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federal register

Monday
December 16, 1985

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federal register

Monday
December 16, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Philadelphia, PA and Washington, DC, see announcement on the inside cover of this issue.

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Federal Highway Administration
Organization and Functions (Government Agencies)
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Radio Broadcasting
Federal Communications Commission

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

War Risk Insurance
Federal Aviation Administration

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

PHILADELPHIA, PA

WHEN: Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

WHERE: Room 3308/10,
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

RESERVATIONS: Laura Lewis,
Philadelphia Federal Information Center.
215-597-1709

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227
Melanie Williams 202-523-5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the Washington, DC briefing.

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Rules and Regulations

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Monday, December 16, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends 8 CFR 103.1(o)(4) to delegate to the Officer in Charge of the INS office in Montreal, Canada the authority to deny waivers of grounds of excludability. This delegation provides more efficient management and expedites responses to applicants.

EFFECTIVE DATE: December 16, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3048
For Specific Information: Margaret M. Smitherman, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633–3320

SUPPLEMENTARY INFORMATION: The Officer in Charge of the Service office in Montreal, Canada had been authorized to approve but not deny all applications for waivers of excludability filed by aliens at American consulates in Canada. Procedures required that an order by the Officer in Charge recommending denial be certified to the District Director in Buffalo, New York. With a view toward more efficient management, the delegation of signatory authority by the District Director in Buffalo to the Officer in Charge in Montreal to deny applications for waiver of excludability will provide for an expeditious response to those affected by this rule.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency management.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities. This order is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Delegation of authority, District directors, Immigration, Powers and duties of Service officers.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103).

2. In § 103.1, paragraph (o)(4) is revised to read as follows:

§ 103.1 Delegations of authority.

(o) * * *

(4) The Officer in Charge of the office in Montreal, Canada is authorized to perform preinspection of passengers and crew of aircraft departing directly to the United States mainland and to authorize or deny waivers of grounds of excludability under section 212 (h) and (i); also, to approve or deny applications for permission to reapply for admission to the United States after deportation or removal, when filed in conjunction with an application for waiver of grounds of excludability under sections 212 (h) or (i) of the Act.

* * * * *

Dated: December 9, 1985.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85–29641 Filed 12–13–85; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–65–AD; Amdt. 39–5183]

Airworthiness Directives: Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires inspection and repair, as necessary, of the Body Station (BS) 1016 pressure bulkhead on certain Boeing Model 737 airplanes. The existing AD applies to all models; however, the FAA has determined that the applicability is unnecessarily broad and should be limited to those airplanes specified in the manufacturer's service bulletin. This amendment provides such a limitation.

DATES: Effective January 20, 1986.

ADDRESSES: The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Carlton Holmes, Airframe Branch, ANM–120S; telephone (206) 431–2926. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to amend AD 84–20–03 (49 FR 38534; October 1, 1984), which requires inspection and repair, as necessary, of the BS 1016 aft pressure bulkhead on all Boeing Model 737 series airplanes, was published in the **Federal Register** on August 12, 1985 (50 FR 32440).

This amendment was prompted by several requests from both operators and the manufacturer to exclude the new Boeing Model 737–300 from the requirements of the existing AD, since there has been no related history to

justify the prescribed inspections for that model.

Initial reports of corrosion and cracking in the lower lobe of the BS 1016 aft pressure bulkhead on earlier Boeing Model 737–100 and 737–200 airplanes have been attributed to a deteriorated leveling compound and plugged drain hole which allows fluids from the aft toilet to accumulate in the lower lobe of the BS 1016 aft pressure bulkhead. Later models of these airplanes incorporated an improved leveling compound and an enlarged drain hole. There have been no reports on these later models to justify their inclusion in the AD.

The comment period for the proposed amendment closed October 4, 1985. Interested persons have been afforded an opportunity to participate in the making of this AD and due consideration has been given to all comments received.

Two comments were received in response to the NPRM. One commenter, a foreign operator, stated that his company is currently complying with AD 84–20–03. The other comment was received from the Air Transport Association of America (ATA), on behalf of its member operators, which supported the proposed amendment.

After consideration of all available data and the comments received, the FAA has determined that air safety and the public interest require the adoption of the amendment as proposed.

This amendment will reduce the applicability of AD 84–20–03 to those airplanes specified by Boeing Service Bulletin 737–53–1075, Revision 1, dated September 2, 1983. Since the amendment limits the applicability of an existing AD, there is no significant economic or regulatory impact on affected operators.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By amending Airworthiness Directive 84–20–03, Amendment 39–4923 (49 FR 38534; October 1, 1984), by revising the effectivity statement preceding paragraph A. to read as follows:

"**Boeing:** Applies to Model 737 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 737–53–1075, Revision 1, dated September 2, 1983, with more than 20,000 flight hours time in service or 7 years since manufacture, whichever occurs first. Compliance is required as indicated. To ensure the continuing structural integrity of the aft pressure bulkhead, accomplish the following:"

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 20, 1986.

Issued in Seattle, Washington, on December 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–29615 Filed 12–13–85; 8:45 am]

BILLING CODE [illegible]

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14 CFR Part 39

[Docket No. 85–NM–80–AD; Amdt. 39–5185]

Airworthiness Directives: DeHavilland Aircraft of Canada, Ltd., Model DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all known persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain DeHavilland Model DHC–8 series airplanes by individual telegrams. The AD requires flight manual limitations to prohibit takeoff, landing, and climb in the vicinity of lightning and continuous ignition. This action was prompted by reports of lightning strike incidents on Model DHC–8 airplanes, which damaged the electronic control units.

DATES: Effective December 26, 1985.

This AD was effective earlier to all recipients of telegraphic AD T85–14–51 dated July 12, 1985. Compliance required before further flight after the effective date of this AD, if not already accomplished.

ADDRESSES: The applicable service information specified in this AD may be obtained upon request to DeHavilland Aircraft of Canada, Ltd, Garrat Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Perrotta, Propulsion Branch, ANE–174; telephone (516) 791–7421. Mailing address: FAA, New England Region, New York Aircraft Certification Office, 181 S. Franklin Avenue, Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition that may exist on DeHavilland Model DHC–8 airplanes.

Two lightning strike incidents have been reported on DHC–8 airplanes in which the engine electronic control units and associated wiring were found vulnerable to induced transients. This could cause engine flame out or power loss and adversely affect the electronic control units and the propeller auto-feathering function.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, telegraphic AD T85–14–51 was issued July 12, 1985, which requires flight manual limitations to prohibit takeoff, landing and climb in the vicinity of lightning. Continuous ignition is also

required below 1500 feet above ground level during takeoff and landing.

Since a situation existed, and still exists, that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to public interest, and good cause exists to make the amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

DeHavilland Aircraft of Canada, LTD.: Applies to all Model DHC-8-101 airplanes, certificated in any category. Compliance is required prior to further flight after the effective date of this airworthiness directive (AD). To minimize the danger of lightning transient-induced damage to the electronic engine control units, accomplish the following, unless previously accomplished:

A. Prior to further flight, incorporate the following limitations into the limitations section of the airplane flight manual. This may be accomplished by including a copy of this AD in the flight manual.

1. To preclude lightning-induced damage to the electronic engine control units, takeoff is prohibited when lightning or thunderstorms have been observed or reported in the immediate vicinity of the airport.

2. Operation with engine ignition selected to manual is required during every takeoff, takeoff climb to 1500 feet AGL, final approach, and landing.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All person affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to DeHavilland Aircraft of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective December 26, 1985, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD 85-14-51 issued July 12, 1985.

Issued in Seattle, Washington, on December 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-29616 Filed 12-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-61-AD; Amdt. 39-5184]

Airworthiness Directives; DeHavilland Aircraft of Canada, Ltd., Model DHC-8 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all known persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain DeHavilland Model DHC-8 airplanes by individual telegrams. The AD requires incorporation of certain flight manual limitations and special procedures to be followed until the flap drive units are modified. This action was prompted by reports of flap positioning malfunction which, if not corrected, could result in a hazardous situation during takeoff and landing.

DATES: Effective December 31, 1985.

This AD was effective earlier to all recipients of telegraphic AD T85-14-52, dated July 18, 1985. Compliance required before further flight after the effective date of this AD, if not already accomplished.

ADDRESSES: The applicable service information specified in this AD may be obtained upon request to DeHavilland Aircraft of Canada, Ltd., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington, or at the FAA, New England Region, New York Aircraft Certification Office, 1815 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. William White, Systems and Equipment Branch, ANE-173; telephone (516) 791-6427. Mailing address: FAA, New York Aircraft Certification Office, 1815 Franklin Avenue, Room 202, Valley Stream, New York 11581.

SUPPLEMENTARY INFORMATION: Transport Canada, the airworthiness authority for Canada, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain DeHavilland Model DHC-8 airplanes. Certain flap drive power units may incorporate spur gears manufactured from an incorrect material which is subject to premature deterioration. This creates a potential for flap position malfunctions during takeoff and landing, which could lead to a hazardous situation:

1. When flaps are selected down to intermediate flap angles, the flaps could travel to the full down (35 degree) position; or similarly

2. When the intermediate flap angles are selected from the full down position, full retraction (0 degrees) could result.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, telegraphic AD T85-14-52 was issued July 18, 1985, which requires incorporation of certain flight manual limitations and special procedures to be followed until the suspect flap drive units are replaced with modified units.

Since a situation existed, and still exists, that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to public interest, and good cause exists to make the amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

DeHavilland Aircraft of Canada, Ltd.: Applies to all Model DHC-8-101 airplanes, certificated in any category, equipped with flap drive power units, Sunstrand Part Number 734177A or 734177B, Serial Numbers 101, 103-105 inclusive, and 107-110 inclusive. Compliance is required as indicated, unless previously accomplished.

To reduce the hazards associated with flap drive power unit malfunctions, prior to further flight, accomplish the following:

A. Incorporate the following into the limitations section of the airplane flight manual. This may be accomplished by including a copy of this AD in the airplane flight manual.

1. Flaps extended speed (VFE) is limited to 130 KIAS for all flap angles;

2. Single engine approach training is prohibited;

3. The flap indicator must be monitored to confirm that the selected angle is achieved; and

4. In the event of an engine inoperative approach, flap should be selected as early as possible and landing flap should not be selected until the landing is assured. If the selected flap angle is exceeded, flap must be reselected to 0 degrees and the approach and landing continued at not less than the 0 flap 1.3 V_s in figure 5/5A-4-2.

B. Within two weeks after the effective date of this amendment, replace the flap drive power units listed above with 27-2 units modified in accordance with DHC Service Bulletin 8-27-6 dated July 10, 1985, and remove the AFM limitations required by paragraph A., above.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to DeHavilland Aircraft of Canada, Ltd., Garrett Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington, or the FAA, New England Region, New York Aircraft Certification Office, 1815 South Franklin Avenue, Room 202, Valley Stream, New York.

This amendment becomes effective December 31, 1985, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD 85-14-52, issued July 18, 1985.

Issued in Seattle, Washington, on December 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-29617 Filed 12-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWP-19]

Alteration and Redefinition of the Fresno, California, Transition Area and Fresno Air Terminal Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter and redefine the transition area at Fresno, California, and Fresno Air Terminal, Fresno, California, Control Zone. This action is necessary to accommodate the name and identification change of the Fresno Very High Frequency Omni-directional Radio Range and Tactical Air Navigation Aid (VORTAC). This action also provides a small alteration to the existing transition area for clarity. The new description refers to geographical coordinates which are permanent in nature and deletes reference to the Fresno VORTAC.

EFFECTIVE DATE: 0901 G.m.t. March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Joe Fowler, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1655.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by altering and redefining the Fresno, California, Transition Area and Fresno Air Terminal Control Zone (50 FR 28589). These alterations are the result of the pending name change of the Fresno VORTAC. To preclude numerous editorial changes to the transition area and control zone descriptions, this amendment uses geographical coordinates as reference points which are permanent in nature and not subject to change. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will alter and redefine the description of the Fresno, California, Transition Area and the Fresno Air Terminal, Fresno, California Control Zone using geographical coordinates and deletes reference to the Fresno VORTAC used in the existing description. This action only changes the existing airspace slightly to provide a clear definition.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration, Part 71 of the FAR is revised as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is revised as follows:

Fresno, CA—[Revised]

Beginning at lat. 36°45'30" N., long. 119°37'30" W.; to lat. 36°44'00" N., long. 119°36'30" W.; to lat. 36°42'10 N., long. 119°39'20" W.; to lat. 36°43'20" N., long. 119°40'30" W.; thence clockwise via the 5-mile radius circle of the Fresno Air Terminal (lat. 36°46'36" N., long. 119°43'03" W.); to lat. 36°49'40" N., long. 119°47'30" W.; to lat. 36°52'20" N., long. 119°48'30" W.; to lat. 36°54'00" N., long. 119°46'20" W.; to lat. 36°51'30" N., long. 119°44"30' W.; thence clockwise via the 5-mile radius circle to the point of beginning.

3. Section 71.181 is revised as follows:

Fresno, CA—[Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 36°39'00" N., long. 119°25'00" W.; direct to lat. 36°36'00" N., long. 119°27'40" W.; direct to lat. 36°41'30" N., long. 119°38'00" W.; direct to lat. 36°40'00" N., long. 119°43'40" W.; direct to lat. 36°39'30" N., long. 119°52'30" W.; direct to lat. 36°37'50" N., long. 119°55'25" W.; direct to lat. 36°40'45" N., long. 119°58'00" W.; direct to lat. 36°50'30" N., long. 119°50'55" W.; direct to lat. 36°54'00" N., long. 119°50'25" W.; direct to lat. 36°54'45" N., long. 119°46'30" W.; direct to lat. 36°51'30" N., long. 119°44'30" W.; thence clockwise via the 5-mile radius circle centered on the Fresno Air Terminal (lat. 36°46'36" N., long. 119°43'03" W.); to lat. 36°45'30" N., long. 119°37'30" W.; to the point of beginning. That airspace extending upward from 1200 feet above the surface beginning at lat. 37°29'00" N., long. 119°15'00" W.; to lat. 36°49'00" N., long. 118°46'00" W.; to lat. 36°39'00" N., long. 118°46'00" W.; to lat. 36°39'00" N., long. 119°09'00" W.; to lat. 36°00'00" N., long. 118°45'00" W.; to lat. 36°00'00" N., long. 119°30'00" W.; to lat. 37°02'00" N., long. 120°18'00" W.; to the point of beginning.

Issued in Los Angeles, California, on December 5, 1985.

H.C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85–29621 Filed 12–13–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket Number 85–ACE–11]

Designation of Transition Area—Centerville, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to designate a 700-foot transition area at Centerville, Iowa, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Centerville, Iowa, Municipal Airport, utilizing the Centerville Non-Directional Radio Beacon (NDB) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure is being developed for the Centerville, Iowa, Municipal Airport, utilizing the Centerville NDB as a navigational aid. The establishment of an instrument approach procedure based on this approach aid entails designation of a transition area at Centerville, Iowa, at or above 700 feet above the ground within aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operations and while transiting between the terminal and enroute environment. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). This action will change the airport status from VFR to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6A, dated January 2, 1985.

Discussion of Comments

On page 40566 of the **Federal Register** dated October 4, 1985, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Centerville, Iowa. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Centerville, Iowa

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Centerville Municipal Airport (latitude 40°41'02"N., longitude 92°54'00"W.); within 3 miles each side of the Centerville NDB (latitude 40°41'14"N., 92°54'00"W.) 319 degree bearing extending from the 5 mile radius area, to 8.5 miles northwest of the airport; and within 3 miles each side of the Centerville NDB 164 degree bearing extending from the 5 mile radius area, to 8.5 miles southeast of the airport.

This amendment becomes effective at 0901 GMT May 8, 1986.

BEST COPY AVAILABLE

Issued in Kansas City, Missouri, on December 5, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-29620 Filed 12-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket Number 85-ACE-09]

Alteration of Control Zone; Grandview, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to amend the Richards-Gebaur Airport, Grandview, Missouri, Control Zone description to incorporate controlled airspace within the Control Zone that previously surrounded the abandoned State Line Airport, Kansas City, Missouri. This action will make the Grandview Control Zone a generally circular area of controlled airspace surrounding the airport compatible with the normal legal description for control zones.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Operational Procedures and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION: This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) alters the Control Zone description of the Richards-Gebaur Airport, Grandview, Missouri. The purpose of this amendment is to incorporate a portion of airspace within the Control Zone that previously surrounded the abandoned State Line Airport, Kansas City, Missouri. This action results in the Grandview, Missouri, Control Zone becoming generally circular as contemplated by Subpart F of Part 71 of the Federal Aviation Regulations. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A, dated January 2, 1985.

Discussion of Comments

On pages 40203, 40204 of the **Federal Register**, dated October 2, 1985, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to alter the Control Zone of Grandview, Missouri. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. By amending § 71.171 as follows:

Grandview, Missouri

Within a 5-mile radius of Richards-Gebaur Airport (latitude 38°50'37" N., longitude 94°33'37" W.); within 2½ miles each side of the Richards-Gebaur ILS localizer south course, extending from the 5-mile radius zone to 1 mile south of the OM; and within 2½ miles each side of the Richards-Gebaur TACAN 195° radial, extending from the 5-mile radius zone to 5½ miles south of the TACAN. This control zone shall be effective during the specific dates and time established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

This amendment becomes effective 0901 G.m.t. May 8, 1986.

Issued in Kansas City, Missouri, on December 5, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-29619 Filed 12-13-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 152, 154, 157, 284, 375, and 381

[Docket Nos. RM79-63-001 through RM79-63-005, and RM82-31-001 through RM82-31-005]

Fees Applicable to Natural Gas Pipelines

Issued November 29, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing for further consideration.

SUMMARY: On September 30, 1985, the Federal Energy Regulatory Commission (Commission) issued a final rule 50 FR 40332 (October 3, 1985), establishing fees for the services and benefits it provides to natural gas pipelines under the Natural Gas Act and the Natural Gas Policy Act of 1978.

In this order, the Commission grants rehearing of its decision solely for the purpose of further consideration.

EFFECTIVE DATE: November 29, 1985.

FOR FURTHER INFORMATION CONTACT: William H. Sipe, III, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-9088.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing for Further Consideration

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

Columbia Gas Transmission Corporation, *et al.*, the Process Gas Consumers Group, *et al.*, United Gas Pipe Line Company, the Interstate Natural Gas Association of America, and Transcontinental Gas Pipe Line Corporation filed timely requests for rehearing in the above-captioned dockets. Rehearing of the order issued on September 30, 1985, in Docket Nos. RM79-63-000 and RM82-31-000 is granted solely for the purpose of affording the Commission additional

time to consider the requests for rehearing. Pursuant to Rule 713(d) of the Commission's Procedural Rules, no answer to this order, or to the requests for rehearing, will be entertained.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29673 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 601

Federal-State Employment Security Programs; Administrative Procedure

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is revising the regulations for administrative procedures for the approval, certification and findings with respect to State laws and plans of operation for standard and additional tax credit and grant purposes. The change will require two rather than four copies of documents submitted to reduce paperwork burden. This will conform with the guideline requirement of 5 CFR 1320.6(c).

This regulation change is submitted without notice and without comment because it is a nonsubstantive change.

EFFECTIVE DATE: December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Carolyn Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213; telephone: (202) 376-6636 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: 5 CFR 1320.6(c) provides that no more than three copies may be required of a collection burden unless otherwise justified.

The changes made in this document are:

1. Section 601.2(a) will now require the States to submit two copies of their unemployment compensation law to the Regional Administrator, Employment and Training Administration (RAETA), instead of four.

2. Section 601.2(b) will require the RAETA to send one copy of the State unemployment compensation law submitted according to § 601.2(a) to the central office of the Employment and Training Administration instead of three.

3. Section 601.3(a) will require the States to submit two copies of relevant State materials as discussed in that section to the RAETA instead of four.

4. Section 601.3(b) will require the RAETA to send one copy of the relevant State materials to the central office instead of three.

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213; telephone: (202) 376-6636 (this is not a toll-free number).

Classification—Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 of Federal Regulations, because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Department believes that this rule will have no "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b). This rule merely reduces the number of copies of State laws and other relevant materials required to be submitted by the States to the RAETA, and by the RAETA to the ETA central office, and has no economic impact on any small entities. The Secretary has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 20 CFR Part 601

Administrative procedures, Reporting requirements, State employment security agencies, Unemployment compensation.

Words of Issuance

For reasons set out in the preamble, Part 601 of Chapter V of Title 20 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, D.C., on November 19, 1985.

Roger D. Semerad,

Assistant Secretary of Labor.

20 CFR Part 601 is amended as follows:

PART 601—[AMENDED]

1. The authority citation for Part 601 is revised to read as follows, and the authority citations following all the sections in Part 601 are removed:

Authority: 5 U.S.C. 301; 26 U.S.C. Chapter 23; 29 U.S.C. 49k; 38 U.S.C. Chapters 41 and 42; 39 U.S.C. 3202(a)(1)(E) and 3202 note; 42 U.S.C. 1302; and Secretary of Labor's Order No. 4-75, 40 FR 18515.

2. Section 601.2 is amended by revising the introductory paragraph and paragraphs (a) and (b) to read as follows:

§ 601.2 Approval of State unemployment compensation laws.

States may at their option submit their unemployment compensation laws for approval (section 3304(a) of the Internal Revenue Code of 1954).

(a) *Submission.* The States submit to the Regional Administrator, Employment and Training Administration (RAETA) two copies of the State unemployment compensation law properly certified by an authorized State official to be true and complete, together with a written request for approval.

(b) *Review of State law.* The RAETA reviews the State law and forwards one copy to the central office of the Employment and Training Administration with his comments. The central office reviews the RAETA's comments and analyzes the State law from the standpoint of the requirements of section 3304(a) of the Internal Revenue Code of 1954.

* * * * *

3. Section 601.3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 601.3 Findings with respect to State laws and plans of operation.

* * * * *

(a) *Submission.* The States submit currently to the RAETA two copies of relevant State material, properly certified by an authorized State official to be true and complete.

(b) *Review.* The RAETA reviews the State material and forwards one copy to the central office with his comments. The central office reviews the material from the standpoint of its conformity with section 303(a) of the Social Security Act, section 3303(a) of the Internal

Revenue Code of 1954, or the Wagner-Peyser Act, as the case may be.

* * * * *

[FR Doc. 85-29590 Filed 12-13-85; 8:45 am]
BILLING CODE 4910-36-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 230

[FHWA Docket No. 85-32]

Supportive Services for Minority, Disadvantaged, and Women Business Enterprises

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: By this final rule, the FHWA is establishing a supportive service program to provide training and assistance to minority business enterprises (MBEs) in Federal-aid highway contracting activities pursuant to section 119(b) of the Surface Transportation Assistance Act of 1982 (STAA of 1982) (Pub. L. 97-424) and as authorized by the Secretary of Transportation. This document provides guidance to implement supportive services activities that will increase the proficiency of minority business enterprises, disadvantaged business enterprises, and women business enterprises to compete on an equal basis with other companies for contracts and subcontracts. The FHWA comments on the procedures adopted in this document for program implementation.

DATES: This rule is effective December 16, 1985.

Comments must be received on or before March 17, 1986.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-32, Federal Highway Administration, Room 4205, HHC-10, 400 Seventh Street SW., Washington DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. B.B. Myers, Chief, Construction and Maintenance Division, (202) 426-0392, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0762, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office Hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Until 1980, the Federal Highway Administration (FHWA) promoted MBE participation in Federal-aid highway programs under provisions of 23 CFR Part 230, Subpart B. That regulation required the States to take certain affirmative actions to increase participation of MBE firms in highway construction programs. On March 31, 1980, the Department of Transportation (DOT) published a comprehensive set of regulations (45 FR 21172) designed to promote MBE participation in all financial assistance programs of the Department. These regulations were codified in 49 CFR Part 23, which superseded MBE regulations previously issued by DOT agencies, and contained administrative requirements for implementing DOT's policy of supporting the fullest possible participation in DOT programs of firms owned and controlled by minorities and women. Under 49 CFR Part 23, each recipient of Federal transportation assistance funds is required to adopt an MBE participation program which shall include, among other things, procedures for setting goals for MBE participation in Federal-aid contracts and provisions for assisting MBEs throughout the life of contracts in which they participate.

On January 6, 1983, in section 105(f) of the Surface Transportation Assistance Act of 1982 (STAA of 1982), Congress issued a new mandate for minority participation in DOT programs by requiring that "not less than 10 percentum of the funds to be appropriated under this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals." To implement this provision, DOT issued a revision to 49 CFR Part 23 which continues the existing MBE program but adds a new Subpart D containing additional requirements relating to the attainment of 10 percent participation by disadvantaged business enterprises (DBE) (July 21, 1983, 48 FR 33442). The implementation of section 105(f) in effect replaced the term "MBE" with the term "DBE" for FHWA purposes.

Section 119(b) of the STAA of 1982 amended section 140 of Title 23, U.S.C., to provide that up to $10,000,000 per year may be deducted from funds apportioned under 23 U.S.C. 104(a) to conduct and finance training and assistance programs in connection with any program under Title 23 "in order that minority business may achieve proficiency to compete, on an equal basis, for contracts and subcontracts." This final rule implements section 119(b). The FHWA has determined that the supportive services programs should benefit MBEs, women business enterprises (WBEs), and DBEs, all as defined in 49 CFR Part 23. The term "MBE supportive services" will be used throughout this regulation to inlcude coverage of all these groups. It is the policy of FHWA to promote the MBE program goals of increased levels of participation of MBEs in Federal-aid highway contracts. These goals are achieved by (1) increasing the total number of minority firms active in the highway program, and (2) supporting the growth and eventual self-sufficiency of individual firms.

The MBE supportive services regulation (23 CFR Part 230, Subpart B) is being issued to prescribe policies and procedures to be followed in developing, conducting, and administering minority business enterprise supportive services programs. To ensure that the congressional intent expressed in 23 U.S.C. 140(c) is carried out, the new regulation includes provisions which: (1) Define explicit program objectives to increase the participation of minority business in Federal-aid highway program contract work, with an emphasis on assistance that will enable firms to become self-sufficient; (2) provide guidance regarding the types of services allowable to assist the State Highway Agencies (SHAs) in determining the types of Supportive services to develop, conduct, and administer; (3) establish procedures for obligating funds allocated under the authority of 23 U.S.C. 140(C) for MBE supportive services programs; and (4) prescribe the role of the SHAs in monitoring, administering, and evaluating the MBE supportive services program.

In § 230.204(b)(5) of this regulation, the services relating to verification procedures should be undertaken to ensure that only eligible MBEs, meeting the criteria established in 49 CFR Part 23, participate in Federal-aid highway programs and receive the benefits of supportive services. Effective verification procedures contribute to the elimination of "frauds" and "fronts" from participation in the MBE program and enhance opportunities for legitimate MBEs to compete for contracts and subcontracts. The FHWA has determined that services relating to verification procedures are clearly within the intent of section 140 of Title 23, U.S.C.

The Form FHWA–1273 referenced in § 230.204(g)(4) of this regulation is the new designation for Form PR–1273, Required Contract Provisions, Federal-Aid Construction Contracts, which is undergoing revisions and pending publication.

The FHWA has determined that this action does not contain a major rule under the Executive Order 12291 or a significant regulation under the regulatory policies of the Department of Transportation. The compliance costs associated with the regulation are not expected to be significant while the supportive services program will provide important benefits to minority and women-owned businesses and to others. This regulation attempts to provide a reasonable administrative framework for supportive services programs and is not expected to have a major economic impact nor have a significant economic impact on a substantial number of small entities. A regulatory evaluation and regulatory flexibility analysis, prepared pursuant to the Regulatory Flexibility Act, have been prepared and are available for inspection in the public docket.

The FHWA recognizes that this program when implemented will serve an important role in developing a larger more diversified and self-sufficient minority business enterprise community. Since this rulemaking action is primarily concerned with implementing a congressional mandate and since it is important for the program to be initiated, the FHWA finds good cause to make this regulation effective without prior notice and without a 30-day delay in effective date. Neither a general notice of proposed rulemaking nor a 30-day delay in effective date is required under the Administrative Procedure Act because the matters affected relate to grants, benefits, or contracts pursuant to 5 U.S.C. 553(a)(2). Accordingly, the regulation is effective upon publication. However, the FHWA gives notice that comments on the procedures promulgated to administer the program will be accepted and evaluated in determining the need for future procedural revisions to the final rule.

While the FHWA does not anticipate that there will be any useful public comment on the general issue of the grant program itself, there may be procedural comments on some provisions of the final rule. For this reason, publication of this final rule without an opportunity for prior comment, but with a request for comments following publication, is consistent with the Department of Transportation's regulatory policies.

In consideration of the foregoing and under the authority of 23 U.S.C. 101, 140, 304, and 315 and 49 CFR 1.48(b), FHWA is amending Chapter 1, Part 230, Subpart B of Title 23, Code of Federal Regulations, as set forth below.

(Catalog of Federal Domestic Assistance Programs Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 230

Grant programs—Transportation, Highways and roads, Minority business.

Issued on: December 9, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 230—[AMENDED]

Subpart B is revised to read as set forth below:

Subpart B—Supportive Services for Minority, Disadvantaged, and Women Business Enterprises

Sec.

230.201 Purpose.
230.202 Definitions.
230.203 Policy.
230.204 Implementation of supportive services.
230.205 Supportive services funds obligation.
230.206 Monitoring supportive services.
230.207 Sources of assistance.

Authority: 23 U.S.C. 101, 140(c), 304, 315; 49 CFR 1.48(b).

Subpart B—Supportive Services for Minority, Disadvantaged, and Women Business Enterprises

§ 230.201 Purpose.

To prescribe the policies, procedures, and guidance to develop, conduct, and administer supportive services assistance programs for minority, disadvantaged, and women business enterprises.

§ 230.202 Definitions.

(a) "Minority Business Enterprise," as used in this subpart, refers to all small businesses which participate in the Federal-aid highway program as a minority business enterprise (MBE), women business enterprise (WBE), or disadvantaged business enterprise (DBE), all defined under 49 CFR Part 23. This expanded definition is used only in this subpart as a simplified way of defining the firms eligible to benefit from this supportive services program.

(b) "Supportive Services" means those services and activities provided in connection with minority business enterprise programs which are designed to increase the total number of minority businesses active in the highway program and contribute to the growth and eventual self-sufficiency of individual minority businesses so that such businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts.

(c) "State highway agency" means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction. The term "State" is considered equivalent to "State highway agency" if the context so implies.

§ 230.203 Policy.

Based on the provisions of Pub. L. 97–424, dated January 6, 1983, it is the policy of the Federal Highway Administration (FHWA) to promote increased participation of minority business enterprises in Federal-aid highway contracts in part through the development and implementation of cost effective supportive services programs through the State highway agencies.

§ 230.204 Implementation of supportive services.

(a) Subject to the availability of funds under 23 U.S.C. 140(c), the State highway agency shall establish procedures to develop, conduct, and administer minority business enterprise training and assistance programs specifically for the benefit of women and minority businesses. Supportive services funds allocated to the States shall not be used to finance the training of State highway agency employees or to provide services in support of such training. State highway agencies are not required to match funds allocated to them under this section. Individual States are encouraged to be actively involved in the provision of supportive services. Such involvement can take the form of staff, funding, and/or direct assistance to augment the supportive services efforts financed by Federal-aid funds.

(b) State highway agencies shall give preference to the following types of services:

(1) Services relating to identification, prequalification, and certification assistance, with emphasis on increasing the total number of legitimate minority business enterprises participating in the Federal-aid highway program;

(2) Services in connection with estimating, bidding, and technical assistance designed to develop and improve the capabilities of minority businesses and assist them in achieving

proficiency in the technical skills involved in highway construction;

(3) Services designed to develop and improve the immediate and long-term business management, recordkeeping, and financial accounting capabilities;

(4) Services to assist minority business enterprises to become eligible for and to obtain bonding and financial assistance;

(5) Services relating to verification procedures to ensure that only *bona fide* minority business enterprises are certified as eligible for participation in the Federal-aid highway program;

(6) Follow-up services to ascertain the outcome of training and assistance being provided; and

(7) Other services which contribute to long-term development, increased opportunities, and eventual self-sufficiency of minority business enterprises.

(c) A detailed work statement of the supportive services which the State highway agency considers to meet the guidance under this regulation and a program plan for meeting the requirements of paragraph (b) of this section and accomplishing other objectives shall be submitted to the FHWA for approval.

(d) State highway agencies which desire to provide or obtain services other than those listed in paragraph (b) of this section shall submit their proposals to the FHWA for approval.

(e) When the State highway agency provides supportive services by contract, formal advertising is not required by FHWA; however, the State highway agency shall solicit proposals from such qualified sources as will assure the competitive nature of the procurement. The evaluation of proposals by the State highway agency must include consideration of the proposer's ability to effect a productive relationship with majority and minority contractors, contractors' associations, minority groups, and other persons or organizations whose cooperation and assistance will increase the opportunities for minority business enterprises to compete for and perform contracts and subcontracts.

(f) In the selection of contractors to perform supportive services, State highway agencies shall make conscientious efforts to search out, and utilize the services of qualified minority or women organizations, or minority or women enterprises.

(g) As a minimum, State highway agency contracts to obtain supportive services shall include the following provisions:

(1) A statement that a primary purpose of the supportive services is to increase the total number of minority firms participating in the Federal-aid highway program and to contribute to the growth and eventual self-sufficiency of minority firms;

(2) A statement that supportive services shall be provided only to those minority business enterprises determined to be eligible for participation in the Federal-aid highway program in accordance with 49 CFR Part 23 and have a work specialty related to the highway construction industry;

(3) A clear and complete statement of the services to be provided under the contract, such as technical assistance, managerial assistance, counseling, certification assistance, and follow-up procedures as set forth in §230.204(b) of this part;

(4) The nondiscrimination provisions required by Title VI of the Civil Rights Act of 1964 as set forth in Form FHWA–1273, Required Contract Provisions, Federal-Aid Construction Contracts,[1] and a statement of nondiscrimination in employment because of race, color, religion, sex, or national origin;

(5) The establishment of a definite period of contract performance together with, if appropriate, a schedule stating when specific supportive services are to be provided;

(6) Monthly or quarterly reports to the State highway agency containing sufficient data and narrative content to enable evaluation of both progress and problems;

(7) The basis of payment;

(8) An estimated schedule for expenditures;

(9) The right of access to records and the right to audit shall be granted to authorize State highway agency and FHWA officials;

(10) Noncollusion certification;

(11) A requirement that the contractor provide all information necessary to support progress payments if such are provided for in the contract; and

(12) A termination clause.

(h) The State highway agency is to furnish copies of the reports received under paragraph(g)(6) of this section to the FHWA division office.

§ 230.205 Supportive services funds obligation.

Supportive services funds shall be obligated in accordance with the procedures set forth in § 230.117(b) of this part. The point of obligation is defined as that time when the FHWA has approved a detailed work statement for the supportive services.

[1] Form FHWA–1273 is set forth at 23 CFR Part 633, Subpart A, Appendix A.

§ 230.206 Monitoring supportive services.

Supportive services programs shall be continually monitored and evaluated by the State highway agency so that needed improvements can be identified and instituted. This requires the documentation of valid effectiveness measures by which the results of program efforts may be accurately assessed.

§ 230.207 Sources of assistance.

It is the policy of the FHWA that all potential sources of assistance to minority business enterprises be utilized. The State highway agency shall take actions to ensure that supportive services contracts reflect the availability of all sources of assistance in order to maximize resource utilization and avoid unnecessary duplication.

[FR Doc. 85–29731 Filed 12–13–85; 8:45 am]
BILLING CODE 4310-02-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 23

Indian Child Welfare Act; Revision of Grant Application Procedures

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is publishing a final rule that amends the regulations necessary to implement the Indian Child Welfare Act of 1978. The amended regulations change the procedures for grant application under Title II of Pub. L. 95–608, and enable the Assistant Secretary of Indian Affairs to award multi-year developmental projects to Indian tribes or organizations for three years.

The Bureau published these amendments as a proposed rule on January 11, 1984, and intends to implement them immediately in order to authorize multi-year development grants prior to publication of the announcement for the FY 86 grant application period. Therefore, for administrative purposes, good cause is found under 5 U.S.C. (d) (2) and (3) for these regulations to become effective upon publication in the **Federal Register**.

EFFECTIVE DATE: December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Eddie F. Brown, Division of Social Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW, Washington, DC 20245, telephone number (202) 343–5434.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 25 U.S.C. 1952, 5 U.S.C. 301 and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9). This final rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

These regulations have developed to enable grant applicants to address their social service needs on a multi-year basis, to assist in the administration of individual grant programs and to facilitate the administration of the total grant program. These regulations should not be construed to guarantee the appropriation of funds for the Indian Child Welfare Act grant program. Grant awards are subject to the availability of funds, and are dependent on the annual appropriation by Congress of funds for these specific purposes. Due to this fact, grant applicants are encouraged to set goals for each year of a multi-year project.

These amended regulations were published as proposed regulations on January 11, 1984, (49 FR 1381). The public comment period on the proposed rule closed on February 21, 1984. All comments were judged to be of merit and were incorporated into the final rule. Changes were adopted as indicated below.

A. Changes Made Due to Comments Received

Comment. Multi-Year Developmental Projects § 23.37. One commenter suggested that clarification is necessary to distinguish the actual grant or budget period from the project period.

Response. The Bureau agreed that clarification was necessary. The term "grant" throughout this section was either removed or changed to "project", whichever was more appropriate, when referring to the multi-year concept. Selective use of the words "grants" and "project" more clearly stipulates that *projects* may be approved on a multi-year basis, but that the actual *grant* or budget is to be approved on an annual basis.

Comment. Multi-Year Developmental Projects § 23.37. One commenter suggested that all factors to be considered by BIA in awarding multi-year projects should be clearly stated at the beginning of this regulation.

Response. The Bureau agreed with this suggestion and added additional language to emphasize the Bureau's discretion in determining if continued funding of individual projects constitutes the best use of available funds. This section has been redesignated 23.37(a).

Comment. Multi-Year Developmental Projects § 23.37(a). A single commenter requested that a detailed explanation be given on application requirements for the initial proposal of a multi-year developmental project.

Response. The Bureau agreed with this recommendation. Section (a) has been redesignated as section (d) with four subparts. It explains the information required in a multi-year project application. The new language specifies that at the time of original submission of the application, the applicant must provide relevant information on proposed activities for the duration of the requested project period. This information must demonstrate a developmental approach to the delivery of social services. In addition, an applicant must, at a minimum, address all requirements previously specified in regulations, including § 23.27(c)(3) which requires a satisfactory evaluation of the program from the appropriate Area Office if the applicant has been a grantee during the preceding year and is submitting an application to continue essentially the same service program.

Comment. Project Renewal Application, § 23.37)(c). One commenter asked that further explanation be provided on the required content of a project renewal application.

Response. The Bureau agreed that further explanation was necessary. At § 23.37, subsections (c) and (d) were reversed for clarification, § 23.37(c) was redesignated as § 23.37(g), and the existing § 23.37(d) was redesignated as § 23.37 (e) and (h). The revised § 23.37(e) has been expanded to specify the information requiréd in a project renewal application. Section 23.37(c) now explains that requests from tribal governing bodies or Indian organizations which cover the duration of the project will fulfill the requirements specified in § 23.26 and need not be resubmitted for either the second or third year. Section 23.37(f) is also added to emphasize that funding in the second and/or third year of a project is dependent on the grantee's progress in accomplishing the goals and objectives specified in the approved work plan submitted in the first year's application.

Comment. Technical Assistance § 23.37(e). One commenter asked that the Bureau's technical assistance role be re-emphasized.

Response. This section has been redesignated as § 23.37(g). The Bureau agreed that clarification concerning technical assistance was necessary. A portion of § 23.37(d) was transferred to § 23.37(g). The information previously contained in § 23.37(e) was incorporated into a new § 23.37(h). The revised § 23.37(g) reiterates the fact that an applicant may request technical assistance on the application and renewal processes in compliance with § 23.29.

Comment. Use of Available Funds § 23.37(f). One commenter asked that information be provided to explain what will happen to existing multiyear grantees if they are not renewed.

Response. The Bureau agreed that this information was necessary. Section 23.37(f) has been redesignated as § 23.37(h) to provide elaboration on the information previously contained in § 23.37(e), and to more specifically relate to grantees who are not renewed. If a multi-year project is not renewed, the grantee will not be eligible to reapply for a multi-year project until the next multi-year grant announcement. Such grantees may, however, submit an application in response to the annual announcement for one-year grants for projects other than those in the original developmental grant.

B. Other Changes Made

Upon review of the proposed rule, the Bureau has made the following structural changes in the final for the purpose of clarity.

—The information presented in § 23.37 has been redesignated section (a) and the material in that section divided into subsections (1), (2), and (3).

—Section 23.37(a) has been redesignated § 23.37(b).

—Section 23.37(b) has been redesignated § 23.37(c).

—Section 23.37(c) has been redesignated § 23.37(g).

—Section 23.37(d) has been subdivided and redesignated as § 23.37 (e) and (h).

—Section 23.37(e) has been redesignated as § 23.37(i).

—Section 23.37(a) has been changed from projects "up to a maximum of three years" to "for project periods of three years." This change was made for administrative purposes.

—Section 23.37(d), previously § 23.37(a), now specifies minimum application requirements.

—Section 23.37(j) is added to clarify that existing grant administrative provisions in §§ 23.21–23.71 also apply to multi-year projects.

The primary author of this document is Louise M. Zokan-Delos Reyes, Bureau of Indian Affairs, Division of Social

Services, telephone number (202) 343–0435.

It has been determined that this document is not a major rule as defined in Executive Order 12991 because it will have no economic impact on the public and it will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. (5 U.S.C. 601 *et seq.*)

The information collection requirements contained in Part 23 are those necessary to comply with the application requirements of the Office of Management and Budget (OMB) Circular No. A–102. The Standard Form 424 and attachments prescribed by that circular are approved by OMB under 44 U.S.C. 3501 *et seq.* This section describes the types of information that would satisfy the application requirements of Circular No. A–102 for this grant program.

List of Subjects in 25 CFR Part 23

Administrative practice and procedure, Child welfare, Grant programs/Indians, Grant programs/Social programs, Indians/Social welfare.

For the reasons set forth in the preamble, Part 23 of Title 25 of the Code of Federal Regulations be amended as follows:

PART 23—INDIAN CHILD WELFARE ACT

Subpart C—Grants to Indian Tribes and Indian Organizations for Indian Child and Family Programs

1. The authority citation for Subpart C continues to read:

Authority: 5 U.S.C. 301; secs. 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9).

2. Section 23.37 Multi-Year Development Projects is added to read as follows:

§ 23.37 Multi-Year Developmental Projects.

(a) The Assistant Secretary—Indian Affairs may approve multi-year developmental projects for project periods of three years, subject to:

(1) The availability of funds in accordance with § 23.27(e);

(2) Grantee compliance with the past performance requirements of § 23.27(c)(3); and

(3) The determination by the Bureau that continued funding constitutes the best use of available funds.

(b) Prior to the beginning of the program year in which grants for multi-year projects will be awarded, the Bureau will publish in the **Federal Register**, an announcement of the grant application process for the year, including priorities, applicant eligibility criteria, the schedule for and required contents of applications, the funding formula and evaluation criteria for multi-year projects.

(c) The formula published in the **Federal Register** in accordance with § 23.27(e)(1) of this Part shall indicate the manner in which the funding shall be established for each year of a multi-year project.

(d) Based on the announcement described in subsection (b) of this Section, the applicant shall prepare an application in accordance with §§ 23.24, 23.25 and 23.26 of this Part in order to enable the Bureau to make a judgment of the relevance and potential effectiveness of the proposed activities for the duration of the project. The application at a minimum shall:

(1) Specify the proposed length of the project period;

(2) Demonstrate a developmental approach in the delivery of social services;

(3) Provide information on activities for each year of the proposed project;

(4) Comply with § 23.27(c) if the applicant has been a grantee during the preceding year and has made an application to continue essentially the same service program.

(e) The renewal application for the second and third years of a multi-year project shall update the information required in §§ 23.24, 23.25, 23.26 and 23.27(c)(3) of this Part. Requests from tribal governing bodies or Indian organizations as required under § 23.26 need not be resubmitted on a yearly basis if such requests were initially written to cover the duration of the multi-year project.

(f) Funding after the first year of a multi-year project will be dependent upon the grantee's progress in achieving project objectives according to the approved work plan submitted in the first year of application.

(g) If, in the judgment of the Assistant Secretary, the grantee's proposed program activity for each year of the multi-year project is acceptable, funding shall be approved in accordance with § 23.27(e)(1) of this Part, depending on the appropriation for that grant program year, the grantee's approved funding request, and the grantee's progress in achieving the objectives of the project according to the work plan submitted in the initial year of multi-year project.

(h) In accordance with § 23.29, an applicant may request technical assistance on the application and renewal process from Bureau Area and/or Agency offices.

(i) If multi-year projects are not renewed for a second or third year of funding, the grantee will not be eligible to apply for a multi-year project until the next multi-year project announcement, but may apply in any subsequent annual grant cycle for projects other than those proposed in the original developmental grant.

(j) The grant administration provisions of §§ 23.21 through 21.71 shall apply to grants for multi-year projects.

Hazel E. Elbert,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85–29613 Filed 12–13–85; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7 84–29]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL, GA, SC

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is changing the regulations governing the drawbridges across the Atlantic Intracoastal Waterway (AICW) from Little River, South Carolina to Miami, Florida to redescribe those vessels entitled to "on demand" openings during authorized closed periods, to delete weather related exemptions at certain bridges, and to identify holidays as federal holidays. This change is being made because of concern for the safety of vessels and bridges and to provide for consistency in the operation of drawbridges across the AICW within the Seventh Coast Guard District.

EFFECTIVE DATE: These interim regulations become effective on January 15, 1986.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 S.W. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 S.W. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 536–4103.

SUPPLEMENTARY INFORMATION: On July 1, 1985 the Coast Guard published (50 FR 27026) a proposal to revise these regulations. The proposed regulations

were also published in a public notice issued by Commander, Seventh Coast Guard District on July 12, 1985. In each notice interested persons were given until August 15, 1985 to submit comments.

This rule does not change closure periods previously established for bridges across the AICW. However, an error in the regulations for the SR 518 bridge at Eau Gallie, FL which existed since the regulations were recodified in the 1984 (49 FR 17463) has been corrected. In addition, the special regulations for the bridge across the Frederica River at St. Simons Island, GA have been deleted because the bridge has been replaced by a fixed bridge.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments

Nine of the 40 comments received supported the proposed rule. Another six commenters took no stand on the proposal; some of them addressed issues not relevant to this rulemaking. There were no objections to the proposals to delete weather related exemptions at certain bridges and to identify holidays as federal holidays.

There were 25 objections received to the proposal to allow large vessels "on demand" draw openings. Many of these objections appear to be in response to incomplete press reports about the proposed rule. Seven commenters who opposed the proposal either gave no reason for their objection or gave a reason that indicated they did not understand the proposal. Ten commenters opposed the regulation on principle, saying that the changes were not necessary or not justified. These comments generally opposed what was considered a change that would increase the number of drawbridge openings.

Eight comments objecting to the proposal included substantive reasons for opposition. One comment claimed the regulation was too broad; the other seven claimed it was not broad enough.

The comment claiming the regulation was too broad suggested the 90 gross ton exemption should not be applied uniformly to all bridges across the AICW since conditions varied from bridge to bridge. This commenter identified a specific bridge where ample sea room for large vessels allegedly made the regulation unnecessary but noted that the regulation was appropriate at many of the affected bridges.

The seven comments claiming the regulation was not broad enough were submitted by passenger vessel operators or their industry associations. Their position may be summed up as supporting the proposed exempt vessel treatment at all drawbridges but insisting that it be applied to passenger vessels regardless of gross tonnage. Their specific arguments are addressed in the following paragraphs.

Many of the arguments presented were economic: Vessel schedules adjusted to match bridge schedules might not be attractive to the public. Passengers don't like their cruises delayed while waiting for bridges. Passengers are on tight schedules and must transfer to tour busses or meet airline schedules. The passenger business is the last healthy sector of the maritime industry and should not be unduly hampered in its effort to survive.

While the Coast Guard understands and sympathizes with these arguments, it cannot change drawbridge regulations in order to promote a particular type of business endeavor. Although drawbridge regulations may affect commerce by benefiting one transportation mode at the expense of another, they are intended to meet the reasonable needs of navigation and to serve the broad public interest.

Scheduled closure periods are intended to meet these navigation needs yet facilitate the flow of land transportation across bridges. Permitting additional unscheduled draw openings would further impede land traffic and could delay the very passengers that vessel operators wish to please.

The historical precedent of passenger vessels having "head of the line" privileges at locks was cited as supporting preferred treatment for these vessels at drawbridges. This is not an apt analogy. When a drawbridge opens, all accumulated vessels may pass through the draw. Lockage, on the other hand, is a time consuming procedure with limited vessel capacity per cycle.

A related argument claimed that the proposed rule treated smaller passenger vessels as noncommercial vessels because tugs with tows were considered exempt vessels but smaller passenger vessels were not. The proposed rule made not distinction between commercial and non-commercial vessels. Tugs with tows are treated as exempt vessels not because they are usually in commercial service but because their size and maneuvering characteristics warrant special treatment in the interest of safety. Tugs without tows are accorded no special treatment.

The most convincing arguments presented were concerned with safety. It was stated that gross tonnage has little to do with vessel size or maneuverability and that vessels of 90 or less gross tons may carry hundreds of people. While there is a correlation between gross tonnage and vessel size, we acknowledge that gross tonnage is not a valid predictor of maneuverability or passenger capacity. The 90 gross ton figure was selected because it included the very large passenger vessels which inspired the original proposal yet excluded the vast majority of passenger vessels which were successfully operating without special regulations.

The Coast Guard shares the concerns of passenger vessel operators for the safety of passengers, vessels, and bridges. It certificates these vessels for the routes on which it has determined they can safely operate. It licenses the personnel who operate these vessels. And it recognizes that these operators would not knowingly hazard their passengers or vessels. The Coast Guard also acknowledges that there are unique circumstances where immediate draw opening may be necessary for safety.

The existing drawbridge regulations recognize these circumstances by requiring "on demand" openings for "vessels in distress." We have interpreted this term broadly, construing it to include legitimate safety reasons and not just vessels sinking, disabled, afire, etc. While our interpretation encompasses passenger vessels that required immediate draw opening for safety's sake, we believe that a more descriptive term would eliminate possible misunderstanding. Therefore in this interim final rule we have replaced "vessels in distress" with "vessels in a situation where a delay would endanger life or property". Since this provision would apply to vessels regardless of gross tonnage, the provision for vessels over 90 gross tons has been deleted.

We plan to replace "vessels in distress" with this new, expanded term in other drawbridge regulations in the course of normal revisions.

Under the new regulation a passenger vessel, or any other vessel, requiring an immediate draw opening to avoid endangering life or property may demand such opening by sounding the five short blasts prescribed by 33 CFR 117.15(b)(3) or by radiotelephone communication. Vessels demanding such opening without valid reason and bridges failing to open when properly requested will be subject to the penalties provided by law.

The use of radiotelephones can eliminate much of the uncertainty and risks of transits through drawbridges. The Coast Guard encourages, and sometimes requires, radiotelephones at drawbridges. Anyone believing that installation and operation of a radiotelephone at a specific drawbridge is necessary for navigation safety may request the Coast Guard to require such installation and operation under the provisions of 33 CFR 117.23. Requests should describe the circumstances that require a radiotelephone at the bridge.

After-the Fact Comment Period

Although this regulation was preceded by two notices of proposed rulemaking which generated significant public comment, the Coast Guard recognizes that actual experience with this new regulation and additional public comment could identify possible improvements to the regulation. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "**ADDRESSES**" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the interim regulation may be changed.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because regularly scheduled cruise vessels previously offered "on demand" openings at certain bridges can adjust their schedules to transit these draws at scheduled opening times. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. In Part 117, §§ 117.261, 117.353, and 117.911 are revised to read as follows:

Florida

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami.

(a) *General.* Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed through the draw of each bridge listed in this section at any time.

(b) *McCormick Bridge, mile 747.5 at Jacksonville Beach.* The draw shall open on signal; except that, during April, May, October, and November, from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except federal holidays, the draw need open only on the hour and half-hour. During April, May, October, and November, from 12 noon to 6 p.m. Saturdays, Sundays, and federal holidays, the draw need open only on the hour and half-hour.

(c) [Reserved]

(d) *Bridge of Lions (SR A1A) bridge, mile 777.9 at St. Augustine.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m. the draw need open only on the hour and half-hour; however, the draw need not open at 8 a.m., 12 noon, and 5 p.m. Monday through Friday except federal holidays. From 7 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays the draw need only open on the hour and half-hour.

(e) *Seabreeze Boulevard bridge, mile 829.1 at Daytona Beach.* The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except federal holidays, the draw need open only at 8 a.m. and 5 p.m.

(f) *Memorial bridge, mile 830.6 at Daytona Beach.* The draw shall open on signal; except that, from 7:45 a.m. to 8:45 a.m. and 4:45 p.m. to 5:45 p.m. Monday through Saturday except federal holidays, the draw need open only at 8:15 a.m. and 5:15 p.m.

(g) *SR A1A bridge, mile 835.5 at Port Orange.* The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except federal holidays, the draw need open only at 8 a.m. and 5 p.m.

(h) [Reserved]

(i) *Harris Saxon bridge, mile 846.5 at New Smyrna Beach.* The draw shall open on signal; except that, from March 15 through October 15 on Saturdays, Sundays, and federal holidays from 3 p.m. to 6 p.m., the draw need open only on the hour and half-hour.

(j) *NASA railroad bridge, mile 876.6 near Jay Jay.* The draw shall be operated as follows:

(1) The bridge is not constantly tended.

(2) The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches the bridge, the lights go to flashing red and a horn sounds four blasts, pauses, and then repeats four blasts. After an eight minute delay, the draw lowers and locks, providing the scanning equipment reveals nothing under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied.

(4) After the train has cleared, the draw opens and the lights return to flashing green.

(k) *SR402 bridge, mile 878.9 at Titusville.* The draw shall open on signal; except that, from 6:45 a.m. to 7:45 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday, the draw need not open.

(l) *John F. Kennedy Space Center (SR405) bridge, mile 885.0 at Addison Point.* The draw shall open on signal; except that, from 6:45 a.m. to 8 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday, the draw need not open.

(m) *SR518 bridge, mile 914.4 at Eau Gallie.* The draw shall open on signal; except that, from 8:15 a.m. to 4:15 p.m. the draw need open only on the quarter-hour and three-quarter hour. From 6:45 a.m. to 8:15 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday except federal holidays, the draw need not open.

(n) *Merrill Barber (SR60) bridge, mile 951.9 at Vero Beach.* The draw shall open on sigal; except that, from 7:45 a.m. to 9 a.m., 12 noon to 1:15 p.m., and 4 p.m. to 5:15 p.m., Monday through Friday, except federal holidays, the draw need open only at 8:30 a.m., 12:30 p.m. and 4:30 p.m. From December 1 through April 30, from 7 a.m. to 6 p.m., Monday through Friday except federal holidays and as provided above, the draw need only open on the hour, quarter-hour, half-hour, and three-quarter hour.

(o) [Reserved]

(p) [Reserved]

(q) *Indiantown Road (SR706) bridge, mile 1006.2 at Jupiter.* The draw shall open on signal, except that, from November 1, through April 30, from 7 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(r) [Reserved]

(s) *PGA Boulevard bridge, mile 1012.6* The draw shall open on signal; except that from, 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the quarter-hour and three-quarter hour. On Saturdays, Sundays, and federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(t) *Parker (US1) bridge, mile 101.3.7.* The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. Monday through Friday except federal holidays, the draw need open only on the hour and half-hour. On Staurdays, Sundays, and federal holidays form 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(u) *Flagler Memorial (SR A1A) bridge, mile 1021.9 at Palm Beach.* The draw shall open on signal; except that, from November 1 to May 31, Monday through Friday except federal holidays, from 8 a.m. to 9:30 a.m. and from 4 p.m. to 5:45 p.m., the draw need open only at 8:30 a.m. and 4:45 p.m. From 9:30 a.m. to 4 p.m., the draw need open only on the hour and half-hour.

(v) *Royal Park (SR704) bridge, mile 1022.6 at Palm Beach.* The draw shall open on signal; except that, from November 1 through May 31, Monday through Friday except federal holidays, from 8 a.m. to 9:30 a.m. and from 3:30 p.m. to 5:45 p.m., the draw need open only at 8:45 a.m., 4:15 p.m., and 5 p.m. From 9:30 a.m. to 3:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(w) *Southern Boulevard (SR700/80) bridge, mile 1024.7 at Palm Beach.* The draw shall open on signal; except that, from November 1 through May 31, Monday through Friday except federal holidays, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6:30 p.m., the draw need open only at 8:15 a.m. and 5:30 p.m.

(x) *Lantana Avenue bridge, mile 1031.0 at Lantana.* The draw shall open on signal; except that, from December 1, to April 30, on Saturdays, Sundays, and federal holidays, from 10 a.m. to 6 p.m., the bridge need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

(y) [Reserved]

(z) [Reserved]

(aa) *Atlantic Avenue (SR806) bridge, mile 1039.6 at Delray Beach.* The draw shall open on signal; except that, from November 1 to May 31 from 10 a.m. to 6 p.m. Monday through Friday, the draw need open only on the hour and half-hour.

(bb) *SR810 bridge, mile 1050.0 at Deerfield Beach.* The draw shall open on signal; except that, from November 1 through May 31 from 11 a.m. to 5 p.m. on Saturdays, Sundays and federal holidays, the draw need not open only on the hour, quarter-hour, half-hour, and three-quarter hour.

(cc) *N.E. 14th Street bridge, mile 1055.0 at Pompano.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(dd) *Atlantic Boulevard (SR814) bridge, mile 1056.0 at Pompano.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour and half-hour.

(ee) *Commercial Boulevard bridge, mile 1059.0 at Lauderdale-by-the-Sea.* The draw shall open on signal, except that, from November 1 through May 15 from 12 noon to 6 p.m., Monday through Saturday, and from 9 a.m. to 6 p.m. on Sundays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

(ff) *Oakland Park Boulevard Bridge, mile 1060.5, at Fort Lauderdale.* The draw shall open on signal; except that, from November 15 through May 15, from 7 a.m. to 6 p.m., Monday through Friday except federal holidays, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour, and from 10 a.m. to 6 p.m. on Saturdays, Sundays and federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

(gg) *Sunrise Boulevard (SR838) bridge, mile 1062.6 at Fort Lauderdale.* The draw shall open on signal; except that, from November 15 through May 15 and year-round through November 14, 1986 from 7:15 a.m. to 6:15 p.m., the draw need open only on the quarter-hour and three quarter hour.

(hh) *Brooks Memorial (S.E. 17th Street) bridge, mile 1065.9 at Fort Lauderdale.* The draw shall open on signal; except that, from 7 a.m. to 7 p.m., the draw need not be reopened for a period of 15 minutes after each closure. The owner of or agency controlling the bridge shall display on both sides of the bridge a time clock which is acceptable to the District Commander and which indicates to approaching vessels the number of minutes remaining before the draw is available for opening.

(ii) [Reserved]

(jj) *Hollywood Beach Boulevard (SR820) bridge, mile 1072.2 at Hollywood.* The draw shall open on signal; except that from November 15 through May 15 from 10 a.m. to 6 p.m., the draw need open only on the hour and half-hour. From May 16 through November 14 on Saturdays, Sundays, and federal holidays, from 9 a.m. to 7 p.m., the draw need open only on the hour and half-hour.

(kk) *Hallandale Beach Boulevard (SR824) bridge, mile 1074.0 at Hallandale.* The draw shall open on signal; except that, from 7:15 a.m. to 6:15 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(ll) *N.E. 163rd Street (SR826) bridge, mile 1078.0 at Sunny Isles.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m. on Monday through Friday except federal holidays, and from 10 a.m. to 6 p.m. on Satrudays, Sundays, and federal holidays, the draw need open only on the quarter-hour and three-quarter hour.

(mm) *Broad Causeway bridge, mile 1081.4 at Bay Harbor Islands.* The draw shall open on signal; except that, from 8 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(nn) *West Span of the Venetian Causeway, mile 1088.6 at Miami.* The draw shall open on signal; except that, from November 1 through April 30, Monay through Friday except federal holidays, from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., the draw need be opened only on the hour and half-hour.

(oo) *MacArthur Causeway bridge, mile 1088.8 at Miami.* The draw shall open on signal; except that, from November 1 through April 30 from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., the draw need open only on the hour and half-hour.

(pp) *Dodge Island bridges, mile 1089.4 at Miami.* The draws shall open on signal; except that, from 7:15 a.m. to 5:45 p.m. Monday through Saturday except federal holidays, the draws need open only on the quarter-hour and three quarter hour.

(qq) *Rickenbacker Causeway bridge, mile 1091.6 at Miami.* The draw shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except federal holidays, and 11 a.m. to 6 p.m. Saturdays, Sundays, and federal holidays, the draw need open only on the hour and half-hour.

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.

(a) *General.* Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed through the draw of each bridge in this section at any time.

(b) *Causton Bluff (SR26) bridge across the Wilmington River, mile 579.9 near Causton Bluff.* The draw shall open on

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signal except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except federal holidays, the draw need open only at 8:10 a.m. and 5:20 p.m.

(c) *Memorial (US80) bridge across the Wilmington River, mile 582.8 at Thunderbolt.* The draw shall open on signal; except that, from 7:45 a.m. to 9:15 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday except federal holidays, the draw need open only at 8:30 a.m. and 5:45 p.m. From May 15 to September 15 from 12 noon to 1:30 p.m. and 4 p.m. to 6 p.m. on Sundays, and federal holidays the draw need open only on the hour and half-hour.

South Carolina

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(a) *General.* Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed through the draw of each bridge listed in this section at anytime.

(b) *Socastee (SR544) bridge, mile 371 at Socastee.* The draw shall open on signal except that from April 1 through June 30 and October 1 through November 30 from 7 a.m. to 10 a.m. and 2 p.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half-hour. From May 1 through June 30 and October 1 through October 31 from 10 a.m. to 2 p.m., Saturdays, Sundays and federal holidays, the draw need open only on the hour and half-hour.

(c) *Ben Sawyer (SR703) bridge across Sullivan's Island Narrows, mile 462. 2 between Sullivan's Island and Mount Pleasant.* The draw shall open on signal, except that the draw need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays. On Saturdays, Sundays, and federal holidays, from 2 p.m. to 6 p.m., the draw need open only on the hour and half-hour.

(d) *SR171/700 bridge across Wappoo Creek, mile 470.8 at Charleston.* The draw shall open on signal; except that the draw need not open from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday except federal holidays. On Saturdays, Sundays, and federal holidays, from 2 p.m. to 6 p.m. the draw need open only on the hour and half-hour.

(e) [Reserved]

(f) *Lady's Island bridge across the Beaufort River, mile 536.0 at Beaufort.* The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Saturday except federal holidays, the draw need open only on the hour.

Dated: December 6, 1985.

G.S. Duca,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 85-29706 Filed 12-13-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-2933-1]

Approval and Promulgation of Implementation Plans; New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document corrects (1) the chart which summarizes dates for attainment of the National Ambient Air Quality Standards (NAAQS) for the State of New Hampshire and (2) an omission in the list of non-SIP regulations.

The dates by which the State of New Hampshire must attain the National Ambient Air Quality Standards are codified at 40 CFR 52.1523 (45 FR 24876, April 11, 1980, as amended at 45 FR 41943, June 23, 1980.) EPA approved a revision of the Berlin Primary TSP attainment date to August 31, 1985, on September 27, 1984 (49 FR 38140). EPA approved a revision of the CO attainment date in Manchester to December 31, 1987 on June 27, 1983 (48 FR 29479). The chart was not revised on those approval dates; therefore, this notice corrects the chart and prints it in its entirety. No changes are being made to the attainment status designations at this time.

On March 15, 1983, (48 10833) EPA published a list of New Hampshire Regulations which are not part of the federally approved SIP. The following line was excluded when the list was published in the **Federal Register**, and when it was codified at 40 CFR 52.1527 and should be added to the list:

- CHAPTER AIR 1000, Part Air 1002.

This action corrects this error and prints the list in its entirety.

FOR FURTHER INFORMATION CONTACT: Lynne A. Naroian, (617) 223-4873; FTS 223-4873.

Dated: November 18, 1985.

Michael R. Deland,

Regional Administrator, Region I.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart EE—New Hampshire

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

§ 52.1523 [Amended]

2. The chart in § 52.1523, "Attainment Dates for National Standards", is revised and appears in its entirety below:

* * * * *

Nonattainment areas [1]	TSP		SO2		NO2	CO	SO3
	Primary	Secondary	Primary	Secondary			
Androscoggin Valley Interstate AQCR 107:							
Berlin	g	f	f	f	a	a	a
Remainder of AQCR	a	b	a	b	a	a	a
Merrimack Valley-SO NH Interstate 121:							
Keene	a	b	a	b	a	a	d
Manchester	a	c	a	b	a	h	d
Nashua	a	b	a	b	a	e	d
Remainder of AQCR	a	b	a	b	a	a	d
AQCR 149	a	b	a	b	a	a	a

a. Air quality level presently below primary standards or area is unclassifiable.
b. Air quality level presently below secondary standards or area is unclassifiable.
c. Eighteen month extension for plan submittal granted; attainment date not yet proposed.
d. December 31, 1982.
e. Redesignation to non-attainment. Nine months granted for submission of an attainment plan; attainment date not yet proposed.
f. December 31, 1981.
g. August 31, 1985.
h. December 31, 1987.
[1] Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.1523 (1978).

3. Section 52.1527, paragraph (b)(5), is revised as follows:

§ 52.1527 Rules and regulations.

* * * * * *

(b) * * *

(5)Non-SIP regulations' numbers listed below:

- CHAPTER Air 100, PART Air 101, sections 101.01-101.03, 101.27, 101.31, 101.50, 101.52, 101.57, 101.63, 101.70-101-

73, 101.76, 101.78, 101.90, 101.97; PARTs Air 102–103.

- CHAPTER Air 200, PARTs Air 201–204; PARTs Air 206–210.
- CHAPTER Air 300, PART Air 304.
- CHAPTER Air 500.
- CHAPTER Air 800, PART Air 803.
- CHAPTER Air 1000, PART Air 1002.
- CHAPTER Air 1100.
- CHAPTER Air 1200, PART Air 1201, section 1201.07; PART Air 1206.

* * * * *

[FR Doc. 85–29659 Filed 12–13–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[A–10–FRL 2937–8]

Designation of Areas for Air Quality Planning Purposes; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By this notice, EPA is approving the redesignation of the Grants Pass, Oregon, from "attainment" to "nonattainment" for carbon monoxide. This action was requested by the State of Oregon Department of Environmental Quality based on carbon monoxide violations recorded during the period of 1981 through 1984.

EFFECTIVE DATE: December 16, 1985.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–85–7), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, 522 S.W. Fifth, Yeon Building, Portland, Oregon 97204

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: 206/442–4233, FTS: 399–4233.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 10, 1984, the State of Oregon Department of Environmental Quality (ODEQ) submitted a request to redesignate the Grants Pass area to nonattainment for carbon monoxide (CO). Specific boundaries were identified in the submittal. Based on this request, ODEQ has devised a State Implementation Plan schedule for development of the CO control strategy. The schedule currently calls for the SIP to be submitted to EPA by May 1986, consistent with the EPA's policy for newly designated nonattainment areas contained in the Guidance Document for Correction of Part D SIPs for Nonattainment Areas, January 27, 1984 and EPA's regulations, 40 CFR 52.24(k) (1984).

II. Response to Comments

On April 18, 1985 (50 FR 15463), EPA solicited public comment on the proposed approval of this redesignation. One comment was received concerning the actual boundaries of the proposed nonattainment area for Grants Pass. A minor correction was published on June 13, 1985 (50 FR 24784).

III. Summary of Rulemaking Action

Today's notice approves the redesignation of the Grants Pass central business district to nonattainment for carbon monoxide. the boundaries for the nonattainment area are as follows:

Beginning at the intersection of B Street and Fifth Street; extending easterly along B Street to Eighth Street; thence southerly along Eighth Street to M Street; thence westerly along M Street to Fifth Street; thence northerly along Fifth Street to the starting point.

IV. Administrative Review

The Office of Management and Budget has exempted this rule from the requirements of section 3 of the Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 14, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: December 9, 1985.

Lee M. Thomas,

Administrator.

PART 81—[AMENDED]

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 is as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.338 the attainment status designation table for carbon monoxide is revised to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—CO

Designated Area	Does not meet primary standards	Cannot be classified or better than national standards
Portland-Vancouver AQMA (portion of the Oregon portion).	X	
Eugene-Springfield AQMA	X	
Grants Pass	X	
Medford—an area contained within the central commercial area of the city.	X	
City of Salem	X	
Remainder of State		X

* * * * *

[FR Doc. 85–29557 Filed 12–13–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Addition of the Guadalupe Fur Seal to the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service adds the Guadalupe fur seal to the List of Endangered and Threatened Wildlife. This measure, required by section 4(a)(2)(A) of the Endangered Species Act, corresponds with a determination of threatened status by the National Marine Fisheries Service, which has jurisdiction of the Guadalupe fur seal pursuant to the Act.

DATES: The effective date of this rule is January 15, 1986.

ADDRESSES: Questions regarding the Service's role in this matter may be addessed to the Office of Endangered Species, U.S. Fish and Wildlife Service, 500 Broyhill Building, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, at the above address (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION: Pursuant to the Endangered Species Act of 1973, as amended, and in accordance with Reorganization Plan Number Four of 1970, responsibility for the Guadalupe fur seal (*Arctocephalus townsendi*), as well as most other marine mammals, lies with the National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration, Department of Commerce. Section 4(a)(2)(A) of the Act provides that the NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife (FWS), however, is responsible for the actual addition of such species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h). In the **Federal Register** of January 3, 1985 (50 FR 294), the NMFS proposed a determination of threatened status for the Guadalupe fur seal and requested comments from the public by March 4, 1985.

In this issue of the **Federal Register**, the NMFS is publishing its final determination of threatened status for the Guadalupe fur seal (see document in Final Rules section under the Department of Commerce, National Oceanic and Atmospheric Administration). Accordingly, the FWS hereby concurrently adds the Guadalupe fur seal, as a threatened species, to the List of Endangered and Threatened Wildlife. Because this FWS action is nondiscretionary, and in view of the public comment period provided by the NMFS on its proposed determination, the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b) as unnecessary and impractical with respect to this ministerial rule. The FWS also has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining the reasons for this determination was published in the **Federal Register** of October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.11(h) is amended by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Guadalupe fur seal	*Arctocephalus townsendi*	U.S.A. (Farallon Islands of CA) south to Mexico (Islas Revillagigedo).	Entire	T	212	NA	227.11

Dated: December 5, 1985.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–29677 Filed 12–13–85; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 41264–5160]

Threatened Fish and Wildlife; Guadalupe Fur Seal

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: The NMFS has determined that the Guadalupe fur seal (*Arctocephalus townsendi*) should be listed as a threatened species according to the Endangered Species Act of 1973 (ESA). This determination is based on information contained in a petition to list the species submitted by the Center for Environmental Education/Seal Rescue Fund, in a Status Review conducted by the NMFS, and in comments received in response to publication of the proposed rule to list the species. The NMFS has determined that such listing is warranted because: (1) The population was reduced to very low numbers by 19th century commercial exploitation; (2) the current population remains small (about 1,600) relative to the presumed minimum pre-exploitation population size (30,000); and (3) the population has been increasing slowly but persistently since its rediscovery in 1954. Critical habitat is not being established at this time because the only areas that are essential to the conservation of the species and may require special management considerations or protection are outside of the jurisdiction of the United States. Concurrent with this rule, the Fish and Wildlife Service, Department of the Interior, is amending the U.S. List of Endangered and Threatened Wildlife by adding the Guadalupe fur seal as a threatened species. The intended effect of listing the Guadalupe fur seal is to provide it with the protection afforded threatened species under the ESA.

EFFECTIVE DATE: The effective date of this rule is January 15, 1986.

ADDRESSES: The complete file for this rule is available for review in the Office of Protected Species and Habitat Conservation, NMFS, 3300 Whitehaven Street, NW., Washington, DC 20235, or the Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Patricia Montanio (Office of Protected Species and Habitat Conservation), 202–634–7529, or Dana J. Seagars (Southwest Region), 213–548—2518.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1983, the NMFS received a petition from the Center for Environmental Education, Seal Rescue Fund to list the Guadalupe fur seal (*Arctocephalus townsendi*) as an endangered species under the ESA (16 U.S.C. 1531) for the following reasons:

1. Overutilization of the species by 19th century commercial sealing operations reduced the population to extremely low numbers.

2. Population growth has been slow since a breeding colony was discovered at Guadalupe Island, Mexico in 1954.

3. The restricted breeding area and overall distribution increases the vulnerability of Guadalupe fur seals to human disturbance through direct or indirect intrusion into these areas. Disruption of normal activities at both breeding and hauling out areas could adversely affect population growth.

4. *A. townsendi* is listed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Such listed species are considered by CITES to be threatened with extinction; trade in the species or its products for commercial purposes is banned by Convention members.

5. The International Union for Conservation of Nature and Natural Resources (IUCN) Red Data Book lists *A. townsendi* as vulnerable.

6. *A. townsendi* was listed according to the Endangered Species Protection Act of 1966 as threatened with extinction. The omission of this species from a revised list published in 1970 (and subsequent lists) was without explanation.

The Assistant Administrator for Fisheries, NOAA, determined that the petition presented substantial information indicating that the petitioned action may be warranted and commenced a review of the status of this species to determine whether or not it should be listed under the ESA (February 8, 1984, 49 FR 4804). On January 3, 1985, the NMFS published its proposed determination that the Guadalupe fur seal should be listed as threatened (50 FR 294–298) and requested comments and information by March 4, 1985. After a thorough review of all information available, the NMFS has determined that the Guadalupe fur seal should be classified as threatened under the terms of the ESA. The list of threatened species under the jurisdiction of the NMFS is contained in 50 CFR 227.4, and is amended to reflect this final determination. The Fish and Wildlife Service (FWS), Department of the Interior, maintains the U.S. List of Endangered and Threatened Wildlife (50 CFR Part 17) of all species determined by the NMFS or the FWS to be endangered or threatened. Concurrent with this rule, the FWS is amending the List by adding the Guadalupe fur seal as a threatened species (see document in the Final Rules section of this issue under Department of the Interior, Fish and Wildlife Service).

Summary of Comments and Recommendations

The NMFS solicited comments and information concerning the Guadalupe fur seal in the **Federal Register** documents noted above. The following individuals and organizations provided information and/or comments: The Conservation Monitoring Center, IUCN; Center for Environmental Education; Department of the Air Force; Department of the Navy; Marine Mammal Commission; Minerals Management Service; Channel Islands National Park, National Park Service; Fish and Game Commission, County of Santa Barbara; Smithsonian Institution; American Society of Mammalogists; Chevron U.S.A., Inc.; Exxon Company, U.S.A.; Union Oil Company of California; Western Oil and Gas Association; Mr. Brent Stewart, Hubbs-Sea World Research Institute; and Dr. Bruce Mate, Oregon State University. Comments from the Wild Flora and Fauna Directorate, Urban Development and Ecology Secretariat (SEDUE), Government of Mexico were received by the U.S. Embassy, Mexico City and transmitted to the NMFS.

Reviewers' comments focused primarily on two issues of the proposed rule: the listing classification to be assigned and the establishment of critical habitat.

Eight commenters supported or had no objection to the proposed listing of *A. townsendi* as "threatened." Three commenters recommended listing the species as "endangered" rather than "threatened." Five commenters felt the species should not be listed or questioned the basis for making a listing determination. Of these five, two believed the economic cost of listing would outweigh any potential benefits to the species or the ensuing restrictions would be onerous and excessive to industry. In accordance with the Conference report on the 1982 amendments to the ESA, § 424.11(b) of 50 CFR requires that the NMFS make a listing determination "*solely* on the basis of the best available scientific and commercial information . . . without reference to possible economic or other impacts of such determination." Therefore, this determination does not consider any economic factors.

Exxon Company, U.S.A. stated that a listing determination is premature due to the lack of detailed information concerning the species' life history and ecology. While the NMFS believes that delaying a final decision to list might provide additional information concerning population parameters (see *Research*, below), the regulations require the NMFS to make a listing determination using the best available information within one year of the publication of the proposed rule, unless there is substantial disagreement among knowledgeable scientists concerning the sufficiency or accuracy of the available information. The NMFS believes sufficient information is available to support listing the species as threatened (see *Listing Procedures*, below) and is not aware of any disagreement in the scientific community regarding the sufficiency or accuracy of the information used in making this determination. Therefore, the NMFS thinks that issuing the final rule at this time is appropriate.

The Minerals Management Service believes the evidence presented in the proposed rule did not satisfy any of the listing criteria. It is the judgment of the NMFS that criterion (2)—"overutilization for commercial . . . purposes" is supported by the current scientific estimates of population size and the written history of the decimation of the population by commercial sealing. Additional details are discussed in the *Listing Procedures* section, below.

The Union Oil Company of California stated that evaluation of the species status should be restricted to the portion of the population in Mexican waters as those individuals in U.S. waters are not intrinsic to survival of the population. The definitions provided in the ESA and the listing regulations of "endangered" and "threatened" status require evaluation of a species' status throughout its range. The current distribution of the Guadalupe fur seal is largely restricted to a remnant of its historic range. Only few individuals are found within the historic range in U.S. waters; these individuals may be recolonizing a portion of their historic range. Reoccupation of historic rookery sites is one indication that the population is recovering. Since the purpose of the ESA is to provide for the recovery of listed species, the NMFS believes that consideration of the individuals occurring in U.S. waters is appropriate.

The United States Air Force requested that the potential impact to *A. townsendi* on the Channel Islands from Space Shuttle sonic booms not be used as justification for listing. The NMFS believes it appropriate to present an analysis respective to the factors outlined by the regulations for listing. While the analysis under factor 1 (present or threatened destruction, modification, or curtailment of . . . habitat or range) noted that

these proposed activities may alter the acoustic environment of the Channel Islands and have the potential to cause short-term disturbance to individuals, the NMFS concluded these activities were not likely to result in significant adverse impacts to the species, and therefore would not, taken alone, support a listing determination.

Based on information from the Red Data Book, the IUCN recommended an endangered status. The NMFS believes the available information supporting listing most closely corresponds with the definition of a "threatened" species provided by the ESA. The Guadalupe fur seal is listed by IUCN as "vulnerable." Included in this category are species "believed likely to move into the 'Endangered' category in the near future . . ." and species whose populations "have been seriously depleted and whose ultimate security has not yet been assured." This classification corresponds more closely with the ESA definition of "threatened" than "endangered" and therefore, it appears that the "threatened" status is consistent with the IUCN category of vulnerable.

The American Society of Mammalogists recommended listing the species as "endangered" based on prior drastic depletion, current low numbers and restricted range, and a potential threat to the species in southern Californian waters due to gillnet fishing operations. The NMFS agrees that there is a potential for *A. townsendi* to be taken in gillnets. However, this potential is low because the number of Guadalupe fur seals in U.S. waters is small. Studies of marine mammal mortality in gillnets conducted by the NMFS and the California Department of Fish and Game since 1978 (Miller *et al.*, 1983; Hanan, 1985) have not reported any incidental taking of *A. townsendi*. If the numbers of *A. townsendi* in the Southern California Bight increase, the potential for incidental taking could increase. The level of take that might occur is difficult to predict because feeding areas of the species have not been identified, routes to these areas are unknown, and the distribution of fishing effort is variable. The NMFS believes that listing the species as "threatened" is justified because currently the potential for incidental taking is low and because the level of incidental take that might occur in California in the future is not expected to have a significant effect on the population. Should incidental taking become a problem as the number of *A. townsendi* increases in U.S. waters, the Service will initiate appropriate action to ensure the recovery of the species.

The Center for Environmental Education, Seal Rescue Fund (CEE/SRF) recommended listing the species as endangered because (1) the recovery of the population has been slow in comparison with the recovery of another pinniped, the northern elephant seal (*Mirounga angustirostris*), and (2) the only breeding site currently use by the species is being used for commercial and recreational purposes. CEE/SRF concluded that the population's slow growth is likely to be jeopardized by potential increases in human activities at this breeding area. The NMFS believes it is inappropriate to evaluate the population growth of *A. townsendi* based entirely on a comparison with *M. angustirostris* because of the differences in size, social structure, and reproductive behavior between otariid and phocid pinnipeds. Because surveys of *A. townsendi* have been conducted at different times of the year, the estimation of the population growth rate of *A. townsendi* is difficult and the factors which may have influenced this rate remain uncertain. However, the NMFS has not been provided with any information to date indicating that recreational or commercial activities at Guadalupe Island have influenced this growth rate. The Government of Mexico and NMFS biologists have provided information indicating that current commercial and recreational use of Guadalupe Island is restricted to areas away from the rookery. Access to rookery beaches is prohibited except for authorized scientific investigations. Additional military personnel have been stationed on the Island in recent years to provide for enforcement of all regulations. Because of this protection, the NMFS finds that recovery is not likely to be jeopardized by these activities and that listing the species as "threatened" is justified.

Five commenters supported the proposed determination not to establish critical habitat. Only the CEE/SRF recommended establishment of critical habitat in a portion of the U.S. Channel Islands off southern California. The specific areas mentioned included San Miguel Island and available ocean waters within U.S. jurisdiction. CEE/SRF noted that one of the criteria proposed for evaluating the recovery of *A. townsendi* was establishment of one or more additional rookeries within the historic range, concluding that if the Channel Islands are the only area where recolonization appears to be taking place, then "this area is essential for the conservation of the species." CEE/SRF further asserted that the NMFS declined to designate critical habitat in the proposed rule "due to a lack of information on the seals' foraging habits."

While recolonization may occur in the Channel Islands, the NMFS does not agree that rookery sites on the Channel Islands or feeding areas in U.S. waters are essential to the conservation of the species and in need of special management measures. Activities considered as essential for recovery include breeding and feeding. The NMFS has identified recolonization of one or more historic breeding sites as one indication of a recovering population. The Channel Islands are only one of several island groups where recolonization may eventually occur. While space for population expansion is certainly essential to the conservation of the species, this space also is available on several islands in Mexico; additional space also is available at Guadalupe Island. Therefore, the NMFS does not find that reoccupation of the Channel Islands in particular is essential to the conservation of the species.

Even if the areas in the Channel Islands were essential to the conservation of the species, the Service does not believe that those areas in the Channel Islands require special management consideration or protection that would be afforded by a critical habitat designation. San Miguel Island is managed by the National Park Service and San Nicolas Island by the U.S. Navy. Both agencies restrict entry to pinniped haul-out areas to all but those persons conducting authorized research or for activities essential to the agency's mission. There is no indication that these activities are, or have the potential for, impeding the recovery of the species.

While the pelagic distribution of feeding Guadalupe fur seals is unknown, it is unlikely that the existing population is dependent on forage in U.S. waters for its continued existence. The decision not to designate U.S. waters as critical habitat was based on the fact that most seals are likely to forage in Mexican waters and not because there was insufficient information to determine the extent of critical habitat. Mexican waters are exempt from consideration as critical habitat; therefore, no foraging habitat has been designated as critical. Two sections (*Listing Decision* and *Criteria for Initiating a Status Review*) have been revised in order to clarify the NMFS' position on the issue of critical habitat.

Comments received concerning "Delisting Criteria" indicated some confusion regarding the NMFS' intent and the procedures proposed to be

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followed after listing of the species. It is the NMFS' intent to identify several specific criteria to be used to identify potential recovery of the population. The NMFS recognizes that these criteria are not absolute or all inclusive, and could be independent of each other. Other specific criteria could be used to identify recovery. The achievement of any one or a combination of these or any other criteria would not make delisting automatic, but would serve to initiate a Status Review. Analyses within the Status Review would culminate with the NMFS proposing a course of action which could include delisting, reclassification, or maintenance of listing status. The section has been retitled and revised slightly to clarify our position on this topic.

Several commenters provided information clarifying the legal status of the nature reserve at Guadalupe Island, calling attention to sightings not noted in the petition or proposed rule, and on additional details of the species biology. While the comments provided additional information about the species, they did not include substantive data which would alter the listing decision. This information has been incorporated into the following sections where appropriate.

Status Review

Detailed information concerning the biology and the status of the species is contained in the petition submitted by CEE/SRF (1983), the NMFS Status Review (Seagars, 1984), and other references cited at the end of this document. This information was summarized in the proposed rule (50 FR 294–298; January 3, 1985).

Listing Procedures

Section 4(a) of the ESA provides that the Secretary of the Interior or Commerce, depending upon the species involved, shall, by regulation, determine if any species is endangered or threatened based upon any one or a combination of the following factors: (1) Present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Section 4(b) of the ESA requires that such determinations are to be made "solely on the basis of the best scientific and commercial data available" and must take into account any efforts being made to protect the species under consideration. The following discussion considers the history, status and biology of *A. townsendi* and current conditions in relation to the listing factors.

(1) *The present or threatened destruction, modification or curtailment of the species' habitat or range.* Habitat loss has not been the primary factor causing the reduced abundance of this species. Several actions that have been proposed within the species' range have the potential to modify or curtail portions of the habitat or range. Offshore oil and gas development activities are intensifying in central and southern California waters. The habitat in the Channel Islands area has a history of low level, chronic occurrence of oil from natural seeps; however, larger scale, catastfophic oil spill events are not a typical component of the habitat. While the occurrence of such events is considered to be unlikely, large amounts of spilled oil could affect individual fur seals in their pelagic habitat or on haulout areas at San Miguel and San Nicolas Islands. There are no data available to evaluate if *A. townsendi* can detect or would avoid oil encounterd at sea. As fur seals rely on their thick pelage for insulation from the cold marine environment, contact with oil either at sea or on a haulout could adversely affect individual fur seals.

The U.S. Air Force's Space Shuttle Program proposes to launch and return vehicles over the northern Channel Islands during the 1980's and 1990's. Over the ten year life of the program, a maximum of 7 launches are predicted to cause high intensity sonic booms over the northern Channel Islands, San Miguel Island in particular. The effects of these sonic booms on pinnipeds are unknown at the present time. High intensity sonic booms are not a normal component of the habitat. Sonic booms of a lesser intensity may impact the islands from approximately 73 other launches and all returns. Any of these sonic booms could cause short-term disturbance to any individuals present. The Air Force has indicated that they will monitor the initial Shuttle launches from Vandenberg A.F.B. to determine the degree, if any, of impact to marine mammal species.

There is potential for disturbance to breeding and resting *A. townsendi* on Guadalupe Island or San Miguel Island by tourists and fishing vessels. However, there are no data that indicate this is a problem now or is likely to become a problem in the future.

There are a number of protective measures in place which either directly or indirectly provide protection to the species and its habitat. These are discussed in detail in listing factor (4) and in the NMFS Status Review (Seagars, 1984).

The NMFS concludes that activities discussed above, particularly those with a potential for oil spills or high-intensity sonic booms, may adversely affect individual Guadalupe fur seals. However, they are not likely to pose a threat to the continued existence of the population breeding on Guadalupe Island or those individuals which haul out on the California Channel Islands.

(2) *Overutilization for commercial, scientific, and educational purposes.* The original population size probably included at least 30,000 individuals. Commercial hunting for the fur of this species resulted in overutilization and its nearly complete eradication in the mid to late 19th century. Archeologic and historic evidence indicates that the species' former breeding range probably was from San Miguel Island, California, to Socorro Island, Baja California. Two specimens were collected for scientific and educational purposes in 1928 when it was unlikely that the population exceeded 60 individuals. Shortly after this time, all known remaining animals were harvested, reportedly for furs sold in Panama. The current breeding distribution is likely restricted to the eastern shore of Guadalupe Island; this area is used by at least 1,600 animals. Although the factors involved are complex and uncertain, the population growth rate may have been influenced by repeated reductions in numbers, reduced genetic variability, or other unknown factors.

(3) *Disease or predation.* There is no information concerning disease or predation for this species.

(4) *Inadequacy of existing regulatory mechanisms.* Current regulatory mechanisms appear to be providing adequate protection of the species within areas subject to Mexican and U.S. jurisdication. Guadalupe Island was designated as a wildlife refuge and sanctuary by the Government of Mexico in 1928, specifically to protect the northern elephant seal and the Guadalupe fur seal. A prohibition on the hunting of these two species was made permanent by Mexico in 1967. A fine of 1.5 million pesos was set in 1983 for any illegal taking; at the same time, provisions for taking for scientific research were established. The Guadalupe fur seal has been protected in the United States under the provisions of the Marine Mammal Protection Act (MMPA, 16 U.S.C. 1361) since December 21, 1972. It is also listed on Appendix I to CITES which prohibits trade for commercial purposes between signatory parties to the Convention.

Although Mexico is not a party to CITES, these prohibitions apply to trade with signatory nations. Listing of the Guadalupe fur seal according to the ESA would provide it with additional protection through the Section 7 consultation process, the prohibitions of this rule, and the potential to designate critical habitat in the future should it become warranted.

(5) *Other natural or manmade factors affecting its continued existence.* The recent levels of human activities around Guadalupe Island have not prevented the continued increase in the population, and there is no evidence that human activities are increasing to levels that will halt the population's growth or threaten its continued existence. However, a potential exists for the expansion of several fisheries into waters adjacent to Guadalupe Island or the (as yet unknown) feeding grounds of *A. townsendi*. In the event that pelagic gillnet fisheries develop offshore Baja California, Guadalupe fur seals would likely be susceptible to entanglement. However, the potential impact from such a fishery is impossible to predict because it is unknown where feeding areas are located, what routes are taken to these areas, and where fishing effort would be located. If these areas coincided, competition for food resources or the incidental taking of seals could occur.

Discussion

Listing Decision

An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range; a threatened species is any species that is likely to become an endangered species within the foreseeable future. The ESA requires that a determination to list a species as endangered or threatened be made solely on the basis of the best available scientific and commercial information concerning that species relative to the criteria reviewed above. Of these, a decision to list *A. townsendi* is best supported by evidence presented according to criterion (2)— "overutilization for commercial . . . purposes." The species is not currently being taken for commercial purposes and is protected from such taking by both Mexican and U.S. legislation. Given the apparent persistence of the species over the past 40 years and continued growth of the population, the NMFS does not find that the species is in danger of extinction throughout all or a significant portion of its range. However, despite the shortcomings of the available scientific information, it is apparent that the population was reduced to, and remains at, a level where the species is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Thus the NMFS determines that listing this species as "threatened" under the provisions of the ESA is appropriate and issues these protective regulations.

Criteria for Initiating a Status Review

The goal of the ESA is to provide for the recovery of listed populations to a point at which the protective measures of the ESA are no longer necessary. Recovery of a listed population is judged relative to the general listing criteria (50 CFR 424.11(c)).

After a review of the species' status, a species may be delisted on the basis of recovery if it is determined that the species is neither endangered nor threatened (50 CFR 424.11(d)). The general criteria for determining recovery (50 CFR 424.11(c)) are not species-specific, as they are designed to apply to a broad range of species and situations. For example, a population that was listed because of habitat degradation could be delisted when the habitat is restored and the population stabilized, or a population that was listed because of overutilization could be delisted when the use is curtailed and the population returns to a safe level.

Because the general criteria are not species-specific, evaluation of the recovery of a species using the general criteria alone may be difficult and may make the delisting process cumbersome. Therefore, the NMFS is proposing specific criteria to identify recovery of the Guadalupe fur seal population to supplement the general criteria of 50 CFR 424.11(c). These criteria can be evaluated with data from a long-term monitoring program and can be evaluated independently. When one or more of the criteria are attained, the NMFS will initiate a Status Review to determine if the listed status of the Guadalupe fur seal should be changed. In addition, other specific criteria not identified here could be used to initiate a Status Review.

The specific criteria are (1) growth to a population size of 30,000 animals, (2) establishment of one or more additional rookeries within the historical range, and (3) growth to the level at which maximum net productivity of the population occurs.

The estimated minimum size of the pre-exploitation population is 30,000 animals (Seagars, 1984). The NMFS believes this level to be a reasonable indication of recovery of the species sufficient to warrant reassessment of its status.

The establishment of additional breeding colonies within the historic range provides an indication of recovery, because it implies population growth. Establishment of a geographically isolated breeding site reduces the potential for adverse effects on a population due to a localized catastrophic event or human interactions, thereby diminishing the need for the protective measures of the ESA. Therefore, if one or more additional rookeries within the historical breeding range are established, the NMFS will initiate a status review.

The maximum net productivity level (MNPL) is a definitive point in the dynamics of a recovering population. The growth rate of the population begins to decrease at the MNPL as density dependent factors begin to operate. A qualitative determination that a population has passed the point at which the MNPL occurs can be made by monitoring the rate of population growth over time. A population above its MNPL is resilient and can respond to reductions (e.g. from an incidental take) by increasing productivity (DeMaster *et al.*, 1982; Goodman, 1980 and 1982). This resiliency provides some protection to the population, and may indicate that the protective measures of the ESA are not necessary. Therefore, the NMFS will use the MNPL of the Guadalupe fur seal population as a criterion for assessing recovery. If the population monitoring program indicates that the population is above its MNPL, the NMFS will initiate a status review.

Meeting one or all of the delisting criteria does not mean that the NMFS will propose delisting the species, but rather that the NMFS will conduct a status review. If, based on the status review, the NMFS determines that the species is neither threatened nor endangered, then it will propose to delist the species. The MNFS thinks that establishing specific criteria for assessing the recovery of a population at the time it is listed will facilitate monitoring the recovery of the population and facilitate the process of initiating a Status Review and the delisting process, if warranted.

Critical Habitat

Critical habitat is defined as "(1) the specific areas within the geographical area currently occupied by a species . . . on which are found those physical or biological features (i) essential to the conservation of the species and (ii) which may require special management

considerations or protection and (2) specific areas outside the geographical area occupied by the species . . . upon a determination . . . that such areas are essential for the conservation of the species" (16 U.S.C. 1532(5)(A)). The 1982 amendments to the ESA provide, in Section 4(a)(3), that the Secretary shall designate critical habitat, to the maximum extent prudent and determinable, concurrent with listing a species as endangered or threatened. The criteria for designating critical habitat are set forth in § 424.12 of the regulations which implement Section 4 of the ESA (50 CFR Part 424). Those regulations state that "[c]ritical habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction" (50 CFR 424.12(h)).

Guadalupe fur seals are known currently to breed only on Guadalupe Island in Mexico. Food habits have not been studied and foraging habitat has not been defined. A few non-breeding individuals have been observed on San Miguel Island each year since 1969 during the breeding season; solitary individuals have been sighted sporadically at San Nicolas, Santa Barbara, and San Clemente Islands and a few widely scattered pelagic locations. However, the areas in southern California waters are not known to be essential to the conservation of the species and are occupied only by a very small number of non-breeding individuals.

The NMFS finds that currently the only areas that meet the definition for critical habitat are outside of U.S. jurisdiction. Therefore, no critical habitat is being designated. If information indicates that any area within the U.S. is essential to the conservation of the species and may require special management considerations or protection, the NMFS will then reconsider designating critical habitat.

Research

Under the authority of Section 108 of the NMPA, the NMFS has informally cooperated with the Government of Mexico in marine mammal scientific research programs that can be continued or expanded. A cooperative research program with the Government of Mexico would facilitate research into various aspects of population dynamics and life history of the Guadalupe fur seal through cooperation in funding, personnel, and shared expertise. This information would provide a sound basis for management throughout the species range. These projects may include a review of historical sealing records (logbooks); periodic surveys designed to assess the population status throughout the range of the species on a consistently repeatable basis; description of natality and mortality rates; identification of food habits and distribution of feeding grounds; development of models used to assess population trends and status; and the monitoring or potential actions which could adversely affect the population—such as anthropogenic disturbance or fishery interactions.

Classification

The NOAA Directives Manual 02–10 (49 FR 29644–29657; July 23, 1984) implementing the National Environmental Policy Act (NEPA), categorically excludes ESA listing actions from the environmental assessment and environmental impact statement requirements of NEPA.

As noted in the Conference report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of species. Therefore, the economic analysis requirements of Executive Order 12291 and the Regulatory Flexibility Act are not applicable to the listing process.

This rule does not result in an increase in public information collection burden as defined by the Paperwork Reduction Act. The permitting and reporting requirements for the Guadalupe fur seal under the Marine Mammal Protection Act of 1972 include the requirements set forth in these regulations under the Endangered Species Act of 1973. Since the Marine Mammal Protection Act requirements satisfy the current rule, no additional burden results. The Marine Mammal Protection Act requirements for the Guadalupe fur seal are approved under OMB control numbers 0648–0084 and 0648–0090.

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List of Subjects in 50 CFR Part 227

Endangered and threatened wildlife, Exports, Fish, Import, Marine mammals, Transportation.

Dated: September 23, 1985.

Carmen J. Blondin

Deputy Assistant Administrator for Fisheries Resource Management National Marine Fisheries Service.

For the reasons set out in the preamble, Part 227 of Title 50 of the Code of Federal Regulations is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for Part 227 is revised to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. Section 227.4 of Subpart A is amended by adding a new paragraph (d) below the flush paragraph which now follows paragraph (c), to read as follows:

§ 227.4 Enumeration of threatened species.

* * * * *

(d) Guadalupe fur seal (*Arctocephalus townsendi*).

3. A new Subpart B, consisting of § 227.11 is added to read as follows:

Subpart B—Threatened Marine Mammals

§ 227.11 Guadalupe fur seal.

(a) *Prohibitions.* The prohibitions of Section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to the Guadalupe fur seal except as provided in paragraph (b) of this section.

(b) *Exceptions.* (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section in accordance with the subject to the provisions of Part 222 Subpart C—Endangered Fish or Wildlife Permits.

(2) Any Federal, State or local government official, employee, or designated agent may, in the course of official duties, take a stranded Guadalupe fur seal without a permit if such taking:

(i) Is accomplished in a humane manner;

(ii) Is for the protection or welfare of the animal, is for the protection of the public health or welfare, or is for the salvage or disposal of a dead specimen;

(iii) Includes steps designed to ensure the return of the animal to its natural habitat, if feasible; and

(iv) Is reported within 30 days to the Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731.

(3) Any animal or specimen taken under paragraph (b)(2) of this section may only be retained, disposed of, or salvaged in accordance with directions from the Director, Southwest Region.

4. Section 227.71 of Subpart D is amended by revising the introductory text to read as follows:

§ 227.71 Prohibitions.

Except as provided in § 227.72, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed in any of the following acts with respect to any species of threatened marine reptile enumerated in § 227.4(a), (b) and (c):

* * * * *

[FR Doc. 85-29676 Filed 12-13-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 241
Monday, December 16, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-14-AD]

Airworthiness Directive; British Aerospace Model BAe-146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of proposed rulemaking.

SUMMARY: This document withdraws a Notice of Proposed Rulemaking (NPRM) which proposed an airworthiness directive (AD) that would have required inspection amd modification, as necessary, of the lift spoiler arming microswitches on certain Model BAe-146 airplanes. Incorrect operation of the microswitches could cause unwanted retraction of the lift spoilers. The FAA has since determined that all affected airplanes have been inspected and modified, as necessary, and therefore, the proposed AD is not necessary. Accordingly, the NPRM is withdrawn.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which would have required inspection and modification, as necessary, of the lift spoiler arming microswitches to ensure correct overtravel setting was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on March 19, 1985 (50 FR 10974). Insufficient overtravel could cause unwanted retraction of the lift spoilers which would result in an unexpected increase in the stopping distance during a rejected takeoff or landing. Comments were requested from the public.

Since issuing the NPRM, the manufacturer has informed FAA that production of the Model 146 has been changed so that the unsafe condition has been corrected. The manufacturer has assured FAA that all affected airplanes of foreign registry have been inspected and modified. The FAA has contacted the Principal Maintenance Inspectors for each U.S. air carrier affected by the proposed AD and has verified, through a review of records, that all eight affected airplanes have been inspected and modified. Therefore, the potential unsafe condition that instigated the NPRM no longer exists and the proposed AD is not necessary. Accordingly, the NPRM is withdrawn.

Withdrawal of this Notice of Proposed Rulemaking constitutes only such action, and does not preclude the agency from issuing another Notice in the future, or commit the agency to any course of action in the future.

Since this action only withdraws a Notice of Proposed Rulemaking (NPRM), it may be made effective in less than 30 days. It is neither a proposed nor final rule, and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Withdrawal

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration withdraws a proposal to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By withdrawing the proposed airworthiness directive published in the **Federal Register** on March 19, 1985 (50 FR 10974), FR Doc. 85-6455.

Issued in Seattle, Washington, on December 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-29618 Filed 12-13-85; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWP-39]

Proposed Alteration of Ukiah, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter and redefine the transition area at Ukiah, California. The realignment of the controlled airspace is required to contain all Instrument Flight Rule (IFR) operations at Ukiah, California. This action is necessary to ensure separation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before January 15, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace Branch, AWP-520, Docket No. 85-AWP-39, P.O. Box 92007 Worldway Postal Center, Los Angeles, California 90009-2007.

The official docket may be examined in the Office of the Western-Pacific Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Airspace Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Joe Fowler, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1655.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the

BEST COPY AVAILABLE

airspace docket and be submitted to triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWP-39." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, AWP-520, 15000 Aviation Boulevard, Lawndale, California 90261, or by calling (213) 297-1655.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide realignment of Ukiah, California, Transition Area. This action is necessary to provide sufficient airspace to ensure aircraft operating under Instrument Flight Rules (IFR) are contained within controlled airspace. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ukiah, CA—[Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Ukiah Municipal Airport (lat. 39°07'36" N., long. 123°12'00" W.); and within 2.5 miles each side of the Ukiah localizer course extending from the 5-mile radius area to 16 miles north of Runway 15 threshold; that airspace extending upward from 1200 feet above the surface beginning at lat. 39°24'30" N., long. 123°52'40" W.; to lat. 39°15'30" N., long. 123°32'30" W., to lat. 39°35'00" N., long. 123°29'00" W.; to lat. 39°35'00" N., long. 123°07'00" W.; to lat. 39°22'00" N., long. 123°07'00" W.; to 39°22'00" N., long. 122°56'30" W.; to lat. 39°11'20" N., long. 122°56'50" W.; to 39°11'20" N., long. 122°47'30" W.; to lat. 38°42'30" N., long. 123°02'40" W.; to 38°42'30" N., long. 123°23'00" W.; to lat. 38°54'30" N., long. 123°35'30" W.; lat. 39°13'30" N., long. 123°50'30" W.; thence three miles off the coast to a point of beginning.

That airspace extending upward from 5300 feet above mean sea level beginning at lat. 39°15'30" N., long. 123°32'30" W.; to lat. 39°20'50" N., long. 123°31'30" W.; to lat. 40°23'00" N., long. 124°09'30" W.; to lat. 40°22'00" N., long. 124°15'00" W.; to lat. 39°44'00" N., long. 124°08'50" W.; to lat. 39°19'00" N., long. 123°39'20" W.; thence to a point of beginning.

That airspace extending upward from 7500 feet above mean sea level beginning at lat. 39°51'20" N., long. 122°34'20" W.; to lat. 39°45'30" N., long. 122°20'00" W.; to lat. 39°28'30" N., long. 122°28'30" W.; to lat. 39°37'30" N., long. 122°49'30" W.; thence to a point of beginning.

That airspace extending upward from 8500 feet above mean sea level beginning at lat. 39°28'30" N., long. 122°28'30" W.; to lat. 39°37'30" N., long. 122°49'30" W.; to lat. 39°22'00" N., long. 122°04'00" W.; to lat. 39°22'00" N., long. 122°56'30" W.; to lat. 39°11'20" N., long. 122°56'30" W.; to lat. 39°11'20" N., long. 122°47'30" W.; to lat. 39°08'00" N., long. 122°49'00" W.; to lat. 39°08'00" N., long. 122°38'20" W.; thence to a point of beginning.

That airspace extending upward from 9500 feet above mean sea level beginning at lat. 39°35'00" N., long. 123°29'00" W.; to lat. 40°20'10" N., long. 123°56'00" W.; to lat. 40°25'00" N., long. 123°48'50" W.; to lat. 40°04'20" N., long. 122°36'30" W.; to lat. 39°54'40" N., long. 122°32'00" W.; to lat. 39°22'00" N., long. 123°04'00" W.; to lat. 39°22'00" N. long. 123°07'00" W.; to lat. 39°35'00" N., long. 123°07'00" W., thence to a point of beginning.

Issued in Los Angeles, California, on December 5, 1985.

H.C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85-29622 Filed 12-13-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 85-ASO-16]

Proposed Revocation, Realignment and Establishment of Restricted Areas; North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke, realign, establish and increase the size of three restricted areas in eastern North Carolina at the request of the United States Navy. These actions are necessary to accommodate changing operational requirements, utilize current systems, and provide for more efficient use of restricted airspace.

DATES: Comments must be received on or before January 30, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 85-ASO-16, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and

Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–3128.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. This proposal is being circulated by the FAA at the request of the U.S. Navy in an effort to fully inform the public. Send comments on environmental and land use aspects to either CDR Larry Cleghorn, Commander Tactical Wings or CDR Al Hewitt, COMMATWING ONE, NAS Oceana, Virginia Beach, VA 23460. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–ASO–16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposals

The FAA is considering amendments to § 71.151 and § 73.53 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to redesignate and realign R–5301, Albemarle Sound, NC, and R–5302 Harvey Point, NC. The U.S. Navy states that these actions are necessary to accommodate changing operational requirements, utilize current systems, and provide for more efficient use of restricted airspace. Additionally, an increase in the size of R–5313 is proposed in order to contain hazardous activities within restricted airspace. This area, R–5113, will normally be used only when R–5314 Dare County Range is not available. The Continental Control Area will be adjusted according to these actions. Also, the Stumpy Point Military Operations Area will no longer be required and it will be cancelled. Sections 71.151 and 73.53 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

PARTS 71 AND 73—[AMENDED]

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R–5313 Long Shoal Point, NC [Revoked].
R–5313A Long Shoal Point, NC [New].
R–5313B Long Shoal Point, NC [New].

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.53 [Amended]

4. Section 73.53 is amended as follows:

R–5301A Albemarle Sound, NC [Revoked].
R–5301B Albemarle Sound, NC [Revoked].
R–5301C Albemarle Sound, NC [Revoked].
R–5301 Albemarle Sound, NC [New].

Boundaries. Beginning at lat. 36°04'58" N., long. 76°16'30" W.; to lat. 36°04'00" N., long. 76°23'40" W.; thence via a 3-nautical-mile clockwise arc centered at lat. 36°04'00" N., long. 76°20'20" W.; to the point of beginning.

Designated altitudes. Surface to 14,000 feet MSL.

Time of designation. Continuous.

Controlling agency. FAA, Washington ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility (FACSFAC VACAPES), NAS Oceana, Virginia Beach, VA.

R–5302 Harvey Point, NC [Revoked]
R–5302A Harvey Point, NC [New]

Boundaries. Beginning at lat 36°04'58" N., long. 76°16'30" W.; to lat. 36°04'00" N., long. 76°06'00" W.; to lat 36°00'00" N., long. 76°06'00" W.; to lat. 36°00'00" N., long. 76°13'00" W.; to lat. 36°00'00" N., long. 76°22'45" W.; thence via a 4-nautical-mile clockwise arc centered at lat. 36°02'00" N., long. 76°20'00" W.; to lat. 36°03'55" N., long. 76°24'18" W.; thence to the point of beginning.

Designated altitudes. Surface to 14,000 feet MSL.

Time of designation. 0800–2330 local time Monday–Thursday; 0800–1600

Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Washington ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility (FACSFAC), NAS Oceana, VA.

R–5302B Harvey Point, NC [New]

Boundaries. Beginning at lat. 36°00'00" N., long. 76°13'00" W.; to lat. 36°58'50" N., long. 76°17'00" W.; thence via a 4-nautical-mile clockwise arc centered at lat. 36°02'00" N.,

long. 76°20'00" W.; to lat. 36°00'00" N., long. 76°22'45" W.; thence to the point of beginning.

Designated altitudes. Surface to 3,000 feet MSL.

Time of designation. 0800–2300 local time Monday–Thursday; 0800–1600

Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Washington ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility (FACSFAC), NAS Oceana, VA.

R–5313 Long Shoal Point, NC [Revoked]

R–5313A Long Shoal Point, NC [New]

Boundaries. A circular area within a 3-mile radius centered at lat. 35°32'48" N., long. 75°41'26" W.

Designated altitudes. Surface to 18,000 feet MSL.

Time of designation. 0800–2300 local time Monday–Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Washington ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility (FACSFAC VACAPES), NAS Oceana, Virginia Beach, VA.

R–5313B Long shoal Point, NC [New]

Boundaries. Beginning at lat. 35°34'55" N., long. 75°47'15" W.; to lat. 35°48'30" N., long. 75°44'00" W.; to lat. 35°39'00" N., long. 75°34'30" W.; to lat. 35°32'00" N., long. 75°34'30" W.; to lat. 35°20'20" N., long. 75°42'45" W.; thence on a 12-nautical-mile clockwise arc centered at lat 35°33'00" N., long. 75°41'00" W.; to lat. 35°35'40" N., long. 75°54'40" W.; thence to the point of beginning. excluding R–5313A.

Designated altitudes. Surface to but not including FL 180.

Time of designation. 0800–2330 local time Monday–Friday; other times by NOTAM at least 24 hours in advance.

Controlling agency. FAA, Washington ARTCC.

Using agency. U.S. Navy, Fleet Area Control and Surveillance Facility (FACSFAC), NAS Oceana, Virginia Beach, VA.

Issued in Washington, DC, on December 6, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–29623 Filed 12–13–85; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action NE 1805]

[A–7–FRL–2933–2]

Revision to State Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On April 12, 1985, EPA received a State Implementation Plan (SIP) revision from the Governor of Nebraska for the Lincoln carbon monoxide (CO) nonattainment area. Supplementary information was submitted on May 6 and August 9, and a transcript of the public hearing was submitted on May 16.

The purpose of today's notice is to propose action on the Lincoln CO SIP. The public is invited to submit comments regarding EPA's preliminary findings and today's proposed rulemaking.

DATES: Comments must be received on or before January 15, 1986.

ADDRESSES: Comments should be addressed to Mary C. Carter, Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The State submission is also available for inspection during normal business hours at the above address and at the following locations: Nebraska Department of Environmental Control, Air Quality Division, Box 94877 Statehouse Station, 301 Centennial Mall South, Lincoln, Nebraska 68509; and Lincoln-Lancaster County Health Department, Division of Environmental Health, 2200 St. Mary's Avenue, Lincoln, Nebraska 68502–3785.

FOR FURTHER INFORMATION CONTACT: Mary C. Carter at (913) 236–2893, FTS 757–2893.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA designated over 400 areas as nonattainment for one or more primary or secondary National Ambient Air Quality Standards. Lincoln, Nebraska, was designated as nonattainment of the CO standard at that time. A revision to the State Implementation Plan (SIP) to meet the rquirements of Part D and Section 10 of the Clean Air Act was required for all nonattainment areas by January 1979. On May 14, 1979, the Lincoln CO SIP was submitted, but due to several deficiencies, including a lack of approvable new source review rules, EPA could not approve the State's submission. In July 1979, EPA imposed a construction ban pursuant to section 110(a)(2)(I) of the Clean Air Act, on all nonattainment areas whose plans were required to contain such a ban but did not, including the Lincoln CO nonattainment area.

The deficiency relating to new source review rules was subsequently corrected, but the plan was still inadequate because the plan had not provided for attainment of the standards by the end of 1982.

In February 1984, acting under section 110(a)(2)(H) of the Act, EPA asked the Governor of Nebraska to withdraw the inadequate CO plan and to develop and submit a new plan to attain the CO standard as expeditiously as practicable but not later than December 31, 1987. On April 27, 1984, Governor Kerrey officially withdrew the CO SIP for Lincoln. On April 12, 1985, EPA received a new SIP revision from Governor Kerrey for Lincoln. Supplementary information was received from the State on May 6 and August 9, 1985. This notice will review and propose action on the Lincoln CO plan revision and supplementary submissions.

Review of State Submissions

The nonattainment area comprises a relatively small portion of the City of Lincoln and is located in a shallow basin (Antelope Creek Basin). A major roadway, Capitol Parkway/Normal Boulevard, is located in the nonattainment area and runs parallel to the bed of the basin. The land use in this basin is characterized primarily by residential development and park land with some areas of commercial development.

There are no major stationary sources of CO in the City of Lincoln and no controllable minor stationary sources in the CO attainment area. The 1982 emission inventory indicates that 97 percent of the total CO emissions in the nonattainment area are generated by mobile sources. The State and City agencies believe that there is an accumulation of basin traffic-generated CO which builds up during peak traffic hours and under very stable meteorological conditions becomes trapped in the basin area, crusing high CO levels and occasional violations of the CO standards.

The City of Lincoln embarked on a program of transportation improvements around 1978 designed to improve traffic flow and thus decrease CO emissions from prolonged idling, traffic congestion, and delays. A program of computer-controlled synchronization of traffic signals in the Antelope Creek Basin was completed during 1982.

The Lincoln Transportation System provides for basic transportation needs through regularly-scheduled public transit services covering 419.8 route miles and approximately 1,500,000 vehicle miles of bus service each year. Approximately 97 percent of the total population live, and 98 percent of those employed persons in Lincoln work, within one-quarter mile of a bus route.

The 2005 Lincoln-Lancaster County Comprehensive Plan addresses long-range transit-related improvements including route expansion and bus replacement.

The City has operated a citywide Carpool/Vanpool program since 1976 to achieve a reduction in vehicle usage within the City. The City Planning Department estimates that ridesharing activities during 1984 resulted in a reduction of 1.2 million vehicle miles traveled (vmt) per month, or about two percent of total vmt, removing approximately 5,000 car trips from the streets each business day. Park and Ride lots have been designated throughout the periphery of the City to promote carpooling and bus ridership. Bicycle storage facilities, maintained by the City and private interests, are located at the business center and activity centers throughout Lincoln. The City has promoted flexible working hours through technical assistance and consultation to individual employers. The current SIP commits to an additional transportation control measure, the widening of Normal Boulevard by December 1, 1985, to further improve traffic flow and reduce CO levels.

These improvements, combined with the effects of the Federal Motor Vehicle Control Program, have reduced emissions of CO in the basin and have reduced the number of violations of the CO standard in recent years. The single monitor located in the nonattainment area at 22nd and "O" Streets recorded one, three, and zero violations during 1982, 1983, and 1984, respectively. The City believes that space heaters and a forge, which in 1983 were vented to the roof of the facility in which the CO monitor was located, coupled with a substantial increase in the number of auto repair facilities in the immediate vicinity of the site, could have been responsible for the violations of the standard that were recorded in 1983. Consequently, the monitor was relocated in 1984 to a site approximately two blocks west and one block north of the discontinued site. The new site, located at 20th and "P" Streets, recorded no violations during the last quarter of 1984 and the first two quarters of 1985.

A modeling analysis was performed using 1982 monitoring data. The CALINE 3 line source dispersion model and the MOBILE 3 emission factor model were used to recreate the conditions and pollution levels observed during 1982. Using the 1982 second highest eight-hour average of 10.8 ppm as the design value, the model predicted attainment by 1987. An additional analysis indicated continued improvement in CO levels and compliance with the standards through 1991.

Plan Evaluation

EPA has evaluated the plan to determine compliance with the requirements of Part D and section 110 of the Clean Air Act.

1. *Expeditious Attainment*—The plan adequately demonstrates attainment of the standard in the nonattainment area by 1987. However, a hotspot modeling analysis by EPA indicates that an area outside the designated nonattainment area may exceed the standard. Consequently, the State and local agencies have committed to locate a special purpose monitor at the modeled hotspot as soon as a suitable site can be found. This monitor will be operated for at least two years and if violations of the standard are recorded during this time, the State has committed to: (1) Redefine the boundaries of the nonattainment area to include the modeled hotspot, and (2) submit a new SIP revision to address the nonattainment problem.

2. *Public notice*—A public hearing was announced and the plan was made available to the public on January 30, 1985. The plan was adopted by the Nebraska Environmental Control Council on March 1, 1985, after a public hearing.

3. *All Reasonably Available Control Measures*—EPA has interpreted this as requiring all reasonably available control measures which are necessary to attain the standards as expeditiously as practicable. The plan includes a transportation control measure and relies on the Federal Motor Vehicle Control Program. The plan demonstrates attainment of the CO standard in the nonattainment area by the end of 1987.

The State evaluated several types of anti-tampering programs, including a change of ownership and a random roadside pullover program involving a four-parameter inspection (catalytic converter, fuel inlet fill pipe, air pump, and plumbtesmo). These programs were found to provide only a minimal improvement in air quality and did not provide for attainment of the standard prior to 1987. The State did not include a detailed evaluation of biennial and annual anti-tampering programs. The State indicated that it would take at least a year to implement such programs. Since the plan demonstrates attainment of the standard by the end of 1987, EPA does not believe that further evaluation of these programs should be required.

4. *Emission Inventory*—The plan contains a current inventory of stationary and mobile sources of CO emissions. The plan indicates that mobile sources account for approximately 97 percent of total CO emissions for the year 1982 and approximately 95 percent for the year 1991 in Lincoln. There are no major stationary sources of CO in Lincoln.

5. *Reasonable Further Progress*—The SIP provides evidence of annual incremental reductions in CO emissions in Lincoln and a net reduction of 29 percent in CO emissions between the years 1982 and 1987 based on MOBILE 3 emission factors and projected traffic volume. In addition, the State projected a further reduction of 6 percent in CO emissions between 1987 and 1991.

6. *Identify Emissions Growth*—The SIP predicts a 15 percent increase in traffic over the period from 1982 to 1991.

7. *Permit Program for New Stationary Sources*—On July 23, 1984 (49 FR 29507), EPA approved the Nebraska regulations for the new source review as meeting all the requirements of Section 172(b)(6) and Section 173 of the Clean Air Act, and the requirements for new sources in nonattainment areas published on August 7, 1980.

8. *Identify and Commit Resources*—The SIP includes a transportation control measure, the widening of Normal Boulevard to improve traffic flow, which will be completed by the Lincoln Public Work Department during 1985. The remainder of the improvement in CO emissions comes from the Federal Motor Vehicle Control Program. Consequently, no future resources are needed to implement the provisions for attainment of the standard.

9. *Emission Limitations and Compliance Schedules*—There are no major stationary sources of CO in the City of Lincoln. The only controllable minor source of CO in Lincoln is located approximately five miles northeast of the nonattainment area. Because of the distance and location of this source, relative to the nonattainment area, it is the City's belief that this source has no impact on the nonattainment area. Consequently, the SIP includes no limits or schedules for stationary sources of CO.

10. *Public, Local Government, and State Involvement in Accordance with section 172(b)(9)*—The SIP contains evidence of public, local government, and State involvement in SIP planning, development, and implementation. The plan contains an analysis of the economic, health, air quality, welfare, energy, and social effects of the plan provisions. No verbal or written public comments on the analysis were received.

11. *Evidence of Adoption of the Necessary Requirements, Schedules and Timetables for Compliance, and Commitments to Implement and Enforce These Plan Elements*—The control measure in the plan is currently being implemented by the responsible agency. Consequently, further commitments to implement the plan elements are unnecessary.

Indirect Source Review

On May 30, 1985 (50 FR 23031), EPA proposed to approve the State's deletion of indirect source review requirements for the State of Nebraska except as they pertain to the Lincoln and Omaha CO nonattainment areas. EPA stated that the indirect source review program would be retained in these areas until the State could adequately demonstrate whether this program should be part of the control strategy for attaining and maintaining the CO standards in these CO nonattainment areas. The reader is referred to the May 30 proposal for further information.

The Nebraska SIP for Lincoln adequately demonstrates attainment of the CO standard in the Lincoln nonattainment area without the use of the indirect source review program in the control strategy. Consequently, EPA believes the deletion of the indirect source review program would be appropriate for the Lincoln nonattainment area.

Proposed Action

EPA proposes to approve the Lincoln CO revision to the Nebraska SIP and to approve the revocation and deletion from the Nebraska SIP of indirect source review rules as they pertain to Lincoln.

EPA is soliciting comments on the State's submissions for Lincoln and on the actions proposed in this document. The Administrator will consider comments received from the public in deciding to approve or disapprove this submission.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

Authority. 42 U.S.C. 7401–7642.

Dated: September 27, 1985.

Morris Kay,

Regional Administrator.

[FR Doc. 85–29668 Filed 12–13–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Parts 261, 264 and 265

[SWH–2932–6]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste, and Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comment.

SUMMARY: On June 26, 1985, EPA proposed to amend its hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) for tank systems storing or treating hazardous waste. 50 FR 26444. Several commenters indicated that the Agency underestimated substantially the number of tank systems potentially affected by the proposed rule by not considering tanks that are integrally tied to reclamation operations that are part of the production process. These comments raised the further question as to whether such tank systems should be considered to be involved in hazardous waste management. EPA is seeking public comment on these questions, and also is seeking comment on relevant information about the numbers and types of such tank systems submitted by the Chemical Manufacturers Association.

DATES: EPA will accept comments from the public until January 30, 1986.

ADDRESSES: Send comments to Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Communications should identify the regulatory docket number "Closed-Loop Tank Systems."

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll-free at 800–424–9346 or (202) 382–3000. For technical information contact: Mr. Matthew A Straus, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475–8551.

SUPPLEMENTARY INFORMATION: On June 26, 1985, EPA proposed to amend its regulations under RCRA that apply to tank systems storing or treating hazardous waste. 50 FR 26444. As part of the rulemaking, the Agency presented estimates on the potential costs and economic impacts of the proposed rule.

The Synthetic Organic Chemical Manufacturers Association (SOCMA) submitted comments stating that EPA had seriously underestimated the potential impact of the rule on tanks involved in on-site recycling operations. As a result of the Agency's amended definition of solid waste (50 FR 614, Jan. 4, 1985), many such tanks would be deemed to be engaged in hazardous waste management even though they may be part of an essentially closed system. See 50 FR at 639. Similar comments were raised at the Washington, DC public hearing on the proposed tank standards and in the comments on Eli Lilly and Co., the National Paint and Coatings Association, and a number of other companies.

The Chemical Manufacturers Association (CMA) has voiced similar concerns to the Agency. They indicate (CMA letter to EPA of Nov. 13, 1985) that hazardous spent materials (frequently spent solvents) are often reclaimed in on-site, closed-loop types of systems where the spent materials are piped from the process to surge or equalization tanks, piped from the tank to the distillation unit (or similar recovery devices), and then (after being reclaimed) returned by pipe to the original unit process for reuse in the manufacturing process. These reclamation operations are generally considered to be part of the manufacturing process, and are often noted as such in standard technical literature on chemical manufacturing processes. CMA estimates that there may be between 3000–5000 such tanks in the organic chemical industry alone (which have not yet been included in the Agency's cost estimates in this rulemaking). CMA also notes that these tanks are not 90-day accumulation tanks because (for the most part) they cannot practically be emptied every 90 days due to the continuous nature of the manufacturing process.

The operations described by SOCMA and CMA appear to be within the language or policy of the closed-loop variance provision contained in 40 CFR 260.30(b) and 260.31(b) (January 4, 1985). This variance provision indicates that reclamation can be viewed as being so integrally tied to production, when followed by return of reclaimed materials to the original process, that the secondary materials being reclaimed are not solid wastes. See 40 CFR 260.31(b)(1)–(8). (The concept of "return to the original process" is explained at 50 FR 640 (Jan. 4, 1985), and involves

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return of reclaimed mateiral to the same part of the process from which it was generated (although not necessarily the same unit operation.)) CMA in fact indicates that its member companies have begun to file variance applications, and at least one already has been granted.

Consequently, EPA is considering amending its rules to indicate that hazardous secondary materials are not solid wastes when all of the following conditions are present:

- *They are returned, after being reclaimed, to the original process in which they were generated where they are reused in the manufacturing process (e.g.* as purifying agents to remove contaminants from feedstocks, as reaction media to dissolve or suspend chemicals, as raw material feedstock, or as reactants to facilitate chemical reactions); [1]
- *Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;*
- *The hazardous secondary materials are never accumulated in such tanks for over twelve months without being reclaimed;*
- *Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators).*

With respect to the third criterion, EPA's information is that the normal accumulation period before reclamation where continuous manufacturing processes are involved is very short (ranging from constant flow through (*i.e.*, no accumulation) to a maximum accumulation time before reclamation of several weeks). Accumulation time when hazardous secondary materials from a series of batch processes are reclaimed likewise is of very limited duration, since distillation normally operates continuously in such circumstances. However, certain manufacturing processes are operated in a batch mode, sometimes on a relatively infrequent basis (semi-annually, for example), with residual materials being sent to a dedicated distillation unit. Materials not reclaimed when the batch process ceases operation are accumulated until the batch process resumes. Our tentative opinion is that this last situation is a close question because of the longer accumulation time, but that reclaimation is still linked to the manufacturing process. We would specify, however, that the accumulation period could not exceed one year. This period would be drawn from the speculative accumulation provision contained in 40 CFR 261.1(b)(8).

EPA is noticing the following information, which bears on all of these issues, for public comment:

(1) Comment of SOCMA, dated August 30, 1985;

(2) Comment of Eli Lilly and Co., dated August 26, 1985;

(3) Comment of National Paint and Coating Ass'n, dated September 5, 1985;

(4) Comment of Chemical Manufacturers Ass'n, dated August 26, 1985;

(5) Letter of CMA, dated November 13, 1985;

(6) Memorandum of November 13 Meeting Between Officials of EPA and Representatives of CMA;

(7) Illustrative Applications for Closed-Loop Variance filed by Eastman Kodak Co.;

(8) Portions of Brief of CMA in *AMC v. EPA*, (No. 85–1206 D.C. Cir. 1985);

(9) Portions of comments of Environmental Defense Fund to Definition of Solid Waste Rulemaking (which voiced some support for considering tanks to be eligible for a closed-loop exclusion).

EPA solicits comment on this new information, and on the issues addressed in this notice. These comments must be received before January 30, 1986.

Dated: December 9, 1985.

J. W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 85–29663 Filed 12–13–85; 8:45 am]

BILLING CODE 6560–50–M

[1] EPA realizes that his contemplated provision is somewhat broader than the language of the closed-loop variance contained in 40 CFR 260.31(b), which requires that reclaimed materials be returned as a feedstock to the orignal process. EPA is considering whether to modify the closed-loop variance to extend to all situations where reclaimed materials are reused in the original manufacturing process.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–372; RM–5172]

FM Broadcast Station in Rock Harbor, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to substitute Channel 271C2 for Channel 272A at Rock Harbor, Florida, and to modify the Class A license for Station WKLG–FM accordingly in response to a petition filed by David W. Freeman, Sr., David W. Freeman, Jr., Elizabeth M. Freeman, and Elizabeth C. Freeman.

DATES: Comments must be filed on or before January 31, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Rock Harbor, Florida); MM Docket No. 85–372. RM–5172.

Adopted: November 25, 1985. Released: December 10, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by David W. Freeman, Sr., Elizabeth M. Freeman, Elizabeth C. Freeman, and David W. Freeman, Jr.,[1] which seeks to substitute Channel 271C2 for Channel 272A at Rock Harbor, Florida, and to modify the license for Station WKLG(FM) to specify operation on Channel 271C2.

2. We believe that the petitioners proposal warrants consideration. The transmitter site must be restricted 22.4 kilometers (13.9 miles) southwest of the city to meet the spacing requirements to Station WYLF(FM), Channel 268, Miami, Florida. In accordance with our established policy, we shall propose to modify the license for Station WKLG(FM), Channel 272A, to to specify operation on Channel 271C2. Currently, pursuant to § 1.420(g), the modification may not be implemented should another party express an interest in the proposed allotment unless an additional equivalent channel is made available for allotment to Rock Harbor.[2]

[1] The petitioners are the licensees of Station WKLG-FM (Channel 272A), Rock Harbor, Florida.

[2] Interested parties should consider the pendency of a rule making proceeding (MM Dkt. 85–313), 50 FR 45439, published October 31, 1985, to amend

3. Comments are invited on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Rules with regard to the following community:

City	Channel	
	Present	Proposed
Rock Harbor, FL	288A	271C2

4. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before January 31, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John M. Spencer, Leibowitz, Spencer and Freedman, 3050 Biscayne Boulevard, Suite 501, Miami, Florida 33137 (Counsel for petitioners).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments should be served on the petitioner by the person filing the comments. Reply comments should be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85–29630 Filed 12–13–85; 8:45 am]

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47 CFR Part 73

[MM Docket No. 85–373; RM–5042]

FM Broadcast Station in Harbor Beach, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Class C2 Channel 289 for Channel 288A at Harbor Beach, Michigan, and modification of the Class A permit, in response to a petition filed by DCS Radio Associates. The allotment could provide Harbor Beach with a first Class C2 channel.

DATES: Comments must be filed on or before January 31, 1986, and reply comments on or before February 28, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

§ 1.420(g) of the Rules with regard to adjacent channels. The rule making as proposed, would make it unnecessary to demonstrate the availability of another equivalent channel.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Harbor Beach, Michigan) MM Docket No. 85–373, RM–5042.

Adopted: November 25, 1985.
Released: December 10, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it a petition for rule making filed by DCS Radio Associates [1] ("petitioner"), requesting the substitution of FM Channel 289C2 for 288A at Harbor Beach, Michigan, and modification of its permit to specify operation on Channel 289C2.

2. We believe the petitioner's proposal warrants consideration. The channel can be allocated in compliance with the minimum distance separation requirements provided there is a site restriction 15.8 kilometers (9.8 miles) northwest of Harbor Beach. The site restriction will prevent a short spacing to FM Channel 290B, Station WJZZ, Detroit, Michigan. In addition, we shall propose to modify petitioner's permit for Channel 288A to specify 289C2. However, in conformity with Commission precedent, should another party indicate an interest in the Class C2 allotment, the modification could not be implemented unless an additional equivalent channel is also allotted. See, *Modification of FM and TV Stations Licenses,* 98 F.C.C. 2d 916 (1984).[2]

3. Concurrence of the Canadian government is required since Harbor Beach, Michigan, is located within 320 kilometers (200 miles) of the common U.S.-Canadian Border.

4. In order to provide a wide coverage area station for the Harbor Beach area, the Commission PROPOSES TO AMEND the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Pro-
Harbor Beach, MI	288A	[illegible]C2

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before January 31, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: David C. Schaberg, on behalf of DCS Radio Associates, Box 11101, Lansing, Michigan 48901–1101.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is alloted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons

[1] Petitioner is the permittee for a new FM station at Harbor Beach, Michigan (BPH 840829IH).

[2] Interested parties should consider the pendency of the *Notice of Proposed Rule Making* (MM Docket 85–313), 50 FR 45439, published October 31, 1985, when filing comments in this proceeding. This proposal would permit FM stations to upgrade on adjacent channels without demonstrating the availability of an additional equivalent class of channel.

acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-29631 Filed 12-13-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-370; RM-4954; RM-5046]

FR Broadcast Station in Thief River Falls and Warroad, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Class C1 Channel 262 for Channel 257A at Thief River Falls, Minnesota, and modification of the Class A license for Station KSNR in response to a petition filed by Theodore S. Storck, or in the alternative, the allotment of Channel 262 to Warroad, Minnesota, in response to a petition filed by Daniel DeMolee. The allotment could provide a wide area coverage channel to Thief River Falls or a first local service to Warroad.

DATES: Comments must be filed on or before January 31, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FR Broadcast Stations (Thief River Falls and Warroad, Minnesota) MM Docket No. 85-370, RM-4954, RM-5046.

Adopted: November 25, 1985.
Released: December 10, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration two separate petitions for rule making. The first petition was filed by Theodore S. Storck [1] ("Storck"), requesting the substitution of FM Channel 262C1 for Channel 257A at Thief River Falls, Minnesota, and modification of its license for Station KSNR to specify operation on the new channel. The second petition was filed by Daniel DeMolee ("DeMolee"), requesting the allotment of FM Channel 262 as a Class C channel to Warroad, Minnesota. The allotment could provide Thief River Falls with its first wide area coverage channel or a first service to Warroad, Minnesota. Storck and DeMolee both expressed their intention to apply for the channel, if allocated to their requested community.

2. We shall offer both proposals for comment and request interested parties to provide a comparative analysis as to which community should be preferred. Parties may suggest alternative channels or lower classes of channels in order to provide both communities with expanded service. Channel 262 can be assigned as a Class C1 channel to Thief River Falls or as a Class C Channel to Warroad in Compliance with the Commission's minimum distance separation requirements We shall also propose to modify the license of Station KSNR, Channel 257A, as requested by Storck to specify operation on Channel 262C1, should the channel ultimately be allocated to Thief River Falls. However, in conformity with Commission precedent, should another party indicate an interest in the Class C1 allotment at Thief River Falls, the modification could not be implemented unless and additional equivalent channel is also allotted. See, *Modification of FM and TV Stations Licenses*, 98 F.C.C. 2d 916 (1984).

[1] Petitioner is the licensee of Station KSNR, Thief River Falls, Minnesota.

3. Concurrence of the Canadian government is required since Thief River Falls and Warroad, Minnesota, are both located within 320 kilometers (199 miles) of the common U.S.-Canadian border.

4. In order to provide a wide coverage area station for Thief River Falls of a first local service to Warroad, Minnesota, the Commission PROPOSES TO AMEND the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Alternative I		
Thief River Falls, MI	257A	262C
Alternative II		
Warroad, MI		262

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before January 31, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John Wells King, Haley, Bader & Potts, 2000 M Street NW., Suit 600, Washington, DC 20036 (Counsel for Theodore S. Storck)

John H. Midlen, Jr., 1050 Wisconsin Avenue, NW., Washington, DC 20007 (Counsel for Daniel DeMolee)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or

court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been serve on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceedings.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice of this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an orginal and four copies of all comments, reply comments, pleadings, brief, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-29632 Filed 12-13-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-371; RM-5095]

FM Broadcast Station in Aurora, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of Channel 247C2 for Channel 276A at Aurora, Nebraska, and the modification of the license of Station KKBB(FM) to specify operation on the higher powered channel, at the request of Mile Hi Broadcasting. The higher powered channel could provide increased service to Aurora and its outlying areas.

DATES: Comments must be filed on or before January 31, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Aurora, Nebraska); MM Docket No. 85-371, RM-5095.

Adopted: November 25, 1985.

Released: December 10, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making filed by Mile Hi Broadcasting ("petitioner"), licensee of Station KKBB(FM), Aurora, Nebraska, requesting the substitution of Channel 247C2 for Channel 276A at Aurora. Petitioner also requests that its license be modified to specify operation on the higher powered channel. Channel 247C2 can be allocated to Aurora in compliance with the Commission's minimum distance separation requirements if the transmitter is sited at least 18.3 kilometers (11.4 miles) west to avoid a short-spacing to Station KZKX, Channel 245, Seward, Nebraska.

2. In accordance with our established policy, we shall propose to modify the license of Station KKBB(FM) to specify operation on Channel 247C2. However, if another party should indicate an interest in the Class C2 allotment, the modification could not be implemented unless an additional equivalent channel is allocated. See, *Cheyenne, Wyoming,* 62 F.C.C. 2d 63 (1976) and *Modification of FM and TV Station Licenses,* 98 F.C.C. 2d 916 (1984). In this regard, petitioner has suggested that Channel 278C2 could be allocated to Aurora for use by any other interested party. This channel can be allocated in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area

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at least 32.7 kilometers (20.3 miles) east to avoid a short-spacing to Station KXNP(FM), Channel 278, North Platte, Nebraska. However, this site restriction requires that the transmitter be located beyond the distance for which we could assume that a city grade signal could be provided. Therefore, we request that should another party express an interest in the allocation, the petitioner or the interested party furnish us with a signal coverage study showing that a site is available from which a Channel 278C2 operation could provide the required 70 dBu signal over the entire community of Aurora.

3. We believe the public interest would be served by proposing the allocation as it could provide Aurora with its first wide coverage FM service. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Rules, for the community listed below to read as follows:

City	Channel No.	
	[redacted]	Proposed
Aurora, NE	[redacted]	247C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before January 31, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Eric L Bernthal, Esq., Daniel F. Van Horn, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036 (Counsel to petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in secitons 4(i), 5 (c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will to be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, rely comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85–29633 Filed 12–13–85; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 241
Monday, December 16, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development, Intent To Award a Cooperative Agreement

AGENCY: Office of International Cooperation and Development, U.S.D.A.

ACTION: Notice of Intent to Award a Cooperative Agreement.

ACTIVITY: The Office of International Cooperation and Development intends to amend an existing cooperative agreement with the Foundation of California State University, Sacramento, for further development and implementation of solar box cookers (SBC) technology in developing countries.

Authority: Section 1458 of The National Agricultural Research Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291).

The Office of International Cooperation and Development announces the availability of funds for fiscal year 1986 to amend a cooperative agreement with the Foundation of California State University, Sacramento in the amount of $11,000. The extension is for further development and implementation of solar box cookers (SBC) technology in developing countries, as initiated in the original cooperative agreement. Specific objectives of the agreement are as follows: (1) Evaluate the ability of the SBC to produce microbiologically safe water from water contaminated with micro-organisms representative of those found in developing countries; (2) establish operating conditions for the use of the SBC to cook various foods typically found in developing countries; and (3) develop guidelines for the use of a SBC for cooking and for water treatment., The Foundation is uniquely qualified to cooperate in this activity as it has extensive skill and experience in the use of SBCs to cook foods commonly used in Third World countries as well as in the techniques for treating water to make it free of micro-organisms of public health significance. and it is the only known source with sufficient expertise to accomplish the stated objectives.

In addition, the Foundation has previously cooperated in the development of (1) guidelines and audio visual material on the construction, use, and application of SBCs, and (2) an evaluation system to determine the solar potential for each day any place on earth. These accomplishments provide the groundwork for the proposed amendment to the cooperative agreement. Assistance will provide only to the Foundation which has been collaborating with the Technical Assistance Division, Food Technology Branch, since 1984. Based on the above, this is not a formal request for applications. It is estimated that approximately $11,000 will be available in Fiscal Year 1986 to support this work. Yearly amounts will vary and are subject to change. It is anticipated that the cooperative agreement will be funded over a budget period of 12 months.

Information may be obtained from: Dr. Fred Barrett, Food Technology Branch, Technical Assistance Division, Office of International Cooperation and Development, U.S. Department of Agriculture.

Charle A. Rooney,
Acting Chief, Management Services.
December 11, 1985
[FR Doc. 85-29712 Filed 12-13-85; 8:45 am]
BILLING CODE 3410-DP-M

Food Safety and Inspection Service

[Docket No. 85-008N]

Transportation Accidents

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of a directive setting forth the policy of the Food Safety and Inspection Service (FSIS) regarding possible adulteration of federally inspected and passed meat and poultry products caused by accidents during transportation outside official establishments. FSIS issued the directive to advise its inspection and compliance officials of procedures to be taken upon notification of a transportation accident. The procedures are designed to limit the government's liability for meat and poultry product that may become adulterated during transportation outside official establishments. This notice advises the public of the issuance and availability of the directive.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Gonter, Assistant Deputy Administrator, Compliance Program, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-7745.

SUPPLEMENTARY INFORMATION: On February 26, 1985, the United States Court of Appeals for the Eighth Circuit issued a decision in favor of the plaintiff in the case of *National Carriers, Inc.*, v. *United States*, No. 84-1617. The decision reversed a judgement rendered earlier by the United States District Court for the Southern District of Iowa. The case involved a claim by National Carriers, Inc., that a departmental inspector at an accident site failed in his duty to direct the proper handling of beef quarters and failed to properly identify that portion which had becomes contaminated, resulting in the condemnation of all the beef quarters by another departmental inspector at destination. As a result of this court acton, FSIS learned that, because of the lack of Agency guidelines, inconsistent procedures were being followed by its field offices regarding inspector activities at accident sites outside official establishments. Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (451 *et seq.*) and the regulations promulgated thereunder, inspectors have authority to inspect and pass or condemn meat and poultry products only at establishments operating under Federal inspection. Meat and poultry products at locations other than federally inspected establishments may be officially detained under certain circumstances by departmental compliance officers and, when necessary, seized by court order due to violations of the FMIA or PPIA. In keeping with the Agency's statutory authority, FSIS Directive 8420.1 prescribes procedures to be taken by

inspectors and compliance officers upon notification of an accident outside of any official establishment that involves inspected product. Copies of this directive are available without charge from the Policy Office, Room 3803, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, DC, on: December 11, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspector Service.

[FR Doc. 85-29710 Filed 12-13-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. A-533-502]

Postponement of Final Antidumping Duty Determination; Certain Iron Construction Castings From India

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On November 25, 1985, we received a request from respondents in the antidumping duty investigation that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)(2)(A)) (the Act). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of certain iron construction castings from India have been made at less than fair value until not later than March 12, 1986.

SUPPLEMENTARY INFORMATION: On June 7, 1985, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of certain iron construction castings from India were being, or were likely to be, sold at less than fair value (50 FR 24008). We issued our preliminary affirmative determination on October 28, 1985 (50 FR 43595). That notice stated we would issue a final determination by January 6, 1986. On November 25, 1985, counsel for the respondents requested that we extend the period for the final determination until not later than the 135th day after the date of publication of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. The respondents account for a significant proportion of exports of the subject merchandise to the United States, and thus are qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly we grant the request and postpone our final determination until not later than March 12, 1986. The date of the public hearing will also be changed. Interested parties and parties to the proceeding will be subsequently notified as to the new public hearing date.

This notice is published pursuant to section 735(d) of the Act.

December 9, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary For Import Administration.

[FR Doc. 85-29532 Filed 12-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-582-501]

Antidumping Duty Order; Photo Albums and Photo Album Filler Pages From Hong Kong

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning photo albums and photo album filler pages from Hong Kong, the United States Department of Commerce (the Department) and the United States Internatjional Trade Commission (the ITC) have determined that this product is being sold at less than fair value and that sales of this product from Hong Kong are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of photo albums and photo album filler pages from Hong Kong made on or after July 16, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: December 16, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Ken Stanhagen Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1776 or 377-1777.

SUPPLEMENTARY INFORMATION: The merchandise covered by this order consists of photo albums and photo album filler pages from Hong Kong. Photo albums are currently classifiable under item number 256.60 of the *Tariff Schedules of the United States, Anotated* (TSUSA) Photo album filler pages are currently provided for in item numbers 256.87, 256.90, and 774.55 of the TSUSA.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on July 16, 1985, the Department published its preliminary determination that there was reason to believe or suspect that photo albums and photo album filler pages from Hong Kong were being sold at less than fair value. We preliminarily determined that "critical circumstances" did not exist within the meaning of section 733(e) of the Act (19 U.S.C. 1673b(e) (50 FR 28829). On October 29, 1985, the Department published its final determination that these imports were being sold at less than fair value and that "critical circumstances" did not exist with respect to photo albums and filler pages from Hong Kong (50 FR 43754).

On December 6, 1985, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 376 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of photo albums and photo album filler pages from Hong Kong. These antidumping duties will be assessed on all unliquidated entries of photo albums and photo album filler pages entered, or withdrawn from warehouse, for consumption on or after July 16, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (50 FR 28828).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-averaged antidumping duty margin as noted below.

Manufacturers/producers/exporters	Weighted/average (percent)
Climax paper converters Ltd	3.69
All Manufacturers/Producers Exporters	3.69

This determination constitutes an antidumping duty order with respect to photo albums and photo album filler pages from Hong Kong, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 10, 1985.

[FR Doc. 85-29717 Filed 12-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-501]

Antidumping Duty Order; Photo Albums and Photo Filler Pages From Korea

AGENCY: International Trade Adminstration, Import Administration, Commence.

ACTION: Notice.

SUMMARY: In separate investigations concerning photo albums and photo album filler pages from Korea, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that this product is being sold at less than fair value and that sales of this product from Korea are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of photo albums and photo album filler pages from Korea made on or after July 16, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: December 13, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Ken Stanhagen, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1776 or 377-1777.

SUPPLEMENTARY INFORMATION: The merchandise coverd by this order consist of photo albums and photo album filler pages from Korea. Photo albums are curently classifiable under item number 256.60 of the *Tariff Schedules of the United States, Annotated* (TSUSA). Photo album filler pages are currently provided for in item numbers 256.87, 256.90, and 774.55 of the TSUSA.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on July 16, 1985, the Department published its preliminary determination that there was reason to believe or suspect that photo albums and photo album filler pages from Korea were being sold at less than fair value. We preliminarily determined that "critical circumstancs" did exist within the meaning of section 733(e) of the Act (19 U.S.C. 1673b(e) (50) FR 28829). On October 29, 1985, the Department published its final determination that these imports were being sold at less than fair value and that "critical circumstances" did exist with respect to photo albums and filler pages from Korea (50 FR 43754).

On December 6, 1985, in accordance with section 735(d) of the Act (19 U.S.C. 1673(d)). the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of photo albums and photo album filler pages from Korea. These antidumping duties will be assessed on all unliquidate entries of photo albums and photo album filler pages entered, or withdrawn from warehouse, for consumption on or after July 16, 1985, the date on which the Department published it "Preliminary Determination" notice in the **Federal Register** (50 FR 28829).

The ITC determined that "critical circumstances" do not exist. Therefore, the suspension of liquidation will be discontinued for entries on photo albums and photo albums filler pages filed before July 16, 1985. All estimated antidumping duties deposited on such entries before July 16, 1985 shall be refunded and the appropriate bonds or other security be released at the time of liquidation.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the 64.81 percent *ad valorem* antidumping duty margin as noted below.

Manufacturers/producers/exporters	Average (percent)
All Manufacturers/Producers Exporters	64.81

This determination constitutes an antidumping duty order with respect to photo albums and photo album filler pages from Korea, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48)

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 10, 1985.

[FR Doc. 85-29716 Filed 12-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-505]

Initiation of an Antidumping Duty Investigation; Small Diameter Welded Carbon Steel Standard Pipe and Tube From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S.

Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of small diameter welded carbon steel standard pipe and tube (standard pipe and tube) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 30, 1985, and we will make ours on or before April 22, 1986.

EFFECTIVE DATE: December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–3464.

SUPPLEMENTARY INFORMATION:

The Petition

On November 13, 1985, we received a petition filed in proper form by the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports (CPTI), and by each of the member companies who produce standard pipe and tube. The members of the Subcommittee represent approximately 70 percent of the domestic production of standard pipe and tube. In compliance with the filing requirements of 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of standard pipe and tube from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on standard pipe and tube and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether standard pipe and tube from the PRC are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination on or before April 22, 1986.

Scope of Investigation

The products covered by this investigation are small diameter welded carbon steel pipe and tube of circular cross-section, 0.375 inch or more but not over 16 inches in outside diameter, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231 and 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products are commonly referred to in the industry as standard pipe or tube produced to various ASTM specifications, most notably A–120, A–53 or A–135.

United States Price and Foreign Market Value

Petitioners based United States price on the average free along side (FAS) value of black and galvanized pipe exported to the United States as reported by the Bureau of Census, U.S. Department of Commerce (1M145X) for September, 1985.

The petitioners alleged that the PRC is a non-market economy and chose India as the appropriate surrogate country of the purpose of determining foreign market value. Foreign market value, thus, was based on home market price quotes for June, 1985 from Zenith Pipe, India for black and galvanized standard pipe.

Based on a comparison of United States prices and foreign market value, petitioners allege dumping margins of 214% for black standard pipe and 236% for galvanized standard pipe.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of these actions and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 30, 1985, whether there is a reasonable indication that imports of small diameter welded carbon steel standard pipe and tube from the PRC materially injure, or threaten material injury to, a U.S. industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 3, 1985.

[FR Doc. 85–29719 Filed 12–13–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–565–501]

Initiation of an Antidumping Duty Investigation; Small Diameter Welded Carbon Steel Standard Pipe and Tube From the Philippines

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of small diameter welded carbon steel pipe and tube (standard pipe and tube) from the Philippines are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 30, 1985, and we will make ours on or before April 22, 1986.

EFFECTIVE DATE: December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–3464.

SUPPLEMENTARY INFORMATION:

The Petition

On November 13, 1985, we received a petition filed in proper form by the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports (CPTI), and by each of the member companies who produce standard pipe and tube. The members of the

BEST COPY AVAILABLE

Subcommittee represent approximately 70 percent of the domestic production of standard pipe and tube. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of standard pipe and tube from the Philippines are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on standard pipe and tube from the Philippines and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether standard pipe and tube from the Philippines are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by April 22, 1986.

Scope of Investigation

The products covered by this investigation are small diameter welded carbon steel pipe and tube of circular cross-section, 0.375 inch or more but not over 16 inches in outside diameter, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231 and 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products are commonly referred to in the industry as standard pipe or tube produced to various ASTM specifications, most notably A–120, A–53 or A–135.

United States Price and Foreign Market Value

Petitioners based United States price on the average free along side (FAS) value of black and galvanized pipe exported to the United States as reported by the Bureau of Census, Department of Commerce (1M145X) for September, 1985.

Petitioners based foreign market value on October 1985 home market price quotes for black and galvanized standard pipe. Based on a comparison of United States prices and foreign market value, petitioners alleged dumping margins of 36.0% and 51.5% for black standard pipe and galvanized standard pipe, respectively.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 30, 1985, whether there is a reasonable indication that imports of small diameter welded carbon steel standard pipe and tube from the Philippines materially injure, or threaten material injury to, a U.S. industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 3, 1985.

[FR Doc. 85–29720 Filed 12–13–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–357–501]

Oil Country Tubular Goods From Argentina; Postponement of Preliminary Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping duty determination involving oil country tubular goods from Argentina is being postponed until not later than January 20, 1986.

EFFECTIVE DATE: December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen or Mary Clapp Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377–3464 or (202) 377–1769.

SUPPLEMENTARY INFORMATION: On August 12, 1985, we announced the initiation of an antidumping duty investigation to determine whether oil country tubular goods from Argentina are being, or are likely to be, sold in the United States at less than fair value (50 FR 33386). The notice stated that we would issue a preliminary determination by December 30, 1985.

On December 5, 1985, counsel for petitioners, Lone Star Steel Company and CF&I Steel Corporation, requested that the Department extend the period for the preliminary determination until not later than January 20, 1986. Accordingly, the preliminary determination in this investigation is hereby extended until not later than January 20, 1986.

This notice is published pursuant to section 733(c)(2) of the Act.

Dated: December 10, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–29721 Filed 12–13–85; 8:45 am]

BILLING CODE 3510–DS–M

[D–475–504]

Initiation of Countervailing Duty Investigation; Welded Steel Wire Fabric for Concrete Reinforcement From Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Italy of welded steel wire fabric for concrete reinforcement, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that is may determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before January 6, 1986. If our investigation proceeds normally, we will make our preliminary determination on or before February 13, 1986.

EFFECTIVE DATE: December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–2830.

SUPPLEMENTARY INFORMATION:

The Petition

On November 20, 1985, we received a petition in proper form filed by the Wire Reinforcement Institute, Inc., on behalf of the U.S. industry producing welded steel wire fabric for concrete reinforcement (wire fabric). In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Italy of wire fabric receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), and that an industry in the United States is threatened with material injury by reason of imports of this merchandise.

Since Italy is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation and the ITC is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on wire fabric from Italy and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Italy of wire fabric receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before February 13, 1986.

Scope of Investigation

For purposes of this investigation, the term "Welded Steel Wire Fabric for Concrete Reinforcement" is defined as material composed of cold-drawn steel wires, whether or not deformed, fabricated into sheets (or so-called mesh) by the process of electric welding. The finished product consists essentially of a series of longitudinal and transverse wires arranged at substantially right angles to each other and welded together at all points of intersection, as described in ASTM Specifications A–185 and A–497. Wire fabric is currently classifiable under item 642.8010 of the *Tariff Schedules of the United States* Annotated (TSUSA).

Allegations of Subsidies

The petition lists a number of practices by the government of Italy which allegedly confer subsidies on manufacturers, producers, or exporters in Italy of wire fabric. We are initiating an investigation on the following programs:

- Scrap Subsidy (Government Payments on Imports of Scrap)
- Rebate of Customs Duties and Certain Indirect Taxes Under Law 639
- Preferential Financing Under Laws 902 and 908
- Financial Aid Provided to Distressed Industrial Sectors Under Law 675
- Regional Tax Incentives to Certain Enterprises in Northern and Central Italy

We are not initiating an investigation on the following program: *Preferential Export Insurance Provided Under Law 227.* Petitioner alleges that producers and exporters of wire fabric in Italy may benefit from a preferential government insurance scheme and a government export insurance program whereby coverage on loans for export is obtained at a reduced rate. We requested further information from petitioner as to whether the rates paid were adequate to cover the long-term operating costs and losses of the program, as required by section J of the Illustrative List of Export Subsidies. Petitioner was unable to provide this information. Therefore, we are not including this program in our initiation.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-confidential information. We also will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 6, 1986, whether there is a reasonable indication that imports of wire fabric from Italy materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 10, 1985.

[FR Doc. 85–29713 Filed 12–13–85; 8:45 am]

BILLING CODE 3510-DS-M

[C–201–502]

Initiation of Countervailing Duty Investigation; Welded Steel Wire Fabric for Concrete Reinforcement From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of welded steel wire fabric for concrete reinforcement, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Mexico materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before January 6, 1986. If our investigation proceeds normally, we will make our preliminary determination on or before February 13, 1986.

EFFECTIVE DATE: December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–2830.

SUPPLEMENTARY INFORMATION:

The Petition

On November 20, 1985, we received a petition in proper form filed by the Wire Reinforcement Institute, Inc., on behalf of the U.S. industry producing welded steel wire fabric for concrete reinforcement (wire fabric). In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of wire fabric receive subsidies within the meaning of section

701 of the Tariff Act of 1930, as amended (the Act), and that an industry in the United States is threatened with material injury by reason of imports of this merchandise.

On April 23, 1985, the Office of the United States Trade Representative announced that Mexico is a "country under the Agreement", within the meaning of section 701(b)(2) of the Act. Consequently, Title VII of the Act applies to this investigation and an injury determination is required.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the pitition sets forth the allegations necessary for initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on wire fabric from Mexico and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of wire fabric receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before February 13, 1986.

Scope of Investigation

For purposes of this investigation, the term "Welded Steel Wire Fabric for Concrete Reinforcement" is defined as material composed of cold-drawn steel wires, whether or not deformed, fabricated into sheets (or so-called mesh) by the process of electric welding. The finished product consists essentially of a series of longitudinal and transverse wires arranged at substantially right angles to each other and welded together at all points of intersection, as described in ASTM Specifications A–185 and A–497. Wire fabric is currently classifiable under item 642.8010 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Allegations of Subsidies

The petition lists a number of practices by the government of Mexico which allegedly confer subsidies on manufacturers, producers, or exporters, in Mexico of wire fabric. We are initiating an investigation on the following programs:

- Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX).
- Preferential Federal Tax Credits (CEPROFI).
- Energy Discounts.
- Import Duty Reductions and Exemptions.
- Accelerated Depreciation Allowances.
- New Exchange Risks Trust Fund Program (FICORCA).
- Article 94 Loans.

Although not specifically alleged by petitioner, we are initiating an investigation to find out if the Mexican wire fabric industry receives any benefits under the following program:

- Nacional Financiera, S.A., Loans (NAFINSA).
- Trust for Industrial Parks, Cities, and Commercial Centers (FIDEIN).
- Foreign Currency Financing of Imports (PROFIDE).
- Loans from the Mexican National Bank for Foreign Trade (BANCOMEXT).
- Government Financed Technology Development.
- The Mexican Institute of Foreign Trade (IMCE).
- Preferential Vessel, Freight, Terminal and Insurance Benefits.
- Fund for Industrial Development (FONEI).
- Guarantee and Development Fund for Medium and Small Industries (FOGAIN).
- National Fund for Industrial Development (FOMIN).
- Port Facilities.
- Preferential State Investment Incentives.
- Export Credit Insurance.
- Drawback Adjusted for Changes in Exchange Rates.
- Temporary Importation Scheme.

We are not initiating an investigation on the following program: *Preferential Pricing of Wire Rod Inputs Used for Export* Petitioner alleges that manufacturers of wire fabric receive preferential pricing of wire rod inputs, citing *Welded Carbon Steel Pipe and Tube from Mexico* as documentation for this program. In the *Preliminary Affirmative Countervailing Duty Determination: Welded Carbon Steel Pipe and Tube Products from Mexico* (50 F.R. 4555) (January 31, 1985), the program which was found countervailable was "Preferential Pricing of Sheet Inputs Used for Export". This finding does not lend itself to parallel comparison with the present case because the input under consideration in that case (sheet) is not the same input as that for wire fabric. We requested clarification of the above allegation, but petitioner has presented no further information. Therefore, we are not including this program in our initiation.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-confidential information. We also will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 6, 1986, whether there is a reasonable indication that imports of wire fabric from Mexico materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 4, 1985.

[FR Doc. 85–29714 Filed 12–13–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–307–508]

Initiation of Countervailing Duty Investigation; Welded Steel Wire Fabric for Concrete Reinforcement From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Venezuela of welded steel wire fabric for concrete reinforcement, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before January 6, 1986. If our investigation proceeds normally, we will

make our preliminary determination on or before February 13, 1986.

EFFECTIVE DATE: December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377–2830.

SUPPLEMENTARY INFORMATION:

The Petition

On November 20, 1985, we received a petition in proper form filed by the Wire Reinforcement Institue, Inc., on behalf of the U.S. industry producing welded steel wire fabric for concrete reinforcement (wire fabric). In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Venezuela of wire fabric receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), and that an industry in the United States is threatened with material injury by reason of imports of this merchandise.

Since Venezuela is a "country under the Agreement" within the meaning of section 701(b)(3) of the Act, Title VII of the Act applies to this investigation and the ITC is required to determine whether imports of the subject merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on wire fabric from Venezuela and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Venezuela of wire fabric receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before February 13, 1986.

Scope of Investigation

For purposes of this investigation, the term "Welded Steel Wire Fabric for Concrete Reinforcement" is defined as material composed of cold-drawn steel wires, whether or not deformed, fabricated into sheets (or so-called mesh) by the process of electric welding. The finished product consists essentially of a series of longitudinal and transverse wires arranged at substantially right angles to each other and welded together at all points of intersection, as described in ASTM Specifications A–185 and A–497. Wire fabric is currently classifiable under item 642.8010 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Allegations of Subsidies

The petition lists a number of practices by the government of Venezuela which allegedly confer subsidies on manufacturers, producers, or exporters in Venezuela of wire fabric. We are initiating an investigation on the following programs:

- Loans from the Venezuela Investment Fund (FIV).
- Export Certificates for Credit Against Income Taxes.
- Multiple Exchange Rates.
- Tax Contributions to Cover Debt Service Costs.

Although not specifically alleged by petitioner, we are initiating an investigation to find out if the Venezuelan wire fabric industry receives any benefits under the following programs:

- Prefential Export Financing.
- Ministry of Finance Loans.
- Loans from the Industrial Credit Fund (FONCREI).
- Preferential Tax Incentives.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-confidential information. We also will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 6, 1986, whether there is a reasonable indication that imports of wire fabric from Venezuela materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 9, 1985.

[FR Doc. 85–29715 Filed 12–13–85; 8:45 am]

BILLING CODE 3510–DS–M

Decision on Application for Duty-Free Entry of Scientific Instrument; North Carolina State University

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 879; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 85–262. Applicant: North Carolina State University, Raleigh, NC 27695–7619. Instrument: Root Length Scanner. Manufacturer: Commonwealth Aircraft Corporation Limited, Australia. Intended Use: See notice at 50 FR 34538.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument optically scans and provides a digital readout measurement of sample root length for diameters of 0.1 to 2.0 millimeters with typical accuracy values of ±5.0 percent for a 15 to 60 meter sample range. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11–105, Importation of Duty-Free Educational and Scientific Materials).

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–29718 Filed 12–13–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of request for experimental fishing permit applications and request for comments.

SUMMARY: This notice announces that NMFS will receive applications for experimental fishing permits to harvest groundfish using set nets (anchored gillnets) targeting on sablefish in the fishery conservation zone off the coasts of Washington, Oregon, and California in 1986. This notice provides instructions on applying for this experimental fishing which otherwise would be prohibited by Federal regulations.

DATE: Applications for 1986 must be received not later than January 30, 1986. Comments on the experimental fishing permit applications will be solicited by notice in the **Federal Register** after applications are received.

ADDRESS: Send applications and comments to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, 206–526–6150.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations (50 CFR Part 663) specify that experimental fishing permits (EFPs) may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at § 663.10.

Regulations at § 663.26(c) prohibit fishing for groundfish using set nets (anchored gill nets) north of 38° N. latitude. The Pacific Fishery Management Council (Council), when developing the FMP, was concerned about the potential for an unacceptably high incidental catch of salmon and halibut, the potential for set nets to continue fishing indefinitely if lost or unattended, and the potential for conflict between fixed and mobile gear if used in the same area. In addition, the major target species of set net fisheries, sablefish, are currently fully utilized by other gear types. In order to obtain information on set nets and their use in harvesting groundfish, NMFS has issued EFPs for the use of set nets to harvest sablefish with incidental takes of lingcod and rockfish primarily off northern Washington each year since 1982.

NMFS is considering issuing similar EFPs again in 1986 in the event that further information is needed on the use of this kind of gear. Data collected from the twelve vessels involved in the experimental sablefish set net fishery in 1985 are currently being analyzed and the final report will be presented at the March 11–13, 1986, meeting of the Pacific Fishery Management Council in Portland, Oregon. The decision on whether to consider all, some, or none of the EFP applications will be based on a number of factors including the results of past studies on this experimental fishery, what additional information is needed, recommendations made by the Council at the March meeting, and comments received from the public. It is possible that the information collected to date may be adequate for evaluating this fishery and no further EFPs will be issued for this purpose. The purpose of issuing EFPs is to obtain information about the use of this gear through experimental fishing procedures, and to determine whether such fishing methods and gear can be incorporated into the groundfish management plan without undue negative impact on the resource or on other fishermen.

In order to obtain a broad base of information, the EFPs, if issued in 1986, may restrict fishing to specific areas other than off northern Washington where past experimental effort has been concentrated. The number of EFPs issued in 1986, if any, may be limited by the funds available to pay for observers to collect experimental data and to monitor permit compliance. Only three permits were issued in 1984 because of limited funds. Potential applicants should understand that it is quite possible that the sablefish experimental set net fishery may not be continued in 1986 and that no EFPs may be issued. If the program is continued, it is possible that only a small number of permits may be issued.

Application Procedures

Fishermen interested in obtaining an EFP to use set nets to harvest sablefish must submit a written application to the NMFS Northwest Regional Office that includes all of the information specified in § 663.10(b) EFP Application Procedures and additional information as requested herein. The following list includes all the required information. Applications which are deficient in providing any of the required information will be returned to the applicant and not considered unless the required information is resubmitted in writing within 10 days of receipt of notice from NMFS of the deficiencies. The following information must be included in the application, which should be entitled "Sablefish Set Net EFP Application".

1. *The date of the application.*

2. *Applicant Information.* Applicant must provide the following:

a. Applicant's name.

b. Mailing address.

c. Telephone number.

d. Operator—names and addresses of individuals who are expected to be operating the vessel under the EFP.

Note.—The EFP, if issued, will designate the applicant as the permittee and any operators, other than the applicant, must be listed on the EFP. EFPs will be valid only for the vessel for which they are issued and only when such vessel is operated by one of the individuals listed on the EFP.

3. *Vessel Information.* Applicants must provide the following information on each vessel they intend to use.

a. Vessel's name.

b. Vessel's identification number:

i. U.S. Coast Guard documentation number, or

ii. State license or registration number.

c. Length of vessel.

d. Net and gross tonnage of vessel.

e. Home port.

f. Vessel's owner and master—name, address, telephone number.

g. Describe the current fisheries that the vessel is operating in.

Note.—EFPs are not transferable. Alternate vessels will not be authorized unless the permittee adequately demonstrates that the permitted vessel is incapacitated or otherwise unsuitable for the purposes of the EFP.

4. *Statement of Purposes, Goals and Significance* of the experiment for which the EFP is needed. Applicants should describe the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP and a statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals.

The application should describe the experience of the applicant and each operator with respect to harvesting sablefish, lingcod, and rockfish, and their experience and knowledge in constructing and utilizing gill nets, especially those designed to be anchored on the bottom (set nets) at depths of 100 fathoms or more. This information is required to enable NMFS to determine whether further experimentation with set net fishing is warranted and to select among applicants if a limited number of EFPs is issued. This information must include:

a. A description of the current fisheries in which the applicant/operator is operating;

b. A description of the applicant/operator's knowledge and experience

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with groundfish fisheries and the use of set nets;

c. A description of any experimentation the applicant/operator is willing to undertake that is above and beyond the experimental program to date.

5. *Dates.* The application must include the approximate dates the applicant expects to fish under the EFP.

Note.—Set net EFPs, if issued, will probably be effective only for the period of May 1 to December 31, 1986.

The EFPs may require a minimum amount of fishing effort every month such as a minimum of six sets of one or more nets (each with a total length of at least 600 feet) and a total landing of at least 500 pounds of sablefish each month that the permit is valid. Applicants should indicate only those dates that they can fish under the EFP and can meet these sample minimum effort requirements.

6. *Area.* Applicants should describe where they propose to fish.

Applicants must select two of the following areas for their EFPs and indicate which area is their first choice and which area they would prefer as an alternate. Only a limited number of EFPs may be issued in each area, so applicants should carefully consider their selections. Applicants should consult the "Permittee Selection Criteria" section of this notice as it relates to the selection of areas.

a. Vancouver Area—north of 47°30′ N. latitude.

b. Northern Columbia Area—From 47°30′ N. latitude south to 45°30′ N. latitude.

c. Southern Columbia Area—from 46°30′ N. latitude south to 43°00′ N. latitude (overlaps Northern Columbia Area from 45°30′ to 46°30′ N. latitude).

d. Eureka Area—from 43°00′ N. latitude south to 40°30′ N. latitude.

7. *Water Depth.* Applicants should indicate the depth ranges at which they propose to use their gear. The EFPs, if issued, may restrict or require the use of the nets in some of the depth ranges in some areas.

8. *Gear.* Applicants should describe the type, size and amount of gear they propose to use under this EFP.

Applicants should be aware that the EFPs may include further gear specifications and restrictions that may not be specified in these application procedures, such as mandatory use of biodegradable cotton twine to connect the webbing to the corkline. The application must include the following information:

a. *Mesh size.* The permits may require two mesh sizes in each net. All shackles/nets may be required to have varying or equal amounts of a larger and smaller mesh webbing as defined below.

Applicants should indicate the specific size of large and small mesh they propose to use.

i. Large—select one mesh size from 5⅞″ to 7″.

ii. Small—select one mesh size from 4¾″ to 5½″.

b. *Type and size of twine.*

c. *Height of net.* Indicate the depth (number of meshes) of the net you propose to use. The EFPs may require that all nets be the same height.

d. *Length of net.* Indicate the maximum amount of net that you propose to use. Each net/shackle may be required to be the same length and constructed the same. The EFPs may also restrict the total amount of net that a vessel can fish simultaneously.

9. *Fish species.* Applicants should describe the species (directed and incidental) expected to be harvested under the EFP and the amounts of such harvest necessary to conduct the experiment. Applicants should include the estimated amount of each fish species they propose to harvest each month that they propose to fish. Such estimates should be based on a reasonable quantity that can actually be harvested and the minimum which is needed by the applicant to participate in the experimental fishery.

Note.—The target species for this experimental fishery is sablefish with incidental catches of lingcod and rockfish. The EFPs may restrict the total amount of each species that can be harvested.

10. *Other Conditions.* As this is an experimental fishery, the EFPs may include other requirements that applicants must comply with, such as carrying an observer.

Note.—EFPs will not be issued to applicants who may be unable or unwilling to cooperate with NMFS on these conditions. The applicants' past performance under EFPs and their past relationships with Federal and State enforcement officers and management personnel may be included in the criteria for selecting permittees.

a. *Observers.*

i. Applicants must indicate whether they will be able to provide board, living accommodations, and safe working conditions for an observer who may accompany the vessel on each trip under the EFP.

ii. Applicants must indicate whether they will be able to provide at least 48 hours' notice prior to departure on each trip.

b. *Logs and Reporting Requirements.*

i. Applicants must indicate whether they will be able to maintain detailed logs on the fishing operation including descriptions of gear conflicts and numbers and estimated weights of fish species retained and those discarded on each set.

ii. Applicants must indicate whether they will be able to submit the detailed logs to NMFS within 5 days of the end of each trip.

iii. Applicants must indicate whether they will be able to submit copies of their delivery receipt (fish ticket) for each trip under the EFP within 5 days of the end of each trip.

iv. Applicants must indicate whether they will agree to the public release of any and all information collected by observers or the permittee relative to the experimental fishery.

c. *Experimental Stipulations*—Applicants should indicate whether they will be able occasionally to test depths, areas, times, or gear different from those requested in the application. The applicant should describe any limitations that may affect his ability to perform such experiments.

Note.—An applicant should be aware that an EFP, if issued, will restrict his proposed fishing operations and may require experimental fishing that was not proposed by the applicant.

11. *Signature.* Applicant must sign the application.

Permittee Selection Criteria

If a decision is made to issue EFPs in 1986, then a number of factors will be taken into consideration in the process of selecting permittees from the applications received. The purpose for issuing the EFPs is to gather further information on this experimental fishery, therefore only a limited number of permits may be issued in each area. The number issued will be based on information needs for each area and the logistical and financial constraints of maintaining adequate observer coverage on each of the experimental vessels. In this regard, it should be noted that considerable data on this experimental fishery have been collected from the areas north of 47°30′ N. latitude and therefore few, if any, permits may be issued for that area. On the other hand, information needs in other areas, if any, may be given a higher priority. Therefore, applicants choosing the Vancouver area (north of 47°30′ N. latitude) as their first choice should be aware that their chances of obtaining a permit may be small compared with other areas.

Applicants willing to make minimal fishing effort during the entire period from May 1 to December 31, 1986, may be more likely to be selected than those who propose to fish only during a

limited period. However, applicants preferring to obtain permits for only a shorter period may be considered for their limited time period if there is a shortage of applicants. They may also be considered as alternates should one of the longer-term permittees cease fishing.

If, after taking the area and time selection factors into account, the number of applicants still exceeds the number of permits to be issued, then NMFS may develop a prioritized list of successful applicants based on an evaluation of each application or a random drawing, or a combination of both. Any evaluation would be based on a determination of which proposals are best suited to achieve the purpose of the EFP provisions with regard to obtaining needed information on the use of set net gear. The evaluation would consider the applicants' experience and ability to comply with the conditions of the experiment that will be specified in the permits. If objective evaluation does not sufficiently limit the number to be considered in each area, a random drawing may be used to select successful applicants. The resulting list will rank applicants in each area. Those ranked at the top of the list, within the number of permits to be issued for that area, will be selected. The remaining applicants would be retained in the listed order as alternates should the successful applicant decline or discontinue fishing for any reason other than having achieved an established quota.

After the closing date for receipt of applications, NMFS will publish a notice in the **Federal Register** acknowledging the completed applications received and will give interested persons an opportunity to comment. Copies or a summary of all applications received will be forwarded to the Pacfic Fishery Management Council and other entities as prescribed in § 663.10(c) prior to the March 11–13, 1986, Council meeting in Portland. NMFS will announce its decision on how many, if any, EFPs will be issued shortly after the Council meeting. If it is decided that information on this experimental fishery is needed in 1986 and a decision is made to issue EFPs, then the selection among applicants will commence. It is anticipated that the selection of permittees, if permits are to be issued, will be announced during the first week of April. All applicants will be notified in writing of their selection or their ranking as alternates by mid-April.

(16 U.S C. 1801 et seq.)

Dated: December 11, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85–29742 Filed 12–13–85; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; James T. Harvey

On October 11, 1985, notice was published in the **Federal Register** (50 FR 41549) that an application had been filed by James T. Harvey (P368), College of Oceanography, Oregon State University, Marine Science Center, Newport, Oregon 97635 to take harbor seals (*Phoca vitulina*) for captive research and subsequent tag and release.

Notice is hereby given that on December 9, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., BIN C15700, Seattle, Washington 98115.

Dated: December 9, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85–29675 Filed 12–13–85; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Limit for Certain Cotton, Textile Products Produced or Manufactured in the People's Republic of China

December 10, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 17, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On Decembr 28, 1984 a notice was published in the **Federal Register** (49 FR 50432) which announced import restraint limits for certain specified categories of cotton, wool and man-made fiber textile products, including Category 320pt. (only T.S.U.S. items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.—with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98), produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985. The limit established for Category 320pt. has been filled, in part, because of improper import charges which have been revealed in a recent investigation. Accordingly, the Chairman of the Committee for the Implementation of Textile Agreements, in the letter which follows this notice, is directing the Commissioner of Customs to deduct 2,975,398 square yards from the import charges made to the limit established for Category 320pt. which were found to be improperly charged.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 10, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of Treasury, Washington, D.C.
20229

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Repubic of China, I request that, effective on December 17, 1985, you deduct 2,975,398 square yards from the import charges made to the restraint limit established in the directive of December 24, 1984 for Category 320pt.[1], produced or manufactured in China and exported during the twelve-month period which began on January 1985.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[1] In Category 320 only T.S.U.S. items 320.—, 321.—, 322.—, 326.—, 327.—, and 328.—, with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98

[FR Doc. 85-29723 Filed 12-13-85; 8:45 am]

BILLING CODE 3510-DR-M

Amending the Bilateral Agreement Concerning Cotton, Wool and Man-Made Fiber Textile Products, Produced or Manufactured in Thailand; Correction

December 11, 1985.

On December 2, 1985 a notice was published in the **Federal Register** (50 FR 49438) which announced an amendment to the bilateral agreement with Thailand concerning certain specified categories of cotton, wool and man-made fiber textile products.

Line ten of paragraph two of the letter to the Commissioner of Customs which followed that notice should be corrected to read as follows: Extended on November 25 and 27, 1985.

Line 26 of paragraph two should be amended to include reference to footnote two, as follows: 330–359, 431–459 and 630–659, as a group.[2]

Footnote two should read as follows, and all succeeding footnotes in the letter to the Commissioner of Customs should be renumbered:

In paragraph four of the letter to the Commissioner of Customs, the following phrase should be deleted: Which were in excess of the limit established for that period:

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-29722 Filed 12-13-85 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education

AGENCY: Department of Education.

ACTION: Application Notice for Noncompeting Continuation Awards under the Comprehensive Program for Fiscal Year 1986.

Applications are invited for noncompeting continuation awards under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education.

[2] Not including Categories 355, 356, 455, 655 and 656.

The Secretary issues awards to institutions of postsecondary education and other public and private educational institutions and agencies for the purpose of improving postsecondary education.

Authority for this program is contained in Title X of the Higher Education Act, as amended.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, an application for a non-competing continuation award for a grant originally funded in 1984 should be mailed or hand-delivered by January 21, 1986. Non-competing continuation awards for grants originally funded in 1985 should be mailed by March 5, 1986.

If the application is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail

An application delivered by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.116C, Washington, DC 20202.

To establish proof of mailing, an applicant must show one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a conmercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a mail receipt that is not dated by the U.S. Postal Service as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

Applicants are encouraged to use registered or at least first class mail.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the Department of Education, Application Control Center, Attention: 84.116C, 7th and D Streets SW., Regional Office Building 3, Room 3633 Washington, DC 20202.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sunday, and Federal holidays.

Program Information

Program information will be mailed to eligible applicants. Institutions currently receiving funds and who satisfy the requirements of 34 CFR 75.118 and 34 CFR 75.253 concerning the continuation of multi-year projects are eligible for continuation awards.

Available Funds

Fiscal Year 1986 funds have not been appropriated for the Fund for the Improvement of Postsecondary Education. However, applications are invited to allow sufficient time for their evaluation and completion of the grants process prior to the end of the fiscal year should the Congress appropriate funds for this program.

It is estimated that approximately 100 continuation awards, at an average of $70,000, could be made if funds are available. These estimates do not bind the Department to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Application Forms

Application forms included in program information packages will be sent directly to all potential applicants that are eligible for a continuation award.

The program information package is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition. (Approval by the Office of Management and Budget under control number 1840–0514).

Applicable Regulations

The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained in:

(1) The Education Department General Administration Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 79.

(2) The regulations in 34 CFR Part 630.

Further Information

For information contact the Fund for the Improvement of Postsecndary Education, regarding the Comprehensive Program Continuation Grants (84.116C); Telephone: (202) 245–8091.

(20.U.S.C. 1135)

(Catalog of Federal Domestic Assistance No. 84.116C. Fund for the Improvement of Postsecondary Education)

Dated: December 11, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85-29704 Filed 12-13-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Indian Education; Closed Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: January 7-10, 1986, 9:00 A.M. until conclusion of business each day.

ADDRESS: U.S. Department of Education, 400 Maryland Avenue, SW., Room 2177, Washington, DC 20202, (202) 732-1887.

FOR FURTHER INFORMATION CONTACT: Lincoln C. White, Executive Director, National Advisory Council on Indian Education, 2000 L Street NW., Suite 574, Washington, DC 20036, (202) 634-6160.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is established under section 442 of the Indian Education Act (20 U.S.C. 1221g). The Council is established to assist the Secretary in carrying out responsibilities under section 441(a) of the Indian Education Act (Title IV of Pub. L. 92-318), through advising Congress, the Secretary of Education, the Under Secretary of Education and the Assistant Secretary of Elementary and Secondary Education with regard to education programs benefiting Indian children and adults.

The closed meeting will start at approximately 9:00 a.m. and will end at the conclusion of business each day, approximately 5:00 p.m. The Council will be reviewing applications submitted under the (1) Indian Controlled Schools authorized by Part A of the Indian Education Act; (2) Planning, Pilot and Demonstration Projects and Educational Personnel Development (Sections 1005 and 422) authorized by Part B of the Indian Education Act; and, (3) Planning, Pilot and Demonstration Projects for Indian Adults Program and Educational Services for Indian Adults Program authorized by Part C of the Indian Education Act.

The reviewing of applications must be held in the highest confidence until the announcement is released by proper authorities as to which projects will be funded. The premature disclosure of information discussed during the review process is likely to significantly frustrate implementation of agency action. Financial information which is privileged or confidential contained in and related to these proposals will be discussed at the review session. In addition, discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (9), (4) and (6) of section 552b(c) of Title 5 U.S.C.

The agenda includes the review of applications submitted under the (1) Indian Controlled Schools authorized by Part A of the Indian Education Act; (2) Planning, Pilot and Demonstration Projects and Educational Personnel Development (Sections 1005 and 422) authorized by Part B of the Indian Education Act; and, (3) Planning, Pilot and Demonstration Projects for Indian Adults Program and Educational Services for Indian Adults Program authorized by Part C of the Indian Education Act. Under section 442(b)(2) of Part D of the Indian Education Act, the Council is authorized to review applications for assistance submitted under these programs and to make recommendations to the Secretary of Education with respect to their approval.

A summary of the activities of the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Dated: December 4, 1985. Signed at Washington, D.C.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 85-29743 Filed 12-13-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Oak Ridge Operating Sites, TN; Trespassing on Department of Energy Property; Correction

This document corrects a Notice concerning unauthorized entry into and upon the Y-12 Plant Site that appeared at pages 27843-27844 of the **Federal Register** of July 8, 1985 (50 FR 27843-27844). This action is necessary to correct the inadvertent omission of two explanatory sentences from the Notice.

The following correction is made to the **Federal Register** Notice of July 8, 1985, appearing at 50 FR 27843:

On page 27844, column two, the following two sentences are inserted as a separate paragraph between the last line of the Y-12 Plant Site description and the date the Notice was signed: "Bearings shown refer to the Y-12 Plant Grid System and do not refer to either true or magnetic North. The Y-12 Plant Grid North is 33°58'32" West of True North."

Dated at Washington, DC, this 27th day of November 1985.

John L. Gilbert,

Exective Assistant, Office of the Assistant Secretary for Defense Programs.

[FR Doc. 85-29726 Filed 12-13-85; 8:45 am]

BILLING CODE 6450-01-M

Pantex Plant, TX; Trespassing on Department of Energy Property; Correction

This document corrects a Notice concerning unauthorized entry into and upon certain portions of the Pantex Plant Site that appeared at pages 31004-31005 of the **Federal Register** of July 31, 1985 (50 FR 31004-31005). This action is necessary to correct typographical errors in the site description.

The following corrections are made in the **Federal Register** Notice of July 31, 1985, appearing at 50 FR 31004:

1. On page 31004, column three, the fourth full paragraph, the first sentence, second line, the number "59" is changed to read to "to".

2. On page 31004, column three, the sixth full paragraph, the first sentence, first line, the word "the" is changed to read to "said".

3. On page 31004, column three, the seventh full paragraph, first sentence, first line, the number "60" is changed to read to "69".

Dated at Washington, DC, this 27th day of November 1985.

John L. Gilbert,

Executive Assistant, Office of the Assistant Secretary for Defense Programs.

[FR Doc. 85-29725 Filed 12-13-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Case No. RF–002]

Energy Conservation Program for Consumer Products; Petition for Waiver of Refrigerator and Refrigerator-Freezer Test Procedure From White Consolidated Industries, Inc.

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a "Petition for Waiver" from White Consolidated Industries, Inc. (WCI) of Cleveland, Ohio, requesting a waiver from the U.S. Department of Energy (DOE) test procedure for refrigerators and refrigerator-freezers. WCI is a manufacturer of home appliances, including refrigerator-freezers. WCI has developoed an electronic deforst control for refrigerator-freezers that initiates defrost cycles in response to operating conditions and usage patterns. The petition requests DOE to grant WCI relief from the DOE test procedure for refrigerators and refrigerator-freezers for its refrigerator-freezer model equipped with the electronic defrost control system on the basis that the existing test procedure yields materially inaccurate estimates of the energy consumption of such units. DOE is soliciting comments, data, and information regarding the petition.

DATE: DOE will accept comments, data and information not later than January 15, 1986.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Test Procedures for Consumer Products, Case No. RF–002, Mail Stop CE–132, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–132, Forrestal Building, 1000 Independenece Avenue, SW., Washington, DC 20585, (202) 252–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9513

Background

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163, 89 Stat. 917), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619, 92 Stat. 3266), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has also prescribed procedures by which manufacturers may petition for waiver of test procedure requirements for a particular basic model of a product covered by a test procedure and the Department may temporarily waive such test procedure requirements for such basic model. Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedure or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. These waiver procedures appear at 10 CFR 430.27. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Refrigerator-freezers are one of the products covered by the Federal Trade Commission's (FTC) Appliance Labeling Program. The energy consumption of refrigerator-freezers, as determined using DOE's test procedure, forms the basis of the estimated annual operating cost figures which FTC requires manufacturers of refrigerator-freezers to disclose on an EnergyGuide label on each unit to assist consumers in making a purchasing decision.

WCI filed a petition for waiver from the DOE test procedure for refrigerators and refrigerator-freezers on the grounds that the procedure yields materially inaccurate estimates of the energy consumed by its refrigerator-freezer model equipped with what WCI describes as an electronic defrost control system. WCI states that its electronic defrost control system initiates defrost cycles on the basis of compressor run time and the length of the preceding defrost period.

The petition states that under the conditions and procedures of the current DOE test procedure for refrigerator-freezers, the energy consumption of a refrigerator equipped with an electronic defrost control system will appear to be lower than a comparable timed-defrost unit. The petition explains that because the unit will defrost less frequently, less energy will be consumed during the test period, leading to test procedure results that do not represent accurately the unit's peformance on a comparable basis with timed-defrost units.

Further, the petition states that WCI seeks to use the alternate test procedure prescribed in DOE's Decision and Order, published in the **Federal Register** on August 23, 1985, granting the Whirlpool Corporation waiver from the DOE refrigerator-freezer test procedure for Whirlpool's refrigerator-freezer models equipped with electronic adaptive defrost controls. 50 FR 34189.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, D.C., November 27, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

October 23, 1985.

Michael J. McCabe, Branch Chief, Testing and Evaluation, Conservation and Renewable Energy, U.S. Department of Energy (Room GF–217), 1000 Independence Ave., N.W., Washington, DC 20585.

Dear Mr. McCabe:

1. *Petition for Waiver*—In accordance with 10 C.F.R. Part 430.27, White Consoldiated Industries, Inc. (WCI) petitions for waiver of the test procedure set forth in 10 CFR Part 430, Subpart B, Appendix A1, adopted 10 August 1982, and for use of an alternate test procedure described in Paragraph 4 below. (WCI is simultaneously filing an Application for Temporary Exception with the DOE Office of Hearings and Appeals.) WCI will be producing for sale to the general public a new type of refrigerator beginning in December, 1985. Designated Frigidaire Model FPCI18TDWO, this refrigerator will have an electronic defrost control system, and use of the required Appendix A1 test procedure referenced above will not produce results which correctly represent the performance of this refrigerator.

2. *Background Information*—WCI manufactures a full line of products for the home including refrigerators, freezers, ranges, ovens, clothes washers, clothes dryers, dishwashers, room air conditioners, humidifers and dehumidifiers. The company is familiar with DOE test procedures and the FTC Energyguide labeling requirements. In our opinion, the applicable DOE test procedure for refrigerators, which was designed for units with timed defrost cycles, will produce erroneous results when used for testing a unit with an electronic defrost control system which does not operate on a timed cycle. The Frigidaire FPCI18TDWO will defrost based on two parameters—compressor running time and the length of the

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"heater-on" time in the previous defrost period. The control could initiate a defrost cycle after as little as eight hours or as long as forty-eight hours of compressor running time

3. *Specific Test Procedure Problems*—With the test conditions and procedures currently prescribed by DOE, energy consumption of a refrigerator equipped with an electronic defrost control system will appear to be lower than a comparable timed-defrost unit. Because the unit will defrost less frequently, less energy will be consumed during the test period, leading to a value on the FTC Energyguide label which does not represent the performance of the unit on a comparable basis with timed-defrost units. Buyers could be misled as to the annual operating cost to be expected in normal service.

4. *Alternate Test Procedures*—The alternate test procedure prescribed in the Whirlpool case (Case No. RF–001) at 50 FR 34189 (August 23, 1985), paragraph (2), could be used to test the Frigidaire Model FPCI18TDWO. This alternate procedure would produce energy consumption measurements similar to those which might be encountered in actual use under some conditions, and would allow customers to compare directly this refrigerator with others equipped with electronic defrost controls.

5. *Public Policy Considerations*—Since innovation is an essential part of the Congressionally-mandated energy conservation programs, it is in the public interest for DOE to facilitate introduction of new products like electronic refrigerator defrost controls which have the potential for saving energy by initiating defrosting only when it is needed.

6. *Other Manufacturers*—Whirlpool Corporation has been granted permission to use this alternate test procedure for testing its Whirlpool ED26SSXM and Sears 106.85569 models.

If there are any questions regarding this matter, please refer them either to Frederick Hallett (202–638–7878) or Ralph Harrington (616–754–7131).

Signed for Petitioner.

White Consolidated Industries, Inc., by Frederick H. Hallett,

Vice President.

[FR Doc. 85–29727 Filed 12–13–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 85–33–NG]

Poco Petroleum, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas from Canada for short-term and spot sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 2, 1985, of an application filed by Poco Petroleum, Inc. (Poco) a wholly-owned subsidiary of Poco Petroleum Ltd. (Poco Ltd.) for blanket authorization to import from Canada up to 150 Bcf of natural gas over a two-year period beginning on the date of first delivery. The applicant will acquire gas from its parent, Poco Ltd., individual producers, producer groups and associations for spot and short-term sales to purchasers in the northwest and midwestern United States. Poco proposes to file quarterly reports with ERA giving the specific terms of each import and sale, including price and volumes.

The application is filed with EPA pursuant to section 3 of the Natural Gas Act and Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on January 15, 1986.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–098, 1000 Independence Ave., SW., Washington, DC. 20585, (202) 252–9622

Diane J. Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–6667

SUPPLEMENTARY INFORMATION: Poco Petroleum, Inc. (Poco), a Delaware corporation whose principal place of busines is in Calgary, Alberta, Canada, is a wholly-owned subsidiary of Poco Petroleum, Ltd. (Poco Ltd.) which produces gas in the provinces of Alberta and British Columbia, Canada.

On December 2, 1982, Poco filed an application for blanket authorization to import up to 150 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery. The gas which Poco proposes to import would be sold on a short-term and spot basis to various industrial commercial end-users, electric utilities, agricultural users, pipelines, distribution companies and other end-users in the northwest and midwestern United States. Poco states that the specific terms for each short term or spot sale will be the product of negotiations between the applicant, its Canadian suppliers, and the domestic purchasers. The applicant will act either as an agent for Poco Ltd. or will itself resell gas it has purchased.

Poco states it will acquire gas not only from its parent, but also from individual producers, producer groups and associations. According to the applicant, Poco Ltd. currently operates approximately 200 wells in the Provinces of British Columbia and Alberta, Canada, which have reserves of approximately 400 BcF of gas and deliverability of approximately 36.5 Bcf per year. Poco assert that approximately 29 Bcf of this gas is excess and not required for delivery under existing contractual arrangements.

Poco states that the terms and conditions of each short-term or spot sale will be responsive to current market conditions. Thus, if Poco cannot obtain competitively priced Canadian gas or adjust the sales price to meet the market price, no sales will be made and no gas will be imported under the requested authorization.

In support of its application, Poco believes that approval and implementation of its blanket authorization request will have a positive impact on the environment in instances were the imported gas displaces high sulphur fuel oil and coal. Poco contends that only existing transmission systems will be used to import the gas and no new construction or separate facilities will be required. In addition, Poco states that approval of its arrangements would be consistent with the public interest because of the beneficial competitive consequences inherent in freely negotiated spot and short-term sales.

Poco proposes to file with the ERA quarterly reports that will include the import and sale price, the quantity of gas imported, the points of entry, transporters, the duration of the agreement, contract adjustment and take provisions, if any, the Canadian suppliers, the U.S. purchasers, as well as a description of the markets served.

This application is one of a number received by the ERA concerning the purchase of imported gas for spot and short-term blanket opportunities. The authorization would provide the applicant with blanket import approval to negotiate and transact individual short-term sales arrangements without further regulatory action. This application is similar to other blanket imports the ERA has recently approved.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). The objective of this policy is to free commercial parties from undue government

interference in determining contract terms and reflects the importance of buyer-seller negotiation. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., January 15, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Poco's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 10, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Adminsitration.

[FR Doc. 29639 Filed 12–13–85; am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA86–3–20–000 & 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

December 9, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on November 29, 1985, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Tenth Revised Sheet No. 201
Tenth Revised Sheet No. 202
Eighth Revised Sheet No. 203
Fourth Revised Sheet No. 204
Alternate Fourth Revised Sheet No. 204
Third Revised Sheet No. 324
First Revised Sheet No. 388

Algonquin Gas states that the purpose of this filing is to include in its rates the Gas Research Institute ("GRI") surcharge as authorized by Opinion No. 243 for GRI funding of $0.0135 per Mcf, adjusted to $0.0131 per MMBtu, to reflect Algonquin Gas' Btu billing basis.

Algonquin Gas proposes that the effective date of the above-mentioned tariff sheets be January 1, 1986, as authorized by Opinion No. 243.

Algonquin Gas requests that the Commission accept the above-mentioned tariff sheets to become effective as proposed and, in the case of Sheets No. 204, Algonquin Gas requests that the Commission accept that sheet which synchronizes its rates with the underlying rates of National Fuel Gas Supply Corporation.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–29683 Filed 12–13–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP83–44–008]

Algonquin Gas Transmission Co.; Tariff Filing Under Rate Schedule SNG–1

December 9, 1985.

Take notice that Algonguin Gas Transmission Company ("Algonquin Gas") on November 29, 1985, submitted a Cost of Service Report related to service under its Rate Schedule SNG–1 for the 1984–85 Winter Delivery Season, as required by the provisions of its FERC Gas Tariff, Second Revised Volume No. 1. Together with such report, and reflecting the results of the report, Algonquin Gas has filed Ninth Revised Sheet No. 202 to reflect a positive current adjustment of $0.0371 to the base tariff SNG–1 Demand Charge approved in Docket No. RP83–44. Such tariff sheet is proposed to be effective November 1, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commissions.

Any person desiring to be hard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests

should be filed on or before December 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29692 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-10-000]

ANR Pipeline Co.; Application

December 10, 1985.

Take notice that on October 3, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP86-10-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing ANR to continue to provide transportation services on behalf of certain shippers and to operate certain facilities incident to the transportation services, all as more fully set forth in the appendix hereto and in the application which is on file with the Commission and open to public inspection.

ANR currently provides transportation services for the identified shippers pursuant to authority as set forth in section 311 of the Natural Gas Policy Act and Part 284 of the Commission's Regulations. ANR proposes to continue the subject services beyond October 31, 1985, and specifically requests such authority through December 31, 1986. It is explained that the continuation of the services would be pursuant to the terms and conditions of the existing transportation agreements between ANR and the respective shippers, currently on file with the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 31, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Shipper, contract date, current Docket No., maximum daily volume dth/d	Receipt point(s)	Delivery point(s)	Rate per 1,000 ft³ (cents)	Fuel charge, percent of gas transported
Acadian Gas Pipeline System, 02/26/84, ST84-740, 75,000	From NGPL at Lake Arthur, LA	Acadian at Franklin, LA or Trunkline at Superior Oil Company's Lowry Plant.	[illegible]	0.3
Baltimore Gas & Electric Company, 03/12/85, ST85-833, 60,000	From Tennessee in HI 270 or HI 526, Offshore TX	To Tennessee at Superior's Lowry Plant or Columbia Gulf in Patterson, LA.	5.1	2.2
Baltimore Gas & Electric Company, 06/12/85, ST85-1244, 20,000	From Caliche at various points in Oklahoma	To Columbia Gas in Paulding, Ohio	[illegible]	3.0
Boston Gas Company, 08/25/85, ST85-, 20,000	From Northern at Janesville, WI, Greensburg, KS	To TETCO in French Lick, IN	6.0	1.0
Bridgeline Gas Distribution Company, 01/09/84, ST84-576, 75,000.	From CIG in Beaver Cty, OK, Funk in Texas Cty, OK	To Columbia Gulf, Riverway, and/or Texas Gas in St. Mary Parish, LA.	24.2	1.5
	From Riverside in Cameron Parish, LA		[illegible]	0.5
	From Trunkline at Superior's Lowry Plant and/or		[illegible]	1.0
	From ONG in Custer Cty, OK		[illegible]	3.0
Bridgeline Gas Distribution Company, 05/07/84, ST84-845, (Northern Natural Gas Company, Agent), 100,000.	From United at Centerville, LA	To Columbia Gulf at St. Mary Parish, LA, Riverway at Patterson, LA.	[illegible]	[illegible]
Bridgeline Gas Distribution Company, 07/12/84, ST85-275, [illegible]	From Riverway in St. Mary Parish, LA	To Riverway and/or Texas Gas in St. Mary Parish, LA.	1.7	0.5
Bridgeline Gas Distribution Company, 03/11/85, ST85-831, 15,000.	From Huff Co. in SMI 260	To Columbia Gulf in Pecan Island, LA	[illegible]	[illegible]
Bridgeline Gas Distribution Company, 05/21/85, ST85-, 10,000	From Bridgeline in St. Landry Parish, LA	To Riverway at Patterson, LA	2.0	[illegible]
The Cincinnati Gas & Electric Company, 09/11/84, ST85-004, 150,000.	From Yankee Resources, ANR Gathering Co. and N.W. Central at various points in OK, TX, KS and LA.	To Texas Gas in Slaughters, KY	[illegible]	3.0
			[illegible]	[illegible]
Citizens Gas & Coke Utility Company, 11/21/83, ST84-1155, 500	From MLV in DuBois Cty, IN	To Panhandle in Definance, Ohio	7.2	1.0
Citizens Gas & Coke Utility Company, 09/01/83, ST84-583, 500	From Earlsboro in Washita Cty, OK	To Panhandle in Definance, Ohio	[illegible]	3.0
Columbia Gas of Ohio, 03/27/85, ST85-899, (Northern Gas Marketing, Agent) 10,000.	From Northern Natural in Greensburg, KS or Janesville, WI	To Panhandle in Definance, Ohio	[illegible]	3.0
Comumbia Gas of Pennsylvania, 03/27/85, ST85-977 (Northern Gas Marketing, Agent) 1,000.	From Northern Natural in Greensburg, KS or Janesville, WI	Columbia Gs in Paulding, Ohio	7.8	1.0
Commonwealth Gas Pipeline, 05/02/85, ST85-0976, 15,000	From Promark in SMI 261	To Panhandle in Definance, Ohio	[illegible]	3.0
Consolidated Edison Company of New York, Inc., 01/21/85, ST85-989, 50,000.	From ANR Gathering at various points in OK, TX and KS.	Columbia Gas in Paulding, Ohio	7.8	1.0
Consolidated Edison Company of New York, Inc., 01/25/85, ST85-637, 25,000.	From Producer's in Caddo and Washita Counties, [illegible]	To Columbia Gulf in Pecan Island, LA	[illegible]	[illegible]
Consolidated Edison Company of New York, Inc., 04/15/85, ST85-1004, 60,000.	From Tennessee in HI 270, 526	To Texas Eastern in French Lick, IN	[illegible]	[illegible]
Creole Gas Pipeline Corporation, 12/07/84, ST85-412, 15,000	From Tennessee in SMI 108	To Tennessee at the Superior Plant in Lowry, Columbia Gulf at Patterson, LA.	5.1	[illegible]
Creole Gas Pipeline Corporation, 03/12/85, ST85-841, 60,000	From Tennessee in HI 270 & HI 526	To Tennessee at the Superior Plant at Lowry.	14.3	1.2
Delhi Gas Pipeline Corporation, 08/15/84, ST84-1255, 75,000	From Northern at Centerville	To Tennessee at the Superior Plant in Lowry, Columbia Gulf at Patterson, LA.	5.1	2.2
		To Columbia Gulf at St. Mary Parish, LA	2.0	
		Transco at Eunice, LA	3.6	0.5

Shipper, contract date, current Docket No., maximum daily volume (Mcf/d)	Receipt point(s)	Delivery point(s)	Rate per 1,000 ft³ (cents)	Fuel charge, percent of fuel transported
Delhi Gas Pipeline Corporation, 02/04/81, ST81-176 (Exchange)	From Delhi at various points in OK	At various points in OK	0	
Delhi Gas Pipeline Corporation, 01/17/85, ST85-765, 10,000	From Delhi in Beaver County, OK	To Delhi in Harper and Roger Mills Cty, OK	[illegible]	1.5
			[illegible]	1.5
East Tennessee Natural Gas, 04/15/85, ST85-983, 60,000	From Tennessee in HI 270,526	To Tennessee at Superior's Plant in Lowry, Columbia Gulf at Patterson, LA.	5.1	[illegible]
Eastern Shore Natural Gas Company, 06/17/85, ST85-1384, 10,000.	From Caliche Plant various points in Oklahoma	To Columbia Gas in Paulding, Ohio	[illegible]	3.0
Eastex Gas Transmission, 04/24/85, ST85-1385, 12,000	From Plumb Oil in St. Mary Parish, LA	To Riverway in St. Mary Parish, LA	2.0	
El Paso Natural Gas Company, 07/31/85, ST85-1686, 25,000	From Leede, Roger Mills County, OK	To El Paso in Roger Mills County, OK	2.8	0.5
Faustina Pipeline, 03/06/84, ST84-1032, 50,000	From Northern at Centerville	To LRC at Grand Chenier, LA	[illegible]	0.5
		Columbia Gulf at St. Mary Parish, LA	[illegible]	
Faustina Pipeline, 06/01/84, ST84-1039, 20,000	From Superior Oil at Lowry	To LRC at Grand Chenier	[illegible]	
Faustina Pipeline, 04/16/84, ST84-1168, 50,000	NW Central in Rice Cty, KS	LRC at Grand Chenier	19.5	0.5
	CIG in Beaver Cty, OK	Patterson, LA	[illegible]	1.5
	Northern at Greensburg, KS		[illegible]	1.5
	Northwest or ANR Gathering at various points in OK, TX and KS.		26.0	3.0
	Damson Oil at various points in LA		[illegible]	
Florida Gas Transmission Company, 09/26/84, ST85-639, 4000	From Florida Gas in El 191	To Florida Gas in Krotz, Springs, LA	14.3	1.0
Illinois Power Company, 06/25/84, ST84-1156, 12,000	From NGPL in Will and McHenry Counties, IL	To IPC in Henry Cty, IL	2.0	
	From ANR Gathering at various points in OK, TX and KS.		[illegible]	3.0
The Kansas Power & Light Company, 03/01/84, ST84-838, 2,000	From KP&L in Canadian Cty, OK	To Northern at Greensburg, KS	[illegible]	3.0
LGS Intrastate, Inc. 01/03/85, ST85-680, 2,000	From Superior Oil at the Lowry Plant	To LRC at Grand Chenier	2.0	
Louisiana Gas System, Inc., 12/26/84, ST85-1088, 13,300	From Superior Oil at its Lowry Plant	To Riverway at Patterson, La, Texas Gas at Eunice, LA.	3.6	1.0
Louisiana Industrial Gas Supply System, 05/05/83, ST83-518, 7,000	From TIPCO in Dewy Cty, OK	To Northern at Greensburg, KS	3.6	3.0
		Acadian PL at Franklin, LA	25.2	3.0
		Southern at Shadyside, LA	25.2	3.0
Louisiana Industrial Gas Supply System, 01/06/84, ST84-503, 15,000.	From Tennessee in SMI 108	To Louisiana IGS at Franklin, LA, Trunkline at Superior's Lowry Plant.	12.5	1.25
Louisiana Industrial Gas Supply System, 01/13/84, ST84-501, 75,000	From NGPL at Lake Arthur, LA	To Louisiana IGS at Franklin, LA, Trunkline at Superior's Lowry Plant.	3.5	0.3
Louisiana Industrial Gas Supply System, 03/26/85, ST85-871, 100,000.	From Northern diverting volumes from United at Centerville, LA.	To Acadian at Franklin, LA,	2.8	0.5
		To Trunkline at Superior's Lowry Plant or Patterson, LA.	2.0	
Louisiana Intrastate Gas Corporation, 01/11/83, ST83-656, 6,000	From LIG at Bayou Hebert, LA	To LIG at Patterson, LA, Shepherd at Jennings or Garden City, LA.	5.4	1.5
Lynchburg Gas Company, 11/30/84, ST85-413, 2,500	From Live Oak at Vermilion Parish, LA	To Transco at Eunice, LA	3.6	0.5
Michigan Consolidated Gas Company, 02/18/83, ST83-313, [illegible]	From MichCon at Willow Run, MI	To Panhandle at Defiance, Ohio	2.0	
Monterey Pipeline Company, 06/17/81, ST82-026, 3,500	From Monterey at W. Gueydan, LA	To Monterey in St. Landry Parish, LA or Krotz Springs, LA.	3.5	1.0
Monterey Pipeline Company, 01/26/84, ST84-846, 10,000	From ARCO in Cameron Parish, LA	To Monterey in St. Landry Parish, LA	3.6	1.0
Mountaineer Gas Company, 03/12/85, ST85-865, 60,000	From Tennessee in HI 270 and 526	To Tennessee at Superior's Lowry Plant, Columbia Gulf in Patterson, LA.	5.1	2.2
National Fuel Gas Supply Corporation, 04/15/85, ST85-982, [illegible]	From Tennessee in HI 270, 526	To Tennessee at Superior's Lowry Plant, Columbia, Gulf in Patterson, LA.	5.1	2.2
Natural Gas Pipeline Company of America, 03/26/84, ST84-873, 75,000.	From Acadian in Franklin, LA	To NGPL at Lake Arthur, LA	3.6	0.5
Natural Gas Pipeline Company of America, 07/06/84, ST85-001, [illegible]	From Superior Oil at Lowry, LA	To NGPL at Lake Arthur, LA	2.0	
Natural Gas Pipeline Company of America, 09/12/84, ST85-037 (TXO as Agent), 15,000.	From Delhi Gas in Kiowa County, KS	To NGPL in Beaver City, OK	[illegible]	0.5
New Jersey Natural Gas Company, 08/15/85, ST85- (Northern Gas Marketing, Agent), 25,000.	From Northern in Greensburg, KS	To Texas Eastern in at French Lick, IN or St. Landry Parish, LA.	[illegible]	3.0
Northern Intrastate Pipeline Company, 10/26/84, ST85-1458, 50,000.	From United at Centerville	To LRC at Grand Chenier, LA or Columbia Gulf at Garden City, LA.	3.6	0.5
Northern Illinois Gas Company, 06/14/85, ST85-1156, 30,000	From Midwestern at Marshfield, WI or Northern at Janesville, WI.	To Midwestern at Joliet, IL	8.7	1.0
Northern Illinois Gas Company (Hadson, Agent), 06/09/85, ST85-	Various points in OK and LA	To Midwestern at Joliet, IL	23.4	3.0
			[illegible]	3.0
Northern Indiana Public Service Company, 06/17/83, ST84-291, 3,500	From Panhandle at Defiance, OH	To NIPSCO in Monroe City, IN	2.0	
Northern Indiana Public Service Company, 04/23/84, ST85-596, 70,000.	From NGPL in W. Joliet, IL	To NIPSCO in Michigan City, IN	2.0	
North Central Public Service Company, 06/10/84, ST84-1256, 12,000.	From North Central in Ft. Madison, IA	MichCon at Willow Run, MI	13.6	2.0
	MichCon at Willow Run, MI	North Central at Fort Madison, IA	8.7	1.0
Northern Natural Gas Company, 02/21/85, ST85-752, 30,000	From United at Centerville, LA	To Texas Eastern at St. Landry, LA	[illegible]	[illegible]
Northwest Pipeline, 02/14/84, ST84-686, 25,000	From Northwest in Custer and Washita Counties, OK	To CIG in Beaver City, OK	[illegible]	3.0
	Producer's in Caddo City, OK	Northern in Greensburg, KS	8.72	3.0
Ohio Gas Company, 04/04/85, ST85-978, 10,000	From ANR Gathering at various points in OK, TX and KS.	To Ohio Gas in Fulton City, OK	[illegible]	[illegible]
Orange & Rockland Utilities, Inc., 05/02/85, ST85-979 (Citizens Energy Corp.' Agent), 15,000.	From Promark in SMI 281	To Columbia Gulf in Pecan Island, LA	[illegible]	
Orbit Gas Company, 03/12/84, ST85-690, 2,000	From ANR Gathering various points in TX, OK, and KS.	To Orbit Gas in Webster County, KY	33.7	3.0
Pacific Lighting Gas Supply Company, 07/12/85, ST85-100,000	From Phillips at its Sherman, TX Plant	To NGPL at Hansford, TX	2.0	
Pacific Lighting Gas Supply Company, 07/29/85, ST85-(ELCON, Agent), 40,000.	From Phillips at its Sherman, TX Plant	To NGPL at Hansford, TX	2.0	
Pacific Lighting Gas Supply Company, 08/01/85, ST85-1573, [illegible]	Various points in OK	To NGPL in Beaver City, OK	4.5	2.0
Pacific Lighting Gas Supply Company, 08/15/85, ST85-, 50,000	Various points in OK	To Northern at Greensburg	4.5	1.0
Pacific Lighting Gas Supply Company, 08/15/85, ST85-, 25,000	Various points in OK	CIG divert to Northern	4.5	1.0
Pacific Lighting Gas Supply Company, 07/29/85, ST85-, 40,000	Sherman Plant	To NGPL in Beaver City, OK	[illegible]	1.0
Pacific Lighting Gas Supply Company, 08/07/85, ST85-1687	Kerr-McGee Hemphill TX	TO NGPL in Beaver City, OK	[illegible]	1.0
The Peoples Gas Light & Coke Company, 11/30/84, ST85-679, 70,000.	From ANR Gathering and Other Sellers	To Peoples Gas in Will County, IL	[illegible]	3.0

Shipper, contract data, current Docket No., maximum daily volume Mcf/d	Receipt point(s)	Delivery point(s)	Rate per 1,000 Mcf (cents)	Fuel charge, percent of fuel transported
	NW Central in Rice City, KS		17.1	[illegible]
Pioneer Transmission Corporation 01/05/84, ST84-1071, 50,000	From Cimmaron PL in Woodward City, OK	To NGPL in Hansford City, TX	3.6	[illegible]
	ONG-Phillips in Custer Cy, OK and	Westar in Hemphill, TX	5.8	[illegible]
	Panhandle in Beaver City, OK			
Ponchartrain Natural Gas System, 02/28/84, ST84-839, 30,000	From Northern at Centerville, LA	To Ponchartrain in Ascension and St. Charles Parishes, LA.	[illegible]	
Ponchartrain Natural Gas System, 07/10/84, ST84-1157, 5,000	From Davis Oil in Cameron Parish, LA	Ponchartrain in Ascension and St. Charles Parishes, LA.	[illegible]	[illegible]
Producer's Gas Company 04/15/83, ST83-389, 100,000	From Producer's in Caddo, County, OK	To Northern at Greensburg	[illegible]	[illegible]
	Dewey County, OK		3.5	3.0
	Washita County, OK		5.4	3.0
	Woodward County, OK		2.8	[illegible]
	ONG in Custer Cty, OK		4.4	3.0
Producer's Gas Company, 06/24/83, ST83-658, 50,000	From United at Centerville, LA	To Transco Eunice, LA, Florida Gas at Krotz Springs.	3.6	0.5
Producer's Gas Company, 11/14/83, ST84-525, 7,000	From Transok in McIntosh Cty, OK	To Producer's in Caddo Cty, OK	[illegible]	
Producer's Gas Company, 12/09/83, ST84-685, 10,000	From ONG in Carter and Grady Counties, OK	To Producer's in Caddo County, OK	[illegible]	
Producer's Gas Company, 01/13/84, ST84-505, 25,000	From Producer's in Harper and Woodward Counties, OK.	To Producer's in Caddo and Woodward Counties, OK.	[illegible]	
Producer's Gas Company, 09/14/84, ST84-1281, 50,000	From Producer's in Washita Cty, OK	To Transco in Eunice, LA	[illegible]	[illegible]
Producer's Gas Company, 10/01/82, ST83-154, 6,000	From Producer's in Caddo County, OK	To Producer's in Custer and Caddo Counties, OK.	0	
Richie Gas System, 02/15/82, ST82-290, 2,000	From Borden at the Lawson lateral in LA	To LIG at Patterson, LA	3.5	[illegible]
Richie Gas System, 6/21/83, ST84-022, 20,000	From United at Centerville, LA	To Acadian PL at Franklin, LA	1.7	
Southeastern Michigan Gas Company, 11/16/84, ST85-524, 10,000.	From ANR Gathering at various points in TX, OK and KS.	To SEMGCO at St. Clair, MI	[illegible]	[illegible]
Southeastern Michigan Gas Company, 2/18/85, ST85-1095, [illegible]	From Great Lakes at St. Clair, MI	To SEMGCO at St. Clair, MI	[illegible]	
Southern California Gas Company, 6/1/85, ST85-, 25,000	Various points in OK, TX and KS	CIG divert to Northern in Dumas, TX	4.5	2.0
Southern Natural, 7/23/82, ST82-435 (Incident to Storage), 125,000.	From Midwestern at Shadyside, LA	To NGPL at West Joliet, IL	[illegible]	3.0
	Joliet, IL	Shadyside, LA	2.0	
Spindletop Gas Distribution System, 6/1/83, ST83-519, 15,000	From United at Centerville, LA	To Acadian PL at Franklin, LA	1.7	
Spindletop Gas Distribution System, 6/26/84, ST84-1037, 25,000	From NGPL at Lake Arthur, LA	To Acadian PL at Franklin, LA	[illegible]	
Tennessee Gas Pipeline Company, 11/5/82, ST83-183, 80,000	From Midwestern at Marshfield, WI, Northern at Janesville, WI	To Superior at Lowry, Midwestern at Joliet, IL and Chrisney, IN.	4.6	1.5
Tennessee Gas Pipeline Company, 12/17/84, ST85-600, 50,000	From CIG in Beaver County, OK	To Midwestern in Joliet, IL	[illegible]	[illegible]
		Tennessee at Superior's Plant in Lowry, LA	[illegible]	[illegible]
Texas Eastern Transmission Company, 1/15/85, ST85-766 (Exchange), 30,000.	From Texas Eastern in SS 135	To Tennessee at Sea Robin in SS 120	[illegible]	
Texas Eastern Transmission Company, 02/24/84, ST85-1403, 4,000.	From TETCO in HI 539	To TETCO in St. Landry, LA	5.1	[illegible]
Texas Gas Transmission Corporation, 02/07/85, ST85-762, 75,000.	From Texas Gas in W.C. 167	To Texas Gas at Eunice, LA	[illegible]	2.2
Texas Gas Transmission Corporation, 12/15/84, ST85-356, 45,000.	From Texas Gas SMI 146	To Texas Gas in SMI 108	7.43	1.0
Transcontinental Gas Pipe Line Corporation, 10/26/82, ST83-312, [illegible]	From ARCO/Quivira at Bayou Sale, LA	To Transco at Eunice, LA	[illegible]	[illegible]
Transcontinental Gas Pipe Line Corporation, 06/26/84, ST84-1154, 34,400.	From Northern at Janesville, WI Midwestern at Marshfield, WI	To Transco at Eunice, LA	[illegible]	
Transcontinental Gas Pipe Line Corporation, 06/20/84, ST85-249, (Exchange).	From Transco in Beckham Cty, OK	To Transco at Eunice, LA	0	
UGI Corporation, 03/12/85, ST85-864, 60,000	From Tennessee at HI 270 & HI 526	To Tennessee at Superior's Plant at Lowry	[illegible]	[illegible]
		Columbia Gulf at Patterson, LA.		
UGI Corporation, 03/27/85, ST85-897, 40,000	From Northern at Greensburg, KA	To Panhandle at Defiance, Ohio	[illegible]	[illegible]
	Janesville, WI	Columbia Gas at Paulding, Ohio	7.8	1.0
United Gas Pipe Line Company, 10/26/83, ST84-376, 10,000	From United HI 351/368	To HIOS HI 330	10.4	
United Gas Pipe Line Company, 12/17/84, ST85-432, 250,000	From United at Centerville, LA	To Northern at Greensburg, KS	[illegible]	0.5
	Rapides Parish, LA		[illegible]	

[FR Doc. 85-29861 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP86-6-000]

Discorbis Oil Company v. Valley Gas Transmission, Inc.; Complaint

December 6, 1985.

On October 25, 1985, Discorbis Oil Company (Discorbis) filed a complaint pursuant to 18 CFR 271.1105(d)(3) and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206. Discorbis alleges that Valley Gas Transmission, Inc. (Valley) violated 18 CFR 271.1104 of the Commission's Regulations by refusing to reimburse Discorbis for current and retroactive production-related costs. Discorbis requests the Production-Related Costs Board (Board) to issue an order directing Valley to pay the amounts specified in its notice of complaint.

Discorbis states that: (1) It has sold and is now selling natural gas from section 102 wells to Valley from Duval County, Texas, under two contracts dated March 20, 1981, and January 24, 1983; (2) it had to construct and maintain at its own expense both transportation and compression facilities to deliver the gas to Valley; (3) both contracts expressly authorize reimbursement for production-related costs, and (4) it previously submitted to Valley complete and accurate descriptions of the charges and the basis thereof for such charges.

Discorbis also notes that it originally filed an application on July 20, 1979, in Docket No. GP79-119-000, at the request of Valley to collect production-related costs. The application was dismissed as unnecessary by Commission order of December 27, 1983 (25 FERC ¶ 61,424), which cited new regulations permitting the collection of such costs on a self-implementing basis. That order stated that the original application date could be used in determining the date to be used in the collection of any appropriate retroactive amounts.

Discorbis claims that Valley has refused to pay and continues to refuse to

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pay production-related costs. It requests the Commission to (1) determine that Valley is in violation of the Commission's rules, and (2) issue an order compelling payment by Valley of the production-related costs.

Under the Rules 206(b) and 213(a), 18 CFR 385.206(b) and 385.213(a), Valley must file an answer to Dicorbis' complaint with the Commission unless otherwise ordered by the Commission. Under Rule 213(e), 18 CFR 385.213(e), any person failing to answer a complaint may be considered in default, and all relevant facts stated in such complaint may be deemed admitted. Valley shall file its answer with the Commission on or before January 6, 1986.

And person desiring to be heard or to protest said filing should file a protest or a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214, 18 CFR 385.211 and 385.214. All such protests or motions should be filed on or before January 6, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-29678 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

Distrigas Corp. and Distrigas of Massachusetts Corp.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

[Docket No. TA86-1-12-0000, 001]

December 9, 1985.

Take notice that Distrigas Corporation (Distrigas) on November 29, 1985 tendered for filing Eighteenth Revised Sheet No. 1 to its FERC Gas Tariff and Distrigas of Massachusetts Corporation (DOMAC) on the above date tendered for filing Eighteenth Revised Sheet No. 3A.

Eighteenth Revised Sheet No. 1 and Eighteenth Revised Sheet No. 3A are being filed pursuant to Distrigas' and DOMAC's purchased LNG cost adjustment provision set forth in their respective tariffs. The Distrigas rate change is being filed to reflect in its sales rate to DOMAC a redetermination (decrease) of the price paid for the purchase of LNG together with an amortization over the six-month period, January 1, 1986 through June 30, 1986, of the balance of the unrecovered purchased LNG cost account.

The DOMAC rate change is being filed to reflect the Distrigas rate change in DOMAC's rates for resale to its distribution customer companies and the amortization over the six-month period, January 1, 1986 through June 30, 1986, of the balance in DOMAC's unrecovered purchased LNG cost account and the GRI Surcharge.

Distrigas and DOMAC request that the proposed tariff sheets become effective January 1, 1986.

A copy of this filing is being served on all affected parties and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-29693 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-58-008]

El Paso Natural Gas Co.; Tariff Filing

December 10, 1985.

Take notice that on December 3, 1985, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act, the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1-A:

Original Sheet Nos. 12 through 18
Original Sheet No. 19
First Revised Sheet No. 100
Third Revised Sheet No. 101
Third Revised Sheet No. 102
Second Revised Sheet No. 103

El Paso states that it was the intent of the parties to the Stipulation and Agreement in Settlement of Rate Proceedings filed June 25, 1985 at Docket No. RP85-58-000, *et al.*, and approved by Commission letter order dated August 14, 1985, that transportation agreements entered into by El Paso on and after July 1, 1985, including arrangements entered into pursuant to § 157.209 of the Commission's Regulations, be subject to the terms and conditions of its new Rate Schedules T-1 or T-2. El Paso has since been advised by the Commission Staff that service to end-users performed on a self/implementing basis under § 157.209 of the Commission's Regulations should continue to be rendered under Rate Schedule TEU-1 which Staff states is the only El Paso rate schedule that, by its terms, is generally applicable to service under § 157.209. Since El Paso had intended to cancel Rate Schedule TEU-1 as soon as all arrangements thereunder had terminated, it did not, in the tariff filing implementing the settlement at Docket No. RP85-000, *et al.*, revise Rate Schedule TEU-1 to include the new rates established as part of the settlement for transportation by El Paso on behalf of others of natural gas which displaces quantities of gas that would otherwise be purchased from El Paso. Therefore, in order to comply with the Staff's direction it is necessary to revise Rate Schedule TEU-1 to reflect the approved rates for displacement service. El Paso states that the above designated tariff sheets serve to

implement such revision and requests that the Commission grant such waiver of its rules and regulations as may be necessary to permit the tariff sheets to become effective July 1, 1985, the effective date of the Stipulation and Agreement at Docket No. RP85–58–000, *et al.*

In addition to the tariff sheets identified above, El Paso also tendered First Revised Sheet No. 19 to its Volume No. 1–A Tariff. El Paso states that the tariff sheet serves to increase the Gas Research Institute funding unit adjustment component of the rates under Rate Scheudle TEU–1, as authorized by Commission Opinion No. 243 issued September 26, 1985 at Docket No. RP85–154–000, and requests that the Commission grant such waiver of its rules and regulations as may be necessary to permit tendered First Revised Sheet No. 19 to become effective January 1, 1986 as provided for in Opinion No. 243.

El Paso states that copies of the filing have been served upon all parties of record in Docket No. RP85–58–000, *et al.*, and, otherwise, upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before December 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–29682 Filed 12–13–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–2–33–000, 001]

El Paso Natural Gas Co.;

December 9, 1985.

Take notice that on Decembr 2, 1985, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act and in accordance with ordering paragraphs (B) and (C) of the Commission's Opinion No. 243 issued September 26, 1985 at *Gas Research Institute*, Docket No. RP85–154–000, the following tariff sheets to its FERC Gas Tariff;

Tariff volume	Tariff sheet
First Revised Volume No. 1	Seventh Revised Sheet No. 100
Original Volume No. 1–A	Second Revised Sheet No. 20
Third Revised Volume No. 02	Third Revised Sheet No. 101 Thirty-second Revised Sheet No. 1–D Seventeenth Revised Sheet No. 1–D.2
Original Volume No. 2A	Thirty-fourth Revised Sheet No. 1–C

El Paso states that the tendered tariff sheets, when accepted and permitted to become effective, will increase the Gas Research Institute funding unit adjustment component of its rates for certain sales and transportation services from the currently effective 1.18c per dth (1.25¢ per Mcf) to the 1.28¢ per dth (1.35¢ per Mcf) authorized to be collected by jurisdictional members of the Gas Research Institute commencing January 1, 1986 by said Commission Opinion No. 243.

El Paso requests that the tendered tariff sheets be permitted to become effective January 1, 1986 as provided for in Opinion No. 243.

El Paso states that copies of the filing have been served upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before *December 16,* 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a moton to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–29694 Filed 12–13–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA86–1–4–000 and 001]

Granite State Gas Transmission, Inc.; Proposed Change in Rates

December 9, 1985.

Take notice that on December 2, 1985, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1, containing changes in rates for effectiveness on January 1, 1986:

Fourteenth Revised Sheet No. 7
Eighth Revised Sheet No. 9

According to Granite State, the filing is made pursuant to the purchased gas cost adjustment provision in Section XIX of the General Terms and Conditions of its tariff. Granite State further states that the instant rate adjustments reflect changes in the cost of purchased gas at suppliers' rates that will be effective January 1, 1986 and the amortization of Unrecovered Purchased Gas Costs. It is stated that the change in rates reflects principally the increase in cost of gas purchased from Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) which Tennessee proposes to make effective January 1, 1986 in a contemporaneous filing with the Commission.

Granit State also states that the filing reflects elimination of a special surcharge applicable to its sales to Bay State, in effect since November 1, 1984, which was designed to amortize certain costs incurred in connection with the certification of Phase 1 of the Boundary Gas project.

Granite State further states that its proposed rates are applicable to wholesale sales to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc. and to a storage service rendered for Bay State. According to Granite State, the effect of the proposed rates in its filing is an increase of approximately $1,095,000 annually in its rates for sales to Bay State and $50,600 annually for sales to Northern Utilities.

According to Granite State, copies of the filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29695 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP86-7-000]

K N Energy, Inc. vs. H. G. Westerman and Others; Complaint

Issued: December 10, 1985.

Take notice that on November 1, 1985, K N Energy, Inc. (KN), filed a complaint against nine respondents,[1] alleging that they failed to give KN a bona fide offer and right of first refusal, as required by NGPA section 315(b), before selling certain gas to a third party.

KN states that in early 1977, four of the respondents agreed to sell KN all of the gas produced from their interests in certain leases in Yuma County, Colorado. The respondents had obtained their interests in some of those leases as part of a farmout agreement with KN under which the respondents agreed to drill for gas on certain of KN's leases in return for a one-half interest in the leases. The remaining five respondents subsequently acquired a part of the first four respondents' interests in the leases.

KN further states that in 1983 it exercised its right to terminate the contract with respect to the NGPA section 107 wells on the leases but offered to continue purchasing the gas from those wells at the lower section 108 ceiling price. KN did continue purchasing the gas at lower than section 107 prices pursuant to various short term and informal arrangements between the parties until May 1, 1985. On that date, according to KN, the respondents notified it that they intended to sell the section 107 gas to another purchaser. The respondents have commenced sales of gas produced from at least nine of their section 107 wells to a third party. KN claims, but the respondents deny, that they have also commenced sales of gas from another section 107 well to the third party. KN states that the respondents did not make a bona fide offer or give KN any right of first refusal with respect to any of the ten wells. According to KN, the respondents claimed that the gas sold to the third party was not dedicated to interstate commerce on November 8, 1978, the date of enactment of the NGPA, and that section 315(b) is therefore inapplicable. KN argues that the gas was so dedicated and has filed this complaint requesting the Commission to order the respondents to comply with the requirements of section 315(b).

Any person who desires to be heard or to protest the complaint should file, within 30 days after this notice is issued in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC., 20426, a motion to intervene or a protest in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests will be considered but will not make the protestants parties to the proceeding. Answers to the complaint shall also be due within 30 days after publication of this notice in the **Federal Register** in accordance with Rules 206 and 213 (18 CFR 385.206 and 385.213)

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29679 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-46-000, 001]

Kentucky West Virginia Gas Co.; Proposed Change in Tariff Sheets

December 9, 1985.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on November 29, 1985, tendered for filing with the Commission the following revised tariff sheets to Kentucky West's FERC Gas Tariff, First Revised Volume No. 1, to become effective January 1, 1986.

Eighth Revised Sheet No. 8
Eighth Revised Sheet No. 10

The revised tariff sheets amend Kentucky West's Gas Research Institute (GRI) Funding charge to place in effect the new GRI funding unit of 13.5 mills per dth as approved by FERC in Opinion No. 243, issued September 26, 1985, under Docket No. RP85-154-000.

Kentucky West states that copy of its filing has been served upon Kentucky West's jurisdictional customers and the Kentucky Energy Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29698 Filed 12-13-85 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-5-000, 001]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

December 10, 1985.

Take notice that on November 29, 1985, Midwestern Gas Transmission Company (Midwestern) filed Sixteenth Revised Sheet No. 5, Seventeenth Revised Sheet No. 6 and Tenth Revised Sheet No. 7 to Original Volume No. 1 of its FERC Gas Tariff, to be effective January 1, 1986.

Midwestern states that the purpose of the filing is to reflect for its Southern System, PGA rate adjustments based on (1) rate changes filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and (2) purchases directly from Tenngasco. The filing also reflects for Midwestern's Northern and Southern Systems an adjustment to the charge for the Gas Research Institute.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

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[1] H. G. Westerman, Thomas J. Jeffrey, Joe Gray, Meredith Mallory, Jr., Althea B. Travis, Ralph M. Connell, Thomas E. Jeffrey, Carl A. Westerman and Loyle P. Miller.

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29685 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-16-000, 001]

National Fuel Gas Supply Corp.; Proposed Tariff Change

December 10, 1985.

Take notice that on November 29, 1985, National Fuel Gas Supply Corporation ("National") tendered for filing Fifth Revised Sheet No. 4 as part of its FERC Gas Tariff, Frist Revised Volume No. 1, to be effective on January 1, 1986.

National states that the only purpose of this revised tariff sheet is to reflect an adjustment in National's rates for recovery of the costs associated with the Gas Research Institute as authorized by the Commission.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29686 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-26-000]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

December 9, 1985.

Take notice that on december 2, 1985, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective December 1, 1985.

Fifth Revised Sheet No. 48
Fifth Revised Sheet No. 51
Substitute Twenty-first Revised Sheet No. 301
Substitute Twentieth Revised Sheet No. 302
Substitute Twentieth Revised Sheet No. 304
Substitute Eighth Revised Sheet No. 306

Natural states that the purpose of Fifth Revised Sheet Nos. 48 and 51 is to revise Natural's Rate Schedules WS-1 and WS-2 so as to reflect the tariff provisions applicable to the winter service year 1985-86. Natural also states that Sheet Nos. 301; 302, 304 and 306 have been revised to set out in Natural's Index of Buyers and Quantity Entitlement section of its tariff the volumes Natural's customers have requested under Rate Schedules WS-1 and WS-2 during the 1985-86 winter season.

A copy of the filing was mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before December 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29699 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-206-000]

Northern Natural Gas Co.; Informal Settlement Conference

December 10, 1985.

On January 16 and 17, 1986, at 10:00 a.m., an informal settlement conference will be convened in the offices of the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426. The conference will be convened to consider technical issues and pursue settlement discussions.

All interested parties and the Staff are invited to attend; however, attendance will not confer party status. Any person wishing to become a party must file a Motion to Intervene in accordance with 18 CFR 385.214 (1985). For further information, contact Daniel Watkiss at (202) 357-8549.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29687 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP86-5-000]

Northern Natural Gas Co., a Division of InterNorth, Inc.; Petition for Declaratory Order

December 6, 1985.

On October 22, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), pursuant to Rule 207 of the Commission's Rules of Practice and Procedure [1], filed a petition for a declaratory order, asserting that certain actions by Diamond Shamrock Corporation (Diamond Shamrock) relating to gas dedicated and flowing in interstate commerce may have resulted in violations of pertinent provisions of the Natural Gas Act (NGA) and the Natural Gas Policy Act of 1978 (NGPA).

Northern states that it purchases residue gas from Diamond Shamrock under five gas purchase contracts pursuant to certificates issued by the Commission. Northern alleges that all the contracts contain plant use reservation clauses and that Diamond Shamrock has increased the amount of gas it consumes under its plant use reservation from areas dedicated to Northern. Northern alleges that the gas previously used by Diamond Shamrock for that purpose, that had been obtained from sources other than acreage committed to Northern, is now being sold by Diamond Shamrock to others. Northern asserts that this resulted in a reduction of nine Bcf in the amount of gas available for sale to Northern by Diamond Shamrock during the period from March 1983 through May 1984. Northern also alleges that two of the contracts provide that if Northern does not purchase gas in excess of the minimum contract amount set forth, Diamond Shamrock may sell such excess gas to others, or otherwise dispose of it.

Northern contends that Diamond Shamrock's increased plant use of gas from areas dedicated to Northern, and the minimum contract volume provisions, which permit Diamond Shamrock to sell to others gas committed to but not purchased by Northern, may constitute illegal diversion of dedicated gas in violation of section 7(b) of the NGA [2] since

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[1] 18 CFR 385.207 (1985).

[2] 15 U.S.C. 717(f)(b) (1982).

Diamond Shamrock has not obtained abandonment authorization for such acts. Northern also notes that there is a question on whether Diamond Shamrock has sold the gas in question at prices which exceeded the appropriate maximum lawful price under the NGPA.

Northern requests that the Commission take jurisdiction of this matter, and issue an order declaring the rights of the parties, and determine whether gas is being diverted unlawfully from interstate commerce.

Any person desiring to intervene in this proceeding or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 and 211 respectively.[3] All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29696 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-205-001]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

December 9, 1985.

Take notice that on December 2, 1985, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 101
First Revised Sheet No. 104
Second Revised Sheet No. 105
Third Revised Sheet No. 129
Third Revised Sheet No. 130
Third Revised Sheet No. 131
Second Revised Sheet No. 132

On September 23, 1985, Northwest filed, at the above referenced docket, a general tariff filing to, among other things, make modifications to the measuring equipment provisions of Northwest's General Terms and Conditions and to modify the GRI language to more clearly establish to whom the GRI charges were to apply. In its Motion to Intervene, dated October 4, 1985, Southwest Gas Corporation ("Southwest") sought clarification of Northwest's changes.

The tendered tariff sheets provide for miscellaneous changes in the measurement provisions and GRI language contained in Northwest's General Terms and Conditions. Such tariff sheets represent the resolution of all issues raised by Southwest in its Motion to Intervene in the above referenced docket.

Northwest has requested an effective date of October 23, 1985 for all tendered tariff sheets. A copy of this filing has been mailed to all jurisdictional customers and interested state commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29700 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FR86-184-000]

Public Service Co. of New Mexico; Filing

December 2, 1985.

Take notice that Public Service Company of New Mexico (PNM) on November 25, 1985, tendered for filing as an initial rate schedule a Precommercial Energy Sale and Purchase Letter Agreement (Letter Agreement) between PNM and Southern California Edison Company (Edison).

The service to be provided under the Letter Agreement is varying amounts of on-peak precommercial energy generated by Palo Verde Nuclear Generating Station Unit 1 (PVNGS Unit 1). The price for the precommercial energy is $28/MWh on-peak and $17/MWh off-peak.

PNM requests an effective date of October 11, 1985, and, therefore, requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Edison and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29690 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA80-1-17-000,001]

Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

December 9, 1985

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 2, 1985 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheet:

Revised Seventy-sixth Revised Sheet No. 14 (4 pages)

This tariff sheet is being filed pursuant to (1) Section 4.F of Texas Eastern's Rate Schedule SS-II and Section 4.E of Texas Eastern's Rate Schedule ISS-III which provide for an automatic rate adjustment to flow through any changes in Consolidated Natural Gas Transmission Corporation's (Consolidated) GSS rates which underlie Texas Eastern's Rate Schedules SS-II and ISS-III and (2) Section 25 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fourth Revised Volume No. 1, to include in Texas Eastern's rates the GRI Funding Unit of 1.35 cents per Mcf approved by the Commission in Opinion No. 243 issued on September 26, 1985 in Docket No. RP85-154-000.

The proposed effective date of the above tariff sheet is January 1, 1986.

Consolidated filed on July 1, 1985 to increase the Rate Schedule GSS rates as a part of their general rate increase filing in Docket NO. RP85-169-000. The proposed rate increase was suspended

[3] 18 CFR 385.214 and 385.211 (1985).

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until January 1, 1986. Pursuant to rate Schedule SS–II and ISS–III of Texas Eastern's FERC gas Tariff, Fourth Revised Volume No. 1, any change in Consolidated's GSS rates are flowed through to Texas Eastern's SS–II and ISS–III rates. Schedule A herein reflects the calculations involved in tracking the GSS rate change through SS–II and ISS–III.

Schedule B herein shows the conversion of the GRI Funding Unit of 1.35 cents per Mcf to 1.31 cents per dry dekatherm (Texas Eastern's billing basis).

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–29684 Filed 12–13–85; 8:45 am]

BILLING CODE 6717–01–M

Williams Pipe Line Co.; Application for Waiver of Uniform System of Accounts

December 6, 1985.

Take notice that Williams Pipe Line Company, by letter dated August 14, 1984, requested it be granted waiver of the provisions of Instruction 3–14, Accounting Units of Property in the Uniform System of Accounts (18 CFR Part 352) which designates units of property for oil pipeline companies. Waiver is requested for certain line pipe work included in the company's ten year modernization program which may not come within the definition of line pipe because it may not involve replacement of 1500 foot pipe segments.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–29691 Filed 12–13–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP86–172–000, et al.]

Western Gas Interstate Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Western Gas Interstate Company

[Docket No. CP86–172–000]

December 2, 1985

Take notice that on November 1, 1985, Western Gas Interstate Company (Western), 900 United Bank Tower, 400 W. 15th Street, Austin, Texas 78701, filed in Docket No. CP86–172–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a sales tap in order to permit the delivery of natural gas to Southern Union Gas Company (Southern Union) for resale in Moore County, Texas, under the certificate issued in Docket No. CP82–441–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that in accordance with the certificate authorization granted by order issued December 11, 1967, in Docket No. CP68–43, Western is operating facilities and delivering and selling natural gas to Southern Union for resale to customers and the Panhandle regions of Texas and Oklahoma. It is further stated that Western is presently providing natural gas service to Southern Union in accordance with the terms and conditions of the currently effective service agreement between Western and Southern Union dated May 17, 1984. The service agreement also provides for the sale and delivery by Western and the purchase and receipt by Southern Union of natural gas for distribution and resale to consumers located in the Panhandle regions of Texas and Oklahoma.

It is asserted that Western has received a request from Southern Union for the installation of a new sales tap at a point on Western's existing West Line in Moore County, Texas. The purpose of the tap is to make deliveries of gas to Southern Union for resale. It is explained that the first such resale would be to Extraction Systems of America, Inc. (Extraction Systems), which would use the gas for plant space heating and water tank and acid bath heating and that the heated acid and water would be used in the extraction of silver and gold from ore available in industrial scrap materials. Extraction Systems has projected that its gas requirements would range from 60 to 100 Mcf per day, and Southern Union projects that deliveries through the tap to Extraction Systems and others may reach 125 Mcf per day.

To provide service for Southern Union, Western proposes to install a sales tap and appurtenant facilities. Western states that the request for natural gas service at the proposed sales tap would not alter Southern Union's entitlements under the service agreement.

Comment date: January 16, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Company

[Docket No. CP86–103–00]

December 10, 1985.

Take notice that on November 26, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86–103–001 an amendment to the pending prior notice request filed on October 31, 1985, in Docket No. CP86–103–000 pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) requesting that the Commission treat such filing as an application for a certificate of public convenience and necessity filed pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

In Docket No. CP86–103–001, United seeks authorization to construct and operate a 1-inch sales tap on United's 8-inch Jackson lateral in Rankin County, Mississippi. United states that the sales tap would be used by United to sell and deliver up to 2,920 Mcf of natural gas annually to Mississippi Valley Gas Company for resale for use in the heating and cooling systems at the Super Saver Store in Bolton, Mississippi.

Comment date: December 31, 1985, in accordance with the first subparagraph

of Standard Paragraph F at the end of this notice.

3. Colorado Interstate Gas Company

[Docket No. CP86-161-000]

December 11, 1985.

Take notice that November 1, 1985, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86-161-000 an application pursuant to section 7(c) of the Natural Gas Act for a certification of public convenience and necessity authorizing the transportation of natural gas for Industrial Gas Associates (IGA), all as more fully set forth in the application which is on file with the Commisison and open to public inspection.

CIG proposes to transport up to 500 million Btu equivalent of gas per day for IGA on behalf of Longmont Turkey Processors and Morning Fresh Farms on an interruptible basis for a term of one year and month-to-month thereafter. It is stated that CIG would receive the gas at a proposed point of interconnection between IGA's and CIG's facilities in Morgan County, Colorado. It is explained that facilities at the proposed point of interconnection would be installed pursuant to CIG's blanket authorization in Docket No. CP83-21-000. It is further stated that IGA would redeliver equivalent volumes of gas for IGA's account to Western Gas Supply Company (Western) at an existing point of interconnection between Western's and CIG's facilities in Adams County, Colorado.

It is asserted that CIG would charge a transportation fee of 63.95 cents per Mcf of gas transported.

CIG also requests authorization to add and delete supply delivery points.

Comment date: December 31, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket No. CP86-167-000]

December 11, 1985.

Take notice that on November 1, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-167-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Mississippi River Transmission Corporation (MRT) and for permission and approval to abandon such service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on an interruptible basis, up to 200 billion Btu of natural gas per day on behalf of MRT for a term to expire on October 27, 1987. It is explained that Applicant would receive the gas at the following points: (1) The existing point of interconnection between the facilities of Applicant and Producers Gas Company (Producers) in Custer County, Oklahoma; (2) the existing point of interconnection between the facilities of Applicant and Producers in Dewey County, Oklahoma; (3) the existing point of interconnection between the facilities of Applicant and Producers in Grady County, Oklahoma; (4) the existing point of interconnection between the facilities of Applicant and Oklahoma Natural Gas Company (ONG) in Custer County, Oklahoma; (5) the existing point of interconnection between the facilities of Applicant and ONG in Woodward County, Oklahoma; (6) the existing point of interconnection between the facilities of Applicant and Delhi Gas Pipeline Corporation in Custer County, Oklahoma; and (7) the existing point of interconnection between the facilities of Applicant and Mustang Fuel Corporation in Washita County, Oklahoma.

Applicant proposes to transport and redeliver thermally equivalent volumes to the following points of delivery: (1) The existing point of interconnection between the facilities of Applicant and MRT in Randolph County, Arkansas; (2) the existing point of interconnection between the facilities of Applicant and MRT in Harrison County, Texas; (3) the existing point of interconnection between the facilities of Applicant and MRT in Clinton County, Illinois; (4) The existing point of interconnection between the facilities of Applicant and ANR Pipeline Company in Cameron Parish, Louisiana; (5) and the existing point of interconnection between the facilities of Applicant and Dow Interstate Gas Company in Vermilion Parish, Louisiana.

Applicant states that it would redeliver equivalent volumes to its delivery points less certain percentage reductions for gas lost and unaccounted for, gas used as fuel and gas used in day to day pipeline operations. These reductions are as follows:

Delivery point	Reduction
Clinton County, Illinois	7.0 percent.
Harrison County, Texas	7.0 percent.
Randolph County, Arkansas	7.0 percent.
Cameron Parish Louisiana	5.5 percent.
Vermilion Parish, Louisiana	5.5 percent.

Applicant proposes to charge MRT a transportation rate of 22.51 cents per million Btu for volumes received at the afore-mentioned receipt points for transportation and delivery to Applicants' afore-mentioned delivery points.

No new facilities are proposed for this service. Applicant also requests authorization to add additional receipt points in the future necessary to support this service.

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP86-130-000]

December 11, 1985.

Take notice that on November 1, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-130-000 an application, as amended on November 20, 1985, pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Faustina Pipeline Company (Faustina) and for permission and approval to abandon the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 8 billion Btu of natural gas per day for Faustina, on an interruptible basis, through October 22, 1987. Applicant states that it would receive the gas for the account of Faustina at an existing interconnection between its facilities and those of the gathring facilties of Intercon, Inc. (Intercon), in Beckham County, Oklahoma. Applicant proposes to redelivery equivalent volumes of gas, less 6.7 percent for fuel and unaccounted for gas at an existing interconnection between the facilities of Applicant and Faustina in Vermilion Parish, Louisiana.

Applicant proposes to charge Faustina 19.8 cents per million Btu for volumes of gas received in Beckham County, Oklahoma. In addition, Applicant states it would charge Faustina the currently effective GRI surcharge.

Applicant also proposes to add receipt points to the transportation service. Applicant states that by March 31 of each year it would tender tariff revisions reflecting the addition of receipt points made during the previous calendar year.

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP75-232-001]

December 11, 1985.

Take notice that on November 1, 1985, Northwest Pipeline Corporation (Northwest), P.O. Box 8900, Salt Lake City, Utah 84108, filed in Docket No. CP75-232-001 a petition to amend the order issued on July 30, 1975, in Docket No. CP75-232, as amended, pursuant to section 7(c) of the Natural Gas Act, so as to authorize the transportation of natural gas for RMNG Gathering Co. (RMNG) from additional wells and to a new redelivery point, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Northwest states that by orders issued July 30, 1975, and April 26, 1977, in Docket No. CP75-232, it was authorized to transport natural gas for RMNG pursuant to a gas transportation agreement (agreement) dated November 26, 1974, as amended. Northwest further states that the agreement provided that RMNG would tender to Northwest for transportation, at the Bar-X delivery points in Mesa County, Colorado, volumes of natural gas produced or purchased by RMNG from the Bar-X and South Canyon fields located in Mesa and Garfield Counties, Colorado. It is indicated that Northwest would purchase either 25 percent or 33⅓ percent of RMNG's natural gas, depending on whether it was produced from acreage shown on Exhibit A or Exhibit D to the agreement, and then would transport and redeliver the remaining volumes, for RMNG's account, at an existing interconnection between the transmission systems of Mountain Fuel Resources, Inc. (Mountain Fuel), and Northwest in Rio Blanco, Colorado. It is further indicated that Northwest was authorized to retain 2 percent of the volumes as reimbursement for fuel and losses and to charge a transportation rate of 5.0 cents per Mcf.

Northwest proposes that the order issued July 30, 1975, as amended April 26, 1977, in Docket No. CP75-232 be further amended to authorize the transportation of natural gas for RMNG from additional wells and to a new redelivery point as provided for by the June 9, 1981, April 10, 1985, and August 6, 1985, amendments to the agreement.

It is stated that on June 9, 1981, RMNG and Northwest entered into an amendment to the agreement to provide for redeliveries of the natural gas through an existing point of interconnection between Northwest and Rocky Mountain Natural Gas Company (Rocky Mountain), RMNG's parent company. It is further stated that this redelivery point (Piceance Creek delivery point) is located in Rio Blanco County, Colorado, and replaced the original redelivery point which no longer is available for use under the agreement. Northwest indicates that the original redelivery point was used for delivery of RMNG's natural gas to Mountain Fuel for subsequent transportation by Mountain Fuel to Rocky Mountain. Northwest further indicates that RMNG has informed it that the agreement between Mountain Fuel and RMNG has expired and the RMNG now needs to utilize the existing Piceance Creek delivery point in order to receive the natural gas volumes from Northwest.

It is stated that on April 10, 1985, and August 6, 1985, Northwest and RMNG further amended the agreement to provide for the transportation of additional natural gas supplies which RMNG has available in the Bar-X and South Canyon fields. The amendment provides, it is further stated, that Northwest would transport the volumes of natural gas tendered by RMNG for transportation at the Bar-X delivery points from additional acreage, as set forth in a new Exhibit E to the agreement. Northwest indicates that it does not have an option to purchase any of the natural gas tendered for transportation from the sources listed on the Exhibit E.

Comment date: December 31, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Trailblazer Pipeline Company

[Docket No. CP79-80-035]

December 11, 1985.

Take notice that on December 2, 1985, Trailblazer Pipeline Company (Petitioner), 701 East Twenty Second Street, Lombard, Illinois 60148, filed in Docket No. CP79-80-035 a petition to amend the order issued March 12, 1982, in Docket No. CP79-80 pursuant to section 7(c) of the Natural Gas Act seeking authorization for an additional point of receipt of natural gas in Weld County, Colorado, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner submits that Natural Gas Pipeline Company of America (Natural) and the Petitioner have amended their service agreement dated October 8, 1982, to permit an additional point of receipt on Petitioner's system in Weld County, Colorado, for volumes of natural gas to be purchased by Natural from MFG Oil Corporation (MFG) under a gas purchase contract dated May 16, 1984, between Natural and MFG Petrocarbon Energy Corporation (Petrocarbon) and under a gas purchase contract dated July 16, 1984, between Natural and Petrocarbon from the Jupiter Field, Weld County, Colorado.

It is further stated that Petitioner and Natural have constructed tap and measurement facilities pursuant to blanket certificates issued in Docket Nos. CP82-497-000 and CP82-402-000, respectively. It is alleged that the proposed additional receipt point and resulting transportation was planned to be commenced pursuant to Petitioner's Order 60 certificate in Docket No. CP82-498-000. It is explained that Reliance Pipeline Company (Reliance) agreed in December of 1984 to construct the necessary gathering facilities to connect the producers' reserves with Petitioner's system. It is stated, however, that MGF filed in December 1984, a Petition under chapter XI of the U.S. Bankruptcy Code and it became necessary for the Bankruptcy Court to approve the agreements with Reliance and to authorize the expenditure of funds by MGF.

Petitioner further states that the Court approval was not obtained until September 1985, thus delaying the construction of the gathering facilities and the completion of the nine wells drilled in the Jupiter field.

Petitioner alleges that Reliance and Petrocarbon would suffer extreme hardship and may even be forced to file for relief under Chapter XI of the bankruptcy laws unless this gas can begin flowing shortly. It is stated that MGF's ability to remove itself from bankruptcy proceedings is dependent upon the instant authorization.

Comment date: December 31, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Transcontinental Gas Pipe Line Corporation

[Docket No. CP81-83-004]

December 11, 1985.

Take notice that on October 2, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP81-83-004 a petition to amend the order issued February 8, 1982, in Docket No. CP81-83-000, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize two additional points of delivery, all as more fully set forth in the petition to amend which is on file with

the Commission and open to public inspection. The original notice of petition to amend in Docket No. CP81–83–004 was issued on October 23, 1985, with a corresponding intervention due date of November 13, 1985.

In Docket No. CP81–83–004 Transco states that by order issued February 8, 1982, as amended on October 25, 1982, Transco was authorized to transport on a firm basis up to the thermal equivalent of 9,000 Mcf of natural gas per day to Florida Gas Transmission Company (FGT) for the account of Southern Natural Gas Company (Southern). It is also stated that such transportation is for Southern individually and as agent for Amoco Production Company.

Transco requests authorization to add two additional points of delivery for the gas which Transco transports for Southern individually at the existing interconnection between Transco and Southern in Livingston Parish, Louisiana, and at the existing interconnection between Transco and Trunkline at Katy, Wharton County, Texas.

In Docket No. CP81–83–004 Transco originally stated that for such transportation service, Transco would continue to charge Southern an initial monthly demand charge of $28,080 based upon a contract demand quantity of 9,000 Mcf of gas per day. By supplement dated November 14, 1985, Transco now submits that the rate and contract demand quantity were inadvertently misstated in Docket No. CP81–83–004. Transco now asserts that the monthly demand charge would be $33,360 based upon a monthly demand rate of $4.17 per Mcf and a contract demand quantity of 8,000 Mcf per day. Transco states that these figures reflect the revised tariff filed with the Commission on April 10, 1984, in Docket No. RP83–30–016, as approved by order issued May 4, 1984 (27 FERC ¶ 61,213).

Comment date: December 31, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86–202–000]

December 11, 1985.

Take notice that on November 12, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86–202–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 10,000 dt equivalent of natural gas per day for United Cities Gas Company, Georgia Division (United Cities), an existing Transco sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is explained that United Cities would purchase such gas from Southern Natural Gas Company (Southern) which would make such sales pursuant to the Commission's emergency regulations, § 157.45, *et seq.* (18 CFR 157.45, *et seq.*). Pursuant to the October 16, 1985, transportation agreement between Transco and United Cities, Transco would receive the gas at an existing interconnection with Southern at Jonesboro, Clanton County, Georgia, and would transport and redeliver the gas, on a best efforts basis, to United Cities at an existing delivery point at Gainesville, Oconee County, Georgia, it is stated.

Transco states that for this transportation service, it would retain a percentage of the gas received for compressor fuel and line loss make-up and would charge United Cities a transportation rate based on Transco's currently applicable Rate Schedule T–1. The transportation agreement provides a term of five years from the date of initial deliveries, it is stated.

Transco states that by filing the subject application, it is not electing "non-discriminatory access" as such term is described and defined in §§ 284.8(b) and 284.9(b) of the Commission's Regulations (promulgated in Order No. 436).

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. Transwestern Pipeline Company

[Docket No. CP86–211–000]

December 11, 1985.

Take notice that on November 21, 1985, Transwestern Pipeline Company (Transwestern), P.O. Box 1188, Houston, Texas 77001, filed in Docket No. CP86–211–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Transwestern (1) to construct and operate a metering facility and tap, (2) to sell for resale up to 3 billion Btu of natural gas per day to Southwest Gas Corporation (Southwest), and (3) to commence such service pursuant to proposed Rate Schedule SG–2, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern states that Southwest has contracted to purchase up to 3 billion Btu of gas per day from Transwestern on a firm basis for resale to residential customers residing in Willow Valley, Arizona. Transwestern proposes to make the sale at a new tap and metering facility contemplated to be installed initially as a nonjurisdictional facility pursuant to section 311 of the Natural Gas Policy Act of 1978 and Part 284 of the Commission's Regulations. Transwestern states that the proposed facilities would be located immediately upstream of and within the surface site of Transwestern's existing Needles measuring station in Mohave County, Arizona. It is stated that the tap and meter would be the measuring point both for section 311 transportation and for the proposed sale of natural gas to Southwest. Transwestern estimates that the cost of construction of the tap and meter would be $56,500 to be paid by Southwest.

Transwestern proposes to commence deliveries as soon as possible upon receipt of all necessary approvals from the Commission. It is stated that the term would be for ten years and from year to year thereafter unless cancelled by either party on at least twelve months written notice.

Transwestern states that it makes sales for resale under Rate Schedule SG–1 to natural gas distributing systems served by Transwestern's pipeline system east of its Roswell, New Mexico compressor station. Transwestern proposes herein to provide sevice to small, general customers in the area west of Roswell, New Mexico under new Rate Schedule SG–2. Transwestern proposes to design the initial rate to be charged for service under Rate Schedule SG–2 based upon the method historically used by Transwestern to design the SG–1 rate. Transwestern state that the Commission issued an order in Docket No. RP85–175, on August 29, 1985, suspending the filed rates until February 1, 1986, and requiring Transwestern to refile such rates consistent with the order. Transwestern thus requests that the initial rate be made effective as proposed and that any issues regarding long-term rate design be determined in the proceedings in Docket No. RP85–175.

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest

in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29697 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-129-000, et al.]

International House of Philadelphia et al; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. International House of Philadelphia

[Docket No. QF86-129-000]

December 5, 1985.

On November 21, 1985, International House of Philadelphia (Applicant), of 3701 Chestnut Street, Philadelphia, Pennsylvania 19104, sumitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Philadelphia, Pennsylvania. It will consist of two Cogenic Energy modules. Heat will be recovered from both jacket water and exhaust gas for space heating, chilling and domestic hot water. The electrical power production capacity of the facility will be 242 kW. The primary energy source will be natural gas.

2. Gull, Inc.

[Docket No. QF86-315-000]

December 9, 1985.

On November 25, 1985, Gull, Inc. (Applicant), of 25 South 300 East, Salt Lake City, Utah 84111 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the same address as the Applicant. The facility will consist of a natural gas fired combustion turbine generator, a heat recovery steam boiler, and a steam driven turbine-generator. The power production capacity will be 5,600 kilowatts. The extracted heat from the steam turbine will flow into mechanical systems for the existing building. Installation is expected to begin in December 1985.

3. Foster Wheeling Power Systems, Inc. Ransom Cogeneration Facility

December 10, 1985

[Docket No. QF86-333-000]

December 10, 1985

On November 27, 1985, Foster Wheeler Power Systems, Inc. (Applicant), of 110 South Orange Avenue, Livingston, New Jersey 07039 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Ransom, Pennsylvania. The facility will incorporate two (2) circulating fluidized bed boilers and a turbine generator. The primary energy source will be anthracite culm. The net electric power production capacity will be 37 megawatts. The steam sales will be made to Potlatch Corporation for its industrial uses. Installation of the facility is expected to begin in September 1986.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29680 Filed 12-13-85; 8:45 am]

BILLING CODE 6717-01-M

Oil Pipeline Tentative Valuation

December 13, 1985.

The Federal Energy Regulatory Commission by order issued February 10, 1978, established an Oil Pipeline Board and delegated to the Board its functions with respect to the issuance of valuation reports pursuant to Section 19a of the Interstate Commerce Act.

BEST COPY AVAILABLE

Notice is hereby given that a tentative basic valuation is under consideration for the common carrier by pipeline listed below:

1983 Basic Report

Valuation Docket No. PV–1488–000; Seminole Pipeline Company, P.O. Box 645, Tulsa, Oklahoma 74101–0645.

On or before January 16, 1986, persons other than those specifically designated in section 19a(h) of the Interstate Commerce Act having an interest in this valuation may file, pursuant to rule 214 of the Federal Energy Regulatory Commission's "Rules of Practice and Procedure" (18 CFR 385.214), an original and three copies of a petition for leave to intervene in this proceeding.

If the petition for leave to intervene is granted the party may thus come within the category of "additional parties as the FERC may prescribe" under section 19a(h) of the Act, thereby enabling it to file a protest. The petition to intervene must be served on the individual company at its address shown above and appropriate certificate of service must be attached to the petition. Persons specifically designated in section 19a(h) of the Act need not file a petition; they are entitled to file a protest as a matter of right under the statute.

Francis J. Connor,

Administrative Officer, Oil Pipeline Board.

[FR Doc. 85–29689 Filed 12–13–85; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[A–9–FRL–2932–9]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Procter & Gamble Company (EPA Project Number SAC 83–01)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that on June 7, 1985 the Environmental Protection Agency issued a modified PSD permit (which was originally issued on May 10, 1983 under EPA's Federal regulations 40 CFR 52.21) to the applicant named above. The PSD permit grants approval to a modification of the gas turbine cogeneration system at their facility in Sacramento, California. The modification involves an increase in the allowable fuel consumption for the duct burner with a corresponding decrease in the emission rate on a heat input basis such that no increase in the mass emissions of NO_x occurs. Also, continuous monitoring requirements for CO and flue gas flow rate have been deleted. The permit is subject to certain conditions, including an allowable emission rate as follows: SO_2 at 0.3% sulfur fuel oil or natural gas; NO_x at 0.30 lb/MM BTU oil fired and 0.26 lb/MM BTU gas fired; CO at 33 lb/hr gas fired and 22 lb/hr oil fired.

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8240, FTS 454–8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include: SO_2—0.3% sulfur fuel oil; NO_x—water injection; CO—combustion control.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by February 14, 1986.

Dated: December 4, 1985.

Carl C. Kohnert,

Acting Director, Air Management Division, Region 9.

[FR Doc. 85–29660 Filed 12–13–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–140072; FRL–2933–3]

Access to Confidential Business Information by Various Marketing Resources, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has authorized Various Marketing, Inc. (VMR) for access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Toll-Free: (800–424–9065), In Washington, DC: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: Under section 8 of TSCA, EPA is required to compile a list of chemical substances which are manufactured in or imported to the United States. Section 8 requires that the Inventory be kept current so that manufacturers and importers of chemical substances may determine whether the substances they intend to manufacture or import are subject to the new chemical reporting requirements of section 5 of TSCA.

Under Contract No. 68–01–6814, previously announced in the **Federal Register** on February 15, 1984 (49 FR 5830), Chemical Asbtracts Service (CAS) assists the Agency in administering sections 5 and 8 by maintaining and updating the TSCA Inventory and by searching the Inventory for chemical substances proposed for manufacture or import. In a subcontract to that contract, VMR will microfilm documents submitted to the Agency under sections 5 and 8 of TSCA. The documents VMR will microfilm include Inventory reporting forms, document destruction logs, Premanufacture Notification forms, *bona fide* requests for searches of the Inventory, Low-Volume Exemption notices, and Test-Market Exemption applications. All microfilming will be performed on CAS premise in Columbus, Ohio.

VMR personnel will not conduct substantive review of any TSCA CBI under this subcontract; however, execution of its provisions will require that these personnel be given access to TSCA CBI in order to preform the above-noted microfilming. Therefore, in accordance with 40 CFR 2.306(j), EPA has determined that access to CBI submitted to the Agency under TSCA is necessary for the satisfactory performance by the subcontractor of the subcontract described above. EPA is issuing this notice to inform submitters of information under TSCA that VMR has been authorized for access to CBI submitted under sections 5 and 8 of TSCA pursuant to the "EPA Contractor Requirements for the Control and Security of TSCA Confidential Business Information" manual. All VMR personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before being permitted access to TSCA CBI. CBI access is authorized only on CAS premise and will expire on September 30, 1986.

Dated: December 6, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–29667 Filed 12–13–85; 8:45 am]

BILLING CODE 6560–50–M

[A-9-FRL-2932-8]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Gilroy Energy Company (EPA Project Number SFB 84-04)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 1, 1985 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 119 megawatt (gross) cogeneration facility to be located in Gilroy, Santa Clara, California. The permit is subject to certain conditions, including an allowable emission rate as follows: NO_x—25 ppmv at 15% O_2 with the gas turbine, and 40 ppmv at 3% O_2 with the auxiliary boilers; SO_2–189 tons per year.

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street; San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of steam injection and low sulfur oil (0.12% by weight normally and 0.25% during natural gas curtailment).

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by February 14, 1985.

Dated: December 5, 1985.

Carl C. Kohnert,

Acting Director, Air Management Division, Region 9.

[FR Doc. 85-29661 Filed 12-13-85; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL 2932-7]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to the Western Power Group, Inc. (EPA Project Number SE 85-05)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that on November 21, 1985 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct the Mesquite Lake Resource Recovery Facility near Brawley, Imperial County, California. The facility is a 15 megawatt multiple hearth and fluidized bed cogeneration system burning cattle manure. The permit is subject to certain conditions, including an allowable emission rate as follows: NO_x at 135 lbs/hr, SO_2 at 195 lbs/hr, CO at 122 lbs/hr and particulate matter at 122 lbs/hr.

FOR FURTHER INFORMATION: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of limestone injection, combustion control systems, a baghouse, and low multiple hearth furnance temperatures combined with low furnace oxygen concentrations and multiple hearth pyrolysis gas recirculation to the fluidized bed.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by February 14, 1986.

Dated: December 5, 1985.

Carl C. Kohnert,

Acting Director, Air Management Division, Region 9.

[FR Doc. 85-29662 Filed 12-13-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59209; FRL-2933-5]

Certain Chemicals Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TMS) Applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by : December 31, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59207[" and the specific TME number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-8

Close of Review Period: January 15, 1986.

Manufacturer. Confidential.

Chemical. (G) Substituted polyethylene oxide diol end-capped with isocyanate.

Use/Production. (G) Chemical intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 4 workers.

Environmental Release/Disposal. Disposal by incineration.

T 85-9

Close of Review Period: January 15, 1986.

Manufacturer. Confidential.

Chemical. (G) Substituted polyethylene oxide diol.

Use/Production. (G) Chemical intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal and inhalation, a total of 6 workers.

Environmental Release/Disposal. Disposal by incineration and biological waste treatment facility.

Dated: December 9, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-29665 Filed 12-13-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51601; FRL-29-2933-4]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statement of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-five PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-248—Feburary 5, 1985.

P 86-224, 86-225, 86-226, 86-227, 86-228, and 86-229—February 26, 1986.

P 86-230, 86-231, and 86-232—March 1, 1986.

P 86-233, 86-234, 86-235, 86-236, 86-237, 86-238, 86-239, 86-240, 86-241, 86-242, 86-243, 86-244, 86-245, 86-246 and 86-247—March 2, 1986.

Written comments by:

P 86-248—January 6, 1986.

P 86-224, 86-225, 86-226, 86-227, 86-228, and 86-229—January 27, 1986.

P 86-230, 86-231, and 86-232—January 39, 1986.

P 86-233, 86-234, 86-235, 86-236, 86-237, 86-238, 86-239, 86-240, 86-241, 86-242, 86-243, 86-244, 86-245, 86-246 and 86-247—January 31, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51601]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidentail Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 86-224

T3Manufacturer. E. I. du Pont de Nemours & Compnay, Inc.

Chemical. (G) monosubstituted alkylbenzenesulfonyl chloride.

Use/Production. (S) Site/limited intermediate. Prod. range. Confidential.

Toxicity Data. Acute oral: 7,500 mg/kg; Irritiation: Eye—Severe; Ames test: Equivocal.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-225

Manufacturer. E. I. du Pont de Nemours & Compnay, Inc.

Chemical. (G) Monosubstituted saccharin.

Use/Production. (S) Site/limited intermediate. Prod. range. Confidential.

Toxicity Data. Acute oral: 7,500 mg/kg; Irritation: Eye—Moderate; Ames test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-226

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Monosubstituted carboxybenzenesulfonamide.

Use/Production. (S) Site-limited intermediate. Prod. range. Confidential.

Toxicity Data. Acute oral: 11,000 mg/kg Irritation: Eye—Mild; Ames test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-227

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Monosubstituted carboalkoxybenzenesulfonamide.

Use/Production. (S) Industrial intermediate. Prod. range. Confidential

Toxicity Data. Acute oral: 11,000 mg/kg; Irritation: Eye—Mild; Ames test: Positive.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-228

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Monosubstituted carboalkoxybenzenesulfonylisocyanate.

Use/Production. (S) Industrial intermediate. Prod./Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. None expected.

P 86-229

Manufacturer. American Hoechst Corporation.

Chemical. (S) 2-amino-5-[2-(sulfooxyethyl)sulfonyl]phenol.

Use/Production. (S) Site-limited captive intermediate for fiber reactive azo dyes. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 6 hrs/da, up to 26 da/yr.

Environmental Release/Disposal. 270 kg/batch released to water. Disposal by biological waste treatment.

P 86-230

Manufacturer. Hach Company.

Chemical. (S) 2,2'-dihydroxy-1,1'-azonaphthalene-6,6'-disulfonic acid.

Use/Production. (S) Industrial reagent for hardness analysis in water of brine. Prod. range. 100-300 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 7 workers, up to 8 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. No release. Disposal by publicly owned treatment works (POTW).

P-86-231

Manufacturer. Hach Company.

Chemical. (S) 2,2'-dihydroxy-1,1'-azonaphthalene-4,6'-disulfonic acid.

Use/Production. (S) Industrial reagent for hardness analysis in water of brine. Prod. range. 100-300 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 7 workers, up to 8 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. No release. Disposal by POTW.

P 86-232

Manufacturer. Hach Company.

Chemical. (S) 2,2'-dihydroxy-1,1'-azonaphthalene-3,3', 6,6'-tetrasulfonic acid.

Use/Production. (S) Industrial reagent for hardness analysis in water of brine. Prod. range. 100-300 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 7 workers, up to 8 hrs/da, up to 60 da/yr.

Environmental Release/Disposal. No release. Disposal by POTW.

P 86-233

Importer. Confidential.
Chemical. (G) Hydroxy functional acrylic copolymer.
Use/Import. (S) Industrial thermosetting decorative and protective coatings. Import range. 75,000–225,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: a total of 30 workers.
Environmental Release/Disposal. No release.

P 86-234

Manufacturer. Confidential.
Chemical. (G) Alkyd.
Use/Production. (S) Insulating varnish. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-235

Manufacturer. Confidential.
Chemical. (G) Aromatic isocyanate-terminated polyether polymer.
Use/Production. (G) Adhesive for industrial laminations. Prod. range. 15,000–30,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 1.0 hrs/da, up to 23 da/yr.
Environmental Release/Disposal. 80 kg/batch released as cleaning solution.

P 86-236

Manufacturer. Confidential.
Chemical. (G) Organosilicon chemical.
Use/Production. (S) Industrial dispersant for magnetic particles. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-237

Importer. Confidential.
Chemical. (G) Amine oxide.
Use/Import. (S) Foaming agent for the foam finishing of fabrics and carpets. Import range. Confidential.
Toxicity Data. Acute oral: Male—$<5{,}000$ mg/kg^{-1}, Female—$<5{,}000$ mg/kg^{-1} but $<2{,}000^{-1}$ mg/kg; Ames test: Non-mutagenic.
Exposure. Confidential.
Environmental Release-Disposal. Confidential.

P 86-238

Manufacturer. Confidential.
Chemical. (G) Functional aliphatic ester.
Use/Production. (G) Industrial paint component. Prod. Range. 10,000–100,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 46 workers, up to 8 hrs/da, up to 250 da/yr.
Environmental Release-Disposal. 1 to 132 kg/batch released to land. Disposal by incineration and landfill.

P 86-239

Manufactuer. Confidential.
Chemical. (G) Unsaturated epoxy ester.
Use-Production. (S) Commercial gel coat vehicle. Prod. range. 30,000–500,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 4 hrs/da.
Environmental Release/Disposal. Less than 5 kg/batch released to land. Disposal by landfill.

P 86-240

Manufacturer. Confidential.
Chemical. (G) Dioxime-triisocyanate polymer.
Use/Production. (G) Adhesive for open, non-dispersive use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-241

Manufacturer. Confidential.
Chemical. (G) Dioxime-diisocyanate polymer.
Use/Production. (G) Adhesive for open, non-dispersive use. Prod. range. Confidential. kg/lbs/yr.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-242

Manufacturer. Confidential.
Chemical. (G) Dioxime-triisocyanate polymer.
Use/Production. (G) Adhesive for open, non-dispersive use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-243

Manufacturer. Confidential.
Chemical. (G) Cyano modified dimethyl-methylhydrogen siloxane.
Use/Production. (S) Intermediate for production of silicone polymers. Prod. range. Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-244

Manufacturer. Confidential.
Chemical. (G) Siloxane polyether copolymer.
Use/Production. (S) Surface active agent for use in polyurethane foam. Prod. range. Confidential.
Toxicity Data. No data on PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-245

Importer. Confidential.
Chemical. (G) Azo condensation pigment.
Use/Import. (G) Open, non-dispersive use. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-246

Importer. Confidential.
Chemical. (G) Tetrasubstituted monoazo pigment.
Use/Import. (G) Open, non-dispersive use. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-247

Manufacturer. E. I. du Pont de Nemours & Company, Inc.
Chemical. (G) Monosubstituted alkylbenzenesulfonamide.
Use/Production. (S) Site-limited intermediate. Prod. range. Confidential.
Toxicity Data. Acute oral: 7,500 mg/kg; Irritation: Eye-Mild; Ames test: Negative.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86-248

Manufacturer. Confidential.
Chemical. (G) Mixed polyol ester of normal and branched chain mocarboxylic acids.
Use/Production. (G) Dispersive use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

Dated: December 9, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-29666 Filed 12-13-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 9, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from the Commission by calling Doris R. Benz, (202) 632-7513. Persons wishing to comment on any information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB No.: 3060-0113
Title: Equal Employment Opportunity Program—10 Point Model Program and Guidelines
Form No.: FCC 396
Action: Extension
Estimated Annual Burden: 351 Responses; 1,229 Hours.

OMB No.: 3060-0120
Title: Equal Employment Opportunity Program—5 Point Model Program and Guidelines
Form No.: FCC 396-A
Action: Extension
Estimated Annual Burden: 2,622 Responses; 2,622 Hours.

OMB No.: 3060-0132
Title: Supplemental Information—72-76 MHz Operational Fixed Stations
Form No.: FCC 1068-A
Action: Extension
Estimated Annual Burden: 300 Responses; 150 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-29629 Filed 12-13-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Individual and Family Programs

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice advises States and the general public of new procedures to be adopted in the administration of the Individual and Family Grant (IFG) program, operated by States under Federal regulations at 44 CFR 205.54. The notice relates to the verification procedures.

DATES: These procedures are effective on December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Agnes C. Mravcak, Emergency Management Specialist, Federal Emergency Management Agency, Office of Disaster Assistance Programs, 500 C Street SW., Washington, DC 20472, (202-646-3660).

In order to expedite the award of grants under the FG program, and to remove from the States the costly burden of verifying each and every application, FEMA has determined that a revised verification procedure is appropriate. Therefore, the Associate Director, State and Local Programs and Support, has made the following determination:

"FEMA is relaxing the requirement on States to perform on-site verifications on FG applications when all the following conditions are met:

1. The IFG applicant is owner-occupant of the primary residence; and
2. The applicant has a decline letter from the Small Business Administration; and
3. The applicant is uninsured for housing and personal property, as determined by the States; and
4. The temporary housing habitability inspection report (FEMA Form 90-56) indicates total destruction, or the report is annotated or supplemented with a cost estimate that exceeds the minimal repair (MR) scope of work, up to the $5,000 grant limit.

FEMA will contract for performance of verification services to determine owner-occupancy and whether the home is totally destroyed, and will provide the State with a price out listing of damages. With this documentation, the eligibility of the applicant can be immediately determined by the State. Implicit in the inspection report on totally destroyed homes and homes with damages beyond the MR scope of work is the idea that personal property and real estate needs beyond the ability of the MR program or the applicant exist. The State shall be held harmless from liability for recovering any funds from recipients of a grant which was based on erroneous information provided by FEMA to the State.

A grantee's award letter under these procedures shall state that he/she may use the award for repair, replacement, or rebuilding of the primary residence and other disaster-related needs or expenses which are eligible under the IFG program (see 44 CFR 205.54 (d)(2)). The recipient shall be notified of these eligible categories, and the ineligible categories as well, to enable him/her to appropriately spend the award. Dollar values shall not be assigned to any category. The grant award letter shall also state that, if flood insurance is required, he/she must purchase it, and that the applicant will be required, for a three year period, to produce receipts for items or services purchased with grant funds in order for the required quality control samples, audits, or other program functions to occur."

This procedure is an interim measure. FEMA anticipates publishing a proposed rule in the **Federal Register** in the near future, which will propose a new verification method. Until that publication occurs, this process may be used. FEMA Regional Director shall make the appropriate changes in the State administrative plans.

FEMA is publishing this notice to take effect upon publication. This procedure enhances the governments' ability to provide quick disaster assistance, and will be available nationwide for all disaster victims until the regulations identified above are ready for final implementation. FEMA has determined that the changes identified in this notice are good public policy, responsive to the changing emergency nature of disaster assistance programs.

Dated: December 10, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-29642 Filed 12-13-85; 8:45 am]

BILLING CODE 6718-01-M

[Federal Emergency Management Agency Docket: FEMA-REP-9CA-1, FEMA-REP-9CA-2, FEMA-REP-9CA-3, FEMA-REP-9CA-4]

State of California Nuclear Power Plant Emergency Plan

December 5, 1985.

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of Receipt of Plan.

SUMMARY: For Continued operation of nuclear power plants, the U.S. Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing State and local government plans, the State of

BEST COPY AVAILABLE

California has submitted its radiological emergency response plan to the FEMA Regional Office. These plans address nuclear power plants which may impact the population of California and include the plans of governments near the Pacific Gas and Electric Company's Diablo Canyon Power Plant located in San Luis Obispo County, California; the Sacramento Municipal Utility District's Rancho Seco Nuclear Power Plant located in Sacramento County, California; and Southern California Edison Company's San Onofre Nuclear Power Plant located in San Diego County, California.

DATE PLANS RECEIVED: November 26, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Vickers, Regional Director, FEMA Region IX, Building 105, Presidio of San Francisco, California 94129, (415) 556–9881.

Notice: The Federal requirement for emergency response plans, FEMA has established a Rule describing its procedures for review and approval of State and local governments' radiological emergency response plans. Pursuant to this FEMA Rule (44 CFR Part 350) "Review and Approval of State and local Radiological Emergency Plans and Preparedness, Final Rule," 48 FR 44332, the Plan for the State of California was received by the Federal Emergency Management Agency, Region IX Office.

Included are plans for local governments which are wholly or partically within the plume exposure pathway emergency planning zones of the 4 nuclear power plants. For the Diablo Canyon Nuclear Power Plant, plans are included for San Luis Obispo County, Santa Barbara County and certain cities therein. For the San Onofre Nuclear Power Plant, plans are included for San Diego and Orange Counties as well as certain cities therein. The Rancho Seco Nuclear Power Plant local plans will be submitted at a later date. Local response plans are not included for Humboldt Bay Nuclear Power Plant as it has been closed since 1976 due to seismic safety conditions.

Copies of these plans are available for review at the FEMA Region IX Office, or will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in subpart of 44 CFR Part 5. There are approximately 19 volumes (20,000+—pages) in these documents; reproduction fees are $.15 a page payable with a request for copy.

Comments on the Plan may be submitted in writing to Mr. Robert L. Vickers, Regional Director, at the above address within thirty days of this Federal Register notice.

FEMA Rule 44 CFR 350.10 calls for a public meeting prior to approval of the plans. Details of each meeting were announced at least two weeks prior to the scheduled meeting and local radio and television stations were requested to announce each meeting. These required public meetings were held as follows: the Diablo Canyon Nuclear Power Plant Public Meeting was announced in the San Luis Obispo Telegram-Tribune, San Luis Obispo, California. The public meeting was held on December 17, 1981 at the Cuesta College Auditorium, San Luis Obispo, California. The San Onofre Nuclear Power Plant Public Meeting was announced in the Daily Sun Post, San Clemente, California. The public meeting was held on May 18, 1981 at the San Clemente City Hall, San Clemente, California.

Robert L. Vickers,

Regional Director.

[FR Doc. 85–29643 Filed 12–13–85; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Petition of Rainbow Navigation, Inc. for Investigation of Conditions Unfavorable to Shipping in the United States/Iceland Trade

Rainbow Navigation, Inc. has filed a Petition pursuant to section 19(1)(b) of the Merchant Marine Act of 1920 requesting that the Commission issue a rule to remedy conditions allegedly unfavorable to shipping in the United States/Iceland Trade arising from actions of the Icelandic carriers involving the carriage of commercial cargo in that Trade. Rainbow alleges that it has been harmed by actions of the Icelandic Government which, through contracts with the U.S. Secretary of State, has persuaded the U.S. Navy to set aside Rainbow's rights as a U.S.-flag carrier to preference on military cargo moving from Norfolk to the U.S. base at Keflavik by declaring Rainbow's rates "excessive or otherwise unreasonable," thus invoking the statutory exception to the Cargo Preference Act of 1904.[1]

Rainbow's Petition to the Commission is based on its expectation of retaliatory legislative action by the Icelandic Government which would deny it access to military cargo. It is alleged that such legislative action by the Icelandic Parliament has been proposed before and could, apparently, be reintroduced and passed within a matter of weeks. Rainbow therefore asks the Commission to make findings of unfavorable conditions in the Trade and to issue a rule suspending the tariffs of the three Icelandic carriers, but further requests that effectiveness of the rule be suspended pending further action by the Icelandic Government.

Rainbow also alleges that it is unable to obtain any commercial cargo in the Trade despite competitive rates because all such cargo is controlled by Icelandic Government-sponsored monopolies and cooperatives who ship exclusively on Icelandic carriers. Rainbow asks the Commission to initate an inquiry into possible illegal rebating, unlawful ratesetting or other malpractices by the Icelandic carriers in the Trade.

Rainbow has obtained an Order from the U.S. District Court of the District of Columbia setting aside the Navy's determination of excessive rates and restoring its right to preference. The District Court's Order has been appealed by the Department of Justice on behalf of the Navy to the U.S. Court of Appeals for the District of Columbia Circuit which has denied a request for stay of that Order but has expedited its proceeding.

Rainbow's Petition raises issues which, at this time, appear to be beyond the purview of section 19(1)(b) and the Commission's subject matter jurisdiction thereunder insofar as actions by the Icelandic Government are concerned.[2] The Commission is for the view that no basis presently appears for action pursuant to section 19(1)(b) because the Icelandic Government has not instituted any laws, rules or regulations discriminatorily affecting Rainbow's right to carry military cargo. Rainbow does not allege, and the Commission is not aware of, any specific Icelandic enactment presently in place or any

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[1] The Cargo Preference Act of 1904 provides, in relevant part, that:

Only vessels of the United States or belonging to the United Stats may be used in the transportation by sea of supplies bought for the Army, Navy, Air Force or Marine Corps. However, if the President finds that the freight charged by those vessels is excessive or otherwise unreasonable, contracts for transportation may be made as otherwise provided by law.

[2] Section 19(1)(b) of the Merchant Marine Act of 1920 authorizes the Commission:

To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, which arise out of or result from *foreign laws, rules* or *regulatiosn* or from competitive methods or practices imployed by owners, operators, agents, or masters of vessels of a foreign country. . . . (emphasis added)

legislative proposal actively being considered by the Icelandic Parliament which would restrict U.S.-flag carrier access to military cargo in the U.S.-Iceland Trade. However, based upon the prospect that these circumstances could change quickly in a manner dramatically affecting Rainbow in a relatively short period of time, the Commission will hold Rainbow's Petition in abeyance pending possible future action by the Icelandic Government or the U.S. Court of Appeals or both.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-29702 Filed 12-13-85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007690-018.

Title: The India, Pakistan, Bangladesh, Ceylon and Burma Outward Freight Conference Agreement.

Parties: The Scindia Steam Navigation Co., Ltd., The Shipping Corporation of India Limited, Waterman Isthmian Line.

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format.

Agreement No.: 202-008650-012.

Title: Calcutta, East Coast of India and Bangladesh/U.S.A. Conference Agreement.

Parties: The Bangladesh Shipping Corporation, The Scindia Steam Navigation Co., Ltd., The Shipping Corporation of India Limited, Waterman Isthmian Line.

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations concerning form and format.

Agreement No.: 224-010859.

Title: Anchorage Terminal Agreement.

Parties: Municipality of Anchorage (Anchorage), Sea-Land Service, Inc. (Sea-Land).

Synopsis: This agreement provides for the granting of preferential usage from Anchorage to Sea-Land of 920 feet on Terminal No. 2 in the Port of Anchorage. The premises shall be used by Sea-Land in the furtherance of its business which shall include, but not be confined, to the receiving, delivering, handling and storage of cargo, the docking of vessels, loading and discharging of cargo for such vessels, including, but not limited to, cargo in containers. The term of the agreement is for five years and Sea-Land has the option to extend the term for five successive periods of five years each. Cargo minimums are provided in the agreement and handling charges are assessed accordingly.

Agreement No.: 224-010860.

Title: Portsmouth Marine Terminal Agreement.

Parties: Virginia International Terminals, Inc. (VIT), Atlantic Container Line (ACL).

Synopsis: This agreement provides for the non-exclusive use of marine terminal facilities at Portsmouth Marine Terminal, Portsmouth, Virginia by VIT to ACL. VIT shall furnish to ACL terminal services connected with the operation of the facility. The term of the agreement shall be for three years and ACL may at its option elect to renew or extend the agreement for two additional terms of one year each. ACL guarantees movement of 100,000 tons through the terminal the 1st year of the agreement, 150,000 tons in the 2nd year and 200,000 tons in the 3rd year. VIT grants to ACL wharfage and crane rental charges different from those contained in Terminal Operators Conference of Hampton Roads Terminal Tariff No. 1, (Agreement No. 8435). The parties have requested a shortened review period for the agreement.

By Order of the Federal Maritime Commission.

Dated: December 11, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-29640 Filed 12-13-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 10, 1985

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3822)

OMB Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880)

Request for OMB Approval To Implement

1. Report title:
   Report of U.S. Government Securities
   Report of U.S. Government Sponsored Agency and Corporation Obligations

Agency form number: FFIEC 016, FFIEC 017

OMB Docket number: N/A

Frequency: One-time

Reporters: State Member Commercial Banks

Small businesses are affected.

General description of report: This information collection is mandatory [12 U.S.C. 324] and is given confidential treatment [5 U.S.C. 552b (4) and b(8)].

These reports will provide information on holdings of U.S. Government agencies and corporations securities, that would aid in the monitoring of the banks' portfolio. Information will be collected from all state member banks.

Board of Governors of the Federal Reserve System, December 10, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-29634 Filed 12-13-85; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

December 10, 1985.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Resesarch and Statistics, Board of Governors of the Federal Reserve System, Washington, D C. 20551 (202–452–3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–6880)

Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following Report

1. Report title: Monthly Survey of Industrial Electricity Use
Agency form number: FR 2009 A, B
OMB Docket number: 7100–0057
Frequency: Monthly
Reporters: Public and privately-owned electric utilities and self-generators
Small businesses are not affected.

General description of report: This information collection is voluntary and is given confidential treatment [5 U.S.C. 552(b)(4)].

The report collects information on the volume of electric power sold to mining or manufacturing establishments or generated by such establishments for their own use. Survey results are used as a proxy for physical production measures in certain categories of the Industrial Production Index.

Proposal To Approve Under OMB Delegated Authority the Implementation of the Following Report

1. Report title: Report on Total Foreign Exchange Turnover
Agency form number: FR 3036 A, B, & C
OMB Docket number: 7100–0215
Frequency: One-time survey for month of March 1986
Reporters: 135 banks, 10 brokers, and 19 nonbank financial institutions
Small businesses are not affected.

General description of report: This information collection is voluntary and is given confidential treatment [5 U.S.C. 525 (b)(4) & (b)(8)].

This survey will gather information for March 1986 on turnover volume in the U.S. foreign exchange market from 135 banking institutions, 10 brokers, and 19 nonbank financial institutions. The information will materially assist in the evaluation of market conditions and in the implementation of monetary policy.

Board of Governors of the Federal Reserve System, December 10, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–29636 Filed 12–13–85; 8:45 am]

BILLING CODE 6210–01–M

The Marine Corp.; Formation of; Acquisitions by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24 to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Boards of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 3, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Marine Corporation,* Milwaukee, Wisconsin, and its wholly-owned subsidiary, *Marisub, Inc.,* Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Commercial Banc-Corp., Monroe, Wisconsin, thereby indirectly acquire The Commercial and Savings Bank, Monroe, Wisconsin.

Board of Governors of the Federal Reserve System, December 10, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–29635 Filed 12–13–85; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Filing of Annual Reports of Federal Advisory Committees

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Services Administration Federal Advisory Committees have been filed with the Library of Congress:

National Advisory Council on Nurse Training

National Advisory Council on the National Health Service Corps

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, D.C., or weeksdays between 9:00 a.m. and 4:30 p.m. at the Department of Health and Human Services, Department Library, North Building, Room 1435, 330 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 245–6791.

Copies may be obtained from the following committee contacts:

National Advisory Council on Nurse Training—Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Training, Bureau of Health Professions, Health Resources and Services Administration, Room 5C–04, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 10857, Telephone (301) 442–6193.

National Advisory Council on the Natonal Health Service Corps—Mr. Jeffrey Human, Executive Secretary, National Advisory Council on National Health Service Corps, Room 6–40, Parklawn Building, 5700 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2900.

Dated: December 10, 1985.

Jackie E. Baum,

Advisory Committee Mangement Officer, HRSA.

[FR Doc. 85–29628 Filed 12–13–85; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

[Docket No. N-85-1570]

Proposed Field Office Closings

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Proposed Field Office closings.

SUMMARY: The Department is reducing the number of its small Field Offices to use its resources more efficiently. This Notice includes the cost-benefit analysis required to be published in the **Federal Register** under section 7(p) of the Department of Housing and Urban Development Act.

FOR FURTHER INFORMATION CONTACT: Judith L. Tardy, Assistant Secretary for Administration, Department of Housing and Urban Development, Washington, DC 20410, (202) 755-6940 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with section 7(p) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(p), the Department of Housing and Urban Development is hereby publishing a cost-benefit analysis concerning a proposed plan to close certain Field Offices.

A. Description of Proposed Changes

1. Five very small Field Offices will be closed. These offices have been responsible for limited program activities in the area of single-family mortgage insurance and have had consistently small workloads. The workload will be transferred to larger, nearby offices in the same Regions. The Field Offices to be closed are:

(a) Bangor Office, Maine; workload transferred to the Manchester Offices, New Hampshire

(b) Burlington Office, Vermont; workload transferred to the Manchester Offices, New Hampshire

(c) Wilmington Office, Delaware; workload transferred to the Philadelphia Regional Office

(d) Springfield Office, Illinois; workload transferred to the Chicago Regional Office

(e) Topeka Office, Kansas; workload transferred to the Kansas City Regional Office

Toll-free access telephone lines will be provided for clients in these service areas for direct contact with the new office. All other Field Offices will remain in the same localities.

2. Consolidation of the workload of the five offices to be closed with that of larger, nearby offices is expected to result in productivity savings of approximately 10 positions. This estimate is based on the following analysis:

- Estimation of the staffing required to perform the combined workload of the consolidated offices, based on application of the current staffing ratio (staff-hours per application processed) to the projected FY 1985 total workload (applications processed).
- Comparison of the estimated staffing requirement above to the current staffing level for single-family application processing in both the gaining office and the office to be closed. In each case, the combined current staffing exceeds the estimated staffing requirement in the gaining office. The difference between current staffing and estimated staffing requirements totals 10 positions which can be saved as a result of the closing of these offices.

3. Reduction-in-force (RIF) procedures will not be used to implement these office closures. All staff in the five Field Offices will be offered new or vacant positions in the gaining offices and/or other offices in the Region. However, past experience shows that not all employees will accept these offers, since some will prefer to leave the Department rather than move to another geographic area.

4. Headquarters organization is not affected by this Field reorganization.

B. Cost-Benefit Analysis

The cost-benefit analysis is presented in Figure 1, Costs and Savings of Reorganization. The costs and savings contained in the analysis are estimates based upon the assumptions described below.

For purposes of computing the cost-benefit analysis, an implementation date of March 31, 1986, is assumed. No changes will be implemented prior to the end of the 90-day notice period. Actual costs and savings will be affected by the current rate of attrition in Field Office positions and the number of employees remaining on board when the actual closings take place.

It is estimated that it will take less than one-half year until the savings resulting from this reorganization will offset the costs of its implementation. After that, savings to the Department are estimated at almost $480,000 annually. The principal costs of reorganization are due to personnel relocation and entitlements like severance pay and unemployment compensation. The principal annual savings are due to reduced salaries and benefits for 10 positions, and reduced administrative costs associated with maintaining these offices, i.e., rent, equipment, etc.

Explanatory Notes—Costs and Savings of Reorganization

Figure 1 summarizes the basic staffing estimates discussed above and uses these staffing figures and other information to estimate:

- The costs of conducting this reorganization.
- The annual savings which would result from this reorganization.
- The length of time it would take for the annual savings to offset the implementation costs.

The following is an explanation of the estimates presented in Figure 1. The paragraph number refers to the respective column in Figure 1.

Positions

1. *Encumbered Positions*—This is the current staffing in the five offices to be closed. The total includes two temporary positions (one each in Bangor and Wilmington) and one part-time permanent position (in Springfield). The remainder are full-time permanent positions.

2. *Revised Staffing Requiring*—This is the estimated increase warranted in the gaining offices to process the workload from the offices to be closed, based on the methodology described in "Description of Proposed Changes" above.

3. *Positions Abolished*—This is the number of positions which can be eliminated as a result of the workload transfer and the revised staff requirements in the gaining offices.

Personnel

4. *Personnel Relocated*—Even though all employees will be offered positions, it is estimated that only five employees will elect to move to the gaining offices and/or another office in the Region. These five are neither eligible for optional retirement nor likely to refuse relocation (see note 5 below).

5. *Personnel Retired or Separated*—For purposes of this analysis, it is assumed that all six employees eligible for optional retirement will elect to retire rather than transfer. Two temporary employees (one each in Bangor and Wilmington) will be separated. They will not be entitled to severance pay as a result of this action due to their temporary status. Based on past experience, it is further assumed that six employees below GS-7 will prefer to leave the Department rather than move to another geographic area.

Costs of Reorganization

6. *Personnel Relocation Costs*—Based upon recent actual relocations, HUD relocations costs average $25,000 per employee, including the "tax grossup." The tax grossup refers to the payment made to relocated employees to compensate them for the higher income taxes which they must pay because of the extra income they receive for temporary quarters, house-hunting trip, real estate sale and purchase, and miscellaneous expenses. The estimate is based on five employees transferring to another office.

7. *Severance Costs*—Severance pay is provided to employees who prefer to leave the Department rather than transfer to another geographic area. The amount of the pay is based upon their salary at time of separation and years of service. Based upon recent experience, it is estimated that severance pay received by employees at GS–7 and below will be approximately $1,300 per employee. It is also estimated that only six employees will be entitled to severance pay (the others are eligible for retirement or, as temporary appointees, are not eligible for severance pay). The estimate is based on six positions at $1,300 each.

8. *Unemployment Compensation*—Unemployment compensation payments by states must be reimbursed by HUD. These payments are estimated at $1,600 per employee. The estimate is based on eight positons at $1,600 each.

9. *Terminal Annual Leave*—Based on current experience, lump sum annual leave payments are expected to average $550 per employee who retires or is separated from Federal service. The estimate is based on 14 positions at $550 each.

10. *Movement of Furniture and Equipment*—Based on recent expeirence where moves are between cities, movement of furniture and equipment for positions transferred is expected to cost $675 per position. The estimate is based on five positions at $675 each.

11. *Space Rental*—All new servicing offices have sufficient space to accommodate the few additional personnel needed to accomplish the transferred workload.

12. *Phone Service*—This is an estimated cost of providing a toll-free number for 1 year for clientss to use for each office closed.

13. *Total Costs*—The Total Costs are estimated to be $222,675.

Savings From Reorganization

14. *Salary and Benefits Savings*—The estimated savings in salary and benefits are due to the 10 positions to be abolished due to productivity savings. The estimate includes a cost per staff-year of $32,100 which covers salary and benefits. The estimate is based on 10 positions at $32,100 each. Although more than 10 people may choose to leave the Department rather than relocate, the savings estimate is based only on the 10 positions since in some cases the new servicing offices will need to hire to fill these vacancies to handle the added workload.

15. Space Rental—Based on the actual rental cost of the offices being closed.

16. Communications and ADP Services—Based on the actual costs for the offices being closed.

17. Equipment Rental—Based on the actual costs for the offices being closed.

18. Miscellaneous Other—Based on the actual costs for the offices being closed.

19. Total Savings—The Total Savings are estimated to be $483,564.

20. Annual Increase in Operating Costs—This annual increase is for additional travel costs based on the increase in mileage between Field Offices being closed and the gaining offices.

21. Net Annual Savings—This is the Total Savings less the Annual Increase in Operating Costs, and is estimated to be $479,314.

Recovery Period

22. Recovery Period—The Recovery Period is an estimate of the time needed to recover the costs of the reorganization. It is calculated by dividing the Total Costs by the Net Annual Savings. The Recovery Period is estimated to be less than 6 months.

C. Impact on Local Economies

The proposed reorganization will have no measurable impact on any single locality. As a result of the reorganization, Burlington will lose two Federal jobs; Bangor, Wilmington, and Topeka will each lose three Federal jobs; and Springfield will lose eight. These reductions will have an insignificant impact on housing markets schools, public services, tax bases, employment, and traffic congestion.

D. Impact on the Quality of Services

The impact of closing these five small offices on the quality and level of service provided to the Department's clients will be minimal. There are three basic reasons for this:

1. Clients in the affected areas will make greater use of the Direct Endorsement Program. Under this procedure, single-family applications require substantially less contact between the Department and the mortgagee, thus enabling the work to be performed as quickly despite the office closures. In the case of the Wilmington Office, the Direct Endorsement Program already accounts for almost 75 percent of the applications received.

2. The physical distance to the new servicing office is relatively small for most clients. In Maine, 70 percent of the workload is located in the middle to southern portion of the State. This area can be serviced as effectively from the Manchester Office. The workload in other areas can also be serviced effectively by telephone and by travel to the areas based on the requirements of the limited workload in the areas.

3. The new servicing offices have all the skills and experience needed to provide fast and efficient single-family development service, and already provide all other HUD Field services in these areas. The functions currently being performed by the five offices are also being performed by experienced and knowledgeable staff in the new servicing offices. The quality of FHA processing will be unchanged.

Authority: (Section 7(p) of the Department of Housing and Urban Development Act. 42 U.S.C. 3535(p)).

Dated: November 7, 1985.

Samuel R. Pierce, Jr.,

Secretary, Department of Housing and Urban Development.

BILLING CODE 4210-01-M

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COSTS AND SAVINGS OF REORGANIZATION

Figure 1

I. STAFFING IMPACT

	Positions			Personnel	
OFFICE	ENCUMBERED	REV. STAFF REQUIREMENT	ABOLISHED	RELOCATED	RETIRED OR SEPARATED
	1	2	3	4	5
Bangor	3	3	0	0	3
Burlington	2	1	1	1	1
Wilmington	3	0	3	1	2
Springfield	8	3	5	3	5
Topeka	3	2	1	0	3
TOTALS	19	9	10	5	14

[1] NOTE: The estimated savings are based on the 10 positions abolished (Column 3 above), not on the 14 individuals expected to retire or choose separation rather than relocation (column 5 above). Because in some cases there will be a workload-related need to hire behind these vacancies in the new servicing offices.

II. DOLLAR COST OF REORGANIZATION

	Personnel				Services			
OFFICE	RELOCATION	SEVERANCE	UNEMPLOY. COMPEN.	TERMINAL LEAVE	FURN/EQUIP MOVEMENT	SPACE RENTAL	PHONE SERVICE	TOTAL COSTS
	6	7	8	9	10	11	12	13
Bangor	$0	$1.300	$3.200	$1.650	$0	$0	$13.200	$19.350
Burlington	$25.000	$1.300	$1.600	$550	$675	$0	$13.200	$42.325
Wilmington	$25.000	$1.300	$3.200	$1.100	$675	$0	$13.200	$44.475
Springfield	$75.000	$2.600	$3.200	$2.750	$2.025	$0	$13.200	$98.775
Topeka	$0	$1.300	$1.600	$1.650	$0	$0	$13.200	$17.750
TOTALS	$125.000	$7.800	$12.800	$7.700	$3.375	$0	$66.000	$222.675

III. DOLLAR SAVINGS FROM REORGANIZATION

IV. SUMMARY

OFFICE	SALARY/ BENEFITS [1]	SPACE RENTAL	COMMUN. and ADP SERVICES	EQUIPMENT RENTAL	MISC. OTHER	TOTAL SAVINGS	ANNUAL INCREASE OPERATING COSTS DUE TO TRAVEL	NET ANNUAL SAVINGS	RECOVERY PERIOD (months)
	14	15	16	17	18	19	20	21	22
Bangor	$0	$6.885	$21.604	$2.700	$1.300	$36.689	$1.000	$35.689	6.51
Burlington	$32.100	$4.932	$19.927	$2.681	$2.820	$62.460	$750	$61.710	8.23
Wilmington	$96.300	$9.120	$9.738	$0	$750	$115.908	$500	$115.408	4.62
Springfield	$160.500	$20.470	$13.516	$4.800	$5.000	$204.286	$1.500	$202.786	5.85
Topeka	$32.100	$14.485	$15.636	$0	$2.000	$64.221	$500	$63.721	3.34
TOTALS	$321.000	$57.892	$80.421	$10.181	$14.070	$483.564	$4.250	$479.314	5.57

[FR Doc. 85-29647 Filed 12-13-85; 8:45 am]
BILLING CODE 4210-01-C

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Commission on Americans Outdoors (Commission) will be held Monday, January 6, 1986, starting at 9:00 am, in the Conference room in Building 201—first floor, of the Golden Gate National Recreation Area, Fort Mason Park Headquarters, San Francisco, CA 94123.

This will be a hearing to obtain information on the kinds of programs that are provided and opportunities afforded in recreation program in this country. Attendees have been invited by the Commission for this public hearing; however interested parties may request time to testify by contacting the Commission.

This meeting is opened to the public, interested persons may attend. The Commission contact is Mr. James Gasser, and may be contacted at the President's Commission on Americans Outdoors, P.O. Box 18547, 1111–20th Street, NW, Washington, DC 20036–8547, (202) 634–7310.

Dated: December 10, 1985.

Victor H. Ashe,

Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 85–29672 Filed 12–13–85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Rail Carriers; Release of Waybill Data for Academic Use

The Commission has received a request from a student at the University of Chicago's Graduate School of Business for permission to use the Commission's Waybill Sample for the period of December 1982 to December 1983 for research on the ocean liner conference system.

In conducting this research, which involves the study of competition for intermodal cargoes, the student needs to ascertain what fraction of the rates on intermodal cargoes shipping firms paid out in incremental costs. Since land transportation is one of the primary components of intermodel incremental cost, waybill data on the costs of rail shipments for containerized cargoes are requested.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (49 FR 40328, September 6, 1983.)

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who filed objections will be timely notified of the Director's decision.

Contact: Elaine K. Kaiser, (202) 275–0907.

James H. Bayne,

Secretary.

[FR Doc. 85–29645 Filed 12–13–85; 8:45 am]

BILLING CODE 7035-01-M

Rail Carriers; Release of Waybill Data for Use by UCLA Graduate Students

The Commission has received a request from four students in the Graduate School of Management at UCLA for permission to use certain data from the Commission's 1981 – 1984 Carload Waybill Sample for a study of the north-south transportation of cargo shipped along the West Coast. The Port of Long Beach will be involved in this study which is essentially a master's thesis in the form of a consultant's report. Specifically, they need the waybill data pertaining to the volume of TOFC/COFC traffic moving north and south that originates or terminates in the following areas: (1) Long Beach/Los Angeles, (2) San Francisco/Oakland, (3) Portland, Oregon, and (4) Seattle/Takoma, Washington. No other confidential waybill data are required.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of pro prietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (48 FR 40238, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275–0907.

James H. Bayne,

Secretary.

[FR Doc. 85–29644 Filed 12–13–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–55 (Sub-168X)]

Seaboard System Railroad, Inc.; Abandonment Exemption in Seminole County, FL; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—Exempt Abandonments to abandon its 0.34-mile line of railroad between milepost ATA–796.96, Valuation Station 50+00 and milepost ATA–770.30, Valuation Station 68+04 in Sanford, FL.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overheard traffic is not moved over the line or may be rerouted, and (2) that no formal complaint file by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective January 15, 1986 (unless stayed pending reconsideration). Petitions to stay must be filed by December 26, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by January 6, 1986 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use condition.

Decided: December 6, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-29646 Filed 12-13-85; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before January 15, 1986.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension.

Title I: NEH Challenge Grant Guidelines and Application Instruction.

Form Numbers: Not Applicable.

Frequency of Collection: Annually.

Respondents: Applicants for Challenge Grants.

Estimated Number of Respondents: 270 annually.

Estimated Hours for Respondents to Provide Information: 50 hours per respondent annually.

Susan Metts,

Acting Director of Administration.

[FR Doc. 85-29649 Filed 12-13-85; 8:45 am]

BILLING CODE 7536-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before January 15, 1986.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 10506 (202-786-0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions.

Title: Applications and Instruction Forms for the Editions Category.

Form Number: Not applicable.

Frequency of Collection: Annual.

Respondents: Humanities researchers and institutions.

Use: Application for funding.

Estimated Number of Respondents: 113

Estimated Hours for Respondents to Provide Information: 523 per respondent.

Susan Metts,

Acting Director of Administration.

[FR Doc. 85-29650 Filed 12-13-85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued the periodic report to Congress

on abnormal occurrences (NUREG–0090, Vol. 8, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the second calendar quarter or 1985. The report identifies the occurences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there were three abnormal occurrences at the nuclear power plants licensed to operate. These events involved, respectively, (1) inoperable safety injection pumps, (2) significant deficiencies in reactor operator training and material false statements, and (3) loss of main and auxiliary feedwater systems. There were four abnormal occurrences at the other NRC licensees. Three events involved disgnostic or therapeutic medical misadministrations; the other involved a breakdown in management controls. There was one abnormal occurrence reported by an Agreement State; the event involved overexposures of a radiographer and an assistant radiographer.

The report also contains information updating some previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW, Washington, DC or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies or microfiche of NUREG–0090, Vol. 8, No. 2 (or any of the previous reports in this series), may be purchased by calling (202) 275–2060 or (202) 275–2171, or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7982. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available. Documents may be purchased by check, money order, Visa, MasterCard, or charged to a GPO Deposit Account.

Copies of the report may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Dated at Washington, DC, this 9th day of December 1985.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–29739 Filed 12–13–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published November 19, 1985 (50 FR 47648). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the January 1986 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634–3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

Standard Plant Design, January 6, 1986, Washington, DC. The Subcommittee will review the NRC Staff paper on standard plants and discuss the status of standard plants.

Reactor Operations, January 7, 1986, Washington, DC. The Subcommittee will hear an update on the new LER system and will review recent operating experience.

Qualification Program for Safety-Related Equipment, January 15, 1986, Washington, DC. The Subcommittee will discuss resolution and implementation of USI A–46. The SQUG/EQE evaluation of the March 1985 Chilean earthquake will also be discussed.

Joint Waste Management and Reactor Radiological Effects, January 15, 16 and 17, 1986, Washington, DC. The Subcommittees will review: (1) EPA's Low-Level Waste Standards (currently being developed), (2) Proposed Revision of 10 CFR Part 20, Standards for Protection Against Radiation, including the supporting AIF/NESP effort and SECY–85–147A, Regulatory Exempt Radiation Levels (*de minimis* levels), (3) other topics in support of NMSS/WM High-Level Waste Management Program, (4) the organization, role, and activities of the Committee on Interagency Radiation Research and Policy Coordination (CIRRPC), and (5) waste management and radiation protection research.

Emergency Core Cooling Systems, January 23 and 24, 1985, Palo Alto, CA. The Subcommittee will continue the review of the joint NRC/B&WOG/EPRI/B&W joint IST Program. A visit is planned to the EPRI-sponsored facilities supporting this Program at the Stanford Research Institute and Science Applications, Inc.

Core Performance, January 29, 1986, Washington, DC. The Subcommittee will review the potential for recriticality of TMI–2 during defueling operations.

Safety Research Program, February 12, 1986 (tentative), Washington, DC. The Subcommittee will continue its discussion on the NRC Safety Research Program and Budget for FY 1987. Also, it will discuss a final draft of the ACRS report to the Congress.

Class 9 (Severe) Accidents, February 25, 1986, Washington, DC. The Subcommittee will review the Staff's methodology and preliminary risk assessments for four reference plants to be reported in NUREG–1150.

Decay Heat Removal Systems, March 18, 1986, Washington, DC. The Subcommittee will continue its review of NRR resolution position for USI A–45, "Shutdown Decay Heat Removal Requirements."

Human Factors, Date to be determined (January/February), Washington, DC. The Subcommittee will explore methods for deciding what actions should be automated in nuclear power plant operation.

Metal Components, Date to be determined (January/February), Washington, DC. The Subcommittee will review: (1) The proposed broad scope rule change to GDC–4 (General Design Criteria) concerning the leak-before-break criteria applied to high-energy lines in light-water reactors; (2)

NUREG–0313, Revision 2; and (3) other related matters.

South Texas Units 1 and 2. Date to be determined (February/March). Bay City, TX. The Subcommittee will review Houston Lighting and Power Company's application for an operating license.

Fort St. Vrain. Date to be determined (February/March), near Longmont, CO. The Subcommittee will tour the facility, explore technical problems addressed during the recent extended outage, and discuss management changes made as a result of the licensee's independent assessment of management controls.

Scram Systems Reliability. Date to be determined, Washington, DC. The Subcommittee will discuss scram breaker reliability for B&W and CE plants and continue its review of the ATWS Rule implementation effort.

Reliability and Probabilistic Assessment. Date and location to be determined. The Subcommittee will review the probabilistic risk assessment for Millstone 3.

Emergency Core Cooling Systems. Date to be determined, Washington, DC. The Subcommittee will continue its review of resolution of the hydrodynamic loads issue for BWR containments.

ACRS Full Committee Meeting

January 9–11, 1986: Items are *tentatively* scheduled.

*A. *Davis-Besse Nuclear Generating Station*—Briefing regarding plant restart following a lost of feedwater incident.

*B. *Recent Operating Events*—Report of ACRS subcommittee and representative of the NRC Staff regarding recent operating events and occurrences at nuclear power plant stations.

*C. *Meeting with Director, NRR*—Briefing regarding activities of the Office of Nuclear Reactor Regulation.

*D. *NRC Outage Inspection Program*—Briefing by representatives of the NRC Staff regarding the implementation of an NRC outage inspection program for nuclear facilities.

*E. *Nuclear Reactor Pressure Vessel Integrity*—The members will hear and discuss reports from its consultants and staff regarding transients and sampling techniques related to the potential for reactor pressure vessel thermal shock.

F. *Regulatory Safety Research Program*—The members will discuss proposed ACRS comments regarding the proposed NRC Safety Research Program and Budget for FY 1987.

*G. *Quantitative Safety Goals (tentative)*—The members will hear and discuss the report of its subcommittee regarding the evaluation of proposed NRC safety goals.

*H. *Activities of ACRS Subcommittees*—The members will hear reports of recent activities and discuss anticipated subcommittee activity in designated areas related to nuclear reactor regulation and safety, including matters regarding quality control and quality assurance in the design and construction of nuclear power plants, radioactive waste management and disposal, ACRS procedures and practices, and definition of a standard plant.

*I. *TVA Organization and Management of Nuclear Power Activities*—The members will hear and discuss a briefing by representative of the NRC Staff regarding changes in structure and personnel proposed to strengthen TVA nuclear activities.

*J. *Security of Nuclear Facilities*—The members will hear and discuss reports by its subcommittee and by representatives of the NRC Staff regarding proposed changes in the arrangements for plant security at nuclear power stations.

*K. *Nuclear Reactor Pressure Vessel Thermal Shock*—The members will hear and discuss reports by an ACRS consultant and an ACRS Fellow regarding actions taken/being taken to preclude pressurized thermal shock in reactor pressure vessels. Representatives of the regulatory staff will participate as appropriate.

*L. *Use of the Check-Operator Concept in Requalification of Nuclear Power Plant Operators*—The members will hear a report and discuss the comments of an invited expert regarding application of the check-operator concept in requalification of nuclear power plant operators.

*M. *Anticipated Committee Activities*—The members will discuss anticipated ACRS subcommittee activities.

*N. *Preparation of ACRS Reports to the NRC*—The Committee will discuss proposed reports to the NRC regarding matters considered during this meeting. In addition, proposed ACRS committees on additional topics considered at previous meetings including topics such as the state of nuclear power plant safety, operation of the Palo Verde Nuclear Power Station, and the Indian Point Nuclear Station probability of core melt will be discussed.

February 13–15, 1986—Agenda to be announced.

March 13–15, 1986—Agenda to be announced.

Dated: December 11, 1985.

John C. Hoyle,

Advisory Committee Management Officer

[FR Doc. 29740 Filed 12–13–85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Reactor Operations; Meeting

The ACRS Subcommittee on Reactor Operations will hold a meeting on January 7, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 7, 1986—8:00 a.m. Until the Conclusion of Business

The Subcommittee will hear an update on the new LER system and will review recent operating experience.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary veiws regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

BEST COPY AVAILABLE

Dated: December 10, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-29741 Filed 12-13-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-454, License No. NPF-37, EA 85-52]

Commonwealth Edison Co.: (Byron Plant, Unit 1); Order Imposing Civil Monetary Penalty

I

Commonwealth Edison Company (the "licensee") is the holder of Operating License No. NPF-37 (the "license") issued by the Nuclear Regulatory Commission (the "Commission"). The license authorizes the licensee to operate the Byron Plant, Unit 1, in accordance with the conditions specified therein. The license was issued on October 31, 1984.

II

A special inspection of the licensee's activities was conducted on March 11, 1985. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with Commission requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated June 6, 1985. The Notice states the nature of the violation, the applicable provisions of the licensee's security plan that were violated, and the amount of civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty with a letter dated July 18, 1985.

III

Upon consideration of the licensee's response and the statements of fact, explanation, and arguments for mitigation contained therein, the Director, Office of Inspection and Enforcement, has determined as set forth in the Appendix to this Order that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, Pub. L. 96-295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Twenty-Five Thousand Dollars ($25,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, DC 20555.

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, USNRC, Washington, DC 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, DC 20555 and to the Regional Administrator, Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Bethesda, Maryland, this 9th day of December 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-29736 Filed 12-13-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; McGuire Nuclear Station, Units 1 and 2; Withdrawal of Application for Amendments to Facility Operating Licenses

The United states Nuclear Regulatory Commission (the Commission) has granted the request of Duke Power Company (the licensee) to withdraw its April 5, 1985, application of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina. The proposed amendments would have changed Technical Specification 3.6.5.1 to allow operation with a reduced minimum weight of ice in the containment ice condenser system. The Commission issued a Notice of Consideration of Issuance of the Amendments in the **Federal Register** on August 5, 1985 (50 FR 31661). By letter dated October 31, 1985, the licensee requested, pursuant to 10 CFR 2.107, permission to withdraw its application for the proposed amendments. The basis for withdrawal of the amendment request was that the licensee determined that an error existed in the input assumptions to the computer code used to provide the technical justification for the proposed amendments. The Commission has considered the licensee's October 31, 1985, request and has determined that permission to withdraw the April 5, 1985, application for amendments should be granted.

For further details with respect to this action, see (1) the application for amendments dated April 5, 1985, (2) the licensee's letter dated October 31, 1985, withdrawing the application for amendments, (3) McGuire Licensee Event Report (LER) 85-29, dated October 31, 1985, and (4) our letter dated December 10, 1985. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlottee (UNCC Station), North Carolina 28223.

Dated at Bethesda, Maryland, this 10th day of December 1985.

For the Nuclear Regulatory Commission.

B.J. Youngblood,

Director, PWR Project Directorate No. 4, Division of PWR Licensing-A.

[FR Doc. 85-29738 Filed 12-13-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-321]

Environmental Assessment and Final Finding of No Significant Impact Regarding Proposed Amendment to Facility Operating License; Georgia Power Co. et al.

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. DPR-57 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, (the licensees) for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 1 (the facility) located in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action

The proposed action would permit the licensees to implement some of the changes to Hatch Plant, Unit 1 Technical Specifications as described in their letter of August 1, 1985. It would permit those changes related to updating the Technical Specification inservice inspection and test requirements related to assuring structural integrity of ASME Code Class 1, 2 and 3 components and piping to make them consistent with the requirements of 10 CFR 50.55a(g)(4)(ii). Other changes requested in the August 1, 1985. letter will be addressed separately.

The Need for the Proposed Action

The need for the proposed action is to:

(i) Update the Technical Specification inservice inspection requirements to make them consistent with 10 CFR 50.55a(g)(4)(ii); and

(ii) Help support completion of the first ten-year inspection interval during the Hatch Unit 1 maintenance refueling outage scheduled to begin November 30, 1985.

Environmental Impacts of the Proposed Action

The proposed action will ensure that inservice inspection of components and piping will be performed in accordance with periodically updated editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code as required by 10 CFR 50.55a(g)(4)(ii). the inspection and testing program include ASME Code Class 1, 2 and 3 components and piping and will provide assurance that the structural intergrity of these components and piping will be maintained at an acceptable level throughout the life of the plant. Thus, post-accident radiological releases will not be greater than previously determined, nor does the proposed change otherwise affect radiological plant effluents. Occupational exposure to radiation would also be unaffected. Therefore, the Commission conludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed change involves systems located within the restricted area as defined in 10 CFR Part 20. No nonradiological effluents are affected, and no other environmental impact would occur. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed change.

Since we have concluded that there is no measurable environmental impact associated with the proposed changes to the Technical Specifications, any alternatives to these changes will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to Hatch Unit 1 operation (Final Environmental Statement dated October 25, 1972).

Agencies and persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environmental.

For further details with respect to this action, see the application for amendment dated August 1, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland, this 9th day of December 1985.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2, Division of BWR Licensing.

[FR Doc. 85-29737 Filed 12-13-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-529]

Palo Verde Nuclear Generating Station, Unit 2, Arizona Public Service Co., et al; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission), has issued Facility Operating License No. NPF-46, (License) to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Power Authority. This License authorizes operation of the Palo Verde Nuclear Generating Station, Unit 2 (facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the License, the Technical Specifications and the Environmental Protection Plan. However, the License contains a condition currently limiting operation to five percent of full power (190 megawatts thermal). Authorities to operate at greater than five percent power will require specific Commission approval.

Palo Verde Nuclear Generating Station, Unit 2 is a pressurized water reactor which utilizes a CESSAR standard plant design and is located at the licensees' site in Maricopa County, Arizona approximately 36 miles west of the city of Phoenix.

The application for the license, as amended, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the License. Prior public notice of the overall action involving the proposed issuance of a operating license was published in the **Federal Register** on July 11, 1980 (45 FR 46941) as clarified in a notice published July 25, 1980 (45 FR 49732).

The Commission has determined that the issuance of this License will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the License is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-46, with Technical Specifications (NUREG-1173) and Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards date December 15, 191; (3) the Commission's Safety Evaluation Report on Palo Verde dated November 1981; Supplemental Nos. 1 through 9, dated February 1982, May 1982, September 1982, March 1983, November 1983, October 1984, December 1984, May 1985 and December 1985, respectively; (4) the Commission's related Safety Evaluation Report on

CESSAR dated November 1981; Supplement No. 1 dated March 1983; Supplement No. 2 dated September 1983; (5) the Final Safety Analysis Reports and Amendments thereto; (6) the Environmental Report and supplements thereto; (7) the Draft Environmental Statement dated October 1981, and (8) the Final Environmental Statement dated March 1982.

These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004. A copy of Facility Operating License No. NPF–46 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-B. Copies of the Safety Evaluation Report and its Supplements 1 through 9 (NUREG-0857), the Final Environmental Statement (NUREG-0841) and the Technical Specifications (NUREG-1173) may be purchsed by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC. 20013–7082. All orders should clearly identify the NRC publication number and the requestor's GPO deposit account, or VISA or Mastercard number and expiration date. NUREG-0857 may also be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, the 9th day of December, 1985.

For the Nuclear Regulatory Commission,

George W. Knighton,

Director, PWR Project Directorate No. 7, Division of PWR Licensing-B.

[FR Doc. 85–29735 Filed 12–13–85; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new revision or extension: Extension.

2. The title of the information collection: 10 CFR Part 19, "Notices, Instructions, and Reports to Workers; Inspections."

3. The form number if applicable: Not applicable.

4. How often the collection is required: Annually and on occasion.

5. Who will be required or asked to report: NRC licensees.

6. An estimate of the number of responses: 548,036.

7. An estimate of the total number of hours needed to complete the requirement or requests: 91,339.

8. An indication of whether section 350(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 19, § 19.13, "Notifications and Reports to Individuals," requires NRC licensees to provide radiation workers with reports of their exposure to radiation. The information in such reports is used by both individual workers and NRC licensees to assure that radiation doses to individuals are maintained within established limits.

Copies of the submittal may be inspected or obtained for a fee from NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill (202) 395–7340.

NRC Clearance Officer is R. Stephen Scott (301) 492–8585.

Dated at Bethesda, Maryland, this 10th day of December 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–29734 Filed 12–13–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–244]

Rochester Gas and Electric Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a license amendment to allow storage of consolidated spent fuel to Rochester Gas and Electric Corporation (the licensee), for the R. E. Ginna Nuclear Power Plant located in Wayne County, New York.

Environmental Assessment

Background

The spent fuel storage capacity of the R. E. Ginna Nuclear Power Plant (Ginna) was 210 fuel assemblies when the plant was licensed in 1969. This licensed capacity was increased in 1976 to 595 fuel assemblies by reracking the spent fuel pool (SFP). This limited increase in storage capacity was in keeping with the expectation generally held in the industry that the federal government would begin accepting spent fuel for interim storage in the 1981–1982 time frame.

Commercial reprocessing of spent fuel has not developed as had been originally anticipated. In 1975 the Nuclear Regulatory Commission (NRC) directed the staff to prepare a Generic Environmental Impact Statement (GEIS, the Statement) on spent fuel storage. The Commission directed the staff to analyze alternatives for the handling and storage of spent light water power reactor fuel with particular emphasis on developing long range policy. The Statement was to consider alternative methods of spent fuel storage as well as the possible restriction or termination of the generation of spent fuel through nuclear power plant shutdown. These alternatives were addressed for the Ginna Nuclear Power Plant in the "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Second Modification of the Spent Fuel Storage Pool" dated November 8, 1984. The referenced Environmental Assessment was issued in conjunction with a license amendment that granted an increase in storage capacity of the Ginna spent fuel pool to 1016 fuel assemblies.

Description and Need of Proposed Action

As discussed in the aforementioned November 8, 1984 Environmental Assessment, 81 spent fuel assemblies belonging to Rochester Gas and Electric Corporation (RG&E) were located at what was formerly the NFS Facility, West Valley, New York. The current licensee of the West Valley Facility, New York State Energy Research and Development Authority (NYSERDA), has placed a requirement on RG&E to remove all 81 spent fuel assemblies by early January 1986.

In conjunction with this, the Office of Civilian Radioactive Waste Management of the Department of Energy (DOE) has requested that a "rod consolidation demonstration" at the West Valley Facility take place. Approximately 25 assemblies of RG&E spent nuclear fuel from the Ginna reactor would would be used for this program. Upon completion of the demonstration project the fuel would be shipped to Ginna and placed in the

spent fuel pool. To accommodate the receipt and storage of the consolidated fuel, a Technical Specification License Amendment must be granted by NRC.

Radiological Environmental Impact of Proposed Action

The potential radiological environmental impact associated with the storage of spent nuclear fuel from the Ginna reactor in the spent fuel pool at Ginna in its current configuration was discussed and evaluated in the above-mentioned Environmental Assessment dated November 8, 1984. The findings detailed in that Environmental Assessment with regard to types and amounts of radioactivity released in the current pool configuration, the radioactivity released to the atmosphere, the types and volumes of liquid and solid radioactive wastes, the occupational radiation exposure and the radiological impact to the public from normal operations and accidents, still provide a bounding scenario with the proposed action included. With respect to normal operations the November 8, 1984 Environmental Assessment provides a bounding scenario because it is based on radioactive releases from a quantity of spent fuel which is equal to the authorized capacity of the current spent fuel pool, which capacity is not being increased by the proposed amendment. With respect to accidents, the November 8, 1984 Environmental Assessment provides a bounding scenario because the accidents analyzed in it would result in greater potential offsite doses than those which would result from similar accidents involving canisters containing consolidated fuel rods which have decayed for 5 years or longer.

Non-Radiological Environmental Impacts of the Proposed Action

The findings in the above-mentioned Environmental Assessment with regard to non-radiological environmental impacts remain valid and still are bounding with regard to the effects of the proposed action because it is based on environmental impacts resulting from a quantity of spent fuel which is equal to the authorized capacity of the current spent fuel pool, which capacity is not being increased by the proposed amendment, and no new or additional non-radiological environmental impacts would result from storing canisters containing consolidated fuel rods.

Alternatives to the Proposed Action

The only alternative to the proposed action would be to deny the license amendment, in which case the spent fuel would be shipped back to Ginna in an unconsolidated form in the same manner as the assemblies that are not scheduled for the consolidation demonstration program. This alternative would not lead to a reduced environmental impact over the proposed action.

Alternative Use of Resources

This action does not involve use of resources not previously considered in the Final Environmental Statement dated December 1973 or the Environmental Evaluation of June 17, 1983 for the R. E. Ginna Nuclear Power Plant, nor does it involve conflicting use of limited available resources requiring consideration of other alternatives.

Agencies and Persons Consulted

The NRC has consulted with DOE and NYSERDA with regard to this action.

Finding of No Significant Impact

The staff has reviewed this proposed facility modification relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed license amendment will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, an environmental impact statement need not be prepared for this action.

For further details with respect of this action, see the application for amendment dated February 27, 1985 as supplemented June 10, June 25 and July 11, 1985 and the staff Environmental Assessment dated November 8, 1984 which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Bethesda, Maryland, this 12th day of December, 1985.

For the Nuclear Regulatory Commission

George B. Lear,

Director, Project Directorate #1, Division of PWR Licensing-A.

[FR Doc. 85-29839 Filed 12-13-85; 8:45 am]

BILLING CODE 7590-01-M

SELECTIVE SERVICE SYSTEM

Privacy Act of 1974; Annual Publication of Notice of Systems of Records

AGENCY: Selective Service System.

ACTION: Notice; annual publication of systems of records with minor administrative changes.

SUMMARY: The purpose of this notice is to meet the requirement of the Privacy Act of 1974 regarding the annual publication of the agency's notice of systems of records. The complete text of all Selective Service System notices appears below, with administrative changes necessary to reflect changes in position titles or other identification of systems managers as well as modifications of systems of records as applicable.

COMMENT DATE: Comments on these systems of records should be submitted in writing or before January 15, 1986, to the Acting Associate Director for Management Services, Selective Service System, Washington, DC, 20435. Phone 202-724-0872.

EFFECTIVE DATE: The system of records will become effective on January 15, 1986, unless the Selective Service System publishes notice to the contrary.

Congressional Notice

Notice of these systems of records has been filed with the Speaker of the House, the President of the Senate and the Office of Management and Budget, as required by 5 U.S.C. 552a(o).

Dated: December 11, 1985.

Thomas K. Turnage,

Director of Selective Service.

System of Records

SSS-2 General Files (Registrant Processing).
SSS-3 Reconciliation Service Records.
SSS-4 Registrant Information Bank.
SSS-5 Registrant Processing Records.
SSS-6 Reserve and National Guard Personnel Records.
SSS-7 Uncompensated Personnel Records.
SSS-8 Suspected Violater Inventory System.
SSS-9 Master Pay Record.
SSS-10 Registrant Registration Records.

SSS-2

SYSTEM NAME:

General Files—SSS.

SYSTEM LOCATION:

National Headquarters, Selective Service System, 1023-31st Street, NW., Washington, DC 20435.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants of the Selective Service System and other individuals and organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains current and previous correspondence with individual registrants, private individuals and Government agencies, requesting information or resolution of specific problems related to registrant processing or agency operations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(3), Military Selective Service Act (50 U.S.C. App. 460(b)(3)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH CASES:

Department of Justice—Refer reports received as to possible violations of the Military Selective Service Act.

Federal Bureau of Investigation—Refer reports received as to possible violations of the Military Selective Service Act.

Department of Defense—Exchange of information respecting status of individuals subject to the provisions of the Military Selective Service Act.

Immigration and Naturalization Service—Response to inquiries concerning aliens.

Department of Health and Human Services—for locations of parents pursuant to the Child Support Enforcement Act (42 U.S.C. 651 et seq.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDS, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper copies maintained in routine filing equipment.

RETRIEVABILITY:

Records are indexed alphabetically by last name.

SAFEGUARDS:

Measures that have been taken to prevent unauthorized disclosure of records are:

a. Records are maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosure of information; offices are locked when authorized personnel are not on duty.

b. Periodic security checks and other emergency planning.

c. Records transferred for storage are boxed and taped; records in transit for temporary custody of another office are sealed.

Records eligible for destruction are destroyed by maceration, shredding or burning.

ACCESS:

An individual desiring to obtain information on the procedures for gaining access to and contesting records may write to: Director of Selective Service, Selective Service System, 1023 31st Street, NW., Washington, DC 20435, Attn: Records Manager.

It is necessary to furnish the following information in order to identify the individual whose records are requested:

a. Full name of the individual.

b. Date of birth.

c. Selective Service Number.

d. Mailing address to which the reply should be mailed.

RETENTION AND DISPOSAL:

Hold file intact for five years from date of latest correspondence; select 1 percent sample for National Archives and destroy balance. If 1 percent sample is not accepted by Archives, the 1 percent sample is also destroyed.

SYSTEM MANAGER AND ADDRESS:

Director of Selective Service, 1023 31st Street, NW., Washington, DC 20435, Attn: Records Manager.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Individual registrants and private individuals and organizations, Members of the Congress acting on behalf of constituents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

555-3

SYSTEM NAME:

Reconciliation Service Records—SSS.

SYSTEM LOCATION:

National Headquarters, Selective Service System, 1023–31st Street, NW, Washington, DC 20435.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Vietnam era draft evaders and military deserters (whose surnames begin with A through R) who have qualified for a period of alternate service as a condition for reconciliation under Presidential Proclamation 4313, signed September 16, 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Registration Card: Individual's name, address, telephone number, personal description, date of birth, Social Security Account Number, former military service, date of registration, reconciliation service required, date reconciliation service started and terminated, total reconciliation service, individual's signature.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Presidential Proclamation 4313; E.O. 11804; 5 U.S.C. 553; 50 U.S.C. App. 460(b)(3).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to the Department of Justice for appropriate action in cases involving unsatisfactory participation.

Referral to the appropriate military referring authority, upon request, in cases involving the updating of military discharges.

Referral to the Presidential Clemency Board, upon request, in cases necessitating additional review.

Referral to Office of Management and Budget, upon request, in cases undergoing investigative review in conjunction with the specific functions of these agencies.

Exchange of information with Reconciliation Service employers regarding the placement, supervision of and performance of Reconciliation Service by returnees who have agreed to perform such service.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDS, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All registration cards and microfiche of registration cards are stored in either metal or wood filing cabinets.

RETRIEVABILITY:

The system is alphabetically indexed by last name.

SAFEGUARDS:

Measures that have been taken to prevent unauthorized disclosure of records are:

a. Records are maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosure of information; offices are locked when authorized personnel are not on duty.

b. Periodic security checks and other emergency planning.

c. Records transferred for storage are boxed and taped; records in transit for temporary custody of another office are sealed.

Records eligible for destruction are destroyed by maceration, shredding or burning.

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ACCESS:

An individual desiring to obtain information on the procedures for gaining access to and contesting records may write to: Director of Selective Service, Selective Service System, 1023 31st Street, NW, Washington, DC 20435, Attn: Records Manager.

RETENTION AND DISPOSAL:

Registration Cards or microfiche thereof will be retained until the enrollee reaches 85 years of age.

SYSTEM MANAGER AND ADDRESS:

Director of Selective Service, Selective Service System, 1023–31st Street, NW, Washington, DC 20435, Attn: Records Manager.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Sources of records in the system are primarily established by the individual at the time and place of enrollment, based on oral and written information given by the enrollee. Other sources of information include the Report of Separation From Active Duty (DD Form 214), referral documents from the referring authority and information provided by an enrollee's employer.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SSS-4

SYSTEM NAME:

Registrant Information Bank (RIB) Records—SSS.

SYSTEM LOCATION:

Data Management Center/Joint Computer Center, Great Lakes, Illinois 60088.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants of the Selective Service System after 1979.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Registrant Information Bank (RIB) is an automated data processing system which stores information concerning registration, classification, examination, assignment and induction of Selective Service registrants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(3) of the Military Selective Service Act (50 U.S.C. App. 460(b)(3)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Defense—exchange of information concerning registration classification, enlistment, examination and induction of individuals, and for recruiting (prior to April 1, 1982 only on request of the registrant).

Alternative service employers—for exchange of information with employers regarding a registrant who is a conscientious objector for the purpose of placement in and supervision of performance of alternative service in lieu of induction into military service.

Department of Justice—for review and processing of suspected violations of the Military Selective Service Act, or for perjury, and for defense of a civil action arising from administrative processing under such Act.

Federal Bureau of Invetigation—for location of an individual when suspected of violation of the Military Selective Service Act.

Immigration and Naturalization Service—to provide information for use in determining an individual's eligibility for re-entry into the United States and United States citizenship.

Department of State—for determination of an alien's eligibility for possible entry into the United States and United States citizenship.

Office of Veteran's Reemployment Rights, United States Department of Labor—to assist veterans in need of information concerning reemployment rights.

Department of Health and Human Services—for locations of parents pursuant to the Child Support Enforcement Act (42 U.S.C. 651 et seq.).

General Public—Registrant's Name, Selective Service Number, Date of Birth and Classification.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDS, ASSESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on tape, disc and computer printouts.

RETRIEVABILITY:

The system is indexed by Selective Service Number.

SAFEGUARDS:

a. On-line access to RIB from terminals is available to authorized personnel, and is controlled by User Identification and password. Batch access controlled via standard data processing software and hardware techniques.

b. Records are handled by authorized personnel only, who have been trained in the rules and regulations concerning disclosure of information; offices are locked when authorized personnel are not on duty and protected by an eletronic security access system at all times.

c. Premises are locked and patrolled when authorized personnel not on duty.

d. Periodic security checks and emergency planning.

ACCESS:

An individual desiring to obtain information on the procedures for gaining access to and contesting records may write to: Director of Selective Service, Selective Service System, 1023—31st Street, NW, Washington, DC 20435, Attn: Records Manager.

It is necessary to furnish the following information in order to identify the individual whose records are requested:

a. Full name of the individual.

b. Date of birth.

c. Selective Service Number.

d. Mailing address to which the reply should be mailed.

RETENTION AND DISPOSAL:

When eligible for disposal, the computer tapes are erased. The records stored in the Registrant Information Bank (RIB) are retained until registrant reaches age 85.

The computer printouts are distributed to the National Headquarters and destroyed when they have served their purpose by maceration, shredding or burning. Computer printouts used at the Data Management Center are destroyed by maceration after they have served their purpose or upon records appraisal action.

SYSTEM MANAGER AND ADDRESS:

Director of Selective Service, Selective Service System, 1023—31st Street, NW., Washington, DC 20435.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Forms prepared by the field elements are the input documents for all information recorded in the SSS—Registrant Information Bank (RIB) Records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SSS-5

SYSTEM NAME:

Registrant Processing Records—SSS.

SYSTEM LOCATION:

Records are stored in the Federal Records Center serving the State in which the registrant resided.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants of the Selective Service System before 1976.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual Processing Records:

a. Registration Card—a locator card identifying the registrant.

b. Classification Record—a listing of the classes in which the registrant was placed and the dates of the classifications.

c. Registrant File Folder and Contents for certain aliens and expatriated U.S. citizens—contains all information necessary for registrant's processing, including forms, statements, correspondence, and copies of documents relevant to inclusion for, or exemption or deferment from training and service under the Military Selective Service Act and Regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 3 10(b)(3) and 15(b) of the Military Selective Service Act (50 U.S.C. App. 453, 460(b)(3), 465(b)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Depatment of Defense—for exchange of information concerning registration, classification, enlistment, examination and induction of individuals.

Alternative service employers—for exchange of information with employers regarding a registrant who is a conscientious objector for the purpose of placement in and supervision of performance of alternate service in lieu of induction into military service.

Department of Justice—for review and processing of suspected violation of the Military Selective Service Act or for perjury and for defense of a civil action arising from administrative processing under such Act.

Federal Bureau of Investigation—for location of an individual when suspected of violation of the Military Selective Service Act.

Immigration and Naturalization Service—to provide information for use in determining an individual's eligibility for re-entry into the United States.

Department of State—for determination of an alien's eligibilty for possible entry into the United States and United States citizenship.

Office of Veterans' Reemployment Rights, United States Department of Labor—to assist veterans in need of information concerning reemployment rights.

Department of Health and Human Services—for locations of parents pursuant to the Child Support Enforcement Act (42 U.S.C. 651 et seq.)

General Public—Registrant's Name, Selective Service Number, Date of Birth and Classification.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDS, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on manually prepared forms, in file folders, and correspondence files.

RETRIEVABILITY:

Records are indexed by name (within local board) and Selective Service Number.

SAFEGUARDS:

Measures that have been taken to prevent unauthorized disclosure of records are:

a. Records are maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosure of information; offices are locked when authorized personnel not on duty.

b. Periodic security checks and other emergency planning.

c. Records transferred for storage are boxed and taped; records in transit for temporary custody of another office are sealed. Records eligible for destruction are destroyed by maceration, shredding or burning.

d. Only photostatic copies of records are withdrawn from the Centers. Withdrawals are requested by authorized personnel only.

ACCESS:

An individual can obtain information on the procedures for gaining access to and contesting records through: Director of Selective Service, Selective Service System, 1023–31st Street, N.W. Washington, DC 20435 Attn: Records Manager.

It is necessary to furnish the following information in order to identify the individual whose records are requested:

1. Full name of the individual.

2. Selective Service Number, Order/Serial Number, or date of birth and address at time of registration if Selective Service Number or Order/Serial Number is not known.

3. Mailing address to which the reply should be mailed.

RETENTION AND DISPOSAL:

Individual Processing Records:

1. Registration Card—Retained until registrant reaches age 85, record; active to age 35.

2. Classification Record—Retained until registrant reaches age 85, record; active to age 35.

3. Registrant File Folder and Contents—All have been destoryed with the following exception: Files of registrants who are aliens (including former U.S. citizens who have expatriated themselves who were last classified in an available class, or 4–C or whose last classification was 5–A immediately proceded by Class 4–C, are retained as permanent records.

SYSTEM MANAGER AND ADDRESS:

Director of Selective Service, Selective Service System, 1023–31st Street, NW., Washington, DC 20435.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Information contained in the Registrant Processing Records System is obtained from the individual and supporting documents from other persons, federal, state and local government agencies and institutions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SSS–6

SYSTEM NAME:

Reserve and National Guard Personnel Records—SSS.

SYSTEM LOCATION:

National Headquarters, Selective Service System, 1023 31st Street, N.W., Washington, DC 20435.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and Warrant Officers of the Reserve and National Guard currently assigned to the Selective Service System, and Officers and Warrant Officers formerly so assigned.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain information relating to selection, placement and utilization of military personnel, such as name, rank, Social Security Account Number, date of birth, physical profile, residence and business, addresses, and telephone numbers. Information is also recorded on unit of assignment, occupational codes and data pertaining to training, cost factors, efficiency ratings and mobilization assignments and duties, and other information relating to the status of the member.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide information to the individual member's branch of the Armed Forces as required in connection with his assignment to the Selective Service System.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDS, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on magnetic tape or disk.

RETRIEVABILITY:

Records are indexed by name and Service Number.

SAFEGUARDS:

The records are maintained in lockable file containers. Measures that have been taken to prevent unauthorized disclosure of records are:

a. Use of the records or any information contained therein is limited to Selective Service System employees or Reserve Forces Members whose official duties require access.

b. Records are maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosure of information; offices are locked when authorized personnel are not on duty.

c. Periodic security checks and other emergency planning.

d. Records transferred for storage are boxed and taped; records in transit for temporary custody of another office are sealed.

Records eligible for destruction are destroyed by maceration, shredding or burning.

RETENTION AND DISPOSAL:

Personnel records for Selective Service Reserve Forces are retained for one (1) year after separation and then disposed of in accordance with procedures provided by each Branch of Service.

ACCESS:

SS Reserve Forces Members or former members who wish to gain access to their records should make their request in writing, including their full name, rank, branch of service, address, and Social Security Account Number. Director of Selective Service, Selective Service System, 1023–31st Street, N.W., Washington, D.C. 20435, Attn: MSP (Military).

SYSTEM MANAGER AND ADDRESS:

Director of Selective Service, Selective Service System, 1023–31st Street, N.W., Washington, DC 20435.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained directly from the individual to whom it applies or is derived from information supplied or is provided by the individual Branch of the Armed Forces.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SSS–7

SYSTEM NAME:

Uncompensated Personnel Records—SSS.

SYSTEM LOCATION:

National Headquarters, Selective Service System, 1023 31st Street, NW, Washington, D.C. 20435.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Currently appointed uncompensated local board and appeal board members, other persons appointed in advisory or administrative capacity, and former appointees in an uncompensated capacity.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain information relating to the selection, appointment and separation of appointees, such as name, date of birth, mailing address, residence and organization location, position title, minority group code, sex, weight, etc. length of service and occupational title.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(3) of the Military Selective Service Act (50 U.S.C. App. 460(b)(3)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Justice—for exchange of information when required in connection with processing of alleged violations of the Military Selective Service Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDS, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on magnetic tape.

RETRIEVABILITY:

Records are indexed by name of individual record identification number and location.

SAFEGUARDS:

The records are maintained in lockable file containers. Measures that have been taken to prevent unauthorized disclosure of records are:

a. Use of the records for any information contained therein is limited to employees whose official duties require such access.

b. Records are maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosure of information; offices are locked when authorized personnel are not on duty.

c. Periodic security checks and other emergency planning.

d. Records transferred for storage are boxed and taped; records in transit for temporary custody of another office are sealed.

Records eligible for distruction are destroyed by maceration, shredding or burning.

ACCESS:

Appointees who wish to gain access to their records should make requests in writing, including their full name, address (state in which appointed), date of birth and Social Security Account Number for former appointees, or record Identification Number for current appointees to: Director of Selective Service, Selective Service System, 1,023 31st Street, NW, Washigton, DC 20435, Attn: MSP (Uncompensated).

RETENTION AND DISPOSAL:

Personnel Records for uncompensated appointees are maintained for one (1) year after separating at the servicing personnel office.

SYSTEM MANAGER AND ADDRESS:

Directror of Selective Service, Selective Service System, 1023 31st Street, NW, Washington, DC 20435.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained directly from the individual or is derived from information he has supplied or is

provided by the agency official with authority to appoint the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SSS–8

SYSTEM NAME:

Suspected Violator Inventory Systems—SSS.

SYSTEM LOCATION:

Data Management Center/Joint Computer Center, Great Lakes, Illinois 60088.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Alleged violators of the Military Selective Service Act (50 U.S.C. App. 451 et seq).

CATEGORIES OF RECORDS IN THE SYSTEM:

Automated records created by matches between records contained in SSS–10 and other computer files, and other records related to non-registrants. Each record may contain the name, address, Selective Service Number (if any), Social Security Account Number (if any), date of birth, status, and disposition data relating to possible violations of the Military Selective Service Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(3) of the Military Selective Service Act (50 U.S.C. App. 460(b)(3)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The names of individuals identified as alleged violators of the Military Selective Service Act will be checked against the SSS–10 registrant file. If the individual has registered, the incoming communication will be destroyed and no further action will be taken. If the individual is not listed in the registrant file or cannot be identified therein where the incoming communication contains sufficient identifying information on the alleged violator to permit sending correspondence to him under the automated tracking system, the name and associated information will be added to that system and the incoming communication will be used to attempt to correspond with the alleged violator, giving him an opportunity to register. After a reasonable attempt is made to register the individual, and he neither registers nor provides documented evidence supporting exemption or where there is insufficient information to add the alleged violator to the automated tracking system, the incoming communication may be forwarded to the Department of Justice for investigation and, if applicable, return to Selective Service with sufficient information for adding to the automated tracking system or comparison with the registrant file. When computer matches of Selective Service files result in production of a list of possible non-registrants, that list may be provided to the Department of Defense and the Department of Transportation to eliminate from the list individuals not required to register. The names, date of birth, Social Security Account Numbers, and home addresses of possible non-registrants who also have been identified as members of the Reserve components of the U.S. military services, including the U.S. Coast Guard, may be provided to the Department of Defense, including the military services, and the U.S. Coast Guard, Department of Transportation, to obtain current address. The names, dates of birth, Social Security Account Numbers, home addresses, and disposition data on possible non-registrants who have been identified as Federal student aid recipients by the Department of Education may be provided to the Department of Education, after processing by Selective Service, for investigation and, if applicable, forwarding to the Department of Justice for prosecution. The list may also be provided to the Internal Revenue Service to obtain current addresses of suspected non-registrants. After processing the information pertaining to suspected non-registrants will be forwarded to the Department of Justice for investigation and, if applicable, prosecution.

Where Selective Service determines that information as originally submitted appears to have contained a discrepancy, the names, dates of birth, Social Security Account Numbers, and home addresses of individuals may be returned to the original sources together with information concerning the discrepancy. Information concerning the discrepancy may include correspondence from the individual concerned.

POLICIES AND PRACTICES FOR STORING RETRIEVING, SAFEGUARDS, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Upon receipt of unsolicited communications regarding alleged violators of the Military Selective Service Act who are not listed in the SSS registrant file, a computer record will be created. This is an automated tracking system which contains the nature of the alleged violator, his Social Security Account Number if available, the date sent to the Department of Justice, the final disposition when received, and the case control number. The document is microfilmed, and can be retrieved by a Document Locator Number recorded in the computer record. The original document is destroyed.

When computer matches between Selective Service and other files produce lists of possible non-registrants, the computer file will be produced and maintained. As the list is processed the paper file will be produced from the microfilm, records, containing correspondence between possible non-registrants and Selective Service. A computerized tracking file of cases referred will be maintained.

RETRIEVABILITY:

Indexed Selective Service Number, Social Security Account Number, name and case number (if any).

SAFEGUARDS:

(a) Records are available to authorized Selective Service personnel only.

(b) Paper records are converted to microfilm. A microfilm copy is kept in a locked file cabinet accessible only to authorized personnel. The microfilm original is transferred to a Federal Archieves and Records Center. The paper records are destroyed after microfilming.

(c) Building is secured and patrolled after normal business hours. Access is controlled by an electronic security access system.

(d) Computer files will be maintained at the Joint Computer Center at Great Lakes, Illinois.

(i) Security guards for the building will allow access to authorized personnel only.

(ii) Computer room will be secured with cypher locks.

(iii) Terminal access to the computer system will be restricted to those with valid user ID and password.

(iv) A Customer Information Control System will require additional password for interactive access to data base information.

(v) A software security package will protect access to data in the system.

(vi) Access to the violator section of the data base will not be possible without specific authorization by the Data Base Administrator.

ACCESS:

If information in the system is desired, write to Director of Selective Service, Selective Service System, Washington, D.C. 20435, Attn: Records Manager and furnish the following information in order to identify the individual whose records are requested:

a. Full name.

b. Date of birth.

c. Selective Service Number of Social Security Account Number.

d. Mailing address to which the reply should be called.

RETENTION AND DISPOSAL:

Upon receipt of unsolicited information regarding an alleged violation of the Military Selective Service Act, SSS will check the registrant file for the individual's name. If the individual has registered, the incoming correspondence will be destroyed and no record will be made or retained by SSS. If the individual is not listed in the registrant file, the individual will be entered into the automated tracking system, and the incoming correspondence will be used to attempt to correspond with the alleged violator, giving him an opportunity to register. After a reasonable attempt is made to register the individual, and he neither registers nor provides documented evidence supporting exemption, the communication may be sent to the Department of Justice. SSS will not retain copies of the incoming correspondence or any record identifying the source of the unsolicited information regarding an alleged violation. When computer matches identify persons as possible non-registrants, processing may result in the production of a paper file of correspondence and/or other information. SSS will not retain paper copies of this information when cases are referred to the Department of Justice, but will retain microfilm copies. Once the Department of Justice has disposed of the case, as it deems appropriate, the Department will notify SSS, and the individual's name and related data will be deleted form the tracking system list of possible non-registrants.

All paper forms and correspondence will be destroyed by maceration, shredding or burning after the appropriate information has been recorded. Computer printouts distributed to SSS National Headquarters are destroyed when they have served their temporary purpose by maceration, shredding or burning.

SYSTEM MANAGER AND ADDRESS:

Director of Selective Service, Selective Service System, 1023 31st Street, NW., Washington, DC 20435.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

The information in the system of records regarding alleged violators of the Military Selective Service Act is received via correspondence, telephone calls and computer matches of list of potential registrants.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2) and 32 CFR 1665.6, the Selective Service System will not reveal to the suspected violator the informant's name or other identifying information relating to the informant.

SYSTEM NAME:

Master Pay Record—SSS.

SYSTEM LOCATION:

Data Management Center/Joint Computer Center, Great Lakes, Illinois 60088.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Currently assigned civilian employees and former civilian employees who have separated during the current year and first prior calendar year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains payroll information such as name, grade, annual salary, hourly rate, address, Social Security Account Number, birth date, date of hire, service computation date, annual leave category, life insurance and health benefits deductions, savings bond data and other information relating to the status of the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) and Title 5, U.S.C.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Selected information by name and Social Security Account Number is furnished the Internal Revenue Service and State and City taxing authorities.

Selected information by name, date of birth and Social Security Number is furnished the Office of Personnel Management for retirement, life insurance and health benefit accounts.

Department of Health and Human Services—for locations of parents pursuant to the Child Support Enforcement Act (42 U.S.C. 651 et seq.)

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDS, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in binders, on microfiche and magnetic tape.

RETRIEVABILITY:

Records are indexed by Social Security Account Number.

SAFEGUARDS:

The records are maintained in lockable file containers. Measures that have been taken to prevent unauthorized disclosure of records are:

a. Use of the records or any information contained therein is limited to employees whose official duties require such access.

b. Records are maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosure of information; offices are locked when authorized personnel are not on duty.

c. Periodic security checks and other emergency planning.

d. Records transferred for storage are boxed and taped; records in transit for temporary custody of another office are sealed.

e. No on-line access to RIB from terminals. Batch access controlled via standard data processing software and hardware techniques.

Records eligible for destruction are destroyed by maceration, shredding or burning.

ACCESS:

Current employees or former employees who wish to gain access to their records should make request in writing, including their full name, address and Social Security Account Number and duty station. Former employees should indicate last duty station with this agency. Inquiries should be mailed to: Director of Selective Service, Selective Service System, 1023–31st Street, NW., Washington, DC 20435, Attention: MS.

RETENTION AND DISPOSAL:

The information on the magnetic tapes retained for two years, then erased. The

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microfiche copies are retained for one year, then destroyed by burning. The computer printouts are retained until updated, then destroyed by shredding.

SYSTEM MANAGER AND ADDRESS:

Director of Selective Service, Selective Service System, 1023–31st Street, NW., Washington, DC 20435.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from the individual to whom it applies or is derived from information the individual supplied, or is provided by the agency official with authority to appoint the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SSS–10

SYSTEM NAME:

Registrant Registration Records—SSS.

SYSTEM LOCATION:

Data Management Center/Joint Computer Center, Great Lakes, Illinois 60085.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Registrants of Selective Service System (after 1979).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual Registration Records:

a. Registration Form.

b. Computer tape and microfilm copies containing information provided by registrants on Registration Form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 3, 10(b)(3) and 15(b) of the Military Selective Service Act (50 U.S.C. App. 453, 460(b)(3)).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Defense—for exchange of information concerning registration, classification, enlistment, examination and induction of individuals and identification of individuals, availability of Standby Reservists, and identification of prospects for recruiting.

Department of Justice—for review and processing of suspected violations of the Military Selective Service Act, or for perjury, and for defense of a civil action arising from administrative processing under such Act.

Federal Bureau of Investigation—for location of an individual when suspected of a violation of the Military Selective Service Act.

Immigration and Naturalization Service—to provide information for use in determining an individual's eligibility for re-entry into the United States.

Department of State—for determination of an alien's eligibility for possible entry into the United States and United States citizenship.

Office of Veteran's Reemployment Rights, United States Department of Labor—to assist veterans in need of information concerning reemployment rights.

Department of Health and Human Services—for locations of parents pursuant to the Child Support Enforcement Act (42 U.S.C. 651 et seq.)

Alternative service employers—for exchange of information with employers regarding a registrant who is a conscientious objector for the purpose of placement and supervision of alternative service in lieu of induction into military service.

General Public—Registrant's Name, Selective Service Number, and Date of Birth.

POLICIES AND PRACTICES FOR STORING RETRIEVING, SAFEGUARDS, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on microfilm and in the computer system. Microfilm records are indexed by Document Locator Number, which is stored in the computer record.

RETRIEVABILITY:

The system is indexed by Selective Service Number, but records can be located by searching for specific demographic data.

SAFEGUARDS:

Measures that have been taken to prevent unauthorized disclosure of records are:

a. Records are maintained by authorized personnel only, who have been trained in the rules and regulations concerning disclosure of information; offices are locked when authorized personnel are not on duty, and are protected by an electronic security access system at all times.

b. Periodic security checks and other emergency planning.

c. Microfilm records transferred to a Federal Archives and Records Center for storage are boxed and taped; records in transit for temporary custody of another office are sealed.

d. On-line access to RIB from terminals is controlled by User Identification and password. Batch access controlled via standard data processing software and hardware techniques.

Records eligible for destruction are destroyed by maceration, shredding or burning.

ACCESS:

The agency office address to which inquiries should be addressed and the location at which an individual may present a request as to whether the Registrant Registration Records System (after 1979) contains records pertaining to himself is: Director of Selective Service, Selective Service System, 1023–31st Street, NW., Washington, DC 20435, Attn: Records Manager.

It is necessary to furnish the following information in order to identify the individual whose records are requested:

1. Full name of the individual.

2. Selective Service Number of Social Security Number, date of birth and address at time of registration if Selective Service Number is not known.

3. Mailing address to which the reply should be mailed.

RETENTION AND DISPOSAL:

Individual Processing Records:

1. Registration Form—Destroyed by maceration when its information has been transferred onto microfilm and into the computer system. Original microfilm is stored at a Federal Archives and Records Center. A microfilm copy is retained at the Data Management Center, in locked steel cabinets. The copies are retained until no longer needed for reference purposes.

2. The record copy of microfilm and computer tape will be retained until registrant reaches 85 years of age.

SYSTEM MANAGER AND ADDRESS:

Director of Selective Service, Selective Service System, 1023–31st Street, NW., Washington, DC 20435.

CONTESTING RECORD PROCEDURES:

See Access, above.

RECORDS SOURCE CATEGORIES:

Information contained in the Registrant Registration Records System is obtained from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85–29709 Filed 12–13–85; 8:45 am]
BILLING CODE 8015–01–M

Matching Program To Identify Registration Violators

AGENCY: Selective Service System.

ACTION: Notice.

SUMMARY: Pursuant to OMB Memorandum dated May 11, 1982, "Revised Supplemental Guidance for Conducting Matching Programs," the Selective Service System publishes the following information concerning revision of the Selective Service System Registration Compliance Program for computerized matching of individual records maintained by the Selective Service System against records of other federal and non-federal sources. This revision of the report published in 49 FR 37886 (September 26, 1984) changes a source of records of registration age men.

FOR FURTHER INFORMATION CONTACT: James E. DeWire, Acting Associate Director for Management Services, Selective Service System, Washington, DC, 20435. Phone 202–724–0872.

Dated: December 11, 1985.

Thomas K. Turnage,

Director of Selective Service.

Paragraph (7) of the listing of record systems that are matched against SSS–8 is revised to read:

(7) Department of Education Record System No. 18–40–0014 "Pell Grant Application File" and No. 18–40–0015 "Pell Grant Student Eligibility Report Sub-system," published in 46 FR 29633 (June 21, 1981);

Congressional Notices

Copies of this report are sent concurrently with publication to the Congress, addressed to the President of the Senate and the Speaker of the House of Representatives.

[FR Doc. 85–29706 Filed 12–13–85; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF TRANSPORTATION

Agreements Filed With the Department of Transportation Under Sections 408, 409, 412 and 414 During the Week Ending December 3, 1985

Answers May Be Filed Within 21 Days From the Date of Filing

Date filed	Docket No.	Parties	Subject	Proposed effective date
12/03/85	43631	Members of International Air Transport Association	First Class and Economy Class Fares Europe-Middle East	01-01-86
12/03/85	43632, R-1—R-11	...do	Composite Passenger Tariff Conf. Currency Adjustment	01-01-86
12/03/85	43633	...do	Mexico/USA-Western Africa Readoption	12-15-86
12/04/85	43635, R-1—R-100	...do	TC3 Fares	01-01-86
12/06/85	43641, R-1—R-19	...do	U.S.-Europe Fares and Excess Baggage Charges	01-01-86

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85–29729 Filed 12–13–85; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended December 6, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Dec. 2, 1985	43627	Southern International Airways, Inc., c/o Richard O. Wheeler, 1120 19th Street, NW., #700, Washington, DC 20036. Application of Southern International Airways, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations. (Additional information pursuant to Order Number 85–10–10) Answers may be filed by December 30, 1985.
Do.	43627	Caicos International Airways, Ltd., c/o Virginia Deardorff, 16924 Flickerwood Road, Parkton, Maryland 21120. Application of Caicos International Airways, Ltd., pursuant to Section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit authorizing Non-Scheduled and Chartered Services between the United States and the Turks and Caicos Islands, British West Indies; and for authority to conduct charters under Part 212 of the Act and/or the charter regulations of the Department of Transportation. Answers may be filed by December 30, 1985.
Do.	43625	Challenge Air Transport, Inc., c/o William H. Callaway, Jr., Zuckert, Scoutt, Rasenberger & Johnson, 888 Seventeenth Street, NW., Washington, DC 20006. Application of Challenge Air Transport, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests a disclaimer of jurisdiction or, in the alternative, for approval of a transfer of its certificates of public convenience and necessity and other operating (i.e., exemption) authority. Such a disclaimer or approval is required in order for Challenge to implement a reorganization of its corporate structure, a measure which will strengthen Challenge's operations and to enable it to continue to expand. Conforming Applications, Motions to Modify Scope and Answers may be filed by December 30, 1985.
Dec. 3, 1985	43630	Empresa Guatemalteca De Aviacion (Aviateca), c/o Philip Schlait, Suite 1000, 1660 L Street, NW., Washington, DC 20036. Application of Empresa Guatemalteca De Aviacion pursuant to Section 402 of the Act and Subpart Q of the Regulations requests renewal of its foreign air carrier permit authorizing it to engage in foreign air transportation with respect to persons, property and mail over a period until December 23, 1985 as follows: 1. Between a point or points in Guatemala and the terminal point Miami, Florida 2. Between a point or points in Guatemala; the intermediate points Cancun and Merida, Mexico; and the coterminal points New Orleans, Louisiana, Houston, Texas and Dallas/Ft. Worth, Texas. 3. Between a point or points in Guatemala; the intermediate point Santo Domingo, Dominican Republic; and the terminal point San Juan, Puerto Rico. The holder is authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations, prescribed by current regulations. Answers may be filed by December 31, 1985.
Dec. 5, 1985	43637	Airlift International, Inc., c/o Roy Nerenberg, Stalland, Nerenberg, Nassau, Buckley & Squires, 1101 17th Street, NW., Washington, DC. Application of Airlift International, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests that Segment 1 of Route 180 be renewed, authorizing it to engage in foreign air transportation of property and mail as follows: 1. Between the co-terminal points Miami, Florida, Houston, Texas and Puerto Rico; and the co-terminal points Barbados, Colombia, Dominican Republic, Ecuador, Haiti, Jamaica, Netherlands West Indies, Nicaragua and Mexico.

Date filed	Docket No.	Description
Do.	[redacted]	Conforming Applications, Motions to Modify Scope and Answers may be filed by January 2, 1986. Air Tara Limited, c/o John T. Stewart, Jr., Zuckert, Scoutt, Rasenberger & Johnson, 888 Seventeenth Street, NW., Washington, DC 20006-3939. Application of Air Tara Limited pursuant to Section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit authorizing it to lease aircraft furnished with crew, subject to Parts 212.4 and 218 of the Department's Regulations to foreign air carriers otherwise authorized to engage in charter, and/or scheduled air transportation of persons, property and/or mail between a point or points outside the United States and any point or points in the [redacted]
Dec. 6, 1985	[redacted]	Answers may be filed by January 2, 1986. Ryan Aviation Corporation (d/b/a Ryan International Airlines) c/o R. Bruce Keiner, Jr., Crowell & Moring, 1100 Connecticut Avenue, NW., Washington, DC [redacted] Application of Ryan Aviation Corporation (d/b/a Ryan International Airlines) pursuant to Section 401(d)(3) of the Act and Subpart Q of the Regulations requests that its certificate for foreign charter air transportation be amended to authorize foreign charter air transportation of persons, property and mail between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, on the one hand, and on the other hand: a. Any point in Central or South America; b. Any point in Australasia, Indonesia or Asia, as far west as longitude 70 degrees east, via a transpacific routing; and c. Any point in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as, and including, India. Conforming Applications, Motions to Modify Scope and Answers may be filed by January 3, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-29728 filed 12-13-85; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 85-100]

Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of the seventh meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held Tuesday, January 14, 1986 in the 29th Floor Boardroom of the World Trade Center Building, formerly the International Trade Mart Building, 2 Canal Street, New Orleans, LA. The meeting is scheduled to begin at 9 a.m. and end at 4 p.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Minutes of the January 15, 1985 Meeting
3. Chairman's Message
4. Discussion of previous Committee recommendations
5. Presentation by the Commanding Officer of the Vessel Traffic Service, New Orleans
6. Presentation of any additonal new items for consideration of the Committee
7. Adjournment

The purpose of this committee is to provide a public forum which will furnish to the U.S. Coast Guard consultation, local expertise, and advice on a wide range of matters regarding all facets of navigation safety.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Lower Mississippi River Waterway Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide his/her name, address, and, if applicable, the organization he/she is representing. Any member of the public may present a written statement of the Advisory Committee at any time.

Additional information may be obtained from Commander D.F. Withee, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, Telephone number (504) 589-6901.

Dated: December 11, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85-29705 Filed 12-13-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Air Traffic Procedures Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from January 14, at 9 a.m., through January 17, 1986, at 4 p.m., at the San Antonio International Airport, 9434 Airport Boulevard, San Antonio, Texas.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than January 10, 1986, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic, Acting ATO-300, 800 Independence Avenue, SW., Washington, DC, 20591, telephone (202) 426-3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is planned to be held from April 7 through April 11, 1986, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on Dec. 5, 1985.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 85-29624 Filed 12-13-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

National Motor Carrier Advisory Committee; Renewal

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA announces the renewal of the charter of the National

Motor Carrier Advisory Committee effective December 18, 1985. The Committee will consult with and make recommendations to the Federal Highway Administrator on matters relating to the activities and functions of the FHWA in areas affecting commercial motor vehicles. Meetings of the Committee will be open to the public and announced in the Federal Register. Copies of the Committee charter are available on request.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Stapleton, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HCC–20, Room 4224, 400 Seventh Street, SW., Washngton, DC 20590, (202) 426–0834. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: December 9, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85–29730 Filed 12–13–85; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 241
Monday, December 16, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 9:30 a.m., Friday, December 20, 1985.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679).

MATTERS TO BE CONSIDERED:

Accounting for Options
Securities Disclosures
Industry Conflicts of Interest
Interstate Activities Statement of Policy
No. 33, December 12, 1985.

Jeff Sconyers,
Secretary.
[FR Doc. 85–29804 Filed 12–12–85; 2:19 pm]
BILLING CODE 6720–01–M

2

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 11, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, December 11, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the already published items heard, the Commission also discussed the following:

4. Youghiogheny & Ohio Coal Co., Docket No. LAKE 85–90.
5. Hobet Mining & Construction Co., Docket No. WEVA 84–113–R, etc., (Consideration of petition for discretionary review).

It was determined by a unanimous vote of Commissioners that these items be included in the meeting and that no earlier announcement of the additions was possible. 5 U.S.C. 552b(e)(1).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 85–29811 Filed 12–12–85; 3:00 pm]
BILLING CODE 6735–01–M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 11, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, December 11, 1985.

PLACE: 1730 K Street, NW., Room 600, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Halfway, Inc., Docket No. WEVA 85–15. (Issues include whether the administrative law judge properly determined that a roof control violation was "significant & substantial").

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653–5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 85–29812 Filed 12–12–85; 3:00 pm]
BILLING CODE 6735–01–M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Thursday, December 19, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposal by the Federal Reserve Bank of New York to offer automated clearing house services to Chase ACH, Inc.
2. Cost of Federal Reserve notes in 1986.

Discussion Agenda

3. Federal Reserve Bank budgets for 1986.
4. Publication for comment of proposed amendments to Regulation Q (Interest on Deposits) regarding advertising and disclosure practices of member banks.
5. Proposed revisions to Quarterly Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks (FR 2225).
6. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 11, 1985.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 85–29774 Filed 12–12–85; 11:07 am]
BILLING CODE 6210–01–M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Thursday, December 19, 1985, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on December 9, 1985.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

BEST COPY AVAILABLE

You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–29775 Filed 12–12–85; 11:07 am]

BILLING CODE 6210–01–M

6

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 2–86

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME:

Tuesday, January 21, 1986 at 9:30 a.m.
Wednesday, January 22, 1986 at 9:30 a.m.

SUBJECT MATTER: Consideration of Final Decisions issued on objections under the Vietnam Claims Program (Pub. L. 96–209), and POW claims under the War Claims Act of 1948 as amended.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 - 20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111 - 20th Street, NW., Room 409, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, DC on December 11, 1985.

Judith H. Lock,

Administrative Officer.

[FR Doc. 85–29767 Filed 12–12–85; 11:07 am]

BILLING CODE 6415–01–M

7

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published] 50FR50252.

STATUS: Open meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, December 4, 1985.

CHANGE IN THE MEETINGS: Deletions.

The following item will not be considered at an open meeting scheduled for Thursday, December 12, 1985, at 11:00 a.m.:

Consideration of a proposal by the Philadelphia Stock Exchange, Inc. (File No. SR–Phlx–85–10) to trade options on European Currency Units. For further information, please contact Alden Adkins at (202)272–2043.

The following item will not be condidered at an open meeting scheduled for Thursday, December 12, 1985, at 3:00 p.m.:

Oral argument on an appeal by Owen V. Kane, the vice president of a registered brokerdealer, from an administrative law judge's initial decision. For further information, please contact R. Moshe Simon at (202) 272–7400.

The following item will not be considered at a closed meeting scheduled for Thursday, December 12, 1985, following the 3:00 p.m. open meeting:

Post oral argument discussion.

Commissioner Cox, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272–2091.

Dated: December 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–29780 Filed 12–12–85; 11:42 am]

BILLING CODE 8010–10–M

federal register

Monday
December 16, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11 and 198

Aviation Insurance; Comprehensive Revision of Current War Risk Insurance Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11 and 198

[Docket No. 24223; Amdt. Nos. 11-27; 198-2]

Aviation Insurance; Comprehensive Revision of Current War Risk Insurance Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the provisions of the Federal Aviation Regulations dealing with the Federal aviation insurance program. These revisions are necessary to reflect certain amendments to the Federal Aviation Act which broadened the scope of risks which may be insured by the Administrator. This rule implements those legislative changes and, in addition, extensively revises the current aviation insurance regulations to better reflect current air carrier insurance needs and commercial insurance practice.

EFFECTIVE DATE: January 15, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Harris, Office of Aviation Policy and Plans (APO-230), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-3711.

SUPPLEMENTARY INFORMATION:

Background

In 1951, the Congress amended the Civil Aeronautics Act of 1938 by adding a new Title XIII which authorized the Secretary of Commerce, with the approval of the President, to provide aviation war risk insurance adequate to meet the needs of U.S. air commerce and the Federal Government. This insurance could only be issued when the Secretary of Commerce found that war risk insurance was commercially unavailable on reasonable terms and conditions.

The war risk insurance program was established to provide the insurance necessary to enable air commerce to continue in the event of war. This was needed because of several factors: commercial war risk insurance policies contained automatic cancellation clauses in the event of major war; the geographical coverage of commercial war risk insurance could be restricted upon reasonable notice to air carriers; rates for commercial war risk insurance could be raised without limit upon reasonable notice to air carriers.

The aviation insurance program was incorporated in Title XIII of the Federal Aviation Act of 1958 (Act). Statutory responsibility for the program was transferred by the Department of Transportation Act to the Secretary of Transportation who delegated this authority to the Federal Aviation Administrator (49 CFR 1.47 (b)).

The definition of war risk in Title XIII was that traditionally employed by commercial underwriters, and, as a matter of policy, the FAA had always conservatively interpreted the definition.

In the early 1970's this definition led to uncertainty about the extent of the Administrator's statutory authority to provide insurance against loss or damage arising from, for example, undeclared wars, hijackings, and terrorist acts. Because of a combination of the progressive exclusion of these news risks from commercial all risk policies, and the failure of the traditional definition of war risk to cover these risks, a potential gap in insurance coverage occurred with the potential result of termination of important air services in emergency situations.

In recognition of the fact that the Administrator needed broad discretionary authority in extraordinary circumstances to insure air services determined to be in the national interest, Congress amended Title XIII on November 9, 1977. These amendments, included in Pub. L. 95-163, removed from Title XIII all references to risk categories. It authorized the Administrator to provide insurance against loss or damage due to any risk arising from operations of aircraft in foreign air commerce or between two points outside the United States deemed by the President to be in the foreign policy interests of the United States. Such insurance can only be issued if commercial insurance for those operations is not available on reasonable terms.

The Aviation Insurance Program

Title XIII authorizes the Administrator to issue two forms of insurance: insurance with premium and insurance without premium. The two forms of insurance do not differ in the scope of coverage, only in the charge for protection. In the case of premium insurance, the Administrator accepts financial liability for claims payable and charges applicants a premium commensurate with the risks covered. In the case of nonpremium insurance, coverage is provided to applicants performing contract services for other Federal departments and agencies which have entered into indemnity agreements with the FAA. Under the terms of these agreements, the FAA would be reimbursed for the costs of any payable insurance claims. Therefore, because the FAA does not assume any financial liability in the provision of this insurance, no premium fees are charged. Applicants are charged only a small aircraft registration fee to recover the administrative costs of providing the insurance. The fundamental policy underlying both programs is that the Government should not provide insurance on a regular or routine basis; rather, commercial problems should be resolved by commercial entities.

Currently, the Administrator may issue aviation insurance for aircraft registered either in the United States or in a foreign country against damage or loss resulting from any risk with regard to aircraft and persons and property on board provided the following conditions are met:

(1) The President has determined that the continuation of specified air services is in the foreign policy interests of the United States;

(2) The operation of the aircraft is either in foreign air commerce or between two points outside the United States; and

(3) The Administrator has found that insurance for the particular operation cannot be obtained on reasonable terms from the commercial insurance market.

In order for the first condition to be satisfied, the Administrator must consult with other interested Federal agencies as the President may require to establish a basis for determination by the President that foreign policy reasons mandate providing insurance so that air service can continue. This condition is a significant determinant of whether the issuance of Federal insurance is warranted. Before Title XIII was amended, the key question was whether the risk to be insured fell within the category of "war risks" as defined in the Act.

The foreign policy consideration is linked to the second qualification: the only risks insurable are those arising from the operation of an aircraft between two points outside the United States or in foreign air commerce. In light of the requirement that air service be in the foreign policy interest of the United States, in the case of aircraft engaged in foreign air commerce, only that portion of a flight commencing with the last stop in the United States and continuing to be destination abroad will be eligible for the Aviation Insurance Program. For the third condition to be

satisfied, the Administrator must determine that commercial insurance is unavailable on reasonable terms and conditions. Establishing the unavailability of coverage requires an investigation of several facets of commercial coverage. Specifically, the Administrator must determine whether certain risks are being excluded and for which operations. An investigation also must be made as to whether the applicant for insurance can obtain commercial coverage in amounts sufficient to cover the full reasonable value of aircraft and associated liability. Finally, if adequate commercial coverage is available, the Administrator must ascertain whether that insurance is available at reasonable premium rates.

Premium Program

In accordance with the provisions of Title XIII, premiums for premium insurance are based, insofar as is practicable, upon consideration of the risk involved. Rates charged for the premium program have been geared to the most recent charges for coverage purchased from the commercial insurers plus an increase judged necessary to reflect the additional hazard which caused the commercial insurers to terminate coverage or increase its cost to an unreasonable level. Recognizing the purpose of Tile XIII, an effort is made to arrive at a rate which is fair, reasonable, and nondiscriminatory. The amount of the premium ordinarily includes a deductible and a factor for claims adjustment expenses.

Furthermore, the rate is set at a level high enough to encourage commercial insurance companies to reenter the market after a crisis has passed.

Nonpremium Program

In addition to the premium program, the Administrator may, in accordance with Section 1304 of the Act, provide insurance for air carriers under contract to other Federal departments or agencies without premium, in consideration of an indeminity agreement between the Department of Transportation and the department or agency seeking insurance. At present, indemnity agreements exist between the Department of Transportation and the Department of Defense (DOD) and State (DOS) respectively. Under the terms of those agreements, if DOD or DOS requests insurance coverage for aircraft operations in support of its departmental activities, and commercial insurance is unavailable, the FAA will provide the necessary insurance. The insurance is provided without a premium cost to the air carriers concerned; however, a $200 per aircraft registration fee is required to recover the administrative costs of providing this insurance. In the event of loss or damage due to a risk covered by nonpremium insurance, DOD or DOS, under the terms of the agreements, will indemnify the FAA for payment of claims.

At the present time, Title XIII nonpremium insurance provides the insurance basis for contract operations which would be performed during periods of activation of the Civil Reserve Air Fleet (CRAF). DOD requires each air carrier participant in the CRAF program to apply to the FAA for nonpremium hull and liability war risk insurance. Commercial war risk aviation insurance is unavailable for aircraft operations performed pursuant ot CRAF activation.

Explanation of Changes

Part 198 is revised to reflect the statutory changes with regard to eligibility for Title XIII insurance and the scope of insurance risks and to reflect the current needs or air carriers and evolving commercial aviation insurance practice.

At the time Part 198 was originally promulgated, commercial war risk insurance policies contained a 24-hour automatic cancellation clause in the event of outbreak of war between any of the five post World War II "great powers." This clause created a special problem concerning the availability of commercial insurance coverage. Since notification 24 hours prior to cancellation may not have provided sufficient time for air carriers to remove their aircraft from high risk environments or for the FAA to process an application for Title XIII premium insurance, a potential gap in war risk insurance coverage existed.

In recognition that this potential gap in coverage could seriously constrain the growth of international civil aviation, Part 198 previously provided for the issuance of interim coverage to bridge this gap. This was accomplished by issuing to air carriers interim binder policies, of 3 years in duration, in consideration of a $200 per aircraft binding fee. Interim binders incorporated by reference all the terms of the standard premium war risk insurance policy. Coverage provided by the interim binders automatically came into force following activation of the 24-hour cancellation clause in commercial war risk insurance policies. The interim binders remained in force until the FAA either issued a premium war risk policy or notified the insured of its intent to cancel the interim binder policy and the notice period has passed. Because the FAA had to give 5 days advance notice of its intent to cancel an interim binder policy, ample time was provided for the insured to remove its aircraft from a high risk environment.

To an extent, technological innovations in aviation eliminated the need for the interim binder policies. The introduction of long-range jet aircraft and the establishment of instantaneous global communications systems currently enable air carriers to move aircraft to insurance "safe-havens" from any point on the globe on 24-hours notice.

The introduction of the CRAF program eliminated any residual need for the interim binders. By providing a mechanism whereby Title XIII nonpremium insurance automatically is substituted for commercial war risk insurance in the event of major war, the CRAF program bridged the potential gap which previously existed between commercial and Title XIII war risk insurance coverage. In the event of major war, commercial war risk insurance would be automatically terminated, CRAF would be activated and that portion of the United States civil aircraft fleet required to fulfill United States foreign policy needs thus would come under the control of DOD, and Title XIII nonpremium war risk insurance coverage would become effective, thereby precluding a need for interim binder coverage.

Accordingly, the interim binder policies have fallen into disuse. Because no air carrier continues to have active interim binder policies, the continued availability of these policies apparently serves no useful purpose. Therefore, this revision will delete all specific references to interim binder policies.

The principal statutory changes to Title XIII enacted by Pub. L. 95–163 were two-fold and complementary. On one hand, Congress greatly expanded the scope of insurable risks for which the Administrator may provide insurance coverage. On the other hand, Congress strengthened the requirement for Presidential review of the exercise of this expanded authority. The statutory changes are incorporated in §§ 198.1, 198.3, 198.5, and 198.7. These sections present a revised and consolidated statement of aircraft operations eligible for insurance and the scope of insurance coverage available. Section 198.1 contains a specific reference to the requirement for Presidential approval of the insurance. Similarly, §§ 198.3, 198.5, and 198.7 reflect the fact that the Administrator has broad discretionary authority in extraordinary circumstances to accept applications for

any aviation insurance customarily available for commercial sources. This is accomplished by the deletion from Part 198 of all references to categories of insurable risks or types of insurance. In addition, all references to nationality of aircraft are deleted. Even prior to the enactment of Pub. L. 95–163, the Administrator possessed authority to insure the operations of foreign-registered aircraft, and retention in Part 198 of a distinction between United States and foreign-registered aircraft served no purpose. The reporting requirements and responsibilities of applicants for insurance have been consolidated in §§ 198.9, 198.11, 198.13, and 198.15. Section 198.9 is a restatement of the documentation an applicant must provide to demonstrate that commercial insurance is not available on reasonable terms and conditions. Section 198.11 emphasizes the responsibility of air carriers to notify the Administrator promptly of any changes in the status of insured aircraft. Sections 198.13 and 198.15 restate the payment procedures for Title XIII insurance.

The Appendices to Part 198 are substantially revised and consolidated. Wheras the current Appendices to Part 198 contain a separate application form and standard policy format for nearly every type and form of insurance the Administrator was authorized to issue prior to 1977, the new Part 198, will contain a single Appendix which presents a standard application form for insurance. This form has been designed to enable an applicant to apply for any type, form, or amount of insurance coverage. All standard policies will be deleted from Part 198. The Administrator now possesses authority to provide insurance coverage against any risk or peril from specified aircraft operations, and it is, therefore, no longer possible to anticipate all the risk(s) or peril(s) for which insurance may be requested. Rather than attempt to prepare a separate standard policy for every conceivable risk or peril for which an application for insurance may be anticipated, preparation of policies will occur after an application has been accepted and the risks or perils for which coverage is requested can be precisely identified. Although all such policy provisions are, therefore, technically negotiable, the agency has attempted to describe the principal provisions which would be commonly included in premium policies issued by the agency. These principal provisions will include:

- An identification of the insurer and insured parties.
- A description of the amounts of insurance provided.

—Insurance will be provided in any amount requested, provided:

- The amounts do not exceed the corresponding amounts by which the insured is or was insuring or self-insuring applicable aircraft or itself against loss, damage, or liability from the risk covered.
- The amount of hull insurance may not exceed the fair and reasonable value of the aircraft covered.
- A description of any deductibles.
- A single catastrophe limit.
- A statement of the time effectiveness of the insurance.
- A description of the coverage, including:

—An enumeration of the risks or perils covered (coverage may be provided against any risk or peril customarily covered by commercial insurance companies authorized to conduct business in the United States).

—Any geographical or other operational limitations.

- An enumeration of exclusions.
- A statement of premium rates, including:

—Any requirement for deposit premiums.

—Payment schedules and related requirements.

—Any procedures for revision of premium rates.

- A description of termination, voidance, and cancellation procedures.

—Termination will occur:

- Upon expiration of the statutory authority to issue insurance.
- Upon expiration of a Presidential determination of foreign policy need for continuation of air services covered by the insurance.
- If there is a change in the status (ownership, registration, operational mission) of aircraft covered.
- After notice of termination or cancellation.
- Upon request of the insured.

—Voidance shall occur in the event of:

- Assignment or transfer of insurance without written consent.
- Concealment, misrepresentation of information, or fraud.

—Cancellation shall occur if:

- Comparable insurance becomes available on reasonable terms and conditions.
- Requested by the insured.
- A statement of general obligations of the insured to:

—Defend itself against loss claims.

—Promptly notify the agency of any event which may result in a claim for compensation.

—Assist the agency in securing all relevent information and evidence concerning loss claims.

—Subrogate to the agency all rights against any other person or entity regarding loss claims.

Discussion

Interested persons were afforded the opportunity to participate in the making of this amendment by Notice 84–15, published on page 35130–35135 of the **Federal Register** of September 6, 1984. Comments were invited for 125 days, ending January 9, 1985. Due consideration has been given to all comments presented in response to this notice.

The FAA received one response to this notice. The commentor had three comments to make.

1. The commentor did not believe that fair market value was an appropriate standard to apply when establishing the maximum limits of hull insurance coverage available under Title XIII. He noted both that the aircraft market is subject to erratic fluctuations and that financiers and lessors of aircraft generally require hull coverage equal to or greater than a stipulated loss value, which may exceed market value at a particular time. Therefore, the commentor suggests that the appropriate standard for the limitation in the amount of insurance coverage would be that it could not exceed that which is currently purchased in the commercial market, and required by lenders and lessors as the case may be. The FAA agrees with the commentor that fluctuation in the market value for aircraft negates its use to establish maximum limits of hull insurance coverage. Therefore, the proposed reference to market value in § 198.7(a) is deleted and the fair and reasonable value of the aircraft will be the maximum limit of hull insurance coverage. Fair and reasonable value is the standard specified in Title XIII and the existing Part 198.

2. The commentor is concerned that the proposed eligibility criteria in § 198.1(b) and the supplementary explanation of these criteria (i.e., domestic segments of operations to or from a foreign point with an intermediate stop in the United States are not eligible for Title XIII insurance coverage) may be a potentially serious deficiency in this program because situations may arise in which the nonavailability of commercial insurance coverage for domestic segments could preclude operations in foreign air commerce which are required to carry out the foreign policy of the United States. The exclusion of domestic

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segments from Title XIII coverage furthers the congressional intent that, to the maximum extent possible, all entities should self-insure for domestic risks and is consistent with the legislative history of the 1977 amendments to Title XIII. Therefore, the FAA has not changed the eligibility criteria in § 198.1 from those in the NPRM.

3. The commentor is concerned that, in circumstances other than Stage III activation of the Civil Reserve Air Fleet (CRAF), Title XIII insurance may not be available on a timely enough basis to preclude gaps in insurance coverage. It is recommended that the problem of potential gaps in coverage possibly could be resolved by provision of immediate nonpremium Title XIII coverage for all CRAF stages in the event of cancellation of commercial insurance and the issuance of binder policies for non-CRAF operations.

The first suggestion raises several policy and practical problems. Title XIII nonpremium insurance coverage is provided at the request of Federal agencies which indemnify the Administrator against losses claimed under the coverage. The requesting agency both assumes the financial risk for loss claims and specifies which operations it desires to be covered by Title XIII insurance. Therefore, provision of Title XIII coverage CRAF Stages, I & II would have to be requested in initiated by the Department of Defense.

Furthermore, the FAA is required by statute to limit the provision of Title XIII insurance to situations in which commercial insurance cannot be obtained on reasonable terms and conditions. Because all commercial war risk insurance policies contain a specific CRAF Stage III Activation exclusion or automatic termination clause, the nonavailability of commercial coverage can be predetermined and administrative provision made for the automatic applicability of Title XIII coverages. The FAA knows of no circumstance involving CRAF Stages I & II operations in which the nonavailability of commercial insurance can be predetermined. Therefore, FAA determinations concerning the availability of commercial insurance for all situations other than those specified in exclusion or automatic termination clauses must be made on a case-by-case basis at the time of application. As a practical matter, the FAA does not believe that failure to provide for automatic extension of Title XIII to CRAF Stages I & II will impair a carrier's ability to respond to Federal Government airlift requirements in emergency situations. Because Title XIII policies already have been issued to carriers for CRAF Stages III operations, these coverages can be extended at the request of the Department of Defense to CRAF Stages I and II operations upon a determination by the FAA of the nonavailability of commercial insurance. The FAA believes that in all conceivable circumstances this process could be completed within 48 hours. In fact, on several occasions during the past 2 years, Title XIII coverage has been provided on this basis for Stage I operations within 48 hours of the FAA's receipt of notice of the need for Title XIII insurance.

Past historical experience does not support the commentor's second conclusion concerning the adequacy of advance notice from commercial insurers and a possible requirement for issuance of binder policies. Binder policies have been available to applicants prior to issuance of this rule. No carrier has applied for binder policies within the last 5 years, and all previously issued policies have expired; i.e., they have fallen into total disuse. The FAA believes this is ample evidence that the carriers perceive no need, at this time, for the FAA to issue binder policies.

Moreover, this rule in no way precludes the issuance of binder policies in the event need is demonstrated for such policies. It merely deletes standardized war risk binder policies together with all other standardized policies from Part 198.

Furthermore, following the 1977 amendment of Title XIII, issuance of binder policies would be contingent upon an initial or recurrent Presidential determination of foreign policy need. The FAA does not believe such need could currently be demonstrated on a continuing basis.

In the final analysis, the issue raised by the commenter is how much advance notice commerical insurers will provide and whether the FAA can provide Title XIII insurance within that time frame. When the potential need for Title XIII premium insurance has arisen during past emergency situations, the FAA has been able to secure all required determinations and complete all administrative measures necessary to issue Title XIII insurance within 48 hours. The FAA believes this response capability has proved fully adequate to meet the needs of air carriers and thereby precludes the need to issue binder policies.

Regulatory Evaluation

As stated in the preamble to this final rule, the FAA will: (1) Consolidate and simplify the regulatory procedures and requirements applicable to the provision of aviation insurance and (2) editorially align these procedures and requirements with changes in the FAA's statutory authority to issue aviation insurance. Because applicants for aviation insurance currently are complying with the statutory requirements for issuance of aviation insurance, the FAA does not contemplate applicants having to incur any additional costs in securing insurance. Rather, the proposed simplification of the regulations may enable applicants to realize a small administrative cost saving. Therefore, the proposed amendment will have no net adverse economic impact on the public and a full regulatory evaluation pursuant to the Department of Transportation Order 2100.5 is not required.

Regulatory Flexibility Determination

This rule will not impose any new requirements on small entities. Because it simplifies the regulatory procedures and requirements for applying for aviation insurance, any applicant, small or large, may realize a small administrative cost saving. Therefore, the FAA has determined that this amendment will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

This rule will not significantly influence international trade involving aviation products or services. This rule implements changes in statutory authority to provide Title XIII aviation insurance. The changes did not change the fundemental policy underlying the administration of Title XIII; i.e., commercal problems should be resolved to the maximum extent possible by commercial entities and the Government should provide aviation insurance only in extraordinary circumstances. Rather, these statutory changes sought only to bring administration of Title XIII into conformity with current insurance practices. FAA believes that the net impact on international trade in aviation services of the regulatory implementation of these changes through this will be insignificant. Therefore, the FAA believes that this amendment will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the United States and will not eliminate existing or create additional barriers to the sale of U.S. aviation

products and services in foreign countries.

Paperwork Reduction Act

Approval for the data collection requirements imposed by Part 198 has been obtained from the Office of Management and Budget. Part 11 is amended by this final rule to include the OMB approval number for those requirements.

Note.—For the reasons set forth previously, the FAA has determined that the revision: (1) Does not involve a major rule under Executive Order 12291, (2) is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11043; February 26, 1979); and (3) does not warrant preparing a full regulatory evaluation as the impact is minimal. For reasons set forth previously, I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

14 CFR Part 11

Rulemaking, Exemptions, Agency information collection.

14 CFR Part 198

Transportation, Air transportation, War risk insurance, Aviation insurance.

Issued in Washington, DC, on December 6, 1985.

Donald D. Engen,

Administrator.

The Amendments

PART 11—[AMENDED]

In consideration of the foregoing, the Federal Aviation Administration amends Part 11 and Part 198 of the Federal Aviation Regulations (14 CFR Part 11 and Part 198) as follows:

1. The authority citation for Part 11 is revised to read as follows:

Authority: 49 U.S.C. 1341(a), 1343(d), 1348, 1354(a), 1401–1405, 1421–1431, 1481, 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

§ 11.101 [Amended]

2. In § 11.101 of Part 11, paragraph (b) is amended to add the following listing:

* * * * *

(b) * * *

Part 198	2120–0514

3. Part 198 is revised to read as follows:

PART 198—AVIATION INSURANCE

Sec.

198.1 Eligibility of aircraft for insurance.
198.3 Basis of insurance.
198.5 Types of insurance coverage available.
198.7 Amount of insurance coverage available.
198.9 Application for insurance.
198.11 Change in status of aircraft.
198.13 Premiun insurance—payment of premiums.
198.15 Nonpremium insurance—payment of registration fees.
Appendix A Form of Application named in § 198.9

Authority: 49 U.S.C. 1531 through 1542; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 49 CFR 1.47(b).

§ 198.1 Eligibility of aircraft for insurance.

An aircraft operation is eligible for insurance if:

(a) The President of the United States has determined that the continuation of that aircraft operation is necessary to carry out the foreign policy of the United States,

(b) The aircraft operation is in foreign air commerce or between two or more points all of which are outside the United States; and

(c) The Administrator finds that commercial insurance against loss or damage arising out of any risk from the aircraft operation cannot be obtained on reasonable terms and conditions from any company authorized to engage in an insurance business in a State of the United States.

§ 198.3 Basis of insurance.

(a) Application for insurance with premium may be made if the eligibility criteria in § 198.1 are met. Premiums charged for insurance shall be based, insofar as practicable, upon consideration of the risk involved.

(b) Applications for insurance without premium may be made if the eligibility criteria in § 198.1 are met and air services are to be performed under contract to a Federal agency which has agreed to indemnify the Administrator, acting for the Secretary of Transportation, against all losses covered by such insurance.

§ 198.5 Types of insurance coverage available.

Application may be made for insurance against loss or damage with respect to the following persons, property, or interests:

(a) Aircraft engaged in operations which are eligible for insurance, as defined in § 198.1;

(b) Any person employed or transported on the aircraft referred to in paragraph (a);

(c) The baggage of persons referred to in paragraph (b);

(d) Cargoes transported or to be transported on the aircraft referred to in paragraph (a);

(e) Any other liability of the aircraft referred to in paragraph (a) or of its owner or operator of the nature customarily covered by insurance.

§ 198.7 Amount of insurance coverage available.

(a) For each aircraft the amount insured may not exceed the amount by which the applicant has otherwise insured or self-insured the aircraft or itself against damage or liability arising from any risk. In the case of hull insurance, the amount insured shall not exceed the fair and reasonable value of the aircraft.

(b) Policies issued without premium may be revised from time to time, by agreement of the Federal Aviation Administrator and the insured and with the approval of the Federal agency on whose behalf contract air services are to be performed, to add aircraft or contracts or to amend amounts of coverage if the insured has changed the amount by which it has otherwise insured or self-insured the aircraft or itself.

§ 198.9 Application for insurance.

(a) Application for premium or nonpremium insurance shall be made in accordance with the applicable form set forth in Appendix A of this part. Application for hull and liability insurance shall be filed on the same form.

(b) Each applicant for insurance with premium under this part also shall submit to the FAA with its application a letter describing in detail the operations in which the aircraft is or will be engaged and stating the type of insurance coverage being sought and the reason it is being sought.

§ 198.11 Change in status of aircraft.

In the event of sale, lease, confiscation, requisition, total loss, or any other change in the status of an aircraft covered by insurance under this part, notice shall be given to the Administrator within 10 working days after the change in status.

§ 198.13 Premium insurance—payment of premiums.

The premium for insurance issued under this part shall be paid within 10 days after receipt, by the insured, of notice that premium payment is due. Premiums shall be sent to the Federal Aviation Administrator by check made payable to the Federal Aviation Administration.

§ 198.15 Nonpremium insurance—payment of registration fees.

(a) The registration fee for each aircraft to be covered by nonpremium insurance shall be $200. The fee shall cover the cost of hull and liability insurance.

(b) An application for nonpremium insurance shall be accomplished by the proper fee, payable by check to the order of the Federal Aviation Administration. Registration fees are not returnable unless applications are rejected.

(c) Requests made after issuance of a nonpremium policy for the addition of aircraft shall be accompanied by the registration fee for each aircraft.

Appendix A—Form of Application Named in § 198.9

UNITED STATES OF AMERICA

Department of Transportation

Federal Aviation Administration

Application for Aviation Insurance

Application is made for aviation insurance, pursuant to Title XIII of the Federal Aviation Act of 1958, as amended, and in accordance with all provisions of law and subject to all limitations thereof, on the aircraft described in the attached "Schedule of Aircraft," with the understanding that this application does not commit the Government to any liability or make the applicant liable for any premium or fees unless insurance is effected by the Federal Aviation Administrator.

Name of Applicant _____
Address _____

Basis of Insurance
( ) Insurance with premium
( ) Insurance without premium:
Contracting Federal Agency _____
Date and Number of Contract _____

Hull

Amounts set forth in the attached "Schedule of Aircraft" as representing the amount of hull insurance desired for each such aircraft shall not exceed the amount in effect on the date of this application, by which the applicant has insured or self-insured that aircraft.

Liability, Exclusive of Cargo

The type and amounts of coverage required for the aircraft described in the attached "Schedule of Aircraft" shall be indicated and the limits of liability for each such coverage shall be specified in the schedule, but such limits shall not exceed the corresponding amounts in effect on the date of this application by which the applicant has insured or self-insured against liability.

Liability of Cargo

Limits of liability desired for each of the aircraft described in the attached "Schedule of Aircraft" shall be specified.

General

Insurance shall attach no earlier than the commercial insurance terminates or at such time as may be specified in the policy.

If application is for insurance with premium, the rate of premium and the amount of any deductible shall be fixed by the Federal Aviation Administrator, acting for the Secretary of Transportation. The registration fee for insurance without premium is $200 per aircraft listed on the "Schedule of Aircraft" and is not returnable unless application is rejected. Registration fees are due upon application or revision of the "Schedule of Aircraft" adding aircraft and are payable by check to the Federal Aviation Administration.

The application shall be accompanied by copies of any commercial insurance policy and any company plan of self-insurance applicable to the aircraft listed in the "Schedule of Aircraft."

The "Schedule of Aircraft" attached to policies without premium may be revised from time to time by agreement of the Federal Aviation Administrator and the insured and with the approval of the Federal agency on whose behalf contract air services are to be performed, to add aircraft or to add contracts.

The application also shall be accompanied by a statement which shall be considered to be incorporated in the application and to form a part thereof, and which shall be signed by the same corporate official who signs the application on behalf of the applicant. The statement shall show that the applicant:

(a) Controls and operates the aircraft listed in the attached "Schedule of Aircraft," and if application is for insurance without premium, has committed such aircraft to the above indicated contract(s);

(b) Is maintaining and has maintained during the 6-month period preceding this application (or since the aircraft was acquired if acquired during the 6-month period) insurance, including demonstrable self-insurance, covering possible injury, loss or damage in amounts which equal or exceed the insurance coverages requested in the application; and

(c) Cannot obtain insurance of the type requested on reasonable terms and conditions from companies authorized to engage in an insurance business in a State of the United States or the District of Columbia, or has partial commercial insurance coverage, but is unable to obtain the additional needed insurance of the type requested on reasonable terms and conditions from such commercial sources;

Verification shall include evidence of premium rate history, the names of the commercial insurance carriers which have been contacted and the premium rates quoted by such carriers which applicant considers not reasonable, and any conditions or limitations which those carriers would impose or have imposed, such as evidence of cancellation or notice of cancellation, which would cause their insurance to be inapplicable to some or all of the operations by aircraft listed in the "Schedule of Aircraft."

If the application is for insurance with respect to a foreign-flag aircraft, it shall be accompanied by the statement setting forth the registration number(s) of the aircraft, the nationality of registration, and the name of the owner or lessee.

The insurance applied for hereunder shall not cover risks to persons or property engaged or transported exclusively in operations between two points in the United States as defined in Section 101(41) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 (41)).

Applicant warrants that the particulars herein are true and complete to the best of his or her knowledge and that no information has been withheld or suppressed.

Applicant agrees that this application, including all attachments hereto and all revisions of the "Schedule of Aircraft" hereinafter accepted by the Government and the terms and conditions of the form of policy prescribed by the Federal Aviation Administrator, acting for the Secretary of Transportation, will constitute the basis of any contract between him or her and the United States of America.

Applicant _____
By _____
(Name and Title)
Date _____

Schedule of Aircraft

HULL INSURANCE

Make, model, and configuration (passenger, cargo, or convertible)	FAA identification No. or equivalent	Amount of hull insurance desired for each aircraft	Amount for which each aircraft is currently insured (including self-insurance)	Loss payee

LIABILITY INSURANCE

(Exclusive of cargo)

Amount requested per occurrence	Amount of insurance (including self-insurance) in effect per occurrence

LIABILITY TO CARGO

Amount requested	Amount of insurance (including self-insurance) in effect per occurrence

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federal register

Monday
December 16, 1985

Part III

Department of Justice

Office of Justice Programs; Bureau of Justice Assistance

28 CFR Part 65

Emergency Federal Law Enforcement Assistance; Final Rule

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DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance

28 CFR Part 65

Emergency Federal Law Enforcement Assistance

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Justice.

ACTION: Final regulations.

SUMMARY: The Bureau of Justice Assistance of the Office of Justice Programs is hereby publishing the regulations to implement the Emergency Federal Law Enforcement Assistance functions vested in the Attorney General by the Justice Assistance Act of 1984 (Pub. L. 98–473). The regulations describe procedures for applying for and administering funds under this Section of the Act.

EFFECTIVE DATE: These regulations are effective on December 16, 1985.

ADDRESS: Mack M. Vines, Director, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531 (202/724–5974). (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: R. John Gregrich, Program Manager, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531 (202/272–6838). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984, Title II, Chapter VI, Pub. L. 98–473, 98 Stat. 1837, Oct. 12, 1984 (the Act), establishes Emergency Federal Law Enforcement Assistance functions, under the direction and authority of the Attorney General, to assist state and/or local units of government in responding to a law enforcement emergency. The Bureau of Justice Assistance of the Office of Justice Programs is publishing the regulations to implement this Section of the Act.

The Bureau published proposed regulations on August 7, 1985 (50 FR 31888) in the **Federal Register** to provide for public comment. A very limited number of comments were received. Respondents taking issue with or raising questions about the regulations, as they were proposed, have been responded to individually. Generally, the comments dealt with issues related to: (1) Coordination with other Federal agencies after natural disasters; (2) adherence to the states' legislative prerogatives; and, (3) ensuring against Federal intervention in matters relating to state or local criminal justice investigative authority. In regard to the latter issue, additional cites from the enabling legislation have been inserted in Subpart B, § 65.11. Other than the referenced additions, the regulations published herein are largely the same as those previously proposed.

This Section of the Act (section 609) is designed to assist jurisdictions experiencing a law enforcement emergency by providing Federal criminal justice assistance to those states and/or localities involved. The term "law enforcement emergency" is defined by the Act as an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which state and local resources are inadequate to protect the lives and property of citizens, or to enforce the criminal law. Equally clear in the Act, and its legislative history, is the firm intention to avoid unnecessary Federal involvement or intervention in matters which are deemed to be primarily of state and local concern. To that end, the Act states that the term "law enforcement emergency" does *not* include needed planning or other activities related to crowd control for general public safety projects, or situations requiring the enforcement of laws associated with scheduled public events, including political conventions and sports events.

Often cited as examples of situations giving rise to law enforcement emergencies compatible with the Act are the Atlanta child murders and the Mount Saint Helens volcanic eruption. Emergencies like these, which are not of an ongoing or chronic nature, would be eligible for assistance.

State and local jurisdictions experiencing significant law enforcement problems should find it helpful to consult with the United States Attorney(s) in the affected District(s). The U.S. Attorney, as Chairman of the Law Enforcement Coordinating Committee (LECC), can bring the problem to the attention of the LECC members, who are representatives of Federal, state, and local criminal justice agencies. Such an approach will allow the LECC members to jointly assess the situation and, possibly, cause LECC member resources to be directed to the problem. Furthermore, should a state or local jurisdiction later decide to submit a request under the Emergency Federal Law Enforcement Assistance Program, the initial involvement with the U.S. Attorney and the LECC should provide focused information regarding the actual extent of the problem, and the resources needed to conduct an effective response.

The Act authorizes the Attorney General to receive written applications for assistance from state chief executives. The information submitted will be reviewed and evaluated by the Attorney General. After consultation with the Federal law enforcement community, including the appropriate U.S. Attorney(s), the Attorney General will approve or disapprove the application within 10 days of receipt.

If the Attorney General approves the application, appropriate Federal law enforcement assistance will be provided. The Act defines "Federal law enforcement assistance" as funds, equipment, training, intelligence information, and personnel.

These regulations do not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more; (b) a major increase in any costs or prices; or, (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Finally, because these regulations will not have significant economic impact on a substantial number of small entities, no analysis of the impact of these regulations on such entities is required by the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 65

Grant Programs—Law, Law enforcement, Emergency assistance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed to amend Title 28 Code of Federal Regulations by adding Part 65 to read as follows:

PART 65—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

Subpart A—Eligible Applicants

Sec.

65.1 General.
65.2 State Government.

Subpart B—Allocation of Funds and Other Assistance

65.10 Fund availability.
65.11 Limitations of fund and other assistance use.
65.12 Other assistance.

Subpart C—Purpose of Emergency Federal Law Enforcement Assistance

65.20 General.
65.21 Purpose of assistance.
65.22 Exclusions.

Subpart D—Application for Assistance

65.30 General.
65.31 Application content.

Subpart E—Submission and Review of Applications

Sec.

65.40 General.
65.41 Review of State applications.

Subpart F—Additional Requirements

65.50 General.
65.51 Recordkeeping.
65.52 Civil Rights.
65.53 Confidentiality of information.

Subpart G—Repayment of Funds

65.60 Repayment of funds.

Subpart H—Definitions

65.70 Definitions.

Authority: The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98-473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 et seq.).

Subpart A—Eligible Applicants

§ 65.1 General.

This subject describes who may apply for emergency Federal law enforcement assistance under the Justice Assistance Act of 1984.

§ 65.2 State Government.

In the event that a law enforcement emergency exists throughout a state or part of a state, a state (on behalf of itself or a local unit of government) may submit an application to the Attorney General, for emergency Federal law enforcement assistance. This aplication is to be submitted by the chief executive officer of the state, in writing, on Standard Form 424, and in accordance with these regulations.

Subpart B—Allocation of Funds and Other Assistance

§ 65.10 Fund availability.

For the previous fiscal year (FY '85), $800,000 was appropriated for emergency Federal law enforcement assistance for the entire country. In FY '86, $1.5 million has been requested. The FY '86 request has not yet been appropriated and is not currently available. The form and extent of assistance provided will be determined by the nature and scope of the emergency presented; but, in any event, no fund award may exceed the amount ultimately appropriated.

§ 65.11 Limitations on fund and other assistance use.

(a) *Land Acquisition—No funds* shall be used for the purpose of land acquisition.

(b) *Non-Supplantation—No funds* shall be used to supplant state or local funds that would otherwise be made available for such purposes.

(c) *Civil Justice—No funds or other assistance* shall be used with respect to civil justice matters except to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters.

(d) *Federal Law Enforcement Personnel—Nothing in the enabling legislation* authorizes the use of Federal law enforcement personnel to investigate violations of criminal law other than violations with respect to which investigation is authorized by other provisions of law. (Section 609O(a), of the Act).

(e) *Direction, Supervision, Control—Nothing in the enabling legislation* shall be construed to authorize the Attorney General or the Federal law enforcement community to exercise any direction, supervision, or control over any police force or other criminal justice agency of an applicant for Federal law enforcement assistance. (Section 609O(b), of the Act).

§ 65.12 Other assistance.

In accordance with the purposes and limitations of this subdivision, members of the Federal law enforcement community may provide needed assistance in the form of equipment, training, intelligence information, and personnel. The application may include requests for assistance of this nature.

Subpart C—Purpose of Emergency Federal Law Enforcement Assistance

§ 65.20 General.

The purpose of the Act is to assist state and/or local units of government which are experiencing law enforcement emergencies to respond to those emergencies through the provision of Federal law enforcement assistance. The authority and responsibility for implementation of this Section is vested in the Attorney General of the United States.

§ 65.21 Purpose of assistance.

The purpose of emergency Federal law enforcement assistance is to provide necessary assistance to (and through) a state government to provide an adequate response to an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which state and local resources are inadequate to protect the lives and property of citizens, or to enforce the criminal law.

§ 65.22 Exclusions.

Excluded from the situations for which this assistance is intended are:

(a) The perceived need for planning or other activities related to crowd control for general public safety projects; and,

(b) A situation requiring the enforcement of laws associated with scheduled public events, including political conventions and sports events.

Subpart D—Application for Assistance

§ 65.30 General.

The Act requires that applications be submitted in writing, by the chief executive officer of a state, on Standard Form 424, in accordance with these regulations.

§ 65.31 Application content.

The Act identifies six factors which the Attorney General will consider in approving or disapproving an application, and includes administrative requirements to ensure appropriate use of Federal assistance. Therefore, each application must be in writing and must include the following:

(a) *Problem*—A description of the nature and extent of the law enforcement emergency, including the specific identification and description of the political and geographical subdivision(s) wherein the emergency exists;

(b) *Cause*—A description of the situation or extraordinary circumstances which produced such emergency;

(c) *Resources*—A description of the state and local criminal justice resources available to address the emergency, and a discussion of why and to what degree they are insufficient;

(d) *Assistance Requested*—A specific statement of the funds, equipment, training, intelligence information, or personnel requested, and a description of their intended use;

(e) *Other Assistance*—The identification of any other assistance the state or appropriate unit of government has received, or could receive, under any provision of the Act; and,

(f) *Other Requirements*—Assurance of compliance with other requirements of the Act, detailed in other parts of these regulations, including: Nonsupplantation; nondiscrimination; confidentiality of information; prohibition against land acquisition; recordkeeping and audit; limitation on civil justice matters.

Subpart E—Submission and Review of Applications

§ 65.40 General.

This subpart describes the process and criteria for the Attorney General's review and approval or disapproval of state applications. The original

application, on Standard Form 424, signed by the chief executive officer of the state should be submitted directly to the Attorney General, U.S. Department of Justice, Washington, DC 20530. One copy of the application should be sent to the Director, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

§ 65.41 Review of State applications.

(a) *Review Criteria*—The Act provides the basis for review and approval or disapproval of state applications. Federal law enforcement assistance may be provided if such assistance is necessary to provide an adequate response to a law enforcement emergency. In determining whether to approve or disapprove an application for assistance under this section, the Attorney General shall consider:

(1) The nature and extent of such emergency throughout a state or in any part of a state;

(2) The situation or extraordinary circumstances which produced such emergency;

(3) The availability of state and local criminal justice resources to resolve the problem;

(4) The cost associated with the increased Federal presence;

(5) The need to avoid unnecessary Federal involvement and intervention in matters primarily of state and local concern; and,

(6) Any assistance which the state or other appropriate unit of government has received, or could receive, under any provision of Title I of the Omnibus Crime Control and Safe Streets Act of 1968.

(b) *Review Process*—(1) The Attorney General shall consult with the Assistant Attorney General, Office of Justice Programs, and the Director, Bureau of Justice Assistance, on requests for grant assistance. (2) All requests for assistance of the Federal law enforcement community (e.g., equipment, training, information, or personnel) shall be reviewed by the Attorney General in consultation with appropriate members of the Federal law enforcement community, including the United States Attorney(s) in the affected District(s). Such requests will be subject to statutory restrictions, including section 609O on Federal agency activities. (3) The Attorney General will approve or disapprove each application, submitted in accordance with these regulations, no later than ten (10) days after receipt.

Subpart F—Additional Requirements

§ 65.50 General.

This subpart sets forth additional requirements under the Justice Assistance Act. Applicants for assistance must assure compliance with each of these requirements.

§ 65.51 Recordkeeping.

(a) The state must assure that it adheres to the recordkeeping requirements enumerated in OMB Circulars, Number A–102 and Number A–128. This requirement extends to participating units of local government, in that they are viewed as the state's subgrantees.

(b) The Attorney General and the Comptroller of the United States shall have access, for the purpose of audit and examination, to any books, documents, and records of recipients of Federal law enforcement assistance provided under this subdivision which, in the opinion of the Attorney General or the Comptroller General, are related to the receipt or use of such assistance.

§ 65.52 Civil Rights.

The Act provides that "no person in any state shall on the grounds of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this title." Recipients of funds under the Act are also subject to the provisions of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G.

§ 65.53 Confidentiality of information.

Section 812 of Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (as amended and implemented by 28 CFR Part 20) shall apply with respect to information, including criminal history information and criminal intelligence systems operating with the support of Federal law enforcement assistance.

Subpart G—Repayment of Funds

§ 65.60 Repayment of funds.

(a) If Federal law enforcement assistance provided under this subdivision is used by the recipient of such assistance in violation of these regulations, or for any purpose other than the purpose for which it is provided, then such recipient shall promptly repay to the Attorney General an amount equal to the value of such assistance.

(b) The Attorney General may bring a civil action in an appropriate United States District Court to recover any amount authorized to be repaid under law.

Subpart H—Definitions

§ 65.70 Definitions.

(a) *Law Enforcement Emergency.* The term "law enforcement emergency" is defined by the Act as an uncommon situation which requires law enforcement, which is or threatens to become of serious or epidemic proportions, and with respect to which state and local resources are inadequate to protect the lives and property of citizens, or to enforce the criminal law. The Act specifically *excludes* the following situations when defining "law enforcement emergency":

(1) The perceived need for planning or other activities related to crowd control for general public safety projects; and,

(2) A situation requiring the enforcement of laws associated with scheduled public events, including political convention and sports events.

(b) *Federal Law Enforcement Assistance.* The term "Federal law enforcement assistance" is defined by the Act to mean funds, equipment, training, intelligence information, and personnel.

(c) *Federal Law Enforcement Community.* The term "Federal law enforcement community" is defined by the Act as the heads of the following departments or agencies:

(1) Federal Bureau of Investigation;

(2) Drug Enforcement Administration;

(3) Criminal Division of the Department of Justice;

(4) Internal Revenue Service;

(5) Customs Service;

(6) Immigration and Naturalization Service;

(7) United States Marshals Service;

(8) National Park Service;

(9) United States Postal Service;

(10) Secret Service;

(11) United States Coast Guard;

(12) Bureau of Alcohol, Tobacco, and Firearms; and,

(13) Other Federal agencies with specific statutory authority to investigate violations of Federal criminal law.

(d) *State.* The term "state" is defined by the Act as any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

Mack M. Vines,

Director, Bureau of Justice Assistance.

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Federal Register

Monday
December 16, 1985

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 994

Egg Marketing Order; Proposed Agreement and Order; Notice of Public Hearing

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 994

[Docket No. MMO–1]

Egg Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on a proposed egg marketing agreement and order.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed egg marketing agreement and order. Proposed provisions were submitted by an all-industry task force. The proposed order would: Authorize regulations to provide for a research and promotion program, including paid advertising; provide for the voluntary removal of laying hens during periods of extreme egg surpluses; and provide for a 21-member national board composed of producers and handlers to administer the order. Funds to administer the order would be obtained from assessments levied on egg handlers. The first-year assessment rate would be set at one-half cent each for the surplus removal program and research and promotion program, on each dozen eggs handled. Subsequent increases, up to a 1-cent maximum rate for each program, would not increase at a rate greater than one-fourth cent per year. The Agricultural Marketing Service, USDA, is proposing several modifications to the proponent's proposal.

DATES: The hearing is scheduled as follows:

1. January 8, 1986—Atlanta (College Park), Georgia
2. January 15, 1986—Little Rock, Arkansas
3. January 29, 1986—San Francisco, California
4. February 5, 1986—Philadelphia, Pennsylvania
5. February 27, 1986—Chicago (Rosemont), Illinois

Each session will begin at 9 a.m. local time. Any of the sessions may be continued beyond 1 day if necessary.

ADDRESSES: The hearing will be held at the following locations:

1. Century Airport Inn/Quality Inn, I–285 Riverdale Road, College Park, Georgia. (1 mile south of Atlanta Airport)
2. Camelot Hotel, Markham and Broadway (downtown), Little Rock, Arkansas
3. Veterans Administration Conference Room, 211 Main Street, San Francisco, California.
4. Customs House, Room 300, 2nd and Chestnut Streets, Philadelphia, Pennsylvania.
5. Holiday Inn O'Hare Kennedy, 5440 N. River Road, Rosemont, Illinois. (2 miles from O'Hare Airport and just south of Kennedy Expressway)

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Poultry Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 382–8132.

SUPPLEMENTARY INFORMATION: The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing formulation of marketing agreements and marketing orders (7 CFR 900.1–900.18).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96–354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the probable regulatory and informational impact of the proposal on small businesses.

An all-industry task force, composed of producers, handlers, and processors, proposed an egg marketing agreement and order. The proposal has not received the approval of the Secretary of Agriculture. The proposed egg marketing agreement and order would provide for a research and promotion program for eggs and related products. Also, a surplus removal program is proposed when it is determined that there is a surplus of commercial eggs. The removal mechanism for this program provides for the removal of laying hens from production. There are no provisions for any inspection, grade, size, or container regulations. A 21-member Egg Marketing Board would be created to coordinate and handle administrative responsibilities. Program costs would be financed by assessments collected from handlers. The marketing agreement and order would be applicable in all 50 states and the District of Columbia.

The Agricultural Marketing Service is also proposing certain modifications of the proposed order provisions, including a provision for a public member and periodic producer referenda.

It is anticipated that the Egg Research and Promotion Order (7 CFR 1250.301–1250.363) authorized by the Egg Research and Consumer Information Act (7 U.S.C. 2701 *et seq.*) would be terminated if the research and promotion provisions of this proposed order are adopted.

The hearing is for the purpose of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed marketing agreement and order and to any appropriate modifications thereof;

(b) Determining whether the handling of eggs produced in the 50 States of the United States, as defined in the order, is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects interstate or foreign commerce;

(c) Determining whether there is need for a marketing agreement and order; and

(d) Determining whether the proposed marketing agreement and order or any appropriate modifications of them will tend to effectuate the declared policy of the Act.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's office. However, arrangements may be made with the reporter at the hearing to purchase copies.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any persons having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Poultry Division, Agricultural Marketing Service

Procedural matters are not subject to the above prohibition and may be discussed at any time.

The provisions of the proposed marketing order follow.

List of Subjects in 7 CFR Part 994

Marketing agreement and order, Eggs.

1. Proposal No. 1 of all-industry task force would add a Part 994 to read as follows:

BEST COPY AVAILABLE

PART 994—EGGS

Subpart—Egg Marketing Order

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994.97 Order with marketing agreement.

Authority: Secs. 1–9, 48 Stat. 31, as amended (7 U.S.C. 601 *et seq.*).

Subpart—Egg Marketing Order

Definitions

§ 994.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture of whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in the Secretary's stead.

§ 994.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 11, 1933), as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–9, 48 Stat. 31, as amended, 7 U.S.C. 601 *et seq.*).

§ 994.3 Egg Marketing Board.

"Egg Marketing Board" or "Board" means the administrative body established pursuant to § 994.35.

§ 994.4 Fiscal period.

"Fiscal period" means the calendar year or such other 12-month period that may be recommended by the Board and approved by the Secretary.

§ 994.5 Marketing period.

"Marketing period" means the period designated by the Egg Marketing Board for which a market projection will be developed pursuant to § 994.60.

§ 994.6 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 994.7 Producer.

"Producer" means any person who is engaged in the production of commercial eggs and owns 10,000 or more laying hens.

§ 994.8 Handle.

"Handle" means to grade, carton, process, purchase or in any manner place eggs or cause eggs to be placed in the current of commerce (except as a common carrier of eggs owned by another). Such term shall not include the washing, packing of cases, or the delivery of a producer's own nest run eggs.

§ 994.9 Handler.

"Handler" means any person who handle eggs.

§ 994.10 Hatching eggs.

"Hatching eggs" means eggs intended for use by hatcheries for the production of baby chicks.

§ 994.11 Hen or laying hen.

"Hen or "laying hen" means a domesticated female chicken 18 weeks of age of older, raised primarily for the production of commercial eggs.

§ 994.12 Commercial eggs or eggs.

"Commercial egg" or "eggs" means eggs from domesticated hens, including egg type breeder hens, which are sold for human consumption either in shell egg form or for further processing into egg products. Eggs from Primary Broiler Breeder hens and/or Broiler Breeder hens shall not be considered "commercial eggs or eggs" pursuant to this section.

§ 994.13 Egg product.

"Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry.

§ 994.14 Spent fowl.

"Spent fowl" means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

§ 994.15 Products of spent fowl.

"Products of spent fowl" means commercial products produced from spent fowl.

§ 994.16 United States.

"United States" means the 50 States of the United States and the District of Columbia.

§ 994.17 Marketing.

"Marketing" means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl in any channel of commerce.

§ 994.18 Promotion.

"Promotion" means any action, including paid advertising, to increase consumption of eggs, egg products, spent fowl, or products of spent fowl.

§ 994.19 Research.

"Research" means any type of research, including nutrition, to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl.

§ 994.20 Consumer education.

"Consumer education" means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

§ 994.21 Eligible organization.

"Eligible organization" means any organization, association, or cooperative which represents egg producers and/or handlers of any egg producing area of the United States certified by the Secretary pursuant to § 994.80.

Egg Marketing Board

§ 994.35 Establishment and membership.

There is hereby established an Egg Marketing Board, hereinafter called the "Board," composed of 21 producer and handler members, and 21 alternates who shall have the same qualifications as the member for whom they are the alternate. Such members and alternates shall be appointed by the Secretary from nominations submitted pursuant to § 994.37.

§ 994.36 Term of office.

The members of the Board, and their alternates, shall serve for terms of 3 years, except initial appointments shall be divided equally for terms of 1, 2, and 3 years. Each member and alternate member shall continue to serve until his/her successor has qualified and is appointed by the Secretary. No member or alternate shall serve for more than two consecutive 3-year terms.

§ 994.37 Nominations.

All nominations authorized under § 994.35 shall be made in the following manner.

(a) Within 30 days of the approval of this order by referendum, nominations shall be submitted to the Secretary for each geographic areas as specified in paragraph (d) of this section by eligible organizations, associations, or cooperatives certified pursuant to § 994.80, or, if the Secretary determines that a substantial number of producers or handlers are not members of, or their interests are not represented by, any such eligible organization, association, or cooperative, then from nominations made by such producers or handlers in the manner authorized by the Secretary;

(b) After the establishment of the initial Board, the nominations for subsequent Board members and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed to the Board;

(c) Where there is more than one eligible organization, association, or cooperative within each geographic area, as defined by the Secretary, they may caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary a nomination for each appointment to be made;

(d) For purpose of nominating members and their alternates to the Board, the 50 States of the United States shall be grouped into 6 geographic areas, as follows: Area 1 (North Atlantic States) consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia; Area 2 (South Atlantic States) consisting of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida; Area 3 (East North Central States) Ohio, Indiana, Illinois, Michigan, and Wisconsin; Area 4 (West North Central States) Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas; Area 5 (South Central States) Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas; and Area 6 (Western States) Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Idaho, Washington, Oregon, California, Hawaii, and Alaska. The number of members of the initial Board, and their alternates, who shall be appointed from each area are: Area 1–3; Area 2–3; Area 3–3; Area 4–2; Area 5–3; and Area 6–4;

(e) At least every 5 years, and not more often than every 3 years, the Board shall review the geographic distribution of egg production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of regions and/or a modification of the numbers of members from regions in order to best reflect the geographic distribution of egg production volume in the United States. The number of members for each region which shall serve on the Board shall be determined by dividing the total volume of eggs produced in the United States for the calendar year previous to the date of review by 18 which provides a factor of volume of eggs per member, and then dividing the total volume of eggs for each region by such factor. In determining the volume of eggs produced in the United States, the Board and the Secretary shall utilize the information received by the Board pursuant to § 994.85 and data published by the Department;

(f) Upon appointment of the initial 18 Board members representing regions described in paragraph (d) above, such Board members shall nominate, and submit to the Secretary for appointment, 3 additional members of the Board representing At Large positions on the Board and 3 alternates for such positions. The terms of the At Large members, and their alternates, shall be consistent with § 994.36; and

(g) The terms of the members of the Board representing At Large positions and their alternates shall expire upon the date of expiration of terms of Board members representing regions described in paragraph (d) above. Following the appointment of the initial Board, nominations for At Large positions and alternates for such positions on the Board shall be submitted to the Secretary by the Board at least 60 days prior to the expiration of the term for the position for which it was submitted.

§ 994.38 Nominee's agreement to serve.

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Actively serve on the Board if appointed;

(b) Disclose any position held with or any ownership interest in any organization that has a contractual relationship with the Board; and

(c) Withdraw from voting on matters where a Board member, or an alternate acting on behalf of a Board member, is an officer or Board member of, or holds an ownership interest in, an organization proposing to contract with the Board. Membership in a nonprofit industry organization shall not require abstention from voting under this paragraph.

§ 994.39 Procedure.

(a) Eleven members of the Board shall be necessary to constitute a quorum and a majority of those present and voting will be required to pass any motion or approve any Board action.

(b) The Board may provide for meetings by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

§ 994.40 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member, or an alternate member, of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or from nominations made by the Board, except that replacement of a Board member, or alternate, with an unexpired term of less than 6 months is not necessary.

§ 994.41 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his/her alternate shall act for him until a successor for such member is appointed and qualified.

§ 994.42 Personal liability.

No member of the Board, or any alternate, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member or alternate in performance of his/her duties, except for acts of willfull misconduct, gross negligence, or those which are criminal in nature.

§ 994.43 Expenses and compensation.

The members of the Board, and their respective alternates when acting as members, shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties under this subpart and shall receive compensation at a rate to be determined by the Board and approved by the Secretary. Whenever specifically authorized or approved by the Board, an alternate member shall be reimbursed for reasonable expenses necessarily incurred by him/her in attending Board meetings and shall receive compensation at the rate provided in this section, notwithstanding that the Board member for whom he serves as alternate also attends such meetings.

§ 994.44 Powers.

The Board shall have the following powers:

(a) To administer this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 994.45 Duties.

It shall be the duty of the Board:

(a) To meet and organize, to select a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board and such minutes, books, and records shall be subject to examination at any time by the Secretary or any authorized agent or representative;

(f) To develop a market projection for ensuing marketing periods for recommendation to the Secretary;

(g) To provide for the bonding of all persons handling Board funds in an amount and with surety thereon satisfactory to the Secretary;

(h) Prior to the beginning of each fiscal period, to submit to the Secretary a budget of projected income and expenses for such fiscal period, together with a report thereon;

(i) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this subpart. A copy of each report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and/or handlers;

(j) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State egg organizations or other organizations or entities for the development and conduct of activities authorized pursuant to this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 994.71. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all its transactions and made periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party.

(k) To disseminate information to producers and handlers or eligible organizations through programs or by direct contact utilizing the public postage system or other system(s);

(l) To develop a marketing policy and, if necessary, surplus removal program(s) pursuant to § 994.64;

(m) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessment pursuant to § 994.71 in obligations of the United States Government or any agency thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government; and

(n) To receive and evaluate, or on its own initiative, develop and budget for plans or projects to promote the use and consumption of eggs, egg products, spent fowl, or products of spent fowl, as well as projects for egg research and nutrition education and to make recommendations to the Secretary regarding such proposals.

Research and Promotion

§ 994.50 Advertising, research, education, and promotion program.

The Board shall develop and submit to the Secretary for approval advertising, research, education, and promotion programs or projects undertaken under the authority of this subpart. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising, sales promotion, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl: *Provided,*

That any such program or project shall be directed towards increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl;

(b) The establishment and carrying on of research including nutrition, marketing, and development projects and studies with respect to the nutritional attributes, sales, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and porducts of spent fowl, and the creation of new products thereof, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved, or made more acceptable, and the data collected by such activities may be disseminated; and

(c) The development and expansion of markets outside the United States and additional uses for eggs, egg products, spent fowl, and products of spent fowl.

No advertising or promotion programs shall use false or unwarranted claims or make any reference to private brand names of eggs, egg products, spent fowl, and products of spent fowl or use unfair or deceptive acts or practices with respect to quality, value, or use of any competing product.

§ 994.51 Allocation of expenditures for research and promotion.

(a) At least 5 percent of the assessments collected pursuant to § 994.71(c)(2), less projected expenses of the Board allocated to funds collected pursuant to § 994.71(c)(2), shall be allocated for research projects involving diet and health issues and/or the dissemination of information relating to diet and health issues.

(b) At least 5 percent of the assessments collected pursuant to § 994.71 (c)(2), less projected expenses of the Board allocated to funds collected pursuant to § 994.71(c)(2), shall be allocated for projects involving new product and new uses research and development and/or marketing of new products.

(c) Fifteen (15) percent of the funds collected pursuant to § 994.71 (c)(2), less the projected expenses of the Board allocated to funds collected pursuant to §994.71(c)(2), shall be allocated to those State or regional egg promotion, research, or nutrition education programs which are qualified pursuant to § 994.52. Funding to qualified promotion, research, or nutrition education programs shall be made on a quarterly basis and shall be proportionate to the amount of assessments collected pursuant to § 994.71(c)(2) from the area in which the qualified promotion, research, and/or nutrition education program operates.

(d) The Board shall establish a procedure to ensure that brown eggs are included in programs for promotion, research, and consumer education at a level which is equal to the percentage for research and promotion funding which is attributable to brown egg handler assessments. The Board may contract with a brown egg producer and/or handler organization or a committee composed of brown egg producers and handlers for the administration of programs for brown eggs.

§ 994.52 Qualified State or regional egg promotion, research, or nutrition education programs.

(a) Any organization which conducts a State or regional egg promotion research or nutrition education program may apply to the Secretary for certification of qualification so that such program may be eligible to receive funding pursuant to § 994.51(c).

(b) In order to be certified by the Secretary as a qualified program, the program must:

(1) Provide for the conduct of activities as defined in § 994.50 that are intended to increase consumption of eggs, egg products, spent fowl, and products of spent fowl generally;

(2) Be financed primarily by producers and/or handlers, either individually or through cooperative associations; and

(3) Not use false or unwarranted claims or make references to private brand or trade names in its advertising and promotion of eggs, egg products, spent fowl, and products of spent fowl; and no funds provided by the Board pursuant to § 994.51(c) shall be utilized to promote eggs by using references to State or regional production.

§ 994.53 Cooperative advertising, promotion, and research.

Nothing in this subpart shall prohibit the Board or qualified State or regional egg promotion, research, or consumer information programs from engaging in cooperative advertising, promotion, or research activities, even though such advertising may utilize a brand or trade name of a product other than eggs, egg products, fowl, or products of spent fowl.

Surplus Removal

§ 994.60 Market projection.

(a) Except as otherwise provided by the Secretary, but no later than 90 days prior to the beginning of the ensuring marketing period, or such earlier date as the Board, with the approval of the Secretary, may establish, the Board shall develop a market projection for the ensuing marketing period. The Board shall consider information provided by industry organizations, the quantity of eggs that should be made available for marketing to meet market requirements and to establish orderly marketing conditions, the prospective imports, and other factors affecting marketing conditions. If these considerations indicate that a surplus condition may exist during the ensuing marketing period, the Board may recommend to the Secretary a marketing policy for such period.

(b) Within the marketing period, the Board shall review its market projection and, if conditions warrant, recommend to the Secretary any appropriate changes in the market projection for that marketing period as may be warranted.

(c) Notice of the market policy recommendations for a marketing period and any later changes shall be submitted promptly to the Secretary and shall be given to producers, handlers, and other interested parties by bulletins, newspapers, or other appropriate media and copies thereof shall be available for examination at the Board office to all interested parties.

§ 994.61 Determining the existence of surplus.

By utilization of information received by the Board pursuant to § 994.60 and § 994.85, through response to invitations for bids or offers pursuant to § 994.62, or in any other manner approved by the Secretary, the Board may determine the existence or non-existence of a surplus of commercial eggs.

§ 994.62 Issuance of invitations.

(a) In order to determine the stability of marketing conditions for eggs and to determine if surplus of eggs exists, the Board shall be authorized to issue invitations to producers for such producers to submit bids or offers for an incentive payment to producers that market laying hens to fowl processing plants in a specified period of time.

(b) For the purposes of this subpart, the term "bid" shall mean written tenders from producers proposing the level of incentive payment necessary for them to remove all or part of their laying hens. The term "offers" shall mean an offer from a producer to remove all or part of the producer's laying hens for receipt of an incentive payment at a level established by the Board and approved by the Secretary.

§ 994.63 Notification of Secretary.

(a) Upon a determination of a surplus of eggs, the Board shall report to the

Secretary regarding the projected quantity of surplus and the supporting evidence for the Board's determination of an existence of a surplus. In addition, the Board shall prepare and recommend to the Secretary a marketing strategy for a surplus program if the Board recommends that such program is necessary to ensure orderly marketing conditions.

(b) If the Board recommends that removal of the surplus is necessary, the marketing strategy developed to remove such surplus shall include, but not be limited to, the following information:

(1) The projected number of laying hens which should be removed; and

(2) The projected total cost of the removal strategy recommended.

§ 994.64 Hen removal.

(a) *Payment.* The Board may accept bids or offers submitted for payment if:

(1) The Board determines that a surplus exists;

(2) The Board recommends that the surplus be removed;

(3) The Board recommends to the Secretary a removal strategy; and

(4) The Secretary approves the removal strategy recommended by the Board.

(b) *Notification.* The Board shall notify successful bidders or offerers of the acceptance of their bids or offers and shall pay such persons upon:

(1) Satisfactory completion of all program requirements; and

(2) Submission of documents which the Board and the Secretary require to administer the program.

(c) *Agreement.* The Board, with the approval of the Secretary, and as a condition of participation in any program implemented pursuant to this section, may require producers to enter into agreements which may include among other terms:

(1) A detailed statement regarding the rights and responsibilities of the producer participating in the program; and

(2) A requirement that the producer make available records, and/or submit reports verifying that laying hens have been marketed.

(d) *Limitation of funds.* Payment to successful bidders or offerers shall be expended only from funds collected pursuant to § 994.71(c)(1).

Expenses and Assessments

§ 994.70 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its establishment, maintenance, and functioning and to enable the Board to exercise its powers and perform its duties. The funds to cover such expenses shall be paid from assessments received pursuant to § 994.71. Following the initial year of operation, the Board is only authorized to incur expenses at a level of which it receives assessments to cover such expenses, with the exception of funds utilized from reserves pursuant to § 994.72.

§ 994.71 Assessments.

(a) Each handler first handling eggs pursuant to regulations issued by the Board and approved by the Secretary, shall pay an assessment to the Board on each dozen eggs handled which are produced by producers as defined in § 994.7 at such times and in such manner as prescribed by the Board.

(b) The first year assessment rate shall be at the rate of 1 cent per dozen of eggs marketed, of which ½ cent shall be allocated for surplus removal pursuant to (c)(1) below, and ½ cent shall be allocated for research, promotion, and consumer information programs pursuant to (c)(2) below. Following the initial year of operation of the Board, the Board, with the approval of the Secretary, may increase or decrease the level of assessments collected, or the percentage of assessments allocated to paragraphs (c)(1) or (c)(2) below; *Provided,* That the assessment rate for assessments allocated to (c)(1) and (c)(2), respectively, shall not increase at a rate greater than ¼ cent per year.

(c) Assessments for the following programs shall be limited to the following maximum rates:

(1) Surplus Removal—1 cent per dozen eggs marketed; and

(2) Research, promotion and consumer information—1 cent per dozen eggs marketed.

The percentage of assessements allocated to (2) above shall be differentiated from the amount of assessments paid pursuant to (1) above. Expenses for administration of this subpart shall be allocated by the Board to the funds allocated to paragraphs (c)(1) and (c)(2) above on a pro rata basis, depending upon the program expense involved.

(d) The Board funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to this subpart.

(e) The Board with the approval of the Secretary may authorize other organizations or agencies to act as the Board's agents to collect assessments in its behalf pursuant to regulations established by the Board and approved by the Secretary.

§ 994.72 Excess funds.

At the end of a marketing period, funds allocated to § 994.71(c) (1) and (2) in excess of the year's expenses for surplus removal and research, promotion, and consumer information, respectively, shall be placed in separate special reserves for those funds, not to exceed limits as the Board, with the approval of the Secretary shall establish. Funds in such separate special reserves shall be available for use by the Board for surplus removal or research, promotion, and consumer information activities, depending upon the funds available, during subsequent marketing periods. If the funds contained in a special reserve exceed the limit placed on the special reserve, the Board, with the approval of the Secretary, shall temporarily suspend collection or adjust the assessment allocations in § 994.71(c) until funds in the special reserve are equal to or below the established limit.

§ 994.73 Accounting of funds upon termination of order.

Any money collected as assessments pursuant to this subpart and remaining unexpended after termination of this subpart shall be distributed in such manner as the Secretary may direct: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

§ 994.74 Late payment charges.

There shall be a late payment charge imposed on any handler who fails to pay his/her assessment within the prescribed time. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, there shall be imposed an additional charge in the form of interest on the outstanding amount. The rate of such charges shall be prescribed by the Board with the approval of the Secretary.

Certification of Organizations

§ 994.80 Certification of organizations.

Any organization may request the Secretary for certification of eligiblity to participate in nominating members and alternate members to the Board to represent the geographic area in which the organization represents egg producers and/or handlers. Such eligibility shall be based, in addition to other available information, upon a certified report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the

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making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership;

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers and/or handlers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced and/or handled by the organization's active membership in such State(s);

(c) The extent to which the commercial egg producer and/or handler membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of this subpart.

The primary consideration in determining the eligibility of an organization shall be whether its membership consists of a substantial number of egg producers and/or handlers who produce and handle a substantial volume of the applicable geographic area's commercial eggs to reasonably warrant its participation in the nomination of members for the Board. The Secretary shall certify any organization which the Secretary finds to be eligible under this section and such determination as to eligibility shall be final.

Miscellaneous Provisions

§ 994.85 Reports and records.

(a) Upon the request of the Board, with the approval of the Secretary, every handler, including handlers who are also egg-type hatchery operators and/or started pullet dealers, shall furnish to the Board in such manner and at such time as may be prescribed, such information as will enable the Board to exercise its responsibilities and duties under this subpart.

(b) Each handler shall establish and maintain for at least 2 succeeding years such records and documents with respect to eggs handled and eggs disposed of by such handler as will substantiate the reports required by this subpart.

(c) For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by handlers, the Secretary and the Board through its duly authorized employees, shall have access to and the authority to examine such records.

(d) All information obtained from the reports, records, and documents required to be maintained under this part shall be kept confidential by all persons, including employees of the Secretary and the Board and all officers and employees of contracting parties, and shall not be available to Board members and alternates or any other handlers, producers, or other interested persons. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which any officer of the United States is a party, and involving this subpart: Except that nothing in the subpart shall be deemed to prohibit that such data and information may be combined, and made available in the form of general reports in which the identities of the individual handlers are not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

§ 994.86 Right of the Secretary.

The members of the Board (including successors and alternates), and any agent or employee appointed or employed by the Board, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval by the Secretary, the disapproved action of the said Board shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 994.87 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except, with respect to acts done under and during the existence of this subpart.

§ 994.88 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 994.89 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof, to any other person, circumstance, or thing, shall not be affected thereby.

§ 994.90 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by the Secretary.

§ 994.91 Termination or suspension.

(a) *Failure to effectuate policy of Act.* The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(b) *Producer referendum.* The Secretary shall terminate in accordance with Section 8C(16)(B) of the Act, the provisions of the subpart at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of eggs: *Provided,* That such majority has during such period, produced for market more than 50 percent of the volume of such eggs produced for market.

(c) *Termination of Act.* The provisions of this subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 994.92 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then functioning members of the Board shall continue as trustees for the purpose of liquidating the affairs of the Board, of all the funds and property then in the possession of or under control of the Board, including claims for any funds unpaid or property not delivered at the time of termination. Action by said trusteeship shall require the concurrence of a majority of said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and shall upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full

title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the Board or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the Board and upon the said trustees.

§ 994.93 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not: (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 994.94 Patents, copyrights, trademarks, inventions, and publications.

(a) Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board.

(b) Funds generated by such patents, copyrights, trademarks, inventions, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

(c) Upon termination of this subpart the Board shall transfer custody of all patents, copyrights, trademarks, inventions, and publications to the Secretary pursuant to the procedure provided for in § 994.92 of this subpart.

§ 994.95 Counterparts.

This agreement may be excuted in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 994.96 Additional parties.

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 994.97 Order with marketing agreement.

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of eggs in the same manner as is provided for in the agreement.

2. Proposal of the USDA, Agricultural Marketing Service.

A. Section 994.35 would read as set forth below:

B. Section 994.37(f) would read as set forth below:

C. A paragraph (e) would be added to 994.64 to read as set forth below; and

D. Paragraph (b) of 994.91 would read as set forth below.

§ 994.35 Establishment and membership.

There is hereby established an Egg Marketing Board, hereinafter called the "Board" composed of 21 members, including producers and handlers and one public member, and 21 alternates who shall have the same qualifications as the member for whom they are alternate. Such producer and handler members and alternates shall be appointed by the Secretary from nominations submitted pursuant to § 994.37 or in any other manner deemed appropriate by the Secretary. The public member and alternate shall be appointed in accordance with § 994.37(f).

§ 994.37 Nominations.

* * * * *

(f) Upon appointment of the initial 18 Board members representing regions described in paragraph (d) above, such Board members shall nominate, and submit to the Secretary for appointment, 2 additional members of the Board representing At Large positions on the Board and 2 alternates for such positions. An additional position shall be filled by a public member. The public member and alternate member shall be selected by the Secretary in his discretion.

§ 994.64 Han removal.

* * * * *

(e) The Board shall establish, with the approval of the Secretary, such rules and regulations as may be necessary for the implementation and operation of a surplus removal program.

§ 994.91 Termination or suspension.

* * * * *

(b) *Producer referendum.* (1) The Secretary shall terminate in accordance with Section 8(c)(16)(B) of the Act, the provisions of this subpart at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of eggs: *Provided,* that such majority has during such period, produced more than 50 percent of the volume of such egg for market.

(2) The Board shall recommend to the Secretary within every 5-year period beginning on the effective date hereof that a referendum be conducted to ascertain whether continuance of this subpart is favored by the producers.

* * * * *

Copies of this notice of hearing may be obtained from: Janice L. Lockard, Poultry Division, AMS, USDA, Washington, DC 20250.

Signed in Washington, DC on December 10, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-29547 Filed 12-11-85; 2:05 pm]

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Part V

Department of Labor

Office of the Secretary

29 CFR Part 20
Debt Collection Act of 1982; Salary Offset; Proposed Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 20

Debt Collection Act of 1982; Salary Offset

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule.

SUMMARY: The Debt Collection Act of 1982 (Pub. L. 97–365), and other applicable authority, authorizes the Federal government to deduct from the current pay account of an employee ("salary offset") when the employee owes money to the United States. This proposed rule establishes the procedures and policies the Department of Labor will follow in making a salary offset.

DATE: Comments, in duplicate, must be received on or before January 30, 1986.

ADDRESS: Send comments to Dennis McDaniel, Office of the Solicitor, Department of Labor, Room N2428, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Dennis McDaniel (202–523–7721).

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97–365) amends the Federal Claims Collection Act of 1966 to authorize the Federal government to employ various debt collection techniques for the collection of debts owed to the United States. Among these techniques are those for deducting from the current pay account of an employee ("salary offset") when the employee owes money to the United States.

This proposed rule establishes the procedures the Department will employ in making a salary offset.

Executive Order 12291

The proposed rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect in the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or foreign markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department believes that the proposed rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposed rule does not, in itself, impose any additional requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been or will be submitted for approval to the Office of Management and Budget (OMB).

List of Subjects in 29 CFR Part 20

Government employees, Loan programs, Claims, Credit, Administrative practice and procedure.

PART 20—[AMENDED]

Accordingly, Part 20 of Title 29 of the Code of Federal Regulations is proposed to be amended as set forth below.

1. The authority for Part 20 is revised to read as follows:

Authority: Pub. L. 97–365, Oct. 25, 1982, 96 Stat. 1749; 31 U.S.C. 3711 *et seq.*: Subpart D is also issued under 5 U.S.C. 5511 *et seq.*

2. Subpart D is added to read as follows:

PART 20—DEBT COLLECTION ACT OF 1982

* * * * *

Subpart D—Salary Offset

Sec.

20.74 Purpose.
20.75 Scope.
20.76 Definitions.
20.77 Agency responsibilities.
20.78 Notifications.
20.79 Examination of records relating to the claim; opportunity for full explanation of the claim.
20.80 Opportunity for repayment.
20.81 Hearing on the obligation.
20.82 Cooperation with other DOL agencies with federal agencies.
20.83 DOL agency as paying agency of the debtor.
20.84 Collections.
20.85 Notice of offset.
20.86 Non-waiver of rights by payments.
20.87 Refunds.
20.88 Additional administrative collection action.
20.89 Prior provision of rights with respect to debt.
20.90 Responsibilities of the Assistant Secretary for Administration and Management.

Subpart D—Salary offset

§ 20.74 Purpose.

The regulations in this subpart establish procedures to implement Section 5 of the Debt Collection Act of 1982 (Pub. L. 97–365), 5 U.S.C. 5514. This statute authorizes the head of each agency to deduct from the current pay account of an employee ("salary offset") when the employee owes money to the United States. This subpart specifies the agency procedures that will be available in a "salary offset" by the Department of Labor of an employee's current pay account.

Administrative offset is defined in 31 U.S.C. 3701(a)(1) as "withholding money payable by the United States Government, to or held by the Government for a person to satisfy a debt the person owes the Government." A salary offset is a form of administrative offset and is separately authorized and governed by 5 U.S.C. 5514. This authority is consistent with and supplemented by administrative offset regulations of subpart B of 29 CFR Part 20.

§ 20.75 Scope.

(a) This subpart applies to debts owed to the United States (arising under Labor Department programs) by Labor Department employees, debts owed to the United States (arising under Labor Department programs) by employees of other federal agencies, and debts owed the United States (arising under programs of other federal agencies) by Labor Department employees. ("Other agency" means an executive agency as defined by section 105 of title 5 of the United States Code (but not including the Labor Department), the U.S. Postal Service, the U.S. Postal Rate Commission, and a military Department as defined by § 102 of title 5 of the United States Code.)

(b) The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g. travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(c) This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584,

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10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, this subpart does not preclude an employee from requesting waiver, if waiver is available under any statutory provisions pertaining to the particular debt being collected.

§ 20.76 Definitions.

(a) "Disposable pay" means that part of current basic pay, special pay,. incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

(b) As used in these regulations, the terms "claim" and "debt" are deemed synonymous and interchangeable. A "debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(c) "Employee" means a current employee of an agency, including a current member of the Armed forces or a Reserve of the Armed Forces (Reserves).

(d) "Paying agency" means the agency employing the individual and authorizing the payment of his or her current pay account.

(e) "Creditor agency" means the agency to which the debt is owed.

(f) "Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(g) "FCCS" means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR 101.1 *et seq.*

(h) "Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 20.77 Agency responsibilities.

(a) Each Department of Labor agency which has delinquent debts owed under its program and administrative activities is responsible for collecting its claims by means of salary offset, in accordance with guidelines established by the Assistant Secretary for Administration and Management.

(b) Before collecting a claim by means of salary offset, the responsible agency should be satisfied that salary offset is feasible, allowable and appropriate, and, as otherwise provided in these regulations, must notify the debtor of the Department's policies for collecting a claim by means of salary offset.

(c) Whether collection by salary offset is feasible is a determination to be made by the creditor agency on a case-by-case basis, in the exercise of sound discretion. Agencies shall consider not only whether salary offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, agencies may give due consideration to the debtor's financial condition, and are not required to use offset of the full or partial amount of the claim in every instance in which there is an available source of funds.

(d) Before advising the debtor that the delinquent debt will be subject to salary offset, the agency head (or designee) responsible for administering the program under which the debt arose shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Labor agencies, or in such other instances as the Assistant Secretary for Administration and Management, or his or her designee, may deem appropriate, the Assistant Secretary, or his or her designee, may determine which agency (or agencies), or official (or officials), shall have responsibility for carrying out the provisions of this subpart.

(e) Agencies may not initiate offset to collect a debt more than 10-years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

§ 20.78 Notifications.

(a) The agency head (or designee) of the creditor Labor Department agency shall send appropriate written demands to the debtor in terms which inform the debtor of the consequences of failure to repay claims. In accordance with guidelines as may be established by the Assistant Secretary for Administration and Management, a total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that a debt to be collected by salary offset will be recovered during the employee's anticipated period of employment with the Government.

(b) In accordance with guidelines as may be established by the Assistant Secretary for Administration and Management, the creditor Labor Department agency shall send (at least 30 days prior to any deduction) written notice to the debtor, informing such debtor as appropriate:

(1) Of the origin, nature and amount of the indebtedness determined by the agency to be due;

(2) Of the intention of the agency to initiate proceedings to collect the debt by means of deduction from the employee's current disposable pay account;

(3) Of the amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) Unless such payments are excused in accordance with the FCCS, of the creditor agency's policy concerning assessment of interest, penalties, and administrative costs;

(5) Of the employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, of the opportunity (under terms agreeable to the creditor agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, be signed by both the employee and the creditor agency, and be documented in the creditor agency's files (4 CFR 102.2(e));

(7) Of the employee's right to a hearing conducted by an administrative law judge of the Department of Labor, if a petition is filed as prescribed by the Department of Labor;

(8) Of the method and time period for petitioning for hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings, unless the creditor agency determines that § 20.81(d) applies and further informs the debtor of the basis for its determination;

(10) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the administrative law judge grants a delay in the proceedings;

(11) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, Part 752 of title 5 Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act sections 3729–3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001 and 1002 of title 18, United States Code or any other applicable statutory authority.

(12) Of any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(c) Credit Labor Department agencies shall also include in their demand letters the notice provisions to debtors required by other regulations of the Labor Department, pertaining to disclosures to credit reporting agencies, administrative offset from other sources of funds, and the assessment of interest, penalties and administrative costs, to the extent inclusion of such is appropriate and practicable.

(d) The responsible agency head (or designee) shall exercise due care to ensure that demand letters are mailed or hand-delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

(e) The creditor Labor Department agency shall, in the initial demand letter to the debtor, provide the name of an agency employee who can provide a full explanation of the claim.

(f) In any internal Labor Department collection, the provisions of § 20.78(a)–(e) need not be applied to any adjustment to pay which is not considered to be the result of collection of a debt, such as excess pay or allowances caused by (1) an employee's election of coverage or a change of coverge under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated in four pay periods or less; or (2) ministerial adjustments in pay rates or allowances which cannot be placed into effect immediately because of normal processing delays, if the amount to be recovered was accumulated in four pay periods or less.

§ 20.79 Examination of records relating to the claim; opportunity for full explanation of the claim.

Following receipt of the notice specified in 20.78(b), the debtor may request to examine and copy agency records pertaining to the debt.

§ 20.80 Opportunity for repayment.

(a) The creditor Labor Department agency shall afford the debtor the opportunity to (1) repay the debt or (2) enter into a repayment plan which is agreeable to the agency head (or designee) and is in a written form signed by such debtor and the creditor agency. The head of the agency (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

(b) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, an agency should effect an offset unless the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience, or the agency otherwise determines that offset would be contrary to sound judgment.

§ 20.81 Hearing on the obligation.

(a) The debtor shall have the opportunity to obtain a hearing by an administrative law judge of the agency's detemination concerning the existence or amount of the debt, or the repayment schedule proposed by the agency, and except as provided in § 20.75(c), review by an administrative law judge is to be the exclusive administrative review remedy on the agency's determination under these regulations.

(b) The debtor seeking a hearing shall make the request in writing to the Chief Administrative Law Judge, pursuant to 29 CFR Part 18, not more than 15 days from the date the notice of proposed salary offset was received by the debtor. The request for hearing shall be signed by the employee and state the basis for challenging the determination. If the debtor alleges that the agency's information relating to the debt is not accurate, timely, relevant or complete, such debtor shall fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes supports his or her position.

(c) The hearing ordinarily shall be based on written submissions and documentation by the debtors. However, an opportunity for an oral hearing shall be provided an individual debtor when the administrative law judge determines that (1) an applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or (2) an individual debtor requests reconsideration of the debt and the administrative law judge determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity; or (3) in other situations in which the administrative law judge deems an oral hearing appropriate. Unless otherwise required by law or these regulations, any oral hearing under this section shall be conducted under the procedures in 29 CFR Part 18. Except as provided under § 20.79, the provisions for discovery shall not be applicable unless otherwise ordered by the administrative law judge. Procedural and evidentiary rules shall be relaxed by the administrative law judge to provide informality and to facilitate the hearing.

(d) Agencies may effect a salary offset against the current pay account of a debtor prior to the completion of the hearing procedures required by this subpart, if failure to initate the offset would substantially prejudice the agency's ability to collect the debt; for example, if the employee's anticipated period of employment with the Government would not reasonably permit the completion of the hearing and recovery of the debt prior to termination of employment. Offset prior to completion of the hearing must be promptly followed by the completion of that hearing.

(e) If the debtor seeking a hearing under this section makes the request for

review of the obligation after the expiration of the period for filing as described in paragraph (b) of this section, the administrative law judge may accept the request for hearing if the debtor can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it).

(f) Upon completion of the hearing, the administrative law judge shall transmit to the debtor a written decision. This decision shall state, at a minimum: the facts purported to evidence the nature and origin of the alleged debt; the administrative law judge's findings and conclusions, as to the employee's and/or creditor agency's grounds; the amount and validity of the alleged debt; and, where applicable, the repayment schedule. If appropriate, the notification shall also indicate any changes in the information to the extent such information differs from that provided, in the notification under § 20.78(b).

§ 20.82 Cooperation with other DOL and Federal agencies.

(a) Appropriate use should be made of the cooperative efforts of other DOL and Federal agencies in effecting collection by salary offsest. Generally, paying agencies should comply with requests from other agencies to initiate salary offset to collect debts owed to theUnited States, unless the creditor agency has not complied with applicable regulations or the request would otherwise be contrary to law.

(b) Unless otherwise prohibited by law, a DOL agency may request that the current pay account of a debtor in another DOL or Federal agency be administratively offset in order to collect debts owed the creditor DOL agency by the debtor. In requesting a salary offset, the creditor DOL agency must provide the paying DOL agency or other paying Federal agency with written certification stating (1) that the debtor owes the creditor agency a debt (including the basis and amount of the debt); (2) the date on which payment was due; (3) the date on which the Government's right to collect the debt first accrued; and (4) where the paying agency is another federal agency, that the creditor agency's regulations under 5 U.S.C. 5514 have been approved by the Office of Personnel Management, and that the creditor agency has followed such regulations to the best of its information and belief.

§ 20.83 DOL agency as paying agency of the debtor.

Whenever a salary offset is sought by another DOL or Federal agency from a paying DOL agency, the paying DOL agency should not initiate the requested offset until it has been provided by the creditor organization with an appropriate written certification as described in §20.82(b). Where the creditor agency is not another DOL agency, the creditor agency must certify that its regulations under 5 U.S.C. 5514 have been approved by the Office of Personnel Management and that it, the creditor agency, has followed such regulations to the best of its information and belief. When the creditor agency is not also the paying DOL agency, the creditor agency should also be required to certify that if an administrative or judicial order is issued directing the paying DOL agency to pay a debtor an amount previously paid to the creditor agency, the creditor agency will reimburse the paying DOL agency or pay the debtor directly within 15 days of the date of the order.

§ 20.84 Collections.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs should be collected in full in one lump sum. This is true whether the debt is being collected by salary offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments. Ordinarily, the size of installment deduction must bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. Installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be except as provided in § 20.84 (c) and (d). Where a DOL agency is the paying agency, salary offset will ordinarily begin with the salary payment made to the employee for the first pay period following expiration of the 30 day notice period described in § 20.78(b), or if a hearing is pending under § 20.81, the first full pay period following the date of the administrative law judge's written decision.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, agencies should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

(c) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, under 5 U.S.C. 5514, salary offset shall be from subsequent payments of any nature (e.g., final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt.

(d) If the debt cannot be liquidated by salary offset from any final payment due the former employee as of the date of separation, under 5 U.S.C. 5514, administrative offset shall be from later payments of any kind due the former employee from the United States.

§ 20.85 Notice of offset.

Prior to effecting a salary offset, the paying DOL agency should advise the debtor of the impending offset. This notice should state that the debtor has been provided his/her rights under 5 U.S.C. 5514, that a determination has been made that collection by salary offset would be in the best interests of the United States, the amount of the offset, the date the salary offset will begin, and that the source of funds shall be from current disposable pay, except as provided by (c) and (d) of § 20.84. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken to obtain a current address.

§ 20.86 Non-waiver of rights by payments.

An employee's involuntary payment, of all or any portion of a debt being collected under 5 U.S.C. 5514, shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary.

§ 20.87 Refunds.

(a) Agencies shall promptly refund to the appropriate party amounts paid or deducted under this subpart when—

(1) a debt is waived or is otherwise not owing to the United States (unless refund is expressly prohibited by statute or regulation); or

(2) the employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 20.88 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the utilization of any other administrative remedy which may be available.

§ 20.89 Prior provision of rights with respect to debt.

To the extent that the rights of the debtor in relation to the same debt has been previously provided by the creditor agency under some other statutory or regulatory authority, the creditor agency is not required to duplicate those efforts before taking salary offset.

§ 20.90 Responsibilities of the Assistant Secretary for Administration and Management.

The Assistant Secretary for Administration and Management, or his or her designee, shall provide appropriate and binding written or other guidance to Department of Labor agencies and officials in carrying out this subpart, including the issuance of guidelines and instructions, which he or she may deem appropriate. The Assistant Secretary shall also take such administrative steps as may be appropriate to carry out the purposes and ensure the effective implementation of this regulation.

Signed at Washington, DC, this 5th day of December 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85-29587 Filed 12-13-85; 8:45 am]

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Monday
December 16, 1985

Part VI

Environmental Protection Agency

Ocean Dumping Permit Program; Notice

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2934-4]

Ocean Dumping Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of application and tentative determination to issue a research permit for the incineration of chemical wastes at sea, and announcement of public hearings to receive comments on this determination.

SUMMARY: The U.S. Environmental Protection Agency has made a tentative determination to issue a research permit to Chemical Waste Management, Inc. (CWM), Oak Brook, Illinois, for the *Vulcanus II* (the Applicant), to transport and incinerate materials as authorized by the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (MPRSA or the Act). Eligible materials for the proposed permit are fuel oils containing between 10 and 30 percent polychlorinated biphenyls (PCBs). Incineration activities would be conducted at the proposed North Atlantic Incineration Site.

The proposed research permit, HQ 85–001, would be effective for a six-month period and would authorize the Applicant to participate in research activities that have been designated by the Agency. The activities to be conducted are detailed in the "Working Document of the Proposed Incineration-At-Sea Research Burn Implementation Plan" and outlined later in this notice (see Support Document E). The maximum amount of material that would be incinerated under the proposed research permit is 708,958 U.S. gallons.

Solicitation of Public Comments: The purpose of this notice is to provide all interested parties an opportunity to comment on the Agency's tentative determination to issue this permit.

DATES: Written public comments on this notice should be submitted by January 31, 1986.

ADDRESSES: Comments should be sent to: David P. Redford, Permit Manager, Marine Permits and Monitoring Branch, Marine Operations Division, Office of Marine and Estuarine Protection (WH–556M), Environmental Protection Agency, Washington, DC 20460.

Support documents used in making the tentative determination to issue this permit are available for examination by the public. They include:

A. Proposed Ocean Incineration Regulation, 50 FR 8222 et seq., February 28, 1985.

B. Draft permit for Chemical Waste Management, Inc., for the disposal of wastes by incineration at sea, including Contingency Plan.

C. Draft Work/Quality Assurance Project Plan for Incineration-at-Sea Research Plan: Study Area 1, Level 2: Land-Based Testing, October 23, 1985.

D. Application for a research permit from Chemical Waste Management, Inc.

E. Working Document of the Proposed Incineration-at-Sea Research Burn Implementation Plan for the Office of Water Incineration-at-Sea Research Strategy dated September 1985.

F. Final Environmental Impact Statement for the North Atlantic Incineration Site Designation, EPA, 1981.

G. Incineration-At-Sea Research Strategy, February 19, 1985.

H. Report of the Incineration of Liquid Hazardous Wastes by the Environmental Effects, Transport, and Fate Committee, Science Advisory Board, April 1985.

I. Assessment of Incineration as a Treatment Method for Liquid Organic Hazardous Wastes: Summary and Conclusions, Office of Policy, Planning and Evaluation, March 1985.

J. Correspondence between EPA and National Oceanic and Atmospheric Administration regarding endangered species.

K. Memorandum from the Director of the Office of Toxic Substances concurring with the draft research permits.

L. Environmental Insurance Coverage for Ocean Incineration Vessels, August 15, 1985.

M. Draft Special Endorsement—Incineration Vessels; Evidence of Financial Responsibility for Incineration-at-Sea Research Permit.

They may be examined at the following locations during normal business hours:

Environmental Protection Agency Library, Room 2904 Mall, 401 M Street SW., Washington, DC 20460, Attention: Ms. Gloris Butler, Phone (202) 382–5926

EPA Region II Library, 26 Federal Plaza, New York, New York

EPA Region II Library, GSA Raritan Depot, Woodbridge Avenue, Edison, New Jersey

New Jersey State Library, West State Street, Trenton, New Jersey

Monmouth County Library, Eastern Branch, Highway 35, Shrewsbury, New Jersey

EPA Region III Library, 5th Floor, 841 Chestnut Street, Philadelphia, Pennsylvania

State Library of Pennsylvania, Government Publications Section, Room 219 Forum Building, Walnut Street and Commonwealth Avenue, Harrisburg, Pennsylvania

Delaware Department of Natural Resources and Environmental Control, Information and Education Center, 89 Kings Highway, Dover, Delaware

The Wilmington Institute Library, 10th and Market Streets, Wilimington, Delaware

EPA Central Regional Library, 839 Bestgate Road, Annapolis, Maryland

Maryland Department of Natural Resources, Public Affairs Information Library, Tawes State Office Building C–1, 580 Taylor Avenue, Annapolis, Maryland

Ocean City Branch, Worcester County Library, 200–14th Street, Ocean City, Maryland

Public hearings will be held on the dates and at the locations and times specified below.

1. January 13, 1986—Port of History Museum Theater, Penns Landing, Walnut Street and Delaware Avenue, Philadelphia, Pennsylvania.

2. January 16, 1986—Count Basie Theater, 99 Monmouth Street, Red Bank, Monmouth County, New Jersey.

3. January 21, 1986—Ballroom, Radisson Wilmington Hotel, 700 King Street, Wilmington, Delaware.

4. January 23, 1986—Compass Ballroom, Sheraton Hotel, 10100 Ocean Highway, Ocean City, Maryland.

For the Philadelphia and Wilmington hearings, registration will begin at 1:00 p.m. A 10-minute staff presentation will open the hearings at 2:00 p.m. EPA will accept public comments until 5:00 p.m. The evening session will begin at 7:00 p.m. and is scheduled to end at 10:00 p.m.

For the Maryland and New Jersey hearings, registration will begin at 8:00 a.m. A 10-minute staff presentation will open the day's hearings at 9:00 a.m. EPA will accept public comments until 5:00 p.m. with a break for lunch. The evening session will begin at 7:00 p.m. and is scheduled to end at 10:00 p.m.

For each of the hearings, anyone wishing to make a statement must register at the hearing. Speakers will be heard in the order in which they have registered. Remarks should be summarized in five minutes or less. Speakers are encouraged to submit written statements for the record.

FOR FURTHER INFORMATION CONTACT: David P. Redford, Permit Manager, (202) 755–9231.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 23, 1984, EPA decided to defer issuance of operational

incineration-at-sea permits pending further study of the issue and promulgation of regulations for incineration at sea.

In July 1984, an Agency scientific working group met to prepare a draft strategy for gathering information that would address the technical questions raised and to discuss the possible environmental effects of incineration at sea. This draft strategy was made available to the public and was the focus of a public meeting held in Washington, D.C., on November 13, 1984. Comments received on the draft strategy were the focus of another Agency work group meeting on December 19, 1984. A final Research Strategy was issued on February 19, 1985 (Support Document G). EPA also developed and proposed extensive regulations for ocean incineration on February 28, 1985 (50 FR 8222 et seq.) (Support Document A). EPA is currently evaluating comments on the proposal.

The Research Strategy addresses the technical and operational issues related to ocean incineration, as well as areas of uncertainty and research needs identified by EPA's Science Advisory Board, scientists, and members of the public. The activities proposed for inclusion in this research permit are based on the Research Strategy and have been discussed in detail within EPA and with members of the Science Advisory Board.

The Agency's Research Strategy is based upon a commonly used risk assessment procedure that compares the effects of an effluent (in this case, the incinerator's emissions) at various concentrations with the exposure concentration reasonably expected to actually occur in the environment. For incineration at sea, the biological responses to be investigated include reproduction, growth, and other health-related changes in aquatic species.

To determine the effect of various exposure concentrations of emissions on aquatic organisms, the Agency has designed and built a sampling system that draws emissions out of an incinerator and absorbs the emissions into seawater. This seawater, with different concentrations of emissions, will then be used in bioassays with aquatic organisms to determine if any effects can be noted at the different concentrations.

The bioassay tests that the Agency intends to use include juvenile fish survival, growth, and pathology; mysid (a shrimp-like organism) survival, growth, and reproduction; sea urchin fertilization; red algae growth and reproduction; and Dinophilus (a marine worm) survival and reproduction. These tests are standard bioassay procedures that are often used on land. Some of these short-term chronic tests require daily replacement of the bioassay water for a total of seven days.

Two tests have been conducted on the sampling and bioassay system to develop testing methods and standard operating procedures for use at sea. The first test was designed to determine the collection efficiency of the seawater in the sampler for trapping organic material. Several organic substances were spiked into the system with hydrochloric acid (which would be present in a real incinerator) and absorbed in the seawater. The sampling system effectively collected the substances and showed it could produce reliable results.

The second test was designed to test the combined sampling and bioassay system. The test was conducted using a fuel oil burner in Columbus, Ohio, as the source of emissions in June 1985 (no hazardous waste was burned). This burner supplied temperature conditions similar to those produced during the incineration of wastes at sea (1200 degrees C). Daily samples were collected from the burner for seven consecutive days for use in the bioassay tests. The results of this test indicated that the combined sampling and bioassay system could be operated effectively and that fuel oil emissions alone do not affect bioassay organisms.

The Agency plans to run a seven-day test in January 1986 at a land-based hazardous waste incinerator. This test is designed to refine the methods and standard operating procedures that were developed from the fuel oil burn and that will be used at sea. Draft standard operating procedures are described in Support Document C. The Agency has built a mobile toxicology laboratory for use during this land-based test and for at-sea tests.

The proposed research burn is scheduled to last 19 days, and only one of the vessel's incinerators will be turned on. This should allow enough time to conduct the various tests that are needed to determine the composition, transport and effects of emissions that are identified in the Agency's Research Strategy. The tests include velocity and combustion efficiency traverses; sampling for semi-volatile trace organics (including PCB destruction efficiency), volatile organics, particulates, total organic halogens, and to determine the toxicity of emissions. During this period, the Agency will also conduct two sets of seven-day aquatic bioassay tests in the mobile laboratory on the incineration vessel. The following table outlines the sampling schedule.

Sample purpose	Number of samples	Sampling days
Determine flow characteristics and combustion efficiency across stack.	3 T	1–2.
Determine trace organics	6 T 6 S	5–11.
Determine particulate loading	4 T 4 S	3–4 and, 12–13.
Determine volatile organics	3 S	14–16.
Determine total organic halogen content.	6 S	14–19.
Determine toxicity of emissions	14 S	3–19.

T=Traverse (40 sampling points).
S=Single point (point of lowest combustion efficiency).

In addition, the plume resulting from the incineration process will be sampled and modeled; and samples of air, water, and biota will be collected in the plume and control areas for determination of the levels of incineration-related substances. EPA has drafted a working document that describes these activities in detail (Support Document E).

Plume-related and control area sampling and analysis will provide information describing the possible levels of emissions in the environment. These levels will be compared to the results of the toxicology tests to determine how observed and modeled environmental levels of the emissions compare to the levels necessary to cause biological responses.

The waste materials proposed for the land-based test and the at-sea tests are polychlorinated biphenyls (PCBs). PCBs have been selected as the waste material due to the abundance of toxicology data available on these substances which can be compared to the results of the on-board toxicology tests. A PCB waste is also the most appropriate waste for these tests because it can be obtained with relatively low levels of other compounds which could complicate the interpretation of the toxicology results and the chemical analysis of the waste and emissions.

The application for a research permit was submitted to EPA by Chemical Waste Management, Inc., on May 24, 1985. The Agency has determined that the activities associated with this proposed permit have been found to satisfy the requirements of applicable statutes and regulations and the London Dumping Convention (LDC).

A separate application has been received from At-Sea Incineration, Inc., (ASI) for a research permit for the *Apollo I*. The application is being reviewed separately due to the uncertain status of the corporation. Until the Agency can verify that ASI is capable of meeting the conditions set forth in the permit and that ASI can certify they are able to achieve the goals

of the research program, EPA will hold the permit application in abeyance.

Section 2 of Pub. L. 96-572 [33 U.S.C. 1412a(b)] authorizes the issuance of research permits if the Administrator determines:

(1) [T]hat the proposed dumping [incineration] is necessary . . . to determine whether the dumping [incineration] of such substance will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

The Agency has developed a sampling system and methodology for conducting toxicity tests on incinerator emissions. This procedure has been tested on land and will be ready to test on an incinerator at sea. Land-based testing will not provide the necessary information on potential endangerment or degradation needed to properly evaluate incineration at sea. This proposed research permit is necessary to conduct the tests at sea, thereby providing the essential information.

(2) [T]hat the scale of the proposed dumping is such that the dumping will have minimal adverse impact upon the human health, welfare, and amenities, and the marine environment, ecological systems, or economic potentialities.

A total of 708,958 gallons of PCB-containing waste is proposed for this permit. As explained herein, due to the extremely small amount of waste expected to actually enter the environment, the amount of waste to be incinerated will not produce emissions that adversely impact human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(3) [A]fter consultation with the Secretary of Commerce, that the potential benefits of such research will outweigh any such adverse impact.

Since the proposed research is not expected to result in any adverse impact and the intended data and information cannot be obtained by other means, EPA believes the benefits outweigh any potential adverse impacts. EPA has consulted with the National Oceanic and Atmospheric Administration, Department of Commerce, on the selection of the proposed research site (Support Document J). This public notice has been sent to the Secretary of Commerce for consideration.

The Agency is making a tentative determination to issue the permit based on the finding that the proposed incineration activities will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems or economic potentialities; will provide needed scientific information; and meet the requirements of PL 96-572, the MPRSA, and the LDC. The proposed permit is consistent with applicable criteria in the Ocean Dumping Regulations (40 CFR Parts 220-228) and all applicable regulations and guidelines of the LDC. With respect to the incineration of PCBs, the proposed permit is consistent with the regulations in 40 CFR 761.70(a) and (b) implementing provisions of the Toxic Substances Control Act (TSCA) on incinerating liquid PCBs. In addition, as a matter of Agency policy, the proposed permit is consistent with the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), regulations on land-based incinerator facilities in 40 CFR Part 264, Subpart O.

II. Summary of Major Provisions of Proposed Permit and Rationale for the Provisions Selected

This section organizes the key permit conditions under major topic categories. Under each category the key conditions of the proposed permit are summarized, followed by a brief explanation of the rationale supporting the Agency's decision to select these conditions.

Authorized Vessel

HQ 85-001: *Vulcanus II.*

Duration of the Permit

The duration of the proposed permit is six months as required by 33 U.S.C. 1412a(b). However, the permit will authorize only one burn.

Eligible Wastes and Quantities To Be Incinerated

Eligible wastes for HQ 85-001 are liquid PCB wastes consisting of between 10 and 30 percent polychlorinated biphenyls and between 90 and 70 percent fuel oil. Ten percent is the lowest amount where an acceptable destruction efficiency can be calculated and 30 percent is the approximate upper limit of PCBs which yield a high BTU content in the waste. EPA is limiting the waste to PCBs to the extent possible.

The maximum quantity of PCB wastes to be incinerated is 708,958 U.S. gallons. The amount of wastes was determined by EPA using the approximate BTU content of PCB wastes, the incinerator capacity, and the duration of the proposed research.

The approximate rated capacity of each incinerator on the *Vulcanus II* is 177 million BTU per hour. Assuming the waste contains 13,900 BTU per pound as stated in the CWM permit application, an average weight of 8.6 pounds per gallon (density of 1.03 as stated in the CWM application) and a 19-day research burn duration using only one incinerator, the amount of waste needed for this research on the *Vulcanus II* is: 177 million BTU/hr divided by 13,900 BTU/lb = 12,734 lbs/hr. 12,734 lbs/hr × 19 days × 24 hours/day = 5,806,704 lbs. 5,806,704 lbs divided by 8.6 lbs/gallon = 675,198 gallons.

Thus, the approximate amount of waste needed for the *Vulcanus II* to burn in one incinerator for 19 days is 675,198 gallons. Because the actual density and heat content of the final waste load may vary by up to 5 percent, the *maximum* amount of waste proposed for the *Vulcanus II* is 5 percent greater than 675,198 gallons, or 708,958 U.S. gallons (85 percent of capacity). The actual volume to be incinerated will be specified in the final permit when the actual waste composition is known. The waste volumes above do not include any auxiliary fuel which may be used.

Prohibitions and Limitations on Contents/Materials To Be Incinerated

HQ 85-001 prohibits:

—PCBs in concentrations exceeding 30 percent or less than 10 percent.
—Concentrations of chlorobenzenes in excess of 10 percent of the waste by volume.
—Concentrations of any halogenated organic substances (besides PCBs and chlorobenzenes) in excess of three percent of the waste by weight.
—Quantifiable concentrations of PCTs (polychlorinated terphenyls).
—Over 2 parts per million (ppm) of DDT and its associated compounds (DDD and DDE) or BHC (lindane).
—Concentrations of 2,3,7,8-TCDD (dioxin) in excess of detectable levels.
—Over 500 ppm of arsenic, cadmium, chromium, lead, nickel, selenium, thallium, zinc.
—Over 9 ppm of mercury.
—Over 21.3 ppm silver.
—Over 350 ppm copper.
—Materials which are produced or used for radiological, chemical or biological warfare, radioactive wastes, or materials which cannot be identified or which are persistent and may float or remain in suspension.

Rationale

As explained previously, it is EPA's intent that PCB wastes with as little interference or contamination as possible from other substances be used for the proposed research. However, EPA recognizes that PCB wastes can contain chlorobenzenes in amounts up to one-third the amount of PCBs. Therefore, up to 10 percent

chlorobenzenes by volume are allowed in the waste. EPA also recognizes that the 70–90 percent of the non-PCB waste mixture will not be entirely pure. Therefore, the Agency is proposing specific limitations on certain additional substances to ensure that the amounts of these substances will be minimal. This will minimize interference and ensure that the presence of other substances will not create any potential for adverse impact to human health or the environment.

When issuing ocean incineration permits, the Agency must also abide by the regulations of the LDC. Regulation 4 of the LDC ocean incineration regulations requires pilot scale tests to be undertaken when doubt exists as to the thermal destructibility of a waste proposed for incineration. Technical guideline 5.1.2 lists five substances for which pilot scale tests are required: polychlorinated biphenyls (the substance with which this proposed research is to be conducted), polychlorinated terphenyls (PCTs), tetrachloro-dibenzo-p-dioxin (TCDD or dioxin), benzene hexachloride (BHC or lindane), and dichlorodiphenyl trichloroethane (DDT) and its derivatives. The Agency has data confirming the thermal destructibility of PCBs, TCDD, BHC and DDT but has no data confirming the thermal destructibility of PCTs; therefore, under the proposed research permit, PCTs are prohibited in the waste to be incinerated in a "quantifiable concentration." This will ensure that any PCT residues entering the marine environment after incineration are rapidly rendered harmless or present as trace contaminants as required by LDC technical guideline 5.2.2.

A quantifiable chemical concentration is defined as the minimum concentration of a discrete constituent in a chemical waste mixture that can be detected, identified and quantified without confirmatory analysis. The amount of this concentration will vary depending on the chemical constituent, possible interferences of other constituents in the chemical waste, and testing methods. Quantifiable concentrations for most organochlorine substances are most likely to be 1–2 ppm.

Because the Agency has data verifying the ability of incinerators to destroy DDT and its associated compounds (DDD and DDE), BHC, and TCDD, the proposed permit would restrict the concentration of DDT and its associated compounds (DDD and DDE) and BHC to the range of the most likely quantifiable concentrations (approximately 2 ppm). The proposed permit would restrict the concentration of 2,3,7,8-TCDD to a nondetectable level. As described in Support Document E, the analytical techniques for conducting the 2,3,7,8-TCDD analysis will be high resolution gas chromatography and either low or high resolution mass spectrometry. High resolution mass spectrometry will be used as a confirmatory analytical technique. By using these techniques, a detection limit in the range of one to ten parts per billion is expected. These levels are not expected to cause interference with the proposed research, and any emissions will be rapidly rendered harmless as required by the LDC due to the small quantities allowed in the waste and the required PCB destruction efficiency of 99.9999 percent.

Limits are placed on the above-listed metals to ensure that the surviving metallic particulates will not cause the applicable marine water quality criteria or the limiting permissible concentrations defined in 40 CFR 227.27 to be exceeded, and also to preclude interference from metals in the emissions toxicology tests.

A model was developed for EPA for use in prior proposed permits to determine the maximum concentration of metals which could be included in a waste mixture and still satisfy the environmental criteria of 40 CFR Part 227. The model used a combination of a mixing zone model and a plume dispersion model to calculate the maximum concentrations of metals in the stack gases and initial waste mixture so that the marine water quality criteria for the metals would not be exceeded. A summary of the model may be found in Appendix A of the February 28, 1985, Proposed Ocean Incineration Regulation, 50 FR 8222 et seq. (Support Document A).

Other than silver, which the model indicated should not exceed 21.3 ppm in the waste mixture, mercury, which should not exceed 9 ppm, and copper, which should not exceed 350 ppm, metals could be in higher concentrations than the 500 ppm requirement included in the proposed permit and still would not exceed the marine water quality criteria for each of the metals. In order to limit the amount of metals in the waste used for this research to the lowest levels, EPA has kept the limits of 21.3 ppm for silver, 9 ppm for mercury, and 350 ppm for copper. All of the other heavy metals listed cannot exceed 500 ppm individually. By limiting the amounts of heavy metals in the waste, EPA is confident that these amounts will not affect the research and that any toxicity observed in the concentrated emissions will be attributed to the organic content and not to trace metals.

High-level radioactive wastes; materials which are produced or used for radiological, chemical or biological warfare; materials which cannot be identified; or which are persistent, inert, synthetic, or which may float or remain in suspension are prohibited by the Act and Section 227.5 of the Ocean Dumping Regulations.

Before low-level radioactive wastes can be disposed in the ocean, the applicant and the administrator of EPA must comply with the requirements of 33 U.S.C. 1414(i)(1)–(i)(4)(A) and Congress must authorize by resolution a permit for the disposal of low-level radioactive wastes in accordance with 33 U.S.C. 1414(i)(4)(B). Because these requirements have not been met, low-level radioactive wastes are prohibited in this permit.

Auxiliary fuels must meet the specifications for used oil burned for energy recovery in 40 CFR Part 266 Subpart E (50 FR 49164, November 29, 1985). This requirement will ensure that everything burned in the incinerator besides the PCB waste material itself would satisfy land-based requirements for safety burning oil in a burner without an emission control device.

Analysis of Wastes Required Before Incineration Cruise

The Ocean Dumping Regulations at 40 CFR 227.5(c) prohibit the dumping of wastes which are insufficiently described to determine their impact on the environment. EPA is requiring the Applicant to supply information on the chemical constituents in the waste mixture (organics and metals) and a description of the waste's heat content, percent moisture, percent ash and solids, specific gravity, viscosity, radioactivity, percent halogen, percent nitrogen, and percent sulfur before loading the vessel. This level of detail is sufficient to determine if the wastes meet the permit conditions. The Applicant is to submit the analysis of the wastes to EPA before the wastes are loaded onto the vessel.

EPA will take duplicate samples and sample splits and submit them for analysis to verify the analytical results obtained by the Applicant on the original samples. Also, EPA may analyze the wastes from dockside storage or the vessel's storage tanks to ensure that new wastes have not been added or other wastes substituted from the time the wastes were transported to the vessel.

The Applicant is to report the name of the person(s) or firm(s) producing the

waste and whether any of the wastes to be incinerated are from hazardous waste sites which are subject to a court, state, or EPA cleanup order. This information will assist EPA and the states in verifying the location and final disposition of such wastes and may assist EPA's determination as to whether the wastes meet the permit conditions.

Permit Manager's Authorization for Loading/Incineration

The Permit Manager is the official who will make decisions on all aspects of the permit and who is ultimately responsible for ensuring that incineration operations are carried out safely and efficiently. The person designated as the Permit Manager is: David P. Redford, Marine Permits and Monitoring Branch, Marine Operations Division, Office of Marine and Estuarine Protection (WH-556M), Office of Water, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The Permit Manager will serve as the EPA Project Officer for all emissions sampling and chemical analysis contracts which the Applicant accepts as part of this research. All reports and data from these contractors shall be sent to the Permit Manager at the same time as they are sent to the Applicant.

The analytical results of waste and auxiliary fuel analyses will be submitted by the Applicant's contract laboratories to the Permit Manager to ensure that the wastes do not contain any prohibited materials. The Permit Manager will verify that the analytical results obtained from the duplicate samples are in agreement with the analytical results submitted by the Applicant for the original samples. If the Permit Manager is convinced that the wastes meet the specifications of the permit, he will authorize the loading of the vessel. Loading of the vessel may begin only with written authorization, and this written authorization must remain on board the vessel at all times.

The authorization for loading is, for all practical purposes, an authorization for incineration. However, should the analysis of any sample taken by EPA from the vessel's tanks, dockside storage tanks or from the blending/holding tanks demonstrate the presence of compounds that were not in, or were in concentrations greater than that indicated in, the original analysis of the Applicant's samples from the blending/holding tanks, the Permit Manager shall terminate the incinceration if the newly discovered compounds or the concentrations of these compounds are not eligible for incineration.

Port of Departure—Port of Philadelphia, Pennsylvania

Section 223.1[a][3] states that the permit shall include a port through or from which the wastes will be transported. The proposed permit lists the Port of Philadelphia, Pennsylvania, as the loading port.

Transportation of Wastes Through Coastal Waters

The U.S. Coast Guard Captain of the Port monitors the loading of the vessel and sets requirements for the passage of the vessel to the incineration research site. Prior to loading the vessel, the results of the waste analyses will be provided to the Captain of the Port to assist him in fulfilling his responsibilities, and a test of the Contingency Plan will be conducted to determine if the Plan functions properly.

During transit from the point of loading toward the incineration site, restrictions will be placed upon the incineration vessel. These include daylight transit only above Ship John Shoal light, a tug escort above the Delaware Memorial Bridge, two-mile minimum visibility, and a U.S. Coast Guard escort enforcing a mowing safety zone around the vessel above the Delaware Memorial Bridge. These restrictions are proposed to ensure safe transport of the vessel. A U.S. Coast Guard shiprider will be on board during all or part of the transit of the vessel to and from the incineration site.

Incineration Research Site

As provided in 40 CFR 228.4(d), sites used for research permits can be specified as a permit condition rather than designated through a prior rulemaking procedure. For the purpose of this proposed research permit, the incineration activities would be conducted at the proposed North Atlantic Incinceration Site, the center of which is located 140 nautical miles (nml) east of Delaware Bay.

Use of this site for a research permit does not constitute approval for any other incineration activities unless explicitly approved under separate regulatory or permit processes.

Section 228.4(d) of the Ocean Dumping Regulations states that sites designated for research as part of a permit will be determined by the nature of the proposed study. EPA has evaluated the site according to the criteria of the Ocean Dumping Regulations (Part 228) and the requirements of the LDC and has determined that it is suitable for the purpose of the proposed research.

The coordinates of the proposed North Atlantic Incineration Site are:

Latitude	Longitude
38°00'N.	71°58'W.
38°00'N.	72°30'W.
38°40'N.	71°50'W.
38°40'N.	72°30'W.

As part of the rulemaking effort to designate the site (47 FR 51768) an Environmental Impact Statement (EIS) was prepared for the site (Support Document F). Based on public comments, an assessment of the impact of incineration on endangered species was also prepared (Support Document J). These documents describe the suitability of the site for incineration purposes.

Operating Parameters

In EPA's judgment, the operating conditions specified will ensure that the incinerator attains and maintains a combustion efficiency of at least 99.95 plus or minus 0.05 percent and a resultant destruction efficiency of at least 99.9999 percent.

Minimum and/or maximum, as appropriate, operating conditions are based on EPA's accumulated data and best engineering judgment that optimum combustion and destruction will occur if the established operating conditions exist. Minimum operating conditions are given for temperature and oxygen, and a maximum for carbon monoxide, because these are the three key parameters that assure complete combustion of the chemical wastes.

If the temperature or oxygen level falls below the specified minimums (1100 degrees C and 3 percent, respectively) or carbon monoxide rises above the specific maximum of 100 ppm, automatic devices shut off the flow of the waste to the incinerator within four seconds.

The Agency believes that by maintaining the required oxygen, carbon monoxide, carbon dioxide, temperature and dwell time, the incinerators on the vessel are capable of maintaining a destruction efficiency greater than 99.9999 percent for PCBs.

Under conditions similar to those required in the proposed research permit, the *Vulcanus II* has been tested for its combustion efficiency and destruction efficiency for five compounds. The resulting combustion efficiencies averaged 99.99 percent, which is above that required for this proposed permit, and its destruction efficiencies for the five substances tested indicated that compounds with heats of combustion similar to PCBs

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should be destroyed at better than 99.9999 percent.

Based upon this data and the fact that the proposed research permit will require that adequate combustion efficiency be maintained as well as the oxygen, carbon monoxide, carbon dioxide, and temperature restrictions, the Agency believes that the vessel should attain PCB destruction efficiencies greater than 99.9999 percent.

Automatic Waste Feed Shut-off Devices

Automatic waste feed shut-off devices stop the flow of the wastes to the incinerator whenever the flame goes out or the minimum temperature, minimum level of oxygen in the combustion gases, maximum level of carbon monoxide, or maximum waste feed rate to the incinerator are reached. These parameters were selected because temperature, oxygen, and carbon monoxide are the key parameters in determining the operating efficiency of the incinerators. In addition, whenever the devices monitoring temperature, air flow, oxygen, carbon monoxide, carbon dioxide and waste feed flow and/or auxiliary fuel (if used) fail, the automatic waste feed shut-off devices are activated. Continuous monitoring and recording of these parameters are required in order to calculate combustion efficiency and dwell time and to assure overall incinerator performance and safety to shipboard personnel.

Monitoring and Recording Requirements

Automatic, tamper-proof devices are to continuously monitor and record once every three minutes temperature, air flow, oxygen, carbon monoxide, carbon dioxide, and waste feed and/or auxiliary fuel (if used).

At least hourly recordings of time, date, wind speed and direction, and vessel position, course, and speed are to be made.

All the above monitoring data are to be submitted to the Permit Manager for evaluation of compliance with the operating conditions and monitoring requirements of the permit.

All raw data resulting from the activities of this permit shall be available for public inspection at the office of the Permit Manager.

In EPA's judgment, the readings for temperature, air flow, oxygen, carbon dioxide and waste feed and/or auxiliary fuel (if used), together with other vessel operating information listed above, are needed to verify that the operating conditions have been met, that the incineration took place at the designated site, and that there were no direct discharges of wastes into the water.

Instrument Calibration

Instrument calibrations are necessary to assure that the measuring devices are giving true readings.

Calibration of the instruments measuring temperature, air flow, draft (relative pressure) in the combustion chambers, oxygen, carbon monoxide, carbon dioxide, waste feed flow and auxiliary fuel (if used) is to be performed before the vessel leaves port and in accordance with manufacturers' recommendations, or more frequently if conditions warrant. A permanent record is to be made of each calibration.

Other Requirements

- The air pressure in the incinerator room shall be greater than that inside the incinerator in order to protect shipboard personnel by preventing fugitive emissions from the incinerator.
- Every four hours, on appropriate radio frequencies, the vessel shall transmit its location, course, and speed, and warn other vessels not to pass closer than three nautical miles astern in order to keep other vessels aware of its movements and restrictive operations.
- No black smoke or extension of the flame is to be above the plane of the stack. These occurrences indicate incomplete combustion and are prohibited by the London Dumping Convention's Incineration Regulations.
- Ammonia and sulfurhexafluoride are to be added to the plume as necessary to make it visible and detectable for plume modeling.

This will also assure that other ships will be aware of and avoid the incineration research operations.

- Pump room bilge water shall be incinerated at sea or, on return to port, either incinerated in EPA-approved land-based facilities or treated in accordance with applicable EPA regulations. In no case are these waters to be discharged directly to the ocean or into the harbor.

This provision ensures that all possible measures will be taken to protect the environment.

- Vessel and incinerator certificates are required as a condition of the permit.

The permit specifies that a valid Letter of Certification for *Vulcanus II* under Pub. L. 97–389 and other permits as required be on board the vessel and prominently displayed on the bridge as required by the London Dumping Convention and U.S. laws and treaties. These certificates indicate that the vessel and the incinerators have met the international and U.S. requirements necessary for the safe operation of the vessel and that all reasonable safety precautions have been taken.

- The Applicant must comply with all applicable Federal or state requirements for hazardous waste generation, collection, storage, transportation, reporting, labeling and disposal, whether or not they are specifically mentioned in the permit. Particularly pertinent are the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and section 6(e) of the Toxic Substances Control Act. The Assistant Administrator for Pesticides and Toxic Substances or his designated representative must give written approval of the incinerator before any incineration of wastes containing PCBs may take place. Support Document K contains this written approval.
- As part of EPA's research program, the Applicant will conduct all waste and emission sampling and chemical analyses as described in Appendix A of the permit (which is also Support Document E). Aliquots of all samples analyzed will be archived for EPA. The Permit Manager may, however, based upon the results of early tests, choose to modify sampling activities to ensure that valid results are obtained.

Verification of Permit Conditions

EPA is requiring that a shiprider be on board the vessel during the incineration cruise to provide 24-hour-per-day coverage of all activities. The shiprider will be an EPA employee. A Principal Shiprider, an EPA employee appointed by the Permit Manager, has the authority to terminate a burn if, in the Shiprider's opinion, any term of the permit is not being met or harm to human health or welfare or the environment is occurring or is about to occur.

An EPA shiprider is included as a condition of the permit to provide full and continuous observation of incineration activities because the nature of incineration activities at sea precludes unannounced spot checks. Automatic tamperproof monitoring devices will also be operating.

Contingency Plan

The Contingency Plan describes the safety equipment and procedures of the vessel, and the notice, communication network and action that would be implemented by the Applicant should an accident or other emregency occur. The vessel is classified as a Type II chemical ship which means that, to be certified by the International Maritime Organization and the U.S. Coast Guard, there must be significant degree of cargo containment

capability. The vessel has double hulls and double bottoms, and the wastes are stored in several independent compartments in the interior of the vessel; thus, there is little likelihood that a collision would cause the loss of the entire cargo of stored wastes. In addition, the safety equipment and its placement on board the vessel is governed by the Safety of Life at Sea Convention (SOLAS). The Contingency Plan in the application also covers responses to potential incidents including spills, collisions, fires, explosions, groundings, etc. EPA believes a Contingency Plan is essential to respond rapidly to emergencies and to minimize environmental and human health consequences of any emergency.

In addition to reporting requirements specified under other statutes or regulations, the proposed permit requires a full written report of any incident and any activities carried out under the Contingency Plan within ten working days after the termination of the burn in which the incident occurs. However, if jettisoning the cargo due to life-threatening incidents is contemplated or is carried out, immediate verbal notification of the U.S. Coast Guard and the Permit Manager is required.

In addition to the safety precautions built into the vessel and the procedures included in their Contingency Plans the U.S. Coast Guard issues a Notice to Mariners warning other ships of the vessel's operations. A U.S. Coast Guard Shiprider will be present during all or part of the transit to and from the incineration site. Also, the Captain of the Port, Philadelphia, must be notified 24 hours before sailing; the vessel is precluded from sailing if there are any conditions, as identified by the Captain of the Port, which would interfere with the safe passage of the vessel to the incineration site or research activities. The Contingency Plan will be tested prior to loading the vessel to ensure that the plan works. This test will involve a hypothetical spill scenario where all the emergency notification and clean-up contracts will be called, and their ability to mobilize will be evaluated by the Permit Manager and the U.S. Coast Guard. Any changes to the Contingency Plan shall be completed to the satisfaction of the Captain of the Port, Philadelphia, prior to the first loading of the vessel.

Evidence of Financial Responsibility

The proposed permit includes the provision that the applicant must establish and maintain evidence of financial responsibility to cover the cost of cleanup and damage claims from unanticipated releases during the term of the permit (six months). The amount of financial responsibility must be at least $60 million and may be established through one or more of the following: insurance, qualification as a self-insurer, guarantee, surety bond or letter of credit.

Amount of Financial Responsibility

The Agency is proposing that the applicant demonstrate financial responsibility in the amount of $60 million based on a number of considerations, designed to ensure that adequate financial resources would be available from the applicant to cover cleanup and damage claims in the event of an unanticipated release of the hazardous wastes to be incinerated. The MPRSA does not include explicit provisions related to financial responsibility. However, the Agency believes that the broad purposes of the MPRSA and the rulemaking authority provided to the Administrator under the statute, as well as traditional acceptance of the imposition of appropriate financial responsibility requirements upon permittees for activities presenting potential risk to the public health and welfare, provide strong support for imposing a requirement that permittees maintain evidence of financial responsibility.

In developing these proposed requirements, EPA has looked to other statutes including the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., which establish liability and/or financial responsibility requirements. RCRA authorizes the Agency to require a demonstration of financial responsibility as may be necessary and desirable. Section 3004, 42 U.S.C. 6924. CERCLA provides that the operator of a facility (which would include a land-based incinerator) is liable for the total costs of cleanup in addition to $50 million for natural resources damages. Section 107(a), 42 U.S.C. 9607(a). While the potential liability for a vessel under CERCLA is limited to $300 per gross ton or $5 million, whichever is greater [section 107(c), 42 U.S.C. 9607(c)], the Agency believes that it may be appropriate to consider a vessel, when conducting incinerator operations, more analogous to a land-based incinerator than a transport vessel for purposes of determining potential financial responsibility. Therefore, the Agency is proposing to require a demonstration of financial responsibility of at least $60 million to cover $50 million for natural resource damage claims and a projected maximum cost of cleanup of $10 million. The $10 million cleanup cost is based on an estimate contained in a recent study prepared for the EPA Office of Policy, Planning and Evaluation. "Environmental Insurance Coverage for Ocean Incineration Vessels" (August 15, 1985). (Support Document L.) The study estimated the maximum total cost for cleanup of materials that float on the surface or wash up on beaches from a spill in Mobile Bay) and at an offshore burn site. The study estimated the cost of cleanup in the bay incident (which would be relevant to Delaware Bay to approach $10 million, while the burn site cleanup costs would be approximately $3 million. The Agency chose the larger estimate of $10 million.

It is also worth noting that pending legislative amendments to CERCLA would confirm that vessels when conducting incineration operations were subject to the same liability provisions as land-based facilities and may authorize the Agency to require demonstrations of financial responsibility in excess of $5 million. the Agency believes that these amendments will be enacted prior to the issuance of the research permit.

The Agency's proposal is consistent with its proposed ocean incineration regulations (50 FR 8222, February 28, 1985). In the proposed regulations, the Agency requested public comment on a requirement that any permittee have a level of liability insurance between $50 million and $500 million. During this proposed single research burn, the Agency believes $60 million would provide substantial coverage for responding to any cleanup and damage claims that may result from an unanticipated release.

While the Agency continues to believe that the MPRSA authorizes it to require a demonstration of financial responsibility of at least $60 million, the Agency recognizes that questions have been raised regarding the Agency's authority to require any amount above $5 million. A 1985 report by the Congressional Research Service entitled "Authority of EPA to Impose Financial Responsibility Requirement as Condition for Ocean Incineration Permits" concluded that the MPRSA does not authorize the Agency to require evidence of financial responsibility in excess of amounts authorized for vessels in CERCLA (i.e., $5 million). This position was echoed in comments on the proposed ocean incineration regulations. The permit applicant, Chemical Waste Management, Inc., also has taken the position that EPA has no authority under the MPRSA to require evidence of

financial responsibility in excess of the amounts authorized by CERCLA, and that the appropriate CERCLA amounts are those applicable to vessels, i.e., $300 per gross ton or $5 million.

The Agency solicits public comment on the appropriateness of its proposed level of financial responsibility for this research permit. The Agency is also considering whether a level in the range of $5 million would be more appropriate given the current CERCLA liability for vessels. Such a level more closely reflects the current levels of financial responsibility required by existing RCRA regulations. Regulations under RCRA currently require land-based incinerators to demonstrate financial responsibility of at least $2 million for claims resulting from "sudden and accidental" releases. 40 CFR 264.147.

Several commenters on the proposed ocean incineration regulations indicated that commercial liability insurance in any amount approaching $60 million was not available. The inability of the applicant to obtain insurance for $60 million is potentially a problem, a given the current state of the environmental insurance market. To assist in alleviating this potential problem, the Agency is proposing to allow alternative mechanisms to demonstrate financial responsibility.

Mechanisms for Establishing Assurance of Financial Responsibility

The proposed permit authorizes the permittee to demonstrate financial responsibility through one or more of five mechanisms: insurance, qualification as a self-insurer, guarantee, surety bond or letter of credit. Depending on the mechanism selected by the permittee, special provisions will apply with respect to each mechanism.

The first mechanism is *insurance*. In the proposed ocean incineration regulations, EPA proposed that permittees provide evidence of financial responsibility through use of liability insurance. That same mechanism is available for the applicant of this research permit. The applicant in fact has submitted insurance policies covering activities under the proposed permit. The policies are included with the permit application (Support Document D). The policies include a hull policy in the amount of $13.75 million, a limited war risk policy attached as a clause to the hull policy, a P&I policy of $350 million and a special policy to cover claims arising out of the use of *Vulcanus II* as an incinerator vessel in the amount of $10 million.

If the applicant chooses to use insurance as the mechanism for demonstrating financial responsibility, the policies will have to include a special endorsement which the Agency has developed (Support Document M). The special endorsement would amend any insurance agreement to clarify the obligations of the insured and insurer with respect to potential liabilities that may arise under the research permit. With these special provisions, EPA believes that insurance would provide a suitable mechanism for demonstrating financial responsibility.

While the proposed ocean incineration regulations would require that a demonstration of financial responsibility be made through insurance, EPA has decided to allow the permittee to make such a demonstration through alternative mechanisms. CERCLA [section 109(a), 42 U.S.C. 9608(a)] and RCRA, as amended, [section 3004(t), 42 U.S.C. 6924(t)] allow for the demonstration of financial responsibility through the alternative means which EPA is proposing to be available to the permittee for the research permit. EPA believes it is appropriate to allow such alternative mechanisms.

Therefore, the second mechanism is *qualification as a self-insurer*. This is a test of financial soundness. The current RCRA financial responsibility regulations include a financial test for establishing financial assurances for closure and post-closure care and for demonstrating financial responsibility to cover claims resulting from sudden and accidental releases. [See 40 CFR 264.143(f), 264.145(f), 264.147 (a)(2) and (f).] The Agency has determined that the financial test under § 264.147(f) provides the appropriate requirements for adequately assessing the financial soundness of a permit applicant. If the applicant chooses to demonstrate financial responsibility by qualifying as a self-insurer, the Agency will apply test provisions similar to those in § 264.147(f). For example, the Agency would use the same multipliers contained in the RCRA test [i.e., net working capital and tangible net worth each at least six times the amount of liability coverage (in this case the amount would be $360 million), see § 264.147(f)(1)(i)(A)]. The financial test will work so that the applicant who passes it will have the financial capability to cover potential liabilities arising during operation under the permit.

A closely related third mechanism is the *guarantee* or *corporate guarantee*. Under this mechanism, the applicant could meet financial responsibility requirements by obtaining a guarantee from another entity that met the financial test requirements. The object is to allow a qualified parent corporation to provide evidence of financial responsibility for a subsidiary. At this time, the Agency would restrict the guarantee to this use. The parent-guarantor would be required to meet the same requirements as the applicant-subsidiary using the financial test. In effect, the parent-guarantor "stands in the shoes" of the applicant as far as demonstrating financial responsibility. This mechanism currently is authorized under the RCRA financial responsibility regulations. 40 CFR 264.143(f) and 264.145(f).

The last two mechanisms are the *surety bond* and *letter of credit*. Also authorized under the RCRA regulations [40 CFR 264.143 (c), (d) and 264.145 (c), (d)], these mechanisms generally rely on commitments by outside financial institutions to perform or pay for specified obligations of the applicant. The Agency does not anticipate that either of these mechanisms will be used by the applicant for the research permit. However, if the applicant chooses either, the Agency would rely on existing RCRA regulatory requirements to develop appropriate provisions for such a mechanism.

Modifications to or Revocation of the Permit

The permit may be modified or revoked for:

- The violation of any provision of the permit, including any misrepresentation, inaccuracy, or failure to disclose all relevant facts in the permit application.
- A change in any condition or fact upon which the permit is based.
- Failure to meet the permit conditions.

Penalties

The following penalties are provided in the Marine Protection, Research, and Sanctuaries Act:

- Civil penalty of up to $50,000 per violation per day.
- Criminal penalty of up to $50,000 per violation per day and/or one year in prison.

Permit Issued by the Assistant Administrator for Water

The Administrator delegated the authority to issue at-sea incineration permits to the Assistant Administrator for Water on September 18, 1983.

III. Findings

Introduction

According to 33 U.S.C. 1412a(b), research permits for dumping (incineration) of industrial waste may be

issued if the Administrator makes the determinations specified in that section. Pursuant to section 1412a(b), the Agency has determined that the proposed dumping will have minimal adverse impact upon human health, welfare and amenities, and the marine environment, ecological systems, and economic potentialities; and that the potential benefits of such research outweigh any adverse impacts.

As discussed above in Part I, the Agency has made these determinations with respect to the proposed research permit. The factors for reviewing and evaluating ocean dumping permit applications and for making the determination to issue the permits are set forth in section 102 of the MPRSA (33 U.S.C. 1412). The specific criteria for evaluating permit applications are set forth in the Ocean Dumping Regulations, 40 CFR Parts 220–228. EPA has not yet promulgated specific criteria for incineration-at-sea activities. However, a regulation containing such criteria was proposed on February 28, 1985 (50 FR 8222 et seq.), and a final regulation is being prepared. Until such criteria are promulgated, the Agency will evaluate research permit applications under the current regulations. Although it is not required, the draft permit meets the applicable criteria proposed by the Agency in the February 28, 1985, ocean incineration regulation. In making these evaluations, the Agency will also apply the standards and criteria binding on the United States under the London Dumping Convention to the extent that application of such criteria does not relax the requirements of the Act.

As part of its tentative determination to issue the research permit, EPA also examined:

- The regulations in 40 CFR 761.70(a) implementing TSCA (15 U.S.C. 2601, Pub. L. 94–466, Oct. 11, 1976), because the research proposes the incineration of PCBs;
- The regulations in 40 CFR 264.340–264.351 implementing the requirements for land-based incinerators under the Solid Waste Disposal Act, as amended by RCRA (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6927), because it is Agency policy to have incineration-at-sea permits at least equivalent to land-based incinerator permits, unless there is a specific reason which renders the land-based requirements unnecessary for incineration at sea.
- The guidance of the U.S. Coast Guard on the adequacy of the Contingency Plan in implementing procedures to protect the environment, if accidents or life-threatening incidents should occur in the harbor or at sea.

A summary of each provision in the above regulations and the guidance of the U.S. Coast Guard is provided below.

Compliance With the Ocean Dumping Regulations

(a) *Section 220.3(e)—Research Permits and § 220.3(f)—Permits for Incineration at Sea.* Section 220.3(e) states that, in general, research permits may be issued when it is determined that the scientific merit of the proposed project outweighs the potential environmental or other damage that may result from the dumping (incineration).

EPA has concluded that the research to be conducted under this proposed permit is necessary to: (1) Address areas of concern raised by various groups; (2) verify methodologies used in the past; and (3) provide information for the management of a future permitting program. EPA has further concluded that potential damage from incineration activities is minimal given the limited scope of these activities, and is outweighed by the scientific merit of the project.

Section 220.3(f) states, among other things, that permits for incineration of wastes at sea will be issued only as research permits (except for certain limited conditions) until specific ocean incineration criteria are promulgated. While ocean incineration criteria have been proposed, they are not final. Therefore, ocean incineration permit applications will be evaluated using those established for research permits.

(b) *Section 221—Applications for Ocean Dumping Permits.* Section 221 outlines several provisions that must be contained in permit applications. The Applicant has met these requirements.

(c) *Section 223.1—Contents of Permits.* Section 223.1 lists several terms and conditions that must be included in permits. The draft permit contains all of the listed items except for § 223.1(a)(4), "A description of relevant physical and chemical properities of the material to be dumped [incinerated]." As set forth in the draft permit, a complete physical and chemical analysis of the waste will be presented to EPA before the Permit Manager authorizes the loading of a vessel.

(d) *Section 224—Records of Permittees.* Section 224 contains record-keeping and reporting requirements that the applicant must meet. These requirements are included in the draft permit.

(e) *Section 227—Criteria for the Review and Evaluation of Ocean Dumping Permit Applications.* The criteria that are used in reviewing and evaluating ocean dumping permits, as required by section 102 of the MPRSA, are set forth in 40 CFR Part 227.

(1) *Subpart A—General.* Subpart A of Part 227 states that:

(a) If the applicant satisfactorily demonstrates that the material proposed for ocean dumping satisfies the environmental impact criteria set forth in Subpart B, a permit for ocean dumping will be issued unless:

(1) There is no need for the dumping, and alternative means of disposal are available, as determined in accordance with the criteria set forth in Subpart C; or

(2) There are unacceptable adverse effects on esthetic, recreational or economic values as determined in accordance with the criteria set forth in Subpart D; or

(3) There are unacceptable adverse effects on other uses of the ocean as determined in accordance with the criteria set forth in Subpart E.

In applying the criteria for incineration-at-sea permits, EPA evaluated the *emissions* resulting from the incineration of mixed liquid chemical wastes as the materials to be disposed of by ocean dumping. The emissions may include hydrochloric acid, carbon dioxide, carbon monoxide, water vapor, and trace amounts of metallic oxides, silicate ash, surviving organic compounds and partially combusted organic compounds.

(2) *Subpart B—Environmental Impact.* Subpart B, §§ 227.4–227.13, sets specific environmental impact prohibitions, limits and conditions for the dumping of materials in the ocean. Section 227.4 states that:

if the applicable prohibitions, limits and conditions are satisfied, it is the determination of EPA that the proposed disposal will not unduly degrade or endanger the marine environment and that the disposal will present:

(a) No unacceptable adverse effects on human health and no significant damage to the resources of the marine environment;

(b) No unacceptable adverse effect on the marine ecosystem;

(c) No unacceptable adverse persistent or permanent effects due to the dumping of the particular volumes or concentrations of these materials; and

(d) No unacceptable adverse effect on the ocean for other uses as a result of direct environmental impact.

EPA finds that the proposed permit meets these requirements because:

- Wastes, such as high-level radioactive wastes; materials produced or used for radiological, chemical, or biological warfare; materials insufficiently described by the applicant; or persistent inert synthetic or natural materials are prohibited from the wastes eligible for incineration.
- The stack emissions will not contain any of the prohibited

constituents in § 227.6(a) except those which are "rapidly rendered harmless" as provided for under § 227.6(h). The determination that the wastes are "rapidly rendered harmless" is being made on the basis that the permit meets or exceeds the Incineration Regulations and Technical Guidelines of the London Dumping Convention and on the basis that incinerator plume modeling and oceanic dispersion modeling conducted to date have demonstrated that any organic compounds or metals contained in emissions, resulting from incinerations which achieve destruction efficiencies of 99.9999 percent, will not cause marine water quality criteria or the marine aquatic life "no effect" concentrations for these materials to be exceeded. The limitations placed on the waste materials as part of the proposed permit further ensure that these constituents will not be present in the emissions.

- The proposed permit limits the quantities of metals allowed in the wastes and require operating parameters such that any emission products of metals or organochlorines are below the limiting permissible levels as required in § 227.6.
- The proposed permit is consistent with § 227.9 because the quantity of material in the emissions will not damage the ocean environment or reduce its amenities based on the monitoring conducted to date which shows no detectable adverse environmental impact.
- The activities conducted under the proposed permit meet the requirements of § 227.10 because the incineration site is away from fishing areas, outside normal shipping fairways for commercial and recreational vessels, and, as previous monitoring data has indicated, the emissions pose no threat to fishing, navigation, shorelines or beaches.
- The purpose of accepting this permit application is to further evaluate the possible environmental impacts of incineration.

(3) *Subpart C—Need for Ocean Dumping.* Subpart C of Part 227 (40 CFR 227.14–227.16) sets forth the basis on which an evaluation will be made of the need for ocean dumping, and alternatives to ocean dumping. Because the specific factors outlined in § 227.15 may not be applicable for all cases, § 227.14 allows for an evaluation of the applicability on an individual permit basis.

EPA does not believe that the specific factors are applicable for this proposed research permit since the permit responds to requests to conduct ocean-incineration-related research.

The EPA Science Advisory Board has completed a review of the incineration of liquid hazardous waste (Support Document H). One of the conclusions is that research needs to be conducted to determine the chemical composition and toxicity of emissions resulting from the incineration process. EPA's Office of Policy, Planning and Evaluation has completed their assessment of incineration as a method for destroying liquid hazardous wastes (Support Document I), and reached a similar conclusion.

The research proposed to be conducted under this research permit has been designed to address the issues raised in both of these studies and issues raised by the public in public meetings and written comments. All these issues were taken into account in the preparation of the Agency's Research Strategy, which was completed on February 19, 1985, and is the basis for this proposed research permit.

Based on the above, the Agency believes that there is a need for this research permit.

(4) *Subpart D, Part 227—Impact of the Emissions on Esthetic, Recreational, and Economic Values; and Subpart E, Part 227—Impact of the Proposed Ocean Dumping on Other Uses of the Ocean.* Under Subpart D, Part 227, EPA is to assess the potential for impacts on the esthetic, recreational and economic values of the ocean which might be affected by incinerator emissions based on the characteristics of the emissions. Subpart E requires an evaluation of the impact for specific uses of the ocean rather than on overall esthetic, recreational and economic values. By their nature, Subparts D and E are dependent on the characteristics of the incineration research site.

The site was selected, in part, because it is beyond the reach of most recreational vessels; it is low in marine resources of commercial or recreational value; and it is far enough from shore that trace contaminants from the emission plume would be in such minute amounts or so diluted by the ocean that on-shore or near-shore activities would not be affected. Therefore, EPA concludes that activities conducted under the proposed research permit should have no adverse impact on commercial or recreational activities. Tests conducted during the research burn will supplement that which is known of the impacts from incineration at sea for use in future permit considerations.

Conclusion

Based on the foregoing analyses, EPA finds that the proposed permit meets all the requirements of the Ocean Dumping Regulations applicable to incineration at sea and 33 U.S.C. 1412a(b) and 1412.

The London Dumping Convention

When evaluating ocean incineration permit applications, EPA is required to apply the London Dumping Convention's Regulations for the Control of Incineration of Wastes and Other Matter at Sea, and is required "to take full account of" the Technical Guidelines implementing the Regulations.

The proposed activities satisfy paragraph (2) of Regulation 2 of the London Dumping Convention which requires that practical alternative land-based methods be considered prior to issuing a permit for incineration at sea. The Agency has included land-based testing of the toxicity test procedures to the greatest extent possible in the research plan but must use the procedures during actual incineration-at-sea activities in order to obtain the needed information.

The proposed research permit meets or exceeds all other requirements of the London Dumping Convention's Incineration Regulations and Technical Guidelines.

Compliance With TSCA Regulations When Incinerating PCBs

Sections 6(e)(1) (A) and (B) of TSCA require the Administrator:

> to promulgate regulations to prescribe methods for the disposal of polychlorinated biphenyls and to require polychlorinated biphenyls to be marked with clear and adequate warnings, and instructions with respect to their processing, distribution in commerce, use or disposal or with respect to any combination of activities.

Based on this mandate, EPA promulgated regulations controlling the incineration of wastes containing PCBs in 40 CFR 761.70.

The PCB regulations issued under TSCA set out certain requirements which must be met for incineration, unless a waiver is obtained. These regulations include a minimum combustion efficiency, in addition to specific temperature, incineration dwell time, and oxygen requirements. The proposed permit incorporates the TSCA requirements for liquid PCBs, except for the TSCA regulatory requirement for dwell time.

Dwell time, the time the liquid waste and its gaseous combustion by-products are in the lower combustion chamber and upper incineration stack, is a

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parameter which was once believed to be of major significance. It is currently overshadowed, however, by the more important parameter of destruction efficiency. While EPA formerly believed that dwell times of two seconds or more were universally needed to achieve good incinerator performance for PCBs, the Agency now has an extensive data base which indicates that as little as tenths of one second may be sufficient in well-designed incinerators. TSCA has a waiver provision for dwell time which relies on destruction removal efficiency as the primary measure of incinerator performance. One of the tests conducted under this research permit will determine the destruction efficiency of the incinerator for PCBs.

Consistency With Land-based Incinerators Permitted Under RCRA.

With the exception of incinerating PDCs, which are regulated under TSCA and the rules in 40 CFR 761.70, landbased incineration facilities are regulated under RCRA and the rules in 40 CFR 264.340–264.351. Although these regulations do not specificially apply to the incineration of hazardous wastes at sea where such activity is regulated by an MPRSA permit, it is EPA's policy to establish or impose requirements in at-sea incineration permits that are equivalent to the requirements in land-based permits unless there is a specific reason which renders the land-based reguirements unnecessary for incineration at sea.

In general, RCRA regulations are performance base; that is, permits are granted based on demonstration of the incinerator's destruction and removal efficiency for specific substances, during a trial burn. During the implementation of the proposed research permit, tests will be conducted to demonstrate the ability of the incinerator to destroy PCBs (destruction efficiency).

Based on the above, EPA has concluded that the proposed permit conditions are at least as stringent as the RCRA requirements.

U.S. Coast Guard's Findings on the Contingency Plan

As indicated elsewhere, a significant degree of cargo containment capability is built into the vessel, and the vessel must be inspected and certified by the U.S. Coast Guard. In addition, the Applicant was required to submit, as part of their application, a Contingency Plan outlining the procedures to be implemented in case of an accident or other emergency. The Contingency Plan specifies the safety precautions and the coordination mechanisms and responses if fires, explosions, spills, collisions, etc., should occur in the harbor, duing transit, or at sea. A major focus of the Contingency Plan is the steps that will be taken to minimize the environmental effect of any incident.

EPA requested the U.S. Coast Guard to review and to make recommendations on the adequcy of the Applicant's Contingency Plan. Based on a preliminary review at the Headquarters level, the U.S. Cost Guard found the format and general content of Plan acceptable. However, following a more detailed review by the cognizant Coast Guard District Commander and Captain of the Port, and improved administrative format was indentified and additional port specific information will be incorperated. Changes to the Contingency Plan based upon Coast Guard and public comments will be approved by EPA and incorporated into the Plan prior to the issuance of an ocean incineration research permit.

Consistency With Coastal Zone Management Act

Under section 307(c)(3)(A) of the Coastal Zone Management Act [16 U.S.C. 1456(c)(3)(A)], an applicant for a Federal permit to conduct an activity affecting land or water uses in the coastal zone of a state with a Federally approved management program must provide the permitting agency a certification that the proposed activity complies with the state's management program and that the activity will be conducted in a manner consistent with the program. The Applicant has submitted a copy of the certification to the states of Pennsylvania, Delaware, and New Jersey. The states of Pennsylvania and Delaware have concurred with CWM's certification, and New Jersey is reviewing it. The Applicant must demonstrate in writing, prior to final permitting, that they have satisfied all CZMA requirements of affected states.

Conclusion

Based on the above analyses, EPA concludes that the proposed incineration under the terms and conditions of the research permit satisfies the requirements of applicable statutes and regulations and the LDC.

Therefore, EPA has made a tentative determination to issue a research permit to Chemical Waste Management, Inc., to incinerate up to 708,958 gallons of 10 to 30 percent PCB waste.

Dated: December 5, 1985.

William N. Hedeman, Jr.,

Acting Assistant Administrator, Office for Water.

[FR Doc. 85–29372 Filed 12–13–85; 8:45 am]

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Monday
December 16, 1985

Part VII

Department of the Interior

Minerals Management Service

Outer Continental Shelf; North Aleutian Basin; Oil and Gas Lease Sale 92; Notice

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
North Aleutian Basin
Oil and Gas Lease Sale 92

1. Authority. This Notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1356), as amended and the regulations issued thereunder (30 CFR 256). The Statement of Reasons for the Secretary's decision on this sale is available from the Alaska Outer Contential Shelf (OCS) Regional Office at the address given in paragraph 2 below.

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Alaska Outer Continental Shelf (OCS) Region, Minerals Management Service (MMS), room 544, 949 East 36th Avenue, Anchorage, Alaska 99508. Bids may be delivered in person to the above address between 8:00 a.m. and 4:00 p.m., Alaska Standard Time (a.s.t.), until the Bid Submission Deadline at 10:00 a.m., a.s.t., January 14, 1986. Bids will not be accepted on January 15, 1986, the day of Bid Opening. Delivery by mail should be addressed to P.O. Box 101159, Anchorage, Alaska 99510, and must be received by the Bid Submission Deadline. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10:00 a.m., a.s.t., January 14, 1986. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., a.s.t., January 15, 1986. Bid Opening Time will be 9:00 a.m., a.s.t., January 15, 1986, at the William A. Egan Civic Convention Center, 555 West 5th Avenue, Anchorage, Alaska. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 50 FR 40618 on October 4, 1985, correction published in the Federal Register at 50 FR 42102 on October 17, 1985.

3. Method of Bidding. (a) A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease Sale 92--North Aleutian Basin, (insert Official Protraction Diagram number and name, if applicable, and block number), not to be opened until 9:00 a.m., a.s.t., January 15, 1986," must be submitted for each block bid on. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 92--North Aleutian Basin, NO 3-8, Block 485, not to be opened until 9:00 a.m., a.s.t., January 15, 1986." (There will be no multiple-blocks comprising a bidding unit for Sale 92.) A suggested bid form appears in 30 CFR 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portion of a block as described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the percentage of the proportionate interest of each participating bidder. The percentage shown on the bid form may not exceed five decimal places; e.g., 50.12345 percent. All documents must be executed in conformance with signatory authorizations on file.

Partnerships also need to submit or have on file a list of signatories authorized to bind the partnership. Other documents may be required of bidders under 30 CFR 256.46.

(b) At the time of bid submission bidders are required to provide a statement when they have filed, either alone or jointly, more than one bid on the same block, as to all persons, partnerships, and corporations which have a controlling interest in the entity submitting the bid.

A controlling interest means a direct or indirect legal or beneficial interest in or influence over another person arising through ownership of capital stock, interlocking directorates or officers, contractual relations, or other similar means, which substantially affect the independent business behavior of such person. (See paragraph 16 of this notice on information concerning Unusual Bidding Patterns.)

Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $571 or more per hectare or fraction thereof. All leases awarded from this sale will provide for a yearly rental payment of $8 per hectare or fraction thereof. All leases will provide for a minimum royalty of $8 per hectare or fraction thereof. The bidding system to be utilized for this sale is cash bonus bidding with a 12 1/2 percent royalty. All bids submitted on all blocks shown in paragraph 12 must be submitted on a cash bonus basis with a fixed royalty of 12 1/8 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Program Representation Form, Form MMS-2032 (June 1985). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or

rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest-bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $371 or more per hectare or fraction thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or other applicable regulations, may be returned to the person submitting that bid by the authorized officer and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer (EFT) utilizing the Federal Reserve Communications System and the Treasury Financial Communications System, payable to the Department of the Interior--MMS.

The RD will provide more detailed instructions on making the EFT payments when bidders are qualified to submit bids at the sale. Bidders are referred to 30 CFR 218.155.

11. Official Protraction Diagrams (OPD). Blocks or portions of blocks offered for lease may be located on the following OPD's which may be purchased for $2 each from the Records Manager, Alaska OCS Region, room 502, at the first address stated in paragraph 2 of this Notice.

Outer Continental Shelf Official Protraction Diagrams:

NO 3-8	--	(Approved March 20, 1975)
NO 4-7	Chignik	(Approved September 30, 1976)
NN 3-2	Cold Bay	(Approved September 30, 1976)

12. Description of the Areas Offered for Bids.

(a) The lease sale area offered for bids is listed by OPD. Only one category of blocks appears under each OPD listed: Whole or Partial blocks.

Whole or partial blocks fall entirely under the jurisdiction of the Federal Government. Each block must be bid on separately. Hectares for whole or partial blocks listed in paragraph 12(b) may be found on the appropriate OPD.

(b) The following blocks or portions of blocks are offered for bid:

Official Protraction Diagram NO 3-8, (approved March 20, 1975):

WHOLE or PARTIAL BLOCKS:

485-523	749-787
529-567	793-831
573-611	837-875
617-655	881-918
661-699	925-962
705-743	969-1006

Official Protraction Diagram NO 4-7, Chignik (approved September 30, 1976):

WHOLE or PARTIAL BLOCKS:

490-506	710-725
534-550	754-760
578-594	798-804
622-638	842-845
666-681	

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Official Protraction Diagram NN 3-2, Cold Bay (approved September 30, 1976):

WHOLE BLOCKS:

1-37	397-415
45-78	441-458
89-121	485-502
133-164	529-545
177-207	573-589
221-251	617-633
265-294	661-675
309-330	705-714
353-372	749-754

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have initial terms of 10 years. Leases will be issued on Form MMS-2005 (August 1982). Copies of the lease form are available from the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the first address stated in paragraph 2.

(b) The following stipulations will be included in each lease resulting from this sale.

Stipulation No.1--Protection of Archaeological Resources.

(a) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object. (Section 301(5), National Historic Preservation Act, as amended, 16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Supervisor, Field Operations (RSFO), believes an archaeological resource may exist in the lease area, the RSFO will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RSFO, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and other pertinent archaeological and environmental information. The lessee shall submit this report to the RSFO for review.

(2) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RSFO that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RSFO. A report on the investigation shall be submitted to the RSFO for review.

(3) If the RSFO determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RSFO will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RSFO has told the lessee how to protect it.

(c) If the lessee discovers any archaeological resource while conducting operations in the lease area, the lessee shall report the discovery immediately to the RSFO. The lessee shall make every reasonable effort to preserve the archaeological resource until the RSFO has told the lessee how to protect it.

Stipulation No. 2--Orientation Program. The lessee shall include in any exploration or development and production plans submitted under 30 CFR 250.34 a proposed orientation program for all personnel involved in exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) for review and approval by the Regional Supervisor, Field Operations. The program shall be designed in sufficient detail to inform individuals working on the project of specific types of environmental, social, and cultural concerns which relate to the sale and adjacent areas. The program shall be formulated by qualified instructors experienced in each pertinent field of study and shall employ effective methods to ensure that personnel are informed of archaeological, geological, and biological resources and habitats including endangered species, fisheries, bird colonies, and marine mammals, and to ensure that personnel understand the importance of avoidance and nonharassment of wildlife resources, and legal authorities and penalties pertinent to the harassment of wildlife. The program shall also be designed to increase the sensitivity and understanding of personnel to community values, customs, and lifestyles in areas in which such personnel will be operating and shall include information concerning avoidance of conflicts with commercial fishing operations and with commercial fishing gear. The program also shall include presentations and information about all pertinent lease sale stipulations and Information to Lessees provisions, and about stipulations applied to subsequent exploration plans and development and production plans.

The program shall be attended at least once a year by all personnel involved in on-site exploration or development and production activities (including personnel of the lessee's agents, contractors, and subcontractors) and all supervisory and managerial personnel involved in lease activities of the lessee and its agents, contractors, and subcontractors.

Stipulation No. 3--Protection of Biological Resources. If the Regional Supervisor, Field Operations (RSFO), identifies biological populations or habitats which may require additional protection from activities associated with the lease, the RSFO may require the lessee to conduct biological surveys to determine the extent and composition of such biological populations or habitats. The RSFO shall give written notification to the lessee of the RSFO's decision to require such surveys.

Based on any surveys which the RSFO may require of the lessee or on other information available to the RSFO on special biological resources, the RSFO may require the lessee to: (1) relocate the site of operations; (2) establish to the satisfaction of the RSFO, on the basis of a site-specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist; (3) operate during those periods of time, as established by the RSFO, that do not adversely affect the biological resources; and/or (4) modify operations to ensure that significant biological populations or habitats deserving protection are not adversely affected.

If any area of biological significance should be discovered during the conduct of any operations on the lease, the lessee shall immediately report such findings to the RSFO and make every reasonable effort to preserve and protect the biological resource from damage until the RSFO has given the lessee direction with respect to its protection.

The lessee shall submit all data obtained in the course of biological surveys to the RSFO with the locational information for drilling or other activity. The lessee may take no action that might affect the biological populations or habitats surveyed until the RSFO provides written directions to the lessee with regard to permissible actions.

Stipulation No. 4--Wellhead and Pipeline Requirements. Subsea wellheads on temporary abandonments, or suspended operations that leave protrusions above the seafloor, are potential hazards to fisheries trawling gear. They shall be constructed or protected, if feasible and as appropriate, in such a manner as to allow commercial fisheries trawling gear to pass over the structures without snagging or otherwise damaging the structures or the fishing gear. The lessee shall submit latitude and longitude coordinates of these structures and their water depths to the Regional Supervisor, Field Operations. The lessee shall also forward this information to the U.S. Coast Guard in accordance with Alaska OCS Order No. 1, Part 4. To determine the coordinates of such structures, the lessee shall use navigation systems with accuracy of at least ±50 feet at 200 miles.

All pipelines, unless buried, including gathering lines, shall have a smooth-surface design. If an irregular pipe surface is unavoidable because of the need for valves, anodes, or other structures, it shall, as appropriate, be protected in such a manner as to allow trawling gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 5--Transportation of Hydrocarbons. Pipelines will be required: (a) if pipeline rights-of-way can be determined and obtained; (b) if laying such pipelines is technologically feasible and environmentally preferable; and (c) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple-use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the Regional Technical Working Group, or other similar advisory groups with participation of Federal, State, and local governments and industry.

All pipelines, including both flow lines and gathering lines for oil and gas, shall be designed and constructed to provide for adequate protection from water currents, storms and ice scouring, permafrost, subfreezing conditions, and other hazards as determined on a case-by-case basis. Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Regional Supervisor, Field Operations, subject to economic feasibility.

In addition to the above, the following provision will be applied to the following blocks:

NN 3-2	21 - 37	272 - 294	529 - 545
	64 - 78	315 - 330	573 - 589
	107 - 121	356 - 372	617 - 633
	149 - 164	397 - 415	661 - 675
	192 - 207	441 - 458	705 - 714
	234 - 251	485 - 502	749 - 754

NO 3-8	516 - 523	775 - 787
	559 - 567	818 - 831
	602 - 611	861 - 875
	645 - 655	904 - 918
	688 - 699	946 - 962
	732 - 743	989 - 1006
NO 4-7	490 - 506	710 - 725
	534 - 550	754 - 760
	578 - 594	798 - 804
	622 - 638	842 - 845
	666 - 681	

In order to protect the wildlife and subsistence resources of the Izembek Lagoon and Port Moller, offshore loading on this block of produced oil, except during testing for well producibility or in the case of an emergency, is prohibited if such a prohibition on offshore loading is technically and economically feasible, safe, and environmentally preferable, and results in no net social loss.

Stipulation No. 6--Testing of Oil Spill Containment Equipment. The lessee shall conduct semiannual full-scale drills at the request of the lessor for production platforms and operator-controlled contracted cleanup vessels for deploying equipment in open water to test the equipment and the contingency plan. These drills must involve all primary equipment identified in the oil spill contingency plans as satisfying Alaska OCS Order No. 7. These drills shall include the primary equipment controlled and operated by the appropriate cooperative. These drills will be unannounced and held under realistic environmental conditions in which deployment and operations can be accomplished without endangering safety of personnel. Representatives of the U.S. Coast Guard, Minerals Management Service, and State of Alaska may be present as observers. The lessor's inspectors will frequently inspect oil and gas facilities where oil spill containment and cleanup equipment are maintained in order to assure readiness.

Stipulation No. 7--Protection of Commercial Fisheries. (a) The lessee, operator(s), subcontractor(s), and all personnel involved in exploration, development, and production operations shall endeavor to minimize conflicts between the oil and gas industry and the commercial fishing industry.

Prior to submitting a plan of exploration or development to the lessor, appropriate industry personnel shall contact potentially affected commercial fishermen or recognized fishing organizations like United Fishermen of Alaska, Bering Sea Fishermen's Association and Oil/Fisheries Group of Alaska to discuss potential conflicts with the

siting, timing, and methods proposed. Through this consultation, the lessee shall assure that, whenever feasible, exploratory and development activities are compatible with seasonal fishing operations and will not result in undue interference with commercial fishing from important fishing grounds.

A discussion of the resolutions reached during this consultation process and a discussion of any unresolved conflicts shall be included in the Plan of Exploration or Development/Production. The lessee shall send a copy of the Plan of Exploration or Development/Production to the Oil/Fisheries Group of Alaska, United Fishermen of Alaska and to major fisheries organizations in the area at the same time they are submitted to the lessor to allow concurrent review and comment as part of the lessor's plan approval process.

(b) In particular, the lessee shall show in the Plan of Exploration or Development/Production crew and supply boat operation routes which will be used to minimize impacts to commercial fishing, marine mammals, and endangered and threatened species. Conflicts foreseen in the planning stages or that develop later shall be resolved whenever feasible and as quickly as possible.

(c) The lessee also shall include in the Plan of Development/Production analyses of the effects of its operations on the allocation and use of local dock space by fishing boats and crew and supply boats. These analyses shall include present (baseline) uses, predicted oil and gas uses which increase the level of demand, and an assessment of individual and cumulative impacts. Conflicts foreseen in the planning stages or that develop later shall be resolved whenever feasible and as quickly as possible.

(d) All activities associated with exploration and development operations shall be conducted to minimize the creation of obstacles to commercial fishing operations. If the Regional Supervisor, Field Operations has reason to believe that the site has not been adequately cleared, additional surveys shall be required to detect the location of any obstacles to commercial fishing.

Stipulation No. 8--Protection of Endangered Whales from Seismic Survey Activities. The lessee shall conduct all seismic survey activities on the lease in a manner that is not likely to jeopardize the continued existence of endangered species of whales. The standards set forth in the Alaska Outer Continental Shelf Region Notice to Lessees 85-2 are expressly incorporated by reference as the standards applicable to this stipulation. These standards shall be followed for all seismic survey activities including, but not limited to, preliminary activities.

14. Information to Lessees.

(a) Affirmative Action Requirements. Revision of Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should those changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, August 1982) would be deleted from leases resulting from this sale. In addition, existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Pending the issuance of revised versions of Forms MMS-2032 and MMS-2033, submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulation requirements will be deemed to be part of the affirmative action forms.

(b) U.S. Army Corps of Engineers Permits. The U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(c) Discharges of Drilling Wastes. Lessees are advised that the U.S. Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System permits are required for discharge of drilling fluids, produced waters, and other drilling wastes generated during exploration and development/production phases.

(d) Oil Spill Cleanup Capability. Approval of oil spill contingency plans will require information on the capability to detect, contain, clean up, and dispose of spilled oil in accordance with Best Available and Safest Technologies requirements as determined by the Regional Supervisor, Field Operations (RSFO).

(e) Offshore Pipelines. Lessees are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Lessees should consult both departments for regulations applicable to offshore pipelines.

(f) Unitization Agreements. Lessees are advised that in accordance with section 16 of each lease offered, the lessor may require a lessee to operate under a unit, pooling, or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases.

(g) Exploration Plan Submittals For 10-Year Lease Terms. Lessees are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the MMS either an exploration plan or a general statement of exploration intention prior to the end of the ninth lease year.

(h) Coastal Zone Management and Bristol Bay Area Plan. Lessees are advised that the Alaska Coastal Management Program (ACMP) contains policies and standards which are relevant to exploration, development, and production activities associated with leases resulting from this sale. In addition, approved local coastal management programs (CMP) which are part of the ACMP may contain more specific policies related to energy facility siting; areas with particular geologic hazards, subsistence uses, habitats, and transportation uses; and areas which have historic or prehistoric resources. Lessees are advised that the draft Aleutians East Coastal Resource Service Area (CRSA) CMP delineates archaeological and historical sites.

Coastal districts with approved CMP's may have policies applicable to ACMP consistency reviews of postlease activities. Coastal districts near the lease area engaged in policy development or implementation include: the Yukon/ Kuskokwim CRSA, the Bristol Bay CRSA, the Aleutians East CRSA, the Bristol Bay Borough, and the Cities of Bethel, Akutan, and St. Paul. Early consultation and coordination with the State and coastal districts involved in coastal management review is encouraged.

The MMS anticipates that the State will review exploration plans, development and production plans, and pipeline right-of-way applications for consistency with the ACMP pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA). As specified in section 307(c)(3)(B), the State may disagree with the lessee's certification of consistency for the lessee's plans for exploration, development, and production, or pipeline right-of-way applications. The State has indicated that it may recommend additional measures be taken by the lessee, as a condition of certification, that will ensure that the transportation, storage, and loading of produced oil is consistent with applicable mandatory enforceable policies listed in the ACMP.

The State of Alaska has advised the MMS that it will review the lessee's consistency certification accompanying oil spill contingency plans specifically for consistency with the State's CMP. The State may not concur with the lessee's plans for exploration, development, and production under section 307(c)(3) of the CZMA unless they are adequate to ensure consistency with applicable policies in the State's program. The State's review will consider the use of best available and safest technologies for operating in the North Aleutian environment. Also considered in this are the lessee's contingency plans in the event of an oil-well blowout (including relief well plans), and the lessee's ability to initiate timely oil spill recovery operations, as required by Federal or State regulations to protect areas of special biological sensitivity.

Lessees are also advised that the State of Alaska adopted a land use management plan in September 1984. That plan, the Bristol Bay Area Plan, contains policies adopted by the State that indicate priorities for different land uses in portions of the Alaska Peninsula and the rest of the Bristol Bay region. Policies include pipeline transportation across State tidelands and the Alaska Peninsula.

(i) Areas of Special Biological Sensitivity. Lessees are advised that certain areas are especially valuable for their concentrations of marine birds, marine mammals, and/or fishes. Lessees are advised that seasonal concentrations of fishes, including major salmon streams, and birds and/or marine mammals in the Izembek and Togiak National Wildlife Refuges, Izembek State Game Refuge, Walrus Islands and Cape Newenham State Game Sanctuaries, State Critical Habitat Areas (Egegik, Pilot Point, Cinder River, Port Heiden, and Port Moller), Port Moller/Herendeen Bay/Bear River area, Nelson Lagoon, Bechevin Bay, Unimak Pass, Amak Island, Sea Lion Rocks, and the Shumagin Islands, are identified as areas of special biological sensitivity. Other areas of special biological sensitivity include Moffett Lagoon, Big Lagoon, Hook Bay, St. Catherines Cove, and Swanson Lagoon. These areas are among areas of special biological sensitivity to be considered in the oil spill contingency plan section of Alaska OCS Order No. 7 and environmental report requirements of 30 CFR 250.34-3. Lessees are advised that, subject to approval by the State and the Secretary of Commerce, areas of special biological sensitivity also may be defined by local coastal management programs. Areas of special biological sensitivity may also be identified by local and regional organizations, planning offices, village councils, and regional nonprofit corporations.

Due to the sensitivity and vulnerability of these areas to spilled oil, special attention will be given to deployment plans and time requirements on the review of oil spill contingency plans. Such protection should not include dispersant usage unless such usage has been approved in advance.

(j) Bering Sea Biological Task Force. In the enforcement of the Protection of Biological Resources stipulation, the RSFO will receive recommendations from a Bering Sea Biological Task Force (BTF) composed of designated representatives of the MMS, the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), and the EPA. (Before making recommendations to the RSFO, the Bering Sea BTF should consult with representatives of the State of Alaska and local communities that can contribute to biological evaluations.) The RSFO will consult with the Bering Sea BTF on the conduct of biological surveys by lessees and the appropriate course of action after surveys have been conducted.

(k) Bird and Marine Mammal Protection. Lessees are advised that during the conduct of all activities related to leases issued as a result of this sale, the lessee and its agents, contractors, and subcontractors will be

subject to, among others, the provisions of the Marine Mammal Protection Act of 1972, as amended; the Endangered Species Act of 1973, as amended; the Migratory Bird Treaty Act; and International Treaties.

Lessees and their contractors should be aware that disturbance of wildlife could be determined to constitute harm or harassment and thereby be in violation of existing laws. With respect to endangered species, disturbance could be determined to constitute a "taking" situation and be in violation of the Endangered Species Act. Under the Endangered Species Act, the term "take" has been defined to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Violations under these acts and treaties will be reported to the NMFS or the FWS, as appropriate by MMS inspectors. These violations will be listed in a monthly report.

Of particular concern is disturbance at major wildlife concentration areas including bird colonies, marine mammal haulout and breeding areas, and wildlife refuges and parks. Maps depicting major wildlife concentration sites in the vicinity of the lease area are available from the RSFO. Lessees are also encouraged to confer with the FWS and NMFS in planning transportation routes between support bases and leaseholdings.

Behavioral disturbance of most birds and mammals found in or near the lease area would be unlikely if aircraft and vessels maintained at least a 1-mile horizontal distance and aircraft maintain a 1,500-foot vertical distance from known or observed wildlife concentration areas, such as bird colonies and marine mammal haulout and breeding areas. It is recommended that aircraft and vessels operated by lessees or their contractors maintain at least a 1-mile horizontal distance and that aircraft maintain a 1,500-foot vertical distance from known or observed wildlife concentrations.

For the protection of endangered whales and marine mammals throughout the lease area, operators of fixed-wing aircraft or helicopters should maintain a 1,500-foot altitude when in transit between support bases and exploration sites; and lessees and their contractors are encouraged to reduce, minimize, or reroute trips to and from the leasehold by aircraft, tugs, barges, supply ships, hovercraft, or other self-propelled surface vessels when endangered whales are likely to be in the area. Information on general locations of endangered whales is available from the RSFO.

The distance and altitude herein recommended to avoid disturbance to wildlife is advisory. Rules of other agencies concerning air traffic must be observed. Human safety will take precedence at all times over these provisions.

(l) Endangered Whales (Oil Spills). Lessees are advised that the RSFO has the authority and may limit or suspend oil and gas drilling activities on any lease whenever endangered (especially gray or right) whales are present and near enough to be subject to probable oil spill risks. Exploratory drilling, testing, and other downhole activities below a

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predetermined threshold depth, with the exception of testing through casing, may be prohibited whenever these whales are in the vicinity of the drilling operation. Such prohibition would continue until it is determined that the whales are outside of the zone of probable influence or are no longer subject to likely risk of oil spills, unless the RSFO determines that continued operations are necessary to prevent a loss of well control or to ensure human safety.

(m) Aleutian Canada Goose. Lessees are advised that the Aleutian Canada goose (Branta canadensis leucopareia) is listed as an endangered species by the U.S. Department of the Interior (16 U.S.C. 1531 et seq.). A potential for conflict may exist in this region between the onshore support facilities of OCS exploration or development and production activities and the Aleutian Canada goose. Such conflicts can be avoided if onshore support facilities are not located near Chagulak or Kiliktagik Island and aerial-support flight paths maintain a 1,500-foot altitude and vessel traffic a 1-mile distance from Aleutian Canada goose populations.

Lessees are advised that the FWS will review all exploration or development and production plans submitted by the lessee to the MMS. The FWS may apply certain restrictions to further protect the Aleutian Canada goose habitats as a result of this review. Lessees and affected operators should establish regular communication with the MMS and the FWS. Human safety will take precedence at all times.

(n) Fairway Designations. Blocks offered for lease may fall in or be adjacent to areas which may be included in fairways, precautionary zones, or traffic-separation schemes which may be established, among other reasons, for the purpose of protecting maritime commerce. Lessees are advised that the United States may designate necessary fairways through leased areas pursuant to the Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221 et seq.).

(o) Potential Gear Conflict with Commercial Fishing Industry. To reduce potential fishing gear conflicts, the lessees should keep commercial fishermen in the area advised of plans for seismic surveys, drill rig transport, or other vessel traffic, and discuss mutually satisfactory ways to avoid fishing-gear conflicts. Additionally, designations of open-ocean-storage areas for crab pots are subject to change. Vessels transiting these areas should operate in such a manner as to prevent loss of these stored crab pots. Locations of storage areas can be provided by the Alaska Department of Fish and Game and the North Pacific Fishery Management Council. The MMS encourages the lessees to use the Oil/Fisheries Group of Alaska to reduce potential conflicts between the oil and commercial fishing industries.

(p) Oil Spill Contingency Plans. Lessees are notified that oil spill contingency plans are required under Alaska OCS Order No. 7, pursuant to the authority prescribed in 30 CFR 250.11, 250.34, and 250.43, prior to

approval of exploration plans and development and production plans. Information to Lessees clause (i) identified areas of special biological sensitivity which will require protection in oil spill contingency plans as mandated under Alaska OCS Order No. 7 and 30 CFR 250.34-3. Due to the severe weather conditions of the Sale 92 area and the sensitivity of this area to spilled oil, particular attention will be given to equipment adequacy, equipment staging areas, deployment plans, and response times. Additionally, special protection measures may be required by the RSFO in the review of oil spill contingency plans. For example, the lessee may be required by the RSFO to position cleanup equipment near sensitive areas, develop specific plans for excluding oil from entering important habitats, demonstrate the timely use of dispersants, or run detailed spill trajectories for determining potential spill impact points, in accordance with MMS/U.S. Coast Guard planning guidelines for approvals of oil spill contingency plans. Furthermore, lessees are required under 30 CFR 250.34-2 to include in development and production plans descriptions of all environmental safeguards. Prior to approval of development and production plans, the RSFO will review these items to determine whether those oil transportation facilities described, which are regulated by the MMS can safely transport oil under expected conditions in the leased areas.

(q) Minimum Altitude Over Izembek Lagoon. Due to large waterfowl concentrations using lagoons in the Cold Bay area from August 15 through November 15 and March 31 through May 31, the following flight procedures are recommended. Helicopter and fixed-wing aircraft should fly around lagoons in the Cold Bay area at or above 2,000 feet ASL when weather conditions permit. When weather conditions do not permit flying around Izembek Lagoon at or above 2,000 feet ASL and it is necessary to cross the lagoon, helicopters and fixed-wing aircraft should only cross the lagoon along the Instrument Flight Rules (IFR) corridor. All helicopters and those fixed-wing planes able to attain 6,000 feet before crossing the lagoon, flying IFR outbound from Cold Bay, should cross Izembek Lagoon at or above 6,000 feet ASL. Fixed-wing aircraft which are mechanically unable to attain 6,000 feet of altitude over the lagoon when departing Cold Bay should cross the lagoon at a minimum of 4,000 feet. Lessees are advised that the FWS will take steps to minimize the impacts of helicopter disturbance on the black brant population of Izembek Lagoon. This may include consultation with the lessee or his contractors and specific FWS recommendations on aircraft altitudes and patterns which should be followed.

(r) Protection of Important Biological Resources. Lessees are advised that according to oil spill contingency planning guidance incorporated in MMS/USCG Planning Guidelines For Approval Of Oil Spill Contingency Plans, if local conditions or geography permit, the target for initiating recovery operations with pre-staged equipment (i.e., the response time) should be 6 to 12 hours from the time of the spill, dependent upon the location and general operating characteristics of the drilling or

production activity. If the Risk Analysis indicates that an oil spill will contact a shoreline sooner than 6 to 12 hours, the response times should be reduced to ensure response prior to contact. Whatever amount of equipment is required to be available for responding to spills should be fully deployed and in operation within the specified response time, weather permitting. The location of staged equipment will be left to the operator. For extraordinary spills, the operator should be expected to obtain additional equipment within a timeframe commensurate with trajectory analysis but no more than 48 hours.

(s) Additional Requirements for Protecting Biological Resources. Lessees are advised that the MMS intends to continue funding environmental and socioeconomic studies in the North Aleutian Basin assuming that exploratory drilling proves successful and future sales are held. The MMS will continue to coordinate with the State of Alaska, Federal Agencies, and other interested parties to plan and implement studies, including those which may assess possible impacts of postlease activities. Based on information received from on-going and planned studies, the MMS may develop site-specific measures to protect living marine resources. Development of these measures will occur in consultation with the State of Alaska, Federal Agencies, and other interested parties. Compliance with these specified measures, which may include operational modifications or restrictions, will be binding on the lessee.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Alaska OCS Orders, and any other applicable OCS Order. Final Alaska OCS Orders were published in the Federal Register at 47 FR 47180, on October 22, 1982.

16. Unusual Bidding Patterns. The bid adequacy procedures provide for the application of criteria in a two-phased process for bid adequacy determination. Prospective bidders should be aware that the RD may determine that an unusual bidding pattern exists when a company and its parent and/or subsidiary (a company in which the controlling interest is owned by another company), participate alone or jointly in more than one bid on the same block. In such case only the highest of such bids by that entity will be considered for computing the number of bids on the block for acceptance in the Phase I criteria of the bid adequacy process. If as a result of an unusual bidding pattern there is an insufficient number of bids for acceptance in the Phase I criteria,

the RD will pass those bids on the block to Phase II of the bid adequacy process for further analysis. As a result, special requirements on this subject have been outlined in paragraph 3(b), Method of Bidding in this Notice.

Wm. D. Bettenberg

Director, Minerals Management Service
Wm. D. Bettenberg

Approved:

Donald Paul Hodel

Secretary of the Interior
DONALD PAUL HODEL

DEC 11 1985
Date

[FR Doc. 85-29733 Filed 12-13-85; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf
North Aleutian Basin

Notice of Leasing Systems, Sale 92

Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA), as amended, requires that, at least 30 days before any lease sale, a Notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the tracts to be offered under each bidding system and the reasons for such designation.

This Notice is published pursuant to these requirements.

1. Bidding system to be used. In the Outer Continental Shelf (OCS) Sale 92, blocks will be offered under the following bidding system as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): bonus bidding with a fixed 12 1/2-percent royalty.

a. Bonus bidding with a 12 1/2-percent royalty. This system is authorized by section (8)(a)(1)(A) of the OCSLA, as amended. This system has been chosen for all blocks proposed for Sale 92 because these blocks are expected to have high exploration, development, and production costs.

Department of the Interior analyses indicate that the minimum economically developable discovery on a block in high-cost areas under a 12 1/2-percent royalty system would be less than it would be for the same block under a 16 2/3-percent royalty system. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. The larger cash bonus bids associated with a lower royalty rate are not anticipated to significantly reduce competition, as the higher costs for exploration and development are the primary constraints to competition.

2. Designation of blocks. All blocks in this lease sale will be offered under a 12 1/2-percent royalty system because that system is most appropriate to the resource levels and costs expected in this sale area.

Director, Minerals Management Service
Wm. D. Bettenberg

Approved:

Secretary of the Interior
DONALD PAUL HODEL

DEC 11 1985

[FR Doc. 85-29732 Filed 12-13-85; 8:45 am]
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H.J. Res. 459/Pub. L. 99-174

Reaffirming the friendship of the people of the United States with the people of Colombia following the devastating volcanic eruption of November 13, 1985. (Dec. 11, 1985; 99 Stat. 1033; 1 page) Price $1.00.

S.J. Res. 206/Pub. L. 99-175

To authorize and request the President to designate the month of December 1985, as "Made in America Month". (Dec. 11, 1985; 99 Stat. 1034; 2 pages) Price: 1.00.

H.J. Res. 473/Pub. L. 99-176

Waiving the printing on parchment of the enrollment of H.J. Res. 372. (Dec. 11, 1985; 99 Stat. 1036; 1 page) Price: $1.00.

H.J. Res. 372/Pub. L. 99-177

Increasing the statutory limit on the public debt. (Dec. 12, 1985; 99 Stat. 1037)

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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing these parts.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Privacy
Justice Department

Radio Broadcasting
Federal Communications Commission

Trade Practices
Federal Trade Commission

Wages
Personnel Management Office

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227 (Voice)
Melanie Williams 202-523-5229 (TDD)

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

NOTE: There will be a sign language interpreter for hearing impaired persons at this briefing.

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Rules and Regulations

Federal Register
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Tuesday, December 17, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 422, 430, 434, 436, and 443

[Doc. No. 0047A]

Crop Insurance Regulations—Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Potato, Sugar Beet, Tobacco (Dollar Plan), Tobacco (Guaranteed Plan), and Hybrid Seed Crop Insurance Regulations (7 CFR Parts 422, 430, 434, 436, and 443), effective for the 1985 calendar year only, by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the Actuarial Tables for such crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Effective date: December 31, 1985.

Comment date: Written comments, data, and opinions on this interim rule must be submitted not later than February 18, 1986, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 16 of the policy for each of the crops affected provides that any changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. Due to the workload involved in making changes on the Actuarial Table for each crop insured in each county where such insurance is offered requires that in the countries where changes in the contract must be on file by December 31, 1985, the date must be extended to February 15, 1986.

FCIC is currently reviewing the actuarial tables for the regulations referred to herein to determine whether the adequacy of current actuarial structures and rate levels offered under each crop insurance policy are consistent with sound actuarial principles and if not to make adjustments where necessary. This is an annual review conducted on all crops. The amount of work involved is such that these reviews will not be completed prior to the date for filing such actuarial data in the service offices for the crops and counties involved unless the filing date is extended.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Without this review, the statutory mandate that the program be actuarially sound could not be met. The workload involved in these actuarial changes will not permit filing of these actuarial tables by the present contract change date of December 31. There is not sufficient time to provide for public comment and implement these changes prior to December 31. It has been determined that the date by which such changes are required to be placed on file in the service office shall be extended from December 31, 1985, until February 15, 1986, and made effective for the 1985 calendar year only for Potatoes, Sugar Beets, Tobacco (Dollar Plan), Tobacco (Guaranteed Plan), and Hybrid Seed.

The changes in the actuarial tables for the crops affected by this rule may be beneficial in some instances and detrimental in others. All policyholders should be aware of the changes in the actuarial table affecting their individual crop insurance contract and of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register**. This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible.

Any comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Parts 422, 430, 434, 436, and 443

Crop insurance, Potato, Sugar beets, Tobacco (Dollar Plan), Tobacco (Guaranteed Plan), Hybrid seed.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Potato, Sugar Beets, Tobacco (Dollar Plan), Tobacco (Guaranteed Plan), and Hybrid Seed Crop Insurance Regulations, effective for the 1985 calendar year only (7 CFR Parts 422, 430, 434, 436, and 443, respectively) in the following instances:

1. The Authority Citations for 7 CFR Parts 422, 430, 434, 436, and 443 continue to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

* * * * *

PART 422—[AMENDED]

2. 7 CFR 422.7(d)16 (3) is revised to read as follows:

§ 422.7 Application and Policy.

* * * * *

16. Contract Changes.

* * * * *

(1) * * *

(3) December 31 preceding the cancellation date for counties with an April 15 cancellation date, except that, for the 1985, 1986 transition only, all contract changes will be available at your service office by February 15, 1986.

* * * * *

PART 430—[AMENDED]

3. 7 CFR 430.7(d)16 is revised to read as follows:

§ 430.7 Application and Policy.

* * * * *

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (February 15, 1986 for the 1985, 1986 transition) and by May 31 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

PART 434—[AMENDED]

4. 7 CFR 434.7(d)16 is revised to read as follows:

§ 434.7 Application and Policy.

* * * * *

16. Contract changes.

We may change any terms and provisions of the contract from year to year. All contract changes will be available at your service office by December 31 preceding the cancellation date, except that for the 1985, 1986 transition only, all contract changes will be available in your service office by February 15, 1986. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

PART 436—[AMENDED]

5. 7 CFR 436.7(d)16 is revised to read as follows:

§ 436.7 Application and Policy.

* * * * *

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31, preceding the cancellation date except that, for the 1985, 1986 transition only, all contract changes will be available at your service office by February 15, 1986. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

PART 443—[AMENDED]

6. 7 CFR 443.7(d)16 is revised to read as follows:

§ 443.7 Application and Policy.

* * * * *

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by December 31, preceding the cancellation date, except that for the 1985, 1986 transition only, all contract changes will be available at your service office by February 15, 1986. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

Done in Washington, DC, on November 15, 1985.

Merritt W. Sprague

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–29753 Filed 12–16–85; 8:45 am]

BILLING CODE 3410–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AWP–31]

Alteration of Alturas, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: On October 31, 1985, (50 FR 45401), the Federal Aviation Administration (FAA) amended the transition area at Alturas, California. This amendment was necessary to provide controlled airspace for aircraft executing Standard Instrument Approach Procedures (SIAP) at Alturas Municipal Airport. In the description of the airspace amendment, the words "along the west edge of V–165" were inadvertently included. This action will correctly describe the transition area.

EFFECTIVE DATE: 0901 G.M.T., March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Bill Reidy, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1186.

SUPPLEMENTARY INFORMATION:

History

On August 16, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will alter the transition area at Alturas, California, (50 FR 33055). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. The proposed amendment to the SIAP to Alturas, California, requires controlled airspace commencing at 700 feet for the procedure turn area. Without this additional controlled airspace, the minimum descent altitude would be raised. This amendment will enhance airport usage and safety. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations lowers the controlled airspace to contain the proposed amendment to the SIAP at

Alturas, California. This additional airspace is required to contain the procedure turn within controlled airspace.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas.

Adoption of the Amendment

Accordingly, ursuant to the authority delegated to me, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–499, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Alturas, CA—[Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 41°34'00" N., long. 120°46'20" W.; to lat. 41°37'00" N., long. 120°28'40" W.; to lat. 41°11'30" N., long. 120°21'00" W.; to lat. 41°08'45" N., long. 120°38'10" W.; thence to the point of beginning; that airspace extending upward from 1200 feet above the surface beginning at lat. 41°22'10" N., long. 120°58'00" W.; to lat. 41°28'20" N., long. 120°44'20" W.; to lat. 41°19'10" N., long. 120°41'30" W.; to lat. 41°15'00" N., long. 120°51'00" W.; thence along the east edge of V–452 to the point of beginning; and that airspace extending upward from 1200 feet above the surface beginning at lat. 41°33'30" N., long. 120°27'40" W.; to lat. 41°34'30" N., long. 120°20'00" W.; to lat. 41°25'50" N., long. 120°18'30" W.; to lat. 41°25'00" N., long 120°25'00" W.; thence to the point of beginning."

Issued in Los Angeles, California on December 3, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 85–29745 Filed 12–16–85; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 16

Commercial Categories for Option Traders

AGENCY: Commodity Futures Trading Commission.

ACTION: Rule related notice.

SUMMARY: On January 10, 1983, the Commission published in the **Federal Register** notification of its revised list of occupation categories for option contracts (48 FR 1047). This list, as amended on February 3, 1984 (49 FR 4200), October 15, 1984 (49 FR 40159) and October 26, 1984 (49 FR 43048) forms the basis from which the Commission will measure commercial participation in the pilot program for domestic exchange-traded commodity options. Futures commission merchants and members of contract markets are required under Commission Rule 1.37(a), 17 CFR 1.37(a) (1982), to record for each option customer account they carry an appropriate occupation category from a list of such categories set forth by the Commission and a symbol indicating whether the option customer is commercial or noncommercial. In order to accommodate options on cocoa, frozen concentrated orange juice and copper, the Commission has determined to revise its current list of occupation categories.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Chief, Agricultural Commodities Unit, Division of Economic Analysis, (202) 254–7303, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commission has revised the list of occupation categories for determining commercial participation in its pilot program for options as follows:

Commodity	Occupation Categories
Sugar and Cocoa	1. Producer. 2. Merchant or Dealer. 3. Refiner/Processor of Raw Commodities. 4. Manufacturer of Intermediate or Final Products. 5. Other Commercial.
Metals/Precious Metals	6. Miner/Producer. 7. Primary or Secondary Refiner. 8. Dealer (Metal Merchant).
Petroleum	9. Commercial End User 46. Fabricator or Alloyer. [1]11. Other Commercial. 39. Crude Oil Producer 40. Crude Oil Reseller. 12. Refiner. 13. Product Marketer and/or Distributor.
Financial Instruments/ Foreign Exchange.	14. End User. 15. Other Commercial. 16. Savings and Loan, Mortgage Bank or Thrift Institution. 17. Commercial Bank. 18. Insurance Company 19 Pension and Retirement Fund. 20. Mutual Fund. 21. Broker/Dealer. 22. Foundation or Endowment. 23. Other Commercial. 24. Importer/Exporter of Goods and Services. 25. Investor/Issuer of Foreign Currency Denominated Securities.
Grains and Soybeans	26. Grain or Soybean Producer 27. Producer Cooperative. 28. Elevator Operator or Merchant Other Than a Producer Cooperative 29. Processor, Including Feed Manufacturing and Crushing. 30. Livestock Feeder or Producer.
Livestock	31. Other Commercial. 32. Farmer or Rancher. 33. Commercial Feedlot Operator 34. Other Livestock Feeder. 35. Marketing Agency and/or Commission Merchant. 36. Packer or Other Meat Processor. 37. Meat Wholesaler, Retailer, or Buyer. 38. Other Commercial.
Cotton and Frozen Concentrated Orange Juice	41. Producer/Grower. 42. Producer/Grower Cooperative. 43. Merchant/Wholesaler 44. Mill Operator/Processor 45. Other Commercial.

[1] Category 10 intentionally blank.

Under the revisions, Categories 1 through 5, which are currently applicable to sugar options, have been modified to reflect occupation categories for sugar and cocoa options. In connection with this change, Category 3 has been changed from "Refiner" to "Refiner/Processor of Raw Commodities." In addition, Category 4 has been changed from "Manufacturer or Processor" to "Manufacturer of Intermediate or Final Products."

In order to accommodate options on frozen concentrated orange juice, Categories 41 through 45 which are currently applicable to cotton options have been changed to reflect occupation categories for cotton and frozen concentrated orange juice options. In conjunction with this revision, Category 41 has been changed from "Producer" to "Producer/Grower" and Category 42 has been changed from "Producer Cooperative" to "Producer/Grower Cooperative." In addition, Category 43 has been changed from "Merchant" to "Merchant/Wholesaler" and Category

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44 has been changed from "Mill Operator" to "Mill Operator/Processor."

With respect to options on copper, Categories 6 through 9 and Category 11 which currently relate to options on precious metals have been amended to reflect occupation categories for metals and precious metals options. To accommodate this amendment, Category 6 has been changed from "Producer" to "Miner/Producer" and Category 7 has been changed from "Refiner" to "Primary or Secondary Refiner." In addition, existing Category 8 has been changed from "Dealer" to "Dealer (Metal Merchant)" and a new Category 46 is being established to include the occupation Category "Fabricator or Alloyer."

As is the case with the existing categories, the appropriate classification for a customer is based on the primary activity of the customer in using the option market in conjunction with its cash market activities.

Issued in Washington, DC on December 12, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-29793 Filed 12-16-85; 8:45 am]

BILLING CODE 8151-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 240, 245, 270, 285, and 295

[T.D. ATF-219]

Implementation of Form 5000.24, Excise Tax Return

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule, which is being issued without notice, amends ATF regulations to implement a new form, Form 5000.24, Excise Tax Return. Form 5000.24, Excise Tax Return, is prescribed for use in conjunction with both the prepayment and deferred payment of excise taxes on distilled spirits, wines, beer, cigars, cigarettes, and cigarette papers and tubes. With the exception of taxpayers in Puerto Rico filing returns under the provisions of 27 CFR Part 250 or 27 CFR Part 275, Form 5000.24 shall be used by all persons required to file ATF tax returns covering the payment of excise taxes on alcoholic beverages, tobacco products, and cigarette papers and tubes. This document also deletes from 27 CFR Parts 270 and 285 outdated transitional rules which are applicable only to taxable removals made prior to January 1, 1983.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Harriet S. Bobo, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC. 20226 (202-566-7602).

SUPPLEMENTARY INFORMATION:

Background

26 U.S.C. 5061(a) and 5703(b) require that the excise taxes on distilled spirits, wines, beer, cigars, cigarettes, and cigarette papers and tubes be collected on the basis of a return. Currently, ATF regulations in 27 CFR Parts 19, 240, 245, 270, and 285 prescribe the use of 8 different return forms for the collection of these taxes. In order to simplify returns processing, ATF consolidated these 8 returns into one new form, Form 5000.24, Excise Tax Return.

Obsolete Forms

Implementation of Form 5000.24, Excise Tax Return, makes the following forms obsolete.

ATF 5110.32—Prepayment Return—Distilled Spirits Tax.

ATF F 5110.35—Distilled Spirits Tax Returns—Deferred Payment.

ATF F 2050 (5120.27)—Wine Tax Return.

ATF F 2052 (5120.37—Prepayment Return—Wine Tax.

ATF F 2034 (5130.7)—Beer Tax Return.

ATF F 3071 (5210.7)—Tax Return—Manufacturer of Tobacco Products.

ATF F 2617 (5210.11)—Prepayment Tax Return—Manufacturer of Tobacco Products.

ATF F 2137 (5230.1)—Monthly Tax Return—Manufacturer of Cigarette Papers and Tubes.

These 8 forms may not be used for the payment of tax liabilities incurred after December 31, 1985.

Regulatory Changes

Implementation of Form 5000.24, Excise Tax Return, requires many regulatory changes. Every regulation in Title 27 of the Code of Federal Regulations containing an obsolete form number has to be amended. In addition, some sections of regulations are being revised to clarify the fact that Form 5000.24 is to be used as both a prepayment and a deferred payment or semimonthly return. Instructions for preparing tax return forms are being deleted from regulations in those cases where the same or similar instructions appear on Form 5000.24.

Unlike many of the forms that it replaces, Form 5000.24 will not require the taxpayer to show quantities of taxable commodities removed subject to tax during the period covered by the tax return. Therefore, all regulations requiring the taxpayer to include such information on his tax returns are being revised to delete this reporting requirement.

Regulations in 27 CFR Part 270 and 27 CFR Part 285 are also being revised to delete transitional rules applicable only to taxable removals made before January 1, 1983.

Administrative Procedures Act

As authorized by section 553 of Title 5 of the United States Code, the regulatory changes in this final rule are being made without prior notice. Public participation in these changes is deemed unnecessary because the changes are minor, liberalizing, and non-controversial in nature. This decision merely consolidates 8 different tax return forms into one and deletes requirements that were applicable only before January 1, 1983. For these reasons, ATF has determined that it is impractical and unnecessary to issue this rule with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation of 5 U.S.C. 553(d).

Executive Order 12291

It has been determined that this final rule is not classified as a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Paperwork Reduction Act

The requirement to collect information imposed by this final rule has been approved by the Office of Management and Budget under Sec. 3507 of the Paperwork Reduction Act of 1980, Pub.

L. 96–511, 44 U.S.C. Chapter 35 (control number 1512–0467).

Drafting Information

The principal author of this document is David Purcell, Procedures Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 245

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 295

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

Authority and Issuance

PART 19—[AMENDED]

27 CFR Part 19—Distilled Spirits Plants is amended as follows:

Paragraph 1. The authority citation for Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510; 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 2. The authority citations in Part 19 are amended by removing the citation "26 U.S.C. 5103", whenever it appears; by replacing the citation "6 U.S.C. 6", wherever it appears, with the citation "31 U.S.C. 9304"; by replacing the citation "6 U.S.C. 7", wherever it appears, with the citation "31 U.S.C. 9306"; and by replacing the citation "6 U.S.C. 15", wherever it appears, with the citation "31 U.S.C. 9301, 9303".

§ 19.461 [Amended]

Paragraph 3. Section 19.46 is amended by removing the words "distilled spirits tax return" inserting in their place the words "excise tax return".

§ 19.515 [Amended]

Paragraph 4. Section 19.515 is amended by removing the words "paid on Form 5110.32" and inserting in their place the words "prepaid on Form 5000.24".

§ 19.519 [Amended]

Paragraph 5. Section 19.519 is amended by removing the words "on Form 5110.32 or on Form 5110.35" and inserting in their place the words "on Form 5000.24".

§§ 19.520 and 19.521 [Amended]

Paragraph 6. Sections 19.520 and 19.521 are amended by removing the words "Form 5110.32 or Form 5110.35", wherever they appear, and inserting in their place the words "Form 5000.24".

Paragraph 7. Section 19.522 is amended by revising paragraphs (a) and (c) to read follows:

§ 19.522 Taxes to be collected by returns.

(a) *Deferred taxes.* The tax on spirits to be withdrawn from bond for deferred payment of tax shall be paid pursuant to a semimonthly return on Form 5000.24. The periods to be covered by semimonthly returns on Form 5000.24 shall run from the 1st day through the 15th day of each month, and from the 16th day through the last day of each month. A return, Form 5000.24, shall be executed and filed for each semimonthly return period notwithstanding that no tax is due for payment for such period. The proprietor of each bonded premises shall include, for payment, on his semimonthly return on Form 5000.24, the full amount of distilled spirits tax determined in respect of all spirits released for withdrawal from the bonded premises on determination of tax during the period covered by the return (except spirits on which tax has been prepaid).

* * * * *

(c) *Prepaid taxes.* The tax on distilled spirits shall be paid pursuant to a prepayment return on Form 5000.24 in all cases where the tax is required to be paid before the spirits are withdrawn from bond. A single prepayment return on Form 5000.24 may cover one or more transactions. The proprietor shall note the serial number of the Form 5000.24 and the date and time such prepayment return was filed on the individual record of tax determination.

Paragraph 8. Section 19.523 is revised to read as follows:

§ 19.523 Time for filing returns.

(a) *Payment pursuant to semimonthly return.* Where the proprietor of bonded premises has withdrawn spirits from such premises on determination and before payment of tax, he shall file a semimonthly tax return covering such spirits on Form 5000.24, and remittance as required by § 19.524 or § 19.525, not later than the last day of the second succeeding return period. Where the due date for filing a return falls on a Saturday, Sunday, or legal holiday, the time for filing is extended to the first succeeding day which is not a Saturday, Sunday, or legal holiday.

(b) *Payment pursuant to prepayment return.* If the proprietor of a distilled spirits plant desires to withdraw spirits from bonded premises on determination of tax and does not have on file an approved withdrawal or unit bond of sufficient penal sum to cover the withdrawal, if there is default by him in any payment of tax under this part, or the proprietor is notified by the regional director (compliance) as provided in § 19.522(b)(2), the proprietor shall not remove the spirits from the bonded premises until the tax thereon has been paid. To pay the tax, the proprietor of the bonded premises shall file a prepayment return on Form 5000.24, and

remittance as required by § 19.524 or § 19.525, before removal of the spirits.

§ 19.524 [Amended]

Paragraph 9. Section 19.524 is amended by removing the words "ATF F 5110.32 or ATF F 5110.35", wherever they appear, and inserting in their place the words "ATF F 5000.24".

§ 19.525 [Amended]

Paragraph 10. Section 19.525 is amended by removing the words "ATF F 5110.32 or 5110.35" and the words "Form 5110.32 or Form 5110.35" and inserting in their place the words "Form 5000.24".

§ 19.561 [Amended]

Paragraph 11. Section 19.561 is amended by replacing the nunber "508", which appears in the authority citation, with the number "5008".

§ 19.565 [Amended]

Paragraph 12. Section 19.565 is amended by deleting the first sentence of the section and by inserting in its place the following: "An unexplained shortage of bottled distilled spirits shall be taxpaid: (a) Immediately on a prepayment return on Form 5000.24, or (b) on the semimonthly return on Form 5000.24 for the return period during which the shortage was ascertained."

Paragraph 13. Section 19.703 is revised to read as follows:

§ 19.703 Taxpayment of samples.

When tax is required to be paid on samples:

(a) If the proprietor is qualified to defer payment of tax, the tax shall be included in the proprietor's semimonthly tax return on Form 5000.24.

(b) If the proprietor is not qualified to defer the payment of tax, the tax shall be paid on a prepayment tax return on Form 5000.24.

PART 240—[AMENDED]

27 CFR Part 240—Wine is amended as follows:

Paragraph 1. The authority citation for Part 240 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5006, 5041, 5042, 5044, 5061, 5062, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5332, 5351, 5353, 5354, 5356-5358, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 27 U.S.C 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 2. The authority citations in Part 240 are amended by removing the citations "18 U.S.C. 926", "22 U.S.C. 2778", "26 U.S.C. 5011", and "26 U.S.C. 5082", wherever they appear; by replacing the citation "6 U.S.C. 6", wherever it appears, with the citation "31 U.S.C 9304"; by replacing the citation "6 U.S.C. 7", wherever it appears, with the citation "31 U.S.C 9306"; and by replacing the citation "6 U.S.C. 15", wherever it appears, with the citation "31 U.S.C 9301, 9303".

Paragraph 3. The table of contents is amended by revising the title of § 240.901 to read as follows and by removing § 240.902:

* * * * *

Subpart UU—Records and Reports

* * * * *

240.901 Form 5000.24.

* * * * *

§ 240.590a [Amended]

Paragraph 4. Section 240.590a is amended by removing the number "2050", whenever it appears, and inserting in its place the number "5000.24".

Paragraph 5. Section 240.591 is amended by revising paragraphs (a) and (c) to read as follows:

§ 240.591 Payment of tax by check, cash, or money order.

(a) *General.* The tax on wine shall (unless prepaid) be paid by semimonthly return on Form 5000.24, which shall be filed with remittance, for the full amount of tax due as shown on the return in a manner authorized under 26 CFR 301.6311–1 (Payment by check or money order). All entries in the return shall be fully supported by accurate and complete records satisfactory to the regional director (compliance). The proprietor shall include for payment on his return, Form 5000.24, the full amount of tax required to be determined (and not prepaid) on all wine removed daily from the bonded wine cellar premises (or transferred to a taxpaid room on the premises) for consumption or sale during the period covered by the return. Prepayments of tax on wine during the period covered by the return shall be separately shown thereon. Except as provided in § 240.592, a return on Form 5000.24 shall be executed and filed to cover each return period, notwithstanding that no tax is due for such period.

* * * * *

(c) *Time for filing returns and paying tax.* Semimonthly returns on Form 5000.24, with remittances, shall, unless the proprietor is qualified for extended deferral, be filed not later than the third calendar day next succeeding the last day of each return period, excluding any Saturday, Sunday, or legal holiday in the District of Columbia, or any statewide holiday of the State in which the return is required to be filed.

* * * * *

§ 240.591a [Amended]

Paragraph 6. Section 240.591a is amended by removing the words "Form 2050 or Form 2052", whenever they appear, and inserting in their place the words "Form 5000.24".

§ 240.592 [Amended]

Paragraph 7. Section 240.592 is amended by removing the number "2050" and inserting in its place the number "5000.24".

Paragraph 8. Section 240.594 is revised to read as follows:

§ 240.594 Prepayment of tax; general.

(a) A proprietor shall, before removal of the wine for consumption or sale, file a prepayment tax return on Form 5000.24, with remittance, where (1) he is required to prepay tax under § 240.595, (2) his tax deferral bond (or bonds), Form 2053, is not in the maximum penal sum and the tax determined and unpaid at any one time exceeds the penal sum of such bond by more than $100, or (3) he does not have an approved tax deferral bond, Form 2053, and the total amount of tax unpaid at any one time exceeds $100. The return, with remittance, shall be filed by forwarding or delivering it to the district director or the director of the service center in accordance with the instructions on the form. For the purposes of complying with this section, the term "forwarding" shall mean deposit in the U.S. mail, properly addressed to the Internal Revenue Service.

(b) However, when a proprietor is required by § 240.591a to deliver payment of tax by electronic fund transfer, the proprietor shall prepay the tax before any wine can be removed for consumption or sale by (1) completing a prepayment return on Form 5000.24, and by mailing it, as instructed on the return, to the district director, the director of the service center, or the regional director (compliance) and (2) by directing the proprietor's bank to effect an EFT.

§§ 240.594a, 240.594b, and 240.594c [Amended]

Paragraph 9. Sections 240.594a, 240.594b, and 240.594c are amended by removing the words "Form 2050 or Form 2052" and the words "Forms 2050 or 2052", wherever they appear, and inserting in their place the words "Form 5000.24".

§240.596 [Amended]

Paragraph 10. Section 240.596 is amended by removing the words "Form

2052 or Form 2050, as the case may be" and inserting in their place the words "Form 5000.24".

§ 240.806 [Amended]

Paragraph 11. Section 240.806 is amended by removing the words "wine tax return" and inserting in their place the words "excise tax return".

Paragraph 12. Section 240.901 is revised to read as follows:

§ 240.901 Form 5000.24.

(a) *General.* Form 5000.24 shall be prepared and filed in accordance with the instructions on the form.

(b) *Semimonthly return.* The proprietor of every bonded wine cellar removing wine subject to tax shall, except as provided in §240.592, prepare semimonthly returns on Form 5000.24, showing thereon the total tax due. There shall also be shown any increases or decreases in tax due to errors in previous returns, or credit under the provisions of Subpart OO for unmerchantable wines returned to bond, or credit under the provisions of Part 252 of this chapter where such credit is authorized by the regional director (compliance) on Form 2639, and credit for the prepayment of tax.

(c) *Prepayment return.* When a proprietor is required to prepay tax, as provided in §§ 240.594(a) and 240.595, the proprietor shall first prepare Form 5000.24 in an amount sufficent to cover the tax on the quantity of wine proposed to be removed that day. Prior to removal of the wine, the proprietor shall forward or deliver Form 5000.24 with remittance as provided in § 240.594(a) or, the case of prepayment by electronic fund transfer, shall file the return and pay the tax as provided in § 240.594(b).

PART 245—[AMENDED]

Paragraph 13. Section 240.902 is removed.

27 CFR Part 245—Beer is amended as follows:

Paragraph 1. The authority citation for Part 245 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5113, 5142–5144, 5146, 5222, 5401, 5402, 5411–5417, 5551, 5552, 5555, 5556, 5571, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6302(c), 6311, 6313, 6402, 6676, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9306.

Paragraph 2. The authority citations in Part 245 are amended by replacing the citation "6 U.S.C. 6", wherever it appears, with the citation, "31 U.S.C. 9304"; by replacing the citation "6 U.S.C. 7", wherever it appears, with the citation "31 U.S.C. 9306"; by replacing the citation "6 U.S.C. 8", wherever it appears, with the citation "31 U.S.C. 9305"; and by replacing the citation "6 U.S.C. 15", wherever it appears, with the citation "31 U.S.C. 9301, 9303".

Paragraph 3. The table of contents is amended by revising the title of § 245.227 to read as follows:

* * * * *

Subpart AA—Records, Reports, and Returns

* * * * *

§245.227 Excise tax return, Form 5000.2.

* * * * *

Paragraph 4. Sections 245.110b, 245.110c, 245.110d, 245.112, 245,117a, 245.117e, 245.117f, 245.227g, and 245.166 are amended by removing the numbers "2034" and "2034 (5130.7)", wherever they appear, and inserting in their place the number "5000.24".

§245.117 [Amended]

Paragraph 5. Section 245.117 is amended by removing the number "2034 (5130.7)", wherever it appears, and inserting in its place the number "5000.24"; by removing paragraph (c); and by redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), respectively.

§ 245.117d [Amended]

Paragraph 6. Section 245.117d is amended by removing the number "2034 (5130.7)" and inserting in its place the number "5000.24" and by removing the last sentence of paragraph (b)(1).

Paragraph 7. Section 245.227 is revised to read as follows:

§ 245.227 Excise tax return, Form 5000.24.

All entries in the return, Form 5000.24, shall be fully supported by accurate and complete records.

PART 270—[AMENDED]

27 CFR Part 270—Manufacture of Cigars and Cigarettes is amended as follows:

Paragraph 1. The authority citation for Part 270 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711–5713, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 27 U.S.C. 205; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. The authority citations in Part 270 are amended by removing the citations "18 U.S.C. 926", "22 U.S.C. 778" and "26 U.S.C. 5707", wherever they appear; by replacing the citation "6 U.S.C. 6", wherever it appears, with the citation "31 U.S.C. 9304"; by replacing the citation "6 U.S.C. 7", wherever it appears, with the citation "31 U.S.C. 9306"; and by replacing the citation "6 U.S.C. 15", wherever it appears, with the citation "31 U.S.C. 9301, 9303".

Par. 3. The table of contents is amended by removing section titles for §§ 270.141, 270.142, and 270.164.

§ 270.141, 270.142 and 270.164 [Removed]

Par. 4. Sections 270.141, 270.142, and 270.164 are removed.

Par. 5. Section 270.162 is revised to read as follows:

§ 270.162 Semimonthly tax return.

Every manufacturer of tobacco products shall file, for each of his factories, a semimonthly tax return on Form 5000.24 for each return period, including any period during which a manufacturer begins or discontinues business. The return shall be filed with the district director or the director of the service center in accordance with the instructions on the form. The manufacturer shall file the return at the time specified in § 270.165 regardless of whether cigars or cigarettes are removed or whether tax is due for that particular return period. However, when the manufacturer requests by letter and the regional director (compliance) grants specific authorization, the manufacturer need not during the term of such authorization file a tax return for which tax is not due or payable.

Par. 6. Section 270.165 is revised to read as follows:

§ 270.165 Times for filing semimonthly return.

(a) *General.* Semimonthly returns on Form 5000.24 shall be filed, for each return period, not later than the 10th day after the end of the first succeeding return period.

(b) *Definitions, etc.* When the manufacturer sends the tax return with or without remittance by U.S. mail to the district director or the director of the service center in accordance with the instructions on the form, the official postmark of the U.S. Postal Service stamped on the cover in which the return was mailed shall be considered the date of delivery of the tax return and, if the return was accompanied by a remittance, the date of delivery of the remittance. When the postmark is illegible, the manufacturer shall prove when the postmark was made. When the proprietor sends the tax return with or without remittance by registered mail or by certified mail, the date of registry or the date of the postmark on the sender's receipt of certified mail, as the case may be, shall be treated as the date of delivery of the tax return and, if accompanied, of the remittance. If the last day for filing a return under this

section falls on Saturday, Sunday, or a legal holiday in the District of Columbia, or on a statewide legal holiday in the State wherein the return is required to be filed, the filing of the tax return and remittance required with the return shall be considered timely if accomplished on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

§ 270.165a [Amended]

Paragraph 7. Section 270.165a is amended by removing the words "Form 3071 or Form 2617", wherever they appear, and inserting in their place the words "Form 5000.24".

Paragraph 8. Section 270.167 is amended by revising paragraph (a) to read as follows:

§ 270.167 Prepayment tax return.

(a) To prepay the tax on cigars and cigarettes, a manufacturer shall file a prepayment tax return on Form 5000.24 showing the tax to be paid on the cigars and cigarettes prior to removal. The return shall be executed and filed, prior to the removal of such products, with the district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form. A manufacturer prepaying the taxes on cigars and cigarettes under the provisions of this section shall continue to file semimonthly returns as required by § 270.162.

* * * * *

Paragraph 9. Section 270.169 is revised to read as follows:

§ 270.169 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701–12) of a manufacturer of tobacco products who has been assigned such a number shall be shown on each tax return, Form 5000.24. Failure of the manufacturer to include his employer identification number on Form 5000.24 may result in assertion and collection of the penalty specified in 26 CFR 301.6676–1.

§ 270.217 [Amended]

Paragraph 10. Section 207.217 is amended by replacing the number "23 U.S.C. 5723", which appears in the authority citation, with the number "26 U.S.C. 5723".

PART 285—[AMENDED]

27 CFR Part 285—Manufacture of Cigarette Papers and Tubes is amended as follows:

Paragraph 1. The authority citation for Part 285 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5701, 5703–5705, 5711, 5721–5723, 5741, 5751, 5753, 5761–5763, 6109, 6302, 6402, 6404, 6676, 7212, 7325, 7342, 7606; 31 U.S.C. 9301, 9303, 9304, 9306.

Paragraph 2. The authority citations in Part 285 are revised by replacing the citation "6 U.S.C. 6", wherever it appears, with the citation "31 U.S.C. 9304" by replacing the citation "6 U.S.C. 7", wherever it appears, with the citation "31 U.S.C. 9306"; and by replacing the citation "6 U.S.C. 15", wherever it appears, with the citation "31 U.S.C. 9301, 9303".

Paragraph 3. Section 285.25 is revised to read as follows:

§ 285.25 Return of manufacturer.

(a) *Requirement of filing.* Every manufacturer of cigarette papers and tubes shall file, for each of his factories, a monthly tax return on Form 5000.24. A return shall be filed for each month regardless of whether cigarette papers and tubes were removed subject to tax or whether tax is due for that particular month. However, when a manufacturer so requests by letter, and the regional director (compliance) grants specific authorization, the manufacturer, need not, during the term of that authorization, file a tax return for any month for which tax is not due or payable.

(b) *Preparation and filing.* The return shall be executed and filed with the district director, director of the service center, or regional director (compliance) in accordance with the instructions on the form.

(c) *Remittance of tax.* Except as provided in §285.27, remittance of the tax, if any, shall accompany the return.

(d) *Time of filing.* For each month, the return shall be filed not later than the tenth day after the end of the first succeeding month. When the last day for filing a tax return falls on a Saturday, Sunday, or legal holiday in the District of Columbia or in the State where the return is required to be filed, the filing of the return (and remittance of the tax) shall be considered timely if done on the next succeeding day which is not a Saturday, Sunday, or such legal holiday.

§ 285.26 [Amended]

Paragraph 4. Section 285.26 is amended by removing the words "manufacturer's monthly tax return, Form 2137" and inserting in their place the words "tax return, Form 5000.24".

§ 285.27 [Amended]

Paragraph 5. Section 285.27 is amended by removing the number "2137", wherever it appears, and inserting in its place the number "5000.24".

Paragraph 6. Section 285.29 is revised to read as follows:

§ 285.29 Employer identification number.

The employer identification number (defined at 26 CFR 301.7701–12) of a manufacturer of cigarette papers or tubes who has been assigned such a number shall be shown on each monthly tax return, Form 5000.24, filed by a manufacturer of cigarette papers or tubes pursuant to the provisions of this part. Failure of the manufacturer to include his employer identification number on Form 5000.24 may result in assertion and collection of the penalty specified in 26 CFR 301.6676–1.

PART 295—[AMENDED]

27 CFR Part 295—Removal of Cigars, Cigarettes, and Cigarette Papers and Tubes, Without Payment of Tax, For Use of the United States is amended as follows:

Paragraph 1. The authority citation for Part 296 is revised to read as follows:

Authority: 26 U.S.C. 5703–5705, 5711, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606.

§ 295.36 [Amended]

Paragraph 2. Section 295.36 is amended by removing the words "semimonthly tax return, Form 3071, or his monthly tax return, Form 2137, as the case may be" and inserting in their place the words "semimonthly or monthly tax return, Form 5000.24".

Signed: November 21, 1985.

Stephen E. Higgins,

Director.

Approved: December 6, 1985.

David D. Queen,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85–29762 Filed 12–16–85; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 14

Security Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: In compliance with Executive Order No. 12356 of April 2, 1982, (47 FR 14874) entitled National Security Information, the Department of Labor publishes its policy concerning declassification of agency information, its guidelines for systematic declassification review and its guidelines for dissemination of such

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information to persons outside the executive branch, including historical researchers and former Presidential appointees.

EFFECTIVE DATE: This document is effective January 16, 1986.

ADDRESS: The Department of Labor Manual Series (DLMS), referred to in the Supplementary Information, are available for inspection at the Directorate of Management Policy and Systems, Department of Labor, Room N1313, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–6421.

FOR FURTHER INFORMATION CONTACT: William J. McLaughlin, Director , Office of Emergency Preparedness Planning, Room S1524, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523–6963.

SUPPLEMENTARY INFORMATION: Section 5–3b of Executive Order No. 12356 of April 2, 1982, (47 FR 14874) provides as follows:

> Any unclassified regulation that establishes agency information security policy shall be published in the **Federal Register** to the extent that these regulations affect members of the public.

In order to comply with this requirement, the Department of Labor has herein excerpted from its Dept. of Labor Manual Series (DLMS–2 Administration, Chapter 300—Security Regulations) the policies and procedures concerning agency information security and its guidelines for systematic declassification review. These excerpts also include internal guidelines for dissemination of such information to persons outside the executive branch, including historical researchers and former Presidential appointees. The complete Dept. of Labor Manual Series (DLMS–2 Administration, Chapter 300—Security Regulations) are not published herein because they contain internal procedures which are public but which are not of a nature warranting publication in the **Federal Register** due to the fact that they effectuate the policy set forth in the attached document. However, the complete DLMS–2 Administration Series, Chapter 300—Security Regulations is available for public inspection and copying. Interested persons should make inquiries to the Contact Office shown or write to the indicated address.

The Department of Labor has had no authority to classify documents since December 1, 1978. Accordingly, this part applies only to documents classified by the Department of Labor before that date. This procedure does not apply to information in the Department's possession which was classified by other agencies.

Publication in Final

The Department has determined that this rule need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA, 5 U.S.C. 553). This is because section 553(a)(1) of Title 5 of the U.S.C. (5 U.S.C. 553(a)(1)) exempts military affairs functions from public participation in the rulemaking process. This rule concerns matters of national security information and is thus related to military affairs.

In addition to the aforesaid determination, there is a second basis for publishing this rule in final form. The Department finds that good cause exists for waiving notice and comment because such action is unnecessary. This is because the rule implements requirements for publication which are mandated by Executive Order 12356 and leave the agency no discretion. See 5 U.S.C. 553(b)(B).

Executive Order 12291

The rule establishes agency information security policy and does not have a significant economic impact upon the economy. Therefore, this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markers. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility analysis do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3404(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain a collection of information requirement.

List of Subjects in 29 CFR Part 14

Security measures, Classified information, Archives and records.

Accordingly, Part 14 of Subtitle A of Title 29 of the Code of Federal Regulations is revised to read as follows:

PART 14—SECURITY REGULATIONS

Subpart A—Introduction to Security Regulations

Sec.
14.1 Purpose.
14.2 Policy.
14.3 DOL Classification Review Committee.
14.4 Definitions.

Subpart B—Review of Classified Information

14.10 Mandatory review for declassification.

Subpart C—Transmission of Classified Information

14.20 Dissemination to individuals and firms outside the executive branch.
14.21 Release of classified information to foreign governments.
14.22 Availability of classified information to persons not employed by the Department of Labor.

Authority: Executive Order No. 12356 of April 2, 1982 (47 FR 14874).

Subpart A—Introduction to Security Regulations

§ 14.1 Purpose.

These regulations implement Executive Order 12356, entitled National Security Information, dated April 2, 1982, and directives issued pursuant to that Order through the National Security Council and the Atomic Energy Act of 1954, as amended.

§ 14.2 Policy.

The interests of the United States and its citizens are best served when information regarding the affairs of Government is readily available to the public. Provisions for such an informed citizenry are reflected in the Freedom of Information Act (5 U.S.C. 552) and in the current public information policies of the executive branch.

(a) *Safeguarding national security information.* Some official information within the Federal Government is directly concerned with matters of national defense and the conduct of foreign relations. This information must, therefore, be subject to security constraints, and limited in term of its distribution.

(b) *Exemption from public disclosure.* Official information of a sensitive nature, hereinafter referred to as national security information, is expressly exempted from compulsory public disclosure by Section 552(b)(1) of Title 5 U.S.C. Persons wrongfully disclosing such information are subject to prosecution under United States criminal laws.

(c) *Scope.* To ensure that national security information is protected, but only to the extent and for such a period as is necessary, these regulations:

(1) Identify information to be protected.

(2) Prescribe procedures on classification, declassification, downgrading, and safeguarding of information.

(3) Establish a monitoring system to ensure the effectiveness of the Department of Labor (DOL) security program and regulations.

(d) *Limitation.* The need to safeguard national security information in no way implies an indiscriminate license to withhold information from the public. It is important that the citizens of the United States have access, consistent with national security, to information concerning the policies and programs of their Government.

§ 14.3 DOL Classification Review Committee.

A DOL Classification Review Committee is hereby established.

(a) *Composition of committee.* The members of this Committee are:

Chairperson—Director, Directorate or Administrative Service and Safety and Health Programs, OASAM
Member—Director, Office of Management, Administration and Planning, Bureau of International Labor Affairs
Member—Security Officer, Bureau of Labor Statistics
Member—Security Officer, Occupational Safety and Health Administration
Member—Director, Office of Management, Office of the Solicitor
Member—Assistant Inspector General for Investigations.

(b) *Responsibilities.* The Committee is responsible for:

(1) Acting on all suggestions and complaints arising with respect to the DOL's information security program.

(2) Reviewing all requests for records under the Freedom of Information Act, 5 U.S.C. 552, when a proposed denial is based on classification under Executive Order 1356 to determine if such classification is current.

(3) Recommending to the Secretary of Labor appropriate administrative actions to correct abuses or violations of any provision of Executive Order 12356 or directives thereunder. Recommended administrative actions may include notification by warning letter, formal reprimand, and, to the extent permitted by law, suspension without pay and removal. Upon receipt of any such recommendation, the Secretary shall immediately advise the Committee of the action taken.

§ 14.4 Definitions.

The following definitions apply under these regulations:

(a) *Primary organization unit*—refers to an agency headed by an official reporting to the Secretary or Under Secretary.

(b) *Classify*—to assign information to one of the classification categories after determining that the information requires protection in the interest of national security.

(c) *Courier*—an individual designated by appropriate authority to protect classified and administratively controlled information in transit.

(d) *Custodian*—the person who has custody or is responsible for the custody of classified information.

(e) *Declassify*—the authorized removal of an assigned classification.

(f) *Document*—any recorded information regardless of its physical form or characteristics, including (but not limited to):

(1) Written material—(whether handwritten, printed or typed).

(2) Painted, drawn, or engraved material.

(3) Sound or voice recordings.

(4) Printed photographs and exposed or printed films (either still or motion picture).

(5) Reproductions of the foregoing, by whatever process.

(g) *Downgrade*—to assign lower classfication than that previously assigned.

(h) *Derivative classification*—a determination that information is in substance the same as information that is currently classified. It is to incorporate, paraphrase, restate or generate in new form information that is already classified (usually by another Federal agency).

(i) *Information Security Oversight Office (ISOO)*—an office located in the General Services Administration (GSA) that monitors the implementation of E.O. 12356.

(j) *Marking*—the physical act of indicating the assigned security classification on national security information.

(k) *Material*—any document, product, or substance on or in which information is recorded or embodied.

(l) *Nonrecord material*—extra copies and duplicates, the use of which is temporary, including shorthand notes, used carbon paper, preliminary drafts, and other material of similar nature.

(m) *Paraphrasing*—a restatement of the text without alteration of its meaning.

(n) *Product and substance*—any item of material (other than a document) in all stages of development, processing, or construction and including elements, ingredients, components, accessories, fixtures, dies, models, and mockup associated with such items.

(o) *Record material*—all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the U.S. Government in connection with the transaction of public business; this includes material preserved by an agency or its legitimate successor as evidence of its organization, functions, policies, decisions, procedures, or other activities, or because of the informational data contained herein.

(p) *True reading*—the paraphrased literal text.

(q) *Upgraded*—to assign a higher classification than that previously assigned.

Subpart B—Review of Classified Information

§ 14.10 Mandatory Review for Declassification.

(a) *Scope of review.* The mandatory review procedures apply to information originally classified by the DOL when it had such authority, i.e., before December 1, 1978. Requests may come from members of the public or a government employee or agency. The procedures do not apply to information originated by other agencies and merely held in possession of the DOL. Requests for disclosure submitted under provisions of the Freedom of Information Act are to be processed in accordance with provisions of that Act.

(b) *Where requests should be directed.* Requests for mandatory review for declassification should be directed to the Department of Labor, Office of the Assistant Secretary for Administration and Management (OASAM), Washington, DC 20210. Requests should be in writing and should reasonably describe the classified information to allow identification. Whenever a request does not reasonably describe the information sought, the requestor will be notified that unless additional information is provided or the scope of the request is narrowed, no further action will be undertaken.

(c) *Processing.* The OASAM will assign the request for information to the appropriate DOL office for declassification consideration. A

decision will be made within 60 days as to whether the requested information may be declassified and, if so, made available to the requestor. If the information may not be released in whole or in part, the requestor will be given a brief statement as to the reasons for denial, and a notice of the right to appeal the determination to the DOL Classification Review Committee, Office of the Assistant Secretary for Administration and Management, Washington, DC 20210. The requestor is to be told that such an appeal must be filed with the DOL within 60 days.

(d) *Appeals procedure.* The DOL Classification Review Committee will review and act within 30 days on all applications and appeals for the declassification of information. The Committee is authorized to overrule on behalf of the Secretary, Agency determinations in whole or in part, when it decides that continued protection is not required. It will notify the requestor of the declassification and provide the information. If the Committee determines that continued classification is required, it will promply notify the requestor and provide the reasons for the determination.

(e) *Burden of proof.* In evaluating requests for declassification the DOL Classification Review Committee will require the DOL office having jurisdiction over the document to prove that continued classification is warranted.

(f) *Fees.* If the request requires a service for which fair and equitable fees may be charged pursuant to Title 5 of the Independent Office Appropriation Act, 31 U.S.C. 483a (1976), the requestor will be notified and charged.

Subpart C—Transmission of Classified Information

§ 14.20 Dissemination to individuals and firms outside the executive branch.

Request for classified information received from sources outside the executive branch of the Federal Government, provided the information has been originated by the DOL, will be honored in accordance with the following guidelines:

(a) *Top Secret Information.* All requests for Top Secret information by an individual or firm outside the executive branch must be referred promptly to the OASAM for consideration on an individual basis.

(b) *Secret and Confidential Information.* Subject to the restrictions below, Secret or Confidential information may be furnished to an individual or firm outside the executive branch if the action furthers the official program of the organization unit in which the information originated. The official furnishing such information must ensure that the individuals to whom the information is to be furnished have the appropriate DOL clearance, or at least clearance for the same or higher classification for another Federal department, or outside agency whose security clearances are acceptable to the DOL. The official must also ensure that the person to whom the classified information is being furnished possess the proper facilities for safeguarding such information. No Secret or Confidential information may be furnished to an individual or firm outside the executive branch without written concurrence from the primary organizational unit head or the Security Officer of that unit.

(c) *Unauthorized knowledge of classified information.* Upon receipt of a request for classified information which raised a suspicion that an individual or organization outside the executive branch has unauthorized knowledge of the existence of Confidential, Secret, or Top Secret information, a report providing all available details must be immediately submitted to the DOL Document Security Officer for appropriate action and disposition.

(d) *Requests from outside the United States.* All requests from outside the United States for Top Secret, Secret or Confidential information, except those received from foreign offices of the primary organizational unit or from U.S. embassies or similar missions, will be referred to the Deputy Under Secretary for International Affairs.

(e) *Access by historical researchers.* Individuals outside the executive branch engaged in historical research may be authorized access to classified information over which the DOL has jurisdiction provided:

(1) The research and need for access conform to the requirements of Section 4–3 of Executive Order 12356.

(2) The information requested is reasonably accessible and can be located and compiled with a reasonable amount of effort.

(3) The researcher agrees to safeguard the information in a manner consistent with E.O. 12356 and directives thereunder.

(4) The researcher agrees to a review of the notes and manuscript to determine that no classified information is contained therein.

Authorization for access is valid for the period required but no longer than two years from the date of issuance unless it is renewed under the conditions and regulations governing its original authorization.

(f) *Access by former presidential appointees.* Individuals who have previously occupied policymaking positions to which they were appointed by the President may be authorized access to classified information which they originated, reviewed, signed, or received while in public office. Upon request, information identified by such individuals will be reviewed for declassification in accordance with the provisions of these regulations.

§ 14.21 Release of classified information to foreign governments.

National security information will be released to foreign governments in accordance with the criteria and procedures stated in the President's Directive entitled "Basic Policy Governing the Release of Classified Defense Information to Foreign Governments" dated September 25, 1985. All requests for the release of such information will be referred to the Deputy Under Secretary for International Affairs.

§ 14.22 Availability of classified information to persons not employed by the Department of Labor.

(a) *Approval for access.* Access to classified information in the possession or custody of the primary organizational units of the Department by individuals who are not employees of the executive branch shall be approved in advance by the DOL Document Security Officer.

(b) *Access to Top Secret Material.* Access to Top Secret Information within the primary organizational units of the DOL by employees of other Federal agencies must be approved in advance by the Top Secret Control Officer of the primary organizational unit.

(c) *Access to Secret and Confidential Information.* Secret and Confidential information may be made available to properly cleared employees of other Federal departments or outside agencies if authorized by the primary organizational units having custody of the information.

Signed at Washington, DC on this December 10, 1985.

Thomas C. Komarek,

Assistant Secretary for Administration and Management.

[FR Doc. 85–29819 Filed 12–16–85; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 357, 358, 361, and 362

Government Losses in Shipment Act, Claims and Declaration of Valuables; Technical Amendments

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule; technical amendments.

SUMMARY: The Bureau intends to publish in the **Federal Register** notice of proposed rulemaking concerning Book-entry Treasury Bonds, Notes and Bills and regulations for offering these securities. These new and proposed regulations will be placed in 31 CFR Parts 357 and 358 because the subject matter of the preceding Parts is similar. Therefore, it is necessary to move the currently existing Parts 357 and 358. Also, the Bureau's proper mailing address should be added to the newly redesignated Parts.

EFFECTIVE DATE: December 17, 1985.

FOR FURTHER INFORMATION CONTACT: Sandy Dyson, Attorney-Advisor, Office of the Chief Counsel, Bureau of the Public Debt, (202) 376–4320.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

Because this document relates to agency management it is not subject to Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act

The Paperwork Reduction Act, Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. Chapter 35) does not apply to this rule because it does not contain information collection requirements which necessitate approval by the Office of Management and Budget.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this document, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601).

Administrative Procedure Act

This regulation relates to agency management and is therefore not subject to the notice and public comment procedures and the delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553(a)(2)).

Accordingly, 31 CFR, Chapter II, Subchapter B, is amended as follows:

1. The authority citation for newly redesignated Part 361 continues to read:

Authority: Sec. 6, 50 Stat. 480; 40 U.S.C. 728.

2. The authority citation for newly redesignated Part 362 continues to read:

Authority: Secs. 6, 7, 50 Stat. 480; 40 U.S.C. 728, 729.

3. Part 357—Claims Pursuant to the Government Losses in Shipment Act, and Part 358—Declaration of Valuables Under the Government Losses in Shipment Act, are redesignated as Parts 361 and 362 respectively.

4. In newly redesignated §§ 361.7 and 361.8 add ", Division of Financial Management, Room 446, E Street Building, Washington, DC 20239–0001." after "Bureau of the Public Debt".

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85–29575 Filed 12–16–85; 8:45 am]

BILLING CODE 4810-35-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 513 and 553

[APD 2800.12 CHGE 22]

General Services Administration Acquisition Regulation; Revised GSA Forms

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR), Chapter 5 is amended to revise section 513.505–2 to provide for the use of GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order; to revise section 553.173(c) to delete GSA Form 1056, Notice of Shipment and GSA Form 3433, Marking and Shipping Instructions, which have been incorporated in the revised GSA Form 3186, Order for Supplies or Services, and to add GSA Form 1458; to revise section 553.270–1 to prescribe GSA Form 3518, Representation and Certification (Acquisition of Leasehold Interests in Real Property); to revise section 553.270–2 to prescribe GSA Form 3516, Solicitation Provisions (Acquisition of Leasehold Interests in Real Property); to revise section 553.270–3 to prescribe GSA Form 3517, General Clauses (Acquisition of Leasehold Interests in Real Property); to revise section 553.272 to provide for the use of GSA Form 1458; to revise section 553.274 to require Federal Supply Service Central Office (FSS) and regional contracting activities to use GSA Form 1602, Notice Concerning Solicitation; to delete section 553.276; and to illustrate the revised GSA forms. The intended effect is to update the regulatory coverage on the use of various GSA forms.

EFFECTIVE DATE: December 6, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 523–4754.

SUPPLEMENTARY INFORMATION: This rule will not have a significant cost or administrative impact on contractors or offerors. Therefore, it was not published for public comment in the **Federal Register.**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Various GSA Forms which are already in use have been revised to conform to revised regulatory requirements. The information collection requirements contained in this rule have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 48 CFR Parts 513 and 553

Government procurement.

1. The authority citation for 48 CFR Parts 513 and 553 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 513.505–2 is revised to read as follows:

513.505–2 Agency order forms in lieu of Optional Forms 347 and 348.

(a) Unless another form is prescribed, the GSA Form 300, Order for Supplies and Services, shall be used instead of the OF 347, Order for Supplies or Services, when making purchases payable through the National Electronic Accounting and Reporting (NEAR) System. The GSA Form 3025, Receiving Report, shall be used to certify receipt of supplies or services ordered using GSA Form 300.

(b) The GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order, shall be used instead of the OF 347, Order for Supplies or Services, when making purchases in connection with the maintenance,

servicing or repair of GSA motor pool vehicles.

(c) The GSA Form 3186, Order for Supplies or Services, shall be used instead of the OF 347, Order for Supplies or Services, when making purchases through the FSS–19 system.

3. The table of contents for Part 553 is amended to add entries for sections 553.370–1458, 553.370–3186, and 553.370–3517; to delete entries for 553.276 and 553.370–1056; and to revise the entry for 553.370–1602 as set forth below:

PART 553—FORMS

Sec.

Subpart 553.3—Illustration of Forms

* * * * *

553.370–1458 GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order.

* * * * *

553.370–1602 GSA Form 1602, Notice Concerning Solicitation.

* * * * *

553.370–3186 GSA Form 3186, Order for Supplies or Services.

* * * * *

553.370–3517 GSA Form 3517, General Clauses (Acquisition of Leasehold Interests in Real Property).

* * * * *

Authority: 40 U.S.C. 486(c).

Editorial Note: GSAR forms are not published in the **Federal Register** or the Code of Federal Regulations.

4. Section 553.173(c) is amended by removing and adding the following table entries.

§ 553.173 Responsibility for the maintenance of forms.

* * * * *

(c) * * *

GSA form No.	Responsible office
. . . . .	.
1056	F [Removed].
. . . . .	.
1458	F [Added].
. . . . .	.
3433	F [Removed].
. . . . .	.

5. Section 553.270–1 is revised to read as follows:

§ 553.270–1 Representations and certifications.

(a) GSA Form 3503, Representations and Certifications, may be used as a part of all solicitations and contracts, except contracts for utilities and leases of real property. The form may also be used for small purchases when Standard Form 33, Solicitation, Offer, and Award, or Standard Form 1442, Solicitation, Offer, and Award, is used.

(b) GSA Form 3518, Representations and Certifications (Acquisition of Leasehold Interests in Real Property), is used as a part of solicitations for leases of real property.

6. Section 553.270–2 is amended by adding paragraph (c) to read as follows:

§ 553.270–2 Solicitation provisions.

* * * * *

(c) GSA Form 3516, Solicitation Provisions (Acquisition of Leasehold Interests in Real Property), is for use in leases of real property.

7. Section 553.270–3 is amended by adding paragraph (f) to read as follows:

§ 553.270–3 Contract clauses.

* * * * *

(f) GSA Form 3517, General Clauses (Acquisition of Leasehold Interests in Real Property), is for use in leases of real property.

8. Section 553.272 is revised to read as follows:

§ 553.272 Purchase/Delivery orders.

Except as otherwise indicated, each of the following forms is designed for use as a purchase order (small purchases) with applicable provisions and clauses printed on the reverse of the form, or as a delivery order to place orders under established contracts.

(a) The GSA Form 300, Order for Supplies or Services, is used for purchases payable through the National Electronic Accounting and Reporting (NEAR) System. This form may also be used in other situations, unless a specific form is prescribed for use. GSA Form 300–A, Order for Supplies or Services (Continuation), is available for use with the GSA Form 300. Pending revision of the April 1984 edition of the GSA Form 300, Block 8A of the form may be revised to delete the sentence which reads as follows: "This purchase is negotiated under the authority of:"

(b) The GSA Form 1458, Motor Vehicle Shop Work Order, Repair and Purchase Order, is used to procure services and/or repairs of GSA motor pool vehicles.

(c) The GSA Form 3186, Order for Supplies or Services, is used to make purchases through the FSS–19 system.

(d) The GSA Form 8002, Motor Vehicle Delivery Order, is used to order motor vehicles. This form is not intended for use as a purchase order for small purchases, and does not include provisions and clauses on the reverse.

9. Section 553.274 is revised to read as follows:

§ 553.274 Solicitation cover page.

GSA Form 1602, Notice Concerning Solicitation, must be used by FSS Central Office and regional contracting offices and may be used by other offices to: (a) Indicate the solicitation number; (b) Describe the type of contract, the duration of the contract, and the identity of the supplies or services being procured; (c) Direct the attention of prospective offerors to special requirements which, if overlooked, may result in rejection of the offer; (d) Highlight significant changes from previous solicitations covering the same commodity or service; and (e) Include other special notices, as appropriate.

§ 553.276 [Removed]

10. Section 553.276 is removed.

Dated: December 6, 1985.

Patricia A. Szervo,

Associate Administrator for Acquisition Policy.

[FR Doc. 85–29748 Filed 12–16–85; 8:45 am]

BILLING CODE 6820–61–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 705 and 706

[AIDAR Notice 85–11 (Final)]

Acquisition Regulation Concerning Noncompetitive Contracting Authorities

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to finalize an interim rule (AIDAR Notice 85–11, published in the October 8, 1985 **Federal Register**). This action re-establishes three AID-specific noncompetitive contracting authorities and a related publicizing exception previously authorized under Section 7–3.107–50 of the AID Procurement Regulation (41 CFR 703.107–50).

EFFECTIVE DATE: October 8, 1985.

FOR FURTHER INFORMATION CONTACT: GC/CCM, Kenneth Fries, telephone (202) 632–1170.

SUPPLEMENTARY INFORMATION: On October 8, 1985, AIDAR Notice 85–11 was published in the **Federal Register** (50 FR 40976) as an interim rule and request for comment. The AIDAR Notice amended the AIDAR to re-establish three AID-specific noncompetitive contracting authorities and a related

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publicizing exception. It provided that full and open competition need not be obtained when it has been determined that it would impair foreign assistance objectives. This authority may be used:

—For award under Sec. 636(a)(3) of the Foreign Assistance Act of a contract for personal services abroad.

—For award of a contract of $100,000 or less by an overseas contracting activity.

—For awards where an Assistant Administrator has determined that use of full and open competition would impair foreign assistance objectives and would be inconsistent with fulfillment of the foreign assistance program, or for awards for countries, regions, projects or programs where the Administrator has made such determinations and findings.

The rule was approved by the Office of Federal Procurement Policy and the Office of Management and Budget as required by OMB Bulletin 85–7.

The Small Business Administration has, under section 8(g)(3) of the Small Business Act, found that the synopsizing exception in the Notice will not be detrimental to small business interests.

Only 2 comments were received regarding AIDAR Notice 85–11. One agreed with the rule as proposed. The other took exception to the finding of AID and the Small Business Administration that the rule would not significantly affect small businesses, but offered no explanation or argument. We therefore have determined to reaffirm the finding underlying the rule.

As required by the Regulatory Flexibility Act, it is hereby certified that AIDAR Notice 85–11 (Final) will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Parts 705 and 706

Government procurement.

The interim rule published as AIDAR Notice 85–11 in the October 8, 1985 **Federal Register** (50 FR 40976) is adopted as final, without change.

Dated: December 4, 1985.

John F. Owens,

AID Procurement Executive.

[FR Doc. 85–29751 Filed 12–16–85; 8:45 am]

BILLING CODE 6116–01–M

Proposed Rules

Federal Register
Vol. 50, No. 242
Tuesday, December 17, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 530

Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to establish higher minimum rates and rate ranges for Computer Scientists, GS–1550, at grades GS–5/ 7/9/11, at the Naval Air Development Center, Warminster, Pennsylvania. This action is based on a review of current staffing conditions through which OPM has determined, after considering competing salary rates in private enterprise, that establishment of special salary rates is necessary to ensure that the subject positions are adequately staffed by well-qualified employees. The special salary rates have been established at levels deemed necessary to achieve this outcome.

DATE: Comments are invited and must be received on or before January 16, 1986.

ADDRESSES: Send or deliver written comments to: Office of Personnel Management, Compensation Group, Allowances and Special Rates Division (FR), Room 3353, 1900 E Street, NW., Washington, DC 20415.

The data OPM used in coming to its conclusions in this case are available for public inspection in the OPM Library, Room 5H27, which is located at 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Vincent E. Donahue, (202) 632–7858.

SUPPLEMENTARY INFORMATION: Section 5303 of title 5, United States Code, authorizes the President to establish special minimum rates of basic pay for one or more grades, occupational groups, series, classes, or subdivisions of classes subject to statutory pay schedules in one or more areas or locations, when the pay rates in private enterprise are so substantially above the statutory pay rates for the positions concerned as to handicap significantly the Government's recruitment or retention of well-qualified persons.

Section 301(a) of Executive Order 11721 of May 23, 1973, as amended, authorizes OPM to exercise the authority conferred upon the President. The rates proposed in this notice were determined in accordance with § 530.303 of title 5, Code of Federal Regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to selected Federal Employees in Warminster, Pennsylvania.

List of Subjects in 5 CFR Part 530

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

OPM is proposing to amend Part 530 as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for Part 530 continues to read as follows:

Authority: 5 U.S.C 5303, and Chapter 54; E.O. 11721, as amended.

2. In § 530.307 (proposed at 50 FR 39698, September 30, 1985), the "Local Authorization" table is amended by adding the following item in numerical order by GS number as follows:

LOCAL AUTHORIZATIONS

Occupational series	Geographic coverage	Grade	1st step	10th step	Within grade	Table No.	Proposed
GS–1550, Computer Scientist	Naval Air Development Center Warminster, PA	GS–5	$18,710	$23,030			
		GS–7	23,170	28,516			
		GS–9	25,980				
		GS–11	28,039				

[FR Doc. 85–29766 Filed 12–16–85; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 530

Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to establish higher minimum rates and rate ranges for Inhalation Therapy Technicians, GS–7, at the Walter Reed Army Medical Center in Washington, DC. This action is based on a review of current staffing conditions through which OPM has determined, after considering competing salary rates in private enterprise, that establishment of special salary rates is necessary to ensure that the subject positions are adequately staffed by well-qualified employees. The special salary rates have been established at levels deemed necessary to achieve this outcome.

DATE: Comments are invited and must be received on or before January 16, 1986.

ADDRESSES: Send or deliver written comments to: Office of Personnel Management, Compensation Group, Allowances and Special Rates Division (FR), Room 3353, 1900 E Street, NW., Washington, DC 20415.

The data OPM used in coming to its conclusions in this case are available for public inspection in the OPM Library, Room 5H27, which is located at 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Ronald Genua, (202) 632–7858.

SUPPLEMENTARY INFORMATION: Section 5303 of title 5, United States Code, authorizes the President to establish special minimum rates of basic pay for one or more grades, occupational groups, series, classes, or subdivisions of classes subject to statutory pay schedules in one or more areas or locations, when the pay rates in private enterprise are so substantially above the statutory pay rates for the positions concerned as to handicap significantly the Government's recruitment or retention of well-qualified persons.

Section 301(a) of Executive Order 11721 of May 23, 1973, as amended, authorizes the OPM to exercise the authority conferred upon the President. The rates proposed in this notice were determined in accordance with § 530.303 of title 5, Code of Federal Regulations.

E.O. 12291, Federal Regulation

I Have determined that this is not a major rule as defined under section 1(b) of E.O 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, because it applies only to selected Federal employees in Washington, D.C.

List of Subjects in 5 Part 530

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

OPM is proposing to amend Part 530 as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for Part 530 continues to read as follows:

Authority: 5 U.S.C. 5303, and Chapter 54; E.O. 11721, as amended.

2. In § 530.307 (proposed at 50 FR 39698, September 30, 1984), the "Local Authorization" table is amended by adding the following item in numerical order by GS number as follows:

Occupational series	Geographic coverage	Grade	1st step rate	10th step rate	Within-grade increase	Table No.	Proposed action
GS-649, Inhalation Therapy Technician	Walter Reed Army Medical Center in Washington, DC	GS-7	$19,606	24,952	$59-	007	Establish

[FR Doc. 85–29552 Filed 12–16–85; 8:45 am]

BILLING CODE 6325–01–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9178]

Bass Brothers Enterprises, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that Ashland Oil Co., the nation's third-largest producer of carbon black, cancel the proposed sale of its carbon black assets to Bass Brothers Enterprises, Inc. Ashland would also be required to obtain Commission approval before selling any of its domestic carbon black plants to a major competitor.

DATE: Comments must be received on or before February 18, 1986.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/L–502, Steven B. Feirman, Washington, D.C. 20580. (202) 634–6609.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f)) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Carbon black, Trade practices.

In the matter of Bass Brothers Enterprises, Inc., et al.; Docket No. 9178.

Agreement Containing Consent Order

The agreement herein, by and between the corporation Ashland Oil, Inc. by its duly authorized officers, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. In accordance with those rules the parties hereby agree that:

1. Respondent Ashland Oil, Inc. is a corporation organization and existing under the laws of the State of Kentucky with its corporate headquarters at 1000 Ashland Drive, Russell, Kentucky.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 7 of the Clayton Act, as amended (15 U.S.C. 18), and section 5 of the Federal Trade Commission Act, as amended (15 U.S.C. 45), and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in the proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in accordance with the terms of this agreement in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the complaint issued by the Commission

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the orders, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For the purposes of this Order the following definitions shall apply:

"Carbon black" means furnace-process and thermal-process carbon black, whether used for rubber or other applications.

"Ashland" means Ashland Oil, Inc., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns.

"Bass Brothers" means Bass Brothers Enterprises, Inc., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns.

"SRCG" means Sid Richardson Carbon & Gasoline Co., as well as its officers, employees, representatives, agents, parents, divisions, subsidiaries, successors, and assigns.

"Production capacity" means the practical annual productive capacity of all units, including units currently in operation and units that could be put into operation with or without time delay or additional investment.

I

It is ordered, That, unless Ashland has already done so, it will, not later than fourteen (14) days after this Order becomes final, terminate any agreement that provides for or contemplates the acquisition of Ashland's carbon black business by Bass Brothers or Sid Richardson, including but not limited to the letter of intent signed on or about November 15, 1983, return or destroy all documents containing or recording confidential information provided to Ashland by Bass Brothers or SRCG, and recover from Bass Brothers and SRCG all documents containing or recording confidential information provided to Bass Brothers and SRCG by Ashland, in connection with acquisition negotiations or agreements. Nothing herein contained shall relieve Ashland from any obligation of confidentiality imposed by agreement among Bass Brothers, SRCG, and Ashland.

II

It is further ordered, That for a period of four (4) years from the date on which the Agreement consenting to the issuance of this Order is signed, Ashland shall not sell, transfer, or divest, either directly or indirectly, any carbon black manufacturing plant in the United States to any person engaged in the production of carbon black in the United States, unless Ashland has filed the notifications set out in Section III of this Order and the waiting period set out in Section III of this Order has expired. *Provided,* however, that such sale, transfer, or divestiture shall not be subject to this Section II: (1) if the sale, transfer, or divestiture is of a single plant, and the acquiring firm's share of carbon black production capacity in the United States in the most recent calendar year preceding the transaction is not greater than fifteen percent; or (2) if notification of the transaction is required to be made, and in fact is made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

III

It is further ordered, That the notification required of Ashland by Section II of this Order shall be made to the Director of the Bureau of Competition of the Federal Trade Commission, shall refer to this Order, and shall include such information and be in such form as is required of the acquired person for notification of an acquisition made pursuant to Section 7A of the Clayton Act and any rule promulgated thereunder. After filing such notification, Ashland shall observe the provisions and requirements of paragraphs (a), (b), and (e) of Section 7A of the Clayton act, 15 U.S.C. 18a, and any rules promulgated thereunder, that relate to prohibition of an acquisition prior to expiration of the waiting period, waiting period duration, termination of waiting period, granting of requests for early termination, extension of waiting period, submission of additional information or documentary material, and other governmental action or information requests, that are in effect at the time the notification is filed, which provisions and requirements are incorporated herein by reference. *Provided,* that no party other than Ashland must file notification under this Section III, and the duration of the waiting period shall not be affected by the failure of any party other than Ashland to submit document or information if requested.

IV

It is further ordered, That notification and other documents required to be filed by Ashland with the Director of the Bureau of Competition by Sections II and III of this Order shall not de deemed "compliance reports" within the meaning ofRule 4.9 of the Commission's Rules of Practice, 16 CFR 4.9.

V

It is further ordered, That Ashland shall notify the Commission at least thirty (30) days prior to any proposed corporate change such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporaion that may affect complaince obligations arising out of this Order.

VI

It is further ordered, That if, prior to the expiration of this Order, the Commission dismisses the complaint against Bass Brothers and SRCG, this Order shall be terminated by the Commission upon application by Ashland.

VII

It is further ordered, That Ashland shall, within thirty (30) days after making any sale, transfer, or divestiture of any carbon black manufacturing plant in the United States that is not subject to notification under Section II of this Order, file with the Commission a written report describing such transaction.

VIII

It is further ordered, That Ashland shall, within sixty (60) days after service upon it of this Order, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Ashland Oil, Inc. ("Ashland").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interestetd persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint, which was issued May 8, 1984, challenges, as violations of Section 7 of the Clayton Act, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, the proposed acquisition by Bass Brothers Enterprises, Inc. ("Bass Brothers") and Sid Richardson Carbon & Gasoline Co. ("Sid Richardson") of Ashland's United States carbon black industry assets. The complaint alleges that both Sid Richardson and Ashland are substantial competitors in the United States carbon black market, that the United States carbon black market is highly concentrated, and that barriers to entry into the production and distribution of carbon black are substantial. The complaint alleges that the effects of the proposed acquisition would be to eliminate substantial actual competition between Sid Richardson and Ashland, and eliminate Ashland as a substantial competitor in the carbon black market; to substantially increase concentration in an already highly concentrated market and encourage additional mergers or acquisitions in that market, thus increasing the likelihood of collusion; to tend to reduce the desgree of price competition and to reduce the volume of production below competitive levels; and to tend to reduce the actual competition among other companies engaged in the production and distribution of carbon black. The complaint charges that the proposed acquisition constitutes a violation of Section 5 of the Federal Trade Commission Act, and if consummated, would constitute a violation of Section 7 of the Clayton Act.

The proposed order requires Ashland for a period of four years to notify the Director of the Comission's Bureau of Competition in advance of any proposed sale or divestiture of one or more of Ashland's three U.S. carbon black plants to a competitior in the U.S. carbon black industry. In this order, "carbon black" includes both rubber carbon black and "industrial," non-rubber carbon black. No prior notice is required if only one plant is being transferred to a competitor who has less than 15 percent of U.S. production capacity, or if the transaction must be reported under the statutory premerger notification program. Ashland is required to report to the Commission within 30 days any carbon black plant sale for which prior notice is not required.

The order provides that, upon application by Ashland, the order may be terminated if the Commission dismisses the still-pending complaint against Bass Brothers and Sid Richardson, Docket No. 9178.

The agreement is for purposes of settlement only; it does not constitute an admission by Ashland that the law has been violated as alleged in the Complaint.

The purpose of this analysis is to facilitate public comments on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-29779 Filed 12-16-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 85N-0553]

Proposed Labeling for Oral Aspirin-Containing Drug Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the labeling of oral over-the-counter (OTC) aspirin and aspirin-containing drug products for human use to bear a warning that such products should not be used to treat chicken pox or flu symptoms in children and teenagers before consulting a doctor about Reye syndrome, a rare but serious illness. FDA is preparing this rule in order to bring uniformity and consistency to the marketplace and to aid in increasing the public awareness about this disease.

DATES: Comments by January 15, 1986. These labeling requirements are proposed to become effective for products initially introduced or initially delivered for introduction into interstate commerce 90 days after the date of publication of any final rule based on this proposal, or May 30, 1986, whichever is later. Further, FDA is proposing that this rule, if promulgated, would expire in 2 years following the effective date unless extended by the agency after publication for notice and comment in the **Federal Register.**

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Christopher Smith, Office of the Commissioner (HF-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5133.

SUPPLEMENTARY INFORMATION: This proposed rule would require that the labeling of oral aspirin and aspirin-containing OTC drug products for human use bear a warning that such products should not be used to treat chicken pox or flu symptoms in children and teenagers before consulting a doctor about Reye syndrome, a rare but serious illness. This rule is being proposed in order to bring uniformity and consistency to the marketplace and to aid in increasing the public awareness about this disease.

I. Background

A. Reye Syndrome

First described by the pathologist Douglas Reye of Australia in 1963, Reye syndrome is classically described as occurring in a child or teenager during the course of or while recovering from a mild respiratory tract infection, flu, chicken pox, or other viral illness. Flu and chicken pox are the mostly commonly associated viral illnesses. The disease is characterized by severe vomiting and irritability or lethargy, which may progress to delirium and coma. The illness is described clinically as having an acute onset in which the initial symptom is usually vomiting, which may be profuse and persistent, and which is often accompanied by a change in mental status. Although the cause of Reye syndrome is unknown, some scientific studies, as described below, have looked at the possible association between the use of aspirin and the onset of the disease.

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B. Early Scientific Studies

The Public Health Service (PHS) first initiated nationwide surveillance for Reye syndrome in December 1973. In 1976, the Centers for Disease Control (CDC) and State health departments intensified this surveillance and four CDC-supported case-control studies were conducted by the Arizona, Ohio, and Michigan State Health Departments. These studies, however, raised as many questions as they answered and generated considerable controversy in the medical community over the conclusion to be drawn from the available information.

In the **Federal Register** of December 28, 1982 (47 FR 57886), FDA published an advance notice of proposed rulemaking, which discussed in great detail the disease, the State studies, the findings of a FDA working group review, and a Reye syndrome workshop cosponsored by FDA, CDC, and the National Institutes of Health (NIH). FDA concluded, in the advance notice, that the State studies did not establish a conclusive link between aspirin use and Reye syndrome and that further research was needed to provide definitive data, but, in the interim, the public and the health care community should be educated about the possibility of an association between aspirin use and Reye syndrome raised by the State studies. FDA initiated, in the fall of 1982, an educational program aimed at achieving this result. These educational efforts have been renewed in each successive fall since then.

C. The Public Health Service Study

Because FDA determined that additional reserch was needed to study the possible relationship between aspirin use and Reye syndrome, in 1982 and 1983, PHS developed a plan for further research into the possible association between Reye syndrome and various exposure factors, including the use of aspirin. A main study was planned and is now being conducted under the direction of the PHS Reye Syndrome Task Force. The main study was preceded by a pilot phase (methodology study) to determine the study feasibility and to establish the appropriate methodology for the full-scale main investigation.

The methodology study phase was completed in late 1984, and the data were reviewed shortly thereafter by the Institute of Medicine (IOM) of the National Academy of Sciences. HHS is committed to making these data, except for the identification of persons involved and other safeguards, available to specified scientists for further scientific review and analysis. Final discussions are underway regarding the procedures by which these data would be made available.

In the methodology study full report, 90 percent of the identifiable Reye syndrome cases had a history of aspirin use during an antecedent respiratory illness or an episode of chicken pox, compared to 46 percent of the controls who had used aspirin but did not develop Reye syndrome. Moreover, a majority of Reye syndrome cases (73 percent) were patients between the ages of 10 and 18. The methodology study, although not conclusive, reported an association between the use of aspirin and the onset of Reye syndrome in children and teenagers. The study results also highlighted the vulnerability of teenagers to this disease. As noted above, the main study is now underway. The data generated will be reviewed, critiqued, and monitored by IOM as the study progresses.

D. Educational Activities

In January 1985, based on the data from the methodology study, FDA expanded its public education program. Agency efforts included newspaper columns, radio public service announcements (PSA's), and newspaper advertisements. Based on findings in the methodology study, FDA placed specific emphasis in its 1985 educational campaign on teenagers. These educational activities are continuing into the 1985–1986 flu season.

Separately, but in concert with FDA's educational campaign, the aspirin industry developed and implemented its own educational program, beginning in January 1985. The industry's educational efforts consisted of television and radio PSA's, store posters, and revised product labeling.

The American Pharmaceutical Association also distributed Reye syndrome warning posters to its membership. Retail establishments headed by Giant Foods, Safeway, Walgreen, Thrift, Osco, People's Drug Stores, and others initiated similar efforts.

The voluntary nature of the aspirin industry's efforts led to considerable diversity in the specific message being conveyed to consumers, particularly through product labeling. For example, the eight companies making up the Aspirin Foundation of America (Bristol-Meyers Co. (Bufferin; Excedrin); Borroughs Wellcome Co. (Empirin); E.R. Squibb & Sons (Trigesic); Glenbrook Laboratories (Bayer Aspirin); L.T. York Co. (York Aspirin); Miles Laboratories, Inc. (Alka-Seltzer, Alka-Seltzer Plus); Proctor & Gamble Co. (Norwich Aspirin), and Whitehall Laboratories (Anacin)) all agreed to place the following warning on their aspirin labels: "Consult a physician before giving this medicine to children, including teenagers, with chicken pox or flu." In addition, the references to flu as an indication for use on the labels of children's aspirin products were deleted.

In contrast, Plough, Inc. (St. Joseph's Aspirin), which is not a member of the Aspirin Foundation, developed its own voluntary precautionary labeling program. Its program includes labeling revisions for rall its aspirin-containing products to bear the following statement: "WARNING: Reye syndrome is a rare but serious disease which can follow flu or chicken pox in children and teenagers. While the cause of Reye syndrome is unknown, some reports claim aspirin may increase the risk of developing this disease. Consult a doctor before use in children or teenagers with flu or chicken pox." In addition, Plough, Inc., has included the following statement in its patient package insert: "The symptoms of Reye syndrome can include persistent vomiting; sleepiness and lethargy; violent headaches; unusual behavior, including disorientation, combativeness, and delerium. If any of these symptoms occur, especially following chicken pox or flu, call your doctor immediately, even if your child has not taken any medication. REYE SYNDROME IS SERIOUS, SO EARLY DETECTION AND TREATMENT ARE VITAL."

Other companies used additional variations. For example, Publix Super Markets, Eckard Drug Co., and LKS Products use the following statement: "REYE SYNDROME WARNING: Children and teenagers who exhibit signs of chicken pox or flu should consult a physician before using aspirin-containing products."

Giant Foods Inc. has also used its own statement. It says: "REYE SYNDROME WARNING: Consult a doctor before giving this product to children 19 years and under with chicken pox or flu."

Still another example is the approach taken by William H. Rorer Inc., which has elected to use the following statement: "Reye's symdrome Warning: Do not use in children, including teenagers, with chicken pox or flu."

Finally, in the case of Menley and James Laboratories, that firm has elected to use two different statements on its products. In one case, the statement reads: "If under medical care, or with a history of ulcers, or for children, including teenagers, with chicken pox or flu, consult a physician before taking this product." In the other

case, the statement reads: "Individuals being treated for depression, high blood pressure, asthma, heart disease, diabetes, thyroid disease, glaucoma, or an enlarged prostate or children, including teenagers, with chicken pox, or flu, should use only as directed by a physician."

In each case, the manufacturer has chosen where the warning statement appears. In some, it is in the "Warning" section of the labels. Others have placed the statement in different labeling sections or on the package side panel, back panel, or end flap. Some firms have simply flagged the label to "See New Label Directions."

On February 28, 1985, the "Emergency Reye Syndrome Act" (S. 538 and H.R. 1381) was introduced in Congress. On October 29, 1984, H.R. 3640 was introduced to amend H.R. 1381. These bills were introduced to amend the Federal Food, Drug, and Cosmetic Act to require prominent warnings concerning the use by children and teenagers of drugs containing aspirin or another salicylate. S. 538 and H.R. 1381 would require the following labeling: "WARNING: This product should not be given to individuals under the age of 21 years who have chicken pox, influenza, or flu symptoms. This product contains aspirin or another salicylate which has been strongly associated with the development of Reye syndrome, a serious and often fatal childhood disease."

In addition, in January 1985, S. 26 was introduced into the Illinois Senate to amend that State's Food, Drug, and Cosmetic Act to require the labeling of OTC aspirin-containing drug products with a warning statement about the possible association between use of the products and Reye syndrome. Although the bill did not pass, Resolution S. 54 did pass in March 1985 urging the United States Senate and House of Representatives to require labeling on OTC aspirin-containing products with a warning statement concerning Reye syndrome.

More recently, in a letter to the Secretary of Health and Human Services dated September 25, 1985, the American Academy of Pediatrics also expressed its concerns regarding the adequacy of such labeling. The Academy said that many of these warnings were not specific enough because they do not mention the possible link with Reye syndrome, and that in most instances the warnings do not stand out prominently enough on product labels. in its letter, the Academy suggested a warning of its own to be used. It stated: "WARNING: Reye syndrome is a rare but serious illness which can follow influenza or chicken pox in children and teenagers. While the cause of Reye syndrome is unknown, studies indicate that aspirin may increase the risk of developing this illness. Consult a doctor before use in children and teenagers with symptoms of influenza or chicken pox." The Acdemy's concern about the labeling language and its location was reiterated in a second letter to the Secretary on November 14, 1985.

II. Regulatory Evaluation

FDA recognizes that the available data do not establish a definitive cause-and-effect relationship between aspirin-containing products and Reye syndrome. However, the agency has concluded that the studies suggest a possible association between aspirin use and Reye syndrome, prompting a major public education campaign as discussed in the advance notice of proposed rulemaking and in this document. In addition, as also discussed above, in January 1985, the aspirin industry, in response to a request by the Secretary, began an education program of its own, including various types of product labeling as presented above.

The Secretary believes that the voluntary program has made real and substantial progress and has done much more in a relatively brief period of time to inform and caution the general public about Reye syndrome and the possible association of the disease with aspirin use than the most ambitious mandatory program alone could have done in the same time frame. The Secretary also believes that this unprecedented voluntary program has proven itself to be, even in hindsight, the most appropriate response to the possible association between aspirin and Reye syndrome based on the scientific information available from the pilot study. In fact, cases of Reye syndrome have decreased from 422 in the 1980–1981 flu season, before FDA's educational program began, to 171 cases reported during last year's flu season, a 60 percent decline.

The relabeling component of this voluntary program has also been positive. For example, all aspirin and aspirin-containing products shipped since August 31, 1985, by the Aspirin Foundation manufacturers and Plough, Inc., which together represent approximately 75 percent of the U.S. aspirin market, contained a new warning statement. Moreover, these relabled products have worked their way through the pipeline onto retail shelves in increasing quantity with each successive month.

Despite these positive aspects, the diversity of the label messages used is likely to be somewhat confusing. As noted above, the label statements being used now, while similar, differ in several respects. Some do not mention Reye syndrome specifically. The mere multiplicity of warning statements also may cause consumer confusion. Finally the location of the statement on the label varies from product to product. FDA believes it is in the best interest of the consumer, industry, and the marketplace to have uniformity in presentation and clarity of message.

Although the previously mentioned eight Aspirin Foundation companies and Plough, Inc., represent some 75 percent of the aspirin market, FDA is unable to ascertain with certainty whether all aspirin-containing products in the marketplace are being relabeled. Thus, to increase consumer awareness, avoid public confusion, and achieve uniformity in the marketplace, FDA is proposing to require the following statement: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness." Further, FDA is proposing that this warning shall precede any additional warnings that may appear on the product labeling in order to assure the prominence of the message.

III. Labeling Provisions

The agency has concluded that a regulation is necessary to achieve consistency and uniformity with respect to the labeling of oral aspirin-containing products and Reye syndrome. The proposed rule would amend § 201.314 *Labeling of drug preparations containing salicylates* (21 CFR 201.314) by adding a new paragraph (h), which would specify the proposed required OTC warning statement. The warning statement would appear in the labeling, as required by the proposed rule, of all aspirin-containing OTC drugs for human use that are administered orally. The aspirin may be present either as a single ingredient or in combination with one or more other ingredients. Aspirin-containing products that are not included would be those that are administered topically, rectally, vaginally, by aerosol, or those used as a mouthwash, toothpaste, or flavoring. This proposal does not apply to prescription drug products because, by definition, physicians are to be consulted prior to their use.

The warning statement that would be required by the proposed rule would be: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is

consulted about Reye syndrome, a rare but serious illness."

The proposed rule would require that all OTC drug products subject to the rule prominently bear the required warning statement on the immediate container labeling, such as the outside container or wrapper label, and on all other labeling accompanying the product. If the labeling contains other warnings, the warning statement proposed in this document would be required to appear as the first warning under the hearing "Warning".

In addition to this warning statement, the proposal would amend § 201.314 to require that the labeling for OTC aspirin-containing drug products subject to this proposed rule packaged solely for use by children (pediatric products) would not be permitted to recommend the product for use in flu or chicken pox.

IV. Compliance

It is proposed that these labeling requirements shall become effective for all products initially introduced into interstate commerce 90 days after publication of any final rule based on this proposal, or May 30, 1986, whichever is later. Any aspirin-containing OTC drug product for human use that is covered by this proposed rule that is initially introduced or initially delivered for introduction into interstate commerce on or after the effective date would be required to contain the labeling required by this proposed rule or be subject to regulatory action.

In addition, FDA is proposing that this regulation, if made final, would expire 2 years following the effective date, unless the agency acts to extend it through proposed rulemaking with notice and public comment. This 2-year period should allow completion of the main study now underway that is looking at the association between these products and Reye syndrome.

V. Legal Authority

This proposed rule would provide that oral OTC drugs which contain aspirin would be misbranded under section 502(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(a)), if the drugs are not labeled with a warning as required by the regulation and are initially introduced or initially delivered for introduction into interstate commerce after the effective date of the regulation.

Section 701(a) of the act (21 U.S.C. 371(a)) provides authority for promulgating substantive rules for the efficient enforcement of the act. See *National Ass'n of Pharmaceutical Manufacturers* v. *FDA*, 637 F.2d 877, 879 (2d Cir 1981). The courts have upheld FDA's authority to promulgate regulations requiring label warnings. See, *Cosmetic, Toiletry and Fragrance Ass'n* v. *Schmidt*, 409 F. Supp. 57 64 (D.D.C. 1976), *Aff'd without opinion*, No. 75–1715 (D.C. Cir., August 19, 1977).

In proposing this regulation, FDA is aware that the voluntary labeling program undertaken by the aspirin industry together with FDA has been successful and has resulted in the labeling of many of the drugs which would be covered by this proposed regulation. However, FDA is of the view that the public interest would best be served by ensuring that the same warning is used on all products covered by this regulation and that it appear in the same place on all packaging. In addition, there may be a small number of products containing aspirin which have not been relabeled to include a warning as part of the voluntary labeling program. By promulgating this regulation, FDA eliminates the potential for consumers being confused and misled by variant forms of label statements about the important subject of aspirin and Reye syndrome (21 U.S.C. 352)).

FDA has a well-established policy of promoting uniformity in the area of labeling. For example, in requiring a warning directed to pregnant and nursing women on all OTC drugs intended for systemic absorption, FDA addressed the need to have the same language appear in the same manner on all labels. (See 47 FR 54753; December 3, 1982.) This preference for uniformity is also recognized by the judiciary in its construction of the Supremacy Clause of the United States Constitution. One of the four factors used to determine if Federal preemption of State regulation in a particular area exists is whether "the nature of the subject matter regulated * * * is one which demands 'exclusive Federal regulation in order to achieve uniformity vital to national interests.' " *Cosmetic, Toiletry and Fragrance Ass'n* v. *State of Minnesota*, 440 F. Supp. 1216, 1220 (D. Minn. 1977), *aff'd per curiam*, 575 F.2d 1256 (ith Cir. 1978), *quoting, Northern States Power Co.* v. *State of Minnesota*, 447 F.2d 1143, 1146–1147 (8th Cir. 1971), *aff'd* 405 U.S. 1035 (1972).

VI. Economic Impact

FDA has examined the regulatory impact and regulatory flexibility implications of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act. The proposal would impose direct one-time costs associated with changing product labels, but that cost is estimated to total less than $3 million.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Comments

Interested persons may, on or before January 16, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. FDA is proposing this rule with a 30-day comment period in order to allow the agency to publish a final rule within the time for products subject to the rule to be properly labeled prior to the 1986–1987 flu season. Accordingly, good cause exists for a comment period of less than 60 days. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 201

Drugs, Labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 201 be amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR Part 201 is revised to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended (21 U.S.C. 321, 352, 355, 371); 21 CFR 5.10 and 5.11.

2. In §201.314 by adding new paragraph (h), to read as follows:

§201.314 Labeling of preparations containing salicylates.

* * * * *

(h)(1) The labeling of an orally administered over-the-counter aspirin-containing drug products subject to this paragraph is required to prominently bear a warning. The warning shall be as follows: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye syndrome, a rare but serious illness."

(2) This warning statement shall appear on the immediate container labeling and on all other labeling accompanying such drug products. It shall be the first warning statement

under the heading "Warning" if the labeling contains warnings.

(3) Over-the-counter drug products subject to this paragraph and labeled solely for use by children (pediatric products) shall not recommend the product for use in treating flu or chicken pox.

(4) Any product subject to this paragraph that is not labeled as required by this paragraph and that is initially introduced or initially delivered for introduction into interstate commerce after (effective date to be 90 days after the date of publication of any final rule based on this proposal, or May 30, 1986, whichever is later) is misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act.

(5) The requirements of this paragraph shall expire (date 2 years after the effective date of the final rule), unless extended by the Food and Drug Administration by publication for notice and comment in the Federal Register.

Dated: December 11, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85-29769 Filed 12-16-85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 625 and 655

[FHWA Docket No. 85-27]

National Standards for Traffic Control Devices; Request for Comments on Proposed Amendments to the Manual on Uniform Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices; request for comments.

SUMMARY: The FHWA is inviting comments on proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD). The MUTCD is incorporated by reference in the design standards for Federal-aid Highways found in Part 625 of Title 23, Code of Federal Regulations. It is also recognized in 23 CFR Part 655 as the national standard for traffic control devices on all public roads.

The amendments affect various parts of the MUTCD and are intended to expedite traffic, improve safety, and provide a more uniform application of highway signs, signals, and markings.

DATES: Comments must be received on or before July 19, 1986.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-27, Federal Highway Administration, Room 4205 HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard

The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for $30.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20420, Stock No. 050-001-81001-8.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 426-0411, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0702, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA both receives and initiates requests for amendments to the MUTCD. Each request is assigned an identification number which indicates, by Roman numeral, the organizational part of the MUTCD affected and, by Arabic numeral, the order in which the request was received.

This notice is being issued to provide the public an opportunity to comment on the desirability of proposed amendments to the MUTCD. Based upon comments received in response to this notice and upon its own experience, the FHWA will issue a final rule concerning these requests.

Index of Requests

General Provisions (Part I)

(1) Request I-4(Chng.)—Manual Changes, Interpretations and Authority to Experiment (Section 1A-6).

Signs (Part (II)

(2) Request II-106(Chng.)—Use of No Parking Symbol Sign (R8-3a) in Rural Areas.

(3) Request II-107(Chng.)—Standards for and Applications of Lane-Use Control Signs at Intersections.

(4) Request II-109(Chng.)—Cloverleaf With Collector-Distributor Roadways.

(5) Request II-110(Chng.)—Tourist Oriented Directional Signs (TODS).

Markings (Part III)

(6) Request III-30(Chng.)—Wrong Way and Lane Use Pavement Marking Arrows.

(7) Request III-38(Chng.)—Warrants for No-Passing Zones at Curves.

(8) Request III-39(Chng.)—Delineator Placement and Spacing.

Signals (Part IV)

(9) Request IV-52(Chng.)—Median Width Criteria for Pedestrian Signals.

(10) Request IV-58(Chng.)—A Required Yellow Arrow Clearance Interval and Left Turn Signal Displays.

(11) Request IV-60(Chng.)—Warrants for Traffic Signal Installation.

(12) Request IV-67(Chng.)—Accident Experience Warrant.

(13) Request IV-68(Chng.)—Effects of Right Turn On Red on Volume Warrants.

Traffic Control for Street and Highway Construction and Maintenance Operations (Part VI)

(14) Request VI-33(Chng.)—Location of Reflective Collars with Respect to Top of Cones.

(15) Request VI-34(Chng.)—Size and Location of Additional Reflective Bands on Cones.

(16) Request VI-35(Chng.)—ROAD (STREET) CLOSED Sign.

(17) Request VI-36(Chng.)—Length of Construction Sign.

Traffic Control Systems for Railroad-Highway Grade Crossings (Part (VIII)

(18) Request VIII-18(Chng.)—Delete Traffic Signal Preemption Drawing, Figure 8-8.

Traffic Control for Bicycle Facilities (Part IX)

(19 Request IX-4(Chng.)—U.S. Bicycle Route Marker (M1-9).

Copies of the proposed text changes to the MUTCD will be distributed to everyone currently appearing on the FHWA mailing list for MUTCD matters. Those wishing to be added to the mailing list or receive copies of the proposed text should write to the Federal Highway Administration, Office of Traffic Operations (HTO-21), 400 Seventh Street SW., Washington, D.C. 20590 or contact Mr. Philip O. Russell (202) 426-0411.

Discussion of Requests

The FHWA proposes to act on the requests for change to the MUTCD as noted below:

General Provisions (PART 1)

(1) *Request I-4(chng.)—Manual Changes, Interpretations and Authority*

to Experiment (Section 1A–6). In FHWA Docket 83–18 (48 FR 30145, June 30, 1983) the FHWA invited comments on the adoption of new procedures concerning MUTCD amendments, interpretations, and experimentations.

The FHWA proposes to modify section 1A–6 of the MUTCD to incorporate these procedures.

These procedures are more detailed, and are designed to improve the timeliness and completeness of amendments, interpretations, and experimentations without imposing additional costs on the FHWA or other highway agencies.

Signs (Part II)

(2) *Request II–106(Chng.)—Use of No Parking Symbol Sign (R8–3a) in Rural Areas.* When no parking zones are established in rural areas it is often desirable to place signs at frequent intervals (100–150 feet) so that a driver attempting to park will see one or more no parking signs at close range.

The FHWA does not support the request from the Michigan Department of Transportation to amend section 2B–33 of the MUTCD to establish the 12 X 12 inch R8–3a Sign as the minimum size no parking symbol sign for use in rural areas. The FHWA believes that the 12 X 12 inch sign does not have adequate target value.

(3) *Request II–107(Chug.)—Standards for, and Applications of, Lane-Use control Signs at Intersections.* In 1983 the City of Aurora, Colorado Requested an interpretation relative to the longitudinal and lateral placement of lane-use control signs at intersections. Their Planning and Traffic Engineer, Mr. Nathan Ficklin P.E. stated that he was aware of the installation of lane-use control signs adjacent to signal heads on the far side of the intersection (across the intersection from the turn lane), and R3–5 and R3–6 signs which are designed for placement over the controlled lane which were being post mounted. He cited lack of uniformity, operational and safety problems, driver confusion, and potential liability as reasons for asking for an interpretation.

On March 14, 1983 the FHWA issued the following interpretation:

"II–82(Intr.)—Positioning of Overhead Lane-Use Control Signs. Lane-Use Control signs are not designed for, nor are they intended for use adjacent to a signal face. Such use could lead to unnecessary motorist confusion. When the MUTCD refers to overhead positioning of Lane-Use Control signs it means directly above and normally at the begnning of the lane to which it applies, not across the intersection.

Lane-Use Control signs shall be used whenever it is desired to require vehicles in certain lanes to turn, or to permit turns from an adjacent lane, except where turning bays, designed so as to not entrap through traffic, are provided and only the auxiliary lane is permitted to turn."

Serious concerns have been voiced because of this interpretation. It is contended that these signs are, in fact, intersection signs and, if this interpretation stands, a valuable tool will be lost to traffic engineers. Many signs presently in use within intersections will ipso facto become non-conforming. Because of these concerns it is proposed to change the MUTCD to allow the use of these signs within an intersection as well as over the approach lane to the intersection.

The above interpretation was published as an Official Ruling and included in Revision 3 of the MUTCD. Subsequently the National Committee on Uniform Traffic Control Devices (NCUTCD) received the interpretation and has suggested that the following changes that relate to the application of lane-use control signs rather than their placement should also be made to the MUTCD to clarify its language:

"1. Section 2B–17—

a. Delete the first sentence.

b. Second sentence—delete "these", insert "Lane-Use control Signs".

2. Section 2B–18—

a. Delete first paragraph and insert new first paragraph: "Lane-Use control signs shall be used to require drivers in certain lanes to turn, or to permit turns from a lane where such turns otherwise would be illegal unless:

(a) Turning bays, designed to not entrap through traffic, have been provided by physical construction or pavement markings and b) only the drivers using such turning bay are permitted to turn."

b. Delete the last sentence, second paragraph."

The FHWA proposes to revise sections 2B–17 and 2B–18 in accordance with the NCUTCD recommendations with the exception that the first paragraph of 2b–18 would read:

"Lane-Use control signs shall be used to require drivers in certain lanes to turn, or to permit turns from a lane where such turns otherwise would be illegal. Lane-Use control signs are not required where:

(a) turning bays, designed not to entrap through traffic, have been provided by physical construction or pavement markings, and (b) only the drivers using such turning bays are permitted to turn."

This proposed amendment will impose no additional cost on State and local highway agencies.

(4) *Request II–109(Chng.)—Cloverleaf with Collector-Distributor Roadway.* Section 2F–27 of the MUTCD states that exists from the collector distributor road shall not be numbered. Some States have numbered these exits with no apparent safety problems. Therefore, the FHWA proposes to amend section 2F–27 to change the "shall" to a "may" condition that would allow the highway agencies to determine whether or not to use exit numbers

This proposed change will impose no additional costs.

(5) *Request II–110(Chng.)—Tourist Oriented Directional Signs (TODS).* The FHWA proposes to add a new section 2I to the MUTCD to incorporated standards for tourist oriented directional signs. The proposed signs would provide business identification and directional information for businesses, services, and activities of interest to tourists. The signs could be installed by highway agencies within the right-of-way of highways other than freeways and expressways.

The Highway Beautification Act of 1965 provided for the control and removal of certain outdoor advertising signs (billboards) adjacent to highways on the Federal-aid Primary Highway System including Interstate highways. Additional, a number of States have adopted equally or more stringent billboard controls applicable to these and other highways. As a consequence, a traditional system for providing motorists with the business identification and directional information for goods and services in the interest of the traveling public (that is, billboards) was severely restricted. In order to relieve this restriction on useful information, many States developed information centers, usually rest areas.

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where information about a great variety of goods and services may be displayed by the business facilities. However, since the construction of rest areas is often economically limited to high traffic volume highways, such as Interstate highways and other freeways, the need for business directional information on many highways has not yet been satisfactorily resolved.

The primary purpose of many motor vehicle trips is to reach business enterprises, such as sporting and recreational areas, developed natural phenomena and historical sites, cultural activities, etc. that have been established in unique rural areas specifically to serve these and similar interests of the public. Other businesses, such as gift and craft shops, guided tours, sporting events and facilities, entertainment facilities, etc., are also important destinations during recreational and business travel. Essential services such as gas, food and lodging serve the immediate needs of all motorists. These businesses, when located in rural areas and not visible to directly accessible from freeway interchanges, can become difficult for motorists to find. Equally important, many of these businesses derive their principle income from travelers and have a serious need to make their location and services known.

Current MUTCD standards regarding motorist information systems provide that motorists, while traveling on Interstate highways and most other freeways, may be given convenient excess to business directional information for an extensive variety of goods and services at information centers, and may be given direct access, through LOGO signs at interchanges, to business directional information for essential gas, food, lodging, and camping services. The FHWA believes that the business directional information needs of freeway users is or can be adequately served within the system presently allowed by the MUTCD and 23 U.S.C. 131(i). However, once motorists leave a freeway, sources of business directional information are greatly reduced.

Recognizing that detailed maps to locations for goods and services are not always readily available or easily interpreted by all motorists, and that direction finding from maps is often difficult for the solitary motorist, the FHWA is proposing a system of business directional signs for tourist oriented businesses for application in rural areas on highways other than freeways.

The use of this system of signs would be entirely voluntary on the part of the State highway agencies. The proposed signs would be rectangular in shape and limited to a size sufficient to accommodate two lines of text providing the business identification and directional information. The use of logograms and standard highway symbols would be permitted. Other physical details of the signs would be standardized to a degree appropriate for highway use. The number of signs that could be installed on the approach to an intersection would be limited and spacing requirements for the signs would be provided. States that elect to use these tourist oriented directional signs (TODS) would be expected to adopt criteria for use, including criteria to determine which specific types of businesses would be eligible for signing. The States would also be urged to provide a means for displaying (in mini-information centers for example) the directional information for eligible businesses excluded from the TODS to the limitations on the number of signs that may be displayed.

The FHWA has been seriously concerned for many years with the business direction needs of motorists in rural areas and has sponsored five experimental projects on the subject. The reports of the projects evaluated to date show that experimental TODS have generally met the goals of the signing with minimal impact on either the environment or safety. These evaluation reports and the experimental signing form the basis of the FHWA TODS proposal. Over 3,000 experimental TODSs have been installed in five States. The majority of these signs have been installed for more than 2 years. Many have been in place for more than 8 years. Additionally, after extensive study, an FHWA task force recommended [1] the development of national standards, for business directional signs for travel related facilities and attractions for use on highways other than freeways. This task force study was made pursuant to section 122(b) of the Federal-Aid Highway Act of 1976 (23 U.S.C. 131(q)(1)). This section, in effect, called for a study of directional information about facilities providing goods and services in the interest of the traveling public.

In view of the foregoing, the FHWA believes that motorists in rural areas, on highways other than freeways, have a need for additional business directional information. The FHWA further believes that this information can be best provided by the use of highway signs. Therefore, the FHWA is proposing to amend the MUTCD to authorize the voluntary installation of tourist oriented business directional signs. The FHWA is soliciting comments on both the concept of signing for this purpose and on the details provided for the proposed signs. Commenters are asked to specifically address the following questions:

1. What types of business, service, and activity should be considered or eligible for signing with Tourist Oriented Directional Signs?

2. Should businesses producing or offering certain products be prohibited from eligibility for Tourist Oriented Directional Signs? An example might be those businesses whose principal product is producing promoting, or selling alcoholic beverages which appears contradictory to State and National concerns about alcohol and driving.

3. Should businesses, services, and activities be open to the general public a minimum number of hours a day, and a minimum number of days per week, to qualify for Tourist Oriented Directional Signs?

4. Should Specific Services Information (LOGO) Signing [2] and Tourist Oriented Directional Signs be allowed to be installed at the same intersection? If yes, what is the number of sign panels, and the number of businesses, services, and activities allowed on each panel on a specific intersection approach?

Marking (Part III)

(6) *Request III–30 (Chng.)—Wrong Way and Lane Use Pavement Marking Arrows.* The NCUTCD requests that several revisions be made to sections 2E and 3B to improve the design and placement of the pavement marking arrows and to better detail the role of arrows in wrong way and lane use control.

The FHWA supports the recommendations of the NCUTCD. The proposed amendments will not place any new mandates on highway agencies but will improve the uniformity and effectiveness of pavement marking arrows at no additional cost.

(7) *Request III–38 (Chng.)—Warrants for No-Passing Zones at Curves.* The North Carolina Department of Transportation through the NCUTCD requests that section 3B–5 be amended so that the speed portion of the warrant

[1] *Options for Assuring Adequate Motorist Travel Information Systems*, Report of the Task Force to Restudy Directional and Informational Signing, May 1979, FHWA. Available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 Seventh Street SW., Washington, DC 20590.

[2] As contained in 23 CFR Part 655, Subpart C of MUTCD Sec. 2G–5 (Page charges not yet printed).

will be based on the off-peak 85 percentile or the posted speed limit, whichever is higher. The request further recommends that the table in section 3B–5 be expanded to include speeds (and corresponding minimum passing sight distances) in 5 MPH increments, with rounding recommended to the next higher 5 MPH increment.

The FHWA proposes to amend the MUTCD as recommended. This proposed amendment imposes no additional mandates on highway agencies and in some cases should reduce the number of speed studies required.

(8) *Request III–39 (Chng.)—Delineator Placement and Spacing.* The FHWA proposes to amend section 3D–5 by changing the "shall" to a "may" condition in the first paragraph.

This proposed change will allow the use of engineering judgment when placing roadside delineators without imposing any additional costs.

Signals (Part IV)

(9) *Request IV–52 (Chng.)—Median Width Criteria for Pedestrian Signals.* The FHWA proposes that the references in Sections 4D–7 and 4C–5 relative to median width be replaced with the words "Sufficient for pedestrian to wait."

The City and County of San Francisco pointed out the inconsistency relative to median width between Sections 4D–7 and 4C–5. Section 4D–7 requires a median of six feet in width, before the two directions of a roadway may be considered separately for timing purposes. The Traffic Signal Warrant 3, Minimum Pedestrian Volume, contained in section 4C–5, on the other hand, provides differing vehicular volume criteria when the median width provides differing vehicluar volume criteria when the median width is four feet or more in width.

The City and County requested that the inconsistency be resolved be revising the median width reference (for timing purposes) in Section 4D–7 to 4 feet (from the present 6 feet).

The NCUTCD reviewed the request and agreed with the need for consistency. However, they recommended that in each instance engineering judgment relative to site specific conditions, be used to determine whether a given median was sufficient enough to serve as a pedestrian refuge.

The proposed amendment increase the latitude to shorten the pedestrain clearance interval when there is a 4 foot median but will impose no additional cost.

(10) *Request IV–58 (Chng.)—A Required Yellow Arrow Clearance Interval and Left Turn Signal Displays.* The FHWA proposes to require a yellow arrow indication for a clearance display following a Green Arrow, by eliminating the optional use of the circular yellow indication for this purpose; allow the use of a flashing arrow indication; and provide design requirement for Left Turn displays. These proposed changes will require modifications to MUTCD sections 4B–5, 4B–6 and 4B–12, and 4B–18. The City of Milwaukee, Wisconsin and the State of California pointed out that presently, the MUTCD in section 4B–15, 5th paragraph requires that "a clearance interval shall be provided between the termination of a Green Arrow indication and the showing of a green indication to any conflicting traffic movement." Paragraph 4B–6.5(c) presently provides that this clearance indication may be via a steady YELLOW ARROW indication, or optionally a CIRCULAR YELLOW indication in signal faces used exclusively to control a single directional movement. This proposal would eliminate the optional CIRCULAR YELLOW indication. The purpose is to provide increased uniformity in left turn displays.

By requiring the use of the Yellow Arrow, a change will be required in the MUTCD to allow the use of flashing arrows under certain conditions and to define their meaning. The change will allow the user to flash either a red or yellow arrow depending on the specific circumstance, engineering judgment would be exercised.

The MUTCD has a number of requirements that pertain to left-turn signals. However, these are fragments and therefore not well understood. As a result, left turn signals are not always installed in accordance with these uniform standards and there have been several requests for interpretations and changes. The NCUTCD, therefore, in reviewing IV–58 (Change) also developed recommendations for section 4B–12 and 4B–18 that would clarify the intent of the MUTCD relative to left turn signals.

Section 4B–18 pertains to the flashing operation of traffic control signals. The NCUTCD recommended that the following modifications be made in order to provide clarification relative to the requirements of flashing operation and to provide for flashing arrows.

1. The word "automatic" will be deleted from the first sentence of the 4th paragraph.

2. The 5th paragraph which pertains to the change from flashing to stop-and-go operation will be deleted entirely.

3. The word "automatic" will be deleted from the 1st sentence of the 6th paragraph.

4. A new paragraph 7 will be added to explain the design requirements for flashing arrows.

The NCUTCD reviewed this request and agreed with the need for modification and recommended additional changes.

The proposed amendment will cause some financial impact where existing 8" circular yellows will have to be replaced with 12" yellow arrows but reduce the likelihood of distraction to through traffic. An implementation period of 10 years will be provided to mitigate the increased costs.

(11) *Request IV–66 (Chang.)—Warrants for Traffic Signal Installation.* The NCUTCD recommended that section 4C–2 of the MUTCD be modified to make it clear that the satisfaction of a warrant is not, in itself a mandate for a signal. There is also a need for an engineering study, considering factors, other than those outlined in the warrant, to indicate whether installation of a signal will improve safety and/or operations.

The proposed change will impose no additional cost.

(12) *Request IV–67 (Chang.)—Accident Experience Warrant.* The NCUTCD recommended a change in section 4C–8 to delete "property damage to an apparent extent of $100 or more" and to add "reportable property damage."

The FHWA is proposing the wording "or property damage apparently exceeding the applicable requirements for a reportable accident."

Various agencies now have different criteria for reporting property damage accidents. In those jurisdictions where an accident report must not be filed when damage exceeds $250, for example, there is no information available on the total number of accidents having an apparent damage of $100 or more. Therefore, it is proposed to change the wording in Warrant 6 so that it is compatible with a variety of reporting levels. The FHWA proposes to adopt this NCUTCD request (with some editorial changes) and to amend the MUTCD accordingly.

This proposed change will increase the usefulness of the Accident Experience Warrant but imposes no additional cost.

(13) *Request IV–68 (Chang.)—Effect of Right Turn on Red on Volume Warrant.* The FHWA proposes to modify section 4C–2 of the MUTCD to allow consideration of Right Turn Movements on the Volume Warrants.

The NCUTCD recommended that the MUTCD be modified to inform the user as to how to apply the warrants when there is heavy right turning movements.

This proposed amendment will increase the usefulness of the volume warrants but will impose no additional cost.

Traffic Control for Street and Highway Construction and Maintenance Operations (Part VI).

(14) *Request VI–33 (Chang.)—Location of Reflective Collars With Respect to Top of Cones.* The NCUTCD requests that Section 6C–3 be revised to provide an unobstructed minimum 3 inch hand hold at the top of cones.

The FHWA supports this request as it would improve the handling characteristics of cones, keep reflective collars cleaner, and provide a larger area of reflective material at no cost to highway agencies. A 3 year implementation period is proposed to offset the impact on contractors and collar suppliers.

(15) *Request VI–34 (Chng.)—Size and Location of Additional Reflective Bands on Cones.* The NCUTCD requests that Section 6C–3 be amended to provide an additional 4 inch band of reflective material to be placed 2 inches below the present standard 6 inch band on 28 inch cones. Their request is based on the recommendation in National Cooperative Highway Research Program (NCHRP) Report 236, "Evaluation of Traffic Controls for Highway Work Zones",[3] for a minimum of 150 square inches of reflective material on 28 inch cones. The NCUTCD recommended configuration will provide a total area of 165 square inches of reflective material.

The FHWA supports this recommendation to improve the visibility of 28 inch cones at a negligible cost to highway agencies. A 3 year implementation period is proposed to offset the impact on highway agencies, contractors and suppliers.

(16) *Request VI–35 (Chng.)—ROAD (STREET) CLOSED Sign.* There are many situations where the ROAD (STREET) CLOSED Sign is quite redundant and serves little, if any, purpose. Examples include, a well-marked and signed detour or a properly barricaded, closed city street. The FHWA proposes to amend Section 6B–8 by changing the "shall" to a "may" condition to provide more flexibility in determining where to use this sign.

This proposed change will impose no additional costs on highway agencies.

(17) *Request VI–36 (Chng.)—Length of Construction Sign.* The Length of Construction Sign has merit when used as intended, to inform the motorists of where the actual construction activity is and the length of that activity. However, too often the signs are erected at the termini at the time the project starts and remain there until the project is complete, even though the type of construction has minimal impact on the motorists or the site of actual construction activity shifts frequently within the termini.

The FHWA proposes to amend section 6B–36 to a "may" condition. This will allow highway agencies to use the sign only where needed to give motorists specific guidance information.

The proposed change will impose no additional costs on highway agencies.

Traffic Control Systems for Railroad-Highway Grade Crossings (Part VIII)

(18) *Request VIII–18 (Chng.)—Delete Traffic Signal Preemption Drawing, Figure 8–8.* The NCUTCD requests that section 8C–6 be modified by deleting Figure 8–8. The figure does not represent a standard application, is technical in nature, and the subject of preemption is more appropriately and thoroughly discussed in the Traffic Control Devices Handbook (TCDH).[4]

The FHWA supports the NCUTCD request. The proposed deletion will impose no additional cost on highway agencies.

Traffic Control for Bicycle Facilities (Part IX)

(19) *Request IX–4 (Chng.)—U.S. Bicycle Route Marker (M1–9).* The American Association of Highway and Transportation Officials through the NCUTCD requests that section 9B–20 and the M1–9 sign be amended by switching the location of symbol and route number and reducing the size of the numbers in the route number. These changes will emphasize the bicycle route aspect of the sign rather than the bicycle route number. Reducing the size of the numbers should eliminate confusion by motorists who may mistake the bicycle route number for a highway route number and still be large enough to satisfactorily fill the bicyclist's needs.

The FHWA proposes to amend section 9B–20 as recommended. To offset the minimal added costs associated with this, a 3 year implementation period is proposed.

This notice of proposed amendments to the MUTCD is issued under the authority of 23 U.S.C. 109(d), 315, and 402(a), and the delegation of authority in 49 CFR 1.48(b).

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant proposal under the regulatory policies and procedures of the Department of Transportation. For the reasons stated herein under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. Due to the preliminary nature of this inquiry, a regulatory evaluation has not been prepared at this time. The expected impact of the changes requested is so minimal that a full regulatory evaluation does not appear to be warranted. The need to further evaluate economic consequences will be reviewed on the basis of the comments submitted in response to this notice.

List of Subjects in 23 CFR Parts 625 and 655

Design standards, Grant programs-transportation, Highways and roads, Signs, Traffic regulations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 5, 1985.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85–29758 Filed 12–16–85; 8:45 am]

BILLING CODE 4910-22-M

[3] NCHRP Report 236 is available for inspection and copying at the Federal Highway Administration, Office of Traffic Operations, Room 3419, 400 7th Street SW., Washington DC 20590. The report (ISBN 0–309–03163–X) may be purchased for $12.00 from the Transportation Research Board, Publications Office, 2101 Constitution Avenue NW., Washington, DC 20418.

[4] Available for $20.00 from the Government Printing Office, Washington DC 20402, Stock No. 050–001–00270–1. Copies are also available for inspection at the Federal Highway Administration, Office of Traffic Operations (HTO–21), Room 3419, 400 7th St. SW., Washington, DC 20590.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 19

[Notice No. 575]

Distilled Spirits Plants—Mixtures of Distilled Spirits and Wine

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes the amendment of the definition of "Spirits or distilled spirits" as contained in T.D. ATF-198, 50 FR 8456 (1985) to exclude those mixtures of wine and spirits which are removed and sold as wine. The amended definition would conform the regulation to 26 U.S.C. 5362(b)(2) which prohibits wines from being removed from the bonded premises of a distilled spirits plant for consumption or sale as wine.

DATE: Written comments must be received by January 16, 1986.

ADDRESSES: Send written comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385.

Copies of written comments received in response to this notice will be available during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4405, Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard C. Langford or J.R. Whitley, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202) 566-7531.

SUPPLEMENTARY INFORMATION:

1. Regulatory Analysis

Prior to the Distilled Spirits Tax Revision Act of 1979, (Pub. L. No. 96-39, Stat. 273 (1979)) taxpaid wine could be received on the bottling/rectifying premises of a distilled spirits plant (DSP) for bottling or rectifying as a wine or wine product or for use in the manufacture of a distilled spirits product. If the DSP proprietor used the wine for a wine or wine product, he may have become liable for additional wine taxes for (1) the increase in volume of the wine, (2) an increase in the taxable grade of the wine, or (3) the manufacture of a wine product.

With the all-in-bond concept, enacted in the Distilled Spirits Tax Revision Act of 1979, the bottling and rectifying operations of a DSP were required to be conducted on the bonded premises of a DSP. However, the Congress made it clear that a wine transferred to the bonded premises of a DSP could only be used in the production of a distilled spirits product and that a wine product was to be produced only on bonded wine cellar premises. Accordingly, the Congress amended 26 U.S.C. 5362(b) to provide that wine could be transferred from a bonded wine cellar to the bonded premises of a DSP, but "Any wine transferred to the bonded premises of a distilled spirits plant . . . may not be removed from such bonded premises for consumption or sale as wine."

Congressional intent was stated in the Senate Report (S. Rept. No. 96-249, on H.R. No. 4537, 96th Cong., 1st Sess. 226 (1979)) as follows: "such wine (which has been transferred to the bonded premises of a DSP) must be used solely in the manufacture of a distilled spirits product . . . All other operations involving the rectification or bottling of wines formerly done on the premises of a distilled spirits plant will be required to be conducted on the premises of a bonded wine cellar or taxpaid wine bottling house."

In promulgating the final rule for 27 CFR Part 19, the Bureau took the position that mixtures of distilled spirits and wine which contain more than 50 percent wine on a proof gallon basis and which are bottled at 48° proof or less were excepted from the requirements relating to liquor bottles, labels and strip stamps; however, such mixtures were subject to the formula requirements in 27 CFR Part 5 and the labeling, advertising and standards of fill regulations as wine under the Federal Alcohol Administration Act, 27 CFR Part 4. The effect of this position was to tax such mixtures as distilled spirits, and required such products to be labeled as wines. Presently, the Bureau has become aware that such a position produces a serious adverse effect on the excise tax revenues derived from such mixtures. This is so because such mixtures, when taxed as a distilled spirits product, on a proof gallon basis, may be taxed at a rate as little as 7 cents a gallon, whereas a like product would be taxed at 17 cents or $2.40 a gallon if produced at a winery. This result may occur because the product may be increased in volume by dilution of proof or even carbonated on a DSP premises without increasing its tax liability.

The Bureau believes that the law and legislative history make it clear that Congress never intended such a result. Therefore, the Bureau has determined that such products are clearly wines and section 5362(b) precludes the removal of such products as a wine from a distilled spirits plant.

Accordingly, this proposal would change the definition of "Spirits or distilled spirits" to make it clear that mixtures of distilled spirits and wine which contain more than 50 percent wine on a proof gallon basis and which are bottled at 48° proof or less would not be a distilled spirits product for tax purposes. Such products would be wines and §§ 19.36 and 19.381 would be amended to prohibit the removal of such wines from the bonded premises of a distilled spirits plant for consumption or sale as wine.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) A significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments concerning this proposed rule from all interested persons. Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

Drafting Information

The principal author of this document is Richard C. Langford, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Authority and Issuance

Accordingly, the Director proposes the amendment of Title 27 of the Code of Federal Regulations as follows:

Section A:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Paragraph 1. The authority citation for Part 5 is revised to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

Para. 2. Section 5.11 is amended by removing the last sentence of the definition of "Distilled spirits."

Section B:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for Part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5282, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Para. 2. Section 19.11 is amended by revising the definition of "Spirits or distilled spirits" to read as follows:

§ 19.11 [Amended]

* * * * *

Spirits or distilled spirits. That substance known as ethyl alcohol, ethanol, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced) but not denatured spirits unless specifically stated. The term does not include mixtures of distilled spirits and wine, bottled at 48° proof or less, if the mixture contains more than 50 percent wine on a proof gallon basis.

* * * * *

Para. 3. Section 19.36 is amended by adding the following sentence at the end of paragraph (a) to read as follows:

§ 19.36 [Amended]

(a) * * * Wines may not be removed from the bonded premises of a distilled spirits plant for consumption or sale as wine.

* * * * *

Para. 4. Section 19.381 is amended by adding the following sentence immediately after the first sentence in paragraph (e) to read as follows:

§ 19.38 [Amended]

* * * * *

(e) * * * However, wines may not be removed from the bonded premises of a distilled spirits plant for consumption or sale as wine. * * *

Signed: September 24, 1985.

Stephen E. Higgins,

Director.

Approved: November 5, 1985.

David D. Queen,

Acting Assistant Secretary, Enforcement and Operations.

[FR Doc. 85–29761 Filed 12–16–85; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 23–85]

Privacy Act; Exemption of Records Systems

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Criminal Division, proposes to exempt certain portions of a new system of records entitled "Office of Special Investigations Displaced Persons Listings, JUSTICE/CRM–027" from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). The exemption is required because access to these records could inform the subject of the identity of witnesses and informants. Thus, the release of such information could present a serious impediment to effective law enforcement by endangering the physical safety of witnesses or informants; by leading to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; or by otherwise preventing the successful completion of an investigation.

DATES: All comments must be received by January 16, 1986.

ADDRESS: Address any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, 272–6474.

SUPPLEMENTARY INFORMATION: A description of the new system is published in the Notice Section of today's **Federal Register.** This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, and Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR 16.91 is amended to add paragraphs (s) and (t) as set forth below.

Dated: October 2, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. It is proposed to amend 28 CFR 16.91 by adding paragraphs (s) and (t).

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§ 16.91 Exemption of Criminal Division Systems—Limited Access, as indicated.

* * * * *

(s) The following system of records is exempted from 5 U.S.C. 552a(d).

(1) Office of Special Investigations Displaced Persons Listings (JUSTICE/CRM–027)

This exemption applies to the extent that the records in this system are subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(t) Exemption from subsection (d) is justified for the following reasons:

(1) Access to records contained in this system could inform the subject of the identity of witnesses or informants. The release of such information could present a serious impediment to effective law enforcement by endangering the physical safety of witnesses of informants; by leading to the improper influencing or witnesses, the destruction of evidence, or the fabrication of testimony; or by otherwise preventing the successful completion of an investigation.

[FR Doc. 85–29651 Filed 12–16–85; 8:45 am]

BILLING CODE 4410–01–M

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28 CFR Part 16

[AAG/A Order No. 25–85]

Privacy Act; Exemption of Records Systems

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The United States Marshals Service (USMS), Department of Justice, proposes to exempt four systems of records from certain provisions of the Privacy Act.

Specifically, the USMS proposes to exempt the Threat Analysis Information System (JUSTICE/USM–009) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2). These exemptions are necessary because adherence to these provisions of the Act would present a serious impediment to security measures necessary for the fulfillment of law enforcement and the protection of participants in the judicial process, including but not limited to judges, witnesses, U.S. Attorneys, etc. For example, persons who have directly threatened or pose a violent threat to USMS protecteees could learn that countermeasures to specific threat situations are being developed and implemented. The exceptions will preclude such knowledge and thereby deny threat sources the opportunity to circumvent law enforcement and security efforts.

The USMS also proposes to exempt from subsections (c)(3) and (d) of the Privacy Act a system entitled "Judicial Facility Security Index System (JUSTICE/USM–010)" pursuant to 5 U.S.C. 552a(k)(5). This exemption is necessary to protect the identity of confidential sources.

Finally, the USMS also proposes to exempt from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act a system entitled "U.S. Marshals Service Freedom of Information/Privacy Act (FOIA/PA) Files (JUSTICE/USM–012)" and from subsections (c) (3) and (4), (d), (e) (2), and (3), (e)(4) (G) and (H), (e)(8), (f), and (g) of the Privacy Act a system entitled "U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files (JUSTICE/USM–013)". The exemptions are needed to protect the integrity of civil litigation, criminal investigatory information, the privacy of third parties and the identity of confidential sources.

DATE: Submit comments by January 16, 1986.

ADDRESS: Address comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Room 9002, Department of Justice, 601 D Street, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202) 272–6474.

SUPPLEMENTARY INFORMATION: All of the above-named systems are being published in full text in the Notice Section of today's **Federal Register**.

This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by U.S.C. 552a and delegated to me by Attorney General order 793–78, it is proposed that 28 CFR 16.101 be amended as set forth below.

Dated: November 12, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. Section 16.101 is amended by redesignating existing paragraph (g) as paragraph (o), by revising the last sentence of newly redesignated paragraph (o), and by adding new paragraphs (g) through (n).

§ 16.101 Exemption of U.S. Marshals Service Systems—Limited access, as indicated.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g):

(1) U.S. Marshals Service Threat Analysis Information System (JUSTICE/USM–009).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to release the disclosure accounting would permit a person to determine whether he or she has been identified as a specific threat to USMS protectees and to determine the need for countermeasures to USMS protective activities and thereby present a serious impediment to law enforcement.

(2) From subsection (c)(4) because it is inapplicable since an exemption is being claimed for subsection (d).

(3) From subsection (d) because to permit access to records would inform a person of the nature and scope of information obtained as to his or her threat-related activities and of the identity of confidential sources, and afford the person sufficient information to develop countermeasures to thwart protective arrangements and endanger lives of USMS protectees, informants, etc. To permit amendment of the records would interfere with ongoing criminal law enforcement and impose an impossible administrative burden requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (5) because the collection of investigatory used to access the existence, extent and likelihood of a threat situation necessarily includes material from which it is impossible to identify and segregate information which may not be

important to the conduct of a thorough assessment. It is often impossible to determine in advance if all information collected is accurate, relevant, timely and complete but, in the interests of developing effective protective measures, it is necessary that the U.S. Marshals Service retain this information in order to establish patterns of activity to aid in accurately assessing threat situations. The restrictions of subsections (e)(1) and (5) would impede the protective responsibilities of the Service and could result in death or serious injury to Marshals Service protectees.

(5) From subsection (e)(2) because to collect information from the subject individual would serve notice that he or she is identified as a specific threat to USMS protectees and would enable the subject individual to develop countermeasures to protective activities and thereby present a serious impediment to law enforcement.

(6) From subsection (e)(3) because to inform individuals as required by this subsection would enable the subject individual to develop countermeasures to USMS protective arrangements or identify confidential sources and thereby present a serious impediment to law enforcement.

(7) From subsections (e)(4)(G) and (H) because they are inapplicable since an exemption is being claimed for subsections (d) and (f) of the Act.

(8) From subsection (e)(8) because to serve notice would give persons sufficient warning to develop countermeasures to protective arrangements and thereby present a serious impediment to law enforcement through compromise of protective procedures, etc.

(9) From subsection (f) because this system of records is exempt from the provisions of subsection (d).

(10) From subsection (g) because it is inapplicable since an exemption is being claimed for subsections (d) and (f).

(i) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (d):

(1) Judicial Facility Security Index System (JUSTICE/USM–010).

These exemptions apply only to the extent that information in this system is exempt pursuant to 5 U.S.C. 552a(k)(5).

(j) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) only to the extent that release of the disclosure accounting would reveal the identity of a confidential source.

(2) From subsection (d) only to the extent that access to information would reveal the identity of a confidential source.

(k) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g):

(1) U.S. Marshals Service Freedom of Information/Privacy Act (FOIA/PA) Files (JUSTICE/USM–012).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(2) and (k)(5).

(l) Because this system contains Department of Justice civil and criminal law enforcement, investigatory records, exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to release the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the existence and nature of the investigation and present a serious impediment to law enforcement.

(2) From subsection (c)(4) because that portion of this system which consists of investigatory records compiled for law enforcement purposes is being exempted from the provisions of subsection (d), rendering this provision not applicable.

(3) From subsection (d) because to permit access to investigatory records would reveal the identity of confidential sources and impede ongoing investigative or law enforcement activities by the premature disclosure of information related to those efforts. To permit amendment of the records would interfere with ongoing criminal law enforcement and impose an impossible administative burden by requiring criminal investigations to be continuously reinvestigated.

(4) From subsections (e)(1) and (5) because it is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete but, in the interests of effective law enforcement, it is necessary to retain this information to aid in establishing patterns of activity and provide leads in criminal investigations.

(5) From subsection (e)(2) because to collect information from the subject individual would serve notice that he or she is the subject of criminal investigative or law enforcement activity and thereby present a serious impediment to law enforcement.

(6) From subsection (e)(3) because to inform individuals as required by this subsection would enable the subject individual to identify confidential sources, reveal the existence of an investigation, and compromise law enforcement efforts.

(7) From subsection (e)(4)(G) and (H) because they are inapplicable since an exemption is being claimed for subsections (d) and (f) for investigatory records contained in this system.

(8) From subsection (e)(8) because to serve notice would give persons sufficient warning to evade law enforcement efforts.

(9) From subsection (f) because investigatory records contained in this system are exempt from the provisions of subsection (d).

(10) From subsection (g) because it is inapplicable since an exemption is being claimed for subsections (d) and (f).

(m) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (4), (d), (e)(2) and (3), (e)(4)(G) and (H), (e)(8), (f) and (g):

(1) U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files (JUSTICE/USM–013)

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) or (k)(5).

(n) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to release the disclosure accounting for disclosures pursuant to the routine uses published for this system would permit the subject of a criminal or civil case or matter under investigation, or a case or matter in litigation, or under regulatory or administrative review or action, to obtain valuable information concerning the nature of that investigation, case or matter, and present a serious impediment to law enforcement or civil legal activities, or reveal a confidential source.

(2) From subsection (c)(4) because the exemption claimed for subsection (d) will make this section inapplicable.

(3) From subsection (d) because to permit access to records contained in this system woud provide information concerning litigation strategy, or case development, and/or reveal the nature of the criminal or civil case or matter under investigation or administrative review, or in litigation, and present a serious impediment to law enforcement or civil legal activities, or reveal a confidential source.

(4) From subsection (e)(2) because effective legal representation, defense, or claim adjudication necessitates collecting information from all individuals having knowledge of the

criminal or civil case or matter. To collect information primarily from the subject individual would present a serious impediment to law enforcement or civil legal activities.

(5) From subsection (e)(3) because to inform the individuals as required by this subsection would permit the subject of a criminal or civil matter under investigation or administrative review to compromise that investigation or administrative review and thereby impede law enforcement efforts or civil legal activities.

(6) From subsections (e)(4)(G) and (H) because these provisions are inapplicable since this system is exempt from subsection (d) and (f) of the Act.

(7) From subsection (e)(8) because to serve notice would give persons sufficient warning to compromise a criminal or civil investigation or administrative review and thereby impede law enforcement or civil legal activities.

(8) From subsection (f) because this system of records is exempt from the provisions of subsection (d).

(9) From subsection (g) because it is inapplicable since an exemption is claimed for subsections (d) and (f).

(o) * * * The decisions to release information from these systems will be made on a case-by-case basis.

[FR Doc. 85-29852 Filed 12-16-85; 8:45 am]
BILLING CODE 4410-01-M

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28 CFR Part 16

[AAG/A Order No. 27-85]

Privacy Act; Exemption of Records Systems

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The United States Marshals Service (USMS), Department of Justice, proposes to exempt a system of records entitled "Warrant Information System, JUSTICE/USM-007" from subsections (e)(1) and (e)(5) of the Privacy Act. These exemptions are necessary because the relevancy, necessity, accuracy, timeliness and completeness provisions of subsections (e)(1) and (e)(5) would present a serious impediment to law enforcement in that it is impossible to determine in advance what information collected in the course of a criminal investigation will be important or crucial to the apprehension of Federal fugitives or to the law enforcement activities of other agencies. These exemptions will permit the USMS to retain seemingly irrelevant, untimely or inaccurate information which, with the passage of time, would gain new significance in the criminal investigation. In addition, because a new paragraph has been added to exempt the system from the additional subsections (e)(1) and (e)(5), the USMS is also republishing existing paragraphs which reflect existing exemptions from other subsections. The existing paragraphs are being republished only to accomplish paragraph redesignation and clarity in Title 28, Part 16, of the Code of Federal Regulations. Their republication has no effect on the public because such republication does not effect any new exemptions.

DATE: Submit any comments by January 16, 1986.

ADDRESS: Address all comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, United States Department of Justice, Room 9002, 601 D Street NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: J. Michael Clark, (202-633-4414).

SUPPLEMENTARY INFORMATION: A description of the Warrant Information System is published in the Notice Section of today's **Federal Register**.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, Sunshine Acts.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, it is proposed that CFR 16.101 be amended as set forth below.

Dated: November 14, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. Section 16.101 is amended by revising the introductory text of paragraph (a); by redesignating paragraphs (b)(4) through (b)(9) as paragraphs (b)(5) through (b)(10); by adding a new paragraph (b)(4); and by revising paragraphs (d)(5) through (7) and (d)(9) and paragraphs (f)(4) through (f)(9).

§ 16.101 Exemption of U.S. Marshals Service Systems—Limited Access, as indicated.

(a) The following system of records is exempt from 5 U.S.C. 552(a) (c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g):

* * * * *

(b) * * *

(4) From subsections (e)(1) and (e)(5) because the requirements of these subsections would present a serious impediment to law enforcement in that it is impossible to determine in advance what information collected during an investigation will be important or crucial to the apprehension of Federal fugitives. In the interest of effective law enforcement, it is appropriate in a thorough investigation to retain seemingly irrelevant, untimely, or inaccurate information which, with the passage of time, would aid in establishing patterns of activity and provide investigative leads toward fugitive apprehension and assist in law enforcement activities of other agencies.

* * * * *

(d) * * *

(5) From subsection (e)(3) for the reason stated in (b)(6) of this section.

(6) From subsections (e)(4)(G) and (H) for the reason stated in (b)(7) of this section.

* * * * *

(9) From subsection (g) for the reason stated in (b)(10) of this section.

* * * * *

(f) * * *

(4) From subsection (e)(2) because the requirement that information be collected to the greatest extent practical from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to compromise the investigation and avoid detection or apprehension.

(5) From subsection (e)(3) for the reason stated in (b)(6) of this section.

(6) From subsections (e)(4)(G) and (H) for the reason stated in paragraph (b)(7) of this section.

(7) From subsection (e)(8) because the individual notice requirement of this subsection would present a serious impediment to law enforcement in that the subject of the investigation would be alerted as to the existence of the investigation and therefore be able to compromise the investigation and avoid detection, subpoena, etc.

(8) From subsection (f) because procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records dealing with investigations of criminal or civil law violations would enable the individual to compromise the investigation and evade detection or apprehension. Since an exemption is being claimed for subsection (d) of the Act, the rules required pursuant to subsections (f)(2) through (f)(5) are not applicable to this system.

(9) From subsection (g) for the reason stated in (b)(10) of this section.

* * * * *

[FR Doc. 85-29653 Filed 12-16-85; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules; Proposed Revision of Rule

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The schedule of fees charged by the National Labor Relations Board for document search conducted in response to requests for documents made pursuant to the Freedom of Information Act has not been changed since initially established in February 1975. These proposed revisions serve only to change the rule to reflect the direct personnel cost of document searches under current salary levels.

DATE: Comments by January 16, 1986.

ADDRESS: Send or deliver written comments to: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 6 of the National Labor Relations Act, as amended (49 Stat. 452; 29 U.S.C. 156), and in accordance with the requirements of section 552(a)(4)(A) of the Freedom of Information Act, the National Labor Relations Board hereby gives notice of its intent to promulgate a revision to its rule establishing a uniform schedule of fees to provide for recovery of the direct costs of record search and duplication incurred in responding to requests for Agency records, made pursuant to section 552(a)(2) and (3) of this Freedom of Information Act, as amended (5 U.S.C. 552(a) (2) and (3)).

The present fee schedule as set forth in § 102.117(c)(2)(iv)(a) of the Board's rules was established in 1975 after rulemaking proceedings (40 FR 2591-2592, January 14, 1975; 40 FR 7290-7291, February 19, 1975) and provides for charges of $1.10 for each one-quarter hour or portion thereof of clerical time and $2.85 for each one-quarter hour or portion thereof of professional time. As stated in the rulemaking notice (40 FR 2582) the charges were based upon the cost to the Agency at that time of salary and personnel benefits for clerical employees at the GS-5 salary level and professional employees at the GS-13 salary level. Current experience is that these grade levels continue to represent the average level at which this work is being performed. The 1985 cost to the Agency of salary and personnel benefits for employees at those grade levels, computed on the basis of 225 days (1,800 hours) on-duty time per year, will be $10.15 per hour for clerical employees at Grade 5, Step 5, and $26.51 per hour for a professional employee at Grade 13, Step 5. It is therefore proposed that the schedule of fees be revised to provide for a charge of $2.50 for each one-quarter hour or portion thereof of clerical time and a charge of $6.60 for each one-quarter hour or portion thereof of professional time. The other elements of the schedule of fees, including the 10-cent-per-page charge for duplication of records, will remain unchanged.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Freedom of information.

Accordingly, it is proposed to amend 29 CFR Part 102 as follows:

PART 102—RULES AND REGULATIONS, SERIES 8, AS AMENDED

1. The authority citation for 29 CFR Part 102 is revised to read as follows:

Authority: Sec. 6, National Labor Relations Act, 61 Stat. 136, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under sec. 552(a)(4)(A) of the Freedom of Information Act, 80 Stat. 383, as amended (5 U.S.C. 552(a)(4)(A).

2. Section 102.117 is amended by revising paragraph (c)(2)(iv)(*a*) to read as follows: The introductory text of (c)(2)(iv) is shown for the convenience of the reader and remains unchanged.

§ 102.117 Board materials and formal documents available for public inspection and copying; requests for described records; time limit for response; appeal from denial of request; fees for document search and duplication; files and records not subject to inspection.

* * * * *

(c) * * *

(2) * * *

(iv) Persons requesting records from this agency shall be subject to a charge of fees for the direct cost of document search and duplication in accordance with the following schedules, procedures, and conditions:

(*a*) Schedule's of charges:

(*1*) For each one-quarter hour or portion thereof of clerical time $2.50

(*2*) For each one-quarter hour or portion thereof of professional time $6.60

(*3*) For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records $0.10

(*4*) All other direct costs of search or duplication shall be charged to the requester in the same amount as incurred by the agency.

* * * * *

Dated, Washington, DC, December 6, 1985.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 85-29506 Filed 12-16-85; 8:45 am]

BILLING CODE 7545-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

Use of NARA Research Rooms

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed rulemaking.

SUMMARY: NARA proposes to amend its regulations on the use of personal copiers and other types of personal items that may be brought into research rooms in the National Archives Building and Washington National Records Center. NARA also proposes to add procedures for use of the self-service high-volume copies in the National Archives Building. These changes are being made to enhance the security of records being used by the public and to ensure proper handling of records while they are being reproduced.

DATE: Comments must be received by February 18, 1986.

ADDRESS: Comments should be sent to Director, Program Policy and Evaluation

Division, National Archives and Records Administration (NAA), Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202–523–3214 (FTS 523–3214).

SUPPLEMENTARY INFORMATION: This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1254

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend Part 1254 as follows:

PART 1254—[AMENDED]

1. The authority citation for Part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118.

2. Section 1254.26 is added to read as follows:

§ 1254.26 Additional rules for use of certain research rooms in the National Archives Building and the Washington National Records Center.

(a) The following procedures shall be observed for use of all archival research rooms in the National Archives Building and in the Washington National Records Center except the Microfilm Research Room and the Motion Pictures Research Room in the National Archives Building. These procedures are in addition to the procedures specified elsewhere in this Part.

(b) All researchers entering the National Archives Building shall complete the Equipment Log at the guard's desk in the lobby in order to bring personal typewriters, tape recorders, cameras, etc., into the building. The log will evidence personal ownership and will be checked by the guard when such equipment is removed from the building.

(c) Researchers shall present a valid researcher identification card to the guard or research room staff on entering the room. All researchers are required to sign each day the Daily Registration Book at the entrance to the research room. Researchers will also record the time they leave the research room at the end of the visit for that day. Researchers are not required to sign in or out when leaving the area temporarily.

(d) Researchers may not bring into the research rooms overcoats, raincoats, hats, personal copying equipment including personal paper to paper copiers, briefcases, purses, notebooks, notepaper, note cards, folders or other containers. These items may be stored on a daily basis at no cost in lockers available in the hallway adjacent to the various research rooms. The following exceptions may be granted:

(1) Small handbags and purses for the storage of currency, credit cards, drivers licenses and other identification cards, etc. may be brought into research rooms, but are subject to inspection when the researcher enters or leaves the room. The guard or research room attendant shall judge whether the handbag or purse may be considered small for purposes of this section;

(2) Notes, references, lists of records to be consulted, and other reference materials may be admitted if the Chief of the branch administering the research room determines they are essential to a researcher's work requirements. Materials approved for admission will be stamped to indicate that they are the researcher's property and will be presented to the guard or attendant when the researcher enters the research room;

(3) Typewriters, personal computers, tape recorders, and hand-held cameras may be admitted by the Reference Service Branch Chief (NNIR) or the Military Field Branch Chief (NNMF) provided that they are inspected, approved, and tagged prior to admittance; and

(4) Notepaper and notecards provided by the National Archives and electrostatic copies made on copying machines in NARA research rooms which are marked with the statement "Reproduced from the Records of the National Archives" may be brought back into the research room on subsequent visits but must be presented on entry to the guard or research room attendent.

(e) NARA will furnish specially marked lined and unlined notepaper and 5x8 notecards, without charge, to researchers for use in the research rooms. Unused note paper and notecards should be returned to the research room attendent at the end of the day.

(f) The personal property of all researchers, including notes, electrostatic copies, typerwriter cases, tape recorders, cameras, etc., will be inspected before removal from the research room. Guards and research room attendants may request that a responsible member of the research room staff examine such personal items prior to their removal from the research room.

3. Section 1254.71 is added to read as follows:

§ 1254.71 Use of the self-service high-volume copier in the National Archives Building.

(a) Researchers who wish to make copies of 100 or more pages may use the self-service copier in Room 7W1 of the National Archives Building. To make use of this copier, researchers should follow the procedures outline in paragraphs (b) through (f) of this section.

(b) Researchers should inform a research room attendant of their desire to use the copier and should identify the boxes containing the documents to be copied. Individual documents to be copied should be tabbed in accordance with the procedures governing the tabbing of documents and returned to their container. Generally, requests to use the copier in 7W1 should be made half a day before a researcher wishes to begin copying.

(c) The attendent will examine the records to determine if they can be copied on the 7W1 self-service copier. If the records are suitable for copying on the high-volume copier, the attendant will ensure that the containers are brought to Room 7W1 and will inform researchers when they will be available there.

(d) The self-service copier in Room 7W1 may be used between 9 a.m. and 12 noon and between 1 p.m. and 5 a.m., Monday through Friday. The continuous use by individual researchers of this copier may be limited to 2 hours if other researchers wish to use the machine.

(e) Researchers must purchase a prepaid debit card from the Cashier's Office (Room G–1) between 9 a.m. and 4 p.m., Monday through Friday, to cover the cost of the copies they wish to make. Researchers with deposit accounts may deduct the cost of debit cards from such accounts. These cards, which are available in denominations of $20 and $100, will, when inserted in the copier, enable the user to make a preassigned number of copies; as copies are made, the total value left on the card is reduced until it reaches zero. The fee for self-service copies is found in § 1258.12 of this Chapter.

(f) On completing their copying, researchers shall give their debit card to the copy room attendant, who will verify any remaining value. If the value of the card has not been reduced to zero, the attendant will issue a credit slip for the unused portion. Researchers may obtain a refund for that amount from the Cashiers' Office between 9 a.m. and 4 p.m., Monday through Friday. Researchers with deposit accounts may apply the amount of the refund to such accounts. All cards will be retained by the copy room attendant.

BEST COPY AVAILABLE

Dated: November 27, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-29810 Filed 12-16-85; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-S-FRL-2940-2]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations, Minnesota

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes to change the attainment status designation for Air Quality Control Region 131 (comprised of the seven Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington) in Minnesota relative to the carbon monoxide (CO) National Ambient Air Quality Standard. The current CO air quality status for all of AQCR 131 is nonattainment of the primary standard. In this notice, USEPA is proposing to retain a primary nonattainment area of approximately 15 square miles within the City of St. Paul and to redesignate the remainder of AQCR 131 to attainment. The purpose of this notice is to discuss the results of USEPA's review of the State's supporting data and to solicit comments on these data and USEPA's proposed action.

DATE: Comments on this revision and on the proposed USEPA action must be received by January 16, 1986.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604

Minnesota Pollution Control Board, Division of Air Quality, 1935 West County Road B-2, Roseville, Minnesota 55113

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5 AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Delores Sieja, (312) 886-6038.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Clean Air Act (Act) the Administrator of USEPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrant.

The primary NAAQS for carbon monoxide (CO), which is set forth at 40 CFR 50.8, is violated if, more than once in a year, CO concentrations exceed either: (1) The maximum allowable 8-hour concentration of 10 milligrams per cublic meter of air (mg/m^3), or (2) the maximum allowable 1-hour concentration of 40 mg/m^3.

USEPA's criteria for supportable redesignation requests, as they pertain to CO, are discussed in the following USEPA memoranda:

1. June 12, 1979, from Richard G. Rhoads, to Directors of Air and Hazardous Materials Divisions, Regions I-X, Subject: Section 107 Redesignation Criteria.

2. April 21, 1983, from Sheldon Meyers, to Directors of Air Management Divisions, Subject: Section 107 Designation Policy Summary.

3. December 23, 1983, from G.T. Helms, to Chiefs of Air Programs Branchs, Region I-X, Subject: Section 107 Questions and Answers.

The USEPA's policy relevant to CO redesignations is summarized as follows:

1. Generally, eight quarters of ambient air quality data showing no violations of the NAAQS are required to support a redesignation to attainment.

2. All available data relative to the attainment status of an area must be reviewed. These data must include the most recent eigth consecutive quarters of quality assured, representative air quality data, plus evidence of an implemented control strategy that USEPA has fully approved. Available modeling data must also be considered.

3. An attainment designation can be supported using the most recent four quarters of exceedance-free ambient data if an acceptable state-of-the-art modeling analysis is providd showing that actual, enforceable emission reductions are responsible for the observed air quality improvement.

On March 3, 1978, (43 FR 9005), USEPA designated Air Quality Control Region (AQCR) 131 (comprised of seven Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington) as nonattainment for carbon monoxide (CO). On June 18, 1984, the Minnesota Pollution Control Agency (MPCA) requested that AQCR 131 be redesignated to attainment, except for the St. Paul, Snelling and University street corridors up to one block from the intersection of these Avenues. Specifically, the MPCA proposed nonattainment area is defined as follows:

Along Snelling Avenue, the nonattainment area would end at Sherburne Avenue on the north and approximately 200 feet south of the Snelling and University intersection. Along University Avenue, the nonattainment area would end at Asbury Street on the east and Roy Street on the west.

To support their request, the MPCA submitted air quality monitoring and modeling data for the Minneapolis/St. Paul area (Ramsey and Hennepin Counties). No CO data were submitted for the remaining five rural counties because no data are available. Air quality monitoring data were submitted for three monitoring sites in the Minneapolis area, and for five sites in the St. Paul area for the period of 1981-1983. Specifically, for the University and Snelling intersection, a special monitoring sudy as conducted for the period of April and May of 1983. In addition, because of USEPA's previously expressed concerns over the possible existence of isolated, non-monitored CO hotspots (localized areas with CO standard violations), the Minnesota Department of Transportation (MnDOT) conducted modeling for the University and Snelling intersection and three nearby interesections along University and Snelling Avenues. As an explanation of the reason for air quality improvement in AQCR 131, the State discussed the implementation of transportation control measures. On November 7, 1984, in response to USEPA's request, the State submitted traffic distribution and land use maps for the St. Paul area.

USEPA's Evaluation of Technical Support Data

Monitoring

The monitoring data submitted for the period of 1981-1983 for the nine monitoring sites in Minneapolis/ St. Paul area showed no violations of the CO NAAQS for the most recent eight quartes of data, except at the two University Avenue sites, 1549 and 1569, in St. Paul. The requested nonattainment area includes the area around sites 1549 and 1569. The special monitoring study was conducted to determine whether the hotspot nature of the CO problem at the University and Snelling intersection was

just limited to that intersection. The study demonstrated the hotspot nature of the CO problem in the vicinity of the intersection.

Modeling

The State submitted modeling performed by the MnDOT for the University and Snelling intersection and three nearby intersections along University and Snelling Avenues. For the modeling to be technically acceptable, it must conform with USEPA's guidelines which do not allow the calibration of modeling data. Calibration is a forced adjustment of modeled results to match monitored results. For the University and Snelling intersection, MnDOT calibrated the modeling data by forcing the modeling results to match the monitored worse-case concentrations taken from the University and Snelling monitors. For the University and Snelling modeling data to be acceptable uncalibrated use of the model should have been performed. For the other three intersections, MnDOT calibrated the modeling results against the University and Snelling concentration distributions. Thus, MnDOT has assumed that the pattern of CO distribution at all the intersections are identical. This is technically incorrect because a wide variation in concentration distribution patterns may be expected due to intersecion-specific factors such as: traffic control characteristics; intersection/traffic lane geometry; and traffic distribution by lane. For the modeling to be acceptable for these three non-monitored intersections, an intersection-specific analysis should have been performed. In addition to the above concerns, USEPA believes that, for the requested redesignation to be acceptable, modeling must be performed for all of the intersections that might be impacted by high average daily traffic.

Status of Five Rural Counties

As stated above, all the monitoring and modeling analyses have been limited to Hennepin and Ramsey Counties. No CO data were submitted for the remaining five rural counties in AQCR 131 (Anoka, Carver, Dakota, Scott, and Washington) because no data are available. It should be recognized that the original designation of these rural counties as nonattainment for CO in 1978 was based on a conservative assumption by the State and was not based on either monitoring or modeling data specific to these rural counties. USEPA believes it is acceptable to redesignate these five counties to attainment because: (1) The urban population is concentrated in Hennepin and Ramsey Counties. (It is assumed that the highest CO concentrations should be found in these urban counties.); and (2) the worst-case monitors in Hennepin and Ramsey Counties, with the exception of those near Snelling and University Avenues, show no violations of the CO NAAQS.

Evidence of Air Quality Improvement

SIP Status

USEPA approved a CO SIP for AQCR 131 on June 16, 1980 (45 FR 40579) including a State demonstration that implementation of the transportation control measures (TCMs) in the 1979 SIP would result in attainment of the CO NAAQS by December 31, 1982. It is clear from data submitted by the State and USEPA's analysis of MPCA's redesignation request that MPCA has implemented all the committed TCM's except for 1) transit performance funding, to be implemented in the future following the activation of a new Regional Transit Authority, and 2) community-oriented transit demonstration projects. The analysis shows that the probable air quality impacts of not implementing these TCM's is negligible. Even though the majority of the USEPA's approved SIP measures have been implemented, and those not implemented are negligible, portions of AQCR 131 still have not attained the CO NAAQS. This conclusion is based on recent CO monitoring data at the University and Snelling Avenues. As a result of the recent violations monitored at this location, USEPA formally notified the State on February 24, 1984, pursuant to section 110(a)(2)(H) of the CAA, that the current SIP was deficient in the City of St. Paul (Ramsey County) and that it must be revised. On May 20, 1985, the State submitted a revised CO SIP for portions of the City of St. Paul to USEPA for review and approval.

USEPA believes that the CO SIP approved in 1980 is adequate to attain and maintain the CO NAAQS for AQCR 131 with the exception of portions of the City of St. Paul in Ramsey County that it is proposing to maintain as nonattainment in this notice. Therefore, approval of the redesignation of AQCR 131, with the exception of portions of the City of St. Paul, is consistent with USEPA's redesignation policy. The remaining area, however, is subject to further SIP revision and should remain designated nonattainment until USEPA has finally approved the necessary SIP revisions and until the monitoring and other data indicate that the area has attained the CO NAAQS.

Conclusion

USEPA has reviewed all the supporting data and believes the State did not provide sufficient information to justify the State's proposal that the University and Snelling intersection area is the sole hotspot in the area. USEPA believes that a larger area, centered on University and Snelling Avenue, has the potential for air quality violations. To determine the extent of the area where CO hotspots might occur, USEPA reviewed a traffic level map for St. Paul and a land use map for the entire Minneapolis/St. Paul urban area provided by the MPCA. It was assumed that most CO hotspots would occur along arterial streets, rather than freeways, because the lower arterial speeds would result in higher emissions. All of the arterial/arterial intersections with traffic levels equaling or exceeding 30,000 ADT (a traffic level cutpoint which USEPA has estimated has the potential to produce local CO hotspots, based on the CO levels and traffic levels at the University and Snelling intersection) are clustered along University and Snelling Avenues. Along University Avenue, these potential hotspot intersections were found from Eustis on the west to Rice on the east. Along Snelling Avenue, the potential hotspots were found from Larpenteur on the north to Randolph on the south. This analysis implies that the mobile source impacts along these portions of traffic corridors should be given further consideration and that the "reduced" CO nonattainment area should include these corridors. Because the nonattainment area should include all major sources contributing to CO levels, it should be large enough to include any roadways expected to experience traffic changes in the future as a result of transportation control measures, Therefore, USEPA believes the primary nonattainment area should be retained in the following area:

A two mile wide corridor centered on Snelling Avenue extending from Randolph Avenue on the south to Larpenteur Avenue on the north for a length of approximately five miles intersecting with a second two mile wide corridor centered on University Avenue extending from Eustis Avene on the west to Rice Street on the east for a length of approximately five miles.

The remainder of AQCR 131 can be redesignated to attainment.

It should be noted that the size of the corridors has been selected to insure that future analyses properly consider traffic control impacts on roadways intersecting either Snelling Avenue or University Avenue. The traffic data that

are availab[illegible]y that a significany potential ex[illegible] nonattainment problems a[illegible]rea. USEPA recognizes that a porti[illegible]e above area may not actually be [illegible]ttainment of the CO NAAQS. Fur[illegible]redesignation of this revised non[illegible]ment area would be acceptable i[illegible]cceptable modeling analysis is c[illegible]ted showing that the CO nonattai[illegible] problem is limited to more restricte[illegible]otspots.

USEPA notes that its final rulemaking action redesignating portions of AQCR 131 from primary nonattainment to attainment fo[illegible]O will make the CO section 110(a[illegible]) growth restrictions no longer applicable in these areas.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: June 20, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–29788 Filed 12–16–85; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC–250–P]

Medicare Program; Home Health Agencies; Financial Security Requirements

Correction

In FR Doc. 85–27810 beginning on page 48435 in the issue of Monday, November 25, 1985, make the following correction:

1. On page 48444, in the second column, in § 405.1231(c)(3), in the seventh line, "have to had" should read "have not had".

2. Also on page 48444, in the third column, in § 405.1231(d)(3)(iii), in the sixth line from the top of the column, "position" should read "portion".

3. On page 48445, in the first column, in § 405.1231(e)(3)(ii), in the third line, "to be first" should read "to the first".

BILLING CODE 1505–01–M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 85–22]

Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: This proposes to amend the Commission's agreement rules to provide that agreements subject to the Shipping Act of 1984 shall affect only future or prospective activities between or among the parties and may not relate to or affect past activities or events. This should remove any confusion as to the activities which are the proper subject of agreements submitted under the 1984 Act.

DATE: Comments on or before February 18, 1986.

ADDRESS: Send comments (original and 15 copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, Washington, DC 20573, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, Washington, DC 20573, (202) 523–5787.

Robert D. Bourgoin, General Counsel, Office of General Counsel, Federal Maritime Commission, Washington, DC 20573, (202) 523–5740

John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, Washington, DC 20573, (202) 523–5860.

SUPPLEMENTARY INFORMATION: The Shipping Act of 1984 (the Act or 1984 Act) (46 U.S.C. app. 1701 *et seq.*) requires that certain agreements among ocean common carriers and among marine terminal operators to engage in specified activities be filed with the Federal Maritime Commission (Commission) (46 U.S.C. app. 1704). Once these agreements become effective, activities undertaken pursuant to them are exempt from the antitrust laws of the United States (46 U.S.C. app. 1706(a) (1) and (2)). In addition, a person is prohibited from operating under an agreement required to be filed under the Act that has not become effective (46 U.S.C. app. 1709(a)(2)).

Following enactment of the 1984 Act, the Commission has received an increasing number of agreements which, in one form or another, contain provisions affecting activities or events which occurred prior to their effective dates. These provisions are particularly pervasive in the area of marine terminal agreements. Under such arrangements, ocean common carriers, which have generally been using port facilities pursuant to the terms of public tariffs or a previously effective agreement, agree with the port for future use of the facilities. These latter agreements often attempt to take into account the use which occurred prior to the effective date of the agreement, *e.g.* in tonnage formulas or by applying a new and lower rate to the previous usage. There appears to be some confusion in the ocean shipping industry over the appropriateness of such provisions. The Commission is therefore initiating this rulemaking proceeding to clarify the matter.[1]

Under section 15 of the Shipping Act, 1916 (1919 Act) (46 U.S.C. app. 801 *et seq.*), it was unlawful, before approval, to carry out in whole or in part, directly or indirectly, any subject agreement (46 U.S.C. app. 814). Pursuant to this mandate, the Commission concluded that it:

> . . . may not approve an agreement in such a way as to render lawful that which the statute explicitly declares unlawful, and therefore the Commission may not approve an agreement so as to validate conduct under the agreement prior to its approval.

Mediterrannean Pools Investigation, 9 F.M.C. 264, 301 (1966). *See also, Carnatian Co.* v. *Pacific Westbound Conference*, 383 U.S. 213, 222 (1966); *Pacific Coast European Conference* v. *FMC*, 439 F.2d 514, 520 (D.C. Cir. 1970); *River Plate & Brazil Conference* v. *Pressed Steel Car Co.*, 227 F.2d 60 (2d Cir. 1955).

The principle enunciated in *Mediterranean Pools* was used to condemn clauses in several terminal lease agreements which would have made the terms of such agreements effective from the date the assignee commenced the use of the facilities.

[1] The Commission has received an informal request from the Virginia Port Authority and Virginia International Terminals, Inc. to institute a rulemaking in this area. In addition, the Port of Portland has also expressed a need for addressing retroactivity provisions in agreements.

even if prior to the Commission's approval of the arrangement. *See Agreements Nos. T–2108 and T–2108–A*, 12 F.M.C. 110 (1968); *Agreement No. T–2138* 12 F.M.C. 126 (1968). In the latter case, the Commission further noted that even though the assignee's use of the terminal facilities prior to Commission approval was pursuant to the Port's published tariff, the crediting of payments for such use to a minimum/maximum provision of the preferential use agreement after it was approved constituted giving effect to the provisions of an unapproved agreement. *Agreement No. T–2138*, 12 F.M.C. at 132. *See also, Pouch Terminal Inc.*, 20 F.M.C. 753 (1978). In a later case, the Commission determined that a terminal lease agreement's rental formula could not be applied to cargo handled prior to the date of the Commission's approval of the agreement. *Virginia Port Authority Petition for Declaratory Order*, Docket No. 81–44, 21 S.R.R. 199 (November 6, 1981), *aff'd sub nom., Portsmouth Terminals, Inc.* v. *Federal Maritime Commission*, 694 F.2d 281 (D.C. Cir. 1982) (table).

An exception to the above line of cases is the Commission's decision in *Agreement No. T–3938, Between the City of Los Angeles and American President Lines, Ltd.*, unpublished Order served August 24, 1982. In that case, American President Lines (APL) was using the Port of Los Angeles' facilities under a pre-existing agreement, but entered into a new agreement which contained a provision stating that the compensation terms of the new agreement would replace those then in effect as of the date the parties entered into the agreement and not the date the Commission subsequently approved the agreement. The Commission at first required that the provision be deleted. However, following APL's petition for reconsideration,[2] the Commission concluded that the provision was not the type of retroactivity condemned by *Mediterranean Pools* and its progeny. The Commission noted that, while the particular provision would result in adjustments to compensation already paid under another agreement, those adjustments would not occur until Commission approval, and therefore could be considered prospective payments merely based on past events.

Passage of the 1984 Act has now given the Commission the opportunity to reassess it position *vis-a-vis* provisions which affect activities which occurred prior to the effective date of an agreement. Though, as indicated above, these provisions generally appear in marine terminal agreements, they can potentially be included in any agreement filed with the Commission.

The 1984 Act provisions relating to agreements appear to indicate that the only agreements subject to the Commission's jurisdiction are those which deal with prospective activities, and not those which somehow affect prior events or activities. For example, section 4 states the the Act applies only to agreements "to" engage in certain specified activities (46 U.S.C. app. 1703). This implies that these arrangements will have a prospective impact. In addition, section 10(a) prohibits anyone from operating under an agreement that has not become effective (46 U.S.C. app. 1709(a)). Moreover, the antitrust exemption provided under the Act applies only to agreements on file with the Commission and in effect when the activity took place (46 U.S.C. app. 1706). These provisions support the proposition that Congress intended that the only activities which can be affected by an agreement under the 1984 Act are those of a future or prospective nature. The proposed rule reflects this position.

It should be further noted that one of the primary arguments for including retroactive-type provisions in an agreement under the 1916 Act was the length of time involved in approving an agreement. The parties to agreements asserted that they wanted to put their arrangements into effect once they agreed upon them and not be subject to the vagaries of the section 15 agreement approval process, with the attendant delays. Whatever the merits of this position, it is less compelling under the 1984 Act. Now, agreements generally become effective 45 days after they are filed and, in certain circumstances, can become effective in as little as 14 days after **Federal Register** notice of filing is published.[3] Parties to terminal lease arrangements and other subject activities can thus effectuate their business relationships expeditiously. There should be no need, therefore, to attempt to affect prior events. If the parties to these arrangements somehow desire to reward prior use of facilities, be it either pursuant to a public tariff or a previously approved or effective agreement, it appears that they can accomplish their objectives by varying the rates and charges to be assessed under their new agreement and not by affecting in any way the prior usage.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies; or geographic regions; or

(3) Significant adverse effect on competition, employment, investment productivity, innovations, or on the ability of United States-based enterprised to compete with foreign-based enterprises in domestic or export Markets.

The Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.)* that this rule will not have a significant economic impact on a substantial number of small entities, including businesses, small organizational units or small governmental jurisdictions. The primary economic impact of these rules would be on marine terminal operators and ocean common carriers, both of which generaly are not small entities.

List of Subjects in 46 CFR Part 572

Antitrust; Cargo vessels; Contracts; Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553 and sections 4, 5, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1703, 1704, and 1716), the Federal Maritime Commission hereby proposes to amend Part 572 of Title 46 of the Code of Federal Regulations as follows:

PART 572—[AMENDED]

1. The authority citation for Part 572 continues to read:

Authority: 5 U.S.C 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

2. Section 572.103 is amended by adding a new paragraph (h) to read as follows:

§ 572.103 Policies

* * * * *

(h) An agreement filed under the Act shall apply only to prospective, future activities of the parties and may not in any way directly or indirectly affect or rely upon activities, events or payments which occurred prior to the effective data of the agreement.

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[2] It should be noted that the petition was filed at a time when the parties were no longer in a posture to file an amendment to their agreement to prospectively achieve what the subject provision was intended to accomplish.

[3] Moreover, the Commission is presently considering exempting certain types of agreements from any waiting period so that they can become effective upon filing.

By the Commission.
Bruce A. Dombrowski,
Acting Secretary.
[FR Doc. 85-29816 Filed 12-16-85; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 74, 78, and 94

[Gen. Docket No. 82-334; FCC 85-599]

Establishment of a Spectrum Utilization Policy for the Fixed and Mobile Services Use of Certain Bands Between 947 MHz and 40 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The Commission proposes to relax eligibility requirements and adjust channeling plans in the bands 1,850–1,990 MHz, 1,990–2,110 MHz, 6,425–6,525 MHz, 6,525–6,875 MHz and 6,875–7,125 MHz and to impose minimum path length requirements on fixed bands above 1 GHz. This action would provide more options for licensees to access the microwave spectrum and lead to more efficient use of the spectrum. It is necessary to accommodate growing use of the spectrum.

DATE: Comments are due January 21, 1986. Replies are due February 17, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donald Draper Campbell, Office of Science and Technology, Spectrum Management Division, Frequency Allocations Branch, 202–653–8113.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Allocations.

47 CFR Part 21

Communication common carriers, Point-to-point microwave, Transmission.

47 CFR Part 74

Point-to-point microwave.

47 CFR Part 78

Point-to-point microwave.

47 CFR Part 94

Point-to-point microwave.

Second Notice of Proposed Rule Making

In the matter of Establishment of a spectrum utilization policy for the fixed and mobile services' use of certain bands between 947 MHz and 40 GHz; Gen. Docket No. 82-334; FCC 85-599.

Adopted: November 12, 1985.
Released: November 27, 1985.

By the Commission:

Introduction

1. In this *Second Notice of Proposed Rule Making (2nd NPRM)* we address the issues of relaxing eligibility restrictions and adjusting channel plans for the following bands: 1850–1990 MHz (1.8 GHz), 1990–2110 MHz (2 GHz), 6425–6525 MHz (6.4 GHz), 6525–6875 MHz (6.5 GHz) and 6875–7125 MHz (7 GHz). These issues were raised for all bands but the 6.4 GHz band in the first *Notice of Proposed Rule Making (1st NPRM)* in this proceeding.[1] However, due to the Commission's desire to afford immediate and adequate remedies to existing licensees who may be displaced from 12.2–12.7 GHz (12.2 GHz) by the direct broadcasting-satellite (DBS) service, we did not treat more general issues in either the *First Report and Order (1st R&O)* [2] or the *Second Report and Order (2nd R&O)* in this docket.[3]

2. The *1st NPRM* also addressed several other technical issues such as frequency coordination procedures, channel loading standards, minimum path length requirements, and congestion measurements. In adopting the *1st R&O*, the Commission stated that a number of issues raised in the *1st NPRM* would be addressed in a later phase of the proceeding. We believe that some of these issues have been affected by changed circumstances. Additionally, we have further analyzed the use of microwave bands and have determined that some of our proposals warrant minor modification. The following paragraphs discuss our original proposals for bands between 1.8 and 7 GHz and comments to them and present revised proposals for comment. While this *2nd NPRM* deals primarily with the issue of expanding access to the bands, it also takes up the issue of minimum path length requirements and protection to satellites in the geostationary orbit. Remaining technical issues and other bands may be the subject of further notices.

1.8 GHz and 6.5 GHz Private Bands

3. The 1.8 and 6.5 GHz bands are used by private entities, as provided for by Part 94 of the Commission's Rules, primarily for long-haul voice and data transmission. Access to these bands is currently given by § 94.5 to those parties who can establish eligibility under Parts 81, 87 or 90 of the Commission's Rules, except that those whose sole basis for eligibility is established under § 90.75(a)(1), i.e., those who conduct commercial activities in the Business Radio Service, are prohibited from using the bands.[4] The channeling plans for these bands currently provide for 5 and 10 MHz channels.

4. In the *1st NPRM* the Commission proposed to take the following action with regard to the 1.8 and 6.5 GHz bands.

(1) Permit access to the bands by all entities except common carriers.

(2) Revise the existing 5 MHz channeling plan at 6,525–6,875 MHz.

(3) Create five new 1 MHz channel pairs from the band segments 6,525–6,530 MHz and 6,870–6,875 MHz.

(4) Create six new 20 MHz channel pairs at 6,525–6,875 MHz by combining 10 MHz channel pairs together.

(5) Impose minimum path length requirements of the bands.

(6) Prohibit the transmission of video signals at 6,525–6,875 MHz.

5. The comments generally supported the proposal to create five 1 MHz channel pairs from the guard band segments 6525–6530 and 6870–6875 MHz. American Petroleum Institute (API) and Association of American Railroads (ARR) were opposed to the proposal to re-pair the 5 MHz channels in the 6.5 GHz band because of potential coordination problems. The API, *et al.*, also stated that there is no need for a 20 MHz channeling plan at 6.5 GHz. With regard to the proposal to permit commercial Business Radio Service licensees access to these bands, parties such as the Utilities Telecommunications Council (UTC), API and ARR expressed concerns about increased interference and accommodation of future needs of the currently authorized users. These

[1] The *1st NPRM*, adopted January 13, 1983, 48 FR 6730, proposed changes in the Commission's Rules to accommodate private fixed users who might be displaced from the 12.2–12.7 GHz (12.2 GHz) band by the re-allocation of that spectrum to the broadcasting-satellite service [see, *Report and Order* in Gen. Doc. 80-603, 47 FR 31555 (July 21, 1982)] and to provide spectrum for growth by private, broadcast and cablecast entities in certain fixed and mobile bands between 1.85 GHz and 31.3 GHz. A list of commenters is contained in Appendix A.

[2] The *1st R&O*, 48 FR 50722, provided access in the 6525–6875 MHz and 12.7–13.15 GHz bands for the reaccommodation of existing 12.2 GHz private fixed microwave users who may need to vacate that band in order to permit the implementation of the broadcasting-satellite service and also completed the allocation of the17.7–19.7 GHz band (18 GHz) for private, common carrier, broadcast auxiliary and cable operations [see *Second Report and Order* in Gen. Doc. 79-188, 48 FR 50322 (1983)].

[3] The *2nd R&O*, 50 FR 7338 (February 22, 1985) established new rules governing the use of the 31.0–31.3 GHz band.

[4] *See* § 94.61(b) (Note 15).

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commenters stated that there is a need to preserve high reliability of communications and argued that the bands are or will become congested by current eligibles, and thus the current eligibility restrictions should remain unchanged. On the other hand, some entities, including business users such as May Department Stores and microwave equipment manufacturers apparently speaking on behalf of business radio users, stated that they need to access the bands to handle their communications requirements.

6. In the *1st R&O* the Commission stated that licensees with authorizations prior to September 9, 1983, in the 12.2 GHz band would have certain special rights to access other bands, including the 6.5 GHz band, even if they would not normally not have eligibility to use the band. The *1st R&O*, however, did not address the question of what spectrum would be used to satisfy new communications requirements generated by parties who would normally use the 12.2 GHz band and who are not eligible for spectrum below 12.2 GHz. In recent years, the Commission has been receiving an increasing number of waiver requests to access the 6.5 GHz band from business service eligibles and from entities who have bandwidth requirements greater than 10 MHz. However, none of the waiver requests so far received have been from licensees of displaced 12.2 GHz links. This indicates that there is a need to provide additional spectrum for new users. We believe that this need should be accommodated by rule rather than by continued use of waivers.

7. Based on review of the comments filed in this proceeding and the waiver requests, it appears that much of the demand for private microwave spectrum below 12.2 GHz could be satisfied by removing the present eligibility restriction on Business Radio entities. The Commission has conducted an analysis of the current usage in the 1.8 and 6.5 GHz bands and several other microwave bands. This analysis indicates that these two bands are capable of accommodating growth in certain geographical areas. In some areas, high performance antennas and additional links would be required to avoid path blockage, but it would appear that substantial additional use can be accommodated by relaxing the current restrictions. Therefore, we are proposing to expand access to the 1.8 and 6.5 GHz bands to permit business use. Similarly, we are proposing to allow entrepreneurs to use the 1.8 and 6.5 GHz bands as well. In PR Doc. 83–426, we concluded that licensing entrepreneurs to use the 1.8 and 6.5 GHz bands to offer private carrier service to Part 94 eligibles generally would effectively negate the prohibition against use of these bands by Business Radio Service eligibles.[5] Therefore, we extended the prohibition to entrepreneurs. In light of our intent to eliminate that restriction and allow access by Business Radio Service eligibles into those bands, we now see no reason to continue to restrict entrepreneurs from using that spectrum to offer a private carrier service to other Part 94 eligibles.[6] We recognize the concerns raised by UTC, API, AAR and some others regarding the importance of communications in the industrial services and the possibilities for congestion raised by their growth. However, without specific and detailed information as to the extent of congestion that might result from our proposed action, we cannont forgo the public benefits to be obtained. Our proposal would enable business eligibles, who are now restricted to use spectrum at GHz and higher, to make better use of the radio spectrum and would extend the economic efficiencies afforded by licensing of entrepreneurs. We request comments on whether access for business users and entrepreneurs should be delayed until September 1988, to permit continued priority for displaced 12.2 GHz users.

8. Basically, these entities need only the capability of transmitting FDM–FM and digital-FM traffic for voice and data, which the existing technical standards will accommodate. We anticipate that with newer technologies, such as new modulation and multiplexing techniques, the 5 and 10 MHz wide channels presently authorized for the bands would be sufficient for a majority of commercial applications.[7]

9. According to the Commission's license data base, the bulk of the 20 MHz channel usage at 6.5 and 12.2 GHz supports the distribution of high quality video educational programs, medical diagnostic activities, corporate communications (video conferencing) and similar types of video transmissions. One example of video distribution is state-wide educational television systems feeding Instruction-Fixed Television Service (ITFS) facilities.[8] These systems typically transmit FM-video signals requiring bandwidths of 18 to 20 MHz. Another type of video use which has been supported at 12.2 GHz is surveillance. This use requires lower signal quality than program distribution and employs 12 MHz double sideband AM transmission as well as 20 MHz FM transmission. Most of these video systems currently use the 12.2 GHz band, though several are using 6.5 GHz frequencies under waiver, or because they were in existence at 6.5 GHz prior to the allocation of the 12.2 GHz band for fixed use in the 1970's.

10. We anticipate that allowing video transmissions in the 6.5 GHz band, by rule, would have a significant adverse impact on the use of the band for the other kinds of services using the band. We are also concerned that accommodating these wideband video requirements could adversely affect the 12.2 GHz reaccommodation process. Our proposals in the *1st NPRM* included consideration of other bands (i.e., the 2 GHz, 7 GHz, and, by comment to the *1st NPRM*, the 6.4 GHz bands) to handle video requirements.[9] Our revised proposals would accommodate video operations in the 2, 6.4 and 7 GHz bands as discussed below.

11. As indicated above, we are presenting revised proposals for comment. Therefore, with respect to the 1.8 and 6.5 GHz bands we request comments on proposals to amend the Commission's Rules to:

(1) Permit all Part 94 eligibles, including entrepreneurs, to access the bands, thus eliminating the business radio service access prohibition.

(2) Create five 1 MHz channel pairs from the guardband segments 6,525–6,530 MHz and 6,870–6,875 MHz, while retaining the existing 5 and 10 MHz channeling plans.

(3) Impose a minimum path length requirement as discussed below.

2 GHz and 7 GHz Television Auxiliary Bands

12. These bands are currently used by television broadcast entities, as provided for by Part 74 of the Commission's Rules, to support the

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[5] *First Report and Order* in PR Doc. 83–426 (FCC 85–53), released April 1, 1985, 50 FR 13338 (April 4, 1985).

[6] In the *Further Notice of Proposed Rule Making* in PR Doc. 83–426 [FCC 85–454, adopted August 7, 1985, 50 FR 37879 (September 18, 1985)], we proposed to permit operational-fixed service licensees to lease capacity on their private microwave system for the transmission of common carrier communications by non-dominant common carriers.

[7] According to the Commission's licensing data base, only a few private systems operating at 6.5 GHz employ parallel 10 MHz channels, thus indicating that a 10 MHz wide channel is generally sufficient for most non-video needs.

[8] ITFS facilities operate in the 2500—2690 MHz band and are licensed in accordance with the provisions of Subpart I of Part 74 of the Rules.

[9] The *1st R&O* provided spectrum at 18 GHz that can be used to support both FM-video (20 MHz channels) and AM-video (6 MHz channels) requirements.

transmission of frequency modulated video signals between studios and broadcast transmitters sites (STL's), between facilities in different cities (intercity relay) and between remote locations and broadcast studios (television pick-up, ENG).

13. In the *1st NPRM* we proposed to take the following action with regard to the 2 and 7 GHz bands:

(1) Permit equal access to the bands by private, cable and broadcast entities (common carriers would also have access but only to provide service to cable and broadcast entities).

(2) Pair the existing 25 MHz channels at 7 GHz, which would also be available on an unpaired basis.

(3) Revise the channeling plan at 2 GHz, to provide three 20 MHz channel pairs, which would also be available on an unpaired basis.

(4) Impose antenna standards which would parallel those imposed on the private 1.8 and 6.5 GHz bands.

(5) Permit only frequency modulated video in the bands.

(6) Impose a minimum path length requirement.

14. The broadcast industry was opposed to opening up the bands to non-broadcast entities and felt that the bands should be used on a primary basis to support electronic news gathering (ENG) operations. NAB was opposed to the implementation of minimum path lengths, particularly for mobile/portable operations, and the imposition of antenna standards for mobile operations. It also stated that because of the nature of news gathering operations, coordination with other types of entities would be very difficult, if not impossible.

15. On the other hand, the cable industry supported the concept of permitting like users to utilize the same frequencies.[10] NCTA stated that cable operators need access to these bands to provide ENG and other remote pickup/mobile operations and that cablecasters proposed usage would be no different than the usage currently being made by broadcasters. NCTA was not opposed to the minimum path concept for fixed operations but stated that it should not be imposed on mobile operations. M/A-COM, Inc., an equipment manufacturer, also supported the concept of expanding access to the bands because it feels that inter-service sharing would result in more flexibility in designing communications systems, increased ability to satisfy user needs that cannot now be met, lower equipment and operating costs, and more efficient use of the microwave spectrum.

16. We have conducted utilization analyses of the 2 and 7 GHz bands. Our study shows that about 4,700 links have been authorized in the 7 GHz band to broadcasters, of which 75% of these links support fixed operations (i.e., STL and intercity relay's) and 25% support mobile operations (i.e., ENG). In both cases the traffic is high quality video with accompanying audio employing 25 MHz channels. Our analyses show that about 5070 links (assignments) have been authorized in the 2 GHz band to broadcasters, of which 77% of these links support mobile operations and 23% support fixed operations. In both cases the traffic is high quality video with accompanying audio. The band is channelized for six 17 MHz channels and one 18 MHz channel. The authorized links support normal day-to-day activities such as point-to-point transmission of continuous program material and routine mobile unit coverage of live program materials. However, at random times and random locations, a news event may occur which attracts a large number of mobile units. Given the unpredicatability of these events and the desirability to provide a high quality broadcast signal to the public, it is essential that there be sufficient capacity in the band and that users coordinate use of the band to prevent harmful interference. According to the broadcast industry commenters, most broadcasters prefer to use the 2 GHz band for mobile operations. This is because of ideal propagation characteristics, which include permitting bouncing signals off buildings. Usually it is only in the major television markets that extensive mobile use is made of the 7 GHz band, apparently because there is not sufficient capacity at 2 GHz. Further, it is primarily in rural areas that extensive fixed use is made of the 2 GHz band.

17. In some cases it is not the operator of a broadcast station or cable system who produces program material, rather is a network. For example, there are sports and news networks which provide programming services. These networks also need access to spectrum for mobile services for the delivery in realtime of program material. In the same view, cable system operators that elect to produce their own program material have similar needs. Currently, broadcast networks are eligible for licensing in these bands. We believe such provisions should also extend to cable networks and cable system operators. Therefore, we proposed to extend access to the 1,990–2,110 and 6,876–7,175 MHz bands to cable network entities and cable system operators for mobile remote pickup (ENG) use only.[11] The technical provisions of Part 74, Subpart F would apply to these licensees.[12] Other production entities could apply for operation in the 6,425–6,525 MHz band.

18. Currently, the 2 and 7 GHz bands are allocated on a primary basis to both the fixed and mobile services. This dual allocations has resulted in some complications in carrying out coordination and operations within these bands. Coordination between fixed links is generally static since once a link is installed little change takes place. Coordination involving mobile operations, on the other hand, is dynamic, for as mobile links move about, coordination must be effected again with all fixed and mobile operations. Broadcasters have set up local coordinating committees composed of licensees in the area which act as clearing houses for spectrum requirements on a real time basis using either dedicated wire-lines or radio communications. The close cooperation of licensees in scheduling the shared use of spectrum has worked well in major markets such as Los Angeles and Washington, DC. Considering the circumstances, we will address the coordination of these bands in a separate furture Mass Media docket.

19. One way to reduce coordination complications may be to eliminate mixed co-equal allocations; i.e., have either the fixed service primary or the mobile service primary, but not both. As noted above, 75% of the links authorized in the 7 GHz band are fixed. Likewise, a majority of the assignments in the 2 GHz band are mobile and the band appears better suited propagationally for mobile operations. Therefore, it may prove beneficial to reallocate the 7 GHz band to fixed primary, mobile secondary and to reallocate the 2 GHz band to mobile primary, fixed secondary. We request

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[10] On January 7, 1983, Westinghouse filed a *Petition for Rule Making* seeking modification of Part 78 to permit, among other things, access by cable operators to the 1990–2110 MHz and 6875 MHz bands to provide ENG operations. Action on the allocations issue was deferred to Gen. Doc. 82-334. *See* MM Doc. 84-886, Amendment of Part 78 of the Commission's Rules concerning licensing procedures and reporting reqtirements in the Cable Television Relay Service, i.e., *NPRM*, 49 FR 38160 (September 27, 1984) and *R&O*, 50 FR 23417 (June 4, 1985).

[11] In Docket MM 85-128, we have already proposed to allow cable networks entry to aural broadcast remote pickup spectrum. *Notice of Proposed Rule Making*, FCC 85-215, 50 FR 1955 (May 9, 1985).

[12] We have proposed to modify the channeling plans that broadcasters use for the 2 and 7 GHz bands by dividing the bands into segments. See *Notice of Proposed Rule Making*, FCC 85-64, 50 8172 (February 28, 1985). If we adopt the proposals herein, the channeling arrangement adopted in that proceeding will apply to the new eligibles.

comments on the merits of such an approach.[13]

20. In summary, with respect to the 2 and 7 GHz bands, we are proposing to amend the Commission's Rules to:

(1) Permit cable system operators and network entities to access the bands for transmission of video signals. Use of this spectrum for direct delivery of video programming to the general public or multi-channel cable distribution would not be permitted.[14]

(2) Apply the technical provisions of Parts 74 to the newly eligible entities.

(3) Impose a minimum path length requirement for fixed operations as discussed below.

6.4 GHz Video Band

21. A number of broadcast commenters to the *1st NPRM* stated that expanded access to the 2 and 7 GHz bands for video transmissions by non-broadcasters could not be accommodated due to existing congestion in many of the top metropolitan areas. Further, they stated that the additional spectrum should be allocated to support their own growth requirements. Harris and M/A-COM, two equipment manufacturers, and several other commenters to the *1st NPRM* suggested that access to the 6.4 GHz band should be expanded to support the mobile/portable requirements of broadcasters, cablecasters and others. In particular, M/A-COM suggested that the band should be channelized into 20 MHz bandwidth channels to support FM/video transmission.

22. The 6.4 GHz band is currently allocated to the mobile service. Common carriers have access on a primary basis to provide service to broadcasters for mobile television pickup, as provided for by Subpart J of Part 21, Local Television Transmisison Service (see § 21.801 *et seq.*).[15] Broadcasters also have access to the band, but on a secondary basis, to provide mobile television pickup, as provided for by Subpart F of Part 74, Television Broadcast Auxiliary Stations (see § 74.602 [Note 3]).[16] In comparison to the number of mobile licenses in other bands, there are relatively few licenses in the 6.4 GHz band. It appears that it can support an increased number of authorized users without impairing service. Because of the need to find additional specturm to support mobile video operations, we are proposing to modify eligiblity criteria to permit access on a co-equal basis by common carriers, broadcasters, private users, cable system operators and network entities.[17]

23. Part 21 does not impose a channeling plan on the 6.4 GHz band; it does, however, limit the maximum channel bandwidth to 30 MHz, see § 21.804. Part 74 does impose a channeling plan; it consists of four 25 MHz channels centered on 6,437.5, 6,462.5, 6,487.5 and 6,512.5 MHz, see § 74.602. As indicated above, broadcaster use of this band is secondary to common carrier usage. Channelization of the 6.4 GHz band into 20 MHz channels, as suggested by M/A-COM, would provide five channels. However, if future growth of mobile video operations is to be accommodated, more than five channels may be needed.

24. In a recent paper, one manufacturer indicated that it has developed a 12.7 GHz radio employing AM-video emission (C3F/F3E) which may provide signal qualify as good as FM-video. This new radio uses a narrower bandwidth for the transmisison—7 MHz for the video signal and 1 MHz for the audio signal. Other manufacturers are also working toward using narrow bandwidth AM emission for video transmission.[18] Thus, it appears that narrow band video systems may prove practical for this band in the near future.

25. Therefore, we are proposing an additional plan of six 8 MHz channel pairs, which will support AM-video (C3F/F3E). This form of emission, transmitted over a 8 MHz channel may not now provide the signal quality that many desire; however, we are faced with a shortage of spectrum and use of this emission form appears worthy of pursuit. The proposed six 8 MHz channel pairs would occupy only 96 MHz of the 100 MHz allocated; therefore, we could also create two 1 MHz channel pairs which could be used to support aural braodcast needs. As an alternative to this approach, we request comments on the concept of dividing the band into 1 MHz segments, as discussed above for the 2 and 7 GHz bands, and permitting the stacking of any number of these segments to arrive at a channel width appropriate for the specific application.

26. We are proposing the additional channeling plan in order to accommodate new video transmission requirements and relieve congestion in the top television market areas. Our proposal would permit the transmission of both AM-video (C3F/F3E) and FM-video (F3F) signals in this band. However, in revising and expanding the scope of Bulletin No. 10D, "Interference Criteria for Microwave Systems in the Private Microwave Services," The Electronic Industries Association (EIA) has found that the mixing of these two forms of emission within the same band may not provide for effective use of the spectrum. Therefore, we are seeking comments on whether or not emissions in this band should be restricted to AM-video (C3F/F3E) to conserve spectrum. If so, what would be a reasonable grandfathering provision for FM-video equipments now using the band.

27. In order to provide for coordination in the 6.4 GHz band under the proposed eligibility criteria, we would apply the procedure already in effect for the band. This is set forth in § 21.100 of the Commission's Rules, dealing with common carriers. However, we request comments and suggestions for alternatives to the procedure in light of the foreseen operations. We also request comments on whether a secondary allocation to the fixed service would be useful and appropriate for this band and how coordination could be carried out with such an allocation.

28. In summary, with respect to the 6.4 GHz band, we are proposing to amend the Commission's Rules to:

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[13] We expect that over time, existing mobile operations would migrate to the 2 and 6.4 GHz bands while existing fixed operations would migrate to the 7 GHz band. Comments should be consider appropriate transition procedures.

[14] Spectrum for multi-channel distribution is available in the 12.7—13.15 and 18.14—18.58 GHz bands.

[15] Currently, seventy licenses have been granted to fifty-six carriers, permitting service anywhere within a company's franchise telephone service area or, where no state franchise service area is designated, anywhere in the continental U.S. Common carriers primarily use the band to provide occasional, temporary television service to broadcasters to relay news and sporting events or special programming on a short haul basis for periods up to six months. However, because the Part 21 rules do require notification to the Commission when service is implemented, actual usage of the 6.4 GHz band by the carriers is not known.

[16] Currently nine licenses have been granted to three broadcast entities.

[17] On July 25, 1985, the Commission adopted a *Report and Order* in Doc. 84-669 [FCC 85-388, released September 13, 1985, 50 FR 39101 (September 27, 1985)], which re-allocated the band segment 2483.5-2500.0 MHz to the radiodetermination-satellite service. As a result, new fixed and mobile operations which would have used this spectrum will now have to find other spectrum to satisfy their requirements.

[18] Strauss, Hsu and Morgiotta, "Spectrum Conservation with High Performance SSB Microwave Carriage of Multiple Television Signals," *Proceedings of the 38th Annual Brodcast Engineering Conference*, 1984.

Conner, W.A., "Mixed Video-Message Performance of a Microwave SSB-AM System" *Proceedings of the International Communications Conferance*, 1984.

Also see comments of Hughes Aircraft Company, Microwave Communications Products, in Docket MM 85-36.

(1) Permit all Part 21, 74, 78 and 94 eligibles to access the 6.4 GHz band for transmission of video signals only. Use of this spectrum for direct delivery of video programming to the general public or for multi-channel cable distribution would not be permitted.

(2) Provide an 8 MHz channeling plan for all users in addition to the 25 MHz channeling plan existing in Part 74.

(3) Require frequency coordination of proposed links and amendments to existing links as currently required by § 21.100.

Minimum Path Lengths

29. In the *1st NPRM*, the Commission proposed to impose minimum path length requirements on the microwave bands in order to discourage the use of lower microwave bands for short-haul communications paths. With some exceptions, the commenters to the *1st NPRM* generally supported the concept of imposing minimum path length requirements on fixed links in bands below 17.7 GHz. However, they were concerned about the practicality of the scheme proposed, whereby the country would be broken into twenty-one zones for purposes of calculating appropriate path length by frequency band. As an alternative to the scheme proposed in the *1st NPRM*, the EIA suggested that a more simple scheme should be employed, taking into account low power (<1 watt) and high power (>1 watt) systems. EIA suggests the following minimum distances.

Frequency band (gigahertz)	Minimum path length (kilometer)	
	Transmitter power	
	High (>1 W)	Low (<1 W)
1,850 to 2,110	17	[illegible]
6,525 to 7,125	17	5
12,200 to 13,250	5	2
17,700 to 19,700	[illegible]	[illegible]

30. The Commission's Rules already contain path length criteria for some bands. In the *Second Report* and *Order* in Doc. 18920,[19] the Commission imposed minimum path length requirements on common carrier usage of bands below 17.7 GHz. These minimum path length requirements are set forth in § 21.710 and repeated in the table below.

Frequency band (gigahertz)	[illegible] path length (kilometer)
2,110 to 2,130	5
2,160 to 2,180	5

[19] FCC 74-657, 39 FR 25490 (11 July 1974)

Frequency band (gigahertz)	Minimum path length (kilometer)
3,700 to 4,200	17
5,925 to 6,425	17
10,700 to 11,700	5

31. We have calculated the distribution of average and median path lengths for existing fixed links for several bands. Additionally, calculations were made to determine the percentage of links which were less than either 17 km for operations under 10.7 GHz or 5 km for operations between 10.7 GHz and 17.7 GHz. The results of these calculations are tabulated below:

Frequency band (megahertz)	Path length		Number of fixed links	Percent of links <= min dis		Type of entity (rule part)
	Average (kilometer)	Median (kilometer)		(kilometer)	(percent)	
1,850 to 1,990	30.7	[illegible]	7,436	17	27.0	[illegible]
1,990 to 2,110	40.3	[illegible]	[illegible]	17	15.3	74
2,110 to 2,130	30.3	[illegible]	1,395	17	24.5	21
2,130 to 2,150	[illegible]	19.0	4,162	17	45.7	[illegible]
3,700 to 4,200	41.6	41.3	43,930	17	[illegible]	21
5,925 to 6,425	[illegible]	[illegible]	31,572	17	5.7	21
6,425 to 6,525	n/a	n/a	n/a	n/a	n/a	21,74
6,525 to 6,875	32.7	32.2	12,260	17	21.7	[illegible]
6,875 to 7,125	[illegible]	25.5	977	17	31.5	74
10,700 to 11,700	22.5	19.1	11,517	[illegible]	5.4	21
12,200 to 12,700	14.4	[illegible]	2,257	[illegible]	[illegible]	[illegible]
12,700 to 13,150	17.1	14.7	70,887	5	3.8	74/78/94
13,150 to 13,250	19.2	16.5	[illegible]	[illegible]	[illegible]	21/74/94
17,700 to 19,700	4.0	3.1	462	[illegible]	n/a	[illegible]
212,00 to 23,600	1.4	0.7	1,198	5	n/a	21 and 94

The Table shows that common carriers (Part 21) have a low percentage of links that do not meet the minimum path distance, since they are placing shorter paths in the higher bands.

32. Our analysis does not indicate that any significant advantage would be gained by having a minimum path length scheme which is dependent on transmitter power, as proposed by EIA. Since it is our goal to encourage the use of the less-used, higher frequency bands, e.g., 18 and 22 GHz where equipment is now readily available, for short path lengths, we propose to adopt the following minimum path length values. These values would be applicable to all fixed links applied for following the adoption of a Report and Order in this proceeding. However, in order not to be unnecessarily restrictive in uncongested areas, we would license links not in accordance with the criteria so long as their operation would not preclude additional links operating in accordance with the criteria.[20] Further, minor modifications to grandfathered systems not in accordance with the criteria would be allowed as well.

[20] This would be similar to the approach taken with antenna standards in these bands. We normally permit the use of less efficient, Category B, antennas in areas not subject to frequency congestion but may require the use of a high performance, Category A, antenna where interference can be resolved by its use.

Frequency band (megahertz)	Minimum path length (kilometer)
Below 1,850	n/a
1,850 to 2,110	11
6,425 to 7,125	17
12,200 to 13,250	[illegible]
Above 17,700	n/a

As an exception, these minimums would not apply to reaccommodation of the existing 12.2 GHz links; however, we encourage these users to consider higher frequencies for short-hop requirements.

33. For long-haul networks with multiple links where some links are less than 17 km, some additional costs may be incurred because the shorter links would have to use 18 GHz or higher equipment. Several commenters pointed out that mixing frequency bands in a single network is not preferable. However, mixing of 1.8, 2.1, 6.5 and 12.2 GHz band frequencies in the same system is already a fairly common practice, and we believe that such mixing using 18 GHz or higher frequency equipment would not be unduly burdensome.

Protection of Geostationary Orbit

34. With the United States ratification of the Final Acts of the 1979 World Administrative Radio Conference (1979 WARC) on September 6, 1983, the Commission is obliged to adhere to their provisions. One of these provisions, Article 27 of the international *Radio Regulations*, imposes antenna pointing

restriction and power limitations on terrestrial stations operating in co-equally shared bands with the fixed-satellite service (Earth-to-space). These restrictions are necessary to protect the geostationary orbit from harmful interference caused by terrestrial services. In this *2nd NPRM* we are taking the opportunity to propose appropriate amendments of the Commission's Rules govering the use of spectrum between 6,425 and 7,075 MHz.[21] This spectrum is currently shared both domestically and internationally on a primary basis by space and terrestrial radio services and, therefore, it is appropriate to impose the Article 27 limitations on terrestrial services. The proposed changes would impose antenna pointing restrictions and power limitations on EIRP as well as transmitter power delivered to the antenna.

Conclusion

35. In this *2nd NPRM*, we are proposing to relax eligibility restrictions on access to microwave spectrum between about 2 and 7 GHz in order to satisfy unmet communications requirements. Specifically, the Commission is proposing (1) to permit business service licensees and entrepreneurs access to the 1.8 and 6.5 GHz private bands, (2) to permit cablecasters and network entities access to the 2 and 7 GHz broadcast auxiliary bands and (3) to permit broadcasters, cablecasters, program producers and other video users access to the 6.4 GHz common carrier/broadcast auxiliary band. Our analyses indicate that there is sufficient spectrum to accommodate these expanded uses of the spectrum and we believe that it is in the public interest that they should be permitted. We are also proposing to impose minimum path length criteria on fixed links in order to promote the use of high frequencies for short paths and low frequencies for long paths. Finally, in order to protect satellites on the geostationary orbit from receiving harmful interference, we are proposing to implement in our domestic rules the provisions already adopted internationally for the bands of interest. Comments on these proposals or suggestions for alternatives to these proposals are invited.

[21] We are also proposing a minor amendment to § 94.77 to reflect changes made previously in the allocations for the bands 12.5–12.7 GHz and 12.7–12.75 GHz.

Initial Regulatory Flexibility Analysis

36. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

37. *Reason for Action:* To relax eligibility restrictions on bands between 2 and 7 GHz in order to expand access to the bands; and to impose minimum path length requirements on fixed operations.

38. *Objective:* The Commission is advancing this proposal to accommodate continued growth in the fixed and mobile services use of spectrum above 1 GHz.

39. *Legal Basis:* The proposal action is authorized under section 4(i), 303(f), 303(g), 303(r), and 331(a) of the Communications Act of 1934, as amended, which authorize the Commission to make such rules and regulations as may be necessary to improve the efficiency of spectrum use.

40. *Description, Potential Impact and Number of Small Entities Affected:* The dropping of eligibility barriers will result in increased opportunities for radio users and manufacturers some of which are small business. Additionally, it is ordered that the Secretary shall serve a copy of this notice on the Small Business Administration.

41. *Reporting, Record Keeping and Other Compliance Requirements:* No new requirements are proposed.

42. *Federal Rules Which Overlap, Duplicate or Conflict with this Rule:* To our knowledge, there are no other Federal Rules that overlap, duplicate or conflict with those contained in the notice.

43. *Significant Alternatives:* None.

Initial Paperwork Reduction Analysis

44. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Administrative

45. For purpose of this non-restricted rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of the presentation of the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must also state by docket number the proceeding to which it relates. See generally, § 1.231 of the Commission's Rules, 47 CFR 1.231.

46. Interested persons may file comments on this proposal on or before January 21, 1986, and reply comments on or before February 17, 1986. All relevant and timely comments filed in accordance with §§ 1.415 and 1.419 of our rules and regulations (47 CFR 1.1415 and 1.419) will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas no contained in comments, provided that such information is placed in the public file, and provided that the Commission's reliance on such information is noted in its final decision.

47. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR § 1.419, formal participations shall file an original and five copies of their comments. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by partiicpating informally may do so by submitting one copy of their comments without regard to form (as long as the docket number is clearly stated in the heading). All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, DC.

48. For further information concerning this rule making, contact Donald Draper Campbell, 202–653–8113.

BEST COPY AVAILABLE

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

List of Commenters

American Blackhawk Broadcast Co. (KTIV)
American Broadcasting Company
American Family Broadcast Group
American Newspaper Publishers Association
American Petroleum Institute
American Telephone and Telegraph Company
American Television and Communications Corp.
Anaconda Ericsson
Apple Valley Broadcasters (KAPP, KEVW)
Arizona Department of Public Safety
Arizona Television Company (KTVK–TV)
Arkansas Television Company (KTVK–TV)
Associated Public-Safety Communications Officers, Inc.
Association of American Railroads
Association of Higher Education of North Texas
Austin Satellite Television
Bell Laboratories
Belo Broadcasting Corp. (WFAA)
Bonneville International Corporation
Buffalo Broadcasting Company
Cable Systems Development Company
Cablevision Industries/Cox Communications
Cablevision Industries/Cox Cable
California Peace Officer's Association
California Public Safety Radio Association
California State of (Communications Division)
California, University of
California, University of (San Diego)
Capital Cities Communications, Inc.
Carson Broadcasting Corp. (KVVU)
CBS, Inc.
Cedar Rapids Television Company
Central California Educational Television, et al
Channel 6, Inc.
Channel Two Television
Circle L Television (KCRL–TV)
Clay Broadcasting Corporation
Community Antenna Television Association
Connecticut Educational Telecommunications Corp.
Cornhusker Television Corp. (KGIN)
Cowles Broadcasting, Inc.
Cox Communications, Inc.
Crane, Robert, Dr.
Daniels, and Associates, et al
Duluth-Superior Area Educational TV Corp.
Educational Broadcasting Corp.
Electronic Industries Association
Eugene Television, Inc. (KVAL)
Evening News Associates (WDVM–TV)
Fetzer Television Corp. (WKZO–TV)
First Charleston Corp. (KCIV–TV)
Fisher Broadcasting, Inc.
Fort Myers Broadcasting Co.
Forward of Iowa (KCAU–TV)
Forward Telecasting, Inc. (WSAW)
Gainesville Television
Gannett Co., Inc. (KARL–TV)
Garryowen Corporation
Gateway Communications, Inc.
Gaylord Broadcasting, Inc.
General Electric Broadcasting Co. (WNGE)
Gill Industries
Global Television, Inc. (KSCI)
Great Lakes Communications (KWTV)
Griffin Television, Inc. (WICU–TV)
GTE Service Corporation
Harris Corporation (Farinon Division and Broadcast Division)
Harte-Hanks Communications, Inc. (KENS)
Hearst Corporation
Heritage Communications, Inc.
Home Entertainment Network (WBTI–TV)
Hubbard Broadcasting, Inc.
Hughes Aircraft Company (Microwave Communications Products)
Illinois Institute of Technology
Independent Broadcasting Co.
Iowa State University
Jackson Cable System
Jefferson Pilot Broadcasting Company (WWBT)
KAAL–TV
KAMR–TV
Kansas State Network (KUTV, Inc.)
KATV
KAYU–TV
Kelly Broadcasting (KCRA–TV)
Kentucky, Commonwealth of
KETV Television, Inc.
KFMB
KID Broadcasting Corporation
KIEM–TV
King Broadcasting Company
KLAS–TV
KMBC–TV
KMSP Television
Knight-Ridder Broadcasting, Inc.
KOSA–TV
KRAL–TV
KSAT–TV
KTAL–TV, Inc.
KTHI–TV, Inc.
KTHV–TV
KTIV–TV
KTSP–TV
KTUL–TV
KTXL–TV
KVOS Television Corp.
KWTV
KXJB–TV
KXLY
KYTV–TV, Inc.
Lee Enterprises, Inc.
Loral Terra Com
Los Angeles Times
Los Angeles Unified School District
Los Angeles, County of (Department of Communications and Office of the Sheriff)
M/A–COM, Inc.
Manufacturers Radio Frequency Advisory Committee
Marsh Media of El Paso (KVIA–TV)
Marsh Media, Inc.
Marston, W. Bernard
Maximum Service Telecasters
May Broadcasting Company (KMTV, KGUN–TV)
May Department Stores
McGraw-Hill Broadcasting Co., Inc. (KGTV)
MCI TeleCommunication Corporation
McIver, W.L.
Meredith Corporation (KPHO)
Metromedia, Inc. (KTTV, et al)
Metropolitan Indianapolis Television Association (KFYI)
Michiana Telecasting Corp.
Micro Communications, Inc.
Mid-Pacific Television Associates (KIKU)
Midcontinent Broadcasting Company
Midwest Television, Inc.
Minnesota-Iowa Television
Missouri, University of
Motorola
Multimedia, Inc. (WXII)
National Academy of Science
National Aeronautics and Space Administration
National Association of Broadcasters
National Association of Business and Educational Radio, Inc.
National Association of Public Television Stations
National Braodcasting Company
National Cable Television Association
National TeleCommunications and Information Administration
Nationwide Communications, Inc.
Nebraska Educational Television Commission
New Jersey Public Broadcasting Authority
New Mexico, Commission on Public Broadcasting of
New Vision, Inc. (WNUV–TV)
New York Times
New York, City of
NTV Network
Nurad Antenna, Inc.
Ohio Education Broadcasting Network
Oklahoma State Regents for Higher Education
Outlet Company (KCPX–TV)
PEC Communications
Pennsylvania Public Television Network
Pennsylvania State University
Perez and Reach
Pikes Peak Broadcast Company (KRDO)
Pikes Peak Broadcasting (KJCT–TV)
Port Communications
Post Corporation
Post-Newsweek Stations, Inc.
Public Service Satellite Consortium
Radio-Television News Directors Association
Rockwell International Corp.
Rogers U.S. Cablesystems, Inc.
Sarkes Tarzian, Inc.
Satellite Television Corporation
Schwartz, Woods & Miller
Scripps-Howard Broadcasting
Smith and Powstenko
Society of Broadcast and Communications Engineers
Society of Broadcast and Communications Engineers (North Texas Chapter)
Society of Broadcast Engineers
South Carolina, State of
Southern Illinois University at Carbondale
Spectrum Planning, Inc.
Springfield Television Corporation (KSTV)
State Telecasting Company
Storer Communications
Suburban Cablevision
Sutro Tower, Inc.
Television Station Licensees
Television Wisconsin, Inc.
Thirty-Three, Inc.
Tichenor Media System
Tribune Company
Turner Broadcasting System
Utilities TeleCommunications Council
ViaCom Broadcasting, Inc. (WVIT–TV)
Viacom International, Inc.
Videoindiana, Inc.
Warner Amex Cable Communications, Inc.

Washington Executive Broadcast Engineers
Washington Post Company
WCBD–TV
WCSC, Inc.
WDBJ Television, Inc.
WEHCO Equipment Corporation
Western Washington Frequency Coordinating Committee
Westinghouse Broadcasting and Cable, Inc.
WFLD–TV
WFMY–TV
WGBH Educational Foundation
WHAG–TV
WHBF–TV
WHEC–TV
Wisconsin TV Nework (WZZM)
WJAR–TV
WJLA–TV
WKFU–TV
WLOX–TV
WMTV
WNNE–TV
Wometco West Michigan TV
WPBN–TV
WPSD–TV
WRC–TV
WREX–TV
WSBT–TV
WSET–TV
WSMV–TV
WTRF–TV
WTVC–TV
WVIA–TV
WWHK Corporation
WXII–TV
WYFF–TV
WYNECO Communications, Inc.

Appendix B

Proposed Rule Changes

Chapter I, Parts 2, 21, 74, 78 and 94 of Title 47 of the Code of Federal Regulations would be amended as follows:

PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106 is amended by revising columns (5) and (6) between 6,425 and 6,525 MHz, and removing note NG122 as follows:

§ 2.106 Table of frequency allocations.

* * * * *

International table			United States table		FCC use frequencies	
Region 1-allocation MHz	Region 2-allocation MHz	Region 3-allocation MHz	Government allocation MHz	Non-Government allocation MHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	[illegible]	(7)
				6425–6525 Fixed-Satellite (earth to [illegible]) Mobile	Auxiliary Broadcast (74).	
				.....	Cable television (78)	
				.....	Domestic public fixed (21).	
				.....	Private Operational Fixed microwave (94).	
				791 809.....	.....	

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES (OTHER THAN MARITIME MOBILE)

B. 1. The authority citation for Part 21 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 21.107 is amended by revising the Table and notes in paragraph (b) as follows:

§ 21.107 Transmitter power.

* * * * *

(b) * * *

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
Below 30	50.0	50.0	.....	.....
30 to 50	350.0	350.0	.....	.....
50 to 76	50.0	50.0	.....	.....
76 to 512	250.0[3]	250.0[3]	.....	.....
512 to 2,110	50.0	20.0	.....	.....
2,110 to 2,130	50.0	.....	.....	.....
2,150 to 2,160	20.0[2]	.....	+45	.....
2,160 to 2,180	20.0[2]	.....	.....	.....
2,500 to 2,685	10.0	.....	.....	.....
2,686 to 2,690	0.25	.....	.....	.....
3,700 to 4,200	20.0	.....	.....	.....
5,925 to 6,425	20.0	.....	+55	.....
6,425 to 6,525	20.0	20.0	+55	+35
10,550 to 10,565	10.0	.....	.....	.....
10,615 to 10,630	10.0	.....	[4]	.....
10,700 to 11,200	10.0	.....	.....	.....
12,200 to 13,250	10.0	10.0	.....	.....

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
17,700 to 18,600	10.0	.....	+55	.....
18,600 to 18,800	10.0[1]	.....	+35	.....
18,800 to 19,700	10.0	.....	+55	.....
21,200 to 23,600	10.0	.....	+50	.....
31,000 to 31,300	0.05	0.05	.....	.....
27,500 to 29,500	10.0	.....	+55	.....
38,600 to 40,000	10.0	1.5	+50	.....

[1] The power delivered to the antenna is limited to −3 dBW.

[2] In the band 2,150–2,162 MHz up to 100 watts may be authorized pursuant to § 21.904.

[3] Transmitter rated power output is limited to a maximum of 25 watts of frequencies in the bands 454.6625–455.0000 MHz and 459.6625–460.0000 MHz.

[4] The EIRP of stations in the 10,600–10,680 MHz band must not exceed +40 dBW.

* * * * *

3. Section 21.108 is amended by revising paragraph (e) as follows:

§ 21.108 Directional antennas.

* * * * *

(e) These limitations are necessary to minimize the probability of harmful interference to reception in the bands 5,925–6,525 MHz on board geostationary space stations in the fixed-satellite service (Part 25).

(1) *5,925 to 6,525 MHz.* No directional transmitting antenna utilized by a station operating in these bands shall be aimed within 2 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed: (1) +47 dBW for any antenna beam directed within 0.5 degrees of the stationary satellite orbit or (2) +47 to +55 dBW, on a linear decibel scale (8 dB per degree) for any antenna beam directed between 0.5 degrees and 1.5 degrees of the stationary orbit.

(2) Methods for calculating the azimuths to be avoided may be found in: CCIR Report No. 393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for controlled Interference With Geostationary-

Satellites" by C. W. Lundgren and A. S. May, Bell System Technical Journal, Vol. 48, No. 10, pp. 3387–3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC–7201, FCC, Washington, DC, 1972. This latter report is available through the National Technical Information Service, U.S. Department of Commerce, Springfield, VA, 22151, in printed form (PB–211 500) or source card deck (PB–211 501).

4. Section 21.801 is amended by revising the Table in paragraph (a), revising note [6] to the Table in paragraph (a), adding new note [7] to the Table in paragraph (a), and adding a new paragraph (g) as follows:

§ 21.801 Frequencies.

(a) * * *

6,425–6,525 MHz [8, 9]
11,700–12,200 MHz [3]
13,200–13,250 MHz [1]
21,200–22,000 MHz [1, 2, 4, 5]
22,000–23,600 MHz [1, 2, 5]
31,000–31,300 MHz [7]

* * * * *

[8] This band is co-equally shared with stations licensed pursuant to Parts 74, 78 and 94 of the Commission's Rules.

[9] Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted.

* * * * *

(g) 6425 to 6525 MHz. Mobile Only. Paired and un-paired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally shared with stations licensed pursuant to Parts 74, 78 and 94 of the Commission's Rules. The following channel plans apply.

(1) 1 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6473.5	6523.5
6474.5	6524.5

(2) 8 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6429.0	6479.0
6437.0	6495.0
6445.0	6503.0
6453.0	6511.0
6461.0	6519.0
6469.0	6519.0

(3) 25 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6437.5	[illegible]
6462.5	[illegible]

5. Section 21.804 is amended by revising the Table in paragraph (d) as follows:

§ 21.804 Bandwidth and emission limitations.

* * * * *

(d) * * *

Frequency band (MHz)	Maximum authorized bandwidth (MHz)
3,700 to 4,200	[illegible]
5,925 to 6,425	[illegible]
6,425 to 6,525	25
10,700 to 12,200	[illegible]
13,200 to 13,250	25
22,000 to 23,600	100

* * * * *

PART 74—EXPERIMENTAL, AUXILIARY AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

1. The authority citation for Part 74 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307, unless otherwise noted.

2. Section 74.601 is amended by adding a new paragraph (g) as follows:

§ 74.601 Classes of TV broadcast auxiliary stations.

* * * * *

(g) *Network-entity.* For the purpose of this subpart, a network-entity is an organization which produces programs for simultaneous transmission by 10 or more affiliated broadcast stations (or 10 separate franchised communities or its equivalent) and having distribution facilities or circuits available to such affiliated stations or cable systems at least 12 hours of each day.

3. Section 74.602 is amended by revising paragraph (a), removing all entries in Band B, MHz from 6425 through 6525 in the Table in paragraph (a), and removing footnote (3) in paragraph (a) and adding new paragraph (j) as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignment to television pickup, television STL, television relay and television translator relay stations. The band segments 17,700–18,580 and 19,260–19,700 MHz are available for broadcast auxiliary stations as described in paragraph (i) of this section. The band segment 6,425–6,525 MHz is available for broadcast auxiliary stations as described in paragraph (j) of this section. Additionally, the band 38.6–40.0 GHz is available for assignment without channel bandwidth limitations to TV pickup stations on a secondary basis to fixed stations.

* * * * *

(j) 6425 to 6525 MHz. Mobile Only. Paired and unpaired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally shared with stations licensed pursuant to Parts 21, 78 and 94 of the Commission's Rules. The following channel plans apply.

(1) 1 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6473.5	6523.5
6474.5	6524.5

(2) 8 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6429.0	[illegible]
6437.0	[illegible]
6445.0	6503.0
6453.0	6511.0
6461.0	6519.0
6469.0	6519.0

(3) 25 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6437.5	[illegible]
6462.5	6512.5

4. Section 74.632 is amended by revising the first sentence of paragraph (a) as follows:

§ 74.632 [Amended].

* * * * *

(a) A license for a television pickup, television STL, or television relay station will be issued only to licensees

of television broadcast stations, cable system operators and network-entities and, further, on a secondary basis, to licensees of low power television stations. * * *

* * * * *

5. Section 74.636 is amended by revising the Table in paragraph (a) and removing paragraph (b) as follows:

§ 74.636 Power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
1,990 to 2,110	20.0	12.0		
2,450 to 2,500	[illegible]	12.0		
6,425 to 6,525		12.0		+35
6,875 to 7,125	[illegible]	12.0	+55	+35
12,700 to 13,250	5.0	1.5	+55	+45
17,700 to 18,600	10.0		+55	
18,600 to 18,800	[1] 10.0		+35	
18,800 to 19,700	10.0		+55	
31,000 to 31,300	0.05	0.05		
38,600 to 40,000		1.5		

[1] The power delivered to the antenna is limited to −3 dBW.

6. Section 74.637 is amended by replacing the phrase "17,700–19,700 MHz and 31,000–31,300 MHz bands" with the phrase "bands 6,425–6,525 MHz, 17,700–19,700 MHz, and 31,000–31,300 MHz" in paragraph (b), and adding new paragraph (f) as follows:

§ 74.637 Emissions and emission limitations.

* * * * *

(f) The maximum bandwidth which will be authorized per frequency assignment is set out in the table which follows. Regardless of the maximum authorized bandwidth specified for each frequency band, the Commission reserves the right to issue a license for less than the maximum bandwidth if it appears that less bandwidth would be sufficient to support an applicant's intended communications.

Frequency band (MHz)	Maximum [illegible]
1,990 to 2,110	18
6,425 to 6,525	[illegible]
6,875 to 7,125	[illegible]
12,700 to 13,250	25
17,700 to 19,700	[illegible]
31,000 to 31,300	25 or 50
38,600 to 40,000	

7. Section 74.638 is amended by revising paragraph (b) as follows:

§ 74.638 Frequency Coordination.

* * * * *

(b) Coordination of assignments in the 6,425–6,525 MHz and 17.7–19.7 GHz bands will be in accordance with the procedure established in § 21.100.

8. Section 74.641 is amended by revising the introductory paragraph (a) and the Table, including the notes, in paragraph (a)(1), and removing and reserving paragraph (a)(4) as follows:

§ 74.641 Antenna systems.

(a) For fixed stations operating between 1,990 MHz and 31.3 GHz and mobile stations operating between 31.0 GHz and 31.3 GHz, the following standards apply:

(1) * * *

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
1,990 to 2,110	A	5.0	NA	12	[illegible]	[illegible]	[illegible]	[illegible]	33	[illegible]
	B	8.0	NA	5	18	[illegible]	[illegible]	[illegible]	28	[illegible]
6,875 to 7,125	A	1.5	NA	26	[illegible]	[illegible]	[illegible]	[illegible]	41	[illegible]
	B	2.0	NA	21	[illegible]	[illegible]	[illegible]	[illegible]	39	[illegible]
12,700 to 13,250	A	1.0	NA	23	28	35	[illegible]	[illegible]	42	[illegible]
	B	2.0	NA	20	[illegible]	[illegible]	[illegible]	32	37	47
17,700 to 18,580	A	NA	[illegible]	[illegible]	29	[illegible]	[illegible]	[illegible]	55	[illegible]
	B	NA	[illegible]	20	24	[illegible]	[illegible]	35	36	[illegible]
19,260 to 19,700	A	NA	38.0	[illegible]	29	[illegible]	36	42	55	[illegible]
	B	NA	[illegible]	20	24	28	[illegible]	[illegible]	36	36
31,000 to 31,300	NA	[1] 4.0	[illegible]							

[1] The minimum front-to-back ratio shall be 38 dBi.

Note:—Stations must employ an antenna that meets the performance standards for category A, except that in areas not subject to frequency congestion antennas meeting standards for category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

* * * * *

PART 74—[AMENDED]

9. Part 74 is amended by adding a new § 74.643 as follows:

§ 74.643 Interference to geostationary-satellites.

These limitations are necessary to minimize the probability of harmful interference to reception in the bands 6,425–6,525 MHz, 6,875–7,075 MHz and 12.7–12.75 GHz on board geostationary space stations in the fixed-satellite service (Part 25).

(a) *6,425 to 6,525 and 6,875 to 7,075 MHz.* No directional transmitting antenna utilized by a station operating in these bands shall be aimed within 2 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed: (1) +47 dBW for any antenna beam directed within 0.5 degrees of the stationary satellite orbit or (2) +47 to +55 dBW, on a linear decible scale (8 dB per degree) for any antenna beam directed between 0.5 degrees and 1.5 degrees of the stationary orbit.

(b) *12.7 to 12.75 GHz.* No directional transmitting antenna utilized by a station operating in this band shall be aimed within 1.5 degrees of the

geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonble alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed +45 dBW for any antenna beam directed within 1.5 degrees of the stationary satellite orbit.

(c) Methods for calculating the azimuths to be avoided may be found in: CCIR Report No. 393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for Controlled Interference With Geostationary-Satellites" by C. W. Lundgren and A. S. May, Bell System Technical Journal, Vol. 48, No. 10, pp. 3387–3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC–7201, FCC, Washington, DC, 1972. This latter report is available through the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22151, in printed form (PB–211 500) or source card deck (PB–211 501).

10. Part 74 is amended by adding a new § 74.644 as follows:

§ 74.644 Minimum path lengths for fixed operations.

The distance between end points of a fixed link must equal or exceed the value set forth in the table below, except that in areas not subject to congestion shorter paths lengths may be operated. Note, however, that the Commission may require compliance with the values set forth in the table where interference problems can be resolved by application of the criteria.

Frequency range (MHz)	Minimum path length (km)
1,850 to 7,125	17
12,200 to 13,250	5
Above 17,700	0

11. Section 74.661 is revised to read as follows:

§ 74.661 Frequency tolerance.

(a) Stations in this service shall maintain the carrier frequency of each authorized transmitter to within the following percentage of the assigned frequency.

Frequency band (MHz)	Frequency tolerance	
	Fixed (percent)	Mobile (percent)
1,990 to 2,110	[1] 0.005	0.005
6,425 to 6,525	[illegible]	[illegible]
6,875 to 7,125	[1] 0.005	0.005
12,700 to 13,250	[illegible]	[illegible]
17,700 to 18,820	[illegible]	
18,920 to 19,700	[illegible]	
31,000 to 31,300	0.03	0.03
38,600 to 40,000	[illegible]	[2] 0.005

[1] Television translator relay stations shall maintain a frequency tolerance of 0.002%.
[2] For transmitters with an output power of 50 mW or less, the frequency tolerance need only be 0.05%.

PART 78—CABLE TELEVISION RELAY SERVICE CHANGES

C. 1. The authority citation for Part 78 continues to read:

Authority: Sec. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat. as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309, unless otherwise note.

2. Section 78.5 is amended by adding a new paragraph (i) as follows:

§ 78.5 Definitions.

* * * * *

(i) Network-entity. For the purpose of this subpart, a network-entity is an organization which produces programs for simultaneous transmission by 10 or more affiliated broadcast stations (or 10 separate franchised communities or its equivalent), and having distribution facilities or circuits available to such affiliated stations or cable systems at least 12 hours of each day.

3. Section 78.18 is amended by adding new paragraph (a)(6) as follows:

§ 78.18 Frequency assignments.

(a) * * *

(6) Frequencies in the bands 1,990–2,110 MHz, 6,425–6,525 MHz and 6,875–7,125 MHz are available for assignment to stations in this service. All operations in these bands are subject to the technical provisions of Part 74, Subpart F of this Chapter.

* * * * *

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.61 is amended by revising the introductory paragraph (b), amending the Table in paragraph (b) by revising the frequency bands 1850–1990 and 6525 through 6875 and by adding new frequency band 6425–6525; and by removing and reserving note [15] and adding notes [30] and [31] to the Table in paragraph (b) as follows:

§ 94.61 Applicability.

* * * * *

(b) Frequencies in the following bands are available for assignment to stations in the Private Operational-Fixed Microwave Service:

* * * * *

1850–1990	[2, 21]
* * * * *	
6425–6525	[30, 31]
6525–6575	[21, 28]
6575–6625	[2, 21, 28]
6625–6875	[2, 8, 21, 28]

* * * * *

[15] [Reserved]

* * * * *

[30] This band is co-equally shared with stations licensed pursuant to Parts 21, 74 and 78 of the Commission's Rules.

[31] Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted.

§ 94.63 [Amended]

3. Section 94.63 (Interference protection criteria for operation-fixed stations) is amended by replacing the phrase "in the bands 10,550–10,680 MHz," with the phrase "in the bands 6,425–6,525 MHz, 10,550–10,680 MHz," in paragraph (a).

4. Section 94.65 is amended by adding paragraph (g)(3) and adding new paragraph (m) as follows:

§ 94.65 Frequencies.

* * * * *

(g) * * *

(3) 1 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6525.5	[illegible]
6526.5	6871.5
6527.5	[illegible]
6528.5	[illegible]
6529.5	6874.5

* * * * *

(m) 6425 to 6525 MHz. Mobile Only. Paired and un-paired operations permitted. Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted. This band is co-equally shared with stations licensed pursuant to Part 21, 74 and 78 of the Commission's Rules. The following channel plans apply.

(1) 1 MHZ authorized bandwidth channels.

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Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6473.5	[illegible]
6474.5	[illegible]

(2) 8 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
[illegible]	6476.0
[illegible]	[illegible]
6445.0	6503.0
6453.0	[illegible]
6461.0	[illegible]
6469.0	[illegible]

(3) 25 MHz maximum authorized bandwidth channels.

Transmit (or receive) (MHz)	Receive (or transmit) (MHz)
6437.5	[illegible]
6462.5	[illegible]

5. Section 94.67 is amended by revising the Table between 2,690 MHz and 6,525 MHz in paragraph (a) as follows:

§ 94.67 Frequency tolerance.

(a) * * *

Transmit band (MHz)	Tolerance as percentage of assigned frequency
* * * *	
6,425 to 6,525	0.005
* * * *	

6. Section 94.71 is amended by revising the Table between 2,690.9375 MHz and 6,525 MHz in paragraph (b) as follows:

§ 94.71 Emission and bandwith limitations.

(a) * * *

(b) * * *

Transmit band (MHz)	Maximum authorized bandwidth
* * * *	
6,425–6,525	25
* * * *	

7. Section 94.73 is amended by removing the paragraphs (a)(1 and (a)(2) and adding a new Table and notes [1] through [8] in paragraph (a) as follows:

§ 94.73 Power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
[illegible]	5.0		+17	
952 to 960	[3] [4] 20.0		[6] +40	
1,850 to 1,990	20.0		+45	
2,130 to 2,150	20.0		+45	
2,159 to 2,160	20.0		[6] +45	
2,160 to 2,200	20.0		+45	
2,450 to 2,500	20.0	12.0	+45	
2,500 to 2,686	10.0		[5] +45	
2,686 to 2,690	0.25		[5] +45	
6,425 to 6,525	[illegible]	[illegible]	[5] +55	+35
6,525 to 6,875	[illegible]	[illegible]	[5] +50	
10,550 to 10,565	10.0		+40	
10,615 to 10,630	10.0		+40	
12,200 to 12,700 [8]	10.0		+50	
12,700 to 13,250	10.0	1.5	[5] +50	+45
17,700 to 18,600	10.0		+55	
18,600 to 18,800	[8] 10.0		+35	
18,800 to 19,700	10.0		+55	
21,200 to 23,600 [8]	10.0		+40	
31,000 to 31,300	0.05	0.05		
38,600 to 40,000	10.0		+40	

[1] Peak envelope power shall not exceed five times the average power.

[2] When an omnidirectional transmitting antenna is authorized the maximum shall be 100 watts.

[3] Remote alarm units that are part of a multiple address central station protection system are authorized a maximum of 2 watts.

[4] When an omnidirectional transmitting antenna is authorized the maximum shall be +30 dBW.

[5] Also see § 94.77.

[6] For low power operations see § 94.90 and § 94.91.

[7] Reserved.

[8] Maximum power delivered to antenna shall not exceed −3 dBW.

8. Section 94.77 is revised to read as follows:

§ 94.77 Interference to geostationary-satellites.

These limitations are necessary to minimize the probability of harmful interference to reception in the bands 2,655–2,690 MHz, 6,425–6,875 MHz, and 12,700–12,750 MHz on board geostationary-space stations in the fixed-satellite service (Part 25). Stations authorized prior to July 1, 1976 in the band 2,655–2,690 MHz, which exceed the power levels in paragraphs (a) and (b) of this section are permitted to operate indefinitely, provided that the operation of such stations does not result in harmful interference to reception in these bands on board geostationary space stations.

(a) *2,655 to 2,690 MHz and 6,425 to 6,875 MHz.* No directional transmitting antenna utilized by a station operating in these bands shall be aimed within 2 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed: (1) +47 dBW for any antenna beam directed within 0.5 degrees of the stationary satellite orbit or (2) +47 to +55 dBW on a linear decibel scale (8 dB per degree) for any antenna beam directed between 0.5 degrees and 1.5 degrees of the stationary orbit.

(b) *12,700 to 12,750 MHz.* No directional transmitting antenna utilized by a station operating in this band shall be aimed within 1.5 degrees of the geostationary-satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed. If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on wavier basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed +45 dBW for any antenna beam directed within 1.5 degrees of the stationary satellite orbit.

(c) Methods for calculating the azimuths to be avoided may be found in: CCIR Report No. 393 (Green Books), New Delhi, 1970; in "Radio-Relay Antenna Pointing for controlled Interference With Geostationary-Satellites" by C.W. Lundgren and A.S. May, Bell System Technical Journal, Vol. 48, No. 10 pp. 3387–3422, December 1969; and in "Geostationary Orbit Avoidance Computer Program" by Richard G. Gould, Common Carrier Bureau Report CC–7201, FCC, Washington, DC, 1972. This latter report is available through the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22151, in printed form (PB–211 509) or source card deck (PB–211 501).

10. Part 94 is amended by adding a new § 94.79 as follows:

94.79 Minimum path lengths for fixed operations.

The distance between end points of a fixed links should equal or exceed the value set forth in the table below, except that in areas not subject to congestion shorter paths lengths may be operated. Note, however, that the Commission may require compliance with the values set forth in the table where interference problems can be resolved by application of the criteria.

Frequency range (MHz)	Minimum path length (km)
Below 1,850	N/A
1,850 to 6,875	17
12,200 to 13,250	[illegible]
Above 17,700	N/A

[FR Doc. 85–28841 Filed 12–16–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85-375; RM-4972]

FM Broadcast Station in Shingle Springs, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 271A to Shingle Springs, California, as that community's first local FM service, in response to a petition filed by Eric R. Hilding.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or supply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Shingle Springs, California); MM Docket No. 85-4375 RM-4972.

Adopted: November 25, 1985.
Released: December 11, 1985.
By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed by Eric R. Hilding ("petitioner") seeking the allotment of Channel 271A to Shingle Springs, California, as that community's first local FM service. Petitioner failed to specifically state that he will apply for the channel, if allotted. He should do so in his comments to this *Notice of Proposed Rule Making.*

2. A staff engineering study indicates that channel 271A can be allotted to Shingle Springs, California, in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. In consideration of the above, we believe that it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to Shingle Springs, California, as follows:

City	Channel No.	
	Present	Proposed
Shingle Springs, CA		271A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be seved on the petitioners, or their counsel or consultant, as follows: Eric R. Hilding, P.O. Box 1300, Freedom, California 95019-1300.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which not been served on the petitoner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file

comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC

[FR Doc. 85-29754 Filed 12-16-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-376; RM-4988]

FM Broadcast Station in Ponte Vedra, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of Channel 293A to Ponte Vedra Florida, as the community's first FM service, in response to a petition filed by Emision de Radio Balmaseda, Inc.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Ponte Vedra, Florida); MM Docket No. 85-376 RM-4988.

Adopted: November 25, 1985.
Released: December 11, 1985.

By the Chief, Policy and Rules Division:

1. A petition for rule making was filed by Emision de Radio Balmaseda, Inc. ("petitioner"), requesting the allotment of Channel 293A to Ponte Vedra, Florida, as that community's first FM service. Petitioner states that if the channel is allotted, it will apply for authority to build and operate a station.

2. Channel 293A can be allotted to Ponte Vedra in compliance with the minimum distance separation requirements. In view of the fact that the proposed allotment could provide a first FM broadcast service to Ponte Vedra, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, as follows:

City	Channel No.	
	Present	Proposed
Ponte Vedra, FL	.....	293A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Gary Smithwick, Esq., Keith and Smithwick, 1320 Westgate Drive, Winston-Salem, North Carolina 27103.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, consititutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division; Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if

advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 85-29755 Filed 12-16-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-374; RM-5015]

TV Broadcast Station in Twin Falls, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of UHF Television Channel 35 to Twin Falls, Idaho, as its second commercial TV channel in response to a petition filed by Ambassador Media Corporation.

DATES: Comments must be filed on or before February 3 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Twin Falls, Idaho); MM Docket No. 85-374, RM-5015.

Adopted: November 25, 1985.
Released: December 11, 1985.

By the Chief, Policy and Rules Division.

1. Ambassador Media Corporation ("petitioner") submitted a petition for rule making requesting the assignment of UHF Television Channel 35 to Twin Falls, Idaho, as a second commercial television assignment. Petitioner stated its intent to apply for authority to construct and operate on Channel 35, if assigned.

2. Twin Falls (population 26,209),[1] seat of Twin Falls County (population 52,927) is located in southern Idaho, approximately 185 kilometers (115 miles) southeast of Boise, Idaho. Twin Falls is presently assigned VHF channels 11 and *13.[2] The assignment of Channel 35 to Twin Falls would meet the spacing requirements of § 73.610 of the Rules.

3. We believe that the petition for the assignment of the second commercial television assignment to Twin Falls warrants consideration. Comments are invited on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Rules, with regard to the following city:

City	Channel No.	
	[illegible]	[illegible]
Twin Falls, ID	11, *13-	11, *13-, and 35.

4. The Commission's authority to institute rule making proceedings showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John P. Bankson, Jr., Esq., Hamel and Park, 888-16th Street NW., Washington, DC 20006 (counsel).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549 published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[1] Population figures are taken from the 1980 U.S. Census.

[2] Channel *13, assigned to Twin Falls for noncommercial use, is presently occupied by educational translator Station K13LR.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular busines hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 85-29756 Filed 12-16-85; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 504, 514, 515, 519, and 553

[GSAR Notice No. 5-127]

General Services Administration Acquisition Regulation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) which would revise the requirements for training under the contracting officer warrant program in Part 501; clarify the requirements regarding the use of the uniform procurement instrument identification system in Part 504; add sections in Parts 514 and 515 to emphasize the need for confidentiality of Government cost estimates; add Section 514.408-1 to provide for the use of a new postcard type form to notify unsuccessful bidders that their bids were not accepted; add Subpart 519.6 to provide procedures for resolving differences between GSA and the Small Business Administration regarding the issuance of certificates of competency; and revise Part 553 to illustrate the new GSA Form to be used to notify unsuccessful bidders. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

DATES: Comments are due in writing January 16, 1986.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Mrs. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th & F Streets NW., Room 4026, Washington, DC 20405, (202) 523-3822.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations on (202) 523-4754.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). This proposed rule primarily relates to the internal operations of the agency and will not have a significant impact on contractors and offerors. Therefore, no regulatory flexibility analysis has been prepared. This proposed rule does not contain any information collection requirements which are subject to OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.).

List of Subjects in 48 CFR Parts 501, 504, 514, 515, 519, and 553

Government procurment.

Dated: December 5, 1985.

Ida M. Ustad,

Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 85-29750 Filed 12-16-85; 8:45 am]
BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 51299-5199]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMPS), NOAA, Commerce.

ACTION: Notice of proposed 1986 fishing quotas and request for comments.

BEST COPY AVAILABLE

SUMMARY: NOAA issues a notice of proposed quotas for the surf clam and ocean quahog fisheries for 1986 and requests public comment. These quotas have been selected from a range defined as the optimum yield for each fishery. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the fishery conservation zone in 1986.

DATE: Comments will be accepted until January 16, 1986.

ADDRESS: Comments on the proposed 1986 fishing quotas should be sent to Bruce Nicholls, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts, 01930. A copy of the information used to justify the quotas is available for public inspection at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls (Plan Coordinator), 617–281–3600, extension 272.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council, to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as optimum yield for each fishery.

In establishing the quotas, the Regional Director has considered stock assessments, catch records, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas likely to be reopened to fishing.

The total surf clam harvest for the Mid-Atlantic Area, as of November 1, 1985, was 2.1 million bushels, out of the quota of 2.65 million. As of July 1985, landings from the Georges Bank Area were 299,600 bushels from a quota of 300,000 bushels; this Area closd in late July. Landings from the Nantucket Shoals Area reached 125,000 bushels on November 1, 1985, from a quota of 200,000 bushels. Harvest of ocean quahogs reached 4.2 million bushels on November 1, 1985, from the quota of 4.4 million bushels.

Analyses of stock assessments, catch records, and all other relevant information indicate stable productivity in the surf clam and ocean quahog fisheries. Overall, adequate resources currently exist to maintain current harvest levels in the surf clam fishery and increase harvest levels in the quahog fishery. The proposed increase in the ocean quahog quota will have negligible impact on the stability of the resource, which has exhibited no sign of fluctuation due to fishing pressure, based on stock assessments conducted from 1965–1972.

The following quotas are proposed for the surf clam and ocean quahog fisheries for 1986:

Fishery areas	1986 quota (in bushels)
Mid-Atlantic surf clam	2,550,000
Georges Bank surf clam	300,000
Nantucket Shoals surf clam	200,000
Ocean quahog	8,000,000

Comments on the proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary, who will determine appropriate final annual quotas for each fishery and publish those quotas in the Federal Register.

Other Matters

This action is taken under authority of 50 CFR 652.21 and is taken in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries, and under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Recordkeeping and reporting requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: December 11, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–29799 Filed 12–12–85; 2:39 pm]

BILLING CODE 3510-22-M

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50 CFR Part 651

[Docket No. 51190–5190]

Northeast Multispecies Fishery

Correction

In FR Doc. 85–28721, beginning on page 49582, in the issue of Tuesday, December 3, 1985, make the following corrections:

1. On page 49582, first column, third line of the **SUMMARY**, "conversion" should have read "conservation".

2. On page 49584, first column, in § 651.2, the fourth line of the definition for *Bottom-tending gill net*, should have read "lower third of the water column."

3. On page 49587, second column, in § 651.20(d)(1):

a. In the third line "60° 40′ N." should have read "69° 40′ N. ";

b. In the fifth line, "9960–S–25600" should have read "9960–X–25600".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 51192–5192]

Pacific Coast Groundfish Fishery

Correction

In FR Doc. 85–28722 beginning on page 49590 in the issue of Tuesday, December 3, 1985, make the following corrections:

1. On page 49590, second column, under "**SUPPLEMENTARY INFORMATION**", twenty-fifth line, insert the word "not" after the word "are". In the third column, second complete paragraph, seventeenth line, remove the word "of".

2. At the bottom of page 49590, insert "**NUMERICAL OY SPECIES** (Table 1)" above Table 1.

3. On page 49591, in the footnotes at the top of the page, in the second line, insert "flatfish 0.1%," before "jack mackerel". In the sixth line, footnote 2 should have read as follows: "[2] Of this 11,600 metric tons, 2,500 metric tons is for part of the Monterey subarea. See § 663.21(a)(2)."

4. At the bottom of page 49591, insert "**SPECIES WITHOUT A NUMERICAL OY** (Table 2)" above Table 2.

5. On page 49592, in table 2, under the heading for "Columbia", "71000" should have read "7000". In footnote 2, first line, "or" should have read "nor".

BILLING CODE 1505-01-M

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50 CFR Part 663

[Docket No. 51192–5192]

Pacific Coast Groundfish Fishery; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary fishery specifications; corrections.

SUMMARY: This document corrects several sentences in the preliminary 1986 specifications for groundfish for the Pacific Coast Groundfish Fishery published December 3, 1985, 50 FR 49590.

FOR FURTHER INFORMATION CONTACT: R.A. Schmitten at 206–526–6150 or E.C. Fullerton at 213–548–2575.

In FR Doc. 85–28722, published December 3, 1985, on page 49592, the following corrections are made:

1. In column 1, line 5 from the bottom of the page, the word "adjusted" is corrected to read "calculated."

2. In column 1, the last sentence is corrected to read "Because of rounding to the nearest 100 mt, the full 100 mt reduction (necessary to stay within the 3,900 mt coastwide maximum ABC) is taken from the Columbia area, resulting in an ABC of 2,500 mt for that area."

3. In column 3, paragraph 1, the sentence that begins on line 7 is corrected to read "Because of the reduced northern area, the summed 1986 ABCs for the *Sebastes* complex remains at 10,100 mt, the some as in 1985, despite the increase in the yellowtail ABC."

Dated: December 12, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–29825 Filed 12–16–85; 8:45 am]

BILLING CODE 3510-22-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Proposed revision of regulations; extension of comment period.

SUMMARY: The Advisory Council on Historic Preservation announces that the deadline for receipt of comments on the proposed revision of regulations (36 CFR Part 800) published October 15, 1985, is extented for 30 days.

DATES: Written comments on the proposed revision must be received by January 15, 1986.

ADDRESS: Address written comments to Robert R. Garvey, Jr., Executive Director, Advisory Council on Historic Preservation, Suite 809, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: John M. Fowler, Deputy Executive Director, Advisory Council on Historic Preservation, Suite 809, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

SUPPLEMENTARY INFORMATION: On October 15, 1985, the Advisory Council on Historic Preservation published in the **Federal Register** (50 FR 41828) proposed revisions to its existing regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) in order to carry out the Council's regulatory reform efforts for the process of review and comment upon federally supported undertakings that affect historic properties.

The Council, after requests from the Department of the Interior and several trade associations for additional time to comment, believes that the proposed revision is sufficiently complex to warrant a comment period longer than the normal 60 days.

Accordingly, this notice announces that the public comment period for that proposed revision of regulations is extended until January 15, 1986. Comments on the proposed revision must be submitted on or before that date.

Dated: December 16, 1985.

John M. Fowler,

Deputy Executive Director.

[FR Doc. 85–30008 Filed 12–16–85; 10:46 am]

BILLING CODE 4310-10-M

Notices

Federal Register
Vol. 50, No. 242
Tuesday, December 17, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Meeting

December 12, 1985.

The next meeting of the National Commission on Agricultural Trade and Export Policy will be at 9:00 am on Friday, January 10, 1986, at the Houston Airport Marriott. The topic of the meeting will be "Financial Difficulties of the Developing Countries."

Information about the meeting is available from the Commission staff at (202) 488–1961.

Kenneth L. Bader,

Chairman.

[FR Doc. 85–29776 Filed 12–16–85; 8:45]

BILLING CODE 3410-05-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

Burley Tobacco; 1986 National Marketing Quota and 1986 Price Support Level for Burley Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC), United States Department of Agriculture (USDA).

ACTION: Notice of Proposed Revised Determinations and extension of comment period.

SUMMARY: A notice of proposed determinations concerning marketing quotas for the 1986 crop of burley tobacco was published in the **Federal Register** on November 18, 1985 (50 FR 47415). On November 15, 1985 Pub. L. 99–157 was approved which includes a provision to reduce the level of price support for the 1985 crop of burley tobacco to 148.8 cents per pound. This change in the level of price support resulted in a change in certain calculations with respect to the size of the 1986 burley tobacco marketing quota. Accordingly, it has been determined that the proposed determinations published at 50 FR 47416 should be revised to reflect the change in the level of support for the 1985 crop of burley tobacco which was made by Pub. L. 99–157. In addition, because these revisions may alter the views of individuals responding to the notice, the comment period has been extended from December 31, 1985 to January 10, 1986.

DATE: Comments must be received on or before January 10, 1986 in order to be assured of consideration.

ADDRESS: Send comments to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–3391.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, USDA, Room 3736-South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–5187. The Preliminary Regulatory Impact Analysis describing the proposed burley marketing quota set forth in this notice and the impact of implementing it is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." This action has been classified "not major" since implementation of these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loan and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since neither the Agricultural Stabilization and Conservation Service (ASCS) Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Marketing Quotas

The Agricultural Adjustment Act of 1938, as amended (hereinafter referred to as the "Act"), requires that the Secretary of Agriculture proclaim by February 1, 1986, marketing quotas for the 1986–87, 1987–88 and 1988–89 marketing years and determine and announce the amount of the national marketing quota for the 1986–87 marketing year for burley tobacco. Since the 1985–86 marketing year is the last year of the three consecutive years for which marketing quotas previously proclaimed will be in effect for burley tobacco, a referendum of farmers engaged in the 1985 production of burley tobacco for the 1985 marketing year will be conducted within 30 days after proclamation of such national marketing quota to determine whether they favor or oppose marketing quotas for the three year period.

Section 319(c) of the Act provides that the national marketing quota for burley tobacco for a marketing year is the amount of that kind of tobacco produced in the United States which the Secretary estimates will be used domestically and will be exported during the marketing year, adjusted upward or downward in such amount as the Secretary, in his discretion, determines is desirable for the purpose of maintaining an adequate supply or for effecting an orderly reduction of supplies to the reserve supply level. The maximum downward adjustment is 10 percent of estimated domestic use and exports.

Section 301(b)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs

in years of drought, flood, or other adverse conditions, as well as in years of plenty. The phrase "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the yearly average quantity of burley tobacco produced in the United States that was consumed in the United States during the ten marketing years immediately preceding the marketing year in which such consumption is determined (1985–86), adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the yearly average quantity produced in the United States that was exported from the United States during the ten marketing years immediately proceeding the marketing year in which such exports are determined (1985–86), adjusted for current trends in such exports.

The reserve supply level for the 1985–86 marketing year was determined to be 1,542 million pounds. This was based on a normal year's domestic consumption of 450 million pounds and a normal year's exports of 140 million pounds (50 FR 21478). The proposed reserve supply level for the 1986–87 marketing year is 1,493 million pounds. This is based on a normal year's domestic consumption of 430 million pounds and a normal year's exports of 145 million pounds.

Section 301(b)(16)(B) of the Act defines "total supply" as the carryover at the beginning of the marketing year (October 1) plus the estimated production in the United States during the calendar year in which the marketing year begins. The total supply for the 1985–86 marketing year is 2,022 million pounds based on carryover of 1,462 million pounds and estimated marketings of 560 million pounds.

The amount of burley tobacco produced and utilized domestically during the 1984–85 marketing year was 402 million pounds, and the amount exported was 154 million pounds, farm sales weight basis. The national marketing quota for burley tobacco for the 1985–86 marketing year is 525 million pounds (50 FR 21478). For the 1986–87 marketing year, utilization in the United States is estimated to be approximately 410 million pounds and exports are estimated to be approximately 173 million pounds. Despite the total supply for the 1985–86 marketing year being 529 million pounds more than the proposed reserve supply level for the 1986–87 marketing year, and downward adjustment shall not exceed 10 percent of such estimated utilization and exports. Accordingly, it is proposed that the national marketing quota be 525 million pounds for the 1986–87 marketing year, the same as for the 1985–86 marketing year.

For each marketing year for which marketing quotas are in effect in accordance with section 319(c) of the Act, the Secretary is authorized to establish a reserve (hereinafter referred to as the "national reserve") from the national marketing quota in an amount not in excess of 1 percent of the national marketing quota to be available for making corrections and adjusting inequities in farm marketing quotas and for establishing marketing quotas for new farms (i.e., farms for which farm marketing quotas have not been otherwise established). A reserve of 465,000 pounds was established for the 1985–86 marketing year (50 FR 21478). It is proposed that a national reserve be established for the 1986–87 marketing year.

Section 319(e) of the Act provides, in part, that each farm marketing quota shall be determined by multiplying the previous year's farm marketing quota by a national factor obtained by dividing the national marketing quota determined under section 319(c) (less the national reserve) by the sum of the farm marketing quotas for the immediately preceding year for all farms for which burley tobacco marketing quotas will be determined for such succeeding marketing year. However, such national factor shall not be less than 90 percent. The national factor for the 1985–86 marketing year was .90 (50 FR 21478).

Section 319(h) of the Act provides that, effective with the marketing year beginning October 1, 1976, no marketing quota, other than a new farm marketing quota, shall be established for a farm on which no burley tobacco was planted or considered planted in any of the five years immediately preceding the year for which farm marketing quotas are being established.

Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect or for which marketing quotas have not been disapproved by producers at a level which is determined in accordance with a formula prescribed in Section 106 of the Agricultural Act of 1949, as amended (the "1949 Act"). With respect to the 1986 crop of burley tobacco, the level of support is determined in accordance with sections 106 (b), (d) and (f) of the 1949 Act.

Section 106(f)(4) of the 1949 Act provides that the level of support for the 1986 crop of burley tobacco, if marketing quots are in effect or are not disapproved by producers, shall be the level in cents per pound at which the 1985 crop of burley tobacco was supported, plus or minus, respectively, the amount by which (A) the support level for the 1986 crop, as determined under section 106(b) of the 1949 Act, is greater or less than (B) the support level for the 1985 crop, as determined under section 106(b) of the 1949 Act, as that difference may be adjusted by the Secretary under section 106(d) of the 1949 Act if the support level under clause (A) is greater than the support level under clause (B). Accordingly, under section 106(f)(4) of the 1949 Act, if marketing quotas are in effect or are not disapproved by producers, the support level for the 1986 crop of burley tobacco will be the 1985 level, adjusted by the difference between (plus or minus) the 1986 "basic support level" and the 1985 "basic support level".

Section 106(b) of the 1949 Act provides that, if marketing quotas are in effect or are not disapproved by producers, that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of burley tobacco (57.2 cents per pound) by the ratio of the average of the index of prices paid by farmers including wage rates, interest and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest and taxes for the 1959 calendar year (298). For the 1986-crop year, the average parity indexes for the three previous years are: 1983—1104; 1984—1127; and 1985—1125 (estimated based on 9-month's data). The preliminary average of the parity indexes for these years is 1119 and the ratio of the 1983–85 index to the 1959 index is 3.76. Accordingly, the preliminary "basic support level" for the 1986 burley tobacco is estimated to be 215.1 cents per pound. For the 1985-crop year, the average parity indexes used to calculate the 1985 "basic support level" were: 1982—1078; 1983—1105; and 1984—1127. the ratio of the 1982–84 index to the 1959 index equaled 3.70. Thus, the "basic support level" for the 1985 crop of burley tobacco equalled 211.6 cents per pound. The difference between the "basic support levels" for the 1985 and 1986 crops of burley tobacco is estimated to be 3.5 cents per pound.

Section 106(d) of the 1949 Act provides that the Secretary may reduce the level of support which would otherwise be established for any grade of tobacco of a crop for which marketing quotas are in effect or are not disapproved by producers which the Secretrary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic suplly, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco.

As previously mentioned, supplies of virtually all grades of burley tobacco are excessive (i.e., 529 million pounds above the reserve supply level), with most of the excess supply consisting of tobacco pledged as collateral for price support loans.

Accordingly, if marketing quotas are in effect or are not disapproved by producers, it is proposed that the 1986 support level for burley tobacco be 151.1 cents per pound. This is an increase of 2.3 cents per pound from the 1985 support level of 148.8 cents per pound, or 65 percent of the increase, i.e., 3.5 cents per pound, that otherwise would be established.

Proposed Determinations

Accordingly, comments are requested on the following proposed revised determinations with respect to burley tobacco for the 1986–87 marketing year:

1. A national marketing quota of 525 million pounds.

2. A reserve supply level in the amount of 1,493 million pounds.

3. A national reserve within the range of 500,000 to 5,00,000 pounds.

4. If marketing quotas are in effect or are not disapproved by producers, a price support level limited to 65 percent of the increase that would have been established otherwise in accordance with section 106 of the 1949 Act, which is currently estimated to be 151.1 cents per pound.

Comments are not requested with respect to the national factor for the 1986–87 marketing year since the national factor is determined as the result of a mathematical computation in accordance with the formula prescribed in section 319(e) of the Act and does not involve administrative decision making.

All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741-South Building, 14th and Independence Avenue, SW., Washington, DC.

Signed at Washington, DC, on December 11, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-29749 Filed 12-12-85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERECE

Bureau of the Census

Annual Surveys in Manufacturing Area; Determination

In conformity with Title 13, United States Code (Sections 131, 182, 224, and 225), and with due notice having been published on August 30, 1985 (50 FR 35277), I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other government sources.

Most of the following commodity or product surveys provide data on shipments or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys. These surveys are listed under major group headings based on the Standard Industrial Classification Manual (1972 edition) promulgated by the Office of Management and Budget for use of Federal Government statistical agencies.

Annual Current Industrial Reports

Major Group 20—Food and Kindred Products

Confectionery

Major Group 22—Textile Mill Products

Broadwoven fabrics finished
Narrow fabrics
Yard production
Knit fabric production
Stocks of wood and related fibers

Major Groups 23—Apparel and Other Finished Products Made from Fabrics and Similar Materials

Men's and boys' outerwear
Women's and children's outerwear
Underwear and nightwear
Gloves and mittens

Major Group 24—Lumber and Wood Products, Except Furniture

Hardwood plywood
Softwood plywood
Lumber production and mill stocks

Major Group 25—Furniture and Fixtures

Office furniture

Major Group 26—Paper and Allied Products

Selected office supplies and accessories
Pulp, paper, and board

Major Group 27—Printing, Publishing, and Allied Industries

Business forms, binders, carbon paper, and inked ribbon

Major Group 28—Chemicals and Allied Products

Industrial gases
Inorganic chemicals
Pharmaceutical preparations, except biologicals
Sulfuric acid
Paints, varnish, and lacquer

Major Group 30—Rubber and Miscellaneous Plastics Products

Rubber
Plastics bottles
Rubber and plastics hose and belting
Mechancial rubber goods

Major Group 31—Leather and Leather Products

Footwear

Major Group 32—Stone, Clay, and Glass

Consumer, scientific, technical, and industrial glassware
Fibrous glass

Major Group 33—Primary Metal Industries

Steel mill products
Insulated wire and cable

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Magnesium mill products
Nonferrous castings
Ferrous castings

Major Group 34—Fabricated Metal Products, except machinery and transportation equipment

Selected heating equipment

Major Group 35—Machinery, Except Electrical

Internal combustion engines
Farm machinery and lawn and garden equipment
Mining machinery and mineral processing equipment
Air-conditioning and refrigeration equipment, including warm air furnaces
Computers and office and accounting machines
Pumps and compressors
Selected industrial air pollution control equipment
Construction machinery
Anti/friction bearings
Fluid power products (including aerospace)
Coin-operated vending machines
Robots

Major Group 36—Electrical Machinery, Equipment, and Supplies

Radios, televisions, and phonographs
Motors and generators
Wiring devices and supplies
Switchgear, switchboard apparatus, relays, and industrial controls
Communication equipment
Semiconductors and printed circuit boards
Electromedical equipment
Electric housewares and fans
Electric lighting fixtures
Major household appliances
Transforms

Major Group 37—Transportation Equipment

Aricraft propellers
Aerospace orders

Major Group 38—Professional, Scientific, and Controlling Instruments; Photographic and Optical Goods; Watches and Clocks

Selected instruments and related products

Major Group 39—Miscellaneous Manufacturing Industries

Pens, pencils, and marking devices

The following survey represents an annual supplement of a monthly survey and will cover the same establishments canvassed monthly. There will be no duplication of reporting, however, since the type of data collected on the annual supplement will be different from that collected monthly.

Major Group 32—Stone, Clay, and Glass

Glass containers
Refractories

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

Major Group 20—Food and Kindred Products

Flour milling products

Major Group 22—Textile Mill Products

Broadwoven fabric (gray)
Consumption of wool and Other fibers, and production of tops and noils
Carpet and rugs

Major Group 23—Apparel and other Finished Products Made From Fabrics and Similar Materials

Sheets, pillowcases, and towels

Major Group 32—Stone, Clay, and Glass

Glass containers
Refractories
Clay construction products
Flat glass

Major Group 33—Primary Metal Industries

Inventories of steel mill shapes

Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment

Plumbing fixtures
Steel shipping drums and pails
Closures for containers

Major Group 35—Machinery, Except Electrical

Construction machinery
Metalworking machinery

Major Group 36—Electrical Machinery, Equipment, and Supplies

Fluorescent lamp ballasts
Electric lamps

Major Group 37—Transportation Equipment

New complete aircraft and aircraft engines, except military Truck trailers

Annual Survey of Manufacturers

The annual survey of manufactures collects industry statistics such as total value of shipments, employment, payroll, work hours, capital expenditures, cost of materials consumed, gross book value of assets, retirements, and depreciation of fixed assets, rental payments, supplemental labor costs, and so forth. This survey while conducted on a sample basis, covers all manufacturing industries, including data on plants under construction but not yet in operation.

Annual Survey of Research and Development

A survey of research and development (R&D) activities is conducted. The major data obtained in this survey include total R&D expenditures by source of funds, the number of scientists and engineers employeed, the amounts spent for pollution abatement and energy R&D, and, for comparative purposes, the total net sales and receipts and the total employment of the company.

Annual Survey of Shipments to Federal Government Agencies

A survey of shipments to the Federal Government is conducted to provide information on the effect of Federal procurement on selected industries by Federal Government agencies.

Annual Survey of Pollution Abatement Costs and Expenditures

The annual survey of pollution abatement expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. This survey also will obtain the costs recovered from abatement activities and quantities of pollutants abated.

Annual Survey of Plant Capacity

The annual survey of plant capacity obtains information such as the amount of time a plant is in operation; operating rates as related to preferred levels and practical capacity; the value of production and other statistics for actual, preferred, and practical capacity operating levels; and the reasons for operating at less than capacity.

The report forms will be furnished to firms included in these surveys. Copies of survey forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have therefore, directed that these annual surveys be conducted for the purpose of collecting the date as described.

Dated: December 12, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-29791 Filed 12-16-85; 8:45 am]

BILLING CODE 3510-07-M

Annual Wholesale Trade; Determination

In accordance with Title 13, United States Code, sections 182, 224, and 225, and due Notice of Consideration having been published November 4, 1985 (50 FR 45849), I have determined that the Census Bureau needs to collect data covering year-end inventories and annual purchases and sales to provide a sound statistical basis for the formation of policy by various governmental agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar wholesale trade sector surveys conducted each year since 1978. It provides, on a comparable classification basis, annual sales for 1985, year-end inventories for 1984 and 1985, and purchases for 1985. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require selected firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1985 Annual Wholesale Trade Survey. The sample will provide, with measurable reliability, statistics on the subjects specified above.

We will furnish report forms to the firms covered by this survey and will require their submission within 20 days after receipt. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

I have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: December 12, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-29790 Filed 12-16-85; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 42-85]

Foreign-Trade Zone 92; Harrison County, Mississippi; Application for Subzone Moss Point Marine Shipyard, Escatawpa

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 92, requesting special-purpose subzone status for the shipyard of Moss Point Marine, Inc., (MPM) in Escatawpa, Mississippi, within the Pascagoula Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 USC 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 4, 1985.

The shipyard is located on the east bank of the Pascagoula River 5 miles north of Pascagoula. The 51-acre shipyard employs 200 persons and is used primarily for the construction of large fishing vessels and supply vessels for the offshore oil and gas industry.

About 10 percent of the value of the vessels involves foreign components such as engines, generators, deck machinery and fittings, gears, anchors, chain, windows, doors, life boats and davits, and air conditioning equipment.

Zone procedures will help MPM to reduce costs on current orders and to compete internationally on bids for new products. The benefits are related to the fact that most of the components are subject to significant duties, and that the finished products, as ocean going vessels, are duty free.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Douglas D. Angle, District Engineer, U.S. Customs Service, South Cental Region, 250 N. Water St., Mobile, AL 36652; and Colonel Carroll H. Dunn, District Engineer, U.S. Army Engineer District Mobile, P.O. Box 2288, Mobile, AL 36628.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before January 31, 1986.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, Pascagoula-Moss Point Bank Building, Room 402, Pascagoula, MS 39567

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, DC 20230.

Dated: December 12, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-29797 Filed 12-16-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-475-503]

Initiation of Antidumping Duty Investigation; Welded Steel Wire Fabric of Concrete Reinforcement from Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of welded steel wire fabric for concrete reinforcement (wire fabric) from Italy are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before January 6, 1986. If this investigation proceeds normally, we will make our preliminary determination on or before April 29, 1986.

EFFECTIVE DATE: December 17, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3464.

SUPPLEMENTARY INFORMATION:

The Petition

On November 20, 1985, we received a petition in proper form filed by the Wire Reinforcement institute, Inc., on behald of the U.S. industry producting wire fabric. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of wire fabric from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We examined the petition on wire fabric from Italy and found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether wire fabric (as detiled in the "Scope of Investigation" section of this notice) from Italy is being, or is likely or be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination on or before April 29, 1986.

Scope of Investigation

For purposes of this investigation, the term "Welded Steel Wire Fabric for Concrete Reinforcement" is defined as material composed of cold-drawn steel wires, whether or not deformed, fabicated into sheets (or so-called mesh) by the process of electric welding. The finished product consists essentially of a series of longitudinal and transverse wires arranged at substantially right angles to each other and welded together at all points of intersection, as described in ASTM Specifictions A–185 and A–497. Wire fabric is currently classifiable under item 642.8010 of the *Tariff Schedules of the United States Annotated* (TSUSA).

United States Price and Foreign Market Value

The petitioner based United States price on prices quoted "direct discharge, duties and discharge paid" to industry sources and various U.S. customers for the summer of 1985.

The petitioner based foreign market value on information concerning U.S. domestic producer costs adjusted for differences in Italy in accordance with § 353.36(a)(7) of the Commerce Department's Regulations. The petitioner priced low carbon industrial quality wire rod in Italy and then made adjustments for converting the wire rod to welded wire fabric. Such adjustments included costs for labor, power and other utility costs associated with producing wire fabric. The Petitioner then added general and administrative expenses to arrive at a foreign market value.

Based on the comparison of the adjusted netback U.S. price and foreign market value, petitioner alleged a dumping margin of 34 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 6, 1986, whether there is a reasonable indication that imports of wire fabric from Italy materially injure, or threaten material injury, to a U.S. industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to statutory procedures.

Dated: December 10, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–29794 Filed 12–16–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–201–503]

Initiation of Antidumping Duty Investigation; Welded Steel Wire Fabric for Concrete Reinforcement from Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of welded steel wire fabric for concrete reinforcement (wire fabric) from Mexico are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before January 6, 1986. If this investigation proceeds normally, we will make our preliminary determination on or before April 29, 1986.

EFFECTIVE DATE: December 17, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen or Patrick O'Mara, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–3464 or (202) 377–3798.

SUPPLEMENTARY INFORMATION:

The Petition

On November 20, 1985, we received a petition in proper form filed by the Wire Reinforcement Institute, Inc., on behalf of the U.S. industry producing wire fabric. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of wire fabric from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We examined the petition on wire fabric from Mexico and found that it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether wire fabric (as detailed in the "Scope of Investigation" section of this notice) from Mexico is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination on or before April 29, 1986.

Scope of Investigation

For purposes of this investigation, the term "Welded Steel Wire Fabric for Concrete Reinforcement" is defined as Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended, between the Governments of the United States and Thailand. No agreement was reached on a mutually satisfactory level for this category during consultations

material composed of cold-drawn steel wires, wether or not deformed, fabricated into sheets (or so-called mesh) by the process of electric welding. The finished product consists essentially of a series of longitudinal and transverse wires arranged at substantially right angles to each other and welded together at all points of intersection, as described in ASTM Specifications A–185 and A–497. Wire fabric is currently classifiable under item 642.8010 of the *Tariff Schedules of the United States Annotated* (TSUSA).

United States Price and Foreign Market Value

The petitioner based United States price on price quotes for 1985 to industry sources from purchases of imported wire fabric.

The petitioner based foreign market value on an affidavit of the General Sales Manager of a domestic manufacturer as to the home market price, to the best of his information and belief, and upon a cost analysis in accordance with § 353.36(a)(7) of the Department's Regulations. The petitioner used price information on low carbon industrial quality wire rod in Mexico and made adjustments for labor, conversion costs, and general and administrative expenses.

Based on the comparision of United States price and the estimated foreign market value, petitioner alleged a dumping margin of 56 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 6, 1986, whether there is a reasonable indication that imports of wire fabric from Mexico materially injure, or threaten material injury, to a U.S. industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: December 10, 1985.

Gilber B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–29795 Filed 12–16–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–307–507]

Initiation of Antidumping Duty Investigation; Welded Steel Wire Fabric for Concrete Reinforcement From Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of welded steel wire fabric for concrete reinforcement (wire fabric) from Venezuela are being, or are likely to be sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of the subject merchandise materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before January 6, 1986. If this investigation proceeds normally, we will make our preliminary determination on or before April 29, 2986.

EFFECTIVE DATE: December 17, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen or Patrick O'Mara, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; Telephone: (202) 377–3464 or (202) 377–3998 .

SUPPLEMENTARY INFORMATION:

The Petition

On November 20, 1983, we received a petition in proper form filed by the Wire Reinforcement Institute, Inc., on behalf of the U.S. industry producing wire fabric. In Compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of wire fabric from Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of action 731 of the Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under Section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation,and whether it contains information reasonably available to the petitioner supporting the allegations. We examined the petiton on wire fabric from Venezuela and found what it meets the requirements of section 732(b) of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether wire fabric (as detailed in the "Scope of Investigation" section of this notice from Venezuela is being, or is likely to be sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination on or before April 29, 1986.

Scope of Investigation

For purposes of this investigation, the term "Welded Steel Wire Fabric for Concrete Reinforcement" is defined as material composed of cold-drawn steel wires, whether or not deformed, fabricated into sheets (or so-called mesh) by the process of electric welding. The finished product consists essentially of a series of longitudinal and transverse wire arranged at subtantially right angles to each other and welded together at all points of interesection, as described in ASTM Specifications A–185 and A–497. Wire fabric is currently classifiable under item 642.8010 of the *Tariff Schedules of the United States Annotated* (TSUSA).

United States Price and Foreign Market Value

The petitioner based United States price on price quotes for 1985 to industry sources from purchases of imported wire fabric.

The petitioner based foreign market value on an affidavit of the General Sales Manager of a domestic manufacturer as to the home market price, to the best of his information and belief.

Based on the comparison of United States price and foreign market value, petitioner alleged a dumping margin of 50 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential

information in our files, provided it confirms in writing that it will not diclose such information either publicly or under an administrative protection order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 6, 1986, whether there is a reasonable indication that imports of wire fabric from Venezuela materially injure, or threaten material injury, to a U.S. industry. If its determination is negative the investigation will tefminate; otherwise, it will proceed according to the statutory procedures.

Dated: December 10, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Impact Administration.

[FR Doc. 85-29796 Filed 12-16-85; 8:45 am]

BILLING CODE 3510-DS-M

Withdrawal of Application for Duty-Free Entry of Scientific Instruments; Johns Hopkins University

The Johns Hopkins University has withdrawn Docket Number 82-00231 an application for duty-free entry of a Self Shielded Cyclotron. Accordingly, further administrative proceedings will not be taken by the Department of Commerce with respect to this application.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Education and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-29800 Filed 12-16-85; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; Pennsylvania State University

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 85-048R. Applicant: The Pennsylvania State University, Department of Ceramic Science, 231 Steidle Building, University Park, PA 16802. Instrument: Electro Optical Extensometer, Model 200X. Original notice of this resubmitted application was published in the Federal Register of January 8, 1985.

Docket No. 85-074R. Applicant: College of the Holy Cross, Department of Chemistry, Worcester, MA 01610. Instrument: Flash Photolysis with 1000J Capacitor Bank, Model KN-100. Orignal notice of this resubmitted application was published in the Federal Register of February 5, 1985.

Docket No. 85-131R. Applicant: Rutgers—The State University of New Jersey, Waksman Institute of Microbiology, P.O. Box 759, Piscataway, NJ 08854. Instrument: Refrigerated Microcentrifuge with Accessories. Original notice of this resubmitted application was published in the Federal Register of April 19, 1985.

Docket No. 85-144R. Applicant: New Jersey Department of Health, CN 360 John Fitch Plaza, Trenton, NJ 08625. Instrument: Electron Microscope, Model EM420T with Accessories. Original notice of this resubmitted application was published in the Federal Register of May 3, 1985.

Docket No. 86-009. Applicant: The Research Foundation of State University of New York, P.O. Box 9, Albany, NY 12201. Instrument: Cubic Anvil System. Manufacturer: NRD Corporation, Japan. Intended Use: The instrument is intended to be used for the study of oxide and silicate minerals and their chemical analogues. Experiments will be conducted at high pressure to P=130 kilobars and high temperatures to T=1100 °C in conjunction with x-ray generating equipment. The objectives of the research are to understand more fully the behavior and properties of materials under ultra high-pressure conditions. In addition, the instrument will be used in the courses: ESS 531—Crystalline Solids and ESS 556—Solid State Geophysics to introduce students to concepts and techniques of solid state geophysics and crystallography. Application received by Commissioner of Customs: October 11, 1985.

Docket No. 86-028. Applicant: University of Miami, Bascom Palmer Eye Institute, Ann Bates Leach Eye Hospital, 900 N.W. 17th Street, Miami, FL 33136. Instrument: Echo-Opthalmograph, Model 7200 MA with Accessories. Manufacturer: Kretztechnik Company, Austria. Intended Use: Studies of various properties of ophthalmic diseases to provide differentiation between lesions in order to improve diagnostic capabilities and patient care. Application received by Commissioner of Customs: November 1, 1985.

Docket No. 86-032. Applicant: Princeton University, Department of Geology & Geophysical Sciences, Guyot Hall, Princeton, NJ 08544. Instrument: Simultaneous Analyzer System, Model TG-DSC-111. Manufacturer: Setaram, France. Intended Use: Study of the heat effects and weight changes associated with phase transitions and dehydration and decarbonation reactions in solids in order to obtain the fundamental relations between weight, heat, and temperature and time. Application received by Commissioner of Customs: October 29, 1985.

Docket No. 86-033. Applicant: Solar Energy Research Institute, 1617 Cole Boulevard, Golden, CO 80401. Instrument: Calorimeter, Model C-80. Manufacturer: Societe d'Etudes d'Automatisation, France. Intended Use: The instrument will be used to measure the heat storage capacity of solid-state phase-change materials such as pentaerythritol, trimethylol ethane, and neopentyl glycol. These materials, their mixtures and composite building materials consisting of concrete, gypsum board, wood products to which these solid-state phase-change materials have been added are being studied at SERI for possible use in passive solar heated buildings. The heat stored in such materials is released slowly and greatly extends the period during which solar heat is available well into the night. Application received by Commissioner of Customs: October 29, 1985.

Docket No. 86-034. Applicant: Brookhaven National Laboratory, Department of Chemistry, Upton, NY 11973. Instrument: Circular Dichroism Spectrophotometer, Model J-500C and Accessories. Manufacturer: Jasco, Japan. Intended Use: The instrument will be used for circular dichroism studies of chiral metal complexes which assist in the detection and assignment of electronic transitions, especially when the absorption spectrum contains overlapping bands. In addition, the instrument will be used for studies of electron exchange reactions of metal complexes. Application received by Commission of Customs: October 29, 1985.

Docket No. 86-036. Applicant: University of Pittsburgh, Department of Physics and Astronomy, 100 Allen Hall, Pittsburgh, PA 15260. Instrument: Far Infrared Polarizing Michelson Interferometer and Accessories.

BEST COPY AVAILABLE

Manufacturer: Analytical Accessories Limited, (SPECAC), United Kingdom. Intended Use: Studies of metal-insulator composites with emphasis on small Bi particles. The experiments will be based on the standard techniques of far infrared Fourier transform spectroscopy as practiced by solid state physicists. The objectives of the study on small particle composites include:

(1) An improved understanding of the far infrared properties of composite media, including the behavior of electrons confined in small metal particles,

(2) The possibility of observing quantum size effects in the far infrared absorption and

(3) For Bi particles, the investigation and exploitation of the analogy with electron-hole droplets.

Application received by Commissioner of Customs: November 5, 1985.

Frank W. Creel,
Director, Statutory Import Programs Staff.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 85-29801 Filed 12-16-85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; University of California, San Diego

This decision is make pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 84-224R. Applicant: University of California, San Diego, La Jolla, CA 92093. Instrument: Cryogenic Magnetometer, Model DRM-430C. Original notice of this resubmitted application was published in the **Federal Register** of July 11, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

REASONS: The foreign instrument provides a resolution better that 1×10^{6} gauss cm^3 $rmsv_{Hz}$. The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument at the time of purchase (April 22, 1983) for the applicant's intended use.

Franks W. Creel,
Director, Statutory Import Program Staff.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 85-29802 Filed 12-16-85; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Yale University

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 84-257. Applicant: Yale University, New Haven, CT 06511. Instrument: Gas Chromatograph Mass Spectrometer System, Model MS-80. Manufacturer: Kratos Scientific Instruments, United Kingdom. Intended Use: See notice at 49 FR 35167.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument is an integrated GC/MS/DS system capable of providing a guaranteed resolution of 25 000 (10% valley definition), mass range of 1-2400 atomic mass units at 4000 electron volts, scan rate of 0.1 to 3000 seconds, selection of alternate CI/EI operation, fast atom bombardment and desorption chemical ionization. The capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,
Director, Statutory Import Programs Staff.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 85-29803 Filed 12-16-85; 8.45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Foreign fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*).

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, DC 20235 or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422;

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19901, 302/674-2331;

David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-1366;

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809/753-6910;

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa FL 33609, 813/228-2815;

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201, 503/221-6352;

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suite 2D Anchorage, AK 99510, 907/271-4060;

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368.

For further information contact John D. Kelly or Shirley Whitted (Fees, Permits, and Regulations Division, 202-634-7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1986 have been received

between November 15, 1985, from the Government shown below.

Dated: December 12, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resources Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code fishery	Regional fishery management councils
ABS Atlantic Billfishes and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA Gulf of Alaska	North Pacific.
NWA Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA Snails (Bering Sea)	North Pacific.
WOC Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
*	Vessel in support of U.S. vessels (Joint Venture).

Government of the Union of Soviet Socialist Republics

Severodonetsk, Large Stern Trawler, UR–86–0757, BSA, GOA, 2*; WOC,
Mys Ratmanova, Large Stern Trawler, UR–86–0078, BSA, GOA, WOC 2*.

[FR Doc. 85–29836 Filed 12–16–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limit for Certain Man-Made Fiber Textile Products Effective on January 1, 1986

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 7 and 8, 1984 between the Governments of the United States and Costa Rica, establishes a restraint limit of 2,363,108 dozen for man-made fiber brassieres the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986. The letter to the Commissioner of Customs which follows this notice establishes this limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 11, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 7 and 8, 1984, between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 649, produced or manufactured in Costa Rica and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986 in excess of 2,363,108 dozen.

In carrying out this directive, entries of textile products in Category 649, produced or manufactured in Costa Rica, which have been exported to the United States on or after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balance, be charged against the limit established for such goods during that twelve-month period. In the event the limit for that period has been exhausted by previous entries, such goods shall be subject to the limit set forth in this letter.

The limit set forth above is subject to adjustment in the future according to the provisions of the bilateral agreement of February 7 and 8, 1984, which provide in part, that: (1) the specific limit may be increased for carryover and carryforward and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnotes 5. Schedules 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption in the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to he rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–29783 Filed 2–16–85; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Thailand

December 11, 1985

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 17, 1985. For further information contact Jane Corwin, International Trade Specialist Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

On September 25, 1985, a notice was published in the **Federal Register** (50 FR 38875) which established an import restraint limit of 1,314,657 pounds for cotton yarn in Category 301pt. (only T.S.U.S.A. numbers 300.6026 and 300.6028), produced or manufactured in Thailand and exported during the ninety-day period which began on August 30, 1985 and extended through November 27, 1985, pursuant to the

held in November 1985. If agreement is reached on a new limit in further consultations, notice will be published in the **Federal Register**. In the meantime, the United States Government has decided, pursuant to the terms of the bilateral agreement, as amended, to establish a prorated annual limit for 1,531,279 pounds for Category 301pt. for the period which began on August 30, 1985 and extends through December 31, 1985 for goods exported during that period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner:

Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27, and August 8, 1982, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 17, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 301pt.[1], produced or manufactured in Thailand and exported during the period which began on August 30, 1985 and extends through December 31, 1985, in excess of 1,531,279 pounds.[2]

Textile products in Category 301pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-29764 Filed 12-16-85; 8:45 am]

BILLING CODE 3510-DR-M

Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Haiti

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact And Fields, International Trade Specialist (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 17 and May 4, 1984, between the Governments of the United States and Haiti establishes specific limits for Categories 337, 347/348, 349/649 and 350, among others, during the agreement year beginning on January 1, 1986. In the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 337, 347/348, 349/649 and 350, produced or manufactured in Haiti and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986, in excess of the designated restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

This letter and the actions taken pursuant to it are not designated to implement all of the provisions of the bilateral agreement, but are designated to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 17 and May 4, 1984, as amended between the Governments of the United States and Haiti; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following Categories produced or manufactured in Haiti and exported during 1986, in excess of the following levels of restraint:

Category	12-mo level of restraint (dozen)
337	154,562
347/348	456,779
349/649	1,835,114
350	32,149

In carrying out this directive, entries of textile products in all of the foregoing categories, produced or manufactured in Haiti and exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that twelve-month period. In the event the limits established during that period have been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

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[1] In Category 301, only T.S.U.S.A. numbers 300.6026 and 300.6028.

[2] The level has not been adjusted to reflect any imports exported after August 29, 1985.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of February 17, and May 4, 1984, as amended, between the Governments of the United States and the Haiti which provide, in part, that: (1) Specific limits shall be increased by seven percent annually (2) a specific ceiling may be exceeded in any agreement year by not more than seven percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent decrease in one or more specific limits; (3) specific limits may also be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-29798 Filed 12-16-85

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Pub. L. 95-202 and DODD 1000.20—Slick Airways Division of Airlift International in the Vietnam Conflict (1965-1967)

Under the provisions of section 401 of Pub. L. 95-202 and DODD 1000.20, the DOD Civilian/Military Service Review Board has accepted an application on behalf of Slick Airways Division of Airlift International in the Vietnam Conflict (1965-1967). Persons with information or documentation pertinent to the determination of whether the service of this group was equivalent to active military service are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (SAF/MIPC), Washington, DC 20330. For further information contact Lt Col Dandar, (202) 692-4744 or Lt Col Todd (202) 692-4746.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-29752 Filed 12-16-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare Environmental Impact Statement; Clarement Channel, NJ

Summary

1. Description of Proposed Action. Deepen and maintain all or a portion of the 2 mile long access channel from its current 27 feet MLW to a depth of up to 45 feet MLW. Improvements will follow the same alignment as the presently existing channel, with a width of 300 feet, except for a possible widening of the entrance to the main ship channel, to facilitate safe navigation into and out of that channel (the main entrance channel into and out of the Port, currently maintained at a depth of 45 feet MLW).

2. Reasonable Alternatives.

(a) Channel depths of 30-45 feet MLW.

(b) Entrance width of up to 1500 feet, tapering down to existing channel width (300 feet) within the first 1000 feet of the channel length.

(c) Disposal of dredged material.

(1) Ocean disposal.

(2) Disposal into subaqueous borrow pits.

(3) Disposal within containment islands.

(4) Upland disposal.

(5) Used to create wetlands.

(d) No action.

3. Scoping Process.

(a) Public Involvement. Public Notice dated December 22, 1982 (No. 11355) announced the start of a feasibility study for improvements to Clarement channel, and requested public input. A second Public Notice (to be issued concurrent with this notice) will announce the preparation of a draft EIS, and the availability of a draft environmental report that provides an initial analysis of project impacts. The public will be asked to comment further on the proposed project and environmental analysis, and to provide additional data or concerns that they feel should be included in the EIS.

(b) Significant Issues Requiring In-depth Analysis.

(1) Impacts of the construction on short- and long-term water quality.

(2) Impacts of the construction of fish and wildlife resources and habitat within the project area.

(3) Disposal impacts on water quality and fish and wildlife resources at the disposal site.

(4) Suitability of disposal options.

(c) Assignments.

Agencies having jurisdiction under the law will be asked to serve as cooperating agencies in the preparation of the EIS.

(d) Environmental review and consultation.

(1) U.S. fish and Wildlife Service have been asked to review project impacts, and have determined there will be no significant impacts to special or high value fish and wildlife resources; no mitigation for loss of habitat is required (August 21, 1985).

(2) New Jersey Department of Environmental Protection have reviewed project impacts and concur with FWS recommendations and findings.

(3) New Jersey Historic Preservation Officer has reviewed the project and determined that there will be no negative impacts or cultural or archaeological resources.

(4) Above agencies, as well as interested agencies and the public will be advised of the draft environmental analysis prepared by the Corps, and given an opportunity to review and comment on its findings.

(5) National Marine Fisheries Service has been formally requested to evaluate the Corp's finding of no impact to threatened or endangered species, or their habitat (section 7 coordination under Endangered Species Act)

(6) The New Jersey Office of Coastal Resources have been formally asked to concur with the Corp's finding of project compliance with coastal zone management policy in the area.

(7) Agencies and the public will be informed of the availability of the DEIS and FEIS, and asked to comment on its findings.

4. Scoping meeting will not be held.

5. Estimate date of statement availability is July 1986.

Address

Project Manager, Douglas Sullivan, ATTN: NANPL-FN, (212) 264-9077

EIS Coordinator, Len Houston, NANPL-E, (212) 264-4662

U.S. Army Engineer District, New York, 26 Federal Plaza, New York, New York 10007.

John O. Roach, II,

Department of the Army Liaison, Officer with the Federal Register.

[FR Doc. 85-30001 Filed 12-16-85; 10:33 am]

BILLING CODE 3710-08-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-505]

Dynamic Random Access Memory Semiconductors of 256 Kilobits and Above From Japan; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of information developed by the U.S. Department of Commerce, the Department is initiating an antidumping duty investigation to determine whether Japanese dynamic random access memory semiconductors having a memory capacity of 256 kolobits and above are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission of this action so that it may determine whether imports of this product are materially injuring, or threatening to materially injure, a U.S. industry, or are materially retarding establishment of a U.S. industry. The ITC will make its preliminary determination on or before January 31, 1986. If this investigation proceeds normally, we will make our preliminary determination on or before May 27, 1986.

EFFECTIVE DATE: December 17, 1985.

FOR FURTHER INFORMATION CONTACT: William L. Matthews, Office of Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. 20230; (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Initiation

On the basis of information available to the Department of Commerce ("the Department"), we are initiating an antidumping duty investigation, under section 732(a) of the Tariff Act of 1930, as amended ("the Act"), to determine whether Japanese dynamic random access memory semiconductors (DRAMs) having a memory capacity of 256 kilobits and above are being, or are likely to be, sold in the United States at less than fair value.

We have evidence indicating that the United States price of this merchandise is less than the foreign market value of such or similar merchandise. We also have evidence that these imports may be having an injurious effect upon the U.S. industry. That information indicates growing import penetration and declining import prices. These imports may be causing depressed conditions in the U.S. industry such as suppressed prices and profits.

If this investigation proceeds normally, we will make our preliminary determination on or before May 27, 1986. As part of that investigation, we will examine the likelihood of sales below the cost of production.

United States Price and Foreign Market Value

We based our estimate of the United States price upon bid and price quotes obtained from U.S. industry sources.

We examined Japanese bids, price quotes and cost data obtained from industry and public sources and calculated that sales were made at prices below the cost of production. We therefore estimated foreign market value based on constructed value, adding the statutory minimum for profit.

Based on our comparisons we have estimated that a dumping margin of 33 percent may exist for exports during the period from June through October 1985.

Scope of Investigation

The merchandise covered by this investigation are Japanese DRAMs having a memory capacity of 256 kilobits and above, of both the N-channel and the complementary metal oxide semiconductor type, whether in the form of processed wafers, unmounted die, mounted die, or assembled devices. Finished DRAMs of 256 kilobits and above are currently classifiable under items 687.7443 and 687.7444 of the Tariff Schedules of the United States Annotated. Unassembled DRAMs, including processed wafers and mounted and unmounted die, are currently classifiable under item 687.7405 of the Tariff Schedules of the United States Annotated.

Processed wafers and die produced in Japan and assembled into finished DRAMs in another country prior to importation into the U.S. from the other country are tentatively included in the scope of the investigation. In the course of this proceeding we will determine whether to continue to include these indirect imports in the scope of this investigation. We invite comments from those not involved in the proceeding, as well as from parties to this proceeding, on this issue. We request that such comments be submitted prior to February 17, 1986.

Notification of ITC

Section 732(d) of the Act requires us to notify the International Trade Commission ("ITC") of this action and to provide it with the information we used in reaching our decision to initiate. The Department will also allow the ITC access to all privileged and proprietary information in our files, provided it conforms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination of ITC

The ITC will determine by January 31, 1986, whether there is a reasonable indication that imports of Japanese DRAMs of 256 kilobits and above are materially injuring, or threatening to materially injure, a United States industry, or are materially retarding establishment of a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: December 6, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-29757 Filed 12-17-85; 11:06 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8746-002, 8615-000,2814-004]

George E. Dennis et al.; Availability of Environmental Assessment and Finding of No Significant Impact

December 11, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

BEST COPY AVAILABLE

EXEMPTIONS

Project No.	Project Name	State	Water body	Nearest town	Applicant
7745-002	Fairfield Mill	TN	Garrison Fork Creek	Fairfield	George E. Dennis.
			Licenses		
9615-000	Fiske Mill	NH	Ashuelot River		Fiske Hydro.
			Amendment		
2814-004	Great Falls	NJ	Passaic River	Paterson	Paterson Municipal Utilities Authority

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE. Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29688 Filed 12-16-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-00066; OPTS-FRL 2940-3]

Availability of Chemical Emergency Preparedness Program Interim Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: EPA has developed a program to address accidental releases of acutely toxic chemicals as part of a comprehensive strategy to deal with the problem of air toxics in the environment. This voluntary program has two goals: To increase community awareness of potential chemical hazards, and to stimulate the development of State and local emergency response plans for dealing with chemical accidents. This notice announces the availability of the Chemical Emergency Preparedness Program Interim Guidance.

DATE: Written comments should be submitted by March 17, 1986.

ADDRESS: Written comments must bear the docket control number OPTS-00066. An original and two copies should be sent to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW. Washington, DC 20460.

All written comments on the Interim Guidance will be available for public inspection in Room E-107 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Costa, Hazardous Response Support Division (WH-548-A), Environmental Protection Agency, Rm. 3103, 401 M St., SW., Washington, D.C. 20460, Toll-Free: (800-535-0202). In Washington, DC: (479-2449). Outside the USA: (Operator-202-479-2449).

SUPPLEMENTARY INFORMATION: EPA is announcing the availability of the Chemical Emergency Preparedness Program Interim Guidance. This document includes an introduction to the program; sections on organizing the community; gathering and analyzing site-specific information; contingency plan development and content; contingency planning appraisal and continuing planning; and the criteria to be used in the identification of acutely toxic chemicals. The interim list of acutely toxic chemicals is included as one of the appendices.

Date: December 11, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-29786 Filed 12-16-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reasons why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

Trident Crating & Services, Inc. dba Trion Freight Forwarding Co., 16038 Vickery, Suite 200, Houston, TX 77032; Officers: Robert Wayne Allmaras, President; Edward Clarence Berrio, Joe F. Harlan;

A & D Forwarding, Inc., 2404 West 14th Street, Tempe, AZ 85281; Officers: Donald White, President; Daniel Rogers, Treasurer; Wayland C. Bartram, Vice President;

Robert A. Zabka dba Commodore International, 6112 Woodward, Downers Grove, IL 60516;

James A. Dinse dba Rutherford Forwarding Co., 15 Driftwood Court, San Rafael, CA 94901;

Jay E. Bowlby, Inc., dba JEBCO International, 268 Green Village Road, Green Village, NJ 07935; Officers: Jay E. Bowlby, Jr., President; Donna L. Bowlby, Secretary/Treasurer.

By the Federal Maritime Commission.

Dated: December 12, 1985.

Bruce A. Dombrowski,

Secretary.

[FR Doc. 85-29817 Filed 12-16-85; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees, Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Gastrointestinal Drugs Advisory Committee

Date, time, and place. January 16 and 17, 1986, 9 a.m., National Institutes of Health, Jack Masur Auditorium, Clinical Center, Bldg. 10, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, January 16, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, January 17, 9 a.m. to 5 p.m

Joan C. Standaert, Center for Drugs and Biologics (HFN–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4730.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of gastrointestinal disorders.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On January 16 the committee will discuss Pepcid (famotidine) NDA 19–462, Merck and Co., for short-term treatment of gastric and duodenal ulcer and gastric hypersecretory states and 6 months maintenance treatment of duodenal ulcer; and on January 17 the committee will discuss: (1) Tagamet (cimetidine) NDA 17–920/S–057, SmithKline and Beckman, for bedtime dosage for short-term treatment of duodenal ulcer; and (2) Carafate (sucralfate) NDA 18-333/S–009, Marion Laboratories, for prevention of recurrence of duodenal ulcer.

Anti-Infective Drugs Advisory Committee

Date, time, and place. January 17, 1986, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, January 17, 9:30 a.m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5:30 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. In workshop format, the committee will discuss gonadal toxicity in humans which may result from antiviral drugs based on data about both marketed and investigational products. Presentations will be made by several invited speakers.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: December 9, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–29773 Filed 12–16–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84P–0253]

Canned Tuna Deviating From Identity Standard; Amendment and Extension of Temporary Marketing Permit

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the temporary permit to market test canned tuna in vegetable oil and canned tuna in water that contain a blend of sodium tripolyphosphate and sodium hexametaphosphate. FDA is also extending the expiration date of the permit. The amendment changes the name of the permit holder, and the extension allows the permit holder to continue experimental market testing of the product while the agency takes action on the permit holder's petition to amend the standard for canned tuna.

DATE: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned tuna that may result form the petition or 30 days after termination of such proposal.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0101.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to Ralston Purina Co., St. Louis, MO 63164, to market test canned tuna in vegetable oil and canned tuna in water that contain a blend of sodium tripolyphosphate and sodium hexametaphosphate in an amount not to exceed 0.5 percent, by weight, of the finished food, to reduce loss of natural fluids and protein during cooking, to prevent oxidation changes during product cool-down, and to facilitate separation of loin meat. The permit was issued in order to facilitate market testing of foods that deviate from

the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to Ralston Purina Co. was published in the **Federal Register** of July 16, 1984 (49 FR 28769). The expiration date of the permit is January 11, 1986.

Since the permit was issued, the Seafood Division of Ralston Purina Co. has become a wholly owned subsidiary, Van Camp Seafood Co., Inc. Ralston Purina Co. has requested that the temporary permit be amended to change the name of the permit holder. Accordingly, FDA is amending the temporary permit to indicate that the Van Camp Seafood Co., Inc., is the permit holder that company name will be declared as the manufacturer on the test product label.

Ralston Purina Co. also requested that the temporary permit be extended so the market test period can continue while agency action on a petition to amend the canned tuna standard proceeds. Ralston Purina Co. submitted the petition at the same time the application for extension was submitted. FDA finds that it is in the interest of consumers to issue the extension. FDA is inviting interested persons to participate in the market test under the conditions that apply to Van Camp Seafood Co., Inc. (formerly Ralston Purina Co.), including the labeling requirements and the amounts of test product to be distributed, except that the designated area of distribution shall not apply.

Any interested person who wishes to participate in the market test must notify, in writing, the Deputy Director, Division of Food Technology (HFF–211), Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the areas of distribution, and labeling that will be used for the test product.

Therefore, FDA is amending the temporary permit by changing the name of the permit holder and, under the provisions of § 130.17(i) (21 CFR 130.17(i)), FDA is extending the expiration date of the permit in order that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned tuna that may result from the petition or 30 days after termination of such proposal. All other conditions and terms of this permit remain the same.

Dated: December 6, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–29770 Filed 12–16–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85N–0452]

Public Health Service Implementation Plans for Attaining the Objectives for the Nation; Nutrition Goals; Announcement of Study; Notice of Closed Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB) (1) has undertaken a study of the scientific community's views on the progress that the Public Health Service (PHS) has made in implementing its plans for attaining its nutrition goals for 1990 of promoting health and preventing disease; and (2) is providing notice of a closed meeting of the ad hoc Review Panel on Nutrition Goals.

DATE: The closed meeting of the ad hoc Review Panel on Nutrition Goals will be held on Thursday, January 9, 1986, at 9 a.m.

ADDRESS: The closed meeting will be held at FASEB, 9650 Rockville Pike, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030.

SUPPLEMENTARY INFORMATION: FDA is announcing that FASEB, under its contract with FDA (No. 223–83–2020), has undertaken a study of the scientific community's views on the progress that PHS has made in implementing its plans for attaining its nutrition goals for 1990 of promoting health and preventing disease. In response to a request from FDA, the Scientific Steering Group that FASEB established under the contract recommended that the Life Sciences Research Office appoint an ad hoc panel to study this matter. As a result, the Life Sciences Research Office has established the ad hoc Review Panel on Nutrition Goals (ad hoc Review Panel).

In a publication that it issued in 1983, "Promoting Health, Preventing Disease: Public Health Service (PHS) Implementation Plans for Attaining the Objectives for the Nation," PHS listed its 15 major nutrition goals. These goals included reducing the prevalence of those diseases that could be affected by nutrition (e.g., hypertension, iron deficiency anemia, elevated cholesterol, and obesity); increasing consumer knowledge about nutrition and its impact on health (e.g., knowledge about the relationships between components of foods and disease/syndrome states and about the balance that must be achieved between food intake and exercise to effect a loss in body weight); and improving the quality of information on nutrition available to the public (e.g., in physicians' offices, cafeterias, and schools). Each nutrition goal was presented in the form of a 10-year plan, with an end-point designed to permit measurement of success or failure.

The Office of the Assistant Secretary for Health (OASH) designated FDA's Center for Food Safety and Applied Nutrition (CFSAN) to monitor PHS activities that are intended to achieve these goals.

The year 1985 marks the mid-point in the 10-year plan for achievement of these goals. CFSAN has been asked to report to OASH on the status of PHS's efforts to achieve these goals.

The purpose of FASEB's study is to provide an objective assessment of PHS's efforts. The report of the ad hoc Review Panel will provide CFSAN with a synopsis of opinions from the knowledgeable scientific community on the actual status of these efforts and on the effects that these efforts have had (as measured by such indices as morbidity/mortality/birth records, hospital records, and surveys on health and nutrition). The ad hoc Review Panel will also report on whether existing nutrition goals should be modified to make their attainment more reasonable or realistic.

The ad hoc Review Panel is composed of members of the Scientific Steering Group and other experts in the matters that are being studied, which are outlined above. A list of the members of the Panel may be obtained by writing to the contact person (address above). As announced in the **Federal Register** of October 11, 1985 (50 FR 41597), the ad hoc Review Panel conducted an open meeting on October 31 and November 1, 1985, and closed meetings following the conclusion of the open meeting on November 1 and on November 14 and 15, 1985. Voluminous comments, views, data, and information were received. Consequently, the ad hoc Review Panel was unable to complete its analysis and found it necessary to schedule a final meeting. This meeting is being announced as required by 21 CFR 14.15(b)(1).

Dated: December 6, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-29771 Filed 12-16-85; 8:45 am]

BILLING CODE 4160-21-M

Request for Nominations for Voting Members on Public Advisory Committees

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on certain public advisory committees in the Center for Drugs and Biologics. Nominations will be accepted for current vacancies and vacancies that will or may occur on the committees during the next 12 months.

FDA has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership, except for consumer-nominated members, should be sent to Morris Schaeffer (address below). All nominations for consumer-nominated members should be sent to Naomi Kulakow (address below).

FOR FURTHER INFORMATION CONTACT:

Morris Schaeffer, Office of Scientific Advisors and Consultants (HFN-30), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455

or

Naomi Kulakow, Office of Consumer Affairs (HFE-40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for the following 17 advisory committees for vacancies listed below. Individuals should have expertise in the activity of the committee.

1. Anesthetic and Life Support Drug Advisory Committee: three vacancies occurring June 30, 1986.

2. Anti-Infective Drugs Advisory Committee: one vacancy occurring November 30, 1985.

3. Arthritis Advisory Committee: four vacancies occurring September 30, 1986, including the consumer-nominated member.

4. Cardiovascular and Renal Drugs Advisory Committee: five vacancies occurring June 30, 1986.

5. Dermatologic Drugs Advisory Committee: three vacancies occurring August 31, 1986.

6. Endocrinologic and Metabolic Drugs Advisory Committee: three vacancies occurring June 30, 1986.

7. Fertility and Maternal Health Drugs Advisory Committee: five vacancies occurring June 30, 1986, including the consumer-nominated member.

8. Gastrointestinal Drugs Advisory Committee: three vacancies occurring June 30, 1986, including the consumer-nominated member.

9. Oncologic Drugs Advisory Committee: four vacancies occurring June 30, 1986.

10. Peripheral and Central Nervous System Drugs Advisory Committee: two vacancies occurring January 31, 1986.

11. Psychopharmacologic Drugs Advisory Committee: four vacancies occurring June 30, 1986, including the consumer-nominated member.

12. Pulmonary-Allergy Drugs Advisory Committee: two vacancies occurring June 30, 1986.

13. Radiopharmaceutical Drugs Advisory Committee: three vacancies occurring June 30, 1986.

The functions of the 13 committees listed above are to review and evaluate available scientific, technical, and medical data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in the area of medical specialties indicated by the title of the committee and to make appropriate recommendations to the Commissioner of Food and Drugs.

14. Drug Abuse Advisory Committee: four vacancies occurring June 30, 1986.

The functions of the Drug Abuse Advisory Committee are to: (1) Advise the Commissioner regarding the scientific and medial evaluation of all information gathered by both the Department of Health and Human Services (HHS) and the Department of Justice regarding the safety, efficacy, and abuse potential for drugs or other substances; and (2) recommend actions to be taken by HHS regarding the marketing, investigation, and control of such drugs or other substances.

15. Allergenic Products Advisory Committee: this is a newly established committee, and there are no vacancies.

16. Blood Products Advisory Committee: no vacancies occurring during the next 12 months.

17. Vaccines and Related Biological Products Advisory Committee: no vacancies occurring during the next 12 months.

The functions of the three committees listed above are to review and evaluate available scientific, technical and medical data concerning the safety, effectiveness, and appropriate use of allergenic products, blood and products derived from blood and serum, and vaccines and other immunological products intended for use in the diagnosis, prevention, or treatment of human diseases, and to make appropriate recommendations to the Commissioner.

Criteria for Members

Persons nominated for membership on the committees described above must have adequately diversified research and/or clinical experience appropriate to the work of the committee in such fields as allergenic products, anesthesiology, surgery, infectious diseases, rheumatology, cardiology, dermatology, endocrinology, obstetrics and gynecology, gastroenterology, oncology, neurology, psychiatry, nuclear medicine, internal medicine, epidemiology, statistics, hematology, immunology, blood banking, virology, bacteriology, allergy, pediatrics, microbiology, and biochemistry, or other appropriate areas of expertise.

The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, research, and/or public service relevant to the field of activity of the committee. The term of office is ordinarily 4 years.

Criteria for Consumer-Nominated Members

FDA currently attempts to place on each of the committees described above one voting member who is nominated by consumer organizations. These members are recommended by a consortium of 12 consumer organizations which has the responsibility for screening, interviewing, and recommending consumer-nominated candidates with appropriate scientific credentials. Candidates are sought who are aware of the consumer impact of committee issues, but also possess enough technical background to understand and

contribute to the committee's work. This would involve, for example, an understanding of research design, benefit/risk, and the legal requirements for safety and efficacy of the products under review, and considerations regarding individual products. The agency notes, however, that for some advisory committees, it may require such nominees to meet the same technical qualifications and specialized training required of other expert members of the committee. The term of office for these members is 4 years. Nominations for all committees listed above are invited for consideration for membership as openings become available.

Nomination Procedure

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Nominations shall specify the committee for which the nominee is recommended. Nominations shall state that the nominee is aware of the nominations, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude committee membership. Potential candidates will be asked by FDA to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I) and 21 CFR Part 14, relating to advisory committees.

Dated: December 9, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–29772 Filed 12–16–85; 8:45 am]

BILLING CODE 4160–01–M

Public Health Service

National Toxicology Program Board of Scientific Counselors Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Toxicology Program Board of Scientific Counselors, U.S. Public Health Service, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, Research Triangle Park, North Carolina, on January 8, 1986.

The meeting will be open to the public from 1:00 p.m. until adjournment for the purpose of providing peer review of the data from the chronic carcinogenesis bioassay of FD and C Yellow No. 6 in male and female Charles River albino rats. The bioassay was sponsored by the Certified Colors Manufacturers Association, conducted by Biodynamics, Inc., and submitted to the Food and Drug Administration (FDA) in support of permanent listing of FD and C Yellow No. 6 for food, drug and cosmetic uses. The review will be performed by the Technical Reports Review Subcommittee of the Board in conjunction with an *ad hoc* panel of experts.

The meeting will commence with a brief overview of the studies. This will be followed with presentations by scientific staff from the Center for Food Safety and Applied Nutrition, FDA, concerning the pathology findings. Sufficient time will be allowed for public comment.

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541–3971, FTS 629–3971, will furnish program information prior to the meeting and summary minutes subsequent to the meeting.

Dated: December 10, 1985.

David P. Rall, M.D., Ph.D.

Director, National Toxicology Program.

[FR Doc. 85–29765 Filed 12–16–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Central and Field Organization

This notice provides a description of the central and field organization of the Department of the Interior, including the functions of the bureaus and offices and places at which the public may obtain information.

This notice is published in accordance with the provisions of 5 U.S.C. 552(a)(1)(A) and supersedes the notice published in the **Federal Register** on May 26, 1979 (44 FR 30451). Additional information regarding the Department's functions and programs may be obtained by directly contacting the appropriate bureau or office and referring to the public regulations of the Department as published in Titles 25, 30, 36, 41, 43, 48, and 50 of the Code of Federal Regulations.

Dated: December 6, 1985.

Joseph E. Doddridge, Jr.,

Deputy Assistant Secretary of the Interior.

Office of the Secretary

Secretary

The Secretary of the Interior, as the head of an executive department, reports directly to the President and is responsible for the direction and supervision of all operations and activities of the Department. The Secretary also has certain powers or supervisory responsibilities relating to Territorial governments.

Under Secretary

The Under Secretary assists the Secretary in the discharge of Secretarial duties and serves as Acting Secretary in the asbsence of the Secretary. With the exception of certain matters reserved by the Secretary, the Under Secretary has the full authority of the Secretary.

Fish and Wildlife and Parks

The Assistant Secretary for Fish and Wildlife and Parks discharges the duties of the Secretary with the authority and direct responsibility for programs associated with the development, conservation, and utilization of fish, wildlife, recreation, historical, and national park system resources of the Nation. The Assistant Secretary represents the Department in the coordination of marine environmental quality and biological resources programs with other Federal agencies. The Assistant Secretary for Fish and Wildlife and Parks exercises Secretarial direction and supervision over the United States Fish and Wildlife Service and the National Park Service.

Water and Science

The Assistant Secretary—Water and Science discharges the duties of the Secretary with the authority and direct responsibility to carry out the statutory mandate to manage and direct programs supporting the development and implementation of national water and minerals policies through encouraging and assisting the development of economically and environmentally sound resource activities, including development and conservation of hte Nation's water supply and support of cost-sharing techniques for development and management of water supplies in the 17 Western States; water resource evaluation and analysis; fostering and encouraging the private sector in the orderly and economic development of domestic mineral resources; effective mineral data collection and analysis; assessment of frontier area mineral resources for long-term availability; improved focus and effectiveness of departmental research and development activities in geology, hydrology,

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metallurgy, mining technology, and mine health and safety, including international work supporting departmental long-term national objectives; topographic, geologic, and mineral resource investigations; Earth seismic research; and remote sensing activities. The Assistant Secretary is the science adviser to the Secretary and, as such, coordinates scientific activities in the Department; coordinates Department activities with the Board on Geographic Names; represents the Secretary on the Trade Policy Review Group to coordinate international trade policy issues, the interagency groups for Antarctic policy, ocean policy and law of the sea, the Emergency Mobilization Preparedness Board, and other interagency efforts as appropriate.

Land and Minerals Management

The Assistant Secretary—Land and Minerals Management discharges the duties of the Secretary with the authority and direct responsibility for programs associated with land use planning; public land management, including onshore and offshore minerals management; development and management of effective fuel-related mineral data collection and analysis; surface mining reclamation and enforcement functions; operations management for minerals on the Outer Continental Shelf to the outer limits of the United States economic jurisdiction; assessment of these frontier area mineral resources for long-term national availability; management of revenues from Federal mineral leases to ensure efficient collection of bonuses, rentals, and royalties; and coordination of related departmental policy. The Assistant Secretary also serves as adviser to the Secretary in the Secretary's role as Chairman of the Cabinet Council on Natural Resources and Environment. The Assistant Secretary exercises Secretarial direction and supervision over the Bureau of Land Management, the Minerals Management Service, and the Office of Surface Mining Reclamation and Enforcement.

Indian Affairs

The Assistant Secretary—Indian Affairs discharges the authority and responsibility of the Secretary for activities pertaining to Indians and Indian affairs. The Assistant Secretary is responsible for providing the Secretary with detailed and objective advice on matters involving Indians and Indian affairs; identifying and acting on issues affecting Indian policy and programs for Indians; establishing policy on Indian affairs; liaison and coordination between the Department of the Interior and other Federal agencies that provide services or funding to Indians; representing the Department in transactions with Congress; monitoring and evaluating on-going activities related to Indian affairs; undertaking or providing leadership in special assignments and projects for the Secretary; and for exercising Secretarial direction and supervision over the Bureau of Indian Affairs.

Policy, Budget and Administration

The Assistant Secretary—Policy, Budget and Administration discharges the authority of the Secretary for all phases of management and administrative activities and serves as the principal policy adviser to the Secretary. Responsibilities include providing detailed and objective advice on program planning, budget, and policy matters; developing and maintaining administrative policy, standards, objectives, and procedures for use throughout the Department; coordinating organizational aspects of proposed legislation with appropriate bureaus and offices; undertaking special management-related projects for the Secretary; and providing management and administrative support services for the Office of the Secretary. The Assistant Secretary performs and supervises the following activities: personnel management, property, safety, space, emergency preparedness, procurement, grants, energy conservation, law enforcement, financial management, aircraft services, printing, publications, management systems, and information resources management, including ADP, telecommunications, library and information services, and directives and regulatory management.

Territorial and International Affairs

The Office of the Assistant Secretary for Territorial and International Affairs was established by Secretarial Order No. 3046 of February 14, 1980. The Assistant Secretary discharges the authority and responsibility of the Secretary for activities pertaining to territorial areas and for the coordination of international affairs of the Department. The Assistant Secretary is responsible for promoting the economic, social, and political development of the U.S. territories of Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, which includes the Marshall Islands, Palau, and Micronesia. The Assistant Secretary also serves as the Department's focal point for analysis, development, and review of the Department's policy and programs pertaining to international activities and the opportunities for support of U.S. foreign policy through the use of the Department's natural resource and environmental expertise.

For further information, contact the Office of Territorial and International Affairs, Department of the Interior, Washington, DC 20240. Phone, 202–343–4822.

Solicitor

The Solicitor is the principal legal adviser to the Secretary and the chief law officer of the Department. The Solicitor is responsible for and has supervision over all of the legal work of the Department, with the exception of that performed by the Office of Hearings and Appeals and the Office of Congressional and Legislative Affairs.

Inspector General

The Inspector General is the Department's focal point for independent review of integrity of operations; the central authority concerned with the quality, coverage, and coordination of the audit and investigation services of the Department; and is the principal adviser to the Secretary on these matters. The Inspector General provides the means for keeping the Secretary and Congress fully and currently informed about problems and deficiencies relating to the administration of Department programs and operations and the necessity for corrective action.

Field Special Assistants

The Field Special Assistants to the Secretary maintain continuous surveillance over the entire range of the Department's program activities, provide leadership and assistance in the coordination of departmental programs and policies where more than one bureau or program interest is involved and, when directed by the Secretary, coordinate Department participation in major interagency and intergovernmental efforts.

The Field Special Assistants to the Secretary also serve as chairmen of the

departmental field committees in their respective regions. These committees, composed of regional directors or other ranking officials approved by the heads of bureaus and offices, promote the development and execution of coordinated regional natural resource programs for the Department and facilitate the coordination of field activities involving two or more bureaus or that have special significance to the Department's overall objectives.

Other Departmental Offices

Office of the Solicitor

The Office of the Solicitor performs all of the legal work of the Department with the exception of that performed by the Office of Hearings and Appeals and the Office of Congressional and Legislative Affairs.

The headquarters office of the Office of the Solicitor in Washington, DC, consists of six Divisions. The Division of Conservation and Wildlife is responsible for legal matters involving the programs of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, and the U.S. Fish and Wildlife Service. The Division of Energy and Resources is responsible for legal matters involving the programs of the Assistant Secretary—Water and Science, the Assistant Secretary—Land and Minerals Management, the Bureau of Land Management, the Bureau of Mines, the Geological Survey, the Bureau of Reclamation, and the Minerals Management Service. The Division of Indian Affairs is responsible for legal matters involving the programs of the Assistant Secretary—Indian Affairs and the Bureau of Indian Affairs. Te Division of Surface Mining provides legal advice to the Assistant Secretary—Land and Minerals Management on surface mining matters and to the Office of Surface Mining Reclamation and Enforcement. The Division of General Law is responsible for general administrative law matters and legal matters involving programs under the jurisdiction of the Assistant Secretary—Policy, Budget and Administration, the Assistant Secretary—Territorial and International Affairs, and the Office for Equal Opportunity. The Division of Audit and Investigation is responsible for providing legal advice and services to the Office of the Inspector General. Administrative and support services for the Office of the Solicitor are provided by the Division of Administration.

The field organization of the Office is divided into eight regions, each headed by a Regional Solicitor.

OFFICE OF THE SOLICITOR—DEPARTMENT OF THE INTERIOR

Region	Address
ALASKA—Alaska	Box 34, 701 C St., Anchorage, AK 99513.
SOUTHEAST—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands.	75 Spring St. SW., Atlanta, GA 30303.
NORTHEAST—Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, Wisconsin.	1 Gateway Center, Newton Corner, MA 02158.
ROCKY MOUNTAIN—Colorado, Iowa, Kansas, Missouri, Montana, Minnesota, Nebraska, North Dakota, South Dakota, Wyoming.	P.O. Box 25007, Denver, CO [illegible]
PACIFIC NORTHWEST—Idaho, Oregon, Washington	500 NE. Multnomah St., Portland, OR 97232.
PACIFIC SOUTHWEST—Arizona, California, Hawaii, Nevada, Pacific Territories.	2800 Cottage Way, Sacramento, CA 95825
INTERMOUNTAIN—Utah	125 S. State St., Salt Lake City, UT 84138.
SOUTHWEST—Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	P.O. Box 3156, Tulsa, OK 74101.

For further information, contact the Administrative Officer, Office of the Solicitor, Department of the Interior, Washington, DC 20240. Phone, 202–343–6115.

Office of Inspector General

The Office of Inspector General provides policy direction and conducts, supervises, and coordinates all audits and investigations; recommends policies for and conducts, supervises, or coordinates other activities in the Department designed to promote economy and efficiency or prevent and detect fraud and abuse. The Inspector General recommends polcies for and conducts, supervises, or coordinates relations between the Department and other Federal, State, and local government agencies concerning (a) promoting economy and efficiency, (b) preventing and detecting fraud and abuse, and (c) identifying and prosecuting people involved in fraud or abuse.

The Office also reviews existing and proposed legislation and regulations and makes recommendations to the Secretary and Congress regarding the impact such initiatives will have on the economy and efficiency of the Department's programs and operations and the prevention and detection of fraud and abuse in such programs; keeps the Secretary and the Congress fully informed about fraud, abuses, and deficiencies in Department programs and operations, and other serious problems; recommends corrective action and reports on the progress made in correcting the problem.

For further information, contact the Office of Inspector General, Department of the Interior, Washington, DC 20240. Phone, 202–343–8231.

Office of Hearings and Appeals

The Office of Hearings and Appeals was established by the Secretary on April 8, 1970, to consolidate related functions and to provide for more effective departmental appeals procedures.

The Office of Hearings and Appeals is responsible for departmental quasijudicial and related functions. Administrative law judges and three formal boards of appeal render decisions in cases pertaining to contract disputes; Indian probate and administrative appeals; public and acquired lands and their resources; submerged offshore lands of the Outer Continental Shelf; surface coal mining control and reclamation; claims under the Alaska Native Claims Settlement Act; and enforcement of the importation and transportation of rare and endangered species. The Director of the Office of Hearings and Appeals may assign administrative law judes or other officials from the Office of Hearings and Appeals for the purpose of holding rulemaking hearings and may also assign administrative law judges or establish ad hoc boards of appeal to meet special requirements of disputes not falling under one of the previously listed categories. Decisions of the boards are final for the Department.

The Office includes the headquarters organization and 4 field offices for departmental administrative law judges and 8 field officies for Indian probate administrative law judges.

For further information, contact the Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203. Phone, 703–235–3810.

Office of Youth Programs

The Office of Youth Programs was established by Secretary's Order Number 2885 of January 7, 1965, as amended under the authority of the Economic Opportunity Act of 1964, and subsequent Secretarial delegations under the Comprehensive Employment and Training Act of 1973, the Youth Conservation Corps Act of 1974, the Youth Demonstration Projects Act of 1977, and the Job Training Partnership Act of 1982. This Office discharges the authority of the Secretary in all matters pertaining to departmental programs of employment and training for youth,

including the Job Corps Civilian Conservation Centers Program, the United States Youth Conservation Corps, and such other programs as the Secretary may designate.

The Office of Youth Programs establishes the basic policies, programs, and priorities for the Department; provides policy direction, guidance, and interpretation for the participating bureaus and offices, coordinates their activities; maintains sufficient controls to provide the Secretary with the information needed to operate the programs, to effect statutory coordination with the Departments of Agriculture and Labor, and to ensure responsiveness to the Congress and the public; performs a continuing analysis of the program's resources, needs, and expenditures; obtains, allocates, and controls the financial, manpower, and material resources necessary to carry out the programs; reviews and evaluates program performance to identify deficiencies and prescribes corrective measures; and implements management systems and procedures necessary to achieve program goals. The Office also provides consolidated administrative services support for assigned programs.

The Office of Youth Programs operates the Fort Simcoe Job Corps Civilian Conservation Center.

For further information, contact the Office of Youth Programs, Department of the Interior, Washington, DC 20240. Phone, 202–343–5951.

Office of Small and Disadvantaged Business Utilization

The Office of Small and Disadvantaged Business Utilization (OSDBU) was established by Secretarial Order 3041 of July 20, 1979, in compliance with Pub. L. 95–507 (97 Stat. 1757), which amended the Small Business Act and the Small Business Investment Act of 1958. The secretarial order directed that the Director of OSDBU report directly to the Under Secretary and that all employees and functions of the Branch of Minority Procurement in the Office of Administrative and Management Policy be transferred to OSDBU. Secretarial Order 3041 was superseded by Departmental Manual Issuance 111 DM 8.

OSDBU is responsible for the implementation and administration of programs relating to sections 8 and 15 of the Small Business Act, as amended by Publ. L. 95–507, as well as Pub. L. 96–302 (94 Stat. 833) (labor surplus area set-asides) and Executive Order 12138 (women-owned businesses). Responsibilities include providing departmentwide liaison and coordination of all matters relating to small and disadvantaged businesses, labor surplus area concerns, and women-owned businesses with the Small Business Administration (SBA), Office of Federal Procurement Policy (OFPP), Minority Business Development Agency (MBDA), and General Services Administration (GSA); assisting bureaus and offices in the development and implementation of policies and procedures required by sections 8 and 15 of the Small Business Act and other authorities including the establishment of goals and the reporting of accomplishments; providing training and education to Department personnel whose functional responsibilities relate to the implementation of sections 8 and 15 of the Small Business Act; conducting outreach seminars and providing liaison services to small and disadvantaged businesses; researching, developing, and publishing informational brochures and documents relating to the Department's small and disadvantaged business programs; performing continuing liaison with other departments and agencies on all activities relating to small and disadvantaged business utilization; and developing, validating, and disseminating to departmental management and the public statistical data and other information on the implementation and results of the Department's business and economic development programs.

For further information, contact the Office of Small and Disadvantaged Business Utilization, Department of the Interior, Washington, DC 20240. Phone, 202–343–8493.

Assistant Secretary for Territorial and International Affairs

The Office for Territorial and International Affairs has the responsibility to promote the economic, social, and political development of the territories, leading toward a goal of self-government and to further international peace and security by conducting territorial affairs in close coordination with the defense and foreign policies of the United States.

The degree to which the Office conducts activities to futher these objectives in a specific territory depends on the status of the territorial government, its relationship to the Secretary of the Interior, and the extent of development already achieved within the territory.

The Office serves as the principal representative to the Office of the Secretary on all territorial matters; makes the needs of the territories known to other Federal agencies and serves as a channel of communication with the territorial governments; studies the economic, social, and political problems of the territories and proposes policies, programs, legislation, and other actions for their solution; advises the Secretary on proposed legislation and other important matters affecting the territories; provides budgetary and certain other administrative services to the Governors of the territories and the High Commissioner of the Trust Territory of the Pacific Islands; and coordinates all international activities of the bureaus and employees of the Department. The Office is composed of budget, legislative, economic development, and other staffs that provide assistance to the territories and the Department on matters relating to territorial and international affairs.

For further information, contact the Office of Territorial and International Affairs, Department of the Interior, Washington, DC 20240. Phone, 202–343–4822.

Bureaus

United States Fish and Wildlife Service

[For the United States Fish and Wildlife Service statement of organization, see Code of Federal Regulations, Title 50, Subchapter A, Part 2]

The United States Fish and Wildlife Service's national responsibility in the service of fish, wildlife, and people reaches back over 110 years to the establishment in 1871 of a predecessor agency, the Bureau of Fisheries. First created as an independent agency, the Bureau of Fisheries was later placed in the Department of Commerce. A second predecessor agency, the Bureau of Biological Survey, was established in 1885 in the Department of Agriculture.

The two Bureaus and their functions were transferred in 1939 to the Department of the Interior. They were consolidated into one agency and redesignated the Fish and Wildlife Service in 1940 by Reorganization Plan III (54 Stat. 1232).

Further reorganization came in 1956 when the Fish and Wildlife Act (70 Stat. 1119) created the United States Fish and Wildlife Service and provided for it to replace and succeed the former Fish and Wildlife Service. The Act established two Bureaus within the new Service: the Bureau of Commercial Fisheries and the Bureau of Sport Fisheries and Wildlife.

In 1970, under Reorganization Plans 3 and 4, the Bureau of Commercial Fisheries was transferred to the Department of Commerce. The Bureau of Sport Fisheries and Wildlife, which remained in Interior, was renamed by an act of Congress in April 1974 (88 Stat.

92) as the United States Fish and Wildlife Service.

The Service is composed of a headquarters office in Washington, DC, 7 regional offices in the lower 48 States and Alaska, and a variety of field units and installations. These include 428 National Wildlife Refuges and 149 Waterfowl Production Areas comprising more than 90 million acres; 13 major fish and wildlife laboratories and centers; 49 cooperative research units at universities across the country; 83 National Fish Hatcheries; and a nationwide network of wildlife law enforcement agents.

The mission of the United States Fish and Wildlife Service, which is responsible for migratory birds, endangered species, certain marine mammals, inland sport fisheries, and specific fishery and wildlife research activities, is to conserve, protect, and enhance fish and wildlife and their habitats for the continuing benefit of the American people. Within this framework, the Service assists in the development of an environmental stewardship ethic for our society based on ecological principles, scientific knowledge of wildlife, and a sense of moral responsibility; works with the States to improve the conservation and management of the Nation's fish and wildlife resources; and administers a national program providing opportunities to the American public to understand, appreciate, and wisely use these resources.

In the area of resource management, the Service provides leadership for the protection and improvement of land and water environments (habitat preservation), which directly benefits the living natural resources, and adds quality to human life. Activities include biological monitoring through scientific research; surveillance of pesticides, heavy metals, and thermal pollution; studies of fish and wildlife populations; ecological studies; environmental impact assessment, including hydroelectric dams, nuclear power sites, stream channelization, dredge and fill permits; associated research; and environmental impact statement review.

The Service is responsible for improving and maintaining fish and wildlife resources by proper management of migratory birds and other wildlife and by control of population imbalances. It also assists in fulfilling the public demand for recreational fishing while maintaining the Nation's fisheries at a level and in a condition that will ensure their continued survival. Specific wildlife and fishery resources programs include:

Migratory birds—wildlife refuge management for production, migration, and wintering; game law enforcement; research, including bird banding and harvest and survival rate studies; breeding, migrating, and wintering surveys; and disease studies;

Mammals and nonmigratory birds—refuge management of resident species (primarily big game); law enforcement; research on disease and population distribution, including marine mammals and species transplants; and technical assistance;

Animal damage control—operational measures through cooperative programs to control predator, rodent, and bird depredations on crops and livstock; research on nonlethal control methods and predator-prey relationships;

Cooperative fish and wildlife research units—located at universities to conduct research and supervise graduate student research, complementing the Service's wildlife and fishery research programs;

Coastal anadromous fish—hatchery production, stocking, and research on nutrition, disease, and habitat requirements in 16 of the 24 coastal States;

Great Lakes fisheries—hatchery production of lake trout; fishery management in cooperation with Canada and the States, and research; and

Other inland fisheries—hatchery production and stocking of Indian lands; technical assistance; and research on genetics, disease, nutrition, and taxonomy.

The Service provides national and international leadership in the area of endangered fish and wildlife from the standpoint of both restoration as well as preventive measures involving threatened species. This program includes development of species lists, recovery plans, conduct of status surveys, coordination of efforts nationally and internationally; research on propagation methods, distribution, genetics, and behavior; operation of wildlife refuges; law enforcement; foreign importation enforcement; and consultation with foreign countries.

Environmental education and public information programs include local conservation education talks; preparation of news releases, leaflets, and brochures; operation of environmental study areas on Service lands for use by school groups and teachers; operation of visitor centers, self-guided nature trails, observation towers, display ponds, and providing recreational activities, such as hunting, fishing, and wildlife photography.

The Service's Federal aid programs apportion funds to the States and territories for projects designed to conserve, develop, and enhance the Nation's fish and wildlife resources.

REGIONAL OFFICES—UNITED STATES FISH AND WILDLIFE SERVICE

Region	[illegible]	Telephone
ALBUQUERQUE—Arizona, New Mexico Oklahoma, Texas.	P.O. Box 1306, Albuquerque, [illegible]	505-766-2321
ANCHORAGE—Alaska	1011 E. Tudor Rd., Anchorage, [illegible]	907-786-3542
ATLANTA—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin [illegible]	75 Spring St. SW., Atlanta, [illegible]	404-221-3588
BOSTON—Connecticut, [illegible], Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia.	Suite 700, 1 Gateway Center, Newton Corner, MA 02158	617-965-5100
DENVER—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming.	P.O. Box [illegible], Denver, CO [illegible]	303-236-7920
PORTLAND—California, Hawaii, Idaho, Nevada, Oregon, Washington.	Suite 1692, 500 [illegible] Multnomah St., Portland, OR 97232.	503-231-6118
TWIN CITIES—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, [illegible]	Federal Bldg., Fort Snelling, Twin Cities, MN 55111.	612-725-3563

For further information, contact the Office of Public Affairs United States Fish and Wildlife Service, Department of the Interior, Washington, DC 20240. Phone, 202-343-5634

National Park Service

The National Park Service was established in the Department of the Interior on August 25, 1916 (39 Stat. 535; 16 U.S.C. 1).

The National Park Service administers for the American people an extensive system of national parks, monuments, historic sites, and recreation areas. The objectives of the National Park Service are to administer the properties under its jurisdiction for the enjoyment and education of our citizens to protect the natural environment of the areas, and to assist States, local governments, and citizen groups in the development of park areas, the protection of the natural environment, and the preservation of historic properties.

The National Park Service has a Service Center in Denver that provides planning, architectual, engineering, and other professional services; and a Center for production of interpretive exhibits, audiovisual materials, and publications in Harpers Ferry, WV.

There are more than 330 units in the National Park System, including national parks and monuments of noteworthy natural and scientific value; scenic parkways, riverways, seashores, lakeshores, recreation areas, and reservoirs; and historic sites associated with important movements, events, and personalities of the American past.

Activities—The National Park Service develops and implements park management plans and staffs the areas under its administration. It relates the natural values and historical significance of these areas to the public through talks, tours, films, exhibits, publications, and other interpretive media. It operates campgrounds and other visitor facilities and provides—usually through concessions—lodging, food, and transportation services in many areas.

The National Park Service also administers the following programs: The State portion of the Land and Water Conservation Fund, the Nationwide Outdoor Recreation Plan and State comprehensive outdoor recreation planning, the Urban Park and Recreation Program, park and recreation technical services, planning for the National Wild and Scenic Rivers System, and the National Trails System, natural area programs, the National Register of Historic Places, national historic landmarks, historic preservation, technical preservation services, Historic American Buildings Survey, Historic American Engineering Record, and interagency archeological services.

REGIONAL OFFICES—NATIONAL PARK SERVICE

Region	Address
NORTH ATLANTIC—Connecticut, Maine, New Hampshire, Massachusetts, New Jersey, New York, Rhode Island, Vermont.	15 State St, Boston, MA 02109
MID-ATLANTIC—Delaware, Maryland, Pennsylvania, Virginia, West Virginia.	143 S 3d St, Philadelphia, PA 19106
SOUTHEAST—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands.	75 Spring St. SW., Atlanta, GA 30303.
MIDWEST—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota Missouri, Nebraska, Ohio, Wisconsin.	1709 Jackson St., Omaha, NE 68102.
ROCKY MOUNTAIN—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.	P.O. Box 25287, Denver, CO 80225.
SOUTHWEST—Arkansas, Louisiana, New Mexico, Oklahoma, Texas.	Box 728 Santa Fe, NM 87501
WESTERN—Arizona, California, Guam, Hawaii, Nevada, Northern Mariana Islands.	450 Golden Gate Ave., San Francisco, CA 94102
PACIFIC NORTHWEST—Idaho, Oregon, Washington.	2001 6th Ave., Seattle, WA 98121.
ALASKA—Alaska	2525 Gambell St, Anchorage, AK 99503.
NATIONAL CAPITAL—Washington, DC, and nearby Maryland and Virginia.	1100 Ohio Dr. SW., Washington, DC 20242.

For further information, contact the Chief, Office of Public Affairs, National Park Service, Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127. Phone, 202-343-7394

Bureau of Mines

The Bureau of Mines was established July 1, 1910, in the Department of the Interior by the Organic Act of May 16, 1910 (36 Stat. 369; 30 U.S.C. 1, 3, 5–7), as amended. The 1910 act has been supplemented by several statutes, including those authorizing production and sale of helium, and research on environmental problems associated with minerals.

The Bureau of Mines is primarily a research and factfinding agency. Its goal is to help ensure that the Nation has adequate supplies of nonfuel minerals for security and other needs. Research is conducted to provide the technology for the extraction, processing, use, and recycling of the Nation's nonfuel mineral resources at a reasonable cost without harm to the environment or the workers involved. Typical areas of research are investigations of ways to use domestic low-grade ores as alternative sources of strategic and critical minerals that must currently be imported, mine health and safety, recycling of solid wastes, and abatement of pollution and land damage caused by mineral extraction and processing operations.

The Bureau also collects, compiles, analyzes, and publishes statistical and economic information on all phases of nonfuel mineral resource development, including exploration, production, shipments, demand, stocks, prices, imports, and exports. Special studies are frequently made on subjects of particular national interest, such as the effects of potential economic, technologic, or legal developments on resource availability. The effects of policy alternatives on mineral supply and demand are also analyzed.

For further information, contact the Office of Technical Information, Bureau of Mines, Department of the Interior, 2401 E Street NW., Washington, DC 20241. Phone, 202–634–1004.

Geological Survey

National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

The Geological Survey was established by the act of March 3, 1879 (20 Stat. 394; 43 U.S.C. 31), which provided for "the classification of the public lands and the examination of the geological structure, mineral resources, and products of the national domain." The act of September 5, 1962 (76 Stat. 427; 43 U.S.C. 31(b)), expanded this authorization to include such examinations outside the national domain. Topographic mapping and chemical and physical research were recognized as an essential part of the investigations and studies authorized by the act of March 3, 1879, and specific provision was made for them by Congress in the act of October 2, 1888 (25 Stat. 505, 526).

Provision was made in 1894 for gaging the streams and determining the water supply of the United States (28 Stat. 398). Authorizations for publication, sale, and distribution of material prepared by the Geological Survey are contained in several statutes (43 U.S.C. 41–45; 44 U.S.C. 260–262).

The Geological Survey's primary responsibilities are: identifying the Nation's land, water, energy, and mineral resources; classifying federally owned lands for minerals and energy resources and water power potential; investigating natural hazards such as earthquakes, volcanoes, and landslides; and conducting the National Mapping Program. To attain these objectives, the Geological Survey prepares maps, collects and interprets data on mineral and water resources, performs fundamental and applied research in the sciences and techniques involved, and publishes and disseminates the results of its investigations in thousands of new maps and reports each year.

REGIONAL OFFICES—GEOLOGICAL SURVEY

Region	Address	Telephone
EASTERN—Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Vermont, Virgin Islands, Virginia, West Virginia, Wisconsin.	119 National Center, Reston, VA 22092.	703–860–7414.
CENTRAL—Arkansas, Colorado, Iowa, Kansas, Louisiana, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming.	Box 25046, 510 Denver Federal Center, Denver, CO 80225.	303–234–2351.
WESTERN—Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington.	345 Middlefield Rd., Menlo Park, CA 94025.	415–323–8111 ext. 2711.

For further information, contact the Public Affairs Officer, Geological Survey, Department of the Interior, 119 National Center, Reston, VA 22092. Phone 703–860–7444.

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Office of Surface Mining Reclamation and Enforcement

The Office of Surface Mining Reclamation and Enforcement was established in the Department of the Interior by the Surface Mining Control and Reclamation Act of 1977 (91 Stat. 4450).

The primary goals of the Office is to assist the States in developing a nationwide program that protects society and the environment from the adverse effects of coal mining, while ensuring that coal surface mining can be done without permanent damage to land and water resources. The Office's main objectives not that most coal-mining States have assumed prime responsibility for regulating coal mining and reclamation activities within their borders, are to oversee mining and reclamation in the States with primary responsibility, to assist the States in meeting the objectives of the act, and to regulate mining and reclamation activities in these States choosing not to assume primary responsibility.

Headquartes for the Office is located in Washington, DC. In addition, there are 13 field offices, 8 area offices, and 2 technical service centers. The field offices interact with the States and other Federal agencies, assisting the States in implementing their regulatory and reclamation program, and monitoring their performance. The technical centers are designed to give technical assistance to State regulatory authorities; to provide technical expertise on such matters as unsuitability petitions, environmental impact statements, and mine plan review on Federal lands.

Activities—Major activities of the Office of Surface Mining are carried out through the Office of the Director, assisted by a Deputy Director and four Assistant Directors. The headquarters office promulgates national policy for the conduct of the surface mining control and reclamation program provided for in the act; reviews and approves amendments to previously approved State programs; and provides overall direction to the field offices and technical centers.

The Assistant Director has the following responsibilities in the areas of technical standards and research:

—Formulates policy requirements for permits, reclamation plans, and performance standards;
—Provides guidance for technical standards, special field services, environmental considerations, research, training, and technology transfer for State and Federal regulatory and abandoned mine land programs; and.
—Provides leadership and general direction to the technical service centers and the Technical Standards, Environmental and Economic Analysis, and Engineering Analysis Divisions.

In the areas of program operations and inspection, the Assistant Director:

—Formulates policy, standards, regulations, and procedures, and provides guidance for the development and conduct of State programs, Federal programs in lieu of State programs, Federal lands programs and Indian lands programs, including cooperative agreements with States for the Federal lands programs;
—Formulates policy and provides guidance for State, Federal, and Indian reclamation programs;
—Provides policy, procedures, and guidance for the review and evaluation of State programs, cooperative agreements, and abandoned mine lands programs and for the conduct of each;
—Provides policy, procedures, and guidance for the designation of lands unsuitable for mining, for the small operator assistance program, and for inspection and enforcement programs;
—Provides leadership and direction to State liaison offices and the State Program Assistance, Regulation and Inspection, Abandoned Mine Land, and Reclamation Divisions.

In the areas of management and budget, the Assistant Director:

—Formulates policy and provide guidance for budget determination and execution, personnel, administrative services, information and records management, and planning systems;
—Provides leadership and policy direction for the same activities in the field;
—Provides headquarters administrative support activities;
—Develops and presents programs and budget requests to the Department, OMB, and Congress; and
—Provides leadership and direction to the Personnel and Management Services Divisions.

In the areas of finance and accounting, the Assistant Director:

—Administers all financial systems, including civil penalties and abandoned mine lands;
—Audits State grants and abandoned mine land functions; and
—Provides policy and direction for grants administration, assessments, financial management, and collection of fines and fees.

For further information, contact the Office of Public Affairs, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, DC 20240. Phone, 202–343–4719.

Bureau of Indian Affairs

The Bureau of Indian Affairs was created as part of the War Department in 1824 and transferred to the Department of the Interior at the time of its establishment in 1849. The Snyder Act of 1921 (42 Stat. 208; 25 U.S.C. 13) provided substantive law for appropriations covering the conduct of activities by the Bureau of Indian Affairs. The scope and character of the authorizations contained in this act were broadened by the Indian Reorganization Act of 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.), the Indian Self-Determination and Education Assistance Act of 1975 (88 Stat. 2203; 25 U.S.C. 450), and title XI of the Education Amendments of 1978 (92 Stat. 2313; 20 U.S.C. 2701 note).

The principal objectives of the Bureau are to actively encourage and train Indian and Alaska Native people to manage their own affairs under the trust relationship to the Federal Government; to facilitate, when maximum involvement of Indian and Alaska Native people, full development of their human and natural resource potential; to mobilize all public and private aids to the advancement of Indian and Alaska Native people for use by them; and to utilize the skill and capabilities of Indian and Alaska Native people in the direction and management of programs for their benefit.

Functions—In carrying out these objectives, the Bureau works with Indian and Alaska Native people, other Federal agencies, State and local governments, and other interested groups in the development and implementation of effective programs for their advancement.

The Bureau seeks for them adequate educational opportunities in public education systems, assists them in the creation and management of educational systems for their own benefit, or provides from Federal resources the educational systems needed; actively promotes the improvement of their social welfare by working with them to obtain and provide needed social and community development programs and services; works with them in the development and implementation of programs for their economic advancement and for full utilization of their natural resources

consistent with the principles of resource conservation.

The Bureau also acts as trustee for their lands and moneys held in trust by the United States, assisting them to realize maximum benefits from such resources.

AREA OFFICES—BUREAU OF INDIAN AFFAIRS

	Headquarters
Aberdeen, SD 57401	115 4th Ave. SE
Albuquerque, NM 87196	5301 Central Ave. NE.
Anadarko, OK 73005	P.O. Box 368.
Billings, MT 59101	316 N. 26th St.
Juneau, AK 99802	Box 3-8000
Minneapolis, MN 55402	15 S. 5th St.
Muskogee, OK 74401	Old Federal Bldg.
Phoenix, AZ 85011	P.O. Box 7007, 3030 N. Central
Portland, OR 97208	P.O. Box 3785, 1425 NE Irving St.
Sacramento, CA 95825	2800 Cottage Way.
Eastern Area	1951 Constitution Ave. NW., Washington, DC 20245
Navajo Area	P.O. Box M, Window Rock, AZ 86515.

For further information, contact the Public Information Staff, Bureau of Indian Affairs, Department of the Interior, Washington, DC 20240. Phone, 202–343–7445.

Minerals Management Service

The Minerals Management Service (MMS) was established on January 19, 1982, by Secretarial Order 3071, under the authority provided by section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262). All Outer Continental Shelf (OCS) leasing responsibilities of the Department of the Interior were consolidated within MMS on May 10, 1982, by amendment 1 to Secretarial Order 3071. Amendment 2, dated May 28, 1982, set forth the basic organizational structure for MMS and provided for the transfer of administrative functions.

Secretarial Order 3087, dated December 3, 1982, and amendment 1, dated February 7, 1983, provided for the transfer of royalty and mineral revenue management functions, including collection and distribution, to the Minerals Management Service and transferred all onshore minerals management functions on Federal and Indian lands to the Bureau of Land Management.

MMS assesses the nature, extent, recoverability, and value of leasable minerals on the Outer Continental Shelf. It ensures the orderly and timely inventory and development, as well as the efficient recovery, of mineral resources; encourages utilization of the best available and safest-technology; provides for fair, full, and accurate returns to the Federal Treasury for produced commodities; and safeguards against fraud, waste, and abuse.

Offshore Minerals Management—MMS is responsible for resource evaluation and classification, environmental review, leasing activities (including public liaison and planning functions), lease management, and inspection and enforcement programs for Outer Continental Shelf lands.

Five-year oil and gas leasing programs are developed for leasing on OCS in consultation with the Congress, the 23 coastal States, local governments, environmental groups, industry, and the public.

MMS conducts extensive environmental studies and consultations with State officials prior to issuing leases. Once leases have been issued, MMS inspectors conduct frequent inspections of offshore operations and MMS environmental studies personnel collect more data to ensure the marine environments are kept free of pollutants.

Royalty Management—MMS is responsible for the collection of all royalty payments, rentals, bonus payments, fines, penalties, assessments, and other revenues due the Federal Government and Indian lessors as monies or royalties-in-kind from the extraction of mineral resources from Federal and Indian lands onshore and from the leasing and extraction of mineral resources on the Outer Continental Shelf.

The revenues generated by minerals leasing are one of the largest nontax sources of income to the Federal Government. As specified by law, these revenues are distributed to the States, to the general fund of the Treasury, and to Indian tribes and allottees.

The basic organization of MMS consists of a headquarters in Washington, DC, with program components located in Reston and Herndon, VA; an Accounting Center in Lakewood, CO; four OCS regional offices; and three administrative service centers.

For further information, contact the Office of Minerals Management Information, Room 1440, MS 612, Eighteenth and C Streets NW., Washington, DC 20240. Phone, 202–343–3983.

FIELD OFFICE—MINERALS MANAGEMENT SERVICE

Office	Headquarters
OCS Regional Offices	
Atlantic Region	Suite 810, 1951 Kidwell Dr., Vienna, VA 22180. Phone, 703–[illegible]-21[illegible]
Gulf of Mexico Region	P.O. Box 7944, 3301 N. Causeway Blvd., Metairie, LA 70010 Phone, 504–837–4720.

FIELD OFFICE—MINERALS MANAGEMENT SERVICE—Continued

Office	Headquarters
Pacific Region	1340 W. 6th St., Los Angeles, CA 90017. Phone 213–688–2049
Alaska Region	P.O. Box 101159, Anchorage, AK 99510. Phone 907–261–4010
Accounting Center	
Royalty Management Accounting	P.O. Box 25165, Lakewood, CO 80225. Phone, 303–231–3114.
Administrative Service Centers	
Southern Service Center	P.O. Box 7944, Metairie, LA 70010. Phone, 504–838–0616
Central Service Center	P.O. Box 25165, Lakewood, CO 80225. Phone, 303–231–3730.
Alaska Service Center	P.O. Box 101159, Anchorage, AK 99510. Phone 907–261–4050

Bureau of Land Management

The Bureau of Land Management (BLM) was established July 16, 1946, by the consolidation of the General Land Office (created in 1812) and the Grazing Service (formed in 1934). This was done in accordance with the provisions of sections 402 and 403 of Presidential Reorganization Plan 3 of 1946 (5 U.S.C. app.).

The Federal Land Policy and Management Act of 1976 (90 Stat. 2743) enacted into law on October 21, 1976, repealed and replaced many obsolete or overlapping statutes. It provides a basic mission statement for BLM and establishes policy guidelines and criteria for the management of public lands and resources administered by the Bureau.

The Bureau's basic organization consists of a headquarters in Washington, DC, a Service Center in Denver, CO, and a Fire Center in Boise, ID, that have bureauwide support responsibilities; and a field organization of State, district, and resource area offices. The Bureau also utilizes a system of advisory councils to assist in the development of management plans and policies.

The Bureau is responsible for the total management of 284 million acres of public lands. These lands are located primarily in the Far West and Alaska, however, scattered parcels are located in other States. In addition to minerals management responsibilities on the public lands, BLM also is responsible for subsurface resource management of an additional 370 million acres where mineral rights have been reserved to the Federal Government.

Resources managed by the Bureau include timber, hard minerals, oil and gas, geothermal energy, wildlife habitat, endangered plant and animal species, rangeland vegetation, recreation and cultural values, wild and scenic rivers

designated conservation and wilderness areas, and open space. Bureau programs provide for the protection (including fire suppression), orderly development, and use of the public lands and resources under principles of multiple use and sustained yield. Land use plans are developed with public involvement to provide orderly use and development while maintaining and enhancing the quality of the environment. The Bureau also manages watersheds to protect soil and enhance water quality; develops recreational opportunities on public lands; administers programs to protect and manage wild horses and burros; and, under certain conditions, makes land available through sale to individuals, organizations, local governments, and other Federal agencies when such transfer is in the public interest. Lands may be leased to State and local government agencies and to nonprofit organizations for certain purposes.

The Bureau oversees and manages the development of energy and mineral leases and ensures compliance with applicable regulations governing the extraction of these resources.

The Bureau has responsibility to issue rights-of-way, in certain instances, for crossing Federal lands under other agencies' jurisdiction. It also has general enforcement authority.

The Bureau is responsible for the survey of Federal lands and establishes and maintains public land records and records of mining claims. It administers a program of payments is lieu of taxes based on the amount of federally owned lands in counties and other units of local government.

For further information, contact the Office of Public Affairs, Bureau of Land Management, Department of the Interior, Washington, DC 20240. Phone, 202-343-9435.

FIELD OFFICES—BUREAU OF LAND MANAGEMENT

State offices	Area of responsibility	Address/telephone
Alaska	Alaska	Box 13, 701 C St., Anchorage, AK 99513. Phone, 907-271-5076.
Arizona	Arizona	P.O. Box 16563, Phoenix, AZ 85011. Phone, 602-241-5501.
California	California	Room E-2841, 2800 Cottage Way, Sacramento, CA 95825. Phone 916-484-4676.
Colorado	Colorado, Kansas	2020 Arapahoe St., Denver, CO 80205. Phone, 303-294-7090.

FIELD OFFICES—BUREAU OF LAND MANAGEMENT—Continued

State offices	Area of responsibility	Address/telephone
Eastern States	All States bordering on and west of the Mississippi River.	350 S. Pickett St., Alexandria, VA 22304. Phone, 703-235-2833.
Idaho	Idaho	3380 American Terrace, Boise, ID 83706. Phone, 208-334-1401.
Montana	Montana, North Dakota, South Dakota.	P.O. Box 36800, 222 N. 32nd St., St. Billings, MT 59107. Phone, [illegible].
Nevada	Nevada	P.O. Box 12000, 300 Booth St., Reno, NV 89520. Phone 702-784-5451.
New Mexico	New Mexico, Oklahoma, Texas.	P.O. Box 1449, S. Federal Pl., Santa Fe, NM 87504. Phone, [illegible].
Oregon	Oregon, Washington.	P.O. Box 2965, 825 NE. Multnomah St., Portland, OR 97208. Phone, 503-231-6251.
Utah	Utah	Coordinated Financial Center, 324 S. State St., Salt Lake City, UT 84111-2303. Phone, 801-524-5311.
Wyoming	Wyoming, [illegible]	P.O. Box 1828, 2515 Warren Ave., Cheyenne, WY 83001. Phone, 307-772-[illegible].

Service and Support Offices

Denver Service Center.		Denver Federal Center Bldg. 50, Denver, CO 80225. Phone, 303-[illegible].
Boise Interagency Fire Center.		3905 Vista Ave., Boise, ID 83705. Phone, 208-334-9421.

Bureau of Reclamation

The Reclamation Act of 1902 (43 U.S.C. 371 et seq.) authorized the Secretary of the Interior to locate, construct, operate, and maintain works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the Western States. To perform these functions, the Secretary in July 1902 established a Reclamation Service in the Geological Survey. In March 1907 the Reclamation Service was separated from the Survey, and in June 1923 the name was changed to Bureau of Reclamation. The name was changed to the Water and Power Resources Service on November 6, 1979, by Secretarial Order No. 3042. The name was changed back to Bureau of Reclamation on May 18, 1981, by Secretarial Order No. 3064.

The basic objectives of the reclamation program are authorized by the act of 1902 and subsequent amendatory and supplemental acts to assist the States, local governments, and other Federal agencies to stabilize and stimulate local and regional economies, enhance and protect the environment, and improve the quality of life through development of water, other renewable resources, and related land resources throughout the 17 contiguous Western States.

Reclamation projects serve multiple purposes, including: municipal and industrial water supply, hydroelectric power generation, irrigation water service, water quality improvement, wind power and solar power research, fish and wildlife enhancement, outdoor recreation, flood control, navigation, river regulation and control, and related activities authorized by Congress. Through contracts with project beneficiaries, the Bureau arranges for repayment to the Government of reimbursable project construction, operation, and maintenance costs. About 85 percent of all direct project costs are reimbursable. Interest is paid on costs allocated to power and to municipal and industrial water service.

Major reclamation functions include: investigation and development of plans for the regulation, conservation, and utilization of water and related resources, including basin-wide water resource studies and development of new sources of fresh water supplies, power capacity, and energy; design and construction of authorized projects for which funds have been appropriated by the Congress; repair and rehabilitation of existing projects; operation and maintenance of Bureau-constructed facilities that are not transferred to local organizations; review of operation and maintenance of Bureau-built facilities that have been transferred to local organizations; administration of the Small Reclamation Projects Act of 1956, and of loans for construction or rehabilitation of irrigation systems; and negotiation, execution, and administration of repayment contracts, and water-user operation and maintenance contracts.

The Bureau of Reclamation has responsibility for the operation and maintenance of 53 hydroelectric powerplants and the construction of new hydroelectric facilities on its projects, as authorized by the Congress.

In cooperation with other agencies, the Bureau prepares and/or reviews environmental statements for proposed Federal water resource projects and renders technical assistance to foreign countries in water resource development and utilization.

MAJOR OFFICES—BUREAU OF RECLAMATION

Office	Headquarters
Commissioner's Office	Room 7654, Department of the Interior, Washington, DC 20240. Phone, 202-343-4157
Engineering and Research Center	Bldg. 67, Box 25007, Denver, CO 80225. Phone 303-234-2041
Pacific Northwest Region	Box 043, 550 W. Fort St., Boise, ID 83724. Phone, 208-334-1938
Mid-Pacific Region	2800 Cottage Way, Sacramento, CA 95825. Phone, 916-484-4647
Lower Colorado Region	Box 427, Nevada Hwy. and Park St., Boulder City, NV 89005. Phone, 702-293-8419
Upper Colorado Region	Box 11568, 125 S. State, Salt Lake City, UT 84147. Phone, 801-524-5403
Southwest Region	Suite 201, 714 S. Tyler, Amarillo, TX 79101. Phone, 806-378-5437.
Missouri Region	Box 2553, 316 N. 26th St., Billings, MT 59103. Phone, 406-657-6218.

For further information, contact the Office of Public Affairs, Bureau of Reclamation, Department of the Interior, Washington, DC 20240. Phone, 202-343-4662

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OMB Circular A-76 Studies and Efficiency Reviews

AGENCY: Department of the Interior.

ACTION: Notice of OMB Circular A-76 Studies and Efficiency Reviews.

SUMMARY: The Department of the Interior is conducting OMB Circular A-76 studies and in-house efficiency reviews of several of its various activities. The studies and reviews are for the purpose of improving productivity. The studies and reviews listed are scheduled to be initiated by September 30, 1986. Other activities are expected to be added to this listing, notice of which will be similarly placed in the **Federal Register** at a later date.

ADDRESS: Department of the Interior, Office of Information Resources Management, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Bishop at (202) 343-7544.

SUPPLEMENTARY INFORMATION: The A-76 study and efficiency review processes are very detailed and labor intensive. The time required to complete a study or review depends on the organizational and geographical location, size, and complexity of the activity under study or review. Specific invitations for bid or requests for proposal will be announced in the Commerce Business Daily as A-76 studies reach the solicitation stage. No consolidated bidders lists will be maintained by the contracting offices of the major Department of the Interior organizational components in which A-76 studies are scheduled. The schedule is as follows:

A-76 Studies

Location, Activity Name and Study Start Date

Bureau of Reclamation

—Grand Coolee Project Office (WA), Motor Pool/Vehicle Maintenance, study start, 8/30/86

—Grand Coolee Project Office (WA), Warehousing/Stock Handling, study start, 9/30/86

—Southwest Regional Office (TX), Mail and File, study start, 10/29/85

—Western Slope Offices (CO), ADP/Data Transcription/Keypunch, study start, 10/18/85

—Mid-Pacific Regional Office (CA), ADP/Data Transcription/Keypunch, study start, 2/3/86

—Utah Offices (UT), ADP/Data Transcription/Keypunch, study start, 3/5/86

—Utah Offices (UT), Mail/File/Library, study start, 9/20/86

—Canyon Ferry Project Office (MT), Heavy Industrial Equipment—Operation and Maintenance, study start date not yet established

—Yellowtail Project Office (MT), Heavy Industrial Equipment—Operation and Maintenance, study start date not yet established

In-House Efficiency Reviews

Location, Activity Name and review Start Date

Minerals Management Service

—Office of Program Services—Offshore (LA), Records Management Section (Mail and File), review start, 10/30/85.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

[FR Doc. 85-29813 Filed 12-16-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Reclamation

Pleasant Valley Water District, San Luis Unit Central Valley Project, CA; Scoping Meeting and Intent to Prepare a Joint Draft Environmental Impact Statement/Environmental Impact Report (EIS-EIR)

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (as amended) and section 21002 of the California Environmental Quality Act, the Bureau of Reclamation, Department of the Interior, and the Pleasant Valley Water District (district) intend to prepare a joint EIS-EIR. The EIS-EIR will address the impacts of delivering water to, and the construction and operation of, the Pleasant Valley Water Distribution System.

Other environmental review and consultation requirements will be met concurrently with the NEPA process. These include applicable requirements of the Clean Water Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Endangered Species Act, and Executive Orders 11988 and 11990 regarding floodplains and wetlands.

The purpose of the proposed plan is to deliver 40,000 acre-feet of Central Valley Project water on an interim basis for an undetermined period, with appropriate shortages in critical water years, to agricultural users in the district near Coalinga, California. It is anticipated that water will be wheeled from the Delta by the California Department of Water Resources to the O'Neill Forebay and possibly as far as the Coalinga Canal turnout from the San Luis Canal. Final transportation to the point of delivery to the district will be through facilities of the United States. The plan will consist of pumping facilities along the existing Coalinga Canal (Pleasant Valley Canal) and a distribution system to deliver water to existing developed lands which have been irrigated by ground water for the past 70 years. No new lands will be developed as a result of this project.

Alternatives currently under consideration for the proposed distribution system include:

(1) Pumping facilities and a pipeline network distribution system with turnouts for individual farms.

(2) Pumping facilities and discharge pipelines with concrete-lined canals and pipeline lateral turnouts for individual farms.

(3) Pumping facilities and discharge pipelines with unlined canals and reservoirs. Farmers would install their own conveyance facilities to their farms.

(4) No action.

A public scoping meeting will be held at 7:30 p.m. on December 19, 1985, in the Everett Hall, West Hills Community College, 300 West Cherry Lane, Coalinga, California. The purpose of the hearing is to solicit information from all interested organizations and individuals relating to alternatives to the proposed plan, the scope of the EIS-EIR, and significant issues related to the proposed action. Written comments from those unable to attend and from those wishing to supplement their oral presentation at the meeting should be submitted by January 10, 1986, to the Bureau of Reclamation at the address provided below.

The Bureau of Reclamation contact person for this environmental statement is Rick Breitenbach, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, telephone (916) 978–5130.

The Pleasant Valley Water District contact person is Roger Reynolds, Senior Engineer, Summers Engineering, Inc., P.O. Box 1122, Hanford, California 93232, telephone (209) 582–9237.

Dated: December 12, 1985.

Clifford I. Barrett,

Acting Commissioner of Reclamation.

[FR Doc. 85–29808 Filed 12–16–85; 8:45 am]

BILLING CODE 4310–09–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service's clearance officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: National Wildlife Refuge Economic and Public Use Permits.

Abstract: This information collection provides information necessary to issue permits for otherwise prohibited activities on national wildlife refuges. The information collected is necessary to identify and contact applicants, and determine eligibility for permit issuance.

Form Number(s) 3–2001.

Frequency: On occasion.

Description of Respondents: Individuals or households, farms, businesses, non-profit organizations, and small entities.

Annual Responses: 146,842.

Annual Burden Hours: 15,146.

Service Clearance Officer: Arthur J. Ferguson 202–653–7499 Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: November 29, 1985.

Walter O. Stieglitz,

Acting Associate Director, Wildlife Resources.

[FR Doc. 85–29814 Filed 12–16–85; 8:45 am]

BILLING CODE 4310–55–M

Yukon Flats National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review

AGENCY: Fish and Wildlife Service.

ACTION: Notice of Availability; supplement to the draft plan.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a supplement to the draft Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Yukon Flats National Wildlife Refugee, Alaska, pursuant to section 304(g)(1) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) and section 102(2)(C) of the National Environmental Policy Act of 1969. The supplement to the draft CCP/EIS focuses on the impacts of allowing geologic and geophysical activities (including seismic) throughout the refuge under all five alternatives analyzed in the plan and on the impacts of leasing in areas of the refuge under intensive and moderate management under two alternatives. This supplement was required in order to incorporate the Fish and Wildlife Service's policy on oil and gas exploration and leasing on Alaska refuges under section 1008 of the Alaska National Interest Lands Conservation Act into the draft CCP/EIS for the Yukon Flats National Wildlife Refuge. The draft CCP/EIS, as initially released in September 1985, allowed seismic activities in only two alternatives and oil and gas leasing in only one alternative.

DATES: Public hearings on the Draft CCP/EIS and supplement for the Yukon Flats Refuge will be held at the North Star Borough Library, 1215 Cowles Street, Fairbanks, Alaska, on January 7, 1986, at 7:30 p.m. and at the Pioneer School. House, 3rd and Eagle, Anchorage, Alaska, on January 9, 1986, at 7:00 p.m.

Remarks on the draft CCP/EIS and supplement must be submitted on or before February 10, 1986, to receive consideration by the Regional Director in preparing the final CCP/EIS.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

A supplement to the draft CCP/EIS has been prepared for general distribution. Copies of the supplement will be sent to all persons, organizations, and agencies which particiapted in either scoping, the alternative workshop, and/or the public review process. Copies of the supplement will be sent to all agencies and persons who have already requested copies. Those wishing to review the supplement and the draft CCP/EIS may obtain copies by contacting Mr. Knauer.

Copies of the supplement and the draft CCP-EIS are available for public review at the above location; at the Yukon Flats National Wildlife Refuge Office, Federal Building, 101–12th Avenue, Fairbanks, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, Interior Building, 18th and C Streets, NW, Washington, DC 20240

U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232

U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Wilflife Resources, Federal Building, Fort Snelling, Twin Cities, NM 55111

U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Boulevard, Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The supplement includes those changes required by the restatement of the Fish and Wildlife Service policy on oil and gas exploration and leasing on Alaska refuges. The supplement contains only those sections of the draft CCP/EIS where changes were necessary to reflect the oil and gas policy.

The draft CCP/EIS allowed ground-disturbing geologic and geophysical activities (including seismic) only on areas of the refuge under intensive and moderate management. Under the Service's policy on oil and gas exploration, geological and geophysical activities (including seismic) may be allowed throughout the refuge if compatible with refuge purposes. Seismic activities would only be

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allowed following completion of the final CCP and Record of Decision (ROD). Ground-disturbing activities would not be allowed in Congressionally designated wilderness unless conducted by an Interior Department agency (or by someone under contract to an Interior agency) with appropriate stipulations to ensure compatibility with wilderness management objectives.

Section 1008 of the Alaska National Interest Lands Conservation Act directs the Secretary of the Interior to establish and oil and gas leasing program on Federal lands. Such a program shall not be undertaken on those units of the National Wildlife Refuge System where, after having considered the national interest in producing oil and gas from such lands, it is determined that the exploration for and development of oil or gas would be incompatible with the purposes for which the refuge was established.

In the draft CCP/EIS, oil and gas leasing was allowed only on areas of the refuge under intensive management. Under the Service's policy on oil and gas leasing, leasing may be allowed on areas of the refuge under intensive and moderate management if compatible with refuge purposes. On areas of the refuge under minimal management in *all* the alternative leasing will automatically be considered incompatible with refuge purposes, while leasing may be allowed in other minimal management areas only if it is determined to be in the national interest. Leasing will not be permitted in Congressionally designated wilderness areas. No leasing program will be initiated prior to the final CCP and issuance of the ROD. If a national interest determination has not been incorporated into the final CCP and ROD, any formal leasing program will be delayed until this has been considered. If adequate information on oil and gas potential on the refuge is lacking, the national interest determination may be delayed until the Bureau of Land Management can assess potential.

Following the public comment period on the draft plan and supplement for the Yukon Flats Refuge, an initial compatibility determination on leasing on the Yukon Flats Refuge will be made. This determination will be based on resource values of the refuge and the subsistence use areas identified in the plan together with public comments. If leasing is determined to be incompatible, Alternatives B and C will be revised to reflect the fact that oil and gas leasing would not be allowed. If leasing is determined to be compatible, either Alternative B or C would be selected as the preferred alternative.

If leasing is determined to be incompatible with refuge purposes, the Final CCP/EIS would note that should leasing be determined to be in the national interest at a later date, the plan would require revision to reflect this change.

Dated: December 6, 1985.

Robert E. Gilmore,

Regional Director.

[FR Doc. 85-29778 Filed 12-16-85; 8:45 am]

BILLING CODE [illegible]

Minerals Management Service

Development Operations Coordination Document; Howell Petroleum Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Howell Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4909, Block 64, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on December 5, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The prupose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCD, available to affected states, executives of affected local governments, and other interested parties become effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 6, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-29768 Filed 12-16-85; 8:45 am]

BILLING CODE [illegible]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-196]

Certain Apparatus for Installing Electrical Lines and Components Therefor; Decision to Deny Complainant's Petition for Reconsideration of Commission Determination; Reformation of Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Denial of complainant Scoggins Manufacturing Inc.'s (SMI) petition for reconsideration of the Commission's determination, and, on Commission's own motion, reformation of cease and desist orders issued to Emergency Products Corp. (EPC) and Alarm Supply Co., Inc. (ASC) to apply to all infringing imported apparatus in inventory, not just apparatus imported after June 20, 1984.

SUMMARY: The Commission has determined to deny SMI's petition for reconsideration pursuant to Commission rule 210.60 of the Commission's decision of June 20, 1985, requesting that the cease and desist orders to EPC and ASC to be amended, because SMI had the opportunity to brief the Commission on the issue in the original investigation, but chose not to do so. The Commission, however, has determined on its own motion to reform the cease and desist orders in order to reflect the Commission's original intention that they apply to all infringing imported products in inventory, not just apparatus imported after June 20, 1984.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of General Counsel, U.S. International Trade Commission, telephone 202–523–0499. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION: On May 14, 1984, complainant pursuant to

section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging unfair methods of competition and unfair acts in the importation and sale of certain apparatus for installing electrical lines. On June 20, 1984, the Commission instituted an investigation to determine whether there is a violation of section 337 by reason of: (1) Direct, contributory, and induced infringement of the claims of U.S. Letters Patents Nos. 3,697,188 and 3,611,549; (2) infringement of complainant's common-law trademark; (3) false advertising; and (4) passing off.

On June 20, 1985, the Commission determined that there was a violation of section 337 and issued a general exclusion and two cease and desist orders directed to respondents ASC and EPC.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and in § 210.60 of the Commission's Rules of Practice and Procedure, 19 CFR 210.60.

Notice of this investigation was published in the **Federal Register** of June 20, 1984 (49 Fr 25318).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Issued: December 6, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–29831 Filed 12–16–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–217]

Certain Expansion Tanks; Determination Not To Review Initial Determination Terminating Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation on the basis of a settlement agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) terminating the above-captioned investigation on the basis of a settlement agreement. On October 2, 1985, complainant AMTROL, Inc., and respondents Vent-Rite Valve Corp., Emerson-Swan, Inc., Flamco BV, and Internatio-Muller NV, filed a joint motion to terminate the above-referenced investigation on the basis of a settlement agreement among the parties. On November 7, 1985, the administrative law judge issue an ID granting the joint motion and terminating the investigation on the basis of the settlement agreement.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53). Notice of the ID was published in the **Federal Register** of November 20, 1985 (50 FR 47853). No petitions for review were filed, nor were any agency or public comments received with regard to the ID.

Copies of the Commission's action and order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–725–0002.

Issued: December 11, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–29832 Filed 12–16–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–207 (Final)]

Cellular Mobile Telephones and Subassemblies Thereof From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1673(b)(1)), that industries in the United States are materially injured by reason of imports from Japan of cellular mobile telephones and subassemblies thereof, provided for in items 685.28 and 685.32 of the Tariff Schedules of the United States, which

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler dissenting.

have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[3]

Background

The Commission instituted this investigation effective June 11, 1985, following a preliminary determination by the Department of Commerce that imports of the subject articles from Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 3, 1985 (50 FR 27496). A notice revising the Commission's schedule for the conduct of the investigation was published in the **Federal Register** of July 31, 1985 (50 FR 31050). The hearing was held in Washington, DC, on October 30, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 9, 1985. The views of the Commission are contained in USITC Publication 1786 (December 1985), entitled "Cellular Mobile Telephones and Subassemblies Thereof from Japan: Determination of the Commission in Investigation No. 731-TA-207 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: December 9, 1985.

By Order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 85-29833 Filed 12-16-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-254 (Final)]

Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-254 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United Sttes is materially retarded, by reason of imports from Canada of welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness not less than 0.156 inch, not threaded and not otherwise advanced, other than pipe conforming to American Petroleum Institute (A.P.I.) specification for oil-well casing, provided for in item 610.39 of the Tariff Schedules of the United States, whch have been found by the Department of Commerce, in a final determination, to be sold in the United States at less than fair value (LTFV). The Commission will make its final injury determination by February 4, 1985 (see section 735(b) of the act (19 U.S.C. 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 22, 1985.

FOR FURTHER INFORMATION CONTACT: Cynthia Wilson (202-523-0291) or Robert Eninger (202-523-0312), Office of Investigations, U.S. International Trade Commission, 701, E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Comission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative final determination by the Department of Commerce that imports of certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigtion was requested in a petition filed on March 25, 1985, by counsel on behalf of Bull Moose Tube Co., St. Louis, Mo; Copperweld Tubing Group, Pittsburgh, PA; Kaiser Steel Corp., Los Angeles, CA; Maruichi American Corp., Santa Fe

[3] Commissioner Lodwick determines that an industry rather than industries, is the subject of material injury.

Springs, CA; UNR–Leavitt, Chicago, IL; and Welded Tube Co. of America, Chicago, IL. In respone to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 20302, May 15, 1985).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on December 23, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 11:00 a.m. on January 10, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 3, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 30, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is January 3, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Comission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 16, 1986. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 16, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: December 6, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–29635 Filed 12–16–85; 8:45 am]

BILLING CODE 7025–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30755]

Colorado & Eastern Railroad Co.; Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Colorado & Eastern Railroad Company from the provisions of 49 U.S.C. 11301 in connection with the issuance of 1,000 shares of no par value stock which will serve as collateral for a loan.

DATES: This exemption is effective on December 13, 1985. Petitions to reopen must be filed by January 6, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30755 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Joseph H. Dettmar, 1000 Potomac St., NW, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: December 11, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Simmons did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85–29824 Filed 12–16–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 170X)

Seaboard System Railroad, Inc.; Abandonment Exemption in Hamilton, Saline and Gallatin Counties, IL; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 38.49-mile line of railroad between milepost M–384.55 near McLeansboro and milepost M–423.04 near Shawneetown in Hamilton, Salina; and Gallatin Counties, IL.

Applicant has certified: (1) That no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption wil be effective January 16, 1986, unless stayed pending reconsideration). Petitions to stay must be filed by December 27, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by January 6, 1986 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commssion should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: December 11, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–29777 Filed 12–16–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 29–85]

Privacy Act of 1974; Modified of System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Civil Rights Division (CRT), Department of Justice hereby publishes notice of its intent to modify a system of records entitled "Correspondence Relating to Civil Rights Matters from Persons Outside the Department of Justice, JUSTICE/CRT–008," most recently published on August 21, 1985 (50 FR 33863).

Modifications to the system notice include revision of the "Storage," "Retrievability," and "Safeguards" sections to reflect the proposed automation of JUSTICE/CRT–008 records. In addition, CRT will modify JUSTICE/CRT–008 by adding a routine use to provide for the disclosure of records during the ordinary course of litigation.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the proposed automation of the system. Therefore, the public, OMB, and the Congress are invited to submit comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street, NW., Washington, D.C. 20530. Comments must be received February 18, 1986. If no comments are received, the proposed routine use and automation of the system will be implemented without further notice in the **Federal Register.**

Dated: November 14, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/CRT–008

Files on Correspondence Relating to Civil Rights Matters from Persons Outside the Department of Justice.

SYSTEM LOCATION:

U.S. Department of Justice; Civil Rights Division (CRT); 10th and Constitution Avenue NW.; Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons communicating in written form in person or by telephone, including complaints, requests for information or action, or expressions of opinion regarding civil rights matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains original correspondence regarding civil rights matters from persons, cover letters or notes from persons referring original correspondence to the Department attorney or other emnployees notes regarding the correspondence, and copies of CRT responses to the original correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is maintained pursuant to 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to CRT under the provisions of 28 CFR 0.50.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used by employees and officials of the Department to respond to incoming correspondence, to compile statistics for use in preparation budget requests, to insure proper disposition of incoming mail, to determine the status and content of responses to correspondence, to respond to inquiries from Division personnel, Office of Legislative Affairs and Congressional offices regarding the status of correspondence, and to carry out other authorized functions of the Department

A record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which the Civil Rights Division is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation

BEST COPY AVAILABLE

and such records are determined by the Civil Rights Division to be arguably relevant to the litigation. A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings.

Information the system regarding individual pieces of correspondence may be provided to Members of Congress upon request in instances where the Members making the request referred the correspondence in question to the Department.

A record may be accessed by volunteer student workers and students working under a workstudy program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Member of Congress. Information in the system may may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration. A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are primarily index cards and original letters or copies thereof.

The index cards and incoming letters are stored in filing cabinets in locked offices, and on disks for automated office equipment; correspondents' names, file numbers, the types of complaints, CRT response to complainants or other corresponding persons, and records of referrals are stored on magnetic cartridges for access by computer.

RETRIEVABILITY:

Information may be retrieved through use of card index file system, automated office equipment, or by logical queries to the computer based system. The information on the index cards, on disks for automated office equipment, and on the computer is organized into indexes (1) arranged according to the name of citizens that corresponded with the Department and (2) arranged to the name of members of Congress or White House staff Members who have referred correspondence to the Department.

SAFEGUARDS:

Information in the system is unclassified. Information in manual and computer form is safeguarded and protected in accordance with applicable Departmental security/regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer or to access the stored information. All records in the system are protected by locks on the storage facility, computer, and by locks on the room that contains the records.

RETENTION AND DISPOSAL:

Citizen correspondence unrelated to matters within the jurisdiction of the Civil Rights Division is destroyed ninety days from the date of correspondence. There are no provisions for disposal of the other records in this system although such procedures are currently under active consideration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General: Civil Rights Division; U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." The request should include the name of the correspondent, his address or the name of the Member of Congress or White House staff member who referred the correspondence to the Department, if known, the Department of Justice file number, if known, and the date of the correspondence. The requester will also provide a return address for transmitting the information. Access requests will be directly to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and consisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the original correspondents, persons referring original correspondence to the Department, and employees and officials of the Department responsible for the disposition of the correspondence.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85-29654 Filed 12-16-85; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 30-85]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Criminal Division, proposes to establish a new system of records entitled "Office of Special Investigations Displaced Persons Listings, Justice/CRM-027." The purpose of the system is to ascertain if individuals who submitted entry visa applications to the United States under the Displaced Persons Acts (in force from 1948 to 1952) made fraudulent statements to gain such entry. The system will also be used to locate potential witnesses to such cases being investigated by the Division.

In the Proposed Rules Section of today's **Federal Register**, the Criminal Division also proposes to exempt portions of the system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). The exemption is needed to protect the information received from confidential sources, and to preserve the identity of such confidential sources and of other individuals who might serve as witnesses against an individual, or who might otherwise be of investigative interest to the Criminal Division.

5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires that it be given a 60-day period in which to review the system. However, the Department has requested a waiver of the 60-day requirement.

Therefore, please submit any comments by January 16, 1986. The public, OMB and Congress are invited to send written comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street, NW., Washington, DC 20530.

In accordance with Privacy Act requirements, the Department of Justice has provided a report on the proposed system to the Director, OMB, the President of the Senate, and the Speaker of the House of Representatives.

Dated: October 2, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/CRM-027

SYSTEM NAME:

Office of Special Investigations (OSI) Displaced Persons Listings.

SYSTEM LOCATION:

U.S. Department of Justice, Criminal Division, 10th and Constitution Avenue, NW., Washington, DC 20530; and Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who applied for entry visas into the United States under the Displaced Persons Acts in force from 1948 to 1952 and for whom the United States Army Counterintelligence Corps assembled visa investigation files.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indexes bearing the names of persons who applied for entry visas under the Displaced Persons Acts, their visa applications, investigative reports and any other supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101 and is intended to assist in implementing and enforcing the criminal laws of the United States, particularly those Criminal Statutes codified in "Criminal Laws," United States Code. The system is also maintained to implement the provisions codified in 28 CFR 0.55 and 0.61.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by OSI personnel as source material to locate potential witnesses who might be able to provide information of investigative interest. However, a record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) Records, or some part thereof, relating to a particular visa applicant, may become a part of an investigative record maintained in a published system of records entitled "Central Criminal Division Index File and Associated Records, JUSTICE/CRM-001" and be subject to the routine uses of that system; (2) a record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement; (3) a record may be disseminated to a Federal, State, local, foreign, or international enforcement agency to assist in the general crime prevention and detection efforts of the recipient agency or to provide investigative leads to such agency; and (4) a record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in apprehending and/or returning a fugitive to a jurisdiction which seeks his return.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index records in this sytem will be stored by name and control number on an IBM System/38. The actual records are papers in files stored in file boxes on shelves in locked record storage rooms.

RETRIEVABILITY:

Records stored in this sytem can be retrieved by the name of the individual, and by the control number of the record.

SAFEGUARDS:

Appropriate steps have been taken to preserve security and minimize the risk of unauthorized access to the system. Staff members who use the computer to input data or who have access to the stored data have been given specific identification codes or passwords by the system security officer which will restrict access to specific data. The files will be kept in a locked room with restricted access.

RETENTION AND DISPOSAL:

Currently there are no provisions for the disposal of records in the system.

SYSTEM MANAGER AND ADDRESS:

Assistant Attorney General, Criminal Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Inquire in writing to the system manager listed above.

RECORD ACCESS PROCEDURE:

Portions of this system ae exempt from disclosure and contest by 5 U.S.C. 552a(k)(2). Make all requests for access to those portions not so exempted by writing to the system manager identified above. Clearly mark the envelope and letter "Privacy Access Requests." provide the full name and notarized signature of the individual who is the subject of the record, his/her date and place of birth, or any other identifying number or information which may assist in locating the record; and, a return address.

CONTESTING RECORD PROCEDURE:

Direct all requests to contest or amend information maintained in the system to the system manager listed above. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

The information in this system was originallly compiled during the course of investigations undertaken by the United States Army Counter Intelligence Corps pursuant to the Displaced Persons Acts in effect from 1948 to 1952. For the most part, the information in this system was obtained directly from the visa applicant himself, but the records would also contain information from other individuals or entities which would have

shed light on the information supplied by the visa applicant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 52a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e), and have been published in the **Federal Register.**

[FR Doc. 85-29655 Filed 12-16-85; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 26-85]

Privacy Act of 1974; Modified Systems of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the United States Marshals Service (USMS), Department of Justice, is republishing the system of records entitled "Warrant Information System (Justice/USM-007)." This system was last published on February 4, 1983 at 48 FR 5378.

The amended system notice is reprinted below. The USMS has revised the system notice to add new routine uses which will permit access by public and private organizations and individuals, and by State, local, and foreign law enforcement agencies, to the extent necessary to gain information and cooperation in USMS fugitive investigations and apprehension efforts, and to assist other law enforcement agencies in their authorized law enforcement activities. It has also clarified a previously published routine use which allows disclosure to an appropriate court. Finally, in addition to making changes to clarify and better describe the system, it has revised the notice to reflect the proposed exemption from additional subsections of the Act, i.e., subsections (e)(1) and (3)(5). (A proposed rule to exempt the system from these additional subsections appears in today's **Federal Register**.) All changes have been italicized for public convenience.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses. Accordingly, address and submit any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Room 9002, Justice Management Division, Department of Justice, 601 D Street, NW, Washington, D.C. 20530 by January 16, 1986.

Since the new routine uses are compatible with the purposes for which this system is maintained, the Department will not be submitting a report to the Office of Management and Budget and the Congress.

Dated: November 14, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/USM-007

SYSTEM NAME:

Warrant-Information System.

SYSTEM LOCATION:

Each district office of the U.S. Marshals Service (USMS) maintains their own files. See Appendix.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

Individuals for whom Federal warrants have been issued.

CATEGORIES OF RECORDS IN THE SYSTEM:

The warrant and other court records and internal correspondence related to the warrant; biographical data including physical description, photograph and criminal history; wanted flyers/posters and investigative reports reflecting patterns of activity, leads developed, statements of witnesses and other persons cooperating with USMS fugitive investigations. Investigative reports and criminal record information from other Federal, State, local and foreign law enforcement agencies participating in or cooperating with USMS fugitive investigations and apprehension efforts are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 USC 509, 510 and 569; 28 CFR 0.111(a).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information may be disclosed to public and private organizations, individuals, and Federal, State, local, and foreign agencies to the extent necessary to obtain information or cooperation in USMS fugitive investigations and apprehension efforts. Recores or information may be disclosed upon request to the appropriate Federal, State, local, or foreign law enforcement agency responsible for investigating, prosecuting, enforcing, defending, or implementing a statute, rule, regulation, or order, to the extent that the information is relevant to the recipient's function. Records may be disclosed without a request to an appropriate Federal, State or local law enforcement agency where there is an indication of an actual or potential violation of civil or criminal laws, statutes, rules, or regulations within the jurisidiction of the recipient agency. Records or information may be disclosed in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; and USMS employee in his or her official capacity, or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisons.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on Roladex Cards and in standard file folders.

RETRIEVABILITY:

Records are retrieved by individual names.

SAFEGUARDS:

Access is restricted to personnel in each district's U.S. Marshals office. *Records are maintained in metal file cabinets within supervised areas of the U.S. Marshal's Offices. District Offices are locked during working and non-duty hours and entry is restricted to employees with official identification.*

RETENTION AND DISPOSAL:

Records are kept in operating file until warrant is executed and then transferred to closed files, where they are indefinitely kept.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Enforcement Opeations Division: U.S. Marshals Service: U.S. Department of Justice: One Tysons Corner Center, McLean, Virginia 22102.

RECORD SOURCE CATEGORIES:

Information is obtained from the courts, Federal, State, local and foreign law enforcement agencies, public and private organizations, witnesses, informants and other persons interviewed during the course of the fugitive investigation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). (2) Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 85-29656 Filed 12-16-85; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 24-85]

Privacy Act of 1974; New Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, (5 U.S.C. 552a), the U.S. Marshalls Service, Department of Justice, is publishing notice of five new systems of records. They are:

U.S. Marshals Service Threat Analysis Information System (JUSTICE/USM-009);
Judicial Facility Security Index System (JUSTICE/USM-010);
Judicial Protection Information System (JUSTICE-USM-011);
U.S. Marshals Service Freedom of Information/Privacy Act Files (JUSTICE/USM-012); and
U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files (JUSTICE/USM-013).

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on the routine uses of these systems; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the systems. However, a waiver of the 60-day requirement has been requested of OMB. Therefore, please submit any comments by January 16, 1986. The public, OMB, and the Congress are invited to submit comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street, NW., Washington, DC 20530.

The Department has provided a report on each of these systems to the Director, OMB, the President of the Senate, and the Speaker of the House of Representatives in accordance with Privacy Act requirements.

The system descriptions are printed below.

Dated: November 12, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/USM-009

SYSTEM NAME:

U.S. Marshals Service Threat Analysis Information System (Justice/USM-009).

SYSTEM LOCATION:

Threat Analysis Group, U.S. Marshals Service (USMS), One Tysons Corner Center, McLean, Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have directly threatened or pose a violent threat to Government witnesses, U.S. Attorneys and their assistants, Federal jurists and other court officials, U.S. Marshals, deputies and other law enforcement officers; to courtroom security; and to Federal property and buildings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated indices contain abbreviated data, e.g., case number, name, social security number, known aliases, address, telephone number, descriptive physical data, an indication of the means by which the threat was issued, and the date of the threat. In addition to the abbreviated data named above, the complete file may contain criminal record information—in particular, known history of violence and skills related to the nature of the threat, associations with dangerous/outlaw gangs or violent extremist groups; and threat-related, investigative information furnished by other Federal, State and local law enforcement agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510, and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(c) through (f).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

USMS officials responsible for conducting threat analysis and for planning and carrying out security operations access this information. Records or information may be disclosed to other appropriate Federal, State and local law enforcement agencies in connection with actual or potential violation of criminal or civil laws, statutes, or regulations, or in conjunction with investigative or litigative responsibilities of the recipient agency, or to the extent that disclosure is necessary to obtain additional threat-related information or to develop protective measures. Records or information may be disclosed to other law enforcement agencies to develop protective measures where a specific threat is posed to their members; and to an individual or organization where the recipient is or could become the target of a specific threat. Records or information may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: the USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an

unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice may be disclosed as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

Release of Information to the National Archives and Records Administration:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on index cards and magnetic disks. Original paper records are kept in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by name.

SAFEGUARDS:

Access to computerized records is restricted to Threat Analysis Group personnel by assigned code. In addition, records are stored in locked metal filing cabinets during off-duty hours. The records are located in a restricted area and USMS Headquarters is under 24-hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by NARS and the USMS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Threat Analysis Group, U.S. Marshals Service, One Tysons Corner Center, McLean, Virginia 22102

NOTIFICATION PROCEDURE:

Direct all inquiries to the system manager identified above. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURE:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate date of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information is obtained from public and confidential sources and from Federal, State and local law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/USMS-010

SYSTEM NAME:

Judicial Facility Security Index System (JUSTICE/USM-010).

SYSTEM LOCATION:

Court Security Division, U.S. Marshals Service, (USMS) One Tysons Corner Center, McLean, Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals employed, or offered employment, as contract court security officers (CSO's) by companies contracting with the USMS to provide judicial area security in Federal courthouses.

CATEGORIES OF RECORDS IN THE SYSTEM:

An alphabetical index contains the name, date of birth and social security number of the court security officer, name of the contracting security firm (employer), completion dates and cost data for limited background investigation and orientation, district of employment, dates contract performance started and ended, posts and hours of duty and the status of employment, i.e., active or inactive. For inactive CSO's, the index contains the reason for inaction, e.g. CSO resigned; applicant rejected based on the preliminary records check; CSO removed based on Office of Personnel Management (OPM) background investigation; etc. In addition to providing abbreviated data, the index assists in locating records on the court security officer related to the initial screening process for eligibility, e.g., application and preliminary checks for arrest records, which are filed under the contract number and name of the contracting security firm (employer). The index also assists in locating files containing OPM reports on the limited background investigation and internal suitability memoranda which are segregated by the categories "active" and "inactive."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101 and 28 CFR 0.111(c) through (f).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Contracting personnel and court security program officers within the USMS use this system to make security/suitability determinations in the hiring of contract court security officers, to monitor orientation completed, to track costs related to background investigations and attendance at Government-sponsored orientation, to monitor orientation completed, and to monitor contractor performance. Records may be disclosed as follows: Individual cost data may be disclosed to the contractor (employer) in connection with billing and recovering reimbursable costs. Records or information may be disclosed to an appropriate Federal, State or local law enforcement agency to the extent necessary to obtain information on arrests, or to the extent relevant to an actual or potential, criminal or civil investigation, litigation or enforcement proceedings of that agency. Records or information may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that

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the litigation is likely to affect it or any of its subdivisions.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice may be disclosed as is necessary to appropriately respond to congressional inquires on behalf of constituents.

Release of information to the National Archives and Records Administration:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (CNARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on magnetic disks and original paper records are kept in file folders.

RETRIEVABILITY:

Records are retrieved by name of the contract court security officer.

SAFEGUARDS:

Records are stored in locked metal filing cabinets during off-duty hours. Access to computerized records is controlled by restricted code to personnel on a need-to-know basis. Entry to USMS Headquarters is restricted by 24-hour guard service to employees with official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by NARS and the USMS.

SYSTEM MANAGER AND ADDRESS:

Chief, Court Security Division, U.S. Marshals Service, One Tysons Corner Center, McLean, Virginia 22102.

NOTIFICATION PROCEDURES:

Direct all inquiries to the system manager identified above. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information contained in this system is collected from the individual, USMS orientation records, other law enforcement agencies, OPM, and from the contractor (employer).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (d) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register.**

JUSTICE/USM-011

SYSTEM NAME:

Judicial Protection Information System (JUSTICE/USM-011)

SYSTEM LOCATION:

Court Security Division, U.S. Marshals Service, (USMS), One Tysons Corner Center, McLean, Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been directly threatened or are subject to violent threat by virtue of their responsibilities within the judicial system, e.g., U.S. Attorneys and their assistants, Federal jurists and other court officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Manual and automated indices contain abbreviated data, e.g., case number, name of protectee, name of control district and district number, an indication of the type and source of threat, and the means by which the threat was made. In addition to the abbreviated data named above, the complete file may contain descriptive physical data of the protectee, and other information to identify security risks and plan protective measures in advance of or during periods of active protection, e.g., individual practices and routines, including associational memberships. Information regarding the expenditure of funds and allocation of resources assigned to the protectee may also be included in the file to enable officials to develop operating plans to counteract threat situations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 509, 510 and 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111(c) through (f).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

USMS officials responsible for planning and carrying out security operations access this information. Other Federal, State and local law enforcement agencies have access to the extent that disclosure is necessary to develop and/or implement protective measures. Records or information may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following in a party to litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an

unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice may be disclosed as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

Release of Information to the National Archives and Records Administration:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

An index record is stored on index cards and magnetic tape. Original paper records are kept in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by name of protectee.

SAFEGUARDS:

Access to computerized records is restricted to Court Security Division personnel by assigned user code and password. In addition, records are stored in locked metal cabinets during off-duty hours. The records are located in a restricted area, and USMS Headquarters is under 24-hour guard protection with entry controlled by official and electronic identification.

RETENTION AND DISPOSAL:

Records are maintained indefinitely until a detailed records retention plan and disposal schedule is developed by NARS and the USMS.

SYSTEM MANAGER AND ADDRESS:

Chief, Court Security Division, U.S. Marshals Service, One Tysons Corner Center, McLean, Virginia 22102.

NOTIFICATION PROCEDURES:

Direct all inquiries to the system manager identified above. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information to the system manager identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information/Privacy Act Request."

RECORD SOURCE CATEGORIES:

Information is obtained from individual protectees. Where information is maintained in this system on identified threat sources to a particular protectee, such information is obtained from public and confidential sources and from Federal, State and local law enforcement agencies, and is not retrievable by name or other identifying particular assigned to the threat source.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/USM-012

SYSTEM NAME:

U.S. Marshals Service Freedom of Information Act/Privacy Act (FOIA/PA) Files (JUSTICE/USM-012)

SYSTEM LOCATION:

Office of Legal Counsel, U.S. Marshals Service, One Tysons Corner Center, McLean, Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request disclosure of U.S. Marshals Service (USMS) records pursuant to the Freedom of Information Act (FOIA); individuals who request access to or correction of records maintained in USMS systems of records pursuant to the Privacy Act (PA); and individuals whose FOIA or PA requests have been referred to the USMS by another Department of Justice component or another agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alphabetical and chronological indices are maintained to aid in the orderly processing of requests and to compile statistical data for annual reports. Indices include such data items as the name and address of the requester; the type of request; dates on which the request was received, acknowledged and answered; type of final response; and exemptions used to deny access to records, when applicable. Identifying data, i.e., data and place of birth and social security number, is maintained on PA requesters to verify their identity and ensure proper disclosure. Files contain a record of the FOIA/PA request, along with the response, copies of documents which have been requested, and internal memoranda or other records related to the initial processing of such request, subsequent appeals and/or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5. U.S.C. 301 and 44 U.S.C. 3101 to implement the provisions of 5 U.S.C. 552 and 5 U.S.C. 552a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system may be disseminated as a rountine use to any Department of Justice component for consideration in connection with an FOIA or PA request, appeal, or civil suit pursuant to the Acts. A record may be disseminated to a Federal, State or local agency which furnished the record to permit that agency to make a decision as to access or correction, or to consult with that agency to enable the USMS to determine the propriety of access or correction.

Records or information which are relevant to the subject matter involved in a pending judicial or administrative proceeding may be disclosed in response to a request for discovery or for appearance of a witness. Records or information may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions.

Release of Information to the News Media

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of

a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice may be disclosed as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

Release of Information to the National Archives and Records Administration:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards are stored in standard card file boxes. Request files are stored in standard file cabinets.

RETRIEVABILITY:

Records are retrieved by name of requester.

SAFEGUARDS:

Request files are stored in locked metal filing cabinets within the Office of Legal Counsel, USMS headquarters, during off-duty hours. Access to USMS headquarters is controlled by 24-hour guard service.

RETENTION AND DISPOSAL:

Records are destroyed 5 years after final response or appeal determination by the Department of Justice, Office of Information and Privacy; or 3 years after final adjudication by the courts.

SYSTEM MANAGER AND ADDRESS:

General Counsel, Office of Legal Counsel, U.S. Marshals Service, One Tysons Corner Center, McLean, Virginia 22102.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above, Attention: FOIA/PA Officer. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD ACCESS PROCEDURE:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the record, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individuals making requests, the systems of records searched in the process of responding to requests, and other agencies who have referred to the USMS those requests for access to or correction of USMS records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney general has exempted certain categories of records in this system from subsections (c) (3) and (4); (d); (e) (1), (2) and (3); (e)(4) (G) and (H); (e)(5); (e)(8); (f); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(2) and (k)(5). The system is expected pursuant to subsections (j)(2) and (k)(2) only to the extent that the records there reflect criminal and civil law enforcement and investigative information. The system is exempted pursuant to subsection (k)(5) only to the extent necessary to protect confidential sources. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b) (c) and (e) and have been published in the **Federal Register.**

JUSTICE/USM–013

SYSTEM NAME:

U.S. Marshals Service Administrative Proceedings, Claims and Civil Litigation Files (JUSTICE/USM–013).

SYSTEM LOCATION:

Office of Legal Counsel, U.S. Marshals Service (USMS), One Tysons Corner Center, McLean, Virginia 22102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed tort and employee claims against the USMS; individuals who have initiated administrative proceedings against the USMS; individuals who have filed civil suits naming the USMS and/or personnel as defendants, including those suits arising from authorized criminal law enforcement activities; and individuals named as defendants in Federal Court actions initiated by the USMS.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to the names of individuals covered by the system and the titles of cases, index cards contain certain summary data, e.g.; a summary of correspondence and pleadings received in a case, names of parties involved; name of attorney handling the case or matter; court in which action is brought, civil action number; and an indication of whether the case is open or closed, thereby facilitating location of the complete file. Cases or matters include adverse actions, grievances, unfair labor practice charges, tort claims, Equal Employment Opportunity and other employee claims, and suits against USMS employees in their official capacities, etc. Files contain correspondence/claim forms submitted by claimants and internal reports and related documents concerning the merits of the claim, attorney or staff recommendations and findings related to claim; records on actions taken by USMS giving rise to appeals, attorney notes, recommendations and strategy for defending appeals; copies of civil actions filed and criminal investigative records related to the action e.g., criminal investigative reports relating the underlying criminal matter which relates to or constitutes the basis of the claim or suit (including those from non-Federal law enforcement participants in USMS criminal or civil law enforcement activities), witness statements, reports of interviews, exhibits, attorney notes, pleadings, and recommendations and strategy for defending civil actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in this system of records may be disseminated as follows:

(a) To any component of the Department of Justice for consideration in connection with the case or matter to which the record relates; (b) To the appropriate Federal, State or local agency responsible for investigating, prosecuting or defending an action where there is an indication of actual or potential violation of criminal or civil laws or regulations or civil liability of any government action; (c) To any Federal, State or local agency, organization or individual to the extent necessary to elicit information or

witness cooperation if there is reason to believe the recipient possesses information related to the case or matter; (d) Records or information may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the USMS is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the USMS to be arguably relevant to the litigation: The USMS or any of its subdivisions; any USMS employee in his or her official capacity or in his or her individual capacity where the Department of Justice agrees to represent the employee; or the United States where the USMS determines that the litigation is likely to affect it or any of its subdivisions; (e) To a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a grant, license or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter; (f) To respond to a request for discovery or for appearance of a witness when the information is relevant to the subject matter involved in a pending judicial or administrative proceeding.

Release of Information to the News Media:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of Information to Members of Congress:

Information contained in systems of records maintained by the Department of Justice may be disclosed as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

Release of Information to the National Archives and Records Administration:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards are stored in standard card file boxes. Administrative claim, appeal and litigation files are stored in standard file cabinets.

RETRIEVABILITY:

Records are retrieved by name of claimant or litigant, or by caption of civil action or administrative proceeding.

SAFEGUARDS:

Files are stored in locked metal filing cabinets within the Office of Legal Counsel, USMS headquarters, during off-duty hours. Access to USMS headquarters is controlled by 24-hour guard service.

RETENTION AND DISPOSAL:

Index cards are retained indefinitely. Claim files are destoryed after 7 years. Litigation files are destroyed after 10 years. Cases designated by the General Counsel as significant or precedential are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Office of Legal Counsel, U.S. Marshals Service, One Tysons Corner Center, McLean, Virginia 22102.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager identified above, Attention: FOI/PA Officer. Clearly mark the letter and envelope "Freedom of Information/ Privacy Act Request."

RECORD ACCESS PROCEDURE:

Make all requests for access in writing and clearly mark letter and envelope "Freedom of Information/Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity (28 CFR 16.41(d)). Direct all requests to the system manager identified above, Attention: FOI/PA Officer, and provide a return address for transmitting the information.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information to the system manager listed above. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Clearly mark the letter and envelope "Freedom of Information Act/Privacy Act Request."

RECORD SOURCE CATEGORIES:

The sources of information contained in this system are the individual claimant/litigant, USMS officials, law enforcement agencies, statements of witnesses and parties, transcripts of depositions and court proceedings, administrative hearings and arbitrations, and work product of staff attorneys and legal assistants working on a particular case or matter.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted certain categories of records in this system from subsections (c) (3) and (4); (d); (e) (2) and (3); (e)(4) (G) and (H); (e)(8); (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(5). The system is exempted pursuant to subsection (j)(2) only to the extent that information in a record pertaining to a particular individual relates to a criminal investigation which relates to or constitutes the basis of a particular suit or claim. The system is exempted pursuant to subsection (k)(5) only to the extent necessary to protect a confidential source. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 85-29657 Filed 12-16-85; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 28-85]

Privacy Act of 1974; Modified Systems of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Civil Rights Division (CRT), proposes to modify all CRT Systems of records.

Specifically, CRT will add a routine use that will permit the disclosure of records in the ordinary course of litigation. The systems are identified as follows:

"Central Civil Rights Division Index File and Associated Records, JUSTICE/CRT-001;" "Files of Applications for the Position of Attorney with the Civil Rights Division, JUSTICE/CRT-002;" "Civil Rights Case Load Evaluation System—Time Reporting System, JUSTICE/CRT-003;" "Registry of Names of Interested Persons Desiring Notification of Submissions under Section 5 of the Voting Rights Act, JUSTICE/CRT-004;" "Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission, JUSTICE/CRT-007;" "Civil Rights Division Travel Reports, JUSTICE/CRT-009;" and "Freedom of Information; Privacy Act Records, JUSTICE/CRT-010."

The Department of Justice last published these systems on August 21, 1985 (50 FR 33863).

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses. Please address any comments to J. Michael Clark, Acting Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 9002, 601 D Street, NW, Washington, D.C., 20530. Comments must be received by January 16, 1986.

Since the new routine use is compatible with the purposes for which the systems are maintained, no report to the Office of Management and Budget and the Congress is required.

Dated: November 14, 1985.

W. Lawrence Wallace,

Assistant Attorney General for Administration.

JUSTICE/CRT-001

SYSTEM NAME:

Central Civil Rights Division Index File and Associated Records.

SYSTEM LOCATION:

United States Department of Justice Civil Rights Division (CRT) 10th and Constitution Avenue, NW., Washington, D.C. 20530; HOLC Building, 320 First Street, NW., Washington, D.C. 20534; and Federal Records Center, Suitland Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These persons may include; Subjects of investigation victims, potential witnesses, correspondents on subjects directed or referred to CRT or other presons or organizations referred to in potential or actual cases and matters of concern to CRT, and CRT employees who handle complaints, cases or matters of concern to CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices bearing the names of those individuals identified above and the associated record to which the indices relate containing the general and particular records of all CRT correspondence cases, matters, and memoranda, including but not limited to investigative reports, correspondence to and from the Division memoranda, legal papers, evidence, and exhibits. The names of some individuals, e.g., witnesses, may not yet be on the central indices. Records relating to such individuals may be obtained by direct access to the file jackets. Such file jackets are located within the respective sections of CRT according to the legal subject matter assigned to each CRT section. The delegated legal duties and responsibilities of each section are described as follows:

The records related to the duties of the Appellate Section of CRT include records generated by all Civil Rights Division cases that have entered the U.S. Supreme Court and the Courts of Appeal. Other records include those generated in the course of Appellate Section duties such as advising Members of Congress on legislative matters, providing legal counsel on civil rights issues to Federal agencies and providing counsel to the various components of the Department of Justice, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Coordination and Review Section include letters, studies, and reports concerning the implementation of Executive Orders 12250 and 12236. Under E.O. 12250, the Attorney General coordinates and monitors the enforcement of Title VI of the Civil Rights Act of 1964. Title IX of the Education Amendments of 1972, as amended, and the civil rights provisions of any Federal assistance grant which forbids discrimination in federally assisted programs on the basis of race, color, national origin, sex handicap or religion. The Coordination and Review Section also works with Federal agencies under E.O. 12336 to monitor review of their enabling legislation on the basis of sex. Other records relate to litigation involving the civil rights statutes coordinated by the Department of Justice, and such other matters as may be required to fulfill the duties mandated by the President and Congress.

The records related to the duties of the Criminal Section of CRT include cases or matters arising under 18 U.S.C. 241 and 242 which prohibit persons acting under color of law or in conspiracy with others to interfere with or deny the exercise of Federal constitutional rights, cases involving criminal violations of the Voting Rights Act of 1965 (42 U.S.C. 1971 through 1974), cases or matters involving criminal interference with housing rights as is prohibited by 42 U.S.C. 3631 and criminal interference with other federally protected rights as is prohibited by 18 U.S.C. 245. Other Criminal Section records include cases or matters involving 18 U.S.C. 1581 through 1588 which prohibit involuntary servitude, some case involving maritime law, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Educational Opportunities Section of CRT include cases or matters arising under Federal laws requiring nondiscrimination in public education such as Titles IV and IX of the Civil Rights Act of 1964 (42 U.S.C. 2000c. 42 U.S.C. 2000h–2) which prohibit discrimination on the basis of race, color, religion, sex, or national origin; Title IX of the 1972 Education Amendments (20 U.S.C. 1681) which prohibits discrimination on the basis of sex in educational programs or activities receiving federal financial assistance and Section 504 of the Rehabilitation Act of 1973 which grants rights to handicapped persons participating in educational programs receiving federal financial assistance. In addition, the records related to the duties of the Educational Opportunities Section include cases or matters arising under the Equal Educational Opportunities Act of 1974 (20 U.S.C. 1701), and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Employment Litigation Section include cases or matters arising under Federal laws prohibiting discriminatory employment practices by State and local governments such as the equal employment opportunity provisions contained within the Revenue Sharing Act of 1972, as amended. Other records include cases or matters arising under Title VII of the Civil Rights Act of 1964 and its amendment which is the Pregnancy Discrimination Act of 1978 (42 U.S.C. 2000e(k)). In addition, the records related to the duties of the Employment Litigation Section include cases or matters arising under Executive Order No. 11246 involving equal opportunity laws applicable to public employers. Federal contractors and subcontractors involved in federally financed projects, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Housing and Civil Enforcement Section of CRT include cases or matters involving the fair housing laws such as Title VIII of the Fair Housing Act of 1968 (42 U.S.C. 3601 through 3619), and cases or matters involving fair credit laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691 through 1691g) as well as its implementing regulations Regulation B (12 CFR Part 202). Other records include cases or matters arising under Title II and Title III of the Civil Rights Act of 1964 which prohibit discrimination in public facilities (except those Title III matters that involve prison facilities) and cases or

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matters arising under the nondiscrimination provisions of the Revenue Sharing Act and the Housing and Community Development Act of 1974, and such other matters as may be required to fulfil the duties mandated by Congress.

The records related to the duties of the Special Litigation Section of CRT include cases or matters arising under Title III of the Civil Rights Act of 1964 as it applies to prison facilities, cases or matters arising under the Civil Rights of Institutionalized Persons Act of 1980 (42 U.S.C. 1997), cases or matters involving the constitutional rights of institutional juveniles, and the constitutional rights of mentally and physically handicapped persons of all ages, cases arising under section 504 of the Rehabilitation Act of 1973, as amended, and such other matters as may be required to fulfill the duties mandated by Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in the system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to the Civil Rights Division under the provisions of 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Information in the system may be used by employees and officials of the Department to make decisions in the course of investigations and legal proceedings: to assist in preparing responses to correspondence from persons outside the Department to prepare budget requests, and various reports on the work product of the Civil Rights Divisions; and to carry out other authorized internal functions of the Department.

B. A record maintained in this system of records may be disseminated as a routine use of such records as follows: (1) A record relating to a possible or potential violation of law, whether civil, criminal, or regulatory in nature may be disseminated to the appropriate federal, state or local agency charged with the responsibility of enforcing or implementing such law; (2) in the course of investigation or litigation of a case or matter, a record may be disseminated to a federal, state or local agency, or to an individual or organization, if there is reason to believe that such agency, individual or organization possesses information or has the expertise in an official or technical capacity to analyze information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or expert analysis or to obtain the cooperation of a prospective witness or informant: (3) A record relating to a case or matter, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or rgulatory proceeding or any other adjudicative body before which the Civil Rights Division is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the Civil Rights Division to be arguably relevant to the litigation; (4) a record relating to a case or matter may be disseminated to an actual or potential party to litigation or the party's attorney (a) for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or (b) in formal or informal discovery proceedings; (5) a record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any determination that has been made; (6) a record relating to a person held in custody or probation during a criminal proceeding or after conviction, may be disseminated to any agency or individual having responsibility for the maintenance, supervision or release of such person; (7) a record may be disseminated to the United States Commission on Civil Rights in response to its request and pursuant to 42 U.S.C. 1975d.; (8) a record may be disseminated to volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subject of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on index cards, in file jackets, and on computer disks or tape.

RETRIEVABILITY:

Information is retrieved through either use of an index card system or logical queries to the computer-based system. Entries are arranged alphabetically by the names of individuals or organizations that have been involved in possible civil rights violations either as the subject of investigations by the Department or as victims or complainants, or by the name of the Division personnel handling the complaint. (Complaints received from individuals which have not been investigated by the Department have not been systematically indexed and information pertaining to such individuals may or may not be retrievable.) Information on such individuals may be retrievable from the file jackets by a number assigned and appearing on the index cards.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Departmental security regulations for systems of records. Only a limited number of staff members who are assigned a specific indentification code will able to use the computer or to access the stored information.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When no longer needed on an active basis, the paper files are transferred to the Federal Records Center, Suitland, Maryland and some records are transferred to computer tape and stored in accordance with Departmental security regulations for system of records. Final disposition is in accordance with records retirement of destruction as scheduled by NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Management Section Chief Civil Rights Division, United States Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Part of this system is exempted from this requirement under 5 U.S.C. 552a

(j)(2) and (k)(2). Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Part of this system is exempted from this requirement under 5 U.S.C. 552a (j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), the subject of the case or matter as described under "Categories of records in the system," and any other information which is known and may be of assistance in locating the record, such as the name of the civil rights related case or matter involved, where and when it occurred and the name of the judicial district involved. The requester will also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information retrievable in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system may be any agency or person who has or offers information related to the law enforcement responsibilities of the Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted parts of this system from subsections (c)(3), (d), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (c) and (e) and have been published in the **Federal Register.**

JUSTICE/CRT-002

SYSTEM NAME:

Files of Applications for the Position of Attorney with the Civil Rights Division.

SYSTEM LOCATION:

U.S. Department of Justice: Civil Rights Division (CRT), 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for a position as an attorney with CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain SF 171 forms, resumes, referral letters, letters of recommendation, writing samples, interview notes, internal notes or memoranda, and other correspondence and documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used by employees and officials of the Department in making employment decisions. If an individual is hired, the records may become part of his or her Official Personnel Folder.

A record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which the Civil Rights Division is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the Civil Rights Division to be arguably relevant to the litigation. A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings.

Release of information to the news media: Information permitted to be released in the news media and the public pursuant to 28 CFR 50.2 may be made available from systems or records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information of Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are primarily original papers or reproductions or copies thereof. The system consists of files pertaining to individual applicants.

RETRIEVABILITY:

Information is retrieved by using an applicant's name.

SAFEGUARDS:

Information in the system is unclassified. It is safeguarded and protected in accordance with Departmental rules and procedures governing access, production and disclosure of any materials contained in its offical files.

RETENTION AND DISPOSAL:

Information is retained in the system until a final employment decision is made or until such time as CRT is notified by the applicant that he or she is no longer interested in or available for the position. If an individual is hired, some or all of the records may become part of his or her Official Personnel Folder.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assitant Attorney General; Civil Rights Division; U.S. Department of Justice; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assitant Attorney General; Civil Rights Division; U.S. Department of Justice; Washington, D.C. 20530.

RECORD ACCESS PROCEDURE:

A request for access to a record from this sytem shall be made in writing with the envelope and the letter clearly marked 'Privacy Access Request.' The request should include the name of the applicant and the position applied for. The requester will also provide a return address for transmitting the information.

Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system generally are the applicants, persons referring or recommending the applicant, and employees and officials of the Department.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

JUSTICE/CRT-003

SYSTEM NAME:

Civil Rights Case Load Evaluation System—Time Reporting System.

SYSTEM LOCATION:

United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and paralegals of the Civil Rights Division of the United States Department of Justice.

CATEGORIES OR RECORDS IN THE SYSTEM:

The system contains the names of Division attorneys and paralegals and their assignments and allocation of work time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Civil Rights Division personnel use this system of records to keep track of resources, i.e., to determine Civil Rights Division allocations of resources and professional time to individual assignments of cases and broad categories of cases (e.g., voting criminal, enforcement), and to assist in preparing budget requests and other reports which may be submitted to the Attorney General or the Congress.

A record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which the Civil Rights Division is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the Civil Rights Divison to be arguably relevant to the litigation. A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement or the case of matter, plea bargaining or in formal or informal discovery proceedings.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to Members of Congress: Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CFT records.

Release of information to the National Archives and Records Administration. A record from the system of records may be disclosed to the National Archives and Records Administration for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks.

RETRIEVABILITY:

Information is retrieved by the names of attorneys or paralegals

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental security regulations for systems of records. Access to the records is limited to those employees whose official duties require such access.

RETENTION AND DISPOSAL:

Information contained in the record system remains on the computer disks indefinitely

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Management Section Chief, Civil Rights Division, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager listed above.

RECORD ACCESS PROCEDURE:

A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual involved, his or her current address, date and place of birth, and notarized signature (28 CFR 16.42(b)), and any other information which is known and may be of assistance in locating the record. The requester should also provide a return address for transmiting the information. Access to request should be directed to the system manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend their records should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information on time-allocation is provided by Civil Rights Division attorneys and paralegals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE-CRT-004

SYSTEM NAME:

Registry of Names of Interested Persons Desiring Notification of Submissions under Section 5 of the Voting Right Act.

SYSTEM LOCATION:

U.S. Department of Justice, Civil Rights Division (CRT), *320 First Street*, NW., Washington, D.C. 20530 *and U.S. Department of Justice, 10th & Constitution, NW., Washington, D.C. 20530.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have requested that the Attorney general send them notice of submissions under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Registry contains the name, address and the telephone numbers of interested parties and, where appropriate, the area or areas with

respect to which notification was requested by such persons.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 FR 877 (1981) codified in 28 CFR 51.30, 42 U.S.C. 1973c, 5 U.S.C. 301 and 28 U.S.C. 509.510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Registry is used to identify persons interested in receiving notice of Section 5 submissions and to comply with their requests. The Registry may be used to notify the persons listed therein of any proposed changes in the "Procedures for the Administration of Section 5 of the Voting Rights Act of 1965," *46 FR 870 (1981) codified in 28 CFR Part 1,* and to solicit their comments with respect to any such proposed changes.

A record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which the Civil Rights Division is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the Civil Rights Division to be arguably relevant to the litigation. A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings.

A record may be accessed by volunteer student workers and students working under work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress: Information in the system may be disclosed as is necessary to respond to inquires by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Names are stored in a card file system, *and an automated addresser.*

RETRIEVABILITY:

Records in this system are retrievable by the names of interested persons or organizations.

SAFEGUARDS:

Information in the system is safeguarded in accordance with Departmental rules and procedures governing access, production and disclosure of any materials contained in its official files.

RETENTION AND DISPOSAL:

An individual or organizational name is retained in the Registry until such time as that person or organization request that the name be deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Voting Section, Civil Rights Division, U.S. Department of Justice Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to: Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

This system contains no information about any individual other than as described in Category of Record above. Persons whose names appear on the Registry may have access thereto or have their names and other information pertaining to them deleted or modified upon a request of the same nature as indicated in *46 FR 877 (1981) Codified in 28 CFR 51.30.*

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Sources of information in the Registry are those persons or organizations whose names appear therein by virtue of their having requested inclusion in the Registry pursuant to *46 FR 877 (1981) codified in 28 CFR 51.30.*

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-007

SYSTEM NAME:

Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission.

SYSTEM LOCATION:

U.S. Department of Justice: Civil Rights Division, 10th and Constitution Avenue NW., Washington. D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons seeking employment or employed by a state or a political subdivision of a state who have filed charges alleging discrimination in employment with the Equal Employment Opportunity Commission (hereinafter EEOC) which have resulted in a determination by EEOC that there is probable cause to believe that such discrimination has occurred, and attempts by EEOC at conciliation have failed.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain copies of charges filed with EEOC; copies of EEOC's "determination" letters, letters of transmittal from and to EEOC, analyses or evaluations summarizing the charge and other materials in the EEOC file, internal memoranda, attorney notes, and copies of "right to sue" letters issued by the Civil Rights Division (CRT). Charges relate to allegations of employment discrimination by public employers filed by individual complainants which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e–5(f)(1) or 5(f)(2), or to allegations of a pattern or practice of violations of the Equal Employment Opportunity Act by a public employer which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e–6.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under authority of 44 U.S.C. 3101 and in the ordinary course fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used by employees and officials of the Department to make decisions regarding prosecution of alleged instances of employment discrimination, to issue right to sue

letters on behalf of individuals; to make policy and planning determinations; to prepare annual budget requests and justifications; to prepare statistical reports on the work product of the Employment Litigation Section and to carry out other authorized internal functions of the Department. If the Department has determined to initiate an investigation or litigate a matter referred by EEOC the records pertaining to that matter are not contained in the system. Such records and their routine uses are described under the notice for the system named: Central Civil Rights Division Index File and Associated Records.

A record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which the Civil Rights Division is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the Civil Rights Division to be arguably relevant to the litigation. A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Releases of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NAAR) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the systems is stored on index cards, in file jackets, and in computer disks which are maintained by the Employment Litigation Section, Civil Rights Division. If the charge related to a public educational agency or institution and was filed before September 1977, such information may be maintained by the Educational Opportunities Section, Civil Rights Division.

RETRIEVABILITY:

Information is retrieved primarily by using the appropriate Department of Justice file number, or the name of the charging party, or the state in which the alleged discrimination occurred or through other logical queries to the computer based system.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Departmental sercurity regulations for systems of records, Only a limited number of staff members who are assigned a specific identification code will be able to use the computer or to access the stored information.

RETENTION AND DISPOSAL:

If the Department determines not to prosecute a matter referred by the EEOC, the records transmitted with the referral are returned to the EEOC. Other records in the system are kept for routine use by the Department and when no longer needed are sent to the Federal Records Center or are destroyed in accordance with records retention and disposal schedules as established by the National Archives and Records Service.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." The request should indicate the state where the alleged employment discrimination took place and the employer to which the charge was related. The requester should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Disclosure of part of the material in this system may be prohibited by *42 U.S.C. 2000e–5(b)*, 42 U.S.C. 2000e–8(e) and 44 U.S.C. 3510(b). Part of this system is exempted from access and contest under 5 U.S.C. 552a(k)(2).

RECORD SOURCE CATEGORIES:

Source of information in this system are charging parties, information compiled and maintained by EEOC, and employees and officials of the Department of Justice responsible for the disposition of the referral request.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted the system from subsection 9d) of the Privacy Act pursuant to 5 U.S.C. 552(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/CRT–009

SYSTEM NAME:

Civil Rights Division Travel Reports.

SYSTEM LOCATION:

United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have filed travel authorization forms or travel voucher forms for official travel on behalf of the Civil Rights Division (CRT).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information concerning travel expenditures which were recorded on travel authorization forms (Form OBD–1) and travel voucher forms (Forms OBD–157 and SF–1012) by CRT employees or other persons authorized to travel for CRT and submitted to the Budget and Finance Branch of CRT from Fiscal Year 1972 to

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the present. The computerized data covers fiscal years 1972 through 1981.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used to make periodic and special reports to the Administrative Management Section, Civil Rights Division, and to the Budget and Finance Branch, Civil Rights Division, for use in controlling and reviewing CRT expenditures. Copies of individual's reports may be disclosed to the individual when appropriate forms are not submitted following a return from travel status.

A record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which the Civil Rights Division is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the Civil Rights Division to be arguably relevant to the litigation. A record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subject to CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are stored on magnetic tape and on computer punch cards, on monthly and periodic and special reports printed on computer. Individual vouchers and travel authorization forms are stored in file jackets.

RETRIEVABILITY:

Records in this system are retrieved by the names of those individuals identified under the caption "Categories of individuals covered by the system."

SAFEGUARDS:

Information in the system is unclassified. However, the records are protected in accordance with applicable Department security regulations for systems of records. Records are stored in locked cabinets and access to the computer is limited to those personnel who have a need for access to perform their official duties.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When not longer needed on an active basis, the records are transferred to computer tape and stored in accordance with Departmental security regulations for systems of records. Final disposition will be in accordance with records retirement or destruction as scheduled by NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Management Section Chief Civil Rights Division, United States Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

Requests by former employees for access to records in this system may be made in writing with the envelope and letter clearly marked "Privacy Act Request". The request should clearly state the dates on which official travel was taken. The requestor should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager. Present employees may request access by contacting the System Manager directly.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are the Civil Rights Division employees and other authorized persons who file travel authorization and travel voucher forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-010

SYSTEM NAME:

Freedom of Information; Privacy Act Records.

SYSTEM LOCATION:

U.S. Department of Justice, Civil Rights Division, 10th and Constitution Avenue, N.W., Washington, D.C. 20530 *and Federal Record Center, Suitland, Maryland 20409.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request disclosure of records pursuant to the Freedom of Information Act; persons who request access to or correction of records pertaining to themselves contained in Civil Rights Division systems of records pursuant to the Privacy Act; and where applicable, persons about whom records have been requested or about whom information is contained in requested records.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains copies of all Freedom of Information/Privacy Act requests received by the Civil Rights Division since January 1, 1975, copies of CRT responses to the requesters, internal memoranda and correspondence related to the requests, copies of the documents responsive to the requests, and records of appeals or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101 and is maintained to implement the provisions of 5 U.S.C. 552 and 552a and the provisions of 28 CFR 16.1 et seq. and 28 CFR 16.40 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system may be disseminated as a routine use of such record as follows: (1) A record may be disseminated to a Federal agency which furnished the record for the purpose of permitting a decision as to access or correction to be made by that agency, or for the purpose of consulting with that agency as to the propriety of access or correction; (2) a record may be disseminated to any appropriate Federal, State, local, or foreign agency for the purpose of verifying the accuracy of information submitted by an individual who has requested amendment or correction of records contained in systems of records maintained by the *Civil Rights* Division; (3) A record may be disseminated to volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties; (4) a record relating to this system, or any facts derived therefrom, may be disseminated in a proceeding before a court, grand jury, administrative or regulatory proceeding or any other adjudicative body before which the Civil Rights Division is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the Civil Rights Division to be arguably relevant to the litigation; and (5) a record relating to this system may be disseminated to an actual or potential party to litigation or the party's attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or in formal or informal discovery proceedings.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

A record contained in this system is stored manually in alphabetical order in file cabinets, *in chronological, cumulative, notebooks,* and on disks automated office equipment.

RETRIEVABILITY:

A record is retrieved by the name of the individual or person making a request for access or correction of records.

SAFEGUARDS:

Access to records is limited to personnel of the FOI/PA Branch of the Civil Rights Division and known Department of Justice personnel who have a need for the record in the performance of their duties. The records are safeguarded and protected in accordance with applicable Departmental rules.

RETENTION AND DISPOSAL:

Currently there are not provisions for disposal of records contained in this system.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Parts of this system are exempted from this requirement under 5 U.S.C. 552a (j)(2) or (k)(2). Address inquires to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Parts of this system are exempted from this requirement under 5 U.S.C. 552a (j)(2), or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record contained in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request". Include in the request the name of the individual involved, his birth date and place, or any other information which is known and may be of assistance in locating the record. The requester shall also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the individuals and persons making requests, the systems of records searched in the process of responding to request, and other agencies referring requests for access to or correction of records originating in the Civil Rights Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records secured from other *Civil Rights Division* systems of records have been exempted from the provisions of the Privacy Act to the same extent as the systems of records from which they were obtained. The Attorney General has also exempted certain categories of records in the system *pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3), (d), and (g) of 5 U.S.C. 552a; in addition, certain categories of records are exempted pursuant to the provisions of 5 U.S.C. 552a (k)(2) from subsections (c)(3), and (d) of 5 U.S.C. 552a.* These exemptions apply to the extent the records contained in the system reflect investigatory law enforcement information. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c),

and (e) and have been published in the Federal Register.

[FR Doc. 85-29658 Filed 12-16-85; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; West Virginia University/Industry Cooperative Research Center

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.*, Pub. L. No. 98-462 ("the Act"), the West Virginia University/Industry Cooperative Research Center ("the Center") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture, and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities are given below.

The Center is comprised of:

(1) West Virginia University, a land-grant, non-profit educational institution of the State of West Virginia with its principal location at Morgantown, West Virginia 26506-6001;

(2) Mosanto Company, a Delaware corporation with its principal place of business at 800 North Lindbergh Blvd., St. Louis, Missouri 63167;

(3) E.I. duPont de Nemours & Company, a Delaware corporation with its principal place of business at 1007 Market Street, Wilmington, Delaware 19898;

(4) The Standard Oil Company, an Ohio corporation with its principal place of business at 200 Public Square, Cleveland, Ohio 44114-2375; and

(5) Union Carbide Corporation, a New York corporation with its principal place of business at Old Ridgebury Road, Danbury, Connecticut 06917.

The parties entered into collaborative agreements on or after August 14, 1985, to conduct research and stimulate industrial innovation in, and othewise to develop, the field of fluidization and fluid particle science.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-29837 Filed 12-16-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Abbott Laboratories

By Notice dated October 1, 1985, and published in the **Federal Register** on October 7, 1985; (50 FR 40900), Abbott Laboratories, 14th Street and Sheridan Road, Attention: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substance listed below:

Drug	Schedule
Pentobarbital (2270)	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 11, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-29805 Filed 2-16-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Notice of Registration; Dupont Pharmaceuticals

By Notice dated October 16, 1985, and published in the **Federal Register** on October 25, 1985; (50 FR 43472), Dupont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 11, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-29805 Filed 2-16-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: On each Tuesday and/or Firday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer.

Paul E. Larson, Telephone 202 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202–395–6800, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Reinstatement

Employment and Training Administration
Title 20 CFR Part 601, Administrative Procedures
ETA–RC 71
On Occasion
State or local government
3,068 responses; 52 hours

Requires states to submit copies of their unemployment compensation laws for approval by the Secretary of Labor, as well as all relevant state materials which allow the Secretary to make finds required by the Internal Revenue Code of 1954, the Social Security Act, and the Wagner-Peyser Act.

Occupational Safety and Health Administration
Access to Employee Exposure and Medical Records
1218–0065; OSHA 243
On occasion, annually
Businesses or other for profit, small businesses or organizations
1,170,979 respondents; 1,502,275 hours; 0 forms

This standard requires employers to preserve and provide access to records associated with employees' exposure to toxic chemicals and harmful physical agents. Employee records and access to them are critically important to the detection, treatment and prevention of occupational illness and disease.

Occupational Safety and Health Administration
Occupational Exposure to Noise
1218–0048; OSHA 238
On occasion
Businesses or other for profit; federal agencies or employees; small businesses or organizations
311,094 respondents; 8,388,093 hours; 0 forms

This standard requires employers to establish and maintain accurate records of employee exposure to noise and audiometric testing performed in compliance with the provisions of the standard. These records are used by the physician, employer, employee and the Government to determine whether occupation-related hearing loss has occurred, to prevent further deterioration of hearing, and to determine the effectiveness of the employer's hearing conservation program.

Signed at Washington, DC, this 12th day of December 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–29823 Filed 12–16–85; 8:45 am]

BILLING CODE 4510–28–M

All Items Consumer Price Index for All Urban Consumers, United States City Average

Pursuant to the requirements of Pub. L. 95–602, I hereby certify that the Consumer Price Index for All Urban Consumers rose by 3.2 percent between October 1984 and October 1985 from a level of 315.3 (1967=100) in October 1984 to a level of 325.5 (1967=100) in October 1985.

Signed at Washington, DC, on the 6th day of December 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85–29821 Filed 12–16–85; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 23, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 23, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 9th day of December 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	[illegible] received	Date of petition	Petition No.	Articles produced
Beth Energy Mines Inc., Cambria Slope Mine 33 (workers)	Ebensburg, PA	12/4/85	11/27/85	TA–W–16,747	Metallurgical coal.
Boise Cascade Corp. (UPIU)	Rumford, ME	12/4/85	11/8/85	TA–W–16,748	Paper for magazines.
Cyternp Specialty Steel Div., Cyclop Corp. (USWA)	Bridgeville, PA	11/26/85	11/22/85	TA–W–16,749	Stainless steel bars, billets, sheets.
Erie Press Systems (company)	Erie, PA	12/6/85	12/2/85	TA–W–16,750	Hydraulic and mechanical forming presses.
Everaman Mfg Co. (company)	Denver, CO	12/6/85	11/20/85	TA–W–16,751	Farm implements.
George Manufacturing Co. (ILGWU)	Boston, MA	11/29/85	11/27/85	TA–W–16,752	Ladies slacks and skirts.
Huffy Sports (workers)	Milwaukee, WI	11/26/85	11/19/85	TA–W–16,753	Exercise equipment.
International Hat Co (workers)	Lutesville, MO	11/29/85	11/20/85	TA–W–16,754	Headwear.
Outdoor Venture Corp (ACTWU)	Stearns, KY	11/27/85	11/25/85	TA–W–16,755	Military tents.
P and L Sportswear Co., Inc. (ILGWU)	Boston, MA	12/4/85	12/2/85	TA–W–16,756	Contractor ladies sportswear.
P.M.D.R. Enterprise (company)	Boise, ID	12/4/85	12/1/85	TA–W–16,757	Machine tooling, toy hobby engine parts.
Plymount Locomotive Works, Ins. (workers)	Plymouth, OH	11/27/85	11/23/85	TA–W–16,758	Fork lift trucks.
Robe Tex, Inc. (workers)	Brooklyn, NY	11/29/85	11/25/85	TA–W–16,759	Robes—beach, house and children.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Shepard Niles, Inc. (IAMAW)	Montour Falls, NY	12/29/85	11/29/85	TA-W-16,760	Material handling equipment.
Wardrobe Maker, Inc. (ILGWU)	Boston, MA	11/27/85	11/25/85	TA-W-16,761	Ladies sportswear

[FR Doc. 85-29818 Filed 11-17-85; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Thru Blu et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period December 2, 1985–December 6, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,229; Thru Blu, South St. Paul, MN

TA-W-16,223; Fred Rueping Leather Co., Fond Du Lac, WI

TA-W-16,212; Wickham Piano Plate Co., Springfield, OH

TA-W-16,232; Leventhal Manufacturing Co., Elizabeth, NJ

TA-W-16,244; Karg Brothers Finishing Corp., Johnstown, NY

Affirmative Determinations

TA-W-16,243; Karg Brothers, Inc., Johnstown, NY

A certification was issued covering all workers of the firm separated on or after July 23, 1984 and before February 1, 1985.

TA-W-16,238; Thomas Manufacturing Co., Bennington, VT

A certification was issued covering all workers of the firm separated on or after July 23, 1984 and before May 25, 1985.

TA-W-16,253; Risedorph Tanners, Gloversville, NY

A certification was issued covering all workers of the firm separated on or after July 23, 1984.

TA-W-16,361; Tucson Cornelia and Gila Bend Railroad Co., Ajo, AZ

A certification was issued covering all workers of the firm separated on or after March 1, 1985 and before June 30, 1985.

TA-W-16,342; Rock Hall Manufacturing, Rock Hall, MD

A certification was issued covering all workers of the firm separated on or after August 5, 1984 and before August 23, 1985.

TA-W-16,116; Ephrata Apparel Co., Inc., Ephrata, PA

A certification was issued covering all workers of the firm separated on or after June 13, 1984 and before April 15, 1985.

TA-W-16,198; Apparel Industries, Inc., Carlstadt, NJ

A certification was issued covering all workers of the firm separated on or after July 1, 1984.

TA-W-16,174; General Refractories Co., Claysburg, PA

A certification was issued covering all workers of the firm separated on or after September 30, 1984.

TA-W-16,301; Carlen Manufacturing Co., Inc., Hazleton, PA

A certification was issued covering all workers of the firm separated on or after August 6, 1984 and before September 28, 1985.

TA-W-16,208; Northway Products Co., Universal Rundle, Rensselaer, IN

A certification was issued covering all workers of the firm separated on or after July 15, 1984.

TA-W-16,206; LTV Steel Co., Pittsburgh Works, Hot Rolled Bar Dept., Electric Furance Dept., Blooming Mill, Hazlewood, PA

A certification was issued covering all workers of the Hot Rolled Bar Department, the Electric Furance Department and the Blooming Mill of the Pittsburgh Works of LTV Steel Co., Hazlewood, PA separated on or after April 19, 1985.

TA-W-16,207; LTV Steel Co., Pittsburgh Works, Hot Rolled Bar Dept., Electric Furance Dept., Blooming Mill, Pittsburgh, PA

A certification was issued covering all workers of the Hot Rolled Bar Department, the Electric Furance Department and the Blooming Mill of the Pittsburgh Works of LTV Steel Co., Pittsburgh, PA separated on or after April 19, 1985.

I hereby certify that the aforementioned determinations were issued during the period December 2, 1985–December 6, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC during normal business hours or will be mailed to persons who write to the above address.

Dated: December 10, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-29820 Filed 12-16-85; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-85-182-C]

Helen Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Helen Mining Company, P.O. Drawer B, Homer City, Pennsylvania 15748 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Homer City Mine (I.D. No. 36-00926), located in Indiana County, Pennsylvnia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement folows:

1. The petition concerns the requirement that all haulage equipment be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of the equipment.

2. As an alternate method, petitioner proposes to use a hand-held, hooked-rod device which permits uncoupling of haulage equipment without the necessity

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of persons going between the ends of the equipment.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 16, 1986. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: December 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-29822 Filed 12-16-85; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by January 10, 1986.

ADDRESSES: Send comments to Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5464).

FOR FURTHER INFORMATION CONTACT: Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5464) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The National Endowment for the Arts requests OMB approval of Application Guidelines and Supplemental Information Sheets for the following programs:

Advancement, Challenge Grants, Dance, Expansion Arts, Folk Arts, Literature, Local Arts Agencies, Test Program for Support for Museums, Music, State, Theater.

Purpose: Application for benefits.

Frequency of Collection: One-time.

Respondents: Individuals, State or local governments and nonprofit institutions.

Use: Guideline instructions and applications elicit relevant information from individual artists, nonprofit organizations, and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 7,719.

Estimated Hours for Respondents to Provide Information: 174,418.

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 85-29792 Filed 12-16-85; 8:45 am]

BILLING CODE 7537-01-M

Agency Information Collection Activities Under OMB

AGENCY: National Endowment for the Humanities.

ACTION: Notices.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before January 16, 1986.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category—Revisions

1. Title: Division of State Programs; Guidelines for Biennial Proposals
Form Number: 3136-0080
Frequency of Collection: Biennially
Respondents: State humanities councils applying for funding.
Use: Application for benefits by state humanities councils to be regranted to nonprofit groups and organizations in their state to produce to make focused, coherent humanities education possible in places and by methods that are appropriate to adults. Information will be used by reviewers, panelists and the Endowment's chairman to determine eligibility for funding.
Estimated Number of Respondents: 28-[illegible]
Estimated Hours for Respondents to Provide Information: 160 hours per respondent or 3,840-4,480 total hours for all respondents.
2. Title: Division of State Programs: Application Cover Sheet
Form Number: 3136-0084
Frequency of Collection: Semi-annually
Respondents: State humanities councils
Use: Provided general purpose data used by the state humanities councils and the Endowment in compiling general purpose statistics. They are also used as tools in program planning/management, program evaluation, and audits.
Estimated Number of Respondents: 53
Estimated Hours for Respondents to Provide Information: 1 hour per response x 100 responses per respondent x 53 respondents for a total of 5300 hours.

Category—Extensions

1. Title: Division of State Programs Plan for Compliance by State Humanities Councils Operating as Citizens' Committees
Form Number: 3136–0079
Frequency of Collection: Annually
Respondents: State humanities councils operating as citizens' committees
Use: To notify the National Endowment for the Humanities' Division of State Programs of the Committee's compliance with the Endowment's authorizing legislation so that the committee can remain eligible for funding.
Estimated Number of Respondents: 53
Estimated Hours for Respondents to Provide Information: 10 hours per respondent for 530 total hours for all respondents.
2. Title: Division of State Program Plan for Compliance by State Humanities Councils Operating as State Agencies.
Form Number: 3136–0078
Frequency of Collection: Annually
Respondents: State humanities councils operating as state agencies.
Use: To notify the National Endowment for the Humanities' Division of State Programs of the agency's compliance with the Endowment's authorizing legislation so that the agency can remain eligible for funding.
Estimated Number of Respondents: 53 is the maximum possible number of respondents. To date there are none.
Estimated Hours for Respondents to Provide Information: 10 hours per respondent for 5,300 total hours if all states were state agencies.
3. Title: Division of State Programs Interim Progress Report Format
Form Number: 3136–0077
Frequency of Collection: Biennially
Respondents: State humanities councils
Use: Provide progress update on the two-year grant approved for funding during the previous year and is necessary to for use by the Endowment's chairman to determine "adequacy" (as required by NFAH authorizing legislation) in order to receive second-year funding.
Estimated Number of Respondents: 26–28
Estimated Hours for Respondents to Provide Information: 20 hours per respondent for 480–560 total hours for all respondents.

Susan Metts,

Acting Director of Administration.

[FR Doc. 85–29815 Filed 12–16–85; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 374–9520.

OMB Desk Officer: Carlos Tellez, (202) 395–7340.

Title: Survey of Earned Doctorates Awarded in the United States.

Affected Public: Individuals.

Number of Responses: 31,000 responses; total of 10,300 burden hours.

Abstract: Persons with doctorate-level education are key members of the labor force in scientific, engineering and learned professions. Information of their demographic and educational background and immediate postdoctoral study or employment plans is essential for analyses of supply and demand. These data also report on the flow of women and minorities into the fields.

Dated: December 12, 1985.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 85–29746 Filed 12–16–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Standard Plant Design; Meeting

The ACRS Subcommittee on Standard Plant Design will hold a meeting on January 6, 1986, Room 1046, 1717 H Street, NW., Washington, DC .

The entire meeting will be open to public attendance..

The agenda for subject meeting shall be as follows: *Monday, January 6, 1986—1-30 p.m. until the conclusion of business.*

The Subcommittee will review the NRC Staff paper on standard plants and discuss the status of standard plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on request for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 12, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–29838 Filed 12–16–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–312]

Sacramento Municipal Utility District; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from a requirement of 10 CFR 50.44(c)(3)(iii) to the Sacramento Municipal Utility District (the licensee), for the Rancho Seco Nuclear Generating Station, located in Sacramento County, California.

Environmental Assessment

Identification of Proposed Action: The exemption would permit the licensee not to install a reactor vessel head vent as required by 10 CFR 50.44(c)(3)(iii).

The exemption is responsive to the licensee's application for exemption dated April 12, 1985.

The Need for the Proposed Action: The licensee has performed tests using the Once-Through Integral System (OTIS) facility. The purpose of these tests was to determine if reactor core cooldown can be maintained in the absence of a vessel head vent to release noncondensible gases from the vessel

during an accident. Based on results of the OTIS tests, the licensee concluded that a reactor vessel head vent is not needed since other high point vents can be used to release gases.

Furthermore, the licensee has committed to implement appropriate emergency procedures to assure reactor core cooling in the absence of a vessel head vent.

Environmental Impacts of the Proposed Action: The proposed exemption, as supported by the licensee's test results and commitment, will provide assurance of reactor core cooling that is equivalent to that required by 10 CFR 50.44(c)(3)(iii) such that there is no increase in the risk of accidents at this facility. The probability of accidents will not be increased and the post-accident radiological releases will not be greater than previously determined, nor will the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other enivronmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Rancho Seco Nuclear Generating Station.

Agencies and Persons Consulted: The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for the exemption dated April 12, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Sacramento City-County Library, 828 J Street, Sacramento, California.

Dated at Bethesda, Maryland, this 11th day of December, 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate No. 6, Division of PWR Licensing-B.

[FR Doc. 85-29840 Filed 12-16-85; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Proclamation Regarding Railroad Unemployment Insurance Account

Pursuant to section 8(a) of the Railroad Unemployment Insurance Act, the Railroad Retirement Board has determined, and hereby proclaims, that the balance to the credit of the railroad unemployment insurance account as of the close of business September 30, 1985, was a deficit of $651,735,704.69. Based on this balance and pursuant to the table in section 8(a) of the Railroad Unemployment Insurance Act, the contribution rate to finance the railroad unemployment insurance program for calendar year 1986 shall be 8.0 percent.

In witness whereof the members of the Railroad Retirement Board have hereunto set their hands and caused its seal to be affixed.

Done at Chicago, Illinois, this 10th day of December, 1985

R.A. Gielow,

Chairman.

C.J. Chamberlain,

Member.

John D. Crawford,

Member.

By the Railroad Retirement Board.

Richard G. Altmann,

Executive Director.

[FR Doc. 85-29747 Filed 12-16-85; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Extension:

Rule 203-2 [17 CFR 275.203-2]
Form ADV-W [17 CFR 279.2]

File No. 270-40.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 203-2 under the Investment Advisers Act of 1940 ("Advisers Act") and Form ADV-W, the form for withdrawing registration under the Advisers Act.

Comments should be submitted to OMB Desk Officer: Sheri Fox, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503.

John Wheeler,

Secretary.

December 10, 1985.

[FR Doc. 85-29781 Filed 12-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-14837; 812-6187]

ML Venture Partners I, L.P., et al.; Application for an Order

December 10, 1985.

Notice is hereby given that ML Venture Partners I, L.P. ("Partnership"), Merrill Lynch Venture Capital, Inc. ("Management Company"), the Management Company for the Partnership, 717 Fifth Avenue, New York, NY 10020, and Merrill Lynch KECALP L.P. 1984 ("KECALP"), 165 Broadway, One Liberty Plaza, New York, NY 10080, filed an application on August 20, 1985, and amendments thereto on November 5 and November 25, 1985, for an order of the Commission: (1) Pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting the concurrent investment by the Partership and KECALP in preferred stocks issued by Itran Corp. ("Itran") and Califorinia Devices, Inc. ("CDI") from the provisions of section 57(a)(4) of the Act, and Rule 17d-1 thereunder; and (2) pursuant to section 17(b) and 57(c) of the Act, exempting from the provisions of section 17(a)(1) and 57(a)(1) of the Act, the proposed sale of preferred stocks of CDI by the Management Company to KECALP and the Partnership. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

The Partnership was formed as a limited partnership under Delaware law in 1982; it has elected to be treated

under the Act as a business development company, and has as its investment objective long-term captial appreciation through venture capital investments. The Partnership has five general partners, four of which are natural persons, a majority of whom are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act (referred to hereinafter as "Individual General Partners"). The Partnership's managing partner is Merrill Lynch Venture Capital Co., L.P. ("Managing General Partner"), and the general partner of the Managing General Partner is the Management Company. The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML&Co."), a holding company which, through its subisdiaries, provides investment, financing, real estate, insurance and related services. On June 30, 1985, the Partnership had net assets of approximately $65 million.

Applicants further state the KECALP, an employees' securities company as defined in section 2(a)(13) of the Act, is a limited partnership, registered under the Act as a closed-end, non-diversified management company, having as its investment objective long-term capital appreciation together with the tax advantages resulting from certain investments. Limited partnership interests in KECALP were sold in an aggregate principal amount of $3,747,000 in a registered public offering which closed in May, 1984, exclusively to those employees of ML&Co. and its subsidiaries having annual compensation in 1983 of at least $75,000, and to non-employee directors of ML&Co. One of the limited partners of KECALP is an officer and a director of the Managing General Partner. Such individuals' capital contribution to KECALP constituted less than one percent of the aggregate capital contributions to KECALP by its limited partners. KECALP operates in accordance with the terms of an exemptive order issued pursuant to section 6(b) of the Act on April 8, 1982 (Investment Company Act Release No. 12363) ("KECALP Exemptive Order") (for a further description of KECALP and its operations, see Investment Company Act Release No. 12290, March 11, 1982).

Itran, a Delaware corporation with its principal office located in Manchester, New Hampshire, is engaged in the design, manufacture and sale of industrial vision systems for high-volume manufacturing companies in the automotive industry, as well as other industries. Pursuant to a Stock Purchase Agreement dated as of August 6, 1985 ("Itran Agreement"), Itran agreed to sell an aggregate of 55,000 shares of its 1985 Preferred Stock and 1986 Preferred Stock to seventeen investors at a purchase price of $100 per share, for an aggregate price of $5,500,000. The closing for the sale of the 1985 Preferred Stock occurred on August 6, 1985, at which time Itran sold 33,000 shares of such stock for an aggregate price of $3,300,000. The closing for the 1986 Preferred Stock placement is scheduled to occur on July 31, 1986; at that time the purchasers wil have the right to purchase 40 percent of their total subscription, subject to the right to increase their investments proportionately to the extent one or more purchasers of the 1985 Preferred Stock elect not to purchase 1986 Preferred Stock.

The Partnership acquired 3,600 shares of 1985 Preferred Stock of Itran pursuant to the Itran Agreement on August 6, 1985. The purchase price was $100 per share, for an aggregate purchase price of $360,000. Such shares, if converted into Itran common stock, would represent approximately 3.62% of the shares of Itran common stock on a fully-diluted basis. Its investment in Itran would thus represent less than 1% of the Partnership's net assets.

Likewise, pursuant to the Itran Agreement, KECALP has conditionally agreed to purchase 1,200 shares of 1985 Preferred Stock at $100 per share, and has the right to purchase 800 shares of 1986 Preferred Stock at the same price. The investment of $120,000 in the 1985 Preferred Stock will represent less than four percent of KECALP's initial assets. If KECALP determines to purchase 1986 Preferred Stock from Itran, its total investment of $200,000 would represent less than six percent of KECALP's initial assets.

To resolve concerns as to the requirements of the Act in light of aforesaid transaction, Applicants decided to apply for the exemptive relief specified hereinabove. The Itran Agreement provides the KECALP is not required to make payment to Itran for the 120,000 shares of the 1985 Preferred Stock KECALP intends to acquire unless the Partnership and KECALP receive the orders requested herein. The Itran Agreement further provides that if such orders have not been issued by the Commission before December 31, 1985, KECALP's obligation under the Itran Agreement will terminate.

Because of the delay in payment to Itran, however, Itran required that KECALP pay interest on such amount to Itran at a rate equal to the 90-day Treasury bill yield as of August 6, 1985, until KECALP makes payment to Itran for the shares of 1985 Preferred Stock it has agreed to purchase. The terms of KECALP's purchase are the same as those of the Partnership's purchase in all other respects, it is stated.

Applicants state that the investment opportunity in Itran preferred shares was initially brought to the attention of the Partnership in September, 1984. The Individual General Partners reviewed the prospective investment by the Partnership and KECALP in Itran at a meeting on July 23, 1985. Among the factors considered by the Individual General Partners, it is stated, was the fact that the terms of the Partnership's purchase of the Itran shares would be no less favorable than the terms on which KECALP is to participate, and the fact that the Partnership would not be disadvantaged in any manner by the participation of KECALP in the proposed transaction. It is stated, in addition, that KECALP Inc. ("KECALP General Partner"), a wholly-owned subsidiary of ML&Co., likewise reviewed the Itran investment, and that the investment committee for the KECALP General Partner decided, at meetings held on June 7, 1985 and August 12, 1985, that the Itran participation would be consistent with KECALP's investment objective of seeking long-term capital appreciation.

CID, A California corporation with its principal office located in San Jose, California, is engaged in the business of designing and producing a specific integrated circuit design technology. Pursuant to a Series 1 Preferred Stock Purchase Agreement ("CDI Agreement"), dated as of August 7, 1985, CDI agreed to sell 56 million shares of Series 1 Preferred Stock ("CDI Shares") to 25 investors for an aggregate purchase price of $13.5 million. The Partnership determined to purchase 4 million CDE Shares for an aggregate purchase price of $1 million, and KECALP determined to purchase 600,000 shares for an aggregate purchase price of $150,000. Applicants state, however, that such investments could not be made concurrently by the Partnership and KECALP without a Commission exemptive order. Therefore, it was agreed that the Management Company would purchase the aggregate of 4.6 million shares on behalf of the Partnership and KECALP, and sell such shares to the Partnership and KECALP at a price arrived at according to the formula described herein below, following issuance of the Commission order herein requested.

The purchase price to be paid by KECALP and the Partnership to the

Management Company for the CDI Shares they respectively propose to acquire will be the lesser of (i) the value of the investment on the date the CDI Shares are acquired by the Partnership and KECALP (as determined by the Independent General Partners of the Partnership and the board of directors of the KECALP General Partner), or (ii) the cost to the Management Company of purchasing and holding the CDI Shares. If the latter formulation (i.e., clause (ii)) should be applicable, such cost will be the original purchase price of $.25 per share paid for the CDI shares on August 7, 1985, plus carrying costs relating to such investment. Applicants note that the purchase price of the CDI Shares is $0.21 per share for certain purchasers—none of whom are affiliated with ML&Co.—who were authorized to purchase CDI Shares at that price pursuant to certain prior lending agreements with CDI.

Applicants state that the Managing General Partner and the KECALP General Partner investment committee have reviewed the proposed investment in CDI Shares in detail. In evaluating the terms of the transaction, the Managing General Partner and the KECALP General Partner Investment committee considered the fact that the proposed purchase price to be paid by the Partnership and KECALP will include carrying costs to be incurred by an affiliated person (i.e., the Management Company), in the event that the value of the investments at the the date of acquisition by the Partnership and KECALP, respectively, should exceed the sum of the purchase price plus the carrying costs incurred by the Management Company. It is stated that both KECALP and the Partnership believe that it is entirely appropriate for them to reimburse the Management Company for its carrying costs in a situation in which the Management Company purchases securities, as, in effect, their nominee, and as an accommodation to KECALP and the Partnership, which would have purchased the securities on August 7, 1985, if they had not believed it necessary to obtain the exemptive relief applied for herein. Applicants submit that to deny reimbursement for said carrying costs would result in a further and unwarranted loss to the Management Company and provide a disincentive to act on behalf of KECALP and the Partnership in the future.

Applicants represent, in addition, that the proposed investment in CDI Shares would not otherwise be available for purchase by KECALP and the Partnership. It is further stated that the KECALP General Partner investment committee and the Managing General Partner have approved the proposed investments after review of a considerable number of possible investments for KECALP and the Partnership. The Partnership and KECALP thus submit that their respective investment programs would be prejudiced if they were not permitted to acquire the proposed participations in CDI Shares.

It is further stated that the board of directors of the KECALP General Partner believe that KECALP's proposed investment in CDI Shares is consistent with the rationale underlying the establishement of KECALP as an "employees' securities company." It has been contemplated since the inception of KECALP, Applicants state, that ML&Co. and its affiliates would be involved in structuring, identifying and investing in many of KECALP's portfolio investments. Similarly, it is asserted that the proposed purchase of CDI Shares is consistent with the Partnership's investment objectives and the types of transactions in which the Partnership was expected to prticipate. That is, it was contemplated that the Partnership would be a co-investor in portfolio companies with affiliates of the Partnership's management, and this expectation has been noted in the Partnership's prospectus.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 30, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-29782 Filed 12-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release Nos. 33-6814; 34-22712; 35-23946; 39-1052; IC-14844; IA-1002 File No. S7-48-85]

Electronic Filing, Processing and Information Dissemination System

AGENCY: Securities and Exchange Commission.

ACTION: Solicitation of comment on certain issues raised at the November 25, 1985, Pre-release Meeting.

SUMMARY: The Securities and Exchange Commission (SEC) requests comments on five issues pertaining to its anticipated Request for Proposals (RFP) for an electronic filing, processing and information dissemination system. The five issues are: (1) 132 Character workstations; (2) filer phase-in schedule; (3) dissemination to state securities regulators; (4) ownership of software and other intellectual property; and (5) proposed dissemination pricing and regulation approach.

Each of these issues has been raised in previous Commission announcements and the public has commented. This is intended to provide interested persons an opportunity to offer further comment.

DATE: Comments must be received on or before January 10, 1986.

ADDRESS: Persons submitting comments should file three copies with John Wheeler, Secretary, Securities and Exchange Commission, Washington, DC 20549. All comments should refer to File S7-48-85 and will be available for public inspection and copying at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: David Copenhafer (202) 272-3794, Edgar Project Manager, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On July 1, 1985 the Commission published a Pre-Solicitation Document (PSD) describing the technical and contractual Requirements for its planned Edgar Operational System. Accompanying the PSD was an Executive Summary highlighting the objectives of the system and identifying significant issues related to the development, operation and funding of the Edgar system. Public comment on these specific issues and on any other aspect of the procurement were invited, either in writing or at a public meeting held on July 23, 1985.

In response to the PSD, the Commission received 18 letters of comment. Based upon these and other comments, Commission staff has extensively reviewed all aspects of the system and anticipates making significant changes in the RFP reflecting

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the public comment. Accordingly, on November 20, 1985, a notice was published in the **Federal Register** (50 FR 47886) describing revised major requirements of the system and announcing that a public meeting would be held with the staff on November 25, 1985 to discuss these changes.

Over eighty people attended this public meeting. A number of comments were made. Several persons requested additional information and the opportunity to provide additional written comments. As a result, the staff indicated that a second notice would be issued expanding on the subjects discussed at this meeting.

1. 132 Character Workstations

The SEC has been informed by several potential bidders that it would be necessary to custom-manufacture the workstations specified in the pre-release document. Commentators indicated that while 132 character monitors and terminals do exist, there were no known pieces of equipment which featured 132 character display in combination with the functionality contained in a personal computer (PC). They stated that without purchasing customized equipment, the SEC would not be able to obtain the functions contained in its existing PC-based pilot workstations.

Reviewers are asked to comment on this apparent technical limitation and on the incremental cost increase to the SEC internal system of any proposed solution. Assume an SEC internal system of 450 workstations in making a cost assessment.

2. Filer Phase-In

The Pre-Solicitation Document proposed that entities whose filings are processed by the Division of Corporation Finance would be phased-in over a one year, seven month period. This schedule reflected industry groups and the Assistant Director groups in the Division of Corporation Finance responsible for processing the filing of these industry groups. A similar approach was described for entities whose filings are processed by the Division of Investment Management.

The proposed revised phase-in schedule for the Division of Corporation Finance, shown below, spans two years and three months. Subject to certain numerical constraints and Commission rulemaking, the schedule offers bidders the opportunity to specify the order in which they perfer be brought into the electronic filing system. The proposed phase-in schedule for the Division of Investment Management spans one year and nine months.

The question was raised whether the SEC would extend the term of the contract to reflect the change in the phase-in schedule on the assumption that revenues would be reduced since the database would not reach maturity as quickly as it would under the old schedule. The staff's position is that the contract will not be extended. The rationale for not extending the contract period (seven years with two options of two years each) is that the extension in the duration of the phase-in period is less than one year, and the contractor will have the opportunity to request that registrants whose filings are of greater commercial value due to greater public interest be brought on at earlier dates than contemplated under the previous approach. For example, the contractor could request that larger companies be brough in first.

The proposed phase-in schedules for the Division of Investment Management and the Division of Corporation Finance are presented for review. Comment is sought on the potential impact both of these schedules would have upon a successful bidder. Although the specific dates may change, depending upon the RFP issue date, contract award date and operational system implementation date; the number of companies included in each phase and the lengths of the between phases will be constant.

Division of Investment Management Phase-In Schedule

INVESTMENT COMPANY DISCLOSURE FILINGS (OTHER THAN FORM N-SAR)

Branch	Effective date for commencing electronic filing	Number of companies added	Cumulative number of investment companies filing electronically
16	05/01/87	[illegible]	[illegible]
17	10/01/87	[illegible]	1,200
18	[illegible]	[illegible]	1,800
20	[illegible]	400	[illegible]

Public Utility Holding Company Filings

(Twelve Active Registered Company Systems)

Staff training, test filings and voluntary operational filing by ten systems will have been substantially completed in the pilot phase. Mandatory electronic filings for all twelve systems is anticipated to begin July 1, 1987.

Form 13F Filings

(Statement of Securities Holdings Required To Be Filed by Institutional Money Managers Under the Securities Exchange Act of 1934, Currently About 600 Filings per Quarter)

It is expected that voluntary electronic filing of this form will begin in the pilot phase. Mandatory filings are anticipated to begin July 1, 1987.

Form N-SAR

(Periodic Semi-Annual and Annual Report Filed by Investment Companies)

Voluntary electronic filing of this form by management investment companies began in November, 1985. Mandatory electronic filing of this form for all management investment companies are anticipated to begin January 1, 1987, even though the branch phase-in schedule shown above provides for a later date for mandatory filing of other disclosure documents. Testing for electronic filing of this form by unit investment trusts to begin in 1986 with mandatory filings to begin January 1, 1988.

Other Filings

It is not expected that applications filed under the Investment Company Act will be received or processed electronically. Similarly, we do not expect to receive or process Advisers Act filings through Edgar. Any decision to include these documents in the electronic system will be made in conjunction with the contractor.

Division of Corporation Finance Phase-In Schedule

General

It is anticipated that all registrants filing documents processed by the Division of Corporation Finance, with the exception of certain forms noted below, will be filing electronically by July 1989.

It is anticipated that registrants will be numerically phased into the system according to the following schedule:

Effective date for commencing electronic filing	Number of registrants added	Cumulative number of companies filing electronically
Apr. 1, 1987	500	500
July 1, 1987	750	1,250
Oct. 1, 1987	750	2,000
Apr. 1, 1988	1,000	3,000
July 1, 1988	2,000	5,000
Oct. 1, 1988	2,000	7,000
Apr. 1, 1989	2,000	9,000
July 1, 1989	(1)	11,000

[1] Remainder.

Williams Act Forms

It is anticipated that persons filing the following documents will be required to file electronically at the same time that the company to which the filings relate is required to file electronically.

Form type	Type of filing
Schedule 13D	Acquisition statement.
Schedule 13G	Acquisition statement.
Schedule 14D-1	Tender offer schedule.
Schedule 14D-9	Tender offer solicitation/recommendation.
Rule 13e-1Transaction Statement	Issuer purchases of securities.
Rule 14f-1Transaction Statement.	Information for director change.
Rule 13e-4	Issuer tender offer.
Schedule 13e-4	Issuer tender offer schedule.

Exception forms

a. Foreign Issuers.

It is anticipated that, at least for the firts two or three years of the contract, the following forms filed by foreign governments and foreign issuers will be filed in paper or electronically, at the option of the registrant.

Form type	Type of filing
F-1	Registration Station—Foreign Issuers.
F-2	Registration Station—Foreign Issuers.
F-3	Registration Station—Foreign Issuers.
F-4	Registration Station—Foreign Issuers.
F-6	Registration Station—Foreign Issuers.
20-F	Foreign Private Issuer Registration Statement and Annual Report.
6-K	Foreign Issuer Current/Periodic Report.
12g3-2b	Provisional Issuer Exemption
Schedule B	Foreign Government Registration Statement.
18	Registration of Foreign Governments.
18-K	Foreign Government Annual Report.

b. Regulation B.

All forms filed pursuant to this Regulation, which relates to fractional undivided interests in oil or gas rights, will be filed on paper.

c. Forms Filed in Regional Office.

The following forms will be filed on paper until the SEC's regional offices are phased into the system:

Form type	Type of filing
Regulation A Forms	Small Business.
Regulation D Forms	Small Business.
Form S-18[1]	Registration Statement.
Regulation F Forms	Acquisition Statement.

[1] Form S-18s filed in the Headquarters office will follow the electronic filing schedule set forth above.

d. Forms 3, 4 and 144.

The SEC receives in excess of 150,000 Forms 3, 4 and 144 annually. These are one-page two-sided forms noting purchases or sales of stock by specified individuals or entities. The forms may be submitted by individuals, partnerships or corporations. Any decision to include these documents in the electronic system pursuant to this contract will be made in conjunction with the contractor.

3. Dissemination to State Securities Regulations

Each year more than 6,000 securities registration filings made with the SEC are also filed with most States securities regulations (States). The SEC seeks to aid both the State and the individual filers by enabling filers to make a single filing that fulfills requirements of the SEC and any State identified by the filer.

Toward that end, under Edgar, these filings will be made electronically with the SEC and forwarded to a central facility operated by an agent selected by the States. In addition, other Edgar filings may be made available to the States through this same mechanism.

The central facility, to be located in the Washington, D.C. metropolitan area, will be set up by the SEC contractor and will consist of a central processing unit capable of processing daily non-peak filings into a data base, sufficient storage capability to maintain an average week of filing data, and a remote job entry telecommunication link to the Edgar dissemination system. The interface to the Edgar dissemination system is at the regulated Level I service for dissemination (see item 5 in this release). In order to assist and encourage the implementation of one-step filing, the estimated $2.5 million cost of the United States agencies dissemination node is included in the SEC internal processing system. The SEC will retain ownership of the node hardware, software and data.

Although the contractor will be responsible for the initial development of the dissemination node, the state agent will be solely responsible for providing the facility and operation of the node. The SEC will have no direct responsibility for or direct interaction with the state filing system or with individual states. The Edgar contractor will be responsible for procurement of the equipment and software described above, and delivery to the central facility. Subsequently, the state agent will be responsible for housing, operation, training of state agent staff, maintenance of the hardware and software, and providing communications and filings to the individual states.

The contractor will not be required to provide this capability until the SEC determines that a sufficient number of states have agreed to the arrangement with the state agent. If, after two years from the contract award date, a sufficient number of states have not entered into an agreement for the state system, the SEC may either relieve the contractor from this obligation or seek the best efforts of other parties in developing the system.

Comment is sought on this proposal.

4. Ownership of Software and Other Intellectual Property

The RFP will provide that: (1) Intellectual property developed with federal funds is owned by the SEC, and (2) intellectual property developed at the contractor's expense is owned by the contractor. Since the federal government will finance the cost of constructing and operating the SEC internal system, the extent to which the successful bidder may copyright or otherwise restrict the intellectual property it develops under the operational Edgar contract is significantly restricted from the PSD.

The SEC will, however, retain a non-exclusive, permanent, transferable, royalty-free interest in such contractor-owned property that relates to the receipt and regulated dissemination system for the sole purpose of being able to continue to operate the entire operational system at the expiration of the contract or in the event that the contractor is replaced.

Comment is sought on this proposal.

5. Proposed Dissemination Pricing and Regulation Approach

A critical objective of the operational Edgar system is to achieve the widest possible distribution of SEC filings, at a fair and reasonable price, that permits the SEC contractor to recover its costs and earn a reasonable rate of return on investment. This is best accomplished by a structure that entails limited Commission involvement in product definition and price regulation and maximum reliance upon free market competition. Thus, the Edgar contractor will be required to provide a limited level of mandatory service within a regulated environment. These services are designed to ensure that any commercial vendor of information has adequate and timely access to SEC information at a fair and reasonable price. The resulting direct and open competition among providers, including the Edgar contractor, will eliminate the need for further Commission involvement in identifying all desirable products or services and determining prices for each of them. The two required services are described below.

Level I Service—Annual subscription service to all SEC filings provided through batch transmittal on a daily basis via landline, broadcast or any other recorded media, as specified by the contractor in its proposal. As part of this service, subscribers will be permitted to lease, at their expense,

dedicated communications lines to the Edgar dissemination system that will provide real time notification of filings upon receipt and enable the subscriber to access and download filings upon command.

This service is modified from the service identified in the PSD to reflect comments that real-time simultaneous downloading of the entire database is neither cost-effective nor desirable. According to commentators, overnight delivery is expected to be satisfactory for all but a very small percentage of filings, which Level I subscribers may obtain on a real-time basis via the interactive communications line which may be provided with this service. It is expected that this service will satisfy the needs of commercial information vendors.

AS discussed above, Level I service will be provided to the agent for state securities agencies for access and distribution to the states. This service will be provided without charge provided usage is restricted to official state purposes.

Level II Service—Annual subscription service to certain SEC-specified subsets of the entire database. Transmission would be as specified in Level I service, but it would not include the option of a real-time leased line connection. This service reflects the comments that certain specialized information vendors require timely access to segments of the database but do not need or have the capability to purchase, receive or store the entire database.

The contractor will not be required to offer accompying real-time demand access with this service. There are three reasons for not mandating this aspect of service. First, it does not appear that subscribers to this level of service, probably providers of periodic analytic or specialized services, routinely require real-time access. Second, to provide this service with no upper limit on the number of users, the Edgar contractor might have to maintain an extremely large communications system that would not be cost-effective. Finally, it is expected that Level II subscribers interested in demand access will be able to obtain this service from Level I subscribers in the open market or from the Edgar contractor, if offered through its unregulated services.

The Edgar contractor will be required to provide both Level I and Level II service in a standardized print image format that corresponds with the document as filed. The Contractor will be permitted to offer standardized communications interfaces that minimize its processing demands, consistent with Federal Information Processing Standards (FIPS PUB).

The following are the Level III Subscription Services that must be provided:

a. Periodic Filings—NYSE Companies
b. Periodic Filings—AMEX Companies
c. Periodic Filings—OTC Companies.
d. Registration Statements and Prospectuses.
e. Tender Offers and Acquisitions Filings
f. Annual Report—All Filings
g. Form 8-K Current Reports—All Filings
h. Investment Company Periodic Reports"

Optional Services—As Levels I and II are mandatory minimum service levels designed to ensure competition, the contractor will be permitted to offer any and all other services in an unregulated environment, as discussed below. Because of the existence of alternative providers through Level I, the Contractor will be subject to direct competition on any other services and purchasers will be able to choose among providers.

For example, potentially heavy users of SEC information, such as law firms or securities analysts that are not interested in maintaining an internal system for storage and access, could contract with any Level I subscriber on the contractor itself for demand access, specifically tailored to their usage or needs. Similary, the occasional or low volume user, such as an individual investor, could obtain service through a commercial "gateway" vendor or via an analytic service in which the Edgar derived data is a component of a broader or enhanced service. In this manner, the public will be able to obtain the broadest array of services at competitive prices.

Cost Recovery and Regulation Approach—As indicated above, the contractor will be entitled to recover the costs of developing and operating the receipt and dissemination system as well as a reasonable rate of return on investment and operation. This will be accomplished by periodic Commission oversight of contractor dissemination activities and regulation of revenue generated from the sale of regulated services. Commission oversight will focus primarily on aggregate revenue and the rate of return on regulated services. Prices for specific products or types of regulated services will be reviewed only to assure the prices are not predatory nor anticompetitive.

Offerors, in their bid proposals, will be required to specify the development and annual operating costs to be recovered as well as specifying and proposing their rate of return. These figures will be utilized in evaluating and selecting the contractor. Subsequently, prior to implementation of service, the contractor will propose prices for Level I and Level II services designed to ensure revenue commensurate with their cost structure and approved rate of return. These initial prices will be subject to Commission review to ensure that they are not anticompetitive nor predatory.

The contractor will be permitted to coduct unregulated activities provided that: (1) Such activities are conducted by a separate entity with complete and separate accounting records and (2) entity is charged the Level 1 annual subscription fee. In addition, the contractor will be permitted to use shared facilities for both regulated and unregulated activities provided that the costs of such facilities are allocated on a reasonable basis which assures that the unregulated activities are not subsidized by a disproportionate level of expenses being borne by the regulated activities. An annual review of regulated operations will be condicted by the Commission based upon an independent audit of operations, conducted under the direction of the Commission. This audit will review all aspects of regulated services. It also will review unregulated activities to the extent necessaary to ensure that costs are properly allocated.

While, as noted, the Commission will review the prices of specific regulated services only to assure that they are not predatory or anticompetitive, the Commission's Office of General Counsel has expressed the view that present law does not authorize an Edgar fee structure in which the contractor would impose a royalty or usage-based fee on subscribers who resell Edgar information.

Finally, the Commission will require the Edgar contractor to provide free access to the public through workstations available in the Commission's public references rooms. In addition, the Commission will ensure that all Commission filings are available for public access in both paper and microfiche form, as is currently the case.

Comment is sought on this proposal.

By the Commission.

Dated: December 12, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-29902 Filed 12-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22702; File No. SR-NYSE-85-37, etc.]

Self-Regulatory Organizations; Filing and Order Approving on an Accelerated Basis; Proposed Rule Change of New York Stock Exchange, Inc., Extending "Next-Day" Settlement Pilot Program; and Requesting Permanent Approval

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1985, and November 13, 1985, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission File Nos. SR-NYSE-85-37 and 85-41, respectively. The Commission is publishing this notice to describe the proposals and to solicit comments on them. The Commission also is approving on an accelerated basis File No. SR-NYSE-85-41 for the reasons discussed below.

Introduction and Description

On April 23, 1985, the Commission approved a NYSE rule change (File No. SR-NYSE-85-4) that established a six-month pilot program (to end on October 30, 1985) to test the feasibility of providing to its members alternate settlement periods.[1] That rule change amended NYSE Rule 64, for the duration of the pilot, to enable members to settle trades on a "next-day" basis, *i.e.*, "for delivery on the first business day following the day of the contract." [2] The pilot program expired on October 30, 1985.[3]

On October 17, 1985, the NYSE filed File No. SR-NYSE-85-37, in which it requested that the Commission permanently approve on an accelerated basis the "next-day" settlement program, to be effective at the end of the pilot program (*i.e.*, on October 30th, 13 days later). That proposed rule change also included a "catch-all" provision to enable NYSE to implement other settlement periods (*i.e.*, on the second, third or fourth business day after trade date ("T+2, T+3 or T+4")) should NYSE members show sufficient interest in those other settlement periods. In that regard, the NYSE requested authority to begin, at any time, a six-month pilot to test these additional settlement time frames.[4] At the request of the Division of Market Regulation staff, the NYSE subsequently submitted File No. SR-NYSE-85-41 on November 13, 1985, asking for an extension of the pilot program until the Commission acts on File No. SR-NYSE-85-37, the proposal to incorporate permanently into NYSE Rule 64 the "next day" settlement program. Division staff requested that the pilot be extended for two reasons. First, the Commission needed more time to perform responsibly its section 19(b) rule proposal review. Second, an extension of the pilot would ensure that NYSE members using the "next-day" settlement feature could continue without interruption.

Rationale for the Proposal

For the following reasons, the NYSE believes that File No. SR-NYSE-85-37 is consistent with the Act and, in particular, section 6(b)(5). More specifically, the NYSE believes that the proposal fosters co-operation and coordination with persons engaged in settling and facilitating transactions in securities and perfects the mechanism of a free and open market.

When the pilot program was initially considered by the Commission, the NYSE stated that several members asked it to consider providing an opportunity to settle trades on a "next-day" basis. These members stated that next-day settlement would help them to meet customer investment objectives. Moreover, the NYSE represented that several other national securities exchanges already permitted next-day settlement and that some institutional investors have used that next-day settlement option to further their sophisticated trading strategies. Because "next day" NYSE trades would settle outside National Securities Clearing Corporation's efficent, automated "street-side" comparison, clearance and settlement facilities, the NYSE promised to monitor closely what effect, if any increased "non-regular-way" trading might have on NYSE member trade settlement operations during the pilot.

NYSE Pilot Program Experience

In File No. SR-NYSE-85-37, the NYSE represented that from April 30 to September 30, 1985, 837 next-day trades were effected on the Exchange, representing 8.5 million shares (about 10,000 shares per trade). During this same period, 1003 next-day trades were effected on other exchanges, totalling 16.9 million shares (about 17,000 shares per trade). The NYSE stated further that approximately 70% of these "next-day" trades on the NYSE (*i.e.*, about 586) were for less than 5,000 shares. Moreover, the Exchange indicated that it has monitored closely whether next-day settlement has affected the quality or operation of its regular-way auction market or the clearance and settlement operations of its member firms. The Exchange noted that it has not discovered any problems.

Request for Comments

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will by order approve File No. SR-NYSE-85-37 or institute proceedings to determine whether it should be disapproved. Interested persons can submit written data, views and arguments concerning File Nos. SR-NYSE-85-37 and SR-NYSE-85-41. Please send six copies of your written comments to the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the filings, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change that are filed with the Commission and any person, other than those may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, are available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of the filings also are available for inspection and coping at the NYSE. All written comments should refer to the file number in the caption above and should be submitted by [insert date 21 days from date of publication].

Conclusion

Because the Commission needs more time to perform its review of File No. SR-NYSE-85-37 but desires an uninterrupted pilot program, the Commission is approving on an accelerated basis File No. SR-NYSE-85-41. Thus, the NYSE will be able to

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[1] *See* Securities Exchange Act Release No. 21975 (April 23, 1985), 50 FR 16768 (April 29, 1985), approving File No. SR-NYSE-85-04, for a description of the Pilot Program.

[2] Prior to the pilot program, NYSE rule 64 provided three types of settlement periods: (1) "cash" (same day) settlement, (2) "regular-way" settlement (on the fifth business day after execution and (3) "seller's option" settlement (in six business days to sixty days after a transaction).

[3] Because the NYSE pilot technically lapsed on October 30, 1985, Division staff granted NYSE a temporary oral "no-action" position to continue the pilot program pending today's accelerated approval of the pilot extension.

[4] The NYSE represented that these additional periods were not tested during the pilot because of insufficient member interest. The Exchange also represented that it will file with the Commission under section 19(b) any rule proposals that permanently codify these or any other additional settlement time frames.

continue providing its members the option of next-day settlement until the Commission acts on the Exchange's proposal to codify permanently File No. SR–NYSE–85–37.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NYSE–85–41) to extend NYSE's next-day settlement period pilot program until the Commission acts on File No. SR–NYSE–85–37 be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 11, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–29784 Filed 12–16–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22703; File No. SR–PCC–85–5 and SR–PSDTC–85–7]

Self-Regulatory Organizations; Pacific Clearing Corp. and Pacific Securities Depository Trust Co.; Order Approving Proposed Rule Changes

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), the Pacific Clearing Corporation ("PCC") and the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission proposed rule changes that would provide settlement and distribution services in connection with certain underwritings of PSDTC-eligible securities. The Commission requested public comment on the proposals in Securities Exchange Act Release Nos. 22400 and 22401 (September 11, 1985), 50 FR 37939 (September 18, 1985). No comments were received. The Commission is approving the proposed rule changes.

A. Description of the Proposals

The proposed rule changes implement a program that provides settlement and distribution services in connection with certain underwritings of PSDTC-eligible securities.[1] Under the proposals, a PSDTC participant acting as a managing underwriter may request PCC and PSDTC to act as its agent in connection with a specific underwriting program by submitting a letter of authorization [2] at least two weeks before the expected settlement date.[3] In the authorization letter, the managing underwriter can request PCC/PSDTC to provide pick-up services, distribution services only, or distribution services and money settlement services. The managing underwriter will instruct the issuer's transfer agent or trustee bank to issue the securities in appropriate denominations registered in PSDTC's nominee name. The specific instruction forms, money settlement schedules and distribution information must be delivered to PSDTC by the managing underwriter at least forty-eight hours before the closing of the underwriting.

1. Pick-Up Services

If requested by the managing underwriter, PCC will pick up the securities certificates from the transfer agent or trustee bank on the day before settlement of the underwriting. Authorized PCC staff and one or more members of the underwriter will count, verify and package the securities at the office of the transfer agent or trustee bank and deliver them to PCC's clearing area, where they will be retained for safekeeping in custody account pending the closing of the underwriting. When notified that the underwriting has closed, PCC will release the certificates to PSDTC personnel for immediate deposit at PSDTC for the credit of the managing underwriter. PSDTC will process book-entry movements and physical withdrawals in accordance with instructions previously received from the managing underwriter.[4] If the managing underwriter so instructs, PSDTC will credit a portion of those securities to the underwriter's account at PCC to permit delivers (free or against payment) to non-PCC/PSDTC members through PCC's Securities Collection Division ("SCD") in accordance with PCC's SCD procedures. In accordance with those instructions, PCC's SCD will make arrangements for the delivery of securities to PCC's branch offices or other registered securities depositories for physical withdrawals and draft deliveries. At the end of the day on which the underwriter closes, all securities remaining in PCC or PSDTC's possession at any PCC branch will be valued and forwarded to PSDTC's vault in San Francisco for safekeeping.

2. Distribution Services

When the managing underwriter requests that PCC/PSDTC provide distribution services only, the underwriter will deliver the securities to PCC's clearing window on settlement day (closing day), and the position will be credited to the managing underwriter's PCC or PSDTC account, in accordance with the managing underwriter's instructions. Thereafter, movements and releases of the securities will be processed in accordance with PCC/PSDTC procedures. Nevertheless, PCC/PSDTC will not make any deliveries until the trustee bank or transfer agent advises PCC/PSDTC that payment has been received by the managing underwriter.

3. Money Settlement and Distribution Services

Under the proposals, PCC/PSDTC will provide money settlement and distribution services for the managing underwriter if the managing underwriter requests these services at least two weeks before the closing. Under this proposed service, PSDTC would accept payments from selling group members for the managing underwriter's account. Based on instructions from the managing underwriter, PSDTC will accept payments from selling group members until 9:00 a.m. on closing day and advise the managing underwriter which selling group members failed to make payments in accordance with the managing underwriter's instructions to PSDTC. PCC and PSDTC would effect no deliveries or movements until authorized by the managing underwriter and, in accordance with the managing underwriter's instructions, would effect deliveries (free or against payment) through PSDTC and PCC facilities.

In the event money settlement and distribution services are to be completed for DTC participants through the depository interface, PCC/PSDTC will ship securities certificates, registered in DTC's nominee name, to its New York City office one day before settlement. On settlement day, PCC/PSDTC's New York office, upon notification that the underwriting has closed, will deposit these securities in its DTC account. DTC, upon receipt of payment from its participants, then will deliver the securities by book-entry movement. Under no circumstances will DTC make these book-entry transfers prior to receipt of payment.

B. PCC/PSDTC's Rationale

PCC and PSDTC state in their filings that the proposed rule changes are consistent with the Act in general and

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[1] The underwriting program applies both to municipal securities and corporate securities that are PSDTC eligible.

[2] The signed authorization letter will be retained at the PCC office through which the underwriting will be completed. In addition to its principal office in San Francisco, PCC maintains offices in Los Angeles, Denver, New York, Portland and Seattle.

[3] The participant also should forward any additional information it has about the underwriting at that time.

[4] Non-PSDTC participants may effect settlement directly with the underwriter or through a correspondent that is a PSDTC participant.

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section 17A in particular because the underwriting program is intended to facilitate securities underwritings by expediting the issuance and distribution of securities. PCC and PSDTC also emphasize that the underwriting program reduces the necessity for physical deliveries and encourages the use of book-entry transfers of securities. Finally, PCC and PSDTC state that their proposed rule changes are consistent with section 17A(b)3)(F) of the Act in that the underwriting program promotes the prompt and accurate clearance and settlement of securities transactions, assures the safeguarding of securities and funds, and, in general, protects investors and the public interest.

C. Discussion

For the reasons stated below, the Commission believes that the proposed rule changes are consistent with section 17A of the Act and therefore is approving the proposals. The Commission believes that the proposals should further the development of the National Clearance and Settlement System ("National System") because they promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

The PCC/PSDTC underwriting program promotes the prompt and accurate clearance and settlement of securities transactions in several ways. First, the PCC/PSDTC program results in reduced distribution of physical securities certifications. Instead of each member of a selling syndicate receiving securities certificates from the issuer's transfer agent or bank trustee, the managing underwriter instructs the transfer agent or bank trustee to issue certificates in PCC/PSDTC's nominee name and authorizes the release of securities to PSDTC.[5] Pre-entered book-entry deliveries are immediately effected from the account of the underwriter to the accounts of the syndicate members. Almost simultaneously, book-entry deliveries versus payment are made to all subsequent purchasers based on delivery instructions which syndicate members submitted in advance. As a result, the Commission believes that issuers, whether corporations or municipalities, should achieve cost savings in that fewer securities certificates need be printed and the inefficiencies associated with the handling of physical certificates are reduced. More specifically, aggregate cost savings to issuers, underwriters and dealers that result from using depository services to distribute securities in primary underswriting could exceed $10,000 per issue.[6]

Second, when closing is completed, new issues immediately become eligible for the full range of depository services. Such services include custody, deposit, withdrawals, book-entry deliveries, pledges, and interest and redemption payments. The Commission believes that immobilization of securities in depositories, because of the efficiencies and cost-savings it promotes, is consistent with the goals of Section 17A of the Act.

Third, the proposed rule changes provide for optional money settlement services, whereby selling group members make payment to PSDTC which in turn transmits settlement proceeds to the underwriter. Centralized money settlement is efficient in that it allows PSDTC to notify the underwriter early on settlement day of firms that haven't made timely payment and to resolve problems prior to settlement.

The Commission also believes that the proposals adequately safeguard funds and securities. Under the proposals, the potential for certificate loss or theft is reduced since fewer certificates are issued. In addition, when the physical certificates issued require handling, PCC/PSDTC employs adequate measures to safeguard those certificates. For example, when PCC/PSDTC provides pick-up services at the request of a managing underwriter, personnel from both the lead underwriter and PCC/PSDTC count and package the securities. Those securities then are transported immediately to and safekept at PCC/PSDTC until settlement the following day. The Commission also notes that PCC/PSDTC, as agent for the managing underwriter, acts only on specific instructions from the underwriter. In this regard, PCC/PSDTC will effect delivery of securities only upon notification from the underwriter that payment has been made.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

[5] The managing underwriter delivers the securities to PCC's clearing window and has its account credited. PSDTC participants then may receive their securities through book-entry movement.

[6] *See* Division of Market Regulation Draft Staff Report, *Progress and Prospects: Depository Immobilizaton of Securities and Use of Book-Entry Systems*, at 5–6 (June 14, 1985).

Dated: December 11, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–29785 Filed 12–16–85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

December 11, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Allied Signal, Inc., Common Stock, $1.00 Par Value (File No. 7–8700)
Cal Fed Inc., Common Stock, $1.00 Par Value (File No. 7–8701)
Crystal Brands, Inc., Common Stock, No Par Value (File No. 7–8702)
First Fidelity Bancorporation, Common Stock, No Par Value (File No. 7–8703)
General Motors Corporation, Class "H" Common, $.10 Par Value (File No. 7–8704)
Horizon Bancorp, Common Stock, $4.00 Par Value (File No. 7–8705)
Kenner Parker Toys, Inc., Common Stock, No Par Value (File No. 7–8706)
United Jersey Banks, Common Stock, $2.00 Par Value (File No. 7–8707)
Citizens First Bancorp., Common Stock, No Par Value (File No. 7–8708)
Farley-Northwest Industries, Inc., Exchangeable Preferred 13½% Cumulative, No Par Value (File No. 7–8709)
Home Group, Inc., Common Stock, $1.00 Par Value (File No. 7–8710)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 30, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if if finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the

maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirly E. Hollis,

Assistant Secretary.

[FR Doc. 85-29783 Filed 12-16-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Southwest Airlines Co. Enforcement Proceeding; Rescheduling of Hearing

[Docket No. 42425]

Notice is hereby given that the hearing in the above-entitled proceeding, earlier scheduled to be held on February 19, will be held on February 13, 1986 at 9:30 a.m. (local time) in Room 5332, Nassif Bldg., 400 7th Street, SW., Washington, DC, before the undersigned Chief Administrative Law Judge.

Dated at Washington, DC, December 12, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-29828 Filed 12-16-85; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Order to Show Cause (Order 85-12-31); Docket 43655]

United States-Philippine Schedule Increases of Northwest Airways and Pan American World Airways

AGENCY: Department of Transporation.

ACTION: Notice.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order allowing Northwest and Pan American each to increase its current operations over Route 2 of the U.S.-Philippines Air Transport Agreement by one weekly roundtrip frequency.

DATES: Persons wishing to file objections shall do so no later than December 23, 1985; answers to objections shall be filed no later than December 30, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 43655 and addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should be served upon all interested parties.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Gaynes (202) 472-5418, Office of Aviation Operations, U.S. Department of Transporation, 400 Seventh Street, SW., Washington, DC 20590.

Dated: December 12, 1985

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-29829 Filed 12-16-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Advisory Circular on Surge and Stall Characteristics of Aircraft Turbine Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Availability of Advisory Circular (AC) No. 33.65-1.

SUMMARY: This notice is to notify the aviation public of the issuance of AC No. 33.65-1, Surge and Stall Characteristics of Aircraft Turbine Engines. The AC provides guidance material for acceptable means of demonstrating compliance with the requirements of Part 33 of the Federal Aviation Regulations relative to surge and stall characteristics and thrust response of turbine engines. This material applies to large, high bypass ratio turbofan engines.

FOR FURTHER INFORMATION CONTACT: George Mulcahy, Engine and Propeller Standards Staff, ANE-110, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, MA 01803; telephone (617) 273-7077.

SUPPLEMENTARY INFORMATION: Interested parties were given the opportunity to review and comment on the draft AC during the proposal and development phases. The notice to announce the availability of and request comments to the draft AC was published in the **Federal Register** (49 FR 33393) on August 22, 1984. All comments were reviewed and appropriate comments were incorporated in the AC.

AC No. 33.65-1 was issued by the Engine and Propeller Certification Directorate in Burlington, Massachusetts, on December 6, 1985.

A copy of AC No. 33.65-1 may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Section, M-494.3, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Burlington, Massachusetts, on December 9, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85-29744 Filed 12-16-85; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

National Hazardous Materials Transportation Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Hazardous Materials Transportation Advisory Committee (NHMTAC) on January 7 and 8, 1986, 8:30 a.m. until 5:00 p.m. on January 7, and 8:30 a.m. until 11:30 a.m. on January 8, 1986, at the Meridien Hotel, 400 Dallas Street, Houston, Texas 77002.

The purpose of the meeting is to receive and to discuss revised reports on the findings and/or recommendations of the Committee's three working groups and to take action on these findings. The working groups are organized around the three areas of prevention, information exchange, and emergency response, which the Committee had previously determined to be issues of priority concern.

Attendance is open to the public but limited to the space available. Members of the public may present written statements to the Committee before or after any meeting of the Committee. Such statements should be sent to: National Hazardous Materials Transportation Advisory Committee, ATTN: Ms. Cecy Ivie, Office of Hazardous Materials Transportation, (DHM-2) Room 8432, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Dated: December 12, 1985.

Sherwood C. Chu,

Executive Director, NHMTAC, Office of Hazardous Materials Transportation.

[FR Doc. 85-29826 Filed 12-16-85; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 242
Tuesday, December 17, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISISON

TIME AND DATE: 10:00 a.m., December 19, 1985.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commisison.

[FR Doc. 85–29887 Filed 12–13–85; 10.47 am]

BILLING CODE 6351–01–M

2

COUNCIL ON ENVIRONMENTAL QUALITY

December 13, 1985.

TIME AND DATE: 10:00 a.m., Wednesday, January 8, 1986.

PLACE: Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC.

NOTICE OF CHANGE: The Sunshine Act meeting previously scheduled for Tuesday, December 17, 1985 (50 FR 50251 (1985)) is rescheduled for Wednesday, January 8, 1986 at 10:00 a.m.

A. Alan Hill,

Chairman.

[FR Doc. 29980 Filed 12–13–85; 3:48 pm]

BILLING CODE 3125–01–M

3

FEDERAL ENERGY REGULATORY COMMISSION

December 11, 1985.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

TIME AND DATE: December 18, 1985, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of Public Information.

Consent Power Agenda, 826th Meeting—December 18, 1985, Regular Meeting (10:00 a.m.)

CAP–1.
Project No. 9025–002, Weyerhaeuser Company
CAP–2.
Docket No. EL85–33–001, Big Bear Area Regional Wastewater Agency
CAP–3.
Project No. 6967–003, California Hydroelectric
CAP–4.
Project No. 9234–001, Adirondack Hydro
CAP–5.
Project No. 7518–001, Niagara Mohawk Power Corporation
CAP–6.
Project No. 7129–002, Wilfred and Rory Poulin
CAP–7.
Project No. 2558–007, Vermont Marble Company
CAP–8.
Project No. 7360–003, Panther Power Partnership
Project No. 9620–001, Panther Power Company
CAP–9.
Project No. 2548–006, Georgia-Pacific Corporation
CAP–10.
Project No. 7014–002, Malta Irrigation District, et al.
CAP–11.
Project No. 2088–014, Oroville-Wyandotte Irrigation District
CAP–12.
Project No. 8764–000, San Gabriel Hydroelectric Partnership
Project No. 1250–000, City of Pasadena, California Water and Power Department
CAP–13.
Docket No. HB05–85–1–000, Montana Power Company
CAP–14.
Docket No. QF86–23–000, Freeport McMoran Inc. and Gunnison Capital, Ltd.
CAP–15.
Docket No. ER85–728–003, Arizona Public Service Company
CAP–16.
Docket Nos. ER86–107–000 and ER86–120–000, Pacific Gas and Electric Company
CAP–17.
Docket No. ER86–72–000, El Paso Electric Company
CAP–18.
Docket No. ER86–101–000, Northern States Power Company (Minnesota)
CAP–19.
Docket No. ER86–133–000, Public Service Company of New Hampshire
CAP–20.
Docket No. ER86–83–000, The Washington Water Power Company
CAP–21.
Docket No. ER86–48–000, Arkansas Power & Light Company
CAP–22.
Docket No. ER86–130–000, Illinois Power Company
CAP–23.
Docket No. ER86–380–000, Florida Power & Light Company
CAP–24.
Docket No. EC85–21–000, Idaho Power Company
Docket No. EC85–22–000, Northwestern Public Service Company
Docket No. EC86–1–000, Central Illinois Public Service Company
CAP–25.
Docket No. ER85–738–002, and 003, Pacific Gas and Electric Company

Consent Miscellaneous Agenda

CAM–1.
Docket No. RM85–1–000 (Parts A–D), regulation of natural gas pipelines after partial wellhead decontrol (Brooklyn Union Gas Company)
CAM–2.
Docket No. RM85–1–000 (Parts A–D, regulation of natural gas pipelines after partial wellhead decontrol (Columbia Gas Transmission Gorporation)
CAM–3.
Omitted
CAM–4.
Docket No. GP85–42–000, Southeastern Gas Company
CAM–5.
Omitted
CAM–6.
Docket No. RO85–7–000, Brent Explorations, Inc.
CAM–7.
Docket No. RM85–1–000–140 (Parts A–D, regulation of natural gas pipelines after

partial wellhead decontrol (Valley Gas Transmission, Inc.)

Consent Gas Agenda

CAG–1.
Docket No. RP85–149–007, East Tennessee Natural Gas Company
CAG–2.
Omitted
CAG–3.
Docket Nos. TA86–1–25–000 and 001, Mississippi River Transmission Corporation
CAG–4.
Docket No. RP86–22–000, ANR Pipeline Company
CAG–5.
Omitted
CAG–6.
Docket No. CP83–403–007 and 008, Consolidated Gas Transmission Corporation
CAG–7.
Docket No. TA86–1–48–002, ANR Pipeline Company
CAG–8.
Docket No. TA83–2–30–001, Trunkline Gas Company
CAG–9.
Docket No. TA85–2–34–002, Florida Gas Transmission Company
CAG–10.
Docket No. TA86–1–33–005, El Paso Natural Gas Company
CAG–11.
Docket No. TA86–1–43–003, Northwest Central Pipeline Corporation
CAG–12.
Docket No. TA85–2–31–002, Arkla Energy Resources
CAG–13.
Docket Nos. TA85–1–33–005, 006, 007, 008, TA84–2–33–010, 0011, TA84–1–33–008 and 009, El Paso Natural Gas Company
CAG–14.
Docket Nos. RP85–165–000, 005, CP85–487–005, CP85–488–005, CP85–672–005 and RP85–125–000, Distrigas of Massachusetts Corporation
CAG–15.
Docket Nos. RP82–8–003, TA81–1–53–006, TA82–1–53–002, TA83–1–53–004 and TA84–1–53–015, K N Energy, Inc.
CAG–16.
Docket Nos. RP79–10–020, RP80–134–020 and RP83–34–005, Great Lakes Gas Transmission Company
CAG–17.
Docket Nos. RP83–93–012, 013 and 014, Trunkline Gas Company
CAG–18.
Docket No. RP85–206–001, Northern Natural Gas Company, division of Internorth, Inc.
CAG–19.
Docket No. RP85–188–000, National Fuel Gas Supply Corporation
CAG–20.
Docket No. RP86–18–000, Valley Gas Transmission, Inc.
CAG–21.
Docket Nos. TA83–1–32–000, TA84–1–32–004, TA85–1–32–003, TA85–5–32–000, RP79–59–000, RP82–54–018 and IN86————, Colorado Interestate Gas Company
CAG–22.
Omitted
CAG–23.
Docket Nos. RP85–11–014 and 015, K N Energy, Inc.
CAG–24.
Docket Nos. ST85–1661–001, ST85–1684–001, ST84–836–001, ST84–1017–001, ST84–1213–001, ST84–1250–001, ST85–47–001, ST85–49–001, ST85–196–001, ST85–575–001, ST85–663–001 and ST85–715–001, Transcontinental Gas Pipe Line Corporation
CAG–25.
Docket Nos. IS78–1–000 and IS80–28–000, Phillips Pipe Line Company
Docket No. IS80–27–000, Williams Pipe Line Company
Docket No.
CAG–26.
Docket Nos. CI85–633–011, et al., 002 and CI85–632–001, Tenneco Oil Company, et al.
CAG–27.
(A) Docket No. CI86–19–001, et al., Amoco Production Company, et al.
(B) Docket No. CI86–19–002, et al., Amoco Production Company, et al.
CAG–28.
Docket No. RI86–1–000, Energy Exploration Company
CAG–29.
Omitted
CAG–30.
Docket No. CI 84–213–000, Tenneco Oil Company
CAG–31.
Docket No. CI85–511–000 And CI85–512–000, Hufo Oils
CAG–32.
Docket No. CI86–46–000, Chevron U.S.A Inc.
Docket No. CI86–65–000, Ohio Gas Marketing Corporation
Docket No. CP86–67–000, Texas Gas Transmission Corporation
Docket No. CI84–555–005, ANR Production Company
CAG–33.
Docket No. CP85–555–001, ANR Pipeline Company
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Docket No. CP84–577–018, Trunkline Gas Company
CAG–35.
Docket No. CP85–621–001, 002, CP85–713–002, 003, CP85–714–002, 003, CP85–716–001, CP85–889–001 and CP86–53–001, ANR Pipeline Company
Docket Nos. CP85–700–001 and 002, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
CAG–36.
Docket Nos. CP85–608–003 and 004, National Fuel Gas Supply Corporation
CAG–37.
Docket Nos. CP83–452–035, 036, 036, 037 and 038, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
CAG–38.
Docket No. CP84–30–002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. CP85–255–000, Florida Gas Transmission Company
Docket No. CP85–256–000, Transcontinental Gas Pipe Line Corporation
CAG–39.
Docket No. CP83–39–007, Equitable Gas Company, a division of Equitable Resources, Inc.
CAG–40.
Docket No. CP85–746–000, Southern Natural Gas Company
Docket Nos. CI73–639–005, CI76–586–006 and CI85–587–000, Arco Oil and Gas Company, division of Atlantic Richfield Company
CAG–41.
Docket No. CP84–210–002, Texas Eastern Transmission Corporation
Docket No. CP84–217–003, Columbia Gas Transmission Corporation
CAG–42.
Docket No. CP85–912–000, Colorado Interstate Gas Company
CAG–43.
Docket No. CP85–774–000, Natural Gas Pipeline Company of America
CAG–44.
Docket No. CP85–308–00, Natural Gas Pipeline Company of America
CAG–45.
Docket No. CP85–764–000, Northern Natural Gas Company, Division of Internorth, Inc.
CAG–46.
Docket No. CP85–453–000 and 001, Trunkline Gas Company
CAG–47.
Docket No. CP85–214–001, Williston Basin Interstate Pipeline Company
CAG–48.
Docket No. CP85–118–007, Northwest Pipeline Corporation
CAG–49.
Docket No. CP84–441–011, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

I. Licensed Project Matters

P–1.
Project No. 2934–004, New York State Electric and Gas Corporation
Project No. 4684–001, Long Lake Energy Corporation

II. Electric Rate Matters

ER–1.
Docket Nos. ER81–428–000 and ER82–483–000 (Qualifying facility issues), Middle South Services, Inc.
Docket No. EL81–12–000, State of Arkansas v. Middle South Utilities, Inc.
ER–2.
Omitted
ER–2.
Omitted

Miscellaneous Agenda

M–1.
Docket No. RM 86–2–000, Revisions to the methodology for assessing Federal land use charges and to billing procedures for annual charges for Administering Part I of the Federal Power Act
M–2.
Docket No. Rm–85–19–000, generic determination of rate of return on common equity for public Utilities

I. Pipeline Rate Matters

RP–1.
Docket Nos. TA86–1–18–000 and 001 (PGA 86–1), Texas Gas Trasmission Corporation

RP2.
Omitted

II. Producer Matters

CI–1.
Docket No. CI85–513–000, Tenngasco Gas Supply Company et al. v. Southland Royalty Company et al.

CI–2.
Docket No. CI81–14–001, Inexco Oil Company

III. Pipeline Certificate Matters

CP–1.
Reserved

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–29920 Filed 12–13–85; 3:22 pm]

BILLING CODE 6717–01–M

4

FEDERAL RESERVE SYSTEM, BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, December 20, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–29866 Filed 12–13–85; 10:19 am]

BILLING CODE 6210–01–M

5

INTERNATIONAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., December 13, 1985.

CHANGES IN THE MEETING: Change of date and time for Commission meeting to December 12, 1985, at 3:00 p.m.

In conformity with 19 CFR 201.37(b), Commissioners Stern, Liebeler, Eckes, Lodwick, and Rohr determined by unanimous vote that Commission business requires the change date and time, affirmed that no earlier announcement of the change was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–29830 Filed 12–12–85; 4:32 p.m.]

BILLING CODE 7020–02–M

6

INTERNATIONAL TRADE COMMISSION

USITC SE–85–53A

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:00 p.m., Friday, December 20, 1985.

CHANGES IN THE MEETING: Addition of agenda item as follows:

7. Investigations Nos. 701–TA–261(A), 263(A) and 264(A) and 731–TA–289(A), 290(A) and 291(A) [Preliminary] (Welded steel wire mesh for concrete reinforcement from Italy, Mexico, and Venezuela)—briefing and vote.

In conformity with 19 CFR 201.37(b), Commissioners Stern, Liebeler, Eckes, Lodwick, and Rohr determined by unanimous vote that Commission business requires the change in subject matter by addition of the agenda item, affirmed that no earlier announcement of the addition to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

December 12, 1985.

[FR Doc. 85–29959 Filed 12–13–85; 3:45 pm]

BILLING CODE 7020–02–M

7

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 16, 23, 30, 1985 and January 6, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 16

Tuesday, December 17

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Briefing on Nuclear Employee Data System (NEDS) (Public Meeting)

Wednesday, December 18

9:30 a.m.
Briefing on Status of Davis-Besse (Public Meeting)

11:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Request for Hearing by R.C. Arnold and E.G. Wallace (tentative)
b. Petition for Review of Appeal Board Decision on Shoreham Emergency Planning/Legal Authority Issues (ALAB–818) (tentative)
c. Notice of Hearing on TMI–2 Leak Rate Data Falsification (tentative)

Week of December 23—Tentative

Tuesday, December 24

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 30—Tentative

Thursday, January 2

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of January 6—Tentative

Monday, January 6

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, January 7

10:00 a.m.
Briefing by Staff on TVA Corporate Plan (Public Meeting)

Wednesday, January 8

10:00 a.m.
Briefing by TVA on Corporate Plan (Public Meeting)

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Corrado,

Office of the Secretary.

December 12, 1985.

[FR Doc. 85–29950 Filed 12–13–85; 3:22 am]

BILLING CODE 7590–01–M

BEST COPY AVAILABLE

8

POSTAL RATE COMMISSION

TIME AND DATE: 9:30 a.m., December 19, 1985.

PLACE: Conference Room, Suite 300, 1333 H S reet, NW, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed Rulemaking for Periodic Reports.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW. Washington, DC 20268–0001, Telephone (202) 789–6840

Charles L. Clapp,

Secretary.

[FR Doc. 85–29901 Filed 12–13–85; 12:12 pm]

BILLING CODE 7715–01–M

federal register

Tuesday
December 17, 1985

Part II

Federal Reserve System

12 CFR Part 204
Reserve Requirements of Depository Institutions; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Reg. D; Docket No. R-0563]

Reserve Requirements of Depository Institutions; Reserve Requirements on Money Market Deposit Accounts Held by Hawaiian Nonmember Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: On January 2, 1986, Hawaiian nonmember depository institutions begin an eight year phase-in of federal reserve requirements on deposit accounts, pursuant to § 204.4(f) of the Board's Regulation D (12 CFR Part 204). Section 204.4(f) also provides that Money Market Deposit Accounts (MMDAs) at those institutions are not subject to the phase-in provisions and are subject to full reserves commencing with the reserve maintenance period beginning January 2, 1986. After March 31, 1986, the authority of the Depository Institutions Deregulation Committee (DIDC) terminates (12 U.S.C. 3509), and as a result, the authority for MMDAs which were created by regulation by the DIDC (12 CFR 1204.122) also terminates. At that time MMDA-type deposits will become subject to the eight year reserve requirement phase-in applicable to other deposits held by nonmember Hawaiian depository institutions.

The effect of the current Regulation D is to make MMDAs at nonmember Hawaiian depository institutions subject to full reserve requirements on accounts held at these institutions for computation periods beginning December 3, 1985 through March 31, 1986 and then to be subject to the eight year phase-in of reserve requirements after that date. In order to avoid this result, the Board, exercising its power under section 11(c) of the Federal Reserve Act, waives the full reserve requirement and amends its regulations to subject MMDAs in nonmember Hawaiian institutions to the same phase-in requirements as are generally applicable to deposits in those institutions. Thus, MMDAs in these institutions will be subject to the eight year phase-in of reserves commencing with the reserve maintenance period beginning January 2, 1986.

EFFECTIVE DATE: December 31, 1985. Comments must be received by December 20, 1985.

ADDRESS: Interested parties are invited to submit written data, views, or arguments concerning the proposal to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or such comments may be delivered to Room B–2223 between 8:45 a.m. and 5:15 p.m. on business days. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. on business days except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452–3778) or Patrick J. McDivitt, Attorney (202/452–3818), Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(8)(E) of the Federal Reserve Act, 12 U.S.C. 461(b)(8)(E), provides for the phase-in of reserve requirements for nonmember depository institutions in Hawaii, and § 204.4(f) of Regulation D implements these statutory requirements. This phase-in commences with the reserve maintenance period beginning January 2, 1986, and continues for eight years.

In implementing the statute, the Board specifically exempted MMDAs in nonmember Hawaiian depository institutions from the phase-in provisions. Thus, commencing January 2, 1986, under the existing regulation, MMDA accounts held in these institutions from December 3, 1985 forward would be subject to full reserve maintenance requirements.

MMDAs were created by the DIDC by regulation in 1982, 12 CFR 1204.122, and the Board amended its Regulation D to provide that MMDAs would be subject to full reserve requirements. However, it extended its regulatory delay of the maintenance of reserve requirements of nonmember Hawaiian depository institutions to MMDAs held by these institutions until January 2, 1986, at which time full reserve maintenance would be required.

The DIDC, and as a result, its regulations, terminate on March 31, 1986, 12 U.S.C. 3059. At that time, MMDAs in Hawaii will become subject to the phase-in provisions for deposits held by nonmembers depository institutions located in Hawaii. Consequently, under the current regulation, MMDAs at nonmember depository institutions in Hawaii, after being subject to full reserves for only a few months, would be subject to reserves at the lower phase-in rate.

Because of the burden to the depository institutions of complying for this brief period, the Board has decided, in the interest of cost savings and convenience, and for other good cause, to relieve this restriction by deleting the requirement in the last sentence of section 204.4(f) of Regulation D that nonmember depository institutions located in Hawaii maintain full reserves on MMDAs after January 1, 1986. The Board will require the phase-in of reserves on MMDAs in these institutions on the same schedule generally applied to their other deposits. The resulting reduction in aggregate reserve balances relative to what would have been maintained over this period is very small and will have no effect on the implementation of monetary policy. Pursuant to section 11(c) of the Federal Reserve Act, 12 U.S.C. 248(c), and section 19(a) of that Act, 12 U.S.C. 461(a), the Board is suspending the maintenance of full reserve requirements on these accounts for the reasons stated above in order to effectuate the purposes of section 19 and delegates to its Secretary the authority to renew the suspension for periods of fifteen days through the maintenance period beginning April 24, 1986—the maintenance period for MMDA accounts held at these institutions through March 31, 1986, when the MMDA expires.

Administrative Issues

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Board to consider the impact of his amendment on small entities. In this regard, it is the Board's view that the amendment would not impose any additional reporting or recordkeeping requirements. The purpose of this amendment is to reduce a burden, and there are no Federal rules which duplicate, overlap or conflict with the amendment. Suggested alternatives will be considered when comments are reviewed. The amendment will apply only to nonmember depository institutions in Hawaii. It is anticipated that the amendment could have a small beneficial impact on the ability of small depository institutions to attract deposits.

The Board, for good cause shown above, finds that this action is in the public interest because the action relieves a burden currently imposed on the affected institutions. The Board also finds that the delayed effective date of

this action provides adequate time for any interested party to comment.

List of Subjects in 12 CFR Part 204

Banks, banking, Currency, Federal Reserve System, Penalties and reporting requirements.

Effective December 31, 1985, pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, 12 CFR Part 204.4 is amended by revising paragraph (f) of § 204.4 by removing the last sentence.

By order of the Board of Governors, December 13, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-29968 Filed 12-16-85; 11:28 am]

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H.R. 3424/Pub. L. 99–178

Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriation Act, 1986. (Dec. 12, 1985; 33 page) Price $1.00.

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H.R. 2965/Pub. L. 99–180

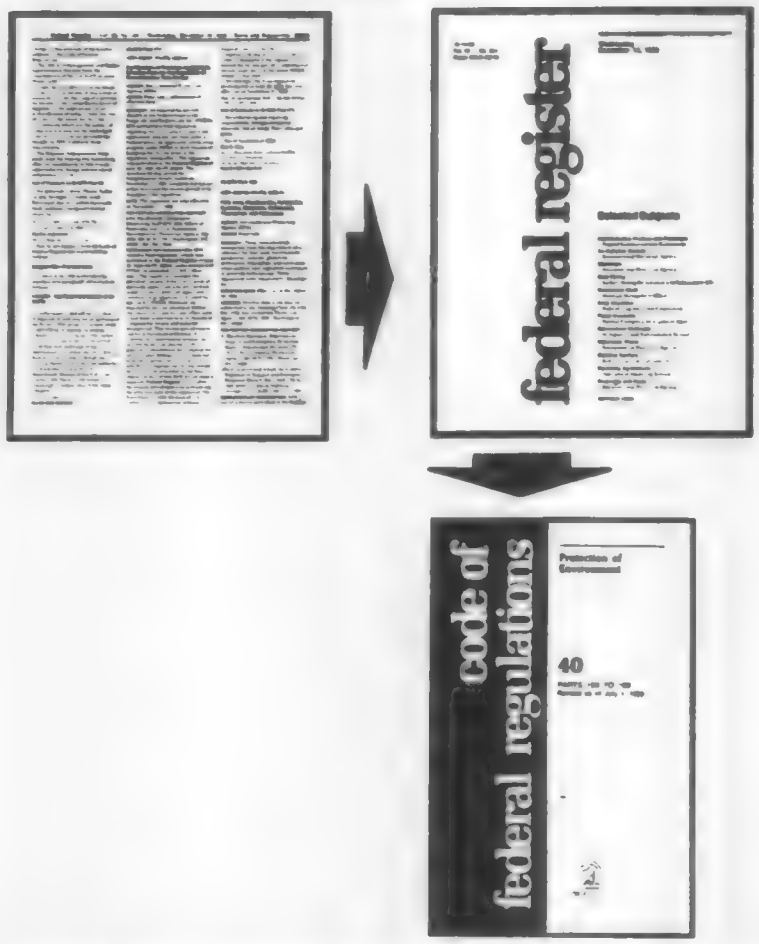
Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1986. (Dec. 13, 1985; 36 page) Price: $1.00.

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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Aviation Safety
Federal Aviation Administration

Communications Common Carriers
Federal Communications Commission

Cosmetics
Food and Drug Administration

Endangered and Threatened Species
Fish and Wildlife Service

Fisheries
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Freedom of Information
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Farm Credit Administration

Public Assistance Programs
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Radio Broadcasting
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Railroads
Interstate Commerce Commission

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Surface Mining
Surface Mining Reclamation and Enforcement Office

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227 (Voice)
Melanie Williams 202-523-5229 (TDD)

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

NOTE: There will be a sign language interpreter for hearing impaired persons at this briefing.

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Federal Register
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Wednesday, December 18, 1985

Presidential Documents

Title 3—

The President

Proclamation 5421 of December 15, 1985

Seventy-fifth Anniversary of the Boy Scouts of America, 1985

By the President of the United States of America

A Proclamation

The Boy Scouts of America, our Nation's largest organization for young people, has served our youth since 1910. Thanks to dedicated adult volunteers, more than 70 million young people have learned Scouting's lessons of patriotism, courage, and self-reliance over the past 75 years, and millions more have benefited from the service, inspiration, and leadership of the Boy Scouts.

Former Scouts have gone on to become leaders in all fields, including business, education, and government. The values they learned through Scouting have given them the confidence to make ethical choices and to realize their full potential as active and responsible citizens.

America's young people have always been treasured as our most precious resource. Since Scouting has had a strong positive influence on young people, it has played a vital role in shaping America's future. The Boy Scouts have clearly shown that it is possible to innovate while remaining faithful to their original principles. I am confident that they will continue to play an important role in American society for many years to come, molding our youth with programs that build confidence and competence, and instilling in them principles that can guide them through their lives.

The Congress of the United States, by House Joint Resolution 159, has designated the year 1985 as the "75th Anniversary of the Boy Scouts of America" and has authorized and requested the President to issue a proclamation to commemorate this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the year 1985 as the Seventy-fifth Anniversary of the Boy Scouts of America.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of December, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-30079
Filed 12-16-85; 4:27 pm]
Billing code 3195-01-M

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Rules and Regulations

Federal Register
Vol. 50, No. 243
Wednesday, December 18, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307 and 381

[Docket No. 85-028]

Overtime and Holiday Inspection Service

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends provisions in the Federal meat and poultry products inspection regulations listing holidays for Federal empolyees to reflect that the birthday of Martin Luther King, Jr., will become an official Federal holiday beginning in January 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Irwin Dubinsky, Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6735.

SUPPLEMENTARY INFORMATION: Pub. L. 98-144 (5 U.S.C. 6103) which became effective November 2, 1983, requires that the meat and poultry products inspection regulations be amended to show that the birthday of Martin Luther King, Jr., is an offical Federal holiday. The provisions in § 307.5(b) of the Federal meat inspection regulations (9 CFR 307.5(b)) and in § 381.38(b) of the poultry products inspection regulations (9 CFR 381.38(b)) listing holidays for Federal employees are hereby amended to reflect this change.

These amendments are made as a result of a legislative act made by Congress and to become effective on the first January 1 occurring after the 2-year period following the date of the enactment of such action. That law requires a change in agency practice as set forth in its regulations. This change does not require notice and comment under the Administrative Procedure Act (5 U.S.C. 553).

Accordingly, the Federal meat and poultry products inspection regulations are amended by revising the first sentence of paragraph (b), section 307.5 and the first sentence of paragraph (b) of § 381.38 to insert immediately below the item relating to New Year's Day as follows:

"Birthday of Martin Luther King, Jr., the third Monday in January."

Done at Washington, DC on: December 11, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

List of Subjects in 9 CFR Parts 307 and 381

Meat inspection, Government employees.

PARTS 307 AND 381—[AMENDED]

Part 307 of the Federal meat inspection regulations (9 CFR 307) and Part 381 of the Federal poultry products inspection regulations (9 CFR 381) are amended as follows:

1. The authority citation for Part 307 continues to read as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695, 7 CFR 2.5(a), 2.92.

§ 307.5 [Amended]

2. Section 307.5(b) is amended by inserting "Birthday of Martin Luther King, Jr., the third Monday in January;" after "New Year's Day, January 1;".

3. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

§ 381.38 [Amended]

4. Section 381.38(b) is amended by inserting "Birthday of Martin Luther King, Jr., the third Monday in January;" after "New Year's Day, January 1;".

[FR Doc. 85-29711 Filed 12-17-85; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-32]

Alteration of Santa Ynez, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment extends the existing transition area at Santa Ynez, California. The extension of the 700 foot transition area is required to contain the Standard Instrument Approach Procedures (SIAP) established for Santa Ynez Airport, Santa Ynez, California. This action is necessary to provide sufficient controlled airspace to contain Instrument Flight Rules (IFR) operations at Santa Ynez Airport.

EFFECTIVE DATE: 0901 G.M.T., March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Joe Fowler, Airspace Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1655.

SUPPLEMENTARY INFORMATION:

History

On September 16, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace to ensure that aircraft conducting Instrument Flight Rules (IFR) operations at Santa Ynez Airport are contained within controlled airspace (50 FR 37542).

Interested parties were invited to participate in this relemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to § 71.181 of the

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Federal Aviation Regulations will expand the 700 foot transition area to contain the Standard Instrument Approach Procedures at Santa Ynez Airport, Santa Ynez, California.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally currrent. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Control zones.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Santa Ynez, CA—[Revised]

That airspace extending upward from 700 feet above the surface beginning at a point lat. 34°33'33" N., long. 120°00'10" W.; to lat. 34°29'00" N., long. 120°06'00" W.; to lat. 34°29'00" N., long. 120°12'20" W.; to lat. 34°37'10" N., long. 120°22'30" W.; to lat. 34°45'40" N., long. 120°18'40" W.; to lat. 34°40'30"N., long. 120°02'00" W.; thence within a 5-mile radius circle of Santa Ynez Airport (lat. 34°36'25" N., long. 120°04'30" W.); to the point of beginning.

Issued in Los Angeles, California, on December 3, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 85–29848 Filed 12–17–85; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1510

Banning of Hazardous Articles and Establishment of Safety Requirements; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error contained in the final rule on the requirements for rattles that was published on May 23, 1978 (43 FR 22002, 22006).

FOR FURTHER INFORMATION CONTACT: Alan Shakin, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION: In FR Doc. 78–14166, appearing on page 22006, in the **Federal Register** of Tuesday, May 23, 1978, correct the first line of the authority citation to read:

"**Authority:** Secs. 2 (f)(1)(D), (q)(1)(A), (s)."

Dated: December 12, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85–29845 Filed 12–17–85; 8:45 am]

BILLING CODE 6355–01–M

16 CFR Part 1700

Packaging Act of 1970 Regulations; Final Exemption of Oral Contraceptives From Child-Resistant Packaging Requirements; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final exemption; correction.

SUMMARY: This document corrects an error contained in the final exemption of oral contraceptives from child-resistant packaging requirements that was published on November 7, 1984 (49 FR 44455, 44457).

FOR FURTHER INFORMATION CONTACT: Alan Shakin, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION: In FR Doc. 84–29223, appearing on page 44457, in the **Federal Register** of Wednesday, November 7, 1984, correct § 1700.14(a)(10)(iv), line 3, 1st word to read "mnemonic". It now reads "memonic".

Dated: December 12, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85–29846 Filed 12–17–85; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulations No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Eligibility; Amount of Benefits; Payment of Benefits, Overpayments, and Underpayments, Reports Required; Income; Resources; and State Supplementation Provisions, Agreements; Payments

Correction

In FR Doc. 85–27698 beginning on page 48563 in the issue of Tuesday, November 26, 1985, make the following corrections:

1. On page 48565, third column, second complete paragraph, third line, "effect" should read "affect".

2. On page 48566, first column, first paragraph, twelfth line, "exclusion" should read "exclusions"; in the the twenty-third line, "some" should read "one"; and in the seventh line from the bottom, "from" should appear between "source" and "being".

3. On page 48567, first column, second line from the bottom, "inocme" should read "income"; and in the third column, second complete paragraph, third line, "issued" should read "issue".

4. On page 48571, first column, § 416.414(b)(3)(ii), last line, "(b)(3), (i)" should read "(b)(3)(i)".

5. On the same page, second column, Example 1, third line, "Mr. X's" should read "Mrs. X's".

6. On page 48578, second column, paragraph designated as (7), twenty-first line, "(b)(4)" should read "(f)(4)".

BILLING CODE 1505–01–M

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Public Emergency Shelters for the Homeless

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These rules provide that an aged, blind, or disabled person who is a resident of a public emergency shelter for the homeless throughout a month may be eligible for Supplemental Security Income (SSI) benefits for up to 3 months in any 12-month period. This is an exception to the general limitation on SSI eligibility for individuals who are residents of a public institution throughout a month. The rules reflect section 1611(e)(1)(D) of the Social Security Act, which was added by section 403 of Pub. L. 98–21 (the Social Security Amendments of 1983).

DATE: These rules are effective December 18, 1985; however, the statutory provision which they reflect has been in effect since May 1983.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 301–594–7337.

SUPPLEMENTARY INFORMATION: Section 1611(e)(1)(A) of the Social Security Act (the Act) provides that, with certain limited exceptions, no person may be eligible for benefits for months throughout which he or she is an inmate (i.e., resident) of a public institution. Sections 1611(e)(1) (B) and (C), which were in effect prior to enactment of Pub. L. 98–21 and are already reflected in regulations, provide exceptions for residents of certain medical institutions which receive payments for the cost of an individual's care from Medicaid and for residents of publicly operated community residences having 16 or fewer residents. Section 1611(e)(1)(D), which was added by Pub. L. 98–21, provides the additional exception that aged, blind, or disabled individuals who are residents of a public emergency shelter for the homeless throughout a month may be eligible for SSI benefits for up to 3 months in any 12-month period. This statutory provision was effective for months beginning with May 1983.

Prior to enactment of Pub. L. 98–21, residents of public emergency shelters for the homeless throughout a month were ineligible for SSI benefits, while similar residents of private emergency shelters could be eligible for SSI benefits. This additional exception provides for more uniform treatment of homeless individuals residing in public and private emergency shelters.

Regulatory Provisions

Exception for Residents of Public Emergency Shelters for the Homeless

We revised the rules in § 416.211 (You are a resident of a public institution) to reflect the additional exception to the rule that a person is not eligible for SSI benefits for any months throughout which he or she is a resident of a public institution. This exception provides that an individual who is a resident of a public emergency shelter for the homeless can be eligible for SSI benefits for any full calendar month throughout which he or she is a resident of such shelter for up to 3 months in any 12 month period.

Suspension of Benefits

We revised § 416.1325 (Suspension due to status as an inmate of an institution) to show that we will not suspend an individual's benefits for up to 3 full calendar months throughout which he or she is a resident of a public emergency shelter for the homeless in any 12-month period. We also revised § 416.1325 to provide for suspension of benefits beginning with the month after the individual has received benefits for the maximum 3 full calendar months in a 12-month period, if such individual is not otherwise eligible for benefits.

"Public Emergency Shelter for the Homeless"

Section 1611(e)(1)(D) of the Act requires the Secretary of Health and Human Services to define by regulation the term "public emergency shelter for the homeless". In developing a definition for "public emergency shelter for the homeless" we were guided by legislative history and the definitions of "institution" and "public institution", both of which were already included in § 416.201. Thus, a public emergency shelter for the homeless must make available some treatment and services in addition to food and shelter. Also, it must be used by the Federal government, a State, or a political subdivision of the State primarily to make available on a temporary basis a place to sleep, food, and some services or treatment to homeless individuals. By "emergency shelter" we mean a shelter for individuals whose homelessness poses a threat to their lives or health. A "homeless individual" is one who is not in the custody of any public institution and has no currently usable place to live. An individual who is in custody is not homeless because the governmental unit that has custody of the individual has the obligation to provide shelter for the person. An individual who for whatever reason no longer has access to his or her dwelling place is homeless. Likewise, an individual who has available shelter but the use of which presents a probability of bodily harm, is considered homeless for purposes of this provision. A medical care facility (as defined in § 416.201) or a holding facility, halfway house, foster care facility, detoxification center, or the like, that retains custody of the individual is not a public emergency shelter for the homeless because individuals under the care and control of the State (or political subdivision) in such facilities meet the definition of custody and are not homeless. Therefore, these facilities do not serve a population that would qualify them as emergency shelters for the homeless. We discuss these definitions in § 416.201 (General definitions and terms used in Subpart B).

"Any 12-month Period"

We also revised § 416.201 to define the term "any 12-month period" as the current full calendar month throughout which an individual is residing in a public emergency shelter for the homeless and the immediately preceding 11 consecutive full calendar months. The use of any standard base such as a calendar year or a fiscal year could result in an individual being paid benefits for as many as 6 consecutive months throughout which he or she resided in a public emergency shelter for the homeless.

Using a calendar base, for example, if an eligible individual entered a public emergency shelter on the last day of September, the first full calendar month throughout which the individual was a resident of the shelter would be October. If the individual remained in the shelter until April of the following year, he or she could receive a benefit under this provision for October, November, and December (3 months of the first 12-month period) and a benefit for January, February, and March (3 months of the second 12-month period). Such a result seems contrary to section 1611(e)(1)(D) of the Act, which clearly provides that a resident of such a shelter not be paid benefits for more than 3 months in *any* 12-month period. Under the definition we have adopted, that same individual would receive benefits under this provision for October, November, and December, but would receive none for January, February or March of the following year. In determining the eligibility of the individual in this example for October, we would use the 12 months from that October through the previous November inclusive. In determining eligibility for November, we would use the 12 months from that November through the previous December inclusive and for December, we would use the 12 months from December through the previous January inclusive.

Similarly, the use of a 12-month period beginning with the first month of an individual's eligibility under this provision (with the next 12-month period beginning on the anniversary of that month) could result in an individual being paid benefits for as many as 6 consecutive months throughout which he or she resided in a public emergency shelter for the homeless.

Comments Received Following Publication of the Notice of Proposed Rulemaking

These regulations were published as proposed rules on April 18, 1984 (49 FR 15225). Interested parties were given 60 days to submit comments. We received comments from 10 sources—7 State agencies, 2 advocacy groups, and an associated charities organization. Six of the writers wrote to support the proposed rules. Another writer, although supporting the proposed rules, recommended several specific changes. Two writers were concerned that the definition of public emergency shelter for the homeless that we proposed may be restrictive to the point of disqualifying most, if not all, public shelters from consideration under these rules. Another writer requested that we clarify the relationship between the public shelter exception and the community residence exception. We have addressed these comments, as well as others that were received, below.

Comment: Two writers feel that the regulations do not address the question of eligibility for SSI benefits of persons who reside in public institutions for part of a month and a public emergency shelter for the homeless for the remainder of that month. Both writers suggested that language be added to the regulations to clarify the benefit eligibility of such persons.

Response: A person residing in a public institution (e.g., a mental hospital) is generally not eligible to receive SSI benefits for any month throughout which he or she resides in that institution (section 1611(e)(1)(A) of the Social Security Act). The law provides three exceptions (section 1611(e)(1) (B), (C), and (D)) to that restriction. One of those exceptions, the public emergency shelter for the homeless exception (section 1611(e)(1)(D)), is the subject of this publication. Section 1611(e)(1)(B), which provides that a resident of an institution which receives payments for the cost of his or her care from Medicaid may be eligible for a reduced benefit, is another exception. The remaining exception under which a resident of a public institution may receive an SSI benefit is provided by section 1611(e)(1)(C). This section permits payment of SSI benefits to residents of publicly operated community residences which serve no more than 16 residents.

A resident of an institution not excepted by section 1611(e)(1) (B) or (C) who leaves that institution and enters a public emergency shelter for the homeless that same month would, if otherwise eligible, be entitled to an SSI benefit upon entering the shelter. However, the amount of the benefit for that first month of residency in the shelter would be a prorated amount calculated from the date of the person's application for benefits or the date of eligibility, whichever is later. Proration of benefits in the initial month of eligibility is required by section 1611(c)(2) of the Social Security Act as amended by section 181 of Pub. L. 97–248. Proposed regulations implementing section 181 were published in the **Federal Register** on September 5, 1985 (50 FR 36108).

A person who leaves an institution where Medicaid is paying for a part of his or her care (and who is, therefore, receiving a reduced benefit) who enters a shelter that same month would, if otherwise eligible, be entitled to the benefit amount he or she would have received for that month had he or she not been institutionalized, less the amount of the reduced benefit already received for that month.

The benefit payments received by a resident of a publicly operated community residence which serves no more than 16 residents would be unaffected by the resident's move to a public emergency shelter for the homeless, if the person is otherwise eligible. By otherwise eligible, we mean that the person has not resided in a public emergency shelter for the homeless for 3 months within the last 12 months for which he or she received SSI benefits, and he or she meets the income and resource limitations of the law.

We have not adopted the writers' suggestions that additional language be added to the regulations to describe such situations. We believe the present pertinent regulation sections permit us to fairly process any situations likely to arise. Section 416.211 explains what we mean by "throughout a month" and discusses that exceptions to the limitation on benefits for resident of public institutions.

Comment: Two commenters are concerned that the definition of public emergency shelter for the homeless may be restrictive to the point of disqualifying most, if not all, public shelters from coverage under these regulations. They point out that most shelters are only able to provide a place to sleep and that very few are able to provide food or other services or treatment. One of the writers feels that public emergency shelters should, by definition, only be required to provide a place to sleep and, while other services may voluntarily be included, they should not be required by regulation.

Response: Facilities that do not provide some treatment or services in addition to food and shelter are not "institutions" for SSI purposes, and individuals residing in such facilities are not subject to any limitation on their SSI benefits on the basis of their residency. Only residents of public institutions, as defined in § 416.201, are ineligible for SSI benefits for months throughout which they reside in such institutions. Since the subject regulations provide an exception to the general limitation on SSI eligibility for persons in public institutions, we paralleled the definition of public emergency shelter for the homeless as closely as possible to the definition of public institution. We believe to do otherwise would be contrary to the purpose of section 1611(e)(1)(D).

Comment: One writer suggested that these regulations should clarify the relationship between the publicly operated community residence exception and the public emergency shelter for the homeless exception. Both are exceptions to the general rule that persons living in public institutions cannot be eligible for SSI benefits. The writer pointed out that some public institutions might qualify both as public operated community residences and as public emergency shelters for the homeless. A resident of a publicly operated community residence which serves no more than 16 residents may be eligible for SSI benefits throughout his or her residency regardless of how long he or she resides there, whereas a resident of a public emergency shelter for the homeless may receive SSI benefits in any 12-month period for no more than 3 months throughout which he or she resides in a shelter. The writer feels the regulations should clarify the benefit status of a resident of an institution that appears to qualify as both a publicly operated community residence and as a public emergency shelter for the homeless.

Response: We have not adopted the writer's suggestion. The public emergency shelter for the homeless exception and the publicly operated community residence exception (see § 416.211(c)) are two different and separate exceptions to the general limitation on benefits for residents of

public institutions. A public emergency shelter for the homeless is a temporary arrangement whereby homeless individuals are provided with shelter, food, and some treatment or services. It is not intended to become a permanent home. A publicly operated community residence is a public institution which provides a more permanent living arrangement, generally offers more community based services than a public emergency shelter for the homeless and may serve no more than 16 individuals at a time for its residents to be SSI eligible (see § 416.211(c)). If an applicant for or a recipient of SSI benefits is in a public facility, we first check to see whether it is, by definition, an institution. If it is, we then check to determine if any of the exceptions apply. Where an institution might technically qualify both as a publicly operated community residence and as a public emergency shelter for the homeless, we would in that instance support a finding most favorable to its residents.

Comment: A writer suggested that the regulations be clarified to show that the 3 months for which a resident of a public emergency shelter for the homeless may be eligible for SSI benefits does not include months in which he or she resided in a shelter but did not receive benefits. Although an individual could be ineligible for SSI benefits for a variety of reasons, the most likely occurrence is where the individual does not file for SSI benefits until sometime after he or she has taken up residency in a shelter.

Response: We agree with the writer's concern and have added language to § 416.211(d) to show that the 3 months of eligibility does not include months during which an individual resided in a public shelter, but for which he or she did not receive SSI benefits.

Additional Changes

We clarified what we mean by a public emergency shelter for the homeless by modifying the definition (in § 416.201) to more clearly show the population that this type of institution normally serves and by describing those types of facilities that are not considered to be public emergency shelters for the homeless. We have also (in § 416.201) described what we mean by the terms "emergency shelter" and "homeless individual".

We have corrected the parenthetical reference added May 9, 1984 (49 FR 19639), under "Resident of a public institution" in § 416.201, that referred to paragraphs (b) and (c) of § 416.211 as describing exceptions to the status of resident of a public institution. They do not describe exceptions to the status of "resident". Rather, they describe exceptions to the general limitation on SSI eligibility for individuals who are residents of a public institution throughout a month. In addition, we have added a reference to the new paragraph (d) of section 416.211. This new paragraph describes the exception for residents of public emergency shelters for the homeless.

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and we have determined that they do not create costs of $100 million or more yearly, or otherwise meet the threshold of the Executive Order. For this reason, the Secretary has determined that the regulations are not a "major rule" under Executive Order 12291, and a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements subject to clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities since they primarily affect only homeless aged, blind, or disabled individuals receiving, or applying for, SSI benefits. States which will be affected are those which supplement the Federal SSI benefit and those States where Medicaid eligibility is tied to SSI eligibility. However, a regulatory flexibility analysis as required under Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program).

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: August 30, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: December 10, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 416—[AMENDED]

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart B of Part 416 revised amended to read as follows:

Authority: Secs. 1102, 1110, 1602, 1611, 1614, 1616, 1618, 1619, 1631, and 1634 of the Social Security Act as amemded, secs. 211 and 212 of Pub. L. 93-66, 49 Stat. 647, 94 Stat. 474, 86 Stat. 1465, and 1474, 90 Stat. 2901, 94 Stat. 445, 86 Stat. 1478, and 87 Stat. 154 through 156 (42 U.S.C. 1302, 1310, 1381a, 1382, 1382c, 1382e, 1382g, 1382h, 1383, 1383c, and 1396); sec. 403 of Pub. L. 98-21, 97 Stat. 140.

2. Section 416.201 is amended by adding in alphabetical order four new definitions and by revising the language in, and adding an exception to, the parenthical reference under "Resident of a public institution" as follows:

§ 416.201 General definitions and terms used in the subpart.

"Any 12-month period" means any period of 12 full calendar months ending with any full calendar month throughout which (as defined in § 416.211) an individual is residing in a public emergency shelter for the homeless (as defined in this section) and including the immediately preceding 11 consecutive full calendar months.

"Emergency shelter" means a shelter for individuals whose homelessness poses a threat to their lives or health.

"Homeless individual" is one who is not in the custody of any public institution and has no currently usable place to live. By "custody" we mean the care and control of an individual in a mandatory residency where the individual's freedom to come and go as he or she chooses is restricted. An individual in a public institution awaiting discharge and placement in the community is in the custody of that institution until discharged and is not homeless for purposes of this provision.

"Public emergency shelter for the homeless" means a public institution or that part of a public institution used as an emergency shelter by the Federal government, a State, or a political subdivision of a State, primarily for making available on a temporary basis a place to sleep, food, and some services or treatment to homeless individuals. A medical facility (as defined in § 416.201) or any holding facility, detoxification center, foster care facility, or the like that has custody of the individual is not a public emergency shelter for the homeless. Similarly, transitional living arrangements such as a halfway house that are part of an insitution's plan to facilitate the individual's adjustment to community living are not public emergency shelters for the homeless.

"Resident of a public institution" * * * (See § 416.211 (b), (c), and (d) of

this subpart for exceptions to the general limitation on the eligibility for Supplemental Security Income benefits of individuals who are residents of a public institution.)

3. Section 416.211 is amended by adding a new paragraph (d) to read as follows:

§ 416.211 You are a resident of a public institution.

* * * * *

(d) *Exception for residents of public emergency shelters for the homeless.* For months after April 1983, if you are a resident of a public emergency shelter for the homeless (defined in § 416.201) you may be eligible for SSI benefits for any 3 months throughout which you reside in the shelter in any 12-month period (defined in § 416.201). The 3 months do not need to be consecutive and we will not count as part of the 3 months any prior months in which you lived in the shelter but did not receive SSI benefits.

Example: You were receiving SSI benefits when you lost your home and you entered a public emergency shelter for the homeless on June 10, 1985. You remained a resident of the shelter until October 10, 1985. Since you were not in the shelter throughout the month of June, you will be eligible to receive your benefit for June without having this month count towards the 3 month period. The last full month throughout which you resided in the shelter was September. Therefore, if you meet all eligibility requirements, you will also be paid benefits for July, August, and September (3 months during the 12-month period September 1985 back through October 1984). In determining your eligibility for July, we used the 12 months from July 1985 through the previous August 1984 inclusive. In determining your eligibility for August, we used the 12 months from August 1985 through the previous September 1984 inclusive and for September, we used the 12 months from September 1985 through the previous October 1984 inclusive. If your are otherwise eligible, you will receive your SSI benefit for October, when you left the shelter, since you were not a resident of the shelter throughout that month.

4. The authority citation for Subpart M of Part 416 is revised to read as follows:

Authority: Secs. 228, 1102, 1611 through 1615, and 1631 of the Social Security Act, as amended, 80 Stat. 647, 49 Stat. 647, as amended, 86 Stat. 1465 through 1477 (42 U.S.C. 428, 1302, 1381 through 1382d, 1383), sec. 502(a) of Pub. L. 94–241, 90 Stat. 628 and sec. 403 of Pub. L. 98–21, 97 Stat. 140.

5. Section 416.1325 is amended by designating the existing text as paragraph (a) and revising it (the example remains unchanged) and adding paragraph (b) to read as follows:

§ 416.1325 Suspension due to status as a resident of an institution.

(a) *General.* Except as provided in § 416.211 (b), (c), and (d), an individual is ineligible for benefits for the first full calendar month in which he or she is a resident of a public institution (as defined in § 416.201) throughout the calendar month, and his or her payments are suspended effective with such first full month. Such ineligibility continues for each full calendar month such individual is so institutionalized.

Example: * * *

(b) *Residents of public emergency shelters for the homeless.* A resident of a public emergency shelter for the homeless (see § 416.201) may be eligible for benefits for any 3 months throughout which he or she is a resident of the shelter in any 12-month period (see § 416.201). The 3 months do not have to be consecutive and we will not count any prior months you lived in the shelter and did not receive Supplemental Security Income benefits. An individual is ineligible and his or her payments will be suspended effective with the fourth full calendar month in which the individual resides in a shelter in any 12-month period. Such ineligibility continues for each full calendar month thereafter within the 12-month period that the individual remains a resident of the shelter.

[FR Doc. 85–29926 Filed 12–16–85; 8:45 am]
BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for J & R Specialty Supply Co. The NADA provides for the use of a 48-gram-per-pound pyrantel tartrate premix in making a 9.6-gram-per-pound pyrantel tartrate intermediate premix used to make complete swine feeds.

EFFECTIVE DATE: December 18, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: J & R Specialty Supply Co., 10 Second Ave. SW., P.O. Box 508, Waseca, MN 56093, is the sponsor of NADA 138–609 submitted on its behalf by Pfizer, Inc. The NADA provides for use of a 48-gram-per-pound pyrantel tartrate premix in making a 9.6-gram-per-pound pyrantel tartrate intermediate premix. The intermediate premix is used for making complete swine feeds used for aid in prevention of migration and establishment, and for removal and control of large roundworm (*Ascaris suum*) infections; and for aid in prevention of establishment and for removal and control of nodular worm (*Oesophagostomum* spp.) infections. The NADA is approved and the regulations are amended to reflect this approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.485 by adding new paragraph (a)(26) to read as follows:

§ 558.485 Pyrantel tartrate.

(a) * * *

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(28) To 049768: 9.6 grams per pound, paragraph (e) (1) through (3) of this section.

* * * * *

Dated: December 10, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-29885 Filed 12-17-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Approval of Amendments to the Utah Permanent Program Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is approving amendments to the Utah Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On February 6, 1984, Utah submitted proposed program amendments for OSM's approval pertaining to water quality and effluent limitations, inspections, notices of violations and suspension or revocation of permits. On August 29, 1984, the Director, OSM, approved the amendments, with the exception of those provisions concerning suspension or renovation of permits (49 FR 34210-34212). On September 25, 1984, the State submitted revised regulations and position papers from the Utah Assistant Attorney General to address OSM concerns regarding the State programs provisions for the suspension or revocation of permits.

On July 31, 1985 (50 FR 30958) OSM reopened the comment period on the materials submitted by the State on September 25, 1984. The Director has determined that the regulatory provisions for the suspension and revocation of permits submitted by the State on February 6, 1984, with the regulatory revisions and clarifications submitted September 25, 1984, satisfy the criteria for approval of state program amendment set forth at 30 CFR 732.17. Therefore, the Director is approving the amendments.

This final rule is being made effective immediately in order to expedite the State program amendment process and to encourage the State to conform its program to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: December 18, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur Abbs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Ave., NW., Washington, DC 20240; Telephone: (202) 343-5361.

SUPPLEMENTARY INFORMATION: On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program under SMCRA for the regulation of surface coal mining operations in the State (46 FR 5899-1915).

Information pertinent to the general background, revisions modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981 Federal Register (46 FR 5899-5915).

On February 6, 1984, the Utah Division of Oil, Gas and Mining (DOCGM) submitted proposed program amendments for OSM's approval pertaining to water quality standards and effluent limitations, and inspection and enforcement requirements.

On April 30, 1984, OSM announced receipt of these amendments and scheduled a public hearing and comment period on the proposed modifications (49 FR 18315). The public comment period closed May 30, 1984.

On June 29, 1984, OSM advised Utah by letter that the proposed provisions satisfied the criteria for approval of State program amendments set forth under 30 CFR 732.15 and 732.17 with the exception of the proposed revisions contained in section UMC/SMC 843.13. This section pertains to the suspension or revocation of permits [See Utah Administrative Record No. 335].

OSM informed the State that it was prepared to delay its final rulemaking on the amendments for one month to allow the State an opportunity to submit draft proposed rule changes or other evidence that the State amendments were consistent with the Federal standards.

Utah did not submit to OSM any additional materials to address the deficiencies identified by OSM in the State's proposed amendments during the one month period granted for this purpose. Therefore, OSM proceeded with the publication of a final rule to announce the Director's decision on the amendments as submitted to OSM on February 6, 1984. The Director's decision was to approve the amendments, with the exception of those provisions pertaining to the suspension or revocation of permits [August 29, 1984, 49 FR 34210-34212].

Subsequently, in a letter to OSM dated September 25, 1984, the State responded to the concerns raised by OSM regarding the provisions submitted February 6, 1984, concerning suspension or revocation of permits. To address OSM's concerns the State submitted revised regulations and position papers from the Assistant Attorney General for Utah concerning the provisions for suspension or revocation of permits.

On July 31, 1985, OSM reopened the public comment period on the amendments submitted February 6, 1984, as revised and clarified by the State on September 25, 1984 (50 FR 30958). The material considered pertained only to the revisions made by Utah to its regulations at UMC/SMC 843.13.

Director's Decision

After thoroughly reviewing the amendments to UMC/SMC 843.13 submitted to OSM by the State on February 6, 1984, together with the regulatory revisions submitted on September 25, 1984, and the Attorney General's position papers submitted on that date, the Director, OSM, has determined that the State's program incorporates sanctions no less stringent than those set forth in section 521 of SMCRA and 30 CFR Part 843 and contains the same or similar requirements relating thereto.

The initial concerns which OSM raised regarding the amendments to UMC/SMC 843.13 submitted by the State on February 6, 1984, were eliminated with the State's submission of further additional regulatory revisions on September 25, 1984, and with respect to one issue, by the submission of a position paper from the State attorney general. A discussion of each of the issues raised by OSM in its June 29, 1984 letter to the State and the disposition of each issue is provided below.

UMC/SMC 843.13(a)(2)(iv) and UMC/SMC 843.13(a)(1)

In its letter to the State dated June 29, 1984, OSM indicated that the State regulations at UMC/SMC 843.13(a)(2)(iv) and UMC/SMC 843.13(a)(1) appeared to provide for both the Director, DOGM, and the Board of Oil, Gas and Mining to make a determination that a pattern of violations exists. OSM advised the State that such a two-tier system would be inconsistent with the Federal regulations at 30 CFR 843.13(a) (1) and (3).

In its letter to OSM dated September 25, 1984, Utah states that both the Director and the Board have responsibilities for specific portions of the procedures for determining that a pattern of violations exists and that those responsibilities do not overlap. The State indicates that the memorandum from the Assistant Attorney General to the Director of DOGM dated September 20, 1984, provides clarification with respect to the distinct roles of the Board and the Director. The September 20, 1984 memorandum indicates that the Director makes the initial finding that a pattern of violations exists and that each violation is the result of a willful or unwarranted failure to comply, while the Board hears the matter following the Director's initial finding. Therefore, the two bodies are making different determinations in that the Board hears the matter *after* the Director makes the initial finding that a related series of violations exists and that each is the result of a willful or unwarranted failure to comply. In light of the explanatory material provided by the Assistant Attorney General OSM has determined that State regulations UMC/SMC 843.13(a)(2)(iv) and UMC/SMC 843.13(a)(1) are consistent with the Federal requirements.

UMC/SMC 843.13 (b) and (c)

A second issue raised in OSM's letter of June 29, 1984, pertained to the requirement under Utah's regulations that an appeal hearing be conducted by the Board or an administrative hearing officer with the Board making a final decision on the case. OSM was concerned that the Board would be making both the initial determination on a pattern of violations and the decision on any appeal of that determination. As indicated above, the memorandum from the Assistant Attorney General to the Director of DOGM dated September 20, 1985, clarifies that the Board only hears a case following the Director's initial finding. In light of the material provided by the State, OSM finds the State provisions consistent with the Federal requirements.

UMC/SMC 843.13(b)

As originally submitted to OSM Utah's proposed rules provided that a hearing on an appeal may be conducted at the Board's option before an administrative hearing officer who may be legally trained. OSM advised Utah that to incorporate procedural requirements which are the same as or similar to those set forth in the Federal regulations, Utah's rules should specify that administrative hearing officers should have the minimum qualifications for hearing officers established under Utah law. Utah's amendment of this provision of September 25, 1984, provides that the minimum requirements for a hearing examiner will be those established under Utah law. This amendment of the provision adequately addresses OSM's initial concern.

UMC/SMC 843.13 (a)(2), (a)(3) and (a)(4)

As initally submitted proposed rules UMC/SMC 843.13 (a)(2), (a)(3) and (a)(4) provided that the determination that a pattern of violations exists shall be based upon the permittee's performance as observed during a given number of inspections of the permit area within a calendar year.

The Federal rules at 30 CFR 843.13 provide that the determination shall be based upon a review of a permittee's performance as observed during a given number of inspections during any 12-month period.

OSM advised Utah that to incorporate sanctions no less stringent than those established in the Federal rules and procedural requirements which are the same as or similar to the Federal requirements, Utah's program must provide that a determination be based on the results of a given number of inspections conducted during a 12-month period rather than during a calendar year. As amended on September 25, 1984, the State's provisions are consistent with the Federal requirements as they provide that a pattern of violations determination be based on the State's findings during a 12-month period rather than a calendar year.

UMC/SMC 843.13(a)(4)

Utah's rules specify that in determining whether or not a pattern exists, the Director shall consider only violations cited as a result of State inspections carried our during enforcement of a State program or a Federal lands program or during the interim program and before the State program was approved pursuant to section 502 or 504 of the Act.

In its June 29, 1984 letter to the State OSM indicated that to incorporate sanctions no less stringent than those set forth in Section 521(a)(4) of the Act and 30 CFR 843.13 and the same or similar procedural requirements relating thereto, Utah's program must stipulate that all violations of the State program requirements cited during any inspection be considered by the person or body making the determination that a pattern of violations does or does not exist.

In its letter to OMS dated September 25, 1984, Utah points out that the State has no control over Federal inspections and, indicates that a due process argument could be made against incorporating Federally written violations into a State pattern of violations charge. After considering the point raised by Utah, OSM has determined that the State should not be required to consider Federally written violations in making a pattern of violations determination.

UMC/SMC 843.13(d)

As initially submitted Section UMC/SMC 843.13(d) of Utah's proposed regulations provided that the Director "may" review the permittee's history of violations to determine whether a pattern of violations exists when the permittee fails to abate a violation contained in a notice of violation or cessation order.

30 CFR 843.13(d) does not allow the Director any discretion with respect to the review of a permittee's history of violations when a permittee fails to abate a violation contained in a notice or order within the abatement period set. The Federal provision stipulates that the Director "shall" conduct such a review.

OSM advised Utah that to incorporate procedural requirements which are the same as or similar to the Federal requirements, Utah's rules must make the review requirement mandatory rather than discretionary.

As amended on September 25, 1984, the State's provision is consistent with the Federal rule.

OSM finds that the regulatory revisions and the position papers provided by the State on September 25, 1984, address all the concerns which were initially raised by OSM regarding the amendments to UMC/SMC 843.13. Therefore, the Director is approving the amendments submitted on February 6, 1984, as revised and clarified on September 25, 1984, as State program amendments.

Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. Compliance With the Regulatory Flexibility Act

The Secretary hereby determines that this proposed rule will not have a significant economic impact on small

entities within the meaning of the Regulatory Flexibility Act (U.S.C. 601 et seq.). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Compliance With Executive Order No. 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted the Office of Surface Mining exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for all actions taken to approve, or conditionally approve, State regulatory programs, actions, or amendments. Therefore, a Regulatory Impact Analysis and regulatory review by OMB are not needed for this program amendment.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, 30 CFR Part 944 is amended as set forth herein.

Dated: December 12, 1985.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining.

PART 944—UTAH

Part 944 of Title 30 is amended as follows:

1. The authority citation for Part 944 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

2. Section 944.15 is amended by adding a new paragraph (g) to read as follows:

§ 944.15 Approval of amendments to State regulatory program

* * * * *

(g) The amendments to UMC/SMC 843.13 submitted to OSM by Utah on February 6, 1984, as revised and clarified by the State in its submittal to OSM dated September 25, 1984 are approved effective December 18, 1985.

[FR Doc. 85–29949 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–8–FRL–2937–6]

Approval and Promulgation of State Implementation Plans; Revision to Colorado Regulation for Existing Alfalfa Dehydration Plants

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice approves revisions to the Colorado Regulations 1 and 5 for existing alfalfa dehydration plants. This regulation extends a limited exemption from the general particulate and opacity regulation found in Regulation No. 1 and subjects existing alfalfa dehydration plants to a less stringent particulate limit as found in Regulation 5.

DATES: This action will be effective on February 18, 1986, unless notice is received by January 17, 1986, that someone wishes to submit adverse or critical comments. Such notice may be submitted to Robert DeSpain at the EPA Regional office address listed below.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Denver, Colorado 80202

Environmental Protection Agency, Public Information Reference Unit, Waterside Mall, 401 M Street, SW., Washington, DC 20460

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC

FOR FURTHER INFORMATION CONTACT: Steve Frey, Air Programs Branch, Environmental Protection Agency, 999 18th Street, Denver, Colorado 80202, (303) 293–1769, FTS–564–1768.

SUPPLEMENTARY INFORMATION: This revision to Colorado Regulations 1 and 5 was approved by the Colorado Air Quality Control Commission on January 17, 1985 and was submitted by the Governor as a State Implementation Plan (SIP) revision on April 9, 1985. This action extends a provision that had expired on January 1, 1985. The provision, which pertains solely to existing alfalfa dehydration plants, previously was incorporated in the Colorado SIP, but had expired at the end of 1984.

This action extends the less stringent regulation for existing alfalfa plants until January 1, 1987. There are only two sources eligible for this standard in Colorado and both are located in areas either attaining or unclassifiable for total suspended particulates. The action should have no impact on the total suspended particulate attainment status for the two areas since it merely extends the effective date of an earlier regulation.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective February 18, 1986.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 18, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of Colorado was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 9, 1985

Lee Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart G—Colorado

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.320 is amended by adding paragraph (c)(32) as follows:

§ 52.320 Identification of Plan.

* * * * *

(c) * * *

(32) Revisions to Air Pollution Control Commission Regulation No. 1, section II. A. 6 and III. C. 2 (a) and (b) and Regulation No. 5 Emission Control Regulation for Existing Alfalfa . Dehydration plants, submitted by the Governor on April 9, 1985.

(i) Incorporation by Reference.

(A) Revisions to Air Pollution Control Commission Regulation No. 1, "Emission Control Regulation for Particulates, Smokes, and Sulfur Oxides for the State of Colorado," sections II. A. 6 and III. C. 2 (a) and (b), effective March 2, 1985.

(B) Revisions to Air Pollution Control Commission Regulation No. 5, "Emission Control Regulation for Existing Alfalfa Dehydration Plants", effective March 2, 1985.

[FR Doc. 85–29559 Filed 12–17–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

Grazing Administration; Effects of Court Order Enjoining Certain Regulations in 43 CFR Group 4100

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Effect of Court Memorandum and Order Enjoining Certain Regulations in 43 CFR Group 4100.

SUMMARY: The United States District Court for the Eastern District of California in the case of *Natural Resources Defense Council, Inc., et al.* v. *Hodel, et al.*, enjoined the Secretary of the Interior from implementing certain sections of the grazing regulations in 43 CFR Group 4100 that were published as a final rulemaking in the **Federal Register** of February 21, 1984 (49 FR 6451), with an effective date of March 22, 1984. Notice is hereby given that the Bureau of Land Management will comply with the memorandum and order of the Court. Specifically, the provisions enjoined by the memorandum and order of the Court will not be implemented and that those regulatory provisions are being amended as set out below.

EFFECTIVE DATE: December 20, 1985.

ADDRESS: Any inquiries or suggestions should be addressed to: Director (220), Bureau of Land Management, Room 5628, Main Interior Bldg., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Billy R. Templeton, (202) 653–9193.

SUPPLEMENTARY INFORMATION: On August 30, 1985, the United States District Court for the Eastern District of California in the case of *Natural Resources Defense Council, Inc. et al.* v. *Hodel, et al.*, No. CIV. S–84–616 RAR (1985), enjoined the Bureau of Land Management from implementing the following provisions which were either included in the final rulemaking published in the **Federal Register** on February 21, 1984 (49 FR 6451), with an effective date of March 22, 1984, or were repealed by that rulemaking. The sections covered by the Court order are as follows:

1. Cooperative Management Agreement Program—§§ 4120.1 and 4170.1–4 (49 FR 6451, Feb. 21, 1984);
2. Dilution of Allotment Management Plans—§ 4120.2 (49 FR 6451, Feb. 21, 1984) and the deletion of § 4120.2–3(a) (as it appears in the Code of Federal Regulations revised as of Oct. 1, 1983);
3. Supplemental Feeding Amendments—section 4140.1(a)(3) (49 FR 6451, Feb. 21, 1984) and the deletion of § 4140.1(a)(3) (as it appears in the Code of Federal Regulations revised as of Oct. 1, 1983);
4. Land Use Planning Amendment—section 4130.6–3 (49 FR 6451, Feb. 21, 1984) and the deletion of §§ 4120.2–1(c) and 4130.2(d)(3) as they appear in the Code of Federal Regulations revised as of Oct. 1, 1983; and
5. Operator Penalty Amendments—the deletion of §§ 4140.1(b) (7) and (8) (as they appear in the Code of Federal Regulations revised as of Oct. 1, 1983).

Dated: December 12, 1985.

James E. Cason,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85–29953 Filed 12–17–85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 22

[CC Docket No. 83–1096; FCC 85–602]

Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: Rules are adopted that refine cellular pre-screening procedures and further streamline and clarify the overall cellular application process. The Commission, in so doing, considered petitions for reconsideration filed against the Memorandum Opinion and Order on Reconsideration of the Cellular Lottery Decision and additional proposals for modifying cellular processing procedures. The rules reduce burdens for applicants and expedite the administrative processes related to the licensing of Cellular Service.

EFFECTIVE DATE: January 17, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia McClain-Hill, (202) 632–6450.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 22

Mobile radio service, Cellular radio.

Memorandum Opinion and Order on Further Reconsideration

In the Matter of Amendment of the Commission's Rules To Allow the Selection From Among Mutually Exclusive Competing Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings; CC Docket No. 83–1096, FCC 85–602.

Adopted November 14, 1985.
Released December 3, 1985.
By the Commission.

1. On March 14, 1985, we adopted a *Memorandum Opinion and Order on Reconsideration* in this proceeding affirming our decision to adopt a system of lotteries for selecting cellular licensees from among mutually exclusive applicants in markets other than the 30 largest.[1] In that order, we generally affirmed the basic regulatory structure and application process for the implementation of cellular lotteries established in the *Cellular Lottery Decision.*[2] In addition, in response to the petitions and our experience with implementing the lottery application and selection process, we eliminated cumulative lottery chances for nonwireline applicants entering into partial settlements in markets beyond the top 120; revised the 1% ownership rule for the beyond-120 markets; clarified certain issues regarding basic qualifying standards and established guidelines for the form, organization and content of future applications. We also interpreted § 22.917 of the rules to require each applicant to obtain a firm lending commitment guaranteeing availability of the financing necessary to construct and operate for one year the

[1] Cellular Lottery Reconsideration Order (Reconsideration Order), FCC 85–117, released May 3, 1985.

[2] Cellular Lottery Decision, 98 FCC 175 (1984).

system at issue.[3] We also announced that all future cellular applications should be filed in a "letter perfect" condition and that failure to conform to this standard would result in the application not being accepted for filing, and we reiterated our commitment to a careful prescreening process.

2. Pending before us are three petitions for reconsideration.[4] Responsive pleadings have been filed.[5] Two of the petitioners seek modification of the "stringent" demonstration of financial ability established in the *Reconsideration Order*. The third petition seeks clarification of the provisions regarding cumulative lottery chances for wireline carriers. Finally, rule changes regarding the format of microfiche application copies, incorporation of common engineering, and frequency coordination are proposed.

3. Also pending before the Commission is a proposal filed by NewVector Communication, Inc. (NewVector) regarding expediting the cellular licensing process. By Public Notice, CL-342, released August 8, 1985, we invited comments on the NewVector pleading.[6] We incorporate the NewVector proposal and responsive pleadings by reference and will act here to revise our cellular pre-screening procedures in general accord with the suggestions made there. Similarly, we will modify the financial demonstration requirement of § 22.917 to require only tentative selectees, surviving applicants in full market settlements and unopposed applicants to obtain firm financing commitments; we will no longer require financial exhibits in the application. Finally, we will modify our frequency coordination requirements as discussed herein.

Discussion

A. Pre-Screening

4. In its proposal, NewVector states that the careful, in-depth pre-screening of cellular applications we have undertaken for markets 91–120 is not required by law and has disserved the public interest. NewVector proposes that the Commission exercise its discretion under section 309(i) of the Communications Act to relax it current pre-screening procedures in favor of a minimal review to determine if all requested information has been priovided.[7] Following this determination, a lottery would be held in accordance with the procedures set forth in § 1.822 of the rules. The tentative selectee's application would then be subject to a thorough and in-depth review to ensure that it has strictly complied with the Commission's rules and if so, subject to petitions to deny. The Commission would then make a finding as to whether or not the application should be granted. If on the other hand, the tentative selectee does not survive, based on staff review or the petition to deny process, successive runners-up would immediately be subjected to the same process until a qualified applicant is found.

5. NewVector's pre-screening proposals are supported in whole or in part by nearly all of the commenters.[8] In contrast, the Cellular Telecommunications Division of Telocator Network of America (Telocator) opposes them. Telocator argues that NewVector has failed to show that the proposed pre-screening, however minimal, would be less time-consuming than the current pre-lottery processing procedures. Second, it maintains that the post-lottery review process that would result from a minimal pre-screening standard could significantly delay the award of construction permits, because of the need to resolve petitions to deny against applications that would otherwise not have been in the lottery at all. Finally, it asserts that the vastly disproportionate number of non-wireline, as opposed to wireline applicants, in conjunction with an increased tendency towards post-lottery litigation under the NewVector proposal, will serve to create substasntial "headstart" problems. Contel Cellular, Inc. (Contel) also opposes NewVector arguing that a relaxation of the current acceptability standards could generate a "gold rush" atmosphere and encourage the very type of applicant that the Commission has tried to discourage.

6. In its comments, the Cellular Telecommunications Industry Association (CTIA) suggests an alternative means of revising current processing procedures. CTIA proposes that the Commission minimize its pre-screening process by requiring that a one-page qualifications summary accompany each application and that each applicant certify that its application meets the statutory qualification requirements set forth in Form 401 and associated exhibits, thereby obviating the need for additional pre-screening.[9]

7. Our efforts to discourage the filing of frivolous applications by speculators having no real interest in constructing or operating a cellular system through rigorous pre-screening procedures have consumed a considerable amount of time and administrative resources, resulting in a delay of more than one year in issuing public notices accepting applications for filing in markets 91 to 120.[10] Consequently, we have reviewed with great interest the pleadings on this issue. While the pre-screening procedures used in markets 91–120 were helpful in ensuring that only qualified applicants become licensees, we are sensitive to the delay inherent in this process and its effect on the expeditious availability of nationwide cellular

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[3] Specifically, we stated that for markets beyond the top 120, we would require applicants who intend to finance their systems through debt placement to submit a firm lending commitment from a recognized bank or other financial institution for the financing required. Such commitment must guarantee availability of the amount of financing necessary to construct and operate for one year the system at issue, and set forth the terms of the loan commitment, including any action required of the applicant to continue the commitment in force. Applicants relying on internal funding must comply with § 22.917(c) to demonstrate their financial ability. Finally, an applicant obtaining funding from other than a recognized lending institution or internal sources, must submit proof that the financing entity has such funds available and uncommitted to other cellular applicants, or, in the alternative, has obtained a bond to guarantee performance of its obligation.

[4] Petitions for Reconsideration and/or Clarification were filed by Cellular Technology, Inc., Cell Pro, and Centel Corporation.

[5] Responsive pleadings were filed by Cell Pro, National Telephone Company, Inc., and Richard L. Vega and Associates, Inc.

[6] The Commission stated that the NewVector proposal would be treated as a counter-proposal to the Request of Metro Mobile CTS, Inc., filed July 8, 1985, regarding expedited acceptance and processing of applications for non-MSA/non-NECMA areas. However, we will deal with the NewVector proposal, to the extent it relates to pre-screening procedures, in the context of the petitions for reconsideration of the cellular lottery procedures in this docket.

[7] The public notice that an application is minimally "acceptable" for inclusion in the lottery would be carefully qualified so as to inform applicants that strict scrutiny to ensure full compliance with the Commission's application requirements will follow in the event the application is selected.

[8] The commenters supporting NewVector are listed in Appendix A. In addition, Western Union Personal Communications, Inc. has proposed similar cellular application processing changes as well as more expeditious acceptance of applications for the remaining markets. See letter from Richard E. Horner, President and Chief Executive Officer of Western Union Personal Communications, Inc. to Jack Richards of Commissioner Dawson's Office. (A copy of Western Untion's proposal has been placed in this docket).

[9] CTIA's proposal is supported by Contel Cellular, Inc., Southwestern Bell Mobile Systems, Inc., BellSouth Mobility, Inc. and United Telespectrum Inc. Contel's support for the CTIA proposal is based on its view that an applicant would be certifying its compliance with the "letter perfect" standard.

[10] Applications in these markets were filed by July 16, 1984, and the first applications were accepted for filing August 12, 1985. *See* Report No. CL-343 released August 12, 1985 (applications accepted for Fort Wayne, Indiana).

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service.[11] In other words, the benefits of the pre-screening process used for markets 91–120 are outweighed by the inherently time-consuming nature of the process and resultant delay in the licensing of competing cellular systems.[12] In authorizing the Commission to utilize lottery procedures, Congress accorded the Commission broad discretion to establish standards by which applications are preliminarily reviewed for inclusion in the lottery.[13] Accordingly, as urged by the commenters, we have decided to modify our pre-screening policies. In order to expedite the processing of applications, each applicant in markets beyond the top 120 will be required to certify under penalties of law,[14] that its application is complete and contains all of the information required by Form 401 and our cellular application rules.[15] Requiring each applicant to certify that its application meets with all applicable Commission rules is a proper means of addressing the Congressional objective of ensuring that only those applications that are deemed acceptable for filing by the Commission be included in the lottery. An applicant signing such a statement falsely will be subject to disqualification and may be prosecuted under 18 U.S.C. 1621 (2). It is our judgement that proceeding in this manner serves the overall legislative intent of making an important new technology available to the public in an expeditious manner. An application containing this certification will be accepted for filing without further review and included in the lottery.[16] The public notice accepting applications for filing will be carefully qualified to inform applicants that strict scrutiny to ensure full compliance with the Commission's application requirements will follow in the event the application is selected in the lottery. In other words, the tentative selectee's application will be carefully reviewed to ensure its compliance with the cellular application standards and will be dismissed for failure to do so.[17] If, on the other hand, the application is found acceptable, petitions to deny may be filed and our existing post-lottery procedures followed.

8. This modified policy will serve the public interest by considerably expediting preliminary staff review of cellular applications and facilitate the rapid implementation of service to the public—our primary reason for the introduction of lotteries in the first place. Moreover, it will not increase the likelihood of an unqualified applicant obtaining a cellular license but will instead allow the Commission to shift its resources to a thorough and in-depth examination of the tentative selectee as opposed to each applicant in the lottery. Although there is merit to Telocator's observation that the experience of having gone through the "hard look" procedures in the fourth round should make future rounds proceed more smoothly and expeditiously, it does not follow that this experience factor will result in a time savings equal to that anticipated by a more cursory review of the applications, particularly in light of the geometric increase in the number of applications in each round thus far. Moreover, there is no objective evidence to support its contention that a significantly greater number of unqualified applicants will be allowed to participate in lotteries or that a relaxation of the prescreening process will result in increased post-lottery litigation.[18] Finally, the procedure we are adopting is likely to reduce, rather than increase, the likelihood of a substantial wireline headstart; by minimizing the time needed to choose a selectee from among non-wireline applicants, we will likely be able to authorize both carriers for a market in a narrow time span.

B. Financial Qualifications

9. Cell-Pro, a cellular application preparation consultant, states that it has no objection to strict scrutiny of financial qualifications under existing case law[19] but that our requirement of a firm commitment would impose "unreasonably large and totally unnecessary costs on applicants with no countervailing public benefit." It says that banks typically charge fees for such letters, ranging from one-half to two percent of the amount of the commitment and often annually. Cell Pro estimates that commitment fees for a conservative estimate of the number of applications in the next round of 30 markets could total at least $50 million—likely more than the total cost of construction and first year operation for the entire round of thirty markets.[20] It states that this would be totally out of proportion to the administrative objectives we enumerated in adopting this policy and would constitute a wasteful diversion of resources to financial institutions that could be more productively utilized in constructing and operating cellular systems. Moreover, Cell-Pro argues that the financing requirement cannot withstand cost-benefit analysis because cellular systems have proved to be self-financing

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[11] We have consistently held that there is a pressing need for cellular service throughout the nation. *See, e.g.*, Cellular Communications Systems 86 FCC 2d 469, 489 (1981).

[12] Since the relatively few wireline carriers in each market are likely to settle, this pre-screening delay impacts most significantly on the non-wireline carriers and may unnecessarily exacerbate the wireline headstart.

[13] Conference Report on Communications Amendments Act of 1982, Conference Report No. 97–765, 97th Cong., 2d Sess. 39 (1982). (Authorizing Commission to establish threshold standards for acceptance for filing.)

[14] See 18 U.S.C. 1621(2).

[15] See § 22.913(b)(3). The certification does not come with the requirements of the Paperwork Reduction Act. See 44 U.S.C. 3501, *et seq.*; 5 CFR 1320.7(k)(1).

[16] The signed certification must appear on the first page of each application. In addition, each applicant must submit an original application and duplicate, the cover of which must include the applicant's name, market name and market number for which it is applying and frequency block designation. Two microfiche copies of the application, in jackets, must also be presented at the time of filing. Failure to comply with the foregoing will result in the application being returned as unacceptable for filing.

[17] Under § 22.918(b), amendments to initial cellular applications may not be filed until a tentative selectee has been placed on public notice, and then only by the tentative selectee. Prior to placement on public notice (and thus prior to the filing of amendments) the tentative selectee's application will undergo the careful review described above. Thus, the selectee will *not* have an opportunity to file curative amendments prior to the extensive staff screening. Only after passing that screening will amendments be permitted under § 22.918(b).

[18] We do not believe that the reduction in the amount of staff time it would take to preliminarily review each application would be offset by increases in the number of applications filed by unqualified applicants. It is true that adoption of lottery selection procedures resulted in a vast increase in the number of applications filed. This occurred, however, because the expense that applicants could expect to incur in preparing and prosecuting applications under the lottery regime was much less than that entailed in participating in a comparative hearing. In addition, new entrants perceive themselves as having an equal chance of prevailing in a lottery as experienced communications companies, thus providing them with a greater incentive to file. In contrast, relaxation of pre-screening procedures is unlikely to spur the filing of additional applications because the change will not reduce the expense of preparing and prosecuting an application or increase the likelihood of being awarded a license. Applicants will continue to face the same rigorous scrutiny of their proposals and their qualifications, albeit at a later stage of application processing. Merely surviving pre-screening procedures will gain an applicant nothing if, when its application is selected by lottery, it is found insufficient and dismissed.

[19] See, *e.g.*, Ultravision Broadcasting Company, Inc. 1 FCC 2d 544 (1965).

[20] Assuming a typical cost of construction and first year operation of between $2 million and $4 million in future markets, the typical commitment fee would range between $10,000 and $40,000 per application. Even taking the lower figure and assuming at least 5,000 applications for the next round of markets (markets 121–150), Cell-Pro argues that the commitment fees would total at least $50 million for the first year alone.

in the "real world marketplace" [21] and that the Commission's objective of assuring that lottery entrants are *bona fide* applicants able to construct and operate a high quality, competitive cellular system should be addressed directly through character, candor and trafficking standards. Cellular Technology, Inc. (Cell-Tech) makes similar criticism of the financing requirements and states further that application mass marketers are arranging firm financing letters for their clients and thus the requirement will have no appreciable impact on deterring or significantly reducing the massive numbers of speculative "lottery ticket" applications being prepared for future markets. Richard L. Vega comments that the Commission should not create unrealistic barriers to entry simply to attempt to reduce the number of cellular applications or to excuse its insufficient processing resources.

10. Given these criticisms, the petitioners propose a number of alternative mechanisms to achieve the goals set forth in the *Reconsideration Order*. Cell-Tech would require all applicants to file affidavits establishing their direct and substantial participation in formulating the design of the proposed system, arranging financing, and developing service proposals. Cell-Pro suggests strict scrutiny of financial showings under existing precedent [22] including rejecting letters from entities with insufficient lending resources, letters which merely evidence a lender's willingness to consider making the loan and those which fail to demonstrate that the applicant has obtained reasonable assurance of receiving the required funding. Vega suggests that each applicant be required to demonstrate a liquid net worth of at least $500,000 in order for its application to be accepted for filing. Finally, National Telephone Company, Inc. proposes requiring each applicant to procure a personal bond to guarantee its ability to obtain financing.

11. Throughout this proceeding, we have carefully considered the need for various additional requirements to deter frivolous applications. [23] In the *Reconsideration Order*, we found a stricter interpretation of § 22.917 warranted because, under a lottery selection regime, the low cost and relative simplicity of the application process encourages many purely speculative "lottery ticket" applications by thinly or non-capitalized entities having little interest in providing cellular service but seeking to profit from obtaining the license. [24] We concluded that these types of applications disserve the public interest and that a stricter financial demonstration requirement was needed to deter them and assure that lottery entrants are *bona fide* applicants. However, as the petitioners here point out, the costs associated with the new financial demonstration are high and will divert substantial capital from constructive system development and operations. Moreover, it has proved to be both difficult and time consuming to properly review each and every applicant's financial exhibits for compliance with our rules. This has been a major source of the delay in prescreening applications and a barrier to the expeditious conduct of lotteries.

12. In addition, as Cell-Pro suggests, cellular systems in the top-90 markets have proved to be attractive to sources of capital investment and there is no evidence here that this will not continue to be the case. The rule may prevent legitimate, sincere applicants from applying for markets otherwise attractive on a marketing, business-potential basis because of the excessive cost of the commitment. Our concern is heightened, moreover, by the possibility that the strengthened financial requirement we articulated in the *Reconsideration Order* may not be effective in limiting abusive or insincere applications, particularly if application mass marketers are successful in arranging firm commitments for their customers. [25] In other words, we have serious doubts as to whether the benefits of applying this requirement to each applicant is justified in light of the costs involved.

13. Accordingly, on reconsideration, we have decided to amend § 22.917 to eliminate the requirement that cellular *applicants* demonstrate their financial qualifications to be licensees. We will no longer require a cellular applicant to include an exhibit in its application demonstrating its financial ability under the firm commitment or any other standard. We will however, require a firm financial commitment be obtained by every tentative lottery selectee, sole applicant in a market, or surviving entity in a full market settlement, within 30 days of the Public Notice which announces such status and invites Petitions to Deny under § 1.822(1) of the rules. [26] Applicants not satisfying this requirement will be disqualified immediately. Thus, applicants would be well advised to make arrangements for the production of the financing and appropriate documentation well in advance of the lottery. We conclude that the public interest would be better served by focusing our efforts on assuring that the applicant that is actually going to construct and operate the system, the cellular permittee, is financially qualified rather than by attempting to ascertain the financial qualifications of thousands of applicants who will merely lose in the lottery and never become permittees.

14. Given this analysis, we will not adopt any of the alternative financial showings suggested by the petitioners. Cell-Tech's "personal involvement" requirement, while meritorious in principle, would invite factual disputes and would be difficult to verify and administer and unlikely to contribute much to achieving our objectives. [27] Cell-Pro's suggestion of "strict scrutiny" of financial showings under existing case precedent is not materially different than the policy we have been following in the past, particularly for markets 91–120 and, given our experience is not likely to reduce the number of abusive applications or ensure that applicants are financially qualified. Vega's suggestion would bar many perfectly capable and deserving applicants while NTCI's suggestion of each applicant obtaining a personal bond to guarantee ability to obtain financing would accomplish at best the same result as we propose here at a higher cost to each applicant. Thus, we conclude that the time has come to focus our resources on assuring that the ultimate permittee can obtain firm financing and move rapidly to construct and operate its system by focusing primarily on that entity rather

[21] Cell-Pro further argues that the financing requirement violates the Regulatory Flexibility Act, 5 U.S.C. § 601 *et. seq.* In light of our action here, it is unnecessary to reach this argument.

[22] See Advanced Mobile Phone Service, Inc., 91 FCC 2d 512, 516–17 (1982), applying a "reasonable assurance" test to an applicant's demonstration of financial qualifications under Section 22.917.

[23] Cellular Lottery Decision, at paras. 63–71; Cellular Lottery Reconsideration Order, at paras. [illegible].

[24] Thus, we found that "reasonable assurance" of financing, while adequate under comparative procedures, was ineffective in deterring such applicants. Reconsideration Order, at para. 28.

[25] Since we have not accepted any applications for markets beyond the top-120 we do not know whether financial demonstrations arranged in this way would meet the firm commitment standard. Some mass marketers of cellular applications advertise that they can arrange a "firm commitment" for any applicant.

[26] We are amending § 1.822 of the rules to increase the time for filing Petitions to Deny to 45 days to allow review of the financial commitment.

[27] Cell-Pro's Comments on Petition for Partial Reconsideration of Cellular Technology, Inc., at pps. 2–4.

than on thousands of applicants in a lottery selection context.[28]

C. Miscellaneous

15. Centel Corporation (Centel) seeks clarification of § 22.33(b) of the rules relating to cumulative chances for partial cellular settlements. Centel states that the rule as originally promulgated in the *Cellular Lottery Decision* authorized cumulative chances for applicants entering into pre-filing settlements so long as each party files an individually acceptable application and subsequently enters into the actual joint enterprise. Centel believes that the amendment of § 22.33(b) adopted in the *Reconsideration Order* to limit cumulative chances to wireline carriers in markets beyond the top-120 has rendered the rule ambiguous and susceptible of being interpreted as meaning that wireline applicants can retain their cumulative lottery chances only if they enter into a settlement agreement after they file their applications. Accordingly, it seeks clarification that the rule has not been changed.

16. We see no need for revision of the rule. In the *Reconsideration Order*, we retained the provision of cumulative chances for wireline carriers entering into partial settlements exactly as provided in the *Cellular Lottery Decision*. There we stated that nothing would prevent an applicant from entering into a pre-filing settlement agreement contemplating a joint venture after the filing date in order to obtain a cumulative chance provided that each party to the settlement files an individually acceptable *bona fide* application capable of being independently prosecuted.[29] This policy and the rule implementing it are unchanged for wireline applicants in markets beyond the top-120.

17. Cell Pro also petitions that we modify our requirement regarding microfiche copies of initial cellular applications to allow the filing of the two required microfiche copies one week after the original and paper copy applications are required to be filed.[30] It states that applicants often make "last minute" revisions to their applications which might not be reflected on the microfiche copies due to the time required for processing. We will not grant this request. The handling and "logging in" of thousands of cellular applications is difficult and burdensome enough without repeating the process one week after the filing period for a group of markets has closed just to accept copies of the same applications. Moreover, under lottery selection, applications have been reduced to a relatively simple, predictable format and no comparative advantage can be achieved by "last minute" system modifications. We will give ample notice of the filing periods for future rounds to enable applicants to prepare their applications with all due deliberation. If one week is the expected time lag in obtaining microfiche copies, applicants would be well advised to complete their applications several weeks prior to the close of the filing window. We expect applicants to anticipate the filing deadlines and ensure that their applications and all copies are complete and correct in accordance with our standards.

18. We also deny Cell Pro's suggestion that applicants be allowed to incorporate by reference generic engineering and market demand materials submitted by the applicant's consulting firm on behalf of all of its clients. We have already taken other steps to substantially reduce space requirements,[31] and we believe that the staff can process applications more expeditiously when each application is complete in itself and ready for review.[32]

19. However, we will modify our frequency coordination requirements specifying that applicants design their systems to avoid harmful intersystem interference to and with authorized systems or single applicant markets within 75 miles.[33] Given the dynamic state of cellular system development, the large number of applicants and the fact that our station files may not be updated frequently enough, we will eliminate this requirement at the application stage only. Of course, all permittees and licensees remain required to engage in formal frequency coordination and to cooperate fully in resolving frequency conflicts as set forth in the rule.

20. Finally, on our motion, we will reverse our decision in the *Reconsideration Order* requiring an applicant to specifically demonstrate that its proposed CGSA includes at least 75 percent of either the land area or population of the MSA or NECMA it is applying for. An applicant need only provide the maps required by §§ 22.913(a)(2) of the rules indicating its compliance with this 75 percent CGSA coverage of MSA requirement and state in its application that the requirement has been met—no independent demonstration need be filed. Consequently, we will amend § 22.903(a) to eliminate the requirement that an applicant *demonstrate* that the combined 39 dBu contours of all base stations will cover at least 75 percent of the total CGSA. The coverage requirement remains in effect; however, the applicant need only state its compliance and prepare its maps accordingly.[34]

D. Filing Periods for Markets Beyond the Top-120.

21. In light of the actions we are taking today, we are now prepared to accept applications for markets beyond the top-120.[35] As we anticipate processing applications more quickly and holding lotteries on an expeditious basis, we establish the following acceptance schedule.

Markets	Dates
121–135	Feb. 3–7, 1986.
136–150	Feb. 24–28, 1986.
151–165	March 17–21, 1986.
166–180	April 7–11, 1986.
181–240	April 28–May 2, 1986.
241–305	May 19–23, 1986.

No application may be filed after 5:30 p.m. EST.[36] These filing periods provide more than 60 days notice to prospective applicants and will allow sufficient preparation time for complete compliance with our cellular application rules and procedures. We will discuss

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[28] In a companion *Notice of Proposed Rulemaking*, we propose to reduce the construction period for cellular systems to one year. This will further assure that cellular permittees must move rapidly to construct and operate their initial systems and that those who fail to do so will lose their authorizations.

[29] Cellular Lottery Decision at para. 48 and n. 73.

[30] Cell Pro also asks that we adopt the industry standard microfiche format instead of that specified in the *Reconsideration Order*. This was our intention and by Erratum released June 24, 1985, we corrected the specifications and § 22.913(c) of the rules. The rule allows the use of a 4 x 6 positive or negative copy microform, 24x reduction, readably labeled at the top and enclosed in a paper jacket. A microfilm jacket format (16mm microfilm in a 4 x 6 jacket) may also be used.

[31] Reconsideration Order, at paras. 48–50.

[32] See Cellular Cleanup Order, FCC 84–416, CC Docket No. 79–318, released October 19, 1984, at paras. 6–7.

[33] Section 22.902(d) of the rules.

[34] We conclude that formal notice and comment procedures are not required. See n. 37, *infra*.

[35] On September 12, 1985, Telephone and Data Systems, Inc. (TDS) filed a petition for rulemaking proposing the redefinition of cellular application markets beginning with MSA No. 210, to consolidate them with non-MSA/non-NECMA areas and to adjust the acceptance of applications accordingly. Our action here is without prejudice to the TDS petition which we will address in the near future.

[36] We are amending our rules to require that all initial applications for the provision of cellular service be filed at the FCC facility in Gettysburg, PA. The doors to this facility will be closed at 5:30 p.m., and no applicant will be admitted.

applications for non-MSA/non-NEOMA areas in a subsequent order.

Ordering Clauses

22. Accordingly, It Is Ordered, That the Petitions for Reconsideration filed in this proceeding are Granted to the extent set forth herein, and are otherwise Denied.

23. It is Further Ordered, That the proposal of NewVector Communications, Inc. is Granted to the extent set forth herein.

24. It is Further Ordered, That Part 22 of the Rules are Amended as specified in Appendix B. These amendments and other policies adopted in this order will become effective January 17, 1986.[37]

Federal Communications Commission.

William J. Tricarico

Secretary.

Appendix A

Comments Supporting NewVector's Pre-Screening Proposal

Colorado Cellular, Inc.
Intercall Systems, Inc.
Midwest Cellular Telephone, Inc.
Kenebec Cellular Telecommunications Company
Blackhawk Metro Cellular Company
Lake Area Cellular Company
Bernard Independent Cellular Telephone Company
East Texas Independent Cellular Telephone Company
Pembroke Cellular Company
Mississippi Valley Cellular Telephone Company, Inc.
Mid-Iowa Cellular Company
Andoscoggin Cellular Telecommunications Company
Excell
Coastal Cellular Systems, Inc.
Clinton Cellular Company
Norway Cellular Communications Company
Concord Telephone Company of Concord, North Carolina
Fairmount Telephone Company, Inc.
Hughes Telephone Company
Interstate Telephone Company
Mid-South Telephone Company
Mouthie Independent Telephone Company
Plant Telephone & Power Company
Statesboro Telephone Company
Waitsfield-Fayston Telephone Company
Rural Telephone Company
Home Telephone Co. of Nebraska
Blue Grass Cellular Communications
Northwestern Indiana Telephone Company, Inc.
The Orwell Telephone Company
North-West Telephone Company
United States Telephone Association
PacTel Mobile Access

[37] The amendments of our rules adopted herein are interpretative and procedural in nature and, moreover, will operate to reduce existing burdens on prospective cellular applicants. Thus, further notice and comment rulemaking procedures are not required. See 5 U.S.C. 553(b).

Appendix B

47 CFR Parts 1 and 22 are revised as follows:

PART 1—PRACTICE AND PROCEDURE

Subpart E—Complaints, Applications, Tariffs and Reports Involving Common Carriers

1. The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

§ 1.742 [Amended]

2. Section 1.742 is amended by adding the words, "Except as specified in Section 22.6 of this chapter," at the beginning of the existing text.

3. Section 1.823(b)(2) is amended by revising the existing text to read as follows:

§ 1.823 Random selection procedures for the Public Land Mobile and Domestic Public Cellular Radio Telecommunications Services.

* * * * *

(b) Petitions to Deny. * * *

(2) Cellular Radio Telecommunications Service. In the Cellular Service, Petitions to Deny may be filed only against the tentative selectee within 45 days of the Public Notice announcing such tentative selection. A consolidated reply may be filed within 30 days of the due date for Petitions to Deny. No additional pleadings will be accepted. If the tentative selected is disqualified, or its application designated for hearing, the Commission will allow Petitions to Deny against the next-ranked tentative selectee.

PART 22—PUBLIC MOBILE SERVICE

Subpart B—Applications and Licenses

4. The authority citation for Part 22 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553).

5. Section 22.6(b) is amended by revising the existing text and redesignating it as paragraph (b)(1) and adding a new paragraph (b)(2) to read as follows:

§ 22.6 Filing of applications, fees, and numbers of copies.

* * * * *

(b)(1) Except as specified in paragraph (b)(2) of this section, applications for radio stations authorizations shall be submitted for filing to: Federal Communications Commission, Washington, D.C. 20554.

(2) Applications for an initial cellular radio communications system authorization in markets beyond the top-120 shall be filed at the Commission's office in Gettysburg, Pennsylvania 17325. The initial processing of such cellular applications to determine their acceptability for filing will be conducted at the Gettysburg office.

* * * * *

§ 22.6 [Amended]

6. Section 22.6(b) is amended by adding the phrase "(See § 22.913 for specific filing requirements for applications for an initial cellular radio communications system authorization)" after the existing text.

§ 22.902 [Amended]

7. Section 22.902 is amended by removing paragraph (d)(2); removing the word "applicants" in the first sentence of paragraph (d)(3) and redesignating paragraph (d)(3) as (d)(2); and redesignating subparagraph (d)(4) as (d)(3).

§ 22.903 [Amended]

8. Section 22.903(a) is amended by removing the last sentence and substituting the following: "An applicant must state that the combined 39 dbu contours of all base stations will cover at least 75% of the total CGSA."

9. Section 22.913 is amended by revising paragraph (b)(2), redesignating paragraph (b)(4) and (b)(5), revising and redesignating paragraph (b)(3) as (b)(4) and by adding a new paragraph (b)(3) to read as follows:

§ 22.913 Content and Form of Applications.

(b) Form of Applications. Applications for construction permits for initial cellular systems in markets beyond the top 120 shall be filed as set forth below:

* * * * *

(2) The applicant's name and the market, market number and frequency block applied for must appear on the cover of the application. In lieu of the name of the market, applications for non-MSA/non-NECMA areas shall include a list of all major cities within the proposed CGSA.

(3) The initial item inside the application cover shall be a certification that all information required by Form 401 and the Commission's cellular application rules has been included in the application. The certification shall be signed by the person signing the Form 401. The following form shall be used.

Certification

[Name of Applicant]

Application for an initial cellular authorization for [insert market]

[Name of applicant or authorized representative] hereby certifies, under penalties of perjury, that this application for an initial cellular authorization for [insert market] is complete in every respect and contains all of the information required by FCC Form 401 and the Commission's cellular application rules. [Applicant or authorized representative] acknowledges that if, upon Commission inspection, this certification is shown to be incorrect, this application shall be dismissed without further consideration.

[Signature and Title] _____

Verification

I declare, under penalties of perjury, that I am the authorized representative of [name of applicant] in the above-entitled matter; that I have read the foregoing certification; and that the matter and things therein stated are true and correct. Executed on [date].

[Signature]

(4) The initial Form 401 shall immediately follow the certification required by paragraph (3) above, followed by a table of contents. The exhibits specified in § 22.13(a)(1) and (2), and § 22.913(a) (1), (2), (8) and (10), shall immediately follow the initial Form 401 and table of contents, with the remaining exhibits required by § 22.13, § 22.913(a), and the remaining cell sites after that. All exhibits shall be tabbed in accordance with the table of contents.

* * * * *

10. Section 22.917 is revised as follows:

§ 22.917 Demonstration of Financial Qualifications.

(a) *Top-120 Markets.* (1) Applications for new stations or modified facilities shall demonstrate the applicant's financial ability to meet the realistic and prudent:

(i) Estimated costs of proposed construction and other initial expenses; and

(ii) Estimated operating expenses for a period of one year, depending upon the nature of service proposed and the degree of business uncertainty or risk.

(2) Resources used to demonstrate an applicant's financial ability under paragraph (a)(1) of this section cannot include funds committed to another project, or committed in another cellular application.

(3) Except as provided in paragraph (c) of this section, each application shall demonstrate an applicant's financial ability as set forth in paragraph (a)(1) of this section by submitting the following financial information, the information required by paragraph (a)(3)(iii) of this section, and whatever other information or details the Commission may require:

(i) A balance sheet current within ninety (90) days of the date of the application and copies of any financial commitments (for example, loan agreements and service contracts) in support of the proposed facilities; and

(ii) Whenever the submissions of paragraph (a)(3)(i) of this section do not satisfy the standard established in paragraph (a)(1) of this section, the applicant shall submit such additional information (e.g., a current income statement, and, for the period of proposed construction plus an initial year of operation, a statement of projected revenues and expenses, a statement of projected sources and application of funds, etc.) as is necessary to demonstrate financial ability.

(iii) The following additional information shall be submitted on any form of intended credit arrangement or equity placement:

(A) The details of any loan or other form of credit arrangement intended to be utilized to finance the proposed construction, acquisition, or operation of the requested facilities including such information as the identity of the creditor (or creditors), letters of commitment, terms of the transaction, and a statement that paragraph (d) of this section is complied with; and

(B) The details of any sale or placement of any equity or other form of ownership interest.

(b) *Markets Beyond the Top-120.*—(1) *New Facilities.* The tentative selectee chosen in a random selection process conducted pursuant to §§ 1.822 and 22.33(a) of these rules, the surviving applicant in a full-market settlement of all mutually exclusive cellular applications for a market, and any unopposed applicant for an initial cellular authorization shall, within 30 days of the Public Notice announcing such status, obtain a firm financial commitment for the financing necessary to construct and operate for one year its proposed cellular system and shall amend its application to so demonstrate. The amendment shall also include the realistic and prudent estimated costs of proposed construction and other initial expenses; estimated operating expenses for a period of one year; and a balance sheet current within 30 days of the date of the filing of the amendment.

(i) The firm financial commitment required above shall be from a recognized bank or other financial institution and shall evidence the lender's determination that it has assessed the creditworthiness of the loan applicant and that it is committed to providing the necessary financing, including any actions required of the applicant to continue the commitment in force. Applicants obtaining financing from other than a recognized lending institution must submit proof that the financing entity has such funds available and uncommitted to another cellular application.

(ii) An applicant relying on internal financing must submit the information required by § 22.917(a)(3), in conformance with generally accepted accounting principles, to demonstrate its financial ability.

(2) Modified Facilities. Applications for modified facilities in markets beyond the top-120 shall demonstrate the applicant's financial ability in accordance with the requirements of paragraph (a), above.

(c) Each application for an assignment of a license (or permit), or for the transfer of control of a corporation holding a license (or permit), shall demonstrate the financial ability of the proposed assignee or transferee to acquire and operate the facilities by submitting adequate financial information under the guidelines specified in this section, as appropriate.

(d) *Notice Upon Default.* In addition to the disclosures required by paragraph (c) of this section, any loan or other credit arrangement providing for a chattel mortgage or secured interest in any proposed radio station facility must include a provision for a minimum of ten (10) days prior written notification to the licensee or permittee, and to the Commission, before any such equipment may be repossessed under default provision of the agreement.

[FR Doc. 85-29419 Filed 12-17-85; 8:45 am]

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47 CFR Part 73

[MM Docket No. 85-39; RM-3683; Docket No. 18651; FCC 85-586]

Amendment of the Rules Regarding AM Station Assignment Standards and Relationship Between the AM FM Broadcast Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By *Report and Order* in MM Docket No. 85-39, the Commission has amended § 73.37(e) of its rules by deleting the non-technical requirements for the acceptance of applications for new AM radio broadcast stations and major changes to them. Conditions since these requirements were adopted have

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changed dramatically. These changes have removed the justification for continuing to apply these rules especially since doing so comes at the expense of precluding new AM services in places where there is demand and support for them. Removing these requirements will enhance the opportunities for the provision of competitive AM services.

EFFECTIVE DATE: January 21, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Louis C. Stephens, Mass Media Bureau, Washington, DC 20554, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

AM broadcast stations, Applications for broadcast facilities; showing . required.

Report and Order (Proceeding Terminated)

In the matter of deletion of AM Application Acceptance Criteria in § 73.37(e) of the Commission's Rules, MM Docket No. 85-39, Rm-3683; Amendment of Part 73 of the Commission's Rules, Regarding AM Station Assignment Standards and the Relationship Between the AM and FM Broadcast Services, Docket No. 18651.

Adopted: October 31, 1985.

Released: December 12, 1985.

By the Commission:

Introduction

1. We here consider our proposal in the *Notice of Proposed Rule Making* in this proceeding (50 FR 8169, published February 28, 1985), to delete the non-technical AM application acceptance criteria set forth in § 73.37(e) of the FCC Rules.[1]

2. Under these non-technical criteria, applications for new AM stations or major changes in existing AM stations are not acceptable for filing unless:

—at least 25% of the area or population to be served has neither AM nor FM primary service; or

—the principal community to be served has fewer than two authorized local services and no FM channel is available for use there; or

—at least 20% of the area or population of the principal community receives fewer than two aural services, and no FM channel is available.

In addition, special provision was made for the acceptance of minority or noncommercial applications on the 25 U.S. I-A Clear Channels even if these applications do not meet the above requirements.

3. In issuing the *Notice*, the Commission noted that the basic policies regarding AM allocations had not been reviewed for almost 20 years. While it may well have been appropriate during early stages of AM development to employ such acceptance criteria, we noted that their continuing need is far from clear, especially in view of the substantial changes which have taken place in the intervening period. With this in mind the Commission decided on a full review of the AM application policies set forth in § 73.37(e).

4. Most responses to the *Notice* opposed retention of existing requirements because they have limited opportunities to provide improved service, especially with respect to daytime stations seeking to obtain nighttime operation. On the other hand, minority and noncommercial radio parties sought retention of these requirements, including their special advantage with respect to the use of the 25 U.S. Class I-A channels. Based on the record in this proceeding and our extensive experience in managing the aural broadcast spectrum, we believe that retention of the requirements of § 73.37(e) is no longer warranted.

Background

5. AM radio was the first broadcast medium and, over the years, AM applications have been subject to varying acceptance criteria. Initially, AM applications were accepted on a "demand" basis, leaving an applicant free to choose its own frequency, power, mode of operation, as well as the proposed community of license. By the early 1960's, the Commission had become concerned that this approach, which encouraged a continuing flow of applications seeking to provide service to the most populous areas of the country, could foreclose remaining opportunities to provide service to unserved and underserved areas.

6. In July 1968, the Commission instituted a "freeze" on the acceptance of AM applications to allow it to consider changes in AM allocation policies. This led to a *Notice of Proposed Rule Making* (34 FR 14384, September 13, 1969) in which the Commission proposed accepting applications for new AM service (other than Class IV) only if each application proposed a first aural service to 25 percent of the applicant's proposed coverage area or population. As adopted, the rule also allowed the filing of an application for a community if it lacked an available FM channel and at least 20 percent of the community did not receive two daytime city-grade services. *Report and Order*, 39 FCC 2d 645 (1973).

7. However, these rule changes proved overly restrictive. Few applicants were interested in establishing a station in those limited areas where they could file, and no opportunity was provided for them to file in those areas in which they wished to bring service. Accordingly, the Commission conducted another proceeding and decided upon a partial relaxation of the previous standards to allow, *inter alia*, expansion of daytime-only stations to provide first aural nighttime radio service in their communities. *Report and Order*, 54 FCC 2d 1 (1975). The rules were further relaxed in 1980 when the Commission, in deciding to permit additional nighttime operations on the 25 Class I-A Clear Channel stations, amended § 73.37(e) of the Rules to allow the acceptance of applications filed by minorities and noncommercial broadcasters. *Report and Order*, 78 FCC 2d 1345 (1978), recon. denied 83 FCC 2d 216 (1980). Even though the rules have been amended on several occasions throughout the years to broaden the class of permissible applications, they remain essentially the same today as has our basic approach to AM allocations.

Discussion

8. As explained below, we believe that our AM allocation policies have been very much responsible for the mature AM radio service that we now have in this country, and § 73.37's non-technical acceptance criteria appear to have been instrumental in furthering our objective of increasing AM service to unserved and underserved areas. However, we have concluded that continuance of these particular criteria would no longer serve the public interest. Similarly, we have concluded that the special provisions relating to the acceptance of applications filed by minorities and public broadcasters for stations on the 25 Class I-A clear channels should no longer be retained. We shall first address the rule's present utility in bringing new AM service to unserved and underserved areas. We shall then turn our attention to the question of the exclusive preferences given minorities and noncommercial public broadcasters with respect to the use of the 25 U.S. Class I-A channels.

9. At the time of the rules' adoption, a substantial percentage of the populace was without any primary aural service. Over half the land area of the United States with an aggregate population of

[1] Section 73.37 also contains technical acceptance criteria designed to avoid interference. These provisions are not at issue in this proceeding.

25 million or more lacked any primary aural nighttime service. Although FM service had come into existence, most FM stations were in areas already well served by AM and few people then owned FM receivers.[2] Accordingly, our primary objective in fashioning these criteria was to stimulate the growth of AM stations to areas lacking any primary service.

10. Since then, the situation has dramatically changed. By 1980, the population lacking primary aural service at night in the 48 coterminous states has been reduced to under four million persons living in widely scattered areas in the West and in smaller, thinly populated portions of the East. Although precise figures are not available, it is clear that AM operations authorized since then have reduced these figures even further.[3]

11. Moreover, vast changes in the FM broadcasting service, particularly in recent years, appear to have diminished the necessity of restricting remaining opportunities for new AM station growth exclusively to the areas embraced by our non-technical acceptance criteria. In spite of its slow beginnings in the 1950s and 1960s, FM has become the dominant aural medium today, and there continues to be a strong demand for FM channels in virtually all parts of the country, rural as well as urban.[4] In addition, the significant actions we have taken in Dockets 80–90 and 84–231 to increase the supply of FM channels throughout the country has expanded possibilities for new and increased radio voices in the marketplace including in underserved areas.

12. Because the availability of FM stations to provide service to new areas appears to be considerably more elastic than that on the AM side, FM appears to be in a far better position than AM to respond to the need for new service in the remaining unserved areas. In addition, FM has the technological advantage over AM of not generating nighttime skywave propagations, which is responsible for greater limitations on nighttime operation of AM broadcasting. The absence of this limitation in FM and the near universal availability of FM receivers in homes and cars have already been instrumental factors that have paved the way in bringing FM service to many areas lacking AM service and, in our estimation, augurs still further for the availability of FM service in many new communities and areas.

13. Given all these circumstances and especially the fact that the demand for FM service is currently much stronger than for AM, we cannot envision any continued strong demand for AM service in the remaining areas now subject to the acceptance criteria. At this juncture, virtually all of the unserved or underserved areas that remain lack a population center capable of supporting a high power AM station which in turn is capable of reaching the area needing service. Moreover, even though we have made provision for additional AM stations with powers up to 50 kW, we have found that this opportunity has been little utilized as a vehicle to provide service in remaining areas, nor has it proved to be a realistic means of providing service to a significant number of persons, particularly at night.

14. Accordingly, we have come to the conclusion that retention of the non-technical acceptance criteria for the very few remaining areas that, in theory, might be desirable locations for new AM services but, in economic reality, could not support such services would serve no positive public interest purpose. Although universal service is a laudatory goal, it is clear to us that future growth in AM is unlikely to bring service to unserved areas even if the current requirements are maintained. From an economic standpoint, it simply is not possible to guarantee one local service to every community regardless of size.[5] In areas where there is both demand and ability to support a broadcast operation, AM service, for the most part, has already been proposed. And, in those areas where future service expansion is possible, the likelihood of its being provided by FM, rather than by AM, is strong. Given these circumstances and the fact that the rule's purposes have largely been achieved, there appears to be very little wisdom in our rigid adherence to the non-technical criteria of § 73.37(e) if they merely serve in theory to preserve AM "opportunities" in the remaining underserved and unserved areas.

15. Aside from the minimal public benefits to be gained from their retention, we find that continuance of these restrictions would have undesirable negative effects. While it is apparent that the remaining benefits that can be reaped under the rule are likely to be negligible, retention of the rule may have the practical effect of eliminating opportunities for new, additional AM radio voices elsewhere. The exclusion of otherwise acceptable applications occasioned by the non-technical criteria thus may unjustly deny to the public new prospects for additional diversity outside those limited areas expressly carved out under the rule.

16. The rule is also designed to foster a first and second local transmisison service as well. However, it should be clear that two local services will not always be sufficient to respond to the needs of a community. Yet, the practical effect of the current provisions is to exclude otherwise acceptable proposals that do not offer a first or second local service. Because they limit entry of new radio forces into the marketplace, they necessarily limit prospects for increased program competition and program diversity. At this relatively mature stage of AM's development, we think it is more sensible to rely on actual demand as a basis for permitting AM operation, rather than to maintain the current criteria.

17. Moreover, we believe that the approach we are adopting today comports more fully with section 307(b) of the Act. Although that section calls for a "fair, efficient and equitable" distribution of radio facilities, it indicates quite clearly that the "equitable distribution" mentioned is to be considered "insofar as there is demand for the same." Accordingly, we believe that the purposes of section 307(b) are far better served by allowing the filing of applications for which there

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[2] According to a *Pulse* audience measurement study published in the February 23, 1970, issue of *Broadcasting*. FM penetration in Abilene, Texas, was only 25.8% and in Winston-Salem, North Carolina, was only 33.7%. Even Pittsburgh, Pennsylvania, only reached the 56.2% level. While penetration in some areas was higher, for the most part these were areas that had abundant AM service. In terms of overall market share, FM was only about 20%, a figure which had grown to 40% by 1976. Again using Pittsburgh, the FM market share in 1970 was 14.7%, climbing to no higher than 33.6% even as late as 1976. In sharp contrast, the Spring, 1985 RADAR survey by Statistical Research, Inc. estimates that FM's share of all radio listening, nationwide (7 days, 24 hours, all persons age 12+) is 70.6%.

[3] AM service continues to grow, but this growth is attributable in major part to the more extensive use of the 25 U.S. 1–A Clear Channels made possible by the Commission's Clear Channel decision, *Report and Order*, 78 FCC 2d 1345 (1980), *recons. denied in pertinent part, Memorandum Opinion and Order*, 83 FCC 2d 216 (1980), *aff'd sub nom. Loyola University v. FCC*, 670 F. 2d 1222 (D.C. Cir. 1982).

[4] The significant progress FM broadcasting has made throughout the years and the dominance it has achieved are principal factors which obviously point to no further need for these restrictions from the standpoint of our having to encourage commercial FM development, one of the early objectives underlying the criteria.

[5] *Memorandum Opinion and Order and Further Notice of Proposed Rule Making* in Docket No 19161 Anamosa, Iowa *et al.* 46 FCC 2d 520 at 525 (1974).

is demand rather than letting them "lie fallow." [6]

18. There are other considerations which lead us to this conclusion. For many daytime-only stations, the only way to obtain nighttime operation is by proposing a change in station location to a community meeting the § 73.37(e) standard, *viz.*, a suburban community. In some of these instances, no attempt is made to determine whether there is a greater need for the station in the suburban location to which it was being moved. In this respect, these non-technical criteria serve only as superficial barriers since some daytime operators having the necessary resources and wherewithal are capable of clearing the administrative hurdles created by the rule. However, other daytime-only stations are not able to take advantage of the provisions of the rules at all and to them it operates as an absolute barrier by foreclosing to them any opportunities for expanding to nighttime operations.

19. The effects of these barriers run counter to the Commission's efforts to alleviate the difficulties daytime-only AM stations face because of their hours of operation. Even with the actions we have taken thus far, daytime-only stations will operate under a disability, unable to compete effectively and to offer the benefits that unlimited operations would bring to their audience. Removal of these barriers creates the possibility of new opportunities for a number of these stations to obtain nighttime operations without having to propose a change in station location solely to clear administrative hurdles.[7]

20. We also wish to emphasize that the burdens that would be removed by elimination of the threshold showing requirements of § 73.37(e)(1) and (2)(i)–(ii) would equally be lifted from the shoulders of minority applicants as well. This would mean, for example, that a minority applicant for a new station on a channel, other than a domestic clear channel, will no longer have to make the threshold showing of service to unserved or underserved areas in order to have its application accepted for filing. Deletion of these provisions would therefore have a positive effect on increasing opportunities for minority ownership of AM stations because it would open the door wider to the possibility of a larger number of new AM stations for which authorization could be sought.

21. Having concluded that the benefits underlying the rule of extending new AM service to unserved and underserved areas are so small as to be outweighed by the detriments imposed, we now turn to the final issue for our consideration—whether to maintain the special provisions applicable to minorities and noncommercial broadcast entities in the use of the 25 U.S. Class I.–A Clear Channels (Section 73.37(e)(2) (iv) and (v). The National Black Media Coalition (NBMC) and the National Association of Black Owned Broadcasters (NABOB) are opposed to the elimination of these special provisions relating to minorities. They urge retention of these provisions as a means for increasing the number of minority-owned stations. They rely on reports that the number of minority-owned broadcast stations in 1984 was reportedly 188 or 1.8% of all broadcasting stations, and that this figure was even below the 1980 figure of 196 minority-owned stations representing 1.9% of the total. They also point out that, until recently, only 13 authorizations have been issued to minority applicants in reliance on the minority-ownership exception in § 73.37(e)(2)(iv). NABOB asserts that the temporary imposition of a "freeze" on the use of these Clear Channels and the time required for judicial review of the rules themselves have inhibited filings and thus form a basis for an additional period during which the rule should continue in effect. For these reasons, we are asked to leave in place all of the non-technical acceptance criteria of § 73.37(e).

22. Under the current criteria, applicants other than minorities and non-commercial entities have never been foreclosed from applying for operation on the 25 U.S. Class I–A Clear Channels, although, unlike minorities and non-commercial entities, they were permitted to apply only for stations serving unserved and underserved areas. However, if we eliminate the non-technical acceptance criteria for unserved and underserved areas, and still maintain the minority and noncommercial broadcast criteria, no one except minorities and non-commercial broadcasters could apply for operation on these channels. In light of this outcome, we can understand why NABOB seeks preservation of the non-technical acceptance criteria and, apparently, not merely the minority provisions: minorities and non-commercial entities would have the exclusive right to apply for all of the remaining opportunities for use of the 25 Class I–A Clear Channels. Such a result clearly was never contemplated by our rules [8] and, having already determined that the non-technical acceptance criteria for underserved areas should be eliminated, we decline to adopt that result here. Accordingly, we conclude that the special provisions for minorities and non-commercial station should also be deleted.

23. Moreover, even if we were disposed to retain the special provisions of § 73.37(e)(2)(iv), we are extremely skeptical whether the few remaining opportunities that exist would justify their retention. The Commission has already received over three hundred applications for unlimited-time Class II stations on the Class I–A channels in question and, therefore, it is extremely unlikely that many more requests for authorizations beyond those already requested could be entertained whether filed by minorities or others. This, together with the fact that approximately 115 stations have already been authorized by the Commission to operate on these channels, indicates that, due to increased spectrum crowding, it simply would not be possible to accommodate many more authorizations in this area.[9] Because there are so few remaining possibilities for unlimited-time stations on these clear channels and because only in unusual circumstances would additional growth in this area be possible, perpetuation of the special provisions of § 73.37(e)(2)(iv) cannot be viewed as a realistic means of appreciably increasing the number of minority owned stations or as a justifiable means for further enlarging the number of minority-owned stations.[10]

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[6] The policy judgment that new AM stations should be allowed wherever there is sufficient demand to support them assumes, of course, that, absent the nontechnical criteria, new AM stations can be proposed for areas already well served without violating our interference rules. In *Report and Order, MM Docket No. 84–281*, 50 FR 24515 (June 11, 1985), *appeal pending sub nom. National Black Media Coalition* v. *FCC*, Case No. 85–4121 (2d Cir.), we found that this possibility did not exist on the foreign clear channels, where for the most part new full-time stations could only be proposed in unserved and underserved areas. Proposals for new stations in areas already adequately served would generally run afoul of our interference rules.

[7] Some licensees may still wish to change their community of license. No alteration in the policies in regard to these applications is intended, including proposals for change of community of license made possible by our revision of § 73.37(e).

[8] *Clear Channel Broadcasting Report and Order, supra.*

[9] The "freeze" mentioned by NABOB may have discouraged the filing of some applications by minorities for use of these Clear Channels, but the fact that the Commission received over three hundred applications suggests that the impact of the freeze was minimal. In any event, no Commission rule or policy prevented the filing of applications either before or after the freeze.

[10] Our reasoning that "so few remaining" opportunities exist to justify our retention of the special acceptance provision for minorities and noncommercial broadcasters was also a consideration at the heart of our decision not to apply for the first tie these special acceptance provisions in the foreign clear channel proceeding. *See* n. 7 *supra*. Although our action in that proceeding created some opportunity for new full-time stations on the 14 foreign clear channels, it created few, if any, opportunities for full-time stations *outside of* unserved or underserved areas.

24. For similar reasons, we have also concluded that the special provision of § 73.37(e)(2)(v) relating to the use of these Clear Channels by noncommercial broadcasters should be deleted. Although Congress has stated that "it is in the public interest to encourage the growth and development of public radio," 47 U.S.C. 396(A)(1), that declaration does not require adoption of, or adherence to, any allocations policy which limits all remaining AM opportunities exclusively to noncommercial broadcasters. We believe that the aims of the statute can be better met through other regulatory mechanisms that do not have the drastic effect of foreclosing remaining AM opportunities to others. Moreover, as indicated above, even with the deletion of the non-technical acceptance criteria, noncommercial broadcasters would continue to have the opportunity to apply for use of these Clear Channels to the extent any opportunities exist. In addition, elimination of the non-technical acceptance criteria would afford noncommercial broadcasters the opportunity to seek authorizations for new AM service on other frequencies in those areas previously forbidden to them and others under the rule.

25. Our decision to delete the exclusively elements contained in § 73.37(e)(2)(iv) & (v) does not curtail in any manner the filing opportunties created under the rule for minorities and noncommercial broadcasters.[11] It merely removes the existing shield which, in some circumstances, protected these groups from the filing of competing applications by others. But even without this shield, minority groups would still continue to enjoy in any ensuing comparative license proceeding the benefits of a preference or enhancement factor to the extent that there existed integration of minority ownership into the overall management of the station. *See Waters Broadcasting Corp.*, 91 FCC 2d 1260 (1982), *aff'd sub. non. West Michigan Broadcasting Co.* v. *FCC*, 735 F.2d 601 (1984), *cert. denied*, 105 S.Ct. 1392 (1985).

26. We believe that a sounder approach to promoting minority ownership is to develop regulatory tools which facilitate new opportunities for minorities, but which do not have the exclusive effect of denying opportunities to all others completely, which retention of the special minority provision of § 73.37(e)(2)(iv) would have. For example, we have attempted to alleviate the underrepresentation of minority ownership that exists through such regulatory mechanisms as the distress sale policy, issuance of tax certificates and effectuation of the newly-exacted lottery statue by Congress. *See, e.g., Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1978); *Minority Ownership of Broadcast Facilities*, 69 FCC 2d 1591 (1978); *Random Selection Lotteries, Second Report and Order*, 98 FCC 2d 952 (1983), *appeal pending sub nom. National Latino Media Coalition* v. *FCC*, No. 83–1785 (D.C. Cir. July 26, 1983). Very recently, we instituted a *Notice of Inquiry* seeking comment on the possibility of extending the existing distress sale policy to permit distress sales of broadcast properties subsequent to the beginning of a revocation or renewal hearing, provided the transaction is entered into prior to the filing of proposed Finding of Fact and Conclusions of Law with the Administrative Law Judge. *Notice of Inquiry in the Matter of Distress Sale Policy for Broadcast Licensees (MM Docket No. 85–299)*, FCC 85–543 (adopted October 8, 1985). In our estimation, all these measures serve to promote minority ownership of broadcast stations for the purpose of fostering program diversity.

27. *Other Matters.* Several Parties in their comments asked that we amend other sections of the rules. The Association of Federal Communications Consulting Engineers and du Treil-Rackley, Consulting Engineers, ask that we modify § 73.37(b)(1), relating to prohibited overlap of adjacent channel signals. WEW, Inc. requests that we amend sections 24 (i) and (j), relating to requirements affecting Class II–A stations and the minimum signal to be provided over principal cities. These matters are all outside the scope of the present proceeding, which is limited to the proposal set out in the *Notice of Proposed Rule Making*, to eliminate the non-technical AM acceptance criteria in § 73.37(e).

28. The amendment contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Regulatory Flexibility Final Analysis

I. Reason for Action

The amendment is designed to relieve restrictions on the filing of AM applications.

II. Objective

By relaxing current restrictions on the filing of AM applications, service can be increased and opportunities for competition enhanced.

III. Legal Basis

Section 303 and 307(b) of the Communications Act of 1934, as amended, empower the Commission to foster more efficient use of radio spectrum in the public interest.

IV. Description, Potential Impact and Number of Small Entities Affected

The National Black Media Coalition took issue with the observation in the Regulatory Flexibility Initial Analysis that the only group of small entities affected is the group of potential applicants who will be able to file for new or improved facilities. NBMC asserted tht minority applicants also would be affected because they no longer would receive special treatment on the U.S. Class I–A Clear Channels. However, as discussed above, the rule is unlikely to offer significant future benefits to such applicants. In addition, their opportunity to file otherwise acceptable applications has not been diminished. Accordingly, we adhere to the view set out in the Initial Analysis that only potential applicants for new and improved AM facilities will be significantly affected by the present Rule change. They will be favorably affected.

V. Federal Rules Which Overlap, Duplicate, or Conflict With Stated Objectives

None.

VI. Any Significant Alternative Minimizing Impact on any Entities Consistent With Stated Objectives

Although NBMC, differed with the Commission's initial anlysis that no adverse impact on small entities is expected, it offered no alternative consistent with the stated objectives.

29. Accordingly, pursuant to authority found in sections 303 and 307(b) of the Communications Act of 1934, as amended, it is ordered, That, effective January 21, 1986, § 73.37 of the Commission's Rules is amended as set forth in appendix 1.

30. It is further ordered, That this proceeding is terminated.

31. For further information please

[11] See para. 20, *supra*.

contact Louis C. Stephens of the Commission's Mass Media Bureau, (202) 632–7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix 1

1. the authority citation for 47 CFR Part 73 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. 47 CFR 73.37 is amended by revising paragraph (e) to read as follows:

§ 73.37 Applications for broadcast facilities, showing required.

* * * * *

(e) In addition to a demonstration of compliance with the requirements of paragraph (a), and, as appropriate, paragraphs (b), (c) and (d) of this section, an application for a new AM broadcast station, or for a major change (see § 73.3571(a)(1) of this chapter) in an authorized AM broadcast station, as a condition for its acceptance, shall make a satisfactory showing, if new or modified nighttime operation by a Class II or Class III station is proposed, that objectionable interference will not result to any authorized station, as determined pursuant to § 73.182(o) of this chapter.

* * * * *

3. 47 CFR 73.37 is amended by removing Notes 5, 6, 7 and 10 and by renumbering existing Notes 8 and 9 as Notes 5 and 6, respectively.

Appendix 2

Parties Who Commented on the Record of MM Docket No. 85–39

Association of Federal Communications Consulting Engineers (AFCCE)
Corporation for Public Broadcasting (CPB)
Du Treil-Rackly, Consulting Engineers
First Broadcasting of Nevada, Inc., and Dave Mack Broadcasting (joint filing)
Robert A. Jones Consulting Engineers
National Black Media Coalition (NBMC)
National Association of Black Owned Broadcasters, Inc. (NABOB)
National Association of Broadcasters (NAB)
National Radio Broadcasters Association (NRBA)
National Public Radio (NPR)
Radio WEW, Inc. (WEW)

[FR Doc. 85–29894 Filed 12–17–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 50575–5075]

Atlantic Surf Clam and Ocean Quahog Fisheries; Technical Correction

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of ocean quahog fishery time adjustment.

SUMMARY: NOAA issues this notice lifting the effort restrictions on the ocean quahog fishery. This action is necessary because catch rates in the ocean quahog fishery have slowed, eliminating the need for effort restrictions. The intended effect of the adjustment of fishing time in the ocean quahog fishery is to allow the quota to be harvested.

EFFECTIVE DATE: 0001 hours, Eastern Standard Time, December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Plan Coordinator, 617–281–3600, extension 272.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(c) a provision to revise allowable fishing time in the ocean quahog fishery when 50 percent of the quota is caught and the Regional Director determines that the quota will be exceeded for the applicable time period.

Allowable fishing time in the ocean quahog fishery was reduced from seven days per week to five days per week on November 1, 1985 (50 FR 46072), consistent with § 652.22(c) of the regulations. This action was taken to prevent the ocean quahog quota from being exceeded and to avoid a prolonged closure of the fishery. Ocean quahog catch rates have since slowed sufficiently to assure that the quota of 4.9 million bushels will not be exceeded this fishing year, thus the Regional Director has determined that the effort restrictions are no longer necessary for the remainder of 1985.

The 1986 fishing year for ocean quahogs will begin December 29, 1985, with the allowable fishing time of seven days per week, 24 hours per day.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: December 13, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

In addition to the above, a technical correction is made as follows:

§ 652.22 [Amended]

(a) In § 652.22(c)(2), the reference to "§ 652.21(c)" is changed to "§ 652.21(d)".

[FR Doc. 85–29923 Filed 12–13–85; 2:20 pm]

BILLING CODE 3510–22–M

50 CFR Part 671

[Docket No. 41154–4154]

Tanner Crab off Alaska

AGENCY: National Marine Fisheries Service (NMSF), NOAA, Commerce.

ACTION: Notice of season closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the Tanner crab fishery in the Central District, Kamishak Bay District, and Barren Islands District of Registration Area H must be closed in order to protect Tanner crab stocks. The Secretary of Commerce therefore issues this notice closing fishing for Tanner crab by vessels of the United States in these districts. This action is intended as a management measure to conserve Tanner crab stocks.

DATES: This notice is effective at noon, Alaska Standard Time (AST), December 19, 1985. Public comments on this notice of closure are invited until December 31, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. AST, weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (NMFS Fishery Management Biologist), 907–586–7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone (FCZ) under the Magnuson Fishery Conservation and Management Act (Magnuson Act), provides for inseason

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adjustments of season and area openings and closures. Implementing rules at § 671.27(b) specify that notices of these adjustments will be issued by the Secretary of Commerce under criteria set out in that section.

Section 671.26(e) establishes six districts within Registration Area H (Cook Inlet area) in order to prevent overfishing of individual Tanner crab stocks by allowing closure or partial closure of a particular district when the desired harvest level is reached.

The Tanner crab season in Cook Inlet opened on November 1, 1985 (50 FR 47549 November 19, 1985). The overall optimum yield (OY) for Registration Area H is 1.5 to 3 million pounds. Approximately 24 vessels caught an estimated 1.1 million pounds of crab from the Central, Kamishak Bay, and Barren Islands Districts through December 5. The catch of legal crabs declined from approximately 38 crabs per pot to 12 crabs per pot in these districts. This unanticipated rapid decline in catch, and the catch of a substantial number of sublegal and female Tanner crabs (10 to 200 per pot) necessitates the closure of this fishery to protect the Tanner crab stocks.

In light of this information, the Regional Director, in accordance with § 671.27(b), has determined that:

1. Actual conditions of Tanner crab stocks in the Central, Kamishak Bay, and Barren Islands District of Cook Inlet are substantially different from conditions anticipated at the beginning of the fishing year; and

2. These differences reasonably support the need to protect those Tanner crab stocks by closing the Central, Kamishak Bay, and Barren Islands Districts of Cook Inlet as defined in § 671.26(E)(1) (i), (iii), (iv), from noon, AST, December 19, 1985, until noon, Alaska Daylight Time, May 31, 1986, at which time the closure of these districts prescribed in Table 1 of § 671.21(a) will begin.

This closure will become effective after this notice is filed for public inspection with the Office of the Federal Register and the closure is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the address stated above. If comments are received, the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Central, Kamishak Bay, and Barren Islands Districts will be subject to damage by overfishing unless the closure takes effect promptly. The Agency, therefore, finds for good cause that advance opportunity for public comment on this notice of closure is contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671, and complies with Executive Order 12291.

List of Subjects in CFR 50 Part 671

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 13, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-29874 Filed 12-16-85; 10:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 243
Wednesday, December 18, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Ch. I

[Notice 1985–14]

Rulemaking Petition; Use of Funds To Influence Federal Elections

AGENCY: Federal Election Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Election Commission requests comments on several factual and legal issues raised by the use of funds to influence federal elections that are not being considered as subject to the Federal Election Campaign Act of 1971, as amended (the "Act" of "FECA"), 2 U.S.C. 431 *et seq.* and the Commission's regulations on the asserted ground that they are actually contributed or expended only for the purpose of influencing state elections. These issues have been discussed extensively in the press in terms of the use of "soft money" in elections and the adequacy of the Commission's regulations to provide disclosure of all funds used to influence federal elections. In light of the attention focused on this area, the Commission is issuing this notice and scheduling public hearings to examine the possible use of unreported funds to influence federal elections. Further details on the specific questions on which comment is sought is provided in the supplementary information that follows.

DATE: Comment must be received on or before January 17, 1986. The Commission will hold a hearing on January 29–30, 1986. Persons wishing to testify should so indicate in their written comments.

ADDRESSES: Comments should be made in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, DC 20463, (202) 523–4143 or toll-free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is aware of the concerns that have been raised by members of the public regarding the increased use of undisclosed funds for activities that may affect federal elections. Often these funds consist of donations from sources that would be prohibited from making contributions or expenditures for federal elections, such as corporations, labor organizations, and persons who have reached their contribution limits under federal law. As a result, it has been asserted that the Commission's regulations are insufficient to provide adequate disclosure of all funds used for activities related to federal elections or to prevent evasion of the Act's prohibitions and limitations.

In view of the growing perception that funds not reported to the Commission may be used to influence federal elections, the Commission is publishing this notice as part of its examination of the questions that have arisen in this area. The Commission's inquiry focuses on two interrelated areas. First, the Commission seeks factual information on the practices involving undisclosed funds that are spent in a manner that affects federal elections. Although the use of undisclosed funds or "soft money" to affect federal elections has been the subject of wide discussion in the press, there appears to be no general agreement as to what constitutes "soft money" or to what extent certain activities involving unreported funds impact on federal elections. For example, some commentors have focused the discussion on nonreporting accounts maintained by political party committees for use in state and local elections. Other groups have defined "soft money", based on the type or source of the funds without regard to the particular activity for which they are used, to include corporate and union treasury funds and funds from individuals who have contributed the maximum amount under federal law.

In addition, the Commission requests comment on the appropriate courses of action to address the problems in this area. The Commission is considering whether a revision of its regulations is necessary in view of charges that have been made that they are inadequate. Several legal issues need to be examined before the Commission can determine whether rulemaking is appropriate. For example, the extent to which the Commission's current regulations are mandated by FECA or are an exercise of the Commission's discretion warrants exploration. Furthermore, the question arises whether the Commission should seek statutory reform to the extent that changes in the current regulatory scheme require revisions of the Act to address issues raised by the use of undisclosed funds.

A. Use of Undisclosed Funds to Influence Federal Elections

The Commission has considered matters involving the use of undisclosed funds to influence federal elections in different contexts involving various activities. These issues have been raised for Commission consideration in advisory opinions ("AOs") and compliance matters. Questions regarding the use of "soft money" to influence federal elections were presented to the Commission in a petition for rulemaking filed by Common Cause on November 6, 1984.[1] In addition, members of Congress have questioned the Commission concerning undisclosed funds that may be used to affect federal elections. Finally, during the last election cycle, the media focused a significant amount of attention on whether the public interest in disclosure and limitation of such funds is being served.

Most of the questions concerning the use of undisclosed funds to influence federal elections have related to the activities of political party committees. There have been numerous stories in the media regarding the large amount of money raised by the major political parties ostensibly for use in state and local elections. While political party committees have been the primary focus, the "soft money" discussion has

[1] The Commission issued a Notice of Availability to seek public comment on the Common Cause petition. 50 FR 477 (Jan. 4, 1985). Five written comments were received in response to the notice, including a supplemental statement by Common Cause. If the Commission decides to undertake a rulemaking to address the issues raised by the use of unreported funds to influence federal elections, it could decide to include the issues raised by the Common Cause petition within the scope of that rulemaking. The Common Cause petition and the comments on it are available for copying and inspection in the Commission's Public Records Office.

extended to activities by other committees, organizations, and individuals as well. For example, concerns have been raised that treasury funds have been expended by corporations and labor organizations in a manner that impacts on federal elections. Questions have similarly arisen regarding other political committees and individuals, such as nonconnected committees with nonfederal accounts and individuals conducting activities in the delegate selection process or in the "testing the waters" period prior to becoming a candidate. To assist the Commission in assessing the scope of activities involved in this area, comment is requested on the extent to which undisclosed funds are used by political committees, organizations, and individuals in a manner that influences federal elections. Comments are also sought on whether revision of various provisions of the Commission's regulations is necessary to address the issues that have arisen in this area. The questions raised for public comment are discussed in greater detail in the information that follows.

1. Political Party Committees

Several activities undertaken by political party committees have raised allegations that undisclosed funds are being used to influence federal elections. One area in which such issues have arisen payments for certain activities conducted by State and local party committees pursuant to provisions enacted in the 1979 FECA amendments. These provisions were intended to increase the role of State and local party committees in the electoral process by exempting certain payments from the definitions of "contribution" and "expenditure". Under the Act, payments by State and local party committees to prepare and distribute slate cards, sample ballots or other printed lists naming three or more candidates for any public office are exempted from the definitions of "contribution" and "expenditure". 2 U.S.C. 431(8)(B)(v) and 431(9)(B)(iv). *See also* 11 CFR 100.7(b)(9) and 100.8(b)(10). Another set of exemptions permits State and local party committees to purchase campaign materials (such as buttons, bumper stickers, and yard signs) to be distributed through volunteer activities on behalf of the party's nominees in a general election. 2 U.S.C. 431(8)(B)(x) and 431(9)(B)(viii). *See also* 11 CFR 100.7(b)(15) and 100.8(b)(16). The third exempted area involves payments by State and local party committees for voter registration and get-out-the-vote activities on behalf of the party's nominees for President and Vice President. 2 U.S.C. 431(8)(B)(xii) and 431(9)(B)(ix). *See also* 11 CFR 100.7(b)(17) and 100.8(b)(18).

Local party committees undertaking only exempt activities are not required to register and report until payments for these activities exceed $5,000. 2 U.S.C. 431(4)(C). Committees may sponsor an activity that falls within these exemptions on behalf of both federal and nonfederal candidates. Under the Commission's regulations, only the portion of the payments attributable to federal candidates must be paid from funds permissible under the Act. *See* 11 CFR 100.7(b)(9), (b)(15)(ii), and (b)(17)(ii); 11 CFR 100.8(b)(10), (b)(16)(ii) and (b)(18)(ii). Similarly, party committees may allocate expenses for get-out-the-vote and voter registration drives conducted jointly in connection with federal and State or local elections. *See* Advisory Opinions ("AOs") 1978–10, 1978–28, and 1978–50. *See also* 11 CFR 106.1(e).

These statutory exemptions should not be used as a shield to spend nonfederal funds for the benefit of federal candidates, particularly through the use of allocation methods which permit a committee to expend funds raised for use in nonfederal elections and thereby free federal funds for contributions and expenditures. Such allocation arguably affords a benefit to the committees, avoiding their spending permissible contributions they have received for operational expenses. Thus, Common Cause and others have claimed that allowing allocation of expenses for exempt activities provides a loophole permitting funds that are not reported to the Commission, often not permissible under the Act, to be used in a manner that affects federal elections. *See also* dissents to AOs 1978–10, 1978–46, 1981–3 and 1982–5.

Concerns have also arisen regarding the use of funds in nonfederal accounts maintained by political party committees. Many persons have alleged that funds ostensibly raised for use in nonfederal elections, that are not reported to the Commission, have in fact been used to influence federal elections. Neither the statute nor current Commission regulations require committees to report the receipt and disbursement of funds in their nonfederal accounts. *See* 11 CFR 102.5(a). Contentions have thus been made that the lack of disclosure of these funds deprives the Commission and the public of accurate information on financing used to influence federal elections, thereby defeating a major purpose underlying the reporting provisions of the Act. It has also been alleged that the Commission's ability to effectively monitor campaign financing for federal elections is impaired if these funds are not subject to reporting requirements. In addition, concerns have been raised because there is no centralized disclosure of funds raised for use in nonfederal elections even though such funds may be subject to disclosure under various state laws.

Another area in which these issues regarding undisclosed funds have arisen concerns the use of nonfederal funds by party committees to conduct activities that have as their purposes promoting the party as a whole. The Commission has noted that political party committees perform numerous functions, termed "party building", that do not relate directly to any particular federal candidate or election. *See, e.g.,* AOs 1975–21, 1975–28, 1975–87, and 1978–50. Members of the public have alleged, however, that nonfederal funds purportedly raised for party building activities are in reality being used to fund activities designed to influence federal elections.

The Common Cause petition and the complainant in Matter Under Review ("MUR") 1766 (1984) questioned the transfer of funds in nonfederal accounts maintained by national level party committees (such as the party's national committee and House and Senate campaign committees) to State and local party committees for party building activities. These matters also raised issues concerning the methods used for allocating expenses between their federal and nonfederal accounts. In MUR 1766, for example, the complainant alleged both that undisclosed funds transferred by the national committees of the Republican and Democratic parties to State and local committees in the State of Washington for party building activities were in reality used to influence a federal election held in the state and that there was not a proper allocation of funds between federal and nonfederal elections. The complainant requested that the Commission issue guidelines on how to allocate party building expenses, as well as additional reporting requirements, to facilitate monitoring these funds and ensure that prohibited funds raised for use in nonfederal elections are not in fact used to influence federal elections. The Commission determined, however, that the respondents had submitted documentation sufficient to indicate that no improper funds were used to influence federal elections.

Quesions pertaining to party building activities have also been presented to

the Commission in advisory opinion requests submitted in 1984 and 1985. *See* AORs 1984–15 and 1985–14. Each of these requests concerned political advertising by a major political party. In responding to the requests, the Commission considered the timing and the content of the advertisements involved to determine whether disbursements for them should be characterized as contributions to a federal candidate, coordinated expenditures under 2 U.S.C. 441a(d), or expenditures for general party building activities. In AO 1984–15, the Commission concluded that neither the contribution limitations nor the section 441a(d) expenditure limitations would apply to disbursements for political advertisements, broadcast in the period after the national nominating convention and before the general election, that referred to opposing party candidates generally without identifying any specific candidate or office. The purpose of such advertisements was found by the Commission to be to promote one party over another and to encourage voters to support one political party generally. As such, the Commission determined that disbursements for the advertisements were not required to be reported as contributions to any specific candidates or as section 441a(d) expenditures, but were only reportable as operating expenditures that are generally related to federal elections. In contrast, the Commission also concluded in AO 1984–15 that the limitations on contributions or section 441a(d) expenditures would apply where the advertisement both (1) depicted a clearly indentified presidential candidate and (2) contained an electioneering message. *Accord* AO 1985–14.

These advisory opinion requests thus raise the issue of whether the Commission's regulations governing party building activities should be expanded to deal more explicitly with such activities. Currently, 11 CFR 110.8(e) addresses certain circumstances under which a party committee may reimburse expenses incurred by a presidential candidate who engages in party building activities without the payment being considered a contribution to the candidate or having an unreimbursed expense count against the expenditure limits for presidential candidates receiving public financing. However, the Commission's regulations might provide more adequate guidance if they set forth general rules governing party building activities.

Clearly increasingly complex questions concerning political party activities are being presented for Commission consideration in the context of advisory opinions and compliance matters. These questions concern a variety of activities including those undertaken pursuant to special statutory exemptions, others ostensibly conducted in nonfederal elections and still others that are alleged to be generic party building. The Commission must examine how the issues raised by these activities impact on the various provisions of its regulations.

2. Separate Segregated Funds

While the most prominent issues concerning the use of unreported funds to influence federal elections have involved political party committees, the questions concerning the use of unreported funds to affect federal elections have also extended to permissible payments by corporations and labor organizations prohibited by the Act from making contributions and expenditures in connection with federal elections from their treasury funds. *See* 2 U.S.C. 441b. Pursuant to 2 U.S.C. 441b(b)(2)(C), these organizations may establish political committees (separate segregated funds) that may undertake activities designed to influence federal elections. Contributions to separate segregated funds must be solicited only from a prescribed class of persons. *See* 2 U.S.C. 441b(b)(4)(A). Sponsoring corporations and labor organizations are allowed to pay all costs associated with establishing, administering, and soliciting contributions to these committees. *See* 11 CFR 114.5. These expenses may include payments for salaries, rent, charges for equipment, and postage and printing charges for committee solicitations. The Act does not require the committees or their sponsors to report funds spent by a sponsoring organization for administrative or solicitation costs incurred by its separate segregated fund.

Concerns have been articulated with regard to the payment of administrative expenses since such payments afford a great benefit to the separate segregated funds. Many have alleged that such payments provide these committees with an unfair advantage because committees without corporate or union sponsors are not permitted to use funds from prohibited sources to pay all of their operational expenses. The Commission has considered legislative recommendations concerning the issues raised by the use of undisclosed funds by corporations and labor organizations to pay the administrative expenses of their separate segregated funds. *See* Agenda Documents #84–40D (March 1, 1984) and #83–46 (March 24, 1983). Congress has also heard testimony from organizations who view this permission as according preferential treatment to political committees established by organizations subject to the prohibitions of section 441b. *Federal Election Compaign Act Amendments, 1979: Hearing Before the Senate Committee on Rules and Administration*, 96th Cong., 1st Sess. 37–38 and 48–52 (1979) *reprinted in Legislative History of Federal Election Compaign Act Amendments of 1979*, 43–44 and 54–57 (1983).

Questions have also arisen regarding payments by corporations and labor organizations using treasury funds to finance communications to their respective solicitable classes. These communications may be made on any subject and may include nonpartisan voter registration and get-out-the-vote drives aimed at these groups. 2 U.S.C. 441b(b)(2)(A) and 441b(b)(2)(B). The statute requires corporations and labor organizations to report payments for communications to their solicitable classes expressly advocating the election or defeat of a clearly identified candidate only if they exceed $2,000 per election. 2 U.S.C. 431(9)(B)(iii). The Commission recently expanded the extent to which treasury funds may be used when it revised its regulations governing the permissible activities that corporations and labor organizations may undertake without violating the Act or incurring reporting obligations. *See* 11 CFR 114.3 and 114.4.

Clearly, payments by corporations and labor organizations from treasury funds for the administration of their separate segregated funds and partisan communications to their solicitable classes have an impact on federal elections. Comment is sought on whether such payments are being made in the manner intended by the Act. The Commission's examination of this area extends to its regulations governing the aforementioned payments made by corporations and labor organizations and the effect that any action to ensure that such payments are made consistent with statutory requirements would have on these rules.

3. Other Political Committees and Individuals

Similar issues involving the use of undisclosed funds in ways that affect federal elections have arisen regarding a broad range of activities conducted by other political committees and individuals. For example, concerns have been raised with regard to nonconnected committees that maintain separate federal and nonfederal

accounts. Like political party committees, these committees are not required to report funds in their nonfederal accounts to the Commission and may allocate administrative expenses between them. The nonfederal accounts established by nonconnected committees may also contain funds from sources prohibited under FECA from making contributions or expenditures in federal elections if permitted by state law.

Issues have also arisen regarding activities conducted pursuant to the Commission's regulations, such as those governing individuals seeking to become delegates to national nominating conventions. Under the Commission's present regulations, individual delegates are not required to report funds received or expended for the purpose of furthering their selection. However, individual delegates are not permitted to use prohibited funds for their activities. 11 CFR 110.14(f). Contributions to delegates are not subject to the Act's contribution limits, but do count against an individual's $25,000 annual contribution limit under 2 U.S.C. 441a(a)(3). 11 CFR 110.5(d) and 110.14(c). Individuals may make disbursements for activities in the course of running for selection as a delegate that benefit the presidential candidate they support. Subject to certain conditions, these disbursements are neither considered contributions to the candidate nor chargeable to the expenditure limitation of a presidential candidate receiving public financing. 11 CFR 110.14(d)(2). The Commission is in the process of reviewing its regulations governing the delegate selection process in light of issues that arose during the 1984 election cycle.

Similarly, the use of undisclosed funds may also affect the Commission's regulations concerning "testing the waters" activities. Commission regulations provide that funds received and expended by an individual in deciding whether to campaign for federal office, so-called "testing the waters" activities, need not be reported unless the person later becomes a candidate. 11 CFR 100.7(b)(1), 100.8(b)(1), and 101.3. The Commission recently revised these rules to forbid the use of prohibited funds and funds in excess of the contribution limitations for "testing the waters" activities. *See* 50 FR 25698 (June 21, 1985).

The Commission will need to consider whether the questions that have been raised by the use of undisclosed funds would impact on other provisons of its regulations. The results of the Commission's inquiry into this area should highlight those activities conducted by political committees and individuals where potential problems exist and possible solutions to these problems. This examination will facilitate the Commission's determination of what, if any, revisions of its rules is necessary to address the use of undisclosed funds to influence federal elections.

4. Questions Raised for Comment

To assist the Commission in assessing the need for a rulemaking regarding the use of undisclosed funds to influence federal elections, comment is sought in the following areas. First, in view of the many activities that raise similar issues, the Commission seeks comments on the scope of the problems raised by the use of undisclosed funds to influence federal elections. The Commission would like information, for example, on the extent to which undisclosed funds are being spent in a manner that impacts on federal elections and, if so, how this is done. Comment is also requested on the extent to which entities that are prohibited from making contributions for federal elections, such as corporations, labor organizations, and those who have reached their contribution limits, dontate funds that may ultimately be used to influence federal elections and whether this increases the potential for evasion of the contribution limitations and prohibitions of the Act.

A related topic on which public comment is sought concerns the committees or other entities that should be affected by a rulemaking concerning the use of undisclosed funds to influence federal elections. Common Cause has proposed regulations, for instance, that would have a significant effect on the activities of candidate committees and party committees operating on the national level and would subject State and local party committees, as well as other political committees with nonfederal affiliates, to increase reporting obligations. *See* Common Cause comment (Feb. 4, 1985). Yet, it is apparent that an even wider range of committees and organizations could be affected by a proposed rulemaking in this area. Concerns similar to those raised with respect to party committees have also arisen regarding activities conducted by separate segregated funds, nonconnected committees and individuals. The Commission requests comments on whether, if undertaken, the rulemaking should address practices of these entities or, alternatively, whether they should be distinguished from party committees and candidate committees that conduct activities on the national level.

With regard to the activities of political parties, the Commission requests comments on which activities, if any, conducted by their committees should be reviewed as related to federal elections. Additionally, comment is sought on what activities conducted by party committees, particularly national party committees, should be viewed as sufficiently unrelated to specific federal elections to be considered general party building.

B. Should the Commission Initiate a Rulemaking?

The second area on which the Commission seeks comments concerns the appropriate courses of action to be taken to address the issues raised by the use of "soft money". The use of undisclosed funds to influence federal elections in many instances has been alleged to result from the Commissions' interpretation of the statute as reflected in its regulations. In view of the issues that have been raised regarding the Commission's regulations, the question arises of whether the Commission should initiate a rulemaking to address some or all of these issues.

Other options are available to the Commission should it decide to resolve the questions that have arisen in this area. Upon reviewing the statute and regulations, the Commission could determine that statutory revisions are necessary to remedy certain problems raised by the use of undisclosed funds to influence federal elections. The Commission could decide in that case to make legislative recommendations advocating statutory reforms. Another course the Commission could take would be to resolve these issues as they are presented in the context of particular enforcement matters. Indeed, there are those who argue that the enforcement process is the only proper method because the alleged practices constitute violations of the Act. Which, if any, of these courses of action the Commission decides to take will depend upon the results of a thorough examination of the allegations that undisclosed funds, particularly those in nonfederal accounts maintained by political committees, are being used to influence federal elections.

1. Current Regulations

The major issues that have been raised about the Commission's regulations have concerned those that permit organizations that qualify as political committees under the Act to maintain separate accounts for their activities in connection with federal and nonfederal elections and to allocate

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expenses for these activities. Section 102.5(a) of the Commission's regulations provides an organization that qualifies as a political committee under the Act with the option of having separate accounts for its activities in connection with federal and state and local elections. 11 CFR 102.5(a). While the Act requires political committees to report all receipts and disbursements, 2 U.S.C. 434(b)2) and 434(b)(4), the Commission's regulations do not subject an organization with separate federal and nonfederal accunts, as a whole, to reporting requirements. Rather, under § 102.5(a), only its federal account is considered a political committee subject to the reporting requirements of the Act. Although state laws may require reporting of nonfederal activity to a state office, a committee's nonfederal activity is not reported to the Commission nor is its nonfederal account subject to the Act's contribution limitations and prohibitions. The lack of centralized disclosure of funds in a nonfederal account has thus been said to result from the Commission's not requiring a committee with separate accounts to report receipts and disbursements for its nonfederal account.

Moreover, the Commission's regulations allowing committees to allocate their expenses between their federal and nonfederal activities have also raised questions concerning the use of unreported funds. Section 106.1(e), for example, provides political committees with the option of allocating administrative expenses between their federal and nonfederal accounts "on a reasonable basis in proportion to the amount of funds spent on federal and nonfederal elections or on some other reasonable basis." Commission regulations also permit party committees conducting exempt activities to allocate the costs between the federal and nonfederal candidates involved, requiring only the portion of the costs attributable to Federal candidates to be paid with funds subject to the limitations and prohibitions of the Act. *See* 11 CFR 100.7 (b)(15)(ii), (b)(16), and (b)(17)(ii); 11 CFR 100.8 (b)(16)(ii), (b)(17) and (b)(18)(ii). In addition, party committees have been allowed to allocate their expenses for get-out-the-vote and voter registration drives conducted in connection with federal and State and local elections as general administrative expenses. *See* AOs 1978–10, 1978–28 and 1978–50. The potential for political committees to evade the contribution limitations and prohibitions and subsidize their political activities in federal elections with prohibited funds has been alleged to stem from the Commission's permitting allocation of expenses for federal and nonfederal activities.

Problems have also arisen regarding the application of these regulations, particularly those governing allocation. It has been contended that committees are using methods to allocate their expenses between federal and nonfederal accounts which neither accurately reflect the effect that a particular activity has on federal elections nor indicate what is spent for nonfederal elections. *See, e.g.,* MUR 1766. Thus, questions have been raised regarding whether the current regulations provide sufficient guidance to insure uniformity as to how expenses should be allocated. Concerns have also been expressed that the present regulations do not permit effective monitoring of allocation methods since committees are not required to disclose the amount of nonfederal activity or the allocation method used. Indeed, the current regulations do not reflect all of the methods the Commission has approved for allocating expenses between federal and nonfederal accounts. In several advisory opinions, the Commission has permitted committees to use various allocation methods, determining that these methods allocated the expenses on a reasonable basis. *See, e.g.,* AOs 1978–28, 1978–50, 1978–102 and 1982–5. *See also* Re: AOR 1976–72. The Commision has also required generally that federal offices be given proportionately more weight in allocating expenses incurred for activities involving federal and nonfederal candidates. AO 1976–72. None of these opinions are reflected in the Commission's regulations.

In prescribing rules to cover committees that conduct activities with respect to both federal and nonfederal elections, the Commission sought to fill a void resulting from the lack of a statutory provision governing the various election activities of these committees. The Commission's regulations attempt to provide a method for separating permissible and impermissible federal contributions and to allow a political committee active in federal and nonfederal elections to limit the extent to which its nonfederal funds would be subject to the requirements of the Act. In this respect, the regulations relieve the reporting obligations of these committees. When these regulations were initially promulgated, they were intended to apply to an area of activity thought to have little, if any, relevance to federal elections. Now there appears to be a significant rise in the amount of money raised for use in nonfederal elections, particularly by national level committees and organizations. Thus, there has been an increase in the potential for these funds to be used in ways that influence federal elections.

2. Issues Raised by Potential Rulemaking

Because of the increased potential for the use of undisclosed funds that may include prohibited contributions to influence federal elections, it may be necessary for the Commission to take action to address this area. Rulemaking may be the most appropriate vehicle should the Commission determine to address in a prospective fashion the questions raised by the use of unreported funds to influence federal elections. The Commission's regulations could be amended in this regard along the lines proposed by Common Cause to require reporting of funds in nonfederal accounts and the amount of expenditures allocated to nonfederal elections. Other provisions of the regulations could also be revised to change the rules governing allocation of expenses and party building activities.

Several issues would arise should the Commission decide to initiate a rulemaking. First, the extent to which the Commission should revise its regulations may depend upon the impact that a particular activity has on federal elections. The Commission has the authority to establish the reporting requirements, within the framework of the Act, of organizations that qualify as political committees. The current regulations are based upon this authority. However, there are those who have asserted that the Commission does not have jurisdiction over nonfederal accounts maintained by political committees because these funds have an insufficient link to federal elections. Similarly, some contend that activities such as party building do not have a direct influence on federal elections. The results of this inquiry must be examined to determine the extent to which a regulatory revision concerning undisclosed funds used to influence federal elections is within the extensive rulemaking authority accorded to the Commission by the statute.

Alternatively, or with respect to certain activities, the Commission could determine that its regulations are mandated by the statute and that a legislative measure is necessary to resolve the issues raised by the use of undisclosed funds to affect federal elections. If such a determination were made, the Commission would then have to decide whether to make legislative

recommendations to Congress seeking statutory revisions to address the use of undisclosed funds to influence federal elections.

Another issue that would be examined in deciding whether to initiate a rulemaking concerns the extent to which the Act preempts state law regarding funds ostensibly raised for use in nonfederal elections. The Act and Commission regulations specify that the Act supersedes and preempts state law in certain instances when an election activity is governed by both FECA and state law. 2 U.S.C. 453; 11 CFR 108.7 (a) and (b). The provisions of the Act and regulations governing the registration and reporting obligations of political committees supporting federal candidates have been found to preempt state law. *See, e.g.*, AO 1978–80. As a result of its inquiry into the use of undisclosed funds to affect federal elections, the Commission could decide that certain activities not currently covered under the regulations fall within the scope of its jurisdiction over political committees and prescribe rules to govern these activities. The Commission would have to consider the extent to which relevant state law would be preempted by a rulemaking of this nature.

3. Questions Raised for Comment

Comment is sought on whether a rulemaking would be consistent with the Commission's authority under the Act. The Commission requests comments on whether there is sufficient impact on federal elections for it to regulate funds not currently subject to reporting requirements that may be used with respect to federal elections. Furthermore, the Commission seeks comments on the extent to which a rulemaking would raise issues involving possible preemption of state law. Comments are also requested on whether legislation is necessary to resolve any of the issues that have arisen concerning activities involving the use of undisclosed funds to influence federal elections and, if so, whether the Commission should seek statutory reform to address these issues.

Finally, the Commission also seeks comments on the areas in which its regulations could be revised should it decide to initiate a rulemaking to address the issues raised by the use of undisclosed funds to influence federal elections. A number of suggestions have been made regarding possible revisions to the Commission's regulations. For instance, in its supplemental statement of February 4, 1985, Common Cause proposed specific amendments to the Commission's regulations to establish reporting requirements for nonfederal accounts maintained by national level political party committees and specific rules for allocation of expenses between federal and nonfederal accounts. There are several other options available to the Commission if it decides to revise its regulations regarding the use of undisclosed funds to influence federal elections. Suggestions of other possible regulatory revisions that could be made to address the use of undisclosed funds to influence federal elections are welcomed.

Dated: December 12, 1985.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 85–29809 Filed 12–17–85; 8:45 am]

BILLING CODE 6715-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 606

Enforcement of Nondiscrimination on the Basis of Handicap

AGENCY: Farm Credit Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to the programs or activities conducted by the Farm Credit Administration.

DATES: To be assured of consideration, comments must be in writing and must be received on or before February 17, 1986. Comments should refer to specific sections in the regulation.

ADDRESSES: Comments should be sent to Donald E. Wilkinson, Governor, Farm Credit Adminstration, 1501 Farm Credit Drive, McLean, Virginia 22101–5090. Comments received will be available for public inspection in the Office of the Director, Congressional and Public Affairs Division, 8:00 a.m. to 4:30 p.m. Copies of this notice will be available on tape or reader services will be provided for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Adminstration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4020.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to program or activities of the Farm Credit Administration (FCA). As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benfits or be subjected to discrimination under any program or activity receiving Federal financial assistance or *under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal finanicial assistanace. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978); *id.* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* 38,552 (remarks of Rep. Sarasin).

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127); therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis:

Section 606.601 Purpose.

Section 606.601 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by executive agencies or the United States Postal Service.

Section 606.602 Application.

The proposed regulation applies to all programs or activities conducted by the agency. Generally, the "programs and activities" of the FCA are the regulation, supervision, and examination of Farm Credit System institutions, and as such do not involve the direct provision of benefits and services to, or participation by, members of the public. Members of the public can avail themselves of the following "programs and activities" which constitute the "programs and activities" of the FCA for purposes of this regulation:

(a) Attending open meetings of the Federal Farm Credit Board.

(b) Making inquiries or filing complaints.

(c) Using the FCA library in McLean, Virginia.

(d) Seeking employment with the FCA.

(e) Attending any meeting, conference, seminar, or other program open to the public.

This regulation does not apply to the institutions that are supervised, regulated, or examined by the FCA.

Section 606.603 Definitions.

"Agency." For purposes of this regulation "agency" means the Farm Credit Administration.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and benefit from the agency's activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 606.660(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." The definition of "complete complaint" enables the agency to determine the beginning of its obligation to investigate a complaint (*see* § 606.670(d)).

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage. The phrase, "or interest in such property," is deleted, because the term "facility," as used in this regulation, refers to structures and to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 606.649, 606.650, and 606.670(f).

"Handicapped person." The definition of "handicapped person" is identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31).

"Qualified handicapped person." The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32). Under this definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies to all programs or activities conducted by the agency.

Section 606.610 Self-evaluation.

The agency shall conduct a self-evaluation of its compliance with section 504 within 1 year of the effective date of this regulation. The process shall include consultation with interested persons, including consultation with handicapped persons or organizations representing handicapped persons. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

Section 606.611 Notice.

Section 606.611 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 606.630 General prohibitions against discrimination.

Section 606.630 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 606.630 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining section of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 606.630. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its activities simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the program or activity in question.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a presentation if the facilities in which the presentation is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a

handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 606.650–651) and communications (§ 606.660) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and conduct its activities in the most integrated setting appropriate to the needs of qualified handicapped persons, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when they are necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services may be provided only when necessary to ensure that acces to that activity by handicapped persons is as effective as the access provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped person access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 606.630(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Section 606.640 Employment.

Section 606.640 prohibits discrimination on the basis of handicap in employment by Executive agencies. This regulation is in accord with a decision of the Fifth Circuit that holds that, despite the resulting overlap of courage with section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), Congress intended section 504 to cover the employment practices of Executive agencies. The court also held that in order to give effect to both sections 504 and 501, the administrative procedures of section 501 must be followed in processing section 504 complaints. *Prewitt v. United States Postal Service*, 662 F.2d 292 (5th Cir. 1981). Consistent with that decision, this section provides that the standards, requirements, and procedures of section 501 of the Rehabilitation Act, as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613, shall be those applicable to employemnt in federally conducted programs or activities. In addition to this section, § 606.670(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employemnt is assigned to the EEOC by Executive Order 12067 (43 FR 2897, 3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes Governmentwide standards on nondiscrimination in employment on the basis of handicap.

Section 606.649 Program Accessibility: Discrimination prohibited.

Section 606.649 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 606.650 and 606.651.

Section 606.650 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–.58), with certain modifications. Thus, § 606.650 requires that the agency's program of activities, when viewed in their entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 606.650(a)(1)). However, § 606.650, unlike 28 CFR 41.56–.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 606.650).

Paragraph (a)(2) generally codified recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activities or in undue financial and administrative burders. A similar limitation is provided in § 606.660(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981). Thus, in *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail

such extensive costs and administrative burdens, that the refusal to undertake the accommodations is not discriminatory. The failure such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to handicapped persons. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 606.650(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and opration of the conducted program or activity should be considered. The burden of proving that compliance with § 606.650(a) would fundamentally alter the financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who belives that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 606.670.

Paragraph (b) suggests some methods by which program accessibility may be achieved including redesign of equipment, reassignment of services to accessible buildings, and provisions of aides. In choosing among methods, the agency shall give priority consideration to those that will provide services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when these is no other feasible way to make the agency's program accessible.

Paragraphs (c) and (d) establish time periods for complying with the accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than 3 years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within 6 months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within 60 days.

Section 606.651 Accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 606.651 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607 (1982). This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing building leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 606.650.

Section 606.660 Communications.

Section 606.660 requries the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 606.660(a)(1) to afford a handicapped person an equal opportunity to participate in and enjoy the benefits of the agency's program or activity. They shall also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 606.660). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 606.660(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra*, preamble § 606.650). Unless not required by § 606.660(d), the agency shall provide auxiliary aids at no cost to the handicapped person.

It is our view that compliance with § 606.660 would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 606.660 would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in § 606.670.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated in complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired person is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public: (1) The communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need

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not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 606.660 (a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to handicapped persons. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 606.670 Compliance procedures.

Paragraph (a) specifies that paragraphs (c) through (1) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 606.670(d)). It it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 606.670(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act or section 504 was designed, constructed, or altered in a manner that does not provide ready access and use to handicapped persons.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appear (§ 606.670(g)). One appeal within the agency shall be provided (§ 606.670(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 606.670(i)).

Paragraph (1) permits the agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 12 CFR Part 606

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

For the reasons set forth in the preamble, Chapter VI, Title 12, of the Code of Federal Regulations is proposed to be amended by adding Part 606 as follows:

PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FARM CREDIT ADMINISTRATION

Sec.

606.601 Purpose.
606.602 Application.
606.603 Definitions.
606.604–606.609 [Reserved].
606.610 Self-evaluation.
606.611 Notice.
606.612–606.629 [Reserved].
606.630 General prohibitions against discrimination.
606.631–606.639 [Reserved]
606.640 Employment.
606.641–606.648 [Reserved]
606.649 Program accessibility: Discrimination prohibited.
606.650 Program accessibility: Existing facilities.
606.651 Program accessibility: New construction and alterations.
606.652–606.659 [Reserved]
606.660 Communications.
606.661–606.669 [Reserved]
606.670 Compliance procedures.
606.671–606.999 [Reserved]

Authority: 29 U.S.C. 794.

§ 606.601 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 606.602 Applicantion.

This part applies to all programs or activities conducted by the agency. Generally, the "programs and activities" of the Farm Credit Administration are regulation, supervision, and examination of Farm Credit System institutions, and, as such, do not involve the direct provision of benefits and services to, or participation by, members of the public. Members of the public can avail themselves of the following "programs and activities" which constitute the "programs and activities" of the FCA purposes of this regulation:

(a) Attending open meetings of the Federal Farm Credit Board.

(b) Making inquiries or filing complaints.

(c) Using the FCA library in McLean, Virginia.

(d) Seeking employment with FCA.

(e) Attending any meeting, conference, seminar, or other program open to public.

This regulation does not apply to the institutions that are supervised, regulated, or examined by the FCA.

§ 606.603 Definitions.

For purposes of this part, the term—

(a) "Agency" means the Farm Credit Administration.

(b) "Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(c) "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities, conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

(d) "Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's actions in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(e) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(f) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or conditions, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (f)(1) of this definition but is treated by the agency as having such an impairment.

(g) "Qualified handicapped person" means a qualified handicapped person who meets the essential eligibility requirements for participation in the program or activity by the agency.

(h) "Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disability Amendment of 1978 (Pub. L. 95–602, 92 Stat. 2955).

§§ 606.604–606.609 [Reserved]

§ 606.610 Self-evaluation.

(a) The agency shall, within 1 year of the effective date of this part, evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall, for at least 3 years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A list of interested persons consulted;

(2) A description of areas examined and problems identified; and

(3) A description of any modifications made.

§ 606.611 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulations.

§§ 606.612–606.629 [Reserved]

§ 606.630 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the activity, aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not effective in affording equal opportunity to obtain the same result, or to gain the same benefit, as that provided to others; or

(iv) Provide different or separate aid, benefit, or service to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons or otherwise subject them to discrimination; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall conduct its activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 606.631–606.639 [Reserved]

§ 606.640 Employment.

No qualified handicapped person shall, on the basis of handicapped, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section

501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR Part 1613, shall apply to employment by the agency.

§§ 606.641–606.648 [Reserved]

§ 606.649 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 606.650 and 606.651, no qualified handicapped persons shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 606.650 Program accessibility: Existing facilities.

(a) General. The activities of the agency shall be conducted in a manner that, when viewed in their entirety, provides ready accessibility to and usability by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration of the activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) Methods. The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that provide the most integrated setting appropriate.

(c) Time period for compliance. The agency shall comply with the obligations established under this section within 60 days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(d) Transition plan. In the event that structural changes to facilities will be undertaken to achieve accessibility, the agency shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specif the schedule for taking the steps necessary to achieve compliance with this section, and if the time period of the transition plan is longer than 1 year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 606.651 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectual Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 606.652–606.659 [Reserved]

§ 606.660 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with personnel of other Federal entities and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in and enjoy the benefits of an agency program or activity.

(i) In determining what type of auxiliary aid is necessry, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with persons by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accesible services, activities, and facilities.

(c) The agency shall provide sinage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel beleive that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after

considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration of such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons are able to receive the benefits and services of the program or activity.

§§ 606.661–606.669 [Reserved]

§ 606.670 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Deputy Governor, Office of Administration.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violtion found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by this paragraph. The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Deputy Governor, Office of Administration, or his/her designee.

(j) The agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the persmission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 606.671–606.999 [Reserved]

Donald E. Wilkinson,

Governor.

[FR Doc. 85–29965 Filed 12–17–85; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AGL–27]

Proposed Transition Area Revocation, Gwinner, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to revoke the transition area currently designated for Gwinner, North Dakota and to return the associated 700-foot area to a non-controlled status.

DATE: Comments must be received on or before January 20, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 85–AGL–27, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The Gwinner, North Dakota 1200-foot and 700-foot transition areas were established in anticipation that an instrument approach procedure would be developed for Gwinner Municipal Airport and that the areas would be needed to ensure the segregation of aircraft utilizing the instrument approach procedure from other aircraft operating under Visual Flight Rules (VFR) while in controlled airspace. That approach procedure was never developed and there is no pending action for any such development. Therefore, the 700-foot area is neither necessary or warranted.

However, the controlling facility for the area has identified a requirement to retain the 1200-foot designated airspace for the area. Currently, the Gwinner area is excluded from the Britton, South Dakota 1200-foot transition area. A change to the Britton transition area to eliminate the Gwinner exclusion would provide the required 1200-foot floor of controlled airspace in the area after revocation of the Gwinner transition area is published.

The modification of the Britton, South Dakota Transition area to eliminate the Gwinner exclusion is the subject of Docket No. 85–AGL–28. That docket along with this Gwinner docket would be processed and charted simultaneously so as to maintain continuity in the 1200-foot controlled airspace.

Aeronautical maps and charts will reflect the area returned to a non-controlled status.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AGL–27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considerd before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the designated transition area for Gwinner, ND.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[Amended]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending 71.181 as follows:

Gwinner, ND

Revoked

Issued in Des Plaines, Illinois, on December 4, 1985.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 29849 Filed 12–17–85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–AWP–9]

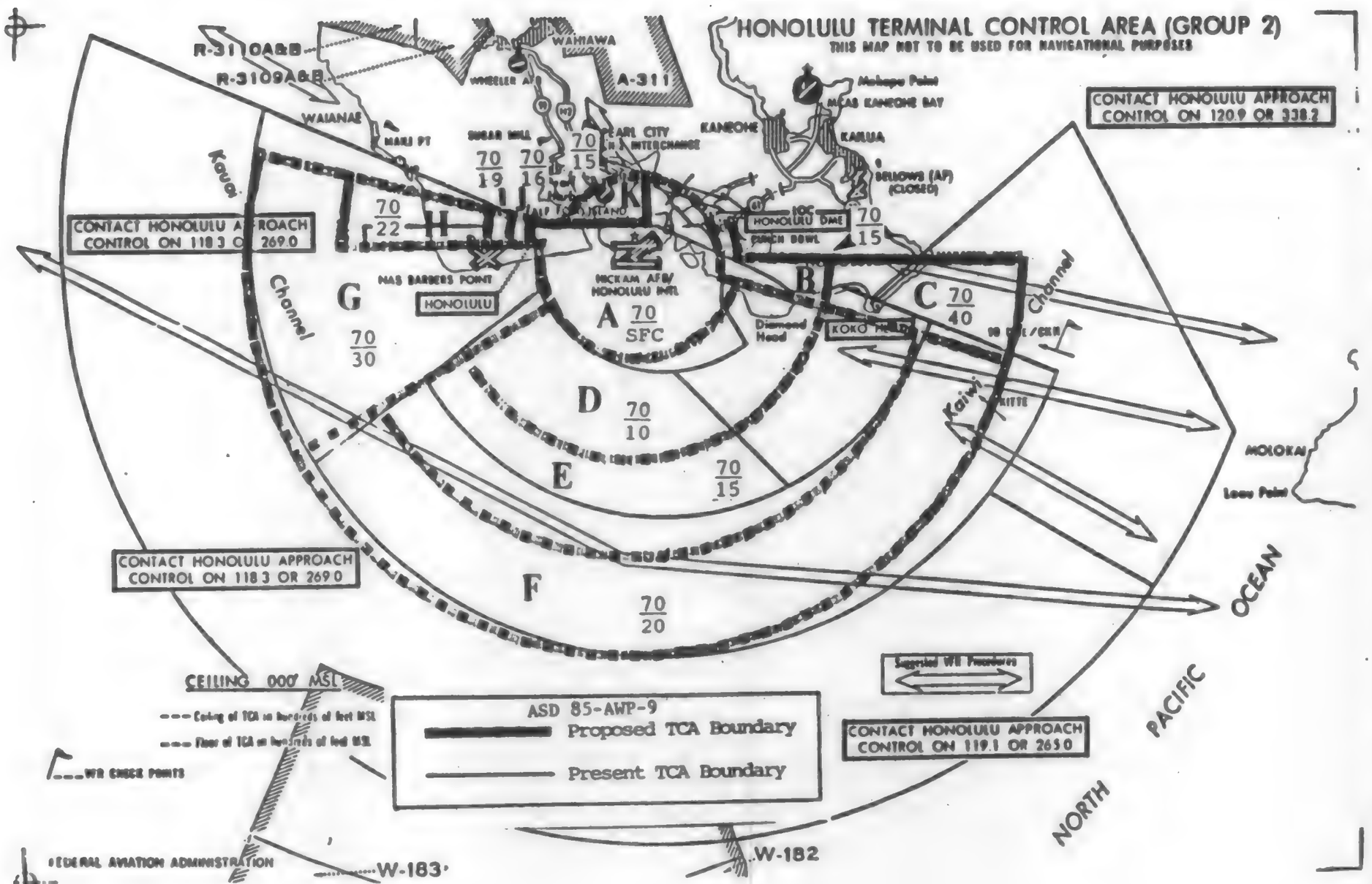
Proposed Alteration to the Honolulu, HI, Terminal Control Area

Correction

In FR Doc. 85–29038 beginning on page 50174 in the issue of Monday, December 9, 1985, the following chart was inadvertently omitted from the end of the document.

BILLING CODE 1501-01-M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Withdrawal of an Application

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Social Security Administration proposes to amend its regulations on withdrawal of applications. As a result of the recodification of 20 CFR 404, Subpart G in 1979, one of the prerequisites for withdrawal of an application after a determination has been made was inadvertently changed. Prior to the recodification, consent was needed from beneficiaries already entitled if their "entitlement would be rendered erroneous." The recodification altered the regulation to state that an application may be withdrawn after a determination has been made on it if "any other person who would lose benefits because of the withdrawal consents in writing to it."

This proposed regulation would alter the current regulation to restore the intended meaning to 20 CFR 404.640(b)(2).

DATE: Your comments will be considered if we receive them no later than February 18, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 301–594–7459.

SUPPLEMENTARY INFORMATION:

Background

As a result of the recodification of 20 CFR 404, Subpart G, one of the prerequisities for withdrawal of an application after a determination has been made was inadvertently changed. Prior to recodification, consent was needed from other beneficiaries already entitle if their "entitlement would be rendered erroneous". The recodified regulation states that an application may be withdrawn after a determination has been made on it if "any other person who would lose benefits because of the withdrawal consents in writing to it." The change in the scope of the consent required was not intended.

There are situations where simultaneously entitled children, (entitled on more than one Social Security earnings record) wish to withdraw their application on the record with the higher primary insurance amount after a determination has been made on it. By withdrawing their application, they may become entitled to a higher benefit amount on the earnings record with a lower primary insurance amount. However, the entitlement of the simultaneously entitled children causes the family maximum, applying to all the individuals entitled on the first earnings record to be higher than it would be if the simultaneously entitled children were not entitled on that record. Thus, in these circumstances, the withdrawal of the simultaneously entitled children's application would cause the family maximum to be reduced which results in a decrease in monthly benefits of the other individuals receiving benefits on that record. However, the decreased monthly benefits are the amounts the other individuals would have been entitled to receive without regard to the entitlement of these children.

As a result of the present recodified regulations, these children must obtain the consent of the other individuals entitled on the same earnings record before the withdrawal can be approved. Often these situations involve more than one household, and the simultaneously entitled children desiring to withdraw their application are not able to obtain the other beneficiaries' consents. By restoring the previous language of the regulation, the other beneficiaries' consent will no longer be required unless the proposed withdrawal nullifies the other beneficiaries' entitlement.

Proposed Change

We propose to amend § 404.640(b)(2) to restore the intended meaning of the subsection; that is, change the section to state that an application may be withdrawn after a determination has been made on it if "any other person whose entitlement would be rendered erroneous became of the withdrawal consents in writing to it." We wish to eliminate the inadvertently added additional requirement that persons whose benefits are decreased, but whose entitlement is not rendered erroneous, also must consent to withdrawal.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation because there should be no significant cost in implementing or maintaining these proposed regulations. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations impose no new reporting/recordkeeping requirements subject to OMB clearance.

Regulatory Flexibility Act

We certify that these proposed regulations will not if promulgated, have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.803, Social Security—Retirement Insurance)

List of Subjects in 20 CFR PART 404

Administrative practice and procedure, Death Benefits, Disability Benefits, Old-Age, Survivors, and Disability Insurance.

Dated: September 17, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 25, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subpart G of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart G continues to read as follows:

Authority: Secs. 205 and 1102 of the Social Security Act, 53 Stat. 1368, and 49 Stat. 647; Sec. 5, Reorganization Plan No., 1 of 1953, 67 Stat. 631; 42 U.S.C. 405 and 1302 and 5 U.S.C. Appendix.

2. In § 404.640 paragraph (b)(2) is revised to read as follows:

§ 404.640 Withdrawal of an application.

* * * * *

(b) * * *

(2) Any other person whose entitlement would be rendered erroneous because of the withdrawal consents in writing to it. Written consent for the person may be given by someone who could sign an application for him or her under § 404.612; and

* * * * *

[FR Doc. 85-29847 Filed 12-17-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Argiculture; Adverse Effect Wage Rate for Montana

Correction

In FR Doc. 85-29279 beginning on page 50311 in the issue of Tuesday, December 10, 1985, make the following corrections:

1. On page 50311, in the third column, in the **FOR FURTHER INFORMATION CONTACT,** in the first line, "Burening" should read "Bruening".

2. Also on page 50311, in the third column, in the eighth line from the bottom, "IND" should read "INS".

3. On page 50312, in the second column, in the first complete paragraph, in the first line, "set slow" should read "set to slow".

4. Also on page 50312, in the second column, in the second complete paragraph, in the last line, "and" should read "an".

BILLING CODE 1505-01-M

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging; Charges for Meals

Correction

In FR Doc. 85-29280 beginning on page 50313 in the issue of Tuesday, December 10, 1985, make the following correction: On page 50314, in the third column, in paragraph 1., in the Authority, in the last line, "(h)(2)(i)" should read "(h)(3)(i)".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 700

[Docket No. 85N-0536]

Cosmetics; Proposed Ban on the Use of Methylene Chloride as an Ingredient of Aerosol Cosmetic Products

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to ban the use of methylene chloride as an ingredient of cosmetic products. The agency is proposing this action because recent scientific studies have revealed that inhalation of methylene chlolride causes cancer in laboratory animals. These studies have shown that the continued use of methylene chloride in cosmetic products may pose a significant risk to the public health, especially to specific segments of the population that are continually exposed to cosmetics containing methylene chloride. FDA is not proposing to lower the maximum permitted residue level of methylene chloride in decaffeinated coffee because that level is considered to be safe.

DATES: Comments by February 18, 1986. The agency proposes that any final rule based on this proposal become effective 60 days after its date of publication for products initially introduced and initially delivered for introduction into interstate commerce.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John M. Taylor, Center for Food Safety and Applied Nutrition (HFF-300), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0160.

SUPPLEMENTARY INFORMATION:

I. Introduction

Methylene chloride (CAS Reg. No. 75-09-2, dichloromethane) is a colorless, volatile liquid that is used in a variety of consumer and industrial products as a solvent and flame suppressant. The cosmetic use of methylene chloride is primarily in hair sprays. In these products, it is used as a solvent and flame suppressant, and because of its volatility, it serves to cause quick drying and setting of the applied resin.

Methylene chloride is also used in foods as an extraction solvent in the processing of coffee beans, spices, and hops. When used to decaffeinate coffee, methylene chloride is a food additive within the meaning of section 201(s) of the Federal Food, and Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)).

II. Carcinogenicity of Methylene Chloride

Several recent chronic studies of methylene chloride have raised questions about the safety of this chemical. The National Toxicology Program (NTP) sponsored inhalation studies in rats and mice; the National Coffee Association (NCA) sponsored drinking water studies in rats and mice; and the Dow Chemical Co. performed three inhalation studies, two in rats and one in hamsters. In addition to these seven studies, NTP sponsored gavage studies in rats and mice. These gavage studies may have no value for carcinogenicity assessment because of serious problems with the manner in which the studies were conducted. NTP did not draw any conclusions from the gavage studies, and, therefore, FDA is not employing them in this proposal.

In one NTP-sponsored 2-year inhalation study, test groups of B6C3F1 mice were exposed to air containing 0 ppm, 2,000 ppm, and 4,000 ppm of methylene chloride for 6 hours per day, 5 days per week (Ref. 1). Increases in the incidence of mice with benign and malignant neoplasms derived from hepatocytes (liver cells), as well as benign and malignant neoplasms of the lung, were observed in the treatment groups of both sexes. The increases in these neoplasms were distinctly dose related. The agency concludes that methylene chloride is carcinogenic to the liver and lung of male and female mice. This study also demonstrates that methylene chloride induces cancer at a site (the liver) remote from the tissues directly exposed by the inhalation treatment (Ref. 2).

In the other NTP-sponsored 2-year inhalation study, test groups of Fischer 344 rats were exposed to air containing 0 ppm, 1,000 ppm, 2,000 ppm, and 4,000 ppm of methylene chloride for 6 hours per day, 5 days a week (Ref. 1). In the female rat groups, the incidence of animals with benign fibroadenomas of the mammary glands was increased by treatment and provided some evidence of a dose-response effect. The agency considers these results to be suggestive of a tumorigenic effect of methylene chloride on the mammary glands of female rats (Ref. 2).

The NTP studies were reviewed and validated by NTP's Board of Scientific Counselors, which concluded that methylene chloride is a carcinogen in mice, but that the evidence is equivocal in rats (Ref. 3).

Dow performed a pair of 2-year inhalation studies in Sprague-Dawley rats: a high-dose study and a low-dose study in which groups of animals were exposed to vaporized methylene chloride at 0 ppm, 500 ppm, 1,500 ppm, and 3,500 ppm; and 0 ppm, 50 ppm, 200 ppm, and 500 ppm, respectively, for 6 hours per day, 5 days per week (Refs. 4 and 5). Compound-related neoplastic effects were not observed in the low-dose study. In the high-dose inhalation study, an increase in the incidence of male rats with sarcomas in the region of the salivary gland was reported at the 1,500 ppm and 3,500 ppm exposure levels. The study investigators believed that this effect was associated with a viral infection of the salivary gland. However, similar tumorigenic effects from viral infections of the salivary gland were not observed among the female or male animals in the other test groups in this study.

Moreover, two unusual sarcomas of the salivary gland/integument were observed in treatment groups in the NTP-sponsored inhalation study on Fischer 344 rats. FDA and NTP pathologists found these two sarcomas to be very similar to those observed in the Dow high-dose study. The agency believes that these observations provide suggestive evidence that methylene chloride induces sarcomas of the salivary gland/integument in rats upon inhalation (Ref. 2).

Dow also performed a 2-year inhalation bioassay in Syrian Golden hamsters in which test groups were exposed to vaporized methylene chloride at 0 ppm, 500 ppm, 1,500 ppm, and 3,500 ppm for 6 hours per day, 5 days per week (Ref. 4). There were no treatment-related toxic effects observed in this study.

NCA sponsored 2-year multidose drinking water studies in Fischer 344 rats and B6C3F1 mice. In the rat study, the concentration of methylene chloride in the drinking water provided intakes for test groups ranging from 5 milligrams per kilogram of body weight per day (mg/kg/day) to 250 mg/kg/day (Ref. 6). In the mouse study, the methylene chloride intakes for the test groups ranged from 60 mg/kg/day to 250 mg/kg/day (Ref. 7). In these drinking water studies, there were no significant increases in the incidences of rats or mice with neoplasms at any site examined. However, higher treatment levels could have enhanced the sensitivity of this study. Because the treatment levels were relatively low, the animals that received methylene chloride via drinking water may not have received as much as those receiving methylene chloride by inhalation (Ref. 2).

Two epidemiology studies have been conducted on workers exposed to methylene chloride in manufacturing plants (Refs. 8 and 9). Neither study reported an increase in cancer attributable to methylene chloride. Design limitations such as small numbers of workers and insufficient duration of exposure make it impossible for FDA to draw any definitive conclusions from these studies about the potential for methylene chloride to cause cancer in humans.

A variety of genotoxicity studies have been performed on methylene chloride. Methylene chloride gave positive results for mutagenicity in bacteria (*Salmonella typhimurium* strains TA–98, TA–100, and TA–1535) (Refs. 10 through 17) and in yeast (*Saccharomyces cerevisiae*) (Ref. 18) without metabolic activation.

A more complete assessment of the specific types of tumors found in testing of methylene chloride and of the significance of these findings is presented in the report of the Cancer Assessment Committee of FDA's Center for Food Safety and Applied Nutrition (Ref. 2).

Based on these adverse findings, the agency concludes that methylene chloride is an animal carcinogen by inhalation and may be carcinogenic to humans. It has been the agency's policy that substances that cause cancer in laboratory animals should be considered potential human carcinogens unless there is clear epidemiological evidence to the contrary or unless there is other evidence that the effects observed in animals are not relevant to humans. In the case of methylene chloride, FDA has found that although the epidemiological studies that have been conducted have not reported any increase in cancer attributable to methylene chloride, these results must be considered inconclusive due to design limitations such as small numbers of workers and insufficient duration of exposure. The Environmental Protection Agency reached a similar conclusion about these studies in its **Federal Register** notice of October 17, 1985 (50 FR 42037). In addition, the agency is unaware of any basis on which to find that the animal studies discussed above are not relevant to humans. Although there is some evidence indicating that at high doses the metabolic pathways of methylene chloride may become saturated, FDA agrees with EPA that currently available data are insufficient to assess the effect of saturation on the carcinogenic potential of methylene chloride (50 FR 42038–42039). FDA will evaluate any additional data from ongoing studies on this point when they become available.

III. Risk Estimate—Cosmetic Uses

The agency has examined the potential level of exposure from the use of methylene chloride as an ingredient of aerosol cosmetic products and has made preliminary estimates of the carcinogenic risks to users of these products.

In calculating the risk from exposure to methylene chloride, the agency considered two population groups. One group, hair care specialists, represents the group with the highest exposure level expected from aerosol hair sprays. The other group is the segment of the population that routinely uses aerosol hair sprays as part of their grooming practices.

The exposure estimates used in the agency's risk assessment are based on data obtained from studies published in 1976 that measures methylene chloride concentration in the breathing zone after use (Refs. 19 and 20). The agency needed to make various assumptions in order to calculate exposure levels for consumers. For example, FDA's exposure estimates assumes that a consumer will use the hair spray once a day, that the spray period is 5 seconds, that the consumer will remain in the spraying zone for 5 to 10 minutes, and that the average concentrations of methylene chloride in the breathing zone is 50 ppm. The agency believes that these assumptions reasonably reflect the actual consumer use conditions and are not drawn to represent worst-case conditions (Ref. 21).

To make comparisons between mice exposed to 2,000 ppm methylene chloride by inhalation in the NTP study and potential human exposure at different exposure levels and for different time intervals, the agency has chosen to use a time-weighted average. The time-weighted average air concentration represents the concentration of methylene chloride to which individuals are exposed on a continuous daily basis, calculated by averaging over time the intermittent air concentrations for fractions of the day or fractions of the week. Use of this averaging concept permits a direct comparison between average human exposure and test animal exposure.

Accordingly, a consumer exposed to 50 ppm methlyene chloride in air for 5

minutes per day, 7 days a week, would have a time-weighted average exposure of 0.174 ppm

$$(50\ \text{ppm} \times \frac{5\ \text{min}}{60\ \text{min}} \times \frac{1\ \text{hr}}{24\ \text{hr}} \times \frac{7\ \text{days}}{7\ \text{days}} = 0.174\ \text{ppm}).$$

and a mouse exposed to 2,000 ppm for 6 hours per day, 5 days a week, would have a time-weighted average exposure of 357 ppm

$$(2.000\ \text{ppm} \times \frac{6\ \text{hr}}{24\ \text{hr}} \times \frac{5\ \text{days}}{7\ \text{days}} = 357\ \text{ppm}).$$

time-weighted average human exposure to methlyene chloride from consumer use of hair spray is thus 0.174 ppm of air inhaled. Assuming that all of the inhaled methylene chloride is absorbed from the lungs into the blood stream, the time-weighted average human exposure is 0.15 milligrams per kilogram of body weight per day.

FDA's time-weighted exposure estimates for hair care specialists are about one order of magnitude higher (1.74 ppm or 1.5 milligrams per kilogram of body weight per day).

Extrapolating, using a linear model, from the incidence of benign and malignant neoplasms in female mice exposed to 2,000 ppm (357 ppm time-weighted exposure) in the NTP study to average human exposure from use of aerosol cosmetics containing methylene chloride, the upper bound estimated lifetime cancer risk for consumers is in the range of 1×10^{-3} (1 in 1,000) to 1×10^{-4} (1 in 10,000), depending on whether the animal-to-human dose comparison is based on the concentration in air or on milligrams per kilogram of body weight per day. For hair care specialist, the upper bound of lifetime risk is in the range of 1×10^{-2} (1 in 100) to 1×10^{-3} (1 in 1,000). These risks are relatively high primarily because the anticipated exposures from aerosol uses are high. Methylene chloride is not a particularly potent carcinogen. Additional discussion of how FDA has calculated the potency of methylene chloride is provided in the discussion of its use in decaffeinated coffee.

The agency assumed a linear dose-response model from zero dose to the experimental level of 2,000 ppm. Extrapolation models incorporating low dose linearity have been recommended by the Office of Science and Technology Policy when uncertainty exists regarding the mechanism of carcinogenicity, as is the case with methlyene chloride (50 FR 10371–10442; March 14, 1985).

Full details of the specific assumptions and methods used to project these upper bound risk assessments are described in Ref. 21.

IV. Risk Estimate—Food Additive Use for Decaffeination

Methylene chloride has been listed in FDA's food and color additive regulations for more than 20 years. It is currently listed in the following regulations: § 73.1 *Diluents in color additive mixtures for food use exempt from certification* (21 CFR 73.1), § 172.560 *Modified hop extract* (21 CFR 172.560), § 173.255 *Methylene chloride* (21 CFR 173.255), § 175.105 *Adhesives* (21 CFR 175.105), and § 177.1580 *Polycarbonate resins* (21 CFR 177.1580).

The agency has sufficient information to determine that the existing methylene chloride residue level for decaffeinated coffee is safe. Because the U.S. population consumes a large volume of decaffeinated coffee, the majority of which is manufactured using methylene chloride in the extraction procedure, it is important to make an assessment of safety. FDA is deferring consideration of the other uses of methylene chloride in food (as well as its presence as an impurity in food additives) because the agency is not aware of any information indicating that the other uses of methylene chloride present a public health hazard.

Methylene chloride is regulated as a food additive in § 173.255. Paragraph (c) of that section authorizes the use of this additive to extract caffeine from green coffee beans and limits residual methylene chloride to a level not to exceed 10 parts per million (ppm) in decaffeinated roasted coffee and in decaffeinated soluble coffee extract (instant coffee).

FDA issued § 173.255(c) in the **Federal Register** of August 31, 1967 (32 FR 12605), in response to a food additive petition (FAP 7A2061). The petitioner submitted data showing that use of both decaffeinated roasted coffee and decaffeinated instant coffee containing 10 ppm methylene chloride would result in approximately 0.1 ppm methylene chloride in a 5 ounce (148 gram) cup of coffee. The petitioner also showed that the average level of methylene chloride in dried decaffeinated instant coffee was approximately 2 ppm, based on an analysis of 33 batches.

As discussed in section II above, methylene chloride has been shown to be carcinogenic to both sexes of B6C3F1 mice upon inhalation. The NTP inhalation mouse bioassay demonstrates that methylene chloride can induce cancer at sites remote from the site of administration. The evidence is also suggestive that methylene chloride may induce tumors in two strains of rats upon inhalation. Based on this evidence, the agency concludes that methylene chloride is an animal carcinogen, and that the NTP inhalation study provides a suitable basis for evaluating the safety of its food additive uses because methylene chloride displayed the greatest potency in this study.

General Foods Corp., the manufacturer that produces the largest amount of decaffeinated coffee, has surveyed its decaffeinated coffee products from 10 nationwide grocery locations (Ref. 22). For 69 samples of decaffeinated roasted and ground coffee products that it has analyzed since 1982, General Foods found methylene chloride levels of 0.01 ppm or less in 82.6 percent of the samples, 0.05 ppm or less in 91.3 percent of the samples, and 0.10 ppm or less in 100 percent of the samples. For 54 samples of decaffeinated instant coffee products that it has analyzed over the same period, General Foods found methylene chloride levels of 0.01 ppm or less in 96.3 percent of the samples, 0.05 ppm or less in 98.2 percent of the samples, and 0.10 ppm or less in 100 percent of the samples.

The agency is aware of four other manufacturers of decaffeinated coffee (Ref. 23). Although FDA does not know whether any methylene chloride residues in the products of these manufacturers are as low as those in the products of General Foods, the agency is aware that these products comply with the current regulation.

Quantitative risk assessment of methylene chloride consists of two parts: (1) Assessment of probable exposure to methylene chloride from its use to decaffeinate coffee under a specific residue limitation, and (2) extrapolation of the risk from methylene chloride observed in the NTP bioassay to the conditions of probable exposure to humans.

1. *Exposure to methylene chloride.* The exposure to methylene chloride from its use in decaffeinating coffee is a product of three factors: (a) The methylene chloride concentration in

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coffee products, (b) the amount of coffee product used to make the coffee beverage, and (c) the amount of beverage consumed.

(a) *Methylene chloride concentration in coffee products.* FDA decided to assess the risk from the existing limitation on the concentration of methylene chloride of 10 ppm. The agency recognizes that the average level of methylene chloride likely to be present in decaffeinated coffee would be much lower than that limitation. The available data, however, did not allow the agency to estimate what the average residue level would be under the 10 ppm limitation. Therefore, in conducting the risk assessment, FDA assumed that all products would contain methylene chloride at a concentration equal to the limitation of 10 ppm.

(b) *Amount of coffee product used to make the coffee beverage.* The General Foods' submission of August 7, 1985, reported that 1 pound of roasted and ground coffee makes 70 to 90 cups of coffee (each cup containing 5 fluid ounces or 148 grams) based on current brewing practices (Ref. 22). Therefore, approximately 5.7 grams of roasted and ground product is used for each cup. General Foods also reported that instant coffee drinkers use about 2.2 grams soluble solids per cup. The agency used these numbers as elements of its exposure estimate (Ref. 23).

In estimating methylene chloride exposure, the agency also assumed that all of the methylene chloride in the roasted and ground product is extracted during brewing and becomes a part of the coffee beverage. Although this assumption may result in an overestimate of exposure, the agency does not now have sufficient reliable data to refine this estimate (Ref. 24).

(c) *Beverage consumption.* The agency considered three surveys in estimating decaffeinated coffee beverage consumption. Based on 1977–1978 surveys, the Market Research Corp. of America (MRCA) estimated a 90th percentile consumption of decaffeinated coffee (among persons who consumed decaffeinated coffee) of 389 grams per day for roasted and ground coffee and 435 grams per day for instant coffee. MRCA estimated average consumption for decaffeinated coffee drinkers of 136 grams per day for roasted and ground coffee and 192 grams per day for instant coffee. MRCA's survey involved a 14-day menu census of 10,819 individuals in the 2 years and older age group. The values for decaffeinated coffee are based on 458 "eaters" of brewed decaffeinated coffee and 1,362 "eaters" of instant decaffeinated coffee (Ref. 25).

The International Coffee Organizataion (ICO) performs a survey each winter. Its winter 1985 coffee drinking survey indicates that 17.3 percent of the U.S. population was drinking decaffeinated coffee at the time of the survey. Decaffeinated coffee drinkers consume the beverage at a rate of 2.42 cups per day (358 grams per day). The ICO data are bsed on wintertime telephone inverviews of 7,500 individuals who were questioned about their coffee consumption on the previous day (Ref. 26).

In 1977–1978, the U.S. Department of Agriculture (USDA) also performed a food consumption survey. This survey included 37,874 individuals of whom 7.3 percent consumed decaffeinated coffee at least once in 3 days. For those individuals consuming decaffeinated coffee at least once in 3 days, USDA computed average consumption and 90th percentile consumption of 347 grams per day and 720 grams per day, respectively (Ref. 27).

Based on these surveys, the agency believes that the estimated consumption of 740 grams per day (five cups) is adequate to represent consumers of large amounts of decaffeinated coffee for a time span of several years (Ref. 28). It is unlikely, however, that individuals will average this consumption rate over a lifetime because decaffeinated coffee drinking varies from essentially no consumption by children to the highest consumption among the oldest age group. In the ICO survey, for example, the percentages of the individuals who drank decaffeinated coffee were 1.7 percent for the 10 to 19 year old age group, 7.3 percent for the 20 to 29 year old age group, 21.0 percent for the 30 to 59 year old age group, and age group, 21.0 percent for the 30 to 59 year old age group, and 33.8 percent for the 60 year old and older age group (Ref. 26). Because of this variation in consumption across age groups, the agency believes that individuals are unlikely to average more than 370 grams per day consumption of decaffeinated coffee over their lifetime (which is equivalent to one-half a lifetime at 740 grams per day) (Ref. 28). The agency used this 370 gram consumption level in computing its exposure estimate.

Dietary exposure can be calculated by multiplying together the three factors (10 ppm methylene chloride in the product, 5.7 grams roasted and ground or 2.2 grams instant product per 148 gram cup, and 370 grams per person per day consumption). By this approach the agency estimated that the lifetime-averaged exposure to methylene chloride under a 10 ppm regulatory limitation would not be likely to exceed 140 micrograms per day for consumers of brewed (roasted and ground) decaffeinated coffee and 55 micrograms per day for consumers of instant decaffeinated coffee (Ref. 28).

2. *Risk extrapolation.* The second part of the evaluation of risk presented by the dietary exposure to methylene chloride is an extrapolation from the actual compound-related incidence of animals with tumors (risk) found in animal bioassays under conditions of exaggerated exposure to the conditions of probable exposure for humans. Among the available studies, the agency considers the NTP inhalation study in mice and the NCA drinking water study in mice to be suitable studies for risk assessment. The NTP study is used because methylene chloride displayed the greatest potency in it.

The agency recognizes, however, that there are problems with using an inhalation study for assessing the risk from ingestion of methylene chloride. The problems stem from a lack of knowledge about the differences in the pharmacokinetics of the absorptioh, distribution, metabolism, and excretion of methylene chloride (and the ultimate carcinogenic entity, which also is not known) when it is inhaled as opposed to when it is ingested.

The NCA drinking water study in mice provides a way of confirming that using the inhalation study for upper bound risk estimation is not likely to underestimate any potential risk. Although the NCA study, which was performed in the same strain of mice as the NTP study, negative, it is useful for determining a maximum possible potency for methylene chloride by ingestion.

In the NTP inhalation study in mice, methylene chloride induced liver cell neoplasms and lung neoplasms. The agency used the female mice data for risk assessment because the female mice give a somewhat stronger response than the male mice. To estimate the risk, the agency considered the lung and liver neoplasia to be independent and added them together. The agency then computed the carcinogenic potency based on the incidence of animals with tumors at the low dose (2,000 ppm).

The computed carcinogenic potency is the risk (the probability that an animal will develop a tumor) divided by the dose that produced that risk. An inhalation exposure of 2,000 ppm for mice is equivalent to an exposure of 2,250 mg/kg/day if it is assumed that all the inhaled methylene chloride vapor is absorbed systemically. Thus, for methylene chloride, the calculated

carcinogenic potency is $4.x10^{-4}$ per kilogram of body weight per day (Refes. 21 and 28).

The NCA drinking water study in mice did not demonstrate any distinct neoplastic effects to liver or lung. However, the dosage levels were considerably lower than those in the inhalation study. Making the assumption that methylene chloride would induce neoplasia at a dose just above the highest level tested in the drinking water study, a maximum potency can be estimated. This estimate is approximately the same as the potency estimated from the inhalation study and provides more confidence that the inhalation study is not likely to underestimate the potency of methylene chloride by ingestion (Ref. 28).

The agency therefore finds that the available bioassays are consistent with a methylene chloride carcinogenic potency of no greater than $4.4X10^{-4}$ per milligram per kilogram of body weight per day when ingested. For a 60 kilogram human, this corresponds to a potency of $7.3X10^{-6}$ per milligram per day.

The potency for methylene chloride derived by the Environmental Protection Agency (EPA) is about 26 times higher than FDA's value. Most of the difference (a factor of 13) between the two estimates is attributable to the fact that EPA uses body surface area for interspecies comparison of exposure, whereas FDA uses body weight for such comparison. An additional factor of two is attributable to a combination of other small differences in risk assessment procedures employed by the two agencies.

FDA has traditionally used body weight scaling to compare doses among laboratory test species and for estimating comparable levels of exposure in humans. Under contract with FDA, the Life Sciences Research Office of the Federation of American Societies for Experimental Biology in initiating a study to examine the biological basis extrapolating doese among laboratory test species and humans (50 FR 45669; November 1, 1985). In the meantime, FDA will continue to use body weight scaling for interspecies comparison of doses.

In FDA's view, the overall risk assessment procedures used by both FDA and EPA are conservative. Neither FDA's nor EPA's procedures are likely to underestimate the actual risk from very low doses. In fact, both are likely to exaggerate the risk because the overall procedures of both agencies are designed to estimate an upper bound risk consistent with the data.

FDA has estimated the upper bound risk from exposure to methylene chloride from consumption of decaffeinated coffee produced in compliance with the 10 ppm limitation. Using $7.3X10^{-6}$ per milligram per day as the potency for methylene chloride when ingested at very low levels and the estimated lifetime-averaged methylene chloride exposure of 140 micrograms per day for consumers of large amounts of decaffeinated brewed coffee and 55 micrograms per day for consumers of large amounts of decaffeinated instant coffee, the agency estimates upper bound of lifetime risks to be $1X10^{-6}$ (i.e., 1 in million) and $4X10^{-7}$ (i.e., 1 in 2.5 million), respectively (Ref. 28).

It should be emphasized that the actual levels of residual methylene chloride in the decaffeinated coffee produced by the major manufacturer are much less than 10 ppm and, therefore, pose an even smaller risk. Most decaffeinated coffee contains mehtylene chloride residue of less than 0.1 ppm. The risks posed by this level of residue are two orders of magnitude lower than the already small risk posed by the 10 ppm level, i.e., $1X^{-8}$ (1 in 100 million) and $4X^{-9}$ (1 in 250 million), respectively.

V. Determination That Existing Limit for Decaffeination is Consistent with Safe Use of Methylene chloride

Because decaffeinated coffee that meets a 10 ppm regulatory limitation presents such extremely low levels of risk, FDA is not proposing to amend § 173.255(c).

Under section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, FDA cannot approve a food additive for a particular use unless the data presented to FDA establish that the food additive is safe for that use. The concept of safety embodied in this requirement was explained in the House Report on the Food Additives Amendment of 1958:

> The concept of safety used in this legislation involves the question of whether a substance is hazardous to the health of man or animal. Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance.
>
> This was emphasized particularly by the scientific panel which testified before the subcommittee. The scientists pointed out that it is impossible in the present state of scientific knowledge to establish with complete certainty the absolute harmlessness of any chemical substance.

H. Rept. 2284, 85th Cong., 2d Sess. 1, 4–5 (1958).

This determination of safety has been incorporated into FDA's food additive regulations in 21 CFR 170.3(i).

The Delaney anticancer clause of the Food Additives Amendment of 1958 (section 409(c)(3)(A) of the act) provides further:

> That no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal * * *.

Because methylene chloride has been shown at a statistically significant level to be a carcinogen by inhalation in the NTP mouse bioassay, if the Delaney anticancer clause (21 U.S.C. 348(c)(3)(A)) is to be interpreted as applying even it a *de minimis* risk is involved, FDA could not find that use of methylene chloride for decaffeinating coffee is safe. Yet, if the associated risk is essentially negligible, there is no gain to the public, and the statutory purpose is not implemented, if the words of the statute are interpreted not to leave the agency any discretion to apply it reasonably. The calculated risk for this use of methylene chloride is extremely low. The risk (no greater than 1 in 1 million and probably closer to 1 in 100 million) is so low as to be essentially nonexistent. Given such a low level of risk, FDA has concluded that there would be no safety gain to the public if it interpreted the Delaney Clause to require a ban on this use of methylene chloride. Therefore, FDA, exercising its inherent authority under the *de minimis* doctrine, concludes that the Delaney Clause does not require a ban in this situation. Because there are no other known safety problems with this use of methylene chloride, FDA finds that the use of methylene chloride to decaffeinate coffee is safe.

A. The de Minimis Doctrine

The *de minimis* doctrine holds that the law does not concern itself with trifling matters, and that courts consequently should be reluctant to apply the literal terms of a statute to mandate pointless results. *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979). In *District of Columbia* v. *Orleans*, 406 F.2d 957, 959 (D.C. Cir. 1968), the United States Court of Appeals for the District of Columbia Circuit stated that this doctrine was properly applied to the administration by the government of its regulatory programs. Thus, an administrative agancy has the inherent power under most statutory schemes to overlook circumstances that are contrary to the literal terms of a statute when those

circumstances can fairly be considered *de minimis*. As the court in *Alabama Power Co.* v. *Costle, supra*, explained:

> Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value.

636 F.2d at 360–361. *Accord, Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*, 636 F.2d 1267, 1284 n. 46 (D.C. Cir. 1980).

B. The de Minimis Doctrine and the Federal Food, Drug, and Cosmetic Act

Section 201(s) of the act states that a "food additive" is "any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food * * *." Yet, in *Monsanto* v. *Kennedy*, 613 F.2d 947 (D.C. Cir. 1979), the court held that not all chemicals that become components of food need be considered food additives. The court stated that FDA has the authority to ignore a chemical that migrates from plastic packaging material into beverages if the amount of the chemical that migrates is *de minimis*.

The *Monsanto* decision is important to the agency's present action even though that case involved the definition of "food additive" and not the application of the Delaney Clause, and even though the carcinogenicity of the chemical at issue in that case, acrylonitrile monomer, had not been established at the time of the decision. The court held that the *de minimis* concept is appropriately used to allow marketing of a product that would otherwise be banned by a Delaney Clause. In that case, the agency had interpreted the statute as defining a carcinogenic substance that migrated into food in low amounts as technically a "food additive" whose approval is banned by the food additive provision's Delaney Clause, see 21 U.S.C. 321(s), 331(a), 342(a)(2)(C), 348 (a) and (c)(3)(A). Although the reviewing court accepted that interpretation, it nevertheless held that the "de minimis" concept, applied to the threshold "food additive" definition, could be utilized to allow such a substance into the market when it presents no real public health risk, see 613 F.2d at 955–956. Thus, the court's decision in *Monsanto* has the practical effect of shielding substances that present effectively no carcinogenic risk from the Delaney Clause. Although the court did not explicitly interpret the Delaney Clause as inapplicable to such substances, the court presumably knew that if a carcinogenic chemical was disregarded as *de minimis* in relation to the food additive definition, the chemical would not be subject to the Delaney Clause, which applies only when that definition is met. Necessarily, therefore, the court regarded this consequence as legally warranted.[1]

Moreover, in *Scott* v. *FDA*, 728 F.2d 322, 325 (6th Cir. 1984), the Sixth Circuit upheld the so-called constituents policy, whereby FDA may approve known carcinogens present in color additives as intermediaries or impurities present at levels too low to cause a response using conventional tests. Noting that FDA had determined the public health risk presented by D and C Green 5 was negligible, the Court reasoned:

> . . . We find this determination by the *Monsanto* court persuasive and relevant to the particular facts of the instant case. We agree with the FDA's conclusion that since it 'has discretion to find that low level migration into food of substances in indirect additives is so insignificant as to present no public health or safety concern . . . . it can make a similar finding regarding a carcinogenic constituent or impurity that is present in a color additive' 47 *FR* 24280 (1982).

C. Application of the de Minimis Doctrine

Two conditions must apply to justify an agency's exercise of its authority to interpret a legal requirement as not requiring action in *de minimis* situations. First, it must be consistent with the legislative design for the agency to find that a situation is trivial and, therefore, one that need not be regulated. *Alabama Power Co.* v. *Costle, supra*, 636 F.2d at 630. Second, it must be clear that the situation is in fact trivial, and that no real benefit will flow from regulating the particular situation. *Environmental Defense Fund* v. *Environmental Protection Agency*, 636 F.2d 1267, 1283–1284 (D.C. Cir. 1980). Both conditions apply here.

1. The establishment of a *de minimis* exception to the Delaney Clause is consistent with the legislative design.

In *Alabama Power Co.* v. *Costle, supra*, the court stated that the implication of *de minimis* authority is consistent with most statutes. The court stated that unless Congress has been extraordinarily rigid, there is likely a basis for an implication of such authority. *Id.* at 360–361. That Congress was not so rigid as to preclude the implication of *de minimis* authority under the Delaney Clause is evidenced both by the stated congressional intent in enacting the Clause and by the stated purpose of this provision.

Although the Delaney Clause in section 409(c)(3)(A) of the act was passed as part of the Food Additives Amendment of 1958, the clearest statement of the congressional intent for that provision is in the legislative history of the Color Additive Amendments of 1960. The Color Additive Amendments contain a provision that is very similar to section 409(c)(3)(A) of the act. See section 706(b)(5)(B) of the act (21 U.S.C. 376(b)(5)(B)).

The Senate considered that the calculation of risk would permit interpretation of the Delaney Clause to allow approval of color additives producing a negligible risk. This is clear from a colloquy on the Senate floor initiated by Senator Jacob Javits in debate on his motion to reconsider the vote to approve the Color Additive Amendments. Senator Javits, focusing on the Delaney Clause, made the record clear in discussion with Republican leader Senator Dirksen and committee chairman Senator Hill that the Senate had agreed to pass the Color Additive Amendments with the Delaney Clause based upon its understanding that the authority conferred by that clause "should be used and applied within the 'rule of reason.' " 106 Congressional Record 15381 (July 1, 1960).[2] Both Senator Dirksen and Senator Hill agreed that the "rule of reason" was to be applied in interpreting the Delaney Clause. *Id.* On that basis, Senator Javits did not pursue his motion to reconsider.

The term "rule of reason" was taken from a report to the President from the President's Science Advisory Committee and from the Departments of Agriculture and of Health, Education, and Welfare (the predecessor to the Department of Health and Human Services) that analyzed the effect of the Delaney Clause that is applicable to food additives. That report defines the "rule of reason" as meaning that: "Every

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[1] FDA has not always been clear about its position on the *Monsanto* decision. For example, in questioning by Senator Orrin G. Hatch that took place in 1983 during hearings on food safety by the Senate Committee on Labor and Human Resources, then-Commissioner Arthur Hull Hayes, Jr. expressed some uncertainty about whether the *Monsanto* decision should be interpreted beyond its specific factual context (S. Hearing 98–309, 98th Cong., 1st Sess. 248 (1983)). FDA has concluded that the *Monsanto* decision is correctly interpreted as extending to the Delaney Clause.

[2] Senator Javits, now retired, recently reviewed this discussion. On July 10, 1985, he sent Margaret Heckler, Secretary of the Department of Health and Human Services, a letter stating that his views had not changed since 1960. He stated that it was his continuing understanding that the rule of reason "would dictate that where the danger to the public is negligible in using products with such color additives, then use should not be prohibited." A copy of Senator Javits' letter to Secretary Heckler is included in the record of this rulemaking.

statute must be interpreted in the light of reason and common understanding to reach the results intended by the legislature." 106 Congressional Record 15380. The report stated its conclusion that "an area of administrative discretion based on the rule of reason is unavoidable if the clause is to be workable." 106 Congressional Record 15381.

This report on implementation of the food additive provision, relied upon by the Senators as illustrating their understanding of the types of circumstances in which the "rule of reason" would appropriately be applied, in fact accurately predicted the advent of the science of risk assessment, the science that the agency is now applying in making its determination about the use of methylene chloride in decaffeinating coffee. The report stated that: "From the experience obtained in animal experiments and study of humans who have been exposed to carcinogens in the course of their work the panel believes that the probability of cancer induction from a particular carcinogen in minute doses may be eventually assessed by weighing scientific evidence as it becomes available." 106 Congressional Record 15380–15381.

Thus, the Senate agreed to adopt the color additive Delaney Clause only with the understanding that the clause would, like the food additive Delaney Clause, be administered with a "rule of reason," premised on the expectation that scientists would be able to determine the "probability of cancer induction." Thus, far from having been "extraordinarily rigid," Congress clearly contemplated that those administering the Delaney Clause would have discretion to implement that provision in a reasonable way.

The purpose of the Delaney Clause in section 409 of the act is, after all, to protect the public from the possibility of increasing cancer risks through the use of food additives. It does not advance this purpose to prohibit uses that present a risk that is, for all practical purposes, zero. Congress recognized this fact in warning FDA not to "go overboard" in applying the Delaney Clause. 106 Congressional Record 15381. Thus, it is not inconsistent with the Delaney Clause to permit some uses of a carcinogenic food additive when those uses are shown to present a potential carcinogenic risk that is so trivial, based on conservative statistical analyses, as to be the functional equivalent of no risk at all.

2. FDA finds that the risk from the use of methylene chloride in decaffeinating coffee (no greater than 1 in 1 million) is so small as to be effectively no risk. The agency makes this finding for the following reasons:

a. This computed level of risk is an upper bound level. It is not an actuarial risk. An actuarial risk is the risk determined by the actual incidence of an event. In contrast, the computed risk is a projection based on certain assumptions that enable the agency to estimate a risk that is too small to actually be measured. The agency uses conservative assumptions to ensure that the computation does not understate the risk. Among the assumptions that the agency relied upon in this computation are that:

(i) FDA assumes that methylene chloride is as effective in inducing cancer on a proportional basis at extremely low doses as it is at the exaggerated doses used in the animal studies.

(ii) FDA assumes that methylene chloride is present in all decaffeinated coffee at the highest level permitted by the regulation.

(iii) FDA assumes that lifetime-average consumption for the high consumer is used, rather than the average consumer.

Based on its computations, the agency is confident that the risk from the use of methylene chloride to decaffeinate coffee will not exceed 1 in 1 million and is likely to be somewhere between that level and zero. FDA emphasizes that the 1 in 1 million level of risk does not mean that 1 in every 1 million people will contract cancer as a result. Rather, in all likelihood, no one will contract cancer as a result of this exposure. The 1 in 1 million level represents a 1 in 1 million increase in risk over the normal risk of cancer in a lifetime—not annual—risk.

Because of the conservative assumptions in the foregoing risk assessement computation, it is probable that the incidence of tumors that would result the use of methylene chloride is likely to be even lower. In fact, the level of risk from most decaffeinated coffee is an incidence of less than one tumor after a lifetime of consumption in the entire population of coffee drinkers. As previously noted, it is likely that in fact there will be no increase incidence.

b. FDA has previously considered the risk level of 1 in 1 million in aerveral contexts. In the ongoing rulemaking proceeding to establish procedures and standards for applying the so-called DES-proviso to the Delaney Clause for carcinogenic drug and food additive residues in edible animal tissues (21 U.S.C. 360b(d)(1)(H)), FDA has proposed than an assay method sufficient to detect a residue posing a calculated upper bound risk of 1 in 1 million be required posing a calculated upper bound risk of 1 in 1 million be required becasue "a risk level of 1 in 1 million over a lifetime imposes no additional risk of cancer to the public" (44 FR 17070, 17093; March 20, 1979). The agency noted that by using that level of risk, "as far as can be determined, in all probability no one will contract cancer" (50 FR 45530, 45541; October 31, 1985).

In several proceedings involving the agency's policy for carcinogenic impurities in food and color additives, FDA has used the risk of 1 in 1 million as a standard for determining whether the calculated upper bound risk of cancer posed by an impurity is low enough to be considered "safe" within the meaning of the general safety clause. See, e.g., the administrative record compiled in the rulemaking on D&C Green No. 6, 47 FR 14138; April 2, 1985.

FDA believes that these uses of the 1 in 1 million risk level are indistinguishable from the use 1 in 1 million as a *de minimis* level of risk with respect to the Delaney Clause. A finding that a substance with a 1 in 1 million risk is "safe," or that it "imposes no additional risk of cancer to the public," is the same as a finding that the risk is of no public health consequence or that it is insignificant. It is in just those circrumstances, where there is no meaningful increase in public health protection from applying the strict terms of a legal standard, that the courts have found the *de minimis* doctrine to be applicable. For example, the court in *Monsanto* equated "*de minimis*" with a finding that migration of an indirect food additive is "insignificant" (613 F.2d at 947) in a context where the court clearly recognized that the real question was the toxicity of a particular level of migration.

For these reasons, FDA concludes that a risk level on the order of 1 in 1 million for cancer constitutes a *de minimis* level of risk, and that its use of that level of risk in other regulatory contexts is consistent with that conclusion, although the agency until now has not had occasion to consider what levels of risk might be considered *de minimis* under the Delaney Clause with respect to be considered *de minimis* under the Delaney Clause with respect to a food or color additive.

Based on the foregoing, FDA concludes that the risk of cancer from the use of methylene chloride to decaffeinate coffee is so low as to be effectively no risk, and that there would be no benefit to the public from prohibiting its use in this case. Further, consistent with section 409 of the act, FDA concludes, for the same reasons

and because there are no other safety problems with this use of methylene chloride, that methylene chloride is safe for use to decaffeinate coffee. Therefore, FDA will permit the continued use of methylene chloride to decaffeinate coffee so long as the residue levels are kept within the limits established in § 173.25.

VI. Regulatory Action

Under section 601(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 361(a)), a cosmetic is deemed to be adulterated "[i]f it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or, under such conditions of use as use are customary or usual * * *." FDA believes that the evidence discussed above establishes that methylene chloride is a poisonous or deleterious substance, and that its use in cosmetic products may render those products injurious to users. Therefore, FDA has tentatively concluded that cosmetics that contain methylene chloride are adulterated under section 601(a) of the act, and the agency is consequently proposing to prohibit the use of methylene chloride in all cosmetic products.

FDA has been informed by several cosmetic manufacturers that they have either ceased using methylene chloride in their hair spray products or are in the process or will soon be in the process to so reformulate. The agency acknowledges these substantial voluntary efforts and the availability of safe substitutes. Consequently, given the severity of the public health risk presented, a regulation is necessary to ensure that all hair spray manufacturers cease using methylene chloride and that no new hair spray manufacturers being using it.

FDA, however, is not taking any action with regard to the use of methylene chloride is decaffeinated coffee.

VII. Economic Impact

FDA, in accordance with the Reguatory Flexibilitiy Act, has considered the effect that this proposed rule would have on small entities including small businesses. The agency has determined that the economic impact arising from this proposed rule will result from one-time reformulation and relabeling costs for those cosmetic products currently containing methylene chloride. Information available to the agency has indicated that the only products potentially affected by this proposal are aerosol hair spray products, and that the use of methylene chloride in these products has declined sharply in recent years. The agency estimates the aggregate costs of this proposed rule to be approximately $1 million. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibiltiy Act, that no significant ecomonic impact on a substantial number of small entities will derive from this action.

Further, in accordance with Executive Order 12291, FDA has analyzed the economic effects of this proposal and has determined that it is not major rule as defined by that Order. A copy of the threshold assessment is on file the Dockets Management Branch.

VII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that findings, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) that was published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985).

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. "Technical Report on the Toxicology and Carcinogenesis Studies of Dichloromethane (Methylene Chloride) in F344/N Rats and B6C3F1 Mice," NTP Draft Report, NTP–TR–306, National Institutes of Health Publication No. 85–2562, 1985.

2. Cancer Assessment Committee, Memorandum of Conferences, "Methylene Chloride," January 20, 1983, August 8, 1984, and June 13, 1985.

3. Summary Minutes for Peer Review of Draft Technical Reports of Long-Term Toxicological Studies by the Technical Review Subcommittee of the Board of Scientific Counselors and Panel of Experts, March 29, 1985.

4. Burek, J.E., et al., "Methylene Chloride: A Two-Year Inhalation Toxicity and Oncogenicity Study in Rats and Hamsters," Toxicological Research Laboratories, Dow Chemical U.S.A., December 31, 1980.

5. Nitschke, K.D., "Methylene Chloride: A Two-Year Inhalation Toxicity and Oncogenicity Study." Toxicological Research Laboratories, Dow Chemical U.S.A., October 1982.

6. National Coffee Association, "24-Month Chronic Toxicity and Oncogenicity Study of Methylene Chloride in Rats—Final Report," August 11, 1982, and "Addition to Final Report," November 5, 1982, Hazelton Laboratories America, Inc. Vienna, VA.

7. National Coffee Association, "24-Month Oncogenicity Study of Methylene Chloride in Mice—Final Report," Hazelton Laboratories America, Inc., Vienna, VA, November 30, 1983.

8. Friedlander, B. R., et al., "Epidemiologic Investigation of Employees Chronically Exposed to Methylene Chloride: Mortality Analysis," *Journal of Occupational Medicine*, 20:675–666, 1978.

9. Ott, M.G., et al., "Health Evaluation of Employees Occupationally Exposed to Methylene Chloride," *Scandinavian Journal of Work, Environment & Health*, 9:Suppl 1:1–38, 1983.

10. Jongen, W.M.F., et al., "Mutagenic Effect of Dichloromethane on *Salmonella typhimurium*," *Mutation Research*, 56:245–248, 1978.

11. Kanada, T., and M. Uyeta, "Mutagenicity Screening of Organic Solvents in Microbial Systems," *Mutation Research*, 54:215, 1978.

12. Jongen, W.M.F., et al., "The Effect of Glutathione Conjugation and Microsomal Oxidation on the Mutagenicity of Dichloromethane is *S. typhimurium*," *Mutation Research*, 95:183–189, 1982.

13. Snow, L., et al., "Mutagenesis Testing of Methylene Chloride and 1,1,1-Trichloroethane in *Salmonella* Strains TA100 and TA98," Northrop Services, Inc., Research Triangle Park, NC, September 19, 1979.

14. Brusick, D.J., "Mutagenicity Evaluation of Methylene Chloride—Final Report," Litton Bionetics, Kensington, MD, July 30, 1976.

15. Green, T., "The Metabolic Activation of Dichloromethane and Chlorofluoromethane in a Bacterial Mutation Assay Using *S. typhimurium*," *Mutation Research*, 118:277–288, 1983.

16. Simmon, V.F., et al., "Mutagenic Activity of Chemicals Identified in Drinking Water," *in* "Progress in Genetic Toxicology," Scott, I.D., et al., editors, Elsevier, Amsterdam, pp. 249–258, 1977.

17. Nestmann, E.R., et al., "Mutagenicity of Paint Removers Containing Dichloromethane," *Cancer Letters*, 11:295–302, 1981.

18. Callen, D.F., et al., "Cytochrome P–450 Medicated Genetic Activity and Cytotoxicity of Seven Halogenated Aliphatic Hydrocarbons in *Saccharomyces cerevisiae*," *Mutation Research*, 77:55–63, 1980.

19. Sayad, R.S., et al., "Methylene Chloride in Hair Sprays," *Soap/Cosmetic/Chemical Specialties*, March 1976.

20. Skory, L.K., T. Anthony, and M.P. Stevenson, "Carboxyhemoglobin Studies Show Methylene Chloride Safe in Aerosol Use," *Aerosol Age*, 20(5), May 1975.

21. Quantitative Risk Assessment Committee, Memorandum, "Preliminary Assessment of Upper-Bound Cancer Risk from Exposure to Methylene Chloride Used in Cosmetic Aerosol Sprays," April 23, 1985.

BEST COPY AVAILABLE

22. Letter dated August 7, 1985, J. Kirschman, General Foods Corp., to R. Scheuplein, FDA, with attachment.

23. Memorandum dated November 12, 1985, G. Cramer, Food Additive Chemistry Evaluation Branch, FDA.

24. Memorandum dated November 14, 1985, G. Cramer, Food Additive Chemistry Evaluation Branch, FDA.

25. Letter dated November 18, 1985, I. Abrams, MRCA Information Service, to A. Beloian, FDA.

26. International Coffee Organization, "United States of America Coffee Drinking Study, Winter 1985," London, England.

27. Pao, E., et al., "Foods Commonly Eaten by Individuals: Amounts Per Day and Per Eating Occasion," U.S. Department of Agriculture, Home Economics Research Report No. 44, pp. 24–25, 1982.

28. Quantitative Risk Assessment Committee, Memorandum, "Upper Bound Estimate of Cancer Risk from Methylene Chloride (MC) in MC-based Decaffeinated Coffee Products," November 15, 1985.

X. Comments

Interested persons may, on or before February 18, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 700

Cosmetics, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 700 be amended as follows:

PART 700—GENERAL

1. The authority citation for 21 CFR Part 700 is revised to read as follows:

Authority: Secs. 601, 602, 701(a), 704, 52 Stat. 1054 as amended, 1055, 67 Stat. 477 as amended (21 U.S.C. 361, 362, 371(a), 374); 21 CFR 5.10 and 5.11.

2. By adding new § 700.19, to read as follows:

§ 700.19 Use of methylene chloride as an ingredient of cosmetic products.

(a) Methylene chloride has been used as an ingredient of aerosol cosmetic products, principally hair sprays, at concentrations generally ranging from 10 to 25 percent. In a 2-year animal inhalation study sponsored by the National Toxicology Program, methylene chloride produced a significant increase in benign and malignant tumors of the lung and liver of male and female mice. Based on these findings and on estimates of human exposure from the customary use of hair sprays, the Food and Drug Administration concludes that the use of methylene chloride in cosmetic products poses a significant cancer risk to consumers, and that the use of this ingredient in cosmetic products may render these products injurious to health.

(b) Any cosmetic product that contains methylene chloride as an ingredient is deemed adulterated and is subject to regulatory action under sections 301 and 601(a) of the Federal Food, Drug, and Cosmetic Act.

Dated: December 12, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85–29851 Filed 12–17–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 544

Control Custody, Care, Treatment, and Instruction of Inmates; Chemical Abuse Programs, Admission and Orientation, Classification and Program Review, and Inmate Recreation Programs

Correction

In FR Doc. 85–27920 beginning on page 48338, in the issue of Friday, November 22, 1985, on page 48341, third column, the fifth line of § 544.34(d)(5) is corrected by changing "90" to read "30".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784

Surface Coal Mining and Reclamation Operations Permanent Regulatory Program; Probable Hydrologic Consequences and Cumulative Hydrologic Impact of Mining

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Availability of draft guidance documents.

SUMMARY: Section 507(b)(11) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) requires that a permit application for a surface coal mining operation contain a determination of the probable hydrologic consequences (PHC) of the operations. The regulatory authority, pursuant to the requirements of sections 507(b)(11) and 510(b)(3) of SMCRA, must conduct a cumulative hydrologic impact assessment (CHIA) of all anticipated mining in the area, and make a finding that the proposed coal mining operation has been designed to prevent material damage to the hydrologic balance outside the permit area prior to issuing a permit.

The Office of Surface Mining (OSM) has developed draft guidelines that provide and understanding of the statutory and regulatory requirements relative to PHC and CHIA and that suggest procedures which may be utilized by permit applicants and State regulatory authorities in the preparation of PHCs and CHIAs, respectively. In order to make the guidelines more useful to surface coal mine permit applicants and regulatory authorities, OSM is soliciting specific suggestions and comments particularly with respect to the sources of hydrologic and geologic information and the applicability and adequacy of coverage of relevant concerns.

DATE: Written comments must be received before 5:00 p.m. eastern standard time on April 17, 1986.

ADDRESS: Administrative Record, Office of Surface Mining, Room 5315L 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Allen Perry, Division of Reclamation Technology, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, DC 20240, Telephone: 202/343–1514.

Dated: December 10, 1985.

Brent Wahlquist,

Assistant Director, Program Operations.

[FR Doc. 85–29924 Filed 12–17–85; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–2940–1]

Gasoline Volatility and Hydrocarbon Emissions From Motor Vehicles; Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; hearing.

SUMMARY: On November 21, 1985 (50 FR 48100), EPA published notice of availability of a regulatory strategies document on gasoline volatility and hydrocarbon emissions from motor vehicles. This notice also established a time and place for a public hearing on this issue. EPA has found it necessary to change the date and location of the hearing as indicated below.

DATES: A public hearing on the issues brought forth in this study will be held on February 4, 1986, convening at 9:00 a.m. The hearing will continue through February 5, 1986 if additional time is needed. Written comments on the study must be received on or before March 5, 1986.

ADDRESS: The public hearing will be held at the Campus Inn, 615 East Huron Street, Ann Arbor, Michigan 48104.

FOR FURTHER INFORMATION CONTACT: Gregory J. Dana, Office of Mobile Sources, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–7647.

Dated: December 6, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85–29787 Filed 12–17–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–379; RM–5091]

FM Broadcast Station in Franklin, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Franklin Broadcasting Corporation, proposes the allotment of Channel 269A to Franklin, Virginia, as the community's first FM service.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 13, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the Matter of Amendment fo § 73.202(b), Table of Allotments, FM Broadcast Stations (Franklin, Virginia) MM Docket No. 85–379, RM–5091.

Adopted: November 25, 1985.
Released: December 12, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by Franklin Broadcasting Corporation ("petitioner"), licensee of Station WYSR(AM), Franklin, Virginia, seeking the allotment of Channel 269A to Franklin, Virginia, as that community's first commercial FM service. Petitioner has expressed an intention to apply for the channel if allotted.

2. The channel can be allotted in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) west of the community. This restriction is necessary to avoid short spacing to Station WWDE–FM, Channel 267, Hampton, Virginia.[1]

3. In view of the fact that Franklin, Virginia could receive its first commercial FM service, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the following community.

City	Channel No.	
	Present	Proposed
Franklin, VA		[illegible]

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Peter Gutmann, Pepper & Corazzini, 1776 K Street, NW., Washington, DC 20006 (Counsel to petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes and *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, §73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a

[1] This proposal is also conditioned on the grant of a license for Station WHZZ, New Bern, North Carolina, to become a Class C1 station, for which a permit has already been issued.

proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Pubic Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requsted for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of §1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-29916 Filed 12-17-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-380; RM-4963; RM-5052; RM-5084; RM-5092]

FM Broadcast Station in Elizabeth, Roswell, Acworth, and Cartersville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of Channnel 298A to either Elizabeth, Roswell, Acworth, or Cartersville, Georgia, as a first FM service at any of the communities, in response to petitions filed by Elizabeth Community Broadcasters, William E. Mallon, C. Phillip Robuck and by Julia N. Frew, respectively.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tryee, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations Elizabeth, Roswell, Acworth, and Cartersville, Georgia, MM Docket No. 85-380, RM-4963, RM-5052, RM-5084, RM-5092.

Adopted: November 26, 1985.
Released: December 12, 1985.

By the Chief, Policy and Rules Division.

1. The Commission herein considers four separate petitions for rule making for Channel 298A. The first was filed by Elizabeth Community Broadcasters, requesting the allotment of Channel 298A to Elizabeth, Georgia; the second by William E. Mallon, requesting Channel 298A at Roswell, Georgia; the third by C. Phillip Robuck for Channel 298A at Acworth, Georgia; and the fourth was submitted by Julia N. Frew, requesting that Channel 298A be allotted to Elizabeth, Georgia.[1] The petitions are considered to be mutually exclusive since the communities are less than the required 105 kilometers (65 miles) apart. Each petitioner stated its (his) intention to apply for Channel 298A at the community requested.

2. Elizabeth (population 1,700),[2] Roswell (population 23,337),[3] Acworth (population 3,648), and Cartersville (population 9,504), are all without local FM broadcast service. Cartersville is served by two AM stations; one fulltime and one daytime-only. Channel 298A can be allotted to any of the communities in compliance with the minimum distance separation requirements of § 73.207 of the Rules. In order to avoid a short spacing to Channel 297 at Columbus, Georgia, a site restriction of 10.3 kilometers (6.4 miles) northeast of Elizabeth and 4.6 kilometers (2.8 miles) north of Acworth must be imposed.

3. Since there are no other channels available for allotment to any of the communities, we shall provide each proponent an opportunity to demonstrate in comments to this proceeding, why its community should receive the allotment. In this regard, parties should be guided by the criteria adopted by the Commission to evaluate conflicting proposals in *Revision of FM assignment Policies and Procedures* (BC Docket 80-130), 90 F.C.C. 2d 88 (1982).

PART 73—[AMENDED]

4. In view of the foregoing, the Commission seeks comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Rules, as it pertains to the following communities.

City	Channel No.	
	Present	Proposed
Elizabeth, GA		298A
Roswell, GA		298A

[1] Channel 288A presently allotted to Cartersville is being used at Canton, Georgia. Petitioner requested the Commission to modify the Table of Allotments to reflect the actual use of Channel 288A at Canton. However, that request will be considered in a separate proceeding which proposes to substitute Channel 289C2 for Channel 288A at Canton.

[2] Elizabeth, Georgia, is not shown in the 1980 U.S Census Report. Petitioner shows Elizabeth as a township which has chosen independent status from nearby Marietta, Georgia, identifiable on various county, state and Rand McNally maps.

[3] Population figures are taken from the 1980 U.S. Census.

City	Channel No.	
	Present	Proposed
Acworth, GA		[illegible]
Cartersville, GA		289A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Nancy L. Wolf, Dow, Lohnes and Albertson, 1255 Twenty-third Street NW., Washington, DC 20037 (Counsel for Elizabeth Community Broadcasters)

Eric S. Kravetz, Ward and Mendelsohn, 1100 17th Street NW., Suite 900, Washington, DC 20036 (Counsel for C. Phillip Robuck)

James E. Price, Sterling Communications, Inc., Uptain Building, Suite 418, Chattanooga, Tennessee 37411 (Consultant to William E. Mallon)

Julia N. Frew, Route 6, N. Tennessee Road, Cartersville, Georgia 30120.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85–29896 Filed 12–17–85; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–377; RM–5017]

FM Broadcast Station in Kapaa, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of Channel 278 to Kapaa, Hawaii, as its first FM service, in response to a petition filed by Native Hawaiian Broadcasting Company.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Kapaa, Hawaii) MM Docket No. 85-377; RM-5017.

Notice of Proposed Rule Making

Adopted: November 25, 1985.
Released: December 12, 1985.
By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by Native Hawaiian Broadcasting Company, which seeks the allotment of Channel 278 to Kapaa, Hawaii, as its first FM channel. Petitioner stated its intent to apply for the channel.

PART 73—[AMENDED]

2. Channel 278 can be alloted to Kapaa in compliance with the minimum distance separation requirements. In view of the fact that the proposed allotment could provide a first FM service to Kapaa, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, as follows:

City	Channel No.	
	Present	Proposed
Kapaa, HI		278

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner(s), or their counsel or consultant, as follows: Alan G. Moskowitz, Shrinsky, Weitzman and Eisen, 1120 Connecticut Avenue NW., Washington, DC 20036 (counsel for petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 85-29914 Filed 12-17-85; 8:45 am]
BILLING CODE 6712-01-M

BEST COPY AVAILABLE

47 CFR Part 73

[MM Docket No. 85-378; RM-4978]

FM Broadcast Station in Sturgeon Bay, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Davison Communications Corporation, proposes the substitution of Channel 259C2 for Channel 261A at Sturgeon Bay, Wisconsin, and modification of the license of Station WSBW(FM), Sturgeon Bay, Wisconsin, to specify operation on Channel 259C2, as that community's second wide coverage area FM service.

DATES: Comments must be filed on or before February 3, 1986, and reply comments or or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

The authority citation of Part 73 continues to read:

Authority: Secs. 4 and 303, 84 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Sturgeon Bay, Wisconsin) MM Docket No. 85-378, RM-4978.

Notice of Proposed Rule making

Adopted: November 25, 1985. Released: December 12, 1985.

By the Chief, Policy and Rules Divisions.

1. A petition for rule making was filed by Davison Communications Corporation, licensee of Station WSBW(FM), Channel 261A, Sturgeon, Wisconsin, ("petitioner"), seeking the substitution of class C2 Channel 259 for Channel 261A and modification of its license to specify operation on the new channel.

2. Petitioner submitted information in support of the proposal and states the upgrade of its facilities would provide a benefit both to Sturgeon Bay and to the entire Door County Peninsula.

3. We believe the petitioner's proposal warrants consideration. The substitution can be made in compliance with the Commission's minimum distance separation requirements. Since Sturgeon Bay is located within 320 kilometers (200 miles) of the U.S.-Canadian border, the proposal requires concurrence by the Canadian government.

4. In accordance with our established policy, we shall propose to modify the license of Station WSBW to specify operation on Channel 259C2. However, if another party should indicate an interest in the Class C2 allotment, the modification may not be implemented unless an additional equivalent channel is allotted.[1] See, *Modification of FM and TV Station Licenses*, MM Docket No. 83-1148, 98 F.C.C. 2d 916 (1984).

PART 73—[AMENDED]

5. Accordingly in order to provide Sturgeon Bay with its second wide converage FM station, the Commission proposes to amend the FM Table of Allotments, (§ 73.202(b) of the Rules, with regard to the community listed below, as follows:)

City	Channel No.	
	[illegible]	Proposed
Sturgeon Bay, WI	230, 249A, and 261A	230, 249A, and [illegible]

6. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel with be allotted.

7. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: James M. Weitzman, Allan G. Moskowitz, Shrinsky, Weitzman & Eisen, P.C., 1120 Connecticut Avenue NW., Suite 270, Washington, DC 20036.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

[1] Interested parties should consider the pendency of the *Notice of Proposed Rule Making* in MM Docket No. 85-313, 50 FR 45439 (published October 31, 1985), which proposes to permit FM stations to upgrade on adjacent channels in this type of proceeding without demonstrating the availability of an additional equivalent class of channel.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice of this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85–29915 Filed 12–17–85; 8:45 am]
BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 462]

Rail Carriers; Exemption of Demurrage From Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is seeking public comment on whether to consider a partial or complete exemption of demurrage charges from regulation. We have recently eliminated antitrust immunity with respect to demurrage charges because in a competitive environment, such charges will more accurately track car supply condition, car demand conditions, and the specific priorities and needs of individual carriers and shippers. Eliminating antitrust immunity effectively promotes the general goals of the rail transportation policy, and the equipment allocation goals of 49 U.S.C. 10750. However, demurrage charges will, without further action, remain subject to Commission regulation. We are requesting comments on whether elimination of antitrust immunity is of itself sufficient to achieve the section 10750 goals of whether additional action should be taken at this time under the exemption provisions of 49 U.S.C. 10505 to reduce or eliminate the regulation of demurrage.

Specifically, we request the parties to comment on the practical effects of the following approaches; (i) no further action at this time; (ii) exemption of demurrage charges from the tariff filing provisions of the Act, while retaining jurisdiction over discrimination, reasonable practice complaints, equipment allocation and equipment shortage; (iii) some other form of partial deregulation; and (iv) exemption of demurrage charges from all applicable statutory provisions. Following consideration of the comments, the Commission will determine whether a further proceeding is warranted.

DATES: Comments are due January 17, 1986.

ADDRESS: An original and 15 copies of comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275–7428.

The effect of this proceeding on matters related to energy, environment, and small business entities also should be addressed in the comments.

Authority: 49 U.S.C. 10321, 10324(a), 10505, 10701, 10741, 10750, 10761, 10762, 11121, 11122, 11123, and 5 U.S.C. 553.

Decided: November 8, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Simmons concurred with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85–29892 Filed 12–17–85; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Florida Grasshopper Sparrow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Florida grasshopper sparrow *(Ammodramus savannarum floridanus),* a bird endemic to the prairie region of south-central Florida, is proposed for listing as an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. In the early 1900's the populations of this bird were reportedly large and widespread in Florida. However, surveys conducted between 1980 and 1984 would indicate a population of about 250 adult birds. The principal reason for the decline of the grasshopper sparrow, and the greatest threat to its continued survival, is habitat loss or degradation resulting from conversion of native vegetation to improved pasture. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for the Florida grasshopper sparrow. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by February 18, 1986. Public hearing requests must be received by February 3, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791–2580 or FTS 946–2580).

SUPPLEMENTARY INFORMATION:

Background

The following information is abstracted primarily from a report by Delany and Cox (1985) prepared for the U.S. Fish and Wildlife Service.

The grasshopper sparrow *(Ammodramus savannarum)* occurs throughout most of temperate North America. The Florida subspecies *(A. s. flordianus)* is geographically isolated from its nearest conspecific, the eastern race *(A. s. pratensis)*, by at least 500 km, and is limited in distribution to the prairie region of south-central Florida.

The Florida subspecies was discovered in 1901 by E.A. Mearns at a location "on the Kissimmee Prairie, 7 miles east of Alligator Bluff, Osceola County, Florida" (Mearns, 1902). Howell (1932) set the northern limit of distribution as 12.9 km southwest of Kenansville (Osceola County), where 10 specimens were collected from a small colony in 1929. He also documented a 1927 report of "numerous" Florida grasshopper sparrows at a location 24 km northwest of Basinger (Okeechobee County); referred to two nests found south of Lake Hicpochee (Hendry County); and stated that Nicholson saw a "number" of birds southeast of Immokalee (Hendry County), where they appeared to be breeding. In 1932, an unspecified number of birds were found south of Fort Drum (Okeechobee County).

More recent records (cited by Delany and Cox, 1985) include one male heard singing 14 km north of Okeechobee (1962), and two birds located 1.6 km south of Brighton in Glades County (1963). In 1968, one specimen was collected in a typical habitat near the Everglades National Park (Dade County); one singing male was reported "west of Lake Okeechobee" in 1971. Finally, in 1973 and again in 1974, several birds were located southwest of Kenansville. Unfortunately, the lack of early distributional information precludes a precise delineation of the historical range of the subspecies.

Florida grasshopper sparrows are small, short-tailed birds, about 13 cm long. Dorsally they are much darker than the eastern race of the species *(A. s. pratensis)*, being mostly black and gray, lightly streaked with brown on the nape and upper back. Ventrally, adults are whitish and unstreaked, with some buff on the throat and breast. The breast is streaked in the juvenile plumage. The stripe over the eye is ochraceous, and the bend of the wing is yellow; the feet are flesh colored. There are no obvious sexual differences in the plumages. The Florida grasshopper sparrow is a well-marked subspecies that has been universally accepted as valid since it was described by Mearns in 1902. This subspecies is non-migratory, while the other two subspecies found east of the Rocky Mountains winter across the southern U.S. from Texas to South Carolina.

The Florida grasshopper sparrow inhabits the stunted growth of saw palmetto, dwarf oaks 30–70 centimeters high, bluestems, and wiregrass, seemingly preferring this habitat to the grassy areas usually occupied by other subspecies of grasshopper sparrows (Howell, 1932). According to Nicholson (1936) the Florida grasshopper sparrow uses the open spaces where saw palmetto are small (25 to 40 centimeters high) and grass is sparse. A low, but sparse growth of saw palmetto, woody shrubs, and bluestems and wiregrass, rather than sod forming grasses, is apparently needed for nesting. Dense vegetation and accumulated litter probably preclude effective foraging by the sparrow.

Delany and Cox (1985) found that, in general, grasshopper sparrows occurred on treeless, relatively poorly drained sites that have been burned frequently. Common shrubs in Florida grasshopper sparrow habitat include pawpaw (*Asimina* spp.), dwarf oak (*Quercus minima*), gopher apple (*Licania michauxii*), and St. John's Wort (*Hypericum fasciculatum*). The grass and herbaceous ground layer usually is rich in species, being dominated by pineland threeawn (*Aristida stricta*), bluestems (*Andropogon* spp.) and flat-topped goldenrod (*Euthamia minor*). In wetter areas of lower elevation, the herbaceous layer includes beak rushes (*Rhynchospora* spp.), pipewort (*Eriocaulon* spp.), and yellow-eyed grass (*Xyris* spp.). Cattle grazing, at a rate of one per 8 hectares, occurs on all sites occupied by sparrows, and does not appear to be detrimental to the species.

In the early 1900's, the populations of Florida grasshopper sparrows were reportedly large and widespread (Howell, 1932). Surveys by Delany and Cox, however, conducted between 1980 and 1984, located only 182 sparrows occurring at nine sites. These sites were in southern Osceola County, southern Polk County, northern Highlands County, western Okeechobee County, and western Glades County. Of the 182 sparrows located, 119 were males. Male sparrows are far more conspicuous than females. If each of the males was mated to a single female, a minimum population estimate for the subspecies would be less than 250 adults. In addition, Delany and Cox found sparrows at only two of the eight sites from which they have been known historically. These facts imply both a reduction in abundance and occupied range for the subspecies. Alteration and loss of habitat due to conversion of native grasslands to improved pastures have been, and continue to be, the greatest threats to the survival of the Florida grasshopper sparrow.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Florida grasshopper sparrow (*Ammodramus savannarum floridanus*) are as follows (abstracted from Delany and Cox, 1985):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The principal threat to the Florida grasshopper sparrow is habitat loss or degradation resulting from conversion of native grasslands to improved pastures. The subspecies apparently can tolerate some alteration in vegetation composition and structure, as evidenced by its occurrence in some improved pastures (Stevenson *in* Kale, 1978). Sparrows have been found in improved pastures where some native vegetation exists. It appears, however, that the species cannot adapt to conditions that result from intensive pasture management which removes all shrubs and saw palmetto. Grasshopper sparrows have been found only in areas that have at least some saw palmetto, shrubs, bluestems and/or wiregrass. Nest sites are located on the ground beneath bushes or tall clumps of grass, features that do not exist in most improved pastures.

Delany and Cox (1985) believe that 6 of the 8 historically known populations of the Florida grasshopper sparrow may have been extirpated as a result of range management. They located 7 new localities for the subspecies, plus two of the historically known sites. Areas now occupied by grasshopper sparrows are managed for cattle by periodic burning during the winter (November-January) at 2- to 3-year intervals. For the most part this does not appear to have adversely affected the grasshopper sparrow populations because prescribed burning improves the habitat for this subspecies by maintaining the prairie grassland community at an early successional stage. There is a possibility that changes in intensity of management could render these sites unsuitable for grasshopper sparrows. More intensive management (removing saw palmetto and planting grass) would eliminate nesting sites. Less intensive management, which would exclude burning or mechancial clearing, would allow vegetation to reach a successional stage which would be unusable by the birds. Much of the land within the range of the Florida grasshopper sparrow is contained in a few large, private ranches; most of the landowners are not aware of the sparrow's existence or needs. Present land use trends indicate a continued loss of habitat for the subspecies due to increased pasture conversion and changes in intensity of management of already converted pastureland.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no indication that any of these factors have had a significant impact on the Florida grasshopper sparrow in the past. However, there is a potential for adverse impact if isolated pairs are collected, or scientific collection is conducted at locations were numbers are small.

C. *Disease or predation.* Hogs, snakes, and skunks are known to destroy nests and prey upon Florida grasshopper sparrows (Nicholson *in* Smith, 1968). However, these natual losses do not appear to be causing any of the reductions in range and numbers that have been observed.

D. *The inadequacy of existing regulatory mechanisms.* The Florida grasshopper sparrow occurs on private land, on State Wildlife Mangement Areas (WMA) (Three Lakes WMA in Osceola County, and Fisheating Creek WMA in Glades County), and on land managed and administered by the Federal Government (U.S. Air Force's Avon Park Bombing Range); the Air Force leases pastures on the Bombing Range for cattle grazing. There are no regulatory mechanisms to assure protection of prairie grassland habitat in private ownership; however, the needs of the grasshopper sparrow are considered when habitat decisions are made on the Bombing Range.

The species is listed as endangered by the State of Florida (Chapter 39–27, Florida Administrative Code), but this legislation does not provide habitat protection. Habitat protection is also not affored under the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*).

E. *Other natural or man-made factors affecting its continued existence.* It is not known if grasshopper sparrows live directly within the target areas of the Air Force's Avon Park Bombing Range; if so, the birds would be adversely affected by bombing activities. Exploding ordnance might also cause fires that could spread to other areas and result in damage to nearby resident sparrows. However, this is unlikely as the Air Force has an aggressive fire control program. Because the bombing range cannot be entered, the Service cannot evaluate how many, if any, sparrows are present within the drop zone.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Florida grasshopper sparrow as endangered. The total population of this subspecies may be less than 250 adults at 9 scattered sites in the prairie region of south-central Florida. All available evidence indicates that the bird has declined greatly in range and in numbers. This has been due to habitat loss or degradation resulting from pasture conversion and changes in intensity of management of converted pasture. Present land use trends indicate a continued loss of acceptable habitat for the species. Given these factors, the Florida grasshopper sparrow appears to be in danger of extinction throughout all or a significant portion of its range and therefore is being proposed as an endangered species. Critical habitat is not being proposed for the Florida grasshopper sparrow for reasons discussed below in the "Critical Habitat" section.

Critical Habitat

In order for the Florida grasshopper sparrow to survive, it is necessary to maintain a habitat that has a low (30–70 cm), but sparse growth of palmettos and woody shrubs. Prescribing burning or mechanical clearing is necessary to maintain this sort of suitable habitat. Delany and Cox (1985) presented the following information to illustrate how grasshopper sparrow populations fluctuate depending upon the condition of the habitat. They report that in 1981–82, only 4 adult grasshopper sparrows were found at the Three Lakes Wildlife Management Area in Osceola County. Many of the pastures at Three Lakes were burned in the winter of 1983–84, and 37 adult grasshopper sparrows were found there in 1984.

At a pasture site in Okeechobee County, no sparrows were found in 1982, but 32 were found in 1984. This particular pasture is burned every three years and was last burned in the winter of 1982–83. In the summer of 1982, when no sparrows were present, it has been two and a half years since the pasture last last burned. In another pasture, only one grasshopper sparrow was found in 1982, but 8 were found in 1984. This pasture is burned every 2 or 3 years, and was last burned in the winter of 1982–83. In contrast, pastures in the Avon Park Bombing Range contained 8 grasshopper sparrows in 1982, but only one could be found in 1984. Some of the pasture in this area had not been burned in the intervening years, and the vegetation was generally very dense, with little bare ground. From the above, it seems evident that periodic buring (and/or mechancial clearing) of vegetative cover greatly improves the quality of pastures for grasshopper sparrows, and that the birds move from area to area as habitiat improves or deteriorates.

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Florida grasshopper sparrow for the following two reasons.

First, as discussed above, the Florida grasshopper sparrow is a species which moves around frequently in order to take advantage of the changing mosaic of available habitat. The habitat needs of the species are specific, and its presence in any one area over a long term cannot be predicted or assured. As one area becomes too thickly overgrown to support populations, the birds move to a more sparsely vegetated area that has been recently burned or mechancially cleared. Thus, the sparrows are not stable residents of any specific area for long periods of time.

Second, most of the habitat occupied by the Florida grasshopper sparrow is

on privately owned land and would not be affected by a determination of critical habitat. There would be no benefit to the species from determining any of this privately owned land as critical habitat. The only Federal agency that might be involved is the U.S. Air Force's Avon Park Bombing Range. The Air Force is already fully aware of this situation.

Therefore, a determination of critical habitat would provide no benefits to the species which would not already be available through the listing itself without critical habitat. For the above reasons, the Service determines that a proposal of critical habitat for the grasshopper sparrow is not prudent at the present time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The only Federal agency that might be affected by the Florida grasshopper sparrow proposal and listing is the U.S. Air Force (Avon Park Bombing Range). Grasshopper sparrows that are resident in target areas of the Bombing Range will be directly affected by exploding ordnance. Fires from exploding ordnance also could spread to nearby areas inhabited by nesting grasshopper sparrows and may temporary damage the sparrow populations. During the period of the present proposal, the Air Force is required to confer with the Service on any action at its Avon Park Bombing Range which is likely to jeopardize the continued existence of this species. If the Florida grasshopper sparrow is listed as endangered, the Air Force will then be required to consult with the Service and to insure that actions it authorizes, funds, or carries out are not likely to jeopardize the continued existence of the species.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce the Florida grasshopper sparrow. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation of survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concering any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Florida grasshopper sparrow;

(2) the location of any additional populations of the Florida grasshopper sparrow and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) additional information concerning the range and distribution of this subspecies; and

(4) current or planned activities, in the subject areas and their possible impacts on the Florida grasshopper sparrow.

Final promulgation of the regulation on the Florida grasshopper sparrow will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Delany, M.F., and J.A. Cox. 1985. Florida grasshopper sparrow status survey. Unpublished Report Prepared for U.S. Fish and Wildlife Service, Jacksonville, Florida. 21 pp plus tables and figures.

Howell, A.H. 1932. Florida bird life. Coward-McCann, New York, N.Y., 579 pp.

Kale, H.W., II. 1978. Rare and endangered biota of Florida, Vol. 2—Birds. Univ. Florida Presses, Gainesville, 121 pp.

Mearns, E.A. 1902. Description of three new birds from the southern United States. Proc. U.S. Nat. Mus., 24:915–926.

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Nicholson, W.H. 1936. Notes on the habits of the Florida grasshopper sparrow. Auk, 53:318–319.

Smith, R.L. 1968. Grasshopper Sparrow. Pp. 725–745 *in* O.L. Austin, Jr., ed. Life Histories of North American Cardinals, Grosbeaks, Buntings, Towhees, Finches, Sparrows, and Allies. U.S. Nat. Mus., Bull 237, Part 2.

Author

The primary author of this proposed rule is John L. Paradiso, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2508 or FTS 946–2580).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	[illegible] population where endangered or threatened	Status	When listed	Critical habitat	Special rules
BIRDS							
Sparrow, Florida grasshopper	*Ammodramus savannarum floridanus*	U.S.A. (FL)	Entire	E		[illegible]	NA

Dated: December 4, 1985.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–29964 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 243
Wednesday, December 18, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Environmental Statements; Caddo Creek Watershed, Texas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Enironmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conversation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Caddo Creek Watershed, Hunt and Collin Counties, Texas.

FOR FURTHER INFORMATION CONTACT: Billy C. Griffin, State Conservationist, Soil Conservation Service, 101 South Main Street, Temple, Texas 76501–7682, telephone (817) 774–1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Billy C. Griffin, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include financial assistance and accelerated technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above. address. Basic data developed during the environmental assesment are on file and may be reviewed by contacting Billy C. Griffin.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 10, 1985.

Gene C. Vittetoe,

State Conservation Engineer.

[FR Doc. 85–29862 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Statements; Crow Creek Watershed, Arkansas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service; U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Crow Creek Watershed, St. Francis County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Jack C. Davis, State Conservationist, Soil Conservation Service, 2405 Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, telephone (501) 378–5445.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jack C. Davis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection which provides accelerated technical and financial assistance for installing land treatment measures to control erosion. Land treatment measures include the no-tillage method of crop production, terraces with underground outlets, diversions, waterways, land smoothing, and contour farming.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jack C. Davis.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 9, 1985.

Jack C. Davis,

State Conservationist.

[FR Doc. 85–29865 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Fulton County Landfill Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Fulton County Landfill RC&D Measure, Fulton County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal

Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614) 469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environmental. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment of 12.5 acres of a severely eroding closed landfill. Planned works of improvement include the installation of a diversion and grade stabilization structure and the shaping, grading, and seeding of the 12.5 acres.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

December 11, 1985.

[FR Doc. 85–29903 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Gallia County Fairgrounds Flood Prevention RC&D Measure, Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guideline (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Gallia County Fairgrounds RC&D Measure, Gallia County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614) 469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for flood prevention on the Gallia County Fairgrounds property to eliminate damage to the property and facilities and increase the use of the fairgrounds. Planned works of improvement include the removal of three downstream culverts and the removal of 1400 feet of downstream woody vegetation that is restricting flow.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

December 11, 1985.

[FR Doc. 85–29904 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Kiser Lake Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guideline (40 CFR Part 1500); and the Soil Conservation Service Guidelined (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Kiser Lake RC&D Measure, Champaign County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservetionist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614) 469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment along a channel leading into Kiser Lake. Planned works of improvement include the installation of glaciated boulders in the bottom and sides of the channel, a grouted rock chute, and 1.2 acres of critical area seeding.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

December 11, 1985.

[FR Doc. 85–29905 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Prairie Creek Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Convervation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Prairie Creek RC&D Measure, Henry County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment along 6800 feet of eroding and slipping streambanks that are causing severe erosion and sedimentation problems. Planned works of improvement include the installation of rock rip-rap at selected locations and the selected shaping and seeding of the streambanks.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

December 11, 1985.

[FR Doc. 85–29906 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Rocky Fork Lake Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rocky Fork Lake RC&D Measure, Highland County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment along 5000 feet of eroding shoreline on Rocky Fork Lake. Planned works of improvement include the installation of 5000 feet of rock rip-rap and critical area seeding.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

December 11, 1985.

[FR Doc. 85–29907 Filed 12–17–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; Ziegler Group Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Ziegler Group RC&D Measure, Fulton County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment of a 100-acre eroding cropland watershed that is causing a county road to be flooded and damaged by sediment. Planned works of improvement include the installation of water and sediment control basins, a change to less intensive crop rotation, and the use of conservation tillage.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill

single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Marshall D. Edens,

Assistant State Conservationist (WR).

[FR Doc. 85-29908 Filed 12-17-85; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on January 10, 1986, at the U.S. Commission on Civil Rights, 230 S. Dearborn Street, Room 3280, Chicago, Illinois. The purpose of the meeting is to plan a public forum on hate group violence.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzburg or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7171, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least fives (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-29927 Filed 12-17-85; 8:45 am]

BILLING CODE 6335-01-M

Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m., on January 14, 1986, at the Federal Building, 444 S.E. Quincy, Room 201, Topeka, Kansas. The purpose of the meeting is to discuss the status of civil rights issues in Kansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett Loomis or Melvin Jenkins, Director of the Central States Regional Office at (816) 374-5253, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-29928 Filed 12-17-85; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Subcommittee on Education to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on January 6, 1986, at the Anne Arundel County Board of Education, 2644 Riva Road, Conference Room, Annapolis, Maryland. The purpose of the meeting is for the Subcommittee on Education to continue planning a community forum on equity issues in special education.

Persons desiring additional information, or planning a presentation to the Subcommittee, should contact Committee Chairperson, Loretta Johnson or John I. Binkley, Director of the Mid-Atlantic Regional Office at (202)254-6717, (TDD 202/254-5461). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-29929 Filed 12-17-85; 8:45 am]

BILLING CODE 6335-01-M

Montana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Montana Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 2:00 p.m., on February 14, 1986, at the Northern Hotel, 1st & Broadway, Billings, Montana. The purpose of the meeting is to review a briefing memorandum on the Harlem School District and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Betty L. Babcock or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844-2211, (TDD 303/844-3031). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 12, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-29930 Filed 12-17-85; 8:45 am]

BILLING CODE 6335-01-M

Vermont Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m., on January 9, 1986, at the Holiday Inn, Blush Hill Road, Waterbury, Vermont. The purpose of the meeting is to discuss data-gathering and other aspects of the Committee study of civil rights laws and enforcement in Vermont.

Persons desiring additional information, or planning a presentation to the Committee, should contact

BEST COPY AVAILABLE

Committee Chairperson, Kenneth Holland or Jacob Schlitt, Director of the New England Regional Office at (617) 223–4671. (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 13, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–29931 Filed 12–17–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Interviewer Record/Follow-up Record/Monthly Noncertainty Letters
Form Number: Agency-B–645, B–646, B–647; OMB—0607–0067
Type of request: Revision of a currently approved collection
Burden: 29,580 respondents; 4,006 reporting hours
Needs and uses: This survey collects data from nonemployers and newly opened retail and service businesses, whose employee identification numbers have not yet been subjected to the list sample.
Affected Public: Businesses or other for-profit institutions and small businesses or organizations
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: December 11, 1985.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 85–29963 Filed 12–17–85; 8:45 am]

BILLING CODE 3510–07–M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1986 National Content Test—Content Reinterview
Form number: Agency—DE–11, DE–12; OMB–NA
Type of request: New Collection
Burden: 8,000 respondents; 1,500 reporting hours
Needs and uses: This survey will be used to assure the accuracy and consistency of reported information collected in the National Content Test.
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—1984 Panel Wave 9
Form number: Agency—SIPP–4900, SIPP–4903, SIPP–4905; OMB–0607–0425
Type of request: Revision of a currently approved collection
Burden: 32,760 respondents; 16,380 reporting hours
Needs and uses: The results of this survey will be used to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs.
Affected public: Individuals or households
Frequency: One time only
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—1985 Panel Wave 5
Form number: Agency—SIPP–5500, SIPP–5505(L), SIPP–4903/5503; OMB–0607–0425
Type of request: Revision of a currently approved collection
Burden: 32,760 respondents; 16,380 reporting hours
Needs and uses: The results of this survey will be used to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs.
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: December 12, 1985.

Edward Michals,

Department Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 85–29889 Filed 12–17–85 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Semiconductor Dependency; Change in Meeting Place and Invitation to Provide Information and Views

Summary

The notice for the Defense Science Board Task Force on Semiconductor Dependency meeting on 9 January 1986 in the Pentagon as published in the **Federal Register** (Vol. 50, No. 231, Monday, December 2, 1985, FR Doc. 85–28600) has been changed to 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202. In all other respect the previous notice remains unchanged.

In accordance with the guidance provided by the Terms of Reference enumerated below, the Defense Science Board Task Force on Semiconductor Dependency will address the impact of possible dependancy of the U.S. Military on foreign sources for semiconductor devices.

Individuals or organizations desiring to provide information and views to the Task Force on the subject should send not only written information but also

justification as to why the information would be in the best interest of the Task Force pursuits explained below. The material should be sent to Col. Donald W. Derrah, USA, Defense Science Board, OUSDRE, Room 3D1020, The Pentagon, Washington, D.C. 20301–3140.

Terms of Reference

You are requested to organize a Defense Science Board Task Force to address the impact of possible dependency of the U.S. military on foreign sources for semiconductor devices.

To an increasing extent, semiconductor devices are being employed in U.S. military systems of virtually all types. Applications include missiles, aircraft, spacecraft, command and control systems, fire control, etc. In the past the U.S. has possessed a burgeoning domestic semiconductor industry to serve as a source of these critical components for military systems. Recent events in the semiconductor industry, however, caused in part by increasing foreign competition, appear to threaten the long-term viability of major segments of the U.S. industrial base in this area. Whether the domestic semiconductor industry can (and should) continue to be the principal supplier of such electronics to the Department of Defense and to its systems contractors is a matter of some importance as well as uncertainty.

Accordingly, the Defense Science Board Task Force on Semiconductors is requested to conduct an assessment addressing, but not limited to, the following questions:

1. To what degree is U.S. military capability dependent upon the use of semiconductor devices insofar as systems in production or previously deployed are concerned?

2. To what extent are domestic sources currently available to supply the semiconductor devices incorporated in operational and production military systems?

3. What is the projected trend for the availability in peacetime, mobilization, and wartime of a domesitc supply of semiconductor devices for military applications?

4. Is it essential that domestic fabrication sources be available for semiconductor devices to be used in U.S. military systems? Must these sources be in operation during peacetime? Is stockpiling a practicable alternative?

5. What is the projected trend for the U.S. semiconductor industry with respect to its ability to stay at the leading edge of the semiconductor device state of the art? What requirements are imposed by the demand to advance or stay abreast of the state of the art in semiconductor devices?

6. What, if any, specific actions should be undertaken to assure an adequate supply of such devices and semiconductor technology for use in defense systems?

Although the semiconductor memory market is a principle area of intended focus, the study should include whatever breadth within the semiconductor field that is deemed appropriate by the Task Force itself.

Administrative Approach

The Semiconductor Dependency Task Force is sponsored by Deputy Under Secretary of Defense for Research and Engineering (Research and Advanced Technology). Mr. Norman R. Augustine, Defense Science Board Member, has agreed to Chair the Task Force. The Executive Secretary will be Mr. Egbert D. Maynard and the DSB staff representative will be Colonel Donald W. Derrah, USA. It is requested that the study be initiated at the earliest possible time. In order to assure that input is received from organizations intimately involved in the day-to-day semiconductor production field, it is requested that an industrial consultation group be established to augment the Task Force itself. It is considered that the subject matter of this study does not involve "particular matters" within the meaning of Section 208 of Title 18, U.S. Code.

Linda M Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 13, 1985.

[FR Doc. 29962 Filed 12–17–85; 8:45 am]

BILLING CODE 3810-01-M

President's Blue Ribbon Commission on Defense Management; Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of closed meeting.

SUMMARY: The President's Blue Ribbon Commission on Defense Management announces a forthcoming meeting beginning at 8:30 a.m. on January 6 and 7, 1986, at 735 Jackson Place, NW., Washington, DC 20503.

Discussion during the meeting will include classified matters of national security and other matters which cannot be addressed in open forum throughout. Such discussions cannot reasonably be segregated for separate open and closed sessions without defeating the effectiveness and purpose of the overall meeting. Accordingly, consistent with section 10(d) of Pub. L. 92–463, the "Federal Advisory Committee Act," and section 552b(c)(1), (c)(4), and (c)(9)(B) of Title 5, United States Code, this meeting will be closed to the public.

AGENDA: The Commission will meet in task force, planning, and executive sessions to continue its consideration of defense management policy and procedures and its preparation of a report to the President on acquisition and procurement issues.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert E. Hetu (Public Affairs), 1201 Pennsylvania Avenue, NW., Suite 700A Washington, DC 20004. Telephone (202) 638–0799 or (202) 395–3198.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 13, 1985.

[FR Doc. 85–29961 Filed 12–17–85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Proposal To Allocate Excess Capacity in Abiquiu Reservoir, NM; Conservation Storage and Allied Purposes

AGENCY: US Army Corps of Engineers, Albuquerque District, DOD.

ACTION: Intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. *Study Objectives and Alternatives.* The Albuquerque District is reactivating an earlier study of potential allocation of excess capacity in the existing Abiquiu Reservoir, with the objective of evaluating additional conservation storage of both imported and native waters. This action was requested by members of the Rio Grande Compact Commission, the City of Albuquerque, and the County of Los Alamos, and was largely prompted by the regional need for additional long-term storage of San Juan—Chama Diversion Project allocations which are surplus to immediate needs. An additional factor is the need to provide a flood control buffer in Elephant Butte Reservoir to protect the city of Truth or Consequences by storing additional water in Abiquiu Reservoir. The reactivated study will, therefore, consider allocation of the project's excess capacity for conservation storage for water supply and allied purposes. Study objectives that will be considered in addition to water supply include the preservation, conservation, and

enhancement of biological, cultural, recreational, social, and aesthetic values; flood control; and hydropower. Additional objectives may be added as the study progresses.

Storage alternatives in Abiquiu Reservoir at this time include conservation storage to the reservoir's maximum capacity, partial storage, and the no-action alternative. Additional alternatives may be developed during the course of the study. The formulation and evaluation of alternatives comprise feasibility level studies and will culminate in a recommendation that best accommodates the needs and desires of the public.

2. *Public Involvement and Interagency Coordination.* Coordination will be maintained with both public and private concerns having jurisdiction or an interest in land and water resources in the Rio Chama and Rio Grande Valleys. Formal public involvement will include public meetings and public and agency coordination. All interested parties will be notified of the time, date, and location of meetings and invited to submit comments on the DEIS when it is circulated for review.

The planning effort will be coordinated with the United States Fish and Wildlife Service pursuant to the requirements of the Fish and Wildlife Coordination Act and the Endangered Species Act and the National Park Service pursuant to the requirements of the Wild and Scenic Rivers Act. Consultation with the Advisory Council on Historic Preservation and the New Mexico State Historic Preservation Officer will continue pursuant to the National Historic Preservation Act and the Preservation of Historic and Archeological Data. Also, special land and water classifications and uses will be coordinated with responsible state and federal agencies.

3. *Significant Issues to be Analyzed.* Significant issues to be addressed and analyzed in the DEIS include the effect of additional water storage on regional water needs and economic development, flood protection, biological resources, recreational facilities and uses, special land and water classifications, cultural resources, social and economic welfare, land use, and aesthetic values. Also, if necessary, the development of mitigative measures will be discussed.

4. *Public Review.* The presently estimated date that the DEIS will be circulated for public review is December 1986.

5. *Further Information.* Questions regarding the study and the DEIS may be directed to: Mr. Mark Sifuentes, USAED, Albuquerque, P.O. Box 1580, Albuquerque, New Mexico 87103. Phone: Comm (505) 766–3577, FTS 474–3577.

Dated: December 10, 1985.

Edward D. Postell,

Major, CE, Deputy District Engineer.

[FR Doc. 85–29886 Filed 12–17–85; 8:45 am]

BILLING CODE 3710-KK-M

DEPARTMENT OF EDUCATION

Magnet Schools Assistance Program; Withdrawal of Application Notice

AGENCY: Department of Education.

ACTION: Withdrawal of Application Notice.

On December 3, 1985, at 50 FR 49595, an application notice was published establishing the closing date for the transmittal of applications for noncompeting continuation projects for fiscal year 1986 under the Magnet Schools Assistance Program. That notice is withdrawn.

On November 22, 1985, the President signed the National Science, Engineering and Mathematics Authorization Act of 1986, Pub. L. 99–159, which includes four amendments to the Magnet Schools Assistance Act (Act). In particular, the prohibition in the Act on secular humanism instruction has been deleted and the provision of the Act describing the authorized uses of funds has been significantly changed. Because these amendments apply to the fiscal year 1986 continuation awards which will be made under this program, an application notice announcing the new closing date for these continuation projects will be published early in 1986 with a Notice of Proposed Rulemaking amending those sections of the magnet schools regulations which are affected by the new legislation.

FOR FURTHER INFORMATION CONTACT: For further information contact M. Patricia Goins, Division of Educational Support, U.S. Department of Education (Room 2023, FOB–6), Mail Stop 6264, 400 Maryland Avenue, S.W. Washington, D.C. 20202. Telephone: (202) 472–7960. (20 U.S.C. 4051–4062)

Dated: December 13, 1985.

(Catalog of Federal Domestic Assistance Number 84.165, Magnet Schools Assistance Program)

Lawrence F. Davenport,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 85–29919 Filed 12–17–85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory and Coordinating Council on Bilingual Education; Meeting

AGENCY: National Advisory and Coordinating Council on Bilingual Education, Ed.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: January 27–28, 1986, Business Meeting 9:00 a.m. to 4:30 p.m. The business meeting will be held at: The U.S. Department of Education, Federal Office Building Number (6), Room 5026, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 245–2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under Section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public. The proposed agenda includes the following:

I. Call to Order
II. Roll Call.
III. Approval of Minutes from Previous Meeting.
IV. Introduction of Visitors.
V. Presentation of Information by Director of OBEMLA or Designee.
VI. Presentation of Information by General Public or Organizations (Limited to 5 minutes).
VII. Committee Assignments.
VIII. Old Business.
IX. New Business.
X. Presentations of Information by Members of the General Public on Items for Possible Future Action by the Council.
XI. Meetings of Council Committees.
XII. Council Reconvenes.
XIII. Adjournment.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 8:00 a.m.–4:30 p.m.

Dated: December 12, 1985.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85–29890 Filed 12–17–85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory and Coordinating Council on Bilingual Education; Meeting

AGENCY: National Advisory and Coordinating Council on Bilingual Education, Ed.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: February 10–11, 1986, Business Meeting 9:00 a.m. to 4:30 p.m. The business meeting will be held at: The U.S. Department of Education, Federal Office Building Number (6), Room 5026, 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 245–2600.

SUPPLEMENTARY INFORMATION: The National Advisory and Coordinating Council on Bilingual Education is established under Section 752(a) of the Bilingual Education Act (20 U.S.C. 3282). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public. The proposed agenda includes the following:

I. Call to Order.
II. Roll Call.
III. Approval of Minutes from Previous Meeting.
IV. Introduction of Visitors.
V. Presentation of Information by Director of OBEMLA or Designee.
VI. Presentation of Information by General Public or Organizations (Limited 5 minutes).
VII. Committee Assignments.
VIII. Old Business.
IX. New Business.
X. Presentations of Information by Members of the General Public on Items for Possible Future Action by the Council.
XI. Meetings of Council Committees.
XII. Council Reconvenes.
XIII. Adjournment.

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporter's Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, Monday through Friday from 8:00 a.m.–4:30 p.m.

Dated: December 12, 1985.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 85–29891 Filed 12–17–85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Variable Industrial Power Rate, Public Hearings, and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice. *BPA File No.:* VI–86. BPA requests that all comments and documents which become part of the Official Record compiled in the process of developing a variable rate based on the market price of aluminum for BPA's direct-service aluminum industrial customers contain the file number designation VI–86.

SUMMARY: In the Pacific Northwest, BPA serves 15 direct-service industrial customers (DSI) that produce various chemicals, metals, pulp and paper, and aluminum. The aluminum companies account for 90 percent of the electric power purchased by the DSIs. Of the 12 primary aluminum producers in the United States, seven have smelters in the Pacific Northwest. In recent years, the amount of electric power demanded by the aluminum producers has fluctuated dramatically due, in part, to an increase in the volatility of the price of aluminum.

The volatility of the DSI load in recent years has caused problems for BPA and the Pacific Northwest region. BPA has recently concluded an analysis of mid- to long-term policy and rate options available to the Administrator addressing the problems caused by fluctuations in DSI demand for electricity (the DSI Options Study). Based on the results of the Study and public comment, the Administrator concluded that two of the options should be pursued further: a variable power rate linked to the price of aluminum, and limited financial support for conservation/modernization at DSI plants. In addition, the DSI Option Study announced BPA's decision to initiate a formal rate process to consider the design of a long-term link between rates to the DSIs and rates to preference customers (IP–PF link), a concept the DSIs proposed during the 1985 rate proceeding. The Administrator, in the 1985 rate proceeding, agreed to facilitate development and adoption of a long term policy establishing the relationship between the IP and PF rate schedules.

BPA is proposing a variable rate for its aluminum smelter industrial customers that is tied to the market price of aluminum. This rate option will undergo a formal hearing mandated by section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (Pacific Northwest Power Act). A single 7(i) process will be held to allow for public participation in the development of the variable rate and IP–PF link. A separate process will be held to develop the conservation/modernization proposal.

Opportunities will be available for interested persons to review the proposed rate design and the supporting studies, to participate in hearings, and to submit written comments. During the development of the final rate design, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final proposed rate design differing from the design proposed in this Notice. The rate design will be filed with the Federal Energy Regulatory Commission (FERC) for confirmation and approval.

Responsible Official: Ms. Shirley R. Melton, Director, Division of Rates, is the official responsible for developing a Variable Industrial Power rate schedule.

DATES: Persons wishing to become a formal "party" to the proceedings must so notify BPA in writing. The notification must be received by January 6, 1986, and should be addressed as follows: Hearing Officer (VI–86)—APR, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. Customers of BPA who provide notice

are parties of right. Others may become parties by demonstrating in their notice and at the prehearing conference that they would represent a significant and otherwise unrepresented interest. The notice should contain: (1) The name of the entity claiming status as a party; (2) the person who will be representing the party; (3) whether the person or entity claiming status as a party has a contractual relationship with BPA that could be affected by the proposed rates; (4) if no contractual interest exists, the interest the person believes would be served by the person or entity being a party. All timely applications will be ruled on by the Hearing Officer.

A prehearing conference, required by the rate procedures, will be held before the Hearing Officer at 9 a.m., in the cafeteria of Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. on January 6, 1986.

During the prehearing conference, dates will be set for the presentation of direct cases, rebuttal cases, cross-examination, oral argument, and briefs. A notice of the dates and times of the hearing will be mailed to all parties of record. All formal hearing sessions after the prehearing conference will be held in the cafeteria at Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon.

A series of public field hearings regarding BPA's proposal will be held at various locations around the region. The field hearings, like the rest of the section 7(i) hearings process, will be open to the discussion of both the proposed variable rate and the proposed IP–PF rate link methodology. Both the public's comments contained in a verbatim transcript of the field hearings and all written comments received before the close of comment deadline will be made a part of the Official Record. Presentation of testimony and evidence from formal parties will not be allowed at the field hearings. Registration for the field hearings will be at 7 p.m. and the hearings will begin at 7:30 p.m. The dates and locations are:

January 27, 1986—Thunderbird Motor Inn-Jantzen Beach, 1401 North Hayden Island Drive, Portland, Oregon
January 28—City Hall Council Chambers, West 808 Spokane Falls Boulevard, Spokane, Washington
January 29—Columbia Falls High School Auditorium, Columbia Falls, Montana
January 30—Alki Room, Seattle Center, Seattle, Washington
February 3—Portage Inn, 3223 Frontage Road, The Dalles, Oregon

Written comments may be submitted until the close of the hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice.

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement office, at the address above. Telephone numbers, voice/TTY, for the Public Involvement office are: 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside of Portland; 800–547–6048 for Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California.

Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6959.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Moutana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. George T. Reich, Acting Puget Sound Area Manager, 415 First, Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376, Box 035, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION: A study that explains the variable rate in more detail will be available December 23, 1986. Requests may be made of the Public Involvement office at the above address or by calling the documents request line: 800–841–5867 for Oregon; 800–624–9495 for other Western states. Callers will reach a recorded message where they may leave a request for the "Variable Rate Study."

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I. Background

In developing the proposed Variable Industrial Power (VI–86) rate, BPA considered revenue and load impacts, environmental impacts, revenue stability, and statutory obligations. The environmental impacts of all three proposals, conservation/modernization, a variable rate, and the IP–PE link, will be reviewed in a single environmental impact statement (EIS). A draft will be available by mid-January 1986. The availability of the EIS will be announced in a later **Federal Register** Notice.

A. Statutory Provisions

Design of a variable rate for the DSIs must comport with BPA's statutory rate directives contained in applicable legislation.

1. General Rate Guidelines

Section 6 of the Bonneville Project Act, 16 U.S.C. 832e, requires that the Administrator prepare schedules of rates and charges for electric energy sold to purchasers to be effective upon confirmation and approval by the FERC. Section 6 directs the Administrator to establish rates with a view toward encouraging the widest possible diversified use of electric energy.

The Federal Columbia River Transmission System Act (Transmission Act), 16 U.S.C. 838, contains requirements similar to those of the Bonneville Project Act. The Transmission Act provides three specific guidelines for the establishment of rates by the Administrator: (1) To set rates with a view toward encouraging the widest possible diversified use of electric power a tthe lowest possible rates to consumer consistent with sound business principles; (2) to set rates with regard to the recovery of the costs of producing and transmitting electric power, including the amortization of the capital investment allocated to power over a reasonable period for years; and (3) to set rates at levels which produce such additional revenues as may be required to pay when due the principal, premiums, discounts, expenses, and interest in connection with bonds issued under the Transmission Act, including

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amounts required to establish and maintain reserve accounts.

The Flood Control Act of 1944 directs that the sale of electric power from certain reservoir project take place "in such a manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles." 16 U.S.C. 825s. The Act also provides that "rate schedules should be drawn having regard to the recovery . . . of the cost of producing and transmitting such electric energy." 16 U.S.C. 825s.

The Pacific Northwest Power Act, 16 U.S.C. 839e, provides additional rate guidelines. Section 7 of the Pacific Northwest Power Act directs the Administrator to establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. BPA has an obligation under section 7(a)(1) of the Pacific Northwest Power Act to establish rates in accordance with sound business principles to recover costs "associated with acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (FCRPS) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law." Specifically, BPA is required to set rates to produce revenues that allow BPA to meet its United StatesTreasury obligation. Section 7(c)(2) directs the Administrator to design a rate for the DSIs that is equitable in relation to the retail industrial rates of the region's public agency and cooperative utilities, but stipulates that the rate shall not be "less than the rates in effect for the contract year ending on June 30, 1985."

2. Confirmation and Approval

The Pacific Northwest Power Act specifies in section 7(a)(2) that rates become effective upon final or interim approval by the FERC. The FERC must review the rate proposal to determine that (1) rates are sufficient to assure repayment of the Federal investment in the FCRPS over a reasonable number of years after first meeting BPA's other costs; (2) rates are based on BPA's total system costs; and (3) transmission rates equitably allocate the costs of the Federal transmission system between Federal and non-Federal power uses of the system. Pursuant to section 7(i)(6) of the Pacific Northwest Power Act, the Commission has promulgated rules found at 18 CFR Part 300 establishing procedures for the approval of BPA rates.

B. Current DSI Rates

Currently all DSIs purchase power under the Industrial Firm Power (IP–85) rate schedule. The IP–85 rate schedule contains a Standard rate (which averages 22.8 mills per kilowatthour), a Premium rate, and an Incentive rate. The Incentive rate provisions allow BPA to offer temporary discounts to the DSIs when such discounts increase BPA's total revenues based on the companies' commitments to purchase certain amounts of power from BPA. An Incentive rate was offered in September 1985 and terminates June 30, 1986. The average rate paid by the DSIs under the current Incentive rate offer is 18.8 mills per kilowatthour.

C. DSI Options Study

During the development of BPA's 1985 wholesale power rates, the issue of DSIs' long term viability was raised. The DSIs indicated that predictable and stable rates were necessary for any long term investment decisions. The Administrator was not prepared to adopt any long term rate policy or option during the course of the 1985 rate filing. Instead, shortly after the start of the 1985 rate case, the Administrator announced that a separate process, the DSI Options Study, would be undertaken to study various long-term DSI options.

BPA recently concluded this analysis of mid- to long-term policy and rate options available to the Administrator addressing the problems caused by fluctuations in DSI demand for electricity (the DSI Options Study). Within the Study five options were examined: (1) A variable DSI rate tied to the price of aluminum; (2) a reduction in current rates in return for increased power interruptibility rights in the future; (3) allowing the DSIs to purchase electricity from other suppliers who could provide more attractive rates; (4) financial support to encourage conservation/modernization investments in DSI plants; and (5) "no action" or pursuing a business-as-usual course. Based on the results of the Study and public comment, the Administrator concluded that two of the options should be pursued at this time: A power rate linked to the price of aluminum and limited financial support for conservation/modernization of DSI plants.

A number of factors influenced the Administrator's decision to pursue a variable rate. Probably the significant factor was the regional perception that BPA's actions to stabilize revenues from its aluminum customers should be directed more toward the "intermediate term" (5–10 years). BPA has brought its costs under control after the dramatic increases in costs from 1979 to 1983. Stabilizing BPA's costs will enable BPA's rates to be relatively stable through the rest of the century. Over the long term, this should allow the Northwest aluminum plants to be competitive in the world market as the costs for other smelters increase more rapidly.

The variable rate concept appeared to have the greatest intermediate term advantages. When implementation of a variable rate was modeled in the DSI Options Study, the variable rate consistently provided benefits to BPA's non-DSI customers greater than those in the "no action" case. Although the model results showed negative benefits to the DSIs, comments received from the DSIs suggested that other considerations outside the model made this option attractive to them. The primary advantage to the DSIs is that the predictability offered by a variable rate would enable the aluminum companies to maintain higher production levels, thereby reducing their average unit production costs by avoiding shutdown and startup costs. Further, the variable rate does not contain the same degree of uncertainty and time lag as the current Incentive rate. These factors would enhance the Northwest smelters' competitiveness position on the worldwide supply curve.

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Pacific Northwest Power Act, 16 U.S.C. 839e(i), provides procedures for encouraging participation of the public in the development of BPA's rates. In order to give the public notice of how it may participate in BPA's rates adjustment proceedings and to elaborate on the procedures established in section 7(i), BPA published on February 10, 1982, "Procedures Governing Bonneville Power Administration (BPA) Rate Adjustments" (46 FR 6240). These procedures were used in BPA's 1985 wholesale power and transmission rate adjustment proceedings. On March 23, 1984, BPA published its "Interim Amendment of Procedures Governing BPA Rate Adjustments" (49 FR 1090) and requested comments from interested parties. This amendment was necessary in order to comply with a judicial determination that BPA ratemaking proceedings are subject to the ex parte communication restrictions found in section 557(d) of the Administrative

Procedures Act. See 5 U.S.C. 557(d). BPA is the process of evaluating comments on the Interim Amendment. BPA's procedures, as amended on an interim basis, will be applicable to the section 7(i) hearings on the variable rate.

The Pacific Northwest Power Act prescribes a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments outside the hearings; and a decision by the Administrator based on the Official Record developed during the hearing process. BPA's procedures expand these requirements. They provide for publication of a notice of the proposed rates, a prehearing conference, a hearing, receipt of written comments, preparation of decision documents, a decision, and the transmittal of the decision with supporting documentation to the FERC.

The process begins with publication in the **Federal Register** of the notice of the proposed rates, which includes a discussion of the research, studies, analyses, and other available information in support of the proposed rates, the deadline for claiming status as a "party," and the beginning date for the hearing.

The procedures further provide for a prehearing conference if scheduled by the Hearing Officer. A prehearing conference has been scheduled before the Hearing Officer on January 6, 1986, 9 a.m., in the cafeteria of Jackson High School, 10625 SW. 35th Avenue, Portland, Oregon. Issues for discussion at the prehearing conference may include disputes concerning status as a party, discovery, the scope of cross-examination, hearing schedules, and other pertinent matters. BPA will prefile the testimony of its witnesses at or before the prehearing conference.

BPA will also convene a series of public field hearings at certain locations throughout the region. The purposes of these hearings is to present to interested members of the public a summary of BPA's rate proposal and to receive comments and information from the general public. The conduct of these hearings will be substantially the same as that of the public field hearings held for previous BPA rate adjustment proceedings. BPA staff will present a synopsis of the proposed rate followed by comments from the public. The public will then have an opportunity to present their comments on the proposed rates.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments and information from "participants," who are defined in the procedures as interested persons who may express their views, but who may not cross-examine witnesses or participate in the prehearing conference. Participants' written comments will be made part of the Official Record. The "participants" category of interest has been established to give the public the maximum opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties."

The second category of interest is that of a "party." A party may be considered a part of right because of its legal and/or contractual relationship with BPA, and hence its direct interest, or it may be a person seeking to represent a significant and otherwise unrepresented interest in the hearings. Parties may participate in the prehearing conference, may call and cross-examine witnesses, and are entitled to service of documents from all other parties. Parties also may be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where two or more parties have substantially like interest and positions, the Hearing Officer, to expedite the hearing, may order limitations on the number of attorneys (or parties appearing pro se) who will be permitted to cross-examine witnesses and file motions and objections on behalf of such parties. If a party demonstrates that it would not be represented adequately in the joint presentaton of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

To facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may order BPA, the parties, or both, to make witnesses available for clarifying sessions on technical matters. BPA expects that clarification sessions for BPA witnesses will be followed by the presentation of the parties' direct cases, clarification of the parties' witnesses, the presentation of rebuttal cases, cross-examination, oral argument, and briefing. The times for these proceedings will be established by the Hearing Officer at the prehearing conference and will be announced in a subsequent order that will be served upon all parties of record.

After the close of the hearings, BPA will file an Evaluation of the Record, which will address significant technical issues. The Hearing Officer will extend an opportunity to other parties to evaluate the record and analyze the pertinent law through briefs. The Hearing Officer also will extend an opportunity to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the record. Written comments may be included in the record if they are submitted before the close of the hearings. Procedures for submitting comments to BPA's Public Involvement Manager are detailed in the Dates and Addresses sections of this notice. Participants will be kept informed of activity at the formal hearings through the field hearings and regular summary letters.

The Official Record will include, among other things, transcripts of the hearings, written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the BPA Administrator for decision.

The Administrator will develop any final proposed Variable Industrial Power (VI–86) Rate Schedule based on the entire Official Record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for any final proposal will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file any final proposal and the record with the FERC for confirmation and approval.

III. Rate Schedule

Schedule VI–86 Variable Industrial Power Rate

Section I. Availability

This schedule is available to direct service industrial (DSI) customers for both the contract purchase of Industrial Firm Power and the purchase of Auxiliary Power if requested by the DSI customer and made available by BPA. This schedule is only available for that portion of a DSI's load used in primary aluminum reduction. DSIs electing to purchase power under this rate schedule must contractually agree to the terms and conditions under this rate schedule and waive future rights to purchase under the Industrial Firm Power Rate Schedule for ten years from the effective date of this rate schedule. This rate schedule shall be effective July 1, 1986. General Rate Schedule Provisions (GRSPs) effective July 1, 1985 a modified herein are applicable to this rate schedule.

Section II. Rate

This rate schedule provides for the energy charge to vary monthly in response to changes in the average price of aluminum in U.S. markets. The energy charge contained herein has already been reduced for the value of reserves provided by purchasers of Industrial Firm Power; therefore a separate billling adjustment for the value of reserve will not be made.

A. *Base Variable Industrial Rate.*—1. *Demand Charge.*

a. $5.28 per kilowatt of billing demand occurring during the Peak Period for all billing months.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.*

a. *Plateau Energy Charge.*

When the average monthly alumnium price is between the Lower Pivot Aluminum Price, which is initially 61 cents per pound, and the Upper Pivot Alumnium Price, which is initially 72 cents per pound, the monthly energy charge shall be 16.0 mills per kilowatthour of billing energy for all billing months.

b. *Reductions to Plateau Energy Charge.*

When the monthly aluminum price is less than the Lower Pivot Aluminum Price, the monthly energy charge shall be the greater of:

(1) the Plateau Energy Charge—(LP—AMP)*(LS) where LP = the Lower Pivot Aluminum Price, initially set at 61.0 cents per pound. AMP = the average monthly aluminum price in cents per pound determined pursuant to section III of this rate schedule.

$$\text{LS} = \text{lower slope} = \frac{\text{1 mill per kilowatthour}}{\text{1 cent per pound}}$$

or:

(2) The applicable Lower Rate Limit.

(a) *Fall Lower Rate Limit.* 12.0 mills per kilowatthour for the billing months August through February.

(b) *Spring Lower Rate Limit.* 7.0 mills per kilowatthour for the billing months March through July.

c. *Increases to Plateau Energy Charge.*

When the monthly aluminum price is greater than the Upper Pivot Aluminum Price, the monthly energy charge shall be the lesser of:

(1) the Plateau Energy Charge + (AMP—UP)*(US) where: AMP = the average monthly aluminum price in cents per pound determined pursuant to section III of this rate schedule. UP = the Upper Pivot Aluminum Price, initially set at 72.0 cents per pound.

$$\text{US} = \text{upper slope} = \frac{\text{0.5 mills per kilowatthour}}{\text{1 cent per pound}}$$

or;

2) the upper rate limit of 22.3 mills per kilowatthour.

Section III. Monthly Average Aluminum Price Determination

A. Calculation of the Monthly Average Aluminum Price.

The monthly average price of aluminum shall be determined by BPA for each billing month. For purposes of this rate schedule, the monthly average aluminum price shall be based on the U.S. market price. The price of aluminum in U.S. markets for the billing month shall be defined as the average U.S. Transaction Price for that calendar month reported by *Metals Week*, in cents per pound, rounded to the nearest tenth of a cent.

B. Notification of the Monthly Average Aluminum Price.

BPA shall provide written notification and documentation to purchases under this rate schedule of the monthly average aluminum price to be used for billing purposes as soon as possible after the 10th of the month and prior to rendering the final monthly bill. C. Changes in Aluminum Price Indicators

In the event that BPA determines that factors outside its control render the monthly average U.S. Transaction Price unusable as an approximation of U.S. market prices, BPA may develop and substitute another indicator for prices in U.S. markets. BPA shall notify interested parties of its intent to do so at least one complete billing month prior to substitution of another aluminum price indicator. In this notification, BPA shall explain the reason for the substitution and specify the replacement indicator it intends to use. BPA shall also describe the methodology to determine the monthly average aluminum price to be used for billing purposes under this rate schedule and shall provide the necessary data to be used in the calculation. Interested persons will have until close of business three weeks from the date of the notification to provide comments. Consideration of comments and more current information may cause the final methodoloy and the substitute aluminum price index to differ from those proposed. BPA shall notify all affected parties, and those parties that submitted comments, of its final determination prior to the billing month the new indicator shall be effective.

Section IV. Billing Factors

A. *Billing Demand.*

The billing demand for power purchased shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the BPA Operating Levels during the Peak Period for the billing month. The BPA Operating Level is defined in section III.A.10 of the GRSPs.

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Industrial Firm Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C. of the GRSPs.

B. *Billing Energy.*

The billing energy for power purchased shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

Section V. Adjustments to the Lower and Upper Pivot Aluminum Prices

Effective July 1, 1987, and every July 1 thereafter, the Lower and Upper Pivot Aluminum Prices in sections II.A.2.b and II.A.2.c, respectively, shall be subject to change for billing purposes.

A. *Implementation Procedures.*

Each year beginning in 1987 and every year thereafter, prior to April 1 BPA shall provide the purchasers under this rate schedule preliminary written estimates of changes to the Upper and Lower Pivot Aluminum Prices. By the last working day in the month of April, BPA shall notify interested parties in writing of BPA's revised determinations concerning changes to the Upper and Lower Pivot Aluminum Prices. BPA shall describe how the adjustments were determined and provide the data used in the calculations. In addition to written notification, BPA may, but is not obligated to, hold a public comment forum to clarify its determinations and solicit comments. Interested persons may submit comments on the determinations to BPA and other parties. Comments will be accepted until close of business on the third working Friday in May. Consideration of comments and more current information may result in the final adjustment differing from the proposed adjustment. By June 1, BPA shall notify all affected parties, and those parties that submitted comments, of the final determination.

B. *Inflation Escalator.*

An inflation escalator shall be calculated prior to the July 1 adjustment date following the procedures set forth below:

1. The average VI-86 rate for the previous calendar year, assuming the plateau energy charge and the Discount for Quality of First Quartile Service were in effect for the entire year and a load factor of 98.5 percent, will be divided by 22.8 mills per kilowatthour to obtain an Electricity Cost Index.

2. The average U.S. Producer Price Index for Intermediate Materials Less Foods and Energy (PP–FE) will be obtained for each month of the previous calendar year from the monthly report, *Producer Price Indexes*, published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). The index for each month used by BPA for this purpose will be the *revised* index for the month published by the BLS in the fourth month following each given month.

3. The revised PPI–FE for each month of the calendar year will be summed and divided by 12 to obtain the average PPI–FE for the year.

4. The average PPI–FE for the previous calendar year will be divided by the PPI–FE for calendar year 1985 to obtain an Other Cost Index.

5. A Weighted Average Cost Index will be calculated by averaging the Electricity Cost Index and Other Cost Index calculated above, using the following weights:

a. electricity cost, .25.

b. other costs, .75.

In the event that the PPI–FE series is discontinued or revised by the Bureau of Labor Statistics (BLS) in a way that BPA determines has rendered it unusable for calculating a consistent cost index, BPA will adjust it or substitute another similar price index available from the BLS, following advance notification and opportunity for public comment described in section V.A.

C. *Rolling Average Aluminum Price.*

Prior to the July 1, 1991 adjustment date, and each annual adjustment date thereafter, a five year average aluminum price shall be calcuated for the previous five calendar years following the procedures set forth below:

1. The average U.S. Transaction Price for aluminum reported by *Metals Week* for each of the first four calendar years of the five-year period shall be escalated to current dollars of the fifth year by multiplying the reported price by the ratio of (a) the Weighted Average Cost Index calculated for the fifth year to (b) the Weighted Average Cost Index for the given year. Both cost indexes are calculated pursuant to procedures described in section V.B.

2. The escalated U.S. Transaction Price for each of the first four calendar years, rounded to the nearest tenth of a cent, shall be added to the average U.S. Transaction Price of the fifth year reported by *Metals Week*. This sum shall be divided by five and rounded to the nearest tenth of a cent to obtain the 5-Year Average Price.

In the event that BPA determines that factors outside its control render the average U.S. Transaction Price for aluminum unusable for calculating average annual U.S. market prices, BPA will substitute another indicator of prices in U.S. markets following advance notice and opportunity for public comment as described in section V.A.

D. *Annual Adjustment Procedures.*

1. *For the period beginning July 1, 1987 and ending June 30, 1991.* The initial Lower and Upper Pivot Aluminum Prices in section II shall be multipiled by the weighted average cost index determined in section V.B.5. of this rate schedule to obtain adjusted Lower and Upper Pivot Aluminum Prices, rounded to the nearest tenth of a cent. These adjusted aluminum prices shall replace, respectively, the initial Lower and Upper Pivot Aluminum Prices and shall be used to determine the energy rate in the subsequent twelve billing months.

2. *For the period beginning July 1, 1991 and ending June 30, 1996.* To determine the Lower and Upper Pivot Aluminum Prices beginning July 1, 1991, the following calculations shall be made by BPA:

a. The Lower Pivot Aluminum Price shall be multiplied by the weighted average cost index determined in section V.B.5 of this rate schedule and rounded to the nearest tenth of a cent to obtain an adjusted Lower Pivot Aluminum Price.

b. If the adjusted Lower Pivot Aluminum Price determined in section V.D.2.a is less than the 5-Year Average Price determined pursuant to section V.C.2:

(1) the Lower Pivot Aluminum Price shall equal the adjusted Lower Pivot Aluminum Price determined in section V.D.2.a.

(2) the Upper Pivot Aluminum Price will be adjusted so that the 5-year Average Price will be equidistant between the Lower and Upper Pivot Aluminum Prices.

The Upper Pivot Aluminum Price shall equal: 2M—ALP; where M = the 5-Year Average price; ALP = the adjusted Lower Pivot Aluminum Price calculated in V.D.2.b.(1) above.

c. If the adjusted Lower Pivot Aluminum Price, determined in section V.D.2.a, is equal to or greater than the 5-Year Average Price determined pursuant to section V.C.2, then both the Lower and Upper Pivot Aluminum Prices are set equal to the greater of:

(1) 55.0 cents per pound escalated to current dollars of the fifth year of the five years used to calculate the 5-Year Average Price by applying the escalation factor determined in section V.B.5, or;

(2) the 5-Year Average Price.

These adjusted aluminum prices shall replace, respectively, the initial Lower and Upper Pivot Aluminum Prices and shall be used to determine the energy rate in the subsequent 12 billing months.

Section VI. Other Adjustments and Special Provisions

A. *Rate Adjustments.*

This rate shall be subject to adjustments in BPA's general wholesale power rate case following the procedures of section 7(i) of the Northwest Power Act. In such a process, the rate level shall be determined consistent with the rate directives contained in sections 7(c)(2) and 7(c)(3) of the Northwest Power Act and other applicable legislation. The Demand Charge, Plateau Energy Charge, and First Quartile Service Adjustment contained in this rate schedule shall be adjusted by a uniform percentage based on the percentage change in the overall rate level. The lower and upper rate limits contained in section II.A shall be adjusted by an amount equal to the change in the mills per kilowatthour in the Plateau Energy Charge net of the discount for the first quartile service. The Upper and Lower Pivot Aluminum Prices and corresponding slopes shall not be adjusted in the rate case; rather they shall be adjusted pursuant to the procedures described in section V of this rate schedule. The rate for unauthorized increase shall be separately determined in each rate case.

B. *Discount for Quality of First Quartile Service.*

When a purchaser requests that First Quartile service be provided with other than Surplus FELCC, a discount of 0.5 mills per kilowatthour shall be granted. This billing credit shall be applied to the monthly billing energy under section IV.B for all power purchases under this rate schedule. No credit shall be applied to those purchases subject to unauthorized increase charges under section VI.D of this rate schedule. By making such a request for discounted service, the purchaser waivers any right to First Quartile service with Surplus FELCC, and BPA shall have no obligation to conserve Surplus FELCC for future First Quartile service to any purchaser under the discounted rate.

C. *Curtailments.*

BPA shall charge the customer for curtailments of the lower three quartiles in accordance with the provisions of section 9 of the power sales contract. BPA shall apply the demand charge in effect at the time of the curtailment in the computation of the amount of the curtailment charge.

D. *Unauthorized Increase.*

1. *Rate of Unauthorized Increase.* 82.2 mills per kilowatthour.

2. *Application of the Charge.* During the billing month, BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor, that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offpeak Period.

E. *Power Factor Adjustment.*

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

F. *Outage Credit.*

Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any DSI to whom BPA is unable to deliver the full billing demand for all hours during the billing month due to an outage on the facilities used by BPA to deliver Industrial Firm Power. Such credit shall not be provided if BPA is able to serve the DSI's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs

Section VII. Resource Cost Contribution

In compliance with section 7(j) of the Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the VI–86 rate is 95 percent Exchange and 5 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.6 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 33.0 mills per kilowatthour.

Section VIII. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

IV. General Rate Schedule Provisions (GRSP)

The GRSPs effective July 1, 1985 are applicable to the VI–86 rate with modifications proposed for Auxiliary Demand and Operating Demand contained in section III.A.9 and III.A.10, respectively of the GRSPs.

1. Auxiliary Demand

Auxiliary Demand is the number of kilowatts of Auxiliary Power that a DSI requests and that BPA agrees to make available to serve a portion of the DSI's load during the period specified in the DSI's request. The DSI may request up to three levels of Auxiliary Demand during a biling month.

If BPA agrees to a request for Auxiliary Power but later becomes unable to supply such demand, the Restricted Demand for Auxiliary Power is deemed to be the Auxiliary Demand for such period of restriction. Auxiliary Power may be curtailed by the DSI according to the provisions of section 9(a) of the DSI's power sales contract.

BPA shall make Auxiliary Power available to Industrial Firm Power purchasers under the Industrial Firm Power Rate Schedule at the Standard Industrial Rate, except that the Industrial Incentive Rate shall apply if the DSI is making its purchases under the IP–85 Industrial Incentive Rate.

Auxiliary Power sales to DSIs purchasing under the Variable Industrial Rate Schedule shall be made at the rate determined pursuant to section II of the VI–86 Rate Schedule. Auxiliary Power sales to DSIs purchasing under the Special Industrial Rate will be made only at the Standard Special Industrial Power Rate.

2. BPA Operating Level

The BPA Operating Level is, for the purpose of these rate schedules and GRSPs, an hourly amount of industrial power (Industrial Firm Power or Special Industrial Power) for a DSI that is equal to the lowest of the following demands during that hour:

a. Operating Demand plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

The weighted average BPA Operating Level for the DSI can be detemined by summing the hourly BPA Operating Levels and dividing by the number of hours in the billing month.

Each DSI must request service from BPA for each billing month in accordance with the terms of the power sales contract. The requested level of service will be the BPA Operating Level, provided BPA does not need to restrict the DSI and provided BPA agrees to supply any requested Auxiliary Demand. Each requested level of service may include a designation for both the Peak Period and the Offpeak Period. A DSI may request and BPA may agree to a level of service for the Offpeak Periods other than that in the Peak Period. If a DSI does not separately designate a requested level of service for the Peak and Offpeak Periods, the BPA Operating Level will be the same for both periods. The BPA Operating Level is the basis for determining if a DSI has incurred an unauthorized increase.

Any DSI whose Measured Demand, before adjustment for power factor, during any one hour exceeds the BPA Operating Level for that hour shall be subject to unauthorized increase charges for each kilowatthour of unauthorized increase associated with each overrun.

Only the BPA Operating Level applicable during the Peak Period will be used in determining the Billing Demand for power purchased under the Industrial Firm Power Rate Schedule, the Variable Industrial Power Rate Schedule, and the Standard Rate under the Special Industrial Rate Schedule. During the Peak Period the BPA Operating Level may be no greater than the Operating Demand for the billing month unless the customer has requested, and BPA has agreed to supply, the Auxiliary Demand.

V. Rate Derivation and Design

1. Concept

BPA is proposing a Variable rate option for aluminum smelter loads which would provide a predetermined contractual tie between the price of BPA's power and the U.S. aluminum ingot price. Establishing a tie between input price (electricity) and output price (aluminum) will enhance the ability of aluminum producers to operate over the entire business cycle. With this type of rate, when the price of aluminum decreases (increases) so will the price of power, within certain limits. Decreasing the price of power when aluminum prices are low reduces the operating costs at the smelters and should encourage higher production levels than if a fixed rate were in place. This in turn should serve to reduce the cyclicality of smelter operations. Increasing the price of power during prosperous aluminum markets is intended to make up the decrease in BPA's revenues when the lower rate occur.

2. Definitions

Variable rate has the following parameters:

a. Plateau: A range of aluminum prices over which the price of power remains constant. The plateau electricity charge equals the Standard Industrial Firm Power rate on average.

b. Pivot Points: The Variable rate is designed with two pivot points: A lower pivot point and an upper pivot point.

d. Lower Pivot Point: The point on the plateau at which a further decrease in the market price of aluminum results in a decrease in the electricity price.

e. Upper Pivot Point: The point on the plateau at which a further increase in the market price of aluminum results in an increase in the electricity price.

f. Slope: The rate of change in the power rate to the DSSIs as a function of the change in the market price of aluminum.

g. Lower Slope: The rate of change in the price of electricity due to a change in the market aluminum price below the lower pivot point.

h. Upper Slope: The rate of change in the price of electricity due to a change in the market aluminum price above the upper pivot point.

i. Rate Limits: The point at which the electricity rate no longer changes in responses to a change in aluminum prices from the pivot points. The two rate limits establish the range of possible electricity prices under the Variable rate.

j. Lower Rate Limit: The limit below which a change in aluminum prices below the lower pivot point will not result in a change in the electricity rate. The lowest electricity rate possible under the Variable rate.

k. Upper Rate limit: The limit above which a change in aluminum prices above the upper pivot point will not result in a change in the electricity rate. The highest electricity rate possible under the Variable rate.

BEST COPY AVAILABLE

VI. Major Rate Issues

1. Goals of the Variable Rate

BPA has identified the following goals for the Variable rate.

a. Discourage aluminum plant closures during the short run, i.e., 1 to 3 years. The Variable rate is not intended to forestall closure of those plants that are not economic over the medium to long term at the Standard Industrial Firm Power (IP) rate.

b. Encourage high aluminum plant operating rates and discourage swing operations during BPA's surplus period.

c. Increase BPA's total revenues over the revenues anticipated if the Standard IP rate to the DSIs were to remain in effect. If possible, the average rate forecasted to be paid under the Variable rate option should equal the Standard IP rate.

2. Eligibility

Because the Variable rate is a function of the price of aluminum, this option is available only for aluminum smelter operations. Other aluminum operations (i.e., aluminum fabrication) and all nonaluminum DSI customers, are ineligible to purchase power at the Variable rate, but will continue to purchase power at the IP–85 rate and its successor rate schedules. Further, once a company has elected to purchase at the Variable rate, it is precluded from switching to the Industrial Firm Power rate for the duration of the Variable rate.

3. Terms of the Rate

The Variable rate is available on a voluntary basis for those aluminum smelters that elect to purchase power under this rate schedule. This rate schedule is available for 10 years from its effective date July 1, 1986.

4. Rate Plateau

The Variable rate contains demand and energy charges. The demand charge is time differentiated on a daily basis. There is no demand charge for deliveries during offpeak hours. The demand and plateau energy charges are based on the average IP–85 Standard rate of 22.8 mills per kilowatthour and assuming a 98.5 percent load factor. The plateau energy charge calculation includes credit for the value of reserves provided by BPA's right to restrict the DSI load and an adder for firm service to the first quartile of the DSI's load. The IP–85 Standard rate was determined in BPA's 1985 general rate proceeding and approved on an interim basis by the Federal Energy Regulatory Commission Order issued June 28, 1985 (Docket No. EF85–2011–000). The plateau energy charge is reduced 0.5 mills per kilowatthour for all energy purchased when the purchaser requests service with other than Surplus FELCC. The demand charge does not vary with changes in aluminum price. For simplicity, all the rate levels discussed hereafter are average rates, combining demand and energy charges including the value of reserves credit and the discount for first quartile service. The plateau energy charge initially remains unchanged when aluminum prices are between 61.0 cents per pound and 72.0 cents per pound.

5. Lower Rate Components

The lower pivot point, the lower slope and the lower rate limit constitute the lower rate components. The lower rate components define the parameters for rate reductions from the plateau.

The lower portion of the rate is designed so that when the market price of aluminum falls below the production costs (variable costs) at the region's highest-cost smelter, the price of electricity decreases. In the short run, a smelter will operate when the market price of aluminum is equal to or greater than the short-run variable cost of producing aluminum. When the price of aluminum is depressed, a smelter will reduce production costs by curtailing output. BPA has estimated the current short-run variable cost at the highest cost smelter to be approximately 61 cents per pound. This estimation is based on the costs that a smelter can avoid, in the short-run, if production is reduced or suspended. Short-run variable costs include a portion of alumina and labor costs, electricity costs, and a portion of other costs (i.e., transportation and other raw materials.)

For every 1 cent per pound decrease in the market price of aluminum below 61 cents per pound, the electricity rate would decrease 1 mill per kilowatthour. Since it is difficult to predict the extent to which aluminum prices would fall, the rate contains a lower rate limit, below which changes in aluminum prices do not result in changes in electricity prices. The lower rate limit is seasonally differentiated to recognize that BPA's revenues in alternative markets vary by season, primarily because of water conditions. In the spring, which is defined here as March through July, the lower rate limit (including demand and energy charges) initially is 13.8 mills per kilowatthour. In the remaining months, September through February, the lower rate limit initially is 18.8 mills per kilowatthour. The lower rate limits were established to balance recognition of BPA's alternative markets and the promotion of DSI loads. Seasonal differentiation should lessen the cost to BPA of DSI load fluctuations during very low aluminum prices.

6. Upper Rate Components

The upper pivot point, the upper slope and the upper rate limit form the upper rate components. The upper rate components increase the rate, enabling BPA to offset the revenue decrease on the lower portion of the rate.

The upper portion of the rate is designed so that the price of electricity increases after the market price of aluminum exceeds the long-run variable cost at the region's highest cost smelter. The long-run variable cost includes total alumina, labor, electricity, and other cost. The long-run variable cost does not include a return to equity nor does it include interest, depreciation, or amortization associated with plant investment in place at the time the rate is offered. BPA estimated the long-run variable cost of the highest cost smelter to currently be 72 cents per pound. The design of the upper portion of the Variable rate provides for the price of power to increase more gradually in response to an increase in aluminum prices than the speed at which the rate decreases on the lower portion of the rate. The rate is set so that a one cent per pound increase in the market price of aluminum above 72 cents per pound causes the electricity rate to increase one half mill per kilowatthour. This results in a sharing of the benefits of prosperous markets between BPA and the DSI. BPA revenues are higher than under a fixed tariff and the DSI's potential net earnings are not all lost to higher power rates.

The rate also contains an upper rate limit, above which changes in aluminum prices do not result in changes in electricity prices. The upper rate limit initially is 29.1 mills per kilowatthour, which is an equal difference in mills per kilowatthour from the plateau rate as the weighted average lower rate limit.

7. Annual Adjustments

The rate schedule provides for an annual adjustment of the upper and lower pivot aluminum prices on the anniversary date of the rate. During the first 5 years of the rate, August 1, 1987 through July 30, 1991, the pivot points would be adjusted annually for inflation. The inflation adjustment is based on a weighted average of changes in (1) U.S. producer costs for intermediate materials, excluding food and electricity, and (2) the regional cost of electricity to the DSIs. During the last 5 years of the Variable rate, August 1, 1991 through July 30, 1996, pivot points would be

adjusted annually to reflect both inflation and the average real aluminum prices that occurred during the previous 5 years that the rate was in effect. As a result of this last adjustment the size of the plateau may change. That is, the range of aluminum prices over which the plateau rate is in effect could become larger, smaller, or could disappear altogether. If low aluminum prices were to persist over the first 5 years, the plateau could collapse, creating a single pivot point rate. In this case the upper and lower pivot points would be the same. However, the single pivot point may not go below 55 cents per pound adjusted for inflation.

8. Rate Case Adjustments

The plateau rate level would be adjusted concurrently with adjustments to BPA's other wholesale power rates, following the procedures of section 7(i) of the Pacific Northwest Power Act, and subject to approval by the Federal Energy Regulatory Commission. The overall rate level would be determined following the rate directives contained in sections 7(c)(2) and 7(c)(3) of the Pacific Northwest Power Act and other applicable legislation. The demand and energy charges and first quartile service discount will be adjusted by a uniform percentage based on the percentage change in the overall rate level. The lower and upper rate limits will be adjusted based on the change in the mills per kilowatthour of the plateau energy charge less the discount for the first quartile service.

9. Treatment of Over (Under) Recoveries

If on an actual basis BPA over- or underrecovers its revenue requirement because of a variance between actual and forecasted DSI revenues, those over- (under-) recoveries will be handled according to BPA's cash management practices and will effect future rates in the same way as over- (under-) recoveries for other reasons.

There is a possibility that in developing the rates during general rate cases, the forecast of revenues from the Variable rate may differ from the forecast of revenues from the IP Standard rate. This difference will be included with the section 7(c)(2) delta and allocated to customers' rates. The section 7(c)(2) delta is the difference between the costs allocated to the DSIs and the revenues forecasted at the IP rate determined according to the section 7(c)(2) rate directives. Therefore, in every rate case BPA will develop its rates to recover its overall revenue requirement.

10. Take or Pay Obligations

The rate does not contain any additional take-or-pay provisions beyond the curtailment charge provided in section 9(c) of the DSI's Power Sales Contract. The Power Sales Contract states that when an industrial purchaser curtails power purchases below 75 percent of its Operating Demand, the purchaser shall pay BPA an additional charge based on a percentage of the demand charge currently in effect.

11. Implementation Date

BPA anticipates that the Variable rate will be effective July 1, 1986, although it is possible that the FERC will not grant interim approval until a late date. Currently, the aluminum smelters are purchasing power at the IP–85 Incentive rate offered in September 1985. The Incentive rate offer will expire June 30, 1986. BPA does not propose to offer the Variable rate prior to termination of the current Incentive rate.

12. Implementation

The Variable rate is available to aluminum smelters on a voluntary basis. Prior to the rate becoming effective, BPA will request that each regional smelter select either the VI–86 rate schedule or the IP–85 rate schedule and its successors. BPA proposes that this offer will only be made once. Once the choice is made a smelter is precluded from switching between rate schedules for 10 years from the effective date of the Variable rate.

The analysis conducted by BPA in support of the Variable rate assumes that all the regional smelters elect to purchase under this rate. Implementation of the Variable rate may not require participation of all regional smelters. BPA expects that most, if not all, the smelters will participate. The Administrator retains the discretion to determine whether the level of participation warrants actual implementation of a Variable rate once offered. BPA expects that after the VI–86 rate schedule is implemented, future IP–85 Incentive rate offers will not be made. BPA also expects that future IP rate schedules will not retain the incentive rate provision. In the event that the Administrator finds that the participation level is not sufficient to implement a Variable rate, a record of decision will be published and the Variable rate offer will be rescinded.

13. Revenue Test

In designing the Variable rate, BPA looked at the impact on total revenues and on revenues from the DSIs. Two revenue tests can be used in evaluating the Variable rate. One is whether the Variable rate increases BPA's total revenues over those received if the IP Standard rate were in place. A similar revenue test is employed when BPA determines the feasibility of implementing an incentive rate under the IP rate schedule. BPA's other customers will be held harmless from the Variable rate if the agency's total revenues are at least as high as with the IP Standard rate.

The other test is whether the Variable rate results in average revenue from the DSIs forecasted to be equal to the average IP Standard rate over the ten year period. Even if forecasted to recover the IP Standard rate, the Variable rate may not, in practice, accomplish this under all situations (i.e., prolonged periods of low aluminum prices) without an adjustment mechanism or some form of "truing-up" device. The annual adjustment procedures proposed by BPA enhance but do not insure the recovery of the average IP Standard rate over the 10 year period.

Issued in Portland, Oregon on December 9, 1985.

Robert E. Ratcliffe,

Acting Administrator.

[FR Doc. 85–29932 Filed 12–13–85; 3:06 pm]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Remedial Order; Shepherd Oil Inc. and Shepherd Trading Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Proposed Remedial Order to Shepherd Oil Inc. and Shepherd Trading Corporation.

SUMMARY: Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice of a Proposed Remedial Order which was issued to Shepherd Oil Inc. and Shepherd Trading Corporation at P.O. Box 100, Morristown, Arizona 85342. This Proposed Remedial Order alleges that incorrect volumes of exempt crude oil were reported in the Refiners Monthly Reports in violation of 10 CFR 211.66 (b) and (h) and 205.202 during the period May 1980 through December 1980 in the amount of $5,666,402.

A copy of the Proposed Remedial Order, with confidential information, if any, deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, ATTN: Sandra K. Webb, Director, One Allen

Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

Within fifteen (15) days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Houston, Texas, on the 26th day of November, 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 85-29873 Filed 12-17-85; 8:45 am]

BILLING CODE 6450-01-M

Proposed Consent Order With Edwin L. Cox & Berry R. Cox

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of proposed consent order and opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order with Edwin L. Cox & Berry R. Cox (Cox) and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATE: Comments by January 17, 1986.

ADDRESS: Send comments to: Sandra k. Webb, Director, Houston Office, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002.

FOR FURTHER INFORMATION CONTACT: Sandra K. Webb, Director, Houston Office, Economic Regulatory Administration, U.S. Department of Energy, One Allen Center, Suite 610, 500 Dallas Street, Houston, Texas 77002. Copies of the Consent Order may be obtained free of charge by writing or calling this office (713/229-3715).

SUPPLEMENTARY INFORMATION: On November 7, 1985, the ERA executed a proposed Consent Order with Cox. Pursuant to 10 CFR 205.199J, ERA will receive written comments on the proposed Consent Order for thirty (30) days following publication of this Notice. The ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order or issue the Consent Order as signed.

I. Background

Cox engaged in the production and sale of crude oil during the period June 1, 1979 through December 31, 1980. ERA audited Cox's compliance during this period with the Mandatory Petroleum Price and Allocation Regulations applicable to the production and sale of "newly discovered" crude oil. 10 CFR Part 212. As a result of this audit, disputes arose between Cox and DOE concerning Cox's compliance with applicable federal petroleum price regulations in its production and sale of "newly discovered" crude oil during the period covered by this Consent Order.

Cox and DOE each maintain that their respective positions on the legal issues underlying such disagreements are meritorious. However, to resolve the issues raised by the audit without further litigation, Cox and DOE would enter into this Consent Order. Cox would do so without admitting it has violated any provision of the Regulations. Except for those matters explicitly excluded therein, the Consent Order would resolve all administrative and civil judicial claims, demands, liabilities, or causes of action between DOE and Cox with respect to the matters and the time period covered by the audit.

II. The Consent Order

The proposed Consent Order has been entered into to resolve all civil and administrative disputes, claims and causes of action by DOE relating to Cox's compliance in its sales of "newly discovered" crude oil during the period of June 1, 1979 through December 31, 1980. Although Cox contends that in all respects it correctly construed and applied the applicable regulations, Cox has entered into this proposed Consent Order to avoid the expense of litigation and the disruption of business. DOE believes the Consent Order is in the public interest and provides a satisfactory resolution of the issues raised by its audit.

III. Refunds

Under the terms of the proposed consent Order, within ten days of the effective date of the Consent Order, Cox will pay the sum of $1,206,698 to DOE. The monies will be deposited in a suitable account for ultimate disposition by DOE.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 p.m., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the provisions of 10 CFR 205.9(f).

Issued in Houston, Texas, on November 26, 1985.

Sandra K. Webb,

Director, Houston Office, Economic Regulatory Administration.

[FR Doc. 85-29935 Filed 12-17-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA86-2-1-002]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

December 11, 1985.

Take notice that on December 4, 1985, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Substitute Eighth Revised Sheet No. 4

This tariff sheet is proposed to become effective January 1, 1986. Alabama-Tennessee states that the purpose of this filing is to reflect a correction in rates filed by Tennessee Gas Pipeline Company in its PGA filing to be effective January 1, 1986.

The tariff sheet submitted herewith provides for the following rates:

Rate schedule	Rate after current adjustment
G-1:	
Demand	D_1 $7.96 D_2 08.26¢
Commodity	12.85¢
Gas	282.55¢
SG-1:	
Commodity	21.41¢
Gas	332.14¢
I-1:	
Commodity	16.71¢
Gas	304.86¢

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December

20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29937 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-15-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 11, 1985.

Take notice that Columbia Gas Transmission Corporation (Columbia), on December 2, 1985, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective as follows:

November 1, 1985

Twelfth Revised Sheet No. 1
Second Revised Sheet No. 1A
Third Revised Sheet No. 16A1
Second Revised Sheet No. 16A2
Second Revised Sheet No. 45
Second Revised Sheet No. 45D
Original Sheets Nos. 45G through 45Q, constituting Rate Schedule GTS
Fourth Revised Sheet No. 65
Original Sheets Nos. 72F through 721, constituting Form of Service Agreement for Rate Schedule GTS

January 1, 1986

Third Revised Sheet No. 16A2

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until December 5, 1985.

The proposed changes were filed pursuant to an order issued by the Federal Energy Regulatory Commission on November 25, 1985, in Docket No. RP86-15, 33 FERC ¶ 61,259 (1985). The proposed changes would implement a new General Transportation Service (GTS) Rate Schedule for firm and interruptible transportation which, if effective, would supersede and cause the elimination of Columbia's existing interruptible Rate Schedules TS-1 and TS-2.

Copies of the filing were served upon the Company's jurisdictional customers, interested state regulatory commissions, and other relevant persons.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29938 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-14-001]

Columbia Gulf Transmission Co.; Proposed changes in FERC Gas Tariff

December 11, 1985.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on December 2, 1985, tendered for filing six (6) copies of the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to be effective on November 1, 1985:

Second Revised Sheet No. 1 (Table Of Contents)
First Revised Sheet No. 57
Original Sheet Nos. 73 thourgh 101 constituting Rate Schedule GTS-1
First Revised Sheet No. 116
Original Sheet Nos. 135 thourgh 156 constituting Rate Schedule GTS-2

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until December 5, 1985.

By order issued on November 25, 1985, in Docket No. RP86-14, the Commission accepted Columbia Gulf's transportation rate filing dated October 31, 1985, without suspension to be effective November 1, 1985. 33 FERC 61,259 (1985). The Commission's acceptance was made subject to the condition that Columbia Gulf file the terms and conditions under which it will provide transportation services pursuant to Part 284 of the Commission's Rules and Regulations within seven (7) days of the date of the order eliminating the proposed reservation fee on Columbia Gulf's Rate Schedule T-2. Accordingly, the Columbia Gulf tendered for filing GTS-1 and GTS-2 Rate Schedules under which it proposes to perform such transportation services.

Columbia Gulf states that the interim transportation rates of Rate Schedules GTS-1 and GT-2 have been derived from Columbia Gulf's currently effective interruptible transportation rates applicable to its Rate Schedules T-2 and T-3. The interim rates also reflect a reservation charge for firm transportation which has been developed in accordance with § 284.8(d) and in compliance with the Commission's order issued November 25, 1985. Columbia Gulf has requested any waivers necessary to make its requested rates effective November 1,1985. Upon the effectiveness of Rates Schedules GTS-1 and GT-2, Rate Schedules T-2 and T-3 will be cancelled, all as more fully explained in the filing.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protest should be filed on or before December 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia Gulf's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29939 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-119-000]

The Connecticut Light and Power Co.; Filing

December 11, 1985.

Take notice that on November 12, 1985, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Northfield Mountain Purchase Agreement between The Connecticut Light and Power Company, Western Massachusetts Electric Company (WMECO, and together with CL&P, the

NU Companies) and the Connecticut Municipal Electric Energy Cooperative (CMEEC) dated as of August 12, 1985.

CL&P states that the Purchase Agreement provides for a sale to CMEEC, on a weekly basis, of a percentage of capacity and related pondage from the NU Companies' Northfield Mountain Pumped Storage Hydro Electric Project (Project) commencing August 12, 1985 and terminating December 31, 1985.

CL&P requests that the Commission waive its standard notice period and permit the rate schedule to become effective on August 12, 1985.

CL&P states that the capacity charge rate for the Project is a rate determined on a cost-of-service basis for the entire Project. The station service charge is equal to the average cost of oil-fired generation on the system of the NU Companies for the prior month, multiplied by CMEEC's share of the Project's station service energy requirements.

Except for the weekly nature of the transactions, CL&P states that the services to be provided under the Purchase Agreement are the same as services provided by the NU Companies relating to a sale of capacity from the Project to the Braintree Electric Light Department pursuant to a rate schedule dated as of May, 1982. (Rate Schedule FERC Nos. CL&P 272 and WMECO 206).

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

WMECO has filed a Certificate of Concurrence in this docket.

Any person desiring to be heard or to protest said application should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, and 385.214). All such motions or protests should be filed on or before December 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-29921 Filed 12-17-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP82-394-004 et al.]

El Paso Natural Gas Co. et al.; Natural Gas Certificate Filings

December 10, 1985.

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Gas Company

[Docket No. CP82-394-004]

Take notice that on November 1, 1985, El Paso Natural Gas Company (El Paso), Post Officel Box 1492, El Paso, Texas 79978, filed in Docket No. CP82-394-004 a petition to amend the order issued March 11, 1983, in Docket No. CP82-394-000 pursuant to section 7(c) of the Natural Gas Act so as to authorized (i) an increase in the authorized aggregate natural gas exchange volumes between El Paso and Phillips Petroleum Company (Phillips) from 95,000 Mcf to 130,650 Mcf per day, (ii) the establishment of three new El Paso delivery points, and the modification of certain provisions necessary to clarify the exchange arrangement between the parties, all as more fully set forth in the petition to amend order which is on file with the Commission and open to public inspection.

El Paso states that it and Phillips propose to exchange additional quantities of natural gas from additional areas within Texas under the existing gas exchange agreement, dated June 18, 1982. It is explained that the proposal facilitates the continuing desire of both El Paso and Phillips to operate more effectively and efficiently their respective pipeline systems located in the Anadarko Basin and the Permian Basin areas in Texas. Moreover, El Paso desires to continue to aid Phillips by making quantities of natural gas dirctly available to Phillips at designated points on El Paso's system in order to meet certain of Phillips system requirements. Therefore, El Paso and Phillips have entered into an amendatory agreement dated May 20, 1985

Under the amendatory agreement between the parties El Paso has agreed to accept for the account of Phillips such volumes of natural gas, if any, up to 130,650 Mcf per day, as Phillips may tender to El Paso at three existing points of interconnection. El Paso states that the three existing points of interconnection are located at the discharge side of Phillips' Benchen plant at a point between the facilities of El Paso Hydrocarbon Company and El Paso in Upton County, Texas, Phillips Fullerton in Andrews County, Texas, and at an existing point of interconnection between the pipeline facilities of El Paso and Phillips in Pecos County, Texas, respectively. Said points are hereinafter referred to as the Benedum receipt point, the Fullerton plant receipt point and the Coates area receipt point. It is asserted that no new or additional facilities are required by any party in order to effectuate deliveries to El Paso at the existing Benedum plant receipt point, the existing Fullerton plant receipt point or the existing Coates area receipt point.

El Paso states that in exchange, it has agreed to deliver concurrently the proposed additional quantities of natural gas to Phillips at two existing delivery points between the facilities of El Paso and Westar Transmission Company, a Division of Cranberry Pipeline Corporation, in Pecos County, Texas and between the facilities of El Paso and Phillips in Gaines County, Texas, delivery point and the Phillips-Gaines delivery point, respectively, and at four proposed delivery points between the facilities of El Paso and Phillips located in Moore, Hutchinson and Gaines Counties, hereinafter referred to as the Zell, Sneed, Sanford and Demprey Booster delivery points, respectively. El Paso states that it would deliver a volume of natural gas thermally equivalent to the total volumes of natural gas delivered by Phillips to El Paso. It is asserted that no new or additional facilities are required by either party in order to effectuate deliveries by El Paso to Phillips at the existing Westar delivery point, to El Paso tap delivery point, and the Phillips-Gaines delivery point. However, in order to effectuate the delivery of natural gas by El Paso to Phillips at the proposal Zell, Sneed, Sanford and Dempsey Booster delivery points, El Paso proposes to construct and operate certain miner tap and valve facilities. El Paso states that the total estimated cost of those minor facilities prepared to be constructed and operated by El Paso to implement the Zell, Sneed, Sanford and Dempsey Booster delivery points, including contingency and filing fees, is $199,638.

El Paso says it would file, pursuant to Part 154 of the Commission's Regulations, the amendatory agreement, dated May 20, 1985, to special Rate Schedule X-63, FERC Gas Tariff, Third Revised Volume No. 2, upon receipt of the requested authorization.

Comment date: December 31, 1985, in accordance with the first subparagrpah of Standard Paragraph F at the end of this notice.

BEST COPY AVAILABLE

2. Columbia Gulf Transmission Company; Columbia Gas Transmission Corporation; Southern Natural Gas Company

[Docket No. CP80–72–005]

Take notice that on November 1, 1985, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, Columbia Gas Transmission Corporation (Columbia Gas), 1700 Mac Corkle Avenue, S.E., Charleston, West Virginia 25314, and Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, (Petitioners) filed in Docket No. CP80–72–000 a petition to amend the order pursuant to section 7(c) of the Natural Gas Act issued January 17, 1980, in Docket No. CP80–72–000, so as to authorize the increase of gas from an additional source as part of the volumes of gas presently being transported and exchanged for Southern's account in accordance with the arrangements authorized, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that, pursuant to the order issued January 17, 1980, they are exchanging up to 25,000 Mcf per day of Columbia Gas' gas reserves from the Cutoff field, Lafourche Parish, Louisiana, made available to Southern at an interconnection of Southern's and Columbia Gulf's pipelines in Lafourche Parish, Louisiana, and Southern's gas reserves from West Cameron Block 563 and Mississippi Canyon Blocks 267, 268,and 312, offshore Louisiana, made available to Columbia Gulf for the account of Columbia Gas at a point at or near the outlet of Texaco's Henry processing plant near Erath, Vermilion Parish, Louisiana. It is stated that any imbalances are corrected at existing Souther and Columbia Gulf redelivery points.

Petitioners request authorization to include, as part of Southern's exchange volumes, gas Southern is purchasing from West Cameron Blocks 537, 551, 552 and 560, offshor Louisiana, which gas Southern Would deliver to Columbia Gulf at a point near Erath, Vermilion Parish, Louisiana.

Comment date: December 31, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket Nos. CP86–92–000, CP86–93–000, CP86–94–000, and CP86–95–000]

Take notice that on October 30, 1985, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket Nos. CP86–92–000, CP86–93–000, CP86–94–000 and CP86–95–000 applications pursuant to section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing continued natural gas transportation services on behalf of interstate pipelines which were previously initiated pursuant to § 284.221 of the Commission's Regulations and National Fuel's Order No. 60 blanket certificate issued in Docket No. CP81–198 pursuant to section 7 of the Natural Gas Act, all as more fully forth in the applications which are on file with the Commission and open to public inspection.

National Fuel proposes to transport natural gas for the following interstate pipeline companies:

Docket No.	Shipper	Quantities (Mcf per day)
CP86–92–000	Transcontinental Gas Pipe Line Corp. (Transco).	[illegible]
CP86–93–000	Columbia Gas Transmission Corp. (Columbia Gas).	[illegible]
CP86–94–000	Tennessee Gas Pipeline Company, a Division of Tenneco Inc (Tennessee).	40,000
CP86–95–000	Columbia Gas	10,000

It is explained that National Fuel would transport the natural gas which Transco would purchase from Sulpetro Limited of Canada in Docket No. CP86–92–000; the natural gas to Columbia Gas of Pennsylvania, Inc., on behalf of Columbia Gas in Docket No. CP86–93–000; the natural gas between the interconnection of National's facilities with Tennessee's facilities at the Ellisburg storage field in Potter County, Pennsylvania, and at the Colden storage field in Erie Country, New York, in Docket No. CP86–94–000; and the natural gas on behalf of Columbia Gas from a tap on Line K located in Little Valley, New York, to a compressor station located in Elwood City, Pennsylvania, in Docket No. CP86–95–000.

National Fuel states that it would initially charge 26.72 cents per Mcf of gas transported for all the proposed services except Tennessee's proposed service in Docket No. CP86–94–000. National Fuel and Tennessee have a no fee arrangement for this exchange service, it is stated. It is asserted that the proposed rate of 26.72 cents per Mcf is the rate assessed in accordance with National Fuel's Rate Schedule T–1. Revenues resulting from these services would be treated in accordance with the settlement agreement in Docket No. RP83–63–000, *et al.*, it is asserted.

National Fuel states that it has advised these interstate pipeline companies that it is unable to continue to provide transportation pursuant to National Fuel's current self-implementing authorizations because of the considerable uncertainty that exists with respect to the effect of such action in light of Order No. 436, issued October 9, 1985. In particular, National Fuel advised the shippers that while Order No. 436 would provide for the "grandfathering" of these transportation services, it may subject National Fuel to § 284.7 of the Commission's Regulations which seems to require a rate filing under section 4 of the Natural Gas Act to be effective no later than July 1, 1986, it is stated.

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket Nos. CP86–96–000 and CP86–97–000]

Take notice that on October 30, 1985, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket Nos. CP86–96–000 and CP86–97–000 applications pursuant to Section 7(c) of the Natural Gas Act for certificates of public convenience and necessity authorizing the continued respective transportation services on behalf of The Southern Connecticut Gas Company (Southern Connecticut) and Delmarva Power and Light Company (Delmarva) which were previously initiated pursuant to Subpart B of Part 284 of the Commission's Regulations and Section 311(a)(1) of the Natural Gas Policy Act of 1978, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

National Fuel proposes to transport up to 1,500 Mcf of natural gas per day on behalf of Southern Connecticut and 10,000 Mcf of natural gas per day on behalf of Delmarva. It is explained that the proposed charge for both services would be in accordance with National Fuel's Rate Schedule T–1, currently 26.72 cents per Mcf. Revenues resulting from these services would be treated in accordance with the settlement agreement in Docket No. RP83–63–000, *et al.*, it is asserted.

National Fuel states that it has advised Southern Connecticut and Delmarva that it is unable to continue to provide transportation pursuant to National Fuel's current self-implementing authorizations because of the considerable uncertainty that exists with respect to the effect of such action in light of Order No. 436, issued October 9, 1985. In particular, National Fuel advised the two shippers that while

Order No. 436 would provide for the "grandfathering" of these transportation services, it may subject National Fuel to Section 284.7 of the Commission's Regulations which seems to require a rate filing under Section 4 of the Natural Gas Act to be effective no later than July 1, 1986, it is stated.

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86–199–000]

Take notice that on November 12, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86–199–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation and delivery of natural gas to Northern States Power Company (NSP) for the account of Minnegasco dated June 18, 1975, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Minnegasco notified NSP that it wished to terminate their agreement and, in turn, NSP notified Applicant that it wished to terminate the transportation service provided by Applicant since this service is no longer needed. Applicant states that it is currently authorized to deliver up to 5,200 Mcf of gas per day during each summer period to NSP at the St. Paul town border station at Inver Grove, Minnesota. NSP then transports such gas to its Wescott liquefied natural gas plant, where the gas is liquefied and stored for Minnegasco, it is stated.

Comment date: December 31, 1986, in accordance with Standard Paragraph F at the end of this notice.

Raton Gas Transmission Company; Raton Natural Gas Company

[Docket No. CP86–122–000]

Take notice that on October 31, 1985, Raton Gas Transmission Company (Raton Transmission) and Raton Natural Gas Company (Raton Natural), both of P.O. Box 308, Raton, New Mexico 87740, filed in Docket No. CP86–122–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for permission to abandon facilities and services provided by Raton Natural and a certificate of public convenience and necessity authorizing Raton Transmission to acquire and operate the pipeline facilities now owned and operated by Raton Natural, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Raton Natural is proposing to abandon those facilities and services for which Raton Transmission is seeking certificate authority. Raton Transmission proposes to acquire and operate the pipeline transmission facilities now owned and operated by Raton Natural. Raton Transmission further seeks authority to continue the sales and transportation services currently rendered by Raton Natural pursuant to Commission certificate authorization and authority to initiate sales for resale to Raton Natural at various city gates and other points of delivery.

It is stated that Raton Transmission is not proposing to construct any facilities. It is further stated that upon granting of the requested certificate authorization, Raton Transmission would be regulated solely by the Commission and that Raton Natural would be regulated by the New Mexico Public Service Commission. It is asserted that the sole source of supply for Raton Natural's operations is Colorado Interstate Gas Company, which would continue to be Raton Transmission's supplier.

It is stated that Raton Transmission would continue all sales and services currently rendered by Raton Natural pursuant to certificates issued by the Commission. It is further stated that Raton Transmission seeks authority to make sales for resale of natural gas to Raton Natural. The sales and deliveries would be made at existing city gate and main line delivery points. Raton Transmission would sell and deliver gas to Raton Natural under its proposed Rate Schedules CD–1 and I–1. Raton Transmission proposes to adopt Raton Natural's FERC Gas Tariff as its own, with conforming changes as needed.

It is asserted that the cost of the transmission facilities and other properties as acquired by Raton Transmission from Raton Natural would be reflected on the Raton Transmission books of account at the depreciated original cost as reflected on Raton Natural's books on the closing date. It is further asserted that the financing of the transfer of facilities from Raton Natural to Raton Transmission would be accomplished by the exchange of shares of stock for the facilities. It is stated that Raton Transmission would exchange 612 shares of stock to Raton Natural for the transfer of easement, real estate, property and assets as set forth in the bill of sale between the parties.

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company; Natural Gas Pipeline Company of America; Columbia Gulf Transmission Company; United Gas Pipe Line Company

[Docket No. CP77–489–007]

Take notice that on November 1, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, Columbia Gulf Transmission Company (Columbia), 3805 West Alabama Avenue, Houston, Texas 77027, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP77–489–007 a petition to amend the Commission's order issued September 7, 1977, in Docket No. CP77–489, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the exchange of certain volumes of gas produced from West Cameron Blocks 537, 551, 552, and 560, offshore Louisiana, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by Commission order issued on September 7, 1977, Petitioners were authorized to exchange certain volumes of natural gas produced from West Cameron Blocks 532, 533, and 586, offshore Louisiana, and purchased by Southern from Sea Robin Pipeline Company (Sea Robin), as provided for pursuant to an exchange agreement among Petitioners dated June 14, 1977. Petitioners state that said gas is transported onshore to a point near the tailgate of Texaco Inc.'s Henry plant located on Section 21, Township 13 South, Range 4 East, Vermilion Parish, Louisiana (Henry point). Petitioners state under the exchange agreement, United agreed to instruct Natural to take delivery of Southern's share of the gas, up to 8,000 Mcf per day, at the existing point of interconnection between United and Natural near the Henry plant (Erath point). Petitioners state, thereafter, Natural agreed to deliver a thermally equivalent volume of gas to Columbia Gulf (Henry point). Petitioners state Columbia Gulf agreed to redeliver thermally equivalent quantities to Southern at the tailgate of the Venice Plant located in Plaquemines Parish, Louisiana (Venice point).

It is stated that on October 26, 1979, Petitioners amended the exchange agreement to facilitate the exchange of up to 25,000 Mcf of additional gas per day produced from West Cameron Block 563, offshore Louisiana, purchased by

Southern from Sea Robin to be delivered for Southern's account near the tailgate of the Henry plant. It is stated that the amendment, approved by the Commission by order issued January 17, 1980, increased the volume of Southern's gas from West Cameron to be exchanged to a total of 33,000 Mcf per day.

Petitioners further state that as a result of Southern's purchase of gas to be produced from West Cameron Blocks 537, 551, 552, and 560, offshore Louisiana, Petitioners executive and amendment to the exchange agreement dated March 11, 1982 to include said gas in the exchange arrangements provided for by said exchange agreement.

Petitioners request authorization to include as part of the authorized exchange volume, the gas Southern is purchasing that is produced from West Cameron Blocks, 537, 551, 552, and 560, offshore Louisiana.

Comment date: December 31, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-198-000]

Take notice that on November 8, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-198-000 an applicaiton pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the city of Lawrenceville, Georgia (Lawrenceville), and existing Transco sales customer, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it is requesting authorization to transport for Lawrenceville, on an interruptible basis, quantities of natural gas up to 9,000 dt equivalent per day pursuant to a transportation agreement between Transco and Lawrenceville.

It is explained that Lawrenceville would purchase such gas from the following suppliers in the following quantities: Bessemer City, North Carolina (Bessemer), up to 1,000 dt equivilent per day; Laurens, South Carolina (Laurens), up t 3,000 dt equivalent per day; city of Monroe, Georgia (Monroe), up to 2,000 dt equivalent per day (hereinafter collectively referred to as "Suppliers"). The suppliers, all of which are existing Transco sales customers, would make sales to Lawrenceville pursuant to the Commission's emergency regulations, § 157.45, *et seq.* (18 CFR 157.45, *et seq.*). It is averred that Transco would receive the gas at existing interconnection points between Transco and the suppliers, except that quantities from United Cities would be received at an existing point of interconnection between Transco and Southern Natural Gas Company at Jonesboro, Clanton County, Georgia. In turn, Transco would delivery, on an interruptible basis, equivalent quantities (less quantities retained for compressor fuel and line loss make-up) at existing interconnection points between Transco and Lawrenceville.

Transco states that for this transportation service it would retain a percentage of the gas received for compressor fuel and line loss make-up and would charge Lawrenceville a transportation rate according to Transco's currently applicable Rate Schedule T-1, as the same may be legally amended or superseded from time to time. It is explained that the transportation agreement which forms the basis of the subject applicable provides for such service to continue in effect for a period of five years from the date of initial deliveries. However, Transco states it would render such transportation service only during periods when the suppliers are authorized to sell such gas to Lawrenceville pursuant to Section 157.45, *et seq.*, of the Commission's Regulations. Further, it is explained that transportation would be conditioned upon the availability of sufficient capacity to provide this service without detriment or disadvantage to Transco's existing customers which depend on Transco's general system supply.

Transco further states that by filing the subject application, it is not electing "non-discriminatory access" as such term is described and defined in §§ 284.8(b) and 284.9(b) of the Commission's Regulations (promulgated in Order No. 346).

Comment date: December 31, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protect with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 826 North Capitol Street NE., Washington, DC. 20426, a motion to intervene or a protect in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29918 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 6856-001 et al.]

City of Petersburg, AK, et al.; Surrender of Preliminary Permits

December 11, 1985.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. City of Petersburg, Alaska

[Project No. 6856-001]

Take notice that The City of Petersburg, Alaska, Permittee for the Thomas Bay Hydropower Project No. 6856, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 6856 was issued April 15, 1983, and would have expired May 1, 1986. The project would have been located on Cascade Creek, in the North Tongass National Forest near Petersburg, Alaska.

The Permittee filed the request on November 18, 1985.

2. TKO Power

[Project No. 8687–001]

Take notice that TKO Power, Permittee for the proposed Sugarloaf Hydroelectric Project No. 8687, has requested that its preliminary permit be terminated. The preliminary permit was issued on March 4, 1985, and would have expired on February 28, 1987. The project would have been located on Hat Creek in Shasta County, California.

The Permittee filed the request on November 19, 1985.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenenth F. Plumb,

Secretary.

[FR Doc. 85–29922 Filed 12–17–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 618–004]

Alabama Power Co.; Filing of Minimum Flow Study Report

December 12, 1985.

Public notice is given that Alabama Power Company (APC) filed the results of a minimum flow study with the Federal Energy Regulatory Commission on July 31, 1984. APC was required to conduct a minimum flow study pursuant to Article 29(b) of its license issued on October 27, 1980, for the Jordan Dam Project (Project No. 618) and pursuant to an order approving minimum flow studies issued on October 29, 1982. The project is located on the Coosa River in Elmore, Chilton, and Coosa Counties, Alabama.

In accordance with the requirements set forth in Article 29(a) of its license, APC consulted with the Alabama Department of Conservation and Natural Resources (ADCNR), U.S. and Wildlife Service (FWS), U.S. Environmental protection Agency, and U.S. Army Corps of Engineers in developing a minimum flow study plan. The plan, as approved by the order dated October 29, 1982, was designed to determine the minimum flow releases from the Jordan Dam that would protect fishery, recreational and wildlife resources, water quality of the Coosa River, and navigation on the Alabama River, consistent with other project purposes including, but not limited to, power production and recreation. Based upon the results of the minimum flow analysis and recommendations by APC and the resource agencies, the plan and order called for APC to file a report of its minimum flow study and for the Commission, on the basis of that report, to approve release of an interim minimum flow. For a period of one year following implementation of this interim minimum flow release approved by the Commission, the impacts associated with the interim minimum flow release would be evaluated and, based upon the data obtained from their interim flow assessment, a long-term minimum flow release would be approved by the Commission.

APC's minimum flow study, filed on July 31, 1984, recommended that an interim flow of 188 cubic feet per second (cfs) be released from the Jordan Dam and that this flow be evaluated for a period of one year.

The ADCNR and FWS filed the results of an independent minimum flow study with the Commission on November 13, 1984. Based upon the results of their minimum flow study, the agencies jointly recommended interim flow releases of 4,475 cfs from June through February and 8,950 cfs from March through May. These agencies also recommended that the interim flow assessment be for a period of 2 years. Both agencies have subsequently indicated, however, that they do not support flow recommendations through Jordan Dam that would affect the normal fluctuations of any reservoir on the Coosa River upstream of Jordan Dam.

In this proceeding, the Commission is considering what the interim minimum flow should be and for how long this interim minimum flow should be studied.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in regard to the interim minimum flow issue in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider any protests or other comments filed in regard to this issue, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before February 11, 1986. All comments, protests, and motions to intervene in this interim minimum flow proceeding filed prior to the issuance of this notice will be considered by the Commission as if timely filed; they need not be refiled pursuant to this notice.

Copies of the minimum flow studies filed by APC and by ADCNR and FWS may be obtained from: Federal Energy Regulatory Commission, Division of Public Information, Room 9200, 825 North Capitol Street, NE., Washington, DC 20426.

Filings and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above-named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Fred Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB, at the above address. A copy of any motion to intervene must also be served upon Mr. William O. Whitt, Vice President, Alabama Power Company, 600 North 18th Street, P.O. Box 2641, Birmingham, Alabama 35291.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–29875 Filed 12–17–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF86–23–001]

Freeport-McMoran Inc. and Gunnison Capital, Ltd., Notice of Amendment Requesting Commission Certification of Qualifying Status of a Small Power Production Facility

December 13, 1985.

On October 15, 1985, Freeport-McMoRan Inc., 1615 Poydras Street, New Orleans, Louisiana 70161, and Gunnison Capital, Ltd., 3050 Post Oak Blvd., Suite 1175, Houston, Texas 77056 ("Applicant"), filed with the Federal Energy Regulatory Commission ("Commission") an application for certification of a facility as qualifying bottoming-cycle cogeneration facility pursuant to § 292.207 of the Commission's rules. On December 11, 1985, Applicant filed an amendment to its application in which it requested that the Commission also certify the facility as a qualifying small power production facility.

The small power production facility will have a net electric power

production capacity of 49.9 megawatts. The primary energy source for the facility will be waste heat produced in the production of pozzolan. This waste heat will be used to produce steam to drive a turbine generator for the generation of electricity. The facility will be located in Santa Barbara County, California, approximately six miles southwest of Santa Maria.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within ten days after the date of publication of this notice and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29940 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6845-001]

Hopewell Power Co.; Notice of Surrender of Preliminary Permit

December 12, 1985.

Take notice that Hopewell Power Company, Permittee for the proposed Hopewell Hydro Project No. 6845, has requested that its preliminary permit be terminated. The permit was issued on April 25, 1983, and would have expired March 31, 1986. The project would have been located on the Broad River near Hopewell, Cherokee County, South Carolina. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on November 1, 1985, and the preliminary permit for Project No. 6845 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb.

Secretary.

[FR Doc. 85-29941 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6847-001]

Lilesville Power Co.; Notice of Surrender of Preliminary Permit

December 12, 1985.

Take notice that Lilesville Power Company, Permittee for the proposed Lilesville Hydro Project No. 6847, has requested that its preliminary permit be terminated. The permit was issued on April 25, 1983, and would have expired March 31, 1986. The project would have been located on the Pee Dee River near Lilesville, Anson County, North Carolina. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on November 4, 1985, and the preliminary permit for project No. 6847 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29942 filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-25-000]

Pacific Power & Light Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Denying Motions, and Establishing Hearing Procedures

Issued December 13, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On October 15, 1985, Pacific Power and Light Company (Pacific) submitted for filing with the Commission a rate schedule providing for charges for load control and load following services.[1] The charges apply to the wheeling of power by Pacific for Bonneville Power Administration (BPA) to BPA's customers located in Pacific's load control area. These services are necessary because some of BPA's customers have not installed appropriate telemetering equipment which would allow BPA to precisely match its generation with the changes in load of its customers in Pacific's service area. The only BPA customer for which Pacific is proposing to charge BPA is the Emerald People's Utility District (Emerald). Pacific wheels power to Emerald for BPA pursuant to a General Transfer Agreement (GTA) between Pacific and BPA which became effective on November 17, 1983. Pacific provides the service to meet the difference between Emerald's instantaneous demand and the demand scheduled to be delivered.[2] The charge is $3.73 kW per month which would result in revenues of about $14,000 per month, until the telemetering equipment is installed. Pacific requests waiver of the notice requirements and an effective date of November 17, 1983, the date on which Emerald commenced providing retail electric service. Pacific characterizes its filing as an initial rate.

Notice of Pacific's filing was published in the **Federal Register**,[3] with comments due on or before October 31, 1985. Timely motions to intervene were submitted by Emerald and BPA. Emerald moved to reject the filing, or, in the alternative, that the filing be determined to be a rate change rather than an initial rate and suspended for five months. Emerald alleges that, under the terms of the *Mobile-Sierra* doctrine,[4] Pacific's unilateral filing of proposed rates for load control and load following services is prohibited because this contradicts the GTA between Pacific and BPA. Emerald notes that the GTA provides that "BPA shall pay Pacific a *mutually-agreeable* Load Control and Load Following Services Charge." Emerald states that the language in the GTA clearly provides that BPA is only required to pay Pacific a load control and load following services charge upon which there has been mutual agreement, that BPA and Pacific have not reached agreement, that Pacific did not reserve any contractual right in the GTA to make a unilateral rate schedule filing in the event of an impasse, and that Pacific did not provide for the Commission to

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[1] *See* Attachment for rate schedule designation.

[2] The original GTA between BPA and Pacific was signed on May 4, 1982. Emerald was added as a customer in 1983. While BPA is Pacific's direct customer, by agreement BPA passes on all of its charges to Emerald.

[3] 50 FR 43,422 (1985).

[4] *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.; 350 U.S. 332 (1956); FPC* v. *Sierra Pacific Power Co.* 350 U.S. 348 (1956).

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act as an arbitrator if the parties were unable to agree upon a charge.

Emerald further argues that Pacific's filing should be rejected because Pacific has failed to provide adequate cost justification for the proposed charge. In this regard, Emerald states that Pacific's purported cost justification is based upon the erroneous assumption that there is a net sale of capacity by Pacific to meet Emerald's load when, Emerald claims, there are times when BPA's deliveries exceed Emerald's load and offset capacity shortages. Emerald also argues that the filing should be rejected as unduly discriminatory. Emerald states that Pacific transfers capacity and energy to 21 other customers of BPA under the GTA, and that the service provided to these other customers does not differ significantly from that provided to Emerald. Pacific's tariff, however, is applicable only to Emerald.

In support of its alternative motion that Pacific's filing be suspended, Emerald notes that since November 17, 1983, Pacific has been compensated through a single rate under the GTA. Emerald contends, therefore, that the proposed rate filing would "supersede, supplement, cancel or otherwise change" provisions of the rate of file with the Commisson, constituting a change in rate. Emerald requests a full five month suspension under this alternative motion because the rate is allegedly not cost-justified and is excessive. Finally, Emerald states that Pacific's requests for waiver of the notice requirements should be denied on the basis that Pacific has failed to demonstrate that good cause exists to justify retroactive application of the proposed rate. Emerald adds that Pacific showed no reason why it delayed filing a "mutually-agreeable" rate, and notes that the clearly-expressed intent of the parties was that a retroactive effective date for the rates was contemplated only for a mutually-agreeable rate.

BPA, in its motion to intervene, request, that Pacific's filing be rejected, or, in the alternative, suspended for five months. BPA reiterates many of the arguments raised by Emerald. Additionally, BPA adds that the filing should also be rejected because it would result in an unlawful double recovery of costs already paid by BPA under the residential exchange subsidiary program of the Northwest Power Act. BPA reasons that, if Pacific's transmission rate does not already recover all costs in serving BPA, one can assume that any shortfall is recovered in Pacific's retail rates. Since these form the basis for the exchange subsidy, BPA concludes that Pacific has already been made whole.

On November 15, 1985, Pacific filed an answer to the motions to intervene. Pacific disputes the claim that its filing is a change in rate. Pacific argues that the rate is an initial rate because there is currently no existing rate on file with the Commission for the services in question. Pacific further states BPA has delayed and consistently fails to review Pacific's proposals for determining the charge, that BPA has refused to deal or negotiate in good faith for a mutually-agreeable charge, and that the Commisson should conclude either that the BPA has by its conduct agreed to Pacific's proposals, or that in absence of mutual agreement, the parties intended that the Commission would approve the charge for the service. Therefore, according to Pacific, the Commission has the authority and duty to accept Pacific's filing, citing *Cities of Bethany et al.*, v. *FERC*, 727 F.R.2d 1131 (D.C. Cir 1984). [5] Pacific also insists that it has provided adequate support for its filing and that, given BPA's conduct during the negotiations, good cause exists to waive the notice requirements.

Finally, Pacific disputes Emerald's contentions that its filing is not cost-justified and is unduly discriminatory.

Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene serve to make Emerald and BPA parties to this proceeding.

The Commission will deny Emerald's and BPA's motions to reject Pacific's filing. First, we note that the parties have provided for Emerald's power deliveries a separate charge for a separate service under the GTA. This provision was added as a supplement to the GTA after a rate was already established for the other services specified in the GTA. The additional service applies specifically to Emerald and not to Pacific's other customers under the GTA. Thus, the charge for the supplemental service appropriately applies only to Emerald.[6]

Second, the Commission disagrees with the intervenors that we cannot accept the charge for filing simply because it has not been agreed to by both parties. Reasonably interpreted, we believe that the provision in the parties' agreement regarding the load control and load following charge provides a two-step procedure which allows for a charge to be established by Pacific prior to mutual agreement on that charge. The provision (Exhibit B of Table 22) reads as follows:

> If the *initially proposed charge* is developed by the Company *within 60 days* of the effective date hereof, *then* the *mutually agreeable charge* shall be paid *retroactively* to the effective date of this exhibit. (emphasis added.)

Pacific complied with the first step by developing an initially proposed charge within 60 days of the effective date of the agreement. It has provided the agreed-upon service for two years and has billed this proposed charge, although the pleadings suggest that payment has not been made. This proposed rate has been the basis for the discussions regarding a mutually agreeable charge, however unsuccessful they have been to date. In our view, the only reasonable construction of the above language is that a preliminary rate was to be proposed to take effect during the process of negotiating a final rate. We are not prepared to conclude that Pacific agreed to provide additional service free of charge for an indefinite period while negotiations were pending, even on the assumption that a mutually agreeable rate would be retroactively applied years after the fact.

In any event, the Federal Power Act requires that the applicable rate be on file with the Commission for the jurisdictional service being provided.[7] The parties cannot negotiate away this obligation. If the Commission were to reject the filing because it has not been mutually agreed upon by the parties, there would be no other method for the supplying utility to submit any charge for filing with the Commission, if both parties did not otherwise agree to an appropriate charge. We shall therefore accept the proposed rate for filing and initiate procedures to resolve the parties' controversy. We strongly encourage the parties to utilize our settlement procedures under Subpart F of the Commission's Rules of Practice and Procedure (18 CFR Part 385), to assist in more quickly reaching a satisfactory agreement.

Our review of Pacific's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates

[5] BPA and Emerald also cite *Cities of Bethany* in support of their request that Pacific's filing be rejected.

[6] This discussion also explains why Pacific's characterization of the submittal as an initial rate filing is erroneous.

[7] 16 U.S.C. 824d(c). *See also* 18 CFR 35.1; *Arkansas Louisiana Gas Co.* v. *Hall*, 453 U.S. 571, 577 (1981).

for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that Pacific's proposed rates may not yield substantially excessive revenues. In light of the fact that Pacific has been providing the load control and load following services on Emerald's behalf without compensation since November 17, 1983, we find that good cause exists to waive the notice requirements. Therefore, we shall suspend Pacific's rates to become effective on November 17, 1983, subject to refund.

The Commission orders:

(A) Emerald's and BPA's motions to reject Pacific's filing are hereby denied, as provided in the body of this order.

(B) Pacific's request to waive the notice requirements is hereby granted.

(C) Pacific's proposed rates are hereby accepted for filing and suspended to become effective, subject to refund, on November 17, 1983.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(b) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Pacific's rates.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates, including the submission of a case-in-chief by Pacific, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Subdocket No. –000 of Docket No. ER86–25 is hereby terminated. The evidentiary hearing established herein is assigned Docket No. ER86–25–001.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment

Rate Schedule Designation

Designation	Description
(1) Supplement No. 2 to Supplement No. 3 to Rate Schedule FERC No. 237.	Service Schedule LF–1

[FR Doc. 85–29943 Filed 12–17–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GP85–47–000]

Samedan Oil Corp.; Notice of Petition for Issuance of a Rule

December 12, 1985.

Take notice that on August 26, 1985, Samedan Oil Corporation (Samedan), filed a petition pursuant to Rule 207(a)(4) of the Commission's rules of practice and procedure requesting the Commission to issue a "rule of general applicability" determining that the Commission has jurisdiction under the Natural Gas Policy Act of 1978 (NGPA) over royalties received by royalty interest owners for sales of natural gas subject to NGPA maximum lawful prices. Alternatively, Samedan requests the Commission to issue an order stating that Samedan and other operators similarly situated are not obligated to make Btu refunds under Commission Order Nos. 399, 399–A and 399–B, attributable to defaulting royalty interest owners.

Samedan argues that Commission jurisdiction over first sales of natural gas should be extended to encompass royalties received by royalty interest owners because royalty payments represent a transfer for value within the meaning of section 2(20) of the NGPA. Samedan states that royalty owners transfer their rights to the natural gas underlying leased lands in exchange for value in the form of royalty payments. This transfer for value is a first sale within the meaning of section 2(21) of the NGPA, according to Samedan, because it precedes the sale of gas by Samedan to its purchasers.

Samedan's request for alternative relief is based on the assertion that it is the Commission's responsibility to relieve operators from the obligation to pay uncollectible Btu refunds attributable to royalty interest owners if the Commission in unwilling to assert jurisdiction owner royalty owners as first sellers under the NGPA.

Any person desiring to be heard concerning Samedan's petition should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. Motions to intervene or protests should be filed not later than 30 days following publication of this notice in the **Federal Register.** Copies of the petition are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–29944 Filed 12–17–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–1–29–004]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

December 11, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on December 4, 1985 the following proposed tariff sheets to Second Revised Volume No. 1 of its FERC Gas Tariff:

Tariff Sheets Proposed To Be Effective November 1, 1985

Second Substitute Thirty-Seventh Revised Sheet No. 12

Substitute Thirty-Seventh Revised Sheet No. 15

Second Substitute Second Revised Sheet No. 15–A

Tariff Sheets Proposed To Be Effective January 1, 1986 [1]

Substitute Thirty-Eighth Revised Sheet No. 12

Substitute Thirty-Eighth Revised Sheet No. 15.

These revised tariff sheets reflect an increase of 0.6¢ per dt above the rates originally proposed to be effective November 1, 1985 in this docket.

On October 1, 1985, Transco filed with the Commission its regularly scheduled semi-annual PGA rate filing in Docket No. TA86–1–29, *et al.* proposed to become effective November 1, 1985. Such filing reflected no change in the current commodity gas cost component (approximately $3.01 per dt) of Transco's rates from that reflected in Transco's filing in Docket No. TA85–3–29, effective April 1, 1985. Such filing did reflect, however, a 3.5¢ per dt increase

[1] These sheets are being filed in order to include the rate changes reflected in this filing on the revised tariff sheets filed by Transco on November 27, 1985 with a proposed effective date of January 1, 1986 to reflect the 1986 Gas Research Institute (GRI) Adjustment.

due to a revision in the Deferred Adjustment necessary to discharge the balance in the appropriate subaccount of FERC Account No. 191.

In response to an informal Staff request, Transco submitted supporting information on October 18, 1985 as a supplement to its October 1, 1985 filing. This supporting information included a detailed estimate of Transco's projected commodity cost of gas (approximately $3.02 per dt) for the six month period commencing November 1, 1985.

By order dated November 15, 1985, the Commission accepted Transco's tariff sheets for filing and suspended the filing to become effective November 1, 1985 subject to refund and subject to conditions as set forth in the order.

Concurrently with the instant filing, Transco has filed a Petition for Clarification or Rehearing and Notice of Contingent Substitute PGA Filing Effective November 1, 1985 (Petition). The purpose of Transco's Petition is to request clarification of the November 15, 1985 order in Docket No. TA86-1-29, *et al.* with respect to the "at risk" condition placed on Transco in such order. As more fully described in the Petition, Transco is requesting that the Commission clarify whether the intended magnitude of the financial risk the Commission is placing on Transco is limited to the difference between the detailed rate supported by Transco in its Supplemental Information filing in Docket No. TA86-1-29 and the rate which Transco voluntarily elected to charge its customers in order to reflect no change in its resale rates effective November 1, 1985. Such difference amounts to approximately $2.4 million.

The purpose of the instant filing is to adjust Transco's commodity rates to reflect the approximately $3.02 per dt cost of gas which was fully supported by the detailed information contained in the Supplemental Information Filing. As more fully described in Transco's Petition, the instant filing is being requested to be made effective contingent upon the Commission either (1) not clarifying its Order as requested in Transco's Petition or alternatively, (2) not granting rehearing and vacating the "at risk" condition for the reasons set forth in Transco's Petition.

Transco states that copies of the instant filing are being mailed to its jurisdiction customers, interested state commissions and intervenors in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 20, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-29945 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI75-395-002 et al.]

TXP Operating Co.; Notice of Application to TXP Operating, Co., as Successor in Interest, for Certificate of Public Convenience and Necessity To Render Service Previously Authorized in Certificates of Public Convenience and Necessity Issued to Transco Exploration Co.

December 10, 1985.

Take notice that on November 18, 1985, TXP Operating Company (TXPO), of P.O. Box 1396, Houston, Texas, 77251, filed an application pursuant to Section 7 of the Natural Gas Act and § 157.23 *et seq.* of Subpart E of the regulations of the Federal Energy Regulatory Commission (Commission), requesting authority, as successor in interest to Transco Exploration Company (TXC), to render natural gas service previously authorized by the Commission in all the properties covered by TXC's certificates of public convenience and necessity issued in the docket listed on Exhibit "A" attached hereto. TXOP also requests to be substituted for TXC in any proceedings related to such dockets.

By general conveyance document dated effective as of July 20, 1983, TXC conveyed its interest in certain properites to TXPO. As a result, TXPO acquired all of the interests of TXC in the properties which are subject to the certificates of public convenience and necessity issued to TXC in the dockets listed on Exhibit "A". In all but one case, assignments from TXC to TXPO are not available because either the leases related to a particular property have expired or TXC acquired its interest in a particular property pursuant to its participation in a joint venture and legal title to such property is held in the joint venture operator's name. Legal title to the properties will eventually be assigned by such operators; however, such operators will assign title directly to TXPO. TXPO requests authority to continue the natural gas service authorized by the Commission in such dockets as successor in interest to TXC and that TXC's rate schedules as identified in Exhibit "A" be redesignated as those of TXPO.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 23, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be necessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A

Field/State	Rate schedule No.	[redacted] docket No	Purchaser	Joint venture program	TXC-TXPO assignment
South Ewing Field, San Patricio County, TX	2	C175-395	TGPL	N/A	All leases have expired.
Southwest Bird Island Field, Kleberg County, TX	3	C176-295	TGPL	Transmac I Exploration Program	No.
LaFourche Crossing Field, Lafourche Parish, LA	6	C176-232	TGPL	N/A	All leases have expired.
Lowel Field, Iberia Parish, LA	8	C177-303	TGPL	Transmac I Exploration Program	No.
Myette Point Field St. Mary Parish, LA	9	C177-306	TGPL	do	No.
Myette Point Field, St. Mary Parish, LA	10	C177-308	TGPL	do	No.
Kawitt Field, Karnes County, TX	11	C177-383	TGPL	do	No.

EXHIBIT A—Continued

Field/State	Rate schedule No	Certificate docket No	Purchaser	Joint venture program	TXC-TXPO assignment
Myette Point Field, St. Mary Parish, LA	12	C177-401	TGPL	do	No
N. Hester Field, St. James Parish, LA	15	C177-515	TGPL	M-T 1976 Exploration Program	No
Southeast Avery Island Field, Iberia Parish, LA	18	C177-539	TGPL	Transmac I Exploration Program	No
Bastian Bay Field (Bolivar Point), Plaquemines Parish, LA	19	C177-541	TGPL	do	No
Stephenson Point Field, Galveston County, TX	[illegible]	C177-711	TGPL	M-T 1976 Exploration Program	No
East Collins Field, Covington County, MS	22	C177-776	TGPL	do	No
Chandeleur Sound Block 58 & 59, Offshore, LA	31	C178-151	TGPL	Transmac I Exploration Program	No
Northeast White City Field, Eddy County, NM	35	C179-20	TGPL	C&K/Enstar 1977 Exploration Program	No
Campbell Ranch Field, Hemphill & Roberts Counties, TX	[illegible]	C178-1190	TGPL	do	No
West Hicksbaugh Field, Tyler County, TX	42	C179-433	TGPL	M-T 1977 Exploration Program	[illegible]
South Bayou Pigeon Field, Iberia Parish, LA	[illegible]	C179-348	TGPL	N/A	Yes
Big Point Field, St. Tammany Parish, LA	[illegible]	C179-465	TGPL	M-T 1975 Exploration Program	No
Matagorda Island Block 565, Offshore, LA	67	C183-173	Florida Gas Transmission Co.	Moxy II Exploration Program	No

[FR Doc. 85-29946 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-86-002 et. al.]

Valero Interstate Transmission Co. et al.; Notice of Filing of Pipeline Refund Reports and Refund Plans

December 11, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 23, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
11/14/85	[illegible] Transmission Co.	[illegible]	Report
11/15/85	Panhandle Eastern Pipe Line Co.	TA84-2-30-011	[illegible]
11/15/85	Natural Gas Pipeline Co. of America	RP72-132-003	[illegible]
11/15/85	East Tennessee Natural Gas Co.	RP71-15-019	[illegible]
11/20/85	Tennessee Natural Gas Co.	RP85-117-007	[illegible]
11/22/85	Transwestern Pipeline Corp.	RP85-88-002	Btu [1]

[1] Refunds resulting from Btu Measurement Adjustments. Each company will retain its basic docket number and future related filings receive new sub-docket numbers.

[FR Doc. 85-29947 Filed 12-17-85; 8:45 am]

BILLING CODE 6717-01-M

Cases Filed; Office of Hearings and Appeals Week of November 22 Through November 29, 1985

During the Week of November 22 through November 29, 1985, the applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 10, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Nov. 22 through Nov. 29, 1985]

[illegible]	Name and location of applicant	Case No.	Type of submission
November 25, 1985	Consolidated Materials, Inc. New Orleans, LA	KRX-0006	Supplemental Order. If granted: The Office of Hearings and Appeals would modify the procedures for the evidentiary hearing to be convened in connection with the enforcement proceeding initiated against Consolidated Materials, Inc. (Case No. HRO-0107)
November 27, 1985	Fields Energy Resources, Inc. Houston, TX	KRW-0001	Remedial Order Finalization. If granted: The Economic Regulatory Administration has requested that a Proposed Remedial Order issued to Fields Energy Resources, Inc. on January 23, 1985, would be issued as a final [illegible]

Date received	Name of refund proceeding/name of refund applicant	Case No
November 25, 1985	Gulf/W. T. Garrick Gulf	RF40-3078
Do	Quaker State/Central Electric Cooperative, Inc	RF213-4
Do	[illegible] Corporation.	RF205-3
Do	Peterson/Midway Oil Corporation.	RF199-3
Do	Pennzoil/Puerto Rico	RQ10-245
Do	Hendel's/Kyttle's Chevron	RF79-24
November 26, 1985	Husky/Bonded Petroleum, Inc.	RF181-68
November 25, 1985	Champlain/Armand Kaigle	RF187-15
November 26, 1985	VGS/Gresham Petroleum Company.	RF191-3
November 27, 1985	Quaker State/ACCO, Inc.	RF213-5
Do	True/Little America Refining.	RF195-8
November 29, 1985	Quaker State/Ross Corporation	RF213-6
Do	VGS/Defense Fuel Supply Center	RF191-4

Date received	Name of refund proceeding/name of refund applicant	Case No
Do	Union Texas/Dawson Oil Co., Ltd	RF140-34
November 25, 1985	Charter/Georgia	RQ23-246
Do	Perry Gas/Georgia	RQ183-247

[FR Doc. 85-29933 Filed 12-17-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of December 2 Through December 6, 1985

During the week of December 2 through December 6, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

December 10, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Bill's Oil Company, Inc., Fitzwilliam, New Hanpshire; KEE-0008

Bill's Oil Company, Inc. filed an Application for Exception from the Energy Information Administration reporting requirements. The exception request, if granted, would relieve the firm of the requirement to file Form FIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." On December 4, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85-29934 Filed 12-17-85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1555]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

December 11, 1985.

In FR Doc. 85-29418, published on December 12, 1985, pg. (50) FR 50842, the following change is made:

The docket number appearing on pg. 50843, first column, lines 9 and 10, should read: "CC Docket No. 85-40".

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-29895 Filed 12-17-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

HPK Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 9, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *HPK Financial Corporation,* Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Hyde Park Bank and Trust Company, Chicago, Illinois.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Frontier National Bancshares Corporation,* Round Rock, Texas; to acquire 100 percent of the voting shares of Security National Bank, Elgin, Texas.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *National Bancorp of Arizona, Inc.,* Tucson, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Tucson, Tucson, Arizona. Comments on this application must be received not later than January 3, 1986.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29876 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Meridian Bancorp, Inc., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for

BEST COPY AVAILABLE

inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Meridian Bancorp, Inc.*, Reading, Pennsylvania; to engage *de novo* through its subsidiary, DBS Discount Brokerage Services, Inc., Reading, Pennsylvania, in the provision of securities brokerage services, i.e., the buying and selling of securities solely as agent for the account of customers. In connection therewith, the Company may engage in securities credit activities, pursuant to 12 CFR Part 220, and incidental activities such as offering custodial services. The Company will not engage in securities underwriting or dealing, and will not provide investment advice or research services. This will be done pursuant to § 225.25(b)(15) of Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Jamestown Union Bancshares, Inc.*, Jamestown, Tennessee; to engage *de novo* through its subsidiary, Jamestown Loan & Thrift Corporation, Jamestown, Tennessee, in industrial loan and thrift activities, pursuant to § 225.25(b)(2) of Regulation Y. These activities would be conducted in Jamestown, Tentress County, Tennessee. Comments on this application must be received not later than January 9, 1986.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Community Banks, Inc.*, Middleton, Wisconsin; to engage *de novo* through its subsidiary, CBJ Trust and Financial Services, Inc., Madison, Wisconsin, in performing trust company functions, including living trusts, testamentary trusts, agency, guardianships, estates, escrow accounts, custodial form management, employee benefits, and other personal trust services, pursuant to § 225.25(b)(3) of Regulation Y.

2. *LaSalle National Corporation*, Chicago, Illinois; to engage *de nova* through its subsidiary, LaSalle Brokerage Services, Inc., Chicago, Illinois, in securities brokerage services, pursuant to § 225.25(b)(15) of Regulation Y. Comments on this application must be received not later than January 9, 1986.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Benson Investment Company*, San Antonio, Texas; to engage *de novo* through its subsidiary, Bancshares Life Insurance Company, Phoenix, Arizona, in acting as reinsurer for credit life, and credit accident and life insurance that is directly related to an extension of credit by the bank holding company system, pursuant to § 225.25(b)(9) of Regulation Y. These activities would be conducted in the State of Texas.

2. *Texas Commerce Bancshares, Inc.*, Houston, Texas; to engage *de novo* through its subsidiary, Texas Commerce Capital Markets, Inc., Houston, Texas, in the origination, sale and servicing of commercial loans, pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29877 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Midwest Financial Group, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The Company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1986.

A. **Federal Reserve Bank of Chicago** (Frankin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Midwest Financial Group, Inc.*, Peoria, Illinois, to engage *de novo* through its subsidiary, Midwest Financial Group Brokerage Services, Peoria, Inc., Illinois, in securities brokerage activities, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29878 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

The Mitsubishi Trust and Banking Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Boar of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically and questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 3, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Mitsubishi Trust and Banking Corporation,* Tokyo, Japan; to become a bank holding company by acquiring 100 percent of the voting shares of Mitsubishi Trust and Banking Corporation, (USA), New York, New York, a proposed new bank.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylania 19105:

1. *Pennsylvania National Financial Corp.,* Harrisburg, Pennsylvania; to acquire 100 percent of the voting shares of Hamburg Savings and Trust Company, Hamburg, Pennsylvania.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Randall Bank Employee Stock Option Ownership Trust,* Madison, Wisconsin; to become a bank holding company by acquiring 50 percent of the voting shares of Randall Corporation of Wisconsin, Inc., Madison, Wisconsin, and thereby indirectly acquire Randall Bank, Madison, Wisconsin.

2. *Randall Corporation of Wisconsin, Inc.,* Madison, Wisconsin; to become a bank holding company be acquiring 100 percent of the voting shares of Randall Bank, Madison, Wisconsin.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens Fidelity Corporation,* Louisville, Kentucky; to acquire 100 percent of the voting shares of Bank of Oldham Count, Lagrange, Kentucky.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29879 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

New Tripoli Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be avilable for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any coment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that woud be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 10, 1986.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *New Tripoli Bancorp, Inc.,* New Tripoli, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The New Tripoli National Bank, New Tripoli, Pennsylvania.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Vernon Bancshares, Inc.,* Leesville, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of The Vernon Bank, Leesville, Louisiana.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *ASB Bankcorp, Inc.,* Adrian, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Adrian State Bank, Adrian, Michigan.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29880 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Rurban Financial Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c) (8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the officers of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Rurban Financial Corp.*, Defiance, Ohio; to acquire Rurbanic Data Services, Defiance, Ohio, and provide data processing services to banks including information processing for applications by customers for bank services, deposit account information and data analysis. The Company also provides payroll services for nonbank customers and billing services for independent telephone companies. The Company also assists banks it serves in acquiring related equipment and coordinating group buying of some form documents. Applicant believes these activities are permitted by § 225.25(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29881 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Shawmut Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection as the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1986.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Shawmut Corporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary, Shawmut Brokerage Services, Inc., Boston, Massachusetts, in securities brokerage services including the purchase and sale of securities as agent for the account of customers; related securities credit activities, pursuant to Regulation T; custodial services; individual retirement accounts; Keogh accounts; cash management services; and other activities incidental to general securities brokerage, but not including securities underwriting, investment advice or research activities, pursuant to 225.25(b)(15) of Regulation Y.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fidelcor, Inc.*, Philadelphia, Pennsylvania; to engage *de novo* through its subsidiary, Fidelcor Brokerage Services, Inc., Philadelphia, Pennsylvania, in securities brokerage services, pursuant to section 225.25(b)(15) of Reguation Y. Comments on this application must be received not later than January 3, 1986.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *South Carolina National Corporation*, Columbia, South Carolina; to engage *de novo* through its subsidiary, SCN Discount Brokerage Services, Inc., Columbia, South Carolina, in securities brokerage services solely as agent for the account of customers, pursuant to 225.25(b)(15) of Regulation Y. These activities would be conducted on a nationwide basis.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Deposit Guaranty Corp.*, Jackson, Mississippi; to engage *de novo* through its subsidiary, D.C. Investments, Inc., Jackson, Mississippi, in securities brokerage services, related securities credit activities, pursuant to the Board's Regulation T, and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, pursuant to § 225.25(b)(15) of Regulation Y.

E. **Federal Reserve Bank of Chicago** (Franklin D. Dryer, Vice President) 230 South LaSalle Street, Chicago, Illinois [illegible]

1. *Bank of Montreal*, Montreal, Quebec, Canada; *Bankmont Financial Corp.*, New York, New York; and *Harris Bankcorp, Inc.*, Chicago, Illinois; to engage *de novo* through Harris Bankcorp, Inc.'s wholly-owned subsidiary, Derivative Markets, Management, Inc., Chicago, Illinois, in investment advice primarily to institutional investors and select individual investors, including pension and profit sharing trusts, insurance companies, foundations and endowment funds, pursuant to § 225.25(b)(4)(i) through (v) of Regulation Y. These activities would be conducted in the U.S. and subject to any required regulatory approvals, in select foreign countries.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Nebraska National Corporation*, Omaha, Nebraska; to engage *de novo* directly in direct lending and loan servicing activities, such as mortgage lending and mortgage loan servicing activities, pursuant to § 225.25(b)(1) of Regulation Y, and to provide management consulting services to nonaffiliated financial institutions, pursuant to § 225.25(b)(11) of Regulation Y.

G. **Federal Reserve Bank of Dallas**, (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Independent Bankshares, Inc.*, Abilene, Texas; to engage *de novo* through its subsidiary, First Independent Computers, Inc., Abilene, Texas, a *de novo* company, in data processing and data transmission services for financial, banking, or economic data to other persons, firms or corporations, pursuant to § 225.25(b)(7) of Regulation Y. Comments on this application must be received not later than January 3, 1986.

H. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Wells & Fargo Company*, San Francisco, California; to engage *de novo* through its subsidiary, Wells Fargo Brokerage Corporation, San Francisco, California; in providing securities brokerage services and related

securities credit activities, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29882 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Standard Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 9, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Standard Bancshares, Inc.*, Evergreen Park, Illinois; to acquire 100 percent of the voting shares of Hickory Bancorp, Inc., Hickory Hills, Illinois, thereby indirectly acquiring Bank of Hickory Hills, Hickory Hills, Illinois.

Applicant also has applied to acquire Hickory Insurance Agency, Hickory Hills, Illinois, and thereby engage in acting as agent in the sale of insurance limited to assuring repayment of the outstanding balance on an extension of credit by a finance company in the event of loss or damage to any property used as collateral for such extension of credit, and provided such extension of credit does not exceed the limits set forth in section 4(c)(8)(B) of the Act.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29883 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Suntrust Banks, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commerce or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; to engage *de novo* through its subsidiary, SunTrust Brokerage Services, Inc., Atlanta, Georgia, in securities brokerage activities, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29884 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Bank of Boston Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased

competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 1986.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation,* Boston, Massachusetts; to engage *de novo* through its subsidiaries, BancBoston Brokerage, Inc., Boston, Massachusetts (BancBoston) and Colbanc Securities Ltd., Waterbury, Connecticut (Colbanc), in securities brokerage services, related securities credit activities and certain incidental activities, pursuant to § 225.25(b)(15) of Regulation Y. These activities would be conducted Nationwide and Australia, Bahamas, Belgium, Bermuda, Canada, England, France, Japan, Korea, Sri Lanka, Sweden, Switzerland, and West Germany for BancBoston; and Nationwide for Colbanc. Comments on this application must be received not later than January 6, 1986.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Wachovia Corporation,* Winston-Salem, North Carolina; to engage *de novo* through its subsidiary, First Wachovia Brokerage Service Corporation, Winston-Salem, North Carolina, in buying and selling publicly-traded securities as agent, solely for the account and on the order of its customers (securities would include common stocks, corporate bonds, municipal bonds and other government securities, certain investment company securities and options); extending related securities credit to its customers, pursuant to Regulation T; offering incidental services to its customers such as securities safekeeping, self-directed individual retirement accounts, and cash management services. The subsidiary would not offer any investment advice or research services to its customers and would not engage in securities underwriting, pursuant to § 225.25(b)(15) of Regulation Y. These activities would be conducted on a nationwide basis.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Dairy State Financial Services, Inc.,* Plymouth, Wisconsin; to engage *de novo* directly in acting as agent or broker in selling credit life insurance and accident and health insurance directly related to extension of credit by its subsidiary bank, Dairy State Bank, Plymouth, Wisconsin, pursuant to § 225.25(8)(i)(A) of Regulation Y.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank Shares Incorporated,* Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Marquette Investors Services Incorporated, Minneapolis, Minnesota, in offering securities brokerage services, pursuant to § 225.25(b)(15) of Regulation Y. Comments on this application must be received not later than January 6, 1985.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas American Bancshares, Inc.,* Fort Worth, Texas; to engage *de novo* through its subsidiary, TABrokerage, Inc., Fort Worth, Texas, in providing securities brokerage activities restricted to buying and selling securities solely as agent for the account of customers and will not include securities underwriting or dealing or the provision of investment advice or research services, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29867 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

The Bank of New York Co., Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) of (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrived by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 3, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.,* New York, New York; to acquire RMJ Securities Corporation, New York, New York, and thereby engage in acting as broker to primary dealers for U.S. government securities and agency obligations, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29868 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Bergen Bank A/S; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or

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control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 1986.

Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Bergen Bank A/S*, Bergen, Norway; to acquire at least 20 percent of the voting shares of Skandinaviska Enskilda Banken Corporation, New York, New York, an investment company organized under Article XII of the New York Banking Code, and thereby engage in commercial lending; mortgage lending; loan servicing; leasing; issuing letters of credit; purchasing and discounting acceptances, drafts, and similar instruments; buying and selling foreign exchange, coin and bullion; receiving money for transmission to and from the United States; receiving time deposits at branches located outside the United States; and receiving and maintaining credit balances. These activities would be conducted in accordance with the provisions of section 225.25. of Regulation Y and the Board's previous decisions.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29869 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

CB Financial Corp. et al.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 3, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *CB Financial Corp.*, Warrenton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank, Warrenton, Georgia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First National Bancorp, Inc.*, Joliet, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Joliet, Joliet, Illinois.

2. *Shelby County Bancorp, Inc.*, Shelbyville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Shelby County State Bank, Shelbyville, Illinois.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *JDOB, Inc.*, Naples, Florida; to acquire 88 percent of the voting shares of Sandstone State Bank, Sandstone, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *NBR Financial, Inc.*, Boulder, Colorado; to acquire 100 percent of the voting shares of National Bank of the Rockies in Colorado Springs, Colorado Springs, Colorado, a proposed *de novo* bank.

2. *Tampa State Bankshares, Inc.* Tampa, Kansas; to merge with Chase County Bankshares, Inc., Strong City, Kansas, thereby indirectly acquiring Chase County Bank, Strong City, Kansas.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *American Southwest Bancshares, Inc.*, El Paso, Texas; to acquire 80 percent of the voting shares of Western Bancshares of El Paso, Inc., El Paso, Texas, thereby indirectly acquiring Western Bank of El Paso, El Paso, Texas.

2. *National Bancshares Corporation of Texas*, San Antonio, Texas; to acquire 100 percent of the voting shares of City National Bank of Laredo, Laredo, Texas.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-29870 Filed 12-17-85; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to acquire the assets and liabilities of Northeast Exchange Ltd. 1984–1, a Texas partnership, and thereby engage in data processing and transmission activities, pursuant to § 225.25(b)(7) of Regulation Y. These activities are to be conducted in the States of Connecticut, Delaware, New Jersey, New York, and Pennsylvania.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–29871 Filed 12–17–85; 8:45 am]

BILLING CODE 6210–01–M

First United Bancorp et. al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) of (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on this question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 3, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First United Bancorp*, Franklin, Indiana; to acquire Franklin Financial Corporation, Indianapolis, Indiana, and thereby engaged in the origination, package, sale and servicing of commercial and mortgage loans, the origination of small consumer loans, and the origination of finance leases, pursuant to §225.25(b)(1) and § 225.25(b)(5) of Regulation Y, respectively.

2. *First United Bancorp*, Franklin, Indiana; to acquire Franklin Mortgage Corporation, Indianapolis, Indiana, and thereby engage in residential mortgage lending, servicing and brokering, and commercial mortgage loan servicing and brokering, pursuant to § 225.25(b)(1) of Regulation Y.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *T N Bancshares, Inc.*, El Paso, Texas; to acquire Coronado Life Insurance Company, El Paso, Texas, and thereby engage in the activity of underwriting credit life and credit accident and credit health insurance directly related to extensions of credit, pursuant to § 225.25(b)(9) of Regulation Y. These activities would be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, December 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–29872 Filed 12–17–85; 8:45 am]

BILLING CODE 6210–01–M

Horizon Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that isn listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 2, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Horizon Bancorp.* Morristown, New Jersey; to engage *de novo* through its subsidiary, Horizon Brokerage Services, Inc., New York, New York, in providing securities brokerage services, related securities credit activities, pursuant to the Board's Regulation T (12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, which will be restricted to buying and selling securities solely as agent for the account of customers as permitted by § 225.25(b)(15) of Regulation.

Board of Governors of the Federal Reserve System, December 16, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30086 Filed 12-17-85; 9:40 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Extension of Time for Filing of Comments on Proposal To Modify Cigarette Testing Procedure

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Commission has extended for ninety (90) days the time period for filing of comments on its proposal to modify the cigarette testing procedure.

EFFECTIVE DATE: December 12, 1985.

FOR FURTHER INFORMATION CONTACT: Judith P. Wilkenfeld, Program Advisor, Cigarette Advertising and Testing, 6th & Pennsylvania Ave., NW., Washington, DC 20580, (202) 376-8648.

SUPPLEMENTARY INFORMATION: On October 11, 1985, the Federal Trade Commission published a **Federal Register** Notice proposing modification of its cigarette testing procedure, and requesting comments on the proposal. A sixty (60) day commend period—until December 12, 1985—was announced. In response to a request by Brown & Williamson Tobacco Corporation, the Commission is now extending the comment period an additional ninety (90) days—until March 12, 1986—to enable all interested parties to submit comments.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-29948 Filed 12-17-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-333-CN; BERC-335-CN]

Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of proposed notices.

SUMMARY: For purposes of avoiding possible confusion on the part of the public, this document corrects certain technical errors that appeared in two proposed notices published in the **Federal Register** on November 22, 1985 (50 FR 48304 and 50 FR 48313).

FOR FURTHER INFORMATION CONTACT: Steve Kirsh, (301) 594-9465.

SUPPLEMENTARY INFORMATION:

A. In **Federal Register** Document 85-27767 beginning on page 48304, in the issue of November 22, 1985, make the following corrections:

1. On page 48307, the "Revised Limit" amount on line five of the third column is corrected by replacing "$40.77" with "$90.77".

2. On page 48312, the first Table IV in the third column, inadvertently included in the proposed notice, is deleted.

As indicated by the information provided in sections III.B.2. and IV of the November 22, 1985 notice (50 FR 48307), the correct cost reporting year adjustment factors are reflected in the second Table IV appearing at page 48312.

B. In **Federal Register** Document 85-27768 beginning on page 48313, in the issue of November 22, 1985, make the following corrections:

1. On page 48316, the computation for the combined national average monthly hospital wage in column two is corrected to read as follows:

$$\frac{6375 + 4990}{10} = \$1137$$

2. On page 48319, line six of the first column is corrected by replacing "October 1, 1985" with "January 1, 1986".

3. On page 48322, the nonlabor component A & G add-on under the *Computation of Adjusted Limit* at the beginning of the first column is corrected by replacing ".42" with ".41".

(Secs. 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act; 42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy)

Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: December 12, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-29957 Filed 12-17-85; 8:45 am]

BILLING CODE 4120-01-M

Public Health Service

Food and Drug Administration; Statement of Organization, Functions, and Delegations of Authority

Part H chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 50 FR 1279, January 19, 1985) is amended to reflect organizational changes in the Food and Drug Administration (FDA).

The changes include establishing a new Division of Information Resources Management (DIRM) in the Office of Management and Operations (OMO), Office of the Commissioner (OC), in the Food and Drug Administration (FDA) and transferring the telecommunication function from the Division of Managment Services, the Agencywide systems management function from the Division of Management Systems and Policy, and the Agencywide ADP security function from the Division of Ethics and Program integrity of the new Division.

Section HF-B, Organization and Functions is amended as follows:

1. Insert a new parapgraph [h-8], *Division of Information Resources Management (HFA73).*

[h-8] *Division of Information Resources Management (HFA73).* Supervises major information resources management functions including standards development, systems management, telecommunications, and development of an ADP and telecommunications plan and budget.

Develops standards to assist in linking data and systems across center and program lines.

Provides Agency telecommunications.

Designs, implements, and coordinates planning a process that results in an Agency 5-year ADP and telecommunications plan with annual updates.

Advises the Commissioner on information resources management issues.

Represents the Agency to the Office of the Assistance Secretary of Health and the Office of the Secretary on information resources management.

Reviews and approves all Agency telecommunications and automated systems support Memoranda of Need, contract proposals, Interagency Agreements, and requisitions.

Provides consultation, technical advice, and assistance in the selection and use of equipment, options, and services to process information.

Directs the Agency's ADP Security Program.

2. Delete subparagraph [h–2], *Division of Management Services (HFA75)* and insert a new subparagraph [h–2], *Division of Management Services (HFA75).*

[h–2] *Division of Management Services (HFA75).* Provides leadership and guidance to Headquarters staff offices, Headquarters operating activities, and field activities for all management services programs including personal property management and accountability, real property management, space management and utilization, safety management and occupational health, construction and engineering services, graphic, arts, printing and reproduction, microform management, and mail and files.

Develops and conducts management programs in directives management, reports and forms management, and other management areas as assigned.

Responsible for maintaining effective liaison with the Government Printing Office and for the centralized clearance and coordination of all printing and publication services.

Coordinates the development of Agencywide policies and procedures for such services; plans, executes, evaluates, and adjusts efforts in these activities.

3. Delete subparagraph [h–3], *Division of Management Systems and Policy (HFA76)* and insert a new subparagraph [h–3], *Division of Management Systems and Policy (HFA76).*

[h–3] *Division of Management Systems and Policy (HFA76).* Provides leadership and direction in the effective and efficient use of Agency resources; provides Agencywide consulting services organization and operations analysis and in the analysis, design, implementation, and maintenance of operating systems and procedures.

Provides central FDA control for delegations of authority and maintains control files of delegations to and within the Agency.

Conducts Agencywide organization, management, and industrial engineering studies; designs and recommends systems and procedures; develops and recommends policy to implement study conclusions.

Provides computer systems analysis and applications programming services for the staff officers of the Commissioner.

Receives, examines, evaluates, and processes all documents and correspondence required or permitted in Agency administrative rulemaking procedures; distributes this material to appropriate Agency components.

Provides advice and assistance to the Agency in such areas as training, career development, awards, and performance management.

4. Delete suparagraph [h–7], *Divisons of Ethics and Program Integrity (HFA72)* and insert a new subparagraph [h–7], *Division of Ethics and Program Integrity (HFA72).*

[h–7] *Division of Ethics and Program Integrity (HFA72).* Directs and coordinates a multidiscipline team of administrative and/or program specialists who conduct scheduled review of field and Headquarters elements of the Agency to determine adherence to existing managerial policy and practices; assures that recommendations resulting from the review findings are implemented.

Evaluates the Agency's personnel and physical security programs and provides professional leadership and authoritative guidance in these areas. Formulates policy and procedures necessary to maintain the integrity of privileged information submitted by industry.

Provides a centralized Agencywide investigative capability for top management.

Implements Internal Control Reviews in accordance with OMB guidelines.

Directs the formulation of FDA policies and procedures concerning conflicts of interest and employee associations with regulated industries, reviews financial interest including outside activities of FDA employees, decides conflict to interest issues, and counsels and train employees on the avoidance of conflicts of interests.

Effective date: December 5, 1985.

Dated: December 5, 1985.

Donald Ian MacDonald, M.D.,

Acting Assistant Secretary for Health.

[FR Doc. 85–29888 Filed 12–17–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Group 813]

California; Filing of Plat of Survey

December 6, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Amador and El Dorado Counties

T. 8 N., R. 13 E.

2. This plat, in two (2) sheets, representing the dependent resurvey of a portion of the subdivisional lines and certain boundaries of mineral surveys, and the survey of the subdivision of sections 4 and 18, Township 8 North, Range 13 East, Mount Diablo Meridian, under Group No. 813, California, was accepted October 31, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85–29852 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 530]

California; Filing of Plat of Survey

December 6, 1985.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Humboldt Meridian, Del Norte County

T. 18 N., R. 4 E.
T. 18 N., R. 5 E.
T. 18 N., R. 16 E.
T. 19 N., R. 4 E.

2. These plats, representing the dependent resurvey of the north and south boundaries and subdivisional lines, and the survey of the subdivision of sections 2, 3, 4, 9, 10, and 13, T. 18 N., R. 4 E., Humboldt Meridian, California; the dependent resurvey of the west boundary and portions of the north and

south boundaries and subdivisional lines, T. 18 N., R. 5 E., Humboldt Meridian, California; the dependent resurvey of portions of the west and north boundaries, T. 18 N., R. 6 E., Humboldt Meridian, California; the retracement of the Oregon-California State Boundary from the east boundary of T. 19 N., R. 4 E., Humboldt Meridian, California, to the 192 mile, 22 chain corner common with portions of the south boundaries of Tps. 41 S., Rs. 8 and 9 W., Willamette Meridian, Oregon, and the north boundary of T. 19 N., R. 4 E., Humboldt Meridian, California, and the dependent resurvey of a portion of the north boundary, the east boundary and subdivisional lines, T. 19 N., R. 4 E., Humboldt Meridian, California, and the survey of the subdivision of sections 33 and 35, T. 19 N., R. 4 E., Humboldt Meridian, California; and the retracement of the Oregon-California State Boundary from the 181 mile corner to the east boundary of T. 19 N., R. 4 E., Humboldt Meridian, California, common with portions of the south boundary of Tps. 41 S., Rs. 7 and 8 W., Willamette Meridian, Oregon, and a portion of the rejected north boundary of T. 19 N., R. 5 E., Humboldt Meridian, California, and the dependent resurvey of the east boundary and subdivisional lines of T. 19 N., R. 5 E., Humboldt Meridian, California, and the survey of the subdivision of sections 34, 35, and 36, T. 19 N., R. 5 E., Humboldt Meridian, California, under Group No. 530, California, were accepted May 3, 1985.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85–29853 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–40–M

[C–11–85]

California; Filing of Plat of Survey

December 6, 1985.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Amador and Calaveras Counties

T. 6 N., R. 13 E.

2. This supplemental plat of the SW¼NW¼ of section 1, Township 6 North, Range 13 East, Mount Diablo Meridian, California, showing amended lotting created by the cancellation of a portion of Mineral Survey No. 6653 Am., is based upon the plats accepted May 20, 1960 and November 4, 1975 and the mineral survey record was accepted October 31, 1985.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85–29854 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–40–M

[C–15–84]

California; Filing of Plat of Survey

December 6, 1985.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 4 S., R. 4 E.

2. This supplemental plat of the W½, section 4, T. 4 S., R. 4 E., San Bernardino Meridian, California, showing amended lottings is based upon the plat approved July 19, 1920, the plat accepted May 22, 1958, and the City of Palm Springs Record of Survey, recorded October 8, 1969, in Book 4, at pages 52–55, Riverside County, was accepted May 29, 1985.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85–29855 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 864]

California; Filing of Plat of Survey

December 6, 1985.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

San Bernardino Meridian, Riverside County

T. 8 S., R. 8 E.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of sections 14 and 22, T. 8 S., R. 8 E., San Bernardino Meridian, under Group No. 864, California, was accepted May 9, 1985.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85–29856 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 720]

California; Filing of Plat of Survey

December 6, 1985.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Butte County

T. 22 N., R. 6 E.

BEST COPY AVAILABLE

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85–29857 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–40–M

Publication of Court Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Publication of Court Order.

SUMMARY: On December 4, 1985, the United States District Court for the District of Columbia rendered a memorandum opinion and order in the case of the *National Wildlife Federation* v. *Burford,* Civil Action No. 85–2238. The court ordered the defendants to publish the court order in the **Federal Register**. In compliance therewith, the order is hereby published:

United States District Court for the District of Columbia

National Wildlife Federation, Plantiff, v. Robert F. Burford, *et al.*, defendants.

[Civil Action No. 85–2238]

Order

Upon consideration of plaintiff's motion for a preliminary injunction, defendants' opposition thereto and plaintiff's reply, and

Finding that a preliminary injunction is necessary to preserve the relative positions of the parties until this case can be decided on the merits, and further

Finding that the plaintiff has shown a substantial likelihood of success on the merits, and further

Finding that the plaintiff will suffer irreparable harm if the requested injunction is not issued, and further

Finding that issuance of the requested injunction would serve the public interest, it is by the court this 4th day of December 1985,

Ordered that plaintiff's motion for a preliminary injunction is granted, and it is

Ordered that as used in this order, the terms "public lands" and "withdrawal" shall have the meaning given them by the Federal Land Policy and Management Act, 43 U.S.C. 1702(e), (j), and it is

Ordered that the defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them are hereby enjointed from:

1. Modifying, terminating or altering any withdrawal, classification, or other designation governing the protection of lands in the public domain that was in effect on January 1, 1981, or

2. Taking any action inconsistent with any withdrawal, classification, or other designation governing the protection of lands in the public domain that was in effect on January 1, 1981, including, but not limited to, the issuance of leases, the sale, exchange or disposal of land or interests in land, the grant of rights-of-way, or the approval of any plan of operations; and it is

Ordered that all persons holding interests, including but not limited to, ownership, possession, mining claims and their development, leases and rights-of-way, in lands that were the subject of classification terminations or withdrawal revocations since January 1, 1981 are hereby enjoined from taking any action inconsistent with the present status quo of these lands, including but not limited to, the staking of additional mining claims, obtaining new leases, mining, timber removal, land clearing, construction, or other forms of development; and it is

Ordered that the defendants shall forthwith cause a copy of this order to be published in the **Federal Register** and posted and made available to the public in defendants' offices in any state where this order might affect any person; and it is

Ordered that pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, plaintiff shall post security for this injunction in the amount of one hundred ($100.00) dollars, and it is

Further Ordered that a status call is scheduled for Monday, January 6, 1986 at 9:30 a.m., Courtroom No. 12, United States Courthouse.

John Pratt,

United States District Judge.

John E. Latz,

Acting Associate Director.

December 13, 1985.

[FR Doc. 85–29936 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–84–M

[UT–040–077]

Proposal To Construct a Range Improvement Project in Mud Springs Canyon Wilderness Study Area

The Bureau of Land Management, Cedar City District, is proposing to construct six segments of conventional steel post and barbed wire fence for a total distance of 3.21 miles. Four of the six segments, totaling 4,618 feet, are proposed to be constructed in the Mud Springs Canyon Wilderness Study Area (WSA). This WSA is located east and southeast of Henrieville, Utah. The location of the proposed fences are in T. 38 S., R. 1 W., Section 12 SLB&M and T. 38 S., R. 1 E, Section 19 SLB&M. Access to install those fence segments within the WSA will be by horseback and does not involve surface distributing activities. This project is one of several needed to implement the Round Valley Allotment Management Plan which will improve range and watershed conditions in the area.

A draft Environmental Assessment has been prepared on this proposal and is now available for public review and comment. To obtain a copy of this document or to obtain additional information on the proposal, contact Rex Rowley, Area Management at the Bureau of Land Management, Kanab Resource Area, P.O. Box 459, Kanab, Utah 84741 or telephone at 801–644–2672. Comments should be submitted by January 20, 1986. Comments postmarked after the above date may not arrive in time to be considered as part of the decisionmaking process on the final Environmental Assessment.

Dated: December 6, 1985.

Morgan S. Jensen,

District Manager.

[FR Doc. 85–29858 Filed 12–17–85; 8:45 am]

BILLING CODE 4310–DQ–M

Use of Helicopters and Motorized Vehicles to Gather Wild Horses; Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Elko District: Public hearing to discuss the use of helicopters and motorized vehicles to gather wild horses in FY 1986.

SUMMARY: In accordance with Pub. L. 92–195 and 92–578, this notice sets forth the public hearing date to discuss the use of helicopters and motorized vehicles to gather wild horses from the Elko District during FY 1986.

DATE: January 14, 1986 at 10:00 a.m.

ADDRESS: The hearing will take place at the Elko District Office, 3900 Idaho Street, Box 831, Elso , Nevada 89801. Telephone (702) 738–4071.

SUPPLEMENTARY INFORMATION: The use of helicopters and motorized vehicles to gather horses from the Antelope, Goshute, Cherry Creek, and Maverick-Medicine herd management areas will be discussed.

This hearing is open to the public. Interested persons may make oral or written statements. If you wish to make oral comments, please contact Rodney Harris by January 10, 1986. Written statements must be received by this date, also, for further information contact Rodney Harris, District Manager, P.O. Box 831, Elko, Nevada 89801, telephone (702) 738–4071.

Rodney Harris,

District Manager.

[FR Doc. 85–29455 Filed 12–17–85; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

[FES 85–49]

Alaska Offshore; Availability of the Final Environmental Impact Statement for Proposed Oil and Gas Lease Sale 100 in the Norton Basin

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Minerals Management Service has prepared a final environmental impact statement (EIS) for proposed oil and gas Lease Sale 100 in the Norton Basin.

Single copies of the final EIS can be obtained from the Office of the Regional Director, Minerals Management Service, Alaska Region, P.O. Box 101159, Anchorage, Alaska 99510.

Copies of the final EIS will also be available for inspection in the following public libraries: Alaska Federation of Natives, Suite 304, 1577 O Street, Anchorage, AK; Anchor Point Public Library, Anchor Point, AK; Department of the Interior Resource Library, Box 36, 701 C Street, Anchorage, AK; Cordova Public Library, Box 472, Cordova, AK; Kenai Community Library, Box 157, Kenia, AK; Elim Learning Center, Elim, AK; Haines Public Library, P.O. Box 36, Haines, AK; North Star Borough Library, Fairbanks, AK: University of Alaska, Institute of Social and Economic Research Library, Fairbanks, AK; Homer Public Library, Box 356, Homer, AK; Z. J. Loussac Public Library, 427 F Street, Anchorage, AK; Juneau Memorial Library, 114 W. 4th Street, Juneau, AK; Alaska State Library, Documents Librarian, Pouch G, Juneau, AK; Ketchikan Public Library, 629 Dock Street, Ketchikan, AK; Department of Defense, Army Corps of Engineers Library, P.O. Box 7002, Anchorage, AK; Kodiak Public Library, P.O. Box 985, Kodiak, AK; Metlakatla Extension Center, Metlakatla, AK; Department of the Interior, Bureau of Mines Library, AF–F.O. Center, P.O. Box 550, Juneau, AK; Petersburg Extension Center, Box 289, Petersburg, AK; Seldovia Public Library, Drawer D, Seldovia, AK; Seward Community Library, Box 537, Seward, AK; University of Alaska Juneau Library, P.O. Box 1447, Juneau, AK; Sitka Community Library, Box 1090, Sitka, AK; Douglas Public Library, Box 469, Douglas, AK; University of Alaska Anchorage Library, 3211 Providence Drive, Anchorage, AK; University of Alaska Elmer E. Rasmusson Library, Fairbanks, AK; and Wrangell Extension Center, Box 651, Wrangell, AK.

Dated: December 12, 1985.

William D. Bethenberg,

Director, Minerals Management Service.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 29898 Filed 12–17–85; 8:45 am]

BILLING CODE 4310-MR-M

Minerals Management Service Outer Continental Shelf; Development Operations Coordination Document, Conoco Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0839, Block 94, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on December 6, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday throught Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 10, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–29900 Filed 12–17–85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nomination for the following properties being considered for listing in the National Register were received by the National Park Service before December 7, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the signficance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 12, 1986.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Fairfield County

Greenwich, *United States Post Office-Greenwich Main Post Office,* 310 Greenwich Ave.

FLORIDA

Alachua County

Gainesville vicinity, *Kanapaha,* 8500 FL 24

Brevard County

Cocoa, *Porcher House,* 434 Delannoy Ave.

Leon County

Tallahassee, *Martin, Gov. John W., House,* 1001 Governer's Dr.

Volusia County.

Daytona Beach, *Merchants Bank Building,* 252 S. Beach St.

KENTUCKY

Campbell County.

Bellevue, *Bellevue High School,* Washington & Center Sts.

MASSACHUSETTS

Norfolk County

Foxboro, *Morse, Amos, House,* 77 North St.

Worcester County

Auburn, *Stone, Joseph, House,* 35 Stone St.

MISSOURI

Jackson County.

Kansas City, *Firestone Building,* 2001 Grand Ave.

NORTH CAROLINA

Cabarrus County

Bethpage vicinity, *Pressley, Rev. John E., House.* N. side of SR 1613, .3 mi. E. of SR 1612

Georgeville vicinity, *Bost Mill Historic District,* N. & S. side of NC 200 off US 601

Mount Pleasant, *First Congregational Church,* Wade & C Sts.

Rocky River vicinity, *Rocky River Presbyterian Church Historic District,* Roughly area off SR 1139, SR 1139 & 1136 jct., SW side of SR 1158, & NW of jct SR 1158 & 1139

Surry County

Mount Airy, *Trinity Episcopal Church,* 472 N. Main St.

OHIO

Cuyahoga County

Brecksville, *Brecksville-Northfield High Level Bridge,* OH 82 and Cuyahoga River (also in Summit County, Northfield)

Meigs County

Middleport, *Middleport Public Library,* 178 S. Third St.

Muskingum County

Dresden, *Crescent Hill,* 44 W. Fifth St.

Richland County

Bethlehem, *Sacred Heart of Jesus Churches,* OH 61

Wyandot County

Upper Sandusky vicinity, *Armstrong Farm,* 1376 OH 199

PUERTO RICO

Arecibo County

Arecibo, *Corregimiento Plaza Theater,* Llaguerry & Toribio Pagan Sts.

SOUTH CAROLINA

Bamberg County

Cal Smoak Site (38BM4)

Greenwood County

Trapp and Chandler Pottery Site (38 GN 169)

Orangeburg County

Mack, Alan, Site (38OR67)

TEXAS

Williamson County

Georgetown, *Amos, Martin C., House (Georgetown MRA),* 1406 Olive

Georgetown, *Arnold—Torbet House (Georgetown MRA),* 906 Pine

Georgetown, *Atkinson House (Georgetown MRA),* 911 Walnut

Georgetown, *Belford Historic District (Georgetown MRA),* Roughly bounded by University Ave., Main, E. Eighteenth, & Austin

Georgetown, *Bowlen House (Georgetown MRA),* 1405 Forest

Georgetown, *Burcham House (Georgetown MRA),* 1310 College

Georgetown, *Casey House (Georgetown MRA),* 705 E. Third

Georgetown, *Caswell House (Georgetown MRA),* 207 E. Ninth

Georgetown, *Chesser—Morgan House (Georgetown MRA),* 1202 E. Fifteenth

Georgetown, *Coffee, J.T., House (Georgetown MRA),* 1403 James

Georgetown, *Daughtrey, E.M., House (Georgetown MRA),* 1316 E. University

Georgetown, *Easley, S.A., House (Georgetown MRA),* 1310 Olive

Georgetown, *First Methodist Church (Georgetown MRA),* 410 E. University

Georgetown, *Fowler, D.D., House (Georgetown MRA),* 1531 Ash

Georgetown, *Grace Episcopal Church (Georgetown MRA),* 1314 E. University

Georgetown, *Harper—Chesser House (Georgetown MRA),* 1309 College

Georgetown, *Harrell, Moses, House (Georgetown MRA),* 1001 Church

Georgetown, *Harris, E.M., House (Georgetown MRA),* 404 E. Seventh

Georgetown, *Hawnen, A.W., House (Georgetown MRA),* 1409 Olive

Georgetown, *House at 214 W. University (Georgetown MRA),* 214 W. University

Georgetown, *House at 801 West (Georgetown MRA),* 801 West

Georgetown, *House at 907 Pine (Georgetown MRA),* 907 Pine

Georgetown, *Hyer, DR. Robert, House (Georgetown MRA),* 904 Ash

Georgetown, *Imhoff House (Georgetown MRA),* 208 Austin

Georgetown, *Irvine, George, House (Georgetown MRA),* 409 E. University

Georgetown, *Johnson, J.J., Farm (Georgetown MRA),* Rabbit Hill Rd.

Georgetown, *Lane—Riley House (Georgetown MRA),* 1302 College

Georgetown, *Leake, Will & Mary, House (Georgetown MRA),* 313 E. Seventh

Georgetown, *Leavell, John, House (Georgetown MRA),* 803 College

Georgetown, *Lockett, M.B. and Annie, House (Georgetown MRA),* 811 E. University

Georgetown, *Love, Frank & Mellie, House (Georgetown MRA),* 1415 Ash

Georgetown, *M.K.T. Bridge (Georgetown MRA),* M.K.T. tracks over San Gabriel River NE of Georgetown

Georgetown, *Makemson, W.K. and Kate, House (Georgetown MRA),* 1002 Ash

Georgetown, *McKnight—Ebb House (Georgetown MRA),* 503 W. Eighteenth

Georgetown, *McMurray House (Georgetown MRA),* 611 Church

Georgetown, *Miller—Ellyson House (Georgetown MRA),* 303 E. Ninth

Georgetown, *Old Georgetown High School (Georgetown MRA),* 507 E. University

Georgetown, *Paige—DeCrow—Weir House (Georgetown MRA),* I–35 and SR 2243

Georgetown, *Patrick, Woodson & Margaret, House (Georgetown MRA),* 211 E. Fifth

Georgetown, *Pegues House (Georgetown MRA),* 904 E. University

Georgetown, *Price, R.H. & Martha, House (Georgetown MRA),* 209 E. Tenth

Georgetown, *Reedy, J.H., House (Georgetown MRA),* 906 E. University

Georgetown, *Rouser House (Georgetown MRA),* 602 Myrtle

Georgetown, *Saint John's Methodist Church (Georgetown MRA),* 301 E. University

Georgetown, *Sansom—Schmalenbeck House (Georgetown MRA),* 813 Church

Georgetown, *Saxon Motor Car Store (Georgetown MRA),* 316 E. Sixth

Georgetown, *Sillure, A.W., House (Georgetown MRA),* 1414 Ash

Georgetown, *Stone, Robert and Lula, House (Georgetown MRA),* 1102 Ash

Georgetown, *Taylor—Cooper House (Georgetown MRA),* 105 E. Fifth

Georgetown, *Vaden, W.C. and Kate, House (Georgetown MRA),* 711 E.University

Georgetown, *Wesley Chapel AME Church (Georgetown MRA),* 508 W. Fourth

Georgetown, *Wilcox, D.K. & Inez, House (Georgetown MRA),* 1307 Olive

Georgetown, *Wilco—Graves House (Georgetown MRA),* 1403 Olive

Georgetown, *Williamson County Courthouse Historic District (Boundary Increase (Georgetown MRA),* 114—124 and 113 E. Eight St.

WISCONSIN

Milwaukee County

Milwaukee, *Abresch, Charles, House (West Side Area MRA),* 2126 Juneau Ave.

Milwaukee, *Calvary Prtesbyterian Church (West Side Area MRA),* 935 W. Wisconsin Ave.

Milwaukee, *Cook, Thomas, House (West Side Area MRA),* 853 N. Seventeenth St.

Milwaukee, *Dahinden, Edward J., House (West Side Area MRA),* 3316 W. Wisconsin Ave.

Milwaukee, *Eagles Club (West Side Area MRA),* 2401 W. Wisconsin Ave.

Milwaukee, *Esbenshade, Abraham H., House (West Side Area MRA),* 3119 W. Wells St.

Milwaukee, *Gesu Church (West Side Area MRA),* 1145 W. Wisconsin Ave.

Milwaukee, *Grand Avenue Congregational Church (West Side Area MRA),* 2133 W. Wisconsin Ave.

Milwaukee, *Highland Avenue Methodist Church,* 2024 W. Highland Ave.

Milwaukee, *Hope Parish House (West Side Area MRA),* 1115 N. Thirty-fifth St.

Milwaukee, *Howie, David W., House (West Side Area MRA),* 3026 W. Wells St.

Milwaukee, *Johnson Hall (West Side Area MRA),* 1121 W. Wisconsin Ave.

Milwaukee, *Kilburn Avenue Row House Historic District (West Side Area MRA),* N.

Fourteenth St., W. Kilbourn Ave., and N. Fifteenth St.
Milwaukee, *Kilbourn Masonic Temple (West Side Area MRA)*, 827 N. Eleventh St.
Milwaukee, *Milwaukee Normal School—Milwaukee Girls' Trade and Technical High School (West Side Area MRA)*, 1820 W. Wells St.
Milwaukee, *Schlitz, Victor, House (West Side Area MRA)*, 2004 W. Highland Ave.
Milwaukee, *Schuster, George, House & Carriage Shed (West Side Area MRA)*, 3209 W. Wells St.
Milwaukee, *Second Church of Christ Scientist (West Side Area MRA)*, 2722 W. Highland Blvd.
Milwaukee, *Sivyer, Fred, House (West Side Area MRA)*, 761 N. Twenty-fifth St.
Milwaukee, *St. George Melkite Catholic Church (West Side Area MRA)*, 1617 W. State St.
Milwaukee, *Tripoli Temple (West Side Area MRA)*, 3000 W. Wisconsin Ave.
Milwaukee, *Walker, Harry B., House (West Side Area MRA)*, 3130 W. Wells St.
Milwaukee, *Zion Rock Missionary Baptist Church (West Side Area MRA)*, 1338—1340 W. Juneau Ave.

Racine County

Racine, *Johnson, Peter, House*, 1601 State St.

Rock County

Jamesville, *Courthouse Hill Historic District*, Roughly bounded by E. Milwaukee St., Garfield & Oakland Aves., S. Main & E. Court Sts., and Parker Pl.

[FR Doc. 85-29841 Filed 12-17-85; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Availability of Annual Evaluation Reports on the Administration of State Regulatory and Abandoned Mine Lands Programs Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability.

SUMMARY: OSM is announcing the availability of six annual evaluation reports on the administration of State regulatory and abandoned mine lands (AML) programs under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The six reports, covering the States of Indiana, Iowa, Kansas, Louisiana, Missouri, and Oklahoma were prepared under the provisions of OSM's oversight policy and have been transmitted to Congress.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** for the addresses where copies of the reports may be obtained.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: Copies of the reports are available, free of charge, at the respective OSM offices listed below:

Indiana: Indianapolis Field Office, Office of Surface Mining, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 520, Indianapolis, Indiana 46204.

Iowa, Kansas and Missouri: Kansas City Field Office, Office of Surface Mining, 1103 Grand Avenue, Professional Building, Room 502, Kansas City, Missouri 64106.

Louisiana and Oklahoma: Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

Background

Under Section 503 of SMCRA, a State may elect to assume primary responsibility for regulating surface coal mining and reclamation operations within its borders by submitting a program to the Secretary of the Interior which demonstrates the State's capability to carry out the provisions of SMCRA. Once the Secretary approves the program, the State is granted primacy, and the Federal government assumes a monitoring and evaluation role. Monitoring of the State's administration and enforcement of its regulatory and AML programs is conducted throughout the year. The Field Office Directors compile and analyze the data gathered during the evaluation period and prepare annual evaluation reports for transmittal to Congress.

The first six evaluation reports for this year (Illinois, Kentucky, Maryland, Mississippi, Montana, and North Dakota) were completed and sent to Congress on November 5, 1985. These final reports were made publicly available on November 14, 1985 (50 FR 47122). Four additional evaluation reports for Alabama, Alaska, Ohio, and Wyoming were completed and sent to Congress on November 25, 1985, and were made publicly available on November 29, 1985 (50 FR 49138). Six additional evaluation reports for Indiana, Iowa, Kansas, Louisiana, Missouri and Oklahoma were completed and sent to Congress on December 10, 1985, and are now publicly available. As the remaining reports are completed, OSM plans to make them available also.

Dated: December 12, 1985.

Brent Wahlquist,

Assistant Director, Program Operations, Office of Surface Mining.

[FR Doc. 85-29925 Filed 12-17-85; 8:45 am]
BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[332-219]

Competitive Position in U.S. Markets of Certain Vegetables Produced in the United States Great Lakes States and in Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: December 12, 1985.

SUMMARY: Following receipt of a request from the Subcommttee on Trade of the House Committee on Ways and Means, the Commission has instituted on its own motion investigation No. 332-219 under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), for the purpose of assessing the competitive position in U.S. markets of certain vegetable produced in the U.S. Great Lakes States and in Canada.

FOR FURTHER INFORMATION CONTACT: Mr. Tim McCarty, principal analyst (telephone 202-274-1753) or Mr. David L. Ingersoll, Chief, Agriculture, Fisheries, and Forest Products Division (telephone 202-274-0068). U.S. International Trade Commission, Washington, D.C. 20436.

Background and Scope of Investigation

The Subcommittee on Trade specifically asked the Commission to provide:

(A) Background information on each of the six vegetables in the Great Lakes States region, including levels and trends in production, share of production sold in the fresh market or sold for processing, and the number of producers for all uses along with the number selling to fresh market outlets. Also, a discussion of the relationship between the Great Lakes States production of the six vegetables under study and the U.S. supplies of the six vegetables in other States that are marketed during the same season as the Great Lakes supplies:

(B) A comparison of U.S. and Canadian tariffs, surtaxes, and nontariff trade regulations, such as grading and packaging requirements, plant health regulations, and other regulations that apply to the U.S.-Canada trade in these six vegetables;

(C) A discussion of the level and trends in production of the six vegetables in the Ontario and Quebec Provinces, the nature of the imported Canadian products, the degree to which such products are like or directly competitive with the regional domestic products, and the principal U.S. markets in which the imported Canadian products are sold;

(D) A description of the marketing channels used for the six fresh-market vegetables when produced in the region and when exported from Canada to the United States;

(E) A description of the principal price indicators used by the regional domestic industry for their fresh-market sales, the principal wholesale markets where the regional production is sold, and the prices for the regional domestic and Canadian products sold competitively in the United States;

(F) A discussion of U.S.-Canada currency exchange rates as they relate to the pricing practices of the imported vegetables; and

(G) A discussion of other factors of competition between regional U.S. and Canadian suppliers, including a discussion of the levels and trends in U.S. consumption, U.S. imports, and U.S. exports during the regional supply season.

The Committee specified that the products to be investigated should be cabbage, carrots, celery, lettuce, radishes, and onions (except pearl onions and onions with tops attached), which are fresh, chilled, or frozen, but not reduced in size or otherwise prepared or preserved, provided for in part 8A of Schedule 1 of the Tariff Schedules of the United States. The Committee asked the Commission to complete its study by March 31, 1986.

Written Submission

Interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be received by the Commission at the earliest practicable date, but no later than January 31, 1986. All submissions should be addressed to the Secretary at the Commission's office in Washingon, D.C.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

Issued: December 12, 1985.
By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–29958 Filed 12–17–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–300 (Preliminary)]

Dynamic Random Access Memory Semiconductors (DRAM's) of 256 Kilobits and Above From Japan; Antidumping Investigation

[Editorial Note.—The following document should have appeared in the issue of Tuesday, December 17, 1985.]

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–300 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of dynamic random access memory semiconductors (DRAM's) having a memory capacity of 256 kilobits and above, of both the N-channel and the complementary metal oxide semiconductor type, whether in the form of processed wafers, unmounted die, mounted die, or assembled devices, as provided for in item 687.74 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by January 27, 1986.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B [19 CFR part 207), and Part 201, Subparts A through E (19 CFR part 201).

EFFECTIVE DATE: December 11, 1985.

FOR FURTHER INFORMATION CONTACT: Ilene Hersher (202–523–4616), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to notification from the Department of Commerce that it is self-initiating an antidumping investigation on the subject products.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

A conference is scheduled in connection with this investigation for 9:30 a.m. on January 3, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Lynn Featherstone (202–523–0242) not later than December 31, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such

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duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions

Any person may submit to the Commission on or before January 7, 1986, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: December 12, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-29834 Filed 12-16-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55; Sub-156]

Seaboard System Railroad, Inc; Abandonment Between Suffolk and College Park in the Cities of Portsmouth, Suffolk, and Chesapeake, VA; Findings

This Commission has issued a certificate authorizing Seaboard System Railroad, Inc., to abandon its 18.61-mile rail line between Suffolk (milepost AB-218.0) and Bruce (milepost AB-230.88) and from milepost ABE-229.00 to milepost ABE-234.73 near College Park, VA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-29956 Filed 12-17-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Quotas for Controlled Substances in Schedule II

Correction

In Fr Doc. 85-23356 appearing on page 40069 in the issue of Tuesday, October 1, 1985 make the following correction in the the table appearing in the third column:

The quota for meperidine should read "9,831,000".

BILLING CODE 1505-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (85-74)]

Calendar Year 1984 Report of Closed Meeting Activities of Advisory Committees

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of public availability of reports.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, the NASA advisory committees that held closed or partially closed meetings in 1984, consistent with the policy of 5 U.S.C. 552b(c), have prepared reports on activities of these meetings. copies of the reports have been filed and are available for public inspection at the Library of Congress, Federal Advisory Committee Desk, Washington, DC 20540; and the National Aeronautics and Space Administration, Headquarters Information Center, Washington, DC 20546. The names of the committees are: NASA Advisory Council (NAC), NAC History Advisory Committee, NAC Life Sciences Advisory Committee, and NASA Wage Committee.

FOR FURTHER INFORMATION CONTACT: Mary R. Lippolis, Code NI, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2986).

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

December 11, 1985.

[FR Doc. 85-29859 Filed 12-17-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice (85-75)]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee, Space Station Task Force.

DATE: January 8-9, 1986, 8:30 a.m. to 5:30 p.m., and January 10, 1986, 8:30 a.m. to 3 p.m.

ADDRESS: National Aeronautics and Space Administration, Lyndon B. Johnson Space Center, Building 1, Room 966, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Sade, Code E, NASA Headquarters, Washington, DC 20546 (202/453-1430).

SUPPLEMENTARY INFORMATION: The Space Station Task Force was established under the NAC Space and Earth Science Advisory Committee to counsel NASA on plans for and work in progress on the scientific utilization of the new capabilities which will be afforded by the Space Station, including the relationship of these plans to the existing space science program. This advice includes periodic updates of scientific requirements on Space Station hardware and operations and interaction with contractors during the definition phase of Space Station development.

This meeting will be open to the public up to the seating capacity of the room (approximately 60 persons, including Committee members and other invited participants). Topics under

discussion at this meeting will include Space Station program status, international science cooperation, and the draft final report.

Type of meeting: Open.

Agenda

January 8, 1986.

8:30 a.m.—Welcome and General Overview.
9 a.m.—Results of Recent Reference Update Review.
10:30 a.m.—Status of Functional Allocations.
11:30 a.m.—Prospects of International Participation.
1 p.m.—NASA Science Operations Planning.
2 p.m.—International Science Cooperation.
3:30 p.m.—Discussion of Draft Final Report.
5:30 p.m.—Adjourn.

January 9, 1986

8:30 a.m.—Significance of Human Medical Research.
10:15 a.m.—Discipline Team Meetings.
1:30 p.m.—Interdisciplinary Team Meetings.
5:30 p.m.—Adjourn.

January 10, 1986

8:30 a.m.—Results of National Commission on Space.
9:30 a.m.—Formulation of Recommendations.
1 p.m.—Discussion with Program Management.
3 p.m.—Adjourn.

Richard L. Daniels,

Deputy Directory, Logistics Management and Information Programs Division, Office of Management.

December 9, 1985.

[FR Doc. 85-29860 Filed 12-17-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Renewal

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) and advises of the renewal of the Advisory Committee on Preservation for a two-year period, until December 3, 1987.

The Archivist of the United States has determined that the renewal of this advisory committee is in the public interest so that the National Archives has up-to-date information on preservation technologies to ensure the preservation of permanently valuable records accessioned into the National Archives.

Dated: December 11, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-29897 Filed 12-17-85; 8:45 am]

BILLING CODE 7515-01-M

Records Schedules

AGENCY: Office of Records Administration, National Archives and Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) whch include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before February 18, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street, NW, Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of the Air Force, Directorate of Administration, (N1-AFU-85-17). Mail Acceptance and Delivery records.
2. Department of the Air Force, Directorate of Administration, HQ USAF (N1-AFU-86-6). Master copies of tests and annual test inventories.
3. Department of the Air Force, Directorate of Administration, HQ USAF (N1-AFU-86-8). Contractor performance documentation prepared by Quality Assurance Evaluations.
4. Department of the Air Force, Directorate of Administration, HQ USAF (N1-AFU-86-9). Rejected unsolicited proposals.
5. Department of the Air Force, Directorate of Administration, HQ USAF (N1-AFU-86-12). Three categories of support agreements and related correspondence.
6. Department of the Air Force, Directorate of Administration, HQ USAF (N1-AFU-86-14). Occupational therapy treatment records.
7. Department of the Air Force, U.S. Air Force Academy (NC1-461-85-3). Final grade sheets for Academy courses.
8. U.S. Department of Agriculture, Forest Service, Area Planning and Development (NC1-95-85-4). Annual Forestry Plans of Work containing funding needs for Resource, Conservation and Development Program projects.
9. Department of the Army, Records Management Operations Office (N1-AU-86-7). Documents relating to installation and maneuver area access roads.
10. Department of the Army, Records Management Operations Office (N1-AU-86-8). Records relating to passports and visas for military and civilian personnel and their dependents.
11. Department of the Army, Records Management Operations Office (N1-338-86-1). Records of various Army proving grounds, 1940-1967, including

routine case files, correspondence, manuals, and publications relating to administrative management. Records with reference and research value will be accessioned by the National Archives.

12. Department of Health and Human Services, Social Security Administration, International Program Service Center (N1–47–86–1). Lists of checks issued by the Treasury Department to beneficiaries residing in foreign countries.

13. Department of Health and Human Services, Public Health Service (N1–90–86–4). Revision to standards for destruction of Privacy Act reports and administrative files.

14. Panama Canal Commission (N1–185–86–2). Records of the Panama Canal Railroad Company, created by the New York Office. Included are facilitative correspondence; accounts, ledgers, vouchers, cancelled bond coupons, and other obsolete financial records; railroad, freight, traffic, purchase, and repair orders; copies of transmittals, duplicate copies of annual reports and other printed records.

15. Office of Personnel Management, Administrative Group, Information Systems Plans and Policies Division (NC1–146–86–6). Civil Service retirement annuity award cards used to record payment information for annuitants and survivor annuitants.

16. Administrative Office of the U.S. Courts (NC1–116–85–7). Facilitative correspondence relating to legal matters and files concerning suits brought against judicial officers in their official capacity.

Dated: December 11, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85–29861 Filed 12–17–85; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440 OL, 50–441 OL]

Cleveland Electric Illuminating Company et al. (Perry Nuclear Power Plant, Units 1 and 2) Cancellation of Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of December 10, 1985, oral argument on the pending appeals of intervenors Ohio Citizens for Responsible Energy and Sunflower Alliance from the Licensing Board's September 3, 1985 Concluding Partial Initial Decision on Emergency Planning, Hydrogen Control and Diesel Generators scheduled for December 19, 1985 in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland, is cancelled.

Dated: December 12, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85–29951 Filed 12–17–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–412A]

Duquesne Light Co., Toledo Edison Co., Ohio Edison Co., and Cleveland Electric Illuminating Co.; Receipt of Antitrust Information

The Duquesne Light Company acting on its own behalf and as agent for the captioned companies, has submitted additional antitrust information in conjunction with the application for an operating license for a pressurized water reactor known as Beaver Valley, Unit 2, located approximately twenty-two miles northwest of Pittsburgh, Pennsylvania on the southern shore of the Ohio River in Beaver County, Pennsylvania. The data submitted contain antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage. (These data represent an updated response from the applicants' original 9.3 data submission that was noticed in the **Federal Register** on October 14, 1983—Vol. 48, No. 200, pg. 46905.)

On completion of a staff antitrust review, the Director of the Office of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, DC and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the **Federal Register** notice. The results of any reevaluation that are requested will be published in the **Federal Register** and copies sent to the Washington, DC and local public document rooms.

A copy of the general information portion of the application for an operating license and the antitrust information submitted is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the local public document room at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Any person who desires additional information regarding the matter covered in this notice or who wishes to have views considered with respect to significant changes related to antitrust matters which have occurred in the applicants' activities since the construction permit antitrust review should submit such requests for information or views to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation, on or before January 17, 1986.

Dated at Bethesda, Maryland this 13th day of December 1985.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Director, Planning & Program Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 85–29954 Filed 12–17–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Order Modifying License Confirming Additional Licensee Commitments on Emergency Response Capability

I

Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR–59 which authorizes the operation of the James A. FitzPatrick Nuclear Power Plant (the facility) at steady state reactor power levels each not in excess of 2436 megawatts thermal. The facility is a boiling water reactor located in Oswego County, New York.

II

Following the accident at Three Mile Island Unit No. 2 (TMI–2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operation reactors and on plants under construction. These requirements included Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operating of nuclear facilities and significant upgrading of emergency response

capability based on the experience from the accident at TMI–2 and official studies and investigations of the accident. The requirements are set forth in NUREG–0737, "Clarification of TMI Action Requirements," and in Supplement 1 to NUREG–0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modifications, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82–33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG–0737. In this letter, operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG–0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82–33 by letter dated April 15, 1983 and supplemented their response by letters dated June 30, 1983 and August 24, 1985. In these submittals, the licensee made commitments to complete the basic requirements. The licensee's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implmentation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 12, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed the licensee's commitments.

IV

The June 12, 1984 Order stated that for those requirements for which the licensee committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the June 12, 1984 Order, the licensee, by letter dated November 30, 1984, provided completion schedules for the following requirements:

1. Safety Parameter Display System (SPDS).

1b. SPDS fully operational and operators trained.

3. Regulatory Guide 1.97—Application to Emergency Response Facilities.

3b. Implement (installation or upgrade) requirements.

5. Emergency Response Facilities.

5a. Technical Support Center fully functional.

The staff reviewed the licensee's November 30, 1984 letter and discussed the dates with the licensee. As a result of these discussions, the licensee provided certain revised dates by letters date June 14 and June 28, 1985. The attached Table summarizing the licensee's schedular commitments for the above items was developed by the NRC from the information provided by the licensee.

The NRC finds that these dates are reasonable and achievable dates for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments are required in the interest of the public health and safety and should, therefore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to sections 103, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 50, it is hereby ordered, effective immediately, that facility Operating License No. DPR–59 is modified to provide that the licensee shall:

Implement the specific items described in the Attachment to this order in the manner described in the licensee's submittal noted in Section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of BWR Licensing, for good cause.

VI

The licensee or any person with an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. A copy should be sent to the Executive Legal Director at the same address. A request for hearing shall not stay in the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this order.

Dated in Bethesda, Maryland this 11th day of December 1985.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Division of BWR Licensing, Office of Nuclear Reactor Regulation.

LICENSEE'S COMMITMENTS ON SUPPLEMENT 1 TO NUREG—0737

Title	Item/requirement	Licensee's completion schedule (or status)
Safety parameter display system (SPDS)	1b. SPDS fully operational and operators trained.	30 days after startup of Cycle 8, or Jan. 31, 1987, whichever is later
Regulatory guide 1.97—application to emergency response facilities.	3b. Implement (installation or upgrade) requirements.	30 days after startup of Cycle 9, or Apr 1, 1988 whichever is later.
Emergency response facilities	5a. Technical support center fully functional.	Fully functional.[1]

[1] Does not include SPDS display terminal.

[FR Doc. 85–29952 File 12–17–85; 8:45 am]

BILLING CODE 7590–01–M

Bi-Weekly Notice; Applications and Amendments To Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to pubish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice include all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on December 4, 1985 (50 FR 49779), through December 9, 1985.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By January 17, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date.

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Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company et al., Docket No. STN 50–528, Palo Verde Nuclear Generating Station, Unit No. 1, Maricopa County, Arizona

Date of amendment request: October 16, 1985.

Description of amendment request: The proposed amendment would revise paragraph 2.C.(6) of the Palo Verde Unit 1 license to allow an extension of time, from November 30, 1985 to March 30, 1986, for the completion of the environmental qualification of the hydrogen recombiner equipment.

The change to the license condition has been requested because the licensees do not expect to complete the environmental qualification testing and documentation for two hydrogen recombiners before November 30, 1985 due to circumstances beyond their control. By letter dated September 30, 1985 the licensees requested that the Commission grant an extension beyond the November 30, 1985 deadline which is stated in license condition 2.C.(6), to March 30, 1986, for the qualification of this equipment. The Commission has approved the request, by its letter to the licensees dated November 18, 1985 and the approval of the request will be reflected in a change to license condition 2.C.(6). On October 16, 1985, the licensees submitted a request for a license amendment for this change.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

No change is involved to the design bases or criteria of the equipment in question. The amendment does not, therefore, significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendment does not vary or affect any plant operating condition or parameter. For these reasons, the NRC staff has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The requested amendment does not change the qualification parameters or standards, the equipment operability requirements, or the design bases for the equipment of the plant. It would only allow the licensees an extension of time to determine that the equipment in question meets those standards and bases. For the reasons stated above, the NRC staff has determined that the change does not involve a significant reduction in any margins of safety.

Based on the above considerations, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arther C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Branch Chief George W. Knighton.

Arizona Public Service Company et al., Docket Nos. STN 50–528 and STN 50–529, Palo Verde Nuclear Generating Station, Unit Nos. 1 and 2, Maricopa County, Arizona Date of Amendment Request: November 19, 1985

Decription of amendment request: The proposed amendment would allow a one time change to Technical Specification 3.6.4.2 for each unit, March 30, 1986, to complete the installation of environmentally qualified hydrogen recombiner equipment.

The change has been requested to exclude the provisions of Technical Specification 3.0.4 from Technical Specification 3.6.4.2 during the period of time (not to exceed March 30, 1986) that the modifications to the hydrogen recombiners are being performed to install environmentally qualified equipment. The one-time change woud allow implementation of the requirements of 10 CFR 50.49 without impacting plant operations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new of different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

No change is involved to the design bases or criteria of the hydrogen recombiner equipment. In addition, if the requested one-time Technical Specification change is used to restart the plant during the time that the modifications are being made to the hydrogen recombiner, operation of the plant will be in conformance with Technical Specification 3.6.4.2 for continued operation. The amendment does not, therefore, significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendment does not very or affect any plant operating condition or parameter. For these reasons, the NRC staff has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The requested amendment does not change the design bases for the equipment or the plant. It would only allow the licensees time to modity the equipment in question to meet the requirements of 10 CFR 50.59 without impacting plant operations. For the reasons stated above, the NRC staff has determined that the change does not involve a significant reduction in any margins of safety.

Based on the above considerations, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for licensees: Mr. Arthur C. Gehr, Snell Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Director George W. Knighton.

Duke Power Company et al., Docket No. 50–413, Catawba Nuclear Station, Unit No. 1, York County, South Carolina

Date of amendment request: July 22, 1985 as suplemented September 11, 1985.

Description of amendment request: The proposed amendment would revise the Catawba Nuclear Station, Unit 1, Technical Specifications (TS) to increase the allowed out-of-service times for Reactor Trip System (RTS) channels. The changes would revise Table 3.3–1 for the following channels:

1. Power Range Neutron Flux.
2. Overtemperature Delta-T.
3. Overpower Delta-T.
4. Pressurizer Pressure-Low.
5. Pressurizer Pressure-High.
6. Pressurizer Water Level-High.
7. Reactor Coolant Flow-Low.
8. Steam Generator Water Level-Low-Low.
9. Reactor Coolant Pumps-Undervoltage.
10. Reactor Coolant Pumps-Underfrequency.
11. Turbine Trip.

For thee channels, the changes would: (1) Increase the time an inoperable channel may be maintained in an untripped condition from one hour to six hours, and (2) increase the time an inoperable channel may be bypassed to allow testing of another channel in the same function from two hours to four hours (or increase the time for channel test in the bypass mode with the inoperable channel tripped). A third change which does not require a change to the TS but is related to these changes, would result in changes to plant procedures to provide for routine testing of these channels in a bypassed condition.

These changes are three of the four changes proposed by WCAP–10271 and Supplement 1 and approved as part of the NRC's Safety Evaluation Report dated February 21, 1985. A fourth change discussed in WCAP–10271 and the SER would decrease the surveillance frequency for TRS analog channel operational tests from once per month to once per quarter. This fourth change is not currently being proposed for Catawba, Unit 1.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain example (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the Commission has reviewed the licensee's request for the above amendment and has determined that should this request be implemented, it would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The bases for these conclusions follow:

CRITERION 1—Operation of Catawba, Unit 1 in accordance with the proposed license amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes affect the Reactor Trip System (RTS), the system which monitors reactor system conditions and scrams the reactor when those conditions reach or are outside a predetermined allowable envelope.

Scramming the reactor stops the fission process by rapidly inserting control rods. Failure of the RTS system can lead to a transient or accident without a scram. While such events are not a design basis accident, the probability and consequences of such a situation have been analyzed. The accident sequences which describe such situations are referred to as Anticipated Transients Without Scram (ATWS).

For design basis accidents, the RTS will successfully scram the reactor because the system meets the single failure criteria. The proposed changes do not affect the way in which the system meets the single failure criteria.

The proposed changes would not change the analyzed consequences of an ATWS since those consequences are based on an assumed failure of the RTS to stop the fission process. The proposed changes would not change this assumed failure.

The proposed changes do not significantly increase the probability of an RTS failure. WCAP-10271 and Supplement 1 evaluated the increases in ATWS probability for the four changes proposed by WCAP–10271 on a generic basis. Sensitivity analyses were used to examine the effects of each of the four changes. WCAP–10271 concluded that the changes in probability were very small. For Catawba, only three of the four changes addressed in WCAP–10271 are being requested—those related to maintenance time, test time and testing in bypass. The change in test interval is not being proposed for Catawba. The change related to testing in bypass does not require a change in Technical Specifications for Catawba.

In its February 21, 1985 Safety Evaluation Report addressing WCAP–10271, the NRC also concluded that the increase in probability of RTS failure due to the four proposed changes was very small and not significant.

The sensitivity analyses demonstrate that some increased probability is associated with each of the changes. However, the overall probability for all four of the changes proposed by WCAP–10271 was judged by the NRC not to be significant. The proposed subset of three changes would result in a smaller increase in probability than all four WCAP–10271 changes. Therefore, the

increased probability associated with the three changes proposed for Catawba, Unit 1, would also not be significant.

Criterion 2—The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The four changes proposed in WCAP–10271 affect only the amount of time during which individual RTS channels may be unavailable and the frequency of testing of the RTS channels. The Technical Specifications presently allow the unavailability of individual channels for short periods of time. Changes in the allowed unavailability times and test intervals do not create a new failure mechanism; they only affect the probability of that failure as discussed under Criterion 1. As explained under Criterion 1, failures of the RTS have been analyzed.

Since none of the changes proposed by WCAP–10271 create new failure mechanisms, the changes proposed for Catawba, Unit 1 (which are a subset of the WCAP–10271 changes) would not create new failure mechanisms.

Criterion 3—The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not alter any safety limits or limiting safety system settings, nor do the changes reduce the requirements for the number of operable RTS channels.

As explained above under Criteria 1 and 2, the changes proposed by WCAP–10271 only affect the test intervals and allowed unavailable times for the RTS channels, and the increase in the probability of RTS failure due to the proposed changes is not significant. In the February 21, 1985 SER the NRC concluded that the resultant increase in the overall plant risk of core damage was not significant.

Since the changes proposed for Catawba are a subset of the WCAP–10271 proposal, the resultant increase in overall plant core damage risk would be smaller than the increase for the four WCAP–10271 changes. Therefore, the overall reduction in plant margin of safety is not significant for the three changes proposed for Catawba.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina, 29730.

Attorney for licensee: Mr. William L. Porter, Esq., Duke Power Company, P. O. Box 33189, Charlotte, North Carolina, 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, et. al., Docket No. 50–413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of amendment request: July 31, 1985.

Description of amendment request: The proposed amendment would revise surveillance requirement 4.8.1.1.2a.4 of Technical Specification 3/4.8.1, "A.C. Sources," relative to the diesel generator surveillance testing.

On July 2, 1984, the NRC issued Generic Letter No. 84–15 entitled "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability." The generic letter requested licenses to review the reliability of their diesel generators based on surveillance test data, to review their programs concerning diesel generator surveillance testing, and to determine their plans for attaining and maintaining certain diesel generator reliability goals. By letter dated July 31, 1985, Duke Power Company requested several changes to the Technical Specifications related to the diesel generators. One of the changes requested, in response to the generic letter, is to reduce the diesel generator cold fast starts. The other changes requested by the licensee's letter of July 31, 1985, are outside the scope of this notice.

The proposed revision is based on the Typical Technical Specification provided as an Attachment to Enclosure 1 of Generic Letter 84–15. The proposed revision would reduce the number and severity of diesel generator cold fast starts, thereby decreasing engine wear and increasing reliability.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has viewed the licensee's request for the above amendment and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because the change is a reduction in frequency and severity of diesel generator test starts which would result in less wear and stress on engine parts. This would decrease the probability of an accident due to failure of engine parts, and the consequences of an accident would not change. Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the design and function of the diesel generators would not be changed. Finally, it would not (3) involve a significant reduction in a margin of safety because there would be no change in diesel generator automatic response times or emergency loads from those used in the accident analyses. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: York County Library, 138 Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. William L. Porter, Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50–369 and 50–370, Mcquire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of Amendment Request: April 25, 1985.

Description of Amendment Request: The proposed amendment would change the record retention period in Technical Specification 6.10 for records of quality assurance activities required by the QA Manual. Specification 6.10.2i presently requires that these records be retained for the duration of the Operating License. The proposed change would substitute a new Specification 6.10.3 requiring that these records be retained for the period specified by ANSI N45.2.9–1974, "Requirements for Collection, Storage, and Maintenance of Quality Assurance Records for Nuclear Power Plants".

Basis for proposed no significant hazards consideration: ANSI N45.2.9–1974 provides a list of the various types of QA records and divides them into "Lifetime" and "Nonpermanent" categories for retention period purposes. For each record type in the "Nonpermanent" category, ANSI N45.2.9–1974 designates a specific minimum retention period ranging from 0 to 6 years. As stated in Regulatory Guide 1.88, the requirements and guidelines for collection, storage and maintenance of quality assurance records that are included in ANSI N45.2.9–1974 are acceptable to the NRC staff and provide an adequate basis for complying with the pertinent quality assurance requirements forAppendix B to 10 CFR Part 50.

The Comission has provided guidance concerning the application of the standards for determining whether

license amendments involve significant hazards considerations by providing certain examples (48 FR 14870). One of the examples (i) of actions not likely to involve a significant hazards consideration relates to administrative changes to the technical specifications. The change in this case involves only the substitution of a more specific and more appropriate requirement for QA records retention pursuant to a standard accepted by the NRC staff. Because this substitution would not shorten the retention period for those types of QA records which the Commission has determined should be retained for the plant lifetime, and does appropriately recognize that some of the QA record types have limited significance and may be retained for lesser periods, the proposed change has no adverse impact on safety and matches the example.

Therefore, the Commission proposes to determine that this request does not involve a significant hazards consideration.

Local Public Document Room Location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company et al., Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: July 22, 1985 as supplemented September 11, 1985.

Description of amendment request: The proposed amendments would revise the McGuire Nuclear Station, Units 1 and 2, Technical Specifications (TS) to increase the allowed out-of-service times for Reactor Trip System (RTS) channels. The changes would revise Table 3.3–1 for the following channels:

1. Power Range Neutron Flux.
2. Overtemperature Delta-T.
3. Overpower Delta-T.
4. Pressurizer Pressure-Low.
5. Pressurizer Pressure-High.
6. Pressurizer Water Level-High.
7. Reactor Coolant Flow-Low.
8. Steam Generator Water Level-Low-Low.
9. Reactor Coolant Pumps-Undervoltage.
10. Reactor Coolant Pumps-Underfrequency.
11. Turbine Trip.

For these channels, the changes would: (1) increase the time an inoperable channel may be maintained in an untripped condition from one hour to six hours, and (2) increase the time an inoperable channel may be bypassed to allow testing of another channel in the same function from two hours to four hours (or increase the time for channel test in the bypass mode with the inoperable channel tripped). A third change which does not require a change to the TS but is related to these changes, would result in changes to plant procedures to provide for routine testing of these channels in a bypassed condition.

These changes are three of the four changes proposed by WCAP–10271 and Supplement 1 and approved as part of the NRC's Safety Evaluation Report dated February 21, 1985. A fourth change discussed in WCAP–10271 and the SER would decrease the surveillance frequency for RTS analog channel operational tests from once per month to once per quarter. This fourth change is not currently being proposed for McGuire, Units 1 and 2.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the Commission has reviewed the licensee's request for the above amendments and has determined that should this request be implemented, it would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The bases for these conclusions follow:

Criterion 1—Operation of McGuire, Units 1 and 2 in accordance with the proposed license amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes affect the Reactor Trip System (RTS), the system which monitors reactor system conditions and scrams the reactor when those conditions reach or are outside a predetermined allowable envelope. Scramming the reactor stops the fission process by rapidly inserting control rods. Failure of the RTS system can lead to a transient or accident without a scram. While such events are not a design basis accident, the probability and consequences of such a situation have been analyzed. The accident sequences which describe such situations are referred to as Anticipated Transients Without Scram (ATWS).

For design basis accidents, the RTS will successfully scram the reactor because the system meets the single failure criteria. The proposed changes do not affect the way in which the system meets the single failure criteria.

The proposed changes would not change the analyzed consequences of an ATWS since those consequences are based on an assumed failure of the RTS to stop the fission process. The proposed changes would not change this assumed failure.

The proposed changes do not significantly increase the probability of an RTS failure. WCAP–10271 and Supplement 1 evaluated the increases in ATWS probability for the four changes proposed by WCAP–10271 on a generic basis. Sensitivity analyses were used to examine the effects of each of the four changes. WCAP–10271 concluded that the changes in probability were very small. For McGuire, only three of the four changes addressed in WCAP–10271 are being requested—those related to maintenance time, test time and testing in bypass. The change in test interval is not being proposed for McGuire. The change related to testing in bypass does not require a change in Technical Specifications for McGuire.

In its February 21, 1985 Safety Evaluation Report addressing WCAP–10271, the NRC also concluded that the increase in probability of RTS failure due to the four proposed changes was very small and not significant.

The sensitivity analyses demonstrate that some increased probability is associated with each of the changes. However, the overall probability for all four of the changes proposed by WCAP–10271 was judged by the NRC not to be significant. The proposed subset of three changes would result in a small increase in probability than all four WCAP–10271 changes.

Therefore, the increased probability associated with the three changes proposed for McGuire, Units 1 and 2, would also not be significant.

Criterion 2—The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The four changes proposed in WCAP–10271 affect only the amount of time during which individual RTS channels may be unavailable and the frequency of testing of the RTS channels. The Technical Specifications presently allow the unavailability of individual channels for short periods of time. Changes in the allowed unavailability times and test intervals do not create a new failure mechanism; they only affect the

probability of that failure as discussed under Criterion 1. As explained under Criterion 1, failures of the RTS have been anlyzed.

Since none of the changes proposed by WCAP–10271 create new failure mechanisms, the changes proposed for McGuire, Units 1 and 2 (which are a subset of the WCAP–10271 changes) would not create new failure mechanisms.

Criterion 3—The proposed license amendment does not involve a significant reduction in a margin of safety.

The proposed changes do not alter any safety limits or limiting safety system settings, nor do the changes reduce the requirements for the number of operable RTS channels.

As explained above under Criteria 1 and 2, the changes proposed by WCAP–10271 only affect the test intervals and allowed unavailable times for the RTS channels, and the increase in the probability of RTS failure due to the proposed changes is not significant. In the February 21, 1985 SER the NRC concluded that the resultant increase in the overall plant risk of core damage was not significant.

Since the changes proposed for McGuire are a subset of the WCAP–10271 proposal, the resultant increase in overall plant core damage risk would be smaller than the increase for the four WCAP–10271 changes. Therefore, the overall reduction in plant margin of safety is not significant for the three changes proposed for McGuire.

Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte, North Carolina 28242.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, Charlotte (UNCC Station), North Carolina, 28223.

NRC Project Director: B.J. Youngblood.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: June 4, 1985.

Description of amendment request: Requests approval of an amendment to the license which would extend the date imposed by Order of March 14, 1983, to fully implement NUREG–0737 Item III.D.3.4, Control Room Habitability, from the Cycle 11 Refueling outage to the Cycle 12 refueling outage.

Basis for proposed no significant hazards consideration determination: By a Confirmatory Order dated March 14, 1983, the licensee is required to have the NUREG–0737 Item III.D.3.4, Control Room Habitability, fully implemented before the restart from the Cycle 11 Refueling outage. This outage is presently scheduled to begin April 12, 1986. The licensee has requested by its letter dated June 4, 1985, postponement of some Item II.D.3.4 requirements to Cycle 12 Refueling outage. The Cycle 12 outage is expected in 1988.

The requirements to be deferred to in the Cycle 12 outage to fully implement Control Room Habitability are the following: 1) perform a single failure analysis of the control room ventilation system and provide remedial measures, 2) assess existing diesel generator capability to provide back up power to the control room ventilation system and 3) meet the beta skin dose limits with the final control room ventilation system design. Requirements to complete these items during the Cycle 12 outage rather than the Cycle 11 outage, would be added to the license.

The Control Room envelope consists of the control room panel area, the Shift Supervisor's office, toilet room, kitchen, and Cable Spreading Rooms. Normal ventilation is provided by a system utilizing one supply fan with steam coils for heating and a three-stage refrigeration unit for cooling. The ability to recirculate air is provided, with recirculation varying from 0 to 100 percent.

The system is normally operated to maintain room air at 75 degrees F. Under normal operation of the turbine generator unit, the system cools during winter and summer. Heat to maintain 70 degrees F. in these areas is anticipated to be required only during the winter when the turbine generator is not operating.

An emergency mode is provided for operation with 100 percent outside air to prevent the recirculation of smoke in the Control Room and to clear the area of smoke and fumes. As required by the Oyster Creek Fire Hazards Analysis, the system was modified to prevent smoke from other areas from entering the Control Room.

Major components of the system are the air conditioning unit and the two heating coils.

An analysis of Control Room shielding has been performed. As a result of this study, one significant source contributing to an elevated radiation dose rate in the Control Room has been identified. This source is the core spray booster pump suction and discharge piping located at E1. 51'3" in the Reactor Building. A shadow shield has been installed in the Reactor Building to reduce the Control Room dose to below the 10 CFR Part 50, Appendix A, General Design Criterion 19 limit.

Control Room Habitability is not an initiator of an accident previously analyzed; therefore, this action does not change the probability of an accident previously evaluated. The staff has determined that the licensee has met General Design Criterion 19, Control Room, of Appendix A to 10 CFR Part 50 including the beta skin dose. The issue of toxic gases that may be introduced into the control room is under review by the staff and will be resolved on the schedule in the Confirmatory Order dated March 14, 1983. This is without the control room ventilation meeting single failure and backup power because the control room ventilation has no filters to reduce the radioactivity or toxic gases introduced in the control room during an accident. Therefore, the proposed action is not a significant reduction in a margin of safety. The control room operators have time to manually close dampers to isolate the control room and to provide heating or cooling to the control room from other sources if needed so that the proposed action does not significantly increase the consequences of a previously evaluated accident or create a new or different kind of accident.

Therefore, based on the above, operation of Oyster Creek with these deferments 1) does not involve a significant increase in the probability or consequences of a previously evaluated accident, 2) does not create the possibility of a new or different kind of accident from any accident previously analyzed and 3) does not involve a significant reduction in a margin of safety. Because the licensee's request meets the above three criteria in 10 CFR 50.92(c), the staff, therefore, proposes to determine that the licensee's proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW. Washington, DC 20036.

NRC Branch Chief: John A. Zwolinski.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 11, 1985.

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Description of amendment request: Request approval for an Appendix A Technical Specifications (TS) change to Item B.1, Reactor Isolation, of Table 3.1.1, Protective Instrumentation Requirements, to allow the low-low reactor water level protective instrumentation to be inoperable in the shutdown reactor mode and, under certain conditions, the Main Steam Line Isolation Valves and Isolation Condenser valves are not required to be closed or the reactor is not required to be in the cold shutdown condition.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the Standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). Example (ii) of amendments not likely to involve significant hazards considerations is a change that constitutes an additioinal limitation, restriction, or control not persently included in the TS. The licensee has requested in its application to revise the existing TS requirement that the low-low reactor water level instrumentation channels be operable in the shutdown reactor mode or, if it is not, close the Main Steam Line Isolation Valves and close the Isolation Condenser vent valves or place the reactor in the cold shutdown condition. This requirement is for reactor isolation for which this instrumentation would monitor the reactor water level for the case of draining of the reactor vessel due to inadvertent plant operation or an accident. The instrumentation would act at low-low reactor water level (+86 inches above the top of the active fuel) to actuate the following Engineered Safety Feature responses:

1. Core spray initiation.
2. Containment spray initiation.
3. Reactor isolation.
4. Containment isolation.
5. Recirculation pump trip.
6. Isolation condenser initiation.
7. Standby Gas Treatment initiation.
8. Annunciators
9. Reactor Water Cleanup System isolation.
10. Shutdown System isolation.
11. Reactor Building Closed Cooling Water to Drywell isolation.
12. Air/Nitrogen to Drywell isolation.
13. Emergency Diesel Generator startup.

With the proposed TS, this instrumentation would not be required to be operable when secondary containment is not required to be maintained or when the conditions of TS 3.5.B.1.a,b,c and d are met. The conditions of TS 3.5.B.1.a,b,c and d are the following:

1. The reactor is subscritical,
2. The copre reactivity shall be limited such that the core could be made subcritical at any time during the operating cycle with the strongest operable control rod fully withdrawn and all other operable rods fully inserted,
3. The reactor is in cold shutdown,
4. The reactor vessel head or the drywell head are in place, and
5. No work is being performed on the reactor or its connected systems in the Reactor Building which could result in inadvertent releases of radioactive material.

If this instrumentation is inoperable, the licensee's proposed change requires that the reactor water level will be monitored during these periods of inoperability. There are five different types of reactor water level indication in the control room. The instrumentation involved in this action is only one of these five types that provide indication in the control room. Therefore, with the loss through inoperability of the low-low reactor water level instrumentation channels, the control room operators have other indication available. One of these other types has an alarm in the control room at low level (+147 inches above the top of the active fuel). This alarm would alert the operators at +147 inches and the operators would manually actuate the same systems if level indication dropped to +86 inches or low-low level which would have been actuated by the instrumentation if it were operable.

One of the several conditions that must be met in the licensee's proposed action is that the reactor must be in cold shutdown. This is, in fact, the same action required in the existing TS if this instrumentation is inoperable. Having the reactor in the cold shutdown is by itself sufficient to meet the action required in Item B.1, Reactor Isolation, of Table 3.1.1 for inoperable low-low reactor water level instrumentation. In addition to this condition, the licensee proposes other conditions which should reduce the possibility of inadvertent draining of the reactor vessel in the shutdown reactor mode and requires, in addition, that control room operators monitor the reactor water level on other water level instrumentation in the control room.

Based on the above, the staff concludes that the licensee has proposed additional restrictions and controls not presently included in the TS and is consistent with example (ii) of the Commission's guidance. Therefore, the staff proposes to determine that the requested action would not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: November 7, 1985.

Description of amendment request: Requests approval of changes to the Appendix A Technical Specifications (TS) pertaining to (1) the minimum amount of diesel fuel in the standby diesel generator fuel tank and (2) the facility licensed reactor operator staffing requirements. The first change would decrease the minimum amount of diesel fuel in the tank from 14,500 gallons to 14,000 gallons in TS 3.7.C.4 and revise the Bases for this TS. The second change would revise the facility staffing requirements in TS Section 6.2.2 for the minimum number of licensed operators in the control room during the various modes of reactor operation. It would add requirements on the minimum number of licensed senior operators and revise the existing requirements on the number of licensed operators to specifically allow more such operators in the control room.

Basis for proposed no significant hazards consideration determination: The staff issued Technical Specification Amendment 60 on February 3, 1982. This revised the staff's calculation of the expected consumption of diesel generator fuel oil for a 3 day running period. The requirements on the licensee were that the Oyster Creek site had to have a minimum supply of diesel fuel to run one diesel for 3 days continuously. The Safety Evaluation for Amendment 60 revised the minimum amount of diesel fuel expected to be consumed in the 3 days from 14,230 gallons to 12,480 gallons. This amount was revised by adding Security System loads to and removing the Reactor Building Closed Cooling Water pump and Service Water pump loads from the emergency diesel generator. This 12,480 gallons of fuel is for the worst case considered by the staff in the Safety Evaluation for Amendment 60. This 12,480 gallons is less than the licensee's proposed minimum amount of 14,000. As indicated in Amendment 18 dated December 30, 1976, there are numerous sources of

diesel fuel which can be obtained within 6 to 12 hours and the heating boiler fuel in a 75,000 gallon tank on the site could also be used.

The licensee's proposed reduction in the minimum amount of diesel fuel onsite in the standby diesel generator fuel tank is to provide sufficent margin above the TS limit to provide for operating flexibility. As reported by the licensee, in Oyster Creek Licensee Event Report, LER 84–001, the potential exists for overfilling and underfilling the Diesel Generator Fuel Oil Tank. The current TS required capacity is 14,500 gallons and the maximum capacity of the tank is 14,986 gallons. When the diesel generator test is run, the fuel comsumption is approximately 200 gallons for a 1-hour test. In addition, the day tank (capacity 130 gallons) at the diesel generator may be partially full at the start of the test and may require approximately 100 gallons to fill after the diesel generator is started. Therefore, about 300 gallons in excess of the 14,500 gallon minimum may be required before the test is started to ensure that the TS requirement is met during and after the tests and the maximum capacity of the tank provides insufficient margin above the TS limit for minimum fuel capacity and, therefore, does not allow sufficient operating flexibility.

The proposed action of reducing the minimum amount of diesel fuel required onsite does not increase the probability of an accident previously analyzed or create the possibility of a new or different accident. The hazards of having diesel fuel onsite and fire protection hazards have been analyzed by the staff and the staff has required a minimum amount of diesel fuel to be onsite. Reducing the minimum amount specified in TS 3.7.C.4 does not remove diesel fuel from the site nor does it introduce diesel fuel to the site; therefore, it does not change the proability of an accident previously analyzed nor does it create a new or different accident from those previously analyzed. Because the licensee is proposing to reduce the minimum amount of diesel generator fuel required in the TS, the proposed action may reduce the consequences of an accident but because the licensee may store diesel fuel in the standby diesel generator fuel tank at the maximum possible amount, the proposed action will not increase the consequences of an accident previously evaluated. The licensee's proposed action does not involve a significant reduction in the margin of safety because the proposed minimum amount of diesel fuel is greater than the minimum amount required by the staff. Thus, this change meets the three criteria in 10 CFR Part 50.92(c) and does not involve significant hazards considerations.

For the second change, the licensee has also proposed to revise the facility staffing requirements in TS Section 6.2.2. for the minimum number of licensed operators in the control room. The TS are being revised to be in accordance with the licensed operator staffing requirements in 10 CFR 50.54(m)(2). The station has been operating in accordance with these Commission regulations since January 1, 1984, as required; but the TS have not been revised to reflect these requirements. The proposed change adds requirements on the minimum number of licensed senior operators and revises an existing requirement on the number of licensed operators to state "*At least* two licensed reactor operators shall. . . ." instead of "Two licensed reactor operators shall. . . ."

The second proposed change is an administrative change to the TS to achieve consistency between the TS and the Commission's Regulations. It is also an additional requirement not presently included in the TS. Thus, this change is encompassed by the Commission's examples (i) and (ii) provided in 48 FR 14870 of actions not likely to involve significant hazards considerations.

Based on the above discussion on the two proposed actions, the staff, therefore, proposed to determine that the requested actions do not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G.F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director. John A. Zwolinski.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Mihigan

Date of amendment request: November 4, 1985.

Description of amendment request: The proposed amendments would revise the Technical Specifications by adding provisions for the containment hydrogen monitor in response to the requirements of NUREG–0737 following the Three Mile Island accident.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for making a no significant hazards consideration determination by providing certain examples (48 FR 14870). One of the examples is "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example a more stringent surveillance requirement." The proposed Technical Specifications add limiting conditions of operation and surveillance requirements on the containment hydrogen monitor pursuant to a Commission request in Generic Letter 83–37 dated November 1, 1983. Therefore, the Commission proposes that the changes would fall into the category of a no significant hazard consideration determination as it contains additional limitations or controls.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Steven A. Varga.

Long Island Lighting Company, Docket No. 50–322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of amendment request: November 18, 1985 and December 9, 1985.

Description of amendment request: The proposed amendment would (1) revise the footnote to Technical Specification paragraph 4.4.3.1.C, on page 3/4 4–9, from ""Not required if containment is closed and inerted." to "Not required if containment is closed," and (2) revise Technical Specification 3/4.3.7.9 to reflect changers in the number and type of plant fire detectors.

The licensee as requested the change to the footnote on page 3/4 4–9 to reflect the fact that, during the power ascension test program (PATP), the Shoreham containment will be closed, but may be inerted. As this condition is currently worded, the licensee would have to make a monthly entry into the containment to perform the surveillance inspection required by paragraph 4.4.3.1.C if the containment is not inerted. the plant would have to be shutdown, or at the very least, power would have to be severely reduced, to allow personnel entry for this test, and, as a result, completion of the PATP would be delayed.

The change to the number and type of the fire detectors is required because of modifications performed as a result of inspection 50–322/84–46, to bring the fire

protection system into compliance with National Fire Protection Association (NFPA) standards 72D and 72E.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment wold not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to these amendment requests follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Containment Surveillance

The proposed change relates to a surveillance inspection for the primary containment air cooler condensate flow instruments. the intent of the current surveillance requirement footnote is to recognized that the test cannot be run without personnel access to the containment. The proposed change would clarify the footnote in recognition of the fact that, during the PATP, the containment may be closed for long periods, but may not be inerted. This clarification would not significantly increase the probability or consequences of an accident previously evaluated, because it changes nothing about the instrument in question, except the conditions under which it is required to be tested.

Fire Detectors

The proposed change would reflect an increase in the number of fire detectors in the plant. This change reduces the probability that a fire will not be detected and extinguished before it can cause significant damage.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The requested amendment does not physically alter the condensate flow instrument in any way. It does not modify any setpoints or change any plant operating conditions or parameters. For these reasons, the NRC staff has determined that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Similarly, the installation of the additional fire detectors does not create the possibility of a new or different king of accident. It only serves to better alert the operators if a fire were to occur.

Standard 3—Involve a Significant Reduction in a Margin of Safety

Containment Surveillance

The condensate flow instrument does not perform any automatic function. It only monitors liquid condensate flow from the primary containment air coolers. The proposed change would not reduce the operability requirements for the instrument or its alarm setpoints and would therefore not reduce or even change any margin of safety.

Fire Detectors

The proposed change would increase the number of detectors and would therefore increase the margins of safety in detecting fires.

Based on the above considerations, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Shoreham Wading River Public Library, Route 25A, Shoreham, New York 11786.

Attorney for licensee: Anthony F. Earley, Esquire, Long Island Lighting Company, 175 East Old Country Road, Hicksville, New York 11801.

NRC Project Director: Walter R. Butler.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: August 30, 1985.

Description of amendments request: The Service Water System at the Salem Nuclear plants utilizes water from the Delaware River as its heat sink. This water source is typically brackish and has a relatively high silt content. In order to ensure high integrity of the Service Water System, PSE&G has decided to conduct detailed inspections of the Service Water System, for both Units 1 and 2, during the refueling outage. In order to perform these inspections it is necessary to take one of two service water headers out of service for an extended time period while the plant is in modes 5 and 6. The current Salem technical specifications require residual heat removal (RHR) loops to be available in modes 5 and 6 as follows:

Mode 5—Two RHR loops are required to be operable if no steam generators are available.

Mode 6—Two RHR loops re required to be operable if the water level in the refueling cavity is less than twenty three (23) feet above the reactor vessel flange.

Since service water supplies the ultimate heat sink for the RHR system, the requirement to have two RHR loops operable requires that both service water headers be available. The proposed changes would revise Specifications 3.4.1.4 and 3.9.8.2 to allow a modified Residual Heat Removal System line up and/or an alternate method of decay heat removal thereby permitting operation in Modes 5 and 6 with one service water loop isolated for inspection and upgrading as necessary.

Basis for proposed no significant hazards consideration determination: The staff has reviewed the proposed amendment request against the criteria provided in 10 CFR 50.92 and has determined:

1. Plant operation using the alternate cooling methods described in this change request were reviewed against the accidents covered in the FSAR and were examined for the potential for creating any new accidents. The results of the evaluation determined that plant operation will remain within the bounds of the previously analyzed accidents and will not create the possibility for any accident not previously evaluated.

2. Plant operation in modes 5 and 6 with one service water header out of service results in no significant increase in the probability or consequences of accidents previously evaluated in he FSAR. A review of all previously postulated accidents concluded that the ony accidents that could occur while in modes 5 and 6 were the boron dilution accident and the loss of off-site power accident. The probability of occurrence and the capability to mitigate a boron dilution accident are not affected by the proposed operation with one service water header because the boron paths assumed in the analysis are not affected. Loss of off-site power concern addressed in the FSAR relate to the loss of primary and secondary flow which are not a consideration in modes 5 and 6. Loss of decay heat removal capability could be affected by a loss of off-site power; however, the licensee has provided for alternate safety-grade methods of decay heat removal and has identified compensatory actions that significantly minimize the likelihood of a loss of cooling that would require the use of those alternate cooling methods.

3. The compensatory actions and the reliability of the RHR systems as

configured for the described alternate cooling modes assure that existing margins of safety are not significantly decreased. The increase in reliability of the Service Water System afforded by this change will measurably improve the overall margin of safety for the Salem plants.

Based on the above, the staff proposes to find that this change does not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhann, Suite 1050, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

NRC Branch Chief: Steven A. Varga.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: July 16, 1985.

Description of amendment request: The proposed Technical Specification amendment provides additional restrictions to plant operating procedures to decrease the potential for a low temperature overpressurization (LTOP) event. This proposed Technical Specification change was initiated by the Commission in a letter to the utility dated June 29, 1984, and is based on operating experiences at other pressurized water reactors. Material toughness of primary system components is reduced at lower operating temperatures. The additional operating restrictions being proposed add steps to protect the primary system from exceeding pressure limits when the system temperature is less than 350° F.

Specific features being added to protect against LTOP Include the following:

(1) The setpoint on the pressurizer relief valve will be decreased and tested before system temperature is lowered to 350° F.

(2) Restrictions will be placed on the operation of the high pressure injection system at the lower temperatures.

(3) Additional restrictions will be placed on the operating procedures for the pressurizer, the make up tank, and the core flood tanks.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include example (ii), changes that constitute an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

The change proposed in the amendment application is encompassed by this example in that additional operating restrictions are being proposed to reduce the likelihood of exceeding design pressure/temperature limits. Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists, the Commission's staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Southern California Edison Company et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Requests: February 20, July 1, October 10, and October 22, 1985 (Reference PCN–165).

Description of Amendment Request: The proposed change would revise Surveillance Requirement 4.4.8.2.2 of Technical Specification 3/4.4.8.2, "Reactor Coolant System—Pressurizer—Heatup/Cooldown", and Table 5.7–1 of Technical Specification 5.7, "Component Cyclic or Transient Limits". Specifically, the change would revise Surveillance Requirement 4.4.8.2.2 to incorporate additional thermal transient conditions for calculation of cumulative thermal cycle usage factors.

The proposed change also would revise Table 5.7–1, which identifies components subject to thermal fatigue when subjected to thermal cycling. The pressurizer spray system (used for control of pressurizer level and RCS pressure) is one such system identified in Table 5.7–1 which is routinely subjected to thermal cycling. Table 5.7–1 identifies the number of thermal cycles to which a component can be subjected and actions to be taken when the limit is approached. The severity of a thermal cycle on the pressurizer spray system is a function of the temperature differential between the pressurizer and the pressurizer spray. The greater this temperature differential, the fewer the number of spray cycles allowed before action must be taken. The threshold for determining when action must be taken is identified as the cumulative usage factor which is the sum of the usage factors for each differential temperature range. The usage factor for each temperature range is defined as the number of cycles accumulated in that temperature range divided by the number allowed.

Table 5.7–1 defines a spray cycle, the threshold temperature, the threshold differential temperature above which a spray cycle must be counted, differential temperature ranges and the number of spray cycles allowed for each range, the method for calculating the usage factor, the cumulative usage factor limit, and the action to be taken when the cumulative usage factor is exceeded. The proposed change revises Table 5.7–1 as follows: It (1) makes the table apply to the entire pressurizer spray system rather than just the pressurizer spray nozzle; (2) redefines a spray cycle; (3) increases the differential threshold pressurizer temperature from 150 °F to 200 °F; (4) redefines the temperature differential ranges and the number of allowed spray cycles for each range; and (5) reduces the cumulative usage factor limit from 0.75 to 0.65.

Basis for Proposed No Significant Hazards Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards consideration. Example (i) relates to a purely administrative change to the technical specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. Example (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, for example, a more stringent surveillance requirement. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a refinement of a previously used calculational model or design method. All revisions addressed

in the proposed change are similar to Examples (i), (ii), or (vi) of 48 FR 14870. A description of each proposed revision to the technical specifications and a discussion of how it is related to the stated examples follows:

The proposed change to Surveillance Requirement 4.4.8.2.2 would state that the spray water temperature differential shall be determined for use in Table 5.7–1 for each cycle of main spray when less than four reactor coolant pumps are operating and for each cycle of auxiliary spray operation. This would change the existing requirement specifying that the temperature differential be determined at least once per twelve hours during auxiliary spray operation.

This change constitutes an additional restriction or control not presently included in the technical specifications. The proposed change would provide a more accurate and stringent evaluation of the modified pressurizer spray system by incorporating the temperature transient effect for each cycle of main spray when less than four reactor coolant pumps are operating and for each cycle of auxiliary spray operation. This new surveillance requirement will therefore cover thermal transients which are not considered in the existing one. Because the change imposes a monitoring requirement to include thermal transients which are more severe and more numerous than those previously accounted for, it is more restrictive and, therefore, is similar to Example (ii) of 48 FR 14870.

Currently, Table 5.7–1 applies only to the pressurizer spray nozzle. The proposed change will make this table apply to the entire pressurizer spray system and will require accounting for both main spray cycles when less than four reactor coolant pumps are operating and for all auxiliary spray cycles if the temperature differential is greater than 200 °F. This change is an additional restriction which is currently not included in the current technical specification since the existing specification only applies to the pressurizer spray nozzle; therefore, this change is similar to Example (ii) of 48 FR 14870.

The existing specification defines a spray cycle as the opening and closing of spray valve by main or auxiliary spray. The proposed change redefines the spray cycle as any initiation and termination of main or auxiliary spray flow through the pressurizer spray nozzle. This proposed change redefines the spray cycle to more closely correspond to the actual monitoring of spray cycles within the plant. Spray cycles are monitored by counting demands made by the spray valves in conjunction with monitoring spray line temperature rather than by monitoring actual opening and closing of the spray valves. This is more accurate since the spray valves often are not completely closed and a small bypass flow is allowed to minimize thermal transients on the system. This change is essentially a change in nomenclature and, therefore, is similar to Example (i) of 48 FR 14870.

The existing Table 5.7–1 requires logging of all pressurizer spray cycles where the differential temperature is greater than 150 °F. The proposed change would require logging of pressurizer spray cycles only if the differential temperature is greater than 200 °F. This increase in the threshold temperature may be perceived to reduce, in some way, a margin of safety. However, the new threshold limit has been incorporated into the analysis of the pressurizer spray system and is compensated for by a decrease in the cumulative usage factor. Although the proposed change may result in fewer spray cycles being logged, with the lower cumulative usage factor limit, fewer cycles will have to be logged before action must be taken. The reanalysis of the pressurizer spray system and accounting for thermal cyclesis consistent with the requirements of SRP Section 3.9.1 "Specific Topics and Mechanical Components." Therefore, this change is similar to Example (vi) of 48 FR 14870.

The existing specification defines the differential temperature ranges and the number of allowed spray cycles for each range. Currently, 50,000 spray cycles are allowed in the temperature range of 150 °F to 200 °F, 7,000 cycles are allowed in the range 201 °F to 300 °F, 2,000 cycles in the range 301 °F to 400 °F, 1,000 cycles in the range of 401 °F to 500 °F and 800 cycles in the range of 501 °F to 600 °F. The proposed change allows unlimited cycles below 200 °F since, as discussed above, 200 °F is the new threshold limit. The new ranges are defined in 50 °F increments from 201 °F to 600 °F with 11,000 cycles allowed to 250 °F, 4,000 cycles between 251 °F and 300 °F, 2,200 cycles allowed between 301 °F and 350 °F, 1,300 cycles between 351 °F and 400 °F, 900 cycles between 401 °F and 450 °F, 500 cycles between 451 °F and 500 °F, 300 cycles between 501 °F and 550 °F and 200 cycles between 551 °F and 600 °F. Comparing the number of spray cycles allowed by the existing specification between 201 °F and 300 °F and by the proposed specification, the existing specification allows 7,000 cycles whereas the proposed change would allow a total of 15,000 cycles (11,000 cycles between 201 °F and 250 °F, and 4,000 cycles between 251 °F and 300 °F).

Because the severity of the transient increases with the differential temperature, splitting the ranges into smaller increments allows considerably more cycles at the lower temperature without significantly increasing the overall severity of the allowed transients. For example, in the existing technical specification, in the range of 201 °F to 300 °F, 7,000 cycles are allowed, but from an analysis standpoint, all 7,000 cycles could occur at 300 °F, whereas in the proposed change, 11,000 cycles are allowed to 250 °F which are less severe than cycles at 300 °F and 4,000 cycles are allowed at 300 °F. Although the increased number of spray cycles allowed by the proposed change may be perceived to reduce, in some way, a margin of safety, the number of allowed spray cycles are accounted for in the analysis of the spray system in accordance with SRP Section 3.9.1; therefore, this change is similar to Example (vi) of 48 FR 14870.

Currently, the cumulative usage factor limit is 0.75. When the cumulative factor limit is exceeded, spray cycles must be limited to less than the threshold differential temperature and an engineering evaluation must be performed to show that the spray system remains acceptable prior to removing this restriction. The proposed change reduces the cumulative usage factor limit to 0.65. This reduction in the cumulative usage factor limit is an additional restriction and, in some ways, compensates for the relaxations in the threshold differential temperature and the increased number of allowed spray cycles in the redefined temperature ranges. Because this change is an additional restriction, it is similar to Example (ii) of 48 FR 14870.

In summary, because each part of the proposed change is similar to one of the examples of 48 FR 14870, the NRC staff proposes to determine that the change does not involve a significant hazards consideration. *Local Public Document Room Location:* San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672. *Attorney for Licensees:* Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111. *NRC Branch Chief:* George W. Knighton.

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Southern California Edison Company et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: October 9, 1985 (Reference PCN–200, 201, 202, 203, 204 and 206).

Description of Amendment Request: On October 9, 1985, Southern California Edison Company (SCE or the licensee) requested several technical specification changes that are necessary to accommodate Cycle 3 operation of San Onofre 2 and 3. Six of these proposed changes are discussed herein. These are Proposed Change Number (PCN) 200, 201, 202, 203, 204, and 206. PCN–199, which is also required for Cycle 3 operation, is discussed elsewhere.

1. PCN–200—This proposed change would revise Technical Specifications (T.S.) 3/4.1.2.1, "Boration Systems—Flow Paths—Shutdown," T.S. 3/4.1.2.2, "Boration System—Flow Paths—Operating," T.S. 3/4.1.2.6, "Boric Acid Makeup Pumps—Operating," T.S. 3/4.1.2.7, "Borated Water Sources—Shutdown," T.S. 3/4.1.2.8, "Borated Water Source—Operating," T.S. 3/4.5.1, "Safety Injection Tanks," T.S. 3/4.5.4, "Refueling Water Storage Tank," and associated bases.

These specifications define: (1) the volume and concentration of boric acid to be maintained in the refueling water storage tank (RWST) for mitigation of a loss of coolant accident (LOCA) and cooldown of the plant; (2) the concentration and volume of boric acid to be maintained in the safety injection tanks (SIT) for mitigation of a LOCA; (3) the volume and concentration of boric acid to be maintained in the boric acid makeup tanks (BAMU); and (4) the flow paths from the borated water sources to the reactor coolant system required during the various modes of plant operation.

The proposed change consists of four parts, which would (a) increase the upper limit or boron concentration for the RWST and SIT's from 2300 to 2500 ppm; (b) reduce the maximum BAMU concentration to allow elimination of heat tracing; (c) better define boration flow path requirements, and (d) decrease the lower limit on SIT boron concentration for Unit 3, Cycle 2 only from 1720 to 1420 ppm:

(a) T.S. 3/4.5.1, "Safety Injection Tanks," and 3/4.5.4, "Refueling Water Storage Tank" specify a maximum boron concentration for the RWST and SIT's of 2300 ppm.

The limit on maximum boron concentration ensures that boric acid does not precipitate in the core following a LOCA and hinder core coolability. Part (a) of proposed change PCN–200 would increase the upper limit from 2300 to 2500 ppm.

(b) T.S. 3/4.1.2.8, "Borated Water Source—Operating" requires that at least one boric acid makeup tank and associated heat tracing circuit be operable, with the contents of the tank as specified in Figure 3.1–1. In Modes 1 through 4, Figure 3.1–1 requires a minimum of 5450 gallons at a minimum boric acid concentration of 8.5 wt% be maintained. T.S. 3/4.1.2.8 also requires that the refueling water storage tank be operable containing a minimum of 362,800 gallons borated water with concentration between 1720 and 2300 ppm. T.S. 3/4.1.2.2 requires a minimum of two of the following three paths: (1) A BAMU tank gravity feed path and associated heat tracing; (2) a BAMU tank path via a boric acid makeup pump and associated heat tracing, or (3) the gravity feed path from the RWST to the charging pump suctions.

The purpose of the required borated water sources and flow paths to the RCS is to ensure that sufficient borated water is available to maintain the reactor subcritical and provide makeup water to account for reactor coolant system (RCS) shrinkage during cooldown to cold shutdown conditions.

Part (b) of proposed change PCN–200 would revise T.S. 3/4.1.2.8 to reduce the concentration range to be maintained in one or both BAMU tanks and to eliminate heat tracing. The range of volumes and concentrations to be maintained in the BAMU tanks is specified in a revised Figure 3.1–1. The revised Figure 3.1–1 would represent the minimum required volume at a given concentration of boric acid to be maintained. Part (b) of proposed change PCN–200 would also allow this volume to be maintained as a combined volume in either or both of the BAMU tanks. The concentration range is approximately 2.25 to 3.5 weight percent boric acid. The BAMU tank boric acid requirements depend on the concentration currently maintained in the refueling water storage tank since both are required to provide boration during plant cooldown. Figure 3.1–1 incorporates four curves which represent the minimum boric acid volume required from BAMU tanks for a given RWST concentration.

(c) T.S. 3/4.1.2.2 "Boration System—Flow Paths—Operating" would be revised to reflect the flow paths required from the borated water sources credited in meeting T.S. 3/4.1.2.8. Currently, T.S. 3/4.1.2.2 requires two out of three available flow paths.

T.S. 3/4.1.2.2 also requires heat tracing to be operable and verification at least once per 18 months that the flow paths from the BAMU tanks are capable of delivering a flow of at least 40 gpm to the reactor coolant system (RCS). T.S. 3/4.1.2.6, "Boric Acid Makeup Pumps—Operating," requires the boric acid makeup pump, in any boration flow path credited in meeting the requirements of T.S.3/4.1.2.2, to be operable with an operable emergency power source. Part (c) of proposed change PCN–200 would require that both the gravity feed and boric acid pump paths from any BAMU tank credited in satisfying the boric acid requirements of T.S. 3/4.1.2.8 be operable and that the RWST gravity feed path to the charging pumps be operable. There is one gravity feed path and one boric acid pump path from each of the BAMU tanks. If the combined volume of boric acid required is contained as a combined volume between the two BAMU tanks, then the proposed change will require both gravity feed paths and both boric acid makeup pump paths to be operable. If the boric acid requirements are being satisfied by one BAMU tank, then the proposed change will require only the gravity feed path and the boric acid makeup pump path from that tank to be operable. Since the proposed change always requires a boric acid makeup pump path to be operable, T.S. 3/4.1.2.6 is revised, for consistency, to reflect that a BAMU pump is always required. The T.S. 3/4.1.2.6 requirement that operable BAMU pumps be capable of being powered from an operable emergency power source is deleted since it is redundant to the requirements of T.S. 3/4.8.1.1, "Electrical Power Systems—AC Sources." The proposed change will require the RWST gravity feed path to be operable at all times regardless of the BAMU tank flow paths required. The proposed change removes the requirement for heat tracing from Technical Specification T.S. 3/4.1.2.2 and the requirement to verify at least one per 18 months that the flow paths from the BAMU tanks are capable of delivering a flow of at least 40 gpm to the RCS. Both of these requirements relate to the potential for obstruction of the boration flow paths due to precipitation of boric acid at the high concentrations currently required. Limiting the maximum concentration in the BAMU tanks to 3.5 wt% eliminates the need for the heat tracing and flow verification.

T.S. 3/4.1.2.7, "Borated Water Source-Shutdown" and T.S. 3/4.1.2.1, "Boration System-Flow Path-Shutdown" define the borated water sources and flow paths to

be maintained during cold shutdown and refueling operations. T.S. 3/4.1.2.7 requires either one boric acid makeup tank and associated heat tracing to be operable with the tank's contents in accordance with Figure 3.1–1, or the refueling water storage tank with a minimum contained volume of 9,970 gallons with a minimum boron concentration of 1720 ppm. T.S. 3/4.1.2.1 requires that one boron injection flow path and associated heat tracing circuit be operable from the credited borated water source. The available flow paths are: (1) A BAMU tank gravity feed path to be charging pump suctions; (2) a boric acid makeup pump path to the charging pump suctions; (3) a gravity feed path from the RWST to the charging pump suctions, or: (4) a flow path from the RWST to the RCS via a high pressure safety injection pump. Part (c) of proposed change PCN–200 would also revise T.S. 3/4.1.2.7 to require a minimum of 5,150 gallons to be maintained in a BAMU tank or the RWST with a minimum concentration of 1720 ppm. The proposed change deletes the requirement for heat tracing from T.S. 3/4.1.2.1 and T.S. 3/4.1.2.7.

(d) T.S. 3.4.5.1, "Safety Injection Tanks" requires a minimum concentration of 1720 ppm to be maintained in the SIT tanks. The minimum concentration ensures that the reactor would be sub-critical during reflood following a large break LOCA. Part (d) of propsed change PCN–200 would revise the minimum concentration required in the SIT tanks from 1720 to 1420 ppm for Unit 3, Cycle 2 only.

2. PCN–201—The proposed change would revise Technical Specifications 3/4.2.4, "DNBR Margin", and 3/4.3.1, "Reactor Protective Instrumentation". Technical Specification T.S. 3/4.2.4 requires that the departure from nucleate boiling ratio (DNBR) be maintained by operating within the region of acceptable operation as indicated by either the Core Operating Limit Supervisory System (COLSS) or the Core Protection Calculator (CPC). Technical Specification T.S. 3/4.3.1 requires that the Reactor Protective Instrumentation System (RPIS) be operable and defines the number and type of RPIS channels required, response times, periods testing required to assure operability, and actions to be taken when the required RPIS is out of service.

Proposed change PCN–201 consists of the following four parts:

(a) The proposed change would revise Figures 3.2–1, "DNBR Operating Limit Based on COLSS", Figure 3.2–2, "DNBR Margin Operating Limit Based on Core Protection Calculators (COLSS out of service, with power greater than or equal to 80% of rated thermal power)", and Figure 3.2–3, "DNBR Margin Operating Limit Based on Core Protection Calculators (COLSS out of service, with power less than 80% of rated thermal power)". Specifically, Figure 3.2–1 shows the minimum calculated Power Operating Limit (POL) based on DNBR for a given reactor power level. Provided that the COLSS POL is greater than that required by Figure 3.2–1 from a given reactor power, the plant is operating in the region of acceptable operation. The existing Figure 3.2–2 defines the required minimum DNBR margin for reactor operation at greater than or equal to 80% power. Figure 3.2–3 defines the required minimum DNBR margin for reactor operation at less than 80% power. The proposed change to Technical Specification 3.2.4 replaces the existing Limiting Condition for Operation (LCO) with four parts, 3.2.4.a through 3.2.4.d. 3.2.4.a and 3.2.4.b replace the existing Figure 3.2–1 with words to the same effect. 3.2.4.a states that when COLSS is in service and either one or both Control Element Assembly Calculators (CEACs) are operable, the COLSS calculated core power must be maintained less than or equal to the COLSS calculated POL based on DNBR. 3.2.4.b. states that when COLSS is in service and neither CEAC is operable, the COLSS calculated core power must be maintained less than or equal to the COLSS calculated POL based on DNBR decreased by a penalty factor of 13.0% of rated power. 3.2.4c. states that when COLSS is out of service and either one or both CEACs are operable, CPC calculated DNBR on any operable channel must be kept within the limits of Figure 3.2–1. The new Figure 3.2–1 is a power independent figure replacing the existing Figures 3.2–2 and 3.2–3. Section 3.2.4.d states that when COLSS is out of service and neither CEAC is operable, CPC calculated DNBR on any operable channel must be kept within the limits of Figure 3.2–2. the new Figure 3.2–2 is a power independent figure similar to the new Figure 3.2–1 but it accommodates the increased margin required when both CEAC's are inoperable.

(b) The proposed change would revise Surveillance Requirement 4.2.4.4, which provides the rod bow penalty factors on DNBR as a function of fuel burnup, which are included in COLSS and the CPC DNBR calculations. Specifically, this Surveillance Requirement requires that the rod bow penalty factor on DNBR as a function of fuel exposure should be verified to be included in COLSS and CPC DNBR calculations at least once per 31 days. The justification for removal of this surveillance requirement is that the rod bow penalty factor has been determined to be less than 2.0 percent at a fuel exposure of 30,000 MWD/MTU. This is unchanged from cycle 2. Because of the physical radial power peak burndown effect, no fuel assembly with burnup exceeding 30,000 MWD/MTU would produce sufficient power to be subject to a limiting DNBR condition. Therefore, 30,000 MWD/MTU is a cutoff point for rod bow penalty calculation. The rod bow penalty factor will be verified for each cycle by design analysis. Since the rod bow penalty at 30,000 MWD/MTU has been incorporated in the minimum DNBR limit of the CPC's Surveillance Requirement 4.2.4.4 is not required.

(c) The proposed change would revise Technical Specification 3.3.1, Table 3.3–1, ACTION 6 which provides conditions under which operation may continue with COLSS out of service, for various operability conditions of the CEAC's. ACTION 6.b addresses operation with COLSS out of service and either one or both CEAC's are operable. ACTION 6.c addresses operation when COLSS is out of service and neither CEAC is operable. The proposed Action change to ACTION 6 combines ACTIONs 6.b and 6.c. Except for whether or not the CEAC's are operable, these two ACTIONs are essentially the same. The reference to Figure 3.2–1 in the existing ACTION 6.b is replaced by reference to Specification 3.2.b. The reference to the penalty factor on the BERR1 constant in the existing ACTION 6.c replaced by reference to Specification 3.2.4.d, where the same penalty definition is applied by a new mechanism.

(d) The proposed change will revise Surveillance Requirement 4.2.4.2 which specifies monitoring of DNBR whenever THERMAL POWER is above 20% of RATED THERMAL POWER. Specifically, Surveillance Requirement 4.2.4.2 requires that DNBR be determined by continuously monitoring core power distribution using COLSS, or, with COLSS out of service, by verifying every two hours that the DNBR on all OPERABLE CPS system DNBR channels is within the limits of Figures 3.2–2 or 3.2–3, and that the penalties in Table 3.3–2b are implemented. The proposed change to Surveillance Requirement 4.2.4.2 removes the requirement to verify that the appropriate penalty factors have been implemented on all CPC system channels, with a requirement to verify that operation is within the limits of new Figures 3.2–1 or 3.2–2 on any CPC system channel. The proposed change

recognizes that it is only necessary to monitor one channel for control purposes during steady state operation, as is done for other parameters. Since sufficient margin is already implemented in the CPC trip setpoint, it is not necessary that this be the most limiting channel. The four CPC channels continue to provide the protection required during transient operation.

3. PCN–202—This proposed change would revise Technical Specification 3/4.1.1.3, "Moderator Temperature Coefficient". Technical Specification 3/4.1.1.3 imposes limitations on moderator tempeature coefficient (MTC) to ensure that the assumptions used in the accident and transient analyses remain valid through each fuel cycle. The surveillance requirements for measurement of the MTC during each fuel cycle will be performed to confirm the MTC value since this coefficient changes slowly due principally to the reduction in reactor coolant system (RCS) boron concentration associated with fuel burnup. The confirmation that the measured MTC value is within its limit provides assurances that the coefficient will be maintained within acceptable values throughout each fuel cycle.

Technical Specification 3/4.1.1.3 currently states that the moderator temperature coefficient shall be less negative than $-2.5x10^{-4}$ delta k/k/°F at rated thermal power. The proposed change will state that the moderator temperature coefficient shall be less negative than $-3.3x10^{-4}$ deltal k/k/°F. This change is required to reflect the use of higher enrichment fuel in uranium-235 beginning in Cycle 3 and the increased burnup to which this fuel will be subjected by end of cycle.

4. PCN–203—This proposed change would revise Technical Specification 3/4.3.1, "Reactor Protective Instrumentation," and Technical Specification 3/4.2.4, "DNBR Margin." Technical Specification 3/4.3.1 requires that the Reactor Protective Instrumentation System (RPIS) be operable and defines the number and type of RPIS channels required, their setpoints and their response times and periodic testing requirements to assure operability. This technical specification defines maximum reactor protection instrumentation response times in order to verify that the maximum response times for RPIS assumed in the Final Safety Analysis Report (FSAR) are not exceeded. Technical Specification 3/4.2.4 requires that the DNBR be maintained by operating within in region of acceptable operation as indicated by either the COLSS or the CPC.

The proposed changes consists of the following two parts:

(a) The proposed change revise Table 3.3–2, "Reactor Protective Instrumentation Response Times," Table 3.3–2a, "Increases in BERR Constants," and Table 3.3–2b, "DNBR LCO Power Operating Limit Adjustments," of Technical Specification 3/4.3.1. Specifically Item 10, "DNBR–Low," specifies a response time of 0.68 second for RCS Hot Leg and Cold Leg Temperature. The table notes that these response times are based on a resistance temperature detector (RTD) response time of less than or equal to 13.0 seconds. For Cycles 1 and 2, the accident analysis used an initial RTD response time of 6 seconds. Table 3.3–2a and 3.3–2b require adjustments to the CPC addressable constants and the reduction in the DNBR power operation limit in the COLSS to compensate for measured RTD response times greater than 6 seconds. For Cycle 3, the accident analysis uses and RTD response time of 8.0 seconds. The proposed change revises the RTD maximum response time from 13.0 seconds to 8.0 seconds in Note (# #) of Table 3.3–2, and deletes Tables 3.3–2a and 3.3–2b, since adjustments are no longer necessary for response times greater than 6 seconds. For consistency, the references to Table 3.3–2b are deleted from Surveillance Requirement 4.2.4.2 of Specification 3/4.2.4.

b. The proposed change also revises Note (#) appended to Item (10(e), "Primary Coolant Pump Shaft Speed." It presently states that the response time shall be measured from the onset of coastdown of two out of the four reactor coolant pumps. This note would be revised to clarify that the response time measured using simulated pump coastdown.

One of the ways to simulate the reactor coolant pump (RCP) coastdown is using the response time test box. The fly-disk on the RCP generates the pulses which are sent to the CPC. The CPC counts the pulses to determine the frequency, which represents the RCP speed. Appropriate initial conditions are entered in the CPC. The pump coastdown is then simulated by changing the frequency using the response time test box that would represent the pump speed at the end of the transient marking the point at which the CPC generates a trip. Therefore, response time measurement is done using the simulation rather than from the onset of a 2 out of 4 RCP coastdown.

5. PCN–204—This proposed change would revise Technical Specification 2.2.1, "Reactor Trip Setpoints," and its associated bases. Table 2.2–1, "Reactor Protective Instrumentation Trip Setpoint Limits," requires that the setpoints for trip values of the Reactor Protective System (RPS) be set at spectified values and kept within a specified allowable value range. The Local Power Density—High Trip Setpoint of Table 2.2.1 specifies the required trip setpoint to prevent the peak linear heat rate from exceeding its safety limit for transients and anticipated operational occurrences and to mitigate the consequences of accidents. The proposed change revises the value of the Local Power Density—High Trip Setpoint and Allowable Value of LSSS 2.2.1, Table 2.2–1. Specifically, Table 2.2–1, Functional Unit 9, requires that both the Trip Setpoint and Allowable Value for the Local Power Density—High trip be 19.95 kw/ft. The proposed change increases both the Trip Setpoint and Allowable Value to 21.0 kw-ft, and reflects this revised setpoint in the Bases. This trip setpoint is a generic value with which the Core Protection Calculator System (CPCS) acts to prevent the Safety Limit from being exceeded during anticipated operating occurrences. Previously the trip setpoint incorporated an adjustment for dynamic effects that will now be accounted for elsewhere in the OPCS algorithms. Any changes to this adjustment on a cycle dependent basis can be incorporated in the addressable constants. Effectively, the CPCS local power density protection is not being changed.

General Design Criterion 10, Reactor Design, requires that the reactor core and associated coolant, control and protection systems be designed with appropriate margin to assure that specified acceptable fuel design limits are not exceeded during any condition of normal operation, including the effects of anticipated operational occurrences. The specified trip settings result in confidence that the specified acceptable fuel design limits will not be exceeded during normal operation or as the result of anticipated operational occurrences.

6. PCN–206—This proposed change would revise Technical Specifications 2.2.2, "Core Protection Calculator Addressable Constants", 6.5.1.6, "Onsite Review Committee", 6.8.1, "Procedures and Programs," and the Bases for Specifications 3/4.3.1 and 3/4.3.2, "Reactor Protective and Engineered Safety Features Actuation System Instrumentation". These specifications relate to CPC addressable constants and define allowable ranges for certain constants and administrative controls

on changes to addressable constants values.

The CPC's are digital computers which form part of the reactor protection system which monitors vari&us plant parameters and automatically generate a reactor trip when specified conditions are exceeded. The CPC's monitor various reactor parameters and calculate DNBR and local power density (LPD). If DNBR and LPD are calculated to exceed the DNBR and LPD trip setpoints, the CPC's automatically initiate a reactor trip.

The CPC addressable constants provide a mechanism to calibrate CPC calculations to account for physics tests measurements, uncertainties, sensor operability status, flow and power measurements, and changes in core design from cycle to cycle. Addressable constants are categorized as either Type I or Type II. Type I constants are calibrating constants, sensor operability status flags and pre-trip alarm setpoints which potentially could change frequently during a fuel cycle. Type I addressable constant values are entered using the CPC operator module.

Type II addressable constants are related to measured physics test parameters, uncertainties, allowances, adjustments and values determined during startup tests following each fuel loading, and are not expected to change during cycle operation. Values for Type II addressable constants are typically entered via diskettes but also can be entered via the operator module.

The CPC software includes range limits on addressable constants. These range limits prevent errors from being made during addressable constant entry. However, the range limit values are not related to the safety analysis; that is, having addressable constant values within the software limits does not in itself guarantee conservative CPC operation.

Technical Specification 2.2.2, "CPC Addressable Constants", requires that CPC addressable constants be in accordance with Table 2.2–2. Table 2.2–2 lists the addressable constants used in the CPC's, and gives limiting values for Type I constants Type II constants are listed without limits. The proposed change would delete Table. 2.2–2 from the Technical Specifications.

Basis for Proposed No Significant Hazards Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards consideration. Example (i) relates to a purely administrative change to the technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Example (ii) relates to changes which may constitute an additional limitation, restriction, or control not presently included in the Technical Specification. Example (iii) relates to a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and the NRC has previously found such methods acceptable. Example (vi) relates to a change which either may result in some increase in the probability or consequences of a previously analyzed accident or may in some way reduce a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP). The six proposed changes are similar to one or more of these examples. The specifics of how each proposed change is similar to the examples of 48 FR 14870 is discussed below.

1. PCN–200—The pertinent acceptance criteria for change is found in SRP Sections 4.3, "Nuclear Design," Section 5.4.7, "Residual Heat Removal System," Section 6.3, "Emergency Core Cooling System," and Section 9.3.4 "Chemical and Volume Control System."

Part (a) of proposed change PCN–200 would increase the maximum concentration allowed in the SIT and refueling water storage tanks from 2300 ppm to 2500 ppm. SRP Section 6.3 "Emergency Core Cooling System" requires that there not be an unacceptably high concentration of boric acid in the core resulting in precipitation in the long-term cooling phase following a LOCA. The proposed increase in maximum concentration will result in a higher post-LOCA concentration in the recirculated water. However, the post-LOCA resulting from the proposed change is less than the solubility limit. Therefore, precipitation will not occur and the SRP acceptance criteria are satisfied.

Parts (b) and (c) of proposed change PCN–200 relax boric acid concentration and volume requirements for the BAMU tanks, removes the requirements for heat tracing of the chemical and volume control system (CVCS) and verification that the BAMU tank flow paths can deliver 10 gpm to the RCS. Preposed change PCN–200 also implements more restrictive requirements on boration flow paths. The CVCS provides RCS inventory control and control of RCS boron concentration for control of reactivity. The functional requirements and acceptance criteria for the CVCS are contained in SRP Section 5.4.7 "Residual Heat Removal System" and Section 9.3.4 "Chemical and Volume Control System." SRP Section 5.4.7 by reference to Branch Technical Position 5–1 "Design Requirements of the Residual Heat Removal System" require the capability to take the plant from normal operating conditions to cold shutdown assuming a loss of offsite power and the limiting single failures. SRP Section 9.3.4 requires that the CVCS: (1) be capable of providing negative reactivity to the reactor by supplying borated water to the reactor coolant system in the event of anticipated operational occurrences; (2) be capable of providing makeup for small breaks to the RCS pressure boundary and to function as part of the ECCS assuming a single active failure coincides with loss of offsite power, and (3) be capable of providing boration of the reactor coolant system through either of two flow paths and from either of two sources. In addition, SRP Section 9.3.4 requires that the amount of boric acid stored in the CVCS exceeds the amount required to borate the RCS to cold shutdown conditions assuming the highest worth CEA is held fully withdrawn from the core. To satisfy these requirements, an adequate volume of sufficiently borated water must be available in the BAMU tanks and RWST, and flow paths must be available to inject water into the RCS. The proposed requirements ensure that an adequate volume of borated water and flow paths are available to enable cooldown of the plant assuming letdown is unavailable in conjunction with a loss of offsite power and the limiting single failure. The proposed concentration requirements ensure that sufficient boron is available to maintain shutdown margin during plant cooldown from normal operating to cold shutdown conditions. The proposed boration flow path requirements ensure that borated water is available from either of two sources and that a borated water source is available to function as part of the

ECCS assuming a single active failure coincident with a loss of offsite power. Therefore, the proposed change meets all applicable SRP acceptance criteria.

Part (d) of proposed change PCN–200 would lower the minimum SIT boron concentration for Unit 3, Cycle 2 from 1720 to 1420 ppm. SRP Section 4.3 "Nuclear Design" requires reactivity control systems to have a combined capability in conjunction with poison addition from the ECCS to reliably control reactivity changes under postulated accident conditions with a margin for stuck control rods. The proposed change would lower the boric acid concentration during reflood following a large break LOCA. In the large break LOCA analysis, conservatively, no credit is taken for control rod insertion. Analysis has confirmed that with 1420 ppm boric acid from the SIT tanks, the reactor will be sub-critical following a postulated LOCA. Therefore, the proposed change satisfies the SRP acceptance criteria.

Based on the above, proposed change PCN–200 is similar to Example (vi) of 48 FR 14870 in that it may, in some way, reduce existing requirements but where the changes satisfy the SRP acceptance criteria.

2. PCN–201—In this case, the proposed change described in part (a) of PCN–201 not only revises Figures 3.2–1, Figure 3.2–2, and Figure 3.2–3 but also replaces the existing Limiting Conditions for Operation (LCO) with four parts, i.e., Sections 3.2.4.a through 3.2.4.d. This modification is similar to Example (i) and (iii) of 48 FR 14870 as discussed below.

Part (a) of PCN–201 is similar to Example (i) in that it relates to a purely administrative change to technical specifications by imposing four applicable administrative control methods and two new figures in lieu of six existing figures to maintain an adequate DNBR margin under different states of plant operations. 3.2.4.a and 3.2.4.b replace the existing Figures 3.2–1 with words to the same effect when COLSS is in service. Additionally, both new figures supplant the existing Figures 3.2–2 and 3.2–3 in compliance with 3.2.4.c and 3.2.4.d when COLSS is out of service. Thus, DNBR will be maintained by 3.2.4.a (or 3.2.4.c) when either one or both CEAC are operable and by 3.2.4.b (or 3.2.4.d) when neither CEAC is operable. Since the proposed change pertains to a revision of graphic representations in LCO with a set of plain administrative control statements easy for understanding and two consolidated figures for simplification, it is a change within the scope contemplated by Example (i).

Also, Part (a) of PCN–201 is similar to Example (iii) in that it relates to a change resulting from a nuclear reactor core loading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not specifically changed, and the NRC has previously found such methods acceptable. This change requires an updating of the DNBR operating limits with the aid of two new figures as a result of the reload analysis for Cycle 3 which involves a nuclear reactor core loading. There are no fuel assemblies in Cycle 3 which are significantly different from those found previously acceptable to the NRC for the previous core. The DNBR operating limits are derived in compliance with the acceptance criteria used for the previous core on the basis of the analytical methods which were approved by the NRC and found acceptable. Hence the proposed change is similar to Example (iii) in that the DNBR operating limits are updated because of a new core loading in Cycle 3.

The proposed change described in Part (b) of PCN-201 revises Surveillance Requirements 4.2.4.4 concerning the rod bow penalty factors on DNBR as a function of fuel burnup. This modification is similar to Example (vi) in that the removal of such penalty factors may reduce in some way a margin of safety, but where the results are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan. Sections 4.4 and 7.2 of the SRP delineates acceptance criteria to maintain fuel integrity. Specifically, the Core Protection Calculator (CPC) and the Reactor Protective Instrumentation System (RPIS) must assure with high probability that acceptable fuel design limits are not exceeded during normal operation or anticipated operational occurrences (AOOs). The removal of Surveillance Requirement 4.2.4.4 does not imply a reduction in the margin of safety because of the deletion of the DNBR rod bow penalty factors from Technical Speeification 3/4.2.4. In fact, effects of fuel rod bowing on DNBR margin have been incorporated in the safety and setpoint analysis and combined with other uncertainty factors at the 95/95 confidence/probability level to define a design DNBR limit. They are adequately validated in the CPC software and verified for Cycle 3. In addition, the RPIS will automatically initiate a reactor trip to prevent Specified Acceptable Fuel Design Limits (SAFDLs) from being exceeded during transients and AOOs. Hence, the proposed change will not result in an increase in the probability or ocnsequences of an accident as the application of the appropriate penalty factors remains adequately validated and the protection of RPIS is available. In short, the relaxation of existing surveillance requirement will not compromise the safety margin, and the results of the reload analysis related to this proposed change are further verified to ensure that the established criteria of the SRP are met in view of Example (vi).

The proposed change described in Part (c) of PCN-201 revises the ACTION statements in Table 3.3–1 of Technical Specification 3.3.1. It is similar to Example (i) in that it is purely administrative change to delete requirements which have been placed in another Technical Specification. The proposed change to ACTION 6 combines ACTIONs 6.b and 6.c for consistency with respect to the proposed changes described in (a) and (b) above. The existing ACTION 6.b.1 is revised to incorporate Specification 3.2.4.b and 3.2.4.d whereas the existing ACTION 6.c is deleted because the penalty factor on the BERRI constant referenced therein is applied by a new mechanism per the proposed change (b). Hence the proposed change is similar to Example (i) in that it relates a change to achieve consistency throughout the technical specifications.

The proposed change described in Part (d) of PCN-201 revises Surveillance Requirements 4.2.4.2 by removing the verification requirement that the appropriate penalty factors have been implemented on all CPC system channels to ensure conformance of the operating limits on any CPC system channel per Figures 3.2–2 or 3.2–3. It is similar in Example (vi) in that the removal of such a surveillance requirment may reduce in some way a margin of safety, but where the results are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan. Specifically, the proposed change recognizes that it is only necessary to monitor one channel for control purposes during steady state operation so long as the plant is operated within the limits of Figures 3.2–1 and 3.2–2 as described in the proposed change (a). Since sufficient margin is already implemented in the CPC trip setpoint for transient protection in a similar way

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discussed in the proposed change (b), it is not necessary to monitor with all CPC system channels. This proposed change thus relieves the operators of an unnecessarily frequent surveillance without any reduction to a margin to safety. The CPC trips will continue to provide the same protection that they always have during transient operation. Hence the proposed change is similar to Example (vi) in that it is a relaxation of a surveillance requirement without compromising any safety operation.

3. PCN-202—This proposed change is similar to Example (iii) of 48 FR 14870 in that the technical specification on the moderator temperature coefficient will reflect the use of more highly enriched fuel that will be exposed to increased burnup by cycle. This change is not significant and does not make changes in analytical methods used to demonstrate conformance with the technical specifications and regulations, and the NRC has previously found such methods acceptable.

4. PCN-203—Part (a) of this proposed change would revise the RTD response time form 13.0 seconds to 8.0 seconds. This change is similar to Example (ii) of 48 FR 14870 in that proposed RTD response time is more restrictive than the current one. The proposed change described in part (b) above is similar to example (i) in that it more accurately specifies the method for response time testing.

5. PCN-204—SRP Section 7.2, "Reactor Trip System", requires that the reactor protection system automatically initiates a reactor trip to assure that specified acceptable fuel design limits are not exceeded. Proposed Change PCN-204 is similar to example (vi) of 48 FR 14870. Although the increased LPD trip setpoint may be perceived to reduce in some way a margin of safety, adjustments for dynamic effects which were previously included in the trip setpoint are now accounted for elsewhere in the CPC algorithms. The net effect is that the CPC's with the revised setpoint will continue to initiate a reactor trip to assure that specific acceptable fuel design limits are not exceeded. Therefore, the proposed change satisfies SRP Section 7.2 acceptance criteria and is similar to example (vi) of 48 FR 14870.

6. PCN-206—This proposed change deletes T.S. 2.2.2 (and Table 2.2–2) and the T.S. 6.5.1.6 requirement for OSRC review and approval for the use of addressable constant values outside the allowable ranges stated in T.S. 2.2.2. The proposed change emplifies Bases Section 3/4.3.1 in regards to the function and control of changes to addressable constants.

The allowable range of values in T.S. 2.2.2 are not related to the safety analysis and the use of value within these ranges does not ensure conservative CPC operation. Actual values to be used for addressable constants result from surveillance requirements for reactor protective instrumentation (T.S. 3/4.3.1) and action requirements (e.g., T.S. 3/4.6.1 Action 6c which rquires adjustments to addressable constant values when certain equipment is out of service). There have been occassions where satisfaction of the surveillance requirements have resulted in addressable constant values outside the allowable range, a conflict in existing technical specification requirements. Because of this conflict and because other technical specifications control the actual values of addressable constants, the proposed deletions are editoral and correct an existing conflict. Therefore the proposed change is similar to example (i) of 48 FR 14870. The proposed change to T.S. 6.8.1 deleting the requirements for prior OSRC approval of the use of the plant computer—CPC data link may be perceived to in some way decrease a safety margin. It should be noted that values for CPC addressable constants can be generated from CPC data manually collected from the CPC's without OSRC approval and that manual collection of data would be more prone to errors than use of the data link. The proposed change does not affect the functioning of the CPC's as part of the reactor protection system but merely revises administrative control of how addressable constant values are generated. Thus, with the proposed change, the CPC's will continue to satisfy the SRP Section 7.2, "Reactor Trip System", requirement for the reactor protection system to automatically initiate a reactor trip to assure that specified acceptable fuel design limits are not exceeded. Therefore this change is similar to exemple (vi) of 48 FR 14870.

Based on the above, the NRC proposes to determine that Proposed Changes PCN-200, 201, 202, 203, 204, and 206 do not constitute a signficant hazards consideration.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for Licensees: Charles R. Kocher, Esq. Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq. 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: April 12, 1985, as supplemented September 9, and October 7, 1985.

Description of amendment requests: The request for amendments was initially noticed on May 28, 1985 (50 FR 20995). The amendments proposed changes to the Technical Specifications to revise the Limiting Condition for Operation (LCO) and Surveillance Requirments (SR) for the reactor trip and bypass breakers, undervoltage trip logic and shunt trip logic. The proposed changes were requested in response to a generic letter, dated July 8, 1983, addressing "required actions based on generic implications of Salem ATWS events" (Generic Letter (GL) 83–28). Item 4.3 of the letter, "Reactor Trip System Reliability," states that Westinghouse reactors shall be modified by providing automatic reactor trip system actuation of the breaker shunt trip attachment.

This notice includes changes requested in subsequent submittals dated September 9, and October 7, 1985. The September 9, 1985 submittal modifies the original change request to include subsequent staff guidance provided in GL 85–09, "Technical Specifications for GL 83–28, Item 4.3" regarding the Limiting Conditions for Operation and Surveillance Requirements of the reactor trip and bypass breakers, the undervoltage and shunt trip logic and the manual scram switches. Specifically, the description of the proposed LCOs and SRs are more specific, descriptive and detailed in that actions based on conditions of redundancy have been specified, and time limits for restoration of operability have been established for the reactor trip breakers and automatic trip logic, and the independent testing of the undervoltage and shunt trip attachments for the reactor trip and bypass breakers, and manual scram switches have been clarified.

The October 7, 1985 submittal reinstates two surveillance requirements which were inadvertently omitted in the April 12, and September 9, 1985 submittals. These two surveillance requirements were not affected by, nor were they a part of, the proposed changes.

Basis for proposed no significant hazards consideration determination:

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). Examples of actions not likely to involve a significant hazards consideration are "(i) A purely administrative change * * * of example* * * a correction of an error, or a change in nomenclature"; and "(ii) a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement."

The supplemental proposed changes are similar to Example (i) in that the reinstatement of the inadvertent omission of two surveillance requirements is a correction of an error; and to Example (ii) in that the additional description and detail clarifies the intent of (a) the surveillance testing requirements for reactor trip and reactor trip bypass breakers, and the manual scram switches; and (b) the LCOs for the reactor trip breakers but constitute additional restriction or controls.

As such, the staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Lester S. Rubeinstein.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Southern California Edison Company, et al, Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: August 23 and October 10 and 16, 1985.

Brief description of amendment: Technical Specification changes relating to the maximum enrichment of fuel assemblies and the criticality requirements for storage of fuel in the fuel storage areas.

Date of publication of individual notice in "Federal Register": October 30, 1985.

Expiration date of individual notice: November 29, 1985.

Local Public Document Room location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commiasion has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has perpared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Baltimore Gas & Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: June 28, 1985.

Brief description of amendments: The amendments change the Unit 1 and 2 Technical Specifications (TS) to: (1) Reflect a clarification of requirements associated with the containment purge isolation valves in TS 3.3–3, "Engineered Safety Features Actuation System Instrumentation," and TS Table 3.6–1, "Containment Isolation Valves," (2) modify TS 3.9.4, "Containment Penetration," to allow the use of an alternate closure for the emergency personnel escape lock, (3) delete TS 6.13, "Environmental Qualifications," and (4) correct identified spelling errors and change in terminology.

Date of issuance: December 4, 1985.

Effective date: December 4, 1985.

Amendment Nos.: 108 and 91.

Facility Operating License Nos. DPR–53 and DPR–69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37072 at 37073).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 4, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Baltimore Gas & Electric Company, Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of application for amendment: August 29 and August 30, 1985.

Brief description of amendment: The amendment changes the TS to reflect changes in the analysis to accommodate Unit 2 Cycle 7 operation. In addition, the analyses support changes in the TS for steam line safety valve setpoints.

Date of issuance: November 21, 1985.
Effective date: November 21, 1985.
Amendment No.: 90.
Facility Operating License No. DPR-69. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: September 25, 1985 (50 FR 38909 at 39910).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1985.

No significant hazards consideration comments received: No.
Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of application for amendment: April 12, 1985, as supplemented September 17, 1985.
Brief description of amendment: The amendment changes the Technical Specifications by raising the K-effective limit of the spent furl storage pool from 0.90 to 0.95 and substituting a maximum K-infinity for the maximum enrichment and average U-235 loading of fuel assemblies in the pool.
Date of issuance: December 3, 1985.
Effective date: 30 days after the date of issuance.
Amendment No.: 91.
Facility Operating License No. DPR-35. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: May 21, 1985 (50 FR 20971) No change in the substance of the amendment was proposed in the licensee's letter of September 17, 1985.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1985.

No significant hazards consideration comments received: Yes. A request for hearing and petition for leave to intervene, dated June 29, 1985, was received from Mr. John F. Doherty. The request was denied by an Atomic Safety and Licensing Board on July 19, 1985, and his appeal of that decision was denied by the Atomic Safety and Licensing Appeal Board on September 5, 1985.
Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket No. 50-373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of amendment request: October 11, 1985.
Brief Description of amendment: The amendment to Operating License NPF-11 revises the La Salle Unit 1 Technical Specifications to delete the air-operated-testable-bypass-check valves installed in each of the emergency-core-cooling systems (ECCS) and reactor core colling isolation (RCIC) system since they are no longer required. The purpose of the bypass valves was to enable the exercising of the testable check valves in the ECCS and RCIC system during reactor operation by equalizing the pressure-across the check valve disk. These testable-check valves are part of the Inservice Inspection Program and the La Salle Unit 1 Program calls for these testable-check valves to be exercised during cold shutdown. Therefore, the bypass check valves are not required.
Date of issuance: December 6, 1985.
Effective date: Upon startup following the first refueling.
Amendment No.: 31.
Facility Operating Licenses No. NPF-11 Amendment revised that Technical Specifications.
Date of initial notice in Federal Register: November 6, 1985 (50 FR 48211). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1985.

No signficant hazards consideration comments received: No.
Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: August 28, 1985.
Brief Description of amendments: The amendments to Operating License NPF-11 and Operating License NPF-18 revise the La Salle Units 1 and 2 Technical Specifications to allow time to correct calibrations before declaring the channels inoperable and requring the imposition of a half-scram. The change is an interpretation and clarification of the provision. When the power is above 90 percent thermal power and the Average Power Range Monitors (APRMs) read less than the thermal power (Gain Adjustment Factor (GAF) 1) as determined by heat balance, the Technical Specifications change allows 2 hours for adjustment if the difference is greater than 2 percent. For thermal power above 90 percent and the APRMs reading greater than the thermal power (GAF 1), the Technical Specifications allows 12 hours for adjustment if the difference is greater than 2 percent. Similary for power less than 90 percent and APRMs read less than thermal power (GAF 1), the Technical Specification allows 2 hours for adjustment if the difference is greater than 2 percent. For power less than 90 percent and APRMs reading greater than the thermal power (GAF 1), the Technical Specifications allows 12 hours for adjustment if the difference is greater than 10 percent. Also, it will be permissible to trip only the inoperable channel where trip systems have more than 2 channels per system.
Date of issuance: November 20, 1985.
Effective date: November 20, 1985.
Amendment Nos.: 30 and 17.
Facility Operating Licenses No. NPF-11 and NPF-18 Amendments revised that Technical Specifications.
Date of initial notice in Federal Register: September 25, 1985 (50 FR 38912). The Commission's related evaluaton of the amendment is contained in a Safety Evaluation dated November 20, 1985.

No signficant hazards consideration comments received: No.
Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 2, 1985.
Brief Description of amendment: The amendment revises the Technical Specification to delete the Boron Injection Tank (BIT) and its associated limiting conditions for operation and surveillance requirements.
Date of issuance: December 5, 1985.
Effective date: Immediately to be implemented within 30 days.
Amendment No.: 104.
Facilities Operating License No. DPR-26: Amendments revised the Technical Specifications.
Date of initial notice in Federal Register: September 11, 1985 (50 FR 37007).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 1985.

No signficant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: July 12, 1985.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to revise the calibration schedule of the seismic instruments from "within 24 hours" to "within 30 days" after a seismic event. The increased flexibiilty would ensure that part of the instrumentation would remain available to record potential after-shock data.

Date of issuance: December 3, 1985.

Effective date: December 3, 1985.

Amendment No. 98.

Facility Operating License No. DPR–66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37081)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power and Light Company et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application of amendments: May 15, 1984 and May 21, 1984 as amended by letters dated May 23, 1985 and August 26, 1985.

Brief description of amendments: These amendments consist of changes to the Technical Specifications to incorporate the provisions of 10 CFR 50.72 and 50.73 as defined in Generic Letter 83–43 and changes to the "Definition" and "Administrative Controls" sections to make the St. Lucie Plant, Unit Nos. 1 and 2 Technical Specifications similar and reflect current organization.

Date of Issuance: December 6, 1985

Effective Date: December 6, 1985.

Amendment Nos.: 69 and 13.

Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 20, 1984 at 49 FR 25359 for St. Lucie 1 and July 24, 1984 at 10 FR 29909 for St. Lucie 2 and September 11, 1985 at 37081 for St. Lucie 1 and 2.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: February 11, 1985.

Brief description of amendments: The amendment approves changes to the Appendix A Technical Specifications (TSs) pertaining to Sections 3.13 and 4.13, Accident Monitoring Instrumentation. These changes add limiting conditions for operation and surveillance requirements to the TSs for the following post-accident monitoring instrumentation: torus water level monitors, drywell pressure monitors and drywell hydrogen monitors.

Date of issuance: November 22, 1985.

Effective date: November 22, 1985.

Amendment No. 94.

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16004). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 22, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Long Island Lighting Company, Docket No. 50–322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of application for amendment: October 21, 1985.

Brief description of amendment: The amendment revises paragraph 2.C.(8) of the Shoreham license to allow an extension of time, until December 31, 1985, as authorized by the Commission, for the completion of the environmental qualification of certain electrical equipment.

Date of issuance: December 6, 1985.

Effective date: December 6, 1985.

Amendment No.: 1.

Facility Operating License No. NPF–36:. Amendment revised the License Condition 2.c.(8).

Date of initial notice in **Federal Register:** November 6, 1985 (50 FR 46214) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786.

Northeast Nuclear Energy Company et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: August 26, 1985.

Brief description of amendments: This amendment corrects technical specification typographical errors, provides clarification and allows continued operation for cycle 11 operation.

Date of issuance: December 6, 1985.

Effective date: December 6, 1985.

Amendment No. 107.

Facility Operating License No. DPR–21. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41250). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 29, 1985, as revised June 14, and September 4, 1985.

Brief description of amendment: The amendment revises Technical Specifications Section 3.5 to change the oxygen concentration in the primary containment atmosphere from 5% by weight to 4% by volume and adds Sections 3.7(E) and 4.7(E). The new sections provide the Limiting Conditions for Operation and the surveillance requirements for the Combustible Gas Control System.

Date of issuance: December 3, 1985.

Effective date: December 3, 1985.

Amendment No.: 35.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of Initial notice in **Federal Register:** October 9, 1985 (50 FR 41251)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: July 11, 1985.

Brief description of amendment: The amendment changed the titles of senior management officials and deleted environmental qualification of electrical equipment administrative requirements (deadline and records). The amendment also changed two Table of Contents pages to reflect current Technical Specification sections. The amendment also added an effluent radiation monitor to the footnotes to Table 3–3. The monitor was erroneously omitted by the staff in a previous licensing action. The amendment also added the title to Table 2–4 which was erroneously omitted by the staff in a previous licensing action. The remaining requests in the July 11, 1985 application will be the subject of a future amendment.

Date of issuance: December 6, 1985.

Effective date: December 6, 1985.

Amendment No.: 93.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37088).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1985.

No significant hazard consideration comment received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: September 6, 1985 as supplemented September 3, 1985.

Brief description of amendment: The amendment changed the technical specifications to support the operation of the unit at full rated power during Cycle 10.

Date of issuance: November 29, 1985.

Effective date: November 29, 1985.

Amendment No.: 92.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38909 at 38918).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Pacific Gas and Electric Company, Docket No. 50–275 Unit 1 and Docket No. 50.323 Unit 2, Diablo Canyon Nuclear Power Plant, San Luis Obispo, County California

Date of amendment request: September 6, 1985.

Brief description of amendment: The amendments change the combined Technical Specifications for Units 1 and 2 concerning the axial flux difference limits.

Date of Issuance: November 29, 1985.

Effective date: Unit 1 date for 8000 MWD/MTV burnup.

Amendment Nos.: 3 and 1.

Facility Operating License Nos. DPR–80 and DPR–82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 23, 1985 (50 FR 43032). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1985.

No significant hazards consideration comments were received: No.

Local Public Document Room location: California Polytechnic State University Library, Documents and Maps Department, San Luis Obispo, California 93407.

Pennsylvania Power and Light Company, Docket Nos. 50–387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendment: July 31, 1985, as supplemented on September 13, 1985.

Brief description of amendments: In January 1984 the licensee experienced ice formation on the spray nozzles of the spray pond. On August 31, 1984 the licensee provided to the staff a long-term solution to preclude freezing problems in the spray pond. The licensee's solution would add an automatic start capability to the recently installed self-priming pumping system. This amendment allows modification of the spary arrays to allow draindown without operator action. A new motor operated valve has been installed in each spray array drain line to isolate the spray arrays from the drain pumps. These new drain valves are interlocked with the drain pumps and riser level monitor instrumentation to allow automatic pumpdown of the spray risers.

This plant modification is reflected in Table 3.8.4.2–1 of the Technical Specification for both Units 1 and 2. The licensee has added these valves to Table 3.8.4.2.–1 (MOTOR OPERATED VALVES THERMAL OVRLOAD PROTECTION). These valves are safety related and the valves have thermal overload protection devices; however, this protection is continuously bypassed except during testing. By design all safety related valves have their thermal overload protection devices continuously bypassed except during testing so that the valves can perform their safety related function beyond that which the thermal overload protection would limit.

Date of issuance: December 3, 1985.

Effective date: Upon completion of the modification but no later than December 31, 1985.

Amendment Nos.: 52 and 20.

Facility Operating License Nos: NPF–14 and NPF–21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 23, 1985 (50 FR 43033). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1985.

No comments were received regarding the Commission's proposed no significant hazards consideration determined.

Local Public Document Room location: Osterhoust Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Dockets Nos. 50–387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: December 21, 1984 as supplemented on July 1, 1985, August 7, 1985, August 23, 1985 and September 4, 1985.

Description of amendment request: On December 21, 1984 the licensee requested a temporary change to Technical Specification 3.8.1.1 and 3.7.1.2 for both Units 1 and 2 to extend the Limiting Conditions of Operation (LCO) for these Technical Specifications in order to perform the necessary preparations for electrical, mechanical

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and instrumentation tie-ins for the installation of the fifth diesel generator at Susquehanna. These tie-in preparations are being performed so that the fifth diesel can replace any of the four existing diesels, presently at Susquehanna, as a manual swing spare. The licensee will remove from service, one diesel at a time, the four diesel generators for an accumulated time of 60 days. The amendments allow the licensee to extend the allowable LCO of 3 days for an out of service diesel to an allowable LCO outage time of 60 days for all four diesels. (A related one time exemption from the single failure criteria for onsite electrical power supplies provided in General Design Criteria 17 of 10 CFR Part 50, Appendix A is being issued separately.

Date of issuance: December 3, 1985

Effective date: Upon commencement of the fifth diesel generator tie-in and is to expire upon completion of 60 cumulative days in the LCO.

Amendment Nos.: 51 and 19.

Facility Operating License Nos: NPF-14 and NPF-22: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41251). The Commissions related evaluation of these amendments is contained in a Safety Evaluation dated December 3, 1985.

No comments on the proposed determination were received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: November 26, 1984.

Brief description of amendment: In the November 26, 1984 submittal the licensees requested a change to License Conditions 2.A and 2.B.(2) of NPF-14 such that the specific amendment number of the Final Safety Analysis Report (FSAR) and Environmental Report (ER) not be included in the above license conditions. The staff has amended the license per the licensee's request and the license conditions now read as follows: 2.A. This license applies to the Susquehanna Steam Electric Station, Unit 1, a boiling water nuclear reactor and associated equipment (the facility), owned by the licensees. The facility is located in Luzerne County Pennsylvania, and is described in the licensees' Final Safety Analysis Report as supplemented and amended and the licensees' Environmental Report as supplemented and amended. 2.B.(2) PP&L, pursuant to the Act and 10 CFR Part 70, to receive, possess, and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report, as supplemented and amended.

The license conditions as amended are now consistent with the as issued license conditions contained in the Unit 2 license. The basis for staff's approval is 10 CFR 50.71(e) which states: "The updated FSAR shall be revised to include the effects of: all changes made in the facility or procedures as described in the FSAR; all safety evaluations performed by the licensee either in support of requested license amendments or in support of conclusions that changes did not involve an unreviewed safety question; and all analyses of new safety issues performed by or on behalf of the licensee at Commission request." This regulation provides assurance that any FSAR change will be reviewed by the utility via the safety evaluation process and that any changes that result in a safety question not previously review and approved by the staff shall be submitted at that time to the staff for review and approval. In addition 10 CFR 50.99(b) requires the licensee to maintain records that shall include a written safety evaluation which provides the bases for the determination that the change, test or experiment does not involve an unreviewed safety question. Additionally, the staff finds the inclusion of the specific amendment number for the ER to be unnecessary as the licensee is not required to and does not update the ER subsequent to licensing but is accountable for and abides by the plant specific Environmental Protection Plan. In view of the present requirements the staff determined that incorporation of specific amendment numbers in License Conditions 2.A and 2.B(2) served no useful purpose.

Date of issuance: November 22, 1985.

Effective date: Upon issuance.

Amendment No.: 53.

Facility Operating License No. NPF-14: Amendment revised the License Conditions.

Date of initial notice in **Federal Register:** July 31, 1985 (50 FR 31070). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 22, 1985.

No comments on the proposed determination were received. No

Local Public Document Room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: May 23, 1980, as amended by letters dated August 1, 1980, June 2, 1981, April 4, 1983, May 29, 1984, and April 24, 1985.

Brief description of amendments: These amendments revise the Administrative Controls Section of the Appendices A and B Technical Specifications to reflect changes in the licensee's organization and personnel related to the operational and review responsibilities for the Peach Bottom facility.

Date of issuance: November 22, 1985.

Effective date: November 22, 1985.

Amendment Nos.: 114 and 118.

Facility Operating Licenses Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 25, 1985 (50 FR 38918).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 22, 1985.

No significant hazards consideration comments received. No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania.

Date of application for amendments: October 9, 1984, which amended a previous application dated February 11, 1982. The February 11, 1982 submittal, as supplemented, was previously noticed in 48 FR 49591 (October 26, 1983). The licensee also supplemented its October 9, 1984, application by letter dated April 18, 1985. This letter involved correction of certain typographical errors and redistribution of material to accommodate recently approved Technical Specifications (TSs) changes. In addition, certain proposed TS

changes were temporarily withdrawn from NRC consideration, but will be reviewed at a later date. Finally, this letter resubmitted some proposed TS changes from the earlier February 11, 1982, application.

Brief description of amendments: These amendments add limiting conditions for operation, surveillance requirements, and administrative requirements for NUREG–0737 items as specified in Generic Letter 83–36.

Date of issuance: November 19, 1985.

Effective date: November 19, 1985.

Amendments Nos.: 113 and 117.

Facility Operating Licenses Nos. DPR–44 and DPR–56. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7998).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 19, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publicatons Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Portland General Electric Company et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: April 4, 1985, as revised August 26, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to make organizational changes and modifications to the membership of the Trojan Nuclear Operations Board.

Date of issuance: December 5, 1985.

Effective date: December 5, 1985.

Amendment No.: 108.

Facility Operating License No. NPF–1. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 32787 at 32800) Subsequent to the initial notice, the licensee, by a letter dated August 26, 1985, clarified the wording of the Technical Specification change and made it clearly consistent with the description of the requested change as described in the April 4, 1985 application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 1985.

No significant hazards consideration comments received: No.

Location of Local Public Document Room: Multnomah County Library, 801 S.W. 10th Avenue , Portland, Oregon.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: March 15, 1985.

Brief description of amendment: The amendment revises Technical Specifications Section 3.5, "Instrumentation System", Section 3.6, "Containment Systems", and Section 4.13, "Containment Vent and Purge System." These changes limit the opening angle of the containment vent valves to 60° and verifiy that the containment purge supply and exhuast isolation valves are closed.

Date of issuance: November 21, 1985.

Effective date: November 21, 1985.

Amendment No.: 62.

Facilities Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20986) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 21, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Southern California Edison Company et al. Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of applications of amendments: January 25, May 23 and August 7, 1974 and August 20, 1985.

Brief description of amendments: The amendments change the Technical Specifications to (1) delete a diesel generator surveillance requirement to test reloading of a diesel generator following its failure with offsite power not available and (2) include only those limiting conditions for operation and surveillance requirements which directly relate to the operability of the A.C. power source required under shutdown and refueling conditions.

Date of issuance: November 22, 1985.

Effective date: November 22, 1985 and fully implemented within 30 days of issuance.

Amendment Nos.: 38 and 27.

Facility Operating License Nos. NPF–10 and NPF–15: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 23, 1985 (50 FR 43025).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1985.

No significant hazards consideration comments were received: No.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

Southern California's Edison Company, et al. Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of application of amendments: August 23, October 10 and 16, 1985.

Brief description of amendments: The amendments revise the Technical Specifications concerning maximum enrichment of the fuel assemblies and the criticality requirements for storage of fuel in the fuel storage areas.

Date of issuance: December 2, 1985.

Effective date: December 2, 1985 and fully implemented within 30 days of issuance.

Amendments Nos.: 39 and 28.

Facility Operating License Nos. NPF–10 and NPF–15: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 30, 1985 (50 FR 45178).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1985.

No significant hazards consideration comments were received: No.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: October 8, 1982, and supplemented April 26, 1984, and August 2 and September 25, 1985.

Brief description of amendment: The amendment modifies the Technical Specification related to leakage rate testing of certain containment isolation valves.

Date of issuance: November 23, 1985.

Effective date: November 23, 1985.

Amendment No.: 47.

Facility Operating License No. NPF–12. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 23, 1985 (50 FR 43034).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 23, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Toledo Edison Company and the Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 18, 1983 (Item 1), as modified November 20, 1984.

Brief description of amendment: The amendment incorporates requirements for special leak testing of containment purge isolation valves. The purpose of the special testing will be to determine if excessive degradation of the valve seats has occurred.

Date of issuance: November 27, 1985.

Effective date: November 27, 1985.

Amendment No. 90.

Facility Operating License No. NPF–3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16018).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

Toledo Edison Company and the Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: February 13, 1985.

Brief description of amendment: This amendment revises the minimum Reactor Coolant System flow requirement to take credit for the decrease in the core bypass flow resulting from the use of Lump Burnable Poison Rods in Cycle 5 design.

Date of issuance: November 27, 1985.

Effective date: November 27, 1985.

Amendment No. 91.

Facility Operating License No. NPF–3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16019).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry Country, Virginia

Date of application for amendments: July 12, 1985.

Brief description of amendments: These amendments will revise Technical Specification Table 4.1–1 to delete the surveillance requirements for the boron injection tank level instruments.

Date of issuance: December 3, 1985.

Effective date: December 3, 1985.

Amendment Nos. 103 and 103.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34947).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of amendment request: May 22, 1985.

Brief description of amendment request: This amendment revises the WNP–2 license by modifying the WNP–2 Technical Specifications to change the Surveillance Requirement 4.8.1.1.2 by modifying the minimum allowable voltage required for auto starting of diesel generators DG–1 and DG–2 making it consistent with the output breaker closure permissive setpoint.

Date of issuance: November 22, 1985.

Effective date: November 22, 1985.

Amendment No.: 19.

Facility Operating License No. NFP–21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 22, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of amendment request: July 9, 1985.

Brief description of amendment request: This amendment revises the WNP–2 license by modifying the Administrative Controls Section 6.2.3 of the Technical Specifications to permit the Supply System to alter the composition of the Nuclear Safety Assurance Group (NSAG). In addition, this amendment corrects a typographical error in a previously granted amendment. Amendment No. 11.

Date of issuance: November 20, 1985.

Effective date: November 20, 1985.

Amendment No.: 18.

Facility Operating License No. NPF–21: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 20, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: October 16, 1985.

Brief description of amendment: Modifies the required interval for degraded grid voltage (second level loss of voltage) surveillance testing in the technical specifications.

Date of issuance: November 30, 1985.

Effective date: November 30, 1985.

Amendment No.: 89

Facility Operating License No. DPR–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 30, 1985 (50 FR 45181).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Yankee Atomic Electric Company, Docket No. 50-29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: August 30, 1985.

Brief description of amendment: The amendment would revise the Technical Specifications to: (1) correct typographical errors; (2) remove references to three loop operation; (3) revise the Linear Heat Generation Rate (LHGR) limit; (4) revise the control-rod-motion-related peaking multipliers that are applied to measured LHGR for comparison to the loss of coolant accident limit; (5) modify the method for combining the independent uncertainty factors applied to the measured LHGR; (6) modify the Safety Injection Acutation Signal setpoint; and (7) revise the maximum allowable core inlet temperature.

Date of issuance: November 27, 1985.

Effective date: November 27, 1985.

Amendment No.: 88.

Facility Operating License No. DPR-3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 23, 1985 (50 FR 43038).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 27, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By January 17, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interests may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)((i)–(v) and 2.714(d).

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 30, 1985, as revised by letters dated November 7 and 16, 1985, and superseded by letters dated November 4, 8 and 14, 1985.

Brief description of amendment: This amendment authorizes changes to Items 3. and 4. of Table 4.1.1, "'Minimum Check, Calibration, and Test Frequency for Protective Instrumentation," for Section 4.1, Protective Instrumentation of the Appendix A Technical Specifications (TS) for Oyster Creek Nuclear Generating Station (Oyster Creek). Specifically, these changes (1) revise the channel check for the low reactor water level instrumentation channels from daily for all the channels to daily for only the channels which have indication in the control room and (2) deletes the channel check for the low-low reactor water level instrumentation channels. These are one-time-only changes to remain effective from November 8, 1985, to the restart from the Cycle 11 Refueling (Cycle 11R) outage.

Date of issuance: November 30, 1985.

Effective date: November 8, 1985 for the shutdown reactor mode, and November 16, 1985 for the remaining reactor modes of operation.

Amendment No. 95.

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Public Comments requested as to proposed no significant hazards consideration: Yes. 50 FR 43027 dated October 23, 1985.

Comments received: None as of November 18, 1985.

The Commission's related evaluation of this amendment and final no significant hazards considerations are contained in a Safety Evaluation dated November 30, 1985.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Bethesda, Maryland this 11th day of December 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director Division of PWR Licensing-A.

[FR Doc. 85–29955 Filed 12–17–85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–1001; 803–51]

David B. Solomon; Notice of Application for an Order of Exemption

December 10, 1985.

Notice is hereby given that David B. Solomon ("Applicant"), 79 Broadway, Suite 1201, New York, New York 10006, registered as an investment adviser under the Investment Advisers Act of 1940 ("Act"), filed an application on June 12, 1985, and an amendment thereto on October 15, 1985, for an order of the Commission, pursuant to section 206A of the Act, exempting Applicant's proposed compensation arrangement with Cypress Partners L.P. ("Partnership"), a limited partnership which Applicant proposes to organize under Delaware law and to serve as investment adviser in the capacity of general partner. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable statutory provisions.

Applicant is president and chief executive officer of Solomon Asset Management, Inc. ("SAM, Inc."), also a registered investment adviser. Applicant and a trust established for a member of Applicant's family own in the aggregate 80% of the issued and outstanding stock of SAM, Inc. SAM, Inc. currently serves as investment adviser to 18 individually-managed investment accounts, several of which are major pension plan accounts. The minimum investment for an account with SAM, Inc. is $10,000,000, and as of February 28, 1985, SAM, Inc. had under management a total of approximately $920,000,000 attributable to those 18 accounts.

According to the application, interests in the Partnership will be offered only as limited partnership interests, and only to sophisticated investors of sufficient financial capacity as will enable them to sustain any loss which may be incurred by the Partnership. No sales commission will be charged to the partners by the Partnership's selling agents. Partnership interests will be sold only in a manner so as to be exempt, in the opinion of the Partnership's counsel, from registration under the Securities Act of 1933 ("Securities Act") pursuant to Regulation D thereunder. The Partnership will be formed so that it will, in the opinion of the Partnership's counsel, be exempt from registration as an investment company pursuant to

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section 3(c)(1) of the Investment Company Act of 1940.

It is further ordered that the Partnership will have a minimum total capital of $15,000,000, and a maximum total capital of $25,000,000, subject to waiver of such minimum or maximum by Applicant. Applicant expects that $20,000,000 will be contributed as the total capital of the Partnership, and that the total number of limited partners in the Partnership will not exceed 15. Applicant will, as general partner, contribute 5% of the Partnership's total capital. The remaining 95% of the Partnership's total capital will be contributed by the limited partners, as follows: 85% by the Class A Limited Partners, and 10% by the Class B Limited Partners. Each and every limited partner will be required to make a minimum capital contribution of $1,000,000, except, that, a limited partner's capital contribution to the Partnership, if agreed to by Applicant, may be reduced, but in any event shall not be less than $500,000. No limited partner will be permitted to make a contribution to capital which equals or exceeds 10% of the total capital contributed to the Partnership, unless such limited partner satisfies the general partner that such limited partner's interest in the Partnership, together with its interests in any other corporation, partnership, trust, or association excepted from registration by section 3(c)(1) of the Investment Company Act does not represent more than 10% of such limited partner's total assets.

It is anticipated that the term of the Partnership will be approximately four years ("Investment Period"). After the end of the Investment Period, Applicant will as soon as practicable distribute the assets of the Partnership, together with any cash on hand to the Partners ("Distribution Period").

Applicant proposes that the Partnership not be limited with respect to the types of investments it may make, or the financial transactions in which it may engage, as Applicant believes that complete investment flexibility is required to maximize potential returns. Accordingly, it is expected that the Partnership's investments will consist of purchases of publicly-traded and restricted debt and equity instruments, warrants and options (including puts and calls) in both established and emerging companies, and in special situations which in Applicant's judgment have the potential for high capital appreciation and increased income yield. The Partnership will make investments via private placements, initial public offerings, and open market and private transactions. The Partnership is not required to assume a "passive" investor's role, and when appropriate, will play a direct policymaking role in companies in which it invests. Applicant contemplates that the holding period of the Partnership's investments may vary widely depending upon, among other factors, the terms and nature of such investments and the Partnership's investment objective of maximizing potential returns.

It is further stated that during the term of the Partnership, the Partnership will pay SAM, Inc. a quarterly management fee not to exceed .325% of the net value of the Partnership's assets as of the end of each quarter. The Partnership will pay all of its organizational expenses, expenses relating to its securities portfolio (i.e., interest, taxes, brokerage fees, custodial expenses, registration expenses), costs of professional services rendered to the Partnership and other direct expenses of the Partnership (such as legal fees, accountant fees, and fees and expenses of any experts retained by the Partnership in connection with its organizational expenses, as well as fees and expenses relating to the provision of managerial, or other assistance to companies in which the Partnership has invested).

Each partner shall have a capital account, which shall be computed at the end of each Partnership fiscal year to reflect such partner's capital contributions, distributions to pay taxes, if any, certain "preferred allocations" (as hereinafter defined), and allocations of net cumulative profit, or net cumulative loss. Specifically, it is stated that the Class A Limited Partners will be entitled to a cumulative preferred allocation of 9% per annum ("Class A Preferred Allocation") on their capital contributions. Each partner will be entitled to a cumulative preferred allocation of 9% per annum on his allocation of undistributed net cumulative profits ("Preferred Allocation"). In this regard, "profits" is defined to include income from Partnership investments, plus realized and unrealized capital appreciation on marketable and non-marketable securities ("Profits"). "Losses", on the other hand, will by definition include realized losses and unrealized capital depreciation on marketable and non-marketable securities ("Losses"). Profits and Losses will be calculated at the end of each Partnership fiscal year, taking into account Profits and Losses in such fiscal year and Profits and Losses for all prior fiscal years, so that at the end of any Partnership fiscal year, the total Profits and Losses for such year and all prior fiscal years of the Partnership will be reflected in "Net Cumulative Profits", or "Net Cumulative Losses", as the case may be.

It is further stated that at the end of each Partnership fiscal year, if Profits exceed Losses for the period beginning of such fiscal year to the end thereof, Profits will be first allocated to the partners' capital accounts, in the following order of priority: (i) First, to the Class A Limited Partners on account of their Class A Preferred Allocation; (ii) second, to the Class A Limited Partners on account of each such partner's Preferred Allocation of any undistributed Net Cumulative Profits; (iii) third, to the Class B Limited Partners on account of each such partner's Preferred Allocation of any undistributed Net Cumulative Profits; and (iv) fourth, to Applicant, as general partner, on account of his Preferred Allocation of any undistributed Net Cumulative Profits.

After all preferred allocations have been made, Applicant states, the remaining Net Cumulative Profits of the Partnership at the end of each fiscal year will be allocated to the capital accounts of each partner as follows:

(1) 40% to each Class A Limited Partner, proportionately to the amount that his initial capital contribution bears to the contribution of all Class A Limited Partners;

(2) 40% to each Class B Limited Partner, in proportion to the amount which his initial capital contribution bears to the total contributions of all Class B Limited Partners; and

(3) 20% to Applicant, as general partner.

If at the end of any Partnership fiscal year, Losses exceed Profits for the period from the beginning of such year to the end of thereof, such Losses will also be allocated to the capital account of each partner in the manner described immediately hereinabove (i.e., as set out in subparagraphs (1), (2) and (3) above).

Except as stated in the paragraph following, other than distributions to pay personal income taxes, no partner will be paid any return until the Distribution Period. Therefore, it is noted, Applicant, as general partner, will not receive any actual payment on account of his compensation until the Distribution Period, and, consequently, the allocation of Net Cumulative Profits to Applicant will assure that Net Cumulative Losses are taken into consideration in computing Applicant's compensation. It is stated further that this allocation formula will assure that the compensation to be paid to

Applicant subsequent to the Investment Period will take into account the Profits and Losses of the Partnership for that fiscal year in which such compensation is paid, and for all prior fiscal years [and therefore will comport with the concepts embodied in Investment Advisers Act Release No. 961 (March 15, 1985)].

During the Investment Period, the Partnership will, as represented, not make any distributions of Partnership Profits to the limited partners or to Applicant, except that within 90 days after the end of any fiscal year during the Investment Period or the Distribution Period, Applicant will distribute to each limited and general partner 20% of any realized net long-term capital gain, and 50% of any other taxable income allocated in such year to such partner. The foregoing distributions will be made in order to permit the partners to pay their tax liabilities incurred as a result of their Partnership investment. Neither Applicant nor the limited partners will be obligated to refund all or any part of any amounts distributed to them pursuant to the foregoing arrangement, it is stated.

In addition to the above distributions, during the Distribution Period, Applicant, as general partner, will distribute the assets of the Partnership after payment of Partnership obligations, as well as expenses of liquidation, in the following order of priority:

(i) First, to the Class A Limited Partners in payment of their capital accounts. If the assets of the Partnership are insufficient to cover all such capital accounts, the assets which are available will be divided among and paid to the Class A Limited Partners in proportion to their capital accounts;

(ii) second, to the Class B Limited Partners in payment of their capital accounts. If the assets of the Partnership are insufficient to cover all such capital accounts, then such assets as are available will be divided among and paid to the Class B Limited Partners in proportion to their capital accounts; and,

(iii) third, to Applicant in payment of his capital account.

At the termination of the Partnership, the assets and cash on hand of the Partnership will be distributed in kind, pro rata, to the partners. If, however, Partnership assets cannot be distributed pro rata, Applicant, as general partner, will allocate such assets to the partners on a fair and equitable basis, after an independent appraisal of the value of said assets.

Applicant represents that the Partnership will provide each partner with unaudited quarterly financial reports, as well as audited annual reports. Applicant further notes that interests in the Partnership will be offered through a private placement exemption from registration under Regulation D of the Securities Act, only to sophisticated investors who understand the risks of their investment, can bear any and all losses from their investment, including their entire investment, and consequently are not in need of protection by governmental regulation. Partnership interests, moreover, will not be freely tradeable in the marketplace, nor will they be continuously offered to investors. Additionally, the venture to be fulfilled through the Partnershp is a one-time enterprise having a definitive life span, Applicant states. Applicant expects, moreover, to invest a substantial amount of his own funds in the Partnership, and Applicant is to be accorded the same Profit-and-Loss treatment as the Class B Limited Partners with respect to the rate of return on his investment, and Applicant will incur a much greater risk of loss since he is general partner. It is asserted that these factors will discourage speculation or manipulation by Applicant as general partner with regard to Partnership investments, assure conformity of interest of the investment adviser and the Partnership, and assure participation in both gains and losses by Applicant. Because the holding period of the Partnership's investment may vary widely, speculation by Applicant will be further deterred, and performance-related compensation would be appropriate.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 3, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of servicer (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-29911 Filed 12-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22701; File No. SR-MCC-85-5]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Clearing Corporation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), notice is hereby given that on November 12, 1985, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Attached to the filing as Exhibit A is an Administrative Bulletin describing changes to the Midwest Clearing Corporation trade recording fees based on trade size and the number of trades per day.

Fees will be as follows:

Trade size in shares	Proprietary sale side
1-499	$0.40
500-999	0.45
1000-1499	0.50
1500-1999	0.60
2000-2499	0.70
2500-2999	0.80
3000-3499	1.00
3500-3999	1.15
4000-4499	1.30
4500-4999	1.45
5000 and up	1.65

In addition, a discount will be applied to the total trade recording fee based on the average trades per day for the given month. The discount rate is as follows and applies to all participants:

Discount	
Average trades/day	Rate-trade
100 + =	$0.05
150 + =	.06
300 + =	.08
500 + =	.10
750 + =	.15

The Settling Trade Volume Credit rates will continue and will also be changed effective October 1, 1985. The credit rates will be as follows:

Trades	Rate
3001-4500	$.05
4500 and up	.10

The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Administrative Bulletin (attached to the filing as Exhibit A) describes a revision to MCC's trade recording fees. Previously the trade recording fee was set at a flat rate of $.57 per side. The proposed fees are based on trade size, and include a discount based on number of trades per day. Under the proposed change the trade recording fee will become a function of the trade size—the greater the trade size, the higher the fee. In addition, recording fees are offset by a discount, which increases as a participant's average number of trades per day increases. MCC anticipates that trade recording costs will be reduced for most Participants, and that cost increases to other Participants will be minimal. Moreover, this new fee schedule more realistically reflects the costs associated with providing these services. In addition, the existing Settling Trade Volume credit is amended as of October 1 as set out in the notice.

Any excess revenues from trade recording fees will be rebated to those Participants who use trade recording services, where management determines that there are sufficient excess revenues to warrant rebates. MCC anticipates that the level of revenues generated under the proposed fee schedule will be the same as, or slightly lower than, the revenues generated under the old schedule.

Consistent with the previous Commission approval in Exchange Act Release No. 34–18823, the Settling Trade volume credit will be applied to any firm whose settling trade volume reaches the specified levels, whether or not the firm is a One Account Settlement firm.

The pricing schedule is consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 11, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–29913, Filed 12–17–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22698; File No. SR–PSE–85–32]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Deletion of Rule XVII ("Wire Connections") of the PSE Rules of the Board of Governors

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(L)(1), notice is hereby given that on November 15, 1985, The Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PSE Rule XVII is entitled "Wire Connections" and basically provides restrictions on the ability of PSE members to establish or maintain private wire connections between member offices and non-member offices without Exchange approval. This proposed rule filing is being submitted in accordance with the recent vote by the Board of Governors of the PSE to eliminate the provisions of Rule XVII as being outdated and unnecessary in the context of current market conditions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

Rule XVII relates to "wire connections", and basically provides for the restriction of private wire connections between member offices

and non-member offices (Section 1[a]). Section 1(b) describes the types of non-members eligible to apply for approval of connections between themselves and the Exchange Floor. The rule also requires that the Exchange give its permission before such connections can be made. It also requires that the member annually provide the Exchange a list of all non-members with whom private communication is maintained (Section 1[d]).

The basis of the decision of the Board of Governors to eliminate this rule was that it was felt to be no longer necessary in the context of current market conditions. The Board felt that the primary basis for the rule, i.e., the regulation of fixed commissions charged by the members of the Exchange, no longer exists. This is borne out by Rule XVII, Section 1(b), which specifically refers to PSE Rule IV. Rule IV, "Commissions", now specifically provides that "(N)othing contained in the rules of this Exchange . . . shall be construed to requife or authorize its members . . . to agree or arrange . . . for the charging of fixed rates of commission for transactions effected on, or effected by the use of, the facilities of this Exchange."

Rule XVII seems to have been originally designed to prevent, without Exchange approval, a member from establishing a link to an outside "non-member" which might allow a member to circumvent the commission rates established by the Exchange. Without this rationale Rule XVII no longer seems to have a practical reason for remaining in

This proposed rule change is consistent with Sections 6 and 11A of the Securities Exchange Act of 1934 in that it will promote information access and communication abilities of PSE members, as well as promoting efficiency and competition. It will also act in accordance with requirements to maintain fair and orderly markets in the national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were received or solicited concerning the decision to eliminate Rule XVII of the Rules of the Board of Governors of the PSE.

III. Date of Effectiveness of the Proposed Rule Change and Time Period for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 8, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 11, 1985.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-29912 Filed 12-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14843; 812-6249]

Lazard Freres & Co.; Filing of Application for a Permanent Order and Issuance of a Temporary Order Exempting Lazard Freres & Co.

Notice is hereby given that Lazard Freres & Co. ("Lazard") One Rockefeller Plaza, New York, New York 10020, has filed an application on November 15, 1985 pursuant to section 9(c) of the Investment Company Act of 1940 ("the Act") for an order exempting Lazard permanently from the provisions of section 9(c) of the Act in respect of the facts and circumstances described therein and for an order of temporary exemption from section 9(a) pending the determination of the Commission on its application for permanent exemption.

Lazard states that it is a New York limited partnership and is registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 ("1934 Act") and as an investment adviser under the Investment Advisers Act of 1940. Lazard states that it engages in the investment banking business and buys and sells securities for its own account and the accounts of others. According to Lazard, it is not currently an investment adviser or principal underwriter to any investment company registered under the Act but proposes to act as investment adviser and principal underwriter to the investment companies described below, subject to the granting of the relief requested by its Application.

Lazard further states that on July 24, 1985, Lazard Special Equity Fund, Inc., a Maryland corporation (the "Equity Fund"), filed with the Commission a notification of registration on Form N-8A under the Act as an open-end, diversified management investment company and the Registration Statement on Form N-1 under the Act and the Securities Act of 1933 ("1933 Act"). Lazard states that upon effectiveness of the Registration Statement and commencement of operations of the Equity Fund, Lazard will act as investment adviser and as distributor to the Equity Fund. Lazard states that it seeks the relief requested by its Application in order that it may so act for the Equity Fund as soon as practicable.

Lazard further states that on November 6, 1985 the Boards of Directors of Lehman Cash Management Fund, Inc., Lehman Government Fund, Inc. and Lehman Tax-Free Money Market Fund (the sole investment portfolio of Lehman Tax-Free Reserves, Inc.) with aggregate net assets at November 6, 1985 of approximately $1,700,000,000 (collectively, the "Lehman Funds"), authorized the termination of their investment advisory and distributorship contracts with Lehman Management Co., Inc. and Lehman Brothers Distributor Inc., respectively, and appointed Lazard as investment adviser and distributor for the Lehman Funds. Lazard's services are to commence January 7, 1986, upon expiration of the 60-day notice period provided in the contracts. At that time,

Lazard would act as investment adviser under advisory contracts approved by the respective Boards of Directors of the Lehman Funds pursuant to Rule 15a–4 under the Act. Definitive advisory contracts would be voted on by the respective shareholders of the Lehman Funds within 120 days of the commencement of Lazard's services pursuant to the interim contracts. Lazard also states that it submits this Application in order that it may take up its appointment as investment adviser and distributor to the Lehman Funds on January 7, 1986.

Lazard further states that on June 20, 1972, the United States District Court for the Southern District of New York entered Final Judgments of Permanent Injunction against International Telephone and Telegraph Corp. ("ITT"), certain of its officers, Lazard and several other defendants. ITT was enjoined from violating section 10(b) of the Act and Rule 10b–5 thereunder, all in connection with the purchase and sale of securities of ITT.

According to Lazard, insofar as the Commission's complaint related to Lazard, it involved Lazard's activities in arranging for the sale by ITT to an Italian company of shares of Hartford Fire Insurance Co. ("HFI") common stock to facilitate ITT's obtaining of a tax ruling in connection with ITT's acquisition of HFI. ITT subsequently offered to exchange a series of ITT convertible preferred stock for HFI shares, and Lazard arranged for the resale of a portion of the ITT shares thus acquired by the Italian company in brokerage transactions in the United States in late 1970 and early 1971. The Commission's complaint alleged that, under all the circumstances of the arrangements and resale of ITT shares by the Italian company, Lazard has violated sections 5(a) and 5(c) of the 1933 Act.

Lazard states that it entered into a Consent to a Final Judgment, dated June 30, 1972 (the "1972 Final Judgment"), neither admitting nor denying any of the allegations in the Commission's complaint except as to jurisdiction. The 1972 Final Judgment enjoined Lazard from offering to sell securities of ITT unless a registration statement had been filed with the Commission and from selling or delivering such securities after sale unless a registration statement was in effect, in either case in the absence of an applicable exemption.

Section 9(a)(2) of the Act, in pertinent part, makes it unlawful for any person to act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company or principal underwriter for any registered open-end investment company, if such person, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with any activity as an underwriter, broker or dealer or in connection with the purchase or sale of any security.

Section 9(c) provides that upon application the Commission shall by order grant an exemption from the provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe, or that the conduct of such person has been such as not to make it against the public interest to grant such application.

Lazard states that it was not engaged in any section 9(a) activities in 1972 and has not proposed to engage in such activities until it determined to sponsor the Equity Fund and until its appointment as investment adviser and distributor to the Lehman Funds. Accordingly, Lazard states that it has not previously filed an application seeking an exemption from the prohibitions of section 9(a). The Commission has heretofore granted temporary or permanent orders of exemption from section 9(a) to several affiliates of ITT to permit them to engage in various activities that otherwise would have been prohibited by reason of the injunction entered against ITT in 1972. (See Releases 7235, June 20, 1972; 8432, July 18, 1974; 9908, August 24, 1977; and 10408, November 16, 1978).

Lazard submits pursuant to section 9(c) that the prohibitions of section 9(a) of the Act, to the extent applicable by virtue of the 1972 Final Judgment enjoining it from offering or selling securities of ITT in violation of section 5 of the 1933 Act, would be unduly and disproportionately severe as applied to Lazard and that the conduct of Lazard has been such as not to make it against the public interest or protection of investors to grant its Application.

Lazard states that it makes this submission for the following reasons:

1. The facts and circumstances to which the 1972 Final Judgment related in no way involve any activities of Lazard relating to the Equity Fund, the Lehman Funds or Lazard's acting as investment adviser or distributor for any registered investment company.

2. The Final Judgment relates to activities of Lazard more than 14 years ago, which were not alleged to, and in fact did not, involve any knowing or willful violation of the registration provisions of the 1933 Act. Unlike the allegations and related injunctions against ITT and certain of its officers, there were no allegations that Lazard had acted in violation of the antifraud provisions of the 1933 Act or the 1934 Act.

3. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to Lazard under the circumstances if they were to prevent Lazard from acting as investment adviser and distributor for the Equity Fund, the Lehman Funds and for other registered investment companies in the future.

4. The events that gave rise to the 1972 Final Judgment are not such as to make it against the public interest or protection of investors to grant the order requested by Lazard's Application.

5. Lazard believes that its ability to serve as investment adviser and principal underwriter to the Equity Fund, the Lehman Funds and any other registered investment company and to comply with the requirements of the Act should not be deemed impaired by the existence of the 1972 Final Judgment.

6. In making its Application, Lazard acknowledges, understands and agrees that its Application and any temporary exemption issued herein shall be without prejudice to the Commission's consideration of any application for exemptions from statutory requirements, including the consideration of Lazard's instant application for a permanent exemption pursuant to section 9(c) from the provisions of section 9(a) of the Act or the revocation or removal of any temporary exemption granted herein.

The Commission has considered the matter and finds that:

1. The prohibitions of section 9(a) may be unduly or disproportionately severe as applied to Lazard and that the conduct of Lazard has been such as not to make it against the public interest or protection of investors to grant the application of Lazard for a temporary exemption from section 9(a) pending determination of the application; and

2. In order not to delay the investment advisory and principal underwriter services to be rendered by Lazard to the Equity Fund and the Lehman Funds, it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act that the temporary order be issued forthwith.

Accordingly, it is ordered, pursuant to section 9(c) of the Act, that Lazard is hereby temporarily exempted from any

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of the provisions of section 9(a) of the Act operative as a result of the entry of the Final Judgment against Lazard in *Securities and Exchange Commission* v. *International Telephone & Telegraph Corp., et al.*, pending final determination by the Commission of Lazard's application for an order exempting Lazard from any of the provisions of Section 9(a) operative as a result of the entry of such Final Judgment.

Notice is further given that any interested person may, not later than January 6, 1986, at 5:30 p.m., submit to the Commission, in writing, a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such comunication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Lazard at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-in-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–29909 Filed 10–17–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14841; File No. 812–5807]

Application and Opportunity for Hearing; Pruco Life Series Fund, Inc.

December 11, 1985.

Notice is hereby given that Pruco Life Series Fund, Inc. ("Applicant") at 3003 North Central Avenue, Phoenix, Arizona 85102, filed an application on March 30, 1984, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from the provisions of section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 promulgated thereunder, to the extent necessary to permit it to use the amortized cost valuation method for the purpose of valuing the short-term debt obligations held in certain of its portfolios. All interested parties are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act for the complete text of those provisions that are relevant to the application.

The application states that Applicant is a corporation organized under the laws of Maryland and is registered under the Act as an open-end, diversified management investment company. The Prudential Insurance Company of America ("Prudential") is Applicant's investment manager. Applicant states that it has five portfolios, interests in each of which are represented by a separate class of capital stock. Applicant represents that it intends to offer its capital stock exclusively to separate accounts of Prudential subsidiaries established in connection with certain variable life insurance contracts. Such separate accounts are registered under the Act as unit investment trusts.

The application states that Applicant desires to use the amortized cost valuation method for the purpose of valuing the short-term debt obligations held in its Conservatively Managed Flexible Portfolio, and its Aggressively Managed Flexible Portfolio (hereinafter referred to collectively as the "Flexible Portfolios"). According to the application, the two Flexible Portfolios seek to attain their respective investment objectives through investing in combinations of short-term debt obligations, intermediate and long-term bonds, and common stocks. Under the amortized cost method of valuation, securities are originally valued at the cost at which they were purchased, and their value is adjusted daily to account for amortization of any premium or for accretion of any discount.

According to Applicant, the primary concern that the Commission has expressed about use of the amortized cost valuation method has been that this method of valuation may, in times of sharp increases or decreases in interest rates, result in dilution of shareholders' interests in investment companies. Applicant states that in order to protect against such dilution, prior exemptions granted by the Commission and Rule 2a–7 under the Act to permit money market funds to use amortized cost valuation contain a series of conditions designed to assure that use of amortized cost valuation will not result in excessive dilution or other unfair results to shareholders. Applicant further states that, in connection with the valuation of short-term debt securities held by the Flexible Portfolios, it is willing to consent to the imposition of what are in substance the same conditions as those generally imposed by the Commission in prior exemptive orders and Rule 2a–7 under the Act, except for the condition requiring a stable net asset value per share.

According to Applicant, the Flexible Portfolios cannot maintain a stable price per share, one of the conditions contained in the prior exemptive orders and Rule 2a–7, since they invest in common stock and intermediate and long-term bonds, as well as short-term debt obligations. Applicant submits that there is no necessary relationship between use of the amortized cost valuation method and the maintenance of a stable price for each share of an investment company. Applicant asserts that inclusion of this condition in prior exemptive orders and Rule 2a–7 came about because money market funds that sought exemptions to permit them to use amortized cost valuation did so to facilitate their ability to maintain a stable price per share for the convenience of their shareholders. Applicant states that it seeks to use amortized cost valuation for short-term debt obligations held in the Flexible Portfolios in order to achieve significant savings in its administrative costs.

Applicant submits that use of amortized cost valuation in connection with the operations of the Flexible Portfolios is especially unlikely to result in any dilution or other unfair results to shareholders in those portfolios because they are not money market funds, but rather a particular type of investment vehicle for variable life insurance contracts. Applicant asserts that the contractholders who participate in any of the portfolios of Applicant will tend to have a longer range investment perspective than shareholders in money market funds, since the contracts are designed to provide whole life insurance protection over time, and withdrawals may involve payment of deferred sales charges. Applicant further states that such a long-range investment perspective is especially likely to be characteristic of those contractholders who allocate their net premiums to the Flexible Portfolios. According to the application, the Flexible Portfolios are designed to accommodate those contractholders who do not wish to allocate by themselves their net premiums among equity, bond, and money market investments, but who rather wish Prudential to do so by

varying the investments of the Flexible Portfolios among those types of securities as its appraisal of current economic and financial conditions dictates. Applicant states that even large fluctuations in interest rates are therefore unlikely to trigger large-scale investments in or redemption of shares of the Flexible Portfolios since participants or potential participants in those Portfolios are not likely to be the type of investors who wish to manage actively their investments.

Applicant therefore requests exemption from the provisions of section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 promulgated thereunder to the extent necessary to permit it to use the amortized cost valuation method for the purpose of valuing short-term debt obligations held in its Flexible Portfolios. Applicant states it is willing to consent to the entry of an order by the Commission conditioning the grant of its exemptive request upon the following conditions:

(1) In supervising the operations of Applicant and delegating special responsibilities involving portfolio management to its investment manager, the Board of Directors of Applicant undertakes (as a particular responsibility within the overall duty of care owed to shareholders of Applicant) to establish procedures reasonably designed, taking into account current market conditions and the portfolios' investment objectives, to minimize the deviation between the value of each Flexible Portfolio's short-term debt obligations as computed through use of the amortized cost valuation method and their value as determined through use of available market quotations.

(2) Included within the procedures to be adopted by the Board of Directors shall be the following:

(a) Review by the Board of Directors, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, between the value of the Flexible Portfolios' short-term debt obligations as determined by using available market quotations, from their value as computed through use of the amortized cost method of valuation; and the maintenance of records of such review. To fulfill this condition, Applicant will use actual quotations or estimates of market value reflecting current market conditions chosen by the Board of Directors in the exercise of its discretion to be appropriate indicators of value, which may inlcude *inter alia*, (1) quotations or estimates of market value for individual portolio investments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from the amortized cost value of the short-term debt obligations in the Flexible Portfolios exceeds ½ of 1 percent, a requirement that the Board of Directors promptly consider what action, if any, should be initiated.

(c) If the Board of Directors believes the extent of any deviation from the amortized cost value for the short-term debt obligations in either Flexible Portfolio may result in material dilution or other unfair results to contractholders, it will take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results, which may include: selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten such portfolio's average portfolio maturity; withholding the crediting of additional shares in lieu of dividends; redeeming shares in kind; or using a net asset value per share as determined by using available market quotations.

(3)(a)(i) The Flexible Portfolios will use the amortized cost valuation method only for their short-term debt obligations—*i.e.*, obligations with remaining maturities of one year or less (except that repurchase agreements having a term of one year or less from the date of delivery of the repurchase agreement may be valued through use of the amortized cost valuation method regardless of the maturity of the underlying securities held pursuant to the repurchase agreement). (ii) Each of the Flexible Portfolios shall maintain a dollar-weighted average portfolio maturity for its short-term debt obligations appropriate to its objective of minimizing the deviation from its net asset value per share as determined through use of the amortized cost valuation method from its net asset value per share as determined through use of available market quotations, provided, however, that neither of the Flexible Portfolios shall maintain a dollar-weighted average portfolio maturity for its short-term debt obligations which exceeds 120 days. If the dispositon of a portfolio instrument should result in a dollar-weighted average portfolio maturity for the short-term debt obligations of either Flexible Portfolio which exceeds 120 days, such Portfolio's available cash will be invested in such a manner as to reduce such average maturity to 120 days or less as soon as reasonably practicable.

(b) The maturity of short-term debt obligations held by these Portfolios shall be calculated as set forth in Rule 2a-7 under the Act.

(4) Applicant will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in subparagraph (1) above, and the Applicant will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Board of Directors' consideration and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the Board of Driectors' meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act.

(5) The short-term debt obligations held in the Flexible Portfolios, including repurchase agreements, will be limited to those United States dollar-denominated instruments which the Board of Directors determines present minimal credit risks, and which are of high quality. For this purpose, "high quality" instruments shall mean those instruments that are rated by any major rating agency within its two highest rating categories or, in the case of any instrument that is not rated, of comparable quality as determined by the Board of Directors.

(6) If any action is taken pursuant to paragraph 2(c) above, Applicant will report such action on Form N–SAR covering the period in which the action was taken and, pursuant to Instruction 77 N of Form N–SAR, will attach a statement to the form describing with specificity the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 6, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Manager, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-29910 Filed 12-17-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/913]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Stability, Load Lines, and on Safety of Fishing Vessels; Meeting

The Working Group on Stability, Load Lines, and on Safety of Fishing Vessels of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on January 14, 1986 at 10:00 AM in room 1103 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to discuss U.S. actions and possible positions for the 31st Session of the Subcommittee, tentatively scheduled for June 1986.

- Intact Stability—form of Informtion to Master.
- Subdivision—Watertight Doors on all Cargo Ships.
- Residual Stability after Damage.
- Load Line Interpretation.
- Revision of Load Line Convention.

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. W.A. Cleary, Jr., U.S. Coast Guard Headquarters (G-MTH-5), 2100 Second Street SW., Washington, DC 20593, Tel: (202) 426-2187 or 2188.

Dated: December 5, 1985.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 85-29864 Filed 12-17-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/914]

Study Group 6 of the U.S. Organization International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 17, 1986 in Room 3012 at the Department of Commerce, Boulder Laboratories Building, 325 Broadway, Boulder, Colorado. The meeting will begin at 9:00 a.m.

Study Group 6 deals with matters relating to the propagation of radio waves in and through the ionosphere. The purpose of the meeting will be to develop the plan of work for the Study Group during the 1986-1990 period.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 632-2592.

Dated: December 2, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85-29863 Filed 12-17-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 153—Airborne VOR Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 153 on Airborne VOR Equipment to be held on January 14-15, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Eighth Meeting Held on October 1-2, 1985; (3) Consideration of Proposed Changes to the Eighth Draft of the Committee Report on Minimum Operational Performance Standards for Airborne VOR Equipment; (4) Review and Discuss European Organization for Civil Aviation Electronics (EUROCAE) Working Groups WG-5 and WG-7A Activities; (5) Review the Third Draft of the Committee Report on Minimum Performance Standards for Instrument Landing System (ILS) Airborne Localizer Equipment; (6) Review the Second Draft Committee Report on Minimum Operational Performance Standards for Instrument Landing System (ILS) Airborne Glide Slope Equipment; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 11, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-29850 Filed 12-17-85; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 243
Wednesday, December 18, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, January 8, 1985.

PLACE: Board Hearing Room, 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of December, 1985.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Director, Tel: (202) 523-5920.

Date of notice: December 12, 1985.

Mr. Rowland K. Quinn, Jr.,

Executive Director, National Mediation Board.

[FR Doc. 85-29983 Filed 12-16-85; 10:23 am]

BILLING CODE 7550-01-M

2

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION:

TIME AND DATE: 10:00 a.m., Thursday, January 9, 1986.

PLACE: Suite 410, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634-4015.

Dated: December 16, 1985.

Earl R. Ohman, Jr.,

General Counsel

[FR Doc. 85-30065 Filed 12-16-85; 3:31 pm]

BILLING CODE 7600-01-M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of December 16, 1985.

A closed meeting will be held on Tuesday, December 17, 1985, at 2:30 p.m. An open meeting will be held on Thursday, December 19, 1985, at 10:00 a.m., in room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendar matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 17, 1985, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Rescission of administrative proceeding of an enforcement nature.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Order.

The subject matter of the open meeting scheduled for Thursday, December 19, 1985, at 10:00 a.m., will be:

1. Consideration of whether to issue a release approving a proposed rule change by the Philadelphia Stock Exchange, Inc. (SR-Phlx-85-23) which, among other things, would create a classified Board of Governors. The amendments would provide that of the 21 previously unclassified broker governors on the Philadelphia Board, nine (9) would be categorized as On-Floor Governors, nine (9) as Off-Floor Governors and three (3) as At-Large Governors. In addition, the Board would continue to include the Chairman, two (2) Vice Chairmen (one (1) from the floor and one (1) from off the floor), the President of the Corporation and three (3) public governors. For further information, please contact Pamela Konieczka at (202) 272-2855.

2. Consideration of whether to issue the following orders and opinions authorizing (1) Middle South Utilities, Inc. ("MSU"), a registered holding company, and its subsidiaries, Middle South Services, Inc. (Services"), Middle South Energy, Inc. ("MSE"), Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), New Orleans Public Service, Inc. ("NOPSI"), and System Fuels, Inc. ("SFI") to continue a system money pool, including MSE therein, and to sell short-term notes to banks and commercial paper dealers from time to time through December 31, 1986; (2) authorizing SFI to finance its 1986 fuel supply programs for the benefit of AP&L, LP&L, MP&L, and NOPSI (collectively the "Operating Companies"), by making additional borrowings from the Operating Companies during 1986 of up to $56 million; (3) authorizing LP&L to issue and sell up to $75 million of its first mortgage bonds by negotiated private placement; (4) authorizing MSU, MSE, and the Operating Companies to make certain amendments to MSE's domestic bank loan agreement; and (5) authorizing MSU to amend its original Credit Agreement to extend the term of the Credit Agreement, and the period during which MSU may effect borrowings from the banks thereunder, to no later than December 31, 1986, and to reduce the maximum principal amount of borrowings permitted to be made by MSU thereunder to $25 million at any time outstanding. For further information, please contact Robert P. Wason at (202) 272-7684.

The subject matter of the closed meeting scheduled for Thursday, December 19, 1985, following the 10:00 a.m. open meeting, will be:

Formal orders of investigation.
Institution of injunctive action.
Institution of administrative proceeding of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272-3195.

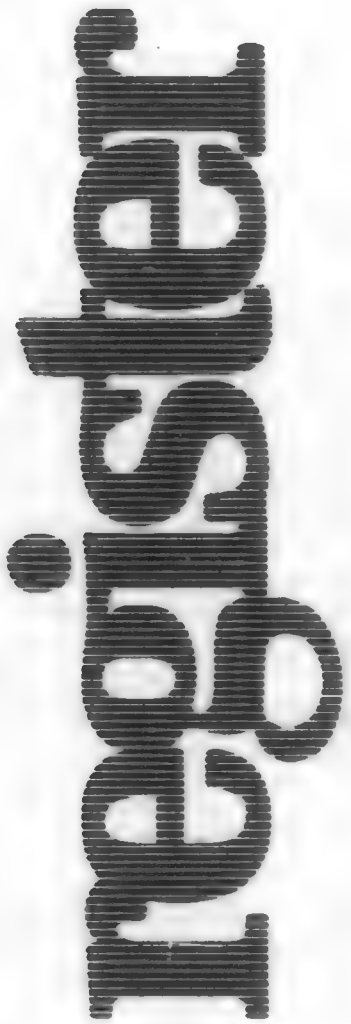
Dated: December 12, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-30042 Filed 12-16-85; 12:38 pm]

BILLING CODE 8010-01-M



Wednesday
December 18, 1985

Part II

Environmental Protection Agency

40 CFR Part 2

Public Information and Confidentiality Regulations; Final Rule

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[OGC-FRL-2917-3]

Public Information and Confidentiality Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule modifies and updates the Environmental Protection Agency's regulations governing the handling of requests for records under the Freedom of Information Act, including provisions on collection of fees, and the treatment of confidential business information. The rule adds new sections for handling business information obtained under the Comprehensive Environmental Response, Compensation and Liability Act and the Motor Vehcile Information and Cost Savings Act. It also updates the confidentiality rules to reflect amendments to the Clean Air Act and the Solid Waste Disposal Act.

EFFECTIVE DATE: This rule will become effective January 17, 1986.

ADDRESS: Contracts and Information Law Branch (LE-132G), Office of General Counsel, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jane S. Roemer, Office of General Counsel, Telephone 202/382-5460.

SUPPLEMENTARY INFORMATION: On August 15, 1985, the Environmental Protection Agency (EPA) published in the **Federal Register** (50 FR 32952) proposed changes to its procedures for handling requests for information under the Freedom of Information Act (FOIA) (40 CFR Part 2, Subpart A) and for the treatment of confidential business information (40 CFR Part 2, Subpart B). On the same date, EPA published in the **Federal Register** (50 FR 32950) an interim final rule on provisions governing the collection of fees under the FOIA, which are part of 40 CFR Part 2, Subpart A. As discussed in the Preamble to the interim final rule, the rule reestablished procedures on fee collection which were in effect prior to March 17, 1983. Several comments were received on the proposed rule; no comments were received on the interim final rule.

As promulgated below, this final rule covers all of the current modifications to 40 CFR Part 2, Subparts A and B, and contains the changes made since the proposed and interim final rules. The modifications were found to be desirable to clarify some provisions of these regulations or better to reflect changes in internal Agency practices. Most of the changes were prompted by the Agency's own review of the proposed and interim final rules; some were based upon suggestions of commenters. None of the changes introduces significant variations from the matters presented in the August 15, 1985, proposal or interim final rule.

The Preambles to the August 15, 1985, proposed and interim final rules provide detailed discussions of the modifications to 40 CFR Part 2 which were presented in those rules. Changes made to the proposed and interim final rules and reflected in this final rule are discussed below. Also presented below are a summary of significant comments and EPA's responses to those comments.

Changes in Subpart A

Subpart A of 40 CFR Part 2 sets forth EPA's regulations implementing the FOIA. Several modifications have been made in this subpart:

Section 2.100(b) of the proposal has been modified in the final rule to no longer exclude from the definition of EPA records "personal notes of an individual not made available to other persons in the agency and not filed with agency records." As discussed under Comment 4, below, notes made by an individual may or may not be agency records. Therefore, as under the current § 2.100(b), EPA will determine on a case-by-case basis whether an individual's notes are agency records subject to the FOIA or whether they are personal notes.

Section 2.111(d) has been changed to instruct that an EPA office which is transferring responsibility for answering a FOIA request to another agency shall "promptly" transfer such responsibility.

Section 2.112(a) has been modified in the final rule to state that an EPA office shall inform a requestor if a record is not known to exist or is not in EPA's possession. It also has been modified to provide that an EPA office may inform a requestor that requested records published by the Federal government are available for inspection and where copies can be obtained. These responses formerly were listed as denials under § 2.113(a).

Section 2.112(d) of the current regulations states that EPA may suspend the statutory response time (ten days or an extension thereof) for a FOIA request until a requestor who has been notified that prepayment of charges is required either pays or makes arrangements to pay them. This section has been modified in the final rule to make clear that the response time also may be suspended until a requestor provides assurance of payment, if EPA has required assurance of payment. In this way, § 2.112(d) will conform with § 2.120(c), which states that EPA may require prepayment or assurance of payment in certain circumstances.

Sections 2.113(f) and 2.114(a) of the regulations were proposed to be amended in an attempt to make clear that initial determinations stating that a record either is not known to exist or is not in EPA's possession (section 2.113(a)(1) and (2)) cannot be appealed to the Agency. Upon review, it appeared that there was still confusion because under the proposed rule these two types of responses would have continued to be listed as initial denials (section 2.113(a)(1) and (2)). Therefore, to make clear that these two responses are not appealable to the Agency, those provisions (section 2.113(a)(1) and (2)) have been deleted from § 2.113 in the final rule. Instead, § 2.112(a) has been amended in the final rule to address responses which were formerly covered by § 2.113(a)(1) and (2). In addition, the proposed change to § 2.113(f) has been withdrawn, as it is no longer necessary because of the changes made to §§ 2.113(a) and 2.112(a).

In reviewing § 2.113(a) to make the changes discussed above, it became apparent that two other provisions of that section also should be deleted to make clear that certain responses should not be considered initial denials subject to appeals. Current § 2.113(a)(3) incorrectly lists as a denial a response which states that a record has been published in the **Federal Register** or is otherwise published and available for sale. Since Federally published materials in the Agency's possession, including records published in the **Federal Register**, should be made routinely available to requestors, responses to such requests are not denials. Section 2.112(a) has been amended to cover responses which inform a requestor that such records are available for inspection and where copies may be obtained. At the same time, § 2.100(b) of the regulations excludes from the definition of EPA records materials published by non-Federal organizations and readily available to the public. Therefore, responses which state that requested records fall into this category are not "denials" and should not be listed as such, as the records are not EPA records subject to the FOIA.

Current § 2.113(a)(7) lists as a denial a response which states that a record is believed to be in EPA's possession but has not yet been located. This provision

has been deleted in the final rule, as has § 2.113(h), which corresponds to that provision. An EPA office should be able to ascertain within the statutory time period that a record either is or is not locatable and to so inform the requestor. If the document is not locatable, the response would state that the record is not in EPA's possession, as stated in amended § 2.112(a).

Section 2.113(b) has been amended in the final rule to add the Deputy Administrators, Associate Administrator, the General Counsel, and the Inspector General to the list of officials delegated the authority to issue initial determinations in response to FOIA requests. This change is consistent with EPA Delegation 1–30.

In the final rule, the General Counsel has been added to the list of EPA officials in § 2.115(b) who may request the Administrator to review a determination by the Assistant Administrator for External Affairs that the public interest would be served by disclosure of a record.

Section 2.120(a)(5)(iii) of the proposed rule has been modified in the final rule to note that EPA may group requests by one requestor to determine the total fee chargeable. This change reflects long-standing EPA practice and covers situations where what is really a single request for related records has been broken into several requests. In such cases, for purposes of determining a fee, EPA may group these related requests.

Section 2.120(a)(5)(iv) of the proposed rule stated that there will be no charge to a FOIA requestor for one copy of his or her official personnel file. This provision has been amended to conform with the Agency's regulations implementing the Privacy Act at 40 CFR 16.11, which state that there will be no charge to an individual for one copy of any record pertaining to that individual in a Privacy Act system of records.

Section 2.120(b) of the proposed rule has been amended in the final rule to reflect that payments of fees for FOIA requests now should be sent to specific "lock box" addresses established by EPA's Financial Management Division. In addition, the section now states that under the Debt Collection Act of 1982 (Pub. L. 97–365), the Agency will assess handling charges, interest, and penalties for late payment of FOIA fees. The Debt Collection Act applies as a matter of law to payment of fees connected with FOIA requests, and reference to it is made in this section to note its applicability.

Section 2.120(e) of the interim final rule has been modified in the final rule to state that payment of fees related to FOIA requests should be sent to the appropriate EPA billing address. The section also has been updated to reflect that the EPA Financial Management Division, rather than the Freedom of Information Officer, maintains a record of FOIA charges and a delinquent payment list.

Changes to the General Rules of Subpart B

Sections 2.201 through 2.215 of 40 CFR Part 2, Subpart B, set forth EPA's basic policy on the treatment of confidential business information. Two changes have been made in the general rules of Subpart B:

Section 2.205(b)(4) has been changed in the final rule to remove the requirement that an EPA office ask a business whose substantiation of a confidentiality claim is overdue whether it has been granted an extension of time. Before contacting a business to find out whether its comments substantiating a confidentiality claim have been lost in the mail, an EPA office normally should already have learned from the EPA legal office whether an extension of the due date has been granted. Therefore, there usually is no need for the EPA office to ask the business whether an extension was granted.

Section 2.209(b), concerning disclosure of confidential business information to Congress (including the General Accounting Office), also has been modified in the final rule. The proposed rule would have removed the requirement that affected businesses receive ten days' advance notice when their confidential business information is to be disclosed to Congress. Instead, notice to affected businesses still would have been required, but when that notice took place would have been left to the discretion of the responding EPA office. As discussed under Comment 1, below, EPA received several comments on the proposed changes in this provision.

As explained in the Preamble to the August 15, 1985, proposed rule, EPA proposed to do away with the requirement of ten days' advance notice because in some cases meeting this requirement interfered with EPA's ability to respond on time to requests from Congress for information. After consideration of the comments received, EPA concluded that it can retain the necessary flexibility to respond to Congressional requests in a timely fashion while giving as much advance notices of such disclosures as possible. To this end, the final rule requires ten days' advance notice except where providing such notice would prevent EPA from meeting any date for responding that the Congress has set. If ten days' advance notice is not possible, then as much advance notice as possible must be given. If advance notice cannot be provided without delaying the response beyond the due date, notice must be given as soon after disclosure as possible.

Thus, the final rule emphasizes EPA's continuing commitment to provide notice in advance of disclosure whenever possible. However, the rule also recognizes that providing notice cannot delay Congress's access to information needed to conduct its business. In implementing this new provision, EPA intends to determine for each Congressional request, as promptly as possible, whether the requested information includes confidential business information. As soon as such a determination is made, EPA normally would provide the required notice. In most cases, EPA believes that such notice can be given in advance of disclosure, but not always ten days in advance.

In the Preamble to the August 15, 1985, proposed rule, EPA stated that it also had considered eliminating any notice requirement entirely and solicited comment on this alternative. EPA has concluded that there may be instances in which no notice to affected businesses should be provided, for example, where a committee's investigation could be adversely affected by EPA's notifying a business of disclosure of its information to the committee. Accordingly, the final rule provides that EPA will provide no notice when Congress so requests.

Changes to the Special Rules of Subpart B

Sections 2.301 through 2.311 (as proposed) of 40 CFR Part 2, Subpart B, set forth special rules for handling confidential business information obtained under specific statutes administered by EPA. The special rules modify, replace or incorporate the general procedures of Subpart B. This final rule adds new sections for handling business information obtained under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Motor Vehicle Information and Cost Savings Act. It also updates the special rules to reflect amendments to the Clean Air Act and the Solid Waste Disposal Act.

Several changes have been made in the special rules since the proposed rule:

Section 2.301 of the regulations governs certain information obtained under the Clean Air Act. Section 2.301(b)(4) of the proposed rule has been amended in the final rule to make clear

that it covers not only information that was but also information that could have been obtained under section 206(c) of the Act.

Section 2.305 of the regulations governs certain information obtained under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act (RCRA). Section 2.305(h)(4) of the proposed rule has been amended to add state and local government agencies to the parties who must be informed that information furnished to them under section 2.305(h) may be entitled to confidential treatment and that they and their employees may be subject to the penalties in section 3001(b)(3)(B), 3007(b)(2), or 9005(b)(1) of RCRA for wrongful disclosure of such information.

Section 2.310 governs certain information obtained under CERCLA. Subsection (a) has been modified in the final rule to clarify the definition of "proceeding" to include any "administrative determination" made under section 104 of the Act, rather than any "action" taken under that section in response to the release or threat of release of a hazardous substance. As discussed further under Comment 2, below, this change more accurately reflects what EPA believes is meant by the term proceeding as used in section 104. Subsection (b) of § 2.310 of the proposal also has been revised in the final rule to make the section applicable to information obtained under any provision of section 104 of the statute, not just under section 104(e)(1). The disclosure provisions of section 104(e)(1) of CERCLA apply not only to information obtained under that subsection but to information obtained under any other part of section 104 as well. In addition, § 2.310(h)(4) has been added since the proposal. The section provides for notice to contractors, subcontractors, and state and local government agencies that information furnished them under § 2.310(h) may be entitled to confidential treatment and that they and their employees may be subject to the penalties in section 104(e)(2)(B) of CERCLA for wrongful disclosure of confidential business information.

Summary of Comments and Responses to Comments

1. Comments on § 2.209(b)

Five commenters addressed the proposal to modify § 2.209(b), which governs disclosure of confidential business information to Congress (including the General Accounting Office), to provide that notice in advance of such disclosure would be discretionary. Some of these commenters also addressed the alternative of eliminating the notice requirement entirely with respect to such disclosures.

Most of the commenters opposed the removal of the requirement of ten days' advance notice and recommended that such notice not be left to the discretion of EPA offices responding to Congressional requests. They expressed the view that advance notice is needed to allow affected businesses an opportunity to spot errors or work out procedures for handling the requested information. Our commenter expressed the view that disclosure without such notice would be unconstitutional.

A comment from a House subcommittee chairman recommended that notice be eliminated entirely because in some instances a Congressional investigation could be adversely affected by such notice or that notice be given only with permission of the requesting Congressional committee. The commenter expressed the view that notice should not be given prior to disclosure because this might interfere with the process of providing the information. The commenter also stated the view that in any event the final rule should be written so as not to delay disclosure of requested information.

Response

As discussed above, EPA has changed the final rule to provide for as much advance notice as possible of disclosure of confidential business information to Congress, to the extent that such notice does not delay responding to Congressional requests beyond any date by which a response is due.

EPA believes this change will meet most of the concerns expressed by commenters regarding the proposed rule, as advance notice is no longer left to the discretion of individual EPA offices. Instead, under the new provision, EPA expects that in most cases businesses will receive advance notice of disclosures of their confidential business information to Congress, though not ncessarily ten days' advance notice.

The rule provides flexibility which allows EPA to respond to a Congressional request on time and still provide notice of such disclosures. At the same time, the rule protects legitimate Congressional interests by providing that no notice of disclosure will be given if the Congress so requests in specific instances.

2. Comment on § 2.310(a)

One commenter questioned the definition of "proceeding" in § 2.310(a) of the special rules governing disclosure of business information under CERCLA. The commenter expressed the view that the definition is too broad because it includes "any action taken by EPA in response to the release or threat of a release of a hazardous substance" and because "proceeding" is not given this meaning in connection with any other statute.

Response

EPA has changed the definition of "proceeding" in this section of the special rules to include "any administrative determination made under section 104" of CERCLA, rather than "any action taken by EPA in response to the release or threat of release of a hazardous substance." EPA believes this description better reflects the administrative process under section 104 that Congress meant to be encompassed by the term "proceeding" as used in that section of the Act.

CERCLA gives EPA authority to respond to the release or threat of release into the environment of hazardous substances. This authority may be exercised under section 106 of CERCLA by issuing administrative orders or pursuing judicial relief. The definition of proceeding in the final rule would encompass actions under section 106 of CERCLA. EPA's authority may also be exercised under section 104 through response actions. There is no basis for distinguishing between such actions under sections 106 and 104 for purposes of defining what constitutes a proceeding in connection with which relevent confidential business information may be released. The changed language, however, describes more accurately than did the proposal language the administrative decision-making process that constitutes a proceeding under section 104.

EPA may need to disclose business information in a variety of circumstances under CERCLA. Most frequently the administrative determinations under section 104 that would fall within the definition of proceeding are lead agency determinations under the National Contingency Plan, 40 CFR Part 300, Subpart F.

While EPA has clarified its definition of the term proceeding, the Agency nonetheless holds the view that the term "proceeding" may vary from statute to statute, depending upon the types of actions that may be taken under each statute. To require the definition of proceeding to be the same for purposes of CERCLA as it is for every other statute would ignore the important

differences between CERCLA's statutory mandate and those of other environmental laws. If Congress has seen fit to fashion unique remedies under CERCLA, then those remedies should not be excluded from the definition of proceeding because of their very uniqueness. Further, in authorizing disclosure of such information under section 104(e) of CERCLA when relevant in proceedings under CERCLA, Congress did not place any limitations on the types of proceedings covered.

In any event, the disclosure of confidential business information when relevant in a proceeding under CERCLA is subject to the procedural safeguards of § 2.310(g).

3. Comment on Subpart B Procedures for Claiming Confidentiality

One commenter expressed the view that Subpart B of the regulations should have been amended to change the basic procedure by which claims of business confidentiality are made by businesses and evaluated by the Agency. The commenter was of the opinion that the current regulations encourage businesses to make sweeping claims which may not be valid.

Response

EPA is certainly in favor of doing everything it can to discourage submitters of business information from making overly broad and unsupportable claims of business confidentiality. EPA does not agree, however, that its fundamental procedures for making business confidentiality claims and evaluating those claims encourage the making of overly broad claims. Therefore, no change in the proposed regulations has been made in response to this comment.

4. Comment on § 2.100(b)

One commenter expressed the opinion that the definition of "agency record" in § 2.100(b) should not be changed to exclude from that definition "personal notes of an individual not made available to other persons in the agency and not filed with agency records." The commenter believed that to do so would encourage the improper shielding of agency records from release under the FOIA.

Response

EPA has changed the language of proposed § 2.100(b) in the final rule so that "personal notes of an individual not made available to other persons in the agency and not filed with agency records" are not excluded from the definition of agency records. Under relevant case law, notes written by an individual *may* be personal notes not subject to the FOIA. However, after considering the comment, EPA believes it appropriate for the agency to continue to determine on a case-by-case basis whether such notes are agency records or whether they are personal records not subject to the FOIA, rather than excluding them by category from the definition of agency records. At the same time, since handwritten notes are not necessarily always agency records, the final rule, like the proposed rule, deletes "handwritten notes" from the examples of informal writings which are necessarily agency records.

5. Comment on § 2.107(a)

A commenter stated that EPA should not amend § 2.107(a) to clarify that the time clock for responding to a misdirected FOIA request does not start until the request is received by a FOIA officer. The commenter believed that such a provision would remove the incentive of EPA employees to respond promptly to misdirected requests.

Response

EPA does not agree with the comment. This change in the regulations is intended to make clear what is already stated in § 2.107(a). The provision currently states that EPA cannot assure a timely or satisfactory response to requests which are not directed to a FOIA officer. The change in this provision recognizes that the time clock for responding to a FOIA request begins when the Agency is able to identify a record as a FOIA request. That happens when the request is received by a FOIA officer. The provision still includes the requirement that EPA employees who receive written requests for records must promptly forward those requests to the appropriate FOIA officer. There is therefore no basis for believing that misdirected requests will not continue to be handled as quickly as possible, as directed by the regulations.

6. Comment on § 2.111(c)

One commenter expressed the opinion that § 2.111(c) should not be amended to provide that the date of receipt of a FOIA request is the date for determining responsive records. The commenter was of the opinion that the cut-off date should be the date of the agency's response.

Response

EPA disagrees. Using the date of receipt as the date for determining responsive records gives responding EPA offices a clear cut-off date, so that a search for records can be performed and completed and not have to continue until a response letter is signed, which is administratively impractical for most offices. A responding EPA office may still, in its discretion, use a later cut-off date, informing the requestor of this. Amending § 2.111(c) provides clear notice of the cut-off date to FOIA requestors, who, of course, may file a new request for more recent information.

7. Comment on § 2.111(d)

One commenter objected to the amendment to § 2.111(d) allowing EPA to transfer responsibility for responding to a request for another agency's records to that agency. The commenter felt that this would allow an inappropriate extension of response time.

Response

EPA does not agree with the comment. It is practical and appropriate for the Agency, in its discretion, to be able to transfer responsibility for answering a FOIA request to another agency which is subject to the FOIA when the request is for records of that agency. This should not result in any significant delay in response time. To make clear that EPA is required to make any such transfer without undue delay, the provision has been modified to state that in such cases the responding EPA office shall "promptly" transfer responsibility for responding to the other agency.

8. Comment on §§ 2.113 and 2.114

One commenter objected to EPA's proposal to amend §§ 2.113 and 2.114 to make clear that initial determinations that a record is not known to exist cannot be appealed to the Agency. The commenter believed that such responses should be administratively appealable.

Response

EPA disagrees, and, as explained above under "Changes in Subpart A," is amending the final rule to further clarify that such responses are not "denials" subject to Agency appeal. The regulations previously were unclear on this point. If an initial response to a FOIA request informs the requestor that records are not known to exist, there is no basis on which the Office of General Counsel, the EPA office which decides FOIA appeals, can make a determination on whether records were properly or improperly withheld. Therefore, the final rule amends the regulations to make clear that a response which states that a record is not known to exist is not a "denial."

9. Comment on § 2.115(b)

One commenter was of the view that EPA should not amend § 2.115(b) to do away with review by the Assistant Administrator for External Affairs of initial determinations by the Office of Inspector General. The commenter felt that there should be some channel of review outside the Office of Inspector General for discretionary denials of FOIA requests made by that office.

Response

EPA disagrees with this comment. As stated in the Preamble to the August 15, 1985, proposed rule, exempting the Office of Inspector General from this review preserves the independent operation of that office and avoids the possible compromise of identities of confidential sources or premature disclosure of sensitive audit or investigative information.

10. Comment on § 2.120(a)

One commenter was of the opinion that EPA's charge of $.20 per page for copies of records is too high and that EPA should provide further justification for the amount of increase proposed in its search fees for FOIA records in § 2.120(a).

Response

EPA did not propose to increase its copying charge in the proposed rule. The $.20 per page charge has been in effect since 1976 and was based on an estimate of actual direct cost to EPA, including materials and labor. The increase in cost of search time in the proposed rule was based on increases in salary which have taken place since 1976. The new charges better reflect the per hour salary of government employees at lower and higher GS-levels. As the commenter noted, the proposed rule raises the amount of fees for which no charge will be made to $25.00 from the present $10.00. The final rule retains the changes in search fees which were made in § 2.120(a) of the proposed rule.

11. Comment on §2.111

One commenter was of the opinion that § 2.11, which sets out penalties for wrongful use or disclosure of business information, should state that wrongful disclosure is subject to tort action.

Response

EPA does not agree that the section should be so changed. The section states those actions which the government may take to discipline or prosecute employees who have wrongfully disclosed business information. The regulations do not state or take a position as to possible remedies a business may have against such employees or the government.

Executive Order 12291

Under Executive Order 12291, EPA must submit a Regulatory Impact Analysis for all "major" rules. EPA has determined that this regulation is not a major rule for purposes of Executive Order 12291 because it will not have an annual net effect on the economy of more than $100 million, will not cause a major increase in costs to consumers or others, and will not not have significant adverse effects on competition, productivity, investment, employment, or innovation. Therefore, a Regulatory Impact Analysis is not required. EPA has based all administrative decisions on this final rule on adequate information concerning the need for and consequences of the rule.

Paperwork Reduction Act

This rule does not come under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because it makes no independent request or requirement to collect information.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. These changes to EPA's procedures will not impose additional costs for small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, is not required.

List of Subjects in 40 CFR Part 2

Administrative practice and procedure, Freedom of Information, Confidential business information.

Dated: December 6, 1985.

Lee M. Thomas,

Administrator.

Therefore EPA amends 40 CFR Part 2 as follows:

1. The Authority citation for Part 2 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 553; secs. 114, 208, 208, 301, and 307 of the Clean Air Act, as amended, 42 U.S.C. 7414, 7525, 7542, 7601, 7607; secs. 308, 501 and 509(a) of the Clean Water Act as amended, 33 U.S.C. 1318, 1381, 1389(a); sec. 13 of the Noise Control Act of 1972, 42 U.S.C. 4912; secs. 1445 and 1450 of the Safe Drinking Water Act, 42 U.S.C. 300j–4, 300j–9; secs. 2002, 3007, and 9005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6927, 6995; secs. 8(c), 11, and 14 of Toxic Substances Control Act, 15 U.S.C. 2607(c), 2610, 2613; secs. 10, 12, and 25 of Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136h, 136j, 136v; sec. 408(f) of the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. 346(f); secs. 104(f) and 108 of the Marine Protection Research and Sanctuaries Act of 1972, 33 U.S.C. 1414(f), 1418; sec. 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9604; sec. 505 of the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 2005.

2. The Table of Sections for Part 2 is amended by revising the title for § 2.305 and adding titles for §§ 2.310 and 2.311 to read as follows:

PART 2—PUBLIC INFORMATION

* * * * *

Subpart B—Confidentiality of Business Information

* * * * *

Sec.

2.305 Special rules governing certain information obtained under the Solid Waste Disposal Act, as amended.

* * * * *

2.310 Special rules governing certain information obtained under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

2.311 Special rules governing certain information obtained under the Motor Vehicle Information and Cost Savings Act.

3. Section 2.100 is amended by revising paragraph (b) to read as follows:

§ 2.100 Definitions.

* * * * *

(b) "EPA record" or, simply "record" means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and which is, was, or is alleged to be possessed by EPA. It may include copies of the records of other Federal agencies (see § 2.111(d)). The term includes informal writings (such as drafts and the like), and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by EPA, its predecessors, its officers, and its employees by use of Government funds or in the course of transacting official business. However, the term does not include materials which are legally owned by an EPA officer or employee in his or her purely personal capacity. Nor does the term include materials published by non-Federal organizations which are readily available to the public, such as books, journals, and periodicals available through reference

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libraries, even if such materials are in EPA's possession.

* * * * *

4. Section 2.106 is amended by revising paragraphs (b)(3), (b)(4), (b)(6), (b)(7), (b)(8), and (b)(9) to read as follows:

§ 2.106 Where requests for agency records shall be filed.

* * * * *

(b) * * *

(3) Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia): U.S. Environmental Protection Agency, Freedom of Information Officer, 841 Chestnut Street, Philadelphia, PA 19107.

(4) Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee): U.S. Environmental Protection Agency, Freedom of Information Officer, 345 Courtland Street, N.E., Atlanta, GA 30365.

* * * * *

(6) Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): U.S. Environmental Protection Agency, Freedom of Information Officer (6M-MC), 1201 Elm Street, Dallas, TX 75270.

(7) Region VII (Iowa, Kansas, Missouri, Nebraska): U.S. Environmental Protection Agency, Freedom of Information Officer, 726 Minnesota Avenue, Kansas City, KS 66101.

(8) Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming): U.S. Environmental Protection Agency, Freedom of Information Officer, One Denver Place, 999 18th Street, Suite 1300, Denver, CO 80202-2413.

(9) Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territory of Pacific Islands): U.S. Environmental Protection Agency, Freedom of Information Officer, 215 Fremont Street, San Francisco, CA 94105.

* * * * *

5. Section 2.107 is amended by revising paragraph (a) to read as follows:

§ 2.107 Misdirected written requests; oral requests.

(a) EPA cannot assure that a timely or satisfactory response under this subpart will be given to written requests that are addressed to EPA offices, officers, or employees other than the Freedom of Information Officers listed in § 2.106. Any EPA officer or employee who receives a written request for inspection or disclosure of EPA records shall promptly forward a copy of the request to the appropriate Freedom of Information Officer, by the fastest practicable means, and shall, if appropriate, commence action under § 2.111. For purposes of § 2.112, the time allowed with respect to initial determinations shall be computed from the day on which the appropriate Freedom of Information Officer receives the request.

* * * * *

6. Section 2.111 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 2.111 Action by office responsible for responding to request.

* * * * *

(c) In determining which records are responsive to a request, the EPA office responding shall ordinarily include those records within the Agency's possession as of the date of the Agency's receipt of the request.

(d) When a request for EPA records encompasses records of another Federal agency, the EPA office shall either: (1) Respond to the request after consulting with the originating agency when appropriate or (2) promptly transfer responsibility for responding to the request to the originating agency provided that the other agency is subject to the FOIA. Whenever the EPA office refers a request to another agency, it shall notify the requestor of the referral.

§ 2.112 [Amended]

7. Section 2.112 is amended by revising paragraphs (a) and (d) to read as follows:

* * * * *

(a) Except as otherwise provided in this section, not later than the tenth working day after the date of receipt by a Freedom of Information Office of a request for records, the EPA office responsible for responding to the request shall issue a written determination to the requestor stating which of the requested records will, and which will not, be released and the reason for any denial of a request. If the records are not known to exist or are not in EPA's possession, the EPA office shall so inform the requestor. To the extent requested records which are in EPA's possession are published by the Federal government, the response may inform the requestor that the records are available for inspection and where copies can be obtained.

* * * * *

(d) There shall be excluded from the period of 10 working days (or any extension thereof) any time which elapses between the date that a requestor is notified by EPA under § 2.120 that prepayment or assurance of payment of fees is required, and the date that the requestor pays (or makes suitable arrangements to pay) such charges.

* * * * *

§ 2.113 [Amended]

8. Section 2.113 is amended by removing paragraphs (a)(1), (a)(2), (a)(3), and (a)(7) and redesignating paragraphs (a)(4), (a)(5), and (a)(6) as (a)(1), (a)(2), and (a)(3), by revising paragraph (b), and by removing paragraph (h) as follows:

§ 2.113 Initial denials of requests.

* * * * *

(b) The Deputy Administrator, Assistant Administrators, Regional Administrators, the General Counsel, the Inspector General, Associate Administrators, and heads of headquarters staff offices are delegated the authority to issue initial determinations This authority may be redelegated; *provided,* that the authority to issue initial denials of requests for existing, located records (other than denials based solely on § 2.204(d)(1)) may be redelegated only to persons occupying positions not lower than division director or equivalent.

* * * * *

9. Section 2.114 is amended by revising paragraph (a) to read as follows:

§ 2.114 Appeals from initial denials; manner of making.

(a) Any person whose request for one or more existing, located EPA records has been denied in whole or in part by an initial determination may appeal that denial by addressing a written appeal to the address shown in § 2.106(a).

* * * * *

10. Section 2.115 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 2.115 Appeal determinations, by whom made.

* * * * *

(b) Whenever the General Counsel has determined under paragraph (a)(3) of this section that a record is exempt from mandatory disclosure but legally may be disclosed, and the record has not been disclosed by EPA under 5 U.S.C. 552, the matter shall be referred to the Assistant Administrator for External Affairs. If the Assistant Administant Administrator determines that the public interest would not be served by disclosure, a determination denying the appeal shall be issued by the General Counsel. If the Assistant Administrator determines that the public interest would be served by disclosure, the record shall be disclosed

unless the Administrator (upon a review of the matter requested by the appropriate Assistant Administrator, Associate Administrator, Regional Administrator, the General Counsel, or the head of a headquarters staff office) determines that the public interest would not be served by disclosure, in which case the General Counsel shall issue a determination denying the appeal. This review by the Assistant Administrator for External Affairs shall not apply to appeals from inital determinations by the Office of Inspector General to deny requests.

* * * * *

(d) The Assistant Administrator for External Affairs may delegate the authority under paragraph (b) of this section to the Deputy Assistant Administrator for External Affairs.

11. Section 2.120 is revised to read as follows:

§ 2.120 Fees; payment; waiver.

(a) *Fee schedule.* Fees will be charged requestors for searching for and producing requested records in accordance with the following schedule:

(1) Record search time (EPA employees):

(i) Personnel at GS–8 and below. For each ½ hour, or portion thereof, spent searching for a requested record, $3.50.

(ii) Personnel at GS–9 and above. For each ½ hour, or portion thereof, spent searching for a requested record, $7.00.

(2) Computer programming time (EPA employees), $8.50 per half hour.

(3) Reproduction of documents (EPA employees) (paper copy of paper original), $0.20 per page.

(4) Other costs of searching for or duplicating records (including such items as computer system time; contractor computer programming time; contractor search time; contractor reproduction costs; reproduction of photographs, microfilms, or magnetic tape; computer printouts; and transportation of records), will be the actual direct cost to EPA.

(5) No charge shall be made—

(i) For examination and evaluation of records which have been located and which are known to be among those requested;

(ii) For the cost of preparing or reviewing letters of response to a request or appeal;

(iii) If the total fee in connection with a request is less than $25.00, or if the costs of collecting the fee would otherwise exceed the amount of the fee (however, EPA may group requests by one requestor to determine the total fee);

(iv) For responding to a request by an individual for one copy of a record pertaining to the individual from a Privacy Act system of records;

(v) For furnishing records requested by either House of Congress, or by a duly authorized committee or subcommittee of Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(vi) For furnishing records requested by and for the official use of other Federal agencies; or

(vii) For furnishing records needed by an EPA contractor, subcontractor, or grantee to perform the work required by the EPA contract or grant.

(b) *Method of payment.* All fees payments shall be in the form of a check or money order payable to the "U.S. Environmental Protection Agency" and shall be sent (accompanied by a reference to the pertinent Request Identification Number(s)) to the appropriate Headquarters or Regional Office lock box address listed below. Under the Debt Collection Act of 1982 (Pub. L. 97–365), payment (except for prepayment) shall be due within thirty (30) calendar days of date of billing, if payment is not received at the end of thirty calendar days, interest and a late payment handling charge will be assessed. In addition, under this Act, a penalty charge will be applied on any principal amount not paid within ninety (90) calendar days of the due date for payment.

(1) EPA—Washington Headquarters, P.O. Box 360277M, Pittsburgh, PA 15251;

(2) EPA—Region 1, P.O. Box 360197M, Pittsburgh, PA 15251;

(3) EPA—Region 2, P.O. Box 360188M, Pittsburgh, PA 15251;

(4) EPA—Region 3, P.O. Box 360515M, Pittsburgh, PA 15251;

(5) EPA—Region 4, P.O. Box 100142, Atlanta, GA 30384;

(6) EPA—Region 5, P.O. Box 70753, Chicago, IL 60673;

(7) EPA—Region 6, P.O. Box 360582M, Pittsburgh, PA 15251;

(8) EPA—Region 7, P.O. Box 360748M, Pittsburgh, PA 15251;

(9) EPA—Region 8, P.O. Box 360859M, Pittsburgh, PA 15251;

(10) EPA—Region 9, P.O. Box 360863M, Pittsburgh, PA 15251;

(11) EPA—Region 10, P.O. Box 360903M, Pittsburgh, PA 15251.

(c) *Prepayment or assurance of payment.* If an EPA office determines or estimates that the unpaid fees attributable to one or more requests by the same requestor exceed or will exceed $25.00, that office need not search for, duplicate or disclose records in response to any request by the requestor until the requestor pays, or makes acceptable arrangements to pay, the total amount of fees due (or estimated to become due) under this section. In such a case, the EPA office shall promptly inform the requestor (by telephone, if practicable) of the need to make payment or arrangements to pay. See also § 2.112(d).

(d) *Reduction or waiver of fee.* The fee chargeable under this section shall be reduced or waived by EPA if the Agency determines that a waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Reduction or waiver of fees shall be considered (but need not necessarily be granted) in connection with each request from a representative of the press or other communications medium, or from a public interest group. A request for reduction or waiver of fees shall be addressed to the appropriate Freedom of Information Officer or the EPA office which is responding to the request for records. The latter office shall initially determine whether the fee shall be reduced or waived, and shall so inform the requestor. This initial determination may be appealed by letter addressed to the EPA Freedom of Information Officer. The Assistant Administrator for External Affairs or, if delegated the authority, the Deputy Assistant Administrator for External Affairs, shall decide such appeals.

(e) The EPA Financial Management Division shall maintain a record of all fees charged requestors for searching for and reproducing requested records under this section. If after the end of 60 calendar days from the date on which request for payment was made the requestor has not submitted payment to the appropriate EPA billing address (as listed in § 2.120(b)), the Financial Management Division shall place the requestor's name on a delinquent list which is sent to the EPA Freedom of Information Officer. If a requestor whose name appears on the delinquent list makes a request under this part, the EPA Freedom of Information Officer shall inform the requestor that EPA will not process the request until the requestor submits payment of the overdue fee from the earlier request. Any request made by an individual who specifies an affiliation with or representation of a corporation, association, law firm, or other organization shall be deemed to be a request by the corporation, association, law firm, or other organization. If an organization placed on the delinquent list can show that the person who made the request for which

payment was overdue did not make the request on behalf of the organization, the organization will be removed from the delinquent list but the name of the individual shall remain on the list. A requestor shall not be placed on the delinquent list if a request for a reduction or for a waiver is pending under paragraph (d) of this section.

12. Section 2.202 is amended by revising paragraphs (b) and (c) to read as follows:

§ 2.202 Applicability of subpart; priority where provisions conflict; records containing more than one kind of information.

* * * * *

(b) Various statutes (other than 5 U.S.C. 552) under which EPA operates contain special provisions concerning the entitlement to confidential treatment of information gathered under such statutes. Sections 2.301 through 2.311 prescribe rules for treatment of certain categories of business information obtained under the various statutory provisions. Paragraph (b) of each of those sections should be consulted to determine whether any of those sections applies to the particular information in question.

(c) The basic rules of §§ 2.201 through 2.215 govern except to the extent that they are modified or supplanted by the special rules of §§ 2.301 through 2.311. In the event of a conflict between the provisions of the basic rules and those of a special rule which is applicable to the particular information in question, the provision of the special rule shall govern.

* * * * *

§ 2.204 [Amended]

13. Section 2.204 is amended by revising paragraphs (d)(1)(iii), (e)(1), and (e)(2), redesignating paragraphs (f) (8) and (9) as (f) (9) and (10) respectively, and adding a new paragraph (f)(8) to read as follows: § 2.204 Initial action by EPA office.

* * * * *

(d) * * *

(1) * * *

(iii) Refer the matter to the appropriate EPA legal office, furnishing the information required by paragraph (f) of this section after the time has elapsed for receipt of comments from the affected business.

* * * * *

(e) * * *

(1) Whenever required by paragraph (d)(1) of this section, the EPA office shall promptly furnish each business a written notice stating that EPA is determining under this subpart whether the information is entitled to confidential treatment, and affording the business an opportunity to comment. The notice shall be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. The notice shall state the address of the office to which the business's comments shall be addressed (the EPA office furnishing the notice, unless the General Counsel has directed otherwise), the time allowed for comments, and the method for requesting a time extension under § 2.205(b)(2). The notice shall further state that EPA will construe a business's failure to furnish timely comments as a waiver of the business's claim.

(2) If action under this section is occasioned by a request for the information under 5 U.S.C. 552, the period for comments shall be 15 working days after the date of the business's receipt of the written notice. In other cases, the EPA office shall establish a reasonable period for comments (not less than 15 working days after the business's receipt of the written notice). The time period for comments shall be considered met if the business's comments are postmarked or hand delivered to the office designated in the notice by the date specified. In all cases, the notice shall call the business's attention to the provisions of § 2.205(b).

* * * * *

(f) * * *

(8) A copy of the business's comments on whether the information is entitled to confidential treatment;

* * * * *

14. Section 2.205 is amended by revising paragraphs (b)(1), (b)(4) and (d)(1) to read as follows:

§ 2.205 Final confidentiality determination by EPA legal office.

* * * * *

(b) * * *

(1) Each business which has been furnished the notice and opportunity to comment prescribed by § 2.204(d)(1) and § 2.204(e) shall furnish its comments to the office specified in the notice in time to be postmarked or hand delivered to that office not later than the date specified in the notice (or the date established in lieu thereof under this section).

* * * * *

(4) If a business's comments have not been received by the specified EPA office by the date they are due (including any approved extension), that office shall promptly inquire whether the business has complied with paragraph (b)(1) of this section. If the business has complied with paragraph (b)(1) but the comments have been lost in transmission, duplicate comments shall be requested.

* * * * *

(d) * * *

(1) If the EPA legal office finds that a business has failed to furnish comments under paragraph (b) of this section by the specified due date, it shall determine that the business has waived its claim. If, after application of the preceding sentence, no claim applies to the information, the office shall determine that the information is not entitled to confidential treatment under this subpart and, subject to § 2.210, is available to the public.

* * * * *

15. Section 2.209 is amended by revising paragraph (b) to read as follows:

§ 2.209 Disclosure in special circumstances.

* * * * *

(b) Disclosure to Congress or the Comptroller General.

(1) Upon receipt of a written request by the Speaker of the House, President of the Senate, chairman of a committee or subcommittee, or the Comptroller General, as appropriate, EPA will disclose business information to either House of Congress, to a committee or subcommittee of Congress, or to the Comptroller General, unless a statute forbids such disclosure.

(2) If the request is for business information claimed as confidential or determined to be confidential, the EPA office processing the request shall provide notice to each affected business of the type of information disclosed and to whom it is disclosed. Notice shall be given at least ten days prior to disclosure, except where it is not possible to provide notice ten days in advance of any date established by the requesting body for responding to the request. Where ten days advance notice cannot be given, as much advance notice as possible shall be provided. Where notice cannot be given before the date established by the requesting body for responding to the request, notice shall be given as promptly after disclosure as possible. Such notice may be given by notice published in the **Federal Register** or by letter sent by certified mail, return receipt requested, or telegram. However, if the requesting body asks in writing that no notice under this subsection be given, EPA will give no notice.

(3) At the time EPA discloses the business information, EPA will inform the requesting body of any unresolved business confidentiality claim known to

cover the information and of any determination under this subpart that the information is entitled to confidential treatment.

* * * * *

16. Section 2.211 is amended by revising paragraph (d) to read as follows:

§ 2.211 Safeguarding of business information; penalty for wrongful disclosure.

* * * * *

(d) Each contractor or subcontractor with EPA, and each employee of such contractor or subcontractor, who is furnished business information by EPA under §§ 2.301(h), § 2.302(h), 2.304(h), 2.305(h), 2.306(j), 2.307(h), 2.308(i), or 2.310(i) shall use or disclose that information only as permitted by the contract or subcontract under which the information was furnished. Contractors or subcontractors shall take steps to properly safeguard business information including following any security procedures for handling and safeguarding business information which are contained in any manuals, procedures, regulations, or guidelines provided by EPA. Any violation of this paragraph shall constitute grounds for suspension or debarment of the contractor or subcontractor in question. A willful violation of this paragraph may result in criminal prosecution.

17. Section 2.301 is amended by revising paragraphs (b)(1)(i)(C) and (b)(1)(ii), redesignating paragraphs (b)(4) and (b)(5) as (b)(5) and (b)(6), respectively, adding a new paragraph (b)(4), and revising paragraph (g)(2), the first sentence of paragraph (g)(3), and the first sentence of paragraph (g)(4) to read as follows:

§ 2.301 Special rules governing certain information obtained under the Clean Air Act.

* * * * *

(b) * * *

(1) * * *

(i) * * * (C) of carrying out any provision of the Act (except a provision of Part II of the Act with respect to a manufacturer of new motor vehicles or new motor vehicle engines);

(ii) Provided or obtained under section 208 of the Act, 42 U.S.C. 7542, for the purpose of enabling the Administrator to determine whether a manufacturer has acted or is acting in compliance with the Act and regulations under the Act, or provided or obtained under section 206(c) of the Act, 42 U.S.C. 7525(c); or

* * * * *

(4) Information will be considered to have been provided or obtained under section 206(c) of the Act if it was provided in response to a request by EPA made for any of the purposes stated in section 206(c), or if its submission could have been required under section 206(c) regardless of whether section 206(c) was cited as authority for any request for the information, whether an action was brought under section 204 of the Act, 42 U.S.C. 7523, or whether the information was provided directly to EPA or through some third person.

* * * * *

(g) * * *

(2) In connection with any proceeding other than a proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies which may be entitled to confidential treatment may be made available to the public under this paragraph (g)(2). No information shall be made available to the public under this paragraph (g)(2) until any affected business has been informed that EPA is considering making the information available to the public under this paragraph (g)(2) in connection with an identified proceeding, and has afforded the business a reasonable period for comment (such notice and opportunity to comment may be afforded in connection with the notice prescribed by § 2.204(d)(1) and § 2.204(e)). Information may be made available to the public under this paragraph (g)(2) only if, after consideration of any timely comments submitted by the business, the General Counsel determines that the information is relevant to the subject of the proceeding and the EPA office conducting the proceeding determines that the public interest would be served by making the information available to the public. Any affected business shall be given at least 5 days' notice by the General Counsel prior to making the information available to the public.

(3) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies which may be entitled to confidential treatment may be made available to the public, or to one or more parties of record to the proceeding, upon EPA's initiative, under this paragraph (g)(3). * * *

(4) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section appplies may be made available to one or more parties of record to the proceeding, upon request of a party, under this paragraph (g)(4). * * *

* * * * *

18. Section 2.305 is amended by revising the section heading and paragraphs (a), (b), (g)(1), and (h)(1) and adding a new paragraph (h)(4) as follows:

§ 2.305 Special rules governing certain information obtained under the Solid Waste Disposal Act, as amended.

(a) *Definitions.* For purposes of this section:

(1) "Act" means the Solid Waste Disposal Act, as amended, including amendments made by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.*

(2) "Person" has the meaning given it in section 1004(15) of the Act, 42 U.S.C. 6903(15).

(3) "Hazardous waste" has the meaning given it in section 1004(5) of the Act, 42 U.S.C. 6903(5).

(4) "Proceeding" means any rulemaking, adjudication, or licensing conducted by EPA under the Act or under regulations which implement the Act including the issuance of administrative orders and the approval or disapproval of plans (e.g. closure plans) submitted by persons subject to regulation under the Act, but not including determinations under this subpart.

(b) *Applicability.* This section applies to information provided to or obtained by EPA under section 3001(b)(3)(B), 3007, or 9005 of the Act, 42 U.S.C 6921(b)(3)(B), 6927, or 6995. Information will be considered to have been provided or obtained under sections 3001(b)(3)(B), 3007, or 9005 of the Act if it was provided in response to a request from EDA made for any of the purposes stated in the Act or if its submission could have been required under those provisions of the Act regardless of whether a specific section was cited as the authority for any request for the information or whether the information was provide directly to EPA or through some third person.

* * * * *

(g)— *Disclosure of information relevent in a proceeding.* (1) Under sections 3007(b) and 9005(b) of the Act (42 U.S.C. 6927(b) and 6995(b)), any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its

relevance in a proceeding shall be made only in accordance with this paragraph (g).

* * * * *

(h) *Disclosure to authorized representatives.* (1) Under sections 3001(b)(3)(B), 3007(b), and 9005(b) of the Act (42 U.S.C. 6921(b)(3)(B), 6927(b), and 6995(b)), EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

* * * * *

(4) At the time any information is furnished to a contractor, subcontractor, or state or local government agency under this paragraph(h), the EPA office furnishing the information to the contractor, subcontractor, or state or local government agency shall notify the contractor, subcontractor, or state or local government agency that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the contractor, subcontractor, or state or local government agency and its employees to penalties in section 3001(b)(3)(B), 3007(b)(2), or 9005(b)(1) of the Act (42 U.S.C. 6921(b)(3)(B), 6927(b), or 6995(b)).

19. By adding § 2.310 to read as follows:

§ 2.310 Special rules governing certain information obtained under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

(a) *Definitions.* For purposes of this section:

(1) "Act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601 et seq.

(2) "Person" has the meaning given it in section 101(21) of the Act, 42 U.S.C. 9601(21).

(3) "Facility" has the meaning given it in section 101(9) of the Act, 42 U.S.C. 9601(9).

(4) "Hazardous substance" has the meaning given it in section 101(14) of the Act, 42 U.S.C. 9601(14).

(5) "Release" has the meaning given it in section 101 (22) of the Act, 42 U.S.C. 9601(22).

(6) "Proceeding" means any rulemaking or adjudication conducted by EPA under the Act or under regulations which implement the Act (including the issuance of administrative orders under section 106 of the Act), or any administrative determination made under section 104 of the Act, but not including determinations under this subpart.

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under section 104 of the Act, 42 U.S.C. 9604, by or from any person who stores, treats, or disposes of hazardous wastes; or where necessary to ascertain facts not available at the facility where such hazardous substances are located, by or from any person who generates, transports, or othewise handles or has handled hazardous substances. Information will be considered to have been provided or obtained under section 104 of the Act if it was provided in response to a request from EPA or a representative of EPA made for any of the purposes stated in section 104, or if its submission could have been required under section 104, regardless of whether section 104 was cited as authority for any request for the information or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and §§ 2.209 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies; however, no information to which this section applies is voluntarily submitted information.

(f) [Reserved]

(g)(1) Under section 104(e)(2)(A) of the Act (42 U.S.C. 9604(e)(2)(A) any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, nothwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its relevance in a proceeding shall be made only in accordance with this paragraph (g).

(2) The provisions of § 2.301(g)(2) are to be used as paragraph (g)(2) of this section.

(3) The provisions of § 2.301(g)(3) are to be used as paragraph (g)(3) of this section.

(4) The provisions of § 2.301(g)(4) are to be used as paragraph (g)(3) of this section.

(h) *Disclosure to authorized representatives.* (1) Under section 104(e)(2) of the Act (42 U.S.C. 9604(e)(2)), EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

(2) The provisions of § 2.301(h)(2) are to be used as paragraph (h)(2) of this section.

(3) The provisions of § 2.301(h)(3) are to be used as paragraph (h)(3) of this section.

(4) At the time any information is furnished to a contractor, subcontractor, or state or local government agency under this paragraph (h), the EPA office furnishing the information to the contractor, subcontractor, or state or local government agency shall notify the contractor, subcontractor, or state or local government agency that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the contractor, subcontractor, or state or local government agency and its employees to penalties in section 104(e)(2)(B) of the Act (42 U.S.C. § 9604(e)(2)(B)).

20. By adding § 2.311 to read as follows:

§ 2.311 Special rules governing certain information obtained under the Motor Vehicle Information and Cost Savings Act.

(a) *Definitions.* For the purposes of this section:

(1) "Act" means the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1901 et seq.

(2) "Average fuel economy" has the meaning given it in section 501(4) of the Act, 15 U.S.C. 2001(4).

(3) "Fuel economy" has the meaning given it in section 501(6) of the Act, 15 U.S.C. 2001(6).

(4) "Fuel economy data" means any measurement or calculation of fuel economy for any model type and average fuel economy of a manufacturer under section 503(d) of the Act, 15 U.S.C. 2003(d).

(5) "Manufacturer" has the meaning given it in section 501(9) of the Act, 15 U.S.C. 2001(9).

(6) "Model type" has the meaning given it in section 501(11) of the Act, 15 U.S.C. 2001(11).

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under Title V, Part A of the Act, 15 U.S.C. 2001 through 2012. Information will be considered to have been provided or obtained under Title V, Part A of the Act if it was provided in

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response to a request from EPA made for any purpose stated in Title V, Part A, or if its submission could have been required under Title V Part A, regardless of whether Title V Part A was cited as the authority for any request for information or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and §§ 2.209 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies, except that information this is fuel economy data is not eligible for confidential treatment. No information to which this section applies is voluntarily submitted information.

(f) [Reserved]

(g) *Disclosure of information relevant to a proceeding.*

(1) Under section 505(d)(1) of the Act, any information to which this section applies may be released by EPA because of the relevance of the information to a proceeding under Title V, Part A of the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Release of information to which this section applies because of its relevance to a proceeding shall be made only in accordance with this paragraph (g).

(2) The provisions of § 2.301(g)(2) are to be used as paragraph (g)(2) of this section.

(3) The provisions of § 2.301(g)(3) are to be used as paragraph (g)(3) of this section.

(4) The provisions of § 2.301(g)(4) are to be used as paragraph (g)(3) of this section.

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H.R. 3918/Pub. L. 99-181

To extend until December 18, 1985, the application of certain tobacco excise taxes, trade adjustment assistance, certain medicare reimbursement provisions, and borrowing authority under the railroad unemployment insurance program. (Dec. 13, 1985; 1 page) Price: $1.00.

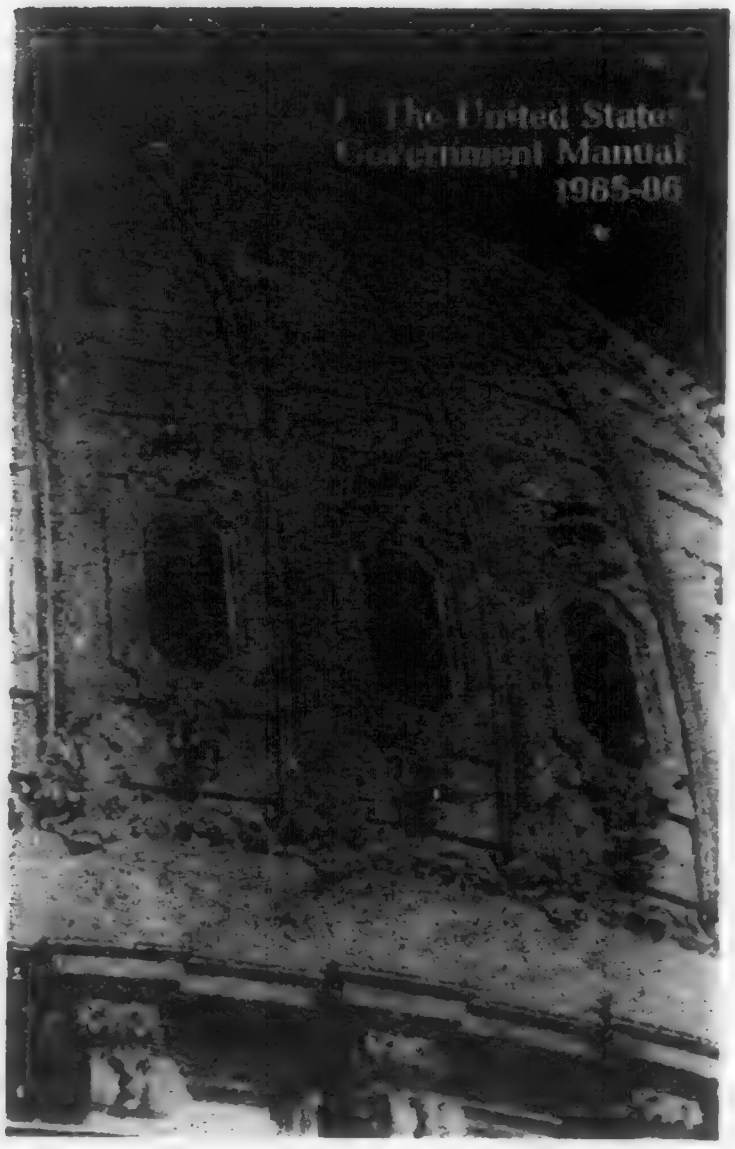
H.R. 3919/Pub. L. 99-182

To extend temporarily the dairy price support program and certain food stamp program provisions, and for other purposes. (Dec. 13, 1985; 1 page) Price: $1.00.

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Relating to the approval and implementation of the proposed agreement for nuclear cooperation between the United States and the People's Republic of China. (Dec. 16, 1985; 2 pages) Price: $1.00.

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federal register

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For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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Immigration and Naturalization Service

Anchorage Grounds
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Hazardous Substances
Environmental Protection Agency

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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Housing and Urban Development Department

Marketing Agreements
Agricultural Marketing Service

Mortgage Insurance
Housing and Urban Development Department

National Parks
National Park Service

Navigation (Water)
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Radio Broadcasting
Federal Communications Commission

Reporting and Recordkeeping Requirements
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Sunshine Act
Occupational Safety and Health Review Commission

Trade Practices
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Waterways
Saint Lawrence Seaway Development Corporation

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227 (Voice)
Melanie Williams 202-523-5229 (TDD)

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

NOTE: There will be a sign language interpreter for hearing impaired persons at this briefing.

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Presidential Documents

Title 3—

The President

Proclamation 5422 of December 17, 1985

Wright Brothers Day, 1985

By the President of the United States of America

A Proclamation

From the time the first human being glimpsed the first bird, the dream of flight has captivated the human imagination. The great Leonardo da Vinci sketched elaborate designs for flying machines, and the poet Tennyson had a vision of the heavens filled with commerce and "argosies of magic sails."

But it was not until early in this century that the remarkable ingenuity and dogged determination of two young Americans finally made that dream come true. On a sandy strip of the North Carolina coast on the morning of December 17, 1903, Orville Wright, then 32, made the first piloted power-driven flight in a heavier-than-air vehicle. He did it in a 750-pound machine designed and built by him and his older brother, Wilbur. It was the culmination of four years of intensive research by the two inseparable brothers whose talents and temperament complemented each other perfectly.

That first conquest of the sky lasted only 12 seconds and took Orville only 120 feet, far less than the wingspan of today's great jets. But it changed forever the course of human history.

The lives of the Wright Brothers reveal a quintessentially American success story. Their father first sparked their interest in flight when he gave them a toy helicopter powered by rubber bands. Neither of these boys from Dayton, Ohio had ever attended college. Indeed, although they were bright students, neither ever formally graduated from high school. They made a living manufacturing bicycles, but all their spare time was devoted to the conquest of the skies. Wilbur read everything available in the local library and then wrote away to the Smithsonian Institution for more.

But what others had written was not enough. The Wright Brothers experimented for years with kites and gliders. They took detailed notes and made up tables of ratios. To master the challenge of controlling their craft, they designed and built their own wind tunnel and tested hundreds of different wing designs in small scale models.

For all its historic importance, only five people were present that fateful morning eight days before Christmas when Orville at the controls of his 12-horsepower plane took off into a 27-miles-per-hour wind and managed to stay aloft 12 seconds. Later that day with Wilbur piloting it, the craft covered 852 feet in 59 seconds.

Three years after that first flight the Wright Brothers were awarded U.S. Patent No. 821,393. They continued to pioneer developments in flight for as long as they lived. Wilbur died in 1912, while jealous rivals were still contesting their claims to priority and just before the rapid development of aviation. But Orville, who sold the Wright company in 1915, served for many years on the National Advisory Committee for Aeronautics and lived to see his and his brother's claim fully vindicated and universally recognized. Before he died in 1948 the revolution they had set in motion was moving on to new achievements. Jet planes had broken the sound barrier and Bill Odum had flown around the world in just over 73 hours.

That revolution continues, and America has stayed on its cutting edge. This year some 400 million passengers will fly some 334 million miles, and almost 66 percent of all the aircraft they will fly on are made in the U.S.A. America leads in space, reaching the moon and beyond. And today our engineers are working on aircraft that will be able to travel coast to coast in 12 minutes and reach any point on the globe in an hour and a half.

Truly, the age of flight is still young and its greatest achievements are yet to come, but we must never forget those two extraordinary young men, the Wright Brothers. Eighty-two years ago they turned an impossible dream into reality.

To commemorate the historic achievement of the Wright Brothers, the Congress, by joint resolution of December 17, 1963 (77 Stat. 402; 36 U.S.C. 169), has designated the seventeenth day of December of each year as Wright Brothers Day and requested the President to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 17, 1985, as Wright Brothers Day, 1985, and I call upon the people of this Nation and local and national governmental officials to observe this day with appropriate ceremonies and activities, both to recall the accomplishments of the Wright Brothers and to provide a stimulus to aviation in this country and throughout the world.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of December, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-30159
Filed 12-17-85; 3:01 pm]
Billing code 3195-01-M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 618]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 618 establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period December 20–26, 1985. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 618 (§ 907.918) is effective for the period December 20–26, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Adminstrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on December 10, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges is very good. The prorate regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.618 is added to read as follows:

§ 907.618 Navel Orange Regulation 618.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 20, 1985, through December 26, 1985, are established as follows:

(a) District 1: 700,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: December 13, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–30031 Filed 12–18–85; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–30–AD; Amdt. 39–5195]

Airworthiness Directives: Fokker B.V. Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspection of various structural items on certain Fokker F27 series airplanes and modification or repair, as necessary, to correct certain unsafe conditions which may exist. This action is necessary to ensure the structural integrity of the landing gear, the elevator trim tab control bracket and supporting structure, and the wing/fuselage fittings.

DATE: Effective January 26, 1986.

ADDRESSES: The applicable service information may be obtained from the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM–113; telephone (206) 431–2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires inspection of the main landing gear drag stay tubes, and replacement if cracks are found; modification of the elevator trim tab, the elevator control bracket.

BEST COPY AVAILABLE

and the supporting rib structure; and inspection and modification of the wing to fuselage attach fittings on certain Fokker Model F27 airplanes, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 3, 1985 (50 FR 18873). This action was considered necessary to maintain the structural integrity of the main landing gear, the elevator trim tab and support structure, and the wing-to-fuselage joint.

The comment period for the NPRM, which ended June 24, 1985, afforded interested persons an opportunity to participate in making the rule.

One commenter, an operator of Fokker F27 airplanes, pointed out that paragraph C. of the proposed AD would require inspections and modification of the wing-to-fuselage attach fitting within 180 days after the effective date of the AD; however, the Fokker Structural Inspection Program (SIP) does not require these inspections and modifications until an airplane has accumulated 45,000 landings. The commenter suggested that the proposed AD be changed to require these inspections and modifications within 180 days after the effective date of the AD or by 45,000 landings, whichever occurs later. Upon reconsideration of the available data, the FAA concurs with this suggestion and the final rule has been changed accordingly. The FAA has determined that this change will not increase the burden on any operator, nor will it compromise safety of flight.

After a careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously mentioned.

Approximately 31 U.S. registered airplanes will be affected by this AD; however, not every airplane will be affected by each of the requirements of the AD. It is estimated that 24 airplanes will be affected by the requirements of paragraph A., which will require 3 manhours to accomplish; 9 airplanes will be affected by the requirements of paragraph B., which will require 40 manhours to accomplish; and 28 airplanes will be affected by the requirements of paragraph C., which will require 295 manhours to accomplish and $4,000 for parts for each airplane. The average labor cost will be $40 per manhour. Based on these figures, the total cost impact to U.S. operators will be $460,000.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Fokker Model F27 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F27 airplanes as indicated in the applicability statement of each service bulletin listed below, certified in any category. Compliance is required within the time interval specified in each of the following paragraphs, unless already accomplished:

A. To prevent collapse of the main landing gear, within 120 days after the effective date of this AD, inspect the drag stay tube for cracks, in accordance with Fokker Service Bulletin F27/32-147 dated September 1, 1981, and replace if cracks are found.

B. To prevent damage to the elevator trim tab, the elevator control bracket support, and the elevator control bracket supporting rib structure, modify the structure in accordance with Fokker Service Bulletin F27/55-31 dated May 31, 1965, within 120 days after the effective date of this AD.

C. To prevent failure of the wing/fuselage joint, inspect and modify the joint in accordance with Fokker Service Bulletin F27/57-54, Revision 1, dated April 2, 1984, within 180 days after the effective date of this AD or prior to the accumulation of 45,000 landings, whichever occurs later.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Manager, Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective January 28, 1986.

Issued in Seattle, Washington, on December 12, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-29971 Filed 12-18-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 24866; Amdt. No. 1310]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anicipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, standard instrument.

Issued in Washington, DC on December 13, 1985.

John S. Kern,

Acting Director of Flight Standards.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§ 97.23 [Amended]

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB , NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective 13 March, 1986

Denver, CO—Stapleton Intl, ILS RWY 35L, Amdt. 26

. . . Effective 13 February, 1986

Rogers, AR—Rogers Muni Arpt-Carter Fld, VOR RWY 1, Amdt. 10
Oakland, CA—Metropolitan Oakland Intl, ILS RWY 29, Amdt. 22
Benton Harbor, MI—Ross Field-Twin Cities, VOR RWY 9, Amdt. 7
Benton Harbor, MI—Ross Field-Twin Cities, VOR RWY 27, Amdt. 16
Benton Harbor, MI—Ross Field-Twin Cities, LOC BC RWY 9, Amdt. 7
Benton Harbor, MI—Ross Field-Twin Cities, NDB RWY 27, Amdt. 8
Benton Harbor, MI—Ross Field-Twin Cities, ILS RWY 27, Amdt. 5
Cadillac, MI—Wexford County, NDB RWY 07, Amdt. 10
Cadillac, MI—Wexford County, NDB RWY 25, Amdt. 6
Cadillac, MI—Wexford County, MLS RWY 25, Amdt. 1
Cadillac, MI—Wexford County, RNAV RWY 7, Amdt. 5
Cadillac, MI—Wexford County, RNAV RWY 25, Amdt. 4
Menominee, MI—Menominee-Marinette Twin County, VOR–A, Orig.
Menominee, MI—Menominee-Marinette Twin County, VOR RWY 18, Amdt. 8, Cancelled
Columbus, OH—Rickenbacker, VOR RWY 23L, Orig.
Coshocton, OH—Richard Dowing, RNAV RWY 22, Orig.
Dayton, OH—Dayton General Arpt South, LOC RWY 20, Amdt. 2
Middletown, OH—Hook Field Muni, LOC RWY 23, Amdt. 6
Middletown, OH—Hook Field Muni, NDB–A, Amdt. 1
Middletown, OH—Hook Field Muni, NDB RWY 23, Amdt. 7
McKinney, TX—McKinney Muni, NDB RWY 17, Amdt. 2
LaCrosse, WI—LaCrosse Muni, NDB RWY 18, Amdt. 13
LaCrosse, WI—LaCrosse Muni, ILS RWY 18, Amdt. 3
New Richmond, WI—New Richmond Muni, NDB RWY 13, Amdt. 2
Pulaski, WI—Carter, VOR–A, Amdt. 3

Sturgeon Bay, WI—Door County Cherryland, SDF RWY 1, Amdt. 2
Strugeon Bay, WI—Door County Cherryland, NDB RWY 1, Amdt. 6
Wausau, WI—Wausau Muni, VOR–A, Amdt. 16
Wausau, WI—Wausau Muni, VOR/DME RWY 12, Amdt. 2

Effective 16 January, 1986

Pontiac, MI—Oakland-Pontiac, VOR RWY 9R, Amdt. 22
Pontiac, MI—Oakland-Pontiac, VOR RWY 27L, Amdt. 13
Pontiac, MI—Oakland-Pontiac, LOC BC RWY 27L, Amdt. 6
Pontiac, MI—Oakland-Pontiac, ILS RWY 9R, Amdt. 10
Winston Salem, NC—Smith Reynolds, NDB RWY 33, Amdt. 22
Winston Salem, NC—Smith Reynolds, ILS RWY 33, Amdt. 23
Williamsport, PA—Williamsport-Lycoming County, ILS RWY 27, Amdt. 16

Effective 10 December, 1985

Honolulu, HI—Honolulu Intl, NDB RWY 8L, Amdt. 18
Honolulu, HI—Honolulu Intl, ILS RWY 8L, Amdt. 20

Effective 27 November, 1985

Santa Ana, CA—John Wayne Airport-Orange County, VOR RWY 19R, Amdt. 23

Effective 21 November, 1985

Hilo, HI—General Lyman Field, ILS RWY 26, Amdt. 11

[FR Doc. 85–29970 Filed 12–18–85; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9150]

Weyerhaeuser Co. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Dismissal order.

SUMMARY: The Federal Trade Commission has dismissed a complaint that charged Weyerhaeuser Co.'s acquisition of a corrugating-medium mill from Menasha Corp. could substantially lessen competition in the manufacture of corrugating medium in the western U.S. The Commission based its dismissal on its findings that a number of market characteristics show that the acquisition did not lessen competition.

DATES: Complaint issued Feb. 9, 1981. Dismissal Order issued Sept. 26, 1985.[1]

[1] Copies of the Complaint, Initial Decision, and Opinion of the Commission are filed with the original documents.

FOR FURTHER INFORMATION CONTACT: Dennis F. Johnson, FTC/G–402, Washington, DC 20580. (202) 254–8978.

SUPPLEMENTARY INFORMATION: In the Matter of Weyerhaeuser Company, a corporation, and Weyerhaeuser West Coast, Inc., a corporation.

List of Subjects in 16 CFR Part 13

Corrugating medium, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani, Mary L. Azcuenaga.

In the matter of Weyerhaeuser Company, a corporation, and Weyerhaeuser West Coast, Inc., a corporation; Docket No. 9150.

Final Order

This matter has been heard by the Commission upon the appeal of complaint counsel from the initial decision and upon briefs and oral argument in support of and in opposition to the appeal. For the reasons stated in the accompanying Opinion, the Commission has determined to sustain the initial decision. Complaint counsel's appeal is denied. Accordingly, it is ordered that the complaint is dismissed.

By the Commission, Commissioners Bailey and Calvani not participating.

Issued: September 26, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 85–30032 Filed 12–18–85; 8:45 am]

BILLING CODE 6750–01–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1010

Export of Noncomplying, Misbranded, Banned Products Subject to Regulation Under Consumer Product Safety Act or Federal Hazardous Substances Act; Statement of Policy and Interpretation; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Statement of policy and interpretation; correction.

SUMMARY: This document corrects three typographical errors contained in a final statement of policy and interpretation that was published on October 10, 1984 (49 FR 39663–70).

FOR FURTHER INFORMATION CONTACT: Allen F. Brauninger, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6980.

The following corrections are made to 16 CFR Part 1010: In FR Doc. 84–26723, published on Wednesday, October 10, 1984, make the following changes.

1. On page 39667, in the heading of the Part, the first word should be "STATEMENT" (an "E" was missing).

2. On page 39668, in § 1010.1(b)(5), the abbreviation in line 5 should be "FFA" (not FAA).

3. On page 39668, in § 1010.1(b)(6), the Docket in line 10 should be numbered "80–2" (not 8–2).

Dated: December 12, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85–29843 Filed 12–18–85; 8:45 am]

BILLING CODE 6355–01–M

16 CFR Part 1032

Commission Involvement in Voluntary Standards Activities; General Standards of Policy; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Statement of policy; correction.

SUMMARY: This document corrects an error contained in the revised statement of policy that was published on May 4, 1978 (43 FR 19216, 19223).

FOR FURTHER INFORMATION CONTACT: Douglas Noble, Voluntary Standards Coordinator, Office of the Executive Director, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6550.

The following correction is made to 16 CFR Part 1032: In FR Doc. 78–12203, in the **Federal Register** of Thursday, May 4, 1978, on page 19223, in the second sentence of §1032.6(b)(1), the word "relay" should be replaced by the word "delay".

Dated: December 12, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85–29844 Filed 12–18–85; 8:45 am]

BILLING CODE 6355–01–M

16 CFR Parts 1610 and 1611

Standards for the Flammability of Clothing Textiles and Vinyl Plastic Film; Amendments to Implementing Regulations; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects final rules issued by the Commission to amend regulations implementing the flammability standards for clothing textiles and vinyl plastic film. The amendments were published in the **Federal Register** of February 26, 1985 (50 FR 7754), to announce the manner by which the Commission will interpret test results and apply the standards to certain kinds of fabrics, film, and related materials. This action is necessary to correct omissions from the **Federal Register** notice by which the Commission issued the final amendments.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gomilla, Division of Regulatory Management, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 492–6400.

The following corrections are made to the rule amending regulations in Part 1610 and Part 1611, published in FR Doc. 85–4575 in the **Federal Register** of February 26, 1985 (50 FR 7754–7764).

1. On pages 7761–2, the paragraph designated with the number 3 is corrected to read as follows:

3. The heading of § 1610.35 and the text of § 1610.35(a) are revised to read as follows:

§ 1610.35 Procedures for testing special types of textile fabrics under the standard.

(a) *Fabric not customarily washed or dry cleaned.* (1) Except as provided in paragraph (a)(2) of this section, any textile fabric or article of wearing apparel which, in its normal and customary use as wearing apparel would not be dry cleaned or washed, need not be dry cleaned or washed as prescribed in §§ 1610.4(d) and 1610.4(e) when tested under the standard if such fabric or article of wearing apparel, when marketed or handled, is marked in a clear and legible manner with the statement: "Fabric may be dangerously flammable if dry cleaned or washed." An example of the type of fabric referred to in this paragraph is bridal illusion.

(2) Section 1610.4(a)(4), which requires that certain samples shall be dry cleaned or washed before testing, shall not apply to disposable fabrics and garments. Additionally, such disposable fabrics and garments shall not be subject to the labeling requirements set forth in paragraph(a)(1) of this section.

* * * * *

2. On pages 7762–3, the paragraph designated with the number 3 is corrected to read as follows:

3. The heading of § 1611.35 and the text of §§ 1611.35 (a) and (d) are revised to read as follows:

§ 1611.35 Testing certain classes of fabric and film.

(a) *Fabric not customarily washed or dry cleaned.* (1) Except as provided in paragraph (a)(2) of this section, any textile fabric or article of wearing apparel, which, in its normal and customary use as wearing apparel would not be dry cleaned or washed, need not be dry cleaned or washed as prescribed in §§ 1610.4 (d) and (e) when tested under the Standard for the Flammability of Clothing Textiles if such fabric or article of wearing apparel, when marketed or handled, is marked in a clear and legible manner with the statement: "Fabric may be dangerously flammable if dry cleaned or washed." An example of the type of fabric referred to in this paragraph is bridal illusion.

(2) Section 1610.4(a)(4) of the Standard for the Flammability of Clothing Textiles, which requires that certain samples shall be dry cleaned or washed before testing, shall not apply to disposable fabrics and garments. Additionally, such disposable fabrics and garments shall not be subject to the labeling requirements set forth in paragraph(a)(1) of this section.

* * * * *

(d)(1) Items which are subject to the Standard for the Flammability of Vinyl Plastic Film from which a test specimen 3 inches by 9 inches cannot be taken lengthwise to the direction of processing shall not be tested in the lengthwise direction.

(2) Items which are subject to the Standard for the Flammability of Vinyl Plastic Film from which a test specimen 3 inches by 9 inches cannot be taken transverse to the direction of processing shall not be tested in the transverse direction.

Dated: December 12, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85–29842 Filed 12–18–85; 8:45 am]

BILLING CODE 6355–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Domestic Exchange-Traded Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of effective date of rule amendment.

SUMMARY: On November 4, 1985, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** an amendment to Regulation 33.4(a)(6) which will permit domestic boards of trade to be designated as a contract market for up to eight options on futures contracts not involving the domestic agricultural commodities specifically enumerated in section 2(a)(1)(A) of the Commodity Exchange Act ("Act") (7 U.S.C. 2). See 50 FR 45811. The Commission indicated, however, that the amendment would not become effective until the expiration of 30 calendar days of continuous session of Congress after the transmittal of the rule amendment and related materials to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry and the publication in the **Federal Register** of a notice of the effective date of the rule amendment.

The Congressional review period specified in section 4(c) of the Act (7 U.S.C., 6c(c)) has now expired. Accordingly, the Commission now provides notice that the amendment to § 33.4(a)(6) of its regulations, as published at 50 FR 45811 became effective on December 9, 1985.

EFFECTIVE DATE: December 9, 1985.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–6990

Lists of Subjects in 17 CFR Part 33

Commodity options, Commodity futures, Commodity exchange designation procedures.

Issued in Washington, D.C., on December 16, 1985 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85–30058 Filed 12–18–85; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release Nos. 33–6613; 34–22705; FRR–23; AAER–82]

The Significance of Oral Guarantees to the Financial Reporting Process

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: Based upon the applicable accounting literature, the Commission believes that oral statements, which are in substance guarantees, are contingent liabilities which may, under certain circumstances, require disclosure. They may also have material significance in accounting for transactions. The Commission emphasizes that the substance of oral agreements should be considered by financial institutions and others in completing audit confirmations. Agreements which in substance constitute guarantees should be reported in response to an audit confirmation request.

The audit process is central to the Commission's financial reporting requirements and to the full and fair disclosure policy underlying the federal securities laws. The inability of an independent auditor to obtain material audit evidence interferes with the audit of the issuer's financial statements. Financial institutions and other entities which provide information to auditors, such as audit confirmations, should provide accurate and complete information. Additionally, auditors should take steps to ensure that audit confirmations clearly request information necessary to the proper conduct of their audit responsibilities.

FOR FURTHER INFORMATION CONTACT: Laurel R. Bond or Edmund Coulson, (202–272–2130), Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing its views regarding the significance of oral guarantees to the financial reporting process. This release discusses the responsibility of financial institutions and other entities to report oral guarantees in response to audit confirmation requests.

I. Background

During the course of a private investigation, the Commission learned that an issuer engaged in schemes to manipulate and materially overstate its earnings and financial position. As a result of these schemes, the issuer materially overstated its income and net assets. These material misstatements were not discovered by the issuer's independent auditor, in part, because a bank responding to an audit confirmation request from the issuer's independent auditors failed to report a material oral guarantee.

One of the schemes to defraud in this matter involved the improper removal of a substantial amount of assets from the balance sheet of a foreign subsidiary of the issuer by means of a purported sale of such assets to an unrelated foreign company. The scheme was effected in order to raise cash to improve the subsidiary's debt-to-equity ratio. However, no sale occurred under generally accepted accounting principles ("GAAP") because the risks of ownership never passed to the unrelated foreign company. The issuer's subsidiary was obligated, by side letters and oral agreements, to repurchase an amount of assets sufficient to enable the unrelated foreign company to pay its debt incurred in purchasing the "sold" assets.

In order to obtain financing for the transaction, the unrelated foreign company sought standby letters of credit from several banks. In an effort to assist the unrelated foreign company in obtaining the standby letters of credit, the issuer told the banks it would issue comfort letters stating that the issuer had full knowledge of the obligations of its subsidiary arising from its agreement with the unrelated foreign company. A senior financial executive, with the approval of his superior, assured a representative of one bank that the issuer viewed its comfort letter as a guarantee. In making the decision to extend credit, the bank relied upon, among other things, the issuer's oral guarantee. However, the bank did not report the existence of the guarantee to the issuer's independent auditor in response to an audit confirmation request for information regarding guarantees, liabilities or other third party obligations. The bank's failure to respond accurately to the audit confirmation request caused, in part, the filing of financial statements with the Commission which were materially false and misleading.

II. Discussion

As a result of this private investigation, the Commission believes that the conduct and procedures of certain banks in responding to audit confirmation requests may impair the integrity of the financial reporting process, insofar as certain banks may be failing to report the existence of oral guarantees that may affect an issuer's financial statements.

The audit process generally involves the issuer's independent auditor confirming, with banks and other lending institutions ("financial institutions"), the existence and amount of account balances, loans and contingent liabilities, including guarantees, among other items. Additionally, auditors routinely confirm financial information with other entities that have business relationships with the issuer. The Commission is concerned that financial institutions and other entities which respond to such audit confirmation requests may fail to include information concerning contingent liabilities created by oral guarantees. These failures may be due to, among other things, lack of an adequate system for recording such contingent liabilities, a failure to understand that oral guarantees may create contingent liabilities, or an agreement to honor a borrower's request for confidential treatment.

In particular, the above-referenced Commission investigation revealed that a senior financial executive of the issuer told representatives of a large New York bank that the issuer viewed its comfort letter, provided in connection with the bank's extension of credit to an unrelated foreign company, as a guarantee. The executive further informed the bank, in substance, that in the event of a default by the unrelated foreign company, the issuer would make sure that the bank was paid and did not lose money on the transaction. The executive made it clear that his oral guarantee to the bank was a representation made on behalf of the issuer's senior management. In making the decision to extend credit, the bank relied upon the issuer's oral guarantee. However, the bank did not report the existence of the oral guarantee to the issuer's independent auditor in the bank's response to a subsequent audit confirmation request. The fact that an oral guarantee was given to the bank was not disclosed for at least two reasons. First, bank officers failed to consider whether the oral guarantee was an item which required disclosure on the audit confirmation request. Additionally, information of material significance concerning the issuance of the oral guarantee was routinely retained by the loan officers responsible for the issuer's account and was not placed in the central credit files. Such information was not accessible to the department and had primary responsibility for answering audit confirmation requests. As a result of the failure to report that an oral guarantee had been provided to the bank, the bank

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returned a false and misleading response to the audit confirmation request. The false and misleading response contributed to the issuer's failure to properly account for this transaction, the failure of the issuer's independent auditor to discover the improprieties in the issuer's financial statements, and therefore to the issuer's filing with the Commission materially false and misleading financial statements.

The Commission believes that it is critical that financial institutions and other entities which receive audit confirmation requests maintain a system by which information of material significance concerning guarantees and other contingent liabilities is available to those persons responding to audit confirmation requests and employ reasonable procedures to keep such information current, accurate and complete. Failure to maintain such a system may prevent auditors from receiving all information of material significance to the audit of the issuer's financial statements.

Even though representatives of the bank conceded that, in deciding to extend credit, the bank relied upon, among other things, the issuer's guarantees, representatives of both the issuer and the bank argued, as a matter of contract law, that oral guarantees were not legally binding under applicable state law and that only legally binding guarantees should be reported in response to an audit confirmation request. However, the Commission is of the view that, depending upon the facts and circumstances, oral guarantees, even if legally unenforceable, may have the same finacial reporting significance as written guarantees. Statement of Financial Accounting Standards No. 5, paragraph 12, states that material undertakings which in substance have the characteristics of a guarantee should be disclosed in financial statements.

Thus, whether oral or written, a material commitment which is in substance a guarantee should be reported. One factor, among others, in determining whether statements made by an issuer constitute an oral guarantee which should be reported is whether the financial institution relied upon the statements in making the decision to extend credit.

Guarantees and guarantees-in-substance can affect the accounting treatment for transactions. For example, Statement of Financial Accounting Standards No. 49 includes guarantees as indicia that a product financing arrangement is a borrowing rather than a sale. Therefore, financial institutions and other entities should report those oral arrangements which constitute guarantees-in-substance in response to an audit cinfirmation request.

Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (April 15, 1982) (47 FR 21028) is updated to:

1. Add a New Section 104, entitled as follows:

104. The Significance of Oral Guarantees to the Financial Reporting Process.

2. Include in Section 104 the Sections entitled "Background", "Discussion" and "Summary", identified as specified below

a. Background
b. Discussion
c. Summary

The codification is a separate publication issued by the SEC. It will not be published in the **Federal Register**/ Code of Federal Regulation System.

List of Subjects in 17 CFR Part 211

Accounting, Reporting and Recordkeeping requirements, Securities.

PART 211—[AMENDED]

Commission Action: Subpart A of 17 CFR Part 211 is amended by adding thereto reference to this release (FRR No. 22).

By the Commission.

Dated: December 12, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–30039 Filed 12–18–85; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 270

[Release No. 14711A; File No. S7–25–85]

Custody of Investment Company Assets Outside the United States; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments; correction.

SUMMARY: On September 11, 1985, the Commission issued a release [50 FR 37654; September 17, 1984] adopting amendments to clarify Rule 17f–5 (17 CFR 270.17f–5) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et. seq.*). The Commission is today amending that relese in order to correct an inadvertent error in those amendments.

FOR FURTHER INFORMATION CONTACT: Jack W. Murphy, Attorney, Office of Regulatory Policy (202) 272–2048..

Accordingly, in FR Doc. 85–22179, page 37655 in the issue of September 17, 1985, the amendatory language for number 2 is corrected to read as follows:

"2. Section 270.17f–5 is amended by adding paragraph (a)(4) and revising paragraphs (c)(2)(i) and (c)(2)(ii) as follows:" and the text of the rule is correctly designated as paragraph (a)(4).

Dated: December 16, 1985.

John Wheeler,

Secretary

[FR Doc. 85–30072 Filed 12–18–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R–85–1226; FR–1954]

Use of Loan Correspondents in Connection With FHA Mortgage Insurance

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Final rule.

SUMMARY: This rule revises the eligibility criteria for FHA loan correspondents by (1) increasing the net worth requirement from $5000 to $25,000, (2) permitting nonsupervised and governmental HUD-approved mortgagees to sponsor loan correspondents, (3) requiring, except under the direct endorsement program (where loans must be underwritten by the mortgagee-sponsor), that all loans be underwritten and closed in the loan correspondent's own name, and (4) permitting loan correspondents to maintain branch offices upon meeting an additional $25,000 net worth requirement for each branch office until an adjusted net worth of $100,000 is reached.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: John Coonts, Director, Office of Lender Activities and Land Sales Registration, Room 9146, Department of Housing and

Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755–6924. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 2, 1985 the Department published a proposed rule (50 FR 18680) to create a new category of approved program participants in the FHA single family mortgage insurance programs, to be known as commitment correspondents. (Commitment correspondents were proposed to be authorized, on behalf of HUD-approved mortgagees, to accept and process FHA loan applications, obtain commitments from HUD, and assign commitments to approved sponsor mortgagees. With respect to the single family Direct Endorsement program, commitment correspondents would be empowered to carry out all loan processing up to the point of actual loan closing and submission for endorsement to HUD.)

Included in the proposed rule, in addition to the above, were provisions that would revise 24 CFR 203.5 (Loan correspondents). Loan correspondents would be required, except in the case of mortgages insured under the Direct Endorsement program (24 CFR 200.163–200.164a), to process and close all mortgage loans in their own name. With respect to mortgages under the Direct Endorsement program, the underwriting would be carried out by the approved sponsor mortgagee. Section 203.5 was also proposed to be revised to (1) increase the adjustment net worth a loan correspondent must maintain from $5000 to $25,000, (2) permit HUD-approved nonsupervised and government institution mortgagees (not just supervised institutions) to sponsor loan correspondents, (3) permit loan correspondents to maintain branch offices for the processing of loan applications and the submission of applications for firm commitment, where the loan correspondent meets an additional net worth requirement of $25,000 for each branch until it reaches an adjusted net worth of at least $100,000 and (4) exempt loan correspondents from the warehouse line of credit requirements of § 203.4(b)(2) where there is a written agreement by a sponsor to fund all mortgages originated by the loan correspondent.

This rule adopts as final, with minor revisions, the provisions in the proposed rule relating to loan correspondents (24 CFR 203.5). It does not adopt the more comprehensive provisions of the proposed rule which would have established commitment correspondents as a new category of FHA program participants. In view of reservations concerning the commitment correspondent concept expressed in public comments on the proposed rule, as well as a continuing assessment of this concept within the Department since publication of the rule, the adoption of final regulatory provisions relating to commitment corespondents is being held in abeyance.

The Department received eight timely public comments concerning the proposed rule—four from individual business organizations and four from national or state associations (the Mortgage Bankers of America, the National Association of Homebuilders, the United States League of Savings Institutions and the Florida League of Financial Institutions). The comments expressed a number of reservations and concerns about (1) the possible role of commitment correspondents vis-a-vis current participants in the mortgage market; (2) potential problems with respect to quality control; and (3) questions concerning compliance with consumer protection and information requirements. Our responses to public comments in this rule, however, are limited to those relating to the loan correspondent provisions.

Only one substantive comment was received relating to loan correspondents. The U.S. League of Savings Institutions did not approve of the proposal to permit loan correspondents to be sponsored by nonsupervised morgtagees. The League felt that a nonsupervised lender could develop a significant volume of business through these relatively low capitalized originators (i.e., loan correspondents), and questioned whether HUD has the quality control system and auditing facilities necessary to prevent potentially servere losses that could occur.

The Department does not share the commenter's concern. The Department's monitoring systems are designed to assure that all types of approved lenders comply with HUD processing requirements, and we do not expect a nonsupervised lender using loan correspondents to originate poorer quality loans than would a supervised institution.

The revision to 24 CFR 203.5 (Loan Correspondents) contained in this final rule is the same as that found in the proposed rule, except that a provision in § 203.5(a) of the proposed rule limiting loan correspondents to single family mortgage transactions has been deleted. Although loan correspondence have, to date, limited their activities to the single family area, there is no reason why they should, by regulation, be restricted to this area, as was inadvertently done in the proposed rule. Also, a sentence is added to § 203.5(b)(4) making clear that a loan correspondent is fully responsible to the Commissioner for the actions of its branch offices. Nonsubstantive technical or clarifying changes have also been made.

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(a)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410.

This Rule was listed as item H–80–84 (Sequence Number 795) under Office of Housing in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44166, 44182), under Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance Program numbers are 14.117, 14.120, 14.123 and 14.133.

Under 5 U.S.C. 605(b) (The Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The use of loan correspondents in HUD's mortgage insurance programs enhances opportunities for both small and large business entities, and no new burdens on small entities are included in this rule.

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for approval under the

provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. §§3501–3520) and have been assigned OMB Control Number 2502–0005.

List of Subjects in 24 CFR Part 203

Mortgage insurance.

PART 203—[AMENDED]

Accordingly, 24 CFR Part 203 is amended as follows:

1. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203 and 211, National Housing Act (12 U.S.C. 1709, 1715b; sec. 7(d) Department of Housing and Urban Development Act, 42 U.S.C. 3536(d)

2. Section 203.5 is revised to read as follows:

§ 203.5 Loan correspondents.

(a) A loan correspondent is an institution that originates and closes HUD/FHA insured mortgage loans for sale to its sponsor or sponsors. Except for the Direct Endorsement program authorized in §§ 200.163 through 200.164a, it must process and close all loans in its own name. A loan correspondent may not sell insured mortgages to any mortgagee other than its sponsor or sponsors without the prior approval of the Commissioner, nor may it retain insured mortgages in its own portfolio. In connection with the Direct Endorsement program, a loan correspondent may not underwrite, but shall close in its own name, all loans for submission to HUD/FHA for insurance endorsement. Underwriting of Direct Endorsement loans shall be the responsibility of the loan correspondent's sponsor.

(b) A mortgagee may be approved as a loan correspondent if it meets the approval requirements of § 203.4, except that:

(1) Its approval must be requested by one or more sponsors that are HUD/FHA approved mortgagees under § 203.3, 203.4, or 203.7.

(2) It shall be exempt from the warehouse line of credit requirements of § 203.4(b)(2) where there is a written agreement by a sponsor to fund all mortgages originated by the loan correspondent.

(3) It shall have and maintain an adjusted net worth or trust estate of not less than $25,000 in assets acceptable to the Commissioner. Previously approved loan correspondents that have a net worth of less than $25,000 must meet this $25,000 net worth requirement on or before (insert date which is two years from effective date of rule).

(4) It may not, as authorized in § 203.4(c), maintain branch offices for the processing of loan applications and the submission of applications for a firm commitment without the prior approval of the Commissioner. Approval may be granted where the loan correspondent meets an additional $25,000 net worth requirement for each branch office it maintains until it has reached an adjusted net worth of not less than $100,000. Loan correspondents with an adjusted net worth of $100,000 or more may, with the prior approval of the Commissioner, open and maintain branch offices without meeting any additional net worth requirements. A loan correspondent shall remain fully responsible to the Commissioner for the actions of its branch offices.

(5) A loan correspondent and its sponsor or sponsors shall promptly notify the Commissioner upon termination of any loan correspondent agreement, and termination of its agreements with all its sponsors shall be cause for withdrawal of the loan correspondent's approval.

(Approved by the Office of Management and Budget under OMB control number 2502–0005)

Dated: December 13, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85–30084 Filed 12–18–85; 8:45 am]

BILLING CODE 4210–27–M

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 571

[Docket No. R–85–1228; FR–2016]

Community Development Block Grants for Indian Tribes and Alaskan Native Villages; Conflict of Interest

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts a proposed rule that advised that the Department intended to promulgate specific regulations governing conflict of interest situations for the Community Development Block Grant (CDBG) program for Indian Tribes and Alaskan Native Villages. This rule addresses those circumstances that are peculiar to Indian and Alaskan Native Communities.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Leroy P. Gonnella, Room 7134, Office of Program Policy Development, Office of Community Planning and Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 755–6092. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department published a proposed rule on June 24, 1985 (50 FR 25999) which explained that, generally, the conflict of interest provisions in 24 CFR 570.611, applicable to the CDBG entitlement program, are also applicable to the Indian CDBG programs, and that major portions have been included without change in this rule. However, as indicated in the proposed rule, this rule making is specifically intended to address certain conflict of interest situations that are unavoidable for grantees that are small Tribes and Villages. In order to proceed with their funded projects, these grantees now must request exceptions from the responsible HUD field office. Exceptions are usually granted, because the person affected is of the same group or class as the beneficiaries of the project. To eliminate the delay in grantees' projects while exceptions are being considered by HUD, the proposed rule added § 571.607(e) to provide for circumstances under which the conflict prohibition would not apply.

This final rule provides, in adopting § 571.607(e) unchanged from the proposed rule, that the grant recipient may make the exception under the described circumstances, provided that to do so will not result in a violation of Tribal or State laws on conflict of interest. Records showing the decisions reached by recipients on exceptions must be maintained for HUD review.

The proposed rule of June 24, 1985 invited public comment for a 60-day period ending August 23, 1985. One comment was received. The comment endorsed the rule as being beneficial to small Tribes and Villages, especially because it eliminated the time-consuming process involved in receiving HUD clearance in conflict of interest situations.

Other Information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public

inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule simplifies and reduces the requirements for grant recipients with respect to potential conflict of interest situations, but would impose no economic burden nor have a significant economic impact on these recipients.

This rule is listed as item number 920 (CPD–5–84; FR–2016) in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44166, 44202) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and have been assigned OMB Control Number 2506–0043.

The Catalog of Federal Domestic Assistance number is 14.223.

List of Subjects in 24 CFR Part 571

Community development block grants, Grant programs: housing and community development, Grant programs: Indians, Indians.

Accordingly, the Department amends 24 CFR Part 571 as follows:

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

1. The authority citation for 24 CFR Part continues to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Part 571, Subpart G is amended by adding a new § 571.607, to read as follows:

§ 571.607 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subrecipients (including those specified at § 570.204(c) of this title), the conflict of interest provisions in Attachment O of OMB Circulars A–102 (grantees), and A–110 (subrecipients) shall apply.

(2) In all cases not governed by Attachment O of OMB Circulars A–102 and A–110, the provisions of this section shall apply. Such cases include the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 570.202; or grants, loans, and other assistance to businesses, individuals and other private entities under § 570.203 or § 570.204).

(b) *Conflicts prohibited.* The general rule is that no persons described in paragraph (c) of this section who have or had any functions or responsibilities with respect to Community Development Block Grant (CDBG) activities assisted under this Part, or who are in a position to participate in a decision, or gain inside information about such activities, may obtain a personal or financial interest or benefit from these activities. Further, such persons may not have an interest in any contract, subcontract, or agreement concerning such activities; and such persons may not, during their employment or tenure in office and for one year thereafter , have an interest in the proceeds from these activities, either for themselves or for those with whom they have family or business ties. This paragraph does not apply to approved eligible administrative or personnel costs.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient, or of any designated public agencies, or subrecipients under § 570.204 of this title, receiving funds under this Part.

(d) *Exceptions requiring HUD approval.*

(1) *Threshold requirements.* Upon the written request of a recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

(i) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate Tribal laws on conflict of interest, or applicable State laws.

(2) *Factors to be considered for exceptions:* In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(v) Whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(vi) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply—*

(1) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of Tribal or State laws on conflict of

interest would result, the prohibition does apply.

(2) All records pertaining to the recipient's decision under this section shall be maintained for HUD review upon request.

Date: December 13, 1985.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 85-30082 Filed 12-18-85; 8:45 am]

BILLING CODE 4210-29-M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 885

[Docket No. N-85-1562; FR-2174]

Loans for Housing for the Elderly or Handicapped; Fiscal Year 1986 Interest Rate

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of section 202 Loan Interest Rate-Fiscal Year 1986.

SUMMARY: This Notice establishes 9.25 percent per annum as the interest rate for loans that are made during Fiscal Year 1986 for housing for the elderly or handicapped under section 202 of the Housing Act of 1959.

FOR FURTHER INFORMATION CONTACT: Robert W. Wilden, Director, Assisted Elderly and Handicapped Housing Division, 451 Seventh Street, SW., Room 6136, Washington, DC 20410, telephone (202) 426-8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 24 CFR 885.410(g)(2), the Secretary of Housing and Urban Development is required to publish an annual notice establishing the interest rate for loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959. This interest rate may not exceed either:

(1) A rate determined by the Secretary of the Treasury to be the average interest rate on all interest-bearing obligations of the United States then forming a part of the public debt computed at the end of the fiscal year immediately prior to the date on which the loan is made, plus an allowance to cover administrative costs and probable losses under the program. (This allowance has been determined by the Secretary of Housing and Urban Development to be one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods); or

(2) Any statutory ceiling on interest rates or allowances for administrative costs and probable losses for such loans as may be applicable. (24 CFR 885.410(g)(1)).

On November 25, 1985, the President signed the Department of Housing and Urban Development-Independent Agencies Appropriations Act, 1986 (Pub. L. 99-160). This act provides that section 202 loans made in Fiscal Year 1986 shall bear an interest rate that does not exceed 9.25 percent per annum (including the allowance for administrative costs and probable losses).

The interest rate on the described interest-bearing obligations of the United States at the end of Fiscal Year 1985 (as determined by the Secretary of the Treasury) was 10.25 percent per annum. This rate plus the .25 percent per annum allowance for administrative costs and probable losses yields an interest rate of 10.50 percent per annum, a rate substantially in excess of 9.25 percent per annum. Accordingly, this Notice announces that the Secretary of HUD has established the interest rate for section 202 loans made during Fiscal Year 1986 at the statutory ceiling of 9.25 percent per annum.

Under 24 CFR 50.20(l) an environmental finding is not necessary because the statutorily required establishment of interest rates is among matters that are categorically excluded from the environmental requirements of 24 CFR Part 50.

Authority: (sec. 202, Housing Act of 1959, U.S.C. 1701q; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)).

Dated: December 12, 1985.

Janet Hale,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 85-30002 Filed 12-18-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

Criminal Division; Policy With Regard To Open Judicial Proceedings

28 CFR Part 50

[Order No. 1115-85]

AGENCY: U.S. Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends 28 CFR 50.9 to assign authority to authorize court closures to the Deputy Attorney General and the Associate Attorney General based upon the source of the closure request. This action is being taken to ensure that the authorizing official is familiar with the activities of the Division which makes the request. Requests originating from Divisions supervised by the Deputy Attorney General will require Deputy Attorney General authorization; ones originating from Divisions supervised by the Associate Attorney General will require authorization by the Associate Attorney General.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: David M. Simonson, Office of Enforcement Operations, Legal Support Unit, Criminal Division, Department of Justice, Washington, DC 20530, (202) 724-6672.

SUPPLEMENTARY INFORMATION: This order amends paragraphs (d) (1) and (2) of 28 CFR 50.9 and changes the method by which the proper authorizing official is determined. Authorization to consent to, or to request, the closure of a court proceeding will now be given by the official who has supervisory authority over the Division from which the request originates, rather than by the Deputy Attorney General in civil cases and the Associate Attorney General in criminal cases.

This Order is not a rule within the meaning of either Executive Order 12291, section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

List of Subjects in 28 CFR Part 50

Administrative practice and procedure.

PART 50—[AMENDED]

By virtue of the authority vested in me, as Attorney General by 28 U.S.C. 509, 510, 516, and 519, and 5 U.S.C. 301, § 50.9 of Title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 50 of Title 28, Code of Federal Regulations, is added to read as follows:

Authority: 28 U.S.C. 508, 509, 510; 5 U.S.C. 301, 552, 552a; 15 U.S.C. 16(d).

2. The authority citations after all the sections in the Part are removed.

3. 28 CFR Part 50 is amended by revising paragraph (d) of § 50.9 to read as follows:

§ 50.9 Policy with regard to open judicial proceedings.

* * * * *

(d) A government attorney shall not move for or consent to the closure of any proceeding, civil or criminal, except with the express authorization of:

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(1) The Deputy Attorney General, or,
(2) The Associate Attorney General, if the Division seeking authorization is under the supervision of the Associate Attorney General

* * * * *

Dated: October 18, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85-29991 Filed 12-18-85; 8:45 am]

BILLING CODE 4410-01-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2203

Regulations Implementing the Government in the Sunshine Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule with request for comments.

SUMMARY: This document changes the procedures followed by the Occupational Safety and Health Review Commission in announcing its meetings and deciding whether to close them to the public. It states the Commission's intention to follow simplified procedures authorized under the Sunshine Act in announcing and closing its regularly-scheduled meetings. It also establishes separate, more formal procedures governing the public announcement of all other meetings of the Commissioners and their decisions to open or close those meetings. In addition, it includes an invitation from the Commission for public comment on its revised procedures. The Commission's present Sunshine Act regulations require it to follow formal procedures for announcing all Commission meetings even though the regularly-scheduled meetings are almost always closed to the public because they involve only the disposition of contested cases. The revised regulations allow the Commission to use a less costly and less formal procedure when the meeting will be closed on this basis.

EFFECTIVE DATE: January 21, 1986.

ADDRESSES: Comments may be mailed to: Earl R. Ohman, Jr., General Counsel, Occupational Safety and Health Review Commission, Room 402-A, 1825 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr. at (202) 634-4015.

SUPPLEMENTARY INFORMATION:

Statutory Requirements

These revised regulations implement the Government in the Sunshine Act, 5 U.S.C. 552b ("Sunshine Act"). The Sunshine Act creates two alternative procedures for announcing agency meetings and deciding whether to close them to the public. Under the Act's formal procedures, a decision to close all or part of a meeting must be made before the meeting, a public announcement must be made at least one week before the meeting, and notice of the meeting must be published in the **Federal Register**. Under the Act's simpler expedited closing procedure, the decision to close a meeting may be made at the beginning of the meeting, notice in the **Federal Register** is not required, and the only requirement concerning announcement of the meeting is that the agency provide "public announcement of the time, place and subject matter of the meeting . . . at the earliest practicable time." 5 U.S.C. 552b(d)(4).

Expedited Closing Procedure

An agency seeking to operate under the expedited closing procedure must meet two prerequisites: (a) The agency must be qualified to use this procedure, and (b) the agency must adopt regulations implementing the procedure. See 5 U.S.C. 552b(d)(4). The Commission has determined that it is qualified to use the expedited closing procedure because almost all of its meetings have been closed to the public on the ground that they involve only formal agency adjudication of particular cases. See §§ 2203.4 (a) and (b). The Commission meets the second prerequisite by adopting these regulations, which implement the expedited closing procedure.

Commission Experience Under the Present Regulations

The Commission adopted regulations implementing the Sunshine Act in March 1977. 42 FR 15414 (Mar. 22, 1977). The present regulations established a hybrid procedure. While the decision on closing a Commission meeting was made at the beginning of the meeting, as authorized under the expedited closing procedure, the public announcement of Commission meetings was governed by the Sunshine Act's formal procedures, including the requirement of publication in the **Federal Register**.

The Commission's experience under its present regulations has not been satisfactory. Currently, the Commmission meets on a weekly basis to consider and decide contested cases under the Occupational Safety and Health Act of 1970. Each week the Commission posts a formal public announcement of the meeting to be held the following week. In addition, it publishes, at a significant cost, a formal announcement of each meeting in the **Federal Register**. The Commission traditionally has closed all such meetings because they involve only "formal agency adjudication." See 5 U.S.C. 552b(c)(10). As a result, there has also been little or no public response to the Commission's announcements. The Commission has therefore concluded that the costly and time-consuming public announcement procedures of its present regulations are unnecessary and wasteful.

Procedural Changes

These revised regulations make several changes in the Commission's procedures for announcing its meetings and determining whether to close them to the public. The regulations create two categories of Commission meetings: (a) Regularly-scheduled meetings and (b) all other meetings of the Commission members. The regulations distinguish between these two types of meetings by identifying which matters may be considered at which type of meeting. The regulations also establish different procedures for announcing the two types of Commission meetings and for determining whether to close them.

In addition, these revised regulations clarify the statutory definition of the key term "meeting." See 5 U.S.C. 552b(a)(2). In particular, a distinction is made between meetings of the Commissioners, which are governed by these regulations, and informal background discussions among the Commissioners, which are not. This distinction is recognized in case law interpreting the Sunshine Act. See *F.C.C. v. ITT World Communications, Inc.*, 104 S.Ct. 1936 (1984), quoting S. REP. NO. 94-354, 94th Cong., 1st Sess. 19 (1975).

Regularly-Scheduled Meetings

The public announcement of the Commission's regularly-scheduled meetings is included in these revised regulations. See § 2203.4(c). This notice will be supplemented by posted notices only when the Commission cancels a regularly-scheduled meeting or reschedules it for another time or day. Notice of the Commission's regularly-scheduled meetings will no longer be published in the **Federal Register**.

Other Commission Meetings

If the Commission has official business that cannot be conducted in a regularly-scheduled meeting, it will schedule a special meeting or meetings for the purpose of conducting that business. The public announcement of

these meetings and decisions to close these meetings in whole or in part will be made in accordance with the Sunshine Act's formal procedures, including publication of notice of the meetings in the **Federal Register**. See § 2203.5.

Public Comment

This document revises agency rules of procedure and practice. The Commission therefore has the authority, under 5 U.S.C. 553(b)(A), to adopt these revised regulations without prior notice or public comment. Because it wishes to put these revised procedures into effect as soon as possible to avoid unnecessary expense, the Commission adopts these revised regulations as its final rule. Nevertheless, the Commission values any comments that the public may have on these matters. Public comment is accordingly invited. Comments may be mailed to the General Counsel at the address previously stated.

List of Subjects in 29 CFR Part 2203

Sunshine Act, Information, Public meetings.

For the reasons set out in the preamble, Part 2203 of Chapter XX, Title 29 of the Code of Federal Regulations is revised to read as follows:

PART 2203—REGULATIONS IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

2203.1 Purpose and scope.
2203.2 Definitions.
2203.3 Public attendance at Commission meetings.
2203.4 Procedures applicable to regularly-scheduled meetings.
2203.5 Procedures applicable to other meetings.
2203.6 Certification by the General Counsel.
2203.7 Transcripts, recordings and minutes of closed meetings.

Authority: 29 U.S.C. 661(g); 5 U.S.C. 552b(d)(4); 5 U.S.C. 552b(g).

§ 2203.1 Purpose and scope.

This part applies to all meetings of the Occupational Safety and Health Review Commission. Its purpose is to implement the Government in the Sunshine Act, 5 U.S.C. 552b. The rules in this part are intended to open to public observation, to the extent practicable, the meetings of the Commission, while preserving the Commission's ability to fulfill its adjudicatory responsibilities and protecting the rights of individuals.

§ 2203.2 Definitions.

For the purposes of this part:

"Expedited closing procedure" means the simplified procedures described at 5 U.S.C. 552b(d)(4) for announcing and closing certain agency meetings.

"General Counsel" means the General Counsel of the Commission, the Deputy General Counsel, or any other person designated by the General Counsel to carry out his responsibilities under this part.

"Meeting" means the deliberations of at least two Commissioners, where such deliberations determine or result in the joint conduct or disposition of "official Commission business." A conference telephone call among the Commissioners is a "meeting" if it otherwise qualifies as a "meeting" under this paragraph. The term does not include: (a) The deliberations required or permitted under §§ 2203.4(d) and 2203.5, e.g., a discussion of whether to open or close a meeting under this part; (b) business that is conducted by circulating written materials sequentially among the Commissioners for their consideration on an individual basis; (c) a gathering at which the Chairman of the Commission seeks the advice of the other Commissioners on the carrying out of a function that has been vested in the Chairman, by statute or otherwise; or (d) informal discussions of the Commissioners that clarify issues and expose varying views but do not effectively predetermine official actions.

"Official Commission business" means matters that are the responsibility of the Commission acting as a collegial body, including the adjudication of litigated cases. The term does not include matters that are the responsibility of the Commission's Chairman. See, e.g., 29 U.S.C. 661(e).

"Regularly-scheduled meetings" means meetings of the Commission that are held at 10:00 a.m. on Thursday of each week, except on legal holidays. The term includes regularly-scheduled meetings that have been rescheduled for another time or day.

§ 2203.3 Public attendance at Commission meetings.

(a) *Policy.* Commissioners will not jointly conduct or dispose of official Commission business in a meeting unless it is conducted in accordance with this part. Because the Commission was created for the purpose of adjudicating litigated cases, it can be expected that most of its meetings will be closed to the public. However, meetings that do not involve Commission adjudication or discussion of issues in cases before it will be open to the extent practicable. The public will not be allowed to participate in discussions during open meetings.

(b) *Grounds for closing meetings.* Except where the Commission finds that the public interest requires otherwise, all or part of a meeting may be closed to the public, and information about a meeting may be withheld from the public, where the Commission determines that the meeting, or part of the meeting, or information about the meeting, is likely to:

(1) Disclose matters that are: (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of title 5), *Provided,* That such statute (i) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person are privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would: (i) Interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trail or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would:

(i) Be likely to (A) lead to significant financial speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution, or

(ii) Be likely to significantly frustrate implementation of a proposed Commission action, except where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, discussion or disposition by the Commission of a particular case of formal Commission adjudication.

(c) *Regularly-scheduled meetings.* The Commission will hold regularly-scheduled meetings for the purpose of considering matters that may properly be closed to the public under paragraph (b)(4), (8), (9)(i) or (10) of this section, or any combination thereof. Primarily, these meetings will be held for the purpose of considering or disposing of particular cases of formal Commission adjudication. The Commission therefore expects to close all regularly-scheduled meetings. The procedures established in § 2203.4 apply to the public announcement and closing of regularly-scheduled meetings.

(d) *Other Commission meetings.* All other meetings of the Commission will be open to public observation unless the Commission determines that all or part of a meeting is likely to disclose information of the kind set forth in any subparagraph of paragraph (b) of this section. The procedures established in § 2203.5 apply to the public announcement of Commission meetings that are not regularly scheduled and to the total or partial closing of these meetings.

§ 2203.4 Procedures applicable to regularly-scheduled meetings.

(a) *Statutory authority to adopt expedited closing procedure.* The Government in the Sunshine Act provides, at 5 U.S.C. 552b(d)(4), that qualified agencies may establish by regulation expedited procedures for announcing and closing certain meetings. Specifically, "[a]ny agency, a majority of whose meetings may properly be closed to the public pursuant to paragraph (4), (8), (9)(A), or (10) of subsection (c) [of the statute], or any combination thereof, may provide by regulation for the closing of such meetings or portions thereof [through the expedited closing procedure]." See §§ 2203.3(b)(4), (8), (9)(i) and (10), which are equivalent to the referenced paragraphs of the statute. The Commission had determined, for the reasons stated in paragraph (b) of this section, that it is qualified to adopt implementing regulations under 5 U.S.C. 552b(d)(4). It hereby announces that it will follow the expedited closing procedure authorized under that statutory provision in conducting its regularly-scheduled meetings.

(b) *Commission qualification to adopt expedited closing procedure.* The Commission has determined that a majority of its meetings may be closed to the public under 5 U.S.C. 552b(c)(10). See § 2203.3(b)(10). The Commission is an adjudicatory agency that has no regulatory functions. It was established to resolve disputes arising out of enforcement actions brought by the Secretary of Labor under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678. *See* 29 U.S.C. 659(c). The Commission's experience under the Government in the Sunshine Act has been that almost all of its meetings have been closed, in whole or in part, under 5 U.S.C. 552b(c)(10) because they involved only formal agency adjudication of specific cases.

(c) *Announcements.* Regularly-scheduled meetings of the Commission will be held at 10:00 a.m. every Thursday, except for legal holidays, in the Hearing Room (Suite 410) of the Commission's national office at 1825 K Street NW., Washington, DC. If a regularly-scheduled meeting is rescheduled, public announcement of the time, date and place of the meeting will be made at the earliest practicable time by posting a notice in a prominent place at the Commission's national office. If a regularly-scheduled meeting is cancelled, a notice of cancellation will be posted in the same manner. Information about the subject of each regularly-scheduled meeting will be made available in the Office of the General Counsel, telephone number (202) 634–4015, at the earliest practicable time. However, no information that may be withheld under § 2203.3(b) will be made available, and individual items may be added to or deleted from the agenda at any time. Inquiries from the public regarding any regularly-scheduled meeting will be directed to the Office of the General Counsel.

(d) *Voting.* At the beginning of each regularly-scheduled meeting, the Commission will vote on whether to close the meeting. No proxy vote will be permitted and the vote of each Commissioner will be recorded. This record of each Commissioner's vote will be made available to the public at the Commission's national office immediately after the meeting.

§ 2203.5 Procedures applicable to other meetings.

(a) *Announcements.*—(1) *Meetings announced.* Public announcement will be made of every meeting that is not a regularly-scheduled meeting. This announcemet will state the time, place, and subject of the meeting, whether it is to be open or closed, and the name and phone number of the person designated to respond to requests for information about the meeting. The announcement will be made at least one week before the meeting unless at least two Commissioners determine by a recorded vote that Commission business requires that such meeting be called at an earlier date. In that case, the Commission will make its public announcement at the earliest practicable time.

(2) *Changes announced.* The time or place of a meeting may be changed following the public announcement required by paragraph (a)(1) of this section, but only if public announcement of the change is made at the earliest practicable time. The subject of a meeting, or the determination by the Commission to open or close all or part of a meeting, may also be changed following the public announcement required by paragraph (a)(1) of this section; however, these changes may be made only if: (i) At least two Commissioners determine by recorded vote that Commission business so requries and that no earlier announcement of the change was possible and (ii) public announcement of the change and the vote of each Commissioner on the change is made at the earliest practicable time.

(3) *Form of announcements.* The announcements requried under paragraph (a) of this section will be made by posting a notice in a prominent place at the Commission's national office. In addition, immediately following each announcement required by paragraph (a) of this section, notice of the same matters described in the posted notice will also be submitted for publication in the **Federal Register.**

(b) *Voting.*—(1) *Requirement that vote be taken.* Action to close all or part of a meeting that is not regularly scheduled or to withhold information about a meeting that is not regularly scheduled, under any paragraph of § 2203.3(b), will be taken only when at least two

Commissioners vote to take the proposed action.

(2) *Separate votes required.* A separate vote of the Commissioners will be taken with respect to each Commission meeting or each part of a meeting that is proposed to be closed under paragraph (b) of this section or with respect to any information that is proposed to be withheld under paragraph (b) of this section.

(3) *Single vote on a series of meetings.* A single vote may be taken with respect to closing all or part of a series of meetings under paragraph (b) of this section, or with respect to any information concerning a series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in the series.

(4) *Public requests to close meetings.* Any person whose interest may be directly affected by a portion of an open meeting may request that the Commission close that portion to the public for any of the reasons referred to in paragraph (b) (5), (6) or (7) of § 2203.3. Upon the motion of any Commissioner, the Commission will vote by recorded vote whether to grant the request.

(5) *Proxy votes; recording of votes.* No proxy vote will be permitted for any vote required under paragraph (b) of this section. The vote of each participating Commissioner will be recorded.

(6) *Public announcement of votes.* Within one day after any vote taken under paragraph (b) of this section, the vote of each Commissioner on the question will be made publicly available at the Commission's national office. If any part of a meeting is to be closed under paragraph (b) of this section, a full written explanation of the Commission's action, together with a list of all persons expected to attend the meeting and their affiliation, will be made publicly available at the Commission's national office within one day after the vote to close.

§ 2203.6 Certification by the General Counsel.

For every meeting closed under any provision of these rules, the General Counsel will be asked to certify before the meeting that in his opinion the meeting may properly be closed to the public, and to state which exemptions he has relied upon. A copy of this certification, together with a statement (from the Commissioner presiding over the meeting) setting forth the time and place of the meeting and the persons present, shall be retained by the Commission as part of the transcript, recording or minutes of the meeting described in § 2203.7.

§ 2203.7 Transcripts, recordings and minutes of closed meetings.

(a) *Record of meeting.* The Commission will make a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public. However, if all or part of a meeting is closed under paragraph (b)(8), (9)(i) or (10) of § 2203.3, the Commission shall maintain either such a transcript or recording, or a set of minutes. Such minutes will fully and clearly describe all matters discussed and will provide a full and accurate summary of any actions taken, and the reasons for the actions. The minutes will also include a description of each of the views expressed on any item and a record of any roll call vote (reflecting the vote of each Commissioner on the question). In addition, the minutes will identify all documents considered in connection with any action.

(b) *Public access to records.* The Commission will make promptly available to the public, at its national office, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines to contain information which may be withheld under § 2203.3(b). Copies of the transcript, the minutes, or a transcription of the recording disclosing the identity of each speaker, with the deletions noted in the preceding sentence, will be furnished to any person at the actual cost of duplication or transcription. Requests to inspect or to have copies made of any transcript, electronic recording or set of minutes of any meeting, or any item(s) on the agenda of any meeting, should be made in writing to the General Counsel at the Office of the General Counsel, Occupational Safety and Health Review Commission, Room 402–A, 1825 K Street, NW., Washington, DC 20006. The request should identify the time, date, and place of the meeting and briefly describe the items sought. The Commission will maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting, or closed portion of a meeting, for a period of at least two years after the meeting, or until one year after the conclusion of any Commission proceeding with respect to which all or part of the meeting was held, whichever occurs later.

Dated: December 11, 1985.

E. Ross Buckley,

Chairman.

Dated: December 11, 1985.

Robert E. Rader, Jr.,

Commissioner.

Dated: December 13, 1985.

John R. Wall,

Commissioner.

[FR Doc. 85–30023 Filed 12–18–85; 8:45 am]

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VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: December 13, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202–389–3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on

manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act Executive Order 12291

For the reasons discussed in the May 7, 1981, **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: December 12, 1985.

Harry N. Walters,

Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date: (38 U.S.C. 1819(f))

(1) Effective December 13, 1985, 13 percent simple interest per annum for a loan which finances the purchases of a manufactured home unit only.

(2) Effective December 13, 1985, 12½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective December 13, 1985, 12½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10½ centum per annum, effective December 13, 1985, the interest rate on any home or condominium loan, other that a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 10½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10¾ per centum per annum, effective December 13, 1985, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 10¾ per centum per annum. (38 U.S.C. 1083(c)(1))

(c) Effective December 13, 1985, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 12 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 10½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 12 percent per annum. (38 U.S.C. 1811 (d)(1) and (2)(A))

* * * * *

[FR Doc. 85–30020 Filed 12–18–85; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 799

[OPTS-42059B; FRL-2940-5]

1,1,1-Trichloroethane; Final Test Standards and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On October 10, 1984 EPA issued a final rule under section 4(a) of the Toxic Substances Control Act (TSCA) requiring that manufacturers and processors of 1,1,1-trichloroethane (TCEA, CAS No. 71–55–6) test this chemical for developmental toxicity. In August 1985, the Agency proposed that the protocols and schedule submitted by an industry consortium be adopted as the test standings and reporting requirements for TCEA under this test rule. EPA has reviewed public comments on the proposal and has decided to promulgate a final rule that specifies these protocols and schedule as the test standards and reporting requirements for TCEA.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271; February 21, 1985), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on January 2, 1986. This rule shall become effective on February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW, Washington, DC 20460, Toll free: (800–424–9065), in Washington, DC: (544–1404), outside the U.S.A: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 10, 1984 (49 FR 39810), EPA issued a final Phase I rule under section 4(a) of TSCA to require testing of TCEA for developmental toxicity. The Agency is now promulgating a final Phase II rule specifying that the industry-submitted protocols and schedule be the test standards and reporting requirements for this testing. This test rule for 1,1,1-trichloroethane is being promulgated under 40 CFR 799.4400.

I. Background

This document is part of the implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

1,1,1-Trichloroethane (TCEA, CAS No. 71–55–6) was designated by the Interagency Testing Committee (ITC) for priority testing consideration (43 FR 16684; April 19, 1978). EPA promulgated in the **Federal Register** of October 10, 1984 (49 FR 39810), a final Phase I rule requiring testing of TCEA. EPA based the final testing requirements for TCEA on the authority of section 4(a)(1)(B) of TSCA. The Agency found that TCEA is produced in substantial quantities and that there is substantial occupational and consumer exposure to TCEA resulting from its manufacture, processing, and use. For a detailed discussion of EPA's findings and testing requirements for TCEA refer to the final Phase I rule. In accordance with the Test Rule Development and Exemption Procedures for two-phase rulemaking in 40 CFR Part 790, persons subject to this rule were required to submit letters of intent to perform the testing or exemption applications. Those submitting letters of intent were required to submit proposed study plans and schedules for the testing required in the final Phase I rule.

On December 20, 1984, a consortium of U.S. manufacturers and an importer of TCEA, known as the Halogenated Solvents Industry Alliance (HSIA), notified EPA of their intent to sponsor the testing required in the Phase I test rule (Ref. 7). HSIA submitted proposed study plans on February 21, 1985 and April 17, 1985. In the **Federal Register** of August 7, 1985 (50 FR 31895), EPA proposed that the submitted protocols and schedules be adopted as the test standards and reporting requirements for the testing of TCEA. EPA is now promulgating a final Phase II rule requiring the HSIA to conduct this testing in accordanoe with the proposed test standards and reporting requirements.

II. Proposed Test Standards

The HSIA, comprised of Dow Chemical Co., ICI Americas, Inc., PPG Industries, Inc., and Vulcan Materials Co., notified EPA of their agreement to sponsor the testing required in the final Phase I rule for TCEA in 40 CFR 790.4400. HSIA has submitted proposed study plans (Refs. 1 through 5) to conduct the following tests: Inhalation Developmental Toxicity Probe Study in rabbits; Inhalation Developmental Toxicity Study in rabbits; Inhalation Developmental Toxicity Probe Study in rats; and Inhalation Developmental Toxicity Study in rats. HSIA stated that these tests will be conducted in accordance with EPA TSCA Good Laboratory Practice Standards as set forth in 40 CFR Part 792.

Exposure levels of 0, 1,000, 3,000, and 6,000 parts per million (ppm) for 6 hr/day were proposed for both the rat (days 6 through 15 or gestation) and rabbit (days 6 through 18 of gestation) probe studies, with exposure levels for the full inhalation developmental toxicity studies based on results of the probe studies. TCEA from a commercial source stabilized with less than 0.1 percent butylene oxide will be used as the test material. It was proposed that either Sprague Dawley or Fisher 344 rats and New Zealand white rabbits would be used for this testing. The full protocols are available in the public docket for this action. The protocols submitted by HSIA have been reviewed by the Agency and found to conform to the TSCA Health Effects Test Guidelines for Inhalation Toxicity Testing. The Agency proposed that these protocols be adopted as test standards for performing the developmental toxicity testing of TCEA required under 40 CFR 799.4400.

III. Proposed Reporting Requirements

HSIA proposed that if the protocol were made final in 1985, the testing could begin in the second quarter of 1986. The U.S. District Court in its final order for NRDC v. EPA required issuance of a final Phase II rule for TCEA by March 1986 (Ref. 6).

HSIA also proposed that within 90 days after the effective date of the final Phase II rule establishing the test standards, the manufacturers would make a final selection of the testing facility. The testing would be initiated within 6 months after the effective date of the final Phase II rule. Final reports of the probe studies would be submitted by week 36 for rabbits and week 37 for rats. The final report for the complete study on rabbits would be submitted by week 61. The final report for the complete study in rats would be submitted by week 70 (Ref. 5). EPA proposed that testing be initiated within 6 months and results reported to the Agency within 16 months of the effective date of the final Phase II rule for TCEA. In addition, it was proposed that quarterly progress reports be submitted to the Agency.

As required by TSCA section 4(d), the Agency plans to publish in the **Federal Register** a notice of the receipt of any test data submitted under this test rule within 15 days after receipt of the data. Except as otherwise provided in TSCA

section 14, such data will be made available for examination by any person.

IV. Response to Public Comments

The Agency received comments from Vulcan Chemicals and the HSIA. Both Vulcan Chemicals and the HSIA reiterated the HSIA's position that the rat probe study should be sufficient to characterize the development toxicity of TCEA in rats if the maternal toxic dose is greater than 3,000 ppm (Refs. 8 and 9). As stated in the final Phase I rule and the proposed test standard rule, the Agency believes that both the probe and full inhalation developmental toxicity studies in rats must be conducted to fully characterize the developmental toxicity of TCEA. The Agency's decision is partially based upon developmental toxicity test results submitted by industry that demonstrate that probe study results alone are inadequate for risk assessment, and at best can be used to set concentrations for definitive testing (Ref. 10). Therefore, the Agency has rejected HSIA's proposed modification to the test rule.

V. Final Phase II Test Rule

A. Test Standards

The protocols submitted by HSIA (Refs. 1 through 5) that specify test methods and conditions for conducting both probe and definitive inhalation developmental toxicity studies in rats and rabbits shall be the test standards for the testing of TCEA required under 40 CFR 799.4400. The Agency believes that the conduct of the required studies in accordance with the HSIA-submitted protocols will assist in assuring that the resulting data are reliable and adequate.

B. Reporting Requirements

The Agency is requiring that all data developed under this rule be reported in accordance with the TSCA Good Laboratory Practice (GLP) Standards (40 CFR Part 792).

The Agency is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. On the basis of its experience with developmental toxicity testing, EPA is adopting HSIA's proposed schedule for the final Phase II rule. Accordingly, testing must be initiated within 6 months, and all results must be reported within 16 months of the effective date of the final Phase II rule. In additional quarterly progress reports must be submitted to the Agency.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

C. Judicial Review

The promulgation date for the TCEA Phase I final rule was established as 1 p.m. eastern standard time on October 24, 1984 (49 FR 39810, October 10, 1984). EPA received no petitions for review of that Phase I final rule. Accordingly, any petition for judicial review on this Phase II final rule will be limited to a review of the test standards and reporting requirements for TCEA established in this notice.

D. Other Provisions

Section 4 findings, required testing, test substance specifications, persons required to test, enforcement provisions, and the economic analysis are presented in the final Phase I rule for TCEA (49 FR 39810).

VI. Public Record

EPA has established a record for this rulemaking, [docket number OPTS–42059B]. This record includes basic information considered by the Agency in developing this rule and appropriate **Federal Register** Notices.

This record includes the following information:

A. Supporting Documentation

(1) ITC designation of 1,1,1-trichloroethane to the Priority List (43 FR 16684; April 19, 1978).

(2) Proposed Phase I rule on 1,1,1-trichloroethane (46 FR 30300; June 5, 1981).

(3) Final Phase I rule on 1,1,1-trichloroethane (49 FR 39810; October 10, 1984).

(4) Proposed Test Standards for 1,1,1-trichloroethane (50 FR 31895; August 7, 1985).

(5) TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(6) Judicial Review Under EPA-Administered Statutes (50 FR 7270; February 21, 1985).

(7) Final rule on two phase test rule development and exemption procedures (49 FR 39774; October 10, 1984).

(8) Written public comments and letters.

B. References

(1) HSIA. Protocol. 1,1,1-Trichloroethane (TCEA): Inhalation Developmental Toxicity Probe Study in Rats. Halogenated Solvents Industry Alliance. Washington, DC January 1985. Submitted to EPA February 21, 1985.

(2) HSIA. Protocol. 1,1,1-Trichloroethane (TCEA): Inhalation Developmental Toxicity Study in Rats. Halogenated Solvents Industry Alliance. Washington, DC January 1985. Submitted to EPA February 21, 1985.

(3) HSIA. Protocol. 1,1,1-Trichloroethane (TCEA): Inhalation Developmental Toxicity Probe Study in Rabbits. Halogenated Solvents Industry Alliance. Washington, DC January 1985. Submitted to EPA February 21, 1985.

(4) HSIA. Protocol. 1,1,1-Trichloroethane (TCEA): Inhalation Developmental Toxicity Study in Rabbits. Halogenated Solvents Industry Alliance. Washington, DC January 1985. Submitted to EPA February 21, 1985.

(5) HSIA. Letter from H. Farber to J. Moore, U.S. Environmental Protection Agency, Washington, DC 20460. April 17, 1985.

(6) Southern District of New York. Final Judgement and Order in *NRDC* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y., Oct. 30, 1984).

(7) HSIA. Letter to USEPA from Halogenated Solvents Industry Alliance. December 20, 1984.

(8) Vulcan Chemicals, Birmingham, AL 35253. Letter from Thomas A. Robinson to TSCA Public Information Office, U.S. Environmental Protection Agency, Washington, DC 20460. September 6, 1985.

(9) HSIA. Letter from H. Farber to TSCA Public Information Office, U.S. Environmental Protection Agency, Washington, DC 20460. September 20, 1985.

(10) Dow Chemical Co., Midland, MI 48640. Letter and final report on the 2-phenoxyethanol dermal teratogenicity probe study from R.L. Hagerman to Ms. Letitia Tahan, U.S. Environmental Protection Agency, Washington, DC 20460. December 24, 1984.

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E–107, 401 M St., SW., Washington, DC 20460.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of TCEA is discussed in the Phase I test rule (49 FR 39810).

This final Phase II test rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments received from OMB are included in the public record for this rulemaking.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are not a significant number of small businesses manufacturing TCEA.

2. Small processors will not perform testing themselves, or participate in the organization of the testing efforts.

3. Small processors will experience only very minor costs, if any, in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements, and any testing costs passed on to small processors through price increases will be small.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final Phase II rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033. No public comments on these requirements were submitted to the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 40 CFR Part 799

Testing; Incorporation by reference, Environmental Protection Agency, Environmental protection, Hazardous substances, Chemicals.

Dated: December 11, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, Chapter I of 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. In § 799.4400 by revising paragraph (d)(1)(ii) an adding new paragraph (d)(1)(iii), to read as follows:

§ 799.4400 1,1,1-Trichloroethane.

* * * * *

(d) * * *

(1) * * *

(ii) *Testing standards.* The testing shall be conducted in accordance with the following study plans developed by the Halogenated Solvents Industry Alliance (HSIA), 1612 K St., NW., Washington, DC 20006, and submitted to the Agency on February 21, 1985 and April 17, 1985: Inhalation Developmental Toxicity Probe Study in Rats, Inhalation Developmental Toxicity in Rats, Inhalation Developmental Probe Study in Rabbits, and Inhalation Development Toxicity Study in Rabbits, which are incorporated by reference. Copies of these study plans are located in the public record for this rule (Docket No. OPTS–42059B) and are available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. These incorporations by reference were approved by the Director of the Federal Register in January 1985. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register.** Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460.

(iii) *Reporting requirements.* (A) The developmental toxicity testing shall be initiated within 6 months of the effective date of the final Phase II rule.

(B) The developmental toxicity tests shall be completed and the final results submitted to the Agency within 16 months of the effective date of the final Phase II rule.

(C) Progress reports shall be submitted quarterly to the Agency beginning 90 days from the effective date of the final Phase II rule.

* * * * *

[FR. Doc. 85–30052 Filed 12–18–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84–654; RM–4702]

FM Broadcast Station in Corydon, IN, Fort Campbell, KY, and Clarksville, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allots Class B FM Channel 299 to Corydon, Indiana, as that community's second FM allotment in response to a petition filed by Ernest O. Sutton, Jr.

EFFECTIVE DATE: January 21, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Corydon, Indiana, Fort Campbell, Kentucky, and Clarksville, Tennessee); MM Docket No 84–654 RM–4702.

Adopted: November 25, 1985.

Released: December 13, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 Fed. Reg. 29426, published July 20, 1984, proposing the allotment of Class B FM Channel 299 to Corydon, Indiana, as that community's second FM allotment. The *Notice* was adopted in response to a petition filed by Ernest O. Sutton, Jr. ("petitioner"). Supporting comments were filed by petitioner reaffirming his intention to apply for the channel, if allotted. Comments were also filed by Fort Campbell Broadcasting Company ("FCBC") and Lifestyles, Inc. ("Lifestyles") to which petitioner filed reply comments.

2. The channel can be allotted in compliance with the minimum distance separation requirements with a site restriction 3.6 miles southwest to avoid short spacing to Station WDAO, Channel 299, Dayton, Ohio. The site restriction, however, increases the short spacing to Station WABD, Fort Campbell, Kentucky, and the *Notice* proposed that Station WABD, relocate its transmitter site 9 miles southwest of its present location to resolve the problem. FCBC comments that the petition was filed prior to March 1, 1984, the effective date of the *Report and Order* in BC Docket 80–90, 94 F.C.C. 2d 152 (1983) creating new FM Class C1 and C2 facilities which operate at reduced power and/or antenna heights reducing the separation requirements between adjacent channel facilities. FCBC states that it is currently operating "at less than maximum facilities due to FAA restrictions in the immediate area" and that if it continued to operate with reduced facilities as a Class C1 rather than a Class C, the proposed allotment of Channel 299 to Corydon would not require it to relocate. FCBC states that its "first preference" is to remain at its present location (as a Class C1 facility) rather than relocate its transmitter site as proposed in the *Notice*. Petitioner's reply comments supports the reclassification of Station WABD's facilities. Therefore, we shall allot Channel 299 to Corydon, Indiana, as requested and order the reclassification

herein. As proposed in the *Notice*, we are reallotting Channel 300 from Clarksville, Tennessee, to Fort Campbell, Kentucky, to reflect its actual usage in that community as a Class C1 facility.

3. Comments filed by Lifestyles suggests that petitioner's real intent is to serve the Louisville, Kentucky, market rather than the Corydon area. However, such allegations are generally not sufficient justification for denial of this proposal. We have held on other occasions, if the community's status is not in question, and a proponent believes that there is a need for additional local service, the Commission has no reason to question such judgment. See, *Chadron, Nebraska*, 52 R.R. 2d 1480 (1982) and *Sacramento, California*, 50 R.R. 2d 951 (1982).

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 21, 1986, the Table of FM Allotments, § 73.202(b) of the Rules, IS AMENDED with respect to the following community:

City	Channel No.
Clarksville, Tennessee	
Corydon, Indiana	243A, 299
Fort Campbell, Kentucky	300C1

5. It is further ordered, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Report and Order* to the following: Fort Campbell Broadcasting Company; Radio Station WABD (FM); P.O. Box 521; Fort Campbell, Kentucky, 42223.

6. It is further ordered, That this proceeding IS TERMINATED.

7. The period for filing applications for Class B FM Channel 299, Corydon, Indiana, will open on January 22, 1986 and close on February 21, 1986.

8. For further information concerning this proceeding contact D. David Weston, Mass Media Bureau (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-30016 Filed 12-18-85; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 50, No. 244
Thursday, December 19, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 422

[Docket No. 2797S]

Potato Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1986 and succeeding crop years in all states, except Florida and certain California counties, and for the 1987 and succeeding crop years the remaining California counties and Florida. The intended effect of this rule is to: (1) Add provisions for insurance coverage in New Jersey; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) change the end of the insurance period in Delaware, Maryland, Missouri, Nevada, North Carolina, and Virginia; (4) define the type of potatoes grown in Maine for insurance purposes and change the end of the insurance period in Maine to coincide with the harvest date for such potatoes; (5) shorten the length of time an insured has to give notice when claiming an indemnity; (6) change the cancellation and termination dates in Missouri, North Carolina, and Virginia; (7) introduce, on an experimental basis, a quality potato option amendment in certain counties in Idaho, Maine, North Dakota, Oregon, and Washington; (8) shorten the length of time for acreage to qualify for entry into the Certified Seed Program; (9) require records of production to be furnished by the cancellation date; (10) delete the term "marketable potatoes" and all reference thereto from the policy; (11) add a definition for the term "ASCS"; and (12) redefine "County" to provide that land identified by an ASCS Farm Serial Number and located outside the county will be included in the county. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than January 21, 1986, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the potato policy and in the certified seed potato option amendment are:

1. Section 2.c—Change the method of calculating the insured's share of the indemnity on crops transferred before harvest. This limits indemnities to the insured's insurable interest at the time of loss.

2. Section 7.b.—Add New Jersey for insurance coverage and provide an August 15 end of the insurance period date. Change the end of the insurance period for Delaware and Maryland from October 31 to August 15; Missouri from October 15 to July 15; North Carolina from October 15 to July 25; Virginia from October 15 to August 15; Nevada from October 15 to October 31. Add an end of insurance period of October 31 for Maine Russett type potatoes only and change the end of the insurance period for Maine (all other types) from October 31 to October 15. These date changes are made to reflect the harvesting periods for these areas.

3. Section 8.a.—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

4. Section 9.e.—Remove the word "marketable" and its related provision because it is no longer used in determining production.

5. Section 15.c.—Amend the recordkeeping requirement to require a producer to furnish records by the cancellation date. This change will provide a more up-to-date coverage based on the producer's actual production.

6. Section 15.e.—Add a December 31 cancellation and termination date for New Jersey. Change the cancellation and termination dates in Delaware, Maryland, Missouri, North Carolina, and Virginia from April 15 to December 31. This change is made to conform to the insurance period.

BEST COPY AVAILABLE

7. Section 17.—Add a definition for the term "ASCS". Amend the "County" definition to state that land identified by an ASCS Farm Serial Number and located outside the country will be included in the county. Delete the definition for "Marketable potatoes" since it no longer appears in the policy.

8. Add a Quality Potato Option Amendment to 7 CFR Part 422 applicable on an experimental basis in Cassia and Bingham counties, Idaho; Walsh County, North Dakota; Malheur and Umatilla counties, Oregon; Aroostook County, Maine; and Adams and Grant counties, Washington. The addition of the quality potato option amendment is in response to requests from growers and is limited to the above counties. As insuring experience is gained, consideration will be given to expansion into other counties

FCIC is soliciting comments on this proposed rule for 30 days after publication in the **Federal Register**. Written comments received pursuant to this notice will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 422

Crop insurance, Potatoes.

Proposed rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to revise and reissue the Potato Crop Insurance Regulations (7 CFR Part 422), effective for the 1986 and succeeding crop years in all states, except certain California counties and Florida; and for 1987 and succeeding crop years the remaining California counties and Florida to read as follows:

PART 422—POTATO CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

422.1 Availability of potato crop insurance.
422.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
422.3 OMB control numbers.
422.4 Creditors.
422.5 Good faith reliance on misrepresentation.
422.6 The contract.
422.7 The application and policy.
422.8 Certified seed potato option amendment.
422.9 Quality potato option amendment.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 422.1 Availability of potato crop insurance.

Insurance shall be offered under the provisions of this subpart on potatoes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation

§ 422.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for potatoes which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 422.3 OMB control numbers.

The OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 422.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 422.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the potato insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 422.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the potato crop as provided in the policy. The contract shall consist of the application, the policy, the Certified Seed Potato Option Amendment, if applicable, the Quality Potato Option Amendment, if applicable, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 422.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the potato crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during the such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract

contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a potato contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR § 400.37, § 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Potato Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato—Crop Insurance Policy

This is continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Through out this policy, "you" and "your" refer to the insured shown on the accepted application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the potatoes have been placed in storage;
(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(3) The failure to follow good potato irrigation practices;
(4) The failure or breakdown of irrigation equipment or facilities;
(5) The failure to follow recognized good potato farming practices;
(6) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(7) Any cause not specified in section a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be potatoes planted for harvest as certified seed stock or for human consumption, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be potatoes planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as detemined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured potatoes at the time of each planting period. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:

(1) Planted with noncertified seed unless allowed by the actuarial table;
(2) Which does not meet the rotation procedures required by the actuarial table;
(3) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(4) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(5) Which is destroyed, it is practical to replant to potatoes, and such acreage is not replanted;
(6) Initially planted after the final planting date contained in the actuarial table unless you agree, in writing, on our form to coverage reduction;
(7) Of volunteer potatoes;
(8) Planted to a type or variety of potatoes not established as adapted to the area or excluded by the actuarial table ;
(9) Planted with a crop other than potatoes; or
(10) Planted for the development or production of hybrid seed or for experimental purposes.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good potato irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter, spring, and summer-planted potatoes in the county in which you have a share;
b. The practice; and
c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in potatoes planted in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit for each planting period, the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the potato policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year.
(2) The premium reduction will be increase because of favorable experience.
(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year.
(4) Once the loss ratio exceeds .80, no further premium reduction will apply.
(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches when the potatoes are planted (in California and Florida insurance attaches when the potatoes are planted in each planting period).

b. Insurance ends at the earliest of:

(1) Total destruction of the potatoes on the unit;
(2) Harvesting or removal from the field;
(3) Final adjustment of a loss;
(4) The following dates of the calendar year in which potatoes are normally harvested:

(a) Missouri..... July 15;
(b) North Carolina..... July 25;
(c) Delaware, Maryland, New Jersey and Virginia..... August 15;
(d) Connecticut, Massachusetts, Nevada, New York, Oregon, Pennsylvania, Washington, and Idaho and Maine (Russet type only)..... October 31;

(e) Alaska.....October 1;
(f) Maine (all other types), all other states except California, and Florida..... October 15;
(g) California and Florida, the dates established by the actuarial table for each planting period.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the potatoes on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the potatoes and given written consent. We will not consent to another use until it is to late to replant for that planting period. You must notify us when such acreage has been put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of the unharvested potatoes (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) total destruction of the potatoes on the unit;

(b) harvest of the unit; or

(c) the calendar date for the end of the insurance period.

b. We must be given the opportunity to inspect any harvested production on any unit for which you have given notice of probable loss if such production will not be delivered directly to a processing plant.

c. You must obtain written consent from us before you destroy any of the potatoes which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the potatoes on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of potatoes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of potatoes to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in hundredweight) to be counted for a unit will include all harvested and appraised prouction.

(1) The extent of any loss may be determined at the time the potatoes are placed in storage or delivered to a processor.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good potato farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than the guarantee for any acreage from which the harvested production is disposed of without our prior written consent and such disposition prevents accurate determination of production; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of potatoes becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested potatoes may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the potatoes are damaged by hail or fire, appriasals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the potatoes are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such viodance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our prescribed form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to

us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all potatoes produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production of units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contact: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be cancelled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Prior to the cancellation date you must:

(1) Furnish to us, satisfactory production records for the crop year or the contract will be cancelled for the next crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood, or other natural disaster. (If this subsection (2) applies, the Field Acturial Office may assign a yield for the year for which the records are unavailable.)

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture will be the date such other payment and setoff are approved.

e. The cancellation and termination dates [illegible]

State and county	Cancellation and termination dates
Manatee, Hardee, Highlands, Okeechobee, and St. Lucie Counties, Florida and all Florida counties lying south thereof.	September 30.
Contra Costa, San Joaquin, Calaveras, and Alpine Counties, California and all California counties lying south thereof.	[illegible]ember 30.
Delaware; Maryland; Missouri; New Jersey; North Caroline; Virginia; and all other Florida counties..	December 31.
All other California counties and all other states.	April 15.

f. If you die or are judicially declared incompetent, or if you are in entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. It two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the acturarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by:

a. June 30 prior to the cancellation date for counties with a September 30 cancellation date;

b. September 30 preceding the cancellation date for counties with a November 30 or December 31 cancellation date; or

c. December 31 preceding the cancellation date for counties with an April 15 cancellation date.

Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of potato crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding potato insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by an ASCS farm serial number for the county but physically located in another county within the State.

d. "Crop year" means the period within which the potatoes are normally grown and will be designated by the calendar year in which the spring-planted potatoes are normally harvested.

e. "Harvest" means the digging of potatoes on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an indivdual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Planting period" means potatoes planted within the dates specified by the actuarial table, as fall-planted, winter-planted, spring-planted, or summer-planted.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the potatoes or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of potatoes in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share;

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the potatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest herein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

§ 422.8 Certified seed potato option amendment.

U.S. DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato Crop Insurance Policy—Certified Seed Potato Option Amendment

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

When you submit this Amendment each crop year on or before the final date for accepting applications and we approve such amendment, your insurable acreage of

potatoes grown for certified seed will be insured, if:

1. You are currently insured under the potato insurance program;

2. All potatoes which are grown for certified seed on insurable acreage are insured;

3. You are a person whose potatoes have qualified for entry into the Certified Seed program for the previous 3 years, (After initial approval, you will be exempt from this requirement provided you have discontinued participation in the program for not more than one crop year out of any three consecutive crop years);

4. You provide acceptable records of your certified seed potato acreage and production for at least the previous 3 years;

5. Potatoes for seed are not grown on the same land on which potatoes of the same variety as the seed potatoes have been grown more than 2 years out of the preceeding 4 years;

6. Elite or high-grade foundation seed potatoes or seed potatoes having a winter test reading of not more than 3 percent common virus are used in planting; and

7. Your acreage insured for certified seed production is managed in accordance with standard practices and procedures required for certification as prescribed by the certifying agency and applicable state regulations regarding seed potato certification.

Your production guarantee and premium rate will be provided by the actuarial table for certified seed potatoes. If, due to insurable causes occurring within the insurance period, potato production will not qualify as certified seed on any insured certified seed potato acreage within a unit, we will pay you one dollar ($1.00) per cwt., times your production guarantee for such acreage, times your share. Any production which will not qualify as certified seed because of your failure to carry out the standard practices and procedures required for certification will be considered lost due to uninsured causes.

Insurable acreage grown under the provisions of this amendment may be designated as a separate unit.

Any claim for indemnity on a unit must be submitted to us on our form no later than 10 working days after you receive your records from the certification agency.

All provisions of the potato policy not in conflict with this amendment are applicable.

This amendment is not continuous. A new amendment must be submitted each crop year to take advantage of the certified seed potato option.

The insured estimates that the Certified Seed Potato Acreage for the _____ crop year will be _____.

Insured's Signature _____

Date _____

Corporation Representative's Signature and Code No. _____

Date _____

Field Actuarial Office Approval _____

Date _____

Following is the Privacy Act Statement found on the reverse side of the Certified Seed Potato Option Amendment:

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)): The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring potatoes under the Potato Crop Insurance Regulations (7 CFR Part 422). The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process the amendment to insure certified seed potatoes, determine the correct premium and indemnity, and to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, other State and Federal law enforcement agencies if litigation becomes necessary, a court, in response to its orders, an administrative tribunal, or opposing counsel as evidence in the course of litigation.

Furnishing the Social Security Number is voluntary and no adverse action will result from failure to do so. Furnishing the information, other than the Social Security Number, is also voluntary; however, failure to furnish the correct, complete information requested except the Social Security Number may result in rejection of the amendment for insuring certified seed potatoes, and/or subsequent denial of any claim for indemnity which may be filed under such amendment or may substantially delay acceptance of the Certified Seed Potato Option Amendment, and any subsequent claim for indemnity.

§ 422.9 Quality potato option amendment.

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Potato Crop Insurance Policy—Quality Potato Option Amendment

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

Upon our approval this amendment is applicable for the 1986 crop year in the following counties: Cassia and Bingham Counties, Idaho; Aroostook County, Maine; Walsh County, North Dakota; Malheur and Umatilla Counties, Oregon; and Adams and Grant Counties, Washington.

1. A signed Quality Potato Option Amendment will be submitted to us on or before the final date for accepting applications for each crop year you wish to insure your potatoes under this amendment.

2. You must have a Federal Crop Insurance Potato Policy (Basic Policy) in force. The basic policy provides guaranteed protection on a hundredweight basis only.

3. All acreage of potatoes insured under the basic policy must be insured under this amendment.

4. Failure to submit a quality option for the crop year will result in your potatoes being insured under the terms and conditions of the basic policy.

5. In addition to subsection 9.e. of the basic policy, the total production (hundredweight) to be counted for a unit will include all harvested and appraised production as follows:

a. The production to count for any unharvested appraised mature production will be determined by dividing the actual percentage of potatoes grading U.S. No. 2* or better, by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of hundredweight of such potatoes.

b. The production to count for any potatoes stored:

(1) without an acceptable inspection will be 100 percent of the gross weight; or

(2) with an acceptable inspection will be determined by dividing the actual percentage of potatoes grading U.S. No. 2[1] or better, by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of hundredweight of stored potatoes.

c. Any sold production which due to insurable causes, contains a portion of potatoes which grade less than U.S. No. 2* will be determined by dividing the actual percentage of potatoes grading U.S. No. 2* or better, by your percentage factor, and multiplying the result, not to exceed 1.000 by the hundredweight of sold potatoes.

6. "Percentage factor" means your actual average percentage of potatoes grading U.S. No. 2* or better, determined from your records. If more than four continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed ten years. If less than four years of records are available, the percentage factor will be the one contained on the actuarial table. The Actuarial Table may provide for percentage factors by type.

7. Your premium rate for quality potatoes will be set by the Actuarial Table.

Insured's Signature _____

Date _____

Corporation Representative's Signature and Code Number _____

Date _____

Following is the Privacy Act Statement found on the reverse side of the Quality Potato Option Amendment:

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)):

The authority for requesting the information to be supplied on this form is the Federal Corp Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring quality potatoes under the Potato Crop Insurance Regulations (7 CFR Part 422). The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process the amendment to insure quality potatoes, determine the correct premium and indemnity, and to determine the correct parties to the insurance contract. The

[1] The actuarial table may provide U.S. No. 1 or better.

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information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, other State and Federal law enforcement agencies, a court in response to its orders, an administrative tribunal, or opposing counsel as evidence in the course of litigation.

Furnishing the Social Security Number is voluntary and no adverse action will result from failure to do so. Furnishing the information, other than the Social Security Number, is also voluntary; however, failure to furnish the correct, complete information requested other than the Social Security Number, may result in rejection of the amendment for insuring quality potatoes, and subsequent denial of any claim for indemnity which may be filed under such amendment or may substantially delay acceptance of the Quality Potato Option Amendment, and any subsequent claim for indemnity.

Done in Washington, DC, on October 7, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-29986 Filed 12-18-85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 1, 3, 103, 236, 242, and 292

[AG Order No. 1113-85]

Aliens and Nationality; Rules of Procedure for Proceedings Before Immigration Judges

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth procedures to be followed in all matters brought before Immigration Judges, including deportation, exclusion, bond, and rescission proceedings, but specifically excluding administrative proceedings involving withdrawal of school approval under 8 CFR 214 and departure-control hearings under 8 CFR 215. These regulatory changes are promulgated for the purpose of assisting in the expeditious, fair, and proper resolution of issues arising in such proceedings by providing the parties involved with clear, useful, and readily accessible procedural guidelines. To achieve this purpose, it has been necessary to amend or delete portions of Parts 1, 3, 103, 236, 242, and 292 of Title 8 of the Code of Federal Regulations, as well as add a number of new provisions to several parts of this chapter as discussed below. However, these proposed rules of procedure are not intended to be read in a vacuum. Unless specifically noted to the contrary, each proposed rule of procedure is intended to be construed harmoniously whenever possible with existing regulations under this chapter.

DATE: Comments must be received on or before: January 21, 1986.

ADDRESS: Please submit written comments in duplicate to: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5203 Leesburg Pike, Suite 1609, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office of Immigration Review, 5203 Leesburg Pike, Falls Church, VA 22041, (703) 756-6470.

SUPPLEMENTARY INFORMATION: A Departmental reorganization in January, 1983, created the Executive Office for Immigration Review (EOIR). This reorganization consolidated the Department's immigration review program by placing the Immigration Judge (Special Inquiry Officer) function (formerly within the Immigration and Naturalization Service (INS)) with the Board of Immigration Appeals (BIA) in the newly created organization, thereby streamlining the Department's management of this important function and minimizing mission disparities within the INS. EOIR has determined that promulgating a set of uniform procedural rules would assist in the furthering of program goals.

This proposed regulatory change constitutes the repositioning of various procedural rules that exist throughout Title 8 of the Code of Federal Regulations, as well as some additional rules, into one section to create a set of easily accessible uniform rules. In order to maximize ease of access to the public, the proposed Rules of Procedure (incorporating 27 new sections) are offered as an entire new subpart C to Part 3 of this chapter, beginning with § 3.12.

8 CFR 3.12, as proposed, would briefly set out the scope of the Rules of Procedure and is self-explanatory.

8 CFR 3.13 is proposed as the definitions section for the rules contained in subpart C. "Administrative Control" is proposed for inclusion in this section as a term of art to clarify jurisdictional issues and to ease the filing and handling of documents. The proposed term "charging document" is included to summarize all initiating documents to allow for one set of rules for all proceedings. The terms "filing" and "service" are defined to eliminate ambiguity.

New sections 8 CFR 3.14 through 3.38 cover the proposed 25 rules of procedure which will be applicable (except where specifically stated to the contrary) to all proceedings before Immigration Judges.

8 CFR 3.14 proposes changes to when jurisdiction vests and proceedings commence before Immigration Judges. In order for EOIR to effectively manage its resources, it is necessary for it to gain full control over the docketing of cases on its hearing calendars. Under the present 8 CFR 242.1 and 242.2, deportation proceedings for an alien in the United States commence upon the issuance and service of an Order to Show Cause by the Service. The present 8 CFR 242.7, provides specified Service officials with the authority to independently cancel served Orders to Show Cause or terminate proceedings at any time prior to the actual commencement of the hearing. Under newly proposed 8 CFR 3.14(a), jurisdiction would vest and proceedings commence when a charging document is filed with the Office of the Immigration Judge. Existing 8 CFR 242.1 and 242.2 would be amended to conform to this new rule. Existing 8 CFR 242.7(a) would be amended to limit the Service's ability to cancel an Order to Show Cause to the period prior to its filing with the Office of the Immigration Judge. Similarly, existing 8 CFR 242.7(b) (regarding Service motions to dismiss) would be amended to become applicable to the Service after an Order to Show Cause is filed with the Office of the Immigration Judge, rather than after the hearing has commenced. Adoption of these proposed regulatory changes would provide EOIR with the ability to utilize its resources efficiently by ensuring optimal scheduling of matters on its hearing calendars. This in turn would ensure the expeditious hearing of new matters brought before the Immigration Judges, as well as provide the maximum possible time for systematically addressing the substantial number of backlogged cases currently in the system.

Proposed 8 CFR 3.14(b) simply restates for the sake of thoroughness and ease of reference, the existing rule found in 8 CFR 208.1(b) regarding an Immigration Judge's exclusive jurisdiction over asylum applications filed in conjunction with underlying matters already before him or her.

Proposed 8 CFR 3.15 would largely codify the current practice of recognizing party representatives where retained in matters brought before Immigration Judges. The new rule would

not be in conflict with certain specialized provisions for mandatory representation by Service attorneys because those provisions relate solely to the manner in which the Service is required to handle certain types of cases.

Proposed 8 CFR 3.16 would deal with appearances by representatives. The new rule would tighten current practice by allowing withdrawal or substitution of a representative during proceedings only in the discretion of the Immigration Judge, and only upon written or oral motion (submitted without fee). Adoption of the new rule would necessitate amendment of 8 CFR 292.4, which currently provides for substitution at any time upon the written withdrawal of the attorney or representative, or upon notification of the new attorney or representative. This new rule change is proposed in order to ensure maximum effective utilization of the Immigration Judge's time. Under current practice, substantial abuse of court calendars by representatives occurs through both nonappearances and last minute withdrawals. The new rule would give the Immigration Judges greater ability to control such abuses during actual proceedings without affecting the respondent/applicant's current ability to change his or her attorney or representative on a motion to reopen.

Proposed 8 CFR 3.17 would deal with the scheduling of cases. As noted in the discussion regarding proposed 8 CFR 3.13, the ability of Immigration Judges to control their calendars is critical to their ability to effectively deal with their caseloads. It is anticipated that the proposed rule would significantly assist Immigration Judges in caseload management. The adoption of this rule would require a regulation change in 8 CFR 242.1, as previously discussed under proposed 8 CFR 3.13.

Proposed 8 CFR 3.18 would deal with the authority of Immigration Judges (pursuant to 8 CFR 242.2) to redetermine custody and bond decisions made by the INS. Although, the proposed rule largely restates existing procedures for such hearings, some minor regulatory changes have been suggested to improve efficiency. Under the existing regulation, and application by a respondent for a custody/bond redetermination may be made to any available Immigration Judge who is stationed at the Service office which has administrative jurisdiction over the proceeding under the Order to Show Cause, or who conducts hearings there. If no such Immigration Judge is available, application may be made to any available Immigration Judge stationed in the region where that Service office is located. If there is no available Immigration Judge in that region the application may be made to any other Immigration Judge. In its restructuring of the availability of Immigration Judges for custody and bond cases, the proposed rule reflects the separation of the Immigration Judges from the Service and the creation of administrative control offices within EOIR. 8 CFR 242.2 has been amended to conform with the new Rules. Within the new organizational structure, it is anticipated that the proposed rule would maximize the prompt availability of Immigration Judges for respondents applying for custody/bond redeterminations while at the same time causing and equitable distribution of this caseload among the Immigration Judges.

In a further effort to improve administrative efficiency and increase productivity, the proposed rule would modify the existing provision in 8 CFR 242.2 requiring the Immigration Judge in all custody/bond redeterminations to state the reasons for his or her decision in a written memorandum. Under the new rule, the Immigration Judge, subsequent to entering his or her decision on the appropriate EOIR form, would have discretion to explain the reasons for his or her decision to the parties involved either orally or in writing.

Proposed 8 CFR 3.19 would establish a procedure for changes of venue on motion by one of the parties, or on the Immigration Judge's own authority. Under the proposed rule, such a motion could be granted by the Immigration Judge in his or her discretion provided good cause has been shown. Although no regulatory provisions currently exist explicity providing for changes in venue, such authority has been routinely exercised by Immigration Judges in the past pursuant to their authority under 8 CFR 236.1 (exlusion cases) and 242.8(a) (deportation cases) to take such actions as are necessary and appropriate (and not inconsistent with any other provisions of the Act) for the disposition of cases. The Board has upheld the Immigration Judge's limited authority to change venue in *Matter of Wadas*, 17 I&N Dec. 346, 348 (BIA 1980) exclusion cases), and *Matter of Seren*, 15 I&N Dec. 590, 591 (BIA 1976) deportation cases). This rule makes uniform the Immigration Judge's authority to change venue in all proceedings. It is anticipated that addoption of this rule would significantly improve EOIR's ability to control its caseload and improve overall efficiency in the hearing process.

Proposed 8 CFR 3.20 would codify current practice and provide for pre-hearing conferences to be held in the discretion of the Immigration Judge for the purpose of narrowing issues, attaining stipulations between the parties, voluntarily exchanging information, or for any other purpose which might simplify, organize, and expendite the proceeding.

Proposed 8 CFR 3.21 would deal with interpreters. As drafted, the proposed rule would streamline current practice by authorizing federal employees (other than those employed by INS) to serve as interpreters without oath. To adopt this administrative improvement would necessitate a minor regulatory change in 8 CFR 242.12, which currently requires all non-INS employed interpreters to be sworn before serving as interpreters in deportation hearings. It is anticipated that the proposed rule would improve efficiency in Immigration Judge proceedings.

Proposed 8 CFR 3.22 establishes a procedure for the submission of motions both prior to the rendering of a final order by the Immigration Judge as well as thereafter in the form of motions for reopening or reconsideration. The only novel aspect of the proposed rule is the requirement that motions to reopen for the purpose of seeking some form of specific relief must be accompanied by the appropriate application and supporting documentation. This latter requirement, while previously nonmandatory, has been routinely followed in many Immigration Judge offices with salutary results. It is anticipated that adoption of this proposed rule will improve overall efficiency and fairness in the hearing process.

Proposed 8 CFR 3.23 would deal with the waiver of fees in Immigration Judge proceedings. The new rule codifies the Board's recent decision in *Matter of Chicas*, Interim Decision 2970 (BIA 1984), authorizing the use of an unsworn declaration (made pursuant to 28 U.S.C. 1746) in lieu of a sworn affidavit for the purpose of applying for a fee waiver on the basis of inability to pay. In an effort to avoid frivolous or undocumented waiver applications, the new rule would use more stringent language than its predecessor in 8 CFR 103.7(c), by requiring the respondent/applicant to substantiate his or her indigency in the affidavit or properly executed unsworn declaration. Adoption of this regulatory change would require minor amendments to §§ 3.3(b) and 103.7(c) to conform to the new rule.

Proposed 8 CFR 3.24 would provide the Immigration Judge with discretion

for good cause to waive the presence of a respondent/applicant at a hearing where the alien is a minor child whose parent or parents are present. The new rule would also authorize the Immigration Judge to conduct hearings *in absentia* pursuant to section 242(b) of the Act with or without representation. It is anticipated that adoption of this rule would significantly improve the efficiency of the hearing process without adversely affecting due process considerations.

Proposed 8 CFR 3.25 would combine and restate the contents of 8 CFR 236.2(a) and 242.16(a) regarding public access to hearing. As drafted, the proposed rule would specify that all hearings except exclusion hearings would be open to the public subject to the Immigration Judge's discretion to reasonably limit attendance based on space availability (with priority given to the press over the general public). The proposed rule further provides that the Immigration Judge may limit attendance or hold a closed hearing to protect the parties, witnesses, or the public interest.

Proposed 8 CFR 3.26 would deal with recording equipment permitted in Immigration Judge proceedings. As drafted, the rule would prohibit the use of any photographic, video, electronic, or similar recording devices during proceedings other than the equipment used by the Immigration Judge to create the official record.

Proposed 8 CFR 3.27 would deal with continuances. As drafted, the rule would codify current procedure and restate in simpler terms the discretionary authority of Immigration Judges to grant continuances for good cause shown found in 8 CFR 242.13. The simplified language of the proposed rule is not intended to conflict with or expand the discretionary limitations delineated in 8 CFR 242.13.

Proposed 8 CFR 3.28 would provide for the lodging of additional charges during deportation proceedings. In more simplified language, the proposed rule would restate the contents of 8 CFR 242.16(d) which deals with the same topic. Adoption of this rule would not substantively change current practice.

Proposed 8 CFR 3.29 would deal with the filing of documents and applications. As drafted, the rule would provide the Immigration Judge with discretionary authority to set and extend limits for the filing of documents and applications, as well as for any related responses thereto. Applications or documents not filed within the time limits set by the Immigration Judge are deemed waived. All documents and applications would be required to be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding. Such applications or documents would not be considered filed until the required fee (if any) had been paid or a fee waiver pursuant to proposed 8 CFR 3.29 had been obtained. This is a new rule that would create stadardized filing procedures—particularly when read in conjunction with existing 8 CFR 3.11 (creation of administrative control offices) and proposed § 3.29 (fee waivers). It is anticipated that adoption of this rule would both clarify the document filing process as well as improve overall efficiency in Immigration Judge proceedings.

Proposed 8 CFR 3.30 is a new rule that would establish standards for service and size of documents. Proposed § 3.30(a) (establishing specific requirements for service on the opposing party or parties) would bolster the concept of fundamental fairness, and, in large measures, codify existing practice in many Immigration Judge offices. Proposed § 3.30(b) (dealing with standardization of document size and manner of presentation) would ease handling and review of written materials during actual proceedings and reduce file storage problems after proceedings are completed.

Proposed 8 CFR 3.31 would deal with translation of documents. As drafted, the rule would extend some of the translation requirements found in 8 CFR 103.2(b) to all Immigration Judge proceedings. It is anticipated that adoption of this rule would speed fair and proper resolution of all matters brought before the Immigration Judges involving foreign language documents.

Proposed 8 CFR 3.32 would codify current practice and extend the requirement found in 8 CFR 242.14(d) that the testimony of witnesses in deportation proceedings be under oath or affirmation) to all proceedings before Immigration Judges.

Proposed 8 CFR 3.33 would establish a uniform procedure for the taking of depositions in all Immigation Judge proceedings. As drafted, the rule would significantly simplify (without fundamentally altering) the more detailed procedure prescribed in 8 CFR 242.14(e) for the taking of depositions in deportation cases. To conform to the new rule, current § 242.14(e) would be deleted and replaced with a condensed regulation authorizing the taking of depositions in accordance with new 8 CFR 3.33. It is anticipated that the new rule would provide adequate guidance to the parties and preserve fundamental fairness in the hearing process without the complexity of its predecessor.

Proposed 8 CFR 3.34 deals with the essential function of creation and maintenance of Immigration Judge hearing records. As drafted, this new rule would require that the Office of the Immigration Judge create and then control the Record of Proceeding. This rule is a corollary to existing 8 CFR 3.11 which designates specific EOIR Immigration Judge field offices as administrative control offices.

Proposed 8 CFR 3.35 would codify current practice regarding decisions rendered in all Immigration Judge proceedings. The rule would permit the Immigration Judge to give either a written or oral decision, unless specified otherwise elsewhere in this chapter. If the decision were written, the rule would require the Immigration Judge to serve it on the parties either by personal service or by first class mail to the most current address in the Record of Proceeding. If the decision were oral, the Immigration Judge would be required to state it in the presence of the parties at the conclusion of the hearing. The proposed rule is fully consistent with existing regulations permitting written or oral decisions in exclusion (8 CFR 236.5), deportation (8 CFR 242.18(b); 242.19), rescission (8 CFR 246.6), and bond (8 CFR 242.2(b), as amended by proposed Rule 3.19) cases. As drafted, this proposed rule can also be read consistently with 8 CFR 242.22 (dealing with decisions on motions for reopening and reconsideration). However, for the sake of brevity, clarity and in order to eliminate the inconsistent requirement of service on the alien of the Immigration Judge's written decision by the District Director, it is proposes to amend 8 CFR 236.5 by deleting paragraphs (a), (b), (c) and inserting in their place a new conforming paragraph (a) that would reference back to the proposed rule. Existing paragraphs (d) and (e) of § 236.5 would be redesignated as paragraphs (b) and (c).

Proposed 8 CFR 3.36 is a new rule which would establish a uniform procedure for filing administrative appeals relating to Immigration Judge proceedings. The rule would provide for appeals from the decisions of Immigration Judges to the Board of Immigration Appeals pursuant to 8 CFR 3.1(b), and authorize both parties to file briefs pursuant to 8 CFR 3.3(c). The new rule would also require the notice of appeal to be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding within ten (10) calendar days (13 if mailed) after service of the decision. In accordance with the Board of Immigration Appeals' interpretation of

the term "day" under 8 CFR 1.1(h) in *Matter of Escobar*, 18 I&N Dec. 412 (BIA 1983), the proposed rule would extend the appeal time to the next business day if the final date for filing falls on a Saturday, Sunday, or legal holiday. It is anticipated that the proposed rule would eliminate possible confusion in the appellate process and thereby improve overall efficiency.

It is also proposed to amend 8 CFR 3.3(a) (notice of appeal). As this paragraph currently reads, a party taking an appeal is required to file the notice of appeal with the Service Office having administrative jurisdiction over the case. To bring this provision into conformity with the new Rules of Procedure, it is proposed to amend 8 CFR 3.3(a) to read "An appeal shall be taken by filing Notice of Appeal . . . with the Office of the Immigration Judge or the Service office having administrative jurisdiction over the case . . ." It is also proposed, for the sake of clarity and consistency, to amend the first sentence of 8 CFR 3.4 (withdrawal of appeal) by changing "officer" to "office" and to amend the fourth sentence of 8 CFR 3.7 (notice of certification) by changing "officer of the Service" to "Office of the Immigration Judge or Service office," in order to parallel the proposed language of 8 CFR 3.3(a) above. Lastly, for the sake of uniformity, it is also proposed to amend 8 CFR 236.7 (dealing with appeals in exclusion cases) to conform to the proposed rule.

Proposed 8 CFR 3.37 is a new rule that would establish when a decision is final. The proposed rule is consistent with the provisions of 8 CFR 243.1 dealing with final orders of deportation. As drafted, the rule would clarify and tighten the existing finality of decision provisions for exclusion and deportation cases found in 8 CFR 236.6 and 242.20, and would provide a uniform rule for all Immigration Judge proceedings. Moreover, the proposed rule would provide that a decision by an Immigration Judge that has not been certified to the Board becomes final upon waiver of appeal or upon the expiration of the time to appeal if no appeal is taken. In order to bring this proposed rule into conformity with this chapter, it is proposed to amend 8 CFR 236.6 and 242.20 accordingly.

Proposed 8 CFR 3.38 would authorize the promulgation of local operating procedures for Immigration Judge Officer. This is a new rule which would authorize individual Immigration Judge offices to establish, by majority written concurrence of the local judges, and subject to the written approval of the Chief Immigration Judge, local operating procedures not inconsistent with existing regulations and these Rules of Procedure. It is anticipated that this rule would significantly enhance the ability of individual Immigration Judge offices to deal with problems unique to their locality, and consequently enable them to improve their overall efficiency.

Together, these regulatory changes would both improve and expedite the hearing process before Immigration Judges. At the same time, the new rule—as a whole, and in each of its proposed individual section—retains all necessary due process considerations and remains within the spirit of the Immigration and Nationality Act, as amended. In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule, if promulgated, will not be a major rule within the meaning of paragraph 1(b) of E.O. 12291.

List of Subjects

8 CFR Part 1

Definitions

8 CFR Part 3

Administrative practice and procedure, Aliens.

8 CFR Part 103

Administrative practice and procedure, Aliens.

8 CFR Part 236

Administrative practice and procedure, Aliens.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 292

Administrative practice and procedure, Aliens.

Accordingly, it is proposed to amend Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 1—DEFINITIONS

1. The authority citation for Part 1 is revised to read as follows. All other authority citations are removed.

Authority: 8 U.S.C. 1101; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. In § 1.1, paragraph (h) is revised to read as follows:

§ 1.1 Definitions

* * * * *

(h) The term "day" when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

* * * * *

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

3. The authority citation for Part 3 is revised to read as follows. All other authority citations are removed.

Authority: 8 U.S.C. 1103, 1362; 28 U.S.C. 509, 510, 1746; 5 U.S.C. 301; Sec. 2 Reorg. Plan No. 2 of 1950.

4. In § 3.3, the first two sentences of paragraph (a) and paragraph (b) are revised as follows:

§ 3.3 Notice of appeal.

(a) A party affected by a decision who is entitled under this chapter to appeal to the Board shall be given notice of his or her right to appeal. An appeal shall be taken by filing Notice of Appeal Form I–290A in triplicate with the Service office or Office of the Immigration Judge having administrative jurisdiction over the case, within the time specified in the governing sections of this chapter. * * *

(b) *Fees.* Except as otherwise provided in this section, a notice of appeal or a motion filed under this part by any person other than an officer of the Service shall be accompanied by the appropriate fee specified by, and remitted in accordance with, the provisions of § 103.7 of this chapter. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or a motion, he or she shall file with the notice of appeal or the motion, his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, stating the nature of the motion or appeal and his or her belief that he or she is entitled to redress. Such document shall also establish his or her inability to pay the required fee, and shall request permission to prosecute the appeal or motion without prepayment of such fee. When such a document is filed with the officer of the Service or the Immigration Judge from whose decision the appeal is taken or with respect to whose decision the motion is addressed, such Service officer or Immigration Judge shall, if he or she believes that the appeal or motion is not taken or made in good faith, certify in writing his reasons for such belief for consideration by the Board.

* * * * *

5. In § 3.4 the first sentence is revised as follows:

§ 3.4 Withdrawal of appeal.

In any case in which an appeal has been taken, the party taking appeal may file a written withdrawal thereof with the office with whom the notice of appeal was filed. * * *

6. Section 3.7 is revised to read as follows:

§ 3.7 Notice of certification.

Whenever in accordance with the provisions of § 3.1(c), a case is requried to be certified to the Board, the alien or other party affected shall be given notice of certification. A case shall be certified only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is made that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is made that the case will be certified, the Service office of Office of the Immigration Judge having administrative control over the record of proceeding shall cause a Notice of Certification (Form I–290C) to be served upon the party affected. In either case, the notice shall inform the party affected that the case is required to be certified to the Board and that he or she has the right to make representation before the Board, including the making of a request for oral argument and the submission of a brief. If the party affected desires to submit a brief, it shall be submitted to the Service office or Office of the Immigration Judge having administrative control over the record of proceeding for transmittal to the Board within ten (10) days from the date of receipt of the notice of certification, unless for good cause shown such Service office or Office of the Immigration Judge or the Board extends the time within which the brief may be submitted. The case shall be certified and forwarded to the Board by the Service office or Office of the Immigration Judge having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief.

7. Part 3 is amended by adding a new Subpart C to read as follows:

Subpart C—Rules of Procedure for Immigration Judge Proceedings

Sec.

3.12 Scope of rules.
3.13 Definitions.
3.14 Jurisdiction & commencement of proceedings.
3.15 Representation.
3.16 Appearances.
3.17 Scheduling of cases.
3.18 Custody/bond.
3.19 Change of venue.
3.20 Pre-hearing conferences.
3.21 Interpreters.
3.22 Motions.
3.23 Waivers of fees in immigration judge proceedings.
3.24 Waiver of presence of respondent/applicant.
3.25 Public access to hearings.
3.26 Recording equipment.
3.27 Continuances.
3.28 Additional charges in deportation hearings.
3.29 Filing documents and applications.
3.30 Service and size of documents.
3.31 Translation of documents.
3.32 Testimony.
3.33 Depositions.
3.34 Record of proceeding.
3.35 Decisions.
3.36 Appeals.
3.37 Finality of decision.
3.38 Local Operating procedures.

Subpart C—Rules of Procedure for Immigration Judge Proceedings.

§ 3.12 Scope of rules.

These rules are promulgated for the purpose of assisting in the expeditious, fair and proper resolution of matters coming before Immigration Judges. Except where specifically stated, these rules apply to all matters before Immigration Judges, including deportation, exclusion, bond, and rescission proceedings. Specifically excluded from applicability under these rules are administrative proceedings involving the withdrawal of school approval under 8 CFR 214 and departure-control hearings under 8 CFR 215.

§ 3.13 Definitions.

As used in this subpart:

Administrative Control—The term "administrative control" means custodial responsibility for the Record of Proceeding as specified in 8 CFR 3.11.

Charging Document—The term "charging document" means the written instrument which initiates a proceeding before an Immigration Judge including an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien.

Filing—The term "filing" means the actual receipt of a document by the appropriate Office of the Immigration Judge.

Service—The term "service" means physically presenting or mailing a document to the appropriate party or parties.

§ 3.14 Jurisdiction & commencement of proceedings.

(a) Jurisdiction vests and proceedings before an Immigration Judge commence when a charging document is filed with the Office of the Immigration Judge.

(b) When the Immigration Judge has jurisdiction over the underlying proceeding, sole jurisdiction over applications for asylum shall lie with the Immigration Judge.

§ 3.15 Representation.

(a) The government may be represented in proceedings before an Immigration Judge.

(b) The respondent/applicant may be represented in proceedings before an Immigration Judge by an attorney or other representative of his or her choice in accordance with 8 CFR 292, at no expense to the government.

§ 3.16 Appearances.

(a) In any proceeding before an Immigration Judge wherein the respondent/applicant is represented, the attorney or representative shall file a Notice of Appearance on the appropriate form with the Office of the Immigration Judge.

(b) Withdrawal or substitution of an attorney or representative may be permitted by an Immigration Judge during proceedings only upon oral or written motion submitted without fee.

§ 3.17 Scheduling of cases.

All cases shall be scheduled by the Office of the Immigration Judge. The Office of the Immigration Judge shall be responsible for providing notice of the time, place, and date of the hearing to the government and respondent/applicant.

§ 3.18 Custody/bond.

(a) Custody and bond redeterminations made by the INS pursuant to 8 CFR 242 may be reviewed by an Immigration Judge pursuant to 8 CFR 242.

(b) Application for bond redetermination by a respondent, his or her attorney or representative, may be made orally, in writing, in person, or, if approved by the Immigration Judge, by telephone.

(c) Application for the exercise of such authority must be made in the following order: (1) If the alien is detained, the Immigration Judge office at or nearest the place of detention; (2) the Immigration Judge Office having administrative control over the case; (3) any other Immigration Judge office.

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(d) Consideration under this paragraph by the Immigration Judge of an application or request of an alien regarding custody or bond shall be separate and apart from any deportation hearing or proceeding, and shall form no part of such hearing or proceeding.

(e) The determination of an Immigration Judge in respect to custody status or bond redetermination shall be entered on the appropriate EOIR form at the time such decision is made, and the parties shall for informed, orally or in writing, as to the reasons for the decision.

§ 3.19 Change of venue.

(a) The Immigration Judge, for good cause, may change venue on motion by one of the parties, or upon his or her own authority after the charging document has been filed with the Office of the Immigration Judge.

(b) No change of venue shall be granted without identification of a fixed street address where the respondent/applicant may be reached for further hearing notification.

§ 3.20 Pre-hearing conferences.

Pre-hearing conferences may be scheduled at the discretion of an Immigration Judge. The conference may be held to narrow issues, attain stipulations between the parties, voluntarily exchange information, and otherwise simplify and organize the proceeding.

§ 3.21 Interpreters.

Any person acting as an interpreter in a hearing shall swear or affirm to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath or affirmation shall be required.

§ 3.22 Motions.

(a) *Pre-Decision Motions.* Unless otherwise permitted by the Immigration Judge, motions submitted prior to the final order of an Immigration Judge shall be in writing and shall state, with particularity the grounds therefor, the relief sought, and the jurisdiction. The Immigration Judge may set and extend time limits for the making of motions and replies thereto. A motion shall be deemed unopposed unless timely response is made.

(b) *Reopening/Reconsideration.* (1) Motions to reopen or reconsider a decision of the Immigration Judge must be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding. Such motions shall comply with applicable provisions of 8 CFR 208.11 and 242.22. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents. The Immigration Judge may set and extend time limits for replies to motions to reopen or reconsider. A motion shall be deemed unopposed unless timely response is made.

(2) When requested in conjunction with a motion to reopen/reconsider, the Immigration Judge may stay the execution of a final order of deportation or exclusion.

§ 3.23 Waivers of fees in immigration judge proceedings.

Any fees pertaining to a matter within the Immigration Judge's jurisdiction may be waived by the Immigration Judge upon a showing that the respondent/applicant is incapable of paying the fees because of indigency. A properly executed affidavit or unsworn declaration made pursuant to 28 U.S.C. Section 1746 by the respondent/applicant must accompany the request for waiver of fees and shall substantiate the indigency of the respondent/applicant.

§ 3.24 Waiver of presence of respondent/applicant.

The Immigration Judge may, for good cause, waive the presence of a respondent/applicant at the hearing where the alien is represented or where the alien is a minor child whose parent(s) is present. In addition, *in absentia* hearings may be held pursuant to section 242(b) of the Act with or without representation.

§ 3.25 Public access to hearings.

All hearings, other than exclusion hearings, shall be open to the public except that: (a) Depending upon physical facilities, the Immigration Judge may place reasonable limitations upon the number in attendance at any one time with priority being given to the press over the general public; (b) for the purpose of protecting witnesses, parties, or the public interest, the Immigration Judge may limit attendance or hold a closed hearing.

§ 3.26 Recording equipment.

The only recording equipment permitted in the proceeding will be the equipment used by the Immigration Judge to create the official record. No other photographic, video, electronic, or similar recording device will be permitted to record any part of the proceeding.

§ 3.27 Continuances.

The Immigration Judge may grant a motion for continuance for good cause shown.

§ 3.28 Additional charges in deportation hearings.

At any time during the proceeding, additional or substituted charges of deportability and/or factual allegations may be lodged by the Service in writing. The respondent shall be served with a copy of these additional charges and allegations and may be given a reasonable continuance to respond thereto.

§ 3.29 Filing documents and applications.

All documents and applications to be considered in a proceeding before an Immigration Judge must be filed with the Office to the Immigration Judge having administrative control over the Record of Proceeding. Filing will be considered effective only after the payment of applicable fees or the waiver of fees pursuant to 8 CFR 3.23. The Immigration Judge may set and extend time limits for the filing of applications and related documents and the responses thereto, if any. If an application or related document is not filed within the time set by the Immigration Judge, the opportunity to file that application shall be deemed waived.

§ 3.30 Service and size of documents.

(a) A copy of all documents (including proposed exhibits or applications) filed with or presented to the Immigration Judge shall be simultaneously served by the presenting party on the opposing party or parties. Such service shall be in person or by first class mail to the most recent address contained in the Record of Proceeding. A certification showing service to the opposing party or parties on a date certain shall accompany any filing with the Immigration Judge unless service is made on the record during the hearing. Any documents or applications not containing such certification will not be considered by the Immigration Judge unless service is made on the record during a hearing.

(b) Unless otherwise permitted by the Immigration Judge, all written material presented to Immigration Judges including offers of evidence, correspondence, briefs, memoranda, or other documents must be submitted on 8½" × 11" size paper. The Immigration Judge may require that exhibits and other written material presented be indexed, paginated, and that a table of contents be provided.

§ 3.31 Transition of documents.

Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation and a certification that the translator is competent to translate and that the translation is accurate.

§ 3.32 Testimony.

Testimony of witnesses appearing at the hearing shall be under oath or affirmation.

§ 3.33 Depositions.

(a) If an Immigration Judge is satisfied that a witness is not reasonably available at the place of hearing and that said witness' testimony or other evidence is essential, the Immigration Judge may order the taking of a deposition either at his or her own instance or upon application of a party.

(b) Such order shall designate the officer by whom the deposition shall be taken, may prescribe and limit the content, scope, or manner of taking the deposition, and may direct the production of documentary evidence. The Immigration Judge may also issue a subpoena in the event of the refusal or willful failure of a witness within the United States to appear, given testimony, or produce documentary evidence after due notice.

(c) The witness and all parties shall be notified as to the time and place of the deposition by the officer designated to conduct the deposition.

(d) Testimony shall be given under oath or affirmation and shall be recorded verbatim.

(e) The officer presiding at the taking of the deposition shall note but not rule upon objections, and shall not comment on the admissibility of evidence or on the credibility and demeanor of the witness.

§ 3.34 Record of proceeding.

The Office of the Immigration Judge shall create and control the Record of Proceeding.

§ 3.35 Decisions.

A decision may be written or oral. If the decision is written, it shall be served on the parties by first class mail to the most recent address contained in the Record of Proceeding or by personal service. If a decision is oral, it shall be stated by the Immigration Judge in the presence of the parties at the conclusion of the hearing.

§ 3.36 Appeals.

(a) Decisions of Immigration Judges may be appealed to the Board of Immigration Appeals as authorized by 8 CFR 3.1(b).

(b) The notice of appeal of the decision shall be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding within ten (10) calendar days after service of the decision. Time will be 13 days if mailed. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day.

(c) Briefs may be filed by both parties pursuant to 8 CFR 3.3(c).

§ 3.37 Finality of decision.

Except when certified to the Board, the decision of the Immigration Judge becomes final upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken.

§ 3.38 Local operating procedures.

An Office of the Immigration Judge having administrative control over Records of Proceedings may establish local operating procedures, provided that:

(a) Such operating procedure(s) shall not be inconsistent with any provision of this chapter;

(b) A majority of the judges of the local Office of the Immigration Judge shall concur in writing therein; and

(c) The Chief Immigration Judge has approved the proposed operating procedure(s) in writing.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

8. The authority citation for Part 103 is revised to read as follows. All other authority citations are removed.

Authority: 5 U.S.C. 552(a); 8 U.S. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12356.

9. Section 103.7(c)(1) is revised to read as follows:

§ 103.7 Fees.

* * * * *

(c) Waiver of Fees. (1) Except as otherwise provided in this paragraph and in paragraph 3.3(b) of this chapter, any of the fees prescribed in paragraph (b) of this section relating to applications, petitions, appeals, motions, or requests may be waived by the Immigration Judge in any case under his/her jurisdiction in which the alien or other party affected is able to substantiate that he or she is unable to pay the prescribed fee. The person seeking a fee waiver must file his or her affidavit, or unsworn declaration made pursuant to 28 U.S.C. 1746, asking for permission to prosecute without payment of fee of the applicant, petition, appeal, motion, or request, and stating his or her belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay.

* * * * *

PART 236—EXCLUSION OF ALIENS

10. The authority citation for Part 236 is revised to read as follows. All other authority citations are removed.

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1252, 1255, 1362.

11. In § 236.5, paragraphs (a), (b), and (c) are removed; paragraphs (d) and (e) are redesignated as paragraphs (b) and (c); and a new paragraph (a) is added to read as follows:

§ 236.5 Decision of the Immigration Judge; Notice to the Applicant.

(a) *Decision.* The Immigration Judge shall inform the applicant of his or her decision in accordance with 8 CFR 3.35.

* * * * *

12. Section 236.6 is revised to read as follows:

§ 236.6 Finality of order.

The decision of the Immigration Judge shall become final in accordance with 8 CFR 3.37.

13. Section 236.7 is revised to read as follows:

§ 236.7 Appeals.

Except as limited by section 236(d) of the Act, an appeal from a decision of an Immigration Judge under this Part may be taken by either party pursuant to 8 CFR 3.36.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

14. The authority for Part 242 is revised to read as follows: All other authority citations are removed.

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1252, 1254, 1255, 1357, 1362; E.O. 12356. Title I of Pub. L. 95–145 enacted Oct. 28, 1977.

15. In § 242.1, paragraphs (a) and (b) are revised to read as follows:

§ 242.1 Order to show cause and notice of hearing.

(a) *Commencement.* Every proceeding to determine the deportability of an alien in the United States is commenced by the filing of an Order to Show Cause with the Office of the Immigration Judge. In the proceeding the alien shall be known as the respondent. Orders to

Show Cause may be issued by District Directors, Acting District Directors, Deputy District Directors, Assistant District Directors, for Investigations, and Officers in Charge at Agana, GU; Albany, NY; Charlotte Amalie, VI; Cincinnati, OH; Hammond, IN; Memphis, TN; Milwaukee, WI; Norfolk, VA; Oklahoma City, OK; Pittsburgh, PA; Providence, RI; Salt Lake City, UT; St. Louis, MO; and Spokane, WA.

(b) Statement of Nature of Proceedings. The Order to Show Cause shall contain a statement of the nature of the proceeding, the legal authority under which the proceeding is conducted, a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of the law, and a designation of the charge against the respondent and of the statutory provisions alleged to have been violated. The Order shall require the respondent to show cause why he should not be deported. The Order shall call upon the respondent to appear before an Immigration Judge for a hearing at a time and place which shall be specified by the Office of the Immigration Judge.

* * * * *

16. In § 242.2, the first sentence of paragraph (a) and paragraph (b) are revised to read as follows:

§ 242.2 Apprehension, custody, and detention.

(a) *Warrant of arrest.* At the time of issuance of the warrant of arrest, or at any time thereafter and up to the time the respondent becomes subject to supervision under the authority contained in section 242(d) of the Act, the respondent may be arrested and taken into custody under the authority of a warrant of arrest. * * *

(b) *Authority of Immigration Judge; Appeals.* After an initial determination pursuant to paragraph (a) of this section, and at any time before a deportation order becomes administratively final, upon application by the respondent for release from custody or for amelioration of the conditions under which he or she may be released, an Immigration Judge may exercise the authority contained in section 242 of the Act to continue to detain a respondent in, or release from custody, and to determine whether a respondent shall be released under bond, and the amount thereof, if any. Application for the exercise of such authority must be made in the following order: first, if the alien is detained, the Immigration Judge office at or nearest the place of detention; second, the Immigration Judge office having administrative control over the case; third, any other Immigration Judge office. However, if the respondent has been released from custody, such application must be made within seven (7) days after the date of such release. Thereafter, application by a released respondent for modification of the terms of release may be made only to the District Director. In connection with such application the Immigration Judge shall advise the respondent of his right to representation by counsel of his or her choice at no expense to the Government. He or she shall also be advised of the availability of free legal services programs qualified under Part 292(a) of this chapter and organizations recognized pursuant to section 292.2 of this chapter, located in the district where his or her application is to be heard. The Immigration Judge shall ascertain that the respondent has received a list of such programs, and the receipt by the respondent of a copy of Form I-618, Written Notice of Appeal Rights. Upon rendering a decision on an application under this section, the Immigration Judge (or District Director if he renders the decision) shall advise the alien of his or her appeal rights under this section. The determination of the Immigration Judge in respect to custody status or bond redetermination shall be entered on the appropriate EOIR form at the time such decision is made, and the parties shall be promptly informed orally or in writing as the reasons for the Judge's decision. Consideration under this paragraph by the Immigration Judge of an application or request of an alien regarding custody or bond shall be separate and apart from any deportation hearing or proceeding under this part, and shall form no part of such hearing or proceeding. The determination of the Immigration Judge as to custody status or bond may be based upon any information which is available to the Immigration Judge or which is presented to him by the alien or the Service. The alien and the Service may appeal to the Board of Immigration Appeals from any such determination. After a deporation order becomes administratively final, or if recourse to the Immigration Judge is no longer available because of the expiration of the seven-day period aforementioned, the respondent may appeal directly to the Board from a determination by the District Director, Acting District Director, Deputy District Director, Assistant District Director for Investigations, or Officer in Charge of an office enumerated in § 242.1(a), except that no appeal shall be allowed when the Service notifies the alien that it is ready to execute the order of deportation and takes him into custody for that purpose. An appeal to the Board shall be taken from a determination by an Immigration Judge pursuant to § 3.36 of this chapter. An appeal to the Board taken from an appealable determination by a District Director, Acting District Director, Deputy District Director, Assistant District Director for Investigations, or Officer in Charge of an office enumerated in § 242.1(a), shall be perfected by filing a notice of appeal with the District Director within 10 days after the date when written notification of the determination is served upon the respondent and the Service. Upon the filing of a notice of appeal from a District Director's determination, the District Director shall immediately transmit to the Board all records and information pertaining to that determination. The filing of an appeal from a determination of an Immigration Judge or a District Director shall not operate to delay compliance, during the pendency of the appeal, with the custody directive from which appeal is taken, or to stay the administrative proceedings or deportation.

17. In § 242.5, paragraph (b) is revised to read as follows:

§ 242.5 Voluntary departure prior to commencement of hearing.

* * * * *

(b) *Application.* Any alien who believes himself or herself to be eligible for voluntary departure under section 242(b) of the Act may apply therefor at any office of the Service any time prior to the commencement of deportation proceedings against him or her. The officers designated in paragraph (a) of this section may deny or grant the application and determine the conditions under which the alien's departure shall be effected.

* * * * *

18. In § 242.7, paragraphs (a) and (b) are revised to read as follows:

§ 242.7 Cancellation proceedings.

(a) *Cancellation of Order to Show Cause.* Any District Director, Acting District Director, Deputy District Director, Assistant District Director for Investigations, or Officer-in-Charge of an office enumerated in § 242.1(a) of this part may cancel an Order to Show Cause prior to jurisdiction vesting with the Immigration Judge pursuant to section 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States or,

(5) The Order To Show Cause was improvidently issued.

(b) *Motion to dismiss.* After commencement of proceedings pursuant to section 3.14 of this chapter, any officer enumerated in paragraph (a) of this section may move for dismissal of the matter on the grounds set out under paragraph (a) of this section. Dismissal of the matter shall be without prejudice to the alien or the Service.

* * * * *

19. Section 242.12 is revised to read as follows:

§ 242.12 Interpreter.

Any person acting as interpreter in a hearing before an Immigration Judge under this part shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath shall be required.

20. Section 242.13 is revised to read as follows:

§ 242.13 Postponement and adjournment of hearing.

After the commencement of the hearing, the Immigration Judge may grant a reasonable adjournment either at his or her own instance or, for good cause shown, upon application by the respondent or the Service.

21. In § 242.14, paragraph (e) is revised to read as follows:

§ 242.14 Evidence.

* * * * *

(e) *Depositions.* The Immigration Judge may order the taking of depositions pursuant to § 3.33 of this chapter.

22. In § 242.16, the first three sentences of paragraph (d) are revised to read as follows:

§ 242.16 Hearing.

* * * * *

(d) *Additional charges.* The Service may at any time during a hearing lodge additional charges of deportability, including factual allegations, against the respondent. Copies of the additional factual allegations and charges shall be submitted in writing for service on the respondent and entry as an exhibit in the record. The Immigration Judge shall read the additional factual allegations and charges to the respondent and explain them to him or her.* * *

23. Section 242.20 is revised to read as follows:

§ 242.20 Finality of order.

The decision of the Immigration Judge shall become final in accordance with 8 CFR 3.37.

PART 292—REPRESENTATION AND APPEARANCES

24. The authority citation for Part 292 is revised to read as follows. All other authority citations are removed

Authority: 8 U.S.C. 1103, 1362.

25. In § 292.4, paragraph (a) is revised to read as follows:

§ 292.4 Appearances.

(a) form G–28. An appearance shall be filed on Form G–28 by the attorney or representative appearing in each case. During proceedings, withdrawal and/or substitution of counsel is permitted only in accordance with section 3.16 of this chapter. When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature shall constitute a representation that under the provisions of this chapter he or she is authorized and qualified to represent.

* * * * *

Dated: October 31, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85–29807 Filed 12–18–85; 8:45 am]

BILLING CODE 4410–01–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 60

[Docket No. PRM–60–2A]

States of Nevada and Minnesota; Filing of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Amended Petition for Rulemaking from the States of Nevada and Minnesota.

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment this notice of receipt of a petition for rulemaking that amends an earlier petition for rulemaking (PRM–60–2) filed with the Commission on January 21, 1985. This amended petition, filed by the States of Nevada and Minnesota, and dated September 30, 1985, was docketed by the Commission on October 3, 1985, and assigned Docket No. PRM–60–2A. The petitioner requests the Commission to amend its repository licensing regulations to incorporate the equivalent substance of the assurance requirements as issued in the final Environmental Protection Agency (EPA) Standards.

DATE: Comment period expires February 18, 1986. Comments received after this date will be considered if it practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Single copies of the petition may be obtained free by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition, copies of comments, and accompanying documents to the petition may be inspected and copies for a fee at the NRC Public Document Room, 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7086 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

I. Statement of Grounds and Interest

The State of Nevada filed this amended rulemaking petition as a State notified pursuant to the Nuclear Waste Policy Act (NWPA), that a potentially acceptable site for a repository has been identified within the state. The State of Nevada avers that it may become affected for purposes of participation in site characterization, pursuant to § 113 of the NWPA.

The State of Minnesota joins this amended petition as a state informed that it is being considered for site characterization for a second repository. The State of Minnesota avers that it may be directly affected by the substance of standards for the development of repositories.

The States of Nevada and Minnesota ground this petition on their respective interest in, and the prevailing responsibility for, the protection of the future health and safety of their citizens.

II. Issues Raised in PRM–60–2 and 60–2A

PRM–60–2

The petitioner filed the original petition (PRM–60–2) with the Commission on January 21, 1985. The petitioner requested the Commission to adopt a regulation governing the implementation of certain environmental standards which had

been proposed by the Environmental Protection Agency. The NRC published a notice of the petition for rulemaking in the **Federal Register** on April 30, 1985 (50 FR 18267) and requested comments. The comment period closed on July 1, 1985. Six comments were received in response to the notice.

PRM–60–2A

The petitioner states that this amendment to PRM–60–2 is based on the intervening action of the Environmental Protection Agency (EPA) on September 19, 1985 (50 FR 38066), in which the EPA issued final standards for protection of the general environment from offsite releases from radioactive material in repositories. The petitioner hopes to accomplish two objectives in this amendment: (1) To place before the Commission the substance of the assurance requirements, in terms of amendments to 10 CFR Part 60, which the EPA's recently published standards failed to make applicable to NRC licensees, i.e. Department of Energy (DOE) high-level waste repositories; (2) to propose to the Commission requirements and considerations for the process of adopting the DOE Environmental Impact Statement.

III. Proposed Commission Findings

The petitioner states that during the pendency of the EPA rulemaking, significant interaction occurred between Commission and EPA staff regarding which was the proper agency to adopt rules in the nature of "assurance requirements" that would apply to Commission licensees, to insure against the inherent uncertainties in selecting, designing and licensing waste disposal systems that must be very effective for more than 10,000 years. The Petitioner indicates that the two agencies agreed informally, and the EPA standard as finally issued provides, that assurance requirements are an appropriate mechanism to better guarantee that numerical standards will be realized; that the NRC was the more appropriate agency to adopt such standards as they apply to NRC licensees; and that the NRC approach would be to integrate the essence of EPA's earlier proposed rules into the repository licensing provisions of 10 CFR Part 60. Further, the Petitioner states that since evidence used by DOE to apply the siting guidelines includes analysis of expected repository performance to assess the likelihood of demonstrating compliance with the EPA standard, the rule proposed herein must be in place in order that DOE may design its site characterization plan in a manner consistent with the siting guidelines. The Petitioner proposes that the Commission make findings accordingly.

IV. The Petitioner Proposes the Following Amendments to 10 CFR Part 60:

1. Add definitions to § 60.2:

[ ] "Active institutional control" means any measure other than a passive institutional control performed to: (1) Control access to a site, (2) perform maintenance operations or remedial actions at a site, (3) control or clean up releases from a site; or (4) monitor parameters related to geologic repository performance and compliance with standards limiting releases of radioactivity to the accessible environment.

[ ] "Passive institutional control" means: (1) permanent markers placed at a site, (2) public records and archives, (3) government ownership and regulations regarding land or resource use, and (4) other methods of preserving knowledge about the location, design, and the contents of a geologic repository.

2. Add § 60.21(c) "Content of [license] application" and renumber remaining sections:

(9) A general description of the program for post-permanent closure monitoring of the geologic repository.

3. Add a new § 60.24(c), (d) and reletter the remaining subsection as (e).

(c) The Commission shall evaluate the environmental impact statement required by 42 U.S.C. 10134(f) and 10 CFR 60.21(a) to determine whether its adoption by the Commission would not compromise the independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011, *et. seq.*). In making such a determination, the Commission shall consider:

(1) Whether the Department of Energy has complied with the procedures and requirements of the Nuclear Waste Policy Act (42 U.S.C. 10101 *et. seq.*).

(2) Whether the alternative sites proposed in the environmental impact statement are bona fide alternative sites; that site characterization under 42 U.S.C. 10133 has been completed at such sites; and that the Secretary, after site characterization is complete, or substantially complete, at such sites, has made a preliminary determination that such sites are suitable for development as repositories consistent with the guidelines promulgated pursuant to 42 U.S.C. 10132.

(3) Whether the consideration of the alternative sites considered in the environmental impact statement included consideration of the natural properties that are expected to provide better isolation of the wastes from the accessible environment for 100,000 years after disposal; and whether the analyses used by the Department of Energy to compare the capabilities of different sites to isolate wastes were based upon the following:

(i) Only the undisturbed performance of the disposal system has been considered;

(ii) The performance of the waste packages and waste forms planned for the disposal system was assumed to be the same from site to site and assumed to be at least an order of magnitude less effective than the performance required by 10 CFR 60.113; and

(iii) No credit was taken for other engineering controls intended to correct preexisting natural flaws in the geologic media (e.g., grouting of fissures shall not be assumed, but effective sealing of the shafts needed to construct the repository shall be assuemd).

(4) Whether the disposal systems considered, selected or designed will keep releases to the accessible environment as low as reasonably achievable, taking into account technical, social and economic considerations.

(d) If the Commission determines that adoption of the environmental impact statement would compromise the independent responsibilities of the Commission, then the Commission shall consider fully the environmental impact of the selection of the proposed site as required by 42 U.S.C. 4321, *et. seq.*

4. Revise § 60.51(a)(1) "License amendment for permanent closure" as follows:

(1) A detailed description of the program for post-permanent closure monitoring of the geologic repository in accordance with § 60.144. As a minimum, this description shall:

(A) Identify those parameters that will be monitored;

(B) Indicate how each parameter will be used to evaluate the expected performance of the repository;

(C) Describe those monitoring devices which will indicate the likelihood that standards limiting releases of radioactivity to the accessible environment may not be met.

(D) Discuss the length of time over which each parameter should be monitored to adequately confirm the expected performance of the repository;

(E) Indicate how the results of post-permanent closure monitoring will be shared with affected State, Indian tribal and local governments.

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5. Add a new subsection to § 60.52(c) "Termination of license" and renumber current § 60.52(c)(3) as 60.52(c)(4).

(3) That the results available from the post-permanent closure monitoring program confirm the expectation that the repository will comply with the performance objectives set out at Sections 60.112 and 60.113.

6. Modify § 60.113 by adding:

(d) In any event, however, and notwithstanding the provisions of (b) above, the geologic repository shall incorporate a system of multiple barriers, both engineered and natural, each designed or selected so that it complements the others and can significantly compensate for uncertainties about the performance of one or more of the other barriers. 'Barrier' means any material or structure that prevents or substantially delays movement of water or radionuclides.

7. Add a new § 60.114 "Institutional Controls":

Neither active nor passive institutional controls shall be deemed to assure compliance with the overall performance objective set out at § 60.112 for more than 100 years after disposal. However, the effects of passive institutional controls may be considered in assessing the likelihood and consequences of processes and events affecting the geologic setting.

8. Add a new § 60.122(c)(18) and renumber later sections:

(18) The presence of significant concentrations of any naturally-occurring material that is not widely available from other sources.

9. Add a new § 60.144 "Post-Permanent Closure Monitoring":

A program of post-permanent closure monitoring shall be conducted and shall provide for monitoring of all repository characteristics which can reasonably be expected to provide substantive confirmatory information regarding long-term repository performance, provided that the means for conducting such monitoring will not degrade repository performance. This program shall be continued until termination of a license which shall not occur until the Commission is convinced that there is no significant concern which could be addressed by further monitoring.

V. Statement in Support

The Petitioner states that the rules proposed here are substantively equivalent to the EPA assurance requirements (which, by their terms, do not apply to NRC licensees), with one very notable exception: proposed 10 CFR 60.24(c). The Petitioner points out that this proposed new section relates to NRC review and adoption of DOE's environmental impact statement (EIS), a document developed in DOE's *selection* of a repository site. EPA's proposed 40 CFR 191.14(e) dealt with site selection, as NRC staff recognized in comments published by EPA in "Background Paper: Potential Changes in 10 CFR 60 to Replace Assurance Requirements in 40 CFR 191, March 21, 1985". NRC staff, however, found that DOE's site selection guidelines, 10 CFR 960.3–1–5, adequately address this issue. Nevada and Minnesota are concerned, and the Petitioner believes that the Commission should also be, that DOE's site selection process may not produce bona fide alternatives for consideration in DOE's EIS because of DOE's current interpretation of section 114(f), 42 U.S.C. 10134(f). Petitioner asserts if it does not, NRC's "independent responsibilities . . . to protect the public health and safety under the Atomic Energy Act of 1954" (section 114(f), 42 U.S.C. 10134(f)) will be implicated. The National Environmental Policy Act, 42 U.S.C. 4321, *et seq*, together with the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011, *et seq*, require the *Commission* to consider bona fide alternatives, even if section 112 of the Nuclear Waste Policy Act, 42 U.S.C. 10132, does not require DOE to do so. Petitioner believes the rule proposed here would guarantee that bona fide alternatives were evaluated by the NRC, if not also DOE. The "low as reasonably achievable" releases concept has also been reintroduced in this context. The bases for DOE's consideration of natural properties expected to provide better isolation have also been introduced.

The Petitioner states that in adopting the language of section 114(f) of the NWPA, Congress did not change the requirement for consideration of bona fide alternatives in an EIS. It merely narrowed the universe of all alternatives which DOE must consider in the final EIS, from all sites reasonably available to only those three sites which has been characterized, and for which the Secretary had made a preliminary determination as to site suitability. The Petitioner believes that a site which the Secretary has determined to be unsuitable for development as a repository, or, conversely, at which the Secretary was unable to make a preliminary determination of suitability, is simply not an alternative. The Petitioner believes the Secretary's responsibilities, under either the NWPA or NEPA, to consider alternative sites, is simply not met by the consideration of three sites, one or two of which were determined at any time to be unsuitable for development as repositories. The Petitioner states further that neither would the Commission's responsibilities be carried out in such a case, and thus such a result would severely jeopardize the Commission's ability, under section 114(f), to adopt the Secretary's final EIS in order to meet the Commission's legal obligations under NEPA.

VI. Notice Regarding Related Actions

The Commission presently has underway rulemaking actions which, when finalized, will address the concerns expressed by the petitioner. The Commission is now preparing to publish proposed amendments to 10 CFR Part 60 to eliminate inconsistencies between the EPA standard and the rule (see *Unified Agenda of Federal Regulations*, Current and Projected Rulemaking—Elimination of Inconsistences between NRC Regulations and EPA standards—OMB Regulation Identifier Number 3150–AC03, 50 FR 44992, October 29, 1985). The Commission anticipates that the proposed rule would incorporate the EPA "assurance requirements" in Part 60, to the extent appropriate, satisfying that aspect of the petitioner's request. The remaining aspect of the petitioner's request, adding a provision to Part 60 relating to NRC review and adoption of DOE's environmental impact statement, falls within the scope of a separate, ongoing rulemaking which would amend Part 51 to conform to provisions of the Nuclear Waste Policy Act concerning environmental review in HLW geologic repository licensing procedures (see *Unified Agenda of Federal Regulations*, Current and Projected Rulemaking—Part 51 Conforming Amendments—OMB Regulation Identifier Number 3150–AC04, 50 FR 44992, October 29, 1985). Accordingly, commenters are advised that further consideration of the issues raised by the petitioner will be deferred for consideration in the rulemaking actions referred to above. The present schedule calls for the publication of these two proposed rules within nine months. Any comments received in response to this notice would, in that event, be incorporated in the administrative record for those proceedings.

Dated at Bethesda, Maryland, this 16th day of December, 1985.

For the Nuclear Regulatory Commission.

Samual J. Chilk,

Secretary of the Commission.

[FR Doc. 85–30089 Filed 12–18–85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM-18; Notice No. SC-85-3-NM]

Special Conditions; British Aerospace 748 ATP Airplane

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the British Aerospace (BAe) 748 ATP series airplane which is to be assembled in the United Kingdom and imported into the United States. This airplane will have novel or unusual design features associated with an automatic takeoff power control system (ATPCS) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the safety standards which the Administrator finds necessary, because of these design features, to establish a level of safety equivalent to that established in the regulations.

DATE: Comments must be received on or before February 3, 1986.

ADDRESS: Comments on this proposal may me mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-18, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-18. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: James Walker, Transport Standards Staff, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-18." The postcard will be dated, time stamped, and returned to the commenter.

Background

On March 26, 1982, British Aerospace, Chester Road, Woodford, Bramhall, Stockport, Chesire SK7 1QR, England, applied for a United States Import Type Certificate for its BAe 748 ATP series airplane.

The BAe 748 ATP is a low wing, twin-engine, pressurized transport category airplane having a maximum takeoff weight of 49,500 pounds. The airplane is equipped with two Pratt and Whitney PW-124 turbopropeller engines, each producing 2,400 shaft horsepower. The airplane has a maximum seating capacity for 75 persons, including the crew, and a maximum permissible altitude of 27,000 feet.

The type design of the BAe 748 ATP series airplane with the ATPCS installed contains a novel or unusual design feature for which the applicable airworthiness requirements do not contain adequate or appropriate safety standards. Special conditions are necessary to provide a level of safety equal to that intended by the established certification basis and to support a finding by the Administrator that no feature of characteristic of the airplane with the automatic system installed makes it unsafe for the category in which certification is requested. The proposed special conditions specify limits on the maximum power increment which may be applied to the operating engines by the ATPCS, prescribe system reliability and status monitoring requirements, require provisions for manual selection of the maximum takeoff power approved for the airplane under existing conditions, prohibit approval of the system if the automatic or manual application of maximum takeoff power would result in an engine operating limit being exceeded, and require the installation of an independent engine failure warning system if the inherent characteristics of the airplane do not provide a clear warning to the crew.

The novel or unusual design feature for the airplane is the installation of an ATPCS. With the ATPCS "armed," takeoffs are normally made with engine power set at less than the maximum takeoff power approved for the airplane under the existing ambient environmental conditions. In the event of an engine failure during the takeoff, the ATPCS when "armed" or "on" automatically increases the fuel flow and the exhaust gas temperature (EGT) as maintained by the Single Red Line Limit (SRL). In the event of an ATPCS failure with an engine failure during the takeoff, the crew would be required to deactivate the system to achieve the maximum takeoff power. Because of this design feature where the pilot must move his hand from the power lever to activate the maximum power condition, the Agency has determined that special conditions for airplanes with automatic limiters should be modified under "Powerplant Controls" (paragraph E.2.b.) to provide that such activation is permitted, provided the means to increase power is located on or forward of the power levers, is easily operated by either pilot, and meets the requirements of § 25.777.

The ATPCS proposed for the BAe 748 ATP turbopropeller airplane performs the same function as the automatic takeoff thrust control system (ATTCS) does for the turbojet and turbofan powered transport airplanes. For setting power on the turbopropeller driven airplanes, horsepower (or torque) is used with the propeller converting the horsepower developed by the engine into forward thrust. For setting power on the turbojet or turbofan driven transport airplanes, fan speed (N_1) or engine pressure ratio (EPR) is generally used. The N_1 or EPR is proportional to the thrust that is developed by the turbojet or turbofan engines. Therefore, to make a distinction between turbopropeller airplane systems and the turbofan type, the different labeling of the two systems was made.

The FAA developed special conditions for an ATTCS for current turbine-powered transport category airplanes and sent the proposal to U.S. user groups and various foreign civil aviation authorities for review and comment in November 1977. Comments were received and reviewed, and the special conditions were revised and sent to the same groups in May 1978. This procedure was repeated again in November 1978. Cooperating with the

FAA in this development were the Aerospace Industries Association of America (AIA), Air Transport Association of America (ATA), Air Line Pilots Association (ALPA), Allied Pilots Association (APA), Rolls Royce (RR), Hawker Siddeley Aviation Limited (HS), British Civil Aviation Authority (CAA), the civil aviation authorities of Australia and Japan, the French Technical Commission Navigation (FTCN) and the French civil aviation authorities, Lockheed, Boeing, McDonnell Douglas, and Rockwell International.

Based on the comments received and on further review by the FAA, a number of changes were made to the proposed special conditions. These provide for consideration of the following specific matters:

1. For the fail-operational system proposed (able to perform its intended function after a single failure or combination of failures not shown to be extremely improbable within the ATTCS system), a reduction of the ATTCS failure probability from extremely improbable to improbable for the ATTCS alone, the addition of an extremely improbable failure probability for the combined ATTCS and engine failure, and deletion of the all-engine performance criteria.

2. For the nonfail-operational system proposed, a reduction in the failure probability from improbable to 10^{-3} for the ATTCS alone, introduction of a climb gradient for the combined ATTCS and engine failure case, and deletion of an engine failure warning means if the inherent characteristics of the engine failure are clearly made known to the pilot.

3. Clarifying changes, including a graphical presentation to clarify the definition of the term, "Critical Time Interval."

The special conditions proposed herein differ in one major respect from similar special conditions which have previously been issued for other airplane models. The certification basis for the BAe 748 ATP includes Amendment 25–23 to Part 25 of the Federal Aviation Regulations (FAR), which includes the requirements of § 25.1309(b)(2). Previous model airplanes to which special conditions for an ATTCS were applied do not have to meet the current requirements of § 25.1309(b)(2). The current requirements of § 25.1309(b)(2) are more stringent than the previous special condition requirements; therefore, the option to provide an ATPCS with reduced reliability if a specific level of minimum performance is available with both the ATPCS and an engine failed has been deleted from these special conditions.

Type Certification Basis

The type certification basis for the BAe 748 ATP series airplane with the ATPCS installed, to be incorporated in the type certificate, is Part 25 of the FAR, including Amendments 25–1 through 25–54; Part 36 of the FAR, including Amendments 36–1 through the Amendment in effect at the time the BAe 748 ATP is type certificated; Special Federal Aviation Regulation (SFAR) 27, including the Amendments 27–1 through the Amendment in effect at the time the BAe 748 ATP is type certificated; § 21.29 of the FAR; and the proposed special conditions for an ATPCS contained in this notice.

The applicable airworthiness standards for import products are those regulations designated in accordance with § 21.29 and are known as the "type certification basis" for the airplane design. Special conditions may be issued and amended, as necessary, as a part of the type certfication basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, are currently issued after public notice in accordance with §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.17(a)(2).

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions for the British Aerospace 748 ATP series airplane equipped with an automatic takeoff power control system (ATPCS).

PART 21—[AMENDED]

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

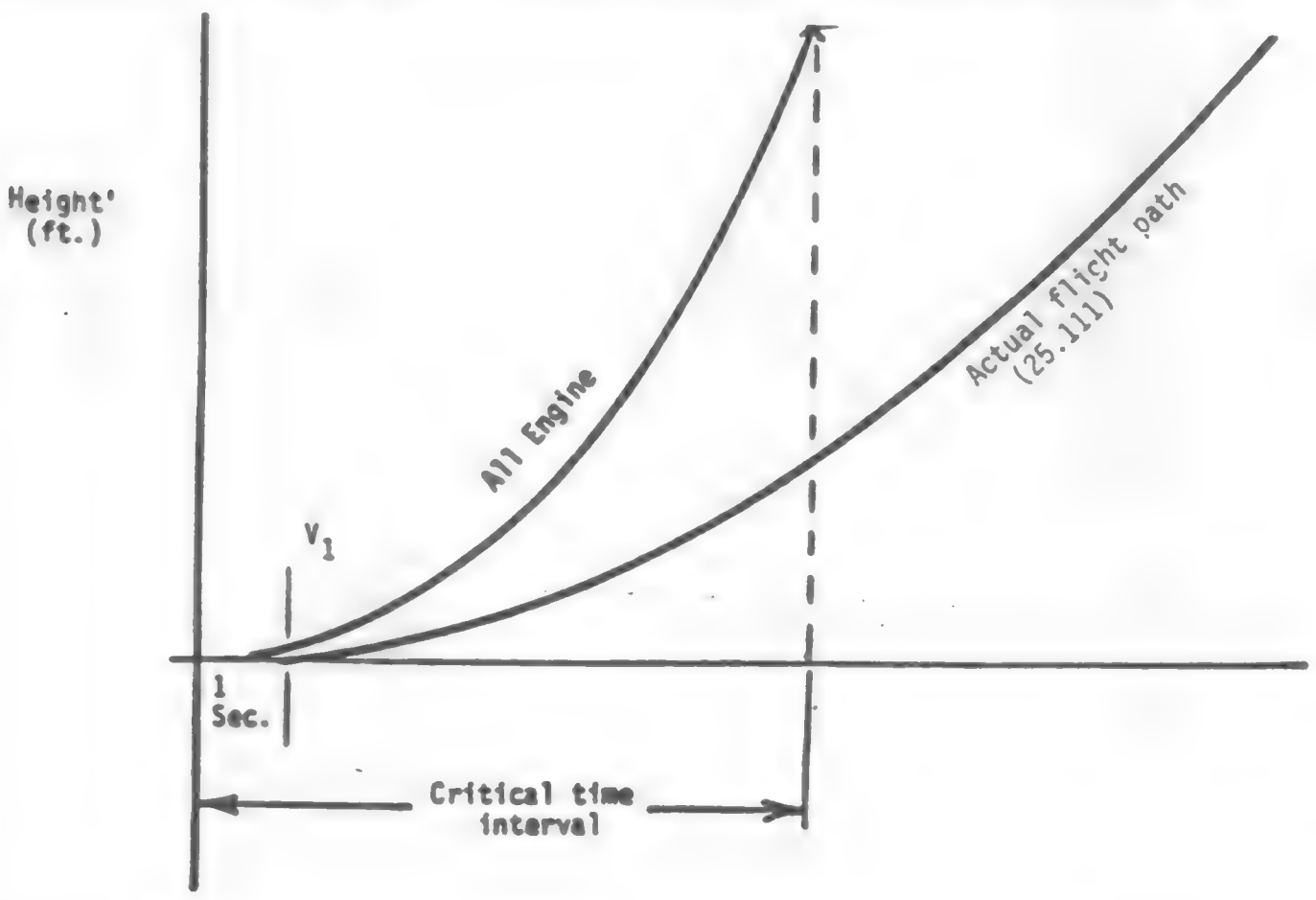
A. *General.* With the ATPCS and associated systems functioning normally as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without requiring any action by the crew to increase power.

B. *Definitions.*

1. *ATPCS.* An ATPCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled power increse, and furnish cockpit information on system operation.

2. *Critical Time Interval.* When conducting an ATPCS takeoff, the critical time interval is between V_1 minus 1 second and a point on the minimum performance, all-engine flight path where, assuming a simultaneous engine and ATPCS failure, the resulting minimum flight path thereafter intersects the Part 25 required actual flight path at not less than 400 feet from the takeoff surface. This definition is shown in the following graph.

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BILLING CODE 4910-13-C

3. *Takeoff Power.* Notwithstanding the definition of "takeoff power" in Part 1 of the FAR, "takeoff power" means the horsepower obtained from each initial power setting approved for takeoff under these special conditions.

C. *Performance Requirements.* The applicant must comply with the following performance and reliability requirements.

1. An ATPCS system failure during the critical time interval must be shown to be improbable.

2. The concurrent existence of an ATPCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

3. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATPCS system functioning.

D. *Power Setting.* The initial takeoff power set on each engine at the beginning of the takeoff roll may not be less than:

1. Ninety percent (90%) of the power level set by the ATPCS (the maximum takeoff power approved for the airplane under existing conditions);

2. That required to permit normal operation of all safety related systems and equipment dependent upon engine power or level position; or

3. That shown to be free of hazardous engine response characteristics when power is advanced from the initial takeoff power level to the maximum approved takeoff power.

E. *Powerplant Controls.*

1. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATPCS system, including associated systems, may cause the failure of any powerplant function necessary for safety.

2. The ATPCS must be designed to:

a. Apply power on the operating engine, following an engine failure during takeoff, to achieve the selected takeoff power without exceeding engine operating limits;

b. Permit manual decerase or increase in power up to the maximum takeoff power approved for the airplane under existing conditions through the use of the power level, except that for aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of power controlled by the power levers in the event of an ATPCS failure. In this case, the means must be located on or forward of the power levers, must be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and must meet the requirements of § 25.777, paragraphs (a), (b), and (c);

c. Provide a means to verify to the flightcrew prior to takeoff that the ATPCS is in a condition to operate; and

d. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

F. *Powerplant Instruments.* In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATPCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATPCS must be provided to give the pilot a clear warning of any engine failure during takeoff.

Issued in Seattle, Washington, on December 6, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-29969 Filed 12-18-85; 8:45 am]

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14 CFR Part 39

[Docket No. 85-NM-107-AD]

Airworthiness Directives: Israel Aircraft Industries (IAI) Model 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require repetitive inspections and replacement, as necessary, of the horizontal stabilizer aft spar splice fitting to detect cracks on all IAI Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes. Cracks have been reported in the splice fitting lugs on several airplanes. This condition, if not corrected, could lead to failure of the fitting, which would compromise the structural integrity of the horizontal stabilizer assembly.

DATE: Comments must be received on or before Feb. 10, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-107-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Israel Aircraft Industries, Delaware Office, P.O. Box 10086, Wilmington, Delaware 19850. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-107-Ad, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Israel Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on IAI Model 1121, 1121A, 1121B, 1123, 1124, and 1224A airplanes. Cracks have been reported in the horizontal stabilizer aft spar splice fitting on several airplanes. These cracks, if allowed to grow undetected, could lead to failure of the fitting, which would compromise the structural integrity of the horizontal

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stabilizer assembly. To prevent this from occurring, the CAA issued Airworthiness Directive 85–001 dated April 10, 1985, which requires periodic inspections and replacement, as necessary, of the fitting in accordance with IAI service bulletins. Fittings found cracked must be replaced prior to further flight.

This airplane model is manufactured in Israel and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require periodic inspections of the fittings and replacement of any fittings found cracked, in accordance with applicable IAI service bulletins.

It is estimated that 350 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required inspections, and that the average labor cost would be § 40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $28,000 per inspection cycle.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($80 per airplane). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Israel Aircraft Industries (IAI): Applies to all Model 1121, 1121A, 1121B, 1123, 1124, and 1124A, airplanes certificated in any category. Compliance is required as indicated below. To detect cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting (hinge assembly), accomplish the following, unless previously accomplished:

A. Within the next 75 flight hours time in service, unless previously inspected within the last 525 flight hours time in service, inspect the horizontal stabilizer aft spar splice fitting (hinge assembly), part number 453005–501, in accordance with the following IAI service bulletins:

Model	Service Bulletin
1121, 1121A 1121B.....	1121–55–003 dated April 2, 1985.
1123.....	1123–55–006 dated April 2, 1985.
1124, 1124A.....	1124–55–020 dated April 2, 1985.

B. If no cracks are found, repeat the inspection required by paragraph A., above, at intervals not to exceed 600 hours time-in-service.

C. If cracks are found, replace the splice fitting prior to further flight, in accordance with the following IAI service bulletins:

Model	Service Bulletin
1121, 1121A 1121B.....	1121–55–004 dated August 5, 1985.
1123.....	1123–55–007 dated August 5, 1985.
1124, 1124A.....	1124–55–021 dated August 5, 1985.

If the installation improvement modifications described in paragraph D(2) of each service bulletin is performed, repeat the inspection of paragraph A. of this AD at intervals not to exceed 2,400 hours time in service for subsequent inspections. If the installation improvement modification is not accomplished, the inspections must be repeated in accordance with paragraph B. of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to Israel Aircraft Industries, Delaware Office, P.O. Box 10086, Wilmington, Delaware 19850. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 12, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–29972 Filed 12–18–85; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 110

[CGD8–85–20

Anchorage Ground; Lower Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard is considering amending the anchorage regulations on the Lower Mississippi River by enlarging the permanent anchorage called Lower Baton Rouge Anchorage. This action is necessary to provide needed additional anchorage space for deep draft vessels.

DATE: Comments must be received on or before February 3, 1986.

ADDRESSES: Comments, should be mailed to Commander, Eighth Coast Guard District (mps), Hale Boggs Federal Building, 500 Camp St., New Orleans, LA 70130–3396. The comments and other materials referenced in this notice will be available for inspection or copying in Rm. 1341 at the above address. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LTJG K. D. Christopher, project officer, Command (mps), Eighth Coast Guard District, 500 Camp St., New Orleans, LA 70130–3396, Tel. (504) 589–6901.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD8–85–20) and the specific section of the proposal to which their comments apply, and give the reasons for comment. Receipt of comments will be acknowledge if a stamped self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is

planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rulemaking process.

Drafting Information: The drafters of this notice are LTJG K. D. Christopher, project officer, Eighth Coast Guard District Marine Safety Divisions and LCDR J. Vallone, project attorney, Eight Coast Guard District Legal Office.

Discussion of Proposed Rule: The Coast Guard received a request from the Greater Baton Rouge Port Commission to extend the Lower Baton Rouge Anchorage. The request indicated their concern that the present deep draft anchorage in the Lower Baton Rouge Anchorage will not be adequate to handle future growth and traffic. The Port Commission also stated that the stevedoring company that is the principal user of this anchorage has increased its tonnage guarantee by 25 percent. Recent anchorage use statistics indicate that the Lower Baton Rouge Anchorage is operating at 57 percent capacity. The increased tonnage guarantee will raise the occupancy level to 71 percent of capacity. While this increased tonnage guarantee does not, on the average, bring this anchorage to its capacity, there have been many occasions when it has been full. The greater the occupancy of the anchorage, the closer together the vessels must anchor. Because of limited maneuverability of most merchant vessels, the risk of accident increases as vessels anchor closer to each other. Also, the Lower Baton Rouge Anchorage is the only deep draft anchorage in the vicinity of Baton Rouge, Louisiana.

The Coast Guard believes that extending the Lower Baton Rouge Anchorage is in the best interest of navigational safety.

Economic Assessment and Certification

These proposed regulations are considered to the non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only extend the Lower Baton Rouge Anchorage by 0.2 miles. The added length is not expected to have any significant effect on navigation and therefore it is determined that the impact will be minimal. It is believed, however, that any economic impacts provided by this regulation are expected to be positive as the lengthening of this anchorage should facilitate midstream cargo operations.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—[AMENDED]

Proposed Regulations

In consideration of the foregoing the Coast Guard proposed to amend Part 110 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. In § 110.195, paragraph (a)(27) is revised to read as follows:

§ 110.195 Mississippi River below Baton Rouge, LA including South and Southwest Passes.

(a) * * *

(27) Lower Baton Rouge Anchorage. An area 0.7 miles in length near mid-channel between mile 228.3 to mile 229.0 above Head of Passes with the west limit 1100 feet off the right descending bank and having the width of 700 feet at both upper and lower limits.

* * * * *

Dated December 16, 1985.

Clyde T. Losk Jr,

Read Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85–30056 Filed 12–18–85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 161

[CGD 74–029]

Houston-Galveston Vessel Traffic Service; Withdrawal of Proposed Rule

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of proposed rule.

SUMMARY: On September 18, 1980, the Coast Guard published a notice of proposed rulemaking concerning the establishment of a mandatory vessel traffic service (VTS) in the Houston-Galveston area to replace the voluntary service presently in operation. Based on the high rate of participation in the voluntary system, the Coast Guard believes a mandatory VTS would not add materially to navigation safety in the area at this time. In light of this, the Coast Guard is withdrawing the notice of proposed rulemaking for Houston-Galveston Vessel Traffic Service.

DATE: This withdrawal is effective on December 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. LaRue Jr., (202) 426–4958, between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard established a voluntary Houston-Galveston Vessel Traffic Service (VTS) because this area has an unusually large number of facilities and vessels handling hazardous cargoes. The VTS came on the air in February 1975 following installation of 4 closed-circuit television systems (CCTV), 1 radar, and Very High Frequency (VHF) communications equipment.

Because of the configuration of the waterway in this area and the nature of the vessel traffic, virtually full participation was considered necessary to obtain the safety benefits of a VTS. To ensure participation in the VTS, the Coast Guard intended to make the system mandatory after all equipment was installed and operational. Therefore, the Coast Guard published a notice of proposed rulemaking (NPRM) on September 18, 1980 concerning the establishment a mandatory VTS (45 FR 62158).

Since publication of the NPRM and installation of additional CCTV equipment, participation has increased to 99% +. This is due, in part, to the efforts of the Houston/Galveston Navigation Safety Advisory Committee, which was established in large measure to advise the Commandant on matters relating to the VTS. The input obtained from users in the development of the VTS appears to have made users more aware of its value as a navigational tool, thus improving the participation rate.

By making users more aware of the procedures involved and the benefits to be derived, voluntary participation has increased to its present high level, making mandatory compliance unnecessary. Therefore, the Coast Guard is withdrawing the NPRM. However, in the event voluntary participation declines, the Coast Guard will again consider regulatory measures in order to maintain the desired level of safety in the waterway.

Drafting Information

The principal persons involved in the drafting of this section are Mr. Edward J. LaRue Jr., Project Manager, Office of Marine Environment and Systems, and Mr. Stephen H. Barber, Project Counsel, Office of the Chief Counsel.

For the reasons stated above, the notice of proposed rulemaking, Coast Guard Docket number 74–029, published

in the Federal Register on September 18, 1980 (45 FR 62158), is withdrawn.

List of Subjects in 33 CFR Part 161

Hazardous materials transportation, Navigation (water), Vessels.

(33 U.S.C. 1231; 49 CFR 1.46(n)(4))

Dated: December 16, 1985.

Peter J. Rots,

Chief, Office of Marine Environment and System.

[FR Doc. 85-30055.Filed 12-18-85; 8:45 am]

BILLING CODE 4910-14-M

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

Tariff of Tolls; Proposed Revision

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation and the St. Lawrence Seaway Authority of Canada have jointly established and presently administer the St. Lawrence Seaway Tariff of Tolls. This tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the Corporation and the Authority. The Authority is proposing to the Corporation that the commodity tolls and vessels charges be increased by approximately 15% for the 1986 navigation season at the Welland Canal section of the St. Lawrence Seaway. Under this proposal, the level of commodity tolls and vessel charges for the Montreal-Lake Ontario section will not change and the Corporation will continue to receive 27% of the revenues generated on this section.

DATES: Public Comments and Hearing:

The Corporation invites comments on the proposed revision to the Tariff of Tolls from any interested person(s) or organization(s). Any party wishing to present views or data on the proposed revision may file comments with the Corporation on or before February 21, 1986.

The Corporation will hold a public hearing on the proposed increase of toll rates on February 5, 1986, beginning at 10:00 a.m. The hearing will run until concluded subject to adjournment from day to day or otherwise at the discretion of the Administrator. Oral presentations will be limited to fifteen (15) minutes. Persons or organizations desiring to present testimony at the hearing shall submit to the Corporation on or before January 27, 1986, a written notice of their intention to appear. If the public hearing is continued to date later than February 11, 1986, the date by which written comments are to be filed will be extended to ten (10) days following the actual close of the hearing.

It is requested that data provided in written comments or at the hearing include total transportation costs for the movements of cargo via the St. Lawrence Seaway and should detail individually all pertinent components thereof including all inland freight cost (rail, truck or water), terminal or elevator charges and handling costs, ocean freight costs and other significant transportation costs. It would be very helpful if each analysis also detailed similar transportation costs by alternative routes in order to adequately evaluate the potential for diversion.

ADDRESS: Notices of appearances, views, data, comments and supplementary statements are to be submitted to the Saint Lawrence Seaway Development Corporation, 400 7th Street, SW., Washington, D.C. 20590. (Attention: Tolls Revision Docket) The public hearing will be held in Room 4234 at the above address.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, (202) 426-3325.

SUPPLEMENTARY INFORMATION: As the result of lengthy discussions, the Corporation and the Authority have agreed, for the purpose of eliciting public comment, to propose a revision of certain charges set forth in Tolls Schedule of the joint St. Lawrence Seaway Tariff of Tolls. This proposal is concerned with only those charges assessed on transiting the Welland Canal and will be subject to subsequent joint review by the Corporation and the Authority.

The Proposal

It is proposed that the Tolls Schedule for the Welland Canal Section (presently codified as 33 CFR 402.8) of the St. Lawrence Seaway be revised as follows (for comparison purposes the rate presently in effect are included):

SCHEDULE OF TOLLS—WELLAND CANAL SECTION

	Present	1986
(a) For transit of the Seaway, a composite toll, comprising:		
(1) A charge in dollars per gross registered ton, according to national registry of the vessel, applicable whether the vessel is wholly or partially laden, or is in ballast. (All vessels shall have an option to calculate gross registered tonnage according to prescribed rules for measurement in either Canada or the United States	0.07	[illegible]

SCHEDULE OF TOLLS—WELLAND CANAL SECTION—Continued

	Present	1986
(2) A charge in dollars per metric ton of cargo as certified on ship's manifest or other document, as follows:		
Bulk cargo	[illegible]	[illegible]
General cargo	[illegible]	[illegible]
Containerized cargo	[illegible]	[illegible]
Government aid cargo	0.31	0.36
Food grains	0.31	[illegible]
Feed grains	[illegible]	[illegible]
(3) A charge in dollars per passenger per lock	[illegible]	1.00
(4) A charge in dollars per lock for complete or partial transit of the Welland Canal in either direction by cargo or passenger vessels, which may be shared by vessels in tandem:		
(i) loaded: Per Lock	250.00	[illegible]
(ii) in ballast. Per Lock	[illegible]	215.00
(b) For partial transit of the Seaway:		
(1) Between Montreal and Lake Ontario, in either direction 15 percent per lock of the applicable toll		
Between Lake Ontario and Lake Erie, in either direction, (Welland Canal), 13 percent per lock of the applicable toll		
(c) Minimum charge in dollars per vessel per lock transited for full or partial transit of the Seaway:		
Pleasure craft	[illegible]	[illegible]
Other vessels	10.00	11.00

Although the charges and tolls applicable to the Montreal-Lake Ontario section are not changed by the proposal set forth about § 402.8 is proposed to be revised by removing from the schedule the column headed "1982" and changing the "1983" heading to "1986", both of which are presently contained under the heading "Montreal to or from Lake Ontario."

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States, and therefore, Executive Order 12291 does not apply. This regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls relates to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact

statement under the National Environmental Policy Act (49 U.S.C. 4321, *et seq.*) because it is not a major federal action significantly affecting the quality of human environment.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

PART 402—[AMENDED]

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend Part 402—Tariff of Tolls (33a CFR Part 402) as follows:

1. The authority citation for 33 CFR Part 402 continues to read as follows:

Authority: 68 Stat. 93–96, 33 U.S.C. 981–990, as amended.

2. Section 402.8 is revised to read as follows:

§ 402.8 Schedule of tolls.

Tolls		
Montreal to or from Lake Ontario	Lake Ontario to or from Lake Erie (Welland Canal)	
	1986	1987
(a) For transit of the Seaway, a composite toll, comprising:		
(1) A charge in dollars per gross registered ton, according to national registry of the vessel, applicable whether the vessel is wholly or partially laden, or is in ballast. (All vessels shall have an option to calculate gross registered tonnage according to prescribed rules for measurement in either Canada or the United States)	0.08	0.08
(2) A charge in dollars per metric ton of cargo as certified on ship's manifest or other document, as follows:		
Bulk cargo	0.85	0.36
General cargo	2.06	0.58
Containerized cargo	0.85	0.36
Government aid cargo	0.52	0.36
Food grains	0.52	0.36
Feed grains	0.52	0.36
(3) A charge in dollars per passenger per lock	1.00	1.00
(4) A charge in dollars per lock for complete or partial transit of the Welland Canal in either direction by cargo or passenger vessels, which may be shared by vessels in tandem.		
(i) loaded: Per Lock	N/A	250.00
(ii) in ballast: Per Lock	N/A	215.00
(b) For partial transit of the Seaway:		
(1) Between Montreal and Lake Ontario, in either direction 15 percent per lock of the applicable toll		
(2) Between Lake Ontario and Lake Erie, in either direction, (Welland Canal), 13 percent per lock of the applicable toll		
(c) Minimum charge in dollars per vessel per lock transited for full or partial transit of the Seaway:		
Pleasure craft	5.00	8.00
Other vessels	10.00	11.00

Issued at Washington, D.C., on December 12, 1985.

Saint Lawrence Seaway Development Corporation.

James L. Emery,

Administrator.

[FR Doc. 85–30000 Filed 12–18–85; 8:45 a.m.]

BILLING CODE 4910-61-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: This Office proposes to remove a regulation providing for the collection of probate fees from the estates of deceased Indians for whom the United States held land in Indian trust status. This action is proposed because Congress repealed the legislation providing for the collection of such fees. The action will delete the Department's obsolete regulation. The Office also proposes to amend a second regulation referring to the collection of probate fees.

DATE: Comments on the proposed rule must be received by January 21, 1986.

ADDRESS: Comments may be mailed to John H. Kelly, Deputy Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: John H. Kelly, Deputy Director, Office of Hearings and Appeals, (703) 235–3810.

SUPPLEMENTARY INFORMATION: On September 26, 1980, Pub. L. 96–363 went into effect. Among other things, this legislation repealed 25 U.S.C. 375b and 377, the legislation requiring the Department of the Interior to collect fees for probating the estates of deceased Indians for whom the United States held land in Indian trust status. The Department's regulations in 43 CFR 4.280 provide for the collection and amount of such fees. Because this regulation was made obsolete by Pub. L. 96–363, it is proposed that the regulation be removed. No fees have been collected since the repeal of §§ 375b and 377.

Conforming amendments would also be made to 43 CFR 4.251, which refers to the collection of probate fees.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the amendment provides for the removal of an obsolete regulation that has not been enforced since 1980.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department of the Interior has determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969, *as amended* (42 U.S.C. 4321–4347).

This rule was written by Kathryn Lynn, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians.

Dated: November 5, 1985.

Paul T. Baird,

Director.

PART 4—[AMENDED]

43 CFR Part 4, Subpart D, is proposed to be amended as follows:

1. The authority citation for Part 4, Subpart D, continues to read as follows:

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b.

§ 4.280 [Removed]

2. Section 4.280 is proposed to be removed.

3. In § 4.251, the introductory text and paragraph (b) are proposed to be revised to read as follows:

§ 4.251 Priority of claims.

After allowance of the costs of administration, claims shall be allowed:

* * * * *

(b) The preference of claims may be deferred, in the discretion of the administrative law judge, in making adjustments or compromises beneficial to the estate.

* * * * *

[FR Doc. 85–29988 Filed 12–18–85; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-387; RM-4929]

FM Broadcast Station in Chatom, AL.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of Channel 291A for Channel 276A at Chatom, Alabama, and modification of the permit of Station WCCJ(FM), in response to a joint petition filed by Radio Hattiesbury, Inc. and June G. Fuss. The proposed substitution would enable Station WHER (FM), Hattiesburg, Mississippi, to move its transmitter site and maintain its Class C status.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530:

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended: 47 U.S.C 154, 303, Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rulemaking and Order To Show Cause

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Chatom, Alabama); MM Docket No. 85-387 RM-4929.

Adopted: December 2, 1985.

Released: December 13, 1985.

By the Commission.

1. Before the Commission for consideration is a joint petition for rule making filed by Radio Hattiesburg, Inc. ("RHI"), licensee of Station WHER (FM) (Channel 279), Hattiesburg, Mississippi, and June G. Fuss ("Fuss"), permittee of Station WDAL(FM) (Channel 276A), Chatom, Alabama.[1] Petitioners proposed to substitute Channel 254A for Channel 276A at Chatom to permit Station WHER to move its transmitter and maintain its Class C status at Hattiesburg.[2]

2. RHI indicates that the presence of Channel 276A at Chatom hinders its ability to move its transmitter to a site where it could operate at full Class C values. If Channel 291A is substituted for Channel 276A at Chatom, it would permit Station WHER to provide expanded coverage to its service area in Hattiesburg, while retaining the only local service at Chatom. Therefore, petitioners request the substitution of channels and modification of Station WCCJ's permit accordingly at Chatom.

3. We believe the proposal warrants consideration. Channel 291A can be substituted for Channel 276A at Chatom consistent with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules.

4. Although Benchmark submitted a statement in which it supported the original request to substitute Channel 254A for 276A at Chatom, we are issuing a show cause order to it to determine its willingness to modify its permit for Station WCCJ(FM) to Channel 291A instead.

5. With respect to the proposed modification of Station WCCJ(FM), the Commission's established policy provides for reimbursement of reasonable costs incurred in changing a station's frequency from the party benefitting from a new channel allotment. The parties have not mentioned whether an agreement has been reached with regard to reimbursement. RHI should indicate its willingness to reimburse or whether another agreement has been reached in this regard should the Chatom proposal be implemented.

6. Accordingly, we consider it appropriate to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Chatom, Alabama	276A	291A

7. It is ordered That, pursuant to section 316(a) of the Communication Act of 1934, as amended, Benchmark Communications Corporation, the permittee of Station WCCJ(FM), Chatom, Alabama, shall show cause why its permit should not be modified to specify operation on Channel 291A in lieu of Channel 276A.

8. Pursuant to § 1.87 of the Commission's Rules, Benchmark Communications Corporation may, not later than February 3, 1986, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, Benchmark Communications Corporation may, not later than February 18, 1986, file written statement showing with particularity why its permit should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on Benchmark Communications Corporation to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the premit as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Benchmark Communications Corporation will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission if the above-mentioned channel modification is ultimately found to be in the public interest.

9. It is further ordered, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Order* to the permittee of Station WCCJ(FM), Chatom, Alabama, as follows: Benchmark Communications Corporation, 4700 S.W. 75th Avenue, Miami, Florida, 33155.

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised in read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

[1] Although Fuss held the construction permit for Station WDAL(FM) at the time this petition was filed, the permit was subsequently assigned to Benchmark Communications Corporation and the call letters changed to WCCJ(FM).

[2] The allotment of Channel 254A to Chatom conflicts with a separate request to substitute Channel 254Cl for Channel 252A at Chickasaw, Alabama, and to modify the license of Station WDLT(FM) (RM-5108). Therefore, in order to accommodate petitioners' proposal, staff engineering study has determined that Channel 291A is available at Chatom. Accordingly, we have substituted that channel for consideration herein.

BEST COPY AVAILABLE

Donald Furr, P.O. Box 707, Columbus, Mississippi 29702–0707 (Petitioner—Radio Hattiesburg, Inc.)
and
John Wells King, Esq., Haley, Bader and Potts, 2000 M Street, NW.—Suite 600, Washington, DC 20036–4574 (Counsel for Benchmark Communications Corporation)

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

13. For futher infomation concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time of a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in section 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached.

Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85–30010 Filed 12–18–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–382; RM–5049]

FM Broadcast Station in Rocky Ford, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the substitution of FM Channel 238Cl for Channel 240A and modification of the license of Station KAVI–FM, Rocky Ford, Colorado, in response to a petition filed by Two A, Inc. The proposal could provide Rocky Ford with its first wide-area coverage FM channel.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Rocky Ford, Colorado; MM Docket No. 85–382 RM–5049.

Adopted: November 25, 1985.

Released: December 13, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration a petition for rule making filed by Two A, Inc. ("petitioner"), licensee of Station KAVI–FM (Channel 240A), Rocky Ford, Colorado, which seeks the substitution of Channel 238C1

for Channel 240A and modification of its license accordingly. Petitioner's proposal is premised on its desire to provide expanded coverage to area residents, as well as those in nearby Crowley and Otero Counties.

2. We believe the proposal warrants consideration. A staff engineering study reveals that Channel 283Cl can be alotted to Rocky Ford in conformity with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules.

3. In view of the above, we shall propose to modify the license of Station KAVI–FM, as requested by petitioner, in the event Channel 238Cl is substituted for Channel 240A at Rocky Ford, Colorado. However, consistent with Commission precedent, should another interest in the allotment be shown, the modification could not be made at this time unless at least one additional equivalent channel is available in the community to accommodate any other expressions of interest. See, *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984).[1]

4. Accordingly, we consider it appropriate to sek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Rocky Ford, Colorado	240A	238Cl

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additonally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: J. Dominic Monahan, Esq. Dow, Lohnes and Albertson, 1255 23rd Street, NW., Washington, DC 20037 (Counsel for Petitioner).

[1] Interested parties should consider the pendency of the *Notice of Proposed Rule Making* (MM Docket No. 85–313) 50 FR 45439, published October 31, 1985, which proposes to permit FM stations to upgrade on adjacent channels without demonstrating the availability of another equivalent class of channel.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Commissions Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel then was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the date set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular hours in the Commission's Public Reference Room at

its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-30011 Filed 12-18-85; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-383; RM-5016]

FM Broadcast Station in Holmes Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of Channel 254A to Holmes Beach, Florida, as its first FM channel in response to a petiton filed by Robert V. Barnes.

DATE: Comments must be filed on or before February 3, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Holmes Beach, Florida); MM Docket No. 85-383 RM-5016.

Adopted: November 25, 1985.

Released: December 13, 1985.

1. Before the Commission is a petition for rule making filed by Robert V. Barnes ("petitioner") which seeks the allotment of Channel 254A to Holmes Beach, Florida, as its first FM service. Petitioner stated his intention to apply for the channel.

2. Channel 254A can be allotted to Holmes Beach in compliance with the minimum distance separation requirements.[1] In view of the fact that the proposal could provide a first FM service to Holmes Beach, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, as follows:

City	Channel No.	
	Present	Proposed
Holmes Beach, Florida		254A

3. The Commission's authority to institute rule make proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Frederick H. Walton, Jr., Dempsey and Kaplovitz, 1401 New York Avenue, Washington, DC 20005.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments event if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initital comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or

[1] The separations are met, based on a construction permit issued to Station WRYO, Crystal River, Florida.

before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the persons(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or the documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-30012 Filed 12-18-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR part 73

[MM Docket No. 85-384; RM-4985]

FM Broadcast Station in Willow Springs, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the substitution of Class C2 Channel 262 for Channel 261A at Willow Springs, Missouri, and modification of the construction permit in response to a petition filed by Woodridge Enterprises, Inc. The assignment could provide Willow Springs with a first Class C2 assignment.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle; Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1061, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Willow Springs, Missouri); MM Docket No. 85-384 RM-4985.

Adopted: November 25, 1985.

Released: December 13, 1985.

By the Chief, Policy and Rules Divisions.

1. The Commission has before it a petition for rule making filed by Woodridge Enterprises, Inc.[1] ("petitioner"), requesting the substitution of FM Channel 262C2 for 261A at Willow Springs, Missouri, and modification of its construction permit to specify the new channel.

2. We believe the petitioner's proposal warrants consideration. The channel can be assigned in compliance with the minimum distance separation requirements of the Commission's Rules. We shall also propose to modify petitioner's construction permit for Channel 261A to specify operation on Channel 262C2. However, in conformity with Commission precedent, should another party indicate an interest in the Class C2 allotment, the modification could not be implemented unless an additional equivalent channel is also alloted. See, *Modification of FM and TV Stations Licenses*, 98 F.C.C. 2d 916 (1984).[2]

3. In order to provide a wide coverage area station for the Willow Springs area, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No	
	Present	Proposed
Willow Springs, Missouri	261A	262C2

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel with be allotted.

5. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Todd D. Gray, Dow, Lohnes and Albertson, 1255 Twenty-Third Street, NW., Suite 500, Washington, DC 20037 (Counsel for petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as

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[1] Petitioner is the permittee for Channel 261A, Willow Springs, Missouri (BPH831216BP).

[2] 2 Interested parties should consider the pending proposal (*Notice of Proposed Rule Making* in MM Docket 85-313, 50 Fed. 45439, published October 31, 1985), which proposes to permit FM stations to upgrade on adjacent channels without demonstrating the availability of another equivalent class of channel.

set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, it authorized, to build a station promptly. Failure to file may lead to denial ot the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §§ 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, and original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85-30013 Filed 12-18-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-381; RM-5120]

FM Broadcast Station in Lake View, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allocation of Channel 277A to Lake View, South Carolina, as that community's first local FM service, at the request of Andrews-Intermart Broadcasting Company and Williard Payne.

DATES: Comments must be filed on or before February 3, 1986, and reply comments on or before February 18, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the Matter of Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations, (Lake View, South Carolina); MM Docket No. 85-381 RM-5120.

Adopted: November 25, 1985.

Released: December 13, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the request of Andrews-Intermart Broadcasting Company, on behalf of Willard Payne ("petitioner"), to allocate Channel 277A to Lake View, South Carolina, as its first local service.[1] Petitioner states that he will apply for the frequency, if allocated.

2. Channel 277A can be utilized at Lake View in compliance with the Commission's mileage separation requirements if the transmitter is sited at least 9.8 kilometers (6.1 miles) northwest to avoid short-spacings to Stations WGNI, Wilmington, North Carolina, and WEZI, Charleston, South Carolina. This site restriction does not negate the short-spacing to Station WZYC at Newport, North Carolina, at its current site and with its present facilities. However, Station WZYC has an application pending to move its transmitter location and downgrade its operation to that of a Class C1 (850628ID). Therefore, the finalization of this request is contingent upon the grant of Station WZYC's pending application.

3. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission allocate broadcast channels to "communities." A community for allocation purposes has been defined as an identifiable population grouping. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. However, absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic or cultural indicia to qualify it as a "community" for allocation purposes. See, *e.g., Ansley Alabama,* 46 FR 58688, published December 3, 1981, and *Cascade Village, Colorado,* 48 FR 19917, published May 3, 1983. Here, Lake View is listed in the 1984 Edition of the Rand McNally Road Atlas and attributed with a population of 939 persons. However, it is not listed in the 1980 U.S. Census nor can we determine that the place is incorporated. Therefore, petitioner is requested to submit additional information regarding

[1] The request for the Lake View allocation was filed as part of a counterproposal in MM Docket 84-231 by Andrews-Intermart seeking the substitution of Channel 283C2 for Channel 285A at Andrews, South Carolina, and the modification of its construction permit for Station WQSC (FM) to specify operation on the higher powered channel. The Lake View proposal wa not accepted at that time as the request did not conflict with any of the proposals under consideration in the omnibus rule making. The Andrews proposal was also deemed to be unacceptable for consideration as part of the omnibus proceeding. Andrew-Intermart has also filed a petition for reconsideration of thse actions in conjunction with other pending reconsideration requests in Docket 84-231. The Lake View reconsideration is dismissed as moot based on the *Notice of Proposed Rule Making* herein.

BEST COPY AVAILABLE

Lake View to demonstrate whether it has any business, social organizations, or governmental units that identify themselves therewith.

5. In view of the foregoing, we believe the public interest would be served by seeking comments on the proposed allocation. However, absent sufficient demographic data substantiating petitioner's claim as to the status of Lake View, this allocation will not be finalized. Accordingly, the Commission seeks comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to Lake View, South Carolina, as follows:

City	Channel No.	
	Present	Proposed
Lake View, South Carolina		277A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be alloted.

7. Interested parties may file comments on or before February 3, 1986, and reply comments on or before February 18, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Gary S. Smithwick, Esq., Keith & Smithwick, 1320 Westgate Drive, Winston-Salem, North Carolina 27103 (Counsel for the petitioner).

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 47 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau

Appendix

1. Pursuant to authority found in section 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §§1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 30014 Filed 12-18-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Astragalus robbinsii var. jesupi (Jesup's Milk-Vetch) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Astragalus robbinsii* var. *jesupi* (Jesup's milk-vetch) to be an endangered species, and thereby to provide the species needed protection under the authority contained in the

Endangered Species Act of 1973, as amended. This species is known from one site in Vermont and two sites in New Hampshire. The total known range of the species is along approximately 16 miles (25 kilometers) of the Connecticut River, where the plants are associated with calcareous bedrock outcrops. Hydropower development and increased recreational activity along the river could threaten the species' continued existence. Critical habitat is not being proposed. Comments are solicited.

DATES: Comments from all interested parties must be received by February 18, 1986. Public hearing requests must be received by February 3, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard W. Dyer at the above address (617/965–5100 or FTS 829–9316).

SUPPLEMENTARY INFORMATION:

Background

Jesup's milk-vetch is a plant of the pea family (Fabaceae) that is only known to occur at three sites on the banks of the Connecticut River in New Hampshire and Vermont. The total range of the species is restricted to approximately 16 miles (25 kilometers) along the river, where it occurs on calcareous schist outcrops. The perennial herbs grow from rhizomes in the silt-filled crevices of outcrops or at the high water mark, where they are shaded by associated trees and shrubs. The one to several stems are 8–24 inches (2–6 decimeters) tall and are either smooth or sparsely covered by short appressed hairs. The leaves are pinnately compound. The 9–17 leaflets are ⅛–¾ inches (1–2 centimeters) long, oblong to elliptic in shape, and may also have a few short hairs. The violet to bluish-purple flowers appear in late May or early June. The fruit is a flattened tapered pod; the form of the pod is important in differentiating among the three New England varieties of *Astragalus robbinsii*. Of these three known varieties, *A. robbinsii* var. *robbinsii* is now extinct, *A. robbinsii* var. *minor* is very rare, and the third, *A. robbinsii* var. *jesupi*, is the subject of this proposal (Barneby, 1964).

Astragalus robbinsii (Oakes) Gray var. *jesupi* Eggleston and Sheldon has persisted at the Hartland, Vermont, location since it was first discovered on May 19, 1881, by Jesup and Perkins. Many early collections were made at this site. This population now consists of fewer than 75 plants. Although collecting for scientific purposes is not now considered a threat to the species' continued existence, any additional loss or taking of plants for any purpose would be extremely detrimental.

Two other populations of Jesup's milk-vetch are known to exist. One small population of six plants occurs at Sumner's Falls near Plainfield, New Hampshire, and the most vigorous colony, of several hundred plants, occurs approximately sixteen miles downstream in Claremont, New Hampshire. This unique stretch of river not only provides the essential habitat requirements for the milk-vetch but is also habitat for a variety of rare plants and animals. Two other candidates for Federal listing, the dwarf wedge mussel *(Alasmidonta heterodon)* and the cobblestone tiger beetle (*Cicindela marginipennis*), are known to exist in the same area. Fifteen plant species considered by the New Hampshire Natural Heritage Inventory as being rare, threatened, or endangered in the State also occur along this stretch of river. Due to the diverse assemblage of plants and animals of State and Federal significance, the New Hampshire Natural Heritage Inventory, in a letter dated November 15, 1984, to the Federal Energy Regulatory Commission, has identified a portion of this habitat as "the most significant natural area in this state of New Hampshire in need of conservation."

Astragalus robbinsii var. *jesupi* was first recommended for Federal listing as an endangered plant species by the Smithsonian Institution in its december 15, 1974, report to Congress, *Report on Endangered and Threatened Plant Species of the United States* (House Document No. 94–51). On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823), indicating its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) of the Endangered Species Act of 1973 (Act) (petition acceptance is now covered by section 4(b)(3) of the Act, as amended). Jesup's milk-vetch was one of approximately 1,700 plant species proposed for Federal listing on June 16, 1976 (41 FR 24523). On December 10, 1979 (44 FR 70796), the Service published notice of the withdrawal of that portion of the 1976 proposal that had not been made final because of the provisions mandated in the Endangered Species Act Amendments of 1978 (Pub. L. 95–632). The withdrawal notice was required because of a deadline for making rules final and was not related to the conservation status of the proposed taxa.

The Service published a comprehensive **Federal Register** notice on December 15, 1980 (45 FR 82480), that was intended to reflect the Service's judgment of the probable status of all plant taxa that had been included in previous notices or proposals. Jesup's milk-vetch was recognized as a category-2 candidate in that notice. Category-2 candidates are taxa for which existing information indicates the possible appropriateness of proposing to list as endangered or threatened, but for which sufficient information is not presently available to biologically support a proposed rule.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned and the deadline for a finding of those species, including *Astragalus robbinsii* var. *jesupi*, was October 13, 1983. On October 13, 1983, October 12, 1984, and again on October 11, 1985, the petition finding was made that listing *Astragalus robbinsii* var. *jesupi* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of the 1983 finding was published in the January 20, 1984, **Federal Register** (49 FR 2485); notification of the 1984 finding was published on May 10, 1985 (50 FR 19761). Such a finding requires a recycling of the petition, pursuant to Section 4(b)(3)(c)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1986; this proposed rule constitutes the finding that the petitioned action is warranted, and proposes to implement the action in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 FR Part 424 set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus robbinsii* (Oakes) Gray var. *jesupi* Eggleston and sheldon are as follows:

A. *The present or threatened destruction, modification, or curtailment*

of its habitat or range. The most significant threat to Jesup's milk-vetch is the direct inundation or alteration of its habitat by future hydropower projects. The Federal Energy Regulatory Commission (FERC) has issued a preliminary permit to a private developer for a 20 megawatt dam that would destroy two of the three populations and may have an adverse impact on the third. A preliminary permit does not authorize the construction of a project but rather grants the permittee exclusive rights to conduct studies on the feasibility of the project at the specified site.

The Service officially notified FERC on November 4, 1984, that the proposed Hart Island project would have "substantial environmental impacts that will be difficult or impossible to mitigate * * *" The Service also stated it would "oppose issuances of a license * * *" and would likely "recommend intervention during the licensing process * * *" The Service's comments were primarily based on concerns regarding the project's adverse impacts on the Connecticut Salmon Restoration Program, the loss of important fish and wildlife habitats, and the effects on rare, threatened and endangered species. Although it is uncertain if the developer will proceed with the project, other private developers would be free to examine the suitability for a hydropower facility at Hart Island if the original applicant does withdraw.

The riverbank ecosystem provides the essential requirements for the species' growth and reproduction. Spring flows annually scour the calcareous outcrops and deposit nutrient-rich sediments in the rock crevices and depressions, creating niches for the plants' existence. Shade provided by the mature hardwood trees at the top of the riverbank is also an important factor in the plants' survival. The cutting of trees at the top of the bank or the development of any water-resources project that would significantly alter the river's flow regime in the area where *Astragalus robbinsii* var. *jesupi* exists would be a serious threat to the species' continued existence.

Sumner's Falls is a scenic area and is heavily utilized for recreational purposes, including canoeing, fishing, sightseeing, picnicking, etc. The increased demand for recreational opportunities will attract more people to the area, and inadvertent trampling of the few remaining plants is a major concern.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Many historical scientific collections of this plant were recorded from the Sumner's Falls, population. Only a few plants remain at this easily accessible site, and additional taking or collecting for any purpose could be extremely detrimental.

C. *Disease or Predation.* Not applicable to this species.

D. *The inadequacy of existing regulatory mechanisms.* Both New Hampshire and Vermont recognize *Astragalus robbinsii* var. *jesupi* as an endangered species in unofficial State reports prepared as part of a cooperative project between the New England Botanical Club and the Service (Crow, 1982; Countryman, 1978; Storks and Crow, 1978). Neither State, however, offers the species any official protection at this time. The State of Vermont provides a limited degree of protection for the species under a comprehensive law called Act 250 (10 V.S.A. 6001–81). Under Act 250 a permit for a proposed development would be denied if the project would cause an adverse impact on "* * * a rare and irreplaceable natural area * * *" or "* * * destroy or significantly imperil necessary wildlife habitat or any endangered species * * *" The species has also been proposed for official listing under a recently passed Vermont State endangered species law. Final action is still pending, however.

E. *Other natural or manmade factors affecting its continued existence.* Two of the three remaining populations are small, and easily accessible, and occur in areas where there is heavy recreational use. The small number of plants and limited reproductive potential combined with the vulnerability of the sites are causes for concern, as human-related or natural chance events could have a serious impact on these populations. The species' biology and population dynamics are not well understood, and it is difficult to assess the significance of a chance event like reproductive failure due to severe weather, change in micro-climatic conditions, etc.

In addition, the protection of the specific areas where the plants ocur may not provide sufficient protection if development projects or other actions in the upstream portions of the watershed significantly affect the local flow regime. An understanding of the species' biology and relationship to river flow therefore becomes an important consideration in the species' protection and recovery strategy.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Astragalus robbinsii* var. *jesupi* as endangered. Due to the small number of populations and the threats to its riverine habitat, the plant is in need of protection if it is to survive.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of benefit to the species involved (50 CFR 424.12). In the present case, the Service believes that designation of critical habitat would not be prudent because no benefit to the taxon can be identified that would outweigh the potential threat of vandalism or collection, which might be caused by the publication of a detailed critical habitat description and map.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal and State agencies, private conservation organizations, and individuals. Because of the diverse assemblage of rare plants and invertebrates of State and Federal significance associated with the habitat in which the milk-vetch occurs, The Nature Conservancy is actively working to protect the sites of known populations. Other conservation measures, including required protection efforts by Federal agencies and prohibitions against taking, are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990, June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed

critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible agency must enter into formal consultation with the Service. The only known current Federal action that would affect *Astragalus robbinsii* var. *jesupi* involves the Federal Energy Regulatory Commission and its authority for issuing permits and operating licenses to private developers for hydropower projects. The Department of the Interior responded to FERC's Public Notice of September 17, 1984, concerning an application for a preliminary permit for the Hart Island hydropower project and notified FERC of the existence of three Federal candidate species in the project area. The November 14, 1984, letter signed by the Regional Environmental Officer (Office of the Secretary) also notified FERC that substantial information was on hand to support the biological appropriateness of listing the milk-vetch and that the Service intended to initiate the formal listing process within a few months.

The State of New Hampshire has initiated a program to promote the recreation opportunities and enhance the tourist economy of the Connecticut River Valley. In addition to attracting visitors to the river, one of the program's objectives is to protect the significant natural resources of the area. Protecting endangered and threatened species and their habitats will need to be a major consideration in the program due to the potentially severe adverse impacts that can occur if expanded recreational opportunities are not carefully planned. The Service will work closely with the State of New Hampshire and private conservation organizations to ensure that the protection of the milk-vetch is carefully considered in the development of alternative recreational plans.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Astragalus robbinsii* var. *jesupi* all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. With certain exceptions, these prohibitions would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. There is no known commercial trade in *Astragalus robbinsii* var. *jesupi* and the Service therefore anticipates few, if any, requests for such permits.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species in areas under Federal jurisdiction. This prohibition would apply to *A. robbinsii* var. *jesupi*. Permits for exceptions to this prohibition are available under regulations published September 30, 1985 (50 FR 39681). *Astragalus robbinsii* var. *jesupi*, however, does not occur on Federal lands.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Astragalus robbinsii* var. *jesupi*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities that may impact existing populations.

Final promulgation of a regulation on *Astragalus robbinsii* var. *jesupi* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Barneby, R.C. 1964. Atlas of the North American *Astragalus*. Memoirs of the New York Botanical Garden 13:1–594, 594–1288.

Countryman, W.D. 1978. Rare and Endangered Vascular Plant Species in Vermont. U.S. Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts.

Crow, G.E. 1982. New England's Rare, Threatened and Endangered Plants. U.S. Government Printing Office, Washington, DC.

Storks, I.M. and G.E. Crow. 1978. Rare and Endangered Vascular Plant Species in New Hampshire. U.S. Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts.

Author

The author of this proposed rule is Richard W. Dyer, Endangered Species Staff, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965–5100 or FTS 829–9316).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under family Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family:						
Astragalus robbinsii var. *jesupi*	Jesup's milk-vetch	U.S.A. (NH, VT)	E		NA	NA

Dated: December 4, 1985.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-30004 Filed 12-18-85; 8:45 am]

BILLING CODE 4310-55-M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 50, No. 244
Thursday, December 19, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass National Forest, Sitka, AK; Intent To Prepare a Supplement to the Draft Enviromental Impact Statement

The USDA Forest Service will issue a supplement to the Draft Environmental Impact Statement filed May 17, 1985 for the 1986–90 Operating Period for the Alaska Pulp Corporation (APC) Long-term Timber Sale Contract Area.

The supplement will address additional information and circumstances relevant to environmental concerns which bear on the proposed action and its impacts. As a result of APC's comments, the Forest Service has agreed to consider two additional areas for harvest during the operating period and address the environmental effects of harvest activities in them. These areas are Trap Bay on Chichagof Island and Security Bay on Kuiu Island. The Supplement will also disclose consequences of an alternative submitted jointly by the City of Hoonah, Huna Totem Corporation and Sealaska Corporation.

The supplement to the Draft Environmental Impact Statement is expected to be available for review in February 1986. The Final Environmental Impact Statement is scheduled to be completed in November 1986.

The responsible official in Michael A. Barton, Alaska Regional Forester. Questions about the proposed action and supplement to the Draft Environmental Impact Statement or on the activities covered in the supplement should be directed to K.W. Roberts, Forest Supervisor, Chatham Area, Tongass National Forest, 204 Siginaka Way, Sitka, Alaska 99835 phone 907–747–6671 or Robert E. Lynn, Forest Supervisor, Stikine Area, Tongass National Forest, P.O. Box 309, Petersburg, Alaska, 99833 phone 907–772–3841.

Dated: December 6, 1985.

Michael A. Barton

Regional Forester.

[FR Doc. 85–30045 Filed 12–18–85; 8:45 am]

BILLING CODE 3410–11–M

Office of Inspector General

Privacy Act of 1974; Public Notice of Computer Matching Programs—Federal Personnel or Beneficiaries Participating in Department of Agriculture Programs and Cross-State Wage Match of Food Stamp Program Participants in Illinois and Indiana

AGENCY: Office of Inspector General, USDA.

ACTION: Notice of matching programs—Federal personnel or beneficiaries participating in U.S. Department of Agriculture programs and cross-State wage match of Food Stamp Program participants in Illinois and Indiana.

SUMMARY: The Office of Inspector General (OIG), U.S. Department of Agriculture (USDA), is providing notice that it intends to conduct continuing matching programs to detect and prevent fraud and abuse in USDA programs. The matches will compare Farmers Home Administration (FmHA) loan files against the personnel data files of the Office of Personnel Management (OPM) for the purpose of identifying Federal personnel who are delinquent on loan payments to FmHA. The matches will also compare personnel data files of the OPM and various Federal personnel or Veterans Administration (VA) pension records with certain Food Stamp Program records for the purposes of identifying Federal personnel who have received food stamp benefits to which they are not entitled. In addition, in Illinois and Indiana, OIG intends to match State unemployment compensation wage records with Food Stamp Program records to identify Food Stamp recipients who have underreported their income and have received excess benefits. The matches will be made under written agreements between USDA and each of the source agencies involved. Set forth below is the information required by paragraph 5f(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Lucius L. Free, Assistant Inspector General for Administration, U.S. Department of Agriculture, Office of Inspector General Washington, D.C., 20250, telephone (202) 447–6915.

Report of Matching Programs: Federal Personnel or Beneficiaries Participating in U.S. Department of Agriculture Programs and Cross-State Wage Match of Food Stamp Program Participants in Illinois and Indiana

a. *Authority:* Pub. L. 95–452, Inspector General Act of 1978, 5 U.S.C. App.

b. *Program Description and Purpose:* One of the responsibilities of OIG under the Inspector General Act of 1978 (Pub. L. 95–452) is to prevent and detect fraud and abuse in USDA programs. As part of the effort to meet this responsibility, OIG plans to match lists of food stamp participants in various States against personnel data files of the Office of Personnel Management (OPM), Department of Navy (Navy), and U.S. Postal Service (USPS) to detect underreporting of income in order to receive food stamp benefits without entitlement. These matches will be done on a continuous basis throughout the United States. In addition, OIG intends to conduct a one-time match of Hawaii food stamp participants against Department of Navy (Navy) payroll and Veterans Administration (VA) pension data files to detect underreporting of income in order to receive food stamps without entitlement. In Illinois and Indiana, OIG also intends to match lists of food stamp participants against State unemployment compensation data files.

In addition, OIG intends to conduct a continuing matching program of FmHA loan files against the personnel data files of OPM to identify Federal employees who are delinquent on FmHA loan payments.

All matches will be accomplished through the use of computer files and will identify common elements of USDA program files and respective Federal personnel, VA benefit, or State unemployment compensation data files by comparing social security numbers (SSN) or some combination of SSN with name and/or date of birth. OIG will

follow up on these matches of common elements or "hits" through review of USDA program records and matching source records, and interviews of the "matching" individuals as necessary. Instances where this followup work identifies abuse or fraud may be referred to the program agency for corrective action or to the proper authorities for prosecution, as appropriate.

c. *Files to be used in this matching program are:*

(1) U.S. Department of Agriculture;

a. FmHA Applicant/Borrower or Grantee File, (USDA/FmHA–1), 50 FR 25727, June 21, 1985;

b. State agency food stamp master files for selected States.

(2) Office of Personnel Management:

a. Central Personnel Data File (CPDF) within the General Personnel Records System (OPM/Govt–1), 48 FR 37124;

b. Civil Service Retirement and Insurance File within the Civil Service Retirement and Insurance Records Systems (OPM/Central-1), 48 FR 37122.

(3) U.S. Postal Service, USPS 050.020, Payroll System, 50 FR 28862.

(4) Department of Navy, Joint Uniform Military Pay System (JUMPS), 50 FR 2281.

(5) Veterans Administration, Pension files within the Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22/28), 46 FR 372.

(6) Illinois Bureau of Employment Security Wage Data File.

(7) State of Indiana Employment Security Wage Data File.

d. *Projected starting and ending dates:* This matching will be done on a continuous basis throughout the United States. The matching programs for Hawaii, Illinois, and Indiana food stamps are scheduled to begin in fiscal year 1985 and end in fiscal year 1986. The matching programs for Florida and Georgia food stamp and FmHA loans are scheduled to begin in fiscal year 1986 and end in either fiscal year 1986 or 1987. Other States may be selected for matches in fiscal year 1986.

e. *Security safeguards:* Computer files used in the matching program will be stored in secure libraries and access will be restricted to only those individuals who have a legitimate need to handle the material in order to accomplish the matches. The personal privacy of individuals identified on the files will be protected by strict compliance with the Privacy Act of 1974. Information concerning "non-matching" individuals will not be extracted for any purpose and source files will not be used for any matches without specific written agreement between USDA and the respective source agency.

f. *Disposition of source records and "hits":* All files received will be destroyed or returned to their source at the completion of the matches. Resulting "hit" information may be retained in audit workpapers.

Dated: December 13, 1985.

Robert W. Beuley,

Deputy Inspector General.

[FR Doc. 85–30018 Filed 12–18–85; 8:45 am]

BILLING CODE 3410–23–M

Office of International Cooperation and Development

Intent To Award Cooperative Agreements; Virginia State University et al.

Activity: The Office of International Cooperation and Development intends to amend two existing cooperative agreements, one with Virginia State University, Petersburg, Va. and one with Alabama A&M, Normal, Alabama, to extend the duration for one year and to provide additional funding. The cooperative agreements, which govern farming systems research, development, and extension, focus on the inter-relationships between the farm household and farm firm in order to develop realistic models of rural development programs appropriate for use with small, limited resource farms both domestically and internationally.

Authority: Section 1458 of the National Agricultural Research and Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291).

The Office of International Cooperation and Development announces the availability of funds for fiscal year 1986 to amend two cooperative agreements (with Virginia State University and with Alabama A&M) in the amount of $25,000 each. The extension will further development of Farming Systems Research and Development Projects in South Central Virginia and Northern Alabama testing methods and approaches adopted for use in developing countries.

This award will be made only to Virginia State University and to Alabama A&M in fulfillment of the Department's commitment to develop the capacity of historically Black colleges (1890 institutions). These institutions have been specifically selected because they are uniquely qualified to cooperate in this activity because of their broad interests and extensive experience in farming systems research and development.

In addition, the institutions have previously cooperated in (1) assessing total needs of the limited resource farm, both farm and household, in South Central Virginia and (2) assisting in the development of a new methodology for working with the limited resource farm and household through a farming systems approach. These accomplishments provide the groundwork for the proposed amendments to the cooperative agreements. Assistance will be provided only to Virginia State University and to Alabama A&M which have been collaborating with the Technical Assistance Division, Natural Resource and Farming Systems Program, since 1983. Based on the above, this is not a formal request for applications. It is estimated that approximately $25,000 will be available in Fiscal Year 1986 per amendment. It is anticipated that the cooperative agreements will be funded over a budget period of 12 months.

Information may be obtained from: Dr. Donald Ferguson, Natural Resource and Farming Systems Program, Technical Assistance Division, Office of International Cooperation and Development, U.S. Department of Agriculture.

Charle A. Rooney,

Acting Chief, Management Services Branch.

[FR Doc. 85–30005 Filed 12–18–85; 8:45 am]

BILLING CODE 3410–DP–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–405]

Antidumping Duty Order: Cellular Mobile Telephones and Subassemblies From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning cellular mobile telephones and subassemblies from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that cellular mobile telephones and subassemblies from Japan are being sold at less than fair value and that sales of cellular mobile telephones and subassemblies from Japan are materially injuring a United States industry. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of cellular mobile telephones and subassemblies from Japan on or after June 11, 1985, the date on which the Department published its

"Preliminary Determination" notice in the **Federal Register**, will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: December 19, 1985.

FOR FURTHER INFORMATION CONTACT: John R. Brinkmann, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3965.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are cellular mobile telephones (CMTs), CMT transceivers, CMT control units, and certain subassemblies thereof, which meet the tests set forth below. CMTs are radio-telephone equipment designed to operate in a cellular radio-telephone system, i.e., a system that permits mobile telephones to communicate with traditional land-line telephones via a base station, and that permits multiple simultaneous use of particular radio frequencies through the division of the system into independent cells, each of which has its own transceiving base station. Each CMT generally consists of (1) a transceiver, i.e., a box of electronic subassemblies which receives and transmits calls; and (2) a control unit, i.e., a handset and cradle resembling a modern telephone, which permits a motor-vehicle driver or passenger to dial, speak, and hear a call. They are designed to use motor vehicle power sources. Cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this investigation.

Subassemblies are any completed or partially completed circuit modules, the value of which is equal to or greater than five dollars, and which are dedicated exclusively for use in CMT transceivers or control units. The term "dedicated exclusively for use" only encompasses those subassemblies that are specifically designed for use in CMTs, and could not be used, absent alteration, in a non-CMT device. The Department selected the five dollar value for defining the scope since this is a value that it has determined is equivalent to a "major" subassembly. The Department feels that a dollar cut-off point is a more workable standard than a subjective determination such as whether a circuit module is "substantially complete." Examples of subassemblies which may fall within this definition are circuit modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF, IF, synthesizer, duplexer, power supply, power amplification, transmitter, and exciter. The presumption is that CMT subassemblies are covered by the order unless an importer can prove otherwise. An importer will have to file a declaration with the Customs Service to the effect that a particular CMT subassembly is not dedicated exclusively for use in CMTs or that the dollar value is less than $5, if he wishes it to be excluded from the order.

The following merchandise has been excluded from this investigation: pocket-size self-contained portable cellular telephones, cellular base stations or base station apparatus, cellular switches, and mobile telephones designed from operation on other, non-cellular, mobile telephone systems.

As noted in our notice of the final determination, cellular mobile telephones and subassemblies are no longer classified under item numbers 685.23, 685.24 and 685.29 of the *Tariff Schedules of the United States (TSUS)*. They are currently classified under TSUS item numbers 685.28 and 685.32.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on June 11, 1985, the Department published its preliminary determination that there was reason to believe or suspect that CMTs from Japan were being sold at less than fair value (50 Fed. Reg. 24554). On October 31, 1985, the Department published its final determination that these imports were being sold at less than fair value (50 Fed. Reg. 45447).

On December 9, 1985, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs Unites States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise subject to this order exceeds the United States price for all entries of such merchandise from Japan, with the exception of that produced by Toshiba Corporation who has been excluded from this investigation. These antidumpting duties will be assessed on all unliquidated entries of such merchandise entered, or withdrawn from warehouse, for consumption on or after June 11, 1985, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (50 FR 45447).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin as noted below:

Manufacturers/sellers/exporters	Weighted-average margin percentage
OKI	9.72
[illegible]	[illegible]
Toshiba (excluded)	0.00
MELCO	[illegible]
NEC Corp.	[illegible]
Matsushita Communication Industrial	[illegible]
Industrial Co. Ltd	
All other manufacturers/producers exporters	57.81

This determination constitutes an antidumping duty order with respect to CMTs from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–30030 Filed 12–18–85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-410]

Hydrogenated Castor Oil From Brazil; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that hydrogenated castor oil from Brazil is being sold in the United States at less than fair value. The United States International Trade Commission (ITC)

will determine within 45 days of publication of this notice whether these imports are materially injuring, or threatening material injury to a United States industry.

EFFECTIVE DATE: December 19, 1985.

FOR FURTHER INFORMATION CONTACT: William D. Kane or Charles E. Wilson, Office of Investigations, United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377–1766 or (202) 377–5288.

SUPPLEMENTARY INFORMATION: Based on our investigation and in accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), we have reached a final determination that hydrogenated castor oil from Brazil is being sold in the United States at less than fair value within the meaning of section 731 of the Act. The weighted-average margins are indicated in the "Suspension of Liquidation" section of this notice.

Case History

On December 28, 1984, we received a petition from Union Camp Corporation on behalf of the U.S. industry producing hydrogenated castor oil. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that hydrogenated castor oil from Brazil is being, or is likely to be, sold into the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping duty investigation. We notified the U.S. International Trade Commission (ITC) of our action and initiated such an investigation on January 17, 1985 (50 FR 3372). The ITC subsequently found, on February 11, 1985, that there is a reasonable indication that imports of hydrogenated castor oil from Brazil are materially injuring a U.S. industry.

On March 1, 1985, we presented antidumping duty questionnaires to Sanbra, S.A. (Sanbra) and Braswey, S.A. (Braswey). Responses to the questionnaires were received on April 15, 1985. Further supplemental responses were received on May 22, 1985 and June 5, 1985.

On March 13, 1985, the petitioner requested that the Department extend the period for the preliminary determination until 210 days after the date of receipt of the petition. On April 1, 1985, we granted the request (50 FR 13644)

On August 1, 1985, we published our preliminary determination of sales at less than fair value (50 FR 31214).

On August 6, 7, and 15, 1985, we verified the responses of Sanbra. On August 8 and 9, and September 18, 1985, we verified the responses of Braswey.

Pursuant to requests from both respondents, on August 29, 1985, we published a notice of postponement of our final determinaion.

On October 25, 1985, we held a public hearing.

Scope of Investigation

The product covered by this investigation is hydrogenated castor oil currently provided for under item number 178.2000 of the *Traiff Schedules of the United States, Annotated.* We investigated sales of this product by the Brazil producers, Sanbra and Braswey, to the United States during the period of investigation, July 1, 1984, through December 31, 1984. Sales by these firms accounted for approximately 75 percent of the product sold to the United States during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provide for in section 772 of the Act, for Braswey we compared United States price based on purchase price, as the product was sold to unrelated purchasers prior to importation into the United States. For Sanbra, we compared United States price based on exporter's sales price, as the product was sold to unrelated purchasers in the United States after importation. For Braswey we calculated the purchase price based on the C.I.F., duty paid, packed price to unrelated purchasers in the United States. We made deductions for foreign brokerage, foreign inland freight, ocean freight and marine insurance, U.S. Customs duty, and U.S. brokerage. For Sanbra we calculated the exporter's sales price on the C.I.F., duty paid, packed or C.I.F., duty paid, packed, delivered price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, handling and port charges, ocean freight and marine insurance, U.S. insurance, credit expenses and other selling expenses incurred in the United States.

Section 772(d)(1)(C) of the Act requires that indirect taxes imposed upon home market merchandise, but which have not been collected on exported merchandise by reason of its exportation to the United States, be added to the United States price to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation. Such a tax, the "ICM" (internal circulation tax), is imposed on home market sales, but the rate of this tax varies with the destination of the merchandise in the home market. Therefore, no single tax rate can be applied as an addition to United States price. For our preliminary determination we deducted this tax as well as the FINSOCIAL and IPI taxes from the home market prices in which they are included. We have continued this methodology for our final calculations.

Sanbra

We have deleted from the U.S. sales listing two sales which were found to have been renegotiated outside the period of investigation and one sale which was found to have been a sale of a product other than hydrogenated castor oil.

In the belief that U.S. inland insurance applied only to merchandise being transported to customer destination in the United States, no insurance charge was deducted from sales out of warehouse for our preliminary determination. However, at verification a review of that insurance policy showed all merchandise to be covered from time of its arrival in the United States until it reached the unrelated purchaser. Thus, an insurance charge was deducted from all sales of the merchandise. Also, a computational error in the calculation of ocean freight charges was corrected which increased that charge slightly.

Braswey

At verification a charge for foreign brokerage, not previously reported, was found to apply to U.S. sales. This has been included in our final calculations.

Calculations errors in U.S. brokerage, ocean freight and marine insurance were adjusted at verification to reflect correct amounts.

Sales commissions applied to two sales were found not to apply and were deleted.

The cost of U.S. packing was recalculated to correct an averaging error.

Foreign Market Value

Sales of such merchandise in the home market were used to represent foreign market value, as provided for in section 773(a) of the Act. Calculations of foreign market value for Sanbra were

based on the ex-factory or delivered, packed prices to unrelated purchasers in the home market. Deductions were made, where appropriate, for inland freight and selling commissions. We also made deductions for credit expenses. We deducted home market indirect selling expenses to offset U.S. indirect selling expenses. We also adjusted for differences in packing costs. The dates of sale for five shipments under a long-term supply contract were changed to reflect the fact that the prices were renegotiated after the original contract date.

Calculations of foreign market value for Braswey were based on ex-factory or delivered, packed prices to unrelated purchasers in the home market. We made deductions for inland freight. We also adjusted for differences in credit terms. For some home market sales used for comparison to U.S. purchase price, sales commissions were paid in one market and not the other. In these cases we made adjustments for the differences between commissions in the applicable market and indirect selling expenses in the other market used as an offset to the commissions, in accordance with § 353.15(c) of the regulations. We adjusted for differences in packing costs. On certain sales, transportation charges were found to reflect the pre-sale movement of merchandise from the factory to the company warehouse. These expenses, as well as interest on warehousing inventory, were added to indirect selling expenses and were allowed, where appropriate, up to the amount of the U.S. sales commissions, which were the lesser of the two.

Claims of technical services expenses could not be verified and were not allowed.

Comparisons were made between sales occurring thirty days on either side of the date of U.S. sale. We disregarded sales of quantities of two thousand kilograms or less because they were not comparable to the usual commercial quantities sold in the U.S. market.

In calculating foreign market value, we made currency conversions from Brazilian cruzeiros to United States dollars in accordance with § 353.56(a) of the regulations, using the certified daily exchange rates for comparisons involving purchase price. For comparisons involving exporter's sales price, we used the official exchange rate as certified by the Federal Reserve for the date of purchase since the use of that exchange rate is consistent with section 615 of the Tariff and Trade Act of 1984 (1984 Act). Therefore, for exporter's sales price sales we chose not to follow § 353.56(a) of the regulations which predates the 1984 Act.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making this determination. We were granted access to the books and records of the companies involved. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Petitioner's Comments

Comment 1

The petitioner claims that the Department has understated Sanbra's U.S. credit expenses by applying a short term interest rate lower than that reported in Santra's response.

DOC Position

The rate used by the Department in its final calculations was the average short term interest rate experienced by the company during the period of investigation, as verified from source documents.

Comment 2

Petitioner contends that use of the average warehousing period calculated by Sanbra results in an understatement of their U.S. warehousing expenses.

DOC Position

While individual containers of the product could not be traced into and out of the warehouse, quantities and periods of shipments from the warehouses reviewed at verification were consistent with the claimed average storage period. Therefore, we have used the reported average storage period in our calculation of this expense.

Comment 3

Petitioner claims that quantities shipped under long-term supply contracts, but listed as individuals sales, should be combined in the listing as one sale and that sale should be disregarded as not being in the ordinary course of trade by virtue of its high quantity volume.

DOC Position

The Department agrees that such individual shipments are in their totality one sale, but considers the volume of such a sale under a long term supply contract to be in the ordinary course of trade in this industry based on the sales practices of the companies investigated.

Comment 4

Petitioner contents that Braswey's claim for a circumstance of sale adjustment for technical services expenses is unfounded.

DOC Position

The Department agrees. At the time of verification neither the nature of these expenses nor their relationship to the sales under investigation could be established. This adjustment has not been allowed.

Comment 5

Petitioner claims that Braswey's U.S. credit expenses were improperly calculated in that an expense should be imputed for financial services provided free of charge by a middleman in the United States.

DOC Position

The Department disagrees. The middleman's function proves mutually beneficial to both parties with no financial costs accruing to Braswey. Nor would the absence of this service result in further credit expenses to Braswey regarding these sales.

Comment 6

Petitioner contends that a document submitted by Sanbra indicates a lower ICM tax rate than that claimed in its response, and should be investigated.

DOC Position

The Department verified the ICM tax rates claimed, and further reviewed the document cited by the petitioner without finding any indication of irregularities.

Comment 7

Petitioner contents that the Department should reject Sanbra's contentions that a sale in the home market which is destined for shipment to a third country should not be considered as a home market sale.

DOC Position

The Department agrees. While it was established at verification that the merchandise was shipped by Sanbra's customer to a third country, there was insufficient indication that Sanbra was aware of the ultimate destination of the merchandise at the time of sale.

Comment 8

Petitioner claims that revisions to Braswey's U.S. brokerage charges should be based on the weighed-average brokerage charge calculated at the time of verification.

DOC Position

The Department agrees, and has deducted that weighted-average brokerage charge calculated at verification.

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Comment 9

Petitioner contends that Braswey's claims for corrections to "U.S. Customs charges" are not substantiated by the verification.

DOC Position

No corrections were made to U.S. Customs duty at verification. Changes made to Customs brokerage charges are discussed in petitioner's comment number 8.

Comment 10

Petitioner contends that foreign brokerage charges discovered at verification should be deducted from Braswey's U.S. prices.

DOC Position

The Department agrees, and has deducted this amount from Braswey's U.S. prices.

Comment 11

Petitioner contends that additional costs of Braswey's U.S. export packing do not include the costs of labor associated with that packing.

DOC Position

While not specifically addressed in the example cited in its report of verification, the Department did verify that the costs of both labor and materials were included in packing costs. The total average cost of export packing was found to be understated, and the corrected packing cost was used in the final calculations.

Comment 12

Petitioner contends that Braswey's U.S. credit expenses should be adjusted to reflect expenses engendered by the date of customer payment and the cost of purchasing foreign exchange contracts.

DOC Position

The total financing expenses per individual sale were calculated. Braswey stated that no additional charges accrued for foreign exchange contracts beyond the interest charge reflected in them, and a review of financial documentation revealed no such extra charges.

Comment 13

Petitioner contends that the Department must disregard an adjustment for the ICM tax because the amount of tax paid was not verified.

DOC Position

The Department disagrees. While proof of payments of this tax per individual sale could not be obtained because of the government's debit/credit accrual system of accounting, the amounts credited to the government on the sales were verified.

Comment 14

Petitioner contends that Braswey's IPI export credit premium should not be considered in the Department's calculation because receipt of the export credit premium was not verified, the export credit premium is not an uncollected or rebated tax, and the export credit premium is in part negated by an offsetting tax which the respondent did not report.

DOC Position

The Department agrees that the export credit premium is not a rebate of taxes which are added to or included in the price of the merchandise when sold in the home market. Therefore, it would not be appropriate to add the export credit premium to United States price.

Respondents' Comments

Comment 1

Braswey contends that adjustments made to U.S. Customs brokerage and marine insurance costs at the time of verfication should be incorporated in the Department's final calculations.

DOC Position

The Department agrees and has incorporated all verified costs in its final calculations, as outlined in the "U.S. Price" and "Foreign Market Value" sections of this notice.

Comment 2

Braswey contends that the Department should compare sales of comparable quantities or, alternatively, expand the period of investigation to capture more home market sales in large quantities.

DOC Position

The Department agrees and has compared only sales in the most comparable quantities by disregarding home market sales in quantities of two thousand kilograms or less.

Comment 3

Braswey contends that an adjustment should be made in the Department's final calculations to reflect the receipt of IPI export credit premiums.

DOC Position

The Department disagrees. See response to petitioner's comment 14.

Comment 4

Sanbra contends that the Department made computational errors in computing the net cruzeiro per pound price to two home market sales in its preliminary calculations.

DOC Position

The Department agrees and has corrected these errors for the final calculations.

Comment 5

Sanbra contends that corrections to their submitted data made by Department personnel at the time of verification should be incorporated in the Department's final calculations.

DOC Position

The Department agrees and has used this verified data in its final calculations, as outlined in the "U.S. Price" and "Foreign Market Value" sections of this notice.

Comment 6

Sanbra contends that a sale made to a customer for purposes of filling an order for export to a third country should not be considered as a home market sale because the ultimate destination of the merchandise was known at the time of the sale. Alternatively, they contend that the sale should be disregarded, as it is the only sale to a hydrogenator of castor oil who competes with Sanbra and, therefore, out of the ordinary course of trade.

DOC Position

The Department disagrees. Sanbra has failed to establish it knew the destination of the merchandise at the time of sale. (See petitioner's comment 7) The Department, further, considers the hydrogenator to be at the same level of trade as end-users in the home market and wholesalers in the U.S. market and not to be outside the ordinary course of trade.

Comment 7

Sanbra contends that shipments under a long-term supply contract whose prices were subject to renegotiation at the time of shipment should be considered as sales made at the time of shipment rather than the date of original contract.

DOC Position

The Department agrees and has considered the dates of these shipments as the dates of sale.

Comment 8

Sanbra contends that certain low volume sales should be excluded from the Department's calculations because they were not in the usual commercial quantities, nor at the nearest

commercial level of trade comparable to U.S. sales.

DOC Position

The Department has compared sales of comparable quantities in the two markets. See respondent's comment 2.

Comment 9

Sanbra contends that, because of the extent of inflation in the home market, the Department should convert home market prices to U.S. dollars as of the date of shipment of the home market merchandise rather than at the date of the U.S. sale.

DOC Position

The Department disagrees. In keeping with established practice and section 353.56 of its regulations the Department has converted home market prices to U.S. dollars as of the date of the U.S. sales to which they are being compared.

Suspension of Liquidation

We made fair value comparisons on all reported hydrogenated castor oil sold in the United States by the two Brazilian companies during the investigative period. With regard to Braswey we found its weighted-average margin to be 2.38 percent. The weighted-average margin for Sanbra is .75 percent.

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of hydrogenated castor oil from Brazil, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service will require the posting of a cash deposit, bond, or other security in amounts based on the following weighted-average margins.

Company	Weighted-Average Margin (Percent)
Braswey	[illegible]
Sanbra	0.75
All Others	1.51

ITC Notification

We are notifying the ITC and making available to it all nonprivileged and nonconfidential information relating to this determination. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that is will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on hydrogenated castor oil from Brazil entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to the Act (19 U.S.C. 1673d(d)).

Theodore W. Wu,

Acting Assistant Secretary for Trade Administration.

December 13, 1985.

[FR Doc. 85-30069 Filed 12-18-75; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-409]

12-Hydroxystearic Acid From Brazil; Final Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that 12-hydroxystearic acid from Brazil is not, nor is likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: December 19, 1985.

FOR FURTHER INFORMATION CONTACT: William D. Kane or Charles E. Wilson, Office of Investigations, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1766 or (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation and in accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), we have reached a final determination that 12-hydroxystearic acid from Brazil is not being sold in the United States at less than fair value within the meaning of section 731 of the Act. We made fair value comparisons on approximately 75 percent of all sales of 12-hydroxystearic acid from Brazil to the United States during the period of investigation. We have found that the margins for all companies investigated are zero.

Case History

On December 28, 1984, we received a petition from Union Camp Corporation on behalf of the U.S. industry producing 12-hydroxystearic acid. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that 12-hydroxystearic acid from Brazil is being, or is likely to be, sold into the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds to initiate an antidumping duty investigation. We notified the U.S. International Trade Commission (ITC) of our action and initiated such an investigation on January 17, 1985 (50 FR 3372). The ITC subsequently found, on February 11, 1985, that there is a reasonable indication that imports of 12-hydroxystearic acid from Brazil are materially injuring a U.S. industry.

On March 1, 1985, we presented antidumping duty questionnaires to Sanbra, S.A. (Sanbra) and Braswey, S.A. (Braswey). Responses to the questionnaires were received on April 15, 1985. Further supplemental responses were received on May 22, 1985 and June 5, 1985.

On March 13, 1985, the petitioner requested that the Department extend the period for the preliminary determination until 210 days after the date of receipt of the petition. On April 1, 1985, we granted the request (50 FR 13644).

On August 1, 1985, we published our preliminary determination of sales at less than fair value (50 FR 31214).

On August 6, 7, and 15, 1985, we verified the responses of Sanbra. On August 8 and 9, and September 18, 1985, we verified the responses of Braswey.

Pursuant to requests from both respondents, on August 29, 1985, we published a notice of postponement of our final determination.

On October 25, 1985, we held a public hearing.

Scope of Investigation

The product covered by this investigation is 12-hydroxystearic acid currently provided for under item numbers 490.2650 and 490.2670 of the *Tariff Schedules of the United States, Annotated.* We investigated sales of this product by the Brazilian producers, Sanbra and Braswey, to the United States during the period of investigation, July 1, 1984, through December 31, 1984.

Sales by these firms accounted for approximately 75 percent of the product sold to the United States during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided for in section 772 of the Act, for Braswey we compared United States price based on purchase price, as the product was sold to unrelated purchasers prior to importation into the United States. For Sanbra, we compared United States price based on exporter's sales price, as the product was sold to unrelated purchasers in the United States after importation. For Braswey we calculated the purchase price based on the C.I.F., duty paid, packed price to unrelated purchasers in the United States. We made deductions for foreign brokerage, foreign inland freight, ocean freight and marine insurance, U.S. Customs duty, and U.S. brokerage. For Sanbra we calculated the exporter's sales price on the C.I.F., duty paid, packed or C.I.F., duty paid, packed, delivered price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, handling and port charges, ocean freight and marine insurance, U.S. customs duty, U.S. insurance, credit expenses and other selling expenses incurred in the United States.

Section 772(d)(1)(C) of the Act requires that indirect taxes imposed upon home market merchandise, but which have not been collected on exported merchandise by reason of its exportation to the United States, be added to the United States price to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation. Such a tax, the "ICM" (internal circulation tax), is imposed on home market sales, but the rate of this tax varies with the destination of the merchandise in the home market. Therefore, no single tax rate can be applied as an addition to United States price. For our preliminary determination we deducted this tax, as well as the FINSOCIAL and IPI taxes, from the home market prices in which they are included. We have continued this methodology for our final calculations.

Sanbra

We have deleted from the U.S. sales listing two sales which were found to have been renegotiated outside the period of investigation and one sale which was found to have been subsequently cancelled. One sale erroneously classified as hydrogenated castor oil was found to be a sale of 12-hydroxystearic acid and was added to the U.S. sales listing.

In the belief that U.S. inland insurance applied only to merchandise being transported to customer destination in the United States, no insurance charge was deducted from sales out of warehouse for our preliminary determination. However, at verification a review of that insurance policy showed all merchandise to be covered from the time of its arrival in the United States until it reached the unrelated purchaser. Thus, an insurance charge was deducted from all sales of the merchandise. Also, a computational error in the calculation of ocean freight charges was corrected which increased that charge slightly.

Braswey

At verification a charge for foreign brokerage, not previously reported, was found to apply to U.S. sales. This has been included in our final calculations.

Calculation errors in U.S. brokerage, ocean freight and marine insurance were adjusted at verification to reflect correct amounts.

The cost of U.S. packing was recalculated to correct an averaging error.

Foreign Market Value

Sales of such merchandise in the home market were used to represent foreign market value, as provided for in section 773(a) of the Act. Calculations of foreign market value for Sanbra were based on the ex-factory or delivered, packed prices to unrelated purchasers in the home market. Deductions were made, where appropriate, for inland freight and selling commissions. We also made deductions for credit expenses. We deducted home market indirect selling expenses to offset U.S. indirect selling expenses. We also adjusted for differences in packing costs. One inland freight expense was found to be in error and was corrected.

Calculations of foreign market value for Braswey were based on ex-factory or delivered, packed prices to unrelated purchasers in the home market. We made deductions for inland freight. We also adjusted for differences in credit terms. For some home market sales used for comparison to U.S. purchase price, sales commissions were paid in one market and not the other. In these cases we made adjustments for the differences between commissions in the applicable market and indirect selling expenses in the other market used as an offset to the commissions, in accordance with § 353.15(c) of the regulations. We adjusted for differences in packing costs. On certain sales, transportation charges were found to reflect the pre-sale movement of merchandise from the factory to the company warehouse. These expenses, as well as interest on warehousing inventory, were added to indirect selling expenses and were allowed, where appropriate, up to the amount of the U.S. sales commissions, which were the lesser of the two.

Claims of technical services expenses could not be verified and were not allowed.

Comparisons were made between sales occurring thirty days on either side of the date of U.S. sale. We disregarded sales of quantities of 2,000 kilograms or less because they were not comparable to the usual commercial quantities sold in the U.S. market.

In calculating foreign market value, we made currency conversions from Brazilian cruzeiros to United States dollars in accordance with § 353.56(a) of the regulations, using the certified daily exchange rates for comparisons involving purchase price. For comparisons involving exporter's sales price, we used the official exchange rate as certified by the Federal Reserve for the date of purchase since the use of that exchange rate is consistent with section 615 of the Tariff and Trade Act of 1984 (1984 Act). Therefore, for exporter's sales price sales we chose not to follow § 353.56(a) of the regulations which predates the 1984 Act.

Verification

In accordance with section 776(a) of the Act, we verified all the information used in making this determination. We were granted access to the books and records of the companies involved. We used standard verification procedures, including examination of accounting records, financial statements and selected documents containing relevant information.

Petitioner's Comments

Comment 1: The petitioner claims that the Department has understated Sanbra's U.S. credit expenses by applying a short term interest rate lower than that reported in Sanbra's response.

DOC Position: The rate used by the Department in its final calculations was the average short term interest rate experienced by the company during the period of investigation, as verified from source documents.

Comment 2: Petitioner contends that use of the average warehousing period calculated by Sanbra results in an understatement of their U.S. warehousing expenses.

DOC Position: While individual containers of the product could not be traced into an out of the warehouse, quantities and periods of shipments from the warehouses reviewed at verification were consistent with the claimed average storage period. Therefore, we have used the reported average storage period in our calculation of this expense.

Comment 3: Petitioner claims that quantities shipped under long-term supply contracts, but listed as individual sales, should be combined in the listing as one sale and that sale should be disregarded as not being in the ordinary course of trade by virtue of its high quantity volume.

DOC Position: The Department agrees that such individual shipments are in their totality one sale, but considers the volume of such a sale under a long term supply contract to be in the ordinary course of trade in this industry based on the sale practices of the companies investigated.

Comment 4: Petitioner contends that Braswey's claim for a circumstance of sale adjustment for technical services expenses is unfounded.

DOC Position: The Department agrees. At the time of verification neither the nature of these expenses nor their relationship to the sales under investigation could be established. This adjustment has not been allowed.

Comment 5: Petitioner claims that Braswey's U.S. credit expenses were improperly calculated in that an expense should be imputed for financial services provided free of charge by a middleman in the United States.

DOC Position: The Department disagrees. The middleman's function proves mutually beneficial to both parties with no financial costs accruing to Braswey. Nor would the absence of this service result in further credit expenses to Braswey regarding these sales

Comment 6: Petitioner contends that a document submitted by Sanbra indicates a lower ICM tax rate than that claimed in its response, and should be investigated.

DOC Position: The Department verified the ICM tax rates claimed, and further reviewed the document cited by the petitioner without finding any indication of irregularities.

Comment 7: Petitioner claims that revisions to Braswey's U.S. brokerage charges should be based on the weighted-average brokerage charge calculated at the time of verification.

DOC Position: The Department agrees, and has deducted that weight-average brokerage charge calculated at verification.

Comment 8: Petitioner contends that Braswey's claims for corrections to "U.S. customs charges" are not substantiated by the verification.

DOC Position: No corrections were made to U.S. customs duty at verification. Changes made to customs brokerage charges are discussed in petitioner's comment number 8.

Comment 9: Petitioner contends that foreign brokerage charges discovered at verification should be deducted from Braswey's U.S. prices.

DOC Position: The Department agrees, and has deducted this amount from Braswey's U.S. prices.

Comment 10: Petitioner contends that additional costs of Braswey's U.S. export packing do not include the costs of labor associated with that packing.

DOC position: While not specifically addressed in the example cited in its report of verification, the Department did verify that the costs of both labor and materials were included in packing costs. The total average cost of export packing was found to be understated, and the corrected packing cost was used in the final calculations.

Comment 11: Petitioner contends that Braswey's U.S. credit expenses should be adjusted to reflect expenses engendered by the date of customer payment and the cost of purchasing foreign exchange contracts.

DOC Position: The total financing expenses per individual sale were calculated. Braswey stated that no additional charges accrued for foreign exchange contracts beyond the interest charge reflected in them, and a review of financial documentation revealed no such extra charges.

Comment 12: Petitioner contends that the Department must disregard an adjustment for the ICM tax because the amount of tax paid was not verified.

DOC Position: The Department disagrees. While proof of payments of this tax per individual sale could not be obtained because of the government's debit/credit accrual system of accounting, the amounts credited to the government on the sales were verified.

Comment 13: Petitioner contends that Braswey's IPI export credit premium should not be considered in the Department's calculation because receipt of the export credit premium is not an uncollected or rebated tax, and the export credit premium is in part negated by an offsetting tax which the respondent did not report.

DOC Position: The Department agrees that the export credit premium is not a rebate of taxes which are added to or included in the price of the merchandise when sold in the home market. Therefore, it would not be appropriate to add the export credit premium to United States price.

Respondent's Comments

Comment 1: Braswey contends that adjustments made to U.S. Customs brokerage and marine insurance costs at the time of verification should be incorporated in the Department's final calculations.

DOC Position: The Department agrees and has incorporated all verified costs in its final calculations, as outlined in the "U.S. Price" and "Foreign Market Value" sections of this notice.

Comment 2: Braswey contends that the Department should compare sales of comparable quantities or, alternatively, expand the period of investigation to capture more home market sales in large quantities.

DOC Position: The Department agrees and has compared only sales in the most comparable quantities by disregarding home market sales in quantities of two thousand kilograms or less.

Comment 3: Braswey contends that an adjustment should be made in the Department's final calculations to reflect the receipt of IPI export credit premiums.

DOC Position: The Department disagrees. See response to petitioner's comment 14.

Comment 4: Sanbra contends that the Department made computational errors in computing the next cruzeiro per pounds price of two home market sales in its preliminary calculations.

DOC Position: The Department agrees and has corrected these errors for the final calculations.

Comment 5: Sanbra contends that corrections to their submitted data made by Department personnel at the time of verification should be incorporated in the Department's final calculations.

DOC Position: The Department agrees and has used these verified data in its final calculations, as outlined in the "U.S. Price" and "Foreign Market Value" sections of this notice.

Comment 6: Sanbra contends that certain low volume sales should be excluded form the Department's calculations because they were not in the usual commercial quantities, nor at the nearest commercial level of trade comparable to U.S. sales.

DOC Position: The Department has compared sales of comparable

quantities in the two markets. See respondents' comment 2.

Comment 7: Sanbra contends that, because of the extent of inflation in the home market, the Department should convert home market prices to U.S. dollars as of the date of shipment of the home market merchandise rather than at the date of the U.S. sales.

DOC Position: The Department disagrees. In keeping with established practice and § 353.56 of its regulations the Department has converted home market prices to U.S. dollars as of the date of the U.S. sales to which they are being compared.

Cancellation of Suspension of Liquidation

We will advise the U.S. Customs Service to discontinue the suspension of liquidation of entries of 12-hydroxystearic acid ordered by our preliminary determination. All estimated duties collected shall be refunded, and any bonds or other securities posted will be released upon liquidation of those entries.

Final Results

The final results of our investigation are as follows:

Company	Weighted-average margin (percent)
Braswey	0.00
Sanbra	0.00

In accordance with section 735(d) of the Act, we will notify the ITC of our determination.

This determination is being published pursuant to the Act (19 U.S.C. 1673d(d)).

Theodore W. Wu,

Acting Assistant Secretary for Trade Administration.

December 13, 1985

[FR Doc. 85-30070 Filed 12-18-85; 8:45 am]

BILLING CODE 3510-DS-M

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held January 7, 1986, 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provide for continuing review to update the Regulations as needed.

Agenda:

1. Introduction of members and attendees.
2. Presentation of papers or comments by the public.
3. Approval of the minutes of the meeting on November 21.
4. Status of § 379.4—foreign persons employed in the U.S.
5. New proposed changes to § 379.4 dealing with multilaterally controlled technical data.
6. Review of the 1986 work plan for the TAC.
7. Discussion of the report to Congress as required by section 5(d)(7) of the Export Administration Act.

Executive Session:

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: December 16, 1985.

Margaret A. Cornejo,

Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 85-30067 Filed 12-18-85; 8:45 am]

BILLING CODE 3510-DT-M

[C-201-013]

Portland Hydraulic Cement and Cement Clinker From Mexico; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On July 3, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico. The review covers the period July 1, 1983 through December 31, 1983, and 19 programs.

We gave interested parties an opportunity to comment on the preliminary results. After review of all comments received, the Department has determined the bounty or grant during the period of review to be zero or *de minimis* for five firms and 3.50 percent *ad valorem* for all other firms.

EFFECTIVE DATE: December 19, 1985.

FOR FURTHER INFORMATION CONTACT: Alan Long or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 27476) the preliminary results of its administrative review of the countervailing duty order on portland hydraulic cement and cement clinker from Mexico (48 FR 43063; September 21, 1983). In accordance with § 355.10(a) of the Commerce Regulations the exporters requested that we complete the administrative review of this order. The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Mexican portland hydraulic cement and cement clinker other than white non-staining. Such merchandise is currently classifiable under items 511.1420 and 511.1440 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983, through December 31, 1983, and 19

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programs: (1) FOMEX; (2) Article 94 of the Banking Law; (3) CEPROFI; (4) FONEI; (5) NDP preferential discounts; (6) accelerated and immediate depreciation allowances; (7) NAFINSA; (8) border zone value added taxes; (9) FONEP; (10) state tax incentives; (11) FOMIN; (12) FOGAIN; (13) import duty reductions and exemptions; (14) export services offered by IMCE; (15) FIDEIN; (16) preferential vessel and freight rates; (17) commercial risk insurance; (18) government-financed technology development under the NDP; and (19) CEDI.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the exporters and the petitioner.

We received one set of written comments from counsel representing five exporters: Cooperative Cementos Hidalgo, S.C.L., Cementos Guadalajara, S.A., Cementos Mexicanos, S.A., Cementos Portland Nacional, S.A. and Cementos Veracruz, S.A. Most of the comments focus on our failure to publish a company-specific rate for each firm. However, we published a rate of zero for three of the five firms. Similarly, counsel for the Anahuac Group filed comments on behalf of two cement companies of the Group, Cementos Anahuac and Cementos Anahuac del Golfo, also focusing on our failure to publish company-specific rates. We had in fact already published a zero rate in our preliminary results for the first of the two companies. Because those companies receiving zero or *de minimis* rates are unaffected (*i.e.*, are not harmed) by our decision to publish a country-wide affirmative rate for other companies, we are treating the comments originally submitted for the seven companies as comments on behalf of only those three companies affected by our prelimiary decision to use a country-wide average. The Mexican government has taken no position on our preliminary results including the issue of company-specific rates.

Comment 1: Nacional, Veracruz, and Anahuac del Golfo maintain that the Department must calculate company-specific countervailing duty rates in this case. Those exporters argue that company-specific rates are required here by the statute, existing Commerce Regulations, the Department's general practice, and its practice in this case. Another exporter, Cementos de Chihuahua, the company with the highest individual benefit, maintains that a country-wide rate is consistent with the international obligations of the United States, the statute, current and proposed regulations and past practice.

Anahuac del Golfo maintains that section 303 of the Tariff Act requires the Department in all instances to collect the *ad valorem* benefit actually received by individual producers or exporters. Where material or significant differences among subsidy rates exist, no average country-wide rate can "equal" the benefit actually received by an individual firm.

The first three firms maintain that section 607 of the Trade and Tariff Act of 1984 ("the 1984 Act") does not alter the Department's obligations. Section 607 merely codifies the Department's stated general practices of establishing country-wide rates but permitting company-specific rates where there are material differences, practices in existence at the time of 1983 final determination and throughout the review period. Nacional and Veracruz further argue that what constitutes a "significant differential" under the 1984 Act is a question not settled by the Department's June 10, 1985 proposed regulations (50 FR 24207) and which will not be settled until the Department publishes its final rule.

All three conclude that our decision in this review also is governed by our final determination in this case, in which we found the spread of rates to be materially different.

All three argue that the Department has frequently assigned different rates for individual producers or exporter. Anahuac del Golfo argues that the relevant differences are between individual company rates, not those between individual rates and a country-wide average. Furthermore, Nacional, Veracruz and Anahuac del Golfo argue that, because the Department defines rates below 0.5 percent to be significantly different than those above, above *de minimis* rates apart from each other by more than 0.5 percent are also significantly different.

The three companies maintain that none of the Department's concerns regarding the difficulty of administering a company-specific approach are sufficient to override the Department's legal obligation to use that approach. Anahuac del Golfo stresses that Congress in 1984 only authorized the presumption in the event of administrative need and that the lack of administtrative need here obviates any reason for the presumption.

The three argue that most cement exporters relied upon the Department's 1983 final determination in this case (which was company-specific). The decline of individual subsidy rates in the review period from those in the initial investigation stems from the incentive to forego benefits which the companies expected to be the basis for their individual liability.

Finally, Chihuahua argues that section 303 refers only to the imposition of countervailing duties on "merchandise." Therefore, the rate must be same for all merchandise from a country, without regard to individual firms. Chihuahua finds its interpretation consistent with the Subsidies Code which speaks of imposition on duties on "a product."

Department's Position: The United States government historically has directed its administration of the countervailing duty law to encouraging governments to cease subsidizing. The vast majority of Treasury orders contained country-wide rates. For example, of the 70 orders transferred from Treasury to the Department in 1980, only four had company-specific rates and two of the four covered only one company.

A central purpose of the law is to encourage foreign governments not to provide competitive benefits to their exporting industries. The best way to accomplish that end is by continuing to treat the foreign government as the central actor, rather than by piecemeal policing of individual companies to encourage them not to use programs offered by those foreign governments.

Nothing in section 303 of the Tariff Act undermines such a view. In contrast to the antidumping law, which directs us not only to analyze the behavior of individual companies but also to examine individual entries of merchandise, section 303 is silent on the methods of calculating "a duty equal to the net amount of such bounty or grant." The Trade Agreements Act of 1979 replaced certain paragraphs of subsection (a) of section 303, but the amendments did nothing to change the pre-existing language cited by Anahuac del Golfo. Thus, neither Treasury nor the Department, as demonstrated by the vastly predominant practice of both agencies, has ever believed that the statutory language compels calculation on a company-specific basis. Indeed, the words in sections 303(a)(1), 303(a)(5), and 751 of the Tariff Act all can be read as collective nouns, directing us to offset the aggregate amount of bounty or grant for all companies through the use of one uniform duty rate on the merchandise.

The first statutory reference to company-specific rates was added in 1984. Section 607 of the 1984 Act, which provides that the contervailing duty order shall "presumptively apply to all merchandise of [the] class or kind

exported from the country investigated," does not establish any preconditions for using country-wide rates. Neither the statutory language nor the legislative history *requires* company-specific rates even if the rates were significantly different. Congress acted because it recognized that there is a general administrative burden associated with the use of company-specific rates. In the legislative history, Congress stated that the provision was intended to lessen that general administrative burden. Congress clearly did not require the Department to weigh the specific administrative burden before applying a country-wide rate in each case. In fact, it would be antithetical to the purpose of alleviating administrative burden to require evidence of administrative burden in each case, and the statutory presumption is clearly intended to avoid such a result.

Nacional, Veracruz and Anahuac del Golfo are wrong in believing that the Department is attempting to apply its draft regulations of June 1985 before final approval of those regulations. We are not. We are acting in accordance with section 607 of the 1984 Act.

Furthermore, neither the Department's 1980 regulations (the only reference for company-specific rates before 1984) nor its administrative practice under those regulations requires the use of company-specific rates in this case. On October 3, 1979, the Customs Service (44 FR 37044 *et seq.*) proposed the following: (1) Calculation of company-specific subsidies (§ 155.1–4); (2) preliminary and final determinations that would state differences in benefits for those enterprises for which such benefits were materially different (§§ 155.28(a) and 155.33(f)); and (3) exclusion for firms that did not receive benefits (§ 155.38). Proposed §§ 155.36 and 155.41, dealing with orders, assessment and administrative reviews made no mention of individual company rates. The Department's final regulations (45 FR 4932 *et seq.;* January 22, 1980) dropped § 355.1–4, altered § 355.38 and retained (without relevant comment) the other provisions. The deletion of the first provisions requiring calculation of company-specific subsidies significantly diminishes the strength of the argument for calculating company-specific rates (either for investigations or, more clearly for assessment) based on the language of the current regulations.

Contrary to Anahuac del Golfo's belief, the Department since publication of the 1980 regulations has published country-wide rates in most of its investigations (74 out of 97 final affirmative determinations). Eleven of the 23 investigations cited by the three exporters for individual rates occurred in 1982, as part of the large number of steel investigations that year. During those investigations, the Department published individual rates for *all* companies investigated, no matter how small the differential between the lowest and highest company or between companies. As an example, in *Certain Steel Products from Korea* (47 FR 57535; December 27, 1982), the Department published two individual rates even though those two were only 0.02 percent apart. Clearly, during that year the Department consciously veered away from a "materially different" standard. Yet even during 1982, the highest number of individual rates the Department published in any investigation was four and most of the final determinations contained only two rates. In 1983 investigations, the Department published company-specific rates in only two of 23 final determinations. In 1984, the number was seven out of 15.

After passage of the 1984 Act, the Department ceased publishing company-specific rates. The two exceptions were published shortly after the effective date of the 1984 Act. Thus by the end of 1984, in accordance with the congressional mandate, the investigations policy had shifted to a more restrictive approach, well before promulgation of the draft countervailing duty regulations.

Virtually all of the Department's administrative reviews have contained country-wide rates (only eight of 165 final results notices were company-specific). Indeed, the eight company-specific final results notices involve only four cases: two resulting from court remands, plus *Ceramic Tile from Mexico* and *Leather Wearing Apparel from Mexico.* With regard to the latter two cases, on May 10, 1982, in the final determination on Mexican ceramic tile (47 FR 20012), the Department agreed to publish in future administrative reviews zero rates for companies certified and verified not to have applied for or used *any* programs during a subsequent review period. In that same determination, the Department explicitly rejected company-specific affirmative rates. We simultaneously agreed to extend the policy of zero rates to Mexican leather wearing apparel. Nonetheless, the Department foresaw a significant administrative problem if zero rates were extended to other cases. We therefore decided not to extend the policy and denied requests in all later cases.

We cannot accept the firms' argument that we should use company-specific rates because we did in the final determination in this case. Any reliance by the companies on our final determination was misplaced because both the applicable law and the facts of this case have changed since the final determination. As we explained above, section 607 establishes a presumption for use of country-wide rates without requiring any case-specific justification for the use of such rates. In addition, the record of this review shows that the number of companies has risen from five to eight. (According to the companies' counsel, the number continues to rise (*see* Comment 6)). Further, the spread, either measured as the exporters wish (from lowest to highest) or as we believe correct (as a variance from the country-wide average (*see infra*)) is much smaller than before. The spread from the country-wide average is in fact so small that it is not significant.

The three exporters' analogy to the Department's treatment of *de minimis* rates is misplaced. It is false logic to assume that, because we treat rates within 0.5 percent of zero to be insignificant, all deviations, of greater than 0.5 percent from larger numbers must be significant. The *de minimis* rule deals with the unique question of when has subsidization ceased. (Nacional and Veracruz accuse us of inflexibility on company-specific rates, but the very rule they analogize to for suppprt—the *de minimis* rule—is itself inflexible.) We point out that section 607 of the 1984 Act places responsibility for determining what is a significant differential with the Department. While Anahuac del Golfo believes any analysis should focus on the gap between individual companies, we believe such a reading of the statute is inconsistent with the purpose of the new provision. The appropriate comparison is with the proposed country-wide average, for that is the amount a company will have to pay in duties if we do not publish a specific rate for that firm. Another firm's individual rate is irrelevant to any measure of the impact of a country-wide rate. The individual assessment rates for Nacional and Anahuac del Golfo are not significantly different from our country-wide average. (Regarding Veracruz, *see* Comment 2.) Similarly the deposit rate for Anahuac del Golfo is not significantly different than the country-wide rate.

Comment 2: Veracruz contends that the Department allocated the CEPROFI tax benefits Veracruz received during the six-month period of review over a sales figure that understated Veracruz's total sales. The Department used one particular line from Veracruz's year-end

financial statement. That line did not include miscellaneous revenue for the year. The Department properly did subtract from the year-end figure total revenue for the first six months, using the June accumulated balance sheet. However, since the Department used a lower than actual annual sales total, the net result was that the Department incorrectly calculated more than *de minimis* benefits for Veracruz.

Department's Position: We agree. We have reviewed the 1983 audited financial statements of Veracruz, which are part of the record, and using the total sales of Veracruz during the period of review, we have determined that Veracruz received *de minimis* CEPROFI benefits during the period. In addition, its aggregate benefits for the period were *de minimis*.

Comment 3: Nacional contends that the Department erred by setting Nacional's rate of cash deposit equal to that company's assessment rate. Nacional received PEMEX authorization during the period of review for a 10 percent discount on the price of heavy fuel oil. PEMEX subsequently issued to Nacional, during the review period, a series of "special credits" for Nacional's heavy fuel oil purchases dating back to November 1981. The fact that Nacional received credits for past fuel purchases as well as purchases during the period is a one-time event. Excluding those "special credits" from the calculation, Nacional's aggregate rate of cash deposit should be *de minimis*.

Department's Position: We agree. Information in the record corroborates Nacional's contention. We have determined that, if Nacional had not received those retroactive credits, its benefit during the period of review would have been *de minimis*. The receipt of those credits was a one-time event. Therefore, for cash deposit purposes, we determine the program and aggregate benefits of Nacional to be *de minimis*.

Comment 4: Nacional and Veracruz contend that the Department erred by including in the country-wide deposit rate the benefit from one of the FONEI loans to Chihuahua. That loan was fully amortized by December 31, 1983. Since no further benefits will result from that loan, the Department should disregard it when calculating the country-wide rate for cash deposit.

Department's Position: Our country-wide cash deposit rate in the preliminary results did not include the benefit from that FONEI loan.

Comment 5: Nacional and Veracruz contend that the Department should follow its long-standing policy of using the most recent available information in determining the rate of cash deposit resulting from the FOMEX pre-export and Article 94 loan programs. The Department in the preliminary results used as the commercial benchmark interest rate, for assessment and cash deposit purposes, the average of the *Indicadores Economicos* ("IE") nominal peso interest rates in effect during the period of review. The IE nominal rates were significantly higher during the review period than subsequently. On June 20, 1985, before publication of the preliminary results, the exporters submitted to the Department the IE nominal rates for calendar year 1984. The Department should now use the IE nominal rate for December 1984 to determine the cash deposit rate.

Department's Position: We agree. Furthermore, effective October 1, 1984, the interest rate charged for FOMEX pre-export loans increased from 19.30 percent to 25.47 percent. We have recalculated the rate of cash deposit using the December 1984 IE nominal rate and the October 1, 1984 change, and for that purpose we find a FOMEX pre-export benefit of 0.75 percent *ad valorem*, an Article 94 *benefit* of 0.12 percent *ad valorem*, and a FONEI benefit of 0.01 percent *ad valorem*.

Comment 6: Counsel for the group of five exporters contends that the Department should calculate a cash deposit rate for unnamed new exporters by taking a weighted-average of all the rates for cash deposit established during this review, including those for zero rate firms. The new exporters have not had the opportunity to demonstrate that they received no benefits in 1984. The Department's preliminary decision to use a weighted-average rate that includes only firms above *de minimis* is unfair. Furthermore, it represents a departure from the precedent set in the final determination in this case, in which the Department assigned to "all other firms" a rate equal to the weighted-average of zero rate and above *de minimis* exporters.

Department's Position: We disagree. To receive a cash deposit rate of zero during an administrative review, an exporter must demonstrate during the review that it did not receive more than *de minimis* benefits. Unless an exporter provides verifiable information that it received no benefit, it is not entitled to a zero rate. Because of the possibility of automatic assessment under the provisions of the 1984 Act and section 355.10 of the Commerce Regulations, it would be unreasonable to include, in the weighted-average cash deposit rate, rates which would not be included in the country-wide assessment rate. If any new exporter believes its cash deposit rate is too high for assessment, it can request an administrative review.

Comment 7: Anahuac de Golfo argues that we overstated the value of its benefit from FOMEX loans. First, we did not allocate the benefit from each loan over the entire term of the loan. We allocated the benefit over exports only during the six-month period of review, even though the term of many of the loans extended past the period of review.

Second, the company argues that we understated the preferential interest rate on its pre-export and export FOMEX loans. The firm's FOMEX loans are discounted at the beginning of the loan term. The company contends that it therefore never had access to the full amount borrowed. Thus, the effective preferential interest rates on FOMEX loans were higher than the nominal interest rates the Department used to calculate the interest differentials and the FOMEX benefit. The Department should adjust upward the FOMEX interest rates in determining the FOMEX benefit.

Department's Position: We disagree. The FOMEX loans in this case are short-term loans not exceeding one year. As a matter of general policy, we consider the benefit from preferential short-term loans to occur when a company realizes the interest saving or cash flow effect. *See Non-Rubber Footwear from Brazil* (50 FR 15597; April 19, 1985); *Unwrought Zinc from Spain* (49 FR 34236; August 14, 1984). Because Anahuac del Golfo's interest is prepaid, we allocated the entire benefit from the preferential loan to the period in which the firm received the loan.

Second, while we recognize that the interest is prepaid, to determine effective interest rates the Department would also need information concerning repayment dates, compensating balance requirements, collateral requirements, and fees and commissions. Since we do not possess reliable information in this case on those items (and therefore on effective FOMEX interest rates), we used nominal rates for both the preferential rates and commercial benchmarks. To use a FOMEX preferential rate partially converted into an effective interest rate (by accounting for the prepaid interest) and comparing it to a nominal benchmark (as suggested by Anahuac deo Golfo) would be improper. It would substantially understate the benefit. Similarly, to compare a partially converted FOMEX rate to an effective benchmark would overstate the benefit. *See also Certain Textile Mill Products from Mexico* (50 FR 10824; March 18, 1985).

Comment 8: Chihuahua contends that the Department should revoke the order. Section 303 of the Tariff Act prohibits the Department from assessing countervailing duties on dury-free products without an affirmative finding of injury if the United States has an international obligation to provide such an injury test. In the "Understanding Between the United States and Mexico regarding Subsidies and Countervailing Duties" ("the Understanding") signed on April 23, 1985, the United States granted Mexico most-favored-nation ("MFN") status. The MFN clause of the Understanding creates an international obligation on the United States to apply the same procedures in countervailing duty proceedings on Mexican products as for products from other countries. Since section 303 prohibits the Department from assessing countervailing duties on duty-free products from other countries, absent an injury test, Mexico is entitled to the same procedural treatment.

The products covered by this order are by U.S. statute duty-free. In three instances involving duty-free products covered by section 303 countervailing duty orders, the Department has refused or preliminarily refused to impose duties. In *Certain Fasteners from India* (47 FR 44129; October 6, 1982), the Department revoked the portion of the order covering duty-free fasteners. In *Certain Scissors and Shears from Brazil* (50 FR 11927; March 26, 1985), the Department preliminarily concluded that it could not assess duties on pinking shears eligible for duty-free treatment. Finally, in *Wire Rod from Trinidad and Tobago* (50 FR 19561; May 9, 1985), the Department tentatively determined to revoke the order because the products became duty-free. The circumstances of those cases are very similar to those of this case and Mexico must receive no less favorable treatment.

In anticipation of the Department's reliance upon paragraph 5 of the Understanding, Chihuahau argues that that provision merely requires an injury test in all then pending and subsequent investigations. It does not preclude injury tests for pre-existing countervailing duty orders.

Department's Position: We disagree. The Department has no international obligation within the meaning of section 303 of the Tariff Act to provide an injury test in this case. The Understanding specifically limits injury tests in countervailing duty proceedings to investigations in progress on April 23, 1985 and to proceedings begun on or after that date.

With regard to paragraph 5, we have confirmed with the U.S. negotiators that their intention was to exclude application of this Understanding to pre-existing orders. Inasmuch as the Mexican government has not commented on our preliminary results (in which we proposed to assess duties) nor exercised its rights under the disputes clause of the Understanding (paragraph 11), we have no reason to believe that the Mexican government has a different view.

Comment 9: Chihuahua contends that loans under 11 categories of Article 94 are available for such a wide range of products and endeavors that they are generally available. Therefore, the terms of loans under Category 12 of Article 94 should be compared to the terms of other Article 94 loans. Only the differential between generally available benefits and export related benefits is countervailable. *See Canned Tuna from the Philippines* (48 FR 50133; October 1, 1983).

Department's Position: We disagree. In the case of tuna from the Philippines we examined an exemption from exporters from 100 percent of certain import duties. There existed under another law a 50 percent exemption from those duties, an exemption that we determined not to have been provided to a specific industry, or group of industries. Because the exporters (along with all other firms) would have qualified for the 50 percent exemption, we countervailed only the additional 50 percent. In doing so, our final determination focused on the 50 percent exemption's "general availability." At the same time, we were under no obligation to seek the commercial alternative to the 100 percent exemption, since a government tax program has no commercial alternative. The alternative to a preferential tax program is what the tax would have been absent the availability of the program.

By contrast, Category 12 loans are short-term loans available only to exporters and are granted to finance export production and inventory of domestic goods intended for export. We have consistently held that the alternative to Category 12 loans is commercially available financing, here the same benchmark that we used for FOMEX financing. Even if that were not the case, we could not adopt Chihuahua's argument. While some categories of Article 94 loans may be not countervailable, we have no reason to believe that Chihuahua would qualify for loans under those categories since certain eligibility requirements must be met.

Comment 10: Chihuahua contends that the CEPROFI certificates the Department found countervailable in the preliminary results are in fact not countervailable because they are generally available to all industries located outside Mexico City. It defies logic to conclude that a tax credit available to an entire country (except for one city) constitutes a regional subsidy. In a recent investigation of a program of government-designated industrial estates scattered throughout Malaysia, the Department determined that, since the program was not designed to promote exports, and not limited to any specific region or industry, it did not constitute a bounty or grant. *See Certain Textiles and Textile Mill Products from Malaysia* (50 FR 9852; March 12, 1985).

If the Department continues to determine that those CEPROFI's are countervailable, the bounty or grant should be the difference between the CEPROFI amounts actually received and the CEPROFI amounts that would have been received for the purchase of Mexican-made capital goods. The Department found CEPROFI's granted for the purchase of Mexican-made capital goods to be not countervailable in the case on oil country tubular goods from Mexico (49 FR 47054, November 30, 1984).

Chihuahua similarly contends that FONEI loans do not constitute countervailable regional subsidies. Such loans are available in all regions except Mexico City.

Department's Position: We disagree. Only the five percent CEPROFI certificates for the purchase of Mexican-made capital equipment are available throughout Mexico. All other types of CEPROFI certificates are not available in Mexico City or in designated cities in two states near Mexico City. Therefore, the program is limited to specific regions of Mexico and is countervailable. The same position applies to FONEI.

In the Malaysian textiles case, the industrial estates were not confined to any region or state, and the services available within those estates were not limited to any specific industry, or group of industries. For a more detailed explanation of the Department's position on this issue, see *Carbon Steel Wire Rod from Saudi Arabia* (50 FR 47788; November 30, 1985).

Second, if a company earns a 20 percent CEPROFI certificate as a result of the purchase of Mexican-made capital goods, we would consider the benefit to be the difference between the value of that 20 percent certificate and the value of the 5 percent CEPROFI certificate generally available for the purchase of Mexican-made capital goods. If the certificate of concern is for

expenditures other than the purchase of Mexican-made capital goods, there is no alternative generally available certificate with which to compare the certificate of concern. Therefore the full value of the certificate is countervailable. The record in this case does not contain the information necessary to determine if purchases of Mexican-made capital goods were the source of the certificates of concern here. Therefore, we determined that the total value of the CEPROFI certificates received during the period of review is countervailable.

Comment 11: The petitioners contend that the Department greatly understated the amount of the plant and equipment CEPROFI benefit by considering only the CEPROFI amounts received during the review period and by allocating those benefits to the same period. There was a massive expansion of the production capacity of the Mexican cement exporters between 1979 and 1982. The Government of Mexico subsidized that expansion by providing CEPROFI certificates for those investments in plant and equipment.

Since the CEPROFI tax credits resulted from investment in plant construction or expansion, they should be considered capital grants and allocated over a period of years. There is no difference, other than in form, between a cash grant, for example, of 20 percent of the cost of a plant and a tax credit equal to 20 percent of that cost. It would be inequitable and contrary to law if the Department did not countervail those extensive capital grants received prior to the date of the order.

Department's Position: We disagree. CEPROFI certificates are received after a firm makes an approved investment in plant and equipment. The firm, not the government, must first furnish the capital for the total investment. Unlike grants, CEPROFI certificates can only be used to pay federal taxes. Furthermore, CEPROFI certificates do not represent one-time capital inflows of the full value of a certificate. Since we want to countervail the benefit when it affects the cash flow of a firm, we would assign the benefit to the period when the recipient used the certificate.

However, we cannot establish when CEPROFI certificates are used by reviewing government records because the records only show the date of issuance. Tracing the actual use of the certificates on a company-by-company basis is a practical impossibility. A best information surrogate for tracing actual use is to allocate the full amount of the CEPROFI certificate to the period in which it is most likely to be used. Because of the inflationary climate in Mexico and the presence of many federal taxes, including a value added tax, that is the period closely following issuance of the certificate.

Comment 12: The petitioners contend that the Department failed to recognize that the fuel oil and natural gas pricing policies of PEMEX constitute a subsidy that the Department should offset.

Department's Position: We disagree. We determined in the final determination in this case that the fuel oil and natural gas pricing policies of PEMEX do not confer countervailable subsidies. The petitioners have not presented new facts to justify a reconsideration of this finding.

Final Results of Review

After reviewing all of the comments received and adjusting for changes in methodology, we determine the total bounty or grant during the period of review to be zero for Cementos Guadalajara, Cementos Mexicanos, Cementos Anahuac, and 0.40 percent *ad valorem* for Cementos Hidalgo and 0.499 percent *ad valorem* for Cementos Veracruz. The Department considers any rate less than 0.50 percent to be *de minimis*. For all other firms, we determine the bounty or grant during the review period to be 3.50 percent *ad valorem*.

We will instruct the Customs Service to assess no countervailing duties on shipments of this merchandise from the five firms with zero or *de minimis* rates of subsidy, and countervailing duties of 3.50 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after July 8, 1983, and exported on or before December 31, 1983.

The Department will instruct the Customs Service not to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments from the five firms with zero or *de minimis* assessment rates during the period of review or from Nacional and to collect cash deposits of estimated countervailing duties of 3.28 percent *ad valorem* for shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: December 13, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-30071 Filed 12-18-85; 8:45 am]

BILLING CODE 3510-DS-M

Transportation and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Test Equipment Technical Advisory Committee will be held January 9, 1986, 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, DC.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda:

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Report on Aerospace Industries Association (AIA) meeting December 6, 1985.
4. TAC 1985-86 plan.

Executive Session:

5. Discussion of matters properly classified under Executive Order 12356 dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and

BEST COPY AVAILABLE

copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes contact Margaret A. Cornejo, 202–377–2583.

Dated: December 16, 1985.

Margaret A. Cornejo,

Acting Director, Technical Support Staff Office of Technology and Policy Analysis.

[FR Doc. 85–30068 Filed 12–18–85; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: Cascadia Research Collective

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant:

a. Name Cascadia Research Collective (P342A).

b. Address 218½ W. Fourth Avenue, Water Street Bldg., Olympia, Washington 98501.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals:

Harbor seals (*Phoca vitulina*)—5000 a year
California sea lions (*Zalophus californianus*)—800 a year
Northern sea lions (*Eumetopias jubatus*)—200 a year
Harbor porpoise (*Phocoena phocoena*)—200 a year
Dall's porpoise (*Phocoenoides dailli*)—50 a year
Gray whales (*Eschrichtius robustus*)—50 a year
Minke whales (*Balaenoptera acutorostrata*)—10 a year
Killer whales (*Orcinus orca*)—75 a year

4. Location of Activity Type of Take: Animals will be taken by harassment throughout the waters of the State of Washington.

5. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Services, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and
Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., BINC 15700, Seattle, Washington 98115.

Dated: December 11, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85–29989 Filed 12–18–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals Permit Modification; Minnesota Zoological Garden Modification No. 4 to Permit No. 200

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Dispaly Permit No. 200, issued to the Minnesota Zoological Garden, 12101 Johnny Cake Ridge Road, Apple Valley, Minnesota, on August 3, 1977, is hereby modified by deleting Section B–6 and substituting therefor the following:

"6. This permit is valid with respect to the taking authorized herein until December 31, 1987."

This modificaton is effective on the date of publication of this Notice in the **Federal Register.**

The Permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and
Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930

Dated: December 11, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85–30053 Filed 12–18–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals Permit Modification; Zoologischer Garten der Stadt Wuppertal Modification No. 1 to Permit No. 485

Pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 485 (49 FR 40073) issued to the Zoologischer Garten der Stadt Wuppertal, Hubertusallee 30, 5600 Wuppertal 1, Federal Republic of Germany, on October 5, 1984, is modified as follows:

Section B–5 is deleted and replaced by:

"5. This permit is valid with respect to the taking authorized herein until December 31, 1986."

This modification becomes effective on December 31, 1985.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC, and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 12, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85–30054 Filed 12–18–85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; University of Missouri

The National Technical Information Service (NTIS), U.S. Department of

Commerce, intends to grant to The University of Missouri, an exclusive right in the United States to manufacture, use, and sell products embodied in the inventions entitled "Carcass Cleaning Unit," U.S. Patent 4,279,059, and "Carcass Cleaning Unit and Containment Chamber," U.S. Patent 4,337,549. The patent rights in these inventions are assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 C.F.R. 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the attention of Douglas J. Campion, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-30044 Filed 12-18-85; 8:45 am]

BILLING CODE 3510-01-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Wednesday, January 15, 1986 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, December 13, 1985.

Charles H. Atherton,

Secretary.

[FR Doc. 85-30049 Filed 12-18-85; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool Textile Products From the Hungarian People's Republic, Effective on January 1, 1986

December 16, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Eve Anderson, International Trade Specialist Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, betweeen the Governments of the United States and the Hungarian People's Republic establishes specific limits for wool textile products in Categories 433, 435, 443, 445/446 and 448, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of wool textile products in Categories 433, 435, 443, 444, 445/446 and 448 in excess of the designated restraint limits.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool Textile Agreement of February 15 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in categories 433, 435, 443, 444, 445/446 and 448, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986, in excess of the following restraint limits:

Category	12-month restraint limit
433	7,573 dozen.
435	9,946 dozen.
443	7,204 dozen.
444	5,118 dozen.
445/446	40,400 dozen of which not more than 30,300 dozen shall be Category 445 and not more than 30,300 dozen shall be in Category 446
448	19,382 dozen.

In carrying out this directive, entries of wool textile products in the foregoing categories, produced or manufactured in Hungary, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall; to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that twelve-month period. In the event those limits have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment in the future pursuant to the provisions of the bilateral agreement of February 17 and 25, 1983, as amended, between the Governments of the United States and the Hungarian People's Republic, which provide, in part, that: (1) With the exception of Category 433, the levels of restraint may be exceeded by not more than five percent during an agreement year provided the increase is compensated for by an equal decrease in equivalent square yards in another specific limit, other than Category 433, (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30025 Filed 12-18-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Control Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

December 16, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 20, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On August 19 and September 5, 1985, notices were published in the **Federal Register** (50 FR 33393 and 36135), which announced that the Government of the United States had requested consultations with the Government of the Republic of Korea concerning cotton skirts in Category 342, cotton dressing gowns in Category 350, cotton underwear in Category 352 and man-made fiber hosiery in Category 632. These requests were made on the basis of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 1, 1982, as amended, between the Governments of the United States and the Repulic of Korea.

The purpose of this notice is to announce that agreement was reached in consultations to establish specific limits for Categories 342, 350, 352, and 632 among others, produced or manufactured in Korea and exported during 1985.

The United States Government has decided to control imports in these categories, not previously controlled in 1985, at the newly agreed levels.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175); May 3, 1983 (48 FR 19924); December 14, 1983 (48 FR 55607); December 30, 1983 (48 FR 57584); April 4, 1984 (49 FR 13397); June 28, 1984 (49 FR 26622); July 16, 1984 (49 FR 28754); November 9, 1984 (49 FR 44782); and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

SUPPLEMENTARY INFORMATION: On December 27, 1984, a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the **Federal Register** (49 FR 50237) which established import restraint limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during the twelve month period which began on January 1, 1985 and extends through december 31, 1985. The letter which follows this notice further amends the directive of December 21, 1984 to establish new limits for Categories 342, 350, 352, and 632.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 concerning cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during 1985.

Effective on December 20, 1985 paragraph one of the directive of December 21, 1984 is hereby further amended to establish the following restraint limits for cotton and man-made fiber textile products in Categories 342, 350, 352, and 632:

Category	12-mo restraint limit[1]
342	71,000 dozen.
350	12,221 dozen.
352	130,668 dozen.
632	1,675,000 dozen pairs.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1984. Imports in Category 342 have amounted to 43,220 dozen during the January-August 1985 period. Imports during the same period have amounted to 5,302 dozen in Category 350; 57,954 in Category 352; and 897,686 dozen pairs in Category 632.

Textile products in the foregoing categories which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Categories 342, 350, 352, and 632 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30026 Filed 12-18-85; 8:45 am]

BILLING CODE 3510-DR-M

Establishment of a New Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

December 13, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customers to be effective on December 20, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The Governments of the United States and Pakistan have exchanged letters further amending their Bilateral Cotton Textile Agreement of March 9 and 11, 1982, as amended, to establish a new specific limit of 400,000 dozen pairs for man-made fiber work gloves in Category 631pt. (only T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550 and 704,9000), produced or manufactured in Pakinstan and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985. In the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to establish the new limit.

Merchandise in Category 631 pt., exported during the twelve-month period which began on December 31, 1984 and extends through December 30, 1985, which exceeded the limit

established for that period, will be permitted entry for consumption, or withdrawal from warehouse for consumption during the five thirty-day periods beginnning on December 20, 1985 and extending through May 18, 1986 in amounts not to exceed 100,000 dozen pairs per thirty-day period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee, for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreement

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive of January 18, 1985 which concerned imports of man-made fiber textile products in Category 631pt.,[1] produced or manufactured in Pakistan and exported during the twelve-month period which began on December 31, 1984 and extends through December 30, 1985.

Effective on December 20, 1985, the directive of December 21, 1984 is hereby amended to include a restraint limit of 400,000 dozen pairs [2] for man-made fiber textile products in Category 631pt., produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Also effective on December 20, 1985, you are directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption, of man-made fiber textile products in Category 631pt. (only T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550 and 740.9000), produced or manufactured in Pakistan and exported during the twleve-month period which began on December 31, 1984 and extends through December 30, 1985, in amounts not to exceed 100,000 dozen pairs during each of the following thirty-day periods up to the new limit:

December 20, 1985–January 18, 1986.
January 19, 1986–February 17, 1986
February 18, 1986–March 19, 1986
March 20, 1986–April 18, 1986
April 19, 1986–May 18, 1986

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–30027 Filed 12–18–85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 631, only T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550 and 704.9000.

[2] The restraint limit has not been adjusted to reflect any imports exported after December 31, 1984.

Request for Public Comment on Bilateral Textile Consultations With Portugal on Category 448

December 16, 1985.

On November 26, 1985, the United States Government, under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested consultations with the Government of Portugal concerning exports to the United States of Category 448 (women's, girls', and infants' wool trousers, slacks, and shorts), produced or manufactured in Portugal.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Portugal, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of such products produced or manufactured in Portugal and exported to the United States during the twelve-month period which began on November 26, 1985 and extends through November 25, 1986 at a level of 9,916 dozen.

A summary market statement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 448 under the agreement with Portugal, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly.

Comments or information submitted in reponse to this notice will be available for public inspection in the Office of Textile and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Portugal—Market Statement

Category 448—Women's Girls' and Infants' Wool Trousers, Slacks and Shorts

November 1958.

Summary and Conclusions

U.S. imports of Category 448 from Portugal reached 16,489 dozens during the year ending September 1985, six times the number imported a year earlier. Portugal is a new supplier of Category 448, shipping 6,704 dozens to the U.S. in 1984. Portugal is now the seventh largest supplier of Category 448.

The substantial increase of low-valued imports of Category 448 from Portugal is distrupting the U.S. market for women's, girls' and infants' wool trousers.

U.S. Production and Market

U.S. production of WGI wool trousers fell 7 percent in 1983 and 9 percent in 1984, declining from 885,000 dozens to 752,000 dozens. The U.S. market for Category 448 remained relatively stable between 1982 and 1984. However, the U.S. producers' share of the market declined from 87 percent in 1982 to 74 percent in 1984 as imports took a larger share.

U.S. Imports and Import Penetration

U.S. imports of Category 448 grew from 129,000 dozens in 1982 to 263,000 dozens in 1984, a 104 percent increase. Imports continued to grow in 1985, increasing 74 percent during the first nine months when compared to the same period in 1984. The ratio of imports to domestic production rose from 14.6 percent in 1982 to 35.0 percent in 1984.

[FR Doc. 85–30028 Filed 12–18–85; 8:45 am]

BILLING CODE 3510-DR-M

Request for Public Comment on Bilateral Textile Consultations With Portugal on Categories 310/318 and 604pt.

December 16, 1985.

On Octoberr 31, 1985, the United

States Government, under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), requested the Government of Portugal to enter into consultations concerning exports to the United States of gingham and other cotton yarn-dyed fabrics in Category 310/318 and spun plied acrylic yarn in Category 604pt. (only T.S.U.S.A. No. 310.5049), produced or manufactured in Portugal.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Portugal, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of such products, produced or manufactured in Portugal and exported to the United States during the twelve-month period which began on October 31, 1985 and extends through October 30, 1986 at levels of 6,733,536 square yards for Category 310/318, and 573,563 pounds for Category 604pt.

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories are invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly.

Comments or information submitted in reponse to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Portugal—Market Statement

Categories 310/318—Yarn-Dyed Fabric

October 1985.

Summary and Conclusions

United States imports of cotton yarn-dyed fabric—Categories 310/318—from Portugal were 7.2 million square yards during the year ending August 1985, up 52 percent from the 4.8 million square yards imported a year earlier. Portugal was the second largest supplier of this fabric, accounting for 14 percent of the total imports.

The sharp and substantial increase of low-priced imports of Category 310/318 from Portugal is distrupting the U.S. market.

Production and Market Share

U.S. production of cotton and cotton/polyester yarn-dyed fabrics fell sharply during the third quarter of 1984 and has continued at the depressed level. First half 1985 production was 68.6 million square yards, down 26 percent from the first half of 1984. Production in 1984, largerly due to the drop during the last half of the year, was 152.0 million square yards, down 17 percent from 1983.

The domestic producers share of the market for domestically produced and imported fabric declined drastically from 86 percent in 1983 to 70 percent in 1984. In addition, the domestic producers experienced a declining market for fabric since imports of yarn-dyed apparel rapidly increased in 1984.

Imports and Import Penetration

U.S. imports of Category 310/318 from all sources increased 68 percent in 1984 to a record level of 49.6 million square yards. Imports for the first eight months of 1985 were up 4 percent over the comparable period in 1984.

The ratio of imports to domestic production doubled from 16.1 percent in 1983 to 32.6 percent in 1984. The ratio continued to rise in 1985, reaching 37.3 percent in the first half compared with 26.7 percent in the first half of 1984.

Import Values

Portugal ships a wide variety of fabrics in both Category 310 and 318. Shipments from Portugal include 100 percent cotton and blended fabrics such as 55 percent cotton/45 polyester. Portugal's products also cover a wide range of yarn counts, from ten to the fifties. Most of the shipments from Portugal are of ten and twenty yarn counts. The duty-paid landed values are substantially below those of comparable U.S. produced fabrics.

During the period January–August 1985, 25 percent of Portugal's Category 310 imports entered under TSUSA 325.2928; another 25 percent entered under TSUSA 331.2935. Sixty-five percent of Portugal's Category 318 imports entered under TSUSA 325.1953.

PORTUGAL—MARKET STATEMENT

Category 604 Part— Spun Plied Acrylic Yarns

October 1985.

Summary and Conclusions

U.S. imports of category 604 part, spun plied acrylic yarns, from Portugal during the year ending August 1985 were 624,449 pounds, a sevenfold increase over the 86,535 pounds imported a year earlier. There were no imports of category 604 pt. from Portugal in 1983.

The sharp ans substantial increase of low-priced imports of category 604 pt. from Portugal is disrupting the U.S. market.

Imports and Import Penetration

During 1979–1984, imports of plied acrylic yarns increased by more than twofold to 20.4 million pounds in the latter years. Imports moderated in 1984, actually declining 6 percent compared with 1983, but still 33 percent above the 1982 level and 41 pecent higher than the 1979–1983 annual average of 14.5 million pounds. Imports in 1984 were second highest on record. During the first eight months of 1985, imports were up to 6 percent over the corresponding period of 1984.

the ratio of imports to domestic shipments of plied acrylic yarns increased threefold, rising from 21.1 percent in 1979 to 57.1 percent in 1984. The ratio continued to rise in 1985, reaching 58.0 percent for the first five months, compared with 50.2 percent in the first five months of 1984.

U.S. Shipments and Market Share

U.S. producers' shipments of plied acrylic yarns have been on a downward trend since 1981. Shipments rose from 42.4 million pounds in 1979 to 44.7 million in 1981 then dropped to 38.3 and 35.8 million in 1983 and 1984, respectively. The latter figure is 20 percent less than the 1981 level. For the first five months of 1985, shipments dropped 12 percent below the comparable period of 1984 level.

The U.S. producers' share of the plied acrylic yarn market declined from 83 percent in 1979 to 64 percent in 1983 and continued to drop in 1984. Import's share of the market more than doubled between 1979 and 1984, absorbing all of the growth in the market plus 15 percent of domestic production.

Import Values

Category 604 Pt. imports from Portugal are entered under TSUSA No. 310.5049, spun plied acrylic yarn. The duty-paid landed values of these imports from Portugal are below the U.S. producer prices for comparable yarn.

[FR Doc. 85–30029 Filed 12–18–85; 8:45 am]

BILLING CODE 3510-DR-M

BEST COPY AVAILABLE

Officials Authorized To Issue Export Visas for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka

December 16, 1985.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983 between the Governments of the United States and Sri Lanka, the Government of Sri Lanka has notified the United States Government that Mr. E.C.A. de S. Ekanayake and Mr. M.N. Ameer have been named to sign export visas issued by the Greater Colombo Economic Commission. The purpose of this notice is to advise the public of this change.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30024 Filed 12-18-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Command and General Staff College Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name: Command and General Staff College (CGSC) Advisory Committee
Date: 15-17 January 1986
Place: College Conference Room, Bell Hall, Ft. Leavenworth, KS 66027-6900
Time: 2000-2200, 15 January 1986; 0900-1630, 16 January 1986; 0900-1400, 17 January 1986.
Proposed Agenda:

- 2000-2200, 15 January 1986: Review of CGSC educational program.
- 0900-1630, 16 January 1986: Continuation of review.
- 0900-1000, 17 January 1986: Continuation of review.
- 1000-1130, 17 January 1986: Executive session.
- 1300-1430, 17 January 1986: Report to Commandant.

The purpose of the meeting is for the Advisory Committee to examine the entire range of College operations and, where appropriate, to provide advice and recommendations to the College Commandant and Faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary.

Philip J. Brookes, Executive Secretary, CGSC Advisory Committee, Bell Hall, Ft. Leavenworth, KS 66027-6900, Phone: 913-684-2741.

Philip J. Brookes,

Executive Secretary, CGSC Advisory Committee.

[FR Doc. 85-29982 Filed 12-18-85; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Section 404 and Section 10 Permits To Dredge Drainage Canals and Lakes, and Install Fill for Multple Uses and Development in Orleans Parish, LA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Proposed Action. This statement will analyze work proposed in a permit application submitted by South Point, Inc. A complex and efficient forced drainage system is planned. This work will consist of the construction of approximately 17.0 miles of new canals and the enlargement of 7.0 miles of existing canals and two lakes. The resulting 12,500,000 cubic yards of dredged material will be deposited in wetland areas. The proposed project area consists of approximately 13,000-acres of leveed land, the majority of which is considered wetlands.

2. Alternatives. In addition to the no action alternative, the DEIS will address several possible plans for the area including the proposed action. Possible development of alternate sites will also be addressed.

3. Scoping Process. A. The proposed project will be discussed in informal meetings attended by representatives of Department of the Interior—U.S. Fish and Wildlife Service, Department of Commerce—National Marine Fisheries Service, Department of Defense—U.S. Army Corps of Engineers, Louisiana Department of Wildlife and Fisheries, and elements of Louisiana Department of Natural Resources. Additional meetings are anticipated to be held with representatives of the New Orleans Mayor's Office and with representatives of local and national environmental groups. A public scoping meeting will be held.

b. Major issues to be addressed in the DEIS include: The current and ultimate environmental values of the 13,000-acre project site, the potential impacts to the existing drainage system, the impacts of expected population and economic growth in New Orleans, the stability of soils to support structutes at the site, and the extent of and possible mitigation of vehicular traffic expected to be generated by the proposed project. Additional issues are expected to be brought out during a public scoping meeting scheduled to be held 14 January 1986.

c. No formal assignments have as yet been planned for input into the DEIS by other Federal and state agencies. Nonetheless, informal meetings will be held and communication will be maintained throughout the EIS process.

d. Periodic reviews will be held with various Federal, state, and local agencies; they will be kept apprised of the progress.

4. Scoping Meeting. A public scoping meeting will be held at 1900 (7 p.m.) on Wednesday, 14 January 1986, at the Marion Abramson High School, 5552 Read Road, New Orleans, Louisiana. The meeting will consist of an introduction and a description of the proposed project, EIS process, and scoping process; after which the attendees will be divided into workshop groups, allowing individuals more freedom to imput their ideas and concerns. Comments made by individuals in the workshop groups will be written, compiled, and analyzed. A summary of the results will be available upon request.

5. Availability. The DEIS is scheduled to be available to the public in December 1986.

ADDRESS: Questions concerning the proposed action and DEIS can be directed to Mr. Robert J. Martinson at (504) 862-2258 at the U.S. Army Corps of Engineers, Regulatory Assessment Section (LMNOD-SA), P.O. Box 60267, New Orleans, Louisiana 70160.

Dated: December 12, 1985.

Eugene S. Witherspoon,

Colonel, CE Commanding.

[FR Doc. 85-30048 Filed 12-18-85; 8:45 am]

BILLING CODE 3710-84-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER86-200-000, et al.]

Arkansas Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

December 10, 1985.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Company

[Docket No. ER86-200-000]

Take notice that on December 4, 1985, Arkansas Power & Light Company (AP&L) tendered for filing an amendment to the December 14, 1983 Letter Agreement as amended May 21, 1984, between AP & L and Cajun Electric Power Cooperative, Inc. The Amendment decreases to 38 MW the contract capacity and accompanying energy for which AP&L will furnigh transmission services.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

Comment date: December 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Company

[Docket No. ER86-201-000]

Take notice that on December 4, 1985 Arkansas Power & Light Company (AP&L) tendered for filing an amendment dated November 8, 1985 to the Letter Agreement of December 9, 1983 (ER84-193-000) between AP&L and the Louisiana Energy & Power Authority. The amendment provides for an extension of the term of the Letter Agreement through December 31, 1986 and has no impact on rate, contract capacity or revenue.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

Comment date: December 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Montaup Electric Company

[Docket No. KR86-202-000]

Take notice that on December 5, 1985 Montaup Electric Company ("Montaup" or "the Company") tendered for filing rate schedule revisions incorporating a new M-11 rate for all-requirements service to Montaup's affiliates Eastern Edison Company ("Eastern Edison") in Massachusetts and Blackstone Valley Electric Company ("Blackstone") in Rhode Island and contract demand service to three non-affiliated customers: The Town of Middleborough in Massachusetts and Pascoag Fire District and Newport Electric Corporation in Rhode Island. The rate schedule revisions provide for a first-step increase of $24.7 million, or 11.0% and a second-step increase of $27.4 million, or an additional 1.2%. Montaup requests that the first-step rates be made effective on February 4, 1986 and suspended until the date when the Millstone No. 3 unit enters commercial service. Montaup requests that the second-step rates be made effective on February 5, 1986 and suspended until the day after the date when the unit enters commercial service.

The increase is requested to offset the increase in Montaup's costs over the 1985 level being recovered through the M-10 rates and to include Montaup's 4.009% ownership interest in Millstone No. 3 in rate base. The filing (1) increases the demand charge from $17.34467 per KW/month as provided in the M-10 rate as currently charged to Montaup's affiliates to $20.53823 per KW/month in the first step and $20.87976 in the second step, and (2) decreases the energy charge from 2.7674 cents per kwh as provided in the M-10 rate to 2.2849 cents per kwh. The filing also includes related changes in agreements under which Eastern Edison and Blackstone rent transmission facilities to Montaup and Montaup rents such facilities to Eastern Edison.

Montaup's filing was served on the affected customers the Rhode Island Public Utilities Commission and the Massachusetts Department of Public Utilities.

Comment date: December 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30074 Filed 12-18-85; 8:45 am]

BILLING CODE 6717-01

[Docket No. CI86-74-001 et al.]

ENSTAR Corp.; Application for Certificate of Public Convenience and Necessity

December 13, 1985.

Take notice that on December 6, 1985, ENSTAR Corporation (Applicant), of P.O. Box 2120, Houston, Texas 77252-2120, filed an application pursuant to the provisons of section 7(c) of the Natural Gas Act 15 U.S.C. 717(c), and § 157.23, *et seq.* of the Commission's Regulations under the Natural Gas Act for Convenience and Necessity, to Redesignate Rate Schedules, and to Redesignate Pending Proceedings before the Commission, authorizing the continued sale of Natural Gas in Interstate Commerce. ENSTAR Corporation is filing as Successor In Interest to C&K Petroleum,Inc., C&K Marine Producing Company, C&K Offshore Company and McAlester Fuel Company covering certain properties fully set forth in the application and in the attached Exhibit "C" which is on file with the Commission and open to public inspection.

Applicant further requests that the Commission authorize these sales as sales of Small Producer reserves pursuant to the Small Producer certificates issued to C&K Petroelum, Inc., in Docket No. CS71-1102, C&K Marine Produciton Company in Docket No. CS75-93, C&K Offshore Company in Docket No. CS71-914 and terminated effective April 1, 1980; and issued to McAlester Fuel Company, in Docket No. CS67-77 and terminated as of August 25, 1977.

Effective Janaury 1, 1983, McAlester Fuel Company and ENSTAR Petroleum, Inc. merged, the surviving Corporation being McAlester Fuel Company, whose name was changed on that same date to ENSTAR Petroleum, Inc. On December 20, 1983, C&K Petroleum, Inc. and ENSTAR Petroleum, Inc. were merged into ENSTAR Corporation.

Following these mergers, ENSTAR Corporation now holds all rights, titles, interests and obligations formerly held by McAlester Fuel Company, C&K Petroleum, Inc., C&K Offshore Company and C&K Marine Production Company.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 30, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the

Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordnace with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT "C" TO ENSTAR CORP.'S APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Location--field, county, State	Purchaser	Applicant's suggested R.S. No.	Predecessor's R.S. No.	Docket No.	Contract dated	Seller
Florence Field, Vermilion Parish, LA	McAlester Fuel Co	1	1	CI80-74-000	Oct. 27, 1977	Columbia Gas Transmission Co.
North Ruston field Lincoln Parish, LA	do	II	None	CI86-96-000	Oct. 1, 1975	Arkansas Louisiana Gas Co.
Village field, Columbia County, AR	do	7	None	CI86-93-000	Dec 30, 1971	Do.
Tatum and Carthage fields, Panola County, TX	do	II	None	CI86-95-000	Dec. 1, 1977	Texas Eastern Transmission Co
Bryans Mill field, Cass County, TX	do	II	None	CI86-94-000	Feb. 1, 1962	Natural GAs Pipline Co.
West Cameron blocks 40 and 41, Offshore, LA	C & K Offshore Company	10	None	CI86-97-000	Dec. 23, 1957	Transcontinental Gas Pipeline Corp.
South Timbalier block 148, offshore, Louisiana	C & K Marine Production Company	11	None	CI86-98-000	Dec. 15, 1977	Do.
South Timbalier block 86, offshore, Louisiana	do	12	None	CI86-99-000	June 20, 1977	Trunkline Gas Co.
South Timbalier blocks 190 and 203, offshore, Louisiana	do	13	None	CI86-101-000	Dec. 1, 1967	Do.
Vermilion block 161, offshore, Louisiana	do	14	None	CI86-100-000	Apr. 11, 1961	Columbia Gas Transmission Co.
Toro field, Reeves County, TX	do	15	None	CI86-116-000	Jan 5, 1967	El Paso Natural Gas Co.
South Andrews field, Andrews County, TX	do	16	None	CI86-117-000	Jan 1, 1980	Do.
Pembrook unit, Upton County, TX	do	17	None	CI86-114-000	Nov 3, 1952	Do.
Sawyer field, Sutton County, TX	do	III	None	CI86-112-000	Feb. 12, 1973	Do.
Sawyer field, Sutton County, TX	do	19	None	CI86-118-000	May 1, 1972	Do.
North Black-River field, Eddy County, NM	do	20	None	CI86-121-000	Aug. 12, 1976	Do.
White City field, Eddy County, NM	do	21	None	CI86-105-000	Feb. 6, 1975	Do.
South Briscoe field, Wheeler County, TX	do	22	None	CI86-120-000	Jan. 20, 1978	Michigan Wisconsin Pipe Line Co
Ozona field, Crocket County, TX	do	23	None	CI86-119-000	Nov. 13, 1981	Northern Natural Gas Co.
N.E. Gomez field, Crocket County, TX	do	24	None	CI86-122-000	Nov. 12, 1976	Do
N.E. Oates field, Crocket County, TX	do	25	None	CI86-102-000	Dec 19, 1967	Do.
Vermilion block 171, offshore Louisiana	do	26	None	CI86-103-000	Mar 1, 1978	Sea Robin Pipeline Company
East Cameron block 118, offshore Louisiana	do	27	None	CI86-123-000	Aug. 15, 1974	Texas Eastern Transmission Company
Ship Shoal block 72, offshore Louisiana	do	28	None	CI86-110-000	Sept. 18, 1957	Transcontinental Gas Pipeline Company
South Timbalier blocks 184 and 185, offshore Louisiana	do	29	None	CI86-115-000	Jan. 15, 1973	Do
Vermilion block 103, offshore Louisiana	do	30	None	CI86-104-000	Apr. 20, 1972	Do
Vermilion block 104, offshore Louisiana	do	31	None	CI86-113-000	Aug. 2, 1971	Do.
Ship Shoal block 246, offshore Louisiana	do	32	None	CI86-107-000	Mar 20, 1974	Do.
Atoka field, Eddy County, NM	do	33	None	CI86-109-000	Jan. 15, 1975	Do.
Carlsbad field, Eddy County, NM	do	34	None	CI86-108-000	May 6, 1977	Do.
Hamon Ellenberger, Reeves County, TX	do	35	None	CI86-106-000	Nov 10, 1966	Do.
Emperor field, Winkler County, TX	do	III	None	CI86-111-000	Apr. 5, 1962	West Texas Gathering Co.

[FR Doc. 85-30077 Filed 12-18-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-27-000]

Midwestern Gas Transmission Co.; Tariff Filing

December 16, 1985.

Take notice that on December 11, 1985, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective on January 1, 1986:

Second Revised Sheet No. 21
First Revised Sheet No. 21A

Midwestern states that the tariff sheets are being filed to revise the minimum bill provision in Midwestern's CD-1 Rate Schedule for its Southern System consistent with the decision of the U.S. Court of Appeals for the D.C. Circuit regarding the "downstream pipeline issue" in its opinion issued August 20, 1985 in *Wisconsin Gas Co.* v. *FERC*, 770 F.2d 1144.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 23, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30076 Filed 12-18-85 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-184-000 et al.]

National Fuel Gas Supply Corporation et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corporation

[Docket No. CP86-184-000]

December 11, 1985.

Take notice that on November 1, 1985, National Fuel Gas Supply Corporation (National), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP86-184-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap facility to deliver up to a maximum of 75 Mcf of gas per day for potential residential customers in the Treasure Lake Subdivision in Pennsylvania, under the certificate issued in Docket No. CP83-4-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National contends that the sales tap would be connected to its affiliate National Fuel Gas Distribution Corporation in Sandy Township, Clearfield County, and that the delivery point connection would have a minimal impact on its existing deliveries. National has also indicated that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers.

Comment date: January 27, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-60-000]

December 12, 1985.

Take notice that on October 21, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-60-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate one sales tap to be utilized as a small volume measurement station for accommodating natural gas deliveries to C.J. Farms Inc. (C.J.), in Fayette County, Iowa, under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that the distributor, Peoples Natural Gas Company (Peoples) would deliver gas to C.J. for grain drying. It is also stated that the tap would provide for an estimated total annual volume of 2,200 Mcf. Northern indicates that gas proposed to be delivered would be within Peoples currently authorized firm entitlement and would have no impact on Northern's present deliveries. The Rate Schedule applicable to the sales made through the proposed facility is CD-1, it is indicated.

Cost to install the small volume sale tap is estimated to be $3,286, of which, $63.00 would be contributed by Peoples.

Comment date: January 27, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Eastern Transmission Corporation

[Docket No. CP86-225-000]

December 12, 1985.

Take notice that on December 9, 1985, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP86-225-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce through and including October 31, 1987 for ten distribution companies, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texas Eastern proposes to transport natural gas on an interruptible basis for the following local distribution companies up to the maximum daily quantities (MDQ) listed pursuant to separate gas transportation agreements with each shipper:

Shipper	MDQ Dt per day
Consolidated Edison Co. of New York, Inc	560,000
Public Service Electric & Gas Co	799,000
Philadelphia Electric Co	233,000
Philadelphia Gas Works	197,000
New Jersey Natural Gas Co	280,000
Elizabethtown Gas Co	82,000
The Brooklyn Union Gas Co	324,000
National Gas and Oil Corp	21,000
Central Illinois Public Service Co	20,000
Long Island Lighting Co	150,000

It is stated that pursuant to the terms of gas transportation agreements with each shipper, Texas Eastern would receive on an interruptible basis for the account of each shipper at the point of receipt(s) up to a MDQ of natural gas, and such additional daily quantities of gas in excess of the MDQ as Texas Eastern in its sole judgement determines it is able to transport, and deliver such quantities to each shipper, or for their account, at certain points of delivery. It is further stated that transportation under the agreements would be subject to section 12.6 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fourth Revised Volume Number 1, and solely for the purpose of applying section 12.6 the Agreements are classified as a TS-1 service agreement.

Beginning with the month in which the transportation commences, Texas Eastern proposes that each shipper pay it each month a charge equal to the product of the posted TS-3 rate in effect during such month times the quantity of gas delivered by Texas Eastern during such month, and where applicable, Texas Eastern proposes to collect the currently effective Gas Research Institute (GRI) surcharge per dt for the gas transported. Texas Eastern further proposes to retain applicable shrinkage, which is currently 1 percent per dt of natural gas received by Texas Eastern per zone within which the natural gas is transported.

Comment date: December 27, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-142-000]

December 11, 1985.

Take notice that on November 1, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-142-000 an application pursuant to section 7 of the Natural Gas Act, for a certificate of public convenience and necessity authorizing Transco to transport natural gas on behalf of Amarex, Inc. (Amarex), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it is requesting authorization herein to transport on behalf of Amarex, on an interruptible basis, quantities of natural gas up to the dt equivalent of 500 Mcf of gas per day pursuant to a transportation agreement between Transco and Amarex, dated October 1, 1985, as amended October 8, 1985. It is explained that such quantities would be purchased by Florida Gas Transmission Company (Florida) from Amarex in the Cossinade Field, Vermilion Parish, Louisiana and would be received by Transco from North Central Oil Company (North Central) at the existing point of interconnection between facilities of Transco and North Central in Vermilion Parish, Louisiana. Transco would redeliver such quantities to existing points of interconnection between the facilities to Transco and Florida in Vermilion Parish, Louisiana.

Transco further states that it would charge 6.81 cents per dt equivalent of gas for all quantities transported to Florida for the account of Amarex. Transco states it would not retain, initially, any of the quantities transported to provide for compressor fuel or line loss make-up.

Transco states that the transportation agreement would remain in force for a primary term of five years from the date of intitial delivery, and year to year thereafter, subject to termination at the end of the primary term or any year thereafter.

Comment date: December 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP86-224-000]

December 12, 1985.

Take notice that on December 6, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478 filed in Docket No. CP86-224-000 a request pursuant to § 157.205 of the Regulations (18 CFR 157.205) for authorization to install a 1-inch sales tap on United's 8-inch Fort Polk line in Vernon Parish, Louisiana, under the certificate issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United States that the proposed sales tap would enable United to sell and deliver to Entex, Inc., the local distributor, an estimated daily average of 7.5 Mcf for resale to the North Fort Trailer Park located in Entex's DeRidder, Louisiana service area, under United's Rate Schedule DG-S. The effective service agreement for such service is dated July 1, 1981. United advises that the proposed tap would be installed in compliance with the Subpart F of Part 157 of the Commission Regulations.

Comment date; January 27, 1986, in accordance with the Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30075 Filed 12-18-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST82-424-001 et al.]

Sun Gas Transmission Co., Inc., et al.; Extension Reports

December 13, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a

[1] Notice of these extension reports does not constitute a determination that service will continue in accordance with Order No. 436, Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372 (Oct. 18, 1985).

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blanket certificate issued under § 284.222 of the Commission's Regulations: a "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before December 23, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Dated filed	Part 284 subpart	Effective date	Expiration date [2]
ST82-424-001 [1]	Sun Gas Transmission Co., Inc., P.O. 2880, Dallas, TX 75221	Tennessee Gas Pipeline Co	11-04-85	C	[illegible]	02-02-86
ST83-130-001 [1]	Sun Gas Transmission Co., Inc., P.O. 2880, Dallas TX 75221	Transcontinental Gas Pipeline Corp	11-04-85	C	12-20-84	02-02-86

[1] This extension report was filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.

Note.—Notice of transactions does not constitute a determination that the filing comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42,372, 10/18/85)

[FR Doc. 85-30078 Filed 12-18-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL 2940-7]

Open Meetings of the Farmworker Protection Standards for Agricultural Pesticides Negotiated Rulemaking Advisory Committee

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of two open meetings of the Advisory Committee negotiating Farmworker Protection Standards for Agricultural Pesticides.

The first meeting will be held on Tuesday, January 7, 1986. The second will be held on Tuesday, February 4, 1986. Each meeting will be held in Conference Room #1112, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, Virginia. Each will start at 9:00 a.m., and will run until completion.

The purpose of each meeting is to continue work on the substantive issues which the Committee has identified for resolution. They include requirements for protective clothing, reentry intervals, notification, training, enforcement, greenhouses, nurseries, and medical monitoring.

If interested in attending, or in receiving more information, please contact Chris Kirtz at (202) 382-7565.

Dated: December 16, 1985.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 85-30051 Filed 12-18-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of information collection: Report of U.S. Government Securities (FFIEC 016 and 018); Report of U.S. Government Agency and Corporation Securities (FFIEC 017).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before January 3, 1986.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 389-4351.

SUMMARY: The FDIC, the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System have submitted for OMB approval a request to conduct a one-time survey of the holdings of securities of U.S. Government agencies and Corporations by insured commercial and savings banks as of December 31, 1985. The Federal banking agencies need the data to allow them to assess more accurately the concentrations of risk that may exist within individual banks. The survey will not be a part of the Reports of Condition and Income, but the data items represent a breakdown of information that is reported on the Call Report. The one-time reporting burden for FDIC-supervised banks is estimated to be one-half hour per bank.

Dated: December 12, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-30036 Filed 12-18-85; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 85-23]

The West Indian Company Limited v. The Virgin Islands Port Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by The West Indian Company Limited against The Virgin Islands Port Authority was served December 13, 1985. Complainant alleges that the respondent has violated sections 10(b)(11), 10(b)(12) and 10(d)(3) of the Shipping Act of 1984 with regard to rates being charged at its marine terminal facilities in St. Thomas Harbor, U.S. Virgin Islands.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by December 15, 1986, and the final decision of the Commission shall be issued by April 15, 1987.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-29973 Filed 12-18-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; Larmex International Freight Forwarders, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight fowarders, 46 CFR Part 510.

License number: 2446
Name: Larmex International Freight Forwarders, Inc.
Address: 5453 N.W. 72nd Ave., Miami, FL 33166
Date revoked: November 28, 1985
Reason: Failed to maintain a valid surety bond
License number: 2440
Name: Rapid Air & Ocean, Inc.
Address: 6954 N.W. 12th Street, Miami, FL 33126
Date revoked: November 28, 1985
Reason: Failed to maintain a valid surety bond
License number: 1148
Name: World Trade Forwarding Company, Inc.
Address: 1919 Penn City Road, Houston, TX 77015
Date revoked: December 5, 1985
Reason: Requested revocation voluntarily
License number: 554
Name: Reliable Cargo Shipping Co., Inc.
Address: 184 Kent Avenue, Brooklyn, NY 11211
Date revoked: December 5, 1985
Reason: Surrendered license voluntarily
License number: 855
Name: S. G. Scott Company
Address: 3909 E. Lake Terrace, Miramar, FL 33023
Date revoked: December 9, 1985
Reason: Requested revocation voluntarily
License number: 2787
Name: Select Shipping, Inc.
Address: P.O. Box 276, Staten Island, NY 10306
Date revoked: December 15, 1985
Reason: Requested revocation voluntarily

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 85-30019 Filed 12-18-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0515]

Policy Regarding Risks on Large-Dollar Wire Transfer Systems Technical Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement; technical amendment.

SUMMARY: This document clarifies the Board's purpose in adopting the term "U.S. capital equivalency" in its policy statement on risks on large-dollar payments systems. The original policy statement was published in the **Federal Register** on May 22, 1985 (50 FR 21120).

FOR FURTHER INFORMATION CONTACT: Edward C. Ettin, Deputy Director, Division of Research and Statistics (202/452-3368); Sydney J. Key, Economist, Division of International Finance (202/452-3522); Joseph R. Alexander, Attorney, Legal Division (202/452-2489); or Joy W. O'Connell, Telecommunication Device for the Deaf (202/452-3244).

SUPPLEMENTARY INFORMATION: The Board's policy on reducing risks on large-dollar wire transfer systems strongly urges each entity participating on private large-dollar networks or incurring daylight overdrafts on Fedwire to adopt a sender net debit cap (a ceiling on the aggregate cross-system net debit position that it can incur during a given interval). For most participants, the sender net debit caps are to be computed as multiples of capital. U.S. branches and agencies of foreign banks, however, are not separately incorporated and have no capital of their own. Accordingly, the Board decided that in determining cross-system sender net debit caps, branches and agencies should use the worldwide capital of the foreign bank establishing the branches and/or agencies, and that the adjusted primary capital of any U.S. bank and/or Edge subsidiaries should be subtracted from the foreign bank's adjusted primary capital to avoid double counting.

In assessing the Federal Reserve's own risk on Fedwire, however, the Board expressed concern about the lack of timely information on foreign banks and the Federal Reserve's inability to monitor their non-U.S. operations. The Board thus decided that, only for purposes of determining the volume of a foreign bank family's uncollateralized Fedwire daylight overdrafts, the cap multiples would be applied to another, narrower measure that the Board termed "U.S. capital equivalency."[1]

The Institute of Foreign Bankers, Inc., has objected to the characterization of this measure as "U.S. capital equivalency," stating that it is "both misleading and unnecessary, [and] could have unintended and unwarranted precedential effect adverse to foreign banks in other contexts."

In the context of the Board's risk reduction policy, the formula for "U.S. capital equivalency" was used because it was a pre-existing measure that resulted in reasonably equitable treatment for the branches and agencies for this purpose, and the term "capital equivalency" is used in regulations of the Comptroller of the Currency, 12 CFR 28.6. This decision, however, was not

[1] "Capital equivalency" was defined as the greater (1) the sum of the amount of capital (but not surplus) which would be required of a national bank being organized at each branch or agency location, or (2) the sum of 5 per cent of the total liabilities of each branch or agency, including acceptances, but excluding (A) accrued expenses and (B) amounts due and other liabilities to offices, branches, and subsidiaries of the foreign bank. This definition follows the deposit requirements applied to federal branches and agencies by section 4(g) of the International Banking Act of 1978, 12 U.S.C. 3102(g).

meant to suggest that this measure could nor should be used to measure "capital" for prudential or other purposes. Accordingly, the Board has determined to amend its policy statement to indicate that its use of this term in the policy statement was not meant to suggest that the Board presently intends that this measure necessarily should be used to measure a foreign bank's capital position in the U.S. for prudential on other purposes.[2] Specifically, the term "U.S. capital equivalency" where it refers to U.S. branches and agencies of foreign banks will be placed in quotation marks, and an explanatory sentence will be added to the first occurrence of this term.

The following changes are made in Docket No. R-0515 appearing on page 21129 in the issue of May 22, 1985, and in the Board's release of May 17, 1985:

1. On page 21125, in the first full paragraph of the third column (the bottom of page 26 of the Board's release), the phrase "U.S. capital equivalency" is placed in quotation marks.

2. On page 21125 in the text immediately after the indication for footnote 14, the following parenthetical is inserted: "(The term 'U.S. capital equivalency' has been chosen merely as the most convenient term of art. While 'U.S. capital equivalency' is to continue to be used in connection with 'sender net debit cap multiples,' developed from the foreign banks' self-evaluation, to determine foreign banks' maximum uncollateralized daylight overdrafts on Fedwire, the Board's use of the term in this manner is not meant to suggest that the Board presently intends that this measure necessarily should be used to measure a foreign bank's capital position in the United States for prudential or other purposes)."

By order of the Board of Governors of the Federal Reserve System, December 13, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-30087 Filed 12-18-85; 8:45 am]

BILLING CODE 6210-01-M

Fairlawn Plaza Investments, Inc.; Formation of; Acquistion by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than December 29, 1985.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fairlawn Plaza Investments, Inc.*, Topeka, Kansas; to become a bank holding company by acquiring 80.274 percent of the voting shares of Fairlawn Plaza State Bank, Topeka, Kansas.

Board of Governors of the Federal Reserve System, December 17, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30190 Filed 12-18-85; 11:02 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 231-007925-002.

Title: North Atlantic Terminal Lumber Conference.

Parties: John J. Orr & Son, Inc., Seaview Avenue Lumber Terminal, Inc., New Haven Terminal, Inc., Elizabeth Lumber Yard, Lumber Exchange Terminal, South Jersey Port Corporation, Wilmington Marine Terminal, Lumber Terminals, Inc.

Synopsis: This agreement amends the basic conference agreement which relates to the operation of the conference members in furnishing marine terminal facilities in connection with the receipt, delivery handling and/or storage of lumber and other forest products at North Atlantic ports. The amendment changes Paragraph 3(d) of the agreement to read, "The annual dues payable by members of the Conference shall be such amount as may be provided in the Conference by-laws".

Agreement No: 224-010861.

Title: Los Angeles Terminal Agreement.

Parties: The City Of Los Angeles (City), Japan Line, Ltd. (Assignee), Y. S. Line, Ltd. (Assignee).

Synopsis: This agreement provides for the granting by the City to the Assignees of nonexclusive preferential use of Berths 127-131, 56.2 acres of backland, and the use of one City owned twin lift gantry type crane, all located within the Port of Los Angeles. The agreement is terminable upon 30 days' written notice. The premises are to be used for berthing and mooring of vessels owned, operated, serviced or represented by Assignees along with the handling of cargo and the disembarking of passengers and their baggage. Agreement No. T-3071 will terminate on the effective date of Agreement No. 224-010861. The parties have requested a shortened review period for the agreement.

Agreement No.: 224-010862.

Title: Savannah Terminal Agreements.

Parties: Georgia Ports Authority (Authority), Scanbarber A/S (Scanbarber).

Synopsis: This agreement covers the lease by the Authoirty to Scanbarber of parking slots for operating a container yard within the confines of the Authority's Garden City Terminal in Savannah, Georgia. The container yard will be operated by employees of Scanbarber. The term of the lease shall be for three years, which term shall begin on the first day of the month following determination of its effective date by the Federal Maritime Commission. Scanbarber shall have the

[2] Parallel changes will be made in other documents referring to the Board's daylight overdraft policy and its implementation if and as they are revised for other reasons.

option to renew or extend the lease for two additional years. Scanbarber for tonnage generated by them during any 365 day guarantee period in excess of 50,000 short tons, will pay wharfage to the Authority based on a scale as provided for in the agreement. The parties have requested a shortened review period for the agreement.

Dated: December 16, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-30061 Filed 12-18-85; 8:45 am]

BILLING CODE 6730-01-M

Filing and Effective Date of Assessment Agreement

The Federal Maritime Commission hereby gives notice, that on December 12, 1985, the following agreement was filed with the Commission pursuant to section 5, Shipping Act of 1984, and was deemed effective on that date, to the extent it constitutes an assessment agreement as described in paragraph (d) of section 5, Shipping Act of 1984.

Agreement No.: 201-000082-009.

Title: West Gulf Marine Association Assessment Agreement.

Parties: West Gulf Marine Association (WGMA), International Longshoremen's Association AFL-CIO (ILA).

Synopsis: The amendment provides for the reduction of the cargo assessment provided for in the WGMA Resolution of September 27, 1985, effective October 1, 1985. The reduction is to become effective on January 1, 1986. The Resolution provides for an assessment calculated on the basis of tonnage handled in the ports of the West Gulf. The assessment will continue to be known as the Guaranteed Annual Income Program and Fringe Benefits Contract Administration Assessment. It is the responsibility of the direct employees of labor under the applicable collective bargaining agreements between the WGMA and the ILA to remit such assessment to the WGMA based on the rates set out for specific types of cargo. The assessment is to be collected by the WGMA and the funds generated thereby are to be administered by the WGMA to meet its obligations under the various agreements existing between it and the ILA.

Dated: December 16, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-30062 Filed 12-18-85; 8:45 am]

BILLING CODE 6730-01-M

Tariff Rules on Containers/Trailers Not Owned or Leased by the Carrier; Filing of Request for Order To Show Cause

Notice is given that Interpool, Ltd. has requested the Commission to direct the U.S. Atlantic-North Europe Conference to show cause why a tariff provision proposed by that Conference, stipulating that member lines will not pay any charges in connection with the use of containers not owned or leased by the member lines, should not be found to violate section 10(c) of the Shipping Act of 1984. The tariff provision was filed in the Conference's Intermodal Freight Tariff FMC No. 1 on November 29, 1985, and is scheduled to become effective January 1, 1986. Interested persons may inspect and obtain a copy of the request at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 1101.

The request is being served on the Conference this date, and the Conference and any interested persons may submit replies to the request to the Acting Secretary, Federal Maritime Commission, Washington, DC 20573, on or before December 31, 1985. An original and fifteen copies of such replies shall be submitted. A copy of such replies shall also be served on filing counsel: Robert J. Ables, Esq., 1919 Pennsylvania Avenue, NW., Washington, DC 20006.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-30063 Filed 12-18-85; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-85-1574]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

Action: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ACTION: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names of telephone numbers of an agency official familiar with the proposed and the OMB Desk Officer for the Department.

Copies of the proposal forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

Th proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Definition of Income, Rents and Recertification of Family Income for the Rent Supplement and Section 236 Programs, 24 CFR Parts 215, 236, 813, 886, and 913.

Office: Housing.

Form Number: None.

Frequency of Submission: On Occasion.

Affected Public: Individuals or Households, State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions.

Estimated Burden Hours: 350.

Status: New.

Contract: James J. Tahash, HUD, (202) 426–3944; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 9, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85–30085 Filed 12–18–85; 8:45 am]

BILLING CODE 4210-01-M

Office of Environment and Energy

[Docket No. I–85–137]

Intended Environmental Impact Statement

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is under preparation by the City of Costa Mesa, California for the Downtown Area I Redevelopment Project under the HUD programs as described in the appendix of the Notice. This Notice is required by the Council on Environmental Quality under its rule (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the particular project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

This Notice shall be effective for one year. If one year after the publication of a Notice in the **Federal Register**, a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the **Federal Register**, then a new and updated Notice of Intent will be published.

Issued at Washington, DC, December 16, 1985.

Dorothy S. Williams,

Deputy Director, Office of Environment and Energy.

Appendix

EIS on the Costa Mesa Downtown Area I Redevelopment Project

The City of Costa Mesa, California, has under preparation an Environmental Impact Statement (EIS) for Downtown Area I Redevelopment Project and solicits comments and information for consideration in the EIS.

Description: The proposed project involves the redevelopment of approximately 19 acres with residential and commercial uses. This project is divided into three separate parcels, known as Sites 1, 2 and 3. These parcels are contained in an area bounded by 19th Street on the north, Newport Boulevard on the east, 18th Street on the south, and Anaheim Avenue on the west. The estimated acquisition costs for each of these developments are $9 million for the Site 1 project, $6 million for the Site 2 project and $5 million of the Site 3 project.

Federal funding for the project is expected to be from the U.S. Department of Housing and Urban Development's Community Development Block Grant Program.

Need: The decision to prepare an EIS has been based upon the large-scale nature of the project and compliance with the State of California's Environmental Quality Act.

Comments: The Draft EIS is expected to be published and distributed on or about December 17, 1985. Copy of the DEIS will be on file at the municipal office or can be obtained for a fee of approximately $20.00. Comments should be forwarded to Allan Roeder, City Manager, City of Costa Mesa, 77 Fair Drive, P.O. Box 1200, Costa Mesa, California 92626, (714) 754–5606.

[FR Doc. 85–30083 Filed 12–18–85; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Supplemental Environmental Impact Statement on the Use of Lead Shot for Hunting Migratory Birds in the United States

AGENCY: Fish and Wildlife Service Interior.

ACTION: Notice of availability.

SUMMARY: This Notice advises the public that the draft Supplemental Environmental Impact Statement on the use of lead shot for hunting migratory birds in the United States is available for public review. Comments and suggestions are requested.

This Draft Supplement of a 1976 FES on the use of steel shot for hunting waterfowl in the United States incorporates data from that document and summarizes information gathered since 1976 on lead poisoning of endangered and nonendangered migratory birds due to lead shot ingestion. Alternatives considered in 1976 have been reevaluated in the light of the expanded scope of concern for lead poisoning in a broader range of migratory birds, particularly the bald eagle. The proposed action is: To promulgate annual regulations for waterfowl hunting seasons that will eliminate lead poisoning resulting from ingestion of lead shotgun pellets as a significant mortality factor among migratory birds.

Six alternative methods for achieving this objective include three different sets of criteria for protecting bald eagles, no action (no hunting), no use of lead shot and an all lead shot alternative. This Draft Supplement concludes that an expansion of the original proposal (Alternative 1) not to allow lead shot for waterfowl hunting in designated problem zones continues to be the most appropriate method for dealing with this problem.

DATE: Written comments are requested by February 3, 1986.

ADDRESSES: Comments should be addressed to Director (FWS/MBMO), Room 536 Matomic, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Public hearings will be held at the following locations:

Pacific Flyway: January 14, 1986, from 1 pm to 5 pm at the Woodlake Inn, 500 Leisure Lane, Sacramento, California.

Central Flyway: January 14, 1986, from 9 am to 1 pm at the Stapleton Plaza Hotel and Athletic Center, 3333 Quebec Street, Denver, Colorado.

Mississippi Flyway: January 14, 1986, from 7 pm to 10 pm at the Airport Ramada Inn, St. Louis, Missouri.

Atlantic Flyway and national hearing: January 14, 1986, from 9 am to 5 pm at the Department of the Interior Auditorium, 18th and C Streets, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202–254–3207).

BEST COPY AVAILABLE

Individuals wishing copies of this EIS for review should immediately contact the above individual. Copies have been sent to all agencies and individuals that have expressed interest in receiving Fish and Wildlife Service documents on this subject.

SUPPLEMENTARY INFORMATION: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management is the primary author of this document.

In making the annual decisions whether, where and how migratory bird hunting will be allowed under the terms of the Migratory Bird Treaty Act, the Secretary of the Interior is required to determine the capability of waterfowl and other migratory bird resources to sustain a sport harvest throughout the various portions of their range. As lead poisoning is a significant annual mortality factor for certain species of waterfowl that indirectly results from their sport harvest, the annual decision process must take into account where it is necessary to curtail further deposition of lead shotgun pellets to control additional loss of these birds.

In addition, there are areas of the country where bald eagles, populations that are listed as endangered or threatened, prey on crippled or dead waterfowl that carry ingested or embedded lead shot. Ingesting such shot can lead to illness or death from lead poisoning. As the Endangered Species Act requires Federal agencies to conserve endangered species and avoid jeopardizing their continued existence, the Secretary must consider where it is necessary to require nontoxic shot in order to reduce exposure of bald eagles to lead in their waterfowl prey.

If a determination is made that the use of lead shot must be avoided in order for the migratory bird hunting program to remain in compliance with the requirements of one or more of these statutes, the Secretary must implement a program that meets those requirements.

Wildlife biologists have known throughout this century that spent lead pellets deposited during hunting can cause sickness and death in waterfowl. In earlier decades when waterfowl populations were greater this incidental hunting-related mortality did not seem critical enough to warrant seeking a less toxic alternative to lead shot.

Increasingly, continental waterfowl populations have come under stress from destruction and degradation of their habitat, periodic adverse weather cycles and disease on crowded migration and wintering habitats. By the 1960s and 1970s the need to find an alternative to lead's toxicity became obvious to wildlife managers. In 1976, the Department of the Interior published a Final Environmental Statement (FES–76), *Proposed Use of Steel Shot for Hunting Waterfowl in the United States.* The proposed action presented at that time sought to limit further deposition of lead shot pellets in areas used by aquatic birds in order to eliminate lead poisoning from ingested lead shotgun pellets as a significant mortality factor among these birds. This proposed action was and continues to be implemented 10 years after it was first presented.

Since 1976, nontoxic shot has been required for hunting waterfowl at numerous locations throughout the United States. These requirements are now reflected in both State and Federal hunting regulations. In 1985, about 30 percent of the average annual waterfowl harvest in the United States occurred in designated nontoxic shot zones in 33 states. Acceptance of this program has occurred among waterfowl hunters in some but not all states.

The majority of wildlife managers and many hunters understand the need for conversion to a nontoxic shot in order to maintain waterfowl populations. However, there are people who believe that steel shot is not the answer: that it will damage their guns and cripple more waterfowl than lead. These concerns are true in part. Shotguns with thin-walled barrels or barrels made of soft steel should not be used for firing steel loads. However modern shotguns available from the major American arms manufacturers are safe for use with steel shot. Numerous tests relating to crippling loss with steel have produced results as varied as their individual objectives. There does appear to be a greater crippling loss with steel. However, the extent to which hunter familiarity with the different shooting characteristics of steel may affect these losses has not been determined.

Criticism about the need to convert to nontoxic shot also centers on the lack of hunter-observed, lead-poisoning mortality. This results from the fact that most lead poisoning occurs after the hunting season when waterfowl can feed undisturbed on hunted areas where shot has been deposited recently and the fact that lead poisoning is a slow, debilitating disease that makes its victims susceptible to predation or other diseases. When encountered, these birds are often mistaken for cripples. Given the difficulty in finding lead-poisoned birds, no accurate estimates can be made of annual losses. What is known is that losses are occurring every year and across the nation. And they are controllable as a reasonable and nontoxic substitute for lead shot is available.

Since FES–76 was issued examinations of dead bald eagles have demonstrated that they are dying from lead poisoning also. The major source of this lead exposure is believed to be lead pellets embedded in or ingested by waterfowl and their other prey. To date 105 lead-poisoned bald eagles have been diagnosed by the Service's National Wildlife Health Laboratory.

The bald eagle is listed as endangered or threatened in different parts of the conterminous 48 States. A national emblem, the bald eagle is also an object of cultural significance, symbolizing not only the strength of the nation, but increasingly, quality in American life. As a result, the bald eagle is protected by many national laws that together place a mandate on the Secretary of the Interior to protect this species. This responsibility was highlighted in 1985 when, in a successful suit by the National Wildlife Federation, the Court admonished the Department of the Interior of the need to consider alternatives for protecting bald eagles from lead poisoning, a topic not covered by FES–76. This Supplement is in part a response to that need.

Since 1978, the annually appropriated funds for the Department of the Interior have been restricted in their use by the following provision: "No funds appropriated by the Act shall be available for the implementation or enforcement of any rule or regulation of the United States Fish and Wildlife Service, Department of the Interior, requiring the use of steel shot in connection with the hunting of waterfowl in any State of the United States unless the appropriate State regulatory authority approves such implementation." As a consequence, the regulations have not been applied consistently throughout the United States. The implementation has varied by State, and in some cases, public lands have been regulated by more rigid standards than private lands.

In 1985, the Fish and Wildlife Service, with input from the States, Flyway Councils and the public, developed guidelines for identifying zones where the use of lead shot should not be permitted for waterfowl hunting in order to reduce exposure of waterfowl to lead. Additionally, preliminary criteria were

developed to begin to reduce exposure of bald eagles to lead poisoning.

Many studies of lead poisoning in birds and the increased use of nontoxic shot for hunting waterfowl have occurred since 1976 as a result of private, State or Federal initiatives. Much of the new information relates to bald eagles. Other new information relates to lead poisoning of waterfowl and other migratory birds.

The Service has concluded that it is in the public interest to provide an update of this information; to expand consideration to include lead shot-poisoning effects on all hunted migratory birds; and to analyze alternatives for meeting federal obligations to protect and recover the bald eagle.

Additionally, in the mid-1980s waterfowl populations are under stress; their numbers are significantly depressed; and management options that offer opportunity to enhance their survival and health take on increased importance. Besides waterfowl and bald eagles, other migratory birds are dying of lead poisoning. Little is known about the incidence or significance of lead poisoning in these species. The need for developing a blueprint for reducing this controllable mortality factor will also be addressed. Through this SEIS process the Service requests the participation of the other Federal and State agencies and the public in developing this plan.

Alternatives Addressed

This supplemental environmental impact statement (SEIS) proposes an administrative action to promulgate regulations for annual waterfowl hunting seasons that will eliminate lead poisoning resulting from ingestion of lead shotgun pellets as a significant mortality factor among migratory birds. This SEIS examines six alternatives for achieving this objective and analyzes the effects of these alternatives on the biological resources and socioeconomic systems likely to be impacted.

Alternative I (Preferred Action): Promulgate regulations that prohibit the use of lead to hunt waterfowl in zones where a known or potential lead-poisoning problem has been identified using separate criteria for nonendangered (waterfowl) and endangered (bald eagles) species. (Eagle criteria: 15 eagles and 5000 or more waterfowl harvested in a county.) Use of nontoxic shot for other migratory bird hunting would be determined on a case-by-case basis.

Alternative II (National Wildlife Federation Action): Same waterfowl criteria as Alternative I; bald eagle criteria are based on presence of lethally or sublethally lead-poisoned bald eagles, lead-poisoned or exposed waterfowl (5 percent lead shot ingestion) and/or 15 or more bald eagles in a county during the NWF Midwinter Survey. Use of nontoxic shot for other migratory bird hunting is not considered.

Alternative III (Ecological Zone Action): Same waterfowl criteria as Alternative I; bald eagle criteria identify (1) major concentrations of eagles and waterfowl along rivers and other wetland complexes; (2) counties with 15 or more wintering bald eagles; and (3) resident eagle families. Use of nontoxic shot for other migratory bird hunting would be determined on a case-by-case basis.

Alternative IV (No Action): Do not open migratory bird hunting seasons.

Alternative V (Flyway Action): Open all migratory bird hunting seasons to nontoxic shot only. This requirement would be phased in by flyway, beginning with the Mississippi Flyway in the 1987–88 season and in the Pacific, Atlantic and Central Flyways in subsequent years.

Alternative VI (Lead Shot Action): Open all migratory bird hunting seasons to use of lead shot. Use of nontoxic shot would be at State discretion.

The environmental analyses in this SEIS focus on the effect of each alternative on: reducing exposure of endangered and nonendangered species to lead poisoning and other potential impacts on these resources; the hunting and nonhunting publics; manufacturers and retailers of shot used in hunting; program administration by Federal and State wildlife agencies; and the effect on U.S. commitments to and use of migratory bird resources in other nations.

All agencies and individuals are urged to provide comments and suggestions for improving this Supplemental EIS as soon as possible. All comments received by the date given above will be considered in preparation of the Final Supplement for this action.

The Service has determined that this document does not contain a major proposal requiring preparation of an economic impact analysis under Executive Order E.O. 11821 as amended by E.O. 11949 and OMB Circular A–107.

Dated: December 13, 1985.

Ronald E. Lambertson,

Acting Deputy Director.

[FR Doc. 85–30073 Filed 12–18–85; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Redelegation of Authority No. 112.1]

Director, Office of Project Development, Bureau for Asia and Near East, Mission Directors in Asia Region, AID Representative in Burma, South Pacific Regional Development Officer in Fiji and the Asean Regional Development Officer

Section 1. Issuance Authority

This redelegation is issued pursuant to the authority delegated to the Assistant Administrator by A.I.D. Delegation of Authority No. 5 with respect to Loan Agreements, No. 38 with respect to Project Agreements, Trust Fund Agreements, and Grants to International Organizations, No. 40 with respect to Waivers of Source, Origin and Nationality for Procurement, No. 41 with respect to Excess Property, No. 99 with respect to Contracting and Related Functions, No. 100 with respect to Adequacy of Assurances of Host Country Participation, No. 112 with respect to Other Authorities and Functions, and No. 133 with respect to Authorization of Project and Nonproject Assistance, all as amended.

Section 2. Delegations of Authority

I hereby redelegate to A.I.D. Mission Directors in Bangladesh, India, Indonesia, Nepal, Pakistan, Philippines, Sri Lanka and Thailand and to the A.I.D. Representative in Burma and to the South Pacific Regional Development Officer and to the Asean Regional Development Officer, each with respect to the country or countries for which he or she is responsible, and to the Director, Office of Project Development, Bureau for Asia and Near East with respect to countries in Asia region within my area of responsibility, authority to exercise any of the following functions, except that the A.I.D. Representative in Burma, the South Pacific Regional Development Officer, the Asean Regional Development Officer, and the Bureau of the Office of Project Development may not exercise the functions in paragraphs A, B and C of this Section 2.

A. *Authorizes Assistance.* The authority to authorize a project, if the project:

(1) Does not exceed $20 million over the approved life of project (except as provided in subparagraph (B) below);

(2) Does not present significant policy issues;

(3) Does not require issuance of waivers that may be approved only by

the Assistant Administrator or the Administrator, or if such waivers are required, they are approved by the Assistant Administrator or the Administrator, as appropriate, prior to such authorization; and

(4) Does not have a life of project in excess of ten years.

B. *Amend Authorizations.* The authority to amend project authorizations executed by any A.I.D. official, if the amendment:

(1) Does not result in a total life of project funding of more than $30 million;

(2) Does not present significant policy issues; and

(3) Does not require issuance of waivers that may be approved only by the Assistant Administrator or the Administrator, or if such waivers are required, they are approved by the Assistant Administrator or the Administrator, as appropriate.

C. *Host Country Contributions.* Authority to receive and to determine the adequacy of the assurances required by section 110(a) of the Foreign Assistance Act of 1961, as amended (the Act), with respect to any individual project or nonproject assistance authorized or amended under subparagraphs A. and B. of this Section 2.

D. *Negotiate and Execute Agreements and Amendments.* Authority to negotiate and execute loan and grant agreements, and amendments thereto, with respect to loans and grants authorized under the Act, in accordance with the terms of the authorization of such loan or grant. Such grant agreements for purposes of this authority and all other authorities contained in this redelegation shall mean agreements with foreign governments, foreign government agencies, and international organizations having a membership consisting primarily of such foreign governments.

E. *Implementation.* Authority to implement loan and grant agreements with respect to loans and grants authorized under the Act and loans authorized by the Board of Directors of the Corporate Development Loan Fund, including the following:

(1) *Implementation Letters.* Authority to prepare, negotiate, sign, and deliver letters of implementation;

(2) *Ancillary Agreements and Documents.* Authority to negotiate, execute and implement all agreements and other documents ancillary to such loan and grant agreements;

(3) *Satisfaction of Conditions Precedent.* Authority to review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precendent to financing under such loan or grant agreements;

(4) *Project Implementation Orders.* Authority to sign or approve Project Implementation Orders;

(5) *Waiver of Competition for Host Country Contracts.* Authority to waive competition in the selection of contractors for contracts with borrowers or grantees financed by funds made available under such loans or grants, provided that the amount of such waiver does not exceed $1,000,000 per transaction and that the field post's noncompetitive review board finds the waiver to be justified in accordance with Handbook 11;

(6) *Waiver of Publication for Host Country Contracts.* Authority to waive, in competitive procurements, the requirement to publish, in the Commerce Business Daily or elsewhere, a notice of the availability of an invitation for bid or request for proposals for procurement of goods or services by borrowers or grantees financed by funds made available under such loans or grants, provided that the aggregate amount of each such procurement does not exceed $500,000, that the sole basis for approving such waivers shall be to avoid serious delay in project implementation, and that in any event, efforts shall be made to secure proposals, bids or offers from a reasonable number of potential contractors or suppliers;

(7) *Approval of Host Country Contracts.* Authority to approve contractors, review and approve the terms of contracts, amendments and modifications thereto, and invitations for bids or requests for proposals with respect to such contracts financed by funds made available under such loans or grants; and

(8) *Extension of Terminal Dates.* Authority to extend terminal dates for signing Project Agreements and for meeting initial conditions precedent for a comulative period of not to exceed one year for each, and to extend terminal dates for requesting disbursement authorizations, terminal disbursement dates and Project Assistance Completion Dates for a cumulative period of not to exceed two years for each, provided that such extensions not extend the life of the project to more than ten years.

F. *Source/Origin/Nationality.* Authority to wiave:

(1) United States source, origin and nationality requirements to permit A.I.D. financing of the procurement of goods and services, other than transportation services, in countries included in A.I.D. Geographic Code 941 (Selected Free World) or the Cooperating Country; and

(2) United States or Code 941 source, origin and nationality requirements for specific transactions to permit A.I.D. financing the procurement of goods and services, other than transportation services, in any country included in A.I.D. Geographic Code 899 (Free World) or Code 935 (Special Free World).

Provided, with respect to both (1) and (2), that,

(a) the cost of goods and services does not exeed $5,000,000 per transaction (exclusive of transportation costs);

(b) waivers for procurement of goods from countries in Code 899 or Code 935 shall contain a certification by the approving official that "Exclusion of the Procurement from Free World countries other than the Cooperating Country and countries included in Code 941 would seriously impede attainment of United States foreign policy objectives and objectives of the foreign assistance program";

(c) waivers for procurement of servies, other than ocean transportation services, from countries in Code 899 or Code 935 shall contain a certification by the approving official that "the interests of the United States are best served by permitting the procurement of services from Free World countries other than the cooperating country and countries in Code 941;"

(d) the authority to waive source and origin requirements for procurement of motor vehicles shall not exceed $50,000 per transaction (exclusive of transportation costs);

(e) the authority to waive source, origin and nationality shall be exercised in accordance with the criteria prescribed in Supplement B of Handbook 1.

G. *Excess Property.* The authority to execute transfer or transfer/trust agreements for excess property with friendly countries or with international organizations having a membership primarily of foreign governments, in accordance with Section 607 of the Act and with Handbook 16, but only after I have authorized such assistance.

Section 3. Delegation to Ambassadors

The authority delegated in paragraph D. of Section 2 of this Redelegation of Authority with respect to execution of loan and grant agreements also is hereby delegated, under the same terms and conditions set forth herein, to the United States Ambassador to each of the countries listed in Section 2 of this Redelegation and to the U.S. Ambassador to Fiji, with respect to the country to which he or she is assigned.

Section 4. Redelegations.

The authorities delegated by this Redelegation of Authority may be exercised by persons in an "acting" capacity for the persons listed above and may be redelegated by the persons listed above as appropriate, but may not be successively redelegated, except that the authorities delegated under paragraphs A. and B. of Section 2 of this Redelegation of Authority may be redelegated only to the principal deputy of a Mission Director and the authority redelegated under paragraph E(6) of Section 2 of this Redelegation of Authority may not be redelegated.

Section 5. Concurrent Authority

I hereby retain for myself concurrent authority to exercise any of the functions herein redelegated.

Section 6. Technical Review

The authorities delegated herein may be exercised only after consultation, as appropriate, with A.I.D. technical and legal staff, and technical review prior to the exercise of the authorities delegated in paragraphs A. and B. of Section 2 of this Redelegation of Authority shall be in accordance with procedures established by the Bureau for Asia and Near East.

Section 7. Definitions

With respect to authorities delegated in paragraphs A., B. and E.(8) of Section 2 of this Redelegation of Authority,

(A) "Project" includes project and non-project assistance;

(B) "Project Assistance Completion Date" (PACD) is the estimated date by which all A.I.D.-financed goods are to have been delivered or all services performed under the Project Agreement (in non-project assistance, the equivalent date is the terminal date for requests for disbursement authorizations);

(C) "Life of Project" is the planned length of the project as determined in project preparation (the life of project runs from the estimated date of signature of the Project Agreement or other obligating document to the PACD).

Section 8. Prior Redelegations.

(A) This Redelegation of Authority is effective immediately and supercedes and rescinds the following Redelegations of Authority.

1. Redelegation of Authority Nos. 5.5, 38.2, 99.3, and 112.1 (41 FR 22114), each dated May 5, 1976, as amended.

2. Redelegation of Authority Nos. 5.7, 38.5, 99.7, and 112.4 (41 FR 48172), each dated October 7, 1976 as amended.

3. Redelegation of Authority Nos. 5.9, 38.7, 99.9, and 112.5 (42 FR 5773), each dated December 23, 1976, as amended.

4. Redelegation of Authority Nos. 5.10, 38.8, 99.10, and 112.6 (42 FR 5773), each dated December 23, 1976, as amended.

5. Redelegation of Authority Nos. 5.11, 38.9, 99.11, and 112.7 (42 FR 5774), each dated December 23, 1976, as amended.

6. Redelegation of Authority Nos. 5.12, 38.10, 99.18, and 112.8 (44 FR 8947), each dated November 11, 1977, as amended.

7. Redelegation of Authority Nos. 5.13, 38.11, and 112.9 (42 FR 64166), each dated November 15, 1977, as amended.

8. Redelegation of Authority Nos. 5.14, 38.12, and 112.3 (43 FR 20289), each dated April 21, 1978, as amended.

9. Redelegation of Authority Nos. 5.20, 38.18, 99.14, and 112.10 (43 FR 51887 and 51888), each dated October 25, 1978, as amended.

10. Redelegation of Authority Nos. 5.23, 38.21, 99.17, and 112.11 (44 FR 8947 and 8948), each dated February 2, 1979, as amended.

11. Redelegation of Authority Nos. 5.24, 138.22, 99.19, and 112.12 (44 FR 45275), each dated July 18, 1979, as amended.

12. Redelegation of Authority Nos. 5.25 and 38.23 (44 FR 54576 and 54577), each dated September 6, 1979, as amended.

13. Redelegation of Authority No. 40.10 (43 FR 58128 and 58129), each dated April 15, 1982, as amended.

14. Redelegation of Authority No. 133.1 (44 FR 8050 and 8051), each dated April 15, 1982.

(B) This Redelegation ratifies all acts taken prior hereto which are consistent with the terms and scope of this Redelegation of Authority.

Dated: May 24, 1985.

Charles W. Greenleaf, Jr.,

Assistant Administrator, Bureau for Asia and Near East.

[FR Doc. 85-29981 Filed 12-18-85; 8:45 am]

BILLING CODE 8116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30722]

Chicago and North Western Transportation Co. and Wisconsin and Southern Railroad Co.; Pooling Agreement and Lease and Operation

AGENCY: Interstate Commerce Commission.

ACTION: Institution of proceeding.

SUMMARY: The Commission is instituting a proceeding to consider the application of the Chicago and North Western Transportation Company (CNW) and the Wisconsin and Southern Railroad Company (WSR) under 49 U.S.C. 11342 and 11343 for approval of pooling of service and revenues for traffic over, and lease and operation of, a line of railroad at Ripon, WI.

DATES: Verified statements and comments supporting or opposing the applications must be filed by January 21, 1986. Verified replies must be filed by February 10, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30722 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;

(2) Applicants' representative: Mack H. Shumate, One North Western Center, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: CNW operates a 19.8-mile line of railroad between Fond du Lac and Ripon, WI. In Docket No. AB-1 (Sub-No. 177), a directly-related proceeding, CNW has filed an application to abandon 18.4 miles of its line from Fond du Lac to Ripon and to abandon operations (discontinue service) over the remaining 1.4 miles at Ripon.

Here, CNW and WSR seek authority for CNW to lease the 1.4-mile segment to WSR, for WSR to operate over the line, and for CNW and WSR to pool service and revenues from traffic on the line. The Commission is requesting comments on the pooling, and on the lease and operation. Parties are asked to discuss whether, inasmuch as CNW is seeking in AB-1 (Sub-No. 177) to discontinue service over the 1.4-mile segment, the arrangement contemplated by CNW and WSR qualifies as pooling. That portion of the application involving lease of a line of railroad will be considered under the Commission's general exemption authority (49 U.S.C. 10505).

An investigation has been instituted in AB-1 (Sub-No. 177), and parties have submitted evidence. The Commission is not asking for further discussion on the merits of that abandonment and discontinuance application. The Commission will, however, conform that proceeding to the time frames and deadlines of this directly-related proceeding and issue its decisions simultaneously.

Decided: December 13, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-30034 Filed 12-18-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act; Ben's Truck & Equipment, Inc., et al.

In accordance with Department policy, 28 CFR 50.7, Notice is hereby given that on November 25, 1985 a proposed Consent Decree in *United States* v. *Ben's Truck & Equipment, Inc. and P&M Cedar Products, Inc.*, Civil Action No. S-84-1672-MLS, was lodged with the United States Court for the Eastern District of California. The proposed Consent Decree concerns the prevention of visible emissions and the proper procedures to be followed during demolition operations involving the removal of friable asbestos material. The proposed Consent Decree only relates to defendant P&M Cedar Products, Inc. and requires P&M to pay a civil penalty of $20,200 and enjoins P&M from further violations of various Sections of the Clean Air Act and the National Emission Standard for Hazardous Air Pollutants for asbestos.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication coments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Ben's Truck & Equipment, Inc. and P&M Cedar Products, Inc.*, D.J. Ref. 90-5-2-1-743.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of California, 650 Capitol Mall, Sacramento, California 95814 and at the Region 9 Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California. Copies of the Consent Decree also may be examined at the Enviromental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Rsources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-29992 Filed 12-18-85; 8:45 am]

BILLING CODE 4401-16-M

Lodging of Consent Decree Pursuant to Clean Air Act and Clean Water Act; Consolidated Rail Corp.

In accordance with Department policy, 28, CFR 50.7, notice is hereby given that on November 26, 1985, a proposed consent decree in *United States v. Consolidated Rail Corporation*, Civ. No. C82-2767, was lodged with the United States District Court for the Northern District of Ohio. This agreement resolves a judicial enforcement action brought by the United States against Consolidated Rail Corporation for violations of the Clean Air Act and Clean Water Act at Conrail's coal handling facility in Ashtabula, Ohio.

The proposed consent decree provides that Conrail will install an enclosure for its cross-river coal conveyor by November 30, 1986. Until the enclosure is completed, Conrail will install and operate a watering spray system to reduce fugitive coal emissions from its coal storage piles. The proposed decree states that Conrail has already installed a run-off collection and treatment system and received an NPDES permit from the State of Ohio in March 1985. Conrail has also demonstrated that its discharges from the collection and treatment system are in compliance with the NPDES permit effluent limitations. Finally, the agreement provides for the payment of a civil penalty of $75,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Consolidated Rail Corporation*, D.J. Ref. 90-5-2-1-432.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney: U.S. Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114

EPA: Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-29997 Filed 12-18-85; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Action To Enjoin Emission of Air Pollutants; Fairchild Republic Co.

In accordance with Departmental Policy, 28 CFR 50.7, 39 FR 19029, notice is hereby given that a consent decree in *United States v. Fairchild Republic Company*, Civil Action No. CV-85-3701, has been lodged with the United States District Court for the Eastern District of New York. The consent decree establishes a compliance program for the Farmingdale, New York plant owned and operated by Fairchild Republic Company, to bring the plant into compliance with the Clean Air Act, 42 U.S.C. 7401 *et seq.* and the New York State Implementation Plan ("SIP"), relating to the emission of volatile organic compounds ("VOC"), and requires payment of a civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Fairchild Republic Company*, D.J. Ref. No. 90-5-2-1-713.

The consent decree may be examined at the office of the United States Attorney, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of

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the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-29998 Filed 12-18-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Koch Industries, Inc.

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on November 25, 1985, a proposed Consent Decree in *U.S. v. Koch Industries, Inc.* Civil Action No. 85F-2532, was lodged with the United States District Court for the District of Colorado. The complaint filed by the United States alleged violations of the Clean Air Act by Koch Industries due to its failure to obtain a Prevention of Significant Deterioration (PSD) permit pursuant to section 165 of the Act before commencing installing two additional gas-fired compressor engines at its gas processing plant in Adams County, Colorado. The complaint sought injunctive relief and civil penalties. The Consent Decree requires Koch Industries to obtain federally enforceable restrictions on its two compressor engines, in compliance with PSD regulations (40 CFR Part 52), to meet specific emission requirements, and to pay a civil penalty of $14,000.00.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Koch Industries, Inc.*, D.J. Ref. 90-5-2-1-847.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Robert N. Miller, 1200 Federal Office Building, 1961 Stout Street, Denver, Colorado 80294 and at the Region VIII Office of the Enviornmental Protection Agency, One Denver Place—Suite 1300, 999—18th Street, Denver, Colorado 80202-2413. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the U.S. Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please include a check in the amount of $1.30 (ten cents per page reproduction cost) payable to the Treasury of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-29994 Filed 12-18-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Youngstown, OH

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 3, 1985, a proposed consent decree in *United States v. City of Youngstown*, No. C84-2929-Y, was lodged with the United States District Court for the Northern District of Ohio. This agreement resolves a judicial enforcement action brought by the United States against the City of Youngstown which alleged violations of the Clean Air Act at the city's sludge incinerators in Youngstown, Ohio.

The proposed consent decree provides that the city will install a scribber on each of the two incinerators which are operated in connection with the city's wastewater treatment plant and implement certain other modifications to the incinerator system by May 2, 1987. The city will also continue to implement an interim control program which reduces particulate emissions to 71.3 tons per year until August 22, 1986, when the first scrubber will be installed. The city is required to comply with the particulate emission limitations in the Ohio SIP on August 22, 1986, when the first scrubber becomes operational. The interim measures include restrictions on the sludge feed-rate, incinerator operating temperatures, and sludge content. The city has agreed to pay a civil penalty of $30,000 for past violations. Finally, the decree establishes monitoring and reporting requirements and provides for stipulated penalties for failure to comply with the provisions of the decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Youngstown*, D.J. Ref. 90-5-2-1-705.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney: U.S. Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114

EPA: Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please attach a check in the amount of $2.20, payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-29993 Filed 12-18-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Toxic Substances Control Act; Cannelton Industries, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 3, 1985 a proposed Consent Decree in the consolidated cases of *United States* v. *Cannelton Industries Inc.*, Civil Action No. 83-2406, and *Cannelton Industries, Inc.* v. *United States*, Civil Action Nos. 83-2388 and 84-2078, was lodged with the United States District Court for the Southern District of West Virginia. The proposed Consent Decree requires Cannelton to remedy an underground spill ob PCB di-electric fluid which occurred while Cannelton was closing its Mine No. 105, near Cannelton (Kanawha County), West Virginia, in April, 1982. The contaminated area extends approximately one hundred ninety (190) feet from a point in the Bullpush Slope approximately three hundred fifty (350) feet below the surface back down the Slope approximately one hundred fifty (150) feet to the point where the Slope intersects with an entry in the No. 2 Gas coal seam, and then approxiamtely forty (40) feet further into the Mine.

The proposed Decree requires Cannelton to: cover the spill with a 12

inch thick cap consisting of bentonite clay and concrete; to seal Mine No. 5; to avoid using any part of the Mine in the future within 100 yards of the spill area, except under emergency situations reported within 24 hours to EPA; and to avoid using any part of the Mine in the future within a 1,000 yard radius of the spill area, except in accordance with notification and sampling procedures contained in the Decree.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of West Virginia, 500 Quarrier Street, Charleston, West Virginia 25301 and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resourses Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.50 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-29995 Filed 12-18-85; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Clean Water Act Enforcement Action; Middlesboro, KY

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *City of Middlesboro, Kentucky* was entered by the United States District Court for the Eastern District of Kentucky on December 2, 1985. The decree requires the city to build a new sewage treatment plant to rehabilitate its sewer system, to improve its operation and maintenance and to pay a civil penalty of $50,000. The decree contains milestone dates and reporting requirements and provides for stipulated penalties for noncompliance.

The Department of Justice will receive for thirty (30) days from the publication date of this notice, written comments relating to the decree. Comments should be addresed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and refer to *United States* v. *City of Middlesboro*, 90-5-1-1-2066.

The consent decree can be examined at the office of the United States Attorney, Limestone and Barr Streets, Lexington, Kentucky, at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice (Room 1515), Ninth and Pennsylvania Avenue NW., Washington, DC 20530.

A copy of the consent decree can be obtained in person or by mail from the Environmental Enforcement section at the above address at a cost of $7.40 (10 cents per page reproduction costs).

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-29996 Filed 12-18-85; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision
2. The title of the information collection: 10 CFR Part 25, "Access Authorization for Licensee Personnel."
3. The form number if applicable: Not applicable
4. How often the collection is required: On Occasion
5. Who will be required or asked to report: Licensees and other organizations
6. An estimate of the number of responses: 110
7. An estimate of the total number of hours needed to complete the requirement or request: 112
8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable
9. Abstract: Licensees and other organizations are required to provide information to ensure that an adequate level of protection is provided for NRC classified information.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Oficer is R. Stephen Scott, (301) 492-8585. Dated at Bethesda, Maryland this 16th day of December 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-30090 Filed 12-18-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

General Public Utilities Nuclear Corp.; Environmental Assessment and Notice of Finding of No Significant Environmental Impact

The U.S. Nuclear Regulatory Commission (the Commission) is planning to issue an Exemption relative to the Facility Operating License No. DPR-73, issued to General Public Utilities Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2), located in Londonderry Township, Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: The action being considered by the Commission is an exemption from assessments, analyses and other requirements of 10 CFR 50.61 for protection against pressurized thermal shock events.

Specifically 10 CFR 50.61 requires the licensee to submit to the U.S. Nuclear Regulatory Commission projected values for reference temperature for each weld and plate or forging in the reactor vessel beltline and an analysis and schedule for implementation of a flux reduction program if the projected values of reference temperature are expected to exceed the pressurized thermal shock criterion set forth in Paragraph (b)(2) of 10 CFR 50.61.

The Need for the Action: Given the lack of pressurization of the Reactor Coolant System (RCS) and the low core and RCS temperatures, pressurized thermal shock is not a credible event. Accordingly, analyses to determine the potential for and actions to protect against pressurized thermal shock for each weld and plate or forging in the reactor vessel beltline are not

warranted. Undertaking the analyses and other actions required by 10 CFR 50.61 would impose an unnecessary burden and expense on the licensee with no concomitant benefit.

Environmental Impacts of the Proposed Actions: The staff has evaluated the subject exemption and concludes that there are no significant radiological or nonradiological impacts to the environment as a result of this action. The exemption removes the Commission's requirement to conduct analyses and make assessments of pressurized thermal shock events.

Alternate to this Action: Since we have concluded that there is no significant environmental impact associated with the subject Exemption, any alternatives to this change will have either no significant environmental impact or greater environmental impact. This would not reduce significant environmental impacts of plant operations and would result in the application of unnecessary regulatory requirements.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Alternate Use of Resources: This action does not involve the use of resources not previously considered in connected with the Final Programmatic Impact Statement for TMI–2 dated March 1981.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the subject Exemption. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see: (1) Letter from F. R. Standerfer, GPUNC, to B. J. Snyder, USNRC, 10 CFR 50.61 Exemption Request, dated August 27, 1985.

The above documents are available for inspection at the Commission's Local Public Document Room ,1717 H Street, N.W., Washngton, DC, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

For the Nuclear Regulatory Commission.

William D. Travers,

Director, TMI–2 Cleanup Project Directorate, Office of Nuclear Reactor Regulation.

[FR Doc. 85–30092 Filed 12–18–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70–622]

Finding of No Significant Impact; Renewal of Special Nuclear Materials License No. SNM–561; Department of the Army

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Special Nuclear Materials License No. SNM–561 for the continued operation of the U.S. Army Armament Research and Development Center at Dover, New Jersey.

Summary of the Environmental Assessment

Identification of the Proposed Action: The proposed action would allow the Army to continue operation for 5 years. Material covered under this license is used for military research and development projects as defined in 10 CFR 70.4(j).

The Need for the Proposed Action: Activities under this license serve a variety of research and development needs for the military. Activities involve research programs primarily in the areas of weapons, weapon systems, and munitions for use in the U.S. Army. Denial of the license renewal for the continued operation of the ARDC, Dover site, would require that similar activities be started at another site. Although denial or renewal of the SNM license for ARDC is an alternative available to the NRC, it would be considerd only if issues of public health and safety cannot be resolved to the satisfaction of the regulatory authorities involved.

Environmental Impacts of the Proposed Action: There will be no effluents produced from normal operation, only some solid waste generated from activation samples. Waste samples will be properly disposed. The sealed sources do not generate any waste.

Finding of No Significant Impact: The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. Based upon the Environmental Assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Environmental Assessment for the proposed action, on which this Finding of No Significant Impact is based, relied on the U.S. Army Armament Research and Development Center license renewal application, License SNM–561, Docket No. 70–622, August 17, 1984.

The Environmental Assessment and the Above Document related to this proposed action are available for public inspection and copying, for a fee, at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 427–4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commisison, Washington, DC 20555.

Dated at Silver Spring, Maryland, this 11th day of December 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85–30091 Filed 12–18–85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittee on Qualification Program for Safety-Related Equipment; Meeting

The ACRS Subcommittee on Qualification Program for Safety-Related Equipment will hold a meeting on January 15, 1986, Room 1167, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 15, 1986—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss NRC Staff resolution and implementation of USI A–46, "Seismic Qualification of Equipment in Operating Plants." The SQUG/EQE evaluation of the March 1985 Chilean earthquake will also be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff,

its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. A. Cappucci (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 12, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–30093 Filed 12–18–85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14846; (File No. 812–6192)]

Financiere Credit Suisse—First Boston and Financiere, Inc.; Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicants From All Provisions of the Act

December 13, 1985.

Notice is hereby given that Financiere Credit Suisse—First Boston (the "Company") and Financiere, Inc. ("Financiere") c/o Scott M. Freeman, Esq., Cravath, Swaine & Moore, One Chase Manhattan Plaza, New York, NY 10005, filed an application on August 27, 1985, and an amendment thereto on December 3, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting the Company and Financiere from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, the Company is organized and regulated under the laws of Switzerland and had total consolidated revenues of Sfr. 298 million (U.S. $115 million) in 1984 and total consolidated equity of Sfr. 485 million (U.S. $187 million) at December 31, 1984. The Company states that it is an international financial services group composed of companies ("Operating Subsidiaries") that raise capital, trade securities and provide investment management and corporate structuring services for companies, governments, institutional investors and other clients worldwide.

Applicants represent that Financiere is a wholly-owned subsidiary of the Company, incorporated in Delaware on March 14, 1985, for the sole purpose of serving as a financing vehicle for the Company's proposed commercial paper program (the "Commercial Paper Program"). Pursuant to the Commercial Paper Program, Financiere will issue commercial paper (the "Commercial Paper") in the United States and loan the proceeds thereof to the Company's Operating Subsidiaries for use in current transactions. In exchange for the Commercial Paper, the Operating Subsidiaries will give Financiere their prommissory notes. The interest payments on the promissory notes will exactly offset the Financiere's payments on the Commercial Paper. Applicants anticipate that the size of the proposed Commercial Paper Program will be in the range of $400 million. The Commercial Paper will generally have maturities of less than 60 days, with the typical maturity in the vicinity of 30 days and most of the Commercial Paper will be sold in denominations in excess of $1,000,000, with the typical denomination in the range of $5,000,000.

Applicants represent that Financiere will be directly liable on the Commercial Paper and that the Company will directly and unconditionally guarantee the payment of principal of, interest on and premium, if any, on the Commercial Paper to the holders thereof. Such guarantee will provide that in the event of any default with respect to such payments on the Commercial Paper, the holders may institute legal proceedings directly against the Company to enforce the Company's guarantee without first proceeding against Financiere. The guarantee of the Company will rank *pari passu* with all other general, unsecured, unsubordinated obligations of the Company.

In addition to the unconditional guarantee provided by the Company, Applicants propose a letter of credit arrangement whereby the Commercial Paper will be issued pursuant to a facility agreement, a depositary agreement and an issuing and paying agency agreement among the Company, Financiere, a major commercial bank acting as issuing agent, paying agent, and depositary (the "Depositary"), and Credit Suisse, a large Swiss commercial bank, and will be supported by a "direct pay" irrevocable letter of credit (the "Letter of Credit") issued by Credit Suisse to the Depositary for the benefit of holders of the Commercial Paper. The Depositary will make drawings under the Letter of Credit to obtain funds to pay the Commercial Paper as it matures, thus assuring timely and complete repayment on the Commercial Paper. The Company represents that it will guarantee to Credit Suisse payment by Financiere of its obligations to Credit Suisse.

Applicants represent that the Commercial Paper will (i) have maturities not exceeding 270 days, (ii) be in bearer or registered form, (iii) be issued in denominations of not less than $100,000, (iv) not be advertised for sale to the general public and (v) be sold through major dealers in the commercial paper market only to institutional investors or other entities that normally participate in the established commercial paper market. Applicants undertake to ensure that each dealer will furnish to each offeree of the Commercial Paper, prior to sale of any Commercial Paper to such offeree, memorandum (the "Offering Memorandum") describing the businesses of the Company and providing its most recent annual audited financial statements, together with a brief description of the material differences between accounting principles utilized in preparation of the Company's financial statements and generally accepted accounting principles used by similar institutions in the United States. Applicants further represent that the Offering Memorandum will be at least as comprehensive as memoranda customarily used in issuances of commercial paper in the United States and will be updated as promptly as practicable to reflect material changes in the Company's status. The Company and Financiere consent to having any order granting the relief requested herein expressly conditioned upon their compliance with the undertaking regarding the Offering Memorandum.

Applicants state that the proposed offering of Commercial Paper will be exempt from registration under the Securities Act of 1933 (the "1933 Act") pursuant to section 3(a)(2), 3(a)(3) or 4(2) thereof. Applicants undertake not to market any Commercial Paper prior to receiving an opinion of its United States counsel that the proposed offering is entitled to an exemption from the registration requirements of the 1933 Act. Applicants do not request review or approval by the Commission regarding the availability of such exemption.

Applicants represent that any issue of debt securities in the United States (not including deposits) shall have received, prior to issuance, one of the two highest investment grade ratings from at least

one nationally recognized statistical rating organization and that their United States counsel shall have certified that such rating has been received. However, no such rating shall be required if, in the opinion of Applicants' United States counsel, an exemption from registration is available under section 4(2) of the 1933 Act or Regulation D thereunder. Moreover, in the event that either or both Applicants issue any debt securities requiring registration under the 1933 Act, Applicants undertake to refrain from selling such obligations until the registration statement filed in connection with such offering has been declared effective by the Commission.

In connection with their proposed issuance and sale of any debt securities in the United States, Applicants undertake to appoint an agent to accept service of process in any action based on the obligations instituted against either or both of them in any state or federal court by any holder based on the obligations, the guarantees thereon or the manner of the offering. Applicants further undertake to accept the jurisdiction of any state or federal court located in the City of New York in respect of any action based on such obligations and instituted by any holder thereof. Applicants represent that such appointment of an authorized agent to accept service of process and such consent to jurisdiction shall be irrevocable until all amounts due and to become due in respect of the obligations shall have been paid. Neither the issuing agent nor the agent for service of process will be a trustee for the holders of the obligations and will not have any responsibilities or duties to act for such holders as would a trustee. Applicant consent to any order granting the requested relief being expressly conditioned upon compliance with all representations and undertaking set forth above and in the application.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 6, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30040 Filed 12-18-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14845; (File No. 812-5772)]

IDS Mutual, Inc.; Notice of Application

December 13, 1985.

Notice is hereby given that IDS Mutual, Inc., IDS Stock Fund, Inc., IDS Selective Fund, Inc., IDS Variable Payment Fund, Inc. (now known as IDS Equity Plus Fund, Inc.), IDS New Dimensions Fund, Inc., IDS Progressive Fund, Inc, IDS Growth Fund, Inc., IDS Bond Fund, Inc., IDS Cash Management Fund, Inc., IDS Tax-Exempt Bond Fund, Inc., IDS High Yield Tax-Exempt Fund, Inc., IDS Tax-Free Money Fund, Inc., IDS Discovery Fund, Inc., IDS Extra Income Fund, Inc., IDS Strategy Fund, Inc., IDS International Fund, Inc., IDS Managed Retirement Fund, Inc., IDS Life Capital Resource Fund I, Inc., IDS Life Capital Resource Fund II, Inc.,[1] IDS Life Moneyshare Fund, Inc., IDS Life Special Income Fund I, Inc., IDS Life Special Income Fund II, Inc.,[2] at 1000 Roanoke Building, Minneapolis, Minnesota 55402; IDS Life Variable Annuity Fund A, IDS Life Variable Annuity Fund B, IDS Certificate Company (collectively, the "Funds"), IDS Financial Services Inc. ("IDS"),[3] IDS Life Insurance Company ("IDS Life"), at IDS Tower, Minneapolis, Minnesota 55402; Shearson Lehman Brothers Inc. ("Shearson"),[4] at American Express Tower, World Financial Center, New York, New York 10285-1900; Foster & Marshall/American Express Inc. (now Known as Foster & Marshall Inc.) (Foster & Marshall"), at 205 Columbia Street, Seattle, Washington 98104; Robinson-Humphrey/American Express Inc. (now known as The Robinson-Humphrey Company, Inc.) ("Robinson-Humphrey"), at 3333 Peachtree Road, NE., Atlanta, Georgia 30383; and Chiles Heider & Co., Inc. ("Chiles, Heider") at 1300 Woodmen Tower, Omaha, Nebraska 68102 filed an application with the Commission on February 15, 1984, pursuant to section 10(f) of the Investment Company Act of 1940 (the "Act"), and amendments thereto on December 5, 1984, and March 1, 1985, for an order exempting the Funds, IDS, IDS Life, Shearson, Foster & Marshall, Robinson-Humprey and Chiles, Heider (collectively, the "Applicants") from the provisions of section 10(f) of the Act, and Rule 10f-3 thereunder, to the extent necessary to permit the Funds, subject to certain conditions, to purchase securities through underwriting syndicates in which Shearson, Foster & Marshall, Robinson-Humphrey and/or Chiles, Heider (collectively, the "Underwriters") participate. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and Rules thereunder for the text of the provisions thereof relevant to any consideration of the application.

Five of the Funds have contracted with IDS Life investment management services. IDS Life in turn employs IDS for certain investment advice rendered in connection with each of those Funds. Seventeen Funds employ IDS as their principal underwriter and investment manager. With combined assets of $8,870,138,943 on July 31, 1984, those seventeen funds represent one of the ten largest mutual fund complexes in the United States. Applicants state that IDS Life Variable Annuity Fund A and IDS Life Variable Annuity Fund B (collectively "Funds A and B") are separate accounts of IDS Life. According to Applicants, both Funds A and B have boards of managers with certain defined authority, and have entered into agreements with IDS Life for investment management and distribution services. Applicants also state that under the terms of an agreement between IDS Life and IDS, IDS provides investment advice with respect to the management of the investments of Funds A and B. Finally, IDS Certificate Company ("IDSCC") is a wholly-owned subsidiary of IDS registered as a face-amount certificate company under the Act that is represented to be by far the largest issuer of face-amount investment certificates in the United States. IDSCC receives from IDS advice, statistical data and recommendations with respect to the acquisition and disposition of securities for IDSCC's portfolio.

Applicants state that IDS is engaged directly and through subsidiaries in

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[1] IDS Life Capital Resource Fund I, Inc. and IDS Life Capital Resource Fund II, Inc. recently merged and are now known as IDS Life Capital Resource Fund, Inc.

[2] IDS Life Special Income Fund I, Inc. and IDS Life Special Income Fund II, Inc. recently merged and are now known as IDS Life Special Income Fund, Inc.

[3] IDS's name was changed from "IDS/American Express Inc." to "IDS Financial Services Inc." On January 30, 1985.

[4] Shearson's name was changed from "Shearson Lehman/American Express Inc." to "Shearson Lehman Brothers Inc." on March 15, 1985.

BEST COPY AVAILABLE

providing a variety of financial products, including investment advisory services. Applicants state that IDS Life, a stock life insurance company, is a wholly-owned subsidiary of IDS. According to the application on January 12, 1984, IDS became a wholly-owned subsidiary of American Express Company ("American Express"), a corporation engaged through various subsidiaries in providing a variety of travel-related, insurance, international banking and investment services.

Applicants represent that each of the Underwriters is a direct or indirect subsidiary of American Express. Shearson, which became a wholly-owned subsidiary of American Express in June 1981, is said to be one of the leading full-line investment service firms serving the United States and foreign securities and commodities market. Applicants state that, among other activities, Shearon acts as manager, co-manager or syndicate member in public offerings of debt and equity securities.

Applicants state that, on May 11, 1984, Shearson and American Express completed a transaction resulting in Shearson's acquisition of Lehman Brothers Kuhn Loeb Incorporated ("Lehman"). Applicants represent that, as part of the acquisition, the corporate and municipal finance departments of Shearson and Lehman have been combined, which has in turn resulted in Shearson's becoming a major participant in all areas of the securities underwriting business. Applicants further represent that Foster & Marshall, Robinson-Humphrey and Chiles, Heider are active at least on a regional basis in the business of underwriting securities. Applicants state that, by virtue of being subsidiaries of American Express, IDS and each of Underwriters may be deemed under section 2(a)(3) of the Act to be "affiliated persons" of each other.

Applicants request an exemptive order of the Commission so as to permit the Funds and any other registered investment companies for which IDS, IDS Life, or any other subsidiary of IDS serves as investment adviser after the date (March 1, 1985) on which Applicants' second amendment was filed with the Commission (collectively, "Covered Funds") to purchase through any underwriting Syndicate in which any of the Underwriter (or any other broker-dealer that may become an "affiliated person" of IDS as defined in section 2(a)(3) of the Act) is a participant ("Affiliated Syndicate") an aggregate amoung of securities exceeding the percentage limitations currently contained in paragraph(d) of Rule 10f–3. Specifically, Applicants request that Covered Funds be subject to two sets of specified limitations that are represented to be based on historical trading patters of the Funds and that vary depending on the kind and principal amount of the securities being offered through the Affiliated Syndicate. The first set of limitations would apply to offerings of corporate equity or debt securities registered under the Securities Act of 1933 and would permit Covered Funds to purchase in the aggregate through an Affiliated Syndicate from four to 10 percent of an offering of securities depending on the size of the offering. The second set of limitations would apple to offerings of municipal securities as defined in section 3(a)(29) of the Securities Exchange Act of 1934 and would permit Covered Funds to purchase in the aggregate through an Affiliated Syndicate from four to 15 percent of an offering depending on the size of the offering. In addition Applicants set forth specific conditions which will govern purchases of securities on behalf of the Funds through Affiliated Syndicates when the transactions are for less than four percent of a particular offering, the amount permitted by paragraph (d) of Rule 10f–3.[5]

Applicants state that, in investing on behalf of the Funds in its capacity as investment manager, IDS often purchases securities offered through fixed price underwriting syndicates.[6] Applicants state that IDS looks to syndicates for securities purchases for a number of reasons. Applicants represent that purchasing securities through syndicates may afford IDS the opportunity to acquire a relatively large quantity of securities without significantly influencing an existing secondary market for the securities. Applicants also state, among other things, that the price for securities offered through a syndicate may be better than that available to IDS in the secondary market for the securities.

Paragraph (d) of Rule 10f–3 generally provides that investment companies employing the same investment adviser may puchase in the aggregate from members of an underwriting syndicate in which affiliate of the investment adviser participates no more than the greater of (1) four percent of the offering or (2) $500,000, to a maximum limit of 10 percent of the offering. Applicants state that the greater of four percent of an offering or $500,000 is significantly lower than the amount of securities that the Funds have often purchased in the past through underwriting syndicates. Thus, Applicants assert, complying with the terms of Rule 10f–3(d) could result in limiting, for reasons other than investment merit, the amount of securities the Funds can purchase through Affiliated Syndicates. According to the application, IDS believes that the limitation would have its greater effect during those periods of the time when attactive opportunities exist in the new issue markets or when the Funds are experiencing net sales of their shares.

In light of the large amounts of securities the Funds purchase through underwriting syndicates, and in light of the significant participation of the Underwriters in the underwriting business, Applicants contend that paragraph (d)'s limitations would have the effect of interfering with the Funds' normal investment practices to a far greater degree than those limitations might with most other investment company complexes. To support their contention, Applicants note that only one mutual fund complex currently among the top ten complexes in terms of non-money market fund assets is affiliated with a borker-dealer having an underwriting business of a size comparable to that of Shearson's. Applicants contend that substituting the quantity limitations that they are proposing for those contained in paragraph(d) will alleviate the undesirable effect of paragraph(d) described above and will provide the Funds with necessary investment flexibility similary to their historic purchase patterns. Applicants also submit that, in view of the Underwriters'

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[5] By letter dated November 13, 1985, Applicants set forth their position on the question of whether the Covered Funds should be able to continue to purchase securities under the provisions of Rule 10f–3 if the exemption sought by the application is granted. Applicants wrote that they believed they should be able to use the Rule for purchases of securities from affiliated syndicates or less than four percent in the aggregate, but they also stated that they were willing to subject such purchase transactions to several additional conditions. Two conditions were identical to those that will apply in the case of purchases in excess of the four percent limit under the exemptive application-enhanced review and-non-solicitation. A new third condition involving prior notice was agreed to by the Applicants. For a further descripiton of these conditions, see the text at page 9, *infra*.

[6] By letter dated October 8, 1985, for example, Applicants represent that underwritten securities were approximately 14 and 16 percent, respectively, of the total non-money market securities purchases for the Funds in 1982 and 1983. They further respresented that such data illustrated an historical pattern of the Funds' purchasing large amounts of securities through fixed price underwriting syndicates. We have been advised by counsel for the Applicants that this additional background information, the representations referred to in footnotes 7 and 8 at page 8, *infra*, the conditions referred to on footnote 5 at page 5 *supra*, and the name change listed on page 1, *supra*, will be set forth in a formal amendment to the applications to be filed during the notice period.

lack of influence over the Funds, the potential for the Funds' engaging in the kinds of transactions with which section 10(f) is intended to deal is at best negligible.

Furthermore, the application contains a number of conditions designed to protect the interests of the Funds and Fund shareholders. In summary, they are as follows. First, a representative of each Covered Fund who is not affiliated with IDS or any of the Underwriters will be required to approve the Fund's purchase of securities through an Affiliated Syndicate before the purchase is completed.[7] Second, the board of directors or managers of a Covered Fund or a committee of the board will review the terms of each purchase of securities by the Fund through an Affiliated Syndicate as soon as practicable after the completion of the purchase and quarterly thereafter.[8] Third, the Underwriters have specifically undertaken not to attempt to solicit directly or indirectly the participation of any Covered Fund in an Affiliated Syndicate. Fourth, the limits of the consideration that a Covered Fund may pay in connection with a purchase of securities through an Affiliated Syndicate are generally stricter than the analogus limits contained in Rule 10f–3(e). Fifth, the role of any Underwriter in an Affiliated Syndicate must be that of a member and may not be that of a manager or co-manager. Sixth, the board of directors or managers of each Covered Fund will adopt procedures designed to ensure that purchases covered by the exemption are effected in accordance with the terms of the conditions listed above and review those procedures annually. Seventh, each Covered Fund will (1) maintain and preserve permanently a written copy of the above procedures and (2) maintain and preserve for a period not less than six years a written record of the purchases covered by the exemption. Eighth, each Covered Fund will report transactions covered by the exemption on appropriate Commission reports.

With respect to transactions covered by the four percent limitation contained in Rule 10f–3, Applicants have agreed to the imposition of the second and third conditions in the application concerning enhanced director review procedures, both soon after the transaction and quarterly thereafter, and the non-solicitation condition. As a third condition, IDS has undertaken that it will notify the Covered Funds each time it proposes to acquire up to four percent of any offering where an Underwriter is the manager or co-manager, and it will delay any such acquisition for 24 hours to permit the Covered Funds to object to the transaction. Applicants contend that this last condition should not be nearly as burdensome for IDS and the Covered Funds to accomplish as the prior review requirement to be conducted by an independent representative of each Fund pursuant to the first condition in the application. For all the reasons stated above, Applicants request that the Commission enter an order pursuant to section 10(f) of the Act permitting them to enter into the transactions described in the application subject to the conditions set forth therein.

Finally, the Commission has determined that any order issued on the application should specifically provide that, if amendments to Rule 10f–3 are subsequently adopted, they will supersede the exemptive order. However, if the rule amendments are minor or procedural, an application to extend the exemptive order would be favorably considered. This will ensure that granting the application will not result in the Funds' maintaining a competitive advantage over mutual fund groups.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 7, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the addresses stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–30041 Filed 12–18–85; 8:45 am]

BILLING CODE 8010–01–M

[7] The letter of October 8, 1985, represents that any such person would be a person skilled in reviewing securities transactions.

[8] The letter of October 8, 1985, represents that at least a majority of each Covered Fund's board of directors would be comprised of non-interested directors, within the meaning of section 2(a)(19) of the Act, as long as the requested exemption is in effect.

[Release No. 34–22706; File No. SR–MSTC–85–4]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Company Relating to Use of the MST System Communications Services

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 21, 1985, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) Article I, Rule 3, Section 2 of the Rules of the Midwest Securities Trust Company is hereby amended as follows:

Article I.

Definitions and General Provision.

Rule 3.

Indemnification

Section 2 (a) No change in text.

(b) No change in text.

(c) No change in text.

(d) In consideration of the Corporation furnishing communications services to a Participant whereby the Participant may send or receive information to or from the Corporation, or instruct the Corporation to act on behalf of the Participant: (i) the Corporation shall not be liable for any loss of or damage to information sent or received through the communications services, provided that the Corporation shall use its best efforts to reconstitute for the Participant, information lost or damaged as a result of the Corporation's own grossly negligent, fraudulent or criminal acts; (ii) the Participant shall indemnify and hold harmless the Corporation against any loss, liability, or expense sustained, arising from any action, proceeding or claim of a third party who, with the prior approval of the Participant, may have received information or other services from communications services furnished by the Corporation to a Participant.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the commission, the self-regulatory organization included

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change clarifies the liabilities and respective rights of MSTC and its Participants with respect to Participants's use of MST System communications services. Through these communications services, MSTC Participants received from independent vendors, computer terminals which allow the Participants to access the MST System.

Previously, MSTC Participants were asked to sign an MSTC Communications Service Agreement (Agreement), under which MSTC disclaimed liability for losses arising from computer terminal malfunction. Rather than continue to require such an agreement, MSTC management believes it would be more expedient to codify the Agreement's relevant provisons in an MSTC Rule. Consequently, the proposed rule filing represents a codification of the previously utilized Agreement.

Consistent with the Agreement, the rule change clarifies MSTC's liability for losses arising from the furnishing of communications services to Participants. The proposed rule change provides that MSTC will not be liable for information lost through the communications services, provided that MSTC will use its best efforts to retrieve information lost due to MSTC's gross negligence. In the event that the Participant shares MST System-generated information with a third party, and where the third party brings an action against MSTC over such information, the Participant will indemnify MSTC under the proposed rule change. This proposed rule change will impose reasonable safeguards where MSTC and its Participants experience communications services malfunctions due to computer problems.

The proposed rule change is consistent with section 17A of the Securities Exchange Act in that it recognizes new data processing and communications techniques that facilitate securities clearance and settlement.

(B) Self-Regulatory Organization's Statment on Burden on Competition

The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer periods to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 9, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 12, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-30043 Filed 12-18-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/915]

Advisory Committee on International Investment, Technology, and Development, Subcommittee on Transborder Data Flows; Meeting

The Department of State will hold a meeting of the Subcommittee on Transborder Data Flows of the Advisory Committee on International Investment, Technology, and Development on January 8, 1986 from 2:00 p.m. to 4:00 p.m. The meeting will be in Room 1105 at the Department of State, 2201 "C" Street, NW., Washington, D.C. 20520.

The purpose of the meeting will be to discuss the invisibles code and the U.S. proposal for joint work with the CMIT committee, to review the OECD/ICCP Special Session on Telecommunications Policy, and to discuss the BIAC/CCITT proposal for a work program project.

Access to the State Department is controlled. Therefore, members of the public wishing to attend the meeting must contact the Office of Investment Affairs, (202) 632-2728, in order to arrange admittance. Please use the "C" street entrance.

The Chairman of the Subcommittee will, as time permits, entertain comments from members of the public at the meeting.

Dated: December 10, 1985.

Walter B. Lockwood, Jr.,

Executive Secretary.

[FR Doc. 85-30038 Filed 12-18-85; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/917]

Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Groups A and B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 8, 1986, at 10:00 a.m. in Room 1205, Department of State, 2201 C Street NW., Washington, D.C.

Study Group A deals with international telecommunications policy and services; Study Group B deals with

preparation for the PC/WATTC Study Group Meeting.

Study Group A will review matters relating to the January/February 1986 Working Party meetings of CCITT Study Group III taking place in Geneva, and provide a debriefing of the November Working Party meetings of CCITT Study Groups I and III. In addition, it will make its final preparations regarding the U.S. Delegation to the upcoming meetings; and its final assessment of the current Study Group III contributions that have been submitted for consideration.

Study Group B will review matters relating to the upcoming meeting of the CCITT PC/WATTC Study Group scheduled to take place in Geneva, March 3–7, 1986, and any related activities within Study Group III.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, D.C., telephone (202) 632–6700. All attendees must use the C Street entrance to the building.

Dated: December 4, 1985

Earl S. Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 85–30050 Filed 12–18–85; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM–8/916]

Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 9, 1986 at 9:30 a.m. in Room 1105, Department of Commerce Building, 325 Broadway, Boulder, Colorado.

The purpose of this meeting is to consider CCITT proposed contributions at the Rapporteurs meetings on message handling, directory systems and presentation transfer syntax. Working Parties of Study Group VII are scheduled to be held in Geneva during January-February 1986.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Requests for further information may be directed to Lorna Kent, Department of Commerce, Boulder, Colorado, telephone (303) 497–3764.

Dated: December 4, 1985.

Earl S. Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 85–30037 Filed 12–18–85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; San Juan County, NM

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in San Juan County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mr. Carl S. Armbrister, Program Development Engineer, Federal Highway Administration, 117 U.S. Court House, Santa Fe, New Mexico 87504–1088, telephone (505) 988–6254, or Mr. W. L. Taylor, Environmental Section, New Mexico State Highway Department, 1129 Cerrillos Road, P.O. Box 1149, Santa Fe, New Mexico 87504–1149, telephone (505) 471–0510.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the New Mexico State Highway Department (NMSHD) will prepare an environmental impact statement (EIS) on a proposal to improve US 64 between the communities of Bloomfield and Blanco in San Juan County, New Mexico. The proposed improvement would involve the reconstruction and partial realignment of US 64 for approximately 12 miles. It would also include the widening or replacement of the San Juan River bridge, east of Blanco.

Improvements to the corridor are considered necessary to correct safety deficiencies existing throughout the length of the corridor, and to relieve congestion within the communities of Bloomfield and Blanco.

Alternatives under consideration include the no build alternative and three other alternatives all of which involve partial reconstruction of the existing roadway and some new alignment construction. A four-lane urban section is proposed by the three build alternatives at Blanco and by two of the alternatives at Bloomfield.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. No formal scoping meeting is planned at this time.

A public information meeting has been held to discuss preliminary project plans. A public hearing will be held after circulation of the Draft EIS. The public hearing will be advertised by public notice and individual notices will inform agencies, groups and individuals that have expressed particular concerns. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed project and the EIS should be addressed to the FHWA or NMSHD at the addresses provided above.

Issued on: December 13, 1985.

Anthony L. Alonzo,

Division Administrator, Santa Fe, New Mexico.

[FR Doc. 85–30047 Filed 12–18–85; 8:45 am]

BILLING CODE 4910-22-M

Commercial Motor Vehicle Safety Regulatory Review Panel

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the Commercial Motor Vehicle Safety Regulatory Review Panel will hold a meeting on January 21 and 22, 1986, beginning at 9:00 a.m., in Washington, DC, at the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, DC, Room 4200. The meeting is open to the public.

The agenda includes the following topics: the status briefings on the repromulgation of the Federal Motor Carrier Safety regulations and a briefing on the consultant effort to organize and abstract State motor carrier safety laws and regulations.

FOR FURTHER INFORMATION CONTACT: Mr. David R. Lukens, Executive Director, Commercial Motor Vehicle Safety Regulatory Review Panel, Federal Highway Administration, HOA–1, Room 4218, 400 Seventh Street, SW., Washington, DC 20590, (202) 426–0390.

Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

Issued on: December 16, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85-29980 Filed 12-18-85; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

[Docket No. IRA-34]

Application for Inconsistency Ruling; State of Illinois; Extension of Comment Period

AGENCY: Office of Hazardous Materials Transportation; Research and Special Programs Administration (RSPA), DOT.

ACTION: Extension of time for public comment.

SUMMARY: This notice extends the public comment period for IRA-34 (50 FR 45186, October 30, 1985).

DATE: Comments should be received by January 21, 1986. (Late filed comments will be considered to the extent practicable.)

ADDRESSES: The application and all related correspondence and comments may be reviewed in the Dockets Branch, Office of Hazardous Materials Transportation, Room 8426, 400 Seventh Street, S.W., Washington, DC 20590. Comments on the application may be submitted to the Dockets Branch at the above address. To ensure proper handling, indicate Docket No. IRA-34 on your submission. Three copies of each submission are requested.

A copy of each comment must also be sent to the following individuals:

Mr. Jack McKay, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, DC 20036

Mr. Henry L. Henderson, Assistant Attorney General, Environmental Control Division, 100 West Randolph Street, 13th Floor, Chicago, Illinois 60601

Certification of the fact that copies have been sent to these individuals is to be indicated on any comments submitted to the Dockets Branch. [The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. McKay and Henderson at the addresses noted in the Federal Register."]

FOR FURTHER INFORMATION CONTACT: Elaine Economides, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, S.W., Washington, DC 20590. (Tel: 202/755-4972).

SUPPLEMENTARY INFORMATION: On October 30, 1985, RSPA published a notice for comment concerning Wisconsin Electric Power Company's application for an administrative ruling on the question of whether an Illinois statute, which imposes a fee of $1000 per cask upon owners of spent nuclear fuel being transported through Illinois, is inconsistent with the Hazardous Materials Transportation Act or the regulations promulgated thereunder and, therefore, preempted under 49 U.S.C. 1811(a).

The public comment period was scheduled to end on December 20, 1985. Because a number of prospective commenters have requested additional time, RSPA is extending the comment period to January 21, 1986.

Issued in Washington, DC, on December 16, 1985.

Alan I. Roberts, Director,

Office of Hazardous Materials Transportation.

[FR Doc. 85-30088 Filed 12-18-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 38-85]

Treasury Notes of December 31, 1987, Series AD-1987

Washington, December 12, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,500,000,000 of United States securities, designated Treasury Notes of December 31, 1987, Series AD-1987 (CUSIP No. 912827 TA 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Notes will be dated December 31, 1985, and will accure interest from that date, payable on a semiannual basis on June 30, 1986, and each subsequent 6 months on December 31 and June 30 through the date that the principal becomes payable. They will mature December 31, 1987, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additonal interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Tuesday, December 17, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, December 16, 1985, and received no later than Tuesday, December 31, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have

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entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred , e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, December 31, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bill, notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institutional to which the tender was submitted, which much be received from institutional investors no later than Friday, December 27, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and and Loan Note Accounts on or before Tuesday, December 31, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public

announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-30115 Filed 12-17-85; 11:01 am]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 39-85]

Treasury Notes of December 31, 1989; Series P-1989

Washington, December 12, 1985.

1. Invitation for Tenders

1.1 The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,000,000,000 of United States securities, designated Treasury Notes of December 31, 1989, Series P-1989 (CUSIP No. 912827 TB 8), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated December 31, 1985, and will accrue interest from that date, payable on a semiannual basis on June 30, 1986, and each subsequent 6 months on December 31 and June 30 through the date that the principal becomes payable. They will mature December 31, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, December 18, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, December 17, 1985, and received no later than Tuesday, December 31, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commericial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commerical banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commerical bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a $1/8$ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tender will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent

to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, December 31, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, December 27, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, December 31, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-30114 Filed 12-17-85; 11:01 am]

BILLING CODE [illegible]

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the Federal Register notifying the public that such a submission has been made. USIA is requesting approval of revisions to our form IAP-66, Certificate of Eligibility for Exchange Visitor (J-1) Status, which has been cleared by OMB (3116-0008, Expiration 3/31/87).

DATE: Comments must be received by January 17, 1986.

COPIES: Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485-8676. And OMB review: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-3785.

SUPPLEMENTARY INFORMATION: Title: "Certificate of Eligibility for Exchange Visitor (J-1) Status". Revisions to the USIA Form IAP-66 have been made to help in identification of the individuals requesting J-1 visas, indication of whether an individual is subject to the home residence requirement, deletion of the requirement for a teenager-sponsor to give the name of a host family, and to spell out clearly the funding arrangements for the period of time involved.

Dated: December 13, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85-29984 Filed 12-18-85; 8:45 am]

BILLING CODE [illegible]

VETERANS ADMINISTRATION

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held in the Omar Bradley Conference Room of the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420, on January 9 and 10, 1986. Both sessions will begin at 8:45 a.m. and conclude at 4:30 p.m.

The meeting will be open to the public to the seating capacity of the room. Anyone having questions concerning the meeting may contact Authur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Veterans Administration Central Office (phone 202–389–3317/3303).

Dated: December 11, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–30021 Filed 12–18–85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 244
Thursday, December 19, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:36 p.m. on Friday, December 13, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in the Farmers State Bank of Barry County, Exeter, Missouri, Exeter, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Friday, December 13, 1985; (2) accept the bid for the transaction submitted by Security Bank of Southwest Missouri, Exeter, Missouri, a newly-chartered State nonmember bank; (3) approve the applications of Security Bank of Southwest Missouri, Exeter, Missouri, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in The Farmers State Bank of Barry County, Exeter, Missouri; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 4:39 p.m., and at 6:40 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Lake National Bank, Lake Ozark, Missouri, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Friday, December 13, 1985; (2) accepted the bid for the transaction submitted by the Central Lake State Bank, Lake Ozark, Missouri, a newly-chartered State nonmember bank subsidiary of Central Bankcompany, Jefferson City, Missouri; (3) approved (a) the applications of The Central Lake State Bank, Lake Ozark, Missouri, for Federal deposit insurance, for consent to purchase certain assets of and assume the liability to pay deposits made in Lake National Bank, Lake Ozark, Missouri, and for consent to establish the sole branch of Lake National Bank as a branch of The Central Lake State Bank, and (b) the application of The Central Trust Bank, Jefferson City, Missouri, for consent to merge, under its charter and title, with The Central Lake State Bank, Lake Ozark, Missouri, and for consent to establish the two offices of the Central Lake State Bank as branches of The Central Trust Bank; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In reconvening the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 6:44 p.m., and at 9:50 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors adopted a resolution making funds available for the payment of insured deposits made in First National Bank of Lincoln County, Ruidoso, New Mexico, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Friday, December 13, 1985.

In reconvening the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. H. Joe Selby, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 16, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-30135 Filed 12-17-85; 12:57 pm]

BILLING CODE 6714-01-M

2

FEDERAL MARITIME COMMISSION:

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: December 13, 1985, 50 FR 50984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: December 18, 1985, 10:00 a.m.

CHANGES IN THE MEETING: .

Withdrawal of the following item from the open session:

1. Agreement No. 203-010852: Discussion Agreement in the Far East-U.S. Atlantic Trades among Nippon Yusen Kaisha, Mitsui O.S.K. Lines, Ltd., and Yamashita-Shinnihon Steamship Co., Ltd.

Addition of the following items to the closed session:

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6. Agreement No. 203–010852: Discussion Agreement in the Far East-U.S. Atlantic Trades among Nippon Yusen Kaisha, Mitsui O.S.K. Lines, Ltd., and Yamashita-Shinnihon Steamship Co., Ltd.

7. Consideration of a proposed 2.5 percent overall rate increased filed by United States Lines, Inc., in the Hawaiian Trade, and protest thereto.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–30170 Filed 12–17–85; 3:41 pm]

BILLING CODE 6730–01–M

3

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Friday, December 13, 1985.

CHANGE IN THE MEETING: Additional item.

The following additional item will be considered at an open meeting scheduled for Thursday, December 18, 1985, at 10:00 a.m.:

Consideration of whether to authorize a proposal by Columbia Gas System, Inc. (Columbia), a registered holding company, Columbia Gas Transmission Corp. (Transmission), a subsidiary of Columbia engaged in the production, transportation and sale of natural gas, and Columbia Producer Settlement Corps. ("PSC") a newly formed subsidiary of Columbia, for the issuance by Transmission of up to $800 million first mortgage bonds to certain Southwest gas producers, the purchase of the bonds by PSC, and the guarantee by Columbia of PSC's obligation to pay Producers the value of the bonds, in settlement of certain of Transmission's high-cost natural gas purchase obligations. For further information, please contact Kathleen Brandon at (202) 272–2676.

Commissioner Peters, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272–3195.

John Wheeler,

Secretary.

[FR Doc. 85–30121 Filed 12–17–85; 11:27 am]

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Federal Register

Thursday
December 19, 1985

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulations (FAR); Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Unallowable Costs Under FAR 31.205

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 31.201–2, Determining allowability.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 21, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–63 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The General Accounting Office (GAO), in a May 7, 1985, report entitled, "Improvements Needed in Department of Defense Procedures to Prevent Reimbursement of Unallowable Costs on Government Contracts," recommended a FAR revision that would reduce differences and disagreements among contractors, Government auditors, and contracting officers; improve overhead negotiations; and reduce inconsistent treatment of costs under FAR 31.205. GAO has concluded that there are costs which may be made unallowable by one subsection of FAR 31.205, but allowed into the negotiation process by another subsection. They believe that the forthcoming revision of FAR 31.205–1, Public relations and advertising costs, did not go far enough in eliminating the ambiguities in the FAR which cause contractors, Government auditors, and contracting officers to have different interpretations on allowability. Consequently, they recommended that the FAR should be amended so that any cost made specifically unallowable under any subsection of FAR 31.205, Selected costs, cannot be allowable under any other section of FAR Subpart 31.2.

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council concurred with the GAO recommendation and are proposing a revision of FAR 31.201–2, Determining allowability, to implement that recommendation. The proposed revision includes an example that illustrates the meaning and intent of the FAR revision.

The proposed revision also complies with the provision of the Defense Procurement Improvement Act of 1985 (Title IX of the DOD Authorization Act of 1986, Pub. L. 99–145) that requires cost principle amendments to define in detail and specific terms those costs which are unallowable.

B. Regulatory Flexibility Act

The proposed change to FAR 31.201–2 is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) because most contracts awarded to small entities are awarded on a competitive fixed price basis and cost principles do not apply.

C Paperwork Reduction Act

The Paperwork Act (Pub. L. 96–511) does not apply because this proposed rule does not impose any additional reporting or recordkeeping requirements on the public which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 13, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

PART 31—[AMENDED]

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 31.201–2 is amended by adding paragraph (d) to read as follows:

31.201–2 Determining allowability.

* * * * * *

(d) Costs made specifically unallowable under any subsection of 31.205 are not allowable under any other sections or subsections of Subpart 31.2. To illustrate, a contractor's donation to a scholarship fund for the family of a deceased employee that is specifically unallowable under 31.205–8, is not allowable under 31.205–13 on the basis that the objective of the contribution was to improve employer-employee relations, even though this is a generally allowable cost objective under 31.205–13.

[FR Doc. 85–29974 Filed 12–18–85; 8:45 am]

BILLING CODE 6820–61–M

48 CFR Part 31

Federal Acquisition Regulation (FAR); Company-Furnished Automobiles

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 31.205–6, Compensation for personal services, and 31.205–46, Travel costs, concerning company-furnished automobiles.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 21, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–64 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

A provision contained in section 911 of the Defense Procurement Improvement Act of 1985 (Title IX of the DOD Authorization Act of 1986. Pub. L. 99–145) specifies that, as a minimum, the cost principles applicable to contractor costs of company-furnished automobiles shall be clarified to define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts.

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are proposing revisions to FAR 31.205–6, Compensation for personal services, and

31.205–46, Travel costs, to implement the Act. The proposed revisions state that the cost of contractor-owned or -leased automobiles is allowable, if reasonable, to the extent that the automobiles are used for company business. Additional proposed language states that the portion of the cost of company-furnished automobiles that relates to personal use by employees is compensation for personal services and is unallowable. The Councils believe it is inappropriate for the Government to reimburse contractor employees' personal costs at taxpayers' expense.

B. Regulatory Flexibility Act

The proposed revisions to FAR 31.205–6(m) and 31.205–46(f) are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) because most contracts awarded to small entities are awarded on a competitive fixed price basis and cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed rule does not impose any additional reporting or recordkeeping requirements on the public beyond those already required by the Internal Revenue Code.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 13, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

PART 31—[AMENDED]

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 31.205–6 is amended by revising paragraph (m) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(m) *Fringe Benefits.* (1) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Fringe benefits include, but are not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. Except as provided elsewhere in Subpart 31.2, the costs of fringe benefits are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor.

(2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see 31.205–46(f)).

3. Section 31.205–46 is amended by adding paragraph (f) to read as follows:

31.205–46 Travel costs.

* * * * *

(f) Costs of contractor-owned or -leased automobiles, as used in this paragraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205–6(m)(2).

[FR Doc. 85–29975 Filed 12–18–85; 8:45 am]

BILLING CODE 6820–61–M

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48 CFR Part 31

Federal Acquisition Regulation (FAR); Implementation of Congressional Direction Regarding the Costs of Membership in Social, Dining, and County Clubs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 31.205–14, Entertainment costs, to implement Congressional direction regarding the costs of membership in social, dining, and country clubs.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 21, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–65 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are considering a change to FAR 31.205–14, Entertainment costs. The change under consideration is designed to prohibit Government reimbursement of the costs of contractor memberships in social, dining, or country clubs or organizations. The proposed change is based on the Defense Improvement Act of 1985 (Title IX of the DOD Authorization Act of 1986, Pub. L. 99–145) and is considered necessary to ensure that only reasonable costs are paid under Government contracts.

B. Regulatory Flexibility Act

The proposed changes to FAR 31.205–14 are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) because most contracts awarded to small entities are awarded on a competitive fixed price basis and cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed rule does not impose any additional reporting or recordkeeping requirements on the public which require the approval of OMB under 44 U.S.C. 3501 et. seq. The proposed rule merely clarifies the allowability of certain membership costs incurred by contractors. Contractors already separately record membership costs in the normal course of business and such existing information provides an adequate basis for compliance with the proposed rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 13, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

PART 31—[AMENDED]

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

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2. Section 31.205–14 is revised to read as follows:

31.205–14 Entertainment costs.

Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs of membership in social, dining, or country clubs or organizations are also unallowable, regardless of whether the cost is reported as taxable income to the employees (but see 31.205–13 and 31.205–43).

[FR Doc. 85–29976 Filed 12–18–85; 8:am]

BILLING CODE 6820–61–M

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48 CFR Part 31

Federal Acquisition Regulation (FAR); Costs of Litigating Appeals Against the Government

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to Federal Acquisition Regulation (FAR) 31.205–33, Professional and consultant service costs.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 21, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–66 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

A provision contained in Section 911 of the Defense Procurement Improvement Act of 1985 (Title IX of the DOD Authorization Act of 1986, Pub. L. 99–145) specifies that, as a minimum, the cost principle applicable to "professional and consulting services, including legal services" be clarified to define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts.

In response to the legislation, the Defense Acquisition Regulatory Council and the Civilian Agency acquisition Council are considering revisions to FAR 31.205–33, Professional and consultant service costs. One revision under consideration adds to the list of unallowable legal, accounting and consultant services those costs which are incurred: (1) In defense against Government claims or appeals and (2) the prosecution of appeals against the Government. Additional language is being proposed to make unallowable costs of legal, accounting, and consultant services, and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between two contractors arising from either: (1) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangment of shared interest in a Government contract: or (2) dual sourcing, co-production, or similar programs.

These revisions are considered necessary because of problems encountered in administering this cost principle and they are not a change in policy. Such costs are presently being disallowed but disputed by some contractors.

B. Regulatory Flexibility Act

The proposed revision to FAR 31.205–33 is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) because most contracts awarded to small entities are awarded on a competitive fixed price basis and cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed rule does not impose any additional reporting or recordkeeping requirements on the public which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 13, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

PART 31—[AMENDED]

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 31.205–33 is amended by revising paragraph (d) and adding paragraph (f) to read as follows:

31.205–33 Professional and consultant service costs.

* * * * *

(d) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with organization and reorganization (also see 31.205–27), defense of antitrust suits, defense against Government claims or appeals, or the prosecution of claims or appeals against the Government (see 33.201) are unallowable. Such costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the contract.

* * * * *

(f) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between two contractors arising from either: (1) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest in a Government contract; or (2) dual sourcing, co-production, or similar programs, are unallowable.

[FR Doc. 85–29977 Filed 12–18–85; 8:45 am]

BILLING CODE 6820–61–M

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48 CFR Part 31

Federal Acquisition Regulation (FAR); Executive Lobbying Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering promulgation of a new cost principle, executive lobbying costs, in FAR 31.205.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 21, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–67 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

A provision contained in section 911 of the Defense Procurement Improvement Act of 1985 (Title IX of the DOD Authorization Act of 1986, Pub. L. 99–145) specifies that, as a minimum, the cost principles applicable to executive branch lobbying shall be clarified to define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts.

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are proposing a new cost principle, FAR 31.205–52, Executive lobbying costs, to implement the Act. The proposed cost principle states that costs incurred to induce, directly or indirectly, actions of the executive branch of the Federal Government relating to regulatory or contract matters on any basis other then the merits are unallowable. The Councils believe costs incurred to improperly influence the executive branch of the Federal Government should be disallowed. Proper communication regarding policy matters are helpful and in many cases indispensable to Government decision makers and costs thereof should be allowable.

The Councils are also considering revising the title of FAR 31.205–22 to read, "Legislative lobbying costs" to distinguish it from the new cost principle.

B. Regulatory Flexibility Act.

The proposed addition of FAR 31.205–52 is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) because most contracts awarded to small entities are awarded on a competitive fixed price basis and cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed rule does not impose any additional reporting or recordkeeping requirements on the public which require the approval of OMB under 44 U.S.C 3501 et seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 13, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

PART 31—[AMENDED]

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 31.205–52 is added to read as follows:

31.205–52 Executive lobbying costs.

Costs incurred to induce, directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a regulatory or contract matter on any basis other than the merits are unallowable.

3. Section 31.205–22 is amended by revising the title to read as follows:

31.205–22 Legislative lobbying costs.

* * * * *

[FR Doc. 85–29978 Filed 12–18–85; 8:45 am]

BILLING CODE 6820–61–M

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48 CFR Part 31

Federal Acquisition Regulation (FAR); Alcoholic Beverage Costs

AGENCY: Department of Defense (DOD), General Services Administration (GAS), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering promulgation of a new cost principle, Alcoholic beverage costs, in FAR 31.205.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 21, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, Far Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–68 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council are considering a change to add FAR 31.205–51, Alcoholic beverage costs. The new cost principle is designed to prohibit Government reimbursement of the costs of alcoholic beverages. The proposed cost principle is based on Title 9, section 911 of the DOD Authorization Act of 1986 and is considered necessary to ensure that only reasonable and appropriate costs are paid under Government contracts.

B. Regulatory Flexibility Act

The proposed addition of FAR 31.205–51 is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) because most contracts awarded to small entities are awarded on a competitive fixed price basis and cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed rule does not impose any additional reporting or recordkeeping requirements on the public which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 13, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

PART 31—[AMENDED]

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 31.205–51 is added to read as follows:

31.205–51 Alcoholic beverage costs.

The costs of alcoholic beverages are unallowable.

[FR Doc. 85–29979 Filed 12–18–85; 8:45 am]

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federal register

Thursday
December 19, 1985

Part III

Department of the Interior

National Park Service

36 CFR Parts 1, 2, 3, 4, 5, 7, and 50
General Regulations for Areas Administered by the National Park Service; National Capital Parks Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1, 2, 3, 4, 5, 7 and 50

General Regulations for Areas Administered by the National Park Service; National Capital Parks Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking reorganizes regulations pertaining to the management and protection of areas administered by the National Park Service in the National Capital Region. It also makes applicable to those park areas the General Regulations that apply to all other units of the National Park System throughout the country.

The Service has determined that a completely separate set of regulations is no longer necessary to manage park areas in Washington, DC and vicinity effectively. Only those regulations that address issues unique to park areas in the National Capital Region will be retained as Special Regulations; all others that duplicate provisions of the Service's General Regulations will be eliminated. Some regulations have been revised slightly to make consistent use of terms and format found in the Service's general regulations, but no new regulatory actions are being proposed.

DATES: Written comments, suggestions or objections regarding this proposed rule will be accepted until February 18, 1986.

ADDRESS: Written comments should be sent to Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242.

FOR FURTHER INFORMATION CONTACT: Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, DC 20242, telephone (202) 426-6700.

SUPPLEMENTARY INFORMATION:

Background

General regulations found in Parts 1 through 5 of 36 Code of Federal Regulations apply to all units of the National Park System except those administered by the National Capital Region in the District of Columbia and its environs (defined as Arlington, Fairfax, Loudoun, Prince William and Stafford counties and Alexandria city in Virginia, and Prince Georges, Charles, Anne Arundel and Montgomery counties in Maryland, 36 CFR 50.4(c)). The general regulations are supplemented by special regulations applicable to individual park areas, as found in Parts 7 and 13. Finally, parks in the District of Columbia and its environs are subject to extensive regulations found in Part 50.

This dual set of regulatory schemes has resulted in considerable redundancy. For example, both the general regulations (Part 2) and regulations applicable to National Capital Region parks (Part 50) deal with many of the same resource protection and public use matters, for example, horses, pets, picnicking, and disorderly conduct. It serves no purpose to have two sets of regulations which regulate many of the same activities.

Further, having different sets of regulatory schemes for different geographic areas has resulted in some confusion. For example, Park Rangers and U.S. Park Policemen in C & O Canal National Historical Park, encompassing lands in the District of Columbia, Maryland, and West Virginia, must use one set of regulations for parts of the park located in the District of Columbia and in Montgomery County, Maryland, and another set of regulations for those parts of the park located in the remainder of Maryland and in West Virginia.

In addition, Part 50 regulations, written primarily for urban parks, sometimes have little relevance to more rural parks such as Prince William Forest Park or Manassas National Battlefield Park, both of which are administered by the National Capital Region. For example, a large portion of the Part 50 regulations deal with demonstrations and special events that occur frequently in the parks of Washington, DC, and seldom in the more rural parks.

Further, Part 50 regulations sometimes neglect provisions necessary to more rural parks. For example, Part 50 does not address aircraft such as hot air balloons or ultra light craft, as the general regulations do in 36 CFR 2.17. Managers of parks subject to Part 50, such as Manassas, are without regulatory tools to manage the rapidly-increasing use of these balloons and crafts. Another example of an activity not addressed by Part 50 regulations, but which is occasionally a problem, is snowmobiling. The general regulations address this activity in § 2.18.

Another problem is the illegal use of metal detectors for location of Civil War artifacts in battlefield parks such as Manassas. Part 50 regulations require some actual damage, injury or removal before an individual with a metal detector can be prevented from using the device under the regulations. (36 CFR 50.7(1)). The general regulations prohibit the possession of a mineral or metal detector unless the device is broken down and stored to prevent its use while in park areas. (36 CFR 2.1(a)(7)).

Proposed Regulatory Changes

To meet the concerns caused by this dual system of park regulation, the National Park Service proposes to eliminate the CFR Part applicable only to the parks in the District of Columbia and its environs (Part 50), to make the general regulations contained in Parts 1-5 applicable to all units of the National Park System, including the District of Columbia parks, and to put regulations applicable only to District of Columbia parks, or to parks in the District of Columbia and its environs, in special regulations in Part 7. The specific changes follow.

1. Parts 1 through 5 (General Regulations)

The rule would amend § 1.2 of 36 CFR by eliminating the present provision excepting parks in the District of Columbia and its environs from the applicability of the general regulations. Parks in the District of Columbia and its environs would then be subject to the same regulations as parks throughout the country, thus avoiding the duplication and confusion in the present dual regulation systems. Regulations specific to these parks would supplement the general regulations and would be placed in Part 7.

In addition, § 1.2 would be amended to make the general regulations applicable to other Federal reservations in the environs of the District of Columbia. Section 1.4 would be amended to include the definition of the term "other Federal reservations in the environs of the District of Columbia." Finally, § 1.2 would be amended to delete references to Part 6, which was deleted in a 1983 rulemaking. See 49 FR 30275, June 30, 1983.

2. Part 50 (National Capital Parks Regulations)

Since the general regulations would be made applicable to the National Capital Region parks, regulations in Part 50 would be deleted except for those specific to the District of Columbia or to the District and its environs. Regulations retained would be placed in Part 7 as detailed below.

Regulations deleted would be those that are duplicative of general regulations or those duplicative of local law. For example, both Part 50 and Part 2 deal with horses, pets, and picnicking.

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Further, provisions in Part 50 dealing with such topics as disorderly conduct and traffic also are covered by local law. Especially in the District of Columbia, which is an area of exclusive federal jurisdiction, local law often is applied. The following sections in Part 50 would be deleted altogether:

50.2 Applicability of Federal laws
50.3 Applicability of District of Columbia and State laws
50.4 Definitions
50.5 Penalties
50.7 Federal property; miscellaneous provisions
50.8 Lamps and lamp posts in park areas
50.9 Comfort stations and other structures
50.10 Trees, shrubs, plants, grass and other vegetation
50.11 Dogs, cats, and livestock
50.12 Horses
50.13 Grazing; permitting animals to run loose
50.14 Picnics in park areas
50.17 Gambling
50.26 Indecency, immorality, profanity
50.28 Use of liquors; intoxication
50.29 Laws and regulations applicable to traffic control; enforcement
50.30 Obstructing entrances, exits, sidewalks
50.31 Speed restrictions
50.32 Reckless driving, prohibited operations
50.33 Parking restrictions; impounding of vehicles
50.34 Traffic signs
50.35 Washing of cars prohibited
50.37 Vehicles; weight and tread restrictions
50.38 Tampering with vehicles prohibited
50.39 Prevention of smoke
50.40 Bicycling, roller skating and coasting restrictions
50.41 Boating
50.42 Swimming, water skiing, etc.
50.43 Collection of scientific specimens
50.44 Lost and found articles
50.45 Photographing; restrictions
50.46 Discrimination in furnishing public accommodations and transportation services
50.46a Discrimination in employment practices
50.47 Installation permits
50.48 Making false reports to the United States Park Police
50.49 Dangerous weapons
50.50 Fires
50.51 Sanitation

3. Part 7 (Special Regulations)

The regulations presently in Part 50 that would be retained would be redesignated as sections in Part 7. The retained regulations would be placed either under special regulation 36 CFR 7.96, National Park Service Areas in the District of Columbia, or under special regulation 36 CFR 7.99, National Capital Region Parks.

The special regulation applicable only to District of Columbia parks would include the following provisions now in Part 50:

§ 50.1 Applicability of regulations. This section would be revised to make these special regulations applicable to areas administered by the National Park Service in the District of Columbia.

§ 50.19 Demonstrations and special events. This section would be retained in its entirety, with minor grammatical changes, as it specifically addresses issues unique to the Washington area parks. These regulations have been carefully crafted over the years to respond to the experiences of the National Park Service in the District of Columbia and to local court decisions.

§ 50.24 Soliciting, advertising, sales. This section would be deleted as duplicative of provisions in the general regulations concerning advertising and of provisions in present § 50.52 concerning sales, with the exception of paragraph (a) relating to solicitations. This provision is retained as it applies a flat ban to solicitations, this being more restrictive than provisions in the general regulations allowing solicitations for which a permit is granted. However, the section would be revised to make the language consistent with the sales provision in § 2.37 of Part 2 of this Chapter.

§ 50.27 Camping. The majority of this section would be retained as it addresses problems specific to the District of Columbia parks and responds to local court decisions. Provisions duplicative of provisions in the general regulations would be deleted.

§ 50.52 Sale and distribution of printed matter. This section would be retained in its entirety, with minor grammatical changes, as it addresses specific parks in the District of Columbia and problems specific to the District of Columbia parks, and responds to local court decisions.

The special regulation applicable to parks in the District of Columbia and its environs would include the following provisions now in Part 50:

§ 50.1 Applicability of regulations. This section would be revised to make these special regulations applicable to areas administered by the National Park Service in the District of Columbia and its environs and to other Federal reservations in the environs of the District of Columbia.

§ 50.15 Athletics. This section would be retained in its entirety, except for the reference in paragraph (d) to another section in Part 50, and except for minor changes, as it addresses specific District of Columbia park areas and addresses problems of substantial impact on parks in the District of Columbia and its environs.

§ 50.16 Model planes. This section would be retained, with minor grammatical changes, as the general regulations provide no comparable prohibitions and the flying of model planes could be a significant problem in urban parks.

§ 50.18 Hunting and fishing. This section would be deleted as presently written because the General Regulations cover the subjects of hunting and fishing. However, to avoid making unlawful those fishing practices that are sanctioned under various state laws, a new regulation allowing fishing as authorized under state law, unless otherwise designated, would be added.

§ 50.25 Nuisances; disorderly conduct. This section would be deleted with the exception of the paragraph concerning swimming in certain park areas and entering into waters from park areas. This paragraph addresses specific National Capital Region parks and grants law enforcement officers the authority to cite persons for entering into dangerous waters, an authority lacking in Parts 1–5 of Chapter 1.

§ 50.36 Commercial vehicles and common carriers. This section would be retained in its entirety, with minor grammatical changes, with the exception of paragraph (c) which duplicates in large part paragraph (a). This section is retained because it addresses activities of unique concern to parks in the District of Columbia and its environs and, in fact, addresses those activities in several named parks.

The only changes that would occur in these sections when they are transposed would be: (1) Corrections of typographical errors in the original sections; (2) revisions in references to internal paragraphs and sections; (3) redesignation of "National Capital Parks" as "the National Capital Region", reflecting an administrative name change; (4) deletion of the reference in § 50.19(c) to the availability of permit applications at the National Visitor Center, Union Station, as the National Park Service no longer administers that facility; (5) deletion of the reference to the President's Cup Regatta in § 50.19, as there is no longer such an event; (6) revision in § 50.19 of the location of the Folk Life Festival, held in the Mall each year, as this location has changed slightly; (7) revision in § 50.19(d)(1)(vii), "Inaugural Ceremonies", to change the date "January 20, 1981", to the more general "Inauguration Day" to reflect the true intent of the paragraph; and (8) revisions of text to clarify the intent of certain regulations, to correct grammatical errors or to make

consistent the use of terms defined in § 1.4.

Public Participation

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the address noted at the beginning of the rulemaking.

Drafting Information

The following persons participated in the writing of this rule: Richard G. Robbins and Patricia S. Bangert, Office of the Solicitor, U.S. Department of the Interior.

Paperwork Reduction Act

The information requirements contained in the general regulations, Parts 2 and 3 of 36 CFR, have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1024–0026. The information requirements contained in § 7.96 of Part 50 have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and assigned clearance number 1024–0021.

Compliance With Other Laws

The National Park Service has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291. The National Park Service also has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, does not require a small entity flexibility analysis under 5 U.S.C. 601. The proposed rule eliminates many present restrictions. While it extends the applicability of other provisions to parks administered by the National Capital Region, the rule makes applicable, to a great extent, provisions that are duplicative of those presently in effect. No new provisions are being instituted. Further, experience has been that the general regulations have had minimal positive or negative impacts on the following types of businesses: some small businesses selling certain park-related items; local guide services and commercial packers; aircraft salvage companies; local repair shops and filling stations; and ranching and farming interests. Therefore, the rule will have no significant impact on any aspect of the economy.

The National Park Service has further determined that this proposed rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act, 42 U.S.C. 4332, *et seq.* An environmental assessment and a Finding of No Significant Impact (FONSI) have been prepared by the National Park Service for the general regulations here made applicable to the National Capital Region parks. We adopt those documents here. The documents are available for review at the Division of Visitor Services, National Park Service, 18th and C St., NW., Washington, DC 20240, telephone (202) 343–4874.

List of Subjects

36 CFR Part 1

National parks, Penalties.

36 CFR Part 2

National parks, Signs and symbols.

36 CFR Part 3

Marine safety, National parks.

36 CFR Part 4

National parks, Traffic regulations.

36 CFR Part 5

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Pets, Transportation.

36 CFR Part 7

National parks.

36 CFR Part 50

District of Columbia, National parks, National Capital Region.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter 1 as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for Part 1 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460 l–6a(e), 462(k).

2. Section 1.2 is revised to read as follows:

§ 1.2 Applicability and scope.

(a) The regulations contained in this chapter apply to all persons entering, using, visiting or otherwise within:

(1) The boundaries of federally owned lands and waters administered by or subject to the jurisdiction of the National Park Service; or

(2) The boundaries of lands and waters, controlled, leased, administered or otherwise subject to the jurisdiction of the National Park Service, including other Federal reservations in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the Act of March 17, 1948 (62 Stat. 81); or

(3) Less-than-fee interests to the extent necessary to fulfill the purpose of the acquired Federal interest and compatible with the retained nonfederal interest.

(b) The regulations contained in Parts 1 through 5 and Part 7 of this chapter are not applicable on privately owned lands and waters (including Indian lands and waters owned individually or tribally) within the boundaries of a park area, except as may be provided by regulations relating specifically to privately owned lands and waters under the legislative jurisdiction of the United States.

(c) The regulations contained in Part 7 and Part 13 of this chapter are special regulations prescribed for specific park areas. Those regulations may amend, modify, relax or make more stringent the regulations contained in Parts 1 through 5 and Part 12 of this chapter.

(d) The regulations contained in Parts 2 through 5 and Part 7 shall not be construed to prohibit administrative activities conducted by the National Park Service, or its agents, in accordance with approved general management and resources management plans, or in emergency operations involving threats to life, property, or park resources.

§ 1.4 [Amended]

3. Paragraph (a) of § 1.4 is amended by adding the following definition after the definition of "Operator" and before the definition of "Pack animal":

(a) * * *

* * * * *

"Other Federal reservations in the environs of the District of Columbia" means Federal areas, which are not under the administrative jurisdiction of the Department of the Interior, located in Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the City of Alexandria in Virginia and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland, exclusive of military reservations, unless the policing of such areas by the U.S. Park Police is specifically requested by the Secretary of Defense or a designee thereof.

* * * * *

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

4. Part 7 is amended as follows:

a. By revising the authority citation to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); §§ 7.96 and 7.98 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

b. By adding a new § 7.96 to read as follows:

§ 7.96 National Park Service Areas in the District of Columbia.

(a) *Applicability of regulations.* This section applies to all park areas administered by the National Park Service in the District of Columbia.

(b) *Demonstrations and special events*—(1) *Definitions.* (i) The term "demonstrations" includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct which involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.

(ii) The term "special events" includes sports events, pageants, celebrations, historical reenactments, regattas, entertainments, exhibitions, parades, fairs, festivals and similar events (including such events presented by the National Park Service), which are not demonstrations under paragraph (b)(1)(i) of this section, and which are engaged in by one or more persons, the conduct of which has the effect, intent or propensity to draw a crowd or onlookers. This term also does not include casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers.

(iii) The term "national celebration events" means the annually recurring special events regularly scheduled by the National Capital Region, which are listed in paragraph (b)(4)(i) of this section.

(iv) The term "White House area" means all park areas, including sidewalks adjacent thereto, within these bounds: on the south, Constitution Avenue, NW.; on the north, H Street, NW.; on the east, 15th Street, NW.; and on the west, 17th Street, NW.

(v) The term "White House sidewalk" means the south sidewalk of Pennsylvania Avenue, NW., between East and West Executive Avenues, NW.

(vi) The term "Lafayette Park" means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Pennsylvania Avenue, NW.; on the north, H Street, NW.; on the east, Madison Place, NW.; and on the west, Jackson Place, NW.

(vii) The term "Ellipse" means the park areas, including sidewalks adjacent thereto, within these bounds: on the south, Constitution Avenue, NW.; on the north, E Street, NW.; on the west, 17th Street, NW.; and on the east, 15th Street, NW.

(viii) The term "Regional Director" means the official in charge of the National Capital Region, National Park Service, U.S. Department of the Interior, or an authorized representative thereof.

(ix) The term "other park areas" includes all areas, including sidewalks adjacent thereto, other than the White House area, administered by the National Capital Region.

(x) The term "Vietnam Veterans Memorial" means the structures and adjacent areas extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

(2) *Permit Requirements.* Demonstrations and special events may be held only pursuant to a permit issued in accordance with the provisions of this section except:

(i) Demonstrations involving 25 persons or fewer may be held without a permit *provided* that the other conditions required for the issuance of a permit are met and *provided further* that the group is not merely an extension of another group already availing itself of the 25-person maximum under this provision or will not unreasonably interfere with other demonstrations or special events.

(ii) Demonstrations may be held in the following park areas without a permit *provided* that the conduct of such demonstrations is reasonably consistent with the protection and use of the indicated park area and the other requirements of this section. The numerical limitations listed below are applicable only for demonstrations conducted without a permit in such areas. Larger demonstrations may take place in these areas pursuant to a permit.

(A) *Pronklin Park.* Thirteenth Street, between I and K Streets, NW., for no more than 500 persons.

(B) *McPherson Square.* Fifteenth Street, between I and K Streets, NW., for no more than 500 persons.

(C) *U.S. Reservation No. 31.* West of 18th Street and south of H Street, NW., for no more than 100 persons.

(D) *Rock Creek and Potomac Parkway.* West of 23rd Street, south of P Street, NW., for no more than 1,000 persons.

(E) *U.S. Reservation No. 46.* North side of Pennsylvania Avenue, west of Eighth Street and south of D Street, SE., for no more than 25 persons and south of D Street, SW., for no more than 25 persons.

(3) *Permit Applications.* Permit applications may be obtained at the Office of Public Affairs, National Capital Region, 1100 Ohio Drive, SW., Washington, DC. 20242. Applicants shall submit permit applications in writing on a form provided by the National Park Service so as to be received by the Regional Director at least 48 hours in advance of any proposed demonstration or special event. This 48-hour period will be waived by the Regional Director if the size and nature of the activity will not reasonably require the commitment of park resources or personnel in excess of that which are normally available or which can reasonably be made available within the necessary time period. The Regional Director shall accept permit applications only during the hours of 8 a.m.–4 p.m., Monday through Friday, holidays excepted. All demonstration applications, except those seeking waiver of the numerical limitations applicable to Lafayette Park (paragraph (b)(5)(ii) of this section), are deemed granted, subject to all limitations and restrictions applicable to said park area, unless denied within 24 hours of receipt. However, where a permit has been granted, or is deemed to have been granted pursuant to this subsection, the Regional Director may revoke that permit pursuant to paragraph (b)(6) of this section.

(i) *White House Area.* No permit may be issued authorizing demonstrations in the White House area, except for the White House sidewalk, Lafayette Park and the Ellipse. No permit may be issued authorizing special events, except for the Ellipse, and except for annual commemorative wreath-laying ceremonies relating to the statutes in Lafayette Park.

(ii) *Other park areas.* No permits may be issued authorizing demonstrations or

special events in the following other park areas:

(A) The Washington Monument, which means the area enclosed within the inner circle that surrounds the Monument's base, except for the official annual commemorative Washington birthday ceremony.

(B) The Kennedy Center, which means the area under the administration of the National Park Service within the building known as the John F. Kennedy Center for the Performing Arts and includes the roof terrace and outdoor terraces on the north, south, and west portions of the institution as well as the driveways leading to the parking garages. For the purpose of this section, the term "Kennedy Center" does not include the east building sidewalk, outdoor plaza or grassy areas at the Center. Demonstrations are permitted on those latter areas *provided* entrances to the Center are not obstructed or vehicular traffic in its vicinity is not impeded.

(C) The Lincoln Memorial, which means that portion of the park area which is on the same level or above the base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level, except for the official annual commemorative Lincoln birthday ceremony.

(D) The Jefferson Memorial, which means the circular portion of the Jefferson Memorial enclosed by the outermost series of columns, and all portions on the same levels or above the base of those columns, except for the official annual commemorative Jefferson birthday ceremony.

(E) The Vietnam Veterans Memorial, except for official annual Memorial Day and Veterans Day commemorative ceremonies. Note: The darkened portions of the diagrams at the conclusion of paragraph (b) of this section show the areas where demonstrations or special events are prohibited.

(4) *Permit Processing.* (i) Permit applications for demonstrations and special events are processed in order of receipt, and the use of a particular area is allocated in order of receipt of fully executed applications, subject to the limitations set forth in this section. *Provided, however,* that the following national celebration events have priority use of the particular park area during the indicated period:

(A) *Christmas Pageant of Peace.* In the oval portion of the Ellipse only, during approximately the last three weeks in December.

(B) *Cherry Blossom Festival.* In the Japanese Lantern area adjacent to the Tidal Basin and on the Ellipse and the Washington Monument Grounds adjacent to Constitution Avenue, between 15th & 17th Streets, NW., for six days usually in late March or early April.

(C) *Fourth of July Celebration.* On the Washington Monument Grounds.

(D) *Festival of American Folklife.* In the area bounded on the south by Jefferson Drive, NW.; on the north by Madison Drive, NW.; on the east by 7th Street, NW.; on the west by 14th Street, NW., for a two-week period in approximately late June and early July.

(E) *Columbus Day Commemorative Wreath-Laying.* At the Columbus statue on the Union Plaza on Columbus Day.

(F) *Inaugural Ceremonies.* The White House sidewalk and Lafayette Park, exclusive of the northeast quadrant, for the exclusive use of the Inaugural Committee on Inauguration Day.

(ii) Other demonstrations or special events are permitted in park areas under permit to the National Celebration Events listed in this paragraph to the extent that they do not significantly interfere with the National Celebration Events. No activity containing structures is permitted closer than 50 feet to another activity containing structures without the mutual consent of the sponsors of those activities.

(iii) A permit may be denied in writing by the Regional Director upon the following grounds:

(A) A fully executed prior application for the same time and place has been received, and a permit has been or will be granted authorized activities which do not reasonably permit multiple occupancy of the particular area; in that event, an alternate site, if available for the activity, will be proposed by the Regional Director to the applicant.

(B) It reasonably appears that the proposed demonstration or special event will present a clear and present danger to the public safety, good order, or health.

(C) The proposed demonstration or special event is of such a nature or duration that it cannot reasonably be accommodated in the particular area applied for; in that event, the Regional Director shall propose an alternate site to the applicant, if available for the activity; in this connnection, the Regional Director shall reasonably take into account possible damage to the park, including trees, shrubbery, other plantings, park installations and statues.

(D) The application proposes activities contrary to any of the provisions of this section or other applicable law or regulation.

(5) *Permit Limitations.* Issuance of a permit is subject to the following limitations:

(i) No more than 750 persons are permitted to conduct a demonstration on the While House sidewalk at any one time.

(ii) No more than 3,000 persons are permitted to conduct a demonstration in Lafayette Park at any one time.

(A) The Regional Director may waive the 3,000 person limitation for Lafayette Park and/or the 750 person limitation for the White House Sidewalk upon a showing by the applicant that good faith efforts will be made to plan and marshal the demonstration in such a fashion so as to render unlikely any substantial risk of unreasonable disruption or violence.

(B) In making a waiver determination, the Regional Director shall consider and the applicant shall furnish at least ten days in advance of the proposed demonstration, the functions the marshals will perform, the means by which they will be identified, and their method of communication with each other and the crowd. This requirement will be satisfied by completion and submission of the same form referred to in paragraph (b)(3) of this section.

(iii) No permit will be issued for a demonstration on the White House Sidewalk and in Lafayette Park at the same time except when the organization, group, or other sponsor of such demonstration undertakes in good faith all reasonable action, including the provision of sufficient marshals, to insure good order and self-discipline in conducting such demonstration and any necessary movement of persons, so that the numerical limitations and waiver provisions described in paragraphs (b)(5) (i) and (ii) of this section are observed.

(iv) No permit will be issued authorizing demonstrations or special events in excess of the time periods set out below: *Provided, however,* that the stated periods will be extended for demonstrations only, unless another application requests use of the particular area and said application preclues double occupancy:

(A) White House area, except the Ellipse: Seven days.

(B) The Ellipse and all other park areas: Three weeks.

(v) The Regional Director may restrict demonstrations and special events weekdays (except holidays) between the hours of 7:00 to 9:30 a.m. and 4:00 to 6:30 p.m. if it reasonably appears necessary to avoid unreasonable interference with rush-hour traffic.

(vi) Special events are not permitted unless approved by the Regional Director. In determining whether to approve a proposed special event, the Regional Director shall consider and base the determination upon the following criteria:

(A) Whether the objectives and purposes of the proposed special event relate to and are within the basic mission and responsibilities of the National Capital Region, National Park Service.

(B) Whether the park area requested is reasonably suited in terms of accessibility, size, and nature of the proposed special event.

(C) Whether the proposed special event can be permitted within a reasonable budgetary allocation of National Park Service funds considering the event's public appeal, and the anticipated participation of the general public therein.

(D) Whether the proposed event is duplicative of events previously offered in National Capital Region areas or elsewhere in or about Washington, DC.

(E) Whether the activities contemplated for the proposed special event are in conformity with all applicable laws and regulations.

(vii) In connection with permitted demonstrations or special events, temporary structures may be erected for the purpose of symbolizing a message or meeting logistical needs such as first aid facilities, lost children areas or the provision of shelter for electrical and other sensitive equipment or displays. Temporary structures may not be used outside designated camping areas for living accommodation activities such as sleeping, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Temporary structures are permitted to the extent described above, provided prior notice has been given to the Regional Director, except that:

(A) Structures are not permitted on the White House sidewalk.

(B) All such temporary structures shall be erected in such a manner so as not to harm park resources unreasonably and shall be removed as soon as practicable after the conclusion of the permitted demonstration or special event.

(C) The Regional Director may impose reasonable restrictions upon the use of temporary structures in the interest of protecting the park areas involved, traffic and public safety considerations, and other legitimate park value concerns.

(D) Any structures utilized in a demonstration extending in duration beyond the time limitations specified in paragraphs (b)(5)(iv) (A) and (B) of this section shall be capable of being removed upon 24 hours notice and the site restored, or, the structure shall be secured in such a fashion so as not to interfere unreasonably with use of the park area by other permittees authorized under this section.

(E) Individuals or groups of 25 persons or fewer demonstrating under the small group permit exemption of paragraph (b)(2)(i) of this section are not allowed to erect temporary structures other than small lecterns or speakers' platforms. This provision does not restrict the use of portable signs or banners.

(viii) No signs or placards shall be permitted on the White House sidewalk except those made of cardboard, posterboard or cloth having dimensions no greater than three feet in width, twenty feet in length, and one-quarter inch in thickness. No supports shall be permitted for signs or placards except those made of wood having cross-sectional dimensions no greater than three-quarter of an inch by three-quarter of an inch. Stationary signs or placards shall be no closer than three feet from the White House sidewalk fence. All signs and placards shall be attended at all times that they remain on the White House sidewalk. Signs or placards shall be considered to be attended only when they are in physical contact with a person. No signs or placards shall be tied, fastened, or otherwise attached to or leaned against the White House fence, lamp posts or other structures on the White House sidewalk. No signs or placards shall be held, placed or set down on the center portion of the White House sidewalk, comprising ten yards on either side of the center point on the sidewalk; *Provided, however,* that individuals may demonstrate while carrying signs on that portion of the sidewalk if they continue to move along the sidewalk.

(ix) No parcel, container, package, bundle or other property shall be placed or stored on the White House sidewalk or on the west sidewalk of East Executive Avenue, NW., between Pennsylvania Avenue, NW., and E Street, NW., or on the north sidewalk of E Street, NW., between East and West Executive Avenues, NW.; *Provided, however,* that such property, except structures, may be momentarily placed or set down in the immediate presence of the owner on those sidewalks.

(x) Stages and sound amplification may not be placed closer than one hundred (100) feet from the boundaries of the Vietnam Veterans Memorial and sound systems shall be directed away from the memorial at all times.

(xi) Sound amplification equipment is allowed in connection with permitted demonstrations or special events, provided prior notice has been given to the Regional Director, except that:

(A) Sound amplification equipment may not be used on the White House sidewalk, other than hand-portable sound amplification equipment which the Regional Director determines is necessary for crowd-control purposes.

(B) The Regional Director reserves the right to limit the sound amplification equipment so that it will not unreasonably disturb nonparticipating persons in, or in the vicinity of, the area.

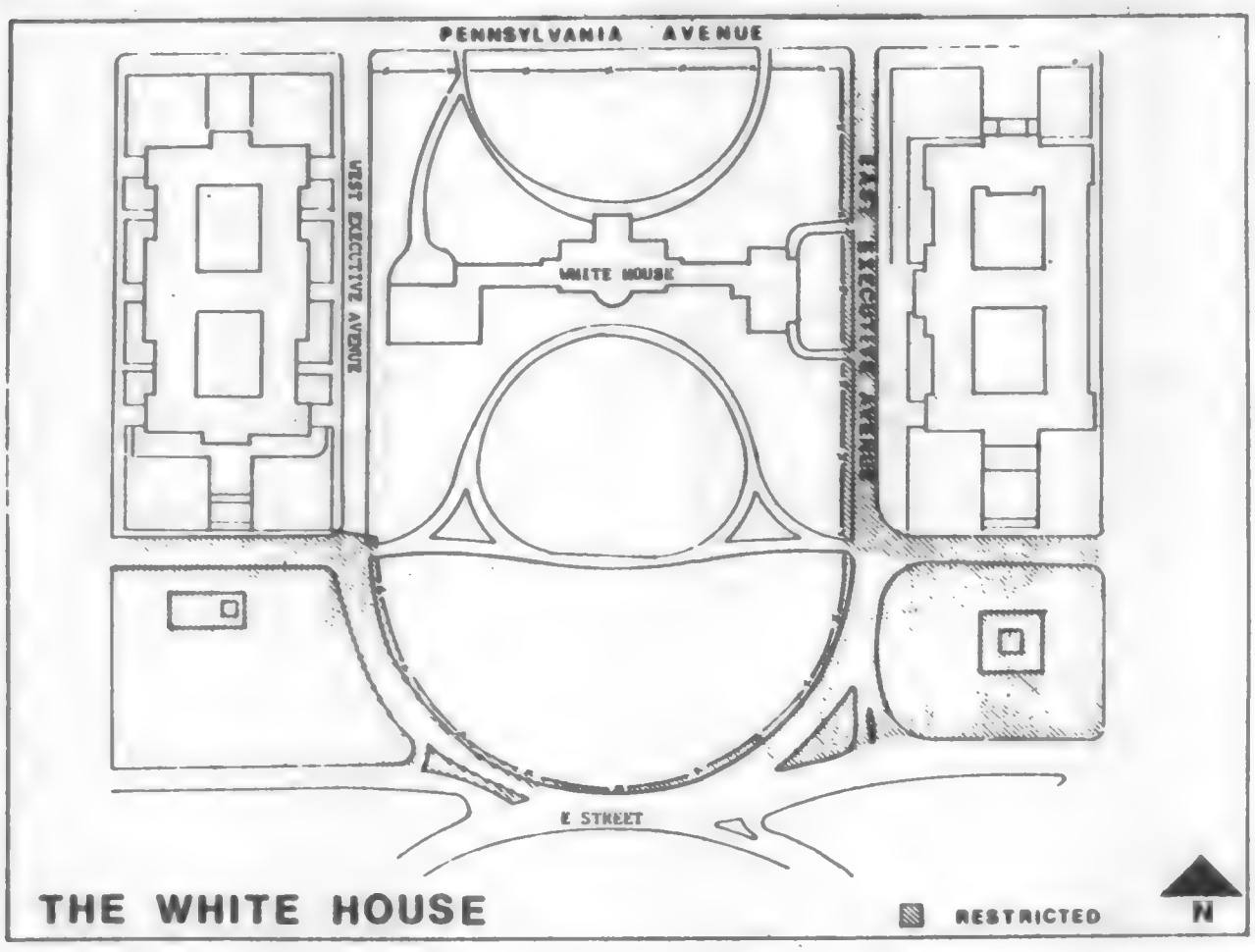
(xii) A permit may contain additional reasonable conditions and additional time limitations, consistent with this section, in the interest of protecting park resources, the use of nearby areas by other persons, and other legitimate park value concerns.

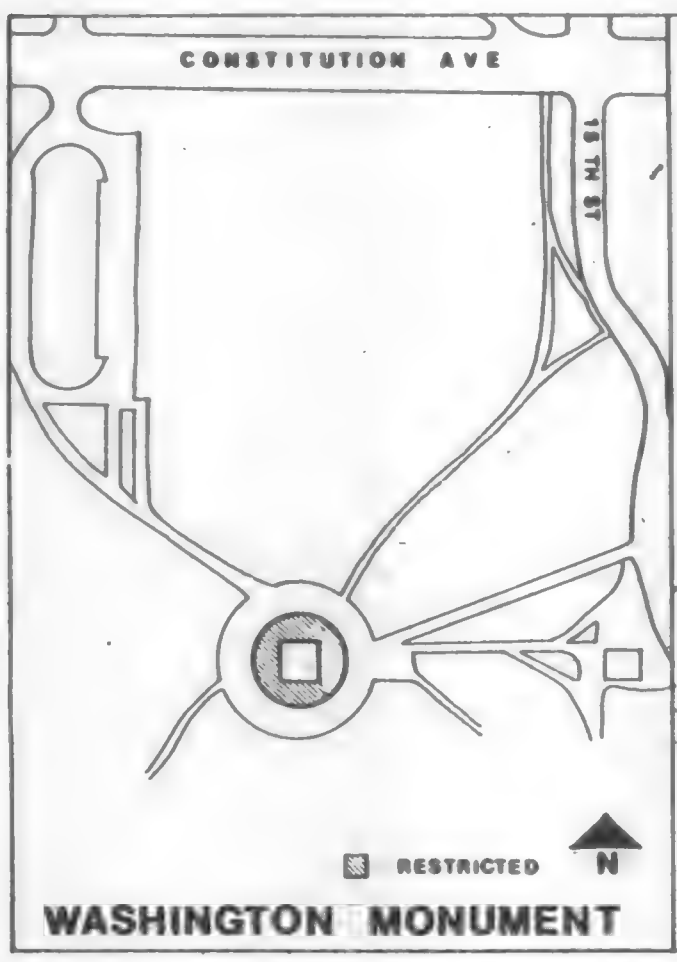
(xiii) A permit issued under this section does not authorize activities outside of areas under administration by the National Capital Region. Applicants may also be required to obtain a permit from the District of Columbia or other appropriate governmental entity for demonstrations or special events sought to be conducted either wholly or in part in other than park areas.

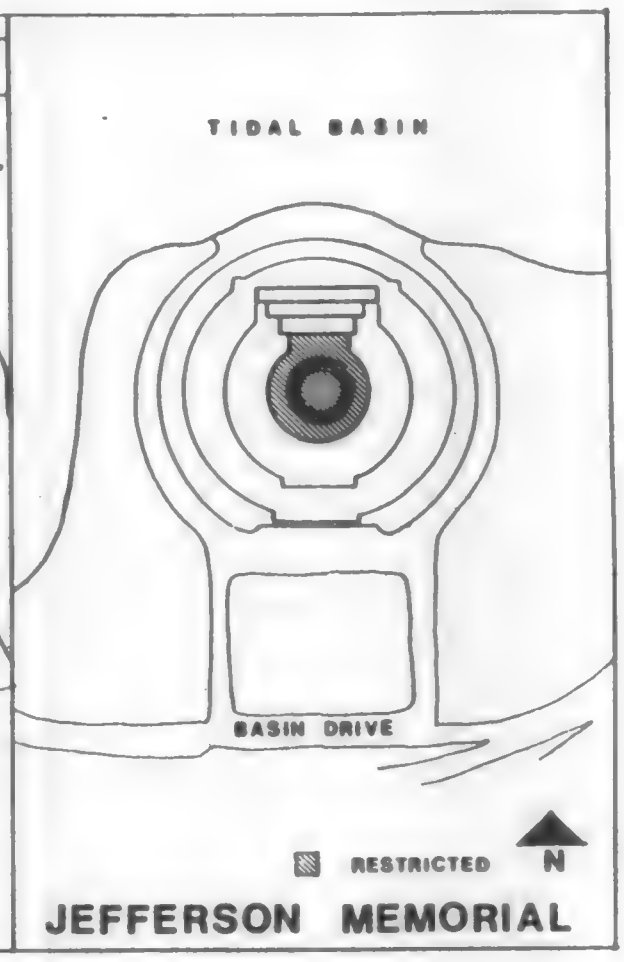
(6) *Permit Revocation.* A permit issued for a demonstration is revocable only upon a ground for which an application therefor would be subject to denial under paragraphs (b) (4) or (5) of this section. Any such revocation, prior to the conduct of the demonstration, shall be in writing and shall be approved by the Regional Director. During the conduct of a demonstration, a permit may be revoked by the ranking U.S. Park Police supervisory official in charge if continuation of the event presents a clear and present danger to the public safety, good order or health or for any violation of applicable law or regulation. A permit issued for a special event is revocable, at any time, in the reasonable discretion of the Regional Director.

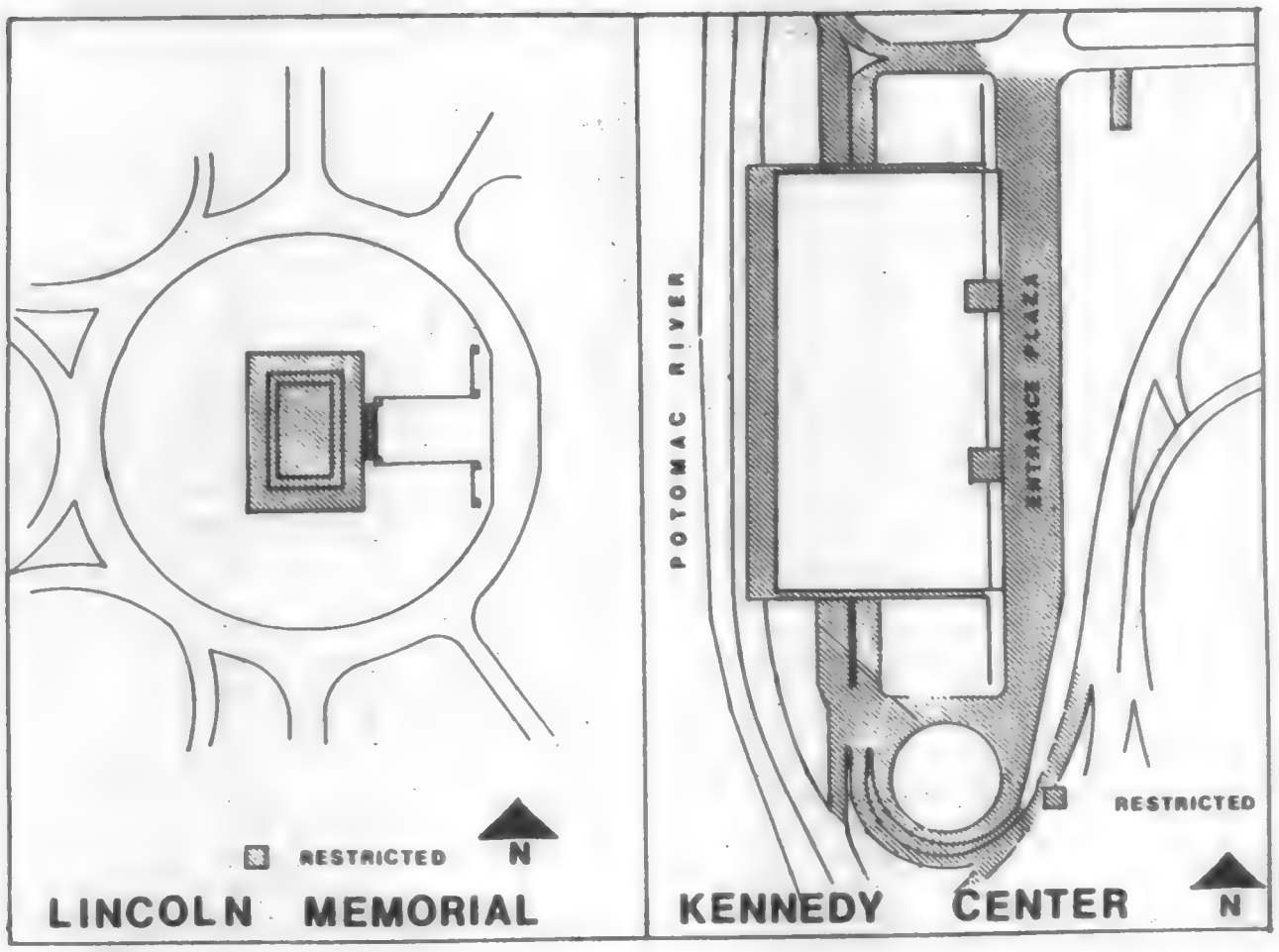
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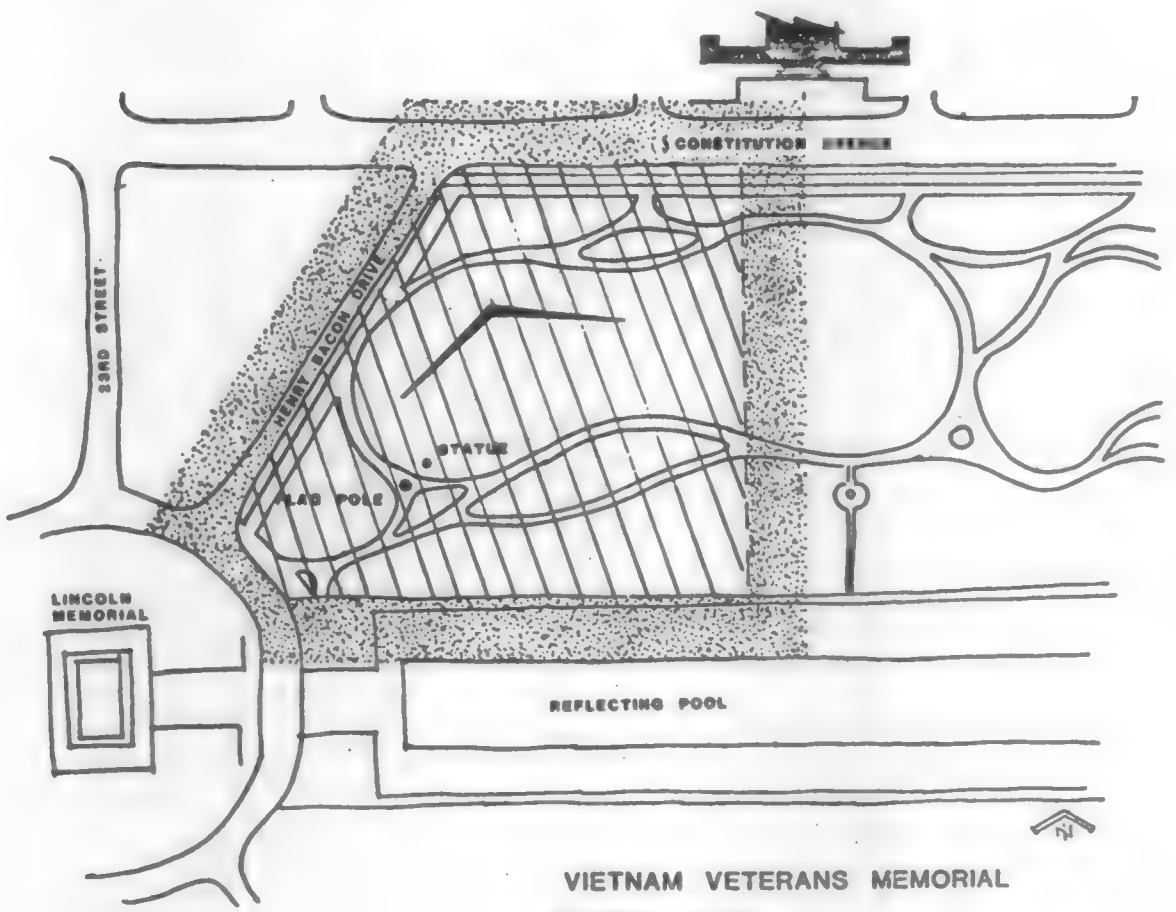
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CONSTITUTION AVE
15TH ST
RESTRICTED
N
WASHINGTON MONUMENT


TIDAL BASIN
BASIN DRIVE
RESTRICTED
N
JEFFERSON MEMORIAL





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(c) *Soliciting.* Soliciting or demanding gifts, money, goods or services is prohibited.

(d) *Camping.* Camping is defined as the use of park land for living accommodation purposes such as sleeping activities, or making preparations to sleep (including the laying down of bedding for the purpose of sleeping), or storing personal belongings, or making any fire, or using any tents or shelter or other structure or vehicle for sleeping or doing any digging or earth breaking or carrying on cooking activities. The above-listed activities constitute camping when it reasonably appears, in light of all the circumstances, that the participants, in conducting these activities, are in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any other activities in which they may also be engaging. Camping is permitted only in areas designated by the Superintendent, who may establish limitations of time allowed for camping in any public campground. Upon the posting of such limitations in the campground, no person shall camp for a period longer than that specified for the particular campground.

(e) *Sales.* (1) No sales shall be made nor admission fee charged and no article may be exposed for sale without a permit except as noted in the following paragraphs.

(2) The sale or distribution of newspapers, leaflets, and pamphlets, conducted without the aid of stands or structures, is allowed in all park areas open to the general public without a permit except the following areas where such sale or distribution is prohibited:

(i) Lincoln Memorial area which is on the same level or above the base of the large marble columns surrounding the structure, and the single series of marble stairs immediately adjacent to and below that level.

(ii) Jefferson Memorial area enclosed by the outermost series of columns, and all portions on the same levels or above the base of these columns.

(iii) Washington Monument area enclosed within the inner circle that surrounds the Monument's base.

(iv) The interior of all park buildings, including, but not limited to, those portions of the Kennedy Center and Ford's Theatre administered by the National Park Service.

(v) The White House Park area bounded on the north by H Street, NW.; on the south by Constitution Avenue, NW.; on the west by 17th Street, NW.; and on the east by 15th Street, NW.; except for Lafayette Park, the White House sidewalk (the south Pennsylvania Avenue, NW. sidewalk between East and West Executive Avenues) and the Ellipse.

(vi) Vietnam Veterans Memorial area extending to and bounded by the south curb of Constitution Avenue on the north, the east curb of Henry Bacon Drive on the west, the north side of the north Reflecting Pool walkway on the south and a line drawn perpendicular to Constitution Avenue two hundred (200) feet from the east tip of the memorial wall on the east (this is also a line extended from the east side of the western concrete border of the steps to the west of the center steps to the Federal Reserve Building extending to the Reflecting Pool walkway).

(3) The sale and distribution of newspapers, leaflets and pamphlets from fixed location stands is permitted within the Kennedy Center, provided a permit to do so has been issued by the General Manager: *And provided further,* that the printed matter is not primarily commercial advertising.

(i) An application for such a permit must set forth the name of the applicant; the name of the organization, if any; the date, time, duration, and location of the proposed sale or distribution; and the number of participants.

(ii) The General Manager shall, without unreasonable delay, issue a permit on proper application unless:

(A) A prior application for a permit for the same time and location has been made which has been or will be granted and the activities authorized by that permit do not reasonably permit multiple occupancy of the particular area;

(B) The sale of distribution will present a clear and present danger to the public health or safety;

(C) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for;

(D) The location applied for has not been designated as available for the sale or distribution of printed matter; or

(E) The activity would constitute a violation of an applicable law or regulation.

(iii) If an application for a permit is denied, the General Manager shall so inform the applicant in writing, with the reason(s) for the denial clearly set forth.

(iv) The General Manager shall designate on a map, which shall be available for inspection in the Office of the General Manager, the locations within the Kennedy Center that are available for the sale or distribution of printed matter. Locations may be designated as not available only if the sale or distribution of printed matter would:

(A) Cause injury or damage to park resources;

(B) Unreasonably impair the atmosphere of peace and tranquility maintained in commemorative areas;

(C) Unreasonably interfere with interpretive, living history, visitor services, or other program activities or with the administrative functions of the National Park Service; or

(D) Substantially impair the operation of public use facilities or services of concessioners or contractors.

(v) The permit may contain such conditions as are reasonably consistent with protection and use of the park area.

(vi) No permit will be issued for a period in excess of 14 consective days: *Provided,* That permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(vii) Persons engaged in the sale or distribution of printed matter under paragraph (e) of this section shall not conduct activities from other than a stand in the locations designated, or hawk or call out from the stand. Each stand shall bear a sign identifying the sponsor, in a form approved by the General Manager.

(viii) The sale or distribution of printed matter without a permit, or in violation of the terms or conditions of a permit, is prohibited.

(ix) A permit may be revoked under any of those conditions, as listed in paragraph (e)(3)(ii) of this section, which constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation.

(4) Persons engaged in the sale or distribution of printed matter under this section shall not obstruct or impede pedestrians or vehicles, harass park visitors with physical contact, misrepresent the purposes or affiliations of those engaged in the sale or distribution, or misrepresent whether the printed matter is available without cost or donation.

(f) *Information Collection.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1024–0021.

The information is being collected to provide notification to park managers, United States Park Police, Metropolitan Police, and the Secret Service of the plans of organizers of large-scale demonstrations and special events in order to assist in the provision of security and logistical support. This information will be used to further those purposes. The obligation is required to obtain a benefit.

c. By adding a new § 7.99 to read as follows:

§ 7.99 National Capital Region Parks.

(a) *Applicability of regulations.* This section applies to all park areas administered by National Capital Region in the District of Columbia and in Arlington, Fairfax, Loudoun, Prince William, and Stafford Counties and the City of Alexandria in Virginia and Prince Georges, Charles, Anne Arundel, and Montgomery Counties in Maryland and to other federal reservations in the environs of the District of Columbia, policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations, pursuant to the provisions of the act of March 17, 1948 (62 Stat. 81).

(b) *Athletics.*—(1) *Permits for organized games.* Playing baseball, football, croquet, tennis, and other organized games or sports except pursuant to a permit and upon the grounds provided for such purposes, is prohibited.

(2) *Wet grounds.* Persons holding a permit to engage in athletics at certain times and at places authorized for this use are prohibited from exercising the privilege of play accorded by the permit if the grounds are wet or otherwise unsuitable for play without damage to the turf.

(3) *Golf and tennis; fees.* No person may use golf or tennis facilities without paying the required fee, and in compliance with conditions approved by the Regional Director. Trespassing, intimidating, harassing or otherwise interfering with authorized golf players, or interfering with the play of tennis players is prohibited.

(4) *Ice skating.* Ice skating is prohibited except in areas and at times designated by the Superintendent. Skating in such a manner as to endanger the safety of other persons is prohibited.

(c) *Model planes.* Flying a model powered plane from any park area is prohibited without a permit.

(d) *Fishing.* Unless otherwise designated, fishing in a manner authorized under applicable State law is allowed.

(e) *Swimming.* Bathing, swimming or wading in any fountain or pool except where officially authorized is prohibited. Bathing, swimming or wading in the Tidal Basin, the Chesapeake and Ohio Canal, or Rock Creek, or entering from other areas covered by this part the Potomac River, Anacostia River, Washington Channel or Georgetown Channel, except for the purpose of saving a drowning person, is prohibited.

(f) *Commercial vehicles and common carriers.*—(1) *Operation in park areas prohibited; exceptions.* Commercial vehicles and common carriers, loaded, or unloaded, are prohibited on park roads and bridges except on the section of Constitution Avenue east of 19th Street or on other roads and bridges designated by the Superintendent, or when authorized by a permit or when operated in compliance with paragraph (f)(2) of this section.

(c) *George Washington Memorial Parkway; passenger-carrying vehicles; permits; fees.* (i) Taxicabs licensed in the District of Columbia, Maryland, or Virginia, are allowed on any portion of the George Washington Memorial Parkway without a permit or payment of fees.

(ii) Passenger-carrying vehicles for hire or compensation, other than taxicabs, having a seating capacity of not more than fourteen (14) passengers, excluding the operator, when engaged in services authorized by concession agreement to be operated from the Washington National Airport and/or Dulles International Airport, are allowed on any portion of the George Washington Memorial Parkway in Virginia without a permit or payment of fees. However, when operating on a sightseeing basis an operator of such a vehicle shall comply with paragraph (f)(2)(iv) of this section.

(iii) Passenger-carrying vehicles for hire or compensation, other than those to which paragraphs (f)(2) (i) and (ii) of this section apply, are allowed on the George Washington Memorial Parkway upon issuance of a permit by the Regional Director, under the following conditions:

(A) When operating on a regular schedule: to provide passenger service on any portion between Mount Vernon and the Arlington Bridge, or provide limited direct nonstop passenger service from Key Bridge to a terminus at the Central Intelligence Agency Building at Langley, Virginia, and direct return, or to provide limited direct nonstop passenger service from the interchange at Route 123 to a terminus at the Central Intelligence Agency Building at Langley, Virginia, and direct return. Permittees shall file a schedule of operation and all schedule changes with the Regional Director showing the number of such vehicles and total miles to be operated on the parkway.

(B) When operating nonscheduled direct, nonstop service primarily for the accommodation of air travelers arriving at or leaving from Dulles International Airport or Washington National Airport: between Dulles International Airport and a terminal in Washington, DC, over the George Washington Memorial Parkway between Virginia Route 123 and Key Bridge; or between Washington National Airport and a terminal in Washington, DC, over the George Washington Memorial Parkway between Washington National Airport and 14th Street Bridge; or between Dulles International Airport and Washington National Airport over the George Washington Memorial Parkway between Virginia Route 123 and Washington National Airport. Permittees shall file a report of all operations and total miles operated on the George Washington Memorial Parkway with the Regional Director.

(C) Permits are issued to operators of vehicles described in paragraphs (f)(2)(iii)(A) and (B) normally for a period of one year, effective from July 1 until the following June 30, at the rate of one cent (1¢) per mile for each mile each such vehicle operates upon the parkway. Payment shall be made quarterly within twenty (20) days after the end of quarter based upon a certification by the operator of the total mileage operated upon the parkway.

(iv) Sightseeing passenger-carrying vehicles for hire or compensation other than taxicabs may be permitted on the George Washington Memorial Parkway upon issuance of a permit by the Regional Director, to provide sightseeing service on any portion of the parkway. Permits may be issued either on an annual basis for a fee of three dollars ($3.00) for each passenger-carrying seat in such vehicle; on a quarterly basis for a fee of seventy-five cents (75¢) per seat; or on a daily basis at the rate of one dollar ($1.00) per vehicle per day.

(3) *Taxicabs.*—(i) *Operations around Memorials.* Parking, except in designated taxicab stands, or cruising on the access roads to the Washington Monument, the Lincoln Memorial, the Jefferson Memorial, and the circular roads around the same, of any taxicab or hack without passengers is prohibited. However, this section does not prohibit the operation of empty cabs responding to definite calls for hack service by passengers waiting at such Memorials, or of empty cabs which have just discharged passengers at the entrances of the Memorials, when such operation is incidental to the empty

cabs' leaving the area by the shortest route.

(ii) *Stands.* The Superintendent may designate taxicab stands in suitable and convenient locations to serve the public.

(4) The provisions of this section prohibiting commercial trucks and common carriers do not apply within other Federal reservations in the environs of the District of Columbia and do not apply on that portion of Suitland Parkway between the intersection with Maryland Route 337 and the end of the Parkway at Maryland Route 4, a length of 0.6 mile.

PART 60—NATIONAL CAPITAL PARKS REGULATIONS [REMOVED]

5. Part 50 is removed.

Dated: October 31, 1985.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-29556 Filed 12-18-85; 8:45 am]

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Thursday
December 19, 1985

Part IV

Environmental Protection Agency

40 CFR Part 766

Polyhalogenated Dibenzo-p-Dioxins/ Dibenzofurans; Testing and Reporting Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 766

[OPTS-83002; FRL-2916-4]

Polyhalogenated Dibenzo-p-Dioxins/Dibenzofurans; Testing and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This document proposes, under section 4 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2603, to require manufacturers and importers of 14 commercial organic chemicals to test for the presence of certain chlorinated and brominated dibenzo-p-dioxins (dioxins) and dibenzofurans (furans). In addition, this testing will be required for 20 other commercial organic chemicals not currently manufactured or imported commercially in the United States if their manufacture or importation should resume.

EPA also proposes, under section 8(a) of TSCA, to require manufacturers and importers of the 14 commercially produced chemicals to submit existing test data on contamination of these chemicals with dioxins or furans and to require similar information on the 20 other chemicals should commercial manufacture or importation resume. EPA also proposes to require under section 8(d) that all chemical manufacturers submit health and safety studies on any dibenzo-p-dioxins and/or dibenzofurans.

If the testing proposed under this rule, or other valid existing test data, shows that these commercial chemicals contain dioxins at concentrations at or above 0.1 parts per billion (ppb) per congener and/or furans at or above 1.0 ppb per congener, EPA proposes to require, with respect to the chemicals the submission of: (1) Production, process, use, exposure, and disposal data under section 8(a) of TSCA; (2) unpublished health and safety studies under section 8(d) of TSCA; and (3) records of allegations of significant adverse reactions both to the chemicals and to the dioxins/furans under section 8(c) of TSCA.

This rule also proposes, under section 8(a) of TSCA, to require the submission of production, process, use, exposure, and disposal data by manufacturers of chemical products made from any of 12 precursor chemicals to determine whether there is further need for dioxin and furan testing of the chemical products made from these precursor chemicals.

DATES: The public is asked to submit written comments on or before February 18, 1986. If persons request time for oral comment by February 3, 1986, EPA will hold a public meeting on March 4, 1986, on this rule in Washington, DC. For further information on arranging to speak at the meeting, contact the TSCA Assistance Office.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Pesticides and Toxin Substances, Environmental Protection Agency, 401 M St. SW, Rm. E-201, Washington, DC 20460.

Comments should include the docket number OPTS-83002. Non-CBI comments received on this Notice will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107, at the above address.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. Toll free: (800-424-9065); In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

EPA has long recognized the potential public health and environmental significance of 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD). 2,3,7,8-TCDD has been described as one of the most toxic substances known to man. It exhibits delayed biological response in many species and is lethal at exceptionally low doses to aquatic organisms, birds, and mammals. It has been shown to be carcinogenic, teratogenic, fetotoxic, and acnegenic. In addition, 2,3,7,8-TCDD has been shown to adversely affect the immune response in mammals. EPA also recongizes the potential health significance of a variety of tetra- through hepta- halogenated dibenzp-p-dioxins and dibenzofurans (HDDs and HDFs) that are structurally related to 2,3,7,8-TCDD in that they are chlorinated or brominated, at the 2,3,7 and 8 positions on the molocular structure (Reference 4). These dioxins and furans, as well as 2,3,7,8-TCDD, are the subjects of this rulemaking. Hereafter, unless otherwise stated, this notice will refer to tetra- through hepa- chlorinated and brominated dioxins and furans substituted at the 2,3,7 and 8 positions as a group by using, interchangeably, the terms "2,3,7,8-substituted dioxins and furans," "2,3,7,8-substituted chlorinated and brominated dioxins and furans," and "2,3,7,8-substituted HDDs/HDFs."

The 2,3,7,8-substituted chlorinated dioxins and furans have been measured in a number of commercial chemicals (Ref. 37). EPA has reason to believe that they also appear in a number of other commercial chemicals. Further, because of the extreme toxicity of 2,3,7,8-TCDD and the toxicological similarity to 2,3,7,8-TCDD of the other 2,3,7,8-substituted chlorinated and brominated dioxins and furans, there is evidence that even at very low levels all the 2,3,7,8-substituted chlorinated and brominated dioxins and furans may be hazardous to health and the environment.

EPA has long been concerned about polychlorinated dioxins (PCDDs) and furans (PCDFs) as shown by the number of EPA activities completed, underway, or planned for the analysis of both the toxicity of and potential for human and environmental exposures to these chemicals. EPA's National Dioxin Strategy (Ref. 29), issued in December 1983, offers a comprehensive overview of EPA's past, present, and planned activities in this area. EPA's past regulatory efforts on dioxins and furans focused on a number of products and processes that could generate chlorinated dioxins and furans or could otherwise lead to human or environmental exposure to these substances. The activities of concern have been 2,4,5-trichlorophenol production and use (a notice of intent to cancel registrations of pesticides containing 2,4,5-trichlorophenol was published in the **Federal Register** of October 18, 1983 (48 FR 48434)); pentachlorophenol use (a notice of intent to cancel registrations for pesticides containing pentachlorophenol was published in the **Federal Register** of July 13, 1984 (49 FR 28666)); fires involving polychlorinated biphenyls (a final rule was published in the **Federal Register** of July 17, 1985 (50 FR 29170) placing additional conditions and restrictions on the use of PCB transformers, including a phaseout requirement); and the cleanup of PCDD disposal sites (several sites in southeastern Missouri are being cleaned up, and work is under way to clean up several sites where 2,4,5-T was manufactured and disposed). The Agency also completed action to list as hazardous wastes certain wastes that could contain trace amounts of PCDDs and PCDFs. The listing was published in the **Federal Register** of January 14, 1985

(50 FR 1978). The rule includes specific requirements for disposal of these wastes, including incineration at a Destruction Removal Efficiency of 99.9999 percent.

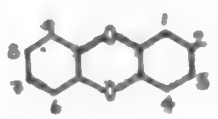
On October 22, 1984, the Environmental Defense Fund and the National Wildlife Federation filed a citizen's petition under section 21 of TSCA, 15 U.S.C. 2620. The petition (Ref. 8) requested that EPA commence certain regulatory actions related to HDDs and HDFs and initiate related investigations and research.

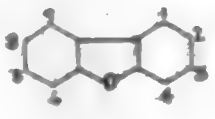
More specifically, the petitioners asked EPA to use its authority under TSCA to analyze aggregate hazards posed by multimedia release of specific 2,3,7,8-substituted congeners of dioxins and furans and to take action under TSCA to commence an integrated, multi-media effort to reduce the risks from the release of these chemicals.

Although the petitioners acknowledged that EPA in its Dioxin Strategy (Ref. 29) has recognized the need for a multi-media approach in cleaning up contamination, they believe that EPA has not taken sufficient action to prevent future contamination from the continued generation of HDDs and HDFs as contaminants during the manufacture of other chemicals and materials. The petitioners requested that EPA take a number of specific regulatory and information-gathering steps under TSCA to regulate generically, as a class of chemicals, the specified congeners; i.e., the 2,3,7,8-HDDs/HDFs.

EPA decided that, in general, it would deny the request to regulate the dioxins and furans under a multi-media TSCA approach for two reasons: (1) The Agency was already proceeding extensively to gather data and initiate regulation under other, more appropriate statutes, and (2) EPA did not have the data necessary to make a finding of unreasonable risk under section 6 of TSCA. EPA did decide, however, to grant part of the petition and initiated this rulemaking under sections 4 and 8 of TSCA to gather additional information on: (1) The presence of 2,3,7,8-substituted congeners of chlorinated and brominated dioxins and furans as contaminants in commercial chemicals; (2) the levels of contamination; (3) the amount of 2,3,7,8-substituted HDDs and HDFs produced, considering the production volume of the contaminated chemicals; (4) the reaction conditions and parameters which produced the 2,3,7,8-substituted HDDs/HDFs; (5) the end uses of the contaminated chemicals; (6) the routes of human and environmental exposure to the contamined chemicals; (7) the number of people potentially exposed to the contaminated chemicals; (8) significant adverse reactions following exposures to the chemicals or the contaminants; and (9) unpublished health and safety studies on the chemicals or the contaminants. Once these data are submitted, EPA will review them and decide whether additional regulatory action is needed under section 6 of TSCA to limit or control the further manufacture, processing, distribution in commerce, and/or use of chemicals contaminated with 2,3,7,8-substituted chlorinated or brominated dioxins and furans.

The specific congeners referred to in this rule as 2,3,7,8-substituted congeners of chlorinated or brominated dioxins and furans are the 15 2,3,7,8-substituted tetra-, penta-, hexa-, and heptachlorodibenzo-p-dioxins and dibenzofurans, and the 15 2,3,7,8-substituted tetra-, penta-, hexa-, and heptabromodibenzo-p-dioxins and dibenzofurans; i.e., those substituted at the 2,3,7, and 8 positions in the molecules diagrammed below:





II. Summary of Proposed Rule

A. Testing Requirements Under Section 4

Under section 4 of TSCA, explained below in Unit IV, EPA may require the contaminant testing of chemicals in order to develop data relevant to assessing the chemicals' risks to health and the environment. EPA has determined that it is appropriate for manufacturers of the 14 chemicals listed below to test these chemicals for contamination with 2,3,7,8-substituted HDDs/HDFs. The additional 20 chemicals not now in commercial production will be tested if commercial production begins or resumes.

The chemicals proposed for testing are listed below along with their Chemical Abstract Services (CAS) registry number, where available:

CAS No.	Chemical name
79-94-7	Tetrabromobisphenol-A.
94-75-7	2,4-Dichlorophenoxy acetic acid.
94-82-6	2,4-Dichlorophenoxybutyric acid.
118-75-2	2,3,5,6-Tetrachloro-2,5-cyclohexadiene-1,4-diona.
118-79-6	2,4,6-Tribromophenol.
120-83-2	2,4-Dichlorophenol.
1163-19-5	Decabromodiphenyloxide.
4162-45-2	Tetrabromobisphenol-A-Diethoxylate.
21850-44-2	Tetrabromobisphenol-A-Bis-2,3-dibromopropylether.
25327-89-3	Allyl ether of tetrabromobisphenol-A.
32534-81-9	Pentabromodiphenyloxide.
32536-52-0	Octabromodiphenyloxide.
37853-59-1	1,2-Bis(tribromophenoxy)-ethane.
.....	Tetrabromobisphenol-A diacrylate.

The following additional chemicals will be tested if their commercial manufacture or importation resumes:

CAS No.	Chemical name
79-95-8	Tetrachlorobisphenol-A.
87-10-5	3,4,5-Tribromosalicylanilide.
87-65-0	2,6-Dichlorophenol.
95-77-2	3,4-Dichlorophenol.
95-95-4	2,4,5-Trichlorophenol.
99-28-5	2,6-Dibromo-4-nitrophenol.
120-36-5	2[2,4-(Dichlorophenoxy)]-propionic acid.
320-72-9	3,5-Dichlorosalicylic acid.
488-47-1	Tetrabromocatechol.
576-24-9	2,3-Dichlorophenol.
583-78-8	2,5-Dichlorophenol.
609-71-9	Pentabromophenol.
615-58-7	2,4-Dibromophenol.
933-75-5	2,3,5-Trichlorophenol.
1940-42-7	4-Bromo-2,5-dichlorophenol.
2577-72-2	3,5-Dibromosalicylanilide.
3772-94-9	Pentachlorophenyl laurate.
37853-61-5	Bismethylether of tetrabromobisphenol-A.
.....	Alkylamine tetrachlorophenate.
.....	Tetrabromobisphenol-S.

The list of chemicals to be tested does not include those chemicals which meet all the criteria for listing, but which EPA believes have use only as pesticides. TSCA excludes pesticides from the definition of "chemical substances" and generally excludes pesticides from TSCA jurisdiction (TSCA section 3(2)). These chemicals are listed here, and the Agency solicits comments on whether they have uses other than as pesticides. Should other uses be found, these chemicals will be subject to the testing and reporting requirements under this rule.

Cas No.	Chemical name
70-30-4	2,2'-Methylenebis(3,4,6-trichlorophenol).
87-86-5	Pentachlorophenol and salts.
88-06-2	2,4,6-Trichlorophenol.
93-72-1	2,4,5-Trichlorophenoxypropanoic acid, esters and salts.
93-76-5	2,4,5-Tirchlorophenoxyacetic acid, esters and salts.
136-25-4	2,2-Dichloropropanoic acid, 2-(2,4,5-trichlorophenoxy)-ethyl esters.
136-78-7	2-(2,4-Dichlorophenoxyethyl sulfate), sodium salts.
299-84-3	Phosphorothioic acid, 0,0-dimethyl 0-(2,4,5-trichlorophenyl) ester.
1689-84-5	3,5-Dibromo-4-hydroxybenzonitrile.
2200-58-6	3,6-Dichloro-o-anisic acid, dimethylamine salt.
2463-84-5	o-(2-chloro-4-nitrophenyl)o,o-dimethyl-phosphorothioate.
3380-34-5	5-Chloro-2-(2,4-dichlorophenoxy) phenol.

Cas No.	Chemical name
25167-83-3	2,3,4,6-Tetrachlorophenol.
41198-08-7	o-(4-Bromo-2-chlorophenyl)o-ethyl s-propyl phosphorothioate.
	(2,4-Dichlorophenoxy) acetic acid, esters and salts.
	2,4,-Dichlorophenoxybutyric acid, esters and salts.
	2-[2,4-(Dichlorophenoxy)] propionic acid, esters and salts.
	Chlorthiophos.

EPA is proposing that manufacturers required to test under this rule submit for Agency review, within 6 months of the date of promulgation of the final rule (or 6 months after manufacture or importation resumes for those chemicals not in commercial production), chemical matrix-specific test protocols sensitive enough to quantitate to the 0.1 ppb level for the 2,3,7,8–HDDs and the 1.0 ppb level for the 2,3,7,8-HDFs. EPA proposes that these levels of quantitation (LOQ) be achieved through the use of high-resolution gas chromatography (HR GC) with high resolution mass spectral detection (HR MS), unless another method can be demonstrated to reach the target LOQs.

EPA will review the protocols and offer recommendations where necessary to ensure that the methods are capable of accurately and precisely measuring dioxins and dibenzoturans at the targeted levels. During this review process EPA will take into account the possibility that interferences may not allow quantitation to the levels specified and, in those cases where reasonable efforts have been made to reach the target LOQ, the Agency may agree to an analytical protocol which results in a higher LOQ.

To facilitate the development of extraction, cleanup and analysis procedures in these protocols, EPA will provide a guidance document titled, "Guidelines for the Determination of Polyhalogenated Dibenzo-p-dioxins and Dibenzofurans in Commercial Products" (Ref. 20).

Within 1 year of the completion of EPA review of the protocols, test results must be submitted to EPA.

B. Reporting Requirements Under Section 8

Under section 8(a) of TSCA, EPA may require chemical manufacturers and processors to maintain such records and submit such reports as the Agency may reasonably require. EPA has determined that certain chemical manufacturers must submit information to assist the Agency in evaluating the risk from commercial chemicals potentially contaminated with 2,3,7,8-substituted HDDs/HDFs, subject to testing in the section 4 rule. The data required to be submitted under section 8 will be used to complete a comprehensive overview of uses, exposures, risks, and benefits of chemicals containing or potentially containing the 2,3,7,8-substituted HDDs/HDFs in order to assess the need for and nature of future regulatory control measures.

Under section 8(a) of TSCA, EPA is proposing that manufacturers of chemicals listed for testing submit, 90 days after promulgation of the final rule, any available test data, with necessary protocols, which show the results of any testing of their chemicals for concentrations of 2,3,7,8-substituted HDDs/HDFs. EPA will review the data and may exempt the manufacturer from any further testing under section 4 of TSCA.

Also under section 8(a) of TSCA, EPA is proposing to require manufacturers (except small manufacturers) of chemicals using any of the precusor chemicals listed below as feedstocks or intermediates to submit data on production volume, manufacturing process, reaction conditions, exposure, use and disposal for the manufactured chemicals. Precusor chemicals are not themselves contaminated, but can, during further processing and under certain reaction conditions, lead to formation of dioxins and furans in other chemicals. EPA is not aware of the circumstances under which these chemicals are used and the reaction conditions to which they are subject during manufacture of other chemicals. Should EPA learn from its data gathering process that reaction conditions favorable to dioxin and furan formation exist, EPA will review production, use, exposure and disposal data to determine whether a significant risk may exist and whether chemical products should be proposed for testing.

EPA also seeks comment on whether manufacturers of chemicals made from precursor chemicals should also be required to submit existing test data showing that the chemicals have been tested for the presence and levels of 2,3,7,8-HDDs/HDFs.

Precursor Chemicals

Cas No.	Chemical name
87-84-3	Pentabromocyclohexane.
89-64-5	4-Chloro-2-nitrophenol.
92-04-6	2-Chloro-4-phenylphenol.
94-74-6	4-Chloro-o-toloxy acetic acid.
94-81-5	4-(2-Methly-4-chlorophenoxy) butryic acid.
95-56-7	o-Bromophenol.
95-88-5	4-Chlororesorcinol.
95-57-8	o-Chlorophenol.
97-50-7	5-Chloro-2,4-dimethoxyaniline.
99-30-9	2,6-Dichloro-4-nitroaniline.
615-67-8	Chlorohydroquinone.
827-94-1	2,6-Dibromo-4-nitroaniline.

Also under section 8(a) of TSCA, EPA is proposing to require all manufacturers of chemicals tested and found to contain 2,3,7,8-substituted HDDs/HDFs at or above the LOQs to submit to EPA further information on the chemicals, including production volumes, process data, reaction conditions, exposure, use and disposal. This information will be submitted within 90 days after submission of test results showing contamination levels at or above the LOQs.

In addition, for those chemicals tested and found to contain 2,3,7,8-substituted HDDs/HDFs at or above the LOQs, EPA is proposing to require manufacturers to submit records of alleged adverse reactions to the tested chemicals under section 8(c) of TSCA and health and safety data on the tested chemicals under section 8(d) of TSCA. These data must be submitted within 90 days of submission of a test report showing contamination at or above the LOQs.

Also required under section 8 (c) and (d) are allegations of significant adverse reactions to any dibenzo-p-dioxin and any dibenzofuran, and health and safety studies on any dibenzo-p-dioxin and dibenzofuran. Manufacturers of any chemical listed in this rule for testing are required to submit allegations of significant adverse reactions to any dibenzo-p-dioxin and any dibenzofuran within 90 days after promulgation of the final rule. Any chemical manufacturer possessing health and safety studies on any dibenzo-p-dioxin and any dibenzofuran is required to submit such studies within 90 days after promulgation of the final rule.

EPA will require additional process data under section 8(a) of TSCA if the test results on a given chemical are not clear. Publication of a notice in the **Federal Register** may take place and list chemicals for which some manufacturers have shown no contamination and some manufacturers have shown contamination above the LOQs. This notice would request all manufacturers who have not reported process data under section 8(a) of TSCA to do so.

III. Organization of this Proposal

The remainder of this Notice is organized according to the findings EPA must make under section 4 of TSCA and the factors the Agency must take into consideration before it may issue rules under section 8 of TSCA.

Section 4 of TSCA authorizes EPA to require, by rule, that chemical manufacturers or processors conduct tests to develop data relevant to the determination that the chemicals do or

do not present an unreasonable risk of injury to health or the environment. EPA must make a number of findings before it may issue a section 4 rule. Under section 4(a)(1)(A), EPA must find that a chemical may present an unreasonable risk of injury to health or the environment, that there are insufficient data and experience upon which the effects of activities involving the chemical can reasonably be determined or predicted, and that testing of the chemical is necessary to develop such data. Section 4(a)(1)(B) provides that, as an alternative to the unreasonable risk finding described in section 4(a)(1)(A), EPA may find that a chemical will be produced in substantial quantities and that it either enters or may reasonably be expected to enter the environment in substantial quantities or that there may be significant or substantial human exposure to the chemical.

Section 4(b) of TSCA requires EPA to deal with a number of issues before promulgating a testing rule. Section 4(b)(1) sets forth three additional issues to be included in a test rule. First, EPA must identify the chemical substances for which testing is required under the rule. Second, EPA is to include "standards for the development of test data." Such standards are defined in section 3(12) as a description of:

(1) The information relating to characteristics of the chemical for which data are being developed, and

(2) Any analysis that is to be performed on such data. Section 3(12) provides further that "to the extent necessary to assure that the data are reliable and adequate," test standards may include a prescription of:

(1) The manner in which data are to be developed,

(2) The specification of any test protocol or methodology,

(3) Any other requirement necessary to assure reliable and adequate data.

Third, section 4(b) requires EPA to specify the period within which persons required to conduct tests shall submit data to EPA. In determining the standards for development of test data and the period for submission of data, EPA's considerations shall include the relative costs of the various test protocols and methodologies that may be required and the reasonably forseeable availability of facilities and personnel needed to perform the testing required.

Section 4(b)(3)(B) sets forth the criteria for determining who should test. Persons who manufacture or intend to manufacture chemicals must test if EPA finds there are insufficient data upon which the effects of chemical manufacture can reasonably be determined or predicted; persons who process or intend to process chemicals must test if EPA makes such findings with respect to chemical processing; persons who manufacture or process must test if EPA makes such findings with respect to chemical distribution in commerce, use, or disposal. Section 4(b)(3) provides that two or more persons required to test may designate a party to conduct testing on their behalf. This provision, however, is not expected to be used for this rule.

Section 4(c) provides for exemptions from testing to avoid submission of duplicative data from different persons and provides for reimbursement of those who actually submitted the data. As explained further in unit IV.B.6, EPA does not expect these provisions to be used in this rulemaking.

Under section 8 of TSCA, EPA must determine the reasonableness of the information-gathering requirements based on the Agency's data needs and the costs of the regulation.

Accordingly, unit IV discusses most of the findings and considerations under section 4 of TSCA; unit V discusses costs of testing; and unit VI discusses the availability of testing facilities and personnel to perform the proposed testing. Unit VII discusses section 8 determinations. In addition, unit VIII discusses compliance and enforcement, unit IX describes the rulemaking record, and unit X lists references used by EPA in preparing this notice. Other regulatory requirements are discussed in unit XI.

IV. Findings and Considerations

A. Findings Under Section 4(a)

EPA has made three findings under section 4(a)(1)(A) of TSCA with respect to the 34 chemicals listed in unit II above. (These chemicals are also listed in § 766.20 of the proposed rule.) First, EPA finds that the chemicals may present an unreasonable risk of injury to health or the environment because they may be significantly contaminated with 2,3,7,8-substituted HDDs/HDFs, which may be highly toxic even at trace levels. Further, the cost of testing for the presence of these contaminants at the levels proposed by EPA is reasonable given the highly toxic nature of these dioxins/furans. Second, there are insufficient data upon which the effects of these chemicals on health or the environment can reasonably be determined because currently EPA has little, if any, data on the levels of dioxin or furan contamination or whether there is any dioxin or furan contamination. Third, EPA finds that analytical testing is necessary to develop data on contaminant levels because such testing is the only way to determine conclusively whether and at what levels dibenzo-p-dioxins and dibenzofurans are present.

1. Unreasonable Risk

EPA has concluded that 2,3,7,8-substituted HDDs/HDFs may be toxic at very low levels, that they may be present in certain chemicals, that their presence in these chemicals may present an unreasonable risk to humans and the environment, and that it is feasible in certain situations to alter process conditions to minimized their formation. In order to protect against the risk from HDDs and HDFs in a reasonable manner, it is necessary to first know where they are formed and at what levels. If the levels present unreasonable risk to health and the environment, EPA may take regulatory action to reduce them. If the levels do not present unreasonable risks to health or the environment, unnecessary regulation will be avoided and chemicals will be "cleared" from list of potentially contaminated products. Furthermore, as discussed in unit V, the costs of testing these chemicals at the levels proposed by EPA are reasonable given, the toxicity of 2,3,7,8-HDDs/HDFs.

a. Toxicity of 2,3,7,8-HDDs/HDFs

In evaluating the toxicity of the 2,3,7,8-substituted HDDs/HDFs, EPA considered strong evidence on the toxicity of 2,3,7,8-TCDD, i.e., data showing that a number of other 2,3,7,8-substituted chlorinated dioxins and dibenzofurans are qualitatively similar to 2,3,7,8-TCDD in their toxic action and other information indicating structural and chemical/biological activity similarities among all the 2,3,7,8-substituted chlorinated, as well as brominated, dioxins and dibenzofurans. EPA has concluded that for purposes of this rule it is prudent public health policy to assume that exposure to the other 2,3,7,8-substituted HDDs/HDFs would pose risks qualitatively similar to those posed by 2,3,7,8-TCDD. The reasons for this decision are discussed below.

The extreme toxicity of 2,3,7,8-TCDD is discussed in detail in EPA's February 1984 Ambient Water Quality Criteria (AWQC) document (Ref. 30) and in a number of other documents EPA has prepared for purposes of regulation. These include the Office of Research and Development's (ORD) Health Assessment Document (HAD) for 2,3,7,8-TCDD, 1,2,3,7,8-PeCDD, 1,2,3,6,7,8-HxCDD, and 1,2,3,6,7,8,9-HpCDD (Ref. 31), the Office of Solid Waste (OSW)

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Health and Environmental Effects Profile (HEEP) for tetra-, penta-, and hexachlorodibenzo-p-dioxins (and the same congeners of dibenzofurans) (Ref. 32), a HEEP document for the brominated dioxins and another for the brominated dibenzofurans (Ref. 33), the Drinking Water Criteria Document (DWCD) prepared for the Office of Drinking Water (ODW) on 2,3,7,8-TCDD (Ref. 34), and a draft (HAD) document being prepared on the chlorine substituted dibenzofuran congeners of concern to EDF/NWF. Of particular note is the relative carcinogenic potency of 2,3,7,8-TCDD, which EPA's Cancer Assessment Group (CAG) estimated as the most potent of 55 suspect human carcinogens (Ref. 31). CAG ranks 2,3,7,8-TCDD as a 2-A carcinogen, which means that the chemical causes cancer in laboratory animals and, therefore, may present a risk of cancer to humans. There is also suggestive epidemiological evidence that links 2,3,7,8-TCDD to the occurence of cancer, particularly soft tissue sarcoma, in humans. Cohort studies conducted in Sweden have associated soft tissue sarcomas with occupational exposure to phenoxy acid herbicides, some of which are contaiminated with 2,3,7,8-TCDD (Ref. 31). Although subsequent studies and discussion in the U.S. and elsewhere have added to the relevant information, the concern remains unresolved at this time (Refs. 6,10,13,14). Additional studies are in process which should clarify this issue (Ref. 11, 26 and 25).

Available data on 1,2,3,7,8-pentachlorodibenzo-p-dioxin (1,2,3,7,8-PeCDD), 1,2,3,4,7,8-hexachlorodibenzo-p-dioxin (1,2,3,4,7,8-HxCDD), 1,2,3,6,7,8-hexachlorodibenzo-p-dioxin (1,2,3,6,7,8-HxCDD), and 1,2,3,7,8,9-hexachlorodibenzo-p-dioxin (1,2,3,7,8,9-HxCDD), and 2,3,7,8-tetrachlorodibenzofuran (2,3,7,8-TCDF compared with the much more extensive data on 2,3,7,8-TCDD show that these other HDDs/HDFs are qualitatively similar in their toxic action to 2,3,7,8-TCDD. (See Refs. 5, 11, 12, 16, 24, 25, and 26.) These data suggest that the dioxins and dibenzofurans substituted at the 2,3,7 and 8 positions are relatively toxic congeners. Results are summarized below.

All animal species studies show very low median lethal doses in acute toxicity testing for all the 2,3,7,8-substituted chlorinated dioxins that have been tested. This is illustrated in mice, where 2,3,7,8-TCDD has an LD_{50} value of 0.88 micromole (umol) per kg and 1,2,3,7,8-PeCDD, 1,2,3,4,7,8-HxCDD, 2,3,6,7,8,-HxCDD and 1,2,3,7,8,9-HxCDD have LD_{50} values of 0.94, 2.11, 3.19, and 3.67 umol/kg, respectively. For 2,3,7,8-TCDF, the acute oral LD_{50} in the guinea pig is reported to be 5 μg/kg/bw (as compared with the acute oral LD_{50} for 2,3,7,8-TCDD in this species, which is 0.6 μg/kg/bw). Subchronic testing of 2,3,7,8-TCDF in rhesus macaques indiced that this compound is extraordinarily toxic. Based on EPA's review of this study, the no observed effect level (NOEL) for 2,3,7,8-TCDF is expected to be below 5.0 ppb. (Ref. 32). The author of this study concluded that continued daily oral intake of small amounts of 2,3,7,8-TCDF gave monkeys a disease which is clinically and morphologically similar to acute or chronic ingestion of 2,3,7,8-TCDD. For most of the observed biological effects, the potency of the two compounds is within an order of magnitude of each other, with 2,3,7,8-TCDF being slightly less toxic than 2,3,7,8-TCDD (Ref. 3). Some scientists have estimated that in laboratory animals, 2,3,7,8-TCDF is 2 to 33 percent less toxic than 2,3,7,8-TCDD, depending upon the particular effect studied. Further, the toxicity of 2,3,7,8-TCDF in rhesus macaques has been estimated to be about 20 times that of 3,4,4,5-tetrachlorobiphenyl, and 1,000 times more toxic than PCB Aroclor 1248, two of the suspected human carcinogens evaluated by CAG (Refs. 31 and 32).

Other chemical and biological indicators show strong similarities among many of the 2,3,7,8-substituted chlorinated dioxins and dibenzofurans. These similarities, discussed below, correlate with toxicity, persistence, and biodegradation—all factors that indicate these chemicals will cause similar effects on health and the environment.

All the 2,3,7,8-substituted HDDs/HDFs are structurally similar, with two benzene rings chlorinated or brominated at the 2,3,7 and 8 positions, joined by one oxygen bridge in the dibenzofuran molecule and two oxygen bridges in the dibenzo-p-dioxin molecule. This structural similarity between 2,3,7,8-TCDD/TCDF and the other 2,3,7,8-substituted HDDs and HDFs indicates a strong likelihood of very similar biological activity, with corresponding potential for toxic effect. These predicted similarities in biological activity and potential toxic effect are supported by data from studies discussed below.

Tests on the 2,3,7,8,-substituted chlorinated dioxins and dibenzofurans show that these compounds have similar ability to induce enzyme activity, a characteristic closely correlated with the degree of toxicity of a compound (Ref. 3). Comparison of *in vitro* studies shows that the 2,3,7,8-substituted chlorinated dioxins and dibenzofurans have similar ability to induce aryl hydrocarbon hydroxylase (AHH) in rat hepatoma cells at very low levels (Refs. 2 and 23) and have similar affinity to bind to the isolated hepatic aromatic hydrocarbon (Ah) cystolic receptor in certain species (Ref. 22).

The cellular biochemical mechanisms leading to the toxic response resulting from exposure to HDDs/HDFs are not known in complete detail. However, over the last few years experimental data have accumulated which suggest that an important role is played by this Ah receptor protein. This receptor binds halogenated polycyclic aromatic molecules, including HDDs and HDFs. In animals, the binding of 2,3,7,8-TCDD-related compounds to this receptor has been correlated with the expression of several systemic toxic effects, including sensitivity to acute toxic effects (LD_{50} values), thymic involution, chloracnegenic response, and the induction of several enzymes systems, some of which have been linked to carcinogenic pathways (References 2 and 21).

All of the 2,3,7,8-chlorinated dioxins and dibenzofurans, tested show a high likelihood of persisting in the human body and the environment should exposure occur. All are lipophilic, have high octanol/water partition coefficients in the same range (between 10^6 and 10^7), are highly persistent under normal environmental conditions (particularly when adsorbed to soil or other substrates) and are generally degraded very little by microbes, and have extensive half-lives in the environment (in excess of 10 years for 2,3,7,8-TCDD (Ref. 32)).

Since bromine as a substituent is more toxicologically active than chlorine (Ref. 33), EPA believes it is prudent to assume that 2,3,7,8-substitued bromodibenzo-p-dioxins and bromodibenzofurans are as toxic as the corresponding chlorinated compounds for purposes of this testing regulation.

EPA has decided that the other halogenated dioxins and dibenzofurans (iodinated and fluorinated) are sufficiently different from the chlorinated and brominated compounds that it would be too highly speculative to include them in this proposed rule.

b. Estimates of Potential Exposure to HDDs/HDFs.

Toxicity and exposure are the two basic components of risk. In the previous unit, EPA summarized available information on the toxicity of 2,3,7,8-HDDs/HDFs and concluded that

these materials are very toxic at low levels.

In order to estimate the potential for human exposure to 2,3,7,8-HDDs/HDFs which may be found in commercial products, EPA selected three levels of theoretical exposure encountered using three exposure categories. Using the CAG multistage linearized model discussed above, EPA calculated theoretical risks associated with Lifetime Average Daily Dose (LADD) values for each exposure level within each category, and explains below the calculation of risk estimates for the occupational and consumer use categories, which are the categories where significant risks are more likely to be encountered. In order to estimate the potential risks posed by exposures to 2,3,7,8-HDDs/HDFs in commercial products, EPA has assumed the LADDs represent exposures to 2,3,7,8-TCDD.

The Agency concludes that it is reasonable to expect that if these compounds are formed during the manufacturing of commercial chemicals, then exposures to them may arise because of the activities associated with the manufacturing, processing, distribution, use or disposal of the chemicals.

c. Risk Estimates for Persons Exposed to HDDs/HDFs.

EPA has estimated the level of risk associated with human exposures to a household cleaner which contains a chemical theoretically contaminated with 2,3,7,8-TCDD at both the 1.0 ppm and 0.1 ppb level, and for occupational dermal exposures encountered during organic chemical synthesis based on the physicochemical characteristics of 2,4-dichlorophenol (density, etc.) at these same levels. The levels were chosen to represent a range bounded by the approximate average concentration of dioxins reported in chemicals and products (Ref. 37) and the level specified in the Environmental Defense Fund/ National Wildlife Foundation petition for total dioxins (Ref. 8). For purposes of this assessment, EPA has assumed that the dioxin present in the feedstock chemical is exclusively 2,3,7,8-TCDD.

1. Risk Estimates for Household Cleaner Exposures

EPA has calculated the LADD for a household cleaner used at full strength on a sponge or rag, and theorizes that the contaminated constituent of the cleanser passes through the sponge or rag, contacting the palm and fingers of one hand resulting in dermal exposure to HDDs/HDFs. The exposure model assumes that the cleaner contains 4.5 percent by volume of the contaminated chemical, i.e., every liter of the cleaner contains 45 ml. of the contaminated chemical.

The surface area exposed is calculated at 200 cm^2, consisting of one-fifth of the outstretched palm and fingers of one hand. The rate of skin adhesion is calculated at 1.5×10^{-3} ml/cm^2, which expresses a measurement of the thickness of the film of water in which the cleaner is dispersed, which remains on the hand after one partial wipe of the cleaning rag or sponge. Absorption of the dispersed cleanser film is assumed to be 100 percent.

The frequency of exposure (number of events per year) is estimated at 52, assuming one use of the cleaner per week, at 52 weeks per year. The average adult body weight is assumed to be 70 kg, and the average life span is assumed to be 70 years.

The LADD is calculated by multiplying the 70-year assumed life span by the annual exposure ($\mu g/yr$), divided by the product of the number of days per average life span (25,550) and the assumed average adult body weight, 70 kg.

At 1.0 ppm, the LADD is estimated at 2.7×10^{-5} $\mu g/kg/day$. Using the CAG risk assessment model for 2,3,7,8-TCDD [$Q1^*$(slope)$=1.6\times10^5$ $(ng/kg/day)^{-1}$], this LADD would correspond to an upper limit risk level of 4×10^{-3}. At 0.1 ppb, the LADD is estimated to be 2.7×10^{-9}. Using the CAG risk assessment for 2,3,7,8-TCDD, this LADD corresponds to 4×10^{-7} upper limit risk level.

Thus, dioxin contamination of 0.1 ppb to 1.0 ppm in a chemical which is ultimately used to formulate a household cleaner could present upper limit oncogenic risks in the range of 4.0×10^{-7} to 4×10^{-3}, depending on the level of contamination.

2. Risk Estimates for Occupational Dermal Exposure

EPA has calculated the LADD for occupational dermal exposures encountered during organic chemical synthesis on the basis of exposure to a chemical with the physicochemical properties of 2,4,-dichlorophenol. The surface area (S) exposed is assumed to be the entire surface area of both hands, estimated at 8.7×10^{-2} cm^2. The thickness of the liquid film (T) left on the hands after exposure is calculated at 1.8×10^{-3} cm, which is calculated as the average film thickness of five representative solutions. The frequency (F) of exposure occurrence (events per year) is estimated at 250, the average number of work days per year. Density of the liquid (D), based on the density of 2,4,-dichlorophenol, is estimated at 1.3 g/cm^3. The daily exposure (DX) are calculated in $\mu g/kg/day$ at the two levels of contamination (C, in $\mu g/g$) as follows:

$$\frac{S \times T \times D \times C}{\text{70 kg body weight}}$$

Annual exposures (AX) are calculated in $\mu g/kg/yr$ as follows:

$S \times T \times D \times C \times F$

The calculation of the LADD values for the two levels of contamination are explained above under the household cleaner risk estimate calculation.

At the 1.0 ppm level the LADD value is calculated at 2.11×10^{-2} $\mu g/kg/day$. Using the CAG risk assessment model for 2,3,7,8-TCDD [$Q_1^*=1.6\times10^5$ $(ng/kg/day)^{-1}$], this LADD corresponds to an upper limit level of oncogenic risk which EPA projects very close to unity (a theoretical 1 in 1 occurrence, with probability too close for the CAG risk assessment model to calculate). At 0.1 ppb, the calculated LADD value of 2.11×10^{-6} corresponds to a 3×10^{-4} upper limit risk estimate or oncogenic risk. Thus, EPA's model indicates that exposures to chemicals contaminated with HDDs/HDFs (assumed to be as potent as 2,3,7,8-TCDD) during the synthesis of organic chemicals could result in a range of upper limit oncogenic risks from 3×10^{-4} to near unity.

A detailed description of the assumptions outlined above and the calculations performed for event exposure, annual exposure, and LADD values is contained in Reference 37.

As the discussion above indicates, chemical analysis for 2,3,7,8-substituted dioxin congeners at the tenth of a part per billion (ppb) level per congener is necessary to determine exposure levels that may present an unreasonable risk of harm to human health or the environment.

d. Case Study of the Feasibility of Minimizing Dioxin/Furan Contamination During Manufacture

Evidence that the amount of 2,3,7,8-TCDD formed during product chemical reactions can be reduced was presented during the cancellation hearings for the herbicide 2,4,5-T (Ref. 7). During those hearings, Dow Chemical Co. presented testimony describing modifications to production processes which reduced the 2,3,7,8-TCDD content in 2,4,5-T to a level of 0.01 ppm or lower. In 1976, Dow began efforts to remove 2,3,7,8-TCDD in final products, and investigated the possibility of altering reaction process

conditions to reduce 2,3,7,8-TCDD formation, thereby lowering the content formed during the actual production process.

DOW initially experimented with activated charcoal bed absorption, which allowed a 50 percent reduction in the levels of 2,3,7,8-TCDD in 2,4,5-T reaction product. Additional efforts included eliminating delays and reducing the duration of the reaction process, precise temperature control during the production process, and modification of the alkalinity (pH) of the process. These additional modifications of the reaction process allowed an additional 50 percent reduction (approximate) in the 2,3,7,8-TCDD content of the product.

As evidenced by this example, the reduction of dioxin contamination in commercial products through the manipulation of the reaction chemistry and conditions of process stream is a very real option. The economic feasibility of the process is also viable; Dow stated that should the production of 2,4,5-T be resumed, a level of 0.01 ppm 2,3,7,8-TCDD or below could be met as a process specification in manufacturing the product. This example demonstrates that dioxin contamination can be reduced through direct manipulation of the process chemistry and reaction conditions at a cost consistent with market price requirements.

e. Determination of Unreasonable Risk

EPA has considered the toxicity of 2,3,7,8-HDDs/HDFs, their structure-activity relationship, and the potential for exposure to them if present as contaminants in commercial chemical products. The example outlined in section (d) above illustrates the practicality of reducing or eliminating the amount of 2,3,7,8-TCDD contamination through manipulation of the production process. The cost of testing in this proposed rule is expected to remain under 3 million dollars, generated primarily by the synthesis and manufacture of analytical standards, development of cleanup, extraction, and test methodologies, and analysis of sample series. In balancing the cost of the testing proposed in this rule with potential risks which may result from exposures to 2,3,7,9-HUDDs/HDFs, EPA finds that the cost involved in generating data enabling a reasonable and accurate determination of risk is not excessive. The discussion of risk estimates above illustrates the necessity for levels of quantitation at the 0.1/1.0 ppb level. Although the testing costs are not inexpensive, these levels of quantitation are necessary for each congener of 2,3,7,8-HDDs/HDFs because these levels of exposure may be encountered in actual situations and may present a risk of concern. Even if the levels of quantitation were less sensitive, the incremental decrease in cost experienced in achieving these levels would not significantly decrease the overall costs of the proposed rule. (See Unit V.)

EPA is considering setting different levels of quantitation for each HDD/HDF based on the relative toxicities of the HDDs/HDFs expected to be present in the chemical (Ref. 3). The Agency requests comments on the utility of this method for use in the final rule.

These levels do not, however, constitute an "action level" under section 6 of TSCA, nor under any other statute. Under TSCA that level is dependent upon the Agency first making a determination that the reduction of risk to health or the environment outweighs the cost of society of such reduction. An action level under section 6 would be determined by many factors, including incremental risk reductions to exposed groups by alternative limits on dioxin and dibenzofuran concentrations in commercial chemicals, and the cost of reducing risks at each alternative level. For this purpose EPA must review data on toxicity, exposure, cost, availability of substitutes, and availability of technology. Using this process, it is likely that the "action level" for each chemical subject to a regulation under section 6 will be somewhat different.

2. Insufficiency of Data and Experience

With the exception of extensive data on 2,3,7,8-TCDD and some data on several related congeners as discussed in the preceding unit on toxicity, EPA has little or no data upon which to base a determination of toxicity or exposure for the chemicals listed for testing. These determinations are basic to a finding of unreasonable risk. Therefore, EPA is proposing that such data be developed, and that such testing be required in order to provide this data.

3. Necessity for Testing

EPA has determined that testing is necessary to generate data on which to base toxicity and exposure, because such data is fundamental to the assessment of risk, and because the analytical data generated by required testing in this proposed rule is currently not available in any accessible or usable form for purposes of assessing these potential risks.

B. Findings Under Section 4(b)

1. Identification of Substances to be Tested

EPA chose the chemicals for testing based on two broad criteria. Some chemicals have actually been tested in the past and found to contain 2,3,7,8-substituted HDDs/HDFs. The others are chemicals which EPA has good reason to believe are contaminated based on structural similarities with the chemicals actually tested and process conditions considered to aid the formation of dioxins and dibenzofurans. Thus, these listed chemicals contain carbon and utilize chlorine and/or bromine in their manufacture and are manufactured under circumstances that include high temperature or pressure and the presence of alkaline conditions.

Contamination of the listed chemicals is expected to occur during manufacture. Thus, the focus of the testing is on detecting contamination at the beginning of the manufacturing chain to allow EPA to draw conclusions about the degree of contamination during further processing of the chemical.

a. Chemicals to be Tested

The 34 chemicals to be tested are listed under unit II.A of this preamble and § 766.20 of this rule. The 14 chemicals in current commercial production will be immediately affected by promulagtion of this rule. The 20 chemicals not currently in commercial production will be affected should commercial production begin or resume.

b. Test Substance

EPA is proposing that manufacturers test chemicals which are listed in this proposed rule in all grades normally marketed in active commerce. This definition is purposely broad, in order to include as many forms and grades as are routinely found in the marketplace, but eliminates the requirement for testing of specialty chemicals prepared only on special order or in extremely small quantities on a custom basis, e.g., research quantities of analytical purity.

2. Standards for the Development of Test Data

This term is defined under section 3(12) of TSCA and refers to the prescription of the information for which test data are to be developed and any analysis to be performed on such data. It also includes the manner in which the data are to be developed, the specification of any test protocol or methodology, and any other requirements needed to provide assurance of the reliability and

adequacy of the data. These standards should be differentiated from analytical standards.

a. General Analytical Method Consideration

The analytical procedures specified in this proposed rule for the quantitative measurement of 2,3,7,8-HDDs/HDFs in commercial products include: (1) the quantitative extraction or partitioning of the analytes from the commercial product; (2) separation of the 2,3,7,8-HDDs/HDFs from interferences present in the extract; and (3) separation and quantitation of 2,3,7,8-substituted tetra-, hepta-, penta- and hexa-DD/DF congeners, using high-resolution gas chromatography and high-resolution mass spectrometry.

The most significant difference in the analysis of 2,3,7,8-HDDs/HDFs in commercial products in comparison with environmental and biological samples will be the extraction and cleanup procedures. The physical and chemical properties of environmental and biological matrices are typically different enough from the properties of the analytes to allow relative ease of separation. In contrast, the commercial products, in most cases, may be structurally similar to the analytes, complicating the separation and necessitating the complete removal of the matrix to avoid interferences in the final determination.

b. Detection Method

The extreme toxicity of certain 2,3,7,8-HDD/HDF congeners at very low levels of exposure necessitates analytical methods with very high sensitivity and specificity. EPA is specifying the use of high-resolution gas chromatography with high-resolution mass spectrometry (HRGC/HRMS) as the chemical analysis method of choice for this proposed rule.

HRGC is one of the most effective ways of separating the product chemical from 2,3,7,8-HDDs/HDFs and other similar impurities or byproducts which are present in solution following extraction and cleanup of the product chemical. It may be possible to use liquid chromatography to separate HDDs and HDFs from the product, byproducts, and other impurities in a product extract. EPA requests comment and further information on the application of these and other separation techniques to the analysis of halogenated chemical products for HDDs and HDFs.

HRGC optimizes separation of all components of an extract into a form that is most amenable to mass spectrometric detection. The analysis of trace amounts of 2,3,7,8-HDDs/HDFs, even when separated by HRGC, requires special selective detectors to identify and measure them. EPA is specifying high resolution mass spectrometry (HRMS) as the method of identification and measurement of 2,3,7,8-HDDs/HDFs in the extract separated by HRGC as outlined above.

EPA considered two other potentially useful detectors, electron capture (EC) and low resolution mass spectrometry (LRMS), but believes that these methods are not sufficiently sensitive or specific to confirm unequivocally the presence of other similar compounds which are present in larger amounts or the same amounts as the 2,3,7,8-HDDs/HDFs. Triple quadrupole mass spectrometry (MS/MS) was also considered but EPA believes it has not been demonstrated to be sufficiently reproducible for most applications in this proposed rule.

HRMS provides more precise mass determination than is available using LRMS. Mass determination with relevant mass intensity ratio comparisons provides confirmation of the identity of chemicals separated by HRGC.

Even though EC may be as sensitive, or more sensitive than HRMS, the detection is based on the capacity of a chemical compound to capture electrons. This electron capture capacity cannot satisfactorily distinguish between the very broad class of halogenated hydrocarbon compounds (which include 2,3,7,8-HDDs/HDFs) and many other broad classes of compounds which are detected by EC. Non-2,3,7,8-HDD/HDF compounds which are impurities or byproducts present in the product chemical extract separated by HRGC are very likely to be detected by EC. EC does not have sufficient selectivity to distinguish between: (1) chlorinated/brominated compounds and other halogenated compounds; or (2) 2,3,7,8-HDDs and HDFs and other halogenated aromatic compounds. The selectivity to distinguish among these halogenated compound classes is essential to resolve the confounding of the analysis by the expected presence in the product extract of chemicals in all of these halogenated compound classes. Even more importantly, this proposed rule requires the still greater selectivity *within* these large halogenated compound classes, namely differences in levels of chlorination/bromination within 2,3,7,8-HDDs and distinction between 2,3,7,8-HDDs/HDFs.

Major advances in analytical capabilities for the HDFs during the last 2 years include the development and extensive use of chemical ionization (CI) and the use of CI in a triple-quadrupole mode. Detection limits in the range of parts per trillion (ppt) have been obtained using these techniques. EPA considers either of these two techniques as having potential for the analysis of HDDs and HDFs in commercial products, but these methods are not yet validated or standardized for use at the levels EPA is specifying in this proposed rule. For these reasons, EPA chose HRGC/HRMS as the analytical method in this proposed rule. EPA seeks comments on the adequacy of the analytical methods outlined above, in terms of achieving reliable data at the levels of detection specified in this proposed rule.

c. Method Sensitivity

A chief concern in using any analytical method is the ability to achieve the desired level of detection. The detection limits reported for various HDDs and HDFs in phenoxyalkanoic herbicides range from 5 to 500 ppb. A detection limit of 0.05 ppb can be achieved for specific congeners of TCDD and TCDF assuming a conservative instrument sensitivity (quadrupole MS) and a 1 µl aliquot from a 200 µl final extract of a 1 gram sample. By increasing initial sample size, decreasing final extract volume, or employing a more sensitive MS (magnetic sector double-focusing) instrument, this detection limit might be lowered to 0.01 ppb or 1.0 part per trillion (ppt). These detection limits are determined largely by the sensitivity of the instrument, and sample interferences may sequentially increase the detection limit attainable for a given matrix. EPA is proposing a detection limit of 0.1 ppb for 2,3,7,8-HDDs and 1.0 ppb for 2,3,7,8-HDFs. Using data reported at these limits of detection, the potential risks associated with exposure to 2,3,7,8-HDDs/HDFs in commercial products may be calculated (See Unit IV.A.1.c for a detailed discussion of risk assessment calculated for 2,3,7,8-HDDs/HDFs at the ppb level of exposure). EPA seeks comments on the appropriateness and feasibility of this proposed analytical detection limit.

d. Quality Assurance/Quality Control (QA/QC) Procedures

The first QA/QC procedure is the requirement of a Quality Assurance Plan (QAP). The QAP should include the following: history and disposition of samples, sampling and sample collection procedures, and extraction and instrumental analysis procedures. The QAP documents how the laboratory intends to demonstrate its capability to produce data which meet data quality requirements.

An accurate trace or history of the life of a sample to be chemically analyzed for 2,3,7,8-HDDs/HDFs must be assembled and should contain information beginning with a description of the system, scheme, or survey design for sample collection. A written record, called a chain-of-custody form, shall follow the sample. Necessary contents of the record are written general descriptions of what happens to the sample, schedules and timetables, disposition, handling, and who has custody. Following final chemical analysis, the last entry in this record should be the disposition of the sample. Any further use (particularly for another activity), movement, or examination of the sample should be added to the history.

Details of the sampling or sample collection procedure are the second section of the QAP. Since the history describes handling, disposition, schedules, and general descriptions of what happens in sampling, the requirement here is a detailed description of sampling and sample collection. Reasons for using a specific or general sample selection process and reasons for not using others must be included here. Estimates of how well the selected samples represent the material to be characterized are an essential part of QA. The greater the variability of composition of a material, the more frequently sampling is required for estimation and quantification purposes. In determining or estimating errors generated in sample collection, control samples or blanks, and 2,3,7,8-HDDs/HDFs (native compounds or, preferably, isotopically labelled compounds), reinforced controls or analytical standards, must be sent to the collection site(s) and returned with the samples for identical handling and treatment. Duplicate samples, which are collected, documented, and handled the same as other samples, are necessary for recovery, precision, and accuracy determinations.

The third section of the QAP is a description of the extraction and chemical analysis or screening test procedures. To determine both extraction, efficiency and measurement efficiency, it is necessary to use analytical standards of isotopically labelled 2,3,7,8-HDD/HDF mixtures or individual isotopically labelled 2,3,7,8-HDD/HDF compounds in control samples. Once capabilities have been established, the operator must determine precision and accuracy and use those determinations to designate acceptable bounds for analytical performance. The operator must keep control chart records to assure that the instrument readings of analytical standards fall within the range of acceptable performance. The operator must establish and describe the quantitative range of an instrument and analytical procedure. Specific requirements are as follows:

For chemical analysis, procedures must be demonstrated to be capable of reproducibly and repeatedly to quantitate 2,3,7,8-HDDs at 0.1 ppb resolvable peak, and 2,3,7,8-HDFs at 1.0 ppb per resolvable peak. Quality control check sample analysis begins the determination of system capabilities. Sets of samples shall be constructed such that no less than one sample set shall be analyzed in a single workday shift. A single set shall contain at the minimum: Calibration standards, method blanks, product samples, and another set of calibration standards, in that order. The calibration standard should contain each 2,3,7,8-substituted congener at concentrations capable of reinforcing a product sample to a product concentration of 0.1 ppb for 2,3,7,8-HDDs and 1.0 ppb for 2,3,7,8-HDFs. A method blank is a sample which has no product but is generated by treating an empty sample container with all of the same steps used in the cleanup, extraction, and chemical analysis of a product sample. A set not meeting the performance criteria below or not having a method blank with nondetected levels of native HDDs/HDFs shall require corrective action checking, and the set must be rerun with reports and explanations for the results from both sets.

For 2,3,7,8-HDDs, to demonstrate the requirement of a limit of quantitation of 0.1 ppb at least two analyses of the same isotopically labelled 2,3,7,8-HDD internal calibration standard spiked to a concentration of 0.1 ppb in a product must be quantifiable to within ±10 percent of each other. The limit of quantitation shall be determined by recovery of the internal calibration congeners which have been spiked into the product sample following sampling but before sample cleanup and extraction. The recovery of the internal calibration standard which has run through the entire chemical analysis must be within 70–130 percent of the amount spiked, or documented corrective actions must be taken and the sample set must be rerun.

For 2,3,7,8-HDFs, to demonstrate the requirement of a limit of quantitation of 1.0 ppb, at least two analyses of the same isotopically labelled 2,3,7,8-HDF internal standard spiked to a final concentration of 1.0 ppb in a product must be quantifiable to within ±10 percent of each other. The limit of quantitation shall be determined by recovery of the internal calibration standard congeners which have been spiked into the product following sampling but before sample cleanup and extraction. The recovery of the internal calibration standard which run through the entire chemical analysis must be within ±70–130 percent of the amount spiked or documented corrective actions must be taken and the sample set must be rerun.

Qualitative requirements include (1) response factors for 2,3,7,8-HDDs and HDFs to be measured and (2) instrument hardware and operating conditions (including type and source of column, carrier gas, flow rate operating temperature range, and ion source temperature). For both qualitative and quantitative measurements, the instrument operator should be blind to the nature or source of samples, particularly to duplicates, blanks, and brominated or chlorinated dibenzodioxin/diberzofuran enriched samples.

The limit of detection (LOD) and the limit of quantification, (LOQ) shall be described for each material. Tentative LOD and LOQ definitions are greater than or equal to 3 times background noise (LOD); and greater than or equal to 10 times background noise (LOQ). Details of quantitative calibration procedures for the known and/or expected range of the 2,3,7,8-HDD/HDF levels in actual samples complete this section of the QAP.

Finally, the last section of the QAP must include the results of laboratory participation in round robin analytical programs, the results of performance audits, systems audits, analytical result of performance audit samples, persons responsible for all aspects of sampling, chemical analysis, data analysis, corrective actions, and quality assurance/quality control. This section of the QAP must also include a description of how problems are handled and documented and how corrections in working level notebooks are indicated and explained.

e. Analytical standards

In using HRGC/HRMS to perform the analysis, several possible methods of quantitation were examined, based on analytical standards of 2,3,7,8-HDD/HDF compounds in concentrations similar to the concentration range of interest (0.1 ppb for 2,3,7,8-HDDs and 1.0 ppb for 2,3,7,8-HDFs) found in chemical products to be tested. Analytical standards must be reasonable

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surrogates for 2,3,7,8-HDDs and HDFs with respect to response, retention time, and resolvability from other materials in the extract, and the surrogate standards must not interfere with the response, retention time, and resolvability of the 2,3,7,8-HDDs and HDFs.

Quantitation must be based on internal standards. The use of internal standards can provide continuous monitoring of extraction efficiency and method precision in the analysis of actual product samples, and thus the internal standards may provide information on matrix effects. The best surrogates to use as internal standards are 2,3,7,8-HDDs and HDFs with selected positions having been substituted with the same atoms but having a different isotope (and atomic mass) from native compounds. The isotopes may be deuterium for native hydrogen, carbon-13 or carbon-14 for native carbon, and chlorine-37 for native chlorine. The internal standards labeled with these isotopes have total masses and fragmentation masses which are significantly different from the total masses and fragmentation masses of the native compounds, such that there is no interference with identity and quantitation of the native 2,3,7,8-HDDs and HDFs using mass spectrometry.

External analytical standards have restricted capability to check extraction efficiency at the limit of quantitation. In addition, external standards may not provide adequate information on the true limit of quantitation which is affected by the actual product matrix. Since an external standard is not in a product sample extract, there is no potential interference with 2,3,7,8-HDDs and HDFs in an actual product sample, and the external standards may be native compounds.

A chemical product may be analyzed (1) solely by the use of internal analytical standards, or (2) at least one sample must be analyzed by using an internal standard (to evaluate extraction and matrix interferences), and the other samples may be analyzed using external standards only when response of the external standards is converted to the response observed for internal standards as proven in a valid comparison study.

Since the HDD and HDF compounds of greatest concern are those substituted at the 2,3,7,8 positions, EPA is specifying that these compounds be used as reference standards. Isotopically labelled standards shall be used as internal standards. Native standards may be used as internal standards for the special case using duplicate pairs of samples, as described earlier.

This rule requires quantitation for the following 2,3,7,8-substituted compounds:

Chlorinated compounds	Brominated compounds
2,3,7,8-TCDD	2,3,7,8-TBDD
1,2,3,7,8-PeCDD	1,2,3,7,8-PeBDD
1,2,3,4,7,8-HxCDD	1,2,3,4,7,8-HxBDD
1,2,3,6,7,8-HxCDD	1,2,3,6,7,8-HxBDD
1,2,3,7,8,9-HxCDD	1,2,3,7,8,9-HxBDD
1,2,3,4,6,7,8-HpCDD	1,2,3,4,6,7,8-HpBDD
2,3,7,8-TCDF	2,3,7,8-TBDF
1,2,3,7,8-PeCDF	1,2,3,7,8-PeBDF
2,3,4,7,8-PeCDF	2,3,4,7,8-PeBDF
1,2,3,4,7,8-HxCDF	1,2,3,4,7,8-HxBDF
1,2,3,6,7,8-HxCDF	1,2,3,6,7,8-HxBDF
1,2,3,7,8,9-HxCDF	1,2,3,7,8,9-HxBDF
2,3,4,6,7,8-HxCDF	2,3,4,6,7,8-HxBDF
1,2,3,4,6,7,8-HpCDF	1,2,3,4,6,7,8-HpBDF
1,2,3,4,7,8,9-HpCDF	1,2,3,4,7,8,9-HpBDF

EPA realizes that industry may have to develop analytical standards for PHDD/PHDF analysis in order to achieve the analytical accuracy and precision specified in this proposed rule. EPA has identified the following specific congeners as available for use as reference analytical standards:

CURRENTLY AVAILABLE DIBENZODIOXIN AND DIBENZOFURAN STANDARDS

Unlabeled	Stable isotope labeled
Dibenzodioxins	
Tetrachloro: 2,3,7,8	2,3,7,8 ($U^{-13}C^{12}$, 99%)
	2,3,7,8 ($U^{-37}Cl_4$, 99%)
	2,3,7,8 ($U^{-14}C$, 33mCi/mmol)
Tetrabromo: 2,3,7,8	2,3,7,8 ($U^{-13}C^{12}$, 99%)
Pentachloro: 1,2,3,7,8	1,2,3,7,8 ($U^{-13}C^{12}$, 99%)
Pentabromo: 1,2,3,7,8	1,2,3,7,8 ($U^{-13}C^{12}$, 99%)
Hexachloro: 1,2,3,6,7,8; 1,2,3,6,7,8; 1,2,3,7,8,9; 1,2,3,7,8,9.	1,2,3,6,7,8/1,2,3,7,8,9 ($U^{-13}C^{12}$, 99%)
Hexabromo: 1,2,3,4,7,8; 1,2,3,6,7,8,/1,2,3,7,8,9.	1,2,3,6,7,8,/1,2,3,7,8,9 ($U^{-13}C^{12}$, 99%)
Heptachloro: 1,2,3,4,6,7,8	1,2,3,4,6,7,8 ($U^{-13}C^{12}$, 99%)
Heptabromo: 1,2,3,4,6,7,8	
Dibenzofurans	
Tetrachloro: 2,3,7,8	2,3,7,8 ($U^{-13}C^{12}$, 99%)
Tetrabromo: 2,3,7,8	2,3,7,8 ($U^{-13}C^{12}$, 99%)
Pentachloro: 1,2,3,7,8; 2,3,4,7,8.	1,2,3,7,8 ($U^{-13}C^{12}$, 99%)
Pentabromo: 1,2,3,7,8	1,2,3,7,8 ($U^{-13}C^{12}$, 99%)
Hexachloro: 1,2,3,4,7,8; 1,2,3,6,7,8; 2,3,4,6,7,8.	1,2,3,4,7,8 ($U^{-13}C^{12}$, 99%)
Hexabromo: 1,2,3,4,7,8	1,2,3,4,7,8, ($U^{-13}C^{12}$, 99%)
Heptachloro: 1,2,3,4,7,8,9; 1,2,3,4,6,7,8.	1,2,3,4,6,7,8 ($U^{-13}C^{12}$, 99%)

3. Period for Submission of Test Data

EPA is proposing that manufacturers subject to the testing requirements of this rule submit protocols developed for the analytical methodology within 6 months after promulgation of a final rule, and that test results for the chemicals listed under unit II.A. of this preamble and § 766.20 of this rule be submitted no later than 1 year after EPA review of protocols for analytical methodology. Notification of EPA review of protocols and any comments will be accomplished by a letter to the manufacturer.

These submission dates apply to chemicals in production at the time this proposed rule becomes final. For those chemicals listed for testing which commence or resume production after the effective promulgation date of the final rule, submission dates will be within 6 months after the commencement or resumption of production for submission of test protocols, and within 1 year after EPA review of protocols for the submission of data developed.

The 1-year period for testing may be considerably more time than is needed to perform the actual extraction, cleanup and analysis. However, this amount of time allows an adequate utilization of available facilities without preempting other dioxin analysis work.

EPA requests comment on staging the testing period so that methods and results from testing of chlorinated compounds are received before the methods development and testing of brominated compounds occurs. Since very little testing of brominated compounds has been done, a staged requirement would allow time to work with the method on chlorinated compounds before modifying it for brominated compounds. Staging the testing would also free up additional laboratory capacity.

4. Persons Required to Test

EPA has found that there is insufficient data and experience upon which to reasonably determine or predict the effects of the manufacture, processing, distribution in commerce, use and disposal of the chemicals subject to the testing requirements of this rule (see unit I and unit VII 3). Therefore, in accordance with section 4(b)(3)(B) of TSCA, manufacturers and processors are responsible for testing. EPA expects, however, that only manufacturers will be subject to the provisions of this proposed rule, since only manufacturers should be expected to test for contamination in their products.

Persons who manufacture or who intend to manufacture the chemical substances listed under unit II.A of the preamble and § 766.20 of this rule at any time from the effective date of the final test rule to the end of the reimbursement period shall be subject to the testing requirements contained in this proposed rule. The end of the reimbursement period will be 5 years after the last final report on testing required in the final rule has been submitted.

Once this test rule is in effect (44 days after publication in the Federal Register), each current manufacturer

will have 30 days to submit either a letter of intent to perform the testing required or an application for exemption. Each manufacturer who submits a letter of intent to perform the specified testing will be obligated, first, to submit within 6 months of the effective date of the test rule a proposed study plan for that test and, ultimately, to perform testing.

Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR Part 790. In the case of the chemical substances listed in proposed § 766.20(a), EPA does not expect to grant exemptions under section 4(c) unless persons who manufacturer or intend to manufacture the chemical substances listed under § 766.20(a) provide information on starting materials, process conditions, and reaction conditions which demonstrate that their substance or mixture is substantially similar to those of another manufacturer subject to this proposed rule. Because of the wide variation in chemical process streams involving different reaction conditions of temperature, pressure, reaction time, types of reaction vessels, and transport equipment, EPA is proposing that each manufacturer individually test the chemical substances which they produce and develop data which will be "process-specific" for their individual product. EPA expects that these data will be unique for each chemical substance and each manufacturer and will ensure that the particular process conditions which influence the production of these chemicals are taken into account.

Chemical analysis methodologies and protocols may be developed by consortia, multilaboratory studies, or round robin studies. These cooperative situations not only may reduce the overall costs, but may so allow for evaluation of the effectiveness of several closely related protocols or operating procedures for the same kinds of products. Even though methodologies are cooperatively developed, however, all participants in the cooperative are still required individually to analyze their own products and report their own results.

It is expected that in all cases subject to this rule, testing will be performed by the manufacturers and that part of the cost of testing will be passed on to the processors through the pricing mechanism, thereby enabling them to share in the costs of testing. However, processors will be called upon to sponsor testing if manufacturers fail to do so, or processors may be required to provide reimbursement directly to those sponsoring this testing. If no manufacturer submits a letter of intent to perform testing within the 30-day period, EPA will publish a notice in the **Federal Register** to notify all processors of the subject chemical. The notice will state that EPA has not received letters of intent to perform testing and that current processors will have 30 days to submit either a letter of intent to perform the test or an exemption application for such testing. Each processor who submits a letter of intent to perform testing will be obligated to submit within 6 months of the publication of the **Federal Register** notice a proposed study plan and, ultimately, to perform testing.

If no manufacturer or processor submits a letter of intent to perform testing, EPA will notify all manufacturers and processors, either by notice in the **Federal Register** or by letter, that all exemption applications will be denied and that within 30 days all manufacturers and processors will be in violation of the rule until a proposed study plan is submitted for required testing.

Manufacturers and processors who are subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790.

5. Bioanalytical Screening Methods

EPA recognizes that the analyses required to detect 2,3,7,8-HDDs/HDFs at the extremely low levels specified in this proposed rule are time consuming, laborious, and more costly than normal chemical analyses. In addition, the Agency recognizes that the number of laboratories adequately equipped and staffed with personnel qualified to perform these analyses is limited. Recognizing these limiting factors, EPA considered the possibility of giving manufacturers the option of conducting a less costly general screen to determine whether the full-scale analysis proposed would be necessary. If the manufacturer performed a general screen which showed no 2,3,7,8-HDDs/HDFs to be present at 0.1 ppb, full-scale analysis would not be required. Conversely, if the general screen yielded a positive result, testing to confirm and quantitate the 2,3,7,8-HDD/HDF level would be required. EPA first considered the use of a chemical screen, but found none suitable primarily because of the extremely high rate of false positives that result from product matrix interference.

EPA is continuing to investigate the possibility of using bioanalytical techniques as potential general screening methods in the interest of reducing time and resources for the testing. Bioanalytical techniques currently being examined by EPA include radioimmunoassay (Refs. 1 and 19), an aryl hydrocarbon hydroxylase (AHH) induction assay (Ref. 22), a cytosol receptor assay (Ref. 5), an early life stage (E.L.S.) bioassay (Ref. 15), and an *in vitro* keratinization assay (Refs. 12 and 18). Each of these techniques has afforded an alternative technique for screening for the presence of 2,3,7,8-HDDs/HDFs based on biological/biochemical properties.

The primary advantages of the radioimmunoassay, the AHH and the cytosol receptor assay are relatively low cost and rapidity. The disadvantages of these techniques in general is that they do not necessarily respond to specific isomers of HDDs and HDFs; they respond to other compounds such as halogenated biphenyls, azobenzenes, and nonhalogenated polynuclear aromatic hydrocarbons, and each technique is less sensitive than available mechanical analytical methods.

The *in vitro* keratinization or E.L.S. bioassays more recently have provided additional options and possibly more specificity for determining the presence of 2,3,7,8-HDDs/HDFs (Ref. 16). Both techniques have been demonstrated to give roughly comparable results with HRGC/MS analysis of total PCDDs and PCDFs in a PCB fire soot (Ref. 12, and fly ash from a municipal incinerator (Ref. 15).

It is important to note that each of the bioassay techniques is most sensitive to the presence of 2,3,7,8-TCDD as opposed to other HDDs/HDFs. It is speculated that the relative response to other HDDs and HDFs might be dependent on halogen substitution in the 2,3,7,8 positions and ultimately to the toxic potential of the compound. It is also important to note that the range of compounds evaluated with each of these bioassay techniques is somewhat limited. EPA believes that evaluation of commercial products for the presence of HDDs and HDFs with any of these bioassay techniques could be a valuable screening tool, particularly in terms of time and resources necessary for the chemical preparation and instrumental analyses of these chemicals. EPA is not convinced, however, that these

bioanalytical techniques are sensitive enough to achieve the level and specificity of detection necessary to quantitate 2,3,7,8-HDDs/HDFs at very low levels. Upon further development of the techniques and resolution of these concerns, EPA may adopt a bioanalytical screening technique in the final rule. Therefore, EPA seeks comments on the applicability and sensitivity of these bioanalytical techniques as potential screening tools for the detection of 2,3,7,8-HDDs/HDFs in commercial products.

V. Economic Analysis and Costs of Testing

A. Costs of Testing Under Section 4(a)(1)(A)

Three primary elements comprise the cost of this proposed rule under section 4: (1) Methods development; (2) synthesis of analytical standards; and (3) sample analysis (Ref. 27). At each point in the analysis a wide range of costs can be used depending on the option chosen. In each case, unless noted, a highest cost scenario has been assumed to demonstrate the greatest possible burden which may be incurred by the firms subject to testing.

1. Methods Development

Testing for the specified PHDD and PHDF congeners in commercial chemical products will require that methodologies for preparing and testing samples be developed by the manufacturers for each subject chemical. Manufacturers are free to use the most cost effective method of clean up and analysis that they can identify to meet the test requirements, including the QA/QC requirements. For methods development, EPA has assumed that all testing firms will coordinate to share the costs of methods development, estimated to be $250,000. An additional cost of $25,000 per chemical has been added to account for any adaptation of the general method required for a specific chemical matrix.

2. Synthesis of Analytical Standards

To conduct the sample analyses, a number of analytical standards that are not currently commercially available will have to be synthesized if they are not commercially available when the rule is promulgated. While the acquisition costs for standards that are commercially available are included in the cost of each sample analysis, the costs for synthesizing and producing the standards that are not available will be a unique cost of this rule. EPA has been able to identify 18 standards that are not now available or in process of becoming available. Estimated cost for synthesizing and manufacturing an adequate amount of native standards ranges from $3,000 to $5,000 depending on the isomeric positions of each. Estimated cost for synthesizing and manufacturing an adequate amount of each isotope-labeled standard is $5,000 to $10,000. In both cases, the higher unit cost was used, and 10 percent of the total cost was increased by a factor of 4 to account for additional difficulties encountered in synthesizing and manufacturing 10 percent of the standards. The total cost for manufacturing 18 standards (10 native and 8 isotope-labeled) is estimated to be $182,000.

3. Sample Analysis

EPA has assumed that each sample will be analyzed by the more expensive HR GC/MS, which is estimated to cost from $2,000 to $5,000 per sample. The maximum seven samples required for each chemical to be tested will therefore cost from $14,000 to $35,000. For purposes of this rule, EPA is using the upper bound cost of $35,000. EPA expects that 26 manufacturers will analyze 54 sample sets, for a total cost of $1,890,000. EPA believes that the cost differential for testing chemicals at levels orders of magnitude higher is minimal, and is soliciting additional data on such incremental cost differences.

Of the thirty-four commercial chemicals subject to this proposed test rule, only 14 chemicals are currently commercially manufactured or imported. Twenty-six firms have been identified as manufacturers and/or importers of the 14 chemicals. The total industry cost to carry out the proposed testing for the 14 chemicals currently commercially manufactured, using upper bound estimates, is $2.67 million. The cost for a manufacturer to resume production or import of a listed chemical which is not now in current commercial production is $60,000. This cost consists of $25,000 to adapt the method to the specific chemical and $35,000 for analysis of the seven required samples.

B. Economic Analysis Under Section 4(a)(1)(A)

1. Allocation of Costs

The distribution of economic impact among the testing firms and among the chemicals subject to testing is dependent on the allocation of jointly shared costs across the firms and chemicals. The impact analysis assumes that each firm will pay for the testing of its own chemicals, but the costs of standards synthesis and methods development will be allocated among firms based on the production volume of each firm's chemicals to be tested. Therefore, firms manufacturing larger quantities of chemicals will assume a greater proportion of the costs. Annualized costs to firms will range from $9,000 to $228,000, with 22 of 26 firms experiencing costs of less than $10,000.

2. Impact of Test Costs on Firm Revenue

Allocating total testing costs among the firms identified as current manufacturers and/or importers indicates that the specific costs of the rule per firm are small relative to the total sales of each firm. For 17 of the 26 firms subject to testing, annualized test costs are less than 0.1 percent of annual firm sales. For 8 of the remaining firms, annualized test costs are projected at less than 1 percent of annual sales. For one firm there is a potential for annualized test costs to run as high as 1.3 percent of annual sales.

3. Costs as a Percentage of Revenues From Chemical

For 10 of the 26 firms, the cost of the test rule is less than 1 percent of the revenue from the chemicals to be tested. For 5 firms, the cost is greater than 1 percent of annual revenue from the chemicals, but less than 50 percent. The test rule is expected to have little or no impact on the 10 firms; the impact on the 5 firms is expected to be minimal. The test costs imposed on seven chemicals currently manufactured (or imported) by 11 firms may be great enough to alter the market status of each chemical. In some cases, the continued marketability of a chemical may be threatened, while in other cases there may be changes in the firms manufacturing or importing a chemical (generally small volume producers discontinuing production in favor of larger volume producers). The annualized test cost allocated to each of 11 firms is greater than 100 percent of the anticipated annual revenue derived from the sale of the chemicals. Each of these 11 firms manufactures or imports the chemicals in small volumes, and is not likely to continue to produce or import the chemical. However, any lost revenue from small volumes of production will not seriously impact the firms.

4. Impact of Test Costs on Chemicals

Seven chemicals have annualized test costs lower than 1 percent of expected revenue, resulting in little impact. Seven chemicals have annualized test costs higher than 1 percent of expected revenue. Of these seven chemicals, three

should experience minimal impact, two because there are no chemical substitutes which are economically and functionally competitive, and the other because there is the possibility of discontinuing production of multiple grades of the chemical, thus reducing the impact of the rule. The remaining four chemicals may be more severely affected. Three are highly specialized, produced in small volumes, and have functional substitutes. This would indicate that test costs would cause these 3 chemicals to be removed from the market. However, all three are marketed currently at prices higher than their substitutes, indicating there may be some functional advantage leading to continued use at a higher price. If this is the case, these 3 chemicals may or may not be replaced by substitutes. The remaining chemical is imported in very small quantities by seven firms. Its annualized test costs are nearly 500 percent of annual revenue. In addition, functional substitutes are available, leading EPA to believe that none of the seven firms will continue to import this chemical, and the chemical will be displaced from the market.

EPA is requesting submission of additional information during the comment period to enable it to make a more specific assessment of the need for testing in the case of these four chemicals. Information requested is: specific uses for these chemcials, the names and properties of substitutes for these chemicals, process information and reaction conditions under which these chemicals are produced. The chemicals are: tetrabromobisphenol-A diacrylate; tetrabromobisphenol-A bis-ethoxylate; tetrabromobisphenol-A bis-2,3-dibromopropyl ether; 2,3,5,6,-tetrachloro-2,5-cyclohexadiene-1,4-dione.

The four chemicals which are threatened represent a minor portion of total sales for their manufactures/importers. For all but one firm, the lost sales would be less than 0.1 percent of the firm's total annual sales, and for the remaining firm, lost sales would equal 0.2 percent of total sales. For most of the firms manufacturing the four chemicals, the costs of conducting the tests would be greater than the lost revenue from discontinuing their sale.

5. Economic Consequences of This Rule

Based on currently available information, EPA has determined that this rule will have negligible economic consequences for any of the chemicals. For most of the chemicals to be tested, costs are extremely low compared to company revenues and revenues from the chemicals. While for other chemicals there may be effects on the marketability of the chemical or the ability of a particular firm to market the chemical at present, all these chemicals appear to be replaceable by functional substitutes, which manufacturers or importers could use if the cost of testing for dioxin and furan contamination is deemed too high. However, it is possible that these chemicals may be irreplaceable for certain specialized uses, (EPA is not currently aware of such uses) and that testing may not be warranted at this time if it is not expected to reveal significant risks. Accordingly, EPA could adopt a different strategy in the final rule for some chemicals, depending on the economic impact of requiring testing for the specific chemicals, the importance of various uses, the number of persons exposed, the levels of the individual chemicals to which persons may be exposed, and the potential for increased use of the chemicals. If EPA determines that testing for certain chemicals is not warranted at the time the final rule is promulgated, EPA may require reporting under the final version of the section 8 rule proposed in this notice to more accurately determine the need for testing these chemicals. EPA will require testing of all chemicals for which additional data is not submitted during the comment period for this rule.

VI. Availability of Facilities

Section 4(b)(1)(C) of TSCA requires that in the development of a test rule the Administrator consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Pursuant to this requirement, EPA conducted a survey of commercial analytic testing laboratories to determine the availability of facilities, equipment, and personnel necessary to perform the tests outlined in this proposed rule (Ref. 27).

A list of 57 laboratories was compiled, consisting of 17 laboratories with current contracts under the EPS's Superfund Contract Laboratory Program, and 40 laboratories from the 1984 Directory of the American Council of Independent Laboratories. Twenty-five laboratories (the 17 EPA contract labs and 8 others chosen at random) were contacted by telephone.

The laboratory capacity survey reviewed the availability of gas chromatography with low-resolution mass spectrometry (LR GC/MS), gas chromatography with high-resolution mass spectrometry (HR GC/MS), and gas chromatography with electron capture detection (GC/ECD). The survey further addressed each laboratory's overall capacity to perform PHDD/PHDF tests of any type.

Of the 25 firms surveyed, 18 reported PHDD/PHDF testing capability. Among the 18 labs, 104 total GC/MS systems were identified, including 8 HR GC/MS systems in 5 facilities and 1 medium resolution system. The total number of GC/ECD systems at the disposal of the survey respondents ranged from 80 to 101. All but one laboratory (with 3 LR GC/MS systems and 1 HR GC/MS system) reported additional capacity available to perform analyses for PHDD/PHDF contaminants in commercial products. Several university laboratories and the in-house research laboratories of some chemical manufacturers will supplement the available supply of HR GC/MS in commercial testing facilities.

Under the guidelines in this rule for selection of chemicals for testing, and sampling and test methodology, it is anticipated that the number of total tests required will be approximately 400 individual sample analyses. The preliminary conclusion of the laboratory capacity survey is that the analysis of these samples will not severely strain the capacity of commercial testing laboratories, supplemented by university and chemical industry research facilities, and the tests required by this rule will not increase the unit price of conducting individual analyses. See the economic analysis (Ref. 27) for a full discussion of laboratory capacity and price of sample analysis.

One testing option discussed in this proposed rule but not incorporated in the laboratory survey is the biological screen for PHDD/PHDF contamination. Because biological screening tests are still under development, the potential capacity available for conducting such tests is unknown. It is assumed, however, that because of the number of laboratories with facilities to conduct various biological analyses and the relatively low start up costs expected, the supply of laboratories to perform biological screens for PHDDs and PHDFs will be available to meet the demand generated by successful development and application of the tests.

VII. Section 8 Reporting

Under section 8(a)(1)(A) of TSCA, EPA may require chemical manufacturers to maintain such records and submit such reports as the Agency may reasonably require, which data are to be known to the person making the report or reasonably ascertainable (section 8(a)(2)). Further, section 8(a)(1)(A) exempts small manufacturers

from recordkeeping and reporting requirements, except where the manufacturer is also subject to a rule proposed or promulgated under section 4 (section 8(a)(3)(A)(ii)). Section 8(a)(2) also notes that to the extent feasible, EPA should not require unnecessary or duplicative reporting.

Small manufacturers are defined as: (1) The parent firm has total annual sales of less than $30 million, and no more than 45,400 kilograms (100,000 pounds) of any one chemical is produced at any one plant site (plant sites which manufacture more than 45,400 kilograms of a chemical product made from a precursor chemical listed under § 766.23 must report on that chemical from that plant site only); or (2) the manufacturer has total annual sales of less than $3 million, regardless of production volume of any chemical at any site. These small manufacturers are not required to report data concerning chemicals made from precursor chemicals under section 8(a) of TSCA. All other data required under section 8(a) must be reported by small manufacturers because it is triggered by a rule under section 4, making the small manufacturer subject both to a rule proposed or promulgated under sections 4 and 8(a).

Under section 8 of TSCA, EPA proposes to require staged reporting by: (1) Manufacturers of chemicals listed in § 766.20; (2) all organic chemical manufacturers; (3) manufacturers (except small manufacturers) of chemicals made from precursor chemicals listed under § 766.23; (4) all manufacturers of tested chemicals reporting a positive test result; and (5) all manufacturers of some uncontaminated chemicals when one manufacturer of a chemical reports contamination. The reporting is staged by a specific trigger from some other action. The first stage is triggered by this rule and occurs 90 days after promulgation of this rule. The second stage is triggered by the reporting of a positive test result, either under section 4, or as a result of test data submitted under section 8(a). The last stage may be triggered by a Notice published in the **Federal Register** by EPA naming those chemicals where at least one manufacturer has reported contamination. A manufacturer always has the option to submit 90 days after promulgation on this rule all data it may be required to submit under section 8 at varous times during the course of this rule.

A. Use of a form

To simplify both reporting and tabulation of production volume, process, use, exposure, and disposal data requested under section 8(a), EPA is proposing the use of a form, the Dioxin/Furan Report Form, § 766.30(e)(5), to be filled out for each chemical on which information is being reported under section 8(a). Submission of unpublished health and safety studies will follow procedures set out at 40 CFR Part 716. Submission of allegations of significant adverse reactions will follow procedures set out at 40 CFR Part 717.

B. Reporting timeframe

1. Reporting Triggered by Promulgation of This Rule.

Ninety days after promulgation of this rule, EPA proposes to require: (a) Manufacturers of chemicals listed under § 766.20 to submit available test data for those chemicals, data which shows contamination (or lack thereof) of the chemical by 2,3,7,8–HDDs/HDFs and which quantifies the level of contamination, along with any protocols showing how samples were taken, cleanup accomplished, and analysis done. This requirement is proposed under section 8(a) of TSCA; (b) Manufacturers of organic chemicals to submit unplublished health and safety studies on dioxins and/or furans. This requirement is proposed under section 8(d) of TSCA; (c) Manufacturers (except small manufacturers) of chemicals made from precursor chemicals listed under § 766.23, to submit information on production volume, process, reaction conditions, use, exposure, and disposal for each chemical product using a precursor chemical in the manufacturing process as a feedstock or intermediate. This requirement is proposed under section 8(a) of TSCA.

2. Reporting Triggered by a Positive Test Response

Ninety days after submission of a positive test response to EPA resulting from testing under section 4, or from previous testing submitted under section 8(a) of TSCA, EPA proposes to require manufacturers of contaminated chemicals to: (a) report production volume, process, reaction conditions, use, exposure and disposal data under section 8(a) of TSCA; (b) submit unpublished health and safety studies on the contaminated chemical under section 8(d) of TSCA; and (c) submit allegations of significant adverse reactions to the contaminated chemical and to the dioxin and/or furan contaminants under section 8(c) of TSCA.

3. Reporting Triggered by a "Federal Register" notice

Ninety days after EPA publication of a notice in the **Federal Register** listing chemicals for which positive test results from at least one manufacturer have shown contamination by 2,3,7,8-HDDs/HDFs at or above the LOQ, manufacturers of those chemicals which have been shown not to be contaminated are required to submit data on process and reaction conditions for their chemical. This requirement is proposed under section 8(a) of TSCA, and will only be used if EPA needs the process data to determine whether the process can be changed to produce a clean chemical.

C. Uses of the data

The kinds of data required under section 8(a) and the reasons for the Agency's request are set forth below. EPA is proposing to collect this information on a form, published under § 766.30(e)(5). Use of a form will facilitate reporting of data for the manufacturer, and processing and comparison of reported data for EPA.

1. Production and Use Information

EPA needs use information, including production volume for each use, as detailed as possible, to construct realistic exposure scenarios. EPA needs this information for tested chemicals only after a positive test result has been reported. For chemicals made from precursor chemicals, EPA needs this information to evaluate the potential exposure for any chemical products that may be candidates for future testing. Therefore EPA has requested this information under section 8(a) at two stages—from manufacturers of chemicals made from precursor chemicals 90 days after promulgation of this rule, and from manufacturers of chemicals listed for testing 90 days after a positive test result has been reported.

2. Process Information

EPA has requested very detailed reporting of the chemical manufacturing process and process conditions in part II of the form (EPA 7910–51). For chemicals made from precursor chemicals, EPA will examine process conditions and process chemistry to determine whether any of the products are likely to be contaminated, and therefore be candidates for future testing under section 4 of TSCA. For the chemicals listed in § 766.20 and shown to be contaminated EPA will examine process chemistry and process conditions to determine whether a process change will reduce the levels of contamination

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to an acceptable risk level in the final chemical. For "clean" chemicals, where one manufacturer of a given chemical has reported contamination, EPA may compare processes and conditions to ensure that a process is available to produce a clean chemical and that the reports of noncontamination have a basis in process or process conditions. These data have been requested at three stages in the reporting cycle. Data from manufacturers of chemicals made from precursor chemicals have been requested 90 days after promulgation of the rule; data from manufacturers of contaminated chemicals have been requested 90 days after submission of positive test results; data from manufacturers of clean chemicals may be requested 90 days after publication of a notice in the **Federal Register** naming contaminated chemicals.

A manufacturer may be exempted from submitting process information in section II of the form if this information for the listed chemical and the same process has been provided to the Agency within the last 2 years on "RCRA Section 3007 Questionnaire; Organic Chemical Manufacturing Industry: Halogenated Dioxins, OMB No. 2000–0396."

3. A Description of Byproducts Resulting From the Manufacture of Listed Chemicals.

This is any available testing information showing levels of 2,3,7,8-HDDs/HDFs in listed chemicals. This information is designed to give EPA any test data on contamination levels in commercial chemicals as quickly as possible and to exempt manufacturers from the testing requirements under section 4 if the data meet the requirements of this rule. Under this proposed rule, this information must be submitted by manufacturers of listed chemicals 90 days after promulgation of this rule.

4. Exposure Information

Manufacturers of both listed chemicals with a positive test result and chemicals made from precursor chemicals would be required to report, by each specific step in the manufacturing process, the maximum number of workers involved in each operation and the maximum duration of time that any one worker will engage in the activity in hours per day and days per year. This information, will enable EPA to calculate occupational exposure to 2,3,7,8-HDDs/HDFs. Manufacturer's of listed chemicals with a positive test result would report this information 90 days after submission of the test result; manufacturers of chemicals made from precursor chemicals would report 90 days after promulgation of this rule.

5. Disposal Information

Information to be reported includes the amount of chemical released at each stage of the process that shows an environmental release on the process diagram. A description of control technology used to control or treat the environmental release should be reported, along with the method of disposing of any waste. This information, along with process information requested, assists the Agency in determining the fate of the dioxins and/or furans generated. The fate calculation will be used in determining levels and durations of exposures as a part of the exposure assessment. Some disposal information is avaialble from the Office of Solid Waste (OSW); however, the information does not account for different manufacturing sites. Any manufacturer who has completed and submitted all process data requested on the questionnaire titled "RCRA Section 3007 Questionnaire; Organic Chemicals Manufacturing Industry: Halogenated Dioxins, OMB No. 2000–0396" for both the chemical and the process in question within the past 2 years note that fact in its submission to EPA under section 8(a) and does not have to complete the section of the form on process conditions.

D. Costs of Reporting

Reporting costs under section 8 are minimal, and will vary depending on which provision a manufacturer is responding to. The most expensive reporting requirement is for the information needed to complete the Dioxins/Furans Report Form. Completion of this form is expected to cost from $1,607 to $3,214 depending on the complexity of process and use data to be reported. Submission of data from previously conducted tests is expected to cost from $273 to $546 per chemical. Reporting under section 8(c) is expected to cost from $188 to $376 per chemical; and reporting under section 8(d) is expected to cost from $250 to $320 plus $80 for each 15-page report submitted. These costs are not expected to have an impact on any firm's decision to manufacture or import the chemical reported on.

VIII. Compliance and Enforcement

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1)(A) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: "(A) establish or maintain records, (B) submit reports, notices, or other information, or (C) permit access to or copying of records required by this Act or a rule" issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11(a) applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with any final rule for chemicals listed under § 766.20. These inspections may be conducted to verify that testing has begun, schedules are being met, and reports accurately reflect the underlying raw data and interpretations and evaluations, and to determine compliance with TSCA GLP standards and the test standards established in the rule.

EPA's authority to inspect a testing facility is also derived from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing

after the deadlines for such submissions. Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IX. Rulemaking Record

EPA has established a record for this rulemaking (OPTS–83002). This record includes basic information considered by the Agency in developing this proposal and appropriate Federal Register notices. The Agency will supplement the record with additional information as it is received.

This record includes the following kinds of information:

1. Federal Register notices pertaining to this rule.
2. Study of availability of test facilities and personnel.
3. Economic analyses.
4. Communications before proposal consisting of written public and intra- or interagency memoranda and comments and summaries of telephone conservations.
5. Reports—published and unpublished factual materials.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room E–107, 401 M St., SW., Washington, DC from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

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XI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. First, the effect on the economy is not expected to exceed the costs of testing 14 chemicals and reporting on those contaminated, plus some additional reporting. The total costs of testing are expected to be $2.67 million. Reporting costs will add an additional $4,100. No significant increases in prices are expected to occur as a result of this rule, as reported in the economic impact analysis. No significant adverse effects are expected on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 et seq., Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses because: (1) Very few small chemical manufacturers and importers will be required to test chemicals and report, and (2) small manufacturers have been exempted from a major reporting requirement.

For this rule the definition of small business is the one used in previous section 8(a) reporting rules, defined at § 766.4(k). For this certification, the total annual sales figure of $4 million was used as the cutoff to denote small chemical manufacturers and importers. Of the firms required to test, 5 qualify as small businesses. These 5 firms do not represent a substantial number of all small chemical manufacturing firms. For these 5 firms, amortized test costs are projected to be less than 1 percent of annual sales, approximately the same precentage experienced by larger manufacturing and importing companies. Only 1 small manufacturer is projected to experience test costs of 1.3 percent of annual sales, approximately 0.3 percent more than other large and small manufacturers.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control numbers 2070–0033 for reporting under section 4, 2070–0004 for submission of health and safety studies under section 8(d), 2070–0017 for submission of allegations of significant adverse reactions under section 8(c), and 2070–0420 for submission of information under section 8(a). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs: OMB; 726 Jackson Place NW; Washington, DC 20503 marked "Attention: Desk Officer for EPA". The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Testing, Environmental Protection Agency, Environmental protection, Hazardous material, Chemicals, Recordkeeping and reporting, Health and safety, Significant adverse reactions.

Dated: December 9, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that Chapter I of 40 CFR be amended by adding Part 766 to read as follows:

PART 766—DIBENZODIOXINS/ DIBENZOFURANS

Subpart A—General Provisions

Sec.
766.1 Scope and purpose.
766.2 Applicability.
766.3 Compliance.
766.4 Definitions.
766.5 Submission of information.
766.10 Test standards.
766.11 Testing guidelines.
766.12 Congeners for which quantitation is required.

Subpart B—Specific Chemical Testing/ Reporting Rules

766.20 Chemicals for testing/reporting.
766.23 Reporting on precursor chemicals.
766.25 Analytical test method.
766.27 Method sensitivity.
766.28 Test results.
766.30 Reporting requirements.

Authority: 15 U.S.C. 2061.

Subpart A—General Provisions

§766.1 Scope and purpose.

(a) This Part identifies that chemical substances which are subject to reporting under section 8 of TSCA and testing under section 4 of TSCA, specifies persons required to report and test (manufacturers, including importers, and processors), prescribes the analytical methods required, including the target limits of quantitation and the congeners for which quantitation is required, and provides deadlines for submission of protocols, reports, studies, and test results to EPA. This part also identifies chemicals which are precursors (aids under appropriate process conditions to formation of halogenated dibenzo-p-dioxins (HDDs) and halogenated dibenzofurans (HDFs)), and identifies reporting requirements and persons required to report for chemicals made from these precursor chemicals.

(b) This Part requires manufacturers and processors of chemical substances identified in § 766.20(a) to submit letters of intent to test and protocols for the sampling, sample preparation, extraction and cleanup, and analysis of the chemical substances. Any submissions must be in accordance with the EPA test rule development and exemption procedures contained in Part 790 of this chapter and any modifications to such procedures contained in this Part.

(c) This Part requires manufacturers of chemical substances identified in § 766.20 to: submit any existing test data and protocols to EPA, to submit allegations of significant adverse reactions to HDDs and HDFs, to analyze chemicals for HDDs and HDFs and

report results. If a test result indicates the presence of contamination of a chemical product by HDDs and/or HDFs, this Part requires additional reporting. In some cases, additional reporting may be required of manufacturers reporting no contamination of a chemical product. This part also requires anyone possessing health and safety studies on HDDs and HDFs to submit such studies.

(d) This Part requires manufacturers of chemical substances produced from chemicals identified as precursors to HDD and HDF formation, listed at § 766.23(a), to report on chemical substances produced from such precursor chemicals.

§ 766.2 Applicability.

(a) This Part is applicable to each person who manufactures or intends to manufacture (including import), processes or intends to process, a chemical substance identified in § 766.20(a). This Part is also applicable to each person who manufactures or intends to manufacture (including import) a chemical product from any chemical substance identified in § 766.23(a). The duration for this rule is the period commencing with the effective date of this rule to the end of the reimbursement period defined in §766.24.

(b) Small manufacturers are exempt from reporting production volume, process, use, exposure and disposal data on chemicals made from precursor chemicals listed under § 766.23(a). Manufacturers qualify as small if they meet either of the standards set forth in § 766.4(k).

§ 766.3 Compliance.

Any person who fails or refuses to comply with any aspect of this Part is in violation of section 15 of TSCA. Section 15(1) makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) makes it unlawful for any person to fail or refuse to submit information required under this rule. Section 16 provides that a violation of section 15 renders a person liable to the United States for a civil penalty and possible criminal prosecution. Under section 17 of TSCA, the district courts of the United States have jurisdiction to restrain any violation of section 15.

§ 766.4 Definitions.

The definitions in section 3 of TSCA and the definitions of §§ 704.3, 716.3, 717.3 and 790.3 also apply to this Part.

(a) Dioxin means any of a family of compounds which has as a nucleus a triple-ring structure consisting of two benzene rings connected through a pair of oxygen atoms.

(b) Dibenzofuran means any of a family of compounds which has as a nucleus a triple-ring structure. Two rings are benzene rings and the third ring, between the benzene rings, is formed by two bridges between the two benzene rings. The bridges are a carbon-carbon bridge and a carbon-oxygen-carbon bridge between respective substitution positions adjacent to the carbon-carbon bridge.

(c) Congener means any one particular member of a class of chemicals. A specific congener is denoted by unique chemical structure, for example 2,3,7,8-tetrachlorodibenzofuran.

(d) Homolog means a group of isomers that have the same degree of halogenation. For example, the homologous class of tetrachlorodibenzo-p-dioxins consists of all dibenzo-p-dioxins containing four chlorine atoms. When the homologous classes discussed in this rule are referred to, the following abbreviations for the prefix denoting the number of halogens are used:

tetra-, T (4 atoms)
penta-, Pe (5 atoms)
hexa-, Hx (6 atoms)
hepta-, Hp (7 atoms)

(e) Polyhalogenated dibenzo-p-dioxin (or PHDD) means any member of a class of dibenzo-p-dioxins containing one to eight chlorine substituents or one to eight bromine substituents. "Polychlorinated dibenzo-p-dioxin" (or PCDD) refers to any member of a class of dibenzo-p-dioxins with one to eight chlorine substitents; "polybrominated dibenzo-p-dioxin" (or PBDD) refers to any member of a class of dibenzo-p-dioxins with one to eight bromine substituents.

(f) Polyhalogenated dibenzofuran (or PHDF) means any member of a class of dibenzofurans containing one to eight chlorine, bromine, or a combination of chlorine and bromine substituents. "Polychlorinated dibenzofuran" refers to any member of a class of dibenzofurans with one to eight chlorine substituents; "polybrominated dibenzofurans" refers to any member of a class of dibenzofurans with one to eight bromine substituents.

(g) Positive test result means: (1) any resolvable gas chromatographic peak for any 2,3,7,8-HDD which equals or exceeds 0.1 part per billion; or (2) any resolvable gas chromatographic peak for any 2,3,7,8-HDF which equals or exceeds 1.0 part per billion.

(h) 2,3,7,8-HDD means any of the dibenzo-p-dioxins totally chlorinated or totally brominated at the following positions: 2,3,7,8; 1,2,3,7,8; 1,2,3,4,7,8,; 1,2,3,6,7,8; 1,2,3,7,8,9; and 1,2,3,4,7,8,9.

(i) 2,3,7,8-HDF means any of the dibenzofurans totally chlorinated or totally brominated at the following positions: 2,3,7,8; 1,2,3,7,8; 2,3,4,7,8; 1,2,3,4,7,8; 1,2,3,6,7,8; 1,2,3,7,8,9; 2,3,4,6,7,8; 1,2,3,4,6,7,8; and 1,2,3,4,7,8,9.

(j) Precursor means a chemical which is not contaminated due to the process conditions under which it is manufactured, but because of its molecular structure, under favorable process conditions, may cause or aid the formation of PHDDs and PHDFs in other chemicals in which it is used as a feedstock or intermediate.

(k) Small manufacturer means (1) the parent firm has total annual sales of less than $30 million, and no more than 45,400 kilograms (100,000 pounds) of any one chemical ius produced at any one plant site (plant sites which manufacture more than 45,400 kilograms of a chemical listed under § 766.20(a) or a chemical product made from a chemical listed under § 766.23(a) must report on that chemical from that plant site only); or (2) the manufacturer has total annual sales of less than $3 million, regardless of production volume of any chemical at any site.

(l) Reimbursement period means the period that begins when the data from the last test to be completed under a test rule is submitted to EPA, and ends after an amount of time equal to that required to develop that data or 5 years, whichever is later.

§ 766.5 Submission of information.

All information (including letters of intent, protocols, data, forms, studies and allegations) submitted to EPA under this part must bear the applicable Code of Federal Regulations (CFR) section number (e.g., § 766.30) and must be addressed to: Document Control Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Washington, DC 20460.

§ 766.10 Test standards.

Testing required under Subpart B of this part must be performed using the protocols submitted to and reviewed by EPA unless modifications have been submitted and reviewed. All new data, documentation, records, protocols, specimens and reports generated as a result of testing under Subpart B of this part must be fully developed and retained in accordance with Part 792 of this chapter. These items must be made available during an inspection or submitted to EPA upon request by EPA or its authorized representative. Laboratories conducting testing for

submission to the Agency in response to a test rule promulgated under section 4 of TSCA must adhere to the TSCA Good Laboratory Practices (GLPs). These GLPs are published at 40 CFR Part 792. Sponsors must notify the laboratory that the testing is being conducted pursuant to TSCA section 4. Sponsors are also responsible for ensuring that laboratories conducting the testing abide by the TSCA GLP standards. Manufacturers must submit a certification to EPA that the laboratory performing the testing adhered to the TSCA GLPs.

§ 766.11 Testing guidelines.

Testing guidelines are contained in a report titled *Guidelines for the Determination of Polyhalogenated Dibenzo-p-dioxins and Dibenzofurans in Commercial Products.* Copies are available from TSCA Assistance Office, (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (800–424–8065). Copies are also located in the public reference for this rule (docket no. OPTS–83002) and are available for inspection in the OPTS Reading Rm., E–107, 401 M Street SW., Washington, DC 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

§ 766.12 Congeners for which quantitation is required.

Quantitation for any of the following 2,3,7,8-HDD/HDF congeners which may be present in the chemical is required for the chemicals listed under § 766.20(a).

Chlorinated Dioxins	*Brominated Dioxins*
2,3,7,8-TCDD	2,3,7,8-TBDD
1,2,3,7,8-PeCDD	1,2,3,7,8-PeBDD
1,2,3,4,7,8-HxCDD	1,2,3,4,7,8-HxBDD
1,2,3,6,7,8-HxCDD	1,2,3,6,7,8-HxBDD
1,2,3,7,8,9-HxCDD	1,2,3,7,8,9-HxBDD
1,2,3,4,6,7,8-HpCDD	1,2,3,4,6,7,8-HpBDD

Chlorinated Furans	*Brominated Furans*
2,3,7,8-TCDF	2,3,7,8-TBDF
1,2,3,7,8-PeCDF	1,2,3,7,8-PeBDF
2,3,4,7,8-PeCDF	2,3,4,7,8-PeBDF
1,2,3,4,7,8-HxCDF	1,2,3,4,7,8-HxBDF
1,2,3,6,7,8-HxCDF	1,2,3,6,7,8-HxBDF
1,2,3,7,8,9-HxCDF	1,2,3,7,8,9-HxBDF
2,3,4,6,7,8-HxCDF	2,3,4,6,7,8-HxBDF
1,2,3,4,6,7,8-HpCDF	1,2,3,4,6,7,8-HpBDF
1,2,3,4,7,8,9-HpCDF	1,2,3,4,7,8,9-HpBDF

Subpart B—Specific Chemical Testing/Reporting Rules

§ 766.20 Chemicals for testing/reporting.

(a) *Identification of chemical substances for testing/reporting.* Chemicals required to be tested for the presence of the congeners of HDDS and HDFs listed under § 766.12 are listed by Chemical Abstracts Service (CAS) Number and Name. The chemicals listed under § 766.20(a)(1) are commercially manufactured and are subject to testing upon promulgation of this rule. Those chemicals listed under § 766.20(a)(2) are subject to testing upon commencement or resumption of commercial manufacture.

(1) *Chemicals commercially manufactured—*

CAS Number and *Chemical Name*
79–94–7 Tetrabromobisphenol-A
94–75–7 2,4-Dichlorophenoxyacetic acid
94–82–6 2,4-Dichlorophenoxybutyric acid
118–75–2 2,3,5,6-Tetrachloro-2,5-cyclohexadiene-1,4-dione
118–79–6 2,4,6-Tribromophenol
120–83–2 2,4-Dichlorophenol
1163–19–5 Decabromodiphenyloxide
4162–45–2 Tetrabromobisphenol-A-bisethoxylate
21850–44–2 Tetrabromobisphenol-A-bis-2,3-dibromopropyl ether
25327–89–3 Allyl ether of tetrabromobisphenol-A
32534–81–9 Pentabromodiphenyloxide
32536–52–0 Octabromodiphenyloxide
37853–59–1 1,2-Bis(tribromophenoxy)-ethane
Tetrabromobisphenol-A diacrylate

(2) *Chemicals not commercially manufactured—*

CAS Number and *Chemical Name*
79–95–8 Tetrachlorobisphenol-A
87–10–5 3,4,5-Tribromosalicylanilide
87–65–0 2,6-Dichlorophenol
95–77–2 3,4-Dichlorophenol
95–95–4 2,4,5-Trichlorophenol
99–28–5 2,6-Dibromo-4-nitrophenol
120–36–5 2[2,4-(Dichlorophenoxy)]-propionic acid
320–72–9 3,5-Dichlorosalicyclic acid
488–47–1 Tetrabromocatechol
576–24–9 2,3-Dichlorophenol
583–78–8 2,5-Dichlorophenol
608–71–9 Pentabromophenol
615–58–7 2,4-Dibromophenol
933–75–5 2,3,6-Trichlorophenol
1940–42–7 4-Bromo-2,5-dichlorophenol
2577–72–2 3,5-Dibromosalicylanilide
3772–94–9 Pentachlorophenyl laurate
37853–61–5 Bismethylether of tetrabromobisphenol-A
Alkylamine tetrachlorophenate
Tetrabromobisphenol-B

(b) *Persons required to report, submit data and conduct tests.* All persons who manufacture or intend to manufacture or process or intend to process any chemical identified under paragraph (a) of this section from (*insert date 44 days from date of publication of the rule in the* **Federal Register**) to the end of the reimbursement period shall submit the following materials on the stated timetable:

(1) Letters of intent to test by (*insert date 45 days from date of publication of the rule in the* **Federal Register**);

(2) existing test data, with protocols, which show results of testing the chemical product for the existence of and level of any dibenzo-p-dioxins and dibenzofurans by (*insert date 90 days from the date of publication of the rule in the* **Federal Register**);

(3) allegations of significant adverse reactions based on any dibenzo-p-dioxins and/or dibenzofurans by (*insert date 90 days from date of publication of the rule in the* **Federal Register**);

(4) proposed protocols capable of analysis of each congener of HDDs/HDFs listed under § 766.12 at the required Level of Quantitation for the sample collection, clean-up, extraction and analysis of the chemicals listed under § 766.20(a)(1), by (*insert date 180 days from the date of publication of the rule in the* **Federal Register**);

(5) results of conducting the testing, including levels of each 2,3,7,8-HDD and HDF congener present above 0.1 ppb and 1.0 ppb respectively, for each product sample tested; negative results; any deviation from methods and QA submitted and reviewed by EPA; any corrective actions required during sampling and analysis; and actual precision and accuracy established for the samples analyzed, no later than 1 year after receipt of comments on the protocols from EPA;

(6) for chemicals with a positive test result, production volume, process, use, exposure and disposal data on form EPA 7910–51 (one form for each chemical with a positive test result), health and safety studies and allegations of severe adverse reactions based on the tested chemical, no later than 90 days after submission of the positive test result to EPA;

(7) manufacturers of chemicals for which no contamination has been reported may be requested to submit process data (Part II of form EPA 7910–51) if one manufacturer of that chemical reports contamination. Such a request will be made by publication of a notice in the **Federal Register.**

(8) manufacturers of any chemical listed under § 766.12(a)(2) will be required to test that chemical according to the schedule in this rule if that chemical enters commercial manufacture.

(c) Any chemical manufacturer in possession of health and safety studies on any dibenzo-p-dioxin or dibenzofuran must submit those studies not later than (*insert date 90 days from publication of this rule in the* **Federal Register**).

(d) The reporting of test results must follow the procedures set out in Part 790 of this chapter.

(e) The reporting of health and safety studies must follow all procedures set out in Part 716 of this chapter, except

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that studies on dibenzo-p-dioxins and dibenzofurans must be submitted 90 days after publication of this final rule, and studies on chemicals tested under § 766.20(a)(1) must be submitted 90 days after submission of a positive test result.

(f) Submissions of allegations of significant adverse reactions caused by dibenzo-p-dioxins, dibenzofurans, or the tested chemical, must follow procedures set out under Part 717 of this chapter. Allegations of significant adverse reactions caused by dibenzo-p-dioxins and/or dibenzofurans must be submitted by (*insert date 90 days after date of publication of this rule in the* **Federal Register**) and allegations of significant adverse reactions caused by the tested chemical must be submitted no later than 90 days after submission of a positive test result.

(g) Information collection requirements under this rule have been approved by the Office of Management and Budget under control numbers 2070–0033 for reporting under section 4, 2070–0004 for health and safety studies, 2070–0017 for allegations under section 8(c), and 2070–0420 for submission of information under section 8(a).

§ 766.23 Reporting on precursor chemicals.

(a) *Identification of precursor chemicals.* Precursor chemicals are produced under conditions that will not yield HDDs and HDFs, but their molecular structure is conducive to HDD/HDF formation under favorable reaction conditions when they are used to produce other chemicals or products. Precursor chemicals are identified by CAS number and name.

CAS Number	*Chemical Name*
87–84–3	Pentabromocyclohexane
89–64–5	4-Chloro-2-nitrophenol
92–04–6	2-Chloro-4-phenylphenol
94–74–6	4-Chloro-o-toloxy acetic acid
94–81–5	4-(2-Methyl-4-chlorophenoxy) butyric acid
95–56–7	o-Bromophenol
95–57–8	o-Chlorophenol
95–88–5	4-Chlororesorcinol
97–50–7	5-Chloro-2,4-dimethoxyaniline
99–30–9	2,6-Dichloro-4-nitroaniline
615–67–8	Chlorohydroquinone
827–94–1	2,6-Dibromo-4-nitroaniline.

(b) *Persons required to report.* All persons who manufacture or intend to manufacture chemical products using any of the chemicals listed under § 766.23(a) as feedstocks or intermediates, must report production, process, use, exposure and disposal data on form EPA 7910–51 under § 766.30(e)(5) for each such chemical product. Small manufacturers, defined under §766.4(k) are not required to report under this subpart. A separate form EPA 7910–51 must be submitted for each chemical product reported. All forms must be submitted to EPA no later than (*insert date 90 days from date of publication of this rule in the* **Federal Register**). Information collection requirements under this rule have been approved by the Office of Management and Budget under control number 2070–0120.

§ 766.25 Analytical test method.

The analytical method consists of several discrete steps, each fully described or reviewed in the document referred to in § 766.11, Testing Guidelines. Because of the difference in matrices of the chemicals listed for testing, no one method for sample selection, preparation, extraction and cleanup is prescribed. For analysis, High Resolution Gas Chromatography with High Resolution Mass Spectrometry is the method of choice, but other methods may be used if they can be demonstrated to reach the target LOQs.

(a) *Sample selection.* The chemical product to be tested should be sampled so that the specimens collected for analysis are representative of the whole. Guidelines for sample selection are provided in the support document referenced in § 766.11.

(b) *Sample preparation.* The sample must be mechanically homogenized and subsampled as necessary. Subsamples are spiked or reinforced with surrogate compounds or with standard stock solutions, and the surrogates or standards are thoroughly incorporated by mechanical agitation. Guidelines are provided in the document referenced in § 766.11.

(c) *Sample extraction and cleanup.* The spiked samples must be treated to separate the HDDs/HDFs from the sample matrix. Methods are reviewed in the document referenced in § 766.11, but the final method or methods are left to the discretion of the analyst, provided the instrumental response of the surrogates meets the criteria listed in the *Quality Assurance Plan for Measurement of Brominated or Chlorinated Dibenzofurans and Dibenzodioxins*, appendixes B and C of the document referenced in § 766.11. Cleanup techniques are described in the document referenced under § 766.11. These are chosen at the discretion of the analyst to meet the requirements of the chemical matrix.

(d) *Analysis.* The method of choice is High Resolution Gas Chromatographic/High Resolution Mass Spectrometric Determination, but alternate methods may be used if the manufacturer can demonstrate that the method will reach the target LOQs. Specific operating requirements are found in the document referenced in § 766.11.

§ 766.27 Method sensitivity.

(a) *2,3,7,8-Halogenated dibenzo-p-dioxins (HDDs).* The required limit of quantitation is 0.1 ppb for each resolved HRGC peak. For at least one product sample, at least two analyses of the same isotopically labelled HDD internal calibration standards spiked to a final product concentration of 0.1 ppb must be reproducibly extracted, cleaned up, and quantified to within ±10 percent of each other. For each spiked product sample, the signal to noise ratio for the calibration standard peaks after complete extraction and cleanup must be 10:1 or greater. The recovery of the internal calibration standards in the extracted and cleaned up product samples must be within 70–130 percent of the amount spiked.

(b) *2,3,7,8-Halogenated dibenzofurans (HDFs).* The required limit of quantitation is 1.0 ppb for each resolved HRGC peak. For at least one product sample, at least two analyses of the same isotopically labelled HDF internal calibration standards spiked to a final product concentration of 1.0 ppb must be reproducibly extracted, cleaned up, and quantified to within ±10 percent of each other. For each spiked product sample, the signal to noise ratio for the calibration standard peaks after complete extraction and cleanup must be 10:1 or greater. The recovery of the internal calibration standards in the extracted and cleaned up product samples must be within 70–130 percent of the amount spiked.

§ 766.28 Test results.

For purposes of reporting test results to EPA, and for further reporting triggered by a positive test result, a positive test result is defined at § 766.4(g).

§ 766.30 Reporting requirements.

(a) *Letters of intent.* Manufacturers who currently manufacture any chemical listed under § 766.20(a) are required to submit to EPA a letter which acknowledges their responsibility under this rule to report and test. This letter must be submitted no later than (*insert date 45 days from date of publication of rule in the* **Federal Register**).

(b) *Information required under section 8.* (1) Manufacturers of chemicals listed under § 766.20(a) are required to report, 90 days after publication of this rule in the **Federal Register**, results of all existing test data which show that any chemical listed under § 766.20(a) has been tested for the presence of HDDs

and/or HDFs. EPA will examine the data and notify the manufacturer whether it meets the requirements for testing required under Subpart B of this Part. If testing requirements under Subpart B are met, the manufacturer is exempt from such requirements. The manufacturer is not, however, exempted from requirements of reporting under § 766.30(e) if the test result from his chemical is positive.

(Approved by Office of Management and Budget under the control number 2070–0420)

(2) Any chemical manufacturer in possession of health and safety studies on dibenzo-p-dioxins and/or dibenzofurans is required to submit such studies to EPA no later than 90 days after publication of this rule in the Federal Register. Such studies shall be submitted in accordance with procedures set forth in Part 716 of this chapter.

(Approved by the Office of Management and Budget under the control number 2070–0004)

(3) Manufacturers of chemicals listed under § 766.20(a) must submit allegations of significant adverse reactions caused by any HDDs and/or HDFs no later than 90 days after publication of this rule in the Federal Register. These allegations shall be submitted in accord with procedures set forth in Part 717 of this chapter.

(Approved by the Office of Management and Budget under the control number 2070–0017)

(4) Manufacturers of chemicals products using any of the chemicals listed under §766.23(a) as feedstocks or intermediates must report production, process, use, exposure and disposal data on form EPA 7910–51 for each such chemical product no later than 90 days after publication of this rule in the Federal Register.

(Approved by the Office of Management and Budget under the control number 2070–0420)

(c) *Protocols.* Protocols include all parts of the *Quality Assurance Plan for Measurement of Brominated or Chlorinated Dibenzofurans and Dibenzodioxins*, as stated in *Guidelines for the Determination of Polyhalogenated Dibenzo-p-dioxins and Dibenzofurans in Commercial Products*, which is referenced in § 766.11. EPA expects to receive specific plans for collection of samples from the process stream, naming the point of collection, the method of collecting the sample, and an estimate of how well the samples will represent the material to be characterized; a description of how control samples (blanks) and HDD/HDF-reinforced control samples, or isotopically labeled compounds (standards) and duplicate samples will be handled; a description of the chemical extraction and clean up procedures to be used; how extraction efficiency and measurement efficiency will be established; and a description of instrument hardware and operating conditions, including type and source of columns, carrier gas and flow rate, operating temperature range, and ion source temperature. These protocols for each chemical product to be tested must be submitted to EPA no later than 6 months after publication of this rule in the Federal Register.

(d) *Analytical test results.* All test results must be reported no later than 12 months after receipt of a letter from EPA commenting on protocols submitted. A positive test result is defined at § 766.4(g).

(Approved by the Office of Management and Budget under the control number 2070–0033)

(e) *Information required under section 8.* Submission of a positive test result triggers additional reporting under section 8 of TSCA, all of which must be submitted to EPA no later than 90 days after the date of submission of the positive test result.

(1) A form, EPA 7910–51 under paragraph (e)(5) of this section has been provided for submission of data required under section 8(a) of TSCA. The form is printed under paragraph (e)(5) of this section and copies are available from the TSCA Assistance Office. One form must be submitted for each chemical for which a positive test result has been submitted.

(Approved by the Office of Management and Budget under the control number 2070–0420)

(2) Health and safety studies for chemicals for which a positive test result have been submitted shall be submitted in accord with Part 716 of this chapter, except that the manufacturer has 90 days after submission of a positive test result to submit health and safety studies on the tested chemical.

(Approved by the Office of Management and Budget under the control number 2070–0004)

(3) Allegations of significant adverse reactions to the chemical for which a positive test result has been submitted, shall be submitted in accord with Part 717 of this chapter, except that the manufacturer has 90 days after submission of a positive test result to submit such allegations on the tested chemical.

(Approved by the Office of Management and Budget under the control number 2070–0017)

(4) A positive test result on a chemical from one manufacturer but not from others may require EPA to publish a notice listing chemicals for which a positive result has been received from at least one manufacturer and requiring any manufacturer of that chemical who has not submitted a positive test result to submit the information required in Part II of EPA Form 7910–51 under §766.30(e)(5). Such a notice will be published only if EPA needs additional process data to make a determination of unreasonable risk.

(5) Dioxin/Furan Reporting Form:

BILLING CODE 6560-50-M

United States Environmental Protection Agency
Washington, DC 20460

EPA

Dioxins/Furans Report

Form Approved
OMB No. XXXX-XXXX
Approval expires XX-XX-XX

When completed, send this form to:

Document Control Officer
Office of Toxic Substances, TS-793
US Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

For Agency Use Only

Document Control Number | Docket Number

Part I — General Information

Section A — Submitter Identification

Confi-dential

Mark (X) the "Confidential" box next to any subsection you claim as confidential.

1a. Person Submitting Notice

Name of authorized official | Title

Company

Mailing address *(number and street)*

City, State, and ZIP Code

Section B — Chemical Identity Information *(Use a separate form for each chemical reported.)*

Mark (X) the "Confidential" box next to any subsection you claim as confidential.

1. Chemical name and CAS Registry Number

Part II — Process and Release Information

Section A — Flow Diagram

Mark (X) the "Confidential" box next to any subsection you claim as confidential.

Complete this section for each unit process. Provide a general process block flow diagram that identifies major unit operations and treatment processes and indicate the types and points of release of byproducts and residuals. *(See example I attached.)*

(1) Include intermediates, coproducts and byproducts produced by the process.

(2) Proide a block for each major unit operation *(e.g., reactor, washer, filtration, air emission control, aeration lagoon, etc.)* in the production process and in the residuals management process.

(3) Identify process input such as raw materials, reagents, and solvents by chemical or common name and CAS number, and indicate the point of introduction with arrows.

(4) For each unit operation in which the temperature is not ambient, specify temperature or temperature range in each block of the flow diagram.

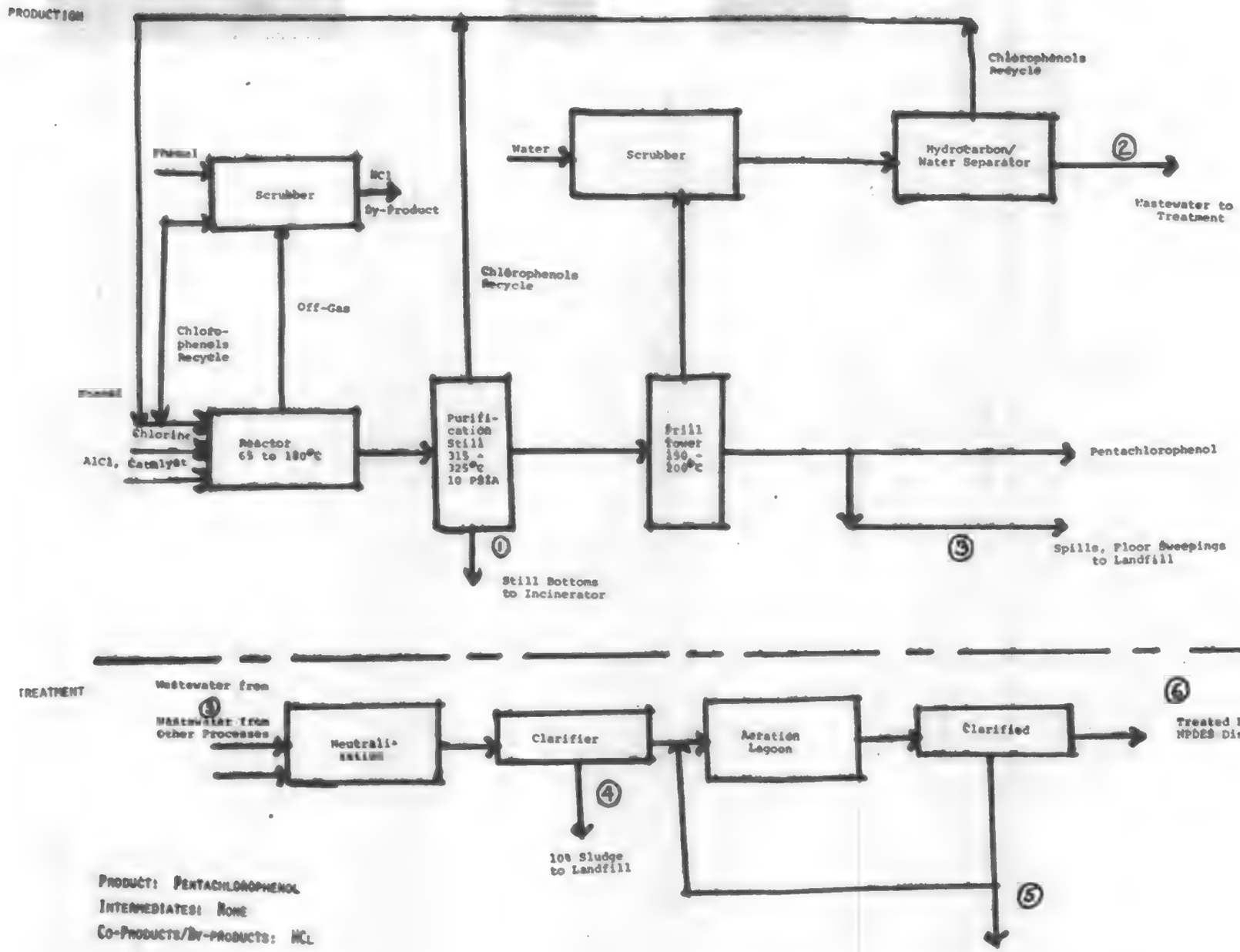
(5) Specify operating pressure or pressure range in each block of the flow diagram for each unit operation in which the pressure is not atmospheric.

(6) Identify the composition of the reaction vessel wherever one is used *(e.g., stainless steel, glass-lined)*.

(7) Number all points in the flow diagram from which the chemical substance will be released into the environment. *(See example I)*

☐ Mark (x) this box if you attach a continuation sheet.

EXAMPLE 1 - PROCESS BLOCK FLOW DIAGRAM



PRODUCT: PENTACHLOROPHENOL
INTERMEDIATES: NONE
CO-PRODUCTS/BY-PRODUCTS: HCL

Section B — Environmental Release and Disposal

You must make separate confidentiality claims for the release number and the amount of the substance released and other release and disposal information. Mark (x) the "Confidential" box next to each item you claim as confidential.

(1) — Enter the number of each release point identified in the process description, part II, Section A.
(2) — Estimate the amount of the chemical substance released directly to the environment or into control technology *(in kg/day or kg/batch)*.
(3) — Mark (x) this column if entries in columns (1) and/or (2) are confidential
(4) — Identify the media *(air, land, or water)* to which the substance will be released from the release point.
(5) — Describe control technology, if any, that will be used to limit the release of the substance to the environment. For releases disposed of on land, characterize the disposal method.
(6) — Mark (x) this column if entries in columns (4) and/or (5) are confidential
(7) — Identify the destination(s) of releases to water.

Release Number (1)	Amount of substance released (2)	Confidential (3)	Media of release (4)	Control technology (5)	Confidential (6)

(7) Mark (x) the destination(s) of releases to water ☐ POTW *(publicly owned treatment works)* ☐ Navigable waterway ☐ Other — *(specify)* ☐ Mark (x) this box if you attach a continuation sheet

EPA Form 7710-51 (9-86)

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Part III — Production, Import, and Use Information

Mark (x) the "Confidential" box next to any item you claim as confidential.

1. **Production volume** — Report the production volume during the past 12 months of production. Also report the maximum production volume for any consecutive 12-month period during the past 3 years of production.

Past 12-month production *(kg/year)*	Maximum 12-month production *(kg/year)*	Confidential

2. **Use information** — You must make separate confidentiality claims for the description of the category of use, the percent of production volume devoted to each category, the formulation of the substance, and other use information. Mark (x) the "Confidential" box next to any item you claim as confidential.

(1) — Describe each category of use of the chemical substance by function and application.
(2) — Mark (x) this column if entry in column (1) is confidential.
(3) — Estimate the percent of total production for the past 3 years devoted to each category of use.
(4) — Mark (x) this column if entry in column (3) is confidential.
(5) — Estimate the percent of the substance as formulated in mixtures, suspensions, emulsions, solutions, or gels as manufactured for commercial purposes at sites under your control associated with each category of use.
(6) — Mark (x) this column if entry in column (5) is confidential.
(7) — Mark (x) whether the use is site-limited, industrial, commercial, or consumer. Mark more than one column if appropriate.
(8) — Mark (x) this column if entries in column (7) are confidential.

Read the **Instructions Manual** for examples.

Category of use (1)	Confidential (2)	Production *(percent)* (3)	Confidential (4)	Formulation *(percent)* (5)	Confidential (6)	Mark (x) appropriate column(s) (7)				Confidential (8)
						Site-limited	Industrial	Commercial	Consumer	

☐ Mark (x) this box if you attach a continuation sheet.

3. **Hazard Information** — Include in the notice a copy or reasonable facsimile of any hazard warning statement, label, material safety data sheet, or other information which will be provided to any person regarding protective equipment or practices for the safe handling, transport, use, or disposal of the new chemical substance. List in part IV any hazard information you include.

☐ Mark (x) this box if you attach hazard information.

4. **Occupational Exposure** — You must make separate confidentiality claims for the description of worker activity, physical form of the substances, number of workers exposed, and duration of activity. Mark (x) the "Confidential" box next to any item you claim as confidential.

(1) — Describe the activities in which workers may be exposed to the chemical substance. Include activities in which workers wear protective equipment
(2) — Mark (x) this column if entry in column (1) is confidential
(3) — Indicate the physical form(s) of the chemical substance at the time of exposure.
(4) — Mark (x) this column if entry in column (3) is confidential
(5) — Estimate the maximum number of workers involved in each activity.
(6) — Mark (x) this column if entry in column (5) is confidential
(7) and (8) — Estimate the maximum duration of the activity for any worker in hours per day and days per year.
(9) — Mark (x) this column if entries in column (7) and/or (8) are confidential

Worker Activity (1)	Confidential (2)	Physical Forms (3)	Confidential (4)	Maximum number (5)	Confidential (6)	Maximum duration		Confidential (9)
						Hrs/day (7)	Days/yr (8)	

☐ Mark (x) this box if you attach a continuation sheet.

EPA Form 7710-51 (9-86)

Part IV — List of Attachments

Attach continuation sheets for sections of the form and optional information after this page. Clearly identify the attachment and the section of the form to which it relates, if appropriate. Number consecutively the pages of the attachments. In column (2) below, enter the inclusive page numbers of each attachment.

Mark (x) the "Confidential" box next to any attachment name you claim as confidential. Read the **Instructions Manual** for guidance on how to claim any information in an attachment as confidential.

Attachment name (1)	Attachment page numbers (2)	Confidential (3)

General Instructions
EPA Form 7710-51, Dioxins/Furans Report

You must provide all information requested in this form to the extent that it is known to or reasonably ascertainable by you.

Part I — General Information

You must provide the chemical identity of the chemical substance reported on, even if you claim the identity as confidential.

Part II — Process and Release Information

You may need additional copies of part II, sections A and B if there are several manufacture operations that you will describe in the form. You should reproduce these sections as needed.

Part III — Production, Import, and Use Information

You must provide production volume, percent of production used for each use category, and whether use is industrial, commercial or consumer. Also included is a copy of any hazard warning and a report of occupational exposure. Copies may be made of any part of the form if additional space is needed.

Part IV — List of Attachments

You should attach additional sheets if you do not have enough space on the form to answer a question fully. In part IV, list all attachments you include with the form.

Optional Information

You may include with the form any information that you want EPA to consider in evaluating the substance.

Confidentiality Claims

You may claim any information in this form as confidential. To assert a claim on the form, mark (x) the "Confidential" box next to the information that you claim as confidential. To assert a claim in an attachment, circle or bracket the information you claim as confidential.

A. General Instructions

Complete the form using a typewriter or by printing legibly in black ink. All information must be in English. Provide all information requested on the form to the extent that you know or can reasonably ascertain it. You may attach continuation sheets to any subsection or item on the form. Mark (x) the appropriate box on the form if you attach continuation sheets.

The use of the term "manufacture" in this form includes both manufacture and import. Manufacturers and importers must fully comply with the information requirements set forth in the Polyhalogenated Dibenzo-p-dioxins/Dibenzofurans Testing and Reporting Requirements Rule. However, importers are not required to submit any data under section 8(a) of TSCA which relates solely to exposure to humans or the environment outside the United States.

Any manufacturer or importer using this form may photocopy the form, sections of the form, or these instructions as frequently as needed.

B. Certification

The official named in Part I, section A of the form, as the person submitting the notice, must sign the certification on page 6 of the form. This official is responsible for the truth and accuracy of each statement in the certification.

C. Asserting Confidentiality Claims

A manufacturer or importer may assert a claim of confidentiality for any information submitted to EPA on this form. To assert confidentiality claims for specific information on the form (e.g., submitter identity, process data, or use information), mark (x) in the "Confidential" box on the form located to the right of the information. Marking these boxes will provide a quick reference for EPA to determine what information is confidential, thus aiding proper treatment of confidential business information.

Part I — General Information

Section A — Submitter Identification

Person submitting notice — Enter information on the official who signed the general certification on page 6.

Section B — Chemical Identity Information

Chemical Name and CAS Registry Number — List the common name and Chemical Abstracts Registry number, if available, for the chemical on which you are reporting.

II. Process and Release Information

Section A — Flow Diagram

Flow diagram — Submit a block flow diagram for each major unit operation and treatment process involved in manufacturing the chemical on which you are reporting. Include the following information:

(1) identify the product process, and chemical intermediates, coproducts and byproducts produced by the process;

(2) provide a block for each major unit operation (e.g., reactor, washer, filtration, air emission control, aeration lagoon, etc.) in the production process and in the residuals management process;

(3) identify all process input such as raw materials, reagents, solvents, etc. by chemical or common name and CAS number, and indicate the point of introduction with arrows;

(4) for each unit operation in which the temperature is not ambient, specify temperature or temperature range in each block of the flow diagram;

(5) specify operating pressure or pressure range in each block of the flow diagram for each unit operation in which pressure is not atmospheric;

(6) identify the composition of the reaction vessel wherever one is used;

(7) number all points in the flow diagram from which the chemical substance will be released into the environment. See the example provided.

Section B — Environmental Release and Disposal

Column (1) — For each release point indicated in the flow diagram (part II, section A), enter the corresponding number.

Column (2) — Estimate the amount of the chemical (in kg/day for continuous operations or kg/batch for batch operations) that will be released from the release point before entering control technology. Base your estimate on your maximum 12-month production volume.

Column (4) — Enter the medium (air, water, land) into which the release stream discharges (whether or not control technology is used).

Column (5) — For releases to the air and water, describe the type of technology used to control the release of the chemical. Examples of control technologies include carbon filter, scrubber, and biological treatment (primary, secondary, etc.). Give as complete a description as possible. Enter "none" if no control technology is used and the substance is released directly to the environment. For disposal on land, describe the landfill site construction (including liners) and handling procedures. Describe landfill containers.

Column (7) — Mark (x) the appropriate box and/or specify other destinations of water releases.

Columns (3) and (6) — Note that you must make separate confidentiality claims for the release number and amount of chemical substance released and other release and disposal information.

Part III — Production, Import, and Use Information

A. Production Information

Production volume — Report the production volume for the past 12 months of production. Also report the maximum production volume for any consecutive 12-month period during the past 3 years of manufacture. Provide this information in kilograms. Include in your report the amounts produced by persons under contract to you. If part of the amount manufactured is for export, include this amount in your reports.

B. Use Information

Column (1) — Identify each possible category of use of the chemical substance by describing its function and application. "Function" is related to the inherent physical and chemical properties of the substance (e.g., degreaser, catalyst, plasticizer, ultraviolet absorber). "Application" refers to the use of the substance in particular processes or products (e.g., a degreaser may be used for cleaning of fabricated metal parts). Following are some examples of how you should describe categories of use:

- a disperse dye carrier for finishing polyester fibers
- a cross-linking agent for epoxy-like coatings for metal surfaces
- a flame retardant for surface application on cotton apparel, textile home furnishings, and exterior canvas products
- a surfactant in automobile spray wax
- a colorant for paper and other cellulosics

Column (3) — Report the percent of the total production volume during the past 12 months manufactured for each category of use.

Column (5) — Estimate the weight percent of the chemical substance contained in any formulated mixture, suspension, emulsion, solution, or gel associated with each category of use as manufactured for commercial purposes at sites under your control. Where the substance is distributed from your site neat, enter N/A for not applicable.

For example:

Category of Use	Formulated Product as Manufactured	Percent of Chemical Substance
Cross-linking agent for epoxy-type coatings for metal surfaces	none; distributed neat	N/A
Flame retardant for cotton apparel	none; distributed neat	N/A
Surfactant in automobile spray wax	spray auto wax (suspension)	4
Colorant for paper and other cellulosics	colorant (solution)	55

Column (7) — Mark (x) to indicate if the category of use is site-limited. Also mark (x) to indicate whether the use is for industrial, commercial, and/or consumer use as defined below. Mark more than one box, if appropriate. For example, a surfactant in an automobile wax may have a consumer use in liquid wax, a commercial use in auto washes, and an industrial use by automobile manufacturers.

Site-limited: The substance is used only on the contiguous property unit where it is manufactured and not intentionally distributed outside that site except for waste disposal. This includes all factories, storage space, and warehouses at the site. An example would be an intermediate which is further reacted on-site to produce a chemical product.

Industrial: The chemical substance or products containing the substance are used only at the site of other manufacturers or processors, e.g., textile dyeing, paint formulation, use of a resin to manufacture an article.

Commercial: The chemical substance or products containing the substance are used by a commercial enterprise providing a consumer service, e.g., use by commercial dry cleaning establishments, use by painting contractors, or use by roofers in commercial building construction.

Consumer: The chemical substance or products containing the substance are used by private individuals in or around a residence, or during recreation, or for any other personal use or enjoyment, e.g., automotive polish, dyed wearing apparel, household cleaners, etc.

Columns (2), (4), (6), (8) — Note that you must make separate confidentiality claims for the description of the category of use, the percent of production devoted to each category, and other use information. The information in this section is used to evaluate potential exposure of the chemical. If you wish to provide any additional information which would assist in this analysis, it may be submitted as optional information.

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C. Hazard Information

Include with the form a copy or reasonable facsimile of any hazard warning statement, label, material safety data sheet, or other information which is provided to any person regarding protective equipment or practices for the safe transport, use or disposal of the chemical. Identify any copies of hazard information or warnings that you attach in Part IV, List of Attachments.

D. Occupational Exposure Information

Column (1) — Describe each specific activity in the operation during which workers may be exposed to the chemical. Such activities may include charging reactor vessels, sampling for quality control, transferring materials from one work area to another, drumming, bulk loading, changing filters, and cleaning equipment. Activities must be described even if workers wear protective equipment or clothing. (Recommended protective equipment should be included as part of Hazard Information).

Column (3) — Indicate the physical form of the substance at the time of exposure, e.g., solid (crystals, granules, powder, dust), liquid (solution, paste, slurry, emulsion, mist, spray), gas (vapor, fume), even if workers wear protective equipment.

Column (5) — Report the maximum number of workers involved in each specific activity, based on the reported maximum 12-month production volume.

Column (7) — Enter the maximum duration that any one worker will engage in the activity in hours/day, e.g., 8 hours/day.

Column (8) — Enter the maximum duration that any one worker will engage in the activity in days/year, based on the reported maximum production volume, e.g., 200 days/year.

Columns (2), (4), (6), (9) — Note that you must make separate confidentiality claims for the description of worker activity, physical form of the chemical, number of workers exposed, and duration of exposure.

Part IV — List of Attachments

Attach any continuation sheets for sections of the form and any optional information, after the last page of the form. Clearly identify the attachment and the section to which it relates. Number consecutively the pages of the attachments. Enter the total number of pages in the form on the last line of the List of Attachments. Mark (x) the "Confidential" box next to any attachment you claim as confidential. See the section of these instructions titled Confidentiality for guidance on claiming any information confidential.

[FR Doc. 85-29669 Filed 12-18-85; 8:45 am]
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December 19, 1985

Part V

Information Security Oversight Office

32 CFR Part 2003

National Security Information; Standard Forms; Final Rule

INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

National Security Information; Standard Forms

AGENCY: Information Security Oversight Office (ISOO).

ACTION: Final rule.

SUMMARY: This amendment to 32 CFR Part 2003 provides for the use within the executive branch of the following standard forms that pertain to national security information: Security Container Information: SF 700; Activity Security Checklist: SF 701; Security Container Check Sheet: SF 702; TOP SECRET Cover Sheet: SF 703; SECRET Cover Sheet: SF 704; and CONFIDENTIAL Cover Sheet: SF 705.

EFFECTIVE DATE: December 19, 1985.

FOR FURTHER INFORMATION CONTACT: Ethel Theis, Senior Program Analyst, ISOO. Telephone: (202) 535–7251.

SUPPLEMENTARY INFORMATION: Section 5.2(b)(7) of Executive Order 12356 authorizes the Director of ISOO to prescribe the use of standard forms that will promote the implementation of the government-wide information security program. ISOO has developed these forms in coordination with those agencies that will be primarily affected by them. The information collection requirements contained in this rule (Subpart B) are not subject to Office of Management and Budget clearance under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 32 CFR Part 2003

Classified information, Executive orders, Information, National security information, Security information.

PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

1. The authority citation for 32 CFR Part 2003 continues to read:

Authority: Sec. 5.2(b)(7) of E.O. 12356.

Subpart A—General Provisions

2. Section 2003.4 is revised to read as follows:

§2003.4 Availability.

Agencies may obtain copies of the standard forms prescribed in Subpart B by ordering through FEDSTRIP/MILSTRIP or from the General Services Administration (GSA) Customer Supply Centers (CSCs). The national stock number of each form is cited with its description in Subpart B.

Subpart B—Prescribed Forms

3. Subpart B is amended by adding § 2003.21 through 2003.26 to read as follows:

§ 2003.21 Security Container Information SF 700.

(a) SF 700 provides the names, addresses and telephone numbers of employees who are to be contacted if the security container to which the form pertains is found open and unattended. The form also includes the means to maintain a current record of the security container's combination and provides the envelope to be used to forward this information to the appropriate agency activity or official.

(b) SF 700 shall be used in all situations that call for the use of a security container information form. Agency-wide use of SF 700 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) Parts 2 and 2A of each completed copy of SF 700 shall be classified at the highest level of classification of the information authorized for storage in the security container. A new SF 700 must be completed each time the combination to the security container is changed as required by applicable executive order(s), statute(s) or implementing security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency's application for a waiver from the use of SF 700. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number for the SF 700 is 7540–01–214–5372.

§ 2003.22 Activity Security Checklist SF 701.

(a) SF 701 provides a systematic means to make a thorough end-of-day security inspection for a particular work area and to allow for employee accountability in the event that irregularities are discovered.

(b) SF 701 shall be used in all situations that call for the use of an activity security checklist. Agency-wide use of SF 701 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) Completion, storage and disposition of SF 701 will be in accordance with each agency's security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency's application for a waiver from the use of SF 701. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number for the SF 701 is 7540–01–213–7899.

§ 2003.23 Security Container Check Sheet SF 702.

(a) SF 702 provides a record of the names and times that persons have opened, closed or checked a particular container that holds classified information.

(b) SF 702 shall be used in all situations that call for the use of a security container check sheet. Agency-wide use of SF 702 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) Completion, storage and disposal of SF 702 will be in accordance with each agency's security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency's application for a waiver from the use of SF 702. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number of the SF 702 is 7540–01–213–7900.

§ 2003.24 TOP SECRET Cover Sheet SF 703.

(a) SF 703 serves as a shield to protect TOP SECRET classified information from inadvertent disclosure and to alert observers that TOP SECRET information is attached to it.

(b) SF 703 shall be use in all situations that call for the use of a TOP SECRET cover sheet. Agency-wide use of SF 703 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) SF 703 is affixed to the top of the TOP SECRET document and remains attached until the document is destroyed. At the time of destruction, SF 703 is removed and, depending upon its condition, reused.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant any agency's application for a waiver from the use of SF 703. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO

Director will review the request and notify the agency of the decision.

(e) The national stock number of the SF 703 is 7540–01–213–7901.

§ 2003.25 SECRET Cover Sheet SF 704.

(a) SF 704 serves as a shield to protect SECRET classified information from inadvertent disclosure and to alert observers that SECRET information is attached to it.

(b) SF 704 shall be use in all situations that call for the use of a SECRET cover sheet. Agency-wide use of SF 704 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) SF 704 is affixed to the top of the SECRET document and remains attached until the document is destroyed. At the time of destruction, SF 704 is removed and, depnding upon its condition, reused.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant any agency's application for a waiver from the use of SF 704. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number of the SF 704 is 7540–01–213–7902.

§ 2003.26 CONFIDENTIAL Cover Sheet SF 705.

(a) SF 705 serves as a shield to protect CONFIDENTIAL classified information from inadvertent disclosure and to alert observers that CONFIDENTIAL information is attached to it.

(b) SF 705 shall be use in all situations that call for the use of a CONFIDENTIAL cover sheet. Agency-wide use of SF 705 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) SF 705 is affixed to the top of the CONFIDENTIAL document and remains attached until the document is destroyed. At the time of destruction, SF 705 is removed and, depending upon its condition, reused.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant any agency's application for a waiver from the use of SF 705. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number for the SF 705 is 7540–01–213–7903.

Steven Garfinkel,

Director, Information Security Oversight Office.

December 16, 1985.

[FR Doc. 85–30057 Filed 12–18–85; 8:45 am]

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Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

December 1, 1985.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of December 1, 1985, of 31 deferrals contained in the first two special messages of FY 1986. There were no rescissions proposed. These messages were transmitted to the Congress on October 1, and November 25, 1985.

Rescissions (Table A and Attachment A)

As of December 1, 1985, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of December 1, 1985, $3,686.5 million in 1986 budget authority was being deferred from obligation and $7.7 million in 1986 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1986.

Information From Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 50, FR p. 41100, Tuesday, October 8, 1985

Vol. 50, FR p. 49498, Monday, December 2, 1985

James C. Miller III,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1986 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

****

TABLE B

STATUS OF 1986 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$3,652.1
Routine Executive releases through December 1, 1985	-38.8
Overturned by the Congress	0
Currently before the Congress	$3,613.3 a/

a/ This amount includes $7.7 million in outlays for a Department of the Treasury deferral (D86-30).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1986

As of December 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently Before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
[redacted]								

Attachment B - Status of Deferrals - Fiscal Year 1986

As of December 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 12-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D86-1	10,000		10-1-85					10,000
International Security Assistance									
Economic support fund.....	D86-24	1,222,216		11-25-85					1,222,216
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal.....	D86-2	77,913		[redacted]					77,913
Timber salvage sales.....	D86-3	22,854		10-1-85					22,854
DEPARTMENT OF COMMERCE									
National Oceanic and Atmospheric Administration									
Promote and develop fishery products and research pertaining to American fisheries	D86-26	32,333		11-25-85					32,333
Fisheries loan fund.....	D86-25	1,959		11-25-85					1,959
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.....	D86-4	353,079		10-1-85	5,298				347,781
Family Housing									
Family housing, Air Force.....	D86-27	11,800		11-25-85					11,800
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation.....	D86-5	1,168		10-1-85					1,168

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Attachment B - Status of Deferrals - Fiscal Year 1986

As of December 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 12-1-85
DEPARTMENT OF ENERGY									
Energy Programs									
Fossil energy research and development.....	D86-6	9,247		10-1-85					9,247
Fossil energy construction.....	D86-7	7,038		10-1-85	1,041				5,997
Naval petroleum and oil shale reserves.....	D86-8	155,668		10-1-85					155,668
Energy conservation.....	D86-9	9,000		10-1-85					9,000
SPR petroleum account.....	D86-10	536,958		10-1-85					[illegible]
Alternative fuels production.....	D86-11	1,109		10-1-85					1,109
Power Marketing Administration [5]									
Southeastern Power Administration, Operation and maintenance.....	D86-12	25,344		10-1-85	23,936				1,408
Southwestern Power Administration, Operation and maintenance.....	D86-13	5,000		10-1-85					5,000
Western Area Power Administration, Construction, rehabilitation, operation and maintenance.....	D86-14	27,095		10-1-85					27,095
Departmental Administration									
Departmental administration.....	D86-15	8,501		10-1-85	8,501				0
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program).....	D86-16	3,000		10-1-85					3,000
Social Security Administration									
Limitation on administrative expenses (construction).....	D86-28	6,489		11-25-85					6,489
DEPARTMENT OF JUSTICE									
Bureau of Prisons									
Buildings and facilities.....	D86-17	20,000		10-1-85					20,000
Office of Justice Programs									
Crime victims fund.....	D86-18	100,000		10-1-85					100,000
DEPARTMENT OF STATE									
Bureau of Refugee Programs									
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[FR Doc. 85-29985 Filed 12-18-85; 8:45am]

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Thursday, December 19, 1985

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Nuclear Regulatory Commission

Savings and Loan Associations
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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227 (Voice)
Melanie Williams 202-523-5229 (TDD)

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

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Rules and Regulations

Federal Register
Vol. 50, No. 245
Friday, December 20, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Continental Airlines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the listing of transportation lines which have entered into agreements with the Service for the preinspection of their passengers and crew at locations outside the United States by adding the name of Continental Airlines.

EFFECTIVE DATE: December 11, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directive and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536. Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Continental Airlines to provide for the preinspection of their passengers and crew as provided by section 238(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1228(b)). Preinspection outside the United States facilitates processing passengers and crew upon arrival at a U.S. port of entry and is a convenience to the travelling public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely adds transportation lines' names to the present listing and is editorial in nature.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR 238

Aliens, Common carriers, Government contracts, Inspections, Transportation lines.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.4 **[Amended]**

In § 238.4 Preinspection outside the United States, the listing of transportation lines is amended by adding the name Continental Airlines under "At Vancouver".

* * * * *

Dated: December 12, 1985.

Marvin J. Gibson,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-30177 Filed 12-19-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 85-126]

Tuberculosis in Cattle; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing the interstate movement of cattle because of tuberculosis by lowering the designation of New Mexico from an accredited-free State to a modified accredited area. It has been determined that New Mexico no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as a modified accredited area.

The regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from either accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers prefer to buy cattle from accredited-free States.

EFFECTIVE DATE: January 21, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Cattle Diseases Staff, VS, APHIS, USDA, Room 818, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis in Cattle" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle not known to be affected with or exposed to tuberculosis are based on whether the cattle are moved from jurisdictions designated as accredited-free States, modified accredited areas, or nonmodified accredited areas. The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) or portions of States is contained in the document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations by incorporation by reference. Generally the status of States or portions of States is determined based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

A document published in the Federal Register on September 30, 1985 (50 FR 39711–39712), proposed to amend the regulations by lowering the designation of New Mexico from an accredited-free State to a modified accredited area.

Comments were solicited concerning the proposal for a 30-day period ending November 29, 1985. No comments were received. Based on the rationale set forth in the proposal, the regulations are amended as proposed.

Executive Order and Regulatory Flexibility Act

This action is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this action will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. It has been determined that this action will not have a significant effect on marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, 9 CFR 77 is amended as follows:

1. The authority citation for Part 77 continues to read as set forth below:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 77.4, paragraph (b) is revised to read as follows:

§ 77.4 Accredited-free States.

(a) * * *

(b) The following States are hereby designated accredited-free States: Arizona, Colorado, Connecticut, Delaware, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Wyoming, and the Virgin Islands of the United States.

Done at Washington, DC, this 17th day of December, 1985.

G.J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–30174 Filed 12–19–85; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0564]

Delegation of Authority to Reserve Banks To Act on Certain Applications Requiring Prior Approval of the Federal Reserve Board and To Furnish Certain Competitive Factor Reports

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending 12 CFR Part 265, its Rules Regarding Delegation of Authority, to delegate to the Federal Reserve Banks authority to act on certain applications requiring prior approval of the Federal Reserve Board and to furnish certain competitive factor reports. It is expected that this delegation of authority would aid in the expeditious processing of certain applications requiring the Board's prior approval and furnishing of certain competitive factor reports.

EFFECTIVE DATE: December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen A. Rhoades, Chief, Financial Structure Section, (202/452–3906) or Jim Burke, Economist and Coordinator of Casework, Financial Structure Section, Division of Research and Statistics (202/452–2612), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Board has considered and approved a number of applications where the only aspect of the applications that precluded delegation was the inability to meet one or both of two-delegation criteria. Thus, the cases were only considered by the Board because both of the banking organizations involved were among a state's 10 largest banking organizations; or each of the banking organizations had over $100 million of total deposits in banking offices in the same banking market that, after consummation of the proposal, would control over 10 percent of total deposits in that market. Many of these cases could have been processed under delegated authority had this amendment to the Board's Rules been in place, while those cases requiring closer scrutiny and consideration by the Board would still have been retained for the Board's review.

In light of this experience, the Board believes the Reserve Banks should be delegated the authority to approve applications unless both of the banking organizations involved are among the five largest banking organizations in any of their respective states, or among the 50 largest banking organizations in the United States; or if the banking organizations have a combined market share (on a banks-only basis) of over 30 percent, or consummation of the proposal would result in an increase of at least 200 points in the Herfindahl-Hirschman Index ("HHI") in a highly concentrated market (a market with a post-merger HHI of at least 1800).

In addition, in line with the policies of the Board and the Department of Justice, the Reserve Banks should be delegated the authority to approve applications involving divestitures designed to address any substantial anticompetitive effects, unless such divestitures are not to be effected on or before consummation of the proposed transaction.

The amendment to the Board's Delegation Rules would expedite applications processing and would decrease the number of Board cases that do not present significant issues.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L 96–354, 5 U.S.C. 601 et seq.), the Board certifies that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendment would ease the application of the existing regulations and does not have particular effect on small entities.

Public Comment

The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective date have not been followed in connection with the adoption of this amendment because the change to be effected is procedural in nature and does not constitute a substantive rule subject to the requirements of that section. The Board's expanded rulemaking procedures have not been

followed because the amendment is a technical one and because it relieves a burden that could obstruct necessary and prompt action that would be in the public interest.

List of Subjects in 12 CFR Part 265

Authority, delegations (Government agencies), Banks, banking, Federal Reserve System.

Pursuant to its authority under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), sections 3(a) and 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1842(a) and 1843(c)(8), sections 5(a), 5(b) and 7(d) of the Bank Service Corporation Act (12 U.S.C. 1865(a), 1865(b) and 1867(d)), and §§ 225.14 and 225.23 of Regulation Y (12 CFR 225.14 and 225.23), to approve applications requiring prior approval of the Board, and under the provisions of section 18(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(4)) to furnish to the Comptroller of the Currency and the Federal Deposit Insurance Corporation reports on competitive factors involved in a bank merger required to be approved by one of those agencies, the Board of Governors amends its Rules Regarding Delegation of Authority (12 CFR Part 265) by revising § 265.2.

PART 265—[AMENDED]

1. The authority citation for Part 265 continues to read as follows.

Authority: Sec. 11, 38 Stat. 261; 12 U.S.C. 248]

2. Section 265.2 is amended by revising paragraph (f)(22)(v) to read as follows:

§ 265.2 Specific functions delegated to Board Employees and to Federal Reserve Banks.

* * * * *

(f) * * *

(22) * * *

(v) With respect to bank holding company formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations:

(A) That rank among a State's five largest banking organizations, or among the 50 largest banking organizations in the United States (as measured by total domestic deposits within the relevant area); or

(B) That, upon consummation of the proposal, would control over 30 percent of total deposits in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index ("HHI") in a highly concentrated market (a market with a post-merger HHI of at least 1800); or

(C) Where divestitures designed to address any substantial anticompetitive effects are not effected on or before consummation of the proposed transaction; or

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 16, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-30103 Filed 12-19-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 85-1094]

FSLIC Insurance Premiums

Dated: December 2, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations to provide a procedure for the payment of premiums for insurance on a semiannual basis.

EFFECTIVE DATE: January 20, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Hayes, Deputy General Counsel for FSLIC, Office of General Counsel, (202) 377-6428; Terrill Rupp, Attorney, Office of the General Counsel; (202) 377-6773 or William Boyer, Deputy Director, Office of Administration, (202) 377-6666, Federal Home Loan Bank Board, at 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On August 23, 1985, the Board proposed amendments to § 563.15 of its Insurance Regulations (12 CFR 563.15) that would provide for the semiannual payment of the standard premium for insurance of accounts required by section 404(b)(1) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(b)(1). As proposed, the amendments contemplate payment of regular premiums for insurance on a semiannual basis as follows. Each insured institution would be billed on the anniversary of the issuance of its certificate of insurance for an amount equal to one-twelfth of one percent of the total amount of all accounts of the insured members of such institution, determined on the basis of the most recent monthly or quarterly report filed by such institution with the Board as of the anniversary date. Six months after its anniversary date, each institution would either be billed for an adjusted premium payment in an amount equal to one-twelfth of one percent of the increase in the reported total amount of all accounts of the insured members of such institution, or given a credit for such institution's next anniversary billing in an amount equal to one-twelfth of one percent of the decrease in the reported total amount of all accounts of the insured members of such institution. Both the semiannual payment and credit would be determined on the basis of the most recent monthly or quarterly report filed by such institution with the Board as of such semiannual date.

After considering the public comments received and other available information, the Board has determined to adopt the amendments substantially as proposed.

Discussion of Comment Letters

The Board received nineteen public comment letters on the proposed rule: eighteen from insured institutions, and one from the United States League of Savings Institutions. Four letters supported the proposal without serious qualification. Of the remaining letters, five were on the whole in favor of the proposed rule and ten against; but some of the same questions were raised by supporters that were raised by those objecting to the proposal.

Several commenters took the position that a semiannual payment should be an amount equal to one half of 1/12 of one percent of a semiannual increase in accounts (or 1/24 of one percent of the increase). The reason voiced for this position by those seeking a modification of the proposal was that the semiannual payment was a half-year's premium for a half-year period of insurance; one commenter asserted that "the semiannual payment will create a shortened period of coverage for the same annual rate charged in the past." Some commenters questioned the legality of the proposal on the ground that, under the language of section 404(b)(1) of the NHA, the Corporation may collect a semiannual premium only in installments each equal to 1/24 of one percent of the accounts. One commenter argued that the "assessment base" could only be an institution's insurance anniversary date. Another argued that assessing a premium on growth within six months appeared to violate the spirit or intent of the "premium year" referred to in section 404. Some commenters asserted that the proposal would change the amount of the

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standard premium to an amount greater than that authorized by statute.

Several comment letters suggested alternative methods for assessing or collecting premiums: "risk related" premiums; monthly adjustments; quarterly billing and paying; and even a "customer option" under which a customer engaging in a large transaction would obtain insurance for "any and all" of its accounts by payment of a special premium that would be collected by the institution and forwarded to the FSLIC. It was also suggested that average growth over a six-month period be used as a basis for the semiannual payment, in order to avoid circumvention of the proposed rule.

Several letters complained of the financial burden that would be placed upon insured institutions by semiannual payment in the proposed form; and some commenters declared that it was unfair to place additional charges on well-run institutions to provide for the continued existence of poorly run institutions.

Several comment letters, including some in support of as well as some in opposition to the proposal, argued that a cash semiannual payment for growth in accounts should be complemented by a cash refund for a decline rather than a credit toward the next anniversary payment.

Authority

Section 404(b)(1) of the NHA provides as follows:

> Each institution whose application for insurance is approved by the Corporation shall pay to the Corporation, in such manner as it shall prescribe, a premium for such insurance equal to one-twelfth of 1 per centum of the total amount of all accounts of the insured members of such institution. Such premium shall be paid at the time the certificate is issued by the Corporation under section 403, and thereafter annually, except that under regulations prescribed by the Corporation such premium may be paid semiannually.

The implementing authority granted to the Corporation is broad and the legislative history of this provision neither states nor implies limitations upon the discretionary authority conferred by the terms of the statute.

It is clear under the provisions of section 404(b)(2) that the "premium year" of each insured institution begins on the anniversary of the issuance of a certificate of insurance. The statute allows the Corporation to prescribe semiannual payment and places a limitation of $\frac{1}{12}$ of one percent of accounts of insured members upon the amount of the premium, but it does not specify any particular point or points in time as the basis or bases of assessing payment. The term "all accounts of insured members" includes uninsured portions of insured members' accounts. The proposed regulation is deliberately designed to take account of growth in accounts during a premium year, and the consequent growth in the insurance risk of the Corporation (and decline in account and risks), but clearly maintains the absolute annual statutory limitation of $\frac{1}{12}$ of one percent of the accounts of insured members.

The following examples of anniversary and semiannual payments under the proposal illustrate these principles. An institution's accounts grow at the following rate over semiannual periods, triggering the following payments:

Premium Year	0	½	1	1½	2	2½
Accounts	$12,000	$12,120	$12,240	[illegible]	$12,480	$12,600
Payments	$10	$.10	$10.20	$.10	[illegible]	$.10

As of year ½, the total payments made to the Corporation for the premium year, including the first payment and the semiannual payment, would equal and not exceed $\frac{1}{12}$ of one percent of the accounts of the institution as reported prior to the year ½ payment. As of year 1½, the total payments made to the Corporation for the premium year, including both the anniversary payment at year 1 and the semiannual payment at year 1½, would equal and not exceed $\frac{1}{12}$ of one percent of the accounts of the institution at year 1½. This result will hold with respect to payments and credits under conditions of continuing decline or alternating growth and decline. It is true that the total amount of the premium for a premium year is finally determined as of the report prior to the semiannual payment rather than as of the report prior to the anniversary payment. The statutory limitation upon the total annual premium, however, does not specify any point or points in time at which the limiting amount is to be determined, but leaves this to the discretion of the Corporation. In no sense is there a "double" premium in or for any premium year. The statutory authority granted to the Corporation to provide by regulation for semiannual payment of the insurance premium does not permit the Corporation to increase the amount of that premium above the statutory limit; but it authorizes the Corporation to determine the manner in which the payments are to be assessed and paid. The amendment to § 563.15 provides for an initial anniversary payment and for a semiannual premium adjustment; and this amendment is clearly within the Corporation's statutory authority. Nothing in the statute requires the Corporation, if it decides to provide for semiannual payments, to specify two equal payments of $\frac{1}{24}$ of one percent of accounts, nor does the statute hinder adjustment of the basis for the total assessment during the premium year.

The Board regards the new rule as essentially fairer and more equitable than either the existing regulation, which provides for a single anniversary payment, or a regulation that would divide the annual premium into two equal parts. The amendment does not exceed the statutory limitation for any premium year, but it does adjust for the increased risk to the insurance reserves of the Corporation resulting from industry growth, a matter that ought to be of concern to the thrift industry as a whole and to the public.

Administration

The regulation promulgated by this resolution provides for a credit, not a refund, to institutions the accounts of which decline between the determination date for the anniversary payment and the determination date for a semiannual payment. The credit would be applied to the next anniversary payment.

There are two reasons for providing a credit rather than a refund. First, it is administratively simpler and less costly to the Corporation as a matter of the general administration of premium payments. Second, it is a necessary measure to deal with possible payment avoidance techniques by some institutions. At or near the date of a report that is expected to be used to determine an annual premium, an institution or institutions may engage in transactions that distort or mask the amount and growth of accounts of insured members. Accordingly, the Board has added a provision to the new rule, which permits the Corporation to take an average of reported accounts as the basis for a premium payment if information of the Board or the Corporation indicates that a filed report on the basis of which a premium payment would usually be made does not accurately reflect the growth or decline of an institution's accounts.

The use of semiannual credits, rather than refunds, will allow the Corporation

to administer the payment of semiannual premiums more effectively and to deal with techniques designed to avoid appropriate semiannual premium adjustments.

Other Possibilities

The Board will continue to review the assessment and collection of insurance premiums in the interests of greater economy and efficiency and lessening the risk to the Corporation. Many of the suggestions in the comment letters, however, such as quarterly payments, are not clearly within the statutory authority of the Corporation.

The Board fully appreciates the fact that the rule will probably increase the actual amounts paid by insured institutions as annual premiums. In considering and balancing the interests of all insured institutions, however, the Board has determined that, under existing statutory authority, the new rule represents a fairer method of sharing the cost of increased risk to the Corporation arising from growth in accounts than the old rule or than other suggested alternatives that could be implemented.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 1167 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in the supplementary information regarding the rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in the supplementary information regarding the rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* There are no alternatives that would have less impact on small institutions, consistent with the intended result and existing statutory requirements concerning the assessment of premiums. The rule will not have a disproportionate impact on small institutions, since the cost of premiums assessed and credits given pursuant to the rule will continue to be a function of the amount of an institution's accounts. Further, the rule will not involve any significant new reporting or compliance costs that could impose a disproportionate burden on small institutions.

List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations; Operations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority for 12 CFR Part 563 continues to read as follows:

Authority: Secs. 401–405, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728); Reorg. Plan No. 3 of 1947, 3 CFR 1943–1948 Comp., p. 1071, unless otherwise noted.

2. Amend § 563.15 by redesignating existing paragraphs (a), (b), and (c) as (b), (c), and (d), respectively; adding a new paragraph (a); and revising redesignated paragraph (b) as follows:

§ 563.15 Insurance premiums.

(a) *Definitions.* For purposes of this section:

(1) "Annual payment date" means the date on which a certificate of insurance is issued by the Corporation to an institution, and each anniversary of the issuance of such certificate.

(2) "Semiannual payment date" means a date six months after an insured institution's annual payment date.

(b) *General provisions.* (1) Pursuant to section 404(b) of the National Housing Act, except as provided in paragraph (c) of this section, each institution whose application for insurance is approved by the Corporation shall pay to the Corporation as follows:

(i) On each annual payment date, each insured institution shall pay an amount equal to one-twelfth of one percent or the total amount of all accounts (except note accounts) of the insured members of such institution.

(ii) On each semiannual payment date, each insured institution shall pay, or receive credit against its next annual payment for, an amount equal to one-twelfth of one percent of the amount by which the total amount of all accounts (except note accounts) of the insured members of such institution is more or less than the total amount of all accounts (except note accounts) of the insured members of such institution as determined for assessment of the immediately preceding annual payment.

(2) The amount of the premium to be paid by each insured institution on each annual payment date, and the amount of the premium to be paid by, or the credit to be provided for, each insured institution on each semiannual payment date, shall be determined on the basis of the most recent report filed by such institution with the Corporation as of each such payment date; but any insured institution that has not filed such a report within 60 days of any annual payment date or semiannual payment date shall provide more recent information if requested to do so by the Corporation. Any amount contained in any such report covering accrued, but not due and payable, or dividends declared, but not due and distributable, as of any annual payment date or semiannual payment date will not be included by the Corporation in the computation of either premiums due on such annual payment date or semiannual payment date, or credits given on such semiannual payment date. For purposes of this section, the amount of a tax and loan account, a United States Treasury General Account, or a United States Treasury Time Deposit—Open Account shall be the average daily balance in such account since the institution's last annual or semiannual payment date, whichever is more recent, unless the account has been established after such date, in which case the average shall be calculated from the date of establishment of such account.

(3)(i) Notwithstanding the provisions of paragraph (b)(2) of this section, if the Corporation determines, on the basis of reports filed with the Corporation by an institution or other information of the Board or the Corporation, that a filed report on the basis of which a premium payment would be made or credit received by the institution does not accurately reflect the growth or decline in the accounts of insured members of such institution, the Corporation may determine that an annual or semiannual payment or credit shall be made on the basis of the average of such accounts as reported over a period determined by the Corporation, but not to exceed six months, and not including any report filed to show the condition of the institution as of a date more than three calendar months before or after the date of the report on the basis of which the amount of a premium payment would be determined under paragraph (b)(2).

(ii) The Director of the Board's Administration Office is authorized to make determinations for the Corporation pursuant to paragraph (b)(3)(i) of this section.

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–30176 Filed 12–19–85; 8:45 am]

BILLING CODE 6720–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Assumption of Real Estate Loans by Nonmembers; Interpretive Ruling and Policy Statement Number 85–3

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interpretive Ruling and Policy Statement Number 85–3.

SUMMARY: Section 107(5)(A)(i) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)(i)) authorizes Federal credit unions to make long-term residential real estate loans to members on certain stated conditions and subject to rules and regulations of the NCUA Board. The NCUA Board has determined that, in the case of loans made pursuant to this authority, Federal credit unions may authorize a nonmember to assume the outstanding balance and maturity of the loan in conjunction with a purchase of the member's principal residence.

EFFECTIVE DATE: December 12, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Bisker, Assistant General Counsel, at the above address, or telephone (202) 357–1030.

SUPPLEMENTARY INFORMATION: Since 1977, FCU's have been empowered, pursuant to section 107(5)(A)(i) of the FCU Act (12 U.S.C. 1757(5)A)(i)), to offer long-term real estate loans to finance a member's principal residence. NCUA's implementing regulation for this authority is set forth at 12 CFR 701.21.

Staff opinions have previously stated that a long-term real estate loan made to a member could not be assumed by a nonmember unless the member remained personally liable for repayment of the loan. This position has, in the view of the Board, placed an unwarranted burden on credit union members and, in most cases, precluded the assumability of FCU mortgage loans.

The policy has also placed Federal credit unions at a disadvantage vis-a-vis other mortgage lenders. Historically, lenders other than FCU's have had greater flexibility to either allow assumption of real estate loans on their existing terms and conditions or to use "due-on-sale" clauses or similar devices to either require payment of the loan or negotiate an adjustment of the interest rate to reflect current market rates on the remaining outstanding balance for the remaining maturity of the loan . The provisions of Title IV of the Garn-St Germain Act (Public Law 97–320) recognize these practices as an integral part of mortgage lending.

NCUA has recently had an opportunity to review this policy in response to an inquiry from a private attorney representing Federal credit unions. As a result of that review, the Board has determined that, as a matter that is incidental to the authority of FCU's in section 107(5)(A)(i) of the Act and § 701.21 of the Rules and Regulations to *make* long-term real estate loans to members, FCU's may permit assumptions, by either members *or nonmembers*, under the terms and conditions specified in the loan agreement and consistent with the Act and Rules and Regulations. This includes the authority to permit a nonmember to assume the mortgage loan without the member remaining primarily liable on the loan. In the case of a nonmember assumption, there must be no new money extended to the borrower and no extension of the original maturity date beyond that specified in the loan agreement with the member.

This Interpretative Ruling is *not* intended to authorize refinancings by nonmembers. Further, it is not intended to provide the legal justification for an FCU to engage in what the Board would consider a "sham transaction," whereby a member would be involved as the borrower simply to legally support the making of the initial mortgage loan but with the underlying intent of having a nonmember immediately, or soon thereafter, assume the loan. FCU's engaging in such practices will be dealt with through NCUA's administrative enforcement process.

This Interpretive Ruling does not in any way require an FCU to permit nonmember assumption of real estate loans. As provided in § 701.21(g)(6) (incorporating regulations issued by the Federal Home Loan Bank Board implementing section 341 of Pub. L. 97–320), an FCU may, pursuant to the loan agreement, declare the loan immediately due and payable if the member's residence securing the loan is sold. Further, the loan agreement may provide for adjustment of the interest rate on the remaining balance of the loan as a condition of approving the assumption. Lastly, FCU's permitting assumptions should not disregard their customary credit standards in evaluating whether the nonmember is creditworthy.

When a long-term real estate loan is assumed by a nonmember FCU's are advised to make appropriate accounting entries to reflect that the loan is no longer a loan to a member. FCU's are recommended to record such loans in ledger account 711—Notes and Contracts Receivable, as described in the *Accounting Manual for Federal Credit Unions.*

Interpretative Ruling and Policy Statement 85–3

Assumption of Real Estate Loans by Nonmembers

Consistent with its authority to make long-term real estate (mortgage) loans pursuant to section 107(5)(A)(i) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)(i)) and Section 701.21(g) of the National Credit Union Administration Rules and Regulations (12 CFR 701.21(g)), a Federal credit union may permit a nonmember to assume a member's mortgage loan in conjunction with the purchasing of the member's principal residence, *Provided that:*

(1) The nonmember assumes *only* the remaining unpaid balance of the loan (no new money or refinancing);

(2) There is no extension of the original maturity date beyond that specified in the loan agreement with the member;

(3) The original loan was not made to the member with the underlying intent of having a nonmember immediately, or soon thereafter, assume the loan;

(4) The terms of the assumption are consistent with the loan agreement and in compliance with the FCU Act, NCUA Rules and Regulations, and other applicable law.

By the National Credit Union Administration Board on December 12, 1985.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–30152 Filed 12–19–85; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84–AEA–8]

Designation of Transition Area; South Hill, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a transition area at South Hill, VA. A new NDB Runway 36 instrument approach procedure has been developed to the Mecklenburg-Brunswick Regional Airport. The transition area is to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR).

EFFECTIVE DATE: 0901 G.M.T. March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Airspace and Procedures Branch, AEA–530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917–1228.

SUPPLEMENTARY INFORMATION:

History

On September 13, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at Mecklenburg-Brunswick Regional Airport, NJ, to provide controlled airpsace from 700 feet above the surface for IFR arrival/departure aircraft at Mecklenburg-Brunswick Regional Airport (49 FR 41526). A new NDB Runway 36 instrument approach procedure has been developed to the Mecklenburg-Brunswick Regional Airport. Interested parties were invited to participate in this proposed rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 3, 1984.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a new transition area at Mecklenburg-Brunswick Regional Airport, NJ. A new NDB Runway 36 approach procedure has been developed ot the Mecklenburg-Brunswick Regional Airport. This action provides protected airspace for aircraft arriving/departing under instrument flight rules.

The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

"1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.81 [Amended]

2. Section 71.181 is amended as follows:

South Hill, VA [New]

That airpsace extending upward from 700 feet above the surface within a five statute mile radius of the Mecklenburg-Brunswick Airport (lat. 36°41'17" N.,long. 78°03'17" W.); and within 3.5 miles each side of the 182° bearing from the Mecklenburg NDB extending from the five mile radius to ten miles south of the NDB.

Issued in Jamaica, New York, on December 6, 1985.

Timothy L. Hartnett,

Acting Director, Eastern Region.

[FR Doc. 85–30097 Filed 12–19–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM85–1–000 (Parts A–D)]

Regulation of Natural Gas Pipelines After Partial Decontrol

Issued November 15, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order granting request for clarification.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Hadson Gas Systems, Inc., the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Biancardi, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–5418.

SUPPLEMENTARY INFORMATION:

Order Granting Request for Clarification

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

In the matter of Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Hadson Gas Systems, Inc.), Docket No. RM85–1–000.

Issued November 15, 1985.

On November 7, 1985, Hadson Gas Systems Inc., (Hadson) requested clarification of § 284.105(a) as promulgated under Order No. 436.[1] Specifically, Hadson inquires whether a pipeline would meet the non-discriminatory termination[2] provision under that section if, before December 15, 1985, it terminated all NGPA section 311 transactions initiated on or after November 1, 1985 but continued those NGPA section 311 transactions which meet the transition provisions of § 284.105(a).

Section 284.105 is intended to provide continued service under the same terms and conditions (except for §§ 284.7 and 284.106) for transportation commenced under NGPA section 311 prior to the issuance of Order No. 436 on October 9, 1985 without prejudice to a pipeline's option to begin "new" section 311 transportation after November 1, 1985, under § 284.102.[3] Accordingly, the "new" section 311 transportation may be terminated prior to December 15, 1985 to avoid the requirements of § 284.10, without affecting a pipeline's authority to continue, beyond December 15, 1985, transportation that qualifies for transition under § 284.105(a).

[1] 33 FERC ¶ 61,007, 50 FR 42408 (October 18, 1985)

[2] Hadson cites our conclusion in another clarifying order that a new § 284.102 transportation may be initiated and terminated before December 15, 1985 without ever attaching the contract demand reduction and conversion rights of § 284.10 so long as the termination of NGPA section 311 transportation is not unduly discriminatory. Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Columbia Gas Transmission Corp.), Order Granting Request for Clarification, issued October 31, 1985.

[3] *See, e.g.* §284.102.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30127 Filed 12-19-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 284

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Decontrol

Issued November 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order addressing request for emergency clarification.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Hadson Gas Systems, Inc., the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Biancardi, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5418.

SUPPLEMENTARY INFORMATION:

Order Addressing Request for Emergency Clarification

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

In the matter of regulation of natural gas pipelines after partial wellhead decontrol (Hadson Gas Systems, Inc.), Docket No. RM85-1-000 (Parts A-D).

Issued November 22, 1985.

On November 15, 1985, Hadson Gas Systems, Inc. (Hadson) filed a request for emergency clarification of Order No. 436.[1] Hadson recites that ANR Pipeline Company (ANR) notified Hadson on November 14, 1985, that it would not transport federal offshore gas to low priority end-users during the period November 1 through December 14, 1985. Hadson requests the Commission to clarify that ANR has the authority as well as the obligation to transport federal offshore gas to end-users.

The gist of the question appears to be whether ANR has authority under the new rules to transport *federal offshore* gas to certain end-users during an interim period November 1 through December 14, 1985.

With regard to § 284.223(g) of the new rules, we repeat that that section in effect allows for an extension through December 14, 1985 of a pipeline's preexisting authority under a blanket transportation certificate to transport gas for certain end-users.[2]

However, the extension, while subject to the non-discriminatory access condition of §§ 284.8 and 284.9, did not modify the pipeline's authority in other ways, for example, by expanding the sources of gas that qualify. Since ANR's blanket certificate did not, prior to November 1, 1985, authorize transportation of federal offshore gas for end-users, the extension pursuant to § 284.223(g) similarly confers no such authority.

Accordingly, we conclude that ANR does not have authority, *by reason of § 284.223(g)*, to transport natural gas supplies from the federal offshore. To this extent Hadson's request is denied.

This analysis does not end the matter, however, for after November 1, 1985, all interstate pipelines are authorized to transport gas from any source, including the federal offshore, under the self-implementing authority of § 284.102. Moreover, with the elimination of the "system supply" requirement previously contained in the relevant regulations, supplies of gas—including supplies from the federal offshore—can be sold directly to end-users so long as transportation is "on behalf of" a local distribution company or intrastate pipeline.

As the Commission said in Order No. 436:

> With regard to the meaning of the "on behalf of" requirement, we reiterate what was said in the NOPR:
>
> However, as we discussed in Order No. 46, which implemented section 311, this test is a legal test, not a physical, test, and only requires some nexus between the transporter and the intrastate pipeline or local distribution company. Thus, the intrastate pipeline or local distribution company need not physically receive the gas, but need only have the gas transported for its account.
>
> (NOPR, mimeo, at pp. 57-58) (footnote omitted).
>
> (Mimeo at IV.A.169.)

In other words, the "on behalf of" requirement can be met even where title to the gas passes directly from the seller to the end-user.

Thus, while ANR may not have authority to transport federal offshore gas for end-users under § 284.233(g), it *does* have the authority to transport the same supplies to the same end-users on behalf of a local distribution company or intrastate pipeline. Moreover, while all authority under § 284.223(g) expires after December 14, 1985, authorization of § 284.102 is available at all times.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30128 Filed 12-19-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 284

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Decontrol

Issued November 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying request for clarification and waiver of regulations.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Energy Marketing Exchange, Inc., the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Biancardi, Federal Energy Regulatory Commission, 825 North Capitol Streeet, NE., Washington, DC 20426, (202) 357-5418.

SUPPLEMENTARY INFORMATION:

Order Denying Request for Clarification and Waiver of Regulations

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and

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[1] 50 FR 42408 (October 18, 1985).

[2] Regulation of Natural Pipelines After Partial Wellhead Decontrol (ANR Pipeline Company), 33 FERC ¶ 61,161 (November 7, 1985).

BEST COPY AVAILABLE

Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

In the matter of regulation of natural gas pipelines after partial wellhead decontrol (Energy Marketing Exchange, Inc.), Docket No. RM85–1–000 (Parts A–D).

Issued November 22, 1985.

On November 1, 1985, Energy Marketing Exchange, Inc., (EME) filed pursuant to rule 207 of the Commission's Rules of Practice and Procedure, a petition to waive or, in the alternative, clarify § 284.223(g) of the Final Rule in Order No. 436.[1] EME states that it is a high priority end-user which has been receiving transportation of gas under the authority of former §157.209(e) of the Commission's Regulations, which at the time provided for transportation for any category of end use, because the transporting pipelines preferred to use that authority rather than the authority for high-priority transportation contained in Order No. 319 and former § 157.209(a)(1). EME has transportation contracts that were extended prior to October 9, 1985, for terms extending into 1986 or beyond. EME requests either waiver or clarification allowing these transactions to be eligible for transition under § 284.223(g)(1), because they could have qualified as Order No. 319 transactions.

Under these facts, the ability to continue receiving transportation for these Order No. 234–B transactions depends upon the election by the transporting pipelines to continue under the transitional rule set forth in § 284.223(g)(2).

This issue was addressed in an order dated October 31, 1985, denying a similar request by Midwest Solvents Company.[2] For the reasons stated therein, these transactions do not qualify under §284.223(g)(1). That transition provision explicitly requires that the transaction be both authorized and commenced, as an Order No. 319 transaction, prior to October 9, 1985. The facts presented by EME do not justify granting of a waiver.

By the Commission.

Kenneth F. Plumb,

Secretary

[FR Doc. 85–30129 Filed 12–19–85; 8:45 am]

BILLING CODE 6717–01–M

[1] 33 FERC ¶ 61,007, 50 FR 42408 (October 18, 1985).

[2] Regulation of Natural Gas After Partial Wellhead Decontrol (Midwest Solvents Company), Order Denying Request for Clarification, 33 FERC ¶ 61,157.

18 CFR Part 284

[Docket No. RM85–1–000 (Parts A–D)]

Regulation of Natural Gas Pipelines After Partial Decontrol

Issued November 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying request for clarification.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a joint petition filed by Teepak, Inc. and Consolidated Fuel Supply, Inc., the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Joel K. Arneson, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8570.

SUPPLEMENTARY INFORMATION:

Order Denying Request for Clarification

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Regulation of Natural Gas Pipelines After Partial Wellhead DeControl (Teepak, Inc., and Consolidated Fuel Supply, Inc.), Docket No. RM85–1–000.

Issued November 22, 1985.

On November 6, 1985, Teepak, Inc. (Teepak), and Consolidated Fuel Supply, Inc. (Consolidated) (jointly referred to as petitioners), filed a request for clarification of Order No. 436.[1] The petitioners' request clarification that Panhandle Eastern Pipe Line Company (Panhandle) may transport gas under § 284.223(g)(1) as promulgated by Order No. 436. We will deny the petitioners' request.

On September 21, 1984, Panhandle entered into an agreement with Teepak and Illinois Power Company whereby Panhandle agreed to transport gas to Illinois Power's facilities for ultimate delivery to Teepak. The gas Panhandle agreed to transport was purchased by Teepak from Consolidated.

[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

Transportation commenced on October 5, 1984. Panhandle filed a notice of its intent to continue transporting gas in Docket No. CP85–92–000 under its blanket certificate issued on January 10, 1983, in Docket No. CP83–83–000, 22 FERC ¶ 62,043. In Docket No. CP85–92–000, Panhandle stated that it was transporting gas for the petitioners under § 157.209(e) of our regulations, which at that time provided for transportation for any end use.

On June 13, 1985, Teepak advised Panhandle that the transportation service qualified for a high-priority end use under § 157.209(a). Teepak states that it orally advised Panhandle of this fact again on September 20 and 23, 1985. Panhandle did not advise the Commission that the transportation was for a high-priority end use until October 31, 1985, when it filed an initial report. Panhandle ceased transporting for the petitioners on October 31, 1985.

The petitioners' argue that Panhandle filed an initial report with the Commission under § 157.209(g) on October 31, 1985. An initial report is not required until thirty days after a transportation service is commenced under § 157.209(a), according to the petitioners. Therefore, the petitioners claim that the transportation service was authorized and commenced on October 1, 1985, due to the filing of the initial report, and so within the provisions of § 284.223(g)(1). The petitioners' contend that the transportation is authorized and commenced on or before October 9, 1985, under § 157.209(a) and is therefore eligible to continue under § 284.223(g)(1).

We reject the petitioners' arguments. In its reports prior to October 9, 1985, Panhandle indicated that it was transporting gas for the petitioners under § 157.209(e). The petitioners' gas could have been transported under either that section or § 157.209(a). Only after October 9, 1985, did Panhandle attempt to convert the transportation service from § 157.209(e) to § 157.209(a). The transition provision of § 284.223(g)(1) explicitly requires that the transaction be authorized and commenced under § 157.209(a)(1) before October 9, 1985. We find that the transportation service was not authorized and commenced before that date. Accordingly, the transaction does not qualify under § 284.223(g)(1).[2]

[2] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (*Midwest Solvents Company*), Order Denying Request for Clarification, 33 FERC ¶ 61,157 (October 31, 1985).

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30130 Filed 12-19-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 284

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Decontrol

Issued: November 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order denying request for clarification.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Frito-Lay, Inc., the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Biancardi, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357-5418.

SUPPLEMENTARY INFORMATION:

Order Denying Request for Clarification

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

In the matter of regulation of natural gas pipelines after partial wellhead decontrol (Frito-Lay, Inc.), Docket No. RM85-1-000, (Parts A-D).

Issued: November 22, 1985.

On November 1, 1985, Frito-Lay, Inc., pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212, requested clarification as to whether new transportation for high priority end-users can be rendered by an interstate pipeline which has filed a statement of notification under Order No. 436.[1]

Frito-Lay states that it is a high priority end-user of natural gas which, in the past, has obtained transportation pursuant to either a special marketing program (SMP) or former § 157.209(a) of the Commission's Rules, which was promulgated by Order No. 319. Prior to November 1, 1985, but after October 9, 1985, Frito-Lay contracted for transportation under Order No. 319 with a pipeline that filed a statement of notification to continue its low priority (i.e., Order 234-B) transportation through December 15, 1985.[2]

Because the proposed transportation was not authorized and had not commenced prior to October 9, 1985, the gas is not eligible for transportation under the transitional rule of § 284.223(g)(1). Frito-Lay asks how transportation can be accomplished between November 1 and December 15, 1985. As we understand Frito-Lay's dilemma, it had not yet received transportation from the pipeline as of October 9, 1985. Accordingly, any self-implementing transportation commenced after November 1, 1985, whether by NGPA section 311 or NGA section 7 blanket certificate authorization, is subject to the amendments to the regulations that were adopted in Order No. 436.

According to Frito-Lay, the interstate pipeline has qualified for, and elected to proceed under, the transitional rule, § 284.223(g)(2), for end-user transportation under Order No. 234-B. As a result, Frito-Lay's transporter must provide service on a nondiscriminatory basis to any other customers who may wish to have gas transported.[3] Thus, Frito-Lay may obtain transportation service from such pipeline, at least until December 15, 1985. Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (ANR Pipeline Company), Order Accepting in Part and Rejecting in Part Statement of Notification, 33 FERC ¶ 61,180 (Issued November 7, 1985). However, the pipeline is not required to offer nondiscriminatory access to transportation after December 15, 1985, unless it files for a blanket certificate under § 284.221.

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[1] 33 FERC ¶ 61,007, 50 FR 42408 (October 18, 1985); Technical Corrections issued October 24, 1985.

[2] A statement of notification is required for low-priority end-user transportation (Order No. 234-B) under § 284.223(g)(2) but not for high priority transportation (Order No. 319) under § 284.223(g)(1).

[3] Because the new rules under Order No. 436 do not distinguish between high priority and low priority end-users, the distinction between Order Nos. 319 and 234-B has been eliminated.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30131 Filed 12-19-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 284

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Decontrol

Issued: November 27, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting request for clarification.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Valley Gas Company, the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Kevin Rees, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-9221.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O.'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

In the matter of regulation of natural gas pipeline after partial wellhead decontrol (Valley Gas Company), Docket No. RM-85-1-000 (Parts A-D).

Order Granting Request for Clarification

Issued: November 27, 1985.

On November 20, 1985, Valley Gas Company filed a request for clarification concerning whether Tennessee Gas Pipeline Company may transport certain gas on behalf of Valley under a storage transportation agreement without becoming subject to the non-discriminatory access provisions of Order No. 436.[1]

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[1] 33 FERC ¶ 61,007 (1985), 50 FR 42408 (October 18, 1985).

Valley entered into a storage service agreement with Consolidated Gas Transmission Corporation on July 8, 1985, for a one-year period beginning April 1, 1985 and conditionally renewable for an additional year. Valley's sole supplier is Tennessee. Valley had a verbal agreement with Tennessee whereby Tennessee would transport gas to Consolidated's storage facility and would then transport gas from Consolidated's storage facility on Valley's behalf pursuant to section 311(a) during the 1985–1986 winter season. Pursuant to section 311 of the Natural Gas Policy Act, Tennessee delivered natural gas for injection into Consolidated's facility as early as July, 1985. Valley states that although Tennessee transported gas to Consolidated for storage injections, it will not complete service under its transportation arrangement with Valley by transporting Valley's gas from Consolidated's storage facility unless it receives clarification that the performance of such service will not subject Tennessee to the non-discriminatory access provisions of Order No. 436.

The Commission has recently clarified that § 284.105 of the regulations adopted in Order No. 436 is applicable to service which commenced pursuant to a verbal agreement prior to October 9, 1985, as long as the parties have complied with all applicable reporting requirements.[2] We find that because service commenced as of July, 1985, under Valley's agreement with Tennessee, Tennessee may continue performance under the agreement pursuant to the transitional provisions of § 284.105.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85–30132 Filed 12–19–85; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Part 284

[Docket No. RM85–1–000 (Parts A–D)]

Regulation of Natural Gas Pipelines After Partial Decontrol

Issued: November 28, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order amending and clarifying order.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42,408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Michigan Consolidated Gas Company, the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Stanley Harris, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8451.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

In the matter of Michigan Consolidated Gas Company, Docket Nos. CP84–15–000 and CP84–15–001; regulation of natural gas pipelines after partial wellhead decontrol, Docket No. RM85–1–000(Parts A–D).

Order Amending and Clarifying Order

(Issued: November 29, 1985).

On October 31, 1985, the Commission issued an order in Docket Nos. CP84–15–000 and CP84–15–001, 33 FERC ¶ 61,131, authorizing Michigan Consolidated Gas Company (MichCon)[1] through its utility division, to provide through August 31, 1992, a long-term transportation service for ANR Pipeline Company (ANR) under MichCon's blanket certificate issued pursuant to former § 284.222 of the Commission's Regulations. The October 31 order provides as follows:

(D) The authorization granted in paragraph (C) is conditioned upon compliance with the terms, conditions, rates and charges and reporting requirements of Subpart C of Part 284 of the Commission's Regulations.

On November 8, 1985, MichCon filed a request, in accordance with Rule 212 of the Commission's Rules of Practice and Procedure, for clarification of the order issued October 31, 1985.

MichCon requests clarification on the following two points:

1. The first full paragraph on page I–13 of Order No. 436 (slip) states:

> The final rule also grandfathers any transportation arrangement authorized under § 284.127, again except with regard to the rate conditions (for interstate pipelines) and the reporting conditions (for both interstate and intrastate pipelines).

In light of this paragraph, would the transportation service by MichCon's utility division for ANR under the October 31 order be grandfathered for its full term under Order No. 436?

2. Does ordering paragraph (D) of the October 31 order subject MichCon's utility division to the regulations promulgated in Order No. 436 or only to the regulations in Subpart C of Part 284 as they existed prior to Order No. 436?

As promulgated by Order No. 436, § 284.125 of the Regulations provides that self-implementing transportation service authorized and commenced under section 311 of the Natural Gas Policy Act of 1978 on or before October 9, 1985, may be continued after that date until the earlier of the expiration of the original or extended term of the authorized transportation arrangement as it was in effect on the date of issuance of the final rule on October 9, 1987. The transportation service rendered by MichCon commenced in January 1983, and was extended to January 17, 1987, as authorized under MichCon's blanket certificate issued pursuant to § 284.222 of the Regulations.[2] In light of this provisions of Order No. 436, the October 31, 1985 order should have extended the term of the transportation service only from January 17, 1987, to October 9, 1987. Accordingly, we find that the public convenience and necessity require that the October 31, 1985 order should be amended and clarified so as to extend the term of the transportation service authorized therein to October 9, 1987.

With respect to MichCon's second request for clarification, § 284.125 provides that any existing transportation service which is permitted to continue under that section may be continued under the terms and conditions that applied prior to November 1, 1985, with the exception of reporting requirements prescribed by § 284.126. Accordingly, with the exception of the reporting requirements of § 284.126, MichCon's transportation service for ANR may continue until October 9, 1987, under the terms and conditions that applied prior to November 1, 1985.

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[2] Regulation of Natural Gas After Partial Wellhead Decontrol (Pacific Gas and Electric Company), 33 FERC ¶ 61,007 (Issued October 31, 1985).

[1] MichCon is a public utility subject to the jurisdiction of the Michigan Public Service Commission and is engaged, through its Utility Division, in the distribution and sale of gas at retail to consumers in the Upper and Lower Peninsulas of Michigan. By order of February 3, 1955, 14 F.P.C. 535, MichCon was found to be a "Hinshaw" pipeline under section 1(c) of the Natural Gas Act and therefore exempted from the provisions of the Natural Gas Act and the orders, rules, and regulations of the Commission issued thereunder.

[2] Reports of this self-implementing transaction were assigned Docket Nos. ST83–217–000 and ST83–217–001.

The Commission orders

The October 31, 1985 order is amended to extend the term of MichCon's transportation service for ANR through October 9, 1987. In all other respects said order shall remain in full force and effect.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-30133 Filed 12-19-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 85F-0478]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyamides consisting of the homopolymer of Nylon 12 derived from *omega*-aminododecanoic acid as side seam cements that may contact food. This action responds to a petition filed by Springborn Regulatory Services, Inc., on behalf of UBE Industries, Ltd.

DATES: Effective December 20, 1985; objections by January 21, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edward Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 8, 1985 (50 FR 9521), FDA announced that a petition (FAP 4B3796) had been filed by Springborn Regulatory Services, Inc., Enfield, CT 06082, on behalf of UBE Industries, Ltd., proposing that the food additive regulations be amended to provide for the safe use of polyamides consisting of the homopolymer of Nylon 12 derived from *omega*-aminododecanoic acid as side seam cements that may contact food.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before January 21, 1986, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 175.300(b)(3) (xxxii) by alphabetically inserting a new item under "Polyamides consisting of the following" to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxii) * * *

Polyamides consisting of the following:

Homopolymer of *omega*-aminododecanoic acid, CAS Reg. No. 24937-16-4.

* * * * *

Dated: December 10, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-30101 Filed 12-19-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 177

[Docket No. 85F-0374]

Indirect Food Additives; Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of trimethyleneglycol di(*p*-aminobenzoate) as a curing agent in the manufacture of polyurethane resins intended for use in contact with dry food. This action responds to a petition filed by Polaroid Corp.

DATES: Effective December 20, 1985; objections by January 21, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA.305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 19, 1985 (50 FR 38036), FDA announced that a petition (FAP 4B3765) had been filed by Polaroid Corp., 238 South Main St., Assonet, MA 02702, proposing that § 177.1680 (21 CFR 177.1680) be amended to provide for the safe use of trimethyleneglycol di(*p*-aminobenzoate) in the manufacture of polyurethane resins intended to contact dry food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 4B3765 (September 19, 1985; 50 FR 38036). No new information or comments have been received that would affect the agency's previous determination that there is no sigificant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before January 21, 1986, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which ojection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Part 177 is amended in § 177.1680(b) by alphabetically inserting a new item in the list of substances to read as follows:

§ 177.1680 Polyurethane resins.

* * * * *

(b) * * *

List of substances	Limitations
. . . . .	.
Trimethyleneglycol di (*p*-aminobenzoate) (CAS Reg. No. 57609–64–0).	As a curing agent.
. . . . .	.

* * * * *

Dated: December 10, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–30100 Filed 12–19–85; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 178

[Docket No. 84F–0427]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from polystyrene and rubber-modified polystyrene resins. This action responds to a petition filed by The Dow Chemical Co.

DATES: Effective December 20, 1985, objections by January 21, 1986.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 9, 1985 (50 FR 1132), FDA announced that a food additive petition (FAP 5B3841) had been filed by The Dow Chemical Co., 1803 Building, Door 7, Midland, MI 48640, proposing that the food additive regulations be amended in 21 CFR 178.1005 to provide for the safe use of hydrogen peroxide for sterilizing food-contact surfaces prepared from polystyrene and rubber-modified polystyrene resins complying with 21 CFR 177.1640.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the

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action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the Federal Register of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(5).

Any person who will be adversely affected by this regulation may at any time on or before January 21, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection.

Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food Additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.1005 by revising paragraph (e)(1) to read as follows:

§ 178.1005 Hydrogen peroxide solution.

* * * * *

(e) *Conditions of use.* (1) Hydrogen peroxide solution identified in and complying with the specifications in this section may be used by itself or in combination with other processes to treat food-contact surfaces prepared from ionomeric resins complying with § 177.1330 of this chapter, ethylene-methyl acrylate copolymer resins complying with § 177.1340 of this chapter, ethylene-vinyl acetate copolymers complying with § 177.1350 of this chapter, olefin polymers complying with § 177.1520 of this chapter, polyethylene terephthalate polymers complying with § 177.1630 of this chapter (excluding polymers described in § 177.1630(c)), and polystyrene and rubbers-modified polystyrene polymers complying with § 177.1640 to attain commercial sterility at least equivalent to that attainable by thermal processing for metal containers as provided for in Part 113 of this chapter.

* * * * *

Dated: December 10, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-30102 Filed 12-19-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-85-1269; FR-2195]

Mortgage Insurance—Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on section 232 (Mortgage Insurance for Nursing Homes) and on section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: December 13, 1985.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 11.00 percent to 10.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (*1*) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major

rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small increase in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 4166) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act, (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development, (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 10.50 percent per annum, except that where an application for commitment was received by the Secretary before December 13, 1985, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues ot read as follows:

Authority: Sec. 211, 235, National Housing Act, (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortagage shall bear interest at the rate agreed upon by the mortgage and the mortgagor, which rate shall not exceed 10.50 percent per annum, except that where an application for commitment was received by the Secretary before December 13, 1985, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after December 13, 1985, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 10.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

Dated: December 12, 1985.

Janet Hale,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-30003 Filed 12-19-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 576]

Appellations of Origin and Geographic Corporate and Trade Names

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: General statement of policy.

SUMMARY: This document relates to regulations governing the use of appellations of origin and geographic corporate and trade names on labels for wine. It arises from the decision in *Wawszkiewicz v. Department of the Treasury*, 480 F.Supp. 739 (D.D.C. 1979), *aff'd in part, rev'd in part*, 670 F.2d 296 (D.C. Cir 1981). The Court of Appeals remanded the case to the lower court with instructions that these regulations (among others) be remanded to ATF for reconsideration and review. ATF has reconsidered and reviewed these regulations and concludes that they do not need to be amended. Definitions of various winemaking terms used on labels of wine, a separate issue involved in the litigation cited above, will be handled separately.

DATE: Policy statement issued on December 20, 1985.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum or James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF issued a final rule, Treasury Decision ATF-53 (43 FR 37672, 54624), which revised various regulations governing the labeling of wine. T.D. ATF-53 provided, in part, that wine may be labeled with an appellation of origin if at least 75 percent of the wine is derived from fruit or other agricultural products grown in the appellation area indicated. In the same final rule, ATF also decided not to amend regulations governing the use of geographic corporate and trade names.

The plaintiffs in *Wawszkiewicz* challenged regulations governing the use of appellations of origin and geographic corporate and trade names, among other regulations. They argued that when the grapes used to make a wine are not 100 percent from the stated appellation of origin, the label is misleading unless the percentages from each appellation of origin are shown on the label. Additionally, they argued that the rules

governing the use of geographic corporate and trade names sanctioned misleading labeling.

District Court

The District Court decision dwelt primarily on the varietal labeling rule. In summarizing, the court held that similar shortcomings applied to the other contested rules: appellation of origin percentages, geographic brand names, geographic corporate and trade names, and the use of winemaking terminology on labels. The court held that the use of a grape variety name, or an appellation of origin, implied that 100 percent of the wine was derived from grapes known by that name (in the case of a wine named for a grape variety name), or from grapes grown in the named area (in the case of a wine claiming an appellation of origin). 480 F.Supp. at 743.

The court concluded that the same rationale requires that wine labels making representations as to geographic origin (*i.e.* geographic brand names and geographic corporate and trade names) should couple such representations with a more precise indication of what minimum percentages attach to the claims made. *id.* at 745.

The District Court ordered that the regulations be remanded to ATF for revision consistent with the conclusion described above.

Court of Appeals

The Court of Appeals disagreed with the District Court's rationale in that a court reviewing agency action is not empowered to substitute its judgment for that of the agency. The Court of Appeals held that an agency's decision should be upheld where there is a rational basis for the decision in the facts of the record. 670 F.2d at 301. Pursuant to this test, the court upheld the regulations governing varietal labeling but found that the regulations concerning statements as to geographic origin and winemaking terminology had not been adequately explained, "either by reference to the record or by a reasoned statement." *id.* at 304. The Court of Appeals remanded the case to the District Court with instructions that the regulations governing statements as to geographic origin [appellation of origin percentages, geographic brand names, geographic corporate and trade names] and winemaking terminology be remanded to ATF for review and reconsideration in light of the appellate court's decision. No specific instructions were provided by either court nor were any dates set in connection with the review or reconsideration.

New Rulemaking Projects

The issuance of this general statement of policy allows ATF to explain its decision on appellations of origin percentages and geographic corporate and trade names, by reference to the record and by reasoned statement.

In previously published notices of proposed rulemaking, ATF has proposed revisions of the geographic brand names regulation, Notice Nos. 522, 534, and 542 (49 FR 19330, 28417, and 34847).

Definitions of various winemaking terms which are indicative of specific processes used in the production of wine will be handled separately.

Reconsideration and Review

Appellation of Origin. One of the areas of contention in the *Wawszkiewicz* litigation was the qualifying requirement for use of an appellation of origin. In general, at least 75 percent of the wine must be derived from fruit or other agricultural products grown in the area indicated by the appellation of origin. (27 CFR 4.25a).

The 75 percent requirement was not, and is not, an arbitrary figure. In 1935, ATF's predecessor agency, the Federal Alcohol Administration, proposed regulations on the use of appellations of origin on wine labels. The proposed rule would have required that 100 percent of the volume of the wine be derived from grapes grown and fermented in the area indicated by the appellation of origin. Careful consideration was given to the concept of geographical descriptions of the origin of wines.

At the hearing in November 1935, testimony was presented indicating that the distinctive geographic characteristics of grapes would be preserved by permitting a wine to be labeled with an appellation of origin when 75 percent of the volume of the wine is derived from grapes grown in the area named. The 75 percent rule would also allow for necessary blending. Thus, the 75 percent requirement is basically unchanged since the repeal of Prohibition.

When the minimum qualifying percentage requirement is met for an appellation of origin, no percentages are required to appear on the label. However, when a multi-county or multi-state appellation of origin is used, all of the grapes used to produce the wine must come from the indicated areas. Since different viticultural characteristics may be associated with different areas when a multi-county or multi-state appellation of origin is used, the percentage of the volume of the wine from each area must be shown on the label. (27 CFR 4.25a (c) and (d)).

Having re-examined this question, ATF believes that the current regulations protect the geographic characteristics. ATF believes that the consumer is protected and adequately informed. No new facts or materials have been presented which would warrant a regulatory change.

Geographic Corporate and Trade Names. The name of the bottler or packer of the wine and the place where bottled or packed (city and State) must appear on labels of wine preceded by the legend "bottled (packed) by." (27 CFR 4.35). Although the corporate or trade name of the winemaker or bottler may be geographic in nature, it must be approved by ATF before it may appear on labels of wine. ATF does not approve names which are considered to be misleading.

The name of the bottler appears in direct conjunction with the city and State, *i.e.* no other information may appear between the corporate or trade name and the actual location of the bottling or packing. ATF believes that the appearance of the city and State in direct conjunction with a geographic corporate or trade name precludes any misleading impressions about the origin of the wine.

However, a geographic brand name does not appear in direct conjunction with the city and State where the wine was bottled or packed. Therefore, a different rule is necessary in the case of a geographic brand name. (27 CFR 4.39(i)). This regulation is under review in a separate rulemaking project, as discussed above.

The Court of Appeals states that the Bureau never explained why it chose to regulate misleading geographic brand names but not equally deceptive geographic corporate or trade names. 670 F.2d at 304. The reason is implicit in the regulation requiring that a geographic corporate or trade name appear in direct conjunction with the city and State where the wine was bottled or packed. Because the corporate or trade name appears in direct conjunction with the address of bottling or packing, a geographic corporate or trade name is not misleading in comparison to a geographic brand name. This point was never made clear during the litigation.

ATF believes that the usage of geographic corporate and trade names is sufficiently regulated to prevent the conveyance of any misleading impressions to consumers. The regulations governing geographic corporate and trade names have remained virtually unchanged since 1935. No facts or materials have been

submitted to ATF which would warrant amending the present regulation.

Summary

ATF believes that the existing regulations on appellations of origin and geographic corporate and trade names are valid because they were established in public rulemaking projects, with the proposed rules modified in response to public comments. Since these regulations adequately provide the consumer with sufficient information on the origin of wines, ATF does not intend to amend these regulations.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, Wine.

Drafting Information

The principal author of this document is John A. Linthicum of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

This notice is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat., 981, as amended, 27 U.S.C. 205.

Signed: November 12, 1985.

Stephen E. Higgins,

Director.

Approved: November 18, 1985.

David D. Queen,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-30017 Filed 12-19-85; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Parts 4, 5 and 7

[T.D. ATF 210]

Disclosure of Saccharin in the Labeling of Wine, Distilled Spirits, and Malt Beverages

AGENCY: Bureau of Alcohol, Tobacco and Firearms. (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the labeling regulations in 27 CFR Parts 4, 5 and 7, by requiring the following statement on labels of alcohol beverages continuing the artificial sweetener saccharin: "Use of this product may be harzadous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals."

EFFECTIVE DATE: The effective date of this final rule is December 20, 1985.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

The Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e)(2), vests authority in the Director of the Bureau of Alcohol, Tobacco and Firearms, as a delegate of the Secretary of the Treasury, to prescribe regulations which will provide the consumer with "adequate information" as to the identity and quality of alcohol beverage products. Under this authority, labeling requirements are prescribed in Title 27, Code of Federal Regulations, Parts 4, 5, and 7 for wines, distilled spirits and malt beverages, respectively. The regulations requiring basic mandatory labeling information for alcohol beverage products have been in effect for over 50 years.

In recent years, the Bureau has considered numerous petitions for regulation changes with respect to the ingredient labeling of alcohol beverage products. Such requests have petitioned ATF to require full ingredient labeling, partial ingredient labeling, even health warning statements for specific ingredients found in alcohol beverages which were alleged to be a health hazard. In response to such requests, the Bureau has established a regulatory policy with respect to ingredient labeling and the need to disclose to consumers the presence of specific ingredients, found to be present in alcohol beverage products, which have been determined to pose health risks.

The Bureau, on October 6, 1983, published a final rule (T.D. ATF-150, 48 FR 45549), rescinding the ingredient labeling regulations for alcohol beverage products. However, mandatory label disclosure was required for alcohol beverages containing the color additive FD&C Yellow No. 5. The Bureau found, as a result of its rulemaking effort, that there was evidence establishing that consumers of the few alcohol beverage products containing that color additive may have adverse reactions to the ingredient. The Bureau also determined, at that time, that there was no clear evidence in the record that any other ingredient being used in the production of alcohol beverages posed a recognized health problem.

Pursuant to T.D. AF-150, the Bureau specifically stated it "will look at the necessity of mandatory labeling of other ingredients on a case-by-case basis through its own rulemaking initiative, or on the basis of petitons, or on the basis of petitions for rulemaking under 5 U.S.C. 553(e) and 27 CFR 71.41(c)."

Recently, ATF has been petitioned by members of the alcohol beverage industry to use the sugar substitute saccharin in the production of alcohol beverages.

Presently, Food and Drug Administration regulations, 21 CFR 180.37 (21 U.S.C. 348, 371), do not preclude the use of saccharin in the production of alcohol beverages. However, while use is not prohibited, the Saccharin Study and Labeling Act (21 U.S.C. 343) mandates that if saccharin is present in a food, then the following warning must also appear on the label of that product:

> Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

It is clear that Congress, after an exhaustive consideration of this issue, determined that all products containing saccharin shall display this health warning so that all consumers would be informed about the potential health risks associated with its use.

In recognition of this congressional mandate as expressed in the Saccharin Study and Labeling Act and pursuant to section 5(e)(2) of the Federal Alcohol Administration Act, which relates to providing the consumer with adequate information, the Bureau has determined that any alcohol beverage product which contains saccharin (including sodium saccharin, calcium saccharin and ammonium saccharin) must bear on its label a health warning statement identical to that set forth in the Saccharin Study and Labeling Act. This statement shall appear on a front or back label, separate and apart from other information, in the required size of type, and on a completely contrasting background.

Administrative Procedure Act

Because this Treasury decision implements the national policy expressed in the Saccharin Study and Labeling Act with respect to the labeling of products containing saccharin, it is found that it is impractical and unnecessary to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b) or subject to the effective date limitation in section 553(d).

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this

final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) do not apply to this final rule because no notice of proposed rulemaking is required by 5 U.S.C. 553(b).

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The author of this document is Coordinator James P. Ficaretta, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, and Labeling.

Authority and Issuance

PART 4—[AMENDED]

27 CFR Part 4—Labeling and Advertising of Wine is amended as follows:

Par. 1. The authority citation for 27 CFR Part 4 is revised to read as follows, and the authority citations following §§ 4.23, 4.23a, 4.25, 4.25a, 4.26, 4.39 are removed:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.32 is amended by adding a new paragraph (d) as follows:

§ 4.32 Mandatory label information.

* * * * *

(d) There shall be stated on a front or back label, separate and apart from all other information, the following statement when saccharin is present in the finished product: Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

PART 5—[AMENDED]

27 CFR Part 5—Labeling and Advertising of Distilled Spirits is amended as follows:

Par. 3. The authority citation for Part 5 is revised to read as follows:

Authority: 26 U.S.C. 5301, 7805; 27 U.S.C. 205.

Par. 4. Section 5.32 is amended to add a new paragraph (b)(6) and to redesignate paragraphs (b) (6), (7), and (8) as paragraphs (b) (7), (8), and (9), respectively, as follows:

§ 5.32 Mandatory label information.

* * * * *

(b) On the brand label or on a back label:

* * * * *

(6) The following statement when saccharin is present in the finished product: Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

* * * * *

PART 7—[AMENDED]

27 CFR Part 7—Labeling and Advertising of Malt Beverages is amended to read as follows:

Par. 5. The authority citation for 27 CFR Part 7 is revised to read as follows:

Authority: 27 U.S.C. 205.

Par. 6. Section 7.22 is amended by adding a new paragraph (b)(5) as follows:

§ 7.22 Mandatory label information.

* * * * *

(b) * * *

(5) The following statement, separate and apart from all other information, when saccharin is present in the finished product: Use of this product may be hazardous to your health. This product contains saccharin which has been determined to cause cancer in laboratory animals.

Signed: October 25, 1985.

Stephen E. Higgins,

Director.

Approved: December 9, 1985.

David D. Green,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85–29707 Filed 12–19–85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Hazard Communication; Interpretation Regarding Lubricating Oils

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of interpretation.

SUMMARY: OSHA has received a number of inquiries in recent months regarding the application of the Hazard Communication Standard (HCS) (29 CFR 1910.1200), to lubricating oils. This notice summarizes the Agency's position on this issue, and indicates further actions to be taken.

DATE: The interpretations described in this notice go into effect December 20, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3637, Washington, DC 20210; (202) 523–8148.

SUPPLEMENTARY INFORMATION: On November 25, 1983, OSHA published a final standard in the **Federal Register** entitled "Hazard Communication", at 48 FR 53280, and which is codified at 29 CFR 1910.1200. The rule requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce or import, and all employers in the manufacturing sector to transmit such hazard information to their employees by means of labels on containers, material safety data sheets, and employee training programs.

The requirements for evaluation of the hazards of chemicals under the rule are primarily performance-oriented. OSHA has provided definitions of hazards, general criteria for evaluation, and possible reference sources, but allows employers considerable flexibility in applying professional judgment to the evaluation process. This performance-oriented approach is amply supported by the rulemaking record, and was

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recently upheld by the U.S. Court of Appeals for the Third Circuit (*United Steelworkers of America* v. *Auchter*, 763 F.2d 728 (3d Cir. 1985)).

In order to ensure that employees of different employers receive pertinent and comparable information regarding the carcinogenicity of chemicals in the workplace, the HCS requires that employers report on material safety data sheets (MSDS) that a chemical is a carcinogen, or potential carcinogen, when (1) OSHA has regulated the substance as a carcinogen; (2) the National Toxicology Program lists the substance on its annual list of carcinogens; or (3) the International Agency for Research on Cancer (IARC) has evaluated the substance, and found sufficient or limited evidence of carcinogenicity. 29 CFR 1910.1200 (d)(4) and (g)(2) (vii). Employers are also required to include "appropriate hazard warnings" on labels on containers of chemicals for such hazards as carcinogenicity. 29 CFR 1910.1200 (f)(1)(ii) and (f)(4)(ii).

Subsequent to the publication of the rule, IARC published Volume 33 of its monograph series, entitled *IARC MONOGRAPHS ON THE EVALUATION OF THE CARCINOGENIC RISK OF CHEMICALS TO HUMANS: POLYNUCLEAR AROMATIC COMPOUNDS, PART 2, CARBON BLACKS, MINERAL OILS AND SOME NITROARENES* (April 1984) (hereinafter referred to as the IARC monograph). In this document, lubricant base oils and derived products are categorized by the refining processes they were subjected to and fall within the following eight classes:

Class 1. Vacuum distillates.

These may have undergone subsequent finishing steps, such as caustic neutralization, dewaxing, clay treatment and/or mild hydrotreatment. They have not been acid treated or solvent extracted.

Class 2. Acid-treated oils.

These may have undergone subsequent finishing steps such as caustic neutralization, dewaxing, clay treating and/or mild hydrotreatment. They have not been solvent extracted.

Class 3. Solvent-refined-oils (raffinates).

These may have undergone subsequent finishing steps, such as dewaxing, clay treating and/or mild hydrotreatment.

Class 4. Hydrotreated oils.

Class 5. White oils and petrolatums suitable for food and/or medicinal use.

Class 6. Aromatic oils:

6.1 Solvent extracts

6.2 Catalytically cracked oils

Class 7. Miscellaneous materials:

7.1 Formulated products

7.2 Used oils

Class 8. Petroleum-derived materials not otherwise classified (not sufficiently described to permit assignment to other classes).

IARC monograph at 90. "This classification is based on increasing severity of processing or refinement; within each class a range of treatment severities is also possible." *Id.* Class 7 oils are comprised of formulations of various base oils from the previous categories, together with chemical additives. *Id.* at 90–91.

The carcinogenicity of each type of product is related to the severity of refinement. IARC's conclusions included the following statements:

> There is *sufficient evidence* for the carcinogenicity in experimental animals of untreated vacuum distillates, acid-treated oils, and aromatic oils, including extracts from solvent treatment of distillates and the high-boiling fraction of catalytically cracked oils [classes 1, 2 and 6].
>
> There is *sufficient evidence* that mildly solvent refined oils [class 3] are carcinogenic to experimental animals. There is *no evidence* that severely solvent refined oils [class 3] are carcinogenic to experimental animals.
>
> There is *sufficient evidence* that mildly hydrotreated oils [class 4] are carcinogenic to experimental animals; the available data on severely hydrotreated oils [class 4] are *inadequate* to permit an evaluation of their carcinogenicity to experimental animals.

IARC mongraph at 150–151.

There are a number of variations in the actual processes used to produce the different types of petroleum streams. Variables include differences in base stock, equipment used, proprietary procedures, catalysts introduced, and temperature and pressure conditions. IARC categorized petroleum streams by process, and related their findings regarding carcinogenicity to the severity of refinement, but the monograph did not explicitly define the terms "mild" and "severe" when used to describe some types of processing.

The situation of immediate concern to OSHA involves the hydrotreatment of naphthenic oils. The purpose of this notice is to define "mild" hydrotreating, and to give OSHA's interpretation of the applicability of the IARC findings regarding naphthenic oils to the requirements of the HCS. No similar issue has been raised with respect to solvent refining.

OSHA has collected as much information as possible to evaluate this situation. OSHA representatives have met individually with various refiners, and conducted an informal meeting on November 7, 1985, where affected parties were given an opportunity to present their views on the issues involved. In addition, OSHA has obtained and evaluated relevant sources referenced in the IARC monograph.

Since IARC has stated that, with respect to hydrotreated oils, conclusive positive evidence of carcinogenicity is associated only with mild hydrotreatment, defining the process is sufficient to clarify the issue and ensure uniform interpretation of the findings in the IARC monograph and of the OSHA standard's applicability. To develop this definition, OSHA is relying primarily on the IARC monograph itself and papers cited by IARC as providing the rationale for their conclusions on this issue, as well as on information submitted at the November 7th meeting. It should be noted that the terms "mild hydrotreating" and "mild hydroprocessing" are used in the IARC monograph synonymously with the term "hydrofinishing." (*See* Table 17 of the monograph, and the discussion which accompanies it, at 124–125.) The task, therefore, is to establish criteria for "hydrofinishing" and/or "mild hydrotreatment" or "mild hydroprocessing."

Several references refer to process parameters for mild hydrotreating. In a paper by Halder *et al.*, entitled "Carcinogenicity of Petroleum Lubricating Oil Distillates: Effects of Solvent Refining, Hydroprocessing, and Blending" (American Journal of Industrial Medicine 5:265–274 (1984)), oils studied were "subjected to mild hydroprocessing, carried out at hydrogen pressures of about 800 psi [pounds per square inch], temperatures of 625–691°F and liquid hourly space velocities of 0.5 to 1.0 hr^{-1}." This study was one of the key papers used by the IARC working group to establish the carcinogenicity of mildly hydrotreated oils. Similarly, in a text entitled *The Chemistry and Technology of Petroleum* (Marcel Dekker, Inc., New York (1981)), James G. Speight of Exxon Research and Engineering Company stated that for hydrofinishing "[R]eactor operating conditions range from 400 to 800°F and from 50 to 800 psi, depending on the kind of feedstock and the degree of treating required." This text was referred to by participants in the November 7th meeting. OSHA has obtained further corroboration of the applicability of these criteria to IARC's conclusions through corrrespondence and oral communication with Dr. E.N. Ladov, a member of the IARC working group and co-author of one of the key papers upon

which IARC relied in its deliberations, "Toxicological Characteristics of Refinery Streams Used to Manufacture Lubricating Oils" (American Journal of Industrial Medicine 5:183–200 (1984)).

OSHA has determined that the references described clearly show that the studies used by IARC to arrive at its conclusions regarding the carcinogenicity of mildly hydrotreated oils involved products for which the degree of treatment was well described. Since the intent of the IARC monograph with regard to process definition is the issue in question, and since the mild hydrotreatment process parameters related to the IARC findings of carcinogenicity are well described, OSHA will use those process parameters to define mild hydrotreatment for purposes of compliance with the HCS. The critical factors for defining the process appear to be the pressure and temperature conditions. OSHA will therefore regard an oil as mildly hydrotreated if it has been processed at a pressure of 800 pounds per square inch (psi) or less, at temperatures up to 800° F, independent of other process parameters. IARC has not identified any conclusive evidence for oils which are hydrotreated using parameters outside the described ranges.

It should be noted, however, that apart from reporting the findings of IARC, for producers of hydrotreated oils "[t]he results of any studies which are designed and conducted according to established scientific principles, and which report statistically significant conclusions regarding the health effect of a chemical, shall be a sufficient basis for a hazard determination and reported on any material safety data sheet." 29 CFR 1910.1200, Appendix B, no. 4. Thus if any data are, or become, available which indicate carcinogenicity for oils produced using process parameters outside those defined as mild hydrotreatment, these data must also be used to determine potential carcinogenicity under the HCS.

As stated above, the IARC monograph concludes that there is sufficient evidence of carcinogenicity in experimental animals when the naphthenic oil is mildly hydrotreated or mildly solvent refined. Oils that are mildly hydrotreated or mildly solvent refined would thus have to be considered potentially carcinogenic under the provisions of the HCS. If the oil is severely hydrotreated, IARC has stated that the evidence is inadequate to determine carcinogenic potential. Thus severely hydrotreated oils do not have to be considered potentially carcinogenic under the HCS on the basis of IARC's findings. However, if one positive study regarding carcinogenicity of severely hydrotreated oils is identified, and it meets the criteria of the hazard determination procedures established in the HCS, then it will also be sufficient to establish potential carcinogenicity under the requirements of the rule. For severely solvent refined oils, IARC indicates that there is no evidence of carcinogenicity. Thus severely solvent refined oils do not have to be considered potentially carcinogenic under the HCS with regard to IARC's findings. There is also evidence cited in the IARC monograph that if sequential processing of mild hydrotreating and mild solvent refining is performed, the positive finding of carcinogenicity is eliminated. Thus, oil subject to this sequential processing does not have to be considered carcinogenic on the basis of the IARC monograph.

To reiterate the requirements of the HCS, there is a duty to report the positive findings of IARC. If a company has performed testing of its own product, and has found negative results, this information may be reported as well, but does not relieve the manufacturer or importer from the duty to report a positive IARC finding. "The chemical manufacturer, importer, or employer may also report the results of other scientifically valid studies which tend to refute the findings of hazard", but the positive data must always be reported. 29 CFR 1910.1200, Appendix B, no. 4. It will not be acceptable for purposes of compliance with the HCS to use negative bioassay results to justify or define severity of treatment.

To further clarify IARC's intent in categorizing the process streams, OSHA is writing to each of the members of the IARC working group that prepared the monograph in question to determine if there are any other considerations that relate to the process by which they categorized the streams and interpreted the data. Responses to these inquiries will determine if any further consideration by OSHA is necessary. If IARC relied on studies which have not been identified by OSHA and which show that positive carcinogenic results have been associated with higher parameter values, OSHA will modify its enforcement policy and compliance directive to include those higher values in its definition of mild hydrotreatment.

The requirements of the rule stand as promulgated—the hazard evaluation process must be accomplished within the constraints and guidance of the procedures outlined in the HCS. OSHA will incorporate the definition of mild hydrotreating described in this notice into its inspection procedures for the HCS (compliance directive CPL 2–2.38), and will use it to establish compliance with the rule with reviewing the hazard assessments of producers of naphthenic oils.

Some inquiries have been received from users of naphthenic oils, particularly those formulating these oils into other types of products, as to what information should be reported on their material safety data sheets. Formulators may use the information supplies by the producer of the base oils used, and may rely on the findings of the producer's hazard evalvation. The formulators must use the best information that they have regarding the base oils and the nature and concentration of additives. If the evaluation of their supplier changes as a result of the application of the interpretations described in this notice, and a new data sheet is provided to them, the formulators will have to update the data sheets for their products in accordance with the provisions of the rule.

Questions have also been received regarding the increased carcinogenicity of naphthenic oils used under high temperature conditions, and the re-refining of naphthenic oils. To OSHA's knowledge, these issues have not been specifically addressed by IARC. In the letter the Agency is sending to the IARC working group members, OSHA has asked for additional guidance in these areas to determine the applicability of the IARC monograph to these types of oils. When this information is received, OSHA will revise its enforcement policy as appropriate.

OSHA must ensure to the greatest extent possible that the evaluations of carcinogenic potential are accurately and consistently performed, and that information provided to employees and downstream employers is comparable among the various producers of a given type of oil. It was for this reason that OSHA has relied on findings of established authorities such as IARC. Actions not consistent with the provisions of the rule will be subject to OSHA review and possible citation.

Authority and Signature

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 8 of the Occupational Safety and Health Act (29 U.S.C. 657).

Signed at Washington, DC this 17th day of December, 1985.

Patrick R. Tyson,

Acting Assistant Secretary for Occupational Safety and Health.

[FR Doc. 85-30153 Filed 12-18-85; 8:45 am]

BILLING CODE 4310-25-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Ross Lake National Recreation Area, WA; Aircraft Use Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The regulation set forth below is necessary to designate locations within Ross Lake National Recreation Area where private and commercial aircraft may land on Ross Lake and Diablo Lake for the purpose of providing visitor access. Designation of location for the operation of aircraft within a park area is required by a National Park Service general regulation. The intent of this rulemaking is to provide for the preservation and enjoyment of the Ross Lake National Recreation Area in a way that is consistent with the aircraft operations policy of the National Park Service and the authority of the Federal Aviation Administration.

EFFECTIVE DATE: January 21, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Reynolds, Superintendent, North Cascades National Park, Telephone: (206) 855-1331.

SUPPLEMENTARY INFORMATION:

Background

As stated in its enabling legislation, Pub. L. 90-544, one of the primary reasons for establishment of the recreation area was ". . . to provide for the public outdoor recreation use and enjoyment. . . ." The operation of aircraft on Diablo Lake and Ross Lake is an established outdoor recreational activity in the Ross Lake National Recreation Area. The legislation also specifically provides that the recreation area shall be administered to best provide for ". . . the continuation of such existing uses and developments as will promote or are compatible with, or do not significantly impair, public recreation and conservation of the scenic, historic, or other values contributing to the public enjoyment."

Aircraft use of lakes within the Ross Lake National Recreation Area was an established activity for nearly 20 years prior to the 1968 establishment act. Floatplanes served as one of the principal means of public access to Ross Lake other than via the long, unimproved road by automobile through British Columbia to reach the north end of Ross Lake at Hozomeen. Highway 20, the North Cascades Highway, was not completed until 1972 and does not provide for automobile access to Ross Lake.

On March 17, 1982, the National Park Service published an extensive revision of Title 36 Code of Federal Regulations as a proposed Rule. Following the review and adoption of suggestions received during the comment period, the Final Rule was published in the **Federal Register** on June 30, 1983. Section 2.17, Aircraft and Air Delivery states, in part, that the use of aircraft is prohibited except at locations designated by special regulation.

The National Park Service, in analyzing requirements for publishing Special Regulations, realized that a long established use of aircraft in the Ross Lake National Recreation Area had to be legitimatized by designating locations in the recreation area as authorized landing sites. The alternative would be to discontinue use.

Special regulations for Ross Lake National Recreation Area were published in the **Federal Register** as a proposed rule on December 27, 1983. Comments from the public were originally accepted through January 26, 1984, but, that comment period was extended until February 25, 1984.

The section-by-section analysis of the final rulemaking for 36 CFR 2.17, published in the **Federal Register** of April 30, 1984, page 18445, states: "In response to public comment on the operation of aircraft on the entire surface of Ross Lake, the Service decided to withdraw this section of the proposed special regulations and retain the provision opening Diablo Lake to aircraft use. The total recreational use of Ross Lake will be reviewed and special regulations considered at a later date." This proposal is based on the intent of that analysis.

Neither of the two locations proposed as designated landing sites are within North Cascades National Park. Only sites within Ross Lake National Recreation Area are proposed. Since this use existed for many years, it is not anticipated that the proposed special regulation will, in itself, be a cause for a rise in such use.

The Superintendent has determined that the designation of these locations is consistent with the purposes for which the recreation area was established, will not adversely affect park resources and that the design and operational procedures are in compliance with federal, state and local laws relating to aircraft use.

Summary of Comments

This rule was published in proposed form for public comment on May 9, 1985 (50 FR 19547). Notice of the proposed rule was also published in local news media in May. The National Park Service received 71 timely comments regarding the proposed regulation. Comments were received from 66 individuals, 4 organizations, and one agnency of State government.

All of the comments received were in support of the proposed regulation. One comment noted that the proposed regulation needed a minor correction regarding the operation of aircraft ". . . within 500 feet of boomlogs . . .", which would prevent aircraft from taxiing to the Ross Lake Resort. Accordingly this noted correction was made by changing the distance, "500 feet" to read "1,000 feet", and changing "boomlogs, buoys" to read, "Diablo dam or Ross dam".

Drafting Information

The following persons participated in writing of these proposed regulations: Gerry Tays, District Manager; Daniel Allen, Resource Management Specialist; James Rouse, Assistant Supertintendent.

Paperwork Reduction Act

This rulemaking contains no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Service has determined that this document is not a "major rule" within the meaning of Excutive Order 12291 (February 19, 1981), 46 FR 13193, and does not require a regulatory analysis under the requirements of the Regulatory Flexibility Act (94 Stat. 1164, 5 U.S.C. 601 *et seq.*). Aircraft transportation to remote recreation sites is not an extensive activity in this area; the majority of use is expected from a regional base of past use, primarily to deliver people to resorts and campsites based on Ross and Diablo Lakes. A small segment of people would likely use the means for trail access into nearby wilderness areas.

This rulemaking will not have a significant economic effect on a substantial number of small entities, nor does it require the preparation of a regulatory analysis. The Service makes this finding because the proposed

regulations will impose no significant costs on any class or group of small entities.

Pursuant to the National Environmental Policy Act (42 U.S.C. 4332), the Service has prepared an Environmental Assessment and a Finding of No Significant Impact on these proposed regulations. Both are available at the address noted above.

List of Subjects in 36 CFR Part 7

National Parks.

In consideration of the foregoing, 36 CFR, Chapter 1 is amended, as follows:

PART 7—SPECIAL REGULATIONS; AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. In § 7.69, by revising paragraph (b) to read as follows:

§ 7.69 Ross Lake National Recreation Area.

* * * * *

(b) *Aircraft.* The operation of aircraft is allowed on the entire water surface of Diablo Lake and Ross Lake, except that operating an aircraft under power on water surface areas within 1,000 feet of Diablo Dam or Ross Dam or on those posted as closed for fish spawning is prohibited.

Dated: November 18, 1985.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-30186 Filed 12-19-85; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 5E3245/R803; FRL-2941-2]

Exemption From the Requirement of A Tolerance for Sodium Chlorite

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the disinfectant sodium chlorite when used as a seed-soak treatment on crop group *Brassica* (cole) leafy vegetables and radishes. This regulation, which eliminates the need to establish a maximum permissible level for residues of sodium chlorite in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on December 20, 1985.

ADDRESS: Written objections, identified by the document control number [PP 5E3245/R803], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M-3708, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 716B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 6, 1985 (50 FR 46103), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition (PP) 5E3245 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of New York proposing the establishment of an exemption from the requirement of a tolerance for sodium chlorite when used as a seed-soak treatment in the growing of the raw agricultural commodities crop group *Brassica* (cole) leafy vegetables and radishes. Member commodities of the crop group *Brassica* (cole) leafy vegetables listed in 40 CFR 180.34 include broccoli, Brussels sprouts, cabbage, cauliflower, collards, kale, kohlrabi, mustard greens and rape greens.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

Based on the data and information considered, the Agency concludes that the proposed exemption would protect the public health. Therefore the exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 12, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.1070 is added to read as follows:

§ 180.1070 Sodium chlorite; exemption from the requirements of a tolerance.

Sodium chlorite is exempted from the requirement of a tolerance for residues when used in accordance with good agricultural practice as a seed-soak treatment in the growing of the raw agricultural commodities crop group *Brassica* (cole) leafy vegetables and radishes.

[FR Doc. 85-30134 Filed 12-19-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2893/R809; FRL-2942-6]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide glyphosate and its metabolite in or on the crop group fruiting vegetables (except cucurbits) including tomatoes, peppers, and eggplants. The regulation to establish a mixiumum permissible level for residues of glyphosate in or on the crop group was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on December 20, 1985.

ADDRESS: Written objections, identified by the document control number [PP 3E2893/R809], may be submitted to the: Hearing Clerk (A-110), Environmental

Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 26, 1985 (50 FR 48615), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, submitted pesticide petition 3E2893 proposing the establishment of a tolerance for the combined residues of the herbicide glyphosate (*N*(phosphonomethyl)glycine), and its metabolite aminomethylphosphonic acid for the crop group fruiting vegetables (except cucurbits) including tomatoes, peppers and eggplants at 0.1 part per million on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of Arkansas, California, Florida, Louisiana, Maryland, Michigan, Tennessee, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Texas, Kentucky, Virginia, and Washington, and the U.S. Department of Agriculture.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking. Based on the data and information considered, the Agency concludes that the tolerance would protect the public health. Therefore the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: December 12, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.364(a) is amended by adding alphabetically the following crop group to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Vegetables, fruiting (except cucurbits) group	0.1
* * * * *	

[FR Doc. 85-30241 Filed 12-19-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42030A; FRL-2941-8]

Toxic Substances; Mesityl Oxide; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final test rule establishing testing requirements under section 4(a) of the Toxic Substances Control Act (TSCA) for manufacturers and processors of mesityl oxide (MO; GAS No. 141-97-7). Testing requirements include (1) inhalation subchronic (90-day) toxicity in at least one mammalian species, (2) mutagenicity (including tests for both gene mutations and chromosomal aberrations), and (3) oncogenicity (if certain mutagenicity test results are positive).

DATE: In accordance with 40 CFR 23.5 (50 FR 7271; February 21, 1985), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriated] time on January 6, 1986. This rule shall become effective on February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll Free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 5, 1983 (48 FR 30699), EPA issued a proposed rule under section 4(a) of TSCA to require testing of MO for chronic effects, mutagenicity, and oncogenicity (conditional on the mutagencity test results). The Agency is now promulgating a final rule requiring testing for these health effects.

I. Introduction

This notice is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*), which contains authority for EPA to require development of data relevant to assessing the risks to health and the environmental posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use or disposal of a chemical substance or mixture or that any combination of such activities, may present an unreasonable risk or injury to health or the environment.

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B) (i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data, and experience upon which the affects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

BEST COPY AVAILABLE

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine if there is or may be substantial release. For the second finding under both sections 4(a)(1)(A) and 4(a)(1)(B), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the third finding, that testing is necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing that the Agency might require would be capable of developing the necessary information.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed test rule package (chloromethane and chlorinated benzenes, published July 18, 1980; 45 FR 48510) and to the second package (dichloromethane, nitrobenzene, and 1,1,1-trichloroethane, published June 5, 1981; 46 FR 30300) for in-depth discussions of the general issues applicable to this section.

II. Background

A. Profile

Mesityl oxide, a colorless, oily liquid, vaporizes at room temperature producing a marked odor of peppermint detectable down to 0.017 part per million (ppm) (Ref. 1). The major use of MO is as a chemical intermediate. Four companies produce MO at six facilities as an intermediate in the manufacture of methyl isobutyl ketone (MIBK). Methyl isobutyl carbinol (MIBC) can also be produced as a coproduct in the same system (Ref. 2). Only two facilities currently isolate MO for use in end products (Ref. 3). The open literature lists a number of solvent uses for MO, e.g., for nitrocellulose, lacquers and lacquer thinners, and carburetor cleaners. According to current data, MO solvent uses have been largely phased out (Ref. 4).

The mesityl oxide level I Economic Impact Analysis, which accompanied the proposed rule, contains a thorough description of the MO production process (Ref. 5). The series of reactions leading to MO and then to MIBK and or MIBC (formed by hydrogenation of MO) may be performed in one system. Thus the MO "used" in this process is not isolated and exists only as a transient intermediate. MIBK is apparently produced only via the MO route (Ref. 4).

As noted, the primary use of MO is as an intermediate in the manufacture of MIBK. In excess of 120 million pounds per year are "produced" for this use (Ref. 4). End product uses may have at one time accounted for as much as 16 percent of production. The proposed rule estimated that 31.0 million pounds of MO was used in 1983 as a solvent and in pesticide formulations. According to current data, however, this figure has shrunk considerably due largely to a decline in the use of MO in solvent markets (Ref. 4). MO sales continue to decline. EPA estimates actual consumption of MO in 1983 at about 5 million pounds, consumed primarily in pesticide applications (Ref. 4).

B. ITC Recommendations

The Interagency Testing Committee (ITC) designated MO for priority consideration in its Fourth Report, published in the Federal Register of June 1, 1979 (44 FR 31866). The ITC designated MO as a priority chemical and recommended the following health effects testing: Carcinogenicity, mutagenicity, teratogenicity, chronic effects, and an epidemiology study. The ITC based its recommendations for MO on production figures in excess of 27 million pounds, estimates of up to 6,100 workers exposed, widespread consumer exposure, and the lack of adequate data to assess potential health effects. The ITC was concerned that MO may possess biological activity because of its chemical structure.

C. Proposed Rule

EPA issued a proposed test rule for MO in the Federal Register of July 5, 1983 (48 FR 30699). The EPA based its proposed testing requirements on the authority of section 4(a)(1)(A) of TSCA.

1. Test requirements. The proposed rule specified that MO be tested for:

a. Subchronic (90-day) inhalation toxicity test in at least one mammalian species to assess potential chronic effects.

b. Mutagenicity (gene mutations and chromosomal aberrations).

c. Oncogenicity testing was specified if MO is mutagenic in any one of the following tests: *in vitro* or *in vivo* cytogenetic tests, gene mutation in somatic cells assay, or *Drosophila melanogaster* sex-linked recessive lethal test.

2. Findings. The Agency made proposed findings that the manufacture, processing, and use of MO may present an unreasonable risk to human health due to chronic and mutagenic effects. EPA also proposed to find that if certain mutagenicity tests gave positive results, these data, supported by the potentially active biological structure of MO, would support an unreasonable risk finding of oncogenic effects. These proposed findings were based on:

a. End product use of over 31 million pounds per year; additional MO produced as a transient intermediate to MIBK.

b. 500–6,000 workers exposed in manufacturing, processing, distribution, and use.

c. Possible systemic effects (liver, kidney, possibly lung changes) in animals and possible anemia and leukopenia in workers and animals.

d. Possible mutagenic effects based on structure activity relationships to known alkylating agents.

e. Possible oncogenic effects if certain short-term mutagenicity tests proved positive.

f. The Agency also proposed to find that there are insufficient animal and human data to reasonably determine or predict the chronic and mutagenic effects of MO, and testing of MO was necessary to develop such data.

The Agency did not propose an epidemiology study because no end point had been sufficiently defined to make a finding for potential unreasonable risk to humans. Further, EPA did not propose testing for teratogenic effects because in the Agency's judgment the limited available data did not suggest a potential for these effects.

The analysis and findings on which the above determinations were based are presented in the Mesityl Oxide Support Document, which is available from the Office of Toxic Substances' TSCA Assistance Office and in the public record for this rulemaking.

D. Data Received Subsequent to Proposed Rule

Following publication of the proposed test rule, MO was added to the list of chemicals subject to the Preliminary Assessment Information Rule—Manufacturer Reporting (40 CFR Part 712) (June 25, 1984; 49 FR 25859). Pursuant to this TSCA section 8(a) rule, data on production, use, and exposure were received on this chemical. Also, in response to the proposed rule, the affected industries submitted monitoring data from production facilities and additional exposure and use information. Most of these data were declared confidential business information (CBI). However, nonconfidential summaries of this

information, where possible, have been prepared and are included in the public record of this final rule. EPA evaluated these data and additional data reported by manufacturers of MO under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716) (September 2, 1982; 47 FR 38780).

1. Production and use. Exxon Chemical Americas notified EPA that it was withdrawing from the manufacture and marketing of MO for commercial purposes and adjusting its operations such that MO would exist solely as a nonisolated intermediate in its MIBK process (Ref. 6). Also, Eastman Kodak Co. stated that MO is only a transient nonisolated intermediate that is never removed from the reaction vessels in which it is manufactured or equipment through which it passes during the process except in very small quantities during sampling of crude MIBK or as a trace impurity in refined MIBK (Ref. 7). Based on information from limited air monitoring during sampling, MO was not detected by a method sensitive to 0.25 ppm. MIBK was detected at 5 ppm in air (Ref. 7).

Union Carbide Corp., Exxon Chemical Americas, and Shell Chemical Co. submitted CBI section 8(a) data. In a letter received by the Agency on October 4, 1983, Union Carbide Corp. stated that the major merchant market use of MO is confined to its carrier-solvent use in pesticides (Ref. 8). It further noted that the manufacture and storage of MO as an MIBK intermediate is an essentially enclosed process with little potential for significant human risk.

2. Exposure during manufacturing and processing. The Chemical Manufacturers Association's Ketones Panel (herein referred to as The Panel), representing the principal manufacturers of ketones, supplied the exposure details summarized below.

The Panel estimates that currently fewer than 200 workers are potentially exposed to MO at six production facilities on a regular basis (Refs. 2 and 3). Most of these workers are involved in the MIBK production process. Both Exxon Chemical and Eastman Kodak produce MO as a site-limited nonisolated intermediate to MIBK (Refs. 6 and 7). The MIBK process is closed, and according to one company the only potential for exposure to MO is during the 26-minute (0.43 hour) per shift sampling operation. During sampling, employees wear personal protective devices, including rubber gloves and full face shields. Based on data from limited air monitoring sampling, MO was not detected by a method sensitive to 0.25 ppm. MIBK was detected at 5 ppm (Ref. 7).

Personal monitoring samples taken within these plants show that MO levels ranged from nondetectable to 0.72 ppm, with an average of 0.07 ppm and a median of 0.22 ppm (Ref. 3). General area sampling of fugitive emissions measured MO levels ranging from nondetectable to 2.38 ppm, with an average of 0.58 ppm and a median of 0.22 ppm.

Shell Chemical Co. produces MO as an intermediate to MIBK at two locations using a closed reactor system (Ref. 3). This manufacturer estimates that 117 workers are potentially exposed to air concentrations of MO ranging from 0.1 ppm to 1 ppm on an 8-hour time-weighted average (TWA) basis. Likewise, Union Carbide produces MO at two facilities. During 1983 and 1984, 8-hour TWA monitoring data at one plant ranged between 0.1 and 2.0 ppm during production operations; short-term samples during tank truck loading ranged between 0.3 and 0.8 ppm. At the second plant, TWA monitoring data for production operations ranged between 0.6 and 3.9 ppm, with a mean of 1.5 ppm (Ref. 3). Union Carbide estimates that fewer than 30 workers are exposed in these operations.

The Panel further states that two members market MO, principally for use in agricultural products. Thus, additional employee exposure to MO may occur during herbicide formulation. Confidential data received from the Panel derived from a limited survey of MO users state that typically, automated, enclosed process equipment is used in the formulation process. This would include unloading bulk MO into storage tanks, mixing it with other ingredients, and removing and packaging the end product. Potential exposure to MO occurs during sampling, quality control, and loading operations. The Panel estimates that fewer than 100 workers are potentially exposed to MO in these operations. Monitoring data are limited, but suggestive that exposure to MO does occur.

The Agency has reviewed the data on MO submitted by CMA, confidential data submitted by manufacturers pursuant to both TSCA and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and other relevant data. The Agency used these data in reaching conclusions regarding the testing needs of the chemical.

In evaluating the potential exposure of workers to MO, EPA considered nonisolated intermediate exposure, isolated intermediate exposure, and exposure during distribution and processing. Exposure to MO in its function as a nonisolated intermediate to MIBK is limited. However, manfuacturing processes exist where MO may be isolated, processed, and stored prior to being converted to MIBK or for end product use. MO is also processed for use as a carrier solvent for herbicides. Exposure resulting from this processing is also subject to TSCA regulation (see Unit III.D below). EPA believes there are a number of steps during the manufacturing, processing, and distribution of MO when exposure can occur. In response to the proposed test rule, commenters submitted data showing that the amount of MO isolated for subsequent processing and/or sale has decreased significantly from the 1983 figures used by EPA in developing the NPRM. Nevertheless, the information available to EPA indicates that such isolation of MO and its attendant exposures continue to occur. Data availalble to EPA show that over 200 workers are exposed to isolated MO in manufacturing and processing plants. An additional number of workers are exposed to isolated MO during herbicide formulation. EPA has thus concluded that current exposure to MO remains sufficient to support a "may present" finding.

If the remaining activities involving isolated MO have been halted or exposures have been significantly reduced since the submission of comments on the proposed rule, or should such activities be halted or exposures significantly reduced subsequent to the promulgation of this final rule, manufacturers and/or processers of MO could petition EPA under section 21 of TSCA to withdraw the test rule, providing evidence of the cessation of those activities. If EPA concluded the "may present" finding could no longer be made, the Agency would initiate rulemaking to withdraw the final rule. Concurrently, EPA might also initiate rulemaking pursuant to section 5(a)(2) and/or 8(a) of TSCA to require notification of the Agency prior to any significant change in manufacturing, handling, processing, or use patterns that would significantly increase exposure to MO.

III. Response to Public Comments

The Agency received comments from the Chemical Manufacturers Association (CMA) Ketones Panel (The Panel), Exxon Chemical Americas, Eastman Kodak Co., Union Carbide Corp., Vulcan Materials Co., the American Industrial Health Council (AIHC), and the Natural Resources Defense Council (NRDC). A public

meeting was also requested by CMA and held on October 24, 1983, to address concerns regarding the legal and scientific basis for the proposed test rule. A transcript of this meeting is included in the public record of this rule. The major issues identified during the comment period are discussed below.

A. Lack of Justification for the Unreasonable Risk Finding

1. Exposure potential.

The Panel commented that exposure to MO is so limited that EPA could not justify a finding that MO "may present an unreasonable risk of injury" under section 4(a)(1)(A)(i) of TSCA. It commented that all but a small fraction of total MO production is either consumed as a nonisolated intermediate or is used for applications outside the coverage of TSCA. It estimated that while 3 to 5 million pounds MO are sold commercially each year, less than 1 million pounds are distributed for us in applications to which section 4 of TSCA applies. The Panel claims that all the MO that is produced as a carrier solvent for herbicides is subject to regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA, 7 U.S.C. 136; 40 CFR 158.105 and 158.110) and is thus excluded from the definition of "chemical substance" in section 3(2)(B) of TSCA.

The Panel further claimed that the exposure estimates cited by EPA in the proposed rule included agricultural workers excluded from coverage under TSCA. Likewise, employee exposure to MO during herbicide formulation was claimed to be outside the scope of EPA's authority under section 4 of TSCA.

EPA has reviewed the data submitted by The Panel and has determined that there is a basis for a section 4(a)(1)(A)(i) finding for MO. As explained in Unit I, EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding in which both exposure and toxicity information are considered to make the finding that a chemical may present an unreasonable risk. The criteria used by the Agency for determining the basis for the exposure component of the (A)(i) finding are considerably less rigorous than those required for a section 4(B)(i) finding. (The reader is directed to the **Federal Register** document on chloromethane and chlorinated benzenes (45 FR 48521; July 18, 1980), for a fuller discussion of these criteria.) Thus, the stronger EPA's scientific basis for suspecting potential toxicity, the less exposure data are needed to support the potential risk finding. In the case of MO, EPA has reviewed data which suggest that the chemical may be toxic in a variety of ways (see Unit III.A.2. below). These data, while insufficient to allow the Agency to reasonably predict whether the levels of MO to which people are exposed (see Unit II.D.2 above) will present an unreasonable risk, do suggest a reasonable potential for MO to produce leukopenia, hypertrophy of the liver, kidney, and spleen, and based on structural activity relationships, the potential to induce mutagenic effects. While these data also suggest some potential for MO to induce carcinogenic effects, EPA believes that the mutagenicity data to be developed under this rule will provide a more appropriate basis to determine whether MO's potential for oncogenic effects is sufficient to warrant a chronic bioassay.

In addition, the Agency has determined that the MO produced and processed for use as an inert component of a pesticide clearly falls under the legal authority of TSCA. In this case, MO itself is not a pesticide as defined in section 2(u) of FIFRA (7 U.S.C. 136), but rather an inert solvent used to formulate a pesticide. Thus, EPA in developing the support for this test rule considered potential exposure to workers processing MO or formulating the pesticide product containing MO. The Agency did not consider worker or consumer exposure that may result from exposure to MO in formulated pesticide products; such exposures are subject to FIFRA authority.

2. Hazard potential.

The Panel questioned the basis for EPA's proposed finding that MO may present an unreasonable risk of chronic health effects. It asserted that (1) EPA relied on seriously flawed data to support the risk finding for chronic effects, and (2) well-conducted studies indicate that chronic effects are not a concern for MO at current exposure levels. Noting that EPA based the potential unreasonable risk finding for chronic effects and the requirement for a subchronic study on the work of Ito (Ref. 9), it contended that this work has serious deficiencies in both the experimental design and the reporting of results which serve to invalidate the study. It further contended that, in contrast to the Ito work, the study conducted by Smyth et al. (Ref. 10) was adequately controlled and reasonably identifies the toxicity of MO following subchronic exposure. Also, Union Carbide, while acknowledging that MO is chemically reactive as an alkylating agent, postulated that steric hinderance may occur because of the position of the methyl groups on the beta carbon, thus lessening MO's biological activity. (Ref. 11).

The Agency disagrees with the commenters that there is no basis for the finding that MO may present an unreasonable risk of chronic effects. As described in the proposed rule and its accompanying support document, the Agency identified two studies that supported the may present an unreasonable risk finding and the need for subchronic inhalation testing of MO (Refs. 9 and 10). EPA believes that the data presented in the Ito study (Ref. 9) raise the level of concern for potential blood, kidney, liver, and lung effects from chronic exposure to MO. The Agency recognizes that the data, as reported by Ito, have flaws and thus only weakly suggest these effects (Ref. 12). The Agency believes, however, that these data are sufficient to support the finding that MO, under the present conditions of use, "may" present an unreasonable risk of chronic effects.

Further, the Agency does not agree that well-conducted studies are currently available on MO. The Smyth *et al.* study, referenced by industry, is from a paper published in 1942 (Ref. 10). The Agency initially found, and continues to believe, that there are sufficient design and reporting deficiencies in this study to question its adequacy by today's testing standards (Ref. 12). The Smyth *et al.* study was both inadequately conducted and reported by current standards. Deficiencies include short duration of exposure (6 weeks), small sample size (10 rats; 10 guinea pigs per group), combining of sexes, pooling of results from both species, and limited pathology. Also, the description of the pathology is such that it is difficult to associate an effect with a given dose. Furthermore, while the authors indicate that blood counts were taken several times on some animals among each exposed group, no specific details were given, making it difficult to interpret the data. While no blood abnormalities were observed in this study, the, limited sampling and short duration of exposure preclude dismissing the concerns for these effects. Hence, it follows that it is impossible to predict the possible health hazards likely to arise from repeated exposure to MO.

In summary, the Agency believes that the available data show that sublethal concentrations of the vapors of MO produce congestion, primarily in the kidney. The liver and lung are affected to a lesser degree. The hematopoietic system may also be a target of MO toxicity. Existing data are insufficient to reasonably determine or predict the

extent of this risk. For these reasons the Agency is requiring a subchronic study to develop data needed to assess the effects resulting from repeated exposures to MO.

EPA recognizes Union Carbide's concern that MO may be a sterically hindered ketone and that this may impact on the chemical's alkylating ability (Ref. 10). However, Union Carbide also recognizes, as does EPA, that MO is chemically reactive as an alkylating agent. Based on chemical structure alone, i.e., its structural relation to known alkylating agents, MO has a potential for posing mutagenic and oncogenic risks. Because the beta carbon is planar (in resonance with the carbonyl electrons) it may be less available to metabolic activation. The fact remains, however, that this can only be determined by utilizing biological systems. For this reason EPA made a conditional "may present" finding for oncogenicity. In this case, MO will be tested for oncogenicity only if the select "short-term" mutagenicity tests are positive indicating that biological activity occurred.

B. Automatic Triggers for Chronic Oncogenicity Bioassay

EPA received comments from CMA, AIHC, and Vulcan Chemicals on the Agency's use of mutagenicity tests to trigger 2-year oncogenicity studies. The Agency's responses to a variety of public comments on this approach, the test sequences, and the assays (and triggers for oncogenicity testing) contained within them may be found in the final Phase I test rule for the C_9 aromatic hydrocarbon fraction (50 FR 20662; May 17, 1985).

As discussed in the final Phase I test rule for the C aromaic hydrocarbon fraction (50 FR 20662, 20668–20672), the Agency believes that the use of sequences of tiered tests for mutagenicity testing and the use of automatic triggers to require chronic oncogenicity bioassays based on the results of certain mutagenicity assays are consistent with both current scientific knowledge and the regulatory approach to chemical testing established under section 4 of TSCA. Existing data show a strong correlation between positive results in certain mutagenicity tests and positive results in animal chronic oncogenicity bioassays for a large number of substances tested in both types of systems. Thus, positive results in one more of these mutagenicity assays provide a basis for concluding that the substance may be an oncogen and, in conjunction with evidence of both an active chemical structure and the potential for human exposure to the substance, that such exposure may present an unreasonable risk of oncogenicity. If all of these mutagenicity tests yield negative results, the likelihood of MO being oncogenic is small and the chronic bioassay will not be required. Conversely, if any one of these trigger tests is positive, potential oncogenicity of MO is suggested and a chronic bioassay is essential to confirm or deny that potential and provide a basis for judging what oncogenic risk exposure to MO may present (see 50 FR 20662).

Because the different mutagenicity assays used to trigger chronic oncogenicity bioassay testing generally measure differnt genotoxic effects, or smiliar effects under substantially different test conditions (e.g., *in vitro* versus *in vivo* metabolic activation), and because each test has independently shown a strong ability to identify animal carcinogens, EPA believes that it generally is appropriate for positive results in any one of these mutagenicity tests to trigger a requirement to perform chronic oncogenicity bioassays. However, EPA agrees with commenters on the proposed test rule mentioned above that the overall scientific weight-of-evidence as to a substance's potential oncogenicity should be appropriately factored into these testing decisions. Furthermore, EPA believes that the weight-of-evidence should apply differently in the case of substances where testing is required under section 4(a)(1)(A) alone (as in the case of MO) when compared with substances where the Agency finds that testing is supported under section 4(a)(1)(B) (as is the case for the C_9 aromatic hydrocarbon fraction). Where EPA has made findings of substantial production and significant or substantial exposure under section 4(a)(1)(B), there is a presumption that testing of the substance for oncogenicity is needed, and the question before the Agency is whether the weight-of-evidence from the mutagenicity testing shows an absence of oncogenic potential such that EPA can reasonably predict that the expected exposures to the substance will not present an unreasonable risk of oncogenicity. In contract, where testing is being required under section 4(a)(1)(A) alone, EPA must consider whether all of the relevant data available to the Agency after completion of the required mutagenicity tests provide evidence that the substance may present an unreasonable risk of oncogenicity.

In the case of MO, testing is being required under section 4(a)(1)(A) of TSCA alone. The finding of potential unreasonable risk of mutagenic effects is based on structure-activity relationships, and there are no test results to verify it. Thus, EPA is making a conditional "may present" finding for oncogenicity testing. This means that if any one of the four required short-term mutagenicity tests produces a positive result, EPA considers that these data, supported by the potentially biologically active structure of MO, show sufficient potential of MO to be a suspect oncogen and that chronic oncogenicity bioassay testing shall be automatically required.

C. Mutagenicity as a Regulatable End Point

While the industry commenters agreed that appropriate mutagenicity assays can be used for assessing carcinogenic potential, they objected to the use of the more elaborate tests to assess mutagenic risk as a separate end point. They objected to EPA's apparent use of rigid inflexible testing schemes in favor of a tiered approach to permit informed scientific judgement.

The general sequences of tiered tests usually employed by EPA in assessing the mutagenic (both gene mutation and cytogenetic) potential of chemical substances, which are required in this final Phase I test rule for MO, were previously described in the proposed test rule issued by the Agency for mesityl oxide (48 FR 30699; July 5, 1983), and are more completely described in the final Phase I test rule for the C_9 aromatic hydrocarbon fraction (50 FR 20662, 20668–20671; May 17, 1985). Although these general test sequences are usually employed, the Agency ultimately specifies the required mutagenicity test for each specific chemical substance on a case-by-case basis.

As described in detail in the final Phase I test rule for the C_9 aromatic hydrocarbon fraction (50 FR 20662, 20668–71), the Agency feels that there is a consensus in the scientific community on both the need for, and the manner of, identifying mammalian mutagens, and that its proposed scheme for identifying these agents is in keeping with those recommended by experts in the field of mammalian mutagenesis. Further, while it is recognized that there is, as yet, no generally accepted single methodology for estimating human risk from mutagenic agents, it is the Agency's view that appropriate methodologies do exist and are usable. Therefore, the Agency concludes that it is appropriate at this time to obtain mutagenicity data on MO with which to perform estimates of mutagenic risk for this substance for

regulatory use, should MO prove to be a mammalian germ-cell mutagen.

For reasons more fully described in the final Phase I test rule for the C_8 aromatic hydrocabon fraction (50 FR 20662, 20668–71), EPA believes that the use of automatic triggers between the assays contained in the mutagenicity testing scheme for MO is appropriate. However, in an effort to incorporate scientific judgment prior to the use of the end-point mutagenicity tests, i.e., the mouse specific-locus test and the heritable translocation test, EPA has decided to utilize automatic triggers between assays contained in lower-tier tests, and a "presumptive automatic trigger and opt-out" approach between lower-tier tests and end point tests in this final test rule for MO. Under this approach, EPA is promulgating a tiered testing scheme for mutagenicity for MO with automatic triggers to additional mutagenicity testing (including the two end point tests). Before testing is initiated in one or both of the end point mutagenicity tests, EPA will hold a public program review if the results of the previous tier tests are positive. Public participation in this program review will be either in the form of written public comments or a public meeting. Request for public comments or notification of a public meeting will be published in the **Federal Register**. If, after the review of public comments, no change in the test program is deemed necessary by EPA, testing will continue to the next test without delay. EPA will provide notification to the test sponsor(s) that the next tier test shall be conducted. If the Agency believes additional testing is no longer warranted as a result of the earlier test results public comment, scientific judgment, and other appropriate factors, EPA will issue a proposed amendment to "opt-out" by repealing the existing requirement and, after consideration of public comments on the proposed amendment, issue a final decision whether to rescind the rule requirement. This approach offers the advantage of allowing the incorporation of scientific judgment based on the weight of the evidence after the initial testing tiers have been completed and allowing change in test requirements to respond to specific chemical issues, while not significantly delaying higher-tier testing when it is deemed necessary.

EPA has decided not to use the public program review approach between the lower-tier mutagenicity tests for the MO test rule. EPA believes the use of automatic triggers between these tiers is suitable. It should be noted that this does not exclude the public from requesting modifications in the test program. Provisions are available under section 21 of TSCA for the public to petition EPA at any time to amend a rule under section 4.

D. Additional Comments by the NRDC on Mutagenicity

The NRDC believes at least two tests should be used in the second tier of mutagenicity testing to guard against a possible false-negative result in the *Drosphila* sex-linked recessive lethal (SLRL) assay.

NRDC cites as evidence of the insensitivity of the SLRL assay its failure to detect the mutagenicity of beta-naphtylamine and 3-methylcholanthrene. A review prepared for the Gene-Tox Program (Ref. 13) found that both of these agents had been inadequately tested in this assay and could not be judged to be either positive or negative. Further testing may find that these agents give positive responses in the SLRL assay. A review of the Gene-Tox data base shows that a total of 54 known carcinogens were tested in both the *Salmonella typhimurium*/mammalian microsomal assay (Ames assay) and the SLRL assay. Of these, 4 were positive in both systems; 1 was positive in the Ames assay, and negative in the SLRL assay; and 13 were positive in the Ames assay, but because of technical inadequacies could not be judged to be either positive or negative in the SLRL assay. Presumably, retesting of these latter 13 agents would increase the percentage of carcinogens that give a positive response in both assays.

It should also be pointed out that agents tested in the Ames assay will also be tested for their ability to induce chromosomal aberrations. Agents which are positive in the Ames assay but negative in the SLRL assay would still be tested for oncogenicity if either the *in vitro* or *in vivo* cytogenetics assays gave a positive response. Chemicals positive in the Ames assays but negative in the SLRL assay and the *in vitro* and *in vivo* cytogenetics assays would not require testing for oncogenicity. In these instances, the Agency feels that negative responses in insects and two mammalian systems, including a whole animal system, outweigh a single positive response in a prokaryotic system. However, the Agency will continue to evaluate comparative data on these systems and, if additional data indicate a need, will modify its test scheme, and may revise its stand on this in future test rules.

For these reasons, and also because the overall correlation with carcinogenicity in the SLRL assay is approximately 88 percent, the Agency believes that its choice of this assay as a trigger for oncogenicity testing for MO is reasonable and scientifically sound.

Further, the NRDC feels that there should be greater specificity in the test schemes, particularly the somatic cell gene mutation assay and the cytogenetics assays. Also, NRDC feels that mesityl oxide should be tested in strain TA 102 in the Ames assay.

It was an oversight that the proposed test rule for MO did not state specifically that the somatic cell gene mutation tests are to be performed in a mammalian cell line both with and without metabolic activation. However, the test guidelines referred to in the proposed test rule specify the use of mammalian cells and a metabolic activation system. The Agency is proposing those guidelines as test standards for this test rule.

The Agency's reasons for not specifying a particular cell line for either the *in vitro* mammalian cell gene mutation or *in vitro* cytogenetics assays are set forth in EPA's response to the CMA comments as detailed in the final Phase I test rule for the C_8 aromatic hydrocarbon fraction (50 FR 20662). By separate cell lines in the *in vitro* and *in vivo* cytogenetics assays, it is assumed that NRDC means different species since cell lines apply only to *in vitro* assays. The Agency has decided to not specify the species to be used or the *in vivo* cytogenetics assay because not one animal species has a sufficient data base of tested chemicals to allow for a preferential choice. Rodents, especially rats and mice, are commonly used for the *in vivo* assy while Chinese hamster ovary cells are commonly used for the *in vitro* assay. Under these conditions, the species specific effects referred to by NRDC would not be an issue.

The Agency intended that its use of the term "cytogenetics assay" referred to an assay for chromosomal aberrations such as breaks, translocations, or other changes in structure or number of the normal chromosome complement of the cells or species used in either the *in vitro* or *in vivo* assays. NRDC's use of the unscheduled DNA synthesis assay is an example of where a cytogenetic assay is inappropriate and would not be considered under this class of tests.

The Agency, at this time, is not recommending the use of strain TA 102 in the Ames assay because of the limited data base of tested chemicals available for this strain and because of its still unknown performance record during routine use in multiple laboratories. The Agency will, however, review data on this strain as it becomes

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more widely available and may revise its position in the future. Companies performing or sponsoring tests on mesityl oxide may, at their discretion, include TA 102 in addition to the strains routinely used in the Ames assay.

E. Comments on Persons Subject to Testing

The Agency received comments from Eastman Kodak Co. and Union Carbide Corp. requesting clarification of who would be subject to the test rule. Kodak, specifically, requested EPA's definition of "manufacture" as that term is used under section 4(a) of TSCA. Noting that TSCA contains a generic definition of "manufacture," Kodak cited numerous examples of the Agency's providing specific guidance on the applicability of its rules to byproducts, impurities, and nonisolated intermediates. Also, Union Carbide requested an EPA decision on whether (1) manufacturers of MO as a nonisolated intermediate and (2) manufacturers of MO intended for use as a pesticide are covered by this rule. Both commenters felt that these judgements are necessary to arrive at appropriate cost sharing for testing mandated by the rule.

EPA is exempting from these testing requirements those manufacturers and processors that produce and process MO only as an impurity. Persons who manufacture or process MO as a byproduct or as a nonisolated intermediate including that MO intended for use as an "inert" solvent in pesticide products are subject to the testing requirements set forth in this rule. The total MO domestic production, including that produced as a byproduct or a nonisolated intermediate, will be used in determining reimbursement shares under the Data Reimbursement Final Rule (48 FR 41786; September 19, 1983). The Agency's rationale for these decisions follows.

EPA is exempting those manufacturers and processors that produce MO only as an impurity because the EPA findings under section 4(a) are based on exposures to MO that are a result of intentional manufacture, processing, and distribution of MO. In addition, it would be difficult for both EPA and manufacturers and processors to identify with complete assurance all chemical substances which contain MO solely as an impurity. Further, the Agency would find it difficult to apply both the exemption and reimbursement processes to those who manufacture and/or process MO solely as an impurity. The Agency's reimbursement regulations issued pursuant to section 4(c) state that those who manufacture or process chemical substances as impurities will not be subject to test requirements unless the rule specifically states otherwise (40 CFR 791.48(b)). EPA finds no basis to impose such requirement in this rule. EPA is including persons who manufacture or process MO as a byproduct or nonisolated intermediate because these activities constitute intentional manufacture and processing of MO. Finally, as discussed in Unit III.A.1 above, raw materials, intermediates, and inert ingredients produced or used in the manufacture of a pesticide are not themselves regulated under FIFRA (unless they happen to be pesticides themselves) and, therefore, are subject to TSCA. Such raw materials, intermediates, and inerts become subject to FIFRA jurisdiction when they become a component of a pesticide product (see 42 FR 64572, 64586; Dec. 23, 1977). Thus, those persons who manufacture MO for use in production of a pesticide product and those who process MO for such uses are subject to the testing requirements of this rule.

F. Comments on Protocol Submission and the Phased Test rule Process

The NRDC submitted comments concerning the need for requiring validated protocols and recommended modification of the Agency's two-phased test rule process. These comments were considered and addressed in both the final Phase I test rule for the C_9 aromatic hydrocarbon fraction (50 FR 20662, 20666–20667; May 17, 1985) and the final rule on Test Rule Development and Exemption Procedures, published in the **Federal Register** of October 10, 1984 (49 FR 39774).

However, EPA shares NRDC's desire that test rules should be completed as rapidly as possible, and the Agency has decided to modify the test rule development process for MO. Elsewhere in this issue of the **Federal Register**, EPA is proposing certain TSCA test guidelines as the required test standards for MO. The Agency is also proposing that the test data from each required study be submitted within certain time frames. By taking this action, EPA believes that testing will be initiated more expeditiously than would occur if the normal two-phase process were followed (See Unit IV.E, below).

IV. Final Test Rule for Mesityl Oxide

A. Findings

EPA is basing the final testing requirements for MO on the authority of section 4(a)(1)(A) of TSCA.

1. EPA finds that the manufacture, processing, and distribution in commerce of MO may present an unreasonable risk of injury to human health due to potential chronic, mutagenic, and oncogenic (conditional on the mutagenicity test results) effects for the reasons presented in Unit II.D. above and more fully discussed in the proposed test rule and the support document which is available in the public record.

Data submitted to EPA since publication of the proposed rule indicate that in excess of 120 million pounds of MO are produced annually as an intermediate in MIBK production; approximately 5 million pounds are sold annually for solvent use (primarily for use in pesticides). Over 200 workers are exposed to MO in its manufacture, processing, and distribution. Additional workers are exposed during the herbicide formulation process. Limited monitoring data are sufficient to show that potential occupational exposures occur in certain job categories during MO production and processing.

The finding of potential chronic toxicity is based on preliminary studies of Ito (Ref. 9), which indicate that exposure to MO may induce leukopenia and hypertrophy of the liver, kidney, and spleen. Support for this finding is provided by the earlier work of Smyth *et al.* (Ref. 10) which identified the liver, kidney, and lung as potential targets of MO's toxicity. The finding of potential mutagenic risk is based on the hypothesis that MO may behave as an alkylating agent and interact with the informational molecules of human cells (DNA, RNA, or protein). These reactions, if not repaired, may result in cellular and/or genetic damage which may be expressed as mutagenic effects. The conditional "may present" finding for oncogenicity is based on positive results in the short-term mutagenicity tests predictive for oncogenicity, supported by the potentially biologically active structure of MO.

2. EPA also finds that there are insufficient data and experience upon which the effects of the manufacture, processing, and distribution of MO on human health can reasonably be determined or predicted.

3. Testing of MO for chronic toxicity (via subchronic testing) and mutagenicity is necessary to develop such data. Testing for oncogenicity will be required if positive results are obtained in the short-term mutagenicity assays.

B. Required Testing

EPA is requiring that MO be tested for chronic toxicity (via a 90-day subchronic toxicity test), mutagenicity, and for

oncogenicity if specific mutagenicity test results are positive.

C. Test Substance

EPA is requiring that MO of at least 97 percent purity be used as the test substance because this grade is readily available and is the material to which workers would be exposed.

D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the manufacturing, processing, and distribution in commerce of MO give rise to exposures that may lead to an unreasonable risk, EPA is proposing that persons who manufacture or process, or who intend to manufacture or process, this chemical at any time from the effective date of this test rule to the end of the reimbursement period be subject to the rule. The end of the reimbursement period ordinarily will be 5 years after the submission of the last final report required under the test rule. As discussed in the Agency's test rule development and exemption procedures (40 CFR Part 790), EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement.

E. Test Rule Development and Exemptions

Elsewhere in this issue of the Federal Register, the Agency is proposing that certain TSCA test guidelines be utilized as test standards for the development of data under this rule for mesityl oxide. As discussed in that document and in previous documents (50 FR 20652; May 17, 1985), EPA has reviewed the method for development of test rules and has decided that for most section 4 rulemakings, the Agency will utilize single-phase rulemaking. In light of this decision, EPA has reevaluated the process for developing test standards for section 4 rulemakings initiated under a two-phase process and has determined that for certain of these two-phase rules, TSCA test guidelines are available for promulgation as relevant test standards. EPA has decided that where TSCA or other appropriate test guidelines are available, the Agency in most cases will propose the relevant guidelines as the test standards for those rules.

EPA believes that, in line with its commitment to expedite the section 4 rulemaking process, it is appropriate to propose the applicable TSCA test guidelines as test standards at the same time as a Phase I final test rule is issued. With regard to the rulemaking for mesityl oxide, TSCA test guidelines are available for all the testing requirements included in this Phase I final rule. Thus, in the accompanying notice, the Agency is proposing these TSCA test guidelines as test standards.

The public, including the manufacturers and processors subject to the Phase I rule, will have an opportunity to comment on the use of the TSCA test guidelines. The Agency will review the submitted comments and will modify the TSCA guidelines, where appropriate, when the test standards are promulgated.

During the development of a test rule under the two-phase process, persons subject to the Phase I final rule are normally required to submit proposed study plans within 90 days after the effective date of the Phase I final rule. (See 40 CFR 790.30(a)(2); published in the Federal Register of May 17, 1985 (50 FR 20658).) However, because EPA is proposing applicable TSCA test guidelines as the test standards for the studies required by this Phase I final rule, persons subject to the rule, i.e., manufacturers and processors of mesityl oxide, are not required to submit proposed study plans for the required testing at this time. Persons subject to this rule, however, are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.25, published in the Federal Register of May 17, 1985 (50 FR 20657). For this rule, once the test standards are promulgated, persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 30 days before the initiation of each required test.

Processors of MO subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent, exemption applications or study plans (before testing is initiated) unless manufacturers fail to sponsor the required tests. The basis for this decision is that manufacturers are expected to pass an appropriate portion of the test costs on to processors through the pricing of products containing MO.

EPA's final regulations for the issuance of exemptions from testing requirements are in 40 CFR Part 790. In accordance with those regulations, any manufacturer or processor subject to this Phase I test rule may submit an application to EPA for an exemption from conducting any or all of the tests required under this rule. If manufacturers perform all the required testing, processors will be granted exemptions automatically without having to file applications.

Because persons subject to this rule for MO are not required to submit proposed study plans for approval, EPA will grant conditional exemptions under this rule. These exemptions will be granted following EPA's receipt of a letter of intent to conduct the required tests rather than after receipt and approval of a study plan. Notice of EPA's adoption of the final test standards and deadlines will be announced in a final Phase II test rule.

Elsewhere in this issue of the Federal Register, EPA is proposing deadlines for the submission of test data. Such deadlines are required under section 4(b)(1)(C) of TSCA. These proposed data submission deadlines are open for public comment and may be modified, where appropriate, when the final Phase II test rule is promulgated.

F. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with the EPA Good Laboratory Practice (GLP) standards pursuant to 40 CFR Part 792, published in the Federal Register of November 29, 1983 (48 FR 53922).

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing these deadlines elsewhere in this issue of the Federal Register.

TSCA section 12(b) requires that persons who export or intend to export to a foreign country any MO subject to the testing requirements of this rule (e.g., not including MO contained in a formulated pesticide product) notify EPA of such exportation or intent to

export. While the results of required testing may not be available for some time, a notice to the foreign government about the export of such substances subject to test rules serves to alert them to the Agency's concern about the substances. It gives these governments the opportunity to request such data that the Agency may currently possess plus whatever data may become available as a result of testing activities. Thus, upon the effective date of this rule, persons who export or intend to export MO must submit notices to the Agency pursuant to TSCA section 12(b)(1) and 40 CFR Part 707. For additional information, see the **Federal Register** of November 19, 1984 (49 FR 45581).

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will announce the receipt within 15 days in the **Federal Register** as required by section 4(d). Test data received pursuant to this rule will be made available for public inspection by any person except in those cases where the Agency determines that confidential treatment must be accorded pursuant to section 14(b) of TSCA.

The publication of the notice in the **Federal Register** announcing the receipt of the mutagenicity data on MO will start the deferred portion of the rule if the results of certain studies indicate that MO is mutagenic in those test systems. Persons subject to the rule are required to submit study plans for this deferred testing at least 30 days prior to the initiation of each study.

G. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records or (2) submit reports, notices, or other records required by the Act or any regulations issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixture are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits and/or inspections will be conducted periodically in accordance with the procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of determining compliance with the final rule for MO. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according the EPA GLP standards and the test standards established in the second phase of this rulemaking.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(2)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they had never submitted their data. Under the penalty provisons of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Intentional violations could lead to the imposition of criminal penalties up to $25,000 for each day of violation and imprisonment for up to 1 year. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular this includes individuals who reports false information or who cause it to be reported. In addditonal, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic analysis of final Test Rule

To assess the economic inpact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impacts as a result of these test costs by examining four market characteristics of mesitye oxide: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations.

Total testing costs for the final rule for MO are estimated to range from $1,872,800 to $2,824,000. This estimate includes the costs for both the required minimum series of tests as well as the conditional ones. The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $485,300 to $731,800. Based on an estimated production (1983) volume of 134.9 million pounds, the unit costs range from 0.36 to 0.54 cents per pound. Compared with the 1982 unit sales value for MO of 54 cents per pound, the test costs per pound are 0.67 to 1.0 percent of price.

Based on these costs and the market characteristics of MO, the economic analysis indicates that the potential for significant adverse economic impact as a result of this test rule is low. This conclusion is based on the following observations: (1) The estimated unit test costs are small; (2) the demand for MO in MIBK manufacture is inelastic as there are no substitutes and the demand for MIBK appears somewhat inelastic; and (3) the market expectations of MO are favorable.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing programs negotiated with industry in place of rulemaking. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," October 1981, can be obtained through the NTIS under publication number PB 82–140773. On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this test rule.

VIII. Rulemaking Record

EPA has established a public record for this rulemaking (docket number OPTS–42030A). This record includes the basic information the Agency

considered in developing this rule, and appropriate Federal Register notices.

This record includes the following information:

A. Supporting Documentation

(1) Federal Register notices pertaining to this final rule consisting of:

(a) Notice containing the ITC designation of mesityl oxide to the Priority List (44 FR 31884; June 1, 1979).

(b) Notice of final rule requiring the submission of unpublished health and safety studies (47 FR 38780; September 2, 1982).

(c) Notice of proposed rule on mesityl oxide (48 FR 30699; July 5, 1983).

(d) Notice adding mesityl oxide to the list of chemicals subject to the preliminary assessment information rule (49 FR 25859; June 25, 1984).

(e) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(f) Notice of final rule on test rule development and exemption procedures (49 FR 39774; October 10, 1984).

(g) Notice of final rule concerning data reimbursement (48 FR 41786; September 19, 1983).

(h) Notice of interim final rule on test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(i) Notice of final rule on the C_6 Aromatic Hydrocarbon Fraction (50 FR 20662; May 17, 1985).

(2) Support documents consisting of:

(a) Mesityl oxide technical support document for proposed rule.

(b) Economic impact analysis of NPRM for mesityl oxide.

(c) Economic impact analysis of final test rule for mesityl oxide.

(3) Communications consisting of:

(a) Written public comments.

(b) Transcription of public meeting.

(c) Summaries of phone conversations.

(d) Meeting summaries.

(4) Reports—published and unpublished contractor's reports.

B. References

(1) Krasavage, W.J., O'Donoghue, J.L., and Divincenzo G.D. "Ketones." *Patty's Industrial Hygiene and Toxicology.* Vol. II C: 4752–4754.

(2) CMA. Comments of the Ketones Panel of the Chemical Manufacturers Association on EPA's Proposed Test Rule for Mesityl Oxide. Letter from G. Cox, CMA to Public Information Office, EPA. October 4, 1983.

(3) CMA. Proposed Test Rule for Mesityl Oxide. Letter from G. Cox, Chemical Manufacturers Association to Public Information Office, EPA. May 16, 1984.

(4) USEPA. U.S. Environmental Protection Agency. Memorandum from Hollis Call to Garry Timm. Mesityl Oxide Consumption. June 11, 1985.

(5) Mathtech, Inc. Economic Impact Analysis of Proposed Test Rule for Mesityl Oxide. Contract No. 68–01–6287. June 8, 1983.

(6) Exxon Chemical Americas. Mesityl Oxide Proposed Test Rule, Comment letter submitted by M.R. Schimenti, Exxon to Public Information Office, EPA. October 4, 1983.

(7) Eastman Kodak Co., Mesityl Oxide, Proposed Test Rule. Letter from G.Y. Brokaw, Eastman Kodak to Public Information Office, EPA. October 6, 1983.

(8) Union Carbide Corp. Comments to EPA's Proposed Test Rule on Mesityl Oxide. Letter from J.B. Browaing to Public Information Office, EPA. October 4, 1983.

(9) Ito, S. "Industrial Toxicological Studies on Mesityl Oxide." (translation from Japanese). *Yokahama Igaku* 20(b):253–265. 1969.

(10) Smyth, H. F., Jr., Seaton, J., Fischer, L. "Response of Guinea Pigs and Rats to Repeated Inhalation of Vapors of Mesityl Oxide." *Journal of Industrial Hygiene and Toxicology* 24:46–50. 1942.

(11) Union Carbide Corporation. Public Meeting on Mesityl Oxide. Comments by Tipton Tyler, Union Carbide at public meeting. October 24, 1983.

(12) USEPA. U.S. Environmental Protection Agency. Memorandum from Irwin P. Baumel to Gary Timm. Review of Toxicity Data on Mesityl Oxide. June 29, 1984.

(13) Lee, W.R., Abrahamson, S., Valencia, R., von Halle, E.S., Wurgler, F.E., and Zimmering, S. "The sex-linked recessive lethal test for mutagenesis in *Drosophila melanogaster.*" A report of the U.S. Environmental Protection Agency Gene-Tox Program. *Mutation Res.* 123:183–279. 1983.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E–107, 401 M St., SW., Washington, DC.

VIII. Other Regulatory Requirements

A. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the order. First, the actual annual cost of all the testing required for MO is estimated at $405,984 to $605,530 over the market life of chemical. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects on users' prices (no more than 0.7 percent of price) for this chemical even if all test costs were passed on. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic effects of any type as a result of this rule.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments received from OMB are included in the Public Record for this rulemaking.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are no small manufacturers of this chemical.

2. Small processors are not expected to perform testing themselves, or participate in the organization of the testing effort.

3. Small processors will experience only very minor costs, if any, in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: December 13, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Part 799 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2003, 2611, 2625.

2. New § 799.2500 is added, to read as follows:

§ 799.2500 Mesityl oxide (MO).

(a) *Identification of test substance.* (1) Mesityl oxide (CAS No. 141.79–7) shall be tested in accordance with this section.

(2) Mesityl oxide of at least 97 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* (1) All persons who manufacture or process or intend to manufacture or process MO from the effective date of this rule, February 3, 1986, to the end of the reimbursement period shall submit letters of intent to conduct testing or exemption applications, study plans, and/or shall conduct tests, and submit data as specified in this section, Subpart A of this Part, and Part 790 of this chapter.

(2) Persons subject to this section are not subject to the requirements of § 790.30 (a)(2), (5), and (6) and (b), and § 790.87(a)(1)(ii) of this chapter.

(3) Persons who notify EPA of their intent to conduct tests in compliance with the requirements of this section must submit plans for these tests no later than 30 days before the initiation of each of those tests.

(4) In addition to the requirements of § 790.87(a) (2) and (3) of this chapter, EPA will conditionally approve exemption applications for this rule if EPA has received a letter of intent to conduct the testing from which exemption is sought and EPA has adopted test standards and schedules in a final Phase II test rule.

(c) *Health effects testing*—(1) *Subchronic inhalation toxicity*—(i) *Required testing.* A 90-day subchronic inhalation toxicity test shall be conducted with MO.

(ii) [Reserved]

(2) *Mutagenic effects—chromosomal aberrations*—(i) *Required testing.* (A) An *in vitro* cytogenetic test shall be conducted with MO.

(B) An *in vitro* cytogenetic test shall be conducted for MO if the *in vitro* cytogenetic test conducted pursuant to paragraph (c)(2)(i)(A) of this section produces a negative result.

(C) A dominant lethal assay shall be conducted for MO if it produces a positive result in the *in vivro* or *in vitro* cytogenetics test conducted pursuant to paragraphs (c)(2)(i) (A) and (B) of this section.

(D) A heritable translocation assay shall be conducted for MO if it produces a positive result in the dominant lethal assay conducted pursuant to paragraph (c)(2)(i)(C) of this section.

(ii) [Reserved]

(3) *Mutagenic effects—gene mutations*—(i) *Required testing.* (A) A *Salmonella typhimurium* mammalian microsomal reverse mutation assay (Ames assay) shall be conducted with MO.

(B) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted for MO if it produces a positive result in the Ames assay conducted pursuant to paragraph (c)(3)(i)(A) of this section.

(C) A gene mutation in somatic cells assay shall be conducted with MO if it produces a negative result in the Ames assay conducted pursuant to paragraph (c)(3)(i)(A) of this section.

(D) A sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted for MO if it produces a positive result in the gene mutation in somatic cells assay conducted pursuant to paragraph (c)(3)(i)(C) of this section.

(E) A mouse specific-locus test shall be conducted for MO if it produces a positive result in the sex-linked recessive-lethal test in *Drosophila melanogaster* conducted pursuant to paragraph (c)(3)(i)(B) or (D) of this section.

(ii) [Reserved]

(4) *Oncogenicity*—(i) *Required testing.* An oncogenicity bioassay shall be conducted by inhalation for MO if MO gives positive results in any one or more of the following tests:

(A) *In vitro* cytogenetics test, conducted pursuant to paragraph (c)(2)(i)(A) of this section.

(B) *In vivo* cytogenetics test, conducted pursuant to paragraph (c)(2)(i)(B) of this section.

(C) Gene mutation in somatic cells assay, conducted pursuant to paragraph (c)(3)(i)(C) of this section.

(D) *Drosophila melanogaster* sex-linked recessive-lethal test, conducted pursuant to paragraph (c)(3)(i)(B) or (D) of this section.

(ii) [Reserved]

(Information collection requirements approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 85–30172 Filed 12–19–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Zanthoxylum thomasianum (Prickly-ash) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Zanthoxylum thomasianum* (prickly-ash), to be an endangered species under the Endangered Species Act of 1973, as amended. *Zanthoxylum thomasianum* is only found in seasonally deciduous vegetation formations that occur on limestone and on areas of volcanic origin in northern and central Puerto Rico and in southern St. Thomas and St. John, Virgin Islands. Fewer than 1,000 individuals of the species are known to exist. All five sites that support populations of *Zanthoxylum thomasianum* are located on privately owned land. The continued existence of this species is endangered by its very limited number, plus potential habitat modifications or destruction due to limestone mining, urbanization, and road maintenance. This final rule will implement the protection provided by the Endangered Species Act of 1973, as amended, for *Zanthoxylum thomasianum*.

DATES: The effective date of this rule is January 21, 1986.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Banco de Ponce Building, Dr. Basora and Mendez Vigo Streets, P.O. Box 3005—Marina Station, Mayagüez, Puerto Rico 00709, and at the Service's Regional Office, Richard B. Russell Federal Building, Room 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mr. David Densmore at the above Mayagüez address (809/833–5760) or Mr. Richard P. Ingram at the above Atlanta Regional Office address (404/221–3583 or FTS 242–3583).

SUPPLEMENTARY INFORMATION:

Background

Zanthoxylum thomasianum was first described by Krug and Urban in 1896, on the basis of a specimen collected by Eggers in St. Thomas (now part of the U.S. Territory of the Virgin Islands) in 1880. The species was not collected again in St. Thomas until 1980 (Vivaldi and Woodbury, 1981). It was collected by Britton and Shafer on St. John, Virgin Islands, in 1913 and found there again by Woodbury in 1983. It was also discovered by Woodbury in the early 1960's at the summit of Piedras Chiquitas (a rocky outcrop between the municipalities of Salinas and Coamo) and along Road 155, north of Coamo, Commonwealth of Puerto Rico. More recently, it was discovered by a high school teacher in the upper part of the Guajataca Gorge in Isabela, Puerto Rico.

The prickly ash is an evergreen, often multi-stemmed shrub or small tree reaching 6 to 20 ft (1.8 to 6 m) in height

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and up to 4 in (10 cm) in diameter at breast height. Leaves are alternate, odd-pinnate, with 5 to 9 shiny, stalkless, rounded or ovate leaflets, each having 1 or 2 sharp spines at the base and usually 1 to 3 spines on the midvein below. Flowers are minute, clustered, and unisexual, with male and female on different plants (dioecious). Fruits consist of 1 to 3 egg-shaped follicles from each flower that split along one side and contain single black, shiny seeds.

Two small specimens of *Zanthoxylum thomasianum* were recently found at Piedras Chiquitas, where the few trees formerly known were believed to have been destroyed by hurricane winds in 1979. However, the population along Road 155 has apparently been destroyed by the combined effects of road improvement and maintenance, and illegal dumping of trash (J.L. Vivaldi, personal communication). Only two individuals of the species are known to exist at the Guajataca Gorge locale. The largest known population is located on the southern coast of St. Thomas and may consist of several hundred individuals. About 50 individuals were recently found at Gift Hill on St. John, and at least one specimen is known to exist north of Salt Pond Bay, also on St. John (R.O. Woodbury, personal communication). Specimens in the Salt Pond Bay area may be within the boundaries of the Virgin Islands National Park (J.M. Matuszak, personal communication).

Zanthoxylum thomasianum was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps, 1978). In August 1979, the Service contracted with Dr. José L. Vivaldi, a resident botanist of Puerto Rico, to conduct a status survey of plans considered to be candidates for listing as endangered or threatened in Puerto Rico and the Virgin Islands. Reports and documentation resulting from this survey indicated that *Zanthoxylum thomasianum* should be proposed for listing as an endangered species. *Zanthoxylum thomasianum* was included among the plants being considered for listing as endangered or threatened species by the Fish and Wildlife Service, as published in the **Federal Register** (45 FR 82479) dated December 15, 1980.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found that listing *Zanthoxylum thomasianum* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the January 20, 1984, **Federal Register** (49 FR 2485). An additional petition finding required in accordance with Section 4(b)(3)(B)(ii) of the Act was incorporated in the proposed rule for this species. The Service proposed to list Zanthoxylum thomasianum in the February 11, 1985, **Federal Register** (50 FR 5647).

Summary of Comments and Recommendations

In the February 11, 1985, proposed rule (50 FR 5647) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Peurto Rico and Government of the Virgin Islands, municipal governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting general public comment were published in the Virgin Islands *Daily News* (in English) on March 2, 1985, and in *EL Nuevo Dia* (in Spanish) on March 5, 1985. Five letters of comment were received and are discussed below. No public hearing was requested; therefore none was held.

A representative of the Federal Highway Administration responded March 8, 1985, pointing out that the plants at Guajataca Gorge were not in the immediate vicinity of road maintenance or construction activities in that area. The Service notes that the proposed rule mentioned the effects of such activities only in respect to the Coamo population, which is now believed to have been destroyed by roadwork and illegal trash disposal.

Dr. José Vivaldi, Director of the Terrestrial Ecology Section of the Puerto Rico Department of Natural Resources, in a letter dated March 13, 1985, reported finding two small trees of this species at Piedras Chiquitas since his 1981 status survey, upon which the proposed rule was based. He reconfirmed that the old trees are no longer there. The final rule has incorporated this new information. Dr. Vivaldi also reported pending preparation of a regulation to implement amendments to the Organic Law of the Department that would provide authorization for designation and protection of endangered and threatened species in the Commonwealth of Puerto Rico.

The Commissioner of the Virgin Islands Department of Conservation and Cultural Affairs relayed comments from a professional botanist with the Virgin Islands Cooperative Extension Service, College of the Virgin Islands, who endorsed the proposed listing. Endorsement was also registered By Dr. Ariel Lugo, Project Leader, Institute of Tropical Forestry, Forest Service, U.S. Department of Agriculture, in support of listing this species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Zanthoxylum thomasianum* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Zanthoxylum thomasianum* (Krug and Urban) P. Wilson, prickly-ash, are as follows:

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* Modification and destruction of habitat appear to be the most serious threats to the species, especially in St. Thomas and St. John, Virgin Islands. The St. Thomas population is located in an area close to the capital, Charlotte Amalie, and to some of the principal hotel complexes serving the tourist trade. The plants are located on property of potential importance to tourism on a small island where land value is high. This particular area has been subdivided into lots, and plans to clear the lots and build are being formulated. The principal St. John site, with about 50 individuals, is located in the Gift Hill area of Fish Bay Estates. This area has also been subdivided into lots. At least one specimen is known to exist at the other location on St. John; this plant and possibly other isolated individuals may exist on Federal lands within the boundaries of the Virgin Island National Park. Lands adjacent to the Park would have the same development potential and value as the other site in St. John, while proposed improvement of facilities within the Park could affect other plants. Such developments, unless conducted with consideration and care, could either destroy or substantially modify habitat upon which individuals

of *Zanthoxylum thomasianum* depend. The population at Coamo, Puerto Rico, was apparently destroyed by activities related to road improvement and by unathorized disposal and burning of trash near the road.

Habitat modification can also be expected in the Guajataca Gorge site. Local residents use the area for planting yams, which results in *Zanthoxylum thomasianum* plants being uprooted. In addition, nearby limestone hills are being mined for fill material. The hill where the plants are located could be razed in order to offer limestone fill for sale. These activities could destroy or adversely modify the species' habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species, but could become so in the future. The species occurs near habitations. Professional cultivation from cuttings and seed has so far been unsuccessful.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of the species.

D. *The inadequacy of existing regulatory mechanisms.* The government of the Virgin Islands does not have specific rules or legislation to protect endangered or threatened plant species. The Commonwealth of Puerto Rico has recently adopted a regulation that recognizes and provides protection for certain Commonwealth listed species, including the prickly ash. For the small, critically endangered populations of the prickly ash in Puerto Rico, Federal listing enhances the protections available and the funding possibilities for needed research.

E. *Other natural or manmade factors affecting its continued existence.* *Zanthoxylum thomasianum* is found in small, compact, localized populations. Its ecological requirements are still poorly understood. The species is dioecious, and the ratio of male to female plants is unknown. The multistemmed growth form of the species makes estimates of actual population size difficult. The two Puerto Rican populations are relictual and probably too small to guarantee the survival of a dioecious species. Hurricanes have probably affected the species in the past, as evidenced by the losses from the Piedras Chiquitas population. Individuals in exposed areas, such as coastal hills, may be adversely affected by high winds. These factors compound the vulnerability of *Zanthoxylum thomasianum* to the previously mentioned threats.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Zanthoxylum thomasianum* as an endangered species. With so few individuals known to exist and a high risk of damage to the plant and/or its habitat, endangered status seems an accurate assessment of the species' condition. It is not prudent to propose critical habitat because doing so would increase the risk to the species, as detailed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under threat factor "B" above, *Zanthoxylum thomasianum* may be threatened by collecting, an activity regulated by the Endangered Species Act with respect to plant only on lands under Federal jurisdiction. Publication of critical habitat localities would increase the risk of taking or vandalism. The small sizes of populations exacerbate these risks. Thus, designation of critical habitat for *Zanthoxylum thomasianum* would not be prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, Territory, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition, cooperative efforts with the Commonwealth and Territory, and requires that recovery action be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being designated for *Zanthoxylum thomasianum*, as discussed above, and Federal involvement is likely only where habitat or plants may be affected by actions of the National Park Service or the Federal Highway Administration. In the event that facilities are upgraded or roadways widened, resurfaced, or realigned in the immediate vicinity of known populations or individuals, a strong commitment, together with funds, will be needed to protect *Zanthoxylum thomasianum*. Designers and work crews need to be alerted so that the plants are considered in any plans for the reconstruction of nearby roads. Such work should be done with care so that the habitat of *Zanthoxylum thomasianum* is left unchanged. It is not know whether there will be Federal involvement in any proposed subdivision developments. Federal authorization, funding, or participation in any of these projects becomes subject to the provisions of section 7 discussed above.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Zanthoxylum thomasianum*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and Commonwealth and Territory conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International trade and interstate commercial trade in *Zanthoxylum thomasianum*, are not known to exist, and the plant is not presently in experimental cultivation. Therefore few permit applications

involving plants of wild origin are anticipated.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Regulations implementing this new prohibition were published on Sepember 30, 1985 (50 FR 39681). This prohibition now applies to *Zanthoxylum thomasianum*,. Permits for exceptions to this prohibition are available. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Ayensu, E.S., and R.A. DeFilipps. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv+403 pp.

Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Zanthoxylum thomasianum*, (Krug and Urban) P. Wilson. Status Report submitted to the U.S. Fish and Wildlife Service, Mayagüez. P.R. 39 pp.

Authors

The primary author of this final rule is Mr. David Densmore, U.S. Fish and Wildlife Service, Caribbean Field Office, P.O. Box 3005, Marina Station, Mayagüez, Puerto Rico 00709–3005.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Rutaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Rutaceae—Citrus family:						
Zanthoxylum thomasianum	Prickly-ash	U.S.A. (PR, VI)	E	213	NA	NA

Dated: December 4, 1985.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–30222 Filed 12–19–85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 50575–5075]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of surf clam fishery closure and 1986 fishing year time restriction.

SUMMARY: NOAA issues this notice closing the Mid-Atlantic Area surf clam fishery and restricting the fishing time period at the beginning of the 1986 fishing year. This action is necessary because harvest from the surf clam fishery will exceed the quota for the last quarter of the 1985 fishing year and the first quarter of the 1986 fishing year. The intended effect of the notice is to prevent harvests from exceeding the annual quota for the surf clam fishery.

EFFECTIVE DATE: 1400 hours, Eastern Standard Time, December 19, 1985, through 2400 hours EST, December 28, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, Plan Coordinator, 617–281–3600, extension 272.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(d) a provision requiring that, if the Regional Director determines that the quota for any time period will be exceeded, the Secretary of Commerce will publish a notice in the **Federal Register** stating the determination and setting a date and time for closure of the fishery.

Harvest of surf clams in the Mid-Atlantic Area has increased significantly over the past several years, including 1985. This is due to both the growth of significant numbers of clams from the 1976 and 1977 year classes, and the reduced size limit [from 5½ to 5¼ inches on October 14, 1984 (49 FR 40580), and to five inches on November 8, 1985 (50 FR 46671)]. On May 12, 1985 (50 FR 20215), the Regional Director reduced allowable fishing time from six hours per week to six hours every other week for vessels harvesting surf clams in the Mid-Atlantic Area. In addition, the fishery was closed from June 23, 1985, through July 4, 1985. Despite the above actions to slow harvest, landings continued to increase, preventing a return to a six hour per week schedule.

The last two week period in 1985, continuing the every other week fishing schedule, ends on December 21st, leaving a one week gap until the end of the year. To allow equal access to the same number of fishing days for all participants in the fishery, the final week of the year must be either open to all vessels or closed to all vessels. Closure during this week might result in a slight underharvest of the quota, while opening the fishery to all vessels during the week would probably result in overharvest of the quota. Whether either would occur is dependent on variable that are difficult to predict.

Traditionally, analysis to calculate annual landings versus annual quotas

occurs shortly after the new year, and is adjusted as late landing reports are submitted. The number of late landing reports is usually small, but has the potential for significantly increasing annual landings figures.

For several years, the industry has expressed its preference for scheduling closures over holidays. A Christmas closure is the least disruptive time to close the fishery, and is widely supported throughout the industry.

Therefore, the Regional Director has determined that the appropriate course of action to avoid overharvest of the 1985 surf clam quota while simultaneously observing the preference of the industry is to close the fishery at 1400 hours December 19, 1985, through 2400 hours December 28, 1985. This closure applies only to surf clams taken in the fishery conservation zone in the Mid-Atlantic Area.

The Regional Director has examined current and projected catch rates in the Mid-Atlantic Area surf clam fishery. He has concluded that allowable fishing time greater than the six hour, every other week schedule in effect since May 1985 would result in rapid harvest of the quarterly allocation, and that a closure would be necessary to avoid exceeding the quarterly allocation. To reduce the possibility of a closure and allow the fishery to continue throughout the quarter, the Regional Director has determined that the six hour, every other week schedule will be in effect at the start of the first quarter of 1986. The Regional Director will continue to monitor landings in the first quarter to determine if allowable fishing time requires adjustment.

Therefore, the surf clam fishing year will begin at 0001 hours EST on December 29, 1985, with six hours fishing time every other week.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: December 17, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-30151 Filed 12-17-85; 2:09 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 245
Friday, December 20, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. AO-265-A5]

Florida Tomato Marketing Order; Hearing on Proposed Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rule.

SUMMARY: This provides notice of a public hearing to be held to consider a proposed amendment to the Florida Tomato Marketing Order (hereinafter called the order). The proposals were submitted by the Florida Tomato Committee, the industry organization administering the order. The principle changes would limit committee, tenure, require periodic referenda, allow for production research and promotion including paid advertising, interchangeable alternates within districts, authority to accept voluntary contributions and to accept assessments in advance or to borrow money. The order has not been amended since 1969. Several sections are outmoded and should be considered at the amendment hearing. The text of the proposal to be considered is set forth below.

DATE: The hearing is scheduled to begin January 14, 1986, at 9:00 a.m.

ADDRESS: The hearing will be held at the Florida Fruit and Vegetable Association Auditorium, 4401 East Colonial Drive, Orlando, Florida 32814.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Vegetable Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, phone (202) 447-7920.

SUPPLEMENTARY INFORMATION: The amendments was proposed and the hearing requested by the Florida Tomato Committee established under the marketing agreement and order program regulating the handling of tomatoes grown in Florida. The Department of Agriculture proposes that it be authorized to make any necessary conforming changes which may result from this hearing.

This administrative action is governed by the provision of section 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that within the statutory authority of a program the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small business.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). The proposed amendment of the marketing agreement and order has not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendment of the marketing agreement and order; (ii) determining whether there is a need for the proposed amendment to the marketing agreement and order; and (iii) determining whether the proposed amendment or appropriate modification of it will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements and orders, Tomatoes, Florida.

1. The authority citation for 7 CFR Part 966 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Proposal No. 1 *Committee tenure.*

Revise § 966.23 to read as follows:

§ 966.23 Term of office.

* * * * * * *

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and until their successors are selected and have qualified. However, from the date this amended section becomes effective, no member or alternative shall serve more than ten full consecutive terms without approval of the Secretary.

Proposal No. 1 *Alternative members.*

Section 966.23 is amended by relettering paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 966.32 Procedure.

* * * * * * *

(b) If both a member and respective alternate are unable to attend a committee meeting, the committee may designate any other alternate present from the same district to serve in place of the absent member.

* * * * * * *

Proposal No. 3 *Borrowing money.*

Section 966.42 is revised by adding a new paragraph (e) as follows:

§ 966.42 Assessments.

* * * * *

(e) In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance, or may borrow money for such purposes.

Proposal No. 4 *Accepting gifts.*

Add new § 966.45 as follows:

§ 966.45 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 966.48. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

Proposal No. 5.

Revise § 966.48 to read as follows:

§ 966.48 Research and promotion.

The committee may, with the approval of the Secretary, establish, or provide for the establishment of projects including production research, marketing research and development

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projects, and marketing promotion including paid advertising, designed to assist, improve or promote the marketing, distribution and consumption or efficient production of tomatoes. The expenses of such projects shall be paid by funds collected pursuant to §§ 966.42 and 966.45.

Proposal No. 6 *Periodic referenda.*

Section 966.84 is amended by relettering paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 966.84 Termination.

* * * * *

(d) The committee shall recommend to the Secretary within every ten year period beginning on the effective date hereof that a referendum be conducted to ascertain whether continuance of this subpart is favored by the producers.

* * * * *

Proposal No. 7.

Make such other changes as may be necessary to make the entire order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be obtained from William C. Knope, Lakeland Marketing Field Office, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, P.O. Box 9, Lakeland, Florida 33802, phone (813) 683–5983, or from Kenneth G. Johnson, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250.

From the time this hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;

Office of the Administrator, Agricultural Marketing Service;

Office of the General Counsel, except Regional Attorneys;

Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on December 16, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–30124 Filed 12–19–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–ANM–31M]

Proposed Alteration of Transition Area; Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the transition area at Wenatchee, Washington, to accommodate a new VOR/DME–C instrument approach procedure to the Pangborn Field Airport at Wenatchee, Washington. This action is necessary to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

DATE: Comments must be received on or before February 10, 1986.

ADDRESSES: Send comments on the proposal to: Manager, Airspace & Procedures Branch, ANM–530, Federal Aviation Administration, Docket No. 85–ANM–31, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace & Procedures Specialist, ANM–534, Federal Aviation Administration, Docket No. 85–ANM–31, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, The telephone number is (206) 431–2534.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspect of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 85–ANM–31". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & Procedures Branch, 17900 Pacific Highway South, C–68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the 1200 foot and 700 foot transition area at Wenatchee, Washington. This action will expand the present transition area to provide controlled airspace for aircraft executing a new VOR/DME–C instrument approach procedure to the Pangborn Field Airport.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Exective Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas, Aviation Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Wenatchee, Washington, Transition Area [Revised]

That airspace extending upward from 700 feet above the surface within 4 miles each side of the Wenatchee VOR 124° radial, extending from the VOR to 12.5 miles southeast of the VOR and that airspace between the 5-mile radius circle of the Pangborn Field Airport (lat. 47°23'56"N., long. 120°12'20"W.) and the 11 DME arc of the Wenatchee VOR/DME bounded by the north edge of V–120 clockwise to the Wenatchee VOR/DME 327° T (305° M) radial, including that airspace within a 1-mile radius of Francher Field, Washington, (lat. 47°26'55"N., long 120°16'40"W.); that airspace extending upward from 1,200 feet above the surface within 5 miles south and 8 miles north of the Wenatchee VOR 092° and 272° radials, extending from 7 miles west to 14 miles east of the VOR and within 5 miles southwest and 9.5 miles northeast of the 124° radial, extending from the VOR to 23 miles southeast of the VOR and that airspace between the 11 DME and the 19 DME arcs of the Wenatchee VOR/DME bounded by the north edge of V–120 clockwise to the Wenatchee VOR/DME 327° T (305° M) radial.

Issued in Seattle, Washington, on December 4, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–30096 Filed 12–19–85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–92–73]

Recapture of Investment Credit for Mass Assets

AGENCY: Internal Revenue Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to recapture of investment credit for mass assets. The amendment will allow provisions of new standard mortality dispersion tables and new rules for applying them so as to correct certain situations that resulted in inaccurate computations and to incorporate the rules under the Accelerated Cost Recovery System (ACRS). The regulations would provide specific rules for the treatment of mass assets which are recovery property governed by ACRS. In addition, the regulations would provide new rules for assigning individual lives to mass assets and assets similar in kind.

DATES: Written comments are requests for a public hearing must be delivered or mailed by February 18, 1986. The amendments would apply to assets placed in service in taxable years beginning 30 days after date of publication of the Treasury Decision in the **Federal Register** and are proposed to be effective on the same date, except as otherwise provided for property depreciated under the ACRS methods.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of International Revenue, Attention: CC:LR:T (LR–92–73) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Sandra E. Wallach of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (202–566–3458, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 46 and 47 of the Internal Revenue Code of 1954.

The investment tax credit is allowed for certain depreciable property used in a trade or business. The amount of credit available is determined by reference to the depreciable life of the property. Recapture of a certain amount of the credit is required when the property is disposed of or ceases to be eligible for the credit with respect to the taxpayer before the end of its depreciable life (recapture period, in the case of recovery property). For most assets, it is easy to determine when the asset is retired or ceases to be eligible for the credit. The investment tax credit is available for certain other assets, however, which are fungible assets too numerous to be accounted for on an asset-by-asset basis. These assets are known as "mass assets." Special rules are required for recapture in the case of these mass assets. This project amends regulations setting out the rules for recapture for mass assets and updates the rules to include ACRS.

Under the existing regulations, taxpayers are allowed to determine statistically when mass assets are retired for recapture of investment credit. The determinations are based on mortality dispersion tables. The taxpayer may use its own mortality dispersion table or a standard mortality dispersion table prescribed by the Commissioner.

The proposed regulations contain two new standard mortality dispersion tables. One applies to non-recovery property (in general, property to which the ACRS depreciation methods do not apply) and the other to recovery property within the meaning of section 168. The proposed regulations also change the rules for applying mortality dispersion tables, for assigning individual useful lives to mass assets and assets similar in kind, and provide rules specifically applicable to recovery property.

Recapture Determinations

The existing standard mortality dispersion table is designed for recapture in the year assets are placed in service, based on expected retirements (front-end recapture). The new tables are designed for recapture in each year assets are expected to be retired (rear-end recapture). The proposed regulatios do not require taxpayers to account for actual retirements, other than abnormal or extraordinary retirements.

The existing regulations made no provision for application of a standard mortality dispersion table to recovery property. The proposed regulations would provide a standard mortality dispersion table specifically applicable to recovery property. In addition, the regulations would provide that an asset's present class life is to be used in determining retirements on the standard mortality dispersion table even though the recovery period (as defined in section 168 (c)) is determinative of the investment credit.

Grouping of Mass Assets

The existing regulations allow taxpayers to place assets with different lives in the same mass assets account. Recapture determination under a mortality dispersion table are based on the average life of the account. Thus, taxpayers may shield assets with shorter lives from recapture because the assets with longer lives increase the

average life of the account. In order to remove this potential for abuse, the proposed regulations require that all mass assets in an account have the same useful life, or the same present class life and recovery period in the case of recovery property.

The existing regulations require taxpayers to maintain sufficient records on which to substantiate the accuracy of the retirement statistics used in establishing their own mortality dispersion tables. The proposed regulations continue to require these records and, in addition, state that, if a taxpayer fails to maintain adequate records, the Service will determine recapture based on the standard mortality dispersion table.

The proposed regulations require that a mass asset account contain only assets placed in service in the same taxable year (closed-end or vintage accounts). In the case of property that is subject to an election under section 167 (m) or that is recovery property, this rule conforms these regulations to the regulations under sections 167 (m) and 168. In the case of property that is not ADR or recovery property this rule imposes a new requirement. Due to the change to rear-end recapture, the use of the open-end accounts distorts the retirement figures determined under a mortality dispersion table because, for example, some assets in the account may be in the first year since they were placed in service while others are in the second or third year. In the interest of accurate administration of the mortality dispersion tables, the proposed regulations require the use of closed-end accounts for all mass assets.

Assets Similar in Kind

The existing regulations allow taxpayers to assign separate lives to certain assets placed in multiple asset accounts. In determining investment credit for assets similar in kind, the taxpayer may assign each asset the average useful life used in computing the allowance for depreciation. Alternatively, the taxpayer may assign the assets different lives based on the range of estimated lives used in determining the average life. This allows taxpayers to receive investment credit for some assets in an account based on a useful life greater than the average life of those assets. This rule is inconsistent with section 46 (c) which requires that taxpayers use the period used for depreciation in determining investment credit. In computing the allowance for depreciation, assets placed in a multiple asset account must, in general, be assigned the average life of the account. See example 2 of paragraph (b) of § 1.167 (b)–1. Therefore, in order that the investment credit be determined based on the same life used for depreciation, under the proposed regulations, taxpayers must assign to each asset in the account the average life of the assets.

Effective Dates

The amendments to the existing regulations relating to assignment of individual lives and recapture of credit taken for non-recovery property (in general, property to which the ACRS depreciation methods do not apply) are applicable prospectively only.

The new rules added for recovery property apply to all property depreciated under the ACRS methods (*i.e.*, recovery property placed in service on or after January 1, 1981).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted for OMB review under the Paperwork Reduction Act, and comments on them should be sent to the Office of Information and Regulatory Affairs of OMB, Attn: Desk Officer for Internal Revenue Service, New Executive Office Bldg. Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Sandra E. Wallach of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substances and style.

List of Subjects in 26 CFR 1–0—1.58–8

Income taxes, Tax liability, Tax rates, Credits.

Proposed Amendments to the Regulations

The proposed amendment to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 1.48–1 also issued under 26 U.S.C. 38 (b) (as in effect before the amendments made by Subtitle F of the Tax Reform Act of 1984) and 26 U.S.C. 47.

Par. 2. Section 1.46–3 is amended as follows:

1. Paragraph (i) is added and reserved.

2. Paragraphs (e)(1) through (e)(6) are redesignated paragraphs (j)(1) through (j)(6), respectively.

3. The heading of paragraph (j), as redesignated, is revised to read: "(j) *Estimated useful life of property not described in paragraph (e)(8) of this section*—".

4. Paragraph (e)(7) is removed.

5. A new paragraph (e) is added to read as follows:

§ 1.46–3 Qualified investment.

* * * * *

(e) *Useful life/recovery period*—(1) *In general.* For purposes of computing qualified investment in property that is not recovery property (within the meaning of section 168) the useful life of such property to be used in determining the applicable percentage to be applied to its basis or cost is the life used or to be used by the taxpayer in computing ther allowance for depreciation with respect to such property for the taxable year in which the property is placed in service. Thus, if property is placed in service by a taxpayer in a taxable year but the period for depreciation with respect to such property does not begin until a succeeding taxable year (see paragraph (d)(1) of this section), the useful life for purposes of computing

qualified investment must be the useful life that the taxpayer uses in computing the allowances for depreciation. See paragraph (e)(6) of this section for rules for determining the useful life of property with respect to which the allowance for depreciation is computed under the unit of production method, the income-forecast method, or any other method which does not measure the useful life of the property in terms of years. For purposes of computing qualified investment in recovery property (within the meaning of section 168) the class of recovery property which applies to such property (as determined under section 168(c)) is determinative of the applicable percentage to be applied to its basis or cost.

(2) *Individual life.* (i) In order to determine qualified investment for multiple asset accounts (or single asset accounts for which an average life rate is used) it is necessary to determine the average life of the account. In order to determine average life, each asset which is section 38 property must be assigned an individual life. The rules for assigning individual lives to section 38 property are set forth below.

(ii) The individual life of any section 38 property to which an election under section 167(m) applies is the present class life selected for such property under § 1.167(a)–11 (b)(4), whether or not such property constitutes mass assets (as defined in § 1.47–1(g)(2)).

(iii) The individual life of section 38 property described in this paragraph (e)(2)(iii) is determined for each asset on the best estimate obtainable on the basis of all the facts and circumstances. The individual life for each asset placed in a multiple asset account (including a mass asset account) must be the same as the useful life of such asset used in determining the group, classified, or composite life for the account for purposes of computing depreciation. Property is described in this paragraph (e)(2)(iii) if:

(*a*) it is not recovery property within the meaning of section 168;

(*b*) no election under section 167(m) is applicable to the property; and

(*c*) it is placed in a multiple asset account for which a group, classified, or composite rate is used in computing depreciation (or in single asset accounts for which an average life rate is used).

(iv) The individual life for recovery property within the meaning of section 168 is the recovery period which applies to such property as determined under section 168(c).

(3) *Assets similar in kind.* (i) For assets similar in kind contained in a multiple asset account (or in a single asset account for which an average life rate is used) and placed in service in taxable years beginning on or after [30 days after publication of this Treasury Decision in the **Federal Register**], the taxpayer must assign to each of those assets the average life of those assets used in computing the allowance for depreciation. Thus no assets may receive investment credit for a life longer than the average life of the assets in the account. For example, assume the taxpayer places 10 similar trucks in a multiple asset account for which a group rate is used in computing the allowance for depreciation. The trucks have an average useful life of 6 years, based on an estimated range of 5 to 7 years. The taxpayer must assign each asset a useful life of 6 years, even though some assets in the account are expected to remain in service for more than 6 years. For assets similar in kind that are placed in service in taxable years beginning before [30 days after publication of this Treasury Decision in the **Federal Register**], the rules contained in paragraph (e)(3) (ii) and (iv) of 26 CFR 1.46–3 (revised as of April 1, 1983) apply.

(ii) For purposes of paragraph (e)(3)(i) of this section, assets shall not be considered as "similar in kind" in respect of other assets unless all such assets are substantially of the same value, nor shall used section 38 property be considered as "similar in kind" to new section 38 property.

(4) *Mass assets.* For "mass assets" (as defined in paragraph (g)(2) of § 1.47–1) placed in service in taxable years beginning on or after [30 days after publication of this Treasury Decision in the **Federal Register**], each asset must be assigned the life of the account, even if a mortality dispersion table indicates that some assets are expected to remain in service longer than the life of the account. See paragraphs (g)(3) and (h)(2) of § 1.47–1 regarding the grouping of mass assets. For mass assets placed in service in taxable years beginning before [30 days after publication of this Treasury Decision in the **Federal Register**], the rules contained in paragraph (j)(3)(iii) of this section apply.

(5) *Useful life of property subject to amortization.* In the case of property with respect to which amortization in lieu of depreciation is allowable, the term over which amortization deductions are taken shall be considered as the useful life of such property.

(6) *Useful life of property subject to certain methods of depreciation.* If a taxpayer is using a method of depreciation, such as the unit of production or retirement method, which does not measure the useful life of the property in terms of years, he must estimate such useful life in years in order to compute his qualified investment.

(7) *Record requirements.* The taxpayer shall maintain sufficient records to determine whether section 47 (relating to certain dispositions, etc., of section 38 property) applies with respect to any asset.

(8) *Effective dates.* The provisions in paragraphs (e) (1) through (7) of this section apply only to property—

(i) the construction, reconstruction, or erection of which—

(*a*) Is completed by the taxpayer after August 15, 1971, or

(*b*) Is begun by the taxpayer after March 31, 1971, or

(ii) which is acquired by the taxpayer—

(*a*) After August 15, 1971, or

(*b*) After March 31, 1971, and before August 16, 1971, pursuant to an order which the taxpayer establishes was placed after March 31, 1971.

For property not described in this paragraph (e)(8), the rules in paragraphs (j) (1) through (6) of this section apply.

* * * * *

Par. 3. Section 1.47–1 is amended as follows:

1. The heading of paragraph (a)(1) is revised to read as follows: "*Property which is not recovery property within the meaning of section 168.*"

2. The first sentence of paragraph (a)(1)(i) is amended by adding the language "which is not recovery property within the meaning of section 168 (see paragraph (a)(3) of this section for special rules for recovery property within the meaning of section 168)" after the phrase "section 38 property" and before the phrase "the basis (or cost)".

3. The last sentence of paragraph (a)(1)(i) is amended by removing the language "paragraph (h)" and adding in its place the language "paragraph (l)".

4. Paragraph (a) is amended by adding a new paragraph (a)(3) to read "(3) *Special rules for recovery property within the meaning of section 168.* [Reserved]."

5. Paragraphs (f), (g) and (h) are redesignated (j), (k), and (l), respectively.

6. Paragraph (e) is amended by—

a. Redesignating paragraphs (e)(2) through (e)(5) as paragraphs (f)(1) thorugh (f)(4);

b. Removing the heading for paragraph (e)(1), and redesignating paragraphs (e)(1), (i), (ii), and (iii) as paragraphs (e) (1), (2), and (3), respectively;

c. Revising redesignated paragraphs (e)(1) and (2)(2), and the introductory text of redesignated paragraph (e)(3), to read as follows:

§ 1.47-1 Recomputation of credit allowed by section 38.

* * * * *

(e) *Identification of property*—(1) *Record requirements.* In general, the taxpayer must maintain records from which he can establish, with respect to each item of section 38 property, the following facts:

(i) The date the property is disposed of or otherwise ceases to be section 38 property,

(ii) The estimated useful life or recovery period in the case of recovery property (within the meaning of section 168) which was assigned to the property under paragraph (e) of § 1.46-3,

(iii) The month and the taxable year in which the property was placed in service and,

(iv) The basis (or cost), actually or reasonably determined, of the property.

(2) *Recapture determination.* For purposes of determining whether section 38 property is disposed of, or otherwise ceases to be section 38 property with respect to the taxpayer, before the close of its estimated useful life or recovery period in the case of recovery property (within the meaning of section 168), and for purposes of determining recomputed qualified investment, the taxpayer must establish from his records the facts required by paragraph (e)(1) of this section.

(3) *Examples.* If the taxpayer fails to maintain records from which he can establish the facts required by paragraph (e)(1) of this section, then this section shall be applied to the taxpayer in the manner indicated in the following examples:

* * * * *

7. Paragraph (i) is added and reserved.

8. A new heading is added to redesignated paragraph (f), and the heading for redesignated paragraph (f)(1) is revised, to read as follows: "(f) *Treatment of mass assets placed in service in taxable years beginning before [30 days after publication of this treasury decision in the "Federal Register"]*—(1) *In general.*".

9. Paragraph (f)(1)(i), as redesignated, is amended by removing the language "in the case of mass assets (as defined in subparagraph (4) of this paragraph)" from the first sentence and adding in its place the language "for mass assets (as defined in paragraph (f)(3) of this section) placed in service in taxable years beginning before [30 days after publication of this Treasury Decision in the **Federal Register**]" and by removing the language "facts required by subparagraph (1) of this paragraph," from the first sentence and adding in its place the language "facts required by paragraph (e) of this section,".

10. Paragraph (f)(1)(ii)(*a*), as redesignated, is amended by removing the language "(e)(3)(ii)(*b*)" and adding in its place the language "(j)(3)(ii)(*b*)".

11. Paragraph (f)(1)(iii), as redesignated, is amended by removing the language "§ 1.46-3(e)(3)(iii)" and adding in its place the language "§ 1.46-3(j)(3)(iii)".

12. In redesignated paragraph (f)(1)(v), paragraph (*c*) of the example is amended by removing the language "(3)(iv)" from the last sentence and adding in its place the language "(2)(iv)".

13. Paragraph (f)(2)(i), as redesignated, is amended by removing, in the first sentence, the language "§ 1.46-3(e)(3)(ii)(*b*) or (iii)" and adding in its place the language "§ 1.46-3(j)(3)(ii)(*b*) or (iii)".

14. Paragraph (f)(2)(ii), as redesignated, is amended by removing, in the first sentence, the language "§ 1.46-3(e)(3)(iii)" and adding in its place the language "1.46-3(j)(3)(iii)".

15. Paragraph (f)(2)(iii), as redesignated, is amended by removing from the first sentence in the introductory text and from paragraph (f)(2)(iii)(*a*) the language "(e)(3)(ii)(*b*)" and adding in its place the language "(j)(3)(ii)(*b*)", and by removing from the second sentence of the introductory text the language "subparagraph (1)(i) of this paragraph" and adding in its place the language "paragraph (e)(1) of this section".

16. Paragraph (f)(2)(iv) is amended by removing the language "§ 1.46-3(e)(3)(ii)(*b*) or (iii)" and adding in its place the language "§ 1.46-3(j)(3)(ii)(*b*) or (iii)".

17. Paragraph (f)(3), as redesignated, is amended by removing in the first sentence the language "(e)(3)(iii)" and adding in its place the language "(j)(3)(iii)".

18. Paragraphs (f)(4)(ii), (iii), and (iv), as redesignated, are amended by removing the language "(3)(i)" and adding in its place the language "(2)(i)".

19. New paragraphs (g) and (h) are added to read as follows:

§ 1.47-1 Recomputation of credit allowed by section 38.

* * * * *

(g) *Treatment of mass assets which are not recovery property for taxable years beginning on or after [30 days after publication of this Treasury Decision in the* **Federal Register***]*—(1) *In general.* (i) For mass assets which are not recovery property within the meaning of section 168 and are placed in service in taxable years beginning on or after [30 days after publication of this Treasury Decision in the **Federal Register**] the taxpayer may use its own mortality dispersion table or a standard mortality dispersion table prescribed by the Commissioner to recompute qualified investment for mass assets (as defined in paragraph (g)(2) of this section). The taxpayer must then use whichever table was chosen to determine the number of assets expected to be retired each year after the assets are placed in service. Recapture determinations must be made at the end of each taxable year in which assets are expected to be retired before the end of the useful life used to determine qualified investment. Taxpayers may rely on the table and, in general, do not need to account for actual retirements.

(ii) If the taxpayer uses its own mortality dispersion table, the table must be based on an acceptable survey of the taxpayer's actual experience and on appropriate statistical methods. The survey of the taxpayer's actual experience must be based on a sample of not less than 250 items. The taxpayer must maintain records showing the historical data used to develop the table. If the taxpayer does not maintain adequate records, the standard mortality dispersion table will be used to recompute qualified investment. The taxpayer may not use its own table for assets placed in service in a taxable year, unless the table was prepared before the beginning of that year. For example, assume a calendar year taxpayer completes preparation of its own table on July 1, 1979. It may use the table for assets placed in service in 1980, but not for assets placed in service in 1979.

(iii) A taxpayer may use the standard mortality dispersion table for one mass asset account and its own table for a different mass asset account. However, if the taxpayer applies a table to a mass asset account in any taxable year, the taxpayer must treat a subsequent change to another table for that account as a change of accounting methods under section 446(e) and obtain consent of the Commissioner.

(2) *Definition of mass assets.* The term "mass assets" means a mass or group of individual items of section 38 property (i) not necessarily homogeneous, (ii) each of which is minor in value relative to the total value of such mass or group, (iii) numerous in quantity, (iv) usually accounted for only on a total dollar or quantity basis, (v) with respect to which separate identification is impracticable, (vi) with the same useful life (in the case

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of recovery property, with the same present class life and recovery period) and (vii) placed in service in the same taxable year.

(3) *Grouping of mass assets.* In general, items in a mass asset account need not be of a similar type although they must have the same useful life. See paragraph (e) of § 1.46–3 for rules for assigning useful lives to mass assets. For example, hammers and saws with useful lives of 4 years may be put in the same account. Hammers with useful lives of 5 years, however, may not be put in an account with hammers with useful lives of 4 years. However, if a taxpayer uses its own mortalitiy dispersion table, all assets in an account must have approximately the same basis or cost. All mass assets in an account must be treated as placed in service (within the meaning of § 1.46–3(d)) on the same date. Taxpayers must use appropriate averaging conventions to determine the date mass assets are placed in service. See paragraph (c)(2) of this section, paragraph (b) of § 1.167(a)–10 for property not subject to an election under section 167(m), and paragraph (c)(2) of § 1.167(a)–11 for property subject to an election under section 167(m).

(4) *Useful life.* The useful life of mass assets used in computing the allowance for depreciation must be used in applying the taxpayer's mortality dispersion table or the standard mortality dispersion table. See paragraph (e) of § 1.46–3 for rules for assigning useful lives to mass assets. For example, if the taxpayer computes the depreciable life of mass assets under section 167(m), it must use the same depreciable life in applying the standard mortality dispersion table.

(5) *Standard mortality dispersion table.* The standard mortality dispersion table prescribed by the Commissioner and set forth below is based on whole- and half-year average useful life categories. Each category contains 30 columns. Each column shows the percentage of basis or cost in a mass asset account expected to be retired in each of the first 30 years after the property is placed in service. The table is set forth below:

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STANDARD MORTALITY DISPERSION TABLE

PERCENTAGE OF BASIS OR COST OF MASS ASSET ACCOUNT CONSIDERED DISPOSED OF EACH 12-MONTH PERIOD AFTER THE ACCOUNT IS PLACED IN SERVICE

Average Useful Life (Years)	1st (1)	2nd (2)	3rd (3)	4th (4)	5th (5)	6th (6)	7th (7)	8th (8)	9th (9)	10th (10)
3	2.28	13.59	34.13	34.13	13.59	2.28	-	-	-	-
3.5	1.62	8.23	23.51	33.28	23.51	8.23	1.62	-	-	-
4	1.22	5.46	15.98	27.34	27.34	15.98	5.46	1.22	-	-
4.5	.99	3.76	11.12	21.20	25.86	21.20	11.12	3.76	.99	-
5	.82	2.77	7.92	15.91	22.58	22.58	15.91	7.92	2.77	.82
5.5	.71	2.10	5.88	11.92	18.75	21.28	18.75	11.92	5.88	2.10
6	.62	1.66	4.40	9.19	14.98	19.15	19.15	14.98	9.19	4.40
6.5	.55	1.33	3.38	7.25	12.00	16.39	18.20	16.39	12.00	7.25
7	.51	1.11	2.74	5.49	9.64	13.87	16.64	16.64	13.87	9.64
7.5	.47	.92	2.20	4.49	7.79	11.55	14.65	15.86	14.65	11.55
8	.44	.78	1.85	3.61	6.46	9.52	12.91	14.43	14.43	12.91
8.5	.40	.70	1.52	2.97	5.16	8.19	10.87	13.05	14.28	13.05
9	.38	.61	1.29	2.47	4.43	6.69	9.27	11.93	12.93	12.93
9.5	.37	.52	1.13	2.07	3.69	5.57	8.13	10.44	11.72	12.72
10	.35	.47	.97	1.80	3.09	4.83	6.90	9.01	10.79	11.79
11	.32	.39	.75	1.35	2.24	3.64	5.10	6.82	8.51	10.24
12	.30	.32	.60	1.06	1.73	2.67	3.88	5.31	6.79	8.19
13	.28	.27	.49	.84	1.34	2.04	3.12	4.13	5.37	6.63
14	.27	.24	.40	.71	1.06	1.68	2.32	3.17	4.38	5.26
15	.26	.21	.35	.57	.89	1.31	1.89	2.60	3.43	4.36
16	.25	.18	.29	.49	.75	1.10	1.48	2.13	2.83	3.38
17	.24	.16	.28	.42	.60	.92	1.30	1.67	2.34	2.82
18	.23	.15	.24	.37	.51	.78	1.08	1.39	1.93	2.50
19	.23	.14	.20	.32	.47	.66	.92	1.15	1.61	2.08
20	.22	.13	.19	.28	.40	.57	.77	1.03	1.36	1.73
25	.20	.09	.12	.18	.23	.31	.41	.53	.67	.85
30	.19	.07	.09	.12	.15	.20	.25	.32	.40	.49

Average Useful Life (Years)	11th (11)	12th (12)	13th (13)	14th (14)	15th (15)	16th (16)	17th (17)	18th (18)	19th (19)	20th (20)
3	-	-	-	-	-	-	-	-	-	-
3.5	-	-	-	-	-	-	-	-	-	-
4	-	-	-	-	-	-	-	-	-	-
4.5	-	-	-	-	-	-	-	-	-	-
5	-	-	-	-	-	-	-	-	-	-
5.5	.71	-	-	-	-	-	-	-	-	-
6	1.66	.62	-	-	-	-	-	-	-	-
6.5	3.38	1.33	.55	-	-	-	-	-	-	-
7	5.49	2.74	1.11	.51	-	-	-	-	-	-
7.5	7.70	4.49	2.20	.92	.47	-	-	-	-	-
8	9.52	6.46	3.61	1.85	.78	.44	-	-	-	-
8.5	10.87	8.19	5.16	2.97	1.52	70	.40	-	-	-
9	11.93	9.27	6.69	4.43	2.47	1.29	.61	.38	-	-
9.5	11.72	10.44	8.13	5.57	3.69	2.07	1.13	.52	.37	-
10	11.79	10.79	9.01	6.90	4.83	3.09	1.80	.97	.47	.35
11	10.64	10.64	10.24	8.51	6.82	5.10	3.64	2.24	1.35	.75
12	9.28	9.87	9.87	9.28	8.19	6.79	5.31	3.88	2.67	1.73
13	7.77	8.62	9.10	9.10	8.62	7.77	6.63	5.37	4.13	3.12
14	6.62	7.25	8.32	8.32	8.32	8.32	7.25	6.62	5.26	4.38
15	5.32	6.23	7.04	7.61	7.93	7.93	7.61	7.04	6.23	5.32
16	4.22	5.30	6.11	6.80	6.89	7.54	7.54	6.89	6.80	6.11
17	3.71	4.48	4.94	5.93	6.51	6.54	7.14	7.14	6.54	6.51
18	3.12	3.57	4.46	4.81	5.71	6.19	6.21	6.75	6.75	6.21
19	2.60	2.97	3.76	4.37	4.96	5.48	5.53	6.19	6.36	6.36
20	2.17	2.66	3.18	3.72	4.25	4.76	5.22	5.57	5.83	5.96
25	1.06	1.29	1.55	1.85	2.18	2.50	2.84	3.19	3.54	3.84
30	.59	.72	.87	1.02	1.20	1.40	1.60	1.83	2.06	2.30

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Average Useful Life (Years)	21st (21)	22nd (22)	23rd (23)	24th (24)	25th (25)	26th (26)	27th (27)	28th (28)	29th (29)	30th (30)
3	-	-	-	-	-	-	-	-	-	-
3.5	-	-	-	-	-	-	-	-	-	-
4	-	-	-	-	-	-	-	-	-	-
4.5	-	-	-	-	-	-	-	-	-	-
5	-	-	-	-	-	-	-	-	-	-
5.5	-	-	-	-	-	-	-	-	-	-
6	-	-	-	-	-	-	-	-	-	-
6.5	-	-	-	-	-	-	-	-	-	-
7	-	-	-	-	-	-	-	-	-	-
7.5	-	-	-	-	-	-	-	-	-	-
8	-	-	-	-	-	-	-	-	-	-
8.5	-	-	-	-	-	-	-	-	-	-
9	-	-	-	-	-	-	-	-	-	-
9.5	-	-	-	-	-	-	-	-	-	-
10	-	-	-	-	-	-	-	-	-	-
11	.39	.32	-	-	-	-	-	-	-	-
12	1.06	.60	.32	.30	-	-	-	-	-	-
13	2.04	1.34	.84	.49	.27	.28	-	-	-	-
14	3.17	2.32	1.68	1.06	.71	.40	.24	.27	-	-
15	4.36	3.43	2.60	1.89	1.31	.89	.57	.35	.21	.26
16	5.30	4.22	3.63	2.83	2.13	1.48	1.10	.75	.49	.29
17	5.93	4.94	4.48	3.71	2.82	2.34	1.67	1.30	.92	.60
18	6.19	5.71	4.81	4.46	3.57	3.12	2.50	1.93	1.39	1.08
19	6.19	5.53	5.48	4.96	4.37	3.76	2.97	2.60	2.08	1.61
20	5.96	5.83	5.57	5.22	4.76	4.25	3.72	3.18	2.66	2.17
25	4.13	4.38	4.58	4.70	4.78	4.78	4.70	4.58	4.38	4.13
30	2.54	2.78	3.01	3.23	3.42	3.61	3.75	3.86	3.95	3.98

The following notes explain the derivation of the table:

(i) The table is based on normal probability distribution. A normal distribution is characterized by a symmetrical dispersion of assets around the average. The equation of the normal probability distribution is—

$$\left(Y = \frac{N}{\sigma\sqrt{2\pi}}\right) \times \left(e^{z}\right)$$

The symbols in the equation are as follows:

N = the number of mass assets in the group

σ = the standard deviation of the normal distribution

π = the constant 3.14159

$$z = -\tfrac{1}{2}\,\frac{(X - \bar{X})^2}{2}$$

e = the constant 2.71828

x = an independent variable

$\bar{X}$ = mean or average of the mass assets in the group (average useful life)

$(x - \bar{X})$ = the deviation of x from the mean or average of the mass assets in the group

$\sigma 2$ = the variance of x

(ii) The range of expected useful lives is assumed to extend from the time of acquisition (1×3 Standard Deviations) to double the average useful life (3 Standard Deviations). Practically all cases (99.73 percent) fall within the (−3 Standard Deviation range under the assumption of a normal probability distribution. The first year mortality figures shown in the table for assets with a long average useful life are greater than those shown for one or more of the succeeding years. In addition, the last year mortality figures shown in the table for assets with a long average useful life are greater than those shown for one or more of the preceeding years. The reason is that the tails (beginning and ending years) of the distribution have been adjusted so that 100 percent of the assets (and not 99.73 percent) are included within the range of useful lives.

(6) *Recapture determinations.* A recapture determination must be made at the end of each taxable year in which assets are expected to be retired before the end of the useful life used to determine qualified investment. The percentage of basis or cost in a mass asset account expected to be retired under the taxpayer's mortality dispersion table or under a standard mortality dispersion table will be considered disposed of ratably over the year. The taxpayer is not required to account for actual retirements other than abnormal or extra-ordinary retirements. See paragraph (b) of § 1.67(a)-8 for definitions of abnormal retirements of non-recovery property that is not subject to an election under section 167 (m). See paragraph (d)(3)(ii) of § 1.167 (a)-11 for definitions of extraordinary retirements of non-recovery property subject to an election under section 167 (m).

(7) *Example.* Paragraph (g)(6) of this section may be illustrated by the following example.

Example. (i) A calendar year taxpayer placed 1000 assets which are not recovery property in service in 1984. Taxpayer established a single mass asset account for these assets. Under the taxpayer's averaging convention the taxpayer uses July 1 as the assumed date of all additions to mas asset accounts. The assets have estimated useful lives of 3 years. The unadjusted basis in the account is $10,000.

(ii) The standard mortality dispersion table indicates that 2.28% of basis will be considered retired in the first year, 13.59% more will be considered retired in the second year, and 34.13% will be considered retired in the third year. The remaining 50% of basis will be in service for 3 years or more.

(iii) For 1984, no credit is allowed for 1.14% of the basis in the account, because 1984 is the taxable year the assets were placed in service. The standard mortality dispersion table indicates that 2.28% of basis is expected to be retired in the first year after the assets were placed in service. Since the assets were not considered placed in service until July 1, only 50 percent, or a 6-month ratable portion, of the 2.28% of basis is considered disposed of in 1984. The remaining 1.14% will be considered disposed of over the first half of 1985. Qualified investment for the remaining 98.86% is $3,295., which is 33⅓ percent of the basis attributable to that portion of the account.

(iv) For 1985, credit for 7.94% of the basis placed in service has to be recaptured. Of the 2.28% indicated by the standard mortality dispersion table to be disposed, of in the first year, 1.14%, or a 6-month ratable portion, will be considered disposed of in the first half of 1985. Of the 113.59% indicated by the table to be disposed of in the second year, 6.8%, or a 6-month ratable portion, will be considered disposed of in the second half of 1985. Removing the qualified investment with respect to 7.94% of the account from the $9886. for which the credit was allowed in year 1 results in a qualified investment of $3030.36 (33⅓% of $9092). Thus, the credit allowed is $303.04, as compared to a $329.50 credit "allowable" for the full basis placed in the account. The decrease in allowable credit and, therefore, the amount recaptured is $26.46.

(v) For 1986, credit for 23.87% of the basis placed in service has to be recaptured. Of the 13.59% indicated by the standard mortality dispersion table to be disposed of in the second year, 6.8% or a 6-month ratable portion, will be considered disposed of in the first half of 1986. Of the 34.13% indicated by the table to be disposed of in the third year, 17.07% or a 6-month ratable portion, will be considered disposed of in the second half of 1986. Removing the qualified investment with respect to 23.87% of the account from the $9886. for which the credit was allowed in year 1 results in a qualified investment of $2499.42 (33⅓% of $7499.). Thus, the credit allowed is $249.94, as compared to a $329.50 credit "allowable" for the full basis placed in the account. The decrease in allowable credit and, therefore, the amount recaptured is $79.56.

(vi) For 1987, credit for 17.07% of the basis placed in service has to be recaptured. Of the 34.13% indicated by the standard mortality dispersion table to be disposed of in the third year, 17.07%, or a 6-month ratable portion, will be considered disposed of in the first half of 1987. Removing the qualified investment with respect to 17.07% of the account from the

$9888. for which the credit was allowed in year 1 results in a qualified investment of $2726.06 (33⅓% of $8179.). Thus, the credit allowed is $272.61, as compared to a $329.50 credit "allowable" for the full basis placed in the account. The decrease in allowable credit and, therefore, the amount recaptured is $56.89.

(vii) None of the credit is recaptured for the precent of basis disposed of after June 30, 1987

(h) *Treatment of mass assets which are recovery property within the meaning of section 168*—(1) *In general.* (i) For mass assets (as defined in paragraph (g)(2) of this section) which are recovery property within the meaning of section 168, the taxpayer must determine dispositions of assets from a mass asset account by the use of an appropriate mortality dispersion table. Such table must be used to determine the number of assets expected to be retired each year after the assets are placed in service. Recapture determinations must be made at the end of each taxable year in which assets are expected to be retired before the end of the recapture period (as defined in subsection (a)(5)(E)(ii) of section 47).

(ii) The taxpayer may use its own mortality dispersion table prescribed by the Commissioner. The taxpayer's own mortality dispersion table or a standard mortaility dispersion table must be based on an acceptable survey of the taxpayer's actual experience and on appropriate statistical methods. The survey of the taxpayer's actual experience must be based on a sample of not less than 250 items. The taxpayer must maintain records showing the historical data used to develop the table. If the taxpayer does not maintain adequate records, the standard mortality dispersion table will be used to determine dispositions of assets from a mass account. The taxpayer may not use its own table for assets placed in service in a taxable year unless the table was prepared before the beginning of that year. For example, assume a calendar year taxpayer completes preparation of its own table on July 1, 1981. It may use the table for assets placed in service in 1982, but not for assets placed in service in 1981.

(iii) A taxpayer may use the standard mortality dispersion table for one mass asset account and its own table for a different mass asset account. However, if the taxpayer applies to a mass asset account in any taxable year, the taxpayer must treat a subsequent change to another table for that account as a change of accounting methods under section 446(e) and obtain consent of the Commissioner.

(2) *Grouping of mass assets.* In general, all items in a mass asset account must have the same present class life (as defined in § 1.167 (a)–11(b)(4)) and the same recovery period but need not be of a similar type. However, if a taxpayer uses its own mortality dispersion table, all assets in an account must have approximately the same cost. For purposes of applying a mortality dispersion table, all assets placed in service during a taxable year will be considered to be placed in service on the first day of the second half of the taxable year.

(3) *Present class life.* The present class life of the assets placed in a mass asset account must be used in applying either the taxpayer's mortality dispersion table or the standard mortality dispersion table, notwithstanding the fact that the appropriate recovery period is used in computing the tax credit.

(4) *Standard mortality dispersion table.* The standard mortality dispersion table prescribed by the Commissioner for purposes of this paragraph is set forth below.

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STANDARD MORTALITY DISPERSION TABLE

PERCENTAGE OF BASIS OR COST OF MASS ASSET ACCOUNT CONSIDERED DISPOSED OF EACH 12-MONTH PERIOD AFTER THE ACCOUNT IS PLACED IN SERVICE

Present Class Life	1st (1)	2nd (2)	3rd (3)	4th (4)	5th (5)	6th (6)	7th (7)	8th (8)	9th (9)	10th (10)
2.5	3.59	23.84	45.14	23.84	3.59	-	-	-	-	-
3	2.28	13.59	34.13	34.13	13.59	2.28	-	-	-	-
3.5	1.62	8.23	23.51	33.28	23.51	8.23	1.62	-	-	-
4	1.22	5.46	15.98	27.34	27.34	15.98	5.46	1.22	-	-
5	.82	2.77	7.92	15.91	22.58	22.58	15.91	7.92	2.77	.82
6	.62	1.66	4.40	9.19	14.98	19.15	19.15	14.98	9.19	4.40
6.5	.55	1.33	3.38	7.25	12.00	16.39	18.20	16.39	12.00	7.25
7	.51	1.11	2.74	5.49	9.64	13.87	16.64	16.64	13.87	9.64
7.5	.47	.92	2.20	4.49	7.79	11.55	14.65	15.86	14.65	11.55
8	.44	.78	1.85	3.61	6.46	9.52	12.91	14.43	14.43	12.91
8.5	.40	.70	1.52	2.97	5.16	8.19	10.87	13.05	14.28	13.05
9	.38	.61	1.29	2.47	4.43	6.69	9.27	11.93	12.93	12.93
9.5	.37	.52	1.13	2.07	3.69	5.57	8.13	10.44	11.72	12.72
10 and 10.5	.35	.47	.97	1.80	3.09	4.83	6.90	9.01	10.79	11.79
11 and 11.5	.32	.39	.75	1.35	2.24	3.64	5.10	6.82	8.51	10.24
12 and 12.5	.30	.32	.60	1.06	1.73	2.67	3.88	5.31	6.79	8.19
13 and 13.5	.28	.27	.49	.84	1.34	2.04	3.12	4.13	5.37	6.63
14	.27	.24	.40	.71	1.06	1.68	2.32	3.17	4.38	5.26
15	.26	.21	.35	.57	.89	1.31	1.89	2.60	3.43	4.36
16 and 16.5	.25	.18	.29	.49	.75	1.10	1.48	2.13	2.83	3.38
17	.24	.16	.28	.42	.60	.92	1.30	1.67	2.34	2.82
18	.23	.15	.24	.37	.51	.78	1.08	1.39	1.93	2.50
19	.23	.14	.20	.32	.47	.66	.92	1.15	1.61	2.08
20-24	.22	.13	.19	.28	.40	.57	.77	1.03	1.36	1.73
25-29	.20	.09	.12	.18	.23	.31	.41	.53	.67	.85
30-50	.19	.07	.09	.12	.15	.20	.25	.32	.40	.49

Present Class Life	11th (11)	12th (12)	13th (13)	14th (14)	15th (15)	16th (16)	17th (17)	18th (18)	19th (19)	20th (20)
2.5	-	-	-	-	-	-	-	-	-	-
3	-	-	-	-	-	-	-	-	-	-
3.5	-	-	-	-	-	-	-	-	-	-
4	-	-	-	-	-	-	-	-	-	-
5	-	-	-	-	-	-	-	-	-	-
6	1.66	.62	-	-	-	-	-	-	-	-
6.5	3.38	1.33	.55	-	-	-	-	-	-	-
7	5.49	2.74	1.11	.51	-	-	-	-	-	-
7.5	7.70	4.49	2.20	.92	.47	-	-	-	-	-
8	9.52	6.46	3.61	1.85	.78	.44	-	-	-	-
8.5	10.87	8.19	5.16	2.97	1.52	.70	.40	-	-	-
9	11.93	9.27	6.69	4.43	2.47	1.29	.61	.38	-	-
9.5	11.72	10.44	8.13	5.57	3.69	2.07	1.13	.52	.37	-
10 and 10.5	11.79	10.79	9.01	6.90	4.83	3.09	1.80	.97	.47	.35
11 and 11.5	10.64	10.64	10.24	8.51	6.82	5.10	3.64	2.24	1.35	.75
12 and 12.5	9.28	9.87	9.87	9.28	8.19	6.79	5.31	3.88	2.67	1.73
13 and 13.5	7.77	8.62	9.10	9.10	8.62	7.77	6.63	5.37	4.13	3.12
14	6.62	7.25	8.32	8.32	8.32	8.32	7.25	6.62	5.26	4.38
15	5.32	6.23	7.04	7.61	7.93	7.93	7.61	7.04	6.23	5.32
16 and 16.5	4.22	5.30	6.11	6.80	6.89	7.54	7.54	6.89	6.80	6.11
17	3.71	4.48	4.94	5.93	6.51	6.54	7.14	7.14	6.54	6.51
18	3.12	3.57	4.46	4.81	5.71	6.19	6.21	6.75	6.75	6.21
19	2.60	2.97	3.76	4.37	4.96	5.48	5.53	6.19	6.36	6.36
20-24	2.17	2.66	3.18	3.72	4.25	4.76	5.22	5.57	5.83	5.96
25-29	1.06	1.29	1.55	1.85	2.18	2.50	2.84	3.19	3.54	3.84
30-50	.59	.72	.87	1.02	1.20	1.40	1.60	1.83	2.06	2.30

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Present Class Life	21st (21)	22nd (22)	23rd (23)	24th (24)	25th (25)	26th (26)	27th (27)	28th (28)	29th (29)	30th (30)
2.5	-	-	-	-	-	-	-	-	-	-
3	-	-	-	-	-	-	-	-	-	-
3.5	-	-	-	-	-	-	-	-	-	-
4	-	-	-	-	-	-	-	-	-	-
5	-	-	-	-	-	-	-	-	-	-
6	-	-	-	-	-	-	-	-	-	-
6.5	-	-	-	-	-	-	-	-	-	-
7	-	-	-	-	-	-	-	-	-	-
7.5	-	-	-	-	-	-	-	-	-	-
8	-	-	-	-	-	-	-	-	-	-
8.5	-	-	-	-	-	-	-	-	-	-
9	-	-	-	-	-	-	-	-	-	-
9.5	-	-	-	-	-	-	-	-	-	-
10 and 10.5	-	-	-	-	-	-	-	-	-	-
11 and 11.5	.39	.32	-	-	-	-	-	-	-	-
12 and 12.5	1.06	.60	.32	.30	-	-	-	-	-	-
13 and 13.5	2.04	1.34	.84	.49	.27	.28	-	-	-	-
14	3.17	2.32	1.68	1.06	.71	.40	.24	.27	-	-
15	4.36	3.43	2.60	1.89	1.31	.89	.57	.35	.21	.26
16 and 16.5	5.30	4.22	3.63	2.83	2.13	1.48	1.10	.75	.49	.29
17	5.93	4.94	4.48	3.71	2.82	2.34	1.67	1.30	.92	.60
18	6.19	5.71	4.81	4.46	3.57	3.12	2.50	1.93	1.39	1.08
19	6.19	5.53	5.48	4.96	4.37	3.76	2.97	2.60	2.08	1.61
20-24	5.96	5.83	5.57	5.22	4.76	4.25	3.72	3.18	2.66	2.17
25-29	4.13	4.38	4.58	4.70	4.78	4.78	4.70	4.58	4.38	4.13
30-50	2.54	2.78	3.01	3.23	3.42	3.61	3.75	3.86	3.95	3.98

(5) *Recapture determinations.* A recapture determination must be made at the end of each taxable year in which assets are expected to be retired before the end of the recapture period. The percentage of basis or cost in a mass asset account expected to be retired under the taxpayer's mortality dispersion table or under a standard mortality dispersion table will be considered disposed of ratably over the taxable year. The taxpayer is not required to account for actual retirements. The concept of abnormal or extraordinary retirements does not apply to recovery property. See paragraph (l)(1) of § 1.168–2.

(6) *Example.* Paragraph (h)(5) of this section may be illustrated by the following example.

Example. (i) A calendar year taxpayer placed 1000 assets which are recovery property in service in 1981. Taxpayer established a single mass asset account for these assets. July 1 is the assumed date of all additions to mass asset accounts. Each asset is 3 year recovery property and has a present class life of 4 years. The unadjusted basis in the account is $10,000.

(ii) By applying the 4 year present class life, the standard mortality dispersion table indicates that 1.22% of basis would be considered retired in the first year, 5.46% more would be considered retired in the second year, and 15.98% more would be considered retired in the third year. The remaining 77.34% of basis will be in service longer than the 3 year recapture period.

(iii) For 1981, no credit was allowed for .61% of the basis in the account, because 1981 was the taxable year the assets were placed in service. The standard mortality dispersion table indicates that 1.22% of basis was expected to be retired in the first year after the assets were placed in service. Since the assets were not considered placed in service until July 1, only 50 percent, or a 6-month ratable portion of the 1.22% of basis was considered disposed of in 1981. The remaining .61% was considered disposed of over the first half of 1982. Qualified investment for the remaining 99.39% is $5963.40, which is 60 percent of the basis attributable to that portion of the account.

(iv) For 1982, credit for 3.34% of the basis placed in service was recaptured. Of the 1.22% indicated by the standard mortality dispersion table to be disposed of in the first year, .61%, or a 6-month ratable portion, was considered disposed of in the first half of 1982. Of the 5.46% indicated by the table to be disposed of in the second year, 2.73%, or a 6-month ratable portion, was considered disposed of in the second half of 1982. Removing the qualified investment with respect to 3.34% of the account from the $9939. for which the credit was allowed in year 1 results in a qualified investment of $5763. (60% of $96050.). Thus, the credit allowed was $576.30 as compared to a $596.34. credit "allowable" for the full basis placed in the account. The decrease in allowable credit was therefore $20.04. $3.66 of which is recaptured at 100% and $16.38 of which is recaptured at 66% (see paragraph (h)(8) (viii) of this section). The amount recaptured was therefore $14.47.

(v) For 1983, credit for 10.72% of the basis placed in service must be recaptured. Of the 5.46% indicated by the standard mortality dispersion table to be disposed of in the second year. 2.73%, or a 6-month ratable portion, will be considered disposed of in the first half of 1983. Of the 15.98% indicated by the table to be disposed of in the third year, 7.99%, or a 6-month ratable portion, will be considered disposed of in the second half of 1983. Removing the qualified investment with respect to 10.72% of the account from the $9939. for which the credit was allowed in year 1 results in a qualified investment of $5320.20 (60% of $8867.). Thus, the credit allowable is $532.02, as compared to a $596.34 credit "allowable" for the full basis placed in the account. The decrease in allowable credit

is therefore 64.32, $16.38 of which is recaptured at 66% and $47.94 of which is recaptured at 33%. The amount recaptured is therefore $26.63.

(vi) For 1984 credit for 7.99% of the basis placed in service must be recaptured. Of the 15.98% indicated by the standard mortality dispersion table to be disposed of in the third year, 7.99% or a 6-month ratable portion, will be considered disposed of in the first half of 1984. Removing the qualified investment with respect to 7.99% of the account from the $9939. for which the credit was allowed in year 1 results in a qualified investment of $5484. (60% of $9140.). Thus, the credit allowable is $548.40, as compared to a $596.34 credit "allowable" for the full basis placed in the account. The decrease in allowable credit is therefore $47.94, 33% of which is recaptured ($15.82).

(vii) None of the credit is recaptured for the percent of basis disposed of after June 30, 1984.

(viii) The amount of the decrease in allowable credit attributable to the first half of a taxable year is determined by multiplying the decrease in allowable credit for the entire taxable year by a fraction, the numerator of which is the percent of basis disposed of in the first half of the taxable year and the denominator of which is the entire percent of basis disposed of in the taxable year The amount of the decrease in allowable credit attributable to the second half of a taxable year is determined by applying the formula above, except the numerator of the fraction will be the percent of basis disposed of in the second half of the taxable year

(7) *Effective date.* The rules in this paragraph (h) apply to all recovery property placed in service on or after January 1, 1981.

* * * * *

20. Paragraph (l)(4), as redesignated, is amended by removing "paragraph (e)(1) of this section" from the first sentence and inserting in its place "paragraph (e) of this section".

21. Paragraph (l)(5), as redesignated, is amended by removing "(h)" from the first sentence and inserting in its place "(l)"

§ 1.48–9 [Amended]

Par. 4. Section 1.48–9 is amended as follows:

1. Paragraph (a)(4)(ii) is amended by removing "§ 1.46–3(e)(7)" and inserting in its place "§ 1.46–3(e)"

2. Paragraph (b)(1)(i) is amended by removing "§ 1.47–1(h)" from the last sentence and inserting in its place "§ 1.47–1(l)"

3 Paragraph (l)(2) is amended by removing "§ 1.47–1(h)(5)" from the last sentence and inserting in its place "§ 1.47–1(l)(5)"

4 Paragraph (q)(1) is amended by removing "(h)(3)(ii)" from the last sentence and inserting in its place "(l)(3)(ii)"

5. Paragraph (q)(7)(iv) is amended by removing "(h)(3)(ii)" from the last sentence and inserting in its place "(l)(3)(ii)".

Par. 5. Paragraph (d)(3)(v)(*d*)(*2*) of § 1.167(a)–11 is amended by removing "paragraph (e)(4)" and inserting in its place "paragraph (g)(2)."

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–29290 Filed 12–19–85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Proposed Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Virginia Permanent Regulatory and Abandoned Mine Land Reclamation Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a proposed amendment submitted by the Commonwealth of Virginia as a modification to its permanent regulatory and abandoned mine land reclamation programs (hereinafter referred to as the Virginia programs) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of new regulations which, except for certain existing operations, would completely replace those now implementing Chapter 19, Title 45.1 of the Code of Virginia, the Virginia Coal Surface Mining Control and Reclamation Act of 1979, as amended.

This notice sets forth the times and locations that the Virginia program and proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing.

DATES: Written comments from the public not received by 4:00 p.m. on January 21, 1986, will not necessarily be considered in the decision process. A public hearing on the proposed amendment has been scheduled for 1:00 p.m. on January 8, 1986, in the conference room of the Lebanon Area Office of the Office of Surface Mining, Flannagan and Carroll Streets, Lebanon, Virginia. Any person interested in making an oral or written presentation at the hearing should contact Mr. William Thomas at the OSM Big Stone Gap Field Office by 4:00 p.m. on January 6, 1986. If no one expresses an interest in participating in the hearing by this date, the hearing will not be held. If only one person has so contacted Mr. Thomas, a public meeting, rather than a hearing, may be held; the results of the meeting will be included in the Administrative Record.

ADDRESSES: Written comments and requests for a hearing should be mailed to: Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219.

Copies of the Virginia program, the proposed modifications to the program, and the administrative record of the Virginia program are available for public review and copying at the OSM offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303

Office of Surface Mining Reclamation and Enforcement, Lebanon Area Office, Flannagan and Carroll Streets, P.O. Box 487, Lebanon, Virginia 24266, Telephone: (703) 889–4032

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5124, Washington, DC 20240, Telephone: (202) 343–4855

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone: (703) 523–2925

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Virginia programs on December 15, 1981. Information pertinent to the general background, revisions, modifications and amendments to the permanent program submissions, as well as the

Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia programs can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). The programs have been amended several times since approval; information concerning the amendments may be obtained from the agency offices listed under "ADDRESSES."

II. Submission of Amendment

In accordance with the provision of 30 CFR 732.17 (d) and (f), on March 25, 1985, the Director notified Virginia of the changes necessary to ensure that the approved regulatory program was no less effective than SMCRA and its implementing regulations, as revised since December 15, 1981, when the program was originally approved. To comply with this letter and to meet other needs and State objectives, the Commonwealth elected to undertake a complete rewrite of the regulations governing its permanent regulatory and abandoned mine land reclamation programs.

By letter of November 8, 1985, Virginia submitted these regulations to OSM for review as a program amendment (Administrative Record No. VA 571). The proposed regulations, consisting of Parts 430–03–19.700 through 480–03–19.882, would replace Parts V700 through V882 of the currently approved regulations, although the current performance standards of Subchapter VK and the current permit application content requirements of Subchapter VG would remain in effect for mines operating under existing permits.

In accordance with the provisions of 30 CFR 732.17 and 884.15, OSM is now seeking comment on whether the proposed regulations satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15, 732.17, 884.14 and 884.15. If approved, the proposed amendment will become part of the Virginia permanent regulatory and abandoned mine land reclamation programs.

III. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovermental relations, Surface mining, Underground mining.

Dated: December 13, 1985.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining.

[FR Doc. 85–30122 Filed 12–19–85; 8:45 am]

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National Park Service

36 CFR Part 7

Lake Mead National Recreation Area, Arizona-Nevada; Noise Abatement Regulation

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The intent of this rulemaking is to allow a recreational activity that has been a tradition at Lake Mead National Recreation Area for many years to continue; namely, to continue to allow motor vessels to exceed established noise level limitations while being operated in authorized regattas. Boat noise limitations are exempted by present Arizona, Nevada and U.S. Coast Guard regulations when the boats are engaged in an authorized boating regatta. National Park Service general regulations allowed for such noise exemptions until the July, 1983 revision. Powerboats designed and constructed for competitive water events are traditionally exempted from State and Federal noise limitations during authorized regattas. This proposed exemption will not adversely affect other recreational users of the lake and will be exercised by permit only during the few authorized regattas that take place annually at Lake Mead.

DATES: Written comments will be accepted through January 21, 1986.

ADDRESS: Comments should be addressed to: Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada. 89005.

FOR FURTHER INFORMATION CONTACT: Jerry D. Wagers, Superintendent, Lake Mead National Recreation area, Telephone: (702) 293–4041.

SUPPLEMENTARY INFORMATION:

Background

Boating regattas have been an accepted activity at Lake Mead since the area was established and are an appropriate use of Lakes Mead and Mohave. The July 1984 revision of 36 CFR 3.7 deleted the exemption for intense or prolonged noise during periods of regattas and requires all boats not to exceed a noise level of 82 decibels measured at 82 feet. The states of Arizona and Nevada provide for exemptions to noise and promote water regattas on the lakes and rivers within their respective jurisdictions. U.S. Coast Guard regulations provide similar exemptions. Present CFR regulations do not make an exemption and are therefore in conflict with local state laws. To impose a noise level restriction on vessels participating in regattas is inconsistent with long standing policy and puts an unnecessary burden on boaters who participate nationwide and who are then expected to meet severe noise limit standards when operating at Lake Mead National Recreation Area.

Drafting Information

The following persons participated in the writing of this regulation: C. Newton Sikes and Alsen E. Inman, Lake Mead National Recreation Area.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 USC 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that to his document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act 5 (5 U.S.C. 601 *et seq.*). The proposed

regulation will not have any significant economic effect because it serves only to make an infrequent exception to the noise level limitation imposed by 36 CFR 3.7, during authorized boating regattas. There should be no additional expenditures involved as a result.

The Service has determined that this proposed rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

a. Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

b. Introduce non-compatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

c. Conflict with adjacent ownerships or land uses; or

d. Cause a nuisance to adjacent owners or occupants. Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Department of the Interior regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter 1 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

12. Section 7.48 (f) is added to read as follows:

§7.48 Lake Mead National Recreation Area.

* * * * *

(f) The Superintendent may exempt motor vessels from the noise level limitations imposed under §3.7 of this chapter when those vessels are engaged in a regatta that has been authorized by a permit issued by the Superintendent.

Dated: November 18, 1985.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-30187 Filed 12-19-85; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA Number KS 1729; A-7-FRL-2940-4]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Purposes; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On February 28, 1985, the State of Kansas submitted a revision to the carbon monoxide (CO) plan for Wichita, Kansas. This plan revision was in response to a call for a plan revision issued under section 110(a)(2)(H) of the Clean Air Act. Included in the plan revision is a request to redesignate the Wichita CO nonattainment area to attainment. The State submitted air quality data and air quality modeling to support the area redesignation. Today's action proposes to approve the SIP revision and the redesignation request.

The purpose of today's proposed rulemaking is to solicit public comments on this proposed action.

DATES: Comments must be received no later than January 21, 1986.

ADDRESSES: Comments should be sent to the Kansas City, Kansas address below. Copies of the State submission are available during normal business hours at the following locations:

Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101

Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8964), EPA designated a portion of Wichita, Kansas, nonattainment for the primary National Ambient Air Quality Standard (NAAQS) for Carbon Monoxide (CO) as required by section 107(d) of the Clean Air Act, as amended in 1977.

Beginning in 1979, the State submitted a plan and revisions intended to comply with the requirements of Part D of the Act. The State submitted an approvable plan to attain the CO standard in Wichita on April 16, 1981. This plan projected attainment of the CO standard by December 31, 1982. There were no significant stationary CO sources in the nonattainment area; thus, the plan as approved by EPA on January 22, 1981 (47 FR 3113), contained 11 transportation control measures (TCMs), most of which have now been implemented. TCMs included plans to improve traffic flow; an improved transit system; a voluntary I/M program; traffic signal retiming to speed up traffic flow; and on-street parking restrictions.

On February 3, 1983 (48 FR 4972), EPA identified Wichita, Kansas, as a nonattainment area unlikely to attain the CO standard by December 31, 1982. This determination was based upon available CO air quality data from 1980, 1981, and 1982. Violations of the CO standard were found in each of those years.

On February 29, 1984, EPA notified the State of Kansas under the authority of section 110(a)(2)(H) of the Act, that the CO SIP for Wichita, Kansas, was substantially inadequate to attain the CO standard. EPA extended the time required under section 110(c)(1)(C) for plan revision to one year. EPA requested that the State submit a schedule for plan development within 60 days of the date of notification. The State's schedule was received by EPA on May 23, 1984.

On March 1, 1985, the State of Kansas submitted a revised CO SIP for Wichita, Kansas. The plan as submitted contained a commitment to continue the voluntary I/M program through 1986; a contingency plan for additional TCMs if additional CO violations should be found; and a request to reduce the size of the CO nonattainment area. In addition, the plan contained a contractor's report showing that the CO standard would be attained at a special purpose monitor (SPM) location by 1987 because of projected automobile emission reductions expected from the Federal Motor Vehicle Pollution Control Program and air quality data from two of three CO monitor locations showing no standard violations in 1983 and 1984. The third monitor (SPM) began operation in mid-1982. THE SPM data show no violations in 1984.

The plan submitted by the State clearly shows that at least a portion of the designated nonattainment area has eight consecutive quarters showing no violation of the standard, but only four quarters at the SPM location. The two older monitor locations are representative of a neighborhood location and a location somewhat representative of the total area. The SPM location is in an area exposed to heavier traffic volumes.

A contractor study was commissioned to determine by modeling whether the CO standard could be attained prior to 1987. The modeling used was the current state-of-the-art CO modeling—Mobile 3

BEST COPY AVAILABLE

and Caline 3 with the proper queuing considerations. The modeling examined 1984, 1985, 1986, and 1987. The model results show attainment of the CO standard in 1984 at the SPM location and continued attainment through 1986, provided that the City continues the voluntary I/M programs.

Upon reviewing the State's CO SIP revision and the subsequent contractor's study report, EPA considered whether to propose approval of the revision or simply propose to redesignate the nonattainment area to attainment for CO. If the area is indeed in attainment, then a SIP to attain the standard is not needed. Two alternative approaches were considered. First, EPA could request the State to withdraw the SIP revision and request an attainment redesignation. Second, EPA could propose to approve the SIP revision as a revision to maintain the CO standard and at the same time propose redesignation to attainment for CO. These two options were presented to the State for consideration. The State of Kansas stated a preference for the second option, because a revised SIP has been formally adopted that is expected to insure continued compliance with the air quality standard for CO. EPA agrees that this is the better option. Thus, today's action proposes to approve the Wichita CO SIP revision under section 110 of the Act and at the same time proposes to approve the State's redesignation request under section 107(d) of the Act.

Because the plan revision as submitted only requested a partial redesignation, on July 30, 1985, the State requested that EPA redesignate the entire nonattainment area to attainment for CO.

With the exception of the on-street parking restrictions, all of the Part D Plan TCMs have been completed. The last TCM completed was the traffic signal timing. That program was completed in 1984. The voluntary I/M program has become an ongoing program. EPA believes that the TCMs completed and continuing in Wichita have contributed significantly to the CO emissions reductions and have resulted in improved CO air quality.

EPA's review of the State's submittal finds that it satisfies public hearings requirements of 40 CFR 51.4 and the revisions and submittal requirements of 40 CFR 51.6.

Proposed Action

EPA proposes to approve the Wichita SIP revision as a plan to maintain the CO ambient air quality standard in the area designated nonattainment at 40 CFR 81.317. EPA proposes to redesignate the CO nonattainment area described at 40 CFR 81.317 as attainment. Final approval of the plan and redesignation depends upon a continued showing of no violations during the interim prior to final rulemaking.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air pollution control, Carbon Monoxide.

40 CFR Part 81

Air pollution control, National Parks, Wilderness Areas.

Authority: 42 U.S.C. 7401–7642.

Dated: September 27, 1985.

Morris Kay,

Regional Administrator.

[FR Doc. 85–29917 Filed 12–19–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS–42030B; FRL–2941–7]

Mesityl Oxide; Proposed Test Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, EPA is issuing a final test rule establishing testing requirements under section 4(a) of the Toxic Substances Control Act (TSCA) for manufacturers and processors of mesityl oxide (MO; CAS No. 141–97–7). In this proposed rule, EPA is proposing that certain TSCA test guidelines be utilized as the test standards for the required studies and that test data be submitted within specified time frames.

DATES: Submit written comments on or before February 3, 1986. If persons request time for oral comment by January 21, 1986, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VI of this preamble.

ADDRESS: Submit written comments, identified by the document control number (OPTS–42030B), in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. E–543, 401 M St., SW., Washington, DC 20460, Toll Free: (800–424–9065), In Washington, DC: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, EPA is issuing a final test rule under section 4(a) of TSCA to require testing of MO for chronic effects, mutagenicity, and oncogenicity (conditional on the mutagenicity test results). The Agency is now proposing the test standards to be used and the time frames for submission of the required test data.

I. Background

Elsewhere in this issue of the **Federal Register**, EPA is promulgating a Phase I final rule pursuant to TSCA section 4 that establishes testing requirements for manufacturers and processors of MO. This Phase I rule specifies the following testing requirements for MO: (1) Inhalation subchronic (90-day) toxicity; (2) mutagenicity (including tests for both gene mutations and chromosomal aberrations); and (3) oncogenicity (if certain mutagenicity test results are positive).

Once this Phase I test rule becomes effective, manufacturers and processors of MO would normally be required (under the two-phase test rule development process) to submit proposed study plans for each of these required studies and proposed schedules for both the initiation of testing and the submission of study data. (See 40 CFR 790.30, published in the **Federal Register** of May 17, 1985 (50 FR 20658).) EPA would review the submitted study plans and schedules and would thereafter issue them (with any necessary modifications) in a Phase II test rule proposal. This proposal would request public comment on the ability of the proposed study plans to ensure that the resulting data would be reliable and adequate. After evaluating and responding to public comment, EPA would adopt the study plans, including the reporting schedules, in a Phase II

final rule as the required test standards and data submission deadlines. (See 40 CFR 790.32, published in the **Federal Register** of May 17, 1985 (50 FR 20659).)

However, in the case of the MO test rule, which was initiated under the two-phase process, EPA has decided to propose the relevant TSCA test guidelines as the test standards (see Unit III below). In addition, EPA is proposing that the data from the required studies be submitted within certain time periods. These time periods will serve as the data submission deadlines required by TSCA section 4(b)(1) (see Unit IV below). The reasons for this change in the test rule development process for mesityl oxide are discussed below.

II. Change in the Test Rule Development Process

A. Test Standards and Data Submission Deadlines

TSCA section 4(b)(1) specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under a two-phase test rule development process utilized by EPA since 1982 (47 FR 13012; March 26, 1982) and formally adopted in the fall of 1984 (49 FR 39774; October 10, 1984), test standards and data submission deadlines were to be adopted during the second phase of the rulemaking process. Upon issuance of the Phase I final rule, which established the effects and characteristics for which a given chemical substance must be tested, persons subject to the rule would be required by a specified date to submit proposed study plans detailing the methodologies and protocols they intended to use to perform the required tests. Such study plans were to include proposed schedules for the initiation and completion of testing and submission of test data. (See 40 CFR 790.30 (a) and (c); published in the **Federal Register** of October 10, 1984 (49 FR 39774).) In the second phase, after consideration of public comment, the Agency would promulgate the Phase II final rule adopting the study plans (with any necessary modifications) as the test standards for the development of test data and deadlines for the submission of test data

In December 1983, the Natural Resources Defense Council and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations filed an action under TSCA section 20 which challenged, among other things, the use of the two-phase process. In an August 23, 1984 Opinion and Order, the Court found that utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgating test rules within a reasonable time frame. *NRDC* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984).

After issuing that Opinion, the Agency decided that to expedite development of section 4 test rules, it would utilize a single-phase rulemaking process for most test rules. In the document announcing this decision, EPA stated that the single-phase approach offers a number of advantages over the two-phase process (see 50 FR 20652, 20653; May 17, 1985). In this single-phase approach, the Agency proposes (in one document) not only the effects for which testing will be required but also proposes pertinent TSCA or other appropriate guidelines as the test standards and time frames for the submission of test data. After receiving and evaluating public comment on the proposed testing requirements, test guidelines, and data submission deadlines, EPA promulgates a final test rule.

This single-phase approach shortens the rulemaking period and expedites the initiation of required testing that would usually result from use of the two-phase rulemaking process. The single-phase process also eliminates the requirement under the two-phase approach for industry to submit proposed test protocols for approval. Moreover, by allowing commenters to submit alternative testing methodologies during the comment period, the single-phase approach preserves the flexibility of the two-phase process.

These same advantages, i.e., expedited initiation of testing and the elimination of proposed study plan submission requirements for persons subject to a Phase I rule, are factors considered by EPA in deciding to modify the rulemaking process for mesityl oxide. By proposing both pertinent TSCA test guidelines as the test standards and data submission deadlines at the time of issuance of the Phase I rule, EPA expects that the Phase II final rule will be issued 6 months sooner than would occur if the usual two-phase process was followed. Thus, required testing will be initiated on a more expedited basis. In addition, for each of the required tests for mesityl oxide, appropriate TSCA test guidelines are available (see Unit III below). Thus, EPA believes that there is no need for manufacturers and processors of MO to develop study plans for approval independent of these TSCA guidelines.

B. Modifications to Requirements Under a Phase I Final Rule for Mesityl Oxide

As indicated above, persons subject to the mesityl oxide Phase I final rule and who have notified EPA of their intent to test would normally be required to submit proposed study plans and proposed data submission deadlines within a specified time of the final rule's effective date (see 40 CFR 790.30 (a) and (c), published in the **Federal Register** of May 17, 1985 (50 FR 20658)). However, because EPA is proposing certain TSCA guidelines as the test standards and data submission deadlines, persons subject to the Phase I final rule are not required to submit proposed study plans for the required testing or proposed dates for the initiation and completion of that testing.

However, persons subject to the Phase I final rule for mesityl oxide are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.25, published in the **Federal Register** of May 17, 1985 (50 FR 20657). Moreover, once the test standards are promulgated in the Phase II final rule, those persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 30 days before the initiation of each required test.

III. Proposed Test Standards

The Phase I rule specifies that MO be tested for inhalation subchronic toxicity, mutagenicity (including tests for both gene mutations and chromosomal aberrations, and oncogenicity (if certain tests predictive for oncogenicity are positive). The Agency is now proposing that this testing of MO be conducted using the following TSCA test guidelines (new parts 796, 797, 798 of 40 CFR were published in the **Federal Register** of September 27, 1985 (50 FR 39252)) as the test standards:

1. *Subchronic Exposure:* Inhalation Toxicity which appears at 40 CFR 798.2450.

2. *Mutagenicity:* Chromosomal Effects.

i. First Tier:

a. *In Vitro:* Mammalian Cytogenetics which appears at 40 CFR 798.5375.

b. *In Vivo:* Mammalian Bone Marrow Cytogenetics Tests: Chromosomal Analysis which appears at 40 CFR 798.5385.

ii. Second Tier:

Rodent Dominant Lethal Assay which appears at 40 CFR 798.5450.

iii. Third Tier: Rodent Heritable Translocation Assay which appears at 40 CFR 798.5460.

3. *Mutagenicity:* Gene Mutations

i. First Tier; *Salmonella typhimurium* which appears at 40 CFR 798.5265.

Somatic Cells in Culture which appears at 40 CFR 798.5300.

ii. Second Tier: Sex Linked Recessive Lethal Test which appears at 40 CFR 798.5275.

iii. Third Tier: Mouse Specific Locus Test which appears at 40 CFR 798.5200.

4. *Chronic Exposure.* Oncogenicity which appears at 40 CFR 798.3300.

EPA believes that the TSCA Health Effects Test Guidelines cited above, if properly followed, should produce adequate and reliable data. These guidelines describe methods for performing testing of chemical substances under TSCA. The methods include the state-of-the-art for evaluating the effects of chemical substances. EPA reviews its TSCA test guidelines annually (see 47 FR 41857; Sept. 22, 1982).

EPA intends to propose shortly in a separate **Federal Register** notice, certain revisions to these TSCA Test Guidelines to provide more explicit guidance on the necessary minimum elements for each study. In addition, these revisions will avoid repetitive chemical-by-chemical changes to the guidelines in their adoption as test standards for chemical-specific test rules. EPA is proposing that these modifications be adopted in the test standards for MO.

The Agency believes the TSCA subchronic guideline will provide detailed information on toxic effects and target organs, and establish both a no-observed-effect level and appropriate levels for lifetime studies. EPA also uses the data from subchronic studies to predict potential chronic effects. The clinical testing which is required in subchronic studies is more extensive than that normally required in chronic studies. These data will be used in understanding the development of any toxic effects resulting from mesityl oxide exposure.

The Agency is requiring that the subchronic study be conducted by the inhalation route (the major route of human exposure to MO) in the rat. If a second species is chosen for testing it should be the mouse, since the rat and the mouse are the species of choice for oncology studies. Oncology testing for MO will be automatically triggered if select first and second tier mutagenicity test results are positive. The reader is directed to the final rule for MO appearing elsewhere in this issue of the **Federal Register** for a detailed explanation of EPA's tiered testing approach that automatically triggers both end-point mutagenicity tests and oncology testing. This test standard is proposed under 40 CFR 798.2450.

The Agency believes that the TSCA test guidelines for mutagenicity testing will provide adequate data to assess the potential human hazard resulting from exposure to MO due to interactions of the chemical with genetic material resulting in heritable change (mutation). The Agency is proposing the TSCA guidelines listed above as test standards. The changes made in the guidelines and the justification for these changes are set forth below.

1. *Salmonella typhimurium reverse mutation assay.* The direct plate incorporation method was selected as the choice assay for MO. Strains TA 1535, TA 1537, TA 98 and TA 100 were chosen because they have the largest data base of chemicals tested in this assay. Aroclor 1254 induced rat liver was chosen as the source of metabolic activation because it is the preferred source of activation for this assay, and because of its large historic data base. Both untreated and vehicle controls should be run to ensure that the solvent has no effect upon spontaneous reversion rate. DMSO is the routine solvent of choice for this assay. MO is to be tested over at least five doses up to a maximum of 5 mg/plate (in the absence of toxicity) to ensure an adequate range of test doses for detection of potential activity.

2. *Detection of gene mutation in somatic cells in culture.* L5178Y mouse lymphoma cells were chosen for use in this assay because of the activity of MO's structural analogue, isophorone, in this system. Both untreated and vehicle controls are to be used to ensure that the vehicle has no effect upon cell growth, survival or spontaneous mutation rate. Aroclor 1254 induced rat liver S-9 is the chosen source of metabolic activation because of its historical data base and generally accepted use in this assay. DMSO is the solvent of choice for this system. A 4-hour exposure time was chosen because it is the standard exposure period recommended for this test.

3. *Sex-linked recessive lethal test in Drosophila Melanogaster.* A negative control is to be included regardless of the size of the historical control because the assay is too important to be done without one. This will ensure that any observed effects are the result of chemical treatment and not environmental factors. Exposure is by vapors because it is the route of human exposure.

4. *The mouse visible specific locus test.* EPA is proposing that this assay be done at 2 doses by the inhalation route. EPA believes that dose-response data are essential for risk estimation. The route of administration is by inhalation because that is the expected route of human exposure. The mouse is the test animal of choice. Strains $(C_3H \times 101)F_1$ or $(101 \times C_3H)F_1$ hybrids are chosen because of the historical data base available for these strains.

IV. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) standards which appear at 40 CFR Part 792.

Test sponsors are required to submit individual study plans at least 30 days prior to the initiation of each study.

EPA is required by section 4(b)(1)(c) of TSCA to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing specific reporting requirements for each of the proposed test standards as follows:

The subchronic toxicity tests shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final test rule. Interim progress reports shall be provided quarterly.

The mutagenicity studies shall be completed and the final results submitted to the Agency as follows:

First tier gene mutation and chromosomal aberration tests within 1 year.

Second tier gene mutation and chromosomal aberration tests within 2 years.

Third tier gene mutation within 4 years. Interim quarterly reports shall be provided for all tests.

The oncogenicity tests, to be triggered if certain tier I or II mutagenicity tests are positive, shall be completed and the final results submitted to the Agency 53 months after submission of the positive mutagenicity test results. Interim progress reports shall be provided quarterly.

As required by TSCA section 4(d), the Agency plans to publish in the **Federal Register** a notice of the receipt of any test data submitted under this test rule within 15 days of receipt of that data. Except as otherwise provided in TSCA section 14, such data will be made available for examination by any persons.

V. Issues for Comment

EPA invites comment on the use of the TSCA test guidelines and the chemical specific modifications to these guidelines as the proposed test standards for the required testing of mesityl oxide. EPA also invites comment on the proposed schedule for the required testing.

VI. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800–424–9065); In Washington, DC: (544–1404); Outside the U.S.A. (Operator—202–554–1404), by (January 21, 1986. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency would transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VII. Public Record

EPA has established a record for this rulemaking [Docket number (OPTS–42030B)]. This record includes basic information considered by the Agency in developing this proposal and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this final rule consisting of:

(a) Notice containing the ITC designation of mesityl oxide to the Priority List (44 FR 31884; June 1, 1979).

(b) Notice of final rule requiring the submission of unpublished health and safety studies (47 FR 38780; September 2, 1982).

(c) Notice of proposed test rule for mesityl oxide (48 FR 30699; July 5, 1983).

(d) Notice adding mesityl oxide to the list of chemicals subject to the preliminary assessment information rule (49 FR 25859; June 25, 1984).

(e) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (48 FR 53922; November 29, 1983).

(f) Notice of final rule on test rule development and exemption procedures (49 FR 39774; October 10, 1984).

(g) Notice of final rule concerning data reimbursement (48 FR 41788; July 11, 1983).

(h) Notice of interim final rule on test rule development and exemption procedures (50 FR 20652; May 17, 1985).

(i) Notice of final rule on the C_9 Aromatic Hydrocarbon Fraction (50 FR 20662; May 17, 1985).

(j) Final Phase I rule on mesityl oxide.

(2) Support documents consisting of:

(a) Mesityl oxide technical support document for proposed rule.

(b) Economic impact analysis of NPRM for mesityl oxide.

(c) Economic impact analysis of final test rule for mesityl oxide.

(3) Communications consisting of:

(a) Written public comments.

(b) Transcription of public meeting.

(c) Summaries of phone conversations.

(d) Meeting summaries.

(4) Reports—published and unpublished contractor's reports.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E–107, 401 M St., SW., Washington, DC 20460.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of mesityl oxide is discussed in the final test rule which appears elsewhere in this issue of the **Federal Register**.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

(1) There are no small manufacturers of this chemical.

(2) Small processors are not expected to perform testing themselves, or participate in the organization of the testing effort.

(3) Small processors will experience only very minor costs, if any, in securing exemption from testing requirements.

(4) Small processors are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention. Desk Officer for EPA." The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals.

Dated: December 13, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, it is proposed that Part 799 be amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. In § 799.2500 by adding paragraphs (c)(1)(ii) and (iii), (2)(ii) and (iii), (3)(ii) and (iii), and (4)(ii) and (iii) to read as follows:

§ 799.2500 Mesityl oxide (MO)

* * * * *

(c) * * *

(1) * * *

* * * * * *

(ii) *Test standard.* (A) Inhalation subchronic toxicity testing shall be conducted with MO in accordance with § 798.2450 of this chapter and modifications specified in paragraph (c)(1)(ii)(B) of this section.

(B) *Test standard modifications.* The requirement under § 798.2450 of this chapter is modified so that the rat is the required species.

(iii) *Reporting requirements.* (A) The subchronic testing shall be completed and the final results submitted to the Agency within 15 months of the effective date of the final test rule.

(B) Interim progress reports shall be provided quarterly beginning 90 days

after the effective date of the final Phase 2 test rule.

(2) * * *

* * * * *

(ii) *Test standard.* (A)(*1*) The *in vitro* mammalian cytogenetic test shall be conducted with MO in accordance with § 798.5375 of this chapter and modifications specified in paragraph (c)(2)(ii)(A)(*2*) of this section.

(*2*) Test standard modifications. The following modifications to § 798.5375 of this chapter are required.

(*i*) The requirement under § 798.5375 of this chapter is modified so that MO shall be tested in established cell lines. The cell line or strain used shall be checked for *Mycoplasma* contamination and for karyotype stability.

(*ii*) The requirement under § 798.5375 of this chapter is modified so that MO shall be dissolved in DMSO prior to treatment of the cells.

(*iii*) The requirement under § 798.5375 of this chapter is modified so that at least 3 concentrations of the test substance over a range adequate to define the response shall be tested. The highest test concentration tested with and without metabolic activation shall be 5 mg/ml or that dose which shows evidence of cytotoxicity or reduced mitotic activity.

(B)(1) The *in vivo* mammalian bone marrow cytogenetics test: Chromosomal analysis shall be conducted with MO in accordance with § 798.5385 of this chapter and modifications specified in paragraph (c)(2)(ii)(B)(*2*) of this section.

(*2*) Test standard modifications. The following modifications to § 798.5385 of this chapter are required.

(*i*) The requirement under § 798.5385 of this chapter is modified so that the mouse is the required species.

(*ii*) The requirement under § 798.5385 of this chapter is modified so that three dose levels shall be used. The highest dose tested shall be the maximum tolerated dose or that producing some indication of cytotoxicity (e.g., partial inhibition of mitosis), or shall be the highest dose attainable.

(*iii*) The requirement under § 798.5385 of this chapter shall be modified so that the animals shall be exposed by inhalation for 6 hours/day for 5 consecutive days.

(C)(*1*) The rodent dominant lethal assay shall be conducted with MO in accordance with § 798.5450 of this chapter and modifications specified in paragraph (c)(2)(ii)(C)(*2*) of this section.

(*2*) Test standard modifications. The following modifications to § 798.5450 of this chapter are required.

(*i*) The requirement under § 798.5450 of this chapter is modified so that the mouse is the required species.

(*ii*) The requirement under § 798.5450 of this chapter is modified so that exposure shall be by inhalation for 5 days for 6 hours/day. Three dose levels shall be used. The highest dose shall produce signs of toxicity (e.g., slightly reduced fertility) or shall be the highest attainable.

(D)(*1*) The rodent heritable translocation test shall be conducted with MO in accordance with § 798.5460 of this chapter and modifications specified in paragraph (c)(2)(ii)(D)(*2*) of this section.

(*2*) Test standard modifications. The following modifications to § 798.5460 of this chapter are required.

(*i*) The requirement under § 798.5460 of this chapter is modified so that the mouse is the required species.

(*ii*) The requirement under § 798.5460 of this chapter is modified so that at least two dose levels shall be used. The highest dose shall result in toxic effects (which shall not produce an incidence of fatalities which would prevent a meaningful evaluation), or shall be the highest dose attainable.

(*iii*) The requirement under § 798.5460 of this chapter is modified so that animals shall be exposed by inhalation.

(iii) *Reporting requirements.* (A) The chromosomal aberration tests shall be completed and the final results submitted to the Agency as follows:

(*1*) The *in vitro* and *in vivo* (if required) tests within 1 year of the effective date of the final test rule.

(*2*) The dominant lethal assay (if required) within 2 years of the final test rule.

(*3*) The heritable translocation assay (if required) within 4 years of the final test rule.

(B) Interim progress reports shall be provided quarterly and beginning 90 days after the effective date of the final Phase 2 test rule.

(3) * * *

* * * * *

(ii) *Test standard.* (A)(*1*) The *Salmonella typhimurium* mammalian microsomal reverse mutation assay (Ames assay) shall be conducted with MO in accordance with § 798.5265 of this chapter and modifications specified in paragraph (c)(3)(ii)(A)(*2*) of this section.

(*2*) Test standard modifications. The following modifications to § 798.5265 of this chapter are required.

(*i*) The requirement under § 798.5265 of this chapter is modified so that the direct plate incorporation method shall be used for this study.

(*ii*) The requirement under § 798.5265 of this chapter is modified so that strain-specific positive controls shall be included in the assay. The following controls are examples of those which may be used in the assay without metabolic activation: Strain TA 1535, sodium azide; strain TA 100, nitrofurantoin; TA 98, and TA 1537, 4-nitro-*o*-phenylenediamine.

(*iii*) The requirement under § 798.5265 of this chapter is modified so that test chemical and positive control reference substances shall be dissolved in DMSO and then further diluted in DMSO for use in the assay.

(*iv*) The requirement under § 798.5265 of this chapter is modified so that MO shall be tested up to 5 mg/plate or to the limits of solubility or toxicity. A suspected positive response not showing a clear-related response shall be confirmed by testing over a narrow range of concentrations.

(B)(*1*) The detection of gene mutations in somatic cells in culture shall be conducted with MO in accordance with § 798.5300 of this chapter and modifications specified in paragraph (c)(3)(ii)(B)(*2*) of this section.

(*2*) Test standard modifications. The following modifications to § 798.5300 of this chapter are required.

(*i*) The requirement under § 798.5300 of this chapter is modified so that MO shall be tested in LK5178K mouse lymphoma cells.

(*ii*) The requirement under § 798.5300 of this chapter is modified so that MO shall be dissolved in DMSO prior to treatment of the cells. The final concentration of the vehicle shall not interfere with cell viability or growth rate.

(*iii*) The requirement under § 798.5300 of this chapter is modified so that the metabolic activation system shall be derived from the postmitochondrial fraction (S–9) of livers from rats pretreated with Aroclor 1254.

(*iv*) The requirement under § 798.5300 of this chapter is modified so that exposure shall be for 4 hours unless a different exposure time is justified by the investigator.

(C)(*1*) The sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with MO in accordance with § 798.5275 of this chapter and modifications specified in paragraph (c)(3)(ii)(C)(*2*) of this section.

(*2*) Test standard modifications. The requirement under § 798.5275 of this chapter is modified so that exposure shall be by exposure to MO vapors.

(D)(*1*) The mouse visible specific locus test shall be conducted with MO in accordance with § 798.5200 of this chapter and modifications specified in paragraph (c)(3)(ii)(D)(*2*) of this section.

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(2) Test standard modifications. The following modifications to § 798.5200 of this chapter are required.

(*i*) The requirement under § 798.5200 of this chapter is modified so that mice shall be used as the test species.

(*ii*) The requirement under § 798.5200 of this chapter is modified so that a minimum of two dose levels shall be tested.

(*iii*) The requirement under § 798.5200 of this chapter is modified so that animals shall be exposed to the test substance by inhalation. Exposure shall be for 6 hours a day. Duration of exposure shall be dependent upon accumulated total dose desired for each group.

(iii) *Reporting requirements.* (A) The gene mutation tests shall be completed and final results submitted to the Agency as follows:

(*1*) The *Salmonella typhimurium* mammalian microsomal reverse mutation assay and the gene mutation in somatic cells assay (if required) within 1 years of the effective date of the final test rule.

(*2*) The sex-linked recessive-lethal test in *Drosophila melanogaster* (if required) within 2 years of the effective date of the final test rule.

(*3*) The mouse specific-locus test (if required) within 4 years of the effective date of the final test rule.

(B) Interim progress reports shall be provided quarterly and beginning 90 days after the effective date of the final Phase 2 test rule.

(4) * * *

* * * * * *

(ii) *Test standard.* (A)(*1*) An oncogenicity bioassay shall be conducted by inhalation with MO in accordance with § 798.3300 of this chapter and modifications specified in paragraph (c)(4)(ii)(A)(*2*) of this section.

(*2*) Test standard modifications. The following modifications to § 798.3300 of this chapter are required.

(*i*) The requirement under § 798.3300 of this chapter is modified so that MO shall be tested in both rats and mice.

(*ii*) The requirement under § 798.3300 of this chapter is modified so that the animals shall be exposed to MO by the inhalation route for at least 6 hours per day on a 5-day per week basis.

(iii) *Reporting requirements.* (A) The oncogenicity tests shall be completed and final results submitted to the Agency 53 months after submission of the positive mutagenicity test results set forth in paragraphs (c)(2)(i) and (3)(i) of this section.

(B) Interim progress reports shall be provided quarterly and beginning 90 days after the submission of the study plan for this test.

(Approved by the Office of Management and Budget under control number 2070–0033.)

[FR Doc. 85–30173 Filed 12–19–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 85–348]

GTE Sprint Communications Corp. et al.; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On December 10, 1985, the Commission published a Notice of Proposed Rule Making in this proceeding concerning GTE Sprint Communications Corporation, et al (50 FR 50316). In that document, the deadline for filing reply comments was referred to as being January 21, 1986. This document corrects that date to read: January 27, 1986.

DATE: The deadline for filing reply comments in this proceeding is January 27, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Kirsch, Common Carrier Bureau, (202) 632–6363.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–30015 Filed 12–19–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 68

[CC Docket No. 81–216; RM–2845; et al.; CC Docket No. 84–490; RM–4458; FCC 85–591]

Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network; etc.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is requesting comments in CC Docket 81–216 on the potential need for Part 68 standards for computer-controlled automatic dialing equipment. Part 68 of the Commission's rules sets forth the terms, conditions and technical standards for registration and connection to the telephone network of customer-provided telephone equipment. The Commission is asking for comments as to whether and how redialing controls can or should be imposed upon the manufacturers, distributors or users of modems and/or computers to prevent potential network harm such as excessive congestion potentially caused by computer controlled automatic dialing equipment. The Commission emphasizes that the focus of the inquiry on this issue will be limited to the minimum Part 68 standards necessary, if any, to prevent potential network harms.

DATES: Comments are due February 1, 1986 and replies March 1, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554 (202) 634–1832.

SUPPLEMENTARY INFORMATION:

Fourth Notice of Proposed Rulemaking

In the Matter of Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network; Notice of Inquiry into Standards for Inclusion of One and Two-Line Business and Residential Premises Wiring and Party Line Service in Part 68 of the Commission's Rules; CC Docket No. 81–216, RM–2845, RM–2930, RM–3195, RM–3206, RM–3227, RM–3283, RM–3316, RM–3329, RM–3348, RM–3501, RM–3526, RM–3530, RM–4054; and Petition to Amend Part 68 of the Commission's Rules to Permit Registration of Terminal Equipment for Connection to Voiceband Private Line Channels that Utilize Loop Start, Ringdown or Inband Signaling and Voiceband Metallic Private Line Channels; CC Docket No. 84–490, RM–4458.

Adopted October 30, 1985.

Released November 4, 1985.

By the Commission.

1. Part 68 of the Commission's rules, 47 CFR Part 68, sets forth the terms and conditions for registration and connection of customer-provided terminal equipment to the telephone network. In a report and order in the above-captioned proceeding adopted by the Commission this same date, the Commission has made diverse modifications, deletions and additions to Part 68.[1] *Petitions Seeking*

[1] The above-captioned proceeding was initiated by *Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network; Notice of Inquiry into Standards for Inclusion of One and Two-Line Business and Residential Wiring and Party Line Service in Part 68 of the Commission's Rules (First Notice)*, CC Docket 81–216, 85 F.C.C.2d 868 (1981).

Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network; Notice of Inquiry into Standards for Inclusion of One and Two-Line Business and Residential Wiring and Party Line Service in Part 68 of the Commission's Rules (First Notice), CC Docket 81–216, FCC 85–580, adopted October 30, 1985. These modifications to Part 68 include, *inter alia*, limitations on automatic dialing terminal equipment. Specifically, a new § 68.318(c) requires as a condition of registration that automatic dialing equipment terminate calls to a particular number after fifteen successive attempts. This limitation is intended to prevent potential network congestion at telephone company central offices, particularly during the peak network usage periods, caused by the proliferation of telephone devices incorporating circuitry that permits automatic redialing of telephone numbers. Devices such as alarm dialers, repertory dialers, computerized polling machines, and telephones capable of automatic number repetition could severely limit availability of customer trunks, causing delays in customers' access to the telephone network, *i.e.*, difficulty "getting dial tone." These delays occur when large numbers of calls are placed in a short period of time, such as in response to radio station contests, or during local emergency conditions, *e.g.*, power failures.

2. However, as indicated by the Commission, one issue has not been adequately explored in the record of this proceeding concerning automatic dialing, *i.e.*, potential network harms such as those enumerated above caused by computer assisted modems employed as automatic dialers. *Id.* para. 41. New § 68.318(c) will apply without question to terminal equipment such as alarm dialers, repertory dialers, computerized polling and telemarketing machines, and automatic redialing telephone instruments. Similarly, if a modem with automatic dialing capabilities itself detertmines when and how often a redial is to be performed, it is relatively simple to impose registration standards on how often such action may be done. However, as explained by the Commission in its concurrent report and order in this proceeding, many such devices used with personal or other computers do not themselves make this determination; rather the determination may be made by the computer itself. Imposition of redialing limitations through the registration process seemingly would necessitate redesign of the modem (so that it could limit the redialing capability) or a requirement for some form of control over the hardware, software or firmware resident in (or utilized with) the computer itself. With the increasing numbers of personal computers used with modems, the redialing and potential attendant network harm warrants further consideration of this matter. Accordingly, further comments are hereby solicited as to whether and how redialing controls can or should be imposed upon the manufacturers, distributors or users of modems and/or computers to prevent the kind of harm associated with repertory dialing. We emphasize that the focus of the Commission's inquiry on this issue will be limited to the minimum Part 68 standards necessary, if any, to prevent potential network harms. The Commission will not readdress the broader policy issues discussed in *In The Matter of Unsolicited Telephone Calls*, CC Docket 78–100, 77 F.C.C.2d 1023 (1980). Comments should provide proposed language for necessary Part 68 rule amendments. Comments will be due no later than February 1, 1986, and replies no later than March 1, 1986. We will then adopt a further order in this docket resolving Part 68 issues concerning the automatic dialing capabilities of modems and computer assisted modems.

Regulatory Flexibility Act Initial Analysis

3. The reason for the Commission issuing this notice of proposed rulemaking is the potential need to create Part 68 limitations on modems and other computer assisted automatic dialing equipment terminal equipment. The objective of this notice of proposed rulemaking is to seek public comment on, provide notice of, and ascertain the need for, Part 68 limitations on computer assisted automatic dialing equipment. The legal basis for the action proposed is Section 1 of the Communications Act of 1934, as amended. The description, potential impact and number of small entities affected is that Part 68 limitations on computer assisted automatic dialing equipment would require small entities manufacturing or employing such equipment to comply with the standards, if any, adopted by the Commission. It is impossible to estimate the number of such entities affected as such standards will be applicable only to those entities voluntarily choosing to register or employ such equipment. Additional paperwork and record keeping would be required by the Commission's adoption of Part 68 limitations on computer assisted automatic dialing equipment for those entities registering such equipment in that they would have to demonstrate compliance with Part 68 standards in their Part 68 registration application. There are no federal rules which overlap, duplicate or conflict with the Commission's proposed action. There are no significant alternatives minimizing impact on small entities and consistent with the Commission's stated objective above. Written comments are requested on this initial regulatory flexibility act analysis. These comments must be filed in accordance with the same filing deadline set for comments on the other issues in this notice of proposed rulemaking, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility act analysis.

4. Accordingly, pursuant to 47 U.S.C. 151 154(i), 154(j), 201–205, 218, 220, 313, 403, 412, and 5 U.S.C. 553, that Part 68 of the Commission's Rules and Regulations, 47 CFR 68.1, *et seq.*, notice is herby provided of proposed rule changes in Part 68 of the Commission's rules, 47 CFR Part 68, in accordance with the discussion and delineation of issues herein.

5. It is further ordered, that the Secretary shall cause a copy of this document to be printed in the **Federal Register** and shall send a copy to the Counsel of Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* (1980).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–30009 Filed 12–19–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Bruneau Hot Spring Snail (Family Hydrobiidae)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that a public hearing will be held on the proposed determination of endangered status for the Bruneau hot spring snail and that the comment period on this proposal is reopened. This species occurs only in two small hot springs and their immediate outflows in Owyhee County, Idaho. The major threat to this species is the drastic and continuing reduction in spring flows. The hearing and the reopening of comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The comment period on the proposal is reopened December 20, 1985. The public hearing will be held at 7:30 p.m., on Wednesday, January 15, 1986, in Bruneau, Idaho. The comment period, which originally closed on October 21, 1985, now closes February 1, 1986.

ADDRESSES: The public hearing will be held at the Rimrock Junior-Senior High School on State Highway 78 between Bruneau and Grand View, Bruneau, Idaho. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah St., Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr Jay Gore, Division of Endangered Species, U.S. Fish and Wildlife, 4696 Overland Road, Room 576, Boise, Idaho 83705 (503/334–1806 or FTS 554–1806).

Background

The first collections of this species were made in 1952 and 1953. Dr. Dwight W Taylor of Tiburon, California, has studied the anatomy of the species and determined that it represents a previously unknown genus and species of the snail family Hydrobiidae. The adults of this species reach only about 5 millimeters in length of the shell. The species occurs in only two small thermal springs or seep areas and their immediate outflows. The snails have been found in these habitats on rocks, gravel, mud, and algal film. The springs and proximal outflows, which constitute the most important habitat, are on land administered by the Bureau of Land Management (BLM). Downstream habitat is on private land.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. The Service held a public hearing on December 10, 1985 in Boise, Idaho. Based on statements given that not all interested parties could reach this location, another hearing has been organized. The Service has scheduled this hearing for January 15, 1986 at 7:30 at the Rimrock Junior-Senior High School on State Highway 78 between Bruneau and Grand View, Bruneau, Idaho. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment period on the proposal originally closed on October 21, 1985. In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted for this proposal until February 1, 1986, to the Service office in the Addresses section.

Author

The primary author of this notice is Ms. Carolyn Bohan, U.S. Fish and Wildlife Service, 500 N.E. Multnomah St., Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: December 16, 1985.

Joseph R. Blum,

Acting Regional Director.

[FR Doc. 85–29760 Filed 12–19–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 245
Friday, December 20, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Advisory Committee on Ocean and Atmosphere; Meeting

December 17, 1985.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby give that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting Monday and Tuesday, January 6–7, 1986. The meeting will be held at 2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B–100, Washington, DC. The meeting will commence at 9:00 a.m. and end at 4:30 p.m. on Monday and commence at 9:00 a.m. and end at 3:30 p.m. on Tuesday.

The Committee, consisting of 18 non-Fedeal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Pub. L. 95–63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Monday, January 6, 1986

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B–100, Washington, DC
9:00 a.m.–12:00 Noon Plenary
9:00 a.m.–9:15 a.m. Announcements
9:15 a.m.–9:30 a.m. Swering-In Ceremony: J. Curtis Mack II, Deputy Administrator, Natiaonal Oceanic and Atmospheric Administration
9:30 a.m.–11:30 a.m. Guest Speakers: Alad D. Hecht, Director, National Climate Program, Topic: The National Climate Program
10:30 a.m.–11:30 a.m. Charles L. Hosler, Jr. Chairman, Board on Atmospheric Sciences and Climate, National Reserach Council, Topic: Atmospheric Science Issues
1130 a.m.–12:30 p.m. Committee Discussion, NOAA Roles and Missions Study
12:30 p.m.–1:30 p.m. Lunch
1:30 p.m.–4:30 p.m. Panel meetings
Panel 1: Roles and Missions of the National Ocean Service/National Marine Fisheries Service, Room B–100, Topic: Panel Work Session, Speakers: TBA
Panel 3: Roles and Missions of the National Environmental Satellite, Data, and Information Service/ Office of Oceanic and Atmospheric Reserach, Room 416, Topic: Panel Work Session, Speakers: None
4:30 p.m. Recess

Tuesday, January 7, 1986

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 and B–100, Washington, DC
9:00 a.m.–12:00 Noon Panel Meetings
Panel 2: Roles and Missions of the National Weather Service/National Climate Program, Room B–100, Topic: Panel Work Session, Speakers: None
Exclusive Economic Zone, Chairman: Lee C. Gerhard, Room 416, Topic: Panell Work Session, Speakers: None
12:00 Noon–1:00 p.m. Lunch
1:00 p.m.–3:30 p.m. Plenary
Old Business: Acid Rain Position Statement; Panel Reports; New Business Calendar; New Committee Topics
3:30 p.m. Adjourn

The public is welcome at the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings may be obtained through the Committee's Acting Executive Director, Amor L. Lane, whose mailing address is: National Advisory Committee on Oceans and Atmosphere 3300 Whitehaven Street, NW., Page Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653–7818.

Date: December 17, 1985.

Amor L. Lane,

Acting Executive Director.

[FR Doc. 85–30164 Filed 12–19–85; 8:45 am]
BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Cotton Textile Products, Produced or Manufactured in Portugal

December 16, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 20, 1985. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

On July 11, 1985, a notice was published in the **Federal Register** (50 FR 28243) which announced that, on June 26, 1985, the Government of the United States had requested the Government of Portugal to enter into consultations concerning exports to the United States of women's, girls' and infants' cotton knitshirts in Category 339, produced or manufactured in Portugal and exported during the twelve-month period which began on June 26, 1985 and extends through June 25, 1986. Inasmuch as no solution has been reached in consultations on a mutually satisfactory limit for this category, the United States

Government has decided to control imports in Category 339, exported during the twelve-month period which began on June 26, 1985 at a level of 257,853 dozen. The level has not been adjusted to reflect any imports exported after June 25, 1985. Imports from July 1, 1985 through October 31, 1985 amounted to 39,040 dozen. As the data become available, further charges will be made.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Portugal, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 20, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 339, produced or manufactured in Portugal and exported during the twelve-month period beginning on June 26, 1985 and extending through June 25, 1986, in excess of 257,853 dozen.[1]

Textile products in Category 339 which have been exported to the United States prior to June 26, 1985 shall not be subject to this directive.

Textile products in Category 339 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30112 Filed 12-19-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The level has not been adjusted to reflect any imports exported after June 25, 1985. Imports from July 1, 1985 through October 31, 1985 amounted to 39,040 dozen.

COMMODITY FUTURES TRADING COMMISSION

MidAmerica Commodity Exchange; Proposed Amendments Relating to Copper Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: Notice of proposed contract market rule changes.

SUMMARY: The MidAmerica Commodity Exchange ("MCE" or "Exchange") has submitted a proposal to amend its copper futures contract. The principal amendments would delete certain currently deliverable grades of copper and allow delivery only of high grade copper cathodes; revise the current list of Exchange-approved warehouses at U.S. delivery points and add warehouses located in Europe; and increase the contract size. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission "(Commission") has determined that this proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before January 21, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the proposed amendments to the MCE rules in Chapter 28 regarding the copper futures contract.

FOR FURTHER INFORMATION CONTACT: Nancy McCabe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The most significant proposed amendments are as follows:

1. The MCE is proposing to amend its copper contract to provide that the only deliverable grade of copper will be high grade copper cathodes. To accomplish this, the official list of MCE-approved copper brands would be amended to specify only those brands which are currently approved for delivery on the high grade copper cathode contract of the London Metal Exchange ("LME"). The amended list would include 43 brands—24 brands of copper which are currently approved for MCE delivery as Grade 1 cathode and 19 new brands of high grade cathode not currently deliverable. The proposed amendments to the list of MCE-approved brands would delete 15 currently approved brands of Grade 1 cathode (those which are not approved for the LME contract) as well as all currently deliverable brands of Grade 2 electrolytic cathode, electrolytic wire bars and ingot bars, fire refined high conductivity copper ingot bars and other fire refined copper ingot bars.

2. A proposed amendment to the list of Exchange-approved warehouses and delivery points will allow delivery of copper at 10 warehouses located at 7 U.S. delivery points and 28 warehouses located at 5 European delivery points. The existing list includes 30 Exchange-approved warehouses located at 16 U.S. delivery points.

3. The MCE is proposing to increase the contract size of 55,000 pounds, plus or minus 2.2 percent. The current contract size is 12,500 pounds, plus or minus 2 percent.

4. The Exchange is proposing to reduce the speculative position limits for all months combined to 1,500 from 6,000 contracts and to reduce the spot month limit to 1,250 from 5,000 contracts.

5. The Exchange is proposing to increase the minimum price fluctuation to $0.0005 per pound from $0.0001 per pound.

6. Finally, the Exchange is proposing several changes in the delivery procedure to facilitate foreign delivery and changes in the list of Exchange-approved assayers and weighmasters.

The MCE submits that the proposed amendments to its copper futures contract reflect major structural changes

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in the cash market for copper. The MCE submitted data that indicate that high grade copper cathode has become the principal copper produced and demanded since the development of continuous cast rod technology in 1985. The Exchange further provided information regarding the international nature of the copper market. In that regard, the Exchange provided evidence that the proposed contract size is established and accepted internationally and that the proposed domestic and European delivery facilities represent major cash market delivery points with access to major production, consumption and import centers.

The Exchange proposes to apply the amendments to all newly listed contracts subsequent to Commission approval.

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis, on behalf of the Commission, has determined that the proposal submitted by the MidAmerica Commodity Exchange relating to its copper futures contract is of major economic significance. Comments are requested concerning the proposed amendments and implementation procedure. The MCE proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commision, 2033 K Street, NW., Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other material submitted by the MCE in support of the proposed amendment may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8

Issued in Washington, DC on December 13, 1985.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 85–30158 Filed 12–19–85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice of amendments to two DLA systems of records.

SUMMARY: The Defense Logistics Agency of the Department of Defense proposes to amend two systems of records subjects to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The specific changes to the system notices being amended are set forth below followed by the record systems notices, as amended, published in their entirety.

DATE: The proposed actions shall be effective without further notice on or before January 21, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the particular applicable record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Merv Jones, DLA–XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, Telephone: 202/274–6234, Autovon 284–6234.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records as prescribed by the Privacy Act of 1974, as amended (5 U.S.C. 552a) have been published in the Federal Register at 50 FR 22897, May 29, 1985 (FR Doc. 85–10237). These amendments do not require an altered system report as set forth by 5 U.S.C. 552a (o).

Linda M Lawson,

Alternate OSD Federal Liaison Officer, Department of Defense.

December 16, 1985.

AMENDMENTS

System Identification:

S322.10 DLA–LZ

System Name:

Defense Manpower Data Center Base (50 FR 221916) May 29, 1985

Changes:

Categories of Individuals Covered by the System:

In the second paragraph after the phrase "Individuals receiving disability compensation from the Veterans Administration;" delete the semi-colon and add the phrase "or who are coverded by Veterans Administration insurance or benefit program;".

Categories of Records in the System:

After the final phrase of the first paragraph "military hospital records" add the phrase "and home and work addresses," and add in the second paragraph after the opening phrase "Champus claim records" add "containing enrollee, patient and provider data such as cause of treatment, amount of payment, name and social security or tax ID of providers or potential providers of care." Add to second paragraph "and credit or financial data as required for security investigations."

Purpose:

Add after the phrase "to assess manpower trends" add:", support personnel functions,".

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of such Uses:

Add to the phrase "Veterans Administration—To analyze the costs to the individual of military service connected disabilities" the phrase", to monitor the amount of coveage under the Veterans Group Life Insurance program, and to provide information on individual's eligibility for GI Bill education and training benefits."

Delete the 12th paragraph phrase starting with, "Veterans Administration."

Add to the end of the next to last paragrph, "To Federal agencies and State and Local governments to support personnel functions requiring data of prior military service credit for their employees or for job applications."

Add before the final paragraph: "To the Internal Revenue Service to obtain home addresses to contact Reserve component members for mobilization purposes and for debt collection." Internal Revenue Service (IRS): to conduct aggregate statistical analyses on the impact on DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses of lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay and benefits.

Add to first paragraph: Veterans Administration and its contractor, the Purdential Insurance Company: To notify members of the individual Ready Reserve (IRR) of their right to apply for Veterans' Group Life Insurance coverage. To administer Veterans Administration and DoD programs for Reserve pay, VA compensation, military retired pay; and active duty separation payments.

Add: Credit Bureaus—Records may be referred to private contract organizations to comply with the provisions of the Debt Collection of 1982 and to comply with the requirements to update security clearance investigations.

S322.50DLA–LZ

System Name:

Defense Enrollment/Eligibility Reporting System (DEERS). (50 FR 22920) May 29, 1985.

Changes:

Categories of Individuals Covered by the System:

After the last word "dependents" add "; and any other individuals entitled to care under the health care program; providers and potential providers of health care; any individual who submits a health care claim."

Categories of Records in the System:

After the last word "sponsor" and "; and claim records of CHAMPUS claims containing enrollee, patient and provider data such as cause of treatment, amount of payment, name and social security or tax ID number of providers of care."

Purposes:

Add after the last word "amounts" add "and to detect fraud and abuse of the benefit program by claimants and providers."

Routine Uses of Records maintained in the System, Including Categories of Users and the Purpose of Such Uses:

Change the first sentence to read "Department of Health and Human Services; Veterans Administration; Federal Preparedness Agency; Commerce Department and Transportation Department for the Conduct of health care studies, for the planning and allocation of medical resources, for support of the DEERS enrollement process, and to identify individuals not entitled to health care."

In the Second sentence change the phrase "The data provided includes summary data * * * " to " the data provided includes data * * *"

Change the last sentence to the following: "To other federal agencies to identify fraud and abuse of the federal agency's programs and to identify * * *".

Following the last sentence add "State, local and territorial governments to help eliminate fraud and abuse in their benefits programs."

S322.10 DLA–LZ

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: W. R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93920.

Back-up files maintained in a back vault in Hermann Hal, Naval Postgraduate School, Montercy, CA.

Decentralized segments—Portions of this file may be maintained by the military personnel and finance centers of the services; selected civilian contractors with research contracts in manpower area and other Federal agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All officers and enlisted personnel who served on active duty from July 1, 1968 and later or who have been a member of a reserve component since July 1975; retired military personnel; participants in Project 100,000 and Project Transition and the evalution control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later. DoD civilian employees or DoD civilian employees separated since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special training program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute, all individuals who participated in the Armed Force Vocational Aptitude Testing Programs at the high school level since September 1969. Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services, National Longitudianl Survey. Individuals responding to recruiting advertisements since January 1978; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Veterans Administration; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors.

Individuals receving disability compensation from the Veterans Administration or who are covered by a Veterans Administration insurance or benefit program; civilian employees of the Federal Government; dependents of active duty military retirees, selective service registrants. Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized records consisting of Name, Service Number, Selective Service Number, Social Security Account Number, demographic information such as home town, age, sex, and race, and education level; civilian occupational information, military personnel information such as rank, length of service, military occupation; aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training; programs, military hospitalization records and home and work addresses.

Champus claim records containing enrollee, patient and provider data such as cause of treatment, amount of payment, name and social security or tax ID of providers or potential providers of care, military compensation data, selective service registration data, Veterans Administration disability payment records, security clearance records and credit or financial data as required for security background investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136; Pub. L. 97–252.

PURPOSE(S):

The purpose of the system of records is to provide single central facility within the Department of Defense to assess manpower trends, support personnel functions, perform longitudinal statistical analysis, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs and to collect debts owed to the United States Government and state and local governments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Veterans Administration (VA): To administer Veterans Administration and DoD programs for Reserve pay, VA compensation military retired pay and active duty separation payments. To analyze the costs to the individual of military service connected disabilities, to monitor the amount of coverage under the Veterans' Group Life Insurance

program, and to provide information on individuals' eligibility for GI Bill education and training benefits. To Veterans Administration and its contractor, the Prudential Insurance Company, to notify members of the Individual Ready Reserve (IRR) of their right to apply for Veterans' Group Life Insurance coverage. To the Veterans Administration Management Sciences Staff for Reports and Statistics Services, Office of the Comptroller, for the purpose of selecting samples for surveys asking veterans about the use of veterans benefits and satisfaction with VA services, and to validate eligibility for VA benefits.

Internal Revenue Service (IRS): For the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for debt collection. For the purpose of conducting aggregate statistical analyses on the impact on DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses of lifestream earnings of current and former military personnel to be used in studing the comparability of civilian and military pay and benefits.

Department of Health and Human Services (DHHS): Disclosure of information from this system may be made to the Office of the Inspector General for the purpose of identification and investigation of DoD employees (military and civilian) who may be improperly receiving funds under the Aid for Families of Dependent Children Program. To the Office of Child Support Enforcement, pursuant to Pub. L. 93–647, to assist state child support offices in locating absent parents in order to establish and/or enforce child support obligations.

Social Security Administration (DHHS): To the Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earning. To the Bureau of Supplemental Security Income for the purpose of verification and adjustment of payments made by the SSA to the active and retired military members under the Supplemental Security Income Program.

DoD Civilian Contractors: Disclosure of information may be made from this system to contractors for the purpose of performing research on manpower problems for statistical analyses.

Office of Personnel Management (OPM): Disclosure of information may be made from this system for the purpose of OPM carrying out its management functions. Records disclosed concern pay, benefits, retirement deductions, and other information necessary for those management functions.

Selective Service System (SSS): Information from this system may be disclosed to the Director of the Selective Service System for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service System registration regulations.

Department of Education (DOE): Disclosure of information may be made from this system to DOE for the purpose of identifying individuals who appear to be in default on their guaranteed student loans so as to permit DOE to take action, where appropriate, to accelerate recoveries of defaulted loans.

Federal Government and Quasi-Federal Agencies: To identify military retirees employed in a civilian capacity whose civilian pay must be offset as a result of increases in military retiree pay pursuant to the Budget Reconciliation Act of 1982, Pub. L. 97–252.

To Federal Agencies, Territorial, State and Local Governments: To support personnel functions requiring data on prior military service credit for their employees or for job applications. To help eliminate fraud and abuse in their benefit programs and to collect debts and overpayments owed to those programs. Information released includes name, social security account number and mailing address of individuals.

Other Federal Agencies: To help eliminate fraud and abuse in the programs administered by agencies within the Federal government and to collect debts and overpayment owed to the Federal government. Information release may include aggregate data and/or individual records in the record system may be transferred to any other federal agencies having a legitimate need for such information and applying appropriate safeguards to protect data so provided. Records of debtors obligated to DoD, but currently employed by another federal agency may be referred to the employing agency under the provisions of the Debt Collection Act of 1982 for the purpose of the debt.

Consumer Reporting Agencies: Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Credit Bureaus and Debt Collection Agencies: Disclosures may be referred to private contract organizations to comply with the provisions of the Debt Collection Act of 1982 (10 U.S.C. 136) for non-payment of an outstanding debt, and to comply with requirements to update security clearance investigations.

Blanket Routine Uses: See also the blanket routine uses set forth at the beginning of the Defense Logistics Agency's listing of systems of records which are also applicable to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic computer tape.

RETRIEVABILITY:

Retrievable by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Primary location—At W. R. Church Computer Center, tapes are stored in a locked cage in machine room, which is a controlled access area; tapes can be physically accessed only by computer center personnel and can be mounted for processing only if the appropriate security code is provided.

Back-up location—tapes are stored in a bank type vault and buildings are locked after hours and only properly cleared and authorized personnel have access.

RETENTION AND DISPOSAL:

Files constitute a historical data base and are permanent.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Deputy Director, Defense Manpower Data Center (DMDC), 550 Camino El Estero, Monterey, CA 93940.

NOTIFICATION PROCEDURES:

Information may be obtained from the System Manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager.

Written requests for information should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license, or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for access to records and for contesting contents and appealing initial determinations may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

The Military Services, the Veterans Administration, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, federal and Quasi-federal agencies, Selective Service System, the U.S. Postal Service.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

5322.50DLA-LZ

SYSTEM NAME:

Defense Enrollment/Eligibility Reporting System (DEERS).

SYSTEM LOCATION:

Primary location: W.R. Church Computer Center, Navy Postgraduate School, Monterey, CA 93940.

Decentralized segments—A support center and an elibility center are maintained and operated by a contractor in Monterey, CA and Alexandria, VA; two data processing centers in Sacramento, CA and Camp Hill, PA and the Processing Center for Automation of DoD Forms 1172 in Santa Barbara, CA.

Back-up files maintained at the Defense Manpower Data Center, 550 Camino El Estero, Monterey, CA 93940.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Armed Forces and reserve personnel and their dependents, retired Armed Forces personnel and their dependents; surviving dependents of deceased active duty or retired personnel; active duty and retired Coast Guard personnel; active duty and retired Public Health Service (PHS) personnel (Commissioned Corps) and their dependents; and active duty and retired National Oceanic and Atmospheric Administration (NOAA) employees (Commissioned Corps) and their dependents; and State Department employees employed in a foreign country and their dependents and any other individuals entitled to care under the health care program; providers and potential providers of health care; any individual who submits a health care claim.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer files containing beneficiary's name, Service or Social Security Number of sponsor, enrollment number, relationship of beneficiary to sponsor, residence address of beneficiary to sponsor, residence address of beneficiary (includes zip code), date of birth of beneficiary, sex of beneficiary, branch of service of sponsor, dates of beginning and ending eligibility, number of dependents of sponsor, primary unit duty location of sponsor, race and ethnic origin of beneficiary, occupation of beneficiary, rank/pay grade of sponsor; and claim records of CHAMPUS claims containing enrollee, patient and provider data such as cause of treatment, amount of payment, name and social security or tax ID number of providers of care.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136; 1969 Pub. L. 91–121, Section 404(A)(2), 'Establishment of the Assistant Secretary of Defense for Health Affairs; the Presidentially Commissioned Department of Defense, Department of Health, Education and Welfare. Office of Management and Budget Report of the Health Care Study (completed December 1975)': DoD Directive 1341.1, Defense Enrollment/ Eligibility Reporting System, October 14, 1981; DoD Instruction 1341.2, DEERS Procedures.

PURPOSE(S):

The purpose of the system is to provide a data base for determining eligibility to receive health care benefits under the Uniformed Health Services Delivery System and CHAMPUS, to monitor the accuracy of payments and to identify and collect overpaid amounts and to detect fraud and abuse of the benefit program by claimants and providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Health and Human Services; Veterans Administration; Federal Preparedness Agency; Commerce Department and Transportation Department for the conduct of health care studies and for the planning and allocation of medical resources, for support of the DEERS enrollment process, and to identify individuals not entitled to health care. The data provided includes data on ages, sex, residence and other demographic parameters. To other federal agencies to identify fraud and abuse of the federal agency's programs and to identify debtors and collect debts and overpayments in the DoD health care programs. State and local and territorial governments to help eliminate fraud and abuse in their benefit programs.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes and discs are housed in a controlled computer media library.

RETRIEVABILITY:

Records about individuals are retrieved by an algorithm determined by contractor which uses name, enrollment number, Social Security Number, date of birth, rank and duty location as possible inputs. Retrievals are made on a summary basis by geographic characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in such summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution of health care information may be made using selection criteria based on geographic and demographic keys.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is resticted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, administrative procedures (e.g., fire protection regulations). Exits used solely for emergency situations are secured to prevent unauthorized instrusion.

Personal data stored at a separate location for backup purposes is protected at least comparably to the protection provided at the primary location.

Requirements for protection of information are binding on contractors or their representative and are subject to the following minimum standards:

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subject of the record or their authorized representative. Access to personal information is further retricted by the use of passwords which are changed periodically.

All those officials whose duties require access to, or processing and maintenance of, personal information are trained in the proper safeguarding and use of the information.

RETENTION AND DISPOSAL:

Computerized records on an individual are maintained as long as the individual is legally eligible to receive health care benefits from the Uniformed

Health Sciences Delivery System. The records are maintained for two (2) years after termination of eligibility.

Records may be disposed of or destroyed only in accordance with DoD Component record management regulations which conform to the controlling disposition of such material as set forth in 44 U.S.C. 3301–3314. Non-record material containing personal information and other material of similar temporary nature is destroyed as soon as its intended purpose has been served under procedures established by the Head of the DoD Component consistent with the following requirement. Such material shall be destroyed by tearing, burning, melting, chemical deposition, pulping, pulverizing, shredding, or mutilation sufficient to preclude recognition or reconstruction of the information.

SYSTEM MANAGER(S) AND ADDRESS:

Project Manager, DEERS, Defense Manpower Data Center, 2100 Garden Road, Suite J, Monterey, CA 93940.

NOTIFICATION PROCEDURE:

Information may be obtained from: Project Manager, DEERS, Defense Manpower Data Center, 2100 Garden Road, Suite J, Monterey, CA 93940.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Project Manager, DEERS, Defense Manpower Data Center, 2100 Garden Road, Suite J, Monterey, CA 93940, (408) 646–2126. Autovon: 878–2126.

Written requests for the information should contain full name of individual and sponsor, if applicable, and other attributes required by previously mentioned search algorithm.

For personal visits the individual should be able to provide a data element required to satisfy the previously mentioned algorithm.

Identification should be corroborated with a driver's license or other positive identification.

CONTESTING RECORD PROCEDURES:

The DLA rules for access to records and for contesting contents and appealing initial determinations are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Personnel and financial pay systems of the Military Departments, the coast Guard, the Public Health Service, the National Oceanic and Atmospheric Administration and other Federal agencies having employees eligible for military medical care.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85–30123 Filed 12–19–85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Proposed Navigational Improvements on the Kvichak River Near Levelock, AK

AGENCY: U.S. Army Engineer Diartict, Alaska.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement.

SUMMARY: 1. The proposed action is to determine the feasibility of navigational improvements on the Kvichak Flat near the outlet of Iliamna Lake.

2.The navigational improvements will alleviate the grounding of barge traffic during the spring and early summer months. These barges supply goods to the communities along Iliamna Lake. Navigational improvements to be studied include, but are not limited to; dredging, channelization, and slough blocking.

3. Scoping for the DEIS will include coordination with interested local, State, and Federal agencies and other interested parties. Formal scoping meetings are not planned at this time.

Anticipated subjects to be addressed included: socio-economic impacts, cultural resources, water quality, fisheries, widlife, endangered species, and measures to minimize adverse impacts.

4. The expected completion date for the DEIS is February, 1987.

ADDRESS: Questions about the proposed action and the DEIS can be answered by: William D. Lloyd, Chief, Environmental Resources Section, U.S. Army Engineer District, Alaska, P.O. Box 898, Anchorage, Alaska 99506–0898.

Dated: December 11, 1985.

Roy S. Carlson, Jr.,

Lieutenant Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. 85–30099 Filed 12–19–85; 8:45 am]

BILLING CODE 3710-NL-M

DEPARTMENT OF ENERGY

University of Washington Grant Award

AGENCY: Department of Energy, Richland Operations Office.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The Department of Energy, Richland Operations Office, announces that it intends to award a grant to the University of Washington acting as fiscal and legal agent for the Northwest College and University Association for Science (NORCUS), in the amount of $450,000 for the first year of a five year project period for the "University—DOE Laboratory Cooperative Program." Funding during the next five years is expected to average $700,000 per year. Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), DOE-Richland has determined that eligibility for this grant award shall be limited to the University of Washington on behalf of NORCUS.

Grant number: DE–FG06–86ER75235.

Scope of project: NORCUS proposes to facilitate the process of providing college and university science and engineering faculty and students with energy-related training and research experience in DOE Laboratory and contractor facilities in the Richland area. Activity will include the appointments and assignments of undergraduate students, graduate students, faculty, post doctoral research associates and some pre-college personnel; as well as the conduct of seminars, workshops, visits, and institutes under the University—DOE Laboratory Cooperative Program.

FOR FURTHER INFORMATION CONTACT: Marji Parker, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352 (509) 376–2029.

Issued in Richland, WA December 9, 1985.

Michael J. Lawrence,

Manager.

[FR Doc. 85–30140 Filed 12–19–85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 85–34–NG]

Amoco Energy Trading Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt

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on December 4, 1985, of an application filed by Amoco Energy Trading Corporation (Amoco Energy) for blanket authorization to import from Canada up to 35 Bcf per year of natural gas over a two-year period beginning on the date of first delivery. The gas would be supplied by various Canadian pipelines and producers and sold to natural gas distributors and other U.S. purchasers. Amoco Energy proposes to file quarterly reports indicating, by month, whether sales have been made, and if so, giving the details of each transaction

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on January 21, 1986.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–9590

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–6667

SUPPLEMENTARY INFORMATION: Amoco Energy, a Delaware corporation, is a wholly-owned subsidiary of Amoco Company, which is wholly owned by Amoco Corporation. Amoco Corporation is an integrated company engaged in exploration, production, refining, transportation and marketing of oil, natural gas and other hydrocarbons.

Amoco Energy seeks authorization to import up to a total of 35 Bcf per year of Canadian gas for a term of two years (for a total of up to 70 Bcf) for short-term or spot sales. The applicant states that it seeks the authorization on a self-implementing or blanket basis in order to eliminate regulatory delays which it asserts place the Canadian supplies at a competitive disadvantage in the U.S. spot market.

Amoco Energy states that it would act as a broker for U.S. purchasers, individual Canadian producer groups and associations, and Canadian pipelines. Amoco Energy may also act on its own behalf as an importer of natural gas for resale to U.S. purchasers. Amoco expects to sell the gas to industrial end-users, agricultural users, electric utilities, pipelines and distribution companies.

The applicant intends to purchase the gas from a number of Canadian suppliers whose identities, as well as those of the buyers, would not be known until the transactions are consummated. Amoco Energy indicates that the specific terms of each short-term or spot sale will be the product of negotiations and responsive to market conditions. Amoco Energy expects that the majority of short-term and spot sales would be used to displace higher priced domestic energy supplies. Amoco Energy proposes filing quarterly reports giving the specific terms for each sale, including the price paid by the purchaser, the volume, the duration of the agreement, transportation arrangements to deliver the gas from the U.S.-Canadian border and, where applicable, contract adjustments and take provisions.

Amoco Energy believes that approval and implementation of this gas import application would have a positive impact on the environment in instances where Amoco Energy's natural gas is displacing the consumption of high sulfur fuel oil and coal. When competitively priced in the market place, no adverse environmental impact is anticipated. In addition, Amoco states that it intends to use existing transmission systems and does not require the construction of new or separate facilities in order to import the gas.

In support of its application, Amoco Energy states that approval of its arrangement would be consistent with the public interest because of the beneficial competitive consequences inherent in freely negotiated spot and short-term sales. Thus, if Amoco Energy cannot obtain competitively priced Canadian gas or adjust the sales price to meet the market price, no sales would be made and no gas would be imported under the requested authorization.

This application is one of a number received by the ERA concerning the purchase of imported gas for spot and short-term blanket opportunities. The authorization would provide the applicant with blanket import approval to negotiate and transact individual short-term sales arrangements without further regulatory action. The requested authorization is similar to other blanket imports the ERA has recently approved.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). The objective of this policy is to free commercial parties from undue government interference in determining contract terms and reflects the importance of buyer-seller negotiation. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Iinformaion

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., January 21, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there

are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Amoco Energy's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., on December 16, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–30137 Filed 12–19–85; 8:45]

BILLING CODE 6450–01–M

[ERA Docket No. 85–37–NG]

National Gas Imports; Amtran Gas Transmission, Inc.; Application To Import Natural Gas From Canada for Short-Term and Spot Sales

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 4, 1985, of an application from Amtran Gas Transmission, Inc. (Amtran) a wholly-owned subsidiary of Diamond Shamrock Exploration Company, for blanket authorization to import Canadian natural gas for individual short-term and spot sales. Authorization is requested to import up to 200 MMcf of Canadian natural gas a day and a maximum of 100 Bcf during a two-year term beginning on the date of first delivery of the import. Amtran intends to market the natural gas produced by its affiliate, Diamond Shamrock Exploration of Canada, as well as to act as a purchaser-reseller and a marketer of other gas supplies, acting as agent on behalf of both producers and purchasers. Amtran proposes to submit quarterly reports within 30 days following each calendar quarter.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than January 21, 1986.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–9162

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicants assert that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervenue or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. January 21, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Amtran's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C., December 16, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–30136 Filed 12–19–85; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 85–35–NG]

Natural Gas Imports; Frito-Lay, Inc.; Application To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application for Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 4, 1985, of the application of Frito-Lay, Inc. (Frito-Lay) to import on a best-efforts basis up to 2,000 MMBtu of Canadian natural gas per day and up to 1,460,000 MMBtu over a two-year period from December 31, 1985, to December 31, 1987, for use in its food processing plants in Vancouver, Washington, and Beaverton, Oregon. The imported volumes are to be purchased from Poco Petroleum Ltd. (Poco) at a border price of $2.25 (U.S.) per MMBtu and transported by Northwest Pipeline Corporation and Northwest Natural Gas Company. The contract contains a market-out provision which permits Frito-Lay to renegotiate or terminate the contract unless the delivered price remains less than or equal to competing gas prices of alternate suppliers.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., on January 21, 1986.

FOR FURTHER INFORMATION CONTACT:

Norman Breckner, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9482.

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions, to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., January 21, 1986.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Frito-Lay's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. December 16, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–30138 Filed 12–19–85; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 85–36–NG]

Natural Gas Imports; Yankee International Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Blanket Application To Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 4, 1985, of an application from Yankee International Company (Yankee) for blanket authorization to import for short-term, spot sales up to 400 MMcf of Canadian natural gas per day and a maximum of 296 Bcf over a period of two years beginning on the date of first delivery. Yankee proposes to import the gas both for its own account and for the accounts of the currently undesignated Canadian suppliers and U.S. purchasers. Yankee proposes to make quarterly reports to the ERA.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motion to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., January 21, 1986.

FOR FURTHER INFORMATION CONTACT:

Olga T. Ronkovich, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–9482;

Diane J. Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, Department of Energy, Forrestal Building, Room 6E–042, 1000

Independence Avenue, SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). The objective of this policy is to free commercial parties from undue government interference in determining contract terms and reflects the importance of buyer-seller negotiation. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23 Forrestal Building, 100 Independence Avenue, SW., Washington D.C. 20585. They must be filed no later than 4:30 p.m., January 21, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application responses filed by parties pursuant to this notice, in accordance with 10 CFR § 590.316.

A copy of Yankee's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 16, 1985.

Robert L. Davies,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 85–30139 Filed 12–19–85; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective January 1, 1986. These prices are based on the prices of alternative fuels. For further information contact: Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., room BE–034, Washington, DC 20585. Telephone: (202) 252–6077.

Section I.

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

[Dollar amounts in millions]

State	[illegible]
Alabama[1]	[illegible]
Arizona[1]	[illegible]
Arkansas[1]	3.52
California	[illegible]
Colorado[2]	[illegible]
Connecticut[1]	3.57
Delaware[1]	[illegible]
Florida	[illegible]
Georgia[1]	[illegible]
Idaho[2]	3.53
Illinois[1]	[illegible]
Indiana	3.41
Iowa[1]	[illegible]
Kansas[1]	[illegible]
Kentucky[1]	[illegible]
Louisiana	3.51
Maine	3.52
Maryland[1]	[illegible]
Massachusetts[1]	3.57
Michigan	[illegible]
Minnesota	[illegible]
Mississippi[1]	[illegible]
Missouri[1]	[illegible]
Montana[2]	3.53
Nebraska[1]	3.25
Nevada[1]	3.78
New Hampshire[1]	[illegible]
New Jersey	[illegible]
New Mexico[1]	3.52
New York	[illegible]
North Carolina[1]	[illegible]
North Dakota[1]	[illegible]
Ohio	3.14
OKlahoma[1]	3.52
Oregon[1]	[illegible]
Pennsylvania	[illegible]
Rhode Island[1]	3.57
South Carolina[1]	3.78
South Dakota[1]	3.25
Tennessee[1]	[illegible]
Texas	3.51
Utah[2]	[illegible]
Vermont[1]	3.57

[Dollar amounts in millions]

State	[illegible]
Virginia[1]	[illegible]
Washington[1]	5.70
West Virginia[1]	5.43
Wisconsin[1]	5.43
Wyoming[1]	3.53

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM–79–21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II—Incremental pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during October 1985 was $32.87 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective January 1, 1986, is $7.37 per million BTU's.

Section III—Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous State on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of August 1985, September 1985, and October 1985.[3] All reports of volume sold and price were identified by the State into which the oil was sold.

[3] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric Utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

B. Method Used to Determine Alternative Price Ceilings

(1) *Calculation of Volume-Weighted Average Price.* The prices which will become effective January 1, 1986 (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, August 1985, September 1985, and October 1985. Reported prices for sales in August 1985 were adjusted by the precent change in the nationwide volume-weighted average price from August 1985 to October 1985. Prices for September 1985 were similarly adjusted by the percent change in the nationwide volume-weighted average price from September 1985 to October 1985. The volume-Weighted 3-month average of the adjusted August 1985 and September 1985, and the reported October 1985 prices were then computed for each State.

(2) Adjustment for Price Variation. States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted Standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B. (1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) *Calculation of Ceiling Price.* The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of August 1985, September 1985, and October 1985. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) *Lag Adjustment.* The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6. high sulfur residual fuel oil for the ten trading days ending December 13, 1985, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of October 1985. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

List of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

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Region B	
Delaware	New York
Maryland	Pennsylvania
New Jersey	
Region C	
Alabama	North Carolina
Florida	South Carolina
Georgia	Tennesse
Mississippi	Virginia
Region D	
Illinois	Ohio
Indiana	West Virginia
Kentucky	Wisconsin
Michigan	
Region E	
Iowa	Nebraska
Kansas	North Dakota
Missouri	South Dakota
Minnesota	
Region F	
Arkansas	Oklahoma
Louisiana	Texas
New Mexico	
Region G	
Colorado	Utah
Idaho	Wyoming
Montana	
Region H	
Arizona	Oregon
California	Washington
Nevada	

Dated: December 18, 1985.

L.A. Pettis,

Acting Deputy Administrator, Energy Information Administration.

[FR Doc. 85-30262 Filed 12-18-85; 3:33 pm]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-176-000, et al.]

Natural Gas Certification Filings; Midwestern Gas Transmission Co., et al.

December 13, 1985.

Take notice that the following have been made with the mission:

1. Midwestern Gas Transmission Company

[Docket No. CP86-176-000]

Take notice that on November 1, 1985, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-176-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Tenngasco Corporation (Tenngasco), acting as agent for certain companies, for a period through December 31, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Midwestern requests authorization to render a transportation service for Tenngasco pursuant to the terms of a gas transportation agreement (agreement) between Midwestern and Tenngasco, as agent for Northern Illinois Gas Company, Inland Steel Company, The Peoples Gas Light & Coke Company, Northern Indiana Public Service Company, Koppers Company, Inc. and Olin Corporation.

It is stated that pursuant to the Agreement, Midwestern has agreed to accept and receive daily on an interruptible basis, as determined in Midwestern's sole opinion, up to 938,000 Mcf of natural gas per day for the account of Tenngasco from various points of receipt.

It is said that Midwestern would, in turn, deliver a thermally equivalent quantity of gas, less volumes for Midwestern's fuel and uses, gas lost and unaccounted for and plant volume reduction (PVR) due to processing, to Tenngasco at the points of delivery.

Midwestern states that the term of the agreement expires December 31, 1988. As a consequence, Midwestern requests that the Commission issue Midwestern pre-granted abandonment authorization, to be effective 11:59 p.m. CST, December 31, 1988, at which time transportation service rendered by Midwestern pursuant to the Agreement would terminate.

It is stated that in accordance with the agreement, Midwestern would charge a rate for this transportation service, based upon Midwestern's Rate Schedules IT-1 or IT-2, as shown on Midwestern's effective Tariff sheet Nos. 5 or 6. It is further stated that the rates for transportation of PVR, if any, would also be based on Midwestern's Rate Schedules IT-1, or IT-2. It is also said that the rates for the transportation of liquids, if any, would be established pursuant to the provisions of the agreement.

Comment date: December 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources, a division of Arka Inc.

[Docket No. CP81-400-001]

Take notice that on Decembe 2, 1985, Arkla Energy Resources, a division of Arkla Inc. (Petitioner), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP81-400-001 a petition to amend the order issued on March 3, 1982, in Docket No. CP81-81-400-000 pursuant to section 7(c) of the Natual Gas Act as to reflect the January 1, 1985, modifications of the contract between Petitioner and the Electric Division of Central Louisiana Electric Company, Inc. (CLECO), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it requests authorization to modify the original proposal authorized by the March 3 order, which authorized construction of facilities and transportation in connection with a direct interruptible sale to CLECO. Specifically, Petitioner proposes to sell a portion of the contract volumes on a firm basis and to reclassify that portion of CLECO requirements from Priorty 7 to Priority 6 under Petitioner's currently effective curtailment plan. In addition, Petitioner states that CLECO would have a right to reduce the volume it takes by 20 percent annually in the years 1986 through 1988, if Petitioner and CLECO cannot reach agreement on the price of gas which would be negotiated before each year begins. Further, Petitioner states that for the years 1989 and beyond, if price negotiations are unsuccessful the contract would terminate at the end of that year. Petitioner states that it reserves the right to continue the contract if it meets the price that CLECO is willing to pay another supplier for a substitute supply.

Comment date: December 30, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Mountain Fuel Resources, Inc.

[Docket No. CP86-215-000]

Take notice that on November 26, 1985, Mountain Fuel Resources, Inc. (Applicant), 79 South State Street, P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP86-215-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to transport natural gas on behalf of Pacific Gas and Electric Corporation (PG&E) and to add and delete related unspecified receipt points, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on a best efforts basis, up to 25,000 Mcf of natural gas per day from Uintah, Carbon, and Duchesne Counties, Utah, and Moffat County, Colorado, (Uintah Basin area) on behalf of PG&E, pursuant to a fifteen year transportation agreement dated May 19, 1983, as amended.

It is explained that such gas would be received by Applicant at various existing points of interconnection on its system in Utah and Colorado and redelivered to Northwest Pipeline Corporation (Northwest), less fuel used and unaccounted for, at existing interconnections with Northwest in Sweetwater County, Wyoming and Uintah County, Utah. Applicant proposes to charge PG&E its current system-wide three-part transportation rate for the proposed transportation service.

Applicant states that is is currently transporting a portion of the proposed transportation gas under a temporary service arrangement with Northwest under Applicant's Rate schedule X–36.

Inconnection with the proposed transportation service, Applicant also requests that it be granted flexible authority to add and delete unspecified receipt points in the Uintah Basin area. Applicant states that such receipt points would be subject to certificated volumetric limitations, appropriate abandonment authorization, and annual reporting requirements.

Comment date: December 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Central Pipeline Corporation

[Docket No. CP86–218–000]

Take notice that on November 27, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86–218–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reclaim The Kansas Power and Light Company (KPL Gas Service) Belle Plaine, Western Alfalfa, Augusta and Leon town border delivery points and construct new measuring, regulating and appurtenant facilities to serve Belle Plaine/Western Alfalfa in Sumner County, Kansas and Augusta/Leon in Butler County, Kansas under the authorization issued in Docket No. CP82–489–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central states that by combining the facilities serving Belle Plaine and Western Alfalfa and Augusta and Leon, there would be less overall maintenance of facilities and the proposed replacements in conjunction with other planned maintenance, would enable Northwest Central to modernize this portion of its pipeline system to bring it into compliance with other Federal agency rquirements. The cost to reclaim the existing facilities is $2,100 with an estimate salvage value of $5,060. The estimated cost of construction is $75,180 which would be paid from treasury cash.

Northwest Central states that this change is not prohibited by an existing tariff had it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Comment date: January 27, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Panhandle Eastern Pipe Line Company

[Docket No. CP86–216–000]

Take notice that on November 27, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86–216–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Keystone Steel and Wire Company (Keystone) and for permission and approval to abandon such services on June 30, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authority to implement a transportation agreement between it, Central Illinois Light Company (CILCO) and Keystone dated November 26, 1985. Panhandle proposes to transport up to 6,500 Mcf of natural gas per day on behalf of Keystone from various existing points of receipt located in Baca County, Colorado, Woodward and Hansford Counties, Texas and Kingfisher, Alfalfa, Dewey and Woods Counties, Oklahoma to the existing point of interconnection between Panhandle and CILCO at the Peoria sales station, Tazewell County, Illinois. It is explained that CILCO is an existing sales customer of Panhandle and would make ultimate delivery to Keystone for its ultimate end-use.

Panhandle states that the proposed transportation rate is the currently effective Rate Schedule OST rate. Panhandle also requests authority to add points of receipt and delivery subject to annual reporting requirements for construction activity pursuant to its blanket certificate in Docket No. CP83–83–000.

Comment date: December 30, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP86–217–000]

Take notice that on November 27, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86–217–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of certain low-priority end-users and for permission and approval to abandon such services on June 30, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authority to implement certain transportation agreements among Panhandle, its local distribution companies (LDC), and certain low-priority end-users with various execution dates. The transportation authorization requested is under the same terms as previously authorized by the Commission pursuant to § 157.209 of the Commission's Regulations. The following table lists the end-user and LDC's involved and the transportation quantity requested.

End user	LDC	Proposed transportation volumes (Mcf/d)
Wagner Castings	Illinois Power Co	2,500
Broderick	Indiana Gas Co	[illegible]
A.B. Chance Co	Union Electric Co	1,100
DiversiTech General Inc.	Indiana Gas Co	[illegible]
B.F. Goodrich Co	Central Illinois Light Co	[illegible]
Witco Chemical Corp	Citizens Gas & Coke Utility	[illegible]
Sherex Chemical Co., Inc.	Central Illinois Light Co	[illegible]
Rock-Tenn Co., Mill Division, Inc.	Indiana Gas Co	[illegible]
Borg-Warner Automotive, Inc	Indiana Gas Co	[illegible]
Pekin Energy Co	Central Illinois Light Co	[illegible]
Midwest Solvents Co	Central Illinois Light Co	[illegible]
General Motors Corp	Direct	[illegible]
PPG Industries, Inc	Illinois Power Co	[illegible]
RCA Corp	Indiana Gas Co	[illegible]

It is explained that the transportation rate is based on Panhandle's presently effective Rate Schedule OST. Panhandle also requests authority to add points of receipt and delivery subject to certain reporting requirements, and authority to construct new points of receipt subject to the annual reporting requirements for construction activity pursuant to its blanket certificate in Docket No. CP83–83–000.

Comment date: December 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-179-000]

Take notice that on November 1, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-179-000 an application pursuant to section 7 of the National Gas Act for a certificate of public convenience and necessity requesting authorization for the transportation of natural Gas for Tenngasco Corporation (Tenngasco), acting as agent for The United Illuminating Company (United Illuminating), and for permission and approval to abandon such transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to render a transportation service for Tenngasco pursuant to the terms of a gas transportation agreement (agreement) between Tennessee and Tenngasco, acting as agent for United Illuminating, dated October 30, 1985.

Pursuant to the agreement, Tennessee states that it has agreed to receive daily on an interruptible basis, as determined in Tennessee's sole opinion, up to 40,000 Mcf of natural gas per day for the account of Tenngasco from certain points of receipt. Tennessee indicates that it would, in turn, deliver a thermally equivalent quantity of gas, less volumes for Tennessee's fuel and uses, gas lost and unaccounted for and plant volume reduction (PVR) due to processing, to Tenngasco at certain points of delivery.

It is stated that the term of the agreement expires December 31, 1988. As a consequence, Tennessee requests herein that the Commission issue Tennessee pre-granted abandonment authorization, to be effective 11:59 p.m. CST, December 31, 1988, at which time transportation service rendered by Tennessee pursuant to the agreement would terminate.

In accordance with the agreement, Tennessee states that it would charge a rate for this transportation service, based upon Tennessee's Rate Schedule IT, as shown on its effective FERC Gas Tariff Sheet No. 22. It is indicated that the rates for transportation of PVR, if any, would also be based on Tennessee's Rate Schedule IT and the rate for the transportation of liquids, if any, wold be established pursuant to the provisions of the agreement.

Comment date: December 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-180-000]

Take notice that on November 1, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-180-000 an application pursuant to section 7 of the National Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural Gas for Tenngasco Corporation, acting as agent for Consolidated Gas Transmission Corporation and for permission and approval to abandon the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport gas for Tenngasco pursuant to a gas transportation agreement (Agreement) between Tennessee and Tenngasco Corporation, as agent for Consolidated Gas Transmission Corporation, dated October 30, 1985. Tennessee states that it has agreed to receive up to 300,000 Mcf of natural gas per day on an interruptible basis for the account of Tenngasco from the various points of receipt. It is stated that Tennessee would, in turn, deliver a thermally equivalent quantity of gas, less volumes for Tennessee's fuel and uses, gas lost and unaccounted for and plant volume reduction (PVR) due to processing, to Tenngasco at various points of delivery.

Tennessee states that it would charge a rate for this transportation service, based upon Rate Schedule IT, of its FERC Gas Tariff, Sheet No. 22. The rates for transportation of PVR, if any, would also be based on Tennessee's Rate Schedule IT, it is stated. In addition, the rates for transportation of liquids, if any, would be established pursuant to the provisions of the Agreement, it is asserted.

It is indicated that the term of the Agreement expires December 31, 1988. Tennessee requests abandonment authorization, to be effective 11:59 p.m. CST, December 31, 1988, at which time transportation service rendered by Tennessee pursuant to the Agreement would terminate.

It is claimed that the proposed transportation service would be in the public interest because it would assist Consolidated Gas Transmission Corporation in obtaining gas supplies at market-clearing prices, enabling it to maintain its business operations on a profitable basis.

Comment date: December 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-181-000]

Take notice that on November 1, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-181-000 an application pursuant to section 7 of the National Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural Gas for Tenngasco Corporation, acting as agent for various companies and for permission and approval to abandon the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport gas for Tenngasco pursuant to a gas transportation agreement (Agreement) between Tennessee and Tenngasco Corporation, as agent for various companies, dated October 30, 1985. Tennessee states that it has agreed to receive up to 1,091,000 Mcf of natural gas per day on an interruptible basis for the account of Tenngasco from the various points of receipt. It is stated that Tennessee would, in turn, deliver a thermally equivalent quantity of gas, less volumes for Tennessee's fuel and uses, gas lost and unaccounted for and plant volume reduction (PVR) due to processing, to Tenngasco at various points of delivery.

Tennessee states that it would charge a rate for this transportation service, based upon Rate Schedule IT, of its FERC Gas Tariff, Sheet No. 22. The rates for transportation of PVR, if any, would also be based on Tennessee's Rate Schedule IT, it is stated. In addition, the rates for transportation of liquids, if any, would be established pursuant to the provisions of the Agreement, it is asserted.

It is indicated that the term of the Agreement expires December 31, 1988. Tennessee requests abandonment authorization, to be effective 11:59 p.m. CST, December 31, 1988, at which time transportation service rendered by Tennessee pursuant to the Agreement would terminate.

It is claimed that the proposed transportation service would be in the public interest because it would assist various companies in obtaining gas supplies at market-clearing prices, enabling it to maintain its business operations on a profitable basis.

Comment date: December 30, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86–220–000]

Take notice that on December 3, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86–220–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to transport for Tennessee on an interruptible basis, up to 150,000 Mcf of natural gas per day, such quantity being equivalent to Tennessee's capacity in the Central Texas Gathering System (CTGS), offshore Texas, and from time to time quantities in excess of such capacity, pursuant to a transportation agreement between Transco and Tennessee.

It is stated that pursuant to the transportation agreement, Transco would receive quantities moved within Tennessee's capacity in the CTGS at the terminus of the CTGS located near the inlet side of Transco's compressor station No. 30 (Wharton receipt point), and would receive gas in excess of Tennessee's capacity in the CTGS at existing points of interconnection between Tennessee's facilities and Transco's facilities in the Brazos area, Blocks A–1, A–22, A–104 and 538, offshore Texas (Brazos area receipt points). It is further stated that Transco would redeliver, on an interruptible basis, equivalent quantities (less quantities retained for compressor fuel and line loss make-up, less fuel for dehydration, and less a reduction in volume and Btu due to processing, if any) to Tennessee at Louise, Wharton County, Texas (Louise delivery point), at Crowley, Acadia Parish, Louisiana (Crowley delivery point), and at the tailgate of the Markham plant in Matagorda County, Texas (Markham delivery point).

It is explained that for the proposed transportation service, Transco would initially retain for compressor fuel and line loss make-up 2.4 percent of the quantities received for delivery at the Crowley delivery point, 0.6 percent of the quantities received for delivery at the Louise delivery point and none of the quantities received for delivery at the Markham delivery point. Transco also proposes to charge Tennessee the following rates for the transportation service:

Delivery points	Rates
Within Tennessee's capacity in the CTGS:	
Markham	
Louise	4.3 cents per dt.
Crowley	17.6 cents per dt.
In excess of Tennessee's capacity in the CTGS:	
Markham	7.3 cents per dt.
Louise	11.6 cents per dt.
Crowley	25.8 cents per dt.

It is explained that the transportation agreement would remain in effect for a primary term of 10 years from the date of initial deliveries, and year to year thereafter unless and until terminated by either party giving proper notice.

Comment date: December 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

11. Transcontinental Gas Pipe Line Corporation

[Docket Nos. CP63–222–000 and CP70–193–000]

Take notice that on November 25, 1985, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket Nos. CP63–222 and CP70–193 a petition, pursuant to section 7 of the Natural Gas Act, to amend the order issued February 17, 1965 in Docket No. CP63–222 and the order issued May 5, 1970 in Docket No. CP70–193, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Transco states that pursuant to the aforementioned orders, it has been transporting for Texaco Inc. (Texaco) from specified receipt points in the Gulf Coast area to Texaco's Eagle Point Refinery near Westville, New Jersey (Eagle Point Refinery) up to 10,000 Mcf of gas per day on a firm basis and up to 16,000 Mcf of gas per day on an interruptible basis for use by Texaco as fuel at the Eagle Point Refinery. It is explained that such transportation is rendered pursuant to the agreement between Transco and Texaco, dated December 1, 1969, as amended (Agreement), on file with the Commission as Rate Schedule X–42 to Transco's FERC Gas Tariff, Original Volume No. 2.

Transco further states that Texaco has advised that on May 20, 1985 Texaco sold the Eagle Point Refinery to Coastal Eagle Point Oil Company (Coastal), that Coastal would process crude oil for Texaco at such refinery, and that Texaco would furnish the gas necessary for such processing.

Transco also states that pursuant to orders issued March 24, 1971 and September 21, 1983 in Transco Docket No. CP71–30–000, it has been transporting for Getty Refining and Marketing Company (Getty Refining), on a firm basis, up to the dt equivalent of 9,300 Mcf of gas per day from specified producing properties, offshore Texas, of parent Getty Oil Company (Getty Oil), to Eastern Shore Natural Gas Company (Eastern Shore) at two delivery points in Chester County, Pennsylvania designated as Parkesburg and Hockessin. Eastern Shore, in turn, has redelivered such gas to Getty Refining at the Delaware City Refinery. It is explained that such transportation by Transco takes place under an agreement between Getty Refining and Transco, dated August 7, 1970, as amended, on file with the Commission as Rate Schedule X–52 to Transco's FERC Gas Tariff, Original Volume No. 2. The instant petition does not propose any changes in the service rendered under Rate Schedule X–52.

Transco states that Texaco has further advised that during 1984 Getty Oil became a subsidiary of Texaco, and that, as a part of a corporation reorganization of Texaco and subsidiary companies, the name of the owner of the Delaware City Refinery, Getty Refining, was changed to Texaco Refining and Marketing Inc. (Texaco Refining). Texaco has requested that its rights under the agreement be assigned to Texaco Refining and that its obligations under the agreement be delegated to Texaco Refining, thereby making the latter the shipper under the agreement. It is indicated that this assignment would correspond to Texaco's corporate reorganization which would make Texaco Refining the company that benefits from the subject transportation.

It is stated that Texaco desires that additional points of delivery be added to the agreement in order that Texaco Refining can utilize its transportation capacity for Transco's delivery of gas to Eastern Shore for the account of Texaco Refining, for redelivery by Eastern Shore at the Delaware City Refinery. These new points of delivery would be Transco's above-mentioned Hoeckessin and Parkesburg points of delivery to Eastern Shore. Transco states that it has been advised by Texaco Refining that Eastern Shore would render its part of the transportation pursuant to authority granted to Eastern Shore in Docket No. CP85–89–000.

It is stated that pursuant to an amendment to the agreement, dated October 23, 1985, Transco would not be obligated to deliver to all delivery points a total quantity of firm transportation gas in excess of the dt equivalent of

10,000 Mcf of gas per day or a total quantity of interruptible transportation gas in excess of the dt equivalent of 16,000 Mcf per day. Transco states that Texaco Refining may apportion the firm and interruptible gas among the delivery points as it determines is necessary, subject to the limitations above described.

No additional facilities would be required by Transco to accomodate the changes described in the instant petition.

In addition, Transco states that in the amendment the parties have agreed to several other substantive modifications to the Rate Schedule X–42 transportation arrangement. It is explained that a provision has been added to the agreement which allows Transco to charge for interruptible transportation under Rate Schedule X–42 its charge per dt in effect from time to time for similar transportation under Transco's Rate Schedule T–I and that the amendment also provides that the agreement would be changed from a volumetric basis (Mcf) to a heating value basis (dt).

Transco states that, by filing the instant petition, it is not election non-discriminatory access as such term is described and defined in § 284.8(b) of the Commission's Regulations promulgated in Order No. 436.

Comment date: December 30, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

12. Transwestern Pipeline Company

[Docket No. CP86–212–000]

Take notice that on November 22, 1985, Transwestern Pipeline Company (Transwestern), 1200 Travis Street, P.O. Box 1188, Houston, Texas 77001, filed in Docket No. CP86–212–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization (1) to construct and operate approximately 357.91 miles of 30-inch diameter pipeline and related facilities, extending various loop lines at eleven locations on Transwestern's system from Pyote, Texas, to a point near Needles, California, and (2) to transport on a contract basis, primarily for shippers who are involved in enhanced oil recovery operations in central California, the dekatherm equivalent of maximum daily quantities up to 320,000 Mcf of natural gas, plus applicable shrinkage, from variouis points of receipt of Transwestern's pipeline system to the proposed interconnection of Transwestern and Mojave Pipeline Company at a location near Needles, California, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transwestern proposes to expand the capacity of its existing system in Texas, New Mexico and Arizona. It is explained that two new pipeline loops, totaling approximately 4.1 and 10.5 miles of new 30-inch diameter pipeline along Transwestern's West Texas lateral between Pyote, Texas, and Rosewell, New Mexico, would be required. These facilities would loop the remaining unlooped portions of Transwestern's system along this lateral and would be in parallel to the existing line. Additionally, Transwestern proposes to construct nine loop segments of 30-inch pipeline totaling approximately 343 miles on portions of its mainline from Rosewell to a location near Needles, California. It is stated that approximately 47 percent of Transwestern's mainline is already looped and that the new facilities proposed herein would loop the remaining portion. The loops to be constructed on the existing right-of-way would range in length from 26 to 50 miles.

Transwestern states that the eleven existing compressor stations along its system between Pyote, Texas, and the Needles meter station would not need to be expanded. Transwestern further states that no additional horsepower is proposed; however, certain modifications would be required to give each gas compressor and the station piping the ability to handle the additional volume of gas. The estimated total cost of the proposed facilities is $230 million.

Transwestern states that it would initially finance the cost of construction through revolving credit arrangements, short-term loans and funds onhand, with permanent financing being undertaken as part of Transwestern's overall long-term financing program at a later date.

Transwestern also seeks authorization to render firm transportation service on a contract basis of the dekatherm equivalent of a maximum daily quantity of up to 320,000 Mcf per day, as set forth in the application, plus applicable shrinkage, of natural gas from its system to the interconnection of the Mojave Pipeline with the existing Transwestern line near Needles, California. It is explained that transportation would be provided for contract shippers who have acquired title to the gas at or upstream of the various points of receipt and who would use such gas primarily in connection with EOR and associated cogeneration projects. Transwestern does not propose to buy or sell any of the natural gas transported by the pipeline. Gas to be used for compressor station fuel and other utility purposes, as well as line losses in the operation of the pipeline, would be provided in kind by the shippers, it is said. The terms and conditions of the proposed transportation service are incorporated in a form of service agreement and a new Rate Schedule CDT–1 as set forth in the application.

Transwestern states that since it would not own any of the gas it transports and since the capacity to be constructed is incremental capacity to be utilized solely to make incremental deliveries to California, the proposed transportation service would be firm and not subject to curtailment due to shortages of the system supply to Transwestern. However, it is stated that some curtailment of service might occur from time to time for the purpose of making necessary alterations or repairs and for other reasons for *force majeure*, and that to the extent any such capacity curtailment might occur, the procedures for such curtailment would be established in the service agreements executed with shippers.

Transwestern states that its position at this time is that its existing customers should not bear any of the costs associated with the new facilities and that any new customers should be only the costs associated with the facilities which create the incremental capacity utilized to provide the new service. Accordingly, it is stated that the new CDT–1 transportation rate is proposed to recover the costs associated with only the new facilities. Transwestern states that the rate being proposed for firm transportation service consists of a capacity reservation charge to recover all fixed costs associated with providing the new firm transportation service including but not limited to, depreciation, return, income taxes, and operation and maintenance expenses. Further, Transwestern explains that the capacity reservation charge is calculated by dividing the annual cost of service by 131,851,600 dekatherms. In addition, Transwestern is proposing to institute an authorized overrun charge equal to the capacity reservation charge and unauthorized overall charge equal to one-hundred fifty percent of the capacity reservation charge.

The incremental cost of service of the proposed expansion, at a throughput level of the dekatherm equivalent of 312,000 Mcf per day, is estimated to be $.4455 per dekatherm.

Transwestern is proposing to charge a levelized capacity reservation charge

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based on a levelized fixed cost of service to be achieved by deferring recovery of its investment. No depreciation expense is charged for the first year of service, it is said. Thereafter Transwestern states it would charge depreciation only to the extent that the capacity reservation charge remains fixed. It is indicated that the fixed capacity reservation charge would remain in effect until the earlier of (i) the first year in which the expanded facilities can be depreciated at a straight line rate without increasing the cost-of-service on a levelized basis (estimated at approximately nine years); (ii) the in-serice date of a system expansion which would impact the facilities herein; or (iii) a filing by Transwestern to change the rates to be charged for service through the expanded services.

Transwestern is proposing to retain 1.2 percent of gas received as compensation for gas used in utility operations.

Transwestern requests authority to negotiate with potential shippers and to adopt such variations from the proposed rate structure as may be required to respond to changing economic conditions in the markets to be served.

Comment date: December 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

13. Western Gas Interstate Company

[Docket No. CP86–173–000]

Take notice that on November 1, 1985, Western Gas Interstate Company (Western), 900 United Bank Tower, 400 West 15th Street, Austin, Texas 78701, filed in Docket No. CP86–173–000 an application pursuant to section 7(c) of the Natural Gas Act for a blanket certificate of public convenience and necessity authorizing Western to effectuate on a best efforts, limited term basis, an Incremental Sales Program (ISP) and authorizing Western to construct, under certain conditions, sales taps and other facilities necessary to implement the proposed program, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Western states that this program would consist of best efforts, flexibly priced gas sales available from Western's Northern Division general system supplies which exceed the requirements of Western's principal on-system customer, Southern Union Gas Company (Southern Union Gas). It is stated that the gas would be offered to new and existing customers on a nondiscriminatory basis. Western states that its proposed ISP is a response to a series of events including the settlement in Docket No. RP84–77–000, *et al.*, and a decline in its sales.

Western submits that the following features taken together form the basis of an ISP designed to allow Western to compete in the marketplace.

Western states that the ability to commence a sale on a self-implementing basis, without time-consuming regulatory review, would be crucial. It is stated that the many producer Special Marketing Programs (SMP) and the pipeline transportation programs approved by the Commission Orders No. 319, 319–A and 235–B were all self-implementing because the Commission recognized that effective competition requires the ability to respond quickly when agreement is reached. Western further states that more recently the Commission reaffirmed the importance of a quick response by authorizing a variety of self-implementing transactions in Order No. 436, issued in Docket No. RM85–1. Without the ability to act quickly, Western claims that it would be condemned to losing sales to producers and intrastate pipelines who can start gas moving almost immediately through already authorized programs.

Western states that its proposed ISP would be on a nondiscriminatory basis. Western states that it recognizes this requirement as inherent in the public interest standard of the Natural Gas Act.

Western states that since it is attempting to achieve incremental sales over and above those made possible by its below-cost settlement rate, the criterion of eligiblity is that the sale truly be incremental. It is stated that this criterion would be implemented, on a nondiscriminatory basis, by means of three rate schedules: ISP–1, ISP–2, and ISP–3.

Western states that Rate Schedule ISP–1 would be available to new customers, defined as any person who did not have a contractural right to purchase gas from Western in the twelve months ended September 30, 1985 (the twelve most recent months of actual experience). Thus the criterion of being truly incremental would be satisfied because any such customer would be a new customer, and all sales would be incremental sales, it is stated.

It is stated that Rate Schedules ISP–2 and ISP–3 would be available to existing customers, defined as any person who had a contractural right to purchase gas from Western at any time during the twelve months ended September 30, 1985. Thus, it is stated, the principal purchaser under ISP–2 would probably be Southern Union Gas, but the other customers who had the right to buy gas from any of Western's Divisions on that date would also be able to purchase gas under Rate Schedule ISP–2. Western indicates that these additional eligible purchasers would be Colorado Interstate Gas Company, Gas Company of New Mexico, and Panhandle Eastern Pipe Line Company.

Western states that Rate Schedule ISP–2 would cover "Excess Volume Service" and provides that purchases in excess of the monthly base volumes set forth in section 8 of the rate schedule would be treated as Rate Schedule ISP–2 purchases. It is stated that base volumes would be set forth separately for each purchaser by month and division (if applicable). Thus, Western explains that since all volumes sold in excess of the base volumes would be incremental sales, Rate Schedule ISP–2 would provide for true incremental service, and would therefore be nondiscriminatory with respect to existing customers. It is further stated that, as a result, it would also be consistent with the goal of the Commission Order 436 to provide yet another competitive, nondiscriminatory market option.

It is indicated that Rate Schedule ISP–3 would cover "Displacement Service," and would provide that an existing customer would be able to purchase ISP–3 gas for a particular market if it certifies to Western, in writing: (a) Either that it is currently purchasing gas from another supplier for all or part of a particular market previously served by Western or that it would cease purchasing gas from Western for all or part of that market unless it can purchase gas under Rate Schedule ISP–3; and (b) that the reason for the change in suppliers is price; and (c) that the availability of gas under Rate Schedule ISP–3 would allow the customer to resume or continue purchasing gas from Western for all or part of the particular market. It is stated that the certification would be filed with the Commission as an exhibit to the executed Service Agreement covering the particular ISP–3 sale. Western states that no threshold level of purchases under any other rate schedule or section of a rate schedule would be necessary in order to purchase gas under Rate Schedule ISP–3. By permitting sales which would otherwise be lost to Western, Rate Schedule ISP–3 would clearly be incremental in relation to the sales otherwise remaining and would therefore be nondiscriminatory, it is stated. Accordingly, like Rate Schedule ISP–2, Western claims that it would provide another competitive market option to these customers

consistent with the Commission's current goals.

Another aspect of Western's proposed ISP would be flexible pricing, it is stated. In order to assure Western's ability to compete with producer SMP programs, Western states that it must have pricing flexibility similar to that enjoyed by such producers. Western also recognizes that its primary obligation would be to protect its existing customers. Western therefore proposes that its ISP sales be subject to a floor price applicable to all sales and a ceiling price applicable to sales for resale in interstate commerce.

It is stated that the floor price, applicable to all sales, would vary each month, and would be the sum of the following: (1) The weighted average cost of purchased gas for the Northern Division in the three most recent months for which actual data are available; (2) an increment of 8 cents per Mcf (representing system average variable cost); (3) any directly assignable variable costs above the 8-cent level; and (4) any third-party downstream transportation charges paid by Western.

Western states that it has chosen to utilize the three-month "rolling average" cost of purchased gas for the Northern Division to provide what it believes would be the closest possible approximation of its curent average gas costs. By utilizing the most recent three months for which actual data are available as opposed, for example, to the preceding month, Western indicates that it would avoid the problem of having to carry forward adjustments from the preceding month to the next month's floor calculation. It is further stated that more importantly, the use of a three month average would have the advantage of leveling out any significant month-to-month fluctuations that would possibly occur.

It is indicated that the ceiling price, applicable only to sales for resale in interstate commerce, would be equivalent to Western's then-effective Rate Schedule G–S rate, currently 378.76 cents per Mcf. For nonjurisdictional direct sales to an end user, Western states that it would be free to charge the market price, based on its negotiations with the purchaser. Western cites an example that for the month of November 1985, the applicable ceiling price for ISP sales for resale (Western's G–S rate) would be 390.12 cents per Mcf, and the floor price would be 234.51 cents Mcf (assuming no incremental variable or transportation costs).

Western states that the actual effective price of all ISP sales would be negotiated contract price, with a provision in the service agreement or contract that the actual price could not exceed the ceiling price, if applicable, nor be less than the applicable floor price. It is further stated that the price would be subject to increase or reduction as necessary to stay within the applicable floor-ceiling range. Western indicates that the parties would also be free to renegotiate the price as necessary, but always within the range set by floor and ceiling prices, as applicable.

Western states that all such sales would be fully interruptible and subordinate to the requirements of Western's principal Northern Division customer, Southern Union Gas. Western proposes that the term for such sales would not exceed a single, one-year initial term plus a single, one-year extension. In addition, Western proposes that its right to commence new sales under this ISP would expire when the rates in effect pursuant to the settlement in Docket No. RP84–77–000 are superseded by either a general system rate case under Section 4 of the Natural Gas Act or by new rates ordered into effect by the Commission under section 5.

Western states that this is consistent with Article IX of the settlement which allows Western to retain the revenues from off-system sales as long as the Settlement is still in effect.

It is indicated that existing sales already in progress when such rate changes occur would be allowed to continue to the end of their initial one-year terms, if they are in the initial term, or until the end of their one-year extension terms if they are already in the extension term. Western states that it would reserve the right to seek to amend its certificate herein to extend the life of the ISP if that should be appropriate in light of new rates put into effect upon termination of the Settlement.

Western also seeks blanket authority to construct sales taps and appurtenant facilities if the total cost of each such facility does not exceed $15,000. Western states that for example, if a particular contract would require deliveries at three different points, this authorization would allow construction of a total of $45,000 of facilities, although no single facility could cost more than $15,000.

Western submits that blanket authorization to construct sales taps is consistent with the public interest, given the small size of Western's system and the need to respond expeditiously to meet competition.

In order to prevent subsidization of these incentive sales by Western's regular customers, Western agrees not to include in its next rate case any costs related to facilities installed hereunder, unless such facilities are projected to remain in service after termination of sales made under this ISP.

Comment date: December 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

14. Williston Basin Interstate Pipline Company

[Docket No. CP–86–110–000]

Take notice that on October 31, 1985, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58051, filed in Docket No. CP86–110–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Williston Basin to sell or transport natural gas, on a firm or interruptible basis, under Williston Basin's proposed sales and transportation tariffs, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin requests a certificate of public convenience and necessity authorizing it to initiate new sales and transportation tariffs available to natural gas purchasers and non-owner shippers. Specifically, Williston Basin requests authority to (1) Establish FERC Gas Tariff, First Revised Volume No. 1, consisting of *inter alia*, new sales rate schedules (SGS–1, Small General Service and E–1 Emergency Service), generall terms and conditions, and pro forma service agreements. (2) Establish FERC Gas Tariff, Original Volume No. 1–A, consisting of, *inter alia*, new transportation rate schedules (SDT–1), Sales Displacement Transportation—Firm; SDT–2, Sales Displacement Transportation—Interruptible; TF–1, New Transportation—Firm; TI–1, New Transportation—Interruptible), existing transportation rate schedules (S–2, T–3, S–3, T–4) general terms and conditions, and pro forma service agreements. (3) Convert existing sales and transportation agreements to the applicable proposed rate schedules up to execution of new sales or transportation service agreements.

Williston Basin indicates that the following are the major aspects of the proposed sales rate schedules in first Revised Volume No. 1:

(1) It is stated that Rate Schedule SGS–1 (Small General Service) would apply to small distributor costomers desiring full or partial requirements firm sales service. It is indicated that this rate would be offered as an option to any customer who would otherwise

purchase under Rate Schedule G–1 and whose monthly maximum daily quantity (MDQ) does not exceed 1,000 Mcf. Williston Basin states that it would consist of (a) a commodity non-gas charge specified in dollars and cents per dekatherm of gas purchased and (b) a commodity-gas charge specified in dollars and cents per dekatherm of gas purchased.

(2) It is stated that Rate Schedule E–1 (Emergency Service) would apply to any customer who desires service on an emergency basis and would feature a straight line rate which would be set at the unit average charge under the SGS–1 rate schedule plus $.10 per dekatherm. It is indicated that service under this rate schedule would be firm, but subservient to the firm requirements of regular customers. Williston Basin states that it would have sole discretion to determine whether it has sufficient gas supply and pipeline capacity to render the service.

With regard to Original Volume No. 1–A, Williston Basin indicates the major aspects of the proposed transportation rate schedules are as follows:

(1) It is indicated that Rate Schedule SDT–1 (Sales Displacement Transportation—Firm) would apply to any party that desires a firm transportation service in order to serve an end-user or distributor who was a sales customer of Williston Basin since September 22, 1980 (the date that Williston Basin's predecessor, MDU, lifted its gas supply curtailment) or for gas requirements that would otherwise be purchased, directly or indirectly, from Williston Basin. It is stated that the service agreement would require the specification of a monthly MDQ and a monthly annual entitlements quantity (AEQ) and would provide that a concomitant release (volume reduction) of sales MDQ and AEQ may be effectuated so that Williston Basin would not be obligated to provide more capacity than was originally authorized for the sales service. Williston Basin indicates that the SDT–1 rate would feature the following components specified at a level equivalent to that associated with G–1 sales: (a) A monthly MDQ charge specified in dollars and cents per Mcf of MDQ; (b) a monthly AEQ demand charge specified in cents per Mcf of AEQ and applied each month to the AEQ; (c) the commodity non-gas charge specified in cents per dekatherm of gas transported. It is stated that additionally, the shipper would have to arrange for a waiver of Williston Basin's potential take-or-pay liability associated with the displaced sales volumes. A minimum bill equivalent to the two demand charge components is proposed. All transportation service would be provided on a thermally balanced basis and all imbalances would be eliminated every 12 months, it is stated.

(2) It is indicated that Rate Schedule SDT–2 (Sales Displacement Transportation—Interruptible) would apply to any party that desires interruptible transportation service in order to serve an end-user or distributor who, since September 22, 1980, was a Williston Basin sales customer purchasing gas for interruptible purposes. It is stated that the SDT–2 rate would be a straight line rate equivalent to the commodity non-gas component of the G–1 rate. The thermal balancing and take-or-pay waiver provisions of the SDT–1 rate would also apply, it is indicated.

(3) It is stated that Rate Schedule TF–1 (New Transportation—Firm) would apply to any party that desires a firm transportation service in order to serve any customer who has not been a direct or indirect sales costomer of Williston Basin since September 22, 1980, or for gas requirements that would not otherwise be purchased, directly or indirectly, from Williston Basin. It is indicated that the rate would require the specification of a MDQ and AEQ. It is stated the rate would feature the same basic structure as the SDT–1 rate, however, at a lower level since no production or products extraction costs would be included. A minimum bill equivalent to the two demand charge components is proposed for this service.

(4) Williston Basin states the Rate Schedule TI–1 (New Transportation Interruptible) would be the interruptible counterpart of the TF–1 rate and would apply to any party that desires an interruptible transportation service in order to serve any customer who has not been a direct or indirect sales customer of Williston Basin since September 22, 1980, or for gas requirements that would not otherwise be purchased, directly or indirectly, from Williston Basin. It is stated that this rate would feature a volumetric structure and would be established at a rate level that gives due consideration to the marketability of the service, but no more than a level equivalent to the commodity non-gas component of the TF–1 rate, exclusive of storage costs. Williston Basin states that as to imbalances, the TI–1 rate would be thermally balanced, but would require the elimination of all imbalances every 60 days so as to avoid the implicit use of storage. If a storage service is desired, Williston Basin proposes to provide it pursuant to its S–3 Rate Schedule.

It is stated that following certification, Williston Basin would timely file its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 1–A, as contained pro forma in Exhibit P, herein.

Comment date: December 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to

be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30126 Filed 12-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-305-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc; Joseph Martin Keating et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Joseph Martin Keating

[Docket No. QF86-305-000]

December 13, 1985.

On November 20, 1985, Joseph Martin Keating (Applicant), of 847 Pacific Street, Placerville, California 95667 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 22.1 megawatt hydroelectric facility (P. 3581) will be located on the Merced River near the Town of El Portal, in Mariposa County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Seadrift Cogeneration and Union Carbide Corporation

[Docket No. QF85-15-001]

December 12, 1985.

On November 27, 1985, Seadrift Cogeneration and Union Carbide Corporation (Applicants), of 10375 Richmond, 3rd Floor, Houston, Texas 77042, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Union Carbide chemical plant at Seadrift, Texas. The facility will consist of combustion turbine-generators, heat recovery boilers (HRB), and steam turbine-generators. Steam from the HRB and condensed steam as hot condenseate will be utilized for process application at the chemical plant. The initial net electric power production capacity will be 94.5 MW, which may be expanded to approximately 312 MW after 1989. The primary energy source will be natural gas. The installation of the facility commenced in the third quarter of 1985.

3. Boulder County Public Works Department

[Docket No. QF86-319-000]

December 13, 1985.

On November 18, 1985, Boulder County Works Department, (Applicant), of P.O. Box 471, Boulder, Colorado 80306 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Boulder County Justice Center, 1777 6th Street, Boulder, Colorado 80302. The plant will consist of a natural gas fired reciprocating engine generator set and necessary heat recovery equipment. The heat recovered from the facility will be used for domestic hot water and space heating and cooling at the Boulder County Justice Center. The net electric power production capacity will be 301 kilowatts. The installation date of the facility will be February 1, 1986.

4. Dade County Aviation Department

[Docket No. QF86-335-000]

December 12, 1985.

On December 2, 1985, Dade County Aviation Department (Applicant), of P.O. Box 592075 AMF, Miami, Florida 33159, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Miama International Airport, Miami, Florida. The facility will consist of a combustion turbine generating unit with a heat recovery steam generator. High-pressure steam generated by the facility will be used for chilled water production for air conditioning. The electric power production capacity of the facility will be 3.3 MW. The primary energy source will be natural gas. The facility is expected to be in service in June, 1988

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30125 Filed 12-19-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $5,615.95 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with Conlo Service, Inc. of East Farmingdale, New York (Case No. HEF-0053). The fund will be available to customers who purchase motor gasoline from Conlo during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be postmarked within 90 days of publication of this notice in the Federal Register and should be addressed to: Conlo Consent Order

Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF–0053.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Conlo Service, Inc. of East Farmingdale, New York. The Consent Order settled possible pricing violations with respect to the firm's sales of motor gasoline to customers during the April 1, 1979 through September 30, 1979 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on May 31, 1985. 50 FR 24301 (June 10, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the Federal Register. Applications will be accepted from reseller customers who purchased motor gasoline from Conlo during the consent order period. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: December 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Conlo Service, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF–0053.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Conlo Service, Inc. (Conlo) of East Farmingdale, New York.

I. Background

Conlo is a "reseller-retailer" of motor gasoline, as this term was defined in 10 CFR 212.31. An ERA audit of Conlo's operations during the period April 1, 1979 through September 30, 1979 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations with respect to the firm's sales of motor gasoline to both its commercial end-user customers and its reseller customers, i.e., retailers and wholesalers. In order to settle all claims and disputes between Conlo and the DOE regarding these sales, Conlo entered into a Consent Order with the DOE on March 20, 1981. The Consent Order refers to the ERA's allegations of overcharges, but notes that no findings of violation were made. In addition, it states that Conlo does not admit that it committed any such violations.

Under the terms of the Consent Order, Conlo agreed to make direct refunds totalling $15,168 to its commercial end-user customers and remit $4,854 to the DOE for deposit in an interest-bearing escrow account. This Decision and Order concerns the distribution of the funds that were deposited in the escrow account, plus accrued interest.[1]

On May 31, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 50 FR 24301 (June 10, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they are eligible to receive a refund from the monies remitted by Conlo. We noted that the ERA audit files identify the reseller customers who purchased motor gasoline from Conlo and specify the amounts these customers were allegedly overcharged.

A copy of the PD&O was published in the Federal Register on June 10, 1985 and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was sent to those customers whose names and addresses were listed in the ERA audit files. We have received no comments with respect to the proposed procedures.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process in order to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements *See Office of Enforcement,* 9 DOE ¶ 82,553 (1982); *Office of Enforcement,* 9 DOE ¶ 82,508 (1981); Office of Enforcement, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Conlo consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

III. Refund Procedures

Since we have not received any adverse comments regarding our proposed refund procedures, we have determined that those procedures should be adopted.

The distribution of refunds will take place in two stages. In the first stage refund monies will be refunded to those customers who purchased motor gasoline from Conlo during the consent order period and who demonstrate that they were injured by Conlo's alleged overcharges.[2] Such purchasers must file claims and document their purchases in order to be eligible for a portion of the consent order fund.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982). However, we will not discuss second-

[1] Conlo remitted a total of $5,615.95 to the DOE. This amount includes interest on Conlo's installment payments of the consent order amount to the DOE.

[2] The consent order period is the same as the audit period, April 1, 1979 through September 30, 1979.

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stage refund procedures in this Decision and Order.

A. Refund Claimants

During the first stage of the refund process, the Conlo consent order fund will be distributed to claimants who satsfactorily demonstrate that they were injured by the firm's alleged regulatory violations and have not already received direct refunds from Conlo. As indicated earlier, Conlo's end-user customers received direct refunds from Conlo pursuant to the Consent Order. They will therefore not be eligible for refunds in this proceeding. Only resellers of Conlo regular and unleaded motor gasoline will be eligible for refunds in this proceeding, since these customers did not receive refunds directly from Conlo. The twelve reseller customers identified in the ERA audit file and the amounts which they were allegedly overcharged are listed in the Appendix to this Decision and Order. Although these identified reseller customers are most likely the only eligible refund claimants in this proceeding, we recognize that there may be other resellers of Conlo motor gasoline who were not listed in the ERA audit files and who may have been injured by the firm's pricing practices during the consent order period. We will therefore accept applications from any reseller customer that can show injury resulting from Conlo's alleged overcharges.

B. Showing of Injury

In order to qualify for a refund in Subpart V proceedings, resellers generally are required to show that during the consent order period, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. *Office of Enforcement,* 10 DOE ¶ 85,056 (1983); *Office of Enforcement,* 10 DOE ¶ 85,029 (1982).

As proposed in the PD&O, however, we will adopt a small claims presumption of injury. This presumption will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. *See* 10 CFR 205.282(e).

1. Applicants Claiming a Refund of $5,000 or Less

As stated in the PD&O, we recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of motor gasoline from the consent order firm. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of inury not exceed the amount of the refund to be gained. In the past we have adopted a small claims presumption to assure that the costs of filing and processing refund applications do not exceed the benefits. *See, e.g., Aztex Energy Co.,* 12 DOE ¶ 85,116 (1984); *Marion Corp.* 12 DOE ¶ 85,014 (1984). We will adopt such a presumption in this case. Therefore, any reseller applicant claiming a refund of $5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.[3]

2. Spot Purchasers

Resellers that made spot purchases from Conlo will be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser would not have made spot market purchases of a firm's product at increased prices unless it was able to pass through to its customers the full amount of the firm's selling price. *See Vickers,* 8 DOE at 85,396–97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser must show that it absorbed the alleged overcharges and should submit additional evidence to establish that it would be inappropriate to presume that it had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

C. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. In the PD&O, we proposed that the maximum refund for the customers listed in the Appendix be based on the amount they were allegedly overcharged as indicated by the ERA audit files. Although we recognize that these files do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a Subpart V proceeding, we believe it is appropriate to use this information in the present case. Specifically, we note that the Consent Order underlying this proceeding is limited to the same product and time period as the audit, and that Conlo had relatively few reseller customers. Because of these factors, the information contained in the ERA audit files can be used for guidance in fashioning a refund plan which is likely to correspond closely to the injuries experienced. *See, e.g., Marion.* To calculate the maximum refund amount for each identified customer listed in the Appendix, we will therefore multiply the alleged overcharge amounts for each firm by a pro rata factor, determined by dividing the applicable consent order amount ($5,615.95) by the total alleged overcharges in sales to resellers ($13,390.34). This yields a pro rata factor of 0.4194. The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

We shall also adopt our proposal to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less that $15 outweighs the benefits of restitution in those situations. See, *e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Conlo consent order fund. Accordingly, we shall now accept applications for refund from eligible customers who purchased motor gasoline from Conlo during the consent order period. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationery. The following information should be included in all Applications for Refund:

1. The name of the consent order firm, Conlo Service, Inc., the case number HEF–0053, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. The manner in which the applicant used Conlo motor gasoline, i.e., whether it was a retailer or wholesaler.

4. The volume of Conlo motor gasoline that the applicant purchased in each month of the period of time for which it

[3] Under the refund methodology set forth in Part IIIC of this Decision, all of Conlo's identified eligible customers would be below this threshold.

is claiming it was injured by the alleged overcharges.

5. A statement of whether the applicant was in any way affiliated with Conlo. If so, the applicant should state the nature of the affiliation.

6. A statement of whether there has been any change in ownership of the entity that purchased motor gasoline from Conlo since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

7. A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any chance in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

8. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register.** A copy of each Application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue, SW, Washington, DC. Any applicant that believes that its Applications contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Applications from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

All Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Conlo Service, Inc. pursuant to the Consent Order executed on March 20, 1981 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

George B. Breznay,

Director, Office of Hearings and Appeals.

Dated: December 13, 1985.

Appendix

Conlo Service, Inc.

Conklin St. & Locust Ave., East Farmingdale, NY 11735.

Consent Order Period: 4/1/79–9/30/79.

Product Covered: Motor Gasoline.

Consent Order Amount: $5,615.95.

Pro Rata Factor ($5,615.95 divided by $13,390.34): 0.4194.

Identified customers	Alleged overcharges	Potential refunds [1]
Frank's Auto,[2] 661 Burnside Avenue, Lawrence, NY 11559	$107.12	$45.00
Jimmy's, 106 Putnam Avenue, Atlantic Beach, NJ 11509	8,379.67	3,514.00
Queen Bee,[2] Veteran's Hwy & Long Island Expressway, Holbrook, NY 11741	1,401.97	588.00
S & J Service,[2] Hempstead Avenue, Hempstead, NY 11552	121.85	51.00
Malverne Park Service,[2] Ocean Avenue, Malvern, NY 11565	877.07	368.00
John & Kenney's, 234 Route 109, West Babylon, NY 11704	772.60	324.00
Milex, 1286 Route 110, Farmingdale, NY 11735	378.95	159.00
Super Car Clinic,[2] Conklin ST. & Denton Ave., Farmingdale, NY 11735	253.00	106.00
W & C,[2] 3821 Veteran's Hwy, Ronkonkoma, NY 11779	117.83	49.00
Acme Marine,[2] Lawrence Basin, Lawrence, NY 11559	384.30	161.00
Nat Park Gulf,[2] Austin Boulevard, Island Park, NY 11558	361.54	152.00
B & W Auto,[2] Route 109, Lindenhurst, NY 11757	234.33	98.00

[1] These figures are rounded to the nearest dollar and do not include interest which has accrued since the consent order funds were remitted to the DOE.

[2] We sent copies of the PD&O to all of the customers listed above. The PD&Os sent to the firms designated with a double asterisk were returned to this Office, however, because of incorrect addresses. These customers remain eligible for refunds and may contact this Office to receive a copy of this Decision. We may enlist the help of the consent order firm and/or contact local newspapers in order to locate these customers.

[FR Doc. 85–30141, Filed 12–19–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $9,361.13 obtained as a result of a consent order which the DOE entered into with O'Connell Oil Company (O'Connell), a reseller-retailer of motor gasoline located in Pittsfield, Massachusetts. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF–0141.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $9,361.13 plus accrued interest obtained by the DOE under the terms of a concent order entered into with O'Connell Oil Company. The funds were provided to the DOE by O'Connell to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period April 1, 1979, through April 30, 1980.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to individuals who purchased motor gasoline from O'Connell. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from O'Connell and to demonstrate that it was injured by O'Connell's pricing practices. Applicants must submit specific documentation regarding the date, price and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisified. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: O'Connell Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0141.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with O'Connell Oil Company (O'Connell).

I. Background

O'Connell is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR § 212.31 and is located in Pittsfield, Massachusetts. A DOE audit of O'Connell's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit indicated that between April 1, 1979, and April 30, 1980, O'Connell committed possible pricing violations amounting to $9,361.13 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between O'Connell and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, O'Connell and the DOE entered into a consent order on December 1, 1980. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. The consent order also states that O'Connell does not admit that it violated the regulations. On September 4, 1981, pursuant to the terms of the consent order, O'Connell deposited $9,361.13 into an interest-bearing escrow account for ultimate distribution by the DOE.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products that were injured by O'Connell's alleged pricing practices between April 1, 1979, and April 30, 1980 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE § 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. To aid us in our assessment of a purchaser's injury, we propose the adoption of certain presumptions. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The first presumption we plan to use is that claimants seking small refunds were injured by the pricing practices of the company from which they purchased products. There are a number of bases for such a presumption. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury, a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive. In the case of relatively small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the expected refund and whatever benefits are derived from any additional precision. Consequently, without simplified procedures, some potential claimants would be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumptionwhich will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of what resulted from the initial impact of the alleged overcharges.

Under the small claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on

[1] As of November 30, 1985, the O'Connell escrow account contained $16,082.67, representing $9,361.13 in principal, and $6,721.74 in accured interest. O'Connell had previously deposited funds into an escrow account pursuant to an earlier consent order regarding sales of motor gasoline during the period November 1, 1973 through March 31, 1974. Those sales and that escrow account are not involved in this Proposed Decision.

purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and to the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the consent order period is many years past, $5,000 is a reasonable value for the threshold.

See Texas Oil and Gas Corp., 12 DOE ¶ 85,069 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

However, a reseller or retailer which seeks a refund of more than $5,000 will be required to provide a detailed demonstration of injury. A reseller will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pas along the alleged overcharges to its own customers.[2] In addition, a reseller claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Triton Oil and Gas Corporation/Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

In addition, we propose that the type of demonstration of injury to be made by retailer claimants will be different than that of reseller applicants. This is proposed because, unlike resellers, for most of the 13 month consent order period (the 9½ month period from July 16, 1979 until April 30, 1980), retailers were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Consequently, retailers were not required to maintain or compute cost banks during the 9½ month period. As a result, any requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, *i.e.*, based upon unrecovered cost banks, would probably eliminate all retailer claimants for the bulk of the consent order period. Therefore, in this proceeding, we propose that retailers which lack banks subsequent to July 16, 1979 may still file a claim for a refund which exceeds the small claim threshold. Retailers should, however, submit bank calculations from April 1, 1979 through July 16, 1979.[3] Like resellers, retailers will be required for the entire consent order period to show that market conditions prevented them from recovering those increased costs, *i.e.*, through a demonstration of lowered profit margins, decreased market shares, or depressed sales volumes.[4]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikey to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from O'Connell not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of motor gasoline from O'Connell during the consent order period.

In addition, we are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were not subject to the DOE regulations during the relevant period, and are thus outside our inquiry concerning pass-through of injury. *See Office of Enforcement, Economic Regualtory Administration; in the matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also /Texas Oil & Gas Corp.*, 12 DOE at 88,209[5] Therefore, we propose that for end users of motor gasoline sold by O'Connell, documentation of purchase volumes will provide a sufficient showing of injury.

We propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges. *See e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Calculation of Refund Amount

We must further determine the proper method for dividing the consent order funds among successful applicants. In cases involving "global" consent orders, or cases where information is minimal, we have generally adopted a "volumetric" allocation of the funds as an equitable way of allocating the proceeds of the consent order among eligible firms. In these situations, the allocation is calculated by multiplying the number of gallons purchased by a claimant by a volumetric factor, using the amount of the relevant consent order fund as the numerator and the total gallons of product covered by the consent order as the denominator. In addition, the volumetric refund presumption generally presumes that alleged overcharges committed by a consent order firm were spread equally over all gallons of product marketed by that firm. However, in cases such as this where more detailed information exists, we have used a different approach to best achieve restitution. *See, e.g.,*

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[2] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[3] The cost bank requirement has been relaxed in other instances regarding the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982) (Tenneco).

[4] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[5] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

Marion Corporation 12 DOE ¶ 85,014 (1984) at 88,031.

A modified volumetric approach makes the refunds ordered correspond more closely to the actual injuries experienced by O'Connell's reseller and end user customers. The information contained in the consent order indicates that fewer gallons were sold and more of the alleged overcharges occurred on the volumes of motor gasoline which O'Connell sold to resellers than on the volumes sold at retail. We note, however, that the audit files do not identify either the allegedly injured parties, or the dollar amount of alleged overcharges paid by each. Also, while the record does indicate that O'Connell's reseller purchasers bore a disproportionate share of the alleged overcharges, there is nothing in the record to rebut the presumption that, within these separate categories of purchaser, overcharges were spread equally over O'Connell's sales of motor gasoline. Therefore, we propose the use of separate volumetric factors for O'Connell's different purchasing classes, which will be used in determining the most equitable refund amounts for each.[6]

The consent order documents the exact breakdown of the settlement funds according to the amounts due to the two classes of purchaser, *i.e.*, $7,407.49 to resellers and $1,953.64 to end users. We propose to use these figures in calculating the separate volumetric factors, *i.e.*, we will use the relevant portion of the consent order funds assigned to each particular class of purchaser as the numerator, and the total gallons of motor gasoline sold to each class during the consent order period as the denominator. For applicants who purchased motor gasoline from O'Connel for resale, the volumetric factor is $.004223. For purchases from O'Connell's retail stations, the volumetric factor is $.000589. In addition, successful applicants will receive a proportionate share of the accrued interest.[7]

[6] The volumetric presumption is rebattable, however. A claimant which beleives that it incurred a disproportionate share of the alleged overcharges within its class may submit evidence providing this claim. *See* Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co., 12 DOE at 88,164.

[7] The volumetric factors have been calculated from information contained in ERA's audit workpapers. The audit examined wholesale sales made during June, July and August 1979, and retail sales made between April and August 1979. From these figures we extrapolated O'Connell's wholesale sales for the entire consent order period (1,754,036 gallons). We then divided this amount into the portion of consent order funds applicable to the alleged overcharges to wholesale customers ($7,407.49) to obtain the volumetric factor of $.004223. Similarly, for retail gallons we extrapolated from the number of retail gallons sold during the five month audit period to arrive at an estimate of 3,317,933 gallons sold during the entire consent order period. We than divided the consent order funds applicable to retail sales ($1,953.64) by our estimate of O'Connell's total retail sales (3,317,933 gallons) to obtain the volumetric factor of [illegible].

C. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 C.F.R. § 205.283. In its application, a claimant must include a schedule of its monthly purchases form O'Connell. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged evercharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is is or has been involved as a party in any DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

D. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by O'Connell Oil Company pursuant to the consent order executed on December 1, 1980, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-30142 Filed 12-19-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds obtained from Conoco Inc. in settlement of all issues regarding the firm's application of the federal petroleum price and allocation regulations during the period January 1, 1973 through January 27, 1981.

DATE AND ADDRESS: Applications for refund must be postmarked by March 20, 1986, should conspicuously display a reference to case numbers HEF-0010 and HEF-0484, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Nancy Kestenbaum, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below.The Decision and Order establishes procedures to distribute funds obtained as a result of a consent order between the DOE and Conoco Inc. (Conoco) on July 2, 1982. The consent order settled all disputes between the DOE and Conoco concerning possible violations of DOE price and allocation regulations relating to transactions by Conoco involving the production, refining, processing, reselling, and marketing of crude oil and petroleum products during the period January 1, 1973 through January 27, 1981. Under the terms of the consent order, Conoco has remitted $14,000,000 which is being held in an interest-bearing escrow account pending determination of its proper distribution.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications

BEST COPY AVAILABLE

for Refund. The specific information to be included in an Application for Refund is set forth below. All Applications should be postmarked by March 20, 1986, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate, and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 12, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Conoco Inc.

Dates of Filing: December 23, 1982, November 14, 1983.

Case Numbers: HEF–0010, HEF–0484.

The regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration's Office of Special Counsel (OSC) to request the Office of Hearings and Appeals (OHA) to formulate and implement procedures for distributing funds received as a result of an enforcement proceeding involving alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with those regulatory provisions, the OSC filed two Petitions for the Implementation of Special Refund Procedures in connection with a consent order entered into with Conoco Inc. (Conoco). The first Petition involves $3 million in settlement of alleged violations of the refiner pricing regulations, and was filed on December 23, 1982. The second Petition involves $11 million in settlement of alleged violations of the crude oil producer regulations, and was filed on November 14, 1983. Each of the petitions concerns funds received from Conoco pursuant to different provisions of that consent order, *i.e.*, paragraphs 402 and 403. Under the terms of the consent order, Conoco agreed to make refunds for alleged violations of the DOE price and allocation regulations in the following amounts: (i) $3 million to be paid to DOE for disposition according to DOE's determination (¶ 402), and (ii) a quantity of foreign crude oil valued at $11 million to be delivered to the Strategic Petroleum Reserve of the United States or, in the alternative, to pay to DOE the amount of $11 million in lieu of delivering crude oil to the Strategic Petroleum Reserve (¶ 403). On November 24, 1982, Conoco remitted to DOE $3 million in accordance with ¶ 402 of the consent order. On October 28, 1983, Conoco elected to pay $11 million in funds directly to DOE in accordance with ¶ 403 of the consent order. These funds, totalling $14 million, are now being held in an escrow account under the jurisdiction of the DOE pending receipt of instructions from the OHA regarding their final distribution.[1]

I. Background

Conoco is a "producer" of crude oil and a "refiner" as those terms were defined in 10 CFR 212.31. During the relevant time periods, Conoco was engaged in the production, refining, processing, reselling, and marketing of crude oil and petroleum products, and was subject to the Mandatory Petroleum Price Regulations set forth at 10 CFR Part 212.

As a part of its enforcement activities, the OSC audited Conoco's price and allocation practices, including the manner in which the firm applied the federal petroleum price and allocation regulations with respect to its importation, refining, and sale of crude oil and covered petroleum products during the period January 1, 1973 through January 27, 1981 (hereinafter referred to as the "consent order period"). In order to settle all claims and disputes between the parties concerning this period, Conoco and DOE entered into a Proposed Consent Order whereby Conoco agreed to remit $3 million to the DOE, and to deliver $11 million worth of foreign crude oil to the Strategic Petroleum Reserve. The consent order refers to the DOE's allegations of regulatory violations, but notes that no findings of violations were made. In addition, the consent order states that Conoco does not admit that it violated the federal petroleum price and allocation regulations during the consent order period. Notice of the Proposed Consent Order was published in the **Federal Register** at 47 FR 30563 (July 14, 1982), and interested persons were invited to submit comments and written notification of potential claims against the settlement funds. After comments were received from numerous parties, the Proposed Consent Order was finalized without modification and published in the **Federal Register** at 47 FR 49700 (November 2, 1982). OSC subsequently filed the two Petitions which are the subject of this refund proceeding.

[1] As of November 30, 1985, the $14 million principal deposited in Conoco's escrow account had accrued $3,182,631.97 in interest, bringing the total amount at that time to $17,182,631.97.

On August 13, 1984, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the funds that had been deposited with the DOE by Conoco. In the PD&O we described a two-stage process for the distribution of the funds made available by the Conoco consent order. The first stage will distribute refunds to identifiable purchasers of covered products who may have been injured by the consent order firm's pricing practices during the applicable consent order period.

This decision discusses the comments that were received, implements the refund process, and describes the information that purchasers of Conoco's refined products or crude oil should submit in order to demonstrate eligibility for a portion of the consent order funds. After meritorious claims are paid, a second-stage refund proceeding may become necessary to distribute any remaining funds. *See generally Office of Special Counsel,* 10 DOE ¶ 85,048 (1982).

II. Jurisdiction

We have considered OSC's two Petitions for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Conoco consent order funds. In our Proposed Decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement,* 9 DOE ¶ 82,553 (1982). We have received no comments challenging our jurisdiction in this case, and we will grant OSC's petitions and assume jurisdiction over the distribution of the Conoco consent order funds.

III. Comments on Proposed Decision

Comments were solicited regarding the proposed refund procedures outlined in the PD&O. Thirteen states [2] and nine other parties [3] filed comments in response to the PD&O. To the extent each of the states and the National Consumer Law Center, Inc. commented on the distribution of residual funds in a second-stage proceeding, we shall defer addressing these issues. It would be

[2] Comments were filed by the following states or their representatives: Arkansas, Delaware, Florida, Iowa, Kansas, Louisiana, New Mexico, North Carolina, North Dakota, Rhode Island, Texas, Utah, and West Virginia.

[3] Comments were also filed on behalf of several Indian tribes, Air Transport Association, Farmland Industries, Inc., Bill Keeling Oil Co., Inc., Marathon Petroleum Company, Mobil Oil Corporation, National Consumer Law Center, Inc., National Council of Farmer Cooperatives, and Petroleum Marketers Association of America.

premature to discuss at this time the disposition of second-stage funds, particularly since the disposition of any funds remaining after meritorious claims have been paid will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶82,508 (1981). All other comments are discussed in the following presentation of the procedures we are adopting.

IV. Refund Procedures

The Conoco consent order resolves the firm's alleged violations for the DOE petroleum price and allocation regulations. As provided in the consent order, Conoco paid $3 million to the DOE and, in lieu of delivering to the Strategic Petroleum Reserve a quantity of foreign crude oil valued at $11 million, also paid $11 million to the DOE for its disposition. In the PD&O we concluded that $3 million of the Conoco Consent Order funds should be made available to those claimants who purchased refined petroleum products, and $11 million should be set aside into a separate crude oil pool of refunds. The determination to allocate in this manner the $14 million in consent order funds between refined petroleum product and crude oil claimants was based on representations made by the Economic Regulatory Administration (ERA). *See* Memorandum from Leslie W. Adams, Deputy Solicitor of ERA, dated July 26, 1984.

The Petroleum Marketers Association of America (PMAA) filed comments disagreeing with this apportionment. PMAA argues that refined product purchasers should be able to claim refunds from the entire $14 million settlement fund, and that ERA's comments should be ignored.[4]

We do not agree. ERA states that the negotiations underlying the $3 million cash payment and $11 million in kind payment of crude oil were separate and segregated between refiner pricing and crude oil violations. ERA maintains that there were different litigation risks associated with the operation of the regulations in each of these two areas, and that the $11 million remedy specifically reflected the litigation history and factual background associated with the crude oil issues. Nor is there evidence in the record which suggests a different basis for the two settlement amounts ultimately obtained. Accordingly, we will divide the consent order funds in the manner previously proposed.

A. Refunds to Refined Product Purchasers

The Conoco refined product pool of $3 million shall be distributed to claimants that satisfactorily demonstrate that they have been adversely affected by alleged overcharges in sales of covered products. As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of refined petroleum products made by the consent order firm. We will therefore calculate refunds based on a per-gallon, volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(d) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions adopted in this case will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider refund applications in the most efficient way possible in view of the limited resources available.

A claimant will be eligible to receive a refund equal to the documented number of gallons of covered products it brought from Conoco during the applicable consent order period, multiplied by a volumetric percentage. This percentage is computed by dividing the amount of the refined product pool by the total number of gallons of covered petroleum products sold by Conoco during the consent order period.[5] The calculation of the volumetric percentage for Conoco results in a per gallon volumetric refund amount of $.0001, exclusive of interest.[6] In addition, interest which has accrued on the consent order funds will be applied to each refund on a pro rata basis.

In the PD&O we tentatively determined that resellers and retailers seeking refunds based on purchases of 50,000 gallons per month, or 600,000 gallons annually, would not be required to demonstrate further any injury resulting from the alleged overcharges. The State of North Carolina filed comments opposing adoption of *any* presumption, arguing that first-stage refunds should only be paid to resellers that can prove that they did not pass on the alleged overcharges, regardless of the amount of the claim. We have considered this comment but will adopt the proposed small claims presumption in the interest of fairness and efficiency.

The adoption of a presumption of injury for smaller claims is based on a number of important considerations. First, because of the complexity of the pricing issues involved and the time elapsed since the alleged overcharges took place, attempts at restitution to deserving parties necessarily will be inexact. *See Flash Oil Co. v. United States*, No. 85–436C(B), mem. opinion (E.D. Mo. Sept. 26, 1985). It is our experience in similar refund proceedings that the presumption of injury enables parties who likely were injured to claim refunds. We note that in past refund proceedings the OHA has analyzed extensively the issue of cost absorption by smaller purchasers of petroleum products. *See, e.g., Economic Regulatory Administration: In the Matter of Standard Oil Co. (Indiana)*, 10 DOE ¶ 85,048 (1982) (*Amoco*) at 88,205–209. After careful analysis of the available

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[4] PMAA directs OHA to a determination in the *Amoco* proceeding, Office of Special Counsel, 10 DOE ¶85,048 (1982), where we attributed little weight to the testimony of a former DOE official regarding the apportionment of the *Amoco* consent order funds among various classes of claimants. In that decision, however, we noted the absence of any relevant restriction or limitation in either the consent order or the petitions invoking our jurisdiction. In contrast, the Conoco consent order—by its own terms—provided an in-kind remedy involving crude oil valued at $11 million. In addition, OSC's petition to OHA expressly stated that the $11 million payment "resolved alleged violations by Conoco in its first sales of domestic crude oil." Petition for the Implementation of Special Refund Procedures, filed November 14, 1983, at 2. These facts, together with ERA's representations to OHA in a memorandum filed July 26, 1984, clearly distinguish this proceeding from *Amoco*, where both the consent order and subsequent petitions were silent on the apportionment issue regarding the consent order funds.

[5] PMAA asserts that the pre-entitlements portion of the crude oil settlement funds should be included in calculating the refined product per gallon rate of refund, presumably arguing that any overcharges for this period were passed through to customers in the form of increased prices for refined petroleum products. Comments, filed November 9, 1984, at 14. No sufficient basis is given, however, for transferring monies attributable to crude oil violations—regardless of when they allegedly took place—to the refined product pool for purposes of calculating refund amounts.

[6] According to information provided by Conoco, the firm sold 32,709,030,338 gallons of covered petroleum products during the consent order period. Dividing the $3 million refined product pool by this amount equals $.0000917 per gallon. For simplicity, the volumetric amount will be rounded to the nearest 1/100 of a cent, *i.e.*, $.0001.

data, we have found that in cases of alleged overcharges by refiners, retailers were probably injured to some degree in that they were unable to pass along all cost increases to their customers. *Amoco* at 88,206; *Mobile Oil Corp.*, 6 Fed. Energy Guidelines ¶ 90,058 at 90,118 (1985) (Proposed Decision and Order). We cannot expect individual purchasers to be capable of producing similar findings, since our analysis was complex and involved data from many different sources. In view of the conclusion that small claimants bore some impact of the alleged overcharges, and the fact that failure to allow simplified application procedures for small claims would deprive injured parties of the opportunity to receive refunds, we conclude that the small claims presumption should be adopted.

The PMAA objects, however, to the use of a small claims presumption based on a gallon threshold amount. It argues that, after estimating the amount of gallons sold by Conoco during the consent order period, the volumetric refund amount would be so small as to discourage a large number of claimants from participating in this proceeding.

We agree. Use of a gallon threshold as described in the PD&O may not enable us to effectuate our goal of facilitating disbursements to claimants applying for relatively small refunds. Consequently, we have decided that an adjustment in that approach is warranted.

Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes pruchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this proceeding, where the volumetric refund amount is fairly low and early months of the consent order periods are many years past, $5,000 is a resonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein. Therefore, applicants who are claiming a refund of $5,000 or less will not be required to provide a separate, detailed showing that they were injured by the alleged overcharges.

In the PD&O, we also tentatively determined that although we would grant smaller refunds without requiring claimants to demonstrate injury, resellers and retailers claiming refunds above a certain level would be required to show that the firm was injured by the alleged overcharges. The Bill Keeling Oil Company, Inc. (Keeling) filed comments objecting to the requirement that claimants demonstrate injury. Keeling argues that it would be difficult for a small business to prove lower profit margins or lower market shares from records which may be impossible to produce, and that a fair and equitable solution would be a refund based on total gallons purchased during the consent order period.

Keeling's comments do not convince us that we should pay all refund claims regardless of amount without requiring a showing of injury. As stated *supra*, the presumption of injury for smaller claims takes into consideration the factors raised by Keeling. Larger claimants are better equipped to prove injury because as a rule they have greater resources and maintain better records. Furthermore, many claimants in past refund proceedings seeking refunds above the threshold have been unable to prove injury despite their attempts to do so. *See, e.g., Standard Oil Co. (Indiana)/ Ashland Oil, Inc.*, 13 DOE ¶ 85,018 (1985). This experience suggests that allowing claimants to receive large refunds based solely on purchase volumes without requiring a detailed showing of injury would potentially enrich these claimants beyond the impact of the alleged overcharges. We therefore have determined that claims above a threshold level must be accompanied by a detailed showing of injury, as outlined below.[7]

A reseller or retailer which claims a refund in excess of $5,000 therefore, will be required to document its injury. While there are a variety of means by which a claimant can make such a showing, a firm is generally required to show that market conditions would not permit it to pass through the increased costs associated with the alleged overcharges. In addition, a reseller or retailer of petroleum products must show that it maintained a "bank" of unrecovered costs, in order to demonstrate that it did not subsequently recover these costs by increasing its prices. *See, e.g., Triton Oil & Gas Corp./ Cities Service Co.*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Co./Mid-Continent Systems, Inc.* 10 DOE ¶ 85,009 (1982).[8]

The PMAA filed comments suggesting that the cost bank showing required of claimants seeking larger refunds is prohibitively expensive and too difficult for medium-sized resellers. It suggests that the OHA adopt an alternative showing of injury, without a cost bank requirement, which would require less expense of potential claimants. This proposed method would compare a firm's historical profit margin in a pre-regulation base period with its realized profits during the period for which it requests a refund. PMAA contends that this method would demonstrate the presence of cost banks—for instance, in months where the firm's profit margin is lower than the base period margin—without requiring an actual calculation of cost banks from the firm's old records. Alternatively, the PMAA proposes that if the OHA is unable to change its standards for demonstrating injury, then the $5,000 threshold level should be raised so that firms not wishing to incur the expense of calculating cost banks may receive refunds more commensurate with the injury they suffered.

The PMAA proposal regarding a new standard of injury has serious limitations. The profit margin comparison, standing alone, would not be reliable evidence of injury and absorbed costs. Because cost banks are cumulative, a firm's ability to pass through some of the increased costs it had previously incurred had the effect of drawing down the cost banks tabulated in previous months. A firm which ultimately was able to recoup its cost therefore was not "injured" by the alleged overcharges, would no longer have cost banks, and would not be eligible for a refund under the cost bank requirement used by the OHA in past proceeding. *See Bayou State Oil Corp.*, 12 DOE ¶ 85,197 (1985) at 88,622. However, under PMAA's alternate proposal, such a firm would be eligible for refunds for all months in which it realized lower than base period profits, regardless of whether it eventually was able to recoup fully its increased costs. Although this method would reduce the cost and effort required of claimants, it would also permit refunds to be paid to parties which may not have been injured by the alleged overcharges and therefore would not be acceptable as a standard of injury in this refund proceeding.

However, the OHA is not wedded in every case to a requirement that firms submit their actual, contemporaneous cost banks to show that they were unable to recoup alleged overcharges. In a case in which a firm did not

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[7] We are also not convinced that any particular injury to Conoco's jobbers should be presumed to have occurred with the purchase of every gallon. *See* PMAA Comments, filed November 9, 1984, at 9.

[8] Resellers or retailers of Conoco products who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed documentation of their injury. *See Office of Enforcement*, 8 DOE ¶ 82,597 (1981) at 85,396.

contemporaneously calculate banks and there are specific circumstances which make calculation of banks at this time prohibitively expensive, we will accept monthly profit margin data. The claimant, however, will have the burden of demonstrating how this data proves the existence of cost banks during the consent order period. The firm also must explain why any increases in its profits above base period levels should not be taken to indicate that increased costs associated with alleged overcharges were later recouped. In addition the firm will still be obliged to show that market conditions would not permit it to pass through the alleged overcharges. *See Bayou State Oil Corp.*, 12 DOE at 88,623.

With regard to PMAA's other suggestions, we will not raise the threshold level to be used for the presumption of injury in this proceeding. As stated above, we believe the $5,000 figure to be a reasonable level based on the competing factors in this case. Moreover, we are providing an alternative to presenting contemporaneously compiled cost banks to the extent that profit margin analysis may be employed to show the presence of cost banks in certain cases. Therefore, the cost of demonstrating injury may be lowered. Nor are we convinced that the cost of calculating cost banks is as high as PMAA contends, *i.e.*, greater than $20,000 for a middle-sized reseller. After all, these firms were required to compile and maintain records regularly from which cost banks could be readily calculated. *See* 10 CFR 210.92 and 212.93(a). In view of all of these factors, we will adopt the $5,000 threshold in this proceeding.

We will also presume that end-user purchasers and ultimate consumers that were not regulated petroleum firms were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum goods and services would be beyond the scope of this special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that downstream end-user purchasers of Conoco petroleum products need only document their purchase volumes in order to make a sufficient showing that they were injured by the alleged overcharges.

In addition, refund applications from firms that purchased refined products and were regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that the firm absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Conoco's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they are allowed to charge their customers. Refunds to agricultural cooperatives will likewise directly influence the prices charged to member customers. Consequently, these firms to need only document their purchase volumes of refined products from Conoco to make an adequate showing of injury. *See Office of Special Counsel*, 9 DOE ¶ 82,538 (1982). However, along with their applications these firms should provide a full, detailed explanation of the manner in which refunds would be passed through to customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of a refund.

As in previous cases, we will presume that there is a class of potential claimants who may have suffered no injury form Conoco's alleged overcharges. Those parties are firms that made spot purchases of Conoco petroleum products.[9] *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in *Vickers:*

> [T]hese customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of Vickers motor gasoline at increased prices unless they were able to pass through the full amount of Vickers' quoted selling price at the time of purchase to their own customers.

8 DOE at 85,396–97. The same rationale applies in this case. Consequently, we will establish a rebuttable presumption that spot purchasers were not injured by the pricing practices resolved by the consent order. Thus, a spot purchasers claimant will be required to submit additional evidence sufficient to establish that it was unable to recover the prices it paid to Conoco.

As in previous cases, a minimum refund amount will be established for potential claimants. In prior refund cased, refunds for less than $15.00 have not been granted in view of the cost to the government of issuing such refunds in comparison to the restitutionary benefits which may be achieved. *See Amoco* at 88,214. We will adopt the same minimum refund limitation in this case.

B. Refunds to Crude Oil Purchasers

In the PD&O we stated that, in order to receive a refund from the crude oil refund pool, an applicant must demonstrate that it bore the burden of the alleged overcharges. *See A. Johnson & Co.*, 12 DOE ¶ 85,102 (1984) (*Johnson*); *Office of Enforcement*, 9 DOE ¶ 82,521 (1982) (*Alkek*); *Office of Enforcement*, 9 DOE ¶ 82,553(1982) (*Adams*). We also noted in the PD&O that certain identifiable parties might be able to show demonstrable injury from the alleged crude oil violations, *e.g.*, resellers or refiners that obtained crude oil directly from Conoco in which an improper base price for crude oil was alleged, refiners who purchased crude oil from Conoco prior to implementation of the Entitlements Program, or end-users who used crude oil directly as industrial boiler fuel.

Several parties filed comments in response to the proposed procedures for crude oil claimants. The Air Transport Association, whose members consist of large end-users that made purchases directly from major refiners, concurs with OHA's preliminary assessment "that it would be extremely difficult for refiners to demonstrate that they absorbed, rather than passed through, the injurious effects of [the crude oil] violations." Mobil Oil Corporation, on the other hand, objects to any presumption that refiners passed through increased crude oil costs resulting from certification violations, and maintains that there is "virtually no provision for applications for refunds by Entitlements Program participants." The National Council of Farmers

[9] We will except from this principle cooperative organizations which made spot purchases of products from Conoco and resold these products to their members. In the past, we have treated refund applications by cooperatives as applications made on behalf of their members who, as ultimate customers, were not in a position to pass along increased costs. Similarly, any refund received by a cooperative would presumably be passed on to its members, in the form of either a price reduction or a distribution of surplus income. Office of Special Counsel, 9 DOE ¶ 82,538 (1982) at 85,203. *See, e.g.*, Anadarko Production Co./Cities Service Co., 12 DOE ¶85,060 (1984). Cooperative purchases, therefore, are presumed to have been injured in spot purchases of a consent order firm's products when these products were resold to members. Coopertives in this category will be eligible to apply for refunds. These firms must explain in their refund applications the manner in which any refunds will be distributed to members.

Cooperatives (NCFM) and Farmland Industries, Inc. both support refund procedures whereby agricultural cooperatives can seek refunds on behalf of their member associations. NCFM further maintains that cooperative refiners applying for crude oil refunds, particularly for the period prior to the operation of the Entitlements Program, should be exempt from the requirement to demonstrate that it did not pass through any alleged overcharges. Finally, Marathon Oil Company addressed several of the issues it raised in our *Alkek, Adams* and *Johnson* proceedings, as well as the arguments and evidence it submitted in *In Re Stripper Well Exemption Litigation*, Case No. HEF-0025.

On June 19, 1985, after the PD&O was issued, the Department of Energy issued a "Report to the United States District Court for the District of Kansas" in the *Stripper Well Exemption Litigation*. 6 Fed. Energy Guidelines ¶ 90,507 (1985). The report stated that "it is impossible to trace these increased costs [caused by crude oil overcharges] through an individual refiners' refinery, distribution and marketing operations." Report, at 90,620. As a result, a statement was issued establishing a DOE restitutionary policy for crude oil overcharges and the OHA issued an order implementing that policy. 50 FR 27,400 (July 2, 1985) (DOE policy); 50 FR 27,402 (July 2, 1985) (OHA implementation). The OHA order notified the public that the Department will hold crude oil overcharge funds attributable to miscertifications after the implementation of the Entitlements Program in escrow pending Congressional action. Comments on that policy have been received and evaluated, and both the DOE policy statement and OHA implementation order were recently reaffirmed. *Amber Refining Inc.*, 13 DOE ¶ 85,217 (1985). Accordingly, we will accept crude oil-related refund applications in this proceeding as provided in the PD&O, but the distribution of the crude oil refund pool in this case will, where applicable, be governed by the DOE policy statement.

V. Applications for Refund

After considering the comments received concerning the first-stage procedures tentatively adopted in the August 13, 1984 PD&O, we have concluded that the proposed procedures should be implemented, as outlined above. We shall now accept applications for refunds from parties who purchased covered products from the consent order firm during the consent order period.

In order to receive a refund, each claimant must provide a monthly schedule of its volume of purchases from Conoco during the applicable consent order period. If no documentation of the number of gallons purchased is available, a claimant must submit a detailed estimate of its purchases. Each claimant must indicate its level in the consent order firm's chain of distribution, *e.g.*, ultimate consumer, reseller, etc. Each applicant must also state whether there has been a change in ownership of the firm during or since the consent order period, and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. If a reseller or retailer claims a refund in excess of $5,000, it must demonstrate that it was injured by the alleged overcharges by submitting the types of information outlined in Section IV of this Decision.

All applications must be filed in duplicate and must be received within 90 days of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the confidential information has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S. 1001. In addition, the applicant should provide the name and telephone number of a person who may be contacted by the OHA for additional information concerning the application.

Applications should refer to Case Numbers HEF-0010 and HEF-0484, and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy pursuant to the Conoco Inc. consent order may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: December 12, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-30143 Filed 12-19-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $40,000 gained as a result of a consent order which the DOE entered into with H. C. Lewis Oil Company, a reseller-retailer of petroleum products located in Welch, West Virginia. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0115.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $40,000 plus accrued interest obtained by the DOE under the terms of a consent order entered into with H. C. Lewis Oil Company, Inc. The funds were provided to the DOE by H. C. Lewis to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the consent order period April 1, 1979, through December 20, 1979.

OHA proposes that a two-stage refund process be followed. In the first

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stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline from H. C. Lewis. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from H. C. Lewis and to demonstrate that it was injured by H. C. Lewis' pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 100 Independence Avenue, SW., Washington, DC 20585.

Dated: December 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: H. C. Lewis Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF–0115.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with H. C. Lewis Oil Company (H. C. Lewis).

I. Background

H. C. Lewis is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR 212.31 and is located in Welch, West Virginia. Based on an audit of H. C. Lewis' records, ERA issued a Notice of Probable Violation (NOPV) on July 17, 1980, in which it alleged that H. C. Lewis had committed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The NOPV stated that between April 1, 1979 and December 20, 1979, H. C. Lewis committed certain pricing violations with respect to its sales of motor gasoline.

In order to settle all claims and disputes between H. C. Lewis and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, H. C. Lewis and the DOE entered into a consent order on March 19, 1981. the consent order fund represents 71 percent of the amount of the overcharge originally alleged in the NOPV. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that H. C. Lewis does not admit that it violated the regulations.

Under the terms of the consent order, H. C. Lewis agreed to deposit $40,000 into an interest-bearing escrow account for ultimate distribution by the DOE. H. C. Lewis remitted this sum on April 22, 1981. This decision concerns the distribution of the funds in the H. C. Lewis escrow account.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unabl;e to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of motor gasoline that were injured by H. C. Lewis' alleged pricing practices between April 1, 1979 and December 20, 1979 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the H. C. Lewis refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by H. C. Lewis' alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases in specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate

[1] As of November 30, 1985, the H. C. Lewis escrow account contained a total of $65,502, representing $40,000 in principal and $25,502 in accrued interest.

matter, we are making a proposed finding that end users experienced injury.

The pro rata, or volumetric, refund persumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from H. C. Lewis times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.0047 per gallon.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

Second, we plan to presume that purchasers of H. C. Lewis' products seeking small refunds were injured by H. C. Lewis' pricing practices. There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges are attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost of OHA of analyzing it could certainly exceed the expected refund and whatever benefits are derived from any additional precision. Consequently, without simplified procedures, some potential claimants would be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to anlayze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volume if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (Conoco), and cases cited therein.

Unlike threshold claimants, an applicant which claims a refund in excess of $5,000 will be required to document its injury. A reseller will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers.[3]

In addition, a reseller claimant must show that market conditions would not permit it to pass through those increased costs. *See e.g., Triton Oil and Gas Corporation/Cities Service Company*, 12 DEO ¶ 85,107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.*, 10 DOE ¶85,009 (1982).

We propose that retailer claimants be subject to a different requirement for demonstrating injury than that outlined above for reseller applicants. We believe a modification of the injury requirement for retailers is justified because during most of the H. C. Lewis consent order period, specifically, from July 16, 1979 to December 20, 1979, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.*

We note that retailer applicants in other refund proceedings are generally unable to claim refunds above the threshold amount if they lack a showing of banks or unrecouped product costs, since banks tend to prove that a firm absorbed rather than passed through its increased product costs. However, for the purposes of this proceeding, we propose that retailer which lack banks subsequent to July 16, 1979 may still file a claim for a refund for that period which exceeds the small claim threshold.[4] Retailers should, however, submit bank calculations from April 1, 1979 through July 16, 1979. In addition, like resellers, they must show that market conditions prevented them from recovering those increased costs. Indicators of a competitive disadvantage include a detailed description of lowered profit margins, decreased market shares, or depressed sales volumes.[5]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have experienced injury. This is true because

> [t]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same principles apply in this case. Accordingly, we propose that resellers and retailers which made only spot purchases from H. C. Lewis not receive refunds unless they present evidence which rebuts this presumption and

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[2] This figure is derived by dividing the $40,000 principal amount by the 8,535,372 gallons of products sold by H. C. Lewis during the consent order period.

[3] This injury requirement reflect the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973 with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a letter month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[4] The cost bank requirement has been relaxed in other instances regarding the change in the pricing regulations for motor gasoline. See Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982) (Tenneco).

[5] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increase will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

establishes the extent to which they experienced injury.

As noted above, we propose to find that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of overcharges. *See Office of Enforcement* 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, we propose that for end users of motor gasoline sold by H. C. Lewis, documentation of purchase volumes will provide a sufficient showing of injury.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with H.C. Lewis' sales of motor gasoline. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and Office of Special Counsel, 9 DOE ¶ 82,545 at 85, 244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

III. Applications for Refund

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of motor gasoline from H. C. Lewis. The Appendix contains a list of 50 H. C. Lewis customers, which may help to identify those firms which were overcharged. This list is not exhaustive, however. Purchasers will be required to provide schedules of their monthly purchases of motor gasoline from H. C. Lewis, including specific information as to the volume of motor gasoline purchased, the date of purchase, the name of the firm from which the purchase was made, and the extent of any injury alleged. If they claim injury at a level greater than the volumetric level, they must document this injury in accordance with the procedures described above. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by H. C. Lewis Oil Company pursuant to the consent order executed on March 19, 1981, will be distributed in accordance with the foregoing decision.

Appendix

H.C. Lewis Oil Company

Customer name	City [1]	Zip Code
Allen Trucking	Kimball	[illegible]
B & G Shell	Lester	[illegible]
Bailey's Grocery	Mohawk	[illegible]
Bailey Lumber	Welch	[illegible]
Bentree Shell	Bentree	[illegible]
Big Four Shell	Kimball	24853
Blizzards Inc	Coaldale	24717
Brinhee Coal Company	Thoyre	24866
Bryant's Shell	Rasped	[illegible]
Carnation Inc.	Carnation	25036
City of Gary	Gary	[illegible]
City of Welch	Welch	24801
Consolidation Coal Company	Maitland	

Customer name	City [1]	Zip Code
Cook Brothers Drilling	Wayne	[illegible]
Corte Co., Inc	Kimball	25701
East Pineville Shell	Pineville	[illegible]
English Shell	English	[illegible]
Fountain Shell	Oak Hill	[illegible]
Gary Country Club	Gary	24836
H & C Bantam Market	Welch	[illegible]
Hawley Coal Mining	Keystone	[illegible]
Henlawson Shell	Logan	[illegible]
Hi Ock Oil No. 2	Welch	[illegible]
Terry Justice	Panther	24872
M & B Coal Company	Welch	[illegible]
Mayberry Produce	Mayberry	[illegible]
McDowell Tire & Tread	Gary	24836
McDowell Trucking	Davy	[illegible]
McKinney's Shell	New Richmond	[illegible]
Matney Junk Company	Welch	[illegible]
Mountain State Shell	Mt. Hope	25880
Mullens Shell	Mullens	25882
New Berry Trucking	Iaeger	24844
Northfork Coca-Cola	Welch	[illegible]
Olga Coal Company	Coalwood-Coretta	
Owens Shell	War	24892
Oyler's Shell	Ikes Fork	[illegible]
P & L Shell	Welch	[illegible]
Perry & Hulton, Inc	Maitland	
Royalty Smokeless	Premier	[illegible]
Sautsville Shell	Sautsville	[illegible]
Seven-up Bottling Company	Welch	24801
Shannon Porghontas Mining	Welch	24801
Skygarty Grocery	Skygarty	[illegible]
Squire Shell	Squire	24884
Steuer Shell	War	24892
Sugar Hill Dist. Co	Welch	[illegible]
Threeway Shell	Iaeger	24844
Wilkinson Shell	Wilkinson	[illegible]
Wyomac Coal Company	Welch	[illegible]

[1] All companies are located in West Virginia.

[FR Doc. 85-30144 Filed 12-19-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $353,339 obtained as a result of a consent order which the DOE entered into with Lockheed Air Terminal, Inc., a reseller of aviation fuel located in Burbank, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0117.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of

Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–0602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentively formulated to distribute to adversely affected parties $353,339 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Lockheed Air Terminal, Inc. The funds were provided to the DOE by Lockheed to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of aviation fuel during the consent order period January 1, 1974 through December 31, 1975.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to 40 first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from Lockheed or to submit a statement verifying that it purchased aviation fuel from Lockheed and is willing to rely on the data in the audit files. Certain firms will also be required to make specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA proposes to distribute at least 50 percent of any remaining funds to the State of California, where approximately 50 percent of the sales to identified purchasers occurred.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Lockheed Air Terminal, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0117.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Lockheed Air Terminal, Inc. (Lockheed).

I. Background

Lockheed is a "reseller" of aviation fuel as that term was defined in 10 CFR 212.31 and is located in Burbank, California. Based on an audit of Lockheed's records, ERA issued a Notice of Probable Violation (NOPV) in which it alleged that Lockheed had committed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The NOPV stated that between January 1, 1974 and December 31, 1975, Lockheed committed certain pricing violations with respect to its sales of aviation fuel.

In order to settle all claims and disputes between Lockheed and the DOE regarding the firm's sales of aviation fuel during the period covered by the audit, Lockheed and the DOE entered into a consent order on May 11, 1981. The consent order fund represents 35.7 percent of the amount of the overcharge originally alleged in the NOPV. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Lockheed does not admit that it violated the regulations.

Under the terms of the consent order, Lockheed agreed to deposit $328,024 plus installment interest into an interest-bearing escrow account for ultimate distribution by the DOE. Lockheed was required to make its payments in 12 equal monthly installments. The consent order was paid in full on March 12, 1982. Including installment interest, Lockheed's actual deposits total $353,339. That sum will be considered to be the principal amount in this proceeding. This decison concerns the distribution of the funds in the Lockheed escrow account.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products that were injured by Lockheed's alleged pricing practices between January 1, 1974 and December 31, 1975 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified Purchasers

A special refund proceeding is designed to provide restitution to parties that were injured as a result of alleged or actual regulatory violations. In this proceeding, we have the benefit of access to material developed by the DOE during its audit of Lockheed and

[1] As of November 30, 1985, the Lockheed escrow account contained a total of $536,113, representing $353,339 in principal (including installment interest) and $182,774 in accrued interest.

we intend to rely in part on that information. In other Subpart V cases where audit material was available to identify purchasers, for example, the refund process has been facilitated by the use of that material. At the same time, these audit files do not necessarily provide conclusive evidence on which to base the distribution of refunds. We have consistently maintained, however, that the information contained in ERA's audit files may reasonably be used to determine the identities of purchasers allegedly overcharged in the first instance and the amounts of the overcharges. *See, e.g., Marion Corp,* 12 DOE ¶ 85,014 (1984) (the information contained in the audit file may be used to fashion a more accurate refund plan than that devised by using a general volumetric approach). *See also Armstrong and Associates/City of San Antonio,* 10 DOE ¶ 85,050 at 88,259 (1983).

During the DOE audit, 40 identifed first purchasers were alleged to have been overcharged in purchases of aviation fuel from Lockheed. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the purchasers identified by the audit, and other as yet unidentified customers that may have been injured by purchases from the consent order firm. *See, e.g., Bob's Oil Co.,* 12 DOE ¶ 85,024 (1984); *Richards Oil Company,* 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit and the share of the settlement earmarked for each are listed in the Appendix.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. To aid us in our assessment of a purchaser's injury, we propose the adoption of certain presumptions. We intend to use the information in the audit files and these presumptions to distribute the funds in the escrow account. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case will permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seking small refunds were injured by the pricing practices of the company from which they purchased products. In addition, we plan to use a volumetric presumption for applicants who were not identified during the audit. As a separate matter, we propose to find that end-users experienced injury. The volumetric presumption and the end-user finding will be discussed in Section B.

There are a number of bases for the presumption that claimants seeking small refunds were injured. *See e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the prducts to which the alleged overcharges are attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the expected refund and whatever benefits are derived from any additional precision. Consequently, without simplified procedures, some potential claimants would be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the consent order period is many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel,* 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein. The record in this proceeding indicates that most of the 40 identified customers made small purchases.

However, a reseller or retailer which seeks a refund of more than $5,000 will be required to document its claim. While there are a variety of methods by which a claimant could show that it did not pass the alleged overcharges on to its customers and that market conditions would not permit it to pass through those increased costs, the claimant would generally have to show that at the time of the alleged overcharges, it maintained a "bank" of unrecovered costs.[2]

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.,* 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle

On the basis of the information in the record at this time, we propose to distribute a portion of the escrow funds to the firms listed in the Appendix, provided they can successfully document their injury with regard to their purchases from Lockheed. The refund amounts attributable to each firm have been adjusted from those listed in the consent order to reflect Lockheed's payments of installment interest.[3] Refunds will be authorized to successful applicants in the amounts indicated, plus accrued interest.

B. Refunds to Unidentified Purchasers

As previously noted, this Decision concerns the distribution of the entire $353,339 that Lockheed deposited into the escrow account through March 12, 1982, plus accrued interest since that date. Since the refunds tentatively allotted to identified purchasers total only $263,240, the remaining portion of the Lockheed consent order funds may

[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond documentation of volumes purchased. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[3] These amounts were recalculated according to the following formula: we divided the $328,064 original principal amount into the new principal amount, $353,339 to obtain a factor of 1.077. We then multiplied this factor by the amounts attributed to each firm to obtain the revised refund amounts.

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be distributed among purchasers other than those identified by the ERA audit, provided they can make the necessary demonstration of injury.

To assist potential claimants in deciding whether to apply for a refund, we propose using the small-claims presumption discussed above. In addition, we will adopt a presumption that the alleged overcharges were dispersed evenly among all sales of aviation fuel made by Lockheed during the consent order period. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, the volumetric presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Using a Volumetric approach means that a portion of the Lockheed consent order amount would be allocated to each gallon of product sold by the consent order firm. The average per gallon refund, or volumetric refund amount, in this proceeding is $0.0078 per gallon.[4] Potential applicants that were not identified by the ERA audit of Lockheed may use this volumetric figure to estimate the refund to which they may be entitled.

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that is suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon & Gasoline Co., and Richardson Products Co./Siouxland Propane Co., 12 DOE ¶ 85,054 at 88,164 (1984).* and cases cited therein. Similary, purchasers identified in the ERA audit may attempt to show that they should receive refunds greater than those indicated in the Appendix. If valid claims exceed the funds available in escrow, all refunds will be reduced proportionately. Actual refunds will be determined only after analyzing all appropriate claims.

As noted above, we propose to find that end-users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of injury. *See Office of Enforcement* 10 DOE ¶ 85,072 (1983) (*PVM*); *See also Texas Oil & Gas Corp.*, 12 DOE at 88,209,. and cases cited therein. Therefore, we propose that for end users of aviation fuel sold by Lockheed, documentation of purchase volumes will provide a sufficient showing of injury.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with Lockheed's sales of aviation fuel. *See, e.g., Office of Special Counsel,* 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Special Counsel,* 9 DOE ¶ 83,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

III. Applications for Refund

In order to receive a refund, each claimant identified by ERA will be required to submit either a schedule of its monthly purchases of aviation fuel from Lockheed or a statement verifying that it purchased aviation fuel from Lockheed and is willing to rely on the data in the audit file. Purchasers not identified by the ERA audit will be required to provide schedules of their monthly purchases of aviation fuel from Lockheed. If they claim injury at a level greater than the volumetric level, they must document this injury in accordance with the procedures described above. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private Section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. In this special refund proceeding, however, the State of California is a general claimant. Based on the fact that Lockheed's sales were made in California and approximately half of the identified firms were located in California, we propose to distribute at least 50 percent of the remainder of the funds to the state of California in a second-state refund proceeding. To the extent that unidentified purchasers may change this configuration, this proposal will be subject to modification.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Lockheed Air Terminal, Inc. pursuant to the consent order executed on May 11, 1981, will be distributed in accordance with the foregoing decision.

Appendix

Lockheed Air Terminal, Inc.

First purchaser	Share of settlement [1]
Air California, 3636 Birch Street, Newport Beach, CA 92660	[illegible]
Air France, 1350 Avenue of the Americas, New York, NY 10019	453
Airlift International, Inc., Post Office Box 90886, International Airport, Los Angeles, CA 90009	[illegible]
Air New Zealand, Ltd., 9841 Airport Boulevard, Los Angeles, CA 90045	[illegible]
Air South, Inc., 230 North Dale Street, Fullerton, CA 92633	[illegible]
Republic Airlines, Inc., 7500 Airline Drive, Minneapolis, MN 55450	17,919
American Airlines, Inc., Post Office Box 61616, Dallas/Ft. Worth Airport, TX 75261	[illegible]
Ansett Airlines of Australia, Ltd., 10881 La Tuna Canyon Road, Sun Valley, CA 91352	[illegible]
Aspen Airway, Inc., Hangar 5, Stapleton International Airport, Denver, CO 80207	[illegible]
Atlantic Richfield Company, 515 South Flower Street, Los Angeles, CA 90071	[illegible]
Boeing Company, Post Office Box 3707, Seattle, WA 98124	[illegible]
Braniff International, Post Office Box 61747, Dallas/Ft. Worth Airport, TX 75261	373
CP Air, 1 Grant McConachie Way, Vancouver, BC V7B 1V1	[illegible]
China Airlines, 391 Sutter Street, San Francisco, CA 94108	[illegible]
Continental Airlines, Inc., International Airport, Los Angeles, CA 90009	42,490
Curtiss-Wright Corporation, 15910 Ventura Boulevard, Encino, CA 91436	[illegible]
Douglas Aircraft Company, 3855 Lakewood Boulevard, Long Beach, CA 90846	[illegible]
Eastern Airlines, Inc., International Airport, Miami, FL 33148	[illegible]
Federal Express Corporation, Post Office Box 727, Memphis, TN 38194	[illegible]
Flying Tigers, Post Office Box 92935, International Airport, Los Angeles, CA 90009	[illegible]

[4] This per gallon factor is computed by dividing the remaining $90,089 available for distribution to unidentified customers of Lockheed by 11,495,256 gallons, which represents an estimate of the total sales volumes to those unidentified firms during the consent order period.

First purchaser	Share of settlement [1]
Frontier Airlines, Inc., 8250 Smith Road, Denver, CO 80207	372
General Electric, 3135 Easton Turnpike, Fairfield, CT 06431	3,135
Gibbs Flying Service, Inc., 7245 Clybourn Avenue, Sun Valley, CA 91352	1,832
Golden West Airlines, 1877, Newport Beach, CA 92663	[illegible]
Hawaiian Airlines, Post Office Box 30008, Honolulu, HI 96820	505
Holiday Airways, Inc., 12421 Littler Place, Granada Hills, CA 91344	1,742
Hydro-Aire, Post Office Box 7722, Burbank, CA 91510	142
Mexicana Airlines, 9841 Airport Boulevard, Los Angeles, CA 90045	118
Northwest Airlines, Inc., Minneapolis/St. Paul International Airport, St. Paul, MN	125
Overseas National Airways, Inc., JFK International Airport, Jamaica, NY 11430	60
Pan American World Airways, Inc., 200 Park Avenue, New York, NY 10166	72
Pacific Southwest Airlines, 3225 North Harbor Drive, San Diego, CA 92101	22,807
Pacific Western Airlines, Ltd., 700 Second Street, S.W., Calgary, AB T2P 2W1	[illegible]
Scandinavian Airlines System, 138-02 Queens Bouleverd, Jamaica, NY 11435	107
Trans Continental Airlines, Inc., Willow Run Airport, Post Office Box 839, Ypsilanti, MI 48197	167
Transamerica Airlines, Inc., Airport Station, Post Office Box 2504, Oakland, CA 94614	3,731
Trans World Airways, Inc., 605 Third Avenue, New York, NY 10016	2,843
United Airlines, Inc., Post Office Box 66100, Chicago, IL 60666	78,565
Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC, 20591	882
Defense Logistics Agency, Cameron Station, Alexandria, VA 22314	[illegible]
Total escrow to identifiable first purchasers	[illegible]
Total escrow to unidentifiable first purchasers	[illegible]
Total escrow amount	[illegible]

[1] This figure includes the share of installment interest. It does not include accrued interest. *See* n.1, p.2

[FR Doc. 85-30145 Filed 12-19-85, 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $25 million obtained by the DOE under the terms of a consent order entered into with Getty Oil Company. The funds were provided by the firm in order to settle enforcement proceedings brought by the Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 60 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC. 20585. All comments should display conspicuously a reference to case number HEF-0209.

FOR FURTHER INFORMATION CONTACT: Geoff Stein, Terry Johnson, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avene, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order tentatively establishes procedures to distribute to adversely affected parties $25,000,000, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Getty Oil Company. The funds were provided to the DOE by the firm in order to settle claims and disputes between Getty and the DOE regarding the manner in which Getty applied the federal price and allocation regulations with respect to its importation, refining, and sale of crude oil and covered petroleum products during the period between August 19, 1973 and December 31, 1978. In summary, a two-stage refund procedure for distribution of the escrowed funds is proposed. In the first stage, claimants may file Applications for Refund for a share of the fund. Level-of-distribution presumptions for motor gasoline claimants are suggested, while general presumptions used in other refund proceedings are proposed for claimants seeking refunds based on purchases of other products. Amounts of money remaining after the valid first-stage refund applications have been paid would be refunded in a second stage; however, no second-stage refund procedures are being proposed at this time.

Some of the information contained in the Proposed Decision was obtained from the Department of Energy's Energy Information Administration pursuant to a disclosure agreement with that agency which limits its dissemination to persons entering into a protective order. That information is deleted from the Proposed Decision which is being published today. The OHA is endeavoring to obtain permission from Getty's successor, Texaco Inc., to make this information public. If Texaco agrees, this Proposed Decision will be republished without the deletions.

It should be pointed out that until final procedures are adopted, no claims for refund will be accepted. Applications for refund therefore should *not* be filed at this time. Appropriate public notice, including notice published in the **Federal Register**, will be provided prior to the acceptance of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 60 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for pubic inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC., between the hours of 1:00 to 5:00 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on December 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Name of Firm: Getty Oil Company
Date of Filing: October 13, 1983
Case Number: HEF-0209

On October 13, 1983, the Economic Regulatory Administration (ERA) filed with the Office of Hearings and Appeal (OHA) a Petition for the Implementation of Special Refund Procedures to distribute the proceeds of a December 3, 1979 consent order which ERA entered into with Getty Oil Company (Getty). In its Petition, ERA requests that OHA formulate and implement special procedures to make refunds in order to remedy the effects of the alleged regulatory violations that were settled in the Getty consent order.

I. Background

Getty Oil Company was an integrated refiner of crude oil and petroleum products during the period of federal price controls and was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150, and 10 CFR Parts 210, 211, and 212. The ERA conducted an extensive audit of Getty's operations and, as a result of that audit, contended in the course of a number of judicial and administrative proceedings that Getty, and its wholly-owned affiliate, Skelly Oil Company (generally referred to collectively as Getty) had violated applicable DOE price and allocation regulations in its sales of crude oil and petroleum products during the audit

period.[1] On December 3, 1979, the ERA executed a consent order with Getty that, with the exception of three enumerated issues, settled all compliance issues involving the firm's regulated operations during the period August 19, 1973, through December 31, 1978 (hereinafter referred to as the consent order or settlement period).[2] In that consent order, Getty agreed to deposit $25 million into an escrow account for subsequent distribution under DOE's supervision and to reduce its banks of unrecovered product and non-product costs, *see generally* 10 CFR § 212.83(e), by $50 million. Consent Order, ¶ 5. In exchange for Getty's performance under the consent order, the ERA agreed not to challenge Getty's compliance with the specific DOE regulations, except for the three specific issues which were listed in the consent order. The Getty consent order specifically provided that "[E]xecution of this Consent Order constitutes neither an admission of Getty nor a finding by Special Counsel or DOE that Getty has violated any statutes or applicable regulations of the Cost of Living Council, the Federal Energy Office, the Federal Energy Administration, or the Department of Energy." Consent Order, ¶ 11. The amount of escrowed funds currently held in an interest-bearing account with the United States Treasury had grown to $42,738,567.73 as of November 30, 1985.

On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures concerning the Getty settlement fund. The purpose of this determination is to set forth tentative procedures for the distribution of the Getty refund monies to persons who were likely to have been injured by Getty's alleged regulatory infractions. As in other similar proceedings, distribution of the Getty refunds should take place in two stages. The first stage will provide for refunds to identifiable purchasers of refined petroleum products who may have been injured by Getty's pricing and allocation practices during the period August 19, 1973 through December 31, 1978. If any funds remain after meritorious claims are paid in the first stage, a second stage may be necessary. We will not, however, propose second-stage procedures at this time. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (*Coline*).

II. Jurisdiction and Authority To Fashion Refund Procedures

The DOE procedural regulations at 10 CFR Part 205, Subpart V, provide that the OHA may, upon petition by ERA, formulate and implement special procedures by which refunds may be made to injured persons. For the following reasons, we conclude that we should assume jurisdiction over the Getty settlement fund.

During the consent order period, Getty was a producer of crude oil, a refiner and marketer of a full slate of petroleum products, and a natural gas plant operator. Getty was the twentieth or twenty-first largest domestic seller of refined petroleum products during each of the six years encompassed by the consent order. "Major Oil Companies—Refined Products, Sales," *International Petroleum Encyclopedia*, 1982, XV, 424. The ERA audits which led to the Getty consent order alleged a substantial number of refiner pricing formula violations, the effects of which would generally have been spread across all of Getty's petroleum products customers. Although a few firms have identified themselves as potential refund recipients, most are not identified, and the number of potentially eligible reseller applicants alone approaches 8,000 persons in 43 states.[3] Accordingly, we have concluded that a Subpart V proceeding is appropriate to distribute the Getty settlement fund.

III. Proposed Refund Procedures

The Subpart V refund process is used by the DOE to identify and compensate persons for injuries incurred as a result of actual or alleged violations of the DOE regulatory program. *See* 44 FR 8562 (1979) ("The new subpart provides a general framework pursuant to which the DOE Office of Hearings and Appeals may order refunds to be made to *injured* persons from funds remitted by regulated firms . . ." (emphasis added). The analysis of refund claims focuses on the question of whether firms were economically injured as a result of allegedly unlawful regulatory practices, rather than on whether they were "overcharged" in a technical sense. *See Denny Klepper Oil* v. *Dept. of Energy*, 598 F. Supp. 527 (D.C.D.C. 1984). Restitution is, however, an inexact process. Relevant case law, the Subpart V regulations and the DOE decisions in this area recognize the difficulties inherent in deciding what would have happened had overcharges not occurred.

In the case of crude oil miscertifications that were spread through the entitlements program to the entire refining industry and then to all consumers, we have previously found that it is impossible to trace the increased costs resulting from such miscertifications through an individual refiner's refining, distribution and marketing operations. *Report to the United States District Court for District of Kansas, In re Department of Energy Stripper Well Exemption Litigation*, June 1985 at 25. Based upon that Report, the Department concluded that in the case of such crude oil miscertifications, where the harm was spread through the entire petroleum distribution system and then through the whole economy, attempts to make payments to individual firms based upon the econometric modeling techniques analyzed in our Stripper Well Report were not appropriate. Department of Energy Statement of Restitutionary Policy, 50 FR 27,400 (July 2, 1985). But in the case before us here, involving the far simpler task of analyzing the effects of alleged overcharges on the petroleum products sold by a single refiner, and where the alleged overcharges did not directly affect the costs of all competitors of those who dealt in Getty's products, it is feasibile to use approximations of injury to facilitate the distribution of refunds.

Since the inception of the special refund program, the OHA has used a variety of approaches to achieve proper restitution of petroleum product overcharge funds, depending upon the

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[1] During the consent order period, Getty exercised indirect control over Skelly. It owned a 3.56 percent interest in Skelly and a 87.93 percent interest in Mission Corporation (Mission), which in turn held a 72.53 percent interest in Skelly. Skelly also marketed motor gasoline under the "Surfco" brand name. Getty and Skelly were generally considered by the agency to be a single "firm" pursuant to 10 CFR 212.83(b), but received exception relief that permitted them to report their crude oil receipts and their increased costs separately and to calculate separate allocation fractions for the period May 19, 1972 through January 25, 1977. *See* Getty Oil Co., 2 FEA ¶ 83,041 (1975) Getty Oil Co., 2 FEA ¶ 80,646 (1975). On January 25, 1977, the DOE rescinded the exception relief at Getty's request because Getty, Skelly and Mission were merging their operations effective January 31, 1977. Getty Oil Co., 5 FEA ¶ 87,009 (1977). The important fact for present purposes is that the consent order covered all of both firms' regulated activities during the settlement period.

[2] The three issues exempted from the consent order relate to: (i) a June 27, 1978 Notice of Probable Violation (NOPV) involving crude oil production at Getty's Kern River field; (ii) the decision and order in Getty Oil Co., 1 DOE ¶ 80,102 (1977) and Getty Oil Co., Civ. No. 77–434 (D. Del.) (subsequently *aff'd* as Getty Oil Co. v. DOE, 749 F.2d 734 (Temp. Emr. Ct. App. 1984), *cert. denied*, 105 S. Ct. 1176 (1985)), concerning certain crude oil exchanges with Standard Oil Company of Ohio; and (iii) issues relating to the propriety of the costs reported by Getty or its predecessors for interaffiliate purchases of natural gas liquids or natural gas liquid products or shrinkage costs under 10 CFR Part 212, Subpart K.

[3] According to information in the record, Getty and Skelly sold motor gasoline to about 6800 wholesalers and dealers and propane through 100 dealers.

particular circumstances of each case. The most important variables from case to case include the amount of information available about the alleged violations underlying a settlement, the amount of money available for distribution, and the type of business in which the consent order firm was involved. Thus, for example, in cases involving petroleum products resellers where the audit record is well-developed and includes a list of alleged overcharge victims and the overcharge amounts each party allegedly incurred, we have relied heavily upon the audit information to make preliminary determinations of alleged overcharges. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *J.A.L. Oil Co., Inc.*, 12 DOE ¶ 85,138 (1984). In contrast, where little information concerning the alleged violations underlying a consent order was available, we have adopted more flexible procedures. *See, e.g., Thornton Oil Co.*, 12 DOE ¶ 85,112 (1984).

This proceeding is unusual. The underlying consent order involved all aspects of the operations of an integrated refiner. Getty marketed motor gasoline and middle distillates through a long distribution network. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*); *Mobil Oil Corp.*, 6 Fed. Energy Guidelines ¶ 90,058 (proposed decision) (hereinafter cited as *Mobil*). In addition, the consent order fund of $45 million is large and potential claimants number several thousand. Consequently, we began our analysis of possible Getty refund procedures by utilizing all relevant marketing information available, including publicly available information, information in the Getty audit files, and proprietary data collected by the Energy Information Administration (EIA). With this data we hoped to fashion product-specific presumptions that could be used to streamline the refund application process.[4]

We first examined the record to determine whether any conclusions could be drawn about potential crude oil refund claims. The audit records revealed that the auditors did not identify many significant issues concerning Getty's compliance with the DOE regulations applicable to sales of crude oil. The only significant dispute, which concerned Getty's crude oil production in a Kern County, California oil field, was excluded by agreement from the ambit of the consent order. *See* Consent Order, ¶ 3(a).[5] Moreover, an agency attorney who was involved in the negotiation of the consent order confirmed that the audit underlying the consent order included few crude oil issues. *See* December 16, 1983 Letter from Leslie Adams, Deputy Solicitor, ERA, to Terry Johnson, OHA. As a result, we anticipate that the refund applications in this case will be filed by firms that purchased Getty refined products.[6]

Potential claimants will therefore claim injury in the sale of Getty refined products. These claimants are likely to be numerous. For example, evidence in the record indicates that in 1974 alone Getty was marketing motor gasoline through 6,861 retail outlets. It would be extremely difficult, if not impossible, to trace the effects of Getty's alleged violations to these particular customers because of many factors, including the large number of purchasers, the much larger number of individual transactions which are relevant to that analysis, and the complex interplay between various aspects of the DOE pricing regulations over an extended period of time. For example, the fact that a refiner's accounting for particular transactions, *e.g.*, motor gasoline sales, may not have been in conformity with the DOE regulations does not necessarily mean that overcharges to particular customers occurred, since the firm may have had adequate banks of unrecovered costs increases to cover any cost violations. Nevertheless, our experience with petroleum products marketing, combined with an analysis of Getty pricing data at various levels, yield useful information about the most likely incidence of injury. We will use this information about the incidence of injury to adopt certain general presumptions that we have used successfully in other proceedings and will also formulate specific presumptions based upon the particular circumstances presented in this case.

A. General Presumptions

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. These presumptions will be founded upon our experience in prior Subpart V proceedings involving refined products. In addition, we will adopt some product-specific presumptions for motor gasoline based upon specific information concerning Getty's regulated operations for that product during the settlement period.

We will first adopt the presumption that the maximum refund available to a particular applicant shall be that proportion of the total consent order fund equal to the volume of Getty purchases made by that applicant divided by all sales of refined products by Getty during the relevant period. Under this "volumetric presumption," the effects of Getty's alleged violations are presumed to have been spread evenly over all of the controlled petroleum products marketed by the firm during the consent order period. We have used this presumption successfully in a number of prior cases. *See, e.g., Amoco* at 88,198. In the absence of better information, this assumption is sound because the DOE price regulations generally required refiners to account for their increased costs on a firm-wide basis in determining their prices. *See generally* 10 CFR Part 212.

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[4] Most of the information in the Getty audit files consists of (i) arguably confidential, proprietary data, (ii) interagency memoranda containing recommendations and preliminary findings concerning the Getty audit, and (iii) investigatory material gathered during the course of ERA's enforcement investigation. These documents are likely to be exempt from disclosure under Exemptions 4, 5, and 7 of the Freedom of Information Act, 5 U.S.C. 552, and the exempt material will be protected from disclosure. In addition, the Getty-specific data obtained from the EIA is covered by a disclosure agreement that limits third-party access to the information to firms that enter into a protective order. *See* July 12, 1984 Disclosure Agreement between EIA and OHA. This information will also be kept confidential.

[5] Due to this exclusion, we will not accept refund applications from purchasers of the crude oil specified in the referenced Notice of Probable Violaton. No Proposed Remedial Order was ever issued in that case. *See* Memorandum of December 11, 1984 Telephone Conversation Between Leslie Adams, Deputy Solicitor, ERA, and Terry Johnson, OHA.

[6] This is consistent with the fact that refined product pricing violations were the focus of the Getty Consent Order. *See e.g.*, March 31, 1978 Notice of Probable Violation (alleging overstatement of costs due to excessive shipping costs); June 24, 1975 Notice of Proposed Disallowance (alleging overstatement of costs for imported crude for the months of October 1973 through April 1974).

Subpart E. However, we also recognize that the impact of a particular refiner's pricing practices on an individual purchaser could have been greater, and we will allow purchasers to file refund applications based on a claim that the applicant suffered disproportionate injury from Getty's alleged overcharges. *See, e.g., Standard Oil Co. (Indiana)/ Army and Air Force Exchange Service,* 12 DOE ¶ 85,015 (1984). Consequently, this presumption will be rebuttable, as will all of the presumptions which we will adopt. *See Amoco* at 88,199.

We estimate that Getty's sales of refined products that were subject to price and allocation controls during the settlement period totalled 16,667,285,701 gallons.[7] When divided into the current Getty escrow account balance of $42,738,567.73 this yields a per gallon refund of $0.002564 ($0.001526 in principal plus $0.001038 in interest accrued through September 30, 1985).[8] As in previous cases, we will establish a minimum refund amount of $15.00 for claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982).

In addition to the volumetric presumption of injury, we will adopt a presumption that any reseller or retailer who made only spot purchases from Getty probably did not suffer an injury and thus will be ineligible for a refund for those purchases. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser that files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Getty motor gasoline. *See Amoco* at 88,200.

An additional class of Getty customers that will be presumed not to have been injured by the firm's regulatory practices is consignee agents. Those firms established their prices at a set, per-gallon commission fee that was added to Getty's wholesale price. That type of arrangement made it likely that a consignee did not absorb any alleged overcharges. We therefore propose to adopte a rebuttable presumption that claims based on alleged overcharges which are submitted by consignees should not be approved. *See Amoco* at 88,200; *Gulf Oil Corp./C.R. Hill Oil Co.,* Case No. RF40–1004 (proposed Decision issued September 11, 1985). *Cf. Tenneco Oil Co./Kellermyer Inc.,* 10 DOE ¶ 85,092 (1983) (consignee's allocation-based claim granted while its price violation claim denied).

The volumetric presumtion of injury will not be applied to claims based on alleged violations of the allocation regulations. Refunds based upon allocation claims—alleging a failure by Getty to furnish product which it was obliged to supply to the claimant under the DOE allocation regulations, 10 CFR Part 211—have in past cases been approved on the basis of monetary damages (if any) caused by the failure to deliver product. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.,* 10 DOE ¶ 85,012 (1982). An allocation claimant should have been aware of the alleged violation at the time it occurred, and should have taken some contemporaneous action to mititgate the injury. Consequently, an allocation claimant must include with its refund application an explanation of the contemporaneous actions it took to mitigate its injury. In addition, an allocation claimant will be required to submit sufficient information to demonstrate that its claim is credible, including the best available evidence of the injury which was sustained by the claimant. The burden of establishing eligibility for a refund based on an allocation-type claim will rest on the claimant, and cases will be adjudicated on a case by case basis.

Our experience with Subpart V proceedings indicates that the likely claimants in this category in this proceeding, when more fully identified, will fall into two categories: (1) Resellers (including refiners and retailers) of Getty refined products and (2) firms, individuals, or organizations that were consumers (end-users) of Getty refined products. The products purchased by these claimants were probably purchased either directly from Getty or from other firms in a chain of distribution leading back to Getty.

As in previous cases, we will adopt a presumption of injury for small claims filed by resellers of Getty refined products other than motor gasoline. *See, e.g., J.A.L. Oil Co.,* 12 DOE ¶ 85,138 (1984). The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Getty consent order is based on a number of considerations. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, considerable expense can be entitled in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding that impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to OHA of analyzing it, can easily exceed the amount of the possible refund. Failure to allow simplification application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, becaue it allows the OHA to process a large number of routine refund claims quickly, and to employ its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Getty and were in the chain of distribution where the alleged overchares occurred. Therefore, they felt at least the initial impact of the alleged overcharges. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the small claims presumption that we intend to adopt a reseller or retailer claimant (for products other than motor gasoline) will not be required to submit any additional evidence of injury beyond Getty purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 (1984), we noted that describing the theshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed in this case. As in other cases, we believe that the establishment of a threshold of $5,000, exclusive of interest, is appropriate. *See Texas Oil & Gas Corp.; Office of Special Counsel; In the*

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[7] This total was calculated based upon Getty's and Skelly's refined product sales figures in the company's annual reports for 1973 through 1978.

[8] This figure is provided in order to enable claimants to estimate potential refund amounts. The appropriate *pro rata* share of interest will be added to each refund at the time of payment.

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Matter of Conoco, Inc., 11 DOE ¶ 85,226 (1984), and cases cited therein.

Finally, as in past refined product cases we will adopt a presumption that regulated industries and agricultural cooperatives need not prove that they absorbed alleged overcharges in order to qualify for a refund on purchases they use or sold to members. Consequently, we will permit these entities to receive a full volumetric refund, provided that they include in their refund application a full explanation of the manner in which refunds will be passed through to their customers. *See Tenneco* at 85,203.

We will also treat end-users or ultimate consumers who purchased products other than middle distillates and motor gasoline, and whose business is unrelated to the petroleum industry, as having been injured by the alleged petroleum product overcharges settled in the consent order. These entities were not subject to DOE regulations during the relevant period, and thus are outside our inquiry about passthrough of overcharges. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of Getty petroleum products other than motor gasoline need only document their purchase volumes from Getty to show that they were injured by the alleged overcharges.

B. Product-Specific Presumptions

The petroleum industry is highly integrated, and some petroleum products such as motor gasoline are frequently sold or transferred more than once before reaching the ultimate consumer. Accordingly, the impact of any Getty overcharges on these products was felt at each level of the distribution system for those products. The presumptions and criteria discussed below are intended to provide a mechanism for assessing what portion of the presumed per gallon injury on each gallon of Getty products was experienced at the different levels of distribution for that product.

1. Motor Gasoline

Motor gasoline sales accounted for over one-half of the volumes covered by the Getty consent order. Only a small portion of these sales were made through Getty-operated retail outlets; most of the motor gasoline sold by Getty passed through at least one intermediate distributor before it was sold to its ultimate consumer. These distributors and consumers number in the thousands. *See* note 3, *supra*. Consequently, it would be useful if we could use the data available to the agency to discern the injury absorbed by each level of the distribution chain. This would obviate the need for individual claimants to submit detailed historical data concerning their pricing practices during the consent order period, *see, e.g., Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982), as well as the need for OHA to conduct a case-by-case analysis of each firm's injury. *See id.*

In previous cases involving major refiner consent order funds, *see, e.g., Amoco*, we have examined the approximate average prices charged by those refiners at each level of distribution and made findings as to the probable share of injury that was absorbed at each level in the distribution system, as reflected by the effect the refiner's price changes had on each level's profit margins. This analysis for mid-level distributors is proper because motor gasoline retailing and reselling is essentially a single-item business. Motor gasoline sales dominate for that type of firm, and its other sales of goods and services, such as tires, batteries and accessories, are tied to the traffic generated by motor gasoline customers. Moreover, the cost of motor gasoline represents the bulk of the firm's selling price and is the key factor in its pricing decisions.

Our profit margin analyses in two previous refiner cases used national average refiner prices, based upon our finding that the prices of each refiner involved substantially mirrored national average refiner prices. *See Amoco* at 88,206; *Mobil* at 90,117. However, those firms had large market shares during the period of price controls and their prices corresponded closely with the national average. In contrast, Getty was only the twentieth or twenty-first ranked largest seller of petroleum products during the consent order period and its reported prices for motor gasoline varied significantly from reported national averages at all distribution lvels. As a result, we have concluded that Getty-specific data should be used to analyze injury for motor gasoline claimants.

Our information concerning Getty's motor gasoline prices was obtained from data which Getty filed with the EIA during the period July 1975 through December 1978.[9] In the absence of data for the other periods, we will assume that market conditions during these 42 months are representative of the market conditions which prevailed throughout the entire consent order period.

This information shows generally that Getty's wholesale motor gasoline prices were usually * * * the national average, while its dealer tankwagon (DTW) price, the price Getty charged independent retailers, was often * * * the national average. These * * * DTW prices did not conform to our expectation that Getty motor gasoline, as a * * * brand product, was marketed at * * * than average prices. On the other hand, Getty's *retail* motor gasoline prices were, as expected, always * * * than the national average. In other words, consumers and end-users of Getty motor gasoline paid * * * than purchasers of other motor gasoline nationwide during the consent order period. In addition, the data showed that including Skelly in Getty's reports beginning in February 1977 caused * * * *See* note 10 below. Based upon these general observations, it appeared that the great majority of the injury experienced by Getty motor gasoline customers as a result of overcharge allegations settled in the consent order was likely absorbed by independent retailers of Getty motor gasoline. We subsequently analyzed the available data in greater detail and our analysis of each individual distribution level follows.

a. *Jobbers' Sales at Dealer Tankwagon (DTW) Prices.* Conclusions about the effect of Getty's prices on its jobbers can be drawn by comparing Getty's wholesale prices (sales to jobbers) and its dealer tankwagon (DTW) prices (sales to retailers) during the 42-month period from July 1975 through December 1978. That information shows that while the Getty jobbers' profit margins for sales at DTW * * * between the pre-Skelly and post-Skelly periods, they were generally * * * than the national average.[10]

[9] This information was collected on Forms FEA-P302-M-1 and EIA-460, "Monthly Petroleum Product Price Report." The EIA did not have information for either Getty or Skelly for the period prior to July 1975. In addition, Skelly was not included in these EIA reports until February 1, 1977. *See* note 1, *supra*.

[10] This corresponded to the shift in sales patterns that also was reflected in the combined reports. The Getty distribution system had relied more heavily than the national average on DTW sales to retailers. After Getty and Skelly combined, the system changed and funnelled the combined entity's motor gasoline sales volumes through jobbers. This may be attributable to Skelly's Midwest location, where jobbers are particularly important. Motor gasoline in that region must frequently be transported by jobbers from remote pipeline terminals, in contrast to the situation in the more populous Northeastern region of the United States, where Getty Eastern marketed its motor gasoline.

During the pre-Skelly period, Getty jobbers' margins on sales at DTW averaged $ * * * per gallon, compared to $.0315 for their competitors. The post-Skelly period found the jobbers' profit margins * * * to an average of $ * * *, with * * * three months of 1978 * * *, compared to a national average of $.0295. In other words, during the entire period, Getty jobbers' profit margins were, * * * as their competitors. In fact, from February 1977 onward, when Skelly was included in Getty's reports, the Getty jobbers' profit margins on sales at DTW were * * * than competing jobbers supplied by other major refiners. The six months when Getty jobbers' profit margin were * * * than national average jobber profit margins were * * * Getty's jobbers thus * * * their jobber competitors throughout the period because Getty's wholesale prices were usually * * * than average, while Getty's DTW prices the average. The data indicate therefore that Getty jobbers * * * rarely were in a position where they would have had to absorb any of the alleged Getty overcharges. As stated above, the Getty jobbers' margins on sales at DTW were depressed in only six of the forty-two months for which we have data. * * * the jobbers' sales volumes reflect * * * market share during the relevant period. As noted above, we are assuming here and in the discussions below that these 42 months are representative of the entire consent order period and are concluding by extrapolation that the same level of injury occurred during the 23 months for which we lack price data.

Based on the foregoing analysis of this critically important data, we have concluded that it is appropriate to adopt a presumption that jobbers were injured in their sales at DTW only during the six months that their profit margins * * * to a point below the national average, i.e., * * * However, since we find below that firms selling Getty motor gasoline at retail—including jobbers—were also injured during those six months, the jobbers will split the volumetric refund with retailers on motor gasoline sales in those months, and the percentage of the full pro rata refund per gallon to be applied against gasoline volumes sold by a Getty jobber at DTW prices will be 7 percent (6 months of injury divided by 2 (to represent the sharing of injury), divided by 42 months in the period, or (6÷2)/42, and rounded to the nearest whole figure).

b. *Retailers.* As we have previously indicated, the retail price (*i.e.*, price charged to consumers) for Getty motor gasoline at Getty-owned and operated outlets for the period for which we have data was * * * the national average. In fact, in all but one of the 42 months studied, Getty's retail prices were * * * than its competitors by * * *. This conformed to our expectations because at all levels of distribution non-major branded motor gasoline is usually sold * * * prices in order to overcome the traditional buyer preference for major-branded gasoline. However, as noted above, Getty's DTW prices were * * * national averages. While this * * * certainly created no hardship for consumers, assuming that independent dealers had to meet the Getty price, * * * adversely affected the independent retailers and the jobber-operated retailers marketing Getty motor gasoline. Throughout the consent order period, margins for Getty independent retailers were * * * than those of their competitors, except for * * * three months * * *. Similarly, Getty jobber-owned retail outlets' margins, *i.e.*, the difference between wholesale and retail prices, were * * * national average prior to the addition of Skelly to the data base, and afterwards * * * low national average, except in the * * * two months * * *.

We therefore conclude that all retailers of Getty motor gasoline were not able to pass through the Getty alleged overcharges and were therefore injured by the alleged Getty overcharges during the period for which we have data, except for * * * two months * * * and we shall adopt a presumption that reflects this finding. For ease of applicants and for processing purposes, the presumption will be set at 93 percent, rather than varying according to the source (*i.e.*, Getty, jobber or owner-jobber) of the motor gasoline for which the retailer is filing a claim. We believe that that percent approximates the average injury suffered by this group.[11]

c. *Consumers.* Prior to its consolidation with Skelly, Getty's direct sales to consumers at Getty-owned and -operated retail outlets comprised a * * * percent of its total motor gasoline sales volumes, compared with a national average of 11.8 percent. During that period, * * * of Getty's sales were at DTW. After February 1977, the proportion of Getty motor gasoline sold at retail * * * for the period February 1977 through December 1978, which was still * * * than the national average of 13 percent. The addition of Skelly * * * Getty's motor gasoline marketing composition to * * * wholesale, reflecting Skelly's operations in the Midwest, where sales by refiners to jobbers are usually more prevalent. Overall, Getty's motor gasoline sales at retail accounted for * * * percent of Getty's total sales of motor gasoline for the period for which we have data.

During the period which we examined, Getty's retail prices were always * * * national average prices. As noted above, we find that * * * Getty's jobbers and retailers to absorb the vast majority of the alleged overcharges on motor gasoline for all but * * * three months * * *, when Getty's retail prices * * * than the national average. Consequently, we have concluded that persons filing claims based upon purchases of Getty motor gasoline at retail will be presumed to have absorbed injury only for 7 percent of volumes purchased during the consent order period (100 percent minus 93 percent). Consumers that purchased motor gasoline directly from Getty did not share the impact of the alleged overcharges with any intermediate party and, accordingly, those claimants will receive 100 percent of the volumetric refund allotted to their purchase volumes.

d. *Motor Gasoline Refund Procedures.* Where a refund applicant states that it is willing to be subject to the applicable

[11] In the case of independent retailers supplied by jobbers, the applicable percentage is calculated by adjusting to account for the six months during which both retailers and jobbers expesienced an impact as a result of the alleged overcharges. This figure is 85.71 percent (42 months minus 3 months of non-injury, less ½ of the six months in which jobbers shared injury, divided by the 42 months of the period, or 36/42). Similarly, for jobbers who sold motor gasoline through their own retail outlets, the presumption of injury would include all but * * * two months * * *, when their profit margins * * * the national average, and is precisely calculated to be 95.24 percent of their purchases for the period (42 months minus 2 months, divided by 42 months). Finally, retailers who purchased product directly from Getty at DTW prices, and thus did not share the burden of the alleged overcharges with any intervening reseller, absorbed 92.86 percent of the volumetric amount for the volumes which they purchased (42 months minus 3 months, divided by 42 months). This last group represents about * * * of the total motor gasoline volumes, and jobber-owned outlets represent * * * of the Getty retail market. We therefore chose 93 percent, rather than 91.27 percent, the arithmetic mean of these three figures. The use of an average will further administrative efficiency by permitting more rapid agency processing. In addition, each retailer will only be obliged to provide the volume and source of the Getty motor gasoline it purchased, not the regulatory status of its supplier. Retailers themselves are often uncertain as to the exact status of their supplier.

presumption for its motor gasoline purchase volumes, we propose to pay a refund to each claimant, depending upon that claimant's position in the distribution chain, for the appropriate percentage of the refund per gallon on the volumes which it purchased without any further showing of injury. These presumptions are as follows:

Type of claimant	Applicable percentage
Jobber (Sales at DTW)	7
Jobber (Sales at Retail)	93
Retailer (Product Purchased Directly from Getty)	[illegible]
Retailer (Product Purchased from Reseller)	[illegible]
Consumer (Purchases at Retail)	7
Consumer (Product Purchased Directly from Getty)	[illegible]

These presumptions are rebuttable, like all of the presumptions we use in Subpart V proceedings, so that claimants may offer additional evidence of injury which could form the basis for the approval of larger refunds. Firms that did not purchase Getty-, Skelly-, or Surfco-branded product should explain the basis for their belief that the product which they purchased was Getty motor gasoline. A claimant filing a non-presumption type of refund application will be obliged to provide, in addition to a schedule of its purchase volumes, information to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, each reseller or retailer will be required to show that it maintained "banks" or unrecovered increased product costs in order to demonstrate that it did not subsequently recoup the alleged overcharges by increasing its prices. *See Vickers.* In addition, a non-presumption claimant must demonstrate that, at the time it purchased motor gasoline from Getty, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *See Amoco* at 88,223.[12]

2. Middle Distillates and Propane. Unlike motor gasoline, middle distallates and propane are customarily sold at only two levels of distribution, wholesale and retail. Reliable information about the marketing of these products, sufficient for us to propose level-of-distribution presumptions is not currently available to the DOE. Consequently, we propose to adopt for applicants filing a claim for these products the generally applicable presumptions set forth in Section III.A. above. However, we will state the information that is currently available, and we invite commenters to supplement that data or to propose analyses of the data which we have obtained that might lead to formulation of reliable level-of-distribution presumptions of injury for these products.

Middle distillates, which include heating oil and diesel fuel, were subject to price controls for only a portion of the Getty settlement period—from August 19, 1973 through June 30, 1976. Since the EIA did not begin its systematic collection of price data until July 1975, it was only able to provide us with Getty and national average wholesale and retail middle distillate price information for one year of the Getty consent order, the period July 1975 through June 1976, or 12 months out of the 35 relevant months. Moreover, since Skelly was not included in Getty's reports until February 1977, the EIA data only encompass Getty's operations in the eastern United States. Consequently, we have serious reservations as to whether this data could form a sufficient basis for the adoption of level-of-distribution presumptions for this product.

Upon closer examination, we found other difficulties involving the middle distillate data. During the year for which we have EIA data, Getty's reported wholesale middle distillate prices * * * in comparison to the national average, which rose gradually over the period. The same effect was observed for retail middle distillate prices. Without an explanation for this * * *, we cannot confidently use this data to propose level-of-distribution presumptions for middle distillate resellers and consumers.

Propane was subject to federal price and allocation controls throughout the entire Getty consent order period. Again, EIA did not make a systematic collection of propane prices until July 1975, and Skelly, which could be expected to make greater than average sales of propane due to its midwestern location, was not included in Getty's reports to EIA until February 1977. EIA reports that, although Form FEA P302–M–1 sought information concerning propane sales volumes and prices in the categories of residential, commercial, industrial, and agricultural sales, Getty did not report any sales in the residential class. The EIA considers all sales to other than residential customers to be wholesale; consequently, it was only able to furnish us price information for one level of distribution. We are therefore unable to conduct an analysis of propane profit margins in order to discern injury at the different levels of distribution.

Nevertheless, these products form a substantial portion of Getty's sales of refined products during the consent order period. Middle distillates comprise 12 percent, and propane almost 17 percent, of the refined products covered by the Getty consent order. Without the aid of presumptions concerning the amount of injury that was absorbed at each level of distribution, those middle distillate and propane claimants who were resellers will be obliged either to submit detailed information concerning their pricing practices during the consent order period, in order to demonstrate that they were unable to pass on the injury to their customers, or to limit their claims to the $5,000 threshold amount. *See, e.g., Tenneco.* Similarly, OHA will be obliged to conduct a case-by-case analysis of the level of injury sustained by each claimant.

In order to remedy this information gap, we would be willing to accept from responsible industry representatives any compilations or studies of Getty middle distillate and propane prices that are documented sufficiently to provide a reliable basis for analyses of the impacts on wholesalers and consumers of Getty's price changes for these products during the consent order period. This information need not cover the entire consent order period, but it should cover enough time to enable us to extrapolate confidently over the rest of the consent order period. Commenters may also wish to propose analyses of the data which we have obtained that would support level-of-distribution presumptions of injury for these products. If we are unable to obtain further information or to formulate appropriate level-of-distribution presumptions, we propose to distribute refunds to middle distillate and propane refund applicants based upon the general principles and presumptions discussed above.

3. Other Refined Products

The remaining refined products other than motor gasoline, middle distillates and propane made up about 4.67 percent of Getty's product sales during the consent order period. We were unable to locate enough reliable information

[12] For example, a refund applicant could provide a complete schedule showing its purchase and selling prices for motor gasoline during the settlement period, so that we could identify and approve refunds for each month in which the firm's profit margin fell significantly. *See, e.g.,* Standard Oil Co. (Indiana)/Lou's All Service, Inc., 12 DOE ¶ 85,061 (1984); Standard Oil Co. (Indiana)/East Side Truck Stop, 11 DOE ¶ 85,141 (1983).

about Getty's and other refiners' marketing practices for these refined products to allow us to formulate appropriate level of distribution presumptions for them. Firms filing refund applications based upon their purchases of these products will therefore be required to demonstrate the amount of injury which they absorbed. However, we will employ the presumptions of injury which we discussed above, including the presumption for small claimants.

IV. Summary of Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of monthly purchases of covered products from Getty for the period August 19, 1973 through December 31, 1978. A suggested application format will be provided in the final Decision. If the products were not purchased directly from Getty, the claimant will be required to include a statement setting forth reasons for believing the product originated with the firm. *See, e.g., Standard Oil Co. (Indiana)/Union Camp Corp.*, 11 DOE ¶ 85,007 (1983). In addition, a reseller or retailer of refined petroleum products (other than a claimant relying on the presumptions for motor gasoline) that files a claim generally will be required to establish that it absorbed the alleged overcharges and was thereby injured. To make this showing, each reseller or retailer will be required to show that it maintained "banks" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover those costs by increasing its prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 (1982) at 88,125. In addition, it will have to demonstrate that, at the time it purchased covered products from Getty, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In the alternative, purchasers of Getty products which limit their claims to $5,000 will only be required to provide sufficient evidence of Getty product purchases to qualify for a refund.

We solicit comments on all aspects of the foregoing Proposed Decision from interested individuals and organizations. All comments must be filed within 60 days of publication of this Proposed Decision in the **Federal Register**.

It Is Therefore Ordered That:

The refund amount remitted by Getty Oil Company pursuant to the consent order executed on December 3, 1979, will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-30146 Filed 12-19-85, 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of second-stage refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has issued a Decision and Order concerning second-stage refund procedures to be implemented for distribution of the remaining consent order funds remitted to the DOE by OKC Corporation (Case No. KQF-0011).

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SE., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: The Decision and Order which appears below establishes procedures for distribution of the consent order funds remitted to the DOE by OKC Corporation which remain after the first stage of the OKC refund proceeding. During the first stage of the proceeding, injured OKC customers received $1,992,605, plus interest, in compensation for alleged violations by OKC of DOE petroleum price and allocation regulations. The funds remaining in the OKC escrow account shall be distributed on behalf of unidentified parties injured by the alleged OKC violations

In this Decision, the Office of Hearings and Appeals (OHA) apportions the residual consent order funds among the ten states in which OKC marketed petroleum products during the period covered by the consent order. The residual funds are apportioned among the ten states in proportion to the level of consumption of OKC products in each state during the consent order period. The refund amount apportioned to each state will be disbursed upon approval by the OHA of a plan submitted by the state which provides restitutionary benefits to purchasers of specific petroleum products, as identified in the Decision.

Dated: December 13, 1985

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Second Stage Refund Procedures

Name of Firm: OKC Corporation

Date of Filing: December 3, 1985

Case Number: KQF-0011

On July 17, 1980, OKC Corporation (OKC) entered into a consent order with the Department of Energy. Under the terms of the consent order, OKC deposited $4,750,000 into an escrow account in settlement of enforcement actions alleging OKC violations of DOE price and allocation regulations during the period August 19, 1973 through July 17, 1980. On March 25, 1982, the Office of Hearings and Appeals (OHA) issued a Decision and Order establishing special refund procedures for distribution of the OKC settlement fund. *Office of Enforcement: In the Matter of OKC Corp.*, 9 DOE ¶ 82,551 (1982) (hereinafter cited as *OKC*). These refund procedures were adopted pursuant to the regulations set forth at 10 CFR Part 205, Subpart V.

The primary purpose of Subpart V special refund procedures is to provide restitution to persons injured by alleged or adjudicated violations of the petroleum price and allocation regulations. *See generally Office of Enforcement*, 8 DOE ¶ 82,597 (1981). To accomplish this objective, we have generally used a two-stage process. In the first stage, payment is made to claimants who file applications for refund and demonstrate that they were injured by the alleged overcharges or allocation violations. Any funds remaining after valid claims are paid are distributed through second stage proceedings, consistent with the restitutionary purpose of the Subpart V regulations and the underlying statutes.

The *OKC* Decision established this type of two-stage process for distribution of the OKC consent order fund. During the first stage of the OKC refund proceeding, refunds were granted to 28 applicants that purchased refined petroleum products from OKC during the consent order period. Refunds paid to these claimants to date total $1,992,605 plus interest. The first stage is nearly completed and $1,981,111, plus interest remains in the OKC escrow account for disbursement. While all first stage refund applications have not yet been acted upon, we can now estimate with reasonable certainty the maximum amount that must be set aside with respect to those claims. The design,

evaluation, and approval of second stage restitutionary projects can be time consuming, and we are anxious to get that process underway. The purpose of this Decision and Order, therefore, is to formulate second-stage procedures for distributing the $1,981,111 [1] which will remain in the OKC consent order fund once the first stage is completed.

In previous special refund cases, we have used a number of different means of achieving restitution in second-stage proceedings, choosing the one in each case which would most clearly serve the equitable and restitutionary goals of the Subpart V process. Where the information in the record of a Subpart V proceeding has indicated that the impact of the alleged overcharges was borne by specific end-users, we have distributed the second-stage refunds to the actual end-users,concerned. *Office of Enforcement (Ada)*, 11 DOE ¶ 85,161 (1983) (Metropolitan Transit Authority of Harris County, Texas); *Office of Enforcement (PVM)*, 10 DOE ¶ 85,072 (1983) (General Electric, Missouri Pacific Railroad). Where specific end-users could not be identified, but the product and geographic area where it was sold were known, we have channelled the second-stage refunds to the injured classes in that geographic area. For example, in *Ada*, the Port of Houston Authority and Galveston Wharves Board were allotted second-stage refunds because they could best use the refunds to benefit the class of injured end-users of Bunker C fuel from Ada. Where the classes of persons who were adversely affected by the alleged overcharges were located in a specific metropolitan area, refunds have been made to the state in which the metropolitan area was located for use in that area. *Office of Enforcement (Nordstrom)*, 11 DOE ¶ 85,174 (1983) (Cedar Rapids, Iowa, metropolitan area); *PVM* (New York City metropolitan area). Where, however, the alleged overcharges were borne by a large cross-section of residents located within a state, second-stage refunds have been approved for the state as a whole. *See, e.g., Anderson Butane Service, Inc.*, 11 DOE ¶ 85,186 (1983) (Louisiana).

Second-stage refunds have also been approved in cases where customers injured by alleged overcharges were located in a region covering more than one state. In those cases, refunds were apportioned among the states based upon the percentage of covered product(s) sold within each state. *See Vickers Energy Corp.*, 12 DOE ¶ 85,164 (1985) (16 states) *(Vickers); Pennzoil Co.*, 12 DOE ¶ 85,183 (1985) (11 states and Puerto Rico); *Charter Co.*, 12 DOE ¶ 85,298) (1985) (11 states).

State governments are particularly well-suited to channelling the benefits of consent order funds to the persons who most likely were injured by the consent order firm's regulatory practices. *See, e.g., PVM; Nordstrom.* State governments are familiar with the energy needs of their citizens and therefore can select the specific energy-related projects and programs which would be funded with the money. State governments also are familiar with the existing and potential mechanisms for distributing these funds through energy-related public programs quickly and in a cost-effective manner.

Where channelling refunds to specific customers, to a locality, state or a multi-state area is impractical or impossible, e.g., where overcharges had a nationwide impact, a direct refund to the Untied States Treasury has been utilized. *See Getty Oil Co.*, 1 DOE ¶ 80,102) (1977) (refund to U.S. Treasury for crude oil price violations), *aff'd, sub nom. Getty Oil Co. v. DOE*, 569 F. Supp. 1204 (D. Del. 1983), *aff'd*, 749 F. 2d 734 (Temp. Emer. Ct. App. 1984), *cert. denied*, 105 S. Ct. 1176 (1985). This refund mechanism involves virtually no administrative expenses and produces benefits for all citizens. *See*, Ruling 1984–1, 2 Fed. Energy Guidelines ¶ 16,082. Finally, the DOE has recommended that Congress enact a bill, entitled the Petroleum Overcharge Restitution Act, which would make oil overcharge funds available to the states for use in three energy conservation programs.

We must now consider which of the above approaches is more appropriate in this proceeding. In the present case, we know that the injured consumers of OKC petroleum products are located in a large but specific region of the nation. OKC sold petroleum products during the period covered by the consent order to firms located in 10 states: Arkansas, Colorado, Illinois, Iowa, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, and Texas.[2] As a result, the impact of the alleged overcharges was not nationwide. In fact, according to our calculations, nearly 80 percent of the OKC covered refined products sold during the consent order period was distributed in only three states: Kansas, Oklahoma, and Arkansas. *See* the Appendix to this decision and Order. We find that the distribution of the remaining OKC consent order funds to those states where the sales covered by the OKC Consent Order took place is most consistent with the restitutionary goals of Subpart V and the underlying statutes since the effects of the alleged overcharges would most likely have been incurred by purchasers of refined products in those states.

We will therefore apportion the remaining consent order funds according to the volume of OKC refined products sold in each of the 10 states. *See, e.g., Vickers.* In order to arrive at an equitable allocation of the remaining consent order funds among the states, we have estimated the proportion of OKC refined products sold in each state using the geographical distribution of purchases of OKC refined products by first-stage claimants in this proceeding. The aggregate state-by-state totals of these claimants' verified purchase volumes represents the best available approximation of the distribution of OKC sales of refined products during the consent order period. The Appendix to this Decision and Order shows the results of our calculations using this data. Accordingly, we will allot the refunds set forth in the Appendix, plus a

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[1] In making this calculation, it was first necessary to determine the portion of the OKC consent order fund that was attributable to alleged crude oil pricing violations. Based upon information submitted by OKC in unrelated proceedings before this Office, we have estimated that during the 84 month period covered by the OKC consent order, OKC sold an average of 90,203 barrels of crude oil per month. The firm's estimated total crude oil sales volume for the consent order period is therefore 7,577,081 barrels (84 × 90,203). This is the equivalent of 318,237,419 gallons (7,57,081 × 42 gallons/barrel). 318,237,419 gallons represents 15.8 percent of OKC's total sales of covered products during the consent order period. We find therefore that $750,500 ($4,750,000 × 15.8%) of the OKC escrow account is attributable to OKC's alleged crude oil pricing violations. This amount shall be held in reserve until disbursed in accordance with Congressional directives. *See* DOE Statement of Restitutionary Policy, 6 Fed. Energy Guidelines, ¶ 90,508 at 90,646. The $1,981,111 of residual funds was arrived at by deducting the following sums from the $4.75 million escrow account: $750,500 (alleged crude oil pricing violations), $1,982,605 (refunds paid) $25,784 (reserve held for pending first stage claims). The amount available for distribution in the second stage will be adjusted slightly if the amount needed to satisfy pending first stage claims differs from our estimate.

[2] Since OKC is no longer in business and is unable to provide relevant information, we recently requested the DOE Energy Information Administration (EIA) to provide us with a state-by-state breakdown of OKC's refined product sales. The EIA informed us that, based upon information which OKC had submitted to the agency on Form EIA–25, the firm sold refined products in only four states during the period from January 1, 1975 through June 30, 1981. This information is inconsistent with the record in the OKC special refund proceeding which shows that refund claimants located in 10 states (including the four reported to us by EIA) purchased significant quanitites of OKC products during the period from August 19, 1973 through July 17, 1980. In view of the verified purchase information provided by those claimants, we are reasonably confident that the vast majority of OKC's covered refined products was consumed in those 10 states.

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proportionate share of the accrued interest, to each of the states listed therein.[3]

Requirements for State Distribution Plans

The funds to be designated for distribution to the states will be disbursed upon our approval of each State's plan for spending this money. The plans should meet the general restitutionary objective of benefiting the class of persons who were injured by the alleged violations—consumers of OKC refined petroleum products.

Each State's plan will be scrutinized to ensure that administrative costs will be minimized.[4] The refunds may not be used as a substitute for state funds to implement projects or programs which would be funded regardless of this distribution. In other words, the money distributed to the states should be used to supplement, not supplant, any state or federal funds which are already budgeted for those purposes. Once the OHA has approved the plan, it will issue an order directing disbursement of the appropriate funds to the applicant. *See e.g., Worldwide Energy Corp./State of Oklahoma*, 11 DOE ¶ 85,109 (1983). Each plan must be implemented within a reasonable period following receipt of the funds. After implementation of the plan, each refund recipient should file a report with the OHA which includes a certification that the funds were spent in accordance with the approved plan.

Following the broad guidelines discussed above, the plans that the states submit should include the following information:

(1) A statement certifying that the submitting agency or office has authority under state or federal law to submit the plan;

(2) A description of the program or programs to be funded;

(3) A statement explaining whether each program is an enlargement of an existing program or a new project;

(4) An explanation of the manner in which consumers of refined petroleum products will benefit from the programs;

(5) The time frame for implementation of the programs;

(6) A statement committing the agency or office responsible for administering the plan to filing with the OHA within two years of our Decision and Order approving the plan a post-plan report, which will include a certification that the funds were spent in accordance with the DOE-approved plan; and

(7) A statement committing the relevant agency or office to depositing their refund in an interest-bearing account until the funds, accrued interest and principal, are spent in accordance with the DOE-approved plan; and

(8) The name and address of the agency official to whom a refund check should be sent.

To the extent benefits will be derived by users of refined petroleum products, the funds may be used to augment various federal energy-related programs already implemented for these purposes. The states are free to select any appropriate energy-related project or program, new or existing, so long as the funds will be spent in a manner which satisfies the restitutionary objectives of this special refund proceeding.[5] For further guidance in formulating programs, *see, e.g., Standard Oil Co. (Indiana)/Maryland*, 13 DOE ¶ 85,075 (1985).[6]

All energy offices located in the 10 states will receive a copy of this Decision and Order and will be informed that they may submit plans suggesting how best to satisfy the restitutionary objectives of this proceeding. Since all applications for refund will be available for inspection in the OHA Public Docket Room, each state should submit two copies of its plan. Applications for refund should be sent to the following address: OKC Corporation Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It is Therefore Ordered That:

(1) The governments of the states in which refined petroleum products sold by OKC Corporation were consumed, as set forth in the Appendix to this Decision and Order, shall be permitted to submit plans for the use of each jurisdiction's proportionate share of the funds remaining in the escrow account established as a result of the consent order entered into by the Department of Energy and OKC Corporation.

(2) This is a final order of the Department of Energy.

Dated: December 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX

State	Percent of total OKC sales[3]	Share of funds
Missouri	8.87	$170,574
Oklahoma	21.86	831,362
Arkansas	11.241	222,877
Texas	4.20	83,267
Mississippi[1]	2.84	56,250
Louisiana[1]	3.18	61,414
Illinois[2]	1.15	22,793
Iowa[2]	0.69	13,670
Kansas[2]	34.15	676,548
Colorado[2]	2.16	42,792
	100.00	1,981,111

[1] 100% residual fuel oil used for electricity generation.
[2] 100% motor gasoline.
[3] See footnote two.

[FR Doc. 30147 Filed 12-19-85; 8:45 am]

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[3] It is possible that the proportional distribution of refunds available to each state will be adjusted after the completion of our analysis of pending first stage claims.

[4] In *PVM Oil Associates, Inc./New York State Energy Office*, 11 DOE ¶ 85,072 (1983), we advised the submitting agency that the limitation of administrative expenses to five percent provided for in the regulations governing the Institutional Building Grant Program, 10 CFR Part 455, while not specifically applicable to OHA special refund proceedings, provides a reasonable guideline for the appropriate portion of a restitutionary fund to be dedicated to administrative expenses. We indicated, however, that we might approve a higher level if the need for additional administrative funds was substantiated. The same standards will be applied in the present proceeding.

[5] Those states entitled to only a relatively small percentage of the OKC consent order funds are encouraged to combine the amount of money they are to receive in this proceeding in a plan for spending the amount they are to receive in other second-stage proceedings. Such combined plans have been approved in a number of proceedings. *See, e.g., Standard Oil Co. (Indiana)/Texas*, 12 DOE ¶ 85159 (1984); *Standard Oil Co. Indiana)/Nebraska*, 12 DOE ¶ 85,115 (1984). For this reason, a deadline for submitting refund applications in the OKC second-stage proceeding will not be established at the present time.

[6] The restitutionary plans submitted by the states of Illinois, Iowa, Kansas and Colorado should principally benefit consumers of motor gasoline since only motor gasoline related refund claims were filed in the first stage of this proceeding by applicants located in these states. Similarly, the plans designed by Louisiana and Mississippi should take account of the fact that OKC's documented sales in these states during the consent order period involved fuel oil sold to electric utilities. The remaining states should prepare plans that benefit petroleum product consumers generally. However, these plans should take into consideration that motor gasoline sales accounted for approximately 61% of OKC's refined product sales during the consent order period.

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2940-8]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal activities, General Information (202) 382-5073 or (202) 382-5075..

Availability of environmental Inpact Statements filed December 9, 1985 Through December 13, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850530, Draft, AFS, NY, VT, Green Mountain National Forest, Land and Resource Management Plan,

Due: March 31, 1986, Contact: Stephen Harper (802) 775–2579.

EIS No. 850531, Final, COE, NY Sheepshead Bay Navigational Channel Improvements, Kings County, Due: January 21, 1986, Contact: Peter Doukas (212) 264–1275.

EIS No. 850532, Final, BLM, WY, Kemmerer Resource Area, Land and Resource Management Plan, Due: January 21, 1986, Contact: Alan Stein (307) 382–5350.

EIS No. 850533, DSuppl, SFW, REG, Migratory Bird Hunting in the United States, Use of Lead Shotgun Pellets Regulations, Due: February 3, 1986, Contact: Rollin Sparrowe (202) 254–3207.

EIS No. 850534, Draft, SCS, LA, Mill Haven Watershed Flood Prevention and Dainage Plan, Ouachita and Richland Parishes, Due: February 3, 1986, Contact: Harry Rucker (318) 473–7751.

EIS No. 850535, Final, COE, HI, Kahawainui Stream Flood Damage Reduction Plan, Hawaii County, Due: January 21, 1986, Contact: James Maragos (808) 438–2263.

EIS No. 850536, Final, EPA, MA, Boston Metropolitan Area Wastewater and Disposal Facilities Expansion, Suffolk County, Due: January 21, 1986, Contact: Ronald Manfredonia (617) 223–5610.

EIS No. 850537, Final, MMS, AK, 1986 Norton Basin, Outer Continental Shelf (OCS) Oil and Gas Sale No. 100, Lease Offering, Bering Sea, Due: January 21, 1986, Contact: Anne Giesecke (202) 343–6264.

EIS No. 850538, Draft, FHW, CA, CA–4 Freeway Construction, Wilson Way to CA–99, San Joaquin County, Due: February 10, 1986, Contact: David Eyres (916) 551–1314.

EIS No. 850539, Draft, FHW, MT, I–15 Beltview Interchange Construction, I–15, to Colonial Drive, Lewis and Clark and Jefferson Counties, Due: February 3, 1986, Contact: William Dunbar (406) 449–5310.

Amended Notices

EIS No. 850385, Draft, SFW, AK, Yukon Flats National Wildlife Refuge Comprehensive Conservation Plan and Wilderness Designation, Due: February 10, 1986, Published FR 9–20–85 Revieiw period extended.

EIS No. 850522, Final, EPA, TX, Cummins Creek Surface Lignite Mine, NPDES Permit, Fayette County, Due: January 21, 1986, Published FR 12–6–85–Review period reestablished.

EIS No. 850300, Draft, CDB, MA, Tent City Development, Parcells 11A and 11B, South End Urban Renewal Area, UDAG, Suffolk County, Published FR 7–18–85–OFFICIALLY WITHDRAWN.

Dated: December 17, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–30154 Filed 12–19–85; 8:45 am]

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[ER–FRL–2940–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 2, 1985 through December 6, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–BLM–K65106–AZ, Rating EC2, Eastern Arizona Grazing Mgmt. Program, AZ. SUMMARY: EPA commented that the draft EIS was deficient in the analysis of water quality impacts caused by grazing and related activities (e.g., chaining, prescribed burns and pesticides use). EPA also requested that a greater emphasis be given to proposed mitigative measures to protect water quality and valuable riparian areas.

ERP No. D–FHW–L40049–OR, Rating EC2, 6th and 7th Ave. Couplet and OR–99 Extension, Garfield St. to West II Ave./OR–126/Florence-Eugene Highway, OR.

Summary: EPA expressed concern about the wetland impacts and recommended that the mitigation plan be included in the final EIS. In addition, EPA suggested that both the noise and secondary development impact sections be expanded.

ERP No. D–SCS–G36122–AR, Rating LO, Tyronza River Watershed Protection and Flood Prevention, (Possible 404 Permit), AR. SUMMARY: EPA expressed no objection to the proposed action as described. EPA requested further coordination with the Corps of Engineers to clarify applicability of 404 jurisdiction.

Amended Notice

The following review was completed during the week of November 18 through 22, 1985 and should have appeared in the FR Notice published on December 6, 1985.

ERP No. D–AFS–L65097–00, Rating EC2, Sawtooth Nat'l Forest, Land and Resource Mgmt. Plan, Wilderness Designation, UT and ID. SUMMARY: EPA identified concerns over impacts of livestock grazing and timber harvesting on water quality and fisheries. In some instances the level of detail provided on the condition of existing resources, especially water quality and fisheries, made review of the draft EIS and Plan difficult. EPA also suggested refinements of the proposal and discussed several other issues as well.

Dated: December 17, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–30155 Filed 12–19–85 8:45 am]

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[OPTS–51602; FRL 2941–5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or imprort a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-seven PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86–249, 86–250, 86–251, 86–252 and 86–253—March 5, 1986.

P 86–254, 86–255, 86–256, 86–257, 86–258, 86–259, 86–260 and 86–261—March 8, 1986.

P 86–262, 86–263, 86–264, 86–265, 86–266, 86–267, 86–268, 86–269, 86–270,. 86–271, 86–272, 86–273, 86–274, 86–275, 86–276, 86–277, 86–278, 86–279 and 86–280—March 9, 1986.

P 6–281, 86–282, and 86–283—March 10, 1986.

P 86–284, and 86–285—March 11, 1986.

Written comments by:

P 86–249, 86–250, 86–251, 86–252 and 86–253—February 3, 1986.

P 86–254, 86–255, 86–256, 86–257, 86–258, 86–259, 86–260 and 86–261—February 6, 1986.

P 86–262, 86–263, 86–264, 86–265, 86–266, 86–267, 86–268, 86–269, 86–270, 86–271, 86–272, 86–273, 86–274, 86–275, 86–276, 86–277, 86–278, 86–279 and 86–280—February 7, 1986.

P 86–281, 86–282 and 86–283—February 8, 1986.

P 86–284 and 86–285—February 9, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–51602]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Confidential Data Branch, Information Managment Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St., SW, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Managment Branch, Chemical Control Diyision (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW, Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The folllowing notice contains information extracted from the non-confidential version of the submission provided by the manufactor on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

P 86–249

Manfacturer. Confidential.

Chemical. (S) Polymer of isophorone diisocyanate, 2-hydroxy ethyl acrylate and polyoxypropylene triamine.

Use/Production. (G) Open-use. Prod. range. 500–30,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 2 drs/da, to 30 da/yr.

Environmental Release/Disposal. Minimal release to air. Disposal by biological treatment lagoons and landfill.

P 86–250

Manufacturer. Confidential.

Chemical. (G) Complex substituted polyurethane of methylene bis (4-cyclohexylisocyanate) with polyols.

Use/Production. (G) Polymeric industrial coating component. Prod. range. 50,000–500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 33 workers, up to 8 hrs/da, up to 191 da/yr.

Environmental Release/Disposal. 2 to 98 kg/batch released to land. Disposal by incineration and landfill.

P 86–251

Importer. Confidential.

Chemicdl. (G) 2-oxepanone, polymer with n-decanol and heptadecafluorodecanol, reaction product with benzene, diisocyanatomethyl.

Use/Import. (G) Paint additive, open, non-dispersive use. Import range. Confidential.

Toxicity Data. Acute oral: >10 g/kg; Irritation: Skin—Slight; Eye—Non-irritant.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–252

Importer. Confidential.

Chemical. (G) Polyoxyalkyene-, polymethylalkyl-polysilozane.

Use/Import. (G) Paint additive, open, non-dispersive use. Import range. Confidential.

Toxicity Data. Acute oral: >10.0 g/kg; Irritation: Skin—Slight; Eye—Non-irritant.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–253

Importer. Confidential.

Chemical. (G) N-butyl-2-ethylhexylacrylate copolymer.

Use/Import. (G) Paint additive, open, non-dispersive use. Import range. Confidential.

Toxicity Data. Acute oral: >20.0 g/kg; Irritation: Skin—Slight; Eye—Non-irritant.

Exposure. Processing: dermal, a total of 5 workers.

Environmental Release/Disposal. No release. Disposal at an approved waste disposal facility.

P 86–254

Manufacturer. Confidential.

Chemical. (S) Reaction product of N,N'-(methylene-di-4,1-phenylene)bis[N(oxiranylmethyl)oxirane methanamine] and bis(4-amiophenyl) sulfone.

Use/Production. (G) Resin system component. Prod. range. Confidential

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 25 workers.

Environmental Release/Disposal. 0.1 to 4.5 kg/batch released to land. Disposal by landfill.

P 86–255

Manufacturer. Hercules, Inc.

Chemical. (G) Phenolic modified rosin ester.

Use/Production. (G) Ink resin. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 12 workers, up to 6 hrs/da, up to 300 da/yr.

Environmental Release/Disposal. 1% of batch and 100 kg released to air. Disposal by incineration.

P 86–256

Manufacturer. Confidential.

Chemical. (G) Substituted heterocycle azo naphthalenesulfonic acid, salt.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 86–257

Manufacturer. Confidential.

Chemical. (S) Site-limited substituted heterocycle azo naphthalenesulfonic acid, salt.

Use/Production. (G) Isolated intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Confidential.

P 86–258

Manufacturer. Confidential.

Chemical. (G) Alkyl oligoglycoside.

Use/Production. (S) Surface active agents for cleaning compounds dispersants for water insoluble organic chemicals. Prod. range. Confidential.

Toxicity Data. Acute oral: 5 g/kg; Irritation: Skin—Slight; Eye—Extreme.

Exposure. Manufacture: dermal, a total of 15 workers, up to 8 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86–259

Importer. Toray Industries (America), Inc.

Chemical. (G) Water soluble nylon.

Use/Import. (G) Surface treatment agent for metal plate and film. Import range. 1,000–5,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–260

Importer. Tory Industries (America), Inc.

Chemical. (G) Water soluble nylon.

Use/Import. (G) Surface treatment agent for metal plate and film. Import range. 1,000–5,000 kg/yr.

Toxicity Data. Acute oral: 10 g/kg.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-261

Manufacturer. Confidential.
Chemical. (G) Chlorendic anhydride capped polyester.
Use/Production. (S) Industrial type coating. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 8 workers.
Environmental Release/Disposal. Confidential.

P 86-262

Importer. BASF Wyandotte Corporation.
Chemical. (S) 2,5-dimethyl-2,5-hexanediamine.
Use/Import. (S) Industrial curing agent for epoxy resins. Import range. 2,000–5,000 kg/yr.
Toxicity Data. Acute oral: LD_{50} −1.4 g/kg; Irritation: Skin—Severe; Eye—Severe; Ames test: Negative; Skin sensitizer: Not a sensitizer.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-263

Manufacturer. Confidential.
Chemical. (G) Penta substituted benzene.
Use/Production. (G) Highly dispersive use. Prod. range. Confidential.
Toxicity Data. Acute oral: −> 2 g/kg; Irritation: Eye—Non-irritant; Photoallergenicity: Non-photosensitizer; Phototoxicity: No phototoxic potential.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-264

Manufacturer. Confidential.
Chemical. (G) Tetra substituted benzene.
Use/Production. (G) Destructive use. Prod. range. Confidential
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86-265

Importer. Confidential.
Chemical. (G) Polyamide resin.
Use/Import. (G) Ink additive. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86-266

Manufacturer. Confidential.
Chemical. (G) Dialkyl substituted propionamide.
Use/Production. (G) Wood and paper additive. Prod. range. Confidential.
Toxicity Data. Acute oral: > 5.0 g/kg; Acute dermal: > 2.0 g/kg; Irritation: Skin—Non-irritant; Eye—Negative; Ames test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW and navigable waterway.

P 86-267

Manufacturer. Confidential.
Chemical. (G) Polymer of fatty acids, C16–18 and C18 unsaturated, isophthalic acid, trimethylolethane and other carboxylic acids.
Use/Production. (S) Coating for industrial applications. Prod. range. 50,000–250,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 9 workers, up to 8 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. .5 kg/batch released to water with .5 to 35 kg/batch to land. Disposal by POTW and landfill.

P 86-268

Manufacturer. SCM Organic Chemicals.
Chemical. (S) 2-, 3- and 4-pinanyl acetate mixture.
Use/Production. (S) Component of perfume compositions for commercial and consumer use. Prod. range. Confidential.
Toxicity Data. Acute oral: −>5 g/kg; Irritation: Eye—Irritant.
Exposure. Manufacture: dermal and inhalation: a total of 12 workers, up to 2 hrs/da, up to 72 da/yr.
Environmental Release/Disposal. Less than 10 kg/batch released to water with > 5 kg/batch to air. Disposal by POTW.

P 86-269

Manufacturer. SCM Organic Chemicals.
Chemical. (S) 1,2-dimethy-3-(1-methylethenyl)-cyclopentanol propionate mixture; plinyl propionate mixture.
Use/Production. (S) Component of perfume compositions for commercial and consumer use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation: a total of 12 workers, up to 2 hrs/da, up to 72 da/yr.
Environmental Release/Disposal. Less than 10 kg/batch released to water with < 5 kg/batch to air. Disposal by POTW.

P 86-270

Manufacturer. SCM Organic Chemicals.
Chemical. (S) 3,7-dimethyl-3-octanol and 2,4-dimethy-4-octanol and 1,2-dimethyl-3-(1-methylethyl)-cyclopentanol mixture.
Use/Production. (S) Component of perfume compositions for commercial and consumer use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation, a total of 12 workers, up to 2 hrs/da, up to 67 da/yr.
Environmental Release/Disposal. Less than 5 kg/batch released to air.

P 86-271

Manufacturer. Confidential.
Chemical. (G) Chlorinated polymer latex.
Use/Production. (G) Adhesive for open, non-dispersive use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential
Environmental Release/Disposal. Confidential.

P 86-272

Importer. Fairmount Chemical Company, Inc.
Chemical. (S) Tri-ortho-tolyl phosphite.
Use/Import. (S) Organo phosphite as intermediate to be used in subsequent step at different site. Import range. Up to 4,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Use: dermal.
Environmental Release/Disposal. No data submitted.

P 86-273

Manufacturer. McWhorter, Inc.
Chemical. (G) Acrylated oil modified polyester.
Use/Production. (S) Resin for industrial coatings. Prod. range. 218,181 kg/yr.
Toxicity Data. No data on the PMN substances submitted.
Exposure. Manufacture: inhalation a total of 2 workers, up to 2 hrs/da, up to 12 da/yr.
Environmental Release/Disposal. No releases. Disposal by landfill.

P 86-274

Importer. CIBA-GEIGY Corporation.
Chemical. (G) Substituted anthraquinone.
Use/Production. (G) Textile day. Import range. 6,5000–10,800 kg/yr.
Toxicity Data. Acute oral: −>5,000 mg/kg; Subacute oral 28-day: No observable effect level. Acute dermal: −>2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames test: Negative; Micronucleus test: Negative;

Skin sensitizer: Non-sensitizer; EC_{50} 24 hr (Daphnia magna): 215 mg/1; LC_{50} 96 hr (Zebra fish): 80 mg/1; COD: 1,199–1,259.1 mg/9 %; BOD: 88 mg/9 %; BOD_5: 9 %; IC_{50} 3 hr: >100 mg/1; TL_{50} 96 hr (Zebra fish: 196 mg/1.

Exposure. Processing: dermal:, a total of 2 workers, up to 0.5 hr/da, up to 1 da/yr.

Environmental Release/Disposal. 0.3 kg/batch released to water. Disposal by POTW.

P 86–275

Manufacturer. Confidential

Chemical. (G) Acrylate, alkoxy silyl acrylate copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential

Toxicity Data. Acute oral: −>10.0 kg; Irritation: Skin—Very slight; Eye—Slight to severe; Ames test: Negative.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 5 da/yr.

Environmental Release/Disposal. 0.07 kg/batch released Disposal by landfill.

P 86–276

Manufacturer. Confidential.

Chemical. (G) Alkoxy functional olefinic silyl hydrocarbon.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. Acute oral: >15.0/kg; Acute dermal: ; Irritation: Skin—Moderate; Ames test: Negative.

Exposure. Manufacture: dermal, a total of 4 workers, up to 2 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. 0.02 kg/batch released to land. Disposal by landfill.

P 86–277

Manufacturer. Hercules Incorporated.

Chemical. (G) 4-substituted phenol, polymer with substituted bis(chlorobenzene), substituted bisphenol and inorganic hydroxide.

Use/Production. (S) Industrial component of resin system for pregregs. Prod. range. Confidential.

Toxicity Data. Acute oral: >−5 g/kg; Irritation: Skin—Non-irritant.

Exposure. Manufacture and processing: dermal, and inhalations a total of workers, up to 1 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. Trace to less than 1 g/kg released to water. Disposal by POTW.

P 86–278

Manufacturer. Rohm and Hass Company.

Chemical. (G) Modified acrylic polymer.

Use/Production. (S) Binder for chalk vehicles for industrial, commercial and consumer use. Prod. range. Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant; Eye-Slight.

Exposure. Confidential

Environmental Release/Disposal. Release to land. Disposal by landfill.

Manufacturer. Confidential.

Chemical. (G) Substituted (2-hydroxy-benzophenoxy) propane.

Use/Production. (G) Ultraviolet light absorbing coating. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential

P 86–280

Manufacturer. The Dow Chemical Company.

Chemical. (G) Aromatic isocyanate.

Use/Production. (S) Site-limited and industrial intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation.

Environmental Release/Disposal. Trace to ~0.2 kg/batch released to air with ~0.2 kg/batch to water. Disposal by POTW, incineration and landfill.

P 86–281

Manufacturer. The Dow Chemical Company.

Chemical. (G) Aromatic isocyanate.

Use/Production. (S) Site-limited and industrial intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation.

Environmental Release/Disposal. Trace to ~0.3 kg/batch released to air with ~0.3 kg/batch to land. Disposal by POTW, incineration and landfill.

P 86–282

Manufacturer. Confidential.

Chemical. (G) Reaction product of an amino alcohol and unsaturated organic acid.

Use/Production. (G) Corrosion inhibitor additive. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 86–283

Manufacturer. Confidential.

Chemical. (G) Reaction product of an amino alcohol and heterocyclic organic acid.

Use/Production. (G) Corrosion inhibitor additive. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Confidential. Disposal navigable waterway.

P 86–284

Manufacturer. The Dow Chemical Company.

Chemical. (G) Methylene diphenylene diisocyanate polyol prepolymer.

Use/Production. (S) Polyurethane elastomers for industrial components. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal and inhalation.

Environmental Release/Disposal. Less than 1 kg/batch released to air. Disposal by incineration.

P 86–285

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. (S) Resin converted to paint for automotive top-costs. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

Dated: December 16, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-30168 Filed 12-19-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-40006C; FRL 2941-4]

Approval of Revised Department of Defense Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Approval of Federal Agency Certification Plan.

SUMMARY: The EPA grants final approval of the revised Department of Defense (DOD) plan for the certification of its employees as pesticide applicators. Notice of the intent to approve this revised plan was published in the Federal Register of August 28, 1985 (50 FR 34910).

EFFECTIVE DATE: December 20, 1986.

FOR FURTHER INFORMATION CONTACT: John MacDonald, Policy and Grants Division, Office of compliance

BEST COPY AVAILABLE

Monitoring (EN–342), Environmental Protection Agency, Rm. 2510, 401 M Street, SW., Washington, DC 20460. (202)–382–7846.

SUPPLEMENTARY INFORMATION: Federal employees are considered by EPA to be commercial applicators. The DOD will certify its employees in 1 or more of the 10 commercial categories defined in 40 CFR 171.3 plus an additional proposed category defined as Aerial Applicator Pest Control.

A Notice of Intent to Approve the DOD Applicator Certification Plan by EPA was published in the **Federal Register** of August 28, 1985 (50 FR 34910). The comment period on the Notice closed on September 27, 1985; no comments were received.

Accordingly, the revised DOD Plan for the Certification of Pesticide Applicators is approved.

Copies of the DOD Plan are available for inspection at the following locations:

1. Armed Forces Pest Management Board, Forest Glen Section, Walter Reed Army Medical Center (WRAMC), Washington, DC 20307–5001.

2. Environmental Protection Agency, Information Services Section, Program Management and Support Division (TS–757c), Office of Pesticide Programs, Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

3. Environmental Protection Agency, Region I, John F. Kennedy Building, Boston, MA 02203.

4. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278.

5. Environmental Protection Agency, Region III, 841 Chestnut St., Philadelphia, PA 19107.

6. Environmental Protection Agency, Region IV, 3435 Courtland St., NE., Atlanta, GA 30365.

7. Environmental Protection Agency, Region V, Pesticides Branch, 2320 Dearborn St., Chicago, IL 60604.

8. Environmental Protection Agency, Region VI, 1201 Elm St., First International Building, Dallas, TX 75270.

9. Environmental Protection Agency, Region VII, 726 Minnesota Ave., Kansas City, KS 66101.

10. Environmental Protection Agency, Region VIII, One Denver Place, Suite 1300, 999 18th Ave., Denver, CO 80202–2413.

11. Environmental Protection Agency, Region IX, 215 Fremont St., San Francisco, CA 94105.

12. Environmental Protection Agency, Region X, 1200 Sixth Ave., Seattle, WA 98101.

The DOD Plan is also available for inspection at selected DOD installations throughout the country. Interested persons desiring the location of the installation in their State should contact the Armed Forces Pest Management Control Board at the address given above, or telephone Captain Larry Lewis, U.S.N. (202–427–5191).

Dated: December 8, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85–30167 Filed 12–19–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59743; FRL–2941–6]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of two such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 86–44—December 29, 1985.
Y 86–45—January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86–44

Manufacturer. Confidential.

Chemical. (S) Polymer of neopentyl glycol, trimethylol propane, adipic acid, isophthalic acid, dimethyl terephthalate and dibutyl tin oxide.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 86–45

Manufacturer. General Electric Company.

Chemical. (G) Polyphenylene oxide-nylon 6,6 polymer blend.

Use/Production. (G) Thermoplastic molding resin. Prod. range. Confidentical.

Toxicity Data. Acute oral: > 5 g/kg; Acute dermal: 2.0 g/kg; Irritation: Skin—irritant; Eye—Non-irritant; Skin sensitization (Guinea pigs): Non-sensitizer.

Exposure. Manufacture: dermal, a total of 40 workers, up to 10 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. 50 kg released to air with 200 kg to water. disposal by incineration and on site-waste treatment plant.

Dated: December 16, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–30171 Filed 12–19–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[No. 85–1142]

FSLIC Insurance Premium

Dated: December 9, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation ordered the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one-thirty-second of one percent of the total amount of the accounts of the insured members of each insured institution determined as of September 30, 1985.

EFFECTIVE DATE: December 9, 1985.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Director, Insurance

Division, Office of the FSLIC, (202) 377–6620; Terrill Rupp, Attorney, Office of General Counsel (202) 377–6773, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

Assessment of Additional Insurance Premium

Whereas, the Federal Home Loan Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c)(1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* that the total amount so assessed in any one year against any insured institution shall not exceed one-eighth of one per centum of the total amount of the accounts of the insured members of such institution; and

Whereas, the Bank Board, as operating head of the Corporation, by Resolution No. 85–142, dated February 22, 1985, by Resolution No. 85–437, dated June 5, 1985, and by Resolution No. 85–770, dated August 28, 1985, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one-thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment and as of March 31, 1985, for the second, and as of June 30, 1985, for the third; and

Whereas, the Bank Board, as operating head of the Corporation, by Resolution No. 85–142, expressed its intention to consider the assessment of further additional premiums in amounts equal to one-thirty-second of one per centum on a quarterly basis during 1985, not to exceed an aggregate of one-eighth of one per centum of the total amount of the accounts of the insured members of each insured institution; and

Whereas, the Bank Board has considered a memorandum of the Director, Office of the FSLIC, (a copy of which memorandum is in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85–142, dated February 22, 1985, Resolution No. 85–437, dated June 5, 1985, and Resolution No. 85–770, dated August 28, 1985, upon the Corporation's insurance reserves:

Now, therefore, it is resolved, that the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85–142, require the assessment of additional insurance premiums pursuant to section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85–142, No. 85–437, and No. 85–770, in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. It appears that the Corporation will incur further substantial losses and expenses in calendar year 1985;

3. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) of the NHA, by order of the Corporation; and

Resolved further, that the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the fourth quarter of 1985, in an amount equal to one-thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of September 30, 1985; and

Resolved further, that the additional insurance premium assessed pursuant to this Resolution shall be payable on or about December 31, 1985; and

Resolved further, that the Director or Deputy Director, Office of the FSLIC ("Director"), shall determine the amount of the additional premium due to be paid on December 31, 1985, by each insured institution and shall notify each insured institution of such amount at least twenty (20) days prior to the date such amount is due; and

Resolved further, that the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved further, that the Secretary shall forward this Resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85–30080 Filed 12–19–85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate [Casualty]

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Crown Cruise Line S.A., Crown Cruise Line Ltd., Palm Beach Cruises S.A., and Crown Cruise Line of Florida, Inc., c/o Grunstad Maritime Overseas, Inc., 2790 N. Federal Highway, Boca Raton, FL 33429.

Dated: December 17, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–30165 Filed 12–19–85; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 54): Crown Cruise Line S.A., Crown Cruise Line Ltd., Palm Beach Cruises S.A., and Crown Cruise Line of Florida, Inc. c/o Grunstad Maritime Overseas, Inc., 2790 N. Federal Highway, Boca Raton, FL 33429.

Dated: December 17, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–30165 Filed 12–19–85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Dakota Company, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR

225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.21 (a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 1986.

A. Federal Reserve Bank of Minneapolis. (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dakota Company, Inc.*, Milbank, South Dakota; to acquire Big Stone City, South Dakota, and thereby engage in general insurance activities in a place with a population not exceeding 5,000, pursuant to section 4(c)(8)(C)(i) of the Act.

Board of Governors of the Federal Reserve System, December 16, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30104 Filed 12-19-85; 8:45 am]

BILLING CODE 6210-01-M

Lincoln Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 10, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lincoln Financial Corporation;* Fort Wayne, Indiana; to acquire 100 percent of the voting shares of First Community Financial Corp., Decautur, Indiana, thereby indirectly acquiring The First State Bank of Decatur, Decatur, Indiana.

2. *Valley Bancorporation,* Appleton, Wisconsin; to acquire 100 percent of the following banks: Bank of Spring Green, Spring Green, Wisconsin; Peshtigo State Bank, Peshtigo, Wisconsin; First National Bank & Trust Co. of Beaver Dam, Beaver Dam, Wisconsin; First National Bank of Minocqua and Woodruff, Woodruff, Wisconsin; and The Commercial Bank, Chilton, Wisconsin.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lone Wolf Bancshares, Inc.*, Lone Wolf, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Lone Wolf, Oklahoma.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Independent Community Financial Corporation,* Dallas, Texas; to acquire 51 percent of Casa Linda Financial Corporation, Dallas, Texas and indirectly acquire 100 percent of Independent Bank, N.A., Dallas, Texas (a *de novo* bank).

2. *Independent Community Financial Corporation,* Dallas, Texas; to acquire 100 percent of the voting shares of Coppell Financial Corporation, Dallas, Texas, and indirectly acquire 100 percent of the voting shares of Independent Bank Coppell, N.A., Dallas, Texas.

3. *Texstar Financial Corporation, Inc.*, Azle, Texas; to become a bank holding company by acquiring 99.93 percent of the voting shares of First National Bank of Azle, Azle, Texas.

Board of Governors of the Federal Reserve System, December 16, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30105 Filed 12-19-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Firday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 13, 1985.

Social Security Administration

Subject: Application for Supplemental Security Income, Extension—(0960-0229)

Respondents: Individuals or households

Subject: Letter to Employer Requesting Wage Information, Revision—(0960-0138)

Respondents: Business or other for-profit

Subject: Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody, Extension—(0960-0019)

Respondents: Individuals or households

OMB Desk Officer: Judy A. McIntosh

Public Health Service

Office of Assistant Secretary for Health

Subject: 1987 National Health Interview Survey (Pretest), New—(0937–0021)
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

Center for Disease Control

Subject: Uranium Miners-Low Dose Investigation, Extension—(0920–0162)
Respondents: Individuals or households
OMB Desk Officer: Bruce Artim

Copies of the above information collection clearance packages can be otained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: December 16, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–30066 Filed 12–19–85; 8:45 am]

BILLING CODE 4150–04–M

Health Care Financing Administration

Privacy Act of 1974; Elimination of Systems of Records

AGENCY: Health Care Financing Administration, HHS.

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Health Care Financing Administration is eliminating the following systems of records:

1. 09–70–0010 Current Medicare Survey (Statistics), HHS/HCFA/ORD. Most recently published at 47 FR 45699; October 13, 1982.

2. 09–70–0017 Health Insurance Benefit and Actuarial Sample Control System, HHS/HCFA/BDMS. Most recently published at 47 FR 45703; October 13, 1982.

3. 09–70–0018 Actuarial Health Insurance and Supplementary Insurance (Medicare), HHS/HCFA/BDMS. Most recently published at 47 FR 45703; October 13, 1982.

4. 09–70–0510 Alphabetical Name File (Folder) of Health Insurance Program Consultants, HHS/HCFA/BPO. Most recently published at 47 FR 45727; October 13, 1982.

5. 09–70–1504 Physical Therapists Proficiency Answer Sheets and Test Results (Medicare), HHS/HCFA/HSQB. Most recently published at 47 FR 45734; October 13, 1982.

6. 09–70–1505 Psychiatric Technician Proficiency Answer Sheets and Test Results (Medicare) HHS/HCFA/HSQB. Most recently published at 47 FR 45735; October 13, 1982.

7. 09–70–1507 Waivered Licensed Practical Nurse Proficiency Exam Answer Sheets and Test Results (Medicare), HHS/HCFA/HSQB. Most recently published at 47 FR 45736; October 13, 1982.

8. 09–70–1510 Professional Qualification Files, HHS/HCFA/HSQB. Most recently published at 47 FR 45737; October 13, 1982.

These systems have been discontinued and the records are no longer maintained. All records were destroyed in compliance with the "Retention and Disposal" section of each system of record.

Dated: December 12, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85–30106 Filed 12–19–85; 8:45 am]

BILLING CODE 4120–03–M

Public Health Service

National Toxicology Program; Fourth Annual Report on Carcinogens, Availability of Draft Report for Public Comment

Notice is hereby given announcing the availability for public comment of the draft of the Fourth Annual Report on Carcinogens, a Report prepared by the National Toxicology Program under delegation from the Secretary, Department of Health and Human Services, pursuant to Pub. L. 95–622. This law requires the Secretary to publish an Annual Report listing substances known or reasonably anticipated to be carcinogens to which a significant number of those residingin the United States are exposed. This notice requests general as well as specific commentary regarding any particular substance or process included in the Fourth Annual Report. Comments including substantial documentation will be evaluated for making changes in the final Report or subsequent editions. Comments must be received by February 18, 1986.

The draft Fourth Annual Report on Carcinogens is available upon request to the Public Information Office, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919–541–3991), or FTS (629–3991). Comments should be submitted to the same address. For further information, contact Jacky Simon, telephone (301–496–3511), or FTS (496–3511).

The Annual Report on Carcinogens, commonly called the Maguire Amendment Report, was one of several environmental health related provisions enacted in the 95th Congress. The amendment concerning this Report requires the Secretary of the Department of Health and Human Services to publish an Annual Report which contains "a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed. . . ." The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed, and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals. Responsibility for preparing the Annual Reports has been delegated to the National Toxicology Program.

As drafted, the Fourth Annual Report has undergone a multi-phase peer review process both by other Federal regulatory and research agencies and programs within and outside the Department of Health and Human Services, as well as by the staff of the National Toxicology Program. However, in order to assure again the content and scientific reliability of the Fourth Annual Report, the Program is providing an additional opportunity for public review. Chemicals, mixtures, or occupational exposures added in this Report are listed in Appendix A.

The program welcomes any public comment on the draft Report, whether general in nature or with regard to any specific substance listed in it. Well documented comments will be considered for inclusion in or for revision of the Report. General comments or suggestions for making the Report more useful or useable for the public are appreciated and will be considered fully for future editions.

Dated: December 12, 1985.

David P. Rall, M.D., Ph.D.,

Director, National Toxicology Program.

APPENDIX A—CHEMICALS, MIXTURES AND OCCUPATIONAL EXPOSURES ADDED IN DRAFT FOURTH ANNUAL REPORT ON CARCINOGENS

Chemicals, mixtures, occupational exposures	CAS No
Adriamycin	[illegible]
Analgesic Mixtures Containing Phenacetin	
Azathioprine	446–86–6
Benzotrichloride	98–07–7

APPENDIX A—CHEMICALS, MIXTURES AND OCCUPATIONAL EXPOSURES ADDED IN DRAFT FOURTH ANNUAL REPORT ON CARCINOGENS—Continued

Chemicals, mixtures, occupational exposures	CAS No.
Bischloroethyl Nitrosourea	[illegible]
Boot and Shoe Manufacture and Repair	
1,4-Butanediol Dimethylsulfonate (Myleran)	55-98-1
Certain Combined Chemotherapy for Lymphomas	
1-(2-Chloroethyl)-3-Cyclohexyl-1-Nitrosourea (CCNU)	13010-47-4
4-Chlor-o-Phenylenediamine	95-83-0
Conjugated Estrogens	
Dacarbazine	[illegible]
DDT	[illegible]
Diethyl Sulfate	64-67-5
1,1-Dimethylhydrazine	57-14-7
Epichlorohydrin	106-89-8
Estrogens (not conjugated):	
1. Estradiol-17β	[illegible]
2. Estrone	53-16-7
3. Ethinylestradiol	57-63-6
4. Mestranol	72-33-3
Ethylene Oxide	75-21-8
Furniture Manufacture	
Hexamethylphosphoramide	[illegible]
Methoxsalen with Ultra-Violet A Therapy (PUVA)	
2-Methylaziridine	75-55-8
4,4'-Methylenedianiline and its Dihydrochloride	101-77-9
Methyl Iodide	[illegible]
Metronidazole	443-48-1
Nitrogen Mustard	[illegible]
2-Nitropropane	79-46-9
Norethisterone	[illegible]
Progesterone	[illegible]
1,3-Propane Sultone	1120-71-4
Propylthiouracil	51-52-5
Rubber Industry (Certain Occupations)	
Toluene Diisocyanate	584-84-9

[FR Doc. 85-30117 Filed 12-19-85; 8:45 am]
BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Region 7 Policy Regarding Management of World War II Material

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This Notice is made to inform the public of the Fish and Wildlife Service, Region 7, policy and procedures concerning the management of historic aircraft parts and other World War II materials occurring on lands of the National Wildlife Refuge System; it does not include new regulatory material, but merely interprets the applicability of existing laws and regulations with regard to these materials. This Notice is necessary due to increased interest and activity by both the public and private sector in entering national wildlife refuges to locate and remove military artifacts dating from the World War II period, and specifically due to recent occurrences in Alaska which indicate a clear lack of understanding of policy and procedures among the public as a whole. It is the intent of the actions describd herein to assure in so far as possible the preservation and appropriate use of these historic materials in accordance with applicable State and Federal laws and regulations. This Notice constitutes the public notice specified in 50 CFR 25.31.

EFFECTIVE DATE: The interpretation given in this Notice is effective immediately.

ADDRESS: U.S. Fish and Wildlife Service, Region 7, 1011 East Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Charles Diters, Regional Historic Preservation Officer, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, 907-786-3386.

SUPPLEMENTARY INFORMATION: The Aleutian Campaign of World War II was unique in that it took place on United States soil; the Japanese invasion of the Aleutians was the first occupation of U.S. territory by a foreign enemy since the War of 1812. The remains of this campaign, although subject to the effects of weather and of collectors over the past forty years, are still substantial. It is the opinion of the U.S. Fish and Wildlife Service (FWS) that these physical remains are of considerable value in the historic sense, and that many, if not all of them, are eligible for inclusion on the National Register of Historic Places. The following paragraphs describe the policy and procedures that will be followed regarding the management of downed aircraft and other materials of World War II military origin found on units of the National Wildlife Refuge System within the State of Alaska.

1. It is the policy of the FWS that all materials of military origin dating from the World War II period, and now located on lands managed as parts of the National Wildlife Refuge System, are to be regarded as under the control of the United States Government. The FWS intends to manage these items in full compliance with the National Historic Preservation Act of 1966, as amended (15 U.S.C. 470), and related laws and regulations.

2. Materials of this sort may only be disturbed or removed when authorized by specific permits issued by the FWS. For items presently buried beneath the soil, permits will be issued following a procedure identical to that set forth in 43 CFR Part 7 (Protection of Archaeological Resources). Application for such permits should be made to the Regional Director. The remainder of this Notice applies only to those materials presently found on the surface of the ground.

3. Individuals or institutions interested in recovering World War II materials from National Wildlife Refuges must make application to the Refuge Manager of the unit in question, for issuance of a special use permit (50 CFR 26.22(b); 50 CFR 36.41). The application must be in writing and must include the following information:

A. The specific aircraft part(s) or other artifact(s) to be collected, including their present location and condition. These descriptions should be detailed enough to allow all further determinations regarding the items to be made without additional field investigation, and ideally should be accompanied by detailed photographs.

B. A detailed descripton of the use to which the part(s) or artifact(s) will be put. Those uses that are scientific, interpretive, or educational in nature will be preferred, as will uses that tend to benefit the largest practical segment of the public. This section should also describe final disposition of the materials when they ar no longer of use or interest to the requesting individual or institution.

C. A detailed description of the qualifications of the individual(s) and/or institution(s) making the request. This portion will be used to assure that the permittee has the ability and resources to complete the uses described in (B).

4. The refuge manager will provide the application described in (3) to the Regional Office for review by staff, and for consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation in accordance with 36 Part 800. The Regional Director will make the final determination as to whether the permit may be allowed on historical grounds, and return the application to the refuge manager, who may issue or deny the permit on environmental or other grounds. The refuge manager is responsible for determining the compatibility of the proposed action with refuge purposes, and may require additional protective stipulations and/or the preparation of environmental documentation (Environmental Assessments or Environmental Impact Statements).

5. During the review process, the Regional Office will actively seek the comments of the public on the merits of the proposed activity, and will allow a minimum of thirty (30) days for such comments. During this period, the Regional Office will also entertain proposals from other individuals or institutions which may have competing desires for the materials in question. If written notice of such an interest is

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received during the comment period, the party or parties in question will be allowed sixty (60) days to apply for a permit to remove the subject materials. If there are competing applicants, the Regional Director will make the final selection; the permit may be granted to the original applicant, to one of the competing applicants, or to two or more parties from among the applicants, and the specific resources divided among them. Any or all of the applicants may also be allowed to modify their applications during this period.

6. Administrative fees may be assessed for the processing of applications and permits (16 USC 668dd–668jj).

7. Permits under these specific procedures are not required for individuals or institutions which merely wish to observe and/or document in place such materials. However, special use permits will be required, and persons or institutions wishing to conduct such activities should contact the refuge manager of the unit of FWS lands in question. The refuge managers will continue to coordinate these activities with the Regional Historic Preservation Officer.

Dated: December 11, 1985.

Robert E. Gilmore,

Regional Director.

[FR Doc. 85–30046 Filed 12–19–85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Butte District, MT, District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Butte District Advisory Council will be held Wednesday and Thursday, January 15 and 16, 1986.

The meeting will begin at 1 p.m., January 15 in the Butte District Office conference room, 106 North Parkmont (Industrial Park), Butte, Montana. The agenda will include (1) access to public lands, (2) the district's land adjustment program, (3) surface management (3809) regulation administration, (4) the FY 86 budget, and (5) a discussion of the district's range program, including the Bureau's riparian initiative, Cooperative Management Agreements and grazing fees.

The meeting is open to the public. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make an oral statement should make advance arrangements with the district manager.

Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: December 12, 1985.

Jack A. McIntosh,

District Manager, Butte District.

[FR Doc. 85–30148 Filed 12–19–85; 8:45 am]

BILLING CODE 4310-DN-M

Colorado; Craig District Advisory Council Meeting

In accordance with Pub. L. 94–579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on January 29, 1986.

The meeting will begin at 10 a.m. at the Craig District Office, 455 Emerson Street, Craig, Colorado.

Agenda items will include:

1. Election for Chairman for 1986 year.
2. Report from Western Area Power Administration on the Craig/Utah 345 kV Transmission Line Project.
3. Report on K–T Copper Mine.
4. Report on the Draft James Creek Coal Preference Right Lease Application Environmental Impact Statement.

The meeting will be open to the public and interested persons may make oral statements to the council beginning at 10:30 a.m. The District Manager may establish a time limit for oral statements, depending on the number of people wishing to speak. Anyone wishing to address the Council, or file a written statement, should notify the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, by January 23, 1986.

Summary minutes of the Council Meeting will be maintained in the Craig District Office and will be available for public inspection and reproduction during regular business hours.

Dated: December 12, 1985.

Larry P. Bauer,

Acting District Manager.

[FR Doc. 85–30150 Filed 12–19–85; 8:45 am]

BILLING CODE 4310-JB-M

[AZ–025–86–13]

Phoenix District Draft Planning Analysis and Decision Record; Availability and Public Comment; AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of Phoenix District Planning Analysis Decision Record and Opportunity for Public Comment.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, a Draft Planning Analysis/Environmental Assessment was prepared by the Phoenix District, Arizona. A subsequent Decision Record and Finding of No Significant Impact (FONSI) is made available for public comment for 30 days, after which the Decision will become final.

The Decision finds it appropriate to make lands in the Phoenix District not covered by a land use plan available for possible exchange.

Public Participation

Copies of the Decision Record and FONSI are available upon request from the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 863–4464. Public reading copies may also be reviewed there and at the Bureau of Land Management, Arizona State Office, 3707 North Seventh Street, Phoenix, Arizona 85014, (602) 241–5547.

Written comments should be sent to the District Manager, Phoenix District, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

The public review and comment period will end 30 days from the date of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Area Manager, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 863–4464.

Maryln V. Jones,

District Manager.

[FR Doc. 85–30149 Filed 12–19–85; 8:45 am]

BILLING CODE 4310-32-M

California; Proposed Issuance of Lease for Abandoned Mining Claim

The Bureau of Land Management proposes to issue a noncompetitive oil and gas lease for the abandoned W½ of the Josephine Claim located in Section 23, T. 31 S., R. 22 E., MD Mer., State of California, County of Kern. The effective date of the lease will be October 22, 1979. The payment of the lessor of back royalties upon oil produced, severed, save and sold from the above-described property between October 22, 1979 and December 31, 1985, will be made by the lessee in four equal quarterly payments beginning on or before March 1, 1986 and concluding on or before December 1, 1986. The lessee's obligation to pay the back royalties is in addition to its obligation to account for presently accruing rentals and/or royalties. An

interest charge shall be assessed on underpayments or late payments of back royalties in accordance with the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447). The lessee will pay the required $500.00 administrative fee and reimburse the Bureau of Land Management for the cost of this Federal Register notice, prior to lease issuance.

The lessee meets all the requirements for the issuance of the lease as set out in section 31(f) of the Minerals leasing Act of 1920 (30 U.S.C. 188f).

Dated: December 10, 1985.

Joan B. Russell,

Chief, Leasable Minerals Section, Branch of Lands & Minerals Operations.

[FR Doc. 85-30271 Filed 12-19-85; 8:45 am]

BILLING CODE 4310-86-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation: Steuber Company, Incorporated, 66 Field Point Road, Greenwich, Ct. 06830.

2. Wholly-owned subsidiaries which will participate in the operations: Metro Oil & Chemical Corp., 343 South Broad Street, Ridgefield, N.J.-State of Inc., New Jersey.

1. Parent corporation and address of principle office: Sysco Corporation, 1177 West Loop South, Houston, Texas 77027.

2. Wholly-owned subsidiaries and divisions which will participate in the operations, and States of incorporation:

Subsidiary—Name and Address	State of Incorporation
Allied-Sysco Food Services, Inc., P.O. Box 6185, Hayward, CA 94540.	[illegible]
Arrow-Sysco Food Services, Inc., P.O. Box 10038 Jefferson, LA 70181.	[illegible]
Baraboo-Sysco Food Services, Inc., 901 Sauk Avenue, Baraboo, WI 53913	Wisconsin.
Bell-Sysco Food Services, Co. P.O. Box 2987, Ashevile, NC 28802.	North Carolina.
Compton Foods Association, 1177 West Loop South Houston, TX 77027.	Delaware.
Compton Refrigerated Distribution Center, A Div. of Compton Foods Association, Houston, TX; 6700 Corporate Drive, Suite 100, Kansas City MS 64120	
Sysco Chemical Co. A Div. of Compton Foods Association, Houston, TX 13003 Southwest Freeway, Suite 160, Stafford, TX 77479	
DiPaolo/Sysco Food Services, Inc., P.O. Box 14465, Columbus, OH 43214.	[illegible]
Glencoe-Sysco Food Services Co., P.O. Box 4343, Carson, CA 90749-4343.	[illegible]
Global Frozen Foods, 1177 W. Loop South, Houston, TX 77027.	[illegible]
Grants-Sysco Food Services, Inc., P.O. Box 1598, Saginaw, MI 48605.	Michigan.
HFP-Sysco Food Services, Inc., P.O. Box 113 Harrisonburg, VA 22801.	Virginia.
Hallsmith-Sysco Food Services, Inc. 380 South Worcester Street, Norton, MA 02766	[illegible]
Hardin's Sysco Food Services, Inc., P.O. Box 18847, Memphis, TN.	Tennessee.
Koon-Sysco Food Services, Inc., P.O. Box 141, Bowling Green, KY 42101-0104.	Kentucky.
Lankford-Sysco Food Services, Inc., P.O. Box 477, Pocomoke City, MD 21851.	Maryland.
Mid-Central/Sysco Food Services, Inc., P.O. Box 820, Olathe, KS 66061.	[illegible]
Miesel/Sysco Food Service Co., P.O. Box 579, Detroit, MI 48232	Michigan.
Miesel/Sysco Food Services Co. A Div. of Miesel/Sysco Food Service Co., Detroit, MI P.O. Box 94570, Cleveland, OH 44101.	
Nobel-Sysco Food Services Co., P.O. Box 5566 TA Denver, CO 80217..	Colorado.
Nobel/Sysco Food Services Co. Southwest Division, A Div of Nobel/Sysco Food Services Co. Denver, CO. 501 Camanche Place N.E., Albuquerque, NM 87107.	
Pegler-Sysco Food Services Co. P.O. Box 8000 Lincoln, ME 68501.	Nebraska.
Robert Orr-Sysco Food Services Co. P.O. Box 1087, Nashville, TN 37202.	Tennessee.
Select-Sysco Foods, Inc., P.O. Box 3097, Haywood, CA 94540.	California.
Sysco Food Services of Amarillo, Inc., P.O. Box 510, Amarillo, TX 79105.	Texas.
Sysco Food Services of Austin, Inc. P.O. Box 1649, Austin, TX 78767.	Texas.
Sysco Food Services of Beaumont, Inc., P.O. Box 56, Beaumont, TX 77704.	Texas.
Sysco Food Services, Inc., P.O. Box 15316, Houston, TX 77220.	Texas.
Sysco Food Services-San Antonio, A Div. of Sysco Food Services, Inc., Houston, TX P.O. Box 18364, San Antonio, TX 78218.	
Sysco Food Services Southeast Inc., P.O. Box 14338, Augusta, GA 30919	Georgia.
Sysco Food Systems, Inc., P.O. Box 814229, Dallas, TX 75381.	Texas.
Sysco/Frost-Pack Food Services, Inc., P.O. Box 8769, Grand Rapids, MI 49518.	Michigan.
Sysco Frosted Foods, Inc., P.O. Box 5327, Albany, NY 12205.	New York.
Sysco/Lousville Food Services, Inc., P.O. Box 32470, Lousville, KY 40232.	Kentucky.
Railton/Sysco Food Services, Co., A Div. of Sysco/Lousville Food Services, Inc., Lousville, KY; 111 N. Northwest Avenue, Northlake, IL 60164	
Sysco-Midwest Food Services, Inc. P.O. Box 5299, Lafayette, IN 47903	Indiana.
Sysco/Rome Food Services, Inc., P.O Box 2026, Rome, GA 30161.	Georgia.
The SYGMA Network, Inc., 7125 W. Jefferson Ave., Suite 460, Lakewood, CO 80235	Delaware.
Midwest/SYGMA, A Div. of The SYGMA Network, Inc., Lakewood, CO P.O. Box 14458, Lenexa KS 66214	
New York Tea-Sysco Food Service Co., P.O. Box 43030, St. Paul, MN 55164.	Minnesota.

Division—Name and Address

Cochran/Sysco Food Services, P.O. Box 2900, Jackson, MS 39207;
Global Sysco, 700 Dibblee Drive, Garden City, NY 11530;
Plantation-Sysco P.O. Drawer 6400-A, Miami, FL 33164;
Plantation-Sysco of Central Florida, P.O. Box 15890, Orlando, FL 32858;
Plantation-Sysco Military Division, P.O. Box 15890, Orlando, FL 32802;
Sysco/Gulf-Atlantic Food Services, P.O. Box 37045, Jacksonville, FL 32236;
Sysco Intermountain Food Services, P.O Box 27638, Salt Lake City, UT 84125;
Sysco-Metro Food Services, P.O. Box 93865, Atlanta GA 30377;
Theimer-Sysco Food Services, P.O. Box 13788, Roanoke, VA 24037-3788;
Thomas-Sysco Food Services, P.O. Box 14405, Cincinnati, OH 45214.

Note.—SYSCO Corporation is incorporated in the State of Delaware.

James H. Bayne,

Secretary.

[FR Doc. 85-30033 Filed 12-19-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-211 (Sub-No. 1X)]

Rahway Valley Railroad Co.; Abandonment Exemption in Union County, NJ

Applicant has filed a notice of exemption under 49 C.F.R. 1152 Subpart F—*Exempt Abandonments* to abandon 2.15 miles of rail line between its terminal at Summit and the Carter Bell Manufacturing Co. siding in Springfield, in Union County, NJ.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic on the line can be rerouted over other lines, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective January 12, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by December 23, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by January 2, 1986 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative: William R. Gilson, 57 Union Place, P.O. Box 1439, Summit, NJ 07901.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: December 10, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-30035 Filed 12-19-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-186 (Sub-1)]

The Newburgh & South Shore Railway Co.; Abandonment and Discontinuance in Cuyahoga County, OH; Corrected Notice of Findings

December 3, 1985.

Notice is hereby given pursuant to 49 U.S.C. 10903 that a decision decided December 3, 1985, a finding, which is administratively final, was made by the Administrative Law Judge stating that the present or future public convenience and necessity permit the abandonment by the applicant, The Newburgh & South Shore Railway Company, of its entire line of railroad between milepost 0.48 to the end of the line at milepost 8.00, a distance of 7.33 miles in Cuyahoga County, OH. Pursuant to the Judge's decision, the application for abandonment is granted, effective 30 days from the date of service, except as the Commission may elect to hear a discretionary appeal. However, offers either of financial assistance or to purchase the line must be filed by December 17, 1985.

James H. Bayne,

Secretary.

[FR Doc. 85-30223 Filed 12-19-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

State Employment Security Agency System Administrative Financing; Open Meetings.

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and purpose for public meetings on the administrative financing mechanism for the State Employment Security Agency programs.

DATES AND ADDRESSES:

January 14, 1986, 8:30 a.m. to 5:00 p.m.: Hyatt Regency, 300 Reunion Boulevard, Dallas, Texas

January 15, 1986, 8:30 a.m. to 5:00 p.m.: Palmer House, 17th and Monroe Street, Chicago, Illinois

January 16, 1986, 8:30 a.m. to 5:00 p.m.: Holiday Inn, Capitol, 550 C Street, SW., Washington, DC.

January 23, 1986, 8:30 a.m. to 5:00 p.m.: Sheraton Palace, Market and New Montgomery, San Francisco, California

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, 601 D Street, NW., Washington, DC 20213 (202/376-6636).

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to solicit the views of a wide range of individuals and organizations who may have an interest in administrative financing of the program. These meetings provide a forum for the discussion of such comments and concerns. The agenda and discussion framework for these meetings will be published in a forthcoming **Federal Register** notice. Presentations will be made by individuals representing major groups who have an interest in employment security. The audience will be encouraged to comment. Written comments are also being solicited through a separate **Federal Register** notice which provides more information on the review process and administrative financing procedure.

Signed at Washington, DC this 17th day of December 1985.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 85-30185 Filed 12-19-85; 8:45 am]

BILLING CODE 4510-30-M

Invitation To Comment on Administrative Financing of State Employment Security Agency Programs and To Propose Changes Thereto

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of opportunity to comment on changes to administrative financing.

SUMMARY: This notice announces a Department of Labor initiative to improve the adequacy and equity of financing of State Employment Security Agency (SESA) programs and invites interested parties to comment. This initiative will focus primarily on the Unemployment Insurance Program (UI).

The Assistant Secretary of Labor is sending individual letters to the governors of the States asking for their personal review and comment on existing administrative financing procedures, the problems associated with these procedures and on any proposals for changes to these procedures. He is planning to convene a general meeting open to the public to discuss problems and proposals for change. The agenda and discussion framework for these meetings will be published in a subsequent **Federal Register** notice. Written comments are requested, if possible, to follow the same discussion format as the meetings.

DATE: Written comments must be received by close of business January 17, 1986.

ADDRESS: Submit comments to Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, 601 D Street, NW., Washington, DC 20213. Telephone: 202-376-6636.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, 601 D Street, NW., Washington, DC 20213. Telephone: 202-376-6636.

SUPPLEMENTARY INFORMATION: The framework for the basic UI system is outlined in the Social Security Act (SSA) and the Federal Unemployment Tax Act (FUTA). Basically, States raise revenues for financing UI benefits; the Federal government raises revenues for financing both the State and Federal administration of the system. (Federal revenues also finance the Federal share of extended benefits and the loan fund from which States may borrow if their revenues are insufficient to pay benefits.)

The costs of administering the UI system have become increasingly large over time and vary considerably with economic conditions. For example, the benefit costs of the UI program have varied recently between $15 and $29 billion per year; the number of beneficiaries has varied between 7 and 13 million; and the administrative costs of the program at the State level have ranged from $1.5 to $2.0 billion.

The current system relies on forcasts of workloads derived from the Administration's economic assumptions as the basis for formulating requests for appropriations. Once the operating budget is appropriated it is allocated among the States for specific categories of activity as well as for separate object classes of expenditures. The Federal allocation of resources is highly specific, reflecting the workload factors on which the forecasts are based, but also thereby prescribing how States will administer the program.

Using the most recent economic assumptions, the Employment and Training Administration prepares workload estimates at base and contigency-above-base levels for various workload categories. Base workload estimates are projected to insure that the maximum number of States experience at least base workloads in their lowest quarter of activity. Workloads above base amounts are financed from a contingency appropriation.

Staff needed to perform necessary activities for proper and efficient administration are determined using productivity factors (workload per staffyear) which were developed from State work measurements and which have been in use since the late 1970's. These productivity factors and workload estimates are used to formulate the number of staffyears requested on a national basis.

Staffyears are priced in the President's Budget request using national average costs per staffyear (CPSY). These CPSY figures include average national costs for salaries and nonpersonal services. In addition to staffyears to process workloads, the President's Budget also includes amounts for certain national activities, automation grants, salary increases, postage and State legislative changes.

The appropriation is allocated among the States based on State specific workload forecasts and State specific productivity factors. State productivity factors are determined from Cost Model work measurement studies conducted by the States. State staff are priced using State specific salary rates and nonpersonal services rates. Initially, States are provided base allocations, with contingency allocations provided quarterly as workloads exceed base amounts. States are entitled to contingency funds based on the lesser of earned staffyears or used staffyears.

The appropriation language has required that all base resources be exhausted before contingency resources may be utilized. Normal budgetary adjustments are applied at mid-year and at the end of the third fiscal quarter to ensure that base resources are being fully utilized. Unused resources are recaptured for subsequent reallocation. Resources are managed to ensure that each State receives an equitable share of estimated nationwide needs but that resources not needed are not expended. To do this, allocations are adjusted (recaptured) during and at the end of the year to ensure that States receive only the lesser of workload dollars earned or used during the year. It is this process on which comments are invited, together with suggestions for improving the adequacy and equity of the process.

Signed at Washington, DC, this 17th day of December 1985.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 85-30184 Filed 12-19-85; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,034]

General Dynamics Corp., Quincy Shipbuilding Division, Quincy, MA; Affirmative Determination Regarding Application for Reconsideration

By an application received on December 3, 1985, the Industrial Union of Marine and Shipbuilding Workers, the International Federation of Professional and Technical Engineers and the International Union of Plant Protection Employees, with the support of the company, requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply of Worker Adjustment Assistance on behalf of workers and former workers of the Quincy Shipbuilding Division of General Dynamics Corporation, Quincy, Massachusetts. The determination was published in the Federal Register on November 5, 1985 (50 FR 45949).

The application claims, among other things, that one of Quincy's customers met their vessel requirements when they purchased the assets and contracts of another domestic company and that no U.S. shipyard has been successful in international commercial ship competition since the elimination of the Construction Differential Subsidies for vessels in 1982.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore, granted.

Signed at Washington, DC, this 10th day of December 1985.

Robert A. Schaerfl,

Director, Office of Program Management, UIS.

[FR Doc. 85-30181 Filed 12-19-85; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Virginia State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On September 28, 1976, notice was published in the **Federal Register** (41 FR 42655) of the approval of the Virginia State plan and the adoption of Subpart EE to Part 1952 containing the decision.

The Virginia State plan provides for the adoption of all Federal standards as State standards after comments and public hearings except for those standards found in 29 CFR Parts 1915, 1917, 1918 and 1919 (shipyards, marine terminals, longshoring and gear certification). A notice of approval was published in the **Federal Register** (43 FR 11274) dated March 17, 1978.

By letters dated April 4, 5 and 12, 1984, from Commissioner Eva S. Teig, Virginia Department of Labor and Industry, to Linda R. Anku, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to: (1) 29 CFR 1910.1002, pertaining to Coal Tar Pitch Volatiles: Interpretation of Terms, as published in the **Federal Register** dated January 21, 1983 (48 FR 2764); (2) 29 CFR

1910.95, pertaining to Noise Standard: Hearing Conservation Amendment, as published in the **Federal Register** dated March 8, 1983 (48 FR 9738); (3) 29 CFR 1910.1025(a)(2), (e), (f)(2)(ii), (i), (j)(3)(ii), (k), (l) and (m), pertaining to Occupational Exposure to Lead: Respirator Fit Test and Miscellaneous Amendments, as published in the **Federal Register** dated November 12, 1982 (47 FR 51110); (4) 29 CFR 1910.106, pertaining to Hazardous Materials: Attendant Exemption and Latch-Open Devices, as published in the **Federal Register** dated September 17, 1982 (47 FR 39161); and (5) 29 CFR 1910.401, pertaining to Commercial Diving Operations: Educational/Scientific Diving Exemption, as published in the **Federal Register** dated November 19, 1982 (41 FR 25059). These standards which are contained in the Virginia Occupational Safety and Health Standards, were promulgated after public hearing conducted on February 28, 1984, and Resolution adopted by the Virginia Codes Commission pursuant to Section 40.1–22 and the Administrative Process Act, Code of Virginia. These State standards were effective on June 15, 1984.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and, accordingly, should be approved.

3. Location of Supplements for Inspection and Copying

A copy of the standard supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, 3535 Market Street, Suite 2100, Philadelphia, Pennsylvania 19104; and the Office of the Commissioner, Virginia Department of Labor and Industry, 205 North Fourth Street, Richmond, Virginia 23241.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Virginia State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting the requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective December 20, 1985.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Philadelphia, Pennsylvania, this 24th day of July 1984.

Linda R. Anku,

Regional Administrator.

[FR Doc. 85–30183 Filed 12–19–85; 8:45 am]

BILLING CODE 4510–26–M

Office of the Assistant Secretary for Veterans Employment and Training

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under section 308, Title III, Pub. L. 97–306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Tuesday, January 14, 1986 at 10:00 A.M., in the Secretary's Conference Room, S–2508, FPB.

Items to be discussed are:

- Secretary's Goals and Objectives
- Separation Briefing Project
- South Carolina Entrepreneurship
- Solicitation for Grant Application Update
- Emeregency Veterans' Job Training Act Update (VA)

The public is invited.

Signed at Washington, DC, this 12th day of December 1985.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 85–30182 Filed 12–19–85 8:45 am]

BILLING CODE 4510–79–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Anthem Electronics, Inc.; Common Stock, $.125 Par Value (File No. 1–8566)

December 16, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Anthem Electronics, Inc. in making its decision to withdraw the common shares from listing and registration considered the costs of maintaining the dual listing of the common shares on the the NYSE and Amex. The issuer does not see any advantage in the dual trading of the common shares and believes that dual listing would fragment the market for such shares.

Any interested person may, on or before January 6, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–30119 Filed 12–19–85; 8:45am]

BILLING CODE 8010–01–M

[File No. 22–14372]

Application and Opportunity for Hearing; Storage Equities, Inc.

December 16, 1985.

Notice is hereby given that Storage Equities, Inc., a California corporation ("Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Trust Services of America, Inc., a California corporation ("TSA") (as successor trustee to First Interstate Bank of California, a California banking corporation), under a tenth supplement of an existing indenture qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify

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TSA from acting as trustee under such tenth supplement.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety (90) days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding.

However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. TSA, as successor trustee, currently is acting as trustee under an indenture (the "Indenture") and several prior supplements thereto under which the applicant is an obligor. The Indenture, dated as of August 9, 1983, is between Applicant and TSA and provides for the periodic issuance of secured notes in partial consideration for the purchase of property by Applicant. This indenture was filed as Exhibit 4.3 to Applicant's Registration Statement No. 2–80850 filed under the Securities Act of 1933, and has been qualified under the Trust Indenture Act in connection with a Form T–1 filing. File No. 22–12633.

Applicant has also entered into, and filed by way of post-effective amendments to the registration statement stated above, prior supplements under which TSA is a trustee. Applicant has issued several series of its secured notes under the prior supplements.

2. Applicant wishes TSA to continue as Trustee under the tenth supplemental indenture executed October 3, 1985.

3. The Applicant is not in default in any respect under the Indenture or prior supplements thereto.

4. Each series of secured notes issued under the prior supplements is secured by separate and distinct assets of Applicant so that should TSA have occasion to proceed against the security under any series of notes, such action would not affect the security, or the use of any security, under any other series. Thus, the existence of the other trusteeships should not inhibit or discourage TSA's actions under any one series.

The Applicant has waived notice of hearing, hearing on the issues raised by its Application and all rights to specify procedures under Rule 8(b) of the Rules of Practice of the Securities and Exchange Commission in connection with this matter. For a more detailed statement of the matters of fact and law asserted, all persons are referred to said Application, File No. 22–14067, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than January 10, 1986, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said Application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the Application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–30120 Filed 12–19–85, 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22714; File No. SR–Amex–85–34]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc., Relating to Amendments to Amex Company Guide—Sections 103 and 104

The American Stock Exchange, Inc. ("Amex") submitted on September 16, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend sections 103 and 104 of the Amex *Company guide* which, in part, govern the features of (1) convertible preferred issues, and (2) convertible bonds and debentures, respectively, that may be listed on the Exchange. Under Rule 104, the Amex proposes to permit listing of convertible bonds and debentures if the underlying issue into which the bond or debenture is convertible is subject to last sale reporting.[1]

In addition, the Amex proposes under both sections 103 and 104 to permit listing of (1) convertible preferred and (2) convertible bonds and debentures, respectively, which grant the issuer discretion temporarily to reduce the conversion price of the preferred stock or debt. Sections 103 and 104 currently prohibit listing of convertible preferred or debt issues with such provisions—known as "flush out" provisions—attached. Under the proposal, the price reduction will be permissible only if the company establishes a minimum period of ten business days within which such reduction will be in effect.[2]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22429, September 19, 1985) and by publication in the **Federal Register** (50 FR 39200, September 27, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the

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[1] Currently, the Amex will list convertible preferred and debt only if the underlying issue is listed on Amex or the New York Stock Exchange.

[2] On December 11, 1985, the Amex filed Amendment No. 1 to the proposed rule change to provide that the Amex would not list convertible preferred or debt issues giving the company the right to "reduce" the conversion price, unless a minimum conversion period of ten business days was established. The Amex's original proposal would have prohibited listing if the company would "adjust" the conversion price unless a ten business day window period was provided for.

Amex has stated that the amendment makes clear that listed companies will be able to use "flush out" provisions for convertible securities only to effect a reduction in the conversion price. *See* letter from Michael S. Emen, Vice President and Counsel, Amex, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated December 10, 1985. Thus, the proposal does not encompass listing convertible issues when the issuer could increase the conversion price.

The Amex has indicated that its disclosure policies in Sections 401–405 of the Amex *Company Guide* apply fully to any reduction by an issuer of the conversion price of convertible preferered, bonds or debentures. Telephone conversation between Donald Nisonoff, Attorney, SEC, and Benjamin Krause, Senior Vice President, Amex, on December 13, 1985.

requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 13, 1985.

John Wheeler,

Secretary

[FR Doc. 85-30118 Filed 12-19-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2222; Amdt. #1]

Florida; Declaration of Disaster Loan Area

The above-numbered Declaration (50 FR 50697), which was issued in accordance with the President's declaration of December 3, 1985, is hereby amended in accordance with the amendment dated December 11, 1985, to include Calhoun, Jefferson and Liberty Counties because of damage from Hurricane Kate and flooding beginning on or about November 20, 1985. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on February 3, 1986, and for economic injury until the close of business on September 3, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: December 13, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-30108 Filed 12-19-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2221]

Maryland; Declaration of Disaster Loan Area

The Counties of Anne Arundel, St. Mary's, Garrett, Washington and the adjacent Counties of Calvert, Frederick and Allegany in the State of Maryland constitute a disaster area because of damage caused by a severe storm, flooding, high winds and tidal surge which occurred on November 4, 1985. Applications for loans for physical damage may be filed until the close of business on February 10, 1986, and for economic injury until the close of business on September 11, 1986, at the address listed below: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 222106 for physical damage and for economic injury the number is 635700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 11, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-30109 Filed 12-19-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2218; Amdt. #2]

Virginia; Declaration of Disaster Area

The above-numbered Declaration (50 FR 48145) as amended (50 FR 50028) is hereby further amended in accordance with the Notice of Amendment to the President's declaration, dated November 16, 1985, to include Chesterfield, King George, Surry, York and Mathews Counties, and the independent City of Poquoson because of damage from severe storms, landslides and flooding beginning on or about November 3, 1985. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business of January 10, 1986, and for economic injury until the close of business on August 11, 1986.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: November 20, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-30110 Filed 12-19-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2224]

West Virginia; Declaration of Disaster Loan Area

The County of Marshall and the adjacent County of Ohio in the State of West Virginia constitute a disaster area because of damage caused by flooding which occurred on November 26-27, 1985. Applications for loans for physical damage may be filed until the close of business on February 10, 1986, and for economic injury until the close of business on September 10, 1986, at the address listed below: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., S.W., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 222406 for physical damage and for economic injury the number is 635600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 10, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-30111 Filed 12-19-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets 43656 (Maryland); 43657 (Arizona); 43658 (Vermont)]

55 Mile Per Hour Hearings

AGENCY: Department of Transportation, (DOT).

ACTION: Notice of Hearings/Instituting Order.

SUMMARY: The Secretary of Transportation (Secretary) delegates to the Chief Administrative Law Judge authority to hold three oral evidentiary hearings to inquire into whether the States of Arizona, Maryland, and Vermont have failed to comply with 23 U.S.C. 154 and 23 CFR Part 659 for fiscal year 1984.

FOR FURTHER INFORMATION CONTACT: Questions or requests from the general public about these proceedings should be directed to Sam Whitehorn, Office of the Assistant General Counsel for Regulation and Enforcement, 400 7th St., SW., Washington, DC, 20590 (202) 472-5577.

Background

In 1974, Congress directed the Department of Transportation

(Department or DOT) to ensure that States enforce a national maximum 55 mile per hour (MPH) speed limit. Under 23 U.S.C 141, each State must certify to the Department that it is enforcing the speed limits on its public highways. Under 23 U.S.C. 154, each State must submit data to the Department supporting that certification. This data must include the percentage of motor vehicles exceeding the 55 MPH speed limit. Section 154 also provides that the Department shall withhold up to 10 percent of a State's Federal-aid non-interstate highway funds following a fiscal year in which more than 50 percent of the motor vehicles traveling on that State's highways which are posted at 55 MPH exceed that limit. Section 154 also grants the Secretary discretion to delay imposition of sanctions in hardship cases. It further states that funds withheld shall be apportioned if the State complies with the law for the fiscal year for which the funds were withheld. There is no statutory requirement that a hearing be conducted prior to imposition of any sanction.

Federal Highway Administration (FHWA) implementing regulations, 23 CFR Part 659, provide procedures concerning how each State must certify its compliance. (FHWA is an operating administration within DOT). Generally, each State develops a plan to monitor speeds. the plan is subject to FHWA review and approval. By January 1 of each year, each State must certify its compliance for the preceding fiscal year and submit information to support that certification.

A State that can not make a compliance certification is accorded a number of opportunities to argue its case to the Department. First, informal hearings may be held. If that proceeding results in a preliminary non-compliance determination, a State may request a formal hearing. If that proceeding results in a final non-compliance determination, a State may request yet another set of informal meetings to discuss sanctions and hardship factors.

In December 1984, Vermont, Maryland, and Arizona submitted data on speed limit observance on their respective highways for the period from October 1, 1983 to September 30, 1984. On February 8, 1985, the Governor of each State was notified that based on the State-submitted data, each State appeared not to be in compliance with the law. Each State was accorded an opportunity to show why a penalty should not be imposed.

The National Highway Traffic Safety Administration (NHTSA; also an operating administration within DOT) and the FHWA held informal hearings for the States (Arizona-March 13, 1985; Vermont-March 26, 1985; and Maryland-May 22, 1985) to discuss each State's 55 MPH compliance program. Transcripts of those hearings were taken and each, along with any documents submitted for those hearings, will be placed in the appropriate dockets established by this order.

In June 1985, each State was notified by the FHWA and NHTSA Administrators that its program was not in compliance (the preliminary decision) with the 55 MPH law. Copies of the letters of notification will be placed in the appropriate docket. Each State was accorded on opportunity to request a formal hearing, as provided under 23 CFR 659.21(d). Each State has done so.

Under 23 CFR 659.21(d), if a State requests a hearing, the Secretary must convene one to determine whether a State is in compliace with the law. If, after the hearing, the Secretary finds a State not to be in compliance, the Administrators of NHTSA and FHWA must notify the Governor of the finding and any proposed reduction in apportioned funds. The Governor of the State is also informed that he or she may request, within 20 days from the date of the letter, a delay in imposition of the penalty based upon hardship. 23 CFR 659.21(d) and 659.19(c).

Under the regulation, the State then may request another informal meeting to discuss the questions of sanctions and any hardship factors.

To date the Department has not conducted a formal hearing under 23 CFR 659.21(d) to determine if a State has complied with the 55 MPH requirements. The regulation provides States an opportunity to request a hearing on the record according to the provisions of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (APA).

Therefore, to investigate whether each State has complied with the 55 MPH law, I direct that the Chief Administrative Law Judge of the Office of Hearings hold a separate hearing for each of the three States mentioned above. By this order, I establish three separate dockets for these cases: 43657 Arizona, 43656 Maryland, and 43658 Vermont. The Chief Administrative Law Judge of the Office of Hearings will be responsible for assigning the cases to other Administrative Law Judge (ALJs) as necessary.

The ALJ shall take testimony, accept evidence and generally develop a record to determine each State's compliance with the 55 MPH law and regulations for the period from October 1, 1983, to September 30, 1984. However, the legitimacy of the underlying regulation, governing how the determinations on compliance are made, is not at issue. At the conclusion of the hearing, the ALJ shall issue a Recommended Decision on the question of compliance. In addition, the ALJ shall certify the record to the Secretary.

The ALJ's ability to rule on questions of relevance and materiality is not limited by the above directives.

Procedural Schedule

The Department intends to expedite these cases because of their effect on the Federal-aid highway funds apportionment for fiscal year 1986. The procedural schedule set out below provides an appropriate amount of time for the various procedural steps, minimizes any disruption to State projects, and provides the Department sufficient time to review each case on its merits. The schedule is as follows:

Prehearing Conference: December 30, 1985. If the ALJ determines that this date must be changed, a notice of the new date will be published in the **Federal Register**.

Submission of Recommended Decision to the Secretary: on or before February 18, 1986.

Submission of Briefs on compliance to the Secretary: 10 days after the ALJ issues a Recommended Decision (to be filed with the Dockets Section).

Submission of Briefs on other issues to the Secretary: 10 days after the ALJ issues a Recommended Decision (to be filed with the Dockets Section).

The ALJ shall establish the procedural schedule. The Recommended Decision shall only address the issue of each State's compliance. If the ALJ determines that briefs to the ALJ are necessary, they are limited to this issue only.

To expedite the entire process set out in 23 CFR Part 659, each State, in a brief on other issues to the Secretary, should address what mitigating factors existed during the relevant reporting period that may or could have affected the State's ability to certify compliance with the law; what factors exist, or existed during the relevant reporting period, that suggest that a hardship deferral is warranted; and what factors might be considered in setting a percentage of Federal-aid highway funds to be withheld. (The preamble to 23 CFR Part 659, 45 FR 64488, September 29, 1980 lists a number of factors that the Department will consider including legislative actions, budgetary considerations, judicial actions, and proposals for additional actions that will be undertaken to bring the State into compliance). Any material that each

State desires to be considered should be submitted with the brief to the Secretary. No oral argument before the Secretary will be provided.

Appendix A lists the information each State must provide to the other parties at the prehearing conference. Other discovery requests should be addressed at the prehearing conference.

The ALJ has authority to limit the scope of discovery, and to ensure that discovery does not delay the proceeding. The Department does not believe that a significant amount of discovery will be necessary because the issues are limited, and informal meetings have already taken place. The ALJ should consider this in ruling on discovery matters.

Procedures

The rules of practice governing the proceeding shall be those set forth in Appendix B. They are based on 49 CFR Part 511. While Part 511 states that the procedures are applicable only for proceedings conducted pursuant to section 508(a)(2) of the Motor Vehicle Information and Cost Savings Act, they provide a general outline for the conduct of administrative proceedings. Therefore, certain modifications have been made for purposes of the proceedings instituted by this order.

By this order, the General Counsel is delegated the authority of the Secretary to rule on all matters raised in any interlocutory appeal appeals under 511.24 of the procedures in appendix B. Requests by non-parties to participate must be filed, and served on all parties, not less than one day prior to the pre-hearing conference.

Burdens

NHTSA/FHWA shall bear the burden of proving that a State is not in compliance with the 55 MPH speed limit requirements. The State then has the burden of refuting that proof.

Parties/Separation of Functions

Because this is a matter between the Department and the States, parties to the proceedings include each respective State and staff from FHWA and NHTSA. NHTSA and FHWA will act as one party. Any other interested person may file a notice of intention to participate in the proceeding, as provided for in 511.17 of the procedures in Appendix B.

FHWA and NHTSA staff litigating these cases shall not advise the Secretary on the issue of compliance. If the Administrators advise the staff on the issue of compliance, the Administrator shall not advise the Secretary on this issue.

Stipulations/Settlement Offers

The parties may stipulate on non-compliance and procedural matters. The parties may not stipulate that a State is in compliance, since a preliminary noncompliance decision has already been made.

It is possible that the parties may reach a settlement or compromise outside of the hearing process on a number of matters that are not a part of the hearing. If so, the proposed agreement must be reduced to writing by the parties and submitted to the Secretary, as provided for in 511.26 of the procedures in Appendix B.

If a State wishes to withdraw its request for a formal hearing, and resolve the matter informally and thereby waive its right to such a proceeding, the Governor can file motion or submit a letter (which will be treated like a motion) to the Secretary to that effect. The letter must be served on all parties and the presiding ALJ. Until the Secretary grants or denies the request or motion, the proceeding will be suspended. If the motion is granted, the proceeding will be terminated. If the request or motion is denied, additional time will be provided.

Post-hearing procedures

When the Secretary makes a final compliance decision, after receipt of all the evidence and briefs, the Administrators will notify each State of the decision and if the decision is of non-compliance, the proposed percentage of funds to be withheld.

Under 23 CFR Part 659, a State that receives a final non-compliance decision by the Secretary has 20 days to request a meeting with the Administrators of FHWA and NHTSA to discuss the question of sanctions. Meetings will be held as soon as possible after receipt of the request.

Dockets

A separate docket shall be established for each State. The docket shall be maintained in the Docket Section, Documentary Services Division, 400 7th St., SW., Room 4107, Washington, DC 20590, and any and all documents or pleadings must be filed between the hours of 9:00 a.m. and 5:00 p.m. All correspondence, the transcripts of each of the informal meetings and any material submitted in conjunction with those meetings, and the data concerning the 55 MPH certification shall be placed in the docket. Any party to the proceeding may request that any of the material referred to above be placed in the hearing record.

Since this matter has now been set down for a hearing before an ALJ, all subsequent material filed shall be addressed to the ALJ. A preliminary service list is attached (Appendix C). This order will be published in the **Federal Register.**

Issued in Washington, DC, on December 9, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

Appendix A—Information Request

This request for information and document production is being submitted pursuant to the United States Department of Transportation's Instituting Order of December 9, 1985. Each State is instructed to answer the following questions and submit documentation, as required. Each State's response must be received by the parties and the Chief Administrative Law Judge no later than the pre-hearing conference.

1. In December 1984, the State submitted its annual certification of speed limits for the period October 1, 1983 to September 30, 1984 (hereinafter referred to as the certification). Please verify the accuracy of that certification.

2. Does the figure indentified in the certification as representing the percentage of monitored motorists exceeding 55 mph, as weighted and adjusted in accordance with the applicable regulations and guidelines, exceed 50 percent?

3. Submit data supporting or pertaining to the certification. Summary data is sufficient, provided that such data verifies the figures set forth in the certification.

4. If the supporting data identified in item 3 does not verify the information set forth in the certification, all known detailed supporting data must be submitted. Discrepancies must be specifically identified and explained.

5. Identify all witnesses which the State may present at the hearing.

6. Submit the following information for each of the witnesses identified in item 5: Name, employer, position, education and expertise.

7. Submit a summary of the testimony to be presented by each of the individuals identified in item 5.

8. Submit a copy of expert reports, if any, which the State plans to present or introduce at the hearing, or which pertains to the State's anticipated presentation at the hearing.

9. Submit all other documents which the State plans to present or introduce at the hearings which are not specified in the answers to the previous items.

10. Authenticate the documents provided in response to items 1 through 9.

Appendix B—Procedures For the 55 MPH Proceedings

Note.—The procedures published in Appendix B apply only to these proceedings. While based upon the text of 49 CFR Part 511, these procedures do not amend or republish Part 511 nor are they intended to have general applicability.

ADJUDICATIVE PROCEDURES

Subpart A—Scope of Rules; Nature of Adjudicative Proceedings, Definitions

Sec.
511.1 Scope of the rules.
511.2 Nature of adjudicative proceedings.
511.3 Definitions.

Subpart B—Pleadings; Form; Execution; Service of Documents

511.11 Commencement of proceedings.
511.12 [Reserved]
511.13 Amendments and supplemental pleadings.
511.14 Form and filing of documents.
511.15 Time.
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Authority: 23 U.S.C. 141, 154, and 315; 49 CFR 1.48(b) and 1.50

Subpart A—Scope of Rules; Nature of Adjudicative Proceedings, Definitions

§ 511.1 Scope of the rules.

This part establishes rules of practice and procedure for adjudicative proceedings conducted pursuant to section 154 of title 23 U.S.C. and referred to in 23 CFR Part 659.

§ 511.2 Nature of adjudicative proceedings.

Adjudicative proceedings shall be conducted in accordance with title 5, U.S.C., sections 551 through 559 and this part. It is the policy of the agency that adjudicative proceedings shall be conducted expeditiously and with due regard to the rights and interests of all persons affected, and to the public interest. Therefore, the presiding officer and all parties shall make every effort at each stage of a proceeding to avoid unnecessary delay.

§ 511.3 Definitions.

(a) As used in this part:

(1) The term "application" means an *ex parte* request by a party for an order that may be granted or denied without opportunity for response by any other part.

(2) The term "NHTSA" means the National Highway Traffic Safety Administration. The term "FHWA" means the Federal Highway Administration.

(3) The term "NHTSA Administrator" means the Administrator of the National Highway Traffic Safety Administration. The term "FHWA Administrator" means the Administrator of the FHWA.

(4) The term "Secretary" means the Secretary of Transportation.

(5) Ther term "motion" means a request by a party for a ruling or order that may be granted or denied only after opportunity for response by each affeced party.

(6) The term "party" means the NHTSA, [FHWA] and any person named as a party in a proceeding governed by this part.

(7) Ther term "person" means any individual, partnerhsip, corporation, association, public or private organization, or Federal, State or municipal governmental entity.

(8) The term "petition" means a written request, made by a person or a party and addressed to the Presiding Officer of the Administrator, that the addresses take some action.

(9) The term "Presiding Officer" means the person who conducts an adjudicative hearing under this part, who shall be an administrative law judge qualified under title 5, U.S.C., section 3105 and assigned by the Chief, Administrative Law Judge.

(10) [Reserved]

(11) The term "Documentary Services Division" means the Documentary Service Division, which includes the Docket Section, of the Office of the Secretary.

(12) The term "staff" means the staff of the National Highway Traffic Safety Administration., and the Federal Highway Administration.

Subpart B—Pleadings; Form; Executive; Service of Documents

§ 511.11 Commencement of proceedings.

(a) *Notice of institution of a proceeding.* An adjudicative proceeding under this part is commenced by the issuance of an instituting order.

§ 511.13 Amendments and supplemental pleadings.

Whenever determination of a controversy on the merits will be facilitated threby, the Presiding Officer upon motion, may allow appropriate amendments and supplemental pleadings which do not unduly broaden the issues in the proceeding or cause undue delay.

§ 511.14 Form and filing of documents.

(a) *Filing.* Except as othewise provided, all documents submitted to the Secretary, Administrators or Presiding Officer shall be addressed to and filed with the Documentary Services Division Documents may be filed in person or by mail and shall be deemed filed on the day of filing or mailing.

(b) *Caption.* Every document shall contain a caption setting forth the name of the action in connection with which it is filed, the docket number, and the title of the document.

(c) *Copies.* An original and nine (9) copies of all documents shall be filed. Documents may be reproduced by

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printing or any other process, provided that any other process, providing that all copies filed are clear and legible.

(d) *Signature.* (1) The original of each document filed shall be signed by a representative of record for the party or in the case of parties not represented, by the party; or by a partner, officer, or regular employee of any corporation, partnership, or association, who files an appearance on behalf of the party.

(2) The act of signing a document constitutes a representation by the signer that the singer has read it; that to the best of the signer's knowledge, information and belief, the statements made in it are true; and that it is not filed for purposes of delay.

§ 511.15 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by the rules in this part, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the peiod runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this part, "legal holiday" includes New Year's DAy, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

(b) [Reserved]

(c) *Extensions.* For good cause shown, the Presiding Officer may extend any time limit prescribed or allowed under this part or by order of the Secretary or the Presiding Office, except thsoe governing the filing of interlocutory appeals and appeals from Initial Decisions and those expressly requiring the Secretary's action. Except as otherwise provided by law, the Secretary, for good cause shown, may extend any time limit prescribed under this part, or by order of the or the Secretary of the Presiding Officer. A party or participant may petition the Presiding Officer or the Secretary as appropriate, for an extension under this paragraph. Such a petition shall be filed prior to the concurrence of the time limit whcih is the subject of the ptition.

§ 511.16 Service.

(a) *Mandatory service.* Every document filed with the Documentary Services Division shall be served upon all parties and participants to a proceeding, and participants, and upon the Presiding Officer.

(b) *Service of complaint, ruling order, decision, or subpena.* Service of a ruling, order, decision, or subpena may be effected as follows:

(1) *By registered or certified mail.* A copy of the document shall be addressed to the person, partnership, corporation or unincorporated association to be srved at his or its residence or principal office or place of business; registered or certified; and mailed; or

(2) *By delivery to an individual.* A copy of the document may be delivered to the person to be served; or to a member of the partnership to be served; or to the president, secretary, or other executive officer, or a director of the corporation or unincorporated association to be served; or to an agent authorized by appointment or by law to receive service; or

(3) *By delivery to an address.* A copy of the document may be left at the principal office or place of business of the person, partnership, corporation, unincorporated association, or authorized agent with an officer, a managing or general agent; or it may be left with a person of suitable age and discretion residing therein, at the residence of the person or of a member of the partnership or of an executive officer, director, or agent of the corporation or unincorporated association to be served.

(c) *Service of documents with prescribed response periods.* When service of a document starts the running of a prescribed period of time for the submission of a responsive document or the occurrence of an event, the document shall be served as provided in paragraph (b) of this section.

(d) *Service of other documents.* All documents other than those specified in paragraph (c) of this section may be served as provided in paragraph (b) of this section, or by ordinary first-class mail, properly addressed, postage prepaid.

(e) *Service on a representative.* When a party has appeared by an attorney or other representative, service upon that attorney or other representative shall constitute service on the party.

(f) *Certificate of service.* The original of every document filed with the agency and required to be served upon all parties to a proceeding shall be accompanied by a certificate of service signed by the party making service, stating that such service has been made upon each party to the proceeding. Certificates of service may be in substantially the following form:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing, postage prepaid (or by delivering in person) a copy to each such party.

Dated at _____ this ____ day of _____, 19____.

(Signature) _____

For _____

(g) *Date of Service.* The date of service of a document shall be the date on which the document is deposited in the United States mail or is delivered in person.

§ 511.17 Public participation.

Participant Status. Any person interested in a proceeding commenced pursuant to the instituting order issued by the Secretary who desires to participate in the proceeding, shall file with the Documentary Services Division a notice of intention to participate in the proceeding and shall serve a copy of such notice on each party to the proceeding and the presiding officer. A notice of intention to participate shall be filed not later than 1 day prior to the commencement of the prehearing conference. Untimely filings will not be accepted absent a determination by the Presiding Officer that the person making the request has made a substantial showing of good cause for failure to file on time. Any person who files a notice to participate in the proceeding as a nonparty shall be known as a participant" and shall have the rights specified in § 511.41(d).

§ 511.18 [Reserved]

Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals; Summary Judgment; Settlement

§ 511.21 Prehearing conferences.

(a) *When held.* (1) A prehearing conference shall be held in person or by conference telephone call, except in unusual circumstances, approximately ten (10) business days after publication in the Federal Register of the instituting order to consider any or all the following:

(ii) Identification, simplification and clarification of the issues;

(iv) Stipulations and admissions of fact and of the content and authenticity of documents;

(v) Oppositions to notices of oral examination;

(vi) Motions for protective orders to limit or modify discovery;

(vii) Issuance of subpenas to compel the appearance of witnesses and the production of documents;

(viii) Limitation of the number of witnesses, particularly the avoidance of duplicate expert witnesses;

(ix) Matters of which official notice will be taken and matters which may be resolved by reliance upon findings of other Federal agencies; and

(x) Other matters which may expedite the conduct of the hearing.

§ 511.22 [Reserved]

§ 511.23 Motions.

(a) *Presentations and dispositions.* During the time a proceeding is before a Presiding Officer, all motions, whether oral or written, except those filed under § 511.42(e), shall be addressed to the Presiding Officer, who shall rule upon them promptly after affording an opportunity for response.

(b) *Written motions.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor. If a motion is supported by memoranda, affidavits or other documents, they shall be served and filed with the motion. All motions shall contain a proposed order setting forth the relief sought. All written motions shall be filed with the Documentary Services Division and served on all parties, and all motions addressed to the Secretary shall be in writing.

(c) *Responses.* Within five (5) days after service of any written motion or petition or within such longer or shorter time as may be designated by these Rules or by the Presiding Officer or the Administrator, the opposing party or parties shall file a written response to such motion. Where a motion would affect only a single party, or an identifiable group of parties, the Presiding Officer or Secretary may limit the response to the motion to the affected party or parties. Failure to respond to a written motion may, in the discretion of the Presiding Officer be deemed as consent to the granting of the relief sought in the motion. The moving party shall have no right to reply, except as permitted by the Presiding Officer or the Secretary.

§ 511.24 Interlocutory appeals.

(a) *General.* Rulings of the Presiding Officer may not be appealed to the Secretary, except as provided herein.

(b) *Exceptions*—(1) *Interlocutory appeals to Secretary.* The Secretary may, in his or her discretion, entertain interlocutory appeals where a ruling of the Presiding Officer:

(i) Requires the production or disclosure of records claimed to be confidential;

(ii) Requires the testimony of a supervisory official of the agency other than one especially cognizant of the facts of the matter in adjudication;

(iii) Excludes an attorney from participation in a proceeding pursuant to § 511.42(b).

(2) *Procedures for interlocutory appeals.* With three (3) days of issuance of a ruling, and party may petition the Secretary to entertain an interlocutory appeal on a ruling in the categories enumerated above. The petition shall not exceed fifteen (15) pages. Any other party may file a response to the petition within three (3) days of its service. The response shall not exceed fifteen (15) pages. The Secretary shall thereupon act upon the petition, or the Secretary shall request such further briefing or oral presentation as he may deem necessary.

(3) *Interlocutory appeals from all other rulings*—(i) *Grounds.* Interlocutory appeals from all other rulings by the Presiding Officer may proceed only upon motion to the Presiding Officer and a determination by the Presiding Officer in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for differences of opinion and that an immediate appeal from the ruling may materially advance the ultimate termination of the litigation, or that subsequent review will be an inadequate remedy.

(ii) *Form.* If the Presiding Officer determines, in accordance with paragraph (b)(3)(i) of this section that an interlocutory appeal may proceed a petition for interlocutory appeal may be filed with and acted upon by the Secretary in accordance with paragraph (b)(2) of this section.

(c) *Proceedings not stayed.* A petition for interlocutory appeal under this part shall not stay the proceedings before the Presiding Officer unless the Presiding Officer shall so order, except that a ruling of the Presiding Officer requiring the production of records claimed to be confidential shall be automatically stayed for a period of five (5) days following the issuance of such ruling to allow an affected party the opportunity to file a petition for an interlocutory appeal pursuant to § 511.24(b)(2). The filing of such a petition shall automatically extend the stay of such a ruling pending the Secretary's action on such petition.

(d) The General Counsel of the Department of Transportation is delegated authority to consider and rule on any interlocutory appeals questions directed to the Secretary of Transportation.

§ 511.25 [Reserved]

§ 511.26 Settlement.

(a) [Reserved]

(b) *Availability.* Any party shall have the opportunity to submit an offer of settlement to the Secretary. The offer will not be made a part of the record of the proceeding, unless the offer is accepted by the Secretary.

(c) *Form.* Offers of settlement shall be in the form of a consent agreement and order, shall be signed by the party submitting the offer or his representative, and may be signed by any other party. Each offer of settlement shall be accompanied by a motion to transmit to the Secretary the proposed agreement and order, outlining the substantive provisions of the agreement, and the reasons why it should be accepted.

(d) *Contents:* The proposed consent agreement and order which constitute the offer of settlement shall contain the following:

(1) An admission of all jurisdictional facts;

(2) An express waiver of further procedural steps, and of all rights to seek judicial review or otherwise to contest the validity of the order;

(3) a description of the alleged non-compliance, or violation;

(4) Povisions to the effect that the allegation of non-compliance are resolved by the proposed consent agreement and order;

(5) listing of the acts of practices, if applicable from which the respondent shall refrain;

(6) A detailed statement of the corrective action(s) which the respondent shall execute and the amount of Federal-aid highway funds if any, that State shall have withheld.

(e) *Transmittal.* The Presiding Officer shall transmit to the Administrator for decision all offers of settlement and accompanying memoranda that meet the requirements enumerated in paragraph (d) of this section. Any party may object to a proposed consent agreement by filing a motion and supporting memorandum with the Secretary.

(f) *Stay of proceedings.* When an offer of settlement has been agreed to by the parties and has been transmitted to the Secretary, the proceedings shall be stayed until the Secretary has ruled on the offer. When an offer of settlement has been made and transmitted to the Secretary but has not been agreed to by all parties, the proceedings shall not be stayed pending the Secretary's decision on the offer.

(g) Secretary ruling. The Secretary will rule upon all transmitted offers of settlement. If the Secretary accepts the offer, the Secretary shall issue an appropriate order. The order shall become effective upon issuance. In

determining whether to accept an offer of settlement, the Secretary will consider the gravity of the alleged violation, and any good faith efforts by the respondent to comply with applicable requirements.

(h) *Rejection.* If the Secretary rejects an offer of settlement, the Secretary shall give written notice of that decision to the parties and the Presiding Officer. Promptly thereafter, the Presiding Officer shall issue an order notifying the parties of the resumption of the proceedings, including any modifications to the schedule resulting from the stay of the proceedings.

(i) *Effects of rejected offer.* Rejected offers of settlement shall not be admissible in evidence over the objection of any signatory, nor shall the fact of the proposal of the offer be admissible in evidence.

Subpart D—Discovery; Compulsory Process

§ 511.31 General provisions governing discovery.

(a) *Applicability.* The discovery rules established in this subpart are applicable to the discovery of information among the parties to a proceeding. Parties seeking information from persons not parties may do so by subpena in accordance with § 511.38.

(b) *Discovery methods.* Parties may obtain discovery by one or more of the following methods: (1) Written interrogatories; (2) requests for production of documents or things; (3) or requests for admissions. Unless the Presiding Officer otherwise orders under paragraph (d) of this section and consistent with the instituting order the frequency of use of these methods is not limited.

(c) *Scope of discovery.* The scope of discovery is as follows:

(1) *In general.* Parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in the proceedings, whether it relates to the claim or defense of the party seeking discovery or to claim or defense of any other party. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Exception.* Parties may not obtain discovery of documents which accompanied the staff's recommendation as to whether an instituting order, procedures governing these cases, or proposed sanctions should be imposed or of documents or portions thereof which would be exempt from discovery under Rule 26(b)(3) of the Federal Rules of Civil Procedure.

(3) *Hearing preparation: Experts.* A party may obtain discovery of facts known and opinions held by experts, that will be witnesses at the hearing regardless of whether they are acquired or developed in anticipation of or for litigation. Such discovery may be had by any of the methods provided in paragraph (b) of this section.

(d) *Protective orders.* Upon motion by a party or person and for good cause shown, the Presiding Officer may make any order which justice requires to protect such party or person from annoyance, embarrassment, competitive disadvantage, oppression or undue burden or expense, including one or more of the following: (1) That the discovery shall not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time and/or place; (3) that the discovery shall be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters shall not be inquired into, or that the scope of discovery shall be limited to certain matters; (5) that discovery shall be conducted with no one present except persons designated by the Presiding Officer; (6) that a trade secret or other confidential research, development, or commercial information shall not be disclosed or shall be disclosed only in a designated way or only to designated parties; and (7) that responses to discovery shall be placed *in camera* in accordance with § 511.45. If a motion for a protective order is denied in whole or in part, the Presiding Officer may, on such terms or conditions as are just, order that any party provide or permit discovery.

(e) *Sequence and timing of discovery.* Discovery may commence after the prehearing conference under the direction of, and ground rules established by, the Presiding Officer.

(f) *Supplementation of responses.* A party who has responded to a request for discovery shall supplement the response with information thereafter acquired.

(g) *Completion of discovery.* All discovery shall be completed as soon as practical and consistent with the instituting order. All discovery shall be served by a date which affords the party from whom discovery is sought an adequate time to respond, consistent with the instituting order.

(h) *Service and filing of discovery.* All discovery requests and written responses, and all notices of the taking of testimony, shall be filed with the Executive Secretary and served on all parties and the Presiding Officer.

(i) *Control of discovery.* The use of these discovery procedures is subject to the control of the Presiding Officer, who may issue any just and appropriate order for the purpose of ensuring their timely completion.

§ 511.32 Written interrogatories to parties.

(a) *Availability; procedures of use.* Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, with leave of the Presiding Officer, be served upon any party consistent with the instituting order.

(b) *Procedures for response.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by a responsible representative of the respondent and the objections signed by the representative making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any within 5 days after service of the interrogatories. The Presiding Officer may allow a shorter or longer time for response. The party submitting the interrogatories may move for an order under § 511.38 with respect to any objection to or other failure to answer an interrogatory.

(c) *Scope of interrogatories.* Interrogatories may relate to any matters which can be inquired into under § 511.31(c)(1), and the answers may be used to the extent permitted under this part. An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory would involve an opinion or contention that relates to fact or to the application of law to fact, but the Presiding Officer may order that such an interrogatory need not be answered until a later time.

(d) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served, or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving the answer is substantially the same for the party

serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, complications, abstracts, or summaries.

§ 511.33 Production of documents and things.

(a) *Scope.* Any party upon leave of the Presiding Officer may request any other party (1) to produce and permit the party making the request, or someone acting on behalf behalf of that party, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and any other data compilation from which information can be obtained, translated, if necessary, by the party in possession into reasonably usable form), or (2) to inspect and copy, test or sample tangible things which constitute or contain matters within the scope of § 511.31(c)(1) and which are in the possession, custody or control of the party upon whom the request is served.

(b) *Procedure for request.* The request may be made at the prehearing conference with leave of the Presiding Officer. The request shall set forth the items to be inspected either by individual item or by category, and shall describe each item or category with reasonable particularity. The request shall specify a reasonable time, place and manner for making the inspection and performing the related acts.

(c) *Procedure for response.* The party upon whom the request is served shall serve a written response within seven (7) days after service of the request. The Presiding Officer may allow a shorter or longer time for response. The response shall state, with respect to each item or category requested, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to only part of an item or category, that part shall be so specified. The party submitting the request may move for an order under § 511.36 with respect to any objection to or other failure to respond to the request or any part thereof, or to any failure to permit inspection as requested.

§ 511.34 Requests for admission.

(a) *Procedure for request.* A party may serve upon any other party a written request for the admission, for the purposes of the pending proceeding only, of the truth of any matters within the scope of § 511.31(c)(1) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of documents described in the request. Copies of documents shall be served with the request unless they have been, or are otherwise, furnished or made available for inspection and copying. The request may, with leave of the Presiding Officer, be served upon any party after filing of the answer. Each matter as to which an admission is requested shall be separately set forth.

(b) *Procedure for response.* The matter as to which an admission is requested is deemed admitted unless within seven (7) days after service of the request, or within such shorter or longer time as the Presiding Officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's representatives. If objection is made, the reasons therefore shall be stated.

The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission. When good faith requires that a party qualify an answer or deny only a part of the matter as to which an admission is requested, the party shall specify the portion that is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny, unless the party states that he or she has made reasonable inquiry and that the information known or readily available to him or her is insufficient to enable him or her to admit or deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for hearing may not, on that ground alone, object to the request but may deny the matter or set forth reasons why the party cannot admit or deny it. The party who has requested an admission may move to determine the sufficiency of the answer or objection thereto in accordance with § 511.36. If the Presiding Officer determines that an answer does not comply with the requirements of this section, he or she may order that the matter be deemed admitted or that an amended answer be served.

(c) *Effect of admission.* Any matter admitted under this section is conclusively established unless the Presiding Officer on motion permits withdrawal or amendment of such admission. The Presiding Officer may permit withdrawal or amendment when the presentation of the merits of the action will be served thereby and the party that obtained the admission fails to satisfy the Presiding Officer that withdrawal or amendment will prejudice that party in maintaining an action or defense on the merits.

§ 511.35 [Reserved]

§ 511.36 Motions to compel discovery.

If a party fails to respond to discovery, in whole or in part, the party seeking discovery may move within five (5) days for an order compelling an answer, or compelling inspection or production of documents, or otherwise compelling discovery. For purposes of this subsection, an evasive or incomplete response is to be treated as a failure to respond. If the motion is granted, the Presiding Officer shall issue an order compelling discovery. If the motion is denied in whole or in part, the Presiding Officer may make such protective order as it would have been empowered to make on a motion pursuant to § 511.3(d). When making oral examinations, the discovering party shall continue the examination to the extent possible with respect to other areas of inquiry before moving to compel discovery.

§ 511.37 Sanctions for failure to comply with order.

In a party fails to obey an order to provide or permit discovery, the Presiding Officer may take such action as is just, including but not limited to the following:

(a) Infer that the admission, testimony, document of other evidence would have been adverse to the party;

(b) Order that for the purposes of the proceeding, the matters regarding which the order was made or any other designated facts shall be taken to be established in accordance with the claim of the party obtaining the order;

(c) Order that the party withholding discovery not introduce into evidence or otherwise rely, in support of any claim or defense, upon the documents or other evidence withheld;

(d) Order that the party withholding discovery not introduce into evidence or otherwise use at the hearing, information obtained in discovery;

(e) Order that the party withholding discovery not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony documents, or other evidence would have shown;

(f) Order that a pleading, or part of a pleading, or a motion or other submission by the party, concerning which the order was issued, be stricken.

or that decision on the pleadings be rendered against the party, or both; and

(g) Exclude the party or representative from proceedings, in accordance with § 511.42(b).

Any such action may be taken by order at any point in the proceedings.

§ 511.38 Subpenas.

(a) *Availability.* A subpena shall be addressed to any party or any person not a party for the purpose of compelling attendance, testimony and production of documents at a hearing.

(b) *Form.* A subpena shall identify the action with which it is connected; shall specify the person to whom it is addressed and the date, time and place for compliance with its provisions; and shall be issued by order of the Presiding Officer and signed by the Executive Secretary or by the Presiding Officer. A subpena *duces tecum* shall specify the books, papers, documents, or other materials or data-compilations to be produced.

(c) *How obtained*—(1) *Content of application.* An application for the issuance of a subpena stating reasons shall be submitted in triplicate to the Presiding Officer.

(2) *Procedure of application.* The original and two copies of the subpena, marked "original," "duplicate" and "triplicate," shall accompany the application. The Presiding Officer shall rule upon an application for a subpena *ex parte*, by issuing the subpena or by issuing an order denying the application.

(d) *Issuance of a subpena.* The Presiding Officer shall issue a subpena by signing and dating, or ordering the Executive Secretary to sign and date, each copy in the lower right-hand corner of the document. The "duplicate" and "triplicate" copies of the subpena shall be transmitted to the applicant for service in accordance with these Rules; the "original" copy shall be retained by or be forwarded to the Documentary Services Division for retention in the docket of the proceeding.

(e) *Service of a subpena.* A subpena may be served in person or by certified mail, return receipt requested, as provided in § 511.16(b). Service shall be made by delivery of the signed "duplicate" copy to the person named therein.

(f) *Return of service.* A person serving a subpena shall promptly execute a return of service, stating the date, time, and manner of service. If service is effected by mail, the signed return receipt shall accompany the return of service. In case of failure to make service, a statement of the reasons for the failure shall be made. The "triplicate" of the subpena, bearing or accompanied by the return of service, shall be returned forthwith to the Executive Secretary after service has been completed.

(g) *Motion to quash or limit subpena.* Within five (5) days of receipt of a subpena, the person against whom it is directed may file with the Presiding Officer a motion to quash, modify, or limit the subpena, setting forth the reasons why the subpena should be withdrawn or why it should be modified or limited in scope. Any such motion shall be answered within five (5) days of service, and shall be ruled on immediately thereafter. The order shall specify the date, if any, for compliance with the specifications of the subpena and the reasons for the decision.

(h) *Consequences of failure to comply.* In the event of failure to comply with a subpena, the Presiding Officer may take any of the actions enumerated in § 511.37 or may order any other appropriate relief to compensate for the withheld testimony, documents, or other materials. If in the opinion of the Presiding Officer such relief is insufficient, the Presiding Officer shall certify to the Secretary a request for judicial enforcement of the subpena.

§511.39 Orders requiring witnesses to testify or provide other information and granting immunity.

(a) A party who desires the issuance of an order requiring a witness to testify or provide other information upon being granted immunity from prosecution under title 18, U.S.C., section 6002, may make a motion to that effect. The motion shall be made and ruled on in accordance with § 511.22, and shall include a showing:

(1) That the testimony or other information sought from a witness or prospective witness may be necessary to the public interest; and

(2) That such individual has refused or is likely to refuse to testify or provide such information on the basis of that individual's privilege against self-incrimination.

(b) If the Presiding Officer determines that the witness; testimony appears necessary and that the privilege against self-incrimination may be invoked, he or she may certify to the Administrator a request that he or she obtain the approval of the Attorney General of the United States for the issuance of an order granting immumity.

(c) Upon application to and approval of the Attorney General of the United States, and after the witness has invoked the privilege against self-incrimination, the Presiding Officer shall issue the order granting immunity unless he or she determines that the privilege was improperly invoked.

(d) Failure of a witness to testify after a grant of immunity or after a denial of the issuance of an order granting immunity shall result in the imposition of appropriate sanctions as provided in § 511.37.

Subpart E—Hearings

§ 511.41 General rules.

(a) *Public hearings.* All hearings pursuant to this part shall be public unless othewise ordered by the Presiding Officer. Notice of the time and location of the hearing shall be served on each party and paticipant, and published in the **Federal Register.**

(b) *Expedition.* Hearings shall proceed with all reasonable speed, and insofar as practicable and with due regard to the convenience of the parties and shall continue without suspension until concluded, except in unusual circumstances.

(c) *Rights of parties.* Every party shall have the right of timely notice and all other rights essential to a fair hearing, including, but not limited to, the rights to present evidence, to conduct such cross-examination as may be necessary in the judgment of the Presiding Officer for a full and complete disclosure of the facts, and to be heard by objection, motion, brief, and argument.

(d) *Rights of participants.* Every participant shall have the right to make a written or oral statement of position, file proposed findings of fact, conclusions of law and a posthearing brief, in accordance with § 511.17(b).

(e) *Rights of witnesses.* Any person compelled to testify in a proceeding in response to a subpena may be accompanied, represented, and advised by counsel or other representative, and may obtain a transcript of his or her testimony at no cost.

§ 511.42. Powers and duties of Presiding Officer.

(a) *General.* A Presiding Officer shall have the duty to conduct full, fair, and impartial hearing, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order. He or she shall have all powers necessary to that end including the following powers:

(1) To administer oaths and affirmations:

(2) To compel discovery and to impose appropriate sanctions for failure to make discovery;

(3) To issue subpenas;

(4) To rule upon offers of proof and receive relevant and probative evidence;

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(5) To regulate the course of the hearings and the conduct of the parties and their representatives therein;

(6) To hold conferences for simplification of the issues, settlement of the proceedings, or any other proper purposes;

(7) To consider and rule, orally or in writing, upon all procedural and order motions appropriate in an adjudicative proceeding;

(8) To issue initial decisions, rulings, and orders, as appropriate;

(9) To certify questions to the Administrator for determination; and

(10) To take any action authorized in this part or in conformance with the provisions of title 5, U.S.C. sections 551 through 559.

(b) *Exclusion of parties by Presiding Officer.* A Presiding Officer shall have the authority, for good cause stated on the record, to exclude from participation in a proceeding any party, participant, and/or representative who shall violate requirements of § 511.76. Any party, participant and/or representative so excluded may appeal to the Administrator in accordance with the provisions of § 511.23. If the representative of a party or participant is excluded, the hearing shall be suspended for a reasonable time so that the party or participant may obtain another representative.

(c) *Substitution of Presiding Officer.* In the event of the substitution of a new Presiding Officer for the one originally designated, any motion predicated upon such substitution shall be made within five (5) days of the substitution.

(d) *Interference.* In the performance of adjudicative functions, a Presiding Officer shall not be responsible to or subject to the supervision or direction of the Secretary, NHTSA and FHWA Administrators, or of any officer, employee, or agent engaged in the performance of investigative of presecuting functions for the Department. All directions by the Secretary, NHTSA and FHWA Administrators, to a Presiding Officer concerning any adjudicative proceeding shall appear on and be made a part of the record.

(e) *Disqualification of Presiding Officer.* (1) When a Presiding Officer deems himself or herself disqualified to preside in a particular proceeding, he or she shall withdraw by notice on the record and shall notify the Chief Administrative Law Judges and the Documentary Services Division of the withdrawal.

(2) Whenever, for any reason, any party shall deem the Presiding Officer to be disqualified to preside, or to continue to preside, in a particular proceeding, that party may file with the Documentary Services Division a motion to disqualify and remove, supported by affidavit(s) setting forth the alleged grounds for disqualification. A copy of the motion and supporting affidavit(s) shall be served by the Documentary Services Division on the Presiding Officer whose removal is sought. The Presiding Officer shall have five (5) days from service to reply in writing. Such motion shall not stay the proceeding unless otherwise ordered by the Presiding Officer or the Secretary. If the Presiding Officer does not disqualify himself or herself, the Administrator will determine the validity of the grounds alleged, either directly or on the report of another Presiding Officer appointed to conduct a hearing for that purpose, and shall in the event of disqualification take appropriate action, by assigning another Presiding Officer or requesting loan of another Administrative Law Judge through the Office of Personnel Management.

§ 511.43 Evidence.

(a) *Applicability of Federal Rules of Evidence.* The Federal Rules of Evidence shall apply to proceedings held under this part only as a general guide. The Presiding Officer may admit any relevent and probative evidence.

(b) *Burden of proof.* (1) This matter is discussed in the instituting order.

(2) Any party who is the proponent of a legal and/or factual proposition shall have the burden of sustaining the proposition.

(c) *Presumptions.* A presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion which remains throughout the hearing upon the party on whom it was originally cast.

(d) *Admissibility.* All relevant and reliable evidence is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or by considerations of undue delay, waste of time, immateriality, or needless presentation of cumulative evidence.

(e) *Official notice*—(1) *Definition.* Official notice means use by the Presiding Officer of extra-record facts and legal conclusions drawn from those facts. An officially noticed fact or legal conclusion must one not subject to reasonable dispute in that it is either (i) generally known within the jurisdiction of the Presiding Officer or (ii) known by the Presiding Officer in areas of his or her expertise; or (iii) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(2) *Method of taking official notice.* The Presiding Officer may at any time take official notice upon motion of any party or upon its own initiative. The record shall reflect the facts and conclusions which have been officially noticed.

(3) *Opportunity to challenge.* Any party may upon application in writing rebut officially noticed facts and conclusions by supplementing the record. The Presiding Officer shall determine the permissible extent of this challenge; that is, whether to limit the party to presentation of written materials, whether to allow presentation of testimony, whether to allow cross-examination, or whether to allow oral argument. The Presiding Officer shall grant or deny the application on the record.

(f) *Objections and exceptions.* Objections to evidence shall be timely interposed, shall appear on the record, and shall contain the grounds upon which they are based. Rulings on all objections, and the bases therefore, shall appear on the record. Formal exception to an adverse ruling is not required to preserve the question for appeal.

(g) *Offer of proof.* When an objection to proffered testimony or documentary evidence is sustained, the sponsoring party may make a specific offer, either in writing or orally, of what the party expects to prove by the testimony or the document. When an offer of proof is made, any other party may make a specific offer, either in writing or orally, of what the party expects to present to rebut or contradict the offer of proof. Written offers of proof or of rebuttal, adequately marked for identification, shall accompany the record and be available for consideration by any reviewing authority.

§ 511.44 Expert witnesses.

(a) *Definition.* An expert witness is one who, by reason of education, training, experience, or profession, has peculiar knowledge concerning the matter of science or skill to which his or her testimony relates and from which he or she may draw inferences based upon hypothetically stated facts or from facts involving scientific or technical knowledge.

(b) *Method of presenting testimony of expert witness.* Except as may be otherwise ordered by the Presiding Officer, a detailed written statement of the elements of the direct testimony of an expert witness shall be filed on the record and exchanged between the

parties as part of direct and/or rebuttal exhibits. The statement must contain a full explanation of the methodology underlying any analysis, and a full disclosure of the basis of any opinion. The direct testimony of an expert witness shall not include points not contained in the written statement. A party may waive direct examination of an expert witness by indicating that the written statement be considered the testimony of the witness. In such a case, the written testimony shall be incorporated into the record and shall constitute the testimony of the witness.

(c) *Cross-examination and redirect examination of expert witness.* Cross-examination, redirect examination, and re-cross-examination of an expert witness will proceed in due course based upon the written testimony and any amplifying oral testimony.

(d) *Failure to file and/or to exchange written statement.* Failure to file and/or to exchange the written statement of an expert witness as provided in this section shall deprive the sponsoring party of the use of the expert witness and of the conclusions which that witness would have presented.

§ 511.45 In camera materials.

(a) *Definition. In camera* materials are documents, testimony, or other data which by order of the Presiding Officer or the Secretary, as appropriate under this Part, are kept confidential and excluded from the public record. Only materials exempt under the Freedom of Information Act may be kept confidential and excluded from the public record. The General Counsel of the DOT is responsible for determining whether an alleged confidential business record is exempt from the Freedom of Information Act. The right of the Presiding Officer, the Secretary and reviewing courts to order disclosure of *in camera* materials is specifically reserved.

(b) *In Camera Treatment of documents and testimony.* The Presiding Officer or the Secretary, as appropriate under this part, shall have authority, when good cause is found on the record, to order documents or testimony offered in evidence, whether admitted or rejected, to be received and preserved *in camera.* The order shall specify the length of time for *in camera* treatment and shall include:

(1) A description of the documents and/or testimony;

(2) The reasons for granting *in camera* treatment for the specified length of time.

(c) *Access and disclosure to parties.* (1) The Secretary and Presiding Officer, and their immediate advisory staffs shall have complete access to all *in camera* materials. All other parties shall also have complete access to all *in camera* materials, except that these parties may seek access only in accordance with paragraph (c)(2) of this section when:

(i) The *in camera* materials consist of information obtained by the government from persons not parties to the proceeding; or

(ii) The *in camera* materials consist of information provided by one of the parties to the proceeding which is confidential as to the other parties to the proceeding.

(2) Any party desiring access to and/or disclosure of the *in camera* materials specified in paragraph (c)(1) (i) and (ii) of this section for the preparation and presentation of that party's case shall make a motion which sets forth the justification therefor. The Presiding Officer or the Secretary, as appropriate under this part, may grant such motion on the record for substantial good cause shown and shall enter a protective order prohibiting unnecessary disclosure and requiring other necessary safeguards. The Presiding Officer or the Secretary, as appropriate, may examine the *in camera* materials and excise portions thereof before disclosing the materials to the moving party.

(d) *Segregation of* in camera *materials. In camera* materials shall be segregated from the public record and protected from public view.

(e) *Public release of* in camera *materials. In camera* materials constitute a part of the confidential records of the Department and shall not be released to the public until the expiration of *in camera* treatment.

(f) *Reference to* in camera *materials.* In the submission of proposed findings, conclusions, briefs, or other documents, all parties shall refrain from disclosing specific details of *in camera* materials. Such refraining shall not preclude general references to such materials. To the extent that parties consider it necessary to include specific details of *in camera* materials, the references shall be incorporated into separate proposed findings, briefs, or other documents marked "CONFIDENTIAL, CONTAINS *IN CAMERA* MATERIAL," which shall be placed *in camera* and become part of the *in camera* record. These documents shall be served only on parties accorded access to the *in camera* materials in accordance with paragraph (c)(2) of this section.

§ 511.46 Proposed findings, conclusions, and order.

Within a reasonable time after the closing of the record and receipt of the transcript, all parties and participants may, simultaneously, file post-hearing briefs, including proposed findings of fact, conclusions of law and a proposed order, together with reasons therefor. The Presiding Officer, consistent with the instituting order, shall establish a date certain for the filing of the briefs. The briefs shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. Replies shall be filed within Seven (7) days of the date for the filing of briefs unless otherwise established by the Presiding Officer. The parties and participants may waive either or both submissions.

§ 511.47 Record.

(a) *Reporting and transcription.* Hearings shall be recorded and transcribed under the supervision of the Presiding Officer by a reporter appointed by the Chief Administrative Law Judge. The original transcript shall be a part of the record and the official transcript. Copies of transcripts are available from the reporter at a cost not to exceed the maximum rates fixed by contract between the DOT and the reporter.

(b) *Corrections.* Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. The Presiding Officer may order corrections, either on his or her own motion or on motion of any party. The Presiding Officer shall determine the corrections to be made and so order. Corrections shall be interlineated or otherwise inserted in the official transcript so as not to obliterate the original text.

§ 511.48 Official docket.

(a) The official docket in adjudicatory proceedings will be maintained in the Docket Section, Room 4107, 400 Seventh Street S.W., Washington, D.C. and will be available for public inspection during normal working hours 9:00 a.m.–5:00 p.m. Monday through Friday.

(b) Fees for production or disclosure of records contained in the official docket shall be levied as prescribed in the DOTs Procedures for Disclosure or Production of Information under the Freedom of Information Act.

(Sec. 9, Pub. L. 89–670, 80 Stat. 981 (49 U.S.C 1657); sec. 301, Pub. L. 94–163, 89 Stat. 911 (15 U.S.C. 2008)

[45 FR 81578, Dec. 11, 1980, as amended at 48 FR 44081, Sept. 27, 1983]

§ *511.49* Fees.

(a) *Witnesses.* Any person compelled to appear in person in response to a

subpena or notice of oral examination shall be paid at least the same attendance and mileage fees as are paid witnesses in the courts of the United States, in accordance with title 28, U.S.C., section 1821.

(b) *Responsibility.* The fees and mileage referred to in this section shall be paid by the party at whose instance witnesses appear.

Subpart F—Decision

§ 511.51 Initial decision.

(a) *When filed.* The Presiding Officer shall file a Recommended Decision with the Secretary on or before sixty (60) days of the issuance of the instituting order.

(b) *Content.* The Recommended Decision shall be based upon a consideration of the entire record and it shall be supported by reliable probative, and substantial evidence. It shall include:

(1) Findings and conclusins, as well as the reasons or bases therefore, upon the material questions of fact, material issues of law, or discretion presented on the record and should where practicable, be accompanied by specific page citations to the record and to legal and other materials relied upon.

(c) *By whom made.* The Recommended Decision shall be made and filed by the Presiding Officer who presided over the hearing.

(d) *Reopening of proceeding by presiding officer; termination of jurisdiction.* (1) At any time prior to or concommitant with the filing of the Recommended Decision, the Presiding Officer may reopen the proceedings for the reception of further evidence.

(2) Except for the correction of clerical errors, the jurisdiction of the Presiding Officer is terminated upon the filing of the Recommended Decision, unless and until the proceeding is remanded to the Presiding Officer by the Secretary.

§ 511.52 [Reserved]

§ 511.53 [Reserved]

Subpart G—[Reserved]

Subpart H—Appearances; Standards of Conduct

§ 511.71 Who may make appearances.

A party or participant may appear in person, or by a duly authorized officer, partner, regular employee, or other agent of this party or participant, or by or with counsel or other duly qualified representative, in any proceeding under the part.

§ 511.72 Authority for representation.

Any individual acting in a representative capacity in any adjudicative proceeding may be required by the Presiding Officer or the Administrator to show his or her authority to act in such capacity. A regular employee of a party who appears on behalf of the party shall be required by the Presiding Officer or the Secretary to show his or her authority to so appear.

§ 511.73 Written appearances.

(a) Any person who appears in a proceeding shall file a written notice of appearance with the Documentary Services Division deliver a written notice of appearance to the reporter at the pre-hearing conference, stating for whom the appearance is made and the name, address, and telephone number (including area code) of the person making the appearance and the date of the commencement of the appearance. The written appearance shall be made a part of the record.

(b) Any person who has previously appeared in a proceeding may withdraw his or her appearance by filing a written notice of withdrawal of appearance with the Documentary Services Division. The notice of withdrawal of appearance shall state the name, address, and telephone number (including area code) of the person withdrawing the appearance, for whom the appearance was made, and the effective date of the withdrawal of the appearance, and such notice of withdrawal shall be filed within five (5) days of the effective date of the withdrawal of the appearance.

§ 511.74 Attorneys.

An attorney at law who is admitted to practice before the Federal courts or before the highest court of any State, the District of Columbia, or any territory or Commonwealth of the United States, may practice before the Department. An attorney's own representation that he or she is in good standing before any of such courts shall be sufficient proof thereof, unless otherwise ordered by the Presiding Officer or the Administrator.

§ 511.75 Persons not attorneys.

(a) Any person who is not an attorney at law may be admitted to appear in an adjudicative proceeding if that person files proof to the satisfaction of the Presiding Officer that he or she possesses the necessary legal, technical, or other qualifications to render valuable service in the proceeding and is otherwise competent to advise and assist in the presentation of matters in the proceedings. An application by a person not an attorney at law for admission to appear in a proceeding shall be submitted in writing not later than five (5) days prior to the prehearing conference in the proceedings. The application shall set forth in detail the applicant's qualifications to appear in the proceedings.

(b) No person who is not an attorney at law and whose application has not been approved shall be permitted to appear in the proceedings. However, this provision shall not apply to any person who appears before the Department on his or her own behalf or on behalf of any corporation, partnership, or association of which the person is a partner, officer, or regular employee.

§ 511.76 Qualifications and standards of conduct.

(a) The Department expects all persons appearing in proceedings before it to act with integrity, with respect, and in an ethical manner. Business transacted before and with the Department shall be in good faith.

(b) To maintain orderly proceedings, the Presiding Officer or the Administrator, as appropriate under this part, may exclude parties, participants, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against certain ex parte communications. The Presiding Officer may, in addition to the above sanctions, deny access to additional *in camera* materials when a party or participant publicly releases such materials without authorization.

(c) An excluded party, participant, or representative thereof may petition the Secretary to entertain an interlocutory appeal in accordance with § 511.24. If, after such appeal, the representative of a party or participant, is excluded, the hearing shall, at the request of the party or participant, be suspended for a reasonable time so that the party or participant may obtain another representative.

§ 511.77 Restrictions as to former members and employees.

The postemployee restrictions applicable to former Administrators and Department employees, as set forth in 18 U.S.C. 207, shall govern the activities of such employees in matters connected with their former duties and responsibilities.

§ 511.78 Prohibited communications.

(a) *Applicability.* This section is applicable during the period

commencing with the date of issuance of an instituting order and ending upon final action in the matter.

(b) *Definitions.* (1) "Decision-maker" means those NHTSA, FHWA, and Department personnel who render decisions in adjudicative proceedings under this part, or who advise officials who render such decisions, including:

(i) The FHWA and NHTSA Administrators, the Office of the Secretary,

(ii) The Administrative Law Judges;

(2) "Ex parte communications" means:

(i) Any written communication other than a request for a status report on the proceeding made to a decisionmaker by any person other than a decisionmaker which is not served on all parties.

(ii) Any oral communication other than a request for a status report on the proceeding made to a decisionmaker by any person other than a decisionmaker without advance notice to the parties to the proceeding and opportunity for them to be present.

(c) *Prohibited ex parte communications.* Any oral or written ex parte communication relative to the merits of a proceeding under this part is a prohibited ex parte communication, except as provided in paragraph (d) of this section.

(d) *Permissible ex parte communications.* The following communications shall not be prohibited under this section:

(1) Ex parte communications authorized by statute or by this part.

(2) Any staff communication concerning judicial review or judicial enforcement in any matter pending before or decided by the Department.

(e) *Procedures for handing prohibited ex parte communication.* (1) Prohibited written ex parte communication. To the extent possible, a prohibited written ex parte communication received by any Department employee shall be forwarded to the Documentary Services Division rather than to a decisionmaker. A prohibited written ex parte communication which reaches a decisionmaker shall be forwarded by the decisionmaker to the Documentary Services Division. If the circumstances in which a prohibited ex parte written communication was made are not apparent from the communication itself, a statement describing those circumstances shall be forwarded with the communication.

(2) Prohibited oral ex parte communication.

(i) If a prohibited oral ex parte communication is made to a decisionmaker, he or she shall advice the person making the communication that the communication is prohibited and shall terminate the discussion.

(ii) In the event of a prohibited oral ex parte communication, the decisionmaker shall forward to the Documentary Services Division a dated statement containing such of the following information as is known to him/her:

(A) The title and docket number of the proceeding;

(B) The name and address of the person making the communication and his/her relationship (if any) to the parties to the proceeding;

(C) The date and time of the communication, its duration, and the circumstances (telephone call, personal interview, etc.) under which it was made;

(D) A brief statement of the substance of the matters discussed;

(E) Whether person making the communication persisted in doing so after being advised that the communication was prohibited.

(3) *Filing.* All communications and statements forwarded to the Documentary Services Division under this section shall be placed in a public file which shall be associated with, but not made a party of, the record of the proceedings, to which the communication or statement pertains.

(4) *Service on parties.* The Documentary Services Division shall serve a copy of each communication and statement forwarded under this section on all parties to the proceedings. However, if the parties are numerous, or if other circumstances satisfy the Documentary Services Division that service of the communication or statement would be unduly burdensome, he or she may, in lieu of service, notify all parties in writing that the communication or statement has been made and filed and that it is available for inspection and copying.

(5) *Service on maker.* The Documentary Services Division shall forward to the person who made the prohibited ex parte communication a copy of each communication and/or statement filed under this section.

(f) *Effect of ex parte communications.* No prohibited ex parte communication shall be considered as part of the record for decision unless introduced into evidence by a party to the proceedings.

(g) *Sanctions.* A party or participant who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion from the proceedings and adverse rulings on the issues which are the subject of the prohibited communication.

Appendix C—Service List

Arizona Proceeding

The Honorable Bruce E. Babbitt, Governor of Arizona, State House, Phoenix, AZ 85007

Charles L. Miller, Director, Arizona Department of Transportation, 206 17th Avenue, Phoenix, AZ 85007

Diane K. Steed, Administrator, NHTSA, 400 7th Street, SW., Washington, DC 20590

Ray A. Barnhart, Administrator, FHWA, 400 7th Street, SW, Washington, DC 20590

Sam Whitehorn, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, Room 10424, 400 7th Street, SW., Washington, DC 20590

Judge Elias C. Rodriquez, Chief, Administrative Law Judge, M–50, Room 9400A, 400 7th Street, SW., Washington, DC 20590

Maryland-Proceeding

The Honorable Harry R. Hughes, Governor of Maryland, State House, Annapolis, MD 21404

Ralph S. Tyler, Assistant Attorney General, Office of the Attorney General, Munsey Building, 2nd Floor, No. Calvert Street, Baltimore, MD 21202

Ben C. Clyburn, Assistant Attorney General, Maryland Department of Transportation, P.O. Box 8755, BWI Airport, Baltimore, MD 21240

Diane K. Steed, Administrator, NHTSA, 400 7th Street, SW., Washington, DC 20590

Ray A. Barnhart, Administrator, FHWA, 400 7th Street, SW., Washington, DC 20590

Sam Whitehorn, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, Room 10424, 400 7th Street, SW., Washington, DC 20590

Judge Elias C. Rodriquez, Chief, Administrative Law Judge, M–50, 400 7th Street, SW., Washington, DC 20590

Vermont Proceeding

The Honorable Madeleine Kunin, Governor of Vermont, State House, Montpelier, VT 05602

Susan C. Crampton, Secretary, Vermont Agency of Transportation, 133 State Street, State Administration Building, Montpelier, VT 05602

Diane K. Steed, Administrator, NHTSA, 400 7th Street, SW., Washington, DC 20590

Ray A. Barnhart, Administrator, FHWA, 400 7th Street, SW., Washington, DC 20590

Sam Whitehorn, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, Room 10424, 400 7th Street, SW., Washington, DC 20590
Judge Elias C. Rodriquez, Chief, Administrative Law Judge, M–50, Room 9400A, 400 7th Street, SW., Washington, DC 20590

[FR Doc. 85–29827 Filed 12–19–85; 8:45 am]
BILLING CODE 4910-62-M

Agreements Filed Under Sections 408, 409, 412 and 414 During the Week Ending December 13, 1985

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
12/09/85	43643 R–1—R–2	Members of International Air Transport Association	GIT fares Japan-Brazil	04/01/86
12/09/85	43644	Members of International Air Transport Association	Cargo Agency Conference	01/01/86
12/09/85	43645	Members of International Air Transport Association	Baggage charges North Atlantic-Israel	01/01/86
12/09/85	43646 R–1—R–6	Members of International Air Transport Association	Fares within Middle East	04/01/86
12/10/85	43650 R–1—R–10	Members of International Air Transport Association	Middle East-Africa fare structure	04/01/86
12/12/85	43651	Members of International Air Transport Association	Amend rates for gold from Brazil to TC1 and 2	12/15/85
12/12/85	43663	Members of International Air Transport Association	Excess baggage charges North Atlantic Middle East	01/01/86
12/12/85	43664	Members of International Air Transport Association	Specific commodity rates Demark to Canada/United States	12/18/85
12/12/85	43665	Members of International Air Transport Association	Fares—Cuba/Paraguay-Brazil	01/01/85

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 85–30178 Filed 12–19–85; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Procedural Regulations (See 14 CFR 302.1701 et seq.); Week Ended December 13, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further procedings.

Date filed	Docket No	Description
Dec. 12, 1985	43659	Air Illinois, Inc., d/b/a Atlantic Gulf Airlines, Stephen L. Gelband, Hew5s, Morella, Gelband & Lamberton, 1010 Wisconsin Ave., NW., Washington, DC 20007 Application of Air Illinois, Inc., d/b/a Atlantic Gulf Airlines pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to authorize it to engage in the air transportation of persons, property and mail, in scheduled and charter services, as follows. Between a point or points in Florida and a point or points in the Dominican Republic, including, but not limited to, Santo Domingo and Puerto Plata Conforming Applications, Motions to Modify Scope and Answers may be filed by January 9, 1985

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 85–30179 Filed 12–19–85; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 147—Traffic Alert and Collision Avoidance System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 147 on Traffic Alert and Collision Avoidance System to be held on January 29–31, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW, Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Meeting Held on October 23–25, 1985; (3) Review of TCAS I Working Group Activities; (4) Review of Pilot Working Group Activities; (5) Review of TCAS III Activities; (6) Consideration of Additional Changes to RTCA Document DO–185, "Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment"; (7) Review of Horizontal Miss Distance Filtering Study; (8) Review and Discussion of Interoperability Issues; (9) Assignment of New Tasks; (10) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on December 13, 1985.

Karl F. Bierach,
Designated Officer.

[FR Doc. 85–30094 Filed 12–19–85; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Executive Committee to be held on January 17, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks; (2) Approval of Minutes of the Meeting Held on November 18, 1985; (3) Chairman's Report on RTCA

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Administration and Activities; (4) Special Committee Activities Report for November and December, 1985; (5) Consideration of Proposals to Establish Special Committees; (6) Approval of Proposed Change 2 to RTCA Document DO–181, "Minimum Operational Performance Standards for Air Traffic Control Radar Beacon System/Mode Select (ATCRBS/Mode S) Airborne Equipment"; (7) Approval of Proposed Change 1 to RTCA Document DO–183, "Minimum Operational Standards for Emergency Locator Transmitters Automatic Fixed—ELT (AF), Automatic Portable—ELT (AP), Automatic Deployable—ELT (AD), Survival—ELT (S) Operating on 121.5 and 243.0 Megahertz"; (8) Approval of Proposed Revisions to Special Committee 159 Terms of Reference; (9) Approval of Proposed Special Committee 156 Correspondence to the Federal Communications Commission; (10) Consideration of Appointments as RTCA Technical Advisers; (11) Approval of Revised Procedures and Guidelines for the RTCA Awards Committee and (12) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 13, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–30095 Filed 12–19–85; 8:45 am]

BILLING CODE 4910–12–M

Maritime Administration

Approval of Applicant as Trustee; Manufacturers Hanover Trust Co.

Notice is hereby given that Manufacturers Hanover Trust Company of California, with offices at 50 California Street, San Francisco, California 94111, has been approved as Trustee pursuant to Pub. L. 89–346 and 46 CFR 221.21–221.30.

Dated: December 16, 1985.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 85–30156 Filed 12–19–85; 8:45 am]

BILLING CODE 4915–81–M

VETERANS ADMINISTRATION

Change to Schedule of Productivity (MEO) Reviews (Not To Be Cost Compared With Private Industry) for the Department of Medicine and Surgery

AGENCY: Veterans Administration.

ACTION: Notice of change to schedule.

SUMMARY: In accordance with OMB Circular No. A–76 the Veterans Administration, Department of Medicine and Surgery serves notice to the public that the schedule of productivity (MEO) reviews, not to be cost compared with private industry, published in the **Federal Register** on June 13, and October 28, 1985, has been substantially changed. The schedule has been adjusted to compress the time frame allowed for each productivity review from eight months to six months, change the implementation dates so that scheduled reviews do not extend beyond September 1987, and rearrange facilities to reflect regional realignment.

FOR FURTHER INFORMATION CONTACT: Questions relating to this Department of Medicine and Surgery Schedule may be directed to Jack Beranek, Gerard Schroko or Harold Wilder at (202) 389–2491 or 2851.

Requests for single copies of the schedule should be made in writing to: Director, Office of Procurement and Supply (91), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

Questions relating to local matters about the conduct of these reviews should be referred to the Director of the VA medical facility concerned.

Dated: December 12, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS

[Not to be cost compared with private industry]

Department of Medicine and Surgery, VA Medical Centers

Field facility	Study start date	Completion date	Implementation date
Housekeeping Services			
Region No. 1			
Bedford, MA	October 1985	[illegible]	[illegible]
Boston, MA	do	do	Do.
Brockton, MA	do	do	Do.
Manchester, NH	do	do	Do.
Northampton, MA	do	do	Do.
Providence, RI	do	do	Do.
Togus, ME	do	do	Do.
White River Junction, VT	do	do	Do.
Albany, NY	January 1986	March 1986	[illegible]
Batavia, NY	do	do	Do.
Bath, NY	do	do	Do.
Buffalo, NY	do	do	Do.
Canandaigua, NY	do	do	Do.
Syracuse, NY	do	do	Do.
Bronx, NY	June 1986	August 1986	[illegible]
Brooklyn, NY	do	do	Do.
Castle Point, NY	do	do	Do.
Montrose, NY	do	do	Do.
Newington, CT	do	do	Do.
New York, NY	do	do	Do.
Northport, NY	do	do	Do.
San Juan, PR	do	do	Do.
West Haven, CT	do	[illegible]	Do.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS—Continued

[Not to be cost compared with private industry]

Department of Medicine and Surgery, VA Medical Centers

Field facility	Study start date	Completion date	Implementation date
Region No. 1			
Coatesville, PA	April 1987	June 1987	September 1987
East Orange, NJ	do	do	Do.
Lebanon, PA	do	do	Do.
Lyons, NJ	do	do	Do.
Philadelphia, PA	do	do	Do.
Wilkes Barre, PA	do	do	Do.
Wilmington, DE	do	do	Do.
Altoona, PA	do	do	Do.
Butler, PA	do	do	Do.
Clarksburg, WV	do	do	Do.
Erie, PA	do	do	Do.
Pittsburgh (UD), PA	do	do	Do.
Baltimore, MD	October 1985	December 1985	March 1986
Ft. Howard, MD	do	do	Do.
Martinsburg, WV	do	do	Do.
Perry Point, MD	do	do	Do.
Washington, DC	do	do	Do.
Beckley, WV	April 1987	June 1987	September 1987
Hampton, VA	do	do	Do.
Huntington, WV	do	do	Do.
Richmond, VA	do	do	Do.
Salem, VA	do	do	Do.
Asheville, NC	January 1986	March 1986	June 1986
Fayetteville, NC	do	do	Do.
Mountain Home, TN	do	do	Do.
Salisbury, NC	do	do	Do.
Region No. 3			
Augusta, GA	April 1987	June 1987	September 1987
Charleston, SC	do	do	Do.
Columbia, SC	do	do	Do.
Atlanta (Decatur), GA	do	do	Do.
Dublin, GA	do	do	Do.
Biloxi, MS	July 1986	September 1986	December 1986
Birmingham, AL	do	do	Do.
Jackson, MI	do	do	Do.
Montgomery, AL	do	do	Do.
Tuscaloosa, AL	do	do	Do.
Tuskegee, AL	do	do	Do.
Lexington, KY	April 1987	June 1987	September 1987
Louisville, KY	do	do	Do.
Memphis, TN	do	do	Do.
Murfreesboro, TN	do	do	Do.
Nashville, TN	do	do	Do.
Bay Pines, FL	January 1987	March 1987	June 1987
Gainesville, FL	do	do	Do.
Lake City, FL	do	do	Do.
Miami, FL	do	do	Do
Tampa, FL	do	do	Do.
Region No. 4			
Chillicothe, OH	October 1985	December 1985	March 1986
Cincinnati, OH	do	do	Do.
Cleveland, OH	do	do	Do.
Dayton, OH	do	do	Do.
Allen Park, MI	January 1987	March 1987	June 1987
Ann Arbor, MI	do	do	Do.
Battle Creek, MI	do	do	Do.
Saginaw, MI	do	do	Do.
Danville, IL	February 1987	April 1987	July 1987
Ft. Wayne, IN	do	do	Do.
Indianapolis, IN	do	do	Do.
Marion, IL	do	do	Do.
Iron Mountain, MI	April 1987	June 1987	September 1987
Madison, WI	do	do	Do.
Tomah, WI	do	do	Do.
Wood, WI	do	do	Do.
Chicago (LS), IL	December 1986	February 1987	May 1987
Chicago (WS), IL	do	do	Do.
North Chicago, IL	do	do	Do.
Hines, IL	do	do	Do.
Columbia, MO	July 1986	September 1986	Decembe 1986
Poplar Bluff, MO	do	do	Do.
St. Louis, MO	do	do	Do.
Region No. 5			
Fargo, ND	January 1987	March 1987	June 1987
Minneapolis, MN	do	do	Do.
Sioux Falls, SD	September 1986	November 1986	February 1987
St. Cloud, MN	November 1986	January 1987	April 1987
Kansas City, MO	February 1987	April 1987	July 1987
Leavenworth, KS	do	do	Do.
Topeka, KS	March 1987	May 1987	August 1987
Wichita, KS	do	do	Do.
Des Moines, IA	April 1987	June 1987	September 1987
Ft. Meade, SD	do	do	Do.
Grand Island, NE	do	do	Do.
Hot Springs, SD	do	do	Do.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS—Continued

[Not to be cost compared with private industry]

Department of Medicine and Surgery, VA Medical Centers

Field facility	Study start date	Completion date	Implementation date
Knoxville, IA	do	do	Do
Lincoln, NE	do	do	Do
Omaha, NE	do	do	Do
Cheyenne, WY	March 1987	May 1987	August 1987
Denver, CO	do	do	Do
Ft. Harrison, MT	do	do	Do
Ft. Lyon, CO	do	do	Do
Grand Juction, CO	do	do	Do
Miles City, MT	do	do	Do
Salt Lake City, UT	do	do	Do
Shendan, WY	do	do	Do
Region No. 6			
Loma Linda, CA	January 1987	March 1987	June 1987
Long Beach, CA	do	do	Do
San Diego, CA	do	do	Do
Sepulveda, CA	do	do	Do
West Los Angeles, CA	do	do	Do
Fresno, CA	December 1986	February 1987	May 1987
Livermore, CA	do	do	Do
Martinex, CA	do	do	Do
Palo Alto, CA	do	do	Do
Reno, NV	do	do	Do
San Francisco, CA	do	do	Do
American Lake, WA	January 1987	March 1987	June 1987
Boise, ID	do	do	Do
Portland, OR	do	do	Do
Rosenburg, OR	do	do	Do
Seattle, WA	do	do	Do
Spokane, WA	do	do	Do
Walla Walla, WA	do	do	Do
White City, OR	do	do	Do
Region No. 7			
Alexandria, LA	October 1986	December 1986	March 1987
Fayetteville, AR	do	do	Do
Little Rock, AR	do	do	Do
Muskogee, OK	February 1987	April 1987	July 1987
New Orleans, LA	October 1986	December 1986	March 1987
Oklahoma City, OK	February 1987	April 1987	July 1987
Bonham, TX	September 1986	November 1986	February 1987
Dallas, TX	February 1987	April 1987	July 1987
Houston, TX	do	do	Do
Kerrville, TX	do	do	Do
Marlin, TX	do	do	Do
San Antonio, TX	do	do	Do
Temple, TX	do	do	Do
Waco, TX	do	do	Do
Albuquerque, NM	do 1987	do	do
Amarillo, TX	do	do	Do
Big Spring, TX	do	do	Do
Phoenix, AZ	do	do	Do
Prescott, AZ	do	do	Do
Tucson, AZ	do	do	Do

Plant Maintenance

Region No. 1			
Bedford, MA	January 1986	March 1986	June 1986
Boston, MA	do	do	Do
Brockton, MA	do	do	Do
Manchester, NH	do	do	Do
Northampton, MA	do	do	Do
Providence, RI	do	do	Do
Togus, ME	do	do	Do
White River Junction, VT	do	do	Do
Albany, NY	July 1986	September 1986	December 1986
Batavia, NY	do	do	Do
Buffalo, NY	do	do	Do
Canandaigua, NY	do	do	Do
Syracuse, NY	do	do	Do
Bronx, NY	September 1986	November 1986	February 1987
Brooklyn, NY	do	do	Do
Castle Point, NY	do	do	Do
Montrose, NY	do	do	Do
New York, NY	do	do	Do
Northport, NY	do	do	Do
San Juan, PR	do	do	Do
West Haven, CT	do	do	Do
Region No. 2			
Coatsville, PA	January 1987	March 1987	June 1987
East Orange, NJ	do	do	Do
Lebanon, PA	do	do	Do
Lyons, NJ	do	do	Do
Philadelphia, PA	do	do	Do
Wilkes Barre, PA	do	do	Do
Butler, PA	April 1987	June 1987	September 1987
Pittsburg (UD) PA	do	do	Do

SCHEDULE OF PRODUCTIVITY (MBO) REVIEWS—Continued

(Not to be cost compared with private industry)

Department of Medicine and Surgery, VA Medical Centers

Field facility	Study start date	Completion date	Implementation date
Baltimore, MD	February 1986	April 1986	July 1986
Ft. Howard, MD	do	do	Do
Martinsburg, WV	do	do	Do
Perry Point, MD	do	do	Do
Washington, DC	do	do	Do
Hampton, VA	March 1987	May 1987	August 1987
Huntington, WV	do	do	Do
Richmond, VA	do	do	Do
Salem, VA	do	do	Do
Asheville, NC	July 1986	September 1986	December 1986
Fayetteville, NC	do	do	Do
Moutain Home, TN	do	do	Do
Salisbury, NC	do	do	Do
Region No. 3			
Augusta, GA	January 1987	March 1987	June 1987
Charleston, SC	do	do	Do
Columbia, SC	do	do	Do
Atlanta (Decatur), GA	do	do	Do
Dublin, GA	do	do	Do
Biloxi, MS	do	do	Do
Birmingham, AL	do	do	Do
Jackson, MI	do	do	Do
Montgomery, AL	do	do	Do
Tuscaloosa, AL	do	do	Do
Tuskegee, AL	do	do	Do
Lousville, KY	April 1987	June 1987	September 1987
Memphis, TN	do	do	Do
Murfreesboro, TN	do	do	Do
Nashville, TN	do	do	Do
Bay Pines, FL	February 1987	April 1987	July 1987
Gainesville, FL	do	do	Do
Lake City, FL	do	do	Do
Miami, FL	do	do	Do
Tampa, FL	do	do	Do
Region No. 4			
Chillicothe, OH	February 1986	April 1986	July 1986
Cleveland, OH	do	do	Do
Dayton, OH	do	do	Do
Allen Park, MI	March 1987	May 1987	August 1987
Ann Arbor, MI	do	do	Do
Battle Creek, MI	do	do	Do
Saginaw, MI	do	do	Do
Danville, IL	January 1987	March 1987	June 1987
Indianapolis, IN	do	do	Do
Iron Mountain, MI	February 1987	April 1987	July 1987
Madison, WI	do	do	Do
Tomah, WI	do	do	Do
Wood, WI	do	do	Do
Chicago, (LS), IL	April 1987	June 1987	September 1987
Chicago, (WS), IL	do	do	Do
North Chicago, IL	do	do	Do
Hines, IL	do	do	Do
Columbia, MO	March 1987	May 1987	August 1987
Marion, IL	do	do	Do
Poplar Bluff, MO	do	do	Do
St. Louis MO	do	do	Do
Region No. 5			
Fargo, ND	April 1987	June 1987	September 1987
Minneapolis, MN	do	do	Do
Sioux Falls, SD	November 1986	January 1987	April 1987
Kansas City, MO	February 1987	April 1987	July 1987
Leavenworth, KS	do	do	Do
Topeka, KS	do	do	Do
Wichita, KS	do	do	Do
Des Moines IA	do	do	Do
Grand Island, NE	do	do	Do
Hot Springs, SD	do	do	Do
Knoxville, IA	do	do	Do
Omaha, NE	do	do	Do
Denver, CO	do	do	Do
Ft. Lyon, CO	July 1986	September 1986	December 1986
Salt Lake City, UT	do	do	Do
Shendan, WY	do	do	Do
Region No. 6			
Loma Linda, CA	April 1987	June 1987	September 1987
Long Beach, CA	do	do	Do
San Diego, CA	do	do	Do
Sepulveda, CA	do	do	Do
West Los Angeles, CA	do	do	Do
Fresno, CA	March 1987	May 1987	August 1987
Livermore, CA	do	do	Do
Martinez, CA	do	do	Do
Palo Alto, CA	do	do	Do
Reno, NV	do	do	Do
San Francisco, CA	do	do	Do
American Lake, WA	February 1987	April 1987	July 1987

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS—Continued

[Not to be cost compared with private industry]

Department of Medicine and Surgery, VA Medical Centers

Field facility	Study start date	Completion date	Implementation date
Boise, ID	do	do	Do
Portland, OR	Do	Do	Do
Roseburg, OR	do	do	Do
Seattle, WA	do	do	Do
Spokane, WA	do	do	Do
Walla Walla, WA	do	do	Do
Region No. 7			
Alexandria, LA	April 1987	June 1987	September 1987
Little Rock, AR	do	do	Do
Muskogee, OK	February 1987	April 1987	July 1987
New Orleans, LA	April 1987	June 1987	September 1987
Oklahoma City, OK	February 1987	April 1987	July 1987
Bonham, TX	November 1986	January 1987	April 1987
Dallas, TX	February 1987	April 1987	July 1987
Houston, TX	do	do	Do
Kerrville, TX	do	do	Do
Marlin, TX	do	do	Do
San Antonio, TX	do	do	Do
Temple, TX	do	do	Do
Waco, TX	do	do	Do
Albuquerque, NM	January 1987	March 1987	June 1987
Amarillo, TX	do	do	Do
Big Spring, TX	do	do	Do
Phoenix, AZ	do	do	Do
Prescott, AZ	Do	do	Do
Tucson, AZ	do	do	Do
Dietetic Foods			
Region No. 1			
Bedford, MA	July 1986	September 1986	December 1986
Boston, MA	do	do	Do
Brockton, MA	do	do	Do
Manchester, NH	do	do	Do
Northampton, MA	do	do	Do
Providence, RI	do	do	Do
Togus, ME	do	do	Do
White River Junction, VT	do	do	Do
Albany, NY	September 1986	November 1986	February 1987
Batavia, NY	do	do	Do
Bath, NY	do	do	Do
Buffalo, NY	do	do	Do
Canandaigua, NY	do	do	Do
Syracuse, NY	do	do	Do
Bronx, NY	January 1987	March 1987	June 1987
Brooklyn, NY	do	Do	Do
Castle Point, NY	do	do	Do
Montrose, NY	do	do	Do
Newington, CT	do	do	Do
New York, NY	do	do	Do
Northport, NY	do	do	Do
San Juan, PR	do	do	Do
West Haven, CT	do	do	Do
Region No. 2			
Coatesville, PA	January 1987	March 1987	June 1987
East Orange, NJ	do	Do	Do
Lebanon, PA	do	do	Do
Lyons, NJ	March 1987	May 1987	August 1987
Philadelphia, PA	do	do	Do
Wilkes Barre, PA	do	do	Do
Wilmington, DE	do	do	Do
Altoona, PA	do	do	Do
Butler, PA		do	Do
Clarksburg, WV	do	do	Do
Erie, PA	do	do	Do
Pittsburgh (UD), PA	do	do	Do
Baltimore, MD	November 1986	January 1987	April 1987
Ft. Howard, MD	do	do	Do
Martinsburg, WV	do	do	Do
Perry Point, MD	do	do	Do
Washington, DC	do	do	Do
Beckley, WV	March 1987	May 1987	August 1987
Hampton, VA	do	do	Do
Huntington, WV	do	do	Do
Richmond, VA	do	do	Do
Salem, VA	do	do	Do
Asheville, NC	January 1987	March 1987	June 1987
Durham, NC	do	do	Do
Fayetteville, NC	do	do	Do
Mountain Home, TN	do	do	Do
Salisbury, NC	do	do	Do
Region No. 3			
Augusta, GA	April 1987	June 1987	September 1987
Charleston, SC	do	do	Do
Columbia, SC	do	do	Do
Atlanta, (Decatur), GA	do	do	Do

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SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS—Continued

[Not to be cost compared with private industry]

Department of Medicine and Surgery, VA Medical Centers

Field facility	Study start date	Completion date	Implementation date
Dublin, GA	do	do	Do.
Biloxi, MS	February 1987	April 1987	July 1987
Birmingham, AL	do	do	Do
Jackson, MI	do	do	Do.
Montgomery, AL	do	do	Do.
Tuscaloosa, AL	do	do	Do.
Tuskegee, AL	do	do	Do
Lexington, KY	do	do	Do
Louisville, KY	do	do	Do
Memphis, TN	do	do	Do.
Murfreesboro, TN	do	do	Do
Nashville, TN	do	do	Do
Bay Pines, FL	March 1987	May 1987	August 1987
Gainesville, FL	do	do	Do
Lake City, FL	do	do	Do
Miami, FL	do	do	Do
Tampa, FL	do	do	Do
Region No. 4			
Chillicothe, OH	August 1986	October 1986	January 1987
Cincinnati, OH	do	do	Do
Cleveland, OH	do	do	Do
Dayton, OH	do	do	Do.
Allen Park, MI	January 1987	March 1987	June 1987
Ann Arbor, MI	do	do	Do
Battle Creek, MI	do	do	Do
Saginaw, MI	do	do	Do.
Danville, IL	March 1987	May 1987	August 1987
Ft. Wayne, IN	January 1987	March 1987	June 1987
Indianapolis, IN	February 1987	April 1987	July 1987
Marion, IL	do	do	Do.
Marion, IN	do	do	Do.
Iron Mountain, MI	April 1987	June 1987	September 1987
Madison, WI	do	do	Do.
Tomah, WI	do	do	Do
Wood, WI	do	do	Do
Chicago (LS) IL	February 1987	April 1987	July 1987
Chicago (WS), IL	do	do	Do
North Chicago, IL	January 1987	March 1987	June 1987
Hines, IL	do	do	Do.
Columbia, MO	do	do	Do.
Poplar Bluff, MO	do	do	Do.
St. Louis, MO	April 1987	June 1987	September 1987
Region No. 5			
Fargo, ND	March 1987	May 1987	August 1987
Minneapolis, MN	do	do	Do
Sioux Falls, SD	February 1987	April 1987	July 1987
St. Cloud, MN	January 1987	March 1987	June 1987
Kansas City, MO	March 19877	May 1987	August 1987
Leavenworth, KS	do	do	Do
Topeka, KS	September 1986	November 1986	February 1987
Wichita, KS	do	do	Do
Des Moines, IA	August 1986	October 1986	January 1987
Ft. Meade, SD	do	do	Do
Grand Island, NE	do	do	Do.
Hot Springs, SD	do	do	Do
Iowa City, IA	do	do	Do
Knoxville, IA	do	do	Do
Lincoln, NE	do	do	Do
Omaha, NE	do	do	Do.
Cheyenne, WY	July 1986	September 1986	December 1986
Denver, CO	do	do	Do
Ft. Lyon, CO	do	do	Do
Ft. Harrison, MT	do	do	Do
Grand Junction, CO	do	do	Do
Miles city, MT	do	do	Do.
Salt Lake City, UT	do	do	Do
Sheridan, WY	do	do	Do
Region No. 6			
Loma Linda, CA	April 1987	June 1987	September 1987
Long Beach, CA	do	do	Do
San Diego, CA	do	do	Do
Sepulveda, CA	do	do	Do.
West Los Angeles, CA	February 1987	April 1987	July 1987
Fresno, CA	April 1987	June 1987	September 1987
Livermore, CA	do	do	Do
Martinez, CA	do	do	Do
Palo Alto, CA	do	do	Do
Reno, NV	do	do	Do
San Francisco, CA	do	do	Do
American Lake, WA	December 1986	February 1987	May 1987
Boise, ID	do	do	Do
Portland, OR	do	do	Do
Roseburg, OR	do	do	Do.
Seattle, WA	do	do	Do
Spokane, WA	do	do	Do
Walla Walla, WA	do	do	Do
White City, OR	do	do	Do.

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS—Continued

[Not to be cost compared with private industry]

Department of Medicine and Surgery, VA Medical Centers

Field facility	Study start date	Completion date	Implementation date
Region No. 7			
Alexandria, LA	March 1987	May 1987	August 1987
Fayetteville, AR	do	do	Do.
Little Rock, AR	do	do	Do.
Muskogee, OK	do	do	Do.
New Orleans, LA	do	do	Do.
Oklahoma City, OK	do	do	Do
Shreveport, LA	December 1986	February 1987	May 1987
Bonham, TX	March 1987	May 1987	August 1987
Dallas, TX	do	do	Do.
Houston, TX	do	do	Do.
Kerrville, TX	do	do	Do.
Marlin, TX	December 1986	February 1987	May 1987
San Antonio, TX	March 1987	May 1987	August 1987
Temple, TX	do	do	Do.
Waco, TX	do	do	Do.
Albuquerque, NM	May 1986	July 1986	October 1986
Amarillo, TX	do	do	Do.
Big Spring, TX	do	do	Do.
Phoenix, AZ	do	do	Do
Prescott, AZ	do	do	Do
Tuscon, AL	do	do	Do
Medical information			
Region No. 1			
Boston, MA	October 1986	December 1986	March 1987
Brockton, MA	do	do	Do.
Albany, NY	November 1986	January 1987	April 1987
Buffalo, NY	do	do	Do.
Bronx, NY	April 1987	June 1987	September 1987
Brooklyn, NY	do	do	Do.
New York, NY	do	do	Do.
Northport, NY	do	do	Do.
West Haven, CT	do	do	Do.
Region No. 2			
Baltimore, MD	January 1987	March 1987	June 1987
Washington, DC	March 1987	May 1987	August 1987
Asheville, NC	do	do	Do.
Region No. 3			
Augusta, GA	November 1986	January 1987	April 1987
Columbia, SC	do	do	Do.
Atlanta (Decatur), GA	do	do	Do.
Biloxi, MS	April 1987	June 1987	September 1987
Birmingham, AL	April 1986	June 1986	September 1986
Lexington, KY	December 1986	February 1987	May 1987
Miami, FL	April 1987	June 1987	September 1987
Tampa, FL	do	do	Do.
Region No. 4			
Cincinnati, OH	January 1987	March 1987	June 1987
Cleveland, OH	do	do	Do.
Dayton, OH	do	do	Do
Allen Park, MI	July 1986	September 1986	December 1986
Battle Creek, MI	do	do	Do.
Wood, WI	November 1986	January 1987	April 1987
Chicago (LS), IL	October 1986	December 1986	March 1987
Chicago (WS), IL	do	do	Do.
Hines, IL	do	do	Do
Columbia, MO	June 1986	August 1986	November 1986
St Louis, MO	do	do	Do
Region No. 5			
Minneapolis, MN	October 1986	December 1986	March 1987
Region No. 6			
Long Beach, CA	September 1986	November 1986	February 1987
Sepulveda, CA	do	do	Do
West Los Angeles, CA	do	do	Do
Portland, OR	March 1986	May 1986	August 1986
Region No. 7			
Alexandria, LA	December 1986	February 1987	May 1987
Houston, TX	September 1986	November 1986	February 1987
San Antonio, TX	do	do	Do.
Albuquerque, NM	January 1986	March 1986	June 1986
Office Operations			
Region No. 1			
Boston, MA	December 1986	February 1987	May 1987
Brockton, MA	do	do	Do.
Providence, RI	October 1986	December 1986	March 1987
Albany, NY	February 1987	April 1987	July 1987
Buffalo, NY	do	do	Do.
Bronx, NY	March 1987	May 1987	August 1987

SCHEDULE OF PRODUCTIVITY (MEO) REVIEWS—Continued

[Not to be cost compared with private industry]

Department of Medicine and Surgery, VA Medical Centers

Field facility	Study start date	Completion date	Implementation date
Brooklyn, NY	do	do	Do.
Montrose, NY	do	do	Do.
New York, NY	do	do	Do.
Northport, NY	do	do	Do.
San Juan, PR	do	do	Do.
West Haven, CT	do	do	Do.
Region No. 2			
Coatesville, PA	December 1986	February 1987	May 1987
East Orange, NHJ	do	do	Do.
Lyons, NJ	do	do	Do.
Wilkes Barre, PA	do	do	Do.
Pittsburgh (UD), PA	do	do	Do.
Mannsburg, WV	January 1987	March 1987	June 1987
Perry Point, MD	do	do	Do.
Washington, DC	do	do	Do.
Richmond, VA	do	do	Do.
Salem, VA	July 1986	September 1986	December 1986
Asheville, NC	December 1986	February 1987	May 1987
Mountain Home, TN	do	do	Do.
Region No. 3			
Augusta, GA	February 1987	April 1987	July 1987
Charleston, SC	do	do	Do.
Columbia, SC	do	do	Do.
Atlanta (Decatur), GA	do	do	Do.
Biloxi, MS	November 1986	January 1987	April 1987
Birmingham, AL	do	do	Do.
Jackson, MI	do	do	Do.
Tuskegee, AL	do	do	Do.
Lexington, KY	January 1987	March 1987	June 1987
Louisville, KY	do	do	Do.
Memphis, TN	do	do	Do.
Murfreesboro, TN	do	do	Do.
Nashville, TN	do	do	Do.
Bay Pines, FL	December 1986	February 1987	May 1987
Gainesville, FL	do	do	Do.
Miami, FL	do	do	Do.
Tampa, FL	do	do	Do.
Region No. 4			
Chillicothe, OH	April 1987	June 1987	September 1987
Cincinnati, OH	do	do	Do.
Cleveland, OH	do	do	Do.
Dayton, OH	do	do	Do.
Allen Park, MI	November 1986	January 1987	April 1987
Ann Arbor, MI	do	do	Do.
Battle Creek, MI	do	do	Do.
Indianapolis, IN	October 1986	December 1986	March 1987
Madison, WI	November 1986	January 1987	April 1987
Wood, WI	May 1986	July 1986	October 1986
Chicago (LS), IL	do	do	Do.
Chicago (WS), IL	do	do	Do.
North Chicago, IL	do	do	Do.
Hines, IL	do	do	Do.
Columbia, MO	December 1986	February 1987	May 1987
St. Louis, MO	do	do	Do.
Region No. 5			
Minneapolis, MN	December 1986	February 1987	May 1987
Kansas City, MO	September 1986	November 1986	February 1987
Topeka, KS	December 1985	February 1986	May 1986
Des Moines, IA	January 1986	March 1986	June 1986
Denver, CO	do	do	Do.
Region No. 6			
Loma Linda, CA	December 1986	February 1987	May 1987
Long Beach, CA	do	do	Do.
San Diego, CA	do	do	Do.
Sepulveda, CA	do	do	Do.
West Los Angeles, CA	do	do	Do.
Palo Alto, CA	March 1986	May 1986	August 1986
San Francisco, CA	do	do	Do.
Seattle, WA	September 1986	November 1986	February 1987
Portland, OR	do	do	Do.
Region No. 7			
Little Rock, AR	December 1986	February 1987	May 1987
New Orleans, LA	do	do	Do.
Oklahoma City, OK	September 1986	November 1986	February 1987
Dallas, TX	January 1987	March 1987	June 1987
Houston, TX	do	do	Do.
San Antonio, TX	do	do	Do.
Temple, TX	September 1986	November 1986	February 1987
Waco, TX	do	do	Do.
Albuquerque, NM	November 1985	January 1986	April 1986
Phoenix, AZ	do	do	Do.
Tucson, AZ	do	do	Do.

[FR Doc. 85-30022 Filed 12-19-85; 8:45 am]

BILLING CODE 8320-01-M

Station Committee on Education Allowances; Meeting

Notice is hereby given pursuant to section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on February 12, 1986, at 9:00 a.m., the Portland, Oregon Regional Office Station Committee on Educational Allowances shall at Room 1427, Federal Building, 1220 SW Third Avenue, Portland, Oregon 97204, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Apprenticeship Training Programs at Lloyd Corporation Ltd., Portland, Oregon, should be continued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: December 13, 1985.

Robert L. Winters,

Director, VA Regional Office.

[FR Doc. 85-30169 Filed 12-19-85; 8:45 am]

BILLING CODE 8320-01-M

UNITED STATES INFORMATION AGENCY

Performance Review Board Members

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: This Notice is issued to revise the membership of the United States Information Agency (USIA) Performance Review Board.

DATE: Upon Publication.

FOR FURTHER INFORMATION CONTACT:

Mr. Harlan Rosacker (Co-Executive Secretary), Chief, Domestic Personnel Division, Office of Personnel, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547. Tel: (202) 485-2617;

or

Ms. Johnnie Manzo (Co-Executive Secretary), Chief, Recruitment and Placement Division, Office of Personnel, Voice of America, U.S. Information Agency, 300 C Street, SW., Washington, DC 20547. Tel: (202) 485-8117.

SUPPLEMENTARY INFORMATION: In accordance with section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95-454), the following list supersedes the U.S. Information Agency Notice (49 FR 38217, September 27, 1984).

Chairperson: Associate Director for Management—Woodward Kingman (Presidential Appointee).

Deputy Chairperson: Acting Associate Director, Voice of America—Morton Smith, Senior Foreign Service Officer.

Career SES Members:

Acting Associate Director, Bureau of Programs—Michael Schneider;
Inspector General—Anthony Gabriel;
News and Current Events Manager, Television and Film Service—William Eames;
Director for News and English Broadcasts, Voice of America—Edward DeFontaine;
Director, Office of Engineering and Technical Operations, Voice of America—Robert Frese;
Deputy for Operations, Office of Engineering and Technical Operations, Voice of America—Walter LaFleur.

Alternate Career SES Members:

Deputy General Counsel, Office of General Counsel and Congressional Relation—C. Normand Poirier;
Deputy for Systems Engineering, Office of Engineering and Technical Operations, Voice of America—Ronald J. Linz.

This supersedes the previous U.S. Information Agency Notice (49 FR 38217, September 27, 1984).

Woodward Kingman,

Associate Director for Management, U.S. Information Agency.

[FR Doc. 85-30180 Filed 12-19-85; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 245
Friday, December 20, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Tennessee Valley Authority 3

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, December 16, 1985, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(9)(B), and (c)(10)).

Dated: December 17, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-30238 Filed 12-18-85; 12:53 pm]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, December 16, 1985, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

(A)(1) acceptance of the bid submitted by a newly organized national bank subsidiary of First Alamogordo Bancshares, Inc., Alamogordo, New Mexico, for the purchase of certain assets of and the assumption of the liability to pay deposits made in First National Bank of Lincoln County, Ruidoso, New Mexico, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Friday, December 13, 1985; and (2) adoption of a resolution providing such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to effect the purchase and assumption transaction; and

(B) Memorandum regarding the purchase of a leasehold agreement in the Corporation's 1776 F Street office building.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: December 17, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-30239 Filed 12-18-85; 12:54 am]

BILLING CODE 6714-01-M

3

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 50984 (December 13, 1985).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m. (est), Tuesday, December 17, 1985.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following item is added to the previously announced agenda:

E. Real Property Transactions

5. Proposed Auction Sale of the 9.92-Acre North Shannon Substation Property Located in Lee County, Mississippi, and Abandonment of Associated Unused Transmission Line Easement Tracts.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-8000, Knoxville, Tennessee. Information is also availabe at TVA's Washington Office, 202-245-0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

Dated: December 16, 1985.

Approved:

C.H. Dean, Jr.,

Director and Chairman.

Richard M. Freeman,

Director.

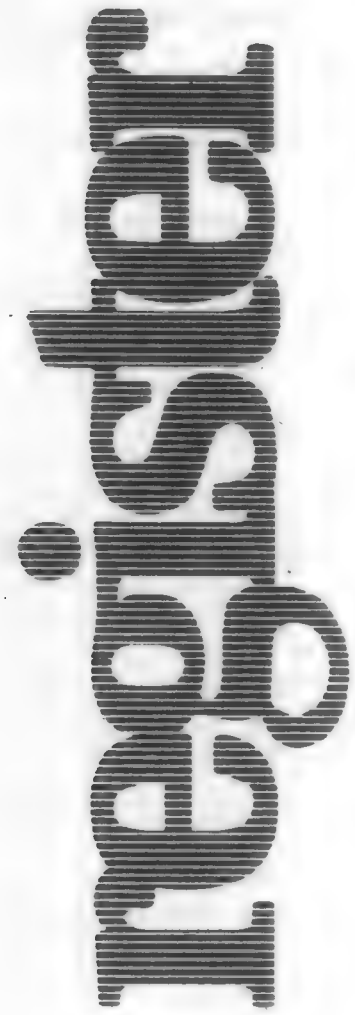
John B. Waters,

Director.

[FR Doc. 85-30203 Filed 12-18-85; 10:56 am]

BILLING CODE 8120-01-M

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Friday
December 20, 1985

Part II

Nuclear Regulatory Commission

10 CFR Parts 19, et al.

Standards for Protection Against Radiation; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 20, 30, 31, 32, 34, 40, 50, 61, and 70

Standards for Protection Against Radiation

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing a major revision of its regulations in 10 CFR Part 20 which provide the requirements for the protection of individuals who are exposed, both within and outside of the workplace, to ionizing radiation from routine activities (normal operations) which are licensed by the NRC. Since these regulations contain basic standards for protection against radiation, the proposed revision would affect all categories of NRC licensees. The intent of the revision is to improve NRC radiation protection standards by reflecting developments in the principles that underlie radiation protection and advances in related sciences that have occurred since the promulgation of 10 CFR Part 20 nearly thirty years ago. In particular the revision would put into practice many of the more recent recommendations of the International Commission on Radiological Protection (ICRP) set forth in ICRP Publications 26, 30, and 32.[1] The expected result of promulgating and implementing the proposed revised rule is an improved rule that provides better assurance of protection; establishes a clear health protection basis for limits and other regulatory actions taken to protect public health; applies to all licensees in a consistent manner; and reflects current information on health risk, dosimetry, and radiation protection practices and experiences. Some small decreases are expected in the number of workers exposed at the higher levels and in the doses received by those workers engaged in milling and fabrication of uranium fuel. While these reductions may not justify a Part 20 revision per se, they do result in a favorable ratio between estimated cost of implementing the revised rule and expected collective dose savings.

DATE: Comments must be submitted in writing on or before April 21, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Submit written comments and any other information relevant to NRC consideration of this matter to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of the environmental impact appraisal regulatory analysis, other referenced documents, and comments received may be examined and copied for a fee at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert E. Alexander, Division of Radiation Programs and Earth Sciences, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 427–4370.

SUPPLEMENTARY INFORMATION:

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VI. Quantification of Risks From Exposures of Individuals in the General Population
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VIII. As Low As Is Reasonably Achievable
IX. Radiation Protection Program
X. Units and Conversion Factors
XI. Standards for Occupational Exposures of Individuals
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XV. Emergency and Accident Conditions
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I. Background

The NRC's standards for protection against radiation were developed and published by the Atomic Energy Commission (AEC) in the late 1950s. Their development reflected scientific knowledge, radiation protection parctices, and recommendations of expert groups available at the time and coincided with development of Federal Guides approved by President Eisenhower in 1960. These standards provided what, at that time, was considered to be "a very substantial margin of safety for exposed individuals," which infers a threshold value for health damage or no observable clinical effects. In promulgating these standards, the AEC emphasized "that the standards are subject to change with the development of new knowledge, with significant increase in the average exposure of the whole population to radiation, and with further experience in the administration of the Commission's regulatory program" (22 FR 548; January 29, 1957). Consistent with this emphasis, the proposed revision reflects new knowledge, increased uses of radiation and generation of radiation sources, and experience gained during the past twenty years.

None of these factors, upon examination, suggest that there have been significant increases in radiation exposure or in health detriment of workers or members of the public since 1957; on the contrary, protection has been good and has improved over the twenty plus years since the Commission established its regulatory program. This may be partially due to a substantial number of revisions of Part 20 to reflect technical and administrative changes. However, these revisions have not kept the regulations in accord with more recent recommendations of scientific organizations (namely, those having expertise in radiation protection and biological effects of ionizing radiation) to improve overall protection and establish a clear health risk rationale. The basic approach to radiation protection in the original regulation (i.e., margin of safety) has been retained throughout the previous revisions without any effort to relate the approach more directly to any associated health risk. Limits were derived by implicit judgments on health effects associated with the use of licensed materials. In the proposed revision, limits are derived explicitly by quantifying risk, and then by judging the acceptability of the risk

[1] ICRP Publication 26, "Recommendations of the International Commission on Radiological Protection," adopted January 17, 1977. ICRP Publication 30, "Limits for Intake of Radionuclides by Workers," adopted July 1978. ICRP Publication 32, "Limits for Inhalation of Radon Daughters by Workers," adopted March 1981.

through a comparison of risks experienced by workers in industries not involving radiation exposures or a comparison of risks normally encountered by the general public.

A most important development in radiation protection is a recognition of the extensive knowledge concerning the probability or risk of suffering radiation-induced health damage and the merit of using this knowledge to form a rationale for standards. Establishing this approach for the limits and the expected improvements in radiation protection programs derived from new knowledge and operating experience are the basis for the proposed revision.

The capability to develop such health risk-based standards is greatly enhanced by contemporary computer technology, which permits consideration of many physical, biological and chemical variables that can affect the health risk and dose estimates required for developing and implementing the standards. For internally deposited radionucclides, the otherwise complex calculations are reducible to simple tables of intake and derived media concentrations.

The ICRP used these advancements to derive a system for radiation protection based on limiting the "effective" whole body dose and, thus, the estimated risk of health damage. Use of this "effective" whole body risk concept is a major departure from the premises of the present Part 20, which is based on the concept of protecting the (single) "critical organ." Its important advantage lies in permitting any type of exposure to radiation or radioactive materials to be considered as if the exposure were to the whole body.

The ICRP system of dose limitations has three basic components:

(1) No practice or operation involving exposures to radiation should be adopted unless its introduction produces a net benefit, i.e., the practice must be justified;

(2) All exposures shall be kept as low as is reasonably achievable (ALARA),[2] technologic, economic, and social factors being taken into account; and

(3) The effective dose equivalent to individuals shall not exceed the limits selected for the appropriate circumstances.

The ICRP approach provides for selecting dose limits based on estimated risks, comparing health risks in the nuclear industry with health risks in other industries and risks to members the public with everyday risks, and adding doses from dissimilar exposure modes to obtain the total risk. The system uses two constraints. The first is a limit to constrain the occurrence of radiation-induced stochastic (random) health effects (carcinogenesis and hereditary diseases), in which the severity of the damage in independent of dose. The second is an additional limit to prevent the occurence of radiation-induced non-stochastic health effects (such as cataract formation), in which no clinical damage occurs unless the dose exceeds a given level (threshold) and the severity of the damage is dose dependent. The proposed revision would adopt, in part, the approach to radiation protection and much of the system of dose limitations recommended by the ICRP.

Implementation of the recommendations of ICRP in Publications 26, 30, and 32 leads to the use of many new terms. Since there is a need to understand the new terminology in order to understand the Part 20 revision, these terms have been defined in § 20.3 of the proposed revision. Most of these terms—shallow, eye, and deep dose equivalent; effective dose equivalent; committed dose equivalent; and committee effective dose equivalent—result in greater specificity of meaning (less ambiguity) in assigning the dose to organs or tissues and in being able to sum the external and internal dose equivalent.

The proposed revisions of Part 20 would supersede proposed amendments to 10 CFR Parts 19 and 20 published by the Atomic Energy Commission (AEC) on January 3, 1975 (40 FR 799) requiring control of doses to an embryo or fetus as low as is reasonably achievable, proposed amendments to 10 CFR Part 20 published by the NRC on February 20, 1979 (44 FR 10388) deleting the 5(N–18) dose-averaging formula, and proposed amendments to 10 CFR Part 20 published by the NRC on May 9, 1983 (48 FR 20721) modifying its reporting requirements for the lose or theft of licensed material.

To having consistency between proposed changes in Part 20 and related parts of NRC's regulations, conforming amendments are proposed to change the affected sections of Parts 19, 30, 31, 32, 34, 40, 50, 61, and 70. These proposed conforming amendments can be found after Appendix F of the proposed revision of Part 20.

Some other 10 CFR parts, such as Part 50 (Appendix I), Part 61 and Part 100, contain dose values which should also be expressed in terms of effective dose equivalent to be consistent with the proposed revision. These adjustments or revisions would not be simple and no attempt has been made to propose amendments to such provisions in these parts at this time.

Subpart E, 10 CFR Part 140, contains the criteria for determination of extraordinary nuclear occurrences (ENO) and includes a table of Total Projected Radiation Doses, which are expressed as organ doses. Any revision of these values constitutes a substantive change and will be considered as part of an ongoing rulemaking proceeding to modify the ENO criteria rather than in conjunction with the Part 20 revision.

II. Comment Response

The NRC has had the benefit of receiving and reviewing many comments which have been valuable in preparing the proposed revision. About 70 responses were received on the Advance Notice of Proposed Rulemaking (ANPRM) on this revision that was published on March 20, 1980 (45 FR 18023) and about 80 responses were received on the notice of proposed deletion of the 5(N–18) provision that was published on February 20, 1979 (44 FR 10388). Although the responses were widely varied, the general conclusion was that revision of NRC's standards for protection against radiation was favored. The NRC also benefited from its participation in the public meetings associated with the guidelines proposed by the Environmental Protection Agency (EPA) for occupational radiation exposure (46 FR 7836; January 23, 1981) and review of comments received by EPA.

In addition, the NRC had valuable discussions with members of national and international radiation protection organizations, licensees, representatives of labor unions, and other groups. These discussions provided useful views, particularly in regard to technical and administrative problems foreseen in implementing the revision. This revision reflects and attempts to resolve many of the concerns identified, while maintaining the central thrust of the revision—to ensure that radiation protection is adequate and defendable when judged by good protection practices and contemporary standards.

A comparison of salient issues in the present Part 20 with the proposed revision is presented in Table 1. It is noteworthy that some limits for external radiation will be lower (e.g., hands) in the revisions and others will be higher (e.g., lens of eye). For internal emitters, specific organ limits will be higher than present values.

BILLING CODE 7590-01-M

[2] ALARA– see § 20.3 in proposed rule for definition.

TABLE 1. COMPARISON OF SALIENT ISSUES IN THE PRESENT 10 CFR PART 20 WITH THE PROPOSED REVISION

Issue	Present 10 CFR Part 20		Proposed Revision	
OCCUPATIONAL				
Limits	External			
	Whole body, head and trunk, active blood-forming organs, lens of eye, or gonads	1.25 rems/qtr or 3 rems/qtr with lifetime occupational exposure history and within 5(N-18) dose-averaging formula.	Whole body, head, trunk, arm above elbow, and leg above knee	5 rems/year (0.05 Sv/year) - includes summation of (external) deep dose equivalent and (internal) committed* effective dose equivalent. 3 rems (0.03 Sv) (external) maximum deep dose equivalent in any quarter.
			Lens of eye	15 rems/year (0.15 Sv/year)
	Hand and forearms; feet and ankles	18 3/4 rems/qtr (75 rems/yr)	Hand, elbow, arm below elbow, foot, knee, and leg below knee	50 rems/year (0.5 Sv/year)
	Skin of whole body	7 1/2 rems/qtr (30 rems/yr)	Skin (10 cm^2)	50 rems/year (0.5 Sv/year)
	No summation of internal (organ) doses.		Weighted organ doses for all organs are summed.	
	No summation of external and internal doses.		Doses from external and internal sources are summed.	

*Except for selected uranium and transuranic radionuclides for which the derived air concentrations (DACs) and annual limits of intake (ALIs) are hard to measure at levels found in the workplace. For these nuclides, the regulation may be based upon the effective dose equivalent received in the year rather than the committed effective dose equivalent

TABLE 1. (Continued)

Issue	Present 10 CFR Part 20	Proposed Revision
	Internal	
	Intake equivalent to 520 MPC-hours/qtr. Calculated to result in a 50-year committed dose of: Whole body 1.25 rems (5 rems/yr) Bone, thyroid, and skin 7.5 rems (30 rems/yr) Other organs 3.75 rems (15 rems/yr)	Annual limit of intake (ALI) equivalent to 2000 DAC-hours/year. Calculated DACs are based on the following: Organs are assigned weighting factors, based on the estimates of risk to that organ per unit of dose relative to the estimate of risk per unit of dose for uniform whole body exposure. "Capping" dose limit of 50 rems/year (0.5 Sv/year) used to avoid non-stochastic effects. For body parts other than those listed above:
		Tissue / w_T / Inferred Dose Limit (rems/year) / Actual Dose Limit (rems/year) Gonads 0.25 20 20 Breast 0.15 33 33 Red bone marrow 0.12 42 42 Lung 0.12 42 42 Thyroid 0.03 167 50 Bone surfaces 0.03 167 50 Each of 5 remaining organs with the largest dose 0.06 83 50
Planned Special	5(N-18) dose averaging provided - with quarterly limits.	Planned special exposures allowed in addition to the annual limits from routine exposures. Limits set at 1 x annual limits/year from all events in a year and 5 x annual limits/lifetime from all events. 5(N-18) dose averaging provision is eliminated.

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TABLE 1. (Continued)

Issue	Present 10 CFR Part 20	Proposed Revision
Embryo/Fetus	Not addressed.	0.5 rem (5 mSv) during the entire pregnancy due to occupational exposure of the "declared" pregnant woman.
ALARA	Recommended.	ALARA program required.
Occupational reference level	None	Investigation level--set by licensee below annual limit.
BASIS FOR LIMITS	Biological damage or health effects would not be statistically observable.	"Acceptable" risk (10^{-4} per year for workers, 10^{-6} to 10^{-5} per year for members of the public) based on estimated radiation-induced fatal cancers and serious hereditary disorders. Upper limit of organ dose set to avoid non-stochastic (threshold) effects, such as cataracts.
INTERNAL DOSIMETRIC METHODOLOGY		
Irradiation	Dose to the most irradiated organ, i.e., "critical organ," used to limit intake via "Maximum Permissible Concentrations" (MPC).	Dose to each organ is calculated, weighted by a factor equating risk from dose to that organ to risk from 5 rems (0.05 Sv) of whole-body irradiation, and then the products are summed. Values for ALIs and DACs have been calculated for each radionuclide.
	Doses from radionuclides deposited in non-critical organs are ignored.	Weighted doses to organs from radionuclides deposited anywhere in the body are summed.
Lung model	1959 ICRP-2 model used.	Improved 1966 model of ICRP Task Group on Lung Dynamics used.
Retention in lung	Aerosols ranked "Soluble" or "Insoluble."	Aerosols ranked by translocation and elimination rates, i.e., D (days), W (weeks), and Y (years).

TABLE 1. (Continued)

Issue	Present 10 CFR Part 20	Proposed Revision
	No consideration given for aerosol aerodynamic properties.	Assumes 1 μm AMAD. Adjustments for other aerosol size distributions, and physical and chemical properties are possible.
Translocation	Based on 1959 biological data.	Based on 1978 biological data from ICRP-30.
PUBLIC		
Limit	Implied limit for individuals of 0.5 rem/year to whole body, blood-forming organs, and gonads; 3 rems/year to bone and thyroid; and 1.5 rems/year to other organs. No summation of external and internal dose. No consideration of food pathways.	Explicit limit of 0.5 rem/year (5 mSv/year) for individuals from all sources. Includes summation of external and internal doses and food pathways.
Reference level	None.	0.1 rem/year (1 mSv/year) to member of the public as action level for licensee.
Collective dose cutoff level	None.	0.001 rem/year (0.01 mSv/year) per person cutoff level for evaluating collective doses to general population.
MONITORING		
Adult	Required at 25% of the basic quarterly limit (0.312 rem).	Required at 10% of the annual limit for deep dose equivalent (0.5 rem or 5 mSv). Required at 10% of the annual limit for eyes, skin, or extremities.
	Required for intakes greater than 25% of 520 MPC-hours in a quarter.	Required at 30% of the ALIs.
Minor	Required at 5% of the basic quarterly limit (0.0625 rem).	Required at 5% of the external annual limits for adults. Required at 5% of the ALIs for adults.

TABLE 1. (Continued)

Issue	Present 10 CFR Part 20	Proposed Revision
SEWER DISPOSAL	Concentration limits equivalent to 5 rems/year by potential ingestion.	Concentration limits equivalent to 0.5 rem/year (5 mSv/year) by potential ingestion.
RECORDS		
Determination of prior dose	Occupational exposure history required as condition for allowing 3 rems per quarter and use of 5(N-18) dose-averaging formula. Signed statements of dose during last quarter required upon employment.	Occupational exposure history (effective dose equivalent received during the current year and, when appropriate, all planned special exposures and over-exposures received during the lifetime of the individual) required for all individuals requiring provision of individual monitoring devices or services.
Current exposure records	Form NRC-5 includes only external dose. Includes items for calculating status under 5(N-18).	Revised Form NRC-5 includes external dose, internal dose, summation, and dose received during planned special exposures and as overexposures.
Effluent releases	Implied under survey requirement.	Explicitly required.
Planned special exposures	No provision.	Records required.
REPORTS		
Criteria for immediate notification of incidents	20 times the basic quarterly dose limits.	5 times the annual dose limits.
	Property damage $200,000.	Loss of facility use and property damage criteria deleted.
Overexposures of public	Required if limits for short-term radiation levels or annual effluent releases to unrestricted areas are exceeded.	Required if any individual in an unrestricted area exceeds 0.5 rem (5 mSv) in one year.

TABLE 1. (Continued)

Issue	Present 10 CFR Part 20	Proposed Revision
REPORTS (Continued)		
Planned special exposures	No provisions for planned special exposures.	Report required.
Exceeding reference level	No provisions.	Report required for exceeding 0.1-rem (1 mSv) level to members of public, unless licensee received prior approval for conducting operations which result in doses in excess of the reference level.
Individual monitoring reports	Annual statistical summary report required of 7 categories of licensees.	Same as present Part 20, except that doses will be effective dose equivalents.
	Termination report required of same 7 categories of licensees.	Same as present Part 20, except that doses will be effective dose equivalents.
Reports to individuals	Required by § 19.13(d) for any information reported to NRC. Applies only to overexposures and termination reports. Pursuant to § 19.13, other reports on exposures are available to the individual on request.	Same requirements as present Part 20, except that doses reported will be effective dose equivalents. In addition, licensees would report to individuals any planned special exposures; and licensees operating under § 20.205 (the exception for certain uranium and transuranic nuclides having very long effective half-lives) would report estimates of both annual effective dose equivalent and 50-year committed effective dose equivalent to their employees.

Enclosure 1

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III. Radiation Protection Principles

Prior to ICRP Publication 26 (1977) and the associated Publication 30 (1978), recommendations for dose limits for internal emitters were based on the concept of protecting the "critical organ" at risk, as described in ICRP Publication 2 (1959). Under this concept, protection was provided by limiting the dose to that single body organ or tissue which accumulated the greatest concentration of radioactive material and consequently received the highest dose. In a few cases, sensitivity to radiation damage and other factors were considered. By protecting the "critical organ," a degree of protection was also provided to all other organs. To satisfy the dose limit to the critical organ, intake of radioactive material was controlled by specifying the maximum permissible concentration (MCP) of a given radionuclide in air and water, corresponding to the major routes of intake by inhalation (breathing) and by drinking. These concentrations were set for a given radionuclide either by the critical organ dose limit, such as 15 rems/year to lung for occupational exposures, or by equating the dose delivered by the radionuclide to the skeleton (bone) to that given by a total body content of 0.1 μCi of radium-226. (Evidence of biological effects caused by radium-226 in humans was available at that time.) The limit for exposure of the whole body was set by the organs that had been assigned the lowest dose limits. These organs were bone marrow, gonads, and lens of the eye because of concerns for inducing leukemia, hereditary effects, and cataracts, respectively. The present Part 20 is based on this concept of protecting the critical organ. Summation of external and internal radiation doses is not required in the present Part 20, even though the need and desirability for summation of doses has been recognized since 1959 (see ICRP Publication 2).

Control measures have often been based on the maximum permissible body or organ content (or "burden") of radionuclides. The burden is calculated to deliver the maximum permissible annual dose to a critical organ. These burdens generally correspond to the quantity of radionuclide calculated to be present after an exposure period long enough for equilibrium to be reached between the continuing rate of intake at the "maximum permissible concentration" and the rate of elimination by body excretion and radioactive decay. At equilibrium the body burden is that which corresponds to the annual dose limit. For example, for insoluble plutonium in the lung, the maximum permissible lung burden of 16 nanocuries is that which results in a dose of 15 rem to the lung in the 50th year following continuing intake. For short-lived radioactive materials, which deliver their entire dose for any given single intake or reach equilibrium for continuous intake within a year or so, maximum permissible body and organ burdens can be appropriate measures for assessing protection. However, for control or intake of long-lives radioactive materials (such as uranium and plutonium, for which equilibrium cannot be attained in a lifetime) the use of the maximum permissible body burden as a limit and the corresponding annual dose equivalent limit is less protective unless adequate consideration is also given to the retention and accumulation of the material over the remaining lifetime. For these long-lived radionuclides, retention of material taken into the body during a year can constitute a chronic source of irradiation for many years, perhaps for a lifetime, and a comparison of the annual dose to the anual limit can be misleading.

Since 1960, an extensive research program to determine the biological effects of ionizing radiation has yielded substantial information concerning risk of damage to health. Comparable estimates of the risk of cancer mortality and morbidity and of hereditary damage per unit of dose were published in 1972 and 1980 (BEIR I and III Reports) by the National Academy of Sciences (NAS) and in 1977 and 1982 by the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR).[3]

Using the UNSCEAR risk estimates, ICRP Publication 26 introduced the terms "effective dose equivalent" and "committed effective dose equivalent" to describe concepts which would permit combining doses received from external and internal exposures. This method assigns each organ a weighting factor, which is proportional to the estimate of risk to that organ per unit of dose relative to the estimate of risk per unit of dose for a uniform whole body exposure. Except for gonad exposures, these weighting factors are presumed to represent the risk of inducing a fatal cancer in the different tissues relative to the total risk (cancer and hereditary diseases) from uniform whole body exposure for the same dose equivalent. The risk coefficient for gonads is based on the potential risk of serious hereiditary damage in the first two generations of offspring of the exposed person. The proposed revision would adopt the relative sensitivity values or weighting factors in ICRP Publication 26. These values and the appropriate risk per unit dose equivalent estimates are shown in Table 2. Also shown is the probability of suffering disease of the irradiated organ, given a unit dose equivalent.

The risk coefficients in Table 2, which are used to determine the relative sensitivity values for radiation-induced fatal cancers in organs, are based primarily on studies of human populations exposed to ionizing radiation at higher dose rates and at higher dose levels than generally found in the workplace and are truly estimates in the statistical sense only. There is no evidence which unequivocally demonstrates an increased incidence of cancers or hereditary effects in humans exposed to radiation at the exposure levels found in the workplace or in the environs of facilities licensed by the NRC. The observed incidence rate of fatal cancers, the observed fluctuations in normal incidence rates, and the relatively low radiation risk make demonstration of any slight increase due to radiation exposure essentially impossible to detect. It is generally prudent to assume in the interest of public health and radiation protection, however, that risk to health is proportional to dose. The risk coefficients, which were derived for exposure conditions with doses and dose rates higher than are expected to occur in the workplace, are believed more likely than not to overestimate the true risk under this assumption.

[3] One segment of these data is currently under review and reevaluation, i.e., the data from Japanese survivors of the A-bombs during World War II. It appears that the reevaluation will require at least 2 years for resolution. The data being challenged are the primary source of information that cover a wide range of exposures and that provide the principal basis for the shape of the dose-health effect response curves. However, the Japanese A-bomb survivor data constitute only one of several sources of human exposure data and, in the opinion of many experts, the risk coefficients are not likely to be changed substantially as a result of the ongoing reevaluation of the data. Consequently, the Commission sees no reason for delaying this rulemaking proceeding until the study is completed.

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TABLE 2.—RELATIVE SENSITIVITIES OF ORGANS AND TISSUES OF THE BODY FOR THE INDUCTION OF FATAL CANCERS AND SERIOUS HEREDITARY EFFECTS

Organ or tissue	Weighting factor (relative sensitivity)	Risk coefficient per rem	Probability per rem
Gonads	0.25	$(4X10^{-4})$	1 in 25,000.
Breast	0.15	$(2.5X10^{-4})$	1 in 40,000.
Red bone marrow	0.12	$(2X10^{-4})$	1 in 50,000.
Lung	0.12	$(2X10^{-4})$	1 in 50,000.
Thyroid	0.03	$(5X10^{-5})$	1 in 200,000.
Bone surfaces	0.03	$(5X10^{-5})$	1 in 200,000.
Any remaining five organs or tissues receiving the highest dose at a relative sensitivity of 0.06 each.	0.30	$(5X10^{-4})$	1 in 20,000.
Total for whole body	1.0	$(1.65X10^{-4})$	1 in 6,000.

The fractional contribution of the risk to individual organs is determined by dividing the risk to the organ by the risk from uniform whole body irradiation, allowing for no differences in seriousness of damage between serious hereditary diseases and fatal cancers or between different types of fatal cancers. For example, irradation of the gonads alone would, theoretically, casue about ¼ of the health effects (occurring as hereditary effects in the first two generations of offspring) caused by uniform irradiation of the entire body (occurring as cancer deaths plus serious hereditary diseases) at the same dose level. Irradiation of the lung alone would, theoretically, cause about ⅛ of the health effects (potential lung cancer deaths) caused by uniform whole body irradiation at the same dose level.

Some organs and tissues, such as the thyroid or bone surfaces, are less prone than others to be the site of fatal radiation-induced cancers. If the dose equivalent permitted to those organs were to be based entirely on the relative sensitivity for fatal cancers, the dose might be sufficient to cause functional damage, rather than cancers, to those organs. Therefore, functional damage (non-stochastic) to organs or tissues must be prevented by an overriding or "capping" dose limit.

Explicit in the recommendations of ICRP Publication 26 is that the sum of the (external) deep dose equivalent and the committed effective dose equivalent in one year should not exceed the annual dose equivalent limits. For members of the public (i.e., those persons who are not occupational associated with radiation industries and activities), the dose limits are ⅒ of the limits for workers, which are numerically the same as the present Part 20 except that internal and external doses are summed and internal doses are committed effective dose equivalents. The annual effective dose equivalent limit implicitly places a limit on the calculated risk of dying of radiation-induced cancer in the future and of transmitting radiation-induced hereditary damage to future offspring.

IV. Acceptability of Risk

Intrinsic in the assumption of a direct proportionality between dose and health damage is the presumption that radiation-induced health damage can occur at any non-zero value of dose, unless a threshold dose for damage is also assumed. (Keep in mind that this adoption of proportionality is made for reason of prudence in protecting public health and does not mean proportionaluity is supported by the best scientific evidence available.) In selecting values for dose limits, therefore, it is necessary to consider the issue of what level of risk is acceptable or what level of risk is unacceptable. The dose limits selected are then surrogates (substitutes) for risk, and doses at or below the limits are generally acceptable and those above the limits are generally unacceptable. The term "generally" is included here because the level cannot be absolute without exceptions.

The ICRP judged the acceptability of the level of risks to individuals exposed in the workplace (i.e., workers occupationally exposed and often referred to as radiation workers) at the dose limit by comparing this risk with that of workers in industries which do not involve radiation and which are recognized as having high standards of safety. In making this judgment the ICRP recognized the basic question of equality between two different types of death; namely, the risk of fatal cancer from radiation exposure versus the risk of accidental death in other occupations. These inherent problems in developing an index of harm are discussed in ICRP Publication 27 (1977). "Safe" industries were considered to be those in which the average annual mortality due to occupational hazards does not exceed 10^{-4}. It would be desirable to compare the risks to the individual workers whom might be exposed at the annual limit for a substantial fraction of their lifetime to the individual workers in higher (rather than average) risk categories in "safe" industries. However, data are inadequate to determine the number of individual workers who might be exposed at the annual limit for a substantial fraction of heir working lifetime. In addition, there are currently no data available on the range of individual (rather than average) risks in "safe" industries. Consequently, the only comparison that can be made at present is between the calculated risk to individuals exposed at the dose limits and the average risk to workers in safe industries.

An acceptable level of risk for member of the public was judged, by the ICRP, to be in the range of 10^{-6} to 10^{-5} per year. This range is a substantive judgment of risk normally accepted in everday life as producing no undue concern.

V. Quantification of Risks From Occupational Exposures

If a worker were to receive a uniform whole body dose equivalent of 5 rems or 0.05 Sv (which is the dose equivalent limit in a year for workers), the mathematical expecption of radiation-induced health damage can be estimated using the risk coefficients in Table 2. This risk is about 5 rems $\times 1.65 \times 10^{-4}$ mortality per rem $= 8 \times 10^{-4}$ to the exposed individual over the individual's remaining lifetime, including a risk of 2×10^{-4} serious hereditary damage in two generations of offspring. If the worker were ot receive the 5 rems every year, the annual risk for the worker (after several years) would also be 8×10^{-4}, which is about eight times higher than the "acceptable" average annual occupational risk in "safe" industries. For perspective on the above risk of cancer, the naturally occurring lifetime risk of cancer death is one in six (NAS BEIR III, 1980). If a different end point, such as years of life lost, were selected, the radiation-induced risk would be substantially less relative to loss of lifetime from many other industrial causes. This is so because death from radiation-induced cancer in adults is likely to occur late in life owing to latency periods (which range from a few years to several decades) between exposure and incidence, whereas many industrial deaths are casued by accidents and are expressed promptly.

The annual occupational dose equivalent limit of 5 rems (0.05 Sv) was recommended by the ICRP for several reasons.

1. With an annual dose limit of 5 rems, few individuals acctually receive whole body dose equivalents of 5 rems or more

in any year, and very few (if any) individuals receive whole body annual dose equivalents which average near 5 rems over an extended time interval. Radiation workers receive an average annual dose equivalent of less than 0.5 rem which implies an associated risk less than the ICRP accepted value of 10^{-4}.

2. ALARA programs, which would be required in the revised Part 20, would usually maintain exposure levels well below the dose limits.

3. The annual risk value for "safe" industries, 10^{-4}, is an average value for the industry. By definition, some workers would be at higher or lower than the average risk for the industry.

The Commission recognizes that there are essential tasks which could require some individuals to receive annual doses which might approach or, on some special occasions, exceed 5 rems. The proposed revision would adopt the 5-rem (0.05 Sv) annual dose limit as recommended by ICRP, but would limit the external component to 3 rems (0.03 Sv) any quarter. The proposed revision would also permit a "planned special exposure" which might result in an individual receiving 5 rems (0.05 Sv) in one year in addition to the dose received from routine operations. The estimated risk from a 5-rem planned special exposure would also be about 8×10^{-3}. Thus, the estimated total risk from 10 rems, which could be received in one year from both routine and planned special exposures (a very unlikely situation), would be about 1.6×10^{-2}.

VI. Quantification of Risks From Exposures of Individuals in the General Population

If a very young individual were to receive a whole body dose equivalent of 0.5 rem or 5 mSv (which is the dose equivalent limit in a year for a member of the general public), the mathematical expectation of radiation-induced cancer and of genetic effects in two generations of offspring would be about 8×10^{-5} over the individual's lifetime. In the unlikely event that the individual were to receive 0.5 rem every year for a lifetime, the calculated annual risk for the individual would be about 8×10^{-5}, which is about an order of magnitude higher than the estimated 10^{-6} to 10^{-5} per year average annual risk which is considered by the ICRP to be the "acceptable" range.

The revision of Part 20 would retain a dose equivalent limit of 0.5 rem (5 mSv) in a year for individual members of the general public, but it would also contain a "reference level" of 0.1 rem (1 mSv) in a year. The 0.1-rem reference level, in conjunction with the constraints of the EPA regulations 40 CFR Part 190 and the NRC regulations in 10 CFR Part 50 (§ 50.34a, § 50.36a, and Appendix I) for uranium fuel cycle facilities and light-water-cooled reactors, respectively, and with a required ALARA program for all licensees, is believed to be adequate to ensure that the annual average risk to any individual member of the public is within, or below, the range of 10^{-6} to 10^{-5}. Licensees would be required to report to the NRC when a dose equivalent of 0.1 rem (1 mSv) is received (or is likely to be received) in a year by an individual member of the public from the licensee's activities. The licensee would also be required to report on efforts to reduce the dose level.

VII. Justification

Recommendations for requiring a justification for exposures are not new. Admonitions to consider the necessity for an activity that is known to produce radiation and that has some individual and public health significance have been called for by the ICRP, National Council on Radiation Protection and Measurements (NCRP), and the former Federal Radiation Council (FRC) for more than a decade, justification is a basic tenent of radiation protection. The Commission endorses the principle that a licensed activity should produce some social benefits. In instances where practices are pursuant to, or consistent with, national policy statements or Federal legislative actions, it is concluded that a judgment on social benefit has been made a priority as an intrinsic part of the policy or legislative process. The issue of benefit trade-offs is thus broader than providing protection against radiation, and the revision of Part 20 contains no requirements to justify the activity or to determine net benefit derived.

VIII. As Low as Is Reasonable Achievable

The present Part 20 (in § 20.1(c)) contains an admonition that licensees ". . . should . . . make every reasonable effort to maintain radiation exposures . . . as low as is reasonably achievable." This provision was added to Part 20 more than a decade ago, replacing the view that an activity was acceptable if the exposures were below a specific limit. Through various license provisions (e.g., technical specifications and license conditions) and through rulemaking (e.g., § 50.34a, § 50.36a, and Appendix I in 10 CFR Part 50 and 40 CFR Part 190), substantial ALARA program and efforts are presently required for certain categories of licensed activities, such as operation of uranium fuel cycle facilities.

The Commission recognizes the importance of ALARA considerations in achieving adequate radiation protection and in the revision would required, rather than merely exhort, all licensees to have a radiation protection program which includes ALARA provisions. However, the Part 20 revision would not required quantified optimization studies, in the sense described below, because of the difficulties in performing the analyses and because it is recognized that the decisions must be largely judgmental in any event.

The ICRP recommends that quantatives optimization evaluations be provided, where practicable, for decisionmaking in radiation protection activities. These evaluations require solutions to differential cost-benefit equations and quantification of technical and socioeconomic factors, including the selection of monetary values for a unit of collective dose (e.g., dollars per person-rem). While optimization has been done for radiation protection activities, the studies can be costly, the methods are not familiar to most persons, the range of uncertainty is substantial, and the quantification of judgmental factors involves difficult social-political considerations as, for example, in dealing with collective dose. For these reasons, the Commission has decided not to require optimization evaluations. However, licensees may apply such evaluations when they consider it beneficial for decisionmaking.

IX. Radiation Protection Program

Only in certain instances are licensees now required to provide a formal radiation protection program for review as part of licensing actions, and even those are not required by the present Part 20. The Part 20 revision would establish a uniform requirement for all licensees to have a radiation protection program which would include provisions for keeping doses ALARA. The revision does not state specifically what must be included in the program, other than provisions for review by management and for internal (licensee) investigation levels. Guidance on the general content and format of the programs would be provided. Since there is a broad range in activities among licensees, the specific provisions of the radiation protection program would be commensurate with the potential for radiation exposures to individual workers and to members of the public.

The revision would not specifically require that the program be reviewed by the NRC. However, the licensee's program would be available for

inspection. The licensee should be able to demonstrate that investigation levels, which will serve to keep doses to individuals well below the dose limits, have been selected and that a procedure for investigating conditions that cause or permit these levels to be exceeded has been established. No formal report to the NRC is required or anticipated for the licensee actions in dealing with the internal investigation levels.

Consideration was given to specifying a numerical value for the ALARA investigation level, rather than leaving it for the licensee to select. However, a single value would not be appropriate for all categories of licensees and, therefore, no value has been specified.

X. Units and Conversion Factors

In accordance with the Metric Conversion Act of 1975, the revision introduces the International System of Units (SI) involving the becquerel, gray, and sievert. This action was also recommended by the ICRP, International Commission on Radiation Units and Measurements (ICRU), and the NCRP in its comments to NRC on earlier drafts of the proposed revision. The proposed radiation protection limits are presented in dual notation so that the regulations do not impede the voluntary transition to the use of the metric system by the Federal agencies, State or local governments, or private sector of the nuclear industry. However, much of the general discussion in the supplementary information used the so-called "special unit," the curie, rad, and rem, which are more familiar to licensees, regulators and workers. This is important in conveying information on the health protection basis for the proposed limits in a format which is as understandable as possible. There has been concern that use of the SI units might be viewed as an attempt to be misleading by using units that are numerically different from the more familiar units. In addition, there has been considerable concern about the potential for errors in the application of the SI units, such as in medical practice. The values in the appendices are given in the traditional units because that is the system in general use by the individual who will use these values. The rule contains the definitions, prefixes, and conversion factors for the SI units so that licensees may use these units in their radiation control programs and their recordkeeping and reporting requirements.

The present Part 20 and the proposed revision equate an exposure of 1 roentgen due to x- or gamma-radiation to a dose equivalent of 1 rem, except for personnel monitoring purposes. Consideration was given to including in the Part 20 revision a table of factors for converting exposure (in roentgens) to dose equivalent (in rems) for a number of photon energies. Properly calibrated personnel dosimeters take this into account. However, it was recognized that such an extensive of conversion factors could have been interpreted as requiring licenses to have on-going knowledge of the spectral distribution of photon energies in each portion of the licensee's facilities. Such a requirement would be impractical amd unwarranted. Consequently, a simple conversion factor of 1.0 has been proved for all photon energies. The same conversion value would be applicable to shallow, eye, and deep dose equivalent.

The mean quality factors and fluence per unit dose equivalent for monenergetic neutrons (Table 2 of the revised rule) have been changed slightly from those in the present Part 20. The values in Table 2 of the revised rule have been adapted from NCRP Reports 38 and 39, National Bureau of Standards Handbook 107, and American National Standards Institute Standard N43.1 (the same values are presented in each of these documents). The fluence of neutrons of unknown energy equivalent to 1 rem has been changed from 14 to 25 million neutrons cm^{-2}. The vaule of 14 million neutrons cm^{-2} rem^{-1} would apply to neutrons of about 40 MeV, well above those emitted by licensed materials.

The proposed revision includes a definition for a "controlled area" which does not exist in the present Part 20. The intent is to codify and clarify current regulatory practice and to remove an existing ambiguity by introducing the term. The present Part 20 defines a restricted area. Logic would seem to indicate that any area which is not a restricted area would be an unrestricted area. However, in many instances there is an area between the restricted area and the truly unrestricted area where dose limits applicable to unrestricted areas are applied, e.g., at the boundary of power reactor sites where there might be limited control of access by individual members of the general public. By recongnizing the existence of the area between the restricted area and the truly unrestricted area and by defining it as the controlled area, a current ambiguity is removed.

The proposed revision contains definitions of occupational dose and of public dose. These definitions reflect current practice and remove some ambiguities in applying the different limits.

XI. Standards for Occupational Exposure of Individuals

Table 3 presents a summary of the dose limits specified in the proposed revision. These dose limits have been based upon ICRP Publication 26 with modifications to translate the recommendations into practical regulatory requirements that satisfy NRC's statutory mandate to protect the health of workes in NRC-licensed facilities and activities.

TABLE 3.—SUMMARY OF DOSE LIMITS

Occupational exposures of individuals	Dose limits
Sum of deep dose equivalent and committed effective dose equivalent [1].	5 rems (0.05 Sv) in one year.
Deep dose equivalent (external only).	3 rems (0.03 Sv) in one quarter.
Any organ or tissue, extremities and skin.	50 rems (0.5 Sv) in one year.
Lens of the eye	15 rems (0.15 Sv) in one year.
Minors	1/10 of annual limits for adults.
Embryo/fetus	0.5 rem (5 mSv) during entire pregnancy period.
Planned special exposure:	
Annual limit from all events	1 × annual limits.
Lifetime limit from all events	5 × annual limits.
Exposures of members of the public: Sum of deep dose equivalent and committed effective dose equivalent [1].	0.5 rem (5 mSv) in one year.

[1] The sum of weighted 50-year dose commitments from the intake of radioactive material and (external) deep dose equivalent. "Deep dose equivalent" used in this summation is the highest dose equivalent at a tissue depth of 1 cm to the head, trunk, arm above the elbow, or leg above the knee. (See § 20.3.) For intakes of certain long effective half-lived radioactive material, annual rather than committed effective dose equivalents may be used. (See § 20.205.)

Combined Internal and External Doses

A limit of 5 rems (0.05 Sv) in a calendar year would be established on the sum of the doses from sources internal and external to the body. The deep dose equivalent from external sources and the product of the weighting factors and the 50-year committed dose equivalent to the organs would be summed. The quarterly limit of 3 rems (0.03 Sv) deep dose equivalent from external sources in the present Part 20 would be retained, but the 5(N–18) provisions for cumulative occupational dose in the present Part 20 would be deleted.

The dose equivalents to the extremities (e.g., hand, elbow, forearm below the elbow, foot, knee, and leg below the knee), the skin, and the lens of the eye are not considered in computing the effective dose equivalent, but are subject to limits that would have to be met separately.

Although not recommended by the ICRP, the 3-rem (0.03 Sv) limit for any calendar quarter is retained for the (external) deep dose equivalent to further ensure that short-term workers.

transient workers, or workers who are rotated between fossil and nuclear facilities will be afforded no less protection under the proposed revision than is provided by the present Part 20. Quarterly limits allow for earlier identification of occupational overexposures and the subsequent earlier investigation into and correction of the causes of such exposures. Further, the dose records do not support a demonstrated need for exceeding 3 rems per quarter, particularly when planned special exposure provisions are available. Retention of the quarterly limit was recommended by some representatives of labor unions and by some representatives of industry management.

Derived Limits

In many working situations, it is difficult to assess doses to the various organs and tissues of an individual from inhaled and ingested radionuclides. Consequently, it is necessary to derive more practical indicators of the exposure, such as annual limits of intake (ALIs) and derived air concentrations (DACs), that might serve as surrogates for dose estimates.

An ALI is the quantity of a radionuclide which, if taken into the body of a reference man (as described in ICRP Publication 23) by inhalation or by ingestion in one year, would not exceed a 5-rem (0.05 Sv) committed effective dose equivalent to the whole body or a 50-rem (0.5 Sv) committed dose equivalent to any organ or tissue.

About 1,800 of the ALI values listed in the proposed Table 1 of Appendix B were determined by limiting the committed effective dose equivalent in order to minimize stochastic health damage. The remaining 270 ALIs were determined by limiting the committed dose equivalent to a specific organ in order to prevent non-stochastic health damage. All ALI values may be considered to produce a risk comparable to that of receiving a uniform whole body dose equivalent of 5 rems.

A DAC is the derived air concentration of a radionuclide which, if inhaled by a reference man with an inhalation rate of 0.02 m^3 per minute for 2,000 hours a year, would result in the intake of one ALI. DAC values would replace the inhalation "MPC" values in Table 1 of Appendix B of the present 10 CFR Part 20. The proposed DAC values are in Table 1 of the revised Appendix B. Section XXIX in this Supplementary Information generally compares the proposed DAC and ALI values with the concentration limits (MPCs) currently listed in Appendix B, 10 CFR Part 20.

ALI and DAC values can generally be used to demonstrate compliance with the annual effective dose equivalent limits by verifying that the sum of the fraction of the external (whole body) deep dose equivalent limit and the fractions of the ALIs (or DACs) does not exceed 1. Thus, dose equivalents from internal and external exposure modes may be added and compared to the annual effective dose equivalent limits. Exposures or intakes at or above the ALIs and exposures for substantial periods of time at or above the DAC values given in the proposed Table 1 of Appendix B are generally unacceptable. Application of ALARA principles should provide sufficient control so that sustained intakes and exposures are kept lower than the ALI and DAC values.

Consider the example in Table 4 in order to compare the methods and degree of difficulty of operation using the existing 10 CFR Part 20 and using the proposed revision of Part 20. The example will demonstrate that the familiar terms and techniques, such as MPC-hours and fractions of MPC, may still be used as DAC-hours and fractions of DAC; and that the changes involved in summation under the proposed rule are relatively simple and straightforward.

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TABLE 4. A COMPARATIVE EXAMPLE

PRESENT 10 CFR PART 20	PROPOSED REVISION TO 10 CFR PART 20
LIMITS	
External (whole body) 1.25 rems/quarter, or 3 rems/quarter within 5(N-18) and with occupational exposure history	5 rems/year effective dose equivalent (Includes summation of external deep dose equivalent and internal committed effective dose equivalent)
Internal Intake equivalent to 520 MPC-hours/quarter	$\frac{H_d}{5} + \sum_j \frac{I_{i,j}}{ALI_{i,j}} \leq 1$
No requirement for summation of external and internal dose. However, fractional intakes of radionuclides would be summed, in compliance with Note 1 of Appendix B, even though the critical organs are different and there would be few organs that would receive appreciable doses from both radionuclides.	Where: H_d is the deep dose equivalent in rems, 5 is the annual dose limit in rems, $I_{i,j}$ is the annual intake of radionuclide j by inhalation, i; $ALI_{i,j}$ is the annual limit of intake of radionuclide j by inhalation, and $\sum_j$ is the summation of the ratios for all radionuclides included in the intake.
EXAMPLE An individual receives 1 rem deep dose equivalent from external exposure, plus 10 days (80 hours) of exposure at the present maximum permissible concentrations of "soluble" iodine-131 and "soluble" cesium-137 in air.	
1 rem/1 25 rems = 0.8 or 80% of quarterly limit, which is 20% of annual dose.	1 rem/5 rems = 0.2 or 20% of annual dose limit
^{131}I intake:	^{131}I intake.
(10 days) x (9 6 x 10^6 ml air inhaled/8-hour work day) x (9 x 10^{-9} µCi ^{131}I/ml (MPC)) = 0 9 µCi ^{131}I (intake)	Assumed to be the same, 0 9 µCi ^{131}I (intake)

TABLE 4. (Continued)

PRESENT 10 CFR PART 20	PROPOSED REVISION TO 10 CFR PART 20
EXAMPLE - Continued	
Permissible ^{131}I intake:	Permissible ^{131}I intake.
(6.3 x 10^8 ml air inhaled/quarter) x (9 x 10^{-9} µCi ^{131}I/ml (MPC)) = 5.7 µCi ^{131}I (permissible intake).	50 µCi ^{131}I (ALI, given in Appendix B)
Percent of annual limit of intake:	Percent of annual limit of intake.
0.9 µCi/5.7 µCi = 0.16 or 16% of quarterly intake limit = 0.04 or 4% of annual limit of intake.	(0.9 µCi ^{131}I (intake))/(50 µCi ^{131}I (ALI)) = 0 018 or 1 8% of annual limit of intake.
^{137}Cs intake:	^{137}Cs intake:
(10 days) x (9.6 x 10^6 ml air inhaled/8-hour work day) x (6 x 10^{-8} µCi ^{137}Cs/ml (MPC)) = 6 µCi ^{137}Cs (intake).	Assumed to be the same, 6 µCi ^{137}Cs(intake).
Permissible ^{137}Cs intake:	Permissible ^{137}Cs intake:
(6.3 x 10^8 ml air inhaled/quarter) x (6 x 10^{-8} µCi ^{137}Cs/ml (MPC)) = 38 µCi ^{137}Cs (permissible intake).	2 x 10^2 µCi ^{137}Cs (ALI, given in Appendix B)
Percent of annual limit of intake:	Percent of annual limit of intake.
6 µCi/37.8 µCi = 0.16 or 16% of quarterly limit = 4% of annual limit of intake.	(6 µCi ^{137}Cs (intake))/(2 x 10^2 µCi ^{137}Cs (ALI)) = 0.03 or 3% of annual limit of intake
Summation:	Summation:
Not required. However, if the fraction of the external dose limit and the fractions of the ^{131}I and ^{137}Cs intakes were added, it would show: 0 20 + 0.04 + 0.04 = 0.28 or 28% of the annual limit	$\frac{1 \text{ rem}}{5 \text{ rems}} + \frac{0.9 \text{ µCi } ^{131}I \text{ (intake)}}{50 \text{ µCi (ALI)}} + \frac{6 \text{ µCi } ^{137}Cs \text{ (intake)}}{2 \times 10^2 \text{ µCi (ALI)}}$ = 0.25 or 25% of the annual effective dose equivalent limit

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TABLE 4. (Continued)

PRESENT 10 CFR PART 20	PROPOSED REVISION TO 10 CFR PART 20
EXAMPLE - Continued	
Alternatively - the intake portions of the example could have been expressed in terms of air concentrations .	
^{131}I (10 days) x (8 hours/day) x MPC = 80 MPC-hours.	Because the DAC for ^{131}I is 2 x 10^{-8} µCi/ml, larger than the current MPC of 9 x 10^{-9} µCi/ml, the intake would be (80 hours) x (9 x 10^{-9} µCi/ml (MPC))/ (2 x 10^{-8} µCi/ml (DAC)) = 36 DAC-hours.
^{137}Cs (10 days) x (8 hours/day) x MPC = 80 MPC-hours.	The MPC and the DAC for ^{137}Cs are the same, 6 x 10^{-8} µCi/ml, and the example exposure would equal 80 DAC-hours
or a total of 160 MPC-hours of intake	^{131}I 36 DAC-hours/2,000 (DAC-hours per year) = 0.018 or 1.8% of annual intake limit.
	^{137}Cs 80 DAC-hours/2,000 (DAC-hours/per year) = 0.04 or 4% of annual intake limit.
160 MPC-hours/520 (MPC-hours permitted per quarter) or 32% of the quarterly limit or 8% of the annual limit of intake.	The summation of internal (only) doses would be expressed as.
	$\frac{36\ (DAC\ hrs)}{2000\ (DAC\ hrs)}\ ^{131}I + \frac{80\ (DAC\ hrs)}{2000\ (DAC\ hrs)}\ ^{137}Cs = 0.06$
	or 6% of the annual (internal) dose equivalent limit
Summation, while not required, would be	The summation of doses would be
$\frac{1\ rem}{5\ rems} + 0.08 = 0.28$	$\frac{1\ rem}{5\ rems} + 0.06 = 0.26$
or 28% of the annual limit.	or 26% of the annual limit

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Note that iodine-131 is one of the radionuclides whose ALI and DAC were constrained by the 50-rem "capping dose" to prevent the occurrence of non-stochastic effects in a particular organ or tissue, e.g., the thyroid for iodine-131. Use of the non-stochastic ALI could be unduly conservative (e.g., overestimates risk) in some instances. In that case, the "stochastic" ALIs for these radionuclides may be used in the equation to determine effective dose equivalent. However, if the stochastic ALIs are used, the licensee must also show that the 50-rem capping dose to any organ or tissue is not exceeded.

Some concern has been expressed about how to demonstrate compliance with the proposed revision when the exposures involve the assessment of incremental intakes of radionuclides. Such assessment would be required at 30% or more of annual intake limits under the proposed rule, compared to 25% of quarterly limits under the current rule. The internal dose assessments may be based on data from the analyses of air samples, bioassays, or combinations of those techniques. As indicated in the example Table 4, assessment may be in familiar terms, MPC-hours (now called DAC-hours), as well as ALIs. All of these terms are readily converted to committed effective dose equivalent, except in cases where DAC values are based upon the 50-rem capping dose limit for avoiding non-stochastic effects to some organ or tissue. Conservatism is introduced if the DAC and ALI values constrained by capping doses are considered equivalent to 5 rems effective dose equivalent, but this is a reasonable simplification which may be chosen by the licensee.

Part of the concern about assessment of intake results from the more restrictive values of ALIs and DACs proposed for certain radionuclides, particularly for some forms of uranium and transuranics. These more restrictive values have resulted primarily from the use of updated biologic and dosimetrict models, rather than by the use of the ICRP system of dose limitation per se.

Demonstration of compliance using the proposed requirement for summation of external dose and internal committed effective dose equivalent is simple and straightforward. It is believed that relatively few licensees operate under conditions in which individuals receive both external doses greater than 10% of the deep dose equivalent annual limit

and intakes greater than 30% of the ALIs so that summation would be required.

Adjustments for Site-Specific Parameters

The assumptions made in deriving the ALIs and DACs in Appendix B place limitations on their use. ALI and DAC values can be derived for the actual work conditions. Such derived limits, specific for the licensed condition, would not necessarily require conservative assumptions which would overestimate doses. Actual exposure times and occupancy of the area could be considered. Detailed investigations would be required to provide the necessary information for NRC approval of the revised ALI and DAC values.

It is recognized that, in some cases, it might be necessasry to make additional tests and measurements in order to determine the actual composition of mixtures of radionuclides or of chemical and physical forms which affect translocation within the body. Where specific information is available on the behavior of radionuclides in the body of an individual, the licensee may document or reference the information in the individual's record and use the specific information to assess the dose to the individual. The licensee is encouraged to use such data, when available, because the ICRP values in Publication 30 are derived for average metabolic behavior in an adult population, and the individual's metabolic behavior might differ substantially from the average.

Committee Dose

The proposed system of dose limitations recommended by the ICRP in 1977 (ICRP Publication No. 28) would assign to the year of intake of the radionuclides the entire caculated 50-year committed dose equivalent received from the year's intake. It is indicative of the 50-year risk of health injury resulting from one year of intake of radionuclides that are retained in the body. The technique of regulating exposures by using committed dose equivalent is less burdensome, in most cases, than the alternative technique of accounting, in each year of the individual's life, for the dose actually received from radioactive material deposited in the body that year and the dose received that year from material deposited in each of the previous years. The committed dose equivalent has been reflected in concentration values listed in Appendix B, 10 CFR Part 20, for many years. The technique is recognized to be conservative for several reasons:

(1) An individual might not live long enough (as a result of risks to life other than from radiation) to receive the 50-year committed dose, particularly when exposures occur late in life.

(2) Because of tissue repair mechanisms, doses of low LET radiation which are delivered at a low dose rate are generally believed to result in less risk than similar doses which are delivered promptly. (However, the selected risk estimators include an adjustment for dose rate.)

(3) During the latent period between the radiation exposure and observation of most types of radiation-induced cancer, individuals would be subject to death from other causes.

Exceptions to the Use of Committed Dose Equivalents

Even at the annual limit, it is difficult to assess, by body counting and bioassays, very small intakes of some radionuclides that would deliver a 50-year committed effective dose equivalent. Surrogates for small intakes, such as intake estimates based on exposure hours, generally must be used.

Exposures to certain airborne radioactive material with very long effective half-lives, such as uranium and transuranic elements, pose especially difficult problems with respect to the licensee's being able to demonstrate compliance with the basic dose limit.

The biological, chemical, and physical characteristics of certain radionuclides are such that the air concentrations found in restricted areas at, or below, the DAC values and the amounts of radionuclide found in vivo at, or below, the ALIs might be difficult to measure in a practical manner with sufficient accuracy to permit projections of committed effective dose equivalent to be used to demonstrate compliance with the limits. Further, assessment of the intake (and the associated 50-year committed dose equivalent) from air sampling data, whether from fixed air samplers in the work area or from individual (lapel) air samplers, may show poor correlation with amounts of radioactive material assessed by bioassay.

It is also recognized that processing of the more hazardous long effective half-lived radioactive materials, such as plutonium, routinely takes place within confinement, such as glove-boxes, and that intake by workers results from some failure of that containment that is neither readily anticipated nor controlled. The facilities which process these radionuclides are designed and operated so that intakes from routine operations are within the ALIs, and bioassays are performed to quantify intake amounts.

Licensed operations wherein uranium compounds are processed have not routinely been subject to the same degree of confinement as plutonium because uranium constitutes a much lesser potential health hazard and compliance with the present Part 20 Appendix B (MPC) values could be demonstrated by air sampling at work stations and estimating exposure times at those air concentrations. However, the proposed revision of Part 20 includes DAC values for uranium which are a factor of 5 less than the MPC values in the present Part 20, and the present method of demonstrating compliance might not be practical.

The problem of demonstrating compliance is even more complex if the worker is exposed to a mixture of chemical and physical forms of a given radionuclide. A single measurement would not indicate which inhalation class (D, W, or Y; see § 20.3) or combination of classes of material might be present. The licensee could assume the material to be Class Y, and thereby potentially overestimate the dose and associated risk. Additional measurements of the characteristics of the individual, the bioassay specimens, and the airborne radioactive material would be needed in order to characterize more accurately the material and the 50-year committed effective dose equivalent which would result from the intake of the mixture.

Another potential problem might be demonstrating compliance with the limits if an individual has previously received an intake of a long-lived radionuclide, such as plutonium (for example, at a Department of Energy facility), before being employed by a licensee such as a uranium fuel fabricator. In this case, it might be difficult to assess either the small incremental intakes of uranium, because of the presence of the radionuclide already deposited in the individual's body, or to assess the dose from the deposited plutonium if the emissions from the plutonium were masked by depositions and emissions from uranium.

In view of these and associated difficulties, an exception to the limitations in § 20.201 would be made in § 20.205 for control of occupational exposures to the radionuclides which are listed in Table 3 of the proposed rule. The radionuclides in Table 3 of the rule include those which are within the most restrictive four decades of DAC values, have radioactive half-lives greater than one year, and are Class Y in lung clearance time. Under the exception in § 20.205, licensees would be permitted to control occupational exposure to these radionuclides in terms of the sum of the (external) deep dose equivalent and the effective dose equivalent actually received in one year from all radioactive material retained in the body of the individual, provided that a number of other conditions are met. In addition to design and operational requirements, and to the annual 5-rem (0.05 Sv) effective dose equivalent limit, these conditions include: (1) Limiting the individual's annual effective dose equivalent from the intake of radionuclides in Table 3 during the licensee's operations to 3 rems or 0.03 Sv (including the contributions from materials carried over from previous years); (2) providing the worker the best estimate of the committed effective dose equivalent for the radioactive material remaining in the body of the worker subsequent to the year of intake; (3) revising the committed dose estimate at least annually; and (4) instructing the worker about the significance of both the annual and the committed dose and the uncertainty of the estimates. The 3-rem (0.03 Sv) annual effective dose equivalent limit is included to constrain individual intakes that could deliver a dose equivalent approaching the limit each year for the rest of the individual's life. This value of 3 rems per year is high enough to permit adequate monitoring and job flexibility, but sufficiently below the basic annual dose limit to ensure that the associated risk to the worker would be within the range found in safe industries. The exception would not apply to the dose limit for individuals in the public.

The 5-rem (0.05 Sv) annual effective dose equivalent limit for the individual applies to the dose from *all* known exposures, e.g., external sources, radioactive material deposited internally from previous exposures, and radioactive material deposited internally during the licensee's operations. The 3-rem (0.03 Sv) limit applies *only* to the annual effective dose equivalent resulting from all long-lived material retained in the individual's body.

If the individual were to receive 3 rems from internally retained radionuclides with long effective half-lives, it would be possible to receive a committed dose equivalent equal to 60% of the annual limit each year for a lifetime from the intake during a single year. If this were to occur, the individual could receive 3 rems from the internal deposition each year and would not be permitted to receive any additional intake of long-lived radionuclides which might add to the annual dose. However, it is unlikely that metabolic behavior of such nuclides will remain so stable over a lifetime that this dose would not decrease somewhat in time. In addition, ALARA efforts should be adequate to keep internal depositions well below the limit.

The Commission believes that these conditions are practical, reflect state-of-the-art health physics practice, and permit adjustment of the committed dose equivalent estimates as better data become available.

XII. Minors and Pregnant Women

In developing the proposed revision, consideration was given to regulating the exposure of classes of workers who might be at a relatively higher-than-average risk from radiation exposures, e.g., minors, fertile women, pregnant women, and embryos/fetuses. For minors (persons less than 18 years of age), the annual limits are 1/10 of those for an adult worker.

The present NRC regulations in 10 CFR Part 19 require that all individuals who might be exposed to radiation in their workplace be informed about the potential risks associated with the exposures. As as matter of policy, the NRC has used a single annual limit for both sexes and has relied on information provided in Regulatory Guide 8.13 ("Instruction Concerning Prenatal Radiation Exposure") to all workers regarding risk to an embryo/fetus.

The susceptibility of the embryo/fetus to damage by radiation is well established and recent information suggests that the period from 10 weeks to 17 weeks in development may be especially critical. In view of the greater sensitivity, it is generally considered desirable to limit the dose to the embryo/fetus to not more than 0.5 rem (5 mSv) during the entire pregnancy. To avoid possible greater damage at higher exposure rates, particularly at some critical time during the development of the embryo/fetus, efforts should be made to avoid substantial variation above a uniform monthly exposure rate which would satisfy this limit. Unfortunately, during one of the critical periods of embryonic organ development (the first two or three months of pregnancy), a woman might not realize that she is pregnant. In order to protect an embryo/fetus before a woman is aware of her pregnancy, a lower dose limit for all fertile women might appear to be desirable. However, establishment of a lower dose limit for all fertile women would result in undue restriction when there is no embryo/fetus to protect and could, therefore,

restrict the employment of virtually all women in the nuclear workforce.

The NCRP recommended in Report No. 39 (1971) that "During the entire gestation period, the maximum permissible dose equivalent to the fetus from occupational exposure of the expectant mother should not exceed 0.5 rem." The ICRP recommended a constraint on the dose to the pregnant woman by selecting working conditions so that she would be unlikely to receive more than about 1.5 rem per year. Because of the shielding provided to the fetus by fluids and the mother's overlying tissues and fluids and the duration of the pregnancy, it is likely that the fetus would receive less than 0.5 rem under such selected working conditions.

Under its responsibility to develop Federal guidance for the protection of workers exposed to ionizing radiation, the Environmental Protection Agency (EPA) has proposed guidance for the protection of the embryo/fetus. This guidance includes a recommendation that the dose equivalent to an embryo/fetus as a result of occupational exposure of a woman declared to be pregant should not exceed 0.5 rem (5 mSv) during the entire gestation period. This recommendation is accompanied by a futher recommendation that conformance to this limitation should be achieved without economic penalty or loss of job opportunity and security to workers. As with previous Federal guidance, the NRC, as a matter of policy will implement the final Federal guidance on protection of the embryo/fetus in its regulations.

Consistent with the proposed guidance to Federal agencies, the proposed revision of Part 20 would require the licensee, following a voluntary declaration of pregnancy by the employee, to limit to 0.5 rem (5 mSv) the dose to an embryo/fetus from occupational exposure of the declared pregnant woman throughout the period of pregnancy unless, as noted below, the embryo/fetus may have alreay received a dose in excess of the limit prior to the declaration. To provide adequate radiation protection for the embryo/fetus, and to minimize the restriction on employment, the Commission recognizes the importance of female workers voluntarily informing their employers of their pregnancy and the estimated date of conception, so that arrangements can be made to restrict potential exposures.

Licensees would be required to use, as dose to an embryo/fetus, the sum of the external radiation (deep dose equivalent) and two times the effective dose equivalent assigned to the expectant mother from the radionuclides which enter the mother's body. The factor of two is the same age-specific factor which was used in deriving the values in Appendix B, Table 2, used in the assessment and control of radiation doses to the public.

The Commission would not consider the licensee in violation of the proposed revision for exceeding the 0.5 rem dose limit if the embryo/fetus had received 0.5 rem, or more, before the pregnant woman notified the licensee of her pregnancy. In order to permit continued employment of the pregnant woman during the remainder of the pregnancy, and recognizing that it is not possible to avoid some additional exposure in a nuclear facility, the proposed revision would permit an additional 1% of the annual dose limit for workers, e.g., 0.05 rem, to be received by the embryo/fetus during the remainder of the pregnancy.

Consistent with the Federal guidance proposed by EPA for protection of an embryo/fetus from occupational radiation exposure of female workers, the proposed amendments to Parts 19 and 20 published by the Atomic Energy Commission on January 3, 1975 (40 FR 799) regarding maintenance of doses to an embryo or fetus as low as is reasonably achievable would be superseded.

XIII. Planned Special Exposures

Removal of the 5 (N–18) "dose-averaging" provision in the present Part 20 could limit the flexibility in the management of some occupational exposures necessary to accomplish tasks in high radiation areas. In order to provide some compensating flexibility, the proposed revision contains a provision from "planned special exposures." However, the provision is designed to be used only in exceptional situation when alternatives which might avoid the higher exposure are unavailable or impractical.

In the proposed provision for planned special exposures, an individual's dose due to all such exposures in a calendar year may not exceed an increment equal to the annual dose limits, Thus, an individual could be permitted to receive 5 rems (0.05 Sv) from planned special exposures in a given year in addition to 5 rems (0.05 Sv) from routine activities (assuming the exposures were all ALARA). No more than five times the annual dose limit may be permitted from all planned special exposures during a "working" lifetime. Doses received from planned special exposures would be recorded along with doses received from normal activities, but would not affect the individual's availability for normal work activities.

The annual and lifetime limits on planned special exposures would be reduced by subtracting from them all doses in excess of the annual limits for normal operating conditions. In other words, overexposures due to accidental or emergency exposure would be added to the planned special exposures for purposes of meeting the annual and lifetime limits of 5 and 25 rems, respectively

A number of limitations would be imposed on licensees prior to the use of the planned special exposure provision. The licensee would be required: To ascertain the dose equivalent from all previous planned special exposures and overexposures for all individuals involved; to inform the individuals involved of the purpose of the planned special exposure event, the estimated doses and special radiation or other conditions that might be involved in performing the task, to provide instruction in measures to be taken to keep the radiation dose and other risks ALARA; and to provide to the employee a written report of the radiation dose actually received. These limitations are designed to ensure protection of the workers and to discourage unwarranted use of this provision.

Consideration was given to permitting a whole body dose equivalent as high as 10 rems from a single planned special exposure event. The 10 rems would be consistent with the ICRP recommendations. However, supporting data have not been found to demonstrate the need for a 10-rem supplemental dose in a year.

Planned special exposures will be restricted to external exposures only. The intake of radioactive material during planned special exposures must be controlled within the limits on committed effective dose equivalent for normal operating conditions. Respiratory protection equipment should be used for planned special exposures when an individual might encounter high airborne concentrations of radioactive material.

Consideration was given to making the use of planned special exposures subject to voluntary action on the part of the individuals receiving the exposure. This approach was not proposed because the risk of suffering health damage from these limited exposures is small and the justification for having the planned special exposure feature is the recognized need of the licensee to accomplish important occasional tasks vital to continued operations. The revision is believed to contain adequate features to permit the licensee to have the assured labor

resources when they are needed while providing adequate worker protection.

Consideration also was given to prohibiting fertile women from participation in planned special exposures. A planned special exposure could result in a whole body effective dose equivalent of 5 rems at the limit, plus an additional 5 rems received during normal working conditions. This theoretical dose equivalent of 10 rems for a possibly pregnant woman could represent a significant increase in risk of damage to the embryo/fetus above the risk from the 0.5 rem limit specified for declared pregnancies.

However, this prohibition has not been included in the revision because of consideration of the following factors. The prohibition would require licensees to either exclude all women from planned special exposures or to question, with the associated invasion of privacy, the reproductive capability of female employees. The prohibition could unnecessarily restrict the work opportunities for women who could choose not to become pregnant during the time intervals involving the higher planned special exposures. The availability and effectiveness of birth control methods now available provides a reduced probability of an unplanned or unexpected pregnancy. Moreover, the dose limit that would be specified for the embryo/fetus would prevent declared pregnant women from participating in planned special exposures.

XIV. Overexposures

The present Part 20 does not specifically address overexposures of workers. However, the present Part 20 does restrict the further exposure of a worker who has exceeded the quarterly limits (1.25 rems per quarter or 3 rems per quarter if the 5(N–18) "bank" has not been "used up") only for the remainder of the quarter in which the overexposure occurs.

The proposed revision would limit the dose equivalent for workers to 3 rems (0.03 Sv) in any quarter and 5 rems (0.05 Sv) in a year. If an individual were to receive more than 3 rems, but less than 5 rems, in a quarter, the worker would still be limited to 5 rems for the year, unless the dose was permitted under the planned special provisions.

The proposal revision would also provide that, except for planned special exposures, individuals who receive occupational doses in excess of the 5-rem annual limits before the end of the calendar year could not be assigned tasks involving more than 1 rem (0.01 Sv) effective dose equivalent each quarter during the remainder of the calendar year, including the quarter in which the overexposure occurred. The additional dose is allowed to permit the continued employment of the individual in the licensed facility, recognizing that it would not be possible to work in the facility without receiving some additional exposure. The risk associated with an overexposure generally would not warrant the removal of the individual from employment in the licensed facility during the remainder of the calendar year. The Commission believes that for those individuals who do not exceed the annual dose limits, the regulations should not present a potential for adversely affecting an individual's availability for continued employment within the basic dose limits, provided that there is no medical advice to the contrary and the individual chooses to do so.

Any portion of the dose received in excess of the annual limits would be subtracted from the annual and lifetime planned special exposure limits and would be required to be reported in every case. Overexposures and use of planned special exposures are expected to be uncommon occurrences, and few individuals would reach the planned special exposure lifetime limit of 25 rems (0.25 Sv).

Consideration was given to limiting additional doses to overexposed workers to 1% of the annual limits. The reason for this suggestion was that it would place more emphasis on the unacceptability of overexposures and to stress the desirability of ALARA levels. This alternative was rejected because of the difficulty in being able to demonstrate compliance through measurements of doses at 1% of the annual limits.

Other limitations such as 6% of the annual limits and 6% of the annual limits per quarter were rejected in favor of the proposed 1 rem per quarter increments because of considerations relating to employability of exposed workers.

XV. Emergency and Accident Conditions

The revision of Part 20 specifically states that the dose limits for normal operating conditions do not apply to emergency conditions. Emergency conditions cannot be detailed in advance of their occurrence, i.e., the conditions will be entirely event-specific. During emergency conditions, it might be necessary to make prompt decisions on actions that could involve some individuals being exposed to high radiation levels in order to prevent even higher exposures to other workers or to members of the public or the spread of radioactive contamination. Because of this, the Commission may require, as part of the licensing process, licensees to develop contingency plans, including how they intend to make prompt decisions on the use of exposure levels that are higher than the proposed regulations would permit. Doses received during emergency conditions or from an accident would become part of the individual's annual occupational dose record and would be subtracted from the annual and lifetime planned special exposure dose limits.

Accidental occurrences, such as tears in rubber gloves or cuts from broken contaminated glassware, can be a principal cause of exposures, particularly for operations which are performed in confinement systems. Such accidents occur with sufficient frequency that the provisions of Part 20 for normal operating conditions should apply. An accidental occurrence does not necessarily constitute an emergency

XVI. Transient and Moonlighting Workers

In situations where the worker is likely to receive more than 25% of the basic quarterly dose limits, the present Part 20 requires a licensee to obtain a written signed statement of each individual's previous occupational dose. This statement must be obtained prior to first entry of the individual into the licensee's restricted area during each employment or work assignment (if the worker is not an employee of the licensee). If, for a given individual worker, the licensee wishes to permit doses up to 3 rems per quarter (within the 5(N–18) dose-averaging formula), the licensee must obtain the lifetime occupational exposure history of that individual on NRC Form 4.

In the proposed revision, licensees would continue to be required to assess and control the total occupational dose received by all individual workers, including transient workers and moonlighters. The licensee must ascertain the occupational exposure history during the current year for all workers likely to require provision of individual monitoring devices or services, and to control additional occupational exposures so that the total dose does not exceed the limits. NRC Form 4 would be revised for this purpose.

There is also a requirement in the present Part 20 (§ 20.408) for termination reports to be filed by seven categories of licensees.[4] The requirement was

[4] Power reactors, industrial radiographers, fuel processors, high-level waste repositories, independent spent fuel installations, certain large

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designed to provide information on the use of, and exposure experience of, individuals who work for more than one licensee in a calendar quarter (transient workers), or who work for more than one licensee at the same time (moonlighters). The categories of licensees required to submit termination reports were believed to involve the greatest potential for use and significant exposure of transient and moonlighting workers.

The requirement for termination reports in the present Part 20 would be continued in the proposed revision for those seven categories of licensees presently required to report. The reporting would be in terms of annual and committed effective dose equivalent, as appropriate.

The proposed revision would retain the 3 rems (0.03 Sv) per quarter limit for deep dose equivalent, similar to the present Part 20 (see the discussion of combined internal and external doses). Retention of the 3-rems quarterly limit would ensure that the proposed revision will not permit transient workers to receive greater doses than the present Part 20, even for short-term employment.

XVII. Standards for Individuals in the General Public

Dose Limits

The present Part 20 does not contain dose limits, as such, for the general public. Rather, it presents values for concentrations of specific radionuclides in air and water and levels of radiation in unrestricted areas from which one may infer a dose limit equal to 1/10 the limit for radiation workers. This "inferred" dose limit is 0.5 rem per year, which is consistent with the Federal Radiation Protection Guidance developed by the Federal Radiation Council and promulgated by the President May 18, 1960 (25 FR 4402).

There is no provision in the present Part 20 for summation of external and internal doses to the public. The short-term dose rate limits in the present Part 20 are based on the assumption that the dose rates will not persist for significant fractions of the year. The limitations on effluents are calculated so that an individual continuously present at the boundary of the restricted area could receive 0.5 rem whole body dose equivalent, or the dose equivalent limit to other single organs and tissues, from the air or water effluents. There is an additional provision that the Commission may limit quantities of radioactive materials released if it appears that the intake from air, water, and food by a suitable sample of an exposed population group, averaged over a period of a year, would exceed one-third of the limit (§ 20.106(e)).

One of the important differences between the present Part 20 and the proposed revision is the treatment of limitations. In the present Part 20 the basic approach is that if a licensed activity results in exposures which result in doses at or below stated limits, it is generally acceptable and requires no further effort to reduce the exposures. There is a sharp line of demarcation which occurs at the limits. In the proposed revision, there is a graded scale of actions which occurs between the limiting dose conditions and zero doses. This is accomplished by: Specifying limiting dose conditions (upper bound); requiring doses to be as low as reasonably achievable (ALARA); and specifying reference levels (below the dose limits) which require specified actions to be performed at that level.

The proposed revision of Part 20 would explicitly set the annual dose limit at 0.5 rem (5 mSv) to an individual member of the public, considering all known sources of both external and internal dose, other than natural background and medical diagnosis and therapy. The short-term dose rate and the effluent concentration features used as limits in the present Part 20 are carried as reference levels in the proposed revision. In this context, they provide precautionary control procedures while meeting the annual limits on dose equivalent to individuals in the public.

An individual member of the general public might receive exposure to radiation or radioactive material from several sources—some subject to regulatory requirements under the Atomic Energy Act, others not—and from several pathways. (Some facilities operated by or for the Department of Energy (DOE) and the Department of Defense (DOD) are not subject to NRC regulation. X-ray machines, accelerators, and most naturally occurring radioactive material also are not subject to NRC regulation.) If effluents containing radionuclides are released, external exposures occur directly from the passing plumes, from radionuclides in the environs, or from radionuclides taken into the body by inhalation or by ingestion of water or locally produced foodstuff. The exposures of such individuals can be substantially more difficult to estimate accurately than that of a worker who will generally be exposed only to the licensed radioactive source and only by one or two exposure modes (generally by direct exposure to an external source, and, in some instances, by inhalation of airborne radionuclides). The individual worker's exposure can be readily monitored, but exposures of the individual member of the public cannot be easily determined, because it requires detailed knowledge of living conditions and habits. Where these uncertainties exist, the Commission believes that conservative, but reasonable, values for parameters generally should be selected by the licensees when estimating public doses.

Numerically lower limits for doses to the general public in the vicinity of uranium fuel cycle facilities have been established by EPA (40 CFR Part 190), and limiting conditions for operation of light-water-cooled nuclear power reactors have been set by the NRC (§ 50.34a, § 50.36a and Appendix I in 10 CFR Part 50.) These limits were based on ALARA considerations at the time of development.

0.1-rem (1 mSv) Per Year Reference Level

Dose limits are intended to apply to real doses to persons actually exposed. However, it is impossible to accurately determine such doses because of incomplete information about personal food intake and habits, individual metabolism, spatial and temporal considerations, and other confounding factors.

To compensate for this lack of information, it is necessary for licensees to assume values for these factors that are conservative (i.e., tending to overestimate the dose). Compliance with the dose limits can then generally be established in a practical manner by evaluating exposures against a reference level that is a small fraction of the annual dose limit. This assumes that the annual dose to the maximally exposed real person is not likely to exceed a fraction of the limits, and almost certainly will not exceed the limits even if there are other licensed and unlicensed radiation sources in the vicinity. For these reasons , a dose equivalent reference level of 0.1 rem (1 mSv) per year is proposed for individual members of the public. Table 2 of Appendix B contains derived air and water concentrations which are based on 0.1 rem per year to an individual in the general public. This table can be used in making dose projections. Licensees operating within this reference level would be confident that no individual member of the public would be likely to exceed a dose

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commercial suppliers of byproduct material, and licensees receiving radioactive waste from other persons for disposal under Part 61.

equivalent of 0.1 rem per year for a substantial fraction of the individual's lifetime. Thus, the lifetime calculated risk to any individual member of the public is unlikely to exceed 1×10^{-3} per year when exposed continuously to a dose rate of 0.1 rem per year over a lifetime.

If a license has reason to believe that an individual in the general public might have received, or is likely to receive, greater than 0.1 rem (1 mSv) in a year as a consequence of the licensed activity, the licensee would be required to report this to the NRC. In the report, the licensee would be required to provide evidence that the 0.5-rem (5 mSv) dose limit will not be exceeded, describe the application of ALARA provisions of the radiation protection program, and provide the reason why the estimated dose exceeds 0.1 rem per year.

While it is anticipated that essentially all licensees can and will operate within the 0.1-rem reference level, applicants or licensees who anticipate difficulty in demonstrating operation within the 0.1-rem (per year) reference level may apply to the NRC for prior approval to operate in a manner which might cause estimates of dose to individuals in the public greater than 0.1 rem (per year). Information which would be submitted to the NRC for this prior approval would include: Demonstration of a clear need to operate in excess of the reference level; the licensee's program to assess and control dose within the 0.5-rem annual limit; and the licensee's procedures to be followed to maintain public exposures ALARA.

It is emphasized that the reference levels are not limits for permitted dose, but rather define actions required to be taken by the licensees at specific exposure levels. The 0.1-rem reference level will have the effect of constraining the dose to individuals to 0.1 rem per year, or less, and will be in accord with the recommendations of the ICRP for potential long-term exposures of individuals. These proposed regulations should result in exposures to members of the general public being well below the 0.5 rem per year dose limit.

XVIII. De Minimis Level and Collective Dose Evaluations

The need has long been recognized for a de minimus feature in the standards for protection against radiation in order to avoid extending regulatory actions beyond what is needed to adequately protect public health. Applied to radiological protection, de minimis could be a level of risk (or dose rate, as a surrogate measure) so low that it would be a trifle in comparison to the risks which the individual is subjected to daily as part of normal living habits and activities. It would constitute a level of risk so low that no resources could be justified to control it, or to be further concerned with it. The Food and Drug Administration (FDA) has used, in essence, such a rationale in a notice of proposed rulemaking to establish an acceptable level for the presence of carcinogens in food additives (44 FR 17092, March 20, 1979). The FDA concluded that a risk of 1 diethylstilbestrol (DES)-induced cancer death in 1 million persons over a lifetime would constitute such a level. See also, *Monsanto Co. v. Kennedy* (D.C. Cir.) 613 F. 2d 947,954 (1979). This risk value appears acceptable in that it is an insignificant incremental risk to the "normal expectation" risk of about one chance in four of contracting cancer. Normal risks of accidental harm are even greater.

There are a number of ways to establish a de minimis level where exposures to radiation are encountered. Many suggestions have been made to select a de minimis value based on variations of the naturally occurring "background" radiation from cosmic and terrestrial sources. Background levels are highly dependent on local geology and altitude. Background levels varying from less than 0.1 rem to over 0.2 rem per year can be found in the United States. Reference to natural radiation background levels provides a good perspective on radiation exposures, but it is not clear how this range could be used to select a de minimis level that has unique advantages over a judgment on risk in terms of cancer deaths and hereditary diseases.

In view of the Commission's policy to use quantified risk as an important factor in decisionmaking, the de minimis level can be based on a quantitative lifetime risk of dying from a radiation-induced cancer and a subjective judgment that such a risk is insignificant in the view of society. (Hereditary diseases in the first two generations are treated as equivalent to cancer deaths in the ICRP system of dose limitation and are included in the following numerical examples.) Since the total risk coefficient in Table 2 is 1.65×10^{-4} per rem for whole body deep dose equivalents, a risk of 1 in 1 million persons in a lifetime (about 70 years), would be about 0.1 mrem per year.

$$10^{-6}\ \frac{\text{Cancer deaths}}{\text{lifetime}} = D\ \frac{\text{rem}}{\text{year}} \times 1.6 \times 10^{-4}\ \frac{\text{Cancer deaths}}{\text{rem}} \times 70\ \frac{\text{years}}{\text{lifetime}}$$

Solving for "D,"

$$D = \frac{10^{-6}}{70 \times 1.6 \times 10^{-4}} = \text{approximately } 10^{-4}\ \frac{\text{rem}}{\text{year}} \text{ or } 0.0001 \text{ rem per year}$$

Thus, if an individual were to receive 0.0001 rem per year every year for a lifetime, the calculated risk of cancer death (or hereditary disease) induced by radiation would be about 1 in 1 million.

The de minimis level would be a lower limit for regulatory concern which would be applicable to any licensed activity. The establishment of a de minimis dose level does not imply that at higher levels it is necessary to spend resources for radiation protection purposes. Indeed, when an ALARA level for a specific activity is determined, even when it approaches the basic annual limit, additional resources for radiation protection would not be required to reduce the level further. But an ALARA level is *not* a de minimis level. Of course, should an licensee operate in a manner that the de minimis level is satsified, these operations are by definition ALARA, because to commit further resources would be unjustifiable from a health protection viewpoint alone.

The relationship between the dose limit, ALARA and a de minimis level is illustrated in Figure 1. Note that ALARA is determined by the case-specific evaluation. However, ALARA evaluations could be made for generic licensed activities and an ALARA value determined for those applications. This information could be used as a basis for an exception for some of the requirements of the rule.

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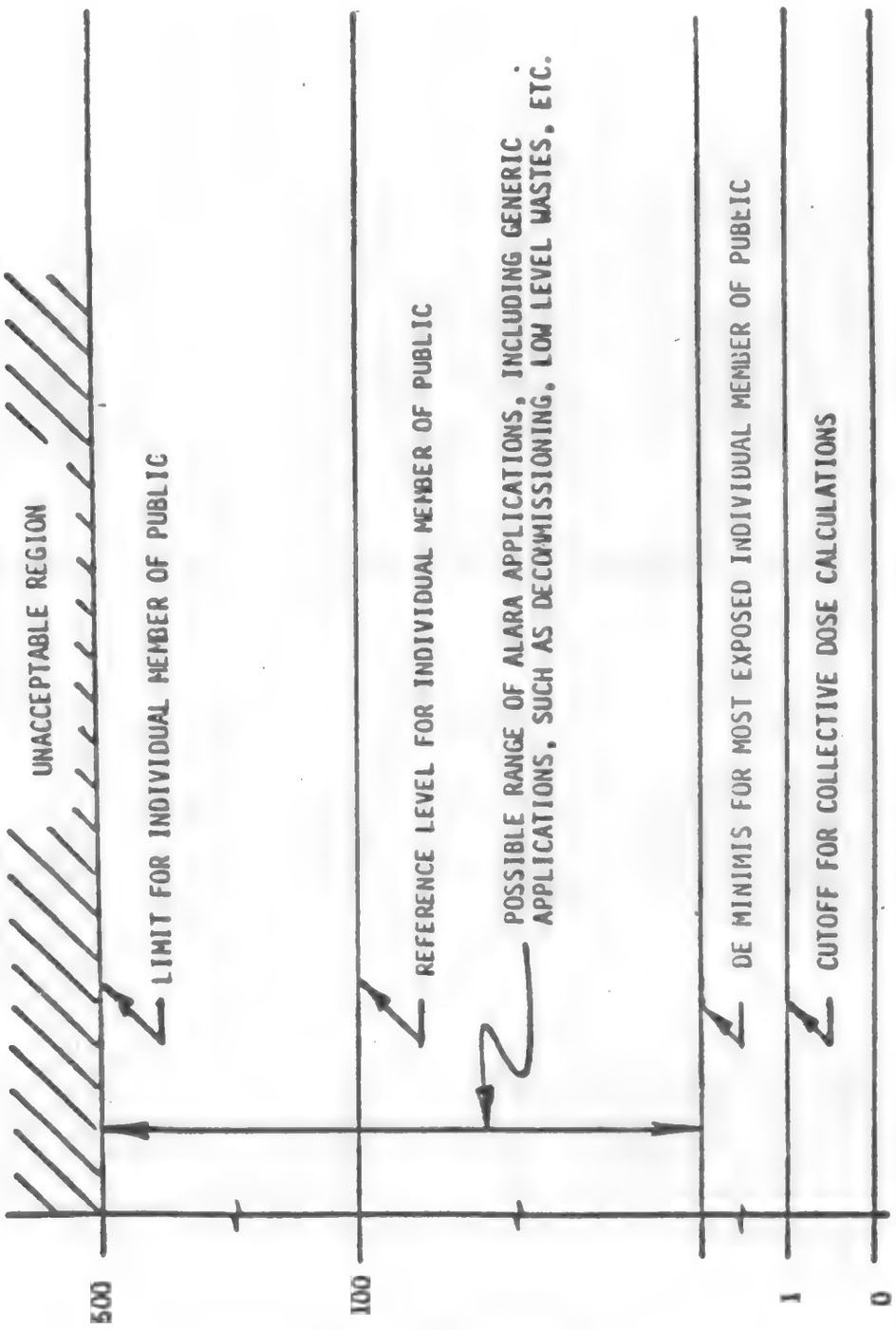


FIGURE 1 - RELATIONSHIP OF LIMIT, REFERENCE LEVEL, ALARA, DE MINIMIS, AND COLLECTIVE DOSE CUTOFF LEVEL

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Enclosure 1

The development of this proposed revision of Part 20 included consideration of de mimimis doses lower (see above) and higher that 0.001 rem in a year for the most exposed individual to define sources of exposure below the level of regulatory concern. Some reviewers of preliminary drafts expressed concern that the de minimis provision could permit abuse. For example, licensees might use de minimis findings in lieu of operating procedures that would reduce or avoid dose to the public; radioactive materials might be more widely used in consumer products without controls, thus presenting potential problems of acceptability; inadequate evaluations might be made of doses to the public before release to the environment of very low level radioactive waste streams; or systems for reducing the radionuclide content of effluent streams might not be operated unless subject to specific license requirements. On the other hand, many reviewers believed 0.001 rem per year was too low. Consequently, this broader de minimis feature of applying the concept to the most exposed individual has not been included in the proposed revision.

A more limited application of the de minimis concept has been proposed. Following consideration of lower and higher numbers, a value of 0.001 rem (0.01 mSv) per year per person was selected for limiting the extent of evaluating collective doses to populations. Application of the de minimis level to collective dose estimates would, among other things, limit both the size of the population and the time over which collective dose would need to be considered in evaluating activities associated with the release of radioactive materials to the environment.

The proposed application of the de minimis concept could have a substantial influence on the evaluations of conditions where very large numbers of people are subjected to very low dose rates. In essence, the proposed rule would suggest disregarding extremely low dose rates (0.001 rem per year) without regard to the number of people exposed at that level or less. Thus, this contibution to estimates of collective doses would be disregarded. Where collective doses to a population are evaluated, the acceptability of the associated potential risks can also be compared to the sum of potential risks experienced by the same population over the same time interval. Consequently, even though some de minimis applications could result in very small but finite doses to very large numbers of persons, the comparative collective risk to which these people are routinely subjected (for example, from natural background radiation) is also very substantial and proportional to the number of persons considered.

Commission is particularly interested in comments on the application of the de minimis concept in radiation protection regulations. Comments are especially invited on the merits of adding to the regulations the application of the concept to the most exposed individual, the cutoff of collective dose evaluation, the numerical values chosen. A suggested level, reasons for the level, and conditions for application would be helpful.

XIX. Surveys and Monitoring

The revision includes a general requirement for licensees to perform surveys and monitoring to demonstrate compliance with the regulations and to provide NRC with information for assessing the adequacy of the licensee's radiation protection program, particularly the effectiveness of ALARA provisions. The comprehensiveness of the survey and monitoring efforts would be determined by the presumed hazard. Detailed guidance on health physics surveys is provided in NRC Regulatory Guides, such as 8.21 "Health Physics Surveys for Byproduct Material at NRC-Licensed Processing and Manufacturing Plants."

The revision would require the use of individual monitoring devices by individuals who enter a high radiation area, and by adults who are likely to receive from external radiation sources an annual deep dose equivalent greater than 0.5 rem (5 mSv), a dose equivalent greater than 1.5 rems (15 mSv) to the eye, or a dose equivalent greater than 5 rems (0.05 Sv) to the skin or extremities. Adults who are likely to exceed 30% of the ALIs would also be required to be individually monitored for the intake of radioactive material. Establishment of these monitoring requirements at the different levels (10% for external whole body dose and for other external exposures versus 30% for intake of radioactive material), rather than at a common level, reflects consideration of the relative ease and practicality of using dosimeters to monitor doses from external sources compared to monitoring doses from internal sources.

The revision would require individual monitoring of minors who are likely to receive 5% of the adult annual limits for both external dose equivalent (0.25 rem or 2.5 mSv for whole body exposure) and intake of radioactive material. The present requirement for monitoring external dose to minors is 5% of the quarterly extenal whole body dose equivalent limit (0.0625 rem). The present Part 20 does not contain a monitoring level for intake of radioactive material for minors, but limits exposure of minors to the concentrations permitted in unrestricted areas.

The revision would require assessment of intakes of radionuclides to aid in determining the internal dose to individuals. However, because there are many factors that must be considered, it is not practical to incorporate specific detailed requirements for bioassay in this revision of Part 20. Measurements of concentrations of radionuclides in air would be required for an individual who enters a designated "airborne radioactivity area." The methods used in monitoring to control inhalation of radionuclides must consider: (1) The radionuclide involved; (2) the physical and chemical forms of the materials; (3) the metabolic behavior; and (4) the sensitivity and availablity of measurement techniques.

It is expected that ICRP metabolic models and information on the chemical and physical forms of the radioactive materials will be used to derive committed dose equivalents from assessed intakes. However, if metabolic data for the exposed individual are available, they should be used. Owing to uncertainty in parametric values, in circumstances where dose limits may have been exceeded or closely approached, or when restrictions on employment due to dose are contemplated by the licensee, it would be appropriate to consider the personal metabolism of exposed individuals and to determine the appropriate dosimetry parameters by a special monitoring program to ensure that the doses are not substatially underestimated.

Consideration was also given to incorporating specific requirements for effluent and environmental monitoring during normal operations, for the capability to monitor radioactive releases and radiation levels associated with anticipated operational occurrences and postulated accident situations, and for standard performance or proficiency tests of radiation and radioactivity measurements. It was concluded that effluent and environmental monitoring requirements, for both normal and abnormal operating conditions, must be based on considerations that are specific to the nature of the particular licensed activity and to the environs of the licensee's facility. Such specific requirements are included in individual license conditions or technical

specifications and are not warranted in Part 20, which applies to all licensees.

XX. Posting Requirements

Several changes have been proposed to the present Part 20 posting requirements. A new requirement would call for posting very high radiation areas with a sign bearing the radiation symbol and the words "Danger" (not "Caution") "Very High Radiation Area." This posting would be in addition to the controls discussed below.

The present Part 20 provides that a licensee need not post a caution sign in a room or area containing a sealed source if the radiation level at 1 foot from the surface of the source container does not exceed 0.005 rem per hour. This provision has been deleted because the Commission staff believes that any area in which radioactive material is used or stored in quantities that exceed those listed in Appendix C should be posted as a warning to personnel such as housekeeping staff, firemen, or others who might be required to enter the area.

XXI. Procedures for Handling Packages

Procedures for picking up, receiving, and opening packages would be changed in several respects. Currently a licensee is required to make arrangements to receive certain packages offered for delivery or to receive notification from the final carrier if the package is to be picked up. The present Part 20 contains a table of "Exempt" and "Type A" Quantities which identifies those packages for which such arrangements must be made. This table would be replaced in the proposed revision by reference to the Type A_2 quantities specified in, or determined by procedures described in, Appendix A of 10 CFR Part 71. Further, licensees would be required to assess both the level of removable radioactive contamination on the surface and the radiation level at 1 meter from the external surface of all packages of radioactive material. The exceptions from such monitoring requirements in the present § 20.205(b) would be deleted. The present requirement to monitor the radiation level at the surface of the package would be deleted since this requirement increases the occupational radiation exposure of the person performing the measurement and increases the licensee's costs without a corresponding increase in detection of faulty packages.

XXII. Access to High and Very High Radiation Areas

The controls required on access to high and very high radiation areas have been changed from those in the present Part 20 in several respects. The provision in the present Part 20 that a licensee may substitute direct surveillance for other types of controls over access to high radiation areas established for a period of 30 days or less would be changed to permit use of direct surveillance without regard to the number of days involved. It should be noted, however, that this surveillance requires the continuous physical presence of an individual capable of taking all of the precautions that might be necessary to prevent unwarranted exposure of individuals.

The additional controls on access to very high radiation areas (areas where there might be ratiation levels of 500 or more rads/hour (5 or more grays/hour) at one meter from a source or from a surface which the radiation penetrates) would be required of all licensees. Only those licensees who use sealed radioactive sources to irradiate materials are required by the present Part 20 to use such additional controls. The revised requirements have been simplified to the degree considered consistent with achieving positive assurance that individuals will not be inadvertently exposed at very high dose rates which present an immediate threat of lethality in any type of licensed facility.

XXIII. Disposal into Sewerage

The NRC is proposing several significant changes in the present Part 20 provisions for release of radioactive material into sanitary sewerage. The revision recognizes that there can be multiple contributors of radioactive material to sanitary sewerage and the dilution afforded by the system should not be relied upon to achieve "acceptable" concentrations in effluents.

The gross quantity (curies) of licensed and other radioactive material that the licensee may release into the sewerage in a year would remain unchanged. However, in the proposed revision, the concentrations that may be released into the sewerage would be those which, if ingested, could result in a calculated committed effective dose equivalent of 0.5 rem (5 mSv) in a year to reference man.

The average concentration of licensed or other radioactive material that the licensee may release into the sewerage in one month would also be limited. The average concentration in the total volume of sewage released by the licensee in a month would not be permitted to exceed the concentration calculated by dividing the occupational oral ingestion ALI by 7.3×10^6. This value is derived by adjusting the annual water intake by ICRP's reference man, 7.3×10^5 ml, by a factor of 10 to reduce the occupational ALI to an intake corresponding to 0.5 rem for an adult in the general population. The concentrations are presented in Table 3 of Appendix B for each radionuclide. The present Part 20 provisions for the daily averaging of releases to the sanitary sewerage, and for the daily release of quantities up to 10 times the existing Appendix C quantities, regardless of the concentration in the licensee's sewage, would be dropped.

While it is clear that people do not directly ingest sewage, intakes of drinking water systems are often located downstream from sewage treatment plants. Some radioactive materials in sewage might not be removed by sewage treatment or by intake water treatment processes and, therefore, could constitute a source of exposure for the general population.

XXIV. Sea Disposal

The present Part 20 (§ 20.302(b)) states that "The Commission will not approve any application for a license for disposal of licensed material at sea unless the applicant shows that sea disposal offers less harm to man or the environment than other practical alternative methods of disposal." The proposed revision deletes this statement. The deletion reflects the mandate of the 1972 Marine Protection, Research, and Sanctuary Act (Pub. L. 92–352) which transferred responsibility for regulating the ocean disposal of radioactive wastes from the NRC to EPA.

XXV. Medical Exceptions

The present Part 20 contains three exceptions to the basic radiation protection standards that are specific to medical situations. The proposed revised Part 20 contains two of these medical exceptions essentially as they appear in the present Part 20: An exception for release of patients' radioactive excreta into sanitary sewerage; and an exception for control of entrance or access to rooms or other areas of hospitals that are high radiation areas solely because of the presence of patients containing radioactive material. The exception from posting rooms or other areas of hospitals because of the presence of patients containing byproduct material would be amended to require posting of the rooms or areas used for patients being treated with therapeutic quantities of unsealed radioactive material or with brachytherapy sources. Such posting has been recommended in Regulatory Guide 10.8, "Guide for the Preparation of

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Applications for Medical Programs," since January 1979.

Consideration was given to requiring the collection of urine from hospitalized patients undergoing therapy with unsealed radionuclides, such as iodine-131, and the treatment of this urine as radioactive waste. However, such requirements were not included in the revision because of the potential for occupational exposure of hospital personnel and the protection afforded by the requirement in § 20.102 that releases of radioactive material to the sanitary sewerage are to be maintained ALARA.

XXVI. Records

The recordkeeping requirements necessary to implement the proposed regulation are grouped in Subpart L of the revision.

Licensees would continue to be required to maintain records of most surveys for two years. However, records of surveys used to assess (internal) committed effective dose equivalent; external dose equivalent in cases where dosimeters are lost, destroyed, or the data from the dosimeters are otherwise unavailable; and releases of radionuclides in effluents to the environment, would be required to be maintained until the Commission terminates each pertinent license requiring the record.

The revision would require licensees to determine the occupational radiation exposure history of each individual likely to require provision of individual monitoring devices or services pursuant to § 20.502. The licensee would use a revised NRC Form 4, or equivalent, to record all periods of prior occupational exposures (as provided by and certified by the worker), the occupational dose equivalent received during the current calendar year, and any dose from planned special exposures plus any overexposures (including those from accidents and emergency conditions) received during the lifetime of the individual. Licensees would not be required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed under the regulations in effect prior to the effective date of this revision. (A copy of the draft revised NRC Form 4, "Occupational Radiation Exposure History," is presented at the end of this notice.)

The records of current individual monitoring results at the licensed facility would include the results of assessment of the external dose equivalent, the internal dose equivalent, and the sum of those as the effective dose equivalent. NRC Form 5 would be revised for this purpose. (A copy of the draft revised NRC Form 5, "Current Occupational Radiation Exposure," is presented at the end of this notice.) Separate entries would be made for doses received during any planned special exposures and any dose received in excess of the annual limits. Licensees operating under the provisions for control of exposure to long-lived radionuclides (proposed § 20.205) would be required to record both the annual effective dose equivalent and the 50-year committed effective dose equivalent associated with the intakes of radioactive material.

For routine occupational exposure to generally uniform external radiation, the dose equivalent to the whole-body, lens of eye, skin, and extremities are usually assessed from a single personal dosimeter and recorded. When the dose equivalent to a body part, such as a hand, is likely to significantly exceed the whose body dose equivalent, and particularly if it is likely that the annual dose equivalent will exceed 10% of the annual limit for the body part, good practice would suggest that additional dosimeters should be worn to assess the dose equivalent to that body part and the monitoring result recorded for that body part.

The recording of exposures to internal radiation is less straight-forward than for external radiation. Four pieces of information would be recorded for each radionuclide and for each physical and chemical form of intake concerned: The radionuclide and lung clearance class; the estimated intake (in μCi or Bq); the ratio of the estimated intake to its specific ALI; and the estimated committed effective dose equivalent from the intake.

XXVII. Reports

The proposed reporting requirements are grouped in Subpart M of the revision. Several of these proposed requirements, i.e., "Reports of overexposures and excessive radiation dose levels and concentrations of radioactive material," would not be changed in intent or substance from the present Part 20. However, the proposed requirements would reflect changes in the proposed system of dose limitation. Two of the initiating criteria (loss of operating time of a facility and monetary values on damage to property) have been deleted from "Notification of incidents." The deletions were made when it was determined that: (1) There was no adequate practical definition of a "facility"; (2) the $200,000 monetary value has not been adjusted for economic changes; and (3) neither of the criteria warrant "immediate" notification.

The Commission decided to incorporate into this overall revision of 10 CFR Part 20 its 1983 proposed revision of 10 CFR 20.204 which requires reports of theft or loss of licensed material. This notice supersedes the Commission's proposed amendment to 10 CFR Part 20 published on May 9, 1983 (48 FR 20721). Because the requirements for reports of theft or loss in this proposed rule are substantively the same as in the 1983 Notice of Proposed Rulemaking, public comments submitted on that notice will be considered under this action.

Planned Special Exposures

Each time that a planned special exposure is conducted the licensee would be required to submit a report to the NRC that indicates the date on which it took place. In addition, the licensee would be required: To maintain detailed records of all aspects of the planned special exposure (see § 20.1103); and to inform, in writing, each individual so exposed of the dose resulting from the planned special exposure (see § 20.206(h)).

0.1-rem (1 mSv) Reference Level

A report would be required within 30 days after the licensee becomes aware that a member of the public received, or was likely to receive, an effective dose equivalent of 0.1 rem or 1 mSv (or higher value if prior approval was granted under the provisions of § 20.303(c)) in a calendar year from sources under the licensee's control. This report would provide the Commission information on substantial sources of exposure to the public and would permit the Commission to focus attention on those programs contributing the larger doses. The reports would also help the Commission to focus on contribution of dose from multiple sources and on additional efforts or requirements that might be warranted to ensure in its judgment that doses to the public are being maintained ALARA and below the annual limit from all known sources, e.g., licensed and unlicensed sources.

Annual and Termination Reports of Exposure

The proposed revision would continue the existing requirements for submission of annual statistical summary reports of monitoring data (§ 20.1206) and of reports of exposure to radiation and radioactive material upon termination of employment or work assignment in the licensee's restricted area (§ 20.1207). These reports would be required of the

same seven categories of licensees as in the present Part 20. The reports would differ from those in the present Part 20 in that the doses reported would include external and internal contributions to the effective dose equivalent and that the time for submission of the annual statistical summary report would be extended from three months in the present rule to seven months in the proposed revision.

In developing the proposed revision, two alternatives for reporting doses received by workers were considered. One alternative would have required all holders of specific licenses to submit an annual report of the effective dose equivalent received by each individual for whom monitoring was required (or for whom monitoring was provided, if that was more practical for the licensee to report). The other alternative would continue the requirement that licensees keep records of monitoring data, but not require them to submit reports to the NRC.

The proposed requirement was chosen because it appears to have relatively minimal economic impact while still providing a means for the Commission to ensure itself that the protection of workers is maintained in those categories of licensees most likely to have the higher exposures.

The Commission requests comments on this issue of reporting requirements, specifically the submission of annual reports of individual monitoring data to the NRC and the provision of such reports to individuals. Also, regardless of the reporting alternative chosen, the Commission encourages the industry, or segments of the industry, to establish a system of collection and collation of annual doses to individuals and seeks comments on this possibility.

XXVIII. Implementation

The implementation of the revised Part 20 would require coordination through a number of interfaces with international, Federal and State organizations, licensees, and various offices of the NRC.

International

Since the revision of Part 20 would, in essence, adopt the dose limits recommended in ICRP 26 and the effective dose equivalent concept, the exposure and dose data from the United States would be comparable to those obtained from other countries who are also proposing regulatory actions which would implement the ICRP recommendations. United Nations organizations, such as the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR), and the International Atomic Energy Agency (IAEA), and the Nuclear Energy Agency (NEA) of the Organization for Economic Co-operation and Development also would be using radiation protection evaluations (e.g., effective dose equivalents) similar to those of the revised Part 20. If the revision is adopted, the impact with respect to the international technical efforts would be minimal. If the present Part 20 is not revised, the impact on the United States international activities could be substantial, e.g., exposure and dose data from other countries could not be compared with U.S. data and technical discussions would be hampered.

The guidance on collective dose evaluations in the revised Part 20 is likely to be of substantial international and domestic interest. The reactions undoubtedly will be mixed. The ICRP recommended requiring optimization, which includes evaluating the collective doses to all persons in all locations over all time from all radiation sources. The revised Part 20 would *not* require optimization evaluations. The limiting of collective dose evaluations is contrary to the official ICRP philosophy, and opposition by IAEA and some other organizations and countries who are committed to the ICRP recommendations can be anticipated. Other countries are also considering de minimis provisions and would endorse the proposed revision.

Federal

Under the Atomic Energy Act of 1954, as amended, and Reorganization Plan No. 3 of 1970, the EPA has the authority to establish "generally applicable environmental standards" for radiation protection, as well as the responsibility of advising the President in radiation matters, a function of the former Federal Radiation Council (FRC). In 1981 (46 FR 7836), EPA published for comment propoed Federal Radiation Protection Guidance for Occupational Exposure to replace the limits for radiation workers in the 1960 Federal Radiation Protection Guides. The proposed guidance was revised to reflect the comments received and was submitted to affected Federal agencies for concurrence. All these agencies have concurred with the revised proposed Federal guidance. It must now be submitted to the President for approval and signature for it to become effective guidance to Federal agencies.

The draft Federal guidance does not address radiation exposure of the general public and, therefore, the 1960 Federal Guides applicable to the general public will remain in effect. EPA has promulgated standards under the Clear Air Act, as amended, that control air emissions of radioactivity from many facilities licensed by the NRC. These standards apply in addition to NRC's regulations (including Part 20) that regulate offsite exposures to the public.

If, as appears likely, EPA's Federal Radiation Protection Guidance for Occupational Exposure implements the ICRP system of dose limitation, including the weighting factors and the concept of effective dose equivalent, it may be anticipated the EPA will revise their other regulations and guidance to express them in terms of effective dose equivalent. For example, the annual limits on dose to members of the public from operation of uranium fuel cycle facilities in 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," might be changed from the present 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ, to a single value expressed in terms of effective dose equivalent.

The NRC decided not to wait for the final development of the EPA guidance, but rather developed the revision of 10 CFR Part 20 in parallel and in close coordination with EPA and other Federal agencies so that the revision will be compatible with the EPA guidance and with any changes planned by other agencies.

National

Traditionally, the NRC and its predecessor, the AEC, have looked to the ICRP and NCRP for advice on radiological matters. For many years, recommendations of the two committees have generally been quite similar and the Commission has selectively chosen among the recommendations in revising its regulations. In 1977, the ICRP recommended the risk-based system of dose limitations upon which this proposed revision is based. The NCRP is currently in the process of developing its own recommendations.

It has been suggested that the revision to Part 20 be delayed until the NCRP recommendations are developed and published. During development of the proposed revision to Part 20, the NRC staff had met and corresponded with the NCRP to obtain their comments and suggestions. Since the rulemaking process required to revise Part 20 is likely to require several months beyond publication in the **Federal Register**, there will be opportunities for the NCRP, as well as others, to provide alternative recommendations for consideration by

the Commission before the revision becomes effective.

States

Presently there are 27 States that have entered into agreements with the NRC under section 274 of the Atomic Energy Act of 1954, as amended, whereby the States have assumed jurisdiction over many uses of byproduct, source, and small amounts of special nuclear material that are regulated by the NRC. These States also exercise regulatory control over x-ray machines, naturally-occurring and accelerator-produced radionuclides, and accelerators. The regulations of these Agreement States must be compatible with the regulations of the NRC. Since the revision of Part 20 will lead to a substantial review and revision of the Agreement State regulations, continued interfacing with State agencies is necessary and has already begun.

Intra-agency

Many NRC licensing actions, such as technical specifications and conditions of licenses, contain references to the present Part 20. Other NRC regulations which interface with Part 20 and regulatory guides directly related to the present Part 20 will have to be reviewed and revised if the proposed revision is promulgated. Considerable reorientation of staff and inspectors will be required so that they will understand and uniformly implement the revised Part 20.

In addition to revising some existing regulatory guides, additional regulatory guides and, perhaps, NUREG reports might be needed.

The Commission invites comments and suggestions concerning the revision of existing regulatory guides or the preparation of additional guidance documents which would be needed or useful in implementing the proposed revision.

Licensees

Licensees will need adequate time to implement the necessary changes in their radiation protection programs. Since doses from external sources will be added to doses from intakes of radioactive material, some licensees might have to add or change bioassay programs to demonstrate compliance. Other licensees might choose to modify, or add, engineered facility features to reduce air concentrations or external exposures. Initiating these changes would require preliminary studies, the acquisition of funds, and construction and operation of the systems. Training programs will also need to be revised to incorporate features of the revised rule.

In order to comply with the proposed revision to Part 20, it will be necessary for licensees to understand the specific features, particularly those which are used in summing internal and external doses. Some NRC workshops and regulatory guides might be offered for the benefit of licensees, Regional Offices, States, and others who are affected by the revision.

In view of these considerations, it appears that an extended period of time is warranted between the publication of the revised Part 20 and the full implementation by licensees. Therefore, it is proposed that the implementation should become effective within five full calendar years following publication of the final rule. To facilitate earlier implementation by those licensees who might choose to do so, the Commission staff is available to work with the licensees as may be necessary and within its resources and responsibilities.

However, if licensees are permitted to choose their own time of implementation within the five year period, as proposed, there could be problems such as difficulties with the exchange of informatin or exposure data, caused by the use of *both* the present and the revised Part 20 over a period of several years. Consequently, the Commission is also considering the alternative of requiring all licensees to implement the revised rule as of January 1st—five full calendar years after the final rule is published. In this case, *all* licensees, having been given five years to prepare, would implement the revised rule on the same date.

According to some information published by the utilities, the revised rule could be implemented comfortably within a much shorter time period. The Commission especially invites comments on the effective date of implementation, including specific information on time and economic considerations.

XXIX. Appendix B

Appendix B to the proposed revision differs from the current Appendix B in a number of ways. In the revision, data are presented for 757 radionuclides, about 500 more than the 260 currently listed. The radionuclides are listed by increasing atomic number, rather than alphabetically. Many of these added radionuclides are not usually considered byproduct, source, or special nuclear material. However, many of them can be produced either in a reactor (and thus classified byproduct matrial) or in an accelerator and, therefore, may or may not be subject to NRC regulatory control—depending on the method of production. All of these radionuclides would be subject to the regulations of Agreement States, and the States would need the information provided in Appendix B for incorporation into the State regulations. Therefore, the Commission has chosen to include all of the radionuclides for which data are presented in ICRP Publication 30.

For each radionuclide there is a listing of chemical forms to be used in selecting the appropriate inhalation ALI or DAC. These ALIs and DACs for inhalation are given for an aerosol with an activity median aerodynamic diameter of 1 micrometer (micron) and for three classes of radioactive material with differing biological retention in the lung.

The inhalation ALIs and DACs listed in Table 1 of Appendix B were derived for occupational exposure of the reference man described in ICRP Publication 23. Table 2 presents derived air and water concentrations which, during an exposure of one year, would result in intakes by members of the general public which would cause a committed dose equivalent of 0.1 rem or 1 mSv (reference level), and Table 3 presents water concentrations applicable to sewage disposal.

The data in proposed Appendix B are expressed in the more familiar units of microcuries (μCi) and μCi/ml, rather than in the units of becquerels (Bq) and bq/m^3 used in ICRP Publications 30 and 32. The decision to use the "traditional" system of units in Appendix B is based upon the fact that this is the system in general use by the nuclear industry, including licensees, Federal regulators and the private sector. Therefore, the potential for errors in using these limiting values for radionuclides is significantly reduced by limiting the necessity for conversion calculations. However, the regulation contains the necessary conversion factors for those individuals who want to use the Appendix B values as Bq or Bq/ml. The conversion from Bq to μCi was made using data obtained from Oak Ridge National Laboratory having two significant figures, which were then rounded to one significant figure in μCi. Some of these listings will differ from the ICRP Publications 30 and 32 values, which have been rounded initially to a single significant figure. Additional information on the derivation and use of the ALIs and DACs is presented in the Introduction to Appendix B, as well as in the example presented earlier in this notice.

Concern has been expressed that some of the ALIs and DACs are less restrictive that the concentration limits (MPCs) currently listed in Appendix B, 10 CFR Part 20. Where comparison is

possible, about 65% of the DAC listings are less restrictive, about 28% are more restrictive, and about 8% remain unchanged. The changes arise from a number of considerations that include:

(1) Dose contribution to all organs and tissues from radioactive material deposited in all organs and tissues, rather than dose to a critical organ from radioactive material deposited in that organ;

(2) Use of the a quality factor of 1 for low-energy beta particles, and a quality factor of 20 for alpha particles, rather than 1.7 and 10, respectively;

(3) Updated biological models; and

(4) Application of the risk-based weighting factors within the ICRP 26 system of dose limitation.

The current level of radiation protection is affected much more by consideration of what is ALARA than by specific dose limits. The ALARA requirement will continue to ensure that the level of radiation protection will remain high even though the limits for certain radionuclides might be increased. Furthermore, the summation of external dose and internal committed effective dose equivalent provides an additional constraint on the amount of radionuclide that may be taken into the body.

XXX. Appendix C

Appendix C lists quantities (μCi) for 757 radionuclides. As discussed earlier, the rule contains the necessary conversion factors from μCi to becquerels for those individuals who desire to use the SI system of values for Appendix C quantities. The quantities are those for which labeling would be required pursuant to the proposed § 20.904. Also, the proposed § 20.1201 would require reports of loss or theft of 10 times the quantities specified in Appendix C. The provision in existing § 20.303(a)(2) that a licensee may discharge up to 10 times the Appendix C quantities into the sanitary sewerage in one day, without regard to the concentration of the radionuclide in the water released, would not be continued in the proposed § 20.1003. For the same reasons discussed with respect to Appendix B, radionuclides that may not be byproduct, source, or special nuclear material have been included in this appendix.

The quantities listed in Appendix C were derived by taking one-tenth of the most restrictive occupational annual limit of intake listed in Appendix B, rounding to the nearest factor of ten, and arbitrarily constraining the values listed between 0.001 and 1,000 μCi. These quantities are comparable, but not identical to the existing Appendix C listings and the byproduct material listings in § 30.71, Schedule B, 10 CFR Part 30. Conformity between Appendix C, 10 CFR Part 20, and § 30.71, 10 CFR Part 30, is not considered essential. Further, such conformance would involve addition of a large number of radionuclides to § 30.71, and would constitute a substantive change in the radionuclides available to persons exempt pursuant to § 30.18, 10 CFR Part 30. No change in § 30.71 is proposed at this time.

XXXI. Appendix E

The analytical expressions in the form of mathematical formulae which may be used by licensees to demonstrate compliance with the various dose limits or reference levels of the revised Part 20 have been assembled in Appendix E. Consideration was given to including the formulae in the text of the rule paralleling and immediately following the verbal requirements. However, some reviewers considered the presence of the formulae in the text to be responsible for a perceived complexity and the formulae were placed in an appendix to permit easier reading.

XXXII. Appendix F

The present § 20.311 contains very detailed requirements for the certification and transfer of low-level waste for disposal at land diposal facilities and for the preparation of shipment manifests. In keeping with the generic nature of the proposed revision, the proposed § 20.1006 contains only the broad requirements of the present § 20.311 and the detailed requirements are all contained in Appendix F. The proposed regulations in § 20.1006 and Appendix F are essentially the same as the present § 20.311.

XXXIII. Environmental Impact: Negative Declaration

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in 10 CFR Part 51, that promulgation of this proposed rule will not have a significant effect on the quality of the human environment and that, therefore, an environmental impact statement is not required. (The environmental assessment and finding of no significant impact on which this determination is based are available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC.)

XXXIV. Paperwork Reduction Act Statement

Pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), this proposed rule has been submitted to the Office of Management and Budget for clearance of the information collection requirements.

XXXV. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the proposed revision and the alternatives considered by the Commission. (The draft analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from the person indicated under the "FOR FURTHER INFORMATION CONTACT" heading

Benefits

The proposed revision to Part 20 includes numerous changes required to bring the NRC radiation protection standards into accord with current, defendable scientific knowledge, and to reflect contemporary scientific and philosophical approaches to protection against radiation. The major benefits are summarized in Table 5.

TABLE 5.—PRINCIPAL CONCERNS AND BENEFITS OF THE PROPSOED REVISION OF 10 CFR PART 20

Concern with present part 20	Proposed part 20 revision	Benefits of revision
1. *Many Values in Appendix B Do Not Reflect Current Knowledge* ● Present MPCs can cause underestimates of doses by a factor of 6 for most alpha emitters and 60 for thorium ● "Soluble" and "insoluble" designations in Part 20 and many other bases were abandoned by health physic its many years ago	● Revises and expands Appendix B to reflect contemporary knowledge of dosmetry and biol-	● Derived values will reflect ICRP risk based systems and make use of contemporary knowledge. ● Air concentrations are based on a lung model which permits adjustment for the particle sizes of aerosols. ● Values are presented for various compounds. ● Coverage of radionuclides has been increased from 280 to 757 ● Of the radionuclides where compansons can be made, about 65% of the new values are less restrictive, about 6% are unchanged, and about 27% are more restrictive.

TABLE 5.—PRINCIPAL CONCERNS AND BENEFITS OF THE PROPSOED REVISION OF 10 CFR PART 20—Continued

Concern with present part 20	Proposed part 20 revision	Benefits of revision
2. *5(N-18) Dose-Averaging Formula Permits Workers to Receive 12 Rems per Year from External Sources* ● Several hundred workers each year receive doses of 5 rems or more ● *Potential* risk could be substantial (3–10%) from 50 years external exposures at 5 rems per year and additional dose from internal exposures	● Deletes 5(N-18) and adopts 5 rems (0.05 Sv) per year and 3 rems (0.003 Sv) per quarter dose limits ● Provides "planned special exposures" for necessary and unavoidable activities	● Annual and Lifetime doses to individuals receiving highest exposures will be reduced. ● Risks to radiation workers receiving highest exposures will be more comparable to those in safe industries. ● Provides substantial flexibility for licensee to manage justifiable exposures beyond selected annual dose limits. ● Provides for readily monitored records of use.
3. *Dose Limits for Internal and External Doses are Idependent* ● Risks from doses at the limits to various organs are unequal	● Establishes 5 rems (0.05 Sv) annual limit for sum of external and internal doses. ● Adopts ICRP "effective dose equivalent" which adjusts doses to various organs to whole body dose equivalent based on risk	● Effective dose equivalents limits from combined external and internal exposures are related to individual risk. ● Limits for various organ doses reflect comparable risks. ● Dose weighting factors based on quantified risk of radiation-induced health effects are consistent with Commission policies on use of quantitative risk. ● Workers and public can understand risk base which is more rational than present dose limit selection. ● Doses to workers subjected to both external and internal exposures will be reduced.
4. *No Requirements for Formal Radiation Protection Program or for ALARA* ● Uneven requirements among types of licensees brought about mostly through licensing actions other than Part 20	● Requires written radiation protection program with ALARA provisions ● Requires management commitment and participation ● Requires selection of investigation levels for doses to workers below dose limits	● Ensures adequate radiation protection program and ALARA efforts by *all licensees*. ● Would reduce doses to workers. ● Provides basis for more effective ALARA efforts with reliance on licensee's judgment. ● Provides requirements in Part 20 for enforcement actions.
5. *Limits Treated As Sharp Line of Demarcation Between Acceptable and Unacceptable* ● De Facto limits are established by licensing actions	● Emphasizes ALARA and provides reference levels to permit graded scale of action as limits are approached	● Action are taken to reduce exposures before dose limits are exceeded and to review exposures when they are substantial. ● Would reduce doses to workers and public without reporting to other regulatory means.
6. *Dose Data on Specific Workers are not Available to Staff until Workers Terminate Employment* ● No reports are made of internal doses ● Workers are not required to be informed of annual or accumulated doses without request	● Requires use of effective dose equivalents	● Compatible with dose system.
7. *Presents No Clear Dose Limits for Members of the Public* ● NRC can require de facto limits without compromising Part 20	● Establishes 500 mrem/yr (5 mSv/yr) effective dose equivalent (external and internal sources) ● Establishes reference levels for action below limits	● Dose limits for public would include possible multiple sources and multiple exposure modes. ● Would provide clearly identified limits and graded actions would result in individual doses less than 100 mrem per year. ● Facilitates use of estimates of health risk as a fundamental determinant in decisionmaking and in any reform of nuclear regulations and licensing.
8. *Present Part 20 Provides No Constraint on Collective Dose Evaluations* ● Can result in unwarranted expenditures of resource for incremental risks which are trifles	● Provides constraints on collective doses evaluations to omit dose less than 1 mrem (0.01 mSv) per year to individuals	● Would save considerable resources. ● Would provide perspective in judgments. ● Would eliminate consideration of health risks which are trifles.

Costs

The initial (first year) cost for implementing the proposed revision to Part 20 is estimated to be about $33 million, $29 million of which would be required for the occupational exposure provisions (see Table 6). The annual cost (first year and continuing) is estimated to be $8 million, approximately $7 million of which would be required for the occupational exposure provisions. These are the estimated costs to all licensees, including those regulated by the Agreement States. Initial costs include items such as software for computers, augmenting internal dosimetry programs, writing radiation protection programs including ALARA provisions, augmenting monitoring programs, revising manuals, and retraining personnel. Taking into account the recurring nature of the annual costs and the time value of money (discounted at a 10% per annum rate) adds about $60 million to the initial costs for a present-day worth totaling about $100 million.

A detailed cost estimate was made for each recording and reporting requirement in the Part 20 revision. Most of these costs would be annual costs for requirements that already exist in the present Part 20. A similar detailed cost estimate for all requirements in the present Part 20 was made for comparative purposes. Based on this comparison, it does not appear that the proposed revision would increase the costs of the present recording and reporting requirements.

Comments on the draft analysis may be submitted to the Commission as indicated under the ADDRESSES heading.

TABLE 6.—ESTIMATES OF COSTS TO NRC AND STATE LICENSEES' FROM IMPLEMENTATION OF 10 CFR PART 20 REVISION

	Initial cost [1]	Annual cost [2]
(1) Effect of 5-rem effective dose equivalent	$200,000	$750,000
(2) Impact of planned special exposure	Negligible	Negligible
(3) Impact of extremity and eye limit provision	Negligible	Negligible
(4) Impact of provision for limit to embryo/fetus	Negligible	$50,000
(5) Impact of internal exposure provision	$8,700,000	$4,100,000
(6) Impact of Alara requirements	$2,200,000	$1,500,000
(7) Impact of revised monitoring requirements	Negligible	$37,000
(8) Impact of recordkeeping requirements	$3,700,000	$140,000
(9) Impact of reporting requirements	Negligible	$180,000
(10) Impact of revisions of manuals and procedures	$10,800,000	Negligible
(11) Impact of retraining personnel	$1,600,000	Negligible
Subtotal	$1,600,000	$6,800,000
(12) Impact of public exposure issues (Nom.)	$4,000,000	$1,000,000
Total	$3,000,000	$7,800,000

[1] 1982 licensees.
[2] 1982 dollars.

XXXVI. Regulatory Flexibility Certification

The Commission has prepared an initial regulatory flexibility analysis in connection with this proposed rule. The analysis discloses that the proposed rulemaking proceeding would apply to all NRC licensees. The NRC has approximately 7,500 licensees, approximately one quarter of which are small entities. (Note: Agreement States have about another 11,000 licensees.) Types of small entities that would be affected include physicians, small hospitals, small laboratories, small

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industrial operations, radiographers, and well loggers. The Commission anticipates that promulgating and implementing the proposed revised rule will result in a regulation that provides better assurance of protection, establishes a clear health protection basis for limits, applies to all licensees, including small entities, in a consistent manner, and reflects current information on health risk, dosimetry, and radiation protection practices and experiences. The potential gain in radiation health protection significantly outweighs the incremental increased impact on small entities. However, the NRC is seeking comments and suggested modifications because of the widely differing conditions under which small licensees operate.

The Commission is particularly seeking comment from small entities (i.e., small businesses, small organizations, and small jurisdictions as defined by the Regulatory Flexibility Act) about the ways the proposed rule will affect them and the ways it may be modified to impose less stringent requirements on them which will still adequately protect the public health and safety. Those small entities who offer comments on how the regulations could be modified to take into account their differing needs should specifically discuss:

(a) The size of the business and how the proposed regulations would result in a significant economic burden upon them as compared to larger organizations in the same business community;

(b) How the proposed regulations could be modified to take into account differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the small entity;

(d) How the proposed regulations, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individuals or groups; and

(e) How the proposed regulations, as modified, would still adequately protect the public health and safety.

XXXVII. List of Subjects in 10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Ocupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

XXXVIII. Additional Comments of NRC Chairman and Commissioners

Additional Comments of Chairman Palladino and Commissioner Zech

Chairman Palladino and Commissioner Zech add the following:

No useful purpose is served by withholding publication of the proposed revision to Part 20 for some indefinite period of time while the need for a backfit analysis is determined. During the comment period, the Commission can determine whether or not a backfit analysis is appropriate; if so, the analysis can be completed concurrently with the comment period. If, at a later date, it is appropriate to obtain comment on the backfit analysis, this issue can be decided at that time.

Chairman Palladino and Commissioner Zech favor performing any analyses required by the backfit rule prior to issuance of the final rulemaking on Part 20. The development of the proposed rule for Part 20 has been on-going for many years and, in fact, is the first revision to the affected standards in over 20 years. More recently, the final backfit rule has been published, and at this time the NRC is developing implementing procedures to ensure compliance with the backfit rule.

Additional Comments of Commissioner Asselstine

Commissioner Asselstine adds the following:

I am generally in favor of this rulemaking which brings about a long overdue updating of our basic radiation standards to reflect the best scientific information available today. This proposed rulemaking is a worthwhile and technically defensible undertaking which moves the United States radiation protection standards in a direction that most other countries have been going. However, the NRC has a backfit rule (10 CFR 50.109) which dictates conditions which must be met before the NRC can promulgate new regulations affecting Part 50 licensees. I preferred that publication of this proposed rule be deferred until the Commission addressed whether this rulemaking complies with the backfit rule. I proposed to the other Commissioners that the backfit analysis required by § 50.109 be made available at the time this proposed rulemaking is published for public comment since such an analysis could have affected the nature and substance of this rulemaking. I also proposed to the other Commissioners that if the Commission were to decide this rulemaking, which affects Part 50 licensees, was not a backfit as defined in § 50.109, then the Commission's rationale for the inapplicability of § 50.109 should be part of the Supplementary Information with a request for any comments on that rationale.

Such an approach has several advantages. First, it would allow the public and the regulated industry to understand how the Commission is complying with regulations that are applicable to the Commission itself. Second, by obtaining public comment on the backfit analysis or the rationale for the inapplicability of § 50.109 during the public comment period on a rulemaking, the NRC would have the benefit of the public and industry views on this aspect of the rulemaking. This would ensure that the backfit analysis is used to shape the substance of a proposed rulemaking. The Commissioners favoring the backfit rule do not agree with the above and voted to publish these proposed revisions to Part 20 before deciding how, if at all, these revisions comply with the backfit rule. We are left to some uncertain date in the future to learn what the backfit rules means in practice. I do not characterize the Commission's action in this regard as providing a predictable or stable regulatory environment.

With regard to this rulemaking, I would appreciate public comments on several issues in additon to those identified in the rulemaking package. They are:

1. What more can be done to protect an embryo or fetus from occupational radiation exposure of female workers without unduly restricting the careers or employment of female workers? Any insights from approaches used by other industries to address this problem are welcomed.

2. Section XVII (Standards for Individuals in the General Public) of the Supplementary Information indicates that the Environmental Protection Agency Environmental Protection Standards for Nuclear Power Operations (40 CFR Part 190) were based on as low as reasonably achievable (ALARA) considerations at the time of development. A clarification by EPA or other interested persons as to whether 40 CFR Part 190 is an upper limit or lower limit for ALARA considerations would be appreciated.

3. The proposed revisions would establish a 1 millirem/year de minimis standard for individual doses for purposes of evaluating collective doses to the population. That is, regardless of the magnitude of the societal doses

associated with individual exposures of less that 1 millirem/year, such societal doses would not be considered in deciding whether additional protective measures are warranted. Why should there not be a de minimis standard such as collective doses less than 100 person-rem comprised of individual doses less than 1 millirem/year?

4. Is this rulemaking a backfit and subject to the analysis and determinations required by 10 CFR 50.109? If yes, should that analysis and determination be available for public comment before making this a final rule? If no, what is the rationale and should that rationale be available for public comment before making this a final rule?

For the reasons set out in the preamble and pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 as amended, and 5 U.S.C. 553, notice is hereby given that adoption of the following revision of 10 CFR Part 20 and the following amendments to 10 CFR Parts 19, 30, 31, 32, 34, 40, 50, 61, and 70 is contemplated.

1. 10 CFR Part 20 is revised to read as follows:

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

Subpart A—General Provisions

Sec.

20.1 Purpose.
20.2 Scope.
20.3 Definitions.
20.4 Units of radiation dose.
20.5 Units of radioactivity.
20.6 Interpretations.
20.7 Communications.
20.8 Reporting, recording, and application requirements: OMB approval.
20.9 Conditions of exposure.

Subpart B—System of Radiation Dose Limitation

20.101 General.
20.102 As low as is reasonably achievable levels of exposure.

Subpart C—Occupational Dose Limits

20.201 Occupational dose limits for adults.
20.202 Compliance with requirements for summation of external and internal doses.
20.203 Further provisions—external exposure.
20.204 Further provisions—internal exposure.
20.205 Further provisions—internal exposure involving radionuclides with very long effective half-lives.
20.206 Planned special exposures.
20.207 Occupational dose limits for minors.
20.208 Dose to an embryo/fetus.

Subpart D—Radiation Dose Limits and Reference Level for Individual Members of the Public

20.301 Dose limits for individual members of the public.
20.302 [Reserved.]
20.303 Reference level for the exposure of individual members of the public.
20.304 Collective dose evaluations.

Subpart E—[Reserved]

Subpart F—Surveys and Monitoring

20.501 General.
20.502 Conditions requiring individual monitoring of external and internal occupational dose.

Subpart G—Control of Exposure From External Sources in Restricted Areas

20.601 Control of access to high radiation areas.
20.602 Control of access to very high radiation areas.

Subpart H—Respiratory Protection Controls to Restrict Internal Exposure in Restricted Areas

20.701 Use of process or other engineering controls.
20.702 Use of other controls.
20.703 Use of individual respiratory protection equipment.
20.704 Further restrictions on the use of respiratory protection equipment.

Subpart I—Storage and Control of Licensed Material

20.801 Security of stored material.
20.802 Control of material not in storage.

Subpart J—Precautionary Procedures

20.901 Caution signs.
20.902 Posting requirements.
20.903 Exceptions to posting requirements.
20.904 Labeling containers.
20.905 Procedures for picking up, receiving, and opening packages.

Subpart K—Waste Disposal

20.1001 General requirement.
20.1002 Method for obtaining approval of proposed disposal procedures.
20.1003 Disposal by release into sanitary sewerage.
20.1004 Treatment or disposal by incineration.
20.1005 Disposal of specific wastes.
20.1006 Transfer for disposal and manifests.

Subpart L—Records

20.1101 General provisions.
20.1102 Records of radiation protection program, including ALARA provisions.
20.1103 Records of surveys.
20.1104 Determination of prior occupational dose.
20.1105 Records of planned special exposures.
20.1106 Records of individual monitoring results.
20.1107 Records of release of radioactive material in effluents.
20.1108 Records of waste disposal.
20.1109 Form of records.

Subpart M—Reports

20.1201 Reports of theft or loss of licensed material.
20.1202 Notification of incidents.
20.1203 Reports of overexposures and excessive radiation levels and concentrations of radioactive material.
20.1204 Reports of planned special exposures.
20.1205 Reports of exceeding reference levels.
20.1206 Reports of personnel monitoring.
20.1207 Reports of personnel monitoring on termination of employment or work.

Subpart N—Exemptions and Additional Requirements

20.1301 Applications for exemptions.
20.1302 Additional requirements.

Subpart O—Enforcement

20.1401 Violations.

Appendices

Appendix A—Protection factors for respirators
Appendix B—Annual limits of intake (ALIs) and derived air concentrations (DACs) of radionuclides for occupational exposure; Reference level concentrations; Concentrations for release to sewerage
Appendix C—Quantities requiring labeling
Appendix D—United States Nuclear Regulatory Commission Regional Offices
Appendix E—Mathematical expressions for demonstrating compliance with selected dose limits and reference levels
Appendix F—Requirements for low level waste transfer for disposal at land disposal facilities and manifests

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 20.102(a), 20.201–20.205, 20.206(e), 20.207, 20.501, 20.502, 20.601 (a) and (c), 20.602(a), 20.701–20.704, 20.801, 20.802, 20.901(a), 20.902, 20.904 (a) and (b), 20.905, 20.1001, 20.1002(b), 20.1003, 20.1004, 20.1005 (b)–(d), 20.1006, 20.1101–20.1108 and 20.1201–20.1207 are issued under sec. 161b., 68 Stat. 948 (42 U.S.C. 2201(b)); and §§ 20.102(a) (2) and (4), 20.204(c), 20.205(b)(5), 20.206 (g) and (h), 20.904(c)(4), 20.905 (c) and (d), 20.1005(c), 20.1006(b)–(d), 20.1101–20.1103, 20.1104(b)–(d), 20.1105–20.1108, and 20.1201–20.1207 are issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Subpart A—General Provisions

§ 20.1 Purpose.

(a) The regulations in this part establish standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the Nuclear Regulatory Commission. These regulations are issued under the Atomic Energy Act of

1954, as amended, and the Energy Reorganization Act of 1974, as amended.

(b) It is the purpose of the regulations in this part to control the possession, use, and transfer of licensed material by any licensee in such a manner that the total dose to an individual (including exposures to licensed and unlicensed radioactive material and to other radiation sources) does not exceed the standards for protection against radiation prescribed in the regulations in this part.

§ 20.2 Scope.

The regulations in this part apply to persons licensed by the Commission to receive, possess, use, or transfer byproduct, source, or special nuclear material or to operate a production or utilization facility under Parts 30 through 35, 40, 50, 60, 61, 70, 72, or 150 of this chapter. The limits in this part do not apply to doses due to emergency exposures, to natural background, to intentional exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical research programs.

§ 20.3 Definitions.

As used in this part:

"Absorbed dose" (See Dose terms).

"Act" means the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), as amended.

"Adult" means an individual 18 or more years of age.

"Airborne radioactive material" means radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" (See Area terms).

"Annual limit of intake" (See Dose control terms).

"ALARA" (See Dose control terms).

"Area" terms:

(1) "Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 mSv) in 1 hour at 30 cm from the radiation source or from any surface which the radiation penetrates.

(2) "High radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour at 30 cm from the radiation source or from any surface which the radiation penetrates.

(3) "Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in 1 hour at 1 meter from a radiation source or from any surface which the radiation penetrates.

Note.—At very high doses received at high dose rates, units of absorbed dose are appropriate, rather than units of dose equivalent.

(4) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive materials, composed wholly or partly of licensed material, exist in concentrations: (i) In excess of the derived air concentrations (DACs) specified in Appendix B of this part, or (ii) to such a degree that an individual present in the area without respiratory protection equipment could exceed, during the hours an individual is present in a calendar week, an intake of 0.6% of the annual limit of intake (ALI), i.e., 30% of 40 DAC-hours.

(5) "Restricted area" means an area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

(6) "Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which is limited by the licensee for any reason. The degree of control may vary, for example, from posting to the use of surveillance or barriers.

(7) "Unrestricted area" means an area, access to which is neither limited nor controlled by the licensee.

(8) "Site boundary" means that line beyond which the land or property is neither owned, leased, nor otherwise controlled by the licensee.

"Bioassay" (See Monitoring terms).

"Biological half-time" means the time required for half of a material deposited in the body to be removed by biological processes.

"Byproduct material" (See Licensed material).

"Calendar quarter" (See Quarter).

"Calendar week" (See Week).

"Calendar year" (See Year).

"Class" (or "Lung class" or "Inhalation class") mean a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y which applies to a range of biological half-times for D of less than 10 days, for W from 10 to 100 days, and for Y greater than 100 days.

"Collective effective dose equivalent" (See Dose terms).

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Committed dose equivalent" (See Dose terms).

"Committed effective dose equivalent" (See Dose terms).

"Controlled area" (See Area terms).

"Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

"Derived air concentration" (See Dose control terms).

"Dose" terms:

(1) "Dose" or "radiation dose" is a generic term which means absorbed dose, dose equivalent, committed dose equivalent, or committed effective dose equivalent, as defined in other paragraphs of this section.

(2) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material at the location of interest. The units of absorbed dose are the rad and the gray [1 gray (Gy) = 100 rad].

(3) "Dose equivalent" means the product of absorbed dose, quality factor, and all other necessary modifying factors at the location of interest in tissue. The units of dose equivalent are the rem and the sievert [1 sievert (Sv) = 100 rem].

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(4) "External dose" means that portion of the dose equivalent received from radiation sources outside of the body.

(i) "Deep dose equivalent" (H_d) applies to the external whole-body exposure and is taken as the dose equivalent at a tissue depth of 1 cm.

(ii) "Eye dose equivalent" (H_e) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 cm.

(iii) "Shallow dose equivalent" (H_s) applies to the external exposure of the skin or an extremity and is taken as the dose equivalent at a tissue depth of 0.007 cm.

(5) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(i) "Committed dose equivalent" ($H_{c,T}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake ($H_{50,T}$).

(ii) "Effective dose equivalent" (H_E) is the sum of the products of the dose equivalent (H_T) to the organ or tissue (T) and the weighting factors (w_T) applicable to each of the body organs or tissues which are irradiated ($\Sigma w_T H_T$).

(iii) "Committed effective dose equivalent" ($H_{E,c}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues which are irradiated and the committed dose equivalent.

(6) "Collective effective dose equivalent" is the sum of the individual weighted dose equivalents received by a specified population from exposure to the given source of radiation.

(7) "Occupational dose" means the dose received by an individual in a restricted area or in the course of employment in which the individual's assigned duties involve exposure to radiation and to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee or other person. Occupational dose does not include dose received from natural background, as a patient from medical practices, from voluntary participation in medical research programs, or as a member of the general public.

(8) "Public dose" means the dose received by a member of the public from exposure to radiation and to radioactive material released by a licensee, or to another source of radiation either within a licensee's controlled area or in unrestricted areas. It does not include occupational dose, or dose received from natural background, as a patient from medical practices, or from voluntary participation in medical research programs.

(9) "Working level" means the potential alpha energy concentrations of radon daughters (for radon–222—polonium–218, lead–214, bismuth–214, and polonium–214; and for radon–220—polonium–216, lead–212, bismuth–212, and polonium–212) in 1 liter of air, without regard to the degree of equilibrium, that will result in the eventual emission of 1.3×10^5 MeV of alpha particle energy.

(10) "Working level month" (WLM) means an exposure of 1 working level for 170 hours (2,000 working hours per year/12 months per year=approximately 170 hours per month).

"Dose control" terms:

(1) "ALARA" (acronym for "As low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in this part as is practical: (i) Consistent with the purpose for which the licensed activity is undertaken, (ii) taking into account the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and (iii) in relation to utilization of nuclear energy in the public interest.

(2) "Annual limit of intake" (ALI) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by reference man which would result in a committed effective dose equivalent of 5 rems (0.05 Sv) or a committed dose equivalent of 50 rems (0.5 Sv) to an organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table 1, Columns 1 and 2 of Appendix B of this part.)

(3) "Derived air concentration" (DAC) means the concentration of a given radionuclide in air which, if breathed by reference man for a working year of 2,000 hours under conditions of light activity (inhalation rate 1.2 cubic meters of air per hour), results in an inhalation of one ALI. (DAC values are given in Table 1, Column 3 of Appendix B of this part. Note consideration of submersion dose; see § 20.203.)

(4) "Dose limits" means the permissible upper bounds of radiation doses. They apply to the dose equivalent received during the period of time covered (generally a calendar year), the committed effective dose equivalent resulting from the intake of radioactive material during the same period, or the effective dose equivalent received in a year.

"Dose" or "Radiation dose" (See Dose terms).

"Dose equivalent" (See Dose terms).

"Effective dose equivalent" (See Dose term).

"Embryo/fetus" means the developing organism from conception until the time of birth.

"Exposure" terms:

(1) "Exposure" means being exposed to ionizing radiation or to radioactive material.

(2) "Natural background exposure" means exposure to cosmic and terrestrial sources of naturally occurring radioactive material, including technologically enhanced radioactive material, such as plasterboard and fertilizer, but not including byproduct material or radioactive material specifically intended to be a radiation source.

(3) "Normal exposure conditions" means the conditions where exposures can be limited by control of the radiation source and by control of the individual exposed to the radiation source.

(4) "Planned special exposure" means an exposure that occurs infrequently during normal operations when it is necessary to permit a few workers to receive doses in excess of the annual dose limits. Dose limiiting provisions for planned special exposures are separate from, and in addition to, the dose limiting conditions for normal exposure conditions.

(5) "Emergency exposure conditions" means conditions where the radiation source is not under control so that subsequent exposure can be limited only by remedial actions.

"Extremities" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Government agency" means any executive department, commission, independent establishment, corporation wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

"High radiation area" (See Area terms).

"Individual monitoring" (See Monitoring).

"Internal dose" (See Dose terms).

"License" means a license issued under the regulations in Parts 30 through 35, 40, 50, 60, 61, 70, or 72 of this chapter.

"Licensee" means the holder of a license.

"Licensed material" means source material, special nuclear material, or byproduct material received, possessed, used, or transferred under a general or specific license issued by the Commission.

(1) "Byproduct material" means: (i) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and (ii) the tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

(2) "Source material" means: (i) Uranium or thorium, or any combination of uranium and thorium in any physical or chemical form; or (ii) ores which contain, by weight, one-twentieth of one percent (0.05%), or more, of uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

(3) "Special nuclear material" means: (i) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 51 of the act, determines to be special nuclear material, but does not include source material; or (ii) any material artificially enriched by any of the foregoing but does not include source material.

"Limits" (See Dose control terms).

"Lost or missing licensed material" means any licensed material whose location is unknown. It includes material which has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

"Members of the public" means persons who are not occupationally associated with the facility or licensed operations.

"Minor" means an individual under 18 years of age.

"Monitoring" terms:

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(1) "Monitoring" (radiation monitoring, radiation protection monitoring) means the measurement of radiation levels, amounts or concentrations of radionuclides, or surface area concentrations of radionuclides, and the use of the results of these measurements to evaluate potential exposures and doses.

(2) "Bioassay" (radiobioassay) means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(3) "Individual monitoring" means: (i) The assessment of dose equivalent by the use of devices designed to be worn by an individual; (ii) the assessment of effective dose equivalent by bioassay (see Bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, i.e., DAC-hours; or (iii) the assessment of dose equivalent by the use of survey data.

(4) "Survey" means an evaluation of the radiation conditions incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation. Such an evaluation may include calculations or a physical survey, or both.

"Natural background exposure" (See Exposure terms).

"Non-stochastic" (See Stochastic effects).

"Normal exposure conditions" (See Exposure terms).

"Occupational dose" (See Dose terms).

"Person" means: (1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, Government agency other than the Commission or the Department of Energy (except that the Department shall be considered a person within the meaning of the regulations in 10 CFR Chapter I to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission under section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244)), and State or any political subdivision of or any political entity within State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

"Planned special exposure" (See Exposure terms).

"Public dose" (See Dose terms).

"Quarter" means 3 consecutive months starting January 1, April 1, July 1, or October 1.

"Radiation" (ionizing radiation) means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. Radiation, as used in this part, does not include non-ionizing radiation, such as sound, radio, or microwaves, or visable, infrared, or ultraviolet light.

"Radiation area" (See Area terms).

"Reference level" means a level used in the course of implementing radiation protection programs to signal the necessity for a course of action. The action initiated might range from simply recording the information, through investigating causes and consequences, to intervening measures. A reference level is not a limit.

"Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. (See ICRP Publication No. 23.)

"Respiratory protection device" means an apparatus, such as a respirator, used to reduce the individual's intake of airborne radioactive materials.

"Restricted area" (See Area terms).

"Site boundary" (See Area terms).

"Source material" (See Licensed material).

"Special nuclear material" (See Licensed material).

"Stochastic effects" means health effects which occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. A "non-stochastic effect" means a health effect the severity of which varies with the dose, and for which a threshold is believed to exist. Cataracts are an example of a non-stochastic effect.

"Survey" (See Monitoring terms).

"Unrestricted area" (See Area terms).

"Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel, to the extent that these activities directly support the production of electrical power for public use. Uranium fuel cycle does not include mining operations, operations at waste disposal sites, transportation of radioactive material in support of these operations, and the reuse of recovered non-uranium special nuclear and byproduct materials from the cycle.

"Very high radiation area" (See Area terms).

"Week" means 7 consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk, arms above the elbow, or legs above the knees.

"Working level" (See Dose terms).

"Working level month" (See Dose terms).

"Year" means 12 consecutive months starting January 1, i.e., a calendar year.

§ 20.4 Units of radiation dose.

(a) Dose-limiting standards are stated in terms of effective dose equivalent, expressed in units of rems or sieverts. Provisions for demonstrating compliance with the standards are stated in terms of absorbed dose, expressed in units of rads or grays; and in terms of dose equivalent, effective dose equivalent, committed dose equivalent, and committed effective dose equivalent, all expressed in units of rems or sieverts.

(1) "Gray" (Gy) is a unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule/kilogram or 100 rads.

(2) "Rad" is a unit of absorbed dose. An absorbed dose of 1 rad is equal to an absorbed dose of 100 ergs/grams or 0.01 joule/kilogram.

(3) "Roentgen" (R) is that quantity of x- or gamma-radiation which causes ionization in air equal to 2.58×10^{-4} coulomb per kilogram. An exposure of 1 roentgen results in an absorbed dose of 0.87 rad in air.

(4) "Sievert" (Sv) is a unit of dose equivalent. One sievert is equal to a dose equivalent of 1 joule/kilogram or 100 rems.

(5) "Rem" is a unit of dose equivalent for any type of ionizing radiation absorbed by body tissue in terms of its estimated biological effect relative to an exposure of one roentgen of x- or γ-rays. The dose equivalent in rems is numerically equal to the absorbed dose in rads multiplied by the quality factor, distribution factor, and any other necessary modifying factors.

(6) The prefixes in Table 1 are used when the unit of radiation dose is expressed in the International System of Units (SI).

TABLE 1 - SI PREFIXES

Factor	Prefix	Symbol	Factor	Prefix	Symbol
10^{18}	exa	E	10^{-1}	deci	d
10^{15}	peta	P	10^{-2}	centi	c
10^{12}	tera	T	10^{-3}	milli	m
10^{9}	giga	G	10^{-6}	micro	μ
10^{6}	mega	M	10^{-9}	nano	n
10^{3}	kilo	k	10^{-12}	pico	p
10^{2}	hecto	h	10^{-15}	femto	f
10^{1}	deka	da	10^{-18}	atto	a

(b) For the purposes of the regulations in this part, any of the following is considered to result in a dose of 1 rem:

(1) An exposure of 1 roentgen of x- or gamma-radiation, except for personnel monitoring purposes which shall comply with the requirements in § 20.501(c);

(2) An absorbed dose, in tissue, of 1 rad due to beta radiation;

(3) An absorbed dose, in tissue, of 0.05 rad due to alpha particles, fission fragments, and other particles heavier than neutrons; or

(4) An absorbed dose, in tissue, of 0.1 rad due to neutrons or high energy protons.

(c) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour, as provided in paragraph (b)(4) of this section, 1 rem of neutron radiation of unknown energies may, for purposes of the regulations in this part, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee may use the incident fluence equivalent to 1 rem or the appropriate Q value from Table 2 to convert a measured tissue-dose in rads to dose equivalent in rems.

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TABLE 2 - MEAN QUALITY FACTORS, Q[a] AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS[b]

	Neutron Energy (MeV)	Q	Fluence per Unit Dose Equivalent (neutrons cm^{-2} rem^{-1})
(thermal)	2.5×10^{-8}	2	980×10^6
	1×10^{-7}	2	980×10^6
	1×10^{-6}	2	810×10^6
	1×10^{-5}	2	810×10^6
	1×10^{-4}	2	840×10^6
	1×10^{-3}	2	980×10^6
	1×10^{-2}	2.5	1010×10^6
	1×10^{-1}	7.5	170×10^6
	5×10^{-1}	11	39×10^6
	1	11	27×10^6
	2.5	9	29×10^6
	5	8	23×10^6
	7	7	24×10^6
	10	6.5	24×10^6
	14	7.5	17×10^6
	20	8	16×10^6
	40	7	14×10^6
	60	5.5	16×10^6
	1×10^2	4	20×10^6
	2×10^2	3.5	19×10^6
	3×10^2	3.5	16×10^6
	4×10^2	3.5	14×10^6

[a] Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-cm diameter cylinder tissue-equivalent phantom.

[b] Monoenergetic neutrons incident normally on a 30-cm diameter cylinder tissue-equivalent phantom.

§ 20.5 Units of radioactivity.

(a) For the purposes of this part, radioactivity is expressed in units of curies (Ci), or becquerels (Bq), or their multiples, or disintegrations per unit of time.

(1) One curie = 3.7×10^{10} disintegrations per second = 3.7×10^{10} becquerels = 2.22×10^{12} disintegrations per minute.

(2) One becquerel = 1 disintegration (transformation) per second (s^{-1}).

(3) The prefixes listed in Table 1 of § 20.4 are used when the unit of radioactivity is expressed in SI units.

§ 20.6 Interpretations.

Unless specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an officer or employee of the Commission other than a written interpretation by the General Counsel is binding on the Commission.

§ 20.7 Communications.

Unless otherwise specified, communications or reports concerning the regulations in this part should be addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A communication, report, or application may be delivered in person to the Commission's offices at 1717 H Street NW, Washington, DC or 7920 Norfolk Avenue, Bethesda, MD.

§ 20.8 Reporting, recording, and application requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). The OMB control number is ————.

(b) The approved information collection requirements contained in this part appear in §§ 20.102, 20.202, 20.204, 20.205, 20.206, 20.303, 20.501, 20.502, 20.601, 20.602, 20.703, 20.904, 20.905, 20.1002, 20.1005, 20.1006, 20.1102, 20.1103, 20.1104, 20.1105, 20.1106, 20.1107, 20.1108, 20.1201, 20.1202, 20.1203, 20.1204, 20.1205, 20.1206, and 20.1207.

§ 20.9 Conditions of exposure.

The regulations in this part apply to normal exposure conditions, including planned special exposures and inadvertent exposures which occur through operational mishaps. The regulations in this part do not apply to emergency exposure conditions. However, the Commission recognizes that emergency exposure conditions can exist as a result of the possession, use, or transfer of licensed material. Nothing in this part shall be interpreted as limiting the exposure of individuals to radiation when exposures occur under emergency circumstances and are for the purpose of minimizing danger to life or property. However, the dose received during an emergency or accident shall be included in the individual's records. Further, the Commission may require a licensee to develop a contingency plan dealing with foreseeable situations that includes provisions for planned countermeasures.

Subpart B—System of Radiation Dose Limitation

§ 20.101 General.

In the interest of public health and safety and in setting the radiation protection standards in this part, the Commission assumes that—

(a) There is, within the range of exposure conditions usually encountered in radiation work, a linear relationship without threshold between dose and probability of stochastic (random) health effects;

(b) The severity of each type of stochastic health effect is independent of dose; and

(c) Non-stochastic (nonrandom) occurrences of radiation-induced health effects are prevented by limiting exposures so that doses are below the thresholds for their induction.

§ 20.102 As low as is reasonably achievable levels of exposure.

(a) Each licensee shall ensure that the dose to individuals receiving occupational doses and to members of the public is as low as is reasonably achievable (ALARA) and does not exceed the appropriate limits. Procedures and engineering controls based on sound radiation protection principles and practices should be used, to the extent practical, to reduce potential exposures.

(1) Each licensee shall develop and implement a radiation protection program including provisions for keeping dose equivalents ALARA.

(2) The licensee's radiation protection program shall include examination and verification of program features and of records by management, or their designee, and administrative controls specifying investigation levels below the limits.

(3) Each licensee shall review circumstances which cause doses in excess of the investigation levels to affirm that doses are ALARA and to take corrective action, if warranted.

(4) The licensee shall maintain records of ALARA actions in accordance with § 20.1102.

(b) A licensee operating a uranium fuel cycle facility so as to meet the provisions of 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," and, if the facility is a light-water-cooled nuclear power reactor, so as to comply with the provisions of Appendix I of Part 50 of this chapter, meets the requirements of this section for maintaining doses to members of the public at levels which are ALARA.

Subpart C—Occupational Dose Limits

§ 20.201 Occupational dose limits for adults.

(a) The licensee shall constrain the occupational dose to individual adults, except for the planned special exposures in § 20.206 and the provisions for very long effective half-lived radionuclides in § 20.205, to the following dose limits.

(1) The annual limit is the more limiting of—

(i) The sum of the (external) deep dose equivalent to the whole body and the (internal) committed effective dose equivalent being equal to 5 rems (0.05 Sv) (see Appendix E of this part for mathematical expressions); or

(ii) The sum of the deep dose equivalent and the committed dose equivalent being equal to 50 rems (0.5 Sv) to an organ or tissue other than the lens of the eye (see Appendix E of this part for mathematical expression).

(2) The deep dose equivalent component of the annual effective dose equivalent in paragraph (a)(1) of this section shall not exceed 3 rems (0.03 Sv) in any calendar quarter.

(3) The dose equivalents to the lens of the eye, to the skin, and to the extremities are subject to the following limits.

(i) The annual dose equivalent limit to the lens of the eye is 15 rems (0.15 Sv).

(ii) The annual dose equivalent limit to the skin and to each of the extremities is 50 rems (0.5 Sv). This limit applies to the dose equivalent average over 10 square centimeters in the region of highest exposure.

(b) If an individual receives an exposure that results in a dose exceeding the 3-rem quarterly limit, but less than the 5-rem annual limit, the licensee shall constrain further exposures so that the annual dose limit is not exceeded, unless the dose was permitted under the planned special exposure provisions in § 20.206.

(c) If an individual receives an exposure that results in a dose exceeding the annual limits specified in this section, unless permitted as a planned special exposure by § 20.206, the following conditions shall be satisfied.

(1) The licensee shall not assign the individual to tasks likely to result in the individual receiving an additional occupational dose exceeding one rem (0.01 Sv) effective dose equivalent during any quarter remaining in the calendar year, including the quarter in which the overexposure occurred.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, planned special exposures, or additional overexposures as provided in paragraph (c)(1) of this section, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year (see § 20.206(e)(1)) and during the individual's lifetime (see § 20.206(e)(2)).

(d) Derived air concentration (DAC) and annual limit of intake (ALI) values are presented in Table 1 of Appendix B of this part and mau be used in demonstrating compliance with the occupational dose limits.

§ 20.202 Compliance with requirements for summation of external and internal doses.

If an individual is occupationally exposed at levels exceeding both 10% of the (external) deep dose equivalent and 30% of the (internal) annual limit of intake (ALI) of radioactive material, the licensee shall demonstrate compliance with the annual dose limit by summing the deep dose equivalent and the committed effective dose equivalent. If the deep dose equivalent is less than 10% of the annual limit, or if the committed effective dose equivalent is less than 30% of the annual limit, the doses need not be summed.

Note.—The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

(a) Because the actual dose equivalent cannot be measured directly, the licensee may use individual monitoring data or other radiation measurements if these data or measurements yield, or are adjusted to yield, a value that is not less than the deep dose equivalent in the region of highest exposure to the whole body of an individual.

(b) Because the committed dose equivalent cannot be measured directly, the licensee may substitute one of the following techniques to demonstrate compliance with the limits.

(1) *Intake by inhalation.* If the only intake of radionuclides is by inhalation, the annual limit is not exceeded—

(i) If the sum of the fraction of the (external) deep dose equivalent limit and the sum of the fractions of the ALI by inhalation of each radionuclide during the year do not exceed unity (see Appendix E of this part for mathematical expression); or

(ii) If the sum of the fraction of the deep dose equivalent limit and the sum of the fractions of the derived air concentration (DAC) of each radionuclide inhaled during the year do not exceed unity (see Appendix E of this part for mathematical expression); or

(iii) If the sum of the fraction of the deep dose equivalent limit and the sum of the committed effective dose equivalents to all significantly irradiated [1] organs or tissues (T) calculated from bioassy data and using appropriate biological models, expressed as a fraction of the annual dose limit, does not exceed unity (see Appendix E of this part for mathematical expression).

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[1] An organ or tissue is "significantly irradiated" if, for that organ or tissue, the weighted value per unit intake is greater than 10% of the maximum weighted value of $H_{e,\tau}$ per unit intake in any organ or tissue.

(2) *Intake by oral ingestion.* If the occupationally exposed individual also receives an intake of radionuclides by oral ingestion greater than 10% of the applicable ALI, the licensee shall account for this intake and include it in demonstrating compliance with the limits (see Appendix E of this part for mathematical expression).

(3) *Intake through wounds or absorption through skin.* The licensee shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption.

Note.—The intake through intact skin has been included in the calculation of DAC for hydrogen-3.

§ 20.203 Further provisions—external exposure.

(a) Derived air concentrations for radioactive noble gases (see class "submersion" in Appendix B of this part) are based upon the dose equivalent rates from exposure to the (external) radiation from submersion in a semi-infinite cloud of uniform concentration, i.e., 2-pi geometry. DAC values may be calculated for submersion in concentrations of noble gases or very short-lived radionuclides in finite volumes. The submersion dose equivalent can also be measured with individual or other radiation monitoring devices. Therefore, the licensee may use either the individual or other radiation monitoring data or measurements of radionuclide concentrations in air to estimate the dose equivalent from exposure to airborne noble gases.

(b) Derived air concentrations for radionuclides other than noble gases (see Appendix B of this part) are based upon the committed effective dose equivalent due to the intake of the radionuclide into the body. The DACs for these radionuclides do not include contributions to the deep dose equivalent from external exposures, such as from submersion in a cloud containing radioactive material. Some very short-lived radionuclides which decay by beta-gamma emission, particularly those marked footnote 2 in Appendix B of this part, can also constitute an important source of external exposure. Consequently, the licensee must also include the dose equivalent from submersion in estimating the effective dose equivalent from airborne concentrations of radioactive material. Licensees may use individual or other radiation monitoring devices to measure, rather than calculate, the dose equivalent from submersion.

(c) The licensee may adjust the estimates of deep dose equivalent based on DAC values when the individual is exposed to clouds with finite volumes or to clouds with nonuniform concentrations.

(d) The licensee may not use DAC values to estimate deep dose equivalent for exposures in which the individual is located where the air concentrations are substantially less than the maximum in the cloud. The use of the semi-infinite cloud conversion factor could cause an underestimate of dose equivalent in such cases. Individual or other radiation monitoring devices may be used to obtain the appropriate dose equivalent estimates in any case.

§ 20.204 Further provisions—internal exposure.

(a) For purposes of determining compliance with occupational dose equivalent limits, the licensee shall take suitable and timely measurements of—

(1) Concentrations of radioactive materials in air in the work areas;

(2) Quantities of radionuclides in the body;

(3) Quantities of radionuclides excreted from the body; or

(4) Combinations of thes measurements.

(b) Unless respiratory protection equipment is used, as provided in § 20.703, or the assessment of intake is based on bioassays, the licensee shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(c) When specific information on the physical and biochemical properties of the radionuclides taken into the body and the behavior of the material in an individual is known, that information may be used in the calculation of committed effective dose equivalent and, if used, the licensee shall document that information in the individual's record.

(d) When a licensee chooses to use DAC or ALI fractions to demonstrate compliance with dose limits, Appendix B values may be adjusted to reflect actual parametric values if the licensee can justify the adjustment with a suitable data base.

(e) When fractional intakes of Class D, W, or Y compounds (see Appendix B of this part) of a given radionuclide are known, the licensee shall access the contribution of each fraction to the total committed effective dose equivalent separately.

(f) Because of the technical difficulties associated with assessment of incremental intakes by inhalation of Class Y radioactive materials, alone or in mixtures with Class D or Class W materials, and assessment of the committed effective dose equivalent to individual workers from intakes of these materials, recording and reporting of these assessments may be delayed for periods up to 7 months, unless otherwise required by §§ 20.1202 or 20.1203, in order to permit the licensee to make additional measurements basic to the assessments.

(g) Precise knowledge of the composition of mixtures of specific radionuclides in air is not necessary for radiation protection purposes. When a mixture of radionuclides exists in air, the licensee may consider any single radionuclide as "not present" in the mixture if—

(1) The concentration of that radionuclide in air is less than 10% of its DAC;

(2) The sum of these percentages for all of the radionuclides considered as "not present" in the mixture does not exceed 30%; and

(3) The licensee uses the radioactivity of the entire mixture (total radioactivity) in demonstrating compliance with the dose limits in § 20.201 and in complying with the monitoring requirements in § 20.502(b).

(h) Based on a number of simplifying assumptions, inhalation of one ALI, or exposure for 2,000 DAC-hours, may be assumed to result in a risk equal to the risk from a whole body dose equivalent of 5 rems (0.05 Sv).

(1) In some cases, the ALI (and the associated DAC) listed in Table 1 of Appendix B of this part is determined by the quantity of a radionuclide that would deliver 50 rems (0.5 Sv) to a particular organ or tissue (the non-stochastic ALI). In such a case, the organ or tissue to which the non-stochastic ALI applies is specified, and the quantity of radionuclide that would result in a committed effective dose equivalent of 5 rems (0.05 Sv), the stochastic ALI, is listed in parentheses.

(2) When the intake is a mixture of radionuclides, the licensee may use the stochastic ALIs to determine committed effective dose equivalent. However, if the licensee chooses to use the stochastic ALIs, the licensee must also demonstrate that the dose the equivalent to any organ or tissue does not exceed 50 rems (0.5 Sv). This is demonstrated if the inequality in the reference to § 20.202 in Appendix E of this part does not exceed unity when summing the fraction of the external deep dose equivalent limit, and the fractions of the non-stochastic ALIs (or DACs) of all of the radionuclides (for which the particular organ or tissue is specified in Appendix B of this part) taken into the body by the individual.

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(i) In addition to the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a calendar week in consideration of chemical toxicity (see footnote 3 of Appendix B of this part).

§ 20.205 Further provisions—internal exposure involving radionuclides with very long effective half-lives.

(a) Biological, chemical, and physical characteristics of the radionuclides listed in Table 3 are of such a nature that the air concentrations found in restricted areas and the amounts of radionuclide found in bioassay samples at or below permissible ALIs might be difficult to measure in a practical manner with sufficient accuracy to permit projection of the committee effective dose equivalent to be used to demonstrate compliance with the limits in § 20.201 by the methods provided in § 20.202(b)

TABLE 3 [1]

Element	Isotope						
Thorium	-228Y	-229Y	-230Y	-232Y			
Protactinium	-231Y						
Uranium	-232Y	-233Y	-234Y	-235Y	-236Y	-238Y	
Plutonium	-236Y	-238Y	-239Y	-240Y	-241Y	-242Y	-244Y
Californium	-249Y	-250Y	-251Y	-252Y			

[1] refers to the classification of radioactive materials dependent on their biological retention in the lung (see Appendix B of this part).

(b) A licensee may permit an individual in a restricted area to receive a dose in excess of the limit in § 20.201, when all or part of the dose equivalent received by an individual is from the intake of one or more of the radionuclides listed in Table 3, if each of the following conditions are satisfied:

(1) Facilities constructed after (*effective date of the revision*) are designed so that air concentrations averaged over the year in restricted areas are within the DAC values.

(2) The licensee operates the facility in a manner that will ensure that any individual is unlikely to have an intake from occupational exposure in 1 year in excess of the ALI value.

(3) The sum of the (external) deep dose equivalent, H_D, and the effective dose equivalent, $\Sigma_T H_T h_T$, received in one year (due to both the radionuclides taken into the body during the current year and the radionuclides remaining in the body from previous years) does not exceed 5 rems (0.05 Sv).

(4) The licensee limits the effective dose equivalent received by the individual in one year from the intake of radionuclides in Table 3 (due to both the radionuclides taken into the body during the current year and the radionuclides remaining in the body from previous years) to 3 rems (0.03 Sv).

(5) The licensee provides the best estimate to both the effective dose equivalent received in a year and the committed effective dose equivalent for all of the radioactive material remaining in the body of the individual at the end of the current year. These estimates shall be recorded, revised at least annually if the exposure is later found to be other than previously estimated, reported to the individual annually, and sent to subsequent employers as part of the individual's occupational exposure history.

(6) The licensee formally instructs the individual employee concerning the significance of both the effective dose equivalent received in a year and the committed effective dose equivalent and the uncertainty of the estimates or projections.

§ 20.206 Planned special exposures.

A licensee may authorize an adult worker to receive doses from exposure to external sources in excess of the limits specified in § 20.201 provided that each of the following conditions is satisfied.

(a) The licensee authorizes a planned special exposure only in an exceptional situation, when alternatives which might avoid the higher exposure are unavailable or impractical.

(b) The licensee (and employer, if the employer is not the licensee) specifically authorizes the planned special exposure, in writing, before the exposure occurs.

(c) Before a planned special exposure, the licensee ensures that the individuals involved are—

(1) Informed of the purpose of the planned operation;

(2) Informed of the estimated doses and special radiation or other conditions that might be involved in performing the task; and

(3) Instructed in the measures to be taken to keep the dose and other risks ALARA.

(d) Before a planned special exposure, the licensee ascertains the dose equivalent from all previous planned special exposures and all doses in excess of the annual limits for each individual involved in accordance with § 20.1104(a)(2).

(e) Subject to § 20.201(c)(2), the licensee does not authorize a planned special exposure which would cause an individual—

(1) To exceed, numerically, one times the annual dose limits specified in § 20.201(a) from all planned special exposures and all doses in excess of the annual limits in a calendar year; or

(2) To exceed a total lifetime dose from all planned special exposures and all doses in excess of the annual limits by that individual of five times the annual limits specified in § 20.201(a).

(f) The licensee provides respiratory protection to ensure that the intake by inhalation will be within the appropriate annual limit of intake (ALI).

(g) The licensee maintains records of the conduct of a planned special exposure in accordance with § 20.1105, and submits a written report in accordance with § 20.1204.

(h) The licensee records the dose resulting from a planned special exposure in the individual's record and informs the individual, in writing, of the dose received within 15 days following determination of the dose. However, this dose will not be considered in controlling future occupational dose to the individual under § 20.201(a).

§ 20.207 Occupational dose limits for minors.

The annual dose limits for occupational exposure for minors are 10% of the annual dose limits specified for adult workers in § 20.201(a). The dose limits for minors are not exceeded if the inequality in the reference for §20.202 in Appendix E of this part is equal to or less than $\frac{1}{10}$.

§ 20.208 Dose to an embryo/fetus.

(a) Except as noted in paragraph (c) of this section, a licensee shall ensure that the effective dose equivalent to an embryo/fetus due to occupational exposure of a declared pregnant women does not exceed 0.5 rem (5 mSv) during the entire pregnancy. Efforts should be made to avoid substantial variation above a uniform monthly exposure rate which would satisfy this limit. (For recordkeeping requirements, see § 20.1106.)

(b) The effective dose equivalent to an embryo/fetus is the sum of—

(1) The deep dose equivalent to the declared pregnant woman; and

(2) In the absence of age-specific transport parameters for the radionuclides involved, two times the committed effective dose equivalent that would be otherwise assessed due to the

intake of radionuclides by the pregnant woman.[2] Further, the licensee may, for intakes of Class Y materials, calculate the dose to the embryo/fetus on the basis of photon dose to the embryo/fetus (target) from other (source) organs plus the dose equivalent to the embryo/fetus from that portion of the pregnant woman's intake of Class Y material that is transportable, applying either the factor of 2 or age-specific factors applicable to the transportable fraction involved.

(c) Notwithstanding the limit in paragraph (a) of this section, if the dose to the embryo/fetus is found to have exceeded 0.5 rem (5 mSv) by the time the woman declares to the licensee the pregnancy and the estimated date of conception, the licensee is in compliance with paragraph (a) of this section if the licensee does not assign the woman tasks which result in the embryo/fetus receiving an additional dose exceeding 0.05 rem (0.5 mSv) during the remainder of the pregnancy.

Subpart D—Radiation Dose Limits and Reference Level for Individual Members of the Public

§ 20.301 Dose limits for individuals members of the public.

(a) Exposure of any individual member of the public shall be constrained so that the total dose from all known sources and operations, licensed and unlicensed, except for natural background, medical diagnosis and therapy, and radioactive material disposed into sanitary sewerage according to § 20.1003, does not exceed 0.5 rem (5 mSv) per year. The total dose shall be the sum of the (external) deep dose equivalent to the whole body and the (internal) committed effective dose equivalent.

(b) If the licensee permits members of the public to have access to controlled areas, the limits for members of the public still apply to those individuals.

(c) The Commission may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee may release in effluents in order to restrict the collective effective dose equivalent.

[2] This factor of 2 recognizes potential differences in biological factors that could result in the embryo/fetus receiving an effective dose equivalent greater than that of the pregnant woman as a result of intake of radioactive material by the pregnant woman. The licensee may use factors other than 2 for specific radionuclides when such factors become available from scientific authorities and are approved by regulatory authorities for use by licensees.

§ 20.302 [Reserved]

§ 20.303 Reference level for the exposure of individual members of the public.

The annual dose limits apply to actual doses that are received by individuals in the public. However, it is impractical, if not impossible, to determine precisely an actual dose because of possible multiple sources, complex problems involving dosimetry, incomplete information concerning water and food intake, habits, spatial and temporal considerations, and other confounding factors. Furthermore, individual members of the public might be subjected to exposures to radiation from several sources, not all of which are controlled by the licensee. Some of the exposures might also occur from activities which are not regulated by the Commission, by State governments, or by other Federal agencies. Therefore, compliance with the dose limits must generally be established in a practical manner by using site-specific parameters and reasonable assumptions to demonstrate that the doses are not likely to exceed a fraction of the limits. For this purpose, reference levels are established. Operations that result in doses at or below these reference levels will ensure that no individual member of the public will be subject to doses that exceed the annual dose limits in § 20.301.

(a) A licensee will be in compliance with the 0.5-rem (5 mSv) annual limit in § 20.301 if the licensee demonstrates that sources under the licensee's control will not result in an individual member of the public receiving a dose in excess of a 0.1-rem (1 mSv) annual reference level.

(b) A licensee may demonstrate operation within the 0.1-rem (1 mSv) annual reference level in paragraph (a) of this section by—

(1) Demonstrating that the sum of the (external) deep dose equivalent and the (internal) committed effective dose equivalent to the individual likely to be the highest exposed from sources under the licensee's control does not exceed the 0.1-rem (1 mSv) annual reference level (see Appendix E of this part for mathematical expression); or

(2) Demonstrating that annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area are constrained to the values specified in Table 2 of Appendix B of this part and dose rates in unrestricted areas are constrained to 0.002 rem (0.02 mSv) in an hour and not more than 0.05 rem (0.5 mSv) in a year.

(c) A licensee or license applicant may apply for prior authorization of operations which may result in exposure of individual members of the public in excess of the reference level in paragraph (a) of this section, but within the annual limits in § 20.301 of this part. The licensee or license applicant shall include in the application for authorization to operate in excess of the reference level—

(1) Demonstration of a clear need to operate in excess of the reference level;

(2) The licensee's program to assess and control dose within the 0.5-rem (5 mSv) annual limit; and

(3) The procedures to be followed to maintain public exposures ALARA.

(d) A licensee shall review the circumstances which cause, or are likely to cause, values which exceed the criteria selected for demonstrating compliance according to paragraph (a) of this section or exceed the level approved under the provisions in paragraph (c) of this section and shall report the findings (see § 20.1205).

(e) In addition to the requirements of this part, a licensee engaged in uranium fuel cycle operations subject to the provisions of 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," shall comply with the requirements of that part.

§ 20.304 Collective dose evaluations.

Doses to individual members of the public receiving 0.001 rem (0.01 mSv) or less in a year may be omitted in collective dose evaluations to prevent an unwarranted commitment of resources for controlling or regulating exposures at levels where calculated risks are negligibly small.

Subpart E—[Reserved]

Subpart F—Surveys and Monitoring

§ 20.501 General.

(a) Each licensee shall make, or cause to be made, surveys that—

(1) May be necessary for the licensee to comply with the regulations in this part; and

(2) Are reasonable under the circumstances to evaluate the extent of radiation levels that could be present and the potential for intake of radioactive materials by individuals.

(b) The licensee shall ensure that instruments and equipment used for quantitative radiation measurements (e.g., dose rate and effluent monitoring) are calibrated for the type of radiation measured.

(c) After [date to be determined in separate rulemaking action], all personnel dosimeters, except extremity

dosimeters and pocket ionization chambers, that require processing to yield a dose value and that are provided to comply with § 20.201 or with the applicable terms and conditions of any license issued by the Nuclear Regulatory Commission:

(1) Shall be processed by a processor currently accredited by the National Voluntary Laboratory Accreditation Program for Personnel Dosimetry Processors of the National Bureau of Standards in accordance with accreditation criteria established in 15 CFR Part 7; and

(2) Shall be approved in this accreditation process for the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

§ 20.502 Conditions requiring individual monitoring of external and internal occupational dose.

(a) Each licensee shall monitor exposures to radiation and shall supply and require the use of individual monitoring devices by—

(1) Adults exposed under circumstances that could result in the individual receiving, in one year from sources external to the body, a doses in excess of 10% of the annual limits in § 20.201(a).

(2) Minors exposed under circumstances that could result in the individual receiving in a year from sources external to the body a dose in excess of 5% of the annual limits for adults in § 20.201(a).

(3) Individuals entering a high or very high radiation area.

(b) Each licensee shall assess the intake of radioactive material by and the committee effective dose equivalent to—

(1) Adults exposed under circumstances that could result in an intake in a year in excess of 30% of the applicable ALI(s) in Table 1, Columns 1 and 2 of Appendix B of this part;

(2) Minors exposed under circumstances that could result in an intake in a year in excess of 5% of the applicable ALI(s) in Table 1, Columns 1 and 2 of Appendix B of this part; and

(3) Individuals using respiratory protection devices to limit the intake of radioactive material under the provisions of §§ 20.702 and 20.703.

Subpart G—Control of Exposure From External Sources in Restricted Areas

§ 20.601 Control of access to high radiation areas.

(a) The licensee shall ensure that each entrance or access point to a high radiation area has one of the following features:

(1) A control device which, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a dose of 0.1 rem (1 mSv) in 1 hour at 30 cm from the radiation source or from any surface which the radiation penetrates.

(2) A control device which energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry.

(3) Entryways that are locked, except during periods when access to the area is required, with positive control over each individual entry.

(4) The licensee may substitute continuous surveillance over a high radiation area to prevent unauthorized entry in place of the controls required by paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(b) A licensee may apply to the Commission for approval of alternative methods for controlling access to high radiation areas.

(c) The licensee shall establish the controls required by paragraphs (a) and (b) of this section in a way that dose not prevent individuals from leaving a high radiation area.

(d) Control is not required for each entrance or access point to a room or other area which is high radiation area solely because of the presence of radioactive materials prepared for transport and packaged and labeled in accordance with the regulations of the Department of Transportation provided that—

(1) The packages do not remain in the area longer than 3 days; and

(2) The dose rate at 1 meter from the external surfaces does not exceed 0.01 rem (0.1 mSv) per hour.

(e) Control of entrance or access to rooms or other areas in hospitals is not required solely because of the presence of patients containing radioactive material, provided that there are personnel in attendance who will take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this part and to operate within the ALARA provisions of the licensee's radiation protection program.

§ 20.602 Control of access to very high radiation areas.

In addition to the requirements in § 20.601, the licensee shall institute additional measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 500 rads (5 grays) or more in 1 hour at 1 meter from a radiation source or any surface through which the radiation penetrates.

(a) The licensee shall include these measures:

(1) *Primary controls.* Control devices on each entrance or access point which function automatically: To prevent entry when a very high radiation area exists; to permit entry only after reduction of the radiation level below 0.1 rem (1 mSv) per hour at 30 cm from the radiation source or from any surface which the radiation penetrates; and to prevent operation of the source or otherwise prevent the existence of a very high radiation area while an individual is in the area;

(2) *Secondary controls.* Additional control devices which will initiate audible and visible alarm signals to indicate the failure of the primary entry control device and the presence of the radiation hazard; and

(3) *Administrative controls.* Administrative procedures to alert personnel in the area before operation of the source(s) and in sufficient time to permit evacuation of the area, or to operate a control device which will prevent operation of the source, or to otherwise prevent or reduce the probability of exposure at very high radiation levels.

(b) A licensee may apply to the Commission for approval of alternative methods of controlling access to very high radiation areas.

Subpart H—Respiratory Protection Controls To Restrict Internal Exposure in Restricted Areas

§ 20.701 Use of process or other engineering controls.

The licensee shall use, to the extent practical, process engineering controls (e.g., process-containment or ventilation), to limit the concentrations of the radioactive materials in air.

§ 20.702 Use of other controls.

When it is not practical to apply process engineering controls to limit the concentrations of radioactive material in air to values below those defined as an airborne radioactivity area, licensees shall use increased surveillance, limitation of exposure times, respiratory protection equipment, or other controls to limit intake.

§ 20.703 Use of individual respiratory protection equipment.

(a) In estimating exposure of individuals to airborne radioactive materials, the licensee may make allowance for respiratory protection equipment used to limit the inhalation of

the material pursuant to § 20.702, provided the following conditions are satisfied:

(1) The licensee shall select respiratory protection equipment that provides a protection factor (see Appendix A of this part) greater than the factor by which average concentrations of radioactive materials are expected to exceed the values specified in Table 1, Column 3 of Appendix B of this part. The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the ambient concentration by the protection factor. If the exposure is later found to be greater than estimated, the corrected value shall be used.

(2) The licensee shall maintain and implement a respiratory protection program that includes—

(i) Air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate exposures;

(ii) Surveys and bioassays, as appropriate, to evaluate actual intakes;

(iii) Testing of respirators for operability immediately prior to each use;

(iv) Written procedures regarding selection, fitting, issuance, maintenance, and testing of respirators; supervision and training of personnel; and recordkeeping; and

(v) Determination by a physician prior to initial fitting of respirators, and every 9 to 15 months thereafter, that the individual user is physically able to use the respiratory protection equipment.

(3) The licensee shall issue a written policy statement on respirator usage covering—

(i) The use of process engineering controls, instead of respirators;

(ii) The routine, nonroutine, and emergency use of respirators; and

(iii) The periods of respirator use and relief from respirator use. The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other condition that might require such relief.

(4) The licensee shall use only respiratory protection equipment certified by the National Institute for Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA).

(5) If the licensee wishes to use equipment that has not been tested or certified by NIOSH/MSHA, has not had certification extended by NIOSH/MSHA, or is not on an existing schedule for testing or certification, the licensee shall include with the application for authorized use of such equipment a demonstration by testing, or a demonstration on the basis of reliable test information, that the material and performance characteristics of the equipment are capable of providing an acceptable degree of protection under anticipated conditions of use.

(b) The licensee shall obtain authorization from the Commission before assigning respiratory protection factors in excess of those specified in Appendix A of this part. The Commission may authorize a licensee to use higher protection factors on receipt of an application that—

(1) Describes the situation for which a need exists for higher protection factors; and

(2) Demonstrates that the respiratory protective equipment provides these higher protection factors under the proposed conditions of use.

§ 20.704 Further restrictions on the use of respiratory protection equipment.

The Commission may impose further restrictions, in addition to those in §§ 20.702, 20.703, and Appendix A of this part to—

(a) Ensure that the respiratory protection program of the licensee is adequate to limit exposures of individuals to airborne radioactive materials, and

(b) Limit the extent to which a licensee may use respiratory protection equipment instead of process or other engineering controls.

Subpart I—Storage and Control of Licensed Material

§ 20.801 Security of stored material.

The licensee shall secure licensed materials stored in controlled or unrestricted areas from unauthorized access or removal.

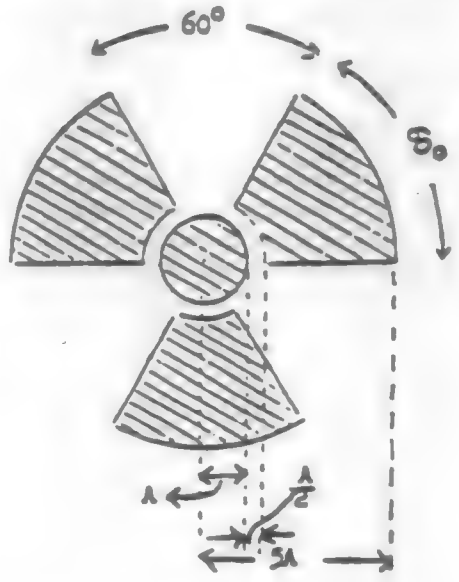
§ 20.802 Control of material not in storage.

The licensee shall control and maintain constant surveillance of licensed material which is in a controlled or unrestricted area and which is not in storage.

Subpart J—Precautionary Procedures

§ 20.901 Caution signs.

(a) *Standard radiation symbol.* Unless otherwise authorized by the Commission, the symbol prescribed by this part shall use the colors magenta or purple on yellow background. The symbol prescribed by this part is the three-bladed design.



Radiation Symbol

(1) Cross-hatched area is to be magenta or purple.

(2) Background is to be yellow.

(b) *Exception to color requirements for standard radiation symbol.* Notwithstanding the requirements of paragraph (a) of this section, licensees are authorized to lable sources, source holders, or device components containing sources of licensed materials that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

(c) *Additional information on signs and labels.* In addition to the contents of signs and labels prescribed in this part, the licensee may provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

§ 20.902 Posting requirements.

(a) *Posting of radiation areas.* The licensee shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA" or "DANGER, RADIATION AREA."

(b) *Posting of high radiation areas.* The licensee shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA."

(c) *Posting of very high radiation areas.* The licensee shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "DANGER, VERY HIGH RADIATION AREA."

(d) *Posting of airborne radioactivity areas.* The licensee shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA."

(e) *Posting of areas or rooms in which licensed material is stored.* The licensee shall post each area or room in which there is stored an amount of licensed material exceeding 10 times the quantity of such material specified in Appendix C of this part with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)."

§ 20.903 Exceptions to posting requirements.

(a) A licensee is not required post caution signs in areas or rooms containing radioactive materials for periods of less than 8 hours, if each of the following conditions is met:

(1) The materials are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to radiation or radioactive materials, in excess of the limits established in this part; and

(2) The area or room is subject to the licensee's control.

(b) Rooms or other areas in hospitals, other than those involving patients being treated with therapeutic quantities of unsealed radioactive materials or with brachytherapy sources, are not required to be posted with caution signs pursuant to § 20.902 because of the presence of patients containing radioactive material, provided that there are personnel in attendance who will take the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the limits established in this part and to operate within the ALARA provisions of the licensee's radiation protection program.

§ 20.904 Labeling containers.

(a) *Labeling.* Except as provided by paragraph (c) of this section, the licensee shall ensure that each container of licensed material bears a durable, clearly visible label identifying the radionuclide(s), the estimate of the quantity of radioactivity, and the date for which the activity is estimated. The label shall bear the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL." It should also provide sufficient information to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures. The licensee should include appropriate information such as radiation levels, kinds of material, and mass enrichment.

(b) *Removing labels from empty containers.* Each licensee shall, prior to disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

(c) *Exceptions to labeling requirements.* A licensee is not required to label the following—

(1) Containers holding licensed material in quantities less than the applicable quantities listed in Appendix C of this part;

(2) Containers holding licensed material in concentrations less than those specified in Table 3 of Appendix B of this part;

(3) Containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by this part;

(4) Containers which are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record (examples of containers of this type are containers in locations such as water-filled canals, storage vaults, or hot cells). The record must be retained as long as the containers are in use for the purpose indicated on the record.

(5) Installed manufacturing or process equipment, such as reactor components, piping, and tanks.

§ 20.905 Procedures for picking up, receiving, and opening packages.

(a) Each licensee who expects to receive a package containing quantities of radioactive material in excess of the "Type As" quantities specified in or determined by procedures decribed in Appendix A of Part 71 of this chapter shall make arrangements—

(1) To receive the package when the carrier offers it for delivery; or

(2) To receive notification of the arrival of the package at the carrier's terminal and to pick up the package expeditiously.

(b) Each licensee, upon receipt of a package containing radioactive material, shall monitor the external surfaces of the package for radioactive contamination and radiation levels, and shall make other surveys as may be required by § 20.501. The licensee shall perform the monitoring as soon as practical after receipt of the package, but not later than 3 hours after the package is received at the licensee's facility if it is received during the licensee's normal working hours, or not later than 3 hours from the beginning of the next working day if it is received after working hours.

(c) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the Administrator of the appropriate NRC Regional Office listed in Appendix D of this part if packages, other than those transported by exclusive use vehicle, are found to have—

(1) Removable radioactive contamination in excess of 0.01 microcurie (0.37 kBq) per 100 square centimeters on the external surfaces of the package; or

(2) Radiation levels at 1 meter from the external surface of the package in excess of 0.01 rem (0.1 mSv) per hour.

(d) Each licensee shall—

(1) Establish and maintain written procedures for safely opening packages in which radioactive material is received;

(2) Ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened; and

(3) Retain copies of the written procedures as long as they are appropriate for use.

Subpart K—Waste Disposal

§ 20.1001 General requirement.

A licensee shall dispose of licensed material only—

(a) By transfer to an authorized recipient as provided in § 20.1006 or in the regulations in Parts 30, 40, 60, 61, 70, or 72 of this chapter;

(b) By decay in storage;

(c) By release in effluents within the constraints in §§ 20.301 and 20.303; or

(d) As authorized under §§ 20.1002, 20.1003, 20.1004, or 20.1005.

§ 20.1002 Method for obtaining approval of proposed disposal procedures.

(a) A licensee or applicant for a license may apply to the Commission for approval of proposed procedures, not otherwise authorized in the regulations in this chapter, to dispose of radioactive waste generated in the licensee's activities. Each application shall include—

(1) A description of the radioactive waste, including the physical and chemical properties important to risk

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evaluation, and the proposed manner and conditions of waste disposal;

(2) An analysis and evaluation of pertinent information on the nature of the environment;

(3) The nature and location of other potentially affected licensed and unlicensed facilities; and

(4) Procedures to ensure that doses are maintained ALARA and within the dose limits in this part.

(b) A person must file an application for a license to receive radioactive waste from other persons for disposal at a land disposal facility under Part 61 of this chapter or at a geologic repository under Part 60 of this chapter.

§ 20.1003 Disposal by release into sanitary sewerage.

(a) A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied.

(1) The material is readily soluble in water.

(2) The quantity of licensed or other radioactive material that the licensee releases into the sewer in one month divided by the average monthly volume of water released into the sewer by the licensee does not exceed the concentration listed in Table 3 of Appendix B of this part.

(3) If more than one radionuclide is released, the following conditions must also be satisfied:

(i) The licensee shall determine the fraction obtained by dividing the actual monthly average concentrations of each radionuclide released by the licensee into the sewer by the monthly average concentration of the radionuclide listed in Table 3 of Appendix B of this part; and

(ii) The sum of the fractions for each radionuclide required by paragraph (a)(3)(i) of this section does not exceed unity.

(4) The gross quantity of licensed and other radioactive material that the licensee releases into the sanitary sewerage system in a year does not exceed 5 curies (185 GBq) of hydrogen-3, 1 curie (37 GBq) of carbon-14, and 1 curie (37 GBq) of all othe radioactive materials.

(b) Excreta from individuals undergoing medical diagnosis or therapy with radioactive material shall be exempt from any limitations contained in paragraph (a) of this section.

§ 20.1004 Treatment or disposal by incineration.

A licensee may treat or dispose of licensed material by incineration only in the amounts and forms specified in § 20.1005, or as specifically approved by the Commission pursuant to § 20.1002, and within the constraints in §§ 20.301 and 20.303.

§ 20.1005 Disposal of specific wastes.

(a) A licensee may dispose of the following licensed material as if it were not radioactive:

(1) 0.05 microcurie (1.85 kBq), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting.

(2) 0.05 microcurie (1.85 kBq), or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

(b) A licensee may not dispose of tissue under paragraph (a)(2) of this section in a manner than would permit its use either as food for humans or as animal feed.

(c) The licensee shall maintain records in accordance with § 20.1106.

(d) The licensee shall comply with other applicable Federal, State and local regulations governing other toxic or hazardous properties of materials.

§ 20.1006 Transfer for disposal and manifests.

(a) The requirements of this section and Appendix F of this part are designed to control transfers of low-level radioactive waste intended for disposal at a land disposal facility (as defined in Part 60 of this chapter), establish a manifest tracking system, and supplement existing requirements concerning transfers and recordkeeping for such wastes.

(b) Each shipment of radioactive waste intended for disposal at a licensed land disposal facility must be accompanied by a shipment manifest as specified in section I of Appendix F of this part.

(c) Each shipment manifest shall include a certification by the waste generator as specified in section II of Appendix F of this part.

(d) Each person involved in the transfer for disposal and disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in section III of Appendix F of this part.

Subpart L—Records

§ 20.1101 General provisions.

Each licensee shall clearly indicate the radiation units of all quantities on records required by this part.

§ 20.1102 Records of radiation protection program, including ALARA provisions.

(a) Each licensee shall maintain records showing—

(1) The radiation protection program, including provisions for maintaining doses ALARA; and

(2) The examination and verification of program features and records, and actions taken by licensee management, or its designee, adequate to demonstrate compliance with the requirements in § 20.102 for maintaining doses ALARA and to demonstrate implementation of the licensee's ALARA program.

(b) The licensee shall retain these records for two years or until completion of the first inspection of the radiation protection aspects of the licensee's program, whichever is longer.

§ 20.1103 Records of surveys.

(a) Each licensee shall maintain records showing the results of surveys and calibrations required by §§ 20.501 and 20.905(b). The licensee shall retain these records for two years after the record is made or until completion of the first inspection of the radiation protection aspects of the licensee's program, whichever is longer.

(b) The licensee shall retain each of the following records required by § 20.703(a)(2)(ii) until the Commission terminates each pertinent license requiring the record:

(1) Records of the results of surveys to determine individual intakes of radioactive material and used in the assessment of internal dose.

(2) Records of the results of surveys to determine the dose from external sources and used, in the absence of individual monitoring data, in the assessment of individual dose equivalents.

(3) Records of the results of surveys used to evaluate the release of radioactive effluents to the environment.

§ 20.1104 Determination of prior occupational dose.

(a) The licensee shall determine—

(1) The occupational radiation dose received during the current calendar year by each individual who enters the licensee's restricted or controlled area and is likely to receive in a year an occupational dose requiring provision of individual monitoring devices or services pursuant to § 20.502; and

(2) Prior to permitting an individual to participate in a planned special exposure, all planned special exposures and overexposures (including doses received during accidents and emergencies) received during the lifetime of the individual.

(b) The licensee shall determine the exposure history, as required by paragraph (a) of this section, and record on NRC Form 4, or other clear and

legible record, all of the information required in that form.[3] The form or record must show each period in which the individual received occupational exposure to radiation or radioactive material and must be signed by the individual who received the exposure.

(c) The records on NRC Form 4 shall be retained until the Commission terminates each pertinent license requiring this record. Arrangements may be made for transfer of the records to the NRC upon termination of the license. The licensee shall retain records used in preparing NRC Form 4 for two years after the record is made or until completion of the first inspection of the radiation protection aspects of the licensee's program, whichever is longer.

(d) The licensee shall attempt to obtain reports of the individual's previously accumulated effective dose equivalent by telephone, telegram, electronic media, or letter. The licensee shall request a follow-up written verification of dose data received via telephone, telegram, or electronic media. The licensee may accept an up-to-date NRC Form 4 signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee. For each period for which the licensee obtains reports, the licensee shall use the dose shown in the report in preparing NRC Form 4. If a determination had been made that the individual was unlikely to receive doses for which monitoring was required under § 20.502, it shall be assumed that the individual has received a dose equal to the minimum doses which would require monitoring. For each quarter for which the licensee is unable to obtain complete reports of the individual's occupational dose, the licensee shall assume that—

(1) The individual has received 1.25 rems (12.5 mSv) per calendar quarter of the current year; and

(2) The individual is not available for planned special exposures.

§ 20.1105 Records of planned special exposures.

(a) The licensee shall maintain records which describe, for each use of the provisions of § 20.206 for planned special exposures—

(1) Evaluations made pursuant to § 20.206(a) before the planned special exposure;

(2) The name of the management official who authorized the planned special exposure pursuant to § 20.206(b) and a copy of the signed authorization;

(3) What actions were necessary;

(4) Why the actions were necessary;

(5) How doses were maintained ALARA; and

(6) What individual and collective doses were expected to result, and the doses actually received in the planned special exposure.

(b) The licenee shall retain the records until the Commission terminates each pertinent license requiring these records.

§ 20.1106 Records of individual monitoring results.

(a) Each licensee shall maintain records of doses received by all individuals for whom monitoring was required under normal operating conditions, and all doses due to overexposures, planned special exposures, accidents and emergency conditions.

(b) Each licensee required by § 20.502 to provide individual monitoring devices to assess external dose equivalent shall maintain records of the results.[4]

(c) Each licensee required by § 20.502 or a specific license condition to assess individual internal effective dose equivalent shall maintain records of the results that contain—

(1) The estimated amounts of the radionuclides providing significant exposures as a result of an intake; and

(2) The total effective dose equivalent assigned to the intake of radionuclides.

(d) Each licensee shall add the assessments of individual external dose equivalent and internal effective dose equivalent resulting from the intake of radioactive material for individuals for whom monitoring is required by § 20.502 or a specific license condition. The licensee shall enter this sum and maintain the records specified in paragraphs (a) and (b) of this section on NRC Form 5, in accordance with the instructions for NRC Form 5, or on clear and legible records containing all of the information required by NRC Form 5.

(1) Where specific information on the physical and biochemical properties of the radionuclides involved and their behavior in an individual is known and differs from the instructions for NRC Form 5, the licensee may use that information. If specific information on an individual is used, the licensee shall document or reference in the individual's record the information and the calculation techniques and models used.

(2) The licensee shall enter on NRC Form 5, or equivalent record—

(i) External deep dose equivalent doses for periods of time not exceeding one calendar quarter; and

(ii) Dose equivalents resulting from the intake of radioactive material, and the summation of dose equivalents from external sources and from intake, for periods of time not exceeding one year.

(3) The licensee shall maintain the records of dose to an embryo/fetus with the records of dose to the mother.

(e) Each licensee subject to § 20.501(c) of this part, in addition to preserving personnel monitoring records in accordance with this section, shall also preserve with these records copies of pertinent personnel dosimetry processor accreditation certificates from the National Voluntary Laboratory Accreditation Program as necessary to demonstrate compliance with § 20.501(c) after [date to be determined in separate rulemaking action].

(f) The licensee shall retain each required form or record until the Commission terminates each pertinent license requiring the record.

§ 20.1107 Records of release of radioactive material in effluents.

(a) Each licensee shall maintain records of the identity and quantity of radioactive material in effluents released to unrestricted areas, within the constraints in §§ 20.301 and 20.303, except that the identity of the individual radionuclide in effluents needs not be documented if the total concentration of such unknown radionuclides is less than 10% of the limit for unknown mixtures.

(b) The licensee shall retain the records required by paragraph (a) of this section until the Commission terminates each pertinent license requiring the record.

§ 20.1108 Records of waste disposal.

(a) Each licensee shall maintain records of the disposal of licensed materials made under §§ 20.1002, 20.1003, 20.1004, 20.1005, and disposal by burial in soil, as authorized before January 28, 1981.[5]

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[3] Licensees are not required to reevaluate the separate external dose equivalents and internal committed dose equivalents or intakes of radionuclides assessed under the regulations in effect before ———. Further, occupational exposure histories obtained and recorded on NRC Form 4 before ——— would not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

[4] Assessments of dose equivalent (rem or sievert) and records made using units in effect before ——— need not be changed.

[5] A previous § 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific Commission authorization.

(b) The licensee shall retain the records required by paragraph (a) of this section until the Commission terminates each pertinent license requiring the record.

§ 20.1108 Form of records.

The licensee may retain the original record or reproduced copy or microform of any record required by this part if—

(a) The reproduced copy shows a signature by the licensee or is authorized to be a copy of the official, original record; and

(b) The microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations.

Subpart M—Reports

§ 20.1201 Reports of theft or loss of licensed material.

(a) *Telephone of reports.* (1) Each licensee shall report by telephone as follows:

(i) Immediately after its occurrence becomes known to the licensee, any lost, stolen, or missing licensed material in such quantities and under such circumstances that it appears to the licensee that a substantial exposure could result to persons in unrestricted areas; or

(ii) Within 30 days after the occurrence of any lost, stolen or missing licensed material becomes known to the licensee, all licensed material in a quantity greater than ten times the quantity specified in Appendix C of this part which is still missing at this time.

(2) Reports must be made as follows:

(i) Licensees having an installed Emergency Notification System shall make the reports to the NRC Operations Center in accordance with § 50.72 of this chapter; and

(ii) All other licensees shall make reports to the Administrator of the appropriate NRC Regional Office listed in Appendix D of this part.

(b) *Written reports.* (1) Each licensee who is required to make a report under paragraph (a) of this section shall, within 30 days after learning of the occurence of any lost, stolen or missing licensed material, report in writing the following information:

(i) A description of the licensed material involved, including kind, quantity, and chemical and physical form;

(ii) A description of the circumstances under which the loss or theft occurred;

(iii) A statement of disposition, or probable disposition, of the licensed material involved;

(iv) Exposure of individuals to radiation, circumstances under which the exposure occurred, and the possible effective dose equivalent to persons in unrestricted areas;

(v) Actions which have been taken, or will be taken, to recover the material; and

(vi) Procedures or measures which have been, or will be, adopted to ensure against a recurrence of the lose or theft of licensed material.

(2) Reports must be made as follows:

(i) For holders of an operating license for a nuclear power plant, the events included in paragraph (b) of this section must be reported in accordance with the procedures described in § 50.73(b), (c), (d), (e), and (g) of this chapter and must include the information required in paragraph (b)(1) of this section.

(ii) All other licensees shall make reports to the Administrator of the appropriate NRC Regional Office listed in Appendix D of this part.

(c) A duplicate report is not required if the licensee is also required to submit a report pursuant to §§ 30.55(c), 40.64(c), 50.72, 50.73, 70.52, 73.27(b), 73.67(e)(3)(vi), 73.67(g)(3)(iii), 73.71, or 150.19(c) of this chapter.

(d) Subsequent to filing the written report, the licensee shall also report any additional, substantive information on the loss or theft within 30 days after the licensee learns of such information.

(e) The licensee shall prepare any reports filed with the Commission pursuant to this section so that names of individuals who may have received exposure to radiation are stated in a separate and detachable part of the report.

§ 20.1202 Notification of incidents.

(a) *Immediate notification.* Each licensee shall immediately report any event involving byproduct, source, or special nuclear material possessed by the licensee which may have caused, or threatens to cause, any of the following conditions—

(1) An individual to receive a deep dose equivalent of 25 rems (0.25 Sv) or more, a dose equivalent to the lens of the eye of 75 rems (0.75 Sv) or more, or a absorbed dose to the skin or extremities of 250 rads (2.5 Gy) or more; or

(2) The release or radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours—

(i) The individual could have received an intake five times the occupational annual limit of intake; or

(ii) For licensees operating under the provisions of § 20.205, the individual could have received an effective dose equivalent of 5 rems in a year.

(iii) The provisions of paragraphs (a)(2)(i) and (a)(2)(ii) of this section do not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(b) *Twenty-four hour notification.* Each licensee shall, within 24 hours of discovery of the event, report any event involving loss of control of licensed material possessed by the licensee which may have caused, or threatens to cause, any of the following conditions—

(1) An individual to receive, in a period of 24 hours, a deep dose equivalent exceeding 5 rems (0.05 Sv), a dose equivalent to the lens of the eye exceeding 15 rems (0.15 Sv), or a dose equivalent to the skin or extremities exceeding 50 rems (0.5 Sv). This dose not include doses which result from planned special exposures, which are within the limits for planned special exposures and which are reported under § 20.1204; or

(2) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours—

(i) The individual could have received an intake in excess of one occupational annual limit of intake; or

(ii) For licensees operating under the provisions of § 20.205, the individual could have received an effective dose equivalent of 3 rems (0.03 Sv) in a year.

(iii) The provisions of paragraphs (b)(2)(i) and (b)(2)(ii) of this section do not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

(c) The licensee shall prepare any report filed with the Commission pursuant to this section so that names of individuals who have received exposure to radiation or radioactive material are stated in a separate and detachable part of the report.

(d) Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees that have an installed Emergency Notification System shall make the reports required by paragraphs (a) and (b) of this section to the NRC Operations Center in accordence with § 50.72 of this chapter

(2) All other licensees shall make the reports required by paragraphs (a)(b) of this section by telephone and by telegram, mailgram, or facsimile to the Administrator of the appropriate NRC Regional Office listed in Appendix D of this part.

§ 20.1203 Reports of overexposures and excessive radiation levels and concentrations of radioactive material.

(a) In addition to notification required by § 20.1202, each licensee shall submit a follow-up report, in writing, within 30 days after becoming aware of the following occurrences:

(1) An individual has received an occupational effective dose equivalent in excess of the annual dose limits in §§ 20.201, 20.205, and 20.207, or in excess of any applicable limit in the license.

(2) Levels of radiation or concentrations of radioactive materials in a restricted area are in excess of any applicable limit in the license;

(3) Any incident for which notification is required by § 20.1202;

(4) An individual member of the public has received a dose equivalent is excess of the public dose limit in § 20.301;

(5) Levels of radiation or concentrations of radioactive material (whether or not involving excessive exposure of any individual) in an unrestricted area are in excess of ten times any applicable limit in the license;

(b)(1) Each report required by paragraph (a) of this section must describe the extent of exposure of individuals to radiation and radioactive material, including—

(i) Estimates of each individual's dose equivalent;

(ii) The levels of radiation and concentrations of radioactive material involved;

(iii) The cause of the exposure, levels, or concentrations; and

(iv) Corrective steps taken or planned to ensure against a recurrence.

(2) The licensee shall include in each report positive identification of each occupationally exposed individual, including the name, social security number, and date of birth. The licensee shall prepare the report so that this information is stated in a separate and detachable part of the report.

(c) In addition to the reports required by paragraph (a) of this section, each licensee operating a uranium fuel cycle facility shall make a report in writing of levels of radiation or releases of radioactive materials in excess of the limits specified in 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," or in excess of license conditions related to compliance with 40 CFR Part 190. Each report required by this paragraph shall describe:

(1) The extent of exposure of individuals to radiation or to radioactive material:

(2) Levels of radiation or concentrations of radioactive material involved;

(3) The cause of the exposure, levels, or concentrations; and

(4) Corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with 40 CFR Part 190 and with associated license conditions.

(d) For holders of an operating license for a nuclear power plant, the occurrences included in paragraphs (a) or (c) of this section must be reported in accordance with the procedures described in §§ 50.73(b), (c), (d), (e), and (g) of this chapter and must also include the information required by paragraphs (a) and (c) of this section. Occurrences reported in accordance with § 50.73 of this chapter need not be reported by a duplicate report under paragraphs (a) or (c) of this section.

(e) All other licensees who make reports under paragraphs (a) or (c) of this section shall, within 30 days after learning of the overexposure or excessive level or concentration, make a report in writing to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D of this part.

§ 20.1204 Reports of planned special exposures.

The licensee shall submit a written report to the Administrator of the appropriate NRC Regional Office listed in Appendix D of this part, within 15 days following any planned special exposure conducted in accordance with § 20.206, informing the Commission that a planned special exposure was conducted, and indicating the date the planned special exposure occurred.

§ 20.1205 Reports of exceeding reference levels.

(a) Each licensee shall report, in writing, within 30 days after becoming aware that an individual member of the public has received, or is likely to receive, in a calendar year, an effective dose equivalent in excess of 0.1 rem (1 mSv), the reference level established in § 20.303(a) or in excess of any level approved under the provisions of § 20.303(c).

(b) In the report required by paragraph (a) the licensee shall identify—

(1) The location of the individual member(s) of the public involved;

(2) The effective dose equivalent of the individual member(s) of the public, including levels of radiation and concentrations of radionuclides involved, demonstrating that the 0.5 rem (5 mSv) limit in § 20.301 has not been exceeded;

(3) The cause of the exposure levels or concentrations; and

(4) The corrective steps taken or planned to ensure that exposures are maintained ALARA.

(c) For holders of an operating license for a nuclear power plant, the report required by paragraph (a) of this section must be reported in accordance with the procedures described in § 50.73(b), (c), (d), (e), and (g) of this chapter and must include the information required by paragraph (b) of this section.

(d) All other licensees who make reports under paragraph (a) of this section shall make the report in writing to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, DC 20555, with a copy to the Administrator of the appropriate NRC Regional Office listed in Appendix D of this part.

(e) A duplicate report is not required if the licensee is also required to submit a report pursuant to §§ 30.55(c), 40.64(c), 50.72, 50.73, 70.52, 73.27(b), 73.67(e)(3)(vi), 73.67(g)(3)(iii), 73.71 or 150.19(c) of this chapter.

§ 20.1206 Reports of personnel monitoring.

Each person described in § 20.1207 shall, by August 1 of each calendar year, submit to the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the reports specified in paragraphs (a) and (b) of this section, covering the preceding calender year.[6]

(a) A report of either: (1) The total number of individuals for whom personnel monitoring devices or services were required under § 20.502 or § 34.33(a) of this chapter during the calendar year; or (2) the total number of individuals for whom personnel monitoring devices or services were provided during the calendar year: Provided, however, that such total includes at least the number of individuals required to be reported under paragraph (a)(1) of this section. The report shall indicate whether it is submitted in accordance with paragraph (a)(1) or (a)(2) of this section. If personnel monitoring devices or services were not required to be provided to any individual by the licensee under § 20.502 or § 34.33(a) of this chapter during the calendar year,

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[6] A licensee whose license expires or terminates prior to or on the last day of the calendar year shall submit reports at the expiration or termination of the license, covering that part of the year during which the license was in effect.

the licensee shall submit a negative report indicating that such personnel monitoring devices or services were not required.

(b) A statistical summary report of the personnel monitoring information recorded by the licensee for individuals for whom personnel monitoring devices or services were either required or provided, as described in paragraph (a) of this section, indicating the number of individuals whose total effective dose equivalent recorded during the previous calendar year was in each of the following estimated ranges:

Estimated ranges of effective dose equivalent in rems*	Number of individuals in each range
No measurable exposure	
Measurable exposure less than 0.1	
0.1 to 0.25	
0.25 to 0.5	
0.5 to 0.75	
0.75 to 1	
1 to 2	
2 to 3	
3 to 4	
4 to 5	
5 to 6	
6 to 7	
7 to 8	
8 to 9	
9 to 10	
10 to 11	
11 to 12	
12+	

* Individual values exactly equal to the values separating ranges of effective dose equivalent shall be reported in the higher range. The low exposure range data are required in order to obtain better information about the estimated effective dose equivalent actually recorded. This section does not require improved measurements.

§ 20.1207 Reports of personnel monitoring on termination of employment or work.

(a) This section applies to each person licensed by the Commission to:

(1) Operate a nuclear reactor designed to produce electrical or heat energy pursuant to § 50.21(b) or § 50.22 of this chapter or a testing facility as defined in § 50.2(r) of this chapter;

(2) Possess or use byproduct material for purposes of radiography pursuant to Parts 30 and 34 of this chapter;

(3) Possess or use at any one time, for purposes of fuel processing, fabricating, or reprocessing, special nuclear material in a quantity exceeding 5,000 grams of contained uranium-235, uranium-233, or plutonium or any combination thereof pursuant to Part 70 of this chapter;

(4) Possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter; or

(5) Possess spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to Part 72 of this chapter; or

(6) Possess or use at any time, for processing or manufacturing for distribution pursuant to Parts 30, 32, or 33 of this Chapter, byproduct material in quantities exceeding any one of the following quantities:

Radionuclides *	Quantity in curies
Cesium-137	1
Cobalt-60	1
Gold-198	100
Iodine-131	1
Iridium-192	10
Krypton-85	1,000
Promethium-147	10
Technetium-99m	1,000

* The Commission may require as a license condition, or by rule, regulation or order pursuant to § 20.502, reports from licensees who are licensed to use radio nuclides not on this list, in quantities sufficient to cause comparable radiation levels.

(7) Receive radioactive waste from other persons for disposal under Part 61 of this chapter.

(b) When an individual terminates employment with a licensee described in paragraph (a) of this section, or an individual assigned to work in such a licensee's facility, but not employed by the licensee, complete the work assignment in the licensee's facility, the licensee shall furnish to the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, a report of the individual's exposures to radiation and radioactive material, incurred during the period of employment or work assignment in the licensee's facility, containing information recorded by the licensee pursuant to § 20.1106. Such report shall be furnished within 30 days after the exposure of the individual has been determined by the licensee or 90 days after the date of termination of employment or work assignment, whichever is earlier.

Subpart N—Exemptions and Additional Requirements

§ 20.1301 Applications for exemptions.

The Commission may, upon application by a licensee or upon its own initiative, grant an exemption from the requirements of the regulations in this part if it determines the exemption is authorized by law and would not result in undue hazard to life or property.

§ 20.1302 Additional requirements.

The Commission may, by rule, regulation, or order, impose requirements on a licensee, in addition to those established in the regulations in this part, as appropriate or necessary to protect health or to minimize danger to life or property.

Subpart O—Enforcement

§ 20.1401 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974; or

(3) A regulation or order issued under the requirements of those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act for violation—

(1) Of sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the sections specified in paragraph (b)(1) of this section;

(2) Of section 206 of the Energy Reorganization Act of 1954;

(3) Of any rule, regulation, or order issued under the requirements of the sections specified in paragraph (b)(1) of this section;

(4) Of any term, condition, or limitation of any license issued under the sections specified in paragraph (b)(1) of this section; or

(5) For which a license may be revoked under section 186 of the Act.

(c) Any person who willfully violates a provision of the Act or regulation or order issued under the requirements of the Act may be guilty of a crime and, upon conviction, be punished by fine or imprisonment or both, as provided by law.

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APPENDIX A

PROTECTION FACTORS FOR RESPIRATORS[a]

Description[b]	Modes[c]	Protection Factors[d] Particulates only	Particulates, gases, & vapors[e]	Tested & Certified Equipment
I. AIR-PURIFYING RESPIRATORS[f]				
Facepiece, half-mask[g]	NP	10		
Facepiece, full	NP	50		30 CFR Part 11,
Facepiece, half-mask, full, or hood	PP	1000		Subpart K.
II. ATMOSPHERE-SUPPLYING RESPIRATORS				
1. Air-line respirator				
Facepiece, half-mask	CF		1000	
Facepiece, half-mask	D		5	
Facepiece, full	CF		2000	
Facepiece, full	D		5	30 CFR Part 11,
Facepiece, full	PD		2000	Subpart J.
Hood	CF		h	
Suit	CF		i	j
2. Self-contained breathing apparatus (SCBA)				
Facepiece, full	D		50	
Facepiece, full	PD		10,000[k]	30 CFR Part 11,
Facepiece, full	RD		50	Subpart H.
Facepiece, full	RP		5,000[l]	
III. COMBINATION RESPIRATORS				
Any combination of air-purifying and atmosphere-supplying respirators		Protection factor for type and mode of operation as listed above		30 CFR Part 11, §11.63(b).

FOOTNOTES

a. For use in the selection of respiratory protective devices to be used only where the contaminants have been identified and the concentrations (or possible concentrations) are known.

b. Only for shaven faces and where nothing interferes with the seal of tight-fitting facepieces against the skin. (Hoods and suits are excepted.)

c. The mode symbols are defined as follows:

CF = continuous flow
D = demand
NP = negative pressure (i.e., negative phase during inhalation)
PD = pressure demand (i.e., always positive pressure)
PP = positive pressure
RD = demand, recirculating (closed circuit)
RP = pressure demand, recirculating (closed circuit)

d. 1. The protection factor is a measure of the degree of protection afforded by a respirator, defined as the ratio of the concentration of airborne radioactive material outside the respiratory protective equipment to that inside the equipment (usually inside the facepiece) under conditions of use. It is applied to the ambient airborne concentration to estimate the concentrations inhaled by the wearer according to the following formula:

$$\text{Concentration inhaled} = \frac{\text{Ambient airborne concentration}}{\text{Protection factor}}$$

2. The protection factors apply:

(a) Only for individuals trained in using respirators and wearing properly fitted respirators that are used and maintained under supervision in a well-planned respiratory protective program.

(b) For air-purifying respirators only when high efficiency particulate filters (above 99.97% removal efficiency by thermally generated 0.3 μm dioctyl phthalate (DOP) test or equivalent) are used in atmospheres not deficient in oxygen and not containing radioactive gas or vapor respiratory hazards.

(c) No adjustment is to be made for the use of sorbents against radioactive material in the form of gases or vapors.

(d) For atmosphere-supplying respirators only when supplied with adequate respirable air. Respirable air shall be provided of the quality and quantity required in accordance with NIOSH/MSHA certification (described in 30 CFR Part 11). Oxygen and air shall not be used in the same apparatus.

e. Excluding radioactive contaminants that present an absorption or submersion hazard. For tritium oxide, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of less than 2 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. If the protection factor for a device is 5 the effective protection factor for tritium is about 1.4; for devices with protection factors of 10 the effective factor for tritium oxide is about 1.7; and for devices with protection factors of 100 or more the effective factor for tritium oxide is about 1.9. Air-purifying respirators are not suitable for protection against tritium oxide. See also footnote i concerning supplied-air suits.

f. Canisters and cartridges shall not be used beyond service-life limitations.

g. Under-chin type only. This type of respirator is not satisfactory for use where it might be possible (e.g., if an accident or emergency were to occur) for the ambient airborne concentrations to reach instantaneous values greater than 10 times the pertinent values in Table 1, Column 3 of Appendix B of this part. This type of respirator is not suitable for protection against plutonium or other high-toxicity materials. The mask is to be tested for fit prior to use, each time it is donned.

h. Equipment shall be operated in a manner that ensures that proper air flow-rates are maintained. A protection factor of no more than 1000 may be utilized for tested-and-certified supplied-air hoods when a minimum air flow of 6 cubic feet (0.17 cubic meters) per minute is maintained and calibrated airline pressure gauges or flow measuring devices are used. A protection factor of up to 2000 may be used for tested and certified hoods only when the air flow is maintained at the manufacturer's recommended maximum rate for the equipment, this rate is greater than 6 cubic feet (0.17 cubic meters) per minute, and calibrated airline pressure gauges or flow measuring devices are used.

The design of the supplied-air hood or helmet (with a minimum flow of 6 cfm (0.17 m^3 per minute) of air) may determine its overall efficiency and the protection it provides. For example, some hoods aspirate contaminated air into the breathing zone when the wearer works with hands-over-head. This aspiration may be overcome if a short cape-like extension to the hood is worn under a coat or overalls. Other limitations specified by the approval agency shall be considered before using a hood in certain types of atmospheres (see footnote i).

i. Appropriate protection factors shall be determined, taking into account the design of the suit and its permeability to the contaminant under conditions of use. There shall be a standby rescue person equipped with a respirator or other apparatus appropriate for the potential hazards and communications equipment whenever supplied-air suits are used.

j. No approval schedules are currently available for this equipment. Equipment is to be evaluated by testing or on the basis of reliable test information.

k. This type of respirator may provide greater protection and be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure, such as skin absorption, must be taken into account in such circumstances.

l. Quantitative fit testing shall be performed on each individual and no more than 0.02% leakage is allowed with this type of apparatus. Perceptible outward leakage of gas from this or any positive pressure self-contained breathing apparatus is unacceptable because service life will be reduced substantially. Special training in the use of this type of apparatus shall be provided to the wearer.

Note 1: Protection factors for respirators as may be approved by the U.S. Bureau of Mines/National Institute for Occupational Safety and Health (NIOSH), according to applicable approvals for respirators for type and mode of use to protect against airborne radionuclides, may be used to the extent that they do not exceed the protection factors listed in this table. The protection factors listed in this table may not be appropriate to circumstances where chemical or other respiratory hazards exist in addition to radioactive hazards. The selection and use of respirators for such circumstances should take into account applicable approvals of the U.S. Bureau of Mines/NIOSH.

Note 2: Radioactive contaminants for which the concentration values in Table 1, Column 3 of Appendix B of this part are based on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

APPENDIX B

ANNUAL LIMITS OF INTAKE (ALIs) AND DERIVED AIR CONCENTRATIONS (DACs) OF RADIONUCLIDES FOR OCCUPATIONAL EXPOSURE; REFERENCE LEVEL CONCENTRATIONS; CONCENTRATIONS FOR RELEASE TO SEWERAGE

Introduction

For each radionuclide a table listing is given indicating the chemical form which is to be used for selecting the appropriate ALI or DAC value. The ALIs and DACs for inhalation are given for an aerosol with an activity median aerodynamic diameter of 1 μm and for three classes (D,W,Y) of radioactive material, which refer to their biological retention in the pulmonary region of the lung. This classification applies to a range of biological half-lives for D of less than 10 days, for W from 10 - 100 days, and for Y greater than 100 days.

Table 1

Note that the columns in Table 1 of this appendix captioned "Oral Ingestion ALI," "Inhalation ALI," and "DAC," are applicable to occupational exposure to radioactive material.

The ALIs in this appendix are the annual intakes of given radionuclides by "Reference Man" which would result in either (1) a committed effective dose equivalent of 5 rems (stochastic ALI), or (2) a committed dose equivalent of 50 rems to an organ or tissue (non-stochastic ALI). The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with 5 rems whole body deep dose equivalent. The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T. This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of w_T are listed below. The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30*

*(0.30 results from 0.06 for each of 5 "remainder organs")

When an ALI is determined by the stochastic limit, this value, alone, is given. When an ALI is determined by the non-stochastic limit, the organ or tissue to which the limit applies is shown, and the stochastic limit is shown in parentheses: (Abbreviated organ or tissue designations used are: LLI wall = lower large intestine wall; St. wall = stomach wall; Blad. wall = bladder wall; and Bone surf. = bone surface.)

Use of the ALI listed first, the more limiting of the stochastic and non-stochastic ALIs, will ensure that non-stochastic effects are avoided and that stochastic effects are limited to an acceptably low level. If, in a particular situation involving a radionuclide for which the non-stochastic ALI is limiting, use of that non-stochastic ALI is considered unduly conservative, the licensee may use the stochastic ALI to determine effective dose equivalent. However, the licensee shall also ensure that the 50-rem committed dose equivalent limit for any organ or tissue is not exceeded. This is demonstrated if the inequality in the reference to § 20.202 in Appendix E of this part does not exceed unity when using the fractions of the non-stochastic ALIs of all of the radionuclides involved that would be limited by the committed dose equivalent to that organ or tissue.

Note that the dose equivalents for hands and forearms, feet and lower legs, skin, and lens of the eye are not considered in computing the effective dose equivalent, but are subject to limits that must be met separately

A value of $w_T = 0.06$ is applicable to each of the five organs or tissues in the "remainder" category receiving the highest dose equivalents, and the dose equivalents of all other remaining tissues may be neglected. The following parts of the GI tract - stomach, small intestine, upper large intestine, and lower large intestine - are to be treated as four separate organs.

The DAC values are derived limits intended to control chronic exposures. The relationship between DAC and ALI is given by:

$$\text{DAC} = \text{ALI in } \mu\text{Ci}/(2000 \text{ hours per year} \times 60 \text{ min per hour} \times 2 \times 10^4 \text{ ml per minute})$$

$$= \text{ALI}/2.4 \times 10^9 \ \mu\text{Ci per ml}$$

where 2×10^4 ml is the volume of air breathed at work by "Reference Man" per minute under working conditions of "light activity."

ALI and DAC values relate to submersion[1] in or to intake, by the specified route of entry into the body, of the single radionuclide named and include an appropriate allowance for any daughter radionuclides produced in the body during the decay of the parent nuclide. However, intakes that include both parent and daughter radionuclides should be treated by the general method appropriate to mixtures.

The values of ALI and DAC do not apply directly when the individual both ingests and inhales a radionuclide, when the individual is exposed to a mixture of radionuclides, or when the individual is exposed to both internal

and external irradiation (see definition of ALI). In such a case, the method and summation formula specified in the reference to § 20.202 in Appendix E of this part shall apply. When an individual is exposed to several translocation classifications, D, W, or Y, of the same radionuclide, the exposure may be treated as exposure to a mixture of radionuclides.

If an individual is exposed to external sources of radiation in addition to unsealed sources of radioactive material, the licensee must limit the total exposure in a year so that the dose equivalent is in compliance with §§ 20.201 and 20.202.

Table 2

The columns in Table 2 of this appendix captioned "Reference Level Concentrations," "Air" and "Water," are applicable to the assessment and control of dose to the public, particularly in the implementation of the reference level provisions in § 20.303.

The reference level air concentration values listed in Table 2, Column 1, were derived by one of two methods. For those radionuclides for which intake (committed effective dose equivalent) is limiting, the occupational stochastic inhalation ALI was divided by 2.4×10^9 (μCi/ml) x 300. The factor of 2.4×10^9 (μCi/ml), relating the inhalation ALI to the DAC, is explained above. The factor of 300 includes the following components: 50 - to relate the 5-rem annual occupational dose limit to the 0.1-rem reference level; 3 - to adjust for the difference in exposure time and inhalation rate between workers and members of the public; and 2 - to adjust the occupational values, which were derived for adults, so that they are applicable to other age groups.

For those radionuclides for which submersion (external dose) is limiting, the occupational DAC in Table 1, Column 3, was divided by 219. The factor of 219 is composed of a factor of 50, described above, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure for 8,760 hours per year. Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

The reference level water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^7(ml). The factor of 7.3×10^7(ml) includes the following components: 7.3×10^5(ml) - the annual water intake of "Reference Man"; 50 - described above; and 2 - described above. Note that because the reference level concentrations are not constrained by consideration of non-stochastic effects (capping doses), as are some of the occupational ALIs and DACs, and because of the difference in the biological models for intake by inhalation and by oral ingestion, there are three groupings of radionuclides in Note 2 of this appendix which are applicable to unknown mixtures of radionuclides.

Table 3

The monthly average concentrations for release to sewerage are applicable to the provisions in § 20.1003. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^6(ml). The factor of 7.3×10^6(ml) is composed of 7.3×10^5(ml) - the annual water intake by "Reference Man," and a factor of 10 to relate the 5-rem annual occupational dose limit to the 0.5-rem annual dose limit for individual members of the public.

[7590-01]

LIST OF ELEMENTS

Name	Atomic Number	Name	Atomic Number
Actinium	89	Molybdenum	42
Aluminum	13	Neodymium	60
Americium	95	Neptunium	93
Antimony	51	Nickel	28
Argon	18	Niobium	41
Arsenic	33	Osmium	76
Astatine	85	Palladium	46
Barium	56	Phosphorus	15
Berkelium	97	Platinum	78
Beryllium	4	Plutonium	94
Bismuth	83	Polonium	84
Bromine	35	Potassium	19
Cadmium	48	Praseodymium	59
Calcium	20	Promethium	61
Californium	98	Protactinium	91
Carbon	6	Radium	88
Cerium	58	Radon	86
Cesium	55	Rhenium	75
Chlorine	17	Rhodium	45
Chromium	24	Rubidium	37
Cobalt	27	Ruthenium	44
Copper	29	Samarium	62
Curium	96	Scandium	21
Dysprosium	66	Selenium	34
Einsteinium	99	Silicon	14
Erbium	68	Silver	47
Europium	63	Sodium	11
Fermium	100	Strontium	38
Fluorine	9	Sulfur	16
Francium	87	Tantalum	73
Gadolinium	64	Technetium	43
Gallium	31	Tellurium	52
Germanium	32	Terbium	65
Gold	79	Thallium	81
Hafnium	72	Titanium	22
Holmium	67	Thorium	90
Hydrogen	1	Thulium	69
Indium	49	Tin	50
Iodine	53	Tungsten	74
Iridium	77	Uranium	92
Iron	26	Vanadium	23
Krypton	36	Xenon	54
Lanthanum	57	Ytterbium	70
Lead	82	Yttrium	39
Lutetium	71	Zinc	30
Magnesium	12	Zirconium	40
Manganese	25		
Mendelevium	101		
Mercury	80		

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 2- Inhalation ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
1	Hydrogen-3	Water, DAC includes skin absorption	$8x10^4$	$8x10^4$	$2x10^{-5}$	$7x10^{-8}$	$1x10^{-3}$	$1x10^{-2}$
4	Beryllium-7	W, all compounds except those given for Y	$4x10^4$	$2x10^4$	$9x10^{-6}$	$3x10^{-8}$	$6x10^{-4}$	$6x10^{-3}$
		Y, oxides, halides and nitrates	-	$2x10^4$	$9x10^{-6}$	$3x10^{-8}$	-	-
4	Beryllium-10	W, see ^7Be	$1x10^3$	$2x10^2$	$6x10^{-8}$	$2x10^{-10}$	$1x10^{-5}$	$1x10^{-4}$
		Y, see ^7Be	-	$1x10^1$	$6x10^{-9}$	$2x10^{-11}$	-	-
6	Carbon-11[2]	Monoxide	-	$1x10^6$	$5x10^{-4}$	$2x10^{-6}$	-	-
		Dioxide	-	$6x10^5$	$3x10^{-4}$	$9x10^{-7}$	-	-
		Organic	$5x10^5$	$5x10^5$	$2x10^{-4}$	$6x10^{-7}$	$7x10^{-3}$	$7x10^{-2}$
		D	-	$4x10^5$	$2x10^{-4}$	-	-	-
6	Carbon-14	Monoxide	-	$2x10^6$	$7x10^{-4}$	$2x10^{-6}$	-	-
		Dioxide	-	$2x10^5$	$9x10^{-5}$	$3x10^{-7}$	-	-
		Organic	$2x10^3$	$2x10^3$	$1x10^{-6}$	$3x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		D	-	$2x10^3$	$1x10^{-6}$	-	-	-

Enclosure 1

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 2- Inhalation ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
9	Fluorine-18[2]	D, fluorides of H, Li, Na, K, Rb, Cs, Fr	$5x10^4$	$7x10^4$	$3x10^{-5}$	$1x10^{-7}$	$6x10^{-4}$	$6x10^{-3}$
		W, fluorides of Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, As, Sb, Bi, Fe, Ru, Os, Co, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, V, Nb, Ta, Mn, Tc, Re	-	$9x10^4$	$4x10^{-5}$	$1x10^{-7}$	-	-
		Y, lanthanum fluoride	-	$8x10^4$	$3x10^{-5}$	$1x10^{-7}$	-	-
11	Sodium-22	D, all compounds	$4x10^2$	$6x10^2$	$3x10^{-7}$	$9x10^{-10}$	$6x10^{-6}$	$6x10^{-5}$
11	Sodium-24	D, all compounds	$4x10^3$	$5x10^3$	$2x10^{-6}$	$7x10^{-9}$	$5x10^{-5}$	$5x10^{-4}$
12	Magnesium-28	D, all compounds except those given for W	$7x10^2$	$2x10^3$	$7x10^{-7}$	$2x10^{-9}$	$9x10^{-6}$	$9x10^{-5}$
		W, oxides, hydroxides, carbides, halides, and nitrates	-	$1x10^3$	$5x10^{-7}$	$2x10^{-9}$	-	-
13	Aluminum-26	D, all compounds except those given for W	$4x10^2$	$6x10^1$	$3x10^{-8}$	$9x10^{-11}$	$6x10^{-6}$	$6x10^{-5}$
		W, oxides, hydroxides, carbides, halides, and nitrates	-	$9x10^1$	$4x10^{-8}$	$1x10^{-10}$	-	-

Enclosure 1

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
14	Silicon-31	D, all compounds except those given for W and Y	$9x10^3$	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, oxides, hydroxides, carbides, and nitrates	-	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	-	-
		Y, aluminosilicate glass	-	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	-	-
	Silicon-32	D, see ^{31}Si	$2x10^3$	$2x10^2$	$1x10^{-7}$	$3x10^{-10}$	-	-
			$(3x10^3)$ LLI wall	-	-	-	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{31}Si	-	$1x10^2$	$5x10^{-8}$	$2x10^{-10}$	-	-
		Y, see ^{31}Si	-	$5x10^0$	$2x10^{-9}$	$7x10^{-12}$	-	-
15	Phosphorus-32	D, all compounds except phosphates given for W	$6x10^2$	$9x10^2$	$4x10^{-7}$	$1x10^{-9}$	$9x10^{-6}$	$9x10^{-5}$
		W, phosphates of Zn^{2+}, S^{3+}, Mg^{2+}, Fe^{3+}, Bi^{3+}, and lanthanides	-	$4x10^2$	$2x10^{-7}$	$5x10^{-10}$	-	-
15	Phosphorus-33	D, see ^{32}P	$6x10^3$	$8x10^3$	$4x10^{-6}$	$1x10^{-8}$	$8x10^{-5}$	$8x10^{-4}$
		W, see ^{32}P	-	$3x10^3$	$1x10^{-6}$	$4x10^{-9}$	-	-

Enclosure 1

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
16	Sulfur-35	Gas	-	$1x10^4$	$6x10^{-6}$	$2x10^{-8}$	-	-
		D, sulfides and sulfates except those given for W	$6x10^3$	$2x10^4$	$7x10^{-6}$	$2x10^{-8}$	-	-
			$(8x10^3)$ LLI wall	-	-	-	$1x10^{-4}$	$1x10^{-3}$
		W, elemental sulfur, sulfides of Sr, Ba, Ge, Sn, Pb, As, Sb, Bi, Cu, Ag, Au, Zn, Cd, Hg, W, Mo. Sulfates of Ca, Sr, Ba, Ra, As, Sb, Bi	-	$2x10^3$	$9x10^{-7}$	$3x10^{-9}$	-	-
17	Chlorine-36	D, chlorides of H, Li, Na, K, Rb, Cs, Fr	$2x10^3$	$2x10^3$	$1x10^{-6}$	$3x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		W, chlorides of lanthanides, Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, Ge, Sn, Pb, As, Sb, Bi, Fe, Ru, Os, Co, Rh, Ir, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, Hf, V, Nb, Ta, Cr, Mo, W, Mn, Tc, Re	-	$2x10^2$	$1x10^{-7}$	$3x10^{-10}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
17	Chlorine-38[2]	D, see ^{36}Cl	$2x10^4$	$4x10^4$	$2x10^{-5}$	$6x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{36}Cl	-	$5x10^4$	$2x10^{-5}$	$6x10^{-8}$	-	-
17	Chlorine-39[2]	D, see ^{36}Cl	$2x10^4$ ($3x10^4$) St. wall	$5x10^4$ -	$2x10^{-5}$ -	$7x10^{-8}$ -	- $4x10^{-4}$	- $4x10^{-3}$
		W, see ^{36}Cl	-	$6x10^4$	$2x10^{-5}$	$8x10^{-8}$	-	-
18	Argon-39	Submersion[1]	-	-	$2x10^{-4}$	$8x10^{-7}$	-	-
18	Argon-41	Submersion[1]	-	-	$3x10^{-6}$	$1x10^{-8}$	-	-
19	Potassium-40	D, all compounds	$3x10^2$	$4x10^2$	$2x10^{-7}$	$6x10^{-10}$	$4x10^{-6}$	$4x10^{-5}$
19	Potassium-42	D, all compounds	$5x10^3$	$5x10^3$	$2x10^{-6}$	$7x10^{-9}$	$6x10^{-5}$	$6x10^{-4}$
19	Potassium-43	D, all compounds	$6x10^3$	$9x10^3$	$4x10^{-6}$	$1x10^{-8}$	$9x10^{-5}$	$9x10^{-4}$
19	Potassium-44[2]	D, all compounds	$2x10^4$ ($3x10^4$) St. wall	$7x10^4$ -	$3x10^{-5}$ -	$9x10^{-8}$ -	- $4x10^{-4}$	- $4x10^{-3}$
19	Potassium-45[2]	D, all compounds	$3x10^4$ ($5x10^4$) St. wall	$1x10^5$ -	$5x10^{-5}$ -	$2x10^{-7}$ -	- $7x10^{-4}$	- $7x10^{-3}$

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
20	Calcium-41	W, all compounds	$3x10^3$	$4x10^3$	$2x10^{-6}$	$5x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
20	Calcium-45	W, all compounds	$2x10^3$	$8x10^2$	$4x10^{-7}$	$1x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
20	Calcium-47	W, all compounds	$8x10^2$	$9x10^2$	$4x10^{-7}$	$1x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
21	Scandium-43	Y, all compounds	$7x10^3$	$2x10^4$	$9x10^{-6}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
21	Scandium-44m	Y, all compounds	$5x10^2$	$7x10^2$	$3x10^{-7}$	$1x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
21	Scandium-44	Y, all compounds	$4x10^3$	$1x10^4$	$5x10^{-6}$	$2x10^{-8}$	$5x10^{-5}$	$5x10^{-4}$
21	Scandium-46	Y, all compounds	$9x10^2$	$2x10^2$	$1x10^{-7}$	$3x10^{-10}$	$1x10^{-5}$	$1x10^{-4}$
21	Scandium-47	Y, all compounds	$2x10^3$	$3x10^3$	$1x10^{-6}$	$4x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
21	Scandium-48	Y, all compounds	$8x10^2$	$1x10^3$	$6x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
21	Scandium-49[2]	Y, all compounds	$2x10^4$	$5x10^4$	$2x10^{-5}$	$8x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
22	Titanium-44	D, all compounds except those given for W and Y	$3x10^2$	$1x10^1$	$5x10^{-9}$	$2x10^{-11}$	$4x10^{-6}$	$4x10^{-5}$
		W, oxides, hydroxides, carbides, halides, and nitrates	-	$3x10^1$	$1x10^{-8}$	$4x10^{-11}$	-	-
		Y, $SrTiO_3$	-	$6x10^0$	$2x10^{-9}$	$8x10^{-12}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
22	Titanium-45	D, see ^{44}Ti	$9x10^3$	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{44}Ti	-	$4x10^4$	$1x10^{-5}$	$5x10^{-8}$	-	-
		Y, see ^{44}Ti	-	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	-	-
23	Vanadium-47[2]	D, all compounds except those given for W	$3x10^4$	$8x10^4$	$3x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		W, oxides, hydroxides, carbides, and halides	-	$1x10^5$	$4x10^{-5}$	$1x10^{-7}$	-	-
23	Vanadium-48	D, see ^{47}V	$6x10^2$	$1x10^3$	$5x10^{-7}$	$2x10^{-9}$	$9x10^{-6}$	$9x10^{-5}$
		W, see ^{47}V	-	$6x10^2$	$3x10^{-7}$	$8x10^{-10}$	-	-
23	Vanadium-49	D, see ^{47}V	$7x10^4$	$3x10^4$	$1x10^{-5}$	$5x10^{-8}$	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{47}V	-	$2x10^4$	$8x10^{-6}$	$3x10^{-8}$	-	-
24	Chromium-48	D, all compounds except those given for W and Y	$6x10^3$	$1x10^4$	$5x10^{-6}$	$2x10^{-8}$	$8x10^{-5}$	$8x10^{-4}$
		W, halides and nitrates	-	$7x10^3$	$3x10^{-6}$	$1x10^{-8}$	-	-
		Y, oxides and hydroxides	-	$7x10^3$	$3x10^{-6}$	$1x10^{-8}$	-	-
24	Chromium-49[2]	D, see ^{48}Cr	$3x10^4$	$8x10^4$	$4x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{48}Cr	-	$1x10^5$	$4x10^{-5}$	$1x10^{-7}$	-	-
		Y, see ^{48}Cr	-	$9x10^4$	$4x10^{-5}$	$1x10^{-7}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
24	Chromium-51	D, see ^{48}Cr	$4x10^4$	$5x10^4$	$2x10^{-5}$	$6x10^{-8}$	$5x10^{-4}$	$5x10^{-3}$
		W, see ^{48}Cr	-	$2x10^4$	$1x10^{-5}$	$3x10^{-8}$	-	-
		Y, see ^{48}Cr	-	$2x10^4$	$8x10^{-6}$	$3x10^{-8}$	-	-
25	Manganese-51	D, all compounds except those given for W	$2x10^4$	$5x10^4$	$2x10^{-5}$	$7x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		W, oxides, hydroxides, halides and nitrates	-	$6x10^4$	$3x10^{-5}$	$8x10^{-8}$	-	-
25	Manganese-52m	D, see ^{51}Mn	$3x10^4$	$9x10^4$	$4x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{51}Mn	-	$1x10^5$	$4x10^{-5}$	$1x10^{-7}$	-	-
25	Manganese-52	D, see ^{51}Mn	$7x10^2$	$1x10^3$	$5x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{51}Mn	-	$9x10^2$	$4x10^{-7}$	$1x10^{-9}$	-	-
25	Manganese-53	D, see ^{51}Mn	$5x10^4$	$1x10^4$	$5x10^{-6}$	-	$7x10^{-4}$	$7x10^{-3}$
			-	$(2x10^4)$ Bone surf.	-	$3x10^{-8}$	-	-
		W, see ^{51}Mn	-	$1x10^4$	$5x10^{-6}$	$2x10^{-8}$	-	-
25	Manganese-54	D, see ^{51}Mn	$2x10^3$	$9x10^2$	$4x10^{-7}$	$1x10^{-8}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{51}Mn	-	$8x10^2$	$3x10^{-7}$	$1x10^{-9}$	-	-
25	Manganese-56	D, see ^{51}Mn	$5x10^3$	$2x10^4$	$6x10^{-6}$	$2x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
		W, see ^{51}Mn	-	$2x10^4$	$9x10^{-6}$	$3x10^{-8}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
26	Iron-52	D, all compounds except those given for W	9×10^{2}	3×10^{3}	1×10^{-6}	4×10^{-9}	1×10^{-5}	1×10^{-4}
		W, oxides, hydroxides, and halides	-	2×10^{3}	1×10^{-6}	3×10^{-9}	-	-
26	Iron-55	D, see ^{52}Fe	9×10^{3}	2×10^{3}	8×10^{-7}	3×10^{-9}	1×10^{-4}	1×10^{-3}
		W, see ^{52}Fe	-	4×10^{3}	2×10^{-6}	6×10^{-9}	-	-
26	Iron-59	D, see ^{52}Fe	8×10^{2}	3×10^{2}	1×10^{-7}	5×10^{-9}	1×10^{-5}	1×10^{-4}
		W, see ^{52}Fe	-	5×10^{2}	2×10^{-7}	7×10^{-10}	-	-
26	Iron-60	D, see ^{52}Fe	3×10^{1}	6×10^{0}	3×10^{-9}	9×10^{-12}	4×10^{-7}	4×10^{-6}
		W, see ^{52}Fe	-	2×10^{1}	8×10^{-9}	3×10^{-11}	-	-
27	Cobalt-55	W, all compounds except those given for Y	1×10^{3}	3×10^{3}	1×10^{-6}	4×10^{-9}	2×10^{-5}	2×10^{-4}
		Y, oxides, hydroxides, halides and nitrates	-	3×10^{3}	1×10^{-6}	4×10^{-9}	-	-
27	Cobalt-56	W, see ^{55}Co	4×10^{2}	3×10^{2}	1×10^{-7}	4×10^{-10}	6×10^{-6}	6×10^{-5}
		Y, see ^{55}Co	-	2×10^{2}	8×10^{-8}	3×10^{-10}	-	-
27	Cobalt-57	W, see ^{55}Co	4×10^{3}	3×10^{3}	1×10^{-6}	4×10^{-9}	6×10^{-5}	6×10^{-4}
		Y, see ^{55}Co	-	7×10^{2}	3×10^{-7}	9×10^{-10}	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
27	Cobalt-58m	W, see ^{55}Co	6×10^{4}	9×10^{4}	4×10^{-5}	1×10^{-7}	8×10^{-4}	8×10^{-3}
		Y, see ^{55}Co	-	6×10^{4}	3×10^{-5}	9×10^{-8}	-	-
27	Cobalt-58	W, see ^{55}Co	1×10^{3}	1×10^{3}	5×10^{-7}	2×10^{-9}	2×10^{-5}	2×10^{-4}
		Y, see ^{55}Co	-	7×10^{2}	3×10^{-7}	1×10^{-9}	-	-
27	Cobalt-60m[2]	W, see ^{55}Co	1×10^{6}	4×10^{6}	2×10^{-3}	5×10^{-6}	1×10^{-2}	1×10^{-1}
		Y, see ^{55}Co	-	3×10^{6}	1×10^{-3}	4×10^{-6}	-	-
27	Cobalt-60	W, see ^{55}Co	2×10^{2}	2×10^{2}	7×10^{-8}	2×10^{-10}	3×10^{-6}	3×10^{-5}
		Y, see ^{55}Co	-	3×10^{1}	1×10^{-8}	5×10^{-11}	-	-
27	Cobalt-61[2]	W, see ^{55}Co	2×10^{4}	6×10^{4}	3×10^{-5}	9×10^{-8}	3×10^{-4}	3×10^{-3}
		Y, see ^{55}Co	-	6×10^{4}	2×10^{-5}	8×10^{-8}	-	-
27	Cobalt-62m[2]	W, see ^{55}Co	4×10^{4} (5×10^{4}) St. wall	2×10^{5} -	7×10^{-5} -	2×10^{-7} -	7×10^{-4}	7×10^{-3}
		Y, see ^{55}Co	-	2×10^{5}	6×10^{-5}	2×10^{-7}	-	-
28	Nickel-56	D, all compounds except those given for W	1×10^{3}	2×10^{3}	8×10^{-7}	3×10^{-9}	2×10^{-5}	2×10^{-4}
		W, oxides, hydroxides, and carbides		1×10^{3}	5×10^{-7}	2×10^{-9}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
28	Nickel-57	D, see ^{56}Ni	$2x10^3$	$5x10^3$	$2x10^{-6}$	$7x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		W, see ^{56}Ni	-	$3x10^3$	$1x10^{-6}$	$4x10^{-9}$	-	-
28	Nickel-59	D, see ^{56}Ni	$2x10^4$	$4x10^3$	$2x10^{-6}$	$5x10^{-9}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{56}Ni	-	$7x10^3$	$3x10^{-6}$	$1x10^{-8}$	-	-
28	Nickel-63	D, see ^{56}Ni	$9x10^3$	$2x10^3$	$7x10^{-7}$	$2x10^{-9}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{56}Ni	-	$3x10^3$	$1x10^{-6}$	$4x10^{-9}$	-	-
28	Nickel-65	D, see ^{56}Ni	$8x10^3$	$2x10^4$	$1x10^{-5}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{56}Ni	-	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	-	-
28	Nickel-66	D, see ^{56}Ni	$4x10^2$	$2x10^3$	$7x10^{-7}$	$2x10^{-9}$	-	-
			$(5x10^2)$ LLI wall	-	-	-	$7x10^{-6}$	$7x10^{-5}$
		W, see ^{56}Ni	-	$6x10^2$	$3x10^{-7}$	$9x10^{-10}$	-	-
29	Copper-60	D, all compounds except those given for W and Y	$3x10^4$	$9x10^4$	$4x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		W, sulfides, halides, and nitrates	-	$1x10^5$	$5x10^{-5}$	$2x10^{-7}$	-	-
		Y, oxides and hydroxides	-	$1x10^5$	$4x10^{-5}$	$1x10^{-7}$	-	-
29	Copper-61	D, see ^{60}Cu	$1x10^4$	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{60}Cu	-	$4x10^4$	$2x10^{-5}$	$6x10^{-8}$	-	-
		Y, see ^{60}Cu	-	$4x10^4$	$1x10^{-5}$	$5x10^{-8}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
29	Copper-64	D, see ^{60}Cu	$1x10^4$	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{60}Cu	-	$2x10^4$	$1x10^{-5}$	$3x10^{-8}$	-	-
		Y, see ^{60}Cu	-	$2x10^4$	$9x10^{-6}$	$3x10^{-8}$	-	-
29	Copper-67	D, see ^{60}Cu	$5x10^3$	$8x10^3$	$3x10^{-6}$	$1x10^{-8}$	$6x10^{-5}$	$6x10^{-4}$
		W, see ^{60}Cu	-	$5x10^3$	$2x10^{-6}$	$7x10^{-9}$	-	-
		Y, see ^{60}Cu	-	$5x10^3$	$2x10^{-6}$	$6x10^{-9}$	-	-
30	Zinc-62	Y, all compounds	$1x10^3$	$3x10^3$	$1x10^{-6}$	$4x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
30	Zinc-63[2]	Y, all compounds	$2x10^4$	$7x10^4$	$3x10^{-5}$	$1x10^{-7}$	$3x10^{-4}$	$3x10^{-3}$
30	Zinc-65	Y, all compounds	$4x10^2$	$3x10^2$	$1x10^{-7}$	$4x10^{-10}$	$5x10^{-6}$	$5x10^{-5}$
30	Zinc-69m	Y, all compounds	$4x10^3$	$7x10^3$	$3x10^{-6}$	$1x10^{-8}$	$6x10^{-5}$	$6x10^{-4}$
30	Zinc-69[2]	Y, all compounds	$6x10^4$	$1x10^5$	$6x10^{-5}$	$2x10^{-7}$	$8x10^{-4}$	$8x10^{-3}$
30	Zinc-71m	Y, all compounds	$6x10^3$	$2x10^4$	$7x10^{-6}$	$2x10^{-8}$	$8x10^{-5}$	$8x10^{-4}$
30	Zinc-72	Y, all compounds	$1x10^3$	$1x10^3$	$5x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
31	Gallium-65[2]	D, all compounds except those given for W	$5x10^4$	$2x10^5$	$7x10^{-5}$	$2x10^{-7}$	$6x10^{-4}$	$6x10^{-3}$
		W, oxides, hydroxides, carbides, halides, and nitrates	-	$2x10^5$	$8x10^{-5}$	$3x10^{-7}$	-	-

Enclosure 1

Enclosure 1

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
31	Gallium-66	D, see ^{65}Ga	$1x10^{3}$	$4x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{65}Ga	-	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	-	-
31	Gallium-67	D, see ^{65}Ga	$7x10^{3}$	$1x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{65}Ga	-	$1x10^{4}$	$4x10^{-6}$	$1x10^{-8}$	-	-
31	Gallium-68[2]	D, see ^{65}Ga	$2x10^{4}$	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{65}Ga	-	$5x10^{4}$	$2x10^{-5}$	$7x10^{-8}$	-	-
31	Gallium-70[2]	D, see ^{65}Ga	$5x10^{4}$ ($8x10^{4}$) St. wall	$2x10^{5}$	$7x10^{-5}$	$2x10^{-7}$	-	-
				-	-	-	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{65}Ga	-	$2x10^{5}$	$8x10^{-5}$	$3x10^{-7}$	-	-
31	Gallium-72	D, see ^{65}Ga	$1x10^{3}$	$4x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		W, see ^{65}Ga	-	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	-	-
31	Gallium-73	D, see ^{65}Ga	$5x10^{3}$	$2x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
		W, see ^{65}Ga	-	$2x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	-	-
32	Germanium-66	D, all compounds except those given for W	$2x10^{4}$	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		W, oxides, sulfides, and halides	-	$2x10^{4}$	$8x10^{-6}$	$3x10^{-8}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
32	Germanium-67[2]	D, see ^{66}Ge	$3x10^{4}$ ($5x10^{4}$) St. wall	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	-	-
				-	-	-	$7x10^{-4}$	$7x10^{-3}$
		W, see ^{66}Ge	-	$1x10^{5}$	$4x10^{-5}$	$1x10^{-7}$	-	-
32	Germanium-68	D, see ^{66}Ge	$5x10^{3}$	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	$6x10^{-5}$	$6x10^{-4}$
		W, see ^{66}Ge	-	$1x10^{2}$	$4x10^{-8}$	$1x10^{-10}$	-	-
32	Germanium-69	D, see ^{66}Ge	$1x10^{4}$	$2x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{66}Ge	-	$8x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	-	-
32	Germanium-71	D, see ^{66}Ge	$5x10^{5}$	$4x10^{5}$	$2x10^{-4}$	$6x10^{-7}$	$7x10^{-3}$	$7x10^{-2}$
		W, see ^{66}Ge	-	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	-	-
32	Germanium-75[2]	D, see ^{66}Ge	$4x10^{4}$ ($8x10^{4}$) St. wall	$8x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	-	-
				-	-	-	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{66}Ge	-	$8x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	-	-
32	Germanium-77	D, see ^{66}Ge	$9x10^{3}$	$1x10^{4}$	$4x10^{-6}$	$1x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{66}Ge	-	$6x10^{3}$	$2x10^{-6}$	$8x10^{-9}$	-	-
32	Germanium-78[2]	D, see ^{66}Ge	$2x10^{4}$	$2x10^{4}$	$9x10^{-6}$	$3x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{66}Ge	-	$2x10^{4}$	$9x10^{-6}$	$3x10^{-8}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
33	Arsenic-69[2]	W, all compounds	$3x10^4$	$1x10^5$	$5x10^{-5}$	$2x10^{-7}$	-	-
			($5x10^4$) St. wall	-	-	-	$7x10^{-4}$	$7x10^{-3}$
33	Arsenic-70[2]	W, all compounds	$1x10^4$	$5x10^4$	$2x10^{-5}$	$7x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
33	Arsenic-71	W, all compounds	$4x10^3$	$5x10^3$	$2x10^{-6}$	$6x10^{-9}$	$5x10^{-5}$	$5x10^{-4}$
33	Arsenic-72	W, all compounds	$9x10^2$	$1x10^3$	$6x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
33	Arsenic-73	W, all compounds	$8x10^3$	$2x10^3$	$7x10^{-7}$	$2x10^{-9}$	$1x10^{-4}$	$1x10^{-3}$
33	Arsenic-74	W, all compounds	$1x10^3$	$8x10^2$	$3x10^{-7}$	$1x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
33	Arsenic-76	W, all compounds	$1x10^3$	$1x10^3$	$6x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
33	Arsenic-77	W, all compounds	$4x10^3$	$5x10^3$	$2x10^{-6}$	$7x10^{-9}$	$6x10^{-5}$	$6x10^{-4}$
33	Arsenic-78[2]	W, all compounds	$8x10^3$	$2x10^4$	$9x10^{-6}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
34	Selenium-70[2]	D, all compounds except those given for W	$1x10^4$	$4x10^4$	$2x10^{-5}$	$5x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, oxides, hydroxides, carbides, and elemental Se	-	$4x10^4$	$2x10^{-5}$	$6x10^{-8}$	-	-
34	Selenium-73m[2]	D, see ^{70}Se	$3x10^4$	$2x10^5$	$6x10^{-5}$	$2x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{70}Se	-	$1x10^5$	$6x10^{-5}$	$2x10^{-7}$	-	-
34	Selenium-73	D, see ^{70}Se	$3x10^3$	$1x10^4$	$5x10^{-6}$	$2x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{70}Se	-	$2x10^4$	$7x10^{-6}$	$2x10^{-8}$	-	-
34	Selenium-75	D, see ^{70}Se	$5x10^2$	$7x10^2$	$3x10^{-7}$	$1x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
		W, see ^{70}Se	-	$6x10^2$	$3x10^{-7}$	$8x10^{-10}$	-	-
34	Selenium-79	D, see ^{70}Se	$6x10^2$	$8x10^2$	$3x10^{-7}$	$1x10^{-9}$	$8x10^{-6}$	$8x10^{-5}$
		W, see ^{70}Se	-	$6x10^2$	$2x10^{-7}$	$8x10^{-10}$	-	-
34	Selenium-81m[2]	D, see ^{70}Se	$2x10^4$	$7x10^4$	$3x10^{-5}$	$1x10^{-7}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{70}Se	-	$7x10^4$	$3x10^{-5}$	$1x10^{-7}$	-	-
34	Selenium-81[2]	D, see ^{70}Se	$6x10^4$	$2x10^5$	$9x10^{-5}$	$3x10^{-7}$	-	-
			($8x10^4$) St. wall	-	-	-	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{70}Se	-	$2x10^5$	$1x10^{-4}$	$3x10^{-7}$	-	-
34	Selenium-83[2]	D, see ^{70}Se	$3x10^4$	$1x10^5$	$5x10^{-5}$	$2x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{70}Se	-	$1x10^5$	$5x10^{-5}$	$2x10^{-7}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
35	Bromine-74m[2]	D, bromides of H, Li, Na, K, Rb, Cs, Fr	$1x10^4$	$4x10^4$	$2x10^{-5}$	$5x10^{-8}$	-	-
			($2x10^4$) St. wall	-	-	-	$3x10^{-4}$	$3x10^{-3}$
		W, bromides of lanthanides, Be, Mg, Ca, Sr, Ba, Ra, Al, Ga, In, Tl, Ge, Sn, Pb, As, Sb, Bi, Fe, Ru, Os, Co, Rh, Ir, Ni, Pd, Pt, Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, Hf, V, Nb, Ta, Mn, Tc, Re	-	$4x10^4$	$2x10^{-5}$	$6x10^{-8}$	-	-
35	Bromine-74[2]	D, see ^{74m}Br	$2x10^4$	$7x10^4$	$3x10^{-5}$	$1x10^{-7}$	-	-
			($3x10^4$) St. wall	-	-	-	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{74m}Br	-	$8x10^4$	$4x10^{-5}$	$1x10^{-7}$	-	-
35	Bromine-75[2]	D, see ^{74m}Br	$3x10^4$	$5x10^4$	$2x10^{-5}$	$7x10^{-8}$	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{74m}Br	-	$5x10^4$	$2x10^{-5}$	$7x10^{-8}$	-	-
35	Bromine-76	D, see ^{74m}Br	$4x10^3$	$5x10^3$	$2x10^{-6}$	$7x10^{-9}$	$5x10^{-5}$	$5x10^{-4}$
		W, see ^{74m}Br	-	$4x10^3$	$2x10^{-6}$	$6x10^{-9}$	-	-
35	Bromine-77	D, see ^{74m}Br	$2x10^4$	$2x10^4$	$1x10^{-5}$	$3x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{74m}Br	-	$2x10^4$	$8x10^{-6}$	$3x10^{-8}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
35	Bromine-80m	D, see ^{74m}Br	$2x10^4$	$2x10^4$	$7x10^{-6}$	$2x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{74m}Br	-	$1x10^4$	$6x10^{-6}$	$2x10^{-8}$	-	-
35	Bromine-80[2]	D, see ^{74m}Br	$5x10^4$	$2x10^5$	$8x10^{-5}$	$3x10^{-7}$	-	-
			($8x10^4$) St. wall	-	-	-	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{74m}Br	-	$2x10^5$	$9x10^{-5}$	$3x10^{-7}$	-	-
35	Bromine-82	D, see ^{74m}Br	$3x10^3$	$4x10^3$	$2x10^{-6}$	$6x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{74m}Br	-	$4x10^3$	$2x10^{-6}$	$5x10^{-9}$	-	-
35	Bromine-83	D, see ^{74m}Br	$5x10^4$	$6x10^4$	$3x10^{-5}$	$9x10^{-8}$	-	-
			($8x10^4$) St. wall	-	-	-	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{74m}Br	-	$6x10^4$	$3x10^{-5}$	$9x10^{-8}$	-	-
35	Bromine-84[2]	D, see ^{74m}Br	$2x10^4$	$6x10^4$	$2x10^{-5}$	$8x10^{-8}$	-	-
			($3x10^4$) St. wall	-	-	-	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{74m}Br	-	$6x10^4$	$3x10^{-5}$	$9x10^{-8}$	-	-
36	Krypton-74	Submersion[1]	-	-	$3x10^{-6}$	$1x10^{-8}$	-	-
36	Krypton-76	Submersion[1]	-	-	$9x10^{-6}$	$4x10^{-8}$	-	-
36	Krypton-77	Submersion[1]	-	-	$4x10^{-6}$	$2x10^{-8}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 2- Inhalation ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
36	Krypton-79	Submersion[1]	-	-	$2x10^{-5}$	$7x10^{-8}$	-	-
36	Krypton-81	Submersion[1]	-	-	$7x10^{-4}$	$3x10^{-6}$	-	-
36	Krypton-83m	Submersion[1]	-	-	$1x10^{-2}$	$5x10^{-5}$	-	-
36	Krypton-85m	Submersion[1]	-	-	$2x10^{-5}$	$1x10^{-7}$	-	-
36	Krypton-85	Submersion[1]	-	-	$1x10^{-4}$	$7x10^{-7}$	-	-
36	Krypton-87	Submersion[1]	-	-	$5x10^{-6}$	$2x10^{-8}$	-	-
36	Krypton-88	Submersion[1]	-	-	$2x10^{-6}$	$9x10^{-9}$	-	-
37	Rubidium-79[2]	D, all compounds	$4x10^{4}$	$1x10^{5}$	$5x10^{-5}$	$2x10^{-7}$	-	-
			$(5x10^{4})$ St. wall	-	-	-	$7x10^{-4}$	$7x10^{-3}$
37	Rubidium-81m[2]	D, all compounds	$2x10^{5}$	$3x10^{5}$	$1x10^{-4}$	$5x10^{-7}$	-	-
			$(3x10^{5})$ St. wall	-	-	-	$4x10^{-3}$	$4x10^{-2}$
37	Rubidium-81	D, all compounds	$4x10^{4}$	$5x10^{4}$	$2x10^{-5}$	$7x10^{-8}$	$5x10^{-4}$	$5x10^{-3}$
37	Rubidium-82m	D, all compounds	$1x10^{4}$	$2x10^{4}$	$7x10^{-6}$	$2x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
37	Rubidium-83	D, all compounds	$6x10^{2}$	$1x10^{3}$	$4x10^{-7}$	$1x10^{-9}$	$9x10^{-6}$	$9x10^{-5}$
37	Rubidium-84	D, all compounds	$5x10^{2}$	$8x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
37	Rubidium-86	D, all compounds	$5x10^{2}$	$8x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
37	Rubidium-87	D, all compounds	$1x10^{3}$	$2x10^{3}$	$6x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
37	Rubidium-88[2]	D, all compounds	$2x10^{4}$	$6x10^{4}$	$3x10^{-5}$	$9x10^{-8}$	-	-
			$(3x10^{4})$ St. wall	-	-	-	$4x10^{-4}$	$4x10^{-3}$
37	Rubidium-89[2]	D, all compounds	$4x10^{4}$	$1x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	-	-
			$(5x10^{4})$ St. wall	-	-	-	$7x10^{-4}$	$7x10^{-3}$
38	Strontium-80[2]	D, all soluble compounds except $SrTiO_3$	$4x10^{3}$	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	$6x10^{-5}$	$6x10^{-4}$
		Y, all insoluble compounds and $SrTiO_3$	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-
38	Strontium-81[2]	D, see ^{80}Sr	$2x10^{4}$	$8x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	$3x10^{-4}$	$3x10^{-3}$
		Y, see ^{80}Sr	-	$8x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	-	-
38	Strontium-83	D, see ^{80}Sr	$2x10^{3}$	$7x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	$3x10^{-5}$	$3x10^{-4}$
		Y, see ^{80}Sr	-	$4x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	-	-
38	Strontium-85m[2]	D, see ^{80}Sr	$2x10^{5}$	$6x10^{5}$	$3x10^{-4}$	$9x10^{-7}$	$3x10^{-3}$	$3x10^{-2}$
		Y, see ^{80}Sr	-	$8x10^{5}$	$4x10^{-4}$	$1x10^{-6}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
38	Strontium-85	D, see ^{80}Sr	$3x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
		Y, see ^{80}Sr	-	$2x10^{3}$	$6x10^{-7}$	$2x10^{-9}$	-	-
38	Strontium-87m	D, see ^{80}Sr	$4x10^{4}$	$1x10^{5}$	$5x10^{-5}$	$2x10^{-7}$	$6x10^{-4}$	$6x10^{-3}$
		Y, see ^{80}Sr	-	$2x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	-	-
38	Strontium-89	D, see ^{80}Sr	$5x10^{2}$	$8x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	$6x10^{-6}$	$6x10^{-5}$
		Y, see ^{80}Sr	-	$1x10^{2}$	$6x10^{-8}$	$2x10^{-10}$	-	-
38	Strontium-90	D, see ^{80}Sr	$3x10^{1}$	$2x10^{1}$	$8x10^{-9}$	$3x10^{-11}$	$4x10^{-7}$	$4x10^{-6}$
		Y, see ^{80}Sr	-	$4x10^{0}$	$2x10^{-9}$	$5x10^{-12}$	-	-
38	Strontium-91	D, see ^{80}Sr	$2x10^{3}$	$6x10^{3}$	$2x10^{-6}$	$8x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		Y, see ^{80}Sr	-	$4x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	-	-
38	Strontium-92	D, see ^{80}Sr	$3x10^{3}$	$9x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
		Y, see ^{80}Sr	-	$7x10^{3}$	$3x10^{-6}$	$9x10^{-9}$	-	-
39	Yttrium-86m[2]	W, all compounds except those given for Y	$2x10^{4}$	$6x10^{4}$	$2x10^{-5}$	$8x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		Y, oxides and hydroxides	-	$5x10^{4}$	$2x10^{-5}$	$8x10^{-8}$	-	-
39	Yttrium-86	W, see ^{86m}Y	$1x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		Y, see ^{86m}Y	-	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
39	Yttrium-87	W, see ^{86m}Y	$2x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		Y, see ^{86m}Y	-	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	-	-
39	Yttrium-88	W, see ^{86m}Y	$1x10^{3}$	$3x10^{2}$	$1x10^{-7}$	$4x10^{-10}$	$1x10^{-5}$	$1x10^{-4}$
		Y, see ^{86m}Y	-	$2x10^{2}$	$1x10^{-7}$	$3x10^{-10}$	-	-
39	Yttrium-90m	W, see ^{86m}Y	$8x10^{3}$	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		Y, see ^{86m}Y	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-
39	Yttrium-90	W, see ^{86m}Y	$4x10^{2}$	$7x10^{2}$	$3x10^{-7}$	$9x10^{-7}$	$6x10^{-6}$	$6x10^{-5}$
		Y, see ^{86m}Y	-	$6x10^{2}$	$3x10^{-7}$	$9x10^{-10}$	-	-
39	Yttrium-91m[2]	W, see ^{86m}Y	$1x10^{5}$	$2x10^{5}$	$1x10^{-4}$	$3x10^{-7}$	$2x10^{-3}$	$2x10^{-2}$
		Y, see ^{86m}Y	-	$2x10^{5}$	$7x10^{-5}$	$2x10^{-7}$	-	-
39	Yttrium-91	W, see ^{86m}Y	$5x10^{2}$	$2x10^{2}$	$7x10^{-8}$	$2x10^{-10}$	$6x10^{-6}$	$6x10^{-5}$
		Y, see ^{86m}Y	-	$1x10^{2}$	$5x10^{-8}$	$2x10^{-10}$	-	-
39	Yttrium-92	W, see ^{86m}Y	$3x10^{3}$	$9x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
		Y, see ^{86m}Y	-	$8x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	-	-
39	Yttrium-93	W, see ^{86m}Y	$1x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		Y, see ^{86m}Y	-	$2x10^{3}$	$1x10^{-6}$	$3x10^{-9}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
39	Yttrium-94[2]	W, see ^{86m}Y	2×10^{4}	8×10^{4}	3×10^{-5}	1×10^{-7}	-	-
			(3×10^{4}) St. wall	-	-	-	4×10^{-4}	4×10^{-3}
		Y, see ^{86m}Y	-	8×10^{4}	3×10^{-5}	1×10^{-7}	-	-
39	Yttrium-95	W, see ^{86m}Y	4×10^{4}	2×10^{5}	6×10^{-5}	2×10^{-7}	-	-
			(5×10^{4}) St. wall	-	-	-	7×10^{-4}	7×10^{-3}
		Y, see ^{86m}Y	-	1×10^{5}	6×10^{-5}	2×10^{-7}	-	-
40	Zirconium-86	D, all compounds except those given for W and Y	1×10^{3}	4×10^{3}	2×10^{-6}	5×10^{-9}	2×10^{-5}	2×10^{-4}
		W, oxides, hydroxides, halides and nitrates	-	3×10^{3}	1×10^{-6}	4×10^{-9}	-	-
		Y, carbide	-	2×10^{3}	1×10^{-6}	3×10^{-9}	-	-
40	Zirconium-88	D, see ^{86}Zr	4×10^{3}	2×10^{2}	9×10^{-8}	3×10^{-10}	5×10^{-5}	5×10^{-4}
		W, see ^{86}Zr	-	5×10^{2}	2×10^{-7}	7×10^{-10}	-	-
		Y, see ^{86}Zr	-	3×10^{2}	1×10^{-7}	4×10^{-10}	-	-
40	Zirconium-89	D, see ^{86}Zr	2×10^{3}	4×10^{3}	1×10^{-6}	5×10^{-9}	2×10^{-5}	2×10^{-4}
		W, see ^{86}Zr	-	2×10^{3}	1×10^{-6}	3×10^{-9}	-	-
		Y, see ^{86}Zr	-	2×10^{3}	1×10^{-6}	3×10^{-9}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
40	Zirconium-93	D, see ^{86}Zr	1×10^{3}	6×10^{0}	3×10^{-9}	-	-	-
			(3×10^{3}) Bone surf.	(2×10^{1}) Bone surf.	-	2×10^{-11}	4×10^{-5}	4×10^{-4}
		W, see ^{86}Zr	-	2×10^{1}	1×10^{-8}	-	-	-
			-	(5×10^{1}) Bone surf.	-	8×10^{-11}	-	-
		Y, see ^{86}Zr	-	6×10^{1}	2×10^{-8}	-	-	-
			-	(8×10^{1}) Bone surf.	-	1×10^{-10}	-	-
40	Zirconium-95	D, see ^{86}Zr	1×10^{3}	1×10^{2}	5×10^{-8}	-	2×10^{-5}	2×10^{-4}
			-	(3×10^{2}) Bone surf.	-	4×10^{-10}	-	-
		W, see ^{86}Zr	-	4×10^{2}	2×10^{-7}	5×10^{-10}	-	-
		Y, see ^{86}Zr	-	3×10^{2}	1×10^{-7}	4×10^{-10}	-	-
40	Zirconium-97	D, see ^{86}Zr	6×10^{2}	2×10^{3}	8×10^{-7}	3×10^{-9}	9×10^{-6}	9×10^{-5}
		W, see ^{86}Zr	-	1×10^{3}	6×10^{-7}	2×10^{-9}	-	-
		Y, see ^{86}Zr	-	1×10^{3}	5×10^{-7}	2×10^{-9}	-	-
41	Niobium-88[2]	W, all compounds except those given for Y	5×10^{4}	2×10^{5}	9×10^{-5}	3×10^{-7}	-	-
			(8×10^{4}) St. wall	-	-	-	1×10^{-3}	1×10^{-2}
		Y, oxides and hydroxides	-	2×10^{5}	9×10^{-5}	3×10^{-7}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
41	Niobium-89[2] (66 min)	W, see ^{88}Nb	$1x10^{4}$	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		Y, see ^{88}Nb	-	$4x10^{4}$	$2x10^{-5}$	$5x10^{-8}$	-	-
41	Niobium-89 (122 min)	W, see ^{88}Nb	$5x10^{3}$	$2x10^{4}$	$8x10^{-6}$	$3x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
		Y, see ^{88}Nb	-	$2x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	-	-
41	Niobium-90	W, see ^{88}Nb	$1x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		Y, see ^{88}Nb	-	$2x10^{3}$	$1x10^{-6}$	$3x10^{-9}$	-	-
41	Niobium-93m	W, see ^{88}Nb	$9x10^{3}$ ($1x10^{4}$) LLI wall	$2x10^{3}$	$8x10^{-7}$	$3x10^{-9}$	-	-
				-	-	-	$1x10^{-4}$	$1x10^{-3}$
		Y, see ^{88}Nb	-	$2x10^{2}$	$7x10^{-8}$	$2x10^{-10}$	-	-
41	Niobium-94	W, see ^{88}Nb	$9x10^{2}$	$2x10^{2}$	$8x10^{-8}$	$3x10^{-10}$	$1x10^{-5}$	$1x10^{-4}$
		Y, see ^{88}Nb	-	$2x10^{1}$	$6x10^{-9}$	$2x10^{-11}$	-	-
41	Niobium-95m	W, see ^{88}Nb	$2x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		Y, see ^{88}Nb	-	$2x10^{3}$	$9x10^{-7}$	$3x10^{-9}$	-	-
41	Niobium-95	W, see ^{88}Nb	$2x10^{3}$	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		Y, see ^{88}Nb	-	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	-	-
41	Niobium-96	W, see ^{88}Nb	$1x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		Y, see ^{88}Nb	-	$2x10^{3}$	$1x10^{-6}$	$3x10^{-9}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
41	Niobium-97[2]	W, see ^{88}Nb	$2x10^{4}$	$8x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	$3x10^{-4}$	$3x10^{-3}$
		Y, see ^{88}Nb	-	$7x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	-	-
41	Niobium-98[2]	W, see ^{88}Nb	$1x10^{4}$	$5x10^{4}$	$2x10^{-5}$	$7x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		Y, see ^{88}Nb	-	$5x10^{4}$	$2x10^{-5}$	$7x10^{-8}$	-	-
42	Molybdenum-90	D, all compounds except those given for Y	$2x10^{3}$	$7x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	$3x10^{-5}$	$3x10^{-4}$
		Y, oxides, hydroxides, and MoS_2	-	$5x10^{3}$	$2x10^{-6}$	$6x10^{-9}$	-	-
42	Molybdenum-93m	D, see ^{90}Mo	$4x10^{3}$	$2x10^{4}$	$7x10^{-6}$	$2x10^{-8}$	$6x10^{-5}$	$6x10^{-4}$
		Y, see ^{90}Mo	-	$1x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	-	-
42	Molybdenum-93	D, see ^{90}Mo	$4x10^{3}$	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	$5x10^{-5}$	$5x10^{-4}$
		Y, see ^{90}Mo	-	$2x10^{2}$	$8x10^{-8}$	$3x10^{-10}$	-	-
42	Molybdenum-99	D, see ^{90}Mo	$1x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		Y, see ^{90}Mo	-	$1x10^{3}$	$6x10^{-7}$	$2x10^{-9}$	-	-
42	Molybdenum-101[2]	D, see ^{90}Mo	$4x10^{4}$	$1x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	$6x10^{-4}$	$6x10^{-3}$
		Y, see ^{90}Mo	-	$1x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	-	-
43	Technetium-93m[2]	D, all compounds except those given for W	$7x10^{4}$	$2x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
		W, oxides, hydroxides, halides, and nitrates	-	$3x10^{5}$	$1x10^{-4}$	$4x10^{-7}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
43	Technetium-93	D, see ^{93m}Tc	$3x10^{4}$	$7x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{93m}Tc	-	$1x10^{5}$	$4x10^{-5}$	$1x10^{-7}$	-	-
43	Technetium-94m[2]	D, see ^{93m}Tc	$2x10^{4}$	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{93m}Tc	-	$6x10^{4}$	$2x10^{-5}$	$8x10^{-7}$	-	-
43	Technetium-94	D, see ^{93m}Tc	$9x10^{3}$	$2x10^{4}$	$8x10^{-6}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{93m}Tc	-	$2x10^{4}$	$1x10^{-5}$	$3x10^{-8}$	-	-
43	Technetium-96m[2]	D, see ^{93m}Tc	$2x10^{5}$	$3x10^{5}$	$1x10^{-4}$	$4x10^{-7}$	$2x10^{-3}$	$2x10^{-2}$
		W, see ^{93m}Tc	-	$2x10^{5}$	$1x10^{-4}$	$3x10^{-7}$	-	-
43	Technetium-96	D, see ^{93m}Tc	$2x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{93m}Tc	-	$2x10^{3}$	$9x10^{-7}$	$3x10^{-9}$	-	-
43	Technetium-97m	D, see ^{93m}Tc	$5x10^{3}$	$7x10^{3}$	$3x10^{-6}$	-	$6x10^{-5}$	$6x10^{-4}$
			-	$(8x10^{3})$ St. wall	-	$1x10^{-8}$	-	-
		W, see ^{93m}Tc	-	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	-	-
43	Technetium-97	D, see ^{93m}Tc	$4x10^{4}$	$5x10^{4}$	$2x10^{-5}$	$7x10^{-8}$	$5x10^{-4}$	$5x10^{-3}$
		W, see ^{93m}Tc	-	$6x10^{3}$	$2x10^{-6}$	$8x10^{-9}$	-	-
43	Technetium-98	D, see ^{93m}Tc	$1x10^{3}$	$2x10^{3}$	$7x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{93m}Tc	-	$3x10^{2}$	$1x10^{-7}$	$4x10^{-10}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
43	Technetium-99m	D, see ^{99m}Tc	$8x10^{4}$	$2x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{99m}Tc	-	$2x10^{5}$	$1x10^{-4}$	$3x10^{-7}$	-	-
43	Technetium-99	D, see ^{99m}Tc	$4x10^{3}$	$5x10^{3}$	$2x10^{-6}$	$8x10^{-9}$	$6x10^{-5}$	$6x10^{-4}$
		W, see ^{99m}Tc	-	$7x10^{2}$	$3x10^{-7}$	$9x10^{-10}$	-	-
43	Technetium-101[2]	D, see ^{99m}Tc	$9x10^{4}$	$3x10^{5}$	$1x10^{-4}$	$5x10^{-7}$	-	-
			$(1x10^{5})$ St. wall	-	-	-	$2x10^{-3}$	$2x10^{-2}$
		W, see ^{99m}Tc	-	$4x10^{5}$	$2x10^{-4}$	$5x10^{-7}$	-	-
43	Technetium-104[2]	D, see ^{99m}Tc	$2x10^{4}$	$7x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	-	-
			$(3x10^{4})$ St. wall	-	-	-	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{99m}Tc	-	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	-	-
44	Ruthenium-94[2]	D, all compounds except those given for W and Y	$2x10^{4}$	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, halides	-	$6x10^{4}$	$3x10^{-5}$	$9x10^{-8}$	-	-
		Y, oxides and hydroxides	-	$6x10^{4}$	$2x10^{-5}$	$8x10^{-8}$	-	-
44	Ruthenium-97	D, see ^{94}Ru	$8x10^{3}$	$2x10^{4}$	$8x10^{-6}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{94}Ru	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-
		Y, see ^{94}Ru	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
44	Ruthenium-103	D, see ^{94}Ru	$2x10^{3}$	$2x10^{3}$	$7x10^{-7}$	$2x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{94}Ru	-	$1x10^{3}$	$4x10^{-7}$	$1x10^{-9}$	-	-
		Y, see ^{94}Ru	-	$6x10^{2}$	$3x10^{-7}$	$9x10^{-10}$	-	-
44	Ruthenium-105	D, see ^{94}Ru	$5x10^{3}$	$2x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
		W, see ^{94}Ru	-	$1x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	-	-
		Y, see ^{94}Ru	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-
44	Ruthenium-106	D, see ^{94}Ru	$2x10^{2}$	$9x10^{1}$	$4x10^{-8}$	$1x10^{-10}$	$3x10^{-6}$	$3x10^{-5}$
		W, see ^{94}Ru	-	$5x10^{1}$	$2x10^{-8}$	$7x10^{-11}$	-	-
		Y, see ^{94}Ru	-	$1x10^{1}$	$5x10^{-9}$	$2x10^{-11}$	-	-
45	Rhodium-99m	D, all compounds except those given for W and Y	$2x10^{4}$	$6x10^{4}$	$2x10^{-5}$	$8x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, halides	-	$8x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	-	-
		Y, oxides and hydroxides	-	$7x10^{4}$	$3x10^{-5}$	$9x10^{-8}$	-	-
45	Rhodium-99	D, see ^{99m}Rh	$2x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{99m}Rh	-	$2x10^{3}$	$9x10^{-7}$	$3x10^{-9}$	-	-
		Y, see ^{99m}Rh	-	$2x10^{3}$	$8x10^{-7}$	$3x10^{-9}$	-	-
45	Rhodium-100	D, see ^{99m}Rh	$2x10^{3}$	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		W, see ^{99m}Rh	-	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	-	-
		Y, see ^{99m}Rh	-	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
45	Rhodium-101m	D, see ^{99m}Rh	$6x10^{3}$	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	$8x10^{-5}$	$8x10^{-4}$
		W, see ^{99m}Rh	-	$8x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	-	-
		Y, see ^{99m}Rh	-	$8x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	-	-
45	Rhodium-101	D, see ^{99m}Rh	$2x10^{3}$	$5x10^{2}$	$2x10^{-7}$	$7x10^{-10}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{99m}Rh	-	$8x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	-	-
		Y, see ^{99m}Rh	-	$2x10^{2}$	$6x10^{-8}$	$2x10^{-10}$	-	-
45	Rhodium-102m	D, see ^{99m}Rh	$1x10^{3}$	$5x10^{2}$	$2x10^{-7}$	$7x10^{-10}$	$2x10^{-5}$	$2x10^{-4}$
		W, see ^{99m}Rh	-	$4x10^{2}$	$2x10^{-7}$	$5x10^{-10}$	-	-
		Y, see ^{99m}Rh	-	$1x10^{2}$	$5x10^{-8}$	$2x10^{-10}$	-	-
45	Rhodium-102	D, see ^{99m}Rh	$6x10^{2}$	$9x10^{1}$	$4x10^{-8}$	$1x10^{-10}$	$8x10^{-6}$	$8x10^{-5}$
		W, see ^{99m}Rh	-	$2x10^{2}$	$7x10^{-8}$	$2x10^{-10}$	-	-
		Y, see ^{99m}Rh	-	$6x10^{1}$	$2x10^{-8}$	$8x10^{-11}$	-	-
45	Rhodium-103m[2]	D, see ^{99m}Rh	$4x10^{5}$	$1x10^{6}$	$5x10^{-4}$	$2x10^{-6}$	$6x10^{-3}$	$6x10^{-2}$
		W, see ^{99m}Rh	-	$1x10^{6}$	$5x10^{-4}$	$2x10^{-6}$	-	-
		Y, see ^{99m}Rh	-	$1x10^{6}$	$5x10^{-4}$	$2x10^{-6}$	-	-
45	Rhodium-105	D, see ^{99m}Rh	$4x10^{3}$	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	$5x10^{-5}$	$5x10^{-4}$
		W, see ^{99m}Rh	-	$6x10^{3}$	$3x10^{-6}$	$9x10^{-9}$	-	-
		Y, see ^{99m}Rh	-	$6x10^{3}$	$2x10^{-6}$	$8x10^{-9}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
45	Rhodium-106m	D, see ^{99m}Rh	$8x10^3$	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{99m}Rh	-	$4x10^4$	$2x10^{-5}$	$5x10^{-8}$	-	-
		Y, see ^{99m}Rh	-	$4x10^4$	$1x10^{-5}$	$5x10^{-8}$	-	-
45	Rhodium-107[2]	D, see ^{99m}Rh	$7x10^4$	$2x10^5$	$1x10^{-4}$	$3x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{99m}Rh	-	$3x10^5$	$1x10^{-4}$	$4x10^{-7}$	-	-
		Y, see ^{99m}Rh	-	$3x10^5$	$1x10^{-4}$	$4x10^{-7}$	-	-
46	Palladium-100	D, all compounds except those given for W and Y	$1x10^3$	$1x10^3$	$6x10^{-7}$	$2x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		W, nitrates	-	$1x10^3$	$5x10^{-7}$	$2x10^{-9}$	-	-
		Y, oxides and hydroxides	-	$1x10^3$	$6x10^{-7}$	$2x10^{-9}$	-	-
46	Palladium-101	D, see ^{100}Pd	$1x10^4$	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{100}Pd	-	$3x10^4$	$1x10^{-5}$	$5x10^{-8}$	-	-
		Y, see ^{100}Pd	-	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	-	-
46	Palladium-103	D, see ^{100}Pd	$6x10^3$	$6x10^3$	$3x10^{-6}$	$9x10^{-9}$	-	-
			($8x10^3$) LLI wall	-	-	-	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{100}Pd	-	$4x10^3$	$2x10^{-6}$	$6x10^{-9}$	-	-
		Y, see ^{100}Pd	-	$4x10^3$	$1x10^{-6}$	$5x10^{-9}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
46	Palladium-107	D, see ^{100}Pd	$3x10^4$	$2x10^4$	$9x10^{-6}$	$3x10^{-8}$	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{100}Pd	-	$7x10^3$	$3x10^{-6}$	$1x10^{-8}$	-	-
		Y, see ^{100}Pd	-	$4x10^2$	$2x10^{-7}$	$5x10^{-10}$	-	-
46	Palladium-109	D, see ^{100}Pd	$2x10^3$	$6x10^3$	$3x10^{-6}$	$9x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{100}Pd	-	$5x10^3$	$2x10^{-6}$	$8x10^{-9}$	-	-
		Y, see ^{100}Pd	-	$5x10^3$	$2x10^{-6}$	$6x10^{-9}$	-	-
47	Silver-102[2]	D, all compounds except those given for W and Y	$5x10^4$	$2x10^5$	$8x10^{-5}$	$3x10^{-7}$	$6x10^{-4}$	$6x10^{-3}$
		W, nitrates and sulfides	-	$2x10^5$	$9x10^{-5}$	$3x10^{-7}$	-	-
		Y, oxides and hydroxides	-	$2x10^5$	$8x10^{-5}$	$3x10^{-7}$	-	
47	Silver-103[2]	D, see ^{102}Ag	$4x10^4$	$1x10^5$	$4x10^{-5}$	$1x10^{-7}$	$5x10^{-4}$	$5x10^{-3}$
		W, see ^{102}Ag	-	$1x10^5$	$5x10^{-5}$	$2x10^{-7}$	-	-
		Y, see ^{102}Ag	-	$1x10^5$	$5x10^{-5}$	$2x10^{-7}$	-	-
47	Silver-104m[2]	D, see ^{102}Ag	$3x10^4$	$9x10^4$	$4x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{102}Ag	-	$1x10^5$	$5x10^{-5}$	$2x10^{-7}$	-	-
		Y, see ^{102}Ag	-	$1x10^5$	$5x10^{-5}$	$2x10^{-7}$	-	-
47	Silver-104[2]	D, see ^{102}Ag	$2x10^4$	$7x10^4$	$3x10^{-5}$	$1x10^{-7}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{102}Ag	-	$1x10^5$	$6x10^{-5}$	$2x10^{-7}$	-	-
		Y, see ^{102}Ag	-	$1x10^5$	$6x10^{-5}$	$2x10^{-7}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
47	Silver-105	D, see ^{102}Ag	$3x10^{3}$	$1x10^{3}$	$4x10^{-7}$	$1x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{102}Ag	-	$2x10^{3}$	$7x10^{-7}$	$2x10^{-9}$	-	-
		Y, see ^{102}Ag	-	$2x10^{3}$	$7x10^{-7}$	$2x10^{-9}$	-	-
47	Silver-106m	D, see ^{102}Ag	$8x10^{2}$	$7x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{102}Ag	-	$9x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	-	-
		Y, see ^{102}Ag	-	$9x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	-	-
47	Silver-106[2]	D, see ^{102}Ag	$6x10^{4}$	$2x10^{5}$	$9x10^{-5}$	$3x10^{-7}$	$1x10^{-4}$	$8x10^{-3}$
		W, see ^{102}Ag	-	$2x10^{5}$	$9x10^{-5}$	$3x10^{-7}$	-	-
		Y, see ^{102}Ag	-	$2x10^{5}$	$8x10^{-5}$	$3x10^{-7}$	-	-
47	Silver-108m	D, see ^{102}Ag	$6x10^{2}$	$2x10^{2}$	$8x10^{-8}$	$3x10^{-10}$	$9x10^{-6}$	$9x10^{-5}$
		W, see ^{102}Ag	-	$3x10^{2}$	$1x10^{-7}$	$4x10^{-10}$	-	-
		Y, see ^{102}Ag	-	$2x10^{1}$	$1x10^{-8}$	$3x10^{-11}$	-	-
47	Silver-110m	D, see ^{102}Ag	$5x10^{2}$	$1x10^{2}$	$5x10^{-8}$	$2x10^{-10}$	$6x10^{-6}$	$6x10^{-5}$
		W, see ^{102}Ag	-	$2x10^{2}$	$8x10^{-8}$	$3x10^{-10}$	-	-
		Y, see ^{102}Ag	-	$9x10^{1}$	$4x10^{-8}$	$1x10^{-10}$	-	-
47	Silver-111	D, see ^{102}Ag	$9x10^{2}$ ($1x10^{3}$) LLI wall	$2x10^{3}$	$6x10^{-7}$	$2x10^{-9}$	-	-
		W, see ^{102}Ag	-	$9x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		Y, see ^{102}Ag	-	$9x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	-	-
47	Silver-112	D, see ^{102}Ag	$3x10^{3}$	$8x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{102}Ag	-	$1x10^{4}$	$4x10^{-6}$	$1x10^{-8}$	-	-
		Y, see ^{102}Ag	-	$9x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	-	-
47	Silver-115[2]	D, see ^{102}Ag	$3x10^{4}$	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{102}Ag	-	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	-	-
		Y, see ^{102}Ag	-	$8x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	-	-
48	Cadmium-104[2]	D, all compounds except those given for W and Y	$2x10^{4}$	$7x10^{4}$	$3x10^{-5}$	$9x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		W, sulfides, halides, and nitrates	-	$1x10^{5}$	$5x10^{-5}$	$2x10^{-7}$	-	-
		Y, oxides and hydroxides	-	$1x10^{5}$	$5x10^{-5}$	$2x10^{-7}$	-	-
48	Cadmium-107	D, see ^{104}Cd	$2x10^{4}$	$5x10^{4}$	$2x10^{-5}$	$7x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{104}Cd	-	$6x10^{4}$	$2x10^{-5}$	$8x10^{-8}$	-	-
		Y, see ^{104}Cd	-	$5x10^{4}$	$2x10^{-5}$	$7x10^{-8}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
48	Cadmium-109	D, see ^{104}Cd	3×10^{2}	4×10^{1}	1×10^{-8}	5×10^{-11}	4×10^{-6}	4×10^{-5}
		W, see ^{104}Cd	-	1×10^{2}	5×10^{-8}	2×10^{-10}	-	-
		Y, see ^{104}Cd	-	1×10^{2}	5×10^{-8}	2×10^{-10}	-	-
48	Cadmium-113m	D, see ^{104}Cd	2×10^{1}	2×10^{0}	1×10^{-9}	3×10^{-12}	3×10^{-7}	3×10^{-6}
		W, see ^{104}Cd	-	8×10^{0}	4×10^{-9}	1×10^{-11}	-	-
		Y, see ^{104}Cd	-	1×10^{1}	5×10^{-9}	2×10^{-11}	-	-
48	Cadmium-113	D, see ^{104}Cd	2×10^{1}	2×10^{0}	9×10^{-10}	4×10^{-12}	3×10^{-7}	3×10^{-6}
		W, see ^{104}Cd	-	8×10^{0}	3×10^{-9}	1×10^{-11}	-	-
		Y, see ^{104}Cd	-	1×10^{1}	6×10^{-9}	2×10^{-11}	-	-
48	Cadmium-115m	D, see ^{104}Cd	3×10^{2}	5×10^{1}	2×10^{-8}	8×10^{-11}	4×10^{-6}	4×10^{-5}
		W, see ^{104}Cd	-	1×10^{2}	5×10^{-8}	2×10^{-10}	-	-
		Y, see ^{104}Cd	-	1×10^{2}	6×10^{-8}	2×10^{-10}	-	-
48	Cadmium-115	D, see ^{104}Cd	9×10^{2}	1×10^{3}	6×10^{-7}	2×10^{-9}	1×10^{-5}	1×10^{-4}
		W, see ^{104}Cd	-	1×10^{3}	5×10^{-7}	2×10^{-9}	-	-
		Y, see ^{104}Cd	-	1×10^{3}	6×10^{-7}	2×10^{-9}	-	-
48	Cadmium-117m	D, see ^{104}Cd	5×10^{3}	1×10^{4}	5×10^{-6}	2×10^{-8}	6×10^{-5}	6×10^{-4}
		W, see ^{104}Cd	-	2×10^{4}	7×10^{-6}	2×10^{-8}	-	-
		Y, see ^{104}Cd	-	1×10^{4}	6×10^{-6}	2×10^{-8}	-	-
48	Cadmium-117	D, see ^{104}Cd	5×10^{3}	1×10^{4}	5×10^{-6}	2×10^{-8}	6×10^{-5}	6×10^{-4}
		W, see ^{104}Cd	-	2×10^{4}	7×10^{-6}	2×10^{-8}	-	-
		Y, see ^{104}Cd	-	1×10^{4}	6×10^{-6}	2×10^{-8}	-	-
49	Indium-109	D, all compounds except those given for W	2×10^{4}	4×10^{4}	2×10^{-5}	6×10^{-8}	3×10^{-4}	3×10^{-3}
		W, oxides, hydroxides, halides and nitrates	-	6×10^{4}	3×10^{-5}	9×10^{-8}	-	-
49	Indium-110[2] (69.1 min)	D, see ^{109}In	2×10^{4}	4×10^{4}	2×10^{-5}	6×10^{-8}	2×10^{-4}	2×10^{-3}
		W, see ^{109}In	-	6×10^{4}	2×10^{-5}	8×10^{-8}	-	-
49	Indium-110 (4.9 h)	D, see ^{109}In	5×10^{3}	2×10^{4}	7×10^{-6}	2×10^{-8}	7×10^{-5}	7×10^{-4}
		W, see ^{109}In	-	2×10^{4}	8×10^{-6}	3×10^{-8}	-	-
49	Indium-111	D, see ^{109}In	4×10^{3}	6×10^{3}	3×10^{-6}	9×10^{-9}	6×10^{-5}	6×10^{-4}
		W, see ^{109}In	-	6×10^{3}	3×10^{-6}	9×10^{-9}	-	-
49	Indium-112[2]	D, see ^{109}In	2×10^{5}	6×10^{5}	3×10^{-4}	9×10^{-7}	2×10^{-3}	2×10^{-2}
		W, see ^{109}In	-	7×10^{5}	3×10^{-4}	1×10^{-6}	-	-
49	Indium-113m[2]	D, see ^{109}In	5×10^{4}	1×10^{5}	6×10^{-5}	2×10^{-7}	7×10^{-4}	7×10^{-3}
		W, see ^{109}In	-	2×10^{5}	8×10^{-5}	3×10^{-7}	-	-
49	Indium-114m	D, see ^{109}In	3×10^{2}	6×10^{1}	3×10^{-8}	9×10^{-11}	4×10^{-6}	4×10^{-5}
		W, see ^{109}In	-	1×10^{2}	4×10^{-8}	1×10^{-10}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
49	Indium-115m	D, see ^{109}In	$1x10^{4}$	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{109}In	-	$5x10^{4}$	$2x10^{-5}$	$7x10^{-8}$	-	-
49	Indium-115	D, see ^{109}In	$4x10^{1}$	$1x10^{0}$	$6x10^{-10}$	$2x10^{-12}$	$5x10^{-7}$	$5x10^{-6}$
		W, see ^{109}In	-	$5x10^{0}$	$2x10^{-9}$	$7x10^{-12}$	-	-
49	Indium-116m[2]	D, see ^{109}In	$2x10^{4}$	$8x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{109}In	-	$1x10^{5}$	$5x10^{-5}$	$2x10^{-7}$	-	-
49	Indium-117m[2]	D, see ^{109}In	$1x10^{4}$	$3x10^{4}$	$1x10^{-5}$	$5x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{109}In	-	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	-	-
49	Indium-117[2]	D, see ^{109}In	$6x10^{4}$	$2x10^{5}$	$7x10^{-5}$	$2x10^{-7}$	$8x10^{-4}$	$8x10^{-3}$
		W, see ^{109}In	-	$2x10^{5}$	$9x10^{-5}$	$3x10^{-7}$	-	-
49	Indium-119m[2]	D, see ^{109}In	$4x10^{4}$	$1x10^{5}$	$5x10^{-5}$	$2x10^{-7}$	-	-
			($5x10^{4}$) St. wall	-	-	-	$7x10^{-4}$	$7x10^{-3}$
		W, see ^{109}In	-	$1x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	-	-
50	Tin-110	D, all compounds except those given for W	$4x10^{3}$	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	$5x10^{-5}$	$5x10^{-4}$
		W, sulfides, oxides, hydroxides, halides, nitrates, and stannic phosphate	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
50	Tin-111[2]	D, see ^{110}Sn	$7x10^{4}$	$2x10^{5}$	$9x10^{-5}$	$3x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{110}Sn	-	$3x10^{5}$	$1x10^{-4}$	$4x10^{-7}$	-	-
50	Tin-113	D, see ^{110}Sn	$2x10^{3}$	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		W, see ^{110}Sn	-	$5x10^{2}$	$2x10^{-7}$	$8x10^{-10}$	-	-
50	Tin-117m	D, see ^{110}Sn	$2x10^{3}$	$1x10^{3}$	$5x10^{-7}$	-	$2x10^{-5}$	$2x10^{-4}$
			-	($2x10^{3}$) Bone surf.	-	$3x10^{-9}$	-	-
		W, see ^{110}Sn	-	$1x10^{3}$	$6x10^{-7}$	$2x10^{-9}$	-	-
50	Tin-119m	D, see ^{110}Sn	$3x10^{3}$	$2x10^{3}$	$1x10^{-6}$	$3x10^{-9}$	-	-
			($5x10^{3}$) LLI wall	-	-	-	$7x10^{-5}$	$7x10^{-4}$
		W, see ^{110}Sn	-	$1x10^{3}$	$4x10^{-7}$	$1x10^{-9}$	-	-
50	Tin-121m[2]	D, see ^{110}Sn	$3x10^{3}$	$9x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{110}Sn	-	$5x10^{2}$	$2x10^{-7}$	$8x10^{-10}$	-	-
50	Tin-121	D, see ^{110}Sn	$6x10^{3}$	$2x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	$8x10^{-5}$	$8x10^{-4}$
		W, see ^{110}Sn	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-
50	Tin-123m	D, see ^{110}Sn	$5x10^{4}$	$1x10^{5}$	$5x10^{-5}$	$2x10^{-7}$	$7x10^{-4}$	$7x10^{-3}$
		W, see ^{110}Sn	-	$1x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
50	Tin-123	D, see ^{110}Sn	$5x10^{2}$	$6x10^{2}$	$3x10^{-7}$	$5x10^{-10}$	$7x10^{-6}$	$7x10^{-5}$
		W, see ^{110}Sn	-	$2x10^{2}$	$7x10^{-8}$	$2x10^{-10}$	-	-
50	Tin-125	D, see ^{110}Sn	$4x10^{2}$	$9x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	-	-
			($5x10^{2}$) LLI wall	-	-	-	$7x10^{-6}$	$7x10^{-5}$
		W, see ^{110}Sn	-	$4x10^{2}$	$1x10^{-7}$	$5x10^{-10}$	-	-
50	Tin-126	D, see ^{110}Sn	$3x10^{2}$	$6x10^{1}$	$2x10^{-8}$	$8x10^{-11}$	$4x10^{-6}$	$4x10^{-5}$
		W, see ^{110}Sn	-	$7x10^{1}$	$3x10^{-8}$	$9x10^{-11}$	-	-
50	Tin-127	D, see ^{110}Sn	$7x10^{3}$	$2x10^{4}$	$8x10^{-6}$	$3x10^{-8}$	$9x10^{-5}$	$9x10^{-4}$
		W, see ^{110}Sn	-	$2x10^{4}$	$8x10^{-6}$	$3x10^{-8}$	-	-
50	Tin-128[2]	D, see ^{110}Sn	$9x10^{3}$	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{110}Sn	-	$4x10^{4}$	$1x10^{-5}$	$5x10^{-8}$	-	-
51	Antimony-115[2]	D, all compounds except those given for W	$8x10^{4}$	$2x10^{5}$	$1x10^{-4}$	$3x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
		W, oxides, hydroxides, halides, sulfides, sulfates, and nitrates	-	$3x10^{5}$	$1x10^{-4}$	$4x10^{-7}$	-	-
51	Antimony-116m[2]	D, see ^{115}Sb	$2x10^{4}$	$7x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{115}Sb	-	$1x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
51	Antimony-116	D, see ^{115}Sb	$8x10^{4}$	$3x10^{5}$	$1x10^{-4}$	$4x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{115}Sb	-	$3x10^{5}$	$1x10^{-4}$	$5x10^{-7}$	-	-
51	Antimony-117	D, see ^{115}Sb	$7x10^{4}$	$2x10^{5}$	$9x10^{-5}$	$3x10^{-7}$	$9x10^{-4}$	$9x10^{-3}$
		W, see ^{115}Sb	-	$3x10^{5}$	$1x10^{-4}$	$4x10^{-7}$	-	-
51	Antimony-118m	D, see ^{115}Sb	$5x10^{3}$	$2x10^{4}$	$8x10^{-6}$	$3x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
		W, see ^{115}Sb	-	$2x10^{4}$	$9x10^{-6}$	$3x10^{-8}$	-	-
51	Antimony-119	D, see ^{115}Sb	$1x10^{4}$	$5x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{115}Sb	-	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	-	-
51	Antimony-120[2] (16 min)	D, see ^{115}Sb	$1x10^{5}$	$4x10^{5}$	$2x10^{-4}$	$6x10^{-7}$	-	-
			($2x10^{5}$) St. wall	-	-	-	$2x10^{-3}$	$2x10^{-2}$
		W, see ^{115}Sb	-	$5x10^{5}$	$2x10^{-4}$	$7x10^{-7}$	-	-
51	Antimony-120 (5.76 d)	D, see ^{115}Sb	$9x10^{2}$	$2x10^{3}$	$9x10^{-7}$	$3x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{115}Sb	-	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	-	-
51	Antimony-122	D, see ^{115}Sb	$7x10^{2}$	$2x10^{3}$	$1x10^{-6}$	$3x10^{-9}$	$9x10^{-6}$	$9x10^{-5}$
		W, see ^{115}Sb	-	$1x10^{3}$	$4x10^{-7}$	$1x10^{-9}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
51	Antimony-124m[2]	D, see ^{115}Sb	$2x10^5$	$8x10^5$	$4x10^{-4}$	$1x10^{-6}$	-	-
			($3x10^5$) St. wall	-	-	-	$4x10^{-3}$	$4x10^{-2}$
		W, see ^{115}Sb	-	$6x10^5$	$2x10^{-4}$	$8x10^{-7}$	-	-
51	Antimony-124	D, see ^{115}Sb	$5x10^2$	$9x10^2$	$4x10^{-7}$	$1x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
		W, see ^{115}Sb	-	$2x10^2$	$1x10^{-7}$	$3x10^{-10}$	-	-
51	Antimony-125	D, see ^{115}Sb	$2x10^3$	$2x10^3$	$1x10^{-6}$	$3x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{115}Sb	-	$5x10^2$	$2x10^{-7}$	$7x10^{-10}$	-	-
51	Antimony-126m[2]	D, see ^{115}Sb	$5x10^4$	$2x10^5$	$8x10^{-5}$	$3x10^{-7}$	$7x10^{-4}$	$7x10^{-3}$
		W, see ^{115}Sb	-	$2x10^5$	$8x10^{-5}$	$3x10^{-7}$	-	-
51	Antimony-126	D, see ^{115}Sb	$5x10^2$	$1x10^3$	$5x10^{-7}$	$2x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
		W, see ^{115}Sb	-	$5x10^2$	$2x10^{-7}$	$7x10^{-10}$	-	-
51	Antimony-127	D, see ^{115}Sb	$7x10^2$	$2x10^3$	$9x10^{-7}$	$3x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{115}Sb	-	$9x10^2$	$4x10^{-7}$	$1x10^{-9}$	-	-
51	Antimony-128[2] (10.4 min)	D, see ^{115}Sb	$8x10^4$	$4x10^5$	$2x10^{-4}$	$5x10^{-7}$	-	-
			($1x10^5$) St. wall	-	-	-	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{115}Sb	-	$4x10^5$	$2x10^{-4}$	$6x10^{-7}$	-	-
51	Antimony-128 (9.01 h)	D, see ^{115}Sb	$1x10^3$	$4x10^3$	$2x10^{-6}$	$6x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		W, see ^{115}Sb	-	$3x10^3$	$1x10^{-6}$	$4x10^{-9}$	-	-
51	Antimony-129	D, see ^{115}Sb	$3x10^3$	$9x10^3$	$4x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-3}$
		W, see ^{115}Sb	-	$9x10^3$	$4x10^{-6}$	$1x10^{-8}$	-	-
51	Antimony-130[2]	D, see ^{115}Sb	$2x10^4$	$6x10^4$	$3x10^{-5}$	$9x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{115}Sb	-	$8x10^4$	$3x10^{-5}$	$1x10^{-7}$	-	-
51	Antimony-131[2]	D, see ^{115}Sb	$1x10^4$	$2x10^4$	$1x10^{-5}$	-	$2x10^{-4}$	$2x10^{-3}$
			-	($3x10^4$) Thyroid	-	$4x10^{-8}$	-	-
		W, see ^{115}Sb	-	$2x10^4$	$1x10^{-5}$	-	-	-
			-	($5x10^4$) Thyroid	-	$8x10^{-8}$	-	-
52	Tellurium-116	D, all compounds except those given for W	$8x10^3$	$2x10^4$	$9x10^{-6}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, oxides, hydroxides, and nitrates	-	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	-	-
52	Tellurium-121m	D, see ^{116}Te	$5x10^2$	$2x10^2$	$8x10^{-8}$	-	-	-
			($8x10^2$) Bone surf.	($3x10^2$) Bone surf.	-	$4x10^{-10}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{116}Te	-	$4x10^2$	$2x10^{-7}$	$6x10^{-10}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
52	Tellurium-121	D, see ^{116}Te	3×10^{3}	4×10^{3}	2×10^{-6}	6×10^{-9}	4×10^{-5}	4×10^{-4}
		W, see ^{116}Te	-	3×10^{3}	1×10^{-6}	4×10^{-9}	-	-
52	Tellurium-123m	D, see ^{116}Te	6×10^{2}	2×10^{2}	9×10^{-8}	-	-	-
			(1×10^{3}) Bone surf.	(5×10^{2}) Bone surf.	-	8×10^{-10}	1×10^{-5}	1×10^{-4}
		W, see ^{116}Te	-	5×10^{2}	2×10^{-7}	7×10^{-10}	-	-
52	Tellurium-123	D, see ^{116}Te	5×10^{2}	2×10^{2}	8×10^{-8}	-	-	-
			(1×10^{3}) Bone surf.	(5×10^{2}) Bone surf.	-	8×10^{-10}	1×10^{-5}	1×10^{-4}
		W, see ^{116}Te	-	4×10^{2}	2×10^{-7}	-	-	-
			-	(1×10^{3}) Bone surf.	-	2×10^{-9}	-	-
52	Tellurium-125m	D, see ^{116}Te	1×10^{3}	4×10^{2}	2×10^{-7}	-	1×10^{-5}	1×10^{-4}
			-	(1×10^{3}) Bone surf.	-	2×10^{-9}	-	-
		W, see ^{116}Te	-	7×10^{2}	3×10^{-7}	1×10^{-9}	-	-
52	Tellurium-127m	D, see ^{116}Te	6×10^{2}	3×10^{2}	1×10^{-7}	-	9×10^{-6}	9×10^{-5}
			-	(5×10^{2}) Bone surf.	-	8×10^{-10}	-	-
		W, see ^{116}Te	-	3×10^{2}	1×10^{-7}	4×10^{-10}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
52	Tellurium-127	D, see ^{116}Te	7×10^{3}	2×10^{4}	9×10^{-6}	3×10^{-8}	1×10^{-4}	1×10^{-3}
		W, see ^{116}Te	-	2×10^{4}	7×10^{-6}	2×10^{-8}	-	-
52	Tellurium-129m	D, see ^{116}Te	5×10^{2}	6×10^{2}	3×10^{-7}	9×10^{-10}	7×10^{-6}	7×10^{-5}
		W, see ^{116}Te	-	2×10^{2}	1×10^{-7}	3×10^{-10}	-	-
52	Tellurium-129[2]	D, see ^{116}Te	3×10^{4}	6×10^{4}	3×10^{-5}	9×10^{-8}	4×10^{-4}	4×10^{-3}
		W, see ^{116}Te	-	7×10^{4}	3×10^{-5}	1×10^{-7}	-	-
52	Tellurium-131m	D, see ^{116}Te	3×10^{2}	4×10^{2}	2×10^{-7}	-	-	-
			(5×10^{2}) Thyroid	(1×10^{3}) Thyroid	-	2×10^{-9}	7×10^{-6}	7×10^{-5}
		W, see ^{116}Te	-	4×10^{2}	2×10^{-7}	-	-	-
			-	(8×10^{2}) Thyroid	-	1×10^{-9}	-	-
52	Tellurium-131[2]	D, see ^{116}Te	3×10^{3}	5×10^{3}	2×10^{-6}	-	-	-
			(5×10^{3}) Thyroid	(1×10^{4}) Thyroid	-	2×10^{-8}	7×10^{-5}	7×10^{-4}
		W, see ^{116}Te	-	5×10^{3}	2×10^{-6}	-	-	-
			-	(1×10^{4}) Thyroid	-	2×10^{-8}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
52	Tellurium-132	D, see ^{116}Te	$2x10^2$	$2x10^2$	$9x10^{-8}$	-	-	-
			($5x10^2$) Thyroid	($8x10^2$) Thyroid	-	$1x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
		W, see ^{116}Te	-	$2x10^2$	$9x10^{-8}$	-	-	-
			-	($5x10^2$) Thyroid	-	$8x10^{-10}$	-	-
52	Tellurium-133m[2]	D, see ^{116}Te	$3x10^3$	$5x10^3$	$2x10^{-6}$	-	-	-
			($5x10^3$) Thyroid	($1x10^4$) Thyroid	-	$2x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
		W, see ^{116}Te	-	$5x10^3$	$2x10^{-6}$	-	-	-
			-	($1x10^4$) Thyroid	-	$2x10^{-8}$	-	-
52	Tellurium-133[2]	D, see ^{116}Te	$1x10^4$	$2x10^4$	$9x10^{-6}$	-	-	-
			($3x10^4$) Thyroid	($5x10^4$) Thyroid	-	$8x10^{-8}$	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{116}Te	-	$2x10^4$	$9x10^{-6}$	-	-	-
			-	($5x10^4$) Thyroid	-	$8x10^{-8}$	-	-
52	Tellurium-134[2]	D, see ^{116}Te	$2x10^4$	$2x10^4$	$1x10^{-5}$	-	$2x10^{-4}$	$2x10^{-3}$
			-	($5x10^4$) Thyroid	-	$8x10^{-8}$	-	-
		W, see ^{116}Te	-	$2x10^4$	$1x10^{-5}$	-	-	-
			-	($5x10^4$) Thyroid	-	$8x10^{-8}$	-	-
53	Iodine-120m[2]	D, all compounds	$1x10^4$	$2x10^4$	$9x10^{-6}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
53	Iodine-120[2]	D, all compounds	$4x10^3$	$9x10^3$	$4x10^{-6}$	-	-	-
			($8x10^3$) Thyroid	($1x10^4$) Thyroid	-	$2x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
53	Iodine-121	D, all compounds	$1x10^4$	$2x10^4$	$8x10^{-6}$	-	-	-
			($3x10^4$) Thyroid	($5x10^4$) Thyroid	-	$8x10^{-8}$	$4x10^{-4}$	$4x10^{-3}$
53	Iodine-123	D, all compounds	$3x10^3$	$6x10^3$	$3x10^{-6}$	-	-	-
			($1x10^4$) Thyroid	($2x10^4$) Thyroid	-	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
53	Iodine-124	D, all compounds	$5x10^1$	$8x10^1$	$3x10^{-8}$	-	-	-
			($2x10^2$) Thyroid	($3x10^2$) Thyroid	-	$4x10^{-10}$	$2x10^{-6}$	$2x10^{-5}$

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
53	Iodine-125	D, all compounds	4×10^{1} (1×10^{2}) Thyroid	6×10^{1} (2×10^{2}) Thyroid	3×10^{-8} -	- 3×10^{-10}	- 2×10^{-6}	- 2×10^{-5}
53	Iodine-126	D, all compounds	2×10^{1} (8×10^{2}) Thyroid	4×10^{1} (1×10^{2}) Thyroid	1×10^{-8} -	- 2×10^{-10}	- 1×10^{-6}	- 1×10^{-5}
53	Iodine-128[2]	D, all compounds	4×10^{4}	1×10^{5}	5×10^{-5}	2×10^{-7}	6×10^{-4}	6×10^{-3}
53	Iodine-129	D, all compounds	5×10^{0} (2×10^{1}) Thyroid	9×10^{0} (3×10^{1}) Thyroid	4×10^{-9} -	- 4×10^{-11}	- 3×10^{-7}	- 3×10^{-6}
53	Iodine-130	D, all compounds	4×10^{2} (1×10^{3}) Thyroid	7×10^{2} (2×10^{3}) Thyroid	3×10^{-7} -	- 3×10^{-9}	- 1×10^{-5}	- 1×10^{-4}
53	Iodine-131	D, all compounds	3×10^{1} (1×10^{2}) Thyroid	5×10^{1} (2×10^{2}) Thyroid	2×10^{-8} -	- 2×10^{-10}	- 1×10^{-6}	- 1×10^{-5}
53	Iodine-132m[2]	D, all compounds	4×10^{3} (1×10^{4}) Thyroid	8×10^{3} (2×10^{4}) Thyroid	4×10^{-6} -	- 3×10^{-8}	- 1×10^{-4}	- 1×10^{-3}

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
53	Iodine-132	D, all compounds	4×10^{3} (8×10^{3}) Thyroid	8×10^{3} (2×10^{4}) Thyroid	3×10^{-6} -	- 2×10^{-8}	- 1×10^{-4}	- 1×10^{-3}
53	Iodine-133	D, all compounds	1×10^{2} (5×10^{2}) Thyroid	3×10^{2} (8×10^{2}) Thyroid	1×10^{-7} -	- 1×10^{-9}	- 7×10^{-6}	- 7×10^{-5}
53	Iodine-134[2]	D, all compounds	2×10^{4} (3×10^{4}) Thyroid	5×10^{4} -	2×10^{-5} -	6×10^{-8} -	- 4×10^{-4}	- 4×10^{-3}
53	Iodine-135	D, all compounds	8×10^{2} (2×10^{3}) Thyroid	2×10^{3} (5×10^{3}) Thyroid	7×10^{-7} -	- 8×10^{-9}	- 3×10^{-5}	- 3×10^{-4}
54	Xenon-120	Submersion[1]	-	-	1×10^{-5}	4×10^{-8}	-	-
54	Xenon-121	Submersion[1]	-	-	2×10^{-6}	1×10^{-8}	-	-
54	Xenon-122	Submersion[1]	-	-	7×10^{-5}	3×10^{-7}	-	-
54	Xenon-123	Submersion[1]	-	-	6×10^{-6}	3×10^{-8}	-	-
54	Xenon-125	Submersion[1]		-	2×10^{-5}	7×10^{-8}	-	-
54	Xenon-127	Submersion[1]	-	-	1×10^{-5}	6×10^{-8}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
54	Xenon-129m	Submersion[1]	-	-	$2x10^{-4}$	$9x10^{-7}$	-	-
54	Xenon-131m	Submersion[1]	-	-	$4x10^{-4}$	$2x10^{-6}$	-	-
54	Xenon-133m	Submersion[1]	-	-	$1x10^{-4}$	$6x10^{-7}$	-	-
54	Xenon-133	Submersion[1]	-	-	$1x10^{-4}$	$5x10^{-7}$	-	-
54	Xenon-135m	Submersion[1]	-	-	$9x10^{-6}$	$4x10^{-8}$	-	-
54	Xenon-135	Submersion[1]	-	-	$1x10^{-5}$	$7x10^{-8}$	-	-
54	Xenon-138	Submersion[1]	-	-	$4x10^{-6}$	$2x10^{-8}$	-	-
55	Cesium-125[2]	D, all compounds	$5x10^{4}$ ($8x10^{4}$) St. wall	$1x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	-	-
				-	-	-	$1x10^{-3}$	$1x10^{-2}$
55	Cesium-127	D, all compounds	$6x10^{4}$	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	$9x10^{-4}$	$9x10^{-3}$
55	Cesium-129	D, all compounds	$2x10^{4}$	$3x10^{4}$	$1x10^{-5}$	$5x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
55	Cesium-130[2]	D, all compounds	$6x10^{4}$ ($1x10^{5}$) St. wall	$2x10^{5}$	$8x10^{-5}$	$3x10^{-7}$	-	-
				-	-	-	$1x10^{-3}$	$1x10^{-2}$
55	Cesium-131	D, all compounds	$2x10^{4}$	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
55	Cesium-132	D, all compounds	$3x10^{3}$	$4x10^{3}$	$2x10^{-6}$	$6x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
55	Cesium-134m	D, all compounds	$1x10^{5}$	$1x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	$2x10^{-3}$	$2x10^{-2}$
55	Cesium-134	D, all compounds	$7x10^{1}$	$1x10^{2}$	$4x10^{-8}$	$1x10^{-10}$	$9x10^{-7}$	$9x10^{-6}$
55	Cesium-135m[2]	D, all compounds	$1x10^{5}$	$2x10^{5}$	$8x10^{-5}$	$3x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
55	Cesium-135	D, all compounds	$7x10^{2}$	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
55	Cesium-136	D, all compounds	$4x10^{2}$	$7x10^{2}$	$3x10^{-7}$	$9x10^{-10}$	$6x10^{-6}$	$6x10^{-5}$
55	Cesium-137	D, all compounds	$1x10^{2}$	$2x10^{2}$	$6x10^{-8}$	$2x10^{-10}$	$1x10^{-6}$	$1x10^{-5}$
55	Cesium-138[2]	D, all compounds	$2x10^{4}$ ($3x10^{4}$) St. wall	$6x10^{4}$	$2x10^{-5}$	$8x10^{-8}$	-	-
				-	-	-	$4x10^{-4}$	$4x10^{-3}$
56	Barium-126[2]	D, all compounds	$6x10^{3}$	$2x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	$8x10^{-5}$	$8x10^{-4}$
56	Barium-128	D, all compounds	$5x10^{2}$	$2x10^{3}$	$7x10^{-7}$	$2x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
56	Barium-131m[2]	D, all compounds	$4x10^{5}$ ($5x10^{5}$) St. wall	$1x10^{6}$	$6x10^{-4}$	$2x10^{-6}$	-	-
				-	-	-	$7x10^{-3}$	$7x10^{-2}$
56	Barium-131	D, all compounds	$3x10^{3}$	$8x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
56	Barium-133m	D, all compounds	$2x10^{3}$ ($3x10^{3}$) LLI wall	$9x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	-	-
				-	-	-	$4x10^{-5}$	$4x10^{-4}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
56	Barium-133	D, all compounds	$2x10^{3}$	$7x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
56	Barium-135m	D, all compounds	$3x10^{3}$	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
56	Barium-139[2]	D, all compounds	$1x10^{4}$	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
56	Barium-140	D, all compounds	$5x10^{2}$	$1x10^{3}$	$6x10^{-7}$	$2x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
56	Barium-141[2]	D, all compounds	$2x10^{4}$	$7x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	$3x10^{-4}$	$3x10^{-3}$
56	Barium-142[2]	D, all compounds	$5x10^{4}$	$1x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	$7x10^{-4}$	$7x10^{-3}$
57	Lanthanum-131[2]	D, all compounds except those given for W	$5x10^{4}$	$1x10^{5}$	$5x10^{-5}$	$2x10^{-7}$	$6x10^{-4}$	$6x10^{-3}$
		W, oxides and hydroxides	-	$2x10^{5}$	$7x10^{-5}$	$2x10^{-7}$	-	-
57	Lanthanum-132	D, see ^{131}La	$3x10^{3}$	$1x10^{4}$	$4x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{131}La	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-
57	Lanthanum-135	D, see ^{131}La	$4x10^{4}$	$1x10^{5}$	$4x10^{-5}$	$1x10^{-7}$	$5x10^{-4}$	$5x10^{-3}$
		W, see ^{131}La	-	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	-	-
57	Lanthanum-137	D, see ^{131}La	$1x10^{4}$	$6x10^{1}$	$3x10^{-8}$	-	$2x10^{-4}$	$2x10^{-3}$
			-	$(8x10^{1})$ Liver	-	$1x10^{-10}$	-	-
		W, see ^{131}La	-	$3x10^{2}$	$1x10^{-7}$	$4x10^{-10}$	-	-
57	Lanthanum-138	D, see ^{131}La	$9x10^{2}$	$4x10^{0}$	$1x10^{-9}$	$5x10^{-12}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{131}La	-	$1x10^{1}$	$6x10^{-9}$	$2x10^{-11}$	-	-
57	Lanthanum-140	D, see ^{131}La	$6x10^{2}$	$1x10^{3}$	$6x10^{-7}$	$2x10^{-9}$	$9x10^{-6}$	$9x10^{-5}$
		W, see ^{131}La	-	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	-	-
57	Lanthanum-141	D, see ^{131}La	$4x10^{3}$	$9x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	$5x10^{-5}$	$5x10^{-4}$
		W, see ^{131}La	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-
57	Lanthanum-142[2]	D, see ^{131}La	$8x10^{3}$	$2x10^{4}$	$9x10^{-6}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{131}La	-	$3x10^{4}$	$1x10^{-5}$	$5x10^{-8}$	-	-
57	Lanthanum-143[2]	D, see ^{131}La	$4x10^{4}$	$1x10^{5}$	$4x10^{-5}$	$1x10^{-7}$	$5x10^{-4}$	$5x10^{-3}$
		W, see ^{131}La	-	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	-	-
58	Cerium-134	W, all compounds except those given for Y	$5x10^{2}$	$7x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
		Y, oxides, hydroxides and fluorides	-	$7x10^{2}$	$3x10^{-7}$	$9x10^{-10}$	-	-
58	Cerium-135	W, see ^{134}Ce	$2x10^{3}$	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		Y, see ^{134}Ce	-	$4x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	-	-
58	Cerium-137m	W, see ^{134}Ce	$2x10^{3}$	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		Y, see ^{134}Ce	-	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
57	Lanthanum-138	D, see ^{131}La	$9x10^{2}$	$4x10^{0}$	$1x10^{-9}$	$5x10^{-12}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{131}La	-	$1x10^{1}$	$6x10^{-9}$	$2x10^{-11}$	-	-
57	Lanthanum-140	D, see ^{131}La	$6x10^{2}$	$1x10^{3}$	$6x10^{-7}$	$2x10^{-9}$	$9x10^{-6}$	$9x10^{-5}$
		W, see ^{131}La	-	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	-	-
57	Lanthanum-141	D, see ^{131}La	$4x10^{3}$	$9x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	$5x10^{-5}$	$5x10^{-4}$
		W, see ^{131}La	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-
57	Lanthanum-142[2]	D, see ^{131}La	$8x10^{3}$	$2x10^{4}$	$9x10^{-6}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{131}La	-	$3x10^{4}$	$1x10^{-5}$	$5x10^{-8}$	-	-
57	Lanthanum-143[2]	D, see ^{131}La	$4x10^{4}$	$1x10^{5}$	$4x10^{-5}$	$1x10^{-7}$	$5x10^{-4}$	$5x10^{-3}$
		W, see ^{131}La	-	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	-	-
58	Cerium-134	W, all compounds except those given for Y	$5x10^{2}$	$7x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
		Y, oxides, hydroxides and fluorides	-	$7x10^{2}$	$3x10^{-7}$	$9x10^{-10}$	-	-
58	Cerium-135	W, see ^{134}Ce	$2x10^{3}$	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		Y, see ^{134}Ce	-	$4x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	-	-
58	Cerium-137m	W, see ^{134}Ce	$2x10^{3}$	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		Y, see ^{134}Ce	-	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
58	Cerium-137	W, see ^{134}Ce	5×10^{4}	1×10^{5}	6×10^{-5}	2×10^{-7}	7×10^{-4}	7×10^{-3}
		Y, see ^{134}Ce	-	1×10^{5}	5×10^{-5}	2×10^{-7}	-	-
58	Cerium-139	W, see ^{134}Ce	5×10^{3}	8×10^{2}	3×10^{-7}	1×10^{-9}	7×10^{-5}	7×10^{-4}
		Y, see ^{134}Ce	-	7×10^{2}	3×10^{-7}	9×10^{-9}	-	-
58	Cerium-141	W, see ^{134}Ce	2×10^{3}	7×10^{2}	3×10^{-7}	1×10^{-9}	2×10^{-5}	2×10^{-4}
		Y, see ^{134}Ce	-	6×10^{2}	2×10^{-7}	8×10^{-10}	-	-
58	Cerium-143	W, see ^{134}Ce	1×10^{3}	2×10^{3}	8×10^{-7}	3×10^{-9}	2×10^{-5}	2×10^{-4}
		Y, see ^{134}Ce	-	2×10^{3}	7×10^{-7}	2×10^{-9}	-	-
58	Cerium-144	W, see ^{134}Ce	2×10^{2}	3×10^{1}	1×10^{-8}	4×10^{-11}	3×10^{-6}	3×10^{-5}
		Y, see ^{134}Ce	-	1×10^{1}	6×10^{-9}	2×10^{-11}	-	-
59	Praseodymium-136[2]	W, all compounds except those given for Y	5×10^{4}	2×10^{5}	1×10^{-4}	3×10^{-7}	-	-
			(8×10^{4}) St. wall	-	-	-	1×10^{-3}	1×10^{-2}
		Y, oxides, hydroxides, carbides and fluorides	-	2×10^{5}	9×10^{-5}	3×10^{-7}	-	-
59	Praseodymium-137[2]	W, see ^{136}Pr	4×10^{4}	2×10^{5}	6×10^{-5}	2×10^{-7}	5×10^{-4}	5×10^{-3}
		Y, see ^{136}Pr	-	1×10^{5}	6×10^{-5}	2×10^{-7}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
59	Praseodymium-138m	W, see ^{136}Pr	1×10^{4}	5×10^{4}	2×10^{-5}	$8\times10^{-}$	1×10^{-4}	1×10^{-3}
		Y, see ^{136}Pr	-	4×10^{4}	2×10^{-5}	6×10^{-8}	-	-
59	Praseodymium-139	W, see ^{136}Pr	4×10^{4}	1×10^{5}	5×10^{-5}	2×10^{-7}	6×10^{-4}	6×10^{-3}
		Y, see ^{136}Pr	-	1×10^{5}	5×10^{-5}	2×10^{-7}	-	-
	Praseodymium-142m[2]	W, see ^{136}Pr	8×10^{4}	2×10^{5}	7×10^{-5}	2×10^{-7}	1×10^{-3}	1×10^{-2}
		Y, see ^{136}Pr	-	1×10^{5}	6×10^{-5}	2×10^{-7}	-	-
59	Praseodymium-142	W, see ^{136}Pr	1×10^{3}	2×10^{3}	9×10^{-7}	3×10^{-9}	1×10^{-5}	1×10^{-4}
		Y, see ^{136}Pr	-	2×10^{3}	8×10^{-7}	3×10^{-9}	-	-
	Praseodymium-143	W, see ^{136}Pr	9×10^{2}	8×10^{2}	3×10^{-7}	1×10^{-9}	-	-
			(1×10^{3}) LLI wall	-	-	-	1×10^{-5}	1×10^{-4}
		Y, see ^{136}Pr	-	7×10^{2}	3×10^{-7}	9×10^{-10}	-	-
59	Praseodymium-144[2]	W, see ^{136}Pr	3×10^{4}	1×10^{5}	5×10^{-5}	2×10^{-7}	-	-
			(5×10^{4}) St. wall	-	-	-	7×10^{-4}	7×10^{-3}
		Y, see ^{136}Pr	-	1×10^{5}	5×10^{-5}	2×10^{-7}	-	-
	Praseodymium-145	W, see ^{136}Pr	3×10^{3}	9×10^{3}	4×10^{-6}	1×10^{-8}	4×10^{-5}	4×10^{-4}
		Y, see ^{136}Pr	-	8×10^{3}	3×10^{-6}	1×10^{-8}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
59	Praseodymium-147[2]	W, see ^{136}Pr	5×10^{4} (8×10^{4}) St. wall	2×10^{5}	8×10^{-5}	3×10^{-7}	1×10^{-3}	1×10^{-2}
		Y, see ^{136}Pr	-	2×10^{5}	8×10^{-5}	3×10^{-7}	-	-
60	Neodymium-136[2]	W, all compounds except those given for Y	1×10^{4}	6×10^{4}	2×10^{-5}	8×10^{-8}	2×10^{-4}	2×10^{-3}
		Y, oxides, hydroxides, carbides and fluorides	-	5×10^{4}	2×10^{-5}	7×10^{-8}	-	-
60	Neodymium-138	W, see ^{136}Nd	2×10^{3}	6×10^{3}	3×10^{-6}	9×10^{-9}	3×10^{-5}	3×10^{-4}
		Y, see ^{136}Nd	-	5×10^{3}	2×10^{-6}	7×10^{-9}	-	-
60	Neodymium-139m	W, see ^{136}Nd	5×10^{3}	2×10^{4}	7×10^{-6}	2×10^{-8}	7×10^{-5}	7×10^{-4}
		Y, see ^{136}Nd	-	1×10^{4}	6×10^{-6}	2×10^{-8}	-	-
60	Neodymium-139[2]	W, see ^{136}Nd	9×10^{4}	3×10^{5}	1×10^{-4}	5×10^{-7}	1×10^{-3}	1×10^{-2}
		Y, see ^{136}Nd	-	3×10^{5}	1×10^{-4}	4×10^{-7}	-	-
60	Neodymium-141	W, see ^{136}Nd	2×10^{5}	7×10^{5}	3×10^{-4}	1×10^{-6}	2×10^{-3}	2×10^{-2}
		Y, see ^{136}Nd	-	6×10^{5}	3×10^{-4}	1×10^{-6}	-	-
60	Neodymium-147	W, see ^{136}Nd	1×10^{3}	9×10^{2}	4×10^{-7}	1×10^{-9}	3×10^{-5}	1×10^{-4}
		Y, see ^{136}Nd	-	8×10^{2}	4×10^{-7}	1×10^{-9}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
60	Neodymium-149[2]	W, see ^{136}Nd	1×10^{4}	3×10^{4}	1×10^{-5}	4×10^{-8}	1×10^{-4}	1×10^{-3}
		Y, see ^{136}Nd	-	2×10^{4}	1×10^{-5}	3×10^{-8}	-	-
60	Neodymium-151[2]	W, see ^{136}Nd	7×10^{4}	2×10^{5}	8×10^{-5}	3×10^{-7}	9×10^{-4}	9×10^{-3}
		Y, see ^{136}Nd	-	2×10^{5}	8×10^{-5}	3×10^{-7}	-	-
61	Promethium-141[2]	W, all compounds except those given for Y	5×10^{4}	2×10^{5}	8×10^{-5}	3×10^{-7}	7×10^{-4}	7×10^{-3}
		Y, oxides, hydroxides, carbides and fluorides	-	2×10^{5}	7×10^{-5}	2×10^{-7}	-	-
61	Promethium-143	W, see ^{141}Pm	5×10^{3}	6×10^{2}	2×10^{-7}	8×10^{-10}	7×10^{-5}	7×10^{-4}
		Y, see ^{141}Pm	-	7×10^{2}	3×10^{-7}	1×10^{-9}	-	-
61	Promethium-144	W, see ^{141}Pm	1×10^{3}	1×10^{2}	5×10^{-8}	2×10^{-10}	2×10^{-5}	2×10^{-4}
		Y, see ^{141}Pm	-	1×10^{2}	5×10^{-8}	2×10^{-10}	-	-
61	Promethium-145	W, see ^{141}Pm	1×10^{3}	2×10^{2}	7×10^{-8}	2×10^{-10}	1×10^{-4}	1×10^{-3}
		Y, see ^{141}Pm	-	2×10^{2}	8×10^{-8}	3×10^{-10}	-	-
61	Promethium-146	W, see ^{141}Pm	2×10^{3}	5×10^{1}	2×10^{-8}	7×10^{-11}	2×10^{-5}	2×10^{-4}
		Y, see ^{141}Pm	-	4×10^{1}	2×10^{-8}	6×10^{-11}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
61	Promethium-147	W, see ^{141}Pm	$4x10^{3}$	$1x10^{2}$	$5x10^{-[illegible]}$	-	$6x10^{-5}$	$6x10^{-4}$
			-	$(2x10^{2})$ Bone surf.	-	$3x10^{-10}$	-	-
		Y, [illegible] ^{141}Pm	-	$1x10^{2}$	$6x10^{-8}$	$2x10^{-10}$	-	-
61	Promethium-148m	W, see ^{141}Pm	$7x10^{2}$	$3x10^{2}$	$1x10^{-7}$	$4x10^{-10}$	$1x10^{-5}$	$1x10^{-4}$
		Y, see ^{141}Pm	-	$3x10^{2}$	$1x10^{-7}$	$4x10^{-10}$	-	-
61	Promethium-148	W, see ^{141}Pm	$4x10^{2}$	$5x10^{2}$	$2x10^{-7}$	$8x10^{-10}$	$6x10^{-6}$	$6x10^{-5}$
		Y, see ^{141}Pm	-	$5x10^{2}$	$2x10^{-7}$	$7x10^{-10}$	-	-
61	Promethium-149	W, see ^{141}Pm	$1x10^{3}$	$2x10^{3}$	$8x10^{-7}$	$3x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		Y, see ^{141}Pm	-	$2x10^{3}$	$8x10^{-7}$	$3x10^{-9}$	-	-
61	Promethium-150	W, see ^{141}Pm	$5x10^{3}$	$2x10^{4}$	[illegible]$^{-6}$	$3x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
		Y, see ^{141}Pm	-	$2x10^{4}$	$7x10^{-6}$	$2x10^{-8}$	-	-
61	Promethium-151	W, see ^{141}Pm	$2x10^{3}$	$4x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		Y, see ^{141}Pm	-	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	-	-
62	Samarium-141m[2]	W, all compounds	$3x10^{4}$	$1x10^{5}$	$4x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
62	Samarium-141[2]	W, all compounds	$5x10^{4}$	$2x10^{5}$	$8x10^{-5}$	$3x10^{-7}$	$6x10^{-4}$	$6x10^{-3}$
62	Samarium-142[2]	W, all compounds	$8x10^{3}$	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
62	Samarium-145	W, all compounds	$6x10^{3}$	$5x10^{2}$	$2x10^{-7}$	$7x10^{-10}$	$8x10^{-5}$	$8x10^{-4}$
62	Samarium-146	W, all compounds	$1x10^{1}$	$4x10^{-2}$	$1x10^{-11}$	-	-	-
			$(2x10^{1})$ Bone surf.	$(5x10^{-2})$ Bone surf.	-	$8x10^{-14}$	$3x10^{-7}$	$3x10^{-6}$
62	Samarium-147	W, all compounds	$2x10^{1}$	$4x10^{-2}$	$2x10^{-11}$	-	-	-
			$(3x10^{1})$ Bone surf.	$(8x10^{-2})$ Bone surf.	-	$1x10^{-13}$	$4x10^{-7}$	$4x10^{-6}$
62	Samarium-151	W, all compounds	$1x10^{4}$	$1x10^{2}$	$4x10^{-8}$	-	$2x10^{-4}$	$2x10^{-3}$
			-	$(2x10^{2})$ Bone surf.	-	$3x10^{-10}$	-	-
62	Samarium-153	W, all compounds	$2x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
62	Samarium-155[2]	W, all compounds	$6x10^{4}$	$2x10^{5}$	$9x10^{-5}$	$3x10^{-7}$	-	-
			$(8x10^{4})$ St. wall	-	-	-	$1x10^{-3}$	$1x10^{-2}$
62	Samarium-156	W, all compounds	$5x10^{3}$	$9x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
63	Europium-145	W, all compounds	$2x10^{3}$	$2x10^{3}$	$8x10^{-7}$	$3x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
63	Europium-146	W, all compounds	$1x10^{3}$	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
63	Europium-147	W, all compounds	$3x10^{3}$	$2x10^{3}$	$7x10^{-7}$	$2x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
61	Europium-148	W, all compounds	$1x10^{3}$	$4x10^{2}$	$1x10^{-7}$	$5x10^{-10}$	$1x10^{-5}$	$1x10^{-4}$
61	Europium-149	W, all compounds	$1x10^{4}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$2x10^{-4}$	$2x10^{-3}$
61	Europium-150 (12.62h)	W, all compounds	$3x10^{3}$	$8x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
63	Europium-150 (34.2y)	W, all compounds	$8x10^{2}$	$2x10^{1}$	$8x10^{-9}$	$3x10^{-11}$	$1x10^{-5}$	$1x10^{-4}$
61	Europium-152m	W, all compounds	$3x10^{3}$	$6x10^{3}$	$3x10^{-6}$	$9x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
63	Europium-152	W, all compounds	$8x10^{2}$	$2x10^{1}$	$1x10^{-8}$	$3x10^{-11}$	$1x10^{-5}$	$1x10^{-4}$
63	Europium-154	W, all compounds	$5x10^{2}$	$2x10^{1}$	$8x10^{-9}$	$3x10^{-11}$	$7x10^{-6}$	$7x10^{-5}$
63	Europium-155	W, all compounds	$4x10^{3}$	$9x10^{1}$	$4x10^{-8}$	-	$5x10^{-5}$	$5x10^{-4}$
			-	($1x10^{2}$) Bone surf.	-	$2x10^{-10}$	-	-
63	Europium-156	W, all compounds	$6x10^{2}$	$5x10^{2}$	$2x10^{-7}$	$6x10^{-10}$	$8x10^{-6}$	$8x10^{-5}$
63	Europium-157	W, all compounds	$2x10^{3}$	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
63	Europium-158[2]	W, all compounds	$2x10^{4}$	$6x10^{4}$	$2x10^{-5}$	$8x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
64	Gadolinium-145[2]	D, all compounds except those given for W	$5x10^{4}$	$2x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	$6x10^{-4}$	$6x10^{-3}$
		W, oxides, hydroxides, and fluorides	-	$2x10^{5}$	$7x10^{-5}$	$2x10^{-7}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
64	Gadolinium-146	D, see ^{145}Gd	$1x10^{3}$	$1x10^{2}$	$5x10^{-8}$	$2x10^{-10}$	$2x10^{-5}$	$2x10^{-4}$
		W, see ^{145}Gd	-	$3x10^{2}$	$1x10^{-7}$	$4x10^{-10}$	-	-
64	Gadolinium-147	D, see ^{145}Gd	$2x10^{3}$	$4x10^{3}$	$2x10^{-6}$	$6x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{145}Gd	-	$4x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	-	-
64	Gadolinium-148	D, see ^{145}Gd	$1x10^{1}$	$8x10^{-3}$	$3x10^{-12}$	-	-	-
			($2x10^{1}$) Bone surf.	($2x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$3x10^{-7}$	$3x10^{-6}$
		W, see ^{145}Gd	-	$3x10^{-2}$	$1x10^{-11}$	-	-	-
			-	($5x10^{2}$) Bone surf.	-	$8x10^{-14}$	-	-
64	Gadolinium-149	D, see ^{145}Gd	$3x10^{3}$	$2x10^{3}$	$9x10^{-7}$	$3x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{145}Gd	-	$2x10^{3}$	$1x10^{-6}$	$3x10^{-9}$	-	-
64	Gadolinium-151	D, see ^{145}Gd	$6x10^{3}$	$4x10^{2}$	$2x10^{-7}$	-	$9x10^{-5}$	$9x10^{-4}$
			-	($5x10^{2}$) Bone surf.	-	$8x10^{-10}$	-	-
		W, see ^{145}Gd	-	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	-	-
64	Gadolinium-152	D, see ^{145}Gd	$2x10^{1}$	$1x10^{-2}$	$4x10^{-12}$	-	-	-
			($3x10^{1}$) Bone surf.	($2x10^{-2}$) Bone surf.	-	$3x10^{-14}$	$4x10^{-7}$	$4x10^{-6}$
		W, see ^{145}Gd	-	$4x10^{-2}$	$2x10^{-11}$	-	-	-
			-	($8x10^{-2}$) Bone surf.	-	$1x10^{-13}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
64	Gadolinium-153	D, see ^{145}Gd	5×10^{3}	1×10^{2}	6×10^{-8}	-	6×10^{-5}	6×10^{-4}
				(2×10^{2}) Bone surf.	-	3×10^{-10}	-	-
		W, see ^{145}Gd		6×10^{2}	2×10^{-7}	1×10^{-10}	-	-
64	Gadolinium-159	D, see ^{145}Gd	3×10^{3}	8×10^{3}	3×10^{-6}	1×10^{-8}	4×10^{-5}	4×10^{-4}
		W, see ^{145}Gd	-	6×10^{3}	2×10^{-6}	8×10^{-9}	-	-
65	Terbium-147[2]	W, all compounds	9×10^{3}	3×10^{4}	1×10^{-5}	4×10^{-8}	1×10^{-4}	1×10^{-3}
65	Terbium-149	W, all compounds	5×10^{3}	7×10^{2}	3×10^{-7}	1×10^{-9}	7×10^{-5}	7×10^{-4}
65	Terbium-150	W, all compounds	5×10^{3}	2×10^{4}	9×10^{-6}	3×10^{-8}	7×10^{-5}	7×10^{-4}
65	Terbium-151	W, all compounds	4×10^{3}	9×10^{3}	4×10^{-6}	1×10^{-8}	5×10^{-5}	5×10^{-4}
65	Terbium-153	W, all compounds	5×10^{3}	7×10^{3}	3×10^{-6}	1×10^{-8}	7×10^{-5}	7×10^{-4}
65	Terbium-154	W, all compounds	2×10^{3}	4×10^{3}	2×10^{-6}	6×10^{-9}	2×10^{-5}	2×10^{-4}
65	Terbium-155	W, all compounds	6×10^{3}	8×10^{3}	3×10^{-6}	1×10^{-8}	8×10^{-5}	8×10^{-4}
65	Terbium-156m (5.0 h)	W, all compounds	2×10^{4}	3×10^{4}	1×10^{-5}	4×10^{-8}	2×10^{-4}	2×10^{-3}
65	Terbium-156m (24.4 h)	W, all compounds	7×10^{3}	8×10^{3}	3×10^{-6}	1×10^{-8}	1×10^{-4}	1×10^{-3}
65	Terbium-156	W, all compounds	1×10^{3}	1×10^{3}	6×10^{-7}	2×10^{-9}	1×10^{-5}	1×10^{-4}

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
65	Terbium-157	W, all compounds	5×10^{4}	3×10^{2}	1×10^{-7}	-	6×10^{-4}	6×10^{-3}
			-	(5×10^{2}) Bone surf.	-	1×10^{-10}	-	-
65	Terbium-158	W, all compounds	1×10^{3}	2×10^{1}	8×10^{-9}	3×10^{-11}	2×10^{-5}	2×10^{-4}
65	Terbium-160	W, all compounds	8×10^{2}	2×10^{2}	9×10^{-8}	3×10^{-10}	1×10^{-5}	1×10^{-4}
65	Terbium-161	W, all compounds	2×10^{3}	2×10^{3}	7×10^{-7}	2×10^{-9}	2×10^{-5}	2×10^{-4}
66	Dysprosium-155	W, all compounds	9×10^{3}	3×10^{4}	1×10^{-5}	4×10^{-8}	1×10^{-4}	1×10^{-3}
66	Dysprosium-157	W, all compounds	2×10^{4}	6×10^{4}	3×10^{-5}	9×10^{-8}	3×10^{-4}	3×10^{-3}
66	Dysprosium-159	W, all compounds	1×10^{4}	2×10^{3}	1×10^{-6}	3×10^{-9}	2×10^{-4}	2×10^{-3}
66	Dysprosium-165	W, all compounds	1×10^{4}	5×10^{4}	2×10^{-5}	6×10^{-8}	2×10^{-4}	2×10^{-3}
66	Dysprosium-166	W, all compounds	6×10^{2}	7×10^{2}	3×10^{-7}	1×10^{-9}	-	-
			(8×10^{2}) LLI wall	-	-	-	1×10^{-5}	1×10^{-4}
67	Holmium-155[2]	W, all compounds	4×10^{4}	2×10^{5}	6×10^{-5}	2×10^{-7}	6×10^{-4}	6×10^{-3}
67	Holmium-157[2]	W, all compounds	3×10^{5}	1×10^{6}	6×10^{-4}	2×10^{-6}	4×10^{-3}	4×10^{-2}
67	Holmium-159[2]	W, all compounds	2×10^{5}	1×10^{6}	4×10^{-4}	1×10^{-6}	3×10^{-3}	3×10^{-2}
67	Holmium-161	W, all compounds	1×10^{5}	4×10^{5}	2×10^{-4}	6×10^{-7}	1×10^{-3}	1×10^{-2}

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
67	Holmium-162m[2]	W, all compounds	$5x10^4$	$3x10^5$	$1x10^{-4}$	$4x10^{-7}$	$7x10^{-4}$	$7x10^{-3}$
67	Holmium-162[2]	W, all compounds	$5x10^5$	$2x10^6$	$1x10^{-3}$	$3x10^{-6}$	-	-
			($8x10^5$) St. wall	-	-	-	$1x10^{-2}$	$1x10^{-1}$
67	Holmium-164m[2]	W, all compounds	$1x10^5$	$3x10^5$	$1x10^{-4}$	$4x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
67	Holmium-164[2]	W, all compounds	$2x10^5$	$6x10^5$	$3x10^{-4}$	$9x10^{-7}$	$3x10^{-3}$	$3x10^{-2}$
67	Holmium-166m	W, all compounds	$6x10^2$	$7x10^0$	$3x10^{-9}$	$1x10^{-11}$	$9x10^{-6}$	$9x10^{-5}$
67	Holmium-166	W, all compounds	$9x10^2$	$2x10^3$	$7x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
67	Holmium-167	W, all compounds	$2x10^4$	$6x10^4$	$2x10^{-5}$	$8x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
68	Erbium-161	W, all compounds	$2x10^4$	$6x10^4$	$3x10^{-5}$	$9x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
68	Erbium-165	W, all compounds	$6x10^4$	$2x10^5$	$8x10^{-5}$	$3x10^{-7}$	$9x10^{-4}$	$9x10^{-3}$
68	Erbium-169	W, all compounds	$3x10^3$	$3x10^3$	$1x10^{-6}$	$4x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
68	Erbium-171	W, all compounds	$4x10^3$	$1x10^4$	$4x10^{-6}$	$1x10^{-8}$	$5x10^{-5}$	$5x10^{-4}$
68	Erbium-172	W, all compounds	$1x10^3$	$1x10^3$	$6x10^{-7}$	$2x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
69	Thulium-162[2]	W, all compounds	$7x10^4$	$3x10^5$	$1x10^{-4}$	$4x10^{-7}$	-	-
			($8x10^4$) St. wall	-	-	-	$1x10^{-3}$	$1x10^{-2}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
69	Thulium-166	W, all compounds	$4x10^3$	$1x10^4$	$6x10^{-6}$	$2x10^{-8}$	$6x10^{-5}$	$6x10^{-4}$
69	Thulium-167	W, all compounds	$2x10^3$	$2x10^3$	$8x10^{-7}$	$3x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
69	Thulium-170	W, all compounds	$8x10^2$	$2x10^2$	$9x10^{-8}$	$3x10^{-10}$	-	-
			($1x10^3$) LLI wall	-	-	-	$1x10^{-5}$	$1x10^{-4}$
69	Thulium-171	W, all compounds	$1x10^4$	$3x10^2$	$1x10^{-7}$	$4x10^{-10}$	$1x10^{-4}$	$1x10^{-3}$
69	Thulium-172	W, all compounds	$7x10^2$	$1x10^3$	$5x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
69	Thulium-173	W, all compounds	$4x10^3$	$1x10^4$	$5x10^{-6}$	$2x10^{-8}$	$6x10^{-5}$	$6x10^{-4}$
69	Thulium-175[2]	W, all compounds	$7x10^4$	$3x10^5$	$1x10^{-4}$	$4x10^{-7}$	-	-
			($8x10^4$) St. wall	-	-	-	$1x10^{-3}$	$1x10^{-2}$
70	Ytterbium-162[2]	W, all compounds except those given for Y	$7x10^4$	$3x10^5$	$1x10^{-4}$	$4x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
		Y, oxides, hydroxides, and fluorides	-	$3x10^5$	$1x10^{-4}$	$4x10^{-7}$	-	-
70	Ytterbium-166	W, see ^{162}Yb	$1x10^3$	$2x10^3$	$8x10^{-7}$	$3x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		Y, see ^{162}Yb	-	$2x10^3$	$8x10^{-7}$	$3x10^{-9}$	-	-
70	Ytterbium-167[2]	W, see ^{162}Yb	$3x10^5$	$8x10^5$	$3x10^{-4}$	$1x10^{-6}$	$4x10^{-3}$	$4x10^{-2}$
		Y, see ^{162}Yb	-	$7x10^5$	$3x10^{-4}$	$1x10^{-6}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
70	Ytterbium-169	W, see ^{162}Yb	2×10^{3}	8×10^{2}	4×10^{-7}	1×10^{-9}	2×10^{-5}	2×10^{-4}
		Y, see ^{162}Yb	-	7×10^{2}	3×10^{-7}	1×10^{-9}	-	-
70	Ytterbium-175	W, see ^{162}Yb	3×10^{3}	4×10^{3}	1×10^{-6}	5×10^{-9}	4×10^{-5}	4×10^{-4}
		Y, see ^{162}Yb	-	3×10^{3}	1×10^{-6}	5×10^{-9}	-	-
70	Ytterbium-177[2]	W, see ^{162}Yb	2×10^{4}	5×10^{4}	2×10^{-5}	7×10^{-8}	2×10^{-4}	2×10^{-3}
		Y, see ^{162}Yb	-	5×10^{4}	2×10^{-5}	6×10^{-8}	-	-
70	Ytterbium-178[2]	W, see ^{162}Yb	1×10^{4}	4×10^{4}	2×10^{-5}	6×10^{-8}	2×10^{-4}	2×10^{-3}
		Y, see ^{162}Yb	-	4×10^{4}	2×10^{-5}	5×10^{-8}	-	-
71	Lutetium-169	W, all compounds except those given for Y	3×10^{3}	4×10^{3}	2×10^{-6}	6×10^{-9}	3×10^{-5}	3×10^{-4}
		Y, oxides, hydroxides, and fluorides	-	4×10^{3}	2×10^{-6}	6×10^{-9}	-	-
71	Lutetium-170	W, see ^{170}Lu	1×10^{3}	2×10^{3}	9×10^{-7}	3×10^{-9}	2×10^{-5}	2×10^{-4}
		Y, see ^{170}Lu	-	2×10^{3}	8×10^{-7}	3×10^{-9}	-	-
71	Lutetium-171	W, see ^{170}Lu	2×10^{3}	2×10^{3}	8×10^{-7}	3×10^{-9}	3×10^{-5}	3×10^{-4}
		Y, see ^{170}Lu	-	2×10^{3}	8×10^{-7}	3×10^{-9}	-	-
71	Lutetium-172	W, see ^{170}Lu	1×10^{3}	1×10^{3}	5×10^{-7}	2×10^{-9}	1×10^{-5}	1×10^{-4}
		Y, see ^{170}Lu	-	1×10^{3}	5×10^{-7}	2×10^{-9}	-	-
71	Lutetium-173	W, see ^{170}Lu	5×10^{3}	3×10^{2}	1×10^{-7}	-	7×10^{-5}	7×10^{-4}
			-	(5×10^{2}) Bone surf.	-	8×10^{-10}	-	-
		Y, see ^{170}Lu	-	3×10^{2}	1×10^{-7}	4×10^{-10}	-	-
71	Lutetium-174m	W, see ^{170}Lu	2×10^{3}	2×10^{2}	1×10^{-7}	-	-	-
			(3×10^{3}) LLI wall	(3×10^{2}) Bone surf.	-	4×10^{-10}	4×10^{-5}	4×10^{-4}
		Y, see ^{170}Lu	-	2×10^{2}	9×10^{-8}	3×10^{-10}	-	-
71	Lutetium-174	W, see ^{170}Lu	5×10^{3}	1×10^{2}	5×10^{-8}	-	7×10^{-5}	7×10^{-4}
			-	(2×10^{2}) Bone surf.	-	3×10^{-10}	-	-
		Y, see ^{170}Lu	-	2×10^{2}	6×10^{-8}	2×10^{-10}	-	-
71	Lutetium-176m	W, see ^{170}Lu	8×10^{3}	3×10^{4}	1×10^{-5}	4×10^{-8}	1×10^{-4}	1×10^{-3}
		Y, see ^{170}Lu	-	2×10^{4}	9×10^{-6}	3×10^{-8}	-	-
71	Lutetium-176	W, see ^{170}Lu	7×10^{2}	5×10^{0}	2×10^{-9}	-	1×10^{-5}	1×10^{-4}
			-	(1×10^{1}) Bone surf.	-	2×10^{-11}	-	-
		Y, see ^{170}Lu	-	8×10^{0}	3×10^{-9}	1×10^{-11}	-	-
71	Lutetium-177m	W, see ^{170}Lu	7×10^{2}	1×10^{2}	5×10^{-8}	2×10^{-10}	1×10^{-5}	1×10^{-4}
		Y, see ^{170}Lu	-	8×10^{1}	3×10^{-8}	1×10^{-10}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
71	Lutetium-177	W, see ^{170}Lu	2×10^{3}	2×10^{3}	9×10^{-7}	3×10^{-9}	3×10^{-5}	3×10^{-4}
		Y, see ^{170}Lu	-	2×10^{3}	9×10^{-7}	3×10^{-9}	-	-
71	Lutetium-178m[2]	W, see ^{170}Lu	5×10^{4}	2×10^{5}	8×10^{-5}	3×10^{-7}	7×10^{-4}	7×10^{-3}
		Y, see ^{170}Lu	-	2×10^{5}	7×10^{-5}	2×10^{-7}	-	-
71	Lutetium-178[2]	W, see ^{170}Lu	4×10^{4} (5×10^{4}) St. wall	1×10^{5}	5×10^{-5}	2×10^{-7}	-	
				-	-	-	7×10^{-4}	7×10^{-3}
		Y, see ^{170}Lu	-	1×10^{5}	5×10^{-5}	2×10^{-7}	-	-
71	Lutetium-179	W, see ^{170}Lu	6×10^{3}	2×10^{4}	8×10^{-6}	3×10^{-8}	9×10^{-5}	9×10^{-4}
		Y, see ^{170}Lu	-	2×10^{4}	6×10^{-6}	2×10^{-8}	-	-
72	Hafnium-170	D, all compounds except those given for W	3×10^{3}	6×10^{3}	2×10^{-6}	8×10^{-9}	4×10^{-5}	4×10^{-4}
		W, oxides, hydroxides, halides, carbides, and nitrates	-	5×10^{3}	2×10^{-6}	6×10^{-9}	-	-
72	Hafnium-172	D, see ^{170}Hf	1×10^{3}	9×10^{0}	4×10^{-9}	-	2×10^{-5}	2×10^{-4}
			-	(2×10^{1}) Bone surf.	-	3×10^{-11}	-	-
		W, see ^{170}Hf	-	4×10^{1}	2×10^{-8}	-	-	-
			-	(5×10^{1}) Bone surf.	-	8×10^{-11}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
72	Hafnium-173	D, see ^{170}Hf	5×10^{3}	1×10^{4}	5×10^{-6}	2×10^{-8}	7×10^{-5}	7×10^{-4}
		W, see ^{170}Hf	-	1×10^{4}	5×10^{-6}	2×10^{-8}	-	-
72	Hafnium-175	D, see ^{170}Hf	3×10^{3}	9×10^{2}	4×10^{-7}	1×10^{-9}	4×10^{-5}	4×10^{-4}
		W, see ^{170}Hf	-	1×10^{3}	5×10^{-7}	2×10^{-9}	-	-
72	Hafnium-177m[2]	D, see ^{170}Hf	2×10^{4}	6×10^{4}	2×10^{-5}	8×10^{-8}	3×10^{-4}	3×10^{-3}
		W, see ^{170}Hf	-	9×10^{4}	4×10^{-5}	1×10^{-7}	-	-
72	Hafnium-178m	D, see ^{170}Hf	3×10^{2}	1×10^{0}	5×10^{-10}	-	3×10^{-6}	3×10^{-5}
			-	(2×10^{0}) Bone surf.	-	3×10^{-12}	-	-
		W, see ^{170}Hf	-	5×10^{0}	2×10^{-9}	-	-	-
			-	(8×10^{0}) Bone surf.	-	1×10^{-11}	-	-
72	Hafnium-179m	D, see ^{170}Hf	1×10^{3}	3×10^{2}	1×10^{-7}	-	1×10^{-5}	1×10^{-4}
			-	(5×10^{2}) Bone surf.	-	8×10^{-10}	-	-
		W, see ^{170}Hf	-	6×10^{2}	3×10^{-7}	8×10^{-10}	-	-
72	Hafnium-180m	D, see ^{170}Hf	7×10^{3}	2×10^{4}	9×10^{-6}	3×10^{-8}	1×10^{-4}	1×10^{-3}
		W, see ^{170}Hf	-	3×10^{4}	1×10^{-5}	4×10^{-8}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
72	Hafnium-181	D, see ^{170}Hf	$1x10^{3}$	$2x10^{2}$	$7x10^{-8}$	-	$2x10^{-5}$	$2x10^{-4}$
			-	$(3x10^{2})$ Bone surf.	-	$4x10^{-10}$	-	-
		W, see ^{170}Hf	-	$4x10^{2}$	$2x10^{-7}$	$6x10^{-10}$	-	-
72	Hafnium-182m[2]	D, see ^{170}Hf	$4x10^{4}$	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	$5x10^{-4}$	$5x10^{-3}$
		W, see ^{170}Hf	-	$2x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	-	-
72	Hafnium-182	D, see ^{170}Hf	$2x10^{2}$	$8x10^{-1}$	$3x10^{-10}$	-	-	-
			$(3x10^{2})$ Bone surf.	$(2x10^{0})$ Bone surf.	-	$3x10^{-12}$	$4x10^{-6}$	$4x10^{-5}$
		W, see ^{170}Hf	-	$3x10^{0}$	$1x10^{-9}$	-	-	-
			-	$(8x10^{0})$ Bone surf.	-	$1x10^{-11}$	-	-
72	Hafnium-183[2]	D, see ^{170}Hf	$2x10^{4}$	$5x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{170}Hf	-	$6x10^{4}$	$2x10^{-5}$	$8x10^{-8}$	-	-
72	Hafnium-184	D, see ^{170}Hf	$2x10^{3}$	$8x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{170}Hf	-	$6x10^{3}$	$3x10^{-6}$	$9x10^{-9}$	-	-
73	Tantalum-172[2]	W, all compounds except those given for Y	$4x10^{4}$	$1x10^{5}$	$5x10^{-5}$	$2x10^{-7}$	$5x10^{-4}$	$5x10^{-3}$
		Y, elemental Ta, oxides, hydroxides, halides, carbides, nitrates, and nitrides	-	$1x10^{5}$	$4x10^{-5}$	$1x10^{-7}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
73	Tantalum-173	W, see ^{172}Ta	$7x10^{3}$	$2x10^{4}$	$8x10^{-6}$	$3x10^{-8}$	$9x10^{-5}$	$9x10^{-4}$
		Y, see ^{172}Ta	-	$2x10^{4}$	$7x10^{-6}$	$2x10^{-8}$	-	-
73	Tantalum-174[2]	W, see ^{172}Ta	$3x10^{4}$	$1x10^{5}$	$4x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		Y, see ^{172}Ta	-	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	-	-
73	Tantalum-175	W, see ^{172}Ta	$6x10^{3}$	$2x10^{4}$	$7x10^{-6}$	$2x10^{-8}$	$8x10^{-5}$	$8x10^{-4}$
		Y, see ^{172}Ta	-	$1x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	-	-
73	Tantalum-176	W, see ^{172}Ta	$4x10^{3}$	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	$5x10^{-5}$	$5x10^{-4}$
		Y, see ^{172}Ta	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-
73	Tantalum-177	W, see ^{172}Ta	$1x10^{4}$	$2x10^{4}$	$8x10^{-6}$	$3x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		Y, see ^{172}Ta	-	$2x10^{4}$	$7x10^{-6}$	$2x10^{-8}$	-	-
73	Tantalum-178	W, see ^{172}Ta	$2x10^{4}$	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	$2x10^{-4}$	$2x10^{-3}$
		Y, see ^{172}Ta	-	$7x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	-	-
73	Tantalum-179	W, see ^{172}Ta	$2x10^{4}$	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	$3x10^{-4}$	$3x10^{-3}$
		Y, see ^{172}Ta	-	$9x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	-	-
73	Tantalum-180m	W, see ^{172}Ta	$2x10^{4}$	$7x10^{4}$	$3x10^{-5}$	$9x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		Y, see ^{172}Ta	-	$6x10^{4}$	$2x10^{-5}$	$8x10^{-8}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
73	Tantalum-180	W, see ^{172}Ta	$1x10^{3}$	$4x10^{2}$	$2x10^{-7}$	$6x10^{-10}$	$2x10^{-5}$	$2x10^{-4}$
		Y, see ^{172}Ta	-	$2x10^{1}$	$1x10^{-8}$	$3x10^{-11}$	-	-
73	Tantalum-182m[2]	W, see ^{172}Ta	$2x10^{5}$	$5x10^{5}$	$2x10^{-4}$	$7x10^{-7}$	$2x10^{-3}$	$2x10^{-2}$
		Y, see ^{172}Ta	-	$4x10^{5}$	$2x10^{-4}$	$6x10^{-7}$	-	-
73	Tantalum-182	W, see ^{172}Ta	$8x10^{2}$	$3x10^{2}$	$1x10^{-7}$	$4x10^{-10}$	$1x10^{-5}$	$1x10^{-4}$
		Y, see ^{172}Ta	-	$1x10^{2}$	$6x10^{-8}$	$2x10^{-10}$	-	-
73	Tantalum-183	W, see ^{172}Ta	$9x10^{2}$ ($1x10^{3}$) LLI wall	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	-	-
		Y, see ^{172}Ta	-	$1x10^{3}$	$4x10^{-7}$	$1x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
73	Tantalum-184	W, see ^{172}Ta	$2x10^{3}$	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		Y, see ^{172}Ta	-	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	-	-
73	Tantalum-185[2]	W, see ^{172}Ta	$3x10^{4}$	$7x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		Y, see ^{172}Ta	-	$6x10^{4}$	$3x10^{-5}$	$9x10^{-8}$	-	-
73	Tantalum-186[2]	W, see ^{172}Ta	$5x10^{4}$ ($8x10^{4}$) St. wall	$2x10^{5}$	$1x10^{-4}$	$3x10^{-7}$	-	-
		Y, see ^{172}Ta	-	$2x10^{5}$	$9x10^{-5}$	$3x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
74	Tungsten-176	D, all compounds	$1x10^{4}$	$5x10^{4}$	$2x10^{-5}$	$7x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
74	Tungsten-177	D, all compounds	$2x10^{4}$	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	$3x10^{-4}$	$3x10^{-3}$
74	Tungsten-178	D, all compounds	$5x10^{3}$	$2x10^{4}$	$8x10^{-6}$	$3x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
74	Tungsten-179[2]	D, all compounds	$5x10^{5}$	$2x10^{6}$	$7x10^{-4}$	$2x10^{-6}$	$7x10^{-3}$	$7x10^{-2}$
74	Tungsten-181	D, all compounds	$2x10^{4}$	$3x10^{4}$	$1x10^{-5}$	$5x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
74	Tungsten-185	D, all compounds	$2x10^{3}$ ($3x10^{3}$) LLI wall	$7x10^{3}$	$3x10^{-6}$	$9x10^{-9}$	-	-
				-	-	-	$4x10^{-5}$	$4x10^{-4}$
74	Tungsten-187	D, all compounds	$2x10^{3}$	$9x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	$3x10^{-5}$	$3x10^{-4}$
74	Tungsten-188	D, all compounds	$4x10^{2}$ ($5x10^{2}$) LLI wall	$1x10^{3}$	$5x10^{-5}$	$2x10^{-9}$	-	-
				-	-	-	$7x10^{-6}$	$7x10^{-5}$
75	Rhenium-177[2]	D, all compounds except those given for W	$9x10^{4}$	$3x10^{5}$	$1x10^{-4}$	$4x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
		W, oxides, hydroxides, and nitrates	-	$4x10^{5}$	$1x10^{-4}$	$5x10^{-7}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
75	Rhenium-178	D, see ^{177}Re	7×10^{4}	3×10^{5}	1×10^{-4}	4×10^{-7}	-	-
			(1×10^{5}) St. wall	-	-	-	1×10^{-3}	1×10^{-2}
		W, see ^{177}Re	-	3×10^{5}	1×10^{-4}	4×10^{-7}	-	-
75	Rhenium-181	D, see ^{177}Re	5×10^{3}	9×10^{3}	4×10^{-6}	1×10^{-8}	7×10^{-5}	7×10^{-4}
		W, see ^{177}Re	-	9×10^{3}	4×10^{-6}	1×10^{-8}	-	-
75	Rhenium-182 (12.7 h)	D, see ^{177}Re	7×10^{3}	1×10^{4}	5×10^{-6}	2×10^{-8}	9×10^{-5}	9×10^{-4}
		W, see ^{177}Re	-	2×10^{4}	6×10^{-6}	2×10^{-8}	-	-
75	Rhenium-182 (64.0 h)	D, see ^{177}Re	1×10^{3}	2×10^{3}	1×10^{-6}	3×10^{-9}	2×10^{-5}	2×10^{-4}
		W, see ^{177}Re	-	2×10^{3}	9×10^{-7}	3×10^{-9}	-	-
75	Rhenium-184m	D, see ^{177}Re	2×10^{3}	3×10^{3}	1×10^{-6}	4×10^{-9}	3×10^{-5}	3×10^{-4}
		W, see ^{177}Re	-	4×10^{2}	2×10^{-7}	6×10^{-10}	-	-
75	Rhenium-184	D, see ^{177}Re	2×10^{3}	4×10^{3}	1×10^{-6}	5×10^{-9}	3×10^{-5}	3×10^{-4}
		W, see ^{177}Re	-	1×10^{3}	6×10^{-7}	2×10^{-9}	-	-
75	Rhenium-186m	D, see ^{177}Re	1×10^{3} (2×10^{3}) St. wall	2×10^{3} (2×10^{3}) St. wall	7×10^{-7} -	- 3×10^{-9}	- 2×10^{-5}	- 2×10^{-4}
		W, see ^{177}Re	-	2×10^{2}	6×10^{-8}	2×10^{-10}	-	-

Atomic No.	Radionuclide	Class	Table I OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
75	Rhenium-186	D, see ^{177}Re	2×10^{3}	3×10^{3}	1×10^{-6}	4×10^{-9}	3×10^{-5}	3×10^{-4}
		W, see ^{177}Re	-	2×10^{3}	7×10^{-7}	2×10^{-9}	-	-
75	Rhenium-187	D, see ^{177}Re	6×10^{5}	8×10^{5}	4×10^{-4}	1×10^{-6}	8×10^{-3}	8×10^{-2}
		W, see ^{177}Re	-	1×10^{5}	4×10^{-5}	1×10^{-7}	-	-
75	Rhenium-188m[2]	D, see ^{177}Re	8×10^{4}	1×10^{5}	6×10^{-5}	2×10^{-7}	1×10^{-3}	1×10^{-2}
		W, see ^{177}Re	-	1×10^{5}	6×10^{-5}	2×10^{-7}	-	-
75	Rhenium-188	D, see ^{177}Re	2×10^{3}	3×10^{3}	1×10^{-6}	4×10^{-9}	2×10^{-5}	2×10^{-4}
		W, see ^{177}Re	-	3×10^{3}	1×10^{-6}	4×10^{-9}	-	-
75	Rhenium-189	D, see ^{177}Re	3×10^{3}	5×10^{3}	2×10^{-6}	7×10^{-9}	4×10^{-5}	4×10^{-4}
		W, see ^{177}Re	-	4×10^{3}	2×10^{-6}	6×10^{-9}	-	-
76	Osmium-180	D, all compounds except those given for W and Y	1×10^{5}	4×10^{5}	2×10^{-4}	5×10^{-7}	1×10^{-3}	1×10^{-2}
		W, halides and nitrates	-	5×10^{5}	2×10^{-4}	7×10^{-7}	-	-
		Y, oxides and hydroxides	-	5×10^{5}	2×10^{-4}	6×10^{-7}	-	-
76	Osmium-181[2]	D, see ^{180}Os	1×10^{4}	4×10^{4}	2×10^{-5}	6×10^{-8}	2×10^{-4}	2×10^{-3}
		W, see ^{180}Os	-	5×10^{4}	2×10^{-5}	6×10^{-8}	-	-
		Y, see ^{180}Os	-	4×10^{4}	2×10^{-5}	6×10^{-8}	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
76	Osmium-182	D, see ^{180}Os	$2x10^{3}$	$6x10^{3}$	$2x10^{-6}$	$3x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{180}Os	-	$4x10^{3}$	$2x10^{-6}$	$6x10^{-9}$	-	-
		Y, see ^{180}Os	-	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	-	-
76	Osmium-185	D, see ^{180}Os	$2x10^{3}$	$5x10^{2}$	$2x10^{-7}$	$7x10^{-10}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{180}Os	-	$8x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	-	-
		Y, see ^{180}Os	-	$8x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	-	-
76	Osmium-189m	D, see ^{180}Os	$8x10^{4}$	$2x10^{5}$	$1x10^{-4}$	$3x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{180}Os	-	$2x10^{5}$	$9x10^{-5}$	$3x10^{-7}$	-	-
		Y, see ^{180}Os	-	$2x10^{5}$	$7x10^{-5}$	$2x10^{-7}$	-	-
76	Osmium-191m	D, see ^{180}Os	$1x10^{4}$	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{180}Os	-	$2x10^{4}$	$8x10^{-6}$	$3x10^{-8}$	-	-
		Y, see ^{180}Os	-	$2x10^{4}$	$7x10^{-6}$	$2x10^{-8}$	-	-
76	Osmium-191	D, see ^{180}Os	$2x10^{3}$	$2x10^{3}$	$9x10^{-7}$	$3x10^{-8}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{180}Os	-	$2x10^{3}$	$7x10^{-7}$	$2x10^{-9}$	-	-
		Y, see ^{180}Os	-	$1x10^{3}$	$6x10^{-7}$	$2x10^{-9}$	-	-
76	Osmium-193	D, see ^{180}Os	$2x10^{3}$	$5x10^{3}$	$2x10^{-6}$	$6x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		W, see ^{180}Os	-	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	-	-
		Y, see ^{180}Os	-	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
76	Osmium-194	D, see ^{180}Os	$4x10^{2}$	$4x10^{1}$	$2x10^{-8}$	$6x10^{-11}$	$6x10^{-6}$	$6x10^{-5}$
		W, see ^{180}Os	-	$6x10^{1}$	$2x10^{-8}$	$8x10^{-11}$	-	-
		Y, see ^{180}Os	-	$8x10^{0}$	$3x10^{-9}$	$1x10^{-11}$	-	-
77	Iridium-182	D, all compounds except those given for W and Y	$4x10^{4}$	$1x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	$6x10^{-4}$	$6x10^{-3}$
		W, halides, nitrates, and metallic iridium	-	$2x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	-	-
		Y, oxides and hydroxides	-	$1x10^{5}$	$5x10^{-5}$	$2x10^{-7}$	-	-
77	Iridium-184	D, see ^{182}Ir	$8x10^{3}$	$2x10^{4}$	$1x10^{-5}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{182}Ir	-	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	-	-
		Y, see ^{182}Ir	-	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	-	-
77	Iridium-185	D, see ^{182}Ir	$5x10^{3}$	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
		W, see ^{182}Ir	-	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	-	-
		Y, see ^{182}Ir	-	$1x10^{4}$	$4x10^{-6}$	$1x10^{-8}$	-	-
77	Iridium-186	D, see ^{182}Ir	$2x10^{3}$	$8x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{182}Ir	-	$6x10^{3}$	$3x10^{-6}$	$9x10^{-9}$	-	-
		Y, see ^{182}Ir	-	$6x10^{3}$	$2x10^{-6}$	$8x10^{-9}$	-	-
77	Iridium-187	D, see ^{182}Ir	$1x10^{4}$	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{182}Ir	-	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	-	-
		Y, see ^{182}Ir	-	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
77	Iridium-188	D, see ^{182}Ir	$2x10^{3}$	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{182}Ir	-	$4x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	-	-
		Y, see ^{182}Ir	-	$3x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	-	-
77	Iridium-189	D, see ^{182}Ir	$5x10^{3}$	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	$7x10^{-5}$	$7x10^{-4}$
		W, see ^{182}Ir	-	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	-	-
		Y, see ^{182}Ir	-	$4x10^{3}$	$1x10^{-6}$	$5x10^{-9}$	-	-
77	Iridium-190m[2]	D, see ^{182}Ir	$2x10^{5}$	$2x10^{5}$	$8x10^{-5}$	$3x10^{-7}$	$2x10^{-3}$	$2x10^{-2}$
		W, see ^{182}Ir	-	$2x10^{5}$	$9x10^{-5}$	$3x10^{-7}$	-	-
		Y, see ^{182}Ir	-	$2x10^{5}$	$8x10^{-5}$	$3x10^{-7}$	-	-
77	Iridium-190	D, see ^{182}Ir	$1x10^{3}$	$9x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{182}Ir	-	$1x10^{3}$	$4x10^{-7}$	$1x10^{-9}$	-	-
		Y, see ^{182}Ir	-	$9x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	-	-
77	Iridium-192m	D, see ^{182}Ir	$3x10^{3}$	$9x10^{1}$	$4x10^{-8}$	$1x10^{-10}$	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{182}Ir	-	$2x10^{2}$	$9x10^{-8}$	$3x10^{-10}$	-	-
		Y, see ^{182}Ir	-	$2x10^{1}$	$6x10^{-9}$	$2x10^{-11}$	-	-
77	Iridium-192	D, see ^{182}Ir	$9x10^{2}$	$3x10^{2}$	$1x10^{-7}$	$4x10^{-10}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{182}Ir	-	$4x10^{2}$	$2x10^{-7}$	$5x10^{-10}$	-	-
		Y, see ^{182}Ir	-	$2x10^{2}$	$9x10^{-8}$	$3x10^{-10}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
77	Iridium-194m	D, see ^{182}Ir	$6x10^{2}$	$9x10^{1}$	$4x10^{-8}$	$1x10^{-10}$	$9x10^{-6}$	$9x10^{-5}$
		W, see ^{182}Ir	-	$2x10^{2}$	$7x10^{-8}$	$2x10^{-10}$	-	-
		Y, see ^{182}Ir	-	$1x10^{2}$	$4x10^{-8}$	$1x10^{-10}$	-	-
77	Iridium-194	D, see ^{182}Ir	$1x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{182}Ir	-	$2x10^{3}$	$9x10^{-7}$	$3x10^{-9}$	-	-
		Y, see ^{182}Ir	-	$2x10^{3}$	$8x10^{-7}$	$3x10^{-9}$	-	-
77	Iridium-195m	D, see ^{182}Ir	$8x10^{3}$	$2x10^{4}$	$1x10^{-5}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{182}Ir	-	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	-	-
		Y, see ^{182}Ir	-	$2x10^{4}$	$9x10^{-6}$	$3x10^{-8}$	-	-
77	Iridium-195	D, see ^{182}Ir	$1x10^{4}$	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{182}Ir	-	$5x10^{4}$	$2x10^{-5}$	$7x10^{-8}$	-	-
		Y, see ^{182}Ir	-	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	-	-
78	Platinum-186	D, all compounds	$1x10^{4}$	$4x10^{4}$	$2x10^{-5}$	$5x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
78	Platinum-188	D, all compounds	$2x10^{3}$	$2x10^{3}$	$7x10^{-7}$	$2x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
78	Platinum-189	D, all compounds	$1x10^{4}$	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
78	Platinum-191	D, all compounds	$4x10^{3}$	$8x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	$5x10^{-5}$	$5x10^{-4}$
78	Platinum-193m	D, all compounds	$3x10^{3}$	$6x10^{3}$	$3x10^{-6}$	$8x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 2- Inhalation ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
78	Platinum-193	D, all compounds	$4x10^4$	$2x10^4$	$1x10^{-5}$	$3x10^{-8}$	-	-
			($5x10^4$) LLI wall	-	-	-	$7x10^{-4}$	$7x10^{-3}$
78	Platinum-195m	D, all compounds	$2x10^3$	$4x10^3$	$2x10^{-6}$	$6x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
78	Platinum-197m[2]	D, all compounds	$2x10^4$	$4x10^4$	$2x10^{-5}$	$6x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
78	Platinum-197	D, all compounds	$3x10^3$	$9x10^3$	$4x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
78	Platinum-199[2]	D, all compounds	$5x10^4$	$1x10^5$	$6x10^{-5}$	$2x10^{-7}$	$7x10^{-4}$	$7x10^3$
78	Platinum-200	D, all compounds	$1x10^3$	$3x10^3$	$1x10^{-6}$	$5x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
79	Gold-193	D, all compounds except those given for W and Y	$9x10^3$	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, halides and nitrates	-	$2x10^4$	$9x10^{-6}$	$3x10^{-8}$	-	-
		Y, oxides and hydroxides	-	$2x10^4$	$8x10^{-6}$	$3x10^{-8}$	-	-
79	Gold-194	D, see ^{193}Au	$3x10^3$	$8x10^3$	$3x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{193}Au	-	$5x10^3$	$2x10^{-6}$	$6x10^{-9}$	-	-
		Y, see ^{193}Au	-	$5x10^3$	$2x10^{-6}$	$7x10^{-9}$	-	-
79	Gold-195	D, see ^{193}Au	$5x10^3$	$1x10^4$	$5x10^{-6}$	$2x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
		W, see ^{193}Au	-	$1x10^3$	$6x10^{-7}$	$2x10^{-9}$	-	-
		Y, see ^{193}Au	-	$4x10^2$	$2x10^{-7}$	$6x10^{-10}$	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 2- Inhalation ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
79	Gold-198m	D, see ^{193}Au	$1x10^3$	$3x10^3$	$1x10^{-6}$	$4x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{193}Au	-	$1x10^3$	$5x10^{-7}$	$2x10^{-9}$	-	-
		Y, see ^{193}Au	-	$1x10^3$	$5x10^{-7}$	$2x10^{-9}$	-	-
79	Gold-198	D, see ^{193}Au	$1x10^3$	$4x10^3$	$2x10^{-6}$	-	$2x10^{-5}$	$2x10^{-4}$
			-	($2x10^3$) Blad. wall	-	-	$2x10^{-9}$	-
		W, see ^{193}Au	-	$2x10^3$	$1x10^{-7}$	$3x10^{-9}$	-	-
		Y, see ^{193}Au	-	$2x10^3$	$7x10^{-7}$	$2x10^{-9}$	-	-
79	Gold-199	D, see ^{193}Au	$3x10^3$	$9x10^3$	$4x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{193}Au	-	$4x10^3$	$2x10^{-6}$	$5x10^{-9}$	-	-
		Y, see ^{193}Au	-	$4x10^3$	$2x10^{-6}$	$5x10^{-9}$	-	-
79	Gold-200m	D, see ^{193}Au	$1x10^3$	$4x10^3$	$1x10^{-6}$	$5x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		W, see ^{193}Au	-	$3x10^3$	$1x10^{-6}$	$4x10^{-9}$	-	-
		Y, see ^{193}Au	-	$2x10^3$	$1x10^{-6}$	$3x10^{-9}$	-	-
79	Gold-200[2]	D, see ^{193}Au	$3x10^4$	$6x10^4$	$3x10^{-5}$	$9x10^{-8}$	$4x10^{-4}$	$4x10^{-3}$
		W, see ^{193}Au	-	$8x10^4$	$3x10^{-5}$	$1x10^{-7}$	-	-
		Y, see ^{193}Au	-	$7x10^4$	$3x10^{-5}$	$1x10^{-7}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
79	Gold-201[2]	D, see ^{193}Au	$7x10^{4}$	$2x10^{5}$	$9x10^{-5}$	$3x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
		W, see ^{193}Au	-	$2x10^{5}$	$1x10^{-4}$	$3x10^{-7}$	-	-
		Y, see ^{193}Au	-	$2x10^{5}$	$9x10^{-5}$	$3x10^{-7}$	-	-
80	Mercury-193m	Vapor	-	$8x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	-	-
		Organic	$4x10^{3}$	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	$6x10^{-5}$	$6x10^{-4}$
		D, sulfates	$3x10^{3}$	$9x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
		W, oxides, hydroxides, halides, nitrates, and sulfides	-	$8x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	-	-
80	Mercury-193	Vapor	-	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	-	-
		Organic	$2x10^{4}$	$6x10^{4}$	$3x10^{-5}$	$9x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		D, see ^{193m}Hg	$2x10^{4}$	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{193m}Hg	-	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	-	-
80	Mercury-194	Vapor	-	$3x10^{1}$	$1x10^{-8}$	$4x10^{-11}$	-	-
		Organic	$2x10^{1}$	$3x10^{1}$	$1x10^{-8}$	$4x10^{-11}$	$2x10^{-7}$	$2x10^{-6}$
		D, see ^{193m}Hg	$8x10^{2}$	$4x10^{1}$	$2x10^{-8}$	$6x10^{-11}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{193m}Hg	-	$1x10^{2}$	$5x10^{-8}$	$2x10^{-10}$	-	-
80	Mercury-195m	Vapor	-	$4x10^{3}$	$2x10^{-6}$	$6x10^{-9}$	-	-
		Organic	$3x10^{3}$	$6x10^{3}$	$3x10^{-6}$	$8x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
		D, see ^{193m}Hg	$2x10^{3}$	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{193m}Hg	-	$4x10^{3}$	$2x10^{-6}$	$5x10^{-9}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
80	Mercury-195	Vapor	-	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	-	-
		Organic	$2x10^{4}$	$5x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		D, see ^{193m}Hg	$1x10^{4}$	$4x10^{4}$	$1x10^{-5}$	$5x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{193m}Hg	-	$3x10^{4}$	$1x10^{-5}$	$5x10^{-8}$	-	-
80	Mercury-197m	Vapor	-	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	-	-
		Organic	$4x10^{3}$	$9x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	$5x10^{-5}$	$5x10^{-4}$
		D, see ^{193m}Hg	$3x10^{3}$	$7x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	$4x10^{-5}$	$4x10^{-4}$
		W, see ^{193m}Hg	-	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	-	-
80	Mercury-197	Vapor	-	$8x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	-	-
		Organic	$7x10^{3}$	$1x10^{4}$	$6x10^{-6}$	$2x10^{-8}$	$9x10^{-5}$	$9x10^{-4}$
		D, see ^{193m}Hg	$6x10^{3}$	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	$8x10^{-5}$	$8x10^{-4}$
		W, see ^{193m}Hg	-	$9x10^{3}$	$4x10^{-6}$	$1x10^{-8}$	-	-
80	Mercury-199m[2]	Vapor	-	$8x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	-	-
		Organic	$6x10^{4}$	$2x10^{5}$	$7x10^{-5}$	$2x10^{-7}$	$9x10^{-4}$	$9x10^{-3}$
		D, see ^{193m}Hg	$6x10^{4}$	$1x10^{5}$	$6x10^{-5}$	$2x10^{-7}$	$8x10^{-4}$	$8x10^{-3}$
		W, see ^{193m}Hg	-	$2x10^{5}$	$7x10^{-5}$	$2x10^{-7}$	-	-
80	Mercury-203	Vapor	-	$8x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	-	-
		Organic	$5x10^{2}$	$8x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	$7x10^{-6}$	$7x10^{-5}$
		D, see ^{193m}Hg	$2x10^{3}$	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{193m}Hg	-	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
81	Thallium-194m[2]	D, all compounds	$5x10^4$	$2x10^5$	$6x10^{-5}$	$2x10^{-7}$	-	-
			($8x10^4$) St. wall	-	-	-	$1x10^{-3}$	$1x10^{-2}$
81	Thallium-194[2]	D, all compounds	$3x10^5$	$6x10^5$	$2x10^{-4}$	$8x10^{-7}$	$3x10^{-3}$	$3x10^{-2}$
81	Thallium-195[2]	D, all compounds	$6x10^4$	$1x10^5$	$5x10^{-5}$	$2x10^{-7}$	$9x10^{-4}$	$9x10^{-3}$
81	Thallium-197	D, all compounds	$7x10^4$	$1x10^5$	$5x10^{-5}$	$2x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
81	Thallium-198m[2]	D, all compounds	$3x10^4$	$5x10^4$	$2x10^{-5}$	$8x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
81	Thallium-198	D, all compounds	$2x10^4$	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
81	Thallium-199	D, all compounds	$6x10^4$	$8x10^4$	$4x10^{-5}$	$1x10^{-7}$	$9x10^{-4}$	$9x10^{-3}$
81	Thallium-200	D, all compounds	$8x10^3$	$1x10^4$	$5x10^{-6}$	$2x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
81	Thallium-201	D, all compounds	$2x10^4$	$2x10^4$	$9x10^{-6}$	$3x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
81	Thallium-202	D, all compounds	$4x10^3$	$5x10^3$	$2x10^{-6}$	$7x10^{-9}$	$5x10^{-5}$	$5x10^{-4}$
81	Thallium-204	D, all compounds	$2x10^3$	$2x10^3$	$9x10^{-7}$	$3x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
82	Lead-195m[2]	D, all compounds	$6x10^4$	$2x10^5$	$8x10^{-5}$	$3x10^{-7}$	$8x10^{-4}$	$8x10^{-3}$
82	Lead-196	D, all compounds	$3x10^4$	$6x10^4$	$3x10^{-5}$	$9x10^{-8}$	$4x10^{-4}$	$4x10^{-3}$
82	Lead-199[2]	D, all compounds	$2x10^4$	$7x10^4$	$3x10^{-5}$	$1x10^{-7}$	$3x10^{-4}$	$3x10^{-3}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
82	Lead-200	D, all compounds	$3x10^3$	$6x10^3$	$3x10^{-6}$	$9x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
82	Lead-201	D, all compounds	$7x10^3$	$2x10^4$	$8x10^{-6}$	$3x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
82	Lead-202m	D, all compounds	$9x10^3$	$3x10^4$	$1x10^{-5}$	$4x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
82	Lead-202	D, all compounds	$1x10^2$	$5x10^1$	$2x10^{-8}$	$7x10^{-11}$	$2x10^{-6}$	$2x10^{-5}$
82	Lead-203	D, all compounds	$5x10^3$	$9x10^3$	$4x10^{-6}$	$1x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$
82	Lead-205	D, all compounds	$4x10^3$	$1x10^3$	$6x10^{-7}$	$2x10^{-9}$	$5x10^{-5}$	$5x10^{-4}$
82	Lead-209	D, all compounds	$2x10^4$	$6x10^4$	$2x10^{-5}$	$8x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
82	Lead-210	D, all compounds	$6x10^{-1}$	$2x10^{-1}$	$1x10^{-10}$	-	-	-
			($1x10^0$) Bone surf.	($3x10^{-1}$) Bone surf.	-	$4x10^{-13}$	$1x10^{-8}$	$1x10^{-7}$
82	Lead-211	D, all compounds	$1x10^4$	$6x10^2$	$3x10^{-7}$	$9x10^{-10}$	$2x10^{-4}$	$2x10^{-3}$
82	Lead-212	D, all compounds	$8x10^1$	$3x10^1$	$1x10^{-8}$	$5x10^{-11}$	-	-
			($1x10^2$) Bone surf.	-	-	-	$2x10^{-6}$	$2x10^{-5}$
82	Lead-214	D, all compounds	$9x10^3$	$8x10^2$	$3x10^{-7}$	$1x10^{-9}$	$1x10^{-4}$	$1x10^{-3}$
83	Bismuth-200[2]	D, nitrates	$3x10^4$	$8x10^4$	$4x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
		W, all other compounds	-	$1x10^5$	$4x10^{-5}$	$1x10^{-7}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
[illegible]	Bismuth-201[2]	D, see ^{200}Bi	$1x10^{4}$	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{200}Bi	-	$4x10^{4}$	$2x10^{-5}$	$5x10^{-8}$	-	-
83	Bismuth-202[2]	D, see ^{200}Bi	$1x10^{4}$	$4x10^{4}$	$2x10^{-5}$	$6x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{200}Bi	-	$8x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	-	-
83	Bismuth-203	D, see ^{200}Bi	$2x10^{3}$	$7x10^{3}$	$3x10^{-6}$	$9x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		W, see ^{200}Bi	-	$6x10^{3}$	$3x10^{-6}$	$8x10^{-9}$	-	-
[illegible]	Bismuth-205	D, see ^{200}Bi	$1x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
		W, see ^{200}Bi	-	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	-	-
[illegible]	Bismuth-206	D, see ^{200}Bi	$6x10^{2}$	$1x10^{3}$	$6x10^{-7}$	$2x10^{-9}$	$9x10^{-6}$	$9x10^{-5}$
		W, see ^{200}Bi	-	$9x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	-	-
[illegible]	Bismuth-207	D, see ^{200}Bi	$1x10^{3}$	$2x10^{3}$	$7x10^{-7}$	$2x10^{-9}$	$1x10^{-5}$	$1x10^{-4}$
		W, see ^{200}Bi	-	$4x10^{2}$	$1x10^{-7}$	$5x10^{-10}$	-	-
[illegible]	Bismuth-210m	D, see ^{200}Bi	$4x10^{1}$	$5x10^{0}$	$2x10^{-9}$	$6x10^{-12}$	$6x10^{-7}$	$6x10^{-6}$
		W, see ^{200}Bi	-	$7x10^{-1}$	$3x10^{-10}$	$9x10^{-13}$	-	-
[illegible]	Bismuth-210	D, see ^{200}Bi	$8x10^{2}$	$2x10^{2}$	$1x10^{-7}$	-	$1x10^{-5}$	$1x10^{-4}$
			-	$(3x10^{2})$ Kidneys	-	$4x10^{-10}$	-	-
		W, see ^{200}Bi	-	$3x10^{1}$	$1x10^{-8}$	$4x10^{-11}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
83	Bismuth-212	D, see ^{200}Bi	$5x10^{3}$	$2x10^{2}$	$1x10^{-7}$	$3x10^{-10}$	$7x10^{-5}$	$7x10^{-4}$
		W, see ^{200}Bi	-	$3x10^{2}$	$1x10^{-7}$	$4x10^{-10}$	-	-
83	Bismuth-213	D, see ^{200}Bi	$7x10^{3}$	$3x10^{2}$	$1x10^{-7}$	$4x10^{-10}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{200}Bi	-	$4x10^{2}$	$1x10^{-7}$	$5x10^{-10}$	-	-
83	Bismuth-214	D, see ^{200}Bi	$2x10^{4}$	$8x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	$2x10^{-4}$	$2x10^{-3}$
		W, see ^{200}Bi	-	$9x10^{2}$	$4x10^{-7}$	$1x10^{-9}$	-	-
84	Polonium-203[2]	D, all compounds except those given for W	$3x10^{4}$	$6x10^{4}$	$3x10^{-5}$	$9x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		W, oxides, hydroxides and nitrates	-	$9x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	-	-
[illegible]	Polonium-205[2]	D, see ^{203}Po	$2x10^{4}$	$4x10^{4}$	$2x10^{-5}$	$5x10^{-8}$	$3x10^{-4}$	$3x10^{-3}$
		W, see ^{203}Po	-	$7x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	-	-
[illegible]	Polonium-207	D, see ^{203}Po	$8x10^{3}$	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	$1x10^{-4}$	$1x10^{-3}$
		W, see ^{203}Po	-	$3x10^{4}$	$1x10^{-5}$	$4x10^{-8}$	-	-
84	Polonium-210	D, see ^{203}Po	$3x10^{0}$	$6x10^{-1}$	$3x10^{-10}$	$9x10^{-13}$	$4x10^{-8}$	$4x10^{-7}$
		W, see ^{203}Po	-	$6x10^{-1}$	$3x10^{-10}$	$9x10^{-13}$	-	-
85	Astatine-207	D, halides	$6x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$8x10^{-5}$	$8x10^{-4}$
		W	-	$2x10^{3}$	$9x10^{-7}$	$3x10^{-9}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
85	Astatine-211	D, halides	$1x10^{2}$	$8x10^{1}$	$3x10^{-8}$	$1x10^{-10}$	$2x10^{-6}$	$2x10^{-5}$
		■	-	$5x10^{1}$	$2x10^{-8}$	$7x10^{-11}$	-	-
86	Radon-220	With daughters removed	-	$2x10^{4}$	$7x10^{-6}$	$2x10^{-8}$	-	-
		With daughters present	-	$2x10^{1}$ (or 14 working level months)	$9x10^{-9}$ (or 1.2 working level)	$3x10^{-11}$	-	-
86	Radon-222	With daughters removed	-	$1x10^{4}$	$4x10^{-6}$	$1x10^{-8}$	-	-
		With daughters present	-	$1x10^{2}$ (or 4 working level months)	$3x10^{-8}$ (or 0.33 working level)	$1x10^{-10}$	-	-
87	Francium-222	D, all compounds	2x103	$5x10^{2}$	$2x10^{-7}$	$6x10^{-10}$	$3x10^{-5}$	$3x10^{-4}$
87	Francium-223	D, all compounds	$6x10^{2}$	$8x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	$8x10^{-6}$	$8x10^{-5}$
88	Radium-223	W, all compounds	$5x10^{0}$	$7x10^{-1}$	$3x10^{-10}$	$9x10^{-13}$	-	-
			($8x10^{0}$) Bone surf.	-	-	-	$1x10^{-7}$	$1x10^{-6}$
88	Radium-224	W, all compounds	$8x10^{0}$	$2x10^{0}$	$7x10^{-10}$	$2x10^{-12}$	-	-
			($2x10^{1}$) Bone surf.	-	-	-	$2x10^{-7}$	$2x10^{-6}$
88	Radium-225	W, all compounds	$8x10^{0}$	$7x10^{-1}$	$3x10^{-10}$	$9x10^{-13}$	-	-
			($2x10^{1}$) Bone surf.	-	-	-	$2x10^{-7}$	$2x10^{-6}$
88	Radium-226	W, all compounds	$2x10^{0}$	$6x10^{-1}$	$3x10^{-10}$	$9x10^{-13}$	-	-
			($5x10^{0}$) Bone surf.	-	-	-	$7x10^{-8}$	$7x10^{-7}$
88	Radium-227[2]	W, all compounds	$2x10^{4}$	$1x10^{4}$	$6x10^{-6}$	-	$2x10^{-4}$	$2x10^{-3}$
			-	($2x10^{4}$) Bone surf.	-	$3x10^{-8}$	-	-
88	Radium-228	W, all compounds	$2x10^{0}$	$1x10^{0}$	$5x10^{-10}$	$2x10^{-12}$	-	-
			($3x10^{0}$) Bone surf.	-	-	-	$4x10^{-8}$	$4x10^{7}$
89	Actinium-224	D, all compounds except those given for W and Y	$2x10^{3}$	$3x10^{1}$	$1x10^{-8}$	$4x10^{-11}$	$3x10^{-5}$	$3x10^{-4}$
		W, halides and nitrates	-	$5x10^{1}$	$2x10^{-8}$	$7x10^{-11}$	-	-
		Y, oxides and hydroxides	-	$5x10^{1}$	$2x10^{-8}$	$6x10^{-11}$	-	-
89	Actinium-225	D, see ^{224}Ac	$5x10^{1}$	$3x10^{-1}$	$1x10^{-10}$	-	$7x10^{-7}$	$7x10^{-6}$
			-	($5x10^{-1}$) Bone surf.	-	$8x10^{-13}$	-	-
		W, see ^{224}Ac	-	$6x10^{-1}$	$3x10^{-10}$	$9x10^{-13}$	-	-
		Y, see ^{224}Ac	-	$6x10^{-1}$	$3x10^{-10}$	$9x10^{-13}$	-	-
89	Actinium-226	D, see ^{224}Ac	$1x10^{2}$	$3x10^{0}$	$1x10^{-9}$	$5x10^{-12}$	$2x10^{-6}$	$2x10^{-5}$
		W, see ^{224}Ac	-	$5x10^{0}$	$2x10^{-9}$	$7x10^{-12}$	-	-
		Y, see ^{224}Ac	-	$5x10^{0}$	$2x10^{-9}$	$6x10^{-12}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
89	Actinium-227	D, see ^{224}Ac	2×10^{-1}	4×10^{-4}	2×10^{-13}	-	-	-
			(3×10^{-1}) Bone surf.	(8×10^{-4}) Bone surf.	-	1×10^{-15}	4×10^{-9}	4×10^{-8}
		W, see ^{224}Ac	-	2×10^{-3}	7×10^{-13}	-	-	-
			-	(3×10^{-3}) Bone surf.	-	4×10^{-15}	-	-
		Y, see ^{224}Ac	-	4×10^{-3}	2×10^{-12}	5×10^{-15}	-	-
89	Actinium-228	D, see ^{224}Ac	2×10^{3}	9×10^{0}	4×10^{-9}	-	3×10^{-5}	3×10^{-4}
			-	(2×10^{1}) Bone surf.	-	2×10^{-11}	-	-
		W, see ^{224}Ac	-	4×10^{1}	2×10^{-8}	-	-	-
			-	(5×10^{1}) Bone surf.	-	8×10^{-11}	-	-
		Y, see ^{224}Ac	-	4×10^{1}	2×10^{-8}	6×10^{-11}	-	-
90	Thorium-226	W, all compounds except those given for Y	5×10^{3}	2×10^{2}	6×10^{-8}	2×10^{-10}	7×10^{-5}	7×10^{-4}
		Y, oxides and hydroxides	-	1×10^{2}	6×10^{-8}	2×10^{-10}	-	-
90	Thorium-227	W, see ^{226}Th	1×10^{2}	3×10^{-1}	1×10^{-10}	5×10^{-13}	2×10^{-6}	2×10^{-5}
		Y, see ^{226}Th	-	3×10^{-1}	1×10^{-10}	4×10^{-13}	-	-
90	Thorium-228	W, see ^{226}Th	6×10^{0}	1×10^{-2}	4×10^{-12}	-	-	-
			(1×10^{1}) Bone surf.	(2×10^{-2}) Bone surf.	-	3×10^{-14}	2×10^{-7}	2×10^{-6}
		Y, see ^{226}Th	-	2×10^{-2}	7×10^{-12}	2×10^{-14}	-	-
90	Thorium-229	W, see ^{226}Th	6×10^{-1}	9×10^{-4}	4×10^{-13}	-	-	-
			(1×10^{0}) Bone surf.	(2×10^{-3}) Bone surf.	-	3×10^{-15}	2×10^{-8}	2×10^{-7}
		Y, see ^{226}Th	-	2×10^{-3}	1×10^{-12}	-	-	-
			-	(3×10^{-3}) Bone surf.	-	4×10^{-15}	-	-
90	Thorium-230	W, see ^{226}Th	4×10^{0}	6×10^{-3}	3×10^{-12}	-	-	-
			(1×10^{1}) Bone surf.	(2×10^{-2}) Bone surf.	-	2×10^{-14}	1×10^{-7}	1×10^{-6}
		Y, see ^{226}Th	-	2×10^{-2}	6×10^{-12}	3×10^{-14}	-	-
90	Thorium-231	W, see ^{226}Th	4×10^{3}	6×10^{3}	3×10^{-6}	9×10^{-9}	5×10^{-5}	5×10^{-4}
		Y, see ^{226}Th	-	6×10^{3}	3×10^{-6}	9×10^{-9}	-	-
90	Thorium-232	W, see ^{226}Th	7×10^{-1}	1×10^{-3}	5×10^{-13}	-	-	-
			(2×10^{0}) Bone surf.	(3×10^{-3}) Bone surf.	-	4×10^{-15}	3×10^{-8}	3×10^{-7}
		Y, see ^{226}Th	-	3×10^{-3}	1×10^{-12}	-	-	-
			-	(5×10^{-3}) Bone surf.	-	8×10^{-15}	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
90	Thorium-234	W, see ^{226}Th	$3x10^{2}$	$2x10^{2}$	$8x10^{-8}$	$3x10^{-10}$	$4x10^{-6}$	$4x10^{-5}$
		Y, see ^{226}Th	-	$2x10^{2}$	$6x10^{-8}$	$2x10^{-10}$	-	-
91	Protactinium-227	W, all compounds except those given for Y	$4x10^{3}$	$1x10^{2}$	$5x10^{-8}$	$2x10^{-10}$	$5x10^{-5}$	$5x10^{-4}$
		Y, oxides and hydroxides	-	$1x10^{2}$	$4x10^{-8}$	$1x10^{-10}$	-	-
91	Protactinium-228	W, see ^{227}Pa	$1x10^{3}$	$1x10^{1}$	$5x10^{-9}$	-	$2x10^{-5}$	$2x10^{-4}$
			-	$(2x10^{1})$ Bone surf.	-	$3x10^{-11}$	-	-
		Y, see ^{227}Pa	-	$1x10^{1}$	$5x10^{-9}$	$2x10^{-11}$	-	-
91	Protactinium-230	W, see ^{227}Pa	$6x10^{2}$	$5x10^{0}$	$2x10^{-9}$	$7x10^{-12}$	-	-
			$(8x10^{2})$ Bone surf.	-	-	-	$1x10^{-5}$	$1x10^{-4}$
		Y, see ^{227}Pa	-	$4x10^{0}$	$1x10^{-9}$	$5x10^{-12}$	-	-
91	Protactinium-231	W, see ^{227}Pa	$2x10^{-1}$	$2x10^{-3}$	$6x10^{-13}$	-	-	-
			$(5x10^{-1})$ Bone surf.	$(3x10^{-3})$ Bone surf.	-	$4x10^{-15}$	$7x10^{-9}$	$7x10^{-8}$
		Y, see ^{227}Pa	-	$4x10^{-3}$	$2x10^{-12}$	-	-	-
			-	$(5x10^{-3})$ Bone surf.	-	$8x10^{-15}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
91	Protactinium-232	W, see ^{227}Pa	$1x10^{3}$	$2x10^{1}$	$9x10^{-9}$	-	$2x10^{-5}$	$2x10^{-4}$
			-	$(5x10^{1})$ Bone surf.	-	$8x10^{-11}$	-	-
		Y, see ^{227}Pa	-	$6x10^{1}$	$2x10^{-8}$	-	-	-
			-	$(8x10^{1})$ Bone surf.	-	$1x10^{-10}$	-	-
91	Protactinium-233	W, see ^{227}Pa	$1x10^{3}$	$7x10^{2}$	$3x10^{-7}$	$1x10^{-9}$	-	-
			$(2x10^{3})$ LLI wall	-	-	-	$2x10^{-5}$	$2x10^{-4}$
		Y, see ^{227}Pa	-	$6x10^{2}$	$2x10^{-7}$	$8x10^{-10}$	-	-
91	Protactinium-234	W, see ^{227}Pa	$2x10^{3}$	$8x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	$3x10^{-5}$	$3x10^{-4}$
		Y, see ^{227}Pa	-	$7x10^{3}$	$3x10^{-6}$	$9x10^{-9}$	-	-
92	Uranium-230	D, UF_6, UO_2F_2, $UO_2(NO_3)_2$	$4x10^{0}$	$4x10^{-1}$	$2x10^{-10}$	$6x10^{-13}$	-	-
			$(5x10^{0})$ Bone surf.	-	-	-	$7x10^{-8}$	$7x10^{-7}$
		W, UO_3, UF_4, UCl_4	-	$4x10^{-1}$	$1x10^{-10}$	$5x10^{-13}$	-	-
		Y, UO_2, U_3O_8	-	$3x10^{-1}$	$1x10^{-10}$	$4x10^{-13}$	-	-
92	Uranium-231	D, see ^{230}U	$4x10^{3}$	$8x10^{3}$	$3x10^{-6}$	$1x10^{-8}$	$6x10^{-5}$	$6x10^{-4}$
		W, see ^{230}U	-	$6x10^{3}$	$2x10^{-6}$	$8x10^{-9}$	-	-
		Y, see ^{230}U	-	$5x10^{3}$	$2x10^{-6}$	$6x10^{-9}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
92	Uranium-232	D, see ^{230}U	2×10^{0} (3×10^{0}) Bone surf.	2×10^{-1} (5×10^{-1}) Bone surf.	9×10^{-11} -	- 8×10^{-13}	- 4×10^{-8}	- 4×10^{-7}
		W, see ^{230}U	-	4×10^{-1}	2×10^{-10}	5×10^{-13}	-	-
		Y, see ^{230}U	-	8×10^{-3}	3×10^{-12}	1×10^{-14}	-	-
92	Uranium-233	D, see ^{230}U	1×10^{1} (2×10^{1}) Bone surf.	1×10^{0} (2×10^{0}) Bone surf.	5×10^{-10} -	- 3×10^{-12}	- 3×10^{-7}	- 3×10^{-6}
		W, see ^{230}U	-	7×10^{-1}	3×10^{-10}	1×10^{-12}	-	-
		Y, see ^{230}U	-	4×10^{-2}	2×10^{-11}	5×10^{-14}	-	-
92	Uranium-234[3]	D, see ^{230}U	1×10^{1} (2×10^{1}) Bone surf.	1×10^{0} (2×10^{0}) Bone surf.	5×10^{-10} -	- 3×10^{-12}	- 3×10^{-7}	- 3×10^{-6}
		W, see ^{230}U	-	7×10^{-1}	3×10^{-10}	1×10^{-12}	-	-
		Y, see ^{230}U	-	4×10^{-2}	2×10^{-11}	5×10^{-14}	-	-
92	Uranium-235[3]	D, see ^{230}U	1×10^{1} (2×10^{1}) Bone surf.	1×10^{0} (2×10^{0}) Bone surf.	6×10^{-10} -	- 3×10^{-12}	- 3×10^{-7}	- 3×10^{-6}
		W, see ^{230}U	-	8×10^{-1}	3×10^{-10}	1×10^{-12}	-	-
		Y, see ^{230}U	-	4×10^{-2}	2×10^{-11}	6×10^{-14}	-	-
92	Uranium-236	D, see ^{230}U	1×10^{1} (2×10^{1}) Bone surf.	1×10^{0} (2×10^{0}) Bone surf.	5×10^{-10} -	- 3×10^{-12}	- 3×10^{-7}	- 3×10^{-6}
		W, see ^{230}U	-	8×10^{-1}	3×10^{-10}	1×10^{-12}	-	-
		Y, see ^{230}U	-	4×10^{-2}	2×10^{-11}	5×10^{-14}	-	-
92	Uranium-237	D, see ^{230}U	2×10^{3}	3×10^{3}	1×10^{-6}	4×10^{-9}	2×10^{-5}	2×10^{-4}
		W, see ^{230}U	-	2×10^{3}	7×10^{-7}	2×10^{-9}	-	-
		Y, see ^{230}U	-	1×10^{3}	6×10^{-7}	2×10^{-9}	-	-
92	Uranium-238[3]	D, see ^{230}U	1×10^{1} (2×10^{1}) Bone surf.	1×10^{0} (2×10^{0}) Bone surf.	6×10^{-10} -	- 3×10^{-12}	- 3×10^{-7}	- 3×10^{-6}
		W, see ^{230}U	-	8×10^{-1}	3×10^{-10}	1×10^{-12}	-	-
		Y, see ^{230}U	-	4×10^{-2}	2×10^{-11}	6×10^{-14}	-	-
92	Uranium-239[2]	D, see ^{230}U	7×10^{4}	2×10^{5}	8×10^{-5}	3×10^{-7}	9×10^{-4}	9×10^{-3}
		W, see ^{230}U	-	2×10^{5}	7×10^{-5}	2×10^{-7}	-	-
		Y, see ^{230}U	-	2×10^{5}	6×10^{-5}	2×10^{-7}	-	-
92	Uranium-240	D, see ^{230}U	1×10^{3}	4×10^{3}	2×10^{-6}	5×10^{-9}	2×10^{-5}	2×10^{-4}
		W, see ^{230}U	-	3×10^{3}	1×10^{-6}	4×10^{-9}	-	-
		Y, see ^{230}U	-	2×10^{3}	1×10^{-6}	3×10^{-9}	-	-

Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
92	Uranium-natural[3]	D, see ^{230}U	$1x10^{1}$	$1x10^{0}$	$5x10^{-10}$	-	-	-
			($2x10^{1}$) Bone surf.	($2x10^{0}$) Bone surf.	-	$3x10^{-12}$	$3x10^{-7}$	$3x10^{-6}$
		W, see ^{230}U	-	$8x10^{-1}$	$3x10^{-10}$	$9x10^{-13}$	-	-
		Y, see ^{230}U	-	$5x10^{-2}$	$2x10^{-11}$	$9x10^{-14}$	-	-
93	Neptunium-232[2]	W, all compounds	$3x10^{4}$	$2x10^{3}$	$1x10^{-6}$	-	-	-
			($5x10^{4}$) Bone surf.	($5x10^{3}$) Bone surf.	-	$8x10^{-9}$	$7x10^{-4}$	$7x10^{-3}$
93	Neptunium-233[2]	W, all compounds	$8x10^{5}$	$3x10^{6}$	$1x10^{-3}$	$5x10^{-6}$	$1x10^{-2}$	$1x10^{-1}$
93	Neptunium-234	W, all compounds	$2x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
93	Neptunium-235	W, all compounds	$1x10^{4}$	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	$2x10^{-4}$	$2x10^{-3}$
93	Neptunium-236 ($1.15x10^{5}$ y)	W, all compounds	$4x10^{-1}$	$3x10^{-2}$	$1x10^{-11}$	-	-	-
			($5x10^{-1}$) Bone surf.	($5x10^{-2}$) Bone surf.	-	$8x10^{-14}$	$7x10^{-9}$	$7x10^{-8}$
93	Neptunium-236 (22.5 h)	W, all compounds	$5x10^{2}$	$4x10^{1}$	$2x10^{-8}$	-	-	-
			($8x10^{2}$) Bone surf.	($8x10^{1}$) Bone surf.	-	$1x10^{-10}$	$1x10^{-5}$	$1x10^{-4}$
93	Neptunium-237	W, all compounds	$7x10^{-2}$	$6x10^{-3}$	$2x10^{-12}$	-	-	-
			($1x10^{-1}$) Bone surf.	($1x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$2x10^{-9}$	$2x10^{-8}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
93	Neptunium-238	W, all compounds	$8x10^{2}$	$9x10^{1}$	$4x10^{-8}$	-	$1x10^{-5}$	$1x10^{-4}$
			-	($2x10^{2}$) Bone surf.	-	$2x10^{-10}$	-	-
93	Neptunium-239	W, all compounds	$2x10^{3}$	$2x10^{3}$	$1x10^{-6}$	$3x10^{-9}$	$2x10^{-5}$	$2x10^{-4}$
93	Neptunium-240[2]	W, all compounds	$2x10^{4}$	$8x10^{4}$	$4x10^{-5}$	$1x10^{-7}$	$3x10^{-4}$	$3x10^{-3}$
94	Plutonium-234	W, all compounds except PuO_2	$9x10^{3}$	$2x10^{2}$	$9x10^{-8}$	$3x10^{-10}$	$1x10^{-4}$	$1x10^{-3}$
		Y, PuO_2	-	$2x10^{2}$	$8x10^{-8}$	$3x10^{-10}$	-	-
94	Plutonium-235[2]	W, see ^{234}Pu	$9x10^{5}$	$3x10^{6}$	$1x10^{-3}$	$4x10^{-6}$	$1x10^{-2}$	$1x10^{-1}$
		Y, see ^{234}Pu	-	$3x10^{6}$	$1x10^{-3}$	$4x10^{-6}$	-	-
94	Plutonium-236	W, see ^{234}Pu	$2x10^{1}$	$2x10^{-2}$	$8x10^{-12}$	-	-	-
			($3x10^{1}$) Bone surf.	($3x10^{-2}$) Bone surf.	-	$4x10^{-14}$	$4x10^{-7}$	$4x10^{-6}$
		Y, see ^{234}Pu	-	$4x10^{-2}$	$2x10^{-11}$	$5x10^{-14}$	-	-
94	Plutonium-237	W, see ^{234}Pu	$1x10^{4}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$2x10^{-4}$	$2x10^{-3}$
		Y, see ^{234}Pu	-	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	-	-
94	Plutonium-238	W, see ^{234}Pu	$7x10^{0}$	$6x10^{-3}$	$3x10^{-12}$	-	-	-
			($1x10^{1}$) Bone surf.	($1x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$2x10^{-7}$	$2x10^{-6}$
		Y, see ^{234}Pu	-	$2x10^{-2}$	$7x10^{-12}$	$2x10^{-14}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
94	Plutonium-239	W, see ^{234}Pu	$6x10^{0}$	$5x10^{-3}$	$2x10^{-12}$	-	-	-
			($1x10^{1}$) Bone surf.	($1x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$1x10^{-7}$	$1x10^{-6}$
		Y, see ^{234}Pu	-	$1x10^{-2}$	$6x10^{-12}$	-	-	-
			-	($2x10^{-2}$) Bone surf.	-	$2x10^{-14}$	-	-
94	Plutonium-240	W, see ^{234}Pu	$6x10^{0}$	$5x10^{-3}$	$2x10^{-12}$	-	-	-
			($1x10^{1}$) Bone surf.	($1x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$1x10^{-7}$	$1x10^{-6}$
		Y, see ^{234}Pu	-	$1x10^{-2}$	$6x10^{-12}$	-	-	-
			-	($2x10^{-2}$) Bone surf.	-	$2x10^{-14}$	-	-
94	Plutonium-241	W, see ^{234}Pu	$3x10^{2}$	$3x10^{-1}$	$1x10^{-10}$	-	-	-
			($5x10^{2}$) Bone surf.	($5x10^{-1}$) Bone surf.	-	$8x10^{-13}$	$7x10^{-6}$	$7x10^{-5}$
		Y, see ^{234}Pu	-	$6x10^{-1}$	$3x10^{-10}$	-	-	-
			-	($8x10^{-1}$) Bone surf.	-	$1x10^{-12}$	-	-
94	Plutonium-242	W, see ^{234}Pu	$7x10^{0}$	$6x10^{-3}$	$2x10^{-12}$	-	-	-
			($1x10^{1}$) Bone surf.	($1x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$2x10^{-7}$	$2x10^{-6}$
		Y, see ^{234}Pu	-	$1x10^{-2}$	$6x10^{-12}$	-	-	-
			-	($2x10^{-2}$) Bone surf.	-	$2x10^{-14}$	-	-
94	Plutonium-243	W, see ^{234}Pu	$2x10^{4}$	$4x10^{4}$	$1x10^{-5}$	$5x10^{-8}$	$2x10^{-4}$	$2x10^{-3}$
		Y, see ^{234}Pu	-	$4x10^{4}$	$2x10^{-5}$	$5x10^{-8}$	-	-
94	Plutonium-244	W, see ^{234}Pu	$7x10^{0}$	$6x10^{-3}$	$2x10^{-12}$	-	-	-
			($1x10^{1}$) Bone surf.	($1x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$2x10^{-7}$	$2x10^{-6}$
		Y, see ^{234}Pu	-	$2x10^{-2}$	$6x10^{-12}$	$2x10^{-14}$	-	-
94	Plutonium-245	W, see ^{234}Pu	$2x10^{3}$	$5x10^{3}$	$2x10^{-6}$	$7x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
		Y, see ^{234}Pu	-	$4x10^{3}$	$2x10^{-6}$	$6x10^{-9}$	-	-
95	Americium-237[2]	W, all compounds	$8x10^{4}$	$3x10^{5}$	$1x10^{-4}$	$4x10^{-7}$	$1x10^{-3}$	$1x10^{-2}$
95	Americium-238[2]	W, all compounds	$4x10^{4}$	$3x10^{3}$	$1x10^{-6}$	-	$6x10^{-4}$	$6x10^{-3}$
			-	($5x10^{3}$) Bone surf.	-	$8x10^{-9}$	-	-
95	Americium-239	W, all compounds	$5x10^{3}$	$1x10^{4}$	$5x10^{-6}$	$2x10^{-8}$	$7x10^{-5}$	$7x10^{-4}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 2- Inhalation ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
95	Americium-240	W, all compounds	$2x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
95	Americium-241	W, all compounds	$1x10^{0}$	$5x10^{-3}$	$2x10^{-12}$	-	-	-
			($2x10^{0}$) Bone surf.	($1x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$3x10^{-8}$	$3x10^{-7}$
95	Americium-242m	W, all compounds	$1x10^{0}$	$5x10^{-3}$	$2x10^{-12}$	-	-	-
			($2x10^{0}$) Bone surf.	($1x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$3x10^{-8}$	$3x10^{-7}$
95	Americium-242	W, all compounds	$5x10^{3}$	$8x10^{1}$	$3x10^{-8}$	$1x10^{-10}$	$6x10^{-5}$	$6x10^{-4}$
95	Americium-243	W, all compounds	$1x10^{0}$	$5x10^{-3}$	$2x10^{-12}$	-	-	-
			($2x10^{0}$) Bone surf.	($1x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$3x10^{-8}$	$3x10^{-7}$
95	Americium-244m[2]	W, all compounds	$6x10^{4}$	$4x10^{3}$	$2x10^{-6}$	-	-	-
			($8x10^{4}$) St. wall	($5x10^{3}$) Bone surf.	-	$8x10^{-9}$	$1x10^{-3}$	$1x10^{-2}$
95	Americium-244	W, all compounds	$3x10^{3}$	$2x10^{2}$	$7x10^{-8}$	-	$4x10^{-5}$	$4x10^{-4}$
			-	($3x10^{2}$) Bone surf.	-	$4x10^{-10}$	-	-
95	Americium-245	W, all compounds	$3x10^{4}$	$8x10^{4}$	$3x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
95	Americium-246m[2]	W, all compounds	$5x10^{4}$	$2x10^{5}$	$7x10^{-5}$	$2x10^{-7}$	$7x10^{-4}$	$7x10^{-3}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 2- Inhalation ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
95	Americium-246[2]	W, all compounds	$3x10^{4}$	$1x10^{5}$	$4x10^{-5}$	$1x10^{-7}$	$4x10^{-4}$	$4x10^{-3}$
96	Curium-238	W, all compounds	$2x10^{4}$	$1x10^{3}$	$4x10^{-7}$	$1x10^{-9}$	$2x10^{-4}$	$2x10^{-3}$
96	Curium-240	W, all compounds	$1x10^{2}$	$5x10^{-1}$	$2x10^{-10}$	$8x10^{-13}$	$2x10^{-6}$	$2x10^{-5}$
96	Curium-241	W, all compounds	$1x10^{3}$	$2x10^{1}$	$9x10^{-9}$	-	$2x10^{-5}$	$2x10^{-4}$
			-	($3x10^{1}$) Bone surf.	-	$4x10^{-11}$	-	-
96	Curium-242	W, all compounds	$6x10^{1}$	$3x10^{-1}$	$1x10^{-10}$	$4x10^{-13}$	-	-
			($8x10^{1}$) Bone surf.	-	-	-	$1x10^{-6}$	$1x10^{-5}$
96	Curium-243	W, all compounds	$2x10^{0}$	$8x10^{-3}$	$4x10^{-12}$	-	-	-
			($3x10^{0}$) Bone surf.	($1x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$4x10^{-8}$	$4x10^{-7}$
96	Curium-244	W, all compounds	$2x10^{0}$	$1x10^{-2}$	$4x10^{-12}$	-	-	-
			($5x10^{0}$) Bone surf.	($2x10^{-2}$) Bone surf.	-	$3x10^{-14}$	$7x10^{-8}$	$7x10^{-7}$
[redacted]	Curium-245	W, all compounds	$1x10^{0}$	$5x10^{-3}$	$2x10^{-12}$	-	-	-
			($2x10^{0}$) Bone surf.	($8x10^{-3}$) Bone surf.	-	$1x10^{-14}$	$3x10^{-8}$	$3x10^{-7}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
96	Curium-246	W, all compounds	$1x10^{0}$	$5x10^{-3}$	$2x10^{-12}$	-	-	-
			($2x10^{0}$) Bone surf.	($8x10^{-3}$) Bone surf.	-	$1x10^{-14}$	$3x10^{-8}$	$3x10^{-7}$
96	Curium-247	W, all compounds	$1x10^{0}$	$6x10^{-3}$	$2x10^{-12}$	-	-	-
			($2x10^{0}$) Bone surf.	($1x10^{-2}$) Bone surf.	-	$2x10^{-14}$	$3x10^{-8}$	$3x10^{-7}$
96	Curium-248	W, all compounds	$4x10^{-1}$	$1x10^{-3}$	$6x10^{-13}$	-	-	-
			($5x10^{-1}$) Bone surf.	($2x10^{-3}$) Bone surf.	-	$3x10^{-15}$	$7x10^{-9}$	$7x10^{-8}$
96	Curium-249[2]	W, all compounds	$5x10^{4}$	$2x10^{4}$	$6x10^{-6}$	$3x10^{-8}$	$7x10^{-4}$	$7x10^{-3}$
97	Berkelium-245	W, all compounds	$2x10^{3}$	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	$3x10^{-5}$	$3x10^{-4}$
97	Berkelium-246	W, all compounds	$3x10^{3}$	$3x10^{3}$	$1x10^{-6}$	$4x10^{-9}$	$4x10^{-5}$	$4x10^{-4}$
97	Berkelium-247	W, all compounds	$1x10^{0}$	$5x10^{-3}$	$2x10^{-12}$	-	-	-
			($2x10^{0}$) Bone surf.	($8x10^{-3}$) Bone surf.	-	$1x10^{-14}$	$3x10^{-8}$	$3x10^{-7}$
97	Berkelium-249	W, all compounds	$5x10^{2}$	$2x10^{0}$	$9x10^{-10}$	-	-	-
			($8x10^{2}$) Bone surf.	($3x10^{0}$) Bone surf.	-	$4x10^{-12}$	$1x10^{-5}$	$1x10^{-4}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
97	Berkelium-250	W, all compounds	$1x10^{4}$	$4x10^{2}$	$2x10^{-7}$	-	$1x10^{-4}$	$1x10^{-3}$
			-	($8x10^{2}$) Bone surf.	-	$1x10^{-9}$	-	-
98	Californium-244	W, all compounds except those given for Y	$3x10^{4}$	$6x10^{2}$	$2x10^{-7}$	$8x10^{-10}$	$3x10^{-4}$	$3x10^{-3}$
		Y, oxides and hydroxides	-	$6x10^{2}$	$2x10^{-7}$	$8x10^{-10}$	-	-
98	Californium-246	W, see ^{244}Cf	$4x10^{2}$	$1x10^{1}$	$4x10^{-9}$	$1x10^{-11}$	-	-
			($5x10^{2}$) LLI wall	-	-	-	$7x10^{-6}$	$7x10^{-5}$
		Y, see ^{244}Cf	-	$9x10^{0}$	$4x10^{-9}$	$1x10^{-11}$	-	-
98	Californium-248	W, see ^{244}Cf	$2x10^{1}$	$9x10^{-2}$	$4x10^{-11}$	-	-	-
			($3x10^{1}$) Bone surf.	($1x10^{-1}$) Bone surf.	-	$2x10^{-13}$	$4x10^{-7}$	$4x10^{-6}$
		Y, see ^{244}Cf	-	$1x10^{-1}$	$5x10^{-11}$	$2x10^{-13}$	-	-
98	Californium-249	W, see ^{244}Cf	$1x10^{0}$	$5x10^{-3}$	$2x10^{-12}$	-	-	-
			($2x10^{0}$) Bone surf.	($8x10^{-3}$) Bone surf.	-	$1x10^{-14}$	$3x10^{-8}$	$3x10^{-7}$
		Y, see ^{244}Cf	-	$1x10^{-2}$	$5x10^{-12}$	$2x10^{-14}$	-	-

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
98	Californium-250	W, see ^{244}Cf	$3x10^{0}$	$1x10^{-2}$	$5x10^{-12}$	-	-	-
			($5x10^{0}$) Bone surf.	($2x10^{-2}$) Bone surf.	-	$3x10^{-14}$	$7x10^{-8}$	$7x10^{-7}$
		Y, see ^{244}Cf	-	$3x10^{-2}$	$1x10^{-11}$	$4x10^{-14}$	-	-
98	Californium-251	W, see ^{244}Cf	$1x10^{0}$	$5x10^{-3}$	$2x10^{-12}$	-	-	-
			($2x10^{0}$) Bone surf.	($8x10^{-3}$) Bone surf.	-	$1x10^{-14}$	$3x10^{-8}$	$3x10^{-7}$
		Y, see ^{244}Cf	-	$1x10^{-2}$	$5x10^{-12}$	$2x10^{-14}$	-	-
98	Californium-252	W, see ^{244}Cf	$6x10^{0}$	$3x10^{-2}$	$1x10^{-11}$	-	-	-
			($1x10^{1}$) Bone surf.	($5x10^{-2}$) Bone surf.	-	$8x10^{-14}$	$1x10^{-7}$	$1x10^{-6}$
		Y, see ^{244}Cf	-	$4x10^{-2}$	$2x10^{-11}$	$5x10^{-14}$	-	-
98	Californium-253	W, see ^{244}Cf	$6x10^{2}$.	$2x10^{0}$	$8x10^{-10}$	$3x10^{-12}$	-	-
			($8x10^{2}$) Bone surf.	-	-	-	$1x10^{-5}$	$1x10^{-4}$
		Y, see ^{244}Cf	-	$2x10^{0}$	$7x10^{-10}$	$2x10^{-12}$	-	-
98	Californium-254	W, see ^{244}Cf	$3x10^{0}$	$2x10^{-2}$	$9x10^{-12}$	$3x10^{-14}$	$4x10^{-8}$	$4x10^{-7}$
		Y, see ^{244}Cf	-	$2x10^{-2}$	$7x10^{-12}$	$2x10^{-14}$	-	-
99	Einsteinium-250	W, all compounds	$5x10^{4}$	$7x10^{2}$	$3x10^{-7}$	-	$7x10^{-4}$	$7x10^{-3}$
			-	($1x10^{3}$) Bone surf.	-	$2x10^{-9}$	-	-
99	Einsteinium-251	W, all compounds	$7x10^{3}$	$1x10^{3}$	$5x10^{-7}$	$2x10^{-9}$	$1x10^{-4}$	$1x10^{-3}$
99	Einsteinium-253	W, all compounds	$2x10^{2}$	$2x10^{0}$	$6x10^{-10}$	$2x10^{-12}$	$3x10^{-6}$	$3x10^{-5}$
99	Einsteinium-254m	W, all compounds	$3x10^{2}$	$1x10^{1}$	$4x10^{-9}$	$1x10^{-11}$	$4x10^{-6}$	$4x10^{-5}$
99	Einsteinium-254	W, all compounds	$2x10^{1}$	$1x10^{-1}$	$4x10^{-11}$	$1x10^{-13}$	-	-
			($3x10^{1}$) Bone surf.	-	-	-	$4x10^{-7}$	$4x10^{-6}$
100	Fermium-252	W, all compounds	$5x10^{2}$	$1x10^{1}$	$5x10^{-9}$	$2x10^{-11}$	$7x10^{-6}$	$7x10^{-5}$
100	Fermium-253	W, all compounds	$1x10^{3}$.	$1x10^{1}$	$4x10^{-9}$	$1x10^{-11}$	$2x10^{-5}$	$2x10^{-4}$
100	Fermium-254	W, all compounds	$3x10^{3}$	$1x10^{2}$	$4x10^{-8}$	$1x10^{-10}$	$4x10^{-5}$	$4x10^{-4}$
100	Fermium-255	W, all compounds	$5x10^{2}$	$2x10^{1}$	$9x10^{-9}$	$3x10^{-11}$	$7x10^{-6}$	$7x10^{-5}$
100	Fermium-257	W, all compounds	$5x10^{1}$	$2x10^{-1}$	$1x10^{-10}$	$3x10^{-13}$	-	-
			($8x10^{1}$) Bone surf.	-	-	-	$1x10^{-6}$	$1x10^{-5}$
101	Mendelevium-257	W, all compounds	$9x10^{3}$	$1x10^{2}$	$4x10^{-8}$	$1x10^{-10}$	$1x10^{-4}$	$1x10^{-3}$
101	Mendelevium-258	W, all compounds	$7x10^{1}$	$3x10^{-1}$	$1x10^{-10}$	$5x10^{-13}$	$1x10^{-6}$	$1x10^{-5}$

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Atomic No.	Radionuclide	Class	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 2- Inhalation ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
-	Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life less than 2 hours	Submersion[1]	-	$2x10^{2}$	$1x10^{-7}$	$1x10^{-9}$	-	-
-	Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life greater than 2 hours	. . . . .	-	$2x10^{-1}$	$1x10^{-10}$	$1x10^{-12}$	$1x10^{-8}$	$1x10^{-7}$
-	Any single radionuclide not listed above which decays by alpha emission or spontaneous fission, or any mixture for which either the identity or the concentration of any radionuclide in the mixture is not known.	. . . . .	-	$4x10^{-4}$	$2x10^{-13}$	$1x10^{-15}$	$2x10^{-9}$	$2x10^{-8}$

[1]"Submersion" means that values given are for submersion in a semispherical infinite cloud of airborne material.

[2]These radionuclides have radiological half-lives less than 2 hours. The total dose equivalent received during operations with these radionuclides might include a significant contribution from external exposure. The DAC values for all radionuclides other than those designated Class "Submersion", are based upon the committed effective dose equivalent due to the intake of the radionuclide into the body and do NOT include potentially significant contributions to dose equivalent from external exposures. The licensee may substitute 1×10^{-7} μCi/ml for the listed DAC to account for the submersion dose prospectively, but should use individual monitoring devices or other radiation measuring instruments that measure external exposure to demonstrate compliance with the limits. (See § 20.203.)

[3]For soluble mixtures of U-238, U-234 and U-235 in air chemical toxicity may be the limiting factor. If the percent by weight (enrichment) of U-235 is not greater than 5, the concentration value for a 40-hour workweek is 0.2 milligrams uranium per cubic meter of air average. For any enrichment, the product of the average concentration and time of exposure during a 40-hour workweek shall not exceed $8x10^{-3}$ SA μCi-hr/ml, where SA is the specific activity of the uranium inhaled. The specific activity for natural uranium is $6.77x10^{-7}$ curies per gram U. The specific activity for other mixtures of U-238, U-235 and U-234, if not known, shall be: $SA=3.6x10^{-7}$ curies/gram U U-depleted. SA=(0.4+ 38 E+0.00[illegible] F^2) 1^{-6}, where E > 0.72. E is the percentage by weight of U-235, expressed as percent.

NOTE:

1. If the identity of each radionuclide in a mixture is known but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

2. If the identity of each radionuclide in the mixture is not known, but it is known that certain radionuclides specified in this appendix are not present in the mixture, the inhalation ALI, DAC, and reference level and sewage concentrations for the mixture are the lowest values specified in this appendix for any radionuclide which is not known to be absent from the mixture; or

Radionuclide	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 2- Inhalation ALI (μCi)	Table 1 OCCUPATIONAL VALUES Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
If it is known that Ac-227-D is not present	-	$7x10^{-4}$	$3x10^{-13}$	-	-	-
If, in addition, it is known that Ac-227-W,Y, Th-229-W,Y, Th-230-W, Th-232-W,Y, Pa-231-W,Y, Np-237-W, Pu-238-W, Pu-239-W, Pu-240-W, Pu-242-W, Pu-244-W, Am-241-W, Am-242m-W, Am-243-W, Cm-245-W, Cm-246-W, Cm-247-W, Cm-248-W, Bk-247-W, Cf-249-W, and Cf-251-W are not present	-	$7x10^{-3}$	$3x10^{-12}$	-	-	-
If, in addition, it is known that Sm-146-W, Sm-147-W, Gd-148-D,W, Gd-152-D,W, Th-228-W,Y, Th-230-Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, Np-236-W, Pu-236-W,Y, Pu-238-Y, Pu-239-Y, Pu-240-Y, Pu-242-Y, Pu-244-Y, Cm-243-W, Cm-244-W, Cf-249-Y, Cf-250-W,Y, Cf-251-Y, Cf-252-W,Y, and Cf-254-W,Y are not present	-	$7x10^{-2}$	$3x10^{-11}$	-	-	-
If, in addition, it is known that Pb-210-D, Po-210-D,W, Ra-226-W, Ac-225-D,Y, Th-227-W,Y, U-230-D,W,Y, U-232-D,W, Pu-241-W,Y, Cm-240-W, Cm-242-W, Cf-248-W,Y, Es-254-W, Fm-257-W and Md-258-W are not present	-	$7x10^{-1}$	$3x10^{-10}$	-	-	-
If, in addition, it is known that Si-32-Y, Ti-44-Y, Sr-90-Y, Zr-93-D, Cd-113m-D, Cd-113-D, In-115-D,W, La-138-D, Lu-176-W, Hf-178m-D,W,						

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Radionuclide	Table 1 OCCUPATIONAL VALUES Col. 1- Oral Ingestion ALI (μCi)	Col. 2- Inhalation ALI (μCi)	Col. 3- DAC (μCi/ml)	Table 2 REFERENCE LEVEL CONCENTRATIONS Col. 1- Air (μCi/ml)	Col. 2- Water (μCi/ml)	Table 3 RELEASE TO SEWERAGE Monthly Average (μCi/ml)
Hf-182-D,W, Bi-210m-D,W, Ra-223-W, Ra-224-W, Ra-225-W, Ra-228-W, Ac-225-W, Ac-226-D,W,Y, Pa-230-W,Y, U-233-D,W, U-234-D,W, U-235-D,W, U-236-D,W, U-238-D,W, Bk-249-W, Cf-253-W,Y, and Es-253-W are not present	-	7×10^{0}	3×10^{-9}	-	-	-
If it is known that Ac-227-D,W,Y, Th-229-W,Y, Th-232-W,Y, Pa-231-W,Y and Cm-248-W are not present	-	-	-	1×10^{-14}	-	-
If, in addition, it is known that Sm-146-W, Gd-148-D,W, Gd-152-D, Th-228-W,Y, Th-230-W,Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, U-Nat-Y, Np-236-W, Np-237-W, Pu-236-W,Y, Pu-238-W,Y, Pu-239-W,Y, Pu-240-W,Y, Pu-242-W,Y, Pu-244-W,Y, Am-241-W, Am-242m-W, Am-243-W, Cm-243-W, Cm-244-W, Cm-245-W, Cm-246-W, Cm-247-W, Bk-247-W, Cf-249-W,Y, Cf-250-W,Y, Cf-251-W,Y, Cf-252-W,Y, and Cf-254-W,Y are not present	-	-	-	1×10^{-13}	-	-
If, in addition, it is known that Sm-147-W, Gd-152-W, Pb-210-D, Bi-210m-W, Po-210-D,W, Ra-223-W, Ra-225-W, Ra-226-W, Ac-225-D,W,Y, Th-227-W,Y, U-230-D,W,Y, U-232-D,W, U-Nat-W, Pu-241-W, Cm-240-W, Cm-242-W, Cf-248-W,Y, Es-254-W, Fm-257-W, and Md-258-W are not present	-	-	-	1×10^{-12}	-	-
If, in addition, it is known that Si-32-Y, Ti-44-Y, Fe-60-D, Sr-90-Y, Cd-113m-D, Cd-113-D, In-115-D,W, La-138-D, Hf-178m-D,W, Hf-182-D, Bi-210m-D, Ra-224-W, Ra-228-W, Ac-226-D,W,Y, Pa-230-W,Y, U-233-D,W, U-234-D,W, U-235-D,W, U-236-D,W, U-238-D,W, U-Nat-D, Pu-241-Y, Bk-249-W, Cf-253-W,Y, and Es-253-W are not present	-	-	-	1×10^{-11}	-	-
If it is known that Ac-227, Pa-231, Np-236 (1.15×10^{5}y), Np-237 and Cm-248 are not present	-	-	-	-	1×10^{-8}	1×10^{-7}
If, in addition, it is known that Pb-210, Po-210, Ra-226, Ra-228, Th-229, Th-232, U-230, U-232, Am-241, Am-242m, Am-243, Cm-243, Cm-244, Cm-245, Cm-246, Cm-247, Bk-247, Cf-249, Cf-250, Cf-251, and Cf-254 are not present	-	-	-	-	1×10^{-7}	1×10^{-6}
If, in addition, it is known that Fe-60, Sr-90, Cd-113m, Cd-113, Cd-115, In-115, I-129, Cs-134, Sm-146, Sm-147, Gd-148, Gd-152, Hg-194 (organic), Bi-210, Ra-223, Ra-224, Ra-225, Ac-225, Th-228, Th-230, U-233, U-234, U-235, U-236, U-238, U-Nat, Pu-236, Pu-238, Pu-239, Pu-240, Pu-242, Pu-244, Cf-248, Cf-252, Es-254, and Md-258 are not present	-	-	-	-	1×10^{-6}	1×10^{-5}

3. If a mixture of radionuclides consists of uranium and its daughters in ore dust (10 μm AMAD particle distribution assumed) prior to chemical separation of the uranium from the ore, the following values may be used for the DAC of the mixture: 6×10^{-11} μCi of gross alpha activity from uranium-238, uranium-234, thorium-230, and radium-226 per milliliter of air; 3×10^{-11} μCi of natural uranium per milliliter of air; or 45 micrograms of natural uranium per cubic meter of air.

4. If the identity and concentration of each radionuclide in a mixture are known, the limiting values should be derived as follows: Determine, for each radionuclide in the mixture, the ratio between the concentration present in the mixture and the concentration otherwise established in Appendix B for the specific radionuclide when not in a mixture. The sum of such ratios for all of the radionuclides in the mixture may not exceed "1" (i.e., "unity").

Example: If radionuclides "A," "B," and "C" are present in concentrations C_A, C_B, and C_C, and if the applicable DACs are DAC_A, DAC_B, and DAC_C, respectively, then the concentrations shall be limited so that the following relationship exists:

$$\frac{C_A}{DAC_A} + \frac{C_B}{DAC_B} + \frac{C_C}{DAC_C} \leq 1$$

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APPENDIX C

QUANTITIES* REQUIRING LABELING

Radionuclide	Quantity (μCi)	Radionuclide	Quantity (μCi)
Hydrogen-3	1,000	Chromium-48	1,000
Beryllium-7	1,000	Chromium-49	1,000
Beryllium-10	1	Chromium-51	1,000
Carbon-11	1,000	Manganese-51	1,000
Carbon-14	100	Manganese-52m	1,000
Fluorine-18	1,000	Manganese-52	100
Sodium-22	10	Manganese-53	1,000
Sodium-24	100	Manganese-54	100
Magnesium-28	100	Manganese-56	1,000
Aluminum-26	10	Iron-52	100
Silicon-31	1,000	Iron-55	100
Silicon-32	1	Iron-59	10
Phosphorus-32	10	Iron-60	1
Phosphorus-33	100	Cobalt-55	100
Sulfur-35	100	Cobalt-56	10
Chlorine-36	10	Cobalt-57	100
Chlorine-38	1,000	Cobalt-58m	1,000
Chlorine-39	1,000	Cobalt-58	100
Argon-39	1,000	Cobalt-60m	1,000
Argon-41	1,000	Cobalt-60	1
Potassium-40	10	Cobalt-61	1,000
Potassium-42	1,000	Cobalt-62m	1,000
Potassium-43	1,000	Nickel-56	100
Potassium-44	1,000	Nickel-57	100
Potassium-45	1,000	Nickel-59	100
Calcium-41	100	Nickel-63	100
Calcium-45	100	Nickel-65	1,000
Calcium-47	100	Nickel-66	10
Scandium-43	1,000	Copper-60	1,000
Scandium-44m	100	Copper-61	1,000
Scandium-44	100	Copper-64	1,000
Scandium-46	10	Copper-67	1,000
Scandium-47	100	Zinc-62	100
Scandium-48	100	Zinc-63	1,000
Scandium-49	1,000	Zinc-65	10
Titanium-44	1	Zinc-69m	100
Titanium-45	1,000	Zinc-69	1,000
Vanadium-47	1,000	Zinc-71m	1,000
Vanadium-48	100	Zinc-72	100
Vanadium-49	1,000	Gallium-65	1,000

*The quantities listed above were derived by taking 1/10th of the most restrictive ALI listed in Table 1, Columns 1 and 2 of Appendix B of this part, rounding to the nearest factor of ten, and arbitrarily constraining the values listed between 0.001 and 1,000 μCi.

APPENDIX C (continued)

Radionuclide	Quantity (μCi)	Radionuclide	Quantity (μCi)
Gallium-66	100	Krypton-85	1,000
Gallium-67	1,000	Krypton-87	1,000
Gallium-68	1,000	Krypton-88	1,000
Gallium-70	1,000	Rubidium-79	1,000
Gallium-72	100	Rubidium-81m	1,000
Gallium-73	1,000	Rubidium-81	1,000
Germanium-66	1,000	Rubidium-82m	1,000
Germanium-67	1,000	Rubidium-83	100
Germanium-68	10	Rubidium-84	100
Germanium-69	1,000	Rubidium-86	100
Germanium-71	1,000	Rubidium-87	100
Germanium-75	1,000	Rubidium-88	1,000
Germanium-77	1,000	Rubidium-89	1,000
Germanium-78	1,000	Strontium-80	100
Arsenic-69	1,000	Strontium-81	1,000
Arsenic-70	1,000	Strontium-83	100
Arsenic-71	100	Strontium-85m	1,000
Arsenic-72	100	Strontium-85	100
Arsenic-73	100	Strontium-87m	1,000
Arsenic-74	100	Strontium-89	10
Arsenic-76	100	Strontium-90	0.1
Arsenic-77	100	Strontium-91	100
Arsenic-78	1,000	Strontium-92	100
Selenium-70	1,000	Yttrium-86m	1,000
Selenium-73m	1,000	Yttrium-86	100
Selenium-73	100	Yttrium-87	100
Selenium-75	100	Yttrium-88	10
Selenium-79	100	Yttrium-90m	1,000
Selenium-81m	1,000	Yttrium-90	10
Selenium-81	1,000	Yttrium-91m	1,000
Selenium-83	1,000	Yttrium-91	10
Bromine-74m	1,000	Yttrium-92	100
Bromine-74	1,000	Yttrium-93	100
Bromine-75	1,000	Yttrium-94	1,000
Bromine-76	100	Yttrium-95	1,000
Bromine-77	1,000	Zirconium-86	100
Bromine-80m	1,000	Zirconium-88	10
Bromine-80	1,000	Zirconium-89	100
Bromine-82	100	Zirconium-93	1
Bromine-83	1,000	Zirconium-95	10
Bromine-84	1,000	Zirconium-97	100
Krypton-74	1,000	Niobium-88	1,000
Krypton-76	1,000	Niobium-89 (66 min)	1,000
Krypton-77	1,000	Niobium-89 (122 min)	1,000
Krypton-79	1,000	Niobium-90	100
Krypton-81	1,000	Niobium-93m	10
Krypton-83m	1,000		
Krypton-85m	1,000		

APPENDIX C (continued)

Radionuclide	Quantity (μCi)	Radionuclide	Quantity (μCi)
Niobium-94	1	Silver-104	1,000
Niobium-95m	100	Silver-105	100
Niobium-95	100	Silver-106m	100
Niobium-96	100	Silver-106	1,000
Niobium-97	1,000	Silver-108m	1
Niobium-98	1,000	Silver-110m	10
Molybdenum-90	100	Silver-111	100
Molybdenum-93m	100	Silver-112	100
Molydbenum-93	10	Silver-115	1,000
Molybdenum-99	100	Cadmium-104	1,000
Molybdenum-101	1,000	Cadmium-107	1,000
Technetium-93m	1,000	Cadmium-109	1
Technetium-93	1,000	Cadmium-113m	0.1
Technetium-94m	1,000	Cadmium-113	0.1
Technetium-94	1,000	Cadmium-115m	10
Technetium-96m	1,000	Cadmium-115	100
Technetium-96	100	Cadmium-117m	1,000
Technetium-97m	100	Cadmium-117	1,000
Technetium-97	1,000	Indium-109	1,000
Technetium-98	10	Indium-110m (69.1m)	1,000
Technetium-99m	1,000	Indium-110m (4.9h)	1,000
Technetium-99	100	Indium-111	100
Technetium-101	1,000	Indium-112	1,000
Technetium-104	1,000	Indium-113m	1,000
Ruthenium-94	1,000	Indium-114m	10
Ruthenium-97	1,000	Indium-115m	1,000
Ruthenium-103	100	Indium-115	0.1
Ruthenium-105	1,000	Indium-116m	1,000
Ruthenium-106	1	Indium-117m	1,000
Rhodium-99m	1,000	Indium-117	1,000
Rhodium-99	100	Indium-119m	1,000
Rhodium-100	100	Tin-110	100
Rhodium-101m	1,000	Tin-111	1,000
Rhodium-101	10	Tin 113	100
Rhodium-102m	10	Tin-117m	100
Rhodium-102	10	Tin-119m	100
Rhodium-103m	1,000	Tin-121m	100
Rhodium-105	100	Tin-121	1,000
Rhodium-106m	1,000	Tin-123m	1,000
Rhodium-107	1,000	Tin-123	10
Palladium-100	100	Tin-125	10
Palladium-101	1,000	Tin-126	10
Palladium-103	100	Tin-127	1,000
Palladium-107	10	Tin-128	1,000
Palladium-109	100	Antimony-115	1,000
Silver-102	1,000	Antimony-116m	1,000
Silver-103	1,000		
Silver-104m	1,000		

APPENDIX C (continued)

Radionuclide	Quantity (μCi)	Radionuclide	Quantity (μCi)
Antimony-116	1,000	Iodine-131	1
Antimony-117	1,000	Iodine-132m	100
Antimony-118m	1,000	Iodine-132	100
Antimony-119	1,000	Iodine-133	10
Antimony-120 (16m)	1,000	Iodine-134	1,000
Antimony-120 (5.76d)	100	Iodine-135	100
Antimony-122	100	Xenon-120	1,000
Antimony-124m	1,000	Xenon-121	1,000
Antimony-124	10	Xenon-122	1,000
Antimony-125	100	Xenon-123	1,000
Antimony-126m	1,000	Xenon-125	1,000
Antimony-126	100	Xenon-127	1,000
Antimony-127	100	Xenon-129m	1,000
Antimony-128 (10.4m)	1,000	Xenon-131m	1,000
Antimony-128 (9.01h)	100	Xenon-133m	1,000
Antimony-129	100	Xenon-133	1,000
Antimony-130	1,000	Xenon-135m	1,000
Antimony-131	1,000	Xenon-135	1,000
Tellurium-116	1,000	Xenon-138	1,000
Tellurium-121m	10	Cesium-125	1,000
Tellurium-121	100	Cesium-127	1,000
Tellurium-123m	10	Cesium-129	1,000
Tellurium-123	10	Cesium-130	1,000
Tellurium-125m	10	Cesium-131	1,000
Tellurium-127m	10	Cesium-132	100
Tellurium-127	1,000	Cesium-134m	1,000
Tellurium-129m	10	Cesium-134	10
Tellurium-129	1,000	Cesium-135m	1,000
Tellurium-131m	10	Cesium-135	100
Tellurium-131	100	Cesium-136	10
Tellurium-132	10	Cesium-137	10
Tellurium-133m	100	Cesium-138	1,000
Tellurium-133	1,000	Barium-126	1,000
Tellurium-134	1,000	Barium-128	100
Iodine-120m	1,000	Barium-131m	1,000
Iodine-120	100	Barium-131	100
Iodine-121	1,000	Barium-133m	100
Iodine-123	100	Barium-133	100
Iodine-124	10	Barium-135m	100
Iodine-125	1	Barium-139	1,000
Iodine-126	1	Barium-140	100
Iodine-128	1,000	Barium-141	1,000
Iodine-129	1	Barium-142	1,000
Iodine-130	10	Lanthanum-131	1,000
		Lanthanum-132	100
		Lanthanum-135	1,000
		Lanthanum-137	10
		Lanthanum-138	1

APPENDIX C (continued)

Radionuclide	Quantity (μCi)	Radionuclide	Quantity (μCi)
Lanthanum-140	100	Samarium-153	100
Lanthanum-141	100	Samarium-155	1,000
Lanthanum-142	1,000	Samarium-156	1,000
Lanthanum-143	1,000	Europium-145	100
Cerium-134	100	Europium-146	100
Cerium-135	100	Europium-147	100
Cerium-137m	100	Europium-148	10
Cerium-137	1,000	Europium-149	100
Cerium-139	100	Europium-150	
Cerium-141	100	(12.62h)	100
Cerium-143	100	Europium-150	
Cerium-144	1	(34.2y)	1
Praseodymium-136	1,000	Europium-152m	100
Praseodymium-137	1,000	Europium-152	1
Praseodymium-138m	1,000	Europium-154	1
Praseodymium-139	1,000	Europium-155	10
Praseodymium-142m	1,000	Europium-156	100
Praseodymium-142	100	Europium-157	100
Praseodymium-143	100	Europium-158	1,000
Praseodymium-144	1,000	Gadolinium-145	1,000
Praseodymium-145	100	Gadolinium-146	10
Praseodymium-147	1,000	Gadolinium-147	100
Neodymium-136	1,000	Gadolinium-148	0.001
Neodymium-138	100	Gadolinium-149	100
Neodymium-139m	1,000	Gadolinium-151	10
Neodymium-139	1,000	Gadolinium-152	0.001
Neodymium-141	1,000	Gadolinium-153	10
Neodymium-147	100	Gadolinium-159	100
Neodymium-149	1,000	Terbium-147	1,000
Neodymium-151	1,000	Terbium-149	100
Promethium-141	1,000	Terbium-150	1,000
Promethium-143	100	Terbium-151	100
Promethium-144	10	Terbium-153	1,000
Promethium-145	10	Terbium-154	100
Promethium-146	1	Terbium-155	1,000
Promethium-147	10	Terbium-156m	
Promethium-148m	10	(5.0h)	1,000
Promethium-148	10	Terbium-156m	
Promethium-149	100	(24.4h)	1,000
Promethium-150	1,000	Terbium-156	100
Promethium-151	100	Terbium-157	10
Samarium-141m	1,000	Terbium-158	1
Samarium-141	1,000	Terbium-160	10
Samarium-142	1,000	Terbium-161	100
Samarium-145	100	Dysprosium-155	1,000
Samarium-146	1	Dysprosium-157	1,000
Samarium-147	0.001	Dysprosium-159	100
Samarium-151	10	Dysprosium-165	1,000

APPENDIX C (continued)

Radionuclide	Quantity (μCi)	Radionuclide	Quantity (μCi)
Dysprosium-166	100	Hafnium-173	1,000
Holmium-155	1,000	Hafnium-175	100
Holmium-157	1,000	Hafnium-177m	1,000
Holmium-159	1,000	Hafnium-178m	0.1
Holmium-161	1,000	Hafnium-179m	10
Holmium-162m	1,000	Hafnium-180m	1,000
Holmium-162	1,000	Hafnium-181	10
Holmium-164m	1,000	Hafnium-182m	1,000
Holmium-164	1,000	Hafnium-182	0.1
Holmium-166m	1	Hafnium-183	1,000
Holmium-166	100	Hafnium-184	100
Holmium-167	1,000	Tantalum-172	1,000
Erbium-161	1,000	Tantalum-173	1,000
Erbium-165	1,000	Tantalum-174	1,000
Erbium-169	100	Tantalum-175	1,000
Erbium-171	100	Tantalum-176	100
Erbium-172	100	Tantalum-177	1,000
Thulium-162	1,000	Tantalum-178	1,000
Thulium-166	100	Tantalum-179	100
Thulium-167	100	Tantalum-180m	1,000
Thulium-170	10	Tantalum-180	1
Thulium-171	10	Tantalum-182m	1,000
Thulium-172	100	Tantalum-182	10
Thulium-173	100	Tantalum-183	100
Thulium-175	1,000	Tantalum-184	100
Ytterbium-162	1,000	Tantalum-185	1,000
Ytterbium-166	100	Tantalum-186	1,000
Ytterbium-167	1,000	Tungsten-176	1,000
Ytterbium-169	100	Tungsten-177	1,000
Ytterbium-175	100	Tungsten-178	1,000
Ytterbium-177	1,000	Tungsten-179	1,000
Ytterbium-178	1,000	Tungsten-181	1,000
Lutetium-169	100	Tungsten-185	100
Lutetium-170	100	Tungsten-187	100
Lutetium-171	100	Tungsten-188	10
Lutetium-172	100	Rhenium-177	1,000
Lutetium-173	10	Rhenium-178	1,000
Lutetium-174m	10	Rhenium-181	1,000
Lutetium-174	10	Rhenium-182	
Lutetium-176m	1,000	(12.7h)	1,000
Lutetium-176	1	Rhenium-182	
Lutetium-177m	10	(64.0h)	100
Lutetium-177	100	Rhenium-184m	10
Lutetium-178m	1,000	Rhenium-184	100
Lutetium-178	1,000	Rhenium-186m	10
Lutetium-179	1,000	Rhenium-186	100
Hafnium-170	100	Rhenium-187	1,000
Hafnium-172	1	Rhenium-188m	1,000

APPENDIX C (continued)

Radionuclide	Quantity (μCi)	Radionuclide	Quantity (μCi)
Rhenium-188	100	Mercury-194	1
Rhenium-189	100	Mercury-195m	100
Osmium-180	1,000	Mercury-195	1,000
Osmium-181	1,000	Mercury-197m	100
Osmium-182	100	Mercury-197	1,000
Osmium-185	100	Mercury-199m	1,000
Osmium-189m	1,000	Mercury-203	100
Osmium-191m	1,000	Thallium-194m	1,000
Osmium-191	100	Thallium-194	1,000
Osmium-193	100	Thallium-195	1,000
Osmium-194	1	Thallium-197	1,000
Iridium-182	1,000	Thallium-198m	1,000
Iridium-184	1,000	Thallium-198	1,000
Iridium-185	1,000	Thallium-199	1,000
Iridium-186	100	Thallium-200	1,000
Iridium-187	1,000	Thallium-201	1,000
Iridium-188	100	Thallium-202	100
Iridium-189	100	Thallium-204	100
Iridium-190m	1,000	Lead-195m	1,000
Iridium-190	100	Lead-198	1,000
Iridium-192m	1	Lead-199	1,000
Iridium-192	10	Lead-200	100
Iridium-194m	10	Lead-201	1,000
Iridium-194	100	Lead-202m	1,000
Iridium-195m	1,000	Lead-202	10
Iridium-195	1,000	Lead-203	1,000
Platinum-186	1,000	Lead-205	100
Platinum-188	100	Lead-209	1,000
Platinum-189	1,000	Lead-210	0.01
Platinum-191	100	Lead-211	100
Platinum-193m	100	Lead-212	1
Platinum-193	1,000	Lead-214	100
Platinum-195m	100	Bismuth-200	1,000
Platinum-197m	1,000	Bismuth-201	1,000
Platinum-197	100	Bismuth-202	1,000
Platinum-199	1,000	Bismuth-203	100
Platinum-200	100	Bismuth-205	100
Gold-193	1,000	Bismuth-206	100
Gold-194	100	Bismuth-207	10
Gold-195	10	Bismuth-210m	0.1
Gold-196m	100	Bismuth-210	1
Gold-198	100	Bismuth-212	10
Gold-199	100	Bismuth-213	10
Gold-200m	100	Bismuth-214	100
Gold-200	1,000	Polonium-203	1,000
Gold-201	1,000	Polonium-205	1,000
Mercury-193m	100	Polonium-207	1,000
Mercury-193	1,000	Polonium-210	0.1

APPENDIX C (continued)

Radionuclide	Quantity (μCi)	Radionuclide	Quantity (μCi)
Astatine-207	100	Neptunium-234	100
Astatine-211	10	Neptunium-235	100
Radon-220	1	Neptunium-236	
Radon-222	1	(1.15×10^5y)	0.001
Francium-222	100	Neptunium-236	
Francium-223	100	(22.5h)	1
Radium-223	0.1	Neptunium-237	0.001
Radium-224	0.1	Neptunium-238	10
Radium-225	0.1	Neptunium-239	100
Radium-226	0.1	Neptunium-240	1,000
Radium-227	1,000	Plutonium-234	10
Radium-228	0.1	Plutonium-235	1,000
Actinium-224	1	Plutonium-236	0.001
Actinium-225	0.01	Plutonium-237	100
Actinium-226	0.1	Plutonium-238	0.001
Actinium-227	0.001	Plutonium-239	0.001
Actinium-228	1	Plutonium-240	0.001
Thorium-226	10	Plutonium-241	0.01
Thorium-227	0.01	Plutonium-242	0.001
Thorium-228	0.001	Plutonium-243	1,000
Thorium-229	0.001	Plutonium-244	0.001
Thorium-230	0.001	Plutonium-245	100
Thorium-231	100	Americium-237	1,000
Thorium-232	0.001	Americium-238	100
Thorium-234	10	Americium-239	1,000
Thorium-natural[1]	0.001	Americium-240	100
Protactinium-227	10	Americium-241	0.001
Protactinium-228	1	Americium-242m	0.001
Protactinium-230	0.1	Americium-242	10
Protactinium-231	0.001	Americium-243	0.001
Protactinium-232	1	Americium-244m	100
Protactinium-233	100	Americium-244	10
Protactinium-234	100	Americium-245	1,000
Uranium-230	0.01	Americium-246m	1,000
Uranium-231	100	Americium-246	1,000
Uranium-232	0.001	Curium-238	100
Uranium-233	0.001	Curium-240	0.1
Uranium-234	0.001	Curium-241	1
Uranium-235	0.001	Curium-242	0.01
Uranium-236	0.001	Curium-243	0.001
Uranium-237	100	Curium-244	0.001
Uranium-238	0.001	Curium-245	0.001
Uranium-239	1,000	Curium-246	0.001
Uranium-240	100	Curium-247	0.001
Uranium-natural[2]	0.001	Curium-248	0.001
Neptunium-232	100	Curium-249	1,000
Neptunium-233	1,000	Berkelium-245	100

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APPENDIX C (continued)

Radionuclide	Quantity (μCi)	Radionuclide	Quantity (μCi)
Berkelium-246	100	Einsteinium-250	100
Berkelium-247	0.001	Einsteinium-251	100
Berkelium-249	0.1	Einsteinium-253	0.1
Berkelium-250	10	Einsteinium-254m	1
Californium-244	100	Einsteinium-254	0.01
Californium-246	1	Fermium-252	1
Californium-248	0.01	Fermium-253	1
Californium-249	0.001	Fermium-254	10
Californium-250	0.001	Fermium-255	1
Californium-251	0.001	Fermium-257	0.01
Californium-252	0.001	Mendelevium-257	10
Californium-253	0.1	Mendelevium-258	0.01
Californium-254	0.001		
Any alpha emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	0.001	Any radionuclide other than alpha emitting radionuclides not listed above, or mixtures of beta emitters of unknown composition	0.01

[1]Based on alpha disintegration rate of Th-232, Th-230 and their daughter products.

[2]Based on alpha disintegration rate of U-238, U-234 and U-235.

NOTE: For purposes of §§ 20.902(e), 20.904(c), and 20.1201(a) where there is involved a combination of radionuclides in known amounts, the limit for the combination should be derived as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific radionuclide when not in combination. The sum of such ratios for all the radionuclides in the combination may not exceed "1" (i.e., "unity").

APPENDIX D

UNITED STATES NUCLEAR REGULATORY COMMISSION REGIONAL OFFICES

	Address	Telephone (24 hours a day)
Region 1: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.	USNRC, 631 Park Avenue King of Prussia, PA 19406	(215)337-5000, (FTS) 488-1000.
Region II: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, Virgin Islands, and West Virginia.	USNRC, 101 Marietta Street Suite 2900 Atlanta, GA 30303	(404)221-4503, (FTS) 242-4503.
Region III: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	USNRC, 799 Roosevelt Road Glen Ellyn, IL 60137	(312)790-5500, (FTS) 388-5500.
Region IV: Arkansas, Colorado, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.	USNRC, 611 Ryan Plaza Drive Suite 1000 Arlington, TX 76011	(817)860-8100, (FTS) 728-8100.
Region IV: Field Office	USNRC, Region IV Uranium Recovery Field Office 730 Simms Street, Suite 100A P.O. Box 25325 Denver, CO 80225	(303)234-7232, (FTS) 234-7232.
Region V: Alaska, Arizona, California, Hawaii, Nevada, Oregon, Washington, and U.S. territories and possessions in the Pacific.	USNRC, 1450 Maria Lane Suite 210 Walnut Creek, CA 94596	(415)943-3700, (FTS) 463-3700.

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APPENDIX E

MATHEMATICAL EXPRESSIONS FOR DEMONSTRATING COMPLIANCE WITH SELECTED DOSE LIMITS AND REFERENCE LEVELS

I. REFERENCE FOR SUBPART C - OCCUPATIONAL DOSE LIMITS AND REFERENCE LEVELS

A. Reference for § 20.201 Occupational dose limits for adults.

(1) The annual limit is the more limiting of--

(i) The sum of the (external) deep dose equivalent to the whole body and the (internal) committed effective dose equivalent being equal to 5 rems. Expressed mathematically:

$$H_d + \Sigma_T w_T H_{c,T} = 5 \text{ (rems)}$$

or

$$\frac{H_d}{5 \text{ (rems)}} + \frac{\Sigma_T w_T H_{c,T}}{5 \text{ (rems)}} = 1$$

where:

H_d is the deep dose equivalent (rems) for the year (Dose equivalents to the extremities, the skin, and the lens of the eye are not considered in computing the whole body dose equivalent);

$w_T H_{c,T}$ is the committed effective dose equivalent for an organ or tissue, T, from radionuclides taken into the body during the year;

w_T is the weighting factor whicH is the proportion of the risk of stochastic effects resulting from irradiation of tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly;

$H_{c,T}$ is the committed dose equivalent for a tissue, T, over a specified time interval; and

Σ_T is the sum of the committed effective dose equivalent for all organs or tissues which receive a significant dose relative to the total dose to all organs or tissues; or

(ii) The sum of the deep dose equivalent and the committed dose equivalent being equal to 50 rems to an organ or tissue other than the lens of the eye. Expressed mathematically:

$$H_d + H_{c,T} = 50 \text{ (rems)}$$

B. Reference for § 20.202 Compliance with requirements for summation of external and internal doses.

(1) Intake by Inhalation.

If the only intake of radionuclides is by inhalation, the annual limit is not exceeded--

(i) If the sum of the fraction of the external deep dose equivalent limit and the sum of the fractions of the ALI by inhalation of each radionuclide during the year do not exceed unity. Expressed mathematically:

$$\frac{H_d}{5 \text{ (rems)}} + \Sigma_j \frac{I_{i,j}}{(ALI)_{i,j}} \leq 1$$

where:

H_d is the deep dose equivalent (rems) for the year;

$I_{i,j}$ is the intake of radionuclide j during the year by inhalation, i;

$(ALI)_{i,j}$ is the annual limit of intake of radionuclide j by inhalation, i; and

Σ_j is the summation of the ratios for all radionuclides included in the intake.

or

(ii) If the sum of the fraction of the deep dose equivalent limit and the sum of the fractions of the derived air concentration (DAC) of each radionuclide inhaled during the year do not exceed unity. Expressed mathematically:

$$\frac{H_d}{5\ (\text{rems})} + \Sigma_j \frac{AC_j \times t}{(DAC)_j \times 2000\ (\text{hours})} \leq 1$$

where:

AC_j is the average air concentration of radionuclide j over the duration of exposure during the year;

t is the duration of exposure (hours) during the year; and

$(DAC)_j$ is the derived air concentration for radionuclide j.

or

(iii) If the sum of the fraction of the deep dose equivalent limit and the sum of the committed effective dose equivalents to all significantly irradiated[1] organs or tissues, T, calculated from bioassay data and using appropriate biological models, expressed as a fraction of the annual dose limit, does not exceed unity. Expressed mathematically:

$$\frac{H_d}{5\ (\text{rems})} + \Sigma_j \Sigma_T \frac{w_T H_{c,T}}{5\ (\text{rems})} \leq 1$$

[1] An organ or tissue is "significantly irradiated" if, for that organ or tissue, the weighted value per unit intake is greater than 10% of the maximum weighted value of $H_{c,T}$ per unit intake in any organ or tissue.

(2) Intake by oral ingestion.

If the occupationally exposed individuals also receive substantial intakes of radionuclides by oral ingestion, an additional term shall be added to the left side of the inequalities in paragraph B(1) of this reference. Expressed mathematically:

$$\Sigma_j \frac{I_{o,j}}{(ALI)_{o,j}}$$

where:

$I_{o,j}$ is the amount of radionuclide j taken into the body by oral ingestion, o, during the year; and

$(ALI)_{o,j}$ is the annual limit of oral ingestion of radionuclide j.

II. REFERENCE FOR SUBPART D - RADIATION DOSE LIMITS AND REFERENCE LEVELS FOR INDIVIDUAL MEMBERS OF THE PUBLIC

A. Reference for § 20.301 Dose limits for individual members of the public.

(a) The annual dose limit for individual members of the public from all known sources is not exceeded if the inequalities in paragraph I.B(1) and (2) of this appendix, adjusted for the contributions to intake from water and food contaminated as a result of releases in effluents, do not exceed 1/10.

(b) If the exposed population includes children, the ALIs, which were derived for adults, shall be adjusted for age-specific transfer factors. Expressed mathematically:

$$\Sigma_\ell \left\{ \frac{H_d}{5\ (\text{rems})} + \Sigma_j \left[\frac{I_{i,j}}{C_1 (ALI)_{i,j}} + \Sigma_k \frac{I_{o,j,k}}{C_2 (ALI)_{j,k}} \right] \right\} \leq \frac{1}{10}$$

where:

Σ_{ℓ} indicates that all sources, ℓ, of exposure except natural background and medical treatment are evaluated and summed;

Σ_k indicates that the evaluations are made for each water and food pathway, k, and summed;

$I_{o,j,k}$ is the annual intake of radionuclide j by oral ingestion, o, through pathway k;

$(ALI)_{o,j,k}$ is the annual limit of intake of radionuclide j by oral ingestion for adults;

C_1, C_2 are age-specific transfer factors used to adjust the annual limits of intake, which were derived for adults, so that they are applicable to other age groups. Values of C_1 and C_2 are each tentatively assumed to equal 0.5 to account for minors; and

$\frac{1}{10}$ is the fraction of the annual occupational limit which is permitted for individual members of the public.

B. Reference for § 20.303 Reference level for the exposure of individual members of the public.

If a licensee demonstrates that the effective dose equivalent to the individual likely to be the highest exposed is within the 0.1 rem annual reference level, the licensee meets the 0.5 rem annual limit. The licensee may demonstrate operation within the 0.1 rem annual reference level if the sum of the fractions obtained by--

(a) Dividing the whole body annual deep dose equivalent, in units of rem, by the annual dose limit of 5 rems;

(b) Summing all of the fractional parts of the inhalation ALIs (or DACs) of all radionuclides inhaled during the year; and

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(c) Summing all of the fractional parts of the oral ingestion ALIs of all radionuclides taken into the body by oral ingestion during the year, does not exceed 1/50. If the exposed population includes children, both the ALIs for inhalation and the ALIs for oral ingestion, which were derived for adults, shall be adjusted for age-specific transfer factors. Expressed mathematically:

$$\frac{H_d}{5\ (\text{rems})} + \Sigma_j \left[\frac{I_{i,j}}{C_1(ALI)_{i,j}} + \Sigma_k \frac{I_{o,j,k}}{C_2(ALI)_{o,j,k}} \right] \leq \frac{1}{50}$$

or

$$\frac{H_d}{5\ (\text{rems})} + \Sigma_j \left[\frac{3(AC)_j}{C_1(DAC)_j} + \Sigma_k \frac{I_{o,j,k}}{C_2(ALI)_{o,j,k}} \right] \leq \frac{1}{50}$$

where:

3 is a factor which adjusts for the difference in exposure time and inhalation rate between workers and individuals in the public; [2 x 10^7 (ml/24 hours) ÷ 1 x 10^7 (ml/8 hours)] x [7 days/wk ÷ 5 days/wk] x [52 (wks/yr) ÷ 50 (wks/yr)] = $2 \times \frac{7}{5} \times \frac{52}{50} \simeq 3$; and

1/50 is the fraction of the annual occupational limit which is represented by the 0.1 rem annual reference level.

Appendix F—Requirements for Low Level Waste Transfer for Disposal at Land Disposal Facilities and Manifests

I. Manifest

The shipment manifest shall contain the name, address, and telephone number of the person generating the waste. The manifest shall also include the name, address, and telephone number or the name and EPA hazardous waste identification number of the person transporting the waste to the land disposal facility. The manifest must also indicate as completely as practicable: a physical description of the waste; the volume; radionuclide identity and quantity; the total radioactivity; and the principal chemical form. The solidification agent must be specified. Waste containing more than 0.1% chelating agents by weight must be identified and the weight percentage of the chelating agent estimated. Wastes classified as Class A, Class B, or Class C in § 61.55 of this chapter must clearly be identified as such in the manifest. The total quantity of the radionuclides H–3, C–14, Tc–99 and I–129 must be shown. The manifest required by this paragraph may be shipping papers used to meet Department of Transportation or Environmental Protection Agency regulations or requirements of the receiver, provided all the required information is included. Copies of manifests required by this section may be legible carbon copies or legible photocopies.

II. Certification

The waste generator shall include in the shipment manifest a certification that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation and the Commission. An authorized representative of the waste generator shall sign and date the manifest.

III. Control and Tracking

A. Any generating licensee who transfers radioactive waste to a land disposal facility or a licensed waste collector shall comply with the requirements in paragraphs A.1 through 8 of this section. Any generating licensee who transfers waste to a licensed waste processor who treats or repackages waste shall comply with the requirements of prargraphs A.4 through 8 of this section. A licensee shall:

1. Prepare all wastes so that the waste is classified according to § 61.55 and meets the waste characteristics requirement in § 61.56 of this chapter;

2. Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with § 61.55 of this chapter;

3. Conduct a quality control program to assure compliance with §§ 61.55 and 61.56 of this chapter; the program must include management evaluation of audits;

4. Prepare shipping manifests to meet the requirements of sections I and II of this appendix;

5. Forward a copy of the manifest to the intended recipient, at the time of shipment; or, deliver to a collector at the time the waste is collected, obtaining acknowledgement of receipt in the form of a signed copy of the manifest or equivalent documentation from the collector;

6. Include one copy of the manifest with the shipment;

7. Retain a copy of the manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as requred by Parts 30, 40, and 70 of this chapter; and,

8. For any shipments or any part of a shipment for which acknowledgement of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with paragraph E of this appendix.

B. Any waste collector licensee who handles only prepackaged waste shall:

1. Acknowledge receipt of the waste from the generator within one week or receipt by returning a signed copy of the manifest or equivalent documentation;

2. Prepare a new manifest to reflect consolidated shipments; the new manifest shall serve as a listing or index for the detailed generator manifests. Copies of the generator manifests shall be a part of the new manifest. The waste collector may prepare a new manifest without attaching the generator manifests, provided the new manifest contains for each package the information specified in section II of this appendix. The collector licensee shall certify that nothing has been done to the waste which would invalidate the generator's certification;

3. Forward a copy of the new manifest to the land disposal facility operator at the time of shipment;

4. Include the new manifest with the shipment to the disposal site;

5. Retain a copy of the manifest and documentation of acknowledgement of receipt as the record of transfer of licensed material as required by Parts 30, 40, and 70 of this chapter, and retain information from generator manifests until disposition is authorized by the Commission; and

6. For any shipments or any part of a shipment for which acknowledgement of receipt is not received within the times set forth in this section, conduct an investigation in accordance with paragaph E of this section.

C. Any licensed waste processor who treats or repackages wastes shall:

1. Acknowledge receipt of the waste from the generator within one week of receipt by returning a signed copy of the manifest or equivalent documentation;

2. Prepare a new manifest that meets the requirements of sections II and III of this appendix. Preparation of the new manifest reflects that the processor is responsible for the waste;

3. Prepare all wastes so that the waste is classified according to § 61.55 and meets the waste characteristics requirements in § 61.56 of this chapter;

4. Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with §§ 61.55 and 61.57 of this chapter;

5. Conduct a quality control program to assure compliance with §§ 61.55 and 61.56 of this chapter. The program shall include management evaluation of audits;

6. Foward a copy of the new manifest to the disposal site operator or waste collector at the time of shipment, or deliver to a collector at the time the waste is collected, obtaining acknowledgement of receipt in the form of a signed copy of the manifest or equivalent documentation by the collector;

7. Include the new manifest with the shipment;

8. Retain copies of original manifests and new manifests and documentation of acknowledgement of receipt as the record of transfer of licensed material required by Parts 30, 40, and 70 of this chapter; and

9. For any shipment or part of a shipment for which acknowledgement is not received within the times set forth in this section, conduct an investigation in accordance with paragraph E of this section.

D. The land disposal facility operator shall:

1. Acknowledge receipt of the waste within one week of receipt by returning a signed copy of the manifest or equivalent documentation to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. The returned copy of the manifest or equivalent documentation shall indicate any discrepancies between materials listed on the manifest and materials received;

2. Maintain copies of all completed manifests or equivalent documentation until the Commission authorizes their disposition; and

3. Notify the shipper (i.e., the generator, the collector, or processor) and the Director of the nearest Commission Regional Office listed in Appendix D of this part when any shipment or part of a shipment has not arrived within 60 days after the advance manifest was received.

E. Any shipment or part of a shipment for which acknowledgement is not received within the times set forth in this section, must:

1. Be investigated by the shipper if the shipper has not received notification of receipt within 20 days after transfer; and

2. Be traced and reported. The investigation shall include tracing the shipment and filing a report with the nearest Commission Regional Office listed in Appendix D of this part. Each licensee who conducts a trace investigation shall file a written report with the appropriate NRC Regional office within 2 weeks of completion of the investigation.

The following amendments are also proposed to other parts of the regulations in this chapter.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

2. The authority citation for Part 19 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

3. Section 19.3 is amended by revising paragraph (e) to read as follows:

§ 19.3 Definitions.

* * * * *

(e) "Restricted area" means an area, access to which is limited by the licensee for the purpose of protecting individuals against undue risks from exposure to radiation and radioactive materials. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

§ 19.13 [Amended]

4. In § 19.13(b) the reference to "§20.401(a) and (c)"is changed to read "§ 20.1106."

5. In § 19.13(d) the reference to "§ 20.405 or § 20.406" is changed to read "§§ 20.1202, 20.1203, 20.1204, or 20.1207."

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

6. The authority citation for Part 30 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

§ 30.51 [Amended]

7. In § 30.51(c)(4) the reference to "§ 20.401(c)" is changed to read "§ 20.1108."

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

8. The authority citation for Part 31 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

§ 31.5 [Amended]

9. In § 31.5(c)(10) the reference to "§§ 20.402 and 20.403" is changed to read "§§ 20.1201 and 20.1202."

§ 31.7 [Amended]

10. In § 31.7(b) the reference to §§ 20.402 and 20.403" is changed to read "§§ 20.1201 and 20.1202."

§ 31.10 [Amended]

11. In § 31.10(b)(1) the reference to "§ 20.301" is changed to read "§ 20.1001."

12. In § 31.10(b)(3) the reference to "§§ 20.301, 20.402, and 20.403" is changed to read "§§ 20.1001, 20.1201, and 20.1202."

§ 31.11 [Amended]

13. In § 31.11(c)(5) the reference to "§ 20.301" is changed to read "§ 20.1001."

14. In § 31.11(f) the reference to "§ 20.301, 20.402, and 20.403" is changed to read "§§ 20.1001, 20.1201, and 20.1202."

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

15. The authority citation for Part 32 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

16. Section 32.51 is amended by revising paragraphs (a)(2)(ii) and (c) to read as follows:

§ 32.51 By product material contained in devices for use under § 31.5; requirements for license to manufacture or initially transfer.

(a) * * *

(2) * * *

(ii) Under ordinary conditions of handling, storage and use of the device, the byproduct material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in any period of one calendar year a dose in excess of 10 percent of the annual limits specified in § 20.201(a) of this chapter; and

* * * * *

(c) In the event the applicant desires that the general licensee under § 31.5 of this chapter, or under equivalent regulations of an Agreement State, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device from installation, the applicant shall include in the application written instruction to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities and the bases for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive a calendar year dose in excess of 10 percent of the annual limits specified in § 20.201(a) of this chapter.

§ 32.61 [Amended]

17. In § 32.61(d) the reference to "§ 20.203(a)" is changed to read "§ 20.901(a)."

§ 32.71 [Amended]

18. In § 32.71(c)(2) the reference to "§ 20.203(a)(1)" is changed to read "§ 20.901(a)."

19. In § 32.71(e) the reference to "§ 20.301" is changed to read "§ 20.1001."

PART 34—LICENSES FOR RADIOGRAPHY AND RADIATION SAFETY REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS

20. The authority citation for Part 34 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

§ 34.29 [Amended]

21. In § 34.29(a) the reference to "§ 20.203(c)(2)(ii), (2)(iii), or (4)" is changed to read "§ 20.601(a)(2), (3), or (4)."

§ 34.41 [Amended]

22. In § 34.41(a) the reference to "§ 20.203(c)(2)" is changed to read "§ 20.601(a) (1), (2), or (3)."

§ 34.42 [Amended]

23. In § 34.42 the reference to "§ 20.204(c)" is changed to read "§ 20.903(b)" and the reference to "§ 20.203(b) and (c)(1)" is changed to read "§ 20.902(a) and (b)."

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

24. The authority citation for Part 40 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

25. Section § 40.34 is amended by revising paragraph (a)(2) to read as follows:

§ 40.34 Special requirements for issuance of specific licenses.

(a) * * *

(2) The application submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one calendar year a radiation dose in excess of 10 percent of the annual limits specified in § 20.201(a) of this chapter; and

* * * * *

§ 40.61 [Amended]

26. In § 40.61(c)(4) the reference to "§ 20.401(c)" is changed to read "§ 20.1108."

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PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

27. The authority citation for Part 50 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

28. Section 50.34 is amended by revising paragraph (f)(2)(viii) to read as follows:

§ 50.34 Contents of applications; technical information.

* * * * *

(f) * * *

(2) * * *

(viii) Provide a capability to promptly obtain and analyze samples from the reactor coolant system and containment that may contain TID 14844 source term radioactive materials without radiation exposures to any individual exceeding 5 rems to the whole-body or 50 rems to the extremeties. Materials to be analyzed and quantified include certain radionuclides that are indicators of the degree of core damage (e.g., noble gases, iodines and cesiums, and non-volatile isotopes), hydrogen in the containment atmosphere, dissolved gases, chloride, and boron concentrations. (II.B.3)

* * * * *

29. In § 50.36a(a) the reference to "§ 20.106" is changed to read "§§ 20.301 and 20.303," and paragraph (b) is revised to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

* * * * *

(b) In establishing and implementing the operating procedures described in paragraph (a) of this section, the licensee shall be guided by the following considerations: Experience with the design, construction and operation of nuclear power reactors indicates that compliance with the technical specifications described in this section will keep average annual releases of radioactive material in effluents and their resultant committed effective dose equivalents at small percentages of the values specified in §§ 20.301 and 20.303 of this chapter and in the operating license. At the same time, the licensee is permitted the flexibility of operation, compatible with considerations of health and safety, to assure that the public is provided a dependable source of power even under unusual operating conditions which may temporarily result in releases higher than such small percentages, but still within the committed effective dose equivalent values specified in §§ 20.301 and 20.303 of this chapter and the operating license. It is expected that in using this operational flexibility under unusual operating conditions, the licensee will exert his best efforts to keep levels of radioactive material in effluents as low as is reasonably achievable. The guides set out in Appendix I provide numerical guidance on limiting conditions for operation for light-water-cooled nuclear power reactors to meet the requirement that radioactive materials in effluents released to unrestricted areas be kept as low as is reasonably achievable.

30. In § 50.72 in paragraph (a), Footnote 1, the reference to "§ 20.205, § 20.403" is changed to read "§ 20.905, § 20.1202," and paragraphs (b)(2)(iv) (A) and (B) are revised to read as follows:

§ 50.72 Immediate notification requirements for operating nuclear power reactors.

* * * * *

(b) * * *

(2) * * *

(iv) (A) Any airborne release that results in concentrations in unrestricted areas that exceed 10 times the applicable reference level concentration specified in Appendix B, Table 2, Column 1 of Part 20 of this chapter, when averaged over a time period of one hour.

(B) Any liquid effluent release that exceeds 10 times the applicable reference level concentration specified in Appendix B, Table 2, Column 2, of Part 20 of this chapter at the point of entry into the receiving waters (i.e., unrestricted area) for all radionuclides except tritium and dissolved noble gases, when averaged over a time period of one hour. (Immediate notifications made under this paragraph also satisfy the requirements of paragraph (a)(2) and (b)(2) of § 20.1202 of this chapter).

31. Section 50.73 is amended by revising paragraphs (a)(2)(viii) (A) and (B) and (ix) to read as follows:

§ 50.73 Licensee event reports.

(a) * * *

(2) * * *

(viii) (A) Any airborne radioactivity release that exceeded 10 times the applicable reference level concentrations specified in Appendix B, Table 2, Column 1, of Part 20 of this chapter, in unrestricted areas, when averaged over a time period of one hour.

(B) Any liquid effluent release that exceeded 10 times the applicable reference level concentrations specified in Appendix B, Table 2, Column 2, of Part 20 of this chapter at the point of entry into the receiving water (i.e., unrestricted area) for all radionuclides except tritium and dissolved noble gases, when averaged over a time period of one hour.

(ix) Reports submitted to the Commission in accordance with paragraph (a)(2)(viii) of this section also meet the effluent release reporting requirements of § 20.1203(a)(5) of this chapter.

* * * * *

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

32. The authority citation for Part 61 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

§ 61.52 [Amended]

33. In § 61.52(a)(6) the reference to "§ 20.105" is changed to read "§§ 20.301 and 20.303."

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

34. The authority citation for Part 70 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5481).

§ 70.51 [Amended]

35. In § 70.51(b)(6) the reference to "§ 20.401(c)" is changed to read "§ 20.1108."

Dated at Washington, DC, this 4th day of December 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Revised NRC Form 4—Occupational Radiation Exposure History

Revised NRC Form 4 is appended for the convenience of those who may wish to comment on the proposed regulations. It is not a part of the regulations. However, the Commission does solicit comments on its content. If the proposed regulations are adopted and codified in Title 10 of the Code of Federal Regulations, the form will be used by licensees, in accordance with § 20.1104, for recording the occupational radiation exposure history of each individual who enters the licensee's restricted or controlled area and is likely to receive or actually receives an annual dose in excess of 30% of the limits in § 20.201(a).

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FORM NRC-4 OCCUPATIONAL RADIATION EXPOSURE HISTORY

1. NAME (Print - Last, First, Middle)	2. SOCIAL SECURITY NO.	3. DATE OF BIRTH	4. NAME, ADDRESS, & LICENSE # OF LICENSEE

			SUMMATION OF DOSE EQUIVALENT						
5. Previous employments involving radiation exposure - list name and address of employer	6. Dates of employment (from - To)	7. Periods of Exposure	8. Lens of Eye (rems)	9. Skin (rems)	10. Extremities (rems)	11. Whole Body (rems)	12. Over Exposures (rems)	13. Planned Special Exposures (rems)	14. Record, Estimate, or Assumed (R,E, or A)
			15. Total	16. Total	17. Total	18. Total	19. Total	20. Total	

21. Remarks

22. CERTIFICATION: I certify that the exposure history listed in Columns 5, 6, and 7 is correct and complete to the best of my knowledge and belief.

Employee Signature _____ Date _____

23. COUNTER CERTIFICATION: I certify that the exposure history and the information on dose is correct and complete to the best of my knowlege and belief.

Employer Signature _____ Date _____

Enclosure 1

[7590-01]

BILLING CODE 7590-01-C

Instructions for Preparation of NRC Form 4

A separate copy of this form, or a clear and legible record containing all of the information required on this form, must be prepared by each licensee of the NRC for each individual who enters the licensee's restricted area under circumstances that might result in the individual receiving a dose requiring provision of individual monitoring devices or services under § 20.502 of "Standards for Protection Against Radiation," 10 CFR Part 20. The requirement for completion of this form is stated in § 20.1104.

The licensee shall make a reasonable effort to obtain: a record of all names and addresses of previous employers during employment periods involving radiation exposure; reports of the individual's previously accumulated occupational dose for each period of employment during the current calendar year; and, prior to permitting an individual to participate in a planned special exposure, all planned special exposures and overexposures received during the lifetime of the individual. The licensee may accept an up-to-date NRC Form 4 signed by the individual and countersigned by an appropriate official of the most recent employer or by the individual's current employer, if the individual is not employed by the licensee. The licensee shall use the dose information to control further exposure of the individual within the limits specified in §§ 20.201, 20.205, 20.206, and 20.207.

Listed below by item are instructions and additional information pertinent to completing this form:

Item 1. Self-explanatory.

Item 2. Self-explanatory, except that if the individual has no social security number the word "None" shall be inserted.

Item 3. Self-explanatory.

Item 4. Self-explanatory.

Item 5. List the name and address of each previous employer for all previous work involving occupational exposure to radiation. Start with the first employer and work forward in chronological order to the most recent employer. For periods of self-employment, insert the words "Self-employed."

Item 6. Give the dates of each employment listed in Item 5.

Item 7. List the periods during which occupational exposure to radiation occurred.

Item 8. Enter the dose equivalent to the lens of the eye. The entries shall be for each period of employment during the current calendar year only. The dose entered for the lens of the eye is the eye dose equivalent, unless the licensee evaluates the dose to the lens through whatever shielding is present, or unless the eyes are protected with shields having a tissue equivalent thickness of at least 700 mg/cm.^{2} In the latter case, the dose entered for the lens of the eye is the deep dose equivalent. Do not include the dose received during planned special exposures.

Item 9 and 10. Enter the dose equivalent to the skin and extremities, respectively. The entries shall be for each period of employment during the current calendar year only. The dose to the skin and extremities is the shallow dose equivalent, and shall be averaged over 10 cm ^{2} in the region of highest exposure. Do not include the dose received during planned special exposures.

Item 11. Enter the sum of the (whole-body, external) deep dose equivalent and the committed effective dose equivalent for each period of employment during the current calendar year. (The licensee may assess deep dose equivalent through a tissue equivalent absorber of 300 mg/cm^2 as for eye dose equivalent.) The licensee shall use the data obtained from the records of previous occupational exposures of the individual or, in the absence of records, in accordance with the provisions in § 20.1104. The licensee may use written estimates of dose provided to an individual at termination of employment pursuant to § 19.13(e) until the finally determined personnel monitoring data are available. The licensee shall include dose received as a result of over-exposures, accidents, and emergencies, but shall not include dose received during planned special exposures.

Item 12. Enter that portion of the summation of dose equivalent for each body part that has exceeded the annual limit for that body part in any year during the lifetime of the individual.

Item 13. Enter the summation of dose equivalent received during planned special exposures. Separate entries shall be made for whole body (WB), lens of eye (Eye), skin (Skin), and extremities (Ext). Note that the provisions for planned special exposures do not apply to the intake of radionuclides.

Item 14. Enter whether the data on doses were obtained from records (enter "R"), estimates of dose (enter "E") provided at termination of very recent employment in the absence of the finally determined dose, or assumed (enter "A") in the absence of records in accordance with § 20.1104.

Item 15. Self-explanatory.

Item 16. Self-explanatory.

Item 17. Self-explanatory.

Item 18. Self-explanatory.

Item 19. Self-explanatory.

Item 20. Self-explanatory.

Item 21. This space should be used to record any unusual or limiting information about the data recorded on the form. This should include data on intake of radionuclides prior to (effective date); particularly the kinds or quantities of radionuclides listed in Table 3, § 20.205. It could include notation of contribution to dose from multiple employments during a period, or dose received by the individual as a patient during medical diagnosis and therapy.

Item 22. The employee must certify that the information in Items 5, 6, and 7 is accurate and complete to the best of the individual's knowledge. The date is the date of the individual's signature.

Item 23. This certification may be used to implement the provision for acceptance of an up-to-date NRC Form 4 when countersigned by an appropriate official of the most recent or current employer (see § 20.1104(d)).

Revised NRC Form 5—Current Occupational Radiation Exposure

Revised NRC Form 5 is appended for the convenience of those who may wish to comment on the proposed regulations. It is not a part of the regulations. However, the Commission does solicit comments on its content. If the proposed regulations are adopted and codified in Title 10 of the Code of Federal Regulations, the form will be used as a current record of occupational radiation doses for each individual for whom personnel monitoring is required by § 20.502.

BILLING CODE 7590-01-M

NRC FORM 5
10 CFR 20

CURRENT OCCUPATIONAL RADIATION EXPOSURE
(See Instructions on Back)

1. NAME (Last, First, Middle)	2. SOCIAL SECURITY NO.	3. DATE OF BIRTH (Month, Day, Year)	4. NAME, ADDRESS, AND LICENSE NO. OF LICENSEE

	EXTERNAL DOSE EQUIVALENT					INTERNAL EFFECTIVE DOSE EQUIVALENT				SUMMATION OF EFFECTIVE DOSE EQUIVALENT		
5. Monitoring Period (From - To)	6. Lens of Eye (rems)	7. Skin (rems)	8. Extremities (rems)	9. Whole Body (rems)	10. Planned Special Exposures (rems)	11. Radionuclides (Name & Class)	12. Intake or Organ Burden (uCi)	13. % of Annual Limit	14. Committed Effective Dose Equivalent (rems)	15. For Monitoring Period (rems)	16. For Calendar Year (rems)	17. Over Exposures (rems)

18. Remarks

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Enclosure 1

Instructions for Preparation of NRC Form 5

The preparation and safekeeping of this form, or a clear and legible record containing all the information required on this form, is required by § 20.1106 of "Standards for Protection Against Radiation," 10 CFR Part 20, as a current record of occupational radiation doses. Such a record must be maintained for each individual for whom personnel monitoring is required by § 20.502.

Listed below by item are instructions and additional information pertinent to completing this form.

Item 1. Self-explanatory.

Item 2. Self-explanatory, except that if an individual has no social security number the word "None" shall be inserted.

Item 3. Self-explanatory.

Item 4. Self-explanatory.

Item 5. Enter the specific dates that the individual monitoring measurement was initiated and terminated. Entries shall be for periods of time not exceeding 1 calendar quarter. For individuals under continuous monitoring, doses received over a period less than a calendar quarter need not be separately entered on the form provided that the licensee maintains a current record of the dose received by the individual.

Item 6. Enter the external dose equivalent recorded for the lens of the eye. The dose to the lens of the eye is the eye dose equivalent, unless the licensee evaluates the dose to the lens through whatever shielding is present, or unless the eyes are protected with shields having a tissue equivalent thickness of at least 700 mg/cm^2. When the eyes are protected with shields having at least 700 mg/cm^2 the dose to the lens of the eye is the deep dose equivalent. Do not include the dose received during planned special exposures.

Items 7 and 8. Enter the external dose equivalent recorded for the skin and for the extremities, respectively. The dose to the skin and the extremities is the shallow dose equivalent, and shall be averaged over 10 cm^2 in the region of the highest exposure. Do not include the dose received during planned special exposures.

Item 9. Enter the external deep dose equivalent to the whole body. The licensee may assess deep dose equivalent through a tissue equivalent absorber of 300 mg/cm^2 as for eye dose equivalent. Include any dose received as a result of overexposures, accidents, and emergencies, but do not include doses received during planned special exposures.

Item 10. Enter the dose equivalent received during planned special exposures. Separate entries shall be made for whole body ("WB"), lens of the eye ("Eye"), skin ("Skin"), and extremities ("Ext"). Note that the provisions for planned special exposures do not apply to the intake of radionuclides.

Item 11. Identify the name and lung clearance class of each radionuclide to which the individual has been exposed. If the licensee does not choose to identify and determine the intake of each individual radionuclide in a mixture, or if the individual has been exposed to an unknown mixture of radionuclides, enter "Unknown Mixture." If the exact composition or the respective concentrations of radionuclides in a mixture is unknown, the licensee may treat the total activity taken into the body in terms of that radionuclide having the most limiting ALI and enter "Mixture" and the identity of the controlling radionuclide.

Item 12. Enter the best assessment of the amount of each radionuclide, in μCi, taken into the body of the individual during the monitoring period. If the licensee has used the provisions for mixtures in Item II, enter the total activity taken into the body. It may be assumed that exposure to uniform concentrations (DAC) of a radionuclide listed in Appendix B, 10 CFR Part 20, for 2,000 hours (40 hours per week for 50 weeks per years, using an inhalation rate of 2×10^4 ml/minute) will result in an intake equal to the ALI. Exposure at uniform DAC for fractions of the 2,000 hours may be assumed to result in proportional fractions of the intake limit. If the provisions of § 20.205 for controlling exposures involving radionuclides with very long effective half-lives are used, enter the radionuclide burden in each significantly exposed organ as determined by bioassay. In this case, the calculational techniques, models, and any specific information on the physical and biochemical properties of the radionuclides involved and their behavior in the individual shall be specifically referenced or documented in the exposed individual's record.

Item 13. Calculated the percentage of the ALI represented by the intake of each radionuclide (Item 12) during the monitoring period and enter the sum of the percentages in Item 13. If one of the provisions for mixtures in Item II is used, calculate the percentage of the ALI listed for the most limiting radionuclide present in the mixture, or the ALI for Unknown Mixtures, listed in Appendix B, 10 CFR Part 20, as appropriate for the chosen provision. If the provisions of § 20.205 are used, enter the sum of the precentages of the annual dose limits represented by the weighted annual dose equivalents to each of the significantly exposed organs or tissues.

Item 14. Multiply the percentage value in Item 13 by 5 rems and enter the product in Item 14. This assumes that an intake equivalent to one ALI will result in a committed effective dose equivalent of 5 rems. If the provisions of § 20.205 are used, enter both the annual effective dose equivalent and the 50-year committed effective dose equivalent assoicated with the intake.

Item 15. Enter the sum of the external whole body deep dose equivalent (Item 9) and the internal committed effective dose equivalent (Item 14) received by the individual during the current monitoring period. If the provisions of § 20.205 are used also enter the sum of the external whole body deep dose equivalent and the internal effective dose equivalent.

Item 16. Add the effective dose equivalent summation (Item 15) for each monitoring period to the previous summation of effective dose equivalent recorded for the year and enter the new summation in Item 16.

Item 17. Enter the portion of the effective dose equivalent entered in Item 16 that exceeds the 5-rem annual limit.

Item 18. This space should be used to record any unusual or limiting information about the data recorded on the form. This could include data on intake of radionuclides prior to (effective date), notation of contribution to dose from multiple employments during a period, dose received by the individual as a patient during medical diagnosis and therapy or dose to the embryo/fetus of a declared pregnant woman.

[FR Doc. 85-29249 Filed 12-19-85; 8:45 am]

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Friday
December 20, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; New Publication Procedures; Notices

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arkansas:	
AR85–4045	Oct. 18, 1985.
Florida:	
FL85–3038	July 12, 1985.
Massachusetts:	
MA85–3013	Mar. 15, 1985.
MA85–3014	Do.
MA85–3015	Do.
Nevada:	
NV85–5014	June 29, 1984
NV84–5014	June 8, 1984.
Oklahoma:	
OK85–4051	Nov. 29, 1985
OK85–4052	Do.
Pennsylvania:	
PA84–3004	Feb. 17, 1984.
Rhode Island:	
RI84–3042	Nov. 30, 1984.
Washington:	
WA85–5038	Oct. 4, 1985.

Signed at Washington, DC this 13th day of December 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. AR85-4045 - MOD NO. 3 (50FR42334 October 10, 1985) Clark, Garland & Hot Springs Cos. Arkansas	Basic Hourly Rates	Fringe Benefits
OMIT:		
PLUMBERS/PIPEFITTERS:		
Within 10 miles of Garland Co. Courthouse	$13.07	$1.98
Over 10 miles from Garland Co. Courthouse	13.97	1.98
ADD:		
PLUMBERS/PIPEFITTERS:		
Commercial buildings, schools, colleges, Universities, Motels, Hotels, Banks, All two (2) stories and under; shopping centers, super-markets, malls, fast foods, theaters and churches, warehouses one (1) story, hospitals, one (1) and two (2) stories, hospital additions and remodels of $500,000.00 or less	$12.07	$1.98
All other work with the exception of that listed above	14.37	1.98

DECISION NO. FL85-3038- MOD. #1 (July 12,1985 in 50 FR 28505) Dade County, Florida	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PLUMBERS:		
Commercial Buildings of five stories or less, except hospitals, manufacturing plants, Miami International Airport;	$11.94	$3.41
SPRINKLER FITTERS	16.20	3.48

DECISION NO. MA85-3015 - MOD. #4 (50 FR 10500 - March 15, 1985) Berkshire, Franklin, Hampden and Hampshire Counties, Massachusetts	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS (BUILDING)		
Group 1	13.35	3.70
Group 2	13.60	3.70
Group 3	14.10	3.70
Group 4	14.10	3.70
Group 5	14.35	3.70
HEAVY & HIGHWAY		
Area 1		
Class I	13.35	3.70
Class II	13.60	3.70
Class III	14.10	3.70
Class IV	14.35	3.70
Area 2:		
Class I	14.05	3.70
Class II	14.25	3.70
Class III	14.80	3.70
Class IV	15.95	3.70
ADD:		
LABORERS		
HEAVY & HIGHWAY		
Area 1		
Class 5		
Flaggers	9.75	3.70

DECISION NO. MA85-3013 MOD #4 (50 FR 10587-March 15, 1985) Essex, Suffolk, Middlesex, Norfolk, Bristol, Plymouth, Barnstable, Dukes, Nantucke Counties, Massachusetts	Basic Hourly Rates	Fringe Benefits
Change:		
LABORERS (BUILDING):		
Class I	14.05	3.70
Class II	14.30	3.70
Class III	14.80	3.70
Class IV	15.05	3.70
Class V	14.80	3.70
LABORERS (WRECKING):		
Area 1:		
Class I	10.70	3.55
Class II	13.80	3.55
Class III	13.90	3.55
Class IV	14.05	3.55
Class V	14.30	3.55
Area 2:		
LABORERS (HEAVY & HIGHWAY):		
Class I	14.05	3.70
Class II	14.25	3.70
Class III	14.80	3.70
Class IV	15.95	3.70
Tunnels, caisson and Cylinder Work in Compressed Air:		
Class V-A	19.83	3.70
Class V-B	21.33	3.70
Class V-C	21.50	3.70
Class V-D	21.57	3.70
Class V-E	22.07	3.70
Free Air Operation:		
Shield driven and liner plate in free air:		
Class VI-A	15.35	3.70
Class VI-B	14.50	3.70
cleaning concrete and caulking tunnel (both new and existing);		
Class VI-C	14.50	3.70
Class VI-D	14.825	3.70

DECISION NO. MA85-3013, CONT'D:	Basic Hourly Rates	Fringe Benefits
Rock shaft, concrete lining of same and tunnel in free air:		
Class VI-E	14.25	3.70
Class VI-F	14.40	3.70
Class VI-G	14.50	3.70
Class VI-H	15.35	3.70
LABORERS (OPEN AIR CAISSONS, UNDERPINNING AND TEST BORING INDUSTRIES):		
Open Air Caisson, Underpinning Work and Boring Crew:		
Class I-A	14.05	3.70
Class I-B	14.80	3.70
Test Boring:		
Class II-A	14.05	3.70
Class II-B	14.92	3.70
Omit:		
Laborers		
Wrecking		
Group 6		
Asbestos Removers	14.55	3.00
Add:		
Laborers		
Wrecking		
Group 7	14.80	3.55

DECISION NO. MA85-3014 - MOD. #4 (50 FR 10594 - March 15, 1985) Worcester County, Massachusetts	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS:		
Building Construction:		
Group 1	14.05	3.70
Group 2	14.30	3.70
Group 3	14.80	3.70
Group 4	15.05	3.70
Group 5	14.80	3.70
Wrecking:		
Group 1	10.70	3.55
Group 2	13.80	3.55
Group 3	13.90	3.55
Group 4	14.05	3.55
Group 5	14.30	3.55
Group 6	14.55	3.55
HEAVY & HIGHWAY CONSTRUCTION		
Group 1	14.05	3.70
Group 2	14.25	3.70
Group 3	14.80	3.70
Group 4	15.04	3.70
Tunnels, Caisson and Cylinder Work in Compressed Air:		
Group 5-A	19.83	3.70
Group 5-B	21.33	3.70
Group 5-C	21.50	3.70
Group 5-D	21.57	3.70
Group 5-E	22.07	3.70
Free Air Operation: Sheild driven and Liner Plate in Free Air:		
Group 6-A	15.35	3.70
Group 6-B	14.50	3.70
Cleaning Concrete and Caulking Tunnel (Both new and existing);		
Group 6-C	15.40	3.70
Group 6-D	14.825	3.70
Rock shaft, Concrete Lining of same and Tunnel in Free Air:		
Group 6-E	14.25	3.70
Group 6-F	14.40	3.70
Group 6-G	14.50	3.70
Group 6-H	15.35	3.70

DECISION NO. MA85-3014, CONT'D:	Basic Hourly Rates	Fringe Benefits
OPEN AIR CAISSON, UNDERPINNING AND TEST BORING INDUSTRIES:		
Open Air Caisson, Underpining Work and Boring Crew		
Group 1-A	14.05	3.70
Group 1-B	14.80	3.70
Test Boring:		
Group 2-A	14.05	3.70
Group 2-B	14.92	3.70
OMIT		
LABORERS		
Wrecking:		
Group 6		
Asbestos Removers	14.55	3.00
ADD:		
LABORERS		
Wrecking:		
Group 7		
Asbestos Removers	14.80	3.55

DECISION NO. NV84-5017 MOD #6 (49 FR 26874-June 29, 1984) Washoe County, Nevada	Basic Hourly Rates	Fringe Benefits
Change:		
Power Equipment Operators (Except Piledriving and Steel Erection):	Area 1	Area 2
Group 1-A	14.64	16.14
Group 2	15.17	16.67
Group 3	15.44	16.94
Group 4	16.18	17.68
Group 5	16.48	17.98
Group 6	16.65	18.15
Group 7	16.90	18.40
Group 8	17.49	18.99
Group 9	17.81	19.31
Group 10	18.16	19.66
Group 10-A	18.35	19.85
Group 11	18.59	20.09
Group 11-A	20.23	21.73
	Area 3	Area 4
Group 1-A	16.64	17.64
Group 2	17.17	18.17
Group 3	17.44	18.44
Group 4	18.18	19.18
Group 5	18.48	19.48
Group 6	18.65	19.65
Group 7	18.90	19.90
Group 8	19.49	20.49
Group 9	19.81	20.81
Group 10	20.16	21.16
Group 10-A	20.35	21.35
Group 11	20.59	21.59
Group 11-A	22.23	23.23
Fringe Benefits: $7.29		

DECISION NO. NV84-5017 (Cont)	Basic Hourly Rates	Fringe Benefits
Piledriving:		
Group 1	15.61	7.29
Group 1-A	16.16	7.29
Group 1-B	16.47	7.29
Group 2-A	16.47	7.29
Group 2-B	17.33	7.29
Group 2-C	17.67	7.29
Group 2-D	17.91	7.29
Group 3	18.14	7.29
Group 3-A	18.33	7.29
Group 4	19.70	7.29
Group 5	19.98	7.29
Group 6	21.77	7.29
Steel Erection:		
Group 1	16.36	7.29
Group 2	16.94	7.29
Group 3	18.58	7.29
Group 4	18.79	7.29
Group 4-A	19.30	7.29
Group 5	20.09	7.29
Group 6	20.77	7.29
Group 7	21.25	7.29
Group 8	21.71	7.29
Group 9	23.37	7.29

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DECISION NO. NV84-5014
MOD #16
(49 FR 20988-June 8, 1984)
Statewide (does not include the test Range, or Building construction in Churchill, Lyon and Mineral Counties, or Highway construction in Douglas County), Nevada

Change:

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Remaining Counties:		
Power Equipment Operators Execpt Piledriving and Steel Erection:	Area 1	Area 2
Group 1-A	14.64	16.14
Group 2	15.17	16.67
Group 3	15.44	16.94
Group 4	16.18	17.68
Group 5	16.48	17.98
Group 6	16.65	18.15
Group 7	16.90	18.40
Group 8	17.49	18.99
Group 9	17.81	19.31
Group 10	18.16	19.66
Group 10-A	18.35	19.85
Group 11	18.59	20.09
Group 11-A	20.23	21.73
	Area 3	Area 4
Group 1-A	16.64	17.64
Group 2	17.17	18.17
Group 3	17.44	18.44
Group 4	18.18	19.18
Group 5	18.48	19.48
Group 6	18.65	19.65
Group 7	18.90	19.90
Group 8	19.49	20.49
Group 9	19.81	20.81
Group 10	20.16	21.16
Group 10-A	20.35	21.35
Group 11	20.59	21.59
Group 11-A	22.23	23.23
FRINGE BENEFITS: $7.29		

DECISION NO. NV84-5014(Cont.)

	Basic Hourly Rates	Fringe Benefits
Piledriving:		
Group 1	15.61	7.29
Group 1-A	16.16	7.29
Group 1-B	16.47	7.29
Group 2-A	16.47	7.29
Group 2-B	17.33	7.29
Group 2-C	17.67	7.29
Group 2-D	17.91	7.29
Group 3	18.14	7.29
Group 3-A	18.83	7.29
Group 4	19.70	7.29
Group 5	19.98	7.29
Group 6	21.77	7.29
Steel Erection:		
Group 1	16.36	7.29
Group 2	16.94	7.29
Group 3	18.58	7.29
Group 4	18.79	7.29
Group 4-A	19.30	7.29
Group 5	20.09	7.29
Group 6	20.77	7.29
Group 7	21.25	7.29
Group 8	21.71	7.29
Group 9	23.37	7.29

DECISION NO. RI84-3042 - MOD. #11
(49 FR 47171 - November 30, 1984)
Statewide, Rhode Island

CHANGE:

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Flagmen (Building Construction) Laborers; Carpenters Tenders; Cement Finisher Tenders; Mason Tenders; Scaffold Erectors & Wrecking Laborers	10.50 / 14.95	2.80
Asphalt Rakers; Adzeman; pipe-trench Bracers; Demolition Burners; Chain Saw Ops.; Fence & Guard Rail Erectors; Setters of Metal Forms for Roadways; Pipelayers Riprap & Dry Stonewall Builders; Highway Stone Spreaders, Pneumatic Tools Ops., Wagon Drill Ops., Tree Trimmers; Barco Type Jumping tampers; Scaffold Builders; Mortar Mixers	15.25	■.■0
Pre-cast Floor & Roof Plant Erectors	15.45	■.■0
Air Track Ops.; Block Pavers; Rammers; & Curb Setters	15.70	■.■0
Blasters; Powdermen	16.95	2.■0
LABORERS (Heavy & Highway Construction):		
Laborers; Carpenters Tenders; Cement Finishers, Tenders; Mason Tenders; Scaffold Erectors & Wrecking laborers	14.95	2.80
Concrete & Power Buggy Ops.; Concrete Saw Ops Demolition Burners; Fence & Guard Rail Erectors; Highway Stone Spreaders; Mason Tenders; Mechanical Grinder Ops.; Mortar Mixers; Pipe Trench Bracers;		

DECISION NO. RI84-3042 (Cont'd)

	Basic Hourly Rates	Fringe Benefits
Pneumatic Tool Ops.; Riprap & Dry Stone Wall Builders; Scaffold Erectors; Setters of Metal Forms for Roadways; Wagon Drill Ops.; Wood Chipper Ops.	15.20	2.80
Air Track Drill Ops.; Brick Pavers; Block Pavers; Rammers; Curb Setters	16.20	2.80
Blaster & Powdermen	16.95	2.80

DECISION NO.: OK85-4051 MOD NO.: 2 - (50FR49328- November 29, 1985	Basic Hourly Rates	Fringe Benefits
Alfalfa, Beckham, Blaine, Caddo, Canadian, Carter, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Lincoln, Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne, Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods, & Woodward Counties Oklahoma.		
ADD:		
SOFT FLOOR LAYERS	14.60	2.03
CHANGE:		
PLUMBERS - AREA I:		
Mechanical contracts under $150,000.00	14.00	2.475
Mechanical contracts of $150,000.00 & over	15.56	2.475
LABORERS: AREA III		
Group I	7.50	1.31
Group II	8.00	1.31

DECISION NO.: OK85-4052 MOD. NO. 2 - (50FR49332 - November 29, 1985)	Basic Hourly Rates	Fringe Benefits
Adair, Atoka, Bryan, Coal, Cherokee, Craig, Creek, Delaware, Haskell, Hughes, Leflore, Latimer, McIntosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Pittsburg, Pushmataha, rogers, Tulsa, Sequoyah, Wagoner, and Washington Cos., Oklahoma		
CHANGE:		
ELEVATOR CONSTRUCTORS:		
Area I		
Journeymen	$15.05	$3.29+a
Helpers	70%JR	3.29+a
Probationary Helpers	50%JR	

DECISION NO. PA84-3004 - MOD. #8 (49 FR 6209 - February 17, 1984) Armstrong, Beaver, Butler, Fayette, Indiana, Washington, Allegheny & Westmoreland Counties, Pennsylvania.	Basic Hourly Rates	Fringe Benefits
OMIT:		
LABORERS: Zones 1, II & III		
ADD:		
LABORERS		
Class 1	12.75	23.6%
Class 2	12.90	23.6%

LABORERS CLASSIFICATION DEFINITIONS

Class 1 - COMMON LABORER:

Building laborer, Brick removal for alterations, carryable pumps, West Brick Buggy or similar , walk behind forklift or similar (non self-propelled), stripper and mover of forms as follow - cement masons and footers, tool room man, all material conveyors (regardless of power used, including starting and stopping), pouring of mortar or aggregate into blocks or voids.

Class 2 - SKILLED LABORER:

Air tract helper, asbestos removal, west brick buggy or similar (self propelled, power wheelbarrows and buggies, walk behind forklift or similar (self-propelled), wagon drill helper, drill runner, drill runner's helper (including drill-mounted on truck, track or similar), blaster's helper, all operators of compacting equipment, pipelayer, burner, jackhammer man - concrete buster, vibrator operator, clay spade and/or similar, concrete saw operator, hod carrier, scaffold builder, air track operator, bell and bottom man on furnaces and stacks, grout machine feeder and pump operator, gunnite machine operator or similar, gunnite machine potman or similar, lancer helper, mortar mixer, mortar mixer machine (regardless of power used, including starting and stopping), wagon drill operator, gunnite nozzleman, laser cleaner, blaster, lancer.

DECISION NO. WA85-5038 - Mod#4 (50 FR 40782 - October 4, 1985) Adams, Asotin, *Benton,Columbia *Douglas, Ferry, *Franklin, Garfield, Grant, Lincoln, *Okanogan, Pend Oreille, Stevens Walla Walla & Whitman Counties, Washington	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ASBESTOS WORKERS	$20.15	$3.53
SPRINKLER FITTERS	19.17	3.40
OMIT:		
TRUCK DRIVERS AREA 1: Omit rates and Classifications.		
ADD:		
TRUCK DRIVERS:		
Area 1: D.O.E. Hanford Site in Benton and Franklin Counties:		
Group 1	12.75	4.10
TRUCK DRIVERS (Cont'd):		
Group 2	14.94	4.10
Group 3	14.98	4.10
Group 4	15.04	4.10
Group 5	15.13	4.10
Group 6	15.34	4.10
Group 7	15.38	4.10
Group 8	15.44	4.10
Group 9	15.48	4.10
Group 10	15.59	4.10
Group 11	15.63	4.10
Group 12	15.94	4.10
Group 13	16.08	4.10
Group 14	16.24	4.10
Group 15	16.38	4.10

TRUCK DRIVERS CLASSIFICATIONS

Area 1:

Group 1: Escort Driver or Pilot car tender and swamper. Pick up hauling employees or material

Group 2: Flat Bed Truck, single rear axle; Fork Lift, 3,000 lbs. and under; Leverperson loading Trucks at Bunkers; Seeder and Mulcher; Stationary Fuel Operator; Team Driver; Tractor (small rubber tired Pulling trailer or similar equipment); Water Tank Truck, 1,800 gallons

Group 3: Bus Driver or Employeehaul Driver; Flat Bed Truck, dual rear axle; Power Boat hauling employees or material; Tireperson No. 1

Group 4: Buggy Mobile and similar; Bulk Cement Tanker; Oil Tank Driver; Power Operated Sweeper; Straddle Carrier (Ross Hyster and similar); Transit Mixers and Trucks hauling concrete (3 yds. and under); Trucks, side, end, and bottom dump (under 6 yds.); Water Tank Truck, 1,801 - 4,000 gallons

Group 5: Auto Crane, 2,000 lbs. capacity; Bulk Cement Spreader; Dumptor (6 yds. and under); Flat Bed Truck (with hydraulic system); Fork Lift (3,001 - 16,000 lbs.); Rubber-tired Tunnel Jumbo; Scissor Truck; Slurry Truck Driver; Transit Mixers and Trucks, hauling concrete over 3 yd to 6 yd; Wrecker and Tow Trucks; Fuel Truck Driver; Steam Cleaner and Washer; Water tank truck 4,001 to 6,000 gallons

Group 6: Service Greaser; Tireperson No. 2; Truck, side, end, and bottom Dump (over 6 yds. to 12 yds.); Oil Distributor Driver (road, Boot Person, Lever Person, Tender); Burner, cutter, and welder

DECISION NO. WA85-5038 (Cont'd):	Basic Hourly Rates	Fringe Benefits

TRUCK DRIVERS CLASSIFICATIONS (Cont'd)

Group 7: A-Frame; Water Tank Truck, 6,001 to 8,000 gallons

Group 8: Dumpter (over 6 yards); Transit Mixers and Trucks hauling concrete (6 yards to 10 yards); Trucks, side, end, and bottom dump (over 12 yards including 20 yards); Semi Truck and Trailer, Lowboy 50 tons and under

Group 9: Low Boy (over 50 ton); Water Tank Trucks, 8,001 to 10,000 gallons; Tractor with Steer Trailer; Truck mounted Crane with load bearing surface, either mounted or pulled

Group 10: Transit Mixer and Trucks hauling concrete (10 yds. to 15 yds.); Trucks, side, end, and bottom dump (over 20 yds. including 30 yds.); Water Tank Truck (10,001 to 12,000 gallons); Fork Lift, over 16,000 lbs.; Flaherty Spreader Box Driver; Flow Boye; Semi-end Dumps

Group 11: Mechanic, Field

Group 12: Tournarocker, D.W.'s and similar, with 2 or 4 wheel power tractor with trailer, gallonage or yardage scale, whichever is greater; Transit Mixers and Trucks hauling concrete (15 yds. to 20 yds.); Trucks, side, end, and bottom dump (over 30 yds. to 40 yds.); Water Tank Truck, 12,001 to 14,000 gallons

Group 13: Transit Mixers and Trucks hauling concrete (over 20 yds.); Trucks, side, end, and bottom dump (over 40 yds. to 50 yds.)

Group 14: Trucks, side, end, and bottom dumps (over 50 yds. to 100 yds.)

Group 15: Helicopter Pilot hauling employees or material; Trucks, side, end, and bottom dump (over 100 yards)

Truck - Tractor pulling 2 trailers - add $.10 yardage scale for second trailer, 3 trailers - add $.20 for third trailer.

Truck pulling farm, tilt, drop, utility and pole trailer (except semi-truck or low boy) - add $.15 yardage scale

Winch Truck - takes classification of Truck on which Winch is mounted

BILLING CODE 4510-27-C

[FR Doc. 85-29966 Filed 12-19-85; 8:45 am]

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice of New Publication Procedures

Note.—This document was originally published on Dec. 6, 1985 at 50 FR 501.16. It is reprinted in this issue at the request of the Department of Labor.

Beginning January 3, 1986, general wage determinations issued under the Davis-Bacon and Related Act will no longer be published in the **Federal Register**. Instead, notices of wage determinations issued will be published in the **Federal Register**. General wages determinations will be published in full in the Government Printing Office (GPO document entitled *"General Wage Determinations Issued Under The Davis-Bacon And Related Acts."* This change is being made to enhance the availability and use of Davis-Bacon wage determinations information while lowering Federal Government costs.

The GPO publication *"General Wage Determinations Issued Under The Davis-Bacon and Related Acts"* is organized into three volumes—East, Central, and West. Subscriptions may be purchased for one, two, or all three volumes (at a cost of $227 per volume) from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783–3283.

This publication is to be available for examination at all 60 Regional Government Depository Libraries and many other of the 1,400 Government Depository Libraries across the country. The State covered by each volume are as follows:

Volume I—East

Alabama	North Carolina
Connecticut	Pennsylvania
Delaware	Rhode Island
Florida	South Carolina
Georgia	Tennessee
Kentucky	Vermont
Maine	Virginia
Maryland	West Virginia
Massachusetts	District of Col.
Mississippi	Canal Zone
New Hampshire	Puerto Rico
New Jersey	Virgin Islands
New York	

Volume II—Central

Arkansas	Missouri
Illinois	Nebraska
Indiana	New Mexico
Iowa	Ohio
Kansas	Oklahoma
Louisiana	Texas
Michigan	Wisconsin
Minnesota	

Volume III—West

Alaska	Nevada
Arizona	North Dakota
California	Oregon
Colorado	South Dakota
Hawaii	Utah
Idaho	Washington
Montana	Wyoming

On or about January 1 of each year, an annual edition will be issued that includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers and libraries providing any modifications or supersedeas waged determinations issued. Each volume's annual and weekly editions will be printed in looseleaf format, thereby facilitating the orderly and continuous availability of a comprehensive listing of up-to-date general wage determinations.

Susan R. Meisinger,

Deputy Under Secretary for Employment Standards.

Herbert J. Cohen,

Deputy Administrator, Wage and Hour Division.

[FR. Doc. 85–29402 Filed 12–5–85; 8:45 a.m.]

BILLING CODE 4510-27-M

federal register

Friday
December 20, 1985

Part IV

Department of the Interior

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Proposed rulemaking.

SUMMARY: The proposed rule establishes procedures for assessing damages to natural resources from a discharge of oil or a release of a hazardous substance and compensable under either the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 *et seq.*, or under the Clear Water Act (CWA), 33 U.S.C. 1251 *et seq.* (also known as the Federal Water Pollution Control Act). Responsibility for preparation of this proposed rule was delegated by the President to the Department of the Interior in Executive Order 12316, August 14, 1981, 46 FR 42237.

The proposed rule is for the use of authorized Federal and State officials referred to in CERCLA as "trustees" for natural resources. Federal trustees are those managemnt agencies designated in subpart G of the National Oil and Hazardous Substances Contingency Plan 40 CFR Part 300, and State trustees are authorized representatives of States who may bring claims under sections 107 and 111 of CERCLA. The procedures in the proposed rule will enable authorized officials to perform damage assessments that when performed by Federal officials will be given the weight of a rebuttable presumption pursuant to section 111(h) of CERCLA in court actions or administrative proceedings when seeking compensation for injuries to natural resources. Section 301(c) of CERCLA requires the promulgation of two types of regulations, simplified "type A" procedures and alternative "type B" procedures to be used in individual cases. This proposed rule consists of the alternative methodologies referred to as the "type B" procedures. This proposed rule does not provide guidance for simplified assessments referred to as the "type A" procedures. The "type A" procedures will be proposed in a future Notice of Proposed Rulemaking on or before April 4, 1986.

The proposed rule does not include procedures for the filing of claims for natural resource damages against the Hazardous Substances Response Trust Fund (Superfund). Rules for that purpose have been promulgated by the Environmental Protection Agency (EPA) on November 30, 1985, to be codified at 40 CFR Part 306.

DATE: Comments should be submitted by February 3, 1986. Comments received on or before the above date will be considered in the decisionmaking process on the final rulemaking. The short comment period is required because of the court ordered deadline that requires publication of the final rule by April 22, 1986.

ADDRESS: Comments should be sent to: Keith Eastin, Associate Solicitor, CERCLA 301 Project Director, Room 4354, Department of the Interior, 1801 "C" St. NW, Washington, DC 20240.

Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:
Keith Eastin, (202) 343–5757;
Sheryl Katz, (202) 343–1301;
Alison Ling, (202) 343–1301.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

Section 301(c) of CERCLA requires the promulgation of rules for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and of section 311(f) (4) and (5) of the CWA. Section 301(c) states:

> (c)(1) The President, acting through Federal officials designated by the National Contingency Plan published under section 105 of this Act, shall study and, not later than two years after the enactment of this Act, shall promulgate regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release of oil or a hazardous substance for the purpose of this Act and section 311(f)(4) and (5) of the Federal Water Pollution Control Act.
>
> (2) Such regulations shall specify (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (b) alternative protocols for conducting assessments in individual cases to determine the type and extent of short-and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.
>
> (3) Such regulations shall be reviewed and revised as appropriate every two years.

The proposed rule will be used by Federal and State authorized officials acting as trustees of natural resources to assess damages to natural resources for purposes of sections 107(a) and 111 (a) and (d) of CERCLA and section 311 (f) (4) and (5) of the CWA. when injuries occur to natural resources resulting from a discharge of oil or release of a hazardous substance, the authorized officials of the Federal or State agency acting in its role of trustee may seek damages for those injuries either by legal actions against the parties responsible or, in the case of hazardous substances, by seeking restoration costs from the Hazardous Substance Response Trust Fund.

Section 107 (a) establishes liability for "damages for, injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release." This language is the basis for seeking damages from responsible parties. Section 107(f) describes the role of a trustee and authorizes Federal and State agencies to assume that role. Sections 111 (a) and (b) permit the payment of claims asserted for injury, destruction, or loss of natural resources, including the cost for damage assessment from the Superfund. Section 311(f)(4) of the CWA establishes responsible party liability for costs incurred by the Federal or State governments in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or hazardous substances.

Section 301(c) of CERCLA specifies two types of procedures to be developed. The type A procedures are to be standard procedures for simplified assessments requiring minimal field observation. The type B procedures are to include alternative methodologies for conducting assessments in individual cases.

B. Regulatory Background

The proposed rule is being developed under a court imposed deadline. Section 301(c) of CERCLA required tis promulgation by December 11, 1982. By Executive Order 12316, August 14, 1981, 46 FR 42237, responsibility for preparation of the proposed rule was delegated to the Department of the Interior. On January 10, 1983, 48 FR 1084, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking comment from the public concerning how to approach the development of the regulations. A second Advance Notice of Proposed Rulemaking, 48 FR 34768, appeared on August 1, 1983, summarizing the comments received from the January

notice. In December 1983, the State of Montana filed suit against the Department of the Interior for failure to promulgate the regulations. That suit was voluntarily withdrawn, but was followed by two new cases, one brought by the State of New Jersey and the New Jersey Department of Environmental Protection, and the other brought by the New Mexico Health and Environment Department, the State of Louisiana, Public Citizen, the National Wildlife Federation, and the Environmental Defense Fund. The court ruled on December 12, 1984, in *State of New Jersey et al. v. Ruckelshaus et al.*, Cir. No. 84–1668 (D.C.N.J.), that the Secretary had failed to promulgate the assessment regulations in timely fashion. In a consent order entered on February 5, 1985, the Secretary agreed to undertake action to adopt the assessment regulations as expeditiously as possible. The Secretary agreed to the following:

(1) To publish a notice of proposed rulemaking for the "A regulations" on or before April 4, 1986, and to promulgate final "A regulations" on or before August 7, 1986.

(2) To publish a notice of proposed rulemaking for the "B regulations" on or before December 20, 1985, and to promulgate final "B regulations" on or before April 22, 1986.

In order to complete the proposed rule expeditiously, an intra-Departmental team was assigned the responsibility for organizing the project, coordinating governmental expertise, and drafting the proposed rule. The team was comprised of professionals from the U.S. Fish and Wildlife Service, the Bureau of Land Management, the U.S. Geological Survey, the Office of Policy Analysis, and the Office of the Solicitor, The team was selected and organized in October 1984 and began full-time work on the project in November 1984.

The team was responsible for determining the scope of the regulations and defining the key issues. Experts from within and outside government were contacted to provide additional information and analysis. Outside contractors were used on a limited basis to conduct studies and gather data not otherwise available. Emphasis was placed on the use of existing research, procedures, and methodologies whenever possible.

To seek similar information from the public, the Department published a **Federal Register** notice on January 11, 1985, inviting updated public comment and suggesting meetings between interested members of the public and representatives of the Department involved in the preparation of the regulations. Comments received in response to this notice and the earlier ANPRMs are discussed later in this preamble.

Two groups within the Federal government reviewed a preliminary working draft of the proposed rule. The existing Department of the Interior Superfund Task Force was used for internal Department review and comment. A second group composed of those Federal agencies represented on the National Response Team was also invited to review and comment. Members of the project team then met with the reviewing agencies to discuss their comments on the working draft.

C. "Type A" Regulations

The proposed rule includes only the type B procedures described in section 301(c)(2)(B) of CERCLA. The type A procedures will be included in a Notice of Proposed Rulemaking on or before April 4, 1986. No guidance is provided in this proposed rule for choosing between a type A and a type B assessment; that guidance will be provided in the proposed rule for the type A procedures. Until type A procedures are available, all assessments performed under CERCLA or the CWA will use the type B procedures. It is comptemplated that the initial type A procedures will provide assessment methodologies only for discharges of oil and releases of hazardous substances in coastal environments. The type A procedures require more time to develop than the type B procedures. Developing the concepts applicable generally to damage assessments and developing the basic methodologies are steps that precede development of a simplified procedure. The type A procedures will require data collected on principals similar to the principles used in the type B assessments. This data collection performed as part of a type B assessment will have to be performed as part of the regulatory development for the type A procedure. This process will ensure that the type A procedure will yield results that are compensatory and not be a mere penalty table.

D. Concepts Embodied in the Proposed Rule

1. Rebuttable Presumption

CERCLA provides for the recovery of damages to natural resources, but it does not establish the measure of those damages. Instead, it requires the President, acting through designated Federal officials, to develop regulations for the assessment of damages. Pursuant to CERCLA section 111(h), the dollar figure representing the measure of damages is determined through an assessment performed using the procedures specified in the proposed rule. This figure, when supported by the Report of Assessment and based on an assessment performed by a Federal official, is entitled to a rebuttable presumption in a court action or administrative proceeding to determine the measure of damages recoverable under the statute. Applying traditional rules of civil procedures, the submission of the damage amount and the Report of Assessment to the court should be sufficient to meet the plaintiff's burden of going forward. The burden of going forward is the requirement of the authorized Federal or State official, as plaintiff, to present an affirmative case supported by evidence. The dollar figure determined by a Federal agency through the process in this proposed rule would be presumed to be correct. It could be rebutted by evidence presented by a responsible party, but a court or administrative agency would have to find that the evidence presented by the responsible party was demonstrated by a preponderance of the evidence to be correct.

The rebuttable presumption provides a significant benefit. Accordingly, the methodologies and criteria adopted in the proposed rule have been carefully selected.

State agencies acting as trustees should note that while the rebuttable presumption currently attaches only to assessments performed by Federal officials, all CERCLA reauthorization bills currently before Congress would allow a rebuttable presumption for States as well as Federal agencies conducting assessments under this proposed rule.

2. Compensatory, Not Punitive

The proposed rule takes into consideration existing common law rules for developing a theory of natural resource damages. A fundamental principle of the theory developed in the proposed rule is that natural resource damages will be compensatory, not punitive. CERCLA itself calls for compensatory rather than punitive damages. This principle is consistent with the common law, which disfavors punitive damages. It is basic to the theory underlying the common law of damages, which is that money can be used to provide substitutionary relief. In other words, that which was lost cannot be replaced, but money can be awarded in compensation.

The money awarded as compensation using common law principles represents a rough measure that approximately represents the value of the thing that is

lost. Rules have been developed by the courts for the measurement of damages so that cases can be resolved, and perhaps more importantly, settled in accordance with common law principles. Settlements become possible because the range of outcomes given a particular set of facts is predictable.

The mandate to establish regulations for the assessment of damages to natural resources included a mandate to develop methodologies that are based on the best available procedures. This directive implies that compensatory damages were intended. The expensive and complex process of studying existing injury measurement and economic compensation techniques would have been unnecessary if punitive damages were intended. The procedures for determining punitive damages could have involved the simple publication of penalty fee tables.

Finally, it should be noted that a variety of criminal or other punitive statutes may apply to actions for which natural resource damages may be sought. Through those statutes penalties may be sought where appropriate.

3. Relationship to Response Actions

An action for the recovery of damages to natural resources is part of the larger statutory scheme of CERCLA and the CWA. Under those Acts discharges of oil and releases of hazardous substances are responded to by EPA and the U.S. Coast Guard in accordance with procedures set forth in the National Contingency Plan (NCP). In some cases responses are also made by States or other Federal agencies. The primary purpose of response actions is to protect human health. This rule supplements the procedures in the NCP. It does not replace response actions, but adds an additional means of addressing problems resulting from discharges of oil and releases of hazardous substances. In addition to taking removal and remedial actions, compensation may be sought and resources restored by use of the procedures in this rule.

Injuries to natural resources should also be considered in the planning of a response by the Environmental Protection Agency (EPA) or the U.S. Coast Guard. In particular, natural resource concerns should be included in the planning process for remedial action. However, in many cases, not all natural resource concerns will be resolved by that process alone. In some cases certain restoration actions, such as habitat management or acquisition of an equivalent resource, will be beyond the scope of the response action. This proposed rule provides that natural resource damages are injuries residual to those injuries that may be ameliorated in the response action and includes the loss of use from the time of the discharge or release until such injuries are ameliorated. This concept of natural resource damages as a residual should prevent the development of two separate actions to ameliorate the same situation, encourage the inclusion of natural resource concerns in the development of remedial plans, and preserve the priority order of remedial actions intended by the creation of the National Priorities List.

In some instances it may be necessary to anticipate an eventual remedial action in planning a natural resource damage assessment. Ideally the natural resource damage assessment would be performed concurrently with the remedial investigation/feasibility study (RI/FS). When the statute of limitations will not allow adequate time to complete and coordinate the necessary procedures, the proposed rule does not preclude filing of a natural resource damage claim against a responsible party before completion of the assessment.

4. Involvement of the Public and Potentially Responsible Parties

The proposed rule uses an administrative process as its decisionmaking method. Various methods exist for doing a damage assessment. No single answer can be given for the various questions that arise in the process. Every resource and affected area has distinctive characteristics, and is managed by different agencies for different purposes. Accordingly, the flexibility of an administrative process is desirable and fair, giving the public and responsible parties protection against arbitrary requirements. The proposed rule requires that an Assessment Plan be prepared before an assessment is initiated. After the plan is prepared there is a thirty day period during which the public and any potentially responsible parties are to be given an opportunity to review and comment on the plan. If a Restoration Methodology Plan is prepared, comment and review by the potentially responsible party and the public are also required for thirty days. All comments on both the Assessment Plan and the Restoration Methodology Plan are included in the Report of Assessment which is part of the administrative record. Therefore, the views of the public and any potentially responsible parties on the key elements of the assessment will be available in any subsequent litigation.

Public involvement and participation by the potentially responsible party will aid the authorized official seeking natural resource damages in a number of ways. First, it will ensure that important resource concerns are not omitted from the assessment. Second, it will help ensure that the methodologies are given an independent review and that the appropriate methodologies are chosen for the Assessment Plan. Third, it will help ensure that the costs of assessment are reasonable. Fourth, it will encourage involvement of the potentially responsible party early in the process, thereby minimizing the need for or the complexity of subsequent litigation.

Early involvement of the potentially responsible party is intended to facilitate fair and speedy resolution of damage actions. Just as the NCP process encourages responsible parties to undertake remedial actions and avoid litigation, this process is intended to encourage responsible parties to undertake natural resource damage assessments and restorations. If the responsible party is aware of the proposed assessment efforts, it may be encouraged to take the actions necessary to do the assessment and restoration. However, the Federal or State authorized official is the ultimate decisionmaker regarding the content of the Assessment Plan and the restoration actions. Public participation and responsible party participation should be used for guidance. The public participation requirement parallels the process used by EPA for remedial actions.

5. Cost-Effectiveness and Reasonable Costs

Cost-effectiveness is defined in the proposed rule as achieving an objective with the least expenditure of financial or other resources. Thus, in order to achieve cost-effectiveness, a well-defined objective must be specified. For example, the objective of restoration or replacement is the return to the baseline level of services provided by the resource. Once an objective is defined, cost-effectiveness means that the authorized official must choose the least expensive management actions that achieve the objective.

The Department recognizes that in many instances limited information may be available to prepare an Assessment Plan. This plan should be modified during the assessment as new information is obtained. What may have been cost-effective under the previous set of circumstances may not be cost-effective when new information is obtained. The proposed rule is flexible enough to allow for revision of the

Assessment Plan. In this context the test of cost-effectiveness may require consideration of new management actions as objectives become clearer and more specific.

Section 107(a)(4)(C) of CERCLA states that a responsible party is liable for the "reasonable costs of assessing" injury. The concept of reasonable cost implies cost-effectiveness, but the term reasonable cost is broader in scope. Cost-effectiveness means that whenever the same benefit can be obtained in several ways, the least costly means of obtaining that benefit is selected. The concept of reasonable cost, while incorporating cost-effectiveness, also allows comparisions to be made across choices of procedures involving different levels of benfits. A cost-effectiveness criterion cannot be used as a measure to select between alternatives that provides different levels of benefits at different costs. A reasonable cost criterion should be used for this purpose.

The Department has defined the term "reasonable cost," for the purposes of this proposed rule, to mean: (1) That the Injury, Quantification, and the Damage Determination phases of the Assessment Plan have a well-defined relationship; and (2) that the extra potential benefits obtained by using a more expensive methodology for injury, quantification, or damage determination outweigh the extra potential costs of the more expensive procedure.

In order to achieve the objective of deriving a dollar figure to be used as the amount of damage claimed, a three-phased assessment must be performed to (1) document the occurrence of an injury, (2) quantify the effects of the injury, (3) determine damages. In almost all cases, the achievement of reasonable costs will require that these three phases be planned concurrently. Since these three phases will form the basis of a damage claim, all analyses conducted under this rule should be directed toward the goal of obtaining a dollar value for the injury to the resource. The minimum amount of information required to move from one phase to another should be collected. During an assessment, studies of injury or damage that do not directly contribute to the determination of a dollar value for the injured resource should not be part of the damage claim. However, nothing in this proposed rule precludes agencies from performing general or related studies with their own funds.

6. Emergencies

In accordance with section 111(i) of CERCLA, the proposed rule permits an emergency restoration prior to development of an Assessment Plan where genuine emergency circumstances exist. Some limited situations may require immediate action in order to avoid irreversible loss or to prevent or reduce any continuing danger to natural resources (e.g., where a continuing discharge or release must be abated in order to avoid the complete destruction of a resource or where continuing degradation threatens more and more of the resource). Such emergency actions would typically consist of the erection of non-permanent barriers to prevent or reduce the migration of the oil or hazardous substance onto or into the resource. The authorized official may undertake only those actions necessary to abate the emergency. Any additional actions other than those necessary may be performed only upon following normal assessment procedures.

Emergency actions may only be taken on land over which the authorized official has administrative jurisdiction. This provision is not an authorization to undertake response actions on private lands nor is it meant as a substitute for response actions. For example, if the discharge or the release occurs in an area not under the administrative jurisdiction of a Federal or State agency, emergency restoration actions are limited to those actions that would prevent or reduce the migration of the oil or hazardous substance onto or into the resource.

However, if the discharge or release occurs in an area under the administrative jurisdiction of a Federal or State agency, the authorized official should first consider using existing authority to undertake response actions to abate the emergency. The cost of such response actions would be recoverable under section 107 (a) or (b) of CERCLA, rather than as natural resource damages. The burden of proof, based upon information available at the time, that irreversible harm would have resulted if the emergency restoration were not undertaken and that costs associated with the emergency actions were reasonable and necessary will rest with the Federal or State agency.

II. Overview of the Proposed Rule

A. Introduction

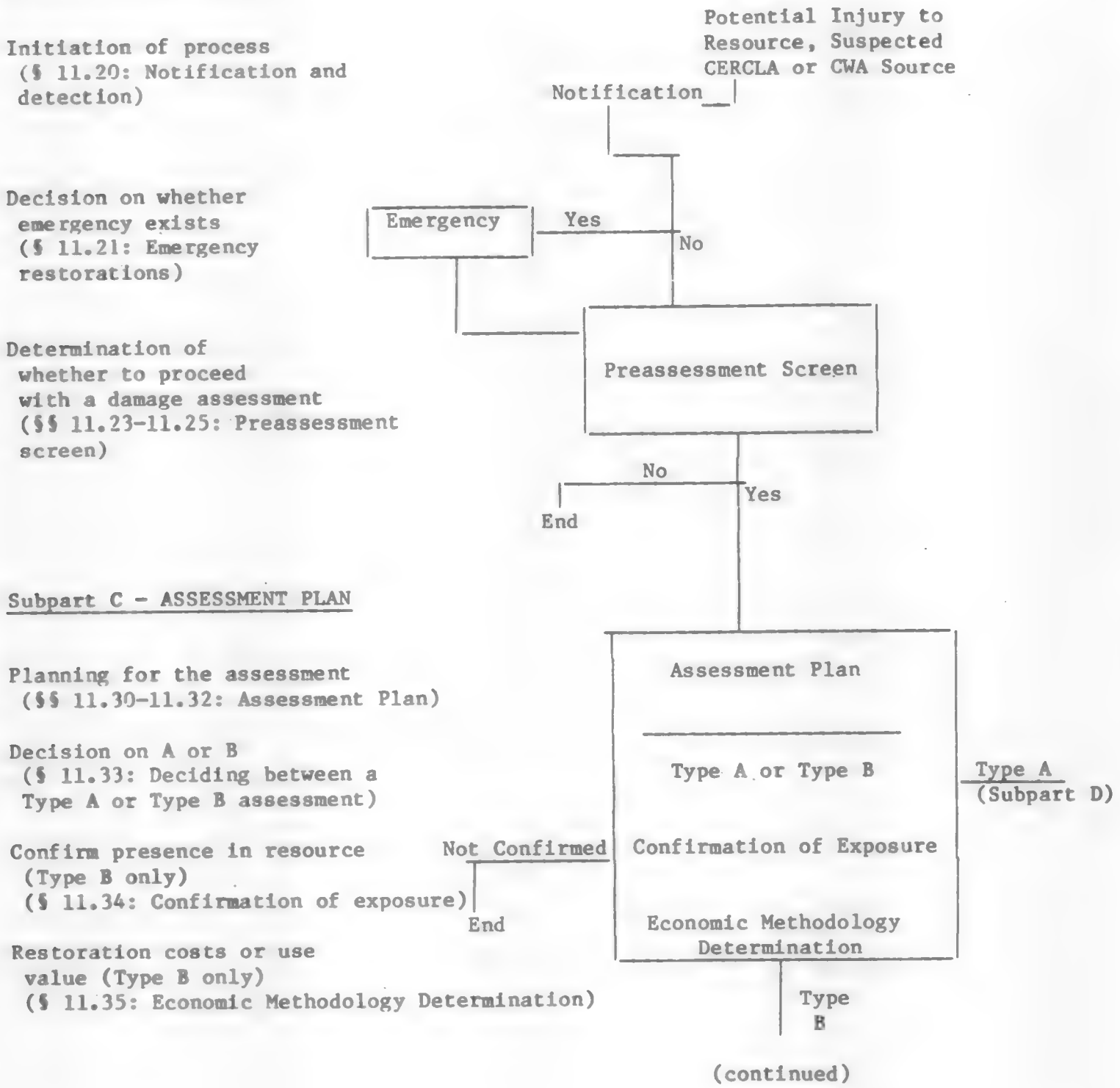
The proposed rule provides a process for determining proper compensation to the public for injury to natural resources. It stresses the need for a planned approach to natural resource damage assessments with active involvement of the public and potentially responsible parties throughout but with final authority for assessment decisions resting with the authorized official. Finally, it seeks a balance between controlling the potential costs of assessments and the need for flexibility in designing the assessments. The proposed rule also specifies the procedural steps to be taken in a natural resource damage assessment process. It provides objectives and acceptance criteria for selecting methodologies for injury and damage determinations. It does not provide specific procedures for implementing these methodologies. A flexible rule is necessary because of the multitude of resources, ecosystems, and oils and hazardous substances, as well as the need to enable the use of evolving scientific and economic methodologies. An evaluation of currently available techniques applicable to the various phases of a damage assessment are included in accompanying technical information documents currently being prepared. These technical information documents cover:

- Procedures for analyzing injuries to fish and wildlife resources, including testing and sampling methodologies;
- Procedures for modeling transport of oil and hazardous substances via the air pathway;
- Methods for using the U.S. Fish and Wildlife Service's Habitat Evaluation Procedures to estimate the effect of oil and hazardous substances on wildlife habitats;
- Information on determining and quantifying injury to soil; and
- Economic methodologies pertinent to natural resource damage assessments. These technical information documents are being prepared to ensure that the steps and objectives outlined in the proposed rule are feasible and to provide more specific information to those performing assessments, interested members of the public, and potentially responsible parties. They are not being prepared as additional regulatory guidance nor are they required to be followed to obtain the rebuttable presumption. Availability of these information documents will be the subject of a future notice in the **Federal Register**.

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Chart I

Natural Resource Damage Assessment Process



(continued)

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Chart I (continued)

(from previous page)

Subpart E - TYPE B ASSESSMENT

Determine whether an injury has occurred that is linked to CERCLA or CWA release
(§ 11.61: General)
(§ 11.62: Injury definition)
(§ 11.63: Pathway determination)
(§ 11.64: Testing and sampling methods)

Injury Determination

Review of planned methodologies, especially Economic Methodology Determination, in light of results of Injury Determination phase
(§ 11.32(f): Assessment Plan)

Review Assessment Plan

CERCLA or CWA Injury Not Confirmed

End

Quantification of effects of discharge or release (§ 11.70: General)

(§ 11.71: Service reduction quantification)
(§ 11.72: Baseline services determination)
(§ 11.73: Resource recoverability analysis)

Quantification

Estimate of diminution of value or restoration or replacement costs
(§ 11.80: General)
(§ 11.81: Restoration methodology)
(§ 11.82: Restoration Methodology Plan)
(§ 11.83: Use value methodologies)
(§ 11.84: Implementation guidance)

Damage Determination

Subpart F - POST-ASSESSMENT

(§ 11.90: Report of Assessment)
(§ 11.91: Demand)
(§ 11.92: Restoration fund)
(§ 11.93: Restoration Plan)

Report of Assessment

Post-assessment

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B. The Natural Resource Damage Assessment Process

Chart I provides an overview of the natural resource damage assessment process embodied in the proposed rule. This section will briefly discuss the major steps in the process. A more detailed discussion of the major issues pertaining to this process follows in the next section.

Initiation of Process—A natural resource damage assessment begins with the process set forth in the NCP. Sections 300.52(d) and 300.62(d) of the NCP provide for notification by the lead agency to Federal or State agencies authorized to act as trustees when a potential natural resource injury may exist. In instances where a Federal or State official first identifies a possible injury to a resource for which a Federal or State agency may act as a trustee under CERCLA, and suspects a CERCLA or CWA covered discharge or release as the source, the official is directed to the procedures in the NCP for reporting the discharge or release.

Emergency Restorations—Section 111(i) of CERCLA provides authority for emergency restorations. The proposed rule (1) defines an emergency, (2) requires that the emergency be reported to the National Response Center, (3) allows for certain actions to be taken in the event the Coast Guard or EPA do not take sufficient action, and (4) upon completion of the emergency restoration, returns the authorized official to the natural resource damage assessment process.

Preassessment Screen—Any assessment actions, other than emergency actions, begin with a preassessment screen to determine whether the discharge or release justifies a natural resource damage assessment. This screen is viewed as a "desk top" review of existing data with a minimal amount of field work and should be capable of being completed in a matter of days.

A determination is required for this screen. The decision to proceed beyond this screen must be based upon a preliminary finding that (1) the discharge or release was covered by CERCLA or the CWA, (2) it could have resulted in some injury to the resource, and (3) the resource and the extent of potential injury were of sufficient concern to the authorized official that the authorized official has reason to believe that the potential benefits outweigh the costs of performing an assessment.

The preassessment screen proceeds in steps from preliminary identification of the substance discharged or released and its source, to initial estimates of the pathway for purposes of identifying any resources that may be impacted, to identifying important resources that may justify further assessment. This preassessment screen should complement rather than duplicate any equivalent procedure that may already be used by Federal and State agencies to screen for potential resource damages. It should not duplicate or repeat information gathered by the lead agency or by other parties as part of the response action. Existing and previously gathered information is sufficient so long as it is adequate to make the appropriate decisions. Moreover, in conduicting assessment activity pursuant to this rule, all activities of the authorized official should be closely coordinated with the lead agency undertaking response work. If the preassessment screen results in a determination that a natural resource damage assessment is appropriate, the next phase is to prepare an Assessment Plan.

Assessment Plan—All decisions on the selection of the methodologies provided in subparts D or E must be documented. This documentation must be set out in an Assessment Plan. The Assessment Plan should ensure that only reasonable costs of assessment will be expended. The authorized official should refer to the definitions stated in the proposed rule for "reasonable costs" and "cost-effectiveness" when preparing the Assessment Plan.

The proposed rule contains several requirements that must be fulfilled in developing the Assessment Plan. These requirements relate to the involvement of multiple agencies, potentially responsible parties, and the public in the assessment.

The authorized official should ensure that other possibly affected agencies have been contacted. The selection of a lead authorized official is required in all instances when multiple agencies are conducting a joint assessment. Allowances are made for assessments which can be divided and conducted separately. Divisions of responsibility among agencies jointly conducting an assessment should be documented in the Assessment Plan. The proposed rule provides a division of responsibility in instances where consensus cannot be reached. Agencies should be aware of additional requirements concerning designation of lead trustees in claims against the CERCLA Fund contained in 40 CFR 306.20(b). In claims against the CERCLA Fund, § 306.20(b) states, "Should the trustees fail to agree on a lead trustee, EPA in its sole discretion shall appoint a lead trustee for the purposes of asserting a claim against the Fund on behalf of all trustees."

The potentially responsible parties should be identified at this phase. The proposed rule provides for a Notice of Intent to Perform an Assessment to be sent to any identified potentially responsible parties.

The proposed rule provides for public involvement in the Assessment Plan with a 30-day review and comment period before implementing the Plan or making major modifications. The proposed rule also requires that comments and responses be maintained as part of the administrative process.

The proposed rule provides for a mandatory review of the Assessment Plan at the end of the Injury Determination phase of the type B assessment. The purpose of this review is to ensure that the selection of methodologies for the last two phases of the type B assessment is compatible with the findings of the Injury Determination Phase.

In the Assessment Plan phase, there are several additional requirements specific to a type B assessment. These include the confirmation of exposure, the Economic Methodology Determination, Quality Assurance Plan, and the objectives of testing and sampling for injury or pathways. Guidance for the first two of these requirements is provided in this portion of the proposed rule. The Quality Assurance Plan should be prepared following the same requirements that apply to other response actions taken under the NCP. The testing and sampling objectives are discussed in the testing and sampling section of the proposed rule (§ 11.64). The confirmation of exposure is the second screen in the assessment process. It is intended to ensure that before initiating an expensive type B assessment the authorized official has confirmed that the oil or hazardous substance has actually come into contact with the resource.

The Economic Methodology Determination is where the authorized official must make a choice between using (1) restoration or replacement costs or (2) the diminution of use values as the measure of damages. The decision will affect the choice of methodologies to be selected in the Quantification phase and to a lesser extent in the Injury Determination phase. Therefore, the proposed rule requires the decision at an early stage, but provides that the decision may be deferred or modified after the Injury Determiniation phase is completed. Using "off-the shelf" data, the Economic

Methodology Determination requires an "order of magnitude" estimate of the relative costs and benefits or restoration or replacement versus the diminution of use. The guidance on performing this determination is described within the proposed rule.

The selection of (1) restoration or replacement costs or (2) the diminution of use values only affects the method of damage determination. It does not imply any decisions concerning whether the resources will be restored. In fact, the proposed rule requires that all funds, regardless of whether the basis of calculating the damage was restoration costs or diminution of use, be used for restoration, rehabilitation, replacement, or acquisition of the equivalent.

The proposed rule allows the recovery of the lesser of (1) restoration or replacement costs or (2) the diminution of use values, except in the case of special resources. The proposed rule defines special resources and suggests for those resources that restoration or replacement be the measure of damages, whenever restoration or replacement is technically feasible and whenever the costs of restoration or replacement are not grossly disproportionate to the benefits. In restoration or replacement, the costs include the diminution of use values until the resource is restored or replaced.

Type B Assessment—A type B damage assessment involves three major steps: (1) establishing that an injury has occurred and that the injury resulted from the discharge or release; (2) quantifying the effects of the discharge or release on the services provided by the injured resource; and (3) determining the damage.

Injury Determination—This phase of the type B assessment acts as the third screen of the natural resource damage assessment. To assert a natural resource damage claim, the authorized official must establish that an injury occurred and must link that injury to the discharge or release.

To perform this phase, injury to one or more natural resources must first be established. The proposed rule provides a general definition of injury as a measurable adverse change in the chemical or physical quality or viability of a natural resource. For example, an organism need not die before that organism is considered to have been injured by the oil or hazardous substance. Conversely, the mere presence of oil or a hazardous substance in the organism may not necessarily constitute an injury. All of the natural resources specified by CERCLA have been placed into one of five groups: surface water, ground water, air, geologic, and biological resources. Specific definitions of injury are provided for each of these resources. These specific definitions focus on inherent physical, chemical, or biological properties of the resource that enable it to provide one or more specific services, such as habitat for aquatic species or a water supply.

In addition to satisfying the injury definition, the pathway of the discharged or released substance from the source to the resource must be demonstrated. Each of the five groups of resources may also act as a component of the pathway through which the oil or hazardous substance may travel. For example, biological resources can carry the substance away from the site by either direct physical contact or by exposing other organisms through the food chain. Oil or hazardous substances contained in ground water resources may move to a lake or stream thereby exposing biological resources. The use of transport and fate modeling in media such as air or water may be useful in many situations. In other situations, sampling may be required.

The proposed rule also provides guidance on selecting testing and sampling methodologies to determine that an injury to the resource has occurred and for pathway determinations.

Review of the Assessment Plan—Upon completion of the Injury Determination phase, the authorized official must review the methodologies selected in the Assessment Plan. If an injury, as defined in the proposed rule, cannot be determined or cannot be linked to the discharge or release, further assessment efforts should be terminated and documentation presented on the results of the Injury Determination phase. If an injury determination has been made, methodologies for the next two phases must be selected that are consistent with the findings of the Injury Determination. If the decision was not previously made, the authorized official must decide whether (1) restoration or replacement costs or (2) a diminution of use values will form the basis of the damage determination.

Quantification—Having established that the resource was injured by the discharge or release, the next step in the type B procedure is to quantify the effects on the injured resource.

Because the purpose of the natural resource damage assessment is to determine compensation for injuries rather than a decision on the level of cleanup, this phase requires ascertaining the baseline level for the uninjured resource The baseline level is compared to the level existing or anticipated upon the completion of any response actions to determine the residual change resulting from the discharge or release. The baseline level will include consideration of the resource's natural cyclical changes. The proposed rule provides that quantification of the change in the resource be expressed in terms of the change in the level of services that the resource provides. These services include such ecological services as flood and erosion control, habitat, and food chains as well as such human uses as recreation. Therefore, it is at this stage in the assessment that the selection is made of services that in a later phase will be determined to have a restoration or replacement cost or use value. The selection of the services to be assessed may vary based upon the economic methodology selected. For restoration or replacement, the authorized official should select services for which restoration or replacement is necessary. For a diminution of use value, the authorized official should select services for which clear relationships to human uses exist and for which dollar values can be assigned.

Damage Determination Phase—The next part of the process is applying the method of estimating the damage, using either the costs of restoration or replacement or the diminution of use values, which was determined in the Assessment Plan.

If restoration or replacement costs are to be the measure of damages, a plan for the restoration or replacement, referred to as the Restoration Methodology Plan, must be developed in the Damage Determination phase. This plan must be in sufficient detail to ensure that all major elements of costs are included and that these costs represent the most cost-effective means of restoring or replacing the services lost. This plan will also serve as the foundation for the final restoration plan that must be developed after the award.

Using the diminution in use values as the method for determining damages will require that the authorized official identify the human uses of the services that were lost as a result of the discharge or release. For an assessment based upon the diminution in use values, the lost uses being valued are the committed uses supplied by the injured resources. Committed uses must be current uses or uses financially, legally, or administratively documented by a body or organization with sufficient authority to do so.

The losses compensable to a Federal or State agency acting as a trustee under CERCLA are for the uses of the resource

by members of the public at large. They do not include any direct losses suffered by private users of public resources. Direct private losses appropriately are not recovered by a public body acting for the public at large.

The proposed rule provides guidance on performing a damage determination using either the restoration or replacement cost method or the diminution of use value method. A final section in this portion of the rule provides guidance, such as selecting a discount rate, that is applicable to either method.

Report of Assessment—At the conclusion of either a type A or a type B assessment, the authorized official must document the results of the major steps of the process. This documentation includes the Preassessment Screen Determination and the Assessment Plan, with all comments and responses, for either the type A or type B assessments. The results of the assessment should be included for the type A assessment. For the type B assessment, the Injury Determination, the Quantification Determination, and the Damage Determination, including the Restoration Methodology Plan if appropriate, should be included. The document must be filed as the Report of Assessment with a court or an administrative body should the agency seek a rebuttable presumption.

Post Assessment—CERCLA requires that funds recovered for damages as a result of the assessment process provided in the proposed rule must be available for restoration, rehabilitation, replacement, or the acquisition of the equivalent of the injured resource. To accomplish this objective, the proposed rule requires the establishment of a trust fund into which all funds awarded by a court pursuant to Section 107 of CERCLA for compensation for damages must be placed. Reimbursements of assessment, administrative, and litigative cost are not placed in this trust fund. Similarly, monies awarded from the Hazardous Substance Responses Trust Fund as reimbursement for assessment or restoration costs pursuant to the natural resource claims provision of CERCLA need not be placed in a post-assessment trust fund because they are by definition reimbursements of costs incurred. These reimbursements must be returned to the Federal or State general treasury which incurred the costs.

In the event damages are awarded pursuant to section 107(a)(4)(C) of CERCLA, the Federal or State agency acting as trustee shall prepare a Restoration Plan. This plan shall be based upon the decisions made in the Restoration Methodology Plan, if one has been prepared, modified to the extent necessary to accommodate new information, including the amount of the award. Where the measure of damages is determined using a use value methodology, the Restoration Plan shall describe those management actions designed to restore, replace, rehabilitate, or acquire the equivalent resources which can be undertaken consistent with the level of the damage award. The trust fund is to be used to pay for the implementation of this Restoration Plan.

In recognition of the fact that restoration of some injured resources is technically infeasible, replacement and acquisition of the equivalent are defined to include acquisition of resources that provide similar services to the injured resource. However, there is a limitation on use of the fund. Where the Restoration Plan would involve acquisition of land for Federal management, the award must be paid to the general treasury. The appropriations process must be used where private land is being acquired that would expand the total Federal landholdings.

III. Resource Related Issues

A. Injury Determination—General

The definition of injury adopted in this proposed rule is fundamental to the assessment process. Without injury to one or more natural resources there is no damage to recover. A general definition of injury is provided in § 11.14(v). The proposed rule clearly distinguishes between the concepts of "damage" and "injury." Following the statutory division in use of the words, "damage" is the amount of money sought in compensation for an "injury." Injury is the "injury to," "destruction of," or "lost of" the resource.

The injury definition has two parts. First, there must be a measurable adverse change in the resource. That is, there must be a change, for the worse, in the resource that is detectable by observation or scientific methods. Specific definitions of injury are provided for each resource in § 11.62. The criteria for what constitutes a measurable injury are set fairly strictly. This stringency reflects the advantage gained by the agency from the rebuttable presumption for the assessment results. Scientific evidence may be admitted in court if it is relevant and probative, but not all evidence is of equal value. Since this proposed rule is used for the purpose of giving weight to evidence, not just considering it, the reliability of the evidence is important. By establishing acceptance criteria for the measurement methodologies for the injuries to the resources, the proposed rule requires that the authorized official use only quality evidence in measuring the adverse change in a resource.

Second, the adverse change must be to the chemical or physical quality or in the viability of a resource. Since only biological resources involve the aspect of viability, specific criteria for measuring such injury is based on a measurable biological response of the resource. Water and air, for instance, are commonly evaluated in terms of established water quality or air quality standards. Such standards have not been established for biological resources to determine when exposure to a specific contaminent level has reduced the viability of the different organisms. Further, no standards have been established for biological resources adversely impacted by residues of specific contaminants resulting from such exposure.

Finally, to be compensable under CERCLA or the CWA, the injury must result from a discharge of oil or release of a hazardous substance, or from a product of reactions resulting from the discharge of oil or release of a hazardous substance. This result is established by the demonstration of a link between the discharge or release and the injured resources, called the pathways determination as provided in § 11.63. Consistent with CERCLA generally, the pathways determination does not require a showing of strict causation. It is not necessary to show that company A's release caused the injury, only that company A released the substance and that exposure to the substance could have resulted in the injury.

B. Injury Determination for Specific Resources

1. Surface Water

The presence of oil or hazardous substances in surface waters may adversely affect the quality of the resource, especially its ability to provide essential life-supporting services. The definitions of injury to the surface water resource rely primarily upon established water standards and criteria, recognizing the extensive research performed to develop the standards and criteria. The injury definitions include concentrations of substances adhering to sediments in contact with the surface water, because these sediments provide services to aquatic life much as soils provide on land. The injury definitions do not differentiate between freshwater and seawater, except as may be provided by the specific standards and

criteria used, because the CWA and CERCLA broadly define the "waters of the United States" to include both fresh and marine surface waters.

2. Ground Water

The presence of oil or hazardous substances in ground water may adversely affect the quality of the resource, especially its services to humans. The definitions of injury to the ground water resource therefore rely upon established water standards and criteria. The term "ground water" is defined in both CERCLA and CWA, and the definitions do not include water or other materials in the unsaturated zone. Therefore, measures of adverse change in the ground water resource resulting directly from the occurrence of oil or hazardous substances in the unsaturated zone are not established. This type of injury is in the subsection on geologic resources. Although many of the standards and criteria used are only applicable to fresh ground water, injury to brackish or saline ground water may occur if the resource contains released substances that have caused injury to other resources.

3. Air

Injury to air is defined in two basic ways. The first relies upon air quality standards set by EPA and upon related standards set by individual States. Those standards includs within them ways of determining whether they have been violated, including duration and appropriate testing procedures. As a result, crtieria are not repeated here in the proposed rule. Secondly, the number of substances for which air quality standards have been set is relatively small, so air may also be considered injured if an airborne oil or hazardous substance injuries other resources. (Note that the definition of "oil" is broad and includes gaseous or vaporized oil products and components.)

4. Geologic resources

Geologic resources include that portion of the Earth's crust not otherwise included in ground and surface water, and includes such elements as soil, sediments, rocks, and minerals. The quality of geologic resources is defined by physical and chemical characteristcs that pertain to the major services provided by the resource. Soil quality is frequently measured by its ability to support plants and other organisms. Thus, injury to soil is defined directly by chemical and physical criteria and through its ability to continue to support biological organisms. Development potential is especially important for mineral resources, so if a discharge or release reduces that potential, the minerals are considered injured. The unsaturated zone is included within geologic resources. However, its major effect is on ground water. Therefore, injury to the unsaturated zone also can be based upon its effect on that resource.

Finally, as with all of the other resources, provision is made for considering the geologic resource injured if concentrations sufficient to cause injury to other resources are found. This provision allows for cases where previouly established standards may not anticipate effects of oil or a hazardous substance on these resources.

Additional information helpful for assessing injury to soil will be available in the "Type B Technical Information Document: Approaches to the Assessment of Injury to Soil Arising from Discharges of Hazardous Substances and Oil," which is being prepared in conjunction with the proposed rule.

5. Biological Resources

This section provides criteria for demonstrating when injury has occurred to organisms when their viability is adversely impacted by oil or a hazardous substance, as well as a limited use of established standards for edibility. Because specific criteria have not been developed previously for this purpose, more detail is provided than for other resources. Additional technical information is being developed in the "Type B Technical Information Document: Injury to Fish and Wildlife Specifies," which is being prepared in conjunction with the proposed rule.

In general, injury will have occurred to a biological resource when a biological response, as defied in the proposed rule, has resulted from exposure to the oil or hazards substance. The proposed rule provides acceptance criteria for determining which biological responses may be used in such a demonstration, provideis a list of certain responses in fish and widlife species that have been determined acceptable according to those criteria, and also provides acceptable measures for those identified responses.

Except for the use of edibility action or tolerence levels set by the Food and Drug Administration and by States, the mere presence of a substance in an organism does not constitute injury to the organism. Many organisms, including man, can carry low levels of foreign chemicals in their tissues with few or no known measurable effects from those chemicals. Injury determination in this proposed rule is based on a demonstrable adverse biological response from the oil or hazardous substance. For example, DDT and related chemicals are ubiquitous in small amounts in almost every warm-blooded animal, but this fact alone does not show injury. DDT, however, can cause eggshell thining. This biological response has been an important factor in causing population declines of certain fish-eating and raptoral birds. Demonstration of significant levels of eggshell thinning in the presence of DDT does demonstrate injury. Many similar biological responses are described in the proposed rule.

Acceptance criteria in the proposed rule provide the means for evaluating whether a particular response will demonstrate injury in a specific case. The criteria set are stringent because of the rebuttable presumption given to assessments that follow this rule. On the other hand, many assessments done in the past have relied extensively on body counts of dead organisms as the primary or sole evidence of injury to those organisms. These criteria broaden past practice by allowing use of and compensation for other kinds of biological responses.

The criteria can be summarized as requiring that the response is unlikely to be due to factors other than the exposure to the oil or hazardous substance, that it has been demonstrated in both the laboratory and the field, and that testing for it is practical and reliable. Both laboratory and field demonstrations are required because these two conditions can rarely provide the same information. Laboratory experiments can be carefully controlled to prevent effects from factors other than the substance under test, but may use concentrations, exposure systems, and other conditions unrelated to those found in the field. Controlled laboratory experiments cannot duplicate the variety of foods, activities, potential substance degradation, and othe factors found in the field. Field experiments or observations often rely on correlations, and cause-and-effect can rarely be documented as well as it can be in the laboratory. There are numerous instances where either laboratory or field experiments have failed to confirm conclusions drawn from the other.

Categories of such responses are provided in the proposed rule, and certain responses within these categories have been identified as having met the acceptance criteria. These specific responses are identified based upon a review contained in the type B technical information document cited above, and pertain to fish and

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wildlife. The acceptance criteria are intended to be applied to responses in all biological resources, including plants, shellfish, and other organisms. The authorized official may rely upon other responses in addition to the specific responses identified in the proposed rule, so long as the other responses relief upon can meet the acceptance criteria. There has been considerable work on responses in other organisms, especially plants, therefore, other responses should meet the acceptance criteria. On the other hand, if extensive new research work is required to meet the acceptance criteria, the costs of such research would be outside the assessement costs attributable to a particular assessment for purposes of a damage claim.

C. Pathways

For injury to have occurred, the oil or hazardous substance must have traveled from the source of the discharge or release to the injured resource. In some cases demonstration of this fact is straightforward, but in others further work must be done. In general, two ways may be used: demonstration of sufficient concentrations in the pathway for it to have carried the substance to the injured resource, or use of modeling that supports that pathway determination. In each case, a given resource may act as a pathway, be injured, or both. Pathways can and often do include more than one resource.

For the physical resources, including water, air, and the geologic resources, the proposed rule identifies important factors and appropriate ways to use standard procedures for those resources that will be appropriate to making a pathway determination.

Biological resources may act as a pathway both by direct physical contact or by assimilation through a food chain. Physical contact usually includes material on the skin, fur, feathers or other surface covering. Food chain transfers may include bioaccumulation and bioconcentration, so that an organism higher on a food chain may contain the highest concentrations of the substances.

Food chains may be analyzed by testing free-ranging organisms or by placing test organisms in situ to discover whether they will take up the substance. The use of appropriate indicator species is recommended. Further discussion of the use of indicator species may be found in the "Field Operations Handbook for Resource Contaminant Assessment—Field Methods and Materials," being developed by the Division of Resource Contaminants Assessment, U.S. Fish and Wildlife Service.

Careful selection of indicator species will consider the potential for that species to have taken up or contacted the discharge or release. Plants often can exclude or selectively screen out non-essential substances present in their environment, especially many organic compounds with large molecules. Other substances, such as small inorganic ions, may be taken up in the plant tissues and passed on to other organisms. Animals, because of their mobility and different physiology, are often more likely to serve as pathways, especially over greater distances.

D. Testing and Sampling

This section provides guidance on selecting procedures and techniques to be used by the authorized official in making injury and pathway determinations. For the most part, the guidance refers to techniques that are standard for each discipline, and their identification here primarily provides special considerations that may be needed in using these otherwise standard techniques for damage assessment purposes.

1. Surface Water and Ground Water

Some techniques for testing and sampling of water resources are currently under development and are not described by the reference cited in § 11.64 of the proposed rule. The authorized official may need to apply these methods during an assessment and therefore should be guided by the discussion and procedures given in the follwoing references:

Barcelona, M.J., L.P. Gibb, and R.A. Miller, "A Guide to the Selection of Materials for Monitoring Well Construction and Ground-Water Sampling," Illinois State Water Survey, Champaign, IL, SWS Report No. 327, 1983.

Benson, R.C., R.A. Glaccum, and M.R. Noel, "Geophysical Techniques for Sensing Buried Wastes and Waste Migration," U.S. Environmental Protection Agency Environmental Monitoring Systems Laboratory, Las Vegas, NV, EPA Contract No. 68–03–3050, 1983.

Claassen, H.C., "Guidelines and Techniques for Obtaining Water Samples that Accurately Represent the Water Chemistry of an Aquifer," U.S. Geological Survey, Lakewood, CO, Open-File Report No. 82–1024, 1982.

Gillham, R.W., M.J.L. Robin, J.F. Barker, and J.A. Cherry, "Groundwater Monitoring and Sample Bias," American Petroleum Institute, Washington, DC, API Publication No. 4367, 1983.

U.S. Environmental Protection Agency, "Guidance on Remedial Investigations under CERCLA," Office of Solid Waste and Emergency Response, Washington, DC, EPA/540/G–85/002, 1985.

2. Air

Testing and sampling may include methods or modeling. Modeling should only be performed if testing and sampling methods are inappropriate. Testing and sampling for air may be complex because of the wide range of conditions that may be encountered, including conditions such as: a massive short-term emission, as might occur from a tank car accident; episodic or intermittent releases, as might be created by varying wind conditions that distribute particulates from a tailing pile; and long-term low-level release that may come from an open disposal pond.

The proposed rule lists factors to identify in setting up a sampling plan, including an appropriate sampling schedule. Objectives based upon the requirements of the testing and sampling need to be set, and the sampling plan designed to meet those objectives.

The authorized official may use air testing methods not listed below but that have been accepted following formal review and evaluation by the U.S. Environmental Protection Agency, the National Institute for Occupational Safety and Health, and American Society for Testing and Materials, and the American Public Health Association. Some examples of these are the following documents:

U.S. Environmental Protection Agency, "Annotated Bibliography of Anlytical Methods for CERCLA Hazardous Substances," Volumes 1, 2, and 3, Environmental Monitoring Systems Laboratory, Las Vegas, NV.

U.S. Environmental Protection Agency, "Atmospheric Measurements of Selected Hazardous Organic Chemicals," Washington, DC, EPA–600/53–81–031, 1980.

U.S. Environmental Protection Agency, "Characterization of Hazardous Waste Sites—A Methods Manual: Volume II, Available Sampling Methods, Second Edition," Environmental Monitoring Services Laboratory, Las Vegas, NV, EPA–600/4–84–076, December 1984.

U.S. Environmental Protection Agency, "Characterization of Hazardous Waste Sites—A Methods Manual: Volume III, Available Laboratory Analytical Methods," Environmental Monitoring Systems Laboratory, Las Vegas, NV, prepared by Lockheed Engineering Management Services Company, under EPA contract No. 68–03–3050, n.d.

U.S. Environmental Protection Agency, "Compendium of Methods for the Determination of Toxic Organic Compounds in Ambient Air," Washington, DC, EPA–600/4–84–041, April 1984.

U.S. Environmental Protection Agency, "DIGEST of Ambient Particulate Analysis and Assessment Methods," Washington, DC, EPA 450/3–78–113, September 1978.

U.S. Environmental Protection Agency, "Network Design and Site Exposure Criteria for Selected Noncriteria Air Pollutants," Washington, DC, EPA–450/485–022, September 1984.

For information on air modeling, the "Type B Technical Information Document: Application of Air Models to Natural Resource Injury Assessment" is being prepared in conjunction with the proposed rule. Its availability will be announced in the Federal Register.

3. Geological Resources

Methodologies for testing and sampling for injuries to soil and other geologic resources are provided in the proposed rule. Specific procedures for implementing the soil methodologies, the largest portion of this resource group, are discussed in the "Type B Technical Information Document: Approaches to the Assessment of Injury to Soil Arising from Discharges of Hazardous Substances and Oil."

The first three methodologies for testing and sampling for injury to soil, those involving pH, cation exchange, and salinity, involve standard chemical analyses. Some useful references for performing these chemical analyses are provided in:

U.S. Environmental Protection Agency, "Characterization of Hazardous Waste Site—A Methods Manual: Volume II. Available Sampling Methods, Second Edition," Environmental Monitoring Systems Laboratory, Las Vegas, NV, EPA–600/4–84–076, 1984.

U.S. Environmental Protection Agency, "Soil Sampling Quality Assurance User's Guide," Environmental Monitoring Systems Laboratory, Las Vegas, NV, EPA–600/4–84–043, 1984.

U.S. Environmental Protection Agency, "Guidance on Remedial Investigations Under CERCLA," Office of Solid Waste and Emergency Response, Washington, DC, EPA–540/G–85/002, 1985.

U.S. Environmental Protection Agency, "Preparation of Soil Sampling Protocol: Techniques and Strategies," Environmental Monitoring Systems Laboratory, Las Vegas, NV, EPA–600/4–83–020, 1983.

U.S. Environmental Protection Agency, "Test Methods for Evaluating Solid Waste, Physical and Chemical Methods," Office of Solid Waste and Emergency Response, Washington, DC, SW–846, Available from NTIS, Springfield, VA, PB–82–172–156.

The fourth method of verifying an injury to soil is by changes to soil microbial respiration. Among the available procedures are those found in:

Anderson, J. P. E., "Soil Respiration," in A.L. Page (ed.), *Methods of Soil Analysis, Part 2: Chemical and Microbial Properties, 2nd Edition,* American Society of Agronomy, Madison, WI, 1982.

Tabatabai, M. A., "Soil Enzymes," in A.L. Page (ed.), *Methods of Soil Analysis, Part 2: Chemical and Microbial Properties, 2nd Edition, American Society of Agronomy, Madison, WI, 1982.*

To verify an injury to soil by testing for changes to microbial populations, the procedures provided in the documents listed below may be useful:

Anderson, J. P. E. and K. M. Pousch, "A Physiological Method for the Quantitative Measurement of Microbial Biomass in Soils," *Soil Biology and Biochemistry,* 6:209–213, 1978.

Jenrinson, P. S. and P. S. Powlson, "The Effects of Biocidal Treatments on Metabolism in Soil-V: A Method for Measuring Soil Biomass," *Soil Biology and Biochemistry,* 8:209–213, 1976.

Karnak, R. E. and J. L. Hannelink, "A Standardized Method for Determining the Acute Toxicity of Chemicals to Earthworms," *Ecotoxicology and Environmental Safety,* 5:216–222, 1982.

To test for an injury to soil that resulted from phytotoxicity, the proposed rule requires either seed germination, seedling growth, root elongation, plant uptake, or soil core microcosm tests. Among the procedures currently available are:

U.S. Environmental Protection Agency, "The Seed Germination/Root Elongation Toxicity Test," in *Environmental Effects Test Guidelines,* Section EG12, Office of Pesticides and Toxic Substance, Washington, DC, EPA–560/6–82–002, 1982. Available from NTIS, Springfield, VA, PB–82–232992.

U.S. Environmental Protection Agency, "The Early Seedling Growth Toxicity Test," in *Environmental Effects Test Guidelines,* Section EG13, Office of Pesticides and Toxic Substances, Washington, DC, EPA–560/6–82–002, 1982. Available from NTIS, Springfield, VA PB–82–232992.

U.S. Environmental Protection Agency, "The Plant Uptake and Translocation Test," in *Environmental Effects Test Guideline* Section EG14, Office of Pesticides and Toxic Substances, Washington, DC, EPA 560/6–82–002, 1982. Available from NTIS, Springfield, VA, PB–82–232992.

Van Voris, P., "Experimental Terrestrial Soil-Core Microcosm Test Protocol," Prepared by Pacific Northwest Laboratory for the U.S. Environmental Protection Agency, Corvallis, OR, EPA–600/3–85–047, 1985. Available from NTIS, Springfield, VA, PB85–213318.

4. Biological Resources

Appropriate tests for biological resources are largely identified in the injury definition section. These are discussed in more detail in the document cited in that discussion, "Type B Technical Information Document: Injury to Fish and Wildlife Species." Specific methodologies may vary depending upon the organism, type of response being studied, oil or hazardous substance involved, and statistical confidence required. Methodologies may be used that technical literature show are appropriate to the response being tested. In general, for purposes of a damage claim, the authorized officials would only use techniques that have been tested previously for the kind of situation being examined and that have been documented in the technical literature.

E. Quantification

1. General

The proposed rule in §§ 11.70–11.73 provides guidance on methods for quantifying the effects of injuries resulting from discharges of oil or releases of hazardous substances. This guidance makes the link between injuries to resources and the methods used to determine compensation for those injuries.

Several steps are necessary to convert natural resource injuries to damages, that is, to assign a dollar amount for the injuries. The Injury Determination phase demonstrated that an injury has in fact occurred as a result of the discharge or release. The Quantification phase must determine how much of the resource has been injured, and how "badly," and also must determine what effect the injury has had on services provided by the resource. Determining the effect on services is critical to coverting physical and biological changes to dollar amounts, and is explained in more detail below.

Throughout the Quantification phase, conditions following the discharge or release are compared to baseline conditions, which are the conditions that would have existed in the absence of the discharge or release. Baseline conditions include physical and biological conditions as well as services.

The final critical dimension in determining "how much" the resouce and associated services have been affected is time, which is referred to here as the "recovery period." Injuries that will recover over a long time period have greater effects on services than those that will recover quickly, especially if that recovery requires little or no intervention ("restoration"). The final section of the Quantification phase, § 11.73, provides guidance on determining recovery periods for various alternatives, including different restoration alternatives and the situation where no actions beyond the removal or remedial actions are carried out.

2. Services Reduction Quantification

In order to quantify services reduction, the authorized official must first determine the extent of the effects

of the injury, or, in other words, how much of the resource has been injured, as provided in § 11.71. In general terms, this reduction might mean the volume of water no longer usable for a specified purpose, the size of a fish population lost, the acres of wildlife habitat changed, or any other physical or biological changes resulting from the discharge or release.

To help make these changes useful for the analyses in the Damage Determination phase they must be converted into "services." Broadly speaking, a service refers to any function that one resource performs for another or for humans. Within the non-human part of an ecosystem, plants provide habitat and food for animals, one animal may provide or serve as food for another, or water may be used by fish for support, respiration, and many other functions. This list could be expanded to describe almost any interaction between species or between physical and biological levels. Amony these services are the uses that humans make of natural resources. These services would include such things as use of water for drinking, agriculture, and industry, the use of fish or wildlife for food, and the use of many components of the environment for recreation.

An important distinction between services and the physical, chemical, or biological conditions existing in a resource is that the services represent interactions between resources, or between resources and humans. Traditionally humans have valued natural resources in monetary terms on the basis of services provided by the resources. This method logically may be extended to valuing damages to an injured resource on the basis of changes in services provided to humans or to other resources. The proposed rule establishes the link between measured adverse changes in the condition of the resource, the injury, and the damages through the measurement of changes in the services provided by the injured resource. This method of determining damages is in accord with traditional measures of the value of natural resources.

Using the proposed rule, damages to an injured pond might be estimated by changes in services the pond provided as fish habitat. The measure of change in services might be numbers of fish, varieties of fish, or the services the fish provide to another resource, such as food for other animals. If the pond had also served as a source of drinking water, the measure of change in services might be the volume of water formerly used for that supply. In either case damages would be estimated on the basis of lost use of the services or of change in the level of more than one service, and changes in all services may be counted when estimating damages.

The methodology to be used in the Damage Determination phase is critical in determining which services to measure in the Quantification phase. Close coordination is required between economists and natural resource specialists in planning and carring out this phase of the assessment. The authorized official must decide whether to determine damages based (1) the diminution of use values or (2) restoration or replacement costs (§ 11.35). These two approaches require different kinds of results from the Quantification phase.

If diminution of use values is chosen, results must be expressed as changes in the uses of the services provided to humans. In this case, the measurements of services not used primarily by humans are useful mainly as intermediate results, although they may be critical in determining changed human use.

On the other hand, if restoration or replacement costs is to be the measure of damages, the non-human services may be equally critical, because the determination of restoration or replacement costs is based on the restoration or replacement of services. In this case, the non-human services may be more important in measuring changes in how well a wildlife habitat or marsh is supporting wildlife, controlling floods, assimilating wastes, and providing any other services that may be important. Human uses may need to be measured for purposes of determining priorities and calculating diminution of use values during the recovery period.

Provision is made in the Quantification phase for directly quantifying the effects of injuries based upon a loss of services dependent on the injured resources, where that provides a better measure of the extent of the effect than first measuring a change in the chemical, physical, or biological parameters. An example could be where a pond or lake contains levels of oil or a hazardous substance sufficient for the water to be considered injured, but one of the most critical services normally supplied by the injured water is provision of habitat for fish that normally would be caught and eaten by man. That service is now disrupted because fish from the lake can no longer be eaten. In this case, the change in services measured could be the loss of availability of a population of edible fish, even though the water is the identified injured resource, and the fish population is viable and eventually may become edible at some time in the future, through either natural processes or restoration activities. Alternatively, the change in services measured could be the loss of available population of edible fish established directly from the presence of concentrations in the fish exceeding FDA tolerance levels.

Detailed guidance is not provided on methods for measuring changes in services, in part because the range of services that can be measured is so broad, and in part because the methods to be used depend greatly on which services are measured. Guidance is provided for certain natural resources, but most methods for measurement of services of those resources will have to be determined by the authorized official. The emphasis in the guidance for specific resources is primarily on how to choose techniques that are scientifically acceptable and that can provide useful data for measuring services.

Quantification of the effects on the physical resources (surface and ground water, air, and geologic resources) focus on determining the area, or in some cases the volume, exposed to the discharge or release. In addition, the services provided by those resources must be determined. Comparison to baseline is critical to this process.

In measurement of biological resources, the choice between habitat and population analysis is required to ensure that common units are being used and that double counting is avoided. There may be circumstances where a mixed analysis may be possible while avoiding double counting, if there is little or no interaction between the resources analysis. For example, a population analysis might be used for a terrestial resource such as deer, but a habitat analysis used for a fish resource affected by the same discharge or release. To some extent, choice of habitat analysis will be more closely related to restoration options, and population analysis to use values, but the relationship is not strict.

The types of biological measurements identified in the proposed rule are those that have generally been used in damage assessments, with the exception of the Habitat Evaluation Procedures (HEP). HEP has been used widely in analyzing impacts of proposed development projects, and considerable documentation is already available. An information document for use with damage assessments, "Type B Technical Information Document: Guidance on Use

of Habitat Evaluation Procedures and Habitat Suitability Index Models for CERCA Application," is being prepared concurrently with the proposed rule. Its availiability will be announced in a notice in the **Federal Register**. Interested parties are encouraged to review this document, which is intended to be made final concurrently with the proposed rule. It is intended to be a supplement to the materials and training already available for HEP from the U.S. Fish and Wildlife Service.

Life table statistics are widely used in other management and research functions, but their use here is restricted. The conditions generally considered necessary for their valid use are expected to occur rarely in damage assessments. The reference in the proposed rule to the American Fisheries Society publication does not address or refer to the dollar values assigned to fish species in that publication, but is restricted to the section in that publication providing guidance on methods for conducting valid counts of dead fish.

3. Baseline Services Determination

The measure of effect in the Quantification phase is a comparison of the conditions found following the discharge or release with a baseline condition both for services and for biological or physical changes. This baseline will most often represent conditions occurring just prior to the discharge or release, although the definition given in the regulation is broader. The broader definition in the regulations allows for longer-term situations where, even in the absence of the specific discharge or release, significant changes would have occurred in the resource or service being measured. For example, an area might have been primarily a farming community when a dump was first established, but land use changed during the period of hazardous waste dumping, and much of the area might have been converted to industrial use. These land use changes need to be considered in establishing baseline; it may be unreasonable to assess damages based in this case upon lost use as wildlife habitat. In addition to human-caused changes, consideration may have to be given to natural changes, such as ecological succession. This method of defining baseline reflects the principle that a natural resource damage claim should be limited to the damages caused by the injury resulting from actions of the party determined responsible.

The issue of from which point the calculation of change should be performed frequently has been erroneously related to the question often faced by EPA in determining what level of "cleanup" is appropriate in response actions under the NCP. The objectives of EPA under the NCP and the damage assessment process differ and, as such, different calculation points are inevitable.

EPA is not always concerned with returning the site to its baseline condition when it determines a cleanup level. Rather, the goal of most response actions is to remove and/or remediate the hazardous substances at a site until they no longer represent an actual or potential threat to public health, welfare, or the environment. The particular cleanup level is driven by the application of applicable or relevant and appropriate environmental standards and other site-specific consideration.

When performing a damage assessment, the objective is to determine the value of the loss. Standards may be used to determine that an injury has occurred, but the extent of effects for which the responsible party may be found liable may differ significantly from the standard. In some instances, the baseline condition was cleaner than the standard where in others the standard was exceeded before the discharge or release. Therefore, in many situations the level of cleanup will be different from the baseline. The proposed rule follows the common law principle that the injured party should be made whole again. Thus, quantification of injury and estimates of damages are based upon the change from baseline, rather than on standards.

The proposed rule also requires that the baseline reflect normal variation in the resource and service. For almost any parameter being measured, variability is expected, whether that parameter is a physical measurement, such as concentration of an ion in ground water, or a biological measure, such as population levels of an animal species. Some of those parameters may be relatively constant, or vary on an annual cycle; others can be expected to vary cyclically and dramatically, such as "four-year cycles" of lemmings or "ten-year cycles" of lynx, where populations may vary from nearly zero to many thousands in a given area over the course of a fairly regular cycle. Other parameters may change gradually in one direction, as do population changes of many species during ecological succession, or show random and unpredictable changes. Included in the last category are extreme changes that might fall outside of "normal" variation, but still be due to natural causes. An example of extreme change is destruction of a coastal marsh by hurricane winds and seas.

A baseline should allow for comparison with the normal range of variation, rather than being constrained to a single measurement. For example, a discharge or release may occur or be studied at a time when a population is normally absent or low, but may affect the ability of the affected area to support the population at times when it would normally be high. A chemical change in air or water may be mitigated by dilution at certain times of year, but the same quantity of material may reach deleterious concentration at other times because of low water flow or different wind conditions. A further constraint is that data for the baseline and for the assessment area should be collected using comparable methods. Unless identical or very similar methodologies are used, different data may simply reflect a difference in the methodologies rather than in the condition being measured.

The preferred method for establishing baseline is to use historical data taken from the assessment area before the discharge or release. In many cases, such historical data for an assessment area may be missing or inadequate, so the proposed rule establishes an alternative means for estimating baseline. In most cases, estimating baseline requires data for similar areas ("control areas") near the assessment area. Preferably, the authorized official will use historical data for the control area if available, after ensuring the control and assessment areas are similar except for the discharge or release. If historical data are unavailable for both the assessment and control areas, then field data must be collected for the control area following the guidance provided.

The same materials used for literature searches in performing research are sources for locating baseline data. These materials include general bibliographic references as well as computer data bases and specialized data bases that contain compilations of resource-specific data from many sources. In addition, many parts of the United States have been studied in Environmental Impact Statements (EIS's) or related documents, for various kinds of projects. these EIS's many contain baseline data (or references to sources) for the subject area. The Digest of Environmental Impact Statements is published by Cambridge Scientific Abstracts, 5161 River Road, Bethesda, MD 20816. It summarizes all EIS's. The company sells microfiche and paper

copies of these documents. A number of State and Federal laws require other planning documents that may be useful. The Federal Government carries out or sponsors research nationwide on natural resources; the National Technical Information Service (NTIS), in Springfield, Virginia, has a computer searchable data base for locating reports on this research, and also can supply microfiche or paper copies. Local information may be available through State agencies (e.g., water resources, air quality control, fish and game, public health, etc.). If the discharge or release occurred on publicly-held land, the agency managing that land may have data available, and private land owners may have similar data. Nearby universities and colleges may have data from studies done by students or faculty members.

If historical data for both assessment and control areas are inadequate, field data must be collected from control areas. Although each resource will require techniques and procedures specific to that resource, and local conditions will require tailoring procedures to the specific location, the proposed rule provides general guidelines that apply to selection and use of control areas. The general guidelines are to be used together with the specific guidelines for each resource, and are designed to balance the needs for flexibility and rigor.

Because of the importance of water as a resource, extensive data on water quality have been collected by many local, State, and Federal agencies. Most of those historical data deal with traditional water quality measures such as inorganic ions and microbial content, and only rarely include tests for man-made organic contaminants. A computerized data base that provides access directly to certain large data collections, such as EPA's STORET water quality data base, or other data bases, is available through the National Water Data Exchange (NAWDEX), headquartered at the U.S. Geological Survey (USGS) in Reston, Virginia, and also available through local assistance centers. In addition, the Survey's own water data are available from the National Water Data Storage and Retrieval System (WATSTORE); inquiries may be sent to Reston or to USGS offices in each State. When determining baseline for ground water, control wells may have to be selected or drilled. Historical data should be available to determine the extent of the aquifers being studied or to determine hydrologic characteristics other than the concentration of oil or hazardous substances. Tests done on the water and matrix from control wells should parallel those done during the Injury Determination phase, as for other baseline procedures.

Establishing baseline for surface water resources includes consideration of effects due to low and high water conditions. At high flow or stage conditions, samples will provide information on material washed from the land surface or tidally-transported while low water conditions will reflect the potentially most concentrated condition of the surface waters. The range of normal concentrations should be determined over the range of water flows or stages, rather than depending strictly on seasonal or annual cycles as might be needed for biological resources. Sediments in the water bodies may represent the major concentration of many contaminants, may provide potential for future releases, and may serve as a potential source of injury for biological resources via food chains. Establishing baseline for marine and estuarine waters may require procedures to account for tidal and current effects on movement of substances.

Concentrations of materials in air can change due to changing wind conditions, diffusion, varying volatility of the materials, and changes in release rates. Thus, establishing baseline conditions for air presents problems for baselines that differ from the other resources. The guideline contained in the proposed rule impose limitations on use of historical data for an air resource baseline. These limitations, in summary, require that pervious testing would have detected the oil or hazardous substance, and that the previous testing indicates that historical levels have been sufficiently predictable to be useful. Detectable concentrations of oil or hazardous substances are normally extremely rare in air, so these requirements are less restrictive than they may seem. Otherwise, monitoring at control sites will have to be conducted by the authorized official with consideration given to siting and to sampling schedules that ensure comparability to the assessment area and conditions and that avoid interference from other potential sources.

Guidelines on baseline data for geologic resources primarily reflect factors important in determining comparability between the assessment and control areas and the need for appropriate sampling from the control areas.

Because quantification of injury to biological resources will involve habitats and populations, the sources of historical information provided emphasize these types of information. Included among the appropriate habitat maps would be the Wetland Inventory maps prepared by the U.S. Fish and Wildlife Service and by individual States showing locations of specific habitats and ecosystems. Many other kinds of habitat and ecosystem maps are available. The U.S. Geological Survey maintains indices to and has available series of aerial photographs for most areas of the country, including not only topographic photography, but also photographs for studying agricultural and other land uses. With professional interpretation, these materials can indicate trends in habitat. Museum collections also provide records of species occurrence that may avoid duplication of collection efforts; specimens often are accompanied by field notes that provide habitat information. Both Federal and State agencies maintain biological data bases that often include distribution and habitat data. Among these are data bases for endangered species, Natural Heritage data bases maintained by many States, systematic data bases often maintained by museums and herbaria, and data bases for numerous fish and game species maintaind by management agencies.

The requirement for species identification is not intended to be a major task. A comprehensive collection of all or most species present is not desirable. The authorized official instead should confirm the identification of species that figure most prominently in the injury assessment and in the selected restoration alternatives. For species that should not be collected for normal taxonomic studies because of low populations or other reasons, modern techniques that require only small blood or other tissue samples from live-trapped animals may be used, as may other techniques that will not create problems for species restoration. These confirmed identities may prove important in subsequent judicial or administrative processes or in later evaluating the success or failure of restoration programs.

4. Resource Recoverability Analysis

Section 301(c)(2)(B) of CERCLA requires consideration of the "ability of the ecosystem or resource to recover." This consideration is provided for in § 11.73 of the proposed rule. To satisfy this requirement, the authorized offical must estimate the time necessary for recovery, both without restoration efforts beyond the removal or remedial

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action and with proposed alternative restoration plans. No single formula can be designated for determining the recovery plans. Recovery will be considered complete upon determination that natural resource services have been effectively restored. This determination does not require that the recovered ecosystem or other resource necessarily be identical to the one lost, but merely that all important and measurable functions of the lost resource have been restored. Once that point is reached, restoration or replacement is considered complete. The authorized offical is given the option of using a shorter period because the costs of efforts expended in estimating very long recovery periods may not provide sufficient benefits when subjected to economic analysis.

The major source of information for the authorized official to use in determining recovery times is the experience that has been gained during other recoveries of similar resources. Journals and published symposia on oil and hazardous substance response, as well as references found in these sources, contain numerous case studies that can be used as the basis for calculating recovery times. EPA has summarized some of these data in Appendix D of their "Technical Support Document for Water Quality-Based Toxics Control," Office of Water Enforcement and Permits and Office of Water Regulations and Standards, September 1985. Knowledge of local conditions, including information on ecosystems, organisms, and climate, can be critical in adjusting the results of published studies to particular situations. Modeling may be useful for air, water, and geologic resources, and knowledge of degradation and natural removal processes for the oil or hazardous substance will be central to all time determinations.

IV. Economic Issues

A. Economic Methodology Determination

The method for determining damages is described in section 301(c)(2) of CERCLA as considering but not limited to, "replacement value, use value and the ability of the ecosystem to recover." Replacement value (costs) and use value are concepts that have a history of application. Accordingly, common law and economics provide considerable guidance on selection of a method or methods to calculate damages. In common law, compensation is often determined by the lesser of the diminution of market value or the cost of restoration or replacement. A simple example is an automobile that has suffered a collision. The owner may recover the cost of repair or the cost of replacement, whichever is less.

In terms of economics, compensation for damages would be the lesser of the diminution of use values or the cost of cost-effective restoration or replacement. That is, if use value is higher than the cost of restoration or replacement, then it would be more rational for society to be compensated for the cost to restore or replace the lost resource than to be compensated for the lost use. Conversely, if restoration or replacement costs are higher than the value of uses foregone, it is rational for society to compensate individuals for their lost uses rather than the cost to restore or replace the injured natural resource. Thus, economics and common law agree on a principle of compensation. This proposed rule has adopted an approach parallel to the general common law and economic rules for compensation for damages. Damages are the lesser of (1) restoration or replacement costs or (2) the diminution of use values.

The only exception to this aforementioned rule occurs when special resources are involved. Congress and State legislatures have determined that certain natural resources are worthy of protection even if their use values are relatively low. If agencies were held to the strict rule of the lesser of a diminution of use values or restoration or replacement costs, some of these resources could be left unrestored or unreplaced, thereby being contrary to Congressional or a State legislature's intent. For this reason, a limited exception has been created.

The term special resources is defined in § 11.14(pp). A special resource is a resource that has been set aside and committed to a specific use by law before the discharge or release was detected. The term includes resources that were set aside primarily for the preservation of wildlife habitat or other sensitive environments. A special resource is not necessarily a "unique or important resource" as that term is used by EPA in its proposed claims regulations. Special resources are distinguished from multiple use resources that are managed for a variety of purposes. Examples of multiple use resources include public lands, National Forests, and military lands. The use of these resources is not limited to a primary purpose and these resources are kept in Federal ownership for a number of reasons other than resource preservation.

Also not included within the category of special resources are threatened and endangered species and critical habitat. These are included on administratively determined lists, and are protected by consultation requirements with the U.S. Fish and Wildlife Service or the National Oceanic and Atmospheric Administration (NOAA), which must be carried out before development can occur, and by specific civil and criminal penalties for harming the species. Since the special resources exception is a substantial departure from the common law and the underlying theory of this proposed rule, it can only be applied where the resource to be restored is, itself, set aside by a legislative body. The inclusion or exclusion of a resource from the special resource category has no implication concerning the decision to restore or replace that resource. It simply addresses the issue of the extent a responsible party should be held liable for an amount in excess of society's value for the resource. The proposed rule draws the line at decisions consciously and clearly made by elected representatives. If the injured resource is a special resource, the analysis required by § 11.35 for the Economic Methodology Determination is to be used as a guide although not a restriction on determining whether diminution of use values or restoration or replacement costs will be the measure of damages. In the case of a special resource, restoration or replacement costs may provide the basis for the analysis to be performed in the Damage Determination phase of the damage assessment even if costs outweigh benefits. The decision should be based upon (1) the statutory responsibility to manage or protect the injured resource; (2) the demonstration that the costs of restoration will not be grossly disproportionate to the benefits gained by restoration; and (3) the technical feasibility of the restoration.

When the injured resource is not a special resource, the measure of damages should be the lesser of (1) restoration or replacement costs, or (2) the diminution of use values. No matter which measure is chosen, the monies collected from the settlement or award must be used for restoration or replacement. In addition, Federal or State agencies are not precluded from supplementing damage funds with other monies to restore, replace, or enhance the injured natural resource.

Regardless of the category of the resource, the analysis required in the Economic Methodology Determination, § 11.35, may be only a rough approximation of the values derived

after the conclusion of the Damage Determination phase. Original research projects should not be conducted at this early phase of the assessment. Existing studies to approximate use values foregone resulting from the injury to the natural resource should be relied upon. Sources of data include journal articles, government publications, such as the documents produced by the Forest Service to implement the Resource Planning Act, and work in progress at many universities. Restoration or replacement costs should be approximated through the use of unit values for past management practices or resource acquisitions. If sufficient information is not readily available at the time of the development of the Assessment Plan, the determination of an economic methodology can be postponed until after the Injury Determination phase of the assessment.

One crucial issue in any quantitative damage assessment is the selection of a discount rate. The discount rate is used to translate monetary amounts of costs and benefits occurring in different time periods into a common present value amount. The discount rate used in this proposed rule is given by OMB's "Circular A–94 Revised." The current discount rate listed in this circular is a real rate of 10%.

B. Restoration or Replacement Methodology

The restoration methodology is described in § 11.81. In the Quantification phase, the authorized official quantifies the effects of the injury in terms of lost or disrupted services. In the Damage Determination phase, the authorized official determines management actions, that is, actions to restore, rehabilitate, replace, or acquire the equivalent, that will return the lost or disrupted services. Management actions are those types of activities which either physically modify the resource or administratively change the species of human use of the resources designed to achieve a specific goal normally reflected in the agency's planning documents. Examples of management actions include such resource related actions as seeding, stocking, supplying water, or hazing to discourage wildlife use of specific habitats. When performing this methodology, the authorized official should look to restore or replace the lost services in a cost-effective manner. Any specific methodology that accomplishes this is acceptable. However, the method chosen must be the result of an evaluation performed in the Restoration Methodology Plan discussed later. An example of a restoration methodology is the Habitat Evaluation Procedures (HEP). For example, the U.S. Fish and Wildlife Service has examined how the presence of oil or hazardous substances can be incorporated into HEP. This information can be found in "Type B Technical Information Document: Guidance on the Use of Habitat Evaluation Procedures and Habitat Suitability Index Models for CERCLA Applications," forthcoming from the U.S. Fish and Wildlife Service.

The U.S. Fish and Wildlife Service has also produced guidance on incorporating cost-effectiveness into HEP. This guidance can be found in "Designing Cost-Effective Habitat Management Plans Using Optimization Methods," by Adrian H. Farmer and Scott C. Matulich, forthcoming from the U.S. Fish and Wildlife Service. In addition, the U.S. Fish and Wildlife Service is preparing a microcomputer program called the "Habitat Management Evaluation Model" (HMEM). This model will provide a means of rapidly designing cost-effective management actions for use with restoration or replacement alternatives. The model is based upon the concepts in the guidance document. These procedures should be reviewed to determine if they can be of assistance in structuring cost-effective restorations or replacements.

If restoration or replacement will form the basis of compensation in the Damage Determination phase of the assessment, the Federal or State agency acting as trustee may also claim damages for the dimunition of use values over the time required to perform the restoration. The authorized official should estimate this diminution of use values in accordance with the guidance in §§ 11.83 and 11.84.

C. Restoration Methodology Plan

The selection of the cost-effective restoration or replacement measures for the Damage Determination is made in the Restoration Methodology Plan. The guidance provided in the section of the rule concerning the restoration methodology is to be followed in developing the Restoration Methodology Plan and in selecting the cost-effective alternative.

The Restoration Methodology Plan is intended to encompass the requirements of a good environmental analysis. Fundamental to the plan are the requirements for an analysis of alternative means of restoring or replacing the lost services and public review and input to the decision. An interdisciplinary analysis of both direct and indirect impacts of the alternatives also is called for in the proposed rule. Finally, in accordance with accepted procedures for environmental analysis, the Restoration Methodology Plan is required to form the basis from which the post-award Restoration Plan will be tiered.

The purpose of the Restoration Methodology Plan is to compute damages. Therefore, the plan is not viewed as being of sufficient detail to carry out a restoration, rather the level of detail is driven by the needs of the damage determination. The later post-award Restoration Plan, when the level of funding is known, is expected to focus on the selected alternative and, therefore, provide more detail on the actual restoration.

The authorized official is encouraged to combine the requirements for the Restoration Methodology Plan with other planning or analytical requirements that may apply to a specific restoration or replacement decision. Some examples of other such requirements include a restoration plan required under section 111(i) of CERCLA for claims against the Fund, Remedial Investigation/Feasibility Studies (RI/FS) required under the National Contingency Plan, analyses required under the National Environmental Policy Act of 1969 (NEPA), or land use planning documents required under the various land management statutes. The Restoration Methodology Plan is designed, in particular, to satisfy the requirements of NEPA without additional analysis at this stage.

D. Use Value Methodologies

Section 11.83 is divided into two parts—one for resources that are traded in markets and the other for resources that are not traded in markets. If the injured resource is traded in a market, the diminution of the market price should be the measure of lost use value. The diminution of the market price will not always coincide with the change in the loss in social value, but this amount is widely recognized by courts as the measure of damages when a commodity is injured.

When the injured resource is traded in the market, the authorized official must determine whether the market is "reasonably competitive" in order to use this methodology. While not defined in the proposed rulemaking, reasonably competitive means that the assumptions underlying a competitive market are fulfilled to a reasonable degree. This determination may be made on a case-by-case basis.

If the injured resource is not traded in a market, but similar or like resources are traded in a market, the authorized official should use an appraisal

technique to determine damages. To the extent possible, all appraisals should be in conformance with the "Uniform Standards for Federal Land Acquisitions" (Uniform Standards). In those instances when State statutes may be at variance with these standards, a State official should follow the applicable State's guidance on performing appraisals for damage assessments performed by a State.

The Uniform Standards cover three general appraisal approaches: (1) The cost approach; (2) the income method; and (3) the comparable sales approach. The cost approach is inappropriate in implementing the appraisal method since the restoration methodology (described in § 11.81) explains how restoration costs are to be determined. The income method in the Uniform Standards should be performed in accordance with the "Factor Income" method given in the proposed rule.

The diminution of market price and the appraisal method jointly comprise the marketed resource methodology in the proposed rule. Only when the injured resource is not traded in a market, or when that market is not reasonably competitive, and no comparable sales are available for use in an appraisal, may the authorized official use any of the nonmarketed resource methodologies listed, or any that meet the acceptance criteria.

CERCLA provides that a Federal or State agency is acting as a trustee when seeking recovery for a loss to a resource. According, it is damage to the public that may be recovered. The use values that can be claimed by a Federal or State agency are those associated with the loss to the public in general because of the discharge or release. These include: (1) Losses in recreation and other public uses; (2) fees and other payments made to the agency for the private use of the public resource and; (3) the economic rent, that is, the excess of total earnings of a producer of a good or service over the payment required to induce that producer to supply the same quantity currently being supplied, accruing to private individuals because the agency does not charge the producer a price or fee for the private use of the public resource.

Under this proposed rule, the Federal or State agency acting as trustee cannot collect for: (1) Taxes forgone, because these are transfer payments from individuals to the government; (2) wages and other income lost by private individuals, except for that portion of income that represents economic rent, because these values do not accrue to the agency and may be the subject of law suits brought by the individuals suffering the loss; or (3) any speculative losses. The costs incurred by private individuals may be considered in performing the nonmarketed resource methodologies listed in the proposed regulation, but the purpose of this use is to enable the authorized official to assign a value to the resource, not to collect that private cost.

The Federal or State agency acting as trustee can claim all the income lost, not just the economic rent, from a commercial venture when the agency is the sole or majority owner of the venture that is affected by the discharge or release. For example, if the Federal or State agency sells water and that water supply is injured, that agency can claim the change in income as damages. This procedure allows the agency to file one claim to obtain all damages associated with the discharge or release, rather than two.

Nonmarketed resource methodologies may be used to measure a diminution of use values. The methodologies listed in § 11.83 are examples of those that are permitted under this proposed rule. Discussions of these methodologies can be found in many natural resource or environmental economics textbooks. Examples include: M. Freeman III, "The Benefits or Environmental Improvement: Theory and Practice," Resources for the Future, Inc., (Baltimore, MD: Johns Hopkins University Press, 1979); and O.C. Herfindal and A.V. Kneese, "Economic Theory of Natural Resources," Resources for the Future, Inc., (Columbus, OH: Charles E. Merrill Publishing Company, 1974.)

Several of the Non-Marketed Resource Methodologies listed in § 11.84 are also listed in the "Procedures for Evaluation of National Economic Developemnt (NED) Benefits and Costs in Water Resources Planning (Level C)," (Procedures), (in *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies*, Chapter II, Section VII, Appendices 1–3, U.S. Department of the Interior, Water Resources Council, Washington, DC 1984 DOI/WRC/84/01, available from NTIS, Springfield, VA). To the extent practicable and applicable, the authorized official should follow the guidance in this document. The discussion of Unit Day Values in the Procedures should be supplemented with other sources of existing estimates of use values, such as that in the forthcoming Final Environmental Impact Statement, "1983–2030 Resources Planning Act Program," (Appendix F, U.S. Forest Service, Department of Agriculture, Washington, DC).

Other studies may also provide the authorized official with more background. One supplemental source is W.H. Desvousages, V.K. Smith, and M.P. McGivney, "A Comparison of Alternative Approaches for Estimating Recreation and Related Benefits of Water Quality Improvement," (U.S. Environmental Protection Agency, Office of Policy Analysis, Washington, DC, EPA–230/05–83–001, March 1983). In addition, further information on the use of these nonmarketed resource methodologies is being prepared entitled "Type B Technical Information Document: Techniques to Measure Damages to Natural Resources."

The list of nonmarketed resource methodologies cannot be comprehensive. The acceptance criteria in § 11.84 were designed to insure that methodologies consistent with economic theory, yet not specifically listed in the proposed rule, are available for use in estimating damages. These acceptance criteria are that the methodology measure either willingness to pay or willingness to accept in a cost-effective manner.

Most economic techniques address willingness to pay; however, in the case of an injury to a natural resource, willingness to accept compensation may be the more technically correct measure of damages. In theory, willingness to accept can be larger than willingness to pay, and in most empirical studies this difference has been evident. However, there is no universally accepted procedure to adjust for this difference. Because of this lack of a universally accepted procedure, the authorized official is given the flexibility to choose either criterion. These concepts are discussed in greater detail in the technical information document discussed above.

V. Glossary

The following terms are defined using generally accepted definitions. These definitions were not modified in any way during the development of the proposed rule and, therefore, are not included as regulatory language. They are provided here simply for clarification.

(a) "Assimilate" means to absorb a substance into an organism's body, tissues, or cellular structure and does not refer to substances in the digestive tract or respiratory system that have not otherwise been absorbed across membranes or epithelia.

(b) "Behavioral abnormalities" means alteration of overt activities by an animal including locomotor,

reproductive, care of young, food gathering, or avoidance of predation.

(c) "Bioaccumulate" means the process whereby chemical substances enter aquatic or terrestrial organisms through both bioconcentration and uptake of chemical residues from dietary sources.

(d) "Bioconcentrate" means the process whereby either chemical substances enter aquatic organisms through gills or epithelial tissue directly from water, or chemical substances enter terrestrial organisms through respiratory or epithelial tissues directly from air; and the concentration of the chemical substances in the tissue fluids of the organism exceeds that of the air or water.

(e) "Biomagnify" means the process by which tissue concentrations of bioaccumulated chemical substances increase as they pass up the food chain through two or more trophic levels.

(f) "Cancer" means both malignant and benign neoplasia.

(g) "Constant dollar" means inflation adjusted dollars at a specified base year.

(h) "Controlled experiment" means any laboratory, pen, or field test in which an investigator regulates the exposure of the biological resource to the oil or hazardous substances and which includes comparison to organisms treated similarly except for such exposure.

(i) "Disease" means an impairment of biological resource's ability to resist or recover from an infections agent.

(j) "Existence value" means the dollar amount of the willingness to pay or willingness to accept of individuals who do not plan to utilize a resource now or in the future, but are willing to pay to know that the resource would continue to exist in a certain state of being.

(k) "Expected present value" means the dollar amount derived by the period-by-period summation of the various levels of benefits or costs associated with alternative assumptions on paramenter values, where each level is weighted by the probability of the occurrrence of the parameter value, and discounted by period, using the discount rate as determined in § 11.83 of this part.

(l) "Free-ranging" means biological resources in their natural habitat, in contrast to biological resources maintained in captivity.

(m) "Genetic mutations" means a detectable chromosomal aberration that can be correlated with a detrimental effect on the survival or reproductive success of the biological resource.

(n) "Neoplasm" means an abnormal mass of tissue, the growth of which exceeds and is uncoordinated with that of the normal tissue and persists in an excessive manner after cessation of the stimuli that evoked the change.

(o) "Net expected present value" means that costs are subtracted from benefits in the definition of expected present value.

(p) "Option value means the dollar amount of the willingness to pay or willingness to accept of individuals who are not currently using a resource, but wish to preserve their option to use that resource in a certain state of being in the future.

(q) "Physicial deformation" means cogenital or acquired alterations in shape, size, and structure of an organism or any part of an organism, including malformations.

(r) "Physiological malfunction" means alterations in biochemical and physiological processes necessary for maintenance of homeostasis and reproduction, including such processes as fluid transport, digestion, emtabolism, excretion, respiration, locomotion, and nervous and endocrine integration.

(s) "Willingness to accept" means the amount of money an individual must be given to be as well off as he was prior to the occurrence of an event.

(t) "Willingness to pay" means the amount of money an individual would be willing to pay to have avoided the occurrence of an event.

VI. Summary and Analysis of Major Issues Included in the Comments Received From the Advance Notices of Proposed Rulemaking

A. Introduction

Three Advance Notices of Proposed Rulemaking (ANPRM's) were issued by the Department during the course of the development of the proposed rule. The first of these, published on Janaury 10, 1983, contained questions and discussion points designed to solicit advice on the policies and procedures to be used both in the rulemaking and in the rule itself. Technical input and information on existing methods of assessment were also requested. The second ANPRM, dated August 1, 1983, was issued primarily to inform the public of the results of the first Notice and of the proposed Departmental response. In this second ANPRM, all comments received up to this point were summarized and addressed briefly. A large part of these comments was suggestions on ways to facilitate the rulemaking. The definition of damage to be adopted in the rule was identified as the most serious substantive issue. Other comments on the content of the rule included numerous suggestions on how the rule could best cover widely varying types of natural resources, discharges, and releases.

The Departmental response to these comments, as announced in the second ANPRM, was a proposed series of meetings with other Federal agencies, and planned visits to selected States. These meetings and visits were intended to assist the Department in its decision on the method to be used in the rulemaking. Workshops, surveys, meetings with experts, and the formation of interagency working groups were all envisioned as possible components of the process of generating the rule. Subsequent events and the imposition of a court-ordered deadline for the completion of the rule made full enactment of this proposed outreach plan inadvisable. The intent of the plan was fulfilled, however, by the use of an intra-Departmental team of specialists to complete the rulemaking, as well as by the extensive use of literature searches, consultation with outside experts, and surveys.

A third ANPRM was issued on January 11, 1985, to allow interested parties further opportunity to supply useful information or express their views. This comment period was extended through July 1, 1985.

A total of ninety-five comments was received from the three ANPRMs: eighty-four from the first two ANPRMs, and eleven from the third. Of the ninety-five, there were ten from industrial firms; fifteen from trade or industrial associations; forty-two from State governments and agencies; seven from Federal agencies; twelve from individuals, firms, companies, or institutions generally interested in the rule; five from groups interested in doing contract work for the Department; and two from law firms representing Native American tribes.

Many of the comments consisted solely of general experssions of interest and offers of assistance. A large number of studies and other documents were included with the comments. This information and assistance was used during the course of the rulemaking.

A number of comments were oriented to the development of the "type A" simplified assessments. These issues will be addressed with guidance for type A procedures is proposed.

Roughly half of the total comments contained discussions of the substantive issues covered in the remainder of this section. The comments recieved on the methods to be used in the rulemaking process were extensively responded to in the second ANPRM and are not included here.

The issues raised in the comments on the contents of the rule can be grouped into three broad categories. The first covers the role of natural resource damage assessments within the wider context of CERCLA, and the degree and nature of the involvement in the assessment process by potentially responsible parties and governmental entities. The second centers around the format that the rule should take to best address the wide variety of natural resources, discharges, and releases covered by the CWA and CERCLA. The third and most intensely addressed group of issues includes the selection of the measures of injury and damages to be used in assessments as well as related questions on restoration or replacement of affected resources.

B. Comments on the Role of Assessments in the Context of CERCLA, and on the Role in Assessments of Potentially Responsible Parties and Governmental Entities

A number of comments pointed out that response to inactive sites is the primary purpose of CERCLA, and that assessments should complement existing Federal response programs rather than complicate them. Some comments went on to note that natural resource damages are the residual damages remaining after cleanup; that in many cases response actions will fully address natural resource issues, rendering assessments unnecessary; or that assessments should only take place during the later stages of response actions or after response actions are complete. A few comments added that CERCLA was intended by Congress to be focused primarily on public health rather than natural resource concerns, and that the Department should adopt the Environmental Protection Agency's approach to the question of "how clean is clean?," as determined on a case by case basis.

The proposed rule incorporates the idea that the primary purpose of CERCLA is response to hazardous sites. It does this by defining natural resource damages as compensation for residual injuries to natural resources after accounting for the results of response actions. The proposed rule also supports the current Federal response program by stressing cooperation and coordination with the existing NCP process. Although completed or anticipated response activities must be included in the determination of damage, no set timing for assessments is specified in the proposed rule. The wide differences between sites and the statute of limitations for natural resource damages dictate that this matter be left flexible. The relationship of the response standards set by the Environmental Protection Agency to this proposed rule is discussed in part I(D)(3) of this preamble.

A large set of comments contained opinions on who should initiate and conduct an assessment. Some suggested that the On-Scene Coordinator should do a preliminary survey for all discharges or releases and decide whether an assessment is warranted. Several stated that the potentially responsible party should be able either to participate in or have total control over assessment costs and activities. Others stressed that Federal and State agencies acting as trustees are solely responsible for assessments and should be given maximum discretion and flexibility in all aspects of assessments. The relationship between Federal and State agencies acting as trustees and the need for clearly delineated lines of authority where multiple agencies are involved was emphasized. Some comments included recommendations on the proper agencies within States for doing assessments, or on ways that jurisdictional conflicts over resources between States or between the Federal Government and States might be resolved.

Federal agencies and States are designated as trustees of natural resources in CERCLA and in the NCP, and as such are responsible for initiating and conducting any assessments that are necessary. The On-Scene Coordinator and other National Response Team members are involved in notification and coordination capacities. Participation, but not control, is allowed to potentiatly responsible parties by the proposed rule. In cases of multiple agencies, the rule recommends that a lead authorized official be chosen. As a few of the comments noted, this proposed rule is not the proper vehicle to define the relationship between Federal and State agencies, or to dictate the internal division of assessment authority within States.

A small number of comments requested that funding or other types of Federal assistance be made available to States or tribes to support their assessment activities.

Section 301(c) of CERCLA grants no independent funding authority. As other comments pointed out, this proposed rule can only address the nature and scope of compensation for damages to natural resources. The disbursement of the Hazardous Substances Response Trust Fund and of other monies designated for response activities are handled under their authorities.

C. Comments on the Format of the Proposed Rule

Many comments discussed ways of handling the disparate natural resources included under CERCLA and the CWA. Some stated that certain resources, such as ground water, marinas and beaches, or anadromous fish, either had special needs that deserved separate treatment or special importance that needed priority treatment. One view held that biological resources should be dealt with primarily in terms of "important species," while another judged ecosystem, habitat, and food chain effects to be essential. The placement of generic resource types into categories, the recognition of regional differences, and the use of a matrix approach were all recommended.

The proposed rule adopts the definition of resources given in CERCLA and treats all resources with equal priorty with the limited exception of the special resources. The overall process gives the flexibility necessary to adequately address the special circumstances connected with each resource at any specific assessment site. Elements of both a single species approach and an ecosystem approach are incorporated into the Injury Determination and Quantification phases of the proposed rule. By focusing on services, damage determination can be accomplished using similar procedures for all resource types, as appropriate to each situation.

A number of comments requested different regulations for discharges of oil and for releases of hazardous substances. This request was based on the different characteristics of these two categories of materials, and on the fact that much more information is available on discharges of oil than on releases of hazardous substances.

The proposed rule is sufficiently flexible to accommodate differences in toxicity and other characteristics among the many types of oil and hazardous substances. The use of two separate rules for type B assessments would be repetitive and unnecessary.

Many comments addressed directly the form that the rule should take and what elements should be included in it. It was repeatedly stressed that a basic requirement of assessment regulations is the flexibility necessary for addressing diverse resource impacts in widely varying geographical settings. Simplicity, elimination of excess paperwork choices in methods and techniques, and ease of application were mentioned as desirable characteristics of an assessment process. Cost-

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effectiveness and efficiency were major concerns. Specific elements suggested for the assessment process included: preliminary screening and establishing priorities; guidance documents; provisions for mitigating irreparable damage; required use of teams of specialists; the encouragement of a sequential decision process; recommendation of only technically feasible techniques; mandated use of only low cost procedures in initial activities; permitted use of complex procedures only if necessary; limitation of assessment activities to those essential to the immediate assessment; and required correlation between the degree of damage, the depth of an assessment, and the amount of information to be gained from varying levels of efforts.

The proposed rule recognizes the importance of all of the above suggestions and incorporates most of them into the various phases of the assessment process. Cost-effectiveness, reasonable cost, and elimination of unjustified expenditures are primary factors in every phase of the proposed rule, which requires an inexpensive preassessment screen and explicit plans before major asssessment activities are undertaken. Since the type B assessment for which this proposed rule is intended are meant to address damages on a case-by-case basis, a certain amount of the simplicity obtained in a uniform approach is impossible to achieve. Nevertheless, the process delineated in the proposed rule retains a flexibility that allows its application in situations ranging from the straightforward to the complex.

Clear guidance is given on the standards to which methods and procedures used in the assessment must adhere, but choice is allowed between comparable methods. Provision is made for the use of new and emerging technologies and procedures with the inclusion in the proposed rule of acceptance criteria for selecting alternate methodologies.

D. Comment on Injury, Damages, Restoration, and Related Issues

1. Injury

Many comments on injury definition stressed that a causal link between the discharge or release and any suspected injury must be clearly established and measured by reasonably available and consistent scientific evidence. One set of responses stated that the discharge or release must be the proximate cause of injury, while another emphasized that indirect effects must not be overlooked. A few comments maintained that the effects of injuries caused by improper or negligent response activities not performed by the responsible party should not be included in damages assessed against the responsible party. Suggestions on possible indicators of injury included mortality, area lost, behavioral changes, tainting of fish, and reduced fecundity. Suggestions on methods to measure injury included multispectral and other monitoring systems, and "the painstaking collection of biological data."

The proposed rule recognizes that a discharge or release may have both direct and indirect effects on resources. Solid scientific evidence is required in both cases to establish a link between an injury and oil or a hazardous substance. Any injuries to natural resources resulting from response activities done in accordance with the NCP can be included in a damage determination, since the response activities would have been unnecessary without the discharge or release. Procedures for determining injury and methods of measuring the extent of injury provided for in the proposed rule vary as appropriate to each resource and situation, but all procedures and methods are required to meet specified standards of acceptability.

A number of comments called for the setting of *de minimus* levels for discharges or releases, with the corollary that amounts below these levels would automatically be excluded form any assessment activity. Other comments emphasized that every spill should be investigated and treated as potentially significant until it is determined that injury is minor.

The proposed rule neither sets *de minimus* levels nor requires that every discharge or release be investigated for natural resource damages. The authorized official decides whether to pursue damages on a case-by-case basis. However, the preassessment screen and the early determination of economic methodology in the Assessment Plan phase should discourage cases of minimal injury where assessment costs far outweigh the damage. Because the Federal or State agency can only obtain compensation where actual damages can be determined, and can only recoup reasonable assessment costs, it is unlikely that unnecessary assessments will be done.

2. Damage and Restoration

Comments on the proper definition of damage and on appropriate methods for determining damage were extensive. A large number of responses centered around the theme that damages should be based on actual and quantifiable economic losses rather than on losses of speculative uses or on esoteric and unmeasurable changes in resources. Opinions on what was esoteric an unmeasurable varied widely. These comments repeatedly stressed that damages should be solely compensatory rather than punitive. An opposing group of comments emphasized the theme that compensation should be as full, fair and efficient as possible, should not have cost/benefit analysis as its primary determinant, and should include consideration of all recreational, commercial, aesthetic, educational, and intrinsic values. One of the comments suggested that punitive damages might be appropriate in some cases.

There were also different interpretations of the role that restoration costs, replacement costs, and use values should take in the determination of damages. Some comments conceptualized damages as amounts to be paid in addition to restoration and replacement costs. Some indicated that restoration or replacement costs should always be awarded, in addition to an amount compensating for lost use value during the period of restoration. Other comments held that the diminution of the market value of a resource was the only fair measure of damage, unless the cost of restoration or replacement was less than this. A few comments suggested the partitioning of resources into prioritized categories for the purpose of determining levels of compensation. Various economic methodologies for establishing the value of resources were either recommended as appropriate or rejected as unsound and inappropriate. Criteria were offered for making the decision between restoration, rehabilitation, replacement, and acquiring the equivalent.

The comments went on to emphasize that CERCLA requires that natural recovery be taken into account in the determination of damages. The concern was expressed that assessments under CERCLA not duplicate awards for damages covered under other statutes or under common law. It was stated that the purpose of the rule should not be to codify private damages. A number of comments stated that compensation should be based on comparisons with pre-spill or pre-release rather than pristine conditions. Some comments advocated the use of data from control situations when no quantitative data is available for pre-damage conditions. One comment called for restoration to an "acceptable" condition, not necessarily the pre-release condition,

with consideration of the actual use of the resource, the potential for future migration of the discharge or release, and the sensitivity of the ecosystem. Resolution of the definition of damage to be used in this proposed rule is of such importance that it has already been discussed at length in the pertinent sections of this preamble. The concerns expressed in these summarized comments are incorporated, as appropriate, into the proposed rule, in an effort to delineate a compensation procedure that is fair, based on solid principles of law and economics, and in accordance with CERCLA and the CWA.

In general, the idea that just compensation should be for the lesser of restoration or forgone use value is accepted in the proposed rule, but an exception to this is made for certain categories of special resources. In accordance with CERCLA, compensatory rather than punitive damages are allowed, and the effects of natural recovery are taken into account. Compensation for lost use values during restoration is permitted. Consideration of pre-release or baseline rather than either pristine or "acceptable" conditions is required. Economic methodologies for calculating use values are provided in a hierarchy of preference, with the simplest and most widely accepted procedures always used first if they are appropriate to the situation. The choice between restoration or replacement is left to the authorized official, but reasonable cost considerations are required. The use of a number of different methodologies for different resources within the same assessment is permitted in order to promote the most feasible and efficient valuation process possible. The principle of non-compensation for private losses and the prohibition against double counting of services guards against the award of duplicate damages, as does the principle of considering natural resource damages as residual to the cost of response actions.

Several comments expressed the opinion that money received in awards should always be used for restoration or replacement. Some went on to state that no restoration should take place until a restoration plan is adopted. Others maintained that restoration should be solely at the discretion of the Federal or State agency acting as trustee, and that CERCLA 301(c) regulations were not meant to address restoration plans. Still other comments assumed that restoration plans would be discussed in full within this rule and gave suggestions on what elements a restoration plan should contain.

A Restoration Methodology Plan is required by the proposed rule when restoration or replacement costs are used in the measurement of damages. In addition, a Restoration Plan is required after the award. A general outline of what should be included in these plans is given. The use of all awards for restoration or replacement purposes after the adoption of the Restoration Plan is also required, in keeping with the emphasis in CERCLA and the CWA on restoration.

3. Related Issues

A small but appreciable number of comments expressed concern about the difficulty that companies would have in acquiring insurance if approaches using esoteric valuation methods differing from accepted common law practices were adopted in the assessment procedure. Reference was made to the possibilities for unlimited liability, and to other ambiguities and inconsistencies under CERCLA.

To the extent possible, the approach to compensation taken in the proposed rule follows common law principles and is designed to avoid excessive and unwarranted damage claims.

A final series of comments pointed out that certain elements of CERCLA need to be included in the rule, such as limitations of liability for releases that occurred wholly before CERCLA was enacted, and the exclusion from compensation for effects resulting from: federally permitted releases, previously identified and approved irretrievable commitments of natural resources, registered pesticide applications, or long-term exposure to multiple and diffuse sources of air pollution. A number of comments concerned the two-year review process stipulated in CERCLA 301(c)(3).

The proposed rule recognizes and reiterates the statutory limitations to liability as they are stated in CERCLA. Provisions for the required two-year review process are made in § 11.12 of the proposed rule.

The primary authors of this proposed rulemaking, all with the Department of the Interior, are Keith Eastin, Alison Ling, and Sheryl Katz, Office of the Solicitor, David Rosenberger and Peter Escherich, U.S. Fish and Wildlife Service, Rich Aiken and Stan Coloff, Bureau of Land Management, Willie Taylor, Office of Policy Analysis, and Craig Sprinkle, U.S. Geological Survey.

The Department of the Interior has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and, therefore, no further analysis pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (43 U.S.C. 4332(2)(C)) has been prepared.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The proposed rule provides technical and procedural guidance for the assessment of damages to natural resources. Therefore, the proposed rule does not directly impose any additional cost. In addition, estimates of per unit assessment costs times the potential numbers of assessment total well below $100 million annually.

The proposed rule applies to Federal and State agencies acting as trustees for natural resources and is thus not expected to have an effect on a substantial number of small entities.

Paperwork Reduction Act

The information collection requirements contained in 43 CFR Part 11 do not require approval by the Office of Management and Budget under 44 U.S.C. 3507, because there are fewer than 10 respondents annually.

List of Subjects in 43 CFR Part 11

Continental shelf, Endangered species, Environmental protection, Fish, Forests and forest products, Grazing land, Indian lands, Mineral resources, National forest, National parks, National wild and Scenic rivers System, Oil pollution, Public lands, Wildlife, Wildlife refuges.

Under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Title 43, Subtitle A, is proposed to be amended by adding a new Part 11 as set forth below.

Dated: December 10, 1985.

Marian Blank Horn,

Principal Deputy Solicitor.

Authority

These regulations are issued under the authority of section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9651(c).

PART 11—NATURAL RESOURCE DAMAGE ASSESSMENTS

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Appendix I—Methods for Estimating the Areas of Ground Water and Surface Water Exposure During the Preassessment Screen

Authority: 42 U.S.C. 9651(c).

Subpart A—Introduction

§ 11.10 Scope and applicability.

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601–9657, and the Clean Water Act (CWA), 33 U.S.C. 1251–1376, provide that Federal and State agencies who are authorized to act as trustees of natural resources may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance covered under CERCLA or the CWA and may seek to recover those damages. This Part supplements the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300, for the identification, investigation, study and response to a discharge of oil or release of a hazardous substance, and it provides a procedure by which a Federal or State agency acting as trustee can determine compensation for injuries to natural resources that have not beren nor are expected to be addressed by response actions conducted pursuant to the NCP. This Part applies to assessments initiated after the effective date of this rule.

§ 11.11 Purpose.

The purpose of this part is to provide standardized and cost-effective procedures for assessing natural resource damages. The results of assessments performed by a Federal official according to these procedures shall be accorded the evidentiary status of a rebuttable presumption as provideed in section 111(h) CERCLA.

§ 11.12

Biennial review of regulations.

The regulations and procedures included within this Part shall be reviewed and, as appropriate, revised 2 years from the effective date of these rules and every second anniversary thereafter.

§ 11.13 Overview.

(a) *Purpose.* The process established by this Part uses a planned and phased approach to the assessment of natural resource damages. This approach is designed to ensure that all procedures used in an assessment are appropriate, necessary, and sufficient to accomplish the purposes of the assessment.

(b) *Preassesment phase.* Subpart B of this Part, the preassessment phase, provides for notification, coordination, and emergency activities if necessary and includes the preassessment screen. The preassessment screen is meant to be a rapid review of readily available information that allows the authorized official to make an early decision on whether a natural resource damage assessment can and should be performed.

(c) *Assessment Plan, phase.* If the authorized official decides to perform an assessment, and Assessment Plan. as described in Subpart C of this Part, is prepared. The Assessment Plan ensures that the assessment is performed in a planned and systematic manner and that the methodologies chosen demonstrate reasonable cost.

(d) *Type A assessments.* The simplified assessments provided for in section 301(c)(2)(A) of CERCLA are performed using the standard procedures specified in Subpart D of this Part.

(e) *Type B asessments.* Subpart E of this part covers the assessments provided for in section 301(c)(2)(B) of CERCLA. The process for implementing type B assessments has been divided into the following three phases.

(1) *Injury Determination phase.* The purpose of this phase is to establish that one or more natural resources have been injured as a result of the discharge of oil or release of a hazardous substance. The sections of Subpart E comprising the Injury Determination phase include definitions of injury, guidance on determining pathways, and testing and sampling methods. These methods are to be used to determine both the pathways through which resources have been exposed to oil or a hazardous substance and the nature of the injury.

(2) *Quantification phase.* The purpose of this phase is to establish the extent of the injury to the resource in terms of the loss of services that the injured resource would have provided had the discharge or release not occurred. The sections of Subpart E comprising the Qualification phase include methods for establishing baseline conditions, estimating recovery periods, and measuring the degree of service reduction from the injured resource.

(3) *Damage Determination phase.* The purpose of this phase is to establish the appropriate compensation expressed as a dollar amount for the injuries established in the Injury Determination phase and measured in the Quantification phase. The sections of Subpart E comprising the Damage Determination phase include guidance

on acceptable economic methodologies for estimating compensation based or (i) the costs of restoration or replacement of (ii) a diminution of use value.

(f) *Post-assessment phase.* Subpart F of this part includes requirements to be met after the assessment is complete. The Report of Assessment contains the results of the assessment, and documents that the assessment has been carried out according to this rule. Other post-assessment requirements delineate the manner in which the demand for a sum certain shall be presented to a responsible party and the steps to be taken when sums are awarded as damages.

§ 11.14 Definitions.

Terms not defined in this section have the meaning given by CERCLA or the CWA. As used in this part, the phrase:

(a) "Acquisition of the equivalent" or "replacement" means the substitution for an injured resource with a resource that provides the same, similar, or related services, when such substitutions are in addition to any substitutions made or anticipated as part of response actions and when such substitutions exceed the level of response actions determined appropriate to the site pursuant to § 300.65 and § 300.68 or the NCP.

(b) "Air" or "air resources" means those naturally occurring constituents of the atmosphere, including those gases essential for human, plant, and animal life.

(c) "Assessment area" means the area or areas affected directly or indirectly by the discharge of oil or release of a hazardous substance and that serves as the geographic basis for the injury assessment.

(d) "Authorized official" means the person to whom is delegated the authority to act on behalf of the Federal or State agency acting as trustee to perform a natural resource damage assessment. As used in this part, authorized official means the phrase "authorized official or lead authorized official," as appropriate.

(e) "Baseline" means the condition or conditions that would have existed at the assessment area had the discharge of oil or release of a hazardous substance not occurred.

(f) "Biological resources" means those natural resources referred to in section 101(16) of CERCLA as fish and wildlife and other biota. Fish and wildlife include marine and freshwater aquatic and terrestrial species; game, nongame, and commercial species; and threatened, endangered, and State sensitive species. Other biota encompass shellfish, terrestrial and aquatic plants, and other living organisms not otherwise listed in this definition.

(g) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601–9657.

(h) "Committed use" means either a current use, or a planned use of a natural resource for which the Federal or State agency acting as trustee or another party has made a documented legal, administrative, budgetary, or a financial commitment before the discharge of oil or release of a hazardous substance is detected.

(i) "Control area" or "control resource" means an area or resource unaffected by the discharge of oil or release of a hazardous substance. A control area or resource is selected for its comparability to the assessment area or resource and may be used for establishing the baseline condition and for comparison to injured resources.

(j) "Cost-effective" or "cost-effectiveness" means that when two or more activities provide the same level of benefits, the least costly activity providing that level of benefits will be selected.

(k) "CWA" means the Clean Water Act, as amended, 33 U.S.C. 1251–1376, also referred to as the Federal Water Pollution Control Act.

(l) "Damages" means the amount of money sought by the Federal or State agency acting as trustee as compensation for injury, destruction, or loss of natural resources as set forth in section 107(a) or 111(b) of CERCLA.

(m) "Destruction" means the total and irreversible loss of a natural resource.

(n) "Discharge" means a discharge of oil as defined in section 311(a)(2) of the CWA, as amended, and includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil.

(o) "Drinking water supply" means any raw or finished water source that is or may be used by a public water system, as defined in the SDWA, or as drinking water by one or more individuals.

(p) "EPA" means the United States Environmental Protection Agency.

(q) "Exposed to" or "exposure of" means that all or part of a natural resource is, or has been, in physical contact with oil or a hazardous substance, or with media containing oil or a hazardous substance.

(r) "Fund" means the Hazardous Substance Response Trust Fund established under section 221 of CERCLA.

(s) "Geologic resources" means those elements of the Earth's crust such as soils, sediments, rocks, and minerals, including petroleum and natural gas, that are not included in the definitions of ground and surface waters.

(t) "Ground water resources" means water in a saturated zone or stratum beneath the surface of land or water and the rocks or sediments through which ground water moves. It includes ground water resources that meet the definition of drinking water supplies.

(u) "Hazardous substance" means a hazardous substance as defined in section 101(14) of CERCLA.

(v) "Injury" means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil or release of a hazardous substance, or exposure to a product of reactions resulting from the discharge of oil or release of a hazardous substance. As used in this Part, injury encompasses the phrases "injury," "destruction," and "loss." Injury definitions applicable to specific resources are provided in § 11.62 of this part.

(w) "Lead authorized official" means an official authorized to act on behalf of all affected Federal or State agencies acting as trustees where there are multiple agencies affected because of coexisting or contiguous natural resources or concurrent jurisdiction.

(x) "Loss" means a measurable adverse reduction of a chemical or physical quality or viability of a natural resource.

(y) "National Contingency Plan" or "NCP" means the revisions to the National Oil and Hazardous Substances Contingency Plan promulgated by EPA in 1985, pursuant to section 105 of CERCLA and codified in 40 CFR Part 300.

(z) "Natural resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act of 1976), any State or local government, or any foreign government.

(aa) "Natural resource damage assessment" or "assessment" means the process of collecting, compiling, and analyzing information, statistics, or data through prescribed methodologies to determine damages for injuries to natural resources as set forth in this Part.

(bb) "Oil" means oil as defined in section 311(a)(1) of the CWA, as

amended, of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(cc) "On-Scene Coordinator" or "OSC" means the On-Scene Coordinator as defined in § 300.6 of the NCP.

(dd) "Pathway" mean the route or medium through which oil or a hazardous substance is or was transported from the source of the discharge or release to the injured resource.

(ee) "Reasonable cost" means the amount that may be recovered for the cost of performing a damage assessment. Costs are reasonable when (1) the injury, quantification, and damage determination phases have a well-defined relationship to one another and are coordinated; and (2) the increment of extra benefits obtained by using a more costly injury, quantification, or damage determination methodology are greater than the costs of that methodology.

(ff) "Rebuttable presumption" means the procedural device provided by section 111(h) of CERCLA describing the evidentiary weight that a court, or EPA in a claim against the Fund, is required to give a damage assessment performed by a Federal agency acting as trustee in accordance with the regulations provided in this Part.

(gg) "Recovery period" means either the longest length of time required to return the services of the injured resource to their baseline conditions, or a lesser period of time selected by the authorized official in the Assessment Plan.

(hh) "Release" means a release of a hazardous substance as defined in section 101(22) of CERCLA.

(ii) "Replacement" or "acquisition of the equivalent" means the substitution for an injured resource with a resource that provides the same, similar, or related services, when such substitutions are in addition to any substitutions made or anticipated as part of response actions and when such substitutions exceed the level of response action determined appropriate to the site pursuant to § 300.65 and § 300.68 of the NCP.

(jj) "Response" means remove, removal, remedy, or remedial actions as those phrases are defined in sections 101(23) and 101(24) of CERCLA.

(kk) "Responsible party or parties" and "potentially responsible party or parties" means a person or persons described in or potentially described in one or more of the categories set forth in section 107(a) of CERCLA.

(ll) "Restoration" or "rehabilitation" means actions undertaken to return an injured resource to its baseline condition, as measured in terms of the injured resource's physical properties or the services it previously provided, when such actions are in addition to response actions completed or anticipated, and when such actions exceed the level of response actions determined appropriate to the site pursuant to § 300.65 and § 300.68 of the NCP.

(mm) "SDWA" means the Safe Drinking Water Act, 42 U.S.C. 300f–300j–10.

(nn) "Services" means the physical and biological functions performed by the resource including the human uses of those functions. These services are the result of the physical, chemical, or biological quality of the resource.

(oo) "Site" means an area or location, for purposes of response actions under the NCP, at which oil or hazardous substances have been stored, treated, released, disposed, placed, or otherwise came to be located.

(pp) "Special resources" means those natural resources that have been set aside and committed to a specific use by law before the discharge of oil or release of a hazardous substance was detected. The term includes resources that were set aside primarily to preserve wildlife habitat or other unique and sensitive environments. It does not include resources that have been set aside but are committed to multiple-use management, nor does it include resources listed on administratively determined lists for special protection, or resources protected by regulatory statutes.

(qq) "Surface water resources" means the waters of the United States, including the sediments suspended in water or lying on the bank, bed, or shoreline and sediments in or transported through coastal and marine areas. This term does not include ground water or water or sediments in ponds, lakes, or reservoirs designed for waste treatment under the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6901–6987 or the CWA, and applicable regulations.

(rr) "Technical feasibility" or "technically feasible" means that the technology and management skills necessary to implement an Assessment Plan or Restoration Methodology Plan are well known and that each element of the plan has a reasonable chance of successful completion in an acceptable period of time, as determined by the authorized official.

(ss) "Trustee" means any Federal natural resources management agency designated in Subpart G of the NCP and any State agency that may prosecute claims for damages under section 107(f) or 111(b) of CERCLA.

(tt) "Type A assessment" means standard procedures for simplified assessments requiring minimal field observation to determine damages as specified in section 301(c)(2)(A) of CERCLA.

(uu) "Type B assessment" means alternative methodologies for conducting assessments in individual cases to determine the type and extent of short- and long-term injury and damages, as specified in section 301(c)(2)(B) of CERCLA.

§ 11.15 Actions against the responsible party for damages.

(a) In an action filed pursuant to section 107(f) of CERCLA, a Federal or State agency acting as a trustee may recover:

(1) Damages as determined in accordance with:

(i) Subpart D; or

(ii) As determined in accordance with §§ 11.80 through 11.84 of this part and calculated based on injuries occurring from the onset of the discharge or release through the recovery period, less any mitigation of those injuries by response actions taken or anticipated, plus any increase in injuries that are reasonably unavoidable as a result of response actions taken or anticipated;

(2) The costs of emergency restoration efforts under § 11.21 of this part; and

(3) The reasonable and necessary costs of the assessment, to include:

(i) The reasonable and necessary costs of the assessment, to include:

(i) The cost of performing the Preassessment Plan phases and the methodologies provided in Subparts D and E of this part; and

(ii) Administrative costs and expenses reasonably necessary for, and incidental to, the assessment, assessment and restoration planning, and any restoration or replacement undertaken.

(b) In a claim filed pursuant to section 311(f) (4) and (5) of the CWA, a Federal or State agency acting as trustee may only claim damages for restoration or replacement.

(c) The determination of the damage amount shall consider any applicable limitations provided for in section 107(c) of CERCLA.

§ 11.16 Claims against the Hazardous Substance Response Trust Fund.

Claims against the Fund shall be filed in accordance with the Natural Resource Claims Procedures, promulgated by EPA at 40 CFR Part 306.

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§ 11.17 Compliance with applicable laws and standards.

(a) *Worker health and safety.* All worker health and safety considerations specified in the NCP, 40 CFR 400.38, shall be observed, except that requirements applying to response actions shall be taken to apply to the assessment process.

(b) *Resource protection.* Before taking any actions under this Part, particularly before taking samples or making determinations of restoration or replacement, compliance is required with any applicable statutory consultation or review requirements, such as the Endangered Species Act; the Migratory Bird Treaty Act; the Marine Protection, Research, and Sanctuaries Act; and the Marine Mammal Protection Act, that may govern the taking of samples or in other ways restrict alternative management actions.

Subpart B—Preassessment Phase

§ 11.20 Notification and detection.

(a) *NCP responses.* Sections 300.52(d) and 300.64(d) of the NCP provide for the OSC or lead agency to notify the Federal or State agency acting as trustee when natural resources have been or are likely to be injured by a discharge of oil or a release of a hazardous substance being investigated under the NCP.

(b) *Previously unreported discharges or releases.* If a Federal or State agency acting as trustee identifies or is informed of apparent injuries to natural resources that appear to be a result of an unknown or previously unreported discharge of oil or release of a hazardous substance, he should first make reasonable efforts to determine whether a discharge or release has taken place. In the case of a discharge or release not yet reported or being investigated under the NCP, the Federal or State agency acting as the trustee shall report that discharge or release to the appropriate authority as designated in the NCP, 40 CFR 300.51(b) and 300.63(b).

(c) *Identification of co-trustees.* The Federal or State agency acting as trustee should assist the OSC or lead agency, as needed, in identifying other Federal or State agencies whose resources may be affected as a result of shared responsibility for the resources and who should be notified.

§ 11.21 Emergency restorations.

(a) *Reporting requirements and definition.* (1) In the event of a natural resource emergency, the Federal or State agency acting as trustee shall contact the National Response Center (800/424–8802) to report the actual or threatened discharge or release and to request that an immediate response action be taken.

(2) An emergency is any situation related to a discharge or release requiring immediate action to avoid an irreversible loss of natural resources or to prevent or reduce any continuing danger to natural resources, or a situation in which there is a similar need for emergency action.

(b) *Emergency actions.* If no immediate response actions are taken at the site of the discharge or release by the EPA or the U.S. Coast Guard within the time that the Federal or State agency acting as trustee determines is reasonably necessary, or if such actions are insufficient, the Federal or State agency acting as trustee should exercise any existing authority it may have to take on-site response actions. If no on-site response actions are taken, the Federal or State agency acting as trustee may undertake limited off-site restoration action to the extent necessary to prevent or reduce the immediate migration of the oil or hazardous substance onto or into the resource under the jurisdiction of the Federal or State agency acting as trustee.

(c) *Limitations on emergency actions.* The Federal or State agency acting as trustee may undertake only those actions necessary to abate the emergency situation. The normal procedures provided in this Part must be followed before any additional restoration actions other than those necessary to abate the emergency situation are undertaken. The burden of proving that emergency restoration was required and that restoration costs were reasonable and necessary based on information available at the time, rests with the Federal or State agency acting as trustee.

§ 11.22 Sampling of potentially injured natural resources.

(a) *General limitations.* Until the authorized official has made the determination required in § 11.23 of this Part to proceed with an assessment, field sampling of natural resources should be limited to the conditions identified in this section. All sampling and field work shall be subject to the provisions of § 11.17 of this Part concerning safety and applicability of resource protection statutes.

(b) *Early sampling and data collection.* Field samples may be collected or site visits may be made before completing the preassessment screen to preserve data and materials that are likely to be lost if not collected at that time and that will be necessary to the natural resource damage assessment. Field sampling and data collection at this stage should be coordinated with the lead agency under the NCP to minimize duplication of sampling and data collection efforts. Such field sampling and data collection should be limited to:

(1) Samples necessary to preserve perishable materials considered likely to have been affected by, and contain evidence of, the oil or hazardous substance. These samples generally will be biological materials that are either dead or visibly injured and that evidence suggests have been injured by oil or a hazardous substance;

(2) Samples of other ephemeral conditions or material, such as surface water or soil containing or likely to contain oil or a hazardous substance, where those samples may be necessary for identification and for measurement of concentrations, and where necessary samples may be lost because of factors such as dilution, movement, decomposition, or leaching if not taken immediately; and

(3) Counts of dead or visibly injured organisms, which may not be possible to take if delayed because of factors such as decomposition, scavengers, or water movement. Such counts shall be subject to the provisions of § 11.71(1)(5)(iii) of this part.

§ 11.23 Preassessment screen—general.

(a) *Requirement.* Before beginning any assessment efforts under this part, except as provided for under the emergency restoration provisions of § 11.21 of this part, the authorized official shall complete a preassessment screen and make a determination as to whether an assessment under this part shall be carried out.

(b) *Purpose.* The purpose of the preassessment screen is to provide a rapid review of readily available information that focuses on resources under the jurisdiction of the Federal or State agency acting as trustee. This review should ensure that there is a reasonable probability of making a successful claim before funds and efforts are expended in carrying out an assessment.

(c) *Determination.* When the authorized official has decided to proceed with an assessment under this part, the authorized official shall document the decision in terms of the criteria provided in paragraph (e) of this section in a Preassessment Screen Determination. This Preassessment Screen Determination shall be included in the Report of Assessment described in § 11.90 of this part.

(d) *Content.* The preassessment screen shall be conducted in accordance with the guidance provided in this section and in § 11.24—Preassessment screen—information on the site and § 11.25—Preassessment screen—preliminary identification of resources potentially at risk, of this part.

(e) *Criteria.* Based on information gathered pursuant to the preassessment screen and on information gathered pursuant to the NCP, the authorized official shall make a preliminary determination that all of the following criteria are met before proceeding with an assessment:

(1) A discharge of oil or a release of a hazardous substance has occurred;

(2) Natural resources under the jurisdiction of the Federal or State agency acting as trustee have been or are likely to have been adversely affected by the discharge or release;

(3) The quantity and concentration of the discharged oil or released hazardous substance is sufficient to potentially cause injury, as that term is used in this part, to those natural resources;

(4) Data sufficient to pursue an assessment are readily available or can be obtained at reasonable cost; and

(5) Response actions, if any, carried out or planned do not or will not sufficiently remedy the injury to natural resources without further action.

(f) *Coordination.* (1) In a situation where response activity is planned or underway at a particular site, assessment activity shall be coordinated with the lead agency consistent with § 300.33(b) of the NCP.

(2) Whenever, as part of a response action under the NCP, a preliminary assessment, 40 CFR 300.52 and 40 CFR 300.64, or an OSC Report, 40 CFR 300.40, is to be, or has been, prepared for the site, the authorized official should consult with the lead agency under the NCP, as necessary, and to the extent possible, use information or materials gathered for the preliminary assessment or OSC Report, unless doing so would unnecessarily delay the preassessment screen.

(3) Where a preliminary assessment or an OSC Report does not exist or does not contain the information described in this section, that additional information may be gathered.

(4) If the Federal or State agency acting as trustee already has a process similar to the preassessment screen, and the requirements of the preassessment screen can be satisfied by that process, the processes may be combined to avoid duplication.

§ 11.24 Preassessment screen—information on the site.

(a) *Information on the site and on the discharge or release.* The authorized official shall obtain and review readily available information concerning:

(1) The time, quantity, duration, and frequency of the discharge or release;

(2) The name of the hazardous substance, as provided for in table 302.4, "List of Hazardous Substances and Reportable Quantities," 50 FR 13456–13522 (1958);

(3) The history of the current and past use of the site identified as the source of the discharge of oil or release of a hazardous substance;

(4) Relevant operations occurring at or near the site;

(5) Additional oil or hazardous substances potentially discharged or released from the site; and

(6) Potentially responsible parties.

(b) *Damages excluded from liability under CERCLA.* (1) The authorized official shall determine whether the discharge or release:

(i) Was specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement or other comparable environmental analysis, that the decision to grant the permit or license authorizes such commitment of natural resources, and that the facility or project was otherwise operating within the terms of its permit or license; or

(ii) Resulted from the application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135–135k; or

(iii) Resulted from any other federally permitted release.

(2) An assessment under this part shall not be continued for potential injuries meeting one or more of the criteria described in paragraph (b)(1) of this section, which are exceptions to liability provided in sections 107 (f), (i), and (j) of CERCLA.

§ 11.25 Preassessment screen—preliminary identification of resources potentially at risk.

(a) *Preliminary identification of pathways.* (1) The authorized official shall make a preliminary identification of potential exposure pathways to facilitate identification of resources at risk.

(2) Factors to be considered in this determination should include, as appropriate, the circumstances of the discharge or release, the characteristics of the terrain or body of water involved, weather conditions, and the known physical, chemical, and toxicological properties of the oil or hazardous substance.

(3) Pathways to be considered shall include, as appropriate, direct contact, surface water, ground water, air, food chains, and particulate movement.

(b) *Exposed areas.* An estimate of areas where exposure or effects may have occurred or are likely to occur shall be made. This estimate shall identify:

(1) Areas where it has been or can be observed that the oil or hazardous substance has spread;

(2) Areas to which the oil or hazardous substance has likely spread through pathways; and

(3) Areas of indirect effect, where no oil or hazardous substance has spread, but where biological populations may have been affected as a result of animals moving into or through the site.

(c) *Exposed water estimates.* The area of ground water or surface water that may be or has been exposed may be estimated by using the methods described in Appendix I of this part.

(d) *Estimates of concentrations.* An estimate of the concentrations of oil or a hazardous substance in those areas of potential exposure shall be developed.

(e) *Potentially affected resources.* (1) Based upon the estimate of the areas of potential exposure, and the estimate of concentrations in those areas, the authorized official shall identify natural resources under his jurisdiction that are potentially affected by the discharge or release. This preliminary identification should be used to direct further investigations, but it is not intended to preclude consideration of other resources later found to be affected.

(2) Natural resources potentially at risk that are special resources, as that phrase is used in this part, shall be identified.

(3) A preliminary estimate, based on information readily available from resource managers, of the services and human uses of the resources identified as potentially affected shall be made. This estimate will be used in determining which resources to consider if further assessment efforts are justified.

Subpart C—Assessment Plan Phase

§ 11.30 Assessment Plan—general.

(a) *Assessment Plan requirement.* Before initiating any assessment methodologies provided in Subpart D for a type A assessment or in Subpart E for a type B assessments, the authorized official shall develop a plan for the assessment of natural resource damages. The Assessment Plan shall be

developed in accordance with the requirements and procedures provided in this Subpart.

(b) *Purpose.* The purpose of the Assessment Plan is to ensure that the assessment is performed in a planned and systematic manner and that methodologies selected from Subpart D for a type A assessment or from Subpart E for a type B assessment, including the Injury Determination, Quantification, and Damage Determination phases, can be conducted at a reasonable cost, as that phrase is used in this Part.

§ 11.31 Assessment Plan—content.

(a) *General content and level of detail.* (1) The Assessment Plan shall identify all of the scientific and economic methodologies that will be performed during the Injury Determination, Quantification, and Damage Determination phases of the type B assessment, or the specific type A procedure that will be performed.

(2) The Assessment Plan shall be of sufficient detail to serve as a means of evaluating whether the approach used for assessing the damage is cost-effective, as that phrase is used in this Part. The Assessment Plan shall include descriptions of the natural resources and the geographical areas involved. In addition, for type B assessment, the Assessment Plan shall include the sampling locations within those geographical areas, sample and survey design, numbers and types of samples to be collected, analyses to be performed, preliminary determination of the recovery period, and other such information required to perform the selected methodologies.

(b) *Decision on type A or type B assessment.* The Assessment Plan shall include documentation of the authorized official's decision as to whether to proceed with a type A or a type B assessment. This determination shall be based upon the guidance provided in § 11.33 of this Part.

(c) *Specific requirements for type B assessments.* When the Assessment Plan includes type B methodologies, the Plan shall incorporate the following, in addition to the material identified in § 11.31(a):

(1) The results of the confirmation of exposure performed in accordance with the requirements of § 11.34 of this part;

(2) The Economic Methodology Determination performed in accordance with the guidance provided in § 11.35 of this part;

(3) A Quality Assurance Plan that satisfies the requirements listed in § 300.68(k) of the NCP and applicable EPA guidance for quality control and quality assurance plans; and

(4) The objectives, as required in § 11.64(a)(2) of this part, of any testing and sampling for injury or pathway determination.

§ 11.32 Assessment Plan—development.

(a) *Pre-development requirements.* The authorized official shall fulfill the following requirements before developing an Assessment Plan.

(1) *Coordination.* (i) If the authorized official's responsibility is shared with other Federal or State agencies acting as trustees as a result of coexisting or contiguous natural resources or concurrent jurisdiction, the authorized official shall ensure that all other known affected Federal and State agencies are notified that an Assessment Plan is being developed. This notification shall include the results of the Preassessment Screen Determination.

(ii) Authorized officials from different agencies are encouraged to cooperate and coordinate any assessments that involve coexisting or contiguous natural resources or concurrent jurisdiction. They may arrange to divide responsibility for implementing the assessment in any manner that is agreed to by all of the affected Federal and State agencies acting as trustees with the following conditions:

(A) A lead authorized official shall be designated to administer the assessment. The lead authorized official shall act as coordinator and contact regarding all aspects of the assessment and shall act as final arbitrator of disputes if consensus among the authorized officials cannot be reached regarding the development, implementation, or any other aspect of the Assessment Plan. The lead authorized official shall be designated by mutual agreement of all the Federal or State agencies acting as trustees. If consensus cannot be reached as to the designation of the lead authorized official, the lead authorized official shall be designated in accordance with paragraphs (a)(1)(ii) (B), (C), or (D) of this section.

(B) When the natural resources being assessed are located on land or water subject to the administrative jurisdiction of a Federal agency acting as trustee, the Federal agency shall act as the lead authorized official.

(C) When the natural resources being assessed are located on land or water subject to the administrative jurisdiction of a State agency acting as trustee, the State shall act as the lead authorized official.

(D) When there is a natural resource claim against the Fund pursuant to section 1111(c)(3) of CERCLA, the lead authorized official will be designated in accordance with the natural resource claims procedures, 40 CFR Part 306.20(b).

(iii) If there is a reasonable basis for dividing the assessment, the Federal or State agencies acting as trustees may act independently and pursue separate assessments, actions, or claims. In these instances, the agencies shall coordinate their efforts, particularly those concerning the sharing of data and the development of the Assessment Plans.

(2) *Identification and involvement of the potentially responsible party.* (i) If the lead agency under the NCP for response actions at the site has not identified potentially responsible parties, the authorized official shall make reasonable efforts to identify any potentially responsible parties.

(ii) In the event the number of potentially responsible parties is large or if some of the potentially responsible parties cannot be located, the authorized official may proceed against any one or more of the parties identified.

(iii)(A) The authorized official shall send a Notice of Intent to Perform an Assessment to all identified potentially responsible parties. The Notice shall invite the participation of the potentially responsible party or, if several parties are involved, a representative of the parties, in the development of the type and scope of the assessment and in the performance of the assessment. The Notice shall briefly describe, to the extent known, the site, vessel, or facility involved, the discharge of oil or release of hazardous substance of concern to the authorized official, and the resources potentially at risk, including identification of any special resources considered at risk.

(B) The authorized official shall allow 30 calendar days for the potentially responsible party or parties notified to respond to the Notice before proceeding with the development of the Assessment Plan or any other assessment actions.

(b) *Plan approval.* The authorized official shall have final approval as to the appropriate methodologies to include in the Assessment Plan and of any modifications to the Assessment Plan.

(c) *Public involvement in the Assessment Plan.* (1) The Assessment Plan shall be made available for review by any identified potentially responsible parties, other Federal or State agencies acting as trustees, other affected Federal or State agencies, and any other interested members of the public for a period of at least 30 calendar days before the performance of any methodologies contained therein.

(2) Any comments concerning the Assessment Plan received from identified potentially responsible parties, other Federal or State agencies acting as trustees, other affected Federal or State agencies, and any other interested members of the public, together with any responses to those comments that may be developed, shall be maintained as part of the Report of Assessment, described in § 11.90 of this part.

(d) *Plan implementation.* At the option of any potentially responsible party, or of potentially responsible parties acting jointly, and with the concurrence of the authorized official, the potentially responsible party under the direction and guidance of the authorized official may implement all or any part of the Assessment Plan finally approved by the authorized official.

(e) *Plan modification.* (1) The Assessment Plan may be modified at any stage of the assessment as new information becomes available.

(2)(i) Any modification to the Assessment Plan that, in the judgment of the authorized official is significant, shall be made available for review by any identified potentially responsible party, any other affected Federal or State agencies acting as trustees, and any other interested members of the public for a period of at least 30 calendar days before tasks called for in the modified plan are begun.

(ii) Any modification to the Assessment Plan that the judgment of the authorized official is not significant shall be made available for review by any identified potentially responsible party, any other affected Federal or State agencies acting as trustees, and any other interested members of the public, but the implementation of such modification need not be delayed as a result of such review.

(f) *Plan review.* (1) After the Injury Determination phase is completed and before the Quantification phase is begun, the authorized official shall review the decisions incorporated in the Assessment Plan.

(2) The purpose of this review is to provide an opportunity to confirm the decisions made in the Economic Methodology Determination, or to make such determination if the determination was not completed in the plan development stage, and to ensure that the selection of methodologies for the Quantification and Damage Determination phases is consistent with the results of the Injury Determination phase.

§ 11.33 Assessment Plan—deciding between a type A or type B assessment. [Reserved]

§ 11.34 Assessment Plan—confirmation of exposure.

(a) *Requirement.* (1) In accordance with the requirements provided in this section, the authorized official shall confirm that at least one of the natural resources identified as potentially injured in the preassessment screen has in fact been exposed to the oil or hazardous substance.

(2) Type B assessment methodologies shall be included in the Assessment Plan only upon meeting the requirements of this section.

(b) *Procedures.* (1) Whenever possible, exposure shall be confirmed by using existing data, such as those collected for response actions by the OSC, or other available studies or surveys of the assessment area.

(2) Where sampling has been done before the completion of the preassessment screen, chemical analyses of such samples may be performed to confirm that exposure has occurred. Such analyses shall be limited to the number and type required for confirmation of exposure.

(3) Where existing data are unavailable or insufficient to confirm exposure, one or more of the analytical methodologies provided in the Injury Determination phase may be used. The collection and analysis of new data shall be limited to that necessary to confirm exposure and shall not include testing for baseline levels or for injury, as those phrases are used in this Part.

§ 11.35 Assessment Plan—Economic Methodology Determination.

(a) *Requirements.* Based upon the guidance provided in this section, the authorized official shall determine whether (1) restoration or replacement costs or (2) a diminution of use values will form the basis of the measure of damages. This determination, referred to as the Economic Methodology Determination, shall be used in developing the Assessment Plan for a type B assessment.

(b) *Determination.* (1) The Economic Methodology Determination shall be used to ascertain whether (i) restoration or replacement costs or (ii) a diminution of use values will form the basis of further economic analysis in the Damage Determination phase.

(2) Unless the injured resource is a special resource the authorized official shall select the lesser of (i) restoration or replacement costs or (ii) diminution of use values as the measure of damages.

(3) When restoration or replacement of the injured resource is not technically feasible, the diminution in use values, as determined by using the methodologies listed in § 11.83 of this Part, or other methodologies that meet the acceptance criteria in § 11.83 of this Part, shall constitute the measure of damages.

(c) *Cost and benefits.* (1) The Economic Methodology Determination shall estimate and document the costs of restoration or replacement and the benefits gained by restoration or replacement, of the resource or the resource services.

(2) The costs of restoration or replacement, as determined in paragraph (e) of this section, shall be measured by the anticipated management actions and resource acquisitions required to return the resource services lost as a result to the injury. In determining the costs of restoration or replacement, the costs of acquiring land for Federal management should be used only if this acquisition would represent the sole viable method of obtaining the lost service.

(3) The benefits of restoration or replacement, as determined in paragraph (e) of this section, shall be the restored uses associated with the anticipated management actions and resource acquisitions as determined in paragraph (c)(2) of this section.

(d) *Special resources.* (1) When the injured resource qualifies as a special resource, the authorized official may elect to seek damages based upon restoration or replacement costs.

(2) To assert a special resource restoration or replacement, the authorized official must show:

(i) The statutory obligation of the Federal or State agency acting as trustee to protect the resource;

(ii) Through the Economic Methodology Determination that restoration or replacement costs will not be grossly disproportionate to the benefits gained; and

(iii) The technical feasibility of the restoration or replacement.

(e) *Content.* (1) In performing the Economic Methodology Determination, existing data and studies should be relied upon. Significant new data collection or modeling efforts should not be performed at this stage of the assessment process to complete this determination.

(2) If existing data are insufficient to perform the Economic Methodology Determination, this analysis may be postponed until the Assessment Plan review stage at the completion of the Injury Determination phase of the assessment.

(3) Each Economic Methodology Determination should estimate the following benefits and costs:

(i) The expected present value, if possible, of anticipated restoration or replacement costs, expressed in constant dollars, and separated into capital, operating, and maintenance costs, and including the timing of the costs;

(ii) The expected present value, if possible, of anticipated use values gained through restoration or replacement, expressed in constant dollars, specified for the same base year as the cost estimate, and separated into recurring or nonrecurring benefits, including the timing of the benefit.

(4) Any estimates of costs and benefits shall make explicit all assumptions pertaining to costs and benefits and shall specify all sources of information. Any effects that cannot be expressed in monetary terms should be listed.

(5) The discount rate to be used in developing estimates of the expected present value of benefits and costs shall be that determined in accordance with the guidance in § 11.84(e) of this part.

Subpart D—Type A Assessments [Reserved]

Subpart E—Type B Assessments

§ 11.60 Type B Assessments—general.

(a) *Purpose.* The purpose of the type B assessment is to provide alternative methodologies for conducting natural resource damage assessments in individual cases.

(b) *Steps in the type B assessment.* The type B assessment consists of three phases: § 11.61—Injury Determination; § 11.70—Quantification; and § 11.80—Damage Determination, of this Part.

(c) *Completion of type B assessment.* After completion of the type B assessment, a Report of Assessment, as described in § 11.90, of this Part shall be prepared. The Report of Assessment shall include the determinations made in each phase.

§ 11.61 Injury Determination phase—general.

(a) *Requirement.* (1) The authorized official shall, in accordance with the procedures provided in the Injury Determination phase of this Part, determine 1) whether an injury to one or more of the natural resources has occurred, and 2) that the injury resulted from the discharge of oil or release of a hazardous substance based upon the exposure pathway and the nature of the injury.

(2) The Injury Determination phase consists of § 11.61—general; § 11.62—injury definition; § 11.63—pathway determination; and § 11.64—testing and sampling methods, of this Part.

(b) *Purpose.* The purpose of the Injury Determination phase is to ensure that only assessments involving well documented injuries resulting from the discharge of oil or release of hazardous substance proceed through the type B assessment.

(c) *Injury Determination phase steps.* (1) The authorized official shall determine whether the potentially injured resource constitutes a surface water, group water, air, geologic, or biological resource as defined in § 11.14 of this Part. The authorized official shall then proceed in accordance with the guidance provided in the injury definition section, § 11.62 of this Part, to determine if the resource is injured.

(2) The authorized official shall follow the guidance provided in the testing and sampling methods section, § 11.64 of this part, in selecting the methodology for determining injury. The authorized official shall select from available testing and sampling procedures one or more procledures that meet the requirements of the selected methodologies.

(3) The authorized official shall follow the guidance provided in the pathway section, § 11.63 of this part, to determine the route through which the oil or hazardous substance is or was transported from the source of the discharge or release to the injured resource.

(4) If more than one resource has potentially been injured, an injury determination for each resource shall be made in accordance with the guidance provided in each section of the Injury Determination phase.

(d) *Selection of methodologies.* (1) One of the methodologies provided in § 11.64 of this Part for the potentially injured resource, or one that meets the acceptance criteria provided for that resource, shall be used.

(2) Selection of the methodologies for the Injury Determination phase shall be based upon cost-effectiveness as that phrase is used in this part.

(e) *Completion of Injury Determination phase.* (1) Upon completion of the Injury Determination phase, the Assessment Plan shall be reviewed in accordance with the requirements of § 11.32(f) of this part.

(2) When the authorized official has determined that one or more of the natural resources has been injured as a result of the discharge or release, the authorized official may proceed to the Quantification and the Damage Determination phases.

(3) When the authorized official has determined that an injury has not occurred to at least one of the natural resources or that an injury has occurred but that the injury cannot be linked to the discharge or release, the authorized official shall not pursue further assessment under this part.

§ 11.62 Injury Determination phase—injury definition.

(a) The authorized official shall determine that an injury has occurred to natural resources based upon the definitions provided in this section for surface water, ground water, air, geologic, and biological resources. The authorized official shall test for injury using the methodologies and guidance provided in § 11.64 of this part. The test results of the methodologies must meet the acceptance criteria provided in this section to make a determination of injury.

(b) *Surface water resources.* (1) An injury to a surface water resource has resulted from the discharge of oil or release of a hazardous substance if one or more of the following changes in the physical or chemical quality of the resource is measured:

(i) Concentrations and duration of substances in excess of drinking water standards as established by sections 1411–1416 of SDWA, or by other Federal or State laws or regulations that establish such standards for drinking water, in surface water that was potable before the discharge or release;

(ii) Concentrations and duration of substances in excess of water quality criteria established by section 1401(1)(D) of SDWA, or by other Federal or State laws or regulations that establish such criteria for public water supplies, in surface water that before the discharge or release met the criteria and was used or is committed to use, as the phrase is used in this Part, as a public water supply;

(iii) Concentrations and duration of substances in excess of applicable water quality criteria established by section 304(a)(1) of the CWA or by other Federal or State laws or regulations that establish such criteria, in surface water that before the discharge release met the criteria and was used or is a committed use, as that phrase is used in this Part, as a habitat for aquatic lite, water supply, or recreation. This most stringent criterion shall apply when surface water is used or is committed to use for more than one of these purposes;

(iv) Concentrations and duration of substances on bed, bank, or shoreline

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sediments sufficient to cause the sediment to exhibit characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act, 42 U.S.C. 6921; or

(v) Concentrations and duration of substances sufficient to have caused injury as defined in paragraph (d), (e), or (f) of this section to air, geologic, or biological resources, when exposed to surface water, suspended sediments, or bed, bank, or shoreline sediments.

(2)(i) The acceptance criterion for injury to the surface water resource is the measurement of concentrations of oil or a hazardous substance in two samples from the resource. The samples must be one of the following types:

(A) Two water samples from different locations, separated by a straight-line distance of not less than 100 feet; or

(B) Two bed, bank, or shoreline sediment samples from different locations separated by a straight-line distance of not less than 100 feet; or

(C) One water sample and one bed, bank, or shoreline sediment sample; or

(D) Two water samples from the same location collected at different times.

(ii) In those instances when injury is determined and no oil or hazardous substances are detected in samples from the surface water resource, it must be demonstrated that the substance causing injury occurs or has occurred in the surface water resource as a result of physical, chemical, or biological reactions initiated by the discharge of oil or release of a hazardous substance.

(c) *Ground water resources.* (1) Any injury to the ground water resource has resulted from the discharge of oil or release of a hazardous substance if one or more of the following changes in the physical or chemical quality of the resource is measured:

(i) Concentrations of substances in excess of drinking water standards, established by section 1411–1416 of the SDWA, or by other Federal or State laws or regulations that establish such standards for drinking water, in ground water that was potable before the discharge or release:

(ii) Concentrations of substances in excess of water quality criteria, established by section 1401(1)(d) of the SDWA, or by other Federal or State laws or regulations that establish such criteria for public water supplies, in ground water that before the discharge or release met the criteria and was used or is committed to use, as the phrase is used in this Part, as a public water supply;

(iii) Concentrations of substances in excess of applicable water quality criteria, established by section 304(a)(1) of the CWA or by other Federal or State laws or regulations that establish such criteria for domestic water supplies, in ground water that before the discharge or release met the criteria and was used or is committed to use as the phrase is used in this Part, as a domestic water supply; or

(iv) Concentrations of substances sufficient to have caused injury as defined in paragraph (b), (d), (e), or (f) of this section to surface water, air, geologic, or biological resources, when exposed to ground water.

(2) The acceptance criterion for injury to ground water resources is the measurement of concentrations of oil or a hazardous substance in two ground water samples. The water samples must be from the same geohydrologic unit and must be obtained from one of the following pairs of sources:

(i) Two properly constructed wells separated by a straight-line distance of not less than 100 feet; or

(ii) A properly constructed well and a natural spring or seep, separated by a straight-line distance of not less than 100 feet; or

(iii) Two natural springs or seeps, separated by a straight-line distance of not less than 100 feet.

(3) In those instances when injury is determined and no oil or hazardous substance is detected in samples from the ground water resource, it must be demonstrated that the substance causing injury occurs or has occurred in the ground water resource as a result of physical, chemical, or biological reactions initiated by the discharge of oil or release of hazardous substances.

(d) *Air resources.* An injury to the air resource has resulted from the discharge of oil or release of a hazardous substance if one or more of the following changes in the physical or chemical quality of the resource is measured:

(1) Concentrations of emissions in excess of standards for hazardous air pollutants established by section 112 of the Clean Air Act, 42 U.S.C. 7412, or by other Federal or State air standards established for the protection of public welfare or natural resources; or

(2) Concentrations and duration of emissions sufficient to have caused injury as defined in paragraphs (b), (c), (e), or (f) of this section to surface water, ground water, geologic, or biological resources when exposed to the emissions.

(e) *Geologic resources.* An injury to the geologic resource has resulted from the discharge of oil or release of a hazardous substance if one or more of the following changes in the physical or chemical quality of the resource is measured:

(1) Concentrations of substances sufficient for the materials in the geologic resource to exhibit characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act, 42 U.S.C. 6921;

(2) Concentrations of substances sufficient to cause or contribute to a loss of geologic resources throug erosion by wind or surface water;

(3) Concentrations of substances sufficient to raise the negative logarithm of the hydrogen ion concentration of the soil (pH) to above 8.5 (above 7.5 in humid areas) or to reduce it below 4.0;

(4) Concentrations of substances sufficient to yield a salt saturation value greater than 2 micromhos per centimeter in the soil or an exchangeable sodium percentage greater than 15 percent;

(5) Concentrations of substances sufficient to decrease the water holding capacity such that plant, microbial, or invertebrate populations are affected;

(6) Concentrations of substances sufficient to impede soil microbial respiration to an extent that plant and microbial growth have been inhibited;

(7) Concentrations in the soil of substances sufficient to inhibit carbon mineralization resulting from a reduction in soil microbial populations;

(8) Concentrations of substances sufficient to restrict the ability to access, develop, or use mineral resources within or beneath the geologic resource exposed to the oil or hazardous substance;

(9) Concentrations of substances sufficient to have caused injury to ground water, as defined in paragraph (c) of this section, from physical or chemical changes in gases or water from the unsaturated zone;

(10) Concentrations in the soil of substances sufficient to cause a toxic response to soil invertebrates;

(11) Concentrations in the soil substances sufficient to cause a phytotoxic response such as retardation of plant growth; or

(12) Concentrations of substances sufficient to have cause injury as defined in paragraphs (b), (c), (d), or (f) of this section of surface water, ground water, air, or biological resources when exposed to the substances.

(f) *Biological resources.* (1) An injury to a biological resource has resulted from the discharge of oil or release of a hazardous substance if concentration of the substance is sufficient to:

(i) Cause the biological resource or its offspring to have undergone at least one of the following adverse changes in viability: death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions

(including malfunctions in reproduction), or physical deformations; or

(ii) Exceed action or tolerance levels established under section 402 of the Food, Drug and Cosmetic Act, 21 U.S.C. 342 in edible portions of organisms; or

(iii) Exceed levels for which an appropriate State health agency has issued directives to limit or ban consumption of such organism.

(2) The method for determining injury to a biological resource, as defined in paragraph (f)(1)(i) of this section, shall be chosen based upon the capability of the method to demonstrate a measurable biological response. An injury can be demonstrated if the authorized official determines that the biological response under consideration can satisfy all of the following acceptance criteria:

(i) The biological response is often the result of exposure to oil or hazardous substances. This criterion excludes biological responses that are caused predominately by other environmental factors such as disturbance, nutrition, trauma, or weather. The biological response must be a commonly documented response resulting from exposure to oil or hazardous substances.

(ii) Exposure to oil or hazardous substances is known to cause this biological response in free-ranging organisms. This criterion identifies biological response that have been documented to occur in a natural ecosystem as a result of exposure to oil or hazardous substances. The documentation must include the correlation of the degree of the biological response to the observed exposure concentration of the oil or hazardous substances.

(iii) Exposure to oil or hazardous substances is known to cause this biological response in controlled experiments. This criterion provides a quantitative confirmation of a biological response that may be linked to oil or hazardous substance exposure that has been observed in a natural ecosystem. Biological responses that have been documented only in controlled experimental conditions are insufficient to establish correlation with exposure occurring in a natural ecosystem.

(iv) The biological response measurement is practical to perform and produces scientifically valid results. The biological response measurement must be sufficiently routine such that it is practical to perform the biological response measurement and to obtain scientifically valid results. To meet this criterion, the biological response measurement must be adequately documented in scientific literature, must produce reproducible and verifiable results, and must have well defined and accepted statistical criteria for interpreting as well as rejecting results.

(3) Unless otherwise provided for in this section, the injury determination must be based upon the establishment of a statistically significant difference in the biological response between samples from populations in the assessment area and in the control area. The determination as to what constitutes a statistically significant difference must be consistent with the quality assurance provisions of the Assessment Plan. The selection of the control area shall be consistent with the guidance provided in § 11.72 of this part.

(4) The biological responses listed in this paragraph have been evaluated and found to satisfy the acceptance criteria provided in (f)(2) of this section. The authorized offical may, when appropriate, select from this list to determine injury to fish and wildlife resources. The biological responses are listed by the categories of injury for which they may be applied.

(i) *Category of injury—death.* Four biological responses for determining when death is a result of exposure to the discharge of oil or release of a hazardous substance have met the acceptance criteria.

(A) *Brain cholinesterase (ChE) enzyme activity.* Injury has occurred when brain ChE activity in a sample from the population has been inhibited by at least 50 percent compared to the mean for normal brain ChE activity of the wildlife species. These enzymes are in the nervous system of vertebrate organisms and the rate of ChE activity is associated with the regulation of nerve impulse transmission. This biological response may be used when anti-ChE substances, such as organophosphorus and carbamate pesticides, are suspected to have resulted in death to bird and mammal species.

(b) *Fish kill investigations.* Injury has occurred when a significant increase in the frequency or numbers of dead or dying fish can be measured in accordance with procedures contained in Part II of "Monetary Values of Freshwater Fish and Fish-Kill Counting Guidelines," (American Fisheries Society Special Publication Number 13, 1982; available from the American Fisheries Society, 5410 Grosvenor Lane, Suite 110, Bethesda, MD 20814).

(C) *In situ bioassay.* Injury has occurred when a statistically significant difference can be measured in the total mortality and/or mortality rates between population samples exposed in situ to a his charge of oil or a release of hazardous substance and those in a control site. In situ caged or confined bioassay may be used when oil or hazardous substances are suspected to have caused death to fish species.

(D) *Laboratory toxicity testing.* Injury has occurred when a statistically significant difference can be measured in the total mortality and/or mortality rates between population samples of the test organisms placed in exposure chambers containing concentrations of oil or hazardous substances and those in a control chamber. Published standardized laboratory fish toxicity testing methodologies for acute flow-through, acute static, partial-chronic (early life stage), and chronic (life cycle) toxicity tests may be used. The oil or hazardous substance used in the test must be reasonably comparable to that suspected to have caused death to the natural population of fish.

(ii) *Category of injury—disease.* One biological response for determining when disease is a result of exposure to the discharge of oil or release of a hazardous substance has met the acceptance criteria.

(A) *Fin erosion.* Injury has occurred when a statistically significant difference can be measured in the frequency of occurrence of fin erosion (also referred to as fin rot) in a population sample from the assessment area as compared to a sample from the control area. Fin erosion shall be confirmed by appropriate histological procedures. Fin erosion may be used when oil or hazardous substances are suspected to have caused the disease.

(iii) *Category of injury—behavioral abnormalities.* Two biological responses for determining when behavioral abnormalities are a result of the exposure to the discharge of oil or release of a hazardous substance have met the acceptance criteria.

(A) *Clinical behavioral signs of toxicity.* Injury has occurred when two or more wildlife organisms present in the assessment area exhibit similar clinical behavioral signs that have been documented in pubished literature. If similar behavioral signs are observed at a comparable control area, then injury has occurred when a statistically significant difference can be measured in the frequency of such behavioral signs observed in population samples from the two areas. Clinical behavioral signs of toxicity are characteristic behavioral symptoms expressed by an organism in response to exposure to an oil or hazardous substance.

(B) *Avoidance.* Injury has occurred when a statistically significant difference can be measured in the frequency of avoidance behavior in population samples of fish placed in

testing chambers with equal access to water containing oil or a hazardous substance and the control water. The oil or hazardous substance used in the test must be reasonably comparable to that suspected to have caused avoidance to the natural populations of fish.

(iv) *Category of injury—cancer.* One biological response for determining when cancer is a result of exposure to the discharge of oil or release of a hazardous substance has met the acceptanace criteria.

(A) *Fish neoplasm.* Injury has occurred when a statistically significant difference can be measured in the frequency of occurrence of the fish neoplasia when comparing population samples from the assessment area and a control area. Neoplasms are characterized by relatively autonomous growth of abnormal cells that by proliferation infiltrate, press upon, or invade healthy tissue thereby causing destruction of cells, interference with physiological functions, or death of the organism. The following type of fish neoplasia may be used to determine injury: liver neoplasia and skin neoplasia. The neoplasms shall be confirmed by histological procedures and such confirmation procedures may also include special staining techniques for specific tissue components, ultra-structural examination using electron microscopy to identify cell origin, and to rule out or confirm viral, protozoan, or other causal agents. Fish neoplasm may be used to determine injury when oil or hazardous substances are suspected to have been the causal agent.

(v) *Category of injury—physiological malfunctions.* Five biological responses for determining when physiological malfunctions are a result of exposure to a discharge of oil or release of a hazardous substance have met the acceptance criteria.

(A) *Eggshell thinning.* Injury has occurred when eggshell thicknesses for samples for a population of a given species at the assessment area are thinner than those for samples from a control population at an uncontaminated area, or are at least 15 percent thinner than eggshells collected before 1946 from the same geographic area and stored in a museum. This biological response is a measure of avian eggshell thickness resulting from the adult bird having assimilated the oil or hazardous substance. This biological response may be used when the organochlorine pesticide DDT or its metabolites are suspected to have caused such physiological malfunction injury.

(B) *Reduced avian reproduction.* Injury has occurred when a statistically significant difference can be measured in the mean number of young fledged per active nest when comparing samples from populations in the assessment area and a control area. The fledging success (the number of healthy young leaving the nest) shall be used as the measurement of injury. Factors that may contribute to this measurement include egg fertility, hatching success, and survival of young. This biological response may be used when oil or hazardous substances are suspected to have reduced the nesting success of avian species.

(C) *Cholinesterase (ChE) enzyme inhibition.* Injury has occurred when brain ChE activity in a sample from the population at the assessment area shows a statistically significant inhibition when compared to the mean activity level in samples from populations in a control area. These enzymes are in the nervous system of vertebrate organisms and the rate of ChE activity is associated with the regulation of nerve impulse transmission. This biological response may be used as a demonstration of physiological malfunction injury to birds, mammals, and reptiles when anti-ChE substances, such as organophosphorus and carbamate pesticides, have been discharged or released.

(D) *Delta-aminolevulinic acid dehydratase (ALAD) inhibition.* Injury has occurred when the activity level of whole blood ALAD in a sample from the population of a given species at an assessment area is significantly less than mean values for a population at a control area, and ALAD depression of at least 50 percent can be measured. The ALAD enzyme is associated with the formation of hemoglobin in blood and in chemical detoxification processes in the liver. This biological response is a measure of the rate of ALAD activity. This biological response may be used to determine injury to bird and mammal species that have been exposed to lead.

(E) *Reduced fish reproduction.* Injury has occurred when a statistically significant difference in reproduction success between the control organisms and the test organisms can be measured based on the use of published standardized laboratory toxicity testing methodologies. This biological response may be used when the oil or hazardous substance is suspected to have caused a reduction in the reproductive success of fish species. Laboratory partial-chronic and laboratory chronic toxicity tests may be used. The oil or hazardous substance used in the test must be reasonably comparable to that suspected to have caused reduced reproductive success in the natural population of fish.

(vi) *Category of injury—physical deformation.* Four biological responses for determining when physical deformations are a result of exposure to the discharge of oil or release of a hazardous substance have met the injury acceptance criteria.

(A) *Overt external malformations.* Injury has occurred when a statistically significant difference can be measured in the frequency of overt external malformation, such as small or missing eyes, when comparing samples from populations of wildlife species from the assessment area and a control area. This biological response may be used as a demonstration of injury when such physical deformations are observed in wildlife species exposed to oil or hazardous substances.

(B) *Skeletal deformities.* Injury has occurred when a statistically significant difference can be measured in the frequency of skeletal deformities, such as defects in the growth of bones, when comparing samples from populations of wildlife species from the assessment area and a control area. This biological response may be used as a demonstration of injury when such physical deformations are observed in wildlife species exposed to oil or hazardous substances.

(C) *Internal whole organ and soft tissue malformation.* Injury has occurred when a statistically significant difference can be measured in the frequency of malformations to brain, heart, liver, kidney, and other organs, as well as soft tissues of the gastrointestinal tract and vascular system, when comparing samples from populations of wildlife species in the assessment area and a control area. This biological response may be used as a demonstration of injury when such physical deformations are observed in wildlife species exposed to oil or hazardous substances.

(D) *Histopathological lesions.* Injury has occurred when a statistically significant difference can be measured in the frequency of tissue or cellular lesions when comparing samples from populations of wildlife species from the assessment area and a control area. This biological response may be used as a demonstration of injury when such physical deformations are observed in wildlife species exposed to oil or hazardous substances.

§ 11.63 Injury Determination phase—pathway determination.

(a) *General.* (1) To determine the exposure pathways of the oil or

hazardous substance, the following shall be considered:

(i) The chemical and physical characteristics of the discharged oil or released hazardous substance when transported by natural processes or while present in natural media;

(ii) The rate or mechanism of transport by natural processes of the discharged oil or released hazardous substance; and

(iii) Combinations of pathways that, when viewed together, may transport the discharged oil or released hazardous substance to the resource.

(2) The pathway may be determined by either demonstrating the presence of the oil or hazardous substance in sufficient concentrations in the pathway resource or by using a model that demonstrates that the conditions existed in the route and in the oil or hazardous substance such that the route could have served as the pathway.

(3) To the extent that the information needed to make this determination is not available, tests shall be conducted and necessary data shall be collected to meet the requirements of this section. Methods that may be used to conduct these additional tests and collect new information are described in § 11.64 of this part.

(b) *Surface water pathway.* (1) When the surface water resource is suspected as the pathway or a component of the pathway, the authorized official shall determine, using guidance provided in this paragraph, whether the surface water resource, either solely or in combination with other media, served as the exposure pathway for injury to the resource.

(2)(i) Using available information and such additional tests as necessary, it should be determined whether the surface water resource downstream of the source of discharge or release has been exposed to oil or hazardous substance.

(ii) When the source of discharge or release is on an open water body such as a marsh, pond, lake, reservoir, bay, estuary, gulf, and sound, it should be determined, using available information and such additional tests as necessary, whether the surface water resource in the vicinity of the source of discharge or release has been exposed to oil to or hazardous substance.

(3)(i) If a surface water resource is or likely has been exposed, the areal extent of the exposed surface water resource should be estimated, including delineation of:

(A) Channels and reaches;

(B) Seasonal boundaries of open water bodies; and

(C) Depth of exposed bed, bank, or shoreline sediments.

(ii) As appropriate to the exposed resource, the following should be determined:

(A) Hydraulic parameters and streamflow characteristics of channels and reaches;

(B) Bed sediment and suspended sediment characteristics, including grain size, grain mineralogy, and chemistry of grain surfaces;

(C) Volume, inflow-outflow rates, degree of stratification, bathymetry, and bottom sediment characteristics of surface water bodies;

(D) Suspended sediment concentrations and loads and bed forms and loads of streams and tidally affected water; and

(E) Tidal flux, current direction, and current rate in coastal and marine waters.

(4)(i) Using avialable information and data from additional tests as necessary, the mobility of the oil or hazardous substance in the exposed surface water resource should be estimated. This estimate should consider such physical and chemical characteristics of the oil or hazardous substance as aqueous solubility, aqueous miscibility, density, volatility, potential for chemical degradation, chemical precipitation, biological degradation, biological uptake, and adsorption.

(ii) Previous studies of the characteristics discussed in paragraph (b)(4)(i) of this section should be relied upon if hydraulic, physical, and chemical conditions in the exposed surface water resource are similar to experimental conditions of the previous studies. In the absence of this information, those field and laboratory studies necessary to estimate the mobility of the oil or hazardous substance in surface water flow may be performed.

(5)(i) The rate of transport of the oil or hazardous substance in surface water should be estimated using available information and with consideration of the hydraulic properties of the exposed resource and the physical and chemical characteristics of the oil or hazardous substance.

(ii) Transport rates may be estimated using:

(A) The results of previous time-of-travel and dispersion studies made in the exposed surface water resource before the discharge or release;

(B) The results of previous studies, conducted with the same or similar chemical substances to those discharged or released under experimental conditions similar to the hydraulic, chemical, and biological conditions in the exposed surface water resource;

(C) The results of field measurements of time-of-travel and dispersion made in the exposed or comparable surface water resource, using natural or artificial substances with transport characteristics that reasonably approximate those of the oil or hazardous substance; and

(D) The results of simulation studies using the results of appropriate time-of-travel and dispersion studies in the exposed or comparable surface water resource.

(c) *Ground water pathway.* (1) When ground water resources are suspected as the pathway or a component of the pathway, the authorized official shall determine, using guidance provided in this paragraph, whether ground water resources, either solely or in combination with other media, served as the exposure pathway for injury to the resource.

(2) Using available information and such additional tests as necessary, it should be determined whether the unsaturated zone, the ground water, or the geologic materials beneath or downgradient of the source of discharge or release have been exposed to the oil or hazardous substance.

(3) If a ground water resource is or likely has been exposed, available information and such additional tests should be used as necessary to determine the characteristics of the unsaturated zone, as well as any aquifers and confining units containing the exposed ground water, in the vicinity of the source of discharge or release.

The characteristics of concern include:

(i) Local geographical extent of aquifers and confining units;

(ii) Seasonal depth to saturated zone beneath the site;

(iii) Direction of ground water flow in aquifers;

(iv) Local variation in direction of ground water flow resulting from seasonal or pumpage effects;

(v) Elevation of top and bottom of aquifer and confining units;

(vi) Lithology, mineralogy, and porosity of rocks or sediments comprising the unsaturated zone, aquifers, and confining units;

(vii) Transmissivity and hydraulic conductivity of aquifers and confining units; and

(viii) Nature and amount of hydraulic connection between ground water and local surface water resources.

(4)(i) Using available information and such additional tests as necessary, the

mobility of the oil or hazardous substance within the unsaturated zone and in the exposed ground water resources should be estimated. This estimate should consider such physical and chemical characteristics of the oil or hazardous substance as aqueous solubility, aqueous miscibility, density, volatility, potential for chemical degradation, chemical precipitation, biological degradation, biological uptake, and adsorption onto solid phases in the unsaturated zone, aquifers, and confining units.

(ii) Previous studies of the characteristics discussed in paragraph (c)(4)(i) of this section should be relied upon if geohydrologic, physical, and chemical conditions in the exposed ground water resource are similar to experimental conditions of the previous studies. In the absence of this information, field and laboratory studies may be performed as necessary to estimate the mobility of the oil or hazardous substance within the unsaturated zone and in ground water flows.

(5)(i) The rate of transport of the oil or hazardous substance in ground water should be estimated using available information and with consideration of the geohydrologic properties of the exposed resource and the physical and chemical characteristics of the oil or hazardous substance.

(ii) Transport rates may be estimated using:

(A) Results of previous studies conducted with the same or similar chemical substance, under experimental geohydrological, physical, and chemical conditions similar to the ground water resource exposed to the oil or hazardous substance;

(B) Results of field measurements that allow computation of arrival times of the discharged or released substance at downgradient wells, so that an empirical transport rate may be derived; or

(C) Results of simulation studies, including analog or numerical modeling of the ground water system.

(d) *Air pathway.* (1) When air resources are suspected as the pathway or a component of the pathway, the authorized official shall determine, using guidance provided in this paragraph, whether the air resources either solely or in combination with other media, served as the exposure pathway for injury to the resource.

(2) Using available information, air modeling, and additional field sampling and analysis, it should be determined whether air resources have been exposed to the discharge of oil or release of a hazardous substance.

(3)(i) If an air resource is or has likely been exposed, available information and such additional tests as necessary should be used to estimate the areal extent of exposure and the duration and frequency of exposure of such areas to emissions from the discharge of oil or release of a hazardous substance.

(ii) The areal extent of exposure is defined as the geographical surface area or space where emissions from the source of discharge or release are found or otherwise determined to be present for such duration and frequency as to potentially result in injury to resources present within the area or space.

(4) Previous studies of the characteristics discussed in paragraph (d)(3)(i) of this section should be relied upon if the conditions in the exposed air resource are similar to experimental conditions of the previous studies. In the absence of this information, air sampling and analysis methods identified in § 11.64(d) of this part, air modeling methods, or a combination of these methods may be used in identifying the air exposure pathway and in estimating the areal extent of exposure and duration and frequency of exposure.

(5) For estimating the areal extent, duration, and frequency of exposure from the discharge or release, the following factors shall be considered as may be appropriate for each emissions event:

(i) The manner and nature in which the discharge or release occurs, including the duration of the emissions, amount of the discharge or release, and emergency or other time critical factors;

(ii) The configuration of the emitting source, including sources such as ponds, lagoons, pools, puddles, land and water surface spills, and venting from containers and vessels;

(iii) Physical and chemical properties of substances discharged or released, including volatility, toxicity, solubility, and physical state;

(iv) The deposition from the air and re-emission to the air of gaseous and paticulate emissions that provide periodic transport of the emissions; and

(v) Air transport and dispersion factors, including wind speed and direction, and atmospheric stability and temperature.

(e) *Geologic pathway.* (1) When geologic resources are suspected as the pathway or a component of the pathway, the authorized offical shall determine, using guidance provided in this paragraph, whether geologic resources, either solely or in combination with other media, served as the exposure pathway for injury to the resource.

(2)(i) Using available information and the methods listed in § 11.64(e) of this part, it should be determined whether any element of the geologic resource has been exposed to the oil or hazardous substance. If a geologic resource is or has likely been exposed, the areal extent of the exposed geologic resource, including the lateral and vertical extent of the dispersion, should be estimated.

(ii) To determine whether the unsaturated zone served as a pathway, the guidance provided in paragraph (c) of this section should be followed.

(f) *Biological pathway.* (1) When biological resources are suspected as the pathway or a component of the pathway, the authorized official shall determine, using the guidance provided in this paragraph, whether biological resources, either solely or in combination with other media, served as the exposure pathway for injury to the resource.

(2) Biological pathways that resulted from either direct or indirect exposure to the oil or hazardous substance, or from exposure to products of chemical or biological reactions initiated by the discharge or release shall be identified. Direct exposure can result from direct physical contact with the discharged oil or released hazardous substance. Indirect exposure can result from food chain processes.

(3) If the oil or hazardous substance adhered to, bound to, or otherwise covered surface tissue, or was ingested, or inhaled but not assimilated, the area of dispersion may be determined based upon chemical analysis of the appropriate tissues or ograns (such as leaves, lumgs, stomach, intestine, or their contents) that were directly exposed to the oil or hazardous substance.

(4) If the oil or hazardous substance was assimilated, the areal dispersion may be determined based upon one or more the following alternative procedures;

(i) If direct exposure to the biological resource has occurred, chemical analysis of the organisms that have been exposed may be performed.

(ii) If indirect exposure to the biological resource has occurred, either chemical analysis of free-ranging biological resources using one or more indicator species as appropriate, or laboratory analysis of one or more in situ placed indicator species as appropriate, may be performed.

(A) "Indicator species," as used in this section, means a species of organism selected consistent with the following factors to represent a trophic level of a food chain:

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(*1*) General availability of resident organisms in the assessment area;

(*2*) Potential for exposure to the oil or hazardous substance through ingestion, assimilation, or inhalation;

(*3*) Occurrence of the substance in a chemical form that can be assimilated by the organism;

(*4*) Capacity of the organism to assimilate, bioconcentrate, bioaccumulate, and/or biomagnify the substance;

(*5*) Capacity of the organism to metabolize the substance to a form that cannot be detected through available chemical analytical procedures; and

(*6*) Extent to which the organism is representative of the food chain of concern.

(B) Collection of the indicator species should be limited to the number necessary to define the areal dispersion and to provide sufficient sample volume for chemical analysis.

(C) When in situ procedures are used, indicator species that behave comparably to organisms existing under free-ranging conditions shall be collected. The indicator species used in this procedure must be obtained from a control area selected consistent with provisions of § 11.72 of this part, and appropriate chemical analysis shall be performed on a representative subsample of the indicator species before in situ placement.

(iii) In situ placement procedures shall be used where the collection of samples would be inconsistent with the provisions of § 11.17(b) of this part.

(5) Sampling sites and the number of replicate samples to be collected at the sampling sites shall be consistent with the quality assurance provisions of the Assessment Plan.

(6) Chemical analysis of biological resource samples collected for the purpose of this section shall be conducted in accordance with the quality assurance provisions of the Assessment Plan.

§ 11.64 Injury Determination phase—testing and sampling methods.

(a) *General.* (1) The guidance provided in this section shall be followed for selecting methodologies for the Injury Determination phase.

(2) Before selecting methodologies, the objectives to be achieved by testing and sampling shall be defined. These objectives shall be listed in the Asssessment Plan. In developing these objectives, the availability of information from response actions relating to the discharge or release, the resource exposed, the characteristics of the oil or hazardous substance, potential physical, chemical, or biological reactions initiated by the discharge or release, the potential injury, the pathway of exposure, and the potential for injury resulting from that pathway should be considered.

(3) When selecting testing and sampling methods, only those methodologies shall be selected:

(i) For which performance under conditions similar to those anticipated at the assessment area has been demonstrated;

(ii) That ensure testing and sampling performance will be cost-effective;

(iii) That will produce data that were previously unavailable and that are needed to make the determinations; and

(iv) That will provide data consistent with the data requirements of the Quantification phase.

(4) Specific factors that should be considered when selecting testing and sampling methodologies to meet the requirements in paragraph (a)(3) of this section include:

(i) Physical state of the discharged or released substance;

(ii) The duration, frequency, season, and time of the discharge or release;

(iii) The range of concentrations of chemical compounds to be analyzed in different media;

(iv) Detection limits, accuracy, precision, interferences, and time required to perform alternative methods;

(v) Potential safety hazards to obtain and test samples;

(vi) Costs of alternative methods; and

(vii) Specific guidance provided in paragraphs (b), (c), (d), (e), an (f) of this section.

(b) *Surface water resources.* (1) Testing and sampling for injury to surface water resources shall be performed using methodologies described in this paragraph.

(2) All chemical analyses performed to meet the requirements of the Injury Determination phase for surface water resources shall be conducted in accordance with one or more of the following methodologies:

(i) "Standard Methods for the Examination of Water and Wastewater" 16th edition, jointly published by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation, Washington, DC, 1985; available from the American Public Health Associaiton, Attn: Publications Sales, 1015 15th Street, NW., Washington, DC 20005;

(ii) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," 2nd edition, July 1982, as amended by April 1984, Update 1, and April 1985, Update 2, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Washington, DC, SW–846; available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: Stock No. 55–002–81001–2;

(iii) "Guideline Establishing Test Procedures for the Analysis of Pollutants," 40 CFR Part 136;

(iv) "National Handbook of Recommended Methods for Water-Data Acquisition," U.S. Geological Survey, Office of Water Data Coordination, 1977, with updates; avaialble from the U.S. Geological Service, Office of Water Data Coordination, MS–417 National Center, Reston VA 22092;

(v) "Methods of Seawater Analysis," 2nd edition, Grasshoff, K., M. Ehrhardt, and K. Kremling, (eds.) Verlag Chemie, Weinheim, Federal Republic of Germany, 1983; available from VSH Scientific Publishers Inc., 303 N.W. 12th Ave., Deerfield, FL 33222–1705: ISN No. 089573–070–7; or

(vi) "A Practical Handbook of Seawater Analysis," 2nd ed., Strickland, J.D.H., and T.R. Parsons, jointly published by the Fisheries Research Board of Canada and Supply and Services Canada, Otawa, Canada, 1984; available from Unipub, 205 E. 42nd Street, New York, NY 10017: No. SSC70;

(3) The term "water sample" shall denote an unfiltered volume of water collected and preserved by methods in references cited in paragraph (b)(2) of this section to represent the bulk water and any dissolved or suspended materials or microorganisms occurring in the surface water resource.

(4) Sampling of water and sediments from surface water resources shall be conducted according to the methods in references cited in paragraph (b)(2) of this section, as appropriate.

(5) Measurement of the hydrologic properties of the resource shall be conducted according to methods in the reference cited in paragraph (b)(2)(iv) of this section.

(6) (i) Interpretation of surface-water flow or estimation of transport of oil or hazardous substance in surface water through the use of models shall be based on hydrologic literature and current practice.

(ii) The applicability of models used during the assessment should be demonstrated, including citation or description of the following:

(A) Physical, chemical, and biological processes simulated by the model;

(B) Mathematical or statistical methods used in the model; and

(C) Model computer code (if any), test cases proving the code works, and any alteration of previously documented

code made to adapt the model to the assessment area.

(iii) The validity of models used during the assessment should be established, including a description of the following:

(A) Hydraulic geometry, physiographic features, and flow characteristics of modeled reaches or areas;

(B) Sources of hydrological, chemical, biological, and meterological data used in the model;

(C) List of maps of data used to describe initial conditions;

(D) Time increments or time periods model;

(E) Comparison of predicted fluxes of water and solutes with measured fluxes;

(F) Calibration-verification procedures and results; and

(G) Types and results of sensitivity analyses made.

(c) *Ground water resources.* (1) Testing and sampling for injury to ground water resources shall be performed using methodologies described in this paragraph.

(2) All chemical analyses performed to meet the requirements of the Injury Determination phase for ground water resources shall be conducted in accordance with one or more of the following methodologies:

(i) "Standard Methods for the Examination of Water and Wastewater," 16th edition, jointly published by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation, Washington, DC, 1985; available from the American Public Health Association, Attn: Publications Sales, 1015 15th Street, NW., Washington, DC 20005;

(ii) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," 2nd Edition, July 1982, as amended by April 1984, Update 1, and April 1985, Update 2, U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Washington, DC, SW–846; available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: Stock No. 55–002–81001–2;

(iii) "Guidelines Establishing Test Procedures for Analysis of Pollutants," 40 CFR Part 136; or

(iv) "National Handbook of Recommended Methods for Water-Data Acquisition," U.S. Geological Survey, Office of Water Data Coordination, 1977, with updates; available from the U.S. Geological Service, Office of Water Data Coordination, MS–417 National Center, Reston, VA 22092;

(3)(i) The term "water sample" shall denote an unfiltered volume of water collected and preserved by methods described in references cited in paragraph (c)(2) of this section to represent the bulk water and any dissolved or suspended materials or microorganisms occurring in the ground-water resource.

(ii) The source of ground water samples may be from natural springs, in seeps, or from wells constructed according to methods described in:

(A) "Ground Water and Wells," Johnson Division, St. Paul, MN, 1985; available from Johnson Divison, P.O. Box 64118, St. Paul, MN 55164; and

(B) "Manual of Individual Water Supply Systems," U.S. Environmental Protection Agency, Office of Drinking Water, EPA–570/9–82–004, 1982; available from U.S. Environmental Protection Agency, Office of Drinking Water, WH–550, 401 M Street, SW., Washington DC 20460;

(4) Sampling of ground water or of geologic materials through which the ground water migrates shall be conducted according to the methods in references cited in paragraph (c)(2) of this section, as appropriate.

(5) Measurement of the geohydrologic properties of the resource shall be conducted according to methods in the reference cited in paragraph (c)(2)(iv) of this section.

(6) Description of lithologies, minerals, cements, or other sedimentary characteristics of the ground water resource should follow methods described in "Sample Examination Manual," R.G. Swanson, Methods and Exploration Series No. 1, American Association of Petroleum Geologists, 1981; available from the American Assocation of Petroleum Geologists, P.O. Box 979, Tulsa, OK 74101;

(7) Interpretation of the geohydrological setting, including identifying geologic layers comprising aquifers and any confining units, shall be based on geohydrologic and geologic literature and generally accepted practice.

(8)(i) Interpretation of ground-water flow systems or estimation of transport of oil or hazardous substances in ground water through the use of models shall be based on geohydrologic literature and current practice.

(ii) The applicability of models used during the assessment should be demonstrated, including citation or description of the following:

(A) Physical, chemical, and biological processes simulated by the model;

(B) Mathematical or statistical methods used in the model; and

(C) Model computer code (if any), test cases proving the code works, and any alteration of previously documented code made to adapt the model to the assessment area.

(iii) The validity of models used during the assessment should be established, including a description of the following:

(A) Model boundary conditions and stresses simulated;

(B) How the model approximates the geohydrological framework of the assessment area;

(C) Grid size and geometry;

(D) Sources of geohydrological, chemical, and biological data used in the model;

(E) Lists of maps of data used to describe initial conditions;

(F) Time increments or time periods modeled;

(G) Comparison of predicted fluxes of water and solutes with measured fluxes;

(H) Calibration-verification procedures and results; and

(I) Type and results of sensitivity analyses made.

(d) *Air resources.* (1) Testing and sampling for injury to air resources shall be performed using methodologies that meet the selection and documentation requirements in this paragraph. Methods identified in this section and methods meeting the selection requirements identified in this section shall be used to detect, identify, and determine the presence and source of emissions of oil or a hazardous substance, and the duration frequency, period of exposure (day, night, seasonal, etc.), and levels of exposure.

(2) The sampling and analysis methods identified in this paragraph are the primary methods to be used for determining injury to the air resource. Air modeling methods may be used for injury determination only when air sampling and analysis methods are not available or the discharge or release occurred with no opportunity to monitor or sample the emissions.

(3)(i) Methods developed, evaluated, approved, and published by the U.S. Environmental Protection Agency may be used for sampling and analysis to determine injury to the air resource.

(ii) Methods selected for air sampling and analysis may include those methods that have been formally reviewed, evaluated, and published by the following government and professional organizations: the National Institute for Occupational Safety and Health, the American Society for Testing and Materials, and the American Public Health Association.

(iii) Methods selected for air sampling and analysis shall be methods that are documented for each of the following:

(A) The range of field conditions for which the methods are applicable;

(B) Quality assurance and quality control requirements necessary to achieve the data quality the methods are capable of producing;

(C) Operational costs of conducting the methods; and

(D) Time required to conduct the methods.

(iv) The determination of concentrations in excess of emission standards for hazardous air pollutants established under section 112 of the Clean Air Act, 42 U.S.C. 7412, shall be conducted in accordance with the primary methods or alternative methods as required in "National Emission Standards for Hazardous Air Pollutants: Source Test and Analytical Methods," 40 CFR 61.14, and as may applicable to the determination of injury to air resources.

(4) In selecting methods for testing and sampling for injury to air resources, the following performance factors of the sampling and analysis methods and the influencing characteristics of the assessment area and the general vicinity shall be considered:

(i) Method detection limits, accuracy, precision, specificity, interferences, and analysis of time and cost;

(ii) Sampling area locations and frequency, duration of sampling, and chemical stability of emissions; and

(iii) Meteorological parameters that influence the transport of emissions and the spatial and temporal variation in concentration.

(e) *Geologic resources.* (1) Testing and sampling for injury to geologic resources shall be performed using methodologies described in this paragraph.

(2) Testing pH level in soils shall be performed using standard pH measurement techniques, taking into account the nature and type of organic and inorganic constituents that contribute to soil acidity; the soil/solution ratio; salt or electrolytic content; the carbon dioxide content; and errors associated with equipment standardization and liquid junction potentials.

(3) Salinity shall be tested by measuring the electrical conductivity of the saturation extraction of the soil.

(4) Soil microbial respiration shall be tested by measuring uptake of oxygen or release of carbon dioxide by bacterial, fungal, algal, and protozoan cells in the soil. These tests may be made in the laboratory or in situ.

(5) Microbial populations shall be tested using microscopic counting, soil fumigation, glucose response, or adenylate energy charge.

(6) Phytotoxicity shall be tested by conducting tests of seed germination, seedling growth, root elongation, plant uptake, or soil-core microcosms.

(7) Injury to mineral resources shall be determined by describing restrictions on access, development, or use of the resource as a result of the soil or hazardous substance. Any appropriate health and safety considerations that led to the restrictions should be documented.

(f) *Biological resources.* (1) Testing and sampling for injury to biological resources shall be performed using methodologies provided for in this paragraph.

(2)(i) Testing may be performed for biological responses that have satisfied the acceptance criteria of § 11.62(f)(2) of this part.

(ii) Testing methodologies that have been documented and are applicable to the biological response being tested may be used.

(3) Injury to biological resources, as such injury is defined in § 11.62(f)(1)(ii) of this part, may be determined by using methods acceptable to or used by the Food and Drug Administration or the appropriate State health agency in determining the levels defined in that paragraph.

§ 11.70 Quantification phase—general.

(a) *Requirement.* (1) Upon completing the Injury Determination phase, the authorized official shall quantify for each resource determined to be injured the effect of the discharge or release in terms of the reduction from the baseline condition in the quantity of services, as that phase is used in this Part, provided by the injured resource using the guidance provided in the Quantification phase of this Part.

(2) The Quantification phase consists of § 11.70—general; § 11.71—service reduction quantification; § 11.72—baseline service determination; and § 11.73—resource recoverability analysis, of this Part.

(b) *Purpose.* The purpose of the Quantification phase is to quantify the effects of the discharge or release on the resource for use in determining the appropriate amount of compensation.

(c) *Steps in the Quantification phase.* In the Quantification phase, the extent of the injury shall be measured, the baseline condition of the injured resource shall be estimated, the baseline sevices shall be identified, the recoverability of the injured resource shall be determined, and the reduction in services that resulted from the discharge or release shall be estimated.

(d) *Completion of Quantification phase.* Upon completing the Quantification phase, the authorized official shall make a determination as to the reduction in services that resulted from the discharge or release. This Quantification Determination shall be used in the Damage Determination phase and shall be maintained as part of the Report of Assessment described in § 11.90 of this part.

§ 11.71 Quantification phase—service reduction quantification.

(a) *Requirements.* (1) The authorized official shall quantify the effects of a discharge of oil or release of a hazardous substance by determining the extent to which natural resource services have been reduced as a result of the injuries determined in the Injury Determination phase of the assessment.

(2) This determination of the reduction in services will be used in the Damage Determination phase of the assessment, and must be consistent with the needs of the economic methodology selected in the determination required in § 11.35 of this part.

(3) Quantification will be done only for resources for which damages will be sought.

(b) *Steps.* Except as provided in § 11.71(f) of this part, the following steps are necessary to quantify the effects:

(1) Measure the extent to which the injury demonstrated in the Injury Determination phase has occurred in the assessment area;

(2) Measure the extent to which the injured resource differs from baseline conditions, as described in § 11.72 of this part, to determine the change attributable to the discharge or release;

(3) Determine the services normally produced by the injured resource, which are considered the baseline services or the without-a-discharge-or-release condition as described in § 11.72 of this part;

(4) Identify interdependent services to avoid double counting in the Damage Determination phase and to discover significant secondary services that may have been disrupted by the injury; and

(5) Measure the disruption of services resulting from the discharge or release, which is considered the change in services or the with-a-discharge-or-release condition.

(c) *Contents of the Quantification.* The following factors should be included in the quantification of the effects of the discharge or release on the injured resource:

(1) Total area, volume, or numbers affected of the resource in question;

(2) Degree to which the resource is affected, including consideration of subunits or subareas of the resource, as appropriate;

(3) Ability of the resource to recover, expressed as the time required for restoration of baseline services as described in § 11.73 of this part;

(4) Proportion of the available resource affected in the area;

(5) Services normally provided by the resource that have been reduced as a result of the discharge or release; and

(6) Factors identified in the specific guidance in paragraphs (h), (i), (j), (k), and (l) of this section dealing with the different kinds of natural resources.

(d) *Selection of resources, services, and methodologies.* Specific resources or services to quantify and the methodology for doing so should be selected based upon the following factors:

(1) Degree to which a particular resource or service is affected by the discharge or release;

(2) Importance or significance of a specific resource or service;

(3) Degree to which a given resource or service can be used to represent a broad range of related resources or services;

(4) Consistency of the measurement with the requirements of the economic methodology to be used;

(5) Technical feasibility of quantifying changes in a given resource or service at reasonable cost; and

(6) Preliminary estimates of services at the assessment area and control area based on resource inventory techniques.

(e) *Services.* In quantifying changes in natural resource services, the functions provided in the cases of both with- and without-a-discharge-or-release shall be compared. For the purposes of this Part, services include provision of habitat, food and other needs of biological resources, recreation, other products or services used by humans, flood control, ground water recharge, waste assimilation, and other such functions that may be provided by natural resources.

(f) *Direct quantification of services.* The effects of a discharge or release on a resource may be quantified by directly measuring changes in services provided by that resource, instead of quantifying the changes in the resource itself, when it is determined that all of the following conditions are met:

(1) The change in the services from baseline can be demonstrated to have resulted from the injury to the natural resource;

(2) The extent of change in the services resulting from the injury can be measured without also calculating the extent of change in the resource; and

(3) The services to be measured are anticipated to provide a better indication of damages caused by the injury than would direct quantification of the injury itself.

(g) *Statutory exclusions.* In quantifying the effects of the injury, the following statutory exclusions shall be considered, as provided in CERCLA sections 107(f), (i), and (j), that exclude compensation for damages to natural resources that were a result of:

(1) An irreversible and irretrievable commitment of natural resources identified in an environmental impact statement or other comparable environmental analysis, and the decision to grant the permit or license authorizes such a commitment, and the facility was otherwise operating within the terms of its permit or license;

(2) The application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 135–135k; or

(3) Any other federally permitted release.

(h) *Surface water resources.* (1) The area where the injured surface water resource differs from baseline shall be determined by determining the areal extent of oil or hazardous substances in the water or on the sediments.

(2)(i) Areal variation in concentrations of the discharged or released substances dissolved in or floating on water, adhering to suspended sediments, or adhering to bed, bank, or shoreline sediments from exposed areas should be determined in sufficient detail to approximately map the boundary separating areas with concentrations above baseline from areas with concentrations equal to or less than baseline.

(ii) The size, shape, and location of the plume may be estimated using time of travel and dispersion data obtained under § 11.63 of this Part, since plumes of dissolved or floating substances may be rapidly transported and dispersed in surface water.

(3) Water and sediment samples may be collected and chemically analyzed and stage, water discharge, or tidal flux measurements made, as appropriate, to collect new data required by this section.

(4)(i) Within the area determined in paragraph (h)(2) of this section to be above baseline, the services provided by the surface water or sediments that are affected should be determined. This determination may include computation of volumes of water or sediments affected, total areas of water or sediment affected, volume of water used from the affected surface water resource, or other appropriate measures.

(ii) The services should be determined with consideration of potential effects on downstream resources during the recovery period, as determined in § 11.73 of this part, resulting from transport of dissolved substances and of substances adhering to sediments.

(i) *Ground water resources.* (1) The area where the injured ground water resource differs from baseline should be determined by determining the areal extent of oil or hazardous substances in water or geologic materials in the unsaturated zone and identified geohydrological units, which are aquifers or confining layers, within the assessment area.

(2)(i) The lateral and vertical extent of discharged or released substances in the unsaturated zone, if it is known to be exposed, should be determined.

(ii) The lateral and vertical extent of plumes within geohydrologic units known to be exposed should be determined. Concentrations of substances within and adjacent to each plume should be determined in sufficient detail to approximately locate the boundary separating areas with concentrations above baseline from areas with concentrations equal to or less than baseline.

(3) Water or geologic materials may be sampled and chemically analyzed, or surface-geophysical techniques may be used for collecting new data required by this section. General verification of the plume boundaries by chemical analysis of selected water samples should be done if boundary locations are initially determined by surface-geophysical measurements.

(4)(i) Within the area determined in paragraph (i)(2)(ii) of this section to be above baseline, the services provided by the ground water that is affected should be determined. This determination may include computation of the volume of water affected, volume of affected ground water pumped from wells, volume of affected ground water discharged to streams or lakes, or other appropriate measures.

(ii) The services should be determined with consideration of potential enlargement of the plume during the recovery period, as determined in § 11.73 of this part, resulting from ground water transport of the substances.

(iii) The effects on the ground water resource during the recovery period resulting from potential remobilization of discharged or released substances that may be adhering, coating, or

otherwise bonding to geologic materials should be considered.

(j) *Air resources.* The area where the injured air resource differs from baseline should be determined by determining the geographical area affected, the degree of impairment of services, and the period of time impairment occurred.

(k) *Geologic resources.* The area where the injured geologic resource differs from baseline should be determined by determining:

(1) The surface area of soil with reduced ability to sustain the growth of vegetation from the baseline level;

(2) The surface area or volume of soil with reduced suitability as habitat for biota from the baseline level;

(3) The volume of geologic resources that may act as a source of toxic leachate;

(4) The volume of geologic resources eroded by water or wind as a result of the discharge or release; or

(5) The tonnage of mineral resources whose access, development, or use is restricted as a result of the discharge or release.

(l) *Biological resources.* (1) The extent to which the injured biological resource differs from baseline should be determined by analysis of the population or the habitat or ecosystem levels. Although it may be necessary to measure populations to determine changes in the habitats or ecosystems, and vice versa, the final result should be expressed as either a population change or a habitat or ecosystem change in order to prevent double counting in the economic analysis. This separation may be ignored only for resources that do not interact significantly and where it can be demonstrated that double counting is being avoided.

(2) Analyses of population changes or habitat or ecosystem changes should be based upon species, habitats, or ecosystems that have been selected from one or more of the following categories:

(i) Species or habitats that can represent broad-components of the ecosystem, either as representatives of a particular ecological type, of a particular food chain, or of a particular service;

(ii) Habitats or ecosystems that are special resources, as defined in this Part;

(iii) Species, habitats, or ecosystems that are especially sensitive to the oil or hazardous substance and the recovery of which will provide a useful indicator of successful restoration; or

(iv) Species, habitats, or ecosystems that provide especially significant services, even though they may not be designated as special resources.

(3) Analysis of populations, habitats, or ecosystems shall be limited to those populations, habitats, or ecosystems for which injury has been determined in the Injury Determination phase or those that can be linked directly through services to resources for which injury has been so determined. Documentation of the service link to the injured resource must be provided in the latter case.

(4) Population, habitat, or ecosystem measurement methods that provide data that can be interpreted in terms of services must be selected. To meet this requirement, a method should:

(i) Provide numerical data that will allow comparison between the assessment area data and the control area or baseline data;

(ii) Provide data that will be useful in planning restoration or replacement efforts and in later measuring the success of those efforts, or that will allow calculation of use values; and

(iii) Allow correction, as applicable, for factors such as dispersal of organisms in or out of the assessment area, differential susceptibility of different age classes of organisms to the analysis methods and other potential systematic biases in the data collection.

(5) When estimating population differences of animals, standard and widely accepted techniques, such as census, mark-recapture, density and index methods, and other estimation techniques appropriate to the species and habitat shall be used. Frequencies of injury observed in the population shall be measured as applicable.

(i) In general, methods used for estimates of wildlife populations should follow recommendations provided in the "Wildlife Management Techniques Manual," (4th edition, Wildlife Society, 1980, available from the Wildlife Society, 5410 Grosvenor Lane, Bethesda, MD 20814), including references cited and recommended in that manual. The specific technique used need not be cited in that manual, but should meet its recommendations for producing reliable estimates or indices.

(ii) Measurement of age structures, life table statistics, or age structure models generally will not provide satisfactory measurement of changes due to a discharge of oil or release of a hazardous substance unless there is clear evidence that the oil or hazardous substance has differentially affected different age classes and there are reliable baseline age structure data available for the population being assessed.

(iii) Mortality from single incidents may be used to estimate changes in populations only when there are available baseline population data for the area, so that the proportion lost can be estimated, and when corrections can be made for potential sampling biases, such as natural mortality and factors influencing distribution of carcasses and ability of investigators to find them. Specific techniques for measuring mortality include the following:

(A) Fish mortality in freshwater areas may be estimated from counts of carcasses, using methods and guidelines contained in Part II of the "Monetary Values of Freshwater Fish and Fish-Kill Counting Guidelines," (American Fisheries Society Special Publication Number 13, 1982; available from the American Fisheries Society, 5410 Grosvenor Lane, Suite 110, Bethesda, MD 20814), including use of appropriate random sampling methods and tagged carcasses.

(B) Adaptation of the techniques discussed in paragraph (5)(iii)(A) of this section for counting dead aquatic birds or for counting marine or estuarine fish or birds will require the authorized official to document the methods used to avoid sampling biases.

(C) Fish mortality may also be estimated by use of an in situ bioassay technique that is similar to that identified in § 11.62(f)(4)(i)(C) of this part, if the oil or hazardous substance is still present at levels that resulted in injury and if appropriate instream controls can be maintained at control areas.

(6) Plant populations may be measured using standard techniques, such as population density, species composition, diversity, dispersion, and cover.

(7) Forest and range resources may be estimated by standard forestry and range management evaluation techniques.

(8) Habitat quality should be measured using techniques such as the Habitat Evaluation Procedures developed and used by the U.S. Fish and Wildlife Service and following guidance and training material developed by the U.S. Fish and Wildlife Service, Western Energy and Land Use Team, 2726 Redwing Rd., Fort Collins, CO 80526–2899.

§ 11.72 Quantification phase—baseline services determination.

(a) *Requirements.* The authorized official shall determine the physical, chemical, and biological baseline conditions and the associated baseline services for injured resources at the assessment area to compare that baseline with conditions found in § 11.71 of this part.

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(b) *General guidelines.* Baseline data shall be selected according to the following general guidelines:

(1) Baseline data should reflect conditions that would have been expected at the assessment area had the discharge of oil or release of hazardous substances not occurred, taking into account both natural processes and those that are the result of human activities.

(2) Baseline data should include the normal range of physical, chemical, or biological conditions for the assessment area or injured resource, as appropriate for use in the analysis in § 11.71 of this part, with statistical descriptions of that variability. Causes of extreme or unusual values in baseline data should be identified and described.

(3) Baseline data should be as accurate, precise, complete, and representative of the resource as the data used or obtained in § 11.71 of this part. Data used for both the baseline and services reduction determinations must be collected by comparable methods. When the same method is not used, comparability of the data collection methods must be demonstrated.

(4) Baseline data collection shall be restricted to those data necessary for a reasonable cost assessment. In particular, data collected should focus on parameters that are directly related to the injury quantified in § 11.71 of this part and to potential restoration or replacement of the injured resource.

(c) *Historical data.* If available and applicable, historical data for the assessment area or injured resource should be used to establish the baseline. If a significant length of time has elapsed since the discharge or release first occurred, adjustments should be made to historical data to account for changes that have occurred as a result of causes other than the discharge or release. In addition to specialized sources identified in paragraphs (g) through (k) of this section, one or more of the following general sources of historical baseline data may be used:

(1) Environmental Impact Statements or Environmental Assessments previously prepared for purposes of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321–4361, similar documents prepared under other Federal and State laws, and background studies done for any of these documents;

(2) Standard scientific and management literature sources appropriate to the resource;

(3) Computerized data bases for the resource in question;

(4) Public or private landholders in the assessment area or in neighboring areas;

(5) Studies conducted or sponsored by Federal or State agencies acting as trustees for the resource in question;

(6) Federally sponsored research identified by the National Technical Information Service;

(7) Studies carried out by educational institutions; and

(8) Other similar sources of data.

(d) *Control areas.* Where historical data are not available for the assessment area or injured resource, or do not meet the requirements of this section, baseline data should be collected from control areas. Historical data for a control area should be used if available and if they meet the guidelines of this secton. Otherwise, the baseline shall be defined by field data from the control area. Control areas shall be selected according to the following guidelines, and both field and historical data for those areas should also conform to these guidelines:

(1) One or more control areas shall be selected based upon their similarity to the assessment area and lack of exposure to the discharge or release;

(2) Where the discharge or release occurs in a medium flowing in a single direction, such as a river or stream, at least one control area upstream of the assessment area shall be included, unless local conditions indicate such an area is inapplicable as a control area;

(3) The comparability of each control area to the assessment area shall be demonstrated, to the extent technically feasible;

(4) Data shall be collected from the control area over a period sufficient to estimate normal variability in the characteristics being measured and should represented at least one full cycle normally expected in that resource;

(5) Methods used to collect data at the control area shall be comparable to those used at the assessment area, and shall be subject to the quality assurance provisions of the Assessment Plan;

(6) Data collected at the control area should be compared to values reported in the scientific or management literature for similar resources to demonstrate that the data represent a normal range of conditions; and

(7) A control area may be used for determining the baseline for more than one kind of resource, if sampling and data collection for each resource do not interfere with sampling and data collection for the other resources.

(e) *Baseline services.* The baseline services associated with the physical, chemical, or biological baseline data shall be determined.

(f) *Other requirements.* The methodologies in paragraphs (g) through (k) of this section shall be used for determining baseline conditions for specific resources in additon to following the general guidelines identified in paragraphs (a) through (e) of this section. If a particular resource is not being assessed for the purpose of the Damage Determination phase, and data on that resource are not needed for the assessment of other resources, baseline data for that resource shall not be collected.

(g) *Surface water resources.* (1) This paragraph provides additional guidance on determining baselie services for surface water resources. The general guidance provided in paragraphs (a) through (f) of this section should be followed before beginning any work described in this paragraph.

(2) Applicable and available historical data shall be gathered to determine baseline conditions for the surface water resource at the assessment area. If deemed inadequate for determining baseline conditions, such data shall be used to the extent technically feasible in designating the control areas described in paragraph (g)(3) of this section for the surface water resource determined to be injured.

(3) Control areas shall be selected for the surface water resource subject to the general criteria in paragraph (d) of this section and additional criteria as follows:

(i) For each injured stream or river reach, a control area shall be designated consisting of a stream or river reach of similar size, that is as near to the assessment area as practical and, if practical, that is upstream from the injured resource, such that the channel characteristics, sediment characteristics and streamflow characteristics are similar to the injured resource and the water and sediments of the control area, because of location, have not have exposed to the discharge of oil or release of a hazardous substance.

(ii) For each injured standing water body, such as a marsh, pond, lake, bay, or esturary, a control area shall be designated consisting of a standing water body of similar size that is as near to the assessment area as practical, such that the sediment characteristics and inflow-outflow characteristics of the control area are similar to the injured resource and the water and sediments of the control area, because of location, have not been exposed to the discharge of oil or release of a hazardous substance.

(4)(i) Within the control area locations shall be designated for obtaining samples of water and sediments.

(ii) The water discharge, stage or tidal flux shall be measured and representative water and sediments collected as follows:

(A) Measure stage, water discharge, tidal flux as appropriate, at the same time that water and sediment samples are collected; and

(B) Obtain comparable samples and measurements at both the control and assessment areas under similar hydraulic conditions.

(iii) Measurement and samples shall be obtained as described in this paragraph in numbers sufficient to determine:

(A) The range of concentration of the substances in water and sediments;

(B) The variability of concentration of the substances in water and sediments during different conditions of stage, water discharge, or tidal flux; and

(C) The variability of physical and chemical conditions during different conditions of stage, water discharge, or tidal flux relating to the transport or storage of the substances in water and sediments.

(5) Samples should be analyzed from the control area to determine the physical properties of the water and sediments, suspended sediment concentrations in the water, and concentrations of oil or hazardous substances in water or in the sediments. Additional chemical, physical, or biological tests may be made, if necessary, to obtain otherwise unavailable data for the characteristics of the resource and comparison with the injured resource at the assessment area.

(6) The median and interquartile range of the available data or the test results should be used as the basis of comparison between the assessment and control areas.

(7) Additional tests may be made of samples from the control area, if necessary, to provide otherwise unavailable information about physical, chemical, or biochemical processes occurring in the water or sediments relating to the ability of the injured surface water resource to recover naturally.

(h) *Ground water resources.* (1) This paragraph provides additional guidance on determining baseline services for ground water resources. The general guidance provided in paragraphs (a) through (f) of this section should be followed before beginning any work described in this paragraph.

(2) Applicable and available historical data shall be gathered to determine baseline conditions for the ground water resource at the assessment area. If deemed inadequate for determining baseline conditions, such data shall be used to the extent technically feasible in designating the control areas described in paragraph (h)(3) of this section for the ground water resource determined to be injured.

(3) A control area shall be designated subject to the general criteria in paragraph (d) of this section and as near to the assessment area as practical, such that, within the control area, geological materials, geohydrological units, and hydrologic conditions are similar to the assessment area, and ground water resources are not exposed to substances from the discharge or release.

(4) Within the control area, wells shall be identified or drilled, designated as control wells, to obtain representative ground water samples for analysis. The location, depth, and number of control wells and the number of ground water samples collected should be sufficient to estimate the vertical and lateral variation in concentration of the substances in both the unsaturated zone and in ground water from geohydrologic units similar to units tested in the assessment area.

(i) Representative water samples from each control well shall be collected and analyzed. The analyses should determine the physical and chemical properties of the ground water relating to the occurrence of oil or hazardous substances.

(ii) If the oil or hazardous substances are commonly more concentrated on geologic materials than in ground water, representative samples of geologic materials from aquifers and the unsaturated zone, as appropriate, should be obtained and chemically analyzed. The location, depth, and number of these samples should be sufficient to determine the vertical and lateral variation in concentration of the oil or hazardous substances absorbing or otherwise coating geologic materials in the control area. These samples may also be analyzed to determine porosity, mineralogy, and lithology of geologic materials if these tests will provide otherwise unavailable information on storage or mobility of the oil or hazardous substances in the ground water resource.

(5) The median and interquartile range of available data or the test results on similar geohydrologic units shall be used as the basis of comparison between the assessment area and the control area.

(6) Additional tests may be made of samples from the control area, if necessary, to provide otherwise unavailable information about chemical, geochemical, or biological processes occurring in the ground relating to the ability of the injured ground water resource to recover naturally.

(i) *Air resources.* (1) This paragraph provides additional guidance on determining baseline services for air resources. The general guidance provided in paragraphs (a) through (f) of this section should be followed before beginning any work described in this paragraph.

(2) Applicable and available historical data shall be gathered on ambient air quality and source emissions to determine baseline conditions for the air resource. These historical data may be used to determine baseline conditions if the data satisfy the general guidelines in paragraph (d) of this section and if all the following criteria are met:

(i) The methodology used to obtain these historical data would detect the oil or hazardous substance at levels appropriate for comparison to the concentrations measured in § 11.71 of this part;

(ii) The effect of known or likely emission sources near the assessment area other than the source of the discharge or release can be identified or accounted for in the historical data; and

(iii) The historical data show that normal concentrations of the oil or hazardous substance are sufficiently predictable that changes as a result of the discharge or release are likely to be detectable.

(3) If historical data appropriate to determine baseline conditions at the assessment area are lacking, one or more control areas, as needed, shall be designated subject to the general criteria of paragraph (d) of this section and the following additional factors, which shall also be considered in establishing a monitoring schedule;

(i) Applicable and available historical data shall be used to the extent technically feasible in designating control areas or, lacking historical data, the factors in paragraph (i)(3)(iii) of this section shall be considered;

(ii) Control areas shall be spatially representative of the range of air quality and meteorological conditions likely to have occurred at the assessment area during the discharge or release into the atmosphere; and

(iii) The following additional factors shall be considered:

(A) The nature of the discharge or release and of potential alternative sources of the oil or hazardous substance, including such factors as existing sources, new sources, intermittent sources, mobile sources, exceptional events, trends, cycles, and the nature of the material discharged or released;

(B) Environmental conditions affecting transport, such as wind speed and

direction, atmospheric stability, temperature, humidity, solar radiation intensity, and cloud cover; and

(C) Other factors, such as timing of the discharge or release, use patterns of the affected area, and the nature of the injury resulting from the discharge or release.

(4)(i) The preferred measurement method is to measure air concentrations of the oil or hazardous substance directly using the same methodology employed in § 11.71 of this part.

(ii) Nonspecific or chemical compound class methodologies may be used to determine baseline generically only in situations where it can be demonstrated that measuring indicator substances will adequately represent air concentrations of other components in a complex mixture.

(j) *Geologic resources.* (1) This paragraph provides additional guidance on determining baseline services for geologic resources. The general guidance provided in paragraphs (a) through (f) of this section should be followed before beginning any work described in this paragraph.

(2) Applicable and available historical data shall be gathered to determine baseline conditions for the geologic resource at the assessment area. If deemed inadequate for determining baseline conditions, such data shall be used to the extent technically feasible in designating the control areas described in paragraph (j)(3) of this section for the geologic resource determined to be injured.

(3) Control areas shall be selected for geologic resources subject to the general criteria in paragraph (d) of this section and additional criteria as follows:

(i) Similarity of exposed soil or geologic material in the assessment area with the geologic resource in the control area should be the primary factor in selecting the control area. Other factors, including climate, depth of ground water, vegetation type and area covered, land slope and land area, and hydraulic gradients and spatial relation to source should be comparable to the assessment area.

(ii) The control area shall be selected such that the geologic resource in the control area is not exposed to the discharge or release.

(4)(i) A sufficient number of samples from unbiased, randomly selected locations in the control area shall be obtained in order to characterize the areal variability of the parameters measured. Each sample should be analyzed to determine the physical and chemical properties of the geologic materials relating to the occurrence of the oil or hazardous substance. Additional chemical, physical, or biological tests may be made, if necessary, to obtain otherwise unavailable data for the characterization and comparison with the injured resource at the assessment area.

(ii) The mean and standard deviation of each parameter measured shall be used as the basis of comparison between the assessment and control areas.

(k) *Biological resources.* (1) This paragraph provides additional guidance on determining baseline services for biological resources. The general guidance provided in paragraphs (a) through (f) of this section should be followed before beginning any work described in this paragraph.

(2) Applicable and available historical data shall be gathered to determine baseline conditions for the biological resource at the assessment area and should include both population and habitat data if available. These data may be derived from the data sources identified in paragraph (c) of this section, as well as from the following:

(i) Aerial photographs or maps showing distribution and extent of habitat types of other biological resources before the discharge or release;

(ii) Biological specimens in systematic museum or herbarium collections and associated records, including labels and collectors' field notes; and

(iii) Photographs showing the nature of the habitat before the discharge or release when the location and date are well documented.

(3)(i) Control areas shall be selected for biological resources subject to the general criteria in paragraph (d) of this section and additional criteria as follows:

(A) The control area shall be comparable to the habitat or ecosystem at the assessment area in terms of distribution, type, species composition, plant cover, vegetative types, quantity, and relationship to other habitats;

(B) Physical characteristics of the control and assessment areas shall be similar; and

(C) If more than one habitat or ecosystem type is to be assessed, comparable control areas should be established for each, or a control area should be selected containing those habitat types in a comparable distribution.

(ii) To the extent they are available, historical data should be gathered and used for the control area. Lacking adequate historical data for both the control and assessment areas, the control areas shall be used for the following purposes, as appropriate to the quantification:

(A) To measure baseline biota population levels or habitat or ecosystem quality, as discussed in § 11.71(1) of this part; and

(B) To measure the natural frequency, if any, of the injury being assessed in unaffected populations or to demonstrate the lack of that injury in unaffected populations if these have not been done for purposes of the Injury Determination, and if needed for purposes of the Quantification.

(4) In addition, a control area should be used to collect control specimens, as needed, for the Injury Determination procedures.

(5) The identity of species for which Damage Determinations will be made or that play an important role in the assessment, shall be confirmed except in the case where collecting the specimens of a species is likely to compromise the restoration of the species. One or more of the following methods shall be used:

(i) Specimens of the species shall be provided to an independent taxonomist or systematic biologist, who has access to a major systematic biology collection for that taxon, and who shall provide written confirmation of their identity to the species level;

(ii) A reference collection of specimens of the species, prepared and preserved in a way standard for systematic collections for that taxon, shall be maintained at least through final resolution of the damage action at which time it should be transfered to a major systematic biology collection; or

(iii) In the case of a species where collecting specimens is likely to compromise the recovery or restoration of that species population, the authorized official shall determine and use an alternative method for confirming species identity that will be consistent with established management goals for that species.

§ 11.73 Quantification phase—resource recoverability analysis.

(a) *Requirement.* The time needed for each injured resource to recover to the state that the authorized official determines services are restored to baseline levels shall be estimated. The time estimated for recovery or any lesser period of time as determined in the Assessment Plan shall be used as the recovery period for purposes of § 11.35 and the Damage Determination phase of this part.

(1) In all cases, the amount of time needed for recovery if no restoration efforts are undertaken beyond response

actions performed or anticipated shall be estimated. This time period shall be used as the "No Action-Natural Recovery" period for purposes of § 11.82 and § 11.84(g)(2)(ii).

(2) The estimated time for recovery shall be included in any alternatives for restoration, as developed in § 11.81 of this part, and the data and process by which these recovery times were estimated shall be documented.

(b) *Restoration not feasible.* If the authorized official determines that restoration will not be technically feasible, as that phrase is used in this Part, the reasoning and data on which this decision is based shall be documented as part of the justification for any replacement alternatives that may be considered or proposed.

(c) *Estimating recovery time.* (1) The time estimates required in paragraph (a) of this section shall be based on the best available information and where appropriate may be based on cost-effective models. Information gathered may come from one or more of the following sources, as applicable:

(i) Published studies on the same or similar resources;

(ii) Other data sources identified in § 11.72 of this part;

(iii) Experience of managers or resource specialists with the injured resource;

(iv) Experience of managers or resource specialists who have dealt with restoration for similar discharges or releases elsewhere; and

(v) Field and laboratory data from assessment and control areas as necessary.

(2) The following factors should be considered when estimating recovery times:

(i) Ecological succession patterns in the area;

(ii) Growth or reproductive patterns, life cycles, and ecological requirements of biological species involved, including their reaction or tolerance to the oil or hazardous substance involved;

(iii) Bioaccumulation and extent of oil or hazardous substances in the food chain;

(iv) Chemical, physical, and biological removal rates of the oil or hazardous substance from the media involved, especially as related to the local conditions, as well as the nature of any potential degradation or decomposition products from the process including:

(A) Dispersion, dilution, and volatilization rates in air, sediments, water, or geologic materials;

(B) Transport rates in air, soil, water, and sediments;

(C) Biological degradation or decomposition rates and residence times in living materials;

(D) Soil or sediment properties and adsorption-desorption rates between soil or sediment components and water or air;

(E) Soil surface runoff, leaching, and weathering processes; and

(F) Local weather or climatological conditions that may affect recovery rates.

§ 11.80 Damage Determination phase—general.

(a) *Requirement.* (1) The authorized official shall estimate the damages resulting from the discharge of oil or release of a hazardous substance based upon the information provided in the Quantification Determination and the guidance provided in the Damage Determination phase.

(2) The Damage Determination phase consists of § 11.80—general; § 11.81—restoration methodology; § 11.82—Restoration Methodology Plan; § 11.83—use value methodologies; and § 11.84—implementation guidance.

(b) *Purpose.* The purpose of the Damage Determination phase is to estimate the amount of money to be sought for compensation for injury to natural resources resulting from a discharge of oil or release of a hazardous substance.

(c) *Steps in the Damage Determination phase.* Based upon the decisions arrived at in the Economic Methodology Determination prepared in § 11.35 of this part, as the part of the Assessment Plan concerning the appropriate measure of damages to be employed during the Damage Determination phase, the authorized official shall use either the restoration methodology provided in § 11.81 of this part or one of the use value methodologies provided in § 11.83 of this part to calculate damages. For assessments that use the restoration methodology, a Restoration Methodology Plan described in § 11.82 of this part shall be prepared. The guidance provided in § 11.84 of this part shall be followed in implementing either the restoration methodology or one of the use value methodologies.

(d) *Completion of the Damage Determination.* Upon completion of the Damage Determination phase, the type B assessment is completed. The results of the Damage Determination phase shall be documented in the Report of Assessment described in § 11.90 of this part.

§ 11.81 Damage Determination phase—restoration methodology.

(a) *Requirement.* The guidance provided in this section shall be followed when estimating damages based upon restoration or replacement costs.

(b) *Diminution of uses.* Damages based on restoration or replacement costs may include any diminution of use values, as described in § 11.84, of this part, occurring during the recovery period as determined in § 11.73 of this part.

(c) *Measurement.* (1) Restoration or replacement measures are limited to those actions that restore or replace the resource services to no more than its baseline, that is, the without-a-discharge-or-release condition as determined in § 11.72 of this part.

(2) The resource services previously provided by the injured resource in its baseline condition shall be identified in accordance with § 11.72 of this part and compared with those services provided by the injured resource, that is, the with-a-discharge-or-release condition. All estimates of the with-a-discharge-or-release condition shall incorporate the ability of the resource to recover as determined in § 11.73 of this part.

(d) *Alternatives.* (1) Alternative methods to achieve the restoration or replacement of the resource services shall be developed. Alternative methods may range from the replacement of individual resources to modification or restoration of a habitat or other resource.

(2) Selection of the cost-effective restorationor replacement methodology shall be documented in the Restoration Methodology Plan as required in § 11.82 of this part.

(e) *Evaluation.* (1) The costs of the alternative restoration or replacement methods developed in (d) above shall be evaluated. When an alternative requires the replacement of a resource, local prices should be used when available for those resources.

(2) In determining the costs of resortation or replacement, the acquisition of land for Federal management should be used only if this acquisition would represent the sole viable method of obtaining the lost services.

(f) *Damages.* (1) The damage amount as measured by restoration or replacement is the cost to accomplish the cost-effective alternative that provides the lost services.

(2) All restoration or replacement techniques, management methods, and methodologies must be technically

feasible, as that phrase is used in this part.

§ 11.82 Damage Determination—Restoration Methodology Plan.

(a) *Requirement.* In instances where the authorized official has determined, based upon the Economic Methodology Determination in § 11.35 of this part, that restoration or replacement costs will form the basis of the measure of damages, a Restoration Methodology Plan shall be developed in accordance with the requirements of this section.

(b) *Purposes.* The purposes of the Restoration Methodology Plan are to ensure that the restoration or replacement alternative that forms the basis of the measure of damages is cost-effective and to serve as a basis for the more detailed restoration or replacement plan that shall be completed after a damage award.

(c) *Uses of the Plan.* (1) The expected present value of the costs of the restoration or replacement alternative selected shall be used as the measure of damages in any action or claim for damages under CERCLA or the CWA.

(2)(i) The Restoration Methodology Plan, updated and otherwise revised to reflect new information, shall be used as the basis of any restoration or replacement decision or plans that may be developed after the damage award has been made.

(ii) For purposes of submitting claims against the Fund, the requirements of 40 CFR 306.22 will need to be fulfilled before restoration work is authorized.

(d) *Plan content.* (1) The Restoration Methodology Plan shall describe all management actions or resource acquisitions to be taken consistent with the restoration or replacement decisions.

(2)(i) The Restoration Methodology Plan shall include a range of restoration and replacement alternatives that restore the lost services to no more than their baseline level. These alternatives shall include a "No Action-Natural Recovery" alternative and other alternatives that reflect varying rates of recovery, management actions, and resource acquisitions.

(ii) The "No Action-Natural Recovery" alternative shall be based upon the determination made in § 11.73(a)(1) of this part concerning the ability of the resource to recover without additional actions beyond those response actions taken or anticipated under the NCP.

(iii) The development of the alternatives should be consistent with the requirements of any Federal or State statue concerning the injured resource, should consider techniques currently available in the biological and physical sciences, engineering, or economic and other management sciences, and should consider the long-term and indirect impacts of the restoration or replacement on other resources.

(iv)(A) An alternative that requires the acquisition of land for Federal management shall not be developed unless in the judgement of the Federal agency acting as trustee such acquisition constitutes the only viable method of obtaining the lost services.

(B) If the acquistion of land for Federal management constitutes the only viable method of obtaining the lost services, the appropriation process must be included in the scheduling of such acquisition since funding for such acquisition will have to be obtained through appropriations.

(3)(i) The Restoration Methodology Plan shall be of sufficient detail to evaluate the alternatives for the purpose of selecting the cost-effective method of restoring or replacing the lost services.

(ii) The cost-effecitve alternative, shall be determined in accordance with the following:

(A) The description of the alternatives shall include cost and timing of expenditures;

(B) The guidance provided for discount rates in § 11.84(e) of this Part shall be used; and

(C) The guidance provided for calculating the diminution of use values over the period of time required for restoration or replacement in § 11.84(g) of this part.

(e) *Plan development.* (1) In developing the Restoration Methodology Plan, the guidance provided in § 11.81 of this part shall be followed.

(2)(i) The Restoration Methodology Plan shall be made available for review by any identified potentially responsible party, other Federal or State agencies acting as trustees, other affected Federal or State agencies, and any other interested member of the public for a period of at least 30 calendar days before the authorized official's final decision on selection of the alternative.

(ii) Comments received from any identified potentially responsible party, other Federal or State agencies acting as trustees, other affected Federal or State agencies, or any other interested members of the public, together with any responses that the agency may develop, shall be included in the Report of Assessment described in § 11.90 of this part.

(3) The Restoration Methodology Plan may be combined with other similar plans or may be expanded to incorporate requirements from procedures required under other portions of CERCLA or the CWA or from other Federal or State statutes applicable to restoration or replacement of the injured resource, so long as the requirements of this section are fulfilled.

(f) *Selection of alternative.* (1) The cost-effective alternative shall be selected as the basis for the measure of damages from among those evaluated in the Restoration Methodology Plan.

(2) The authorized official has the responsibility for the final approval of selection of the appropriate restoration or replacement alternative.

§ 11.83 Damage Determination phase—use value methodologies.

(a) *Requirement.* (1) The methodologies listed, or other methodologies that meet the acceptance criteria provided in this section, shall be used to estimate damages based on a diminution of use values.

(2) In estimating use values, either a marketed or nonmarketed resources methodology, as described in paragraphs (c) and (d) of this section shall be used.

(3) In using the nonmarketed resource methodologies in paragraph (d) of this section, the applicable guidance on the travel cost, contingent valuation, and unit value methodologies found in "National Economic Development (NED) Benefit Evaluation Procedures," (Procedures), (in *Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies,* Chapter II, Section VII, Appendices 1–3, U.S. Department of the Interior, Water Resources Council, Washington, DC, 1984, DOI/WRC/–84/01; available from National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161: No. PB 84–199–405), and any changes hereafter issued shall be followed.

(4) Nothing in this section precludes the use of different methodologies for separate damage estimates for different resources.

(b) *Use values.* (1) For the purposes of this part, use values are the value to the public of recreational or other public uses of the resource, as measured by changes in consumer surplus, any fees or other payments collectable by the government for a private party's use of the natural resource, and any economic rent accruing to a private party because the government does not charge a fee or price for the use of the resource.

(2) In instances where the Federal or State agency acting as trustee is the majority operator or controller of a for- or not-for-profit enterprise, and the injury to the natural resource results in a loss to such an enterprise, that portion of the lost income due the agency from

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this enterprise resulting directly or indirectly from the injury to the natural resource may be included as a measure of damages under this Part.

(c) *Marketed resource methodologies.* (1) A determination shall be made as to whether the market for the resource is reasonably competitve. Unless the authorized official determines that the market for the resource is not reasonable competitive, the diminution in the market price of resource shall be used to estimate the damages to the injured resource. This methodology shall be referred to as the market price methodology.

(2)(i) When the authorized official determines that the market price methodology is not appropriate, the appraisal methodology shall be used if sufficient information exists. Damages should be measured, to the extent possible, in accordance with the applicable sections of the "Uniform Appraisal Standards for Federal Land Acquisition" (Uniform Appraisal Standards), (Interagency Land Acquisition Conference, Washington, DC, 1973; available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: Stock Number 052–059–00002–0), and any changes hereafter issued. The measure of damages under this methodology shall be the difference between the with- and without-injury appraisal value.

(ii) In conflicts between guidance provided in this Part and guidance provided in the Uniform Appraisal Standards, the guidance in this Part shall govern.

(d) *Nonmarketed natural resource methodologies.* (1) Only when the authorized official has determined that neither the market price nor the appraisal methodology is appropriate shall the methodolgies listed in this section or those that meet the acceptance criteria in paragraph (d)(7) of this section be used to estimate a diminution of use value for the purposes of this Part.

(2) If the lost resource is an input to a production process, which has as an output a product with a well-defined market price, the factor income methodology can be used. This methodology should be used to estimate the economic rent associated with the use of a resource in the production process and is sometimes referred to as the "reverse value added" method. The factor income methodology should be used to measure the in-place value of the resource.

(3) The travel cost methodology may be used to estimate a value for the use of a specific area. An individual's incremental travel costs to an area are used as a proxy for the price of the services of that area. Damages to the area are the difference between the value of the area with and without-a-discharge-or-release. When regional travel cost models exist, they should be used if appropriate.

(4) Hedonic pricing methodologies may be used to estimate the value of a resource. These methodologies can be used to determine the value of nonmarketed resources by an analysis of private market choices. The demand for nonmarketed natural resources is thereby estimated indirectly by an analysis of commodities that are traded in a market.

(5) The contingent valuation methodology includes all techniques that set up hypothetical markets to elicit an individual's economic valuation of a natural resource. This methology can survey consumptive, option, and existence values. The use of this method to estimate option and existence values should be used only if the authorized official determines that no other valuation technique will be feasible.

(6) Unit values are preassigned dollar values for various types of nonmarketed recreational or other experiences by the public. Where feasible, regional unit values and unit values that closely resemble the recreational or other experience lost should be used.

(7) Nonmarketed resource methodologies that measure use values in accordance with willingness to pay or willingness to accept, in a cost-effective manner, are acceptable methodologies to estimate damages under this Part.

§ 11.84 Damage Determination phase—implementation guidance.

(a) *Requirement.* The damage estimation methodologies in § 11.81 and § 11.83 of this part should be implemented following the appropriate guidance in this section and that in § 11.35 of this part.

(b) *Determining uses.* (1) Before estimating damages based on the diminution of use values under § 11.83 of this part, the uses made of the resource services identified in the Quantification phase should be determined.

(2) Only committed uses, as that phrase is used in this part, of the resource of services over the recovery period will be used to measure the change from the baseline resulting from injury to a resource. The baseline uses must be reasonably probable, not just in the realm of possibility. Purely speculative uses of the injured resource are precluded from consideration in the estimation of damages.

(3)(i) When resources or resource services have mutually exclusive uses, the highest-and-best use of the injured resource or services, as determined by the authorized official, shall be used as the basis of the analyses required in this part. This determination of the highest-and-best use must be consistent with the requirements of paragraph (b)(2) of this section.

(ii) If the uses of the resource or service are not mutually exclusive, the sum of damages should be determined from individual services. However the sum of the projected damages from individual services must be consistent with the resulting projected total use of those services.

(c) *Double counting.* (1) Double counting of damages should be avoided. Double counting means that a benefit or cost has been counted more than once in the economic analysis.

(2) Natural resource damages are the residual to be determined by incorporating the effects, or anticipated effects, of any response actions. To avoid one aspect of double counting, the effects of response actions shall be factored into the analysis of damages. If response actions will not be completed until after the assessment has been initiated, the anticipated effects of such action should be included in the assessment.

(d) *Uncertainty.* (1) When there are significant uncertainties concerning the assumptions required to implement the selected damage methodology, reasonable alternative assumptions should be examined. In such cases, uncertainty should be handled explicitly in the analysis and documented. The uncertainty should be incorporated in the estimates of benefits and costs.

(2) To incorporate this uncertainty, a range of probability estimates for the important assumptions used in the methodology should be determined. In these instances, the damage estimate shall be the net expected present value of (1) restoration or replacement costs, or (2) diminution of use values.

(e) *Discounting.* (1) Where possible, damages should be estimated in the form of an expected present value dollar amount. In order to perform this calculation, a discount rate must be selected.

(2) The discount rate to be used is that specified in OMB "Circular A–94 Revised," and any changes hereafter issued.

(f) *Substitutability.* In calculating the diminution of use values, the estimates of the ability of the public to substitute uses for those of the injured services should be incorporated. This

substitutability shall be estimated only if the potential benefits from an increase in accuracy are greater than the potential costs.

(g) *Diminution of use in restoration or replacement.* (1) If restoration or replacement is to form the basis of the measure of damages, the diminution of use values during the period of time required to obtain restoration or replacement may also be included in the measure of damages.

(2) To calculate the diminution of use values during the period of time required to obtain restoration or replacement, the procedures described below should be followed. It is not necessary that they be followed in sequence.

(i) The ability of the resource to recover over the recovery period should be estimated. This estimate includes estimates of natural recovery rates as well as recovery rates that reflect management actions or resource acquistions to achieve restoration or replacement.

(ii) A recovery rate should be selected for this analysis that is based upon cost-effective management actions or resource acquisitions, including a "No Action-Natural Recovery" alternative. After the recovery rate is estimated, the diminution is use values should be estimated.

(iii) The rate at which the uses of the injured resource will be restored through the restoration or replacement of the services should be estimated. This rate may be discontinuous, that is, no uses are restored until the services are restored, or continuous, that is, restoration of uses will be a function of the level and rate restoration or replacement of the services. Where practicable, the supply of and demand for the restored services should be analyzed, rather than assuming that the services will be utilized at their full capacity at each period of time in the analysis. These use values should be discounted using the rate described in paragraph (e)(2) of this section. This estimate is the expected present value of uses obtained through restoration or replacement.

(iv) The use of the resource that would have occurred in the absence of the discharge or release should be estimated. This estimated should be done in accordance with the procedures in § 11.72 of this part. These uses should be estimated over the same period using the same discount rate as that specified in paragraph (e)(2) of this section. This amount is the expected present value of uses forgone.

(v) Subtraction of the present value of uses obtained through restoration or replacement from the expected present value of uses forgone gives the amount of compensation that may be included, if positive, in a measure of damages

(h) *Incorporating natural recovery in use values.* If use values will form the measure of damages, the natural ability of the resource to recover as determined in § 11.73 of this part shall be used to estimate the diminution of use values. The same procedures as those in pararaph (g)(2) of this section should be followed to determine the diminution of use values, except that only the natural rate of recovery, as determined by the analysis required in § 11.73 of this part, and any normal management actions, shall be used.

(i) *Scope of the analysis.* (1) The authorized official must determine the scope of the analysis in order to estimate a diminution of use values.

(2) In assessments where the scope of analysis is Federal, only the diminution of use values to the Nation as a whole should be counted.

(3) In assessments where the scope of analysis is at the State level, only the diminution of use values to the State should be counted.

Subpart F—Post-Assessment Phase

§ 11.90 Post-assessment phase—Report of Assessment.

(a) *Requirement.* (1) At the conclusion of either a type A or type B assessment, the authorized official shall prepare a Report of Assessment that shall consist of the Preassessment Screen Determination, the Assessment Plan, and the requirements of paragraphs (2) or (3) of this paragraph as appropriate.

(2) For a type A assessment conducted in accordance with the guidance in Subpart D of this part, the Report of Assessment shall include the results of that assessment.

(3) For a type B assessment conducted in accordance with the guidance in Subpart E of this part, the Report of Assessment shall consist of all the documentation supporting the determinations required in the Injury Determination phase, the Quantification phase, and the Damage Determination phase, and specifically including the test results of any and all methodologies performed for the Injury Determination and the Quantification phases. Where the basis for the measure of damages is restoration or replacement costs, the Restoration Methodology Plan shall also be included in the Report of Assessment.

(b) The Report of Assessment shall constitute the administrative record of the assessment for purposes of judicial review or administrative consideration.

§ 11.91 Post-assessment phase—demand.

(a) *Requirement and content.* At the conclusion of the assessment the authorized official shall present to the responsible party a demand in writing for a sum certain, representing the damages determined in accordance with the requirements and guidance of § 11.80 and including the reasonable cost of the assessment, delivered in such a manner as will establish the date of receipt. The demand shall adequately identify the Federal or State agency asserting the claim, the general location and description of the injured resource, identification of the type of discharge or release determined to have resulted in the injuries, and the damages sought from that party.

(b) *Report of Assessment.* The demand letter shall include the Report of Assessment as an attachment.

(c) *Rebuttable presumption.* When performed by a Federal agency in accordance with this part, the assessment of damages and the resulting Damage Determination supported by a complete administrative record of the assessment including the Report of Assessment as described in § 11.90 of this part, shall have the force and effect of a rebuttable presumption on behalf of any claimant in any judicial or adjudicatory administrative proceeding under CERCLA or section 311 of the CWA.

§ 11.92 Post-assessment phase—restoration fund.

(a) *Fund establishment.* Upon award of damages pursuant to section 107(a)(4)(C) of CERCLA, the responsible party or parties shall set up an interest bearing account payable in trust to the Federal or State agency acting as trustee into which the responsible party or parties shall deposit all sums awarded as damages for injury to natural resources except as provided in paragraphs (b) and (c) of this section.

(b) *Land acquisition funds.* Any funds awarded for the purpose of acquiring land for Federal management shall be deposited in the United States Treasury. Federal agencies shall acquire land for Federal management solely with funds appropriated for that purpose..

(c) *Reimbursement for costs.* Sums awarded as reimbursement for the reasonable costs of conducting the assessment shall be payable to the appropriate treasury of the Federal or State agency that incurred the costs.

(d) *Adjustments.* In establishing the account pursuant to paragraph (a) of this section, the calculation of expected present value reflected in the measure of damages shall be reviewed and adjusted

in accordance with the guidance provided in § 11.84(g)(2)(iii) of this part.

(e) *Payments from fund.* Funds shall be paid out of the account established pursuant to paragraph (a) of this section only for those actions described in the Restoration Plan required by § 11.93 of this part.

§ 11.93 Post-assessment phase—Restoration Plan.

(a) Upon determination of the amount of the award of a natural resource damage claim as authorized by section 107(a)(4)(C) of CERCLA, the authorized official shall prepare a Restoration Plan as described in section 111(i) of CERCLA. If the measure of damages was determined in accordance with the guidance in § 11.81 of this part, the plan shall be based upon the Restoration Methodology Plan described in § 11.82 of this part. If the measure of damages was determined using any of the methodologies described in § 11.83 of this part, the plan shall describe how the funds will be used to address natural resources, specifically what restoration, replacement, or acquisition of the equivalent resources will occur. The Restoration Plan shall be prepared in accordance with the guidance set forth in § 11.82 of this part.

(b) No restoration activities should be conducted by Federal agencies that would incur ongoing expenses in excess of those that would have been incurred under baseline conditions and that cannot be funded by the amount included in the trust fund established pursuant to § 11.92(a) of this part unless such additional funds are appropriated through the normal appropriations process.

Appendix I—Methods for Estimating the Areas of Ground Water and Surface Water Exposure During the Presessment Screen

This appendix provides methods for estimating, as required in § 11.25 of this Part, the areas where exposure of ground water or surface water resources may have occurred or are likely to occur. These methods may be used in the absence of more complete information on the ground water or surface water resources.

Ground water

The longitudinal path length (LPL) factors in table 1 are to be applied in estimating the area potentially exposed downgradient of the known limit of exposure or of the boundary of the site. Estimates of lateral path width (LPW) are to be used when the LPW exceeds the width of the plume as determined from available data, or when the width of the plume at the boundary of the site is estimated as less than the LPW. In the absence of data to the contrary, the largest values of LPL and LPW consistent with the geohydrologic data available shall be used to make the estimates required in the preassessment screen. An example computation using the LPL and LPW factors follows table 1.

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Table 1 -- Factors for Estimation of Areas Potentially Exposed Via the Ground Water Pathway

Aquifer Type	Porosity/Hyd. Conductivity Factor (miles/year)		Hydraulic Gradient Estimate (feet/mile)		Time since Release Began (in years)		Longitudinal Path Length (in feet)	Lateral Path Width (in feet)
Sand	50	X	_____	X	_____	=	_____	LPW=0.2LPL
Sand+silt	0.5	X	_____	X	_____	=	_____	LPW=0.3LPL
Gravel	6000	X	_____	X	_____	=	_____	LPW=0.2LPL
Sandstone	0.01	X	_____	X	_____	=	_____	LPW=0.4LPL
Shale	$3x10^{-6}$	X	_____	X	_____	=	_____	LPW=0.8LPL
Karst, Limestone, or Dolomite	10	X	_____	X	_____	=	_____	LPW=0.2LPL
Limestone or Dolomite	0.01	X	_____	X	_____	=	_____	LPW=0.4LPL
Fractured Crystalline Rocks	0.3	X	_____	X	_____	=	_____	LPW=0.3LPL
Dense Crystalline Rocks	$1x10^{-5}$	X	_____	X	_____	=	_____	LPW=0.8LPL

Example of Computation for Estimating the Area Potentially Exposed via Ground Water Pathway

A release of hazardous substances occurs from a facility located in a glacial valley. Available data indicate the release may have occurred intermittently over a period of almost 1 year, although only one well about 300 feet downgradient of the facility boundary had detectable quantities of contaminants. The contaminated well is screened in the water table aquifer composed of gravelly sands. The facility boundary nearest the contaminated well is almost 3,000 feet in length, but a review of available data determined the release is probably localized along a 500-foot section of the boundary where a stream leaves the facility. Available water table date indicate hydraulic gradients in the valley range from 0.005 feet/mile up to 0.25 feet/mile near pumping wells. No pumping wells are known to be located near the release, and a mean hydraulic gradient of 0.1 feet/mile is estimated in the vicinity of the release site. Using the gravel factor from table 1, the LPL and LPW are estimated:

$6000 \times 0.1 \times 1 = 600$ feet (LPL) and
$600 \times 0.2 = 120$ feet (LPW).

Since the estimated LPW (120 feet) is less than the plume width (500 feet) determined from other available data, the greater number is used to compute the area potentially exposed:

(1) 600 feet $\times$ 500 feet = 300,000 square feet (about 6.9 acres).

The available information allows an initial determination of area potentially exposed via the ground water pathway to be estimated:

(2) 300 feet $\times$ 500 feet = 150,000 square feet (about 3.5 acres).

The total area potentially exposed is the sum of (1) and (2): 6.9 + 3.5 = 10.4 acres.

Surface water

The area of surface water resources potentially exposed should be estimated by applying the principles included in the examples provided below.

Example 1—A release occurs and most of the oil or hazardous substance enters a creek, stream, or river instantaneously or over a short time interval (pulse input is assumed). The maximum concentration at any downstream location, past the initial mixing distance, is estimated by:

$Cp = 25(Wi)/T^{a.7}Q)$

where Cp is the peak concentration, in milligrams/liter (mg/L),

Wi is the total reported (or estimated) weight of the undiluted substance released, in pounds,

Q is the discharge of the creek, stream, or river, in cubic feet/second, and

T is the time, in hours, when the peak concentration is estimated to reach a downstream location L, in miles from the entry point.

The time T may be estimated from: $T = 1.467(L)/Vp$ where T and L are defined as above and Vp is the mean stream velocity, in feet per second.

The mean stream velocity may be estimated from discharge measurements or from estimates of channel slope S (foot drop per foot distance downstream) and estimates of discharge Q (defined above) using the following equations:

for pool and riffle reaches $Vp = 0.38(Q^{0.40})(S^{0.20}$. or

for channel-controlled reaches $Vp = 2.69(Q^{0.260.26})(S^{0.25})$.

As the peak concentrations become attenuated by downstream transport, the plume containing the released substance becomes elongated. The time the plume might take to pass a particular point downstream may be estimated using the following equation: $D = 92.5 \times 10^6 Wi/(Q\ Cp)$ where D is the time estimate, in hours, and Wi, Cp, and Q are defined above.

Example 2—A release occurs and most of the oil or hazardous substance enters a creek, stream, or river very slowly or over a long time period (sustained input assumed). The maximum concentration at any downstream location, past the initial mixing distance, is estimated by: $c = C(q)/(Q+q)$ where c is the maximum downstream concentration, in mg/L,

C is the average concentration of the released substance during the period of release, in mg/L,

Q is the discharge rate of the release into the streamflow, in cubic feet/second, and

q is the discharge rate of the streamflow into which the contaminant flows, in cubic feet/second.

For the above computations, the initial mixing distance may be estimated by: $L = (1.7 \times 10-5)v(B^2)/(d^{2/3})(s^{1/2})$ where L is the initial mixing distance, in miles,

v is the mean stream velocity, in ft/s,

B is the average stream surface width, in ft,

d is the mean depth of the stream, in ft, and

s is the water-surface slope, in ft/ft.

Example 3—A release occurs and the oil or hazardous substance enters a pond, lake, reservoir, or coastal body of water. The concentration of soluble released substance in the surface water body may be estimated by: $c = C(v/V)$ where c is the estimated concentration of the released substance, in mg/L,

C is the average concentration of the released substance during the period of the release, in mg/L,

v is the total volume of substance released, in volumetric units, and

V is the volume of the surface water body, in the same volumetric units used for v.

[FR Doc. 85-30098 Filed 12-19-85; 8:45 am]
BILLING CODE 4310-10-M

Federal Register

Friday
December 20, 1985

Part V

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting; Recombinant DNA Research; Proposed Actions Under Guidelines; Notices

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, on January 27, 1986, from 9:00 a.m. to adjournment at approximately 5:00 p.m. This meeting will be open to the public to discuss:

Scientific issues in human somatic-cell gene therapy;
Containment for retroviruses;
Exchange list for gram positive bacteria;
Amendment of Guidelines; and
Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such opportunity at the discretion of the Chair.

Dr. William J. Gartland, Jr., Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, Building 31, Room 3B10, telephone (301) 496–6051, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

Dated: December 2, 1985.

Betty Beveridge,

Committee Management Officer, NIH.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 85–30115 Filed 12–19–85; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Research; Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Actions Under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. After consideration of these proposals and comments by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on January 27, 1986, the Director of the National Institutes of Health will issue decisions on these proposals in accord with the Guidelines.

DATE: Comments must be received by January 21, 1986.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, Building 31, Room 3B10, National Institutes of Health, Bethesda, Maryland 20892. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m. Comments received by close of business January 21, 1986, will be reproduced and distributed to the RAC for consideration at its January 27, 1986, meeting.

FOR FURTHER INFORMATION: Background documentation and additional information can be obtained from Drs. Stanley Barban and Elizabeth Milewski, Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6051.

SUPPLEMENTARY INFORMATION: The National Institutes of Health will consider the following actions under the Guidelines for Research Involving Recombinant DNA Molecules.

I. Proposal to Modify the NIH Guidelines to Specifically Refer to Recombinant RNA

The Recombinant DNA Advisory Committee (RAC) has discussed whether the NIH Guidelines should explicitly state that recombinant RNA (e.g., retroviral vectors) is covered by the NIH Guidelines, particularly in the case of human gene therapy protocols. Accordingly, a RAC working group has composed a proposal to modify Section III–A–4, Section III–B–3, and Section III–B–4–a of the NIH Guidelines to specifically refer to recombinant RNA. That proposal would modify these sections n the following manner:

A. Section III–A–4 of Section III–A, *Experiments that Require RAC Review and NIH and IBC approval Before Initiation,* currently reads as follows:

III–A–4. Deliberate transfer of recombinant DNA or DNA derived from recombinant DNA into human subjects (21). The requirement for RAC review should not be considered to preempt any other required review of experiments with human subjects. Institutional Review Board (IRB) review of the proposal should be completed before submission to NIH.

Under the working group proposal, Section III–A–4 would be modified to read as follows:

III–A–4. Deliberate transfer of recombinant DNA or DNA or RAN derived from recombinant DNA into human subjects (21). The requirement for RAC review should not be considered to preempt any other required review of experiments with human subjects. Institutional Review Board (IRB) review of the proposal should be completed before submission to NIH.

B. Section III–B–3 of Section III–B, *Experiments that Require IBC Approval Before Initiation,* currently reads as follows:

III–B–3. *Experiments Involving the Use of Infectious Animal or Plant Viruses or Defective Animal or Plant Viruses in the Presence of Helper Virus in Tissue Culture Systems.*

Caution: Special care should be used in the evaluation of containment levels for experiments which are likely to either enhance the pathogenicity (e.g., insertion of host oncogene) or to extend the host range (e.g., introduction of novel control elements) of viral vectors under conditions which permit a productive infection. In such cases, serious consideration should be given to raising the physical containment by at least one level.

Note.—Recombinant DNA molecules which contain less than two-thirds of the genome of any eukaryotic virus (all virus from a single Family (17) being considered identical (19)) may be considered defective and can be used in the absence of helper under the conditions specified in Section III–C.

Under the working group proposal, Section III–B–3 would be modified to read as follows:

III–B–3. *Experiments Involving the Use of Infectious Animal or Plant DNA or RNA Viruses or Defective Animal or Plant DNA or RNA Viruses in the Presence of Helper Virus in Tissue Culture Systems.*

Caution: Special care should be used in the evaluation of containment levels for experiments which are likely to either enhance the pathogenicity (e.g., insertion of a host oncogene) or to extend the host range (e.g., introduction of novel control elements) of viral vectors under conditions which permit a productive infection. In such cases, serious consideration should be given to raising the physical containment by at least one level.

Note.—Recombinant DNA molecules or RNA molecules derived therefrom which contain less than two-thirds of the genome of any eukaryotic virus (all virus from a single Family (17) being considered identical (19)) may be considered defective and can be used in the absence of helper under the conditions specified in Section III–C.

C. Section III–B–4–a of Section III–B, *Experiments that Require IBC Approval Before Initiation,* currently reads as follows:

III–B–4–a. DNA from any sources except for greater than two-thirds of a eukaryotic viral genome may be transferred to any non-human vertebrate organism and propagated under conditions of physical containment comparable to BL1 and appropriate to the organism under study (2). It is important that the investigator demonstrate that the fraction of the viral genome being tuilized does not lead to productive infection. A USDA permit is required for work with Class 5 agents (18, 20).

Under the working group proposal, Section III–B–4–a would be modified to read as follows:

III–B–4–a. Recombinant DNA or RNA molecules derived therefrom from any source except for greater than two-thirds of a eukaryotic viral genome may be transferred to any non-human vertebrate organism and propagated under conditions of physical containment comparable to BL1 and appropriate to the organism under study (2). It is important that the investigator demonstrate that the fraction of the viral genome being utilized does not lead to productive infection. A USDA permit is required for work with Class 5 agents (18, 20)."

II. Proposal to Modify Appendix C of the NIH Guidelines

Section III–D–5 of the NIH Guidelines states that certain classes of recombinant DNA molecules are exempt ". . . if the Director, NIH, with advice of the RAC, after appropriate notice and opportunity for public comment, finds that they do not present a significant risk to health or the environment. . . ." These classes of experiments are listed in Appendix C.

A RAC Working Group on Gram Positive Bacteria has now suggested that a new section be added to Appendix C. That new section would be entitled Appendix C–V, *Extrachromosomal Elements of Gram Positive Organisms.* The current Appendix C–V, *Footnotes and References of Appendix C,* would be renumbered Appendix C–VI under the proposal.

The Working Group on Gram Positive Bacteria has suggested proposed Appendix C–V read as follows:

Recombinant DNA molecules derived entirely from extrachromosomal elements of the organisms listed below (including shuttle vectors constructed from vectors described in Appendix C), propagated and maintained in organisms listed below are exempt from these Guidelines.

Bacillus subtilis
Bacillus pumilus
Bacillus licheniformis
Bacillus thuringiensis
Bacillus cereus
Bacillus amyloliquefaciens
Bacillus brevis
Bacillus natto
Bacillus niger
Bacillus aterrimus
Bacillus amylosaccharliticus
Bacillus anthracis
Bacillus globigii
Bacillus megaterium
Staphylococous aureus
Staphylococous epidermindis
Staphylococous carnosus
Clostridium acetobutylicum
Pediococcus damnosus
Pediococcus pentosaceus
Pediococcus acidilactici
Listeria grayi
Listeria murrayi
Listeria monocytogenes
Streptococcus pyogenes
Streptococcus agalactiae
Streptococcus sanguis
Streptococcus salivarious
Streptococcus cremoris
Streptococcus pneumoniae
Streptococcus avium
Streptococcus faecalis.
Streptococcus anginosus
Streptococcus sobrinus
Streptococcus lactis
Streptococcus mutans
Streptococcus equisimilis
Streptococcus thermophylus
Streptococcus milleri
Streptococcus durans
Streptococcus mitior
Streptococcus ferus

Exceptions.

Experiments described in Section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Large-scale experiments (e.g., more than 10 liters of culture) require prior IBC review and approval (see section III–B–5).

Experiments involving the deliberate cloning of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

The Working Group on Gram Positive Bacteria also suggested the first paragraph of Appendix C–IV, *Experiments involving Bacillus subtilis Host-Vector Systems,* be modified. That paragraph currently reads as follows:

Any asporogenic *Bacillus subtilis* strain which does not revert to a sporeformer with a frequency greater than 10^{-7} can be used for cloning DNA with the exception of those experiments listed below. Indigenous *Bacillus* plasmids and phages whose host-range does not include *Bacillus cereus* or *Bacillus anthracis* may be used as vectors.

The second sentence of that paragraph would be deleted and the paragraph would read as follows:

Any asporogenic *Bacillus subtilis* strain which does not revert to a sporeformer with a frequency greater than 10^{-7} can be used for cloning DNA with the exception of those experiments listed below.

III. Proposed Revision of Appendix C–I

Dr. Robert Simpson, Chair of the NIH Institutional Biosafety Committee, has requested a modification of Appendix C–I, *Exemptions Under section III–D–5. In proposing this modification, Dr. Simpson said:*

A great number of experiments are currently carried out which involve the use of 'shuttle' vectors containing small amounts of eukaryotic viral DNA together with bacterial plasmid sequences; such recombinant DNA constructions can replicate in either bacteria or tissue culture cells. These vectors are used for cloning and for expression studies. Examples of the types of viral sequences utilized are the SV40 origin of replication, splice junction, polyadenylation signal, herpes thymidylate kinase gene, etc. Such recombinant molecules are not capable of generating infectious virus.

Currently the Guidelines require registration of any experiment in which any eukaryotic viral sequences are propagated in tissue culture cells. [The NIH IBC feels] this is not necessary and would like to propose . . . revision to Appendix C–I. . . .

Appendix C–I currently reads:

Appendix C–I. *Recombinant DNAs in Tissue Culture.* Pecombinant DNA molecules derived entirely from non-viral components (that is, no component is derived from a eukaryotic virsus) that are propagated and maintained in cells in tissue culture are exempt from these Guideline with the exceptions listed below.

Exceptions.

Experiments described in section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Experiments involving DNA from Class 3, 4 or 5 organisms (1) or cells known to be infected with these agents.

Experiments involving the deliberate introduction of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

Dr. Simpson suggested Appendix C–I be modified to read as follows:

Appendix C–I. *Recombinant DNAs in Tissue Culture.* Recombinant DNA molecules that are propagated and maintained in cells in tissue culture are exempt from these Guidelines with the exceptions listed below.

Exceptions

Experiments described in section III–A which require specific RAC review and NIH approval before initiation of the experiment.

Experiments involving DNA from Class 3, 4, or 5 organisms (1) or cells known to be infected with these agents.

Experiments involving the deliberate introduction of genes coding for the biosynthesis of molecules toxic for vertebrates (see Appendix F).

Experiments involving DNA molecules which contain more than two-thirds of a primate retroviral genome.

IV. Proposal to Modify Appendix J, Federal Interagency Advisory Committee on Recombinant DNA Research, of the NIH Guidelines

In a memorandum dated November 25, 1985, Dr. Bernard Talbot, Deputy Director of the National Institute of Allergy and Infectious Diseases, noted that the NIH Guidelines for Research Involving Recombinant DNA Molecules (49 FR 46266) devotes Appendix J to a description of the Federal Interagency Advisory Committee on Recombinant DNA Research. Appendix J lists those departments and agencies which had representation on this committee as of December 1980.

Dr. Talbot said this committee met from 1976 to 1980 but has not met since 1980. Recently another interagency committee, the Biotechnology Science Coordinating Committee, was established to provide for interagency science policy coordination and guidance and for exchange of information as announced in a **Federal Register** notice on November 14, 1985 (50 FR 47174).

Dr. Talbot suggested Appendix J be modified to reflect the current situation. He requested the following change in the NIH Guidelines be issued for public comment and placed on the agenda for the next meeting of the NIH Recombinant DNA Advisory Committee.

Dr. Talbot proposed that current Appendix J be deleted from the NIH Guidelines and the following language be substituted:

Appendix J. Biotechnology Science Coordinating Committee

The following excerpts from its charter (signed October 30, 1985) describe the Biotechnology Science Coordinating Committee:

Purpose

The Domestic Policy Working Group on Biotechnology has determined that in the area of biotechnology with its rapid growth of scientific discovery, scientific issues of interagency concern will arise frequently and need to be communicated among the various agencies involved with reviews of biotechnology applications. The Federal Coordinating Council for Science, Engineering, and Technology (FCCSET) established by 42 U.S.C. 6651 is an interagency science committee chaired by the Director of the Office of Science and Technology Policy with the mission of coordinating science activities affecting more than one agency. Committees may be established under FCCSET for addressing particular science issues. Thus, the Biotechnology Science Coordinating Committee (BSCC) is established to provide formally an opportunity for interagency science policy coordination and guidance and for the exchange of information regarding the scientific aspects of biotechnology applications submitted to federal research and regulatory agencies for approval.

Functions

The BSCC will coordinate interagency review of scientific issues related to the assessment and approval of biotechnology research applications and biotechnology product applications and postmarketing surveillance when they involve the use of recombinant RNA, recombinant DNA, cell fusion or similar techniques. The BSCC will:

(a) Serve as a coordinating forum for addressing scientific problems, sharing information, and developing consensus;

(b) Promote consistency in the development of Federal agencies' review procedures and assessments;

(c) Facilitate continuing cooperation among Federal agencies on emerging scientific issues; and

(d) Identify gaps in scientific knowledge.

Authority

To accomplish these functions the BSCC is authorized to:

(a) Receive documentation from agencies necessary for the performance of its function;

(b) Conduct analyses of broad scientific issues that extend beyond those of any one agency;

(c) Develop generic scientific recommendations that can be applied to similar, recurring applications;

(d) Convene workshops, symposia, and generic research projects related to scientific issues in biotechnology; and

(e) Hold periodic public meetings.

Members and Chairman

The BSCC includes the following initial members:

Department of Agriculture
Assistant Secretary for Marketing and Inspection Services
Assistant Secretary for Science and Education
Department of Health and Human Services
Commissioner, Food and Drug Administration
Director, National Institutes of Health
Environmental Protection Agency
Assistant Administrator for Pesticides and Toxic Substances
Assistant Administrator for Research and Development National Science Foundation
Assistant Director for Biological, Behavioral & Social Sciences

The BSCC is chaired by the Assistant Director for Biological, Behavioral and Social Sciences of the National Science Foundation and the Director of the National Institutes of Health on a rotating basis.

Administrative Provisions

(a) The BSCC will report to the FCCSET through the Chair.

(b) Meetings of the BSCC shall be held periodically. Some public meetings will be held.

(c) Confidential business information and proprietary information shall be protected under the confidentiality requirements of each member agency.

(d) Subcommittees and working groups, with participation not restricted to BSCC members or full-time Federal employees, may be formed to assist the BSCC in its work.

(e) All BSCC members will be full-time Federal employees whose compensation, reimbursement for travel expenses and other costs shall be borne by their respective agencies.

(f) Each member of the BSCC shall provide such agency support and resources as may be available and necessary for the operation of the BSCC including undertaking special studies as come within the functions assigned herein.

(g) An Office of Science and Technology Policy staff member will serve as BSCC Executive Secretary.

Dated: December 16, 1985.

Bernard Talbot, M.D., Ph.D.,

Acting Director, National Institute of Allergy and Infectious Diseases.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance.* Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every federal program would be included as many federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

[FR Doc. 85–30116 Filed 12–19–85; 8:45 am]

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federal register

Friday
December 20, 1985

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 11 and 93

High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule

14 CFR Part 93

Slot Allocation; Initial Withdrawal and Redistribution of Slots; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11 and 93

[Docket No. 24105; Amdts. Nos. 11-28 and 93-49]

High Density Traffic Airports; Slot Allocation and Transfer Methods

AGENCY: Federal Aviation Administration (FAA), Department of Transportation, (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This action will permit air carrier and commuter operator slots (i.e., allocated instrument flight rules (IFR) takeoff and landing reservations) at Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, and Washington National Airport to be transferred for any consideration. This amendment also adopts certain procedures for the allocation and use of slots including a use-or-lose provision at these airports. In addition, a procedure is adopted to allocate unused slots. Special procedures are provided for international flights and flights which fulfill obligations under the Essential Air Service Program, to assure that a sufficient number of slots will be available for these operations.

DATES:

Effective Date: The prohibition against trading slots on other than a one-for-one basis at the same airport until April 1, 1986 (§ 93.221(d)) is effective upon publication of this rule.

The other provisions are effective 30 days after publication. Existing slot allocations are established in reference to conditions in effect on the date of publication of this rule (see § 93.215(a)).

Comment Date: Comments must be received on or before January 24, 1986.

Hearing Date: A public hearing will be held on January 21 and 22, 1986.

ADDRESS: Comments on this final rule may be mailed in duplicate to:

Federal Aviation Administration, Office of the Chief Counsel. Attention: Rules Docket (AGC-204), Docket No. 24105, 800 Independence Avenue, SW., Washington, DC 20591.

or delivered in duplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, DC.

Comments may be examined in the Rules Docket weekdays, except Federal Holidays, between 8:30 a.m. and 5:00 p.m.

The public hearing will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the Third Floor Auditorium.

FOR FURTHER INFORMATION CONTACT:

Edward P. Faberman, Deputy Chief Counsel, Telephone: (202) 426-3775. Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Comments Invited

Even though this action is a final rule, interested persons are invited to comment on the rule by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24105." The postcard will be date/time stamped and returned to the commenter. Also, this rule may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date of comments.

In addition to seeking comments on this amendment, the FAA will hold a public hearing to allow public input and to answer questions on the administration of the rule adopted. The hearing will be held on January 21-22, 1986, at the Federal Aviation Administration, 800 Independence Avenue, SW., Third Floor Auditorium. This meeting will maximize the ability of those affected by the amendment to familiarize themselves with its implementation.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 426-8058. Communications must identify the amendment number of the document.

Meeting Procedures

Persons who plan to attend the hearing should be aware of the following procedures to be followed:

(a) The hearing will be informal in nature and will be conducted by the designated representative of the Administrator under 14 CFR 11.33. Each participant will be given an opportunity to make a presentation. Questions may be asked of each presenter by other participants or by representatives of the Administrator.

(b) The hearing will begin at 9:00 a.m. (local time). There will be no admission fee or other charge to attend and participate. All sessions will be open to all persons on a space available basis. The presiding officer may accelerate the schedule if possible. The second day of the hearing will be held only if all speakers cannot be accommodated during the first scheduled day.

(c) All meeting sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be distributed. Participants submitting handout materials must present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by DOT participants at the hearing should not be taken as expressing a final DOT position.

Public Hearing Schedule

The schedule for the meeting is as follows:

Tuesday, January 21, 1986

9:00 a.m.—Hearing is opened
9:15 a.m.—Summary of Rule
9:30 a.m.—Questions
10:00-12:00—Formal presentations
1:00-5:00—Formal presentations

A continuation of the hearing can be held on Wednesday, January 22, if necessary.

Anyone interested in making a presentation at the hearing must contact Pam Trebbe, (202) 426-3773, with the name of the individual making the presentation and the name of the group represented. Presentations should be limited to 10 minutes.

Related Rulemaking

In this issue of the **Federal Register**, there is a Notice of Proposed Rulemaking which proposes to amend

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the provisions adopted in this rule by withdrawing and redistributing a percentage of slots at each of the covered airports.

Background

The FAA has broad authority under the Federal Aviation Act (FAAct) of 1958, as amended, to regulate and control the use of navigable airspace of the United States. Under section 307(a) of the FAAct (49 U.S.C. 1348(a)), the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to ensure the safety of aircraft and the efficient utilization of such airspace. Under section 307(c) of the FAAct (49 U.S.C. 1348(c)), the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navigable airspace.

Federal Aviation Regulations (FAR) Amendment No. 93–13, effective April 27, 1969 (33 FR 17896, December 3, 1968), designated Kennedy, O'Hare, LaGuardia, Washington National, and Newark Airports as high density airports and prescribed special air traffic rules, known as the "High Density Rule," that apply to operations at those airports. The High Density Rule (FAR Part 93, Subpart K) was made permanent in 1973 (38 FR 29463, October 25, 1973). The rule establishes limitations (quotas) on the number of Instrument Flight Rule (IFR) reservations per hour that would be accepted at those airports and allocated the hourly reservations among the three classes of users: air carriers except air taxis, scheduled air taxis (commuter airlines), and all other operators—primarily general aviation operators but also charter operators. The hourly quotas are set at the predominant IFR capacity for each airport, as determined by the FAA. The predominant IFR capacity is the airport's capacity under the circumstances and configurations most frequently encountered when weather conditions preclude Visual Flight Rule (VFR) operation. The limitations in the rule are predominantly determined by groundside restraints.

The entire quota for Newark International Airport was suspended indefinitely, although the airport was retained in the rule as a high density airport.

On March 1, 1984, the FAA issued an Interim Final Rule (49 FR 8237, March 6, 1984) which amended the limitations on operations at Kennedy, LaGuardia, and O'Hare Airports and continued the suspension of operational quotas at Newark Airport. The Interim Final Rule was effective on April 1, 1984.

The current rule provides hourly and half-hourly quotas for classes of operators, but does not specifically provide for the means by which particular slots are allocated to individual operators within the hourly or half-hourly limits of the rule. For certificated air carriers and commuter carriers, slots at each of the four airports generally have been allocated by eight scheduling committees composed of the incumbent carriers and interested new entrant carriers in each category at each airport. Each committee meets and operates under a limited grant of antitrust immunity issued under section 414 of the Federal Aviation Act. The functions and responsibilities of the Civil Aeronautics Board for the administration of Title IV of the Federal Aviation Act, including grants of antitrust immunity, were transferred to the Department of Transportation on January 1, 1985.

The agreements under which the four air carrier scheduling committees operate require unanimous agreement on carrier schedules and contain no provisions for resolving deadlocks if agreement cannot be reached. The air carrier agreements also have no use-or-lose provisions which would require the return of unused slots. As a result of the unanimity requirement and the lack of deadlock-breaking provisions, the air carrier scheduling committees have found it difficult in recent years to reach agreement on a schedule in full compliance with the High Density Rule. The committees have been able to avoid deadlocks in some situations due in large part to the FAA's flexibility in accommodating certain schedule adjustments if within the overall limits of the rule and when consistent with air traffic control resources and objectives. However, the National Airport Scheduling Committee has been deadlocked for some time and others have also deadlocked at times. Overall, the scheduling committees are not currently functioning in a manner which provides for the efficient allocation of slots, for rapid adjustment to market conditions and shifting carrier needs and preferences, for adequate opportunity for expansion of operations, or for new carriers to serve high density airports.

The committee agreements under which the commuter carriers operate contain both deadlock-breaking mechanisms and use-or-lose provisions. For example, a commuter carrier at O'Hare Airport which fails to operate its slots 5 days per week at least 80 percent of the time during a particular scheduling period will surrender those slots to the O'Hare Regional Carrier Scheduling Committee for reallocation. If the committee members cannot reach agreement on the allocation of newly available slots, a lottery is held to determine which carriers will obtain each of the available slots. As a result of these procedures, the committees do not encounter formal deadlocks in the allocation of slots. However, procedures at the four airports are not uniform, and there have been difficulties in interpretation of the use-or-lose and other provisions of the agreements. Also, the commuter agreements do not contain clear provisions for the transfer of slots among carriers.

When the scheduling committees fail to agree on an allocation in compliance with High Density Rule quotas, the responsibility for accomplishing allocation falls to the Government. The slot allocation alternatives available to the Government without additional regulatory authority are limited, however, and administrative procedures for allocation have proven to have significant drawbacks. For these reasons, the DOT has issued three regulatory proposals over the past five years to further the public discussion of alternative methods of allocating and exchanging slots among carriers.

On October 21, 1980, the Department issued Notice No. 80–16 (45 FR 71236; October 27, 1980) which proposed alternative procedures for slot allocation at National Airport. The alternatives proposed included administrative allocation, slot auctions and variations thereof. In addition, the notice solicited comments on the continued use of the airline scheduling committees. The notice also proposed variations of each alternative to assure that small- and medium-sized communities do not lose nonstop service to the airport. Comments submitted on that NPRM are in the Docket of the Office of the Secretary (Docket No. 70, Office of the General Counsel, Room 4107, 400 Seventh Street, SW., Washington, DC 20590).

On June 1, 1984, the FAA issued two notices proposing alternate procedures for the allocation and exchange of slots. Notice No. 80–16 was superseded by these two later notices. The first notice, Notice 84–6, Slot Transfer Methods (49 FR 23788, June 7, 1984), proposed that air carrier slots could be exchanged for any consideration. Under the proposal, air carrier slots could only be exchanged and held by air carriers, and slots obtained through any deadlock breaking

mechanism could not be transferred until used for at least 90 days. The second notice, Notice 84–7, Slot Allocation Alternative Methods (49 FR 23806, June 7, 1984), proposed deadlock breaking and use-or-lose provisions for air carrier and commuter slots. The notice proposed to preserve the scheduling committee system of allocation and to provide a regulatory allocation mechanism if a committee reached an impasse. Existing slots would continue to be used by the operator holding them. The notice proposed the use of a lottery to allocate newly created slots and slots that were not used. The lottery provided for a 15 percent set-aside of available slots for new entrants, a set-aside of Essential Air Service (EAS) program slots at O'Hare Airport, and a lottery procedure weighted in accordance with the approximate number of slots already held by carriers. Slots obtained through the lottery could not be transferred until they had been used for at least 90 days. Under the NPRM, it was proposed that a slot not used at least 71 percent of the time (approximately 5 days out of 7) in any 2-month period would be withdrawn by the FAA.

Slot Transfer and Allocation Rules Adopted: Overview

On consideration of the issues and proposals presented in both Notices 84–6 and 84–7, and public comment thereon, the DOT is adopting a new Subpart S to Part 93 of the Federal Aviation Regulations, 14 CFR Part 93, to establish regulatory procedures and rules for the allocation and transfer of high density slots. In summary form, the amendment provides as follows:

—Separate slot pools for air carrier, commuter, and other operators are retained. The numbers contained in the High Density Rule are not changed by this amendment.
—Air carriers and commuters holding permanent slots which are in use on December 16, 1985 will be allocated those slots.
—Beginning on April 1, 1986, any person may purchase, sell, trade, or lease air carrier or commuter slots (except for international and EAS slots) in any number at any of the high density airports.
—International and essential air service slots are treated specially and transfer of such slots is restricted.
—All slots are "tagged" with a priority number, assigned by lottery, to determine the order of withdrawal if necessary.
—Slots not used 65 percent of the time in a 2-month period must be returned to the FAA (use-or-lose).
—A lottery procedure is provided for the allocation of newly available slots and slots returned under the use-or-lose provision.
—The use-or-lose provision does not apply to slots allocated by lottery until 60 days after allocation (180 days after allocation to a new entrant awaiting a Part 121 or Part 135 certificate, and 90 days after allocation to any other new entrant).
—Slots will be made available for additional EAS operations, as requested and approved by OST, by taking slots from incumbent operators if not otherwise available.
—Slots will be made available for new international operations at O'Hare and John F. Kennedy Airports, as requested, by taking slots from incumbent operators if not otherwise available.
—Slots utilized for general aviation operations are not affected by this amendment.
—This amendment does not create proprietary rights in slots.
—Slots may be recalled or eliminated by the agency for operational reasons.

All comments were thoroughly reviewed prior to the issuance of this amendment. Numerous comments were submitted and various options were proposed. There was not any consensus among commenters on an approach to take. In fact, most commenters suggested their own version of a deadlock/allocation mechanism. In selecting a procedure to be utilized, the Department had to be mindful of statutory responsibilities including the need to place maximum reliance on competitive market forces, the maintenance of air service to small communities, honoring international air service treaty obligations, avoiding immediate disruption of the existing air service patterns at the affected airports, and maximizing scheduling flexibility for the air carriers and for the public. The Department believes that this amendment is the one alternative which best meets these objectives.

This amendment basically adopts Notice 84–6, slot transfer methods, as proposed. It does not adopt a deadlock breaking mechanism as proposed in Notice 84–7 although a number of the provisions set forth in that document are adopted.

As a result of this amendment, the role of the scheduling committees in the allocation of slots is eliminated. However, the FAA, as discussed below, suggests that there may be a role for the committees in keeping track of slot holdings and facilitating slot transfers.

The following is a brief summary of this amendment. A more detailed section-by-section description appears later in this preamble.

Summary of the Rule

Applicability of Rules. This amendment applies to the allocation and transfer of air carrier and commuter slots. It does not apply to the category of "other" slots which includes general aviation operations. Those slots are not allocated on a permanent basis and, therefore, will not be made subject to this amendment. The use of slots for general aviation is governed by FAA Advisory Circular 90–43F, "Operations Reservations for High Density Traffic Airports." Operations by general aviation at high density airports are required to have slot reservations under the high density rule and the procedures described in AC 90–43F.

Initial Allocation. The first step in the allocation process will be to continue the assignment of all previously allocated slots to the carriers and commuters utilizing them. (Each air carrier or commuter operator holding a permanent slot on December 16, 1985 as evidenced by the records of the appropriate scheduling committee, shall be allocated those slots.)

In order to consider further the reallocation of some permanently held slots, a NPRM was issued and is published in today's **Federal Register.** The NPRM (Notice No. 85–25) proposes to withdraw up to 5 percent of the slots used by air carriers and commuter operators and to redistribute those slots by lottery.

Purchase and Sale of Slots. This amendment allows air carriers, commuters or other persons, effective April 1, 1986, to buy, sell or lease slots for any consideration and any time period and allows the trading of slots in any combination for slots at the same airport or any other high density airport.

Use-or-Lose. The Amendment provides that slots which are not used at least 65 percent of the time in a 2-month period shall be returned to the FAA. This provision does not apply during a strike or bankruptcy proceeding, or for the following periods after slots are awarded in a lottery: 60 days for incumbents; 180 days for uncertificated new entrants who have made substantial progress toward FAA certification; and 90 days for all other new entrants.

EAS Operations. Slots will be made available for service as provided under the Essential Air Service (EAS) program. The Department may assign slots to carriers if necessary to provide EAS service and may recall non-EAS slots for that purpose if unallocated slots are not

available. The rule restricts transfer of all slots used for EAS operations. The rule further provides that a slot awarded for EAS purposes under the rule may not be sold or traded except on a one-for-one basis at the same airport.

International Operations. Slots will be made available for certain international service at Kennedy and O'Hare airports. If slots are not available, they will be withdrawn from incumbent operators. The rule further provides that international slots shall not be sold or leased. Further, international slots may only be traded on a one-for-one basis at the same airport.

Procedural rules. This amendment establishes minimal regulations for the allocation and transfer of high density airport slots. As such, the rule contains specific procedures for the acquisition, use, and transfer of slots. Among the areas covered are: reporting requirements; allocation of newly available slots by lottery; special procedures applicable to EAS and international slots; use-or-lose provisions; exceptions to the use-or-lose rules during the start-up of operations and in strikes or bankruptcy situations; eligibility to buy and sell slots; identification of the recall priority of each slot; slot recall procedures; and penalties for noncompliance. Each of the above provisions is discussed in the response to comments immediately below.

ATC Services

The rule will provide for the allocation of existing ATC capacity among individual operators. The rule will have no affect on the provision of ATC services or on FAA's determination of the capacity of the air traffic control system at the four high density airports. The priorities and operating rights provided by the rule do not preclude the expansion, limitation, or modification of ATC services as deemed necessary by the FAA for purposes or the safe and efficient movement of air traffic. In addition, ATC will not give special consideration to any operator because it has a slot, special slot number or has a use-or-lose problem.

Comments received in response to Notice 84–6 and Notice 84–7

The FAA has received a significant number of comments to Dockets 24105 and 24110 in response to Notices 84–6 and 84–7. Comments were submitted by air carriers and commuter carriers, other Federal agencies, state and local government agencies including airport operators, and aviation-related organizations and industry associations as well as consumer groups. Supporting and opposing comments were received on virtually every aspect of the two proposals, and a wide range of alternative courses of action was suggested by various commenters. Supporters of the buy-sell proposal included American, Continental, Eastern, Flying Tigers, Northwest, Pan Am, People Express, Piedmont, TWA, United and Western Air Lines ("Joint Commenters"); the Regional Airline Association (RAA), (representing commuter airlines); and three government agencies, the Council of Economic Advisers (CEA), the Department of Justice (DOJ), and the Bureaus of Economics, Competition, and Consumer Protection of the Federal Trade Commission (FTC) as well as the Office of Management and Budget (OMB). Commenters opposed to a buy-sell rule included USAir, Delta, Midwestern, Jet America, Muse Air, and PSA; the National Association of State Aviation Officials (NASAO) and the National Air Carrier Association (NACA), as well as a number of state agencies and airport operators.

The comments tended to focus on several issues. The comments and the Departmental response to each of these issues are discussed below by general subject area.

Applicability of Rules. Notice 84–6 proposed that only air carrier slots be subject to these provisions. The agency solicited comments on whether the proposal should extend to commuters as well as to air carriers. A large majority of commenters agreed that the provisions should apply to both types of operation. RAA supported the right of commuters to buy and sell slots. The RAA stated, "the scheduling committee process employed over the past sixteen years to allocate access at the "high density airports no longer works."

The Department agrees that the rules should apply to both air carrier and commuter operators. Therefore, this amendment applies to both air carrier and commuter opreations at the high density airports. In order to provide for continued service from smaller communities to the high density airports, the amendment does not allow air carriers (as defined in 14 CFR 93.123(c)(1) as operator using aircraft having a certificated maximum seating capacity of 56 or more) to use commuter slots (as defined in 14 CFR 93.123(c)(2) as operators using aircraft having a certificated maximum seating capacity of less than 56 or if used for cargo service in air transportation, with aircraft having a maximum payload capacity of less than 18,000 pounds.) The rule allows the use of air carrier slots with smaller aircraft.

Initial allocation. Notice 84–6 did not specifically address the rights of incumbent operators to hold onto existing slots. The primary alternatives suggested for this initial allocation were to "grandfather" the existing allocation; to distribute all or some percentage of slots by lottery, with the remaining slots to be grandfathered; or to auction all slots or some percentage of slots.

Notice 84–7 did propose that the first step in an allocation process would be to continue the assignment of all previously allocated slots to the air carriers and commuters currently utilizing them. That proposal is adopted in this amendment. A slot is not permanent if it has been allocated for a short period of time and is to be returned to the appropriate scheduling committee. The issue of "permanent" slots will primarily apply to commuter slots. For example, the commuter scheduling committees reallocate returned slots for short periods of time until the next scheduled permanent allocation. As part of this reallocation, the committee advises the participating commuters that these slots will be reallocated at a certain date. Slots which have been temporarily allocated, such as by the commuter committee, are not permanent and are not allocated under this rule. Instead, those slots will be permanently allocated under the lottery provisions of this amendment. Representatives of the FAA will meet with each scheduling committee to decide upon a complete list of permanent slots. The Chief Counsel of the FAA will make the final determination on all matters relating to initial slot allocations to individual carriers, including which slots are permanent and which slots shall be allocated under the lottery provisions. The slots to be permanently allocated will be in accordance with the 30-minute and 60-minute limitations contained in § 93.123(a).

The auction mechanism was not proposed in Notice 84–6 because legislation would be required for the collection and disposition of the proceeds. DOJ noted that several unresolved legal questions make it impractical to use auctions, citing in particular the Independent Offices Appropriations Act, 31 U.S.C. 9701 as an example. This is particulary so if these proceeds were to be applied for airport improvements as suggested by some commenters. Further, several commenters, including the Joint Commenters and RAA, noted their opposition to the concept of an auction

on the basis of service disruptions and the lack of recognition of existing carrier investments.

The grandfathering of the existing slot allocation was supported by the Joint Commenters and the RAA, as well as by OMB, DOJ, and FTC. A number of commenters opposed the grandfathering of existing slot allocations, primarily because of concern that such an allocation, in conjunction with the ability to sell slots, would confer a financial windfall on the incumbent carriers. A second major concern was the adverse effect on new entrants.

The Department recognizes the benefit to incumbent carriers inherent in the ability to sell the slots now assigned to each of those carriers. However, the Department believes that this one-time benefit is necessary, in the implementation of the buy-sell system, in order to minimize disruption of existing service patterns.

Allocation of slots to carriers currently holding them will avoid immediate disruption of air service to the public. A comprehensive reallocation of slots could leave carriers that now have a large investment in airport assets without the operating rights to utilize those assets. This approach recognizes the investments and commitments in personnel, equipment, terminal development, and planning by existing carriers. The investments noted in the preamble to the NPRM, which have been made at O'Hare, are evidence of this need. As part of this, carriers and commuters have made large investments in hub/spoke operations at the high density airports. Further, other airports have made corresponding commitments. The Department believes that this one-time allocation is necessary for near-term stability in the services provided to the public.

According to many commenters, the windfall to incumbent carriers may be exaggerated. As noted in the comments of OMB, incumbent carriers are already entitled to use the slots, and, therefore, have already received the value of the slots at no cost. The ability to sell the slots only marginally increases that value. Most air carriers and commuters have expended large amounts of resources to establish existing service and facilities. This provision recognizes that investment.

With respect to the effect of "grandfathering" on new entrants, several other provisions of the rule mitigate the initial effects and will act to eliminate these effects over time. First, the adoption of the buy-sell rule itself permits new entrants to acquire slots on the same basis as incumbents seeking additional slots. This would allow new entrants (some of which have waited for some time) to obtain immediate access at a high density airport. Second, the lottery mechanism adopted for the allocation of new, returned, or otherwise unallocated slots provides a set-aside of 15 percent of the available slots for new entrants.

As previously mentioned, Notice 85–25, published on this date, further addresses the issue of comprehensive "grandfathering" of slots by proposing to withdraw up to five percent of the slots initially assigned to incumbents, for distribution by a lottery in which new entrants would be given a preference.

Purchase and sale of slots. Notice 84–6 proposed to allow incumbent or new entrant carriers to obtain additional slots for any mutually agreed consideration. The Department has decided to adopt the "buy-sell" proposal to permit maximum reliance on market forces to determine slot distribution following the initial allocation of slots. The Department believes that the rule minimizes the need for government intervention in the continuing allocation and distribution of slots. Because carrier agreement on schedules, as the scheduling committees now operate, is not required, there will no longer be deadlocks in the allocation process. Finally, the Department believes that a market in slots will permit long-range stability in carrier planning and marketing that would not be availabe if slots were periodically reallocated using another mechanism such as lotteries or auctions.

Notice 84–6, which proposed in principle the buy-sell rule adopted here, generated substantial public comment. Many commenters expressed opinions that the purchase and sale of slots would have various anticompetitive or other effect adverse to the public interest. Particular concerns were that a buy-sell regulation would result in the concentration of slots held by large affluent carriers; that slots would tend to be used for large, high-volume markets to the detriment of smaller cities; that the initial allocation to incumbents unfairly constituted a substantial financial windfall on incumbents; that fares would be raised to cover the costs of slots purchased; that the cost of slots would raise a new barrier to market entry; and that buy-sell would create proprietary rights in slots which would complicate the carriers' dealings with airport proprietors and bankruptcy coiurts. Each of these concerns is addressed in detail in the response to comments below. The Department of Transportation believes that most of the problems anticipated will not result from the specific rule adopted, and that in consideration of all of the effects of the rule that the net costs of the amendment will be outweighed by its benefits.

Effect on Air Fares. Several commenters opposed to a buy-sell rule, including the National Association of State Aviation Officials (NASAO) and the National Air Carrier Association (NACA), cited the objection that the cost of purchasing slots at high density airports would be passed on to consumers in the form of higher air fares. The price paid for a slot purchased under the rule would represent an additional one-time cost for the purchasing carrier. However, there are a number of factors other than cost which determine pricing, and DOT does not believe that the cost of purchasing a slot will necessarily be passed on to the consumer.

FTC, on the basis of economic theory and the actual past pricing policies of carriers at the high density airports, concluded that fares would not increase as a result of the market in slots. FTC noted that the scarcity of slots causes fares to increase and not the fact that they can be bought and sold. Because the hourly limits at high density airports are unaffected by this rule, the scarcity of high density slots remains unchanged. The scarcity value of the slots will therefore be the same after adoption of the buy-sell rule as before. On the basis of economic theory, FTC predicts that fares in the slot-constrained markets currently reflect this scarcity value, and, therefore, that fares will not increase even if the value of the slots must be paid.

As an example, FTC cites from an FTC staff report which found that in the first quarter of 1981, fares in slot-constrained markets were two to five percent higher than in other markets. FTC concluded that even if carriers were to acquire those slots at their market value (rather than for free, as under the existing rule), that the average fare level would not rise. If a carrier's fare in a slot-constrained market did rise, it would indicate that the carrier had not been charging a profit-maximizing fare prior to buy-sell, which is unlikely. FTC further noted that the above conclusion applied to the average of all fares, and that there were circumstances which could result in the increase in fares in some markets and the decrease of fares in others.

DOJ, responding to the question of whether the sale of slots would lead to higher fares to cover the purchase costs,

stated that the current level of fares is not reduced to reflect the availability of slots at no charge. Rather fares are determined by marginal costs and demand, and cover the economic cost of slots as well as the costs of other resources used in providing service. The fact that slots currently are provided without cost accrues to the carriers and not to consumers in the form of lower fares. On this basis, DOJ concludes that fares will not increase and predicts that, as a result of allowing slots to be utilized more productively, airline fares in slot-constrained markets actually be lowered.

Amercian Airlines commented that fares are not always directly related to costs. American also noted that fares might actually be lowered as a result of buy-sell, because the market in slots would increase economic efficiency and allow a more productive use of slots. Other comments pointed out that since the expenditures for slots would only be a small part of overall costs, those expenditures would not have a significant effect on ticket prices.

For all the above reasons, the Department does not believe that "buy-sell" will significantly affect fares.

Barriers to Entry/Market Concentration. Several commenters objected in a buy-sell rule on the basis that it would be anticompetitive, either as a result of the barriers it would raise to new entrants or because of the unfair advantage it would provide to larger, more affluent carriers.

USAir, Republic, Jet America, Muse Air, and Midwestern, among others, commented that a buy-sell rule would tend to exclude new entrants from high density airport markets as a result of the high cost of purchasing operating authority. However, because the buy-sell rule permits a new entrant to obtain slots in the same manner and for the same costs as an incumbent carrier, it is the market price of the slots themselves and not the method of allocation which constitutes the alleged barrier to new entry in a slot market.

DOJ in their comments stated that both the Airline Deregulation Act and the Federal Aviation Act require DOT to rely, to the maximum extent possible, on market mechanisms to create an efficient procompetitive system for allocating slots. They further stated that a market approach (such as adopted in this amendment) is the only way to accomplish that mandate.

FTC responded to the concern of barriers to market entry with the observation that it is the absence of a slot market which poses the barrier to entry, because there exists no competitive means for entry in a slot-constrained market. FTC stated that an entry barrier exists when a incumbent can maintain price above average cost (including a reasonable return on investment) in the long run, without inducing potential new entrants to start serving the market. Any restriction on slot transfers enables an incumbent carrier to maintain fares above average per-passenger costs in a slot-constrained market, without inducing entry. The existing system, which permits slot trades, allows some entry by slot holding carriers willing to abandon another market, but does not adequately provide for entry by carriers not holding any slots. An unrestricted market in slots will permit a new entrant to obtain marginally profitable slots from one carrier at a price which will allow the new entrant to compete in a market in which another carrier is maintaining a price above average cost.

CEA notes that cost-related barriers to entry (as opposed to prohibitions on entry) result because an entrant is putting its money at risk to enter the market. If the new entrant subsequently decides to leave the market, it cannot recoup its sunk costs, such as the depreciation of its assets. The price paid for a slot under a buy-sell rule is not a sunk cost, however. Because the slot does not depreciate, a carrier can recover the money paid for the slot on leaving the market. FTC concludes that the purchase of slots does not put a new entrant's money at risk and, therefore, is not a barrier to entry.

CEA cites the examples of new entrants being able to gain access during the limited buy-sell experiment conducted with interim operations plan slots in 1982. They cite the example in which one carrier acquired 26 slots at that time. The price of the slots did not constitute a barrier to entry or to subsequent profitable operation.

On this issue, DOJ stated that a "buy/sell" market would enable the incumbents and new entrants with the lowest costs and greatest passenger demand to obtain slots. They pointed out that the existing scheduling committee system provides little opportunity for such new entry or growth.

While the Department believes that an unrestricted slot market may represent the most effective opportunity for new entry at high density airports, special consideration has been provided in this amendment for new entrants. In the first selection sequence in the lottery mechanism for distribution of newly available slots, 15 percent of slots will be set aside for new entrants, and new entrants will be able to select 4 slots instead of 2. New entrants will otherwise compete on an equal basis with incumbent carriers for the remainder of the available slots.

The Department believes that the ability to buy and sell slots also removes existing artificial barriers to entry into high density airport markets. The elimination of barriers to entry is essential for the optimal operation of a competitive market. The rule accomplishes this by placing new entrants in the same position as incumbent carriers desiring additional slots. One additional point is that in the case of each airport, there is at least one other airport in the area that can be utilized by all operators including new entrants.

In a related objection, Midway, PSA, Republic, USAir and others commented that the buy-sell rule discriminates against smaller carriers or those carriers using smaller aircraft in secondary markets. The commenters believes that the greater economic power of the larger carriers would result in the entrenchment of those carriers and the concentration rather than diversification of the industry.

The FTC observed that the motivation to purchase in a slot market will be the expectation of providing relatively high-value flights and not simply the availability of cash on hand. If a smaller carrier can obtain higher profitability from an additional operation than can a larger carrier, the smaller carrier should be able to offer a higher purchase price and obtain the slot, even if financing is required. The size of a carrier is not necessarily related to the ability to finance purchases. FTC notes that smaller carriers such as People Express have been able to finance large equipment purchases and should have no more trouble financing slot purchases. Financing should be facilitated by the fact that slots are non-depreciating and readily transferable.

Inherent in the concern that a buy-sell rule will result in market concentration is the notion that larger carriers will use their resources to dominate markets. The Department does not believe that such anticompetitive behavior will be a problem, because of the lack of business incentives to do so and because of the impracticality of obtaining any monopoly control of slot-constrained markets. A carrier will not have the incentive to acquire and use a slot merely to prevent other carriers from using it. For example, if another carrier could offer more valuable service, then the slot is worth more to that carrier than to the holding carrier. The Department believes that the holding carrier can maximize profits only by

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selling the slot to another carrier offering more highly valued service.

Nor would there by any practical purpose in accumulating slots in quantity for the possible monopoly value of a dominant slot block at a high density airport. FTC lists several reasons why such a strategy would not be effective in a buy-sell system. First, in each case, a carrier or group of carriers attempting to monopolize markets would face competition from other airports in the same metropolitan area, such as Midway in Chicago and Washington Dulles International and Baltimore/Washington International in the Washington area. Therefore, the opportunity for monopoly pricing would be extremely limited.

Second, successful monopolization of a market would require control of a massive number of slots. Since at each airport any slot may be used in any city-pair market, an attempt to charge monopoly prices in that market would induce other carriers to enter the market unless the monopolizing carrier or carriers controlled virtually all available slots. FTC believes that even if a carrier attempted this, which is unlikely given the financial incentives not to hold slots unnecessarily, the size of the purchasing activity would enable antitrust authorities to detect the attempt and intervene to stop it. FTC concludes, and the Department agrees, that the use-or-lose provisions of the rule, in conjunction with existing antitrust laws, will be sufficient to deter anticompetitive behavior.

As to possible anticompetitive behavior, DOJ notes that, in a market context, interdependent behavior would almost certainly require an explicit agreement among the holders of slots to boycott potential purchases. They pointed out that such an agreement would be a felony violation of the Sherman Act.

Effect on Service to Small Communities. Notice 84–6 specifically solicited comments on the effects a buy-sell rule would have on levels of service to smaller communities. In its comments, FTC pointed out that current non-market slot allocation methods give slots to airlines which can use those slots to serve any city-pair market they choose. If it is more profitable to serve large cities, the current slot allocation system will not preserve service to small cities. CEA commented that deregulation has resulted in an increase in service to small communities. Since such service can be profitable for air carriers, CEA sees no reason to assume that a slot market will result in a decline in service to smaller communities. FTC also commented that other policies, such as the Essential Air Service program, and reservations of certain numbers of slots for commuter carriers, tend to maintain levels of service to smaller communities. Both of those policies are retained in the current rule.

DOJ commented that smaller communities may act on their own to preserve air service by entering into contractual agreements with carriers holding slots or by purchasing slots and leasing them to carriers. This rule would allow such arrangements.

The majority of commenters felt that a pure buy-sell rule would not detract from service to small communities, but many felt otherwise. USAir theorized that buy-sell would result in a shift in service to longer haul, higher density markets served by large airplanes because the profit potential of a large airplane is always greater than that of a small airplane. Thus, said USAir, smaller markets would not generate passengers or revenue to justify the use of a slot.

The FTC in their comments stated that service to small communities is not affected by this rule. They stated that service to small communities will work equally well with marketable slots as they now do under non-market slot allocation. The Joint Commenters stated that the fear is unfounded that a buy/sell rule would result in shifting of service to small communities from the high density airports, or that slots would be used only with large aircraft. They cite numerous examples of carriers serving small communities and suggest that that will continue. In fact, they suggest that "without buy/sell some small and medium community services might be adversely affected." American Airlines pointed out that an efficient hub-spoke system requires short-haul routes from the hub. American cites the recent expansion of service to smaller communities as proof that new service will be directed towards small communities to "tap" new markets and feed the established long-haul routes.

The retention of separate slot markets for air carrier and commuter operator categories preserves slots for service to smaller communities by aircraft suited to short-haul, lower passenger volume markets. Therefore, the rule will continue to limit the use of commuter slots to aircraft defined in § 93.123(c)(2), having a certificated maximum passenger seating capacity of less than 56 or a maximum cargo payload capacity of less than 18,000 pounds. However, the rule adopted will now permit the use of any aircraft in an air carrier slot. The policy reasons for maintaining separate operator categories require the protection only of commuter slots and not of air carrier slots, so the use restrictions on air carrier slots have been removed to provide maximum carrier flexibility. Therefore, additional slots may be available to commuters for service to such communities.

Protection and development of service to smaller communities is also achieved by the provision for separate treatment of slots used for service to certain communities under the Essential Air Service (EAS) Program. The Airline Deregulation Act of 1978 (ADA) included provisions for the continuation of service to small communities after deregulation of air carrier routes. (49 U.S.C. 1389). Carriers serving communities identified under the EAS program have certain obligations before suspending that service and may be eligible for subsidies to provide continued service. Under the rule adopted, the Office of the Secretary may decide that slots should be assigned to carriers if necessary to provide EAS service. This may necessitate the recall of other non-EAS slots for that purpose if unallocated slots are not available, although this is not anticipated to occur often. The rule further provides restrictions on the transfer of EAS slots. This restriction will be closely monitored by the Office of the Secretary of Transportation.

The Department of Transportation believes that the above provisions will preserve and enhance the protection of air service under the EAS program and the the adoption of the buy-sell rule will not adversely impact the present level of service to eligible communities.

International Operations. In Notice 84–6, comments were solicited on whether the rule should apply to international operations.

Six foreign airlines and the International Air Transport Association (IATA) favored the exclusion of any international operations from the buy-sell rule. Japan Airlines commented that a rule allowing international slots to be bought and sold had the potential for seriously disrupting the international scheduling framework. International carriers, according to Japan Airlines, are subject to different scheduling seasons, and different lead times for schedule planning, than those applicable to domestic services. Air Canada's comments pointed out the possible conflicts between a buy-sell rule (with or without an accompanying lottery) and bilateral agreements between the U.S. and respective foreign countries. American Airlines, on the other hand, argued that exclusion of foreign operations would reduce the supply of

domestic slots, thus, driving up the price with the result that domestic carriers would be subsidizing foreign carriers. DOJ's comments agreed with American Airlines, further stating that a buy-sell rule would not interfere with bilateral air service agreements.

The Department of State commented that bilateral agreements would probably not be violated if foreign carriers were given a fair and equal opportunity to compete with domestic carriers for available slots. DOS was concerned, however, that the larger scale of activity of domestic carriers at the high density airports might give them at least an initial unfair advantage. DOS recommended that the buy/sell approach be confined at first to domestic operations to gain experience and to make any needed adjustments before adapting the rule to include international operations.

This rule adopts the approach recommended by the foreign commenters and by DOS. To ensure equal treatment, U.S. international operators are treated the same as foreign operators in most respects. International slots may not be bought or sold and may be traded only on a one-for-one basis for other international slots at the same airport.

Accordingly, the Office of the Secretary of Transportation has determined that as a matter of international aviation policy the allocation of new slots to international carriers at Kennedy and O'Hare Airports will be made by the FAA based on requests from foreign and U.S. operators conducting international operations. Kennedy and O'Hare handle the vast majority of international operations at the high density airports.

This amendment does not allow the sale or multiple trading of slots utilized for international operations. It does, however, require the government to provide slots to any carrier wishing to conduct international operations at either Kennedy or O'Hare airports.

Slots for international operations will be allocated administratively, upon request to the FAA by an appropriately authorized carrier, rather than being issued by lottery. In the event insufficient unallocated slots are available to meet valid requests for international operations, the FAA may recall allocated slots to meet the international demand. The Department believes that the above provisions will ensure sufficient capacity for international operations at Kennedy and O'Hare Airports.

The Department will closely monitor requests for international slots, and the use of those slots, to determine whether this section of the rule needs to be reviewed to avoid undue discrimination against domestic operations.

Future Allocation of Available Slots. The lottery procedures proposed in Notice 84–7 were intended for use as a supplemental allocation mechanism to resolve deadlocks in the scheduling committee negotiations. Because the initial allocation under the rule adopted is by "grandfathering" of the existing allocation, and because most future adjustments will be accommodated throught the purchase and sale of slots, the scheduling committees will not be used to allocate slots after December 16, 1985. However, from time to time, as a result of new system capacity or by operation of the use-or-lose provisions, unallocated slots will become available. The amendment provides for a period lottery mechanism to allocate those slots.

The majority of comments on Notice 84–7, "Slot Allocation Alternative Methods" favored adoption of the "deadlock" proposal. A few commenters qualified their support by emphasizing that the proposed rule should be adopted as a temporary measure only until such time as the High Density Rule (HDR) is rescinded. The Aviation Consumer Action Project (ACAP) urged adoption on an experimental basis only. Others, such as American Airlines and Federal Express, emphasized that the proposal should be adopted only in conjunction with the companion buy-sell rule. "Slot Transfer Methods."

Those who opposed the rule proposed in Notice 84–7, did so mainly on the grounds that it favored the incumbents, and would therefore act as an incentive for them to encourage deadlock. The original proposal involved use of the lottery as the backup allocation method in the event that the Airline Scheduling Committees failed to agree. The lottery mechanism set out in this rule is intended only as a supplementary allocation procedure for newly available slots. The mechanism eliminates the weighted allocations based on historical patterns of service. Therefore, it no longer favors incumbents. Furthermore, since deadlock is no longer the triggering event for the lottery, any objection on this basis is no longer applicable.

On the issue of eligibility requirements, McClain Airlines argued that new carriers without FAA operating authority, but who had obtained economic authority under section 401 of the Federal Aviation Act (or its equivalent), should be allowed to participate in the allocation sessions so that slots could be used to obtain financing. The final rule includes in the lottery those operators who have obtained apppropriate economic authority and made substantial progress toward obtaining FAA operating authority, as evidenced by the submission of three or more documents specifically listed in the rule, § 93.225(g)(1) throught (6). This is necessary to ensure that those who enter the lottery will be able to use the slots within a reasonable time and are not intent on just leasing the slots during the time they hold them for a quick profit. This would unnecessarily penalize carriers who are in the lottery to obtain slots for use rather than for speculative reasons.

Empire Airlines proposed that dual operators (those conducting air carrier and commuter operations) be allowed to use their slots for either type of operation, but that these slots should retain their original identity when traded. Empire would also allow cross-trading of slots (i.e.—commuter slots may be traded for air carrier slots and vice versa.) The final rule allows air carrier slots to be used for either air carrier or commuter operations, but limits the use of commuter slots to commuter operations only. this provides a measure of protection for short-haul routes and small community markets by insuring that the number of commuter slots will not be depleted by air carrier operations. The final rule also allows slots to be traded in any combination.

Procedural Requirements

A. *Weighting of New Slot Allocations Based on Historical Patterns of Service.* The proposal outlined an allocation scheme whereby larger operators would be given some additional selections during the first slot selection sequence in each session, as well as in the second sequence at O'Hare. American, Eastern, Delta, Western, and United Airlines all favored this provision, American asserting that any unfairness would be mitigated by the 15 percent set-aside and additional weighting in the allocation scheme for new entrants. Eastern objected to the different weighting schemes at O'Hare and the two New York Airports, arguing that all should be the same.

There were several comments filed in opposition to the weighting scheme. In answer to the argument that weighting would recognize the investments, commitments, and planning by existing carriers, Midway, Pacific Southwest, and Air One argued that incumbents could realize on their investments through other methods, such as leasing of terminal space. Other commenters

opposed were NACA, DOJ, Midwestern Airlines and Southwest Airlines. Midway stated that any preferential treatment should be considered on a case by case basis, in response to individual petitions. USAir suggested that incumbents be allowed to choose two slots, and new entrants four. Jet America suggested all carriers be allowed to choose four slots each, after 15 percent were set-aside for new entrants.

Since the final rule provides for grandfathering of virtually all existing slots and since investments by incumbents and historical patterns of service are recognized in the current distribution, the rationale for the weighting scheme initially proposed is not appropriate.

B. *Order of Slot Selection.* Under the proposal, every 30 days after an allocation session, the FAA would notify carriers of the availability of additional slots. They would then be offered to the next operator in the lottery sequence. Midwest Express expressed concern that carriers might manipulate the option to "pass" during the allocation session, thereby putting themselves in an advantageous position at the head of the list for additional slots, thereby encouraging subsequent deadlocks. Jet America suggested that carriers who either received slots or "passed" during the allocation session, be placed at the end of the list in a subsequent lottery.

Under the rule adopted, a random lottery will be held whenever the FAA determines that sufficient slots have become available for distribution. The order of slot selection will thus be determined anew for each slot allocation session, and there will be no opportunity to abuse the "pass" option. It must be noted that there is no certain date set for holding any lottery. That will be determined by the FAA at its discretion.

C. *Set-Aside for New Entrants.* No commenter opposed the 15 percent set-aside for new entrants, although three commenters felt the set-aside should be greater. The Department believes that a reservation of 15 percent of newly available slots to new entrants in the first selection sequence, in addition to the advantage given to new entrants to select 4 instead of 2 slots in the first selection sequence of the lottery session, will provide a sufficiently large slot pool for new entrants. This advantage is in addition to the provisions which would allow all operators including new entrants to purchase slots.

D. *60-Day Use Requirement for Lottery Slots.* Notice 84–7 provided that no slot obtained through the lottery mechanism could be transferred unless it had been used by the transferor carrier for at least 90 days. CEA opposed any such restriction on trade, and McClain favored reducing the time to 30 days. Accordingly, section 93.221(a)(5) modifies this provision, requiring only that slots obtained in a lottery be used 65 percent of the time during a 2-month period, before such slots can be sold or traded on other than a one-for-one basis. To avoid circumvention of this rule, any slot obtained in a one-for-one trade for a slot obtained in the lottery also may not be sold until it is used 65 percent of the time over a 2-month period.

Many commenters suggested that the 90-day use restriction apply only to *inter*-airport trades, and not to slot trades at the same airport. This, it was argued, would provide for needed flexibility and allow airlines to accommodate each other's individual needs when the initial allocation does not meet them, but would not encourage speculation, since speculators would presumably be interested only in *inter*-airport trades. This amendment prohibits *sale* of slots obtained in a lottery until such slots have been used for the requisite 65 percent of the time for a 2-month period. In addition, it limits trading of slots obtained in a lottery to one-for-one intra-airport trades until such slots have been used for the requisite time. This provision is necessary to maximize the ability of new entrant carriers and small carriers already operating at the airport to obtain slots by keeping certificated carriers from entering the lotteries only for the purpose of obtaining slots for later sale.

E. *60/90-Day Start Up Rule.* Under the proposed rule, slots obtained under the lottery mechanism would have to be utilized within 60 days of the lottery or the slot would be lost (90 days for new entrants). This provision received broad support, many commenting that the penalty was not harsh enough. It was suggested that the rule exclude circumstances beyond the carrier's control.

The final rule contains a 65 percent use-or-lose rule for all slots not used for international operations. An exception is made, however, in § 93.217 (c) and (d) for slots of an operator forced by a strike to cease operations using those slots and slots of an operator filing for bankruptcy during the first 60 days after filing.

Two commenters, McClain Airlines and Northwestern, felt the 90-day use provision was unfair to new entrants. They urged that special provisions be made for them because of the inherent delays in commencing operations. The final rule, at § 93.217(b), provides for a 180-day grace period for new entrants who have not yet obtained operating authority. It retains the 90-day period for all other new entrants, and the 60-day period for all other operations. At the end of this period, the slots become subject to the 65 percent use-or-lose rule.

F. *50 Percent Ownership or Control Provision.* The proposed rule provided that if an air carrier or commuter operator has more than a 50 percent ownership or control of one or more air carriers, the air carrier or commuter shall be considered to be a single entity. The same rule would apply to two or more carriers or commuters owned or controlled (more than 50 percent) by a single company. There were few comments on this provision. However, Continental and New York Air, both of which are owned and controlled by the same company, argued that it was irrational to treat the two carriers as different in their operations, but the same for the purpose of slot lotteries. They argued that even if the provision was adopted, publicly held corporations should be exempt, since there is little danger that it would be merely a sham corporation set up to obtain slots. The National Air Carrier Association also felt that the provision discriminated against separate corporate entities.

The Department believes that the 50 percent ownership provision serves to prevent the use of business organizations to obtain advantages under slot withdrawal and lottery provisions. Therefore, the amendment incorporates the 50 percent ownership provision.

G. *Use or Lose Provisions.* Notice 84–7 proposed use-or-lose provisions for air carrier and commuter slots. The proposal would have required that any slot not utilized at least 71 percent of the time (approximately 5 days out of 7) in any 2-month period would be withdrawn by the FAA. Most commenters supported the use-or-lose provisions and the reasons for that support are equally applicable to this rule. The Department of Justice commented that a use-or-lose provision may be necessary to prevent large carriers or several large carriers from "hoarding" slots in an attempt to restrict service to drive up fares or to keep smaller competitors from entering into or expanding in certain markets. DOJ supported such a provision provided that it is not so restrictive that it forces carriers to sell slots they could use productively or to conduct near empty flights to hold slots for future use and

provided, further, that leasing and co-ownership of slots are permitted.

The use-or-lose provision in this rule prevents the holding of "pocket" slots for speculative purposes and serves to maximize utilization of airport capacity.

The Massachusetts Port Authority proposed that the term "use" include leasing of slots. The Department agrees that the ability to lease slots will help to ensure that all available slots are used, and the rule allows holders to lease their slots for any period.

The National Air Carrier Association (NACA), ATA and RAA commented that use-or-lose requirements should make exceptions for circumstances beyond the carriers' control, including strikes, and cancellations due to aircraft malfunction or weather. The Department recognizes this concern and has reduced the requirement to 65 percent. The 65 percent use requirement embodied in this rule permits a carrier to normally utilize a slot 5 days a week and still allows for a limited number of cancellations because of unforeseen circumstances. In addition, as previously stated, this rule specifically provides that slots which are unused due to a strike are not subject to loss.

The FAA will apply the use-or-lose provision in discrete 2-month periods to facilitate tracking and enforcement. The 2-month period begins on the first day of the first month after the rule is issued. The next 2-month period begins on the first day of the third month after the rule is issued, and so on.

RAA and ATA commented that any use-or-lose provision should accommodate those flights which are not scheduled on a daily basis. The rule provides that slots may be shared, that is, different carriers may operate a slot on different days of the week, so that the 65 percent rule would only apply to those days actually allocated to the carrier.

H. *Eligibility to Purchase Slots.* In Notice 84–6, it was proposed that only air carriers holding valid operating certificates be allowed to obtain or transfer slots. Comments were invited on this issue. A number of air carriers suggested that only carriers be allowed to purchase slots.

DOJ in their comments stated that slot ownership should not be restricted to aviation users but should be open to other entities including banks, communities, and brokers to ensure that slots go to their most productive use. DOJ further noted that allowing cities to purchase slots is one way to enable small communities to preserve service at the high density airports. According to DOJ, this would allow small communities to enter into contractual arrangements with carriers holding slots and would also allow communities to purchase slots to lease them for service to their airport. CEA made the same argument. The FTC suggested that allowing non-airlines to participate in the process might help enable small carriers to obtain financing.

DOT agrees with these comments. Even if non-carriers could not purchase slots, arrangements could be made with carriers to help finance slots. It seems to be an unnecessary step to require. Therefore, there will be no limitation on which organizations or persons can purchase slots. In this connection, as already noted, a use-or-lose provision is also contained in this amendment. Therefore, any group purchasing a slot must use it or it would be returned to the Government for reallocation. This rule, however, allows only carriers to participate in the lottery.

Rights of Local Airport Proprietors

A large group of commenters, including the Joint Commenters, Delta, People Express and Southern Jersey Airways were concerned that airport proprietors might misinterpret a buy-sell rule as granting them authority to sell slots on their own. The Massachusetts Port Authority and the Port Authority of New York and New Jersey asserted that proprietors should be able to regulate local resources through slot restrictions. The Department's position in this manner remains that the FAA retains sole jurisdiction over the Nation's airspace, and that nothing in this rule should be construed to authorize a sale of slots by any airport authority.

The authority for this amendment is contained in Section 307 of the Federal Aviation Act which gives the FAA exclusive jurisdiction to regulate the safety and efficiency of the Nation's airspace system. Moreover, with respect to non-high density rule airports, DOJ stated in its comments that the buy-sell rule does not set a precedent that local airport proprietors can use to restrict operations.

In its comments on this subject, DOJ also stated that proprietors of the high density airports are preempted from changing either FAA's hourly limitations or its slot allocations systems because FAA already has used its airspace management powers to "stake out its turf" at those airports.

Section-by-Section Description of the Rule

Set forth below is a section-by-section description of the more important provisions of the rule. Included in the discussion are reasons for adopting certain of the provisions and an explanation of how the provisions will be applied.

Section 93.211 Applicability.

This section describes, in general terms, the applicability of the new Subpart S of Part 93. The subpart prescribes rules applicable to the allocation, withdrawal and transfer of slots at the High Density Traffic Airports. The rules do not apply to Newark Airport since the High Density Rule—Subpart K of Part 93—is not currently in effect at that airport. Subpart S only applies to air carrier and commuter operator slots and not to those slots designated by Subpart K as general aviation slots. General aviation slots will continue to be allocated by the Air Traffic Control Reservation Office on a first-come first-served basis.

Section 93.213 Definitions and General Provisions.

The terms "new entrant carrier" and "slot" are specifically defined in this section. The definition of "new entrant carrier" is particularly important since those carriers will be provided a preference in any lotteries held to distribute slots in the future. "New entrant carrier" is defined as any commuter operator or air carrier that does not hold a slot at a particular airport and has never sold or given up a slot at that airport after December 16, 1985. The Department does not believe it would be appropriate to permit carriers that have sold or given up their slots at an airport to receive a preference in a lottery to reobtain slots at that airport.

A "slot" is defined as the authority to conduct one allocated IFR landing or takeoff operation during a specific hour or 30-minute period at one of the high density airports. Under Subpart K, each of the high density airports have slots allocated by the hour, except at O'Hare and LaGuardia Airports where the allocations are in 30-minute periods. The hours of the day during which slots are required for IFR operations at the high density airports are: 6:45 a.m. to 9:15 p.m. at O'Hare, 3:00 p.m. to 8:00 p.m. at Kennedy, and 6:00 a.m. to 12:00 a.m. at LaGuardia and National Airports. All parties are reminded that in accordance with Subpart K, scheduled operations at a high density airport must only be conducted with appropriate IFR reservations.

Section 93.213(b) makes it clear that the definitions contained in Subpart K of Part 93 also apply to Subpart S.

Paragraph (c) of § 93.213 includes a provision that was applied under the Interim Operations Plan, which was in effect as the air traffic control system

recovered from the 1981 controllers' walk-out. Under this provision, any air carrier, commuter operator, or other persons that owns or controls more than 50 percent of one or more other air carriers, commuter operators, or other persons is considered to be a single air carrier or commuter operator for purposes of Subpart S. Since any person [person is defined in 14 CFR Part 1 to include corporations] is allowed to buy or sell slots, it is necessary to apply the "co-ownership" provisions to them as well as to carriers and commuters. This provision applies for entry in any lottery held under § 93.225 or to slots withdrawn by the Government under § 93.223. Thus, a corporation owning two corporations and two carriers, all with slots, would only appear in a § 93.223 or § 93.225 lottery once.

The section also makes it clear that a single operator may be considered to be both an air carrier and a commuter operator for purposes of entering lotteries under this subpart. Thus, for example, a single operator that owns two commuter operators and two air carriers could enter lotteries for both the commuter operator class of user and air carrier class of user at a particular airport, but it could enter each lottery only once. This is no change from current procedures. For example, if Carrier A operates large and small aircraft at O'Hare, it may obtain and use slots in both the commuter and air carrier pools. Of course, commuter slots can only be utilized for commuter operations.

Section 93.215 Initial Allocation of Slots.

Subpart S does not affect the total number of slots and the total number of commuter operator and air carrier slots as specified in Subpart K of Part 93. This section specifies how slots will be initially allocated.

Paragraph (a) of § 93.215 provides that air carriers and commuter operators holding permanent slots on December 16, 1985 will be allocated those slots subject to the withdrawal provisions of Subpart S. The records of the air carrier and commuter operator scheduling committees will be used to determine which operators were holding permanent slots on December 16, 1985. A slot allocated on a temporary basis is not a permanent slot. If the scheduling committee records submitted to the FAA indicate a dispute over which carrier holds a slot, the FAA will resort to other records to effectuate the initial slot allocation. The FAA will meet with each scheduling committee to determine proper placement of each slot. The agency may ask carriers to produce documentation to support any claim to slots. If the FAA cannot determine which operators were holding particular slots as of December 16, 1985, those slots will not be allocated under § 93.215. Rather, they will be allocated at a later date under the provisions of § 93.217, for international operations; § 93.219, for essential air service (EAS) operations; or § 93.223, by lottery, to air carrier or commuter operators, for any operations they desire. The Chief Counsel of the FAA shall be the final decisionmaker in this regard. Slot trades may need to be temporarily suspended by the FAA in order to make these determinations.

Paragraph (b) of § 93.215 provides for those slots that are being held by different operators on different days of the week and those whose use is otherwise divided. Any such division of slots would have to be confirmed by a scheduling committee.

Those carriers having partial use of slots will continue to be allocated those slots as they operated them in the past. For example, some slots have been allocated for 2 days to one operator and for 2 days to another operator. Those operators would be able to continue to use those slots in that fashion. For slot withdrawal purposes (see the discussion of § 93.223), the slots would receive a single withdrawal priority number and, for slot use-or-lose purposes (see the discussion of § 93.227), if either carrier ceases to use its share of the slots 65 percent of the time over a 2-month period, that carrier would lose its share while the other carrier would not. Thus, only 2 days use of the slots would be reallocated.

Since certain slots used for international operations—those described in § 93.217(a)(1)—are specially treated within Subpart S, it is important that the Department be aware of which slots are being used for those operations. Paragraph (c) of § 93.215 requires that, within 30 days after the issuance date of the rule, each U.S. air carrier and commuter operator must notify the FAA in writing of those slots used, as of December 16, 1985, for the international operations described in § 93.217(a)(1). This requirement applies to slots used for international operations at LaGuardia Airport. This provision does not apply to foreign operators since all operations conducted by them are international.

Section 93.215(d) indicates that slots not held by an operator on December 16, 1985 will be allocated in accordance with other provisions of Subpart S.

Section 93.217 Allocation of Slots for International Operations and Applicable Limitations.

Section 93.217(a) provides that slots will be allocated to airlines to conduct certain specified international operations at Kennedy and O'Hare Airports. For purpose of allocation, slots will not be allocated for international operations at LaGuardia Airport unless otherwise required by bilateral agreement. The international operations for which slots will be provided under § 93.217(a) are—(a) any flight segment in which either the takeoff or landing is at a foreign point, and (b) for foreign operators only, any flight segment that is a continuation of a flight that begins or ends at a foreign point.The Department believes that foreign operator continuation flights should be few in number.

Under § 93.217(a)(1), continuation flights by U.S. international operators to or from high density airports will be treated as domestic operations since U.S. operators can carry local traffic on those flight segments. To treat continuation flights of U.S. international operators the same as those of foreign operators, for slot allocation purposes, would place U.S. domestic operators at a competitive disadvantage since they will not be able to obtain slots upon request under § 93.217. It could also lead to abuse, since U.S. international operators could obtain numerous slots under § 93.217 by characterizing purely domestic flights as continuation flights. Should the Department receive convincing evidence that a significant competitive disadvantage to U.S. international operators results from this provision, the Department reserves the option to review the treatment of continuation flights under the rule.

The same paragraph also provides that slots obtained under § 93.217 may not be bought, sold, leased or otherwise transferred, except that those slots may be traded for other slots used for international operations on a one-for-one basis at the same airport. In addition, if a slot obtained under § 93.217 will not be used for more than a 2-week period, the slot must be returned to the FAA, and, if it is not used every day of the week, the carrier is required to notify the FAA in writing of those days in which the slot will not be used. Failure to comply with these requirements will result in the slots involved becoming available for reallocation under Subpart S.

In providing a slot for an international operation, the FAA will atttempt to match the hour of the slot with that

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requested by the U.S. or foreign operator consistent with international scheduling needs. However, in order to provide some flexibility to the FAA in allocating slots for international operations, § 93.217(a) provides that slots will be allocated to carriers in a time period within two hours of the time period requested. In this way, the FAA will be able to avoid withdrawing slots from a domestic operator to fill an international operation's need if there are unallocated slots available reasonably close in time to the time requested by the international operator.

It should be noted that, under § 93.217(b), slots obtained under § 93.215 which are used for the international operations described in § 93.217(a)(1) are subject to the same basic conditions as are applied to slots obtained under § 93.217. These conditions apply to slots used for international operations at LaGuardia Airport as well as Kennedy and O'Hare Airports. The conditions include those relating to how the slots may be used, the prohibition against most transfers the return of unused slots, and the notification of the days of the week on which the slots are not being used.

Under paragraph (c) of § 93.217, the Office of the Secretary of Transportation (DOT) states a reservation with respect to the application of the provisions of § 93.217(a). In this paragraph, DOT makes it clear that slots need not be allocated to foreign operators if the country of that operator allocates slots to U.S. operators on a basis more restrictive than that provided by Subpart S. For example, if a foreign country allocates slots at its capacity constrained airports in a manner which limits increased operations by U.S. carriers, operators from that country should not automatically expect to receive free slots for increased operations under this amendment. Any decision on the application of § 93.217(a) will be made by the Office of the Secretary of Transportation.

Paragraph (d) of § 93.217 states that requests for slots for international operations must be submitted to the FAA by August 1, for operations planned for the Winter scheduling period, and by February 1, for operations planned for the Summer scheduling period. These time frames coincide, more or less, with the time frames used under the past practice of obtaining slots through the scheduling committees for international operations.

In order to ensure that those airlines requesting slots for international operations will in fact use them, § 93.217(e) requires a certified statement, signed by a senior officer of the operator requesting the slots. The statement must indicate that the operator has bona fide plans to use the requested slots for operations described in § 93.217)(a)(1) and has, or has contracted for, appropriate aircraft. This provision is needed since, in some cases, slots will have to be withdrawn from domestic operators to be provided for international operations and needless withdrawals would unnecessarily disrupt air transportation service. This would be the case even though the FAA will offer to the affected domestic operator any slots that were withdrawn from it for international operations and then were returned within 180 days after withdrawal. Any lack of good faith on the part of those requesting slots for international operations could result in criminal enforcement action under Title 18 of the U.S. Code for false certification to the Federal Government (18 U.S.C. 1001).

Section 93.219 Allocation of Slots for Essential Air Service (EAS) Operations and Applicable Limitations.

Under this section, whenever the Office of the Secretary of Transportation determines that slots are needed for operations to or from a high density airport under the essential air service (EAS) program, established under section 419 of the Federal Aviation Act, as amended, those slots will be provided to the designated air carriers or commuter operators, subject to the following conditions. Those slots may not be bought, sold, leased or otherwise transferred, except they may be traded for other slots on a one-for-one basis at the same airport. This would enable EAS operators to make slight adjustments in their schedules to better serve the public. In addition, any slot obtained under the section must be returned to the FAA if it will not be used for EAS purposes for more than a 2-week period. A slot so returned, however, may be reallocated to the operator which returned it, upon request to the FAA, if that slot has not been reallocated to an operator to provide substitute EAS service. To provide the FAA with some flexibility in allocating slots under this section, slots will be allocated in a time period within 90 minutes of the time period requested. This flexibility could result in fewer slots having to be withdrawn for EAS purposes from other operators.

Section 93.219(d) provides that the agency will not honor a request for a slot for essential air service if the requesting operator has sold or traded a slot it used for essential air service to or from the same point in the past.

Finally, paragraph (e) of § 93.219 makes it clear that slots obtained under Civil Aeronautic Board Order No. 84–11–40 will be considered to have been obtained under § 93.219. Only a limited number of such slots exist and they were allocated by the Department specifically for EAS purposes. They should, therefore, be subject to the special restrictions in § 93.219, which are discussed above.

Section 93.221 Transfer of Slots.

This section provides, in general, that slots may be bought, sold or leased for any consideration and for any time period and they may be traded in any combination for slots at the same airport or any other high density airport. The section contains a number of conditions that must be met for these transfers to be effective.

This section does not wholly apply to the transfer of slots obtained for international operations and essential air service operations under §§ 93.217 and 93.219, respectively. Section 93.221 must be applied together with § 93.217(a)(2) or § 93.219(a) for such transfers.

The conditions that must be met under § 93.221(a) include the following:

(1) requests for confirmation of the validity of the transfer, including leases, must be made to the FAA in writing and must identify the slot designation;

(2) current FAA records must indicate that the transferor has the slots to be transferred in its base;

(3) written evidence of each transferor's consent (signed by a senior official of the transferor) to the transfer must be provided to the FAA;

(4) the recipient of a transferred slot may not use the slot until written confirmation has been received from the FAA. The confirmation process within the FAA will be handled as expeditiously as possible; and

(5) slots obtained in a lottery may not be sold or traded on other than a one-for-one basis at the same airport unless they are first used by the operator obtaining them for a 2-month period at least 65 percent of the time.

This section makes it clear that leases of slots are included in the reporting requirements applicable to transfer.

Because the Department prefers to rely upon the private sector whenever possible, we urge the air transport industry to establish its own system of tracking slot holdings and confirming slot transfers. This might be done through an existing instrumentality, such as the scheduling committees reservation center, or through a new organization, perhaps funded by fees

imposed on slot transfers. If such an industry sponsored system were established, which adequately provided for transactions involving EAS slots, as discussed below, the FAA would be amenable to allowing operations to begin after a slot transfer as soon as confirmation was received under the industry system. The FAA would, however, reserve the right, at a later date, to review the transactions and disallow any transfer if the rules of Subpart S were not met. The FAA may issue further instructions in this connection.

A final condition, which will be applied by the Office of the Secretary of Transportation, is that the transfer may not be injurious to the EAS program. Carriers serving communities with an EAS designation may have a continuing obligation to provide that service. This regulation is not intended to provide an incentive or means to abrogate that obligation. Therefore, should a carrier with an obligation to provide essential air service to a point enter into a transaction after which that service would no longer be provided, the Department may find it necessary to disapprove the transaction to ensure that the legal obligation to provide EAS service is met. In order to avoid the possibility of this occurring, the Office of the Secretary is willing to advise concerned parties informally prior to their entering a proposed slot transaction as to whether that transaction is likely to be disapproved by the Department. The Department urges that operators take advantage of this procedure. If not, approval of the transaction may be delayed.

Under § 93.221(b), the FAA will keep records of all slot transfers and current slot assignments. Those records will be made available to the public upon written request or by visiting the FAA Docket.

Paragraph (c) of § 93.221 makes it clear that any person, a term defined in 14 CFR Part 1, may buy or sell slots and any air carrier or commuter may use them. For purposes of Subpart S, a state or local government would be considered to be a person. However, even though any person may buy or sell slots or hold them, commuter slots may only be used by air carriers with aircraft of the kind described in § 93.123(c)(2). This provision will ensure that commuter slots continue to be used with the smaller aircraft most suitable for serving small and medium size communities and are not bought by carriers intent on serving busier, more populous markets with large aircraft. Air carrier slots, on the other hand, could be used with large or small aircraft.

Section 93.221(d) indicates that, until April 1, 1986, slots may only be transferred by trade on a one-for-one basis for slots at the same high density airport. This provision is needed in order to set up a slot tracking system and to consider Notice No. 85–25. If unrestricted slot transfers were allowed during the period before April 1, 1986, the FAA would be faced with the impossible administrative problem of trying to track the many slots that are in existence without the necessary tracking system in place. This period will also provide a period of time for application of the use-or-lose provisions of § 93.227. This will ensure that carriers are not able to profit from the sale of any slots that they are not actually using.

Section 93.223 Slot Withdrawal.

This section establishes a procedure for the withdrawal of slots if that should become necessary. Slots may have to be withdrawn from some operators for operational needs, such as to allow other carriers to conduct essential air service or international operations. Paragraph (a) of the section makes it clear that slots do not represent a property right but represent only an operating privilege subject to absolute FAA control. Paragraph (a) also indicates that, before withdrawing any slots for operational needs, those slots available because they were returned to the FAA or recalled by the FAA under the use-or-lose provisions of § 93.227 will be allocated for these purposes.

To establish withdrawal priorities, the FAA will conduct a series of lotteries. They will be held within 30 days after the scheduling committee records are obtained or 30 days after the effective date of the rule, whichever occurs later. The slot withdrawal lottery procedures are set forth in § 93.223(b). Separate lotteries will be conducted for air carrier slots and for commuter operator slots at each airport. Each slot at the airport will be provided a specific designation, which will include an airport code, a code indicating whether the slot is an air carrier or commuter slot, the airline code, and the time period of the slot. The designation may also indicate that the slot is used for international operations, or EAS operations, or by different operators on different days of the week. All communications with the agency concerning slots must include the designation assigned in the lottery.

The agency will either place the slot designations on individual pieces of paper and place those pieces of paper in containers for the drawings or it might use another similarly random method to establish the withdrawal priority. All drawings will be blind and they will be made one at a time. As drawn, each slot will be assigned a withdrawal priority in numerical order, i.e., the slot first drawn in the lottery will be the first slot to be withdrawn if withdrawal should become necessary and if the drawn slot is in a time period in which a slot is required. After a withdrawal priority number is established for each of the slots, a complete list of the withdrawal priority numbers will be made available to the public.

Whenever slots must be withdrawn, they will be withdrawn in accordance with the priority list established under § 93.223. A slot will retain its withdrawal priority number at all times, even after reallocation by the FAA or transfer to another carrier. If there are newly created slots, they will be assigned the lowest withdrawal priorities (i.e., the highest withdrawal priority numbers.)

Slots necessary for international and essential air service operations will be exempt from withdrawal for use for other international or essential air service operations. This provision is set forth in § 93.223(c). Such slots will retain their withdrawal priority number but will be passed over for withdrawal as long as they are used for international or EAS operations.

Since some U.S. carriers will hold slots in the same time period that are used for domestic and international operations, a special rule is set forth in paragraph (d) of § 93.223 to establish which of those slots are international and EAS slots and what the withdrawal priorities of each are. Under that paragraph, if an operator has more than one slot in a specific time period in which it has a slot being used for international or essential air service operations, the international and essential air service slots will be considered to be those with the lowest withdrawal priority (i.e., the highest priority number.) By applying this rule, carriers will be able to determine (1) which slots may only be traded on a one-for-one basis for international and essential air service slots, and (2) the order of slot withdrawal, if withdrawal were required for purposes other than to provide for international and essential air service operations. Section 93.223(d) will also make it clear to operators and potential transferees that the slots with the highest withdrawal priority are those that are not used for international or essential air service operations.

When the FAA determines that a slot must be withdrawn, the operator currently using it will be notified in

writing and, generally, will be given at least 30 days after notification to cease operations with that slot. During this period, the operator could notify the FAA if the slot is being used for essential air service operations. Where exigencies exist, a shorter time period to cease operations may be necessary and will be specified in the notification to the operator. This procedure is set forth in § 93.223(e).

Finally, paragraph (f) of § 93.223 provides that the FAA will not withdraw slots granted in the initial allocation or slots awarded in a lottery under § 93.225 from any air carrier or commuter operator holding eight or fewer slots, excluding slots used for international operations, at that airport. This provision recognizes that withdrawing slots from carriers with a limited number of slots could be disproportionately injurious to them. The provision does not apply to purchased slots because the price of those slots presumably will reflect their withdrawal priority. The provision does not apply to non-carrier slot holders. In this connection, slots of carriers or commuters with joint ownership, as defined in § 93.213(c), will be considered a single entity for purposes of withdrawal under § 93.223.

Section 93.224 Return of Slots.

Section 93.224 sets forth how carriers are to return slots when required and how they should return those slots if they voluntarily do so. Return is accomplished under this section by written notification to the FAA.

Section 93.225 Lottery of Available Slots.

Under this section, whenever the FAA determines that sufficient slots have become available for distribution for purposes other than international or essential air service operations, they will be allocated using a lottery. The FAA does not expect that such lotteries will be held more than twice a year because of administrative burdens and because the existence of a sufficient number of available slots to warrant such a lottery is unlikely to exist any more frequently. The FAA will not necessarily hold a lottery each time slots are available.

Section 93.225(b) through (f) prescribes the lottery procedures. Initially, a random lottery would be held to determine the order in which carriers will select slots. Separate lotteries will be held on an airport-by-airport basis for commuter operators and for air carriers. Unlike the lotteries for slot withdrawal purposes (which will be conducted only once for air carrier and commuter operator slots for each high density airport), lotteries for allocation purposes will be conducted whenever the agency determines that a sufficient number of slots are available for allocation. A notice will be published in the **Federal Register** announcing the lottery dates and possibly specifying additional procedures to be in effect for the lotteries. The FAA will attempt to publish the notice at least 30 days prior to the lottery. Each U.S. air carrier and commuter operator that is operating at the affected airport will be included in the lottery. It should be noted that foreign operators will not be permitted to participate in the lotteries since they can obtain slots under §93.217 for their international operations. Any U.S. carrier not operating at the airport but wishing to initiate service at the airport will be included in the lottery if it notifies the FAA at least 15 days prior to the lottery date.

At the slot selection, each operator, in the order established by the random lottery, will make its selection within 5 minutes after being called or it will lose its turn. If capacity still remains after each operator has had an opportuity to select slots, the selection process will be repeated in the same order. An operator may select any two slots available at the airport during each selection sequence, except that new entrant carriers may select four slots, if available, in the first sequence.

Paragraph (g) of § 93.225 sets forth carrier qualifications for participating in the lottery. The carrier must have appropriate economic authority under Title IV of the Federal Aviation Act of 1958, as amended, and at least have made substantial progress in obtaining FAA operating authority under 14 CFR Parts 121 or 135. This latter condition is necessary to preclude "paper" airlines from obtaining slots in the lottery for free purely for speculative purposes. Paragraph (g) also specifies, in detail, what will be considered to be substantial progress in obtaining FAA operating authority.

As a further preference for new entrant carriers and to ensure that some slots are available to them, 15 percent of the slots available during the first selection sequence will be reserved for selection by new entrant carriers. This number will not be less than two slots. The FAA believes the new entrant preferences in the lotteries are warranted to further policies enunciated in the Airline Deregulation Act of 1978.

Paragraph (i) of § 93.225 explains the withdrawal priorities for slots obtained in a lottery. They are discussed above in connection with § 93.223.

Section 93.227 Slot Use and Loss.

The general rule under § 93.227 is that slots must be used 65 percent of the time over a 2-month period or they will be recalled by the FAA. This 65 percent rule would permit a carrier to use a slot five out of the 7 days in each week (many carriers do not operate certain slots on weekends) and would also provide some leeway for those circumstances where, because of mechanical problems, a limited number of flights might have to be cancelled over a 2-month period.

Section 93.227, in paragraphs (b), (c), (d) and (f), contains a number of exceptions to the general use-or-lose rule. First, slots obtained in a lottery will not have to be used for the first 60 days after they are allocated to give operators an opportunity to arrange for the necessary aircraft, gate space, crews, etc. New entrant carriers would be given 90 days instead of 60 to first use their slots, recognizing their need for additional time to initiate operations at a new airport. Furthermore, new entrant carriers that have not obtained their Part 121 or 135 certificates from the FAA at the time of allocation will be given 180 days after the slots are allocated in the lottery to initiate operations. This 180-day period recognizes the fact that obtaining FAA authority can take some time, but a carrier meeting the requirements of § 93.225(g) when entering the lottery should be able to initiate revenue operations within 180 days after the slots are allocated.

Second, the use-or-lose provisions do not apply to slots of an operator forced by a strike to cease operations using those slots. The FAA has no way of knowing how long a strike will last and also no way of knowing which particular slots will continue to be used by a carrier who might have to cease only some operations because of a strike. Therefore, the FAA is unable to withdraw and reallocate slots of a carrier subjected to a job action by its employees. If a significant number of slots are not used for some time because of a strike, the FAA will consider special regulatory action to put the slots back into use.

Third, the use-or-lose provisions are inapplicable to slots of an operator that files for protection under the Federal bankruptcy laws during the first 60 days after filing. This 60-day period will provide time for the trustee in bankruptcy to lease or sell the slots of the bankrupt carrier, or for the carrier to be reorganized and to resume operations. It should be noted that after the 60-day period, the use-or-lose

provisions would apply to the slots of the bankrupt carrier.

Fourth, the use-or-lose provisions do not apply to slots used for international operations, as designated in § 93.217(a)(1). Under the provisions of § 93.217, international slots must be returned to the FAA if they are not used for a 2-week period.

Section 93.227(f) makes it clear that slots obtained in a lottery, slots of a carrier subject to a strike, and slots of a bankrupt carrier may be leased to others while they are not being used by the carrier holding them. Leasing, which is permitted for all slots under § 93.221, allows slots to be used to the maximum extent.

Section 93.227(h) provides that, within 30 days after an operator files for protection under the Federal bankruptcy laws, the FAA may recall any slots of that operator that have been used for essential air service if the Office of the Secretary of Transporation determines that those slots are required to provide substitute essential air service to or from the same points. Absent this provision, a trustee in bankruptcy could lease or sell slots that are necessary to provide essential air service.

Finally, § 93.227(i) requires that each holder of a slot (air carrier, commuter operator or other person) file with the FAA a bi-monthly report setting forth the daily usage for each of its high density airport slots. This will enable the agency to readily track operations in accordance with the use-or-lose provision. The report must be signed by a senior official of the air carrier or commuter operator holding the slot. The report shall show the name of the operator which operated the slot (after April 1, 1986, the operator may or may not be the same as the holder) for each day of the particular calendar month. Since this amendment would, effective April 1, 1986, allow non-air carriers and commuters to hold slots, this provision would require any "person" holding a slot to file the report. This provision may be withdrawn if the industry develops a self-regulating system to monitor slot usage. The report must include the airline flight number for which the slot was used and must identify the flight as an arrival or departure.

This requirement should not create any burden on any party since similar information is already kept by operators for other purposes. It must be noted that submission of false information under this requirement will subject the person and company filing this report to civil and criminal penalties.

Section 93.229 Penalties.

This section emphasizes that the provisions of Section 901 of the Federal Aviation Act of 1958, as amended, which prescribe a civil penalty, currently up to $1,000, for each violation of the Federal Aviation Regulations, are applicable to Subpart S. Any air carrier or commuter operator using a slot that it is not entitled to use will be subject to a $1,000 maximum civil penalty for each unlawful takeoff or landing operation it conducts. The violations continue for each day the rule is not complied with. Moreover, any person failing to return a slot to the FAA, as required by Subpart S, will be subject to a $1,000 maximum civil penalty for each such slot for each day the person is in violation. For purposes of taking enforcement action under Subpart S, FAA records concerning the identity of the persons holding slots shall be controlling in any enforcement proceeding. This section does not preclude the application of any other penalty available under FAR Part 13.

Regulatory Evaluation

A regulatory evaluation of the projected economic impacts of the final rule has been prepared and placed in the docket. The Department's conclusions in this evaluation may be summarized as follows:

Carriers. In the short term, benefits to air carriers and commuters will accrue from the full utilization of slots resulting from the use-or-lose provisions. In the long run, benefits will also be realized from the more efficient allocation of slots which will result from the competitive slot market. Further benefits will accrue from the ability to liquidate a slot at a price higher than the value to the using carrier, or alternatively, to acquire a slot at a price which will permit a return on investment higher than the next preferable investment alternative. A 1980 study found that an economically efficient allocation of slots at Washington National Airport could result in an increase in air carrier profits of between $100,000 and $130,000 per day. The separate allocation of international and EAS slots and the continuing restrictions on commuter slot use, adopted for public policy reasons discussed above, mitigate somewhat the potential efficiency benefits of the buy-sell rule. It must further be noted that carriers and commuters are not required to buy or sell slots and that other airports are available for their use in each area.

New Entrants. New entrant carriers benefit from being able to obtain access to high density airport markets at the market price for such access.

Passengers. In the competitive buy-sell market, the Department believes that the cost of slot purchases will not be passed through to passengers to any significant degree, and fares may actually be decreased by the resulting economic efficiency. However, it is possible that fares in certain isolated markets may increase to a degree without drawing competition.

Government. Under the regulation adopted, the Department will be relieved of the responsibility of monitoring the air carrier and commuter scheduling committees. However, the Government will incur additional costs for recordkeeping and monitoring of slot assignments and transfers, and also for antitrust oversight of slot transactions. The Government may need to hire additional personnel to monitor and implement this amendment.

Summary of costs and benefits. The analysis indicates that the regulation is likely to produce economic benefits in the long run by facilitating improvement in the allocation of slots among air carriers. The proposal may also result in some increased governmental responsibilities and costs with respect to rule enforcement and antitrust activity. On balance, it is expected that the benefits will exceed the costs, resulting in a positive net benefit to society. It is also likely that the regulation will result in some redistribution of wealth among various groups—incumbent carriers, potential new entrants, and consumers of air transportation services based upon an analysis of DOJ, FTC, CEA, and OMB comments. On balance, and in the context of the existing competitive market, the Department believes that the impacts of the regulation are positive.

International Trade Impact Analysis

This rule will not influence or affect the sale of foreign products or services domestically or the sale of U.S. products or services in foreign countries. Therefore, the Department certifies that this rule will not eliminate existing or create additional barriers to the sale of foreign aviation products or services in the U.S. The Department also certifies that the rule will not eliminate existing or create additional barriers to the sale of U.S. aviation products and services in foreign countries.

Regulatory Flexibility Act Determination

As discussed above, this rule should only result in minimal positive benefits to U.S. carriers. Small operators will not

be disproportionately affected in any discernible way by this rule. Accordingly, the Department has determined that the rule will not, if enacted, have a significant economic impact on a substantial number of small entities.

For the reasons set forth above, the Department has determined that this amendment (1) is not a major rule under Executive Order 12291, (2) is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities. A copy of the regulatory evaluation prepared for this action can be obtained from the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Immediate Effectivity

This rule contains a requirement prohibiting slot transfers, except trades on a one-for-one basis at the same airport, until April 1, 1986, that becomes effective upon publication. Other requirements establish allocations based on conditions in effect on the issuance date of the rule. These provisions are needed for the FAA to establish initial slot allocations. A failure to make them apply as adopted herein could render the FAA's task impossible. Therefore, I find that good cause exists for making these requirements effective immediately.

Paperwork Reduction Act

This amendment will require the reporting of certain information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget has approved the information collection provision of this rule. OMB Approval Number 2120–0524 has been assigned to Subpart S.

List of Subjects in 14 CFR Parts 11 and 93

Aviation safety, Air traffic control.

Adoption of the Amendment

For the reasons set out above, Parts 11 and 93 of the Federal Aviation Regulations (14 CFR Parts 11 and 93) are amended as follows:

PART 11—[AMENDED]

1. The authority citation for Part 11 is revised to read as follows:

Authority: 49 U.S.C. 1341(a), 1343(d), 1348, 1354(a), 1401 through 1405, 1421 through 1431, 1481, 1502, 49 U.S.C. 106 (Revised Pub. L. 97–449, January 12, 1983).

Note.—Authority citations following any section throughout Part 11 are removed.

2. By amending § 11.101 by adding a new OMB Control Number to the table in paragraph (b), as follows:

§ 11.101 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

Part 93 Subpart S	2120–0524

3. The authority citation for Part 93 is revised to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402 and 2424; 49 U.S.C. 106 (Revised Pub. L. 97–449, January 12, 1983).

Note.—Authority citations preceding any subpart or following any section through out Part 93 are removed.

4. A new Subpart S is added to read as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

* * * * *

Subpart S—Allocation of Commuter and Air Carrier IFR Operations at High Density Traffic Airports

Sec.

93.211 Applicability.
93.213 Definitions and General Provisions.
93.215 Initial Allocation of Slots.
93.217 Allocation of Slots for International Operations and Applicable Limitations.
93.219 Allocation of Slots for Essential Air Service Operations and Applicable Limitations.
93.221 Transfer of Slots.
93.223 Slot Withdrawal.
93.225 Lottery of Available Slots.
93.227 Slot Use and Loss.
93.229 Penalties.

Subpart S—Allocation of Commuter and Air Carrier IFR Operations at High Density Traffic Airports

§ 93.211 Applicability.

(a) This subpart prescribes rules applicable to the allocation and withdrawal of IFR operational authority (takeoffs and landings) to individual air carriers and commuter operators at the High Density Traffic Airports identified in Subpart K of this part except for Newark Airport.

(b) This subpart also prescribes rules concerning the transfer of allocated IFR operational authority and the use of that authority once allocated.

§ 93.213 Definitions and general provisions.

(a) For purposes of this subpart—

(1) "New entrant carrier" means a commuter operator or air carrier which does not hold a slot at a particular airport and has never sold or given up a slot at that airport after December 16, 1985.

(2) "Slot" means the operational authority to conduct one IFR landing or takeoff operation each day during a specific hour or 30 minute period at one of the High Density Traffic Airports, as specified in Subpart K of this part.

(b) The definitions specified in Subpart K of this part also apply to this subpart.

(c) For purposes of this subpart, if an air carrier, commuter operator, or other person has more than a 50-percent ownership or control of one or more other air carriers, commuter operators, or other persons, they shall be considered to be a single air carrier, commuter operator, or person. In addition, if a single company has more than a 50-percent ownership or control of two or more air carriers and/or commuter operators or any combination thereof, those air carriers and/or commuter operators shall be considered to be a single operator. A single operator may be considered to be both an air carrier and commuter operator for purposes of this subpart.

§ 93.215 Initial allocation of slots.

(a) Each air carrier and commuter operator holding a permanent slot on December 16, 1985, as evidenced by the records of the air carrier and commuter operator scheduling committees, shall be allocated those slots subject to withdrawal under the provisions of this subpart. The Chief Counsel of the FAA shall be the final decisionmaker for initial allocation determinations.

(b) Any permanent slot whose use on December 16, 1985 is divided among different operators, by day of the week, or otherwise, as evidenced by records of the scheduling committees, shall be allocated in conformity with those records. The Chief Counsel of the FAA shall be the final decisionmaker for these determinations.

(c) Within 30 days after December 16, 1985, each U.S. air carrier and commuter operator must notify the office specified in § 93.221(a)(1), in writing, of those slots used for operations described in § 93.217(a)(1) on December 16, 1985.

(d) Any slot not held by an operator on December 16, 1985 shall be allocated in accordance with the provisions of §§93.217, 93.219 or 93.225 of this subpart.

§ 93.217 Allocation of Slots for International Operations and Applicable Limitations

(a) Any air carrier or commuter operator having the authority to conduct

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international operations shall be provided slots for those operations, subject to the following conditions:

(1) The slot may be used only for a flight segment in which either the takeoff or landing is at a foreign point or, for foreign operators, the flight segment is a continuation of a flight that begins or ends at a foreign point. Slots may be obtained and used under this section only for operations at Kennedy and O'Hare airports unless otherwise required by bilateral agreement.

(2) Slots used for an operation described in paragraph (a)(1) of this section may not be bought, sold, leased or otherwise transferred, except that such a slot may be traded for another slot used for such operations on a one-for-one basis at the same airport.

(3) Slots used for operations described in paragraph (a)(1) of this section must be returned to the FAA if the slot will not be used for such operations for more than a 2-week period.

(4) Each air carrier or commuter operator having a slot that is used for operations described in paragraph (a)(1) of this section but is not used every day of the week shall notify the office specified in § 93.221(a)(1) in writing of those days on which the slots will not be used.

(5) Slots shall be allocated in a time period within two hours of the time period requested.

(b) If a slot allocated under § 93.215 was scheduled for an operation described in paragraph (a)(1) of this section on December 16, 1985, its use shall be subject to the requirements of paragraphs (a)(1) through (a)(4) of this section. This requirement applies to slots used for international operations at LaGuardia Airport.

(c) The Office of the Secretary of Transportation reserves the right not to apply the provisions of paragraph (a) of this section, concerning the allocation of slots, to any foreign air carrier or commuter operator or a country that provides slots to U.S. air carriers and commuter operators on a basis more restrictive than provided by this subpart. Decisions not to apply the provisions of paragraph (a) will be made by the Office of the Secretary of Transportation.

(d) Each operator desiring slots under paragraph (a) of this section must request those slots from the office specified in § 93.221(a)(1) by August 1, for operations to be conducted during the following Winter scheduling period (during the observance of Standard Time), and by February 1, for operations during the Summer scheduling period (during the observance of Daylight Savings Time.)

(e) Each request for slots under this section shall state the airport, days of the week and time of the day of the desired slots and the period of time the slots are to be used. The request must be accompanied by a certified statement signed by an officer of the operator indicating that the operator has or has contracted for aircraft capable of being utilized in using the slots requested and that the operator has bona fide plans to use the requested slots for operations described in paragraph (a).

§ 93.219 Allocation of slots for essential air service operations and applicable limitations.

Whenever the Office of the Secretary of Transportation determines that slots are needed for operations to or from a High Density Traffic Airport under the Department of Transportation's Essential Air Service (EAS) Program, those slots shall be provided to the designated air carrier or commuter operator subject to the following limitations:

(a) Slots obtained under this section may not be bought, sold, leased or otherwise transferred, except that such slots may be traded for other slots on a one-for-one basis at the same airport.

(b) Any slot obtained under this section must be returned to the FAA if it will not be used for EAS purposes for more than a 2-week period. A slot returned under this paragraph may be reallocated to the operator which returned it upon request to the FAA office specified in § 93.221(a)(1) if that slot has not been reallocated to an operator to provide substitute essential air service.

(c) Slots shall be allocated for EAS purposes in a time period within 90 minutes of the time period requested.

(d) The Department will not honor requests for slots for EAS purposes to a point if the requesting carrier has previously traded away or sold slots it had used or obtained for use in providing essential air service to that point.

(e) Slots obtained under Civil Aeronautics Board Order No. 84–11–40 shall be considered to have been obtained under this section.

§ 93.221 Transfer of slots.

(a) Except as otherwise provided in this subpart, effective April 1, 1986, slots may be bought, sold or leased for any consideration and any time period and they may be traded in any combination for slots at the same airport or any other high density traffic airport. Transfers, including leases, shall comply with the following conditions:

(1) Requests for confirmation must be submitted in writing to Slot Transfers, Office of the Chief Counsel, Rules Docket, 800 Independence Avenue, SW., Room 915G, AGC–204, Washington, DC 20591, in a format to be prescribed by the Administrator. Requests will provide the names of the transferor and recipient; business address and telephone number of the persons representing the transferor and recipient; whether the slot is to be used for an arrival or departure; the date the slot was acquired by the transferor; the section of this subpart under which the slot was allocated to the transferor; whether the slot has been used by the transferor for international or essential air service operations; and whether the slot will be used by the recipient for international or essential air service operations. After withdrawal priorities have been established under § 93.223 of this part, the requests must include the slot designations of the transferred slots as described in § 93.223(b)(5).

(2) The slot transferred must come from the transferor's then-current FAA-approved base.

(3) Written evidence of each transferor's consent to the transfer must be provided to the FAA.

(4) The recipient of a transferred slot may not use the slot until written confirmation has been received from the FAA.

(5) Slots obtained in a lottery held under § 93.225 of this part may not be sold or traded, except on a one-for-one basis at the same airport, unless they are first used by the operator obtaining them for a 2-month period at least 65 percent of the time. If a slot obtained in a lottery is traded before the above use requirement is met, any slot acquired in the first or subsequent trades may not be sold or traded except on a one-for-one basis at the same airport until such slot is used for a 2-month period at least 65 percent of the time by the operator which obtained the slot in the lottery. Requests for confirmation of transfers of slots obtained in a lottery must be accompanied by documentation of use.

(6) The Office of the Secretary of Transportation must determine that the transfer will not be injurious to the essential air service program.

(b) A record of each slot transfer shall be kept on file by the office specified in paragraph (a)(1) of this section and will be made available to the public upon request.

(c) Any person may buy or sell slots and any air carrier or commuter may use them. Notwithstanding § 93.123, air carrier slots may be used with aircraft of the kind described in § 93.123 (c)(1) or

(c)(2) but commuter slots may only be used with aircraft of the kind described in § 93.0123(c)(2).

(d) Prior to April 1, 1986, slots may only be transferred by trade on a one-for-one basis at the same airport, provided that the conditions specified in paragraphs (a)(1) through (a)(4) and (a)(6) of this section are met.

§ 93.223 Slot withdrawal.

(a) Slots do not represent a property right but represent an operating privilege subject to absolute FAA control. Slots may be withdrawn at any time to fulfill the Department's operational needs, such as providing slots for international or essential air service operations or eliminating slots. Before withdrawing any slots under this section to provide them for international operations, essential air services or other operational needs, those slots returned under § 93.224 of this part and those recalled by the agency under § 93.227 will be allocated.

(b) By December 16, 1985 or within 30 days after receipt of the scheduling committee records specified in § 93.215(a) of this part, whichever occurs later, the FAA shall conduct recall lotteries for each High Density Traffic Airport to establish a priority for the recall of slots at each airport. The lotteries shall be conducted as follows:

(1) A separate lottery shall be conducted for air carrier slots and for commuter operator slots at each airport.

(2) Each slot shall be assigned a designation consisting of the applicable airport code, a code indicating whether the slot is an air carrier or commuter operator slot, the airline code, and the time period of the slot (e.g., DCA/Air Car/PL/0900). The designation shall also indicate if the slot is used by different operators on different days of the week, is used for international operations, or was allocated for EAS purposes.

(3) Separate pools shall be established for air carriers and commuters at each airport. The slot designations shall be placed in drawing pools.

(4) Blind drawings shall be made from each of the pools, one at a time, and, as withdrawn, each slot designation will be assigned a withdrawal priority in numerical order (i.e., the slot first drawn in the lottery will be the first slot to be withdrawn if withdrawal should become necessary and if the drawn slot is in a time period in which a slot is required).

(5) The withdrawal priority number shall be added to the slot designation (e.g., DCA/Air Car/DL/0900/1) and a complete list of the withdrawal priority numbers will be made available to the public.

(c) Whenever slots must be withdrawn, they will be withdrawn in accordance with the priority list established under paragraph (b) of this section, except:

(1) Slots obtained in a lottery held pursuant to § 93.225 of this part shall be subject to withdrawal pursuant to paragraph (i) of that section, and

(2) Slots necessary for international and essential air service operations shall be exempt from withdrawal for use for other international or essential air service operations.

(d) The following withdrawal priority rule shall be used to permit application of the one-for-one trade provisions for international and essential air service slots and the slot withdrawal provisions where the slots are needed for other than international or essential air service operations. If an operator has more than one slot in a specific time period in which it also has a slot being used for international or essential air service operations, the international and essential air service slots will be considered to be those with the lowest withdrawal priority.

(e) The operator(s) using each slot to be withdrawn shall be notified by the FAA of the withdrawal and shall cease operations using that slot on the date indicated in the notice. Generally, the FAA will provide at least 30 days after notification for the operator to cease operations unless exigencies require a shorter time period.

(f) Notwithstanding other provisions in this section, the FAA shall not withdraw slots obtained under § 93.215 or § 93.225 from any air carrier or commuter holding eight or fewer slots (excluding slots used for operations described in § 93.217(a)(1)) at that airport.

§ 93.224 Return of slots.

(a) Whenever a slot is required to be returned under this subpart, the holder must notify the office specified in § 93.221(a)(1) in writing of the date after which the slot will not be used.

(b) Slots may be voluntarily returned for use by other operators by notifying the office specified in § 93.221(a)(1) in writing.

§ 93.225 Lottery of available slots.

(a) Whenever the FAA determines that sufficient slots have become available for distribution for purposes other than international or essential air service operations, but generally not more than twice a year, they shall be allocated in accordance with the provisions of this section.

(b) A random lottery shall be held to determine the order of slot selection.

(c) Slot allocation lotteries shall be held on an airport-by-airport basis with separate lotteries for commuter operator and air carrier slots.

(d) The FAA shall publish a notice in the **Federal Register** announcing any lottery dates. The notice may include special procedures to be in effect for the lotteries.

(e) Each U.S. air carrier or commuter operator, as appropriate, operating at the airport shall be included in the lottery. Any U.S. carrier not operating at the airport, but wishing to initiate service at the airport, shall be included in the lottery if that operator notifies, in writing, the Office of the Chief Counsel, Docket Section, AGC–204, 800 Independence Ave., SW., Washington, DC 20591. The notification must be in duplicate and must be received 15 days prior to the lottery date.

(f) At the lottery, each operator must make its selection within 5 minutes after being called or it shall lose its turn. If capacity still remains after each operator has had an opportunity to select slots, the allocation sequence will be repeated in the same order. An operator may select any two slots available at the airport during each sequence, except that new entrant carriers may select four slots, if available, in the first sequence.

(g) In order to select slots during a slot lottery session, the operator must have appropriate economic authority under Title IV of the Federal Aviation Act of 1958, as amended, and must have made substantial progress in obtaining FAA operating authority under Parts 121 or 135 of this chapter. For purposes of this subpart, substantial progress in obtaining FAA operating authority under Parts 121 or 135 of this chapter shall be evidenced by the submission of at least three of the following documents, as required by those parts, to the FAA:

(1) The compliance statements.

(2) The aircraft operating manuals.

(3) The company operating manuals.

(4) The operator's training program.

(5) The operator's maintenance programs.

(6) A schedule of certification events, such as planned dates of:

(i) Proving runs;

(ii) Aircraft deliveries;

(iii) Training completion;

(iv) Emergency evacuation demonstration; and

(v) First revenue trip.

(h) During the first selection sequence, 15 percent of the slots available but no fewer than two slots shall be reserved for selection by new entrant carriers.

(i) Slots obtained under this section shall retain their withdrawal priority as established under § 93.223. If the slot is newly created, a withdrawal priority shall be assigned. That priority number shall be higher than any other slot assigned a withdrawal number previously.

§ 93.227 Slot use and loss.

(a) Except as provided in paragraphs (b), (c), (d), and (g) of this section, any slot not utilized 65 percent of the time over a 2-month period shall be recalled by the FAA.

(b) Paragraph (a) of this section does not apply to slots obtained under § 93.225 of this part during—(1) the first 180 days after they are allocated if the operator obtaining them did not have a Part 121 of 135 certificate at the time of allocation; (2) the first 90 days for other new entrant carriers; or (3) the first 60 days after they are allocated for all other operators.

(c) Paragraph (a) of this section does not apply to slots of an operator forced by a strike to cease operations using those slots.

(d) Paragraph (a) of this section does not apply to slots of an operator that files for protection under this Federal bankruptcy laws during the first 60 days after filing.

(e) Persons having slots withdrawn pursuant to paragraph (a) of this section must cease all use of those slots upon receipt of notice from the FAA.

(f) Persons holding slots but not using them pursuant to the provisions of paragraphs (b), (c) and (d) may lease those slots for use by others. A slot obtained in a lottery may not be leased after the expiration of the applicable time period specified in paragraph (b) of this section unless it has been operated for a 2-month period at least 65 percent of the time by the operator which obtained it in the lottery.

(g) This section does not apply to slots used for the operations described in § 93.217(a)(1) of this part.

(h) Within 30 days after an operator files for protection under the Federal bankruptcy laws, the FAA shall recall any slots of that operator, if—(1) the slots were formerly used for essential air service and (2) the Office of the Secretary of Transportation determines those slots are required to provide substitute essential air service to or from the same points.

(i) Every air carrier and commuter operator or other person holding a slot at a high density airport shall, within 14 days after the last day of the second full month after December 16, 1985 and every 2 months thereafter, forward, in writing, to the address identified in § 93.221(a)(1), a list of all slots held by the air carrier, commuter operator or other person along with a listing of which air carrier or actually operated the slot for each day of the particular calendar month. The report shall identify the flight number for which the slot was used and shall identify the flight as an arrival or departure. The report shall be signed by a senior official of the air carrier or commuter operator. If the slot is held by an "other person," the report must be signed by an official representative.

§ 93.229 Penalties.

(a) Any air carrier or commuter operator using a slot it is not entitled to use under the provisions of this subpart shall be subject to a $1,000 maximum civil penalty in accordance with section 901 of the Federal Aviation Act, as amended, for each unlawful takeoff or landing operation it conducts: For purposes of this subpart, FAA records concerning the identity of the persons holding slots shall be controlling in any enforcement proceeding.

(b) Any person failing to return a slot to the FAA as required by this subpart shall be subject to a $1,000 maximum civil penalty in accordance with section 901 of the Federal Aviation Act, as amended, for each day the person is in violation.

Issued in Washington, DC, on December 16, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85-30081 Filed 12-17-85; 2:34 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 24105; Notice No. 85-25]

Slot Allocation; Initial Withdrawal and Redistribution of Slots

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend Subpart S of Part 93 of the Federal Aviation Regulations (FAR) (14 CFR Part 93, Subpart S), which was adopted in this issue of the **Federal Register** to provide for the initial withdrawal of up to 5 percent of the slots used by air carrier and commuter operators by lottery. Subpart S provides, in general, that slots being used as of the issuance date of that subpart will be allocated to the carriers then holding them. Those slots can be sold at a later date and any carrier not now holding slots or wishing additional slots would be able to buy slots to begin operations in the future. This gives incumbent carriers at the High Density Airports an advantage that this notice attempts to diminish by assuring that a number of slots will be initially allocated by a lottery in which new entrant carriers would be given preference.

DATES: Comments must be received on or before January 24, 1986. A public hearing will be held on January 21 and 22, 1986.

ADDRESSES: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 24105, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked "Docket No. 24105." Comments may be examined in the Rules Docket, Room 915G, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

The hearing will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Third Floor Auditorium, Washington, DC.

Copies of this document are available by writing the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Ave., SW., Washington, DC 20591 (or call 202-426-8058).

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, Deputy Chief Counsel, AGC-2, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 426-3775.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this regulatory action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24105." The postcard will be date/time stamped and returned to the commenter. All communications received between the specified opening and closing dates for comments will be considered by the Administrator before taking further action on this rulemaking. This proposal may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

In addition to seeking comments on this proposal the FAA will hold a public hearing to allow public input on the proposal and to answer questions on the administration of the new Subpart S.

The hearing will be held on January 21-22, 1986, at the Federal Aviation Administration, 800 Independence Avenue, SW., Third Floor Auditorium. This meeting will maximize the ability of those affected by Subpart S to familiarize themselves with its implementation.

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 426-8058. Communications must identify the notice number of the document.

Meeting Procedures

Persons who plan to attend the hearing should be aware of the following procedures to be followed:

(a) The hearing will be informal in nature and will be conducted by the designated representative of the Adminstrator under 14 CFR 11.33. Each participant will be given an opportunity to make a presentation. Questions may be asked of each presenter by other participants or by representatives of the Administrator.

(b) The hearing will begin at 9:00 a.m. (local time). There will be no admission fee or other charge to attend and participate. All sessions will be open to all persons on a space available basis. The presiding officer may accelerate the schedule if possible. The second day of the hearing will be held only if all speakers cannot be accommodated during the first scheduled day.

(c) All meeting sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be distributed. Participants submitting handout materials must present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the hearing should not be taken as expressing a final FAA position.

Public Hearing Schedule

The schedule for the meeting is as follows:

Tuesday, January 21, 1986

9:00 a.m.—Hearing is opened
9:15 a.m.—Summary of Subpart S
9:30 a.m.—Questions
10:00-12:00—Formal Presentations
1:00-5:00—Formal Presentations

A continuation of the hearing may be held on Wednesday, January 22, if necessary.

Anyone interested in making a presentation at the hearing must contact Pam Trebbe, (202) 426-3773, with the name of the individual making the presentation and the name of the group represented. Presentations should be limited to 10 minutes.

Background

In today's edition of the **Federal Register**, the Department has adopted a new Subpart S to Part 93 of the FAR.

That subpart prescribes rules applicable to the allocation and withdrawal of IFR operational authority, i.e., takeoff and landing authority (commonly referred to as "slots"), to individual air carriers and commuter operators at the high density airports—LaGuardia and Kennedy Airports in New York, O'Hare Airport in Chicago, and National Airport in Washington. That subpart also prescribes rules governing the transfer of slots and the use of slots once allocated.

Section 93.215 of Subpart S prescribes, in general, that each air carrier and commuter operator holding slots as of the issuance date of the rule shall be allocated those slots subject to withdrawal by the FAA. Under Subpart S, those slots not being used and those slots for which the FAA cannot determine the holder will be made available to other operators in accordance with the provisions of the subpart, which include lotteries of available slots to carriers that desire them. In those lotteries, new entrant carriers would be given a preference.

Under the amendment, approximately 90 to 95 percent of the slots at the high density airports are anticipated to be allocated initially to carriers now using them. As a result of non-use or slots returned, a small percentage should be available for allocation by lottery. Some, however, may have to be allocated outside the lottery for international or essential air service operations.

A number of the commenters to the notices of proposed rulemaking which led to Subpart S, while not opposed to the buying and selling of slots once allocated, were opposed to allocating all slots initially to incumbent carriers. Several suggested auctioning off all or a portion of the slots and applying the proceeds to improving the aviation system. These suggestions were rejected for a number of reasons, including costs to the industry, the potential for major disruption in air service in the case of auctioning off all, or a substantial portion of all, slots, and a lack of statutory authority. Several other commenters suggested that a limited number of slots, perhaps 10 percent, be withdrawn and redistributed by lottery. This approach does not have the drawbacks of an auction if the initial withdrawal is not so large as to disrupt service. A 10-percent withdrawal, in the Department's view, is too large. If the maximum number of slots to be withdrawn is held to 5 percent (and in all probability under this proposal, it should be less), little, if any, service will be disrupted.

The Department believes it is important that a pool of slots equal to 5 percent of those that exist be established and made available for acquisition in a lottery. Although it is appropriate for incumbent carriers to retain a large percentage of the slots they have because of their investments and commitments in personnel, equipment, terminal development, and planning at the high density airports, it could by place new entrant carriers and incumbent carriers with few slots at an initial disadvantage since the only way they could obtain new or additional slots would be to buy them. In the past, these operators have found it very difficult to obtain slots at some of the high density airports, and the Department believes that the disadvantages they have faced can be offset if at least 5 percent of the slots would be allocated initially by lottery.

The Proposal

Although the Department believes an adequate pool of slots will be available for allocation through a lottery under Subpart S, at least at some of the high density airports, the possibility exists that that will not be the case at all the airports. The exact size of the pools of available slots will not be certain for several months because all pertinent records of who held slots and how they were used must be compiled and reviewed. If a sufficient number of slots do not become available for adequate lottery allocations under Subpart S, the additional slots could be withdrawn from the carriers currently holding them. This proposal would provide for such a withdrawal if that should become necessary.

Under this proposal, the FAA would determine the number of slots available for lottery allocations under Subpart S at each high density airport for each class of user (air carrier and commuter operators). The FAA would then determine the extent to which this number is less than 5 percent of the slots for each class of user at each of the high density airports. The number of available slots will be determined separately for commuters and air carriers. If the number of slots equals 5 percent or more of the available slots, this proposal will be withdrawn for that airport and category of user. If, however, the number is less than 5 percent of either the air carrier or commuter operator slots at an airport, the number of slots needed to reach the 5-percent level would be withdrawn from incumbent air carriers and commuter operators, as appropriate. This would be accomplished through a withdrawal procedure different than that prescribed in Subpart S. The slots would be withdrawn randomly in a blind lottery from the air carrier and commuter operator pools of slots. The slots would retain the withdrawal priorities established under §93.223 after they are reallocated. Slots utilized for international or EAS operations would not be withdrawn. The withdrawals would be accomplished prior to the date that slots can be sold under Subpart S, i.e., April 1, 1986.

The following chart shows the *maximum* number of slots that would be withdrawn from incumbent operators at each of the high density airports under this proposal:

NUMBER OF SLOTS THAT MIGHT BE WITHDRAWN

Airport	Air carrier	Commuter operator	Hours
O'Hare	[illegible]	22	0645–2114
LaGuardia	[illegible]	11	0700–2159
Kennedy	[illegible]	3	1500–1959
Washington National	[illegible]	[illegible]	0700–2159

The Department recognizes that an argument exists that this withdrawal provision should not apply to commuter operators since the commuter operator scheduling committees have used deadlock-breaking mechanisms in the past which have assured some access by new entrants. The Department invites comments on whether this proposal should not apply to one or more of the air carrier or commuter operator slot pools because of actions taken by the appropriate scheduling committee to encourage new entry into the particular airport. The Department is also considering not withdrawing any slots from incumbent operators having eight or fewer slots at a particular airport because of the disproportionate impact this would cause. Comments on these alternatives are invited.

In addition, comments are invited on whether the total number of slots to which 5 percent is applied should include international slots, since international slots are not subject to withdrawal and the burden of withdrawal would fall disproportionately on domestic operators.

Once withdrawn under the proposal, slots would be redistributed by lottery, as provided in Subpart S (14 CFR 93.225). That lottery procedure gives new entrant carriers two preferences in the first selection sequence. First, it guarantees them 15 percent of the slots available to be allocated. Second, it gives each new entrant carrier the opportunity to choose four instead of two slots. Suggestions on other

distribution mechanisms for reallocation are solicited.

Regulatory Evaluation

This proposal should have only a minimal economic impact overall. It would affect only a small number of slots at the high density airports. Those slots represent operational authority controlled by the FAA and are not a property right. The proposal would merely shift the usage of those few slots withdrawn from certain operators and provide them to others. The operators losing slots would be able to buy replacement slots if it was economically justified to them. The operators gaining slots might be relieved of the need to buy slots. Comments on the economic impact of the proposal are invited.

Regulatory Flexibility Determination

Small entities should not be disproportionately affected by this rulemaking overall. In fact, as mentioned above, the Department is considering not withdrawing slots from carriers operating a minimum number of flights at an airport (e.g., eight or fewer). the overall impact on small entities should be minimal. Comments on this determination are requested.

For the reasons set forth in this notice: (1) The Department has determined that the proposal does not involve a major proposal under Executive Order 12291; (2) Is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) The overall economic impact is so minimal as not to warrant a full regulatory evaluation, and I certify that under the criteria of the Regulatory Flexibility Act this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 93

Aviation safety, Airspace, Air traffic control.

(49 U.S.C. 1302, 1303, 1348, 1354(a) and 1421(a); 49 U.S.C. 106(f) (Revised Pub. L. 97-449, January 12, 1983))

Issued in Washington, DC, on December 16, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85-30080 Filed 12-17-85; 2:34 pm]

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Friday
December 20, 1985

Part VII

Department of Agriculture

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1986; Solicitation of Applications; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Special Research Grants Program for Fiscal Year 1986; Solicitation of Applications

Applications are invited for competitive grant awards under the Special Research Grants Program for Fiscal Year 1986.

The authority for this program is contained in section 2(c)(1) of the Act of August 4, 1965, Pub. L. 89–106, as amended (7 U.S.C. 450i(c)(1)). This program is administered by the Cooperative State Research Service (CSRS) of the U.S. Department of Agriculture (USDA). Under this program, and subject to the availability of funds, the Secretary may award grants for periods not to exceed five years, for the support of research projects to further the programs discussed below. Proposals may be submitted by any land-grant college or university, research foundation established by a land-grant college or university, State agricultural experiment station, and any college or university having a demonstrable capacity in food and agricultural research. Proposals from scientists at non-United States organizations will not be considered for support.

Applicable Regulations

Regulations applicable to this program include the following: (a) The regulation governing the Special Research Grants Program, 7 CFR Part 3400 (50 FR 5498, February 8, 1985), which sets forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015.

Introduction to Program Description

Standard project grants will be awarded to support basic studies in selected areas of (1) animal health research and (2) aquaculture research. Consideration will be given to proposals that address innovative as well as fundamental approaches to the research areas outlined below and that are consistent with the mission of USDA. The following specific program areas and guidelines are thus provided as a base from which proposals may be developed:

Program Areas

1.0 Animal Health Research

CSRS Contacts: Dr. Dale K. Sorensen; Telephone: (202) 447–7437; Dr. Howard S. Teague; Telephone: (202) 447–3847.

Funds will be awarded to support research seeking solutions to health problems of livestock and poultry and major aquaculture species. No more than $150,000 will be awarded for the support of any one project under the program area, regardless of the amount requested. A proposal will not be evaluated by more than one peer panel.

Investigators and co-investigators who have received Special Research Grant awards in the Animal Health area during the past five years should include a brief summary of progress and a list of publications resulting from such grants.

The overall objective of this research is to develop and/or refine abiotic and biotic methodologies for suppression of animal losses due to infectious and noninfectious diseases and internal and external parasites of livestock, poultry and major aquaculture species.

Research should be directed toward: (1) Basic studies to clarify infectious and noninfectious diseases and parasites or their interactive effects on animal health; and (2) development of practical, implementable management systems for the producer to prevent or alleviate these causes of animal losses. Research may include clarification of complex or unknown etiologies including nutritional, genetic, and environmental interactions; development of improved methods of detecting disease agents or antibodies in animals, animal products, tissues, etc.; clarification of disease pathogenesis; determination of methods of disease transmission including transmission by embryo transfer, artificial insemination and importation of animal products (such studies should mimic as closely as possible the normal conditions of collection, preparation and use of these items); development of improved methods of imunization against disease agents that will provide solid and persistent protection without compromising diagnosis; development of alternative pest eradication methods so as to limit the use and dependence on biotoxic substances (such alternatives may include biologic methods, sterile male techniques, artificial pheromones, etc.); developmnt of other disease prevention, control and eradication technology; and evaluation of the economics of disease and disease prevention or control.

The specific areas of inquiry in which projects will be funded are listed below. The areas are broken down into subcategories which will be funded in the approximate percentages listed. In the event that there are insufficient meritorious proposals recommended by peer panels to utilize all funds in each specific area of inquiry or in each subcategory, the balance of any such funds will be awarded for meritorious proposals recommended by peer panels under the other subcategories within the specific area of inquiry or the other specific areas of inquiry. Utilizing the recommendations of the peer panels, the Administrator of CSRS will make the final determination on specific grants to be awarded.

1.1 Beef Cattle

(1) Respiratory diseases complex (approximately 17 percent of available funds).

(2) Reproductive diseases, especially brucellosis, including but not limited to, anestrus, leptospirosis and vibriosis (approximately 12 percent of available funds).

(3) Enteric diseases, including but not limited to Johne's Disease (approximately 8 percent of available funds).

(4) Parasites (internal and external), including but not limited to anaplasmosis, ticks, flukes, nematodes, and interactive effects of internal and external parasites; metabolic diseases, especially bloat, grass tetany, and mineral imbalance (approximately 4 percent of available funds).

1.2 Dairy Cattle

(1) Mastitis (approximately 6 percent of available funds).

(2) Reproductive diseases, including but not limited to, brucellosis and nondetected estrus (approximately 5 percent of available funds).

(3) Respiratory diseases (approximately 3 percent of available funds).

(4) Digestive and enteric diseases, including but not limited to Johne's Disease (approximately 2 percent of available funds).

(5) Johne's Disease (approximately 2 percent of available funds).

1.3 Swine

(1) Enteric diseases. Viral enteritis, colibacillosis, coccidiosis, salmonellosis, clostridium, dysentery, and proliferative enteritis (approximately 5 percent of available funds).

(2) Respiratory diseases. Hemophilus pleuropneumonia, mycoplasma pneumonia, atrophic rhinitis, influenza, Hemophilus parasuis and Pasteurella

multocida (approximately 5 percent of available funds).

(3) Reproductive diseases. Parvovirus, Mastitis-metritis-agalactia, leptospirosis, and streptococcus (approximately 4 percent of available funds).

(4) Other swine diseases. Trichinosis, pseudorabies, eperythrozoonosis, parasites, mycotoxicosis, and lameness (approximately 4 percent of available funds).

1.4 Poultry

(1) Respiratory diseases (approximately 5 percent of available funds).

(2) Metabolic and immunologic diseases (approximately 5 percent of available funds).

(3) Enteric disorders (approximately 3 percent of available funds).

1.5 Sheep and Goats

Bluetongue, foot rot, chlamydial polyarthritis, respiratory disease, and mastitis (approximately 5 percent of available funds).

1.6 Horses

Especially respiratory diseases, including but not limited to, enteric diseases, reproductive diseases, and musculoskeletal diseases (especially laminitis and lameness) (approximately 3 percent of available funds).

1.7 Aquaculture

Infectious diseases and parasites (approximately 2 percent of available funds).

2.0 Aquaculture Research

CSRS Contacts: Dr. Meryl Broussard; Telephone: (202) 447–6014; Dr. Howard S. Teague; Telephone: (202) 447–3847.

No more than $80,000 will be awarded for support of any one project under this program area, regardless of the amount requested. The objective of this research is to provide and improve upon the scientific and technical base needed by the aquaculture industry.

Proposals focused on production of commercially important aquaculture species in the following *specific areas of inquiry* will be considered:

2.1 Improved production efficiency in diet formulation, reproduction and breeding, and disease and parasite control.

2.2 Improved water quality for production and factors affecting the quality of water discharges.

How To Obtain Application Materials

Copies of this solicitation, the "Research Grant Application Kit," and the Administration Provisions governing this program, 7 CFR Part 3400 (50 FR 5498, February 8, 1985), may be obtained by writing to the address or by calling the telephone number which follows: Grants Administrative Management, Attention: Proposal Services Unit, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 007, J.S. Morrill Building, 15th and Independence Ave., SW., Washington, DC 20251; telephone number (202) 475–5040.

What To Submit

An original and 9 copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of the proposal must include a Form S&E–661, "Grant Application," which is included in the "Research Grant Application Kit." Proposers should note that one copy of this form, must contain pen and ink signatures of the Principal Investigator(s) and the Authorized Organizational Representative.

Members of review committees and the staff expect each project description to be complete in itself. It should be noted that the reviewers are not required to read beyond 10 pages (single spaced) of the project description to evaluate the proposal. It would be helpful to the reviewers if the Principal Investigator(s) vitaes were limited to three (3) or four (4) pages.

All copies of a proposal must be mailed in one package. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. Also, please see that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BIND. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the Application Requirements checklist contained in the "Research Grant Application Kit" and instructions contained in the regulations governing the Special Research Grants Program, 7 CFR Part 3400.

Applicants should not submit the same research proposal twice in the same fiscal year to different research program area categories within the Special Research Grants Program. Duplicate proposals will be returned without review.

Where and When To Submit Grant Applications

Each research grant application must be submitted by the time limits set forth below to: Grants Administrative Management, Attention: Proposal Services Unit, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 007, J.S. Morrill Building, 15th and Independence Avenue, SW., Washington, DC 20251.

To be considered for funding during fiscal year 1986, proposals *must be received* in the Grants Administrative Management office *by the close of business* on the date specified below for each program area:

March 10, 1986—Animal Health Research

March 19, 1986—Aquaculture Research

One copy of each proposal not selected for funding will be retained for a period of one year. The remaining copies will be destroyed.

Special Instructions

The Special Research Grants Program should be indicated in Block 7, and the applicable program area and specific area of inquiry should be indicated in Block 8 on Form S&E–661 provided in the Research Grant Application Kit. *Select one program area only.* The number assigned to the specific area of inquiry must also be cited in Block 8. Example: (Animal Health, 1.5 Sheep and Goats). The final determination of the program area and specific area of inquiry will be made by agency staff members and/or the appropriate peer review panel. The code numbers assigned to program areas and specific areas of inquiry are listed below:

1.0 Animal Health Research (use appropriate specific area of inquiry 1.1 through 1.7)
1.1 Beef Cattle
1.2 Dairy Cattle
1.3 Swine
1.4 Poultry
1.5 Sheep and Goats
1.6 Horses
1.7 Aquaculture
2.0 Aquaculture Research
2.1 Diet Formulation, Reproduction and Breeding, and Disease and Parasite Control
2.2 Water Quality for Production and Quality of Water Discharges.

SUPPLEMENTARY INFORMATION: The Special Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the final-rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the collection of

information requirements contained in this Notice have been approved under OMB Document No. 0525–0001.

The award of any grants under the Special Research Grants Program during FY 1986 is subject to the availability of funds.

Done at Washington, DC, this 17th day of December 1985.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 85–30175 Filed 12–19–85; 8:45 am]

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H.J. Res. 491/Pub. L. 99-184

Making further continuing appropriations for fiscal year 1986. (Dec. 17, 1985; 1 page) Price: $1.00

S. 1639/Pub. L. 99-185

Gold Bullion Coin Act of 1985. (Dec. 17, 1985; 3 pages) Price: $1.00

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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227 (Voice)
Melanie Williams 202-523-5229 (TDD)

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

NOTE: There will be a sign language interpreter for hearing impaired persons at this briefing.

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Rules and Regulations

Federal Register
Vol. 50, No. 246
Monday, December 23, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 402

[Docket No. 2899S]

Raisin Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby confirms as final the interim rule which revises and reissues the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 and succeeding crop years. The intended effect of this action is to confirm the interim rule published on Friday, July 12, 1985, at 50 FR 28367, to: (1) Remove the Premium Adjustment Table: (2) insure raisins from vineyards operated to produce table grapes by separate agreement; (3) clarify the procedures used to arrive at the insured tonnage; (4) eliminate the experience table; (5) limit the reconditioning allowance to wash and dry reconditioning; (6) shorten the length of time an insured has to give notice of loss from 7 days to 72 hours; (7) change the end of the insurance period from October 25 to October 20; (8) add definitions for the terms "loss ratio", "raisins", "net ton", "USDA inspection", and "table grapes"; and (9) redefine "unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1970.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, July 12, FCIC published an interim rule revising and reissuing the Raisin Crop Insurance Regulations. Written comments on this interim rule were solicited by FCIC for 60 days after publication in the **Federal Register** but none were received.

On April 24, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register**, at 50 FR 16090 to revise and reissue the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 and succeeding crop years. After publication of the proposed rule it was determined that the date by which changes in the raisin insurance policy were to be filed in the service offices could not be changed from May 15, the date required by the policy for the 1985 crop year, to June 30 as had been intended in order to give sufficient time to consider comments on the proposed rule, publish the final rule, and file changes in the service offices by the required date.

Therefore, the proposed rule as published on April 24, 1985, was withdrawn and the proposed changes, many of which are necessary to ensure actuarial soundness of the raisin insurance program, were adopted in the interim rule.

All existing policies for insurance for the 1985 crop year, were cancelled. Insurance was made available under the new policy contained herein to persons who had such insurance.

The insureds received a letter explaining this and advising them that they must sign a new application for insurance before the sales closing date, July 31, 1985. As with any new policy issued, the provision for non-cancellation was in effect for the first year.

Any good insurance experience discount was carried over into the new policy without penalty. In addition, the letter advised that if the policyholder's 1984 premium reduction exceeded 5 percent, that reduction will be retained through the 1989 crop year or until the policyholder's loss ratio reaches .81 whichever occurs first.

Merritt W. Sprague, Manager, FCIC, had determined that an emergency situation exists which precluded notice and other public procedure because the then current policy for insuring raisins did not provide coverage on an actuarially sound basis. The intention of FCIC in publishing the notice of proposed rulemaking on April 24, 1985, was to correct this situation and protect the integrity of the raisin insurance program.

The principal changes in this raisin policy from the previous policy are:

1. *Section 2.*—Not insure table grapes placed on trays in some cases.

2. *Section 4.*—Determine the insured tonnage by delivered tonnage, plus verifiable loss of production. Tray

weights will be used to establish raisin tonnage not removed from the vineyard.

3. *Section 5.*—Remove the Premium Adjustment Table. Insureds with good loss experience who were receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier. Since those insureds with good loss ratios and premium reductions stayed in the program while those premium increases because of poor loss ratio tended to drop out, the premium structure under the premium adjustment table made actuarial projection difficult.

Remove the provisions for transfer of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. *Section 7.*—Change the insurance ending date from October 25 to October 20.

5. *Section 8.*—Shorten from 7 days to 72 hours the length of time the insured has to give notice of loss to better enable FCIC to adjust the loss.

6. *Section 9.*—Provide a reconditioning allowance when raisins are high moisture due to rain.

7. *Section 18.*—Define "loss ratio", "raisins", "net ton", "USDA inspection", and "table grapes", and modify the definition of unit to remove the unit division guidelines.

On September 4–5, 1985, the Board of Directors, FCIC held informal meetings in Hearing Room B, Interstate Commerce Commission Building, Washington, DC, for the purpose of receiving comments from interested parties the determination to restrict unit division by removing unit division guidelines from policies. That concept was included in the interim rule.

The determination to eliminate applicable unit division guidelines restricts unit division to include all the insurable crop grown within a county with no allowance for further division beyond those contained in the crop insurance policies.

FCIC has determined that further studies shall be conducted which are to be presented to the Board of Directors for consideration at the first meeting of the Board after February 1, 1986.

However, the unit division guidelines provision will not be restored to the Raisin Crop Insurance Regulations at this time. The 1985 crop year has progressed to the point that no change in the unit definition is possible and any change which FCIC may make in February will be in time for the 1986 crop year.

Public comment on this rule was solicited for 60 days after the publication of this rule in the **Federal Register**. The rule was scheduled for review following the 60-day comment period so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible, however, no comments were received. Therefore, the interim rule as published is hereby adopted.

List of Subjects in 7 CFR Part 402

Crop insurance, Raisins.

Final Rule

PART 402—[AMENDED]

Accordingly, the interim rule published at 50 FR 28367, Friday, July 12, 1985, is adopted as a final rule without change.

1. The Authority Citation for 7 CFR Part 402 continues to read:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C 1506, 1516).

Done in Washington, DC, on October 24, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–30298 Filed 12–20–85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 431

[Docket No. 2952S]

Soybean Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Prescribe procedures for insuring soybeans on an "Actual Production History" (APH) basis and provide for cancellation for not furnishing records; (2) change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (3) eliminate row width provisions; (4) change the calculation in computing replanting payments; (5) shorten the length of time an insured has to give notice when claiming an indemnity; (6) clarify the method of computing indemnities when acreage, share or practice is underreported; (7) add definitions of "Loss ratio", and "ASCS"; (8) redefine "County" to clarify when land located outside the county is included in the county; and (9) increase the minimum amount necessary to replant before a replanting payment will be made. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with States and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the soybean policy are:

1. *Section 2.c.*—Add a clause to change the method of calculating the share of an indemnity on crops transferred before harvest. This will limit indemnities to the insured's insurable interest at the time of loss when the crop is transferred after planting but before harvest.

2. *Section 2.f.*—Remove the row width requirements at planting unless specified in the actuarial table. This change conforms to present farming practices.

3. *Section 9.f.*—Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment and clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date. This reduces the number of inspections by eliminating small replant payments and paperwork.

4. *Section 8.a.(4)*—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

5. *Section 9.d.*—When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the complexity of calculations.

6. *Section 15.c.*—Add a clause to cancel the contract if the prior year's production records are not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

7. *Section 17.*—Add definitions of "ASCS" and "Loss ratio". Amend the "County" definition to clarify when land located outside the county is deemed to be in the county.

On Thursday, October 31, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 45410, revising and reissuing the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1986 and succeeding crop years. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received.

Therefore, with the exception of minor changes in language and format, the proposed rule as published at 50 FR 45410 is adopted as a final rule.

Since these regulations must, according to the provisions of the policy, be placed in file in the Service Office by December 31, 1985, good cause is shown for making these regulations effective in less than 30 days.

List of Subjects in 7 CFR Part 431

Crop insurance, Soybeans.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Soybean Crop Insurance Regulations (7 CFR Part 431), effective for the 1986 and succeeding crop years, to read as follows:

PART 431—SOYBEAN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

431.1 Availability of soybean crop insurance.
431.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
431.3 OMB control numbers.
431.4 Creditors.
431.5 Good faith reliance on misrepresentation.
431.6 The contract.
431.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and succeeding crop years.

§ 431.1 Availability of soybean crop insurance.

Insurance shall be offered under the provisions of this subpart on soybeans in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 431.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which the indemnities shall be computed for soybeans which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 431.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 431.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 431.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Soybean insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresenatation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Request for relief under this section must be submitted to the Corporation in writing.

§ 431.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance of a form prescribed by the Corporation. The contract shall cover the soybean crop as provided in the policy. The contract shall consist of the application, the policy and the county actruarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 431.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may

be made by any person to cover such person's share in the soybean crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submittitng applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance.of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a soybean contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrations Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Soybean Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Soybean—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Agreement to insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9e(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure to follow recognized good soybean farming practices;
(3) The failure or breakdown of irrigation equipment or facilities;
(4) The failure to follow recognized good soybean irrigation practices;
(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be soybeans which are planted for harvest as beans, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be soybeans planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured soybeans at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been establised;
(2) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(3) Which is destroyed, it is practical to replant to soybeans, and such acreage is not replanted;
(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;
(5) Of volunteer soybeans;
(6) Planted to a type or variety of soybeans not established as adapted to the area or excluded by the actuarial table;
(7) Planted with a crop other than soybeans; or
(8) Of a second soybean crop following a soybean crop harvested in the same crop year.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good soybean irrigation practice.

f. Unless otherwise provided in the actuarial table, insurance will attach only on acreage initially planted in rows; but, if such insured acreage is destroyed and replanted by broadcasting or drilling, it will be regarded as insured acreage.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

h. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of soybeans in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any soybeans planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the soybean policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;
(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the soybeans are planted and ends at the earliest of:

a. Total destruction of the soybeans;

b. Combining, threshing, or removal from the field;

c. Final adjustment of a loss; or

d. The date immediately following planting as follows:

(1) Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, December 20;

(2) All other states, December 10.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant soybeans damaged due to any insured cause (see Subsection 9.f.);

(b) During the period before harvest, the soybeans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the soybeans and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days of the beginning of harvest or during harvest, immediate notice must be given and a representative sample of the unharvested soybeans (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the soybeans on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the soybeans on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the soybeans which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the soybeans on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of soybeans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of soybeans to be counted (see subsection 9.e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from the insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature soybean production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent.

(2) Mature soybean production which, due to insurable causes:

(a) Has a test weight of less than 49 pounds per bushel; or

(b) Is of distinctly low quality, as determined by a grain grader licensed by the Federal Grain Inspection Service or under the United States Warehouse Act will be adjusted by:

(i) Dividing the value per bushel of such soybeans by the price per bushel of U.S. No. 2 soybeans; and

(ii) Multiplying the result by the number of bushels of such soybeans.

The applicable price for No. 2 soybeans will be the local market price on the earlier of the day the loss is adjusted or the day such soybeans are sold.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good soybean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of soybeans becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(5) The amount of production of any unharvested soybeans may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the soybeans are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured soybeans replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit as determined on the final planting date.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the price election multiplied by 3 bushels multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

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j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the soybeans are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilites under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years afer the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all soybeans produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Ninety days prior to the cancellation date for any crop year you must:

(1) Furnish to the Corporation, satisfactory production records for the previous crop year or the contract will be cancelled for the subsequent crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood, or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

You may furnish the records required by this section for any crop year at least 90 days prior to that crop year's cancellation date. Your election of this option will result in the inclusion of that crop year's production information in next year's yield guarantee.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas, and all Texas counties south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31.
All other Texas counties and all other states.	April 15.

f. If you die or are judically declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judical declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise.

If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for countries with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of soybean crop insurance:

a. "Actuarial table" means the forms and related material for the crop year appoved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding soybean insurance in the county.

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land indentified by an ASCS farm serial number for the county but physically located in another county within the state.

d. "Crop year" means the period within which the soybeans are normally grown and will be designated by the calendar year in which the soybeans are normally harvested.

e. "Harvest" means the completion of combining or threshing of soybeans on the unit.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to soybeans.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the soybeans or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of soybeans in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the soybeans on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning to any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with or determinations, you may obtain reconsideration of our appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on December 2, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-30299 Filed 12-20-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 618, Amdt. 1]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 618 increases the quantity of California-Arizona navel oranges that may be shipped to market during the period December 20–26, 1985. Such action is needed to provide for the orderly marketing of fresh navel orange for the period specified due to the marketing situation confronting the oranges industry.

DATE: Amended Regulation 618 (§ 907.918) is effective for the period December 20–26, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This amendment is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on December 17, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges has become good. The amendment is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Marketing Agreements and Orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.918 Navel Orange Regulation 618 paragraphs (a) through (e) is hereby revised to read:

§ 907.918 Navel Orange Regulation 618.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 20, 1985, through December 26, 1985, are established as follows:

(a) District 19: 800,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: December 1, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–30331 Filed 12–19–85; 11:52 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1427

CCC Cotton Loan Program Regulations (Amendment 6)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations governing the 1980 and subsequent crops cotton loan program to provide another option for making price support available to producers of upland and extra long staple (ELS) cotton. Under the provisions of the final rule, CCC may authorize a person or firm to act as an authorized loan servicing agent ("authorized LSA") for CCC for the purpose of making and servicing Form A cotton loans that are presently handled by a county Agricultural Stabilization and Conservation Service (ASCS) Office.

EFFECTIVE DATE: December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Grady Bilberry, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, (202) 447–7987.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs of prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this rule applies are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29915 (June 24, 1983).

A notice of proposed rulemaking was published in the **Federal Register** on September 19, 1985, at 50 FR 38008, requesting comments with respect to amendments of the Cotton Loan Program Regulation at 7 CFR Part 1427. The proposed rule provided for a 30-day comment period which ended October 21, 1985.

The Department received a total of 32 comments with respect to the proposed rule. The Department has considered all comments received in developing this final rule. All comments received are on file and available for public inspection in Room 3627—South Building, 14th and Independence Avenue, SW., Washington, DC 20013.

Amendments to the regulation were proposed which would provide another mechanism through which producers may obtain price support loans for upland and ELS cotton. Under the proposed rule, CCC may enter into a written agreement with a person or firm which meets the terms and conditions prescribed by CCC to be an authorized loan servicing agent ("authorized LSA") for CCC. The authorized LSA would act as an agent of CCC in performing most Form A loanmaking and loan servicing functions for producers which are now performed by a county ASCS office, except that the authorized LSA must contact the local county ASCS office to determine: (1) Whether the producer is an eligible producer and otherwise meets the requirements of the applicable commodity regulations, and (2) whether the producer's loan proceeds are subject to setoff and withholding under applicable CCC setoff and withholding regulations.

It was also proposed the § 1427.5 be amended to provide the eligible cotton must not have been sold, nor any sales option on eligible cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan. This amendment is necessary to ensure that only producers of cotton are the direct beneficiaries of a CCC cotton loan.

Discussion of Comments

A total of 32 comments were received with respect to the proposed rule. Twenty respondents supported the provisions of the proposed rule concerning the authorization by CCC of a loan servicing agent, and twelve respondents opposed these provisions of the proposed rule.

One respondent suggested that an authorized LSA acting as an attorney-in-fact for the producer be permitted to purchase the cotton for its own account. Historically, a person serving as an attorney-in-fact for a producer has not been permitted to purchase the cotton for its own account. This provision serves as a means of protection for the producer. Therefore, for the continued protection of the producer, the suggestion by the respondent was not adopted.

All twelve respondents opposing the proposed rule commented that the local county ASCS office could provide more efficient service to producers because the county ASCS office is familiar with the producer's operation and understands the operation of CCC. One of these 12 respondents suggested that the county office would provide faster service. After careful consideration of these comments, it has been determined that the proposal allowing an authorized LSA to act as agent for CCC in performing most loanmaking and loan servicing functions should be adopted as a final rule. The regulations, as

amended, would not preclude any producer from obtaining price support through the local county ASCS office. The rule simply offers producers an alternative method for obtaining CCC price support loans with respect to cotton.

One comment was received in connection with § 1427.5(n) of the proposed rule which provides that eligible cotton must not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan. The respondent was concerned that § 1427.5(n) would change the practice of a person buying a producer's equity in cotton pledged as loan collateral. However, the proposed rule will not change such practice.

It has been determined that a change should be made with respect to § 1427.22(b)(2) of the proposed rule. As set forth in the proposed rule, clause (ii) of § 1427.22(b)(2) provided that if the attorney-in-fact is an authorized LSA, such authorized LSA must file with the local county ASCS office the original or facsimile of the power of attorney, or a certified copy of the power of attorney. In addition, the authorized LSA was required to excute and file the Form 815 with the local county ASCS office. It has been determined that clause (ii) of § 1427.22(b)(2) should be revised to delete these requirements because records of price support loans which are disbursed through authorized LSA's will not be currently maintained or serviced through the county ASCS office. It is not believed that this revision to the proposed rule is of such significance as to warrant any further public comment.

Accordingly, it has been determined that, except for the revision to § 1427.22(b)(2)(ii), the provisions of the proposed rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouse.

PART 1427—[AMENDED]

Final Rule

Accordingly, the regulations at 7 CFR Part 1427, Subpart—Cotton Loan Program Regulations are amended as follows:

1. The authority citation for 7 CFR Part 1427 Subpart—Cotton Loan Program Regulations is revised to read as follows:

Authority: Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421); sec. 602, 91 Stat. 934, as amended (7 U.S.C. 1444).

2. Section 1427.2 is amended by revising paragraphs (b) and (c) and by adding new paragraphs (k) and (l) to read as follows:

§ 1427.2 Definitions.

* * * * *

(b) "Kansas City Management Office" shall mean the Kansas City Management Office, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(c) "Kansas City Commodity Office" shall mean the Kansas City Commodity Office, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

* * * *

(k) "Authorized LSA" shall mean a person or firm that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing individual Form A cotton loans. The authorized LSA may perform, on behalf of CCC, certain CCC cotton loanmaking services specifically prescribed by CCC including: (1) Preparing and executing loan documents, (2) disbursing loan proceeds, (3) handling the extension of loans as authorized by CCC, (4) accepting cotton loan repayments, (5) handling documents involved with forfeiture of cotton loan collateral to CCC, and (6) providing loan data to CCC for statistical purposes.

(l) "Cotton" shall mean upland cotton and extra long staple cotton.

3. Section 1427.3 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1427.3 Administration.

(a) *Responsibility.* The Cotton, Grain, and Rice Price Support Division, ASCS, will administer the regulations in this subpart under the general supervision and direction of the Deputy Administrator, State and County Operations, ASCS, in accordance with program provisions and policy determined by the CCC Board of Directors and the Executive Vice President, CCC. In the field, the regulations in this subpart will be administered by the Agricultural Stabilization and Conservation State and county committees (hereinafter called "State and county committees") the Kansas City Commodity Office, and the Kansas City Management Office.

(b) *Documents.* (1) Any member of the county committee, the county executive director, or other employee of the county ASCS office (hereinafter called "county office") designated in writing by the county executive director to act in the county executive director's behalf (such delegation to be filed in the county office) is authorized to approved documents under this program except where otherwise specified in the regulations in this subpart. County committees or county executive directors also may approve loan clerks at convenient locations to assist producers in preparing loan documents.

(2) Authorized LSAs may execute and approve documents under this program as specifically authorized by CCC.

(c) *Limitation of authority.* County executive directors, State and county committees, the Kansas City Commodity Office, Kansas City Management Office and authorized LSAs do not have authority to modify or waive any of the provisions of the regulations in this subpart.

* * * * *

4. Section 1427.5 is amended by revising paragraphs (a) and (b), by redesignating paragraphs (n), (o), and (p) as (o), (p), and (q), respectively, and by adding a new paragraph (n) to read as follows:

§ 1427.5 Eligible Cotton.

Cotton produced by eligible producers is eligible cotton if it meets the following requirements:

(a) Such cotton must have been produced on a farm by a producer who has complied with the price support eligibility requirements, if any, specified in Parts 713, 718, 791, and 792 of this title. The cotton in any bale may have been produced by two or more producers on one or more farms if the bale is not a repacked bale.

(b) Such cotton must be tendered for a loan within the availability period provided for in § 1427.6(d).

* * * * *

(n) Such cotton must not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan.

* * * * *

5. Section 1427.6 is revised to read as follows:

§ 1427.6 Program Availability and Disbursement of Price Support Loans.

(a) *Where to request a loan.* (1) A producer may request price support: (i) At the local county ASCS office, or (ii) from an authorized LSA.

(2) An authorized agent which has an agreement with CCC and which is designated by producers to obtain loans on their behalf may obtain such loans

through a central county ASCS office designated by CCC.

(3) An approved cooperative marketing association must request loans: (i) At a servicing bank approved by CCC, or (ii) at the county ASCS office for the county in which the principal office of the cooperative is located unless the State ASC committee designates some other county ASCS office as the office where such association must request price support.

(b) *Disbursement of loans.* Disbursement of loans to individual producers may be made by: (1) Local county ASCS offices, (2) authorized LSAs, or by (3) central county ASCS offices (when designated by CCC to provide centralized service to a person or firm which has been designated as a producer's agent and which has entered into a written agreement with CCC). Loans may be disbursed by approved servicing banks to approved cooperative marketing associations. Service charges and cotton research and promotion fees, when required by the provisons of 7 CFR 1205.500 *et seq.*, will be deducted from the loan proceeds. If the producer so elects, loan clerk fees may be deducted from the loan proceeds instead of the loan clerk being paid in cash. The loan documents shall not be presented for disbusement unless the commodity covered by the mortgage or pledge of security is in existence and in good condition. If the commodity was not in existence and in good condition at the time of disbursement, the total amount disbursed under the loan shall be refunded promptly.

(c) *Program availability.* Loans will be available to eligible producers on cotton represented by warehouse receipts which is stored at CCC approved warehouses.

(d) *Period of availability of loans.* Producers may request loans on a corp of cotton from the beginning of harvest of the crop through May 31 following the calendar year in which such crop is grown. Form CCC Cotton A must be signed by the producer or the producer's agent and mailed or delivered to the county office or an authorized LSA within 15 days after the producer signs the Form CCC Cotton A and within the period of loan availability. Whenever the final date of availability falls on a nonworkday for county ASCS offices, the applicable final availability date shall be extended to include the next workday.

6. Section 1427.14 is revised to read as follows:

§ 1427.14 Service Charges.

(a) Except for loans disbursed by an authorized LSA, a producer shall pay a non-refundable service charge to CCC for each loan disbursed at the rate of $1.50 per loan plus 25 cents for each bale of cotton pledged as loan collateral. The service charge to be paid to CCC by the producer shall be in addition to any clerk fee paid to a loan clerk as authorized in § 1427.15.

(b) An authorized LSA may charge producers a service charge for each loan disbursed at a rate not to exceed $1.50 per loan plus 25 cents for each bale of cotton pledged as loan collateral.

§ 1427.19 [Amended]

7. Section 1427.19 is amended by adding in the third, fourth, and fifth sentences in § 1427.19(a) and in the fourth sentence of §1427.19(b) the words "or authorized LSA" immediately following the words "county office".

8. Section 1427.20 is revised to read as follows:

§1427.20 Custodial Offices.

Forms A and A–1, collateral warehouse receipts, cotton classification memoranda, and related documents will be maintained in custody of the local county ASCS office, authorized LSA, central county ASCS office, or any financial institution (defined in §1427.2 and approved by CCC), whichever disbursed the loan evidenced by such documents.

9. Section 1427.22 is revised to read as follows:

§ 1427.22 Repayment of Loans.

(a)(1) In order to redeem one or more bales of cotton pledged to CCC as collateral for a loan, the producer must pay to the local county ASCS office or an authorized LSA. whichever disbursed the loan, or to the bank as provided in paragraph (a)(3) of this section, the loan principal, together with any interest and other charges which may be applicable to the bales of cotton being redeemed. An authorized agent which has an agreement with CCC and which is designated by producers to repay such loans on their behalf may repay such loans through a central county ASCS office designated by CCC.

(2) Upon payment of the amounts specified in paragraph (a)(1) of this section, the local county ASCS office or the authorized LSA (whichever disbursed the loan) shall transmit the warehouse receipts applicable to the cotton pledged as loan collateral which has been redeemed (and, if requested, the classification memoranda applicable to such cotton) to the producer or authorized agent.

(3) The producer may request that the warehouse receipts (and classification memoranda) be forwarded to a bank for payment, in which case the principal amount of the loan, together with any applicable interest and other charges, must be paid after the documents are received by the bank. All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(4) Repayment of loans will not be accepted after CCC acquires title to the cotton.

(b)(1) A producer who desires to appoint an attorney-in-fact to act for the producer for the purpose of: (i) Redeeming the producer's cotton which is pledged as collateral, (ii) selling the producer's equities in the cotton pledged as loan collateral, or (iii) executing Forms CCC–813, release of Warehouse Receipts (referred to in this subpart as "Form 813"), shall use Form 211, except that a power of attorney on another form will be accepted if it is determined by CCC to be sufficient.

(2) In order to redeem cotton or to execute Form 813, the attorney-in-fact must: (i) File with the local county ASCS office, authorized LSA, or central county ASCS office designated by CCC, whichever disbursed the loan, the original or facsimile of the power of attorney or a copy certified by a notary public as a true and correct copy; and (ii) execute and file with the local county ASCS office, authorized LSA or central county ASCS office designated by CCC, whichever disbursed the loan, an agreement of attorney-in-fact, Form CCC–815 (referred to in this subpart as "Form 815").

(3) The attorney-in-fact redeeming a producer's cotton under authority of a power of attorney or signing the Form 813 under authority of a power of attorney shall not: (i) Purchase any such cotton redeemed from a CCC cotton loan or purchase the producer's equity in such cotton for the attorney-in-fact's own account or as agent for others; or (ii) sell any such cotton or equities in such cotton to any person by whom the attorney-in-fact is employed or who has the right to control or direct the attorney-in-fact's sale of such redeemed cotton or the euqities in such cotton.

(4) The attorney-in-fact shall not adopt any scheme or device which tends to defeat the purpose of these regulations or the cotton program.

(5) If the attorney-in-fact holds power of attorney from more than one producer, the attorney-in-fact may not: (i) Pool the producer's cotton or the proceeds therefrom or (ii) make settlement with such producers on a pool basis upon sale of the cotton or the equities therein. The attorney-in-fact will, however, make an accounting to

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each producer for the proceeds of each bale of the producer's cotton which the attorney-in-fact redeems and sells and each equity which the attorney-in-fact transfers, unless the attorney-in-fact has a valid annual marketing agreement with such producers authorizing the attorney-in-fact to pool the cotton or the proceeds therefrom.

(c)(1) A producer or the producer's authorized agent may enter into an agreement with a person or persons to redeem the producer's cotton and may authorize the release of the applicable warehouse receipts to such person(s) or transferee (hereinafter called the "buyer") on Form 813. If the buyer executes and files the Form 813 with the loan originating office the buyer shall be obligated to redeem the cotton specified on such form on or before the maturity date of the loan which is applicable to such cotton. CCC will use its best efforts to make certain that the cotton is not redeemed by anyone other than the buyer and to provide for the delivery to the buyer of the warehouse receipts (and, if requested, the classification memoranda) covering the cotton upon the repayment of the loan principal together with any applicable interest and other charges, to the loan originating office.

(2) If the loan documents are sent to a bank for collection, repayment of the loan, together with any applicable interest and other charges, must be made within 5 business days after the documents are received by the bank. All charges assessed by the bank to which the documents are sent must be paid by the buyer. Redemptions will not be permitted after the maturity date of the loan. Upon the failure of the buyer to redeem all such cotton pledged as loan collateral:

(i) Title to the cotton shall, at CCC's election and without a sale thereof, immediately vest in CCC, and there shall be no obligation on the part of CCC to pay for any market value which such cotton may have in excess of the principal amount of the loan thereon, together with any applicable interest and other charges. The buyer shall be personally liable for any amount by which the amount due on the loan on such cotton exceeds the market value of the cotton as of the date title to the cotton vests in CCC, as determined by CCC.

(ii) CCC may, at CCC's election and without notice to the buyer, sell, transfer and deliver the cotton or documents evidencing title thereto, at such time, and in such manner, and upon such terms and conditions as CCC may determine, at any cotton exchange or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand advertisement, or notice of the time and place of sale or adjournment thereof or otherwise. Upon such sale, CCC may become the purchaser of the whole or any part of such cotton at its market value, as determined by CCC. Any overage remaining from the proceeds received therefrom shall, after deducting from such proceeds the principal amount of the loan on such cotton, together with any applicable interest and other charges, be paid to the buyer or the buyer's personal representative without right of assignment to, or substitution of, any other person. If the proceeds from the sale do not cover the principal amount of the loan on such cotton, together with any applicable interest and other charges, the buyer shall be liable to CCC for any difference.

(d) Warehouse receipts will not be released except as provided in paragraphs (a), (b), and (c) of this section.

10. Section 1427.25 is amended by revising paragraph (b) as follows:

§ 1427.25 Kansas City Commodity Office and Kansas City Management Office.

* * * * *

(b) Accounting, recording, and reporting for all States will be handled through Kansas City Management Office, P.O. Box 205, Kansas City, Missouri 64141.

Signed at Washington, DC, on December 17, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-30229 Filed 12-20-85; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 284, and 375

[Docket No. RM85-1-000]

Regulation of Natural Gas Pipelines After Partial Wellhead Deregulation

Issued: December 12, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order Granting in Part and Denying in Part Applications for Rehearing, Denying Petition for Stay, and Granting Clarification.

SUMMARY: On October 9, 1985, the Federal Energy Regulatory Commission (Commission) issued Order No. 436,[1] a final rule pursuant to the Natural Gas Act (NGA)[2] and the Natural Gas Policy Act of 1978 (NGPA),[3] which substantially changed the Commission's regulation of the natural gas industry. The Commission received many applications seeking rehearing of the order.[4] In addition to the applications to rehear the order, the Commission has received numerous general requests for clarifications.[5] The issues raised by the applications seeking rehearing and some of the applications for clarification are addressed in this order.

This order grants rehearing in part and denies rehearing in part. It also clarifies Order No. 436 and denies a petition for stay of Order No. 436.

EFFECTIVE DATE: Sections 284.10(a) and 284.223(g)(3)(i) are effective December 12, 1985. The remaining changes are effective January 22, 1986.

FOR FURTHER INFORMATION CONTACT:

For implementation matters: Kenneth A. Williams, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulations, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8500

For legal matters: Christopher J. Warner, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8440

For policy matters: Charles E. Teclaw, Federal Energy Regulatory Commission, Office of Regulatory Analysis, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8100

SUPPLEMENTARY INFORMATION:

Order Granting in Part and Denying in Part Applications for Rehearing, Denying Petition for Stay, and Granting Clarification

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Docket Nos. RM85-1-000 through -003, -006 through -009, -011 through -038, -040 through -046, -048 through -071, -073 through -100, -102 through -125, -127 through -133, and -136 (Parts A-C); Order No. 436-A.

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[1] 50 FR 42408 (Oct. 18, 1985).

[2] 15 U.S.C. 717-717w (1982).

[3] 15 U.S.C. 3301-3432 (1982).

[4] A list of the applicants is included in Appendix A.

[5] A list of the petitioners is included in Appendix B.

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I. Introduction

On October 9, 1985, the Federal Energy Regulatory Commission (Commission) issued Order No. 436,[1] a

[1] 50 FR 42408 (Oct. 18, 1985).

final rule pursuant to the Natural Gas Act (NGA) [2] and the Natural Gas Policy Act of 1978 (NGPA),[3] which substantially changed the Commission's regulation of the natural gas industry. The Commission received many applications seeking rehearing of the order.[4] In addition to the applications to rehear the order, the Commission has received numerous general requests for clarifications.[5] The issues raised by the applications seeking rehearing and some of the applications for clarification are addressed in this order.

This order grants rehearing in part and denies rehearing in part. It also clarifies Order No. 436 and denies a petition for stay of Order No. 436.

II. Background

A. Procedural History

The Commission began this rulemaking proceeding with the first phase of a Notice of Inquiry (NOI) issued on December 24, 1984,[6] and a second and third phase issued on January 18, 1985.[7] After reviewing the comments received in response, it issued a Notice of Proposed Rulemaking (NOPR) on May 30, 1985, following decisions by a Federal court in the *Maryland People's Counsel* cases.[8] The NOPR proposed a package of four parts. Part A included a comprehensive, simplified transportation program, including blanket certificates under NGA section 7 and self-implementing transportation under NGPA section 311. Part B included a proposal to alleviate the gas marketing problems caused by take-or-pay provisions in gas purchase contracts. Part C included a procedure for optional expedited certificates under NGA section 7. Finally, Part D included a new requirement that gas supplies subject to the maximum lawful prices of NGPA categories 104, 106(a) and 109 be billed separately from all other gas supplies.

The Commission received over 200 comments in response to the three phases of the NOI. In addition, it held public hearings on February 20, 1985, and on March 28–29, 1985. In response to the NOPR, the Commission received approximately 300 comments. The Commission heard two days of oral presentations by over 100 commenters at a public hearing held on August 1–2, 1985. In formulating the final rule, the Commission relied on both the written and oral comments in response to the NOIs and the written and oral comments in response to the NOPR.

The final rule adopted Parts A and C of the NOPR, with modifications. It did not adopt Part B. Instead, the Commission reaffirmed its policy statement issued on April 10, 1985.[9] In addition, it issued a new statement of policy providing for expedited processing of producer abandonment applications under existing substantive criteria. In a separate document, the Commission requested supplemental comments on Part D of the proposal.[10] Specifically, the Commission expressed its interest in gathering additional information on the effects of its proposal on the national gas supply and on gas consumers. The Commission has received over 200 comments in response to this notice.

B. Summary of Provisions of Final Rule

Part A—Transportation

Consistent with its original proposal, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the NGA and self-implementing transportation under section 311 of the NGPA, conditioned to require non-discriminatory access to such transportation.

Rates for the service must be volumetric, downwardly-flexible, cost-of-service rates, differentiated by time-of-use and distance, and consistent with sections 4 and 5 of the NGA. A pipeline's participation under the new rules also offers its customers an opportunity to modify their existing service agreements in order to reduce their firm sales entitlements. This customer option is available if the pipeline holds itself out as a transporter of gas for others, *i.e.*, if the pipeline decides to participate in the new transportation program. Abandonment is available to the pipeline to the extent of any customer's reduction. This will enable such customers to choose more freely among a portfolio of service options offered by pipelines. In addition to the option to reduce sales entitlements or contract demand, the rule also affords firm sales customers of a transporting pipeline the opportunity to convert from firm sales to firm transportation, upon payment of a reservation fee.

The final rule contains some necessary refinements to the proposal. It recognizes a pipeline's need to impose reasonable operational conditions on requests for service and, therefore, includes a requirement that any such conditions be filed as part of the tariff. The final rule provides for a reservation charge for firm transportation service, requires the use of interim transportation rates effective November 1, 1985, and exempts intrastate pipelines from the rate conditions for self-implementing transportation, from the firm sales entitlements adjustment obligations, and from the requirement to offer firm service. Under the rule, projected levels of service that form a basis for interstate pipeline rates for transportation under Part 284 may be changed in rate cases. Finally, certain transportation transactions are allowed to continue after November 1, 1985, to permit a smoother transition to the new transportation programs.

Part B—Take-or-Pay Buy-Outs and Producer Abandonment

Although the Commission had proposed to establish, during a limited transition period, a rebuttable presumption of prudence for certain payments made by pipelines to extinguish problem contracts, the record persuaded it not to adopt the approach. Still recognizing the extent of the problems caused by continued take-or-pay obligations and non-market responsive prices the Commission reaffirmed the approach contained in the April 10, 1985, policy statement in Docket No. PL85–1–000, which establishes a policy of expeditious rate review and certificate or abandonment proceedings necessary to effectuate service modifications that arise from pipeline buy-outs of their take-or-pay obligations. In the final rule, the Commission also stated its intent to expedite processing of producer abandonment applications if producers are subject to substantially reduced takes of gas without payment or if the underlying contract has expired.

Part C—Optional Expedited Certificates

The Commission proposed and established optional expedited certificate procedures under section 7 of the NGA for new services, facilities, and operations made available by pipelines willing to assume the financial risk of

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[2] 15 U.S.C. 717–717w (1982).

[3] 15 U.S.C. 3301–3432 (1982).

[4] A list of the applicants is included in Appendix A.

[5] A list of the petitioners is included in Appendix B.

[6] Interstate Transportation of Gas for Others, 50 FR 114 (Jan. 2, 1985) (Phase I).

[7] Natural Gas Pipeline Ratemaking, Risk and Financial Implications After Partial Wellhead Decontrol, 50 FR 3801 (Jan. 28, 1985) (Phases II and III)

[8] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 24130 (June 7, 1985). *See* Maryland People's Counsel v. FERC, 761 F.2d 768 (D.C. Cir. 1985) and Maryland People's Counsel v. FERC, 761 F.2d 780 (D.C. Cir. 1985).

[9] 18 CFR 2.76, 50 FR 16078 (Apr. 24, 1985).

[10] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol: Proposed Rule, 50 FR 42372 (Oct. 18, 1985).

these ventures. That willingness is manifested by the pipeline's agreement to provide such service or facilities subject to specified conditions, including volumetric rates similar to those established for transactions under new Part 284.

Appropriate abandonment is conditionally pre-granted to the pipeline to be effective at the expiration of the underlying contracts. Since pipelines would knowingly assume the risk of these ventures, competing certificates may be granted.

The Commission added a requirement that an applicant seeking a certificate to provide transportation service must obtain a blanket transportation certificate under § 284.221. The final rule prohibits shifting costs from so-called "new service" to existing pipeline customers, if revenues are underrecovered. Abbreviated application procedures under § 157.7 are also available for optional expedited certificates.

C. Effect of Technical Corrections

On October 24, 1985, the technical corrections to Order No. 436 were issued. These corrections made several changes to Order No. 436 to rectify inadvertent errors that occurred in the process of the order's rapid preparation in anticipation of the November 1, 1985, termination date imposed by the Court of Appeals for certain ongoing transportation programs. To ensure timely compliance and to minimize misunderstanding during the initial implementation of the Commission's rule, the corrections were issued at the earliest possible date. The Commission now ratifies those corrections, effective October 9, 1985, as expositions of its original intent.[11]

Specifically, the notice made technical corrections to reflect the Commission's intent that:

1. No notice period associated with a reduction or conversion of firm sales entitlements may begin sooner than February 1, 1986, unless a pipeline agrees otherwise;

2. An NGPA section 311 self-implementing transportation arrangement authorized and for which service had commenced on or before October 9, 1985, may continue under the original terms and conditions (except for § 284.7 and the new reporting requirements of §§ 284.106 and 284.126) until the expiration of its authorized original or extended term that was in effect on October 9, 1985, or until October 9, 1987, whichever comes first;

3. An authorized transportation arrangement under Order Nos. 60 (interstate pipelines on behalf of other interstates) and 63 (LDCs or Hinshaw pipelines on behalf of interstates) may continue subject to the transition provisions of Subparts B and C of Part 284, as amended, respectively;

4. An NGPA section 311 transportation arrangement authorized and for which service had commenced on or prior to October 9, 1985, pursuant to a Commission order under § 284.107 or § 284.127 of the Commission's regulations as in effect prior to November 1, 1985, may continue under the original terms and conditions (except for § 284.7 and the new reporting requirements of §§ 284.106 and 284.126) until the expiration of its authorized original or extended term that was in effect on October 9, 1985, or until October 9, 1987, whichever comes first;

5. Any blanket certificate transportation arrangement authorized and for which service had commenced on or before October 9, 1985, under then existing § 157.209(a) of the Commission's regulations (Order No. 319), may continue for the time remaining in its authorized term after November 1, 1985;

6. Any transportation arrangement authorized on a self-implementing basis for 120 days pursuant to existing § 157.209(e)(1) of the Commission's regulations (Order No. 234–B), may continue only for the time remaining in its 120-day term past October 31, 1985;

7. *Only* optional *transportation* certificates, not optional sales certificates, will be subject to the prerequisite that the applicant file for, and state it will accept, a new blanket transportation certificate under new § 284.221 of Part 284 of the Commission's regulations.

D. Case-Specific Clarifications

Order No. 436 affects a great variety of gas transportation and sales transactions. In particular, the transitional provisions that allow certain arrangements previously authorized under section 311 or under NGA blanket certificates to continue after November 1, 1985, pertain to hundreds of contracts, construction and service schedules, and other fact-specific situations that may be immediately affected. To date, the Commission has received variously-styled pleadings from pipelines or their customers requesting clarification, interpretation, or waiver of the regulations. In recognition of the unique situation created by Order No. 436 and the need to avoid inequities to the extent feasible, the Commission has responded with orders on clarification of Order No. 436. The following list summarizes briefly the issues involved in each.

1. *Northwest Pipeline Corp.* (Oct. 29 1985) (Filing a statement of notification to continue transportation for a low priority end-user authorized under a blanket certificate does not commit an interstate pipeline to becoming an open transporter after the transition period).

2. *Intercon Gas, Inc.* (Oct. 30, 1985) (Section 311 transactions commenced after October 9, 1985, do not qualify under the transitional rules).

3. *El Paso Natural Gas Company* (Oct. 30, 1985) (Written contracts for transportation service on a month-to-month basis, which were executed before October 9, 1985, do qualify under § 284.105 until the end of the final month or October 9, 1987).

4. *Panhandle Eastern Pipe Line Company* (Oct. 30, 1985) (Transportation arranged under Order No. 60 may continue subject to the transition provisions. Only transportation service actually commenced on or before October 9, 1985, qualifies under § 284.105(a), and the underlying transportation arrangement may not be amended after October 9, 1985. Transportation under a new blanket certificate issued under new § 284.221 cannot be performed until the certificate is issued).

5. *Hadson Gas System, Inc.* (Oct. 30, 1985) (Any changes to the terms and conditions of a transitional section 311 transaction is an initiation of a new NGPA section 311 transportation transaction).

6. *Consolidated Fuel Supply, Inc.* (Oct. 31, 1985) (Any changes to the terms and conditions of the originally certificated blanket certificate transaction that

[11] The Commission does not believe that a correction made before a rule's effective date constitutes retroactive rulemaking. The assertions in the applications for rehearing that the technical corrections constitute retroactive rulemaking, if taken seriously, would preclude the Commission from making any significant modifications in a rule in response to rehearing applications. Thus, the Commission rejects any assertion that the technical corrections are procedurally defective. The only issue is whether the modifications are reasonable. The Commission finds the October 24, 1985, corrections are reasonable. Specifically, the potential that interstate and intrastate pipelines would begin new transportation transactions before November 1, 1985, only to avoid the conditions established in Order No. 436 for transportation transactions is greater than the ill effects from amending the transitional provisions to include, among other things, the October 9, 1985, cut-off date for eligible transactions. In addition, the Commission has sought to provide relief on a case-by-case *basis to any persons unnecessarily harmed by the change. See* discussion, *infra.*, Section VII.C.

qualified under the transitional provisions would require an application for a new blanket certificate).

7. *Columbia Gas Transmission Corp.* (Oct. 31, 1985) (New or expanded NGPA section 311 transportation transactions may be commenced after October 9, 1985, and terminated on a non-discriminatory basis before December 15, 1985, without subjecting the pipeline to non-discriminatory access, CD adjustment obligations or the new rate conditions after December 15, 1985).

8. *Texas Eastern Pipeline Co.* (Oct. 31, 1985) (Initiation of new section 311 transactions under Order No. 436 subjects the pipeline to the non-discriminatory access condition applicable to such service, but does not obligate the pipeline to file for a new blanket certificate under Subpart G of Part 284).

9. *Midwest Solvents Company* (Oct. 31, 1985) (Transportation for high priority users that was authorized under former § 157.209(e) does not qualify under transitional provisions that apply to former § 157.209(a) concerning automatic authorization for transportation for high priority end-users).

10. *Amstar Corporation* (Oct. 31, 1985) (Transportation service must have actually commenced on or before October 9, 1985, to qualify under §§ 284.105, 284.125, and 284.223(g)(1)).

11. *Carnation Company.* (Oct. 31, 1985) (In order to qualify under transitional provisions applicable to Order No. 319 transportation arrangements, that service must have been both authorized and commenced on or before October 9, 1985, regardless of whether the gas was transported under an SMP).

12. *Pacific Gas and Electric Company* (Oct. 31, 1985) (A verbal agreement is sufficient to meet the "authorized" test for transitional NGPA section 311 transportation as long as the arrangement was commenced on or before October 9, 1985, and the parties to the transaction have complied with all applicable reporting requirements).

13. *El Paso Natural Gas Company* (Oct. 31, 1985) (Filing of an extension report prior to October 9, 1985, pursuant to executed letter agreements that permit continuance of NGPA section 311 transportation service beyond November 1, 1985, is sufficient to meet the "authorized and commenced" prior to October 9, 1985, tests of the transitional provisions, provided all the statutory and regulatory requirements are met).

14. *Transcontinental Gas Pipeline Corp.* (Nov. 1, 1985) (Certain section 311 transportation service qualifies under transitional provisions, provided the pipeline files an affidavit that the transportation services affected were small in number and were intended to continue past October 31, 1985).

15. *Orange and Rockland Utilities, Inc. and Transcontinental Gas Pipeline Corp.* (Nov. 1, 1985) (A section 311 transportation arrangement that commenced after October 9, 1985, qualifies under transitional provisions because of unique circumstances, including the extent of prior investment).

16. *Michigan Gas Utilities Company* (Nov. 7, 1985) (Transportation for a high priority end-user was authorized under former § 157.209(a), even though the initial report identified the transaction as an "industrial process use" within former § 157.209(e) and this report was not corrected until after October 9, 1985, *distinguishing Midwest Solvents Company* (Oct. 31, 1985). The *authority* to continue blanket certificate transportation between November 1, 1985, and December 15, 1985, is co-extensive with the *obligation* to serve in a non-discriminatory manner *all* customers, old and new, that request transportation service without need for further grant of authority from this Commission).

17. *ANR Pipeline Company* (Nov. 7, 1985) (Order accepts ANR's filing that states that ANR intends to comply with non-discriminatory access conditions for the period ending December 15, 1985. But, the order rejects that part of ANR's filing that states that it lacks authority to provide transportation for an end-user during the transition period without a new certificate under NGA section 7(c) since the existing blanket certificate provides authority for new transportation for the 45-day period ending December 15, 1985.[12] Refusal by a company that has voluntarily assumed the non-discriminatroy obligations of §§ 284.8(b) and 284.9(b) to provide service, if in fact it occurs, is inconsistent with the regulations).

18. *Algonquin Gas Transmission Company* (Nov. 8, 1985) (Algonquin was permitted to charge for its transitional NGPA Section 311 transportation arrangements a one part rate that is included in a rate schedule that was on file with the Commission and effective prior to November 1, 1985).

19. *El Paso Natural Gas Company* (Nov. 8, 1985) (Order treated request for clarification as a report required under former § 284.106(b) for NGPA section 311 transportation service).

20. *Transcontinental Gas Pipe Line Corp.* (Nov. 8, 1985) (Arrangement that was initated many months ago as an ordinary section 311 transaction and at a substantial expense to a distributor was found to qualify under transitional provisions, since the pipeline actually commenced service on October 9, 1985, when it delivered gas into the purchaser's pipeline for testing).

21. *Northwest Pipeline Corp.* (Nov. 8, 1985) (Restates and amplifies *ANR Pipeline* Company (Nov. 7, 1985)).

22. *Carnegie Natural Gas Company* (Nov. 13, 1985) (Consistent with § 157.18, a pipeline may terminate transactions initiated pursuant to a new blanket certificate without triggering the contract demand reduction and conversion rights in § 284.10, if it applies for and the Commission grants it appropriate abandonment authorization prior to December 15, 1985. Sections 284.7, 284.8 and 284.9 would also cease to apply after such termination).

23. *Dresser Industries, Inc.* (Nov. 13, 1985) (Granted a section 7(c) exemption consistent with *Caterpillar Tractor Company,* 11 FERC ¶61,076 (1980)).

24. *Tex-La Gas Company* (Nov. 13, 1985) (Although company failed to timely file a 30-day report for a NGPA section 311 transportation, transaction company qualified under the transitional provisions, since it filed the report before issuance of Order No. 436).

25. *Hadson Gas Systems, Inc.* (Nov. 15, 1985) ("New" section 311 transportation may be terminated prior to December 15, 1985, to avoid the requirements of § 284.10, without affecting a pipeline's authority to continue beyond December 15, 1985, transportation that qualifies for transition under § 284.105(a)).

26. *Hadson Gas Systems, Inc.* (Nov. 22, 1985) (If a blanket certificate did not, prior to November 1, 1985, authorize transportation of Federal offshore gas for end-users, the transitional provisions under § 284.223(g) do not confer authority to transport Federal offshore gas. But, after November 1, 1985, all interstate pipelines are authorized to transport gas from any source, including Federal offshore, under the self-implementing authority of § 284.102).

27. *Frito-Lay, Inc.* (Nov. 22, 1985) (Although end-user's proposed transportation arrangement was not eligible under one transitional provision (§ 284.223(g)(1)), the order determined that a company may obtain, until December 15, 1985, transportation service from a pipeline providing similar service under a related transitional rule (§ 284.223(g)(2) to other end-users).

28. *Battle Creek Gas Company* (Nov. 22, 1985) (Because the parties did not notify the Commission that they were

[12] *See, infra,* Section VIII, INGAA Classification

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relying on § 157.209(a) for transportation authority until well after Order No. 436 was issued, a transportation transaction that qualifed as high-priority service under § 157.209(a), but was authorized under § 157.209(e), did not meet the requirements of the transitional provisions of new § 284.223(g)(1); order applies *Midwest Solvents Company* decision).

29. *Energy Marketing Exchange, Inc.* (Nov. 22, 1985) (Order applies *Midwest Solvents* (Oct. 31, 1985) and emphasizes that the eligibility for particular transitional provisions depends on the authority under which the transportation transaction was authorized on or before October 9, 1985).

30. *TeePak, Inc. and Consolidated Fuel Supply, Inc.* (Nov. 22, 1985) (Order applies *Midwest Solvent* (Oct. 31, 1985) and concludes transaction did not qualify under transitional provision of § 284.223(g)(1)), since company did not attempt to convert the transportation service from § 157.209(e) for all end-users to § 157.209(a) for high-priority end-users until after October 9, 1985).

31. *Valley Gas Company* (Nov. 27, 1985) (Order applies *Pacific Gas and Electric Company* (Oct 31, 1985) and concludes that transitional provisions apply to service which commenced prior to October 9, 1985, pursuant to a verbal agreement as long as the parties have complied with all applicable reporting requirements).

32. *Michigan Consolidated Gas Company.* (Nov. 27, 1985) (Order applied § 284.125 to clarify that the transportation service described in the request for clarification was authorized and commenced on or before October 9, 1985, may continue until October 9, 1987, under the terms and conditions that applied prior to November 1, 1985, with the exception of the reporting requirements of § 284.126.

III. Overview of Issues on Rehearing

The Commission received applications for rehearing or clarification from individual companies and their trade associations representing every segment of the natural gas industry. These included producers and marketers of natural gas, interstate and intrastate transporters, local distribution companies (LDCs), industrial and other end users, and state and Federal government agencies. This section generally reviews the broad issues raised by these applications.

A. Producers and Marketers

The major producers assert that the CD reduction option effectively authorizes unilateral breach of contract by a pipeline's customers. Some of the independent producers (including Mesa, Panhandle Producer and Royalty Owners Assoc.) take the opposite tack and urge the Commission to expressly find that Order No. 436 does not constitute "*force majeure.*" While raising a number of other points regarding transportation, the producers generally focus the rest of their arguments on the statement of policy on take-or-pay and producer abandonment, arguing, for example, for a rebuttable presumption in favor of abandonment of service by producers when an abandonment application under the expedited procedure is protested.

B. Pipelines

1. Interstate Pipelines

Almost all of the interstate pipelines argue that the Commission's transportation program is effectively involuntary. In fact, they maintain that the Commission is attempting to impose mandatory carriage. However, the majority of these applicants argue that the Commission should condition producer access on take-or-pay relief to the pipeline.

These applicants raise legal and economic arguments in opposition to contract adjustments by their customers. First, they argue that the Commission's actions constitute an unconstitutional taking and violate sections 4, 5, and 7 of the Natural Gas Act. Second, they argue that the Commission's actions will have adverse affects on the market and on natural gas supply.

Also, many of the pipelines raise issues relating to the rate conditions that range from general legal arguments that the rates are confiscatory to a proposal that reservation fees should also be allowed for optional sales certificates, not only for optional transportation certificates under Part C.

2. Intrastate Pipelines

Intrastate pipelines argue that the non-discriminatory access provision violates NGPA sections 601 and 602 because it imposes common carrier status and encroaches on state authority.

They also raise specific issues relating to delivery points and applicability of the rate conditions. For example, they argue that intrastate pipelines should be permitted to discount their transportation rates below their fair and equitable ceilings and that they should be permitted to impose a reservation charge.

C. Local Distribution Companies (LDCs)

LDCs are unanimous in arguing that the Commission's regulations improperly promote bypass of their systems by pipelines and end-users. First, while supporting non-discriminatory access generally, they argue that the non-discriminatory access condition inhibits LDCs from negotiating flexible transportation arrangements with pipelines which oppose the condition. However, many LDCs argue that if a pipeline agrees to provide non-discriminatory access, LDCs should be preferred for such access.

Secondly, while generally supporting the "CD" reduction/conversion condition, they argue that it may cause adverse supply impacts if it threatens the pipeline's role as a supplier. They view these regulations as leading to capacity-management problems, such as overbooking and misallocation of service between firm and interruptible service.

Third, they argue that the rate conditions allow for undue discrimination. Many of the applicants request specific clarifications and suggest alternatives.

With regard to the optional expedited certificates, the majority of the LDCs oppose the presumption of public convenience and necessity in favor of granting a certificate where by-pass is involved. They argue that the presumption violates section 7 of the Natural Gas Act and states' rights, that it will have adverse economic effects on LDCs or competing pipelines, and that it reverses long-standing Commission policy in favor of LDCs. Also, many LDCs argue that the notice and protest procedures are inadequate and request a longer review period.

D. End-Users

The majority of the end-users favor the non-discriminatory access condition as a means of making available to them new gas supplies. In fact, they propose that the Commission broaden the blanket certificate transportation programs by exempting end-users from prior notice procedures. Many of these applicants submit specific requests for clarification relating to the continuation of certain transportation arrangements begun before November 1, 1985. The Commission is deciding these on a case-by-case basis.

E. State and Federal Agencies

The majority of the state applicants argue that the Commission exceeded its jurisdiction in establishing a rebuttable presumption of public convenience and necessity for qualified applicants under

its optional expedited certificate regulations.

Also, the majority of the applicants argue that the Commission did not adequately resolve the take-or-pay problem. They argue that the Commission should condition producer access on providing take-or-pay relief.

Many of the state applicants suggest specific revisions to clarify that state laws control in the situation they outline. Both state applicants and the Department of Energy suggest that all pipeline customers be permitted to reduce or convert CDs whether or not their pipleline suppliers agree to transport on a non-discriminatory basis.[13]

F. Major Issues

Before discussing the specific issues raised by the applications for rehearing, the Commission will consider and respond to two general issues which appear common to most of the applications. The first issue relates to the scope of the Commission's conditioning authority under section 7(e) of the NGA and section 311(c) of the NGPA. The second issue relates to the Commission's treatment of "take-or-pay problems" in existing pipeline-producer contracts.

1. Scope of Conditioning Authority Under NGA Section 7 and NGPA Section 311

First, applicants allege that the conditions placed by the Commission on self-implementing transportation and blanket transportation certificates are unreasonable and, therefore, an unlawful exercise of the Commission's conditioning authority under section 7(e) of the Natural Gas Act and section 311(c) of the Natural Gas Policy Act of 1978.

In particular, applicants assert that the condition permitting firm sales customers to reduce or convert their contract demands ("CDs") constitutes an unlawful unilateral abrogation of pipeline contracts with those customers. Applicants also allege that the non-discriminatory access condition attached to self-implementing and blanket certificate transportation "economically coerces" pipelines to provide such transportation.[14] Therefore, applicants say, the non-discriminatory access condition constitutes a common carriage or mandatory carriage obligation unlawful under the NGA and NGPA.

a. *Reasonableness of CD Reduction/Conversion Condition.* To the extent applicants attack the "CD" reduction/conversion condition as sanctioning abrogation of their contracts with their firms sales customers, they misunderstand the operation of Order No. 436. The Commission made clear in Order No. 436 that the choice to provide transportation service on a self-implementing basis or under a blanket certificate is purely the pipeline's choice, and the Commission is not mandating what that choice is.

What Order No. 436 does provide, however, is that if a pipeline provides self-implementing or blanket transportation, it must *also* offer its firm sales customers an opportunity to adjust their sales service agreements over a phased period to take advantage of the resulting new opportunities for transportation services. The Commission notes that data on file at the Commission and reproduced at Exhibit D of Order No. 436 indicates that the overwhelming majority of transportation arrangements undertaken on behalf of local distribution companies in the first six months of 1985 have been for partial requirements customers with alternate pipeline suppliers and *not* for full requirements customers supplied solely by one pipeline. While the refusal to transport for full requirements customers may also be due to refusal by pipelines to transport gas that would displace their sales, it is nevertheless clear that firm sales service agreements inhibit the ability of full requirements customers to choose from among a portfolio of gas supplies.

Firm sales customers are bound by their firm sales entitlements to pay for the pipeline capacity set aside for those entitlements, regardless of whether it is used. Full requirements customers, of course, purchase all of their gas requirements from a single pipeline. Partial requirements customers and most direct users are not bound to purchase their full requirements from one pipeline, and therefore have more flexibility to purchase gas elsewhere, either from another pipeline or directly in the field under a transportation arrangement with their pipeline-supplier.

Order No. 436 found that sole-supplied firm sales customers would not realistically be as able as partical requirements customers to enjoy the benefits of non-discriminatory transportation services unless they were able to adjust their sales entitlements with their pipeline suppliers.

In fact, the Commission concludes that firm sales customers, especially small municipal systems, without the CD reduction/conversion condition, would be denied the most important tool available to them to compete with interstate pipelines seeking to by-pass them and transport gas directly to end-users: the ability to obtain firm "booked" transportation capacity on the pipeline in order to acquire suppliers that will enable them to compete.

Otherwise, the enormous flexibility of transportation under a NGA section 7 blanket certificate would permit pipelines to squeeze market share from LDCs, while denying those LDCs the same flexibility to keep their customers by providing firm self-implementing transportation service under section 311 of the NGPA. Thus, the CD reduction/conversion condition is an indispensable element of non-discriminatory access to transportation.

Furthermore, the CD reduction/conversion condition is just that, a *condition* on the flexibility provided to interstate pipelines under the new transportation services authorized by Order No. 436. In return for accepting this condition, pipelines obtain a "two-way street" of benefits under Order No. 436, such as the expanded eligibility of gas categories, shippers and terms of transactions for self-implementing or blanket certificate transportation.

On the other hand, in return for exercising their conditional right to reduce or convert CDs, firm sales customers must be willing to agree to a commensurate adjustment in the certificated obligation of their pipelines to provide them with sales service under the CDs. This necessarily means that they must assume some of the supply risks previously borne by the pipelines.

The Commission intends the CD reduction/conversion condition to provide full requirements customers the same opportunity to choose among natural gas suppliers that the Order No. 380 minimum bill rule provides partial requirements customers.[15] However, as under the minimum bill rule, the exercise of the conditional rights does not prejudge the determination in individual rate cases of the appropriate

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[13] The Commission also received on December 5, 1985, a pleading filed by the Honorable Don Nickles, United States Senator, in this docket. The Commission is accepting this pleading as a request for reconsideraton and is responding to ORA the issues it raises herein.

[14] *See* Interstate Natural Gas Association of America (INGAA) at pp. 13–16 ("* * * if a competitor of Pipeline A participates in the transportation program, and thereby achieves a competitive edge, Pipeline A may find that it has no choice but to participate, notwithstanding the legal and operational disadvantages.").

[15] *See* Wisconsin Gas Co. v. FERC, No. 84–1358 (D.C. Cir. 1985), slip op. at 38–39, 43.

allocation of risks and revenue responsibilities attributable to the exercise of those rights. Under Order No. 436, each pipeline subject to a CD reduction or conversion will continue to be able to file with the Commission, as appropriate, new rates to reflect the resulting adjustments in revenue responsibility.

In the first year, no CD reduction rights become effective before a pipeline has filed new rates. In subsequent years, a pipeline may specify a single date by which customers must give notice of their CD reductions in order that the pipeline may plan its rate filings accordingly. The CD conversion option is available at any time during the year, upon 60 days' notice by the LDC.

Thus, Order No. 436 leaves entirely to determination in future rate cases the appropriate allocation of risks, including the rate of return and revenue responsibility, among a pipeline and its customers exercising CD reduction or conversion rights.

The Commission rejects those petitions which allege the CD reduction/conversion condition would abrogate contracts. Order No. 436 clearly permits CDs to be reduced or converted *only* if a pipeline chooses to provide Order No. 436 transportation services; every pipeline remains free to choose to provide such services or instead provide other services not subject to the CD reduction/conversion condition, such as transportation or sales service under an individual certificate pursuant to section 7(c) of the NGA.

The Commission rejects those applications for rehearing which assert that the Commission may not impose the CD reduction/conversion condition except after a finding that current CDs are unjust and unreasonable under section 5 of the NGA. The Commission does not doubt it has the authority under section 5 to do so. The Commission need not do so here, because Order No. 436 makes clear that CD reduction/conversion rights are imposed as a *condition* under sections 7(e) of the NGA and 311(c) of the NGPA, not as a *mandate* under section 5 of the NGA.

For the same reason, the Commission rejects the argument that the condition constitutes an unlawful delegation to private parties of its authority to set rates under section 4 or to condition certificates under section 7. Order No. 436 clearly limits CD reduction and conversion to a condition which a pipeline is free to accept or reject as an element of its mix of sales and transportation services. The Commission clearly has the authority to impose this condition generically.[16] Moreover, the conditions are a transitional tool only and will not apply to agreements entered into after the effective date of the rules. *See* § 248.10(b).

Finally, the condition is not legally infirm because it would affect sales service agreements filed with the Commission in connection with initial rates contained in certificates previously issued under section 7 of the NGA. The Commission is not amending previously-issued sales certificates or retroactively adjusting initially-certificated rates; it is merely imposing a condition on transportation service which a pipeline may or may not choose to offer.

That this condition may be exercised so as to affect initially certificated rates or previously certificated sales service is left to determination if and when the conditional rights are exercised and new rates are filed. However, the Commission's ability to may affect sales service agreements through its section 7 conditioning authority is without doubt.[17]

b. *Reasonableness of Non-discriminatory Access Condition.* The Commission also rejects the contention that the non-discriminatory access condition constitutes "economic coercion" and therefore is not a reasonable condition under section 7 of the NGA.

When stripped of its rhetorical weight, the "economic coercion" alleged by applicants is no more than the competitive pressures which already exist in natural gas markets. Interstate pipelines argue that they will be forced to provide Order No. 436 transportation merely because (1) other pipelines are providing the same services, or (2) pipeline customers are requesting the services.[18]

Thus, interstate pipelines appear to be arguing that the Commission has committed legal error by not including in Order No. 436 some sort of exemption or immunity from competition with other pipelines who choose to offer transportation services or pipeline customers who request such services on a non-discriminatory basis.

The Commission not only rejects this definition of "economic coercion," it finds that a change in the non-discriminatory access condition which would have the effect of granting any pipeline an exclusive franchise to provide self-implementing or blanket certificate transportation to any particular class of customers would violate the Natural Gas Act and the Natural Gas Policy Act of 1978.

Sections 4 and 5 of the NGA prohibit unduly discriminatory or perferential practices, and section 7(g) of the NGA makes clear that certificates issued by the Commission are not required to be exclusive. Section 311 of the NGPA was expressly intended by the Congress to encourage the free movement of gas on a self-implementing basis, and carving out exclusive service areas for pipelines providing section 311 services would directly contradict that Congressional purpose.[19]

The Commission believes that the allegation by some applicants that the non-discriminatory access condition is involuntary because the Commission's review of individual section 7(c) applications is not as timely as its review of blanket certificate applications reflects considerable misunderstanding. The Commission has made very clear its intention to carry out its mandates under the NGA and the NGPA to process the Commission's caseload in an efficient and timely manner *consistent with the procedural rights of all parties.* While blanket certificates offer the considerable advantage of authorizing individual transactions in expeditious fashion, the consideration afforded application for the certificate itself is equivalent to that given other section 7(c) applications. Nevertheless, in separate orders issued prior to the effective date of Order No. 436, the Commission made clear that it expects that applications for individual section 7(c) transportation certificates will be processed on a timely basis and may be determined on a delegated basis by the Director of the Office of Pipeline and Producer Regulation *where unopposed.*[20] These delegated orders may be issued in a timely manner following completion of the public notice period and staff review. In fiscal year 1985, the Director of OPPR issued 211 orders in an average of 125 days from receipt to completion, involving individual section 7 pipeline certificates for construction and operation, transportation, sales, and abandonment.

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[16] Id. 54–56.

[17] Atlantic Refining Co. v. PSC of New York, 360 U.S. 378 (1959); FPC v. Transcontinental Gas Pipe Line Corp., 365 U.S. 1 (1960).

[18] *See* INGAA at 13, 16; Natural Gas Pipeline Co. of America at 23; Transcontinental Gas Pipeline Corp. (Transco) at 7–8; *but see* Department of Energy (DOE) at 4–5 (criticizing the Order No. 436 transitional "provisions [that] allow pipelines an opportunity to maintain many of their current transportation services for up to two years before meeting the requirements of the open access rule.").

[19] Committee on Interstate and Foreign Commerce, Report on H.R. 6831, "National Energy Act" (July 19, 1977) at 92–95.

[20] ANR Pipeline Company, Docket No. CP85–621, CP85–674, CP85–713, CP85–714, Order Setting Case for Hearing and Denying Temporary Authorization and Stay (October 31, 1985).

It must be recognized that this time period included the notice period, requests for, and receipt of, supplemental information, and in some instances the resolution of protests. These orders represented 35 percent of the total pipeline certificate orders issued during the same period covering similar proposals.

On the other hand, the Commission has also made clear that, under court precedents, where intervening parties raise material issues of fact, the Commission will set an individual section 7(c) application for hearing under the Natural Gas Act. For example, the Commission notes that this same standard applies to individual transactions authorized under blanket transportation certificates; the Commission's regulations require that such transactions be converted to individual section 7(c) applications *if* protested during the 120-day automatic authorization period and the protest cannot be resolved. The Commission also notes that the NGPA does not provide a *right* to pipelines to provide self-implementing transportation under section 311; it merely provides that the Commission may authorize such transportation under such terms and conditions as it may believe necessary.

Finally, the Commission notes that 132 individual section 7(c) certificate applications or authorization or amendments to prior authorizations were filed at the Commission between October 15, 1985, and November 15, 1985. The Commission considers that it has adequate resources to process these applications on a timely basis in fiscal year 1986, and also has adequate flexibility within its overall resources to respond to such future filings. For this reason, the Commission rejects the allegation that individual section 7(c) certificates are not a realistic alternative to transportation under a blanket certificate or transportation under self-implementing authority. This finding is based not only on the Commission's caseload data, but also on the fact that Order No. 436 does no more than codify the Natural Gas Act's requirement that rates and practices, such as access to transportation and levels of contract demand, must be just and reasonable and not unduly discriminatory or preferential. This requirement applies equally to both Order No. 436 transportation and to transportation under an individual section 7(c) certificate.

2. The Commission's Policies on Take-or-Pay

The majority of pipeline and local distribution company applicants allege error in the failure of the Commission to condition producer access to non-discriminatory transportation on take-or-pay relief.

In the alternative, these applicants assert that Order No. 436 is arbitrary and capricious to the extent it provides for non-discriminatory access and CD reduction/conversion conditions without at the same time "resolving" the liability of pipelines under take-or-pay clauses in their so-called "problem" contracts with producers.

This is error, applicants say, because non-discriminatory access and CD reduction/conversion would expose pipelines to displacement of their own gas sales by gas bought directly in the field. In turn, they say, displacement of their own gas sales by gas transportation would increase the pipelines' take-or-pay liability with their producers for gas not taken under long-term contracts. Thus, they conclude, Order No. 436 does not adequately address this take-or-pay exposure and, therefore, is arbitrary and capricious.

A fundamental criticism of Order No. 436 made by virtually all interstate pipelines and by many of their customers is that the Commission has not dealt in the desired way with non-market responsive contracts between producers and pipelines. The criticism was put succinctly by the American Gas Association (AGA) (at 4):

> The issue is really bargaining power. The Commission is decreasing pipeline bargaining power, but increasing producer bargaining leverage by requiring pipelines to transport unconditionally for producers and by allowing unilateral producer abandonments under new §2.77.

AGA further summarized the criticism of a number of companies [21] when it asserted (at 8) that:

> The non-discriminatory access provisions of new transportation §§ 284.8(b) and 284.9(b), plus new § 2.77 on expedited abandonment, take away a pipeline's only tools for renegotiating these contracts.

All this means is that the company management must evaluate its business options. A pipeline may determine that certain of its existing business arrangements make participation in the new rules unwise or undesirable. The pipeline might wish, prior to committing to the new rules, to alter any of a number of its existing business arrangements, including, to give but a few examples, the extent of its leveraged capital structure, the extent of its non-pipeline business interests or its existing contracts with producers. Nothing in Order No. 436 precludes a company's management from deferring participation until after these existing arrangements are modified.

In essence, these applicants are asserting that their "primary" or "only" tool for modifying contracts with producers is the ability to deny access to interstate transportation or to utilize the abandonment procedures under a Federal law to deny a producer the ability to move gas to market.

The Commission rejects these assertions concerning the effect of Order No. 436, and furthermore finds that conditioning producer access on take-or-pay relief would be inconsistent with the non-discrimination requirements of both Order No. 436 and the Natural Gas Act.

It is obvious that pipelines have been successfully using section 311 and end-user transportation to offset declines which have already occurred in their gas sales.[22] It is also clear that local distribution companies, the prime users of self-implementing transportation services, look on such services as an opportunity to supplement, not replace, the security of their agreements with pipelines for firm sales services at times of peak demand. In other words, LDCs look on gas transportation as one tool to supplement their on-peak firm sales revenues with revenues from interruptible sales to off-peak users.

The reason for this is made obvious by the comments filed in this docket by the AGA. AGA demonstrated that the decline in gas sales demand between 1980 and 1985 is not due to reductions in *peak* demand but to declines in *off-peak* demand by industrial users. This is confirmed by data filed with the Commission by pipelines in FERC Form No. 16. The Form No. 16 data indicates that the sales load factors of most interstate pipelines have declined since 1980 and are at historically low levels.[23]

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[21] *See also, e.g.,* applications of Northwest Pipeline Company, at 20 (pipeline access to transportation systems is really a pipeline's only trading card in seeking to renegotiate producer contracts); Tennessee Gas Transmission, at 6 (offering of transportation services in exchange for contractual concessions are the pipeline's "primary bargaining leverage against the producer"); and Natural Gas Pipe Line Company of America, at 17 (it is imperative for FERC to assist pipelines by providing them "trading chips" in dealing with producers, including conditioning producers' access to the interstate system).

[22] *See* "Voluntary Carriage Through Midyear 1985," Interstate Natural Gas Association of America (November 1985) at 1–3 ("Strong transportation growth offset sales declines during the second quarter of 1985. * * * This increase has occurred despite sizable declines in the pipelines' traditional sales business.").

[23] *See* Comments of AGA at 23, Attachment A. *See also* Final Rule, 50 FR 42413 (Oct. 8, 1985).

If LDCs exercise their option to convert or reduce firm sales service at times of peak demand, the Commission considers it more likely that they will either convert to firm transportation on the same pipeline, or else free up underutilized capacity under uneconomic CDs for use by other customers on the same pipeline. In either case, the pipeline may actually increase throughput and, therefore, gain the net benefits of spreading its fixed costs over greater units of gas service.

In the situation where an LDC actually displaces the pipeline's own system supply gas, the Commission believes that the pipeline's revenues from sales may not necessarily decline and may in fact increase. This is because the LDC is unlikely to switch to transportation unless it can obtain gas supplies cheaper than the pipeline's own system supply. To that extent, the pipeline will be competing with itself as both merchant and transporter, and therefore will seek to adjust its gas purchasing practices so as to lower its weighted average cost of gas *to all customers*. If it does so, it stands to gain additional sales revenues overall, as it competes with other pipelines and other fuel sources for new customers.

However, in the unlikely case that a pipeline is unable or unwilling to seek to compete for its own sales customers who switch to transportation, the Commission rejects the assertion that the pipeline would necessarily bear the risk of increased take-or-pay liability under its contracts with producers.

As Order No. 436 demonstrated at Exhibit O, take-or-Pay prepayments included by pipelines in rate base have remained stable or declined slightly between 1982 and 1985, despite the nearly 200 percent increase in pipeline transportation for LDCs and end users, and the continuing decline in pipeline sales during the same period. Although take-or-pay prepayments are in most cases less than a pipeline's potential take-or-pay liability, such prepayments do indicate the actual experience of the industry over the last few years. This actual data should be considered in contrast with various theoretical projections of such potential liability.

In addition, the Commission makes clear here what it intended in Order No. 436: nothing in Order 436, including the non-discriminatory access and CD reduction/conversion conditions, is intended to affect the rights of parties to gas supply contracts between pipelines and their suppliers, nor to affect the existing jurisdiction of state and local agencies over the production and conservation of natural gas. Thus, to the extent an LDC or end-user contracts with pipelines for transportation services under Order No. 436, nothing in Order No. 436 is intended to abridge the rights and obligations regarding take-or-pay liabilities under contracts between those pipelines and their suppliers.

To the extent these rights and obligations are renegotiated or become the subject of litigation, the non-discriminatory access and CD reduction/conversion conditions are not intended to affect such renegotiations or litigation. To the extent a pipeline in fact incurs additional take-or-pay liability due to transportation services under Order No. 436, nothing in Order No. 436 is intended to preclude the Commission from determining the appropriate allocation of revenue responsibility among the pipeline and its customers in an individual rate case filed to reflect the adjustments in sales and transportation service. Thus, Order No. 436 leaves to individual rate cases the determination of whether a pipeline, or its customers, or both, will bear any risk or revenue responsibility for actual take-or-pay expenditures.

Finally, the Commission rejects the argument that Order No. 436 fails to "adequately deal" with take-or-pay problems. Part B of Order No. 436 reaffirms the April 10, 1985, Statement of Policy issued by the Commission on take-or-pay "buy-outs" negotiated by pipelines and producers. Part B was adopted in the final rule in lieu of the more specific presumption of prudence for certain specified take-or-pay settlement costs proposed in the Notice of Proposed Rulemaking. This more specific proposal was unanimously rejected *as inadequate* by the overwhelming majority of interstate pipeline commenters and producer and LDC commenters as well.

For this reason, the Commission in Part B of the final rule reaffirmed the take-or-pay policy statement and adopted a new policy statement on expedited producer abandonment. This new policy statement provides that the Commission will expeditiously review unopposed applications for abandonment of gas subject to take-or-pay relief or substantially reduced takes. In the latter case, even where take-or-pay relief is not an express element of the abandonment application, the abandonment and sale of the gas elsewhere may make available to former pipeline purchasers the usual contract remedies against the producer for mitigation of damages, including mitigation of take-or-pay obligations.

The Commission notes with interest the study on high-cost gas contracts appended to AGA's petition for rehearing. This appendix indicates the bulk of high-cost "problem" contracts without "market-outs" may be those entered into prior to 1982 involving offshore gas regulated under NGPA section 102. To this extent, Order No. 436 as well as a recent order of the Commission [24] indicate that producers of such gas will not be granted blanket transportation authority independent of that provided by pipelines on a voluntary basis under Order No. 436. Producers of such gas may be able to obtain blanket authority to abandon their service obligations to pipelines and sell such gas elsewhere. However, voluntary release of such gas may be the subject of take-or-pay negotiations. In fact, Order No. 436 positively encourages on-going and potentially successful private negotiations between the parties regarding their take-or-pay rights and obligations, such as the recent contract settlement between Columbia and its customers and suppliers.[25]

Finally, regardless of whether these three assertions by petitioners are true or not, the Commission declines to condition producer access for another reason: conditioning producer access on take-or-pay relief would be patently inconsistent with the non-discriminatory access requirements of Order No. 436 as well as sections 4 and 5 of the NGA.

Where a willing producer-seller and a willing buyer agree to a contract for the sale of gas, it would be unduly discriminatory for a pipeline to refuse to provide transportation service for the gas under Order No. 436, merely because the producer and pipeline cannot agree on take-or-pay relief in another contract. Such a refusal would discriminate not only against the producer-seller, but also against the willing buyer who has never been a party to the take-or-pay contract in the first place.

Moreover, nothing precludes any gas shipper, whether end-user, LDC, or independent broker, from negotiating *on its own behalf* a condition in a "self-help" gas sales contract which would require the producer-seller to grant take-or-pay relief to the shipper's pipeline supplier before the shipper takes delivery of the gas. This is especially true where the shipper is attempting to purchase gas supplies that are currently under contract to a pipeline, but are not

[24] Tenneco Oil Co., *et al.*, Order Permitting and Approving Limited Term Abandonments and Granting Certificates, Docket No. CI85-633-000, *et al.* (Oct. 29, 1985).

[25] *See also* "Columbia Gas Says 4 Suppliers Reduced Prices," *Wall Street Journal*, November 12, 1985.

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being taken because of the pipeline's reduced need for those gas supplies.

For all these reasons, the Commission declines to condition producer access to non-discriminatory transportation on take-or-pay relief.

IV. Discussion of Transportation Issues (18 CFR Part 284)

A. Non-Discriminatory Access Under §§ 284.8(b) and 284.9(b)

1. Legal Authority Under NGA Section 7(e)

In Order No. 436, IV. A., the Commission defended the non-discriminatory access condition against attacks that it equates with the imposition of mandatory carriage requirements by explaining that the requirement that pipelines transport natural gas without undue discrimination is only "a *condition* on the certification or authorization of certain self-implementing transportation services which a pipeline may voluntarily choose to perform or not."

Some applicants believe that the mandatory nature of the decision to provide transportation services under Order No. 436 is further emphasized by the Commission's "threats" regarding the adverse consequences of a refusal to provide transportation services under Order No. 436. (*See* Tennessee Gas Pipeline at p. 7, NGPL at p. 25, Texas Gas Transmission at pp. 20–21.) These applicants cite the Commission's statements in Order No. 436 that it "fully intends to closely scrutinize projected levels of service and rates of return filed in rate cases as a means of assuring that pipelines bear their fair share of the risks of maintaining pipeline throughput" (Order No. 436 at IV. A.) and that the Commission intends to establish imputed sales levels and to remove underutilized facilities from pipelines' rate bases as incentives for pipelines to offer transportation services to maintain pipeline throughput.

Further, as noted by NGPL (at p. 25), there is no guarantee that non-discriminatory access conditions will not be attached to certificates issued in traditional section 7 proceedings, as the Commission indicated in Order No. 436 (at IV. A.) that it might on a case-by-case basis.

Several applicants emphasize that only Congress can impose common carrier status upon contract carriers [26] and that Congress has consistently refused to require mandatory carriage or to impose common carrier status on natural gas pipelines, as recognized by the Commission in Order No. 436 (at IV. A.).[27] Tennessee Gas Pipeline notes that in hearings on H.R. 11662, a predecessor to the bill that became the Natural Gas Act of 1938, Congressman Cole and Dozier A. Devane, Solicitor of the Federal Power Commission, clearly stated that natural gas pipelines would not be common carriers:

> MR. COLE: Where you find a line is not transporting gas to its fullest capacity, the idea is to compel that line to take gas from anyone in the field where the pipeline gets its gas?
>
> MR. DEVANE: There is no provision in here which gives the Commission the authority to make them take gas, no; they would have to have available at the source sufficient gas to fill the pipeline to its capacity.
>
> MR. COLE: They are not made common carriers.
>
> MR. DEVANE: No; not the gas pipelines.[28]

As evidence of Congressional reluctance to impose common carriage requirements on pipelines, several petitioners [29] point out, as discussed below, that in section 602(b)(2) of the NGPA, the Congress specifically provided that:

> *Common Carriers*—No person shall be subject to regulation as a common carrier under any provision of Federal or State law by reason of any transportation . . .
>
> (2) Authorized by the Commission under section 311(a) of this Act.

Further the applicants emphasize that the only instances in which Congress has empowered an agency to require natural gas pipelines to render services are (1) the Outer Continental Shelf Lands Act of 1978, 42 U.S.C. 1334 (e) and (f), which requires that pipelines authorized to transport OCS gas provide transportation on a non-discriminatory basis; and (2) section 7(a) of the Natural Gas Act which authorizes the Commission to order a natural gas company to provide sales service to a local distribution company if (a) no undue burden is placed on the natural gas company, and (b) there is no resulting impairment of the Company's ability to render adequate service to its other customers.

INGAA (at p. 15) and CIG (at p. 36) further argue that the court's mandate in the *Maryland People's Counsel v. FERC* cases, 761 F.2d 768; 761 F.2d 780; 768 F.2d 450 (D.C. Cir., 1985) and consolidated case 85–1086 did not require that the Commission adopt regulations that indirectly impose common carriage.

These applicants assert that pipelines and their customers should be permitted to negotiate transportation access on terms that recognize the individual circumstances of particular systems. There should be some recognition of the long-standing contractual relationships among the customers themselves. Order No. 436 would, they assert, abruptly cancel these contractural relationships and cause cost-shifting among customers. However, desirable the objective of non-discriminatory transportation, reasonable latitude should be permitted to pipelines and their customers to work out arrangements that would clearly pass non-discrimination tests without drastic economic consequences either to the pipeline or its customers.

In short, these applications claim that: (1) Order No. 436 is coercive and hence in fact an involuntary program; (2) the non-discriminatory access condition, because it is involuntary, effectively mandates carriage and hence unlawfully turns pipelines into common carriages; (3) the Commission erred in determining that it is *per se* unduly discriminatory for a pipeline to refuse to transport gas that displaces its own sales; and (4) the rate and CD adjustment conditions are unreasonable.

The Commission considered most of the arguments raised by the applicants which suggest that the Commission lacks legal authority to apply the non-discriminatory access condition to interstate transportation under the NGA prior to issuing Order No. 436. Further, the Commission reviewed the requirements of the NGA, the legislative history of the NGA, and relevant case law.

Section 7(e) of the NGA, which was added as an amendment to the act in 1942, states, in pertinent part, that:

> The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

According to the Supreme Court:

> The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges . . .

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[26] *See* Northern Natural at p. 5, *citing* FCC v. Midwest Video Corp., 440 U.S. 689, 702–709 (1978) and Florida Power and Light Company v. FERC, 660 F.2d 668 (5th Cir. 1981).

[27] *See, e.g.*, Tennessee Gas Pipeline at p. 8; Northern Natural at p. 5; NGPL at p. 22; Florida Gas Transmission at p. 14; and CIG at p. 37.

[28] Tennessee Gas Pipeline at p. 8, quoting Roach & Gallagher, *A Compilation of the Legislative History of the Natural Gas Act* (1935—July 1, 1968) Part I, at page 70.

[29] *See* Tennessee Gas Pipeline at p. 8; Northern Natural at p. 5.

. . . In view of this framework in which the Commission is authorized and directed to act, the initial certification of a proposal under section 7(e) of the Act as being required by the public convenience and necessity becomes crucial. This is true because the delay incident to determination in section 5 proceedings through which initial certificated rates are reviewable appears nigh interminable.[30]

Thus, as stated by the Commission in Order No. 436 (at Section IV.A.), the Commission's certificate and conditioning authority is the means by which it effectuates the purpose of the NGA to underwrite just and reasonable rates to the consumers of natural gas.[31] Any attack on a condition in a certificate issued by the Commission must confront the well-established principle that generally the Commission has extremely broad authority to condition certificates of public convenience and necessity.

While determined to use the full breadth of its section 7 conditioning authority to end discriminatory transportation practices and thereby fulfill its obligation under sections 4 and 5, the Commission recognized that its actions could neither directly nor indirectly impose common carrier obligations on pipelines in violation of the NGA.[32]

Further, the condition only applies with regard to each of the individual types of Order NO. 436 transportaiton seservice offered. Therefore, for example, an interest pipeline may transport under the Part 284, Subpart G blanket certificate program without becoming subject, by reason of such blanket certificate transportation, to an obligation to provide service under Subpart B of Part 284 and vice versa. Further, the non-discriminatory access provisions of §§ 284.8(b) and 284.9(b) *per se* do not cover transportation under existing individual section 7 certificates or new individual section 7 certificates filed outside of the optional expedited certificate procedure.

The Commission agrees with those petitioners that state that the court's mandate in *Maryland People's Counsel* v. *FERC,* 761 F.2d 768 and 768 F.2d 780 (D.C. Cir. 1985), was not intended to require that the Commission adopt mandatory carriage regulations. In any event, the Court's mandate clearly did judicially recognize all that is necessary for present purposes, that is the Commission has the authority to impose non-discriminatory access conditions on piple line transportation.[33]

The Commission determined that the non-discriminatory access conditions in Order No. 436 did not amount to a "direction" or a "mandate" to pipelines to transport for others as an "affirmative duty" because the condition is only a condition. As it stated in the order: "a *condition* on the certification or authorization of certain self-implementing transportation services which a pipeline may *voluntarily choose to perform or not,* strictly at its own option." Thus, Order No. 436 does not "direct" or "mandate" a pipeline to do anything. Further, the non-discriminatory access condition, even when accepted by a pipeline as part of its self-implementing transportation program, does not impose any "affirmative duty" on a pipeline to transport. It only requires that when a pipeline *does* choose to transport on a self-implementing basis, it must provide those transportation services in a non-discriminatory manner. Nor does the condition cover all transportation services and thus operate as mandatory *in effect.* A pipeline remains free to seek authorization for other transportation not covered by the condition and the Commission will review them on a case-by-case basis.[34]

Furthermore, the Commission is not dissuaded by the comparisons made by several petitioners including, e.g., NGPL (at pp. 12, 28) and City of Willcox, Arizona (at p. 35), between Order No. 436 and the legislative proposals to mandate common-carriage transportation that have been considered, but not enacted by Congress over the years. Nor does the Commission believe that Order No. 436 is inconsistent with section 602(b)(2) of the NGPA, which provides that no person shall be subject to regulation as a common carrier by reason of any transportation authorized under section 311(a) of the NGPA. In the first place, the Commission notes that neither the NGA nor the NGPA defines "common carrier." Nevertheless, the provisions of

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[30] Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 378, 388–89 (1959) (CATCO).

[31] Id. at 389.

[32] An important factor in the Commission's determination that it does not have the authority to mandate common cariage was the legislative history of sections 303 and 304 of Title III of H.R. 5423 which was introduced on February 6, 1935, (74th Congress 1st Session) by Representative Sam Rayburn, Chairman of the House Committee on Interstate and Foreign Commerce.

Sections 303 and 304 of H.R. 5423 provided in pertinent part (emphasis added):

Section 303(a). *It shall be the duty of every distributor to* furnish natural gas, to exchange natural gas with, and *transmit natural gas for any person* upon reasonable request therefor; and to furnish and maintain such services and facilities as shall promote the customers, employees, and the public, and shall be in all respects adequate, efficient and reasonable . . .

Section 304. Whenever the Commission after notice and opportunity for hearing finds such action necessary or desirable in the public interest, *it may by order direct a distributor* to make additions, extensions, repairs, or improvements to or changes in its facilities, to establish physical connection with the facilities of one or more persons, to permit use of its facilities by one or more persons, or utilize the facilities of, sell natural gas to, purchase natural gas from, *transmit natural gas for,* or exchange natural gas with *one or more other persons* . . .

. . . [T]he Commission may prescribe the terms and conditions of the arrangement to be made between such persons, including the apportionment of reimbursement reasonably due to any of them.

Sections 303 and 304 must be read in the context of sections 4(b) and 5(a) of the NGA as enacted. In contrast to the affirmative duty of unenacted section 303 of H.R. 4523, section 4(b) of the NGA flatly prohibits "any undue preference or advantage" and "any reasonable difference" in service or as between classes of service. In contrast to the discretionary proposed authority in unenacted section 304 of H.R. 5423 to *order* transportation, section 5(a) of the NGA contains *no express authority to order transportation.* Instead, section 5 limits the Commission to fixing prospectively by order the "just and reasonable . . . rule, regulation, practice or contract" to be observed.

[33] In its order on the blanket certificate program (No. 84–1090), the court noted (761 F.2d at 780 n.19) that MPC's plea that blanket transportation certificates be conditioned on non-discriminatory access accords with the recommendation of the Department of Energy: "To achieve the benefits of a properly developed spot market for natural gas . . . FERC should use its authority over natural gas transportation to require pipeline companies to provide carriage on a non-discriminatory basis whenever there is idle pipeline capacity." Second DOE Section 123 Report at p. 82. The court further noted that the Commission does not question that it has such authority, *citing* Tennessee Gas Pipeline Co. v. FERC, 680 F.2d 212, 214–15, (D.C. Cir. 1982); Transcontinental Gas Pipeline Corp. v. FERC, 589 F.2d 186, 190 (5th Cir. 1979) (invoking "the well-established principle that generally the Commission has extremely broad authority to condition certificates of public convenience and necessity"), *cert. denied,* 445 U.S. 915 (1980).

[34] Several petitioners argue that Order No. 436 is similar to regulatory programs rejected by the courts in Moss v. CAB, 430 F.2d 891 (D.C. Cir. 1970) and Consolidated Edison Company of New York v. FPC, 511 F.2d 372,377 (D.C. Cir. 1974). The Commission does not believe these cases are germane in this instance. In *Moss* the Civil Aeronautics Board failed to comply with the public notice and hearing requirements of the Federal Aviation Act in prescribing a fare formula for domestic airlines. Moreover, the court found that the formula actually amounted to a prescription of rates, because the Board admitted that the pressures on carriers to file conforming rates was "great if not irresistable." In a similar vein, the court held in *Consolidated* Edison that if end-use curtailment plans were not filed voluntarily by pipelines but were the result of coercion by the Federal Power Commission the plans would be invalid, because the Commission could not impose a change on an existing tariff without complying with section 5 of the Natural Gas Act.

Neither of these cases applies to the circumstances of Order No. 436. In the first place, Order No. 436 was issued in compliance with applicable rulemaking procedures, which involved extensive public participation. Moreover, as the Commission has already explained, the self-implementing transportation program is voluntary and indeed alternative authority is fully available under traditional Natural Gas Act procedures.

Order No. 436 do not regulate pipelines as common carriers, as that term is commonly understood.[35]

For instance, even though Order No. 436 requires, as the cited legislative proposals would have required, non-discriminatory access, the all-important distinction is that Order No. 436 allows a pipeline the option of applying to provide transportation services under individual NGA section 7 certificates. Order No. 436 also gives a pipeline that has opted for self-implementing transportation the opportunity to cease such transportation and resume its status as a merchant. None of the mandatory common-carriage proposals considered heretofore by Congress have included any equivalent option. While a transportation application under the regular NGA section 7 procedures is open to challenge on the grounds that approval of the application would result in undue discrimination, only the individual transportation arrangement covered by the pipeline's applications is at issue in a regular NGA section 7 certificate proceeding and, therefore, denial of a certificate in that proceeding does not prejudice certificate applications by the same pipeline in other proceedings. This option, unlike the legislative proposals for common-carriage, effectively allows a pipeline the discretion to determine whether or not to become a transporter of gas. Further, while allegations of unduly discriminatory effects will be considered in regular NGA section 7 transportation certificate proceedings, a regular NGA certificate is not conditioned on a pipeline's providing transportation to all shippers requesting service. For example, if the Commission should determine that approval of a regular NGA section 7 transportation certificate application would cause undue discrimination to another party, the discrimination could be cured by an amendment to the application as it affects a particular additional shipper.

The Commission cannot agree with those applicants that insist that it is not unduly discriminatory for a pipeline that transports gas to refuse to transport gas that displaces the pipeline's sales. This is precisely what the court found objectionable in *Maryland People's Counsel v. FERC*, 761 F.2d 780 (D.C. Cir., 1985). Pipelines that were willing to transport gas for their fuel-switchable customers were not required to transport for their captive sales customers that were incapable of switching fuels.

2. Effects of Non-Discriminatory Access

a. *On Order No. 319 Transactions.* Certain of the applications for rehearing request that the Commission amend the final rule to allow new transactions to provide transportation for local distribution companies and high-priority end users, previously authorized under NGPA § 311 and Order Nos. 319 and 60, to continue to be made without requiring interstate pipeline companies to provide non-discriminatory access. Philadelphia (passim), CIG (at pp. 25–28) and BUG (at pp. 3–8) assert that the access condition is inconsistent with the NGPA and is not required by the *Maryland People's Counsel* decisions of the D.C. Court of Appeals. Huffco (at pp. 17–18) contends that certificates for the transportation of gas to high-priority end users are required to be issued by section 7(c)(2) of the NGA.

Existing transportation for high-priority end users that had been authorized under § 157.209(a) of the regulations has been permitted to continue for the term of the transportation arrangement, subject to the terms and conditions existing at the time it was authorized. *See* § 284.223(g). New high-priority end-user transportation, section 311 transportation for intrastate pipelines and local distribution companies, transportation for end users under § 157.209(e), and transportation for interstate pipelines, are subject to the express requirement that the transporting pipeline provide non-discriminatory access for all shippers and the various other requirements of § 284.7 *et seq.* The Commission has determined that the practice of restricting access to transportation is unduly discriminatory and preferential and has prevented consumers from obtaining the lowest reasonable rates for both gas and transmission. With that determination, and in view of the many other reasons expressed in the final rule for requiring open access for future transportation, it would be inconsistent with the whole rationale underlying the final rule (and, in the Commission's view, with the rationale underlying the *Maryland People's Counsel* cases as well) to permit new transactions to be initiated for service without adherence to the requirements of the final rule.

BUG alleges that by imposing new conditions on the transportation of gas under section 311 to local distribution companies, the rule will deprive it of gas at a time when it is most needed, during the coming winter heating season. BUG claims that the new conditions should not be made effective until after the winter is past.

BUG advises that several pipelines now transporting gas under section 311 have indicated that they do not intend to transport long-term and non-SMP gas supplies after December 14, 1985. However, BUG has not shown that gas service from its suppliers will not be available in fact. At most, its filing reflects only that some changes may be necessary in the prior terms and conditions of its transportation arrangements. Moreover, the rules allow most transportation services which had commenced on or before October 9, 1985, to continue under the pre-existing conditions (except as to rates and reporting) until the earlier of the expiration of the term of the transportation agreement or October 9, 1987. These transition provisions should operate to diminish any discontinuance of service. Finally, pipelines now transporting long-term gas supplies under section 311 may also apply for NGA section 7 certificates to continue such transportation.

Section 7(c)(2) of the NGA provides that the Commission *may* issue a certificate for high-priority transportation. It does not *require* it, and certainly does not preclude certificates that are issued from being subject to a pipeline's providing nondiscriminatory access.

Section 284.10(a) is modified to allow new transportation arrangements under section 311 of the NGPA to be commenced or continued for a transitional period through February 15, 1986, without triggering the CD reduction/conversion condition. The purpose of this change is to extend through the major portion of the 1985–1986 winter heating season the transition period intended by Order No. 436. This transition period is intended to permit different segments of the industry to adjust their commercial arrangements to take advantage of the new opportunities under Order No. 436, without unduly disrupting transportation during the winter heating season.

b. *On Intrastate Pipelines.* The State of Louisiana (at pp. 4–9) asks that the Commission clarify that the non-discriminatory access condition only applies to interstate service and not to purely intrastate service even if the latter service is performed "on behalf of" an interstate pipeline acting as a broker, seller, or off-system seller.

As framed, the question answers itself for if the transportation is, in fact, purely intrastate, then the Commission lacks

[35] Since Order No. 436 does not have the effect of imposing common carriage status on contract carriers, cases cited for the proposition that only Congress can impose that status (FCC v. Midwest Video Corp., 440 U.S. 689, 702–09 (1978) and Florida Power and Light Co. v. FERC, 660 F.2d 668 (5th Cir. 1981) are not applicable.

jurisdiction over the transportation. The Commission declines, however, to render any generalizations about jurisdictional status. Persons may seek a declaratory order if they have questions regarding specific circumstances.

Louisiana Intrastate (at pp. 6–7), Termac (at pp. 4–6), Tenngasco (at pp. 9–10) Amoco Gas (at pp. 2–3), and Louisiana Resources (at 5) argue that the non-discriminatory access condition is arbitrary and discriminates against intrastate pipelines because they have no option to avoid that condition other than to become subject to the NGA or to completely withdraw from the interstate market. Amoco Gas also asserts that a NGPA section 502(c) adjustment is an alternative as well. Interstate pipelines, they assert, have an advantage because they can opt for a NGA section 7(c) certificate without the condition. Tenngasco, for example, urges that, if the condition remains, the rule should be modified to reinstate the prior approval application procedure that the Commission removed (§ 284.127). In that way, they would be permitted to seek prior approval of section 311 transportation without the non-discriminatory condition. Termac (p. at 8) adds that section 311(a) of the NGPA reflects Congress' intent that not everyone has a right to participate in a section 311 transaction.

The Commission does not agree that the non-discriminatory access condition is arbitrary or discriminates against intrastate pipelines. Contrary to some petitioners' assertions, section 7(c) certificates are available to intrastates on a "limited jurisdiction" basis without the full panoply of NGA rate and service obligations. That is, jurisdiction extends only to the specific service authorized, and the interstate remains non-jurisdictional with respect to its remaining operations (*See, e.g., United Gas Pipe Line Co.*, 1 Ferc ¶ 61,247(1977)).

Moreover, there are various differences in the Commission's treatment of intrastate pipelines that counter-balance the alleged disadvantage they have. In recognition of the different circumstances of intrastate pipelines, the Commission has given intrastate pipelines the advantage of being able to choose whether or not to offer firm transportation, interruptible transportation, or both.[36] Participating interstate pipelines must provide both types of service. Moreover, interstate pipelines who accept optional expedited certificates for transportation also must accept the non-discriminatory access condition.[37] And, among other counter-balancing differences, interstate pipelines alone are subject to the CD reduction and conversion provisions of § 284.10.

Finally, the Commission notes that §§ 284.107 and 284.127 were dropped because the reasons for their existence (the system supply test and the two-year limitation) were eliminated by the final rule. But there is no reason to reinstitute them as a means of avoiding the non-discriminatory access provision. The nondiscriminatory access condition serves a valid regulatory purpose of being the first line of defense against arbitrary or exclusionary interstate transportation by any participating pipeline, whether inter- or intrastate.[38]

For these reasons, it would be counter-productive to reinstitute the prior approval procedure under section 311(a) just to provide a means for intrastates to avoid the condition that is the very cornerstone of the entire program.

c. *On Curtailment Plans of Interstate Pipelines.* Texas Gas, Northwest Natural and APGA assert in their requests for rehearing that Order No. 436 inadequately considers the effects of the non-discriminatory access condition (§ 284.8(b) of the final rule) on both capacity-related and supply-related curtailments. Texas Gas (at p. 28) is concerned that the final rule, by affording firm sales and firm transportation customers equal access to pipeline capacity during times of capacity-related curtailment, will induce low-priority sales customers to convert their existing sales entitlements to firm transportation. Texas Gas maintains that, as a result, transportation for low-priority end users will occur at the expense of higher-priority sales customers.

If pipelines manage their systems prudently the Commission would expect capacity-related curtailments to continue to be relatively rare. Capacity-related curtailments would only be expected to impact on firm service customers in the event of a pipeline's overbooking of capacity or short-run *force majeure* conditions. Also, *force majeure* conditions, which by their very nature are unexpected and temporary, are unlikely to alter a sales customer's long-term gas purchasing profile. In addition, pipeline practices in booking firm transportation service and assessing capacity reservation charges are subject to prudency review under sections 4 and 5 of the Natural Gas Act and remedies for overbooking can be fashioned in individual cases by the Commission.

A pipeline overbooking its firm pipeline capacity could also be subject to contractual liability in the event that it was unable to provide the contracted level of service. Nothing in the Commission's final rule operates to affect the contractual provisions between the parties that may govern liability relating to a pipeline's overselling or overbooking its pipeline capacity.

Thus as a practical matter, the Commission expects that the non-discriminatory access condition of the final rule will have slight effect on pipeline curtailment plans for gas supplies.

Northwest Natural (at p. 12) and APGA (at pp. 21–26) are both concerned that under the conversion option of § 284.10 of the final rule, sales customers serving essential agricultural users and process or feedstock requirements will lose the curtailment priority established for such end uses under sections 401 and 402, respectively, of the NGPA. They both foresee situations in which a firm sales customer will convert its service to firm transportation service and lose a high-priority claim to the pipeline's system capactiy. APGA goes on to urge that in the event of capacity curtailments the Commission requires that a pipeline allocate its capacity to both sales and transportation customers on the basis of end-use profiles. To do otherwise, it argues, violates Title IV of the NGPA.

At the time the NGPA was enacted, the curtailment plans on file with the Commission generally governed only the interruption of sales. In addition, most of these plans applied only to supply shortages, not capacity limitations. If Congress intended to require, as APGA suggests, that end-use curtailment be imposed on all transportation service as well as on sales, it would have done so explicitly. On the contrary, the Commission believes that in conferring high-priority status under NGPA sections 401 and 402 on certain end uses, it was intended that such priorities were to be applied in the context of the curtailment plans previously approved by the Commission. (Note that even before Order No. 436, customers could substitute transportation service for sales if the pipeline agreed to it and applied for appropriate authority under the Natural Gas Act.) If a pipeline's approved curtailment plan applies only to sales, then sales for essential agricultural, process or feedstock requirements, are entitled to the NGPA

[36] 50 FR 42434.

[37] 50 FR 42436.

[38] 18 CFR 157.102(a)(2).

priority, but transportation of shipper-owned gas is not affected. This interpretation is supported by the NGPA conference report, which states in relevant part:

> The conferees were concerned that these changes not burden the Commission with lengthy proceedings which might throw existing curtailment plans into disarray . . . . For example, the conferees do not intend the reopening of curtailment plans for this limited purpose to result in adoption of a new base year for curtailment purposes.

Joint Explanatory Statement of the Committee of Conference, Title IV, section 401, I FERC Statutes and Regulations ¶ 3101 at p. 3121.

AGPA maintains that in the event of supply-related curtailments, a pipeline transporter should be able to call on transportation gas owned by others and use that gas to meet its own high-priority sales requirements.

As the Commission stated in Order No. 436, 50 Fed. Reg. at 42,436, during the supply curtailment era it never allocated gas supplies owned by individual shippers among sales customers of the transporting pipeline. *See Sebring Utilities Commission v. FERC,* 591 F.2d 1013 (5th Cir. 1979). Aside from a declared emergency under section 303, nothing in the NGPA requires this. To do so would be inconsistent with the purpose of NGPA sections 311 and 312, which was designed in part to encourage transportation of excess gas supplies to relieve markets curtailed because of supply shortages.

Texas Gas suggests that the first-come, first-served requirement for the allocation of capacity to potential shippers means that in the event of capacity-related curtailments, pipelines are required under the final rule to interrupt transportation on a "last-on, first-off" basis. Texas Gas misunderstands the applicability of the first-come, first-served requirement. This stricture is to be followed in *contracting* for available capacity. Curtailment resulting from insufficient transportation capacity among firm contract customers because of pipeline overbooking is doubtful in light of contractual liability that may result. Capacity-related curtailment, if occurring at all, is likely to be caused by *force majeure* conditions, such as winter freeze-offs, compressor station failure, line failures, and the like. Incidents such as these generally impact on particular segments of a pipeline's system and overall system capacity may be unaffected or affected to a lesser extent. Remedial measures employed by the pipeline-transporter are usually of short duration, localized and traditionally affect only a small portion of its overall operations. Thus, if capacity is insufficient to meet demand, the final rule allows pipelines to allocate the limited capacity of their systems among their firm and interruptible customers—whether sales or transportation customers—on the same basis that they allocated capacity prior to the rule.

d. *On Prices of Natural Gas.* Laclede (at p. 20) asserts that, while distributors must be assured of long-term supplies at a reasonable cost to meet the needs of their high-priority markets, Order No. 436 gives no such assurance. Laclede argues that, regardless of Order No. 436, the only gas that distributors will be able to buy at a reasonable price likely will be short-term supplies on the spot market. Indeed, Laclede believes the cost of long-term supplies will be greater than that of current supplies. This projection is based on the assumption that the large producers, which alone can provide long-term reliable supply, will demand a price premium for selling gas to distributors because (1) the distributor will demand greater supply reliability than that usually needed by a pipeline buyer that has many supply sources; (2) a distributor will be a less predictable and less reliable purchaser than the much larger pipeline since a distributor is unable to take gas at even flow rates and perform other load balancing functions as efficiently as a pipeline; and (3) producers, in the hope that gas prices will rise, would rather sell their least expensive gas to low-priority end users, who will buy on a short-term basis, than bind themselves to low prices under long-term contracts with distributors.

Laclede (at p. 21) further argues that, even if distributors can buy reasonably-priced long-term supplies in the field, the Commission still assumed too much in issuing Order No. 436. Laclede emphasizes that bottlenecks in the pipeline system can prevent the transmission of gas to distributors' markets. Further, Laclede believes that Order No. 436 assumes unrealistically that available pipeline capacity will be in the right place to transport distributors' gas purchases to them.

In sum, Laclede attacks what it believes to be the basic assumptions underlying Order No. 436: that effective pipeline-to-pipeline competition exists and will increase and that distributors will be able to compete effectively with pipelines in purchasing competitively-priced gas from producers. Further, Laclede believes that producers that have gas supplies that cannot be marketed readily at today's average gas prices will be encouraged by Order No. 436 to sell lower-priced gas to the competitive industrial boiler fuel market which will purchase such supplies on a short-term basis. Under Laclede's scenario, captive high-priority markets will not get a fair share of lower-priced gas because the distributors cannot meet their long-term commitments by purchasing lower-priced gas, which producers would rather sell on a short-term basis. Producers do not have the fear that distributors may switch to other fuels, which would provide a contervailing incentive to provide lower-priced supplies to distributors, since the price of alternative fuels to distributors' residential and commercial markets would be much higher (after factoring in the costs end users would incur in converting facilities to alternative fuel-use capability) than the price charged to large industrial customers.

Laclede (at p. 23) criticizes Order No. 436 for failing to provide effective restraints against monopolistic pricing. Laclede believes that the Commission is wrong when it claims [39] that, having given pipelines a real opportunity to enter one another's markets, it can deregulate the prices that pipelines charge for much of their gas. This position is based on Laclede's assumption that the new industry structure created by Order No. 436 will not result in effective competition. Laclede states that, because of Order No. 436, the price of gas in its market could rise higher than the price of electric heat.

Southern Natural Gas Company (at p. 17) also believes the Commission's conclusions regarding the spot market for gas are incorrect. This petitioner states that the Commission is wrong in relying on the availability of spot market gas as a reliable long-term gas suply alternative since that gas presumably will be bought up by pipelines' customers that exercise their contract demand reduction rights under § 284.10.

Southern Natural (at p. 18) states that, unlike with oil and coal, there is no ability to stock-pile or to provide for any reasonable volume of gas to serve the nation's gas needs for a significant period; these requirements are met in the long run, not by gas deliverability, but by gas reserve addition. Therefore, according to Southern Natural, the Commission must distinguish excess gas deliverability from gas reserve inventory. Southern Natural states further that, whether the emergence of the current spot market for gas production results from excess deliverability, conservation, reduced gas markets, or other factors, the gas

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[39] *See* Notice Requesting Supplemental Comments Mimeo at 78–82.

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markets cannot have a long-term reliable gas supply based on the assumption there will be a continuing spot market for gas production. But, according to Southern Natural, such an assumption is implicit in Order No. 436, since it allows customers of pipelines maximum flexibility in tapping different sources of gas.

Southern Natural (at p. 19) alleges that the Commission has provided no findings to support the conclusion that gas reserves will be sufficient to allow a continuation of spot market sales at the current 2 to 2.5 trillion cubic feet per year level. According to Southern Natural, 85 percent of current spot market sales may be from excess deliverability or produced from existing committed gas reserves, although Southern Natural (at p. 20) admits it is unlikely that spot market sales depend so heavily on these sources of supply. It nevertheless criticizes the Commission for not explaining in Order No. 436 the sources of the 2 to 2.5 trillion cubic feet of gas currently moving in the spot market. Furthermore, Southern Natural (at p. 21) asserts that the Commission has not gathered either the individual or industry-wide data required to sustain a conclusion that the current spot market will be viable for the long run. In this regard, Southern Natural states that current gas consumption statistics are not a substitute for the facts on the volumes of gas in identified reserves.

Furthermore, Southern Natural (at p. 21) argues that, while the Commission recognizes that purchasers of gas are seeking the same opportunities to swing from one gas supplier to another, as partial requirements customers currently do, the Commission has failed to evaluate the consequences that customers' switching of suppliers will have upon the ability of pipelines to continue to offer reliable, long-term service to their sales customers in the future. Southern Natural (at p. 22) asserts that the comparative shopping by customers that is encouraged by Order No. 436 will make it virtually impossible for a pipeline to make efficient business judgments in acquiring gas reserves to meet the needs of its customers in the future since the pipeline will have no way of accurately forecasting the portions of those customers' demands for natural gas that they ultimately will expect the pipeline to satisfy. Southern Natural (at pp. 22–23) further states that, despite the Commission's assertions regarding the increase in storage capacity in the United States, a pipeline's knowledge that available storage capacity is sufficient to hold any gas it buys and cannot resell is not a reasonable basis, as the Commission seems to contend it is, for the pipeline to contract for the reserves needed to supply its customers' firm, peak-day requirements without having some assurance that its customers actually will purchase at least a certain level of supplies from the pipeline during the remainder of the year.

The Commission disagrees that it has not adequately supported its conclusions. There is sufficient pipeline-to-pipeline competition to justify expanding the opportunities for pipelines to transport into one another's traditional markets and for gas purchasers to reduce their contract demand entitlements in order to purchase gas from all available supply sources.

While it is true that pipelines generally continue to be fairly fully utilized during peak period operations, as indicated in Order No. 436, total deliveries through their systems have fallen sharply from the 1972–1973 period. This phenomenon has been reflected in lower annual load factors for interstate pipelines and higher unit costs of providing service. It has also meant a significant increase in the amount of capacity available for transportation outside of the periods of peak demand.

Further, the maturing of the pipeline industry in recent decades has meant that there is now an interconnected nationwide pipeline grid. This enables increasingly efficient transportation transactions through backhauls, displacement and exchanges, which enable the "transportation" of a particular supply to a particular purchaser that is far removed from the supply and indeed may not even be physically connected with the field supply source. Thus, even a customer that actually has only one supplier nevertheless has access to gas supplies located in virtually any producing area in the Nation, if the customer has non-discriminatory access to transportation services under just and reasonable rates. Conversely, a producer of gas—given the same non-discriminatory access to the transportation grid—now can seek markets for its gas virtually anywhere in the Nation.

In view of the above consideration, the Commission believes, contrary to Laclede's and Southern Natural's claims, that many LDCs and other purchasers will be able to arrange for transportation of competitively-priced gas supplies by their traditional pipeline suppliers, even if the supplies are not directly accessible to those pipelines. The Commission recognizes, however, that some LDCs, including some that exercise their § 284.10 contract demand reduction and conversion options, will not be able in all instances to arrange for transportation of lower-priced gas that they locate.

Admittedly, the pipeline configuration of those suppliers with which a customer is connected with sometimes make transportation of their customers' self-help gas purchases infeasible. Further, every gas purchaser will not be able to take advantage of the pipelines' expanded authority and its obligation to transport whenever the LDC can acquire cheaper gas.

An LDC, like Laclede, that is willing to accept that gas generally may be available in plentiful supply but at uneconomic prices or inaccessible to the LDC's pipeline suppliers, will have to consider these factors when deciding whether to exercise its option under § 284.10. In any event, the failure of Order No. 436 to guarantee to every gas purchaser that it always will be able to arrange for transportation of lower-price gas supplies does not diminish the substantial benefits to LDC and end users as the result of Order No. 436. The final rule is designed to provide all current and future gas customers with a broader array of supply options; it is not designed to guarantee that any one supply option is necessarily cheaper and/or less risky than all others, or that all potential shippers will be able to contract for and have transported gas that is cheaper than pipeline supplies.

Also, commercial storage has continued to increase over the years to a total of 8,043 Bcf in 1984. (*See* Order No. 436). The availability of this storage capacity means that gas does not have to be produced and consumed at identical rates in order to avoid the shutting in of production or the making of "dump" sales. Rather, a pipeline can take receipt of gas volumes even when it has no immediate market for the gas. Operational constraints remain a limitation, of course. But operational flexibility has increased enormously.

The spot market has been steadily increasing also. Thus, by the summer of 1985, the spot market was accounting for a substantial percentage of the total market. As shown in Order No. 436 (in Exhibit D, which summarizes experience under the Commission's transportation programs from January 1, 1985, to June 30, 1985; Exhibit J, which lists local gas utilities and intrastate pipelines receiving gas under NGPA section 311; and Exhibit K, which lists end-users receiving gas under blanket certificates), transactions under both NGPA section 311 and blanket transportation

certificates were being performed by virtually every major pipeline, hundreds of local gas utilities, and hundreds of individual end-users. Customers in the great majority of the states have been benefitting from access to the national gas market under the NGPA section 311 transportation program, the blanket certificate program, or both.

While it is true that estimates of the exact size of the spot market vary, a study submitted in this docket by the United States Department of Energy (DOE) estimates that by January 1985 the total spot market (including intrastate transactions) had increased to between 2 to 2.5 Tcf per year (compared to total gas consumption of about 17–18 Tcf). This figure represents a tripling in the size of the spot market in the space of one year. Moreover, the great bulk of this growth has taken place in the interstate market.

In addition, the DOE study documented several significant trends that are evident in the filings made with the Commission:

(1) The average size of the spot transaction is continuing to decrease, indicating a broadening of the array of buyers and sellers in the market.

(2) Local gas distribution utilities are increasingly involved as nearly all states have approved, or are considering, gas transportation rates for local utilities.

Finally, the Commission notes that over the last two years the market has developed an infrastructure that includes trade publications following prices and market developments and at least one electronic buy-sell exchange to which members of the public are free to subscribe.

For the above reasons, as more fully discussed in Order No. 436, the Commission concluded, and hereby reaffirms its conclusion, that in view of the breadth and variety of the spot market it is not a transitory phenomenon. Rather, the development of this market is an indication of the radical change that the natural gas industry has under gone and is continuing to experience as a result of the development of distinct gas markets and the reemergence of unbundled transportation service. To be sure, the exact size of the spot market in future years will change as the preferences of buyers and sellers change, again however, the Commission notes that it is only providing a framework within which all customers can participate in the market, it is not requiring them to so participate.

In view of these considerations, the Commission disagrees with Laclede's and Southern Natural's assertions that distributors will be unable to arrange with producers for long-term supply arrangements for gas at reasonable prices. Regardless of the nature of the spot market for gas transportation and supplies, Order No. 436 assumes that self-implementing and blanket transportation arrangements may be performed on both a short-term and long-term basis, in times of shortage as well as times of surplus, in response to current market conditions. By removing restrictions on eligible gas categories, shippers, and the duration of transactions, Order No. 436 actually enhances the flexibility of pipelines to maintain their role in providing long-term, reliable services to their customers, contrary to the assertions of the applicants.

Since the NGPA does not prohibit a producer from selling its gas below market clearing price or below the applicable NGPA maximum lawful price, the producer may charge different customers different prices. Laclede argues that, the producer will not reduce the price of the gas it sells directly to distributors because of the seasonal changes in the distributors' needs and because distributors require long-term supply arrangements. The Commission does not agree with Laclede's conclusion. The Commission believes that purchasers such as Laclede should be able to negotiate for supplies at prices representing their commodity value under contracts with market responsive provisions. Under such circumstances, it should be possible to arrange for longterm supplies.

e. *On Transportation of Gas from the Outer Continental Shelf.* One commenter, Ashland Exploration, Inc. (Ashland), addresses the issue of whether the non-discriminatory access condition applicable to new transportation service under §§ 284.8 through 284.10 conflicts with provisions of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLA) (42 U.S.C. 1334 (e) and (f) (1982)).

Ashland (at pp. 2–3) asserts that (1) pipelines currently operating on the Outer Continental Shelf (OCS) have a mandatory obligation under the OCSLA to provide non-discriminatory access to their OCS facilities, (2) many pipelines have indicated that they will elect not to provide new system-wide non-discriminatory transportation under §§ 284.8 through 284.10, and (3) if pipelines decline to utilize Order No. 436 transportation authority, then the delivery of substantial volumes of OCS gas to the interstate market could be delayed and much of the flexibility and many of the competitive advantages envisioned by the Commission in Order No. 436 will be lost or frustrated. Ashland concludes that because the non-discriminatory access obligation of the OCSLA is mandatory, not voluntary, and since extending the obligation system-wide may have the effect of curtailing OCS transportation, the Commission should permit pipelines operating on the OCS to implement transportation under Order No. 436 to transport OCS gas subject to §§ 284.8 through 284.10 without subjecting their entire systems to non-discriminatory access requirements.

In issuing Order No. 436, the Commission neither relied on its authority under the OCSLA to require non-discriminatory transportation of OCS gas nor has it implemented such a requirement in the final rule. Order No. 436 provides an opportunity for persons to transport voluntarily under authorizations which provide for non-discriminatory access pursuant to statutory authority wholly separate and apart from the OCSLA.

Ashland may be correct that implementation of Order No. 436 may initially delay transportation of some OCS gas which is already subject to open access under the OCSLA. However, in *Maryland Peoples Counsel v. FERC*, 761 F.2d (D.C. Cir. 1985); 768 F.2d 1354 (D.C. Cir. 1985), the court directed the Commission to use its authority over natural gas transportation to provide carriage on a nondiscriminatory basis, if such transportation is to be offered at all. In any event, pipelines, including those operating on the OCS, retain the option of proceeding under section 7 of the NGA without triggering the access provisions of Order No. 436.

In conjunction with the *MPC I* and *MPC II* mandates, Order No. 436 establishes a comprehensive regulatory framework which provides the Commission the opportunity to allow the commodity market for natural gas to develop in a competitive fashion. On balance, the Commission believes that any short-term adverse consequences of Order No. 436, such as delay in transportation of OCS gas, are outweighed by the long-term benefits to be derived from, implementation of the rule on the comprehensive basis contemplated. Nothing that the Commission does in this rule, however, changes the obligation of pipelines to provide non-discriminatory access to the transportation of gas in the OCS. The Commission notes that most of this transportation is provided under individual section 7 certificates.

3. Relationship to Incremental Pricing

Northern Illinois Gas Company (NI–GAS) (at pp. 40–41) notes that the Commission did not address the comments by NI–GAS and others concerning the impact of the incremental pricing provisions of Title II of the NGPA or LDCs and interstate pipelines in light of the transportation provisions of Order No. 436. NI–GAS asserts that when industrial boiler fuel users can avail themselves of pipeline transportation services and purchase gas directly from producers or brokers, who are not required by Title II to impose incremental surcharges, LDCs and pipelines, who must impose the surcharges, will be placed at a competitive disadvantage.

The Commission did not address incremental pricing regulations in Order No. 436, even though various commenters on the NOPR suggested a concurrent suspension of those regulations because they are beyond the scope of this rulemaking proceeding. Title II of the NGPA requires the imposition of incremental surcharges on gas sales to large industrial boiler fuel facilities. The Commission has authority, however, under NGPA sections 206(d) and 502(c) to provide for an exemption from incremental pricing to any industrial facility, or category thereof, as necessary to prevent special hardship, inequity, or unfair distribution of burdens. The Commission recognizes there may be instances in which Title II of the NGPA creates a temporary competitive disadvantage. The Director of the Office of Pipeline and Producer Regulation has granted exemptions, from the operation of the Commission's incremental pricing regulations when the availability of lower priced fuel from alternative sources renders the incrementally-priced gas uncompetitive. *See,* for example, *Southern California Gas Company,* 30 FERC ¶ 62,138 (1985). The Director will continue to consider petitions for exemption on a case-by-case basis and will advise the Commission if experience under the Order No. 436 regulations indicates a need for revisions to the incremental pricing regulations.

4. Requests for Different Procedures, Minimum Commitments

The Commission indicated in Order No. 436 that pipelines which have elected to operate under any of the Order No. 436 programs may terminate their participation so long as they do so in a non-discriminatory fashion. Brooklyn Union Gas Company (at p. 15) requests clarification as to the Commission's intentions regarding how pipelines may exercise this discretion. Brooklyn Union Gas Company is concerned that some pipelines will seek to defeat or subvert the conditions of Order No. 436 by participating in the Order No. 436 programs only in the summer when competitive pressures are more intense. Such seasonal participation, according to Brooklyn Union Gas Company, would minimize the benefits of Order No. 436 to "captive" markets and local distributors serving such markets, as well as other gas users whose demands for gas are highest or occur primarily during the winter period. Brooklyn Union Gas Company states that all of its pipeline suppliers have indicated that their present intention is to forego participation in the Order No. 436 programs, and thereby avoid operation under the non-discriminatory conditions, for any extended period during the forthcoming winter heating season.

Brooklyn Union Gas Company (at p. 16) urges the Commission to clarify on rehearing that participation by pipelines in the Order No. 436 programs only on a seasonal basis is *per se* unduly discriminatory. Further, Brooklyn Union Gas Company requests that the Commission require that an election by a pipeline after January 1, 1986, to operate under any of the Order No. 436 programs will be binding for a minimum of one full year unless a Commission waiver of this requirement is secured in advance. Brooklyn Union Gas Company believes application of this requirement should be prospective only in order to avoid prejudice to any pipeline that already has made an election to participate in an Order No. 436 program on a short-term basis in reliance on the absence of any regulatory requirement that its participation continue for any fixed period of time.

The Commission denies Brooklyn Union Gas Company's requests. A pipeline's participation in Order No. 436 transportation programs only during the summer season would certainly raise the issue that the pipeline was opting in and out of the program in a discriminatory manner, but such a pattern of participation need not be held in and of itself to demonstrate discrimination. The Commission plans to review such cases that are brought to its attention on a case-by-case basis since legitimate operational considerations may conceivably limit some pipelines to seasonal participation. For the same reason, the Commission also will perform case-by-case reviews in instances where such action seems appropriate and necessary to determine whether a pipeline's decision to terminate its participation in an Order No. 436 program after less than a year had unduly discriminatory effects.

5. Non-discriminatory Access to Distribution Systems

API (at pp. 1–8), El Paso (at pp. 17–21), Tenngasco (at p. 13), and Industrial Groups (at p. 17) reiterate a request that was specifically rejected in the final rule (50 FR 42,433): that the Commission require that an LDC provide non-discriminatory access to its own system as a condition to any interstate pipeline being granted a blanket certificate to transport gas on the LDC's behalf. In Order No. 436, the Commission concluded that such a condition would bring the Commission into direct conflict with state authorities with regulatory responsibilities over such entities. Applicants now generally assert that there would be no conflict with the states because the program is voluntary and that this condition is necessary to prevent LDCs from becoming bottlenecks to direct access by end users to wellhead suppliers. API (at p. 3) argues that this condition, being voluntary, would not "mandate" transportation by LDCs any more than the non-discriminatory access condition established in Order No. 436 mandates interstate pipelines to transport gas. El Paso (at p. 17) asserts that non-discriminatory access by LDCs is mandated by *MPC I* and *MPC II* since end users who are captive customers of an LDC are denied direct access to wellhead suppliers unless the LDC chooses to allow such access. API (at p. 6) asserts that it is unduly discriminatory to allow an LDC to deny its customers access to low-priced self-help supplies while, at the same time, imposing the non-discriminatory access condition on its interstate pipeline supplier. In its opinion, this violates sections 4 and 5 of the NGA.

The Commission denies rehearing on this issue. The non-discriminatory access condition imposed on interstate pipelines transporting gas under section 311 or § 284.221 blanket certificate and intrastate pipelines in section 311 situations is not analogous to an open access condition on LDCs. The most critical distinction is that an interstate pipeline is a regulated entity under the Natural Gas Act and the open access condition applies to the interstate transportation of gas by such entities. On the other hand, the local distribution of gas (or Hinshaw transportation) is not subject to Federal jurisdiction.[40] Instead,

[40] Where an LDC engages in interstate transportation of gas, Order No. 436 treats it as an

Continued

NGA sections 1 (b) and (c) exempt LDCs and Hinshaw pipelines from NGA jurisdiction. Moreover, as stated in Order No. 436, a conflict with the states could arise if the Commission were to impose a non-discriminatory access condition on LDCs. Further, *MPC I* and *MPC II* do not compel a different result. The discrimination that concerned the court in each case was that committed by natural gas companies within the Commission's jurisdiction; those cases did not involve discrimination by non-jurisdictional LDCs. Any such discrimination, if it occurs, is within the province of the state authorities and does not result in a violation of the NGA or the NGPA. Only jurisdictional natural gas companies and intrastate pipelines engaged in interstate transactions, respectively, are subject to its provisions.

B. Producer Access to Pipeline Systems and Take-or-Pay Relief

1. Take-or-pay Relief as a Pre-Condition

In Order No. 436, the Commission considered and rejected various proposals by commenters to condition producer access to intersate transportation on producer waiver of take-or-pay provisions in gas purchase contracts. In general, these commenters asserted that the Commission has the requisite legal and statutory authority to impose such a condition on producer access to transportation and that such a condition is required to prevent increased take-or-pay liability.

On rehearing, numerous applicants again urge the Commission to impose a producer access condition on transportation and require producers to waive or renegotiate take-or-pay provisions in contracts.[41] INGAA (at p. 11), Con Ed (at p. 4), AGA (at p. 10), Northwest Pipeline (at p. 19) point out that in the SMP orders, the Commission always required take-or-pay relief for gas released by a pipeline into an SMP and purchased by another party. AGA suggests that proliferation of producer-sponsored SMPs, plus many recent applications for limited-term abandonment, show that producers willingly trade contract rights for transportation rights. These applications assert that the Commission's decision to continue to allow unconditioned access by producers is arbitrary and capricious, and discriminates against interstate pipelines.

AGA (at pp. 3–8) says that if the rule provides meaningful take-or-pay relief, there will be an incentive, rather than the current disincentive,to participate in transportation. AGA would require producers to renegotiate and amend contracts to include market-out or price redetermination clauses. Appended to AGA's application is a study purporting to show that 17 percent of major interstate supplies of gas is purchased under old (pre-1962), high-priced contracts. Most of these contracts contain take-or-pay clauses. AGA strongly believes that unless pipelines can condition transportation on contract relief, it will be virtually impossible to renegotiate these contracts.

Applicants maintain that the Commission has broad conditioning authority under section 7(e) of the NGA to impose an access condition, INGAA, AGA (at p. 9) and El Paso (at p. 24) point out that since such a condition would attach to the pipeline's blanket *transportation* authority and would not require a producer to provide take-or-pay relief; therefore, the question of regulation of first sales or producer contracts is avoided.[42] INGAA (at p. 10) states that the Commission can find that the threat to pipeline financial viability makes it in the public interest to condition access to certificates.

Similarly, Natural (at p. 18) asserts to the rule falls short by instituting a jurisdictional program without considering non-jurisdictional impacts and whether appropriate access conditions were developed.

The applicants assert that the non-discriminatory access requirements of the new transportation scheme, coupled with the contract demand reduction/conversion feature, will increase pipelines' take-or-pay liability and market loss and that the access condition is needed to offset this. AGA points out that as long as the weighted average cost of gas remains above the spot market price, distribution companies will be pressured to cut back their pipeline purchases, thus increasing take-or-pay liability.

The Commission declines to revisit its decision not to impose a producer access condition. As it said in the final rule, the Commission cannot allow some shippers to be "more equal" than others if its goal is to provide equal and non-discriminatory access to transportation. The Commission has considered the extensive legal arguments made by petitioners, and is unpersuaded that the reservations it expressed in the final rule are misplaced.

Applicants also argue that the rule is deficient in failing to address the take-or-pay issue or provide any take-or-pay relief.[43] Without such relief, it will be difficult for the other parts of the package to work. INGAA (at p. 6–7) charges that the Commission failed to meet its statutory obligations to consumers and pipelines. Transco believes the Statement of Policy is unsatisfactory since it contains no presumption of prudence. AGA (at p. 2) flatly asserts there is no take-or-pay relief under Order No. 436 and that the Commission must provide relief if it wants new Part 284 to work. Similarly, Natural (at p. 16) asserts that the interstate pipelines have "excess baggage" in the form of high-cost, high take-or-pay contracts that have to be shed before pipelines can become effective participants.

The final rule fully explains the Commission's decision not to promulgate Part B and to affirm its April 10, 1985, Policy Statement. Contrary to applicants' arguments, the Policy Statement procedures are effective, as evidenced by the number of settlements reached under them. The Commission continues to believe the procedures in the Policy Statement are best suited to providing a framework within which parties can resolve current take-or-pay problems. It does not believe that the situation has changed appreciably since comments were filed on the proposed rule, except that now the pipelines imply that they will not participate in the new authorized transportation program unless additional take-or-pay relief beyond that in the Policy Statement is granted. The Commission concludes that the Policy Statement guidelines provide an adequate regulatory framework within which pipelines can address take-or-pay problem contracts.

2. Unilateral Reduction in Obligations by Pipelines

The final rule permits customers to reduce or covert to transportation their

intrastate pipeline, subject to the access condition in the same fashion. *See* § 284.8(b) of the final rule.

[41] Florida Gas, at p. 5, 16; El Paso, at pp. 21–24; INGAA, at p. 7; Transco, at pp. 3–8; AGA, at pp. 3–11; Consolidated Nat., at p. 3; Natural, at pp. 15–25; Memphis, at p. 2; Northwest Central, at p. 9; and Northwest Pipeline, at pp. 2, and 18–22.

[42] A substantial part of the problem contracts identified by AGA are contracts for gas supply that qualifies under NGPA section 102(d). Such gas is therefore subject to the Commission's NGA jurisdiction and producers who makes sales for release of such gas in interstate commerce are natural gas companies under the NGA. The decision concerning take-or-pay relief, however, is not based on whether the *producers* are jurisdictional. Instead, the question is whether such a condition would be a reasonable exercise of the Commission's authority over interstate transportation, regardless of the source of the gas.

[43] Transco at pp. 13–17; AGA, at p. 2; ANR, at p. 25; Consolidated Nat., at p. 3; Natural, at pp. 3, 15–20; Memphis, at p. 1; ConEd., at pp. 1–2.

sales contract entitlement. Some applicants believe pipelines should have a corresponding right to unilaterally reduce their contractual obligations to producers. Florida Gas (at p. 17) argues that even though a pipeline may have kept its gas supply and sales in balance, exercise of the CD reduction/conversion option could create take-or-pay liability. Similarly, Consolidated Natural (at p. 7) foresees declining sales, but no relief from existing minimum bill obligations.

Transco (at p. 7) asserts that granting open access at the distribution end—by permitting distributors to abrogate their contracts with pipelines—is totally inconsistent with precluding pipelines from a concomitant modification of their producer contracts.

The Commission does not believe that a right to reduce obligations under producer contracts necessarily flows from its decision to permit customers to reduce or convert their contract demands. The Commission instituted the CD reduction/conversion option to allow customers and purchasers to obtain access to other supply sources and to choose the type of service best suited to their individual needs. Because customers will have more options, pipelines will have more incentive to keep sales and transportation services competitive and to engage in continued renegotiation of "problem" take-or-pay contracts. Indeed, a customer's CD reduction may not increase a pipeline's take-or-pay obligations because the customer may only be bringing its CD in line with its new market requirements and would not have bought additional gas under any circumstances.

The contracts under which pipelines purchase gas from producers are straightforward commercial agreements, not utility-type "service agreements." A reduction in the volumetric level of a pipeline's service agreement with its customers may or may not result in a change in the rate for providing the reduced service depending on the disposition of the pipeline's subsequent rate case. A reduction in the volume level of a take-or-pay clause in a producer's contract to sell gas to the pipeline, however, would simply reduce the minimum dollar obligation of the pipeline; the producer cannot file a subsequent rate case to seek to collect the same level of revenues over a smaller number of sales units. In short, the analogy drawn between pipeline-LDC and producer-pipeline contracts confuses utility service agreements under a regimen of cost based rates with commercial contracts for the sale and delivery of a commodity.

The Commission denies these rehearing requests because it does not have jurisdiction over many of the producer-pipeline contracts at issue. It would be inequitable to allow pipelines to reduce their takes only under contracts still subject to the Commission's NGA jurisdiction, particularly because many of the problem contracts are not subject to the Commission's jurisdiction. Finally, as it indicated in Order No. 436, the Commission is convinced that the April 10, 1985, Statement of Policy provides an adequate framework within which pipelines may address the problem of take-or-pay liabilities. Moreover, many pipelines have made progress in renegotiating their contracts and substantial liabilities have been settled.

C. Firm Sales Entitlements Reduction and Conversion Under § 284.10

1. Legal Authority Under NGA Sections 5 and 7

a. *Alleged Contract Abrogation.* Section 284.10 of the final rule provides that a firm sales customer of an interstate pipeline will have the option to reduce its firm sales entitlements (or contract demand) and the option to convert firm sales entitlements into firm transportation. Specifically, Order No. 436 established § 284.10(c), which provided the customer the option of reducing its firm sales entitlements by up to 25 percent per year as long as it gives the pipeline written notice not later than 150 days before the proposed reduction. Similarly, § 284.10(d) provided the customer the option of converting up to 25 percent per year of its firm sales entitlements to firm transportation so long as it gives the pipeline 60 days written notice before the proposed conversion. The two primary purposes of this section, as originally promulgated and as amended in this order, include the "freeing up" of presently contracted firm service so that the transmission capacity presently "bundled" with the sales entitlement may be sold separately to willing shippers and permitting customers of pipelines flexibility in the services they take from pipelines.

A significant number of applicants addressed this issue, most of which challenged the CD reduction/conversion condition as an unlawful unilateral abrogation of pipeline contractual rights. Panhandle, at pp. 5–7; Tetco, at p. 13; CIG, at pp. 20–25; Northwest Pipeline, at pp. 4–7; Algonquin, at pp. 11–34; Monterey, pp. 13–15; Northern Natural, pp. 6–9; MRT, pp. 2, 11; Texas Gas, p. 14; Natural, pp. 16–18, 30, 40; Pan-Alberta Gas, at pp. 1–2, 6–9; and Coastal, at p. 2.

Generally, the applicants state that the Commission erred by instituting a mechanism allowing unilateral alteration of the terms of the contract without satisfying the statutory requirements under section 5 of the NGA. They state that the unilateral contract abrogation will have a destabilizing effect both upon pipelines and the consuming public and that long-term service arrangements and the security of supply have been sacrificed by focusing on spot market considerations. (INGAA, at p. 19). They further state that the right of customers to abrogate such contracts constitutes a unilateral right to abandon the certificated service without a proper factual showing that abandonment is in the public convenience and necessity as required by section 7(b) of the NGA. (INGAA, at p. 20). They state that this provision imposes an unjustifiable economic squeeze on pipelines which have procured gas to meet their firm sales contract obligations, and therefore would subject the pipelines to reduced sales and increased take-or-pay (or minimum bill) obligations related to that very same gas supply. (Algonquin, at p. 20). Since those sales contracts are the underpinnings for the pipeline industry and for lenders who made their investments predicated on those contracts, this rule would disrupt settled expectations. (Algonquin, at p. 21). They further contend that the contract demand reduction requirement is improperly coercive, in that participation in the program is not truly voluntary. (Algonquin, at p. 29). As demonstrated by the decision in *ANR Pipeline Co. et al.*, 33 FERC ¶ 61,149, Docket No. CP85–621–000, *et al.*, (October 31, 1985), commenters argue that it appears the substantive aspects of the rule are being applied to individual section 7 certificate applications and that the Commission's generic definition of a public convenience and necessity has been modified to comport with that stated in Order No. 436. (Algonquin, at pp. 29–32).

They state that there is no basis for allowing customers who no longer require their contract demand to repudiate their existing contractual commitments, and that the Commission has failed to show any "unequivocal public necessity" for relieving any party to a contract of its bargain. (Northwest Natural, at pp. 17–18).

The Commission disagrees with the applicants that the CD reduction/conversion condition is an unlawful unilateral abrogation of the pipeline's contractual rights. Order No. 436 neither modifies contracts by its own terms nor creates any "unilateral" rights to breach contracts. Nor is the Commission here

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relying on the statutory requirements of section 5 of the Natural Gas Act. Rather, the CD reduction and conversion options in § 284.10 are merely a condition—imposed pursuant to the Commission's authority under section 7(e) of the Natural Gas Act and section 311(c) of the NGPA—to which the pipeline must agree in order to provide service prospectively under the self-implementing transportation rules. When changes occur, the rates charged for that converted transportation will continue to be set under the Natural Gas Act, with proper consideration given for changes in cost incurrence and cost responsibility. 50 FR 42439. Since the final rule does not require that a pipeline operate under the self-implementing rules, the final rule does not override any existing contracts. And the provisions of section 5 of the Natural Gas Act do not apply because the Commission is not modifying the provisions of any existing certificates. As stated in the final rule, one purpose of the CD reduction option is to permit a "freeing up" of unused firm capacity that existing customers may have "booked" but not longer need and no longer desire to reserve. 50 FR 42440. Therefore, the final rule does not modify the contracts parties have entered into, but merely provides that a condition of participating in the self-implementing operating rules, is for the pipeline to agree to provide the reduction and conversion options to its firm sales customers as a condition of that choice.

It is the voluntary decision of a pipeline to accept self-implementing transportation authority that reflects the concomitant agreement to provide the contract reduction and conversion option to its customers. 50 FR 42440. A pipeline that believes such a commitment is at odds with the "settled expectations" reflected in its sales contract (Algonquin, at p. 21) is free not to participate. The assertion that the Order No. 436 program is, in effect, coercive and mandatory rather than voluntary is discussed above. The discussion need not be repeated.

Algonquin's suggestion that the Commission applied the provisions of Order No. 436 to an application under NGA section 7 in *ANR* is wrong. The order issued in that case merely set the proceeding for hearing, to resolve issues of *material* fact raised by an intervenor. The hearing was required by the Natural Gas Act. While the order does indicate that the Commission will review under section 4(b) of the NGA allegations of discrimination in the context of its decision to grant individual section 7(c) transportation certificates, the order cited did not resolve any substantive issues as to what will constitute such discrimination.

b. *Alleged Certificate Amendment.* A number of applicants state that the Commission is applying its conditioning authority under section 7(e) of the Natural Gas Act to permit the CD reduction/conversion option. Panhandle, at p. 5; Texas Eastern at p. 6; Memphis, Light Gas & Water Division, at pp. 11–12; Natural Gas Pipeline, at p. 50; Algonquin, at p. 25; Amoco, at pp. 2, 4–5, 9–10; Mississippi River Transmission, at pp. 18–19; Northwest Natural, at pp. 19–21; Monterey, at p. 14; Indicated Producers, at pp. 6–10; Transwestern, at p. 19. Generally, the applicants state that the conditioning authority under section 7(e) can only be exercised when the certificate is issued, and unless a pipeline requests or agrees to the modification or ratification of a certificate or has violated the terms of its certificate, the Commission has no authority to modify or revoke an existing section 7 certificate. (Indicated Producers at p. 6). For example, Algonquin (at pp. 26–27) states that the Natural Gas Act does not give the Commission the power to alter, amend or in any way modify a certificate of public convenience and necessity. They state that while section 7(e) of the NGA authorizes the Commission to place reasonable conditions upon a certificate, that certificate must stand until the pipeline seeks abandonment of the service under section 7(b) of the NGA.

Amoco Production Company (at pp. 9–12) states that the Commission is attempting to use its section 7 transportation authority as a substitute for performing its duties under section 5. They contend that the 25 percent reduction/conversion provision in the final rule is being applied to the blanket *transportation* certification, and not to the certificate governing the jurisdictional firm *sale* to be affected. They contend that the condition is being applied to the wrong certificate. They contend that *Panhandle Eastern Pipeline Company v. FERC*, 613 F.2d 1120 (D.C. Cir. 1979) makes clear that the Commission cannot use its section 7(e) authority as a proxy for its section 5 authority. They acknowledged that while *Panhandle* dealt with a rate issue, the decision is essentially founded on the same basic interplay between sections 5 and 7(e). Amoco Production further contends that even if the reduction/conversion rule is a valid section 7(e) condition, it is unreasonable. Amoco states that the Commission's purpose for permitting this option is to "free up" capacity for transportation under the new rule. However, the Commission has not indicated why this option outweighs the long-recognized importance of private contractual agreements. Moreover, Amoco Production (at pp. 13–17) contends that the Commission failed to consider how a voluntary mutual negotiation between pipelines and suppliers could not achieve essentially the same result.

Virtually all of these arguments were raised in comments to the Commission's proposed rule and were addressed in its Order No. 436. 50 FR 42439. As explained more fully in the final rule, these applications appear to assume that the rule would automatically allow firm sales customers to shift cost responsibilities on to other customers or on to the pipeline's shareholders. Before any such shifting occurs, the pipeline is required to file appropriate adjustments to its rates. The Commission will review any proposed reallocation of fixed costs in the rate case. In the case of the conversion option, the Commission notes that the reservation charges permitted for firm service recognize cost responsibility for firm service and sharply reduce the potential for cost-shifting.

Second, as stated earlier, the CD reduction option is intended to allow a "freeing up" of firm capacity and does not establish rate levels. Moreover, the CD reduction and conversion options are not mandatory. They are merely a condition of participating in self-implementing transportation programs. Pipelines that choose not to participate in the new program will not be subject to the CD reduction and conversion options. Pipelines, however, that choose to participate in the new program will be agreeing to the condition and accepting *new* certificates with the CD reduction and conversion conditions. To this extent, the Commission is not amending previously issued certificates, but is allowing pipelines the opportunity to accept a new certificate with new conditions that apply prospectively.

In the *Panhandle* case cited by applicants, the court found that the Commission could not use revenue crediting to reduce previously approved rates, without a finding under section 5 of the NGA that the previously approved rates were not just and reasonable. Order No. 436, by contrast, will not reduce previously approved rates by revenue credit or any other means. Pipelines voluntarily choose whether to participate in self-implementing transportation. Similarly, the pipeline is free to choose when and if it wishes and make an appropriate

rate filing under section 4 of the NGA to reflect the changed circumstances resulting from customers' exercise of the CD adjustment options. As noted above, such rate filings will be reviewed on a case-by-case basis.

c. *Alleged Bias For Firm Sales Customers.* Indicated Producers (at p. 5) state that the conversion option discriminates unduly in favor of a pipeline's firm sales customers and is contrary to the prohibition against undue preference and discrimination in sections 4(b) and 5(a) of the Natural Gas Act. They stated (at pp. 3–5) that while firm transportation capacity is generally available on a "first-come, first-served basis", firm sales customers that convert to firm transportation are given priority over other potential customers. They state that once a customer makes the business decision to reduce its purchases, it should stand in no better position than any other prospective shipper who seeks transportation on a first-come, first-served basis.

The Commission disagrees with this analysis. Firm sales customers, who are already on the system and have been paying to reserve firm capacity all along, have a legitimate claim on that capacity. Whether they call on that capacity in the form of sales or transportation, the capacity available for new customers is generally the same. While the Commission recognizes that in some cases a customer will be seeking to use different segments of the pipeline system, these situations can be dealt with on a case-by-case basis.

d. *Alleged Unlawful Delegation.* A number of applicants claim that the Commission has in effect delegated to private parties its abandonment responsibilities under section 7(b) of the Natural Gas Act.[44] Generally, applicants state that specific findings under section 7(b) of the Natural Gas Act would be required in order for the Commission to permanently reduce a customer's contract demand. By authorizing contract demand reductions at the sole option of a customer without any case specific finding, they contend the Commission has delegated its responsibility under section 7(b) to the pipeline's customer (Northwest Natural Gas, at pp. 8–13).

Other customers contend that the Commission has delegated its authority under section 5 of the Natural Gas Act. (Algonquin, at p. 5; and Amoco Production, at p. 7.) For example, Algonquin states that section 5 requires the Commission to make findings that the contract provisions are unjust, unreasonable or otherwise unlawful. However, the Commission has not made these findings, says Algonquin, but rather has given the pipeline customer authority to unilaterally modify the firm contract demands up to a certain percent per year. Amoco Production contends that while the Commission has delegated its authority to third parties, it attempts to justify that delegation by setting limits on that delegation. In effect, the customer and not the Commission determines what is the lawful exent of the firm service reduction. Amoco Production (at pp. 6–9) states that these determinations must be made by the Commission in accordance with section 5 and cannot be delegated to the customers.

The Commission disagrees with the applicants. Furthermore, it is clear from § 284.10(f) of the final rule that abandonment authority will be available if a customer exercises its conversion or reduction options under § 284.10. On the other hand, this abandonment flexibility is not mandatory, *i.e.*, a pipeline may choose to retain its section 7 sales certificate in order to stand ready to permit its customer to "swing" back on to sales service. Moreover, a customer and a pipeline always retain the flexibility, even where a certficate has been abandoned, to apply for a new or amended section 7 certificate to resume the sales service or some other form of transportation service. 50 FR 42443.

Section 284.10 is not a delegation of any responsibility under section 7(b) of the Natural Gas Act. Section 284.10(f) specifically provides that if a customer exercises an option to reduce or convert its firm sales entitlements, the pipeline may file an application under the Commission's rules to abandon that portion of the sales service.

Moreover, the Commission is not invoking its authority under section 5, because the final rule does not modify any contract provisions. Pipelines that apply for a certficate under the new program are agreeing voluntarily to all the terms and conditions of that program as set out more fully in the regulations. Similarly, a pipeline customer who uses the CD reduction and conversion option is making a determination that it desires to amend its current service contract. Nothing in the statute prevents the Commission from permitting parties from agreeing to amend or modify their contracts.

2. Effects of Reduction/Conversion Options

a. *Reasonableness; Unlawful Taking.* A few applicants claim that the CD reduction and conversion option essentially establishes a methodology for avoiding existing contracts between pipelines and distribution companies, and that such action constitutes a taking of property without just compensation in violation of section 5 of the U.S. Constitution. (Panhandle, at p. 9; Texas Eastern, at p. 24; Algonquin, at p. 29; Natural Gas Pipeline, at pp. 48–50). For example, Natural Gas Pipeline (at pp. 46–50) contends that the Commission's action interferes with private contractual relationships. They state that while the Commission attempts to justify the interference on the basis that the action is voluntary on the part of the pipeline, it is not clear why a pipeline's willingness to transport should automatically trigger a contract reduction option. They contend that the Commission has no statutory authority to abrogate the pipelines' contracts.

Similarly, Texas Eastern (at pp. 24–27) states that the CD reduction and conversion options deprive it of its lawful contract rights without due process and are in violation of the Fifth Amendment. They further contend it violates the Natural Gas Act which requires the pipelines' rates to be "just and reasonable". Under their interpretation, this means that those rates not only must yield revenues to cover prudently-incured costs, but also that the rates must allow an opportunity to earn a return on invested capital. They claim that the CD reduction and conversion options threaten the financial integrity of pipeline companies, both with respect to operating revenues and in terms of servicing the dividend on stock.

As explained above, the final rule does not override contracts. There is no requirement that a pipeline operate under the self-implementing rules. For the same reason, there is no taking of property. If pipelines decide that the generic CD reduction and conversion options may adversely impact their financial integrity, they may exercise their business judgment in deciding not to participate in the new program. As long as the condition is reasonable under the NGA and the NGPA, it must pass constitutional muster.

The Commission also disagrees with Texas Eastern's argument (at p. 25) that pipelines have been assigned all the additional risks associated with the rule. A pipeline's customers that decide to exercise the CD reduction or conversion

[44] Foothills, at p. 713; Algonquin, at p. 16; Mississippi River Transmission, at pp. 18–19; Texas Eastern, at pp. 18–21; Northwest Natural, at pp. 4–12; Northwest Central, at p. 6; Natural, at p. 8.

option also incur a risk by selecting an alternative source of gas supply and will be deemed to have waived rights to protest abandonment application.

ANR Pipeline Co. (ANR) (at p. 7) asserts that a reduction in firm sales entitlements to a customer means that the customer will pay a lesser proportion of the demand costs of the pipeline which must then be borne by other customers. Further, ANR argues that while conversion to firm Transportation service can offset the revenue loss from the reduction in firm sales entitlements, such offset will not be complete because such items as pipeline supplier demand charges will not be recovered from transportation customers. For this reason, ANR asserts that other customers or the pipeline will be injured by a conversion from firm sales entitlements to firm transportation.

ANR also asserts (at p. 8) that to the extent a reduction or conversion of firm sales entitlements results in less gas purchases than would have resulted absent the reduction, then a pipeline's take-or-pay and minimum take liabilities will cause increased costs which will adversely affect all consumers.

ANR argues (at pp. 13, 16) that § 284.10 should be eliminated or changed on rehearing. The change requested by ANR is that customers who convert their purchase entitlements to transportation entitlements should be required to pay fully compensatory rates for transportation service (at p. 16).

Finally, ANR argues (at p. 16) that a pipeline should not be required to file an adjustment to its rates under § 284.10(g) every time a customer's firm sales entitlement is changed under § 284.10. ANR asserts that a change may not be necessary, and that under the Natural Gas Act, pipelines have the option to file for rate changes.

Trunkline Gas, Trunkline LNG, and Panhandle assert (at p. 9) that any reduction of firm sales entitlements and any conversion to firm transportation should be permitted only on a single annual date to be fixed by the pipeline after prior notice of at least nine months. Further, they seek clarification as to the effect on pipeline minimum bills of a reduction in firm sales entitlements and a conversion to firm transportation. They point out that § 284.10(c)(4) requires a reduction of minimum commodity bills by an amount proportionate to any reduction of firm sales entitlements, while § 284.10(d)(5) requires a credit against the minimum commodity bill for each unit of firm transportation service purchased, and that it is not clear that only one of these provisions will apply exclusively in each case (at p. 10).

As set forth below, rehearing on these issues is generally denied. With regard to ANR's concern, the Commission recognizes that some cost shifting may occur as a result of the conversion and reduction provisions; however, as stated in Order No. 436.

> First, by adding the conversion option and specifically allowing for reservation charges for firm service, the final rule recognizes cost responsibility for firm service and sharply reduces the potential for cost shifting. Second, the primary purpose of the CD reduction option is to allow a freeing up of firm capacity, not to allow existing customers to simply reduce the level of monthly payments. The issue of establishing rate levels is left to individual cases; the instant rule seeks only to establish a rate structure. 50 FR 42439.

Order No. 436 further states that:

> The rule in no way resolves the issue of how those costs [resulting from CD reductions or conversions] will be allocated, however. Hence, the cost allocation issues will be decided on a case-by-case basis. 50 FR 42442.

Thus, while some cost shifting may occur under the rule, the case-by-case review of cost allocation provided by the rule provides a forum so as to prevent any unreasonable cost shifting.

The Commission agrees with ANR that a pipeline should not be required to file an adjustment to its rates everytime a customer's firm sales entitlement is changed under § 284.10. The Commission notes that under § 248.7(b)(2), a pipeline operating under the new rules must file transportation rates that conform to the standards of § 248.7. Pipelines must, of course, make appropriate adjustments to a customer's demand and minimum bill charges when a reduction or conversion becomes effective. After that, there is no need to require additional filings, because no cost-shifting to other customers can occur prior to any new filing; so there is no harm to pipeline customers. Of course, nothing in the rule precludes a pipeline from filing to adjust its rates at any time. Accordingly § 284.10(g) will be deleted from the final rule.

With regard to Trunkline Gas, Trunkline LNG, and Panhandle's arguments, the final rule provides that a pipeline may establish a single date during each calendar year for *reductions* to take effect, and that customers must provide the pipeline with 150 days notice before a proposed reduction. As discussed in Order No. 436, (50 FR 42445) this procedure should accommodate the needs of pipelines to prepare any necessary rate filings. With regard to the applicants' concern about effects on pipeline minimum bill provisions as a result of reductions or conversions of firm entitlements, the rule clearly provides that § 284.10(c)(4) applies to customers who simply reduce their firm sales entitlements, while § 284.10(d)(5) applies to customers who convert their firm sales entitlement to firm transportation.

b. *Shippers on the "Prebuild" Portion of ANGTS.* Pan-Alberta Gas and Foothills Pipe Lines (Yukon) express concern over the potential impact of the contract adjustment provisions in § 284.10 on the financial integrity of the "prebuilt" portions of the Alaska Natural Gas Transportation System (ANGTS). Pan-Alberta sells Canadian natural gas to Northwest Alaskan Pipeline Company, which in turn resells that gas to shippers at the U.S.-Canada border. Foothills transports the Pan-Alberta gas from Alberta to the border through the "prebuilt" Canadian segment of the ANGTS. The gas is then transported for the shippers from the border into the U.S. by the U.S. "prebuilt" segments of the ANGTS.

The Commission notes, at the outset, that the transportation programs authorized by Order No. 436 are purely voluntary. In that respect, the final rule differs significantly from Order No. 380, cited by Pan-Alberta. Because of its voluntary nature, Order No. 436 does not undermine the financial integrity of the ANGTS. Indeed, Pan-Alberta and Foothills themselves acknowledge in their requests for rehearing (Pan-Alberta, at p. 8); Foothills, at p. 4)) that § 284.10 does not threaten the financial integrity of the ANGTS. In any event, the Commission affirms that no action taken here is intended to alter its prior commitments made with respect to that ANGTS pre-build. To the extent that Pan-Alberta, Foothills, and Westcoast Transmission argue that § 284.10 indirectly threatens the financial integrity of "the North American Gas Industry," their arguments parallel arguments advanced by others. These points are addressed by the Commission throughout this order.

c. *Nexus Between CD Adjustments and Transportation.* A few applicants state that the Commission has not established a nexus between the contract demand reduction condition and the exercise of transportation rights under the NGPA and the NGA. Texas Eastern, at p. 12; Algonquin, at p. 17; ANR, at p. 13, Amoco, at pp. 12–17. The Commission disagrees. The nexus lies at the heart of Order No. 436 and is simply stated. While pipelines legitimately exercise "natural" monopoly power in many geographic areas over interstate *transportation*, there is no clear economic basis for pipelines to wield

"natural" monopoly power over the purchasing and selling of the natural gas *commodity*. *Pennzoil v. FERC*, 645 F.2d 360, 378–379 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982). Accordingly, there is a sound regulatory basis for the Commission to take those steps necessary to fulfill the NGPA goal to remove federal price regulation over markets for the natural gas commodity at the wellhead.

The CD adjustment options, by allowing a freeing-up of capacity now booked for firm sales service, allow shippers the ability to book *equally firm* transportation service in order to link up the two sides of a competitive market in the gas commodity. Algonquin makes a somewhat different point when it states (at pp. 17–22) that pipeline facilities typically have been constructed to provide capacity for firm sales and transportation requirements. Unless these contracts have expired or been amended through bilateral agreements approved by the Commission, the available firm jurisdictional pipeline capacity is fully subscribed. Since the rule requires pipelines to accord firm sales customers a priority opportunity to convert their firm sales rights to firm transportation, some customers, Algonquin states, will convert all of their firm sales entitlements to transportation. If the customers need the capacity, it is likely they would convert their firm sales entitlement to firm transportation.

If Algonquin's analysis is correct, then it only means that customers will prefer the conversion option over the reduction option. If Algonquin is wrong, then the reduction option will serve as a useful device to free up capacity that consumers no longer wish to pay for. In either event, the Commission sees no reason to modify this feature of the rule because the Commission's objective is to free up capacity not required for sales or transportation service to existing customers.

d. *On Contracts Providing for Annual Entitlements.* ANR asserts in its application for rehearing (at p. 6) that the term "firm sales entitlements", as used in § 284.10, is not defined but seems to include not only "contract demand," or "Maximum Daily Quantity" amounts, but also "annual contract quantity," or "Annual Entitlement" amounts. ANR seeks clarification that the latter, annual amounts are included in the definition of firm sales entitlements. Memphis asserts in its application for rehearing (at pp. 11–13) that the Commission erred in Order No. 436 by not allowing customers of pipelines to reduce their firm sales entitlements for D–2 quantities which relate to expected annual purchases or curtailment entitlements, under the modified fixed-variable rate design. As set forth below, rehearing on these issues is denied.

With regard to ANR's concerns, Order No. 436 provides that "firm sales entitlements" means ". . . not only contract demand but such Annual Contract Quantities, or perhaps certain curtailment entitlements. To the extent that there may be some particular questions as to whether a specific vehicle operates to fix firm sales entitlement, these issues may be appropriately addressed on a case-by-case basis." Thus, firm sales entitlements covers both peak and annual volumes. With regard to Memphis' concern, Order No. 436 clearly provides that the CD reduction and conversion options are intended to allow reductions in the volumetric levels of service, not in the amount of fixed charges paid to the pipeline under a particular rate design. However, as set forth above, Memphis may pursue its argument, to the extent it relates to volumetric reductions, in an individual case. For these reasons, rehearing is denied on these issues.

e. *On existing Full Requirements Customers.* In Order No. 436 we held that customers served under a contract that required them to buy all their gas from one supplier or were subject to a sole supplier clause could nevertheless reduce or convert their firm sales entitlement. 50 FR 42445. The Commission declined, however, to hold that the customers served under contracts like these could continue to purchase gas under the pipeline's full requirements rate schedule. The Commission did so because there could be differences between the costs of providing full requirements sales service and full requirements transportation service. It said, however, that if there were disagreements on what the proper rate should be, they would be resolved in individual cases. *Id.*

On rehearing Tennessee Small General Service Customer Group (at pp. 3–4), CILCO (at pp. 2–17), and Illinois (at pp. 2–12) argue that the Commission erred in not addressing the rate question. The Commission sees nothing in CILCO's or Illinois' arguments; however, that warrants a different conclusion. The full requirements rate schedule establishes certain criteria that customers must meet in order to be subject to the full requirements rate schedule. (The full requirements rate schedule is typically a more favorable rate schedule than a partial requirements rate schedule, in terms of the price that is paid for a unit of service). If after taking advantage of a reduction or conversion a customer still complies with the criteria for being a full requirements customer, then that customer should continue to be a full requirements customer. If that customer no longer meets the criteria for a full requirements customer after a reduction or conversion, then that customer would be a partial requirements customer and come under whichever rate schedule that meets the customer's current contract. A customer that moves from a full requirements customer to a partial requirements customer as a result of a contract reduction or conversion may then use the next rate case as an opportunity to argue that the criteria for full requirements customers should be amended so that it could continue to take advantage of the full requirements rate schedules. In the interim before the next rate case is filed, the customer should pay under the rate schedule that meets the criteria for its contract. For example, if a customer reduces its entitlement by, say, 15 percent and takes no gas from any other pipeline and takes no transportation services from the pipeline with which it has a contract, then, as long as there is not a volume minimum for contract demand for full requirements customers, it would continue to use the full requirements rate schedule. If the customer converted 15 percent of its firm sales contract demand to transportation service but still continues to take all of its pipeline services from the pipeline with which it has the contract (even though it buys some gas directly from producers) then, if this is not prohibited by the full requirements rate schedule, the customer would continue to be a full requirements customer. If the full requirements rate schedule, however, prohibited customers from buying gas directly from producers and transporting it on the pipeline, then the customer would no longer be a full requirements customer.

3. Proposed Procedural Changes

a. *Length of Notice.* As stated earlier, § 284.10 provides that customers that exercise their CD reduction option or conversion option are required to give the pipeline 150 days notice or 60 days notice, respectively, before the proposed change. INGGA states that the 60 day notice period is too brief if pipelines are to plan their long term supply arrangements at the lowest reasonable rate. They suggest that the Commission should require all such parties converting service to file at the same

time annually, with that conversion to be effective nine months thereafter (INGGA at p. 18).

Washington Natural Gas Company states that even assuming a pipeline elects to accept the new blanket certificate, local distribution companies do not have enough time by the February 1, 1986, deadline in the final rule to determine whether it is a prudent economic decision to reduce or convert their contract demands. Moreover, Washington Natural maintains that the Commission's proposal on block billing in Part D of the rule will also affect the distributors' decisions. (Washington Natural Gas Company, at p. 4).

Kansas Power and Light Company states (at pp. 2–3) that in the second and subsequent calendar years, it appears that § 284.10(c)(2) permits the pipelines to designate dates on which CD reductions will occur. If this is correct, Kansas Power and Light states that pipelines could set the first election date after February 1, 1986 at December 31, 1987. This means that a pipeline's customers would only be allowed to make one CD reduction election which would be effective in the first three winters after the issuance of Order No. 436. They further state that it is unclear whether § 284.10 permits the pipeline to change the election date from year to year or whether it must select a permanent annual election date. If the date is not permanent, they state the pipeline could pick January 1, in one year and December 31, in the next, and thereby impede the implementation of the CD reductions. They suggest that the Commission require pipelines to select an initial CD election date in the period from February 1, 1986, to May 18, 1986 and that that date would be a permanent election date.

The Commission believes that the 60-day notice period is reasonable. This notice period is the minimum period within which a pipeline's customers may give notice of a CD conversion. Presumably, some customers will give notice before that date. Even if other customers provide only the minimum notice period, that 60-day period may be the earliest time at which the customer can assess the options available to it. The Commission believes that the 60-day notice period appropriately balances the time needed for the pipeline to assess its supply and demand against the customer's need for flexibility in assessing its options. Further, a converting customer will continue to contribute to the recovery of fixed costs at essentially similar levels. As contrasted with a reducing customer, the converting customer is not leaving the system.

With respect to Washington Natural's comment, the earliest for electing CD reductions for 1986 was February 1, 1986, under Order No. 436. If a customer does not exercise its CD reduction option in 1986, it can still elect that option for 1987. In any event, the CD conversion option may be exercised at any date each year following the appropriate 60-days' notice.

Finally, Kansas Power and Light is correct that § 284.10(c)(2) allows pipelines to designate the date during each calendar year that the CD reductions are to take effect and that the pipeline may change this date from year to year.

In response to these requests, § 284.10(c)(2) is modified to establish more certain notice deadlines and effective dates for customers to exercise their CD reduction options. Under § 284.10(c)(1), the "trigger" date for the availability of the CD reduction option is the date the pipeline first commences or continues a new section 311 arrangement after February 15, 1986, or accepts a new blanket certificate. Section 284.10(c)(2), as modified, would require that, unless the pipeline agrees otherwise, a customer wishing to exercise its CD reduction option the first year it is available, must give the pipeline written notice of the level of its first year reduction not later than 45 days following the "trigger" date established under § 284.10(a). This 45-day notice requirement is only applicable to firm sales customers in the first year the CD reduction option is available. Because § 284.10(c)(1) establishes a single date for first year reductions to take effect, the 45-day notice requirement is intended to provide customers adequate time to decide their first reduction elections under § 284.10.

In addition, § 284.10(c)(2) requires that, in the first year, all such customer reductions take effect 150 days following the close of the required 45-day customer notice period. This will assure that all customers enjoy the same 45-day period to make their CD reduction elections, and that all such CD reduction elections will take effect on the same day the first year. The Commission intends this modification to provide pipelines and their customers with the certainty and predictability necessary to plan their first service agreement modifications and tariff filings under Order No. 436.

In subsequent years, § 284.10(c)(2) is modified to permit a pipeline to establish a single effective date for all CD reductions to take effect, as long as the pipeline provides its customers with 180 days written notice prior to such date. This change would permit pipelines the flexibility to change the effective date for CD reductions in subsequent years, as long as the changed effective date is no later than the "anniversary" date of their customers' last such reduction, and as long as their customers are provided prior notice of the changed effective date. In this way, a pipeline may choose to require that all CD reductions take effect on a single date, and customers will be assured that such effective date is no later than 12 months following the effective date of their last such reductions.

b. *Gradual Phase-in.* Several petitioners argue on rehearing that the Commission should have considered alternatives to the schedule of phasing-in the CD adjustment options. Elizabethtown Gas Company states (at pp. 11–12) that the Commission should limit the options to a total of 20 percent over a four-year period. Petitioners state that until the Commission has had actual experience with the effect of its program on the maintenance of continuous, adequate and reliable natural gas service, such a limitation would not prevent pipelines and their customers from negotiating larger reductions and conversions, but that those reductions and conversions would be subject to case specific applications under section 7(b) of the Natural Gas Act. They suggest that this approach would afford a meaninful recognition of the competitive market while testing the ability of the pipeline to meet its obligations through firm transportation services. Elizabethtown also argues that limiting the options would mitigate adverse cost-shifting.

American Public Gas Association (APGA) and Wisconsin Distributors Group (WDG) make arguments (at p. 36 and at p. 11, respectively) similar to Elizabethtown's that limiting the CD adjustment options would mitigate the problem of shifting costs to remaining customers. Specifically, APGA recommends that the 25 percent annual ceiling be reduced to 15 percent, so that CD adjustments would be more gradual and spread over a greater number of years. WDG simply supports reducing 25 percent to a smaller percentage.

MPC (at pp. 9–12) takes issue with the Commission's four-year phased-in approach to CD conversions (25 percent maximum each year). It charges that LDCs will be put in a dilemma of having to use up their CD reduction option to avoid cost shifting when their large

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industrial/commercial customers swing to direct producer purchases. Accordingly, MPC (at p. 12) recommends elimination of the 25 percent limitation on CD conversions. Alternatively, it urges that LDCs be given credit toward their contract demand charge payments to their pipeline suppliers to the extent that their large industrial or commercial customers purchase transportation directly from the pipeline servicing the LDC. It asserts that this latter option would prevent LDCs from having to use up their limited 25 percent options to eliminate their payments for CD capacity that are already being made directly to the pipelines by the LDCs own former sales customers who are now purchasing transporation.

In addressing these concerns over the schedule adopted in Order No. 436 for phasing-in CD reductions and conversions, the Commission believes it is important to reiterate the intent and purpose behind CD adjustments as a general matter. Order No. 436 is designed to promote alternatives to the traditional marketing of gas in which the pipeline purchases gas at the wellhead, transports it and resells it to its customers. The CD reduction/conversion options provide pipelines' firm sales customers, especially full requirements customers, with a greater ability to purchase gas from nontraditional suppliers and to have it transported on a firm or interruptible basis. For this policy to be effective, there must be access to firm pipeline capacity. Otherwise, interruptible loads, including the large volume of fuel-switchable load, would be primarily, if not virtually the exclusive, beneficiary of the freed-up gas supplies.

At the same time, it is clear that a transition period is appropriate in view of the need for so many business participants to review and perhaps revise their existing arrangements in light of wellhead decontrol and Order No. 436. The Commission also must assure that its approach will allow it to monitor the evolution of the market, to respond to problems as they arise, and to make any mid-course adjustments that become necessary.

The Commission provided for a transition period in Order No. 436. However, we are persuaded by the petitions, especially those of APGA and WDG, associations of primarily small, full-requirements customers, that the transition period should be slightly more graduated and gradual.

The Commission is therefore granting rehearing in order to modify the CD reduction/conversion phase-in period. First, it will provide for a five-year phase-in period. Second, it will cap adjustments at 15 percent for each of the first two years, 20 percent for the third year, and 25 percent for each of the last two years. (The "years" will be twelve-month periods dating form the date on which the pipeline first becomes subject to § 284.10 by virtue of commencing a new section 311 transaction or accepting a new blanket certificate under § 284.221.) Third, it will require that the adjustments be cumulative.[46] Accordingly, the Commission adopts the following schedule:

Year	Annual changes (percent)	Cumulative reduction/conversion (percent)
1	15	15
2	15	30
3	20	50
4	25	75
5	25	100

The Commission believes that the modifications to the CD reduction/conversion schedule adopted herein will better enable pipelines to accommodate their customers' CD adjustments in a more orderly and less disruptive manner. Pipelines and their customers will benefit from a more gradual CD adjustment program to the extent it ensures a more predictable transition and mitigates potential take-or-pay exposure. Most significantly, as pointed out by APGA and WDG, limiting the CD adjustment options will help to mitigate adverse cost-shifting.

The nondiscriminatory access conditions in Order No. 436 are intended to give all customers of a pipeline access to available transportation capacity. In the near future, as pipeline customers revisit their traditional relationships with pipeline suppliers and gain experience in finding and purchasing non-traditional supplies, most transportation services will probably be on an interruptible basis. A customer's ability to obtain interruptible transportation service does not necessarily depend upon CD reductions and conversions.

However, Order No. 436 recognizes the possibility of structural changes in the gas industry. Distribution customers and end-users may choose to purchase more of their gas supplies, either short-term or long-term, from producers, brokers and other nontraditional suppliers. In these cases, pipeline customers would require long-term firm transportation arrangements. The CD reduction/conversion options are important in this respect to free up some pipeline capacity and to give firm sales customers, especially full requirements customers, greater options. However, recognizing that these new pipeline service options involve structural changes in the industry, the Commission must ensure that use of these new options does not greatly disadvantage any one class of customers.

Changes in purchasing patterns may be more prevalent in some areas of the country than others, or for some customers more than others. Partial requirements customers have historically been able to "swing" on a competitive basis between multiple pipeline suppliers, an ability that was enhanced by Order No. 380. It is reasonable to assume that the ability to "swing" has translated to expertise on the spot market as well. In this regard, the Commission notes that data on file at the Commission and reproduced at Exhibit D of Order No. 436 indicates that the overwhelming majority of transportation arrangements undertaken on behalf of local distribution companies in the first six months of 1985 have been for partial requirements customers with alternate pipeline suppliers and *not* for full requirements customers supplied solely by one pipeline.

Since many partial requirements customers have greater experience with spot market and interruptible transportation transactions, we believe that they have developed greater knowledge of the competitive market infrastructure, with greater resources to make direct purchases of competitively priced gas. This customer class may be better situated, therefore, to take immediate and full advantage of the CD options.

Full requirements customers, on the other hand, have not had the same opportunities to play the competitive field between pipeline suppliers. Nor in many cases have they had the opportunity to gain extensive experience in making spot market or direct producer purchases. Accordingly, many may be reluctant to immediately forgo the reliability of service which comes from their present suppliers' firm sales obligations. As a result, full requirements customers will probably be unwilling to reduce or convert their firm entitlements as rapidly as many partial requirements customers.

To the extent partial requirements customers can better take advantage of the CD reduction election than full requirements customers, there may be

[46] The "cumulative" requirement here implements the Commission's intention that firm sales customers be provided maximum options for transportation services, regardless of whether they choose to exercise those options to the full extent from year to year during the CD reduction/conversion phase-in schedule.

cost-shifting from partial to full requirements customers. This is so because some portion of fixed costs are allocated on the basis of firm entitlements. If partial requirements customers reduce their entitlements in a disproportionately greater amount than the reductions by full requirements customers, these latter customers may be allocated a greater share of the fixed costs. By setting the CD reduction cap higher in the initial years, the Commission inadvertently may have disadvantaged the very customers that the CD reduction provisions are intended to benefit. Therefore, as indicated above, we have decided to modify those provisions to provide for a more graduated and gradual phase-in period.

c. *Reduction of Transportation Entitlements.* One applicant, Columbia Gas Transmission Company, states that the Commission should also allow reductions in exisiting firm transportation contracts. It states that, as a corollary to the Commission's regulations permitting pipeline customers to reduce their sales contracts by a certain percent a year, customers with the ability to reduce their firm transportation contracts by a similar percent a year should be afforded the same treatment. Columbia contends that this is especially important for upstream pipelines who are transporting gas for the benefit of another pipeline's system supply. It states that present over-supply situations have resulted from down stream pipelines paying significant demand charges which are in excess of daily deliveries of gas by the upstream pipelines. It also believes that the situation will be aggravated as additional pipelines sales are replaced by greater transportation quantities under Order No. 436. (Columbia, at p. 15).

The purpose of the rule is to provide greater use of transportation services, to encourage the development of a competitive wellhead market and to give customers' options to take either sales or transportation service. There is nothing that precludes a firm transportation customer from negotiating for a reduction in its firm transportation entitlement and seeking the necessary certificate authority. However, that is beyond the scope of this rule, which is directed toward encouraging greater use of pipeline capacity for transportation. *See Mississippi River Transmission Corp. v. United Gas Pipeline Co.*, 29 FERC ¶ 61,171 (Nov. 13, 1984); 33 FERC ¶ —— (1985).

4. Allocation by Distributors of Minimum Bill Credits That Arise From Reduction/Conversion

Memphis (at pp. 13–14) and Panhandle Eastern (at p. 10) request clarification that the Commission intended no double reduction in an LDC's minimum commodity charges under §§ 284.10(c)(4) and (d)(5) when an LDC reduces sales CD in the process of converting sales CD to transportation CD under § 284.10(d)(5). Each section provides for concomitant reductions in minimum commodity bills to reflect the reduced sales CDs. Panhandle Eastern states that nothing indicates that the two provisions will apply exclusively in each case. BUG (at pp. 9–11), on the other hand, interprets the conversion provision of § 284.10(d)(5) to be discriminatory because, in its view, the provision provides no mechanism for a reduction in minimum commodity bill charges and has the effect of indirectly assigning such charges to transportation in contravention of § 284.8(d). Frito-Lay (at pp. 2–3) seeks clarification that the minimum bill reduction and credit provisions of § 284.10(c)(4) and (5) apply when an end-user elects to take transportation services from an interstate pipeline, even though the LDC has not elected to reduce or convert its contract demand for sales.

At the outset, the Commission notes that the minimum bill reduction/credit provisions of §§ 284.10(c)(4) and (d)(5) are mutually exclusive and cannot result in a duplicate reduction in minimum commodity bill liability in the event of a CD conversion. If the LDC converts CDs, then § 284.10(d) applies to the CD volume converted. If it elects to reduce CDs (and seek a new source of supply, for example), § 284.10(c)(4) applies to the CD volumes reduced. Both rules cannot operate with respect to a conversion. Further, BUG is off the mark in its comments. Section 284.10(d)(5) does expressly effect a reduction in minimum commodity bill charges and is therefore not different in that respect, than § 284.10(c)(4), CD reductions. Moreover, while the net effect of a conversion on the pipeline's recovery of fixed costs may be minimal (due to the reservation fee provision) (*see* 50 FR 42444), the fact that the LDC that converts CDs may pay more than one that strictly reduces CD is justified. The converting LDC still should pay to tie up the pipeline's firm capacity even it is now in the form of firm transportation service. Further, and differences in cost recovery as a result of CD reductions will ultimately depend on the outcome of the pipeline's rate proceeding. (*See* 50 FR 42440). The purpose of both the CD reduction and the CD conversion provisions is to free up unused capacity by allowing reductions in volumetric levels of sales service; not to reduce costs *per se*.

Frito-Lays' requested changes are at odds with the plain language of §§ 284.10(c)(4) and (d)(5). No minimum bill reductions or credits arise unless the LDC elects to reduce or convert its demand for sales service. It is equitable to preclude the same minimum bill reductions or credits when an end-user obtains transportation that by-passes the LDC because the pipeline still must maintain by capacity and stand ready to serve that LDC in the event it is able to replace the end users and require its full contracted service.

D. Rate Conditions Under § 284.7

1. Value of Service

Several applicants state that the rate criteria in §§ 284.7(c) and 157.103(d)(2) for transportation under Part 284 and any new service under optional expedited certificates, respectively, are invitations to "value of service" ratemaking; *i.e.*, all fixed costs will be charged to on-peak customers thus giving off-peak customers a "free ride."

APGA asserts in its application for rehearing (at pp. 42–43) that the Commission has authority under the Natual Gas Act to consider seasonal differences in the cost of rendering service in setting rates, as provided in §§ 157.103(d)(5) and 284.7(d)(3) of the rule. APGA further asserts that because pipelines can develop cost based rates for peak and off-peak periods, it is unnecessary to include §§ 284.7(c) and 157.103(d)(2) in the rule. These sections are essentially similar and set forth the rate objectives related to self-implementing transportation and optional expedited certificates. Section 157.103(d)(2) provides as follows:

> Maximum rates for both peak and off-peak periods must be designed, to the maximum extent possible, to achieve the following three objectives:
>
> (i) Rates for service during peak periods should ration capacity;
>
> (ii) Rates for firm service during off-peak periods and for interruptible service during all periods should maximize through-put; and
>
> (iii) The certificate holder's revenue requirement allocated to firm and interruptible services should be attained by providing the projected units of service in peak and off-peak periods at the maximum rate for each service.

APGA contends (at pp. 43–44) that §§ 157.103(d)(2) and 284.7(c) serve no useful or legally permissible purpose, that the sections will be used by pipelines to adopt "value-of-service"

rates rather than cost-based just and reasonable rates, and that the sections should be eliminated from the rule.

As set forth below, APGA's application for rehearing on this issue is denied. Order No. 436 clearly provides that rates under the final rule must be cost-based and must be designed so that the pipeline has a reasonable opportunity to recover its costs. Further, the rates should be designed to ration capacity at the peak and to encourage full utilization of the pipeline. *See* 50 FR 42448. Order No. 436 also provides that "the rates for firm or interruptible transportation under this rule will be based on the fully allocated, separately established cost of providing the service and shall separately identify the cost-component attributable to transportation, storage, and gathering." (*Id.*) Because of the strong support for cost-based ratemaking in Order No. 436, APGA's concern that the Commission will permit pipelines to abandon cost-based ratemaking in favor of value-of-service ratemaking is unfounded. For these reasons, rehearing is denied.

2. Generic v. Case-by-Case Approach

Section 284.7(d) imposes numerous rate conditions on pipelines transporting natural gas under Subparts B, G, or H of Part 284. This section provides that the rates must be volumetric, one-part rates that recover costs allocated to the service on the basis of projected units of service, except to the extent a reservation fee is permitted by § 284.8(d) for firm transportation; separately identify the cost component attributable to transportation, gathering, and storage; and reasonably reflect any material variation in the cost of providing service due to the time at which the service is provided and the distance over which it is provided.

Several commenters argue that rates designed consistent with these conditions will not enable pipelines to recover their costs. Several of these commenters—El Paso (at pp. 13–14), UDC (at pp. 44–52), Transwestern (at pp. 17–20)—contend that the solution to this problem is to eliminate the rate conditions and provide that the rates will be established on a case-by-case basis.

The Commission sees no merit in this argument. The rate conditions in § 284.7(d) simply establish the basic ratemaking framework. The actual rate levels will be set on a case-by-case basis. 50 FR 42448. Moreover, as stated in Order No. 436, one of the critical elements to be considered in setting rates for transportation under Subparts B, G, and H is to design rates that will allow the pipeline to recover its costs plus a fair return. Finally, the essence of § 284.7(d) is that rates must be designed so that the pipeline will recover the costs allocated to the service if it transports the volumes (the "projected units of service") used to design the rates. This is exactly the same method the Commission uses to design rates for other pipeline services, such as firm sales. No tenable argument can be made that this method does not permit pipelines to recover their costs plus a fair return.

Nor does the Commission see any merit to the arguments when the specifics of § 284.7(d) are considered. El Paso (at pp. 9–10) and UDC (at pp. 48) argue that § 284.7(d) will not permit pipelines to recover their costs because § 284.7(d)(3)(i) requires the rates to reasonably reflect any material variation in the cost of providing the service due to "whether the service is provided during a peak period or an off-peak period." This is so, El Paso argues, because the rate for transportation during the peak period will be higher than the rate for sales services, which generally do not differentiate between peak and off-peak periods. Hence the customers will tend to buy gas during the peak period. But during the off-peak periods the transportation rate will be lower so that customers will transport rather than buy gas. The problem with this argument is that it assumes that all the fixed costs associated with providing self-implementing transportation will be allocated to the peak period.

The final regulations do not presuppose that all fixed costs will be allocated to the peak period. That will be determined in the rate case in light of the rate objectives of § 248.7(c) and other basic goals and elements of the rate design process, such as the necessity of designing rates that permit pipelines to recover their costs. *See* 50 FR 42447–48. Furthermore, nothing precludes a pipeline from using the rate objectives of § 248.7(c) when designing its sales rates

El Paso and UDC also argue that pipelines will not recover their costs because the rate conditions require pipelines to offer "unbundled rates" for transportation while sales rates are not "unbundled." Section 284.7(d)(1) provides that the rates must "separately identify the cost components attributable to transportation, storage and gathering costs." To the extent certain services are not required for the transportation of gas, some of the costs can be avoided by pipelines. Other costs will have to be reallocated in rate proceedings, depending on the reasons for their incurrence. This does not mean that the pipelines will be unable to recover costs prudently incurred.

Finally, UDC argues (at pp. 44–95) that the pipelines will not recover their costs because the reservation fee does not "guarantee recovery of an appropriate level of fixed costs." Nothing in the statute requires us to guarantee the recovery of fixed costs. All that is required is that the pipeline be given the opportunity to recovery its costs. *FPC* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 590 (1942). The reservation fee provided by the regulations gives pipelines the opportunity to recover essentially the same level of transportation-related fixed costs recovered in their sales demand rates. Indeed, if the maximum volmetric rate is collected for the projected units of service, the pipeline will recover its fixed costs even without charging a reservation fee. Accordingly, the Commission sees no reason to grant rehearing on this issue.

3. Reservation Fees

a. *Diminution of Risk of Pipelines.* APGA (at pp. 37–38) argues that no reservation fee should be permitted for firm transportation under subparts B, G, and H or for sales service. APGA argues that this is necessary to place pipelines at risk. The Commission disagrees. First, the question of the appropriate method of developing rates for sales service is considerably beyond the scope of this rule. Second, the reservation fee pipelines may impose for firm transportation under subparts B, G, and H enables them to recover no more than the same portion of fixed costs recovered in their sales demand rates. It does not guarantee recovery of all fixed costs. Those costs remain at risk, depending on the level of throughput. *See* 50 FR 42471.

b. *Proposed Exemption for Small Sales Customers.* APGA (at p. 39) also argues that, if pipelines are permitted to impose a reservation fee, they should not be permitted to impose a reservation fee on a customer that converts from firm sales to transportation where the rate the customer paid for sales service was a one part rate. In short, APGA argues that, if the customer did not pay a demand charge when it was a sales customer, it should not pay a reservation fee when it converts to firm transportation. The Commission disagrees. In Order No. 436, the Commission decided pipelines should be permitted to impose a reservation fee for firm transportation to minimize the possibility that, because of the non-discriminatory access condition, customers would "overbook" capacity. 50 FR 42449. Sales service is not subject

to a non-discriminatory access condition. Consequently, the Commission sees nothing in the fact that customers do not pay a demand charge for sales service to warrant exempting them from the reservation fee for self-implementing transportation. Moreover, the program is voluntary. If the customer is better off as a sales customer; it will remain a sales customer. If it is better off as a transportation customer, notwithstanding a reservation fee, it can exercise the option it prefers.

c. *Applicability to Intrastate Pipelines.* Producers Gas (at p. 8) seeks clarification of whether the permission that the rule gives to interstate pipelines to impose a reservation fee applies to intrastate pipelines. It does to the extent that the intrastate pipeline offers firm transportation subject to the non-discriminatory access condition in § 248.8 and that the total rate meets the fair and equitable standard. If a pipeline provides firm service in intrastate commerce and charges a reservation fee for that service that is consistent with the requirements of § 248.8(d), the pipeline may use that reservation fee for service provided under Supbart C. If the pipeline has no such reservation fee and seeks to impose a reservation fee for firm interstate service, it must, consistent with § 248.123(b)(2), file the reservation fee with the Commission and support it. *See* § 248.123(b).

4. Cost Allocation Issues

a. *Reasonableness of Allocating Between Peak and Off-Peak Periods.* Section 284.7(d)(3)(i) provides that rates must reasonably reflect any material variation in the cost of providing service due to whether the service is provided during peak or off-peak periods. APGA (at p. 44) argues that the term "off-peak period" should be construed in accordance with pre-existing cost classification and allocation precedents, such as *Atlantic Seaboard Corp.*, 11 FPC 43 (1952). APGA's point seems to be that in setting rates for self-implementing transportation the Commission should follow its past practice of allocating a substantial amount of fixed costs to off-peak periods.

The Commission is not adopting this clarification. Although the result of the ratemaking process may or may not be that substantial amounts of fixed costs will be allocated to the off-peak period, the Commission sees no reason to determine the result now. Instead, the question of how much of the pipeline's fixed costs are to be allocated to off-peak periods will be determined on a case-by-case basis in light of the rate objectives in § 248.7(c).

b. *Meaning of "Properly Allocated".* Section 284.7(d)(4) provides that the rates for a transportation service provided under subparts B, G, and H must recover "solely those costs which are properly allocated to the service to which the rate applies." APGA (at pp. 45–57) argues that the Commission should modify § 248.7(d)(4) to require pipelines to allocate storage, production, gathering, and "as billed" fixed costs to their firm transportation services on the same basis that these costs are allocated to their firm sales service.

The Commission declines to adopt this modification. The basic rule the Commission follows in allocating costs to sales service is to allocate to each service and each class of customers the costs the pipeline incurs in serving them. *See generally Columbia Gulf Transmission Co.*, Opinion No. 173, 23 FERC ¶ 61,396, at 61,850 (1983), *aff'd sub nom., City of Charlottesville v. FERC*, No. 83–2059 (D.C. Cir. Oct. 18, 1985). The Commission intends no departure from that rule in allocating costs to transportation services. *See* 50 FR 42448. Hence the general rule to be followed in allocating costs to transportation services will be the same as the rules followed in allocating costs to sales services. The consequence of this, however, may well be that the amounts and types of costs allocated to transportation services will differ from those allocated to sales service. For example, a pipeline may incur production costs to provide sales services, but it may not incur those costs to provide transportation services. Consistent with the general rule, the pipeline should therefore not allocate production costs to transportation. Accordingly, the Commission sees no basis for requiring pipelines to allocate to transportation services the same costs allocated to sales services. Instead, the costs to be allocated to transportation must be resolved, as they always have been, in individual rate cases.

5. Selective Discounting

a *Legal Authority.* Among the rate conditions imposed on transportation performed under subparts B, G, and H is the requirement of § 284.7(d)(5)(i) that the rate schedule set forth a maximum rate and a minimum rate. A pipeline may then charge a customer the maximum rate, the minimum rate, or any rate in between. *See* § 284.7(d)(5)(ii).

APGA (at pp. 47–67), Laclede (at pp. 12–14), NI-Gas (at pp. 22–30), Southern Indiana (at pp. 29–35), Ohio Association (at pp. 2–4), and IOGA (at pp. 2–3), oppose this aspect of the rate. Each argues that section 4(b) of the Natural Gas Act prohibits a pipeline from charging one customer one rate and another customer a different rate. The Commission disagrees.

In Order No. 436 the Commission reviewed the applicable law and precedents. It concluded that section 4(b) was not intended to prohibit pipelines from discounting its rates to its customers to meet competition. *See* 50 FR 42452.

None of the parties opposing § 284.7(d)(5)(ii) challenge the Commission's analysis of the statute's legislative history. Instead, they argue around the question. For example, APGA argues (at pp. 57–59) that allowing pipelines to discount their rates to particular customers to meet competition is inconsistent with the holding of the D.C. Circuit in *MPC II*, which is, APGA alleges, that the NGA requires the same rate to be charged to captive and non-captive customers. The problem with this argument is that the issue before the court was not whether the Commission could allow a pipeline to offer a discount to a particular customer to meet competition. The issue was whether the Commission could allow a pipeline to deny access to transportation (and therefore to the competitive nationwide market for gas supplies) to some customers. To be sure, there is language in the court's opion, 761 F.2d at 784–85, that says the NGA requires pipelines to charge the same rate to captive and non-captive customers. But this language is in the section of the opinion in which the court is summarizing the petitioner's arguments. Nothing in the rest of the opinion suggests that the court was thereby adopting those arguments as its own statement of the law on an issue that was not then before it.

NI-Gas also argues (at pp. 25–27) that § 284.7(d)(5)(ii) is inconsistent with the D.C. Circuit's holding in *MPC II*. But NI-Gas. argument is that to permit pipelines to charge customers different rates for transportation amounts to allowing pipelines to discriminate among customers in terms of access to transportation. This is incorrect. The two situations are different. In the case before the court in *MPC II* the Commission had denied captive customers access to transportation. Here, by contrast, the Commission's regulations require pipelines to grant access to transportation to all customers willing to pay the just and reasonable rate.

NI-Gas (at pp. 28–30) and Laclede (at pp. 13–14) argue that permitting pipelines to offer a discount to a particular customer will remove the

competitive pressure on producers to reduce the price of gas at the wellhead. But in Order No. 436 the Commission examined the impact that permitting pipelines to offer discounts to particular customers might have on wellhead prices. 50 FR 42454. The Commission concluded that permitting pipelines to discount selectively would likely have no effect on prices at the wellhead. The Commission sees nothing in the arguments of NI-Gas and Laclede that requires a different conclusion.

b. *Anticompetitive Effects.* APGA (at p. 47), Ohio Association, IOGA, and Southern Indiana (at p. 32) argue that permitting pipelines to discount selectively will have anticompetitive effects. For example, Southern Indiana argues that a pipeline could use § 284.7(d)(5)(ii) to charge the maximum rate to an LDC while charging an end-user, formerly served by the LDC, a discounted transportation rate, thereby imposing a price squeeze on the LDC. The problem with this argument is that it overlooks the fact that the conduct of a pipeline offering a discount to one customer but not to another is still subject to scrutiny under both the antitrust laws and sections 4 and 5 of the NGA. The Commission made that clear in Order No. 436. *See* 50 FR 42454.

Moreover, *both* rates are fully subject to the Commission's rate jurisdiction and full remedial powers. Hence, the situtation is entirely distinguishable from the price squeeze issue as it arises under the Federal Power Act. *Cf., Mid-Tex Electric Cooperative* v. *FERC*, 773 F.2d 327, 355–56 (D.C. Cir. 1985) (sl. op., at pp. 58–59).

In short, all that Order No. 436 provides is that a pipeline offering a discount to one customer but not to another is not by that mere fact engaging in unduly discriminatory conduct. It does not provide that a pipeline may engage in anticompetitive or unreasonable conduct or that the Commission will not take action to remedy unduly discriminating rates being charged. Accordingly, the Commission sees no reason to eliminate § 284.7(d)(5)(ii).

c. *Proposed Upward Flexibility.* Several pipelines—Cascade (at p. 10), Florida Gas (at pp. 17–18), ANR (at p. 27), and Tennessee (at pp. 31–35)—argue that not only should they have the flexibility to offer discounts below the maximum rate but also that they should have the flexibility to charge rates above the maximum. Essentially two reasons are given in support. First, ANR and Florida Gas argue that allowing pipelines to charge above the maximum rate is necessary to balance the fact that the rate conditions will allegedly produce non-compensatory rates. Second, Cascade argues that allowing pipelines to charge above the maximum when competitive conditions permit is consistent with the behavior of unregulated companies.

The Commission sees no merit in these arguments. With respect to the first argument, it does not believe rates designed in conformity with the rate conditions will be non-compensatory. Simply put, the rate conditions provide that the rates must be designed to provide the company a reasonable opportunity to recover the costs allocated to the service, including a fair profit, by transporting the volumes used to design the rates. This does not differ from the method used to design rates for other jurisdictional services. No tenable objection can be made to that time-tested method. Nor is it an objection to the rate conditions that the pipeline offering a discount may not recover its costs. If the Commission did not permit the pipeline to discount, the alternative to offering a discount and not recovering some costs would be to not transport certain gas at all and recover even fewer costs. Moreover, depending on the elasticities of the customers' demands, discounting the rate may enable the pipeline not only to recover all of its costs, but also to earn increased returns. In short, downward flexibility in unit rates does not necessarily mean reduced total revenues.

With respect to the second argument, the Commission sees nothing in the fact that an unregulated company may charge more than its costs plus a fair return when competitive conditions permit. In an unregulated industry, business usually can set the price of its goods at a level above what is needed to recover costs plus a fair return only when the business has a degree of market power. The Commission regulates pipelines to prevent them from exercising the market power they have. Hence, the Commission sees no justification for allowing pipelines to charge a rate higher than is needed to recover their costs plus a fair return.

d. *Discounts to Affiliates.* AGD (at p. 31), Consolidated Fuel Supply (at p. 3), and the Ohio Association (at p. 3) argue that the Commission should at least prohibit or restrict the ability of a pipeline to offer discounts to its affiliates. In Order No. 436 the Commission recognized that a discount offered to an affiliate may be made for legitimate competitive reasons. The Commission also notes that there are certain safeguards to prevent pipelines from abusing its discounting authority. As stated in Order No. 436, such discounts will be carefully scrutinized. 50 FR 42454. AGD, Consolidated Fuel Supply, and Ohio Association do not challenge this conclusion. Accordingly, the Commission sees no reason to grant rehearing on this issue and prohibit pipelines from offering discounts to their affiliates.

e. *Filing Requirements.* Southern Indiana (at pp. 33–34) argues that § 284.7(d)(5) is inconsistent with section 4(c) of the NGA. The purpose of section 4(c) is to give the Commission notice of the rate the pipeline is charging. *See City of Cleveland* v. FPC, *525 F.2d 845, 854 (D.C. Cir. 1976). The Commission sees nothing in § 284.7(d)(5) that contradicts this purpose. The rate for the service—reflecting the reasonable range between the maximum and minimum—is required to be on file prior to the service being offered. In addition, § 284.7(d)(5)(iv) requires the pipeline charging a customer a discounted rate to file a report with the Commission. This report, which will be attached to the pipeline's rate schedule, will show the rate within the range that the pipeline actually charged. 50 FR 42455. In response to Southern Indiana, the Commission will modify the reporting requirement to ensure that such reports will be filed 15 days after the close of the billing period, as compared to the 45 days contained in Order No. 436. See* new § 284.7(d)(5)(iv). This will provide sufficient notice to the Commission and the public of the rate the pipeline is charging.

f. *Miscellaneous Matters.* There are also two requests for clarification of § 284.7(d)(5). First, the Association of Texas Intrastate Natural Gas Pipelines seeks clarification of whether intrastate pipelines may offer discounts below the maximum rate. Section 284.7(d)(5) does not apply to intrastate pipelines transporting under Subpart C of Part 284. By its terms, § 284.7 applies only to interstate pipelines transporting under Subparts B, G, or H. *See* § 284.7(a). Thus, the rates intrastate pipelines may charge will be subject to the same rules they always have been. *See* 50 FR 42408. Since those rules permit intrastate pipelines to charge a customer a rate that does not exceed the fair and equitable rate, *see, e.g., Red River Pipeline Co.*, 30 FERC ¶ 61,228 at 61,452 (1985), intrastate pipelines may continue to offer discounts to customers.

Second, Columbia (at p. 20) argues that the basic intent of Order No. 436 is that the pipeline may offer a discount if the discount is not anticompetitive and the pipeline assumes all risks of under-recovery. Columbia seeks clarification because the Commission's discussion, 50 FR 42452, of *Sea-Land Services Inc.* v.

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ICC, 738 F.2d 1311 (D.C. Cir. 1984), suggests that a discount must be offered to all "similarly situated customers." A discount to one customer need not be provided to any other customer. Discounts in transportation rates may be offered on a selective basis. Since a pipeline operating under the new rules will be operating in a more competitive environment, it is appropriate to provide it greater flexiblity—within the approved maximum and minimum—in pricing its services. Under the conditions contained in the new rates, where it is clear that the discount is solely at the pipeline's expense, selective discounts will not ordinarily be unduly discriminatory. Complaints will be entertained as a means of determining whether a particular discount is pernicious.

Finally National Fuel Gas Supply Corp. asks how long beyond December 15, 1985, it may transport gas pursuant to the transitional provisions of §§ 284.105 and 284.223 without becoming subject to the rate filing requirements of § 284.7(b)(2). If an interstate pipeline plans to terminate all transportation under Subpart B and G prior to July 1, 1986 (the date specified in § 284.7(b)(2) as the time by which new rates must be effective), § 284.(b)(2) will not be applicable, assuming all Part 284 transportation is actually terminated, as planned, prior to July 1, 1986. If new rates are not filed in time to be effective by July 1, 1986, transportation must be interrupted on that date, as the interim rate under § 284.7(b)(1) apply only until July 1, 1986.

6. Effective of Waiver Request for Applicability of Rate Conditions

Northern Border requests (at p. 2) the Commission on rehearing to clarify: (1) Whether it may file for a blanket transportation certificate under subpart G of Part 284 of the Commission's regulations which does not conform to—and thus requires a waiver of—certain of the requirements of Order No. 436; and (2) whether the mere filing of a proposal would subject Northern Border to the "open access" and rate requirements of Order No. 436; or whether such requirements would only apply if Northern Border's filings is approved as filed. Northern Border states that its participation in a blanket certificate program under the revised regulations or in self-implementing transportation is possible only if the new rate conditions which attach to such transportation can be modified to be compatible with Northern Border's underlying financial agreements and a prior Commission order approving its cost of service tariff.

Northern Border is a partnership which primarily transports Canadian natural gas owned by shippers from the international border in Montana to a terminus near Ventura, Iowa. It does not buy or resell gas. Northern Border states that, under the loan agreement to finance construction of Northern Border's pipeline, it may be found in default if the pipeline's tariff is amended or modified and such change materially and adversely affects eiher the ability of Northern Border to perform its obligations under the loan documents, or the rate of amortization of the notes held by the lender. The pipeline states that under the rate conditions of new § 284.7(d), its costs, previously assured of recovery under a full cost-of-service tariff, would be placed at risk (at p. 9). Thus, it would be unable to continue the interruptible transportation service currently performed for certain of its customers. Revenues from those services are currently credited to its cost of service. The company states that it presently operates under an open and non-discriminatory tariff and that the incentive to provide incremental transportation is already present, since each of Northern Border's shipper-partners benefits from the crediting of revenues to Northern Border's cost of service.

In response to Northern Border's questions, as the Commission stated in Order No. 436, the program is completely voluntary. If Northern Border can show that its proposed transportation services achieve the objectives of Order No. 436 and that it has valid reasons for not being able to conform to all of the rate conditions of § 284.7(d), Northern Border should file for a waiver of the specific provisions that impede its participation in the Order No. 436 programs, The mere filing of such waiver request with a blanket certificate application does not automatically subject the applicant to the rate conditions of § 284.7(d) and the non-discriminatory access conditions. Northern Border should, however, request a waiver prior to beginning self-implementing transportation, since the rate charge for such transportation must comply with subpart A of Part 284. If Northern Border is unable to show good grounds for waiver, its transportation rate would be subject to revision. Any request for a waiver will be carefully scrutinized to ensure that pipelines are not placing imaginary obstacles in the way of implementing either the non-discriminatory access provision or the rate conditions. Waivers can thus only be considered in a case-specific setting.

E. Transitional Treatment of Existing Transactions

1. Nondiscriminatory Access as a Condition

DOE recommends that the final rule be amended to provide for continuation of transactions for only those pipelines that apply to participate in the nondiscriminatory transportation program. DOE points out that some reductions in transportation services have occurred, as most pipelines have been unwilling as yet to apply for a new blanket transportation certificate. A decision to limit the interim continuation of on-going transportation arrangements solely to situations where the pipeline agrees to the nondiscriminatory access condition, and the other conditions of the final rule, would operate to eliminate the voluntary nature of the program, and open the Commission to a charge that it was mandating common carriage. The Commission believes that the acceptance of the program by pipelines must be voluntary if the program is to be found valid under the existing statutory authority. As discussed in the final rule, the transitional provisions were carefully adopted to occasion minimum disruption in existing transportation arrangements, while endeavoring to establish and foster a framework for the widest possible acceptance of the new terms and conditions, conditions which do not have the features of the earlier transportation programs found objectionable by the Court of Appeals in the *Maryland People's Counsel* cases. The numerous clarifications of Order No. 436 issued since the Order's adoption should serve to diminish many of the piplines' initial concerns and to permit on-going transportation arrangements to continue under the conditions of the final rule.

2. Transactions Under NGPA Section 311

a. Continuation of Long-Term Transactions. Louisiana Resources (at p. 6), Louisiana Intrastate (at p. 9–10), Amoco Gas (at p. 4) and Tenngasco (at p. 8) contend that the provision of the final rule limiting transitional treatment of existing section 311 transportation arrangements by intrastate pipelines on behalf of an interstate pipeline or local distribution companies served by an interstate pipeline to the earlier of the expiration of their term or October 9, 1987, is arbitrary and discriminatory. Willcox likewise argues that all such section 311 transportation arrangements entered into and commenced before the final rule became effective should be

permitted to remain in effect without change for their full contractual term.

The pre-existing Part 284, subpart B regulations automatically authorized all contracts which satisfied the criteria of section 311(a)(1). Section 284.102(b), however, imposed a maximum two-year term as a condition on such contracts. In Order No. 46 which first promulgated Part 284 and in which the two-year term first was applied, the Commission stated that successive extensions of two years on section 311(a) transactions would be self-implementing "unless the Commission decides that an extension is not in the public interest." In § 284.5 of the regulations, the Commission reserved authority to impose further terms and conditions prospectively, as deemed appropriate, on transactions authorized by Part 284. The Commission concludes, for reasons amply expressed in that final rule, the further extension of authority after expiration of the time limits authorized in the rule are not in the public interest unless the conditions of the new rule are met. Contrary to Willcox's claim (at p. 46), such determination is within the Commission's reserved authority and does not constitute a retroactive revocation of prior pre-granted approval for the full contract term of all section 311(a) gas transportation agreements entered into and commenced before the final rule became effective.

Tenngasco argues that existing section 311 transportation arrangements performed by intrastate pipelines that had received prior approval under former § 284.127 of the regulations, and were not subject to the two-year limitation imposed on self-implementing transactions, should be continued after October 9, 1987. The request is denied. The same reasons that justify a limited authority to continue self-implementing transportation transactions are applicable to transactions of the type referred to by Tenngasco. Because Order No. 436 eliminates the two-year term restriction on NGPA section 311 arrangements, shippers now have the same flexibility to enter into long-term arrangements under all section 311 provisions as they did under former §§ 284.107 and 284.127. Thus, the transitional provisions should be identical for both.

b. *Alleged Discrimination Against Transactions Not Effective on or Before October 9, 1985.* The Fertilizer Institute (FI) has requested that the final rule be amended to allow continued transportation for high-priority end users without regard to whether such transportation was commenced under § 157.209(a)(1) or was certificated by separate SMP authority. The request must be denied. All SMP transportation authority and all end-user transportation under § 157.209(e) ceased with the termination of those programs on October 31, 1985, in accordance with the *Maryland People's Counsel* cases (except for transactions allowed to continue under § 284.223(g)(2), subject to conditions consistent with the mandate of those cases). High-priority end user transportation authorized under former § 157.209(a) and commenced on or before October 9, 1985, is authorized for its full term. Continued transportation can only be effected if consistent with the new regulations. See *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol* (Midwest Solvents Company), Docket No. RM85–1–000, issued October 31, 1985 (Order Denying Request For Clarification).

FI asserts (at p. 3–4) that new end-user transportation, and extensions of end-user transportation previously authorized under Order No. 234, should be authorized on the same basis as transportation on behalf of pipelines and local distribution companies. The request is denied. The reasons for the differentiation have been expressed amply in the preamble to the final rule. In the Commission's opinion, the provisions for the initial 120-day authorization and the notice and protest procedure set forth in § 157.205 will be adequate to consider whether such transportation should be authorized further and the appropriate conditions therefor.

Citizens Energy requests that the Commission reduce the duration of the two-year grandfather period on self-implementing section 311 transactions to possibly July 1, 1986. The two-year maximum period was selected in light of the authorized duration of many existing self-implemented transactions and to avoid the necessity for unduly infringing on those arrangements. The Commission finds no validity in Citizens Energy's proposal. The provisions as established in the final rule will remain unchanged.

Citizens Energy also requests clarification (at p. 3–4) whether a change may be made in the supplier of gas to be transported or the agents utilized by the local distribution company in effecting the transportation arrangement without violating the transitional provision. This matter was answered in an order issued on October 30 , 1985, in response to a request for clarification. See *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol* (Hadson Gas Systems, Inc.), 33 FERC ¶ 61,142 (1985). In brief, the "grandfathered" transportation transactions must continue without change as they existed on October 9, 1985, including with regard to the supplier of the gas.

Finally, Northern Illinois (NI-Gas) recommends (at p. 7) that the Commission allow pipelines to provide local distribution companies and high-priority end users new transportation services until the earlier of July 1, 1986, or the effective date of a pipeline's rate case in which representative levels for self-implementing transportation transactions are reflected. Such interim provision of new section 311 or Order No. 319 transportation would be on a non-discriminatory basis, and would not trigger § 284.10 unless the pipeline elected to become an open access transporter under either Subparts B or G of Part 284 of the Commission's regulations.

As the Commission has indicated previously, the reductions and conversions of entitlements provided by § 284.10 are essential in order to make the non-discriminatory access conditions for transportation meaningful for pipeline sales customers. The Commission does not believe that there is good reason to delay implementing the condition as suggested by NI-Gas.

3. Blanket Certificate Transactions Under NGA Section 7

a. *Forty-five Day Period for New Certificate Applications Should be Extended.* Several applicants have alleged that the 45-day grace period for deciding whether to file for a blanket certificate under the new rules is too short and should be extended. Southern Union Gathering (at p. 7–8) and the Industrial Groups (at p. 16) ask that the time be set at 60 days after a final order on rehearing. Southern Union Gathering specifically includes rehearing of the final rule regarding block billing, which has yet to be issued. Consolidated Natural (at p. 6) requests that the transitional period be extended, at a minimum, to the end of 1985. Tenneco (at p. 8) requests March 31, 1986, as the end of the transition period.

The requests are denied. The Commission believes it is important that the transportation program, and any necessary accommodating adjustments, be initiated without undue delay. The Commission believes the existing transitional period is adequate to allow the final rule to be evaluated and the requisite managerial decisions to be made on a timely basis. It is not convinced that additional time is necessary and, in particular, that the period need be extended until a decision is made on the block billing proposal. Moreover, the Commission notes that

there is nothing that precludes a pipeline from determining to proceed under the new rules at any later date.

Tenneco points out that no transition period was provided for gas that had been authorized to be sold to end users after October 31, 1985, under blanket section 7(c) authority. The Commission assumes Tenneco is referring to the blanket SMP certificate program vacated by the Court of Appeals in *Maryland People's Counsel*, 761 F.2d 780 (D.C. Cir. 1985). Since that program was found inadequate and could not be continued, it has been replaced under the new rules. No transition period is required or is appropriate in this situation.

b. *Existing Transportation Rates Should be Continued.* Pacific Gas contends (at p. 6–8) that the rate structures for all existing section 311 transportation arrangements should be allowed to continue for their remaining duration under the transitional provisions. Southern Union likewise requests modification of the transitional provisions of Order No. 436 to permit all transactions commenced before October 9, 1985, to continue without modification until the earlier of their scheduled expiration or October 9, 1987. Both applicants seek a change in § 284.7. That section permits an interim rate to be charged until July 1, 1986, provided it is a one part rate included in an appropriate rate schedule on file and effective prior to November 1, 1985. After July 1, 1986, the rate must meet the requirements of §§ 284.7 (c) and (d).

The Commission believes this provision should remain unchanged. Existing rates may not meet the objectives set out in § 284.7(c) which, in its opinion, are necessary for the provision of truly viable, non-discriminatory transportation services at reasonable rates. The Commission preceives no reason why the rates for these transportation arrangements, some of which can remain in effect for an extended period into the future, depending on the service provided and the form of the authorization secured, should not be required to conform to the rate objectives as soon as reasonably possible.

Pacific Gas raises a special concern regarding the interrelationship of its rates under its cost-of-service tariffs and the "extraordinary historic facts" underlying those tariffs. This issue is more appropriate for consideration in a petition for waiver of the rule as it applies to Pacific Gas than in a request to modify the generic effect of the rule on rehearing.

4. Proposed Procedural Changes

MRT (at p. 12), Louisiana Intrastate (at p. 9–10) and the Industrial Groups (at pp. 3, 16) have requested that the Commission extend the term and/or scope of the transitional provisions. Louisiana Intrastate's petition has been considered above in the section of this order disallowing its request that section 311(a) transportation arrangements that were not eligible for self-implementation be continued for their full contract term. It contends that there is no justification for requiring long-term section 311 transportation transactions to terminate by October 9, 1987, while allowing section 7(c) authorizations to continue. The Commission disagrees. The Commission has determined as a matter of policy that all section 311 authorizations should be required to conform to the non-discriminatory access condition not later than October 9, 1987. The transition period of up to two years gives transporters adequate time to make adjustments. In this respect, there is no basis to differentiate the treatment on the basis of the original authorization.

MRT asks that all transportation contracted for prior to November 1, 1985, be allowed to continue through October 31, 1987, and under the rate conditions previously applicable until July 1, 1986. The Commission stated in the final rule why different treatment has been accorded various forms of transportation transactions. MRT has presented no basis for a change in those conclusions. The provision in § 284.7(b) dealing with interim rates for Part 284 transactions is, the Commission believes, a reasonable requirement to assure that the objectives of the final rule will be accomplished and that such rates are just and reasonable.

The Industrial Groups request that the December 15, 1985, date by which pipelines must discontinue transportation service under the non-discriminatory access statements, in the absence of a filing for a blanket certificate under § 284.221, be changed to sixty days after issuance of the order on rehearing of Order No. 436. The petition presupposes that substantial changes in Order No. 436 will be made on rehearing. In the Commission's view, affected pipelines will have had adequate time by December 15, 1985, to study the Commission's orders and to decide whether they will avail themselves of the opportunities therein presented. The request for an extension is denied.

F. Capacity Allocation; First-Come, First-Served Rule; Annual Filings

1. Effect of "First-Come, First-Served" Rule on Existing Contracts and Supply Arrangements

Consolidated Edison argues that the Commission's first-come, first-served policy with regard to the allocation of pipeline capacity should be revised. According to Consolidated Edison, under that policy, customers who have never paid any of the pipeline's fixed costs of providing capacity should not stand on an equal footing with customers who have paid such costs. Transwestern Pipeline Company also contends that pipelines should not be required to allocate capacity on a first-come, first-served basis and that they should be allowed to use other just and reasonable methods. The Commission disagrees. The first-come, first-served method ensures that capacity will be allocated on a non-discriminatory basis and is consistent with the concept that the non-discriminatory access condition is a contract carriage condition, rather than a common carriage condition. While other methods of allocating capacity could be devised, the requirement that all pipelines operate on the first-come, first-served principle ensures that they all stand on an equal footing in obtaining customers and their customers stand on an equal footing in obtaining service.

The Interstate Natural Gas Association of America (INGAA) contends that the adoption by the Commission of the non-discriminatory access provision, the first-come, first-served capacity allocation mechanism, and the CD reduction procedure means that pipelines will lose their ability to manage their own systems so as to provide for the long-term needs of existing customers. According to INGAA, by this impairment of pipelines to render adequate service, the Commission has shirked its role of consumer protection and has thereby violated its statutory mandate. The Commission does not agree. Nothing in the rule precludes pipelines from entering into long-term agreements for firm transportation or sales service. Nothing precludes a pipeline from seeking authority to construct new capacity to provide the service under either traditional section 7(c) procedures or under the optional expedited procedures. Hence, pipelines will not lose their ability to manage their own systems as claimed by INGAA.

Tenngasco Corporation requests clarification as to the meaning of first-come, first-served. In particular, it

wishes the Commission to make clear whether an executed contract (or commencement of service) is required to establish priority status or whether a nomination to the pipeline reserves the shipper's position in line.

Natural Gas Pipeline Company of America (Natural) urges that the first-come, first-served policy should not be applied to interruptible transportation service and that such service should be governed by contract. Natural contends that pipelines need the ability to overbook interruptible service to provide a reasonable opportunity to earn the allowed return, to maximize customers' utilization of facilities, and to provide customers an incentive to sign up for firm service and pay a reservation charge.

In response, the final rule discussed how the Commission intended the first-come, first-served principle to work.

> Prior to offering any transportation services pursuant to the rule, a pipeline will make a determination of capacity available for such services. . . . The amount so determined will be proposed and supported in the pipeline's rate case. In fulfilling its non-discriminatory obligations, a pipeline must accept nominations up to this level. As the pipeline accepts nominations for firm transportation services the amount of remaining capacity available for firm transportation will decrease. 50 FR 42450.

In response to Tenngasco's request for clarification as to whether first-come, first-served applies to executed contracts or to requests for services, the final rule makes it clear that a customer's place in line is determined by when it makes a request for service, not when his contract is executed. The pipeline must consider whether there is sufficient capacity available to serve customers who request service on a first-come, first-served basis. The pipeline cannot accept requests for service over a period of time and determine which contracts to execute and then determine a shipper's place in line by virtue of the executed contracts. As the Commission discusses below, however, a person's place in the line is only ensured by a request for service if the customer is willing to pay the maximum rate for service, including any reservation fee where applicable, and of course to meet the reasonable operational conditions on file.

Columbia Gas Transmission Corporation and United Distribution Companies request that the Commission clarify that the allocation of interruptible capacity will not disturb the priority for existing interruptible shippers. In other words, Columbia contends that existing interruptible shippers who already have been receiving transportation service should be considered as having already "come" on the system for capacity allocation purposes. Similarly, Brooklyn Union Gas Company requests that the Commission confirm that existing long-term, certificated, interruptible services are to be accorded a higher priority of service than new, self-implementing and optional certificate interruptible service and sale arrangements.

Baltimore Gas and Electric Company (BG&E) seeks clarification that a pipeline must award capacity to a shipper willing to pay a higher transportation rate than another shipper (within the rate limits of § 284.7) even though the first shipper is further down in line. BG&E contends that two shippers closely placed in line for transportation capacity could compete for that capacity on the basis of the rate to be paid.

Several petitioners request that the Commission clarify how the first-come, first-served concept will work for interruptible service. As noted above, if a customer requests interruptible service, and is willing to pay the fully allocated rate established for interruptible service then the pipeline must provide service to that customer after all prior requests (including shippers existing prior to the date of the final rule) for interruptible service have been satisfied by the pipeline. The Commission notes, however, that a pipeline is *never* required to accept a request for service by a customer if that customer has not indicated a willingness to pay the maximum rate. Selective discounting is totally at the discretion of the pipeline. Thus, a customer that indicates that it will only book service if the pipeline provides such service at a discounted rate is subject to the willingness of the pipeline to discount. However, if a request for service at a discounted rate is accepted by the pipeline, it must honor that contract on a first-come, first-served basis. Parties may nevertheless agree to make such interruptible service subject to another customer coming in at a later point willing to pay a higher rate than the discounted rate determined between the pipeline and the first customer. The Commission notes, however, that this discretion would not exist with regard to the grant of a selective discount for firm service. To allow the pipeline to reserve the right to grant firm transportation capacity to a customer willing to pay a higher rate would essentially convert firm transportation service into interruptible service, that is, service that could be interrupted by a customer with a higher claim to the capacity. This, then, might be used to exceed the maximum rate (generally lower than the firm maximum rate) determined for interruptible service.

Mississippi River Transportation Corporation (MRT) requests that the Commission clarify that the reasonable operating conditions which a pipeline is allowed to impose on service by §§ 284.8(c) and 284.9(c) of the regulations would permit a pipeline to preclude or remedy a bottleneck on its system. MRT is concerned that a customer may desire firm transportation that would use only a few miles of the pipeline system and that such transportation might preclude the pipeline, under the non-discriminatory access provisions, from providing other transportation that would use more of the spare capacity available over a longer distance.

The question posed by MRT is too hypothetical to be addressed meaningfully at this time. Suffice it to say that an interstate pipeline engaging in self-implementing transportation may not, in general, decline to provide firm transportation because it would interfere with some other preferred use of its system capacity. Unusual circumstances that would produce unreasonable results under a strict application of the rule, however, are appropriately addressed in their reasonable operating conditions filing.

Monterey Pipeline Company seeks clarification concerning the relationship between an intrastate pipeline's NGPA section 311 transportation and the pipeline's strictly intrastate transportation and sales. First, Monterey requests that the Commission make explicit that the first-come, first-served principle applies to an intrastate pipeline's section 311 transactions only and that the Commission does not intend to require such pipelines to serve section 311 shippers to the detriment of their intrastate customers. This is already explicit in Order No. 436. The Commission reiterates that it does not intend for the regulations to impair the ability of intrastate pipelines to provide reliable service to their intrastate customers. An intrastate pipeline is not obliged to provide transportation in interstate commerce on a firm basis. In the event that it does offer firm interstate transportation, however, that transportation must be offered on a non-discriminatory basis. (This would necessarily include a first-come, first-served allocation of the firm capacity available to interstate transportation.) Similarly, if it offers interruptible interstate transportation, it must do so on a non-discriminatory basis. The

regulations apply to section 311 service, not to strictly intrastate service.

Monterey also requests clarification on whether the non-discriminatory access provision applies to all of an intrastate pipeline's system or only between those points on its system which the pipeline wishes to open up to section 311 transportation. Monterey poses the following example: If it provides section 311 service between points A and B, must it also provide such service between points C and D? The Commission makes clear that if an intrastate pipeline has physically separate segments of its system over which interstate transportation will be provided, that the provision applies to the physically individual systems rather than the intrastate corporate entity. If section 311 transportation is undertaken by the corporate entity, however, the provision applies to the entirety of its operations.

Finally, Monterey requests clarification as to how the Commission intends to implement the first-come, first-served principle as applied to section 311 transactions by intrastate pipelines. In response, a pipeline may provide section 311 service if capacity is available for that service. The pipeline may offer such service on a firm or interruptible basis. Firm service, if offered, must be offered on a first-come, first-served basis. Thus, exactly as for interstate pipelines, firm shippers have priority over interruptible shippers. Curtailments of service within each of those two shipper classes would be subject to the pipeline's contractual arrangements with the shippers.

2. Proposed Procedural Changes

a. *Protection for Small Companies; Lotteries.* The American Public Gas Association (APGA) contends that the first-come, first-served policy is not appropriate because not all potential transportation customers have the sophistication or resources to take advantage of the policy. APGA contends that the policy will ensure that those market participants with the closest ties to interstate pipelines or the greatest resources to devote to the race will be able to take an inordinately large share of available transportation capacity and that municipal distributors will not be able to effectively compete for capacity. APGA suggests that an acceptable solution to this problem would be a solicitation round of initial nominations followed by a lottery. In a similar vein, Consolidated Edison requests that the Commission adopt an allocation method that recognizes the superior rights of direct pipeline customers over indirect customers. Memphis Light, Gas and Water Division and Elizabethtown Gas Company contend that the regulations should provide priority transportation to local distribution customers.

The Commission believes that the first-come, first-served policy is appropriate. The purpose is to enable potential customers to receive transportation service on a non-discriminatory basis. The Commission, however, cannot guarantee that all potential customers will be able to book capacity. But customers will have an equal opportunity to do so. Moreover, as the Commission indicated in Order No. 436, the imposition of a resevation fee by a pipeline should discourage overbooking by customers. The Commission has discussed this issue more completely above. Accordingly, the nomination and lottery system proposed by APGA is not considered necessary to ensure equal access by potential transportation customers.

b. *Reservation Procedures Requested.* Indicated Producers argue that reservation fees for firm transportation may not be adequate to prevent overbooking of pipeline capacity and that the Commission should establish procedures, such as a "use it or lose it" condition, for making such capacity available again. The Commission does not believe that further procedures are necessary. A reservation fee should be sufficient to prevent overbooking by pipelines. It is not likely that a shipper will pay such a fee without intending to use the capacity reserved. Further, if a customer does not use its booked capacity, the pipeline may still use that capacity on an interruptible basis.

c. *Required Filings.* Transwestern Pipeline Company maintains that § 284.12 of the regulations, which requires pipelines to make an annual filing designating the capacity of their systems, is meaningless because conditions vary from point to point and day to day. The Commission believes that a pipeline should be required to shown the estimated peak day capacity, and the use of that capacity, of the system under reasonably representative operating assumptions. This should provide a reasonable estimate of pipeline capacity and is a necessary step in ensuring compliance with conditions for self-implementing transportation.

Maryland People's Counsel (MPC) requests that the Commission require pipelines to state the date on which they receive applications for service in the reports they are required to file pursuant to §§ 284.106, 284.126, and 284.233 of the regulations. MPC argues that the reporting requirement would not be burdensome to pipelines, but would provide disappointed shippers with a ready means of ascertaining whether they have been refused service in a discriminatory manner and would assist in determining whether to file a complaint with the Commission. The Commission rejects this request. The present reporting requirements strike an appropriate balance between the need for the Commission to obtain information concerning transportation transactions and the burden imposed on pipelines in supplying such information. The information requested by MPC is not needed by the Commission to monitor pipeline transportation.

d. *Nomination Procedures.* Consolidated Edison and APGA request that the Commission modify the regulations to set forth specific procedures to be followed by pipelines in accepting nominations for transportation service. The Commission does not believe that such a modification is necessary. Once the pipeline determines the level of capacity that is available for transportation, it may accept nominations for that capacity. Potential customers will specify in their nominations relevent information such as volumes to be transported, origins and destinations of the volumes, and periods of transportation. Pipelines will receive the nomination and make decisions as to whether customers can be accommodated. The regulations set out the pipelines' obligations should they elect to provide non-discriminatory transportation under the regulations. Spelling out the nomination procedures in further detail would be an unnecessary intrusion into the pipelines' management prerogatives.

3. *Deterrence to Overbooking Capacity.* Yankee Resources, Inc. requests that the regulations be modified to permit a pipeline to increase transportation volumes for a customer by up to 5000 Mcf per day for a period of 120 days during which time a new prior notice procedure under § 284.222 can be completed. Yankee Resources argues that this proposed procedure would enable pipelines to allocate capacity based on the actual needs of the customers rather than on inflated estimates of capacity needs and thereby prevent overbooking of capacity. The Commission will not modify the regulations as requested by Yankee Resources. A pipeline may require a reservation fee to prevent overbooking with respect to firm service. As to interruptible service, such service, by its nature, is interruptible when a pipeline is operating at full capacity.

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NI-Gas argues that overbooking of firm capacity should be prohibited rather than treated as a contract matter susceptible to traditional measures of contract damages. As the Commission discusses above, the Commission does not think such a prohibition is necessary. As discussed in Order No. 436, overbooking of firm capacity by customers should not be a significant problem. Section 284.4(d) permits a pipeline to impose a resevation fee as a condition of providing firm transportation service to a shipper. Such fees should discourage overbooking. If experience shows that overbooking by pipelines becomes a problem, further steps can be taken to deal with it.

Pennzoil (at pp. 5–7) argues that a reservation fee is inadequate to solve the problem of customers' overbooking capacity. This is so, Pennzoil says, because customers will still reserve capacity and not use it even though they have to pay a reservation fee. Pennzoil suggests customers might do this to pre-empt the market or to sub-lease the capacity reserved. Pennzoil recommends that in addition to paying a reservation fee customers should be required to use the capacity they reserved within 90 days or lose it.

The Commission declines to adopt this suggestion. It has no reason to believe, let alone to speculate as Pennzoil does, that requiring customers to pay a reservation fee will not be effective to prevent customers from overbooking capacity.

G. Canadian Gas Imports

Mesa Petroleum (at p. 10) and the Panhandle Association (at p. 4) ask the Commission to revise the blanket certificate and self-implementing transportation provisions so that they would not be applicable to the first pipeline that receives imported gas at the U.S. border. They request that the first transportation by a U.S. pipeline of Canadian gas be made subject to the prior notice procedure.

The applicants, all of whom are domestic producers, state that the Economic Regulatory Administration (ERA) has recently adopted policies regarding natural gas imports that run counter to the NGPA-mandated objective of encouraging domestic exploration and development. Mesa Petroleum argues that, historically, the Commission could be relied upon to examine the impact of a proposed import on domestic reserves in a combined proceeding under sections 3 and 7 of the NGA. However, the division of responsibility between the FERC and ERA under section 3 of the NGA was redefined last year by Delegation Order Nos. 0204–111 and 0204–112 (49 FR 6684 Feb. 22, 1984) and all policy matters concerning imports are now considered by ERA. Since ERA has declined to consider the impact of proposed Canadian gas imports on domestic reserves, the applicants argue, "[it] is incumbent upon the Commission to provide an opportunity for interested parties to contest the importation of gas into the United States." (Panhandle, at p. 5.)

The Commission believes that the matters raised by Mesa Petroleum and the Panhandle Association are outside the scope of this rulemaking. First, the applicants attempt to do indirectly what they were unable to do directly, namely to stop the importation of Canadian gas. As Mesa Petroleum itself points out, the question of whether to permit the importation of such gas is a matter for ERA to determine. Thus, it is for ERA to examine the impact on domestic drilling and reserves of importing Canadian gas. The Commission's job, under sections 4, 5 and 7 of the NGA, is to determine the appropriate rate treatment of the imported gas, the rate to be charged for its transportation, the construction and operation of particular facilities, the siting of facilities and the place of entry for such imports. Those responsibilities do not include reexamining whether the authorized importation is in the public interest.

Second, permitting imported gas to be transported under the blanket certificate procedures in no way impairs the Commission's authority to examine, in the appropriate proceeding, such issues as the proper rate treatment of demand charges, pipeline minimum commodity bills and the treatment of take-or-pay liabilities. This, however, is not the appropriate proceeding. Contrary to Mesa Petroleum's assertions (at p. 12), such issues are wholly unrelated to the transportation of imported gas and are properly raised in a section 4 or section 5 case involving the sales rates for Canadian gas. Mesa Petroleum and the Panhandle Association are free to raise any issues affecting their interests in the appropriate rate case.

Since the Commission is presented with no valid reasons for distinguishing between the transportation of imported gas and the transportation of domestic gas, the Commission denies the applicants' request to make the first transportation segment of imported gas subject to the prior notice procedure. Moreover, the Commission notes that the bulk of commenters in the Notice of Inquiry proceeding urged the Commission to include imported supplies under the new rules.

Pursuant to authority delegated to him by the Secretary of Energy, the Administrator of the ERA has exclusive jurisdiction under section 3 of the Natural Gas Act to approve or disapprove the importation of natural gas into the U.S. Under those circumstances, it would be singularly inappropriate for the Commission to adopt more stringent procedures with respect to the transportation from the border of gas that the Administrator of ERA has authorized to be imported at that border.

H. Filing Requirements Under New Part 284

1. Reporting Requirements

Several applicants argue that the Commission's reporting requirements for transportation services are inadequate. The Order No. 436 procedures, set forth in §§ 284.106, 284.126 and 284.223, require pipelines to file: (i) Initial reports within 30 days after commencing transportation; (ii) subsequent reports reflecting any material change in the transportation arrangement within 30 days of such change; (iii) annual reports not later than May 1 of each year; and (iv) a final statement within 30 days after termination of service. The specific information that each report must contain is discussed in the final rule.

Con Ed (at pp. 11–12) states that monthly reports by pipelines of all interruptible service are necessary for a successful compliance monitoring program. Iowa (at pp. 9–10) also believes that reports should be filed on a more frequent basis to ensure the timely evaluation of program results. According to Con Ed, the reports should also identify, among other things, when the service was requested and agreed to. Hadson (at p. 1) is likewise in favor of monthly reports on all requests for section 7(c) certificate applications. Similarly, Mesa (at pp. 12–13) and Panhandle Association (at pp. 6–7) suggest that all interstate pipelines maintain for public inspection a log of all transportation requests. MPC (at pp. 20–21) also agrees that pipelines should indicate in the reports the date on which they receive applications for service. Finally, Industrial Groups (at pp. 12–14) claim that detailed tariffs or sworn statements of current transportation policies and practices would facilitate Commission oversight.

MRT (at p. 20), however, takes the position that, given the addition of the annual reporting requirement, the final report under § 284.106(d) is superfluous. In the alternatives, it asks that the

deadline for filing the statement be extended from 30 days to 60 days.

The Commission does not feel that further revisions to the reporting procedures are warranted. The present requirements provide the Commission and the public with sufficient information to monitor the transportation activities. In the final rule, the Commission attempted to strike a balance between the interests of all parties involved, including pipelines and shippers. On the one hand, the Commission sought to avoid unnecessary pipeline filings while, at the same time, it sought to guarantee adequate safeguards against discriminatory practices. Reductions were achieved in frequency (eliminating the 48-hour report) and quantity (*e.g.*, deleting information on price and end use). Measures to ensure compliance with the anti-discrimination provisions of the rule were also recognized (*e.g.*, pipeline operational conditions are to be stated in the respective tariffs). Moreover, potential shippers who believe that the pipelines are not complying with the open access requirements of § 284.8(b) and § 284.9(b) may file complaints in specific cases.

The Commission adopts Mesa's and Pandhandle Association's suggestion that interstate pipelines be required to keep a log of all transportation requests, however. The Commission believes that such a log will provide a protestor with the access to information it needs to determine whether the pipeline is acting on a discriminatory basis. The Commission is not requiring that the pipeline file this information with the Commission. Rather, the log should be maintained by the pipeline and be made available for inspection by the public at the company's corporate headquarters during the company's normal business hours. Information that may be contained in such a log could include, but not be limited to: (1) The date of the request for service; (2) the name of the person requesting transportation service; (3) the volume of gas to be transported; (4) the receipt and delivery points; (5) the duration of the service; (6) whether the service sought was firm or interruptible; (7) the percentage of pipeline capacity allocated to firm and interruptible volumes under contract at the time of the request; and (8) the date and manner of disposition of the request. As the Commission and the industry gain actual experience in operating under the new rules, additional mechanisms may or may not be found appropriate.

As for elimination of the notification of termination under § 284.106(d), the Commission again emphasizes that in order to fulfill its regulatory responsibilities in monitoring transactions conducted under Order No. 436 it needs to know when transportation arrangements cease, as well as the total volumes transported and the revenues received. Moreover, inasmuch as Order No. 436 allows the statement to be a simple one page notice or telegram, pipelines should not be inconvenienced by the 30-day time restriction.

2. Effective Date of New Blanket Certificates

Yankee proposes (at pp. 2–4) that the final rule be modified to permit pipelines to begin blanket transportation after November 1, 1985, on a self-implementing basis upon the filing of an application for a new blanket certificate under § 284.221, without the necessity of waiting until the certificate is issued and accepted. Any transactions implemented in the period before issuance of the certificate would be subject to the same terms and conditions as transactions which commence after issuance of the certificate.

As recognized in Yankee's application, this issue has already been considered and decided. In a clarification to the final rule issued to Panhandle Eastern on October 30, 1985, the Commission stated that if a pipeline elects to obtain a new blanket transportation certificate, transportation under the blanket certificate cannot be performed, under NGA section 7, until the blanket certificate has been issued. 33 FERC ¶61,139 (1985). The order also indicated that if the pipeline wishes to commence a transportation service prior to issuance of that new blanket certificate, it may use other self-implementing authority available to it under NGPA section 311. If a pipeline elects to initiate NGPA section 311 transportation on an interim basis pending the issuance of the blanket certificate, however, it will incur the responsibilities attached to that authority, such as, *inter alia*, the filing fee, initial report, and termination notice when the transaction is transferred to its blanket certificate authority, as well as the more substantive non-discriminatory access and CD reduction/conversion provisions.

The Commission believes that allowing a pipeline to commence service before the Commission has acted on its application for a certificate would be inconsistent with section 7 of the NGA as well as the notice requirements of the Administrative Procedure Act. Moreover, the Commission does not believe that these procedural requirements place unreasonable regulatory burdens on the participants, nor that these requirements will be the cause of delays and timing problems for multi-pipeline transactions. It also notes that the problems foreseen by Yankee will be minimized or eliminated if pipelines apply for new blanket certificates well in advance of the time such authorization is required.

With respect to blanket certificates available to Hinshaw pipelines and LDCs served by interstate pipelines, further modifications are in order. Given the generally small size of such entities and the fact that they are not subject to the Commission's jurisdiction apart from the blanket certificate, existing Order No. 63 certificate holders (issued pursuant to § 284.222 as it existed prior to November 1, 1985) need not file new applications for the § 284.224 certificate. Since the old and new certificates are identical but for the non-discriminatory access condition related to transportation transactions, the Commission is instead requiring that persons holding Order No. 63 certificates only file a letter with the Commission by (30 days from rehearing date) which either (1) ratifies the terms and conditions applicable to transportation transactions under § 284.224; or (2) surrenders the Order No. 63 certificate which will be deemed terminated as of November 1, 1985, as to new transportation transactions. Either option will not affect the grandfathering of transportation transactions begun prior to October 9, 1985, which are subject to § 284.125, or the sales and assignment authorization under such certificates. Furthermore, since the person holding an Order No. 63 certificate is neither amending its existing certificate, nor applying for a new certificate, no filing fee under Part 381 of the Commission's regulations is due. The Commission is merely requiring the pipeline to conform to the nondiscriminatory access condition.

The Commission notes here that the Order No. 63 or the new § 284.224 certificate merely puts the certificate holder in the same position as an intrastate pipeline with respect to NGPA section 311 and section 312 eligibility. That is, it permits sales, assignments and transportations. However, it is only the exercise of the transportation authority pursuant to subpart C of Part 284 that triggers nondiscriminatory access under § 284.8(b) or § 284.9(b).

Finally, through inadvertence, the Commission omitted delegation authority to the OPPR Director to issue § 284.224 blanket certificates. The

Commission is providing that authority here.

I. Intrastate Pipeline Issues, Generally

1. Requested Exemptions.

a. *From Environmental Compliance Under § 284.11.* Section 284.11 provides that any authorization granted under subparts, B, C, and H of Part 284 that involves construction or abandonment with removal of facilities is subject to compliance with various Federal environmental laws and regulations, as set forth in § 157.206(d). Producers Gas asserts that § 284.11, Environmental Compliance, should be amended to remove reference to subpart C, because intrastate pipelines are not subject to the Commission's jurisdiction. According to Producers Gas, intrastate pipelines which may conduct NGPA section 311 transactions under subpart C are not subject to the NGA certificate and abandonment authorization that applies to interstate pipelines, including environmental review under § 157.206. Producers Gas, therefore, believes that the reference in subpart C is an oversight. Producers Gas further asserts that the states exercise jurisdiction over construction and abandonment of intrastate pipelines, and therefore, there is no reason for the Commission to pre-empt state regulation with respect to environmental compliance.

In response, the Commission emphasizes that the application of § 284.11 to section 311 transactions by intrastate pipelines was not an oversight. The Commission has a statutory obligation under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* to assess the reasonably foreseeable impacts of its action on the environment. In order to ensure that this rule is not a major Federal action significantly affecting the quality of the human environment by authorizing unrestricted gas transportation arrangements, the Commission determined that all transactions under Part 284 must be made responsive to the mandate of NEPA and other environmental laws. The laws described in § 157.206(d) manifest environmental concerns that are shared by the states. The Commission has not delegated its NEPA responsibilities, however. The potential effects of non-jurisdictional construction or abandonment of facilities, which may be incidental to transactions under Order No. 436, are therefore its concern, particularly because intrastate transactions are increasingly an integral part of the Nation's gas transportation system. This comprehensive and integrated approach to NEPA implementation is not an attempt by the Commission to broaden its jurisdiction under the NGA or to preempt state regulation. It is, rather, a recognition that its responsibilities under NEPA may not be arbitrarily demarcated according to its NGA authority.

The Commission does not believe that the reporting obligations imposed on intrastate pipelines are unduly burdensome. The same rules apply to interstate pipelines and only apply to an intrastate pipeline that participates in transporting gas in the interstate transportation grid. A pipeline must undertake its responsibilities in compliance with Federal environmental laws.

Producers Gas also asserts that the notice provisions of the APA, 5 U.S.C. 553(c), were violated because the Commission gave no notice that it proposed to issue an environmental compliance condition in the NOPR issued May 30, 1985.

In Part VIII of the NOPR, issued May 30, 1985,[46] the Commission gave notice that it would be considering the potential environmental effects of the proposed rulemaking, including "secondary effects of non-construction transaction." Section 284.11 is a logical outgrowth of the Commission's intervening consideration of those effects as discussed in the environmental assessment above. Therefore, there was adequate notice and a reasonable opportunity to participate was accorded, even though the exact provisions of the final rule differed from those proposed.

b. *From filing tariffs with the Commission.* Sections 284.8(c) and 284.9(c) require each participating pipeline, if it seeks to impose reasonable operating conditions on the availability of transportation service, to file them as part of its "transportation tariff". Producers Gas (at pp. 7–8), Louisiana intrastate (at p. 11), Oklahoma Natural and ONG (at pp. 11–12), and Texas Intrastate Pipelines (at pp. 3–4) note that intrastate pipelines covered by the rule do not have such "tariffs" on file with the Commission. They assert that the rules should be modified to remove that obligation. Texas Intrastate Pipelines suggests that the intrastate pipelines could be permitted to post their operational conditions as part of their tariffs on file with the states or could include them as part of standard form transportation contracts. This would be in lieu of a new filing obligation which Texas Intrastate Pipelines asserts would be unduly burdensome. Producers Gas notes that applications for rate approval generally include transportation contracts; which should be sufficient. Louisiana Intrastate (at p. 11) requests that the Commission amend § 284.123 to require the pipeline to file a statement of its operating conditions.

The Commission agrees that it did not intend that intrastate pipelines be required to file "tariffs" with the Commission just to provide their operating conditions. However, it did intend that they file reasonable operating conditions as a condition to commencing transportation of gas under the program. A number of vehicles are available to obtain this information to enforce the non-discrimination provisions of the rules such as special filings, attachments to initial reports, or a modification of the Form 549–ST itself. Because of the nature of the information, the Commission believes that Louisiana Intrastate's suggestion has merit. The Commission is modifying § 284.123 by adding a new paragraph (e) that provides that each participating intrastate pipeline shall make a one-time filing containing a statement of the pipeline's operating conditions. This filing is due within 30 days of the date of issuance of this order for those pipelines that have already elected to participate in the new program. For those pipelines that do not now intend to transport under the new program but decide to do so in the future, this filing will be required within 30 days of commencement of the new service. The new rule also clarifies that changes in operating conditions must also be filed. The Commission does not believe that such a generally one-time filing imposes an undue burden that outweighs the benefits of the information to the Commission and to prospective shippers.

2. Extent of State Regulations of NGPA Section 311 Transactions

a. *Restriction to Interruptible Service.* Under the rules, intrastate pipelines have an option to provide either firm transportation, interruptible transportation, or both. Louisiana (at p. 3) requests that we clarify that state authorities can condition authorizations to perform section 311 transportation to require intrastate pipelines to offer only interruptible section 311 service. Louisiana asserts that, without this authority, federal-state conflicts will arise, as the Commission will be impermissibly regulating intrastate transportation of gas. The purpose, it asserts, is to prevent firm transportation service being required to be offered to

[46] 50 FR 24154

interstate shippers to the detriment of local needs.

The Commission cannot agree with Louisiana. At the outset, the Commission notes that its contention is based in part, on the incorrect premise that our non-discriminatory access condition constitutes regulation of purely intrastate transportation. Its involvement, and particularly the open access condition itself, only applies to interstate transactions after the intrastate pipeline has embarked on the interstate service. *See,* for example, *Sunray Mid-Continent Oil Co. v. FPC,* 364 U.S. 378 (1960). Any resultant impact on the level or quality of purely intrastate service performed by a participating pipeline would only be the result of the voluntary choices made by the pipeline itself and would not rise to the level of actual federal regulation of intrastate commerce.

b. *Allocation of Capacity.* Louisiana (at 3–5) asks that the Commission clarify that states have the power to set relative priorities of users competing for the capacity of intrastate pipelines who participate in the new transportation program. Louisiana asserts that local transportation, both firm and interruptible, must take precedence over new interstate transportation "mandated" by the rule, and that states should be the ones to decide how to allocate that capacity. Louisiana requests that the Commission modify § 284.8 either to delete the firm service option or to clarify that it is not intended to supplant any local service, firm or interruptible, whether in the past, present, or future.

The Commission believes that its program for section 311 transportation affords states sufficient latitude to perform their jurisdictional responsibilities. Nothing in Order No. 436 requires intrastate pipelines to offer firm transportation service.

Moreover, the Commission emphasizes and clarifies that existing local transportation arrangements can have priority over new interstate transportation. For example, there should be no question that a firm existing intrastate transportation service has contractual priority over a new interruptible interstate transportation. Likewise, firm interstate service has priority over non-firm interstate service. Accordingly, the Commission does not perceive any conflicts arising, at least in the near term, over priorities. The Commission's self-implementing rules incorporate the business decisions of the intrastate pipelines and only may affect them to the extent that the non-discriminatory access condition requires them to provide interstate shippers with access to capacity that the pipeline voluntarily chooses to make available to the interstate market.

3. Applicability of Non-Discriminatory Access Condition

Intrastate pipelines and state regulatory commissions and some interstate pipelines [47] cite the NGPA section 602(b) prohibition on common carrier status for section 311 transporters as an absolute ban on application of the non-discriminatory access condition to their operations. Some petitioners [48] also state that the condition is illegal under NGPA section 601(a)(2)(A), which exempts transportation by intrastate pipelines under section 311(a) of the NGPA from Commission jurisdiction for purposes of section 1(b) of the NGA.

As stated in Order No. 436 (at IV.A.23), the Commission has absolutely no intention of regulating *intra*state transportation of natural gas. Rather, the intent of Order No. 436 is simply that the same non-discriminatory access condition will apply to all transportation in interstate commerce, whether by an entity subject to Commission jurisdiction under the NGA or to other entities allowed by the Commission under the NGPA to engage in such interstate commerce without becoming subject to the NGA. Indeed, several changes were made in Order No. 436 to clarify this intent. First, the proposed rule was revised so that there would be no requirement that intrastate pipelines transporting under NGPA section 311 provide such transportation service on a firm basis. (*See* § 284.8(a)(ii).) Firm transportation is not prohibited, however. In the event an intrastate pipeline offers firm transportation, then § 284.8(b) requires that it provide "such" service on a non-discriminatory basis.

Similarly, if an intrastate pipeline offers interruptible interstate transportation (under § 284.9(a)(ii)), the only obligation is to provide interruptible service on a non-discriminatory basis. (*See* § 284.9(b).)

By means of these limitations, Order No. 436 completely avoids the situation whereby an intrastate pipeline is required to offer firm service for out-of-state shippers, thus, progressively being turned into an interstate pipeline against its will and against the will of the responsible state authorities.

With regard to the rate conditions of § 284.7, while the proposed rule would have required intrastate pipelines to comply with the same conditions, Order No. 436 makes it clear that the rate conditions of § 284.7 apply only to transportation under subparts B, G, and H of Part 284 of the regulations. Order No. 436 retains the pre-existing rules regarding rates for subpart C transportation. (*See* § 284.123.) With regard to the argument by some petitioners that the non-discriminatory access condition violates section 602(b), the Commission reiterates that the NGPA does not define "common carrier" and that there is but scant legislative history to section 602(b). The only mention of the purpose of section 602(b) in the Conference Agreement merely states that the House bill had provided that "the intrastate pipeline would not have been subjected to regulation as a common carrier. * * *" [49] The Commission notes that Congress did not directly authorize or create a right to section 311 transportation, as indicated by some petitioners, but gave the Commission the discretion to authorize such transportation under such terms and conditions as the Commission might prescribe under sections 311(c) and 501(a) of the NGPA.[50]

In Order No. 436, the Commission simply has ensured that where a new entity enters the field of offering interstate transportation services, that it do so on a non-discriminatory basis. The Commission cannot accept the premise that section 602(b) is a Congressional license to "intrastate pipelines" to enter into the field of interstate commerce on an avowedly discriminatory basis. Whatever else the prohibition regarding "common carriage" status may do, it does not sweep so broadly as to license unduly discriminatory rates or practices.[51] The same conclusion applies

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[47] *See* Mississippi River Transmission Corporation at 17; Valero Transmission Corporation at 4; Louisiana Intrastate Gas Corporation at 4; the Association of Texas Intrastate Natural Gas Pipelines at 4; Florida Gas Transmission Company at 14; Panhandle Companies at 5; Oklahoma Natural Gas Company, a Division of ONE OK, and ONG Transmission Company at 2; Louisiana Resources Company at 3; State of Louisiana at 9; INGAA at 14; Houston Pipeline Company at 4; City of Willcox, Arizona, and Arizona Electric Power Cooperative at 14.

[48] The Association of Texas Intrastate Natural Gas Pipelines at 2; City of Wilcox, Arizona, and Arizona Electric Power Cooperative at 22.

[49] Joint Explanatory Statement of the Committee on Conference, H.R. 5289, Natural Gas Policy Act of 1978, at 106.

[50] Section 311(c) provides that "any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe." Section 501(a) provides in part that the Commission "is authorized to perform any and all acts," and "to prescribe, issue, amend, and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under this Act."

[51] Neither NGPA section 601(a)(2)(A)(ii) nor 311(a)(2)(B) exempt intrastate pipelines transporting under section 311 from the NGA prohibitions on undue discrimination.

to interstate pipelines operating under section 311.

Further, notwithstanding the arguments of some petitioners,[52] it appears from the legislative history of the NGPA that the Commission's conditioning authority under NGPA sections 311(c) and 501(a) is coextensive with the broad discretion granted to the Commission under section 7(c) of the NGA.[53] Section 311(c) must be read in light of the fundamental intention of the NGPA to facilitate the movement of gas between the intrastate and interstate markets following a period of severe curtailment of interstate supplies coincident with ample intrastate supplies.[54] In this regard, the Commission emphasizes that, while it has construed its conditioning authority under NGPA sections 311(c) and 501(a) to be coextensive with that under NGA section, 7, it has not relied, as some petitioners appear to believe, on its NGA section 7 conditioning authority in applying any conditions of Order No. 436 to NGPA section 311 transportation.

Although the Commission has determined that the non-discriminatory access condition does not violate section 602(b), the Commission emphasizes that it fully respects the bounds of its jurisdiction under section 1(b) of the NGA as reaffirmed by section 601(a)(2)(A) of the NGPA. The Commission has clearly indicated that it does not intend that any aspect of Order No. 436 intrude in any way whatsoever on the sound discretion of the states to regulate strictly intrastate transactions in the public interest. (*See* Order No. 436 at IV.A. 25–28.) Nor does the Commission intend Order No. 436 in any way whatsoever to impair the ability of intrastate pipelines to provide reliable service tho their intrastate customers.

4. Possible Detriment to Intrastate Customers of Intrastate Pipelines

Monterey (at pp. 6–8) seeks clarification of the "first-come, first-served" principle underlying the non-discriminatory access condition as applied to section 311 transactions. It seeks the Commission's assurance that the principle does not require intrastate pipelines to serve their section 311 shippers to the detriment of their intrastate customers, even if an intrastate arrangement is entered into subsequent to the section 311 transactions. Accordingly, Monterey would be permitted to discretion to reallocate its capacity as it sees fit, subject to any contractual constraints. Otherwise, it asserts, this program would have the effect of regulating intrastate commerce by affecting the amount of gas transported or sold in the intrastate market. Texas Intrastate Pipelines (at pp. 6–7) asserts that non-discriminatory access will impair the ability of intrastate pipelines to continue to provide adequate and reliable service at the state level by the displacement of sales and loss of revenues. Accordingly, it asserts that the condition improperly encroaches on the operation of state regulatory programs.

Certainly, the Commission did not intend that its rule would operate to harm intrastate consumers. And it believes that its program is flexible enough to accommodate exigencies that may arise. But the exact answer depends on the circumstances. The Commission's program is not intended to interfere with existing contractual obligations. Nor, for example, does it mandate that a new firm intrastate service take a lower priority than an existing interruptible interstate transportation service. What it does require is that once it contracts to provide *firm* interstate service, it may not then subordinate that service to subsequent customers, whether in interstate or intrastate commerce. If an intrastate pipeline does not wish to provide firm service to interstate customers, it does not have to. But having chosen to provide that service it cannot then favor intrastate interruptible customers at the firm customer's expense. If a new intrastate shipper is first in line, then so be it. If not, then it may have to wait for remaining capacity to become available again to the intrastate market. Otherwise, the progression to an integration of the inter- and intrastate transportation systems into a national transportation grid would be impaired. Moreover, for the same reasons expressed above with respect to state claims regarding authority to control allocations, the Commission rejects Monterey's contention that the Commission's action constitutes the unlawful regulation of intrastate transportation.

J. Section 311 Transactions and Distributor By-Pass

Southern Indiana (8–9), Laclede (10–14) and GDIS (passim) point out what they allege is an anomaly in the final rule. The prior notice and protest procedures of the earlier blanket certificate regulations, as restated in § 157.205 of the revised regulations, have been retained for certain NGA section 7 applications filed under Part 157, Subparts E and F, where transportation service by an interstate pipeline may be authorized by the Commission to permit direct delivery by the pipeline to an end-user without going through a local distribution company, *i.e.*, the local distribution company would be by-passed. However, the requirement for prior notice to the local distribution company and an opportunity for such company to protest is not required for transactions under NGPA section 311 and Part 284 of the regulations, which can be undertaken without prior Commission approval, i.e., self-implementing transportation transactions subject to automatic authorization, which likewise can lead to distributor by-pass.

Section 311 of the NGPA and § 284.102 of the regulations, issued pursuant to section 311, require that any transportation performed by an interstate pipeline pursuant thereto must be "on behalf of" an intrastate pipeline or a local distribution company. Section 284.122 of the regulations, the companion section to § 284.102 but applicable to transportation by intrastate pipelines, allows such transportation to be made without prior Commission approval "on behalf of" an interstate pipeline or a local distribution company served by an interstate pipeline. The applications for rehearing contend that the regulations issued in the final rule permit transportation for any of these potential sellers or intermediate transporters directly to an end-user customer, even if currently served by a local distribution company, without notice to the local distribution company and without any Commission scrutiny. They also note that since the earlier "system supply" requirement for section 311 transactions has been eliminated, facilities may be constructed and operated by a pipeline without further authorization to deliver gas to any local distribution company's customer as long as the "on behalf of" requirement is satisfied.

Finally, GDIS claims that even though the prior notice and protest procedure is embodied in § 284.223(b), transportation by-passing a local distribution company could be performed by an interstate pipeline by means of a series of short-term (less than 120-day) transactions as long as different "shippers" (such as spot sellers) are involved in each 120-day transaction.

The policy considerations relevant to transactions under NGPA section 311

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[52] *See* City of Willcox, Arizona, and Arizona Electric Power Cooperative at pp. 8–12; Huffco Petroleum Corporation at pp. 8–10; and Valero Transmission Company at pp. 6–7.

[53] 124 Cong. Rec. H-13, 118–119 (Oct. 14, 1978).

[54] Committee on Interstate and Foreign Commerce, Report on *H.R.* 6831, "National Energy Act" (July 19, 1977) at 92–95.

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are substantially different than those applicable to blanket certificates and other authorizations under NGA section 7. Section 311 involves gas moving from intrastate to interstate markets or vice-versa. The section reflects the fact that one of the main purposes underlying the NGPA was and is the integration of these two formerly wholly separate markets and that this purpose could outweigh the Commission's historic policy favoring service by local distribution companies to end-users located within the distributor's market area. This conclusion is demonstrated by the fact that Congress provided in NGPA section 311 for the Commission to authorize transportation by pipelines, not only on behalf of local distribution companies, but also on behalf of other pipelines without any condition that the gas would in turn be delivered by those pipelines to local distribution companies so that they could distribute the gas to end-users. Removal of the system supply test (which is not required by the NGPA) without also requiring that there be notice and opportunity for protest might not have been appropriate heretofore. However, application of the non-discriminatory access conditions to pipelines that undertake new NGPA section 311 transportation will allow distributors to avoid being by-passed by those pipelines, as the local distribution companies themselves can locate lower-priced gas for their customers and require that the pipelines transport the gas to the local distribution companies for distribution to the end-users.

Appropriate notice procedures are required by section 7 of the NGA for certificates issued thereunder. It is not required by the NGPA for transactions under section 311. In the Commission's opinion, the "integration of markets" purpose underlying section 311 justifies omission of the notice requirement in these instances. However, in order to ensure that LDCs and their state regulatory authorities are informed prior to commencement of section 311 services that would result in an LDC by-pass, the Commission is modifying the reporting requirements for both interstate and intrastate pipelines engaged in such arrangements to require that they make such notifications of potential by-pass in writing prior to commencement of service.

Insofar as notice of the construction and operation of facilities for the implementation of section 311 transactions is concerned, including transactions that may by-pass a local distribution company, the Commission observes that pipeline facilities to make such transportation possible can be used only for section 311 purposes. These facilities cannot be used for transportation or sales subject to the Commission's jurisdication under the NGA without further approval.

Finally, on the matter raised by GDIS regarding the possibility of successive 120-day transactions defeating the purpose of § 284.223(b), § 284.223(a)(2) makes clear that a second 120-day transaction is permitted between a particular transporter and an identified end-user, irrespective of the seller or sellers of the gas, only if the first 120-day automatically authorized transaction was followed by a transportation period authorized under the prior notice procedures of § 157.205.

V. Discussion of Take-or-Pay/Producer Abandonment Issues

A. Take-Or-Pay Relief

1. Conditioning

In their requests for rehearing, a number of applicants describe Order No. 436 as arbitrary, capricious, and not based on substantial evidence because the order does not condition producer abandonment on take-or-pay relief for pipelines. These applicants argue that producers should be required to waive take-or-pay obligations in order to quality for abandonment under the procedures adopted in the § 2.77 Policy Statement.[55] Upon review, the Commission concludes that the applicants' arguments are without merit and thus do not warrant modification of Order No. 436.

The April 1985 Policy Statement provides guidelines applicable to the regulatory review of the renegotiation of economically burdensome contracts. The Policy Statement addresses the situation where there is a reduction or elimination of pipeline take-or-pay liability under individual contracts in return for lump sum payments by the pipelines to producer-sellers. To the extent Commission abandonment authorization is needed to implement buy-outs of take-or-pay liability, the Policy Statement provides for expedited consideration of the producers' abandonment applications. It is thus clear that take-or-pay relief is the *sine qua non* of the Policy Statement. The Commission finds no basis in the rehearing applications to attempt to prescribe take-or-pay relife beyond that provided for by the Policy Statement.

Order No. 436 also provided for expedited consideration of abandonments in cases where the producer is subject to substantially reduced takes without payment. In many instances, producers of old, low priced gas are being subjected to reduced takes because pipelines are purchasing higher priced supplies in order to minimize their take-or-pay liability. The rehearing applicants request that in cases where abandonment is sought by a producer because of reduced takes, the producer should be required to provide take or pay relief to the purchaser. This is an issue that should be raised and considered in connection with individual abandonment cases.

2. Whether Order No. 436 Is a Force Majeure Defense To Take-or-Pay Contracts

Mesa and Panhandle Assoc. maintain that Order No. 436 does not create an imminent emergency on pipeline systems and therefore request clarification that the rule does not constitute a *force majeure* event. El Paso, on the other hand, requests that the Commission affirmatively state that it will not prohibit any contract defenses, specifically *force majeure* as a result of Order No. 436, which a pipeline may raise to terminate a contract.

Without referring to a specific page in the order, El Paso interprets Order No. 436 as suggesting that the rule may not legally operate as a *force majeure* for a pipeline seeking relief under take-or-pay contract provisions. Relying on *Pennzoil v. FERC*, 645 F.2d 360, 380–82 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982), which held that the Commission lacks the power to interpret pipeline-producer gas purchase agreements for the sale of gas removed from NGA jurisdication, El Paso claims that the Commission has no authority to rule on the validity of possible contract defenses a pipeline may raise against its producer-supplier.

Mesa and the Panhandle Association anticipate that pipelines will invoke *force majeure* to obtain relief from substantial take-or-pay obligations incurred because of historic projections of gas requirements of their customers. To eliminate the need for pipelines to raise this contract defense, Panhandle Assoc. suggests that the Commission clarify the rule to provide that a reduction in minimum commodity bills is not applicable to that portion of the rate that represents recovery of take-or-pay obligations. Mesa specifically requests

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[55] Northwest Central Pipeline Corporation, at p. 9; Texas Gas Transmission Corporation, at pp. 11 & 28; American Gas Association, at Appendix A, p. 14; Consolidated Natural Gas Company, at p. 3; Pan-Alberta Gas Ltd., at p. 12; Baltimore Gas and Electric Company, at p. 7; Memphis Light, Gas & Water Division, at p. 2; Public Utilities Commission of the State of California, at p. 3; United Distribution Companies, at p. 54; Tennessee Gas Pipeline Company, at p. 11; and Consolidated Edison Company of New York, Inc., at p. 1.

that the Commission make inapplicable to take-or-pay clauses § 284.10(c)(4) of the rule, which presently mandates the reduction of minimum commodity bills in proportion to the reduction in contract firm sales entitlements. Mesa claims that if pipelines could file tariffs for the recovery of take-or-pay obligations which were not subject to this reduction, pipelines could continue to recover from those customers for whom they originally incurred such obligations.

Mesa also asks the Commission to instruct any pipeline believing the rule causes undue hardship to seek an adjustment under section 502(c) of the NGPA. Additionally, Mesa requests that when establishing an appropriate rate of return the Commission consider a pipeline's assertion that the rule operates as a *force majeure* occurrence.

As the Commission states in Order No. 436, nothing in the order, including the non-discriminatory access and CD reduction/conversion conditions, is intended to affect the rights and obligations of parties to gas supply contracts between pipelines and their suppliers. 50 FR 42443 (1985). Thus, to the extent an LDC or end-user contracts with pipelines for transportation services under Order No. 436, nothing in the order is intended to abridge the rights and obligations regarding take-or-pay liabilities under contracts between those pipelines and their suppliers, including any right to raise *force majeure* as a defense in an appropriate case. Because the Commission does not intend the rule to affect such contract rights, it need not reach the issue raised by El Paso concerning its authority to do so.

The Commission further states in Order No. 436 that it fully recognizes that the exercise of reduction and conversion options by pipeline customers might require pipelines to adjust their gas supplies under contracts with producers, and for that reason it reaffirmed in the rule the April 10, 1985 Policy Statement concerning take-or-pay buyouts. 50 FR 42443, 42462 (1985). Accordingly, the Commission believes that to mandate any type of take-or-pay "pass through" mechanism as proposed by Mesa and Panhandle Assoc. is inconsistent with the use of the guidelines in the Policy Statement as the means for addressing the recovery of take-or-pay obligations.

With respect to Mesa's remaining requests, a pipeline maintaining that the rule has created a special hardship is of course free to seek a waiver from any Commission regulation. Finally, in any section 4 rate case the Commission considers all relevant factors in establishing an appropriate rate of return and would therefore consider the impact on the pipeline of market conditions brought about by Order No. 436.

B. Expedited Producer Abandonments Under § 2.77

1. Lawfulness of the Policy of Expeditious Consideration of Abandonment Applications

A number of applicants for rehearing contend that the Commission's § 2.77 Policy Statement, which provides for review of abandonment applications on an expedited basis in cases where the producer is subject to substantially reduced takes without payment, is unlawful. These applicants include the American Gas Association (at p. 10), Kansas Power and Light Company (App. at pp. 14–18), Northern Natural Gas Company (at pp. 12–14), Public Service Electric and Gas Company (at pp. 5–6), Transcontinental Gas Pipe Line Corporation (at pp. 17–18), and United Distribution Companies (at pp. 52–54). Generally, the applicants view the Policy Statement as meaning that the Commission will grant producer abandonment applications on a generic basis based solely on a showing of reduction in takes even though the pipeline formerly purchasing the gas opposes the abandonment.

The applicants state that granting abandonment on such a basis would be unlawful since the Commission would not consider all relevant factors in determining whether abandonment is permitted by the public convenience and necessity as required by section 7(b) of the NGA.[56]

The answer to this contention is that Order No. 436 does not provide for the automatic granting of abandonment applications based upon a showing of reduced takes without payment. Rather, the Commission simply determined that it would, as a matter of policy, consider applications for abandonment in cases of reduced takes on an expedited, case-by-case basis and grant such applications where permitted by the public convenience or necessity. *See* 18 CFR 2.77(a). The Commission provided an opportunity for any person to intervene in order to oppose a producer's application for abandonment.[57] Nothing in Order No. 436 forecloses intervenors from raising any issue relevant to a determination whether abandonment is in the public interest or from seeking permission to conduct discovery or present evidence with respect to those issues. Indeed, the Commission expressly stated, "It is not possible to foresee all issues that may arise in connection with abandonment applications that are opposed and that must therefore be decided * * * on a formal basis consistent with the requirements of section 7(b) of the NGA. The Commission will therefore not attempt at this time to establish criteria to be applied in determining whether abandonment requests should be granted or denied. The standards to be applied will instead be developed on a case-by-case basis." The Commission continues to adhere to that position.[58]

One of the principal policy objectives underlying Order No. 436 is to insure that natural gas markets are sufficiently competitive so that natural gas service can be provided consumers at the lowest reasonable cost consistent with reliable, long-term service. It is clear that where a pipeline is purchasing high cost gas in order to minimize its take-or-pay liability while at the same time reducing its purchases of otherwise available low-cost gas, a significant market disorder is created. The NGPA is predicated on the proposition that the price and allocation of natural gas can and should be determined to a greater extent by market forces rather than by means of the strict utility-type regulation previously employed under the NGA. It is therefore imperative that obstacles to the orderly operation of market forces be eliminated to the extent possible. The Commission believes that in order to achieve this goal producers should be able to market low-priced gas. It is for this reason that the Commission provided for expeditious consideration

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[56] In this connection, one applicant, the American Gas Association (at pp. 11–12), requests that the Commission state that take-or-pay payments for gas that cannot be made up violate NGPA Title I ceiling prices. This issue is beyond the scope of this rulemaking. It is presently before the Commission in a number of cases (*See, e.g.*, Producer's Gas Co., Docket No. GP83–46–000; El Paso Natural Gas Co., Docket No. G84–49–000; Transcontinental Gas Pipeline Corp., Docket No. GP85–1–000; and Southern Natural Gas Co. v. Pogo Producing, Docket No. GP85–11). The Commission believes it is more appropriate to address the issue on a case-by-case basis in those proceedings in the context of the precise fact situations there presented.

[57] The only exception is a buyer who agrees to cancellation of a contract in return for a take-or-pay buy-out. Such a buyer is considered to have waived any right to oppose the abandonment.

[58] Two applicants, Panhandle Producer and Royalty Owners Association and Independent Petroleum Association of Mountain States (at p. 5), request that the Commission set forth in its regulations all the situations in which it will permit abandonment. As stated above, the Commission believes that, at least until it has gained more experience, it is best to determine the exact circumstances in which abandonment should be granted by adjudication in individual cases rather than in this rulemaking. The issues involved are too varied and complex for the Commission now to determine all the situations in which abandonment would be justified.

of abandonment applications irrespective of the NGPA price category of the gas. Relevant policy considerations should and will be considered in determining whether abandonment is permitted by the public convenience and necessity, and the Commission's consideration of these factors is accordingly in no way inconsistent with section 7(b).

Three other assertions by applicants concerning the unlawfulness or wisdom of the policy statement require comment. Associated Gas Distributors (AGD) objects (at p. 30) to the Commission's direction to the Director of the Office of Pipeline and Producer Regulation to grant promptly any unopposed producer abandonment application pursuant to his delegated authority. AGD claims that even where an application is unopposed, the Commission must develop the facts relevant to the public interest, including whether the former pipeline purchaser's supply of gas is adequately protected, before granting abandonment.

The Commission rejects this contention. This aspect of the policy statement represents no change from the Commission's current treatment of unopposed applications for abandonment. Pursuant to 18 CFR 375.307(a)(6), the staff currently reviews each application. Unopposed producer abandonment applications are routinely granted by the Director of the Office of Pipeline and Producer Regulation. If any party feels that it would be adversely affected by a proposed abandonment, the Commission assumes that party would oppose the application.

Two applicants for rehearing, Pennzoil Producing Company (at pp. 8–9) and Indicated Producers (at pp. 8–10), object to the Commission's assertion in the policy statement that, upon expiration of the underlying contract, the purchaser has no obligation to continue purchasing from the seller although the seller has a continuing obligation to sell. The applicants contend that the purchaser does have a continuing obligation to purchase gas. This matter is not essential to the statement of policy. Regardless of a purchaser's obligation to continue purchasing gas upon expiration of a contract, the policy considerations underlying the Commission's statement of policy, including the need to enable producers to market low-priced gas, support the Commission's determination to provide for expedited review of abandonment applications. The Commission made this statement in explaining its concern about the need for abandonment in cases where the underlying contract has expired.

Finally, People Gas Light and Coke Company and North Shore Gas Company (at pp. 14–16) requests that the Commission delay implementation of the policy statement in order to allow adversely affected persons an opportunity to comment on the policy statement's guidelines for granting abandonment. The Commission sees no need to so delay implementation of the policy statement. As stated above, nothing in the policy statement prejudges whether any particular abandonment application will be granted. The Commission intends to determine whether contested abandonment requests will be granted on a case-by-case basis. Any person adversely affected by a particular application for abandonment may intervene in opposition to that application. Accordingly, there is no need to amend the policy statement or to provide for further comments concerning it.

2. Conditioning Abandonment on Take-or-Pay Relief to Pipelines

As previously stated, Order No. 436 does not modify the substantive criteria for deciding when abandonment should be granted, or what conditions should be attached to the grant of abandonment. The Commission continues to believe that these issues should be addressed on a case-by-case basis in connection with individual abandonment applications.

3. Pipeline Protests in Cases Where Take-or-Pay is Settled

In Order No. 436, the §2.76 Policy Statement was amended to provide that where an abandonment application is based on payments made in lieu of take-or-pay obligations pursuant to the Policy Statement, the interstate pipeline making the payments will be deemed to have waived any right to oppose the abandonment.

The American Public Gas Association (APGA) urges that § 2.76(e) be amended to provide for a rebuttable "presumption of nonopposition" to abandonment by the pipeline rather than an absolute bar. APGA is concerned that an adequate amount of reasonably-priced, long-term reserves remain to serve the pipeline's customers, and suggests that a pipeline be required to submit a statement explaining why it entered into the take-or-pay buy-out agreement and why it believes the agreement to be in the best interests of its customers. The Commission does not believe that any such statement is necessary. If APGA members are concerned about a particular abandonment application, they will have the opportunity to raise their objections at the time the application is made.

APGA also suggests that possibly a few cases might involve economic "duress" during the contract renegotiations, or a mutual mistake of fact, and that in such cases a pipeline should not be barred from later protesting the producer's abandonment application. We believe that any such situations, as APGA acknowledges, will be rare. Accordingly, there is no need to modify the procedures set forth in §§ 2.76 or 2.77. If in particular cases a pipeline believes that it is necessary in order fairly to protect its interests to protest a producer abandonment application related to a take-or-pay buy-out, it may request waiver of the prohibition against pipeline opposition. Any such cases will be decided based on the facts of the particular case.

4. Requested Procedural Changes

a. *Objections to the Fifteen-Day Notice Period Under the § 2.77 Policy Statement.* Several commenters [10] complain that the 15-day notice period provided for abandonment and certificate applications filed pursuant to the § 2.77 policy statement is too short to allow them to receive notice, review the matter, and file comments, and that these procedures, in conjunction with the abbreviated adjudiction schedule, will not afford them a fair opportunity to be heard.

Upon further consideration of this matter, the Commission concludes that the notice provisions of the § 2.77 policy statement should be clarified to reflect accurately the Commission's intent. The deadline for protests or interventions will be 15 days following publication of notice in the Federal Register. This will yield a total notice period of 15 days plus about a week, the approximate time required for a notice to appear in the Federal Register. The Commission believes that period is ample and that it should satisfy the objections raised on this point.

In this connection, the Commission believes the applicants overestimate the degree of complexity required in filings submitted in response to the notice. The critical information is the filing party's request to intervene and a statement of that party's position regarding the application and whether a hearing is requested. While the Commission welcomes more information, a filing providing the basic information is all

[10] Northwest Central, Northwest Pipeline, APGA, Kansas Power, Peoples, SoCal, UDC, and AGA.

that is required and, as a practical matter, is all that is usually filed at the comment-intervention point.

The procedures prescribed in § 2.77 do no differ materially from standard Commission practice. Unopposed certificate and abandonment applications are normally processed by staff and granted promptly by the Director, Office of Pipeline and Producer Regulation; contested applications are considered on a case-by-case basis. The main difference here is the procedures established for the purpose of expediting resolution of contested cases. The Commission intends to provide parties with the opportunity to present their comments, and, if necessary, evidence and relevant arguments on issues of law and policy. Accordingly, we find the objections to the § 2.77(b) procedures to be without merit.

b. *Burden of proof.* Arkla, Inc. requests that § 2.77(a)(1) not be deemed to grant producers a presumption in favor of abandonment. The Specified Producers on the other hand argue that the Commission should establish a rebuttable presumption in favor of granting abandonment applications filed pursuant to the § 2.77 Policy Statement. Under such a presumption, a protestor would have the burden of showing that abandonment is *not* in the public convenience or necessity. Specified Producers assert that the NGA may be interpreted to permit this presumption.

Under NGA section 7(b) and applicable case law, the applicant has the burden of demonstrating that an abandonment is permitted by the public convenience or necessity. *See, e.g., Michigan Consolidated Gas Co.* v. *FPC*, 283 F.2d 204 (D.C. Cir. 1960), *cert. denied*, 364 U.S. 913 (1960). In issuing Order No. 436, the Commission did not intend to relieve applicants of the burden of demonstrating that a proposed abandonment meets the statutory requirements of section 7(b) of the NGA. Requests that the Commission adopt presumptions either for or against abandonment are rejected. Commission decisions on abandonment applications will be based on the record in each case. The Commission will of course also consider the policies and purposes underlying Order No. 436 in ultimately determining whether abandonment is permitted by the public convenience or necessity consistent with the requirements of NGA section 7(b).

5. Definition of Substantially Reduced Takes

The Commission's § 2.77 policy statement provides for expedited consideration of producer abandonment applications in cases where the producer is subject to "substantially reduced takes without payment". Several applicants request the Commission to define the term "substantially reduced takes" with greater precision or to establish specific criteria to be applied in determining when takes would be deemed substantially reduced.[60] One applicant for example, asserts that substantially reduced takes should be defined as "50 percent of full deliverability."[61] These applicants state that clarification is needed to eliminate uncertainty and to enable affected parties to make informed business judgments.[62] The Commission is also requested to clarify whether § 2.77(a)(1) is intended to require any particular duration of reduced takes;[63] whether an allowance or exception is contemplated for temporary reductions caused by economic conditions or facility failures;[64] or whether any allowance will be made for applicable field or state production regulations.[65] The Commission is also requested to adopt the expedited abandonment procedures in situations involving drainage of gas, lease maintenance, and undeveloped acreage[66] and to clarify whether expedited producer abandonment procedures apply to first sellers who are not producers, such as gatherers, resellers, or interstate pipelines which sell their own production.[67]

Clarification of the term "without payment" is also requested by applicants.[68] In particular, Mesa Petroleum Company seeks clarification concerning whether acreage released in lieu of making a required take-or-pay payment, as contractually provided, would come within the scope of § 2.77(a)(1).[69] The Commission is also requested to expand application of the take-or-pay buy-out provisions of the § 2.76 Policy Statement to "all negotiated modifications of any and all forms of contractual pipeline purchase obligations. . . ."[70]

Modification of the subject policy statements has not been shown to be reasonable or necessary at this time. The Commission stated in Order No. 436 that it was not possible to foresee all issues which might arise in connection with abandonment applications filed pursuant to the rule and that it intended to proceed on a case-by-case basis.[71] The Commission will not attempt to establish in advance specific standards intended to apply to various hypothetical situations which may or may not arise in the future. In its policy statement the Commission reaffirmed that it would not depart from the traditional case-by-case approach to abandonments under section 7(b) of the NGA. Consequently, all parties will be free to present arguments regarding the definition or application of substantially reduced takes, including duration, drainage, undeveloped acreage and other factors, in individual cases arising under the rule. The Commission will rule on the issues raised at such time as the cases are decided. Further clarification or revision of the § 2.77 policy statement or of the provisions of the Commission's rule will be implemented only if shown to be justified based on experience gained in individual cases.

The Commission also declines at this time to modify the § 2.77 policy statement to add new categories of cases which would be subject to expedited procedures. References to possible situations involving drainage, lease maintenance, and undrilled acreage do not provide sufficient basis for establishing new categories. However, in these types of cases, producers are in no way precluded from filing abandonment applications in accordance with the Commission's normal filing requirements. *See* 18 CFR 157.18 (1985). Applicants may request expedited consideration of any applications so filed. Commission action will be based on the facts of each particular case. Accordingly, the requests for modification of the policy statement are denied.

The request for clarification of Southern Union Gathering company is reasonable and is granted. The expedited abandonment procedures set

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[60] *E.G.*, Specified Producers, at pp. 4–5; Northern Natural Gas Company, at p.14; Northwest Central Pipeline Corp., at p. 15; Associated Gas Distributors, at p. 31; Arkla, Inc., at p. 10; Mesa Petroleum Co., at p. 4; Panhandle Producer, *et al.*, at p. 5; Kansas Power and Light Company, at p. 15; Southern Union, at p. 2.

[61] Specified Producers, at p. 4.

[62] *E.g.*, Northwest Central Pipeline Company, at p. 15.

[63] Specified Producers, at p. 5; Northern Natural gas Company, at p. 14.

[64] Northern Natural Gas Company, at p. 14; Associated Gas Distributors, at p. 31.

[65] Northern Natural Gas Company, at p. 14; Arkla Inc., at p. 10.

[66] Specified Producers, at pp. 6–7.

[67] Southern Union Gathering Company, at p. 2.

[68] *E.g.*, Specified Producers, at p. 6; Mesa Petroleum Co., at p. 9

[69] Mesa Petroleum Co., at p. 12.

[70] Northwest Central Pipeline, at p. 15. *See also*, Northern Natural Gas Co., at pp. 13–14; Specified Producers, at pp. 6–9.

[71] Order No. 436, 50 FR. 42465–466.

forth in the § 2.77 policy statement will be available to all first sellers of gas, including producers, gatherers, resellers, and interstate pipelines.

6. Abandonment Should Not Necessarily Be Limited to High-Cost Gas

Several rehearing applicants suggest that expedited producer abandonment procedures be limited to high-cost gas.[72] Generally, the applicants suggest that the expedited procedures should apply only to gas priced under NGPA sections 102(d) and 108 and should exclude gas priced under NGPA sections 104, 106 and 109.[73] The Iowa State Commerce Commission asserts that captive pipeline customers were to receive the benefit of the low-cost gas and will receive no benefit or protection from the expedited abandonment procedures.[74] Another applicant claims the Commission, in the NOPR to Order No. 436, acknowledged that Congress intended the economic benefits of low-cost gas to continue to "historical pipeline sales customers."[75]

The Commission declines to adopt the applicants' recommendations. The abandonment procedures and general policy do not establish binding substantive norms. Hence, all of these applicants' concerns may be fully aired and resolved in individual cases. As we have indicated on several occasions, Order No. 436 does not provide for the automatic grant of abandonments based solely on reduced takes. Each case will be decided on its merits consistent with the requirements of section 7(b) of the NGA. The Commission holds that there should be no automatic or general bar to the abandonment of particular gas supplies based solely on their NGPA price category.

7. Effects of Expedited Abandonment on Long-Term Supply

Memphis Light, Gas & Water Division asserts that the Commission erred in allowing producer abandonments without adequate safeguards for long-term pipeline supply needs. Memphis states that the §§ 2.76 and 2.77 Policy Statements violate section 7 of the NGA and do not adequately protect the long-term supply needs of the pipelines. In a similar vein, Peoples Gas Light and Coke Company and North Shore Gas Company argue that these sections should be revoked because they open the door to withdrawal from the interstate market of low cost regulated supplies.

These arguments are without merit. Nothing in Order No. 436 was intended to suggest that the supply consequences of abandonment would be ignored by the Commission or that affected parties would be precluded from arguing that a proposed abandonment should be denied because of alleged adverse effects on the existing purchaser or its customers. Section 2.77(b)(3) provides that in cases where certificate or abandonment applications are opposed, the Commission will consider the objections and rule on the applications if possible or, if necessary, will set the applications for hearing. A pipeline or distribution company will have full opportunity to show that the loss of a particular source of supply does not serve the public convenience or necessity and the abandonment should therefore either be denied or limited as to scope or duration.

C. Applicability of NGPA Section 315(a)(3) to Transportation of OCS Gas

Tenngasco Corporation requests the Commission to clarify its policy with regard to the application of NGPA section 315(a)(3). Tenngasco argues that this section should not be interpreted to require inflexible 15-year contracts involving the sale of OCS gas. Tenngasco argues that such an approach would be inconsistent with the Commission's stated goal of creating a competitive, price-responsive maket for gas and that in order to achieve this goal contracts must be permitted to include flexible, market-based pricing provisions. Tenngasco suggests that contracts for the purchase of OCS gas should be allowed to include flexible marketout provisions alllowing for termination of the contract in the event the parties are unable to agree on essential terms in the future. Tenngasco argues that there is nothing in the legislative history of the NGPA to indicate Congress intended otherwise.

The Commission is in basic agreement with Tenngasco on this point. The Commission has previously held that contracts subject to section 315(a)(3) do not comply with that section if they provide for a 15-year term subject to earlier termination by mutual agreement of the parties. *Tenneco Oil Company, et al.*, 31 FERC ¶ 61,301 (1985). Upon further review, the Commission believes this determination should be reconsidered. The Commission concludes, consistent with the views expressed by Tenngasco, that mutual termination and similar contract provisions are not precluded by the terms of section 315(a)3). While the Commission agrees with Tenngasco in principle, it is not possible to establish a general rule which would be applicable in all situations. To the extent of its jurisdiction, the Commission will review each case on its merits depending on the particular terms incorporated in the contract. The Commission's policy regarding application of NGPA section 315(a)(3) will accordingly be developed on a case-by-case basis.

VI. Discussion of Optional Expedited Certificates (Subpart E, Part 157) Issues

A. Presumption of Public Convenience and Necessity

A number of petitioners oppose the adoption of a presumption of public convenience and necessity established in § 157.104(c)(3) of the Final Rule.

Petitioners opposing the establishment of the presumption include primarily LDCs, but also serveral public entities, as well as associated groups such as the American Gas Association (AGA), the National Association of Regulatory Utility Commissioners (NARUC), United Distribution Companies (UDC), and the Wisconsin Distributors Group. For example, Columbia Gas Distribution Companies and Memphis Light, Gas & Water Division state that it is beyond the power of the Commission under the Natural Gas Act to establish the "competitive incentive" embodied in the proposed rule's rebuttable presumption, particularly in the situation where service is currently provided through the facilities of an LDC. Northern Illinois Gas Company states that a service cannot be presumed to be in the public interest merely because the pipleline is willing to place its shareholders at risk, because the Commission cannot fully shield customers from the costs of pipeline mistakes.

Other petitioners complain that the presumption provides a procedural barrier to protecting their interests. Gas Distributors Information Service, (GDIS) complains that simply to obtain a procedural right, a protestor must prove the ultimate issue. In this regard several petitioners such as the California Public Utilities Commission and GDIS intimate that legal discovery is necessary in order to rebut the presumption. Others such as Atlanta Gas Light Company and American Public Gas Association believe the Commission must consider the individual circumstances of each case and therefore, should provide formal hearings in all cases involving by-passes of LDCs. NARUC

[72] *E.g.*, American Public Gas Association, at p. 83; Public Service Gas and Electric Company, at p. 7; Peoples' Gas, Light and Coke Company, at p. 19; Kansas Power and Light Company, at p. 15, note 5; and Iowa State Commerce Commission, at p. 3.

[73] Public Service Electric and Gas Company, at p. 7; Peoples Gas, Light and Coke Company, at pp. 19–20; American Public Gas Association, at p. 83.

[74] Iowa State Commerce Commission, at p. 3.

[75] American Public Gas Association, at p. 83.

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recommends amending § 157.102(b)(2) to provide intervenors and protestors with the time and opportunity to discover material facts after filing their initial pleadings and the opportunity to file supplemental pleadings bringing such facts to the Commission's attention.

Some petitioners such as UDC request that the Commission amend the rule to require hearings in all cases where a protest is filed. UDC recommends that the Commission provide for full hearings under the procedures set forth in section 17(a) of the Natural Gas Act in all cases involving by-pass of an LDC. In addition, UDC believes that the Commission could provide the states with a meaningful opportunity to participate in assessing the validity of a proposed by-pass by providing a joint hearing procedure under section 17(a).

The Commission need not repeat its extensive discussion from the preamble regarding its responsibility to determine public convenience and necessity. (See 50 FR 42474–42475, October 18, 1985). The Commission reaffirms its conclusion that it is reasonable to presume that the requirements of the NGA have been met (subject to rebuttal) in light of the protection that the rule provides ratepayers. (See § 157.103). The Commission reiterates its intention that the rule is not a substitute for its obligation to determine whether individual applications are required by the public convenience and necessity. In this regard, it is not requiring the protestor to "prove the ultimate issue" as contended by GDIS. Those petitioners who request additional assurances of the opportunity for legal discovery have not demonstrated why the Commission's procedural rules for optional expedited certificates are inadequate to accomplish their perceived need for additional factual information.

Accordingly, the Commission does not believe that it is unreasonable to impose on protestors the burden under § 157.102(b)(2) to identify those issues of fact material to a determination of whether the applicant's certificate is required by the public convenience and necessity. The Commission will consider carefully all protests filed, with the caveat that speculative or unsupported allegations will not be considered a sufficient basis for withholding a certificate or ordering a hearing. (See 50 FR 42476).

Sections 157.10 and 385.214 of the Commission's rules specifically provide for participation of state commissions and regulatory agencies in proceedings before this Commission. In implementing these provisions in conjunction with Subpart E, the Commission will give the states an opportunity to raise any issues affecting their interests prior to approval of any proposal under Subpart E. A substantial record has already been compiled on all aspects of this rulemaking proceeding, however, and the Commission does not believe that additional procedures suggested by some commenters are needed to coordinate the final rule with the states.

B. Distributor By-Pass; State Regulatory Authority

1. Anticompetitive Effects of By-Pass; Unfair Cost Shifting

Each of the LDCs petitioning for rehearing on Optional Expedited Certificates allege that the Commission has not adequately addressed the by-pass issue in the Final Rule. Virtually all the applicants repeat the arguments they made in their comments on the NOPR. In this regard, LDCs specifically object to the establishment of the rebuttable presumption in applications resulting in the bypass of an LDC. They assert that LDCs cannot compete on an equal basis with interstate pipelines.

Consumers Power Company, for example, highlighted some of the economic and competitive circumstances it believes distinguish LDCs from pipelines: (1) LDCs have a greater duty to serve than do pipelines; (2) residential and small commercial customers have no practical alternative; (3) LDCs are limited to geographic service areas and are much less able to replace lost industrial customers; (4) LDCs, unlike pipelines, have not been able to directly influence producer field prices. Other petitioners who generally share this view are Kansas Power and Light Company, Elizabethtown Gas Company, Southern Indiana Gas and Electric Company (SIGECO) and UDC. Accordingly, UDC contends that only large industrial end-users will benefit from the new rule at the expense of commercial and residential customers. Each of these petitioners reasserts the "cost-shifting" arguments previously advanced in the comments to the NORP.

Several petitioners such as Peoples Gas Light and Coke Company argue that the Commission did not provide standards in Subpart E requiring applicants to show that the proposed service is necessary or would in any way provide a net economic benefit to consumers in comparison with competing services. They contend the rule contains no standards for evaluating the effects of duplication of facilities and cost shifting on core market consumers. AGA states the Commission is required under sections 7(c) and 7(e) of the NGA to determine where the public interest lies and that we cannot evade our statutory duties by effectively delegating this responsibility to the market place. UDC contends that the requirements imposed on certificate applicants are *pro forma* filings amounting to little more than the applicant's agreement to assume "financial accountability" for the proposed service.

Several applicants request that the requirement of non-discriminatory transportation be imposed on optional certificate applications for sales service. Consumers Power Company, Michigan Gas Storage Company and Kansas Power and Light Company complain that a pipeline could use the expedited certificate procedures to by-pass LDCs even without opening its system to non-discriminatory access. (See Technical Corrections, Docket No. RM85–1–000, October 25, 1985, mimeo at pp. 2–3). Similarly, they observe that the pipeline's customers would not have the ability to reduce contract demands or escape full requirements contracts since only transportation by the pipeline under a blanket certificate makes those options available to the LDCs.

Process Gas Consumers Group (PGC) contends that the omission of the non-discriminatory access requirement on optional certificate sales service contradicts the Commission's determination that the availability of non-discriminatory transportation is one of the criteria relevant to the Commission's presumption that an optional certificate is in the public interest. Accordingly, PGC recommends that the Commission condition optional certificates for on-system sales programs on the applicant's applying for and accepting a nondiscriminatory blanket transportation certificate under Order No. 436. They assert that such a modification would be consistent with the Commission's recent decision rejecting an extension of Northern Natural's discriminatory discount rate under Order No. 436. (See Docket No. CP83–14–103, October 25, 1985.)

As the Commission stated in Order No. 436, it is not pursuaded that cost-shifting which may occur as a result of a bypass of an LDC justifies forbidding a bypass to occur. (50 FR 42468.) The petitioners have not raised any new arguments sufficient to reverse the Commission's earlier judgment. Likewise, the petitioners have not demonstrated that the rule will allow pipelines to engage in "unfair" competitive practices. The rule requires actual notice to affected LDCs of any by-pass proposal under an application

for an optional expedited certificate. This will ensure that LDCs have every opportunity to exercise their rights to protest a specific proposal. If the facts of a particular situation subject to the hearing provided for in § 157.104, reveal the existence of, or potential for, unfair practices, the Commission may take appropriate remedial action. As regards the interest of the commercial and residential customers, the affected states have authority to prevent cost-shifting where the LDCs fail to compete aggressively in the absence of "unfair" competition. As stated above, the Commission believes the rule provides protection of the public interest notwithstanding potential by-passing of some LDCs.

With respect to petitioners' concern over non-discrimination in sales authorized under the final rule, the Commission rejects their recommendation to extend the non-discriminatory condition to those sales. It was never the Commission's intention in Order No. 436 to force "merchant" pipelines to become "transporter" pipelines or vice versa. One of the fundamental policies of this new program has been to provide pipelines the election to include transportation as a significant component of the services they offer or to be an exclusive merchant. (*See* NOPR, Mimeo at 8, 29.) Optional certificates are a new tool available to pipelines in a more competitive environment, to seize new opportunities to serve new markets. While the Commission believes transportation services will be an important part of this environment, it believes that pipelines ought to retain substantial discretion as to what services they offer. Discretion justifies the imposition of accountability for the business decisions made by the pipleine. Pipelines may legitimately decide to remain merchant pipelines. The Commission believes it would be poor policy to tie one hand behind the merchant pipeline's back by removing from it the ability to accept financial risk and to move quickly to serve new sales markets. This would be fundamentally inconsistent with the Commission's policy of promoting competition in the natural gas industry.

2. Infringement on State Authority Over Distribution of Gas

Several state public service commissions strongly object to the rules for Optional Expedited Certificates arguing that they effectively pre-empt the judgment of the state commissions. The New York Department of Public Service, for example, contends that the Commission, by allowing by-pass of LDCs, is entering the "thicket" of the retail rate regulation and holding itself out as prepared to make the ultimate determination of how gas is to be delivered to individual end users. Other state commissions such as the Minnesota Public Utilities Commission and the Minnesota Department of Public Service assert that the states are uniquely able to determine the local effects of by-pass transportation to an end-user. Therefore, they request the Commission to remove transportation directly to an end-user from among the services which pipelines may provide under the optional certificate. The Iowa State Commerce Commission requests a broader exclusion by asking the Commission to remove optional authority in any instance to by-pass an LDC. The Kentucky Public Service Commission believes that the Commission is making the ultimate determination as to whether a by-pass is or is not to be authorized, thereby impinging on the retail cost allocation problems which the Natural Gas Act reserves to the states.

The Columbia Gas Distribution Companies (CDC) provide extensive legal arguments that § 157.104 exceeds the jurisdiction of the Commission under the NGA, and trespasses upon legitimate state authority to determine local convenience and necessity. CDC reiterates its position stated in its comments to the NOPR and concludes that the Commission should accept the determinations of the local convenience and necessity by appropriate state bodies, or condition its orders on subsequent approvals by state regulators. One LDC, SIGECO, proposes that state regulatory review and approval of transactions involving LDC by-pass should be required as a condition to engaging in optional certificate transactions.

Most of the petitioners who argue that the rule interferes with state authority rely on the principles set forth in *Panhandle Eastern Pipe Line Co.* v. *Michigan PSC*, 341 U.S. 329 (1951), and *Panhandle Eastern Pipeline Co.* v. *PSC of Indiana*, 332 U.S. 507 (1947). Finally, APGA repeats its recommendation as stated in its comments to the NOPR that the Commission deny certificate authorization in by-pass cases unless (i) the affected LDC consents to the by-pass *or* (ii) the state or local regulatory body issues an order declaring the by-pass to be in the public interest.

It is well established that the Commission's authority over the transportation of gas in interstate commerce includes the authority to issue certificates for the transportation of gas and the construction and operation of facilities from which direct sales are made. The authority to set rates for direct sales lies exclusively with the states. *F.P.C.* v. *Louisiana Power & Light Co.*, 406 U.S. 621 (1972); *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 232 F.2d 467 (1956).

The Commission has frequently exercised its authority over transportation to authorize pipelines in interstate commerce to construct and operate the facilities necessary to make direct sales, including transactions involving issues of distributor by-pass. In some instances, the Commission denied requests for direct sales that would by-pass a distributor; in others, it approved the proposal, depending on the circumstances of the case and the factors bearing on the public interest. *See, e.g., Panhandle Eastern Pipe Line Company*, Order Denying Request for Rehearing, 31 FERC 61,333 (1985). The final rule does nothing to change this, nor does it alter traditional jurisdictional relationships between state and federal governments or preempt the states' authority to regulate rates for the retail sale of gas.

The Commission notes that the Staff Subcommittee on Gas of the National Association of Regulatory Utility Commissioners (NARUC) has reported to the NARUC Committee on Gas regarding the by-pass issue. In its report, dated November 7, 1985, the Subcommittee concluded and recommended that "The by-pass issue is best handled by a cost-based rate design which provides services on an unbundled basis. The states should not adopt a policy of prohibition of by-pass. . . Sensibly designed transportation rates would substantially eliminate the incentive to by-pass the LDC . . ."[76]

3. Miscellaneous

One pipeline, Transcontinental Gas Pipeline Corporation (Transco), expresses concern that the rule may not provide true incentives which would exist in a free market environment. Transco believes that the Commission has not clearly and unequivocally provided for increased earnings potential for those pipelines willing to take on added risks. The matter of appropriate earnings potential will be considered with other risk factors related to a pipeline's rate of return along with the issue of how to allocate

[76] Staff Subcommittee on Gas, "Report to Gas Committee, "Proposed State Regulatory Actions for Implementation of FERC Rules in Docket No. RM85-1-000, NARUC, at 2-3.

the costs of unused capacity, which will be addressed in future rate cases of the participating pipeline.

C. Rate Conditions Under § 157.103

1. Prohibition on Changing Projected Units of Service

Section 157.103(d)(4) provides that any rate for new service must be designed to recover costs on the basis of projected units of service. The units projected for the new service in the initial rates may be increased in a subsequent rate filing, but may not be *decreased*.

Northern Natural (at pp. 16–19) asserts the prohibition against reducing projected levels is unlawful and confiscatory. Such a provision is also claimed to be unjust and unreasonable because it will not allow the pipeline to reallocate costs resulting from the reduction in sales volumes under the new transportation program.

Northern Natural further believes it may be reasonable to impose this condition upon facilities or expenditures directly related to a new service, but not upon any existing system costs or facilities allocated to the new service. It asserts that a pipeline will never have a realistic opportunity to earn a profit (since units of service will always be adjusted upward) but will always assume the costs if the project fails. Northern Natural contends this result violates the principle that public utilities are entitled to a just and reasonable rate of return, as enunciated in *Smyth* v. *Ames*, 169 U.S. 466 (1898), and *Bluefield Water Works & Improvement Co.* v. *Public Service Comm'n of West Virginia*, 262 U.S. 679 (1923).

With regard to this requirement, Natural (at p. 73) points out that projected units of service are generally annualized service levels associated with a particular service or class of service. Natural believes that if an optional service is granted for a specific period with pregranted abandonment, the pipeline should not be precluded from reducing projected levels in a rate case after the service is no longer authorized.

The Commission will not alter the prohibition against decreasing projected levels of service. As it stated in the final rule, the *optional* expedited certificate procedure is a voluntary procedure available to those applicants willing to shoulder the economic risks of a project. Applicants' concerns ignore this fundamental premise by requesting modifications that would allow ratepayers to assume some risk. In deciding whether to seek an optional expedited certificate for a new service, applicants must carefully consider and project the need for the economic feasibility of the new service and the possibility of diminished profit or even losses if the applicants' expectations do not come to fruition. This is common business reality in competitive markets. The knowledge that the costs of unsuccessful projects cannot be recovered ensures pipeline accountability which is necessary in an atmosphere of increased competition. If the facilities are used for system-wide services after the abandonment of an optional expedited certificate, the pipeline may include the costs of those facilities in rates under § 157.103(d)(8).

2. Reservation Fees and Pipeline Risk

Section 157.103(e) of the final rule permits a reservation charge for firm transportation service consistent with the conditions in § 284.8(d), but not for sales service.

By permitting a reservation charge, the rule, CPUC (at p. 4) asserts, will *not* make the pipeline assume the full financial risk of the project, and that customers will thus bear a portion of the fixed costs regardless of their volumetric purchases. Accordingly, CPUC believes the Commission cannot presume that the initial rate is just and reasonable under section 4 of the NGA.

As the Commission explained in the final rule, a reservation fee for transportation, while admittedly assuring some recovery of fixed costs, does not insulate the pipeline from as much risk as a demand charge would. A pipeline must still find customers who will agree to pay a reservation fee to book firm transportation service, and the customer can determine in its negotiations with the pipeline the duration of the service. Additionally, pipelines are not guaranteed the payment of a reservation fee. Customers may have sufficient options available to avoid paying a reservation fee by shifting risk to the pipeline during the negotiation process. Further, the Commission noted, a reservation fee promotes customer accountability by deterring a few customers from overbooking available capacity. The Commission believes the balance should be struck in favor of opening up capacity to as many shippers as possible, even if this shifts some risk from pipelines to customers. On the whole then, the Commission does not agree that permitting a reservation fee where customers agree to it is inconsistent with the rebuttable presumption that a certificate application under these procedures is in the public interest. The applicant would still bear a substantial risk, and the presumption remains subject to rebuttal through the protest procedures.

Northern Natural (at p. 19) states that the rule unreasonably prohibits a reservation charge for a new sales service and unfairly puts pipelines at a competitive disadvantage. The pipeline asserts that competing non-regulated gas suppliers may require reservation charges, minimum bills, and minimum throughput provisions. Northern Natural believes there is no reason for restricting pipelines in competing for new sales services and that this requirement indicates a bias against pipeline sales services and for transportation.

Tennessee argues that the condition of the regulations which prohibits a pipeline from imposing a reservation charge, under the optional certificate procedures, on sales customers is unreasonable and that such a charge is necessary to prevent firm sales customers from overbooking capacity. Northwest Central (at pp. 19–20), Arkla (at pp. 5–7), and BUG (at p. 17) assert that the rule is arbitrary and unfair because, contrary to the Commission's rationalizations, the *same* need exists to prevent customers from overbooking sales service as well as transportation service. The Commission disagrees.

The optional expedited certificate removes certification as a barrier to entry where the pipeline assumes all the risks. (50 FR 45467). Allowing a pipeline to require a reservation fee for firm sales tends to inappropriately shift the risks away from the pipeline to the customer. As such, permitting pipelines to require a reservation fee for firm sales tends to undercut the basis for granting the optional, expedited certificate. To be sure, § 157.103(d)(3) permits pipelines to charge a reservation fee for firm transportation. But this limited exception to the requirement that the pipeline assume all the risks is necessary because firm transportation is subject to the non-discriminatory access conditions of §§ 284.8 and 284.9. Hence, the pipeline needs to have some means of preventing customers from booking more capacity than they are likely to use. (50 FR 42471.) The reservation fee is that means. Firm sales service provided under an optional expedited certificate, however, is not subject to a first-come, first-served, non-discriminatory access condition. Pipelines have more control in selecting which customers to serve under an expedited sales certificate. Accordingly, there is no need to permit an exception to the general rule under which the optional expedited certificates are granted, namely that, the pipeline assume all the risks. With

respect to Northern Natural's contentions that the lack of a reservation fee puts pipelines at a competitive disadvantage, the Commission believes that the opposite may be true. Customers may well prefer to purchase service without any minimum charge.

D. Other Proposed Limitations

1. Direct Pipeline Sales

Atlanta Gas (at pp. 1, 9–10), Industrial Groups (at pp. 19–21) and Transco (at p. 20 n.3) are unclear whether an interstate pipeline seeking to make direct *sales* to industrial customers under the optional expedited certificate procedures must also provide all customers with non-discriminatory access to *transportation*. Atlanta Gas and Industrial Groups are in favor of open access, whereas Transco asserts that open access to transportation in this situation is an unjustified "additional burden".

The October 24, 1985, Technical Corrections to Order No. 436 removed the words "or sales" from the applicable discussion in the final rule. In this way, the Commission reflected its "intent that *only* optional transportation certificates, *not* optional sales certificates, will be subject to the prerequisite that the applicant has filed for and will accept a new blanket transportation certificate under new § 284.221 . . . "(emphasis in original). (Technical Corrections, Mimeo at pp. 2–4.) This clarification applies to a pipeline's direct sales as well as its sales for resale.

2. Environmental Requirements

Arkla's (at pp. 8–9) second concern relates to the environmental information required by new §157.102(b)(1)(v). Specifically, that section provides that any application filed under Subpart E must contain an environmental report, as sepcified in Appendix B to Part 2 of the Commission's regulations. In the preamble to the final rule, the Commission also states that "the provisions of § 157.7 of Subpart A, which permit abbreviated applications, will be available for applications under Subpart E as well." (Section IV.C. of Order No. 436.) Moreover, § 2.82(a) provides that, in certain situations, applications need not be accompanied by the detailed report specified in Appendix B. From this, Arkla reasons that the detailed environmental report should not be required for abbreviated certificate applications submitted under Subpart E. Accordingly, it requests that § 157.102(b)(1)(v) be revised to exclude such applications.

Arkla, however, has overlooked an important point. The environmental requirements of § 2.82(a) apply only to applications filed under no-longer-effective §§ 157.7(b), (c) and (d) for the construction of budget-type facilities. These budget certificates only permitted the construction of facilities within specified dollar amounts, thus providing a check on potential environmental consequences. Moreover, such budget certificates have been superseded by the blanket certificate program which is subject to Subject F of Part 157 which is subject to § 157.206(d) environmental conditions. As of November 18, 1985, the optional expedited certificates, available under Subpart E of Part 157 were also made subject to the § 157.206(d) conditions. Moreover, there are no similar limits on construction that may occur under Subpart E. Therefore, the Commission does not believe that the requirements for the filing of environmental information should be relaxed in this instance.

3. Entry of Unsafe Pipeline Systems

Under Subpart E of Part 157, an "eligible applicant" is defined at § 157.101(b)(1) as "any natural gas company or person that will be a natural gas company upon completion of any proposed construction or extension of natural gas facilities." California PUC (at p. 15), however, suggests that the Commission narrow the eligibility requirements "to ensure that the public is not endangered through a proliferation of pipelines operated by companies not currently subject to governmental regulations for pipeline operations."

This concern is unfounded. First, California PUC offers no explanation of what restrictions it thinks the Commission should impose to limit entry into the field. Second, once the applicant becomes a natural gas company, it will be subject not only to regulation by the Commission, but also to the safety requirements of the Department of Transportation in its implementation of the Natural Gas Pipeline Safety Act of 1968. In the Commission's view, this constitutes sufficient protection against unsafe systems. Therefore, modification to §157.101(b)(1) is unnecessary.

4. Qualifying Facilities

Another question with respect to Subpart E is raised by Arkla (at pp. 7–8). In particular, Arkla states that qualifying facilities that are constructed pursuant to Subpart E should be available at any time following their construction for the performance of self-implementing blanket transportation transactions under Subparts B and G of Part 284. A "qualifying facility" is defined in § 157.101(b)(3) as "a facility or a portion of a facility that will be used solely to provide new service" and, pursuant to § 157.101(b)(2), "new service" means "a service for which the applicant for a certificate under this subpart does not have certificate authority."

The Commission agrees with Arkla's interpretation of the Commission's optional certificate regulations. The definition of "new service" in § 157.101(b)(2) could be read to imply that facilities built under an optional certificate can only be used to provide a service for which no prior certificate authority existed. The problem with this interpretation comes when considering the interrelationship of this provision with blanket certificate authorizations. Since an applicant for an optional certificate may have already received a blanket certificate, it could be argued that our regulations prohibit blanket transportation through optional certificate facilities since the holder of a blanket transportation already has "certificate authority" to provide service and thus does not fall within the definition of "new service."

The Commission does not adopt this interpretation of its regulations. Section 157.101(b)(2) as written is consistent with Arkla's request that facilities installed under the optional procedure be useful for blanket transportation. The certificate authority granted in a blanket transportation certificate is only valid to the extent certificated capacity exists. Since there is no requirement that additional capacity be constructed (§ 284.8(e)), the blanket certificate authority for transportation is only triggered when the facility is built. Such capacity can be the result of an optional certificate or a traditional certificate. Thus, "new service" cannot be provided by the applicant, under a blanket transportation certificate until, in the case of Arkla's question, the facility is build under the optional procedures.

VII. Discussion of Procedural and Administrative Issues

A. Scope of Notice

1. Notice of Grandfathering Provisions was Adequate

Colorado Interstate, (at p. 28) Intercon Gas (at p. 6) and Cascade Natural (at pp. 13–15) argue that they had insufficient notice and opportunity to comment on the specific rules for determining whether particular pre-existing transportation services are grandfathered. Texas Eastern Transmission also argues that the NOPR was inadequate in setting out criteria for

grandfathering section 311 transactions, since the NOPR failed to mention how transactions existing before Order No. 436 would be treated in the final rule. Similarly, AGA argues that the abrupt termination of existing and important transportation programs was not indicated in the NOPR, and thus the industry was without notice and opportunity for comment on this aspect of the final rule.

The Commission believes that the public was provided with sufficient notice and opportunity to comment on the extent that existing programs would be allowed to continue, without subjecting the pipeline to the requirements and regulations promulgated by Order No. 436. Specifically, the NOPR proposed extensive revisions to the then existing authority of interstate and intrastate pipelines to transport gas under NGPA section 311. By proposing to revise the requirements under which existing NGPA section 311 transactions are authorized for a maximum of two years and to substitute new requirements for all NGPA section 311 transactions of indefinite term, the Commission raised for comment the issues of when the new requirements would apply and when the old requirements would no longer apply. The Commission's resolutions are logical and integral parts of implementing the overall proposal. The Commission believes that the transitional provisions address inevitable implementational concerns about which requirements would apply effective on November 1, 1985, and which requirements would apply for any transaction authorized and commenced on or before October 9, 1985. See §§ 284.105 and 284.125.

Identical issues were also raised in the NOPR, to the extent that the requirements for the then-existing blanket certificate programs were revised. In fact, the proposed rule specifically provided that existing blanket certificate authority for transportation under former § 157.209(a)(1) would continue until the end of the term originally authorized. Section 284.223(f) provided that new blanket certificates would not provide for continued transportation under former § 157.209, beyond the date authorized by the certificate issued under that section. At the expiration of that authorization, however, a new authorization would be available under the proposed new blanket certificate regulations (50 FR 24146). In addition, specific transitional provisions were proposed for transportation for low-priority end users under former § 157.209(e), because the United States Court of Appeals for the District of Columbia had mandated that all transportation under that section must end by October 31, 1985.

The Commission also proposed to eliminate particular programs, including Order No. 60 arrangements, by revising § 284.221 which authorized these arrangements. (50 FR 24143.) Five year and 10-year automatic transportation authorization for high-priority end users would be eliminated prospectively for transactions commencing after a date certain. (50 FR 24145.) Finally Order No. 63 transactions would be abolished by making them subject to the same access and rate conditions that apply to intrastate pipelines. (50 FR 24146). The Commission's exploration of these issues was relatively detailed.

2. Expedited Producer Abandonment Policy and the Scope of the Notice of Proposed Rulemaking

In Order No. 436, the Commission affirmed its policy of granting abandoment authorizations on an expedited basis by means of existing procedures if: (1) The producer is subject to substantially reduced takes without payment; (2) the producer and pipeline have engaged in a "buy-out" as contemplated by the Commission's policy statement (§ 2.76); or (3) the underlying contract has expired.

Northwest Central (at p. 12) argues that implementation of the Commission's policy concerning expedited producer abandonments is not supported by substantial evidence and that it is procedurely defective, since the Commission failed to provide parties sufficient notice and a fair opportunity to comment on an aspect of the final rule that is tied to and a part of the new transportation program. Similarly, AGA (Appendix A at pp. 4–5) complains that the Commission reaffirmed and modified its prior statement of policy on take-or-pay (§ 2.76) without notice or an opportunity for comment, with no consideration of the public policy interest of maintaining reliable gas supplies, and with no consideration or provision for the financial impact of this new provision on pipeline buyers. Consolidated Natural and United Distribution Companies (at pp. 52–54) note that the NOPR requested comment on what, if anything, the Commission should do to expedite producer abandonment (50 FR 24145), but argues that the issuance of entirely new provisions for abandonment of gas dedicated to the interstate market is plainly unlawful. The commenters complain that no proposals were made in reference to: (1) The scope or terms of expedited abandonment; (2) the categories of gas affected; or (3) the protest procedures that would be available. In contrast, Peoples Gas recognizes that the Commission's policy statement on producer abandonments does not have the legal force and effect of a substantive rule and that pipelines and producers must support their applications on a case-by-case basis. This commenter nevertheless argues that the Commission must permit an opportunity for comment on this policy, because an expression of intent to expedite this type of proceeding in a quick and possibly truncated procedure, lends a certain general presumption of validity to these applications.

The Commission believes that commenters had notice that it was intending to address the issue of expedited producer abandonments in the final rule. As noted by Consolidated and UDC, the Commission specifically requested comment on what procedural changes to the producer abandonment and certificate regulations are needed to allow efficient implementation of transportation arrangements under the regulations permitting transportation by interstate pipelines on behalf of shippers other than other interstate pipelines. (50 FR 24145).

The Commission also believes that the applicants have misconstrued the substantive and procedural requirements that must be followed to promulgate and support implementation of a statement of policy. Specifically, the Administrative Procedure Act (5 U.S.C. 553 (1982)) does not require the Commission to provide notice and opportunity for comment before expressing its tentative intentions in a statement of policy.[78] Similarly, the Commission is not required to support a policy statement with substantial evidence or an analysis of the effects from the implementation of its policy at the time the policy statement is promulgated, because any application of a policy to an individual case must be supported by the fact and record in the case.[79] Consequently, an opportunity to

[78] The Administrative Procedure Act does not require an agency to publish a general notice of proposed rulemaking in the **Federal Register** before it promulgates a statement of policy, 5 U.S.C. 553(d)(A) (1982).

[79] *See* Pacific Gas & Electric Co. V. FPC, 506 F. 2d 33, 38–40 (D.C. Cir. 1974); American Bus Association v. United States, 627 F.2d 525, 527–31 (D.C. Cir. 1980); Amrep Corp. v. FTC, 768 F.2d 1171, 1177–78 (10th Cir. 1985).

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present views on the fairness and the effect of the policy statement are afforded affected parties during individual cases, when a policy may be applied.

3. Application of Non-discriminatory Access to all Part 284 Transactions and the Scope of the Notice of Proposed Rulemaking

Natural Gas argues (at p. 56) that the Commission failed to give proper notice, as required by the Administrative Procedure Act (5 U.S.C. 553), of its intent to subject section 311 or Order No. 60 arrangements to additional access conditions.

The Commission believes that it provided sufficient notice of its intent to impose additional access conditions on section 311 and Order No. 60 arrangements. In particular, §§ 284.104(b), 284.124(b) and 284.221(c)(1) of the proposed regulations contained a new non-discriminatory access provision applicable to interstate and intrastate pipelines transporting under NGPA section 311. (50 FR 24 142–43.) Similarly, the NOPR proposed to substantially revise the regulations that permitted Order No. 60 arrangements to consolidate this blanket certificate with the blanket transportation authorization proposed by the NOPR. In fact, the NOPR proposed to amend the regulations that authorized Order No. 60 transactions to establish the general terms and conditions for these blanket certificates. (50 FR 24,143).

4. The Notice of Proposed Rulemaking Provided Insufficient Notice to Abolish all Minimum Commodity Bills

In the final rule, the Commission denied commenters' requests to abolish all minimum commodity bills. The Commission reasoned that these proposals went considerably beyond its original proposal. The final rule, however, requires reductions of certain minimum commodity bills by an amount proportionate to the reduction in the firm sale entitlement. Similarly, it requires a pipeline to credit against a minimum commodity bill any obligations for firm sale entitlements that are converted to firm transportation entitlements.

The reductions in, and credits to, minimum commodity bills are consistent with and implement the goal of freeing up unwanted firm capacity and providing flexibility for customers. Under new § 284.106, the Commission will facilitate the reduction in firm sales entitlements and encourage conversions to firm transportation. In essence, these reductions and credits are a logical outgrowth and an appropriate extension of the Commission's original proposal to permit any firm sales customer of an interstate pipeline that becomes an open transporter to reduce contract demand for firm sales service from that pipeline.

Although recommending that the Commission issue a notice and request comment on the issue of eliminating minimum commodity bills, Columbia nevertheless argues that the issues raised by the elimination of minimum commodity bills are within the scope of this rulemaking. In particular, Columbia argues that eliminating minimum commodity bills would advance three basic objectives of the final rule by eliminating the distortions in gas costs to consumers, permitting purchasers an effective choice of supply and permitting pipelines to compete on a "level playing field."

The Commission still believes that eliminating all minimum commodity bills, including those of pipelines that decide not to take advantage of the programs established by Order No. 436, is considerbly beyond the scope of this rulemaking. As discussed above, the reductions and credits permitted in the final rule implement the reduction and conversion of firm sales entitlement by firm sales customers. In contrast, the Commission did not propose to eliminate all minimum commodity bills on a generic basis. The commission does not believe that it is necessary to eliminate all minimum commodity bills in order to implement the final rule. In addition, elimination of minimum commodity bills could have adverse effects that are not now apparent. For these reasons, the Commission will continue to examine fixed cost minimum bills on a case-by-case basis.[80]

B. Allegedly Unlawful Use of Rulemaking Authority: Reduction/ Conversion Options

Panhandle Eastern and Texas Eastern claim that Order No. 436 represents an unlawful exercise of the Commission's generic rulemaking authority.

Texas Eastern asserts that the rule abrogates its resale contracts and service agreements without considering the specific facts and circumstances surrounding each contract and without making the necessary findings based on substantial record evidence. Panhandle Eastern maintains that, because it does not resolve pipeline take-or-pay obligations, the rule is not a comprehensive package, and the initial justification for conducting generic rulemaking no longer exists.

[80] Transwestern, 32 FERC ¶ 61.009 (1985).

The Commission has broad discretion to proceed through a generic rulemaking or on a case-by-case basis.[81] Through Order No. 436 the Commission furthers comprehensive regulatory goals in a manner that it could not accomplish effectively through case-by-case determinations. The Commission proposed the rule after it concluded from five months of extensive inquiry that the regulatory framework for the natural gas transmission industry has not sufficiently adjusted to economic changes to promote the public interest in the evolving market. The goal of the rule is to ensure that natural gas markets are sufficiently competitive to provide consumers with natural gas at the lowest reasonable rates consistent with reliable, long term service. The Commission's choice not to adopt a new policy or rule but to reaffirm its previous Statement of Policy does not alter the comprehensive nature of Order No. 436. In any event, the validity of any generic rulemaking depends not on whether it comprehends all aspects of a problem but, rather, on whether it is a reasonable response to the issues it does address.

C. Legality of Technical Corrections

On October 24, 1985, the Commission issued technical corrections to certain provisions of Order No. 436.

Among other things, the document corrected the eligibility dates in §§ 284.105, 284.125 and 284.223(g) for permitting the continuation of existing transportation arrangements during the initial implementation of Order No. 436.[82] The corrections also made clear that the transactions eligible to be "grandfathered" for a limited term and, in some cases, subject to new conditions are only those services actually being provided on or before October 9, 1985.[83]

AGA, ANR, Cascade, Florida Gas, Oklahoma Natural, Teepak and Texas Eastern variously claim that, by correcting Order No. 436, the Commission undertook substantive changes in the rule and therefore violated their 5th Amendment due process rights and contravened the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553. Additionally, AGA, Cascade, Consolidated Fuel Supp., Florida Gas and Teepak characterize the issuance of

[81] *See* SEC v. Chenery Corp., 332 U.S. 194, 202–3 (1947); Permian Basin Area Rate Cases, 390 U.S. 747, 790 (1968); Wisconsin Gas Co. v. FERC, 770 F.2d 1144, 1186 (1985).

[82] *See* Section II.C. *supra*.

[83] The Commission subsequently allowed very limited exceptions to this restriction. See Transcontinental Pipeline Company clarification, Section II.D., *supra*.

such technical corrections as retroactive rulemaking.

Petitioners assert that the correction of the dates in all three sections will have a material effect on the natural gas industry. Petitioners' concerns with respect to the changes in §§ 284.105 and 284.125 can be summarized by the position taken by Florida Gas that such corrections could operate to force interstate pipelines to become a "transporter by default" if, in reliance on Order No. 436 it contracted for and/or commenced service pursuant to a section 311 transportation agreement after October 9, 1985, but before October 24, 1985.

Most of the petitioners request that the Commission restore the "effective dates" in Order No. 436.[84] AGA asks that the Commission grandfather any transaction authorized before November 1, 1985, or alternatively, grant a rehearing on the new effective date. Cascade requests that the Commission withdraw the new date or extend the grandfather provisions to cover any Section 311 service commenced on or before October 24, 1985, the date of the Technical Corrections rule.

The Commission's corrections of October 24, 1985, were "technical" in the sense that they codified the Commission's intent incorrectly stated in Order No. 436. The Commission recognizes its obligation under the Administrative Procedures Act to provide adequate public procedures before substantively amending its regulations. The October 24 changes conform to those obligations in two ways. First, they do not represent a departure from the scope or intent of Order No. 436, as issued on October 9, 1985, with regard to the appropriate treatment of existing self-implementing (NGPA section 311) or blanket certificate transactions. These transactions which would have terminated at some time under new regulations, in any event. Participants in the proceeding had ample opportunity to present their views on how this transition should occur after November 1, 1985. Second, the corrections issued before the effective date of the rule and were promulgated before the end of the Commission's statutory opportunity to modify its orders.[85]

After issuance of Order No. 436, it was discovered that the Commission had inadvertently provided a "window" in the provisions of §§ 284.105, 284.125, and 284.223(c) within which parties could negotiate new transactions or activate transportation arrangements that had existed only on paper with the single purpose of avoiding having to make a serious choice about participating in the new program and, in some cases, about providing non-discriminatory access to pipeline transportation services. This result was plainly contrary to the goals of the order and action was taken quickly to clarify the Commission's original intent.[86] The Commission could have delayed action on these changes but did not do so for reasons of fairness. It determined that parties to existing section 311 and blanket certificate transactions could not be expected to wait for a rehearing order to be told of the entirety of a Commission decision that affects the continuance or discontinuance of ongoing gas supply arrangements. The Commission chose to act quickly.

The Commission recognizes that, because transactions authorized or commenced after October 9, 1985, may not be continued under the former rules, some sellers and purchasers of gas were caught unaware. The Commission does not believe, however, that the final result was entirely unexpected by these persons or that the impact of the change in dates has been inordinately harsh. The position of these parties, including the applicants, is obviously no different than it would have been if Order No. 436 as originally issued had specified the dates announced in the Technical Corrections. More importantly, the parties to these transactions had little reason, in light of the breadth of the Commission's proposal, to depend on the indefinite continuation of existing transactions.

Finally, as stated above, the Commission is unpersuaded by the claims of retroactive rulemaking presuppose that the Commission acted to amend or reverse the prior rule and policy in disregard of the impacts that such action would have on those who relied on Order No. 436, as issued.[87] The claim by Florida Gas that the Commission's correction could have made it a "transporter by default," *i.e.*, subject unintentionally to non-discriminatory access, reflects a misunderstanding. No transaction begun before November 1, 1985, except those originally authorized under the Commission's Order No. 234–B, are now or would have been subject to the open access condition after November 1, 1985. The Commission's swift issuance of corrections was aimed at averting misunderstandings and detrimental reliance.

D. Postponing Consideration of Part D

In the NOPR, the Commission proposed a package of four parts: Part A included a comprehensive transportation program; Part B included a program to alleviate the problem of take-or-pay; Part C included an optional expedited certificate program under NGA section 7; and Part D included a new billing procedure. In response to the written and oral comments, the Commission issued in Order No. 436 Parts A through C and requested supplemental oral and written comments on Part D.

Many applicants, including pipelines such as Transco, Panhandle, Northwest, Northwest Central and Natural, distributors such as Columbia Gas Distribution, NI-Gas, SoCal, Washington, North Carolina, and UDC, two trade associations (APGA and INGAA) and the California PUC criticize the Commission's decision to extend the public procedures for Part D, Block Billing procedures, rather than adopt a final rule on that subject. They point out that the Commission argued in the NOPR that the four parts of the NOPR were interrelated, interdependent portions of one rule. Therefore, they conclude that the Commission should not have issued Parts A, B and C separately.

UDC argues that the Commission's piecemeal action conflicts with its policy concerns that it issue an integrated comprehensive program to address the marketing problems in the natural gas industry. Citing *ITT World Communications v. FCC*, 725 F.2d 732, 754 (D.C. Cir. 1984), Northwest Central argues that it is clear that "an agency, does not act rationally when it chooses and implements one policy and decides to consider the merits of a potentially inconsistent policy in the very near future."

Other applicants raise two practical problems for the Commission's failure to issue Part D. The California PUC argues that, without block billing, producers of high-cost gas will rely on rolled-in pricing which will make distributors and pipelines uncertain whether to participate in the Commission's transportation programs. The California PUC concludes that gas consumers will therefore not obtain a needed reduction

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[84] Consolidated Fuel Supply and Teepak ask that the Commission only consider their requests for rehearing in the event that the Commission adversely disposes of their Joint Emergency Request for Clarification, filed November 8, 1984, in which they seek clarification that their present transportation arrangements may continue after November 1, 1985.

[85] *See* section 19(a) of the Natural Gas Act.

[86] That intent is made clear today by the Commission's formal ratification of those changes in this order.

[87] *See* Note 11, *supra*.

in the cost of high-cost gas to market-clearing levels.

Similarly, Panhandle and Transco argue that, without immediate final action in Part D and continued rolled-in pricing, pipelines cannot adequately compete in the spot market. Panhandle argues that because the Commission has failed to define the billing changes, it is uncertain how a pipeline will try to market its gas supplies and recover its gas costs.

Several LDCs, NI-Gas, Washington, Columbia Dist., North Carolina and SoCal, and a pipeline company, Northwest, argue that it is impossible for LDCs to ascertain whether to convert their firm purchase entitlement to transportation because, until block billing is adopted, it is impossible to determine at what price the pipeline would sell gas to compete with non-regulated markets. As a possible solution, NI-Gas suggests that a decision to convert or reduce CD either should be made reversible, or made effective within 150 days of final determination of Order No. 436 or Part D.

In the request for supplemental comments on Part D, the Commission reviewed extensively the arguments for and against postponing final action on block billing, while issuing final regulations in the other three parts. 50 FR 42373–375. Briefly, the Commission discussed the numerous motions from every segment of the industry and requests from members of Congress who asked that the Commission acquire additional information on the overall affects of Part D on the industry. A petition filed by ANR Pipeline and supported by 21 other persons on August 14, 1985, requested the Commission to issue an interim rule in Part A and to renotice Part D. The Commission received responses to ANR's petition which argued for and against issuing separate parts of the rule. The majority of the applicants requested that the Commission delay action in order to acquire additional information.

The Commission also received numerous comments that raised specific issues relating to implementation of final regulations. These commenters offered alternatives to the proposal. The commenters raised serious questions that convinced the Commission that it had to acquire additional information before issuing a final rule.

For the renotice, the Commission revised the block billing procedures based on proposals raised by commenters. The request for supplemental comments discusses the proposed revisions. Recognizing the critical importance of addressing the billing issues, the Commission nevertheless does not believe that severing Part D creates inevitable inconsistencies with Order No. 436. Arguments based on the *ITT World Communication* case therefore provide no useful guidance on the issue of whether the Commission is dealing appropriately with Part D. The Commission's objective, regardless of the nature of its final action on Part D, is to develop a comprehensive regulatory scheme for gas transportation and pricing that will enhance the economic efficiency of the market. Assessment of any "potential inconsistency" must await the Commission's final rule in Part D.

The Commission's further examination of these issues can only benefit the industry. There is no justification for delaying the effect of the other parts of the rule.

VIII. Further Clarification and Denial of Petition for Stay

A. Request by INGAA for Clarification

Following issuance of Order No. 436, the Commission received numerous petitions requesting clarification of the final rule or some other special relief from application of the rule. The following discussion is part of the Commission's series of responses but addresses the generic or hypothetical situations presented to it by a major trade association.

On October 31, 1985, the Interstate Natural Gas Association of America (INGAA) filed a request for clarification of Order No. 436. INGAA's request raises a number of issues regarding the transition period provided by Order No. 436.[88]

Question. Concerning contracts amended between October 9, 1985, and November 1, 1985, to provide for transportation extension periods beginning after October 9, 1985, do § 284.105 and 284.125 provide for interstate pipelines and intrastate pipelines, respectively, to transport after October 31, 1985, pursuant to such extension agreements?

Answer. No. In order for the transitional transportation authority under § 284.105 or 284.125 to apply, the extension period must have been contractually provided for on or prior to October 9, 1985, and otherwise authorized under the Commission's regulations.[89]

Question. Concerning an interstate pipeline that (1) continues any blanket certificate transportation authorized under previously effective § 157.209(e) (Order No. 234–B transportation[90] after October 31, 1985, but (2) does not apply under § 284.221 before December 15, 1985, for a new blanket certificate, and (3) ceases all Order No. 234–B transportation as of that date: After December 15, 1985, will the pipeline remain subject to the open-access and rate conditions of Order No. 436 by reason of having continued its Order No. 234–B transportation after October 31, 1985, and therefore be required to accept requests for either blanket certificate or NGPA section 311 transportation received after December 15, 1985?

Answer. An interstate pipeline will not be required pursuant to the non-discriminatory access conditions of §§ 284.8 and 284.9 to provide blanket certificate transportation in response to transportation requests received after December 15, 1985, if by that date the pipeline ceases all Order No. 234–B transportation and all new blanket certificate transportation commenced during the period November 1, 1985, to December 15, 1985.

An interstate pipeline that continues any blanket certificate transportation after October 31, 1985, is deemed to be still transporting under authority of its original blanket certificate issued under previously-effective § 157.209, since a new certificate may not have been issued under § 284.221 as revised by Order No. 436 by that time. Further, a pipeline's continued exercise of its original blanket certificate transportation authority and reliance on new § 284.223(g)(2) to maintain its Order No. 234–B transportation arrangements will, as provided in § 284.223(g)(2), subject the pipeline to the non-discriminatory access conditions of Order No. 436. Therefore, the pipeline will be required to accept, under its old blanket certificate, new requests for transportation that the pipeline is authorized to provide under the revised blanket certificate regulations.

If an interstate piepline does not apply under § 284.221 by December 15, 1985, for a new blanket certificate, the pipelines authority under its old blanket certificate will be deemed to cease to the extent that it provided for (1) the continuation of Order No. 234–B transportation and (2) the performance of new blanket certificate transportation required, pursuant to §284.223(g)(2), to

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[88] 33 FERC ¶61.007 (1985), 50 FR 42408 (October 18, 1985).

[89] Similar clarification requests were filed by El Paso Natural Gas Company on October 22, 1985, and Panhandle Eastern Pipe Line Company on October 21, 1985. The Commission responded to these requests in its orders issued in this docket on October 30, 1985.

[90] 48 FR 34875 (Aug. 1, 1983).

be undertaken during the period from November 1, 1985, to December 15, 1985. Accordingly, if an interstate pipeline does not apply by December 15, 1985, for a new blanket certificate, it must by that date cease *all* blanket certificate transportation under Part 157 *except* its Order No. 319 transportation initially authorized under previously-effective § 157.209(a)(1) which is permitted to continue under new § 284.223(g)(1). However, by ceasing all blanket certificate transportation except that which qualifies under § 284.223(g)(1) on a non-discriminatory basis by December 15, 1985, or any other date certain, the pipeline will shield itself from the requirement to honor requests after that date for blanket certificate transportation.

If an interstate pipeline that has filed a statement of notification in accordance with § 284.223(g)(2)(i) does apply under § 284.221 prior to December 15, 1985 for a new blanket certificate, the pipeline's transportation authority under its old blanket certificate to continue its Order No. 234–B transportation and to undertake new blanket certificate transportation will remain in effect (subject to the conditions of §§ 284.223(g) (1) and (2), as applicable) until the pipeline's new blanket certificate is issued and a reasonable time for the pipeline to accept the certificate has elapsed. Further, if an interstate pipeline applies by December 15, 1985, for a new blanket certificate, thereby providing for the full transportation authority under its old blanket certificate to be extended until the new certificate is issued, the requirement under § 284.223(g)(2) that the pipeline provide additional blanket certificate transportation on a non-discriminatory basis, upon request, will continue during such period following December 15, 1985.

Acceptance of a new blanket certificate by an interstate pipeline will simultaneously extinguish the pipeline's transportation authority under the old certificate, place all existing blanket certificate transportation under the new blanket certificate, and continue the pipeline's non-discriminatory access obligations under §§ 284.8 and 284.9. Upon acceptance of a new blanket certificate, a pipeline will be subject to the open-access conditions of §§ 294.8 and 284.9 by operation of § 284.221(c), which is applicable to all blanket certificates issued after November 1, 1985, for the entire periods that they are in effect, as opposed to § 284.223(g)(2), which relates only to the transition period.

An interstate pipeline will not be required to provide any NGPA section 311 transportation by reason of a blanket certificate, including transportation under Order No. 234–B continued under § 284.223(g)(2), even if such transportation is continued beyond December 15, 1985. A pipeline is required under §§ 284.8 and 284.9 to provide additional NGPA section 311 transportation only if the pipeline has already undertaken new NGPA section 311 transportation after October 31, 1985. That is, the *first* new NGPA section 311 transportation undertaken by a pipeline after October 31, 1985, is entirely within the pipeline's discretion. However, the pipeline's choice to accept its first new NGPA section 311 transportation arrangement after October 31, 1985, makes the pipeline subject to the non-discriminatory access conditions. Further, the Commission wishes to make a clarification regarding pipeline that commenced or extended NGPA section 311 or blanket certificate transportation arrangements during the period October 9, 1985, to November 1, 1985. Regardless of the purported expectation of the pipelines, if a transportation arrangement did not qualify for continued transportation under § 284.105 or § 284.223(g)(1), the continuation of such transportation on and after November 1, 1985, constitutes the commencement of new transportation on November 1, 1985, and thus makes the pipeline subject to the non-discriminatory access conditions of Order No. 436.

A pipeline will be required under § 284.7(b)(2) to file new rates to be effective by July 1, 1986, only for those transportation arrangements that will still be in effect on July 1, 1986. Therefore, for example, if the pipeline ceases all Order No. 234–B transportation by December 15, 1985, the pipeline is not required to file for such transactions rates to be effective July 1, 1986. However, rates charged prior to December 15, 1985, will be subject to refund if it is determined that they were not consistent with the interim rate conditions in § 284.7(b)(1).

Question. Concerning an interstate pipeline that begins a new NGPA section 311 transportation arrangement prior to December 15, 1985, pursuant to the non-discriminatory access conditions that will attach if Order No. 234–B transportation is continued after October 31, 1985; must the new NGPA section 311 transportation arrangement end on December 15, 1985, if the pipeline has not filed an application for a new blanket certificate as of that time?

Answer. INGAA's question in this regard indicates a misunderstanding of the operation of the non-discriminatory access conditions in the context of the transitional provisions of § 284.223(g)(2). An interstate pipeline that continues Order No. 234–B transportation after October 31, 1985, is not required by reason of such Order No. 234–B transportation to provide NGPA section 311 transportation service. The December 15, 1985, date in § 284.233(g)(2) is relevant only to blanket certificate transportation continued under authority of, or required to be commenced pursuant to, that section. If a pipeline begins any new NGPA section 311 transportation, such transportation may continue after December 15, 1985, subject to the non-discriminatory access condition and the other Part 284 conditions, until the expiration of its underlying contractual terms, as provided by §§ 284.102 or 284.122, as applicable. But, as the Commission stated elsewhere, if a pipeline stops all NGPA section 311 transportation on a non-discriminatory basis, the pipeline is no longer subject to the non-discriminatory access provisions applicable to NGPA section 311 transportation.

Question. If an interstate pipeline commences new NGPA section 311 service because it is subject to the open-access conditions of Order No. 436 by reason of its Order No. 234–B transportation, will the pipeline be subject to the open-access conditions with respect to all requests for transportation that the pipeline would be authorized to provide under NGPA section 311?

Answer. Again, as explained above, an interstate pipeline is not required to agree to additional transportation under NGPA section 311 because it chooses to continue its Order No. 234–B transportation. A pipeline, including an intrastate pipeline, is required by the non-discriminatory access conditions of Order No. 436 to provide additional NGPA section 311 transportation only once the pipeline, in its sole discretion, has already begun its first new NGPA section 311 transportation arrangement on or after October 9, 1985.

While the non-discriminatory access conditions will not apply to an interstate pipeline after December 15, 1985, if by that date the pipeline has ceased (1) all blanket certificate transportation begun or extended during the period October 9, 1985, to December 15, 1985, (2) all Order No. 234–B transportation, and (3) all NGPA section 311 self-implementing transportation commenced on or after October 9, 1985, the rate conditions of

§ 284.7 will apply to all Order No. 319 blanket certificate and NGPA section 311 transportation arrangements commenced prior to October 9, 1985, that are still in effect after December 15, 1985.

Question. If an interstate pipeline ceases all Order No. 234–B transportation by December 15, 1985, and does not accept a new blanket certificate by that date, will the pipeline be required under the open-access conditions to accept requests received after December 15, 1985, for NGA section 7 transportation?

Answer. It is unclear whether INGAA's reference to section 7 transportation means only blanket certificate transportation or all section 7 transportation, including that under traditional section 7 certificates. In either case, however, if an interstate pipeline has ceased all blanket certificate transportation other than Order No. 319 transportation continued under § 284.223(g)(1) by December 15, 1985 and has not *applied* for a new blanket certificate by that date, the interstate pipeline will not be required after December 15, 1985, by reason of the open-access conditions of Order No. 436, to accept service requests that require utilization of either blanket certificate or traditional NGA section 7 authority. Further, in such cases, the interstate pipeline will not be required pursuant to the open-access conditions to enter into new transportation arrangements after December 15, 1985, even if the interstate pipeline began new blanket certificate transportation during the period November 1, 1985, to December 15, 1985. That is because these arrangements, even if commenced solely because of the non-discriminatory access conditions in § 284.233(g)(2), must also cease on December 15, 1985, if the interstate pipeline has not filed for a new blanket certificate. As explained above, the pipeline's failure to apply for a new certificate will result in the extinction of the pipeline's authority under its old certificate to provide any blanket certificate transportation except transportation authorized under other terms of Order No. 436 (including Order No. 319 transportation continued under § 284.223(g)(1).)

Question. If a pipeline enters new blanket certificate transportation arrangements after December 15, 1985, may it ever terminate its obligation to provide such transportation?

Answer. Yes. A pipeline may determine that it will not accept new transportation requests and will not agree to extensions of service for NGPA section 311 transportation as of any given time. If so, however, the pipeline must first seek to surrender its blanket certificate and abandon transportation thereunder pursuant to § 157.18 of the Commission's Regulations. *See* 50 FR 42434 (1985). A pipeline's obligation to accept new transportation requests will cease under its blanket certificate when it receives such abandonment approval. If such transportations are covered by the pre-granted abandonment under § 284.221(d), the blanket certificate must still be surrendered. A pipeline may terminate its obligation to transport gas under NGPA section 311, as long as it ceases or discontinues all such transportation, except transportation authorized to continue under § 284.105 or § 284.125, on a non-discriminatory basis. However, the undertaking thereafter of any new blanket certificate or NGPA section 311 transportation will cause the pipeline to again become subject to the non-discriminatory access conditions. Further, as explained in Order No. 436,[91] a pipeline may not decide that it will provide no further self-implementing blanket certificate transportation and then again start accepting new customers in a manner that has the effect of discrimination against shippers that sought transportation during the pipeline's period of "retirement".

Question. Concerning a pipeline that continues an NGPA section 311 transportation arrangement that was commenced prior to October 9, 1985, (1) only until the earlier of October 9, 1987, or the expiration date of the contractual primary term or extension period, as applicable, that was in effect on October 9, 1985, or (2) after the expiration date of the primary term or extension period that was in effect on October 9, 1985; does such transportation in either case make the pipeline subject to the non-discriminatory access conditions of Order No. 436, if the pipeline has not applied for a blanket certificate?

Answer. Regardless of whether an interstate pipeline accepts a new blanket certificate, it is required to provide non-discriminatory access to NGPA section 311 transportation only if it undertakes new NGPA section 311 transportation service after October 31, 1985, or agrees to an extension of an NGPA section 311 arrangement so that transportation will continue beyond the expiration of the primary term or extension period that was in effect on October 9, 1985.

Question. If a pipeline commences new NGPA section 311 transportation after October 31, 1985, will the pipeline be required, pursuant to the non-discriminatory access conditions of Order No. 436, to provide:

(1) NGPA section 311 transportation for other shippers seeking service?

Answer. Yes, on a non-discriminatory basis subject to the terms and conditions in Order No. 436.

(2) NGPA section 311 transportation for shippers seeking extensions of such service that was commenced prior to October 9, 1985?

Answer. Yes, on a non-discriminatory basis subject to the terms and conditions in Order No. 436.

(3) Blanket certificate transportation?

Answer. Not by reason of the new non-discriminatory access condition applicable to new NGPA section 311 transportation service.

Question. If, after October 31, 1985, an interstate pipeline enters a new blanket certificate arrangement to transport gas under § 284.222 on behalf of another interstate pipeline, will the transporting interstate pipeline be required, by reason of such transportation and the open-access conditions of §§ 284.8 and 284.9, to provide

(1) NGPA section 311 transportation under Subpart B of Part 284?

Answer. Not by reason of the transportation on behalf of an interstate pipeline under § 284.222 and the non-discriminatory access condition applicable thereto. However, since LDCs are covered by the blanket certificate as eligible shippers, the question of whether a pipeline must provide the transportation to LDCs under section 311 is largely irrelevant.

(2) Blanket certificate transportation under § 284.222 for interstate pipelines that request extensions of service that was commenced prior to October 9, 1985, under the provisions of previously effective § 284.221?

Answer. Yes.

(3) Blanket certificate transportation under § 284.223 for shippers other than interstate pipelines?

Answer. Yes.

Question. If, after October 31, 1985, an interstate pipeline offers to provide NGPA section 311 transportation under Subpart B of Part 284 on behalf of local distribution companies and intrastate pipelines, must the interstate pipeline also offer, in order to avoid undue discrimination against customers of other classes (*e.g.*, end users that are not or cannot be costrued to be "intrastate pipelines"), to provide blanket certificate transportation under Subpart G of Part 284?

Answer. No.

Question. Concerning blanket certificate and NGPA section 311 transportation arrangements authorized

[91] 50 FR 42408, 42434 (October 18, 1985).

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and commenced prior to October 9, 1985, where the contracts for such service are amended on or after October 9, 1985, (1) to allow natural gas to be received from, or delivered to, points other than those permitted under the contract prior to such amendment, or (2) to allow additional volumes of natural gas to be transported; will such amendments to the service contract remove the transportation arrangement from the scope of § 284.223(g) or § 284.105, as applicable, and thus cause the transporting pipeline to be subject to the open-access conditions of §§ 284.8 and 284.9?

Answer. Yes.[92]

Question. Under what circumstances is transportation deemed to constitute agreement by an interstate pipeline to offer its customers the right to reduce their firm sales entitlements and convert such entitlements to firm transportation service?

Answer. If an interstate pipeline (1) commences a new NGPA section 311 transportation arrangement under authority of § 284.102 or § 284.243, after February 15, 1986, or (2) accepts a blanket certificate issued under § 284.221, the interstate pipeline is deemed to have agreed to offer its firm sales customers the contract demand reduction and purchase-to-transportation conversion rights specified in §§ 284.10(c) and (d), respectively. The change in dates is accomplished by this rehearing order.

A transportation "arrangement" is an agreement providing for the transportation of natural gas. A transportation arrangement is "commenced" when a pipeline first takes receipt of any natural gas purusant to the transportation agreement. A "new" transportation arrangement is a transportation arrangement under which the initial or primary transportation term or an extension commences on or after December 15, 1985.

B. Petition for Stay

The City of Willcox, Arizona, and the Arizona Electric Power Cooperative (Willcox) request that the Commission stay the effective date of the regulations promulgated by Order No. 436 until the day after the Commission issues a rehearing order in this proceeding.[93] In support of its petition, Willcox contends that it will be irreparably harmed if the final rule is not stayed because it will be unable to finalize arrangements for the purchase, transportation, and sale of gas. Willcox is particularly concerned about the transportation arrangement. It asserts that it has been informed by its pipeline supplier, El Paso Natural Gas Company (El Paso), that the pipeline will not participate in the Order No. 436 transportation program. Willcox claims that, if the Commission grants a stay it will be able to negotiate the purchase of gas with a producer and finalize the arrangements with its customer before the new effective date of the regulations and that its transportation arrangements would then be grandfathered for two years.

Willcox' petition for a stay is denied. Section 705 of the Administrative Procedure Act authorizes the Commission to postpone the effective date of action taken when it finds that justice so requires. The Commission is unable to make that finding here. First, the Commission does not believe that staying the effectiveness of Order No. 436 would be in the public interest. As the Commission has indicated in this order, the final rule will benefit consumers by stimulating competition in natural gas markets. Second, Willcox has not demonstrated that implementation of the regulations will cause it imminent irreparable harm. Willcox's allegation that it will not be able to secure a new customer is unsustantiated. Moreover, even if the allegation is true, it would not constitute irreparable harm. The regulations do not deprive the customer or service available under the Natural Gas Act. The new program provides alternative means by which natural gas service may be supplied.

IX. Changes to the Regulations

As discussed above in this order, the following revisions to the regulations promulgated in Order No. 436.

A. Notice of Filing of Application in § 2.77

The Commission received numerous comments that argue that the 51-day notice period provided for abandonment and certificate applications under § 2.77 is too short to afford them sufficient opportunity to review the application and to file comments. In this order, the Commission clarifies that it intended that the 15-day period begin after publication of the notice of the application in the **Federal Register**. The amendment to the regulation reflects that clarification of its general policy.

B. Report to the Commission of Change in Discount Rate Under § 284.7(d)(5)(iv)

Under § 284.7(d)(5)(iv), a pipeline is required to file within 45 days of the close of the billing period any change in its discount rate under § 284.7 Several applicants argue that 45 days does not provide them with timely notice. The Commission agrees with the applicants and is changing the requirement to 15 days.

C. Rate Adjustment Under § 284.10(g)

The Commission is eliminating the requirement of § 284.10(g) that the pipeline file a change to rates every time there is a change in the customer's firm sales entitlement. Under § 284.7, a pipeline that provides transportation under Subparts B, G, and H is required to file a rate for such transportation. The Commission believes that the initial filing under § 284.7 is sufficient. Of course, pieplines may file subsequent rate changes at their discretion.

D. Requiring Interstate Pipeline to Keep a Log of Requests for Transportation

The Commission is amending its regulations to require interstate pipelines that transport under Subparts B, G, or H to keep a log of all transportation requests. This log is intended to provided interested persons with the information they need to determine whether the pipeline is operating an a non-discriminatory basis. The log is to be kept available for public inspection at the company's corporation headquarters during the company's normal business hours.

The pipeline is required to begin keeping the log within 30 days after it begins to transport under the Commission's programs. The log must show the date of the transportation request, the name of the person requesting the transportation, and the volume of gas to be transported.

The Commission believes that this requirement is consistent with the purposes of its new transportation program and its responsibilities under the NGA and that it is not unduly burdensome. Pipelines already keep this information in the normal course of business. Furthermore, the benefit to interested persons to provide them with this type of information that is available only to the pipeline outweighs the inconvenience to the pipeline. Moreover, the Commission is also interested in the information in the log and may request that the pipeline provide the

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[92] A similar clarification was included in the Commission's October 30, 1985 order in response to Panhandle Eastern's Pipe Line Company's Request for Clarification filed October 21, 1985.

[93] Although styled as a motion, Willcox's pleading is treated as a petition because there are no motions in rulemakings. 18 CFR Part 385.

Commission with data from it for information purposes.[84]

E. Filing by Intrastate Pipelines of Their Operating Conditions

The Commission is adding a new paragraph (e) to § 284.123 to require an interstate pipeline that participates in the Commission's transportation program to file a one-time statement that describes how it will operate under the program. This statement should contain the pipeline's conditions, including quality standards and financial viability of the shipper. The pipeline is required to file any amendments to this statement within 30 days of commencement of the change. If a pipeline has already elected to participate in the program, the filing is due no later than Feburary, 1, 1985. If a pipeline decides to transport under the new program in the future, it must file the statement within 30 days of commencement of the new service.

F. Changes to the Commission's Delegations of Authority

The Commission is amending its regulations in § 375.307 in order to authorize the Director of the Office of Pipeline and Producer Regulation to pass on uncontested applications for blanket certificates by Hinshaw pipelines and LDCs served by interstate pipelines. At the same time, the Commission is consolidating redundant sections relating to the Director's delegated authority to pass on uncontested blanket certificate applications.

G. Notice of LDC By-Pass

The Commission is amending its regulations relating to new service provided under either section 311 of the NGPA or under the optional expedited certificate procedures in Order No. 436 to assure that LDCs and their apprporiate state regulatory agencies are notified in writing prior to the commencement of such services to a customer that is located in the service area of the LDC. *See,* new §§ 284.106(a)(4), 284.126(a)(6), and 157.102(b)(iv).

H. Phase-In Schedule of CD Reduction/ Conversion Condition

The Commission is revising § 284.10, the CD reduction/conversion condition, in three respects.

First, § 284.10(a) is modified to allow new transportation arrangements under section 311 of the NGPA to be commenced or continued for a transitional period through February 15, 1986, without triggering the CD reduction/conversion conditions. The purpose of this change is to extend through the major portion of the 1985–1986 winter heating season the transition period intended by Order No. 436. This transition period is intended to permit different segments of the industry to adjust their commercial arrangements to take advantage of the new opportunities under Order No. 436, without unduly disrupting transportation during the winter heating season.

Because the bulk of self-help transportation services are those implemented under section 311 and because Order No. 436 provides pipelines new flexibility to provide section 311 services to local distribution systems for both system supply and direct end-uses, the change to § 284.10(a) would extend the CD reduction/conversion "trigger" date for new section 311 arrangements from December 15, 1985, to February 15, 1986. However, all other Order No. 436 conditions applicable to such 311 services, such as the non-discriminatory access conditon, would continue to apply as required by Order No. 436.

Under this change, all segments of the industry more readily will be able to adjust their commercial relationships, while at the same time meeting Order No. 436's overall goal of permitting pipelines and their customers to maximize the movement of gas on a non-discriminatory basis in response to competitive conditions.

Second, § 284.10(c)(2) is modified to establish more certain notice deadlines and effective dates for customers to exercise their CD reduction options. Under § 284.10(c)(1), the "trigger" date for the availability of the CD reduction option is the date the pipeline first commences or continues a new section 311 arrangement after February 15, 1986, or accepts a new blanket certificate. Section 284.10(c)(2), as modified, would require that, unless the pipeline agrees otherwise, a customer wishing to exercise its CD reduction option the first year it is available, must give the pipeline written notice of the level of its first year reduction not later than 45 days following the "trigger" date established under § 284.10(a). This 45-day notice requirement is only applicable to firm sales customers in the first year the CD reduction option is available. Because § 284.10(c)(1) establishes a single date for first year reductions to take effect, the 45-day notice requirement is intended to provide customers adequate time to decide their first reduction elections under § 284.10.

In addition, § 284.10(c)(2) requires that, in the first year, all such customer reductions take effect 150 days following the close of the required 45-day customer notice period. This will assure that all customers enjoy the same 45-day period to make their CD reduction elections, and that all such CD reduction elections will take effect on the same day the first year. The Commission intends this modification to provide pipelines and their customers with the certainty and predictability necessary to plan their first service agreement modifications and tariff filings under Order No. 436.

In subsequent years, § 284.10(c)(2) is modified to permit a pipeline to establish a single effective date for all CD reductions to take effect, as long as the pipeline provides its customers with 180 days written notice prior to such date. This change would permit pipelines the flexibility to change the effective date for CD reductions in subsequent years, as long as the changed effective date is no later than the "anniversary" date of their customers' last such reduction, and as long as their customers are provided prior notice of the changed effective date. In this way, a pipeline may choose to require that all CD reductions take effect on a single date, and customers will be assured that such effective date is no later than 12 months following the effective date of their last such reductions.

Third, in response to rehearing requests concerning the ability of pipelines and their customers to adjust to the CD reduction and conversion options during an orderly transition period, § 284.10(c) and § 284.10(d) are modified to extend the 4-year phase-in schedule for such options to 5-years. This modification would also clarify that the phase-in schedule runs for the five-year period beginning when the pipeline first commences or continues a new section 311 arrangement after February 15, 1986, or accepts a new blanket certificate. Finally, the modification would clarify that the reduction/conversion options are cumulative; that is, any customer that does not elect to reduce or convert its firm sales entitlements in the full amount in any given year, may in subsequent years reduce or convert the full, cumulative amount eligible to be reduced or converted in that and all previous years. The cumulative nature of the CD reduction/conversion option is intended to assure firm sales customers maximum

[84] Consistent with its findings in Order No. 436, the Commission believes these changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612 (1982).

choices for transportation services regardless of whether they choose to exercise those options to their full extent from year to year.

Thus, under the revised 5-year phase-in schedule, subject to the notice and effective date requirements in § 284.10 (c)(2) and (d)(2), a customer would be permitted to convert/reduce up to 15 percent during the first year, up to 30 percent the second year, up to 50 percent the third year, up to 75 percent the fourth year, and up to 100 percent the fifth year and thereafter.

The purpose of this more gradual, 5-year phase-in schedule is intended to enable pipelines to accommodate their customers' CD adjustments in a more orderly and smooth manner. Pipelines and their customers will benefit from a more gradual program to the extent it ensures a more predictable transition and mitigates potential cost-shifting.[95]

I. Change in Transition Date

Under the old transitional provisions, the authorization for certain transportation under § 157.209(e)(1) ceased on December 15, 1985 unless the pipeline files for a blanket certificate under § 284.221 before that date. Since December 15 is a Sunday, the Commission extends this date to 11:59 p.m. on December 16, 1985 to permit pipelines and their customers an additional working day to adjust their commercial arrangements in light of the changes made by this order.[96]

[95] Generally, a rule becomes effective not less than 30 days after it is published in the Federal Register. A rule may become effective sooner if it is an interpretive rule or policy statement, if it relieves a restriction or grants an exemption, or if the agency finds there is good cause to do so. 5 U.S.C. 553(d) (1982).

The Commission finds good cause to make the changes to §§ 284.10(a) and 284.223(g)(3)(i) effective upon issuance. Section 284.10(a) originally vested rights in pipeline's sales customers to reduce or convert the level of those customers' firm sales entitlements, if their pipeline is providing new transportation service after December 15, 1985. The revisions to § 284.10(a) postpone the date on which these rights may vest until after the winter heating season and avoids the uncertainty in the gas industry that may have been likely under the old rules. In addition, this change can be effective immediately without affecting any ongoing transactions or contractual arrangements, because customers could not have exercised any reduction or conversion rights under the old rules until February 1, 1985, as a practical matter. See note 96, infra.

[96] The Commission finds good cause under the Administrative Procedure Act, 5 U.S.C. 553(d) (1982) to extend this date to 11:59 p.m. on December 16, 1985, to permit pipelines and their customers an additional working day to adjust their commercial arrangements in light of the changes made by this order by amending § 284.223(g)(3)(i). In addition, this minor change in the regulations primarily relieves a restriction on pipelines and their customers by permitting transportation authority to continue one additional day.

X. Effective Date and Paperwork Reduction Act Statement

The changes to the Commission's regulations contained in this order are effective January 22, 1986, unless otherwise stated in this order. The effectiveness of new data collection provisions are subject to approval by the Office of Management and Budget.

The new information collection and retention provisions in this order will be submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act, 44 U.S.C. 3501–3502 (1982) and OMB's regulations, 5 CFR 1320.12 (1984). Interested persons can obtain information on these provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (Attention: Ellen Brown, (202) 357–8272). Comments on these provision can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Regulatory Commission).

XI. Commission Order

In consideration of the foregoing, the Commission:

A. Denies in part the applications for rehearing of Order No. 436, as specified in this order;

B. Grants in part the applications for rehearing of Order No. 436, as specified in this order, and amends accordingly Chapter 1, Title 18 of the *Code of Federal Regulations*, as set forth below, effective January 22, 1986, unless made effective immediately as stated in this order;

C. Denies the petition for stay of Order No. 436 filed by the City of Willcox, Arizona and the Arizona Electric Power Cooperative.

By the Commission. Chairman O'Connor concurred in part and dissented in part. Commission Stalon concurred in part and dissented in part and will have a separate statement to be issued later.

Kenneth F. Plumb,

Secretary.

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 4321–4361 (1978), unless otherwise indicated.

2. In § 2.77, paragraph (b)(1) is revised to read as follows:

§ 2.77 Policy on expedite producer abandonment.

* * * * *

(b) *Procedures.*

(1) Applications will be noticed promptly and a period not to exceed 15 days after publication of the notice in the **Federal Register** will be provided for comments or interventions.

* * * * *

PART 157—[AMENDED]

3. The authority citation for Part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

4. In § 157.102, paragraph (b)(1)(iv) is revised to read as follows:

§ 157.102 Contents of application and other pleadings.

* * * * *

(b) *Specific contents.* (1) Any application under this subpart must contain:

* * * * *

(iv) If the proposed new service would be provided to a customer that is located in the service area of a local distribution company, a statement that the applicant has served a copy of this application on that local distribution company and the local distribution companmy's appropriate state regulatory agency;

* * * * *

PART 284—[AMENDED]

5. The authority citation for Part 284 continues to read as follows

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order No. 12,009, 3 CFR 142 (1978).

§ 284.7 [Amended]

6. In § 284.7(d)(5)(iv), the number "45" is removed and the number "15" is added in lieu thereof.

7. In § 284.10, paragraph (g) is removed, and paragraphs (a), (c)(1), (c)(2), (c)(3), (d)(1), (d)(3), and (e) are revised to read as follows:

§ 284.10 Reductions in firm sales entitlements and conversions to firm transportation.

(a) *Agreement to offer reduction and conversion options.* An interstate

pipeline is deemed to have agreed to offer its firm sales customers the options set out in paragraphs (c) and (d) of this section, if it:

(1) Commences or continues a new transportation arrangement under authority of § 284.102 or § 284.243 of this chapter after February 15, 1986; or

(2) Accepts a certificate issued under § 284.221 of this chapter.

* * * * *

(c) *Option to reduce certain firm purchase obligations*—(1) *Customer option.* An interstate pipeline subject to this section agrees to offer, and is deemed to offer, every firm sales customer the option to reduce the level of the customer's firm sales entitlements under any eligible firm sales service agreement with that pipeline.

(2) *Notice by Customer*—(i) *Initial year.* (A) Unless the pipeline agrees otherwise, a customer of a pipeline that wishes to exercise its option under this paragraph during the first twelve-month period after the pipeline becomes subject to this section must provide the pipeline written notice of the level of any first year reduction not later than 45 days following the date the pipeline becomes subject to the provisions of this section.

(B) Such reductions will take effect 150 days following the close of the 45-day period provided in paragraph (c)(2)(i)(A) of this section.

(ii) *Subsequent years.* (A) During each twelve-month period after the date on which customer reductions took effect under paragraph (c)(2)(i)(B) of this section, the pipeline may establish a single effective date for later reductions in accordance with paragraph (c)(3) of this section, provided:

(*1*) The pipeline provides its firm sales customers 180 days written notice prior to such a date; and

(*2*) Such date is not later than the date such reductions took effect in the previous year.

(B) Unless the pipeline agrees otherwise, a customer of a pipeline that wishes to exercise its option under this paragraph must provide the pipeline written notice of the level of the reduction not later than 150 days before the effective date.

(3) *Level of reduction.* (i) A customer of a pipeline subject to this section may elect to reduce the level of its existing firm sales entitlements under any eligible firm sales service agreement with that pipeline, in accordance with the following schedule:

(A) During the first twelve-month period after the pipeline first becomes subject to this section, up to 15 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(B) During the second twelve-month period after the pipeline first becomes subject to this section, up to 30 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(C) During the third twelve-month period after the pipeline first becomes subject to this section, up to 50 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(D) During the fourth twelve-month period after the pipeline first becomes subject to this section, up to 75 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline; and

(E) Beginning the fifth twelve-month period after the pipeline first becomes subject to this section, up to 100 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(ii) A pipeline subject to this section may, at any time, permit a firm sales customer to reduce its firm sales entitlements by more than the amount provided in the schedule in paragraph (c)(3)(i) of this section.

* * * * *

(d) *Option to convert to firm transportation.*—(1) *Customer option.* An interstate pipeline subject to this section agrees to offer, and is deemed to offer, every firm sales customer the option, under this paragraph, to convert a portion of its firm sales entitlements under any eligible firm sales service agreement to a volumetrically equal amount of firm transportation service.

* * * * *

(3) *Level of Conversion.* (i) A customer of a pipeline subject to this section may convert to firm transportation its existing firm sales entitlements under any eligible firm sales service agreement with that pipeline, in accordance with the following schedule:

(A) During the first twelve-month period after the pipeline first becomes subject to this section, up to 15 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(B) During the second twelve-month period after the pipeline first becomes subject to this section, up to 30 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(C) During the third twelve-month period after the pipeline first becomes subject to this section, up to 50 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline;

(D) During the fourth twelve-month period after the pipeline first becomes subject to this section, up to 75 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline; and

(E) Beginning the fifth twelve-month period after the pipeline first becomes subject to this section, up to 100 percent of the level of its firm sales entitlements in existence on the date the pipeline first becomes subject to this section, under any eligible firm sales service agreement with that pipeline.

(ii) A pipeline subject to this section may, at any time, permit a firm sales customer to convert to firm transportation by more than the amount provided in the schedule in paragraph (d)(3)(i) of this section.

* * * * *

(e) *Limitation.* Reductions of firm sales entitlements under paragraph (c) of this section and conversions of firm sales entitlements under paragraph (d) of this section may not, in combination, without the consent of the pipeline, affect more than 15 percent of a customer's eligible firm sales entitlements during the first 12-month period subsequent to the date on which customer reductions took effect under paragraph (c)(2)(i)(A) of this section; more than 30 percent during the second 12-month period subsequent to such date; more than 50 percent during the third 12-month period subsequent to such date; more than 75 percent during the fourth 12-month period subsequent to such date; or more than 100 percent after the fourth 12-month period subsequent to such date.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS ACT AND THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

8. The table of contents for Part 284 is amended by adding under Subpart A a new § 284.13 to read as follows:

Subpart A—General Provision and Conditions

Sec.

* * * * *

284.13 Recordkeeping requirement.

* * * * *

9. Part 284 is amended by adding new § 284.13 to read as follows:

§ 284.13 Recordkeeping requirement.

(a) Within 30 days after commencement of any transportation arrangement under Subpart B, G, or H of this part, the interstate pipeline that provides such service must keep a log of the request for such service, that, at a minimum, includes:

(1) The date of the request;

(2) The name of the person requesting transportation; and

(3) The volume of gas to be transported.

(b) The log required under this section must be available for public inspection at the company's corporate headquarters during the company's normal business hours.

10. In § 284.106, a new paragraph (a)(4) is added to read as follows:

§ 284.106 Reporting requirements.

(a) * * *

(4) If such transportation is provided to a customer that is located in the service area of a local distribution company, a statement that the interstate pipeline has notified the local distribution company and the local distribution company's appropriate regulatory agency in writing of the proposed transportation prior to comments.

* * * * *

11. In § 284.123, a new paragraph (e) is added to read as follows:

§ 284.123 Rates and charges.

* * * * *

(e) *Filing requirements.*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, within 30 days of commencement of new service, any intrastate pipeline that engages in transportation arrangements under this subpart must file with the Commission a one-time statement that describes how the pipeline will engage in these transportation arrangements, including operating conditions, such as, quality standards and financial viability of the shipper. If the pipeline changes its operations under this subpart, it must amend the statement and file such amendments not later than 30 days after commencement of the change in operations.

(2) *Exception.* Any intrastate pipeline that engages in transportation arrangements authorized under this subpart before December 15, 1985, must file the statement described in paragraph (e)(1) not later than February 1, 1986. Any amendments to this statement must be filed in accordance with paragraph (e)(1).

12. In § 284.126, a new paragraph (a)(6) is added to read as follows:

§ 284.126 Reporting requirements.

(a) * * *

(6) If such transportation is provided to a customer that is located in the service area of a local distribution company, a statement that the intrastate pipeline has notified the local distribution company and the local distribution company's appropriate state regulatory agency in writing of the proposed transportation prior to commencement.

* * * * *

13. In § 284.223, paragraph (g)(3) is revised to read as follows:

§ 284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

* * * * *

(g) *Transitional rule for transportation arrangements*

* * * * *

(3) Authorization for transportation service under paragraph (g)(2) of this section;

(i) Ceases at 11:59 p.m. December 16, 1985, unless the pipeline files for a blanket certificate under § 284.221 before that time; and

(ii) Is subject to compliance with the requirements of § 284.8(b), or § 284.9(b), as appropriate and § 284.7.

* * * * *

PART 375—[AMENDED]

14. The authority citation for Part 375 continues to read as follows:

Authority: Department of Energy Organization Act 42 U.S.C. 7101–7352 (1982). Executive Order 12009, 3 CFR, 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1982).

§ 375.307 [Amended]

15. Section 375.307(a)(7) is amended by removing the term "§ 284.222," and inserting in lieu thereof the term "§ 284.224."

16. Section 375.307(a)(15) is amended by removing the phrase "Subpart G of Part 284 and" before the term "Subpart F of Part 157."

17. In § 375.307, paragraph (w) is removed.

Appendix A

Note.—Appendix A will not appear in the Code of Federal Regulations.

In the Matter of: RM85–1–000—*Request for Rehearing*

Mobil Oil Exploration and Producing Southeast Inc's 001
Hadson Gas Systems, Inc 002
Orange and Rockland Utilities 007
Bridgeline Gas Distribution Company 008
Michigan Consolidated Gas Company 009
CP National Corporation's 011
Oklahoma Natural Gas Company, Division of ONEOK Inc., and ONG Transmission Company 012
Mobil Gas Service Corporation, Mississippi Valley Gas Company, and Clarke-Mobile Counties Gas District 013
Public Service Electric and Gas Company 014
Pacific Gas and Electric Company 015
Illinois Commerce Commission 016
Frito-Lay, Inc. 017
Monetery Pipeline Company 018
Louisiana State Gas Corporation 019
Fertilizer Institute 020
Northern Natural Gas Company 021
National Fuel Gas Supply Corporation 022
Peoples Gas and Light and Coke Company and North Shore Gas Company 023
Southern Indiana Gas and Electric Company 024
Elizabethtown Gas Company 025
Foothills Pipe Lines 026
Westcoast Transmission Company Limited 027
Pan-Alberta Gas Ltd. 028
Southern Natural Gas Company 029
Indicated Producers 030
Mississippi River Transmission Corporation 031
Natural Gas Pipeline Company of America 032
Valero Transmission Company 033
Interstate Natural Gas Association of America 034
Public Utilities Commission of the State of California 035
Baltimore Gas and Electric Company 036
Panhandle Producer and Royalty Owners Association and Independent Petroleum Association of Mountain States 037
Kansas Power and Light Company 038
Tenngasco Corporation 040
Corpus Christi Gas Gathering, Inc. 041
Consumers Power Company and Michigan Gas Storage Company 042
Hadson Gas Systems, Inc. 043
Mesa Petroleum Company 044
Iowa State Commerce Commission 045
Laclede Gas Company 046
Pacific Gas Transmission Company 048

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Minnesota Department of Public Service and the Energy Issues Intervention Office of the Minnesota Department of Public Service 049
Florida Gas Transmission Company 050
Northwest Natural Gas Company 051
Houston Pipe Line Company 052
Transwestern Pipeline Company 053
Columbia Gas Transmission Corporation 054
ANR Pipeline Company 055
Columbia Gas Distribution Companies 056
Northern Illinois Gas Company 057
Coastal Oil and Gas Corporation 058
Tenngasco Corporation 059
Tenneco Oil Company 060
Tennessee Gas Pipeline Company, Division of Tenneco 061
The Brooklyn Union Gas Company 062
Alabama-Tennessee Natural Gas Company 063
America Council on Education 064
Consolidated Natural Gas Company 065
National Association of Regulatory Utility Commissioners 066
United Gas Pipe Line Company 067
The Petrochemical Energy Group 068
The Independent Oil & Gas Producers of West Virginia 069
Loeffler, Tom; Member of Congress 070
Indicated Industrial Associations and Individual Industrial Users of Natural Gas 071
Amoco Gas Company 073
Amoco Production Company 074
Colorado Interstate Gas Company 075
The Maryland People's counsel 076
Ashland Exploration, Inc. 077
The Wisconsin Distributors Group 078
The Association of Texas Intrastate Natural Gas Pipelines 079
The Association of Texas Intrastate Natural Gas Pipelines 080
Southern Union Gathering Company 081
Huffco Petroleum Corporation, Norse Petroleum (U.S.) Incorporated, Texas Crude Exploration, Inc. and Total Petroleum, Inc. 082
Atlanta Gas Light Company 083
Tennessee SGS Customer Group 084
Louisiana Intrastate Gas Corporation 085
Louisiana Resources Company 086
Pennzoil Producing Company 087
Northwest Pipeline Corporation 088
North Carolina Natural Gas Corporation and Public Service Corporation of North Carolina, Inc. 089
Northwest Central Pipeline Corporation 090
El Paso Natural Gas Company 091
Northern Border Pipeline Company 092
The Department of Energy 093
United Distribution Companies 094
Algonquin Gas Transmission Company 095
Howell Petroleum Corporation 096
American Paper Institute 097
Natural Gas Pipeline Company of America 098
Air Products and Chemicals, Inc. 099
The City of Willcox, Arizona and Arizona Electric Power Cooperative, Inc. 100
Southern California Gas Company and Pacific Lighting Gas Supply Company 102
Producer's Gas Company and PGC Pipeline 103
The American Public Gas Association 104
Seagull Energy Corporation 105
Texas Eastern Transmission Corporation 106
Consolidated Edison Company of New York 107
The Process Gas Consumers Group, et al. 108
Panhandle Eastern Pipe Line Company, Trunkline Gas Company and Trunkline LNG Company 109
Teepak, Inc. 110
Consolidated Fuel Supply, Inc. 111
Washington Natural Gas Company 112
Texas Gas Transmission Corporation 113
Transcontinental Gas Line Corporation 114
Memphis Light, Gas and Water Division 115
The Gas Distributors Information Service 116
Southern Union Gas Company 117
McMoRan 118
Associated Gas Distributors 119
The State of Louisiana 120
Central Illinis Light Company 121
Permac Energy Company 122
Yankee Resources, Inc. 123
Arkla, Inc. 124
Cascade Natural Gas Association 125
The American Gas Association 127
The Public Service Commission of The Commonwealth of Kentucky 128
The Department of Public Service of The State of New York 129
Energas Company 130
Methanol Production Corporation 131
Ohio Oil & Gas Association 132
Citizens Energy Corporation 133
Entex Inc. 136

Appendix B

Note.—Appendix B will not appear in the Code of Federal Regulations.

In the Matter of: RM85–1–000—*Request for Clarification*

Panhandle Eastern Pipeline Line Company 000
El Paso Natural Gas Company, comments supporting applicants were filed by: Public Utilities Commission of the State of California; Pacific Gas and Electric Company; Southern California Gas Company; National Council of Senior Citizens; California State Grange 000
Northwest Pipeline Corporation, comments supporting applicants were filed by: Washington, Water Power Company; Northwest Natural Gas Company; Gilmore Steel Corporation; Washington Natural Gas Company 000
American Paper Institute Inc.'s 000
Consolidated Fuel Supply, Inc 000
Midwest Solvents Company 000
Energy Marketing Exchange, Inc 000
Transcontinental Gas Pipe Line Corporation, comments supporting applicants were filed by: Lynchburg Gas Company 000
Exxon Corporation 000
Elizabethtown Gas Company 000
Southern Edison Company 000
California Edison Company 000
Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company 000
Texas Eastern Gas Pipeline Company 000
Frito-Lay Inc. 000
Process Gas Consumers Group, American Iron and Steel Institute, Chemical Manufacturers Association, Association of Businesses Advocating Tariff Equality and Georgia Industrial Group 000
Orange and Rockland Utilities, Inc. 000
Exxon Corporation 000
Algonquin Gas Transmission Company 000
Battle Creek Gas Company, comments supporting applicants were filed by: Panhandle Eastern Pipe Line Company 000
Southern Natural Gas Company, comments supporting applicants were filed by: Columbia Nitrogen Corporation 000
Michigan Gas Utilities Company, comments supporting applicants were filed by: Panhandle Eastern Pipe Line Company 000
Lynchburg Gas Company 000
Southern Gas Pipeline Company 000
Columbia Gas Transmission Corporation, comments supporting applicants were filed by: Mountaineer Gas Company 000
Northwest Central Pipeline Corporation, comments supporting applicants were filed by: Diamond Shamrock Exploration Company; Reese Exploration Incorporated; Mickey DeBernard and Associates; Vanguard Pipeline Corporation; Simco Petroleum and Caporale Energy Corporation; Answer of Jerry Lutz; Triple-T Pipelines Inc.; Bill Schuette, US House of Representatives 000
Teepak, Inc. and Consolidated Fuel Supply, Inc., comments supporting applicants were filed by: Panhandle Eastern Pipe Line Company 000
Carnegie Natural Gas Company 000
Kellog Company 000
UGI Corporation 000
Hadson Gas Systems, Inc. 000
Specified Producers 000
McMoran 000
Kansas Pipeline Company 000
Natual Gas Pipeline Company of America 000
Entrade Corporation 000
J.R. Simplot Company 000
GGSI Gathering and Processing Company and Power-Tex 000
Midwestern Gas Transmission Company 000
FPM Operating Company comments supporting applicants were filed by: McMoran Oil & Gas Inc. 000
Texas Gas Transmission Corporation 000
Southern Natural Gas Company 000
Power-Tex 000

Methanol Production Corporation, comments supporting applicants were filed by: West Texas Gas Inc.; Harper, Charles E.; Caddo Management, Inc.; Jernigan, E.D.; King, Julius W.; Gas Research Institute; Creole Gas Pipeline Corporation; Mountain Fuel Resources, Inc.; Pride Energy Pipeline of Kentucky Corporation 000
Intercon Gas Inc. 003
Natural Gas Pipeline Company of America 006

[FR Doc. 85-29967 Filed 12-20 85; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 19 and 21

Conflict of Interest; Protection of Privacy

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for conflict of interest to update references to organization designations. In addition, FDA is amending the regulations for protection of privacy to update references to organization designations and to be consistent with changes made in the Privacy Act Record System.

EFFECTIVE DATE: December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Melissa M. Moncavage, Office of Management and Operations (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 10, 1985 (50 FR 1278), an FDA reorganization retitled the Division of Personnel Management as the Division of Human Resources Management and retitled the Policy Management Staff as the Division of Ethics and Program Integrity. This document changes these titles wherever they appear in 21 CFR Parts 19 and 21. FDA is also updating its regulations under Part 21 to be consistent with changes made in the Privacy Act Record System. In addition, FDA is revising § 21.31 to reflect the establishment of the National Archives and Records Administration (see 50 FR 15722; April 19, 1985).

List of Subjects

21 CFR Part 19

Conflict of interests.

21 CFR Part 21

Privacy.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Parts 19 and 21 are amended as follows:

PART 19—STANDARDS OF CONDUCT AND CONFLICTS OF INTEREST

1. The authority citation for 21 CFR Part 19 is revised to read as set forth below and the authority citations following 21 CFR 19.10 and 19.21 are removed.

Authority: Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)); 21 CFR 5.10.

§ 19.10 [Amended]

2. Section 19.10 *Food and Drug Administration Conflict of Interest Review Board* is amended in paragraph (a) by revising "Division of Personnel Management" to read "Division of Human Resources Management."

§ 19.21 [Amended]

3. Section 19.21 *Duty to report violations* is amended in paragraphs (a), (b), and (c) by revising "Policy Management Staff" to read "Division of Ethics and Program Integrity."

PART 21—PROTECTION OF PRIVACY

4. The authority citation for 21 CFR Part 21 is revised to read as set forth below and the authority citations following 21 CFR 21.1, 21.20, 21.32, 21.40, 21.41, 21.42, 21.43, 21.50, 21.51, and 21.61 are removed.

Authority: Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)); 5 U.S.C. 552a; 21 CFR 5.10.

§ 21.1 [Amended]

5. Section 21.1 *Scope* is amended in paragraph (b)(4) by revising "Division of Personnel Management" to read "Division of Human Resources Management."

§ 21.31 [Amended]

6. Section 21.31 is amended by revising the section heading to read "§ 21.31 *Records stored by the National Archives and Records Administration*" and in paragraph (a) by revising "General Services Administration" to read "National Archives and Records Administration".

§ 21.32 [Amended]

7. Section 21.32 *Personnel records* is amended in paragraphs (b) (1)(ii) and (2), (c), and (d)(5) by revising "Division of Personnel Management" to read "Division of Human Resources Management."

§ 21.40 [Amended]

8. Section 21.40 *Procedures for submitting requests for notification and access* is amended by removing paragraph (g).

9. Section 21.52 is amended by revising pararaph (a), to read as follows:

§ 21.52 Administrative appeals of refusals to amend records.

(a) If an individual disagrees with a refusal under § 21.51(a)(2) to amend a record, he or she may appeal that refusal to the Commissioner of Food and Drugs, Rm. 14-71, 5600 Fishers Lane, Rockville, MD 20857.

* * * * *

10. Section 21.61 is amended by removing paragraph (b)(4) and by revising paragraph (b)(1) and the first sentence in paragraph (c), to read as follows:

§ 21.61 Exempt systems.

* * * * *

(b) * * *

(1) Bio-research Monitoring Information System—HHS/FDA/09-10-0010.

* * * * *

(c) The system described in paragraph (b)(3) of this section includes investigatory records compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment, military service, Federal contracts, and access to classified information. * * *

11. Section 21.71 is amended by revising paragraph (a) (1) through (9) and by adding new paragaph (a) (10), (11), and (12), to read as follows:

§ 21.71 Disclosure of records in Privacy Act Record Systems; accounting required.

(a) * * *

(1) To those officers and employees of the agency which maintains the record who have a need for the record in the perfomance of their duties;

(2) Required under section 552 of the Freedom of Information Act;

(3) For a routine use as described in the routine use section of each specific system notice;

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or to the Archivist of the United States or his or her designee for evaluation to determine whether the record has such value;

(7) To another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his or her authorized representatives in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d)). (This "Special Disclosure" statement does not apply to any FDA system of records.)

* * * * *

Dated: December 13, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-30202 Filed 12-20-85; 8:45 am]

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21 CFR Part 178

[Docket No. 81F-0154]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,3,5-tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as an antioxidant for olefin polymers used in the manufacture of articles or components of articles intended for use in contact with food. This action responds to a petition filed by the American Cyanamid Co.

DATES: Effective December 23, 1985; objections by January 22, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 5, 1981 (46 FR 30197), FDA announced that a petition (FAP 1B3548) had been filed by the American Cyanamid Co., One Cyanamid Plaza, Wayne, NJ 07470, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 1,3,5-tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione as an antioxidant in polypropylene and high-density polyethylene, without limitation regarding the condition of use.

In an amended notice published in the **Federal Register** of Octobr 10, 1985 (50 FR 41411), FDA announced that the petitioner had amended this petition to provide for the use of this additive in all olefin polymers, including polypropylene and high-density polyethylene, without limitation regarding the conditions of use.

FDA has evaluated data in the petition and other relevant material. It concludes that the additive is safe for use in all olefin polymers, and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before January 22, 1986, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.2010(b) by revising limitation 1 for the item "1,3,5-Tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
1,3,5-Tris(4-*tert*-butyl-3-hydroxy-2,6-dimethylbenzyl)-1,3,5-triazine-2,4,6-(1*H*,3*H*,5*H*)-trione (CAS Reg. No. 40601-76-1).	For use only: 1. At levels not to exceed 0.1 percent by weight of olefin polymers complying with § 177.1520 of this chapter, under conditions of use A through H described in table 2 of § 176.170(c) of this chapter.
* * * * *	

Dated: December 12, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-30201 Filed 12-20-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 20

[Docket No. R-85-1240; FR-1349]

Rules of the Board of Contract Appeals

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of announcement of effective date for final rule.

SUMMARY: This notice announces the effective date for the final rule published in the **Federal Register** on November 5, 1985 (50 FR 45910) that revised the procedures of the Department of Housing and Urban Development Board of Contract Appeals. This rule adopted, in substantial part, the Uniform Rules of Procedure for Board of Contract Appeals issued by the Office of Federal Procurement Policy.

The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**. Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the final rule published November 5, 1985 (50 FR 45910), is December 16, 1985.

FOR FURTHER INFORMATION CONTACT: David T. Anderson, Chairman, Board of Contract Appeals, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-0132. (This is not a toll-free number.)

Dated: December 17, 1985.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 85-30230 Filed 12-20-85; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 990

[Docket No. R-85-1170; FR-1834]

Modification to the Performance Funding System; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; correction.

SUMMARY: On June 24, 1985, we published an interim rule (50 FR 25951), which added a new paragraph (x) to the definitions section of Part 990, § 990.102. On November 18, 1985, we published a final rule (50 FR 47368), for which an effective date has not yet been announced, which also purported to add a new paragraph (x). This document corrects the latter rule to preserve the definition added by the June rule, to remove the lettered paragraph designations of the definitions, to place the definitions in alphabetical order, and to correct cross references.

In addition, the rule published on November 18, 1985 contained a few references to effectiveness of the revisions for PHA fiscal years commencing January 1, 1986. Because of the Department's statutory obligation to delay effectiveness of its final rules until after 30 continuous days of a session of Congress and the adjournment of Congress in 1985 before the necessary time period, the rule cannot be made effective January 1, 1986. The references to January 1, 1986 are being changed to April 1, 1986, the next date on which PHA fiscal years begin.

DATES: Effective date: The effective date of the rule published on November 18, 1985 (50 FR 47368) as corrected by this document, is April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Sally Warner Watts, Regulations Division, Office of General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone (202) 755-7084. (This is not a toll-free number.)

PART 990—[CORRECTED]

Accordingly, 24 CFR Part 990 is corrected as follows:

1. Section 990.102 is corrected to read as follows:

§ 990.102 Definitions.

Allowable Expense Level (AEL). The per unit per month dollar amount of expenses (excluding Utilities and expenses allowed under § 990.108) computed in accordance with § 990.105, which is used to compute the amount of operating subsidy.

Allowable Utilities Consumption Level (AUCL). The amount of Utilities expected to be consumed per unit per month by the PHA during the Requested Budget Year, which is equal to the average amount consumed per unit per month during the Rolling Base Period. After the end of the Requested Budget Year, the AUCL of the utility(ies) used for space hearing will be adjusted by a Change Factor, defined in this section.

Base Year. The PHA's fiscal year immediately preceding its first fiscal year under PFS.

Base Year Expense Level. The expense level (excluding Utilities, audits and certain other items) for the Base Year, computed as provided in § 990.105.

Change Factor. The ratio of the affected PHA fiscal year heating degree days (HDD) divided by the average annual HDD of the Rolling Base Period. (Affected year HDD divided by Rolling Base Period average HDD.)

Current Budget Year. The fiscal year in which the PHA is currently operating.

Formula. The revised formula derived from the actual expenses of the PFS sample group of PHAs, which is used in PFS, as provided in § 990.105, to determine the Formula Expense Level and the Range of each PHA. HUD plans to update the Formula each year to reflect actual costs experienced by the sample group of PHAs.

Formula Expense Level. The per unit per month dollar amount of expenses (excluding Utilities and audits)

computed under the Formula, in accordance with § 990.105.

Heating Degree Days. The annual arithmetic sum of the positive difference (those under 65 degrees) of the average of the lowest and highest daily outside temperatures in degrees Fahrenheit, subtracted from 65 degrees Fahrenheit.

HUD Field Office. The HUD Field Office that has been delegated authority under the United States Housing Act of 1937 to perform functions pertaining to this subpart for the area in which the PHA is located.

Interim Formula. The HUD system, which has been replaced by PFS, for determining the amount of operating subsidy that applied to PHA fiscal years which commenced on or after October 1, 1972, and before April 1, 1975.

Local Inflation Factor. The weighted average percentage increase in local government wages and salaries for the area in which the PHA is located and non-wage expenses based upon the Implicit Price Deflator for State and Local Government Purchases of Goods and Services. This weighted average percentage will be supplied by HUD. HUD anticipates that it will update the Local Inflation Factor each year. This revised Local Inflation Factor is applicable to PHA fiscal years beginning January 1, 1982, and for all fiscal years thereafter.

Operating Budget. The PHA's operating budget and all related documents, as required by HUD, to be submitted in accordance with the Annual Contributions Contract.

Other Income. Income other than dwelling rental income and income from investments, except the following items are excluded: grants and gifts for operations, other than for utility expenses, received from Federal, State and local governments, individuals, or private organizations; amounts charged to tenants for repairs for which the PHA incurs an offsetting expense; and legal fees in connection with eviction proceedings, when those fees are lawfully charged to tenants.

Project. Each project under an Annual Contributions Contract to which PFS is applicable, as provided in § 990.103.

Project Units. All dwelling units of a PHA's Projects.

Projected Operating Income Level. The per unit per month dollar amount of dwelling rental income plus nondwelling income, computed as provided in § 990.109.

Range. $10.31 below to $10.31 above the PHA's Formula Expense Level for the Base Year. The dollar amount is subject to change from time to time by HUD in connection with updating of the Formula. The Range is used in connection with determination of the Allowable Expense Level, as provided in § 990.105, the qualification for transition funding, as provided in § 990.106, and in consideration of requests for adjustments of the Base Year Expense Level under § 990.110.

Requested Budget Year. The budget year (fiscal year) of a PHA following the Current Budget Year.

Rolling Base Period. The 36-month period that ends 12 months before the beginning of the PHA Requested Budget Year, which is used to determine the Allowable Utilities Consumption Level used to compute the Utilities Expense Level.

Transition Funding. Funding for excessively high-cost PHAs, as provided in § 990.106.

Unit Approved for Deprogramming. (a) A dwelling unit for which HUD has approved the PHA's formal request for removal from the PHA's inventory and the Annual Contributions Contract, but for which removal, i.e., deprogramming has not yet been completed, or (b) a nondwelling structure or a dwelling unit used for nondwelling purposes that the PHA has determined will no longer be used for PHA purposes and for which HUD has approved removal from the PHA's inventory and Annual Contributions Contract.

Unit Months Available. Project Units multiplied by the number of months the Project Units are available for occupancy during a given PHA fiscal year. Except as provided in the following sentence, for purposes of this part, a unit is considered available for occupancy from the date on which the End of the Initial Operating Period for the Project is established until the time it is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. On or after July 1, 1991, a unit is not considered available for occupancy in any PHA Requested Budget Year if the unit is located in a vacant building in a project that HUD has determined is nonviable.

Utilities. Electricity, gas, heating fuel, water and sewerage service.

Utilities Expense Level. The per unit per month dollar amount of Utilities expense, computed as provided in §990.107.

§ 990.105 [Corrected]

2. Section 990.105(e)(4) is corrected by removing the phrases "in calendar year 1985" and "in 1985" each time they appear, and adding in their place the phrase "before April 1, 1986".

3. Section 990.105(e)(5) is corrected by removing the phrase "in calendar year 1986 and thereafter" each time it appears, and adding in its place the phrase "on or after April 1, 1986".

(42 U.S.C. 1437g)

Dated: December 17, 1985.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 30231 Filed 12-20-85; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8063]

Income Taxes; Temporary Regulations Relating to the Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning the taxation and valuation of fringe benefits and exclusions from gross income for certain fringe benefits. Changes to the applicable law were made by the Tax Reform Act of 1984 (98 Stat. 877). The regulations affect any person providing or receiving fringe benefits. The regulations provide these persons with the guidance necessary to comply with the law.

DATE: The regulations are effective as of January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, (202-566-3918, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the taxation and valuation of fringe benefits and exclusions from gross income for certain fringe benefits. Section 61 of the Internal Revenue Code of 1954 (Code) was amended, and section 132 was added to the Code, by section 531 of the Tax Reform Act of 1984 (98 Stat. 877). Temporary and proposed regulations were published in the Federal Register for January 7, 1985 (50 FR 747, 836). These regulations were later amended in part in the Federal Register for February 20, 1985 (50 FR 7038, 7073).

Subsequently, Pub. L. 99-44 (Repeal of Contemporaneous Recordkeeping Requirements) affected the proposed

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and temporary regulations published in February. To implement the provisions of Pub. L. 99–44, the Service withdrew the affected proposed and temporary regulations published in February 1985 (50 FR 46004, 46086, Nov. 6, 1985) and published new proposed and temporary regulations on November 6, 1985 (50 FR 46006, 46087).

Many comments were received from the public concerning the provisions in the proposed and temporary regulations previously published in 1985. In addition, on April 16, 17, and 18, 1985, the Internal Revenue Service (Service) held public hearings on the proposed regulations. In response to the comments and the statements made at the public hearings, the regulations have been amended. Due to the extent of the amendments, the Service is issuing the regulations in temporary rather than final form and is providing a cross-reference notice of proposed rulemaking (see the Proposed Rules section of this issue of the **Federal Register**). This will provide the public with an opportunity to comment on the revised provisions of the regulations before they become final. The Service expects to hold public hearings on the regulations early next year.

The regulations contain general rules relating to valuation of fringe benefits and special rules that may be used to value certain fringe benefits, including the availability of employer-provided automobiles, the use of employer-provided vehicles for personal purposes or for commuting only, flights on employer-provided aircraft, and taxable flights on commercial airlines.

Summary of Comments and Explanation of Provisions

In General

All of the regulations issued in January, February, and November of 1985 under sections 61 and 132 (the "proposed regulations") were removed and are replaced by these revised temporary regulations (the "new temporary regulations"). Many of the provisions contained in the proposed regulations were revised in response to comments received. The explanation of provisions describes the changes made to the proposed regulations and the reasons that certain comments are not reflected in the new temporary regulations. Many of the comments received are not included in this summary because they suggested changes that were contrary to the statutory amendments or the legislative intent evidenced in committee reports accompanying the legislation.

In addition to revised rules, the new temporary regulations contain rules relating to areas not addressed in the proposed regulations. For example, the regulations contain a special rule that may be used to value meals provided at an employer-operated eating facility for employees. This section contains an explanation of many of these new rules.

Valuation of Employer-Provided Vehicles Determination of Fair Market Value

The proposed regulations provided that the Annual Lease Value is determined by reference to the fair market value of the employer-provided automobile made available to the employee. Many commentators suggested that the regulations provide additional guidance concerning determination of the fair market value of the automobile. In response, the new temporary regulations provide fair market value safe harbor rules. Many commentators requested that the proposed regulations allow the use of an automobile pricing guide to determine fair market value. Other commentators suggested that the cost of purchasing the automobile may be treated as the fair market value of the automobile, either with or without an adjustment reflecting any group or volume discount secured by the employer. In response, the new temporary regulations provide that for an automobile owned by an employer, the employer's cost of purchasing the automobile be treated as the fair market value of the automobile, provided the purchase is made at arm's length. For an automobile that is leased or revalued by an employer, the retail value provided in any nationally recognized publication that regularly reports retail automobile values may be treated as the fair market value of the automobile, provided the value is reasonable with respect to the automobile.

Many commentators suggested that the regulations provide that the fair market value of an automobile be reduced by the value of special equipment contained in the automobile. In response, the new temporary regulations provide that the fair market value of an automobile does not include the fair market value of any specialized equipment that is added to or carried in the automobile if the presence of the equipment is necessitated by, and attributable solely to, the business needs of the employer. This rule does not apply to equipment susceptible to personal use.

First-Average Valuation Rule

The proposed regulations provided that the Annual Lease Value of each automobile must be determined based on its fair market value. Commentators suggested that this rule would be difficult to administer when an employer has a large fleet of automobiles. The new temporary regulations provide that employers may determine a fleet-average value of the automobiles in the fleet that may be used to determine an Annual Lease Value for all the automobiles in the fleet. The rule is available for an automobile the value of which does not exceed $16,500 and that is regularly used in the employer's business.

Provisions of Fuel in Kind

The proposed regulations provided that the provision of fuel in kind may be valued at 5.5 cents-per-mile. Commentators indicated that employers with large fleets of automobiles need a special rule to value fuel where fuel is not provided from a company pump but the cost is reimbursed by or charged to the employer. In response to this comment, the new temporary regulations provide that an employer may value the provision of fuel for automobiles eligible for the fleet-average valuation rule by reference to average fuel costs and miles-per-gallon rates determined by sampling the greater of 10 percent of the automobiles in the fleet or 20 automobiles.

Redetermination of Annual Lease Value

The Annual Lease Values contained in the proposed regulations are based on a four-year, level-payment lease. Thus, the proposed regulations provided that the Annual Lease Value amount must generally be used for the period beginning on the day the special rule is first used and ending on December 31 of the fourth full year following that date. A number of commentators stated that the Annual Lease Value amount should be redetermined more frequently than every four years. Because the Annual Lease Values are based on a four-year, level-payment lease, however, it would be inappropriate to redetermine the Annual Lease Value more frequently. An alternative would be to base the Annual Lease Values on a shorter lease period. This alternative would require an increase in the Annual Lease Values to reflect the shorter lease term.

Use of Daily Lease Value

The proposed regulations provided that a pro-rated Annual Lease Value may be used when the automobile is available to an employee for at least 30

days. If the automobile is available for less than 30 days, the availability of the automobile may be valued by applying the Daily Lease Value to the number of days the automobile is available to the employee. Alternatively, the availability may be valued by deeming the automobile available to the employee for at least 30 days. Some commentators suggested that the regulations provide that a pro-rated Annual Lease Value be used regardless of the number of days of availability. This suggestion was not adopted because the Daily Lease Value amount was based on an approximation of the lowest fair market rental values. The lessors' charge is higher for leases for shorter periods. The Service's market analysis indicated that a daily lease value is typically 700 percent of the daily pro-rated four-year lease rate in the proposed regulation. Consequently, the new temporary regulations retain the rules regarding Daily Lease Values.

Vehicle cents-per-mile Special Rule

The proposed regulations provided that the availability of an automobile cannot be determined by reference to a cents-per-mile rate multiplied by the number of miles driven. This rule was provided because automobiles are generally not leased on a cents-per-mile basis, but rather on the basis of the amount of time the automobile is available to the lessee.

Many commentators suggested that the regulations allow the use of a cents-per-mile rate, such as the standard mileage rate, to determine the value of the personal use of employer-provided automobiles. In response, the new temporary regulations provide that the standard mileage rate (21 cents-per-mile in 1985) may be used to determine the value of the personal use of an employer-provided vehicle (including an automobile) that is (1) reasonably expected to be regularly used in the employer's business or (2) actually driven (primarily by employees) at least 10,000 miles in a calendar year. This rule may be used for any vehicle the value of which in the calendar year in which it is first made available to an employee for personal use, or, if later, January 1, 1985, does not exceed the sum of the maximum recovery deductions allowable under section 280F(a)(2) for the first three taxable years in the recovery period for an automobile first placed in service during that calendar year. For 1985, that value is $12,800.

The reason for the regularly used in the employer's business requirement (and the alternative mileage rule) is that the vehicle cents-per-mile rule assumes that at least a fixed number of personal miles will be driven in a year (i.e., 15,000). Therefore, unlimited use of the special vehicle cents-per-mile rule would result in a significantly lower valuation for the use of an employer-provided vehicle in certain circumstances. For example, an employee who drives an employer-provided automobile valued at $12,000 for 5,000 miles (all personal) in a year, but who is not provided fuel by his employer, will include $775 in income. Under the Annual Lease Value table, which generally reflects the market value of the availability of an automobile for a year, the employee would include $3,600 in income. Because the valuation distortion is so great, use of the vehicle cents-per-mile rule is permitted only if the vehicle satisfies the regularly used in business requirement or the alternative mileage rule. The alternative mileage rule is intended to provide a mechanical alternative to the more general concept of "regularly used in business." The reason that the mileage must be primarily by employees, rather than, for example, by employees' families, is precisely because the mileage rule is intended as a mechanical alternative to the business use rule.

It should also be noted that in certain situations use of the cents-per-mile rule will result in a higher inclusion than will the automobile lease valuation rule.

Commuting Special Valuation Rule

The proposed regulations provided that the value of the commuting use of an employer-provided vehicle may be valued at $3.00 per one-way or round-trip commute. The new temporary regulations clarify that the value of the commuting use is $1.50 per one-way commute. In the case where more than one employee commutes in an employer-provided vehicle, such as in the case of an employer-sponsored car pool, the value of the commuting use is $1.50 per one-way commute per employee.

The proposed regulations provided that the commuting special rule may not be used to value the commuting use of an employer-provided vehicle by an officer or a five-percent owner of the employer. Many commentators requested that the regulations define an officer, especially for government employees. The new temporary regulations provide that, for commuting that occurs after 1985, the special rule cannot be used to value the commuting use of an employer-provided vehicle by a "control employee". This term (which is defined differently for other purposes) includes certain officers, directors, and owners and is defined in the regulations for both government and non-government employers. The new temporary regulations provide that the officer component of the control employee definition may be applied to define an officer in 1985.

Valuation of Flights on Employer-Provided Aircraft

The proposed regulations provided a special rule that may be used to value certain flights on employer-provided airplanes. The value determined under the special rule depended on the purpose of the trip by the airplane and on whether the employee receiving the fringe benefit was a "key employee".

Many commentators stated that the values provided under the special rule were excessive and that the rule was complicated and too "fact-sensitive" to administer. In response to taxpayer and congressional concerns, the Treasury Department indicated in a letter to Senator Robert Dole (131 Cong. Rec. S6369 (daily ed. May 16, 1985)) that the regulations would be amended. The new temporary regulations adopt the provisions set out in that letter. Accordingly, under the new temporary regulations, the value of a flight under the special rule depends on the weight of the aircraft and whether the employee receiving the benefit is a control employee (defined separately for government and non-government employers).

Generally, the value of a flight determined under the new temporary regulations is lower than the value of a flight determined under the proposed regulations. Under certain circumstances, however, the value of a flight determined under the proposed regulations would be lower than the value of a flight determined under the new temporary regulations. Therefore, the new temporary regulations provide that the value of a flight taken in 1985 may be valued at the lower of the value determined under the proposed regulations or the value determined under the new temporary regulations.

The new temporary regulations retain the use of the Standard Industry Fare Level (SIFL) rates to determine the value of flights on employer-provided aircraft. The regulations provide the new SIFL rates that may be used to determine the value of flights taken during the last six months of 1985. As in the proposed regulations, the multiples used are intended to approximate coach and first-class fares on commercial airlines (e.g., 125 percent of the SIFL rates approximates coach fare and 200 percent of the SIFL rates approximates first-class fare).

The proposed regulations provided that the special valuation rule may only

be used to value flights on employer-provided airplanes, rather than all aircraft (such as helicopters). The new temporary regulations provide that the special rule may be used to value flights on all employer-provided aircraft.

The proposed regulations also provided that the special valuation rule may not be used to value international flights. The new temporary regulations remove this restriction.

Many commentators noted that if an aircraft makes a certain flight for a business purpose, there is no additional cost incurred by the employer in allowing other persons to fly for personal purposes on such trip. They argued, therefore, that no income should be imputed to those persons who fly for personal purposes under such circumstances. Whether the employer incurs an additional cost, however, is not relevant to whether an employee receives a benefit. Certainly, those employees who are allowed to fly for personal purposes place some value on the flight provided.

It should be noted, however, that the proposed regulations provide that where at least 50 percent of the regular seating capacity of an aircraft is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable as working condition fringes), the value of flights provided to employees (and certain others) will be considered to be zero. The inclusion of this special rule in the proposed regulations is intended to be a limited provision and is not to be interpreted as an exception to the general valuation principles which the Service will continue to apply outside the scope of this rule.

Valuation of Taxable Flights on Commercial Airlines

The proposed regulations provided a special valuation rule under which certain taxable flights on commercial airlines (i.e., stand-by or space-available flights) may be valued at 50 percent of the highest unrestricted coach fare of the flight taken. Many commentators protested that the 50 percent value was excessive in light of the restrictions imposed on the persons taking the flights, such as the lack of a guaranteed seat. The commentators submitted relevant data and suggested that 25 percent of the highest unrestricted coach fare is a more appropriate value of the benefit received. In response, the new temporary regulations provide that stand-by or space-available flights on commercial airlines may be valued at 25 percent of the highest unrestricted coach fare.

Valuation of Meals Provided at Employer-Operated Eating Facilities for Employees

The new temporary regulations contain a special valuation rule that may be used to value meals provided at employer-operated eating facilities for employees. Pursuant to the special rule, the fair market value of all meals provided at the facility (the "total meal value") will be deemed to equal 150 percent of the facility's direct operating costs. This total meal value, less the actual gross receipts of the facility (the "total meal subsidy"), may then be allocated among employees in any manner reasonable under the circumstances. Alternatively, the employer may determine the fair market value of the taxable part of meals provided to a particular employee under a special "individual meal subsidy" rule.

Section 132 Regulations

In General

The new temporary regulations provide rules relating to the exclusion from gross income for certain fringe benefits. Section 132 provides that certain fringe benefits, such as no-additional-cost services, qualified employee discounts, working condition fringes, and de minimis fringes may be excludable from the income of employees receiving the benefits. The regulations provide that, for purposes of the no-additional-cost service and qualified employee discount exclusions, the term "employee" means any individual who is currently employed by the employer, who was employed by the employer but separated from service by reason of retirement or disability, or who is a widow or widower of an employee. The regulations provide that a partner who performs services for a partnership is considered employed by the partnership.

The regulations provide that any individual listed above who could exclude from income no-additional-cost services or qualified employee discounts may exclude from income working condition fringes. In addition, solely for purposes of administrative convenience, the regulations provide that directors of the employer and independent contractors who perform services for the employer may generally exclude from income working condition fringes. This special rule is only available when, as set forth in Rev. Rul. 84–151, any amount included in income would also be deductible as an ordinary and necessary business expense. Therefore, this special rule does not apply, for example, to exclude from the income of an independent contractor or a director as a working condition fringe the value of the use of consumer goods under a product testing program. Directors and independent contractors are not treated as employees for any other purposes.

There is no limitation under section 132 as to who may exclude a de minimis fringe from income. Therefore, the regulations provide that any recipient may exclude a de minimis fringe from income.

Line of Business Limitation

No-additional-cost services and qualified employee discounts are available to employees of the line of business providing discounts or services. The regulations define a line of business based on the Enterprise Standard Industrial Classification Manual (ESIC Manual) prepared by the Statistical Policy Division of the U.S. Office of Management and Budget. An employer is generally considered to have more than one line of business if the employer offers for sale to customers property or services in more than one two-digit classification referred to in the ESIC Manual. Examples of two-digit classifications are general retail merchandise stores; hotels and other lodging places; and auto repair, services, and garages.

The regulations also provide special rules under which an employer's separate lines of business will be aggregated. Under one rule, if it is uncommon in the employer's industry for any of the separate lines of business to be operated without the others, the separate lines of business are treated as one line of business. Under another rule, separate lines of business are aggregated if it is common for a substantial number of employees (other than those employees who work at the headquarters or main office of the employer) to perform substantial services for more than one line of business of the employer so that any determination of which employees perform substantial services for which lines of business would be difficult. Under another aggregation rule, separate retail lines of business located on the same premises are generally treated as the same line of business.

Working Condition Fringes

Employer-Provided Transportation for Security Reasons

The proposed regulations provide that the value of transportation provided by the employer for security reasons may be excludable as a working condition fringe to the extent a deduction under section 162 or 167 would be allowable to

the employee had the employee paid for the transportation. Many commentators requested that the Service provide additional guidance concerning the appropriateness and amount of any working condition fringe exclusion for the value of security provided for bona fide business-oriented security reasons. In response, the new temporary regulations provide rules concerning the existence of bona fide business-oriented security reasons and the effect of an independent security study particular to the employer and its employees. The new temporary regulations also contain several examples of the application of the rules.

Product Testing

The regulations provide that the value of the use of consumer goods may be excludable as a working condition fringe if certain conditions are met. This portion of the regulations is based on the legislative history of section 531 of the Tax Reform Act of 1984. The exclusion for product testing is limited so as to permit employers to have the benefit of product testing programs without allowing a major deviation from the general overall legislative intent of taxation of nonstatutory fringe benefits.

Qualified Automobile Demonstration Use

The value of qualified automobile demonstration use is excludable from income as a working condition fringe. The regulations provide guidance concerning when the exclusion is available. In addition, the regulations provide a safe harbor rule that defines the sales area in which an automobile dealership is located.

Parking

The value of parking may be excluded as a working condition fringe. The regulations provide rules relating to when the exclusion is available.

Employer-Operated Athletic Facilities

Under a special rule, the value of the use of employer-operated athletic facilities may be excluded from income. The regulations provide rules concerning the definition of an employer-operated athletic facility and when the exclusion is available.

Nondiscrimination Rules

No-additional-cost services, qualified employee discounts, and meals provided at employer-operated eating facilities for employees are only excludable from the income of an employee who is an officer, owner, or highly compensated employee (i.e., a member of the "prohibited group") if the benefits are offered on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of the members of the prohibited group. Many commentators suggested that the definitions of owner and highly compensated employee contained in the proposed regulations were arbitrary and mechanical. The definitions were not amended in the new temporary regulations because, based on data submitted by commentators, the Service believes that the definitions comprise a reasonable and appropriate framework for identifying employees as members of the prohibited group. In addition, many commentators requested that the Service retain definitions that provide certainty.

The regulations provide that a classification is nondiscriminatory under section 132 if the classification would be nondiscriminatory under the rules provided in the qualified plan area (section 410(b)(1)(B) of the Code and the regulations thereunder).

Employer-Operated Eating Facilities for Employees

The value of meals provided at employer-operated eating facilities for employees are excludable from income as de minimis fringes if the revenues from the facility equal or exceed the direct operating costs of the facility and the nondiscrimination requirements of section 132 are satisfied. In response to comments, direct operating costs are narrowly defined as the cost of food and beverages and the cost of labor for personnel whose services relating to the facility are performed primarily on the premises of the eating facility. If meals provided at an eating facility are not excludable because, for example, the direct operating costs of the facility exceed revenues from the facility, the special meal valuation rule provided in the regulations under section 61 (described above) may be used to value the meals provided at the facility.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the temporary regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB. Control number [1545-0771].

Drafting Information

The principal author of these regulations is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61-1—281.4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * 1.61–2T, 1.132–1T, 1.132–2T, 1.132–3T, 1.132–4T, 1.132–5T, 1.132–6T, 1.132–7T, and 1.132–8T also issued under 26 U.S.C. 132.

Par. 2. Section 1.61–2T is removed and a new § 1.61–2T is added in its place, as follows:

§ 1.61–2T Taxation of fringe benefits (Temporary).

(a) *Fringe benefits*—(1) *In general.* Section 61(a)(1) provides that, except as otherwise provided in subtitle A, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. Examples of fringe benefits include: an employer-provided automobile, a flight on an employer-provided aircraft, an employer-provided free or discounted commercial airline flight, an employer-provided vacation, and employer-provided discount on property or services, and emkployer-provided membership in a country club or other social club, and an employer-provided ticket to an entertainment or sporting event.

(2) *Fringe benefits excluded from income.* To the extent that a particular fringe benefit is specifically excluded from gross income pursuant to another section of subtitle A, that section shall govern the treatment of the fringe benefit. Thus, if the requirements of the governing section are satisfied, the fringe benefits may be excludable from gross income. Examples of excludable fringe benefits are qualified tuition reductions provided to an employee (section 177(d)); meals and lodging furnished to an employee for the convenience of the employer (section 119); and benefits provided under a dependent care assistance program (section 129). Similarly, the value of the use by an employee of an employer-provided vehicle or a flight provided to an employee on an employer-provided aircraft may be excludable from income under section 105 (because, for example, the trnsportation is provided for medical reasons) if and to the extent that the requirements of that section are satisfied. Section 61 and the regulations thereunder shall apply, however, to the extent that they are not inconsistent with such other section. For example, many fringe benefits specifically addressed in other sections of subtitle A are excluded from gross income only to the extent that they do not exceed specific dollar or percentage limits, or only if certain other requirements are met. If the limits are exceeded or the requirements are not met, some or all of the fringe benefit may be includible in gross income. See paragraph (b)(3) of this section.

(3) *Compensation for services.* A fringe benefit provided in connection with the performance of services shall be considered to have been provided as compensation for servcies. Refraining from the performance of services (such as pursuant to a covenant not to compete) is deemed to be the performance of services for purposes of this section.

(4) *Recipient of a fringe benefit*—(i) *Definition.* A fringe benefit is included in the income of the "recipient" of the fringe benefit. The recipient of a fringe benefit is the person performing the services in connection with which the fringe benefit is provided. Thus, a person may be considered to be a recipient, even though that person did not actually receive the fringe benefit. For example, a fringe benefit provided to any person is connection with the performance of services by another person is considered to have been provided to the person who performs the services and not the person who receives the fringe benefit. In addition, if a fringe benefit is provided to a person, but taxable to a second person as the recipient, such benefit is referred to as provided to the second person and use by the first person is considered use by the second person. For example, provision of an automobile to an employee's spouse by the employer is taxable to the employee as the recipient. The automobile is referred to as available to the employee and use by the employee's spouse is considered use by the employee.

(ii) *Recipient may be other than an employee.* The recipient of a fringe benefit need not be an employee of the provider of the fringe benefit, but may be a partner, director, or an independent contractor. For convenience, the term "employee" includes a reference to any recipient of a fringe benefit, unless otherwise specifically provided in this section.

(5) *Provider of a fringe benefit.* The "provider" of a fringe benefit is that person for whom the services are performed, regardless of whether that person actually provides the fringe benefit to the recipient. The provider of a fringe benefit need not be the employer of the recipient of the fringe benefit, but may be, for example, a client or customer of an independent contractor. For convenience, the term "employer" includes a reference to any provider of a fringe benefit, unless otherwise specifically provided in this section.

(6) *Effective date.* This section is effective as of January 1, 1985. No inference may be drawn from the promulgation or terms of this section concerning the application of law in effect prior to January 1, 1985.

(b) *Valuation of fringe benefits*—(1) *In general.* An employee must include in gross income the amount by which the fair market value of the fringe benefit exceeds the sum of (i) the amount, if any, paid for the benefit, and (ii) the amount, if any, specifically excluded from gross income by some other section of subtitle A. Therefore, for example, if the employee pays fair market value for what is received, no amount is includible in the gross income of the employee.

(2) *Fair market value.* In general, fair market value is determined on the basis of all the facts and circumstances. Specifically, the fair market value of a fringe benefit is that amount a (hypothetical person would have to pay a hypothetical third party to obtain (i.e., purchase or lease) the particular fringe benefit. Thus, for example, the effect of any special relationship that may exist between the employer and the employee must be disregarded. This also means that an employee's subjective perception of the value of a fringe benefit is not relevant to the determination of a fringe benefit's fair market value. In addition, the cost incurred by the employer is not determinative of the fair market value of the fringe benefit. For special rules relating to the valuation of certain fringe benefits, see paragraph (c) of this section.

(3) *Exclusion from income based on cost.* If a statutory exclusion phrased in terms of cost applies to the provision of a fringe benefit, section 61 does not require the inclusion in the recipient's gross income of the difference between the fair market value and the excludable cost of that fringe benefit. For example, section 129 provides an exclusion from an employee's gross income for amounts paid or incurred by an employer to provide dependent care assistance to employees. Even if the fair market value of the dependent care assistance exceeds the employer's cost, the excess is not subject to inclusion under section 61 and this section. If the statutory cost exclusion is a limited amount, however, then the fair market value of the fringe benefit attributable to any excess cost is subject to inclusion.

(4) *Fair market value of the availability of an employer-provided vehicle.* If the vehicle special valuation rules of paragraph (d), (e), or (f) of this section are not used by a taxpayer entitled to use such rules, the value of the availability of an employer-provided vehicle is determined under the general valuation principles set forth in this section. In general, such valuation must be determined by reference to the cost to a hypothetical person of leasing from a hypothetical third party the same or comparable vehicle on the same or comparable terms in the geographic area in which the vehicle is available for use. Unless the employee can substantiate that the same or comparable vehicle could have been leased on a cents-per-mile basis, the value of the availability of the vehicle cannot be determined by reference to a cents-per-mile rate applied to the number of miles the vehicle is driven. An example of a comparable lease term is the amount of time that the vehicle is available to the employee for use, e.g., a one-year period.

(5) *Fair market value of a flight on an employer-provided aircraft.* If the non-commercial flight special valuation rule of paragraph (g) of this section is not used (or is not properly used) by a taxpayer entitled to use such rule, the value of a flight on an employer-provided aircraft is determined under the general valuation principles set forth

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in this section. An example of how the general valuation principles would apply is that if an employee whose flight is primarily personal controls the use of an aircraft with respect to such flight, such flight is valued by reference to how much it would cost a hypothetical person to charter the same or comparable aircraft for the same or comparable flight. The cost to charter the aircraft must be allocated among all employees on board the aircraft based on all the facts and circumstances, including which employees controlled the use of the aircraft. Notwithstanding the allocation required by the preceding sentence, no additional amount shall be included in the income of any employee whose flight is properly valued under the special valuation rule of paragraph (g) of this section.

(c) *Special valuation rules*—(1) *In general.* Paragraphs (d) through (j) of this section provide special valuation rules that may be used under certain circumstances for certain commonly provided fringe benefits. Paragraph (d) provides a lease valuation rule relating to employer-provided automobiles. Paragraph (e) provides a cents-per-mile valuation rule relating to employer-provided vehicles. Paragraph (f) provides a commuting valuation rule relating to employer-provided vehicles. Paragraph (g) provides a flight valuation rule relating to flights on employer-provided aircraft. Paragraph (h) provides a flight valuation rule relating to flights on commercial airlines. Paragraph(i) is reserved. Paragraph (j) provides a meal valuation rule relating to employer-operated eating facilities for employees. For general rules relating to the valuation of fringe benefits not eligible for valuation under the special valuation rules, see paragraph (d) of this section.

(2) *Use of the special valuation rules—(i) In general.* The Special valuation rules may be used for income, employment tax, and reporting purposes. Use of any of the special valuation rules is optional. An employer need not use the same vehicle special valuation rule for all vehicles provided to all employees. For example, an employer may use the automobile lease valuation rule for automobiles provided to some employees, and the commuting and vehicle cents-per-mile valuation rules for automobiles provided to other employees. Except as otherwise provided, however, if either the commercial flight valuation rule or the noncommercial flight valuation rule is used, such rule must be used by an employer to value all flights taken by employees in a calendar year. Effective January 1, 1986, if an employer uses one of the special rules to value the benefit provided to an employee, the employee may not use another special rule to value that benefit. The employee may, however, use general valuation rules based on facts and circumstances (see paragraph (b) of this section). Effective January 1, 1986, an employee may only use a special valuation rule if the employer uses the rule. If a special rule is used, it must be used for all purposes. If an employer properly uses a special rule and the employee uses the special rule, the employee must include in gross income the amount determined by the employer under the special rule less any amount reimbursed by the employee to the employer. The employer and the employee may use the special rules to determine the amount of the reimbursement due the employer by the employee. If an employer properly uses a special rule and properly determines the amount of an employee's working condition fringe under section 132 and § 1.132–1T (under the general rule or under a special rule), and the employee uses the special valuation rule, the employee must include in gross income the amount determined by the employer less any amount reimbursed by the employee to the employer.

(ii) *Transitional rules*—(A) *Use of vehicle special valuation rules for 1985 and 1986.* For purposes of valuing the use or availability of a vehicle, the consistency rules provided in paragraphs (d)(6) and (e)(5) of this section (relating to the automobile lease valuation rule and the vehicle cents-per-mile valuation rule, respectively) apply for 1987 and thereafter. Therefore, for 1985 and 1986 an employer (and employee, subject to paragraph (c)(2)(i) of this section) may use any applicable special valuation rule (or no special valuation rule) to value the use or availability of a vehicle, subject to paragraph (c)(2)(ii)(B) of this section.

(B) *Consistency Rules for 1985 and 1986.* If an employer uses the automobile lease valuation rule of paragraph (d) of this section in 1985 or 1986 with respect to an automobile, such rule must be used for the entire calendar year with respect to the automobile except for any period during which the commuting valuation rule of paragraph (f) of this section is properly used. If an employer uses the vehicle cents-per-mile valuation rule of pararaph (e) of this section in 1985 or 1986 with respect to a vehicle, such rule must be used for the entire calendar year with respect to the vehicle except for any period during which the commuting valuation rule of paragraph (f) of this section is properly used. The rules of this paragraph (c)(2)(ii)(B) also apply to employees using the special valuation rules of paragraphs (d) or (e) of this section.

(C) *Employee's use of special valuation rules for 1985.* An employee may use a special valuation rule (other than the rule in paragraph (e) of this section relating to the vehicle cents-per-mile valuation rule) during 1985 even if the employer does not use the same special valuation rule during 1985. An employee's use of a special valuation rule in 1986 and thereafter must be consistent with his employer's use of the rule as required under paragraph (c)(2)(i) of this section.

(D) *Examples.* The following examples illustrate the rules of paragraph (c)(2)(ii) of this section:

Example (1). Assume that an employer properly uses the automobile lease valuation rule in 1985. The employer may use the vehicle cents-per-mile valuation rule in 1986 if the requirements of the vehicle cents-per-mile valuation rule are satisfied.

Example (2). Assume that an employer does not use a special valuation rule to value the availability of an automobile in 1985. The employer may use any of the special valuation rules in 1986 if the requirements of the rule chosen are satisfied. The same applies for 1987.

Example (3). Assume that an employer properly uses the vehicle cents-per-mile valuation rule in 1985. The employer may continue to use to the rule or use any of the other special valuation rules to value the benefit provided in 1986 if the requirements of the rule chosen are satisfied. Alternatively, the employer may use none of the special valuation rules in 1986 but use any of the rules in 1987 if the requirements of the rule chosen are satisfied.

Example (4). Assume that an employee properly uses the automobile lease valuation rule in 1985. In 1986 and thereafter the employee may use a special valuation rule only if the employee's employer uses the same special valuation rule. The employee may use general valuation principles to value the benefit provided in 1986 and thereafter.

(3) *Election to use the special valuation rules*—(i) *In general.* A particular special valuation rule is deemed to have been elected by the employer (and, if applicable, by the employee), if the employer (and, if applicable, the employee) determines the value of the fringe benefit provided by applying the special valuation rule and treats such value as the fair market value of the fringe benefit for income, employment tax, and reporting purposes. Neither the employer nor the employee is required to notify the Internal Revenue Service of the election.

(ii) *Notification to employee.* Effective January 1, 1987, an employer who elects to use a special valuation rule must

notify the employee of the election by the later January 31 of the calendar year for which the election is to apply or 30 days after the employer first provides the benefit to the employee. An employer who elects to use a special valuation rule with respect to 1986 must notify the employee of the election by the later of March 31, 1986, or 30 days after the employer first provides the benefit to the employee. An employer who elects to use a special valuation rule with respect to 1985 need not provide notification of this election to the employee.

(4) *Application of section 414 to employers.* For purposes of paragraphs (c) through (j) of this section, except as otherwise provided therein, the term "employer" includes all entities required to be treated as a single employer under section 414 (b), (c), or (m).

(5) *Valuation formulas contained in the special valuation rules.* The valuation formulas contained in the special valuation rules are provided only for use in connection with such rules. Thus, when a special valuation rule is properly applied to a fringe benefit, the Commissioner will accept the value calculated pursuant to the rule as the fair market value of that fringe benefit. However, when a special valuation rule is not properly applied to a fringe benefit (see, for example, paragraph (g)(11) of this section), or when a special valuation rule is not used to value a fringe benefit by a taxpayer entitled to use the rule, the fair market value of that fringe benefit may not be determined by reference to any value calculated under any special valuation rule. Under the circumstances described in the preceding sentence, the fair market value of the fringe benefit must be determined pursuant to paragraph (b) of this section.

(6) *Modification of the special valuation rules.* The Commissioner may, if he deems it necessary, add, delete, or modify the special valuation rules, including the valuation formulas contained herein, on a prospective basis.

(7) *Special Accounting Period.* If the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B., August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), benefits which are deemed provided in a subsequent calendar year pursuant to such rule are considered as provided in such subsequent calendar year for purposes of the special valuation rules. Thus, if a particular special valuation rule is in effect for a calendar year, it applies to benefits deemed provided during such calendar year under the special accounting rule.

(d) *Automobile lease valuation rule*—(1) *In general*—(i) *Annual Lease Value.* Under the special valuation rule of this paragraph (d), if an employer provides an employee with an automobile that is available to the employee for an entire calendar year, the value of the benefit provided in the Annual Lease Value (determined under paragraph (d)(2) of this section) of that automobile. Except as otherwise provided, for an automobile that is available to an employee for less than an entire calendar year, the value of the benefit provided is either a pro-rated Annual Lease Value or the Daily Lease Value (as defined in paragraph (d)(4) of this section), whichever is applicable. Absent any statutory exclusion relating to the employer-provided automobile (see, for example, section 132(a)(3) and § 1.132–5T(b)), the amount of the Annual Lease Value (or a pro-rated Annual Lease Value or the Daily Lease Value, as applicable) is included in the gross income of the employee.

(ii) *Definition of automobile.* For purposes of this paragraph (d), the term "automobile" means any four-wheeled vehicle manufactured primarily for use on public streets, roads, and highways.

(2) *Calculation of Annual Lease Value*—(i) *In general.* The Annual Lease Value of a particular automobile is calculated as follows:

(A) Determine the fair market value of the automobile as of the first date on which the automobile is made available to any employee of the employer for personal use. For an automobile first made available to any employee for personal use prior to January 1, 1985, determine the fair market value as of January 1, 1985. For rules relating to determination of the fair market value of an automobile for purposes of this paragraph (d), see paragraph (d)(5) of this section.

(B) Select the dollar range in column 1 of the Annual Lease Value Table, set forth in paragraph (d)(2)(iii) of this section, corresponding to the fair market value of the automobile. Except as otherwise provided in paragraphs (d)(2)(iv) and (v) of this section, the Annual Lease Value for each year of availability of the automobile is the corresponding amount in column 2 of the Table.

(ii) *Use by employee only in 1985.* If the employee, but not the employer, is using the special rule of this paragraph (d), the employee may calculate the Annual Lease Value in the same manner as described in paragraph (d)(2)(i)(A) of this section, except that the fair market value of the automobile is determined as of the first date on which the automobile is made available to the employee for personal use or, for an automobile made available to the employee for personal use prior to January 1, 1985, by determining the fair market value as of January 1, 1985. If the employer is also using the special rule of this paragraph (d), however, then the employee to whom the automobile is made available must use the special rule, if at all, by using the Annual Lease Value calculated by the employer. The rules of this paragraph (d)(2)(ii) apply only for 1985.

(iii) *Annual Lease Value Table.*

Automobile fair market value (1)	Annual lease value (2)
$0 to $999	[illegible]
$1,000 to $1,999	[illegible]
$2,000 to $2,999	1,100
$3,000 to $3,999	1,350
$4,000 to $4,999	1,600
$5,000 to $5,999	1,850
$6,000 to $6,999	2,100
$7,000 to $7,999	2,350
$8,000 to $8,999	2,600
$9,000 to $9,999	2,850
$10,000 to $10,999	3,100
$11,000 to $11,999	3,350
$12,000 to $12,999	3,600
$13,000 to $13,999	3,850
$14,000 to $14,999	4,100
$15,000 to $15,999	4,350
$16,000 to $16,999	4,600
$17,000 to $17,999	4,850
$18,000 to $18,999	5,100
$19,000 to $19,999	5,350
$20,000 to $20,999	5,600
$21,000 to $21,999	5,850
$22,000 to $22,999	6,100
$23,000 to $23,999	6,350
$24,000 to $24,999	6,600
$25,000 to $25,999	6,850
$26,000 to $27,999	7,250
$28,000 to $29,999	7,750
$30,000 to $31,999	8,250
$32,000 to $33,999	8,750
$34,000 to $35,999	9,250
$36,000 to $37,999	9,750
$38,000 to $39,999	10,250
$40,000 to $41,999	10,750
$42,000 to $43,999	11,250
$44,000 to $45,999	11,750
$46,000 to $47,999	12,250
$48,000 to $49,999	12,750
$50,000 to $51,999	13,250
$52,000 to $53,999	13,750
$54,000 to $55,999	14,250
$56,000 to $57,999	14,750
$58,000 to $59,999	15,250

For vehicles having a fair market value in excess of $59,999, the Annual Lease Value is equal to: (.25 X the fair market value of the automobile) + $500.

(iv) *Recalculation of Annual Lease Value.* The Annual Lease Values determined under the rules of this paragraph (d) are based on a four-year lease term. Therefore, except as otherwise provided in paragraph (d)(2)(v) of this section, the Annual Lease Value calculated by applying paragraph (d)(2) (i) or (ii) of this section shall remain in effect for the period that begins with the first date the special valuation rule of paragraph (d) of this section is applied by the employer to the automobile and ends on December 31 of the fourth full calendar year following

that date. The Annual Lease Value for each subsequent four-year period is calculated by determining the fair market value of the automobile as of the January 1 following the period described in the previous sentence and selecting the amount in column 2 of the Annual Lease Value Table corresponding to the appropriate dollar range in column 1 of the Table. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B., August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), the employer may calculate the Annual Lease Value for each subsequent four-year period as of the beginning of the special accounting period that begins immediately prior to the January 1 described in the previous sentence. For example, assume that pursuant to Announcement 85–113, an employer uses the special accounting rule. Assume further that beginning on November 1, 1985, the special accounting period is November 1 to October 31 and that the employer elects to use the special valuation rule of this paragraph (d) as of January 1, 1985. The employer may recalculate the Annual Lease Value as of November 1, 1988, rather than as of January 1, 1989.

(v) *Transfer of the automobile to another employee.* Unless the primary purpose of the transfer is to reduce Federal taxes, if an employer transfers an automobile from one employee to another employee, the employer may recalculate the Annual Lease Value based on the fair market value of the automobile as of January 1 of the year of transfer. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (1985–31 I.R.B., August 5, 1985) (relating to the reporting of and withholding on the value of noncash fringe benefits), the employer may recalculate the Annual Lease Value based on the fair market value of the automobile as of the beginning of the special accounting period in which the transfer occurs. If the employer does not recalculate the Annual Lease Value, and the employee to whom the automobile is transferred uses the special valuation rule, the employee may not recalculate the Annual Lease Value.

(3) *Services included in, or excluded from, the Annual Lease Value Table*—(i) *Maintenance and insurance included.* The Annual Lease Values contained in the Annual Lease Value Table include the fair market value of maintenance of, and insurance for, the automobile. Neither an employer nor an employee may reduce the Annual Lease Value by the fair market value of any service included in the Annual Lease Value that is not provided by the employer, such as reducing the Annual Lease Value by the fair market value of a maintenance service contract or insurance. An employer or employee may take into account the services actually provided with respect to the automobile by valuing the availability of the automobile under the general valuation rules of paragraph (b) of this section.

(ii) *Fuel excluded*—(A) *In general.* The Annual Lease Values do not include the fair market value of fuel provided by the employer, regardless of whether fuel is provided in kind or its cost is reimbursed by or charged to the employer.

(B) *Valuation of fuel provided in kind.* The provision of fuel in kind may be valued at fair market value based on all the facts and circumstances or, in the alternative, it may be valued at 5.5 cents per mile for all miles driven by the employee. However, the provision of fuel in kind may not be valued at 5.5 cents per mile for miles driven outside the United States, Canada, and Mexico. For purposes of this section, the United States includes the United States and its territories.

(C) *Valuation of fuel where cost reimbursed by or charged to employer.* The fair market value of fuel, the cost of which is reimbursed by or charged to an employer, is generally the amount of the actual reimbursement or the amount charged, provided the purchase of the fuel is at arm's length. If an employer with a fleet of at least 20 automobiles that meet the requirements of paragraph (d)(5)(v)(C) of this section reimburses employees for the cost of fuel or allows employees to charge the employer for the cost of the fuel, however, the fair market value of fuel provided to those automobiles may be determined by reference to the employer's fleet-average cents-per-mile fuel cost. The fleet-average cents-per-mile fuel cost in equal to the fleet-average per-gallon fuel cost divided by the fleet-average miles-per-gallon rate. The averages described in the preceding sentence must be determined by averaging the per-gallon fuel costs and miles-per-gallon rates of a representative sample of the automobiles in the fleet equal to the greater of ten percent of the automobiles in the fleet or 20 automobiles for a representative period, such as a two month period.

(iii) *All other services excluded.* The fair market value of any service not specifically identified in paragraph (d)(3)(i) of this section that is provided by the employer with respect to an automobile (such as the services of a chauffeur) must be added to the Annual Lease Value of the automobile in determining the fair market value of the benefit provided.

(4) *Availability of an automobile for less than an entire calendar year*—(i) *Pro-rated Annual Lease Value used for continuous availability of 30 or more days.* Except as otherwise provided in paragraph (d)(4)(iv) of this section, for periods of continuous availability of 30 or more days, but less than an entire calendar year, the value of the availability of the employer-provided automobile is the pro-rated Annual Lease Value. The pro-rated Annual Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is the number of days of availability and the denominator of which is 365.

(ii) *Daily Lease Value used for continuous availability of less than 30 days.* Except as otherwise provided in paragraph (d)(4)(iii) of this section, for periods of continuous availability of one or more but less than 30 days, the value of the availability of the employer-provided automobile is the Daily Lease Value. The Daily Lease Value is calculated by multiplying the applicable Annual Lease Value by a fraction, the numerator of which is four times the number of days of availability and the denominator of which is 365.

(iii) *Election to treat all periods as periods of at least 30 days.* A pro-rated Annual Lease Value may be applied with respect to a period of continuous availability of less than 30 days, by treating the automobile as if it had been available for 30 days, if to do so would result in a lower valuation than applying the Daily Lease Value to the shorter period of actual availability.

(iv) *Periods of unavailability*—(A) *General rule.* In general, a pro-rated Annual Lease Value (as provided in paragraph (d)(4)(i) of this section) is used to value the availability of an employer-provided automobile when the automobile is available to an employee for a period of continuous availability of at least 30 days but less than the entire calendar year. Neither an employer nor an employee may use a pro-rated Annual Lease Value when the reduction of Federal taxes is the primary reason the automobile is unavailable to an employee during the calendar year.

(B) *Unavailability for personal reasons of the employee.* If an automobile is unavailable to an employee because of personal reasons of the employee, such as while the employee is on vacation, a pro-rated Annual Lease Value may not be used.

For example, assume an automobile is available to an employee during the first five months of the year and during the last five months of the year. Assume further that the period of unavailability occurs because the employee is on vacation. The Annual Lease Value, if it is applied, must be applied with respect to the entire 12 month period. The Annual Lease Value may not be pro-rated to take into account the two-month period of unavailability.

(5) *Fair market value*—(i) *In general.* For purposes of determining the Annual Lease Value of an automobile under the Annual Lease Value Table, the fair market value of an automobile is that amount a hypothetical person would have to pay a hypothetical third party to purchase the particular automobile provided. Thus, for example, any special relationship that may exist between the employee and the employer must be disregarded. Also, the employee's subjective perception of the value of the automobile is not relevant to the determination of the automobile's fair market value. In addition, except as provided in paragraph (d)(5) (ii) of this section, the cost incurred by the employer of either purchasing of leasing the automobile is not determinative of the fair market value of the automobile.

(ii) *Safe-harbor valuation rule.* For purposes of calculating the Annual Lease Value of an automobile under this paragraph (d), the safe-harbor value of the automobile may be used as the fair market value of the automobile For an automobile owned by the employer, the safe-harbor value of the automobile is the employer's cost of purchasing the automobile, provided the purchase is made at arm's length. For an automobile leased by the employer, the safe-harbor value of the automobile is the value determined under paragraph (d)(5)(iii) of this section.

(iii) *Use of nationally recognized pricing guides.* The fair market value of an automobile that is (A) provided to an employee prior to January 1, 1985, (B) being revalued pursuant to paragraphs (d)(2) (iv) or (v) of this section, or (C) is a leased automobile being valued pursuant to paragraph (d)(5)(ii) of this section, may be determined by using the retail value of such automobile as reported in a nationally recognized publication that regularly reports new or used automobile retail values, whichever is applicable. The values contained in (and obtained from) the publication must be reasonable with respect to the automobile being valued.

(iv) *Fair market value of special equipment*—(A) *Certain equipment excluded.* The fair market value of an automobile does not include the fair market value of any telephone or any specialized equipment that is added to or carried in the automobile if the presence of such equipment is necessitated by, and attributable to, the business needs of the employer.

(B) *Use of specialized equipment outside of employer's business.* The value of specialized equipment must be included, however, if the employee to whom the automobile is available uses the specialized equipment in a trade of business of the employee other than the employee's trade or business of being an employee of the employer.

(C) *Equipment susceptible to personal use.* The exclusion rule provided in this paragraph (d)(5)(iv) does not apply to specialized equipment susceptible to personal use.

(v) *Fleet-average valuation rule*—(A) *In general.* An employer with a fleet of 20 or more automobiles may use a fleet-average value for purposes of calculating the Annual Lease Values of the automobiles in the fleet. The fleet-average value is the average of the fair market values of each automobile in the fleet. The fair market value of each automobile in the fleet shall be determined, pursuant to the rules of paragraphs (d)(5) (i) through (iv) of this section, as of the later of January 1, 1985, or the first date on which the automobile is made available to any employee of the employer for personal use.

(B) *Period for use of rule.* The fleet-average valuation rule of this paragraph (d)(5)(v) may be used by an employer as of January 1 of any calendar year following the calendar year in which the employer acquires a fleet of 20 or more automobiles. The Annual Lease Value calculated for the automobiles in the fleet, based on the fleet-average value, shall remain in effect for the period that begins with the first January 1 the fleet-average valuation rule of this paragraph (d)(5)(v) is applied by the employer to the automobiles in the fleet and ends on December 31 of the subsequent calendar year. The Annual Lease Value for each subsequent two year period is calculated by determining the fleet-average value of the automobiles in the fleet as of the first January 1 of such period. An employer may cease using the fleet-average valuation rule as of any January 1. The fleet-average valuation rule does not apply as of January 1 of the year in which the number of automobiles in the employer's fleet declines to fewer than 20. If, however, the employer is using the special accounting rule provided in Announcement 85–113 (I.R.B. No. 31, August 5, 1985), the employer may apply the rules of this paragraph (d)(5)(v)(B) on the basis of the special accounting period rather than the calendar year. (This is accomplished by substituting (1) the beginning of the special accounting period that begins immediately prior to the January 1 described in this paragraph (d)(5)(v)(B) for January 1 wherever it appears in this paragraph (d)(5)(v)(B) and (2) the end of such accounting period for December 31.) The revaluation rules of paragraph (d)(2) (iv) and (v) of this section do not apply to automobiles valued under this paragraph (d)(5)(v).

(C) *Limitations on use of fleet-average rule.* The rule provided in this paragraph (d)(5)(v) may not be used for any automobile whose fair market value (determined pursuant to paragraphs (d)(5) (i) through (iv) of this section as of either the first date on which the automobile is made available to any employee of the employer for personal use or, if later, January 1, 1985) exceeds $16,500. In addition, the rule provided in this paragraph (d)(5)(v) may only be used for automobiles that the employer reasonably expects will regularly be used in the employer's trade or business. Infrequent use of the vehicle, such as for trips to the airport or between the employer's multiple business premises, does not constitute regular use of the vehicle in the employer's trade or business.

(D) *Additional automobiles added to the fleet.* If the rule provided in this paragraph (d)(5)(v) is used by an employer, it must be used for every automobile included in or added to the fleet that meets the requirements of paragraph (d)(5)(v)(C) of this section. The fleet-average value in effect at the time an automobile is added to the fleet is treated as the fair market value of the automobile for purposes of determining the Annual Lease Value of the automobile until the fleet-average value changes pursuant to paragraph (d)(5)(v)(B) of this section.

(E) *Use of the fleet-average rule by employees.* An employee can only use the fleet-average value if it is used by the employer. If an employer uses the fleet-average value, and the employee uses the special valuation rule of paragraph (d) of this section, the employee must use the fleet-average value.

(6) *Consistency rules*—(i) *Use of the automobile lease valuation rule by an employer.* Except as provided in paragraph (d)(5) (v)(B) of this section, an employer may adopt the automobile lease valuation rule of this paragraph (d) for an automobile only if the rule is adopted with respect to the later of the period that begins on January 1, 1987, or the first period in which the automobile

is made available to an employee of the employer for personal use or, if the commuting valuation rule of paragraph (f) of this section is used when the automobile is first made available to an employee of the employer for personal use, the first period in which the commuting valuation rule is not used.

(ii) *An employer must use the automobile lease valuation rule for all subsequent periods.* Once the automobile lease valuation rule has been adopted for an automobile by an employer, the rule must be used by the employer for all subsequent periods in which the employer makes the automobile available to any employee, except that the employer may, for any period during which use of the automobile qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with respect to the automobile.

(iii) *Use of the automobile lease valuation rule by an employee.* Except as provided in paragraph (c)(2)(ii)(C) of this section, an employee may adopt the automobile lease valuation rule for an automobile only if the rule is adopted (A) by the employer and (B) with respect to the first period in which the automobile for which the employer (consistent with paragraph (d)(6)(i) of this section) adopted the rule is made available to that employee for personal use, or, if the commuting valuation rule of paragraph (f) of this section is used when the automobile is first made available to that employee for personal use, the first period in which the commuting valuation rule is not used.

(iv) *An employee must use the automobile lease valuation rule for all subsequent periods.* Once the automobile lease valuation rule has been adopted for an automobile by an employee, the rule must be used by the employee for all subsequent periods in which the automobile for which the rule is used is available to the employee, except that the employee may, for any period during which use of the automobile qualifies for use of the commuting valuation rule of paragraph (f) of this section and for which the employer uses the rule, use the commuting valuation rule with respect to the automobile.

(v) *Replacement automobiles.* Notwithstanding anything in this paragraph (D)(6) to the contrary, if the automobile lease valuation rule is used by an employer, or by an employer and an employee, with respect to a particular automobile, and a replacement automobile is provided to the employee for the primary purpose of reducing Federal taxes, then the employer, or the employer and the employee, using the rule must continue to use the rule with respect to the replacement automobile.

(e) *Vehicle cents-per-mile valuation rule*—(1) *In general*—(i) *General rule.* Under the vehicle cents-per-mile valuation rule of this paragraph (e), if an employer provides an employee with the use of a vehicle that (A) the employer reasonably expects will be regularly used in the employer's trade or business throughout the calendar year (or such shorter period as the vehicle may be owned or leased by the employer) or (B) satisfies the requirements of paragraph (e)(1)(ii) of this section, the value of the benefit provided in the calendar year is the standard mileage rate provided in the applicable Revenue Ruling or Revenue Procedure ("cents-per-mile rate") multiplied by the total number of miles the vehicle is driven by the employee for personal purposes. For 1985, the standard mileage rate is 21 cents per mile for the first 15,000 miles and 11 cents per mile for all miles over 15,000. See Rev. Proc. 85–49. The standard mileage rate must be applied to personal miles independent of business miles. Thus, for example, if an employee drives 20,000 personal miles and 35,000 business miles in 1985, the value of the personal use of the vehicle is $3,700 (15,000×$.21+5,000×$.11). For purposes of this section, the use of a vehicle for personal purposes is any use of the vehicle other than use in the employee's trade or business of being an employee of the employer. Infrequent use of the vehicle, such as for trips to the airport or between the employer's multiple business premises, does not constitute regular use of the vehicle in the employer's trade or business.

(ii) *Mileage Rule.* A vehicle satisfies the requirements of this paragraph (e)(1)(ii) in a calendar year if (A) it is actually driven at least 10,000 miles in the year, and (B) use of the vehicle during the year is primarily by employees. For example, if a vehicle is used by only one employee during the year and that employee drives a vehicle at least 10,000 miles in a calendar year, such vehicle satisfies the requirements of this paragraph (e)(1)(ii) even if all miles driven by the employee are personal. The requirements of this paragraph (e)(1)(ii), however, will not be satisfied if during the year the vehicle is transferred among employees in such a way which enables an employee whose use was at a rate significantly less that 10,000 miles per year to meet the 10,000 mile threshold. Assume that an employee uses a vehicle for the first six months of the year and drives 2,000 miles, and that vehicle is then used by other employees who drive the vehicle 8,000 miles in the last six months of the year. Because the rate at which miles were driven in the first six months of the year would result in only 4,000 miles being driven in the year, and because the first employee did not use the vehicle during the last six months of the year, the requirements of this paragraph (e)(1)(ii) are not satisfied. The requirement of paragraph (e)(1)(ii)(B) of this section is deemed satisfied if employees use the vehicle on a consistent basis for commuting. If the employer does not own or lease the vehicle during a portion of the year, the 10,000 mile threshold is to be reduced proportionately to reflect the periods when the employer owned or leased the vehicle. For purposes of this paragraph (e)(1)(ii), use of the vehicle by an individual (other than the employee) whose use would be taxed to the employee is not considered use by the employee.

(iii) *Limitation on use of the vehicle cents-per-mile valuation rule.* The value of the use of an automobile (as defined in paragraph (d)(1)(ii) of this section) may not be determined under the vehicle cents-per-mile valuation rule of this paragraph (e) if the fair market value of the automobile (determined pursuant to paragraphs (d)(5) (i) through (iv) of this section as of the later of January 1, 1985, or the first date on which the automobile is made available to any employee of the employer for personal use) exceeds the sum of the maximum recovery deductions allowable under section 280F(a)(2) for the first three taxable years in the recovery period for an automobile first placed in service during that calendar year. For 1985, that value is $12,800.

(2) *Definition of vehicle.* For purposes of this paragraph (e), the term "vehicle" means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term "vehicle" includes an automobile as defined in paragraph (d)(1)(ii) of this section.

(3) *Services included in, or excluded from, the cents-per-mile rate*—(i) *Maintenance and insurance included.* The cents-per-mile rate includes the fair market value of maintenance of, and insurance for, the vehicle. An employer may not reduce the cents-per-mile rate by the fair market value of any service included in the cents-per-mile rate but not provided by the employer. An employer or employee may take into account the services provided with respect to the automobile by valuing the availability of the automobile under the general valuation rules of paragraph (b) of this section.

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(ii) *Fuel provided by the employer*—(A) *Miles driven in the United States, Canada, and Mexico.* With respect to miles driven in the United States, Canada, and Mexico, the cents-per-mile rate includes the fair market value of fuel provided by the employer. If fuel is not provided by the employer, the cents-per-mile rate may be reduced by no more than 5.5 cents or the amount specified in any applicable Revenue Ruling or Revenue Procedure. For purposes of this section, the United States includes the United States and its territories.

(B) *Miles driven outside the United States, Canada, and Mexico.* With respect to miles driven outside the United States, Canada, and Mexico, the fair market value of fuel provided by the employer is not reflected in the cents-per-mile rate. Accordingly, the cents-per-mile rate may be reduced but by no more than 5.5 cents or the amount specified in any applicable Revenue Ruling or Revenue Procedure. If the employer provides the fuel in kind, it must be valued based on all the facts and circumstances. If the employer reimburses the employee for the cost of fuel or allows the employee to charge the employer for the cost of fuel, the fair market value of the fuel is generally the amount of the actual reimbursement or the amount charged, provided the purchase of fuel is at arm's length.

(4) *Valuation of personal use only.* The vehicle cents-per-mile valuation rule of this paragraph (e) may only be used to value the miles driven for personal purposes. Thus, the employer must include an amount in an employee's income with respect to the use of a vehicle that is equal to the product of the number of personal miles driven by the employee and the appropriate cents-per-mile rate. The employer may not include in income a greater or lesser amount; for example, the employer may not include in income 100 percent (all business and personal miles) of the value of the use of the vehicle. The term "personal miles" means all miles driven by the employee except miles driven by the employee is the employee's trade or business of being an employee of the employer.

(5) *Consistency rules*—(i) *Use of the vehicle cents-per-mile valuation rule by an employer.* An employer must adopt the vehicle cents-per-mile valuation rule of this paragraph (e) for a vehicle by the later of the period that begins on January 1, 1987, or the first period in which the vehicle is used by an employee of the employer for personal use or, if the commuting valuation rule of paragraph (f) of this section is used when the vehicle is first used by an employee of the employer for personal use, the first period in which the commuting valuation rule is not used.

(ii) *An employer must use the vehicle cents-per-mile valuation rule for all subsequent periods.* Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employer, the rule must be used by the employer for all subsequent periods in which the vehicle qualifies for use of the rule, except that (A) the employer may, for any period during which use of the vehicle qualifies for the commuting valuation rule of paragraph (f) of this section, use the commuting valuation rule with respect to the vehicle, and (B) if the employer elects to use the automobile lease valuation rule of paragraph (d) of this section for a period in which the vehicle does not qualify for use of the vehicle cents-per-mile valuation rule, then the employer must comply with the requirements of paragraph (d)(6) of this section. If the vehicle fails to qualify for use of the vehicle cents-per-mile valuation rule during a subsequent period, the employer may adopt for such subsequent period and thereafter any other special valuation rule for which the vehicle then qualifies. For purposes of paragraph (d)(6) of this section, the first day on which an automobile with respect to which the vehicle cents-per-mile rule had been used fails to qualify for use of the vehicle cents-per-mile valuation rule may be deemed to be the first day on which the automobile is available to an employee of the employer for personal use.

(iii) *Use of the vehicle cents-per-mile valuation rule by an employee.* An employee may adopt the vehicle cents-per-mile valuation rule for a vehicle only if the rule is adopted (A) by the employer and (B) with respect to the first period in which the vehicle for which the employer (consistent with paragraph (e)(5)(i) of this section) adopted the rule is available to that employee for personal use or, if the commuting valuation rule of paragraph (f) of this section is used by both the employer and the employee when the vehicle is first used by an employee for personal use, the first period in which the commuting valuation rule is not used.

(iv) *An employee must use the vehicle cents-per-mile valuation rule for all subsequent periods.* Once the vehicle cents-per-mile valuation rule has been adopted for a vehicle by an employee, the rule must be used by the employee for all subsequent periods of personal use of the vehicle by the employee for which the rule is used by the employer, except that the employee may, for any period during which use of the vehicle qualifies for use of the commuting valuation rule of paragraph (f) of this section and for which such rule is used by the employer, use the commuting valuation rule with respect to the vehicle.

(v) *Replacement vehicles.* Notwithstanding anything in this paragraph (e)(5) to the contrary, if the vehicle cents-per-mile valuation rule is used by an employer, or by an employer and an employee, with respect to a particular vehicle, and a replacement vehicle is provided to the employee for the primary purpose of reducing Federal taxes, then the employer, or the employer and the employee, using the rule must continue to use the rule with respect to the replacement vehicle if the replacement vehicle qualifies for use of the rule.

(f) *Commuting valuation rule*—(1) *In general.* Under the commuting valuation rule of this paragraph (f), the value of the commuting use of an employer-provided vehicle may be determined pursuant to paragraph (f)(3) of this section if the following criteria are met by the employer and employees with respect to the vehicle:

(i) The vehicle is owned or leased by the employer and is provided to one or more employees for use in connection with the employer's trade or business and is used in the employer's trade or business;

(ii) For bona fide noncompensatory business reasons, the employer requires the employee to commute to and/or from work in the vehicle;

(iii) The employer has established a written policy under which the employee may not use the vehicle for personal purposes, other than for commuting or de minimis personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home);

(iv) Except for de minimis personal use, the employee does not use the vehicle for any personal purpose other than commuting; and

(v) The employee required to use the vehicle for commuting is not a control employee of the employer (as defined in paragraphs (f) (5) and (6) of this section).

If the vehicle is a chauffeur-driven vehicle, the commuting valuation rule of this paragraph (f) may not be used to value the commuting use of any passenger who commutes in the vehicle. The rule may be used, however, to value the commuting use of the chauffeur. Personal use of a vehicle is all use of the vehicle by the employee that is not used

in the employee's trade or business of being an employee of the employer.

(2) *Special rules.* Notwithstanding anything in paragraph (f)(1) of this section to the contrary, the following special rules apply—

(i) *Written policy not required in 1985.* The policy described in paragraph (f)(1)(iii) of this section prohibiting personal use need not be written with respect to the commuting use which occurs prior to January 1, 1986;

(ii) *Commuting use during 1985.* For commuting use that occurs after December 31, 1984, but before January 1, 1986, the restrictions of paragraph (f)(1)(v) of this section shall be applied by substituting "an employee who is an officer or a five-percent owner of the employer" in lieu of "a control employee". For purposes of determining who is a five-percent owner, any individual who owns (or is considered as owning) five or more percent of the fair market value of an entity (the "owned entity") is considered a five-percent owner of all entities that would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m). An employee who is an officer of an employer shall be treated as an officer of all entities treated as a single employer pursuant to section 414 (b), (c), or (m). The definitions provided in paragraphs (f)(5)(i) and (f)(6) of this section may be used to define an officer; and

(iii) *Control employee exception.* If the vehicle in which the employee is required to commute is not an automobile as defined in paragraph (d)(1)(ii) of this section, the restrictions of paragraph (f)(1)(v) of this section do not apply.

(3) *Commuting value*—(i) *$1.50 per one-way commute.* If the requirements of this paragraph (f) are satisfied, the value of the commuting use of an employer-provided vehicle is $1.50 per one-way commute (e.g., from home to work or from work to home).

(ii) *Value per employee.* If there is more than one employee who commutes in the vehicle, such as in the case of an employer-sponsored car pool, the amount includible in the income of each employee is $1.50 per one-way commute. Thus, the amount includible for each round-trip commute is $3.00 per employee.

(4) *Definition of vehicle.* For purposes of this paragraph (f), the term "vehicle" means any motorized wheeled vehicle manufactured primarily for use on public streets, roads, and highways. The term "vehicle" includes an automobile as defined in paragraph (d)(1)(ii) of this section.

(5) *Control employee defined—Non-government employer.* For purposes of this paragraph (f), a control employee of a non-government employer is any employee—

(i) Who is a Board- or shareholder-appointed, confirmed, or elected officer of the employer,

(ii) Who is a director of the employer, or

(iii) Who owns a one-percent or greater equity, capital, or profits interest in the employer.

For purposes of determining who is a one-percent owner under paragraph (f)(5)(iii) of this section, any individual who owns (or is considered as owning under section 318(a) or principles similar to section 318(a) for entities other than corporations) one percent or more of the fair market value of an entity (the "owned entity") is considered a one-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m). An employee who is an officer of an employer shall be treated as an officer of all entities treated as a single employer pursuant to section 414 (b), (c) or (m).

(6) *Control employee defined—Government employer.* For purposes of this paragraph (f), a control employee of a government employer if any—

(i) Elected official,

(ii) Federal employee who is appointed by the President and confirmed by the Senate. In the case of commissioned officers of the United States Armed Forces, an officer is any individual with the rank of brigadier general or above or the rank of rear admiral (lower half) or above; or

(iii) State or local executive officer comparable to the individuals described in paragraph (f)(6) (i) and (ii) of this section.

For purposes of this paragraph (f), the term "government" includes any Federal, state, or local governmental unit, and any agency or instrumentality thereof.

(g) *Non-commercial flight valuation rule*—(1) *In general.* Under the non-commercial flight valuation rule of this paragraph (g), if an employee is provided with a flight on an employer-provided aircraft, the value of the flight is calculated using the aircraft valuation formula provided in paragraph (g)(5) of this section. Except as otherwise provided, for purposes of this paragraph (g), a flight provided to a person whose flight would be taxable to an employee as the recipient is referred to as provided to the employee, and a flight taken by such person is considered a flight taken by the employee.

(2) *Eligible flights and eligible aircraft.* The valuation rule of this paragraph (g) may be used to value flights on all employer-provided aircraft, including helicopters. The valuation rule of this paragraph (g) may be used to value international as well as domestic flights. The valuation rule of this paragraph (g) may not be used to value a flight on any commercial aircraft on which air transportation is sold to the public on a per-seat basis. For a special valuation rule relating to certain flights on commercial aircraft, see paragraph (h) of this section.

(3) *Definition of a flight*—(i) *General rule.* Except as otherwise provided in paragraph (g)(3)(iii) of this section (relating to intermediate stops), for purposes of this paragraph (g), an individual's flight is the distance (in statute miles) between the place at which the individual boards the aircraft and the place at which the individual deplanes.

(ii) *Valuation of each flight.* Under the valuation rule of this paragraph (g), value is determined separately for each flight. Thus, a round-trip is comprised of at least two flights. For example, an employee who takes a personal trip on an employer-provided aircraft from New York, New York to Denver, Colorado, Denver to Los Angeles, California, and Los Angeles to New York has taken three flights and must apply the aircraft valuation formula separately to each flight. The value of a flight must be determined on a passenger-by-passenger basis. For example, if an individual accompanies an employee and the flight taken by the individual would be taxed to the employee, the employee would be taxed on the special rule value of the flight by the employee and by the individual.

(iii) *Intermediate stop.* If the primary purpose of a landing is necessitated by weather conditions, by an emergency, for purposes of refueling or obtaining other services relating to the aircraft, or for purposes of the employer's business unrelated to the employee whose flight is being valued ("an intermediate stop"), the distance between the place at which the trip originates and the place at which the intermediate stop occurs is not considered a flight. For example, assume that an employee's trip originates in St. Louis, Missouri, on route to Seattle, Washington, but, because of weather conditions, the aircraft lands in Denver, Colorado, and the employee stays in Denver overnight. Assume further that the next day the aircraft flies to Seattle where the employee deplanes. The employee's flight is the distance between the airport

in St. Louis and the airport in Seattle. Assume that a trip originates in New York, New York, with five passengers and makes an intermediate stop in Chicago, Illinois, before going on to Los Angeles, California. If one of the five passengers deplanes in Chicago, the distance of that passenger's flight would be the distance between the airport in New York and the airport in Chicago. The intermediate stop is disregarded when measuring the flights taken by each of the other passengers. Their flights would be the distance between the airport in New York and the airport in Los Angeles.

(4) *Personal and non-personal flights*—(i) *In general.* The valuation rule of this paragraph (g) applies to personal flights on employer-provided aircraft. A personal flight is one the value of which is not excludable under another section of subtitle A, such as under section 132(d) (relating to a working condition fringe). However, solely for purposes of paragraphs (g)(4)(ii) and (g)(4)(iii) of this section, references to personal flights do not include flights a portion of which would not be excludable by reason of section 274.(c).

(ii) *Trip primarily for employer's business.* If an employee combines, in one trip, personal and business flights on an employer-provided aircraft and the employee's trip is primarily for the employer's business (see § 1.162–2(b)(2)), the employee must include in income the excess of the value of all the flights that comprise the trip over the value of the flights that would have been taken had there been no personal flights but only business flights. For example, assume that an employee flies on an employer-provided aircraft from Chicago, Illinois to Miami, Florida, for the employer's business and that from Miami the employee flies on the employer-provided aircraft to Orlando, Florida, for personal purposes and then flies back to Chicago. Assume further that the primary purpose of the trip is for the employer's business. The amount includible in income is the excess of the value of the three flights (Chicago to Miami, Miami to Orlando, and Orlando to Chicago), over the value of the flights that would have been taken had there been no personal flights but only business flights (Chicago to Miami and Miami to Chicago).

(iii) *Primarily personal trip.* In an employee combines, in one trip, personal and business flights on an employer-provided aircraft and the aircraft's trip is primarily personal (see § 1.162–2(b)(2)), the amount includible in the employee's income is the value of the personal flights that would have been taken had there been no business flights but only personal flights. For example, assume that an employee flies on an employer-provided aircraft from San Francisco, California, to Los Angeles, California, for the employer's business and that from Los Angeles the employee flies on an employer-provided aircraft to Palm Springs, California, primarily for personal reasons and then flies back to San Francisco. Assume further that the primary purpose of the trip is personal. The amount includible in the employee's income is the value of personal flights that would have been taken had there been no business flights but only personal flights (San Francisco to Palm Springs and Palm Springs to San Francisco).

(iv) *Application of section 274(c).* The value of employer-provided travel outside the United States away from home may not be excluded from the employee's gross income as a working condition fringe, by either the employer or the employee, to the extent not deductible by reason of section 274(c). The valuation rule of this paragraph (g) applies to that portion of the value of any flight not excludable by reason of section 274(c). Such value must be included in income in addition to the amounts determined under paragraphs (g)(4)(ii) and (g)(4)(iii) of this section.

(v) *Flight by individuals who are not personal guests.* If an individual who is not an employee of the employer providing the aircraft is on a flight, and the individual is not the personal guest of any employee, the flight by the individual is not taxable to any employee of the employer providing the aircraft. The rule in the preceding sentence applies where the individual is provided the flight by the employer for noncompensatory business reasons of the employer. For example, assume that G, and employee of company Y, accompanies A, an employee of company X, on company X's aircraft for the purpose of inspecting land under consideration for purchase by company X from company Y. The flight by G is not taxable to A.

(5) *Aircraft valuation formula.* Under the valuation rule of this paragraph (g), the value of a flight is determined by multiplying the base aircraft valuation formula for the period during which the flight was taken by the appropriate aircraft multiple (as provided in paragraph (g)(7) of this section) and then adding the applicable terminal charge. The base aircraft valuation formula (also known as the Standard Industry Fare Level formula or SIFL) in effect on June 30, 1985, is as follows: ($.1402 per mile for the first 500 miles, $.1069 per mile for miles between 501 and 1500, and $.1028 per mile for miles over 1500). The terminal charge in effect on June 30, 1985, is $25.62. The SIFL cents-per-mile rates in the formula and the terminal charge are calculated by the Department of Transportation and are revised semi-annually.

(6) *SIFL formula in effect for a particular flight.* For purposes of this paragraph (g), in determining the value of a particular flight during the first six months of a calendar year, the SIFL formula (and terminal charge) in effect on December 31 of the preceding year applies, and in determining the value of a particular flight during the last six months of a calendar year, the SIFL formula (and terminal charge) in effect on June 30 of that year applies. The following is the SIFL formula in effect on December 31, 1984: ($.1480 per mile for the first 500 miles, $.1128 per mile for miles between 501 and 1500, and $.1085 per mile for miles over 1500). The terminal charge in effect on December 31, 1984, is $27.05.

(7) *Aircraft multiples*—(i) *In general.* The aircraft multiples are based on the maximum certified takeoff weight of the aircraft. For purposes of applying the aircraft valuation formula described in paragraph (g)(5) of this section, the aircraft multiples are as follows:

(In percent)

Maximum certified takeoff weight of the aircraft	Aircraft multiple for a—	
	Control employee	Non-control employee
6,000 lbs. or less	62.5	15.6
6,001 to 10,000 lbs	125.0	25.4
10,001 to 25,000 lbs	300.0	31.3
25,001 lbs. or more	400.0	51.3

(ii) *Flights treated as provided a to control employee.* Except as provided in paragraph (g)(10) of this section, any flight provided to an individual whose flight would be taxable to a control employee (as defined in paragraph (g)(8) and (9) of this section) as the recipient shall be valued as if such flight has been provided to that control employee. For example, assume that the chief executive officer of an employer, his spouse, and his two children fly on an employer-provided aircraft for personal purposes. Assume further that the maximum certified takeoff weight of the aircraft is 12,000 lbs. The amount includible in the employee's income is 4 x ((300 percent x base aircraft valuation formula) plus the applicable terminal charge).

(8) *Control employee defined—Nongovernment employer.* For purposes of this paragraph (g), a control employee of a non-government employer is any employee—

(i) Who is a Board- or shareholder-appointed, confirmed, or elected officer of the employer, limited to the lesser of (A) one-percent of all employees (increased to the next highest integer, if not an integer) or (B) ten employees;

(ii) Whose compensation equals or exceeds the compensation of the top one percent most highly-paid employees of the employer (increased to the next highest integer, if not an integer) limited to a maximum of 25 employees;

(iii) Who owns a ten-percent or greater equity, capital or profits interest in the employer; or

(iv) Who is a director of the employer.

For purposes of this paragraph (g), any employee who is a family member (within the meaning of section 267(c)(4)) of a control employee is also a control employee. Pursuant to this paragraph (g)(8), an employee may be a control employee under more than one of the requirements listed in paragraphs (g)(8)(i) through (iv) of this section. For example, an employee may be both an officer under paragraph (g)(8)(i) of this section and a highly-paid employee under paragraph (g)(8)(ii) of this section. In this case, for purposes of the officer limitation rule of paragraph (g)(8)(i) of this section and the highly-paid employee limitation rule of paragraph (g)(8)(ii) of this section, the employee would be counted as reducing both such limitation rules. In no event shall an employee whose compensation is less than $50,000 be a control employee under paragraph (g)(8)(ii) of this section. For purposes of determining who is a ten-percent owner under paragraph (g)(8)(iii) of this section, any individual who owns (or is considered as owning under section 318(a) or principles similar to section 318(a) for entities other than corporations) ten percent or more of the fair market value of an entity (the "owned entity") is considered a ten-percent owner of all entities which would be aggregated with the owned entity under the rules of section 414 (b), (c), or (m). For purposes of determining who is an officer under paragraph (g)(8)(i) of this section, notwithstanding anything in this section to the contrary, if the employer would be aggregated with other employers under the rules of section 414 (b), (c), or (m), the officer definition and the limitations are applied to each separate employer rather than to the aggregated employer. If applicable, the officer limitation rule of paragraph (g)(8)(i) of this section is applied to employees in descending order of their compensation. Thus, if an employer has 11 board-appointed officers, the employee with the least compensation of those officers would not be an officer under paragraph (g)(8)(i) of this section. For purposes of this paragraph (g), the term "compensation" means the amount reported on a Form W–2 as income for the prior calendar year. Compensation includes all amounts received from all entities treated as a single employer under section 414 (b), (c), or (m).

(9) *Control employee defined—Government.* For purposes of this paragraph (g), a control employee of a government employer is any—

(i) Elected officials;

(ii) Federal employee who is appointed by the President and confirmed by the Senate. In the case of commissioned officers of the United States Armed Forces, an officer is any individual with the rank or brigadier general or above or the rank of rear admiral (lower half) or above; or

(iii) State or local executive officer comparable to the individuals in paragraph (g)(9)(i) and (ii) of this section.

For purposes of this paragraph (g), the term "government" includes any Federal, state, or local government unit, and any agency or instrumentality thereof.

(10) *Seating capacity rule*—(i) *In general.* Where 50 percent of more of the regular passenger seating capacity of an aircraft (as used by the employer) is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable from income under section 132(d)), the value of a flight on that aircraft by any employee who is not flying primarily for the employer's business (or who is flying primarily for the employer's business but the value of whose flight is not excludable under section 132(d) by reason of section 274(c)) is deemed to be zero. See § 1.132–5T which limits the exclusion under section 132(d) to situations where the employee receives the flight in connection with the performance of services for the employer providing the aircraft. For purposes of this paragraph (g)(10), the term "employee" includes only employees and partners of the employer providing the aircraft and does not include independent contractors and directors of the employer.

For purposes of this paragraph (g)(10), the second sentence of paragraph (g)(1) of this section will not apply. Instead, a flight taken by an individual who is either treated as an employee pursuant to section 132(f)(1) or whose flight is treated as a flight taken by an employee pursuant to section 132(f)(2) is considered a flight taken by an employee. If (A) a flight is considered taken by an individual other than an employee (as defined in this paragraph (g)(10)), (B) the value of that individual's flight is not excludable under section 132(d), and (C) the seating capacity rule of this paragraph (g)(10) otherwise applies, then the value of the flight provided to such an individual is the value of a flight provided to a non-control employee (even if the individual who would be taxed on the value of such individual's flight is a control employee).

(ii) *Application of 50-percent test to multiple flights.* The seating capacity rule of this paragraph (g)(10) must be met both at the time the individual whose flight is being valued boards the aircraft and at the time the individual deplanes. For example, assume that employee A boards an employer-provided aircraft for personal purposes in New York, New York, and that at that time 80 percent of the regular passenger seating capacity of the aircraft is occupied by individuals whose flights are primarily for the employer's business (and whose flights are excludable from income under section 132(d)) ("the business passengers"). If the aircraft flies directly to Hartford, Connecticut where all of the passengers, including A, deplane, the requirements of the seating capacity rule of this paragraph (g)(10) have been satisfied. If instead, some of the passengers, including A, remain on the aircraft in Hartford and the aircraft continues on to Boston, Massachusetts, where they all deplane, the requirements of the seating capacity rule of this paragraph (g)(10) will not be satisfied unless at least 50 percent of the seats comprising the aircraft's regular passenger seating capacity were occupied by the business passengers at the time A deplanes in Boston.

(iii) *Regular passenger seating capacity.* The regular passenger seating capacity of an aircraft is the maximum number of seats that have at any time been on the aircraft (while owned or leased by the employer). Except to the extent excluded pursuant to paragraph (g)(10)(v) of this section, regular seating capacity includes all seats which may be occupied by members of the flight crew. It is irrelevant that on a particular flight, less than the maximum number of seats are available for use, because, for example, some of the seats are removed. When determining the maximum number of seats, those seats that cannot at any time be legally used during

takeoff and are not any time used during takeoff are not counted.

(iv) *Examples.* The rules of paragraph (g)(10)(iii) of this section are illustrated by the following examples:

Example (1). Employer A and employer B order the same aircraft, except that A orders it with 10 seats and B orders it with eight seats. A always uses its aircraft as a 10-seat aircraft; B always uses its aircraft as an eight-seat aircraft. The regular passenger seating capacity of A's aircraft is 10 and of B's aircraft is eight.

Example (2). Assume the same facts as in example (1), except that whenever A's chief executive officer and spouse use the aircraft eight seats are removed. Even if substantially all of the use of the aircraft is by the chief executive officer and spouse the regular passenger seating capacity of the aircraft is 10.

Example (3). Assume the same facts as in example (1), except that whenever more than eight people want to fly in B's aircraft, two extra seats are added. Even if substantially all of the use of the aircraft occurs with eight seats, the regular passenger seating capacity of the aircraft is 10.

(v) *Seats occupied by flight crew.* When determining the regular passenger seating capacity of an aircraft, any seat occupied by a member of the flight crew (whether or not such individual is an employee of the employer providing the aircraft) shall not be counted, unless the purpose of the flight by such individual is not primarily to serve as a member of the flight crew. If the seat occupied by a member of the flight crew is not counted as a passenger seat pursuant to the previous sentence, such member of the flight crew is disregarded in applying the 50 percent test described in the first sentence of paragraph (g)(10)(i) of this section. For example, assume that, prior to the application of this paragraph (g)(10)(v), the regular passenger seating capacity of an aircraft is two seats.

Assume further that an employee pilots the aircraft and that the employee's flight is not primarily for the employer's business. If the employee's spouse occupies the other seat for personal purposes, the seating capacity rule is not met and the value of both flights must be included in the employee's income. If, however, the employee's flight were primarily for the employer's business (unrelated to serving as a member of the flight crew), then the seating capacity rule is met and the value of the flight for the employee's spouse is deemed to be zero. If the employee's flight were primarily to serve as a member of the flight crew, then the seating capacity rule is not met and the value of a flight by any passenger for primarily personal reasons is not deemed to be zero.

(11) *Erroneous use of the non-commercial flight valuation rule*—(i) *In general.* If the non-commercial flight valuation rule of this paragraph (g) is used by an employer or a control employee, as the case may be, on a return as originally filed, on the grounds that either the control employee is not in fact a control employee, or that the aircraft is within a specific weight classification, and either position is subsequently determined to be erroneous, the valuation rule of this paragraph (g) (including paragraph (g)(13) of this section) is not available to value the flight taken by that control employee by the person or persons taking the erroneous position. With respect to the weight classifications, the previous sentence does not apply if the position taken is that the weight of the aircraft is greater than it is subsequently determined to be. If, with respect to a flight by a control employee, the seating capacity rule of paragraph (g)(10) of this section is used by an employer or the control employee, as the case may be, on a return as originally filed, and it is subsequently determined that the requirements of paragraph (g)(10) of this section were not met, the valuation rule of this paragraph (g) (including paragraph (g)(13) of this section) is not available to value the flight taken by that control employee by the person or persons taking the erroneous position.

(ii) *Value of flight excluded as a working condition fringe.* If either an employer or an employee, on a return as originally filed, excludes from the employee's income or wages the value of a flight on the grounds that the flight was excludable as a working condition fringe under section 132, and that position is subsequently determined to be erroneous, the valuation rule of this paragraph (g) (including paragraph (g)(13) of this section) is not available to value the flight taken by that employee by the person or persons taking the erroneous position.

(12) *Consistency rules*—(i) *Use by the employer.* Except as otherwise provided in paragraphs (g)(11) and (g)(13)(iv) of this section, if the non-commercial flight valuation rule of this paragraph (g) is used by an employer to value flights provided in a calendar year, the rule must be used to value all flights provided in the calendar year.

(ii) *Use by the employee.* Except as otherwise provided in paragraphs (g)(11) and (g)(13)(iv) of this section, if the non-commercial flight valuation rule of this paragraph (g) is used by an employee to value a flight taken in a calendar year, the rule must be used to value all flights taken in the calendar year.

(13) *Transitional valuation rule*—(i) *In general.* If the value of a flight determined under this paragraph (g)(13) is lower than the value of the flight otherwise determined under paragraph (g) of this section, the value of the flight is the lower amount. The transitional valuation rule of this paragraph (g)(13) is available only for flights provided after December 31, 1984, and before January 1, 1986.

(ii) *Transitional valuation rule aircraft multiples.* The appropriate aircraft multiples under the transitional valuation rule are as follows:

(A) 125 percent of the base aircraft valuation formula, plus the applicable terminal charge, for any flight by any employee who is not a key employee (as defined in paragraph (g)(13)(iii) of this section.)

(B) 125 percent of the base aircraft valuation formula, plus the applicable terminal charge, for a flight by a key employee if there is a primary business purpose of the trip by the aircraft. For purposes of this paragraph (g)(13)(ii) (B), entertaining an employee or other individual is not a business purpose.

(C) 600 percent of the base aircraft valuation formula, plus the applicable terminal charge, for a flight by a key employee if there is not primary business for the trip by the aircraft.

Where there is no business purpose for the trip by the aircraft, the alternative valuation rule may not be used to value a flight by a key employee. For purposes of this section, compensating an employee is not a business purpose.

(iii) *Key employee defined.* A "key employee" is any employee who is a five-percent owner or an officer of the employer, or who, with respect to a particular trip by the aircraft, controls the use of the aircraft. For purposes of determining who is a five-percent owner, any individual who owns (or is considered as owning) five or more percent of the fair market value of an entity (the "owned entity") is considered a five-percent owner of all entities that would be aggregated with the owned entity under the rules of section 414(b), (c), or (m).

(iv) *Erroneous use of transitional valuation rule.* If the transitional valuation rule is used by an employer or a key employee, as the case may be, on a return as originally filed, on the grounds that—

(A) The key employee is not in fact a key employee,

(B) An aircraft trip had a primary business purpose, or

(C) An aircraft trip had some business purpose,

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and such position is subsequently determined to be erroneous, neither the transitional valuation rule nor the non-commercial flight valuation rule of this paragraph (g) is available to value such flight taken by that key employee by the person or persons taking the erroneous position.

(h) *Commercial flight valuation rule*—(1) *In general.* Under the commercial flight valuation rule of this paragraph (h), the value of a space-available flight (as defined in paragraph (h)(2) of this section) on a commercial aircraft is 25 percent of the actual carrier's highest unrestricted coach fare in effect for the particular flight taken.

(2) *Space-available flight.* The commercial flight valuation rule of this paragraph (h) is available to value a space-available flight. The term "space-available flight" means a flight on a commercial aircraft (i) for which the airline (the acutal carrier) incurs no substantial additional cost (including forgone revenue) determined without regard to any amount paid for the flight and (ii) which is subject to the same types of restrictions customarily associated with flying on an employee "standby" or "space-available" basis. A flight may be a space-available flight even if the airline that is the actual carrier is not the employer of the employee.

(3) *Commercial aircraft.* If the actual carrier does not offer, in the ordinary course of its business, air transportation to customers on a per-seat basis, the commercial flight valuation rule of this paragraph (h) is not available. Thus, if, in the ordinary course of its line of business, the employer only offers air transportation to customers on a charter basis, the commerical flight valuation rule of this paragraph (h) may not be used to value a space-available flight on the employer's aircraft. Similarly, if, in the ordinary course of its line of business, an employer only offers air transportation to customers for the transport of cargo, the commercial flight valuation rule of this paragraph (h) may not be used to value a space-available flight on the employer's aircraft.

(4) *Timing of inclusion.* The date that the flight is taken is the relevant date for purposes of applying section 61(a)(1) and this section to a space-available flight on a commercial aircraft. The date of purchase or issuance of a pass or ticket is not relevant. Thus, this section applies to a flight taken on or after January 1, 1985, regardless of the date on which the pass or ticket for the flight was purchased or issued.

(5) *Consistency rules*—(i) *Use by employer.* If the commercial flight valuation rule of this paragraph (h) is used by an employer to value flights provided in a calendar year, the rule must be used to value all flights provided in the calendar year.

(ii) *Use by employee.* If the commercial flight valuation rule of this paragraph (h) is used by an employee to value a flight taken in a calendar year, the rule must be used to value all flights taken by such employee in the calendar year.

(i) [Reserved]

(j) *Valuation of meals provided at an employer-operated eating facility for employees*—(1) *In general.* The valuation rule of this paragraph (j) may be used to value a meal provided at an employer-operated eating facility for employees (as defined in § 1.132–7T). For rules relating to an exclusion for the value of meals provided at an employer-operated eating facility for employees, see § 1.132–7T.

(2) *Valuation formula*—(i) *In general.* The value of all meals provided at an employer-operated eating facility for employees during a calendar year is 150 percent of the direct operaitng costs of the eating facility ("total meal value"). For purposes of this paragraph (j), the definition of direct operating costs provided in § 1.132–7T applies. The taxable value of meals provided at an eating facility may be determined in two ways. The "individual meal subsidy" may be treated as the taxable value of a meal provided at the eating facility (see paragraph (j) (2) (ii) of this section). Alternatively, the employer may allocate the "total meal subsidy" among employees (see paragraph (j) (2) (iii) of this section).

(ii) *"Individual meal subsidy" defined.* The "individual meal subsidy" is determined by multiplying the price charged for a particular meal by a fraction, the numerator of which is the total meal value and the denominator of which is the gross receipts of the eating facility, and then subtracting the amount paid for the meal. The taxable value of meals provided to a particular employee during a calendar year, therefore, is the sum of the individual meal subsidies provided to the employee during the calendar year.

(iii) *Allocation of "total meal subsidy."* Instead of using the individual meal value method, the employer may allocate the "total meal subsidy" (total meal value less the gross receipts of the facility) among employees in any manner reasonable under the circumstances.

Par. 3. Section 1.132–1T is removed and a new § 1.132–1T is added in its place, as follows:

§ 1.132–1T Exclusion from gross income of certain fringe benefits (Temporary).

(a) *In general.* Gross income does not include any fringe benefit which qualifies as a—

(1) No-additional-cost service,

(2) Qualified employee discount,

(3) Working condition fringe, or

(4) De minimis fringe.

Special rules apply with respect to certain on-premises gyms and other athletic facilities (§ 1.132–1T (e)), demonstration use of employer-provided automobiles by full-time automobile salesmen (§ 1.132–1T (n)), parking provided to an employee on or near the business premises of the employer (§ 1.132–5T (o)), and on-premises eating facilities (§ 1.132–7T).

(b) *Definition of employee*—(1) *No-additional-cost services and qualified employee discounts.* For purposes of section 132 (a) (1) (relating to no-additional-cost services) and section 132 (a) (2) (relating to qualified employee discounts), the term "employee" (with respect to a line of business of an employer) means—

(i) Any individual who is currently employed by the employer in the line of business,

(ii) Any individual who was formerly employed by the employer in the line of business and who separated from service with the employer in the line of business by reason of retirement or disability, and

(iii) Any widow or widower of an individual who died while employed by the employer in the line of business or who separated from service with the employer in the line of business by reason of retirement or disability.

For purposes of this paragraph (b) (1), any partner who performs services for a partnership is considered employed by the partnership. In addition, any use by the spouse or dependent child (as defined in this paragraph (b)) of the employee will be treated as use by the employee.

(2) *Working condition fringes.* For purposes of section 132(a)(2) (relating to working condition fringes), the term "employee" means—

(i) Any individual who is currently employed by the employer,

(ii) Any partner who performs services for the partnership,

(iii) Any director of the employer, and

(iv) Any independent contractor who performs services for the employer.

Notwithstanding anything in this paragraph (b)(2) to the contrary, any independent contractor who performs services for the employer cannot exclude the value of parking or the use

of consumer goods provided pursuant to a product testing program under § 1.132–5T (n); in addition, any director of the employer cannot exclude the value of the use of consumer goods provided pursuant to a product testing program under § 1.132–5T (n).

(3) *De minimis fringe.* For purpose of section 132(a)(4) (relating to de minimis fringes), the term "employee" means any recipient of a fringe benefit.

(4) *Dependent child.* For purposes of this paragraph (b), the term "dependent child" means any son, stepson, daughter or stepdaughter of the employee who is a dependent of the employee, or both of whose parents are deceased. Any child to whom section 152(e) applies will be treated as the dependent of both parents.

(c) *Special rules for employers—Effect of section 414.* All employees treated as employed by a single employer under section 414(b), (c) or (m) will be treated as employed by a single employer for purposes of this section. Thus, employees of one corporation that is part of a controlled group of corporations may under certain circumstances be eligible to receive section 132 benefits from the other corporations that comprise the controlled group. However, the aggregation of employers described in this paragraph (c) does not change the other requirements for an exclusion, such as the line of business requirement. Thus, for example, if a controlled group of corporations consists of two corporations that operate in different lines of business, the corporations are not treated as operating in the same line of business even though the corporations are treated as one employer.

(d) *Customers not to include employees.* For purposes of section 132 and the regulations thereunder, the term "customer" means customers who are not employees. However, the preceding sentence does not apply to section 132(c)(2) (relating to the gross profit percentage for determining a qualified employee discount). Thus, an employer that provides employee discounts cannot exclude sales made to employees in determining the aggregate sales to customers.

(e) *Treatment of on-premises athletic facilities*—(1) *In general.* Gross income does not include the value of any on-premises athletic facility provided by the employer to its employees. For purposes of section 132 and this paragraph (e), the term "on-premises athletic facility" means any gym or other athletic facility (such as a pool, tennis court, or golf course)—

(i) Which is located on the premises of the employer,

(ii) Which is operated by the employer, and

(iii) Where substantially all of the use of which is, during the calendar year, by employees of the employer, their spouses, and their dependent children.

For purposes of this paragraph (e) (1) (iii), the term "dependent children" has the same meaning as the plural of the term "dependent child" in paragraph (b) (4) of this section. The exclusion of this paragraph (e) does not apply to any athletic facility if access to the facility is made available to the general public through the sale of memberships, the rental of the facility, etc.

(2) *Premises of the employer.* The athletic facility need not be located on the employer's business premises. However, the athletic facility must be located on premises of the employer. The exclusion provided in this paragraph (e) applies whether the premises are owned or leased by the employer; in addition, the exclusion is available even if the employer is not a named lesse on the lease so long as the employer pays reasonable rent. The exclusion provided in this paragraph (e) does not apply to any athletic facility that is a facility for residential use. Thus, for example, a resort with accompanying athletic facilities (such as tennis courts, pool, and gym) would not qualify for the exclusion provided in this paragraph (e).

(3) *Application of rules to membership in an athletic facility.* The exclusion provided in this paragraph (e) does not apply to any membership in an athletic facility (including health clubs or country clubs) unless the facility is owned (or leased) and operated by the employer and substantially all the use of the facility is by employees of the employer, their spouses, and their dependent children. Therefore, membership in health club or country club not meeting the rules provided in this paragraph (e) would not quality for the exclusion.

(4) *Operation by the employer.* An employer is considered to operate the athletic facility if the employer itself operates the facility through its own employees, or if the employer contracts out to another to operate the athletic facility. For example, if an employer hires an independent contractor to operate the athletic facility for the employer's employees, the facility is considered to be operated by the employer. In addition, if an athletic facility is operated by more than one employer, it is considered to be operated by each employer. For purposes of paragraph (e) (1) (iii) of this section, substantially all the use of a facility operated by more than one employer must be by employees of all of the employers, their spouses, and their dependent children. Where the facility is operated by more than one employer, an employer that either pays rent directly to the owner of the premises or pays rent to a named lessor of the premises is eligible for the exclusion.

(5) *Nonapplicability of nondiscrimination rules.* The nondiscrimination rules of section 132 and § 1.132–8T do not apply to on-premises athletic facilities.

(f) *Nonapplicability of section 132.* If the tax treatment of a particular fringe benefit is expressely provided for in another section of Chapter 1, section 132 and the applicable regulations (except for section 132 (e) and the regulations thereunder) do not apply to such fringe benefits. For example, since section 129 provides an exclusion from gross income for amounts paid or incurred by the employer for dependent care assistance for an employee, the exclusions under section 132 and this section do not apply to the provision by an employer to an employee of dependent care assistance.

Par. 4. The following new § 1.132–2T is added at the appropriate place:

§ 1.132-2T No-additional-cost service (Temporary).

(a) *In general*—(1) *Definition.* Gross income does not include the value of a no-additional-cost service. The term "no-additional-cost service" means any service provided by an employer to an employee for the employee's personal use if—

(i) The service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee performs substantial services, and

(ii) The employer incurs no substantial additional cost in providing the service to the employee (including forgone revenue and excluding any amount paid by or on behalf of the employee for the service).

For rules relating to the line of business limitation, see § 1.132–4T.

(2) *Examples.* Services that are eligible for treatment as no-additional-cost services are excess capacity services such as hotel accommodations; transportation by aircraft, train, bus, subway, or cruise line; and telephone services. Services that are not eligible for treatment as no-additonal-cost services are non-excess capacity services such as the facilitation by a stock brokerage firm of the purchase of stock. Employees who receive non-excess capacity services may, however,

be eligible for a qualified employee discount of up to 20 percent of the value of the service provided. See § 1.132-3T.

(3) *Cash rebates.* The exclusion for a no-additional-cost service applies whether the service is provided at no charge or at a reduced price. The exclusion also applies if the benefit is provided through a partial or total cash rebate of an amount paid for the service.

(4) *Applicability of nondiscrimination rules.* The exclusion for a no-additional-cost service applies to officers, owners, and highly compensated employees only if the service is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, or highly compensated employees. See § 1.132-8T.

(5) *No substantial additional cost*—(i) *In general.* The exclusion for a non-additional-cost service applies only if the employer does not incur substantial additional cost in providing the service to the employee. For purposes of the preceding sentence, the term "cost" includes revenue that is forgone because the service is provided to an employee rather than a nonemployee. (For purposes of determining whether any revenue is forgone, it is assumed that the employee would not have purchased the service unless it were available to the employee at the actual price charged to the employee.) Whether an employer incurs substantial additional cost must be determined without regard to any amount paid by the employee for the service. Thus, any reimbursement by the employee for the cost of providing the service does not affect the determination of whether the employer incurs substantial additional cost.

(ii) *Labor intensive services.* An employer must include the cost of labor incurred in providing services to employees when determining whether the employer has incurred substantial additional cost. An employer has incurred substantial additional cost. An employer incurs substantial additional cost, whether or not non-labor costs are incurred, if a substantial amount of time is spent by the employer or its employees in providing the service to employees. This would be the result whether or not the time spent by the employer or its employees in providing the services would have been "idle", or if the services were provided outside normal business hours. An employer generally incurs no substantial additional cost, however, if the employee services provided are merely incidental to the primary service being provided by the employer. For example, the in-flight services of a flight attendant provided to airline employees traveling on a space-available basis are merely incidental to the primary service being provided (i.e., air transportation). In addition, the cost of in-flight meals provided to airline employees is not considered substantial in relation to the air transportation being provided.

(b) *Reciprocal agreements.* For purposes of the exclusion for a no-additional-cost service, any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if all of the following requirements are satisfied:

(1) The service is provided pursuant to a written reciprocal agreement between the employers under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive no-additional-cost services from the other employer;

(2) The service provided pursuant to the agreement to the employees of both employers is the same type of service provided by the employers to customers both in the line of business in which the employees perform substantial services and the line of business in which the service is provided to customers; and

(3) Neither employer incurs substantial additional cost (including forgone revenue) in providing the service to the employees of the other employer or pursuant to the agreement. If one employer receives a substantial payment from the other employer with respect to the reciprocal agreement, the paying employer will be considered to have incurred a substantial additional cost pursuant to the agreement.

Par. 5. The following § 1.132-3T is added at the appropriate place:

§ 1.132-3T Qualified employee discount (Temporary).

(a) *In general*—(1) *Definition.* Gross income does not include the value of a qualified employee discount. The term "qualified employee discount" means any employee discount with respect to qualified property or services provided by an employer to an employee for the employee's personal use to the extent the discount does not exceed—

(i) The gross profit percentage of the price at which the property is offered to customers, for discounts on property, or

(ii) 20 percent of the price at which the services are offered to customers, for discounts on services.

(2) *Qualified property or services*—(i) *In general.* The term "qualified property or services" means any property or services that are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee performs substantial services. For rules relating to the line of business limitation, see § 1.132-4T.

(ii) *Exception for certain property.* The term "qualified property" does not include real property and it does not include personal property (whether tangible or intangible) of a kind commonly held for investment. Thus, an employee may not exclude from gross income the amount of an employee discount provided on the purchase of either residential or commercial real estate, securities, commodities, or currency, whether or not the particular purchase is made for investment purposes.

(iii) *Property and services not offered in ordinary course of business.* The term "qualified property or services" does not include any property or services of a kind that is not offered for sale to customers in the ordinary course of the line of business of the employer. For example, employee discounts provided on property or services that are offered for sale only to employees and their families (such as merchandise sold at an employee store or through an employer-provided catalog service) may not be excluded from gross income.

(3) *No reciprocal agreement exception.* The exclusion for a qualified employee discount does not apply to property or services provided by another employer pursuant to a written reciprocal agreement that exists between employers to provide discounts on property and services to employees of the other employer.

(4) *Cash or third-party rebates*—(i) *Property or services provided without charge or at a reduced price.* The exclusion for a qualified employee discount applies whether the property or service is provided at no charge (in which case only part of the discount may be excludable as a qualified employee discount) or at a reduced price. The exclusion also applies if the benefit is provided through a partial or total cash rebate of an amount paid for the property or service.

(ii) *Property or services provided directly by the employer or indirectly through a third party.* A qualified employee discount may be provided either directly by the employer or indirectly through a third party. For example, an employee of an appliance manufacturer may receive a qualified employee discount on the manufacturer's appliances purchased at a retail store that offers such appliances for sale to customers. The employee may exclude the amount of the qualified

employee discount whether the employee is provided the appliance at no charge or purchases it at a reduced price, or whether the employee receives a partial or total cash rebate from either the employer-manufacturer or the retailer. If an employee receives additional rights associated with the property that are not provided by the employee's employer to customers in the ordinary course of the line of business in which the employee performs substantial services (such as the right to return or exchange the property or special warranty rights), the employee may only receive a qualified employee discount with respect to the property and not the additional rights. Receipt of such additional rights may occur, for example, when an employee of a manufacturer purchases property manufactured by the employee's employer at a retail outlet.

(5) *Applicability of nondiscrimination rules.* The exclusion for a qualified employee discount applies to officers, owners, and highly compensated employees only if the discount is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, or highly compensated employees. See § 1.132–8T.

(b) *Employee discount*—(1) *Definition.* The term "employee discount" means the excess of—

(i) The price at which the property or service is being offered by the employer for sale to customers, over

(ii) The price at which the property or service is provided by the employer to an employee for use by the employee.

A transfer of property by an employee without consideration is considered use by the employee for purposes of this section. Thus, for example, if an employee receives a discount on property offered for sale by his employer to customers and the employee makes a gift of the property to his parent, the property will be considered to be provided for use by the employee, thus enabling the discount to be eligible for exclusion as a qualified employee discount.

(2) *Price to customers*—(i) *Determined at time of sale.* In determining the amount of an employee discount, the price at which the property or service is being offered to customers at the time of the employee's purchase is controlling. For example, assume that an employer offers a product to customers for $20 during the first six months of a calendar year but at the time the employee purchases the product at a discount, the price at which the product is being offered to customers is $25. In this case, the price from which the employee discount is measured is $25.

(ii) *Quantity discount not reflected.* The price referred to in paragraph (b)(2)(i) of this section cannot reflect any quantity discount unless the employee actually purchases the requisite quantity of the property or service.

(iii) *Customers of employee's employer controls.* In determining the amount of an employee discount, the price at which the property or service is offered to customers of the employee's employer is controlling. Thus, the price at which property is sold to the wholesale customers of a manufacturer will generally be lower than the price at which the same property is sold to the customers of a retailer. However, see paragraph (a)(4)(ii) of this section regarding the effect of a wholesaler providing to its employees additional rights not provided to customers of the wholesaler in the ordinary course of its business.

(iv) *Discounts to discrete customer or consumer groups.* In determining the amount of an employee discount, if an employer offers for sale property or services at one or more discounted prices to discrete customer or consumer groups, and sales at all such discounted prices comprise at least 35 percent of the employer's gross sales for a representative period, then the price at which property or service is being offered to customers is a discounted price. The applicable discounted price is the current undiscounted price, reduced by the percentage discount at which the greatest percentage of the employer's gross sales are made for such representative period. If sales at different percentage discounts equal the same percentage of the employer's gross sales, the price at which the property or service is being provided to customers may be reduced by the average of the two group discounts. For purposes of this section, a representative period is the taxable year of the employer immediately preceding the taxable year in which the property or service is provided to the employee at a discount. If more than one employer would be aggregated under section 414 (b), (c), or (m), and all of the employers do not have the same taxable year, the employers required to be aggregated must designate the 12-month period to be used in determining gross sales for a representative period.

(v) *Examples.* The rules provided in this paragraph (b)(2) are illustrated by the following examples:

Example (1). Assume that a wholesale employer offers property for sale to two discrete customer groups at differing prices. Assume further that during the prior taxable year of the employer, 70 percent of the employer's gross sales are made at a 15-percent discount and 30 percent at no discount. The current undiscounted price at which the property or service is being offered by the employer for sale to customers may be reduced by the 15-percent discount.

Example (2). Assume that a retail employer offers a 20 percent discount to members of the American Bar Association, a 15 percent discount to members of the American Medical Association, and a ten percent discount to employees of the Federal Government. Assume further that during the prior taxable year of the employer, sales to American Bar Association members equal 15 percent of the employer's gross sales, sales to American Medical Association members equal 20 percent of the employer's gross sales, and sales to Federal Government employees equal 25 percent of the employer's gross sales. The current undiscounted price at which the property or service is being offered by the employer for sale to customers may be reduced by the ten percent Federal Government discount.

(3) *Damaged, distressed, or returned goods.* If an employee pays at least fair market value for damaged, distressed, or returned property, such employee will not have income attributable to such purchase.

(c) *Gross profit percentage*—(1) *In general*—(i) *General rule.* An exclusion from gross income for an employee discount on qualified property is limited to the price at which the property is being offered to customers in the ordinary course of the employer's line of business, multiplied by the employer's gross profit percentage. The term "gross profit percentage" means the excess of the aggregate sales price of the property sold by the employer to customers (including employees) over the employer's aggregate cost of the property, then divided by the aggregate sales price.

(ii) *Calculation of gross profit percentage.* The gross profit percentage must be calculated separately for each line of business based on the aggregate sales price and aggregate cost of property in that line of business for a representative period. For purposes of this section, a representative period is the taxable year of the employer immediately preceding the taxable year in which the discount is available. For example, if the aggregate sales of property in an employer's line of business for the prior taxable year were $800,000, and the aggregate cost of the property for the year were $600,000, the gross profit percentage would be 25 percent ($800,000 minus $600,000, then

divided by $800,000). If more than one employer would be aggregated under section 414 (b), (c), or (m), and all of the employers do not have the same taxable year, the employers required to be aggregated must designate the 12-month period to be used in determining the gross profit percentage. If an employee performs substantial services in more than one line of business, the gross profit percentage of the line of business in which the property is sold determines the amount of the excludable employee discount.

(iii) *Special rule for employers in their first year of existence.* An employer in its first year of existence may estimate the gross profit percentage of a line of business based on its mark-up from the cost. Alternatively, an employer in its first year of existence may determine the gross profit percentage by reference to an appropriate industry average.

(iv) *Redetermination of gross profit percentage.* If substantial changes in an employer's business indicate at any time that it is inappropriate for the prior years' gross profit percentage to be used for the current year, the employer must, within a reasonable period, redetermine the gross profit percentage for the remaining portion of the current year as if such portion of the year were the first year of the employer's existence.

(2) *Line of business.* In general, an employer must determine the gross profit percentage on the basis of all property offered to customers (including employees) in each separate line of business. An employer may instead select a classification of property that is narrower than the applicable line of business. However, such classification must be reasonable. For example, if an employer computes gross profit percentage according to the department in which products are sold, such classification is reasonable. Similarly, it is reasonable to compute gross profit percentage on the basis of the type of merchandise sold (such as high mark-up and low mark-up classifications). It is not reasonable, however, for an employer to classify certain low mark-up products preferred by certain employees (such as officers, owners, and highly compensated employees) with high mark-up products or to classify certain high mark-up products preferred by other employees with low mark-up products.

(3) *Generally accepted accounting principles.* In general, the aggregate sales price of property must be determined in accordance with generally accepted accounting principles. An employer must compute the aggregate cost of property in the same manner in which it is computed for the employer's Federal income tax liability, pursuant to the inventory rules in section 471 and the regulations thereunder.

(d) *Treatment of leased sections of department stores*—(1) *In general*—(i) *General rule.* For purposes of determining whether employees of a leased section of a department store may receive qualified employees discounts at the department store and whether employees of the department store may receive qualified employee discounts at the leased section of the department store, the leased section is treated as part of the line of business of the person operating the department store, and employees of the leased section are treated as employees of the person operating the department store as well as employees of their employer. The term "leased section of a department store" means a section of a department store where substantially all of the gross receipts of the leased section are over-the-counter sales of property made under a lease, license, or similar arrangement where it appears to the general public that individuals making such sales are employed by the department store. An example of a leased section of a department store is a cosmetics firm that leases floor space from a department store.

(ii) *Calculation of gross profit percentage.* When calculating the gross profit percentage of property and services sold at the department store under paragraph (c) of this section, sales of property and services sold at the department store, as well as sales of property and services sold at the leased section, are considered. The rule provided in the preceding sentence does not apply, however, if it is reasonable to calculate the gross profit percentage for the department store and leased section separately, or if it would be inappropriate to combine them (such as where either the department store or the leased section, but not both, provides employee discounts).

(2) *Employees of the leased section*—(i) *Definition.* For purposes of this paragraph (d), "employees of the leased section" means all employees who perform substantial services at the leased section regardless of whether the employees engage in over-the-counter sales of property or services. The term "employee" has the same meaning as in section 133(f).

(iii) *Discounts offered to either department store employees or employees of the leased section.* If the requirements of this paragraph (d) are satisfied, employees of the leased section may receive qualified employee discounts at the department store regardless of whether employees of the department store are offered discounts at the leased section. Similarly, regardless of whether employees of the leased section are offered discounts at the department store, employees of the department store may receive qualified employee discounts at the leased section.

(e) *Excess discounts.* Unless excludable under a statutory provision other than section 132(a)(2), an employee discount provided on property is excludable to the extent of the gross profit percentage multiplied by the price at which the property is being offered for sale to customers. If an employee discount exceeds the gross profit percentage, the excess discount is includible in the employee's income. For example, if the discount on property is 30 percent and the employer's gross profit percentage for the period in the relevant line of business is 25 percent, then 5 percent of the price at which the property is being offered for sale to customers is includible in the emloyee's income. With respect to services, an employee discount of up to 20 percent may be excludable. If an employee discount exceeds 20 percent, the excess discount is includible in the employee's income.

Par. 6. The following § 1.132–4T is added at the appropriate place:

§ 1.132–4T Line of business limitation (Temporary).

(a) *In general*—(1) *Applicability*—(i) *General rule.* A no-additional-cost service or qualified employee discount provided to an employee must be for property or services that are offered for sale to customers in the ordinary course of the same line of business in which the employee receiving the property or service performs substantial services. Thus, an employee who does not perform substantial services in a particular line of business of the employer may not exclude the value of services or employee discounts received on property or services in that line of business.

(ii) *Property and services sold to employees rather than customers.* Since the property or services must be offered for sale to customers in the ordinary course of the same line of business in which the employee performs substantial services, the line of business limitation is not satisfied if the employer's products or services are sold to employees of the employer, rather than to customers. Thus, for example, an employer in the banking line of business is not considered in the variety store line of business if the employer

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establishes an employee store that offers variety store items for sale to the employer's employees.

(iii) *Performance of substantial services in more than one line of business.* An employee who performs services in more than one of the employer's lines of business may only exclude no-additional-cost services and qualified employee discounts in the lines of business in which the employee performs substantial services.

(iv) *Performance of services that directly benefit more than one line of business*—(A) *In general.* An employee who performs substantial services that directly benefit more than one line of business of an employer is treated as performing substantial services in all such lines of business. For example, an employee who maintains accounting records for an employer's three lines of business may receive qualified employee discounts in all three lines of business.

(B) *Significantly interrelated minor line of business.* The employees of a minor line of business of an employer that is significantly interrelated with a major line of business of the employer who perform substantial services that directly benefit both the major and the minor lines of business are treated as employees of both the major and the minor lines of business. Employees of the minor line of business who do not perform substantial services which directly benefit the major line of business are not treated as employees of the major line of business. A minor line of business is significantly interrelated with a major line of business when, for example, the activity of the minor line of business is directly related to but is a minor part of the major line of business (such as laundry services provided at a hospital).

(C) *Examples.* The rules provided in this paragraph are illustrated in the following examples:

Example (1). Assume that employees of units of an employer provide repair or financing services, or sell by catalog, with respect to retail merchandise sold by the employer. Such employees may be considered as employees of the retail merchandise line of business under this paragraph (a)(1)(iv).

Example (2). Assume that an employer operates a hospital and a laundry service. Assume further that some of the gross receipts of the laundry service line of business are from laundry services sold to customers other than the hospital employer. Only the employees of the laundry service who perform substantial services which directly benefit the hospital line of business (through the provision of laundry services to the hospital) will be treated as employees of the hospital line of business. Other employees of the laundry service line of business will not be treated as employees of the hospital line of business.

Example (3). Assume the same facts as in example (2), except that the minor line of business also operates a chain of dry cleaning stores. Employees who perform substantial services which directly benefit the dry cleaning stores but who do not perform substantial services that directly benefit the hospital line of business will not be treated as employees of the hospital line of business.

(2) *Definition*—(i) *In general.* An employer's line of business is determined by reference to the Enterprise Standard Industrial Classification Manual (ESIC Manual) prepared by the Statistical Policy Division of the U.S. Office of Management and Budget. An employer is considered to have more than one line of business if the employer offers for sale to customers property or services in more than one two-digit code classification referred to in the ESIC Manual.

(ii) *Examples.* Examples of two-digit classifications are general retail merchandise stores; hotels and other lodging places; auto repair, services, and garages; and food stores.

(3) *Aggregation of two-digit classifications.* If, pursuant to paragraph (a)(2) of this section, an employer has more than one line of business, such lines of business will be treated as a single line of business where and to the extent that one or more of the following aggregation rules apply:

(i) If it is uncommon in the industry of the employer for any of the separate lines of business of the employer to be operated without the others, the separate lines of business are treated as one line of business.

(ii) If it is common for a substantial number of employees (other than those employees who work at the headquarters or main office of the employer) to perform substantial services for more than one line of business of the employer, so that determination of which employees perform substantial services for which line of business would be difficult, then the separate lines of business of the employer in which such employees perform substantial services are treated as one line of business. For example, assume that an employer operates a delicatessen with an attached service counter at which food is sold for consumption on the premises. Assume further that most but not all employees work both at the delicatessen and at the service counter. The delicatessen and the service counter are treated as one line of business.

(iii) If the retail operations of an employer that are located on the same premises are in separate lines of business but would be considered to be within one line of business under paragraph (a)(2) of this section if the merchandise offered for sale in such lines of business were offered for sale at a department store, then the operations are treated as one line of business. For example, assume that on the same premises an employer sells both women's apparel and jewelry. Since, if sold together at a department store, the operations would be part of the same line of business, the operations are treated as one line of business.

(b) *Grandfather rule for certain retail stores*—(1) *In general.* The line of business limitation may be relaxed under a special grandfather rule. If—

(i) On October 5, 1983, 85 percent of the employees of one member of an affiliated group (as defined in section 1504 without regard to subsections (b)(2) and (b)(4) thereof) were entitled to employee discounts at retail department stores operated by another member of the affiliated group, and

(ii) More than 50 percent of the current year's sales of the affiliated group are attributable to the operation of retail department stores,

then for purposes of the exclusion from gross income of a qualified employee discount, the first member is treated as engaged in the same line of business as the second member (the operator of the retail department stores). Therefore, employees of the first member of the affiliated group may exclude qualified employee discounts received at the retail department stores operated by the second member. However, employees of the second member of the affiliated group may not exclude any discounts received on property or services offered for sale to customers by the first member of the affiliated group.

(2) *Taxable year of affiliated group.* If all of the members do not have the same taxable year, the affiliated group must designate the 12-month period to be used in determining the "current year's sales" (as referred to in this paragraph (b)). The 12-month period designated, however, must be used consistently.

(3) *Definition of "sales".* For purposes of this paragraph (b), the term "sales" means the gross receipts of the affiliated group, based upon the accounting methods used by its members.

(4) *Retired and disabled employees.* For purposes of this paragraph (b), an employee includes any individual who was, or whose spouse was, formerly employed by the first member of the affiliated group and who separated from

service with the member by reason of retirement or disability if the second member of the group provided employee discounts to such individuals on October 5, 1983.

(5) *Increase of employee discount.* If, after October 5, 1983, the employee discount described in this paragraph (b) is increased, the grandfather rule of this paragraph (b) does not apply to the amount of the increase. For example, if on January 1, 1985, the employee discount is increased from 10 percent to 15 percent, the grandfather rule will not apply to the additional five percent discount.

(c) *Relaxation of line of business requirement.* The line of business requirement may be relaxed under an elective grandfather rule provided in section 4977. For rules relating to the section 4977 election, see § 54.4977–1.

Par. 7. The following § 1.132–5T is added at the appropriate place:

§ 1.132–5T Working condition fringe (Temporary).

(a) *In general*—(1) *Definition.* Gross income does not include the value of a working condition fringe. The term "working condition fringe" means any property or service provided to an employee of an employer to the extent that, if the employee paid for the property or service, the amount paid would be allowable as a deduction under section 162 or 167. If, under section 274 or any other section, certain substantiation requirements must be met in order for a deduction under section 162 or 167 to be allowable, those substantiation requirements apply to the determination of a working condition fringe. An amount that would be deductible by the employee under, for example, section 212 is not a working condition fringe.

(2) *Trade or business of the employee.* If the hypothetical payment for the property or service would be allowable as a deduction with respect to a trade or business of the employee other than the employee's trade or business of being an employee of the employer, it cannot be taken into account for purposes of determining the amount, if any, of the working condition fringe. For example, assume that, unrelated to company X's trade or business and unrelated to company X's employee's trade or business of being an employee of company X, the employee is a member of the board of directors of company Y. Assume further that company X provides the employee with air transportation to a company Y board of director's meeting. The employee may not exclude the value of the air transportation to the meeting as a working condition fringe. The employee may, however, deduct such amount under section 162 if the section 162 requirements are satisfied. The result would be the same whether the air transportation was provided in the form of a flight on a commercial airline or a seat on a company X airplane.

(b) *Vehicle allocation rules*—(1) *In general*—(i) *General rule.* In general, with respect to an employer-provided vehicle, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the availability of the vehicle. For example, assume that the value of the availability of an employer-provided vehicle for a full year is $2,000, without regard to any working condition fringe (i.e., assuming all personal use). Assume further that the employee drives the vehicle 6,000 miles for his employer's business and 2,000 miles for reasons other than the employer's business. In this situation, the value of the working condition fringe is $2,600 multiplied by a fraction, the numerator of which is the business-use mileage (6,000 miles) and the denominator of which is the total mileage (8,000 miles). Thus, the value of the working condition fringe is $1,500. The total amount includable in the employee's gross income on account of the availability of the vehicle is $500. For purposes of this section, the term "vehicle" has the same meaning given the term in § 1.61–2T(e)(*2*). Generally, when determining the amount of an employee's working condition fringe, miles accumulated on the vehicle by all employees of the employer during the period in which the vehicle is available to the employee must be considered. For example, assume that an employee of the employer is provided the availability of an automobile for one year. Assume further that during the year, the automobile is regularly used in the employer's business by other employees. All miles accumulated on the automobile by all employees of the employer during the year must be considered. If, however, substantially all the use of the automobile by other employees in the employer's business is permitted during a certain period, such as the last three months of the year, the miles driven by the other employees during that period would not be considered when determining the employee's working condition fringe exclusion.

(ii) *Use by an individual other than the employee.* For purposes of this section, if the availability of a vehicle to an individual would be taxed to an employee, use of the vehicle by the individual is included in references to use by the employee.

(iii) *Provision of an expensive vehicle for personal use.* Assume an employer provides an employee with an expensive vehicle that an employee may use in part for personal purposes. Even though the decision to provide an expensive rather than an inexpensive vehicle is made by the employer for bona fide noncompensatory business reasons, there is no working condition fringe exclusion with respect to the personal miles driven by the employee. If the employee paid for the availability of the vehicle, he would not be entitled to deduct any part of the payment attributable to personal miles.

(2) *Use of different employer-provided automobiles.* The working condition fringe exclusion must be applied on an automobile by automobile basis. For example, assume that automobile Y is available to employee D for 3 days in January and for 5 days in March, and automobile Z is available to D for a week in July. Assume further that the Daily Lease Value, as defined in § 1.61–2T, of each automobile is $50. For the eight days of availability of Y in January and March, D uses Y 90 percent for business (by mileage). During July, D uses Z 60 percent for business (by mileage). The value of the working condition fringe is determined separately for each automobile. Therefore, the working condition fringe for Y is $360 ($400 x .90) leaving an income inclusion of $40. The working condition fringe for Z is $210 ($350 x .60) leaving an income inclusion of $140. If the value of the availability of an automobile is determined under the Annual Lease Value rule for one period and Daily Lease Value rule for a second period (see § 1.61–2T), the working condition fringe exclusion must be calculated separately for the two periods.

(c) *Applicability of sections 162 and 274(d)*—(1) *In general.* The value of property or services provided to an employee may not be excluded from the employee's gross income as a working condition fringe, by either the employer or the employee, unless the applicable substantiation requirements of either section 274(d) or section 162 (whichever is applicable) and the regulations thereunder are satisfied. With respect to listed property, the substantiation requirements of section 274(d) and the regulations thereunder do not apply to the determination of an employee's working condition fringe exclusion prior to the date that those requirements apply to the first taxable year of the employer beginning after December 31,

1985. For example, if an employer's first taxable year beginning after December 31, 1985, begins on July 1, 1986, with respect to listed property, the substantiation requirements of section 274(d) apply as of that date. The substantiation requirements of section 274(d) apply to an employee even if the requirements of section 274 do not apply to the employee's employer for deduction purposes (such as when the employer is a tax-exempt organization or a governmental unit); in these cases, the requirements of section 274(d) apply to the employee as of January 1, 1986.

(2) *Section 274(d) requirements.* The substantiation requirements of section 274(d) are satisfied by "adequate records or sufficient evidence corroborating the [employee's] own statement". Therefore, such records or evidence provided by the employee, and relied upon by the employer to the extent permitted by the regulations promulgated under section 274(d), will be sufficient to substantiate a working condition fringe exclusion.

(d) *Safe harbor rules*—(1) *In general.* Section 1.274–6T provides that the substantiation requirements of section 274(d) and the regulations thereunder may be satisfied, in certain circumstances, by using one or more of the safe harbor rules prescribed in § 1.274–6T. If the employer uses one of the safe harbor rules prescribed in § 1.274–6T during a period with respect to a vehicle (as defined in § 1.61–2T), that rule must be used by the employer to substantiate a working condition fringe exclusion with respect to that vehicle during the period. An employer that is exempt from Federal income tax may still use one of the safe harbor rules (if the requirements of that section are otherwise met during a period) to substantiate a working condition fringe exclusion with respect to a vehicle during the period. If the employer uses one of the methods prescribed in § 1.274–6T during a period with respect to an employer-provided vehicle, that method may be used by an employee to substantiate a working condition fringe exclusion with respect to the same vehicle during the period, as long as the employee includes in gross income the amount allocated to the employee pursuant to § 1.274–6T and this section. (See § 1.61–2T(c)(2)(i) for other rules concerning when an employee must include in income the amount determined by the employer.) If, however, the employer uses the safe harbor rule prescribed in § 1.274–6T(a)(2) or (3) and the employee without the employer's knowledge uses the vehicle for purposes other than de minimis personal use (in the case of the rule prescribed in § 1.274–6T(a)(2)), or for purposes other than de minimis personal use and commuting (in the case of the rule prescribed in § 1.274–6T(a)(3)), then the employee must include additional income for the unauthorized use of the vehicle.

(2) *Period for use of safe harbor rules.* The rules prescribed in this paragraph (d) assume that the safe harbor rules prescribed in § 1.274–6T are used for a one-year period. Accordingly, references to the value of the availability of a vehicle, amounts excluded as a working condition fringe, etc., are based on a one-year period. If the safe harbor rules prescribed in § 1.274–6T are used for a period of less than a year, the amounts referenced in the previous sentence must be adjusted accordingly. For purposes of this section, the term "personal use" has the same meaning as prescribed in § 1.274–6T(e)(5).

(e) *Vehicles not available to employees for personal use.* For a vehicle described in § 1.274–6T(a)(2) (relating to certain vehicles not used for personal purposes), the working condition fringe exclusion is equal to the value of the availability of the vehicle if the employer uses the method prescribed in § 1.274–6T(a)(2).

(f) *Vehicles not available to employees for personal use other than commuting.* For a vehicle described in § 1.274–6T(a)(3) (relating to certain vehicles not used for personal purposes other than commuting), the working condition fringe exclusion is equal to the value of the availability of the vehicle for purposes other than commuting if the employer uses the method prescribed in § 1.274–6T(a)(3). This rule applies only if the special rule for valuing commuting use, as prescribed in § 1.61–2T, is used and the amount determined under the special rule is either included in the employee's income or reimbursed by the employee.

(g) *Vehicles used in connection with the business of farming that are available to employees for personal use*—(1) *In general.* For a vehicle described in § 1.274–6T(b) (relating to certain vehicles used in connection with the business of farming), the working condition fringe exclusion is calculated by multiplying the value of the availability of the vehicle by 75 percent.

(2) *Vehicles available to more than one individual.* If the vehicle is available to more than one individual, the employer must allocate the gross income attributable to the vehicle (25 percent of the value of the availability of the vehicle) among the employees (and other individuals whose use would not be attributed to an employee) to whom the vehicle was available. This allocation must be done in a reasonable manner to reflect the personal use of the vehicle by the individuals. An amount that would be allocated to a sole proprietor reduces the amounts that may be allocated to employees but are otherwise to be disregarded for purposes of this paragraph (g). For purposes of this paragraph (g), the value of the availability of a vehicle may be calculated as if the vehicle were available to only one employee continuously and without regard to any working condition fringe exclusion.

(3) *Examples.* The following examples illustrate a reasonable allocation of gross income with respect to an employer-provided vehicle between two employees:

Example (1). Assume that two farm employees share the use of a vehicle which for a calendar year is regularly used directly in connection with the business of farming and qualifies for use of the rule in § 1.274–6T (b). Employee A uses the vehicle in the morning directly in connection with the business of farming and employee B uses the vehicle in the afternoon directly in connection with the business of farming. Assume further that employee B takes the vehicle home in the evenings and on weekends. The employer should allocate all the income attributable to the availability of the vehicle to employee B.

Example (2). Assume that for a calendar year, farm employees C and D share the use of a vehicle that is regularly used directly in connection with the business of farming and qualifies for use of the rule in § 1.274–6T (b). Assume further that the employees alternate taking the vehicle home in the evening and alternate the availability of the vehicle for personal purposes on weekends. The employer should allocate the income attributable to the availability of the vehicle for personal use (25 percent of the value of the availability of the vehicle) equally between the two employees.

Example (3). Assume the same facts as in example (2) except that C is the sole proprietor of the farm. Based on these facts, C should allocate the same amount of income to D as was allocated to D in example (2). No other income attributable to the availability of the vehicle for personal use should be allocated.

(h) *Qualified non-personal use vehicles.* Effective January 1, 1985, 100 percent of the value of the use of a qualified nonpersonal use vehicle (as described in § 1.274–5T (k)) is excluded from gross income as a working condition fringe, provided that, in the case of a vehicle described in paragraph (k) (3) through (7) of that section, the use of the vehicles conforms to the requirements of that paragraph.

(i) [Reserved].

(j) *Application of section 280F.* In determining the amount, if any, of an employee's working condition fringe, section 280F and the regulations thereunder do not apply. For example, assume that an employee has available for a calendar year an employer-provided automobile with a fair market value of $28,000. Assume further that the special rule provided in § 1.61–2T is used and that the Annual Lease Value, as defined in § 1.61–2T, is $7,750, and that all of the employee's use of the automobile is in the employer's business. The employee would be entitled to exclude the entire Annual Lease Value as a working condition fringe, despite the fact that if the employee paid for the availability of the automobile, an income inclusion would be required under § 1.280F–5T(d)(1). This paragraph (j) does not affect the applicability of section 280F to the employer with respect to such employer-provided automobile, nor does it affect the applicability of section 274. For rules concerning substantiation of an employee's working condition fringe, see paragraph (c) of this section.

(k) *Aircraft allocation rule.* In general, with respect to a flight on an employer-provided aircraft, the amount excludable as a working condition fringe is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the flight on the aircraft. For example, if employee P flies on P's employer's airplane primarily for business reasons of P's employer, the value of P's flight is excludable as a working condition fringe. However, if P's spouse and children accompany P on such airplane trip primarily for personal reasons, the value of the flights by P's spouse and children are includable in P's gross income. See § 1.61–2T(g) for special rules for valuing personal flights.

(l) [Reserved].

(m) *Employer-provided transportation for security concerns*—(1) *In general.* The amount of a working condition fringe exclusion with respect to employer-provided transportation is the amount that would be allowable as a deduction under section 162 or 167 if the employee paid for the transportation. Generally, if an employee pays for transportation taken for primarily personal purposes, the employee may not deduct any part of the amount paid. Thus, the employee may not generally exclude the value of employer-provided transportation as a working condition fringe if such transportation is primarily personal. If, however, for bona fide business-oriented security concerns, the employee purchases transportation that provides him or her with additional security, the employee may generally deduct the excess of the amount paid for the transportation over the lesser amount the employee would have paid for the same mode of transportation absent the bona fide business-oriented security concerns. With respect to a vehicle, the phrase "the same mode of transportation" means use of the same vehicle without the additional security aspects, such as bulletproof glass. With respect to air transportation, the phrase "the same mode of transportation" means comparable air transportation. These same rules apply to the determination of an employee's working condition fringe exclusion. For example, if an employer provides an employee with an automobile for commuting and, for bona fide business-oriented security concerns, the automobile is specially designed for security, then the employee may exclude the value of the special security design as a working condition fringe if the employee's automobile would not have had such security design but for the bona fide business-oriented security concerns. The employee may not exclude the value of the commuting from income as a working condition fringe because commuting is a nondeductible personal expense. Similarly, if an employee travels on a personal trip in an employer-provided aircraft for bona fide business-oriented security concerns, the employee may exclude the excess, if any, of the value of the flight over the amount the employee would have paid for comparable air transportation, but for the bona fide business-oriented security concerns. Because personal travel is a nondeductible expense, the employee may not exclude the total value of the trip as a working condition fringe.

(2) *Demonstration of bona fide business-oriented security concerns*—(i) *In general.* For purposes of this paragraph (m), the existence of a bona fide business-oriented security concern for the furnishing of a specific form of transportation to an employee is determined on the basis of all the facts and circumstances within the following guidelines:

(A) *Services performed outside the United States.* With respect to an employee performing services for an employer in a geographic area other than the United States, a factor indicating a bona fide business-oriented security concern is a recent history of violent terrorist activity in such geographic area (such as bombings or abductions for ransom), unless such activity is focused on a group of individuals which does not include the employee or a similarly situated employee or on a section of the geographic area which does not incude the employee.

(B) *Services performed in the United States.* With respect to an employee performing services for an employer in the United States, a factor indicating a bona fide business-oriented security concern is threats on the life of the employee or on the life of a similarly situated employee because of the employee's status as an employee of the employer.

(ii) *Establishment of overall security program.* Notwithstanding anything in paragraph (m)(2)(i) of this section to the contrary, *no* bona fide business-oriented security concern will be deemed to exist unless the employee's employer establishes an overall security program with respect to the employee involved.

(iii) *Overall security program*—(A) *Definition.* An overall security program is one in which security is provided to protect the employee on a 24-hour basis. The employee must be protected while at the employee's residence, while commuting to and from the employee's workplace, and while at the employee's workplace. In addition, the employee must be protected while traveling, whether for business or personal purposes. An overall security program would include the provision of a bodyguard/driver who is trained in evasive driving techniques; and automobile specially equipped for security; guards, metal detectors, alarms, or similar methods of controling access to the employee's workplace and residence; and, in appropriate cases, flights on the employer's aircraft for business and personal reasons.

(B) *Application.* There is no overall security program when, for example, security is provided at the employee's workplace but not at the employee's residence. In addition, the fact that an employer requires an employee to travel on the employer's aircraft, or in an employer-provided vehicle that contains special security features, does not alone constitute an overall security program. The preceding sentence applies regardless of the existence of a corporate or other resolution requiring the employee to travel in the employer's airplane or vehicle for personal as well as business reasons. Similarly, the existence of an independent security study particular to the employer and its employees, or to the employee involved, does not alone constitute an overall security program.

(iv) *Effect of an independent security study.* An overall security program with respect to an employee is deemed to exist even though security is not

provided to an employee on a 24-hour basis if the conditions of this paragraph (m)(2)(iv) are satisfied:

(A) A security study is performed with respect to the employer and the employee (or a similarly situated employee) by an independent security consultant;

(B) The security study is based on an objective assessment of all the facts and circumstances;

(C) The recommendation of the security study is that an overall security program (as defined in paragraph (m)(2)(iii) of this section) is not necessary and such recommendation is reasonable under the circumstances; and

(D) The employer applies the specific security recommendations contained in the security study to the employee on a consistent basis.

The value of the security provided pursuant to a security study that meets the requirements of this paragraph (m)(2)(iv) may be excluded from income, if the security study conclusions are reasonable and, but for the bona fide business-oriented security concerns, the employee would not have had such security. No exclusion from income applies to security provided by the employer that is not recommended in the security study. Security study conclusions may be reasonable even if, for example, it is recommended that security be limited to certain geographic areas, as in the case where air travel security is provided only in certain foreign countries.

(v) *Application of security rules to spouses and dependents.* The availability of a working condition fringe exclusion based on the existence of a bona fide business-oriented security concern with respect to the spouse and dependents of an employee is determined separately for such spouse and dependents under the rules established in this paragraph (m).

(vi) *Working condition safe harbor.* Under the special rule of this paragraph (m)(2)(vi), if, for a bona fide business-oriented security concern, the employer requires that the employee travel on an employer-provided aircraft for a personal trip, the employer and the employee may exclude, as a working condition fringe, the excess value of the trip over comparable first-class airfare without having to show that but for the bona fide business-oriented security concerns, the employee would have flown first-class on a commercial aircraft. If the special valuation rule provided in § 1.61–2T is used, the excess over the amount determined by multiplying an aircraft multiple of 200-percent by the base aircraft valuation formula may be excluded as a working condition fringe.

(3) *Examples.* The provisions of this paragraph (m) may be illustrated by the following examples:

Example (1). Assume that in response to several death threats on the life of A, the president of a multinational company (company X), company X establishes an overall security program for A, including an alarm system at A's home and guards at A's workplace, the use of a vehicle that is specially equipped with alarms, bulletproof glass, and armor plating and a bodyguard/driver who is trained in evasive driving techniques. Assume further that A is driven for both personal and business reasons in the vehicle. Also, assume that but for the bona fide business-oriented security concerns, no part of the overall suecurity program would been provided to A. With respect to the transportation provided for security reasons, A may exclude as a working condition fringe the value of the special security features of the vehicle and the value attributable to the bodyguard/driver. Thus, if the value of the specially equipped vehicle is $40,000, and the value of the vehicle without the security features is $25,000, A may determine A's income attributable to the vehicle as if the vehicle were worth $25,000. A must include in income the value of the availability of the vehicle for personal use.

Example (2). Assume that B is the chief executive officer of a multinational corporation (company Y). Assume further that there have been kidnapping attempts and other terrorist activities in the foreign countries in which B performs services and that at least some of such activities have been directed against B or similarly situated employees. In response to these activities, company Y provides B with an overall security program, including an alarm system at B's home and bodyguards at B's workplace, a bodyguard/driver who is trained in evasive driving techniques, and a vehicle specially designed for security during B's overseas travels. In addition, assume that company Y requires B to travel in company Y's airplane for business and personal trips taken to, from, and within these foreign countries. Also, assume that but for bona fide business-oriented security concerns, no part of the overall sucurity program would have been provided to B. B may exclude as a working condition fringe the value of the special security features of the automobile and the value attributable to the bodyguards and the bodyguard/driver. B may also exclude as a working condition fringe the excess, if any, of the value of personal flights in the company Y airplane over first-class airfare (as determined under the special valuation rule provided in § 1.61–2T if the safe harbor described in paragraph (m)(2)(vi) of this section is used). B must include in income the value of the availability of the vehicle for personal use and the lesser of the value of first-class airfare or the value of the flight determined under § 1.61–2T for each personal flight taken by B in company Y's airplane.

Example (3). Assume the same facts as in example (2) except that company Y also requires B to travel in company Y's airplane within the United States, and provides B with a chauffeur-driven limousine for business and personal travel in the United States. Assume further that company Y also requires B's spouse and dependents to travel in company Y's airplane for personal flights in the United States. If no bona fide business-oriented security concern exists with respect to travel in the United States, B may not exclude any portion of the value of the availability of the driver or limousine for personal use in the United States. Thus, B must include in income the value of the availability of the vehicle and driver for personal use. In addition, B may not exclude any portion of the value attributable to personal flights by B or B's spouse and dependents on company Y's airplane. Thus, B must include in income the value attributable to the personal use of company Y's airplane. See § 1.61–2T for rules relating to the valuation of personal flights on employer-provided airplanes.

Example (4). Assume that company Z retains an independent security consultant to perform a security study with respect to its chief executive officer. Assume further that, based on an objective assessment of the facts and circumstances, the security consultant reasonably recommends that the employee be provided security at his workplace and for ground transportation, but not for air transportation. If company Z follows the recommendations on a consistent basis, an overall security program will be deemed to exist with respect to the workplace and ground transportation security only.

Example (5). Assume the same facts as in example (4) except that company Z only provides the employee security while commuting to and from work, but not for any other ground transportation. Since the recommendations of the independent security study are not applied on a consistent basis, an overall security program will not be deemed to exist.

(n) *Product testing*—(1) *In general.* The fair market value of the use of consumer goods, which are manufactured for sale to nonemployees, for product testing and evaluation by an employee outside the employer's workplace is excludable as a working condition fringe if—

(i) Consumer testing and evaluation of the product is an ordinary and necessary business expense of the employer,

(ii) Business reasons necessitate that the testing and evaluation of the product be performed off the employer's business premises by employees (i.e., the testing and evaluation cannot be carried out adequately in the employer's office or in laboratory testing facilities),

(iii) The product is furnished to the employee for purposes of testing and evaluation,

(iv) The product is made available to the employee for no longer than

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necessary to test and evaluate its performance and must be returned to the employer at completion of the testing and evaluation period,

(v) The employer imposes limitations of the employee's use of the product which significantly reduce the value of any personal benefit to the employee, and

(vi) The employee must submit detailed reports to the employer on the testing and evaluation.

The length of the testing and evaluation period must be reasonable in relation to the product being tested.

(2) *Employer-imposed limitations.* The requirement of paragraph (n)(1)(v) of this section is satisfied if—

(i) The employer places limitations on the employee's ability to select among different models or varieties of the consumer product that is furnished for testing and evaluation purposes,

(ii) The employer's policy provides for the employee, in appropriate cases, to purchase or lease at his or her own expense the same type of product as that being tested (so that personal use by the employee's family will be limited), and

(iii) The employer generally prohibits use of the product by members of the employee's family.

(3) *Discriminating classifications.* If an employer furnishes products under a testing and evaluation program only to officers, owners, or highly compensated employees, this fact may be considered in a determination of whether the products are furnished for testing and evaluation purposes or for compensation purposes, unless the employer can show a business reason for the classification of employees to whom the products are furnished (e.g., that automobiles are furnished for testing and evaluation by an automobile manufacturer to its design engineers and supervisory mechanics).

(4) *Factors that negate the existence of a product testing program.* If an employer fails to tabulate and examine the results of the detailed reports within a reasonable period of time after expiration of the testing period, the program will not be considered a product testing program. Existence of one or more of the following factors may also establish that the program is not a bona fide product testing program:

(i) The program is in essence a leasing program under which employees lease the consumer goods from the employer for a fee;

(ii) The nature of the product and other considerations are insufficient to justify the testing program; or

(iii) The expense of the program outweighs the benefits to be gained from testing and evaluation.

(5) *Failure to meet the requirements of this paragraph (n).* The fair market value of the use of property for product testing and evaluation by an employee outside the employee's workplace, under a product testing program that does not meet all of the requirements of this paragraph (n), is not excludable as a working condition fringe.

(6) *Example.* Assume that an employer that manufactures automobiles establishes a product testing program under which 50 of its 5,000 employees test and evaluate the automobiles for 30 days. Assume further that the 50 employees represent a fair cross section of all of the employees of the employer, such employees submit detailed reports to the employer on the testing and evaluation, the employer tabulates and examines the test results within a reasonable time, and the use of the automobiles is restricted to the employees. If the rules of paragraph (n)(2) of this section are also met, the employees may exclude the value of the use of the automobile during the testing and evaluation period.

(o) *Qualified automobile demonstration use*—(1) *In general.* The value of qualified automobile demonstration use is excludable from gross income as a working condition fringe. The term "qualified automobile demonstration use" means any use of a demonstration automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) Such use is provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) There are substantial restrictions on the personal use of the automobile by the salesman.

(2) *Full-time automobile salesman*—(i) *Definition.* The term "full-time automobile salesman" means any individual who—

(A) Is employed by an automobile dealer,

(B) Customarily spends substantially all of a normal business day on the sales floor selling automobiles to customers of the automobile dealership,

(C) Customarily works a number of hours considered full-time in the industry (but at a rate not less than 1,000 hours per year), and

(D) Derives at least 85 percent of his or her gross income from the automobile dealership directly as a result of such automobile sales activities.

An individual, such as the general manager of an automobile dealership, who receives a sales commission on the sale of an automobile is not a full-time automobile salesman unless the requirements of this paragraph (o)(2)(i) are met. The exclusion provided in this paragraph (o) is available to an individual who meets the definition of this paragraph (o)(2)(i) regardless of whether the individual performs services in addition to those described in this paragraph (o)(2)(i). For example, an individual who is an owner of the automobile dealership but who otherwise meets the requirements of this paragraph (o)(2)(i) may exclude from gross income the value of qualified automobile demonstration use.

(ii) *Use by an individual other than a full-time automobile salesman.* Personal use of a demonstration automobile by an individual other than a full-time automobile salesman is not treated as a working condition fringe. Therefore, any personal use, including commuting use, of a demonstration automobile by a part-time salesman, automobile mechanic, manager, or other individual is not "qualified automobile demonstration use" and thus not excludable from gross income.

(3) *Demonstration Automobile.* The exclusion provided in this paragraph (o) applies only to qualified use of a demonstration automobile. A demonstration automobile is an automobile that is—

(i) Currently in the inventory of the automobile dealership, and

(ii) Available for test drives by customers during the normal business hours of the employee.

(4) *Substantial restrictions on personal use.* Substantial restrictions on the personal use of demonstration automobiles exist when all of the following conditions are satisfied:

(i) Use by individuals other than the full-time automobile salesmen (e.g., the salesman's family) is prohibited,

(ii) Use for personal vacation trips is prohibited,

(iii) The storage of personal possessions in the automobile is prohibited, and

(iv) The total use by mileage of the automobile by the salesman outside the salesman's normal working hours is limited.

(5) *Sales area*—(i) *In general.* Qualified automobile demonstration use must be use in the sales area in which the automobile dealer's sales office is located. The sales area is the geographic area surrounding the automobile dealer's sales office from which the office regularly derives customers.

(ii) *Sales area safe harbor.* With respect to a particular full-time salesman, the automobile dealer's sales area may be treated as the larger of the area within a 75 mile radius of the dealer's sales office, or the on-way

commuting distance (in miles) of the particular salesman.

(p) *Parking*—(1) *In general.* The value of parking provided to an employee on or near the business premises of the employer is excludable from gross income as a working condition fringe. The working condition fringe exclusion applies whether the employer owns or rents the parking facility or parking space.

(2) *Reimbursement of parking expenses.* Any reimbursement to the employee of the ordinary and necessary expenses of renting a parking space on or near the business premises of the employer is excludable as a working condition fringe. The preceding sentence does not apply, however, to cash payments that are not actually used for renting a parking space. Thus, that part of a general transportation allowance that is not used for parking is not excludable as a working condition fringe under this paragraph (p).

(3) *Parking on residential property.* With respect to an employee, this paragraph (p) does not apply to any parking facility or space located on property owned or leased for residential purposes by the employee.

(q) *Nonapplicability of nondiscrimination rules.* Except to the extent provided in paragraph (n)(3) of this section, the nondiscrimination rules of section 132(h)(1) and § 1.132–8T do not apply in determining the amount, if any, of a working condition fringe.

Par. 8. The following § 1.132–6T is added at the appropriate place:

§ 1.132–6T De minimis fringe (Temporary).

(a) *In general.* Gross income does not include the value of a de minimis fringe provided to an employee. The term "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(b) *Frequency.* Generally, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringe to each individual employee. For example, if an employer provides a free meal to one employee on a daily basis, but not to any other employee, the value of the meals is not de minimis with respect to that one employee even though with respect to the employer's entire workforce the meals are provided "infrequently." However, where it would be administratively difficult to determine frequency with respect to individual employees, the frequency with which similar fringes are provided by the employer to the employer's employees is determined by reference to the frequency with which the employer provides the fringes to the employees and not the frequency with which individual employees receive them. In these cases, if an employer occasionally provides a fringe benefit of de minimis value to the employer's employees, the de minimis fringe exclusion may apply even though a particular employee receives the benefit frequently. For example, if an employer exercises sufficient control and imposes significant restrictions on the personal use of a company copying machine so that at least 85 percent of the use of the machine is for business purposes, any personal use the copying machine by particular employees is considered to be a de minimis fringe.

(c) *Administrability.* Unless excluded by a statutory provision other than section 132(a)(4), the value of any fringe benefit that would not be unreasonable or administratively impracticable to account for must be included in the employee's gross income. Thus, except as otherwise provided in this section, the provision of any cash fringe benefit (or any fringe benefit provided to an employee through the use of a charge or credit card) is not excludable as a de minimis fringe. For example, the provision of cash to an employee for personal entertainment is not excludable as a de minimis fringe.

(d) *Special rules*—(1) *Transit passes.* A transit pass provided to an employee at a discount not exceeding $15 per month may be excluded as a de minimis fringe. The exclusion provided in this paragraph (d) also applies to the provision of $15 in tokens or fare cards that enable an individual to travel on the transit system. The exclusion provided in this paragraph (d) does not apply to any provision of cash or other benefit to defray transit expenses incurred for personal travel.

(2) *Occasional meal money or local transportation fare.* Occasional meal money or local transportation fare provided to an employee because overtime work necessitates an extension of the employee's normal workday is excluded as a de minimis fringe.

(3) *Use of special rules to establish a general rule.* The special rules provided in this paragraph (d) may not be used to establish any general rule. For example, the fact that $180 ($15 per month for 12 months) worth of transit passes can be excluded in a year does not mean that any fringe benefit with a value equal to or less than $180 may be excluded as a de minimis fringe.

(4) *Benefits exceeding value and frequency limitations.* If the benefit provided to an employee is not de minimis because either the value or frequency exceeds a limit provided in this paragraph (d), no amount of the benefit is considered to be de minimis. For example, if an employer provides a $20 monthly transit pass, the entire $20 must be included in income, not just the excess value over $15.

(e) *Nonapplicability of nondiscrimination rules.* Except to the extent provided in § 1.132–7T, the nondiscrimination rules of section 132(h)(1) and § 1.132–8T do not apply. Thus, for example, a fringe benefit may be a de minimis fringe even if the benefit is provided exclusively to officers of the employer.

(f) *Examples*—(1) *Benefits excludable from income.* Examples of de minimis fringe benefits are occasional typing of personal letters by a company secretary; occasional personal use of an employer's copying machine, provided that the employer exercises sufficient control and imposes significant restrictions on the personal use of the machine so that at least 85 percent of the use of the machine is for business purposes; occasional cocktail parties or picnics for employees and their guests; traditional holiday gifts of property (not cash) with a low fair market value; occasional theatre or sporting event tickets; and coffee and doughnuts.

(2) *Benefits not excludable as de minimis fringes.* Examples of fringe benefits that are not excludable from income as de minimis fringes are: season tickets to sporting or theatrical events; the commuting use of an employer-provided automobile or other vehicle more than once a month; membership in a private country club or athletic facility, regardless of the frequency with which the employee uses the facility; and use of employer-owned or leased facilities (such as an apartment, hunting lodge, boat, etc.) for a weekend. Some amount of the value of these fringe benefits may be excluded under other statutory provisions, such as the exclusion for working condition fringes. See § 1.132–5T.

Par. 9. The following § 1.132–7T is added at the appropriate place:

§ 1.132–7T Treatment of employer-operated eating facilities (Temporary).

(a) *In general*—(1) *General rule.* The value of meals provided to employees at an employer-operated eating facility for employees is excludable from gross income as a de minimis fringe only if—

(i) On an annual basis, the revenue from the facility equals or exceeds the direct operating costs of the facility, and

(ii) With respect to any officer, owner or highly compensated employee, access to the facility is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, and highly compensated employees. See § 1.132–8T.

(2) *Employer-operated eating facility for employees.* An employer-operated eating facility for employees is a facility that meets all of the following conditions—

(i) The facility is owned or leased by the employer,

(ii) The facility is operated by the employer,

(iii) The facility is located on or near the business premises of the employer,

(iv) Substantially all of the use of the facility is by employees of the employer operating the facility, and

(v) The meals furnished at the facility are provided during, or immediately before or after, the employee's workday.

For purposes of this section, the term "meals" means food, beverages, and related services provided at the facility. If an employer can determine the number of employees who receive meals that are excludable from income under section 119, the employer may, in determining whether the requirement of paragraph (a)(1)(i) of this section is satisfied, disregard all costs and revenues attributable to such meals provided to such employees. For purposes of this section, each dining room or cafeteria in which meals are served is treated as a separate eating facility, regardless of whether each such dining room or cafeteria has its own kitchen or other food-preparation area.

(3) *Operation by the employer.* If an employer contracts with another to operate an eating facility for its employees, the facility is considered to be operated by the employer for purposes of this section. If an eating facility is operated by more than one employer, it is considered to be operated by each employer.

(b) *Direct operating costs.* The direct operating costs test must be applied separately for each dining room or cafeteria. For purpose of this section, the direct operating costs of an eating facilities are: (1) The cost of food and beverages and (2) the cost of labor for personnel whose services relating to the facility are performed primarily on the premises of the eating facility. Direct operating costs do not include the cost of labor for personnel whose services relating to the facility are not performed primarily on the premises of the eating facility. Thus, for example, the labor cost for cooks, waiters, and waitresses is included in direct operating costs, but the labor cost for a manager of an eating facility whose services relating to the facility are not primarily performed on the premises of the eating facility is not included in direct operating costs. If an employee perfoms services both on and off the premises of the eating facility, only the applicable percentage of the total labor cost of the employee that bears the same proportion as time spent on the premises bears to total time is included in direct operating costs. For example, assume that 60 percent of the services of the cooks in the above example are not related to the eating facility. Only 40 percent of the total labor cost of the cooks is includible in direct operating costs. For purposes of this section, labor costs include all compensation required to be reported on a Form W–2 for income tax purposes and related employment taxes paid by the employer.

(c) *Valuation of non-excluded meals provided at an employer-operated eating facility for employees.* If the exclusion for meals provided at an employer-operated eating facility for employees is not available, the recipient of meals provided at such facility must include in income the amount by which the fair market value of the meals provided exceeds the sume of: (1) The amount, if any, paid for the meals, and (2) the amount, if any, specifically excluded by another section of the Code. For special valuation rules relating to such meals see § 1.61–2T (j).

Par. 10. The following § 1.132–8T is added at the appropriate place:

§ 1.132–8T Nondiscrimination rules (Temporary).

(a) *Application of nondiscrimination rules*—(1) *General rule.* To qualify under section 132 for the exclusions for non-additional-cost services, qualified employee discounts, or meals provided at employer-operated eating facilities for employees, the fringe benefit must be available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer that does not discriminate in favor of officers, owners, or highly compensated employees (the "prohibited group employees").

(2) *Consequences of discrimination.* If the availability of or the provision of the fringe benefit does not satisfy the nondiscrimination rules provided in this section, the exclusion applies only to those employees (if any) who receive the benefit and who are not prohibited group employees. For example, if an employer offers a 20 percent discount (which otherwise satisfies the requirements for a qualified employee discount) to all nonprohibited group employees and a 35 percent discount to all prohibited group employees, the entire value of the 35 percent discount (not just the excess over 20 percent) is includible in the gross income and wages of the prohibited group employees who make purchases at a discount.

(3) *Scope of the nondiscrimination rules provided in this section.* The nondiscrimination rules provided in this section apply only to fringe benefits provided pursuant to section 132 (a)(1), (a)(2), and (e)(2). These rules have no application to any other employee benefit that may be subject to nondiscrimination requirements under any other section of the Code.

(b) *Coverage requirement*—(1) *Section 132 (a)(1) and (2).* For purposes of the exclusions for no-additional-cost services and qualified employee discounts, the nondiscrimination rules of this section are applied by aggregating the employees of all related employers (as defined in § 1.132–1T (c)), but without aggregating employees in different lines of business (as defined in § 1.132–4T). Employees in different lines of business will be aggregated, however, if the line of business limitation has been relaxed pursuant to either section 1.132–4T (b) or (c). Except as provided in paragraph (e) of this section, the nondiscrimination rules of this section are generally applied separately to each fringe benefit program of an employer.

(2) *Section 132(e)(2).* For purposes of the exclusion for meals provided at employer-operated eating facilities for employees, the nondiscrimination rules of this section are applied by aggregating the employees of all related employers, without regard to different lines of business, who regularly work at or near the premises on which the eating facility is located. The nondiscrimination rules of this section are applied separately to each eating facility. Each dining room or cafeteria in which meals are served is treated as a separate eating facility, regardless of whether each such dining room or cafeteria has its own kitchen or other food-preparation area.

(3) *Classes of employees who may be excluded.* Except as otherwise provided in this section, for purposes of applying the nondiscrimination rules of this section to a particular fringe benefit program, there may be excluded from

consideration the following classes of employees provided that, with respect to each class (other than the class described in paragraph (b)(3)(iii) of this section), all employees in the class are excluded from participating in the particular fringe benefit program—

(i) All part-time or seasonal employees who are (or who are reasonably expected to be) credited with less than 1,000 hours (or such lesser number required for the program) of service during a calendar year;

(ii) All employees who are included in a unit of employees covered by an agreement with the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that the particular fringe benefit program was the subject of good faith bargaining between such employee representatives and such employer or employers (and if, after March 31, 1984, the additional condition of section 7701(a)(46) is satisfied);

(iii) All employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from services within the United States (within the meaning of section 861(a)(3));

(iv) All employees who have not completed at least one year (or such lesser period required for the program) of service with the employer;

(v) All employees who have separated from the service of the employer in a year prior to the current year (regardless of the reason for the separation);

(vi) All employees who have separated from the service of the employer in a year prior to the current year except for retired and/or disabled employees (either with or without a time limit based on a set number of years since separation from the service of the employer); and

(vii) All employees of a leased section of a department store.

(c) *Classification requirement*—(1) *General rule.* The determination of whether a particular classification established by an employer discriminates in favor of the prohibited group will depend on the facts and circumstances involved, based on principles similar to those applied in the qualified plan area (see section 410(b)(1)(B) and the regulations thereunder). In general, except as otherwise provided in this section, a classification that would be determined to be nondiscriminatory pursuant to the application of the nondiscrimination standards that are applied in the qualified plan area shall be deemed to be nondiscriminatory for purposes of section 132.

(2) *Classifications that are per se discriminatory.* A classification that, on its face, makes fringe benefits available only to prohibited group employees is per se discriminatory, and no exclusion from gross income is available to any prohibited group employee under section 132. In addition, a classification that is based on either an amount or rate of compensation is per se discriminatory if it favors those with the higher amount or rate of compensation. On the other hand, a classification that is based on factors such as seniority, full-time vs. part-time employment, or job description is not per se discriminatory but may be discriminatory as applied to the workforce of a particular employer.

(3) *Former employees.* When determining whether a classification is discriminatory, former employees shall not be considered together with other employees of the employer. Therefore, a classification is not discriminatory if the employer does not make the fringe benefits available to any former employee. Whether a classification of former employees discriminates in favor of prohibited group employees will depend on the facts and circumstances. The rules of this section shall apply separately to the former employee classification.

(4) *Employer-operated eating facilities for employees*—(i) *General rule.* If access to an employer-operated eating facility for employees is available to a classification of employees that discriminates in favor of highly compensated employees, the classification will not be treated as discriminating in favor of the prohibited group employees unless the facility is used, more than a de minimis amount, by any executive group employee.

(ii) *Executive group employees.* For purposes of this paragraph (c)(4), the term "executive group employees" has the same meaning as the term "prohibited group employees" (as defined in paragraph (g) of this section), except that for purposes of identifying highly compensated employees—

(A) The exception provided in paragraph (g)(1)(i)(A) of this section does not apply, and

(B) The phrase "highest-paid one percent of all employees of an employer" is substituted for the phrase "highest-paid ten percent of all employees of an employer" in paragraph (g)(1)(ii)(A) of this section.

(d) *Substantially-the-same-terms requirement*—(1) *General rule.* Fringe benefits available to a particular classification of employees must be available to each employee in the classification on substantially the same terms. The determination of whether this requirement is met shall depend on the facts and circumstances involved. For example, if a department store provides a 20 percent qualified employee discount to its employees on all merchandise, the substantially-the-same-terms requirement will be satisfied. Similarly, if the discount provided to all employees is 30 percent on certain merchandise (such as apparel), and 20 percent on all other merchandise, the substantially-the-same-terms requirement will be satisfied. However, if the discount provided is 20 percent on all merchandise for hourly employees and 30 percent on all merchandise for salaried employees, the substantially-the-same-terms requirement will not be satisfied. In addition, if the percentage discount varies depending on either an employee's amount or rate of compensation, or volume of purchases, the substantially-the-same-terms requirement will not be satisfied. In order to determine whether such a discount program satisfies the nondiscrimination requirements of section 132, each group of employees that does receive fringe benefits on substantially the same terms must be treated as a separate classification. However, subject to the rules of paragraph (e) (2) of this section, an employer may divide a fringe benefit program into two programs for purposes of aggregating groups of employees. See Example (1) of paragraph (d) (3) of this section.

(2) *Terms relating to priority.* Certain fringe benefits made available to employees are available only in limited quantities that may be insufficient to meet employee demand. This may occur either because of employer policy (such as where an employer determines that only a certain number of units of a specific product will be made available to employees each year) or because of the nature of the fringe benefit (such as where an employer provides a no-additional-cost transportation service that is limited to the number of seats available just before departure). Under these circumstances, an employer may find it necessary to establish some method of allocating the limited fringe benefits among the employees eligible to receive the fringe benefits. An allocation among employees on a "first-come, first-served" basis will not violate the substantially-the-same-terms requirement provided that such an allocation is not discriminatory in practice. In addition, an allocation among employees on a lottery basis will

not violate the substantially-the-same-terms requirement provided that such an allocation is nondiscriminatory in practice. For example, assume that an employer has a limited number of a particular benefit to offer to its employees. Assume further that the employees interested in receiving the benefit submit their names to the employer who then selects a number of names, at random, equal to the number of fringe benefits available. This lottery system would not violate the substantially-the-same-terms requirement. An allocation among employees on other than a "first-come, first-served", lottery, or similar basis will violate the substantially-the-same-terms requirement. Therefore, an allocation based on seniority, full-time vs. part-time employment, or job description will violate the substantially-the-same-terms requirement. In order to determine whether such a fringe benefit program satisfies the nondiscrimination requirements of section 132, each group of employees that does receive fringe benefits on substantially the same terms must be treated as a separate classification. For purposes of this rule, the last two sentences of paragraph (d)(1) of this section apply.

(3) *Examples.* The followings examples illustrate the provisions of this paragraph (d):

Example 1. Assume that with respect to a benefit available in limited quantities an employer provides priority to employees based on seniority. Assume further that all non-prohibited group employees have ten years of seniority and all prohibited group employees have nine years seniority. If each of these groups were tested separately, the benefits offered to prohibited group employees would be discriminatory under this section. In this case, the employer could divide the fringe benefit program provided to non-prohibited group employees into two parts: one relating to nine years of seniority and one relating to an additional year of seniority. As restructured in this manner, all employees receive the benefit relating to nine years seniority and only non-prohibited group employees receive the benefit relating to an additional year of seniority. Both groups (all employees and all non-prohibited group employees) are nondiscriminatory groups.

Example 2. Assume that prices charged to prohibited group employees at an employer-operated eating facility for employees are lower than prices charged to non-prohibited group employees. The substantially-the-same requirement is not satisfied.

(4) *Disproportionate use of eating facility.* If access to an employer-operated eating facility for employees is technically available on substantially-the-same-terms (to (i) all employees who regularly work at or near the premises on which the eating facility is located (the employee group), or (ii) a nondiscriminatory classification of the employee group, but in practice a highly disproportionate number of the prohibited group employees in the employee group, compared to the non-prohibited group employees in the employee group, use the facility, the substantially-the-same-terms requirement will not be satisfied unless no member of the executive group eats there more than a de minimis amount.

(e) *Aggregation of separate fringe benefit programs*—(1) *General rule.* If an employer maintains more than one fringe benefit program, i.e., two or more classifications of employees providing either identical or different fringe benefits, the nondiscrimination requirements of section 132 will generally be applied separately to each such program. Thus, a determination that one fringe benefit program discriminates in favor of prohibited group employees generally will not cause other fringe benefit programs covering the same prohibited group employees to be treated as discriminatory.

(2) *Exception*—(i) *Related fringe benefit programs.* If one of a group of fringe benefit programs discriminates in favor of prohibited group employees, no related fringe benefit provided to such prohibited group employees under any other fringe benefit program may be excluded from the gross income of such prohibited group employees. For example, assume a department store provides a 20 percent merchandise discount to all employees under one fringe benefit program. Assume further that under a second fringe benefit program, the department store provides an additional 15 percent merchandise discount to a group of employees defined under a classification which discriminates in favor of the prohibited group. Because the second fringe benefit program is discriminatory, the 15 percent merchandise discount provided to the prohibited group employees is not a qualified employee discount. In addition, because the 20 percent merchandise discount provided under the first fringe benefit program is related to the fringe benefit provided under the second fringe benefit program, the 20 percent merchandise discount provided the prohibited group employees is not a qualified employee discount. Thus, the entire 35 percent merchandise discount provided to the prohibited group employees is includible in such employees' gross incomes.

(ii) *Employer-operated eating facilities for employees.* For purposes of paragraph (e)(2)(i) of this section, meals at different employer-operated eating facilities for employees are not related fringe benefits, so that a prohibited group employee may exclude the value of a meal at a nondiscriminatory facility even though any meals provided to him or her at the discriminatory facility cannot be excluded.

(f) *Cash bonuses or rebates.* A cash bonus or rebate provided to an employee by an employer that is determined pursuant to the value of employer-provided property or services purchased by the employee, is treated as an equivalent employee discount. For example, assume a department store provides a 20 percent merchandise discount to all employees under a fringe benefit program. In addition, assume that the department store provides cash bonuses to a group of employees defined under a classification which discriminates in favor of the prohibited group. Assume further that such cash bonuses equal 15 percent of the value of merchandise purchased by each employee. This arrangement is substantively identical to the example described in paragraph (e)(2) of this section. Thus, both the 20 percent merchandise discount and the 15 percent cash bonus provided to the prohibited group employees are includible in such employees' gross incomes.

(g) *Prohibited group employees*—(1) *Highly compensated*—(i) *General rule.* Except as otherwise provided in this paragraph (g)(1)(i), any employee of an employer who has (or is reasonably expected to have) compensation during a calendar year equal to or greater than the employer's base compensation amount is highly compensated. There are two exceptions to this rule:

(A) Any employee who has (or is reasonably expected to have) compensation during a calendar year equal to or greater than $50,000 is highly compensated, regardless of whether such compensation is in excess of the base compensation amount, and

(B) Any employee who is reasonably expected to have compensation during a calendar year equal to or less than $20,000 is not highly compensated, unless no employee of the employer is reasonably expected to have compensation equal to or greater than $35,000.

The determination of whether an employee is a highly compensated employee will be determined based on the entire employee workforce of all employers aggregated pursuant to the rules of section 414 (b), (c), or (m) without regard to the regular workplace of the employees.

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(ii) *Base compensation amount*—(A) *General rule.* The term "base compensation amount" is defined as that amount corresponding to the lowest annual compensation amount received by the highest-paid ten percent of all employees of an employer (the number of employees in the top ten percent will be increased to the next highest integer if necessary), determined on the basis of the preceding calendar year. For purposes of this paragraph (g) (1) (ii), the term "employer" includes all entities that would be aggregated pursuant to the rules of section 414 (b), (c), or (m).

(B) *Employees that are excluded.* For purposes of determining the base compensation amount with respect to a fringe benefit program, employees described in paragraph (b)(3) of this section are excluded whether or not they are covered under the fringe benefit program, except that: (*1*) Employees described in paragraph (b)(3)(ii) of this section are taken into account with respect to the program even if they are excluded under paragraph (b)(3), and (*2*) employees described in paragraph (b)(3) (i) and (iv) of this section are taken into account with respect to the program unless they are excluded under paragraph (b)(3).

(C) *Exception to preceding calendar year rule.* In the case of an employer's first year of operation, or where an employer's business has changed significantly from the prior calendar year (e.g., due to an acquisition or merger), the employer must make a good faith attempt to either determine or adjust the base compensation amount for the current year based on reasonable estimates of current year compensation.

(iii) *Compensation.* The term "compensation" is defined as the amount reportable on a Form W–2 as income. Amounts that would be excluded from income but for section 132(h)(1) are not included in compensation for purposes of this paragraph (g)(1). Compensation includes amounts received from all entities which would be treated as a single employer under section 414 (b), (c), or (m) and is not restricted to amounts received with respect to any one line of business.

(iv) *Employee.* Generally, for purposes of determining whether an employee is highly compensated under this paragraph (g)(1), the term "employee" does not include any individual who does not perform services for the employer as an employee during the calendar year. For example, if an employer has active employees, retired or disabled employees, and widows or widowers who are "employees" under section 132(f)(1)(B), the general rule (described in paragraph (g)(1)(i) of this section) applies only to the active employees.

(2) *Owner*—(i) *General rule.* For purposes of this section, the term "owner" means any employee who owns a one percent or greater interest in either the employer or in any entity that would be aggregated with the employer pursuant to the rules of section 414 (b), (c), or (m). In addition, such an employee shall be treated as an owner of all entities that would be aggregated with the employer pursuant to the rules of section 414 (b), (c), or (m).

(ii) *Determining ownership.* Ownership in a corporation shall be determined pursuant to the rules of section 318(a). For purposes of determining ownership in an entity other than a corporation, the rules of section 318(a) shall apply in a manner similar to the way in which they apply for purposes of determining ownership in a corporation. For non-corporate interests, capital or profits interest must be substituted for stock.

(3) *Officer.*—(i) *Non-government.* For purposes of this section, an officer of a non-government employer is any employee who is appointed, confirmed, or elected by the Board or shareholders of the employer. An employee who is an officer of an employer shall be treated as an officer of all entities treated as a single employer pursuant to section 414 (b), (c), or (m). The number of officers is not to exceed one-percent of the total number of employees of all entities treated as a single employer pursuant to section 414 (b), (c), or (m) (increased to the next highest integer, if necessary). If the number of officers exceeds one-percent of all employees, then the limitation is to be applied to employees in descending order of compensation (as defined in paragraph (g)(1)(iii) of this section). Thus, if an employer with 1,000 employees has 11 board-appointed officers, the employee with the least compensation of those officers would not be an officer under this paragraph (g)(3)(i). In determining the total number of employees with respect to a fringe benefit program, employees described in paragraph (b)(3) of this section are excluded whether or not they are covered under the fringe benefit program, except that (A) employees described in paragraph (b)(3)(ii) of this section are taken into account with respect to the program even if they are excluded under paragraph (b)(3), and (B) employees described in paragraph (b)(3) (i) and (iv) of this section are taken into account with respect to the program unless they are excluded under paragraph (b)(3).

(ii) *Government.* For purposes of this section, an officer of a government employer is any—

(A) Elected official,

(B) Federal employee appointed by the President and confirmed by the Senate. However, in the case of any commissioned officer of the United States Armed Forces, an officer is any employee with the rank of brigadier general or rear admiral (lower half) or above, and

(C) State or local executive officer comparable to individuals described in paragraphs (g)(3)(ii) (A) and (B) of this section.

For purposes of this paragraph (g)(3)(ii), the term "government" includes any Federal, state, or local governmental unit, and any agency or instrumentality thereof.

(4) *Former employees.* [Reserved]

§ 1.162–25T [Amended]

Par. 11. Paragraph (b) of § 1.162–25T is amended by removing the words "(as defined in § 1.61–2T Q/A–20)" and adding in their place the words "(as defined in § 1.61–2T(e)(2))".

§ 1.274–5T [Amended]

Par. 12. Section 1.274–5T is amended as follows:

1. Paragraph (e)(1)(ii) is amended by removing the words "(as defined in § 1.61–2T Q/A–20)" and adding in their place the words "(as defined in § 1.61–2T(e)(2))".

2. The first sentence of paragraph (l) is revised to read as follows: "For purposes of section 274(d) and this section, the terms "automobile" and "vehicle" have the same meanings as prescribed in § 1.61–2T(d)(1)(ii) and § 1.61–2T(e)(2), respectively.".

3. The third sentence of paragraph (m) is amended by removing the words "except as provided in § 1.132–1T Q/A–4b" and adding in their place the words "except as provided in § 1.132–5T(h)".

§ 1.274–6T [Amended]

Par. 13. Section 1.274–6T is amended as follows:

1. Paragraph (a)(3)(i)(E) is revised to read as follows: "The employee required to use the vehicle for commuting is not a control employee (as defined in § 1.61–2T(f) (5) and (6)) required to use an automobile (as defined in § 1.61–2T(d)(1)(ii)), and".

2. Paragraph (a)(3)(i)(F) is amended by removing the citation "§ 1.61–2T Q/A–21" and adding in its place the citation § 1.61–2T(f)(3)".

3. Paragraph (a)(3)(ii) is amended by removing from the introductory text the

citation "§ 1.61–2T Q/A–21" and adding in its place the citation "§ 1.61–2T(f)(3)".

4. Paragraph (a)(3)(ii)(E) is revised to read as follows: "The employee required to use the vehicle for commuting is not a control employee (as defined in § 1.61–2T(f) (5) and (6) required to use an automobile (as defined in § 1.61–2T(d)(1)(ii)), and".

5. Paragraph (a)(3)(ii)(F) is amended by removing the citation "§ 1.61–2T Q/A–21" and adding in its place the citation "§ 1.61–2T(f)(3)".

6. Paragraph (b)(1) is amended by removing from the last sentence the citation "§ 1.132–1T Q/A–4a(f)" and adding in its place the citation "§ 1.132–5T(g)".

7. Paragraph (b)(3) is amended by removing from the last sentence the citation "§ 1.132–1T Q/A–4a(f)" and adding in its place the citation "§ 1.132–5T(g)(3)".

8. Paragraph (e)(3) is amended by removing the citation "§ 1.61–2T Q/A–11" and adding in its place the citation "§ 1.61–2T(d)(1)(ii)".

9. Paragraph (e)(4) is amended by removing the citation "§ 1.61–2T Q/A–20" and adding in its place the citation "§ 1.61–2T(e)(2)".

PART 602—[AMENDED]

Par. 14. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 15. Section 602.101(c) is amended by inserting in the appropriate place in the table § 1.61–2T . . . 1545–0771; 1.132–2T . . . 1545–0771; and § 1.132–5T . . . 1545–0771".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 11, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

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26 CFR Parts 1 and 602

[T.D. 8064]

Income Tax; Information Returns Relating To Sales or Exchanges of Certain Partnership Interests

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to information returns, statements, and notifications required where there is a sale or exchange of certain partnership interests. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules Section of this issue of the **Federal Register**. The temporary regulations reflect changes to the applicable tax law made by section 149 of the Tax Reform Act of 1984 and provide guidance on the manner of filing and contents of required information returns, statements, and notifications under section 6050K of the Internal Revenue Code of 1954.

DATE: The regulations contained in this document are effective with respect to sales or exchanges of partnership interests made after December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T LR–129–85). Telephone, 202–566–3297 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Explanation of Provisions

Under section 6050K (a) and § 1.6050K–1T a partnership must file a return on Form 8308 when there is a sale or exchange described in section 751 (a) (a "section 751 (a) exchange") of any interest in that partnership during any calendar year after 1984. A section 751 (a) exchange occurs when any portion of any money or other property received by a transferor partner in exchange for all or a part of his or her interest in the partnership is attributable to section 751 property (unrealized receivables and substantially appreciated inventory items as defined in seciton 751 (c) and (d)). Generally, a sale or exchange of an interest in a partnership (or a portion thereof) at a time when the partnership has any section 751 property will constitute a section 751(a) exchange.

A return on Form 8308 must be filed with respect to each sale or exchange. Section 1.6050K–1T (a) (2), however, provides that the Commissioner may, at a future date, authorize the use of a single document which includes all of the partnership's returns for a calendar year, or of a composite document, by partnerships that are required to file 25 or more separate returns in any calendar year. The information to be supplied on Form 8308 includes the names, addresses, and taxpayer identification numbers of the transferee and transferor in the exchange and of the partnership, the date of the exchange, and such other information as may be required by Form 8308 or its instructions. Form 8308 shall contain a printed notice that the information on the Form has been supplied to the Internal Revenue Service, that the transferor is required to treat a portion of the gain realized from the section 751 (a) exchange as ordinary income, and that the transferor in a section 751 (a) exchange is required under § 1.751–1 (a) (3) to attach a statement relating to the exchange to his or her income tax return for the taxable year in which the exchange occurred. The partnership return on Form 8308 is to be filed as an attachment to the partnership's Form 1065 for its taxable year in which the calendar year in which the section 751 (a) exchange occurred ends.

Under section 6050K (b) and the temporary regulations all partnerships that are required to file returns under section 6050K (a) must furnish a statement to each person whose name appears on the partnership's Form 8308 showing the name and address of the partnership in addition to the information shown on the Form 8308 with respect to that person. A copy of Form 8308 is to be used as the statement. The statement must be furnished on or before January 31 following the calendar year in which the section 751 (a) exchange occurred (or, if later, 30 days after the partnership has notice of the exchange). Thus, under the statute the partnership must generally prepare Form 8308 prior to the time it must be filed so as to allow the timely furnishing of statements to the transferor and transferee.

Section 6050K (c)(1) and the temporary regulations require the transferor of a partnership interest in a section 751 (a) exchange to notify the partnership of the exchange, in writing, on or before the thirtieth day after the date of the exchange (or, if earlier, January 15 of the calendar year following the calendar year in which the exchange occurred). The written notification from the transferor must include the names and addresses of the transferor and transferee, the date of the exchange, and the taxpayer identification numbers of the transferor and, if known, of the transferee.

Under section 6050K (c) (2) and the temporary regulations the partnership is not required to file a return or furnish statements under section 6050K until the partnership has notice of the section 751 (a) exchange. Section 1.6050K–1T (e) clarifies that a partnership has notice of a section 751 (a) exchange when either (1) the partnership receives the written

notification from the transferor required under section 6050K (c)((1); or (2) the partnership has knowledge that there has been a transfer of a partnership interest at a time when the partnership had any section 751 property. However, no return or statements are required under section 6050K if the transfer was not a section 751 (a) exchange (*e.g.*, a transfer which in its entirety constitutes a gift for federal income tax purposes). A partnership may rely on a written statement from the transferor that the transfer was not a section 751 (a) exchange in the absence of knowledge to the contrary. Under the temporary regulations the partnership is generally not required to value property. However, in certain circumstances a partnership may not be able to determine whether it had any section 751 property on the date of a transfer of a partnership interest without determining the value of such property. In such cases, partnerships that do not wish to make such a valuation may file Form 8308 in order to avoid the risk of incurring a penalty under section 6652 (a).

Regulatory Flexibility Act; Executive Order 12291; Paperwork Reduction Act of 1980

No general notice of proposed rulemaking is required by 5 U.S.C 553 (b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The reporting requirements added by this document have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. The reporting requirements have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

List of Subjects

26 CFR 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 and Part 602 are amended as follows:

PART 1—[AMENDED]

Income Tax Regulations

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.6050K–1T also issued under 26 U.S.C. 6050K.

Par. 2. A new § 1.6050K–1T is added immediately after § 1.6050J–1T to read as follows:

§ 1.6050K–1T Returns relating to sales or exchanges of certain partnership interests. (Temporary)

(a) *Partnership return required.* (1) Except as provided in paragraph (a) (2) of this section, a partnership shall make a separate return on Form 8308 with respect to each section 751 (a) exchange of an interest in such partnership which occurs after December 31, 1984. The term "section 751 (a) exchange" means any sale or exchange of a partnership interest (or portion thereof) in which any portion of any money or other property received by a transferor partner in exchange for all or a part of his or her interest in the partnership is attributable to section 751 property. The term does not include a distribution which is treated as a sale or exchange between the distributee and the partnership under section 751 (b). For purposes of this section, the term "section 751 property" means unrealized receivables, as defined in section 751 (c), and inventory items which have appreciated substantially in value ("substantially appreciated inventory items"), as defined in section 751 (d). A partnership that is in doubt as to whether partnership property constitutes section 751 property to any extent or as to whether a transfer of a partnership interest constitutes a section 751 (a) exchange may file Form 8308 in order to avoid the risk of incurring a penalty under section 6652 (a). The penalty under section 6652 (a) will generally apply, however, to partnerships that do not file Form 8308 where in fact a section 751 (a) exchange occurred, except as provided in paragraph (e) of this section.

(2) The Commissioner may authorize the use, at the option of the partnership, of a single document which includes all of the partnership's returns for a calendar year in the case of partnerships required under paragraph (a) (1) of this section to make 25 or more returns on Form 8308 for any calendar year. In addition, the Commissioner may authorize the use for this purpose, also at the option of such a partnership, of a composite document. These authorizations shall be subject to such conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate. Such composite document shall consist of a form prescribed by the Commissioner and an attachment or attachments of magnetic tape or other approved media. To the extent that the use of a single or composite document has been authorized by the Commissioner, references in this section to Form 8308 shall be deemed to refer also to returns included in a single or composite document under this paragraph (a) (2). Any single or composite document so authorized shall include the information required to be provided on Form 8308 under paragraph (b) of this section with respect to each section 751 (a) exchange.

(b) *Contents of return.* The return on Form 8308 shall include the following information:

(1) The names, addresses, and taxpayer identification numbers of the transferee and transferor in the exchange and of the partnership filing the return;

(2) The date of the exchange; and

(3) Such other information as may be required by Form 8308 or its instructions.

(c) *Statement to be furnished to transferor and transferee.* Every partnership making a return under paragraph (a) of this section must furnish to each person whose name is set forth in such return a written statement on or before January 31 of the calendar year following the calendar year in which the section 751(a) exchange occurred to which the return under paragraph (a) relates (or, if later, 30 days after the partnership is notified of the exchange as defined in paragraph (e) of this section). The partnership shall use a copy of the completed Form 8308 as a statement unless the Form 8308 contains information with respect to more than one section 751(a) exchange (see paragraph (a)(2) of this section). If the partnership does not use a copy of

Form 8308 as a statement, the statement shall include the information required to be shown on Form 8308 with respect to the section 751(a) exchange to which the person to whom the statement is furnished is a party, as well as the printed notice on Form 8308 with respect to the facts that the information shown on the statement has been supplied to the Internal Revenue Service, that a transferor of a partnership interest in a sale or exchange described in section 751(a) of the Internal Revenue Code is required to treat a portion of any gain or loss resulting from the sale or exchange as ordinary income or loss, and that the transferor in a section 751(a) sale or exchange is required under paragraph (a)(3) of § 1.751–1 to attach a statement relating to the sale or exchange to his or her income tax return for the taxable year in which the sale or exchange occurred.

(d) *Requirement that transferor notify partnership.* The transferor of any partnership interest in a section 751(a) exchange shall notify the partnership of such exchange in writing within 30 days of the exchange, (or, if earlier, January 15 of the calendar year following the calendar year in which the exchange occurred). The written notification from the transferor shall include the following information:

(1) The names and addresses of the transferor and transferee in the section 751(a) exchange;

(2) The taxpayer identification numbers of the transferor and, if known, of the transferee; and

(3) The date of the exchange.

Any transferor who notified a partnership under section 6050K(c)(1) prior to January 22, 1986 by a notification that does not meet the requirements of this paragraph (d) shall furnish such partnership with the written notification described in this paragraph (d) on or before February 21, 1986.

(e) *Partnership not required to make a return or furnish statements under this section until it has notice of the exchange.* A partnership shall not be required to make a return or furnish statements under this section with respect to any section 751(a) exchange until it has been notified of the exchange. For purposes of section 6050K (c) (2) and this section a partnership is notified of a section 751(a) exchange when either:

(1) The partnership receives the written notification from the transferor required by paragraph (d) of this section; or

(2) The partnership has knowledge that there has been a transfer of a partnership interest or any portion thereof, and, at the time of the transfer, the partnership had any section 751 property. However, no return or statements are required under section 6050K if the transfer was not a section 751(a) exchange (*e.g.*, a transfer which in its entirety constitutes a gift for federal income tax purposes). For purposes of this paragraph (e)(2), the partnership may rely on a written statement from the transferor that the transfer was not a section 751(a) exchange in the absence of knowledge to the contrary. For rules applicable where the partnership is in doubt as to whether partnership property constitutes section 751 property to any extent or as to whether a transfer of a partnership interest constitutes a section 751(a) exchange, see paragraph (a)(1) of this section.

(f) *Partnership return is to be attached to Form 1065.* Any partnership return on Form 8308 required under this section shall be filed as an attachment to the partnership's Form 1065 for its taxable year in which the calendar year in which the section 751(a) exchange occurred ends and shall be filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing of the partnership's Form 1065 for that taxable year (see paragraph (e) of § 1.6031–1 for the time and place for filing Form 1065). However, if a partnership is notified of an exchange (as defined in paragraph (e) of this section) after the partnership has filed Form 1065 for the taxable year for which the exchange should have been reported, Form 8308 shall be filed by amending the partnership's Form 1065 for that taxable year and filing the amended Form 1065 with the Form 8308 attached on or before the thirtieth day after the partnership is notified of the exchange.

(g) *Penalties.* For penalties for failure of:

(1) Transferors to furnish the notification required by paragraph (d) of this section see section 6678(c);

(2) Partnerships to furnish any statement required under paragraph (c) of this section see section 6678(a); and

(3) Partnerships to file the return on Form 8308 as required by paragraph (a) of this section see section 6652 (a) (1) and (3)

PART 602—[AMENDED]

OMB Control Numbers Under the Paperwork Reduction Act

Par. 3.—The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate places in the table "1.6050K–1T . . . 1545–0941."

* * * * *

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 12, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–30323 Filed 12–20–85; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R, Amdt. No. 34]

Civilian Health and Medicare Program of the Uniformed Services (CHAMPUS); Federal Medical Care Recovery Act, Chapter IX

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This amendment revises the CHAMPUS Regulations, DoD 6010.8–R, by consolidating all federal claims provisions arising under the operation of CHAMPUS into two chapters. When originally published as a proposed rule on October 7, 1983, this amendment was proposed to be contained in only one chapter, a revised Chapter IX of the Regulation. However, based upon a number of comments received, we believe clarity will be served by separating our original proposed rule into two new chapters, Chapters XI and XII. Chapter IX will be reserved for future use. This amendment reflects changes mandated by the Debt Collection Act of 1982 and recent amendments to the Federal Claims Collection Standards issued jointly by the Department of Justice and the General Accounting Office. Federal claims arise when the government has a right to recover money or property from an indiviudal, partnership, association, corporation, governamental body or other legal entity, foreign or domestic, except an instrumentality of the United States. This amendment clarifies the specific

procedures and criteria uses in the assertion, collection or compromise of federal claims and the suspension or termination of collection action on such claims arising under the operation of CHAMPUS. Chapter XI deals with claims in favor of the United States arising under the Federal Claims Collection Act (recoupment claims). Chapter XII deals with claims in favor of the United States arising under the Federal Medicare Recovery Act. When appropriate, these provisions would avoid the expense or court proceedings for both the government and the debtor. These provisions also will reduce administrative handling, provide greater flexibility to recovery efforts, and aid in the timely settlement of outstanding federal claims. This change will facilitate the use of the Regulation by CHAMPUS fiscal intermediaries, Uniformed Service claims officers and by the general public.

DATE: This amendment will become effective January 22, 1986. The implementation of portions of the regulation dealing with the liability questionnaire will depend upon the availability of that form. OMB has approved the form and supplies should be available to CHAMPUS fiscal intermediaries by the effective date.

FOR FURTHER INFORMATION CONTACT:

Robert L. Shepherd, Assistant General Counsel, OCHAMPUS, Aurora, Colorado 80045, telephone (303) 361–8506

Tariq Shahid, Policy Banch, OCHAMPUS, Aurora, Colorado 80045, telephone (303) 361–3587

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Civilian Health and Medical Program of the Uniform Services (CHAMPUS)," as Part 199 of this title. As originally published, § 199.15 addressed only claims collection activities under the CHAMPUS for third-party liability claims arising under the Federal Medical Care Recovery Act. Claims activity under other statutory or contractual grounds arising under the operation of CHAMPUS were addressed only in the most general terms in other Sections of the regulation.

In FR Doc. 83–27322, appearing in the **Federal Register** on October 7, 1983 (48 FR 457691), the Office of the Secretary of defense published comment a proposed amendment revising Chapter IX of the CHAMPUS Regulation, DoD 6010.8–R. The revision was generated by a desire to consolidate all federal claims provisions arising under the operation of CHAMPUS where the government has a right to recover money or property from an individual, a business entity, another government body or other legal entity. It was also deemed desirable to include greater detail in the regulation with respect to claims collection procedures than had been available previously. This was intended to facilitate the use of the regulation by CHAMPUS fiscal intermediaries, Uniformed Service claims officers and by the general public. Public comments were to have been submitted by November 7, 1983.

We received comments on the proposed amendments from several government agencies, including all of the Uniformed Services, the Veterans Administration,and the Department of Health and Human Services. We express our appreciation to all the commenters for the time they took in providing their comments. We envision the likelihood of frequent amendments to these provisions, and we encourage additional comments from any interested party. It is because of the comments received that we have determined to divide this revision into two parts published herein as §§ 199.17 and 199.18. Section 199.15 has been revised for future use.

Comments

Most of the commenters felt that the delegations of authority to the Director, OCHAMPUS, under the Federal Claims Collection Act (FCCA) and to the Uniformed Services under the Federal Medical Care Recovery Act (FMCRA) were not sufficiently clear. There was particular concern that the relative roles of the Director and the Services under the FMCRA were not sufficiently delineated. Accordingly, changes have been made which make it clear that once a potential FMCRA claim is identified, the Uniformed Services have the sole responsibility for that claim.

Concern was also expressed that the provisions of the regulation which outline the government's authority to compromise or waive claims arising under the FMCRA unnecessarily duplicate and could possibly conflict with the existing Service regulations on this subject. While these provisions have been retained to provide information to users who may not have ready access to the Service regulations, language has been added to clarify that these provisions are informational only.

A couple of the commenters objected to the provisions of § 199.15(j)(5)(ii) which require a Uniformed Service to reimburse CHAMPUS where payments have been made to ineligible persons holding inaccurate or outdated identification cards. These provisions were a part of the regulation since its initial promulgation in 1977, and were being moved to a new location in the regulation as a part of the consolidation process described above. However, the portion requiring reimbursement by a Uniformed Service has been deleted. Under the current accounting procedures, such reimbursement funds are deposited to the general treasury making the reimbursement of no real benefit to CHAMPUS. However, should the accounting procedure change to allow such refunds to benefit CHAMPUS, we will consider reinstating this requirement.

One commenter suggested that more detail be provided concerning the procedures to be followed in dealing with no-fault statutes, medical payments insurance coverage, uninsured motorist coverage, and worker's compensation. We recognize that these are areas which are evolving and changing, and in which there may be a need for eventual clarification. However, because of the relative unsettled nature of these areas, we have determined not to expand substantially on the proposed rule at this time. Rather, we have made an editorial clarification by moving the paragraphs dealing with these matters from the Medical Care Recovery Act provisions to other provisions of the § 199.18. In addition, we have added to § 199.18 a new provision dealing with "mixed claims" (i.e., those in which a potential for recovery under both the FMCRA or the FCCA may exist.) It is hoped that these measures will provide sufficient clarification for present operations to continue. Obviously, this is an area in which we expect future amendments to be helpful and necessary as clarifications in the law are realized and the concerned agencies gain experience in dealing with these difficult areas.

All of the Services expressed great concern with the reporting requirements imposed by § 199.18(e)(6)(ii). Each expressed a present inability to comply with this requirement and recommended that it be deleted. However, we deem the information required in these reports to be essential to the efficient administration of the CHAMPUS Medical Care Recovery Act program. For this reason, we have chosen to delay implementation of this reporting requirement for a reasonable time (not to exceed three years) to allow the Services to develop the capability of providing the required information.

The Veterans' Administration commented that the proposed amendment deals exclusively with the

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procedures and criteria followed by "responsible claims asserting authority" in the collection or settlement of federal claims arising under the operation of CHAMPUS. They stated that because the VA is not identified as a "responsible claims asserting authority," the proposed amendment is not applicable to claims arising under the CHAMPVA and has no impact on it. By law, CHAMPVA provides medical care "in the same or similar manner and subject to the same or similar limitations" as that provided under CHAMPUS. Thus, unless specifically exempted by law (as are certain eligibility requirements and the Program for the Handicapped) all of DoD 6010.8–R including Chapters XI and XII, applies to CHAMPVA claims. This fact was recognized in the Memorandum of Understanding entered into between DoD and VA. That Memorandum of Understanding specifically delegates authority to the Secretary of Defense to take administrative action on federal claims arising under the Federal Claims Collection Act. Based upon the foregoing analysis, we believe that the VA comment was in error to the extent that the provisions of the regulation which govern CHAMPUS are made applicable to CHAMPVA claims under the Memorandum of Understanding.

The Federal Claims Collection Act of 1966 (31 U.S.C. 3701 *et seq.*) authorizes the Secretary of Defense, under regulations issued by him, to compromise, or to suspend or terminate collection activities on certain claims under the programs of the Department. The claim must not exceed $20,000, exclusive of interest, and there must be no indications of fraud in connection with the claim. CHAMPUS fiscal intermediaries are required to collect erroneous payments made to beneficiaries, providers, physicians and other suppliers of services by requesting refunds and, if necessary, offsetting such erroneous payments against current payments due or against future claims when possible. However, attempts to recover these erroneous payments are sometimes more time consuming and costly than is justified by the circumstances. Section 199.17 specifies an alternative to costly and time consuming collection activities and referrals to other government agencies for additional collection efforts. It allows the Director, OCHAMPUS, or a designee, under authority delegated by the Secretary to negotiate a compromise settlement, or to suspend or terminate collection activities when this is in the government's best interest. When appropriate, compromise, suspension, or termination will avoid the expense of court proceedings for both the government and the debtor. These provisions also will reduce administrative handling, provide greater flexibility to recovery efforts, and aid in the timely settlement of outstanding federal claims.

These §§ 199.17 and 199.18 include the following major provisions:

- Procedures for the collection by recoupment or offset of erroneous CHAMPUS payments are specified. These provisions are promulgated under the authority of the Federal Claims Collection Act of 1966 (as amended). Erroneous CHAMPUS payments can arise as the result of mathematical errors, payments for care provided to ineligible persons, payments for care which is not an authorized benefit and payments for duplicate claims and other similar circumstances. The first and preferred method of effecting recoupment of these claims is through a voluntary refund in response to a written request or demand for payment. Failing this, collection can be effected, in appropriate cases, by offset against other monies owed by the United States to the debtor and ultimately by referral to appropriate federal agencies for legal action.
- The regulation recognizes that circumstances may arise when claims other than those arising under the Federal Medical Care Recovery Act or from erroneous CHAMPUS payments will be asserted. Examples of these include property damage claims, worker's compensation claims, and insurance claims. The general responsibility for the identification and initial investigation of such claims is vested in CHAMPUS fiscal intermediaries. The responsibility for the evaluation and assertion of these claims is vested in the responsible government agency.
- Standards for the compromise or the suspension or termination of collection action for claims arising under the FCCA that do not exceed $20,000 are established. Such compromises, suspensions, or terminations are based principally on an evaluation of the debtor's ability to pay the full amount of the claim within a reasonable time or a determination that the cost of collection action or litigation will exceed the likely amount of recovery (termination), or would not justify enforced collection of the full amount (compromise). The factors that the Director, OCHAMPUS, or a designee, considers in determining the government's inability to enforce collection of the entire claim include the debtor's age, health, assets, present and potential income and possible concealment or improper transfer of assets. If the debtor is deceased, the available assets of the estate will be considered taking into account any liens or superior claims. These provisions conform with the Federal Claims Collection Standards issued jointly by the Attorney General and Comptroller General of the United States under the Federal Claims Collection Act. These joint standards are codified at 4 CFR Parts 101–105.
- Procedures for the assertion of claims arising under the Federal Medical Care Recovery Act (FMCRA) are set out. This statute allows the United States to recover the reasonable value of medical care it pays for or provides to a person injured or suffering a disease under circumstances creating tort liability in a third party to pay damages for that care. Responsibility for effecting recoveries under that statute is vested in the Uniformed Services. Such claims are to be initially identified by CHAMPUS fiscal intermediaries and referred by them to responsible legal offices of the Uniformed Services for assertion and collection. A claim in excess of $40,000 may be compromised, settled, waived or released only with the prior approval of the Department of Justice.
- The obligations of persons receiving medical care under CHAMPUS where potential third-party liability under the FMCRA exists are specified.
- The conditions for settlement and waiver of FMCRA claims are outlined. The authority for the settlement and waiver of FMCRA claims arising under CHAMPUS is vested in the Uniformed Services.
- Specific reporting requirements concerning the number of claims referred for collection and the dollar amounts collected under the FMCRA are established.
- Actions taken under these Sections are not initial determinations for the purpose of invoking the appeals procedure set out in § 199.16 of the regulation. The compromise of any claim asserted under § 199.17 shall be final and conclusive on the debtor and the United States in the absence of fraud, misrepresentation, or mutual mistake of fact. Failure of the Director, OCHAMPUS, or a designee, or any other claims-asserting authority under § 199.17 to comply with any provision of these regulations shall not be available as a defense to any debtor. Section 199.17 does not create a right to have any claim compromised, or collection activities concerning any claim terminated or suspended.

• Conforming changes to other sections of the regulation have been made to insure consistency with the provisions of these sections.

Note.—We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291. We certify that this amendment will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

2. 32 CFR 199.10(a)(8) is revised to read as follows:

§ 199.10 Basic program benefits.

(a) * * *

(8) *Double coverage and third party recoveries.* CHAMPUS claims involving double coverage or the possibility that the United States can recover all or part of its expenses from a third party, are specifically subject to the provisions of § 199.14, "Double Coverage" or § 199.18, "Third Party Recoveries," as appropriate.

* * * * *

3. 32 CFR 199.13(j) is revised to read as follows:

§ 199.13 Claims submission, review and payment.

* * * * *

(j) *Erroneous payments and recoupment.*—(1) *Erroneous payments.* Erroneous payments are expenditures of government funds which are not authorized by law or regulation. Such payments are to be recouped under the provisions of § 199.17, "Overpayments Recovery," of this part.

(2) *Claims denials resulting from clarification or change in law or regulation.* In those instances where claims review results in a finding of denial of benefits previously allowed but currently denied due to a clarification or interpretation of law or this regulation, or due to a change in this regulation, no recoupment action need be taken to recover funds expended prior to the effective date of such clarification, interpretation, or change.

* * * * *

§ 199.15 [Removed]

4. 32 CFR 199.15 is removed and reserved.

5. 32 CFR 199.17 is added as follows:

§ 199.17 Overpayments Recovery.

(a) *General.* Actions to recover overpayments arise when the government has a right to recover money or property from an individual, partnership, association, corporation, governmental body or other legal entity, foreign or domestic, except an instrumentality of the United States because of an erroneous payment of benefits under CHAMPUS. A claim against several joint debtors arising from a single incident or transaction is considered to be one claim. It is the purpose of this section to prescribe procedures for investigation, determination, assertion, collection, compromise, waiver and termination of claims in favor of the United States for erroneous benefits payments arising out of administration of the Civilian Health and Medical Program of the Uniformed Services.

(b) *Authority.*—(1) *Federal statutory authority.* The following federal statutes provide the basic authority under which claims may be asserted pursuant to this Section.

(i) The Federal Claims Collection Act (31 U.S.C. 3701 *et seq.*) is a statute enacted to avoid unnecessary litigation. The Federal Claims Collection Act was substantially amended by the Debt Collection Act of 1982, Pub. L. 97–365, enacted on October 25, 1982. The Federal Claims Collection Act is implemented by joint regulations issued by the Department of Justice and the General Accounting Office, 4 CFR Parts 101–105. Thereunder, the heads of federal agencies or their designees are required to attempt collection of all claims of the United States for money or property arising out of the activities of their respective agencies. These officials may, with respect to claims that do not exceed $20,000, exclusive of interest, and in conformity with the standards promulgated in the joint regulations, compromise, suspend, or terminate collection action on such claims.

(2) *Other authority.* Occasionally, federal claims may arise which are grounded, at least in part, in authority other than the federal status referenced above. These include, but are not limited to, claims arising under:

(i) State worker's compensation laws.

(ii) State hospital lien laws.

(iii) State no-fault automobile statutes.

(iv) Contract rights under terms of insurance policies.

(c) *Policy.* The governmental policy of avoiding unnecessary litigation in the collection of claims by the United States for money or property necessitates aggressive agency collection action. The Director, OCHAMPUS, or a designee, will insure that CHAMPUS claims asserting personnel are adequately supported to take timely and effective action. Claims arising out of any incident which has or probably will generate a claim in favor of the government will not be compromised nor will collection action be terminated by any person not authorized to take final action on the governments's claim. By the Act of July 18, 1966 (28 U.S.C. 2415–2418), Congress established a statute of limitation applicable to the government in areas where previously neither limitations nor laches were available as a defense. Claims falling within the provisions of this statute will be processed expeditiously to the Department of Justice or the General Accounting Office, as appropriate, without attempting administrative collection action if such action cannot be accomplished in sufficient time to preclude the running of the statute of limitations.

(d) *Appealability.* This section describes the procedures to be followed in the recovery and collection of federal claims in favor of the United States arising from the operation of the CHAMPUS. Actions taken under this Section are not initial determinations for the purpose of the appeal procedures of § 199.16 of this regulation. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in § 199.16 may affect the processing of federal claims arising under this section. Those appeal procedures afford a CHAMPUS beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is a significant factual dispute. For example, a fiscal intermediary may erroneously make payment for services which are excluded as CHAMPUS benefits because they are determined to be not medically necessary. In that event recoupment action will be initiated by the fiscal intermediary at the same time the fiscal intermediary will offer an administrative appeal as provided in § 199.16 of this regulation on the medical necessity issue raised by the adverse benefit determination. The recoupment action and the administrative appeal are separate actions. However, in an appropriate case, the pendency of the appeal may provide a basis for the suspension of collection in the recoupment. Obviously, if the appeal is

resolved entirely in favor of the appealing party, that would provide a basis for the termination of collection action in the recoupment case.

(e) *Delegation.* Subject to the limitations imposed by law or contained in this section, the authority to assert, settle, compromise or to suspend or terminate collection action on claims arising under the Federal Claims Collection Act has been delegated to the Director, OCHAMPUS, or a designee.

(f) *Recoupment of Erroneous Payments.*—(1) *Erroneous payments.* Erroneous payments are expenditures of government funds which are not authorized by law or regulation. Examples which are sometimes encounted in the administration of the CHAMPUS include mathematical errors, payment for care provided to an ineligible person, payment for care which is not an authorized benefit, payment for duplicate claims, inaccurate application of the deductible or co-payment, or payment for services which were not medically necessary. Claims in favor of the government arising as the result of the filing of false CHAMPUS claims or other fraud fall under the direct cognizance of the Department of Justice. Consequently, the procedures in this section apply to such claims only when specifically authorized or directed by the Department of Justice. (See 32 CFR 101.3.)

(2) *Scope.* (i) This section and the sections following contain requirements and procedures for the assertion, collection or compromise of, and the suspension or termination of collection action on claims for erroneous payments against a sponsor, beneficiary, provider, physician or other supplier of services under the CHAMPUS. These provisions are adopted pursuant to the Federal Claims Collection Act (31 U.S.C. 3701 *et seq.*, as amended by the Debt Collection Act of 1982, Pub. L. 97–365), which requires each agency of the U.S. Government (pursuant to regulations jointly promulgated by the Attorney General and the Comptroller General) to attempt collection of federal claims in favor of the United States arising out of the activities of the agency, and 5 U.S.C. 5514, which provides for installment deduction for indebtedness of the United States, implemented by regulations issued by the Office of Personnel Management, 5 CFR Part 550, and the Department of Defense, 32 CFR Part 90. This section also includes government-wide collections by salary offset under 5 U.S.C. 5514.

(ii) As used herein, "debtor" means a sponsor, beneficiary, provider, physician, other supplier of services or supplies, or any other person who has for any reason been erroneously paid under the CHAMPUS. It includes an individual, partnership, corporation, professional corporation or association, estate, trust or any other legal entity.

(iii) As used herein, a debt is considered "delinquent" if it has not been paid by the date specified in the initial demand for payment (i.e., the initial written notification) or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date. A debt is also considered delinquent if at any time after entering into a repayment agreement, the debtor fails to satisfy any obligations under that agreement.

(3) *Other health insurance claims.* Claims arising from erroneous CHAMPUS payments in situations where the beneficiary has entitlement to insurance, medical service, health and medical plan, or other government program, except in the case of a plan administered under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), through employment, by law, through membership in an organization, or as a student, or through the purchase of a private insurance or health plan, shall be recouped under one of the following procedures:

(i) Where the other health insurance plan has not already made benefit payments to the beneficiary or provider, a claim for direct reimbursement will be asserted against the plan, pursuant to the fiscal intermediary's coordination of benefit procedures.

(ii) If the other health insurance plan has made its benefit payment prior to receiving the CHAMPUS request for reimbursement, the recoupment procedures set forth in this section will be followed.

(4) *Claims denials due to clarification or change.* In those instances where claim review results in the denial of benefits previously provided but now denied due to a change, clarification or interpretation of the public law or this regulation, no recoupment action need be taken to recover funds expended prior to the effective date of such change, clarification, or interpretation.

(5) *Good faith payment.* (i) The Department of Defense, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a file listing persons eligible to receive benefits under CHAMPUS. However, it is the responsiblity of the Uniformed Services to provide eligible CHAMPUS beneficiaries with accurate and appropriate means of identification. When sources of civilian medical care exercise reasonable care and precaution in identifying persons claiming to be eligible CHAMPUS beneficiaries and furnish otherwise covered services and supplies to such persons in good faith, CHAMPUS benefits may be paid subject to prior approval by the Director, OCHAMPUS, or a designee, notwithstanding the fact that the person receiving the services and supplies is subsequently determined to be ineligible for benefits. Good faith payments will not be authorized for services and supplies provided by a civilian source of medical care as the result of its own careless identification procedures.

(ii) When it is determined that a person was not a CHAMPUS beneficiary, the CHAMPUS fiscal intermediary and the civilian source of medical care are expected to make all reasonable efforts to obtain payment or recoup the amount of the good faith payment from the person who erroneously claimed to be a CHAMPUS beneficiary. Recoupments of good faith payments initiated by the CHAMPUS fiscal intermediary will be processed pursuant to the provisions of this section.

(6) *Recoupment procedures.* (i) When an erroneous payment is discovered, the CHAMPUS fiscal intermediary normally will be required to take the initial action to effect recoupment. Such action will be in accordance with the provisions of this regulation and the fiscal intermediary's CHAMPUS contract and will include demands for refund or an offset against any other CHAMPUS payment becoming due the debtor. When the efforts of the CHAMPUS fiscal intermediary to effect recoupment are not successful within a reasonable time, recoupment case will be referred to the General Counsel, OCHAMPUS, for further action in accordance with the provisions of this section. All requests to debtors for refund or notice of intent to offset shall be in writing.

(ii) *Demand for payment.* The CHAMPUS fiscal intermediary and OCHAMPUS normally shall make a total of at least three progressively stronger written demands upon the debtor in terms which inform the debtor of the consequences of his or her failure to cooperate. The initial written demand shall inform the debtor of the basis for and the amount of the indebtedness. The initial written demand shall also inform the debtor of the following: the debtor's right to inspect and copy all records pertaining to the debt; his or her right to request an administrative review by the fiscal intermediary; that interest on the debt at the current rate as determined by the Director, OCHAMPUS, or a designee, will begin to accrue on the date of the initial demand notification;

that such interest shall be waived on the debt, or any portion thereof, which is paid within 30 days of the date of the initial demand notification; that payment of the indebtedness is due within 30 days of the date of the initial demand notification; and that administrative costs and penalties will be charged pursuant to 4 CFR 102.13. The debtor also shall be informed that collection by offset against current or subsequent claims may be taken. All debtors will be offered an opportunity to enter into a written agreement to repay the indebtedness. The fiscal intermediary demand letters must be dated the same day as they are mailed. Two written demands, at 30-day intervals, normally will be made by the CHAMPUS fiscal intermediary unless a response to the first demand indicates that further demand would be futile or unless prompt suit or attachment is required in anticipation of the departure of the debtor, of his removal or transfer of assets, or the running of the statute of limitations. There should be no undue time lag in responding to any communication received from the debtor. Responses should be made within 30 days whenever feasible. If these initial efforts at collection are not productive or if immediate legal action on the claim appears necessary, the claim either will be referred promptly by the CHAMPUS fiscal intermediary to the General Counsel, OCHAMPUS, or the CHAMPUS fiscal intermediary will prepare a final notice informing the debtor that the debt is to be offset in whole or in part. When a case is referred to OCHAMPUS, the Office of General Counsel will normally prepare a third written demand unless from the record such demand appears futile or otherwise inappropriate.

(iii) *Collection by administrative offset.* Collections by offset will be undertaken administratively on claims which are liquidated or certain in amount in every instance in which this is feasible. No collection by offset may be undertaken unless a demand for payment containing all of the procedural safeguards described in paragraph (f)(6)(ii) above has been sent to the debtor. The determinations of indebtedness made for recoupment of erroneous CHAMPUS payments rarely involve issues of credibility or veracity. Erroneous CHAMPUS payments most frequently arise from claims submitted by individuals ineligible for CHAMPUS benefits; from claims submitted for services or supplies not covered by CHAMPUS; from claims in which there have been other insurance payments which reduce the CHAMPUS liability and from claims from participating providers in which payment is initially erroneously made to the beneficiary. While these recoupment claims normally involve the resolution of factual questions, these resolutions nearly always require only reference to the documentary evidence compiled in the investigation and processing of the claim. The appeals system described in § 199.16 of this regulation affords a CHAMPUS beneficiary or participating provider an opportunity for an administrative appellate review, including, under certain circumstances, the right to oral hearing before a hearing officer. Further, there is no statutory provision for the waiver of indebtedness arising from erroneous CHAMPUS payments, other than the provisions of the Federal Claims Collection Act which allow for the compromise of claims or the termination of collection action under certain circumstances specified in paragraph (g) of this Section. Consequently, the pre-offset oral hearing requirements of the Federal Claims Collection Standards (4 CFR 102.3) do not apply to the recoupment of erroneous CHAMPUS payments. CHAMPUS fiscal intermediaries may take administrative action to offset erroneous payments against other current CHAMPUS payments owing a debtor. Payments on the claims of a debtor pending at or filed subsequent to the time collection action is initiated should be suspended pending the outcome of the collection action so that these funds will be available for offset. All or any part of a debt may be offset depending upon the amount available for offset. Only the cases in which no possibility of offset arises within 60 days of the initiation of collection action and on which other collection efforts have been unsuccessful or in which the debtor seeks relief from the indebtedness will be referred to the General Counsel, OCHAMPUS, by the CHAMPUS fiscal intermediary. Offset, under the provisions of 31 U.S.C. 3716, is not to be used with respect to debts owed by any state or local government. Any requests for offset that are received from other agencies shall be forwarded to the General Counsel, OCHAMPUS, for processing, as will orders for garnishment issued by courts of competent jurisdiction.

(iv) *Collection of installments.* CHAMPUS recoupment claims should be collected in one lump sum whenever possible. However, if the debtor is financially unable to pay the debt in one lump sum, payment may be accepted in regular installments by the CHAMPUS fiscal intermediary or the General Counsel, OCHAMPUS. Installment payments normally will be required on at least a monthly basis and their size will bear a reasonable relation to the size of the debt and the debtor's ability to pay. A CHAMPUS fiscal intermediary should not enter into installment agreements which extend beyond 24 months. OCHAMPUS installment agreements normally should liquidate the government's claim within 3 years. Installment payments of less than $50 per month normally will be accepted only if justifiable on grounds of financial hardship or some other reasonable cause. Any installment agreement with a debtor in which the total amount of the deferred installments will exceed $750 should normally include an executed promissory note.

(v) *Interest, penalties, and administrative costs.* Interest shall be charged on CHAMPUS recoupment debts and debts collected in installments in accordance with 4 CFR 102.13 and instructions issued by the Director, OCHAMPUS, or a designee. Interest shall accrue from the date on which the initial demand is mailed to the debtor. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate). The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness, except that where the debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, a new interest rate may be set which reflects the current value of funds to the Treasury at the time the new agreement is executed. The collection of interest on the debt or any portion of the debt, which is paid within 30 days after the date on which interest began to accrue, shall be waived. The agency may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, the collection of interest, penalties, and administrative costs may be waived in whole or in part as a part of the compromise of a debt as provided in paragraph (g) of this section. In addition, the Director, OCHAMPUS, or a designee, may waive in whole or in part, the collection of interest, penalties, or administrative costs assessed herein, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States. Some situations in which such a waiver may be appropriate include:

(*a*) Waiver of interest consistent with 4 CFR 104.2(c)(2) in connection with a suspension of collection action pending a CHAMPUS appeal under § 199.16 of

this part where there is a substantial issue of fact in dispute.

(*b*) Waiver of interest where the original debt arose through no fault or lack of good faith on the part of the debtor and the collection of interest would impose a financial hardship or burden on the debtor. Some examples in which such a waiver may be appropriate include: a debt arising when a CHAMPUS beneficiary, who is unaware of the loss of eligibility for CHAMPUS because he or she has become eligible for Medicare, continues to file and be paid for CHAMPUS claims, resulting in erroneous CHAMPUS payments; a debt arising when a CHAMPUS beneficiary in good faith files and is paid a CHAMPUS claim for medical sevices or supplies which are later determined not to be benefits of CHAMPUS; and a debt arising when a CHAMPUS beneficiary is overpaid as the result of a calculation error on the part of a fiscal intermediary or OCHAMPUS.

(*c*) Waiver of interest where there has been an agreement to repay a debt in installments, there is no indication of fault or lack of good faith on the part of the debtor, and the amount of interest is so large in relation to the size of the installments that the debtor can reasonably afford to pay, that it is likely the debt will never be repaid in full. When a debt is paid in installments, the installment payments first will be applied to the payment of outstanding penalty and administrative cost charges, second to accrued interest and then to principal. Administrative costs incurred as the result of a debt becoming delinquent (as defined in paragraph (f)(2)(iii) of this section, shall be assessed against a debtor. These administrative costs represent the additional costs incurred in processing and handling the debt because it became delinquent. The calculation of administrative costs should be based upon cost analysis establishing an average of actual additional costs incurred in processing and handling claims against other debtors in similar stages of delinquency. A penalty charge, not exceeding six percent a year shall be assessed on any portion of a debt that is delinquent for more than 90 days. This charge, which need not be calculated until the 91st day of delinquency, shall accrue from the date that the debt became delinquent.

(vi) *Referral to other federal agencies for administrative offset.* As appropriate and in accordance with 4 CFR Part 1023, agencies will be requested to initiate administrative offset to collect CHAMPUS debts. When a debtor is employed by the U.S. Government, or is a member or retired member of the Uniformed Service, and collection by offset against other CHAMPUS payments due the debtor cannot be accomplished, and there have been no positive responses to a demand for payment within 60 days, the Director, OCHAMPUS, or a designee, may contact the agency holding funds payable to the debtor for payment by allotment or otherwise by salary offset from current disposable pay in accordance with 37 U.S.C. 1007 or 5 U.S.C. 5514 as implemented by 32 CFR Part 90 and 5 CFR Part 550. Where applicable, the request for recovery of erroneous CHAMPUS payments shall be submitted to the debtor's paying agency in accordance with 5 CFR 550.1106. Before contacting the paying agency, the Director, OCHAMPUS, or a designee, will provide the debtor written notification of the agency's intent to collect the debt by means of salary offset, authorized by 5 U.S.C. 5514. The notification will include, as a minimum:

(*a*) The agency's determination that a debt is owed, including the origin, nature, and the amount of the debt;

(*b*) The date by which payment is to be made, which will normally be 30 days from the date the demand letter is mailed;

(*c*) The amount, frequency, proposed beginning date and duration of the intended deductions, which will be determined in accordance with the provisions of 5 CFR 550.1104 or 32 CFR Part 90, as appropriate. Ordinarily, the size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay (4 CFR 102.11). However, the amount deducted for any period must not exceed 15 percent of the disposable pay from which the deduction is made unless the debtor has agreed in writing to the deduction of a greater amount. Debts must be collected in one lump-sum whenever possible. However, if the employee is financially unable to pay in one lump-sum, or the amount of the debt exceeds 15 percent of current disposable pay for an officially established pay interval, collection must be made in installments. Such installment deductions must be made to effect collection within the period of anticipated active duty or employment. If the debtor retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset from subsequent payments of any kind due the employee from the paying agency as of the date of separation shall be made to the extent necessary to liquidate the debt pursuant to 31 U.S.C. 3716 as implemented by 5 CFR Part 550 and 32 CFR Part 90. If possible, the installment payments should be sufficient in size and frequency to liquidate the government's claim in not more than 3 years. Installment payments of less than $50 per month should be accepted only with reasonable justification. An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 will not be construed as a waiver of any rights the debtor may have under that statute or any other provisions of contract or law, unless there are statutory or contractual provisions to the contrary.

(*d*) An explanation of interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards;

(*e*) Advice that the debtor may inspect and copy government records relating to the debt or, if debtor or his or her representative cannot personally inspect the records, to request and receive a copy of such records. Requests for copies of the records relating to the debt shall be made no later than 10 days from the receipt by the debtor of the notice of indebtedness.

(*f*) An opportunity for a review by the agency of its determination regarding the existence or the amount of the debt, or when a repayment schedule is established other than by written agreement, concerning the terms of the repayment schedule. The debtor shall be advised that a challenge to either the existence of the debt, the amount of the debt, or the repayment schedule, must be made within 30 days of the receipt by the debtor of the notice of indebtedness or within 45 days after receipt of the records relating to the debt, if such records are requested by the debtor. A request for waiver or reconsideration should be accompanied by supporting documents indicating why the debtor believes he is not so indebted, or by a financial affidavit supporting his request for an alternative repayment schedule;

(*g*) Notice that the timely filing of a petition for review will stay the commencement of collection proceedings;

(*h*) Notice that a final decision on the review (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the review unless the employee requests, and the agency grants, a delay in the proceedings;

(*i*) The opportunity, if it has not been previously provided, to enter into a written agreement to establish a schedule for repayment of the debt in

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lieu of offset. The agreement will be signed, by both the debtor and the agency's representative and will be keep in the agency's files;

(*j*) Notice that any knowingly false or frivolous statements, representations, or evidence may subject the debtor to: (*1*) Disciplinary procedures appropriate under Chapter 75 of Title 5 United States Code, 5 CFR 752, or any other applicable statutes or regulations; (*2*) penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable authority, or (*3*) criminal penalties under 18 U.S.C. sections 286, 287, 1001 and 1002, or any other applicable authority;

(*k*) Where applicable, notice of the debtor's right to appeal, under 32 CFR 199.16;

(*l*) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will promptly be refunded to the debtor. Refunds do not bear interest unless required or permitted by law or contract;

(*m*) The specific address to which all correspondence regarding the debt shall be directed. Unless otherwise prohibited by law, moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund may be administratively offset in reasonable amounts in order to collect in one full payment or a mininal number of payments debts owed to the United States by the debtor. The General Counsel, OCHAMPUS, may forward requests for offset of debts arising from the operation of CHAMPUS to the appropriate officials of the Office of Personnel Management. These requests shall comply with the provisions of 4 CFR 102.4 and 5 CFR Part 550.

(vii) *Referral to debt collection agencies.* Pursuant to the provisions of the Federal Claims Collection Standards (4 CFR 102.6), the Director, OCHAMPUS, or a designee, is authorized to enter into contracts for collection services, including contracts with private collection agencies for the purpose of supplementing and strengthening the collection efforts of the Department of Defense in recouping erroneous CHAMPUS payments. Such contracts will supplement but not replace the basic collection program described herein. The authority to resolve disputes, compromise claims, terminate collection action and initiate legal action may not be delegated in such contracts but will be retained by the Director, OCHAMPUS, or a designee. Individuals or firms that enter into contracts for collection services pursuant to this paragraph are subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, federal and state laws and regulations pertaining to debt collection practices, including the Fair Debt Collection Practices Act, 15 U.S.C. 1692. Debt collection contractors shall be required to account strictly for all amounts collected and must agree to provide any data contained in their files relating to paragraphs (a)(1), (2) and (3) of 4 CFR 105.2. Contracts for commercial collection services must comply with 32 CFR Part 90.

(viii) *Referrals to consumer reporting agencies.* The Director, OCHAMPUS, or a designee, is authorized to provide for the reporting of delinquent debts to consumer reporting agencies. Delinquent debts are those which are not paid or for which satisfactory payment arrangements are not made by the due date specified in the initial notification of indebtedness, or those for which the debtor has entered into a written payment agreement and installment payments are past due 30 days or longer. These referrals may be made only after publication of a "routine use" for the disclosures involved as required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a. Procedures developed for such referrals must also insure that an accounting of the disclosures is kept which is available to the debtor; that the consumer reporting agencies are provided with corrections and annotations of disagreements by the debtor; and that reasonable efforts are made to assure that the information to be reported is accurate, complete, timely and relevant. When requested by a consumer reporting agency, verification of information disclosed will promptly be provided. Once a claim has been reviewed and determined to be valid, a complete explanation of the claim will be given the debtor. When the claim is overdue, the individual will be notified in writing that payment is overdue; that within 60 days, disclosure of the claim shall be made to a consumer reporting agency unless satisfactory payment arrangements are made or unless the debtor requests an administrative review and demonstrates some basis on which the debt is legitimately disputed; and of the specific information to be disclosed to the consumer reporting agency. The information to be disclosed to the consumer reporting agency will be limited to information necessary to establish the identity of the debtor, including name, address and taxpayer identification number; the amount, status and history of the claim; and the agency or program under which the claim arose. Reasonable action will be taken to locate an individual for whom a current address is not available.

(ix) *Use and disclosure of mailing addresses.* In attempting to locate a debtor in the collection of a debt under this section, the Director, OCHAMPUS, or a designee, may send a written request to the Secretary of the Treasury, or a designee, for current address information from records of the Internal Revenue Service. These requests will comply with the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service. Disclosure of a mailing address so obtained may be made pursuant to 4 CFR 102.18(b) and 31 U.S.C. 3711.

(g) *Compromise, Suspension or Termination of Collection Actions Arising Under the Federal Claims Collection Act.*—(1) *Basic considerations.* Federal claims against the debtor and in favor of the United States arising out of the administration of the CHAMPUS may be compromised or collection action thereon may be suspended or terminated if:

(i) The claim exclusive of interest, penalties and administrative costs, does not exceed $20,000, and

(ii) There is no indication of fraud, the filing of a false claim, or misrepresentation on the part of the debtor or any director, partner, manager, or other party having an interest in the claim.

(iii) After deducting the amount of partial payments or collections, if any, if a claim exceeds $20,000, exclusive of interest, penalties, and administrative costs, the authority to compromise, suspend, or terminate collection action rests solely with the Department of Justice.

(2) *Authority.* CHAMPUS fiscal intermediaries are not authorized to compromise or to suspend or terminate collection action on federal CHAMPUS claims. Only the Director, OCHAMPUS, or a designee, and Uniformed Service claims officers acting under the provisions of their own regulations, are so authorized.

(3) *Basis for compromise.* A claim may be compromised hereunder if the government cannot collect the full amount if:

(i) The debtor or the estate of a debtor does not have the present or prospective ability to pay the full amount within a reasonable time;

(ii) The debtor refuses to pay the claim in full and the government is unable to enforce collection of the full amount within a reasonable time by enforced collection proceedings;

(iii) There is real doubt concerning the government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or a *bona fide* dispute as to the facts; or

(iv) The cost of collecting the claim does not justify enforced collection of the full amount.

(4) *Basis for suspension.* Collection action may be suspended for either of the following reasons if future collection action may be sufficiently productive to justify periodic review and action on the claim giving consideration to its size and the amount which may be realized thereon:

(i) The debtor cannot be located; or

(ii) The debtor is unable to make payments on the government's claim or effect a compromise at the time, but the debtor's future prospects justify retention of the claim for periodic review and action and: (*a*) The applicable statute of limitations has been tolled or started running anew; or (*b*) future collection action can be effected by offset, notwithstanding the statute of limitations with due regard to the 10-year limitation prescribed by 31 U.S.C. 3716(c)(1); or (*c*) the debtor agrees to pay interest on the amount of the debt on which collection action will be temporarily suspended, and such temporary suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(iii) Consideration may be given by the Director, OCHAMPUS, or a designee, to suspend collection action pending action on a request for a review of the government's claim against the debtor or pending an administrative review under § 199.16 of this part of any CHAMPUS claim or claims directly involved in the government's claim against the debtor. Suspension under this paragraph will be based upon appropriate consideration, on a case-by-case basis as to whether: (*a*) There is a reasonable possibility that the debt (in whole or in part) will be found not owing from the debtor; (*b*) the government's interest would be protected if suspension were granted by reasonable assurance that the debt would be recovered if the debtor does not prevail; and (*c*) collection of the debt will cause undue hardship.

(5) *Basis for termination.* Collection action may be terminated for one or more of the following reasons:

(i) The United States cannot collect or enforce collection of any significant sum from the debtor having due regard to the judicial remedies available to the government, the debtor's future financial prospects and the exemptions available to the debtor under state and federal law;

(ii) The debtor cannot be located, and either: (*a*) there is no security remaining to be liquidated, or (*b*) the applicable statute of limitations has run and the prospects of collecting by offset, notwithstanding the bar of the statute of limitations, are too remote to justify retention of the claim;

(iii) The cost of further collection action is like to exceed any recovery;

(iv) It is determined that the claim is legally without merit; or

(v) Evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment are unavailing.

(6) *Factors considered.* In determining whether a claim will be compromised, or collection action terminated or suspended, the responsible CHAMPUS collection authority will consider the following factors:

(i) Age and health of the debtor, present and potential income, inheritance prospects, possible concealment or improper transfer of assets and the availability of assets or income which may be realized upon by enforced collection proceedings;

(ii) Applicability of exemptions available to a debtor under state or federal law;

(iii) Uncertainty as to the price which collateral or other property may bring at forced sale; or

(iv) The probability of proving the claim in court, the probability of full or partial recovery, the availability of necessary evidence and related pragmatic considerations.

(7) *Amount of compromise.* The amount acceptable in compromise will be reasonable in relation to the amount that can be recovered by enforced collection proceedings. Consideration shall be given to the following:

(i) The exemptions available to the debtor under state and federal law;

(ii) The time necessary to collect the debt;

(iii) The litigative probabilities involved; and

(iv) The administrative and litigative costs of collection where the cost of collecting the claim is a basis for compromise.

(8) *Payment of compromised claims.*—(i) *Time and manner.* Compromised claims are to be paid in one lump sum if possible. However, if payment of a compromise is necessary, a legally enforceable compromise agreement must be obtained. Payment of the amount that CHAMPUS has agreed to accept as a compromise in full settlement of a CHAMPUS claim must be made within the time and in the manner prescribed in the compromise agreement. Any such compromised claim is not settled until the full payment of the compromised amount has been made within the time and the manner prescribed. Compromise agreements must provide for the reinstatement of the prior indebtedness, less sums paid thereon, and acceleration of the balance due upon default in the payment of any installment.

(ii) *Failure to pay the compromised amount.* Failure of any debtor to make payment as provided in the compromise agreement will have the effect of reinstating the full amount of the original claim, less any amounts paid prior to the default.

(9) *Effect of compromise, or suspension or termination of collection action.* Pursuant to the Internal Revenue Code, 26 U.S.C. 6041, compromises and terminations of undisputed debts not discharged in a Title II bankruptcy case and totaling $600 or more for the year will be reported to the Internal Revenue Service in the manner prescribed by them for inclusion in the debtor's gross income for that year. Any action taken under paragraph (g) of this section regarding the compromise of a federal claim, or suspension or termination of collection action on a federal claim is not an initial determination for purpose of the appeal procedures of Section 199.16 of this part.

(h) *Referrals for Collection.*—(1) *Prompt referral.* Federal claims of $600 or more on which collection action has been taken in accordance with the provisions of this Section and which cannot be collected or compromised or on which collection action cannot be suspended or terminated, as provided herein, will be promptly referred by the Director, OCHAMPUS, or a designee, to the Department of Justice for litigation in accordance with 4 CFR Part 105. Such referrals will be made as early as possible consistent with aggressive collection action by CHAMPUS fiscal intermediaries and OCHAMPUS and well within the period for bringing a timely suit against the debtor. Ordinarily referrals will be made within one year of the OCHAMPUS final determination of the fact and the amount of the debt.

(2) *Report of prior collection actions.* The Director, OCHAMPUS, or a designee, will prepare a Claims Collection Litigation Report (CCLR) for each case referred for collection under the provisions of this section. The CCLR will include, as a minimum, the following:

(i) A checklist or brief summary of the actions previously taken to collect or compromise the claim. If any of the required administrative collection actions have been omitted, the reason for its omission must be provided.

(ii) The current address of the debtor, or the name and address of the agent for

a corporation upon whom service may be made. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice for the institution of foreclosure or other proceedings, in which the current address of any party is unknown, will be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(iii) Reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under state and federal law and the judicial remedies available to the government. Such credit data may take the form of a commercial credit report; an agency investigative report showing the debtor's assets, liabilities, income, and expenses; the individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or an audited balance sheet of a corporate debtor. Such credit data may be omitted if a surety bond is available in an amount sufficient to satisfy the claim in full; the forced sale value of any security available for application to the government's claim is sufficient to satisfy the claim in full; the debtor is in bankruptcy or receivership; the debtor's liability to the government is fully covered by insurance, in which case such information as can be developed concerning the identity and address of the insurer and the type and amount of insurance coverage will be furnished or the nature of the debtor is such that credit data is not normally available or cannot reasonably be obtained, for example, a unit of state or local government.

(3) The CCLR shall also be used when a claim is referred to the Department of Justice in order to obtain approval of that Department with respect to compromise, suspension, or termination when such approval is required by 4 CFR 103.1(b) and 104.1(b).

(4) *Preservation of evidence.* The Director, OCHAMPUS, or a designee, will take such action as is necessary to ensure that all files, records and exhibits on claims referred hereunder are properly preserved.

(i) *Claims Involving Indications of Fraud, Filing of False Claims or Misrepresentation.* Any case in which there is an indication of fraud, filing of false claims or misrepresentation will be promptly referred to the Director, OCHAMPUS, or a designee, for processing. The Director, OCHAMPUS, or a designee, will investigate and evaluate the case and either refer the case to the appropriate investigative law enforcement agency or return the claim for other appropriate administrative action, including collection action under this section. Payment on all CHAMPUS beneficiary or provider claims in which fraud, filing false claims or misrepresentation is suspected will be suspended until payment or denial of the claim is authorized by the Director, OCHAMPUS, or a designee. Collection action on all federal claims in which a suspicion of fraud, misrepresentation or filing false claims arises will be suspended pending referral to the appropriate law enforcement agencies by the Director, OCHAMPUS, or a designee. Only the Department of Justice has authority to compromise or terminate collection action on such claims.

6. 32 CFR 199.18 is added as follows:

§ 199.18 Third party recoveries.

(a) *General.* This section deals with the right of the United States to recover the costs of medical care furnished or paid for on behalf of CHAMPUS beneficiaries from third parties. These third parties may be individuals, or entities who are liable for tort damages to the injured CHAMPUS beneficiary or a liability insurance carrier covering the individual or entity. These third parties may also include other entities who are primarily responsible to pay for the medical care provided to the injured beneficiary by reason of an insurance policy, workers' compensation law or other source of primary payment.

(b) *Authority.* The following authorities provide the basis under which claims may be asserted or other actions taken under this section.

(1) The Federal Medical Care Recovery Act (42 U.S.C. 2651–2653) is a statute enacted to authorize the recovery of the reasonable value of medical care furnished or paid for by the United States to a person who is injured or suffers a disease under circumstances creating tort liability in a third party. This Act is implemented by Executive Order 11060 and an Attorney General Regulation, 28 CFR Part 43.

(2) *Other Authority.* Third party recoveries may arise in whole or in part under authorities other than the Medical Care Recovery Act. These include, but are not limited to:

(i) State Workers' Compensation Laws;

(ii) State hospital lien laws;

(iii) State no-fault or uninsured motorist statutes;

(iv) Contract rights under terms of insurance policies.

(c) *Policy.* CHAMPUS third party recovery claims can be complex and difficult to administer because they often involve recovery potential from multiple sources. It is essential that all persons responsible for taking action under this section have adequate training and support in this area. The Director, OCHAMPUS, or a designee, will insure that CHAMPUS personnel (including fiscal intermediary personnel) responsible for taking any action under this section are adequately trained and supported to take timely and effective action. Responsibility for taking third party recovery action at various times can rest with either fiscal intermediary personnel, OCHAMPUS employees, or uniformed service claims asserting authorities. For this reason close coordination between those responsible for any action under this section is essential. Care must also be taken to insure that appropriate action to assert any third party recovery right is taken in sufficient time to preclude the running of any applicable statute of limitations or other bar to the government's right to recover.

(d) *Appealability.* This section describes the procedures to be followed in the assertion and collection of third party recovery claims in favor of the United States arising from the operation of CHAMPUS. Actions taken under this section are not initial determinations for the purpose of the appeal procedures of § 199.16 of this regulation. However, the proper exercise of the right to appeal benefit or provider status determinations under the procedures set forth in § 199.16 may affect the processing of federal claims arising under this section. Those appeal procedures afford a CHAMPUS beneficiary or participating provider an opportunity for administrative appellate review in cases in which benefits have been denied and in which there is a significant factual dispute. For example, a fiscal intermediary may deny payment for services which are determined to be excluded as CHAMPUS benefits because they are found to be not medically necessary. In that event the fiscal intermediary will offer an administrative appeal as provided in § 199.16 of this regulation on the medical necessity issue raised by the adverse benefit determination. If the care in question results from an accidental injury and if the appeal results in a reversal of the initial determination to deny the benefit, a third party recovery claim may arise as a result of the appeal decision to pay the benefit. However, in no case is the decision to initiate such a claim itself appealable under § 199.16 of this regulation.

(e) *Federal Medical Care Recovery Act Claims.*—(1) *General.* The Federal Medical Care Recovery Act (FMCRA) (42 U.S.C. 2651–2653) provides that in any case in which the United States is authorized or required by law to furnish or pay for hospital, medical, surgical or dental care and treatment to a person who is injured or suffers a disease under circumstances creating tort liability in some third person to pay damages for that care, the United States has a right to recover from the third person the reasonable value of the care and treatment furnished or to be furnished.

(2) *Obligations of persons receiving treatment.* To insure the expeditious and efficient processing of Federal Medical Care Recovery Act claims, any person furnished care and treatment under CHAMPUS, his or her guardian, personal representative, counsel, estate, dependents or survivors shall be required:

(i) To provide complete information regarding the circumstances surrounding an injury as a condition precedent to the processing of a CHAMPUS claim involving possible third-party liability.

(ii) To assign in writing to the United States his or her claim or cause of action against the third person to the extent of the reasonable value of the care and treatment furnished, or to be furnished, or any portion thereof;

(iii) To furnish such additional information as may be requested concerning the circumstances giving rise to the injury or disease for which care and treatment are being given and concerning any action instituted or to be instituted by or against a third person;

(iv) To notify the responsible recovery judge advocate, the CHAMPUS fiscal intermediary or General Counsel, OCHAMPUS, or other officer who is representing the interests of the government at the time, of a settlement with, or an offer of settlement from a third person; and,

(v) To cooperate in the prosecution of all claims and actions by the United States against such third person.

(3) *Responsibility for recovery.* The Director, OCHAMPUS, or a designee, is responsible for insuring that CHAMPUS claims arising under the Federal Medical Care Recovery Act are properly referred to and coordinated with the Uniformed Services. Generally, federal claims arising under this statute will be processed as follows:

(i) *Identification and referral of Federal Medical Care Recovery Act claims.—(a) CHAMPUS fiscal intermediaries.* In most cases where medical care is provided by civilian providers and payment for such care has been made by a CHAMPUS fiscal intermediary, initial identification of potential third-party liability will be by the CHAMPUS fiscal intermediary. In such cases, the CHAMPUS fiscal intermediary is responsible for conducting a preliminary investigation and referring the case to designated appropriate legal officers of the Uniformed Services.

(*b*) *Initial identification by other agencies.* Occasionally, cases involving potential third-party liability may be initially identified by offices, agencies or individuals other than a CHAMPUS fiscal intermediary. When this occurs, these cases should be initially referred to the General Counsel, OCHAMPUS, Aurora, CO 80045–6900 for evaluation. If appropriate, the General Counsel, OCHAMPUS, may refer the case to the fiscal intermediary or the designated Uniformed Service legal office for action.

(ii) *Processing CHAMPUS claims.* When the CHAMPUS fiscal intermediary initially identifies a claim as involving potential third-party liability, it shall request additional information concerning circumstances of the injury or disease from the beneficiary or other responsible party unless adequate information is submitted with the claim. The information normally is obtained by requesting the beneficiary to complete a personal injury questionnaire. The CHAMPUS claim will be suspended and no payment issued pending receipt of the third-party liability information. If the requested third-party liability information is not received, the claim will be denied. A CHAMPUS beneficiary may expedite the processing of his or her CHAMPUS claim by submitting a completed third-party liability questionnaire with the first claim for treatment of an accidental injury. Third-party liability information normally is required only once concerning any single accidental injury. Once the third-party liability information pertaining to a single incident or episode of care is received, subsequent claims associated with the same incident or episode of care may be processed to payment in the usual manner. If, however, the requested third-party liability information is not received, subsequent claims involving the same incident or episode of care will be suspended or denied as stated above.

(iii) *Ascertaining total potential liability.* It is essential that the legal office responsible for asserting the claim against the third party receive from the CHAMPUS fiscal intermediary a report of all amounts expended by the United States for care resulting from the incident upon which potential liability in the third party is based (including amounts paid by CHAMPUS for both inpatient and outpatient care). Prior to assertion and final settlement of a claim, it will be necessary for the responsible legal office to secure from the CHAMPUS fiscal intermediary updated information to insure that all amounts expended under CHAMPUS are included in the government's claim. It is equally important that information on future medical payments be obtained through the investigative process and included as a part of the government's claim. No CHAMPUS-related claim will be settled, compromised or waived without full consideration being given to the possible future medical payment aspects of the individual case.

(4) *Representing the government's interest.* The government's right to recover the amounts expended for the patient's medical care is independent of the right the patient has to assert a claim against the third person for damages. The existence of the government's right, however, is dependent upon establishing the liability of the third person under ordinary principles of law.

(i) Frequently, collection actions under the Federal Medical Care Recovery Act must be referred to the Department of Justice for litigation. This is usually necessary because either the administrative collection action has been unsuccessful or the injured party has initiated suit and the government must be joined to protect its interests. When such referrals involve significant cases in which the dollar amount of the potential recovery on CHAMPUS claims exceeds $40,000 or involve a unique or significant legal issue, notice of the referral will be provided to the General Counsel, OCHAMPUS. Upon request by the Uniformed Service involved, the General Counsel, OCHAMPUS, will assist in the coordination of any case with the Department of Justice.

(ii) The attorney for the injured beneficiary may be requested to represent the interests of the government and join both claims in a single action against the third person. Such representation of the government's interest normally must be made at no expense to the government. However, when such representation of the government's interest is undertaken by the injured party's attorney for the government, offices and agencies involved will extend full cooperation to the injured party's attorney to insure that the government's interests are fully protected. The coordination of such cases is normally the responsibility of the designated Uniformed Service claims office. However, the General

Counsel, OCHAMPUS, may be requested to provide assistance in coordinating CHAMPUS matters relating to these cases. If the attorney representing the injured beneficiary does not wish to join the government's claim with that of his or her client, and court action is required to recover the amount expended for the patient's medical care, intervention or an independent suit may be initiated by the United States for the reasonable value of the care or treatment provided.

(5) *Settlement and waiver of Federal Medical Care Recovery Act claims.* (i) Uniformed Services legal offices may, under the authority and provisions of regulations prescribed by their respective departments, (*a*) accept the full amount of a claim and execute a release therefore, (*b*) compromise or settle and execute a release of any claim, not in excess of $40,000, which has been referred to it under the provisions of this Section, or (*c*) waive, and in this connection, release any claim not in excess of $40,000 in whole or in part, either for the convenience of the government, or if it is determined that collection would result in undue hardship upon the person who suffered the disease or injury resulting in the care and treatment provided under the CHAMPUS.

(ii) A claim in excess of $40,000 may be compromised, settled, waived and released only with the prior approval of the Department of Justice. The Department of Justice is also to be consulted in all cases involving (*a*) unusual circumstances, (*b*) a new point of law which may serve as a precedent, or (*c*) a policy question where there is or may be a difference of views between federal departments and agencies.

(iii) The authority of compromise, settlement, waiver and release described by this paragraph cannot be exercised in any case in which (*a*) the claim of the United States for such care and treatment has been referred to the Department of Justice, or (*b*) a suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described herein and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(6) *Reporting requirements.* The Department of Defense is required to submit an annual report to the Attorney General stating the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third persons for third-party federal claims arising from the operation of the CHAMPUS. To facilitate the preparation of this report and to maintain program integrity, the following reporting requirements are established:

(i) Each CHAMPUS fiscal intermediary shall submit on or before January 31 of each year an annual report to the Director, OCHAMPUS, or a designee, covering the 12 months of the previous calendar year. This report shall contain, as a minimum, the number and total dollar amount of cases investigated for potential third-party liability and the number and dollar amount of cases referred to Uniformed Services claims offices for further investigation and collection. These latter figures are to be itemized by the states and uniformed services to which the cases are referred.

(ii) Each Uniformed Service will submit an annual report covering the 12 calendar months of the previous year, setting forth, as a minimum, the number and total dollar amount of cases involving CHAMPUS payments received from CHAMPUS fiscal intermediaries, the number and dollar amount of cases involving CHAMPUS payments received from other sources, and the number and dollar amount of claims actually asserted against, and the dollar amount of recoveries from, third persons. The report, itemized by state and foreign claims jurisdictions, shall be provided no later than February 28 of each year, by each Uniformed Service to the Director, OCHAMPUS, or a designee.

(iii) The reporting requirements prescribed by (e)(6)(i) of this section are to be implemented by the Director, OCHAMPUS, or a designee, by an appropriate action. The reporting requirements prescribed by paragraph (e)(6)(ii) of this section are to be implemented as soon as practicable by agreement between the Director, OCHAMPUS, or a designee, and the affected reporting agency. In no event will the reporting requirements prescribed in paragraph (e)(6)(ii) above be implemented later than December 23, 1988.

(f) *Automobile or Other Medical Payment Insurance, No-Fault Insurance, or Uninsured Motorist Insurance.* Payment may not be made under CHAMPUS for any medical service or supply to the extent that payment has been made or can reasonably be expected to be made for the service or supply under medical insurance or other plan, automobile medical payment insurance policy or plan, uninsured motorist insurance, no-fault insurance or other forms of medical payments protection. Unless all or a portion of a payment under a no-fault or uninsured motorist insurance policy is designated as reimbursement for medical expenses or for some other policy benefit, the full amount of all such undesignated payments shall be deemed to be for medical expenses incurred by the policy beneficiary. Where a CHAMPUS beneficiary is covered by no-fault or uninsured motorist insurance, CHAMPUS benefits will not become available until the CHAMPUS beneficiary furnishes written documentation that he or she has incurred medical expenses equal to the full amount of the payment received under the policy, or to that portion of the total payment received which was designated for medical expenses. Based upon the results of the investigation described in paragraph (e)(3)(ii) of this section, the fiscal intermediary will segregate all claims involving treatment of personal injuries for which it is likely that such other insurance is available. These claims will be processed initially as double coverage claims under the provisions of § 199.14 of this part. Any CHAMPUS payments made after the double coverage provisions have been fully complied with will be considered for possible third-party liability recovery under the provisions of this section.

(g) *Worker's Compensation Claims.* Based upon the results of the investigation described in paragraph (e)(3)(ii) of this section, the fiscal intermediary will segregate all claims involving treatment of work-related injuries. These claims will be processed initially as double coverage claims under § 199.14 of this part dealing with workers' compensation claims. Any CHAMPUS payments made after the double coverage provisions have been fully complied with will be considered for possible third-party liability recovery under the provisions of this section. Unless all or a portion of a payment made pursuant to a Worker's Compensation claim is designated as reimbursement for medical expenses or for some other policy benefit, the full amount of all such undesignated payments shall be deemed to be for medical expenses incurred by the policy beneficiary.

(h) *Mixed Claims.* Occasionally, a claim arising under the Medical Care Recovery Act will be referred to a claims collection authority which also has some other potential for recovery. A typical example of such a claim is one arising as the result of an automobile accident in which there is a likely tortfeasor and the injured party is also covered by some combination of other health insurance which is primary to CHAMPUS, such as, workers' compensation, or a medical payments provision of an automobile policy. These claims will also initially be processed as

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double coverage claims. In addition, agency claims collection authorities should take full cognizance of all avenues of potential recovery as long as there is any potential for recovery from the tortfeasor. Once final action has been taken, any remaining possible recovery under the Federal Claims Collection Act may be referred to the General Counsel, OCHAMPUS, for further action in accordance with 32 CFR 199.17. Such referrals should contain a complete report of all actions taken on the case and full and complete documentation of the claims involved.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

December 13, 1985.

[FR Doc. 85-29889 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego Reg. 85-17]

Security Zone Regulations: San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone at Naval Air Station North Island, San Diego, California, consisting of the water area within 100 yards (91.5 meters) of the cruiser pier (berths J–K) and within 300 yards (275 meters) of the carrier pier (quay wall, berths L–P). This security zone is established at the request of the United States Navy and is needed to safeguard U.S. Naval vessels and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Commanding Officer, Naval Air Station North Island or the Captain of the Port.

DATES: This regulation becomes effective on December 5, 1985. It terminates on April 5, 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, C/O U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101-1064, telephone (619) 293-5860.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to secure the interests of the United States.

Drafting Information

The drafters of this regulation are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The Commanding Officer, Naval Air Station North Island has requested that Captain of the Port, San Diego, California establish a security zone at Naval Air Station North Island Cruiser (J–K) and Carrier (L–P) Piers. This request was made to improve security at those piers and to prevent vessels from approaching naval ships moored at those locations closer than 100 yards (91.5 meters) at the cruiser pier and 300 yards (275 meters) at the carrier pier (quay wall). The Captain of the Port concurs with the need for this security zone. The security zone is needed to protect persons and property from sabotage or other subversive acts, accidents, criminal actions, or other causes of a similar nature, and to secure the interests of the United States. The Captain of the Port has designated the Commanding Officer, Naval Air Station North Island, to permit entry into this security zone. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

PART 165—[AMENDED]

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 33 CFR 160.5.

2. In Part 165, a new § 165.T1104 is added to read as follows:

§ 165.T1104 Security zone: San Diego Bay, California.

(a) *Location:* The following area is a security zone: The water area adjacent to Naval Air Station North Island, Coronado, California, and within 100 yards (91.5 meters) of the Cruiser (J–K) Pier and within 300 yards (275 meters) of the Carrier (L–P) Pier, described as follows: From a point on the shoreline of Naval Air Station North Island, on North Island, Coronado, California, at latitude 32°42'47.5" N, longitude 117°11'25.0" W (Point A), for a place of beginning; thence northeasterly to latitude 32°42'52.0" N, longitude 117°11'21.5" W (Point B); thence southeasterly to latitude 32°42'44.5" N, longitude 117°11'11.0" W (Point C); thence southerly to latitude 32°42'31.0" N, longitude 117°11'16.4" W (Point D); thence southeasterly to latitude 32°42'21.4" N, longitude 117°10'44.5" W (Point E); thence southerly to latitude 32°42'12.8" N, longitude 117°10'47.8" W (Point F); thence generally northwesterly along the shoreline of Naval Air Station North Island to the place of beginning (Point A).

(b) *Effective Date:* This regulation becomes effective on December 5 1985. It terminates on April 5 1986.

(c) *Regulations:* In accordance with the general regulations in 165.33 of this Part, entry into the area of this zone is prohibited unless authorized by the Captain of the Port or the Commanding Officer, Naval Air Station North Island. Section 165.33 also contains other general requirements.

Dated: December 5, 1985.

E.A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port, San Diego, California.

[FR Doc. 85-30267 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL-012; A-4-FRL-2942-4]

Approval and Promulgation of Implementation Plans; Florida; Attainment Date Designation for Lead

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is today deleting two sources from the source-specific regulations, which were promulgated on Novemer 1, 1985, for the Florida lead implementation plan. EPA is also amending the Florida table of

attainment dates, listed in Part 52, to include an attainment date for lead.

EFFECTIVE DATE: This action will be effective on February 21, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. Such notice may be submitted to Archie Lee, at the EPA, Region IV address below.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location:

Environmental Protection Agency, Air Programs Branch, EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blairstone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Archie Lee, Air Programs Branch, Region IV, EPA, at the above address and phone 404/881-3286 or FTS: 257-3286.

SUPPLEMENTARY INFORMATION: EPA took final action on the Florida Lead SIP on November 1, 1985 (50 FR 45603). The action disapproved the regulatory portion of the SIP, approved the rest of the SIP, and promulgated source-specific Federal regulations to replace the disapproved portion. Since that time, two of the sources have shut down permanently, and today's action removes them from these regulations. Specifically, 40 CFR 52.535(c) (3) and (6) are hereby removed.

The two sources are Chloride Battery in Tampa, Florida, and Refined Metals, in Jacksonville, Florida. Chloride Battery formally requested that the Hillsborough County Environmental Protection Commission invalidate its permits on July 3, 1985. Refined Metals never returned its permits, which expired on December 31, 1984. Under Florida law, should the source wish to reopen after permit expiration, it is subject to Florida's New Source Review requirements as a new source.

The Code of Federal Regulations (CFR) contains a table for attainment dates of each pollutant for each state. Florida's table is contained in 40 CFR 52.523, but does not include lead. Today's action will amend the table to include lead, and set the attainment date as December 1, 1985, which is the effective date of the federally promulgated Florida lead implementation plan.

Action

This action is taken without prior proposal because it is noncontroversial and EPA anticipates no comments on it. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action, and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Intergovernmental relations.

Dated: December 16, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart K—Florida

§ 52.523 [Amended]

2. In § 52.523, Attainment dates for national standards, the table is amended as follows:

A column is added for the pollutant "Lead," with the notation "h" for every entry, and a corresponding line is added to the legend as follows: "h. December 1, 1985."

§ 52.535 [Amended]

3. In § 52.535 paragraphs (c)(3) and (6) are removed and reserved.

[FR Doc. 85-30248 Filed 12-20-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-4-FRL-2937-7]

Implementation plans; Florida; Approval of Source Sampling Rule Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final action.

SUMMARY: EPA is today approving the Source Sampling III rule amendments submitted by the Florida Department of Environmental Regulations (FDER). This rule includes serveral minor changes to the FDER's notification and testing requirments in order to correct and update portions of the existing rules.

EFFECTIVE DATE: This action will be effective on February 21, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Archie Lee of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Florida Department of Environmental Regulation, Bureau of Air Quality Management, Twin Towers Office Building, 2600 Blairstone Road, Tallahassee, Florida 32301;

Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20005;

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365;

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Archie Lee, Air Programs Branch, EPA Region IV, at the above address, and phone 404/881-3286, or FTS 257-3286.

SUPPLEMENTARY INFORMATION: The Source Sampling III rule amendment was submitted by the FDER to EPA on May 30, 1985. After a thorough review, EPA has determined the amendments to be acceptable, and is today approving them as submitted.

The submittal amends Florida Administrative Code (FAC) Chapter 17-2.700, *Stationary Point Source Emissions Test Procedures.* These rule amendments include:

(1) The requirement to conduct annual compliance testing of specific source classes:

(2) Confirmation that the source emission rate is established on the basis of a three test run unless otherwise specified by the applicable test method;

(3) The requirement that source owners give notice to the FDER 15 days prior to testing;

(4) Retaining the 20° alpha requirement for swirling flow stack conditions, but correctly moving the requirement to FDER Method 1;

(5) Adoption by reference of the Federal Register publication dates of the original promulgations and amendments to EPA Methods already in 17–2.700, and adopting EPA Methods 6A and 6B for sulfur dioxide emission testing, and EPA Method 7A for nitrogen oxides emission testing;

(6) Amending Table 1 to require EPA's Method 5 for particulate emission testing with acetone wash for citrus plants; EPA Method 6 for sulfur dioxide emission testing, and alternatively allowing the use of fuel sampling to determine sulfur dioxide emission rates for fossil fuel steam generators and EPA Method 5 particulate emission testing for portland cement plants.

Table I is a listing of the sampling procedures and special conditions for each source which has an emission limiting standard in the FAC.

Under Method 6, Special Conditions for fossil fuel steam generators, fuel sampling and analysis may be used in lieu of Method 6, with prior approval of the FDER. EPA concurs with this alternate method for determining compliance, provided that initial compliance is assured by Method 6. The FDER has been informed of this, and has stated that the intent was to assure initial compliance with Method 6. Therefore, EPA finds this to be acceptable.

Final Action

Based on the foregoing, EPA hereby approves Florida's Source Sampling III rule amendment. This action is taken without prior proposal because the changes are noncontroversial and EPA anticipates no comments on them.

The public should be advised that this action will be effective 60 days from the date of publication of this Federal Register notice. However, if notice is received within 30 days of the date of this notice that someone wishes to submit adverse or critical comments, this action will be withdrawn, and two subsequent notices will be published before the effective date. One notice will withdraw the final action, and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 21, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Incorporation by reference of the Florida State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, intergovernmental relations, incorporation by reference, nitrogen dioxide, particulate matter, sulfur dioxide.

Dated: December 9, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart K—Florida

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.520 is amended by adding paragraph (c)(56) as follows:

§ 52.520 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(56) Amendments to the Florida Administrative Code (FAC) submitted by the Secretary of the Florida Department of Environmental Regulation (FDER) on May 30, 1985, which deals with source sampling.

(i) Incorporation by reference.

(A) Amendments to 17–2.700 FAC, which deals with source sampling procedures and conditions, adopted on April 3, 1985, by the FDER.

(ii) Additional material.

(A) None.

[FR Doc. 85–29558 Filed 12–20–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 10

[CGD 85–094]

Licensing of Pilots; Annual Physical Examination

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: This rule amends the Final Rule (50 FR 26106) published on June 24, 1985 and the correction of the effective date (50 FR 30274) published July 25, 1985 regarding § 10.07–9(e) of 46 CFR Subpart 10.07. This amendment will permit first class pilots to take the required physical examination at any time during the calander year, with the stipulation that the time between each physical examination may not exceed 13 months. This rule provides flexibility in scheduling physical examinations in order to accommodate the employment practices in the merchant marine.

DATES: Effective January 1, 1986. Comments must be received by February 6, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Office of Merchant Marine Safety (G–MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593, (202) 426–2985.

SUPPLEMENTARY INFORMATION: On June 24, 1985, the Coast Guard published a Final Rule at 50 FR 26106 regarding the licensing of pilots, effective July 24, 1985. Due to numerous comments that the requirements could not be met within the 30 days allowed without a substantial disruption of pilots' schedules, the effective date was amended to January 1, 1986 (50 FR 30274). Subsequent to the revision of the effective date, more comments were received objecting to the manner in which the statutory requirement for an annual physical exam was being applied. Under 46 U.S.C. 7101(e)(3) an individual may be issued a license as a pilot only if the individual has a thorough physical examination each year while holding the license. Currently, 46 CFR 10.07–9(e) provides that if an individual holding a first class pilot's license or endorsement does not satisfactorily complete a physical examination within 90 days prior to the anniversary date of the issuance of the license, the license or endorsement is invalid as of the anniversary date and the individual may not operate under the authority of that license or endorsement until a physical examination has been completed. The 90

day provision was intended to provide flexibility in scheduling physical examinations in recognition of the employment practices in the merchant marine.

It was brought to our attention that the requirement for the physical examination to be conducted within the 90-day period prior to the anniversary date of the issuance of the license placed a large burden on the pilots because, as a matter of practice, most pilots undergo their physical exams at times that do not conflict with their sailing or seagoing period. For example, in several pilot organizations every pilot takes the physical exam during December each year. Additionally, pilots on Great Lakes vessels take their physical exams during February or March each year to avoid conflict with the sailing season which runs from April to December. In most instances the schedules for physical exams currently being followed have no relationship to the individual's license issuance date.

To deal with these problems, the Coast Guard is amending 46 CFR 10.07-9 to allow even greater flexibility. This amendment will permit a first Class pilot to take the required physical examination at any time during the calendar year. The license will become invalid on the first day of the-month following the anniversary of that examination. This will allow pilots to maintain an annual physical exam schedule that best suits their individual needs. This change should eliminate the problems associated with the scheduling of annual physical exams.

This amendment is being published as an interim final rule in order to avoid a disruptive effect on pilots and their employers. The substantive requirement for an annual physical examination is not being changed, only the scheduling of the exam. Since delay in promulgating this relaxation would cause pilots to schedule additional physical examinations, the Coast Guard has determined, under 5 U.S.C. 553, that providing prior notice and opportunity for comment would be contrary to the public interest.

This interim final rule is effective in less than 30 days. Good cause exists to make this rule effective in less than 30 days because the purpose of the interim final rule is to relieve the potential hardship created by the rule published June 24, 1985, which unless amended would become effective January 1, 1986. Comments are solicited to assist in determining if the practical problems with physical exam scheduling have been eliminated. Comments should be mailed to Commandant (G-CMC/21) (CGD 85-094), U.S. Coast Guard, Washington, D.C. 20593. Between 7:30 a.m. and 3:30 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G-CMD/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593, (202) 426-1477. Comments must be received by February 6, 1986.

Regulatory Evaluation: This amendment is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). It is not expected to have a significant economic impact, as the only consequence is that an extra physical exam may not be required for some pilots. The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary. Since the impact of this rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities. There is no paperwork burden associated with this amendment.

List of Subjects in 46 CFR Part 10

Seamen, Marine Safety, Navigation (water), Passenger vessels.

PART 10—AMENDED]

In consideration of the foregoing, Part 10 of Title 46 of the Code of Federal Regulations is amended as follows:

1. The Authority citation for Part 10 reads as follows:

Authority: 46 U.S.C. 7101; 49 CFR 1.46(b).

2. Section 10.07-9 is amended by giving paragraphs (b), (e) and (g) to read as follows:

§10.07-9 Physical examination requirements for a license or endorsemennt as first class pilot.

* * * * *

(b) Every person holding a license or endorsement as first class pilot shall have a thorough physical examination each calendar year while holding the license or endorsement except that this requirement does not apply to an individual who will serve as a pilot only on a vessel of less than 1,600 gross tons.

* * * * *

(e) An individual's first class pilot's license or endorsement becomes invalid on the first day of the month following the first anniversary of the individual's most recent physical examination satisfactorily completed; the individual may not operate under the authority of that license or endorsement until a physical examination has been satisfactorily completed.

* * * * *

(g) An applicant for renewal of a license or endorsement as first class pilot shall satisfactorily complete within one year prior to renewal and file the OCMI, a physical examination meeting the requirements specified in paragraph (d) of this section.

Dated: December 18, 1985.

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-30266 Filed 12-20-86; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[General Docket Nos. 84-689 and 84-690]

Radiodetermination Satellite Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Erratum is to correct the Table of Frequency Allocations of the Report and Order released by the FCC on September 13, 1985, regarding radiodetermination satellite service.

FOR FURTHER INFORMATION CONTACT: Melvin J. Murray, Frequency Allocations Branch, Office of Science and Technology Federal Communications Commission, Washington, DC 20554 (202) 653-8144.

SUPPLEMENTARY INFORMATION:

Erratum

In the Matter of: Amendment of the Commission's Rules to Allocate Spectrum for, and to Establish other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, Gen. Docket No. 84-689, RM-4426; Policies and Procedures for the Licensing of Space and Earth Stations in the Radiodetermination Satellite Service, Gen. Docket No. 84-690; GEOSTAR CORPORATION, For Authority to Construct, Launch and Operate Space Stations in the Radiodetermination Satellite Service, File Nos. 2191-DSS-P/L-83, 2192-DSS-P/L-83, 2193-DSS-P/L-83, 2194-DSS-P/L-83; A request to allocate the 1606.8-1613.8 MHz band on a Primary Basis to the Radio Astronomy Service, RM-4839.

Released: December 13, 1985.

In the Commission's Report and Order in the captioned proceeding released September 13, 1985 (50 FR 39101; September 27, 1985), an error was detected in the Table of Frequency

allocations in the first column on page 39108. This Table is corrected by deleting footnote US40 from both columns 4 and 5.

Federal Communications Commissions.

William J. Tricarico,

Secretary.

[FR Doc. 85-30198 Filed 12-20-85; 8:45 am]

BILLING CODE 0712-01-M

BEST COPY AVAILABLE

Proposed Rules

Federal Register
Vol. 50, No. 246
Monday, December 23, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 994

[Docket No. MMO–1]

Egg Marketing Order

Correction

In FR Doc. 85–29547, beginning on page 51344 in the issue of Monday, December 16, 1985, make the following corrections:

1. On page 51345:

a. In the second column, § 994.1, fourth line, "of whom" should read "to whom".

b. In the third column, § 994.9, second line, "handle" should read "handles".

c. In the third column, § 994.11, third line, "of older" should read "or older".

2. On page 51346, second column, § 994.37(d), first line, "purpose" should read "purposes".

3. On page 51347, third column, § 994.45(j)(3), third line, "made" should read "make".

4. On page 51348:

a. In the first column, § 994.50(b):

(1) In the fifth line, "sales" should read "sale".

(2) In the eighth line, "porducts" should read "products".

b. In the second column, § 994.60(a), third line, "ensuring" should read "ensuing".

c. In the third column, § 994.62(a), third line, insert the word "a" between "if" and "surplus".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–236–84]

Information Returns Relating to Sales or Exchanges of Certain Partnership Interests; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary income tax regulations relating to information returns, statements, and notifications required where there is a sale or exchange of certain partnership interests. The text of the temporary regulations serves as the comment document for this notice of proposed rulemaking..

DATES: Written comments and requests for a public hearing must be delivered or mailed by Feburary 21, 1986. The regulations are proposed to be effective with respect to sales or exchanges of partnership interests made after December 31, 1984.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, 1111 Constitution Avenue, NW., Attention: CC:LR:T (LR–236–84), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert E. Shaw of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:LR:T LR–236–84). Telephone 202–566–3297 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) under section 6050K of the Internal Revenue Code of 1954.

For the text of the temporary regulations see T.D. 8064 published in the Rules and Regulations portion of this issue of the **Federal Register.** The preamble to the temporary regulations explains the addition to the regulations.

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that the proposed rule is not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request of any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OBM) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer of Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Robert E. Shaw of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However,

personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-30324 Filed 12-20-85; 9:22 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[LR-216-84]

Taxation of Fringe Benefits; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking by cross-reference to temporary regulations published in the **Federal Register** for January 7, 1985 (50 FR 836), February 20, 1985 (50 FR 7073), and November 6, 1985 (50 FR 46006), relating to the taxation of fringe benefits. The text of the temporary regulations under sections 61 and 132 served as the comment document for the notice of proposed rulemaking. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is removing portions of those temporary regulations. This document withdraws portions of the notice of proposed rulemaking that relate to the removed portions of the temporary regulations. Changes to the applicable tax law were made by section 531 of the Tax Reform Act of 1984 (98 Stat. 877).

DATE: The withdrawal of portions of the notice of proposed rulemaking is effective as of January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, (202) 566-3918, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

Section 61 was amended and section 132 was added to the Internal Revenue Code of 1954 (Code) by section 531 of the Tax Reform Act of 1984 (98 Stat. 877). Temporary regulations published in the **Federal Register** for January 7, 1985 (50 FR 747), amended the Income Tax Regulations (26 CFR Part 1) to reflect the changes in the law relating to the taxation of fringe benefits. These regulations were later amended in the **Federal Register** for February 20, 1985 (50 FR 7039), and November 6, 1985 (50 FR 46006).

Many comments were received on the proposed and temporary regulations published during 1985. In addition, on April 16, 17, and 18, 1985, the Internal Revenue Service held public hearings concerning the provisions of the proposed regulations. In response to the comments and the statements made at the public hearings, the rules provided in the proposed and temporary regulations have been amended. Due to the extent of the amendments, the regulations have been issued in temporary rather than final form. In addition, the temporary regulations (published in the Rules and Regulations portion of this issue of the **Federal Register**) also serve as the comment document for a notice of proposed rulemaking (published in the Proposed Rules portion of this issue of the **Federal Register**). Because the rules are being reissued as proposed and temporary regulations rather than final regulations, portions of the previously published notice of proposed rulemaking and temporary regulations must be withdrawn. The portion of the temporary and proposed regulations relating to the election to aggregate lines of business for purposes of certain fringe benefit exclusions under section 4977 of the Code is not withdrawn.

Drafting Information

The principal author of this document is Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document on matters of both substance and style.

The proposed amendments to 26 CFR Part 1 under § 1.61-2T and § 1.132-1T published in the **Federal Register** for January 7, 1985, February 20, 1985, and November 6, 1985, are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-30163 Filed 12-18-85; 11:10 am]

BILLING CODE 4830-01-M

[26 CFR Parts 1 and 602]

[LR-216-84]

Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the taxation of fringe benefits. The text of those temporary regulations serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be mailed or delivered by February 21, 1986. Except to the extent otherwise provided, the regulations are proposed to be effective as of January 1, 1985.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-216-84 and LR-37-85), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Annette J. Guarisco of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service (202-566-3918, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Parts 1 and 602 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations, which this document proposes to base on those temporary regulations, would amend Parts 1 and 602 of Title 26 of the Code of Federal Regulations.

The regulations provide guidance on the tax treatment of taxable and nontaxable fringe benefits, including the valuation of taxable fringe benefits for purposes of income and employment tax reporting and withholding. The regulations provide special rules for valuing employer-provided automobiles, use of employer-provided aircraft, free or discounted flights on commercial airlines, and meals provided at employer-operated eating facilities. The regulations also provide rules relating to the exclusions from gross income for certain fringe benefits and applicable nondiscrimination rules.

Section 61 of the Internal Revenue Code of 1954 (the Code) was amended, and section 132 was added to the Code, by section 531 of the Tax Reform Act of 1984 (98 Stat. 877). Temporary and proposed regulations were published in the **Federal Register** on January 7, 1985 (50 FR 747, 836). These regulations were

later amended in the **Federal Register** on February 20, 1985 (50 FR 7038, 7073).

Subsequently, Pub. L. 99–44 (Repeal of Contemporaneous Recordkeeping Requirements) affected some of the proposed and temporary regulations published in February. To implement the provisions of Pub. L. 99–44, the Service withdrew the affected proposed and temporary regulations published in February (50 FR 46004, 46086) and published new proposed and temporary regulations on November 6, 1985 (50 FR 46006, 46087). This document replaces portions of the previously issued proposed regulations.

Many comments were received from the public concerning the provisions in the proposed and temporary regulations published earlier this year. In addition, on April 16, 17, and 18, 1985, the Internal Revenue Service (Service) held public hearings concerning the temporary and proposed regulations. In response to the comments and the statements made at the public hearings, the regulations have been amended. Due to the extent of the amendments, the Service is issuing the regulations in temporary rather than final form. This document contains the cross-reference notice of proposed rulemaking to provide the public with an opportunity to comment on the revised provisions of the regulations before they become final. The Service expects to hold public hearings on the proposed regulations early next year.

For the text of the temporary regulations, see FR Doc. [T.D. 8.063] published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations contains a summary of the provisions of these regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required by 5 U.S.C. chapter 6.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. When the public hearing is scheduled, notice of the time and place will be published in the **Federal Register**.

Comments are particularly invited concerning the administrability and appropriateness of the special rules contained in the temporary regulations relating to valuing the availability of employer-provided automobiles, the personal use of employer-provided vehicles, the use of employer-provided vehicles for commuting, flights on employer-provided aircraft, free or discounted flights on commercial airlines, and meals provided at employer-operated eating facilities for employees.

With regard to the automobile special valuation rule, comments are requested concerning the use of a four-year, level-payment lease term as the basis of the Annual Lease Value Table. (For a further discussion of this rule, see the preamble to the temporary regulations contained in the Rules and Regulations portion of this issue of the **Federal Register**.)

The proposed regulations provide guidance on valuing an automobile for purposes of determining the Annual Lease Value. In particular, the proposed regulations provide that for this purpose the value of an automobile does not include the value of specialized equipment which is not susceptible to personal use or of a telephone. An example of such equipment would be permanent shelving custom designed to hold special business tools. This provision does not mean that any property susceptible to personal use which is in an automobile must be valued as part of the automobile. The regulations are not intended to address the treatment of property which, although susceptible to personal use, is not commonly included in an automobile but when included in an automobile is commonly used for business while the automobile is being used for personal purposes. An example of such property is a car telephone, which may be used for business purposes while the car is being used for personal purposes (e.g., a business call while an employee is commuting to work). Comments are requesting as to what other property falls into this economy and as to the appropriate tax treatment for personal use of such property.

The vehicle cents-per-mile rule may be used to value the personal use of employer-provided vehicles regularly used in the employer's business if the value of the vehicle does not exceed $12,800 (for 1985). Comments are requested concerning (1) the need for further definition of the regularly used in business standard, (2) suggestions for such a definition, and (3) the appropriateness of and suggestions for refining the alternative mileage rule for use of the vehicle cents-per-mile rule.

Comments are requested concerning the definitions of Federal officers and executive officers at the state and local levels, for purposes of determining who is a control employee and thus ineligible to use the commuting special valuation rule.

Comments are also requested relating to the tax treatment of so-called "bonus" programs (such as "frequent flier" programs) under which a company provides benefits (such as free flights, automobile rentals, and hotel rooms) to their customers on the basis of the amount of business the customer does with the company. The issue of tax treatment arises when, for example, the business that gives rise to the benefits or bonuses is paid for by the customer's employer rather than the customer (i.e., business flights or hotel rooms are paid for by the employer and the company awards the bonus flight or hotel room to the employee). Comments are requested on the need for special rules relating to the valuation of the benefits, the administrability of either withholding on or reporting the value of such benefits, and the appropriate party to charge with the responsibility for reporting. Comments are specifically requested regarding whether the benefits should be regarded as "wages" subject to withholding.

In August 1985, the Service announced rules relating to reporting and withholding on the value of fringe benefits (Announcing 85–113 I.R.B. No. 31, August 5, 1985). Comments are requested relating to those withholding and reporting rules.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. Comments on those requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on those requirements to OMB also send copies to the Service.

Drafting Information

The principal author of these regulations is Annette J. Guarisco of the

Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

Reporting and recordkeeping requirements.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–30162 Filed 12–18–85; 11:09 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 16

[Order No. 1114–85]

Revision of Department of Justice Fee Regulations Implementing the Freedom of Information Act

AGENCY: Department of Justice.

ACTION: Proposed Rule.

SUMMARY: This notice sets forth a proposed revision to the procedural regulations of the Department of Justice, 28 CFR 16.10, setting forth the fees to be charged under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552. It is proposed that this provision be amended, for the first time since 1975, to increase certain of the fees charged under the Act. No change is proposed in the current charge of $0.10 per page for duplication.

DATE: Comments must be received on or before January 22, 1986.

ADDRESS: Comments should be directed to: Kevin R. Jones, Deputy Assistant Attorney General, Office of Legal Policy, United States Department of Justice, Room 4224, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Daniel J. Metcalfe, Co-Director, Office of Information and Privacy, United States Department of Justice, Washington, DC 20530 ((202) 724–7400).

SUPPLEMENTARY INFORMATION: The regulations of the Department of Justice implementing the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act of 1974, 5 U.S.C. 552a, were amended in their entirety, effective April 30, 1984. 49 FR 12248 (Mar. 29, 1984). As stated in the Supplementary Information to that notice, revisions to the Department's FOIA fee regulation were still then under consideration and would be dealth with in a separate rulemaking proceeding. 49 FR at 12249. That review has now been completed. The purpose of this Notice of Proposed Rulemaking is to propose certain changes in the fees charged to requesters under the FOIA—the costs of searching for requested information and of related materials and services, including audio tapes and computer services and materials. No change is porposed in the current duplication charge of $0.10 per page.

The Department's current fee regulations was first adopted in 1975, in response to the 1974 amendments to the Freedom of Information Act that limited the allowable fees chargeable to requesters to the cost of search for and duplication of documents. 5 U.S.C. 552(a)(4)(A); 28 CFR 16.9 (1983). That regulation set the charge for duplication at $0.10 per page, and provided for a charge of $1.00 per quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and retrieving requested records, and a charge of $2.00 per quarter hour for nonclerical, nonroutine searches where the time of professional or managerial personnel is required. That regulation also provided a schedule of charges for computer services and materials and audio tapes needed to reproduce computerized or audio records.

These provisions have remained unchanged since 1975, except to renumber them as 28 CFR 16.10. 49 FR 12257–58. The considerable inflation since that time has rendered these charges well out of date. For Federal employees, both at the clerical level and the professional level, salary rates at specific grades in the General Schedule have increased by approximately 70% since 1975. Moreover, the charges for computer time and materials and for audio tapes are in most cases far out of line with the current actual costs of those services and items to the Department today.

Accordingly, it is proposed that the Department's regulation be amended to increase the fees to $1.75 per quarter hour after the first quarter hour for clerical searches and to $3.50 per quarter hour after the first for nonclerical, professional searches. The regulations governing computer services and materials and audio tapes would be revised to provide for the charging of current actual costs to the Department of those services and items. However, no change is proposed for the current duplication charge of $0.10 per page.

It is proposed that the provisions in current 28 CFR 16.10, as amended, relating to charges over $25.00 and to the requirement of a deposit be retained with only minor revisions.

The standard for waiving or reducing fees is proposed to be modified to conform more closely to the statutory language set forth in 5 U.S.C. 552(a)(4)(A). That section requires that documents be furnished at no charge or at a reduced charge where the agency determines that a waiver or reduction of fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

These rules do not constitute "major rules" within the meaning of Executive Order No. 12291 (Improving Government Regulations). The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects in 28 CFR Part 16

Freedom of Information.

PART 16—[AMENDED]

Accordingly, under the authority vested in me by 28 U.S.C. 509 and 510 and 5 U.S.C. 301 and 552, Part 16 of Chapter I of Title 28 of the *Code of Federal Regulations* is proposed to be amended as follows:

1. The authority citation for Part 16 continues to read as follows:

Authority: 28 U.S.C. 509; 5 U.S.C. 301, 552; 31 U.S.C. 483a, unless otherwise noted.

2. Section 16.10 is revised to read as follows:

§ 16.10 Fees.

(a) *When charged.* Fees pursuant to 31 U.S.C. 9701 and 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (c) of this section for services rendered by components in responding to and processing requests for records under this subpart. All fees so assessed shall be charged to a requester, unless the requester makes a request for a waiver or reduction of the fees and the official of a component making a decision to grant all or part of the request, or making the decision on appeal, determines that all or part of the fees should be waived. Documents shall be furnished without charge or at a reduced charge if the official determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(b) *When not charged.* Fees shall not be charged where they would amount, in the aggregate, for one request or for a

series of related requests, to less than $3.00. However, a component may, in its discretion, increase the amount of this minimum fee. Fees also shall not ordinarily be charged if the requested records do not exist or cannot be located, except that search fees in excess of $25.00 may be charged in such cases if notice pursuant to paragraph (d) of this section has been given or the requester has agreed to bear those costs.

(c) *Charges.* In responding to requests under this subpart, the following charges shall be assessed, unless a waiver or reduction of the fees has been granted pursuant to paragraph (a) of this section:

(1) *Copies.* For a paper photocopy of a record (no more than one copy of any record need be supplied) the fee shall be $0.10 per page.

(2) *Clerical searches.* For each quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and retrieving a requested record, the fee shall be $1.75.

(3) *Nonroutine, nonclerical searches.* To the extent that a search and retrieval cannot be performed by clerical personnel (for example, where the identification of records within the scope of a request requires the use of professional or managerial personnel), for each quarter hour spent by higher level personnel in exces of the first quarter hour, the fee shall be $3.50.

(4) *Examination and processing of records.* No charge shall be assessed for any time spent examining or processing records to determine whether they are exempt from mandatory disclosure and should be withheld.

(5) *Other charges.* When a response to a request requires services or materials for search or duplication other than those described in paragraphs (c) (1), (2) and (3) of this section, the direct costs of such services or materials shall be charged.

(d) *Notice of anticipated fees in excess of $25.00.* When a component determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the component shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated fee. A notice to the requester pursuant to this paragraph shall offer him the opportunity to confer with Department personnel with the objection of reformulating his request to meet his needs at a lower cost.

(e) *Form of payment.* Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(f) *Advance deposits.* (1) Where the estimated fee chargeable under this section exceeds $25.00, a component may require a requester to make an advance deposit of 25% of the estimated fee or an advance payment of $25.00, whichever is greater.

(2) Where a requester has previously failed to pay a fee charged under this part, the requester must pay the component or the Department the full amount owed and make an advance deposit of the full amount of any estimated fee before a component shall be required to process a new request or a pending request from that requester.

Dated: October 17, 1985.

Edwin Meese III,

Attorney General.

[FR Doc. 85-29990 Filed 12-20-85; 8:45 am]

BILLING CODE 4410-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-020; A-4-FRL-2942-5]

Approval and Promulgation of Implementation Plans; Tennessee; Chattanooga-Hamilton County RACT for Coke Plants

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee for the Chattanooga-Hamilton County portion of the Tennessee SIP for Total Suspended Particulates (TSP). The revisions consist of amendments to the section for Reasonably Available Control Technology (RACT) for underfire (combustion) stacks in Coke Plants, which will allow stacks that demonstrate compliance with a newly adopted (submitted as part of this revision) RACT mass emission limit, but exceed the present SIP opacity limit, to have an alternate opacity limit established for the source. The visible emission limit for charging coke batteries was also revised.

DATE: To be considered, comments must reach us on or before January 22, 1986.

ADDRESSES: Written comments should be addressed to Kelly McCarty of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the State's submittal are available for review during normal business hours at the following locations.

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407

Tennessee Air Pollution Control Division, Bureau of Environment, T.E.R.R.A. Building, 150 Ninth, Avenue North Nashville, Tennessee 37219-540H

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

FOR FURTHER INFORMATION CONTACT: Kelly McCarty, EPA Region IV, Air Management Branch, at the above listed address, and phone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On January 31, 1985, the State of Tennessee submitted a SIP revision for the Chattanooga-Hamilton County portion of the Tennessee SIP for TSP. Several deficiencies were noted in this submittal, but Tennessee has indicated that they will be corrected and submitted to EPA for review. EPA is today proposing to approve this SIP revision with the understanding that these problems will be corrected before final action is taken on the revision.

Background

On October 9, 1981, EPA negotiated the Chattanooga Coke Consent Decree (CCCD) with the Chattanooga-Hamilton County Air Pollution Control Bureau, in order to get Chattanooga Coke & Chemicals, Inc., into compliance with the process weight table contained in the Tennessee SIP for TSP. The CCCD contains source-specific emission limits, and the testing procedures used to determine compliance with those limits. When implemented, these emission limits would bring all sources into compliance with the process weight table. Since the time that the CCCD was originally entered with the court, Chattanooga has adopted the CCCD emission limits into their regulations in place of the process weight table. However, Chattanooga has not yet adopted all the necessary testing procedures to support the emission limits.

BEST COPY AVAILABLE

Proposed Changes

The proposed changes deal with two parts of the RACT regulations for Coke Plants, which is part of the Tennessee SIP for TSP: Charging, Section 4–25, Rule 26.4 (B)(1)(a), and Underfire (Combustion) Stacks, Rule 26.4(B)(6). The proposed change will increase the allowance for visible emissions from coke battery charging operations from a cumulative total of seventy-five (75) seconds for any four (4) consecutive charges, to one hundred twenty-five (125) seconds for any five (5) consecutive charges.

This change is acceptable by the EPA because the new allowance is considered to be a RACT level of control, and because it will not interfere with the continued maintenance of the NAAQS for TSP. The Part D SIP for Chattanooga was approved in 1983, and was demonstrated to assure attainment of the primary TSP standard. Chattanooga was redesignated to primary attainment in 1984, in part because TSP monitors in the area had not measured exceedances since before 1981. Chattanooga Coke is currently not meeting even the emission level proposed in this notice; therefore, this relaxation would not allow any actual increase in emissions. In fact, the source is prepared to install additional control equipment to meet the proposed limit after it is approved, so actual emissions will decrease significantly. Thus, although this change in the emission limit is estimated to allow a 0.33 ton/year increase in allowable particulate emissions, it will require an actual emissions reduction that will improve air quality beyond the current level, which meets the primary TSP standard.

The Chattanooga area is presently designated nonattainment for the secondary TSP standard and the projected date for attainment is December 31, 1990. Only one of the eleven TSP monitors in the area, which is located at the Chattanooga City Hall, has measured violations of the secondary standard in the past 2 years. This monitor is located about 5 kilometers north of the subject coke batteries. Two monitors located closer to the coke batteries (2.5 kilometers north and 2.5 kilometers northeast) did not measure violations between 1982 and 1984. Due to: (1) The small impact of this change (a 0.33 tons per year increase in allowable emissions), (2) the fact that emissions from the source are released close to the ground and therefore can be expected to have their maximum impact on the close monitors showing no violations, and (3) the large decrease in actual emissions from the source that will result even under the revised limits, EPA believes the revision will not interfere significantly with reasonable further progress toward timely attainment of the standard.

A RACT mass emission limit of 0.05 gr/dscf was adopted for underfire stacks, and also included in this submittal. The major change in this submittal, however, was the allowance of alternate opacity limits for underfire stacks incoke plants that have demonstrated compliance with the newly adopted RACT mass emission limit, but cannot meet the present SIP opacity limit. Technical justification for considering this mass emission limit to be RACT may be found in EPA's Docket for Steel Mills.

Problems

There are two types of opacity limits which are widely used: timed averages and aggregate count. The timed average is an average of all the opacity readings, taken at 15-second intervals, over a specified length of time. EPA Method 9, with a modified averaging period if necessary, is the testing procedure most often used for this type of opacity limit. The aggregate count opacity limit is a specified number of exceedances per specified time period (i.e., no more than 21 readings in excess of 20% opacity per hour are allowed). Method 9 is not strictly applicable to aggregate count opacity limits.

The deficiencies which have been noted, and which Chattanooga has agreed to correct, are as follows:

(1) The present SIP opacity limit is an aggregate limit, the Chattanooga has no adopted method in their regulations for determining compliance with this aggregate opacity limit. A test method must be adopted and should include: provisions for indicating the averaging shall not be used in determining compliance a statement that each monetary observation recorded at 15-second intervals shall be deemed to represent the opacity of emissions for the preceding 15-second interval; and a statement that the accumulated exceedances do not have to be consecutive in order to document a violation. EPA may take final action on the submittal before taking final action on the corrective action for this deficiency.

(2) In order for the alternate opacity limit to be federally enforceable, some provision for submitting the limit to EPA as a SIP revision must be included in the regulations. The limit may be adopted as a regulation and submitted, or the permits which contain the limit may be submitted.

(3) The submitted regulation contains no provisions for requiring that the mass testing of the underfire stacks be conducted during representative conditions, (i.e., testing period should include a representative number of charges made at normal charging frequencies).

Chattanooga has committed to remedy all of the above deficiencies prior to EPA's final action on this proposal.

Although the CCCD contains all the necessary testing procedures, including that for aggregate count opacity limits, eventually it will expire. Unless all of the source-specific emission limits and testing procedures contained in the CCCD are adopted by regulation before it expires, Chattanooga will be left with no way to control the emissions from coke plants in the area. Therefore, it is necessary to adopt all the emission limits and testing procedures that are in the CCCD into the regulations as expeditiously as possible.

Proposed Action

EPA has reviewed the submitted material and found it to be equivalent to present EPA RACT requirements. Therefore, with the understanding that the State will submit the required materials before final action is taken, EPA is today proposing to approve the State submittal as satisfying the requirements of an acceptable plan for implementing RACT for Coke Plants in Chattanooga, and is soliciting public comment on the regulation.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

For further information on the specifics of the analysis, see EPA's Technical Support Document, which contains a detailed review of the approval of the RACT regulations for Coke Plants in Chattanooga.

Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, particulate matter, incorporation by reference.

Authority: 42 U.S.C. 7401–7642.

Dated: May 28, 1985.

Jack E. Raven,

Regional Administrator.

[FR Doc. 85-30247 Filed 12-20-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 798 and 799

[OPTS-42074; FRL-2895-4]

Cumene; Proposed Test Rule

Correction

In FR Doc. 85-26262 beginning on page 46104 in the issue of Wednesday, November 6, 1985, make the following corrections:

1. On page 46107, in the second column, in the first line, "LD_{50}" should read "LC_{50}".

2. Also on page 46107, in the second column, in the ninth line, "LD_{50}" should read "LD_{50}".

BILLING CODE 1505-01-M

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40 CFR Parts 798 and 799

[OPTS-42073; TSH-FRL 2906-9]

2-Mercaptobenzothiazole; Proposed Test Rule

Correction

In FR Doc. 85-26266 beginning on page 46121 in the issue of Wednesday, November 6, 1985, make the following corrections:

1. On page 46124, in the second column, in the first complete paragraph, in the fifth line, "20 mg/kg" should read "200 mg/kg".

2. On page 46130, in the second column, the signature now reading "J.S. Moore" should read "J.A. Moore".

3. Also on page 46130, in the third column, in § 798.7470(c)(1)(iii), in the third line, "(NIH)-7-23," should read "(NIH)-78-23,".

4. On page 46131, in the first column, in § 798.7470(c)(2)(ii)(C), in the ninth line, "5 cm" should read "$5cm^2$".

5. Also on page 46131, in the third column, in § 798.7470(d)(3)(iv), in the third line, "fermal" should read "dermal".

6. On page 46132, in the first column, in § 799.2475(b), in the sixth line, remove "December 19, 1985" and insert in its place "(44 days after the publication date of the final rule in the **Federal Register**)".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 252

[R-102]

Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in World-Wide Services

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Maritime Administration (MARAD) proposes to amend the regulations governing the calculation and payment of operating-differential subsidy (ODS) for bulk cargo vessels engaged in worldwide services, to provide for the payment of ODS as a fixed and final daily amount encompassing all items of expense authorized for ODS participation by the ODS contracts currently in force.

DATE: Comments must be received on or before February 21, 1986.

ADDRESS: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies of the coments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC., 20590, Tel. (202) 382-6036.

SUPPLEMENTARY INFORMATION: Sections 603 and 606 of the Merchant Marine Act, 1936, (Act) as amended (46 U.S.C. 1173, 1176), contain the statutory requirements for the determination of ODS rates and the payment of ODS. The Act is quite specific in prescribing the methods for determining wage rates, but provides no guidance on the methods for determining rates for other subsidizable expenses, i.e., maintenance and repairs (M&R), hull and machinery insurance premiums (H&M) and protection and indemnity insurance premiums and deductibles (P&I). ODS rates for wages are determined and paid for fiscal periods, while ODS rates for the other expenses are determined and paid for calendar periods. In administering 46 U.S.C. 1173 and 1176, MARAD bases ODS payments on estimated expenses accured by the operators. The Act does not require the operator to pay expenses before receiving ODS payments from MARAD.

The existing regulations in 46 CFR Part 252 implement the statutory authority for determining and paying ODS for bulk cargo vessels in worldwide service. These regulations contain a detailed and comprehensive body of procedures governing the determination of ODS rates and payment of ODS under the current system. Payment of ODS is based on the U.S.-foreign cost differential which shall be the excess of an operator's cost over the principal foreign-flag competitor's cost.

The current system includes two methods for payment of ODS, i.e., a daily rate for wages and a reimbursement method, based on a percentage differential applied to eligible expenses, for other subsidizable items. It is a system which requires that MARAD audit the actual expenses of the operators. Further, under existing procedures, the finalization of U.S. and foreign cost differentials and the concomitant final payment of ODS cannot be accomplished until two to two and one-half years after the close of the subsidized year.

In 1981, the Comptroller General of the United States completed an audit of the system for ODS as previously described. The GAO Audit report of November 30, 1981 (CED-82-2), urged MARAD to expedite ODS payments and concluded, in part:

> "The U.S. Government owes subsidized operators millions of dollars. Subsidy payments are delayed due to an extensive and time-consuming process used to compute final ... subsidy rates. This process, which currently delays final payments by an average of 3 years, precludes these operators from timely receipt of monies due them and hurts their cash management capability."

The GAO report added that MARAD should take steps to provide for payment of accrued ODS owed to operators for prior years and to provide for more timely payment of future subsidy. The Office of the Secretary, Department of Transportation, concurred with the GAO's conclusions and recommendations.

In response to the GAO report and to improve current procedures for ODS rate determinations and timely payment, MARAD has developed a proposed system which would pay ODS as a fixed and final daily amount that includes all items of subsidizable expense. The new system would permit the operators to establish conclusively the amounts of

ODS receivable at the time they prepare financial statements and tax filings, and when making decisions on dividends.

The receipt of ODS at the time it is earned would greatly improve cash flow. Overall, the proposed system would place the ODS receipts of the operators and the obligations of the government on a current basis. The following discussion outlines how the proposed system would work and the changes necessitated in the current system as a result.

The Proposed System

General

Under the proposed amendments to the regulations in 46 CFR Part 252 commencing retroactively July 1, 1985, MARAD would establish a daily ODS rate every six months, inclusive of all subsidizable expenses. U.S. -foreign cost differentials would be calculated each year for the fiscal period July 1 through June 30. The year would be divided into two periods: July 1 through December 31 and January 1 through June 30. MARAD would make adjustments for wage changes, effective June 16 each year, in the ODS rates applicable to the period commencing July 1, and would make adjustments for changes in other expenses in the ODS rates applicable to the period commencing January 1.

46 U.S.C. 1173 prescribes a formula for determining daily ODS for wages applicable to the fiscal period July 1 through June 30. Since the formula requires the use of data not available until March each year, it will be necessary to wait until such data are available to establish the final wage portion of the daily ODS rate. In order to accomplish the objective of establishing final ODS by the end of the calendar year, it will be necessary for MARAD to approve final daily ODS payments for the first six months of the fiscal period. Since errors in the wage rate are expected to be small, adjustments can be made for such errors during the second half of the fiscal period, and paid to operators either as a lump sum or as an adjustment to the ODS daily amounts. As a result, both parties are protected from any error in the ODS rate for the first half of the year. This procedure would assure prompt finalization of ODS accounts. Because of the adjustment which would be made in the second half of the fiscal period, there would not be any retroactive adjustments of the daily ODS rate for the first six months. Further, MARAD does not anticipate that it will be necessary to make retroactive adjustments for more than four months in the second half of the period. Under the current system, MARAD has demonstrated high accuracy in estimating tentative ODS rates each year, averaging within five percent of the final rates. By changing the current system as discussed below, MARAD's accuracy should be improved significantly. We estimate that the margin of error would be less than two percent, so the adjustment during the second six-month period would be small.

ODS Rate Determinations

ODS rate determinations under the proposed system would conform to the existing method of establishing rate differentials, as set forth in the existing regulations, 46 CFR Part 252, except for a reduction in the amount of data required for submission and the use of regression economic techniques to determine rates. The specific changes in procedure are discussed below.

I. Foreign-Flag Competition

Currently, MARAD bases its determination of foreign-flag competition for ODS rate-making purposes as of January 1 of the subsidized year. Under the proposed system, competition data available as of January 1 of the preceding year would be used. The use of this older competition data would still provide MARAD with reasonably accurate competition data and would permit accelerated ODS rate calculations, since this data would be available at a much earlier time.

II. Foreign Exchange Rates

Under the current system, the exchange rates prevailing at the end of each month are averaged for the entire subsidized year and are used for rate calculation purposes. The proposed system would use the average of the end month exchange rates for the first seven months of the fiscal period commencing July 1, unless there is a substantial and consistent change in exchange rates in one direction during the period. In this case, the end of period (January 31) exchange rates would be used. The reduction from twelve months to seven months of exchange rates used in ODS rate determinations would still provide a sound data sample and would permit earlier ODS rate calculations.

Wage

In current rate calculations, the subsidized operator's variable cost experience for the entire calendar year preceding January 1 of the subsidized fiscal year is used. The proposed system would use only the first nine months of the preceding year. This change would permit earlier calculation of wage rates and at the same time, require a smaller but fully acceptable sample of data.

At the present time, the actual wage costs for crew members who remain aboard subsidized vessels during idle status periods are subsidized as unpredictably timed costs (costs that are not regularly incurred). As a result, these costs require audit. Under the new procedures, a man-day reduction amount calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidizable crew members in each category. For each day of a reduced crew period, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day.

Operators now bill unpredictably timed expenses for ODS purposes by using differential rates expressed as a percentage, which are derived from the ODS rate calculations for wages under the index system, contained in 46 U.S.C. 1173(b). Under the proposed system, unpredictably timed expenses would be included as a daily increment in the total daily ODS rate. This would convert subsidy payment for unpredictably timed expenses to a daily rate or lump sum payment, and would reduce audits required for such expenses.

Non-Wage Items—General

ODS for M&R, H&M and P&I premiums is paid on the basis of a differential expressed as a percentage which is applied to actual expenses. For P&I deductibles, ODS is the dollar difference between the deductible absorptions (claim costs absorbed by the company) of the U.S. operator and the deductible absorptions of the foreign competitor. Due to the unavailability of data, there is a two-year lag in the calculation of final rates which necessitates adjustment of subsidy when final rates are calculated.

Under the proposed system, ODS would be an agreed upon daily amount with no subsequent adjustment. The necessary procedural changes are discussed below for each item.

M&R

Under the proposed system, subsidizable daily costs for M&R would be determined from the historical M&R

cost experience of the operator, indexed to January 1 of the subsidized calendar year. The latest U.S./foreign percentage differential available, determined in accordance with existing procedures, would be applied to the subsidizable costs to derive a daily ODS amount for M&R. Use of a regressed U.S./foreign percentage differential would provide a reasonably accurate differential and would permit significantly earlier calculation of the ODS rate. Historical M&R expenses would be audited to assure accuracy of data.

H&M & P&I Premiums

Under the proposed system, MARAD would determine subsidizable daily costs for the subsidized calendar year from actual premium costs submitted by the operators for that year. The latest U.S./foreign percentage differential available, calculated in accordance with existing procedures, would be applied to such costs to determine a daily ODS amount for H&M and P&I premiums. Use of historical U.S./foreign percentage differentials would permit significantly earlier calculations of daily ODS amounts.

P&I Deductibles

Under the proposed system, MARAD would determine ODS for P&I deductibles on the basis of the historical relationship of P&I deductible ODS to wage ODS for a three-year period. Further, since the P&I deductible absorptions of the operators for crew claims are primarily wage related, the P&I deductible ODS woud now be determined by applying the wage percentage differential, established in the ODS calculation, for wages for the three-year period to eligible deductible expenses for the same three-year period. The ODS for P&I deductibles would be established as a percentage of wage ODS for the three-year period. The percentage would be applied to the daily wage ODS calculated for the subsidized year to derive a daily ODS rate for P&I deductibles. These changes would permit much earlier calculation of subsidy for P&I deductibles and would eliminate the need for schedules of foreign deductibles. MARAD would audit historical P&I deductible expenses to assure accuracy of data.

E.O. 12291, Statutory and DOT Requirements

The Acting Maritime Administrator has determined that this proposed rulemaking is not major, as defined in E.O. 12291, and is significant under DOT regulatory policies and procedures due to considerable public interest (49 FR 11034; February 26, 1979). This rulemaking would place the ODS receipts of the operators and the obligations of the government on a current basis, with no appreciable overall change in such receipts and obligations. Since it would only facilitate the payment of final ODS amounts in a more timely manner, the economic impact of this proposal has been found to be minimal and further evaluation is unnecessary.

However, MARAD specifically requests comments on the industry's views with respesct to the economic impact of this proposal and will prepare a regulatory evaluation, if necessary. If MARAD does believe it necessary to prepare a Regulatory Evaluation, it expects no appreciable change in receipts or obligations and, thus, no appreciable cost asscoiated with the rule. The major benefit is one of improving the timeliness of ODS payments.

Since this proposal would affect principally ship operators with substantial annual revenues, the Acting Maritime Administrator certifies that, if finalized, this rulemaking would not exert a significant economic impact on a substantial number of small entities under The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). It does not include new information collection requirements, but maintains existing information requirements which have been approved by OMB under control numbers 2133–0004 and 2133–0024, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 252

Bulk comodities, Bulk cargo vessels, ODS program, Water transportation.

PART 252—[AMENDED]

Accordingly, it is proposed to amend 46 CFR Part 252 as follows:

1. The authority citation for Part 252 is revised to read as follows:

Authority: Secs. 204(b), 603–606, 608–611, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1173–1176), 49 CFR 1.66.

2. Subpart A is amended by revising § 252.1 to read as follows:

§ 252.1 Purpose.

This part prescribes regulations implementing provisions in Title VI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1171–1176 and 1178–1181) governing operating-differential subsidy for bulk cargo vessels engaged in carrying bulk cargo in essential services in the foreign commerce of the United States.

§ 252.3 [Amended]

3. In § 252.3 of Subpart A, paragraph (f) is amended by removing the word "Assistant" and inserting in its place, the word "Associate".

4. In § 252.3 of Subpart A, paragraph (j) is removed and paragraphs (k) through (u) are redesignated (j) through (t).

5. A new § 252.4 is added to Subpart A to read as follows:

§ 252.4 Waivers.

In special circumstances and for good cause shown, the procedures prescribed in this Part may be waived, in writing, by mutual agreement of the parties, in keeping with the circumstances then present, as long as the procedures adopted are consistent with the Act and with the intent of these regulations.

§ 252.20 Subsidized and nonsubsidized voyages.

6. In § 252.20(b), paragraph (3) is amended by removing the reference to "252.24(a)" and inserting, in its place, "§ 252.23(a)".

§ 252.22 Substantiality and extent of foreign-flag competition.

7. In § 252.22, paragraph (a) is revised to read as follows:

(a) *Type and tonnage groupings.* Foreign-flag competition shall be determined as of January 1 of the year preceding January 1 of the subsidized year, by surveying a data file known as "Merchant Fleets of the World" that is maintained by MARAD. All foreign-flag bulk cargo vessels included in this data file are divided by type and category, and further subdivided by class. Classes include, but are not limited to general tanker, chemical tanker, OBO, general dry bulk carrier and wood chip carrier. Each vessel class is further divided into deadweight tonnage range as follows:

(1) Range A—vessels of less than 25,000 DWT;

(2) Range B—vessels of 25,000 but less than 50,000 DWT;

(3) Range C—vessels of 50,000 but less than 100,000 DWT; and

(4) Range D—vessels of 100,000 or more DWT.

* * * * *

§ 252.24 Financial and other reporting requirements [redesignated and amended].

8. Section 252.24 is redesignated § 252.23 and is amended by removing the words "Director, Office of Financial Analysis" and inserting, in their place, the words "Director, Office of Financial Approvals".

9. Subpart D is revised to read as follows:

Subpart D—Calculation of Subsidy Rates

Sec.
252.30 Amount of subsidy payable.
252.31 Wages of officers and crew.
252.32 Maintenance (upkeep) and repairs
252.33 Hull and machinery insurance.
252.34 Protection and indemnity insurance.

Subpart D—Calculation of Subsidy Rates

§ 252.30 Amount of Subsidy Payable.

(a) *Daily Rates.* Daily ODS rates shall be used to quantify the amount of ODS payable. The daily ODS rate represents the cost differential between the subsidized vessel and its foreign-flag competition. A daily rate shall be calculated for each subsidized item of expense identified in the ODSA, and the total of all items is the daily amount of ODS payable for approved vessel operating days, excluding reduced crew periods.

(b) *Reduced Crew Periods.* For reduced crew periods, as defined in § 252.3 of this part, a man-day reduction amount, calculated separately for officers and unlicensed crew members, shall be used to reduce the daily wage ODS rate to conform to the complement remaining on the vessel. The man-day reduction amounts shall be determined by dividing the daily wage ODS for officers and unlicensed crew members by the number of subsidizable crew members in each category. For each day of a reduced crew period, the man-day amount shall be multiplied by the number of crew members missing for that day, and the resulting product shall be deducted from the daily ODS rate. The difference shall be the ODS payable for such day.

(c) *Review of Rated.* Daily subsidy rates shall be reviewed every six months. For the item "wages of officers and crews," the daily rate shall be calculated for fiscal periods July 1 through June 30, in accordance with provisions of the Act. During the period January through June, adjustments—paid as a lump sum or as a daily amount—shall be made to wage ODS so that the correct amount of ODS for the full fiscal period is received by the operator. For other subsidizable items of expense, the daily rate shall be calculated for calendar years.

(d) *Negative Rates.* When an ODS rate in any category is less than zero, indicating that the subsidized operator is at an advantage rather than a disadvantage in such category, the negative rate shall be deducted from positive rates in determining the daily ODS amount payable.

(e) *Operator Comments.* The operator shall have the opportunity to comment on each subsidy rate as calculated MARAD. The operator and contracting officer shall make every effort to resolve disagreements that arise. In the event of a disagreement that cannot be resolved, comments received from the operator and the contracting officer's recommendation shall be presented to the Board for its consideration in determining subsidy rates.

§ 252.31 Wages of Officers and Crews.

(a) *Definitions.* When used in this part:

(1) *Base period.* The first base period under the wage index system, as provided in section 603 of the Act, is the period beginning July 1, 1970 and ending June 30, 1971. Thereafter, base period means any annual period beginning July 1 and ending June 30, with respect to which the Board establishes a base period cost. At intervals of not less than two years, nor more than four years, the Maritime Subsidy Board shall establish a new base period. Base periods shall be announced by the Board prior to the December 31 date that would be included in the new base period.

(2) *Base period cost.*—(i) *Initial base period.* For the initial base period of subsidized service, the terms "base period cost" means the collective bargaining cost as of January 1 of that base period.

(ii) *Subsequent base periods.* For base periods subseqent to the intitial base period, the term "base period cost" mean the average of the collective bargaining cost as of January 1 of such fiscal year, and the base period cost of the previous base period, indexed to January 1 of the new base period by an index compiled by the Bureau of Labor Statistics. This index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective bargaining agreements, with equal weight to be given to changes affecting employees in the transportation industry (excluding the off-shore maritime industry) and to changes affecting employees in private non-agricultural industries other than transportation. However, such base period cost shall not be less then a minimum, nor more than a maximum amount, determined as a percentage of the collective bargaining cost computed for January 1 of such base period in accordance with the following schedule:

[in percent]

	Minimum	Maximum
Base period following a:		
2 year cycle	97½	102½
3 year cycle	98¼	103¾
4 year cycle	95	105

(3) *Collective bargaining cost (CBC)* means the annual cost, calculated on the basis of the per diem rate of expense, as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required by the operator through a collective bargaining or other agreement, covering the employment of the approved manning complement of the subsidized vessel, including payments required by law of assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(4) *Approved manning complement* means the complement approved by the Board for subsidy.

(5) *U.S. wage cost (WC)* means the annual cost, calculated on the basis of the per diem rate of expense as of January 1 of the annual fiscal periods July 1 through June 30, of all items of expense required of the operator through a collective bargaining or other agreement, covering the employment of the normal manning complement of the subsidized vessel, including payments required by law to assure old-age pensions, unemployment benefits or similar benefits, and taxes or other governmental assessments on crew payrolls.

(6) *Normal manning complement* means the crew complement established by a collective bargaining or other agreement with the officers and unlicensed crew of the vessel. In cases where the complement may vary in number, the lowest number shall be the normal manning complement. When ratings of different salaries are in the same job during the year, the base wages of the rating carried most of the time shall be used.

(7) *Subsidizable wate cost* means, (i) with respect to a base period, the base period cost, and (ii) in any fiscal period other than a base period, the most recent base period cost, increased or decreased by the change from January 1 of the base period to January 1 of the non-base period. The subsidizable wage cost shall not be less than 90 percent nor greater than 110 percent of the collective bargaining cost as of January 1 of such period.

(8) *Unpredictably timed costs* are collective bargaining costs that are not regularly incurred. Examples of unpredictably timed costs are such costs as severance pay, shortfalls, special assessments, and war zone bonuses.

(b) *Method of calculating collective baragaining cost (CBC).* CBC shall be determined by pricing out, for the approved crew complement, the per diem total of fixed costs specified in the

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collective bargaining agreement and adding a per diem total of variable costs obtained from the experience of the subsidized vessel during the first nine months of the preceding calendar year.

(1) *Fixed Costs.* The per diem total of fixed costs shall include all costs that are stated in specific or determinable amounts per time period and, based on operating experience, do not vary. In cases where a monthly amount is specified in the agreement, the per diem amount shall be determined by dividing the monthly amount by 30. When a daily amount is specified it shall be used. Examples of fixed costs are:

(i) Base wages;

(ii) Non-watch pay;

(iii) Vacation pay (including contributions to vacation funds);

(iv) Tool allowance;

(v) Clothing and uniform allowances; and

(vi) Per diem contributions for pension, training, welfare, unemployment, including unallocated contributions placed in escrow.

(2) *Variable costs.* Variable costs are regularly incurred employment costs which vary with ship operating experience. The per diem aggregate of variable costs as of January 1 shall be determined by applying a ratio to the per diem aggregate of base wage costs as of January 1, the numerator of which shall be the total of variable costs for the first nine months of the preceding calendar year and the denominator of which shall be the total of base wage costs for the first nine months of the preceding calendar year. Variable costs include but are not limited to:

(i) Payroll taxes (including social security taxes);

(ii) Overtime and penalty pay;

(iii) Variable pension, training, welfare, unemployment, and vacation costs:

(iv) Pay in lieu of time off;

(v) Transportation and travel allowances;

(vi) Payments to relief officers and crews;

(vii) Wages and other expenses of USMMA cadets and extra messmen;

(viii) Board and lodging allowances;

(ix) Overlap in wages (a maximum of three days for officers and two days for unlicensed crew); and

(x) Penalty cargo bonuses.

(c) *Method of calculating U.S. wage cost (WC).* Two different calculations of WC are necessary—a per diem amount for every ship type on the service and a per month amount for the predominant ship type (most voyages) on the service. The purpose of the per month calculation is to make a comparison with the monthly foreign wage costs. The relationship of WC to foreign costs for the predominant ship is applied to the per diem WC for other ship types in the service to estimate comparable foreign costs for them.

(1) *Calculation of per diem WC.* The per diem WC shall be calculated by the same method that applies to CBC, except that the normal manning complement shall be used.

(2) *Calculation of per month WC.* The costs and manning level used in this calculation shall be the same as those used for the per diem WC.

(d) *Data submission requirements.* For purposes of calculating CBC and WC the operator shall each year submit Form MA–790 and, as appropriate, current copies of all collective bargaining or other agreements, memoranda of understanding, and arbitration awards, which specify the fixed costs as of January 1. Schedule A of Form MA–790, which covers wage costs on voyages terminated during the first nine months of the previous calendar year, shall be submitted by December 31. Schedule B of Form MA–790—normal manning complement, rates of pay, and contributions in effect on January 1 of the current year—shall be submitted by January 31. Form MA–790, Schedules A and B, shall be submitted to the Director, Office of Ship Operating Costs, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590.

(e) *Example Calculation.* The following is a sample calculation of CBC and WC:

ABC Bulk Company

[Jan. 1, 1985, collective bargaining costs (CBC) and U.S. wage cost (WC)

	Per diem	
	WC	CBC
Crew complement	[1] 35	[2] 31
Fixed costs as of Jan. 1, 1985:		
Base wages and non-watch pay	$1,789.79	$1,571.60
Allowances (radio, telephone, clothing, etc.)	[illegible]	[illegible]
Vacation pay	1,189.60	1,109.65
Pension, welfare, training, unemployment fund contributions	[illegible]	1,171.75
Total fixed	$4,265.94	3,858.75
Variable costs as of Jan. 1, 1985:		
Variable cost factor (based on 1984 cost experience) (percent)	104.69	[illegible]
Total variable costs (Jan. 1, 1985 base wages x variable cost factor)	$1,673.73	$1,645.31
Total wage costs as of Jan. 1, 1985	[illegible]	$5,504.06

[1] Normal manning complement.
[2] Approved manning complement.

(f) *Method of calculating foreign wage cost.* The foreign wage cost (FC) of the principal foreign-flag competitor and the comparable WC of the subsidized vessel are matched as of January 1 of the subsidized fiscal year for purposes of determining the wage cost of the principal foreign flags. The following procedures are used:

(1) *Manning.* The foreign manning complement in number and nationality for the principal foreign-flag competitor shall be constructed for the subsidized vessel type using the manning scales and practices of the competitor as developed through an examination of alien crew manifests, payrolls, and other reliable information. The commonly used crew complement of the competitor shall be adjusted to fit the predominant vessel type in recognition of differences in physical characteristics that would affect manning scales. Where the manning complement cannot be estimated with reasonable substantiation, it will be deemed to be identicial with that of the subsidized vessel.

(2) *Method.* The method of calculating FC shall be the same as that used for WC, provided that it is possible to obtain foreign cost data on the same basis as wage cost data. Preference shall be given to pricing out for fixed costs and to cost experience for variable costs. Where applicable, foreign currencies shall be converted into U.S. currency equivalents by using the average of end-month exchange rates for July through January, unless they consistently change in one direction by 25% or more during the period, in which case the January exchange rate shall be used. The exchange rates shall be obtained from the publication, "International Financial Statistics," published monthly by the International Monetary Fund. If exchange rates for particular foreign currencies are not available in this publication, they shall be obtained from the United States Department of the Treasury.

(3) *Foreign wage cost.* The per diem composite foreign wage cost is determinded by multiplying the per diem WC for the U.S. ship type by the ratio of FC to WC for the foreign-flag competitor. The following is a sample calculation of the foreign cost percentage.

ABC BULK COMPANY, INC.

[Jan. 1, 1985—Foreign wage cost (FC)]

	[illegible]	[illegible]
Crew complement	[illegible]	[illegible]
Base wages	[1] 53,687	[1] 24,799
Allowances	1,074	4,584
Vacation pay (leave)	[1] 35,681	[1] 13,009
Pension and welfare	[2] 38,407	[2] 2,065
Social Security	[3] 6,608	[3] 7,227
Overtime and other variable costs (not elsewhere included)	[3] 48,732	[3] 10,944
Repatriation		
Total wage costs	184,189	[illegible]
Percentage FC to WC		[illegible]

[1] Based on Jan. 1 priced out cost.
[2] Excludes training costs—foreign data not available.
[3] Based on cost experience.

(g) *Determination of daily wage rate.* The foreign wage cost is deducted from subsidizable wage costs to determine the daily wage subsidy rate. Table 1 is an example calculation of a daily wage subsidy rate using the procedures described in this section.

(h) *Unpredictably timed costs (UTC)* are subsidized by calculating costs incurred during the previous six months and converting them into a daily rate. A lump sum amunt would be paid for special lump sum assessments or for per man-day increases to benefits plans which become effective during the six months following the establishment of the daily rate. In either case, the percent age subsidy rate—which is the differential percent-age between the subsidizable wage cost and the foreign wage cost—is used to establish the amount of subsidy payable for UTC incurred.

(1) UTC expenses such as severance pay and area bonuses shall be eligible for subsidy payment without obtaining prior approval and subsidy shall be paid as a lump sum amount.

(2) Expenses such as shortfalls in benefit fund contributions, special assessments for benefits funds, and retroactive wage increases may be treated as UTC if the cost increase was not negotiate. Such costs must be approved as UTC by the Director, Office of Ship Operating Costs. To the extent such expenses qualify for UTC, the Director shall determine the appropriate method of pay subsidy—added to the per diem wage subsidy rate and/or as a lump sum amount treated separately.

TABLE 1.—ABC BULK COMPANY, INC.

[Calculation of wage subsidy rates [1]]

Base period (1)	Interim period (2)	U.S. [illegible] cost (3)	[illegible] bargaining cost (4)	Application of BLS index to base period cost (5)	Averaging in [illegible] periods (4)+(5)÷2 [illegible]	Appropriate limits (7)
1981		4,162.60	3,850.29			
	1982	4,578.24	4,230.15	3,850.29x1.0845=4,175.64		.9x(4)=3,807.14 1.1x(4)=4,653.17
	1983	4,578.24	4,230.15	3,850.29x1.1816=4,549.50		.9x(4)=4,104.34 1.1x(4)=5,016.42
	1984	5,539.40	4,966.90	3,850.29x1.2992=5,002.30		.9x(4)=4,470.21 1.1x(4)=5,463.59
1985		6,139.57	5,504.06	3,850.29x1.4044=5,407.35		.95x(4)=5,228.86 1.05x(4)=5,779.26

[1] This computation is based on a new vessel entering Subsidized Service in May 1981.

Base period cost	Subsidizable wage cost	Foreign cost [illegible] percentage	Foreign wage cost	Wage subsidy daily rate	Wage subsidy percentage rate (12)÷(9)
3,850.9	3,850.29	32.99	1,373.24	2,477.05	[illegible]
	4,175.64	32.98	1,509.90	2,665.74	[illegible]
	4,549.50	36.15	1,812.49	2,737.01	50.16
	5,002.30	34.77	1,926.05	3,076.25	61.50
5,445.71	5,455.71	33.99	2,086.84	3,368.87	61.75

§ 252.32 Maintenance (upkeep) and repairs.

(a) *Basis for subsidy.* The fair and reasonable maintenance and repair costs not compensated by insurance, if eligible for subsidy under the ODSA and the regulations in 46 CFR Part 272, shall be used for determining the daily amount of subsidy. The U.S.-foreign cost differential shall be determined from price estimates of representative items of maintenance and repair work and by using the repair practices of the foreign-flag competition.

(b) *U.S.-foreign cost differential.* MARAD shall use the following procedures for calculating the U.S.-foreign cost differential for M&R.

(1) *Cost survey.* MARAD shall select a sample of jobs which are representative of the various types of maintenance and repair work—drydocking and underwater repairs, machinery repairs, hull and deck repairs, electrical repairs, exterior painting and interior painting, etc. The jobs shall be described fully and combined into a standard set of specifications based on a particular type of vessel. The same specifications shall be used for obtaining all price estimates. MARAD shall request reliable and mutually acceptable ship repair cost experts to ascertain the U.S. and foreign M&R prices. MARAD shall survey foreign countries during a three-year cycle. The survey year prices shall be adjusted in the years between surveys by price adjustments estimated by the ship repair cost experts.

(2) *Country cost differential.* A country cost differential shall be determined for each country where work was performed on the competitive vessels. The country cost differential shall be 100 percent minus the ratio of the estimated foreign price divided by the U.S. price estimate. The U.S. price estimate shall be representative of the coastal area included in the subsidized service (for example East Coast) or, if more than one coast is served, the coast where the company is home based. For example.

DETERMINATION OF COUNTRY COST DIFFERENTIAL, YEAR 1985

[U.S. Atlantic—Gulf Coast; Foreign Country—Singapore]

[illegible] category	Foreign price	U.S. price
Drydocking and underwater repairs	$89,840	$300,245
Tank cleaning and coating	70,160	77,080
Boiler repairs	10,545	47,550
Machinery repairs	22,505	108,165
Hull and deck repairs	33,500	99,370
Piping system	71,905	215,830
Electrical repairs	12,340	36,660
Exterior painting	5,035	30,640
Interior painting	390	1,470
Estimate total	316,220	917,010

Note.—Foreign/U.S. price ratio, 34%; Country cost differential (100–34), 66%.

(3) *Distribution of repairs.* The distribution of repairs refers to the countries where M&R work was performed on the vessels of the foreign-flag competitor. When data on the repairing practices are obtained directly from the foreign competitor, they shall be used. If information about such practices is unavailable—or only partially available-data, published by the classification societies and Lloyd's Voyage Record, reporting the dates and localities of drydocking and completion of the various types of vessel surveys.

shall be used for determining the geographical distribution of the unknown repairing practices. For diesel vessels, there are three basic types of survey—drydocking, machinery, and hull. For steam vessels, there is a fourth survey—boiler—in addition to the other three surveys. Since these surveys may be performed in different countries, they are weighted in order to determine the distribution of repairs. The weighting factors shall be: Drydocking—20 percent, machinery—40 percent (10 percent allocated to boiler survey on steam vessels), and hull—40 percent.

(4) *U.S.-foreign cost differential.* The U.S.-foreign cost differential for the foreign-flag competitor shall be determined by multiplying the percentage distribution of repairs for each country where repair work was performed by the country cost differential for that country, and by adding the resulting weighted cost differentials for all countries. For example:

ABC BULK COMPANY, INC.

[U.S.-Foreign cost differential, 1985]

Principal competitor	Distribution of repairs		Country [illegible] differential [percent]	Weighted [illegible]
	Country (1)	Percent (2)		(1)×(2) (percent) (3)
Liberia	U.K.	15	19	2.9
	Japan	[illegible]	36	7.2
	Singapore	[illegible]	57	37.1
U.S.-Foreign cost differen- [illegible]				47.0

(c) *Calculation.* The U.S.-foreign cost differential is applied to the subsidizable maintenance and repair costs to establish the daily M&R subsidy amount.

(1) *Subsidizable costs.* The period used for establishing the subsidizable maintenance and repair costs will generally be a 24-to-36 month period ending in the year prior to the subsidizable year. The length of the period will be the number of months between the last two routine drydockings, and the subsidizable costs will include only the most recent routine drydocking. The costs of each year will be indexed to the subsidized year by the BLS Index of Shipbuilding and Repairing Employment and Average Hourly Earnings. The eligible costs will be divided by the calendar days of the period to establish daily average maintenance and repair costs. The U.S.-foreign differential percentage applicable to the most recent year will be applied to the daily average cost to determine the daily M&R subsidy amount.

(2) *Data submission requirement.* The operator is required to submit an annual certified statement of eligible M&R expenses for each month. The report shall be submitted to the Director, Office of Ship Operating Costs. The report should be submitted not later than sixty (60) days after the close of each calendar year.

§ 252.33 Hull and Machinery Insurance.

(a) *Subsidy items.* The fair and reasonable net premium costs (including stamp taxes) of hull and machinery, increased value, excess general average, salvage, and collision liability insurance against risks and liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up returns, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential. Port risk premiums are eligible for subsidy but not for determining the U.S.-foreign cost differential.

(b) *U.S.-foreign cost differential.* A U.S.-foreign cost differential shall be calculated for the service. Due to the difficulty of comparing forms and costs of hull and machinery insurance coverages, the following assumptions shall be used for estimating the composite premium cost of the foreign-flag competitor.

(1) *Coverage.* The foreign competitive vessels have the same types and amounts of insurance coverages and deductible averages as the subsidized vessels.

(2) *Premium rate.* The foreign competitive vessels are insured in the British market and the rate for such vessels is the same as the British market rate for the subsidized vessels. If the operator carries all of its insurance in the American market, the American market rate shall be assumed to be the same as the British market rate.

(3) *Repairs.* Insurable repairs of the foreign competitive vessels are performed in the same countries and in the same distribution as non-insurable repairs, and the cost differential for such repairs shall be the same as the maintenance and repair percentage differential.

(4) *Particular average.* The percentage of particular avarage repair claims for the foreign competitive vessels is the same as the percentage of particular average repair claims for the subsidized vessels. The particular average portion of the premium cost for the subsidized vessels shall be determined as follows:

(i) *Percentage.* the particular average portion of the premium cost shall be determined by applying a percentage to the hull and machinery premium cost after deducting the estimated total loss premium. The percentage is based on insured claims experience. The percentage shall be determined by dividing the total of underwriter's absorptions for particular average domestic repair claims paid and estimated by the total of underwriter's absorptions for all claims paid and estimated (excluding total loss and constructive total loss claims) under the hull and machinery portion of the insurance coverage, except that such percentage shall not exceed eighty-five (85) percent. The percentage is based on the claims experience of the subsidized vessels for the five (5) calendar year period preceding the subsidized year. For subsidized operators that do not have five years of claims experience, the average percentage of particular average domestic repair claims for all similar subsidized vessels shall be used unless the operator can submit data to substantiate its own claims cost experience on similar vessels.

(ii) *Data submission requirement.* The operator shall submit the five year claims experience, invoices showing net premium costs and coverages for the subsidized year, and lay-up returns for the previous year to the Director, Office of Ship Operating Costs, not later than sixty (60) days after the close of each calendar year.

(c) *Calculation.* In calculating the subsidized premium cost, the following steps shall be taken:

(1) The particular average portion of the premium cost shall be adjusted in order to give effect to the repair cost differential for the foreign competitive vessels by applying the complement of the maintenance and repairs precentage cost differential (100 percent minus the differential) to the particular average

portion of the premium cost. The adjusted particular average foreign premium cost shall be added to the net premium cost excluding the particular average portion to determine the composite foreign premium cost.

(2) The foreign premium cost shall be subtracted from the operator's total premium cost to determine the difference in dollars. The percentage differential is determined by dividing the dollar difference by the operator's total premium cost. An example calculation is included in Table 2.

(3) The net premium cost of the subsidized vessels shall be divided by the number of days in the calendar year and the resultant daily insurance cost shall be multiplied by the U.S.-foreign cost differential percentage applicable to the most recent year to determine the daily amount of subsidy for hull and machinery insurance.

Table 2.—ABC Bulk Co., Inc., U.S./Foreign Cost Differential for Hull and Machinery Insurance

[1985]

1. Foreign premium cost:		
A. Hull and machinery, total coverage	$92,741,996	
Average premium rate in British market (percent)	1.00966	
Premium cost in British market		$936,379
(Estimated total loss premium $92,741,966@ .46500 pct. $431,250)		
B. Increased value, total coverage	$1,083,325	
Average premium rate in British market (percent)	.32550	
Premium cost in British market		3,526
C. Excess liability, total coverage		None
D. Total premium cost if insured 100 pct. in British Market		939,905
E. Deduct particular average portion: $936,379 less $431,250=$505,129 × 62 pct.[2]		313,180
F. Net premium cost exclusive of particular average		626,725

	Worldwide service
G. Particular average adjustment:	
P/A portion of premium cost	$313,160
M&R Subsidy rate complement [3] (percent)	84.48
Adjusted P/A foreign premium cost	$264,574
Add: Net premium cost (excluding P/A)	$626,725
2. Foreign premium cost	$891,299
3. Total premium cost to subsidized operators	$1,068,980
4. Differential in dollars [4]	$177,699
5. U.S. Foreign cost differential [5] (percent)	16.62

[1] Estimated gross total loss rate adjusted for broker's discounts, policy tax and other costs, as necessary
[2] Percentage of particular average.
[3] 100% minus M&R subsidy rate of the same calendar year.
[4] Line 3 less line 2.
[5] Line 4 divided by line 3.

§ 252.36 Protection and Indemnity Insurance.

(a) *Subsidy items.* Items eligible for determination of subsidizable costs and the U.S.-foreign cost differential area:

(1) *Premiums.* The fair and reasonable net premium costs (including stamp taxes) of protection and indemnity, excess insurance, second seamen's insurance, tovalop or other forms of pollution insurance, bumbershoot (only that portion identified as applicable to P&I insurance), cargo liability if excluded from the primary policy, supplemental calls against liabilities covered under the terms and conditions of policies approved as to form and coverage by MARAD, less lay-up return premiums, shall be eligible for subsidy and used for determining the U.S.-foreign cost differential.

(2) *Deductibles.* The fair and reasonable cost of crew claims paid by and pending with the operator under the deductible provision of the protection and indemnity insurance policy approved as to form and coverage by MARAD, to the extent that such cost would have been paid by the insurance underwriter under the terms of the policy, except for the fact that it did not exceed the deductible provision of the policy, shall be eligible for subsidy. For subsidy purposes, the deductible absorption shall not exceed $50,000 for each accident or occurrence, provided however, that benefits paid on unearned wages, if excluded from coverage under the protection and indemnity insurance policy, shall be eligible notwithstanding that the deductible provisions of the policy may be exceeded.

(b) *Assumptions made in calculation.* For purposes of determining subsidy for protection and indemnity insurance, it shall be assumed that the cost differential between the subsidized vessels and the foreign competitive vessels is limited to those portions of premium costs and deductible absorptions which are related to crew liability and that the cost of all other liabilities is the same for both the subsidized vessels and the foreign competitive vessels.

(c) *Calculation.* The following is the method of calculating the U.S.-foreign cost differential for premiums:

(1) *General.* A differential shall be calculated for the service of the vessels. Since the premium cost for all other liabilities is assumed to be the same for both the U.S. and foreign competitive vessels, the calculation of the differential for protection and indemnity insurance premiums is in effect based on the difference between U.S. and foreign premium costs for crew liabilities. Premium costs are determined in costs per gross registered ton (GRT).

(2) *Reporting requirement.* The operator shall submit the total premium cost for the subsidized year, plus any supplemental calls and lay-up return premiums not previously reported, to the Director, Office of Ship Operating Costs, not later than 60 days after the beginning of such year. The data shall be supported by invoices from the insurance underwriter.

(3) *U.S. crew liability cost.* The crew liability portion of the total premium cost shall be determined by applying a percentage to the total premium cost based on five (5) years of claims experience for the five years preceding January 1 of the subsidized year. The percentage shall be determined by dividing the total of underwriter's absorptions for crew claims, paid and estimated, by the total of underwriter's absorptions for all claims, paid and estimated. The crew claims portion shall be limited to eighty-five (85) percent unless the operator can substantiate a higher percentage as a result of having crew liability and all other liabilities insured with different underwriters. The operator shall submit the five-year claims experience not later than 60 days following the close of each calendar year.

(4) *All other liabilities cost—U.S. and foreign.* The all other liabilities portion of the U.S. premium cost shall be determined by subtracting the crew liability portion from the total premium

cost. The same cost shall be used for the all other liabilities portion of the foreign-flag competitor's premium cost.

(5) *Foreign crew liability cost.* The crew liability cost of each principal foreign-flag competitor shall be used, if reliable cost data can be obtained. If such data cannot be obtained for a principal competitor, and it is determined that such competitor has a non-national crew, the crew liability cost for similar vessels registered under the flag of the crew's nationality may be used, at the Board's discretion, provided reliable cost data are obtained. If no reliable cost data are obtained for a competitor, the crew liability cost for that competitor shall be estimated by multiplying the subsidized operator's crew liability portion of the total premium cost by the ratio of that competitor's wage costs (FC) to the subsidized operator's wage costs (WC), as determined in the calculation of the wage differential.

(6) *U.S.-foreign cost differential.* The U.S.-foreign cost differential shall be the excess of the operator's total premium cost over the principal foreign-flag competitor's estimated total premium cost, expressed as a percentage, calculated in the following manner.

ABC BULK CO., INC., PROTECTION AND INDEMNITY INSURANCE PREMIUMS

[1985]

	[illegible]	Liberia
Premium cost (per GRT):		
Crew liability	[1] $3.98	[2] $1.27
All other liability	1.06	1.06
Total cost	5.04	2.33
Differential—Excess of:		
U.S. cost over foreign cost		$2.71
U.S.-Foreign cost differential (percent)		53.77

[1] Determined by applying 79.03 percent (based on 5-year claims experience) to total GRT premium rate of $5.04
[2] Crew liability data obtained by Maritime Administration

NOTE.—The unweighted percentage of foreign to U.S wage costs would be used to estimate the foreign cost if the foreign crew liability data were not available.

(d) *Daily subsidy rate.* The daily subsidy rate shall be calculated in the following manner:

(1) *Premiums.* The net premium costs per calendar day for the subsidized year shall be multiplied by the U.S.-foreign cost differential percentage determined for the most recent year. The product shall be the daily amount of subsidy for P&I premiums.

(2) *Deductibles.* (i) The eligible illness and injury crews, paid and pending, shall be audited for each calendar year of a three-year period commencing six years prior to January 1 of the subsidized year, and shall be multiplied by the percentage age differential, as determined in the calculation of wage subsidy for the appropriate fiscal period. The resulting calender period P&I deductible differential shall be divided by the fiscal period wage differential in the service for the three-year period, and the resulting percentage shall be applied to the wage per diem calculated for each ship type in the service to derive the daily amount of subsidy for P&I deductibles. As to pending claims previously recognized in the historical period, only the amount of changes in cost with respect to such claims shall be subsequently recognized. The following methodology shall determine subsidy for P&I deductibles.

DETERMINATION OF DAILY AMOUNT OF SUBSIDY FOR P&I DEDUCTIBLES

T.R. 98 item	Fiscal year [illegible]			Total
Wage ODS	1,500,000	1,000,000	1,750,000	4,250,000(1)
	Calendar year [illegible]			
P&I Ded. ODS	75,000	[illegible]	100,000	255,000(2)
Ratio of P&I DED. ODS to wage ODS				6.00(2)–(1)

T.R. 98 ship type	[illegible] wage ODS Jan. 1, 1985	Ratio P&I Ded. to wage ODS	Daily P&I Ded. ODS Jan. 1, 1985
C4–A	[illegible]	X .06	$240.00
C5–B	5,000	X .06	[illegible]
C6–C	6,000	X .06	[illegible]

(ii) In case where national insurance schemes cover crew claims costs in their entirety, resulting in no cost to the foreign competitor for deductible absorptions, the composite percentage differential for wages shall be adjusted by substituting a zero cost for such foreign competitor in the calculation of the differential. The adjustment of the wage percentage differential shall not be used for Japan, where operators incur minimal costs for deductible absorptions, rather than no costs. For Japan, the insurance related costs which are normally included in the calculation of Japanese wage costs shall be excluded in adjusting the wage percentage differential for this purpose.

10. Section 252.40 is revised to read as follows:

§ 252.40 Payment of subsidy.

Submission of voucher. At the close of each calender month, the subsidized operator may submit a voucher, and include for payment in such voucher the amount of ODS accrued for the voyages terminated during the period.

11. Section 252.41 is revised to read as follows:

§ 252.41 Subsidy billing procedures.

(a) *Subsidy voucher.*—(1) *Form.* Requests for payment of ODS shall be submitted on a public voucher, Standard Forms 1034 and 1034A, which can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) *Copies.* The operator shall submit the original and 3 copies of the voucher for payment to the MARAD Region Director. The original and 2 copies must be supported by schedules and an affidavit. The third copy is the payee's copy and need not be supported.

(b) *Schedules and affidavit.* (1) The following schedules shall be used for calculating the amount of ODS payable:

Schedule A

(Company) _____

ODSA No. _____

ODS Accrued During Fiscal Year 19—

ODS Payable for the Month of

	Current voucher	[illegible] voucher	Total
Total Accrued [illegible] (Sched. B)	[illegible]		
Less ODS [illegible] Reduced [illegible] (Sched. C).	[illegible]		
Net ODS Accrued	[illegible]	$	[illegible]
Less Previous Payments.			[illegible]
ODS Payable			[illegible]

(Company) _____

ODS Accrued for the Month of _____

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Vessel name	Voyage No	Voyage dates From	Voyage dates To	Voyage days	[illegible]	[illegible]
					$	$
ODS Payable for Unpredictably Timed Expenses not included in Daily Amount (Attach supporting information)						$
Total Accrued Subsidy (Enter on Schedule A)						$

Schedule C

(Company) _____

REDUCED CREW PERIODS

[illegible]	Reduced crew dates From—	Reduced crew dates To—	Number of [illegible] crew days	X	No. of crew reduced	=	Man-days	||	Man-day amount	=	[illegible]
									$	$	
									$		
Total Reduced Crew Reduction (Enter on Schedule A)											$

[a] If licensed crew, indicate (*).
[b] If unlicensed crew, indicate (*).

(2) A notorized affidavit as shown below shall be signed by an official of the subsidized operator who is familiar with the ODSA, these regulations, the operation of the subsidized vessel, and the accounts, books, records, and disbursements of the subsidized operator relating to such operation:

AFFIDAVIT

State of _____
City of _____
County/Parish of _____

I, _____, being duly sworn, depose and say, that I am (title) of the _____ (herein referred to as the "Operator"), and as such am familiar with (a) provisions of the Operating-Differential Subsidy Agreement, Contract No. ____, dated as of _____, as amended, to which the Operator is a party; and (b) the regulations govrning the payment of operating-differential subsidy for bulk cargo vessels, PART 252, Title 46, CFR; and (c) the operation of the vessels covered by said Agreement and regulations; and (d) the accounts, books, records, and disbursements of the Operator relating to such operation.

Referring to the public voucher dated _____, covering voyage days allowed for subsidy during the periods commencing _____ and ending _____, and attached, submitted by said Operator concurrent herewith for a payment on account in the sum of _____, under said Agreement, I further depose and say that, to the best of my knowledge and belief, the Operator has fully complied with the terms and conditions of said Agreement and regulations, applicable orders, rulings and provisions of the Merchant Marine Act, 1936, as amended, and is entitled, under the provisions of said Agreement and regulations, orders and rulings applicable thereto, to the amount of the payment on account requested; and further depose and say that the vessels named in the attached schedules were in authorized service for the vessel operating days on which the payment is requested and has not included in the calculation of the amount of subsidy claimed in the attached voucher any costs of a character that the Maritime Administration, or Secretary of Transportation acting by and through the Maritime Subsidy Board or any predecessor or successor, had advised the Operator to be ineligible to be so included, or any costs collectible from insurance, or from any other source.

Payment by the Maritime Administration of all or part of the amount claimed herein shall not be construed as approval of the correctness of the amount stated to have been due, nor a waiver of any right of remedy the Maritime Administration, or Secretary of Transportation, acting by and through the Maritime Subsidy Board, or any predecessor or successor, may have under the terms of said Agreement, or otherwise.

I further depose and say that this affidavit is made for and on behalf and at the direction of the Operator for the purpose of inducing the Maritime Administration to make a payment pursuant to the provisions of the aforesaid Operating-Differential Subsidy Agreement, as amended.

Subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this _____ day of _____.

My commission expires _____
Notary Public _____

(3) The subsidized operator shall furnish its own supply of supporting schedules and affidavit.

12. Section 252.42 is revised as follows:

§ 252.42 Appeals procedures.

(a) *Appeals of annual or special audits.* An operator who disagrees with the findings, interpretations or decisions in connection with audit reports of the Office of the Inspector General and who cannot settle said differences by negotiation with the Contracting Officer may submit an appeal to the Maritime Administrator from such findings, interpretations or decisions in accordance with part 205 of this chapter.

(b) *Appeals of administrative determinations.*—(1) *Policy.* An operator who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal from such findings, interpretations or decisions as follows:

(i) Appeals shall be made in writing to the Secretary, Maritime Subsidy Board, Maritime Administration, within 60 days following the date of the document notifying the operator of the administration determination of the Contracting Officer. In his appeal to the Secretary the operator shall indicate whether or not he desires a hearing.

(ii) The appellant will be notified in writing if a hearing is to be held and whether he is required to submit

additional facts for consideration in connection with the appeal.

(iii) When a decision has been rendered by the Board, the appellant will be notified in writing.

(2) *Appeal to the Secretary of Transportation.* An operator who disagrees with the Board may appeal such findings and determinations by filing with the Secretary of Transportation, a written petition for review of the Board's action. The petition shall be filed in accordance with provisions of the Department of Transportation pertaining to Secretarial review.

(3) *Hearings.* The Rules of Practice and Procedures, 46 CFR Part 201, Subpart M, shall be followed for all hearings granted under 46 U.S.C. 1176 and 46 CFR 252.42

By order of the Maritime Administrator.

Dated: December 17, 1985.

Murray A. Bloom,

Assistant Secretary, Maritime Administration.

[FR Doc. 85-30157 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to revise Part 18 to incorporate amendments to the Marine Mammal Protection Act of 1972 and update organizational nomenclature. The revisions would affect those sections of Part 18 where the regulations paraphrase the wording in the Act. Also changed are the references to terms, such as "Bureau" and "Area Director," which are no longer used in the Service's organization. These amendments will eliminate inconsistencies with the law and avoid reader confusion.

DATE: Comments concening these changes should be submitted no later than January 22, 1986.

ADDRESS: Coments should be forwarded to Chief, Division of Wildlife Management, Room 514 Matomic, U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: LeRoy Sowl, Chief, Division of Wildlife Management, address above, telephone (202) 632-2202.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act (MMPA or Act) was enacted in 1972, and the Fish and Wildlife Service implemented the Act by regulations contained in 50 CFR Parts 18, 82 and 403. The MMPA was enacted for the purpose of ensuring that marine mammals are maintained at healthy population levels. In passing the Act, Congress responded to the growing concern regarding the decline of certain marine mammal species and recognized the important role that marine mammals play in the ecosystem as well as their economic, aesthetic and recreational value. Under the MMPA the Department of the Interior is charged with responsibility for polar bears, walruses, sea and marine otters, manatees and dugongs. On October 9, 1981, Congress amended the MMPA with the passage of Pub. L. 97-58.

On July 29, 1983, the Service published a notice in the **Federal Register** (48 FR 34486) that described the various changes made by Pub. L. 97-58. While the substantive changes addressing marking and tagging of marine mammal parts, and incidental take by commercial fishermen will be addressed in proposed and final rulemaking documents, this document contains proposed changes necessary to remove inconsistencies with the legislative amendments, and corrects several outdated organization terms.

The individual proposed changes to 50 CFR Part 18 are described below:

1. Section 18.11. This section would be amended to include citation to 50 CFR Part 403, the joint regulations issued by the Service and the National Marine Fisheries Service concerning transfer of marine mammal management authority to States. Such reference paraphrases the wording of 16 U.S.C. 1372(a), which was amended by Pub. L. 97-58 to include reference to the transfer of management authority provisions.

2. Section 18.13. This section paraphrased 16 U.S.C. 1372(a), which was changed by the 1981 MMPA amendments (see section 3 of Pub. L. 97-58) by replacing paragraph (a)(3) with new paragraphs (a) (3) and (4) and redesignating paragraph (a)(4) as (a)(5). Sections 18.13 (b) and (c) of Title 50, CFR would be revised to make them consistent with the present wording of the law.

3. Section 18.14(c). This would update the term "Bureau" to "Service." The "Bureau" term referred to the Service's former name, Bureau of Sport Fisheries and Wildlife.

4. Section 18.22. This section paraphrases 16 U.S.C. 1379(h), which was revised by Pub. L. 97-58, section 4, by adding Federal employees to the officials that may "take" marine mammals in the course of official duties. Section 18.22 would be amended to reflect this statutory change. Section 18.22(b) would be amended by replacing the term "Bureau" with "Service," for the same reason as described in item 2, above.

5. Section 18.23. This sectin would be amended by changing the section title, introductory sentence, and paragraph (a)(1). The reision would remove the inconsistencies with 16 U.S.C. 1371(b), which is paraphrased by section 18.23(a). The changes were made by Pub. L. 97-58, section 2. The two references made to the Alaska Area Director would be changed to reflect the position's current title of regional director.

6. Section 18.26. The term "Bureau of Sport Fisheries and Wildlife" would be replaced with "Service" for the reasons set forth under 2, above.

As noted above, the proposed amendments to Part 18 would remove inconsistencies with the MMPA in those areas where the law changed wording paraphrased by the regulations. These changes are necessary to conform existing regulations to the law. The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) Similarly, the Service determines that, since the regulatory amendments reflect the statutory language, an environmental assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared for this action. There are no impacts on the public other than to remove any confusion created by the lack of consistent wording contained in the regulations and the law. Additionally, there are no information collection requirements contained in this document that require Office of Management and Budget clearance under 44 U.S.C. 3501. The primary authors of this document are Rupert R. Bonner and James E. Pinkerton of the Fish and Wildlife Service.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Marine mammals, Transportation.

PART 18—[AMENDED]

Accordingly, 50 CFR Part 18 is proposed to be amended as described below:

1. The authority for Part 18 continues to read as follows:

Authority: Marine Mammal Protection Act of 1972, as amended (Pub. L. 92–522, 86 Stat. 1027; Pub. L. 97–58 State. 979 (16 U.S.C. 1361–1407)).

2. Section 18.11 is amended by revising the introductory text to read as follows:

§ 18.11 Prohibited taking.

Except as otherwise provided in Subpart C, D, or H of this Part 18, or Part 403, it is unlawful for:

* * * * *

3. Section 18.13 is amended by redesignating paragraph (c) as (d), revising paragraph (b) and adding a new (c) to read as follows:

§ 18.13 Prohibited uses, possession, transportation, and sales.

* * * * *

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal, or product therefrom, taken in violation of the Act or these regulations;

(c) Any person subject to the jurisdiction of the United States to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product; or

* * * * *

4. Section 18.14(c) is amended by replacing the term "Bureau" with "service."

5. Section 18.22 is amended by revising the section title, and amending paragraph (a), by inserting "Federal" before the term "State" as follows:

§ 18.22 Taking by Federal, State or local government officials.

(a) A Federal, State or local government official or employee * * *

(a) A Federal, State or local government official or employee * * *

6. The flush paragraph appearing after paragraph (a)(6) of § 18.22 is amended by replacing the term "Bureau of Sport Fisheries and Wildlife" with the term "U.S. Fish and Wildlife Service.

7. Section 18.23 is amended by revising the section title, introductory paragraph (a), and paragraph (a)(1) to read as follows:

§ 18.23 Native exemptions.

(a) *Taking.* Notwithstanding the prohibitions of subpart B of this Part 18, but subject to the restrictions contained in this section, any Alaskan Native who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean may take marine mammals without a permit, if such taking is:

(1) For subsistence purposes, or

* * * * *

8. Section 18.23 is further amended in introductory paragraph (b) and paregraph (b)(2) by replacing the term "Alaska Area" with "Regional" both times it appears in this section.

§ 18.26 [AMENDED]

9. Section 18.26(b) is amended by replacing the term "Bureau of Sport Fisheries and Wildlife" with the term "U.S. Fish and Wildlife Service."

Dated: November 1, 1985.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–29987 Filed 12–20–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 246
Monday, December 23, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 43–85]

Foreign-Trade Zone 14—Little Rock, AR; Application For Subzone Polar Stainless Products Sink Plant, Searcy

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Little Rock Port Authority on behalf of the State of Arkansas, grantee of Foreign-Trade Zone 14, requesting special-purpose subzone status for the stainless steel sink manufacturing plant of Polar Stainless Products, Inc. (Polar), in Searcy, White County, Arkansas, some 45 miles northwest of the Little Rock Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 9, 1985.

The proposed subzone is located at 920 E. Lincoln Avenue, Searcy. The 12.5-acre facility employs 171 persons and is used to produce stainless steel sinks for home and commercial uses. Polar has been purchasing most of its stainless steel sheet and strip from domestic sources. Because of increasing foreign competition, the company plans to purchase about 50 percent of its steel from lower-cost foreign sources. Polar exports over 6 percent of its production.

Zone procedures would allow Polar to avoid duty payments on the foreign steel used in its exports. On its domestic sales, the company would be able to take advantage of the normal duty rate available to importers of sinks, which is 4.7 percent. Stainless steel sheet and strip is subject to a 10-percent basic duty rate. An additional 6 percent duty is in effect under an ITC Escape Clause action. Polar states that it cannot maintain its domestic production without turning to lower cost foreign materials, because of the price competitiveness of sinks made abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal St., New Orleans, LA 70130; and Colonel Robert W. Whitehead, District Engineer, U.S. Army Engineer District Little Rock, P.O. Box 867, Little Rock AR 72203.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 7, 1986.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, Suite 635, Savers Federal Bldg., 320 W. Capitol Ave., Little Rock, AR 72201

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Ave., NW., Washington, DC 20230

Dated: December 16, 1985.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 85–30282 Filed 12–20–85; 8:45 am]
BILLING CODE 3510-DS-M

International Trade Administration

Carbon Steel Plate from Japan; Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Antidumping Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act of 1930, of the antidumping duty order on carbon steel plate from Japan. The review covers the period from October 1, 1984. Bethlehem Steel Corporation, Inland Steel, Lukens, Inc., Laclede Steel Company, LTV Steel Company, National Steel Corporation, and United States Steel Corporation, all of which are domestic interested parties to this proceeding, have notified the Department that they are no longer interested in the antidumping duty order. These affirmative statements of no interest and a Voluntary Restraint Agreement that imposes restrictions on imports of carbon steel plate from Japan provide a reasonable basis for the Department to revoke the order. Therefore, we intend to revoke the order. In accordance with the interested parties, notifications, the revocation will apply to all carbon steel plate entered, or withdraw from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On May 30, 1978, the U.S. Department of the Treasury published in the **Federal Register** T.D. 78–150, an antidumping duty order on carbon steel plate from Japan (43 22937).

Bethlehem Steel Corporation, Inland Steel, Lukens, Inc., Laclede Steel Company, LTV Steel Company, National Steel Corporation, and United States Steel Corporation, domestic interested parties to this proceeding, have notified the Department that they are no longer interested in the order and stated their support of revocation of the order. Collectively, these companies constitute a substantial majority of the U.S. industry producing carbon steel plate. In their letters, these companies stated their opinion that the May 14, 1985, Voluntary Restraint Agreement with Japan, which imposes restrictions on imports of carbon steel plate from Japan,

provides relief from unfairly traded imports of carbon steel plate from Japan that is at least equal to that which could be obtained through continuation of the antidumping duty order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping order that is no longer of interest to domestic interested parties.

Scope of the Review

The merchandise covered by this review is hot-rolled carbon steel plate, 0.1875 inches or more in thickness, over 8 inches in width, not in coils, not pickled, not coated or plated with metal, not clad, and not cut, pressed, or stamped to non-rectangular shape. Carbon steel plate is currently classifiable under items 607.6620 and 607.6625 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminary determine that the domestic interested parties' affirmative statements of no interest in continuation of the antidumpting duty order on carbon steel plate from Japan and a Voluntary Restraint Agreement that imposes restrictions on imports of carbon steel plate from Japan provide a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on this product effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of carbon steel plate from Japan which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), and (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: December 17, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-30253 Filed 12-20-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-504]

Preliminary Affirmative Countervailing Duty Determination; Carbon Steel Wire Rod From New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to maufacturers, producers, or exporters in New Zealand of carbon steel wire rod. The estimated net bounty or grant is 9.83 percent *ad valorem* for all manufacturers, producers, or exporters in New Zealand of carbon steel wire rod.

We are directing the U.S. Customs Service to suspend liquidation of all entries of carbon steel wire rod from New Zealand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in the amount equal to the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination by March 3, 1986.

EFFECTIVE DATE: December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Ellie Shea, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 377-2438 or 377-0184.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended, (the Act), are being provided to manufacturers, producers, or exporters in New Zealand of carbon steel wire rod. For purposes of this preliminary determination, the following programs are found to confer bounties or grants:

- Export Performance Taxation Incentive (EPTI).
- Export Market Development Taxation Incentive (EMDTI).
- Sales Tax Exemptions or Refunds.

We preliminarily determine the estimated net bounty or grant to be 9.83 percent *ad valorem* for all manufacturers, producers, or exporters in New Zealand of carbon steel wire rod.

Case History

On September 23, 1985, we received a petition in proper form from Atlantic Steel Co., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., filed on behalf of the U.S. Industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in New Zealand of carbon steel wire rod, directly or indirectly, receive benifits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on October 15, 1985, we initiated such an investigation (50 FR 43590). We stated that we expected to issue a preliminary determination on or before December 17, 1985.

Since New Zealand is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Administration is not required to determine whether, imports of this merchandise materially injure, or threaten material injury to, a U.S. industry.

On October 25, 1985, we presented a questionnaire to the New Zealand government in Washington, DC concerning the petitioners' allegations. On November 25, 1985, we received

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responses to our questionnaire from New Zealand Steel Ltd., Pacific Steel Ltd., and the government of New Zealand. Pacific Steel Ltd. is the only known manufacturer of carbon steel wire rod in New Zealand. Both New Zealand Steel Ltd. and Pacific Steel Ltd. exported carbon steel wire rod to the U.S. during the review period.

Scope of Investigation

For purposes of this investigation, the term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross-section, not under 0.20 inch in diameter, nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classifiable under items 607.14, 607.17, 607.22, and 607.23 of the *Tariff Schedules of the United States*.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is April 1, 1984, through March 31, 1985. Based upon our analysis of the petition and the responses to our questionnaire submitted by the government of New Zealand, New Zealand Steel Ltd. and Pacific Steel Ltd., we preliminarily determine the following.

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in New Zealand of carbon steel wire rod under the following programs.

A. Export Performance Taxation Incentive (EPTI)

Petitioners allege that the New Zealand wire rod industry receives EPTI tax credits on exports of qualifying goods under section 156A of the Income Tax Act of 1976, as amended.

According to the response of the government of New Zealand, under the 1979 Amendment of the Income Tax Act of 1976, exporters receive a tax credit based on the f.o.b. value of qualifying goods exported. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the remainder is paid to the taxpayer in cash. The rate of the tax credit is dependent upon the government predetermined value-added category into which the product falls. The amount of the tax credit is calculated by multiplying the rate corresponding to the value-added category into which the product falls by the f.o.b. value of export sales. Carbon steel wire rod falls into value-added category B, for which the corresponding rate is 10.5 percent. According to the response, the rates specified under this program will be reduced in the tax years ending March 31, 1986, and March 31, 1987. On the tax return filed during the review period, New Zealand Steel Ltd. did not claim EPTI tax credits for exports of wire rod. However, Pacific Steel Ltd. claimed EPTI tax credits on the tax return filed during the review period for its exports of wire rod.

Because eligibility for this program is limited to exporters, we preliminarily determine that it provides a bounty or grant to producers and exporters of carbon steel wire rod within the meaning of the countervailing duty law.

Under our tax methodology, we calculate the benefit from this program by dividing the amount of the EPTI tax credits claimed by Pacific Steel Ltd. on its tax return filed during the review period by the company's total export sales during the review period. On this basis, we calculate an estimated net bounty or grant of 9.12 percent *ad valorem*.

B. Export Market Development Taxation Incentive (EMDTI)

Petitioners allege that the New Zealand wire rod industry receives EMDTI tax credits under section 156F of the New Zealand Income Tax Act of 1976, as amended, for qualifying export market development expenditures.

According to the government's response, under the 1979 Amendment of the Income Tax Act of 1976, export market development expenditures, such as expenses incurred principally for seeking and developing markets, retaining existing markets, and obtaining market information, qualify for a tax credit of 67.5 percent of the total expenditure. Any company that has such expenditures may claim them in calculating taxable income. However, an exporter who takes advantage of this tax credit may not deduct the qualifying expenditures as ordinary business expenses in calculating the taxable income. Because the normal corporate tax rate in New Zealand is 45 percent, and exporters may claim a tax credit of 67.5 percent, the net benefit to the exporters under this program is 22.5 percent of the qualifying expenditure amount.

In the company responses, New Zealand Steel Ltd. and Pacific Steel Ltd. reported receiving benefits under this program during the review period. Because eligibility for this program is limited to exporters, we preliminarily determine that it confers a bounty or grant within the meaning of the countervailing duty law.

To calculate the benefit, we divided 22.5 percent of the qualifying expenditures which were claimed by respondent companies on their 1983/84 tax returns by the total f.o.b. value of export sales during the review period. On this basis, we find an estimated net bounty or grant amount of .21 percent *ad valorem*.

C. Sales Tax Exemptions or Refunds

Petitioners allege that the New Zealand wire rod industry receives sales tax exemptions or refunds on machinery and equipment used in the production of goods for export.

In the response, Pacific Steel Ltd. states that it did not receive sales tax exemptions or refunds during the review period. New Zealand Steel Ltd., however, indicates that it received sales tax exemptions or refunds, but was unable to provide an estimate of the amount of such exemptions or refunds.

Because information provided in the government's response indicates that sales tax exemptions or refunds are available only on machinery and equipment used principally in export production, we preliminarily determine that this program provides a bounty or grant to producers and exporters of

carbon steel wire rod within the meaning of the countervailing duty law.

As the best information available to calculate the benefit, we multiplied the net increase in the value of plant and equipment from 1984 to 1985, as reported in the 1985 financial statements of New Zealand Steel Ltd., by the sales tax rate for machinery listed in Chapter 84 of New Zealand's Customs Tariff. We then divided this by total export sales during the review period. On this basis, we calculate an estimated net bounty or grant of .50 percent *ad valorem*.

II. Programs Preliminarily Determined Not To Be Used

In accordance with our practice of accepting a response to an allegation which denies the receipt of benefits under a program, we preliminarily determine, subject to verification, that manufacturers, producers, or exporters in New Zealand of carbon steel wire rod did not use the following programs which were listed in our notice of initiation.

A. Export Credits From the Development Finance Corporation

Petitioners allege that the New Zealand wire rod industry receives export credits on preferential terms from the Development Finance Corporation (DFC).

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. has received concessionary financing from the Development Finance Corporation.

B. Export Marketing Assistance

Petitioners allege that the New Zealand wire rod industry receives various types of export marketing assistance from the New Zealand Export-Import Corporation, the Department of Trade and Industry, the Building Research Association, the Department of Scientific and Industrial Research, the Standards Association of New Zealand, and the Testing Laboratory Registration Council.

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received export marketing assistance from any of the aforementioned organizations. With respect to petitioners allegation that the Standards Association of New Zealand translates technical documents and aids exporters in obtaining foreign standards, regulations, and testing requirements, the responses indicate that neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received such assistance in obtaining U.S. standard on carbon steel wire rod.

C. Export Suspensory Loan Scheme (ESLS)

Petitioners allege that the New Zealand wire rod industry receives ESLS loans for purchasing equipment needed to expand production of export goods under a program administered by the Department of Trade and Industry and the Development Finance Corporation (DFC). ESLS loans are payable at DFC's normal rates but can become grants if the exporters meets predetermined export sales targets.

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received loans under ESLS during the period 1973 through 1985.

D. Export Programme Grants Scheme (EPGS)/Export Programme Suspensory Loan Scheme (EPSLS)

Petitioners allege that, under the Export Programme Grants Scheme (EPGS), the New Zealand wire rod industry is eligible to receive 64 percent of its approved overseas market development costs in advance. Although the EPGS was superseded by the Export Programme Suspensory Loan Scheme (EPSLS) in June 1982, petitioner's allege that grants under the EPGS could continue unitl June 1985.

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received loans or grants under EPGS or EPSLS during the last 15 years.

E. Preferential Treatment to Exporters in Granting Import Licenses

Petitioners allege that import licensing concessions are provided to companies which import materials for incorporation in goods to be exported. Such concessions may include additional availability of import licenses on components for incorporation in goods to be exported.

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received import licensing concessions during the review period.

F. Research and Development Incentives

Petitioners allege that the New Zealand wire rod industry receives research and development incentives under the Applied Technology Program administered by the DFC and under the previous Industrial Research and Development Grants Advisory Committee of the Department of Trade and Industry.

According to the responses, no assistance has been provided under this program to New Zealand Steel Ltd. or Pacific Steel Ltd.

G. Regional Development Investment Incentives

Petitioners allege that New Zealand wire rod producers receive a variety of regional development incentives based on their location in regions classified as either priority or slow-growth. Petitioners also allege that the wire rod industry receives concessions on electricity, water rights, and rail freight for any facilities located on the South Island.

According to the government's response and supported by the company responses, no regional development incentives are offered to the wire rod industry as no manufacturers or exporters of wire rod are located in a designated priority or slow-growth region. The responses also indicate that none of the facilities or plants of New Zealand Steel Ltd. or Pacific Steel Ltd. is located on the South Island and therefore neither company receives concessions on electricity, water rights, or rail freight.

H. Special Industrial Development Allowances

Petitioners allege that the New Zealand wire rod industry receives tax benefits from the Industrial Development Plan Investment Allowance (IDPIA) under section 121 or the High Priority Investment Allowance under section 121A of the New Zealand Income Tax Act of 1976, as amended.

According to the government's response, no industrial development plan has been approved for the steel industry and, therefore, no manufacturer or exporter of carbon steel wire rod has qualified for this program. Both companies indicate in their responses that they have not received benefits under this program.

III. Programs PReliminarily Determined To Be Terminated

A. Increased Exports Taxation Incentive (IETI)

Under the IETI program, an exporter can claim an income tax deduction proportionate to the exporter's increased export earnings. Although the New Zealand government terminated this program on March 31, 1983, we included this program in our investigation to determine whether benefits might still be accruing to the producers or exporters of carbon steel wire rod.

According to the response, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received benefits under this program during the review period and no benefits are further accruing.

B. Export Investment Allowances

Petitioners allege that the New Zealand wire rod industry receives tax benefits under the Export Investment Allowance program, which was terminated on March 31, 1983, and the Export Manufacturing Investment Allowance program.

According to the responses, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received tax benefits under these programs during the review period and no benefits are still accruing.

C. New Markets Increased Exports Taxation Incentive (NMIETI)

Petitioners allege that the New Zealand wire rod industry is eligible to receive NMIETI tax benefits under Section 157 of the New Zealand Tax Act of 1976, as amended.

Accoding to the response, this program was terminated on March 31, 1983, and no benefits are still accruing. Therefore, neither New Zealand Steel Ltd. nor Pacific Steel Ltd. received benefits under this program during the review period.

IV. Program for Which Additional Information is Needed

A. Import Duty Exemptions or Refunds

Petitioners allege that the New Zealand wire rod inustry receives import duty exemptions or refunds on machinery and equipment used in the production of goods for export.

According to the response, both New Zealand Steel Ltd. and Pacific Steel Ltd. have received import duty exemptions and refunds on equipment and machinery during the review period. The response also indicates, however, that such exemptions and refunds are available, at the discretion of the Minister of Customs, to all importers when no local equivalent product is available which could perform the same function. During verification, we intend to seek further information on the review and approval process for import duty exemptions and refunds on machinery and equipment and on the availability of such exemptions and refunds.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of carbon steel wire rod from New Zealand which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each entry of this merchandise in the amount of the estimated *ad valorem* rate. The estimated net bounty or grant is 9.83 percent *ad valorem* for all manufacturers, producers, or exporters in New Zealand of carbon steel wire rod. This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 17, 1986, at the U.S. Department of Commerce, room 3708, 14th Street and Consitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B–099, at the above address within 10 days of the publication of this notice.

Requests for a hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by January 10, 1986. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 17, 1985.

[FR Doc. 85–30283 Filed 12–20–85; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Applications; Minority Business Development Center (MBDC); Hawaii

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $694,118 for the project performance period of July 1, 1986 to June 30, 1987. The MBDC will operate in the Honolulu Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $590,000 in Federal funds and a minimum of $104,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09–10–86015–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements incuded in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Room 15018, San Francisco, California 94102. January 14, 1986 at 10:00 A.M.

Proposals are to be mailed to the following address: Minority Business

Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 450 Goldren Gate Avenue, Box 36114, San Francisco, California 94102; 415/556–6734.

CLOSING DATE: The closing date for applications is January 31, 1986. Applications must be postmarked by midnight January 31, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Busines Development, (Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office

December 17, 1985

[FR Doc. 85–30258 Filed 12–20–85; 8:45 am]

BILLING CODE 3510–21–M

National Techincal Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to:

Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6–710,639
Space Board
SN 6–671,113
Electrodynamic Method for Separating Components of a Mixture
SN 6–774,698
Dyed Wrinkle-Resistant and Durable-Press Cotton Fabrics
SN 6–779,958
Filament Seed Thresher

Department of Commerce

SN 6–783,503
Process for Preparing Refractory Borides and Carbides

Department of Health & Human Services

SN E–404–85
A Human Mouse Hybrid Cell Line Expressing Monocyte-Macrophase Properties
SN 6–717,615
Treatment of Diagnosis of Cancers by Endoscopic Injection for Access of Reagents into the Lymphatics
SN 6–748,854
Synthesis of Chiral 1-Benzyl-1-1,2,3,4-Tetrahydroisoquinolines by Asymmetric Reduction
SN 6–776,044
Apparatus and Method for Continuous Countercurrent Foam Separation
SN 6–778,669
A Method and Kit for Detecting Human Exposure to Genotoxic Agents
SN 6–778,670
Target Specific Cross-Linked Heteroantibodies
SN 6–780,932
Method of Preparing 1,2-Diaminocyclohexane Tetrachloro Planinum (IV) Isomers
SN 6–791,120
An Oxomorpholinyl Dimer and Rescue of Anthracycline and Mitomycin C Damage
SN 6–792,646
In Vivo Treatment of HTLV–III Using Suramin
SN 6–792,836
A Method of Controlling Graft Versus Host Reaction

Department of the Air Force

SN 6–357,441 (4,523,212)
Simultaneous Doped Layers for Semiconductor Devices
SN 6–380,451 (4–448,086)
Temperature Controlled Gyro
SN 6–382,069 (4,523,325)
Three-Stage Binary Coincidence Detector Apparatus with Adaptive Constant False Alarm Rate
SN 6–393,169 (4,534,100)
Electrical Method of Making Conductive Paths in Silicon
SN 6–394,591 (4,532,695)
Method of Making Self-Aligned IGFET
SN 6–444,004 (4,528,506)
Ferromagnetic Resonance Probe Liftoff Suppression Apparatus
SN 6–447,599 (4,533,933)
Schottky Barrier Infrared Detector and Process
SN 6–448,162 (4,534,050)
X-Ray Goniometer
SN 6–454,081 (4,523,359)
Machine With an Intermittently Rotating Table for the Performance of work Operations
SN 6–455,674 (4,523,327)
Multi-color X-Ray Line Source
SN 6–455,715 (4,536,658)
Hybrid Schottky Infrared Focal Plane Array
SN 6–468,629 (4,523,104)
Switch Debounce Circuit
SN 6–482,377 (4,523,293)
Two-Dimensional Bulk Acoustic Wave Correlator-Convolver
SN 6–487,340 (4,521,893)
Clock Distribution Circuit for Active Aperture Antenna Array
SN 6–511,592 (4,533,829)
Optical Electromagnetic Radiation Detector
SN 6–511,697 (4,523,198)
Radio Frequency Lens Antenna
SN 6–512,070 (4,534,016)
Beam Addressed Memor System
SN 6–512,083 (4,534,538)
Modular Air Shut-Off Valve
SN 6–521,803 (4,535,486)
Random Timer
SN 6–533,330 (4,523,475)
Simultaneous Incremental Strain/Incremental Temperature Analog Devic for, and Method, of Testing For Stress Response
SN 6–578,335 (4,522,883)
Circumferentially Wrapped Carbon-Carbon Structure
SN 6–593,750 (4,535,457)
Transverse Flow CW Atomic Iodine Laser System
SN 6–596,863
Analog Circuit for Simulating a Digitally Controlled Rheostat
SN 6–617,445 (4,534,808)
Method for Refining Micrositurctures of Prealloyed Powder Metallurgy Titanium Articles
SN 6–617,447 (4,536,234)
Method for Refining Microstructures of Blended Elemental Power Metallurgy Titanium Aticles
SN 6–640,916 (4,534,938)
Method for Making Alloy Additions to Base Metals Having Higher Melting Points

Department of the Army

SN 6–267,312 (4,377,751)
Optical Waveguide Dosimeter
SN 6–441,718 (4,489,240)
Radiochromic Leuko Dye Real Time Dosimeter, One Way Optical Waveguide
SN 6–771,968
Flat Passband Etched Groove Saw Filter
SN 6–772,971
Millimeter Wave-Infrared Block Oscillator/Detector
SN 6–778,120

Radiological Instrument
SN 6–780,347
Method of Protecting a Radiochromic Optical Waveguide Dosimeter from Adverse Temperature Effects

[FR Doc. 85–30204 Filed 12–20–85; 8:45 am]
BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products from the Republic of Korea; Effective on January 1, 1986

December 18, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, as issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Bilataral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea establishes restraint limits for Categories 300/301, 313, 314, 315, 317, 319, 320, 331, 333/334, 335, 336, 337, 338/339, 340, 341, 345, 347/348, 351, 353/354/653/654, 359pt. (only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0652, 384.3443, 384.4300, 384.4420), 410, 433/434, 435, 436, 438, 440, 442, 443, 444, 445/446, 447, 448, 459pt. (only T.S.U.S.A. numbers 702.7500, and 702.8000), 604, 605pt. (only T.S.U.S.A. numbers 316.5500 and 316.5800), 612, 613, 614, 631, 633/634/635, 636, 638/639, 640, 641, 642, 643, 644, 645/646, 647, 648, parts of 659, 669, and 670, produced of manufactured in Korea and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986. Accordingly, the letter which follows this notice from the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the foregoing categories that have been exported during the aforementioned agreement period in excess of the designated amounts.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1985.

Commissioner of Customs
Department of the Treasury, Washington, DC

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986, in excess of the indicated restraint limits:

Category	12-mo. restraint limit
300/301	5,145,354 pounds.
313	50,383,685 square yards.
314	2,692,226 square yards.
315	23,001,542 square yards.
317	16,580,640 square yards.
319	8,070,440 square yards.
320	24,591,453 square yards.
331	483,870 dozen pairs.
333/334	66,826 dozen.
335	[illegible] dozen.
336	43,076 dozen.
337	[illegible] dozen.
338/339	[illegible] dozen.
340	207,303 dozen.
341	129,149 dozen.
345	[illegible] dozen.
347/348	[illegible] dozen.
351	110,143 dozen.
353/354/653/654	[illegible] dozen.
359 pt. [1]	1,567,235 dozen.
410	4,567,529 dozen.
433/434	17,112 dozen of which not more than 13,065 dozen shall be in Category 433 and not more than 6,700 shall be in Category 434.
435	30,977 dozen.
436	13,113 dozen.
438	[illegible] dozen.
440	211,262 dozen.
442	44,311 dozen.
443	[illegible] dozen.
444	4,004 dozen.
445/446	[illegible] dozen.
447	[illegible] dozen.
448	31,176 dozen.
459 pt. [2]	185,931 pounds.
604	585,127 pounds.
605 pt. [3]	2,524,954 pounds.
612	94,860,871 square yards.
613	22,902,386 square yards.
614 pt. [4]	8,990,165 square yards.
614 pt. [5]	12,082,188 square yards.
631	226,147 dozen pairs.
633/634/635	1,416,411, dozen of which not more than 178,914 dozen shall be in Category 633, not more than 824,191 dozen shall be in Category 634 and not more than 625,786 dozen shall be in Category 635.
636	215,378 dozen.
638/639	5,641,220 dozen.
640 pt. [6]	3,804,434 dozen.
640 pt. [7]	[illegible] dozen.
641	1,024,978 dozen.
642	78,285 dozen.
643	60,691 dozen.
644	86,151 dozen.
645/646	3,348,885 dozen.
647	813,145 dozen.
648	351,632 dozen.
659 pt. [8]	2,437,961 pounds.
659 pt. [9]	297,250 pounds.
659 pt. [10]	437,994 pounds.
669 pt. [11]	1,893,715 pounds.
669 pt. [12]	680,590 pounds.
669 pt. [13]	3,769,118 pounds.
669 pt. [14]	5,194,747 pounds.
670 pt. [15]	22,274,668 pounds.

[1] In Category 359, only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0652, 384.3443, 384.4300, 384.4420.
[2] In Category 459, only T.S.U.S.A. numbers 702.7500, and [illegible].
[3] In Category 605, only T.S.U.S.A. numbers 316.5500 and 316.5800.
[4] In Category 614, only T.S.U.S.A. numbers 338.1000, 338.1505, 338.1508, 338.1511, 338.1525, 338.1528, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568, and 338.1572.
[5] In Category 614, only T.S.U.S.A. numbers except those in footnote 4.
[6] In Category 640, only T.S.U.S.A. numbers 381.3130, 381.3970, 381.3556, 381.6972, 381.9535, 381–9540, 381.9860, and 381.9968.
[7] In Category 640, only T.S.U.S.A. numbers except those in footnote 6.
[8] In Category 659, only T.S.U.S.A. numbers 703.0510, 703.0520, 703.530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640, and 703.1650.
[9] In Category 659, only T.S.U.S.A. numbers 381.2340 381.3170 381.9100, 381.9570, 384.1920, 384.2339, 384 8300, 384.8400, and 384.9353.
[10] In Category 659, only T.S.U.S.A. numbers 381.3325, 381.9605, 384 2205, 381.2530, 384.8605, and 384.9310.
[11] In Category 669, only T.S.U.S.A. numbers 348.0065, 348.0075, 348.0565 and 348.0575.
[12] In Category 669, only T.S.U.S.A. numbers 355.4520 and 355.4530.
[13] In Category 669, only T.S.U.S.A. numbers 385.5300.
[14] In Category 669, only T.S.U.S.A. numbers 386.1105 and 389.6210.
[15] In Category 670, only T.S.U.S.A. numbers 706.4144 and 706.4152.

In carrying out this directive, entries of textile products in the foregoing categories which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances be charged against the restraint limits established for such goods during that

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twelve-month period. In the event the levels established for these categories have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The 1986 levels are subject to adjustment according to the provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, which provide, in part, that: (1) During any agreement year specific limits and sublimits may be adjusted exceeded by certain designated percentages, provided a corresponding reduction in square yards equivalent is made in one or more other specific limits; (2) under specific conditions specific limits and sublimits may be adjusted for carryover and carryforward not to exceed 10 percent; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any adjustment under the foregoing provisions will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonweath of Puerto Rico.

The Committee for the Implementation of Textle Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a) (1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 30254 Filed 12–20–85; 8:45 am]

BILLING CODE 3510-DR-M

New Limit for Certain Wool Textile Products Produced or Manufactured in the People's Republic of China

December 18, 1985.

The Chairman of the Committee for the Implementation of Textle Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 24, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On April 29, 1985 a notice was published in the **Federal Register** (50 FR 16729) announcing an import restraint limit of 12,195 dozen for wool knit shirts and blouses in Category 438, produced or manufactured in China and exported to the United States during the twelve-month period which began on March 29, 1985 and extends through March 28, 1986.

During consultations held under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, the Governments of the United States and teh People's Republic of China have agreed to establish a specific limit of 22,000 dozen for Category 438, produced or manufactured in China and exported during the agreement year which began on January 1, 1985 and extends through December 31, 1985.

In the letter published below, the CITA Chairman directs the Commissioner of Customs to establish the new specific limit for Category 438.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1985.

Commissioner of Customers,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive cancels and supersedes the directive of April 24, 1985 concerning wool textile products in Category 438, produced or manufactured in China and exported during the period which begin on March 29, 1985 and extends through March 28, 1986.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton Wool and Man-Made Fiber Textile Agreement, of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 24, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 438, produced or manufactured in the People's Republic of China, and exported during twelve-month period which began on January 1, 1985 and extending through December 31, 1985, in excess of 22,000 dozen.[1]

Textile products in Category 438 which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (48 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry the United States for consumption to include entry for consumption into the Commonweath of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of the Textile Agreements.

[FR Doc. 85–30256 Filed 12–20–85; 8:45 am]

BILLING CODE 3510-DR-M

Permitting Entry of Certain Man-Made Fiber Yarns Produced or Manufactured in Brazil

December 18, 1985.

The Chairman of the Commitee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Comissioner of Customs to be effective on December 24, 1986. For further information contact Ann Fields, International Trade Specialist (202) 377–4212.

Background

During negotiation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985, the Governments of the United States and the Federative Republic of Brazil agreed that 363,000 pounds of

[1] The limit has not been adjusted to account for any imports exported after December 31, 1984.

man-made fiber yarn in Category 604, produced or manufactured in Brazil and exported during the restraint periods established prior to the current agreement year, which began on April 1, 1985 and extends through March 31, 1986, should be permitted entry without charge during the current agreement year. It was further agreed that the 363,000 pounds would be charged to the limit established for Category 604 during the agreement year beginning on April 1, 1986 and extending though March 31, 1987.

Accordingly, the letter which follows this notice requests the Commissioner of Customs to deduct 363,000 pounds from the imports charged to the restraint limit established for Category 604 during the period which began on April 1, 1984 and extends through March 31, 1985 which were exported during the period that began on Novermber 1, 1983 and extended through March 31, 1985. This amount will be charged to the limit established for the category during the period which begins on April 1, 1986 and extends through March 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED(1985). 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, DC

[illegible]

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 7 and 29, 1985 between the Governments of the United States and the Federative Republic of Brazil, I request that, effective on December 24, 1985, you deduct 363,000 pounds from imports charged to the restraint limit established for man-made fiber textile products in Category 604 during the twelve-month period which began on April 1, 1984 and extended through March 31, 1985, produced or manufactured in Brazil and exported during the period which began on November 1, 1983 and extended through March 31, 1985. This amount is to be charged to the limit established for Category 604 during the twelve-month period beginning on April 1, 1986 and extending through March 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30255 Filed 12-20-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on DNA Management; Meeting

SUMMARY: The Defense Science Board Task Force on DNA Management will meet in closed session on 8–9, January 1986 in the Defense Nuclear Agency Field Command, Albuquerque, New Mexico.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review Defense Nuclear Agency management structure, organization and staffing to determine if they are appropriate for fulfilling the Agency's mission. Emphasis will include Agency functions as well as relationships with other U.S. Government Agencies and offices.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85-30218 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Electronic Warfare; Meeting; Date Change

ACTION: Change in Date of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Electronic Warfare scheduled for 16 December 1985 as published in the **Federal Register** (Vol. 50, No. 221, Friday, November 15, 1985, FR Doc. 85-27267) will be held on 15 January 1986. In all other respects the original notice remains unchanged.

Linda M. Lawson,

Aletrnate OSD Federal Register Liaison Office, Department of Defense.

December 17, 1985.

[FR Doc. 85-30219 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contain the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing

Champus Treatment Report

The CHAMPUS Treatment Report is necessary to: determine whether the psychiatric treatment is medically/psychologically necessary and appropriate; for professional review for the purpose of making benefit determinations; and to assure compliance with statutory requirements. The respondents are all mental health professional who submit claims to CRAMPUS.

Small Business or Organizations

Responses: 8,000
Burden Hours: 12,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vittiello, DoD Clearance Officer, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (202) 746–0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–3509.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer Department of Defense.

December 17, 1985.

[FR Doc. 85–30214 Filed 12–20–85; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing

CHAMPUS Authorization of Psychoanalysis Form

The CHAMPUS Authorization of Psychoanalysis Form is necessary to: have information regarding the patient and the treatment; determine whether psychoanalysis is medically/psychologically necessary; determine appropriateness through professional review; make benefit determinations; and comply with statutory requirements. The respondents are psychoanalysts submitting claims to OCHAMPUS.

Small Businesses or Organizations

Responses: 250
Burden Hours: 750

ADDRESSED: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vittiello, DoD Clearance Officer, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (202) 746–0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained form Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado 80045–6900, telephone (303) 361–3509.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85–30215 Filed 12–20–85; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of information collection and form number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Revised

Allotments for Child and Spousal Support

DoD has published an interim rule under 32 CFR Part 54, titled: "Allotments for Child and Spousal Support," that outlines how persons may request enforcement of child, or child and spousal support, orders from the pay of members on active duty. The interim rule specifies the information collection requirements necessary for the military services to process requests for enforcement of such support orders by allotment from the member's pay.

State Child Support Enforcement Agencies

Responses: 2,000
Burden hours: 1,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302, telephone (703) 746–0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. James T. Jasinski, Office of the Depty Assistant Secretary of Defense (Management Systems), Room 3A882, The Pentagon, Washington, DC 20301, telephone (202) 697–0530.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85–30216 Filed 12–20–85; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the use to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing

CHAMPUS Follow-up Progress Summary

The CHAMPUS Follow-up Progress Summary is necessary to: obtain periodic updates of information regarding patients and their treatment; validate continued medical/psychological necessity/appropriateness for professional review; benefit determinations; and complying with statutory requirements. The form is used as a follow-up to the more comprehensive CHAMPUS Treatment Report and CHAMPUS Authorization for Psychoanalysis forms.

Small Businesses or Organizations

Responses: 4,500
Burden Hours: 2,250

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vittiello, DoD Clearance Officer, WHS/DIOR, Suite 1204, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, telephone (202) 746–0664.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Jane Bomgardner, OCHAMPUS, Aurora, Colorado, 80045–6900, telephone (303) 361–3509.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85–30217 Filed 12–20–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Personal Information Questionnaire NAVMC 10064

Information is required to provide the Marine Corps relevant information regarding an applicant's background in terms of education, intelligence, experience and personal characteristics and is used as a method of determining the overall eligibility of applicants for all Reserve officer candidate programs.

Individuals or Households and Businesses or Other Institutions

Responses: 25,000
Burden Hours: 6,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–430–2, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from M.A. Cagiano, Headquarters, U.S. Marine Corps, Personnel Procurement Division, Officer Procurement Section, Washington, DC 20380, telephone (202) 694–1801.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85–30220 Filed 12–20–85; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Enlistee Financial Statement NAVCRUIT 1130/13

Information is required to collect data by which to make a determination as to the applicant's ability to meet his/her financial obligations on Navy pay.

Applicants for Naval Service With Persons Either Wholly or Partially Dependent Upon Them

Responses: 75,000
Burden Hours: 25,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mrs. Doris Davis, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, VA 22203 (ATTN: Code 216), telephone (202) 696–4880.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 17, 1985.

[FR Doc. 85–30221 Filed 12–20–85; 8:45 am]

BILLING CODE 3810-01-M

Chief of Naval Operations, Executive Panel Advisory Committee Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Defense and Naval Warfare Task Force will meet 7–8 January, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in strategic defensive architecture, and related intelligence. The entire agenda for the meeting will consist of discussions of key issues regarding strategic defense systems in support of U.S. national security. These matters constitute classified information that is specifically authorized by Executive order to be be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States, Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: December 18, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve. Federal Register Liaison Officer.

[FR Doc. 85-30268 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Laboratory Oversight and Review Panel will meet on January 13, 1986, at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8:00 a.m. and teminate at 4:30 p.m. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to bring all Laboratory Review team Leaders together to discuss the review process to date, share lessons learned during the process, and to begin preparation of a consolidated report of findings and recommendations. The agenda will consist of an Executive Session dedicated to a review of material received to date and discussion among the Review Team Leaders in order to begin preparation of a consolidated report. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concering this meeting contact: Commander T. C. Fritz, U. S. Navy, Office of Naval Research (Code 00NR) 800 North Quincy Street, Arlington, VA 22217-5000; Telephone number (202) 696-4870.

Dated: December 18, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve. Federal Register Liaison Officer.

[FR Doc. 85-30269 Filed 12-20-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-C&E-86-14; OFP Case No. 50552-0096-20, 21, 22, 23-22]

Chugach Electric Association, Inc.; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Chugach Electric Association, Inc.

SUMMARY: On November 15, 1985, Chugach Electric Association, Inc. (Chugach), of Anchorage, Alaska, completed its filing of a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent reliability of service exemption for four gas-fired units at its Beluga Station facility from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in any new electric powerplant and the construction of such a powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. The final rules governing the reliability of service exemption, 10 CFR 503.40, were published at 46 FR 59872 (December 7, 1981).

The four proposed units for which Chugach seeks exemption consists of the following: (1) Two simple cycle gas turbines rated at 87 MW each, one to be installed in 1988, the other in 2011; (2) two combined cycle units each having two gas turbines with a heat recovery unit and each having a rating of 236 MW. These are to be installed in 1999 and 2006.

Beluga Station is located in a remote area approximately 40 air miles west of and across Cook Inlet from Anchorage.

Chugach, headquartered in Anchorage, Alaska, is a non-profit member-owned electric cooperative. Chugach serves approximately 61,000 retail electric consumers within the Municipality of Anchorage and on the Kenai Peninsula. In addition, Chugach is wholesale power supplier for two neighboring cooperatives—Matanuska Electric Association, Inc. of Palmer, Alaska, and Homer Electric Association, Inc. of Homer, Alaska—and for the City of Seward, Alaska. Overall, Chugach has the power supply responsibility of approximately half of Alaska's estimated 500,000 population.

At present, Chugach owns and operates five generating plants with a combined capacity of 529.9 MW. This includes 14 MW from the Knik Arm Power Plant, (in process of being retired).

In addition, Chugach has an entitlement of 9 MW from the Alaska Power Administration's Eklutna Project. Chugach also purchases 50 MW from Anchorage Municipal Light & Power (ML&P), under a five-year, annually decreasing purchase power agreement. Under this Chugach-ML&P agreement, Chugach will purchase power only until 1990, due to ML&P's increasing power demands. Chugach's overall generating capacity, including purchased power and the Knik Arm Power Plant, is 588.9 MW.

Chugach recently signed a conditional sales agreement to purchase 80 percent (72MW) of the 90 MW to be generated from the proposed Bradley Lake Hydroelectric Power Project to be constructed by the state-run Alaska Power Authority. The Bradley Lake project is planned to begin service in 1990.

The new units for Beluga Station are in addition to all other Chugach power requirements, proposals and planned generation units. Since Chugach—like other Alaska electric utilities—is a small isolated system within the security of a regional or national grid, and because of the length and severity of Alaska winters, the need for system reliability is paramount. According to Chugach, unexpectedly high growth in its power supply area, reflected in demand forecasts, make the installation of these units necessary.

After receipt of information from Chugach, ERA has determined that the petition includes sufficient evidence to support a determination on the exemption request and it is, therefore, accepted pursuant to 10 CFR 501.3. ERA retains the right, however, to request additional relevant information from Chugach at any time during the proceeding should circumstances or procedural requirements so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

BEST COPY AVAILABLE

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials relating to the proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of the reasons therefor, will be published in the **Federal Register**.

DATES: Written comments are due on or before February 6, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Docket No. ERA-C&E-86-14 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585; Telephone (202) 252-4708.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Chugach proposes to install four generation units at its Beluga Station facility located approximately 40 air miles west of and across Cook Inlet from Anchorage.

Section 212(f) of FUA and 10 CFR 503.40 provides for a permanent exemption for powerplants necessary to maintain reliability of service. In addition, section 317 of Pub. L. 97-394 (42 U.S.C. 8322) provides that:

> In the case of any new electric powerplant located in Alaska for which a petition is accepted after the date of enactment of this Act, but before December 31, 1985, pursuant to Section 212(f) of the Powerplant and Industrial Fuel Use Act of 1978, to use natural gas . . . the petitioner shall be deemed to have made the demonstrations required by clauses (1) and (2) of such section and such exemption, subject to the other applicable provisions of such Act, shall be granted . . . Nothing in this section shall apply to any new electric powerplant using natural gas produced from the Prudhoe Bay unit of Alaska.

In accordance with the requirements of 10 CFR 503.40 (a) and (c), Chugach's petition for a permanent exemption for the four Beluga Station units includes evidence and supporting information demonstrating that the Beluga Station units are qualifying powerplants under section 317 of Pub. L. 97-394; that no alternate power supply exists; and that the use of mixtures in the unit is not feasible. In addition, Chugach submitted an environmental impact analysis, as required by 10 CFR 503.13.

NEPA Compliance

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.;* and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significant by affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Chugach is entitled to the exemption requested. That determination will be based on the entire record of the proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on December 16, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-30283 Filed 12-20-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-15; OFP Case No. 50552-9302-23-22]

Chugach Electric Association, Inc.; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Chugach Electric Association, Inc.

SUMMARY: On November 15, 1985, Chugach Electric Association, Inc. (Chugach), of Anchorage, Alaska, completed its filing of a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent reliability of service exemption for a package-power plant simple-cycle natural gas turbine at its Soldotna Unit No. 3 facility from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in any new electric powerplant and the construction of such a powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. The final rules govering the reliability of service exemption, 10 CFR 503.40, were published at 46 FR 59872 (December 7, 1981).

The proposed unit for which Chugach seeks an exemption is to be a package-power plant simple-cycle natural gas turbine rates at 87 MW. The unit is scheduled to be installed by Chugach in 2013.The facility will be located in a rural area approximately three miles east of the community of Soldotna. Natural gas will be produced from the surrounding Kenai field. No natural gas used in the generation unit will be provided from the Prudhoe Bay gas fields of Alaska.

Chugach, headquartered in Anchorage, Alaska, is a non-profit member-owned electric cooperative. Chugach serves approximately 61,000 retail electric consumers within the Municipality of Anchorage and on the Kenai Peninsula. In addition, Chugach is wholesale power supplier for two neighboring cooperatives—Matanuska Electric Association, Inc. of Plamer, Alaska, and Homer Electric Association, Inc. of Homer, Alaska—and for the City of Seward, Alaska. Overall Chugach has the power supply responsibility for approximately half of Alaska's estimated 500,000 population.

At present, Chugach owns and operates five generating plants with a combined capacity of 529.9 MW. This includes 14 MW from the Knik Arm Power Plant, (in process of being retired).

In addition, Chugach has an entitlement of 9 MW from the Alaska Power Administration's Eklutna Project. Chugach also purchases 50 MW from Anchorage Municipal Light & Power (ML&P), under a five-year, annually descreasing purchase power agreement. Under this Chugach-ML&P agreement, Chugach will purchase power only until 1990, due to ML&P increasing power demands. Chugach's overall generating capacity, including purchased power and the Knik Arm Power Plant, is 588.9 MW.

Chugach recently signed a conditional sales agreement to purchase 80 percent (72 MW) of the 90 MW to be generated from the proposed Bradley Lake Hydroelectric Power Project to be constructed by the state-run Alaska Power Authority. The Bradley Lake project is planned to begin service in 1990.

The new unit for Soldotna Station is in addition to all other Chugach power requirements, proposals and planned generation units. Since Chugach—like other Alaska electric utilities—is a small isolated system within the security of a regional or national grid, and because of the length and severity of Alaska winters, the need for system reliability is paramount. According to Chugach, unexpectedly high growth in its power supply area, reflected in demand forecasts, make the installation of this unit nessessary.

After receipt of information from Chugach, ERA has determined that the petition includes sufficient evidence to support a determination on the exemption request and it is, therefore, accepted pursuant to 10 CFR 501.3. ERA retains the right, however, to request additional relevant information from Chugach at any time during the proceeding should circumstances or procedural requirements so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials relating to the proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of the reasons therefor, will be published in the **Federal Register**.

DATES: Written comments are due on or before February 6, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–045, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Docket No. ERA–C&E–86–15 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA–045, Washington, DC 20585, Telephone (202) 252–4708;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A–113, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: Chugach proposes to install a package-power plant simple-cycle natural gas turbine rated at 87 MW. The geographic location of the facility is to be in a rural area approximately three miles east of the community of Soldotna. The unit is scheduled to be installed by 2013.

Section 212(f) of FUA and 10 CFR 503.40 provides for a permanent exemption for powerplants necessary to maintain reliability of service. In addition, section 317 of Pub. L. 97–394 (42 U.S.C. 8322) provides that:

> In the case of any new electric powerplant located in Alaska for which a petition is accepted after the date of enactment of this Act, but before December 31, 1985, pursuant to Section 212(f) of the Powerplant and Industrial Fuel Use Act of 1978, to use natural gas . . . the petitioner shall be deemed to have made the demonstrations required by clauses (1) and (2) of such section and such exemption, subject to the other applicable provisions of such Act, shall be granted . . . Nothing in this section shall apply to any new electric powerplant using natural gas produced from the Prudhoe Bay unit of Alaska.

In accordance with the requirements of 10 CFR 503.40(a) and (c), Chugach's petition for a permanent exemption for Soldotna Unit No. 3 includes evidence and supporting information demonstrating that Soldotna Unit No. 3 is a qualifying powerplant under Section 317 of Pub. L. 97–394; that no alternate power suply exists; and that the use of mixtures in the unit is not feasible. In addition, Chugach submitted an environmental impact analysis, as required by 10 CFR 503.13.

NEPA Compliance

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980 NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Chugach is entitled to the exemption requested. That determination will be based on the entire record of the proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on December 16, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–30284 Filed 12–20–85; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–C&E–86–16; OFP Case No. 50552–9301–24–22]

Chugach Electric Association, Inc.; Acceptance of Petition For Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by Chugach Electric Association, Inc.

SUMMARY: On November 15, 1985, Chugach Electric Association, Inc.

(Chugach), of Anchorage, Alaska, completed its filing of a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent reliability of service exemption for a package-power plant simple-cycle natural gas turbine at its International Station No. 4 facility from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or "the Act"). Title II of FUA prohbits the use of petroleum and natural gas as a primary energy source in any new electric powerplant and the construction of such a powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. The final rules governing the reliability of service exemption, 10 CFR 503.40, were published at 46 FR 59872 (December 7, 1981).

The proposed unit for which Chugach seeks an exemption is to be a package-power plant simple-cycle natural gas turbine rated at 87 MW. The unit is scheduled to be installed by Chugach in 1996. The facility will be located in the greater Municipality of Anchorage. Natural gas will be produced from Enstar and supplied from the Kenai Peninsula fields. No natural gas used in the generation unit will be provided from the Prudhoe Bay gas fields of Alaska.

Chugach, headquartered in Anchorage, Alaska, is a non-profit member-owned electric cooperative. Chugach serves approximately 61,000 retail electric consumers within the Municipality of Anchorage and on the Kenai Peninsula. In addition, Chugach is wholesale power supplier for two neighboring cooperatives—Matanuska Electric Association, Inc. of Palmer, Alaska, and Homer Electric Association, Inc. of Homer, Alaska—and for the City of Seward, Alaska. Overall, Chugach has the power supply responsibliity for approximately half of Alaska's estimated 500,000 population.

At present, Chugach owns and operates five generating plants with a combined capacity of 529.9 MW. This includes 14 MW from the Knik Arm Power Plant, (in process of being retired).

In addition, Chugach has an entitlement of 9 MW from the Alaska Power Administration's Eklutna Project. Chugech also purchases 50 MW from Anchorage Municipal Light & Power (ML&P), under a five-year, annually decreasing purchase power agreement.

Under this Chugach-ML&P agreement, Chugach will purchase power only until 1990, due to ML&P's increasing power demands. Chugach's overall generating capacity, including purchased power and the Knik Arm Power Plant, is 588.9 MW.

Chugach recently signed a conditional sales agreement to purchase 80 percent (72 MW) of the 90 MW to be generated from the proposed Bradley Lake Hydroelectirc Power Project to be constructed by the state-run Alaska Power Authority. The Bradley Lake project is planned to begin servíce in 1990.

The new unit for International Station is in additon to all other Chugach power requirements, proposals and planned generation units. Since Chugach—like other Alaska electric utilities—is a small isolated system within the security of a regional or national grid, and because of the length and severity of Alaska winters, the need for system reliability is paramount. Acccording to Chugach, unexpectedly high growth in its power supply area, reflected in demand forecasts, make the installation of this unit necessary.

After receipt of information from Chugach, ERA has determined that the petition includes sufficient evidence to support a determination on the exemption request and its is, therefore, accepted pursuant to 10 CFR 501.3. ERA retains the right, however, to request additional relevant information from Chugach at any time during the proceeding should circumstances or procedural requirements so require. A reveiw of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provide for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials relating to the proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m. except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of the reasons therefor, will be published in the **Federal Register**.

DATES: Written comments are due on or before February 6, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–045, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Docket No. ERA–C&E–86–16 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administation, 1000 Independence Avenue, SW, Room GA–045, Washington, DC 20585, Telephone (202) 252–4708;

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building—Room 6A–113, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: Chugach proposes to install a package-powerplant simple-cycle natural gas turbine rated at 87MW. The geographic location of the facility is to be in the greater municipality of Anchorage. The unit is scheduled to be installed by 1996.

Section 212(f) of FUA and 10 CFR 503.40 provides for a permanent exemption for powerplants necessary to maintain reliability of service. In addition, section 317 of Pub. L. 97–394 (42 U.S.C. 8322) provides that:

> In the case of any new electric powerplant located in Alaska for which a petition is accepted after the date of enactment of this Act, but before December 31, 1985, pursuant to Section 212(f) of the Powerplant and Industrial Fuel Use Act of 1978, to use natural gas . . . the petitioner shall be deemed to have made the demonstrations required by clauses (1) and (2) of such section and such exemption, subject to the other applicable provisions of such Act, shall be granted . . . Nothing in this section shall apply to any new electric powerplant using natural gas produced from the Prudhoe Bay unit of Alaska.

In accordance with the requirements of 10 CFR 503.40(a) and (c), Chugach's petition for a permanent exemption for International Station No. 4 includes evidence and supporting information demonstrating that International Station No. 4 is a qualifying powerplant under Section 317 of Pub. L. 97–394; that no alternate power supply exists; and that the use of mixtures in the unit is not

feasible. In addition, Chugach submitted an environmental impact analysis, as required by 10 CFR 503.13.

NEPA Compliance

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.* and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that chugach is entitled to the exemption requested. That determination will be based on the entire record of the proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on December 16, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-30265 Filed 12-20-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ES86-16-000, et al.]

El Paso Electric Company, et al.; Electric Rate and Corporation Regulation Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Company

[Docket No. ES86-16-000]

December 17, 1985.

Take notice that on December 11, 1985, El Paso Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority, prsuant to section 204 of the Federal Power Act, to issue up to $70,000,000 principal amount of long-term promissory notes, to issue second mortgage bonds equal in principal amount to the principal amount of such promissory notes in order to secure the payment of the promissory notes and to enter into an interest rate swap agreement in order to effect a fixed interest rate on the borrowings under the notes. The Company proposes to issue such notes and second mortgage bonds and enter into the interest rate swap agreement in January 1986.

Comment date: December 30, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Gulf States Utilities Company

[Docket No. ES86-12-000]

December 17, 1985.

Take notice that on November 27, 1985, Gulf States Utilities Company (Applicant) filed an application seeking an order under section 204(a) of the Federal Power Act authorizing the Applicant to issue up to 750,000 Shares of New Preferred Stock, $100 Par Value, and seeking exemption from competitive bidding requirements.

Comment date: December 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Gulf States Utilities Company

[Docket No. ES86-11-000]

December 17, 1985.

Take notice that on November 25, 1985, Gulf States Utilities Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $400 million of short-term unsecured promissory notes with a final maturity no later than December 31, 1988.

Comment date: December 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Cities of Newark, New Castle, and Milford, Delaware, and Town of Smyrna, Delaware v. Delmarva Power and Light Company

[Docket No. EL86-11-000]

December 13, 1985.

Take notice that on November 27, 1985 that the Cities of Newark, New Castle and Milford, Delware, and Town of Smyrna Delaware (Municipalities) tendered for filing a complaint against Delmarva Power and Light Company (DP&L) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206.

The municipalities seek to have the Commission order DP&L to file reduced rates or refunds to the municipalities of $2,800,000 plus interest in compliance with the agreement between the two parties filed with the Commission on February 2, 1983. In the alternative, municipalities request this Commission to order DP&L to reduce rates to municipalities corresponding to retail rate reductions of March, 1984, June, 1984, March 1985 and the two rate reductions in June 1985 and order a hearing to determine the appropriate amount of rate reduction.

Comment date: January 13, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30233 Filed 12-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2894-003, et al.]

ARCO Oil & Gas Co., Division of Atlantic Richfield Co., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

December 16, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 31, 1985, file with the Federal Energy Regulatory Commission,

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and Location	Price per Mcf	Pressure base
G-2694-003, D, Dec. 5, 1985	ARCO Oil & Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	El Paso Natural Gas Company, Various Fields, Lea County, New Mexico.	(1)	
G-7009-003, D, Dec. 9, 1985	Cities Service Oil & Gas Corporation, P.O. Box 300, Tulsa, Okla. 74102.	Columbia Gas Transmission Corporation, Blackberry Field, Pike County, Kentucky.	(2)	
CI65-603-000, D, Dec. 2, 1985	Marathon Oil Company, P.O. Box 3128, Houston, Texas 77253.	Natural Gas Pipeline Company of America, Indian Basin Area, Eddy County, New Mexico.	(3)	
CI65-663-000, D, Oct. 7, 1985	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	Phillips Petroleum Company, Panhandle Field, Moore County, Texas.	(4)	
CI66-172-001, D, Oct. 10, 1985	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Texas Gas Transmission Corporation, Maurice Field, Lafayette & Vermilion Parishes, Louisiana.	(5)	
CI66-85-000, D, Nov. 26, 1985	Phillips Petroleum Company, 336 HS&L Bldg., Bartlesville, Okla. 74004.	El Paso Natural Gas Company, Anadarko Basin Area, State of Texas.	(6)	14.73
CI66-86-000 (CI74-641), B, Nov. 25, 1985	do	KN Energy, Inc., Pawnee Creek Field, Logan County, Colorado.	(7)	
CI66-87-000, B, Nov. 25, 1985	TXO Production Corp., First City Center LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Northwest Central Pipeline Corporation, Gate Townsite No. 1 Well, Sec. 33-5N-28ECM, Beaver County, Oklahoma.	(8)	
CI66-88-000, B, Nov. 25, 1985	do	Northwest Central Pipeline Corporation, Keahey No. 1 Well, Sec. 15-17N-25W, Roger Mills County, Oklahoma.	(9)	
CI66-89-000, B, Nov. 25, 1985	do	Northwest Central Pipeline Corporation, Gate Townsite No. 1 Well, Sec. 33-5N-28ECM, Beaver County, Oklahoma.	(9)	
CI66-90-000, B, Dec. 2, 1985	do	Northwest Central Pipeline Corporation, Beavins No. 1 Well, Sec. 12-17N-25W, Roger Mills County, Oklahoma.	(9)	
CI66-91-000 (CI71-499), B, Dec. 4, 1985.	The Superior Oil Company, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Tennessee Gas Pipeline Company, Lac Blanc Field, Vermilion Parish, Louisiana.	(9)	
CI66-92-000, B, Dec. 4, 1985	Buckeye Oil Producing Co	Consolidate Gas Transmission Corporation, Ritchie County, West Virginia.	(10)	
CI66-124-000 (CI77-560), B, Dec. 6, 1985.	The Superior Oil Company, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Natural Gas Pipeline Company of America, Cemetary Field, Eddy County, New Mexico.	(11)	
CI66-125-000 (CI66-350), B, Dec. 5, 1985.	Cities Service Oil & Gas Corporation, P.O. Box 300, Tulsa, Okla. 74102.	Gas Gathering Corporation, Bayou Henry Field, Iberville Parish, Louisiana.	(12)	
CI66-126-000 (CI72-278), B, Dec. 9, 1985.	The Superior Oil Company	Tennessee Gas Pipeline Company, Lac Blanc Field, Vermilion Parish, Louisiana.	(11)	
CI66-127-000 (G-6161), B, Dec. 9, 1985.	do	Lone Star Gas Company, Ready Field, Garvin County, Oklahoma.	(13)	
CI66-128-000 (G-11813), B, Dec. 9, 1985.	Marathon Oil Company, P.O. Box 3128, Houston, Texas 77253.	Tennessee Gas Pipeline Company, Nelsonville Field, Austin County, Texas.	(14)	
CI66-129-000, F, Dec. 10, 1985	Tenneco Oil Company (Succ. to Forest Oil Corporation), P.O. Box 2511, Houston, Texas 77001.	Natural Gas Pipeline Company of America, West Cameron Area Block 229, Offshore Louisiana.	(15)	14.73
CI66-130-000 (CI70-23), B, Dec. 10, 1985.	Pennzoil Company, P.O. Box 2967, Houston, Texas 77252-2967.	Columbia Gas Transmission Corporation, O. D. Stockley Lease, Henry District, Clay County, West Virginia.	(16)	

[1] Deliveries directly to El Paso from the Tubb Zone only in the S. J. Sarkeys Well No. 5 have ceased as a result of the commingling operation.
[2] Gas is no longer available.
[3] Reserves depleted, well plugged and abandoned and lease terminated by the Land Commissioner of the State of New Mexico.
[4] Sohio Petroleum Company conveyed the acreage to Kodiak Drilling, Inc. effective 7-1-85.
[5] Sale of Bendel Heirs Property No. 808008 to Custom Enterprises and Investment Co.
[6] Applicant is filing for an increase exchange of volumes of natural Gas with El Paso Natural gas Company and adding new delivery points.
[7] The well was plugged and abandoned and the lease has been cancelled.
[8] Depleted.
[9] Gas depleted and *well* plugged and abandoned.
[10] $75.00 a month meter charge.
[11] Gas depleted and *wells* plugged and abandoned.
[12] The purchaser has advised that its resale contract with Transcontinental Gas Pipe Line Corporation expired 7-1-85, extended to 7-16-85, and the purchaser will no longer require the available gas. The subject gas will be sold to Anchor Gasoline Corporation for plant fuel and shrinkage.
[13] Production ceased and leases expired.
[14] Gas reserves were depleted and the wells were plugged and abandoned. The leases were terminated and were released to the lessor.
[15] Tenneco Oil Company acquired this property as of 8-1-85 from Forest Oil Corporation.
[16] Gas depleted to the extent that continuance of service under contract is unwarranted, and pursuant to paragraph 10 of the contract, said contract has been terminated by Seller. Pennzoil proposes to sell this gas to consolidated under Pennzoil's Rate Schedule #10.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-30234 Filed 12-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C173-494-000]

Columbia Gas Development Corp.; Request for Waiver and Petition To Amend Certificate

Issued December 17, 1985

Take notice that on December 2, 1985, Columbia Gas Development Corporation ("Columbia Development") filed a Request For Waiver of Optional Procedure Pricing Certificate Conditions (18 CFR 2.75(f) and 2.75(m)) and Petition to Amend the Certificate of Public Convenience and Necessity issued pursuant to Federal Power Commission Opinion No. 705 (September 11, 1974). Commission approval would permit Columbia Development to receive up to Natural Gas Policy Act (NGPA) applicable maximum lawful prices for all gas produced in Block 307, Eugene Island Area, Offshore Louisiana in the Federal Domain and sold to Columbia Gas Transmission Corporation pursuant to the certificate previously issued in the above-referenced docket. Columbia Development states that under the current rate allowed in the optional pricing certificate, participation in current Block 307 operations is uneconomic.

Columbia Development proposes to

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amend the optional pricing certificate to allow repricing the gas based on a market-pricing provision proposed in a November 18, 1985 Amendment to its Gas Purchase and Sales Agreement, filed with this petition as a supplement to its applicable Rate Schedule. Columbia Development states that this relief is necessary to fund on -going and future operations on Block 307, Eugene Island Area. Under the amendment, the price for all gas purchased and produced from any well existing prior to October 1, 1985 would not exceed the lesser of the NGPA maximum lawful price under NGPA section 104 or an "alternate price" nominated by the purchaser as being representative of the market value of the gas in the purchaser's market area. The price for all gas purchased and produced from any well drilled subsequent to October 1, 1985 would not exceed the lesser of the applicable NGPA maximum lawful price or the "alternate price." The amendment provides that no adjustments will be made to the applicable price pursuant to section 110 of the NGPA. Under the terms of the amendment, the alternate price can be proposed periodically by either the seller or the buyer. With the exception of NGPA section 104 or 109 gas, the amendment allows the seller to seek a bona fide third party offer of a price other than the price nominated by the purchaser who may then continue to purchase the gas at the third party's price, or release such gas. Columbia Development additonally has petitioned for an order of pre-granted partial abandonment to effectuate any contingent release.

Any peprson desiring to be heard or to protest this application should, not later than thirty days after the date of publication in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1985)). All protests filed with the Commisison will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate a a party in any hearing therein must file a motion to intervene in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 395.214 (1985)).

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30235 Filed 12-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST85-1-000, et al.]

Texas Gas Transmission Corp., et al.; Self-Implementing Transactions

December 17, 1985.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Subpart F of Part 157 and Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A. "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant ot § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to blanket certificate issued under §284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under §284.222 of the Commission's Regulations.

A "G(HT)" or "GHS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before January 3, 1986, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[1] Notice of transactions does not constitute a determination that service will continue in accordance with Order No. 436, Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372 (Oct. 18, 1985); Order No. 436-A, 33 FERC ¶ 61,372 (19085).

Docket No.[1]	Transport/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST86-1	Texas Gas Transmission Corp	Alumax Aluminum Corp	10-01-85	F(157)		
ST86-2	Texas Gas Transmission Corp	Baptist Memorial Hospital	10-01-85	F(157)		
ST86-3	Texas Gas Transmission Corp	Conley Frog & Switch Co	10-01-85	F(157)		
ST86-4	Texas Gas Transmission Corp	Southwire Co	10-01-85	F(157)		
ST86-5	Algonquin Gas Transmission Co	Boston Gas Co	10-01-85	B		
ST86-6	Acadian Gas Pipeline System	[illegible] Louisiana Gas Co	10-01-85	C		
ST86-7	Lone Star Gas Co	Devco Pipeline Corp	10-01-85	B		
ST86-8	Panhandle Eastern Pipe Line Co	Federal-Mogul Corp	10-01-85	F(157)		
ST86-9	Panhandle Eastern Pipe Line Co	Michigan Consolidated Gas Co	10-01-85	B		
ST86-10	Midwestern Gas Transmission Co	SCM Corp	10-01-85	F(157)		
ST86-11	Midwestern Gas Transmission Co	N-Ren Corp	10-01-85	F(157)		
ST86-12	Midwestern Gas Transmission Co	J.R. Simplot	10-01-85	F(157)		
ST86-13	Consolidated Gas Transmission Corp	MacKintosh-Hemphill Manuf. Co	10-02-85	F(157)		
ST86-14	Panhandle Eastern Pipe Line Co	Missouri Portland Cement Co	10-02-85	F(157)		
ST86-15	Trunkline Gas Co	Missouri Portland Cement Co	10-02-85	F(157)		
ST86-16	Panhandle Eastern Pipe Line Co	Clifford-Jacobs Forging Co	10-02-85	F(157)		
ST86-17	Red River Pipeline	Pacific Lighting Gas Supply Co., *et al*	10-04-85	C		
ST86-18	Delhi Gas Pipeline Corp	Natural Gas Pipeline Co. of America	10-04-85	C		
ST86-19	Columbia Gulf Transmission Co	Pennsylvania Gas & Water Co	10-04-85	B		
ST86-20	Columbia Gulf Transmission Co	Hayes-Albion Corp	10-04-85	F(157)		
ST86-21	Columbia Gulf Transmission Co	Pennsylvania Gas & Water Co	10-04-85	B		
ST86-22	Columbia Gulf Transmission Co	Anchor Hocking Corp	10-04-85	F(157)		
ST86-23	ANR Pipeline Co	Boston Gas Co	10-04-85	B		
ST86-24	ANR Pipeline Co	Badger Paper Mills, Inc	10-04-85	F(157)		
ST86-25	ANR Pipeline Co	Scott Paper Co	10-04-85	F(157)		
ST86-26	Transcontinental Gas Pipe Line Corp	Kings Mountain Mica Co	10-04-85	F(157)		
ST86-27	Transcontinental Gas Pipe Line Corp	Kings Mountain Brick, Inc	10-04-85	F(157)		
ST86-28	Tennessee Gas Pipeline Co	Cabot Corp	10-04-85	B		
ST86-29	Oklahoma Natural Gas Co	Panhandle Eastern Pipe Line Co	10-04-85	C	[illegible]-86	24.32
ST86-30	Trunkline Gas Co	Michigan Gas Utilities Co	10-07-85	B		
ST86-31	Panhandle Eastern Pipe Line Co	Quincy Soybean Co	10-07-85	F(157)		
ST86-32	Southern Natural Gas Co	MacMillan Bloedel, Inc	10-07-85	F(157)		
ST86-33	Southern Natural Gas Co	Bickerstaff Clay Products Co., Inc	10-07-85	F(157)		
ST86-34	ANR Pipeline Co	Borden, Inc	10-07-85	F(157)		
ST86-35	ANR Pipeline Co	American Potatoe	10-07-85	F(157)		
ST86-36	ANR Pipeline Co	Kohler Co	10-07-85	F(157)		
ST86-37	ANR Pipeline Co	Interlake, Inc	10-07-85	F(157)		
ST86-38	Texas Eastern Transmission Corp	Southern Connecticut Gas Co	10-08-85	B		
ST86-39	Algonquin Gas Transmission Co	Bay State Gas Co	10-08-85	B		
ST86-40	Algonquin Gas Transmission Co	Providence Gas Co	10-08-85	B		
ST86-41	Algonquin Gas Transmission Co	Southern Connecticut Gas Co	10-08-85	B		
ST86-42	Northern Natural Gas Co	Granite State Gas Trans., *et al*	10-08-85	G/I		
ST86-43	Texas Eastern Transmission Corp	Commonwealth Gas Co	10-08-85	B		
ST86-44	Texas Eastern Transmission Corp	Providence Gas Co	10-08-85	B		
ST86-45	Texas Eastern Transmission Corp	Lukens Steel Co	10-08-85	F(157)		
ST86-46	Algonquin Gas Transmission Co	Bay State Gas Co	10-08-85	B		
ST86-47	Algonquin Gas Transmission Co	Connecticut Light and Power Co	10-08-85	B		
ST86-48	ANR Pipeline Co	Henkel Corp	10-08-85	F(157)		
ST86-49	ANR Pipeline Co	SCM Corp	10-08-85	F(157)		
ST86-51	Texas Gas Transmission Corp	Consolidated Gas Transmission Corp	10-08-85	G		
ST86-52	Texas Eastern Transmission Corp	Connecticut Light and Power Co	10-08-85	B		
ST86-53	Texas Eastern Transmission Corp	Middleborough Gas and Elect. Dept	10-08-85	B		
ST86-54	Texas Eastern Transmission Corp	Bay State Gas Co	10-08-85	B		
ST86-55	Consolidated Gas Transmission Corp	Copperweld Steel Co	10-09-85	F(157)		
ST86-56	Consolidated Gas Transmission Corp	Sukne Steel	10-09-85	F(157)		
ST86-57	Consolidated Gas Transmission Corp	Seneca Foods Corp	10-09-85	F(157)		
ST86-58	Midwestern Gas Transmission Co	Henkel Corp	10-09-85	F(157)		
ST86-59	Delhi Gas Pipeline Corp	Southwest Gas Corp	10-10-85	C		
ST86-60	Tennessee Gas Pipeline Co	Bay State Gas Co	10-10-85	B		
ST86-61	Tennessee Gas Pipeline Co	Bridgeline Gas Distribution Co	10-10-85	B		
ST86-62	Louisiana Intrastate Gas Corp	Creole Gas Pipeline Corp	10-10-85	C	[illegible]-86	52.40
ST86-63	United Gas Pipe Line Co	Providence Gas Co	10-10-85	B		
ST86-64	Southern Natural Gas Co	Georgia Kaolin Co., Inc	10-10-85	F(157)		
ST86-65	Southern Natural Gas Co	Armstrong World Industries, Inc	10-10-85	F(157)		
ST86-66	Southern Natural Gas Co	Mustang Fuel Corp. of Mississippi	10-10-85	B		
ST86-67	Southern Natural Gas Co	Kemira, Inc	10-10-85	F(157)		
ST86-68	Southern Natural Gas Co	Atlantic Steel Co	10-10-85	F(157)		
ST86-69	Southern Natural Gas Co	The Bibb Co	10-10-85	F(157)		
ST86-70	United Gas Pipe Line Co	U.S. Steel Corp	10-10-85	F(157)		
ST86-71	Williston Basin Inter. Pipeline Co	Sugar Creek Resources, Inc	10-10-85	F(157)		
ST86-72	El Paso Natural Gas Co	Magma Copper Co	10-10-85	F(157)		
ST86-73	Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	10-10-85	G		
ST86-74	Columbia Gulf Transmission Co	General Electric Co	10-10-85	F(157)		
ST86-75	Southern Natural Gas Co	Calsilite Corp	10-10-85	F(157)		
ST86-76	United Gas Pipe Line Co	Bay State Gas Co	10-10-85	B		
ST86-77	Valero Transmission Co	El Paso Natural Gas Co	10-11-85	C		
ST86-78	Columbia Gas Transmission Corp	Hammermill Paper Co	10-11-85	F(157)		
ST86-79	Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	10-11-85	B		
ST86-80	Columbia Gas Transmission Corp	U.S.S. Chemicals	10-11-85	F(157)		
ST86-81	Producer's Gas Co	ANR Pipeline Co	10-11-85	C	03-10-86	25.20
ST86-82	Columbia Gulf Transmission Co	Chemetals, Inc	10-11-85	F(157)		
ST86-83	Columbia Gulf Transmission Co	Hammermill Paper Co	10-11-85	F(157)		
ST86-84	Columbia Gas Transmission Corp	Chemetals, Inc	10-11-85	F(157)		
ST86-85	Valero Transmission Co	Transcontinetal Gas Pipe Line Corp	10-11-85	C		
ST86-86	Columbia Gas Transmission Corp	PPG Industries, Inc	10-11-85	F(157)		
ST86-87	Tennessee Gas Pipeline Co	East Tennessee Natural Gas Co	10-11-85	B		
ST86-88	Tennessee Gas Pipeline Co	Columbia Gas of Kentucky, *et al*	10-11-85	B		
ST86-89	El Paso Natural Gas Co	Tucson Electric Power Co	10-11-85	F(157)		
ST86-90	Florida Gas Transmission Co	Atlanta Gas Light Co	10-11-85	B		
ST86-91	United Gas Pipe Line Co	Connecticut Light & Power Co	10-15-85	B		
ST86-92	Columbia Gulf Transmission Co	Monterey Pipeline Co	10-15-85	B		
ST86-93	ANR Pipeline Co	Peoples Gas Light and Coke Co	10-15-85	B		

Docket No.[1]	Transport/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST86-94	Producer's Gas Co	Peoples Gas Light and Coke Co	10-15-85	D		
ST86-95	Natural Gas Pipeline Co. of America	Jones and Laughlin Steel, Inc	10-15-85	F(157)		
ST86-96	Natural Gas Pipeline Co. of America	Vulcan Chemicals	10-11-85	F(157)		
ST86-97	Texas Gas Transmission Corp	National-Southwire Aluminum Co	10-11-85	F(157)		
ST86-98	Texas Gas Transmission Corp	General Electric Co	10-11-85	F(157)		
ST86-99	Texas Gas Transmission Corp	DIXICO, Inc	10-11-85	F(157)		
ST86-100	Texas Gas Transmission Corp	Logan Aluminum, Inc	10-11-85	F(157)		
ST86-101	ANR Pipeline Co	Pennsylvania Gas and Water Co	10-17-85			
ST86-102	Transcontinental Gas Pipe Line Corp	Scott Paper Co	10-15-85	F(157)		
ST86-103	Texas Gas Transmission Corp	Emerson Electric Co	10-16-85	F(157)		
ST86-104	Southern Natural Gas Co	Thomaston Mills, Inc	10-15-85	F(157)		
ST86-105	Southern Natural Gas Co	Union Camp Corp	10-16-85	F(157)		
ST86-106	Michigan Gas Storage Co	Battle Creek Gas Co	10-16-85			
ST86-107	Western Transmission Co	Pacific Lighting Co	10-16-85	C		
ST86-109	ANR Pipeline Co	Proctor & Gamble Paper Products Co	10-18-85	F(157)		
ST86-110	Panhandle Eastern Pipe Line Co	Dunn/SECO Partners	10-16-85	F(157)		
ST86-111	Southern Natural Gas Co	Allied Corp	10-16-85	F(157)		
ST86-112	Southern Natural Gas Co	Owens-Corning Fiberglas Corp	10-16-85	F(157)		
ST86-113	Southern Natural Gas Co	A.P. Green Refractories Co	10-16-85	F(157)		
ST86-114	Transcontinental Gas Pipe Line Corp	Campbell Soup Co	10-17-85	F(157)		
ST86-115	Transcontinental Gas Pipe Line Corp	Goldtex, Inc	10-17-85	F(157)		
ST86-116	Transcontinental Gas Pipe Line Corp	VLDC Co	10-17-85	E		
ST86-117	Algonquin Gas Transmission Co	Commonwealth Gas Co	10-17-85			
ST86-118	Algonquin Gas Transmission Co	Town of Middleborough	10-17-85			
ST86-119	United Gas Pipe Line Co	Mississippi River Transmission Co	10-17-85	G		
ST86-120	ANR Pipeline Co	Pacific Lighting Gas Supply Co	10-18-85	B		
ST86-121	Northwest Pipeline Corp	Public Service Co. of New Mexico	10-18-85	F(157)		
ST86-122	El Paso Natural Gas Co	Public Service Co. of New Mexico	10-18-85	F(157)		
ST86-123	United Gas Pipe Line Co	Stone Container Corp	10-18-85	F(157)		
ST86-124	El Paso Natural Gas Co	Caminco American, Inc	10-18-85	F(157)		
ST86-125	United Gas Pipe Line Co	First Chemical Corp	10-18-85	F(157)		
ST86-126	United Gas Pipe Line Co	City of Alexandria, et al	10-18-85			
ST86-127	United Gas Pipe Line Co	Mustang Fuel Corp	10-21-85			
ST86-128	United Gas Pipe Line Co	Commonwealth Gas Co	10-21-85	B		
ST86-129	Columbia Gulf Transmission Co	Texas Eastern Transmission Corp	10-21-85	G		
ST86-130	Northwest Pipeline Corp	Longview Fibre Co	10-21-85	F(157)		
ST86-131	Northwest Central Pipeline Corp	Miami Pipeline Co	10-21-85			
ST86-132	Texas Eastern Transmission Corp	Sabine Gas Transmission Co	10-21-85	E		
ST86-133	Texas Eastern Transmission Corp	UGI Corp., et al	10-21-85	B/G		
ST86-134	Texas Eastern Transmission Corp	UGI Corp., et al	10-21-85	B/G		
ST86-135	Natural Gas Pipeline Co. of America	Archer-Daniels-Midland Co	10-21-85	F(157)		
ST86-136	Northern Natural Gas Co	Endevco Oil and Gas Co	10-21-85			
ST86-137	Tennessee Gas Pipeline Co	Consolidated Edison Co. of NY, Inc	10-21-85			
ST86-138	National Fuel Gas Supply Corp	Hammermill Paper Co	10-21-85	F(157)		
ST86-139	United Gas Pipe Line Co	Consolidated Edison Co. of NY, Inc	10-24-85			
ST86-140	Northwest Central Pipeline Corp	Miami Pipeline Co	10-22-85	B		
ST86-141	Northwest Central Pipeline Corp	Stepan Co	10-22-85	F(157)		
ST86-142	Consolidated Gas Transmission Corp	Niagara Mohawk Power Corp	10-22-85	F(157)		
ST86-143	J-W Gathering Co	Mississippi River Transmission Corp	10-22-85	C		
ST86-144	Transcontinental Gas Pipe Line Corp	Hercules, Inc	10-22-85	F(157)		
ST86-145	Transcontinental Gas Pipe Line Corp	Texaco Chemical Corp	10-22-85	F(157)		
ST86-146	Tennessee Gas Pipe Line Co	Texas Gas Transmission Co	10-22-85	D		
ST86-147	Transcontinental Gas Pipe Line Corp	Giveaudan Corp	10-22-85	F(157)		
ST86-148	Texas Gas Transmission Corp	Burke Steel	10-22-85	F(157)		
ST86-149	United Gas Pipe Line Co	Elizabethtown Gas Co	10-22-85	B		
ST86-150	United Gas Pipe Line Co	Quivra Gas Co	10-22-85			
ST86-151	Texas Eastern Transmission Corp	Columbia Gas Transmission Corp	10-23-85	G		
ST86-152	Panhandle Eastern Pipe Line Co	City of Hillsdale, Board of Public Utilities	10-24-85	F(157)		
ST86-153	Northwest Central Pipeline Corp	Atlas Powder Co	10-23-85	F(157)		
ST86-154	ANR Pipeline Co	Consolidated Packing Corp	10-23-85	F(157)		
ST86-155	Transcontinental Gas Pipe Line Corp	Marcal Paper Mills	10-23-85	F(157)		
ST86-156	Producer's Gas Co	Michigan Gas Utilities	10-23-85	D		
ST86-157	United Gas Pipe Line Co	Humble Gas Transmission Co	10-23-85			
ST86-158	Colorado Interstate Gas Co	City of Colorado Springs	10-24-85			
ST86-159	Panhandle Eastern Pipe Line Co	Caterpillar Tractor Co	10-24-85	F(157)		
ST86-160	Valero Transmission Co	El Paso Natural Gas Co	10-24-85	C		
ST86-161	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	10-24-85	G		
ST86-162	Seagull Energy Corp	Seagull Interstate Corp	10-24-85	C	03-23-86	10.00
ST86-163	Michigan Gas Storage Co	Dunn/SECO Partners	10-16-85	F(157)		
ST86-164	Louisiana-Nevada Transit Co	Mississippi River Transmission Corp	10-17-85	G		
ST86-165	El Paso Natural Gas Co	El Paso Hydrocarbons Co	10-25-85			
ST86-166	Columbia Gas Transmission Corp	Al-Tech Specialty Steel Corp	10-25-85	F(157)		
ST86-167	Columbia Gas Transmission Corp	Metropolitan Educational Council	10-25-85	F(157)		
ST86-168	Columbia Gas Transmission Corp	Columbus Board of Education	10-25-85	F(157)		
ST86-169	Columbia Gas Transmission Corp	South-Western City Schools	10-25-85	F(157)		
ST86-170	Columbia Gulf Transmission Co	Al-Tech Specialty Steel Corp	10-25-85	F(157)		
ST86-171	Columbia Gulf Transmission Co	Calgon Carbon Corp	10-25-85	F(157)		
ST86-172	Columbia Gulf Transmission Co	Lodke Insulators, Inc	10-25-85	F(157)		
ST86-173	Columbia Gulf Transmission Co	Mobay Chemical Corp	10-25-85	F(157)		
ST86-174	Columbia Gulf Transmission Co	SCM Corp	10-25-85	F(157)		
ST86-175	Texas Gas Transmission Corp	Gates Rubber Co	10-25-85	F(157)		
ST86-176	Texas Gas Transmission Corp	Hunt Wesson Foods, Inc	10-25-85	F(157)		
ST86-177	Texas Gas Transmission Corp	Dow Corning Corp	10-25-85	F(157)		
ST86-178	ANR Pipeline Co	Anamax Corp	10-25-85	F(157)		
ST86-179	ANR Pipeline Co	Bemis Manufacturing Co	10-25-85	F(157)		
ST86-180	ANR Pipeline Co	Brillion Iron Works, Inc	10-25-85	F(157)		
ST86-181	ANR Pipeline Co	Consolidated Papers, Inc	10-25-85	F(157)		
ST86-182	ANR Pipeline Co	Del Monte Corp	10-25-85	F(157)		
ST86-183	ANR Pipeline Co	Hardwoods Corp. of America	10-25-85	F(157)		
ST86-184	ANR Pipeline Co	Owens-Illinois	10-25-85	F(157)		
ST86-185	ANR Pipeline Co	Plastics Engineering Co	10-25-85	F(157)		
ST86-186	ANR Pipeline Co	Schreiber Foods, Inc	10-25-85	F(157)		

Docket No.[1]	Transport/seller	Recipient	Date filed	Subpart	Elevation date[2]	Transportation rate (¢/MMBtu)
ST86-187	ANR Pipeline Co	University of Wisconsin	10-25-85	F(157)		
ST86-188	ANR Pipeline Co	Wisconsin Dairies Cooperative	10-25-85	F(157)		
ST86-189	Equitable Gas Co	Equitable Gas-Energy Co	10-25-85	F(157)		
ST86-190	United Texas Transmission Co	Pacific Lighting Gas Supply Co	10-28-85	C		
ST86-191	United Gas Pipe Line Co	Texas Gas Transmission Corp	10-28-85	G		
ST86-192	United Gas Pipe Line Co	Southern Connecticut Gas Co	10-28-85	B		
ST86-193	Natural Gas Pipeline Co. of America	Wenhaco Corp	10-28-85	F(157)		
ST86-194	Oasis Pipe Line Co	Pacific Lighting Gas Supply Co	10-29-85	C		
ST86-195	Tennessee Gas Pipeline Co	National Railroad Passenger Corp	10-29-85	F(157)		
ST86-196	ANR Pipeline Co	Wisconsin Fuel and Light Co	10-29-85	B		
ST86-197	ANR Pipeline Co	Wisconsin Gas Co	10-29-85	B		
ST86-198	ANR Pipeline Co	Froedtert Malt Corp	10-29-85	F(157)		
ST86-199	ANR Pipeline Co	Interstate Drop Forge	10-29-85	F(157)		
ST86-200	ANR Pipeline Co	Krause Milling	10-29-85	F(157)		
ST86-201	ANR Pipeline Co	Nekoosa Paper	10-29-85	F(157)		
ST86-202	ANR Pipeline Co	Wisconsin Paperboard	10-29-85	F(157)		
ST86-203	Houston Pipe Line Co	HNG Industrial Natural Gas Co	10-30-85	C		
ST86-204	Houston Pipe Line Co	Providence Gas Co	10-30-85	C		
ST86-205	Florida Gas Transmission Co	Houston Pipe Line Co	10-30-85	B		
ST86-206	Northern Natural Gas Co	Corn Products	10-30-85	F(157)		
ST86-207	Tennessee Gas Pipeline Co	Florida Gas Transmission Co	10-30-85	G		
ST86-208	Producer's Gas Co	Northern Illinois Gas Co	10-30-85	D		
ST86-209	Texas Gas Transmission Corp	Michigan Gas Utilities Co., *et al.*	10-30-85	B		
ST86-210	Texas Eastern Transmission Corp	Central Illinois Public Service Co	10-30-85	B		
ST86-211	Texas Eastern Transmission Corp	Commonwealth Gas Co	10-30-85	B		
ST86-212	Texas Eastern Transmission Corp	Central Hudson Gas and Elect. Corp	10-30-85	B		
ST86-213	Texas Eastern Transmission Corp	Boston Gas Co	10-30-85	B		
ST86-214	Texas Eastern Transmission Corp	Ohio Cumberland Gas Co	10-30-85	B		
ST86-215	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co	10-30-85	B		
ST86-216	Northwest Pipeline Corp	Oregon Steel Mills	10-24-85	F(157)		
ST86-217	Northern Natural Gas Co	Southwest Gas Corp	10-30-85	B		
ST86-218	Trunkline Gas Co	Northern Illinois Gas Co	10-30-85	B		
ST86-219	Panhandle Eastern Pipe Line Co	Northern Illinois Gas Co	10-30-85	B		
ST86-220	Trunkline Gas Co	Caterpillar Tractor Co	10-24-85	F(157)		
ST86-221	Transcontinental Gas Pipe Line Corp	Garden State Paper, Inc	10-30-85	F(157)		
ST86-222	Northwest Pipeline Corp	Texaco Refining and Marketing, Inc	10-30-85	F(157)		
ST86-223	Producer's Gas Co	Pacific Gas and Electric Co	10-30-85	D		
ST86-224	Panhandle Eastern Pipe Line Co	Ball Glass Corp	10-30-85	F(157)		
ST86-225	Trunkline Gas Co	Ball Glass Corp	10-30-85	F(157)		
ST86-226	Panhandle Eastern Pipe Line Co	Northern Indiana Public Service Co	10-30-85	B		
ST86-227	National Fuel Gas Supply Corp	Jamestown Metal Manufacturing Co	10-30-85	F(157)		
ST86-228	Southern Natural Gas Co	LGS Intrastate, Inc	10-31-85	B		
ST86-229	El Paso Natural Gas Co	Gas Marketing, Inc	10-31-85	D		
ST86-230	Westar Transmission Co	El Paso Natural Gas Co	10-31-85	C		
ST86-231	Sea Robin Pipeline Co	Commonwealth Gas Co	10-31-85	B		
ST86-232	Northwest Pipeline Corp	Petrofina Gas Pipeline Co	10-31-85	B		
ST86-233	Northwest Pipeline Corp	El Paso Natural Gas Co	10-31-85	G		
ST86-234	United Gas Pipe Line Co	Columbia Gas Trans. Co., *et al.*	10-31-85	[illegible]		
ST86-235	Tennessee Gas Pipeline Co	North Alabama Gas District	10-31-85	B		
ST86-236	ANR Pipeline Co	Wisconsin Public Service Corp	10-31-85	B		
ST86-237	Kentucky West Virginia Gas Co	Columbia Gas of Maryland	10-31-85	B		
ST86-238	El Paso Natural Gas Co	Southern Union Gas Co	10-31-85	B		
ST86-239	El Paso Natural Gas Co	City of Mesa	10-31-85	B		
ST86-240	El Paso Natural Gas Co	Western Gas Interstate Co	10-31-85	B		
ST86-241	Tennessee Gas Pipeline Co	Peoples Gas Light & Coke Co	10-31-85	B		
ST86-242	Transcontinental Gas Pipe Line Corp	City of Alexander City	10-31-85	B		
ST86-243	Transcontinental Gas Pipe Line Corp	City of Bowman	10-31-85	B		
ST86-244	Transcontinental Gas Pipe Line Corp	City of Buford	10-31-85	B		
ST86-245	Transcontinental Gas Pipe Line Corp	City of Butler	10-31-85	B		
ST86-246	Transcontinental Gas Pipe Line Corp	City of Clanton	10-31-85	B		
ST86-247	Transcontinental Gas Pipe Line Corp	City of Commerce	10-31-85	B		
ST86-248	Transcontinental Gas Pipe Line Corp	City of Covington	10-31-85	B		
ST86-249	Transcontinental Gas Pipe Line Corp	East Central Alabama Gas District	10-31-85	B		
ST86-250	Transcontinental Gas Pipe Line Corp	City of Elberton	10-31-85	B		
ST86-251	Transcontinental Gas Pipe Line Corp	City of Hartwell	10-31-85	B		
ST86-252	Transcontinental Gas Pipe Line Corp	City of Lawrenceville	10-31-85	B		
ST86-253	Transcontinental Gas Pipe Line Corp	Town of Liberty	10-31-85	B		
ST86-254	Transcontinental Gas Pipe Line Corp	City of Linden	10-31-85	B		
ST86-255	Transcontinental Gas Pipe Line Corp	City of Madison	10-31-85	B		
ST86-256	Transcontinental Gas Pipe Line Corp	Maplesville Water Works & Gas Board	10-31-85	B		
ST86-257	Transcontinental Gas Pipe Line Corp	City of Monroe	10-31-85	B		
ST86-258	Transcontinental Gas Pipe Line Corp	City of Roanoke	10-31-85	B		
ST86-259	Transcontinental Gas Pipe Line Corp	Town of Rockford	10-31-85	B		
ST86-260	Transcontinental Gas Pipe Line Corp	City of Royston	10-31-85	B		
ST86-261	Transcontinental Gas Pipe Line Corp	City of Social Circle	10-31-85	B		
ST86-262	Transcontinental Gas Pipe Line Corp	City of Sugar Hill	10-31-85	B		
ST86-263	Transcontinental Gas Pipe Line Corp	Water Works & Gas Board of the Town of Thomaston	10-31-85	B		
ST86-264	Transcontinental Gas Pipe Line Corp	City of Toccoa	10-31-85	B		
ST86-265	Transcontinental Gas Pipe Line Corp	Tri-County Natural Gas Co	10-31-85	B		
ST86-266	Transcontinental Gas Pipe Line Corp	United Cities Gas Co	10-31-85	B		
ST86-267	Transcontinental Gas Pipe Line Corp	Town of Wadley	10-31-85	B		
ST86-268	Transcontinental Gas Pipe Line Corp	The Utilities Board, Wedowee, AL	10-31-85	B		
ST86-269	Transcontinental Gas Pipe Line Corp	City of Winder	10-31-85	B		
ST86-270	Transcontinental Gas Pipe Line Corp	City of Bessemer City	10-31-85	B		
ST86-271	Transcontinental Gas Pipe Line Corp	Blacksburg Natural Gas System	10-31-85	B		
ST86-272	Transcontinental Gas Pipe Line Corp	Clinton-Newberry Natural Gas Authority	10-31-85	B		
ST86-273	Transcontinental Gas Pipe Line Corp	Commonwealth Gas Pipeline Corp	10-31-85	B		
ST86-274	Transcontinental Gas Pipe Line Corp	City of Danville Gas Department	10-31-85	B		
ST86-275	Transcontinental Gas Pipe Line Corp	Fort Hill Natural Gas Authority	10-31-85	B		
ST86-276	Transcontinental Gas Pipe Line Corp	Town of Fountain Inn	10-31-85	B		
ST86-277	Transcontinental Gas Pipe Line Corp	Comm. Public Works, Greenwood, SC	10-31-85	B		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST85-278	Transcontinental Gas Pipe Line Corp	Comm. of Public Works, Greer, SC	10-31-85	B		
ST85-279	Transcontinental Gas Pipe Line Corp	City of Kings Mountain	10-31-85	B		
ST85-280	Transcontinental Gas Pipe Line Corp	Comm. of Public Works, Laurens, SC	10-31-85	B		
ST85-281	Transcontinental Gas Pipe Line Corp	City of Lexington	10-31-85	B		
ST85-282	Transcontinental Gas Pipe Line Corp	North Carolina Gas Service	10-31-85	B		
ST85-283	Transcontinental Gas Pipe Line Corp	Piedmont Natural Gas Co., Inc	10-31-85	B		
ST85-284	Transcontinental Gas Pipe Line Corp	City of Shelby	10-31-85	B		
ST85-285	Transcontinental Gas Pipe Line Corp	Southwestern Virginia Gas Co	10-31-85	B		
ST85-286	Transcontinental Gas Pipe Line Corp	City of Union	10-31-85	B		
ST85-287	Transcontinental Gas Pipe Line Corp	United Cities Gas Co	10-31-85	B		
ST85-288	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	10-31-85	B		
ST85-289	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	10-31-85	B		
ST85-290	Transcontinental Gas Pipe Line Corp	Delmarva Power & Light Co	10-31-85	B		
ST85-291	Transcontinental Gas Pipe Line Corp	Frederick Gas Co	10-31-85	D		
ST85-292	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	10-31-85	B		
ST85-293	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas & Water Co	10-31-85	B		
ST85-294	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	10-31-85	B		
ST85-295	Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	10-31-85	B		
ST85-296	Transcontinental Gas Pipe Line Corp	Public Service Electric & Gas Co	10-31-85	B		
ST85-297	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	10-31-85	B		
ST85-298	Transcontinental Gas Pipe Line Corp	UGI Corp	10-31-85	B		
ST85-299	Southern Natural Gas Co	South Carolina Pipeline Corp	10-31-85	B		
ST85-300	Southern Natural Gas Co	Chattanooga Gas Co	10-31-85	B		
ST85-301	Kentucky West Virginia Gas Co	Columbia Gas of Ohio	10-31-85	B		
ST85-302	Midwestern Gas Transmission Co	Ball Glass Corp	10-31-85	F(157)		
ST85-303	Transcontinental Gas Pipe Line Corp	Alcan Powders and Chemicals	10-31-85	F(157)		
ST85-304	Transcontinental Gas Pipe Line Corp	Reichhold Chemicals, Inc	10-31-85	F(157)		
ST85-305	ANR Pipeline Co	Michigan Power Co	10-31-85	B		
ST85-306	Midwestern Gas Transmission Co	Northern Illinois Gas Co	10-31-85	B		
ST85-307	Columbia Gas Transmission Corp	The Inland Gas Co	10-31-85	G		
ST85-308	Columbia Gulf Transmission Co	Celotex Corp	10-31-85	F(157)		
ST85-309	Columbia Gulf Transmission Co	Consolidated Aluminum Co	10-31-85	F(157)		
ST85-310	Columbia Gas Transmission Corp	Mt. Savage Refractories	10-31-85	F(157)		
ST85-311	Columbia Gulf Transmission Co	Eastern Stainless Steel Co	10-31-85	F(157)		
ST85-312	Columbia Gas Transmission Corp	Eastern Stainless Steel Co	10-31-85	F(157)		
ST85-313	Columbia Gas Transmission Corp	Consolidated Aluminum Co	10-31-85	F(157)		
ST85-314	Midwestern Gas Transmission Co	Stepan Co	10-31-85	F(157)		
ST85-315	Midwestern Gas Transmission Co	Northern Gas Co	10-31-85	B		
ST85-316	Texas Gas Transmission Corp	Quaker Oats Co	10-31-85	F(157)		
ST85-317	ANR Pipeline Co	Northern Illinois Gas Co	10-31-85	B		
ST85-318	ANR Pipeline Co	Michigan Gas Utilities Co	10-31-85	B		
ST85-319	ANR Pipeline Co	Stepan Co	10-31-85	F(157)		
ST85-320	Northern Natural Gas Co	Plains Cooperative Oil Mill, Inc	10-31-85	F(157)		
ST85-321	Northern Natural Gas Co	Texas Instruments	10-31-85	F(157)		
ST85-322	Northern Natural Gas Co	Texas Tech University	10-31-85	F(157)		
ST85-323	Northern Natural Gas Co	Frito Lay, Inc	10-31-85	F(157)		
ST85-324	Columbia Gulf Transmission Co	Great Lakes Sugar Co	10-31-85	F(157)		
ST85-325	El Paso Natural Gas Co	Arizona Public Service Co	10-31-85	F(157)		
ST85-326	El Paso Natural Gas Co	El Paso Electric Co	10-31-85	F(157)		
ST85-327	Mountain Fuel Resources, Inc	J.R. Simplot Co	10-31-85	F(157)		
ST85-328	Midwestern Gas Transmission Co	Interlake, Inc	10-31-85	F(157)		
ST85-329	The Inland Gas Co., Inc	Industrial Gas Corp	10-31-85	B		
ST85-330	Southern Natural Gas Co	Georgia Kraft Co	10-31-85	F(157)		
ST85-331	Southern Natural Gas Co	Gulf States Paper Corp	10-31-85	F(157)		
ST85-332	Southern Natural Gas Co	Delta Brick & Tile Co	10-31-85	F(157)		
ST85-333	Southern Natural Gas Co	Allied Corp	10-31-85	F(157)		
ST85-334	Southern Natural Gas Co	Nord Kaolin Co	10-31-85	F(157)		
ST85-335	Tennessee Gas Pipeline Co	Pennsylvania Gas & Water Co	10-31-85	B		
ST85-336	Midwestern Gas Transmission Co	Caterpillar Tractor Co	10-31-85	F(157)		
ST85-341	Panhandle Eastern Pipe Line Co	National Starch & Chemical Co	10-31-85	F(157)		
ST85-342	Panhandle Eastern Pipe Line Co	Anchor Glass Container Corp	10-31-85	F(157)		
ST85-344	Trunkline Gas Co	Cokinos Natural Gas Co	10-31-85	B		
ST85-345	Algonquin Gas Transmission Co	Providence Gas Co	10-31-85	B		
ST85-346	Algonquin Gas Transmission Co	Commonwealth Gas Co	10-31-85	B		
ST85-347	Algonquin Gas Transmission Co	Fall River Gas Co	10-31-85	B		
ST85-348	Gas Transport, Inc	Anchor Hocking Corp	10-31-85	F(157)		
ST85-349	Gas Transport, Inc	Anchor Hocking Corp	10-31-85	F(157)		
ST85-350	Algonquin Gas Transmission Co	Connecticut Natural Gas Corp	10-31-85	B		
ST85-351	Algonquin Gas Transmission Co	Orange & Rockland Utilities, Inc	10-31-85	B		
ST85-352	Algonquin Gas Transmission Co	Boston Gas Co	10-31-85	B		
ST85-353	Algonquin Gas Transmission Co	Central Hudson Gas & Electric Corp	10-31-85	B		

PGP Pipeline filed a Petition for Rate Approval for both ST85-289 and ST85-898 subsequent to their initial reports for these transactions. The rate petition is noticed at this time to give interested parties the appropriate 150-day comment period.

ST85-288	PGP Pipeline	Washington Gas Light Co	10-30-85	D	03-29-86	22.75
ST85-898	PGP Pipeline	Mississippi River Transmission Co	10-31-85	D	03-29-86	22.75

[1] Notice of transactions does not constitute a determination that filings comply with Commission Regulations in accordance with Order No. 436 (Final Rule and Notice Requesting Supplemental Comments, 50 FR 42372, 10/18/85.

[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 85-30238 Filed 12-20-85; 8:45 am]

BILLING CODE 6717-01-M

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FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 13, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for reivew and clearance under the Paperwork Reduction Act of 1980, Pub. L. 95–111.

Copies of the submissions are available for Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–7231.

OMB Number: 3060–0277
Title: Section 81.223, Station Documents
Action: Extension
Respondents: Public coast radio stations (Maritime Service) using telegraphy
Estimated Annual Burden: 10 Recordkeepers; 80 Hours

OMB Number: 3060–0297
Title: Section 81.352, Cooperative use of facilities
Action: Extension
Respondents: Limited coast radio stations and marine-utility radio stations (Maritime Service)
Estimated Annual Burden: 100 Recordkeepers; 1,600 Hours

OMB Number: 3060–0317
Title: Section 81.36(d), Modification of license
Action: Extension
Respondents: Licensees of radio stations on land in the maritime services and Alaska fixed service
Estimated Annual Burden: 50 Responses; 50 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–30199 Filed 12–20–85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85–367; File No. BPCT-850627KI et al.]

Ashford Communications et al.; Hearing Designation Order

In re applications of: Mary AShford d./b./a.

Ashford Communications	MM DOCKET NO. 85–367; File No. BPCT-850627KI.
Sonshine Family TV, Inc.	File No. BPCT-850612KG.
Thomas H. Moffit, Sr., *et al.* d.b.a. Bethlehem Broadcasting.	File No. BPCT-850614KH.
Leo Jones d.b.a. Haughton Television.	File No. BPCT-850015KF.
William Saunders d.b.a. Lehigh Valley Broadcasting and Communications.	File No. BPCT-850015KG.
William J. Kimbel	File No. BCPT-850015KH.

For Construction Permit Bethlehem, Pennsylvania.

Adopted: November 27, 1985.
Released: December 16, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 60, Bethlehem, Pennsylvania; a petition to deny the application of Ashford Communications filed by Marantha Broascasting, licensee of Stations WFMZ—FM and WFMZ—TV, Allentown, Pennsylvania; a petition to deny the application of Bethlehem Broadcasting filed by Haughton Television; petitions to deny the applications of Sonshine Family TV, Inc., Haughton Television, Lehigh Valley Broadcasting and Communications (Lehigh), and William J. Kimble filed by Bethlehem Broadcasting; [1] and a late-filed amendment submitted by Lehigh. [2]

2. Ashford Communications proposes to mount its antenna on the tower owned by Marantha Broadcasting Company (Marantha), licensee of Stations WFMZ—TV and WFMZ—FM, Allentown, Pennsyvlania. On July 12, 1985, Marantha filed a letter stating that Ashford Communications (Ashford), was not authorized to specify the WFMZ tower as its proposed transmitter site. The letter further states that Marantha told Ashford Communications' consultant that there was no room on the tower for an additional antenna. On August 15, 1985, Marantha filed a petition to deny Ashford Communications' application based on the fact that Ashford misrepresented the availability of its proposed site. In response to the petition, Ashford states that the site specified in its application is not owned or controlled by Marantha but by Franklin Broadcasting. Ashford states that it erroneously specified the geographical coordiantes of the WFM tower and that it was amending its application to correct the coordinates. Ashford has not amended its applicationas of this date. We note, in reviewing the applications in this proceeding, that there is a site owned by Franklin Broadcasting near the Marantha site. Several of the other applicants have also specified the Franklin site. We decline, therefore, to specify a site availability or misrepresentation issue against Ashford on the basis of the information now before us. However, Ashford will be required to submit corrected coordinates for its site as well as a certification as to the current availability of its site in the form required by the Commisison.[3] Ashford wil be given 20 days after the release of this Order to submit the required information.

3. No determination has been reached that the tower height and location proposed by each of the applicants, except William J. Kimbel, would not constitute a hazard to air navigation. Accordingly. an issue regarding this matter will be specified.

4. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose ofdetermining whether a comprative preference should accure to any of the applicants.

5. Section V–C, item 10(e), FCC Form 301, requires an applicant to submit figures for the area and population within its predicted Grade B contour. Haughton Television has not submitted this information. Accordingly, Haughton Television will be required to submit an

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[1] Haughton Television's petition and Bethlehem Broadcasting's petitions are, in essence, pre-designation petitions to specify issues. Since such petitions are no longer permitted, the petitions will each be dismissed. *Revised Procedures for Processing of Contested Broadcasting Applications*, 72 FCC 2d 202 (1979).

[2] Lehigh filed a petition for leave to amend accompanied by the amendment on November 4, 1985, after the "B" cut-off date (September 30, 1985). The amendment corrects minor errors and provides additional supporting information. Good cause exists for granting the petition and accepting the amendment. However, no comparative advantage will accure because of our action herein.

[3] On June 28, 1985, the Commisison issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them.

amendment which specifies the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after this Order is released.

6. Each of the applicants, except Bethlehem Broadcasting, proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes,* T.I.A.S. 2594 (1952). Accordingly, in the event of a grant of any of the applications, except Bethlehem Broadcasting's application, the construction permit shall be appropriately conditioned.

7. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field patterns, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. William J. Kimble has not supplied this data. Accordingly, Mr. Kimble will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

8. The scale of miles on the contour map submitted as Exhibit E–3, by William J. Kimble, is inaccurate. Accordingly, Mr. Kimble will be required to submit a corrective amendment to the presiding Administrative Law Judge, within 20 days after this Order is released.

9. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each of the applicants, except William J. Kimble, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

11. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

12. It is further ordered, that the petition to deny filed by Marantha Broadcasting is granted to extent indicated and denied in all other respects.

13. It is further ordered, that the petitions to deny filed by Haughton Television and Bethlehem Broadcasting are dismissed.

14. It is further order, that Lehigh Valley Broadcasting and Communications' November 4, 1985, petition for leave to amend is granted and the accompanying amendment is accepted.

15. It is further ordered, that Haughton Television shall submit an amendment which specifies the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after this Order is released.

16. It is further ordered, that, in the event that Ashford Communications is the successful applicant in this proceeding, the construction permit shall be conditioned as follows: Subject to the condition that operation with effective radiated power in excess of 1000 kW after November 1, 1987 is subject to a further extension of consent by Canada.

17. It is further ordered, that Ashford Communications shall submit the information required by paragraph 2 herein, to the presiding Administrative Law Judge, within 20 days after this Order is released.

18. It is further ordered, that, in the event that Sonshine Family TV, Inc., Haughton Television, Lehigh Valley Broadcasting and Communications, or William J. Kimble is the successful applicant in this proceeding, the construction permit shall be conditioned as follows: Subject to the condition that operation with effective radiated power in excess of 1000 kW is subject to the consent of Canada.

19. It is further ordered, that William J. Kimble shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

20. It is further ordered, that William J. Kimble shall submit an amendment which includes a contour map with an accurate scale of miles, to the presiding Administrative Law Judge, within 20 days after this Order is released.

21. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

22. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–30191 Filed 12–20–85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85–365, File No. BPCT–850625KH et al.]

Ashley Broadcasting et al.; Hearing Designation Order

In re applications of:

Ramona Ashley d.b.a. ASHLEY BROADCASTING.	MM Docket No. 85–365; File No. BPCT–850625KH.
Etex Telemedia	File No. BPCT–850711KI.
Channel 54 Broadcasting Co.	File No. BPCT–850815KJ.

For Construction Permit Longview, Texas.

Adopted: November 27, 1985.

Released: December 16, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive

applications of Ramona Ashley d.b.a. Ashley Broadcasting (Ashley), Etex Telemedia (Etex), and Channel 54 Broadcasting Co. (CBC) for authority to construct a new commercial television station on Channel 54, Longview, Texas, and an informal objection filed by the Association of Maximum Service Telecasters, Inc.

2. On September 30, 1985, the Association of Maximum Service Telecasters, Inc. filed an informal objection against each of the applications on the ground that each would be short-spaced to Station KLMG–TV, Channel 51, Longview, Texas. Section 73.610 of the Commission's Rules requires a minimum separation of 20 miles between a station operating on Channel 54 and one operating on Channel 51. Ashley's proposed site would be short-spaced to KLMG–TV, Channel 51, by 10 miles, Etex's proposed site would be 11 miles short-spaced and CBC's site would be 6 miles short-spaced. Accordingly, issues will be specified to determine whether circumstances exist warranting a waiver of the rule.

3. Section II, item 3(a), FCC Form 301, inquires whether the applicant is in compliance with the provisions of section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments. Ashley's response indicates that she may not be in compliance with section 310 of the Act. Ashley will be required to submit clarification of her response to the presiding Administrative Law Judge within 20 days after this Order is released.

4. CBC indicated that it is limited partnership. The applicant has identified the general partner; however, none of the limited partners have been disclosed. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *recon. granted in part*, FCC 85–252, released June 24, 1985, the Commission stated that, henceforth, limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partners will "not be involved in any material respect in the management or operation of" the proposed station, 97 FCC 2d at 1023. The Commission defined the degree of noninvolvement in paragraphs 48–50 of the June 24 decision on reconsideration. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards, 97 FCC 2d at 1034. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if CBC can submit the necessary certification and showing that its limited partnership interests will be sold only to individuals or entities that are sufficiently insulated. If the certification or showing is not appropriate, of course, the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, CBC will be required either to state that its limited partners have or will have no other media interests subject to the cross interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interest.

5. Section V–C, item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. CBC did not specify the population within its Grade B contour. Accordingly, CBC will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge.

6. No determination has been made that the tower height and location proposed each by Ashley and CBC would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

7. On June 28, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. Ashley has not submitted such a certification. Accordingly, Ashley will be given 20 days from the date of release of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If the applicant cannot make the certification, she shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

8. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether the applications of Ashley Broadcasting, Etex Telemedia, and Channel 54 Broadcasting Co., are consistent with the minimum mileage separation requirements of § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver.

2. To determine whether there is a reasonable possibility that the tower height and location proposed each by Ashley Broadcasting and Channel 54 Broadcasting Co. would each constitute a hazard to air navigation.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if any, of the applications should be granted.

10. It is further ordered, That the Association of Maximum Service Telecasters, Inc. is made a party respondent to this proceeding, with respect to issue 1.

11. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding, with respect to issue 2.

12. It is further ordered, That Ramona Ashley d/b/a Ashley Broadcasting shall submit a statement clarifying her response to Section II, item 3(a), FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

13. It is further ordered, that Ramona Ashley d/b/a Ashley Broadcasting shall, within 20 days of after the release of this Order, file with the presiding Administrative Law Judge, a site availability certification, in the form required by the Commission, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

14. It is further ordered, that Channel 54 Broadcasting Co. shall submit the certification, statement and/or information required by paragraph 4, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

15. It is further ordered, that Channel 54 Broadcasting Co. shall submit an

amendment providing the information required by Section V–C, item 10, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

16. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

17. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85–30195 Filed 12–20–85; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 85–363, File No. BPCT–841221KZ et al.]

C.R. Pasquier Associates of Bellevue, Inc. et al.; Hearing Designation Order

In re Applications of MM Docket No. 85–363:

	File No.
C.R. Pasquier Associates of Bellevue, Inc.	BPCT–841221KZ
Bellevue Telecasters, Ltd	BPCT–850215KI
Bellevue Broadcasting Company, Ltd.	BPCT–850215KR
Lezlie Lee, d/b/a Rainier Broadcasting Company.	BPCT–850215KS

For Construction Permit. Bellevue, Washington.

Adopted: November 25, 1985.

Released: December 17, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 51, Bellevue, Washington.

2. An applicant seeking authority to construct a commercial television station is required to afford equal employment opportunity to all qualified persons. See § 73.2080 of the Commission's Rules and Section VI, FCC Form 301. Pursuant to this requirement, an applicant who proposes to employ five or more full-time station employees must establish a program of practices to assure equal employment opportunities. Although Bellevue Telecasters intends to employ at least five full-time employees, it has failed to submit an equal employment opportunity proposal. Therefore, we cannot conclude that Bellevue Telecasters has complied with § 73.2080. Accordingly, Bellevue Telecasters will be required to submit its complete EEO proposal to the presiding Administrative Law Judge within 20 days after this Order is released.

3. Bellevue Telecasters has not certified its financial qualifications.[1] Although the financial standards are unchanged, the Commission requires only certification as to financial qualifications. Accordingly, the applicant will be given 20 days from the date of release of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

4. In Section V–C, FCC Form 301, Bellevue Telecasters specifies a maximum visual effective radiated power of 5000 kW and an antenna height above average terrain of 2071 feet. This combination of power and height exceeds the maximum permitted by § 73.614 of the Commission's Rules. Accordingly, Bellevue Telecasters must submit a corrective amendment to the presiding Administrative Law Judge, within 20 days after this Order is released.[2]

5. Each of the applicants proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however, they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes*, T.I.A.S. 2594 (1952). In the event of a grant of the applications of Bellevue Telecasters, Pasquier or Rainier, the construction permit will contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. In the event of a grant of the Bellevue Broadcasting application, the construction permit will contain a condition precluding station operation with maximum visual ERP of 1000 kilowatts after June 1, 1987, subject to a further extension of consent by Canada. *South Bend Tribune*, 8 RR 2d 416 (1966).

6. The Canadian Government has informed the Commission that it objects to the amended proposals of Bellevue Telecasters, Rainier, and Pasquier because none of these proposals would provide adequate protection against interference to any Canadian television station which might be authorized to operate on Channel 51 in Kelowna, British Columbia. Canada requests that Bellevue Telecasters be required to reduce its proposed power toward Kelowna by at least 5.1 dB. Canada also states that Pasquier's proposal would be accepted at an ERP of 1580 kilowatts at 31 degrees True (toward Kelowna). With respect to the Rainier application, Canada indicates that it would accept an operation with ERP of 1410 kilowatts at 31 degrees True (toward Kelowna) at the site and at the antenna height presently proposed. The requests are the subject matter of an agreement between the United States and the Canadian Government. The United States cannot, therefore, waive these requirements. Accordingly, the applications must be amended, within 20 days after the release of this Order, to comply with the Canadian requests. See also paragraph 4, *supra*.

7. Bellevue Telecasters' application indicates that the applicant is a limited partnership. Section II, Item 5(a), FCC Form 301, requires that if the applicant is a partnership, the requested information must be given for each general or limited partner. Bellevue Telecasters' application identifies only

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[1] On October 15, 1985, Pasquier, one of the competing applicants in this proceeding, filed a letter urging return, as unacceptable for filing, of the applications of Bellevue Telecasters and Rainier Broadcasting. Pasquier raises financial qualifications and short-spacing questions with respect to Bellevue Telecasters and a short-spacing question with respect to Rainier. Since none of these questions relate to acceptability for filing, the Pasquier letter is, in effect, a petition to specify issues. As such, it will be dismissed because such petitions are no longer permitted.

[2] Reduction of height or power may require the submission of new engineering data such as new contour maps, new vertical tower sketch, and changed area and population figures. If so, this information must be submitted as part of the required amendment.

the general partner and some of the limited partners. An equity interest of 35 percent in the applicant will be held by limited partners to be identified at a later date. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984) *recon. granted in part*, FCC 85–252, released June 24, 1985, the Commission stated that, henceforth, limited partner's interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partners will not be involved in any material respect in the business or operation of the station. 97 FCC 2d at 1023. The applicant has certified that the identified limited partners will not be involved in any material respect in the business or operation of the station, but it has not made a similar certification with respect to the unidentified limited partners. There is now no need to provide information as to the limited partners if Bellevue Telecasters can submit the necessary certification and showing that the unsold limited partnership interests will be sold only to individuals or entities that are sufficiently insulated. If the certification or showing is not appropriate, of course, the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area, 97 FCC 2d at 1030. Accordingly, Bellevue Telecasters, will be required either to state that all limited partners have or will have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interest.

8. Section 73.6859(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. The data supplied by Bellevue Broadcasting is inaccurate and insufficient. The directional antenna tabulation submitted does not accurately reflect the horizontal pattern for the specified antenna; i.e., the relative field values at each azimuth do not agree with the values indicated by the pattern submitted. The applicant, therefore, will be required to recalculate its DA tabulation data and to file a corrected tabulation as an amendment, within 20 days of the release of this Order, to the presiding Administrative Law Judge with a copy each to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau.

9. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

10. The Commission is not in receipt of a determination from the Federal Aviation Administration that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually excusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Aministrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

13. It is further ordered, That Bellevue Telecasters, Ltd. shall submit a complete EEO proposal to the presiding Administrative Law Judge within 20 days after this Order is released.

14. It is further ordered, That within 20 days after this Order is released, Bellevue Telecasters, Ltd. shall submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the required certification cannot be made, as may be appropriate.

15. It is further ordered, That Bellevue Telecasters, Ltd. shall submit an amendment to show compliance with § 73.614 of the Commission's rules pertaining to power and height above average terrain, to the presiding Administrative Law Judge, with 20 days after this Order is released.

16. It is further ordered, That, Bellevue Telecasters, Ltd., Rainier Broadcasting Company, and C.R. Pasquier Associates of Bellevue, Inc., shall each submit an appropriate amendment as required by paragraph 6, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

17. It is further ordred, That, Bellevue Telecasters, Ltd. shall submit the certification, statement and/or information required by Paragraph 7, *supra*, to the presiding Administrative Law Judge, with 20 days after this order is released.

18. It is further ordered, That, Bellevue Broadcasting Company, Ltd. shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy each to the Chief, Television Branch, and Chief, Hearing Branch, Mass Media Bureau, within 20 days of the release of this Order.

19. It is further ordered, That, in the event of a grant of the application of Bellevue Broadcasting Company, Ltd., the construction permit shall be conditioned as follows:

Subject to the condition that operation with effective radiated visual power in excess of 1000 kW after June 1, 1987 is subject to a further extension of consent by Canada.

20. It is further ordered, That in the event of a grant of the application of C.R. Pasquier Associates of Bellevue, Inc., Bellevue Telecasters, Ltd. or Rainier Broadcasting Company, the construction permit shall be conditioned as follows:

Subject to the condition that operation with effective radiated visual power in excess of 1000 kW is subject to the consent of Canada.

21. It is further ordered, That the petition to deny filed by C.R. Pasquier Associates of Bellevue, Inc. against Bellevue Telecasters, Ltd. and Raineir Broadcasting Company is dismissed.

22. It is further ordered, That the Federal Aviation Administration is

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made a party respondent to this proceeding with respect to issue 1.

23. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

24. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as rred by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-30192 Filed 12-20-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85-364, File No. BPCT-850229KE et al.]

Classic Vision, Inc. et al.; Hearing Designation Order

In re Applicaitons MM Docket No. 85-364:

	File No.
Classic Vision, Inc	BPCT-850529KE
4-A Communications	BPCT-850725KI
Lucky 33 TV	BPCT-850725KJ
El Sol Broadcasting	BPCT-850725KK
M.W.D., Inc.	BPCT-850725KM
Venture Broadcasting Company [1].	BPCT-850725KN

For Construction Permit, Las Vegas, Nevada.

Adopted: November 27, 1985.

Released: December 17, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 33, Las Vegas; a late-filed amendment filed by 4-A Communications;[2] a late-filed amendment filed by Margo Shepard (See footnote 1); a petition to dismiss the application of Margo Shepard; and related pleadings.[3]

2. Section V-C, item 10(e), FCC Form 301, requires an applicant to specify the area and population within its Grade B contour. Lucky 33 TV has not given us this information. Additionally, El Sol Broadcasting has not specified the population within its predicted Grade B contour. Accordingly, Lucky 33 TV and El Sol Broadcasting must each provide the information required by item 10(e) to the presiding Administrative Law Judge, within 20 days after this Order is released. The presiding Administrative Law Judge will consider any significant difference in the areas and populations served under the standard comparative issue.

3. No determination has been reached that the tower height and location proposed by Lucky 33 TV, El Sol Broadcasting, and M.W.D., Inc. each would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Section 73.685(f) of the Commission's Rule's requires an applicant proposing to use a directional antenna to include a tabulation of relative field least every 10 degrees plus any minima or maxima. Classic Vision, Inc. and 4-A Communications have not supplied this data. Accordingly, the applicants will each be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

5. On June 28, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. Classic Vision, Inc. has not submitted such a certification. Accordingly, Classic Vision, Inc. will be given 20 days from the release date of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If Classic Vision, Inc. cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

6. M.W.D., Inc. proposes a transmitter site that is located 1.93 miles from AM Station KENO, Las Vegas, Nevada. Accordingly, any grant of a construction permit to M.W.D., Inc. will be conditioned to ensure that KENO's radiation pattern will not be adversely affected.

7. Section II, item 8(a) FCC Form 301, inquires whether any parties to the application are related to each other. If the answer to item 8(a) is affirmative, a full disclosure concerning the persons involved, their relationship, the nature and extent of such interest or connection, the number of such application, and the location of such station or proposed station is to be submitted as an exhibit to FCC Form 301. 4-A Communications answered item 8(a) affirmatively. However, no explanation was included with its application. Accordingly, 4-A Communications will be required to submit the exhibit as an amendment to its application, to the presiding Administrative Law Judge, within 20 days after this Order is released.

8. Lucky 33 TV and El Sol Broadcasting have each indicated that it is a limited partnership. Each applicant has identified its general partner. However, neither applicant has identified its limited partners. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for the FCC forms,

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[1] On September 13, 1985, ("B cut-off date), Margo Shepard filed a minor amendment to her application which changed the applicant from a sole proprietorship to a corporation. Ms. Shepard owns 51 percents of the corporation's stock.

[2] The deadline for filing amendments to the above captioned-applications was September 13, 1985 ("B" cut-off date). On September 26, 4-A Communications filed an amendment to its application which brings its proposal into compliance with § 73.685(e) of the Commission's Rules. Good cause exists for accepting the amendment. Accordingly, the amendment will be accepted.

[3] As noted in footnote 1, Venture Broadcasting Company's application was orginally filed on July 25, 1985, by an individual applicant, Margo Shepard. On August 29, 1985 Ms, Shepard filed another application as an amendment. She explains that the July 25 application was not signed by her, but signed for her at her request. She also explains that she was unaware that the procedure was improper. Ms. Shepar requests that the application signed by her be accepted *nunc pro tunc*. On October 2, 1985, 4-A Communications filed a petition to dismiss the application of Margo Shepard on the grounds that the application was not properly executed when it was filed. The application was "substantially complete" when it was filed. Furthermore, the amendment which, corrects a defect, does not constitute a "major change." Clearly, all parties to this proceeding had notice of the application on July 25; therefore, none were prejudiced. These circumstances are governed by a long-standing policy which dictates that the amendment and signature be accepted *nunc pro tunc*. *Communications Gaithersburg, Inc.*, 60 FCC 2d 537 (1976); *B.J. Hart*, 44 FCC 2068 (1960). Therefore, the amended application bearing the original signature of Ms. Shepard will be accepted *nunc pro tunc* and the petition to dismiss will be denied. However, "circumstances surrounding the filing of this application and the applicant's legal qualifications may be appropriate matters for inquiry in hearing . . ." *Communications Gaithersburg, Inc.*, 60 FCC 2d at 542. *See, Jane A. Roberts* 60 FCC 141 (1960). Accordingly, an apporpriate issue will be specified to determine the facts and circumstances surrounding the signing of Venture Broadcasting Company's orignal application.

unless the information is inapplicable. However, in *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *recon. granted in part*, 58 RR 2d 604 (1985), the Commission stated that henceforth limited partnership interests were not attributable for the purposes of the multiple ownership rules, if the applicant certifies that the limited partners will "not be involved in any material respect in the management or operation of" the proposed station, 97 FCC 2d at 1023. The Commission defined the degree of noninvolvement in paragraphs 48–50 of the June 24 decision on reconsideration. Further, the Commission directed that Form 301, among others, be amended to conform to the new attribution standards, 97 FCC 2d at 1034. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if each applicant can submit the necessary certification and showing that limited partnership interests will be sold only to individuals or entities that are sufficiently insulated. If the certification or showing is not appropriate, of course, the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1030. Accordingly, Lucky 33 TV and El Sol Broadcasting, will each be required either to state that the limited partners have or will have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature and extent of the ownership interest.

9. Linda C. Bonnici owns 33⅓ percent of Independent Concepts. Her husband, Anthony Bonnici, is sales manager of Stations KENO(AM) and KOMP(FM), Las Vegas, Nevada. There is a rebuttable presumption that the media interests of spouses are attributable to one another. *Attributio of Ownership Interests, supra.* Mr. Bonnici's connection with the stations may be inconsistent with the Commission's cross-interest Policy. However, Independent Concepts has represented to the Commission that Mr. Bonnici will resign from his positions with Stations KENO and KOMP(FM), if Independent Concepts is the successful applicant for Channel 33. Accordingly, any grant of a construction permit to Independent Concepts will be appropriately conditioned.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Lucky 33 TV, El Sol Broadcasting and M.W.D., Inc., whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine, with respect to Venture Broadcasting Company, all of the facts and circumstances surrounding the signing of its original application and, in light of the evidence adduced, the effect, if any, upon the applicant's basic or comparative qualifications.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, That the amendment filed by 4–A Communications, on September 26, 1985, is accepted.

13. It is further ordered, That the petition to dismiss filed by 4–A Communications is denied.

14. It is further ordered, That 4–A Communications shall submit the exhibit required by Section II, item 8(a), FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

15. It is further ordered, That the amendment filed by Venture Broadcasting Company, on August 29, 1985, is accepted *nunc pro tunc.*

16. It is further ordered, That the Federal Aviation Administration is made a Party respondent to this proceeding with respect to issue 1.

17. It is further ordered, That Licky 33 TV shall submit an amendment which specifies the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after this Order is released.

18. It is further ordered, That El Sol Broadcasting shall submit an amendment which specifies the population within its predicted Grade B contour, to the presiding Administrative Law judge, within 20 days, after this Order is released.

19. It is further ordered, That Lucky 33 TV and El Sol Broadcasting shall each submit the certification, statement and/or information required by paragraph 8, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

20. It is further ordered, That Classic Vision, Inc. and 4–A Communications shall each submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and copies to the Chief, Television Branch, and the Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

21. It is further ordered, That Classic Vision, Inc. shall file a site availability certification, in the form required by the Commission, with the presiding Administrative Law Judge or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days after this Order is released.

22. It is further ordere, That, in the event that M.W.D., Inc. is the successful applicant in this proceeding, the construction permit shall be conditioned as follows:

During the installation of the antenna authorized here, AM Station KENO, Las Vegas, Nevada, shall determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point values with authorized limits. Upon completion of the installation, common point impedance measurements on the AM array shall be made and a partial proof of performance, as defined by Section 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the submitted to the Commission (along with a tower sketch of the installation) in an application for the AM station to return to the direct method of power determination.

23. It is further ordered, That, in the event that Independent Concepts is the successful applicant in this proceeding, the construction permit shall be conditioned as follows:

Prior to commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Anthony Bonnici has servered all connections with the

licensee of Stations KENO (AM) and KOMP (FM), Las Vegas, Nevada.

24. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

25. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-30193 Filed 12-20-85; 8:45 am]

BILLING CODE 6712-01-M

Community Service Telecasters, Inc. et al.; Hearing Designation Order

In re Applications of MM Docket. No. 85-366:

	File No.
Community Service Telecasters, Inc.	BPCT-850426KM
East Coast Media, Limited...	BPCT-850701KZ
Dr. James Wingate, d/b/a Winard Broadcasting.	BPCT-850706KE

For Construction Permit, Greenville, North Carolina.

Adopted: November 27, 1985.
Released: December 16, 1985.
By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 38, Greenville, North Carolina.[1]

2. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. None of the applicants has submitted such a certification. Accordnigly, each applicant will be given 20 days from the release date of this Order to file such a certification, in the form required by the Commission, with the presiding Administrative Law Judge. If an applicant cannot make the certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

3. No determination has been reached that the tower height and location proposed by Winard Broadcasting would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Our review of the technical data submitted by Community Service Telecasters, Inc. indicates that a grant of the application would constitute a major environmental action as defined by § 12.1305(a) of the Commission's Rules. However, Community Service Telecasters did not submit the environmental impact information described in § 1.1311. Accordingly, Community Service Telecasters will be required to file, within 20 days of the release of this Order, its enivironmental narrative statement with the presiding Administrative Law Judge and a copy to the Chief, Hearing Branch. In addition, a copy shall be filed with the Chief, Television Branch, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, Section 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Crop.*, 71 FCC 2d 229 (1979), *recon. denied sub nom Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

5. James McManus, a limited partner in East Coast Media, Limited, is President and General Manager of Greenville Broadcasting, Inc., licensee of Station WBZQ (AM), Greenville, North Carolina. The application also includes the following representation: "Mr. McManus will act in accordance with Commission Rules as to removal in the event instant application is granted."[2] We do not know what this statement means. There is no indication that Mr. McManus will be sufficiently insulated so as to avoid attribution of his interest in the applicant here. See *Multiple Ownership (Attribution)*, 58 R.R. 2d 604, 619-20 (1985). Thus, in the absence of an appropriate showing, we assume an attributable interest. As an officer of the licensee of Station WBZQ, Mr. McManus also has an attributable interest in that station as well. We note, however, that under the rule these two interests do not *require* removal of Mr. McManus from either position. The only requirement imposed is that the applicant make an appropriate "one-to-a-market" showing. We shall specify an appropriate issue to permit such a showing here. Further, Mr. McManus' connection with the station may violate the Commission's cross-interest policy since the AM station and the proposed television station are in the same community. Accordingly, an issue will be specified to determine if East Coast Media, Limited's proposal is consistent with the Commission's cross-interest policy and, if not, whether grant of its application would be consistent with the public interest.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Winard Broadcasting, whether there is a reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.

2. If a final environmental impact statement is issued with respect to Community Services Telecasters, Inc. which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment:

(a) To determine whether the applicant's proposal is consistent with the National Environmental Policy Act, as implemented by § 1.1301-1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

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[1] Winard Broadcasting filed a facsimile copy of its application. Therefore, it did not have the original signatures of Dr. Wingate and its technical consultant, Mr. Mowers. Winard Broadcasting will, therefore, be required to submit verification of the signatures in Sections V-C, V-G, and VI, to the presiding Administrative Law Judge, within 20 days after this Order is released.

[2] The decision to divest, until the end of the period when amendments can be made as a matter of right, is for the applicant to make, not the Commission. The applicant did not make an unqualified divestment pledge and it cannot now upgrade its comparative posture.

3. To determine, with respect to East Coast Media, Limited, whether its proposal is consistent with § 73.3555 of the Commission's Rules and the Commission's cross-interest policy and, if not, whether grant of its application would be consistent with the public interest.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, That the Federal Aviation Administration is made a party Respondent to this proceeding with respect to issue 1.

9. It is further ordered, that each applicant shall file a site availability certification, in the form required by the Commission, with the presiding Administrative Law Judge, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate, within 20 days after this Order is released.

10. It is futher ordered, that Winard Broadcasting shall submit an amendment which contains verification of the signatures in Section V-C, V-G, and VI of its application, to the presiding Administrative Law Judge, within 20 days after this Order is released.

11. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate,a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

12. It is futher ordered, that the applicant herein shall, pursuant to § 311(a)(2) of the Communcations Act of 1934 as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-30194 Filed 12-20-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0146.
Title: State Administrative Plan for Individiual and Family Grant Program.
Abstract: The paln is reqiuired to facilitate monitoring of the IFG program since the program is State administered, but cost shared (25 percent State and 75 percent Federal). In also provides a guide for State personnel responsible for administering the program.
Type of respondents: State of Local Governments.
Number of respondents: 56.
Burden hours: 224.

Copies of the above information collection request and supporting doumentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, SW., Washington, DC 20472.

Comments should br directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 12, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85-3028 Filed 12-20-85; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-756-DR]

Florida; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-756-DR), dated December 3, 1985, and related determinations.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Florida, dated December 3, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 3, 1985: Franklin, Gadsden, Gulf, Leon, Liberty, and Wakulla Counties for Public Assistance. Leon County as an adjacent county for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: December 13, 1985.

Samuel W. Speck,

Associate Director, State and Local Program and Support.

[FR Doc. 85-30205 Filed 12-20-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-756-DR]

Florida; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-756-DR), dated December 3, 1985, and related determinations.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Florida, dated areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 3, 1985: Calhoun, Jefferson, and Liberty Counties as adjacent counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dated: December 11, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-30206 Filed 12-20-85; 8:45 am]

BILLING CODE 6718-02-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0049.
Title: Request for Advance or Reimbursement.
Abstract: This form is used to disburse to the applicant the necessary fund advances and final payment for costs related to public assistance, temporary housing and Individual Family Grant.
Type of respondents: State or Local Governments; Non-Profit Institutions.
Number of respondents: 2,500.
Burden hours: 1,250.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Make Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 11, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85–30207 Filed 12–20–85; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL HOME LOAN BANK BOARD

[No. AC–462]

Old Colony Bank, a Federal Savings Bank, Providence, RI; Final Action; Approval of Conversion Application

Dated: December 17, 1985.

Notice is hereby given that on *December 12, 1985,* the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Old Colony Bank, a federal savings bank, Providence, Rhode Island, for permission to convert to the stock of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, D.C. 20552 and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Boston, One Financial Center, P.O. Box 9106, Boston, Massachusetts 02205–9106.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 30276 Filed 12–20–85; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Kodiak National Wildlife Refuge Comprehensive Conservation Plan; Environmental Impact Statement and Wilderness Review, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a draft Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Kodiak National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The draft CCP/EIS describes four strategies for long-term management of the 1,865,000-acre refuge on Kodiak Island. Three alternatives identify lands that would be suitable for addition to the National Wilderness Preservation System.

DATES: Remarks on the draft CCP/EIS must be submitted on or before March 21, 1986, to receive consideration in the preparation of the final CCP/EIS and Wilderness Review.

As scheduled below, one formal public hearing and five public meetings will be held to receive comments on the draft CCP/EIS:

Public hearing:
Clark Junior High School, 150 S. Bragaw, Anchorage, AK—February 5, 1986, 7 p.m.
Public meetings:
Kodiak Island Borough Assembly, 700 Mill Bay Road, Kodiak, AK—January 22, 1986, 7 p.m.
Communities of Karluk, Larsen Bay, Akhiok, and Old Harbor on Kodiak Island, AK—End of January, 1986

Dates, times, and places for the village meetings will be advertised by the poster, use of the news media, and letters to the mayors well in advance of the assigned time period. Written and oral testimony will be accepted at the public hearing and will be transcribed for the official record. Written and oral comments will also be accepted at the public hearings. All comments and testimony, both oral and written, received prior to date listed above will be considered in preparation of the final CCP/EIS.

ADDRESS: Remarks should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1101 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3399.

A draft CCP/EIS has been prepared for general distribution. Copies of the draft have been forwarded to all agencies that participated in the scoping process and to agencies and persons who have already requested copies. Those wishing to review the draft may obtain a copy by contacting Mr. Knauer. Copies of the draft CCP/EIS are also available for review at the office of the Regional Director, at the above address; at the headquarters of the Kodiak National Wildlife Refuge, Buskin River Road, Kodiak, Alaska, and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, U.S. Department of the Interior Bldg., 18th and C Streets, NW, Washington, DC 20240
U.S. Fish and Wildlife Service, Wildlife Resources, 500 NE Multnomah Street, Suite 1692, Portland, OR 97232
U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW, Room 1306, Albuquerque, NM 87103
U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111
U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Bldg., 75 Spring Street, Atlanta, GA 30303
U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158
U. S. Fish and Wildlife Service, Wildlife Resources, 134 Union Blvd., Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The draft CCP/EIS for the Kodiak National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of sections 304 and 1317 of ANILCA relating to preparation of comprehensive conservation plans. In addition, the draft CCP/EIS and Wilderness Review also describe the general wilderness suitability of various

BEST COPY AVAILABLE

acreages of non-wilderness refuge lands, under each of the management alternatives, in order to comply with the requirements of section 1317(a) of ANILCA. This requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his/her recommendations to the President by 1987.

Major issues addressed by the plan focus on fish and wildlife management; problems with increasing recreational use in an island community with unique fish and wildlife habitats; potential conflicts between off-refuge commercial, sport, and subsistence harvest of fishery resources; lack of resource data; potential offshore oil and gas exploration/development; development and use of adjacent State and private lands; and management of refuge inholdings. Overall goal of the plan is to maintain historical subsistence use of the area, to maintain fish and wildlife populations in their present state, and to provide opportunities for hunting, fishing, and other recreation uses.

This plan describes four alternatives for management of the Refuge; the process pursued in their development; and the environmental consequences of implementing each alternative. The alternatives vary in their management emphasis. Alternative A, the current situation, would maintain the Refuge in an undeveloped state. Alternative B would provide for development of support facilities to support commercial fishing and increased public, recreational use. Alternative C, the Fish and Wildlife Service's preferred alternative, would maintain key fish and wildlife populations and habitats, provide for traditional access and for continued subsistence use, and would afford additional opportunities for guided and outfitted use in the Refuge.

For all of the alternatives the Service is proposing management objectives for Native lands within the refuge boundary, pursuant to the provisions of section 22(g) of the Alaska Native Claims Settlement Act. The plan identifies where important areas for fish and wildlife are on the Native lands, and establishes the Service's management intent for those lands. A process is outlined in the plan for determining those uses and activities that would be appropriate on Native lands.

Section 1008(a) of the Alaska National Interest Lands Conservation Act (ANILCA) directs the Secretary of the Interior to establish an oil and gas leasing program on federal lands in Alaska, except where prohibited by law or in those areas where oil and gas development would be incompatible with refuge purposes. Areas where oil and gas leasing would be incompatible with the purposes of Kodiak Refuge identified for all of the alternatives.

The draft plan also describes the general wilderness suitability of differing acreages of non-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his/her recommendations to the President by 1987. Currently, no part of the Refuge's 1,865,000 acres is designated as wilderness. A range of recommendations is included in the plan's four alternative management strategies. Alternative A proposes none of the refuge for wilderness designation. Alternatives B and C both propose about 73 percent of the refuge. Alternative D proposes 100 percent of the Refuge for addition to the National Wilderness Preservation System.

Other government agencies and the general public contributed to the development of this draft CCP/EIS and Wilderness Review. The Notice of Intent to prepare the draft CCP/EIS was published in the **Federal Register**, April 20, 1983. Scoping meetings were held on Kodiak Island, in Kodiak, May 7, 1983, and in Old Harbor, Akhiok, Larsen Bay, and Karluk, during the period May 16–24, 1983. During mid-March 1985 a couple of workshops were held in Kodiak and Anchorage, plus meetings in Karluk (April 1, 1985), Akhiok (April 3, 1985), Larsen Bay (April 5, 1985), and Old Harbor (April 23, 1985) to help define issues involving refuge resources. In addition, two Open Houses were held in Kodiak, March 15 and 17, 1985, and one in Anchorage, March 21, 1985.

Dated: December 17, 1985.

Robert E. Gilmore,

Regional Director.

[FR Doc. 85-30259 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs

Plan for the Use and Distribution of the Cherokee Nation of Oklahoma Indians Judgment Funds in Docket 262-83L Before the United States Claims Court

December 6, 1985.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), as amended, requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on August 9, 1984, in satisfaction of the award granted to the Cherokee Nation of Oklahoma before the United States Claims Court in Docket 262-83L. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated August 5, 1985 and was received (as recorded in the Congressional Record) by the Senate on September 9, 1985, and by the House of Representatives on September 4, 1985. The plan became effective on November 8, 1985 as provided by the 1973 Act, as amended by Pub. L. 97-458, since a joint resolution disapproving it was not enacted. The plan reads as follows:

For the Use and Distribution of the Judgment Funds Awarded to the Cherokee Nation of Oklahoma in Docket 262-83L Before the United States Claims Court

The funds of the Cherokee Nation (Oklahoma) appropriated August 9, 1984 in Docket 262-83L before the United States Claims Court, less attorney fees and litigation expenses, and including all interest and investment income accrued, shall be used and distributed as follows:

The funds shall be invested in securities with a minimum of A rating by the Secretary of the Interior and only the interest and investment income accrued shall be utilized by the tribal governing body on a budgetary basis subject to the approval of the Secretary for governmental operation and social and economic programs with a maximum maturity date of ten (10) years. The funds shall be audited each year as part of the annual audit of the Cherokee Nation of Oklahoma. Upon maturity of the funds, the funds may be reinvested or the principal portion utilized for programming purposes, subject to the approval of the Secretary.

None of the funds made available under this plan for programming shall be subject to Federal or State income taxes, nor shall such funds nor the availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act or, except for per capita

shares or dividend payments in excess of $2,000, any Federal or federally assisted programs.

Ronald L. Esquerra,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85-30213 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Serial No. I-010387]

Idaho; Order Providing for Opening of Public Lands

December 9, 1985.

Because of a lack of use for which the following-described lands were originally patented under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869; 869-4) the Palisades Ward LDS Church has reconveyed these lands to the United States.

The lands involved in the reconveyance are:

Boise Meridian

T. 1 N., R. 43 E.,
sec. 1, lots 63, 64, 65, 74, 75, 76, 94 and 95.
The area described contains 10 acres.

The land is located at Swan Valley in Bonneville County, Idaho.

Subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable laws, the lands will at 9:00 a.m. on January 21, 1986, be open to the operation of the public land laws.

Inquiries concerning the lands should be addressed to the Chief, Realty Operations Section, 3380 Americana Terrace, Boise, Idaho 83706.

William E. Ireland,

Chief Realty Operations Section.

[FR Doc. 85-30274 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-GG-M

New Mexico; Notice of Filing of Plat of Survey

December 6, 1985.

The plats of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on December 6, 1985.

A survey representing the dependent resurvey of portions of the south and east boundaries and the subdivision of sections 25 and 36, and the survey of certain parcels within Township 3 North, Range 5 East, and the survey of parcels A and B, Township 3 North, Range 6 East, of the New Mexico Principal Meridian, New Mexico, under Group 825 NM . This survey was requested by the National Park Service.

A survey representing the dependent resurvey of a portion of the Seventh Standard Parallel North through Range 11 West, a portion of the subdivisional lines, and the survey of the subdivision of certain lots in section 9, Township 28 North, Range 11 West, New Mexico Principal Meridian, New Mexico, under Group 849 NM. This survey was requested by the District Manager, Albuquerque District, Bureau of Land Management.

The plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plat may be obtained from that office upon payment of $2.50 per sheet.

Gary S. Speight,

Chief, Branch of Cadastral Survey.

[FR Doc. 85-30273 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-FB-M

Wyoming; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of Plats of Survey.

SUMMARY: The plats of surveys of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 A.M., December 6, 1985.

Sixth Principal Meridian

T. 41 N., R. 69 W.
The plat showing a subdivision of certain sections, T. 41 N., R. 69 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

T. 43 N., R. 70 W.
The plat showing a subdivision of certain sections, T. 43 N., R. 70 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

T. 44 N., R. 70 W.
The plat showing a subdivision of certain sections, T. 44 N., R. 70 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

T. 41 N., R. 71 W.
The plat showing a subdivision of certain sections, T. 41 N., R. 71 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

T. 40 N., R. 72. W.
The plat showing a subdivision of certain sections, T. 40 N., R. 72 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

T. 44 N., R. 72 W.
The plat showing a subdivision of 14 and 15 section, T. 44 N., R. 72 W., Sixth Principal Meridian, Wyoming, was accepted December 4, 1985.

These supplemental plats were prepared to meet certain administrative needs of this Bureau.

ADDRESS: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: December 9, 1985.

Richard L. Oakes,

Chief Cadastral Surveyor for Wyoming.

[FR Doc. 85-30272 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-22-M

Public Meeting; Folsom Resource Area; Bakersfield District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Folsom Resource Area of the Bakersfield District in California is in the initial stages of preparing an amendment to the Sierra Management Framework Plan (MFP). This amendment involves BLM-administered lands in the counties of Amador, Calaveras, El Dorado, Mariposa, Nevada, Placer, Tuolumne, and Yuba.

Pursuant to 43 CFR 1610.2, the Folsom Resource Area will hold meetings to inform the public of the proposed change in management planning activities and provide the opportunity for the public to have input on proposed actions and Bureau programs.

DATES: The public meetings will be held at 7:30 p.m. at the following locations:

1. January 22, 1986—Tahoe National Forest, Supervisor's Office, Hwy. 49 & Coyote Street, Nevada City, California.

2. January 28, 1986—Stanislaus National Forest, Supervisor's Office, 19777 Greenley Road, Sonora, California.

3. January 29, 1986—Mariposa County High School Auditorium, 5074 Old Highway North, Mariposa, California.

SUPPLEMENTARY INFORMATION: The major change in the Sierra MFP to be discussed will be land retention and intensive management versus low level management and/or transfer to nonfederal ownership. In addition, discussions will be held concerning Wild and Scenic River eligibility for the Merced River lands administered by BLM.

FOR FURTHER INFORMATION CONTACT: D.K. Swickard, Folsom Resource Area Manager, 63 Natoma Street, Folsom, California 95630; (916) 985-4474.

Dated: December 10, 1985.

D.K. Swickard,

Area Manager.

[FR Doc. 85-30275 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-MR-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1256, Block 172, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

DATE: The subject DOCD was deemed submitted on December 12, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 16, 1985.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-30228 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Shell Offshore, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it prosposes to conduct on Lease OCS–G 1039, Block 274, Ship Shoal Area, offshore Louisiana. Proposed plans for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Venice and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on December 11, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 13, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-30227 Filed 12-20-85; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the collection of information requirement and supporting documentation may be obtained by contacting the Bureau Clearance Officer at the phone number listed below. Comments and suggestions on the collection of information should be made within 30 days directly to the Bureau Clearance Collection Officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone (202) 395–7313; with copies to David A Schuenke; Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091.

Title: Oil and Gas Operations in the Outer Continental Shelf, 30 CFR Part 250 (17 submissions—see individual titles below).

Abstract: Rules governing oil and gas operations in the Outer Continental Shelf (OCS) currently contained in regulations, OCS Orders, and Minerals Management Service (MMS) Standards are being proposed for revision in a new 30 CFR Part 250. Twelve of the subparts of the proposed rule contain narrative information collection requirements which are being submitted to OMB for approval. In addition, requirements are proposed to be changed for five of the forms in use in 30 CFR Part 250. Those five forms are being submitted for approval. The information collection is necessary to enable MMS to ensure safety, protection of the environment, and protection of correlative rights for oil and gas operations in the OCS.

Bureau Form Number: Various—see Items 13–17.

Frequency: Various.

Description of Respondents: Outer Continental Shelf oil and gas lessees.

Bureau Clearance Officer: Dorothy Christopher, telephone (703) 435–6213.

1. Subpart A, General—Annual Responses: 524. Annual Burden Hours: 2,702.

2. Subpart B, Exploration and Development and Production Plans—Annual Responses: 1,168. Annual Burden Hours: 512,718.

3. Subpart C, Pollution Prevention and Control—Annual Responses: 2,513. Annual Burden Hours: 43,978.

4. Subpart D, Drilling Operations—Annual Responses: 1,810. Annual Burden Hours: 23,128.

5. Subpart E, Well-Completion Operations—Annual Responses: 2,378. Annual Burden Hours: 1,518.

6. Subpart F, Well-Workover Operations—Annual Responses: 2,378. Annual Burden Hours: 1,518.

Note.—Subpart G, Abandonment of Wells, has no information collection requiring OMB approval.

7. Subpart H, Production Safety Systems—Annual Responses: 645. Annual Burden Hours: 2,838.

8. Subpart I, Platforms and Structures—Annual Responses: 308. Annual Burden Hours: 10,042.

9. Subpart J, Pipelines and Pipeline Rights-of-Way—Annual Responses: 3,805. Annual Burden Hours: 95,720.

10. Subpart K, Production Rates—Annual Responses: 1,033. Annual Burden Hours: 4,602.

11. Subpart L, Production Measurement, Commingling, and Security—Annual Responses: 22,720. Annual Burden Hours: 51,075.

12. Subpart M, Unitization—Annual Responses: 213. Annual Burden Hours: 5,115.

Note.—Subpart N, Remedies and Penalties, has no information collection requiring OMB approval.

13. Form MMS–331, Sundry Notices and Reports on Wells—Annual Responses: 6,756. Annual Burden Hours: 3,378.

14. Form MMS–331C, Application for Permit to Drill, Deepen, or Plug Back—Annual Responses: 1,590. Annual Burden Hours: 795.

15. Form MMS–1866, Reservoir Data—Request for Reservoir MER—Annual Responses: 600. Annual Burden Hours: 600.

16. Form MMS–2867, Request for Well Maximum Production Rate (MPR)—Annual Responses: 4,000. Annual Burden Hours: 1,000.

17. Form MMS–1868, Well Potential Test Report—Annual Responses: 4,000. Annual Burden Hours: 8,000.

In addition to the information collection changes contained in the proposed rule, MMS requests comments concerning the need for the following possible rule changes:

1. A provision to allow the lessee to provide the manufacturers name, the model number, and the model year of standardized equipment in lieu of specifications and descriptions for such standardized items.

2. A provision to allow the lessee to reference information from previously submitted documents that is readily available to MMS and State reviewing agencies to avoid duplication of the information.

3. A provision to enable States to collect information directly from lessees in the OCS when such information is collected solely for the States.

Dated: October 30, 1985.

Richard B. Krahl,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 85–30228 Filed 12–20–85; 8:45 am]

BILLING CODE 4310-MR-M

Royalty Management Advisory Committee; Meeting

AGENCY: Minerals Management Service, (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Royalty Management Advisory Committee will hold a meeting to brief committee members on the Royalty Management Program and organize technical working panels. Notice of this meeting is required under the Federal Advisory Committee Act.

Name: Organizaiton Session of Royalty Management Advisory Committee.

Date and Time: January 9, 1986, at 8:30 a.m. to 4:00 p.m.; January 10, 1986, at 8:00 a.m. to 4:00 p.m.

Place: Sheraton Inn Lakewood, Morrison and Golden Room, 360 Union Boulevard, Lakewood, Colorado 80228.

Agenda: January 9: Opening Remarks, Royalty Management Program Overview and Management Action Plan Review.

January 10: Secretary of the Interior Comments, Issue Briefing, Organize Working Panels, Public Comments, and Closing Remarks.

This meeting will be open to the public. Public attendance may be limited by the space available. Questions and answers from the public will be addressed at the close of the meeting. Written statements should be submitted by January 3, 1986, to Mr. Todd McCutcheon, Minerals Management Service, P.O. Box 25165, MS 660, Denver Federal Center, Building 85, Denver, Colorado 80225. Questions regarding arrangements for this meeting may be forwarded to Mr. Todd McCutcheon at the same address or by telephoning Mr. Todd McCutcheon at (303) 231–3360. Minutes of this meeting will be available for public inspection and copying by March 31, 1986, at the above address.

Dated: December 17, 1985.

William D. Battenberg,

Director, Minerals Management Service.

[FR Doc. 85–30270 Filed 12–20–85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Hopewell Furnace National Historic Site; Notice of Park Name Change

AGENCY: National Park Service; Hopewell Furnace National Historic Site.

ACTION: Notice of park name change.

SUMMARY: Notice is hereby given that effective September 19, 1985, Hopewell Village National Historic Site which was designated by Secretarial Order of August 3, 1938 (3 FR 2039), pursuant to the Historic Sites Act of August 21, 1935 (49 STAT. 666) is hereby redesignated by Secretarial Order as Hopewell Furnace National Historic Site.

SUPPLEMENTARY INFORMATION: Historically, the area was never known as Hopewell Village. During the period of furnace operations (1771–1883), the industrial complex was referred to on maps and by merchants dealing with the furnace as "Hopewell Furnace" or "Hopewell". Therefore, the redesignation of Hopewell Village National Historic Site to Hopewell Furnace National Historic Site will describe the significance of the site more effectively.

Dated: December 9, 1985.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region

[FR Doc. 85–30308 Filed 12–20–85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–6 (Sub-274)]

Burlington Northern Railroad Co., Abandonment in Adair and Cass Counties, IA; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its 25.86-mile rail line between Greenfield (milepost 21.15) and Cumberland (milepost 47.01) and Adair and Cass Counties, IA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has

offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85–30224 Filed 12–20–85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Notice of Hearing

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given of a public hearing of the National Commission for Employment Policy in the auditorium of the Murry Bergtraum High School for Business Careers, 411 Pearl Street, New York, New York.

DATE: Thursday, January 9, 1986, 9:00 a.m. to 12:00 p.m.

STATUS: This hearing is open to the public.

MATTERS TO BE DISCUSSED: Commission members will hear testimony from various local government, business, education and community witnesses regarding basic skills remediation and dropout prevention for New York City youth. Witnesses will testify on the importance of basic academic skills to young people's success in the job market.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy ReMine Trego, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy is authorized by the Job Training Partnership Act (Pub. L. 97–300). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. No public testimony will be authorized except by those asked to do so prior to the hearing date. However, written testimony for the record will be accepted at the Commission offices through January 17, 1986.

Copies of the testimony and materials prepared for the hearing will be available for public inspection at the Commission's offices, 1522 K St. NW, Suite 300, Washington, DC 20005.

Signed this 16th day of December 1985.

Carol J. Romero,

Acting Director.

[FR Doc. 85–30189 Filed 12–20–85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

Artists in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Artists in Education Advisory Panel (Artists Residency Grants) to the National Council on the Arts will be held on January 8 and 9 from 8:30 a.m.—8:00 p.m. and on January 10, from 9:00 a.m.–5:00 p.m. in room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic for discussion will be Artist Residency Grant applications and policy issues.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: December 13, 1985.

John H. Clark,

Director Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–30209 Filed 12–20–85; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening Section) to the National Council on the Arts will be held on January 6–8, 1986, from 9:00 a.m.–6:00 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: December 13, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–30210 Filed 12–20–85; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater Overview Section) to the National Council on the Arts will be held on January 7–9, 1986 from 9:00 a.m.–5:30 p.m. in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW. Washington, DC.

A portion of this meeting will be open to the public on January 7, from 10:30 a.m.–5:30 p.m. and on January 8 and 9 from 9:00 a.m.–5:30 p.m. to discuss guidelines, the Five-Year Plan and other policy issues.

The remaining sessions of this meeting on January 7, from 9:00 a.m.–10:30 a.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of

BEST COPY AVAILABLE

February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constitutencies, National Endowment for the Arts, 1100 Pennsylvania, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further infomration with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Dated: December 13, 1985.

John H. Clark,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–30211 Filed 12–20–85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Astronomical Sciences; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences.

Date and time: January 7, 1986 9AM–5PM.

Place: Nile Room, Shamrock Hilton Hotel, Houston, Texas.

Type of meeting: Open.

Contact person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 202/357–9488.

Summary minutes: May be obtained from the contact person at the above address.

Purpose of committee: In the light of recent technological advances and large telescopes being planned in the U.S. and elsewhere, the subcommittee is asked to examine the scientific rationale and current plans and to advise on appropriate future directions for the Foundation's support of technology development and planning for a large optical/infrared telescope for the remainder of the decade.

Agenda: 9 AM–5 PM—Discussion of draft report.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1985.

[FR Doc. 85–30278 Filed 12–20–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Population Biology and Physiological Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation Announces the following meeting:

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date and time January 16 & 17, 1986–8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of meeting: Part Open. Open 01/17/86, 11:00 a.m. to 12:00 noon. Closed 01/16/86, 8:30 a.m. to 5:00 p.m. and 01/17/86, 8:30 a.m. to 11:00 a.m. and 12:00 noon to 5:00 p.m.

Contact person: Dr. James P. Collins, Program Director, Population Biology and Physiological Ecology (202) 357–9728, Room 1140, National Science Foundation, Washington, DC 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in populaiton biology and physiological ecology.

Agenda: Closed; To reveiw and evaluate research proposals and projects as part of the selection process of awards. Open: 01/17/86, 11:00 a.m. to 12:00 noon. Discussion to include long-range planning in population biology and physiological ecology.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authoirty to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1985.

[FR Doc. 85–30280 Filed 12–20–85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Systematic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and time: January 13 & 14, 1986—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1242B, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of meeting: Part Open. Open 01/14/86, 2:00 p.m. to 3:00 p.m. Closed 01/13/86, 8:30 a.m. to 5:00 p.m. and 01/14/86, 8:30 a.m. to 11:00 a.m. and 12:00 noon to 5:00 p.m.

Contact person: Dr. James E. Rodman, Program Director, Systematic Biology. (202) 357–9588, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Closed: To review and evaluate research proposals and projects as part of the selection process of awards. Open: 01/14/86, 2:00 p.m. to 3:00 p.m. Discussion to include long-range planning in systematic biology.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1985.

[FR Doc. 85–30281 Filed 12–20–85; 8:45 am]

BILLING CODE 7555-01-M

Materials Research Advisory Committee; Closed Meetings

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Materials Research Advisory Committee

Place: Rooms 540, 523, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Date: Monday, January 13, 1986 and Tuesday, January 14, 1986

Time: 9:00 a.m.–5:00 p.m., each day

Type of meeting: Closed

Contact person: Dr. Lewis H. Nosanow, Director, Division of Materials Research, Room 408, National Science Foundation, Washington, DC, 20550, Telephone: (202) 357–9701

Summary minutes: May be obtained from the Contact Person, Dr. Lewis H. Nosanow, at the above stated address.

Purpose of subcommittee: To provide advice and recommendations concerning support of materials research.

Agenda Closed

Monday, January 13, 1986—9:00 to 5:00 p.m.

9:00 a.m.—Introduction and explanation of work plan for meeting, including peer review and grant award details—Lewis H. Nosanow.

9:30 a.m.—Staff Briefing on Programs and related proposals and reviews.

- Overview, Condensed Matter Sciences Section—Donald U. Gubser
- Solid State Physics—Jack E. Crow
- Solid State Chemistry—Fred E. Stafford
- Low Temperature Physics—Donald H. Liebenberg
- Condensed Matter Theory—Joseph W. Serene

12:00 noon—Working Lunch, Organization of Subcommittee work.

1:00 p.m.—Subcommittee Meetings. Separate meetings to discuss details of individual programs and related grants, a review of the peer review process as applied to actions, and a review of supporting documentation.

5:00 p.m.—Adjourn.

Closed

Tuesday, January 14, 1986—9:00 a.m. to 5:00 p.m.

9:00 a.m.—Administrative matters.

9:15 a.m.—Subcommittee Meetings—Continue Separate meetings to discuss programs and practices on section-wide basis.

12:00 noon—Working Lunch.

1:00 p.m.—Meetings with Division Director, Separate meetings of Subcommittees with Division Director to discuss findings.

2:00 p.m.—Report preparation.

5:00 p.m.—Adjourn.

Reasons for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10 (d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

December 18, 1985.

[FR Doc. 85–30279 Filed 12–20–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Co. and the Cleveland Electric Illuminating Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the withdrawal of an application dated November 5, 1984, filed by Toledo Edison Company (the licensee). The application requested amendment to Facility Operating License No. NPF–3 for operation of the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio. The proposed amendment would have deleted the low pressure switch interlocks in the main steam lines to the Auxiliary Feedwater Pump inlets. The Commission issued a Notice of Consideration of Issuance of Amendment in the **Federal Register** on March 27, 1985 (50 FR 12165). By letter dated October 25, 1985, the licensee withdrew the application for the proposed amendment. The Commission has considered the licensee's October 25, 1985, letter and has determined that permission to withdraw the November 5, 1984, application for amendment should be granted.

For further details with respect to this action, see (1) the application for amendment dated November 5, 1984, (2) the licensee's letter dated October 25, 1985, withdrawing the application for license amendment, and (3) our letter to Toledo Edison Company dated December 2, 1985.

All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Bethesda, Maryland, this 2nd day of December 1985.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, PWR Project Directorate No. 6, Division of PWR Licensing-B.

[FR Doc. 85–30287 Filed 12–20–85; 8:45 am]

BILLING CODE 7590-01-M

[CLI–85–18; Docket No. LRP]

Inquiry Into Three Mile Island, Unit 2 Leak Rate Data Falsification; Order and Notice of Hearing

Commissioners: Nunzio J. Palladino, Chairman, Thomas M. Roberts, James K. Asselstine, Frederick M. Bernthal, Lando W. Zech, Jr.

In an Order issued February 25, 1985, CLI–85–2, 21 NRC 282, the Commission stated that it would institute a separate hearing apart from the Three Mile Island, Unit 1 restart proceeding to develop the facts surrounding the reactor coolant system ("RCS") leak rate data falsifications at Three Mile Island, Unit 2 (TMI–2) prior to the March 28, 1979 accident, in sufficient detail to determine the ultimate status of those likely involved, which includes those segregated from TMI–1 and those now working at other facilities. The Commission herein specifies the procedures to govern the separate hearing, which will be a legislative format hearing designed solely to gather information. This order also identifies the steps to be taken, after the Presiding Board issues a recommended decision setting forth the facts, in order for the Commission to determine what action, if any, will be taken.

A. Background

Harold Hartman, a control room operator at TMI–2 prior to the accident, alleged that RCS leak rate surveillance tests, which were used to assess whether primary system leakage surpassed limits contained in the facility's technical specifications, were at times purposely manipulated and records of unacceptable results were discarded at TMI–2 prior to the accident to cover up the fact that over an extended period of time the results of the tests exceeded technical specification limits for unidentified leakage. Hartman alleged that the computer program for calculating leak rates was unreliable, frequently yielding unrealistic results. This made it more difficult to get "good" leak rates. Hartman further alleged that the operators at TMI–2 sometimes manipulated the RCS leak rate test results by inputting wrong data into the computer, adding hydrogen gas to the make-up tank during leak rate tests, adding water to the make-up tank during a leak rate test and not inputting the addition into a computer, and leaking water into the make-up tank while performing water transfer operations involving other tanks. Hartman specifically alleged that shift supervision was aware of such improper conduct. After a preliminary investigation into Hartman's allegations, the NRC in April of 1980 referred the matter to the Department of Justice for criminal investigation.

After a Grand Jury investigation and indictment of Metroplitan Edison Company, the TMI–2 licensee at the time of the accident, the Department of Justice began prosecution of the criminal charges against Metropolitan Edison Company.

On February 29, 1984, Metropolitan Edison Company entered into a plea agreement with the United States which ended the criminal prosection. Metropolitan Edison pleaded guilty to one count of the indictment charging it with failure to establish, implement, and maintain an accurate and meaningful reactor coolant system water inventory balance procedure to demonstrate that unidentified leakage was within the

allowable limits. The company also pleaded no contest to six other counts of the indictment, including those which charged the Company with improper manipulation of TMI–2 leak rate test to generate results that would fulfill the Company's license requirements. In urging the Court to accept the plea agreement, U.S. Attorney David Queen stated the evidence developed in the Grand Jury inquiry did not indicate that any of the directors and officers of GPU Nuclear from its inception in 1982 (as successor to Metropolitan Edison) to the date of the indictment, or any of the directors of Metropolitan Edision "participated in, directed, condoned, or was aware of the acts or admissions that are the subject of the indictment." [1]

After the Court accepted the plea agreement, the Department of Justice on behalf of the Commission asked the Court to provide the NRC access to the record of the Grand Jury proceeding. The Court denied the request. *United States* v. *Metropolitan Edison Company*, 594 F. Supp. 117 (M.D. Pa) (1984).

The Commission also asked its Office of Investigations ("OI") to examine whether Michael Ross, Manager of Operations at TMI–1, had participated in, directed or condoned leak rate falsifications at TMI–2. Prior to the accident Ross was licensed at both TMI–1 and TMI–2. OI interviewed Ross and many others under oath regarding Ross' involvement at Unit–2, reviewed pertinent records and concluded that Ross' role at TMI–2 was minimal, that during the period falsifications took place he was present at TMI–2 only the minimum time necessary to maintain his TMI–2 license, and that he was not involved in the falsifications.

B. Purpose and Scope of Hearing

1. The purpose of this hearing is to develop the fact surrounding the leak rate falsifications that occurred at TMI–2 from February 2, 1978 (the date TMI–2 received its operating license) until March 28, 1979, in sufficient detail to determine the involvement of any individual who may now work, or in the future work, at a nuclear facility licensed by the Commission.

2. The specific issues which the Presiding Board is to address and limited to the following:

(a) How were the Technical Specification 3.4.6.2 requirements for reactor coolant system unidentified leakage interpreted and implemented by control room operators (CROs), shift foremen, shift supervisors and on-site and of-site management? Following the discovery by an NRC inspector in October 1978 that Technical Specification 3.4.6.2 requirements were not properly interpreted or implemented, what corrective action was taken by management personnel? Was the corrective action taken sufficient to insure compliance with the Technical Specification 3.4.6.2 by the personnel performing and reviewing the leak rate surveillance tests?

(b) What difficulties, if any, were operators experiencing when conducting leak rate surveillance tests required by Technical Specification 4.4.6.2.d? Who knew about these difficulties? What corrective actions were taken? Did operators feel pressure to obtain leak rate surveillance tests results which did not exceed technical specification limits? If so, what type of pressure was perceived or exerted and who was responsible?

(c) Were unacceptable leak rate surveillance test results required by technical Specification 4.4.6.2.d discarded? If so, who knew of, condoned or directed this practice? Were unacceptable leak rate surveillance test results discarded in an attempt to hide them from the NRC?

(d) Did operators manipulate data or take other actions during leak rate surveillance testing in an attempt to improperly influence test results? Who performed, condoned, dircted or was knowledgeable of data manipulation or other improper actions during leak rate surveillance testing? This would include, but is not limited to the following:

(i) Inputting the wrong data into the plant computer;

(ii) Adding hydrogen gas to the make-up tank during the test in an attempt to influence make-up tank level indication;

(iii) Adding water to the make-up tank during the test and either not including the addition in the computer calculation or underrecording the addition in the computer;

(iv) Taking advantage of differences or inaccuracies in plant instrumentation (*e.g.*, make-up tank level indicators) in an attempt to influence parameters critical to the leak rate surveillance test calculation;

(v) Taking or failing to take any action in violation of technical specification requirements?

(e) The Commission has accepted the findings of the U.S. Attorney that the 24 individuals mentioned in footnote 1, *supra*, were not involved in the leak rate falsifications. It has also accepted the OI finding that Michael Ross similarly was not involved. Accordingly, the Commission has decided that these individuals are outside of the scope of the hearing.[2] Therefore, the Presiding Board shall not address any issue regarding any alleged knowledge or involvement of these individuals in the falsifications that occurred at the TMI–2 reactor from February 2, 1978 until March 28, 1979.

(f) The Presiding Board is not to entertain issues other than those set forth in (a)–(d) above without the prior authorization of the Commission.

C. Procedures

1. The Chief Administrative Judge, Atomic Safety and Licensing Board Panel, is to appoint a three-person Presiding Board to rule on petitions to intervene, to conduct any prehearing procedures and the hearing, and to render a recommended decision setting forth the facts surrounding the falsifications and identifying those individuals who participated in, or knew of and condoned, or by their dereliction or culpable neglect allowed the leak rate falsifications at TMI–2.

2. Any person who has an interest which may be affected by this hearing may petition to intervene. Petitions to intervene shall include the name of the party, how the party's interest may be affected by the proceeding, and how the party expects to contribute to the development of an adequate record. Petitions are to be filed within 45 days of the date of this Order and Notice of Hearing. Petitions shall be granted if the Presiding Board determines that the petitioner has an interest that may be affected and petitioner will likely contribute to development of an adequate record.

3. The hearing will be held in the Washington, D.C. area, although the Presiding Board may hold portions of the hearing in other places consistent with the convenience of the parties or their representatives and the public interest.

4. The NRC staff will not participate as a party. Instead, it will make available to the parties and to the

[1] The individuals thereby cleared by the U.S. Attorney are William G. Kuhns, Herman M. Dieckamp, Robert C Arnold, James S. Bartman, Shepard Bartnoff, Frederick D. Hafer, Richard Heward, Henry D. Hukill, Edwin E. Kintner, James R. Leva, Bernard H. Cherry, Philip R. Clark, Verner H. Condon, Walter M. Crietz, Robert Fasulo, Ivan R. Finfrock, William L. Gifford, Robert L. Long, Frank Manganaro, Ernest M. Schleicher, Floyd J. Smith, William, A. Verrochi, Raymond Werts, and Richard P. Wilson

[2] If the Presiding Board believes that any of these individuals have pertinent information to provide on issues falling within the scope of the hearing, it may call them as witnesses at mutually convenient times or, if necessary, issue a subpoena requiring their attendance and testimony. The Board is not to make unreasonable demands on the time of these individuals or upon other persons playing key roles in the operation of any nuclear facility.

Presiding Board, relevant documentary material within its possession as soon as practicable after issuance of this Order and Notice of Hearing. Disclosure of material is to be consistent with the Commission's Statement of Policy, "Investigations, Inspections, and Adjudicatory Proceedings," 49 FR 36032 (September 13, 1984). The NRC staff will also provide whatever testimony or other assistance the Presiding Board requests to ensure that the hearing record is fully developed. All orders, petitions, submissions to the Presiding Board and other pertinent material shall be served on the NRC staff.

5. This hearing will not be conducted under 10 CFR Part 2, Subpart G, except that, in addition to the powers granted by this Order and Notice of Hearing, the Presiding Board shall have the powers specified in 10 CFR 2.718 (a), (e), (f), (h), (i), (j) and (k). The hearing will be conducted using a legislative hearing format, as specified below.

(a) Only relevant, material, and reliable oral and documentary evidence which is not repetitious should be admitted into evidence. Only the Presiding Board will be able to call witnesses or to question them. Witnesses will testify under oath.

(b) No discovery will be conducted. Instead, it is the Commission's intent that the hearing itself serve as the fact-finding mechanism.

(c) The presiding Board may issue subpoenas if necessary to compel attendance of witnesses. The Presiding Board will make available to the parties lists of the individuals that it intends to call as witnesses. Parties will be invited by the Presiding Board to submit recommendations regarding whether additional individuals should be called to testify.

(d) Before each witness testifies, the Presiding Board will invite the parties to submit questions in writing to the Presiding Board which they believe should be posed to the witness. The Presiding Board has the discretion to use the questions suggested by the parties.

(e) After the hearing has been completed, the Presiding Board is to invite the parties to file proposed findings of fact and conclusions of law.

(f) The Presiding Board is to issue a recommended decision which sets forth its findings on who participated in, had knowledge of and condoned, or by their dereliction or culpable neglect allowed the leak rate falsifications, and the facts surrounding any such involvement in sufficient detail to determine the involvement of any individual who may now work, or in the future work, at a nuclear facility. The Board's decision shall address each of the issues set out in Part B of this Order. The Presiding Board is not to make recommendations regarding whether any actions should be taken.

(g) The Presiding Board's recommended decision will not be subject to review by an Atomic Safety and Licensing Appeal Board.

(h) The Presiding Board is not to deviate from the procedures set forth above without prior authorization from the Commission. If the Presiding Board should determine that these procedures will not lead to the development of an adequate hearing record, and that other procedures, such as discovery or cross-examination, are necessary for the development of an adequate hearing record, the Presiding Board is to request authorization from the Commission to use more formal procedures. The Presiding Board in its request to the Commission is to specify in detail those issues which cannot be fully developed under the procedures in the Order and Notice of Hearing, what procedures it desires to use, and how use of those additional procedures will result in the development of the needed information.

On the basis of the Presiding Board's recommended decision and taking into account any other information which it believes is appropriate for Commission consideration, the NRC staff shall make recommendations to the Commission regarding what action, if any, should be taken. The NRC staff is to provide its recommendations to the Commission within sixty days after issuance of the Presiding Board's decision. Those recommendations are to include whether the Commission should remove the condition imposed in the TMI–1 restart proceeding barring certain individuals from certain positions at TMI–1.

After reviewing the Board's recommended decision and the NRC staff's recommendations, the Commission will decide what further steps, if any, need to be taken with regard to involved individuals. This will include consideration of whether to remove TMI–1 employment constraints and whether to initiate formal enforement action or take any licensing action with regard to involved individuals. If as a result of its review the Commission institutes a formal enforcement proceeding [3] or takes any licensing action, the facts found by the Presiding Board and Commission in the hearing ordered here will not be binding in the subsequent enforcement or licensing proceeding.

It is so ordered.

Commissioners Asselstine and Bernthal disapproved this Order and provided separate views.

Dated at Washington, D.C., this 16th day of December 1985.

For the Commission.[4]

Samuel J. Chilk,

Secretary of the Commission.

Separate Views of Commissioner Asselstine

I cannot agree with the hearing procedures established by the Commission in this order.

First, the Commission should simply hold an adjudicatory hearing on this issue rather than setting up some sort of ersatz legislative proceeding. Since the Commission will not do that, however, they should at least have modified some of the more unreasonable provisions. At a minimum any party to the TMI–1 Restart proceeding who wishes to participate in this proceeding should be automatically admitted as a party without having to establish standing. Further, holding the "hearing" in the Washington, D.C. area seems to needlessly make participation in this proceeding more difficult than it should be.

Second, the Commission should not exclude consideration of the involvement of all upper-level GPUN management. I explained in more detail my reasons for believing that the scope of this hearing should not be limited in my dissenting views on CLI 85–2 so I will not repeat them here. Suffice it to say that in my view relying solely on the statement of the U.S. Attorney at a court hearing on a bargained plea agreement is not a valid jusification for ignoring management responsibility for the leak rate falsifications.

Separate Views of Commissioner Bernthal

I dissented from the path the majority chose in respect to the number and scope of additional hearings in relation to the Commission's restart of TMI–1. I continue to believe that the overriding consideration in the denouement of the TMI–1 restart proceeding is public confidence—the need for the public to be provided, to the extent reasonably possible, with all the facts relevant to the TMI accident and its aftermath.

I consider this hearing as ordered by the Commission unlikely to prove adequate for that important purpose.

[FR Doc. 85–30284 Filed 12–20–85; 8:45 am]

BILLING CODE 7590–01–M

[3] Because the leak rate falsification events to be addressed in this Board hearing are more than five years old, the five-year statute of limitations set forth in 28 U.S.C. 2462 may bar the NRC from subsequently instituting an enforcement proceeding for involvement in the events that are the subject of this hearing. However, the information developed in the hearing may be used for other purposes, for example, in evaluating whether an individual's operator license should be renewed.

[4] Commissioner Bernthal was absent when this order was affirmed. He had previously disapproved the Order and had he been present he would have affirmed his prior vote.

[Docket No. 50-276]

Environmental Assessment and Finding of no Significant Environmental Impact Regarding Proposed Order Relating to Termination of Facility Operating License No. R-111; Georgia Institute of Technology

The Nuclear Regulatory Commission (the Commission) is considering issuance of an Order authorizing disposition of all reactor components and terminating Facility Operating License No. R-111 for the AGN-201 reactor facility on the Campus of Georgia Institute of Technology in Atlanta, Georgia. A single Order is considered appropriate because removing all fuel from this type of reactor leaves an intact, portable, non-radioactive entity.

The Order would authorize disposal of the reactor components and terminate the Operating License in accordance with the licensee's application dated September 26, 1984, as supplemented. Opportunity for hearing was afforded by the Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License published in the **Federal Register** on November 21 1984 at 49 FR 45939. No request for a hearing or petition to intervene was filed following notice of the proposed action.

Environmental Assessment

Identification of Proposed Action

The Order would authorize disposition of all non-fueled reactor components and terminate Facility Operating License No. R-111, issued for the AGN reactor at the Georgia Institute of Technology in Atlanta, Georgia.

Need for the Proposed Action

Pursuant to 10 CFR 50.82, the licensee has requested that the Commission terminate the Operating License. The final radiological inspection has been completed, showing that all relevant regulatory requirements have been satisfied. Therefore, there is no longer any need for the Operating License to remain in effect.

Environmental Impacts of Proposed Action

The fuel has been removed form the reactor and authorization to retain it has been transferred to another Facility Operating License, and residual contamination is within acceptable levels. Also, the remainging components are essentially portable, so removing them will cause no distrubance of buildings and grounds. Therefore, termination of the license is the next appropriate administrative action. This action will have no environmental impact.

Alternative Use of Resources

The proposed action does not involve any unresolved conflicts concerning alternatives uses of available resources.

Agencies and Persons Consulted

The NRC staff reviewed and approved the licensee's decommissioning plan and conducted the final inspection of the site. No other agencies or persons were consulted.

Finding of no Significant Impact

On the basis of the Environmental Assessment, the Commission has concluded that termination of the license will have no significant environmental impact. The Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

For further details with respect to this action see the licensee's request for authorization to dismantle and for termination of the Facility Operating License dated September 26, 1984, and the Commission's Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts and terminating Facility License dated November 21, 1984, (49 FR 45939), which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Dated at Bethesda, Maryland, this 17th day of December 1985.

For the Nuclear Regulatory Commission.

Dominic Tondi,

Acting Director Standardization and Special Projects Directorate, Division of PWR Licensing-B.

[FR Doc. 85-30286 Filed 12-20-85; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, CE 304-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Standard Format and Content of Decommissioning Plans for 10 CFR Parts 30, 40, and 70 Licensees" and is intended for Division 3, "Fuels and Materials Facilities." It is being developed to identify the information needed by the NRC staff for evaluating decommissioning plans. The guide also provides a format for submitting this information.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Comments will be most helpful if received by February 17, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washinton, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission

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(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 16th day of December 1985.

For the Nuclear Regulatory Commission.

Guy A. Arlotto,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 85-30285 Filed 12-20-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas & Electric Corp.; R.E. Ginna Nuclear Power Plant, Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 12 to Facility Operating License No. DPR-18 issued to Rochester Gas and Electric Corporation (the licensee) which revised the Technical Specifications for operation of the R.E. Ginna Nuclear Power Plant (the facility), located in Wayne County, New York. The amendment was effective as of the date of its issuance.

The amendment revised the Technical Specifications to authorize storage of consolidated spent fuel in the spent fuel pool and to authorize use of the auxiliary building crane to move consolidated fuel canisters.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on November 13, 1985. No request for a hearing or petition for leave to intervene was filed following this notice.

An "Environmental Assessement and Finding of No Significant Impact" was Published in the **Federal Register** on December 16, 1985 (50 FR 51317) in connection with this action.

For further details with respect to this action see (1) the application for amendment dated February 27, 1985 as supplemented on June 10, June 26, and July 11, 1985, (2) Amendment No. 12 to Facility Operating License No. DPR-18, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of PWR Licensing-A, NRR.

Dated at Bethesda, Maryland, this 16th day of December 1985.

For the Nuclear Regulatory Commission.

George E. Lear,

Director, Project Directorate #1, Division of PWR Licensing.

[FR Doc. 85-30286 Filed 12-20-85; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A86-3; Order No. 644]

Chatham, Mississippi 38731 (Mrs. Callie Mosley et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Issued November 13, 1985.

Docket number: A86-3

Name of affected post office: Chatham, Mississippi 38731

Name(s) of petitioner(s): Mrs. Callie Mosley; George W. Stone, Sr.

Type of determination: Closing

Date of filing of first appeal papers: November 6, 1985

Categories of issues apparently raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(A)].
2. Effect on the community [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before November 21, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Appendix—Docket No. A86-3, Chatham, Mississippi 38731

November 6, 1985: Filing of Petition
November 13, 1985: Notice and Order of Filing of Appeal
December 2, 1985: Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].
December 12, 1985: Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
January 2, 1986: Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
January 17, 1986: (1) Petitioners' Reply Brief should Petitioners choose to file one [*see* 39 CFR 3001.115(d)].
January 24, 1986: (2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
March 6, 1986: Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85-30212 Filed 12-20-85; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14854]

Application and Opportunity for Hearing; Hartford Variable Annuity Life Insurance Company—Variable Account "B"

December 16, 1985.

Notice is hereby given that Hartford Variable Annuity Life Insurance Company—Variable Account "B" ("Applicant"), Hartford Plaza, Hartford, Connecticut 06115, an insurance company separate account registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on July 22, 1985, and an amendment thereto on November 7, 1985, pursuant to section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and referred to the

Act and the rules thereunder for the applicable provisions.

On April 24, 1981, Applicant filed a notification of registration on Form N–8A and a registration statement on Form S–6. The registration statement was declared effective May 7, 1984.

Hartford Variable Annuity Life Insurance Company ("HVA") wons 100% of the outstanding units of interest of the Applicant. There had been approximately 15 contractholders whose premium payments had totaled approximately $225,000. These separate account assets were fully invested in Depository Accounts. In late 1984, HVA management decided to discontinue sale of the contracts and to terminate all existing contracts. Accordingly, contractholders were offered the option of either surrendering out their contracts or transferring their funds (original purchase payment plus interest on such amount) to Variable Account "A", another HVA unit investment trust. During the period from February through March 1985, approximately half of the contractholders surrendered their contracts for full refund, while the other half transferred to Variable Account "A." Liquidations for purposes of repayment to contractholders or transfer to Variable Account "A" were made at the then current unit value from the assets of the Applicant. No sales or brokerage commission were paid.

Applicant states that its assets consist of investments in Depository Accounts maintained at national banking institutions, and at September 30, amounted to $149,582, and that these assets have been retained by the Applicant in order to earn interest income. Liabilities represent mortality expenses which will be paid upon liquidation. As of September 30, 1985, these amounted to $1,455, due to HVA. Applicant states that upon liquidation, it will settle any existing liabilities and distribute to HVA the full liquidation value of its holdings at the unit value then computed.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 13, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20459. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–30290 Filed 12–20–85; 8:45 am]

[illegible]

[Release No. IC–14848; 811–3192]

Application and Opportunity for Hearing; IDS Life Capital Resource Fund I, Inc.

December 13, 1985.

Notice is hereby given the IDS Life Capital Resource Fund I, Inc. ("Applicant"), 1000 Roanoke Building, Minneapolis, Minnesota 55474, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 31, 1985, for an order of the Commission pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All intersted persons are referred to the appication on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the applicable provisions.

On May 29, 1981, Applicant filed a notification of registration on Form N–8A and a registration statement on Form N–1. The registration statement was declared effective on November 10, 1981. Applicant states that it is the investment vehicle for Accounts C, D, and E, separate accounts of the IDS Life Insurance Company registered as unit investment trust under the Act, and for Accounts 1, 2, and 3, separate accounts of IDS Life Insurance Company of New York, which are also so registered.

Applicant states that the initial public offering commenced on October 13, 1981, and Applicant's separate existence as a corporation terminated on August 30, 1985, upon the filing of the Agreement of Merger in the state of incorporation, Nevada. Applicant further states that it has not transferred any of its assets to a separate trust within the last 18 months. Applicant represents that no distributions were made to securityholders and Applicant has not retained any assets.

Applicant maintains that no debts or other liabilities remain outstanding and that is not a party to any litigation or administrative proceedings. Applicant further represents that it has no securityholders and is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

The application states that as of August 30, 1985, it had 2,048,776 shares of common stock outstanding with a net value per share of $14,487. Applicant submits that all expenses of the merger were borne by IDS Life Insurance Company, that all securityholders' interests have been transferred into the Surviving Corporation, IDS Life Capital Resource Fund, Inc., ("Surviving Corporation") and that all portfolio securities and any other assets of the Applicant were transferred into the Surviving Corporation. Applicant further states that: (1) Its Board of Dirctors, including a majority of the directors who are not interested persons of either the Applicant or IDS Life Capital Resource Fund II, Inc. recommended the merger of the two funds on May 9, 1985; (2) on July 10, 1985, shareholders voted, on the instuctions of the contractowners, to approve the merger between Applicant and IDS Life Capital Resource Fund II, Inc. The affirmative vote represented at least a majority of the issued and outstanding capital stock of Applicant, and that thereby the Agreement of Merger was duly adopted; and (3) proxy material was distributed to contractowners and filed with the Commission regarding the proposed merger.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 8, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30291, Filed 12-20-85 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14849; 811-3191]

Application and Opportunity for Hearing; IDS Life Special Income Fund I, Inc.

December 13, 1985.

Notice is hereby given that IDS Life Special Income Fund I, Inc. ("Applicant"), 1000 Roanoke Building, Minneapolis, Minnesota 55474, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on October 31, 1985, for an order of the Commission pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and the rules thereunder for the applicable provisions.

On May 29, 1981, Applicant filed a notification of registration on Form N-8A and a registration statement on Form N-1. The registration statement was declared effective on November 10, 1981. Applicant states that it is the investment vehicle for Accounts C, D, and E, separate accounts of the IDS Life Insurance Company registered as unit investment trusts under the Act, for Accounts 1, 2, and 3, separate accounts of IDS Life Insurance Company of New York, which are also so registered.

Applicant states that the initial public offering commenced on October 13, 1981, and Applicant's separate existence as a corporation terminated on August 30, 1985, upon the filing of the Agreement of Merger in the state of incorporation, Nevada. Applicant further states that it has not transferred any of its assets to a separate trust within the last 18 months. Applicant represents that no distributions were made to securityholders and Applicant has not retained any assets.

Applicant maintains that no debts or other liabilities remain outstanding and that it is not a party to any litigation or administrative proceedings. Applicant further represents that it has no securityholders and is not now engaged, nor does it propose to engage in any business activities other than those necessary for the winding-up of its affairs.

The application states that as of August 30, 1985, it had 3,403,916 shares of common stock outstanding with a net asset value per share of $11,278. Applicant submits that all expenses of the merger were borne by IDS Life Insurance Company, that all securityholders' interests have been transferred into the Surviving Corporation, IDS Life Special Income Fund, Inc. ("Surviving Corporation"), and that all portfolio securities and any other assets of the Applicant were transferred into the Surviving Corporation. Applicant further states that: (1) Its Board of Directors, including a majority of the directors who are not interested persons of either the Applicant or IDS Life Special Income Fund II, Inc. recommended the merger of the two funds on May 9, 1985; (2) on July 10, 1985, shareholders voted, on the instructions of the contractowners, to approve the merger between Applicant and IDS Life Special Income Fund II, Inc. The affirmative vote represented at least a majority of the issued and outstanding capital stock of Applicant, and that thereby the Agreement of Merger was duly adopted; and (3) proxy material was distributed to contractowners and filed with the Commission regarding the proposed merger.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 8, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30292 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14852; (File No. 811-3892)]

Institutional Telephone Trust, First Exchange Series (A Unit Investment Trust); Application for an Order Declaring that Applicant Has ceased to be an Investment Company

December 16, 1985.

Notice is hereby given that International Telephone Trust, First Exchange Series (A Unit Investment Trust) ("Trust"), c/o Bank of New England, N.A., Corporate Agency Office, One Washington Mall, Boston, MA 02109, registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on November 12, 1985, pursuant to Section 8(f) of the Act, and Rule 8f-1 thereunder, for an order declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Trust is organized as a common law trust in accordance with the laws of the Commonwealth of Massachusetts, pursuant to a trust agreement, dated as of November 28, 1983 ("Trust Agreement"), between SEI Financial Services Company ("SEI") as sponsor and depositor, and Bank of New England, N.A., as trustee, dividend agent, and redemption agent. On October 28, 1983, Trust filed with the Commission a Notification of Registration on Form N-8A, and a Registration Statement on Form N-8b-2 under the Act. On October 31, 1983, Trust filed a Registration Statement on Form S-6 under the Securities Act of 1933 ("Securities Act"), and on November 28, 1983, Trust filed Amendment No. 1 to its Form S-6 Registration Statement, which was declared effective on that date. The Registration Statement covered an indefinite number of units of beneficial interest in the Trust, and the initial public offering of the Trust's units commenced on November 28, 1983, continuing until December 31, 1983.

It is further stated that the Trust's units were offered to holders of American Telephone & Telegraph Company ("AT&T") common stock in exchange for their AT&T shares, during an exchange period running from November 28, 1983, to December 31, 1983. The exchange ratio was one unit of the Trust for each share of AT&T tendered and during the exchange

period, 1,132,012 units were issued in exchange for a like number of AT&T shares of common stock. The AT&T shares received were placed in the custody of Bank of New England, N.A.

The Trust Agreement provided that the Trust's units could be redeemed in kind, in which case the uniholder would receive the number of whole shares of AT&T represented by the redeemed units. Pursuant to the Trust Agreement, SEI, as sponsor, directed Bank of New England, as trustee, to terminate the Trust as of September 6, 1985, as the value of the underlying securities (as defined in the Trust Agreement) at August 21, 1985 ($8,276,295) was less than 40% of the aggregate value of the underlying securities deposited in the Trust during the exchange period ($74,712,792). Accordingly, the balance, excluding 1,883 shares which were liquidated on the New York Stock Exchange, of the underlying securities were thereupon distributed in kind to the holders of the Trust's 46,435 units as of September 6, 1985.

The assets of the Trust presently consist of dividends receivable in the amount of $31,866, which are being retained by Applicant as a reserve for winding-up expenses; such assets will not be invested in any securities, it is stated. It is stated further that, other than winding-up expenses in an amount not exceeding $27,473, the Trust has no debts or other liabilities which remain outstanding. The Trust is not a party to any litigation or administrative proceeding, it has no securityholders, and it is not engaged nor does it propose to engage in any business activity other than that necessary to the winding-up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30293 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14853; (File No. 812-6217)]

Mortgage Bankers Financial Corporation II; Application For an Order

December 16, 1985.

Notice is hereby given that Mortgage Bankers Financial Corporation II ("Applicant"), 1718 Connecticut Avenue, NW., Washington, DC 20009, a Delaware corporation, filed an application on October 2, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act to enable it to issue bonds secured by certain mortgage-related collateral. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the relevant statutory provisions.

Applicant was organized under Delaware law on September 23, 1985, as a wholly-owned, limited purpose finance subsidiary of Mortgage Bankers Financial Corporation, a Delaware corporation engaged in the mortgage finance business. Applicant will operate as a financing entity providing a source of funds to home builders, mortgage bankers, thrift institutions, commercial banks, insurance companies and other entities engaged in real estate and mortgage finance.

Specifically, Applicant will be engaged in the issuance of bonds, or other evidences of indebtedness ("Bonds") secured by certain borrowing arrangements (described below, and hereinafter referred to as "Funding Agreements"), and by certain securities derived from residential mortgages (described below, and hereinafter referred to as "Mortgage Collateral"). Applicant will lend the proceeds obtained from the issuance of Bonds to borrowers for use in connection with the funding or acquisition of Mortgage Collateral and in connection with other activities incidental to, or necessary or convenient for such purposes. Applicant will have no significant assets other than Funding Agreements and Mortgage Collateral.

The Bonds will be issued pursuant to an indenture drawn between Applicant and an independent trustee ("Trustee"), and will be registered under the Securities Act of 1933 ("Securities Act"). Bonds may consist of several classes, or may all be of a single class, and will be sold to institutional or retail investors through one or more investment banking firms. Bonds may be issued in separate series, and as required by Applicant's certificate of incorporation, any issuance of Bonds will be rated by a nationally-recognized statistical rating organization in the highest bond rating category. To the extent that Bonds are to be secured by Mortgage Collateral, Applicant will issue Bonds and apply the proceeds of sale to the direct purchase of Mortgage Collateral. To the extent that a series of Bonds is to be secured by Funding Agreements, Applicant will enter into a Funding Agreement with each borrower participating in such series, pursuant to which, upon the issuance of Bonds by Applicant, (i) Applicant will lend a proportionate share of the proceeds of the Bonds to each borrower; (ii) the borrower will pledge Mortgage Collateral to Applicant as security for its loan; (iii) the borrower will be obligated to repay the loans made to it by Applicant by causing payments on the Mortgage Collateral to be made directly to the Trustee on behalf of Applicant in such amounts as are necessary to pay a proportionate share of the principal of and interest on the Bonds as they become due; and (iv) if so provided in the Funding Agreement, the borrower will issue one or more promissory notes to evidence the borrower's obligation to repay the loan.

Mortgage Collateral will consist of (i) fully modified pass-through certificates guaranteed as to payment of principal and interest by the Government National Mortgage Association ("GNMA Certificates"), (ii) mortgage pass-through certificates issued by the Federal National Mortgage Association ("FNMA Certificates"), (iii) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), and (iv) any reserve funds, credit supports and collection accounts serving as additional collateral for the Bonds (GNMA Certificates, NFMA Certificates and FHLMC Certificates are collectively referred to hereinafter as "Mortgage Certificates"). Under the Indenture, Applicant will have a limited right to substitute new Mortgage Collateral ("Substitute Collateral") for Mortgage Collateral initially pledged as security for the Bonds. Substitute Collateral will

be required to have payment terms similar to, and in no event scheduled cash flows less than, those of the Mortgage Collateral in replaces. It will be a further condition of any such substitution that the outstanding ratings of the Bonds not be effected by such substitution. Each Mortgage Certificate may only be substituted for a like type of Mortgage Certificate. Applicant does not anticipate that substitution of Mortgage Collateral will occur frequently.

Applicant does not intend to require that Mortgage Certificates relate to "whole pools". It is asserted that any distinction between "whole pool" and "partial pool" Mortgage Certificates is irrelevant insofar as the investment is concerned. Each Mortgage Certificate evidences a fractional undivided interest in the underlying pool of mortgages, and payments with respect to such mortgages are passed through pro rata to the Mortgage Certificates by the issuer, or in the case of a default, by GNMA, FNMA, or FHLMC. A holder of Bonds collateralized by "partial pool" Mortgage Certificates has exactly the same investment experience as a holder of Bonds collateralized by "whole pool" Mortgage Certificates.

Applicant will assign to the Trustee, as security for the Bonds, its entire right, title and interest in the Funding Agreements (except its right to indemnification), the Mortgage Collateral pledged thereunder, and the Mortgage Collateral it purchases directly. Payments on Mortgage Collateral will be the primary source of funds for payments of principal and interest due on the Bonds. The scheduled available principal and interest payments on the Mortgage Collateral securing the Bonds, plus income received thereon, will be sufficient to make the interest payments on and amortize the principal of, the Bonds by their stated maturity.

It is further stated that the Bonds will provide under certain circumstances for their mandatory and discretionary redemption by Applicant. The Bonds may also provide for redemptions at the option of Bondholders, but only to the extent that payments received on the Mortgage Collateral are available for such redemptions. Under no circumstances will Bondholders be entitled to compel the liquidation of the Mortgage Collateral in order to redeem the Bonds prior to maturity.

Neither Applicant nor the Trustee will be able to impair the Bondholder's security afforded by the Mortgage Collateral. Without the consent of each Bondholder to be affected, neither Applicant nor the Trustee will be able to (1) change the stated maturity on any Bond; (2) reduce the principal amount, or the rate of interest on any Bond; (3) change the priority of repayment of any class of Bonds within a series; (4) impair or adversely affect the Mortgage Collateral securing a series of Bonds; (5) permit the creation of any lien ranking prior to or on a parity with the lien of the Indenture with respect to the Mortgage Collateral; or (6) otherwise deprive Bondholders of the security afforded by the lien of the Indenture.

With regard to Applicant's status under the Act, Applicant states that in general it will not be engaged in a business activity sufficient to bring it within the definition of investment company set forth in sections 3(a)(1) or 3(a)(3) of the Act, that the Funding Agreements and Mortgage Collateral are not among the types of investments intended to be covered by the Act, and that even if they were deemed to be such investments, the circumstances under which Applicant holds the Funding Agreements and the Mortgage Collateral do not constitute investing, reinvesting, holding, or trading in securities within the meaning of either sections 3(a)(1) or 3(a)(3) of the Act.

Applicant further assets that even if it were determined that it falls within either or both of the aforesaid Section 3(a) definitions of investment company, it should be deemed to come within the exception to those definitions afforded by section 3(c)(5)(C) of the Act. That is, Applicant believes that as a substantive matter, the Funding Agreements and Mortgage Certificates constitute liens on real estate within the meaning of section 3(c)(5)(C). Applicant further states that it will not *issue* any of the securities prescribed by section 3(c)(5)(C), and that it will be engaged in the business of facilitating the financing of mortgage loans. Although Applicant will not, under the Funding Agreements, acquire legal title to the Mortgage Collateral—which will remain the property of the borrowers—Applicant will acquire a security interest in such Mortgage Collateral to secure payment of the loans made to such borrowers pursuant to the Funding Agreements. Therefore, it is asserted, Applicant will have direct or indirect liens on and other interests in real estate.

Thus, while Applicant believes that the Funding Agreements are not securities within the purview of Section 3 of the Act, and further, that the Funding Agreements represent liens on, or interests in, real estate as contemplated by the provisions of section 3(c)(5)(C) of the Act, Applicant has filed a request for exemption pursuant to section 6(c) of the Act to eliminate any uncertainty as to its status under the Act. In support of this request for exemption, Applicant states that investors will be protected both by the terms of the Indenture establishing a Trustee qualified to protect investors' interests, and by the security afforded by Mortgage Collateral. It is stated further that Applicant will not trade or deal in securities, or engage in any activities other than those incidental to and necessary for the issuance of the Bonds. Under the Indenture, at the time a series of Bonds is issued, the principal amount and the collateral value of the Mortgage Collateral for such series will be at least equal to the principal amount of the Bonds. Each pool of Mortgage Collateral securing a series of Bonds will be fixed, except for the limited right of substitution herein described, at the time of issuance of such Bonds. The pool will not be subject to investment discretion exercisable by any participant in the proposed transaction. Accordingly, neither the proposed operations of Applicant, nor the proposed offering and sale of Bonds resemble those of a typical investment company, which has the authority to invest, reinvest and trade with investors' funds.

Applicant further states that there are important policy reasons for granting the exemptive relief it requests, in that its activities will supply capital to builders and other institutions engaged in the real estate and mortgage markets, and thereby facilitate the financing of housing, a critical national need. The development of an active, efficient secondary market for residential mortgages has long been an important objective of national housing policy. The secondary mortgage market provides capital for primary mortgage lenders by allowing mortgage lenders to sell mortgages or mortgage-backed securities.

Applicant further states that a number of large builders and thrift institutions have been able to raise funds either through the direct issuance of mortgage-backed bonds, or through the issuance of such bonds by wholly-owned finance companies. Applicant will make it possible for a number of small home builders, thrift institutions and other mortgage lenders to achieve the same economies of scale in their financing efforts as those of larger builders, thrift institutions and other mortgage lenders. Therefore, to require Applicant to register under the Act would be to impose higher financing costs on these smaller entities. Applicant asserts that there is no public policy reason for doing so, and that sound reasons rooted

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in equality of treatment exist for granting Applicant the requested exemption.

Notice is further given that any interested person wishing to request a hearing on the applicant may, not later than January 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority,

John Wheeler,

Secretary.

[FR Doc. 85-30294 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23950; 70-6513]

New England Energy Inc.; Notice of Proposal by Fuel Subsidiary to Make Investments in Oil and Gas Exploration and Development up to $6 Million.

December 16, 1985.

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, a fuel subsidiary of New England Electric System ("NEES"), a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), 10, 12 and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43, 90 and 91 thereunder.

NEEI is engaged in various activities relating to fuel supply for the NEES system. By order dated December 30, 1980 (HCAR No. 21862), NEEI was authorized to enter into an oil and gas exploration and development partnership ("Partnership") with Dorchester Exploration, Inc. ("Dorchester"). On Deceber 29, 1981, NEEI terminated the Partnership with Dorchester, and the affairs of the partnership were wound-up on March 13, 1985, resulting in assignments to NEEI of its interests in partnership properties, both producing and undeveloped. NEEI intends to sell, farm-out or develop these properties in order to maximize returns. For these purposes, NEEI requests authority to invest up to $6 million in such development from January 1, 1986 through December 31, 1987.

The application-declaration and any amendment thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment of request a hearing should submit their views in writing by January 10, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of attorney at law, by certificate) should be filed with the request. Any request for a hearing must identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, it ordered, and will receive a copy of any notice or order issued in this matter. After said date, the amended application-declaration, as filed or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30297 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23949; 70-7123]

Middle South Energy, Inc., et al.; Supplemental Notice of Proposal Issue and Sell $300 Million of First Mortgage Bonds, Pursuant to Negotiated Private or Public Placements

December 16, 1985.

Middle South Energy, Inc. ("MSE"), P.O. Box 61000, New Orleans, Louisiana 70161, Arkansas Power & Light Company ("AP&L"), P.O. Box 551, Little Rock, Arkansas 72203, Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39205, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, New Orleans Public Service Inc., ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112, and their parent Middle South Utilities, Inc. ("MSU"), P.O. Box 61005, New Orleans, Louisiana 70161, a registered holding company, has filed declaration with this Commission pursuant to Sections 6, 7, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

The transactions proposed herein relate to the issuance and sale by Middle South Energy, Inc. in one or more series, from time to time, not later than July 31, 1986 of not to exceed $300 million aggregate principal amount of its first mortgage bonds ("Bonds"), by means of negotiated private or public offerings. MSE was incorporated under the laws of the State of Arkansas on February 11, 1974 to construct, finance and own certain base-load generating units for the subsidiaries of Middle South Utilities, Inc. ("Middle South System").

In it original filings, MSE stated that for several reasons it did not believe it would be possible to issue and sell the Bonds at competitive bidding as required by Rule 50 under the Act. The reasons include the large size of the issue(s) relative to the market for securities of comparable quality; MSE's short earnings and operating history; the complexity of MSE's present financing arrangements and legal and regulatory proceedings; and the overall risk and uncertainty associated with nuclear plant construction. MSE feels that all of these factors might inhibit, delay or prevent MSE from issuing and selling the Bonds at competitive bidding.

For the foregoing reasons, MSE now requests that the Commission grant it an exception from the competitive bidding requirements of Rule 50 under the Act so that MSE may negotiate the terms of the offering(s) of the Bonds, and arrange for their sale through public or private placements. MSE states that such negotiations will provide the flexibility required to detemine the appropriate terms for the Bonds in light of MSE's circumstances and the needs of purchasers, and will enhance MSE's ability to obtain operating and construction funds for the Grand Gulf Station in accordance with its financing plans. Subject to obtaining any necessary regulatory approval, MSE proposes to retain an investment banker(s) to assist in negotiating the terms of the Bonds, and arranging the sale of the Bonds.

MSE may negotiate the terms of the proposed issuance and sale of up to $300 million of its Bonds by private of public placement.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 10, 1986, to the Secretary, Securities and Exchange

Commission, Washington, DC 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the respect. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30296 Filed 12-20-85; 8:45 am]

BILLING CODE [illegible]

[Release No. 34-22720; File No. SR-PSE-85-34]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Incorporated; Relating to the adjustments in the Specialist Evaluation Systems as adopted under the Rules of the Pacific Stock Exchange in the "Pilot Program" for the Evaluation of Specialist Performance

Pursuant to section 19(b)(1) of Securities Exchange Act of 1934, 15 U.S.C. 78s(L)(1), notice is hereby given that on November 20, 1985, The Pacific Stock Exchange, Inc., ("PSE" or "Exchange") filed with the Secrities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE filed its Pilot Program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Post ("Pilot Program") with the Commission on May 4, 1981. The Pilot Program was amended in 1982, and is currently scheduled to terminate on December 31, 1985. The Board of Governors of the PSE has decided to amend the structure of the Pilot Program by instituting changes in the Specialist Evaluation System. These changes will include revisions relating to the guidelines used for specialist evaluation which will be based on National Market System Quote Performance (45% of total score), Specialist Evaluation Questionnaire (45% of total score), and SCOREX Limit Order Acceptance (10% of total score). The PSE now requests that the Commission adopt the amendments and revisions to these PSE Rules concerning specialist evaluation. The Board has also voted to request that the Pilot Program be extended through the first two quarters of 1986 so as to allow for a proper evaluation of these changes in the Specialist Evaluation System.

In connection with these proposed adjustments in the Specialist Evaluation System, the PSE also proposes to amend sections 1(1) and 11(t) of Rule II of the Rules of the Board of Governors of the PSE, so as to conform to these changes. The PSE also proposes to amend Rule II, Section 11(s) to conform to adoption of a new Specialist Evaluation Questionnaire Survey.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Pilot Program was initially filed with the Commission on May 4, 1981, and approved for a period of one year on May 27, 1981. In December 1982, the Pilot Program was amended. The term of the Pilot Program has been extended several times by the Commission. It is currently scheduled to terminate on December 31, 1985.

The PSE's Board of Governors and the Equity Allocation Committee have reviewed certain proposed modifications to the structure of the Pilot Program in preparation for its adoption as part of the Specialist Evaluation System. The Exchange has proposed modifications as they relate to the methods and limits used to evaluate the performance of the specialists as they are described in Rule II, section 11(a) of the Rules of the Board of Governors. The PSE has also voted to amend Rule II, Sections 1(1) and 11(t) to conform to the request to provide an adequate period to evaluate the modified Specialist Evaluation System. In addition, Rule II, section 11(s) will be amended to conform to the newly adopted Specialist Evaluation Questionnaire Survey. The PSE has voted to request that the Pilot Program be extended through the first two quarters of 1986 in order to evaluate these adjustments in the Specialist Evaluation System.

The PSE believes that the proposed rule change is consistent with section 6(b) of the Act in general, and in particular section 6(b)(5) and 6(b)(7).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

In response to a notification of proposed changes in the specialist evaluation system, the PSE received comments from several specialist's expressing their concern over the new guidelines in the National Market System Quote Performance.[1]

The concern was expressed that requiring the specialist to make a 500 share market, 50% of the time would prove to be unrealistic with many stocks. In light of these concerns the Board of Governors of the PSE approved a criteria calling for a 500 share, or the primary market, whichever is less (with a 200 share minimum) 40% of the time. This was felt to be more flexible and more realistic in today's market conditions than the proposed criteria, or the previously used 200 share market/50% of the time, as has been used under the Pilot Program.

Other comments involved general approval of the new Specialist Evaluation Questionnaire, as being a more accurate measurement of the specialist performance.

Two comment letters asserted that the questionnaire portion of the specialist evaluation should remain at a weight of 40% instead of being raised to 45%, claiming that the questionnaire reflects more on popularity than performance.

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[1] The PSE received three comment letters addressing the proposal which are attached to the Commission's file.

III. Date of Effectiveness of the Proposed Rule Change and Time Period for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit writter data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commisson, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE.

All submissions should refer to the file number in the caption above and should be submitted by January 13, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

Dated: December 16, 1985.

[FR Doc. 85-30289 Filed 12-20-85; 8:45 a.m.]

BILLING CODE 8010-01-M

[Release No. IC-14851; (File No. 812-6243)]

Putnam High Income Government Trust, and Putnam Option Income Trust II; Application for an Order Granting Exemption

December 16, 1985.

Notice is hereby given that Putnam High Income Government Trust ("Government Trust") and Putnam Option Income Trust II ("Option II") (Government Trust and Option II together, "Applicants"), One Post Office Square, Boston, Massachusetts 02109, registered under the Investment Company Act of 1940 ("Act") as open-end, diversified, management investment companies, filed an application on November 5, 1985, for an order of the Commission pursuant to section 6(c) of the Act exempting Applicants from the provisions of section 19(b) of the Act, and Rule 19b-1 thereunder, to permit Applicants to make quarterly distributions of long-term capital gains from certain options transactions. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of the pertinent statutory provisions.

Government Trust's investment objective is to seek a high current return, consistent with preservation of capital, by investing in debt securities issued or guaranteed by the United States Government or any of its agencies or instrumentalities ("U.S. Government Securities"). In order to enhance its current return, or to hedge against changes in interest rates, Government Trust may write covered options, purchase options and purchase and sell futures contracts and related options with respect to U.S. Government Securities and enter into closing transactions with respect to such futures contracts and options.

Government Trust pays dividends from net investment income monthly and distributes net realized short-term capital gains quarterly. Government Trust distributes net long-term capital gains realized during a fiscal year after such fiscal year closes on September 30.

Option II's primary investment objective is to seek high current return by investing in dividend-paying common stocks, securities convertible into common stocks and U.S. Government Securities, and by writing covered call and put options with respect to part or all of its portfolio. As a secondary investment objective, Option II seeks to achieve relative stability of principal by hedging against changes in market prices through the purchase and writing of put and call options on portfolio securities and related futures contracts. Option II also purchases options and writes call options on stock indices and stock index futures contracts.

Option II pays dividends from net investment income quarterly and currently distributes net realized short-term capital gains quarterly. Option II distributes any net long-term capital gains realized during a fiscal year after such fiscal year closes on November 30.

The Tax Reform Act of 1984 amended section 1256 of the Internal Revenue Code ("Code") and significantly altered the tax treatment of capital gains from certain types of options transactions. Prior to the 1984 amendments to section 1256, all gain or loss recognized with respect to options was treated as short-term capital gain or loss. Under section 1256, as amended, options with respect to U.S. Government Securities and options on broad-based stock indices are treated differently: 60% of any option gains or losses are treated as long-time capital gains or losses, and 40% are short-term capital gains or losses.

Applicants note that section 1256 was amended in order to eliminate certain tax abuses relating to the realization of short-term capital losses from options transactions, and that there is no evidence that Congress intended the amendment to limit the frequency with which registered investment companies may distribute capital gains from options transactions. Nevertheless, Applicants state, the new characterization of 60% of the gain from certain options transactions as long-term capital gain causes such gain to fall within section 19(b) of the Act, and Rule 19b-1 promulgated thereunder.

Applicants further state that realization of gains from options transactions is an integral part of their investment objectives and policies, and that they follow the practice followed by other registered investment companies with similar objectives and policies by making distributions of short-term capital gains quarterly. Applicants state further that, prior to the recent amendment to section 1256, such distributions would have included all gains derived from options. Applicants believe that, notwithstanding the amendment to section 1256, such gains continue to be of a "short-term" nature from an investment point of view, and that shareholders of Applicants generally would wish to receive such gains as part of their quarterly distributions.

Section 19(b) prohibits registered investment companies from distributing long-term capital gains in contravention of rules, regulations, or orders of the Commission more often than once every

twelve months. Rule 19b-1 prohibits registered investement companies from distributing more than one capital gains dividend, as defined in section 852(b)(3)(C) of the Code, in any taxable year, with certain limited exceptions.

Applicants argue that none of the purposes of section 19(b) and Rule 19b-1 would be served by a strict application of these provisions to the portion of capital gains from options transactions that is now treated as long-term capital gain under section 1256 of the Code. Applicants state that, because their investment objectives and policies are specifically directed to current return (achieved in part by options transactions), the distribution of these long-term capital gains together with investment income is not likely to result in confusionor misunderstanding among their shareholders. Applicants state that they intend to make quarterly distributions of short-term capital gains from options transactions in any event, and that they will continue clearly to distinguish any distribution of capital gains from distributions out of net interest or dividend income in an accompanying notice to shareholders. Therefore, the Applicants state, it is unlikely that merely including in these regular quarterly distributions the portion of capital gain from options transactions that is now classified as long-term capital gain under Section 1256 along with the portion classified as short-term capital gain would increase the likelihood that shareholders will confuse such distributions with dividend or interest income.

Applicants state that section 19(b)and Rule 19b-1 were also devised to prevent investment companies from churning their portfolios in contravention of their goal of long-term capital appreciation. Applicants explain that the characterization of 60% of the capital gain from certain options transactions to which section 1256 applies as long-term capital gain is not expected to affect the investment decisions or distribution practices of Applicants, each of which has an investment objective of high current return, not long-term capital appreciation. Therfore, Applicants conclude, there is no need for the protective mechanism of section 19(b) and Rule 19b-1.

Applicants also state that the quarterly distribution of long-term capital gains from options transactions to which section 1256 applies will not increase administrative expenses because Applicants already make, and expect to continue to make, quarterly distributions of short-term capital gains.

Applicants state further that they believe that designating an appropriate part of each quarterly distribution of gains from options transactions to which Section 1256 applies as long-term capital gain is in the best interest of their shareholders since it will spread the benefit of the lower capital gains tax rate to persons who are shareholders at various points during the year. Applicants also state that regular quarterly distribution of both long-term and short-term options gains is likely to be more satifactory to shareholders than three smaller quarterly distributions of short-term gains alone, followed by a single disproportionately large distribution, including a year's accumulation of long-term gain. They conclude that, because Applicants are designed for shareholders seeking high current return, a relatively steady, consistent stream of current income in the form of more nearly even quarterly distributions woud appear to be in the best interest of Applicants' investors.

Applicants conclude that an order granting each of them an exemption from section 19(b) of the Act and Rule 19b-1 thereunder to enable them to make quar terly distributions of long-term capital gains that arise with respect to options to which section 1256 applies would be appropriate, in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30295 Filed 12-20-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/919]

Shipping Coordinating Committee; Subcommittee on Safety of Safety of Life at Sea Working Group on Safety of Navigation; Announcement of Meeting and Correction of two Meetings

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will hold an open meeting on February 25, 1986 at 9:30 AM in Room 6319 of the U.S. Coast Guard Headquarters, Transport Building, 2100 second street, SW., Washington, DC.

The purpose of the meeting will be to prepare the U.S. position relating to the below listed agenda items to be considered at the 32nd session of the Subcommittee on Safety of Navigation of the International Maritime Organization to be held in London, March 17–21, 1986.

Routing of ships
Additional interpretation of the 1972 Collision Regulations
Matters concerning search and rescue
Navigational aids and related equipment
Information to be included in the maneuvering booklet
Units of wind speed in international meteorological messages
Infringement of safety zones around offshore structures
Warning signals for vessels leaking dangerous cargo
Seaspeak manual

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–WWM), Washington, DC 20593, Telephone: (202) 426–4958.

Subcommittee on Safety of Life at Sea Notice of Two Meetings: Correction

Members of the public are advised that the dates for the Shipping Coordinating Committee's Subcommittee on Safety of Life at Sea (SOLAS) meeting announced in the Friday, December 6, 1985 issue of the **Federal Register**, Pg. 50030, have been changed. The meeting to discuss final preparations for the 52nd Session of the Maritime Safety Committee (MSC) will be held on January 15 instead of January 16 as originally announced. Time and location remain as previously announced. Also changed is the date of the meeting of the Working Group on Ship Design and Equipment of the SOLAS Subcommittee. This group will now meet on January 16 rather than

January 15. Time and location remain as previously announced.

Dated: December 16, 1985.

William H. Dameron,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 85-30260 Filed 12-20-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/920]

Shipping Coordinating Committee; Subcommittee on UNCTAD; Meeting

The Subcommittee on the United Nations Conference on Trade and Development of the Shipping Coordinating Committee (SHC) will hold an open meeting at 2:30 PM on January 9, 1985, in Room 1105 of the Department of State, 2201 C Street, NW., Washington, DC.

The purpose of the meeting is to discuss United States preparations for the United Nations Conference on Conditions for Registration of Ships from January 20–February 7, 1985. In particular, the Subcommittee will discuss the development of U.S. positions on the composite text that emerged at the previous session of the Conference in July, 1985. Of special concern will be the issues of ownership, management, and manning.

Members of the public may attend up to the seating capacity of the room. Those wishing to attend the meeting are requested to arrive at the C Street entrance of the Department of State, from where they will be escorted to the meeting room.

For further information, contact Mr. Michael McNaull, Office of Maritime and Land Transport, Room 5826, Department of State, 2201 C Street, NW., Washington, DC 20520, Telephone: (202) 632-2655.

Dated: December 16, 1985.

William H. Dameron,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 85-30261 Filed 12-20-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Docket 43657]

State of Arizona 55 MPH Speed Limit Compliance Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge William A. Kane, Jr. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg. 400 7th Street, SW., Washington, DC 20590, telephone (202) 426-5560.

Dated Washington, DC, December 17, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-30303 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 43657]

State of Arizona 55 MPH Speed Limit Compliance Proceeding; Prehearing Conference

Notice is hereby given that pursuant to the Order of the Secretary of Transportation dated December 9, 1985, instituting the above-titled proceeding and the December 17, 1985 notice of assignment by the Chief Administrative Law Judge a prehearing conference will be held on January 8, 1986, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC, before the undersigned administrative law judge.

In order to facilitate the conduct of the conference the parties and prospective participants will furnish each other in writing, with three copies to the judge, their positions, statements of the issues, stipulations, requests for evidence in addition to that required under Appendix A to the Secretary's order and proposals for procedural dates supplementing those contained in that Appendix. In addition, the FHWA/NHTSA Litigating Staff furnish copies of all exhibits on which it intends to rely, a list of the witnesses it intends to call and a summary of their testimony. The Litigating Staff's material shall be in the hands of the judge and the other parties and prospective participants by January 6, 1986. The material from the other parties and prospective shall be furnished to each other, the Litigating Staff and the judge no later than the commencement of the prehearing conference.

Dated at Washington, DC, December 17, 1985.

William A. Kane, Jr.,

Administrative Law Judge.

[FR Doc. 85-30301 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43656]

State of Maryland 55 MPH Speed Limit Compliance Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transporation, Office of Hearing, M-50, Room 9400A, Nassif Bldg. 400 7th Street, SW., Washington, DC. 20590, telephone (202) 426-5560.

Dated: Washington, DC., December 17, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-30304 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43658]

State of Vermont 55 MPH Speed Limit Compliance Proceeding; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg. 400 7th Street, SW., Washington, DC. 20590, telephone (202) 426-5560.

Dated: Washington, DC., December 17, 1985.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 85-30305 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43658]

State of Vermont 55 MPH Speed Limit Compliance Proceeding; Prehearing Conference

Notice is hereby given that the prehearing conference in the above-entitled matter is assigned to be held on January 7, 1986, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC,-20590, before the undersigned administrative law judge.

Dated at Washington, D. December 17, 1985.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 85-30302 Filed 12-20-85; 8:45 am]

BILLING CODE 4910-62-M

VETERANS ADMINISTRATION

Advisory Committee on Cemeteries and Memorials; Meeting

The Veterans Administration gives notice that a meeting of the Administrator of Veterans Affairs' Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at the Central Office of the

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Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, on February 27, 1986.

The session will begin at 9:00 a.m. to conduct routine business. The meeting will be open to the public up to the seating capacity which is about twenty persons. Those wishing to attend should contact Mrs. Ann Stone in the Office of the Chief Memorial Affairs Director (phone 202–389–2396) not later than 12 noon, EST January 30, 1986.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Chief Memorial Affairs Director (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Chief Memorial Affairs Director. Letters and written statements as discussed above must be mailed or delivered in time to reach the Chief Memorial Affairs Director by 12 noon EST January 30, 1986. Oral statements will be heard only between 9 and 10 a.m.

Dated: December 12, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–30257 Filed 12–20–85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 246
Monday, December 23, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:00 a.m., January 14, 1986.

PLACE: Forbes, Inc., 60 Fifth Avenue, New York, New York 10011.

STATUS: Closed, pursuant to 5 U.S.C. 552(b)(c)(1) 22 CFR 1302.4(c) and (h) of the Board's rules (42 FR 9388, March 12, 1977).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Walter R. Roberts, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036, 202-254-8040.

[FR Doc. 85-30354 Filed 12-19-85; 2:01 pm]
BILLING CODE 8155-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:40 a.m. on Tuesday, December 17, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: December 18, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-30351 Filed 12-19-85; 1:57 pm]
BILLING CODE 6714-01-M

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Federal Register

Monday
December 23, 1985

Part II

Office of Management and Budget

Financial Management Division; Cognizant Agency Assignments; Notice

OFFICE OF MANAGEMENT AND BUDGET

Financial Management Division; Cognizant Agency Assignments

AGENCY: Office of Management and Budget, Financial Management Division.

ACTION: Final notice.

SUMMARY: This notice transmits a revised list of Federal agencies responsible for administering the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments," and OMB Circular A–128, "Audits of State and Local Governments."

FOR FURTHER INFORMATION CONTACT: Marvin E. Saunders, Financial Management Division, (202) 395–3993.

John J. Lordan,

Deputy Associate Director for Financial Management.

SUPPLEMENTARY INFORMATION:

Office of Management and Budget

Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Governments

Agency: Office of Management and Budget.

Action: Notice of Cognizant Agency Assignments.

Summary: This notice transmits a revised list of Federal agencies responsible for administering the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments," and OMB Circular A–128, "Audits of State and Local Governments."

In the past OMB has assigned cognizance separately for cost allocation and for audit. The revised list combines the assignments and makes one Federal agency responsible for both requirements. Federal agencies assigned cognizance under this notice shall remain cognizant for a period of three years.

The revised list replaces cognizant agency assignments published in the **Federal Register** on February 28, 1980, and October 6, 1980. The revised list also replaces audit assignments for local governments included in the Director of OMB's Memorandum to Departments and Agencies dated March 2, 1982.

For Further Information Contact: Marvin E. Saunders, Financial Management Division, Office of Management and Budget, Washington, DC 20503, (202) 395–3993.

Supplemental Information: On February 27, 1985, OMB requested comments from the major grantmaking agencies on a proposed revision to the cognizant agency assignments. Comments received from the agencies were analyzed and considered in developing the revised list included in this notice.

The revised list assigns cognizance under Circulars A–87 and A–128 for most governmental units included in the 1980 and 1982 lists. Where organizational changes have occurred at the State and local levels, appropriate cognizant agency assignments have been made for the new government entities. Cognizant agency assignments have been made for all States, including State agencies. Territorial governments, Indian tribal governments, and larger local governments are also included. Those State departments and local units of government not listed should deal with the Federal agency providing them the most funds.

Generally, the new assignments make the same Federal agency responsible for cost negotiation and for audit. The only exception is for statewide cognizance. Under Circular A–87, the Department of Health and Human Services has negotiated statewide cost allocation plans for all States, plus the District of Columbia and Puerto Rico. OMB sees no reason for change. Consequently, in many cases the Federal agencies assigned statewide responsibility for cost negotiation and the lead agency [1] for audit will be different.

The following Federal agencies will continue to be responsible for audit and approval of cost allocation plans and general oversight of single audits.

Indian tribal governments	DOI
Territorial governments	DOI
Special districts:	
Airport authorities	DOT
Economic development districts	DOC
Hospital, library, and health districts.	HHS
Housing and urban development districts.	HUD
Park and recreation districts	DOI
Port authorities	DOT
School districts	ED
Transit districts	DOT
Water and sewer districts	EPA

Because of frequent changes in Federal agency funding levels of State and local recipients requiring changes in cognizant assignments, several agencies have suggested that the term of the cognizance assignments be fixed. OMB agrees that this would be usefu and has established the period of assignments at three years. During that time cognizant agencies requiring help in accomplishing its assignments may request assistance from other agencies. However, the assigned cognizant agency shall continue to be responsible under this directive. After three years the Federal agency or the recipient may request OMB to consider a change in the cognizant assignment if circumstances warrant.

James C. Miller III,

Director.

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A–87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A–128

	Cognizant Federal agency
ALABAMA	
State agencies.	
Aging Commission	HHS
Agriculture and Industry	USDA
Archives and History	DOI
Civil Defense	FEMA
Conservation and Natural History	DOI
Corrections	DOJ
Development	HUD
Economic and Community Affairs	DOL
Education	ED
Education-Voc Rehab Service	ED
Environmental Management	EPA
Forestry Commission	USDA
Governor's Office	HUD
Geological Survey	DOI
Highway	DOT
Industrial Relations	DOL
Labor	DOL
Law Enforcement Planning Agency	DOJ
Medical Services Administration	HHS
Mental Health	HHS
Military	DOD
Pensions and Securities	HHS
Planning and Federal Programs	HUD
Public Health	HHS
Youth Services	HHS
Counties.	
Calhoun	HHS
Dallas	HHS
Etowah	HHS
Houston	HHS
Jefferson	EPA
Lauderdale	HHS
Madison	HHS
Mobile	HHS
Montgomery	EPA
Morgan	HHS
Talladega	HHS
Tuscaloosa	DOL
Walker	HHS
Cities:	
Birmingham	HUD
Gadsden	HHS
Huntsville	DOL
Mobile	HUD
Montgomery	HUD
Tuscaloosa	HUD
ALASKA	
State agencies:	
Commerce and Economic Development	DOE
Community and Regional	DOL
Corrections	DOJ
Education	ED
Environmental Conservation	USDA
Fish and Game	DOI

[1] Lead agencies for audit are designated in the list by an asterisk. For local governments the asterisk also indicates the Federal agency responsible for negotiating cost allocation plans. Federal agencies assigned as lead agencies should represent the interest of other Federal audit agencies in carrying out the cognizant agency responsibilities for single audit of State and local governments. Federal agencies assigned audit cognizance for State and local departmental units shall cooperate with and assist the lead agency in carrying out the requirement for the single audit.

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Cognizant Agency Assignments for Cost Allocation Under OMB Circular A-87 and for Single Audit Under OMB Circular A-128—Continued

	Cognizant Federal agency
Governor's Office	HHS
Health and Social Services	HHS
Housing Authority	HUD
Labor	DOL
Military and Veteran Affairs	DOD
Natural Resources	DOI
Public Safety	DOJ
Transportation and Public Facilities	DOT
Vocational Rehabilitation	HHS
Counties: Greater Anchorage	HHS
Cities: Anchorage	HHS
American Samoa	
State agencies: All departments and agencies	DOI
Arizona	
State Agencies:	
Corrections	DOJ
Economic Security	HHS
Education	ED
Emergency and Military Affairs	DOD
Game and Fish	DOI
Governor's Office	DOL
Health Services	HHS
Industrial Commission	DOL
Land	USDA
Mine Inspector	DOL
Public Safety	DOJ
State Parks	DOI
Transportation	DOT
Counties:	
Cochise	HHS
Maricopa	HUD
Pima	HHS
Pinal	HHS
Cities:	
Phoenix:	
Aviation	DOT [1]
Community Development	HUD
Housing	HUD
Human Resources/Relations	DOL
Parks and Recreation	DOI
Police	DOJ
Public Works	DOT
Sewer Utility	EPA
Transit	DOT
Tucson	HUD
Arkansas	
State agencies:	
Corrections	DOJ
Education	ED
Emergency Services Office	FEMA
Energy Office	DOE
Forestry Comission	USDA
Game and Fish Commission	DOI
Governor's Office	DOL
Health	HHS
Highway and Transportation	DOT
Human Services	HHS
Labor	DOL
Natural and Cultural Heritage	DOI
Parks and Tourism	DOI
Pollution Control and Ecology	EPA
Workers' Compensation Commission	DOL
Veterans Affairs	VA
Counties:	
Jefferson	HHS
Mississippi	HHS
Pulaski	HUD
Sebastian	EPA
Washington	HHS
Cities:	
Fort Smith	HUD
Little Rock:	
Community Improvement	DOL
Human Resources	HUD
Parks	DOI [1]
North Little Rock	EPA
California	
State agencies:	
Aging	HHS [1]
Air Resources Board	EPA
Alcohol and Drug Abuse Programs	HHS
Conservation	EPA
Corrections	HHS
Developmental Services	HHS
Economic and Business Development	DOC
Education	ED
Emergency Services Office	FEMA
Employment Development	DOL
Energy Commission	DOE
Finance	HUD
Fish and Game	DOI
Food and Agriculture	USDA
Forestry	USDA
Governor's Office	DOJ
Health Services	HHS
Housing and Community Development	HUD
Industrial Relations	DOL
Justice	DOJ
Mental Health	HHS
Military Department	DOD
Parks and Recreation	DOI
Post Secondary Education Commission	ED
Planning and Research Office	HUD
Rehabilitation	ED
Resources Agency	EPA
Social Services	HHS
Solid Waste Management Board	EPA
Transportation	DOT
Veterans Affairs	VA
Water Resources Control Board	EPA
Youth Authority	HHS
Counties:	
Alameda	
District Attorney	HHS [1]
Health/Human Services	HHS
Planning	HUD
Probation	DOJ
Sheriff	DOJ
Social Services	HHS
Streets	DOT
Contra Costa	HHS
Fresno	HHS
Kern	HHS
Los Angeles:	
Community and Senior Citizens/Services	HHS [1]
Community Development Commission	HUD
Courts	DOJ
District Attorney	HHS
Health Services	HHS
Mental Health	HHS
Parks and Recreation	USDA
Public Social Services	HHS
Public Works	DOT
Regional Planning	DOT
Sheriff	DOJ
Merced	HHS
Monterey	HHS
Orange:	
Airport	DOT
Criminal Justice	DOJ
Courts	DOL
District Attorney	HHS [1]
Environmental Affairs/Protection	HUD
Health/Human Services	HHS
Probation	HHS
Senior Citizens/Services	HHS
Sheriff	HHS
Riverside	HHS
Sacramento	HHS
San Bernardino:	
Community Development	HUD
Environmental Public Works	EPA
Health/Human Services	HHS [1]
Human Resources/Relations	HHS
Law and Justice	DOJ
Manpower	DOL
San Buenaventura	HHS
San Diego	HHS
San Joaquin	HHS
San Luis Obispo	HHS
San Mateo	HHS
Santa Cruz	HHS
Sonoma	HHS
Stanislaus	HHS
Tulare	HHS
All other counties	HHS
Cities:	
Alameda	HUD
Alhambra	HHS
Anaheim	HHS
Bakersfield	EPA
Berkeley	HUD
Burbank	HHS
Butte	HHS
Carson	DOT
Compton	HUD
Downey	HHS
Fresno	HUD
Fullerton	HHS
Garden Grove	HHS
Glendale	HHS
Hayward	HUD
Inglewood	HHS
Lakewood	HHS
Long Beach	HUD
Los Angeles:	
Airport	DOT
Building and Safety	HUD
Community Development	HUD
Council	DOT
Sacramento:	HUD
General Services	HUD
Housing Authority	HUD
Mayor's Office	DOC
Parks and Recreation	HUD
Personnel	DOL [1]
Public Works	EPA
Redevelopment Agency	HUD
Transportation	DOT
Norwalk	HHS
Oakland	HUD
Palo Alto	EPA
Pasadena	HHS
Pomona	HUD
Richmond	HUD
Riverside	HUD
Fire Services	FEMA
San Bernardino	HUD
San Diego:	
General Services	DOT
Housing Commission	HUD
Streets	HUD
Utilities	EPA [1]
San Francisco:	
Administrative Office	EPA
Arts	DOI
Health/Human Services	HHS
Mayor's Office	DOL [1]
Parks and Recreation	DOI
Planning	DOC
Police	DOJ
San Jose	USDA
San Leandro	HHS
San Mateo	HUD
Santa Ana	HUD
Santa Barbara	HUD
Santa Clara:	
Justice	DOJ
Planning	HUD [1]
Santa Monica	HHS
Southgate	HHS
Stockton	HUD
Sunnyvale	HHS
Torrance	HHS
Vallejo	HUD
Ventura	HHS
West Covina	HHS
Colorado	
State agencies:	
Agriculture	USDA
Education	ED
Governor's Office	DOE
Highways	DOT
Institutions	HHS [1]
Labor and Employment	DOL
Local Affairs	HUD
Natural Resources	DOI
Health	HHS
Public Safety	DOT
Public Utilities Commission	DOT
Social Services	HHS
State Planning and Budgeting Office	HUD

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
[illegible]	
Adams	[illegible]
Arapaho	[illegible]
Boulder	[illegible]
El Paso:	
Parks	[illegible]
Social Services	HHS [1]
Jefferson	[illegible]
Larimer	[illegible]
Mesa	HHS
Pitkin	DOT
Pueblo	HHS
Weld	HHS
[illegible]	
Colorado Springs:	
Airport	DOT
Community Development	HUD
Housing Authority	HUD [1]
Parks and Recreation	[illegible]
Police	[illegible]
Public Works	[illegible]
Utilities/Utilities Authority	[illegible]
[illegible]	
Airport	DOT [1]
Community Development	HUD
Human Resources/Relations	[illegible]
Parks	[illegible]
Public Works	EPA
Regional Planning	[illegible]
Transportation	DOT
Denver	[illegible]
CONNECTICUT	
[illegible] agencies:	
Aging	HHS [1]
Agriculture	[illegible]
Children and Youth Services	[illegible]
Consumer Protection	[illegible]
Correction	[illegible]
Economic Development	[illegible]
Education	[illegible]
Environmental Protection	[illegible]
Governor's Office	[illegible]
Health Services	[illegible]
Historical Commission	[illegible]
Housing	[illegible]
Human Resources	[illegible]
Income Maintenance	[illegible]
Labor	[illegible]
Mental Health	[illegible]
Mental Retardation	[illegible]
Military	[illegible]
Policy and Management Office	[illegible]
Public Safety	[illegible]
Transportation	DOT
Veterans Home and Hospital	VA
Cities:	
Bridgeport	[illegible]
[illegible]	
Aging	[illegible]
Community Improvement	[illegible]
Education	[illegible]
Health/Human Services	HHS
Housing	HUD [1]
Parks and Recreation	[illegible]
Planning	HUD
Public Works	[illegible]
Redevelopment	[illegible]
Meriden	[illegible]
New Britain	[illegible]
New Haven:	
Development Administration	HUD [1]
Education	[illegible]
Human Resources	[illegible]
Police	[illegible]
Public Works	[illegible]
Norwalk	[illegible]
Stamford	[illegible]
Waterbury	[illegible]
Towns:	
Greenwich	HHS
West Hartford	HUD
DELAWARE	
State agencies:	
Agriculture	USDA

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Community Affairs	[illegible]
Employment Security Commission	[illegible]
Governor's Office	[illegible]
Health and Social Services	HHS
Labor	[illegible]
National Guard	[illegible]
Natural Resources and Environmental Control	[illegible]
Public Instruction	ED [1]
State	DOJ
Transportation	DOT
[illegible]	
Kent	[illegible]
New Castle	HUD
Sussex	EPA
Cities: Wilmington	HUD
DISTRICT OF COLUMBIA	
State agencies:	
Corrections	[illegible]
Employment Services	DOL
Housing and Community Development	[illegible]
Human Services	[illegible]
Mayor's Office	[illegible]
Metropolitan Police	[illegible]
Public Library	HHS
Public Schools	[illegible]
Public Works	DOT
Recreation	[illegible]
FLORIDA	
State agencies:	
Administration	[illegible]
Agriculture and Consumer Services	USDA
Commerce	DOC
Community Affairs	[illegible]
Education	ED [1]
Environmental Regulation	EPA
Game and Fresh Water Commission	[illegible]
Governor's Office	[illegible]
Health and Rehabilitative Services	HHS
Labor and Employment Security	DOL
Law Enforcement	DOJ
Military Affairs	[illegible]
Natural Resources	[illegible]
State	[illegible]
Transportation	DOT
Counties:	
Alcalooca	HHS
Alachua	DOL
Basy	HHS
Brevard	DOL
Broward	HUD
Dade	DOT
Duval/Jacksonville	EPA
Escambia	HUD
Hillsborough	HHS
Lake	HHS
Lee	HUD
Leon	DOL
Manatee	[illegible]
Manon	[illegible]
Orange	DOL
Palm Beach:	
Area Planning Board	EPA [1]
Criminal Justice	[illegible]
Employment Training	DOL
Engineering	[illegible]
Health	HHS
Housing and Community Development	[illegible]
Human Resources	HHS
Transit Authority	DOT
Water and Sewer	[illegible]
Pasco	[illegible]
Pinellas	[illegible]
Polk	HUD
Sarasota	DOL
Seminole	DOL
Volusia	DOL
Cities:	
Gainesville	[illegible]
Fort Lauderdale	[illegible]
Hialeah	HHS
Miami	[illegible]
Miami Beach	HHS
Orlando	HUD
Pensacola	EPA

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
St. Petersburg	HUD
Tallahassee	EPA
Tampa	[illegible]
West Palm Beach	HUD
[illegible]	
State agencies:	
Agriculture	USDA [1]
Community Affairs	[illegible]
Defense	FEMA
Education	[illegible]
Forestry Commission	USDA
Governor's Office	DOE
Highway Safety Office	DOT
Human Resources	HHS
Industry and Trade	HUD
Labor	DOL
Natural Resources	[illegible]
Offender Rehabilitation	[illegible]
Planning and Budget Office	HUD
Public Safety	[illegible]
Transportation	DOT
University Regents Board	[illegible]
Veterans Service	VA
Counties:	
Bobb	HHS
Cobb	EPA
Chatham	HHS
De Kalb	EPA
Dougherty	HHS
Floyd	HHS
Gwinnett	[illegible]
Fulton	HHS
Muskogee/Columbus	HHS
Richmond	[illegible]
Cities:	
Albany	HUD
[illegible]	
Aviation	DOT
ourts	DOJ
nvironment and Streets	EPA [1]
uman and Community Development	HUD
ayor's Office	DOL
arks and Recreation	[illegible]
ublic Safety	DOC
GUAM	
State agencies: All departments and agencies	DOI
HAWAII	
State agencies:	
Agriculture	USDA
Attorney General	DOJ
Budget and Finance	HHS
Commerce and Consumer Affairs	DOC
Defense	[illegible]
Education	ED
Governor's Office	HHS
Health	HHS
Labor and Industrial Relations	DOL
Land and Natural Resources	[illegible]
Planning and Economic Development	[illegible]
Social Services and Housing	HHS
Transportation	[illegible]
Counties: Hawaii	DOL
Cities:	
Honolulu:	
Building	DOC
Community Development and Housing	HUD
Human Resources/Relations	DOL
Police	[illegible]
Prosecuting Attorney	[illegible]
Public Works	EPA [1]
Transportation	DOT
IDAHO	
State agencies:	
Adjutant General	[illegible]
Agriculture	[illegible]
Education	[illegible]
Employment	DOL
Fish and Game	[illegible]
Governor's Office	[illegible]
Health and Welfare	HHS
Historical Society	DOI
Industrial Commission	[illegible]

Cognizant Agency Assignments for Cost Allocation Under OMB Circular A-87 and for Single Audit Under OMB Circular A-128—Continued

	Cognizant Federal agency
Labor and Industrial Services	DOL
Lands	USDA
Parks and Recreation	DOI
Transportation	DOT
Water Resources	DOT
Counties:	
Ada	HHS
Canyon	HHS
ILLINOIS	
State agencies:	
Aging	HHS
Agriculture	USDA
Atomic Energy Commission	DOE
Board of Education	ED
Children and Family Services	HHS
Commerce and Community Affairs	HHS
Conservation	DOI
Corrections	DOJ
Emergency Services and Disaster Agency	FEMA
Energy and Natural Resources	DOE
Environmental Protection Agency	EPA
Governor's Office	DOL
Human Rights	DOJ
Labor	DOL
Law Enforcement	DOJ
Mental Health and Developmental Disabilities	HHS
Military and Naval	DOD
Mines and Minerals	DOI
Public Aid	HHS
Public Health	HHS
Rehabilitation Services	HHS
Sanitary Board	EPA
Transportation	DOT
Veterans Affairs	VA
Counties:	
Adams	HHS
Champaign	HUD
Cook:	
Community Development	HUD
Environmental Control/Resources	DOE
Manpower	DOL [1]
Sheriff	DOJ
De Kalb	EPA
Du Page	HUD
Kane	HHS
Kankakee	HHS
Knox	HHS
Lake	HUD
La Salle	HHS
Macon	HHS
Madison	HHS
McHenry	HHS
McLean	HHS
Peoria	HHS
Rock Island	HHS
Sangamon	HHS
St. Clair	HUD
Tazewell	HHS
Vermilion	HHS
Whiteside	HHS
Will	HHS
Winnebago	HHS
Cities:	
Aurora	HHS
Berwyn	HHS
Chicago:	
Community Development and Housing	HUD [2]
Consumer Services	EPA
Economic Development/Opportunity	HUD
Employment and Training	DOL
Health/Human Services	HHS
Housing	HUD
Mayor's Office	DOT
Planning	HUD
Police	DOJ
Public Safety	DOJ
Public Works	DOT
Senior Citizens/Services	HHS
Cicero	HHS
Decatur	HHS
East St. Louis	HHS
Evanston	HHS
Joliet	EPA
Oak Park	HHS

Cognizant Agency Assignments for Cost Allocation Under OMB Circular A-87 and for Single Audit Under OMB Circular A-128—Continued

	Cognizant Federal agency
Peoria:	
Community Development	HHS [2]
Community Improvement	DOL
Public Works	EPA
Rockford	HHS
Rock Island	HUD
Skokie	HHS
Springfield	EPA
Waukegan	EPA
Towns:	
Aurora	HHS
Berwyn	HHS
Bloom	HHS
Breman	HHS
Capital	HHS
Decatur	HHS
Downers Grove	HHS
E. St. Louis	HHS
Elgin	HHS
Evanston	HHS
Joliet	HHS
Leyden	HHS
Lyons	HHS
Maine	HHS
Milton	HHS
New Trier	HHS
Niles	HHS
Oak Park	HHS
Proviso	HHS
Rockford	HHS
Thornton	HHS
Waukegan	HHS
Wheeling	HHS
INDIANA	
State agencies:	
Aging and Community Services	HHS
Civil Defense and Emergency Management	FEMA
Commerce	DOE
Correction	DOJ
Education	ED
Employment Security Division	DOL
Governor's Office	HHS
Health Board	HHS
Highways	DOT
Housing Board	HUD
Labor Division	DOL
Mental Health	HHS
Military	DOD
Natural Resources	DOI
Public Service Commission	DOT
Public Welfare	HHS
Regional Planning Commissions	DOC
Rehabilitation Service Agency	HHS
State Police	DOJ
Transportation	DOT
Veteran Affairs	VA
Counties:	
Allen	HHS
Clark	HHS
Delaware	HHS
Elkhart	HHS
Floyd	HHS
Grant	HHS
Howard	HHS
Lake	HHS
La Porte	HHS
Madison	HHS
Marion	HHS
Monroe	HHS
Porter	HHS
St. Joseph	HHS
Tippecanoe	HHS
Vanderburgh	HHS
Vigo	HHS
Wayne	HHS
Cities:	
East Chicago	HHS
Evansville:	
Community Development	HUD [2]
Planning	DOC
Transportation	DOT
Fort Wayne	EPA
Gary	HUD
Hammond	EPA
Indianapolis	HUD

Cognizant Agency Assignments for Cost Allocation Under OMB Circular A-87 and for Single Audit Under OMB Circular A-128—Continued

	Cognizant Federal agency
Muncie	HHS
South Bend	HUD
Terre Haute	HUD
Towns:	
Anderson	HHS
Calumet	HHS
Center-Kokomo	HHS
Center-Muncie	HHS
Gary	HHS
Harrison	HHS
Knight	HHS
North-Hammond	HHS
Pigeon	HHS
Portage	HHS
Warren	HHS
Washington	HHS
Wayne-Fort Wayne	HHS
Wayne-Indianapolis	HHS
Wayne-Richmond	HHS
IOWA	
State agencies:	
Aging Commission	HHS
Agriculture	USDA
Commerce Commission	DOT
Conservation Commission	DOI
Corrections	DOJ
Development Commission	HUD
Governor's Office	DOL
Health	HHS
Historical	DOI
Human Services	HHS
Job Service	DOL
Labor Bureau	DOL
Planning and Programming	HHS
Public Defense	FEMA
Public Instruction	ED
Public Safety	DOJ
Transportation	DOT
Veterans' Affairs	VA
Water, Air, and Waste Management	EPA
Counties:	
Black Hawk	HHS
Clinton	HHS
Dubuque	HHS
Johnson	HHS
Linn	HHS
Polk	HHS
Pottawattamie	HHS
Scott	HHS
Woodbury	HHS
Cities:	
Cedar Rapids	EPA
Council Bluffs	HHS
Davenport	HHS
Des Moines	HUD
Dubuque	EPA
Sioux City	HUD
Waterloo	HHS
KANSAS	
State agencies:	
Adjutant General	FEMA
Aging	HHS
Agriculture Board	USDA
Corrections	DOJ
Education	ED
Economic Development	HUD
Fish and Game Commission	DOI
Forestry	DOI
Governor's Office	USDA
Health and Environment	HHS
Highway Patrol	DOT
Historical Society	DOI
Human Resources	DOL
Park and Resources Authority	DOI
Social and Rehabilitation Services	HHS
Transportation	DOT
Water Resources Board	DOI
Counties:	
Johnson	HHS
Reno	HHS
Saline	HHS
Sedgwick	HHS
Shawnee	HHS
Wyandotte	HHS

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Cities:	
Kansas City	EPA
Topeka	HHS
Wichita	DOT
KENTUCKY	
State agencies:	
Agriculture	USDA
Appalachian Regional Commission	DOC
Commerce	DOC
Corrections	DOJ
Education and Humanities	ED
Energy	DOE
Governor's Office	HUD
Housing Corporation	HUD
Human Resources	HHS
Justice	DOJ
Labor	DOL
Local Government	DOI
Military Affairs	DOD
Natural Resources and Environmental Protection.	USDA
Public Protection and Regulation	DOL
Tourism	DOI
Transportation	DOT [1]
Counties:	
Boyd	HHS
Campbell	HHS
Christian	HHS
Daviess	HHS
Hardin	HHS
Harlan	HHS
Jefferson	EPA
Kenton	HHS
Lexington-Fayette	EPA
McCracken	HHS
Pike	HHS
Cities:	
Covington	HUD
Lexington	EPA
Louisville	DOL
LOUISIANA	
State agencies:	
Agriculture	USDA
Commerce	DOC
Corrections	DOJ
Culture, Recreation and Tourism	DOI
Education	ED [1]
Environmental Quality	EPA
Governor's Office	DOC
Health and Human Resources	HHS
Justice	DOJ
Labor	DOL
Military	DOD
National Resources	EPA
Public Safety	DOJ
Transportation and Development	DOT
Urban and Community Affairs	HUD
Veterans Affairs	VA
Wildlife and Fisheries	DOI
Counties (Parishes):	
Bossier	HHS
Caddo	HHS
Calcasieu	HHS
Iberia	HHS
Jefferson	HHS
Lafayette	HHS
Lafourche	HHS
Ouachita	HHS
Rapides	HHS
St. Landry	HHS
Tangipahoa	HHS
Terrebonne	EPA
Cities:	
Baton Rouge	HUD
Lake Charles	EPA
Monroe	HUD
New Orleans	HUD
Shreveport:	
Parks and Recreation	USDA
Public Affairs/Services	DOL
Public Works	DOT
Sportron	DOT
Urban Development	EPA [1]
Water/Sewer	HUD

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Slidell	HHS
MAINE	
State agencies:	
Agriculture, Food, and Rural Resources	USDA
Conservation	USDA
Corrections	DOJ
Defense and Veteran Services	VA
Educational and Cultural Services	ED
Environmental Protection	EPA
Governor's Office	HHS
Human Services	HHS
Housing Authority	HUD
Inland Fisheries and Wildlife	DOI
Labor	DOL
Mental Health and Mental Retardation	HHS
Public Safety	DOJ
Transportation	DOT
Counties:	
Androscoggin	HHS
Cumberland	HHS
Kennebec	HHS
Penobscot	HHS
York	HHS
Cities:	
Bangor	HHS
Portland	HHS
MARYLAND	
State agencies:	
Aging Office	HHS
Agriculture	USDA
Children and Youth Office	HHS
Economic and Community Development	HUD
Education	ED
Employment and Training	DOL
Environmental Services	EPA
Governor's Office	DOJ
Health and Mental Hygiene	HHS
Human Resources	HHS
Law Enforcement and Administration on Justice Commission.	DOJ
Licensing and Regulation	HHS
Military	DOD
Natural Resources	DOI
Public Safety and Correctional Services	FEMA
Public Service Commission	DOT [1]
State Planning	HUD
Transportation	DOT
Veterans Commission	VA
Counties:	
Allegany	HHS
Anne Arundel:	
Administrative Office	DOJ
Aging	HHS
Domestic Relations	HHS
Planning and Zoning	HUD
Public Works	EPA [1]
Baltimore	EPA
Caroline	DOT
Carroll	EPA
Frederick	HHS
Harford	EPA
Howard	DOT
Kent	DOT
Montgomery	HUD
Prince Georges:	
Aging	HHS
Circuit Court	HHS
Emergency Preparedness	DOE
Health and Human Services	DOJ
Personnel	DOL [1]
Planning and Economic Development	HUD
Police	DOJ
State's Attorney	HHS
Queen Annes	DOT
St. Marys	DOT
Washington	EPA
Wicomico	DOT
Cities:	
Baltimore:	
Aging	HHS
Education	ED
Criminal Justice	DOJ
Health and Human Services	HHS
Hospitals	HHS

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Housing and Community Conservation	HUD
Manpower	DOL
Mayor's Office	HUD
Parks and Recreation	DOI
Planning	HUD
Public Works	DOT [1]
Social Services	HHS
State's Attorney	DOJ
MASSACHUSETTS	
State agencies:	
Administration and Finance Executive Office	HHS
Communities and Development	HUD
Consumer Affairs and Business Regulation	DOC
Economic Affairs	DOC
Educational	ED
Elder Affairs	HHS
Energy Resources	DOE
Environmental Affairs	DOI
Environmental Management	EPA
Food and Agriculture	USDA
Governor's Office	DOJ
Labor and Industries	DOL
Mental Health	HHS
Public Safety	DOJ
Public Welfare	HHS
Public Works	DOE
Social Services	HHS
State	DOI
Transportation and Construction Office	DOT [1]
Veterans Services Office	VA
Counties:	
Barnstable	HHS
Berkshire	HHS
Bristol	HHS
Essex	HHS
Franklin	HHS
Hampden	HHS
Hampshire	HHS
Middlesex	HHS
Norfolk	HHS
Plymouth	HHS
Worcester	HHS
Cities:	
Boston	
Education	ED [1]
Health and Hospitals	HHS
Mayor's Office	DOL
Parks and Recreation	DOI
Police	DOJ
Public Works	DOT
Brockton	
Community Improvement	DOL
Education	ED [1]
Cambridge	HUD
Chicopee	EPA
Fall River	ED
Holyoke	HUD
Lawrence:	
Airport	DOT
Community Development	HUD [1]
Education	ED
Highways	DOT
Lowell	HHS
Lynn	HUD
Malden	HHS
Medford	HHS
New Bedford	HUD
Newton	HHS
Pittsfield	EPA
Quincy	HHS
Somerville	HUD
Springfield	HHS
Waltham	HHS
Worcester	HUD
Town: Brookline	HHS
State Agencies:	
MICHIGAN	
Aging office	HHS
Attorney General	HHS
Agriculture	USDA
Commerce	HUD
Corrections	DOJ
Education	ED
Governor's Office	DOJ

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Labor	DOL
Management and Budget	HHS
Mental Health	HHS
Military Affairs	DOD
Natural Resources	DOI
Police	DOT
Public Health	HHS
Social Services	HHS
State	DOI
Transportation	DOT
Counties:	
Allegan	HHS
Bay	HHS
Berrien	EPA
Calhoun	HHS
Genesee	HHS
Ingham	HHS
Jackson	HHS
Kalamazoo	HHS
Kent	EPA
Lenawee	HHS
Macomb	HHS
Madison	EPA
Marquette	HHS
Midland	HHS
Monroe	HHS
Muskegon	HHS
Oakland	HUD
Ottawa	EPA
Saginaw	EPA
Shawassee	HHS
St. Clair	EPA
Washtenaw	HHS
Wayne	HHS
Cities:	
Ann Arbor	HUD
Bay City	HUD
Dearborn	HHS
Dearborn Heights	HHS
Detroit:	
Community and Economic Development	HUD
Employment and Training	DOL
Finance	HUD
Health and Human Services	HHS[1]
Historical	HUD
Neighborhood Services	HHS
Planning	HUD
Police	DOJ
Public Works	HUD
Recreation	DOI
Senior Citizens/Services	HHS
Transportation	DOT
Flint:	
Community Development	HUD[1]
Community Improvement	DOL
Public Works	DOC
Water/Sewer	EPA
Grand Rapids	EPA
Jackson	HHS
Kalamazoo	EPA
Lansing	EPA
Lincoln Park	HHS
Livonia	HHS
Pontiac	HUD
Roseville	HHS
Royal Oak	HHS
St. Clair Shores	HHS
Saginaw	HUD
Westland	HUD
Warren	HHS
Towns:	
Dearborn	HHS
Redford	HHS
MINNESOTA	
State agencies:	
Administration	HHS
Aging Board	HHS
Agriculture	USDA[1]
Commerce	DOC
Corrections	DOJ
Council for the Handicapped	HHS
Economic Security	DOL
Education	ED
Employment Security	DOL
Energy and Economic Development	USDA
Governor's Office	HHS
Health	HHS
Historical Society	HUD
Housing Finance Agency	HUD
Human Services	HHS
Labor and Industry	DOL
Military Affairs	DOD
Natural Resources	DOI
Planning Agency	HHS
Pollution Control Agency	EPA
Transportation	DOT
Veterans Affairs	VA
Counties:	
Anoka	HHS
Dakota	HHS
Hennepin	HHS
Olmsted	HHS
Ramsey	HHS
Stearns	HHS
St Louis	HHS
Washington	HHS
Cities:	
Bloomington	HHS
Duluth	HHS
Minneapolis:	
Community Action Agency	HHS
Contract Management	HUD[5]
Employment and Training	DOL
Riverfront Development	DOI
St. Paul	HUD
MISSISSIPPI	
State agencies:	
Agriculture and Commerce	USDA
Archives and History	DOI
Economic Development	DOC
Education	ED
Employment Security Commission	DOL
Energy and Transportation	DOE
Forestry Commission	USDA
Governor's Office	HHS[1]
Health	HHS
Highway	DOT
Human Development	HHS
Medicaid Commission	HHS
Mental Health	HHS
Military	DOD
Natural Resources	DOI
Public Safety	DOJ
Public Welfare	HHS
Rehabilitative Services	HHS
Veterans Affairs Commission	VA
Wildlife Conservation	DOI
Youth Services	ED
Counties:	
Bolivar	HHS
Forrest	HHS
Harrison	HHS
Hinds	HHS
Jackson	HHS
Jones	HHS
Lauderdale	HHS
Washington	HHS
Cities:	
Jackson	HUD
MONTANA	
State agencies:	
Agriculture	USDA
Arts Council	HHS[1]
Commerce	DOC
Education	ED
Fish, Wildlife and Parks	DOI
Governor's Office	HHS
Health and Environmental Science	HHS
Highways	DOT
Institutions	DOJ
Justice	DOJ
Labor and Industry	DOL
Library	HHS
Military Affairs	DOD
Natural Resources and Conservation	DOI
Social and Rehabilitation Services	HHS
State Lands	DOI
Counties:	
Cascade	HHS
Yellowstone	HHS
Cities:	
Billings	HHS
Great Falls	HHS
NEBRASKA	
State agencies:	
Aging	HHS
Aeronautics	DOT
Agriculture	USDA
Correctional Services	DOJ
Economic Development	HUD
Education	ED
Energy Office	DOE
Environmental Control	EPA
Game and Parks Commission	DOI
Governor's Office	HHS
Health	HHS
Historical Society	DOI
Justice	DOJ
Labor	DOL
Law Enforcement and Criminal Justice Commission.	DOJ
Military	DOD
Policy Research Office	DOC
Public Institutions	HHS
Social Services	HHS
State Patrol	DOT
Roads	DOT
Veterans Affairs	VA
Water Resources	DOI
Counties:	
Douglas	HHS
Lancaster	HUD
Cities:	
Lincoln	DOT
Omaha	HUD
NEVADA	
State agencies:	
Agriculture	USDA
Commerce	DOC
Community Services Office	HHS
Conservation and Natural Resources	DOI
Education	ED[1]
Employment Security	DOL
Governor's Office	DOL
Human Resources	HHS
Industrial Commission	DOL
Military Department	DOD
Motor Vehicle	DOJ
Traffic Safety	DOT
Transportation	DOT
Wildlife	DOI
Counties:	
Clark	HHS
Lancaster	HUD
Cities:	
Las Vegas	EPA
Reno	HUD
NEW HAMPSHIRE	
State agencies:	
Adjutant General	DOD
Aging Council	HHS
Agriculture	USDA
Air Resources Agency	DOI
Corrections	DOJ
Education	ED
Employment Security	DOL[1]
Fish and Game	DOI
Governor's Office	DOJ
Health and Welfare	HHS
Housing Finance Authority	HUD
Labor	DOL
Public Works and Highways	DOT
Resources and Economic Development	DOI
Safety	DOJ
Veterans Council	VA
Counties:	
Hillsboro	HHS
Merrimack	HHS
Rockingham	HHS
Strafford	HHS
Cities: Manchester	HUD

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COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
New Jersey	
State agencies:	
Agriculture	USDA
Community Affairs	HHS [1]
Commerce and Economic Development	HUD
Corrections	DOJ
Defense	DOD
Delaware Valley Regional Planning Commission	DOT
Education	ED
Energy	DOE
Environmental Protection	DOT
Governor's Office	HHS
Health	HHS
Human Services	HHS
Labor	DOL
Law Enforcement Planning Agency	DOJ
Law and Public Safety	DOJ
Port Authority of New York and New Jersey	DOT
Transportation	DOT
Counties:	
Atlantic	HHS
Bergen:	
Aging	HHS [1]
Children's Services	HHS
Community Action Planning	HHS
Community Development	HUD
Hospital	HHS
Housing Authority	HUD
Mental Health/Retardation	HHS
Planned Parenthood	HHS
Utilities/Utilities Authority	EPA
Burlington	HHS
Camden	HHS
Cumberland	HHS
Essex	HHS
Gloucester	HHS
Hudson	HHS
Hunterdon	HHS
Mercer	HHS
Middlesex	HHS
Monmouth:	
Aging	HHS [1]
Community Improvement	DOL
Planning	HUD
Prosecuting Attorney	DOJ
Morris	HHS
Ocean	HHS
Passaic	HHS
Salem	HHS
Somerset	HHS
Union:	
Human Resources/Relations	DOL
Planning and Engineering	HUD
Probation	HHS [1]
Warren	HHS
Cities:	
Atlantic City	HUD
Bayonne	HHS
Bloomfield	HHS
Camden	HUD
Clifton	HHS
East Orange	HUD
Elizabeth	HHS
Irvington	HHS
Jersey City	HUD
Newark:	
Employment and Training	DOL
Engineering	DOC
Health/Human Services	HHS [1]
Mayor's Office	HUD
Police	DOJ
Passaic	HHS
Paterson	DOL
Trenton	HUD
Union	HHS
Towns:	
Hamilton	HHS
Union	HHS
Woodbridge	HHS
New Mexico	
State agencies:	
Adjutant General-Emergency Preparedness	FEMA
Aging	HHS
Agriculture	USDA
Corrections	DOJ
Economic Development and Tourism	DOC
Education	ED
Employment Security	DOL
Energy and Minerals	DOE
Finance and Administration	HUD
Fish and Game	DOI
Governor's Office	DOL
Health and Environment	HHS
Highway	DOT
Human Services	HHS
Natural Resources	USDA
Transportation	DOT
Counties:	
Bernalillo	HHS
Chaves	HHS
Dona Ana	DOT
Eddy	HHS
San Juan	HHS
City: Albuquerque	DOT
New York	
State agencies:	
Aging Office	HHS [1]
Agriculture and Markets	USDA
Alcohol and Substance Abuse Office	HHS
Commerce	DOC
Correctional Services	DOJ
Consumer Protection Board	HHS
Education	ED
Energy Office	DOE
Environmental Conservation	EPA
Governor's Office	DOC
Health	HHS
Housing and Community Renewal Division	HUD
Labor	DOL
Mental Health Office	HHS
Military and Naval Affairs Division	DOD
Motor Vehicles	DOT
Parks, Recreation and Preservation Office	DOI
Port Authority of New York and New Jersey	DOT
Social Services	HHS
State	DOL
State Police	DOT
Transportation	DOT
Urban Development Corp	HUD
Youth Division	HHS
Counties:	
Albany	HHS
Broome:	
Aviation	DOT
Community Improvement	DOL
Health/Human Services	HHS [1]
Parks	HHS
Public Works	DOT
Sheriff	DOT
Social Services	HHS
Transportation	DOT
Cattaraugus	HHS
Cayuga	HHS
Chautauqua	HHS
Chemung	HHS
Clinton	HHS
Cortland	HHS
Dutchess:	DOL
Community Improvement	DOL [1]
Health/Human Services	HHS
Mental Health/Retardation	HHS
Social Services	HHS
Transportation	HHS
Erie	HHS
Fulton	HHS
Genesee	HHS
Herkimer	HHS
Jefferson	HHS
Madison	HHS
Montgomery	HHS
Monroe:	
Community Affairs/Services	DOI
Community Development	HUD
Health/Human Services	HHS [1]
Public Works	EPA
Social Services	HHS
Water Quality	EPA
Nassau:	
Housing and Intergovernmental Affairs	HUD
Planning	DOT
Public Works	EPA
Social Services	HHS [1]
Youth Employment	DOL
Niagara	HHS
Oneida	HHS
Onondaga	HHS
Ontario	HHS
Orange	HHS
Otsego	HHS
Oswego	HHS
Rensselaer	HHS
Rockland	HHS
Saratoga	HHS
Schenectady	HHS
St. Lawrence	HHS
Steuben	HHS
Suffolk:	
Aging	HHS [1]
Community Development	HUD
Criminal Justice	DOJ
Health/Human Services	HHS
Labor Resources	DOL
Public Assistance	EPA
Social Services	HHS
Transportation	DOT
Tompkins	HHS
Ulster	HHS
Wayne	HHS
Westchester	HHS
Cities:	
Albany	HHS
Binghamton	EPA
Buffalo:	
Community Development	HUD [1]
Economic Development	HUD
Education	ED
Housing Authority	HUD
Human Resources	DOL
Parks	DOI
Police	DOJ
Public Works	EPA
Sewer Authority	EPA
Transportation	ED
Urban Renewal	HUD
Youth	DOI
Water	EPA
Cheektowaga	HHS
Mount Vernon	HUD
New Rochelle	HHS
New York:	
Aging	HHS [1]
Board of Education	ED
Criminal Justice Coordinating Council	DOJ
Economic Development Administration	DOC
Employment	DOL
Environmental Protection	EPA
Health	HHS
Housing Preservation and Development	HUD
Human Resources Administration	HHS
Mayor's Office	HUD
Mental Health	HHS
Parks	DOI
Transportation	DOT
Niagara Falls	HHS
Rochester	HUD
Schenectady	HHS
Syracuse	HHS
Troy	HHS
Utica	HHS
White Plains	HUD
Yonkers	HUD
Towns:	
Amherst	HHS
Babylon	HHS
Brookhaven	HUD
Colonie	HHS
Greenburgh	HHS
Hempstead	HUD
Huntington	HHS
Irondequiot	HHS
Islip	HHS
North Hempstead	HHS
Oyster Bay	HHS
Smithtown	HHS
Tonawanda	HHS

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Union	HHS
NORTH CAROLINA	
State agencies:	
Administration	HHS [1]
Agriculture	USDA
Commerce	DOE
Community Colleges	ED
Correction	HHS
Cultural Resources	ED
Crime Control and Public Safety	DOJ
Public Education	ED
Employment Security Commission	DOL
Governor's Office	HUD
Human Resources	HHS
Labor	DOL
Natural Resources and Community Development	DOL
Transportation	DOT
Wildlife Resources Commission	DOI
Counties:	
Alamance	DOL
Buncombe	HUD
Burke	HHS
Cabarrus	HHS
Catawba	HHS
Cleveland	HHS
Craven	HHS
Cumberland	DOL
Davidson	DOL
Durham	HHS
Edgecombe	HHS
Forsyth	HHS
Gaston	HHS
Guilford	HHS
Halifax	HHS
Iredell	HHS
Johnston	HHS
Lenoir	HHS
Mecklenburg	HHS
Nash	HHS
New Hanover	HHS
Onslow	DOL
Pitt	HHS
Randolph	HHS
Robeson	DOC
Rockingham	HHS
Rowan	HHS
Wake	DOL
Wayne	HHS
Wilson	HHS
Cities:	
Asheville	HUD
Charlotte	HUD
Durham	HUD
Greensboro	EPA
High Point	HUD
Raleigh	HUD
Winston-Salem	HUD
[1]NORTH DAKTA	
State agencies:	
Adjutant General	DOD
Agriculture	USDA
Combined Law Enforcement Council	DOJ
Forest Service	DOI
Game and Fish	DOI
Governor's Office	DOL
Government Affairs Bureau	HUD
Health	HHS
Highway	DOT
Highway Patrol	DOT
Human Services	HHS
Housing Finance Agency	HUD
Institutions Director	HHS
Job Service	DOL
Labor	DOL
Management and Budget	HUD
Parks and Recreation	DOI
Parole and Probation	DOJ
Public Instruction	ED [1]
State Government and Outdoor Recreation	DOI
Veteran Affairs	VA
Vocational Rehabilitation	HHS
Water Commission	DOI

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Counties: Cass	HHS
OHIO	
State agencies:	
Adjutant General	DOD
Aging Commission	HHS
Agriculture	USDA
Development	DOE
Education	ED
Employment Services Bureau	DOL
Environmental Protection Agency	EPA
Governor's Office	HHS
Health	HHS
Highway Safety	DOT
Human Services	HHS
Industrial Relations	DOL
Mental Health	HHS
Natural Resources	DOI
Public Utilities	DOT
Rehabilitation and Correction	DOJ
Transportation	DOT
Youth Service	HHS
Counties:	
Allen	HHS
Ashtabula	HHS
Belmont	HHS
Butler	HHS
Clark	HHS
CLermont	HHS
Columbiana	HHS
Cuyahoga:	
Aging	HHS [1]
Commissioners	DOC
Community and Economic Development	DOL
Community Development	HUD
Courts	DOJ
Sanitation	EPA
Sheriff	DOJ
Welfare	HHS
Erie	HHS
Fairfield	HHS
Franklin	HHS
Greene	HHS
Hamilton:	
Community Development	DOL
Community Improvement	HUD [1]
Hancock	HHS
Jefferson	HHS
Lake	HHS
Lawrence	HHS
Licking	HHS
Lorain	HHS
Lucas:	
Community Commissioners	DOI
County Engineer	DOT
Courts	DOJ
Sanitary Engineer	EPA
Welfare	HHS [1]
Mahoning	HHS
Marion	HHS
Medina	HHS
Miami	HHS
Montgomery:	
Community Development	HUD
Community Services	HHS [1]
Engineering	DOT
Parks and Recreations	DOI
Sanitary	EPA
Muskingum	HHS
Portage	HHS
Richland	HHS
Ross	HHS
Sandusky	HHS
Scioto	HHS
Seneca	HHS
Stark	HHS
Summit	HHS
Trumbull	HHS
Tuscarawas	HHS
Warren	HHS
Washington	HHS
Wayne	HHS
Wood	HHS
Cities:	
Akron	EPA

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Canton:	
Community Development	HUD
Health/Human Services	EPA [1]
Mayor's Office	DOL
Water Pollution Control	EPA
Cincinnati:	
Community Improvement	DOL
Health/Human Services	HHS
Mayor's Office	HUD [1]
Planning	DOT
Public Safety	DOJ
Recreation	USDA
Transit	DOT
Water	EPA
Cleveland:	
Community Development	HUD
Economic Development/Opportunity	HUD
Health/Human Services	EPA
Human Resources/Assistant	DOL [1]
Cleveland Heights	HHS
Columbus	HUD
Dayton:	
Aviation	USDA
Community Improvement	DOL [1]
Fire Services	DOJ
Housing and Urban Development	HUD
Water	EPA
Youth Services	USDA
Euclid	HHS
Hamilton	HHS
Kettering	HHS
Lakewood	HHS
Lima	HHS
Lorain	EPA
Parma	HHS
Springfield	HHS
Toledo	HUD
Warren	HUD
Youngstown	HUD
Towns:	
Canton	HHS
Madison	HHS
Perry	HHS
Plain	HHS
Springfield	HHS
OKLAHOMA	
State agencies:	
Agriculture	USDA
Civil Defense	FEMA
Conservation Commission	EPA
Corrections	DOJ
Economic and Community Affairs	DOL
Education	ED
Employment Security Commission	DOL
Governor's Office	DOC
Health	HHS
Human Services	HHS
Labor	DOL
Mental Health	HHS
Military	DOD
Mines	DOI
Pollution Control	EPA
Public Safety	DOJ
Tourism and Recreation	DOI
Transportation	DOT [1]
Veterans Affairs	VA
Vocational and Technical Education	ED
Water Resources Board	EPA
Wildlife Conservation	DOI
Counties:	
Comanche	HHS
Garfield	HHS
Kay	HHS
Muskogee	EPA
Oklahoma	HHS
Tulsa	EPA
Cities:	
Lawton	HUD
Oklahoma City	HHS
Tulsa	HUD
OREGON	
State agencies:	
Agriculture	USDA
Commerce	DOC

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Economic Development	DOC
Education	ED
Energy	DOE
Environmental Quality	EPA
Executive Department	DOL
Fish and Wildlife	DOI
Forestry	USDA
Geology and Mineral Industries	DOI
Governor's Office	HUD
Human Resources	HHS [1]
Justice	DOJ
Labor and Industries Bureau	DOL
State Police	DOJ
Transportation	DOT
Veterans Affairs	VA
Water Resources	DOI
Workers Compensation	DOL
Counties:	
Clackamas	HHS
Coos	HHS
Douglas	HHS
Jackson	HHS
Lane	HHS
Linn	HHS
Marion	HHS
Washington	HHS
Cities:	
Eugene	HUD
Portland	HUD
Salem	DOT
PACIFIC ISLANDS	
State agencies: All departments and agencies	DOI
PENNSYLVANIA	
State agencies:	
Aging	HHS
Agriculture	USDA [1]
Attorney General's Office	DOJ
Commerce	DOC
Community Affairs	HUD
Education	ED
Emergency Management Agency	FEMA
Energy Council	DOE
Environmental Resources	EPA
Fish Commission	DOI
Game Commission	DOI
Governor's Office	DOL
Health	HHS
Historical and Museum Commission	DOI
Housing Finance Agency	HUD
Labor and Industry	DOL
Military Affairs	DOD
Probation and Parole Board	DOJ
Public Welfare	HHS
State Police	DOJ
Transportation	DOT
Counties:	
Adams	HHS
Allegheny:	
Audit Services	HHS [1]
Community Development	HUD
Comprehensive Education and Training Act	HHS
Federal Programs	DOL
Health/Human Services	HHS
Jail	DOJ
Mental Health/Retardation	HHS
Armstrong	HHS
Beaver	HHS
Berks	HHS
Blair	HHS
Bradford	HHS
Bucks:	
Adult Services	HHS [1]
Child Welfare	HHS
Community Development	HHS
Community Improvement	DOL
Mental Health/Retardation	HHS
Butler	HHS
Cambria	HHS
Carbon	HHS
Centre	HHS
Chester	HHS
Clearfield	HHS
Columbia	HHS
Crawford	HHS

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Cumberland	HHS
Dauphin	HHS
Delaware	HHS
Erie	HHS
Fayette	HHS
Franklin	DOL
Indiana	HHS
Lackawanna	HHS
Lancaster	HHS
Lawrence	HHS
Lebanon	HHS
Lehigh	HHS
Lycoming	HHS
Luzerne	DOL
McKean	HHS
Mercer	HHS
Montgomery:	
Child Welfare	HHS [1]
Community Development	HUD
Community Improvement	DOL
Geriatric Center	HHS
Northampton	HHS
Northumberland	HHS
Schuylkill	HHS
Somerset	HHS
Washington	DOL
Westmoreland:	
Aging	HHS [1]
Children's Bureau	HHS
Housing Authority	HUD
Manpower	DOL
Planning	HUD
Transportation	DOT
York	DOL
Cities:	
Allentown	HUD
Altoona	HUD
Bethlehem	HHS
Chester	HUD
Erie	HUD
Harrisburg	HUD
Johnstown	HUD
Lancaster	EPA
Philadelphia:	
Public Property	DOT
Schools	ED
All other departments	HUD [1]
Pittsburgh	HUD
Reading	HUd
Scranton:	
Community and Economic Development	HUD
All other departments	EPA [1]
Westmoreland	HUD
Wilkes-Barre	HUD
York	HHS
Towns:	
Abington	HHS
Bristol	HHS
Haverford	HHS
Lower Merion	HHS
Penn Hills	HHS
Upper Darby	HHS
PUERTO RICO	
State agencies:	
Agriculture	USDA
Commerce	DOC
Consumer Affairs	HHS
Cooperative Development Administration	DOC
Crime Commission	DOJ
Cultural Affairs	HHS
Addiction Services	HHS
Economic Development Administration	DOL
Education	ED
Employment Security Bureau	DOL
Environmental Quality Board	EPA
Governor's Office	DOI
Health	HHS
Housing	HUD
Labor and Human Resources	DOL
Metropolitan Bus Authority	DOT
Municipal Services Administration	HUD
National Guard	DOD
Natural Resources	HHS
Social Services	HHS
Solid Waste Management Authority	EPA

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Transportation and Public Works	DOT
Rhode Island	
State agencies:	
Adjutant General's Office	DOD
Administration	HHS [1]
Attorney General	DOJ
Business Regulation	DOC
Children and Their Families	HHS
Community Affairs	HHS
Corrections	DOJ
Economic Development	DOL
Education	ED
Elderly Affairs	HHS
Emergency Management Agency	FEMA
Employment Security	DOL
Environmental Management	USDA
Governor's Office	DOJ
Health	HHS
Labor	DOL
Mental Health, Retardation, and Hospitals	HHS
Public Transit Authority	DOT
Social and Rehabilitative Services	HHS
State Police	DOJ
Transportation	DOT
Cities:	
Cranston	HHS
Pawtucket	EPA
Providence:	
Community Development	HUD [1]
Community Improvement	DOL
Federal Programs	ED
Planning and Urban Development	HUD
Warwick	HUD
SOUTH CAROLINA	
State agencies:	
Adjutant General's Office	DOD
Aging Commission	HHS
Agriculture	USDA
Alcohol and Drug Abuse Commission	HHS
Archives and History	DOI
Corrections	DOJ
Development Board	DOC
Education	ED
Employment Security Commission	DOL
Forestry Commission	USDA
Governor's Office	DOL
Health and Environmental Control	HHS
Highways and Public Transportation	DOT
Housing Authority	HUD
Human Affairs	DOL
Labor	DOL
Land Resources Conservation Commission	EPA
Mental Health	HHS
Mental Retardation	HHS
Parks, Recreation and Tourism	DOI
Parole and Community Corrections	DOJ
Public Service Commission	DOT
Social Services	HHS
Vocational Rehabilitation	ED
Water Resources Commission	DOC
Wildlife and Marine Resources	DOI
Youth Services	HHS
Veteran's Affairs	VA
Counties:	
Aiken	HHS
Anderson	HHS
Charleston	HHS
Darlington	HHS
Florence	HHS
Greenville	DOL
Horry	HHS
Lexington	HHS
Orangeburg	HHS
Richland	HUD
Spartanburg	HHS
Sumter	HHS
York	HHS
Cities:	
Charleston	HUD
Columbia	EPA
Greenville	HUD

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
SOUTH DAKOTA	
State agencies:	
Agriculture	USDA
Charities and Corrections Board	HHS [1]
Commerce and Regulation	DOC
Education and Cultural Affairs	ED
Energy Office	DOE
Game, Fish and Parks	DOI
Governor's Office	DOE
Health	HHS
Housing Development Authority	HUD
Labor	DOL
Military and Veterans Affairs	DOD
Public Safety	DOJ
Social Services	HHS
State Development	DOC
Transportation	DOT
Vocational Rehabilitation	HHS
Water and Natural Resources	EPA
Counties:	
Minnehaha	HHS
Pennington	HHS
Cities:	
Sioux Falls	EPA
TENNESSEE	
State agencies:	
Aging Commission	HHS [1]
Agriculture	USDA
Commerce and Insurance	DOC
Conservation	DOI
Corrections	DOJ
Economic and Community Development	DOL
Employment Security	DOL
Education	ED
Governor's Office	DOJ
Health and Environment	HHS
Historical Commission	DOI
Housing Development Agency	HUD
Human Services	HHS
Labor	DOL
Mental Health and Retardation	HHS
Military	FEMA
Planning Office	HUD
Safety	DOJ
Transportation	DOT
Veterans Affairs	VA
Wildlife Resources Agency	DOI
Counties:	
Anderson	HHS
Blount	HHS
Hamilton	DOC
Knox	HHS
Madison	HHS
Montgomery	HHS
Nashville-Davidson:	
Community Development	HUD
Community Improvement	DOL
District Attorney	DOJ
Education	ED
Health/Human Services	EPA [1]
Hospital	HHS
Metro Action Commission	HHS
Police	DOJ
Social Services	HHS
Water/Sewer	EPA
Rutherford	HHS
Shelby	HHS
Sullivan	DOL
Washington	HHS
Cities:	
Chattanooga	HHS
Knoxville	HHS
Memphis	HUD
Nashville	HUD
TEXAS	
State agencies:	
Aeronautical Commission	DOT
Aging	HHS
Agriculture	USDA
Air Control Board	EPA
Attorney General's Office	DOJ
Budget and Planning Office	HUD
Community Affairs	DOL
Corrections	DOJ

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Education Agency	ED
Employment Commission	DOL
Forest Service	USDA
Governor's Office	DOJ
Health	HHS
Highway and Public Transportation	DOT
Historical Commission	DOI
Human Resources	HHS
Intergovernmental Relations Advisory Commission.	HHS
Labor and Standards	DOL
Mental Health Retardation	HHS
Parks and Wildlife	DOI
Public Safety	DOJ
Public Utility Commission	DOE
Railroad Commission	DOT
Rehabilitation Commission	ED
Veteran Affairs Commission	VA
Water Resources	DOI
Youth Commission	HHS
Counties:	
Bell	HHS
Bexar	HHS
Bowie	HHS
Brazoria	HHS
Cameron	HHS
Dallas	HHS
Ector	HHS
El Paso	DOJ
Galveston	HHS
Grayson	HUD
Gregg	HHS
Harris:	
Community Development and Housing	HUD
Courts	DOJ
District Attorney	DOJ
Employment and Training	DOL
Health/Human Services	HHS
Juvenile Probation/Detention	DOJ
Parks	DOI [1]
Hidalgo	HHS
Jefferson	HHS
Lubbock	HHS
McLennan	HHS
Midland	HHS
Nueces	DOC
Orange	HUD
Palmview	DOT
Potter	HUD
Smith	HHS
Tarrant	HHS
Taylor	HHS
Tom Green	HHS
Travis	HHS
Webb	HHS
Wichata	HHS
Cities:	
Abilene	HUD
Amarillo	HUD
Austin	HHS
Beaumont	HHS
Corpus Christi	HHS
Dallas	DOT
El Paso	HUD
Fort Worth	HUD
Galveston	HUD
Houston:	
Aging	HHS
Airport	DOT
Community Development	HUD [1]
Community Improvement	DOL
Health/Human Services	HHS
Library	ED
Public Works	EPA
Laredo	HUD
Lubbock	HHS
San Angelo	HHS
San Antonio	EPA
Tyler	HHS
Waco	HUD
Wichita Falls	EPA
UTAH	
State agencies:	
Agriculture	USDA
Apprenticeship Council	DOL

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Community and Economic Development	HUD
Education Office	ED
Employment Security	DOL
Governor's Office	HUD
Health	HHS [1]
Industrial Commission	DOL
National Guard	DOD
Natural Resources	DOI
Public Safety	HHS
Social Services	HHS
Transportation	DOT
Counties:	
Davis	HHS
Salt Lake	HHS
Utah	HHS
Weber	HHS
Cities:	
Ogden	HHS
Salt Lake City	HUD
VERMONT	
State agencies:	
Agriculture	USDA
Development and Community Affairs	HUD
Education	ED
Employment and Training	DOL
Environmental Conservation	DOI
Governor's Office	HHS [1]
Human Services	HHS
Labor and Industry	DOL
Libraries	HHS
Military	DOD
Public Safety	DOJ
Public Service	DOE
Rehabilitation Center	HHS
Transportation	DOT
Counties: Chittenden	HHS
VIRGINIA	
State agencies:	
Adjutant General's Office	DOD
Aging	HHS
Agriculture and Consumer Affairs	USDA
Air Pollution Control Board	EPA
Commerce	DOC
Conservation and Economic Development	DOI
Corrections	DOJ
Criminal Justice Services	DOJ
Education	ED
Emergency and Energy Services Office	FEMA
Employment Commission	DOL
Game and Inland Fisheries Commission	DOI
Governor's Office	DOL
Health	HHS
Highways and Transportation	DOT
Historic Landmarks Commission	DOI
Housing and Community Development	HUD
Law	DOJ
Labor and Industry	DOL
Library	HHS
Mental Health and Mental Retardation	HHS
Planning and Budget	HUD
Rehabilitative Services	HHS
Social Services	HHS
State Police	DOJ
Water Control Board	EPA
Counties:	
Arlington	HHS
Chesterfield	EPA
Fairfax	EPA
Hennco	HUD
Montgomery:	
Education	ED
Public Assistance	HHS [1]
Orange	DOT
Pittsylvania	HHS
Prince William	EPA
Roanoke	HHS
Cities:	
Alexandria	HHS
Chesapeake	ED
Hampton	HHS
Lynchburg	HHS
Newport News	ED
Norfolk:	
City Manager	HUD [1]

COGNIZANT AGENCY ASSIGNMENTS FOR COST ALLOCATION UNDER OMB CIRCULAR A-87 AND FOR SINGLE AUDIT UNDER OMB CIRCULAR A-128—Continued

	Cognizant Federal agency
Community Relations	HUD
Development	HUD
Education	ED
General Government	HHS
Housing Authority	HUD
Human Resources/Relations	HHS
Judicial	DOJ
Parks and Recreation	HUD
Personnel	DOT
Planning	DOJ
Police	HHS
Public Health	HHS
Portsmouth	HHS
Richmond	HUD
Roanoke	DOT
Virginia Beach	ED
VIRGIN ISLANDS	
State agencies: All departments and agencies	DOI
WASHINGTON	
State agencies:	
Agriculture	USDA
Archaeology and Historic Preservation Office	DOI
Attorney General's Office	DOJ
Commerce and Economic Development	DOC
Community Development	HUD [1]
Corrections	DOJ
Ecology	DOI
Emergency Management	FEMA
Employment Security	DOL
Energy Office	DOE
Financial Management Office	HHS
Fisheries	DOC
Game	DOI
Governor's Office	HHS
Labor and Industries	DOL
Library	HHS
National Guard	DOD
Natural Resources	USDA
Parks and Recreation Commission	DOI
Post Secondary Education Council	HHS
Public Instruction	ED
Social and Health Services	HHS
State Patrol	DOJ
Traffic Safety Commission	DOT
Transportation	DOT
Veterans Affairs	VA
Counties:	
Benton	HHS
Clark	HHS
Cowlitz	HHS
Grays Harbor	HHS
King	HHS
Kitsap	HHS
Pierce:	
Aging	HHS [1]
Airport	DOT
Community Action	HHS
Community Development	HUD
Law and Justice	DOJ
Manpower	DOL
Sewer Utility	EPA
Social Services	HHS
Skagit	HHS
Snohomish	HUD
Spokane	USDA
Thurston	HHS
Whatcom	HHS
Yakima	HHS
Cities:	
Seattle	HHS
Spokane:	
Community Development and Planning	HUD
Employment and Training	DOL
Human Services	HHS
Public Works	DOT
Sewer Utility	EPA
Transit	DOT
Water	DOE
Tacoma	EPA
WEST VIRGINIA	
State agencies:	
Adjutant General's Office	DOD
Aging Commission	HHS
Agriculture	USDA
Air Pollution Control Commission	HHS
Attorney General	DOJ
Corrections	DOJ
Culture and History	DOI
Economic and Community Development Office	DOL
Education	ED
Emergency Services Office	FEMA
Employment Security	DOL
Finance and Administration	DOT
Governor's Office	HHS
Health	HHS
Highways	DOT
Housing Development Fund	HUD
Human Services	HHS
Labor	DOL
Mines	DOI
Natural Resources	DOI
Public Service Commission	DOT
Public Safety	DOJ
Veterans Affairs	VA
Vocational Education Board	ED
Counties:	
Cabell	HHS
Fayette	HHS
Harrison	HHS
Kanawha:	
Employment and Training	DOL [1]
Housing Authority	HUD
Parks and Recreation	DOI
Regional Intergovernmental Council	DOT
Transit Authority	DOT
Logan	HHS
Marion	HHS
McDowell	HHS
Mercer	HHS
Monongalia	HHS
Ohio	EPA
Raleigh	HHS
Wood	HHS
WISCONSIN	
State agencies:	
Administration	HHS
Agriculture, Trade and Consumer Protection	USDA
Development	DOC
Governor's Office	DOJ
Health and Social Services	HHS
Historical Society	DOI
Housing and Economic Development Authority	HUD
Industry, Labor and Human Relations	DOL
Justice	HHS
Military Affairs	DOD
Natural Resources	DOI
Public Instruction	ED
Transportation	DOT
Veterans Affairs	VA
Counties:	
Brown	HHS
Dane	HHS
Dodge	HHS
Eau Claire	HHS
Fond du Lac	HHS
Jefferson	HHS
Kenosha	HHS
La Crosse	HHS
Manitowoc	HHS
Marathon	HHS
Milwaukee	HHS
Outagamie	HHS
Racine	HHS
Rock	HHS
Sheboygan	HHS
Walworth	HHS
Waukesha	HHS
Winnebago	HHS
Wood	HHS
Cities:	
Green Bay	HUD
Kenosha	HHS
Madison	DOT
Milwaukee	HUD
Racine	EPA
Wauwatosa	HHS
West Allis	HHS
WYOMING	
State agencies:	
Agriculture	USDA
Attorney General's Office	DOJ
Charities and Reform Board	HHS
Economic Planning and Development	DOC
Education	ED
Employment Security Commission	DOL
Environmental Quality	EPA
Game and Fish	DOI
Governor's Office	DOL
Health and Social Services	HHS
Highway	DOT
Labor and Statistics	DOL
Public Lands	USDA
Mine Inspector	DOI
National Guard	DOD
Public Service Commission	DOT
Recreation Commission	DOI
Workers Compensation Division	DOL
Counties, Laramie	HHS

[1] Lead cognizant agency for single audits at State and local levels. Also, responsible for negotiating cost allocation plans at local levels. HHS will continue to be cognizant agency for review of State-wide cost allocation plans.

[FR Doc. 85-30188 Filed 12-20-85; 8:45 am]

BILLING CODE 3110-01-M

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Monday
December 23, 1985

Part III

Environmental Protection Agency

40 CFR Part 51

Stack Height Emissions Balancing Policy Proposal

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-2830-8]

Stack Height Emissions Balancing Policy Proposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed policy.

SUMMARY: Reproduced below is a draft memorandum which sets forth a policy proving for the concept of "emissions balancing" to be used to comply with the stack height regulation revisions (promulgated July 8, 1985, 50 FR 27892). The EPA solicits public comment on the memorandum before issuing it as a final Agency policy.

DATE: Comments must be submitted on or before January 22, 1986.

ADDRESSES: Comments on the draft memorandum should be submitted (in triplicate if possible) to: Central Docket Section (LE–131), EPA, Attention: Docket Number A–85–05, 401 M Street, SW., Washington, DC 20460. The Central Docket Section is located in the West Tower Lobby, Gallery I, 401 M Street, SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: David Stonefield, Chief, Policy Development Section, Standards Implementation Branch (MD–15), EPA, Research Triangle Park, North Carolina 27711. Telephone: (919) 541–5540.

SUPPLEMENTARY INFORMATION: The stack height regulation revisions promulgated on July 8, 1985 (50 FR 27892), implement the provisions of section 123 of the Clean Air Act which requires that emissions limits incorporated in a State implementation plan (SIP) not be affected by (1) stack heights in excess of good engineering practice, or (2) any other dispersion technique. For a more detailed discussion, see the July 8, 1985, notice.

Stationary sources of air pollution are subject to emission limitations to assure attainment of the national ambient air quality standards and to protect prevention of significant deterioration increments. These limitations are derived from predictions of ground-level pollutant concentrations that occur in the area of maximum impact as a result of pollutant emissions from one or more sources. Dispersion enhancing practices, including all stacks, lower the predicted ground-level concentrations and may result in allowing sources to emit greater amounts of pollution.

As a result of promulgation of the stack height regulation revisions, some sources will be required to reduce their emissions. The proposed policy has been developed in consideration of the fact that emission reductions may be obtained more cost-effectively in some cases by allowing affected sources (the source for which emission reductions are required by the stack height regulations is termed the "affected source") to contract with other sources for the reductions in lieu of reducing emissions at their own facilities (the source which provides the emission reductions is termed the "providing source"). This is referred to as an "emissions balance."

The stack height regulations revisions require that a SIP revision establishing emission limits for sources affected by the regulation be submitted within 9 months of promulgation of the regulation. An emissions balance would also go through the SIP process. To allow time for arranging balances (which cannot be done until the new emission limits required by the regulation are calculated), an additional 6 months would be provided for submitting a SIP revision establishing emissions balances. Therefore, the emissions balance must be submitted to EPA on or before October 8, 1986. This would, however, not extend the 9-month requirement for the original SIP revision required by the regulation, or the deadline for final compliance with the SIP.

The EPA is limiting the period during which emissions balancing can be carried out to avoid delays in compliance with revised emission limitations. Depending on the extent of required emission reductions, significant lead time may be necessary before actual compliance can be achieved. If a source sought to establish an emissions balance much later than 6 months after receiving a revised emission limitation, it may not be possible for the providing source to reduce its emissions within the time required for compliance with that emission limitation, and EPA does not believe that any extensions should be granted. However, EPA is soliciting comment on whether the proposed time limit is, in fact, needed to ensure timely compliance. For example, EPA could allow the approval of emissions balances at any time after the establishment of revised emission limitations but assess noncompliance penalties on the affected source for the period between the compliance deadline established with the revised emission limitation and the date that the providing source achieves the emission reductions specified by the emission balance.

To ensure that balancing would have positive environmental benefits as great as or greater than stack-by-stack compliance with the July 8 regulation, EPA believes that, in light of the unique variability in sulfur dioxide (SO_2) emissions and emissions inventory, the large volumes of emissions from many affected sources and the extremely short time available to develop, review, and approve emission balances under the outstanding court order (50 FR 27892–95), the emissions reductions from the providing sources must be greater than the reduction required by the regulations of the affected sources. Due to all these constraining factors, EPA is proposing to require between 20 and 100 percent additional emission reductions (i.e., ratios of between 1:1.2 and 1:2). Because of the complexities involved in the stack height regulations, EPA favors the more conservative 1:2 ratio; however, EPA solicits comments on the entire range of ratios.

This proposed policy would not allow the use in any emissions balance of emission reductions from plant shutdowns, or operation curtailment. Load shifting steps such as "least emissions dispatch" are also not allowed because of difficulties in monitoring and enforcing compliance. Least emissions dispatch is currently being studied under the EPA's State Acid Rain (STAR) grant program with a view to determining whether such an approach could be allowed in future emissions balancing regulations.

The EPA is considering placing limits on the relative stack height of the providing and affected sources. The EPA is considering four options: (1) no restrictions on the stack height of the providing source, (2) the providing source's actual stack height must be at least equal to or greater than 75 percent of the actual stack height of the affected source, and (3) the providing source's actual stack height may be at least equal to or greater than the actual stack height of the affected source, and (4) the providing source's effective stack height (actual stack height plus plume rise) must be equal to or greater than the effective stack height of the affected source. The EPA intends to select that option that is the most environmentally beneficial, considering such factors as ease of implementation and legal defensibility. The EPA solicits public comment on all of the options before making a final decision.

Because of the administrative and enforcement difficulties with

maintaining balances beyond the limits of a State's authority, EPA has limited the balances to facilities within the State boundaries. The EPA has proposed to allow an exception for interstate air quality control regions. In such areas the States have already developed processes for interstate actions to attain and maintain the ambient air quality standards. Therefore, it is reasonable to allow the balancing of emissions reductions among sources within those areas.

The EPA wishes to consider public comment on this policy before issuing it in final form. Once issued, the policy will be applicable nationally.

Dated: December 16, 1985.

Lee M. Thomas,

Administrator.

Draft Memorandum

Subject: Stack Height Emissions Balancing Policy
From: The Administrator (A–100)
To: Regional Administrator, Regions I–X

I. Background

On July 8, 1985, the Environmental Protection Agency (EPA) promulgated the revised stack height regulation required to implement section 123 of the Clean Air Act (50 FR 27892). The regulation limits the credit sources can receive for the height of their stacks and the use of other dispersion techniques in calculating emission limits. Consequently, certain sources will be required to comply with lower emission limitations.

The likelihood that some required emission reductions could be obtained more cost-effectively from sources other than those directly affected by the regulation has given rise to the concept known as "emissions balancing." This concept would allow certain sources subject to the regulations to comply in a more cost-effective manner while achieving an overall environmental benefit.

II. Policy Discussion

The EPA will allow most sources directly affected by the regulations, "affected sources," to obtain the required emission reductions by reducing emissions at their own facilities or by contracting with other sources, "providing sources," to reduce emissions at other facilities. However, sources which must reduce their emissions because of reliance on a prohibited supplemental or intermittent control strategy cannot obtain reductions from other sources.

The emissions at the providing source, calculated on an annual basis, must be reduced by an amount at least [*] times the reductions required of the affected sources. This balance factor has been chosen because of the difficulty of ensuring environmental equivalency. Partial balancing is allowed, i.e., affected sources may combine emissions reductions at their own facilities with emission reductions from providing sources to meet the total reductions required. For example, if an affected source is required to reduce its emissions by 10,000 tons per year, it may reduce its emissions by 5,000 tons per year and develop an emissions balance for the remaining 5,000 tons per year of required reductions.

This policy applies to sources affected by the regulations promulgated at 50 FR 27892 on July 8, 1985, which were in operation as of that date or for which permits to construct or operate had been issued.

III. Details of Policy

A. Conditions for Emissions Balances

1. Emissions balancing may be permanent or may be used to comply with the regulations temporarily until permanent controls can be installed. With respect to temporary balancing, the remaining requirements of this policy would apply for the duration of the temporary balance.

2. An approvable emissions balance must be such that the providing source reduces emissions of the same pollutant, calculated on an annual basis, to an extent [*] times the emission reduction required of the affected source (or [*] times that portion of the required reduction for which the affected source is seeking an emissions balance).

3. An emissions balance must take place entirely within the boundaries of a State, with one exception: Interstate balances within the same air quality control region may be acceptable if an enforceable interagency agreement is incorporated into the State implementation plans (SIP's) of both States and is approved by EPA. Regardless of the geographical boundaries of the agreement—whether intrastate or interstate—the appropriate Regional Office may limit balances to smaller areas of a case-by-case basis considering factors such as geography, meteorology, or topography if necessary to ensure comparable environmental benefit.

4. Emission reductions from the providing source must be stack emissions.

5. [The EPA is considering four alternatives for limiting the applicability of the policy: (1) No restriction on the stack height of the providing source, (2) the providing source's actual stack height must be at least 75 percent of the actual height of the affected source, (3) the providing source's actual stack height must be at least as high as the affected source's actual stack height, and (4) the effective stack height of the providing source must be equal to or greater than the effective stack height of the affected source. Public comment is solicited to assist EPA in deciding the extent to which the policy should be limited.] [1]

6. Other conditions of an emissions balance are:

- both the affected and providing sources must be in compliance with all applicable Federally approved SIP requirements,
- all national ambient air quality standards (NAAQS) must be attained and maintained,
- prevention of significant deterioration (PSD) increments must be protected, and
- existing or future SIP requirements for visibility protection must be met.

The emissions balancing submittal must demonstrate that the emission limitations for both the affected and providing sources with the actual height and actual stack parameters are adequate to ensure attainment and maintenance of the NAAQS and applicable PSD increments. Any modeling used in this demonstration must conform to EPA's modeling guideline.[2]

7. In addition to any other emission limits, an annual emissions cap (tons per year) must be applied to the affected and providing sources as part of the SIP emission limits.

B. Calculation of Emissions Balances

1. The baseline from which emissions are reduced from the providing source must be the lesser of actual or allowable emissions. Actual emissions are determined by averaging the annual emissions of the providing source over the most recent 3 calendar years unless circumstances (e.g., the recent installation of a permanent control device) warrant a different period of record. Allowable emissions are those emissions allowed by a control strategy which is approved and currently

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*This value will be established from a range of 1.2 to 2.0 depending upon public comment.

[1] The wording of this section will be developed after EPA selects one of the alternatives.

[2] *Guideline on Air Quality Modeling*, EPA–450/2–78–027, U.S. EPA, Research Triangle Park, North Carolina, April 1978 (or later editions)

considered by EPA as sufficient for providing for attainment of NAAQS.

2. Reductions from the providing source must be reductions obtained through installation of control equipment or use of lower sulfur fuels. Emission reductions from shutdowns, operation curtailments, intermittent or supplemental control strategies, or load shifting will not be acceptable for emissions balancing. Shutdowns or curtailments would represent only a shifting of production elsewhere (assuming constant demand), with attendant emission increases. Intermittent or supplemental control strategies and load shifting would present too difficult an enforcement problem to be acceptable for an emissions balance. If a providing source shuts down or curtails its operations at some later date, the emissions balance will be totally or partially negated, respectively, and the affected source must either arrange an emissions balance with another source or reduce its own emissions as explained in item C.3.

3. The emission reduction from the providing source calculated for an emissions balance may not be derived from a source control measure: (1) which is already an approved part of a SIP, (2) for which a commitment for reductions has been approved as a part of a SIP, (3) which has been proposed for adoption as a part of a SIP, or (4) which has been adopted at the State or local level as a necessary control measure. As explained in item C.2., however, the new emission limit on a providing source will become part of the SIP.

C. Procedural Requirements

1. Any emissions balance must be part of the SIP process, and any resulting emission limitations must be submitted to EPA as a SIP revision by October 8, 1986 (i.e., 15 months from promulgation of the stack height regulations). This requirement in no way extends the 9-month requirement for the SIP revision required by the regulations. Emissions balancing proposals must be open to public scrutiny, and the process must provide for full public participation as provided for by SIP revision procedures.

2. The emission limits resulting from the balance will be enforceable SIP limits for each source, and the balance must be incorporated into the SIP with an explanation of the interrelationship of both emission limits. The providing source may not increase its emissions until it is relieved of its obligation under the emissions balance agreement through the process of a SIP revision.

3. The SIP emission limit which is required by the stack height regulation for an affected source will remain in the SIP as a contingent emission limit which will become automatically effective and enforceable if the terms of the emissions balance are not met due to a possible curtailment or shutdown of a providing source. Consequently, the SIP must contain a contingency plan for an affected source to reduce its emissions to the limits required by the stack height regulation until another emissions balance can be arranged and submitted as a SIP revision. The plan could consist of a measure such as the substitution of low-sulfur fuel.

4. Emission reductions by a providing source which are currently used to meet any other requirements of the Act may not be creditable for an emissions balance. Likewise, emission reductions by a providing source which are used for an emissions balance may not be creditable for other purposes (e.g., to provide additional PSD increment).

5. This policy may not be used in any way to delay compliance with the stack height regulation revisions, such as to extend the SIP submission date or to postpone the final compliance date by which the emission reductions required by those regulations are to be achieved Temporary balances may be used to extend the time period for emission reductions at the affected source, such as for installation of a control system; however, the emissions balance would have to take place by the original compliance date for the affected source

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Monday
December 23, 1985

Part IV

Environmental Protection Agency

40 CFR Part 61

Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant; Proposed Rule

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[ADL-FRL-2869-5]

Assessment of Trichloroethylene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice describes the results of EPA's preliminary assessment of Trichloroethylene (TCE) as a potentially toxic air pollutant. Based on the health and preliminary risk assessment described in today's notice, EPA now intends to add TCE to the list of hazardous air pollutants for which it intends to establish emission standards under section 112(b)(1)(A) of the CAA. The EPA will add TCE to the list if emission standards are warranted. The EPA will decide whether to add TCE to the list only after studying possible control techniques that might be used to control emissions of TCE and after further assessing public health risks. This notice has no effect on the regulation of TCE as a volatile organic compound in order to attain the national ambient air quality standards (NAAQS) for ozone. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of TCE.

Through this notice, the Agency solicits information on the intent to list decision. The EPA also solicits information on the potential carcinogenicity of TCE, the potential noncarcinogenic adverse health effects of exposure to TCE, the effectiveness of controlling TCE emissions with control equipment, the current level of control of TCE sources, and current TCE emission estimates.

ADDRESSES: Submit written materials (duplicate copies are preferred) to: Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–85–02, 401 M Street SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

DATES: Written comments are to be submitted by February 21, 1986.

ADDRESSES: The final Health Assessment Document (HAD) for TCE is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. the National Technical Information Service number PB85–248696 should be used when ordering. Paper copies of the HAD are available for $28.95 (price code A–14), and microfiche copies are available for $5.95 (price code A–01). Prices are subject to change. For further information on the availability of this document, please contact: ORD Publications, CERI–FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (telephone: 513–684–7562 commercial/684–7562 FTS).

The source assessment document for TCE is also available through the National Technical Information Service and can be ordered at the address provided above. The order number PB86–107943/AS should be included when ordering. Paper copies are available for $16.95 (price code A–07) and microfiche copies are available for $5.95 (price code A–01). For additional information on the source assessment document, please contact Mr. Robert Rosensteel (telephone: 919–541–5671 commercial/629–5671 FTS).

The HAD was reviewed by the Science Advisory Board (SAB), an independent group of recognized scientists and technical experts that provide advice and critical review of scientific issues to the Administrator. The SAB comments are available from the SAB office (contact Cheryl Bentley, A–101F, U.S. EPA, 401 M Street, S.W., Washington, D.C. 20460; phone 202–382–2560 commercial/382–2560 FTS). Transcripts of the SAB meetings are available for inspection and copying from the U.S. Environmental Protection Agency, Committee Management Staff. For additional information, please contact Janet Workcuff, PM–213, Room M2515, 401 M Street, S.W., Washington, D.C. 20460 (telephone 202–382–5036 commercial/382–5036 FTS).

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone 919–541–5645 commercial/629–5645 FTS).

SUPPLEMENTARY INFORMATION:

Background

TCE is a solvent widely used in the industrial degreasing of metals, with secondary solvent uses in adhesive, paint, and polyvinyl chloride production. A previous use for TCE was as an inhalation anesthetic agent in certain surgical procedures, although this practice has been discontinued. The use of TCE can be separated into consumptive and solvent uses. Consumptive uses result in direct chemical alteration (i.e., PVC chain terminator) or export of the TCE while solvent uses employ TCE in nonconsumptive applications. In essentially every case of solvent use, the majority of the TCE employed (79–100%) is lost to the atmosphere through volatilization, with a relatively small amount (2–3%) released to ground and surface waters, and the remainder to incineration or solid waste disposal. Some of the TCE released to water bodies or disposal systems may volatilize and ultimately be released to the atmosphere.

In the atmosphere, TCE is photochemically reactive, with an estimated residence time (i.e., time to decrease in concentration to 37% of original amount) of 11 to 15 days. The estimated northern hemisphere average concentration is between 11 and 30 parts per trillion (ppt), with a gradient observed between urban and rural locations. The maximum measured concentration in the ambient air is 87 parts per billion (ppb) (2 hours) in Newark, New Jersey. The decomposition products include dichloroacetyl chloride, phosgene, carbon monoxide, hexachlorobutene and hydrochloric acid, with ozone produced through trichloroethylene-associated free radical reaction with nitrogen oxides. Given currently estimated emissions and the halflife of TCE in the atmosphere, public exposure to decomposition products of TCE is likely to be very low. While associated public health risks are difficult to quantify, such risks are also expected to be low. However, because other compounds which also undergo transformation in the atmosphere may contribute to atmospheric concentrations and associated public health risks, the Agency will continue to conduct research and examine monitoring information to better define potential public health risks.

TCE has certain chemical and physical properties which make it a desirable solvent for metal cleaning and for paint, adhesive, pesticide, pharmaceutical and fabric scouring uses. Due to environmental and health concerns, market factors such as increased replacement of metals by plastics and substitution of methyl chloroform and other solvents, production and use of TCE has declined. TCE production peaked in 1970 at 277,000 megagrams per year (Mg/yr). Production in 1983 is estimated at 65,700 Mg/yr.

A summary of TCE uses and source emissions for 1983 is provided in Table 1. The baseline emission estimates assume that the source categories meet

current State emission limitations for volatile organic compounds in order to comply with the national ambient air quality standards for ozone.

In January 1984 the Office of Research and Development's Office of Health and Environmental Assessment (OHEA) published a draft of the HAD for TCE. This document was reviewed by the SAB in May 1984, with a final letter forwarding comments by SAB on the HAD sent to the Administrator in December 1984. The final HAD for TCE, which incorporates comments and changes requested by the SAB, was printed in July 1985.

TABLE 1.—SUMMARY OF TRICHLOROETHYLENE USES AND SOURCE EMISSIONS [a]

Source category	Use (percent)	Emissions to U.S. atmosphere [b] (Mg/yr)
Metal degreasing	85	52,000
Publicly owned treatment works	[c] N/A	1,450
Production facilities	N/A	102
Chemical plants	10	158
Drinking water treatment facilities	N/A	42
Miscellaneous [d]	5	3,200
Total	100	57,500

[a] Estimates are for 1983 (EPA, 1985).
[b] Assumes controls currently in place to meet State VOC emission limitation requirements.
[c] Not applicable.
[d] Includes use in paints and coatings, adhesive formulations, and general solvent use.

Adverse Health Effects

A number of studies have been conducted to assess the health effects related to exposure to TCE. The majority of these studies have been compiled, reviewed and evaluated in HAD for Trichloroethylene.

Acute, subchronic and chronic exposure to TCE via inhalation, ingestion or dermal exposure is associated with a variety of adverse health effects in humans and animals. Acute exposure to TCE has been documented in human case histories to cause visual disturbances, mental confusion fatigue and nausea, increasing to unconsciousness and death at high concentrations. In a limited number of controlled human studies, headaches and decreases in performance ability for tests of perception, manual dexterity, reaction time and memory are associated with short-term exposures near the Occupational Safety and Health Administration Permissible Exposure Limit (OSHA-PEL) of 100 ppm, with a progressive decrease in psychomotor performance as TCE concentrations increase from 100 to 500 ppm.

The primary noncarcinogenic adverse health effect due to exposure to TCE is dysfunction of the central nervous system, with other effects observed on the liver, kidney and cardiovascular systems. Occasional hepatorenal toxicity in humans is associated with acute inhalation abuse. In limited epidemiological studies of chronically-exposed workers, symptoms related to nervous system disorders increased in frequency with both longer exposures and higher concentrations of TCE for concentrations ranging from 5 to 629 ppm. Symptoms resulting from acute to chronic exposure have been reported to be generally reversible, although permanent nervous system disorders have been documented as a result of long-term exposure. Data are lacking so that it is not possible to characterize the parameters of exposure beyond which irreversible damage occurs.

Evidence of the carcinogenicity of TCE evaluated in the HAD consists of several positive mouse studies (Inhalation: Bell et al., 1978; Henschler et al., 1980; Gavage: NCI, 1976; NTP, 1982) and one marginally positive gavage rat study (NTP, 1982). Several additional studies, (Inhalation: Fukuda et al., 1983; Maltoni, unpublished; Gavage: Henschler et al., 1984; NTP, unpublished; Maltoni, unpublished) including at least one inhalation study, received or reported since completion of the HAD, have not been fully evaluated, but at least two of these studies (Fukuda et al., 1983; Maltoni (inhalation), unpublished) are reported to be positive, with a positive response in more than one species in one of the studies. OHEA has indicated that the additional studies received since completion of the HAD will be incorporated into a future addendum to the HAD. The addendum will be reviewed by the SAB prior to a listing decision.

Of the studies evaluated in the HAD, the Henschler et. al. (1980) and Bell et. al. (1978) mouse studies and the NTP (1982) rat studies were judged to have defects which made their results inadequate to use in the quantitation of a unit risk value, although they do lend support to the overall weight of evidence evaluation of TCE carcinogenicity. The conclusion that TCE is a probable carcinogen is based on the findings of the NCI (1976) and NTP (1982) mouse studies, which were judged in the HAD to be scientifically adequate. These studies demonstrated treatment-related increases in the incidence of hepatocellular carcinonas (liver tumors) in both sexes of B6C3F1 mice. The NCI (1976) and NTP (1982) mouse gavage studies were, therefore, the studies used to assess the carcinogenicity of TCE in a quantitative fashion.

A number of human epidemiological studies have also been conducted and are reviewed in the HAD. While no association between TCE exposure and significant increases in human cancer were demonstrated, each of these studies was considered to have serious deficiencies and thus the epidemiologic data base is considered inadequate to evaluate the carcinogenic potential of TCE.

Using the criteria developed by the International Agency for Research on Cancer (IARC), the HAD concluded that the overall ranking of TCE could be either group 2B (i.e., a probable carcinogen for humans) or group 3 (i.e., cannot be classified as to its carcinogenicity for humans), depending on the evaluation of mouse liver tumors as being suggestive of human cancer. The SAB, in their review of the HAD, was unable to reach a definitive conclusion regarding the classification of TCE carcinogenicity.

While the SAB was deliberating their conclusions, EPA completed and published for review proposed Guidelines for Carcinogen Assessment. EPA announced at that time that the Agency would use those guidelines as interim measures. Using those guidelines, a Technical Committee of the Agency's Risk Assessment Forum classified TCE as category B2 (i.e., a probable human carcinogen). This classification of carcinogenicity was based on a finding of sufficient animal evidence (the proposed guidelines regard mouse liver tumors as sufficient evidence unless downgraded by a variety of factors which were not shown by the TCE results) and inadequate human data. The Agency's proposed Guidelines for Carcinogen Assessment have now received a favorable review by the SAB, with the HAD indicating that under these guidelines TCE is classified as a probable carcinogen (category B2).

Risks to Public Health

Estimates of human exposure to atmospheric TCE emitted from all point sources identified in the EPA (1985) source assessment document have been calculated using the Human Exposure Model. Maximum individual and annual incidence cancer risk estimates were also computed for the metal degreasing, publicly-owned treatment works, and miscellaneous source categories using a dispersion algorithm which assigns emissions to an area rather than to a point. The quantity of emissions assigned to an area is proportional to

the population density of that area, with certain assumptions permitting calculation of the risk estimates.

The upper-bound incremental unit risk estimate for air was derived from the geometric mean of the results from four sets of gavage bioassay data on hepatocellular carcinomas in male and female mice (NCI, 1976; NTP, 1982), there being no inhalation data available at the time the HAD was finalized. The unit risk factor is an upper-bound estimate of the additional probability that an individual will die from cancer resulting from continuous exposure to 1 microgram of TCE per cubic meter of inspired air (assuming a 70 year life-span). The upper-bound nature of the unit risk estimate is such that the true risk estimate for air (1.3×10^{-9}), the aggregate risk of cancer due to exposure to TCE for persons living within 50 kilometers of production sites or chemical plants or drinking water treatment facilities, and resulting from emissions from metal degreasing or publicly-owned treatment works or miscellaneous solvent uses, is 4.1 cases of cancer per year (Table 2). The highest individual risk estimate (defined as the additional risk of cancer to an individual continuously exposed to the highest modeled ambient concentration for a 70-year lifespan), is 9.4×10^{-5}. This analysis does not address potential risks associated with exposure via other media (i.e., food or water), the risks associated with exposure to background concentrations of TCE, or the summation of risks for individuals exposed to emission from area sources.

TABLE 2.—HEALTH RISK ESTIMATES FOR TRICHLOROETHYLENE SOURCE CATEGORIES

Source category	Annual incidence	Maximum individual risk[a]
Metal Degreasing[b]	3.9	9.4×10^{-5}
Publicly-owned treatment works[b]	[illegible]	3.5×10^{-6}
Production Facilities	[illegible]	8.7×10^{-5}
Chemical Plants	[illegible]	3.3×10^{-6}
Drinking Water Treatment Facilities	0.0007	1.2×10^{-5}
Miscellaneous[b, c]	[illegible]	8.0×10^{-6}
Total all sources	4.1	

[a] The maximum individual risk estimates do not include the summation of risks for individuals exposed to emissions from area sources, thus these risk estimates are likely to underestimate the risks to the most exposed individual.
[b] Area sources.
[c] Includes use in paints and coatings, adhesive formulations, and general solvent uses.

A study to estimate the cancer incidence rate resulting from ambient exposure to TCE and other chemicals has been reported by Hunt et al. (1984). In the Hunt study estimates of national cancer incidence rates and maximum individual risk were calculated on the basis of limited monitoring of urban and rural ambient concentrations of TCE. Using the Hunt technique, an aggregate incidence of 8.0 and a maximum individual risk of 2.6×10^{-5} were calculated. These estimates compare favorably with the modeling results presented above.

Risks to workers in facilities manufacturing or using TCE have not been estimated. However, if emission controls were applied to degreasers, it is likely that worker exposure to TCE will be reduced.

Current modeling information suggests that noncarcinogenic adverse health effects may occur in the vicinity of some production facilities. Using a worst-case modeling scenario, fenceline (200 meters from emission point) concentrations have been estimated at 60 ppm for an 8-hour averaging time and 2000 ppm for a 15-minute averaging time. As noted previously, the OSHA PEL is 100 ppm for an 8-hour averaging time, and adverse health effects such as task performance decrements have been reported as a result of exposure to TCE near this concentration. The American Conference of Governmental Industrial Hygienists (ACGIH) has recommended and eight hour Threshold Limit Value (TLV) of 50 ppm, and a Short Term Exposure Limit (STEL) of 150 ppm. In order to determine the extent to which these modeled concentrations reflect the potential for adverse health effects, it will be necessary to examine the sources in much more detail along with the distribution of population in the vicinity of facilities that emit TCE. Given the uncertainties of the present analysis, it is difficult to estimate the extent to which short-term emissions of TCE pose risks to public health. As the Agency moves forward toward a decision on the listing of TCE, efforts to refine this analysis and characterize the risk to populations from short-term exposures will be performed.

There are a number of assumptions underlying these estimates that can yield either over or underestimates of the risk posed by TCE. Further study and assessment will not likely narrow the uncertainties associated with some of the inputs to the risk assessment or yield an improvement in some of these assumptions (e.g., the carcinogenic potency of a chemical estimated through the use of a mathematical model for extrapolating animal studies to the much lower concentrations present in the ambient air). There are other inputs to the risk estimates that are very preliminary at the current stage of assessment and that will be substantially refined through further study. The primary example of this is the source information: number and types of sources, their locations, emission rates, stack parameters, variability of emissions, etc. Current source information is based on engineering estimates, data obtained under section 114 of the Clean Air Act, and other readily available information in the literature. This information, in many cases, will be improved through plant visits, and source tests. The Agency has concluded that the preliminary risk estimates presented here are sufficient to warrant further study for possible regulation. The Agency will improve these estimates, particularly with respect to emissions and exposure, before making a final decision on whether to add TCE to the list under section 112.

Statement of Intent

Section 112(b)(1)(A) of the CAA defines hazardous air pollutants as air pollutants that contribute to mortality or serious irreversible, or incapacitating reversible, illness. Section 112(b)(1)(A) provides that the Administrator shall maintain "... a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section." In deciding whether to establish such emission standards for carcinogens, EPA considers both public health risks and the feasibility and reasonableness of control techniques (e.g., 49 FR 23522, 23498, 23558 (June 6, 1984) (emission standards for benzene)).

Based on the health and preliminary risk assessment described in today's notice, EPA now intends to add TCE to the section 112(b)(1)(A) list. EPA will decide whether to add TCE to the list only after studying possible techniques that might be used to control emissions of TCE and after further improving the assessment of the public health risks. EPA will add TCE to the list if emission standards are warranted. EPA will publish this decision in the Federal Register.

If standards are not warranted under section 112 of the Clean Air Act, the Agency will consider other options as described in EPA's report, "A Strategy to Reduce Public Health Risks From Air Toxics," June 1985. For example, in that strategy EPA described other approaches for dealing with routine releases of toxic air pollutants from stationary sources such as working with State of local air pollution agencies to address problems that do not warrant Federal regulatory action but which account for elevated risks in some areas.

Standards Development Process

The following discussion has been prepared to provide the reader with an explanation of the standards development process and the timing of the process. The standards development process involves two phases, each taking about two years. The first phase is the identification of the emission sources and the need and ability to control those sources. The second phase involves Agency decisionmaking and public review prior to final action.

During the first phase, EPA identifies the sources that are significant emitters of the pollutant and the specific emission points within each source and then determines the quantities of pollution emitted, the alternative control systems available, and their cost and effectiveness in reducing emissions and associated public health risks. A set of alternative regulations is developed and the environmental, economic, energy, and public health risks are evaluated.

The first phase requires investigation of the many different ways in which a candidate pollutant can be emitted and controlled. As indicated earlier, TCE is emitted from production and chemical plant use of TCE, from drinking water treatment facilities, from metal degreasing and publicly owned treatment works, and from miscellaneous uses in paints and coatings, adhesive formulations, and general solvent use. Within a source category there is wide variation in designs, sizes, and processes. This variation affects the emission rates, the public health risks, and the cost and controllability of the pollutant. Assessment of source emissions and controls is further complicated by the fact that emissions are not necessarily contained in stacks or ducts (i.e., some are fugitive emissions) and emission test programs are technically difficult and costly.

The decisionmaking and review phase involves a series of EPA internal and external activities. Prior to publication of proposed rules, the Agency reviews all of the technical, cost, and exposure/risk data and makes decisions on the level of standards. The data and conclusions are reviewed publicly by an independent technical advisory committee. The standard is proposed for public comment. The comment period is open a minimum of two months and a public hearing is held, if requested. Following the comment period, Agency technical staff review the comments and resolve technical issues, an activity that often requires obtaining and analyzing new data.

Miscellaneous

TCE is currently listed as a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Under section 101(14) of CERCLA, Reportable Quantities (RQs) are established for substances specified in the CERCLA, as well as substances listed or designated under certain sections of the Clean Water Act, the Resource Conservation and Recovery Act, the CAA (section 112) and the Toxic Substances Control Act (50 FR 13456; April 4, 1985). Section 103(a) of the CERCLA requires any release of TCE to the environment (including the air) that is equal to or greater than 1,000 pounds in any 24-hour period to be reported to the National Response Center [NRC] (Telephone 800–424–8802 or 202–426–2675 for the Washington DC, metropolitan area). The current RQ for TCE does not reflect consideration of its potential as a human carcinogen and is currently under review by the Agency. Since TCE is already listed under section 101(14) of the CERCLA, a decision to list TCE under section 112 of the CAA would not pose any additional reporting requirements.

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements on States or sources. This proposal was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and any written EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl Chloride.

Dated: December 14, 1985.

Lee M. Thomas,

Administrator.

40 CFR Part 61 is amended as follows:

PART 61—[AMENDED]

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416 and 7601.

2. Section 61.01 paragraph (b) is revised by adding the following entry in the alphabetized list of substances.

§ 61.01 Lists of pollutants and applicability of Part 61.

* * * * *

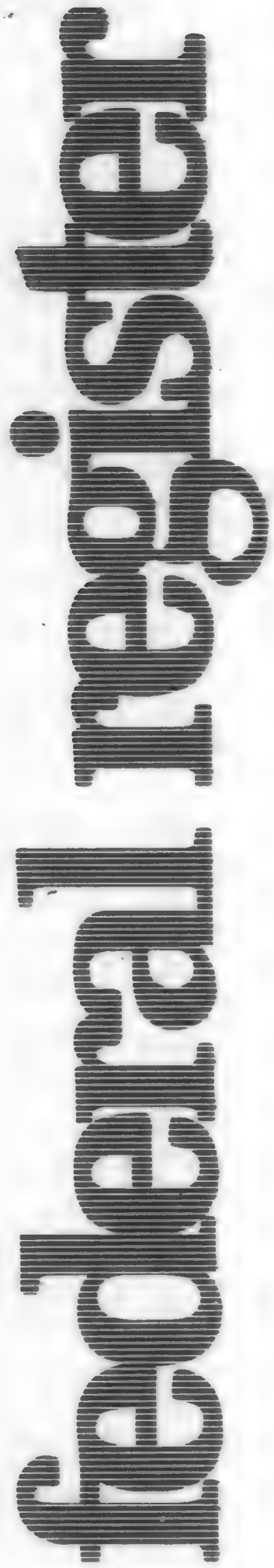
(b) * * *

Trichloroethylene.	(49 FR [Page number]; [Date of publication]).

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Monday
December 23, 1985

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 4, 5, 6 etc.
Federal Acquisition Regulation; Final Rule

BEST COPY AVAILABLE

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, and 52

[Federal Acquisition Circular 84-13]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-5, was published in the **Federal Register** on January 11, 1985 (50 FR 1728) as an interim rule and request for comment. As a result of public comments received the coverage was revised and is hereby published as a final rule.

EFFECTIVE DATE: February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Circular (FAC) 84-5 amended the FAR to implement the Competition in Contracting Act of 1984 (CICA). FAC 84-5 was published in the **Federal Register** on January 11, 1985 (50 FR 1728) as an interim rule and request for comment.

Having carefully considered all comments provided, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory Council (DARC) have revised the interim CICA coverage. A summary of the major changes to the interim regulation follows:

a. FAR Subpart 4.6 is revised to require each agency to establish and maintain a computer file of information regarding the agency's procurements.

b. In FAR 5.202 the exceptions to the requirement to publish notices of proposed contract actions have been revised to clarify their relationship to the exceptions to full and open competition in FAR Part 6. In addition, the blanket exception to publicizing acquisitions outside the United States, its possessions, or Puerto Rico, has been replaced by FAR 5.202(a)(12), which restricts the exception to defense agencies' contracts that will be made and performed outside the United States, its possessions, or Puerto Rico when only local sources will be solicited.

c. The regulations in FAR 5.207(b) regarding the preparation of synopses have been revised to require that synopses contain a provision that reflects whether the solicitation requires an offeror, its product, or service meet a qualification requirement and identifies the office from which additional information about the qualification requirement may be obtained. In addition, FAR 5.207(b)(6) has been clarified to require that synopses contain a statement of the reason justifying other than full and open competition.

d. FAR 6.001, 6.302-5, and 19.809-1 have been revised to reflect changes made by Pub. L. 98-577 that contracts awarded under the Small Business Administration 8(a) program are excepted from the requirement for full and open competition under FAR 6.302-5, Authorized or Required by Statute. FAR 6.302-5(c)(2) states that such contracts need not be supported by written justifications and approvals.

e. The title of FAR 6.302-1 is revised to clarify that the first exception to providing for full and open competition applies when the required supplies or services are available from only one responsible source and no other supplies or services will satisfy agency requirements. Further, the subsection is amended to clarify the exception's specific application to unsolicited research proposals and follow-on contracts and possible application to other listed examples.

f. FAR 6.303-1 is revised to require that contracting officers ensure and document that each contract action not providing for full and open competition taken pursuant to the authority of a class justification and approval is within the scope of that class justification and approval. Further, FAR 6.303-2, which specifies the contents of justifications, is revised to include information regarding the publicizing of the requirement in the Commerce Business Daily.

g. FAR 6.304 is revised to clarify that contracts not exceeding $25,000 do not require approval of the justification for other than full and open competition, and to require the inclusion of the estimated dollar value of all options in determining the approval level of justifications.

h. FAR Part 7 is revised to clarify that agencies are required to perform acquisition planning and market surveys for all acquisitions, and to remove the requirement for concurrence in the plan by the cognizant competition advocate. Coordination by this official is still required.

i. FAR 10.002(b) required that defense agencies include descriptions of agency requirements, whenever practicable, to be stated in terms of functions to be performed or performance required. This preference for functional or performance specifications has been revised to apply governmentwide, rather than just to defense agencies.

j. FAR Subpart 15.5 prescribes the policies and procedures for the submission, receipt, evaluation, and acceptance of unsolicited proposals. This coverage is revised to specify that the subpart does not govern the competitive selection of basic research proposals and to refer the reader to FAR Subpart 6.3.

k. FAR 15.1001 discusses notifications to unsucessful offerors. FAR 15.1001(a) is revised to remove the exceptions to notifying unsuccessful offerors that had been inadvertently retained in the interim rule.

l. FAR Part 34, Major System Acquisition, requires agencies to sustain effective competition between alternative system concepts and sources. In order to clarify this requirement, the definition of effective competition has been added to FAR 34.001.

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 et seq. and have been assigned clearance number 9000-0013 (see FAR 1.105).

C. Final Regulatory Flexibility Act Analysis

FAC 84-13, Item I, Competition in Contracting Act of 1984, amends the FAR to implement Pub. L. 98-369, the Competition in Contracting Act of 1984 (CICA), and sections 302 and 303 of Pub. L. 98-577, Small Business and Federal Competition Enhancement Act of 1984. Under the new coverage, agencies will be required to provide for full and open competition by soliciting sealed bids or requesting competitive proposals, or use other competitive procedures, unless a statutory exemption permits other than full and open competition. There are new justification, approval, and notice requirements for contracts employing other than full and open competition. This coverage also requires the appointment of competition advocates and enumerates their responsibilities.

Because of the tight statutory deadlines for implementation of the

Acts and the significant changes to the basic statutes underlying the Federal procurement systems, a notice was published in the **Federal Register** on July 25, 1984 (49 FR 29982) requesting Government agencies, private firms, associations, and the general public to submit comments to be considered in the formulation of the initial implementation of CICA in the FAR.

On October 1, 1984, a **Federal Register** (49 FR 38680) notice was published making available for comment, changes to the FAR implementing the CICA. Copies of the draft proposal were sent to Government agencies, private firms, and associations.

On October 3, 1984, a **Federal Register** (49 FR 39151) notice was published announcing the CAAC and DARC would hold a public meeting on proposed changes to the FAR resulting from CICA.

On January 11, 1985, an interim rule and request for comment was published in the **Federal Register** (50 FR 1726) with respect to FAR changes required to implement CICA.

As a result of the notices and public meeting, over 250 comments were received and considered. No comments were received from small entities indicating that the coverage would have a significant economic impact.

This coverage will have a beneficial impact on a substantial number of small entities, since it will increase competitive opportunities for those entities by restricting the award of noncompetitive contract actions to those situations specifically authorized by statute, and by requiring public announcement, with limited exceptions, of all proposed contract actions. These changes will provide small entities with the opportunity to respond to and be considered for all such contract actions including those publicized as noncompetitive.

List of Subjects in 48 CFR Parts 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, 52

Government procurement.

Dated: December 19, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84-13]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-13 is effective February 3, 1986.

Eleanor R. Spector,

Deputy Assistant, Secretary of Defense for Procurement.

December 18, 1985.

[Number 84-13]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive materials contained in FAC 84-13 is effective February 3, 1986.

Terence C. Golden,

Administrator.

[Number 84-13]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-13 is effective February 3, 1986.

S.J. Evans,

Assistant Administrator for Procurement.

Federal Acquisition Circular (FAR) 84-13 amends the Federal Acquisition Regulation (FAR) as specified below.

Item I—Competition in Contracting Act of 1984

The Competition in Contracting Act of 1984 (CICA), Title VII of Pub. L. 98-369, substantially changes the basic statutes underlying the Federal acquisition system. Any solicitation for bids or proposals issued on or after April 1, 1985, was required to comply with CICA's new requirements.

Therefore, 48 CFR Parts, 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, and 52 are amended as follows:

Chapter 1 of Title 48, Code of Federal Regulations, the interim rule, published on January 11, 1985 (50 FR 1726-1753) is adopted as a final rule with the following changes:

1. The authority for Parts, 4, 5, 6, 7, 10, 13, 15, 17, 19, 34, and 52 continues to read as follows:

Authority: 40 U.S.C. 485(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 4—ADMINISTRATIVE MATTERS

4.601 [Redesignated as 4.602]

2. Section 4.601 is redesignated as section 4.602, and a new section 4.601 is added to read as follows:

4.601 Record requirements.

(a) Each executive agency shall establish and maintain for a period of 5 years a computer file, by fiscal year, containing unclassified records of all procurements, other than small purchases.

(b) with respect to each procurement carried out using competitive procedures, agencies shall be able to access from the computer file, as a minimum, the following information:

(1) The date of contract award.

(2) Information identifying the source to whom the contract was awarded.

(3) The property or services obtained by the Government under the procurement.

(4) The total cost of the procurement.

(5) Those procurements which result in the submission of a single bid or proposal so that they can be separately categorized and designated noncompetitive procurements using competitive procedures.

(c) In addition to paragraph (b) above with respect to each procurement carried out using procedures other than competitive procedures, agencies shall be able to access from the computer file—

(1) The reason under Subpart 6.3 for the use of such procedures; and

(2) The identity of the organization or activity which conducted the procurement.

(d) This information shall be transmitted to the Federal Procurement Data System in accordance with agency procedures.

PART 5—PUBLICIZING CONTRACT ACTIONS

3. Section 5.002 is revised to read as follows:

5.002 Policy.

Contracting officers shall publicize contract actions in order to—

(a) Increase competition;

(b) Broaden industry participation in meeting Government requirements; and

(c) Assist small business concerns, small disadvantaged business concerns, and labor surplus area concerns in obtaining contracts and subcontracts.

4. Section 5.101 is amended by revising the introductory text of paragraph (a) to read as follows:

5.101 Methods of disseminating information.

(a) Except as provided in 5.202, contracting officers shall disseminate information on proposed contract actions expected to exceed $10,000 by—

* * * * *

5. Section 5.201 is amended by revising paragraphs (a) and (b) to read as follows:

5.201 General.

(a) As required by the Small Business Act (15 U.S.C. 637(c)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies shall furnish for publication in the Commerce Business Daily (CBD) notices of proposed

contract actions expected to exceed $10,000 as specified below.

(b) For acquisitions of supplies and services other than those covered by the exceptions in 5.202, and special situations in 5.205, the contracting officer shall transmit a notice to the CBD (synopsis) (see 5.207) for each proposed—

* * * * *

6. Section 5.202 is amended by revising the introductory text and paragraph (a) to read as follows:

5.201 Exceptions.

The contracting officer need not submit the notice required by 5.201 when—

(a) The contracting officer determines that—

(1) The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (e.g., would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;

(2) The contract action is made under the conditions described in 6.302–2 and the Government would be seriously injured if the agency complies with the time periods specified in 5.203(a) (see also 5.203(b));

(3) The contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government or international organizations, has the effect of requiring that the acquisition shall be from specified sources;

(4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act, or from a specified source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;

(5) The contract action is for utility services other than telecommunications services and only one source is available;

(6) The contract action is an order placed under a requirements contract;

(7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97–219);

(8) The contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal;

(9) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(10) The contract action is made under conditions described in 6.302–3, or 6.302–5 with regard to brand name commercial items for authorized resale, or 6.302–7, and advance notice is not appropriate or reasonable;

(11) The contract action is made under the terms of an existing contract that was previously synopsized in sufficient detail to comply with the requirements of 5.207 with respect to the current contract action; or

(12) The contract action is by a Defense agency and the contract action will be made and performed outside the United States, its possessions, or Puerto Rico, and only local sources will be solicited.

* * * * *

7. Section 5.203 is revised to read as follows:

5.203 Publicizing and response time.

Whenever agencies are required to publish notice of contract actions under 5.201, they shall proceed as follows:

(a) A notice of the contract action shall be published in the CBD at least 15 days before issuance of a solicitation.

(b) Agencies shall allow at least 30 days response time for receipt of bids or proposals from the date of issuance of a solicitation.

(c) Agencies shall allow at least 30 days response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement.

(d) Agencies shall allow at least 45 days response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for contract actions categorized as research and development.

(e) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(f) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted) following transmittal of the synopsis to the CBD.

8. Section 5.205 is amended by revising paragraph (c) to read as follows:

5.205 Special situations.

* * * * *

(c) *Architect-engineer services.* Except when exempted by 5.202, contracting officers shall publicize notices of intent to contract for architect-engineer services as follows:

(1) Synopsize each proposed contract action for which the total fee (including phases and options) is expected to exceed $10,000.

(2) When the total fee is not expected to exceed $10,000, the contracting officer may display a notice of the proposed contract action at the contracting office and use other optional publicizing methods authorized by 5.101(b).

* * * * *

9. Section 5.207 is amended by revising paragraphs (b)(4)(iv) and (b)(6) to read as follows:

5.207 Preparation and transmittal of synopses.

* * * * *

(b) * * *

(4) * * *

(iv) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see Subpart 9.2).

* * * * *

(6) In the case of a contract action under Subpart 6.3, insert a statement of the reason justifying other than full and open competition, and the identity of the intended source(s) (see 5.207(d)(3)).

* * * * *

10. Section 5.301 is revised to read as follows:

5.301 General.

Except for classified contract actions that were synopsized in accordance with 5.202(a), contracting officers shall synopsize in the CBD awards exceeding $25,000 that are likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

PART 6—COMPETITION REQUIREMENTS

11. Section 6.001 is revised to read as follows:

6.001 Applicability

This part applies to all acquisitions except—

(a) Contracts awarded using the small purchase procedures of Part 13;

(b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;

(c) Contract modifications that are within the scope and under the terms of an existing contract;

(d) Orders placed under requirements contracts or definite-quantity contracts; or

(e) Orders placed under indefinite-quantity contracts that were entered into pursuant to this Part when—

(1) The contract was awarded under Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order; or

(2) The contract was awarded under Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

12. Sections 6.302, 6.302–1, 6.302–2, 6.302–3, 6.302–4, 6.302–5, 6.302–6, and 6.302–7, are revised to read as follows:

6.302 Circumstances permitting other than full and open competition.

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

6.302–1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(1) or 41 U.S.C. 253(c)(1).

(2) When the supplies or services required by the agency are available from only one responsible source and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept the substance of which (A) is not otherwise available to the Government, and (B) does not resemble the substance of a pending competitive acquisition. (See 10 U.S.C. 2304(d)(1)(A) or 41 U.S.C. 253(d)(1)(A).)

(ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in (A) substantial duplication of cost to the Government that is not expected to be recovered through competition, or (B) unacceptable delays in fulfilling the agency's requirements. (See 10 U.S.C. 2304(d)(1)(B) or 41 U.S.C. 253(d)(1)(B).)

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in 6.302–7; it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all-inclusive and do not consitute authority in and of themselves):

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by unique supplies or services available from only one source or only one supplier with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see Part 27).

(3) When acquiring electric power or energy, gas (natural or manufactured), water, or other utility services, circumstances may dictate that only one supplier can furnish the service (see 8.304–5(d)); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids and proposals must have been considered. (See 15.402(g).)

6.302–2 Unusual and compelling urgency.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(2) or 41 U.S.C. 253(c)(2).

(2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) *Application.* This authority applies in those situations where (1) an unusual and compelling urgency precludes full and open competition, and (2) delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302–3 Industrial mobilization; or engineering, developmental, or research capability.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(3) or 41 U.S.C. 253(c)(3).

(2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(b) *Application.* (1) Use of the authority in paragraph (a)(2)(i) above may be appropriate when it is necessary to—

(i) Keep vital facilities or suppliers in business or make them available in the event of a national emergency;

(ii) Train a selected supplier in the furnishing of critical supplies or services, prevent the loss of a supplier's ability and employees' skills, or maintain active engineering, research, or development work;

(iii) Maintain properly balanced sources of supply for meeting the

requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for full and open competition as appropriate under this part);

(iv) Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;

(v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada;

(vi) Continue in production, contractors that are manufacturing critical items, where there would otherwise be a break in production;

(vii) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base; or

(viii) Acquire items covered by Subpart 8.2, Jewel Bearings and Related Items.

(2) Use of the authority in paragraph (a)(2)(ii) above may be appropriate when it is necessary to—

(i) Establish or maintain an essential capability for theoretical analyses, exploratory studies, or experiments in any field of science or technology;

(ii) Establish or maintain an essential capability for engineering or developmental work calling for the practical application of investigative findings and theories of a scientific or technical nature; or

(iii) Contract for supplies or services as are necessary incident to paragraphs (b)(2)(i) or (ii) above.

(c) *Limitations.* Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

6.302–4 International agreement.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(4) or 41 U.S.C. 253(c)(4).

(2) Full and open competition need not be provided for when precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.

(b) *Application.* This authority may be used in circumstances such as—

(1) When a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or

(2) When a contemplated acquisition is for services to be performed, or supplies to be used, in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.

(c) *Limitations.* Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

6.302–5 Authorized or required by statute.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(5).

(2) Full and open competition need not be provided for when (i) a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or (ii) the agency's need is for a brand name commercial item for authorized resale.

(b) *Application.* This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:

(1) Federal Prison Industries (UNICOR)—18 U.S.C. 4124 (see Subpart 8.6);

(2) Qualified Nonprofit Agencies for the Blind or other Severely Handicapped—41 U.S.C. 46–48c (see Subpart 8.7);

(3) Government Printing and Binding—44 U.S.C. 501–504, 1121 (see Subpart 8.8); or

(4) 8(a) Program—15 U.S.C. 637 (see Subpart 19.8).

(c) *Limitations.* (1) The authority in paragraph (a)(2)(ii) above may be used only for purchases of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see 6.301(d)). •

(2) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304, except for those contracts awarded under paragraphs (b)(2) and (b)(4) above.

6.302–6 National security.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(6) or 41 U.S.C. 253(c)(6).

(2) Full and open competition need not be provided for when the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

(b) *Application.* This authority may be used for any acquisition when disclosure of the Government's needs would compromise the national security (e.g., would violate security requirements); it shall not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) See 5.202(a)(1) for synopsis requirements.

(3) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302–7 Public interest.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(7) or 41 U.S.C. 253(c)(7).

(2) Full and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned.

(b) *Application.* This authority may be used when none of the other authorities in 6.302 apply.

(c) *Limitations.* (1) A written determination to use this authority shall be made in accordance with Subpart 1.7, by (i) the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation for the Coast Guard, or the Administrator of the National Aeronautics and Space Administration; or (ii) the head of any other executive agency. This authority may not be delegated.

(2) The Congress shall be notified in writing of such determination not less than 30 days before award of the contract.

(3) If required by the head of the agency, the contracting officer shall perpare a justification to support the determination under paragraph (c)(1) above.

(4) This Determination and Finding (D & F) shall not be made on a class basis.

13. Section 6.303–1 is amended by revising paragraph (c) as follows:

6.303–1 Requirements.

* * * * *

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(c) Justifications required by paragraph (a) above may be made on an individual or class basis. Any justification for contracts awarded under the authority of 6.302–7 shall only be made on an individual basis. Whenever a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken pursuant to the authority of the class justification and approval is within the scope of the class justification and approval and shall document the contract file for each contract action accordingly.

* * * * *

14. Section 6.303–2 is amended by revising paragraphs (a)(6) and (a)(9)(ii) to read as follows:

6.303–2 Content.

* * * * *

(a) * * *

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a CBD notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

* * * * *

(9) * * *

(ii) When 6.302–1 is cited for follow-on acquisitions as described in 6.302–1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

* * * * *

15. Section 6.304 is amended by revising paragraph (a)(1) and adding paragraph (d) to read as follows:

6.304 Approval of the justification.

(a) * * *

(1) For a proposed contract not exceeding $100,000, at a level above the contracting officer. This approval is not required for—

(i) Contracts under the authority cited in 6.302–4 or 6.302–5;

(ii) Contracts for electric power or energy, gas (natural or manufactured), water, or other utility services when such services are available from only one source;

(iii) Contracts for educational services from nonprofit institutions; or

(iv) Contracts not exceeding $25,000.

* * * * *

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

PART 7—ACQUISITION PLANNING

16. Section 7.102 is revised to read as follows:

7.102 Policy.

Agencies shall perform acquisition planning and conduct market surveys for all acquisitions in order to promote and provide for full and open competition (see Part 6), or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253A(a)(1)). This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.

17. Section 7.104 is amended by revising paragraph (c) to read as follows:

7.104 General procedures.

* * * * *

(c) The planner shall coordinate with and secure the concurrence of the contracting officer in all acquisition planning. If the plan proposes using other than full and open competition, the plan shall also be coordinated with the cognizant competition advocate.

* * * * *

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

18. Section 10.002 is amended by revising paragraph (b) to read as follows:

10.002 Policy.

* * * * *

(b) Acquisition policies and procedures shall require descriptions of agency requirements, whenever practicable, to be stated in terms of functions to be performed or performance required.

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

19. Section 13.103 is amended by revising paragraph (b) to read as follows:

13.103 Policy.

* * * * *

(b) Small purchase procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the small purchase limitation even though resulting awards do not exceed that limit. Requirements aggregating more than the small purchase dollar limitation shall not be broken down into several purchases that are less than the limit merely to permit the use of small purchase procedures.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

20. Section 15.500 is revised to read as follows:

15.500 Scope of subpart.

This subpart prescribes policies and procedures for submission, receipt, evaluation, and acceptance of unsolicited proposals. It does not govern the competitive selection of basic research proposals (see 6.102(d)(2)).

21. Section 15.502 is revised to read as follows:

15.502 Policy.

Agencies may accept unsolicited proposals in accordance with 15.507. To award a contract based on an unsolicited proposal without providing for full and open competition requires that appropriate authority exists in subpart 6.3. In this connection, 6.302–1(a)(2)(i) provides special authority for unsolicited research proposals.

22. Section 15.303 is amended by revising paragraph (c)(5) to read as follows:

15.503 General.

* * * * *

(c) * * *

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

* * * * *

23. Section 15.507 is amended by adding the following sentence at the end of paragraph (b)(5) to read as follows:

15.507 Contracting methods.

* * * * *

(b) * * *

(5) * * * (For unsolicited research proposals, see 6.302–1(a)(2)(i). A valid unsolicited proposal for other than research may be accepted only if otherwise permissible under other provisions of Subpart 6.3.)

* * * * *

24. Section 15.1001 is amended by revising paragraphs (a) and (b)(2) to read as follows:

15.1001 Notifications to unsuccessful offerors.

(a) *General.* The Contracting officer shall promptly notify each offeror whose

proposal is determined to be unacceptable or whose offer is not selected for award, unless disclosure might prejudice the Government's interest.

(b) * * *

(2) In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall inform each unsuccessful offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the unsuccessful proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

25. Section 17.207 is amended by revising paragraph (g) to read as follows:

17.207 Exercise of options.

* * * * *

(g) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority.

26. Section 17.602 is amended by revising paragraph (a) to read as follows:

17.602 Policy.

(a) Heads of agencies, with requisite statutory authority, may determine in writing to authorize contracting officers to enter into or renew any management and operating contract in accordance with the agency's statutory authority, or the Competition in Contracting Act of 1984, and the agency's regulations governing such contracts. This authority shall not be delegated. Every contract so authorized shall show its authorization upon its face.

* * * * *

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

27. Section 19.809–1 is amended by revising paragraph (b)(1) to read as follows:

19.809–1 General.

* * * * *

(b) * * *

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5) (as appropriate) as the authority for use of other than full and open competition.

* * * * *

PART 34—MAJOR SYSTEM ACQUISITION

28. Section 34.001 is amended by adding in alphabetical sequence the following definition:

34.001 Definitions.

"Effective competition," as used in this part, is a market condition which exists when two or more contractors, acting independently, actively contend for the Government's business in a manner which ensures that the Government will be offered the lowest cost or price alternative or best technical design meeting its minimum needs.

* * * * *

29. Section 34.002 is amended by revising paragraphs (a) and (b) to read as follows:

34.002 Policy.

* * * * *

(a) Promote innovation and full and open competition as required by Part 6 in the development of major system concepts by (1) expressing agency needs and major system acquisition program objectives in terms of the agency's mission and not in terms of specified systems to satisfy needs, and (2) focusing agency resources and special management attention on activities conducted in the initial stage of major programs; and

(b) Sustain effective competition between alternative system concepts and sources for as long as it is beneficial.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

30. Section 52.214–19 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place the date "(FEB 1986)"; and by revising paragraph (a) of the provision to read as follows:

52.214–19 Contract Award—Sealed Bidding—Construction.

* * * * *

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

* * * * *

31. Section 52.245–16 is amended to correct the heading and text that appeared incorrectly in the interim rule as follows:

52.245–16 Facilities Equipment Modernization.

As prescribed in 45.302–7(e), insert the following clause:

* * * * *

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S. 727/Pub. L. 99-186

To clarify the application of the Public Utility Holding Company Act of 1935 to encourage cogeneration activities by gas utility holding company systems. (Dec. 18, 1985; 1 page) Price: $1.00

S. 1116/Pub. L. 99-187

To amend the Act of October 15, 1982, entitled "An Act to designate the Mary McLeod Bethune Council House in Washington, District of Columbia, as a national historic site, and for other purposes. (Dec. 18, 1985; 2 pages) Price: $1.00

H.J. Res. 485/Pub. L. 99-188

Waiving the printing on parchment of enrolled bills and joint resolutions during the remainder of the first session of the Ninety-ninth Congress. (Dec. 18, 1985; 1 page) Price: $1.00

H.R. 3981/Pub. L. 99-189

To extend until December 19, 1985, the application of certain tobacco excise taxes, trade adjustment assistance, certain medicare reimbursement provisions, and borrowing authority under the railroad unemployment insurance program. (Dec. 18, 1985; 1 page) Price: $1.00

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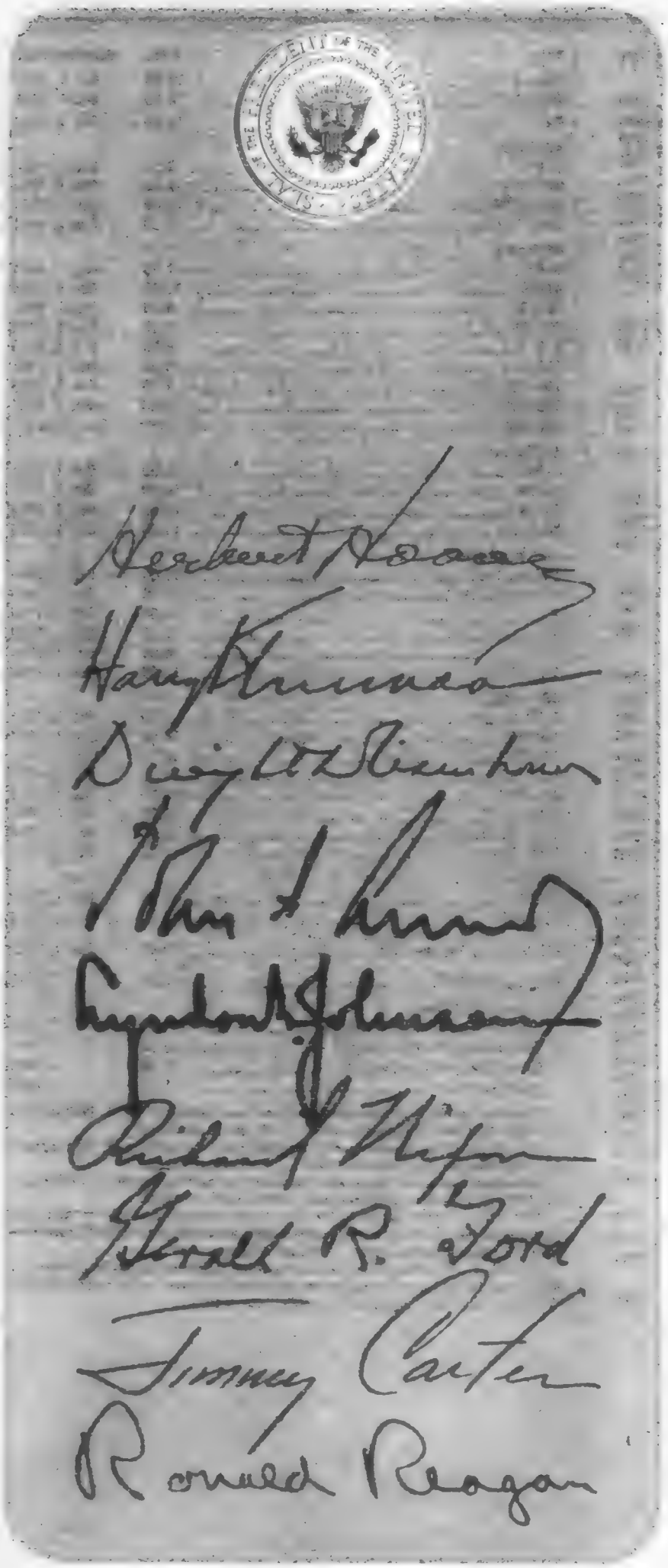
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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



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Postal Service
Postal Service

Radio
Federal Communications Commission

Savings and Loan Associations
Federal Home Loan Bank Board

Securities
Securities and Exchange Commission

Water Pollution Control
Environmental Protection Agency

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227 (Voice)
Melanie Williams 202-523-5229 (TDD)

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

NOTE: There will be a sign language interpreter for hearing impaired persons at this briefing.

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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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Rules and Regulations

Federal Register
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Tuesday, December 24, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

Milk in the Southern Illinois Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends certain provisions of the Southern Illinois order concerning the shipping standards for regulating supply plants under the order. The suspension lowers the proportion of milk receipts (from 50 to 40 percent) that must be shipped from supply plants to bottling plants during December 1985. The suspension was requested by Mid-America Dairymen, Inc., a cooperative association that represents a substantial number of the producers who supply the market. The action is necessary because higher production and seasonally decreasing sales of fluid milk products during the December holiday season reduce the need for bottling plants to rely on supply plant milk for fluid milk needs. Absent a suspension, costly and inefficient shipments of milk would be made solely for the purpose of assuring that dairy farmers, who regularly supply the fluid milk needs of the market, would continue to have their milk priced under the order.

EFFECTIVE DATE: December 24, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued November 26, 1985; published December 2, 1985 (50 FR 49395).

The Administrator of the Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities. The action lessens the regulatory impact of the order on certain milk handlers and tends to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southern Illinois marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on December 2, 1985 (50 FR 49395) concerning a proposed suspension of certain provisions of the order. Interested persons were given an opportunity to file written data, views, and arguments thereon. No comments opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the month of December 1985 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1032.7(b), the words "which have at least 50 percent Class I use (not including filled milk) of the total of such supply plant milk and producer milk receipts" and the words "through February".

Statement of Consideration

This action suspends certain provisions concerning the shipping standards for regulating supply plants under the Southern Illinois order. The suspension lowers the proportion of milk receipts (from 50 to 40 percent) that supply plants must ship to pool distributing plants to attain pool plant status during December 1985.

The suspension was requested by Mid-America Dairymen, Inc., a cooperative association that represents a substantial number of producers who supply the market. Mid-Am contends that the action is necessary to recognize the lesser need for supply plant shipments to meet the fluid milk requirements of distributing plants during December 1985.

The suspension is necessary because of production increases by producers over year-earlier levels. The higher level of production has reduced the degree to which distributing plants need to rely on supply plant shipments for milk requirements. As sales of fluid milk products decline during the December holiday season, the need for milk from supply plants will be further reduced. In the absence of a suspension action to recognize the declining need for supply plant milk during December, costly and inefficient shipments of milk from supply supply plants would be made solely for the purpose of assuring that the milk of dairy farmers who have regularly supplied the fluid needs of the market would continue to be priced under the order.

Interested parties were given an opportunity to submit written data, views, or arguments concerning this action. No comments in opposition to the suspension were received.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure the orderly marketing of milk in the marketing area in that without the suspension costly and inefficient shipments of milk would be made solely for the purpose of assuring that dairy farmers would continue to have their milk priced under the order;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1032 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

It is therefore ordered, That the following language in § 1032.7 of the order is hereby suspended for the month of December 1985.

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

§ 1032.7 [Amended]

In 7 CFR Part 1032 in § 1032.7(b), the words "which have at least 50 percent Class I use (not including filled milk) of the total of such supply plant milk and producer milk receipts" and the words "through February".

Effective date: December 24, 1985.

Signed at Washington, DC on: December 18, 1985.

Alan T. Tracy,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85-30332 Filed 12-23-85; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Revision 2—Amdt. 41]

Delegation of Authority To Conduct Program Activities in Field Offices; Certificate of Competency Approval Authority

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Increases the Regional Administrators' authority to approve applications for Certificates of Competency from $2,000,000 to $5,000,000 and allows the regional office COC specialists approval authority on COC cases valued less than $250,000. Increasing the monetary approval authority of Regional Administrators will improve and speed program delivery by placing the authority in the regional office which has direct responsibility of delivering SBA assistance. Delegating COC decision authority on cases valued less than $250,000 to Regional Office COC specialists will expedite the process procedure on small dollar value cases and improve program delivery at the regional office level. Prior to the expiration date of this change, SBA will evaluate if benefits accrued to the SBA and small businesses would merit extension of this rule.

EFFECTIVE DATE: December 24, 1985, for the period of one year.

FOR FURTHER INFORMATION CONTACT: John Whitmore, Director, Office of Industrial Assistance, Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Telephone No. (202) 653-6582.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking, public participation and a regulatory flexibility review, 5 U.S.C. 501 et seq., are not required and this amendment is adopted without resort to those procedures. This amendment does not contain recordkeeping requirements subject to the Paperwork Reduction Act 44 U.S.C. Chapter 35 and is not a major rule for purposes of Executive Order 12291.

For the reasons set forth in the preamble Part 101, 13 CFR 101.3-2 is amended, following the index terms, as set forth below:

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedure, Organization and functions (Government agencies).

PART 101—[AMENDED]

1. The authority citation for Part 101 continues to read as follows:

Authority: Secs. 4 and 5, Pub. L. 85-536, 72 Stat. 384 and 385 (15 U.S.C. 633 and 634, as amended); sec. 308, Pub. L. 85-699, 72 Stat. 694 (15 U.S.C. 687, as amended); sec. 5(b)(11), Pub. L. 93-386 (Aug. 23, 1974); and 5 U.S.C. 552, unless otherwise noted.

2. In § 101.3-2 Part VI, Section A is revised to read as follows:

§ 101.3-2 Delegations of Authority to conduct program activities in field offices.

* * * * *

Part VI—Procurement Assistance Program (PA)

Section A—Certification of Competency Approval Authority

1. To approve applications for a Certificate of Competency (COC) received from small business concerns located within the region's geographic jurisdiction, subject to the following monetary limitations:

a. Regional Administrator	$5,000,000
b. Deputy Regional Administrator	2,000,000
c. Assistant Regional Administrator/PA	2,000,000
d. COC Specialist	250,000

2. To deny an application for a Certificate of Competency (COC) received from small business concerns located within the region's geographic jurisdiction, subject to the following monetary limitations:

a. Regional Administrator	Unlimited
b. Deputy Regional Administrator	Unlimited
c. Assistant Regional Administrator/PA	Unlimited
d. COC Specialist	$250,000

* * * * *

Dated: December 11, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-30358 Filed 12-23-85; 8:45 am]

BILLING CODE 8025-01-M

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13 CFR Part 125

[Revision 1, Amendment 5]

Certificate of Competency Program: Certificate of Competency Approval Authority

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This change transfers the monetary limit on the Regional Office's delegated COC authority from 13 CFR Part 125.5 to the more appropriate section of the regulation, 13 CFR Part 101.3. This is an administrative change and will not effect the COC process. An increase in the Regional Administrators delegated authority from the current $2,000,000 level to $5,000,000 is being processed simultaneously by amending Section 13 CFR 101.3.

EFFECTIVE DATE: December 24, 1985, for the period of one year.

FOR FURTHER INFORMATION CONTACT: John Whitmore, Director, Office of Industrial Assistance, Small Business Administration 1441 L Street, NW., Washington, DC 20416. Telephone No. (202) 653-6582.

SUPPLEMENTARY INFORMATION: Inasmuch as the amendment set forth below affects internal procedures only, notice of proposed rulemaking, public participation and a Regulatory Flexibility Review pursuant to 5 U.S.C. 601 et seq., are not required and this amendment is adopted without resort to those procedures. This amendment does not contain recordkeeping requirements subject to the Paperwork Reduction Act 44 U.S.C. Chapter 35 and is not a major rule for purposes of Executive Order 12291, since it relates solely to Agency organization.

The following topic index may be useful in determining interest in this regulation:

List of Subjects in 13 CFR Part 125

Government procurement, Small business, Technical assistance.

1. The authority citation for 13 CFR Part 125 continues to read as follows:

Authority: Secs. 8 and 15 of the Small Business Act, 72 Stat. 384, as amended (15 U.S.C. 631).

2. For the reasons set forth in the preamble 13 CFR Part 125, § 125.5(f) is revised as follows:

§ 125.5 Certificate of competency program.

* * * * *

(f) If the Regional Office's decision is negative, the COC is denied and both the firm and procuring agency are notified. If the Regional Office's decision is affirmative and the dollar value of the procurement is within the region's delegated authority, the Regional Office issues a Certificate. Contracting officers will be informed in advance of issuing. For procurements in excess of the region's delegated authority, if the Regional Office recommends issuance of the Certificate, the Associate Administrator for Procurement Assistance, SBA Central Office, causes a review to be made and either issues or denies the Certificate. If the Associate Administrator's decision is negative, the firm and procuring activity are so informed; if affirmative, a letter, certifying the responsibility of the firm as to the elements of responsibility referred (the COC) is sent to the procuring activity and the applicant informed of such issuance by the regional office.

* * * * *

Dated: December 11, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-30357 Filed 12-23-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ASW-16, Amdt. 39-5186]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 47B, 47B3, 47D, 47D1, 47E, 47G, 47H-1, and 47G-3; Hawkeye Rotor and Wing, U.S. Army Model OH-13E; and Texas Helicopter Corporation, U.S. Army Model OH-13E Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Bell Helicopter Textron, Inc., Model 47B, 47B3, 47D, 47D1, 47E, 47G, 47H-1, and 47G-3; Hawkeye Rotor and Wing, U.S. Army Model OH-13E; and Texas Helicopter Corporation, U.S. Army Model OH-13E helicopters by individual priority letters. The AD requires removal of all Texas Helicopter Corporation tail rotor blade yokes. The AD is needed to prevent rotorcraft from flying with improperly heat treated tail rotor blade yokes which could fail prematurely resulting in probable loss of the helicopter.

EFFECTIVE DATE: January 8, 1986, as to all persons except those persons to whom it was made immediately effective by priority letter AD 85-15-04, issued July 23, 1985, which contained this amendment.

Compliance: Required within the next 10 hours' time in service after the effective date of this AD, unless already accomplished.

FOR FURTHER INFORMATION CONTACT: Gary B. Roach, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2593.

SUPPLEMENTARY INFORMATION: On July 23, 1985, priority letter AD 85-15-04 was issued and made effective as to all known U.S. owners and operators of certain BHTI Model 47B, 47B3, 47D, 47D1, 47E, 47G, 47H-1 and 47G-3; Hawkeye Rotor and Wing, U.S. Army Model OH-13E; and Texas Helicopter Corporation, U.S. Army Model OH-13E helicopters. The AD requires removal of all Texas Helicopter Corporation tail rotor blade yokes Part Number (P/N) 74-641-057-9.

This AD was prompted by the failure of a tail rotor blade yoke which resulted in loss of control and subsequent loss of the helicopter. During the postcrash investigation, it was discovered that spindle threads of the failed yoke had been nitrided which is not in accordance with the engineering drawing. This condition could cause premature failure of the yoke. A total of 90 tail rotor blade yokes (P/N 74-641-057-9) were manufactured by Texas Helicopter Corporation. Two other yokes randomly selected from the lot of 90 were examined and determined to have nitrided spindle threads. Thus, it was determined that AD action was necessary to prevent possible failure of the tail rotor blade yoke. Failure of the tail rotor blade yoke would probably result in loss of control of the helicopter.

Since it was found that immediate correction was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual priority letter issued July 23, 1985, to all known U.S. owners and operators of certain BHTI Model 47B, 47B3, 47D, 47D1, 47E, 47G, 47H-1, and 47G-3; Hawkeye Rotor and Wing, U.S. Army Model OH-13E; and Texas Helicopter Corporation, U.S. Army Model OH-13E helicopters. These conditions still exist and the AD is hereby published in the Federal Register as an amendment to § 39.13 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

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Bell Helicopter Textron, Inc., Hawkeye Rotor and Wing, Texas Helicopter Corporation: Applies to Model 47B, 47B3, 47D, 47D1, 47E, 47G, 47H-1, 47G-3, U.S. Army Model OH-13E helicopters certified in any category and other helicopters equipped with tail rotor blade yoke P/N 74-641-057-9.

Compliance is required as indicated, unless already accomplished.

To prevent the failure of the tail rotor blade yoke, accomplish the following:

(a) Within the next 10 hours' time in service after the effective date of this AD, remove from service Texas Helicopter Corporation tail rotor blade yoke P/N 74-641-057-9.

(b) Any equivalent method of compliance with this AD which provides an equivalent level of safety may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

(c) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the replacement required by this AD may be accomplished.

This amendment becomes effective January 8, 1986, as to all persons except those to whom it was made immediately effective by priority letter AD 85-15-04, issued July 23, 1985, which contained this amendment.

Issued in Fort Worth, Texas, on December 10, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-30308 Filed 12-23-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ASW-30, Amdt. 39-5172]

Airworthiness Directives; Sikorsky Aircraft Model S-64E Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires (1) Repetitive visual inspections of the main rotor torque tube inner bracket assembly for cracks and corrosion; (2) replacement if cracked; and (3) replacement or rework, as necessary, if corroded on Sikorsky Aircraft Model S-64E helicopters. The AD is needed to prevent fatigue cracking in the main rotor head torque tube inner bracket which could lead to failure and possible loss of control of the helicopter.

EFFECTIVE DATE: December 30, 1985.

Compliance: As prescribed in the body of the AD.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 30, 1985.

ADDRESSES: The applicable service information may be obtained from Sikorsky Aircraft Division, United Technologies Corporation, North Main Street, Stratford, Connecticut 06601.

A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Cheryl McCabe, Boston Aircraft Certification Office, ANE-152, New England Region, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7112.

SUPPLEMENTARY INFORMATION: The U.S. Army reported an occurrence where a main rotor head torque tube inner bracket assembly experienced a fatigue crack in a military helicopter which uses an assembly similar to that used on the civilian version Model S-64E helicopter. The FAA has determined that a fatigue crack in the main rotor head torque tube inner bracket could lead to failure and possible loss of control of the helicopter. Since this condition is likely to exist or develop on other helicopters of the S-64E type design, an AD is being issued which requires: (1) Repetitive visual inspections of the main rotor torque tube inner bracket assembly for cracks and corrosion; (2) replacement if cracked; and (3) replacement or rework, as necessary, if corroded on Sikorsky Aircraft Model S-64E helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Model S-64E helicopters, certificated in any category.

Compliance is required as indicated, unless already accomplished.

To prevent operation with a cracked main rotor head torque tube inner bracket, accomplish the following:

(a) Prior to the first flight of each day, after the effective date of this AD, visually inspect with a 10-power or higher magnifying glass the main rotor head torque tube inner bracket assembly, Part Number S1510-21332-0, for cracks and/or corrosion in accordance with Section 2, Paragraph A, of Sikorsky Alert Service Bulletin (ASB) No. 64B10-4A, dated July 17, 1985, or an FAA-approved equivalent.

(b) If the torque tube inner bracket assembly is cracked, replace with a serviceable torque tube inner bracket assembly prior to further flight in accordance with Section 2, Paragraph A, of Sikorsky ASB No. 64B10-4A, dated July 17, 1985, or an FAA-approved equivalent.

(c) If the torque tube inner bracket assembly is corroded, determine the extent and limits of the corrosion prior to further flight in accordance with Section 2, Paragraph B, of Sikorsky ASB No. 64B10-4A, dated July 17, 1985, or an FAA-approved equivalent. If the extent or limits of the corrosion are exceeded, replace with a serviceable torque tube inner bracket assembly prior to further flight in accordance with Section 2, Paragraph B, of Sikorsky ASB No. 64B10-4A, dated July 17, 1985, or an FAA-approved equivalent. Otherwise, rework the torque tube inner bracket assembly prior to further flight in accordance with Section 2, Paragraph A, of Sikorsky ASB No. 64B10-4A, dated July 17, 1985, or an FAA-approved equivalent.

(d) Aircraft may be ferried in accordance with the provisions of §§ 21.197 and 21.199 to a base where the AD can be accomplished.

(e) Upon request, an alternative means of

compliance with the requirements of this AD which provide an equivalent level of safety may be used when approved by the Manager, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7112.

Sikorsky ASB No. 64B10–4A, dated July 17, 1985, identified and described in this directive is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Sikorsky Aircraft Division, United Technologies Corporation, North Main Street, Stratford, Connecticut 06601. These documents may also be examined at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective December 30, 1985.

Issued in Fort Worth, Texas, on November 19, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85–30307 Filed 12–23–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AWA–2]

Establishment of Airport Radar Service Areas

Correction

In FR Doc. 85–29125, beginning on page 50254, in the issue of Monday, December 9, 1985, make the following corrections:

1. On page 50254, second column, in the sixth line under "ARSA Program Comments", "the" should read "that";

2. On page 50256, second column, in the fifth line from the bottom, "FCC" should read "FAA";

3. On page 50258, third column, in the fourth line of the fourth full paragraph, "ASA" should read "ARSA";

4. On page 50261, second column, under "Lubbock International Airport, TX [New]", the sixth and seventh lines should read "upward from 4,500 feet MSL to 7,300 feet MSL within a 10-mile radius of the";

5. On page 50262, under "Will Rogers World Airport, Oklahoma City, OK [New]", in the seventh line, "36°25'57"N" should read "36°26'57"N"; and

6. On page 50262, in the same paragraph, in the fourth line from the bottom, remove the "0" preceeding "lat.".

BILLING CODE: 1505–01–M

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14 CFR Part 73

[Airspace Docket No. ANM–26]

Establishment of Restricted Area R–6714E, Yakima, WA

Correction

In the issue of Wednesday, December 11, 1985, on page 50611 in the first column, a correction to FR Doc.85–27305 appeared. The last line should read: "46°33'00" N.".

BILLING CODE 1505–01–M

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14 CFR Part 385

Office of the Secretary

[OST Docket No. 42745; Amendment, 385–1]

Assignment of Certain Aviation Economic Functions

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment reflects the redelegation of certain authorities related to consumer protection currently being carried out by to the Director, Office of Community and Consumer Affairs under 14 CFR 385.30 to the Assistant Secretary for Policy and International Affairs. The amendment also eliminates § 385.30(b), relating to approval or disapproval of air carrier statements explaining denied boarding compensation, and § 385.30(d), concerning applications for relief under § 250.11 of this chapter, since the Civil Aeronautics Board eliminated these underlying regulations prior to its sunset. The authority contained in § 385.30(c), relating to waivers and relief from baggage liability regulations, and § 385.30(e), relating to smoking regulation waivers, are delegated to the Assistant Secretary for Policy and International Affairs in a separate delegation document amending 49 CFR 1.56, which is contained in this edition of the **Federal Register**.

DATE: The effective date of this amendment is December 24, 1985.

FOR FURTHER INFORMATION CONTACT: Becky L. Bentson, Office of the General Counsel, U.S. Department of Transportation, Washington, DC (202) 472–5577.

SUPPLEMENTARY INFORMATION: Since this amendment relates to departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective fewer than thirty days after publication in the **Federal Register**.

On December 31, 1984, the Department of Transportation reissued the former Civil Aeronautics Board rules (14 CFR Part 385) dealing with the delegation of numerous items of discretionary authority needed to carry out Titles IV and X of the Federal Aviation Act of 1958, as amended, and related statutes (49 FR 50984, December 31, 1984.) Editorial corrections and a new subpart to Part 385 were issued later. (50 FR 7169, February 21, 1985.) Concurrently with the reissuance of Part 385, the Department issued amendments to 49 CFR Part 1 to delegate transferring CAB functions to Secretarial officers within DOT (49 FR 50994, December 31, 1984).

The Secretary has now determined that the authority to issue aviation consumer protection regulations, and waivers from those regulations (49 CFR 1.61(d)(4) and 14 CFR 385.30), should be carried out by the Assistant Secretary for Policy and International Affairs. This amendment, together with an amendment to 49 CFR Part 1, which is published in this edition of the **Federal Register**, accomplish that redelegation and deletes two obsolete provisions from 14 CFR 385.30.

List of Subjects in 14 CFR Part 385

Organization and functions (government agencies).

PART 385—[AMENDED]

Accordingly, 14 CFR Part 385 is amended as follows:

1. The authority citation for Part 385 continues to read as follows:

Authority: Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 et seq.); Airline Deregulation Act of 1978 (Pub. L. 95–504, October 24, 1978); Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98–443, October 4, 1984); and 49 U.S.C. Subtitle I.

2. Section 385.30 is amended by revising paragraph (b) to read as follows, and removing paragraphs (c) through (f).

§ 385.30 Authority of the Director, Office of Community and Consumer Affairs.

* * * * *

(b) Recommend to the Deputy General Counsel the compromise of civil penalties in the resolution of informal consumer complaints.

Issued in Washington, DC, on December 14, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85-30388 Filed 12-23-85; 8:45 am]

BILLING CODE 4910-62-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1000

Commission Organization and Functions

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is publishing revisions to its statement of organization and functions to reflect organizational changes made since the changes published December 31, 1984, 49 FR 50633. These include the creation of an Office of Media Relations and an Office of Information and Public Affairs, to assume functions formerly performed by the Office of Outreach Coordination and the Office of Information and Public Affairs.

DATE: December 24, 1985.

ADDRESS: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, (301) 492-6980.

SUPPLEMENTARY INFORMATION: The Commission is revising its statement of organization and functions, 16 CFR Part 1000, to include organizational changes since the part was last revised on December 31, 1984, 49 FR 50633. The organizational changes are summarized below:

1. An Office of Media Relations was created and assumed responsibility for the Commission's relations with national print and broadcast media.

2. An Office of Information and Public Affairs was created and assumed responsibility for the Commission's national information and public affairs program.

Since this rule relates solely to internal agency management, pursuant to 5 U.S.C. 553(b), notice and other public procedures are not required and it is effective immediately upon publication in the **Federal Register**. Further, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612, and, thus, is exempt from the provisions of that Act.

List of Subjects in 16 CFR Part 1000

Organization and Functions (Government Agencies).

PART 1000—[AMENDED]

Accordingly, Part 1000 of Chapter II of Title 16 of the Code of Federal Regulations is amended as shown.

1. The authority citation for Part 1000 continues to read as follows:

Authority: 5 U.S.C. 552(a).

2. Section 1000.12 is revised to read as follows:

§ 1000.12 Organization structure.

The Consumer Product Safety Commission is composed of the principal units listed in this section.

(a) The following units report directly to the Chairman of the Commission:

(1) Office of the General Counsel;
(2) Office of Congressional Relations;
(3) Office of Administrative Law Judge;
(4) Office of Media Relations;
(5) Office of the Secretary;
(6) Office of Internal Audit;
(7) Office of Equal Employment Opportunity and Minority Enterprise;
(8) Office of the Executive Director.

(b) The following units report directly to the Executive Director of the Commission:

(1) Office of Program Management;
(2) Office of Budget, Program Planning, and Evaluation;
(3) Office of Information and Public Affairs;
(4) Directorate for Epidemiology;
(5) Directorate for Economic Analysis;
(6) Directorate for Engineering Sciences;
(7) Directorate for Health Sciences;
(8) Directorate for Compliance and Administrative Litigation;
(9) Directorate for Administration;
(10) Directorate for Field Operations.

3. Section 1000.17 is revised to read as follows:

§ 1000.17 Office of Media Relations.

The Office of Media Relations is responsible for implementing the Commission's media relations program nationwide. The Office serves as the Commission's spokesperson to the national print and broadcast media, develops and disseminates the Commission's press releases, and organizes Commission press conferences.

4. Section 1000.21 is revised to read as follows:

§ 1000.21 Office of the Executive Director.

The Executive Director, under the broad direction of the Chairman and in accordance with Commission policy, acts as the chief operating manager of the agency, supporting the development of the agency's budget and operating plan before and after Commission approval and managing the execution of those plans. The Executive Director has direct line authority over seven operating directorates and three offices: Epidemiology, Economic Analysis, Engineering Sciences, Health Sciences, Compliance and Administrative Litigation, Administration, and Field Operations; the Office of Program Management; the Office of Budget, Program Planning, and Evaluation; and the Office of Information and Public Affairs.

5. Section 1000.24 is revised to read as follows:

§ 1000.24 Office of Information and Public Affairs.

The Office of Information and Public Affairs is responsible for the development, implementation, and evaluation of a comprehensive national information and public affairs program designed to promote product safety. This includes responsibility for developing and maintaining relations with a wide range of national groups such as consumer organizations; business groups; trade associations; state and local government entities; labor organizations; medical, legal, scientific and other professional associations; and other Federal health, safety and consumer agencies. The Office also manages the Commission's Hotline, described in § 1000.3.

Dated: December 18, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85-30300 Filed 12-23-85; 8:45 am]

BILLING CODE 6355-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22724; File No. S7-1000]

Securities; Broker-Dealers; Registration; Applicability to Banks; Requests for Exemptions

AGENCY: Securities and Exchange Commission.

ACTION: Availability of temporary exemptions from Rule 3b-9.

SUMMARY: The Securities and Exchange Commission is continuing to review requests from banks for temporary exemptions from Rule 3b-9 (17 CFR 240.3b-9) under the Securities Exchange

Act of 1934 ("Exchange Act"). Although many banks have already taken the steps necessary to comply with the provisions of Rule 3b–9 by its effective date, January 1, 1986, many others which are acting in good faith may not be able to take all steps necessary to comply with the Rule by that date. Banks that are making deligent, good faith efforts to satisfy the requirements of the Rule will be granted requests for temporary exemptions.

DATES: Requests for exemption from § 240.3b–9 will be considered until January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Chamberlin, Esq., Chief Counsel (202) 272–2848, Edward L. Pittman, Esq., Attorney (202) 272–2848. Requests for temporary exemptions from Rule 3b–9 should be addressed to Mary Chamberlin, Esq., Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC. 20549.

SUPPLEMENTARY INFORMATION: On July 1, 1985, the Commission adopted Rule 3b–9 (17 CFR 240.3b–9) under the Exchange Act.[1] The Rule generally requires that a bank conduct certain securities activities through a broker-dealer registered under the Exchange Act. These activities are (1) public solicitation of brokerage business for transaction-related compensation, (2) receipt of transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides advice, or (3) dealing in or underwriting securities. The Rule contains exceptions for banks that conduct only limited securities activities. The effective date of Rule 3b–9 is January 1, 1986.

A challenge to the Commission's legal authority to adopt Rule 3b–9 was brought in the United States District Court for the District of Columbia. The District Court has determined that Rule 3b–9 is a valid exercise of the Commission's rulemaking powers and the court refused to enjoin the rule.[2] Thus, absent an exemption from the Rule, banks that are not in compliance with the Rule by January 1, 1986 will be in violation of the federal securities laws.

In adopting Rule 3b–9, the Commission recognized that many banks would be required to take additional steps to comply with the Rule. Accordingly, it delayed the effective date of the Rule for approximately six months. In addition, the Commission's Division of Market Regulation subsequently announced that it would grant, on a case-by-case basis, written requests for temporary exemptions from the Rule by banks that could demonstrate good faith and diligent efforts to comply with the Rule.[3] Recently, it was brought to the Commission's attention by William Seidman, Chairman of the Federal Deposit Insurance Corporation, and others, that many banks may not fully understand the grounds on which the Commission's staff is willing to provide exemptive relief. Therefore, the Commission is issuing this release to set forth its willingness to grant temporary exemptions from Rule 3b–9 in order to allow banks to complete efforts to comply.

At the time the Commission adopted Rule 3b–9, it delegated authority to the Division of Market Regulation to grant exemptions where appropriate. Acting pursuant to delegated authority, the Division of Market Regulation has liberally granted requests for temporary exemptions from Rule 3b–9 to banks which have demonstrated a diligent and good faith effort to comply with the Rule.[4] The exemptions have been for periods of up to five months.

Although the Division will consider all relevant factors in determining whether to grant an exemption, among the common elements in each request for an exemption the Division has granted are the existence of one or more of the following: a broker-dealer registration application on file with the Commission, a membership application on file with the National Association of Securities Dealers, Inc., or personnel in the process of preparing for and taking the registered principal or registered representative examinations. Additional factors that the Division will consider in granting temporary exemptions include an application for approval to create a subsidiary to engage in brokerage activities on file with the appropriate banking regulator, the existence of a pending request for permanent exemptions under Rule 3b–9, and a representation that a broker-dealer application will be submitted to the Commission by a specific date before January 1, 1986. The Division will also consider granting temporary exemptions to banks that are involved in mergers that will ultimately result in the merging of brokerage operations into a single registered broker-dealer subsidiary or that are in the process of receiving internal corporate board approvals necessary for the creation of a new subsidiary or affiliate.[5]

It is the Division's intention to continue to consider requests for temporary exemptions from Rule 3b–9 up to the effective date of the Rule. Moreover, in the event that the Division is unable to respond to all requests received prior to the January 1, 1986 effective date, the staff will in all appropriate cases provide interim no-action relief pending issuance of the exemption letter. Requests for temporary exemptions from Rule 3b–9 should contain a brief narrative of the efforts taken by the bank which demonstrate a diligent and good faith effort to comply with Rule 3b–9.

By the Commission.

Dated: December 18, 1985.

John Wheeler,

Secretary.

[FR Doc. 30337 Filed 12–23–85; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 22205 (July 1, 1985), 50 FR 28385 (July 12, 1985).

[2] An appeal has been taken from the district court's decision. *American Bankers Association* v. *Securities and Exchange Commission*, No. 85–2482 (D.D.C. Oct. 30, 1985), *appeal docketed*, No. 85–6055 (D.C. Cir. Oct. 31, 1985).

[3] Letter dated August 28, 1984 from Richard Wessel, Esq., Associate Director, Division of Market Regulation, to James D. McLaughlin, Esq., Government Relations Counsel, American Bankers Association.

[4] *See, e.g.*, letters to David R. Sanders, Esq. (Suburban Bancorp) (October 25, 1985); Richard J. McCullen, (National Bank of Detroit) (November 27, 1985); Ralph F. MacDonald, III (Central Bank of the South) (December 9, 1985); William N. Stellin, (Union Bank and Trust Company) (December 13, 1985). Copies of exemptive requests and the Division's responses are available in the Commission's public files.

[5] Where banks themselves seek to register with the Commission as broker-dealers, rather than forming a subsidiary, the Commission indicated in the release adopting Rule 3b–9 that it would anticipate using its exemptive authority under the financial responsibility rules if any conflicts between bank and securities regulation result.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 107

[Docket No. R–85–1237; FR–2020]

Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This rule amends 24 CFR Part 107, "Nondiscrimination and Equal

Opportunity Under Executive Order 11063", to provide for the administrative data collection necessary to implement Executive Order 11063 which was revised by Executive Order 12259 to prohibit discrimination on the basis of sex and to clarify that the terms "religion" and "creed" are synonymous. This amendment is a conforming change inadvertently omitted from the final version of the implementing regulation published on August 2, 1985.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Katrina Ross, Director, Fair Housing Enforcement Division, Room 5208, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5873. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Executive Order 11063, "Equal Opportunity in Housing" (November 20, 1962, 27 FR 11527), directs Federal departments and agencies to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin in (1) the sale, leasing, rental or other disposition of residential property and related facilities which are owned or operated by the Federal Government or provided with Federal assistance; and (2) the lending practices with respect to residential property and related facilities of lending institutions, insofar as such practices relate to loans insured or guaranteed by the Federal Government. Executive Order 12259, "Leadership and Coordination of Fair Housing in Federal Programs" (January 6, 1981, 46 FR 1253), revised Executive Order 11063 by adding a prohibition against discrimination based on sex, and by clarifying the reach of Executive Order 11063 with respect to "creed" by adding the word "religion".

On August 2, 1985, HUD published a final rule (50 FR 31359) which implemented Executive Order 12259 by amending 24 CFR Part 107, "Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063", to add the prohibition against discrimination based on sex and to clarify the reach of E.O. 11063 with respect to "creed" by adding the word "religion". The final version of the August 2, 1985 final rule inadvertently omitted a conforming change within Part 107. This final rule makes that change by revising §§ 107.30(a) and 107.30(b) to add sex and religion to the categories of data which should be maintained in order to carry out the mandate of Executive Order 12259.

The Department has concluded that, because this rule making is merely making a conforming change and is limited to the coverage of HUD's Executive Order 11063 implementation procedures in accordance with the policies reflected in Executive Order 12259, public comment on the rule is unnecessary. Accordingly, these amendments to Part 107 are being adopted as final rulemaking.

This rule does not constitute a "major rule" as the term is defined in section 1(b) of the Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule makes no substantive change in existing procedures associated with the Executive Order on Nondiscrimination and Equal Opportunity, but merely conforms its coverage to the revisions contained in Executive Order 12259.

This rule was listed as item number 943 in the Department's Semi-annual Agenda of Regulations published on October 29, 1985 (50 FR 44166, 44206) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number and titles are: 14.400, Equal Opportunity in Housing; and 14.401, Fair Housing Assistance Program.

List of Subjects in 24 CFR Part 107

Administrative practice and procedure, Fair housing, Loan programs—housing and community development.

Accordingly, 24 CFR Part 107 is amended as follows:

PART 107—NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063

1. The authority citation for Part 107 continues to read as follows:

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Executive Order 11063, Equal Opportunity in Housing, issued November 20, 1962 (27 FR 11527); Executive Order 12259, Leadership and Coordination of Fair Housing in Federal Programs, January 8, 1981 (46 FR 1253).

2. Paragraphs (a) and (b) of § 107.30 are revised to read as follows:

§ 107.30 Recordkeeping requirements.

(a) All persons receiving assistance through any program or activity of the Department involving the provision of housing and related activities subject to Executive Order 11063 shall maintain racial, religious, national origin and sex data required by the Department in connection with its programs and activities.

(b) All lenders participating in Departmental mortgage insurance programs, home improvement loan programs, GNMA mortgage purchase programs, or special mortgage assistance programs, shall maintain data regarding the race, religion, national origin and sex of each applicant and joint applicant for assistance with regard to residential property and related facilities. Racial data shall be noted in the following categories: American Indian/Alaskan Native, Asian/Pacific Islander, Black, White, Hispanic. If an applicant or joint applicant refuses to voluntarily provide the information or any part of it, that fact shall be noted and the information shall be obtained, to the extent possible, through observation. Applications shall be retained for a period of at least twenty-five (25) months following the date the record was made.

* * * * *

Dated: December 17, 1985.

Antonio Monroig,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 85-30378 Filed 12-23-85; 8:45 am]

BILLING CODE 4210-28-M

BEST COPY AVAILABLE

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8061]

Fringe Benefits; Listed Property; Reporting and Recordkeeping Requirements; Temporary; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to temporary rule.

SUMMARY: This document contains a correction to the **Federal Register** publication on Wednesday, November 6, 1985, beginning at 50 FR 46006 of the temporary regulations which were the subject of Treasury Decision 8061. T.D. 8061 relates to revised recordkeeping requirements with respect to listed property and taxation of fringe benefits.

EFFECTIVE DATE: The temporary regulations relating to the substantiation requirements of section 274(d) (§§ 1.274–5T and 1.274–6T) that are the subject of this correction are effective for taxable years beginning after December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Carroll Yue of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. (Attention: CC:LR:T). Telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On November 6, 1985, the Federal Register published temporary regulations (50 FR 46006) under section 274 of the Internal Revenue Code of 1954 (Code), relating to the substantiation requirements with respect to certain "listed property." Section 179 of the Tax Reform Act of 1984 (the 1984 Act) amended Code section 274 to provide that no deduction or credit shall be allowed with respect to "listed property" (as defined in Code section 280F(d)(4)), unless the taxpayer substantiated any deduction or credit with "adequate contemporaneous records." Temporary regulations were published in the **Federal Register** on October 24, 1984, and February 20, 1985 (49 FR 42701 and 50 FR 7038), providing guidance for taxpayers affected by the requirement to maintain adequate contemporaneous records for taxable years beginning after December 31, 1984. Section 1 of the Repeal of Contemporaneous Recordkeeping Requirements Act (the 1985 Act) amended Code section 274 to provide that any deduction or credit with respect to listed property must be substantiated by adequate records or sufficient corroborative evidence and repealed any regulations issued to carry out the amendments made to section 274 by the 1984 Act. T.D. 8061, in part, clarified the types of records that are generally necessary to substantiate any deduction or credit with respect to listed property.

Under the Explanation of Provisions section in the preamble to T.D. 8061, the discussion concerning the substantiation requirements for reimbursement arrangements and mileage allowances that begins at the top of the 2nd column of text on page 46009 advises employers and employees to consider the effect of the limitations on annual depreciation deductions imposed by section 280F of the Code on arrangements by which employers reimburse employees at the standard mileage rate for expenses incurred by employees who use their own automobiles in connection with their employers' businesses. This notice removes the last two paragraphs of that discussion.

If an employee who uses his own automobile in connection with his employer's business chooses to use the standard mileage rate to compute an allowable deduction for transportation expenses paid or incurred on behalf of his employer, the employee is deemed to have made an election to exclude his automobile from the Accelerated Cost Recovery System under section 168(e)(2) of the Code. (See Rev. Proc. 82–61, 1982–2 C.B. 849, as modified by Rev. Proc. 83–74, 1983–2 C.B. 593, Rev. Proc. 84–72, 1984–2 C.B. 735, and Rev. Proc. 85–49, 1985–40 I.R.B. 26.) If the automobile is not recovery property, it is not subject to the limitations imposed by section 280F. In determining the amount of a deduction at the standard mileage rate, the employee need not establish that use of the automobile was for the convenience of the employer and required as a condition of employment. If the employer reimburses the employee for transportation expenses at the standard mileage rate, the reimbursement would, therefore, not exceed the employee's deductible expenses and would not result in income to the employee.

Need for Correction

As published, Treasury Decision 8061 contained an error in the preamble to the temporary regulations in the discussion of reimbursement arrangements and mileage allowances that begins at the top of the 2nd column of text on page 46009.

Correction of Publication

Accordingly, in the publication of Treasury Decision 8061, which was the subject of FR Doc. 85–26358, (November 1, 1985), under the reimbursement arrangements and mileage allowances discussion that begins on page 46009, 2nd column, the 3rd and 4th paragraphs are removed.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85–30325 Filed 12–23–85; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 166

Defense Contracting; Reporting Procedures on Defense Related Employment

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This rule is the fiscal year 1985 update of the section listing DoD contractors receiving negotiated contract awards of $10 million or more. The regulation is published to comply with the provisions of Section 1, Pub. L. 97–295, October 12, 1982; 10 U.S.C. 2397.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. J.R. Sungenis, Director for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302. Telephone (202) 746–0334.

SUPPLEMENTARY INFORMATION: In FR Doc. 70–15846 appearing in the **Federal Register** on November 25, 1970 (35 FR 18040), the Office of the Secretary of Defense published a final rule establishing criteria, prescribing procedures, and assigning responsibilities for monitoring contracting within the Department of Defense. Subsequently, paragraphs (a) and (d) of § 166.11, which constitute the list of DoD contractors receiving negotiated contract awards for $10 million or more, were updated for fiscal years 1971 (36 FR 18464); 1972 (37 FR 18727); 1973 (38 FR 25990); 1974 (39 FR 32985); 1975 (40 FR 44135); 1976 (41 FR 20466); 1977 (43 FR 1617); 1978 (44 FR 3049); 1979 (44 FR 75631); 1980 (45 FR 83486); 1981 (46 FR 60821); 1982 (47 FR 56847); 1983 (48 FR 55728); and 1984 (50 FR 77).

1. The authority citation for 32 CFR Part 166 continues to read as follows:

Authority: Sec. 410, 83 Stat. 210; 50 U.S.C. 1436.

2. Accordingly, § 166.11 is revised to read as follows:

§ 166.11 Department of Defense contractors receiving negotiated contract awards of $10 million or more.

Fiscal Year 1985:

3 A Industries, Inc.
A & S Tribal Industries
A A I Corp.
A C S Construction Co. of Miss.
A L M, Inc.
A M General Corp.
A R C Corp.
A T & T Information Systems
A T & T Technologies, Inc.
A V W Electronic Systems, Inc.
Abbott Products, Inc.
Abex Corp.
Accent General, Inc.
Accudyne Corp.
Action Mfg. Co.
Accurex Corp.
Addsco Industries, Inc.
Advance Computer Communications
Advanced Marine Enterprises
Advanced Technology, Inc.
Aero Corp.
Aerojet General Corp.
Aerojet Strategic Propulsion
Aerojet Tactical Systems
Aerojet Techsystems
Aeroquip Corp.
Aerospace Corp., The
Aerospace Technologies, Inc.
Alascom, Inc.
All Bann Enterprises, Inc.
Allen Corp. of America
Alliance Properties, Inc.
Allied Signal Corp.
Allis Chalmers Distribution Svc.
Altama Delta Corp.
Alvarado Construction, Inc.
Amber Refining, Inc.
Amerada Hess Corp.
American Airlines, Inc.
American Automar, Inc.
American Cyanamid Co., Inc.
American Development Corp.
American Electronic Laboratories, Inc.
American Express Co.
American Management Systems, Inc.
American President Lines, Ltd.
American Satellite Co.
American Systems Corp.
American Telephone & Telegraph Co.
American Trans Air, Inc.
Amertex Enterprises, Ltd.
Ametek, Inc.
Amex Systems, Inc.
Amoco Corp.
Ampex Corp.
Amron Corp.
Amstar Technical Products Co.
Analysis & Technology, Inc.
Analytic Sciences Corp., The
Analytic Services, Inc.
Analytical Systems Engnr. Corp.
Analytics, Inc.
Anderson, Arthur & Co.
Arcwel Corp
Argosystems, Inc.
Arinc Research Corp.
Arkla, Inc.
Arrow Airways, Inc.
Aryana Corp.
Ashland Oil, Inc.
Assurance Technology Corp.
Astronautics Corp. of America
Atlantic Dry Dock Corp.
Atlantic Marine, Inc.
Atlantic Research Corp.
Atlantic Richfield Co.
Atlas Processing Co.
Austin Co., The
Automated Data Management, Inc.
Automated Machine Products, Inc.
Automated Sciences Group, Inc.
Automation Industries, Inc.
Avco Corp.
Avondale Shipyards, Inc.
Aydin Corp.
Ayer N W, Inc.
B B N Communications Corp.
B D M Corp.
B D M International, Inc.
B E I Electronics, Inc.
B P North America Petroleum, Inc.
B S I Corp.
Ball Corp.
Baltimore Gas & Electric Co.
Barnes & Reinecke, Inc. (Del.)
Bataco Industries, Inc.
Bates, Ted Worldwide, Inc.
Bath Iron Works Corp.
Battelle Memorial Institute
Bay City Marine, Inc.
Bay Tankers, Inc.
Beacon Oil Co.
Beech Aerospace Services, Inc.
Beech Aircraft Corp.
Bell Aerospace Textron
Bell Helicopter—Boeing, JV
Bell Helicopter Textron, Inc.
Bell Telephone Labs, Inc.
Belleville Shoe Mfg. Co.
Bendix Corp., The
Bendix Field Engineering Corp.
Beretta USA Corp.
Beta Systems Velco Filter
Betac Corp.
Bethlehem Steel Corp.
Blue Cross & Blue Shield of RI
Blue Cross of Washington & Alaska, Inc.
Bodenhamer Building Corp.
Boeing Aerospace Co.
Boeing Co., The
Boeing Computer Services
Boeing Technical Operations
Bolt Beranek & Newman, Inc.
Booz Allen & Hamilton, Inc.
Borg Warner Corp.
Brunswick Corp.
Bulova Systems & Instruments Corp.
Bunker Ramo Corp.
Burnside Ott Aviation Training Center
Burroughs Corp.
Butler Associates, Inc.
Butt & Head, Inc.
C 3, Inc.
C A S, Inc.
C Construction Co., Inc.
C D I Marine Co.
C F M International, Inc.
C F S Air Cargo
CACI, Inc.
CACI, Inc. Federal
Caddell Construction Co., Inc.
Cadillac Gage Co.
Calcasieu Refining Co., Inc.
California Microwave, Inc.
California Pacific Associates
Calspan Corp.
Caltex Oil Products Co.
Caltex Petroleum Corp.
Campbell Soup Co.
Carbon Hill Mfg. Co.
Carnation Co.
Carnegie Mellon University
Carolina Power & Light Co.
Case, J I Co.
Caterpillar Tractor Co.
Cates Construction, Inc.
Central Gulf Lines, Inc.
Century Brass Products, Inc.
Cerberonics, Inc.
Cessna Aircraft Co., Inc.
Chamberlain Mfg. Corp.
Chaparral Industries, Inc.
Charles Stark Draper Laboratories, Inc.
Chevron USA, Inc.
Chromalloy American Corp.
Chrysler Corp.
Cincinnati Electronics Corp.
Cleveland Pneumatic Co.
Coastal Dry Dock & Repair Corp.
Coastal Industries, Inc.
Coastal Refining & Marketing
Cobro Corp.
Coca Cola Co.
Colt Industries, Inc.
Columbia Research Corp.
Comarco, Inc.
Command Control & Communications Corp.
Communication Mfg. Co.
Comptek Research, Inc.
Computer Sciences Corp.
Computervision Corp.
Comsat General Corp.
Conner Brothers Construction Co.
Conoco, Inc.
Container Research Corp.
Contel Page Systems, Inc.
Continental Maritime San Diego
Control Data Corp.
Cornell University
Coronado Technology, Inc.
Crane Co.
Cray Research, Inc.
Cubic Corp.
Cummins Engine Co., Inc.
Curtiss Wright Corp.
Dart & Kraft, Inc.
Dart Industries, Inc.
Dataproducts New England, Inc.
Dawson Construction Co., Inc.
Day & Zimmerman, Inc.
Day & Zimmerman, Inc. & Basil, FE JV
Dayron Corp.
Defense Research, Inc.
Del Mfg. Co., Inc.
Del Monte Corp.
Delta Industries, Inc.
Designers & Planners, Inc.
Developmental Sciences, Inc.
Devils Lake Sioux Mfg. Corp.
Dewey Electronics Corp.
Diagnostic Retrieval Systems, Inc.
Diamond Shamrock Chemicals Co.
Digital Equipment Corp.
Dresser Industries, Inc.
Dual Motors, Inc.

Dun & Bradstreet Corp.
Dynalectron Corp.
Dynamac Corp.
Dynamic Industries Corp.
Dynamic Systems, Inc.
Dynamics Corp. of America
Dynamics Research Corp.
E Systems, Inc.
E G & G Washington Analytical Services Center
E S L, Inc.
Eagle Technology, Inc.
Eastman Kodak Co.
Eaton Corp.
Edcar Industries, Inc.
Edo Corp.
Educational Computer Corp.
El Paso Electric Co.
Electro Methods, Inc.
Electronic Data Systems Corp.
Electrospace Systems, Inc.
Emco, Inc.
Emerson Electric Co.
Engineered Air Systems, Inc.
Engineering Research, Inc.
Enginetics Corp.
Environmental Elements Corp.
Environmental Research Institute, Michigan
Essex Corp.
Evaluation Research Corp.
Evergreen Intl. Airlines
Ex-Cell-O Corp.
Exxon Co. U.S.A.
Exxon Corp.
F M C Corp.
F N Mfg., Inc.
Fairchild Industries, Inc.
Fairchild Weston Systems, Inc.
Falcon Systems, Inc.
Farmers Union Central
Farrell Lines, Inc.
Federal Cartridge Corp.
Federal Data Corp.
Federal Data System Corp.
Federal Electric Corp.
Figgie International, Inc.
Flight Systems, Inc.
Florida Power & Light Co
Flow General, Inc.
Flying Tiger Line, Inc., The
Ford Aerospace & Communications
Four Phase Systems, Inc.
Freedom Industries, Inc.
G & M Oil Co., Inc.
G K S, Inc.
G T E Communications Systems Corp.
G T E Products Corp., Del.
G T E Service Corp.
G T E Sylvania, Inc.
Garrett Corp., The
Gary Refining Co.
Gates Learject Corp.
Gayston Corp.
General Defense Corp.
General Dynamics Corp.
General Dynamics Land Systems
General Electric Co.
General Foods Corp.
General Instrument Corp., Del.
General Motors Corp.
General Research Corp.
General Ship Corp.
General Signal Corp.
Gentex Corp.
Geodynamics Corp.
Georgia Technical Research Corp.
Getty Oil Co.
Giant Industries, Inc.
Gladieux Refinery, Inc.
Global Associates, A Joint Venture
Golden Mfg. Co., Inc.
Goodrich, B F Co., The
Goodyear Aerospace Corp.
Goodyear Tire & Rubber Co.
Goolsby Building Corp.
Gortons of Gloucester
Gould Defense Systems, Inc.
Gould, Inc.
Greenhut Construction Co., Inc.
Grey Advertising, Inc.
Grumman Aerospace Corp.
Gulf & Western Industries, Inc.
Gulf Refining & Marketing
Gulf Stream America Corp.
Gulf Tool Corp.
H & H Meat Products, Inc.
H L J Construction & Mgt. Group
H R B Singer, Inc.
H R Textron, Inc.
Halter Marine, Inc.
Hamilton Technology, Inc.
Harley Davidson Motor Co., Inc.
Harris Corp.
Harsco Corp.
Hawaiian Electric Co., Inc.
Hawaiian Independent Refinery
Hawaiian Telephone Co.
Hayes International Corp.
Hazeltine Corp.
Heckethorn Mfg. Co.
Hansel Phelps Construction Co.
Hercules, Inc.
Hess Oil Virgin Island Corp.
Hewlett Packard Co.
Hollingsworth, John R. Co.
Holmes & Narver, Inc.
Holmes & Narver Services Co., Inc.
Holston Defense Corp.
Honeycomb Co. of America
Honeywell, Inc.
Honeywell Information Systems
Horizons Technology, Inc.
Howell Corp.
Howmet Turbine Components Corp.
Hudson Institute, Inc.
Hughes Aircraft Co.
Hughes Communication Services
Hunt Oil Co.
Hycor, Inc.
Hydraulics International, Inc.
Hyster Co.
I C I Americas, Inc.
I I T Research Institute
I T T Avionics & Westinghouse JV
I T T Corp.
Inco, Inc.
Industrial Acoustics Co.
Informatics General Corp.
Information Spectrum, Inc.
Ingersoll Rand Co.
Institute for Defense Analyses
Integrated Systems Analysts
Intercontinental Mfg. Co., Inc.
Interlisearch
Intermetrics, Inc.
Intermountain Construction Co.
Intermouth International Oil, Inc.
International Business Machines
International Terminal Operating Co.
Interstate Electronics Corp.
Irvin Industries, Inc.
Israel Aircraft Industries
Itek Corp.
Jacksonville Shipyards, Inc.
Jaycor
Jersey Central Power & Light Co.
John Hopkins University
Jones Group, Inc., The
Jowett, Inc.
JR Son, Inc.
Jungclaus Campbell Co., Inc.
K D I Precision Products, Inc.
Kaiser Aerospace & Electronics Co.
Kaiser, Henry J., Co.
Kaman Aerospace Corp.
Kaman Sciences Corp.
Kansas Power & Light Co., Inc.
Keco Industries, Inc.
Kemenash, D. & Associates, Inc.
Kenco Refining Inc.
Kern Oil and Refining Co.
Key Airlines, Inc.
Kidde, Inc.
Kisco Co., Inc.
Koch Fuels, Inc.
Kollmorgen Corp.
Kvass Construction Co., Inc.
L S I Avionic Systems Corp.
L T V Aerospace & Defense Co.
L T V Corporation, The
Laguna Industries, Inc.
Laketon Refining Corp.
Landoll Corp.
Lanson Industries, Inc.
Lear Siegler, Inc.
Lewis Management Services Co.
Libby Corp.
Lite Industries, Inc.
Little, Arthur D., Inc.
Litton Industries, Inc.
Litton Systems, Inc.
Lockheed Corp.
Lockheed Electronics Co., Inc.
Lockheed Missiles & Space Co., Inc.
Lockheed Shipbuilding & Construction
Lockley Mfg. Co., Inc.
Loggins Meat Co.
Logicon, Inc.
Logistics Management Institute
Loral Electro Optical Sys.
Loral Electronics Corp.
Louis J. Sportswear, Inc.
Louisville Gas & Electric Co., Inc.
Lucas Industries, Inc.
Lundy Electronics & Systems, Inc.
Lykes Bros. Steamship Co., Inc.
M/A Com, Inc.
M/A Com Linkabit Corp.
Mac H B, Inc.
Magnavox Advance Products System Co.
Magnavox Government & Industrial Electronics Co.
Maitland Bros., Co.
Management & Technical Services Co.
Mantech International Corp.
Mapco, Inc.
Mapco Petroleum, Inc.
Mar, Inc.
Maremont Corp.
Marine Transport Lines, Inc.
Marinette Marine Corp.
Marquardt Co., Inc.
Martin Marietta Corp.
Martin Marietta, Diehl Co's., Thorn & Thomson, JV
Martin Marietta Ordnance System

Marvin Engineering Co., Inc.
Mason & Hanger Silas Mason Co., Inc.
Mason Chamberlain, Inc.
Massachusetts Institute of Technology
Maxima Corp., The
Maxwell Laboratories, Inc.
McCarty Corp., The
McDonnell Douglas Corp.
McDonnell Douglas Helicopter
McLaughlin Research Corp.
McMullen, John J. Associates, Inc.
McRae Industries, Inc.
Merck & Co., Inc.
Metal Trades, Inc.
Metro Machine Corp.
Michael Industries, Inc.
Michelson Organization
Microwave Laboratories, Inc.
Midland Ross Corp.
Milcom Systems Corp.
Miltope Corp.
Mine Safety Appliances Co.
Minnesota Mining & Mfg. Co.
Minowitz Mfg. Co., Inc.
Mission Research Corp.
Mit Con, Inc.
Mitre Corp., The
Mitsui & Co. USA, Inc.
Mobil Oil Corp.
Moog, Inc.
Morton Thiokol, Inc.
Moss Point Marine, Inc.
Motorola, Inc.
Murdock Engineering Co., Texas
N C R Corp.
N I Industries, Inc.
N I West, Inc.
N L Industries, Inc.
Nabisco Brands, Inc.
National Airlines, Inc., Del.
National Power Corp.
National Steel & Shipbuilding Co.
National Systems Management
Navajo Refining Co.
Needham, Inc.
Nero & Associates, Inc.
New Mexico State University
Newberg Brinderson, A Joint Venture
Newhall Refining Co., Inc.
Newport News Shipbuilding & Dry Dock Co.
Nichols Research Corp., Inc.
Nordam
Norden Systems, Inc.
Norfolk Shipbuilding & Dry Dock Corp.
North American Philips Corp.
North Atlantic Industries, Inc.
Northern Telecom, Inc., Del.
Northrop Corp.
Northrop Services, Inc.
Northrop Worldwide Aircraft Services, Inc.
Northwest Airlines, Inc.
Northwest Marine Iron Works
Nuclear Metals, Inc.
O A O Corp.
O R I, Inc.
Ocean Technology, Inc.
Ogden Bulk Transport, Inc.
Olin Corp.
Omni Spectra, Inc.
Optic Electronic Corp.
Oshkosh Truck Corp.
P P G Industries, Inc.
P R B Associates, Inc.
P S I Mobile Products, Inc.
Paccar, Inc.
Pacer Systems, Inc.
Pacific Construction
Pacific Refining Co.
Pacific Sierra Research Corp.
Pan American World Airways, Inc.
Pan American World Services, Inc.
Papago Chemicals, Inc.
Parker Hannifin Corp.
Parsons, Ralph M. Co., The
Pennsylvania Shipbuilding Co.
Pennsylvania State University
Perceptronics, Inc.
Percor, Inc.
Perkin Elmer Corp., The
Peterson Builders, Inc.
Phibro Salomon, Inc.
Philip Morris, Inc.
Philips Electronic Instruments
Phillips Petroleum Co.
Physics International Co.
Picker International, Inc.
Planning Research Corp.
Pneumo Corp.
Polorn Products-Bloomsberg, Inc.
Potomac Electric Power Co.
Power Conversion, Inc.
Presearch, Inc.
Pride Refining, Inc.
Proctor & Gamble Co., The
Propper International, Inc.
Prudential Lines, Inc.
Public Service Co. of New Mexico
Puerto Rico Sun Oil Company, Inc.
Purdy Corp.
Purvis Systems, Inc.
Q E D Systems, Inc.
Quality Apparel Co.
Questech, Inc.
Quintron Systems, Inc.
R & D Associates
RCA Corp,
RCA Global Communications
RF Products, Inc.
RGI, Inc.
RMI, Inc., Advance Marine
Radian Corp.
Rand Corp., The
Rantoul, Village of
Raymond Brown Root-Mowlin
Raymond Engineering, Inc.
Raytheon Co.
Raytheon Service Co.,
Refinery Associates, Inc.
Reflectone, Inc.
Remington Arms Co., Inc.
Resource Consultants, Inc.
Rexon Technology Corp.
Reynolds, R J Industries, Inc.
Reynolds, R J Tobacco Co.
Roberts, J R Corp.
Rockwell International Corp.
Roebbelen Engineering
Rohr Industries, Inc.
Rolls-Royce, Inc.
Rolm Corp.
Rosemount, Inc.
Rosenblatt, M & Son, Inc.
Ryan & Associates, Inc.
Ryan Walsh Stevedoring Co.
S Cubed
S C I Systems, Inc.
S K F Industries, Inc.
S M S Data Products Group, Inc.
S R I International
Saft America, Inc.
Sage Systems, Inc.
San Antonio, City of
Sanders Associates, Inc.
Santa Barbara Research Center
Sargent Fletcher Co.
Sargent Industries of Del., Inc.
Scallop Corp.
Scanoil International S A Inc.
Schafer, W J Associates, Inc.
Science Applications Intnl., Inc.
Scientific Atlanta, Inc.
Scientific Support Systems
Sea Land Service, Inc.
Sea Mobility, Inc.
Selma Apparel Corp.
Semcor Corp.
Serv Air, Inc.
Service Engineering Co.
Shell Oil Co.
Sheller Globe Corp.
Siemens Capital Corp.
Sierra Research Corp.
Simmonds Precision Products
Simplex Wire & Cable Co.
Sinclair Marketing, Inc.
Singer Co., The
Sippican, Inc.
Smith Industries
Softech, Inc.
Sohio Supply Co.
Solar Turbines, Inc.
Soltek of San Diego
Sonicraft, Inc.
Sooner Defense of Florida, Inc.
South Carolina Electric & Gas Co.
South Central Bell Telephone Co.
Southeast Machine Co.
Southern Air Transport, Inc.
Southern Dredging Co., Inc.
Southern Union Co.
Southwest Marine, Inc.
Southwest Research Institute
Southwestern Bell Telephone Co.
Space Communication Co.
Space Data Corp.
Sparta, Inc.
Sparton Corp.
Spears Associates, Inc.
Sperry Corp.
Standard Container Co.
Standard Mfg. Co.
Stanford, Leland Jr., University
Stanford Telephone, Inc.
Stearns, Roger, Inc.
Steuart Petroleum Co.
Stewart Warner Corp.
Sun Chemical Corp.
Sun Refining & Marketing Co.
Sundstrand Corp.
Sundland Refining Corp.
Superior Engineers Electronic Co.
Support Systems Associates, Inc.
Supreme Beef Processors, Inc.
Survival Technology, Inc.
Sverdrup Technology, Inc.
Swedlow, Inc.
Swift & Co.
Sygnetron Protection Systems
Syscon Corp.
Systems Development Corp.
Systematics General Corp.
Systems & Applied Sciences Corp.
Systems Management American, Inc.
Systems Research Laboratories, Inc.
T & G Construction Co., Inc.
T R W, Inc.

T S C Corp.
T W Oil (Houston), Inc.
Taurio Corp.
Techdyn Systems Corp.
Technology Applications, Inc.
Tektronix, Inc.
Teledyne, Inc.
Teledyne Industries, Inc.
Teledyne Microwave
Telephonics Corp.
Telos Computing, Inc.
Tempo, Inc.
Tetra Tech., Inc.
Texaco, Inc.
Texas Instruments, Inc.
Texas Power & Light Co.
Texas, State of
Therm, Inc.
Thompson, J. Walter Co.
Tilley Construction & Engineers
Todd Pacific Shipyards Corp.
Todd Shipyards Corp.
Tracor Aerospace Austin, Inc.
Tracor, Inc.
Tracor Marine, Inc.
Tracor MBA
Tradax Petroleum America, Inc.
Trans World Airlines, Inc.
Transamerica Airlines, Inc.
Transamerica Delaval, Inc.
Treadwell Corp.
Trepte Construction Co.
Tri-Ex Tower Corp
Triad Microsystems, Inc.
Triple A Machine Shop, Inc.
Turbo Compressor Technologies
Turtle Mountain Mfg. Co.,
U S Oil & Refining Co.
U T L Corp.
Ultrasystems, Inc.
Unidynamics Corp.
Unified Industries, Inc.
Union Carbide Corp.
Union Oil Co. of California
Uniroyal, Inc.
United Airlines Aircrew Training
United Chem Con Corp.
United States Lines, Inc.
United Technologies Corp.
United Technologs Auto Holdings
United Telecontrol Elect., Inc.
Universal Energy System, Inc.
Universal Hydraulics, Inc.
Universal Maritime Service
University of California
University of Dayton
University of Illinois
University of Maryland, Inc.
University of New Mexico, The
University of Southern California
University of Texas System
Usibelli Coal Mine, Inc.
Utah Power & Light Co.
Utah State University
V S E Corp.
Valleydale Packers, Inc.
Valmac Industries, Inc.
Varian Associates, Inc.
Varo, Inc.
Veda, Inc.
Verac, Inc.
Vessel Charters, Inc.
Vickers, Inc.
Vitro Corp.
Voest Alpine Trading USA Corp.
W F Industries
Walters E & Co., Inc.
Wang Laboratories, Inc.
Wardoco, Inc.
Washington, University of
Watkins Johnson Co.
Wedtech Corp.
Wellco Enterprises, Inc.
West Systems
Western Gear Corp.
Western Research Corp.
Western Trading Co.
Western Union International
Western Union Telegraph Co.
Westinghouse Electric Corp.
White Engines, Inc.
Whittaker Corp.
Williams International Corp.
Williams Steel Industries, Inc.
Wilson Machine Co.
Winfield Mfg. Co., Inc.
Wisconsin Physicians Service Insurance
Wolf, L Co.
Woods Hole Oceanographic Institute
Woodward Governor Co.
World Airways, Inc.
Wyoming Refining Co.
Xerox Corp.
Zantop International Airlines, Inc.
Zenith Electronics Corp.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 18, 1985.

[FR Doc. 85-30338 Filed 12-23-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

32 CFR Part 584

[Army Reg. 608-99]

Family Support, Child Custody, and Paternity

AGENCY: U.S. Army Community and Family Support Center, DoD.

ACTION: Final rule.

SUMMARY: This rule gives the Department of the Army's support, custody, and paternity policies and information on garnishment and involuntary allotments for payment of support under a court order. It includes guidance for processing complaints and claims, as well as requests regarding adoption proceedings of children of Army soldiers, and U.S. citizenship determinations. It provides a listing of administrative and punitive actions that may be taken against an Army soldier for failure to comply with the requirements of Army Regulation 608-99. Procedures for processing complaints and claims against nonactive duty or discharged Army personnel are also provided.

DATE: December 24, 1985.

ADDRESS: Commander, U.S. Army Community and Family Support Center (DACF-IS-PA), Room 468, Hoffman I, 2461 Eisenhower Avenue, Alexandria, VA 22331-0522.

FOR FURTHER INFORMATION CONTACT: LTC Milton J. Brokaw, (202) 325-8951.

SUPPLEMENTARY INFORMATION: 32 CFR Part 584 is added to show the Department of the Army's support, custody, and paternity policies. Army Regulation 608-99 applies to the Regular Army, the U.S. Army Reserve (USAR) on active duty, active duty for training, or official active duty for training (30 days or more duration), and the Army National Guard of the United States (ARNGUS) on active duty, active duty for training, or special active duty for training under title 10, U.S.C. (30 days or more duration). It does not apply to members of the USAR performing inactive duty training or to members of the ARNGUS performing duty in a State status under title 32, U.S.C. Penalties for violations of the minimum support requirements and child custody provisions include the full range of statutory and regulatory sanctions.

The U.S. Army Community and Family Support Center has certified that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612.

Pursuant to 5 U.S.C. 605(b), the regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

List of Subjects in 32 CFR Part 584

Family support, Child custody, Paternity claims, Adoption proceedings, Citizenship and naturalization, Wages, Military personnel.

Accordingly, new Part 584 is added to Title 32 CFR to read as follows:

PART 584—FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY

Sec.

584.1 General
584.2 Family support and child custody.
584.3 Paternity claims.
584.4 Adoption proceedings.
584.5 U.S. citizenship determinations on children born out of wedlock in a foreign country.
584.6 Procedures governing nonactive duty or discharged personnel.
584.7 Basic allowance for quarters.

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Sec.
584.8 Garnishment.
584.9 Involuntary allotments.
Appendix A—References.
Glossary.

Authority: 10 U.S.C. 3012.

§ 584.1 General.

(a) *Purpose.*

This regulation sets forth the Department of the Army (DA) policy, responsibilities, and procedures on—

(1) Support and nonsupport of family members.

(2) Child custody.

(3) Paternity claims.

(4) Adoption proceedings involving the children of soldiers.

(b) *References.* Required and related publications and prescribed and referenced forms are listed in appendix A.

(c) *Explanation of abbreviations and terms.* Abbreviations and special terms used in this regulation are explained in the glossary.

(d) *Responsibilities.* (1) The Deputy Chief of Staff for Personnel will set policy for processing—

(i) Nonsupport complaints.

(ii) Child custody complaints.

(iii) Paternity claims.

(iv) Requests on adoption proceedings of children of soldiers.

(2) The Commanding General (CG), U.S. Army Community and Family Support Center (USACFSC) will—

(i) Set procedures for processing the following:

(A) Nonsupport complaints.

(B) Child custody complaints.

(C) Paternity claims.

(D) Requests regarding adoption proceedings of children of soldiers.

(ii) Process nonsupport complaints, child custody complaints, and paternity claims received at USACFSC regarding Army soldiers.

(iii) Carry out the objectives of this regulation to protect the rights of the soldier, the family, and the interests of the Army.

(iv) Advise and assist the heads of Headquarters, Department of the Army (HQDA) agencies, commanders of the major Army commands, and other commanders on matters pertaining to—

(A) Nonsupport.

(B) Child custody.

(C) Paternity

(D) Adoption proceedings of children of soldiers.

(3) Officers having general court-martial jurisdiction will give special emphasis to the support of family members in command information programs. This includes informing soldiers of Army policy and of their responsibility to provide adequate support for all family members and to comply with all court orders.

(4) First level field grade commanders will monitor all instances of soldiers' repeated failure to meet the requirements of this regulation that are brought to their attention. They will take action, when proper.

(5) Immediate commanders will—

(i) Ensure that soldiers are informed of the DA policy on support of family members and that they comply with court orders. They will also inform soldiers of the possible consequences of failing to fulfill financial obligations. This information will be included during inprocessing and outprocessing briefings, particularly during processing for mobilization and oversea movement.

(ii) Process nonsupport complaints, child custody complaints, and paternity claims per this regulation.

(iii) Counsel soldiers when complaints and claim are received. If the soldier is suspected of criminal conduct, self-incrimination protections (article 31, Uniform Code of Military Justice (UCMJ) and rights advisement) must be provided. (See § 584.2(g)(4).)

(iv) Answer all correspondence received from CG, USACFSC and other DA officials. In answering this correspondence, the commander will—

(A) Furnish complete details regarding nonsupport complaints, child custody complaints, and paternity claims.

(B) Reveal whether or not the soldier authorized the release outside the Department of Defense (DOD) of information obtained from a system of records. His or her decision should be recorded on DA Form 5459–R (Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Complaints).

(v) Answer all correspondence received directly from family members, legal assistance attorneys, and others. Normally, replies will not include information obtained from a system of records without the soldier's written consent. (See § 584.1(f).) Commanders may coordinate responses with the Staff Judge Advocate (SJA). Also, the commander will ask the SJA for guidance in unusual or difficult situations.

(vi) Inform the first level field grade commander of all instances of the soldier's repeated failure to meet the requirements of this regulation or to comply with court orders. Also, point out actions taken or contemplated to correct instances of nonsupport of family members or continuing violations of court orders.

(vii) Refer correspondence or queries received from news media organizations to the unit, installation, or command public affairs officer for response.

(viii) Take appropriate action against soldiers who fail to comply with this regulation. These actions include, but are not limited to, the actions in §§ 584.1(d)(5)(viii) (A) through (E). Failure to comply with the minimum support requirements (§ 584.2(d)) or the child custody provisions (§ 584.2(e)) of this regulation may be charged as violations of article 92, UCMJ. Article 132, UCMJ, prohibits the making of false claims. Article 133, UCMJ, covers conduct unbecoming an officer. Article 134, UCMJ, concerns dishonorable failure to pay debts and conduct of a nature to bring discredit upon the Armed Forces. Also, the criminal laws of some States prohibit the abduction of children by a parent or the nonsupport of family members in violation of existing court orders. These laws may also apply against soldiers under article 134, UCMJ, and Assimilative Crimes Act, section 13, title 18, United States Code (18 U.S.C. 13).

(A) Denial of reenlistment for enlisted members (AR 601–280).

(B) Letter of reprimand for filing in a soldier's Military Personnel Records Jacket or Official Military Personnel File (AR 600–37).

(C) Administrative separation from the service (AR 635–100 or AR 635–200).

(D) Nonjudicial punishment under article 15, UCMJ.

(E) Court-martial.

(ix) Urge soldiers to provide additional financial support beyond the required minimum whether the needs of the family so require.

(x) After coordination with the SJA and appropriate command representatives, and under applicable State, Federal, and host country laws, take remedial steps to assist in the following:

(A) Elimination of continuing violations of court orders and this regulation on child custody.

(B) Return of such children to the parent or guardian entitled to custody.

(6) The unit, installation, or command public affairs officer will—

(i) Answer correspondence and queries received from news media organizations.

(ii) Coordinate with the SJA before making any response.

(e) *Policy.* (1) Soldiers of the Army are required to manage their personal affairs statisfactorily. This responsibility includes—

(i) Providing adequate and continuous support to or for family members. (See § 584.2.)

(ii) Complying with all court orders.

(2) The Army has an interest in the welfare of both soldiers and their families. This is recognized by numerous laws and programs authorizing the following:

(i) Family housing.

(ii) Living and travel allowances.

(iii) Medical care.

(iv) Child care and development.

(v) Community support services.

(3) Because of military duty, soldiers and their families often live in States in which they have not established domicile. Frequently, they reside in foreign nations. This often places soldiers beyond the judicial process of State courts.

(4) The Army recognizes the transient nature of military duty. This regulation prohibits the use of a soldier's military status or assignment to deny financial support to family members or to evade court orders on child support or custody. Commanders have a responsibility to ensure that soldiers provide for the welfare of their families. Before recommending approval of requests for, or extensions of, oversea assignments, commanders should consider whether the soldier's oversea assignment will adversely affect the legal rights of family members in pending court actions against the soldier.

(5) The policy in this regulation regarding the financial support of family members is solely intended as an interim measure until the parties—

(i) Arrive at a mutually satisfactory agreement, or

(ii) Resolve their differences in court.

(6) Soldiers are entitled to the same legal rights and privileges in State courts as civilians. This includes determining the extent and amount of their support obligations to family members. This regulation is not intended to be used as a guide by courts in determining the following:

(i) The existence of support obligations.

(ii) The amount of past, present, or future support obligations.

(f) *Release of information.* (1) Soldiers will be provided the opportunity of completing DA Form 5459–R before being questioned about compliants or claims under this regulation. Information voluntarily provided by soldiers may be used by commanders to answer inquiries. Replies normally will not include information obtained from a system of records without the soldier's written consent.

(2) Some information may be released outside DOD from a system of records even without the soldier's written consent. Under the Privacy Act (5 U.S.C. 552a(b)(2) and AR 340–21, para 3–3), information may be released, if required, under the Freedom of Information Act. Under 5 U.S.C. 552(b)(6) and AR 340–17, chapter III, information from personnel and other similar files may be released if it does not constitute a "clearly unwarranted invasion of privacy." The information released must be in the public interest.

(3) The type of information that may be released from a system of records without the soldier's consent will vary from case to case. In each case, the public interest of having soldiers support their families and obey court orders must be balanced against the sensitivity of the privacy interests involved. Army policy favors permanent resolution of support and custody matters in court. The denial of information that hinders such resolution is not in the public interest.

(4) Before releasing information from a system of records without the soldier's consent, commanders may consult the SJA. Generally, the types of information shown below may be released to the complaining family member entitled to support or those authorized by the family member to act in his or her behalf (for example, legal assistance attorneys, Member of Congress, courts, Government welfare agencies).

(i) Present unit of assignment, including port calls and future duty assignments, permanent or temporary, if known.

(ii) Scheduled separation and retirement dates from the Service.

(iii) Rank and authorized pay and allowances for that grade.

(iv) Allotments authorized or being authorized for or in behalf of the family member entitled to support.

(v) The soldier's stated intentions, if any, regarding resolution of the complaint.

(vi) The general whereabouts of the soldier's children, if known.

(5) The SJA should be consulted for legal advice before the residential address of a soldier or family member is released.

(6) Any information released should be pertinent to the inquiry. The soldier's relationship, if any, to the person making the inquiry, should be considered. Consistent with the purpose of this regulation, information that unduly invades the privacy of the soldier or his or her family should not be released.

(g) *Penalties.* Compliance with the minimum support requirements § 584.2(d)) and child custody provisions (§ 584.2(e)) of this regulation will be enforced by administrative and criminal remedies as appropriate.

(h) *Basic allowance for quarters.* A summary of the rules regarding entitlements to basic allowance for quarters (BAQ) is in § 584.7. The minimum support requirements of this regulation are stated in amounts equal to a soldier's BAQ at the "with dependents" rate. However, a soldier's entitlement or lack of entitlement to such allowances has no relationship to the obligation under this regulation to support family members. Except for § 584.2(f)(2)(ii)(B), the actual receipt or nonreceipt of BAQ also has no relationship to that obligation.

(i) *Entitlement of variable housing allowance.* Soldiers entitled to BAQ at the "with" or "without dependents" rate may be entitled to variable housing allowance (VHA). Terms for receiving VHA are set forth in the Joint Travel Regulations, M4550 through M4557. Soldiers may use VHA to defray housing costs for family members.

(j) *Garnishment.* A summary of the rules regarding garnishment of Federal wages is in § 584.8.

(k) *Involuntary allotments.* A summary of the rules regarding involuntary allotments from pay and allowances is in § 584.9.

§ 584.2 Family support and child custody.

(a) *General.* (1) This chapter requires soldiers to provide financial support to family members and to obey court orders on child custody. It also provides guidance and policy to commanders to follow when resolving nonsupport and child custody issues. Consistent with specific provisions below, a soldier will—

(i) Furnish financial support to family members that meets at least the minimum support requirements of this regulation (§ 584.2(d)).

(ii) Provide such additional support within his or her financial ability to meet the financial needs of family members (§ 584.2(j)).

(iii) Comply with all court-imposed obligations (§ 584.2(c)(3)).

(iv) Obey court orders and this regulation on child custody and visitation rights (§ 584.2(e)).

(2) It is the responsibility of soldiers to resolve nonsupport issues with family members by one of the methods shown in § 584.2(a)(2)(i) through (iii). In all cases, Army support policy for family members should be considered temporary until either an agreement has been reached between the parties (including those acting on behalf of minor children) or court action has been taken.

(i) Oral agreements.

(ii) Written support agreements.

(iii) Court orders.

(3) Each complaint of nonsupport will be considered individually by the soldier's immediate commander. Alleged desertion or other marital misconduct on the part of a spouse has no effect on a soldier's obligation to provide financial support as required by § 584.2(d).

(b) *Separation from family due to military service.* Military service often requires soldiers to live separately from their families during oversea service or extended temporary duty. Soldiers must plan carefully for the support of their families during these periods. Commanders will educate soldiers and their families on the advantages of joint bank accounts. Such arrangements usually minimize the hardship and financial burden on family members that may occur during periods of such separation. If proper, commanders will urge soliders to start an allotment to or for their family to ensure continuous financial support. The amount of such a support allotment should be set up by agreement between the soldier and his or her family. In the absence of such an agreement or a court order, the provisions of §584.2(d)(2) apply. Each soldier is expected to keep reasonable contact with family members to minimize inquiries, claims, and compliants sent to Army officials.

(c) *Support by oral agreement, written support agreement, or court order.*—(1) *Oral agreement.* It is not the Army's policy to involve itself in disputes over the terms or enforcement of oral support agreements. Where an oral agreement exists and is being followed, the Army need not and will not interfere. When a dispute arises, the Army will require compliance only with the provisions of this regulation. Thus, if a family member complains that a soldier is not sending an agreed upon amount that is less or more than the minimum required by § 584.2(d), the commander will advise the soldier to either send the agreed upon amount or the minimum amount required by § 584.2(d). § 584.2(d) applies when the parties cannot reach an oral agreement or the amount agreed upon is in dispute. In appropriate cases, the commander can order additional support beyond the minimum amount required by § 584.2(d). (See §584.2(j).)

(2) *Written support agreement.* If the parties are separated and have a signed written agreement, the amount of support specified in such an agreement controls. A signed written agreement includes a separation agreement or a property settlement agreement. A written agreement on support also may be shown by letters exchanged between the parties in which the amount of support has been agreed to by the parties. If the agreement is silent on an amount of spousal and/or child support, the interim minimum financial support requirements of §584.2(d)(2) apply. The amount specified in the written agreement will be deemed adequate until modified by—

(i) Another agreement reduced to writing and signed by both parties.

(ii) Court order.

(3) Court order.

(i) Court orders often contain other financial obligations, such as provisions for property division, marital property awards, and payment of medical and other expenses. Commanders have a responsibility to ensure that soldiers comply with these provisions. Soldiers will comply with all court-imposed obligations. Failure to do so may result in costly and time-consuming litigation or court contempt proceedings. These actions often are to the detriment of the soldier and the unit's readiness mission. §584.2(d)(1)(i), however, only applies to court orders directing the soldier to provide financial support to family members on a periodic basis.

(ii) Court orders under this regulation include those orders issued by the courts of the Federal Republic of Germany (FRG). The courts must have acquired valid jurisdiction consistent with the provisions of articles 32 through 37 of the Supplementary Agreement concerning foreign forces stationed in the FRG. This agreement supplements the North Atlantic Treaty Organization Status of Forces Agreement. A soldier will comply with all other foreign nation court and administrative orders that are recognized by treaty or international agreement.

(iii) Commanders should be aware that conditions may have changed greatly from when a court order was issued. For example, a soldier may have gained other family responsibilies. Many outstanding and uncontested support orders against soldiers cause severe hardship. Such orders can only be modified by a court. If a soldier's income appears inadequate to satisfy an outstanding order and still maintain the soldier, the commander should urge the individual to consult a legal assistance attorney. However, the soldier will comply with the terms of a court order until relieved of this obligation by modification of the order by a court.

(d) *Minimum support requirements.* (1) Soldiers will not violate the following:

(i) Financial support provisions of a court order.

(ii) Financial support provisions of a written support agreement in the absence of a court order.

(iii) Interim minimum financial support requirements of § 584.2(d)(2) in the absence of a court order or written support agreement.

(2) In the absence of a court order or written support agreement, and until such an order or agreement is obtained, the following interim *minimum* financial support requirements apply:

(i) *Single family units.* (A) Family not living in Government family quarters. The soldier will provide support in an amount equal to the soldier's BAQ at the with-dependents rate. This amount of financial support will be provided for this family unit regardless of whether or not the soldier is—

(*1*) Receiving BAQ.

(*2*) Occupying Government family quarters.

(B) Family living in Government family quarters. While the supported family is occupying Government family quarters, the soldier will provide an amount equal to the difference between BAQ at the with- and without-dependents rate. When the supported family members move out of Government family quarters, support will be provided in an amount equal to BAQ at the with-dependents rate for the soldier's rank.

(ii) *Multiple-family units.* In multi-family unit support situations, each supported family member will receive a pro-rata share of the BAQ at the with-dependents rate. This share will be determined by dividing an amount equal to BAQ at the with-dependents rate for the soldier's rank by the total number of supported family members (excluding former spouses). The following modifications apply: First, any court ordered support will be paid as stated. Secondly, supported families living in Government family quarters will receive an amount equal to the difference between BAQ at the with- and without-dependents rate for the soldier's rank. Lastly, any remaining family members (excluding former spouses) will receive a pro-rata share of the BAQ amount. This will be provided regardless of the amount of support paid to other family members. Following are examples:

(A) *Example 1.* A soldier is divorced and has three children from that marriage. The soldier is required by a court order to pay $300 per month for the children and $100 per month for the former spouse. The soldier has remarried and has two more family members (spouse and child) living in private housing. The soldier now has a total of five family members that he or she must support under Army policy. (A former spouse does not qualify as a family member in pro-rata determinations.) The children by the previous marriage must receive $300 and the former spouse must receive $100 per the court order.

The present spouse and child should receive support equal to two-fifths of BAQ at the with-dependents rate for the soldier's rank.

(B) *Example 2.* A soldier has one child by a previous marriage. There is no court order for child support. The soldier is unable to show that the court granting the divorce had personal jurisdiction over the soldier so as to be able to order child support. The soldier has remarried and has a spouse and two children living in private housing. The soldier now has a total of four family members that he or she must support under Army policy. (These family members are the child by a previous marriage and the present spouse and two children.) Each family member should receive support equal to one-fourth of BAQ at the with-dependents rate for the soldier's rank.

(C) *Example 3.* A soldier has two children by a previous marriage. The soldier is required by court order to pay $200 per month for these children. Also, the soldier is required to pay $75 per month for support of a child per a court order that has declared him to be the father. He has remarried and has a spouse and three children living in Government family quarters. The soldier now has a total of seven family members that he must support under Army policy. The children by his previous marriage must receive $200 per the court order. His other child must receive $75 per the court order. The spouse and children of his present marriage should receive an amount equal to the difference between BAQ at the with- and without-dependents rate for the soldier's rank.

(iii) Military members married to one another. In the absence of a court order or written support agreement, an Army soldier is not required to provide support to a spouse on active duty in the Armed Forces.

(iv) Children of military member parents.

(A) *Single family units.* In the absence of a court order or written support agreement, the following interim support requirements apply:

(1) Single family units when the Army soldier does not have custody of any children of the marriage. The Army soldier will pay an amount equal to the difference between his or her own BAQ at the with- and without-dependents rate to the military member having custody of the child or children of the marriage. This amount of financial support will be provided regardless of which military member, if any, is receving BAQ or occupying Government family quarters.

(2) Single family units when the Army soldier has custody of the child or children of the marriage (for example, Army soldier has custody of one child and spouse has custody of two children). In this situation, the Army soldier is not required to provide a minimum amount of financial support for the children in the other military member's custody.

(B) *Multiple-family units.* The provisions of § 584.2(d)(2)(ii) apply. However, the amount in § 584.2(d)(2)(iv)(A) will not be diminished by proration because of the Army soldier's financial support obligations to other family members. For example: An Army soldier has an adopted child from a previous marriage. The soldier is required by court order to pay $150 per month for this child. The soldier presently is married to a spouse on active duty with the Air Force. They have two children from this marriage. The Air Force member and children reside in private housing. The Army soldier has a total of three family members that he or she must support. The Army soldier will pay $150 a month to the adopted child per the court order. The children from the present marriage will receive an amount equal to the difference between his or her BAQ at the with- and without-dependents rates for the Army soldier's rank.

(3) A commander has no authority to excuse a soldier from complying with the interim *minimum* support requirements of § 584.2(d)(2) when they are applicable.

(4) In the absence of a contrary provision in a written support agreement or court order, monthly financial support to family members will be sent before the last calendar day of the month for which the support is due. If the family members are not residing together, the soldier will ensure each family member receives his or her pro-rata share. (For example, spouse lives along and the children live with their grandparents.)

(e) *Child custody.* (1) A soldier relative, who is aware that another person is a lawful custodian of an unmarried child under the age of 14 years, will not—

(i) Abduct, taken, entice, or carry away the child from the lawful custodian.

(ii) Withhold, detain, or conceal the child away from the lawful custodian.

(2) A "lawful custodian" is a person authorized, either along or together with another person or persons, to have custody and exercise control over a child less than 14 years of age by order of a court. The fact that joint custody has been awarded to both parents by a court does not preclude a violation of this paragraph by the soldier parent. However, in the absence of a court order to the contrary, the mother of a child born out of wedlock who is not then, nor has ever been, married to the father of the child is deemed the "lawful custodian" of that child for the purpose of this regulation.

(3) A soldier relative is a soldier who is the parent, grandparent, brother, sister, uncle, aunt, or one who has at some time been the lawful custodian of the child.

(4) It is a defense to a violation of this paragraph that the soldier—

(i) At the time of the offense had custody of the child to the exclusion of others pursuant to a valid order of a court having jurisdiction over the child; or

(ii) Voluntarily returned the child to the lawful custodian within 96 hours after return was demanded by the lawful custodian.

(f) *Relief from the minimum support requirement.* (1) Court orders with financial support provisions.

(i) Court ordered financial support will be by the terms of the court order. Relief from a court order can only be obtained under the law. Nothing in this regulation affects or lessens a soldier's legal obligation to comply strictly with the terms of a court order.

(ii) A soldier who disobeys a court order may be held in contempt of the court that issued the order. Also, a soldier may be punished for violating this regulation. It is, however, a defense to any violation of § 584.2(d)(1)(i) that—

(A) The court issuing the order was without jurisdiction to do so, and

(B) The soldier at all times has been complying with any of the following:

(1) The financial support provisions of another court order.

(2) The financial support provisions of a written support agreement.

(3) The interim minimum financial support requirements of § 584.2(d)(2).

(2) Court orders without financial support provisions.

(i) A soldier will provide financial support to family members unless expressly relieved of this obligation by—

(A) Court order.

(B) Written support agreement.

(ii) A soldier will provide financial support under § 584.2(f)(2) to family members, which meets at least the minimum support requirements of this regulation. The financial support will be provided even when a court order contains no provision as to support except as follows:

(A) A soldier has no obligation to provide financial support to a former spouse except by order of court.

(B) A soldier has no obligation to provide financial support to minor children of the marriage if he or she can show the following:

(1) The court issuing the final order of divorce had personal jurisdiction over the soldier to order child support.

(2) The soldier is not receiving BAQ at the "with dependents" rate based solely

on the support of the minor children in question.

(3) *Written support agreements.* If a financial support obligation is evidenced by a written agreement between the parties, the soldier can only be relieved of this obligation by another written agreement or by court order.

(4) *Greater spousal income.* In the absence of a written support agreement or court order, a soldier has no obligation to support a civilian spouse who is receiving an annual income equal to or greater than the annual gross pay of the soldier. The income of the spouse does not affect the soldier's obligation to provide financial support to the children of that marriage in the physical custody of the spouse on a pro-rata basis. Example: A soldier is living in Government family quarters with one of their children. The soldier's spouse deserted the soldier and lives in private housing with their other child. The soldier's spouse earns $5,000 more in annual income from a civilian job than the soldier earns in annual gross pay. There is no court order or written support agreement. The soldier has a total of three family members. However, under Army support policy, the soldier does not have to provide a pro-rata share of financial support to the spouse because the spouse's income exceeds that of the soldier. (Note that under § 584.2(a)(3) marital misconduct is not a relevant consideration.) The soldier must support the child in Government family quarters. In addition, the soldier must provide an amount equal to one-third of BAQ (pro-rata share) at the "with dependents" rate to the spouse on behalf of the child living with the spouse.

(g) *Commander's inquiries.* (1) If a soldier denies he or she has a financial obligation to support a spouse or children for any reason, the soldier's commander will—

(i) Inquire into the matter.

(ii) Consult with the SJA prior to determining whether or not there is a support obligation. If there is no support obligation, BAQ at the "with dependents" rate should be stopped.

(2) If a soldier claims he or she has made support payments as required by this regulation, the soldier's commander will—

(i) Request the soldier to provide proof of payment in one of the following forms:

(A) Canceled personal checks.

(B) Leave and earnings statements showing allotments.

(C) Postal or money order receipts accompanied by a sworn statement from the soldier that the order was sent to the family member. If possible, evidence that the postal or money order was cashed by the complaining party should be provided.

(D) Other acceptable evidence of payment.

(ii) Consult with the SJA, if necessary, to determine whether the soldier has provided enough proof of payment.

(3) If a soldier is suspected of violating a child custody or visitation rights in a court order, the soldier's commander will—

(i) Inquire into the matter.

(ii) Consult with the SJA prior to taking action.

(4) In any case in which the soldier is suspected of violating this regulation (§ 584.2(d) or (e)), or of having committed other offenses, the commander, prior to questioning the soldier, will advise him or her of—

(i) The suspected offense.

(ii) The right to remain silent under article 31, UCMJ.

(iii) The right to counsel under the Fifth Amendment.

(h) *Form of support payment.* (1) Unless otherwise provided in the court order or by agreement, a financial support payment will be made in one of the following ways:

(i) In cash.

(ii) By check or money order.

(iii) By allotment.

(2) A soldier will receive credit for payments made to others on behalf of, and with the agreement of, the supported family members. Examples of support provided in kind include—

(i) Rent.

(ii) Utility services.

(iii) Interest and principal due on loans, mortgages, or charge accounts.

(iv) Insurance payments.

(i) Arrearages

(1) *General.* A soldier who falls into arrears without legal justification or excuse is in violation of § 584.2(d).

(2) Court orders and written support agreements.

(i) Amounts in arrears based on a past failure to comply with a court order or written support agreement will be paid at once in a lump sum amount. If an immediate lump sum payment is impractical, soldiers are expected to work out arrangements with the court or the affected family members to pay arrearages on a scheduled basis. If arrangements can not be worked out, commanders will intervene and order payment of arrearages on a scheduled basis based on the soldier's ability to pay.

(ii) When arrearages arise from noncompliance with court orders and written support agreements, this may result in—

(A) Garnishment of the soldier's pay account (§584.8).

(B) Initiation of an involuntary allotment against the soldier's pay account (§ 584.9).

(C) Contempt of court proceedings.

(D) Recoupment of BAQ received by the soldier.

(iii) Administrative or punitive action may be taken on a violation of this regulation for any month in which the soldier failed to provide the required financial support even if the amount in arrears eventually is paid.

(3) Interim minimum financial support requirements. A soldier should be encouraged to pay the amount in arrears based on past noncompliance with the interim minimum financial support requirements (§§ 584.2(d) (1)(iii) and (2)). However, a soldier cannot be ordered to pay such an amount. Nevertheless, administrative or punitive action may be taken on a violation of this regulation for any month in which the soldier failed to provide the required financial support even if the amount in arrears eventually is paid. Also, failure to provide required financial support in the past may be considered, together with other factors, in a commander's determination of the amount of additional support that may be ordered. (See § 584.2(j).)

(j) Additional support where there is no support agreement or court order.

(1) Ordinarily, a soldier should not be required to provide financial support beyond that required by § 584.2(d)(1)(iii). However, a soldier should provide additional support within his or her ability to meet the basic financial needs of family members when the interim support requirements of this regulation are shown to be inadequate.

(2) If there is a demonstrated need for immediate and temporary additional support because of unexpected and unforeseen circumstances and the parties are unable to agree on such additional support, a commander may order temporary additional support.

(3) Commanders will consider the following factors in determining the amount of additional support, if any, that a soldier should provide when a request for additional support is received:

(i) The pay, allowances, separate income, and other financial resources of both the soldier and the family member for whom additional support is requested.

(ii) The earning capacity of the family member on whose behalf support is requested.

(iii) The financial savings of the soldier and family member.

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(iv) The separate and joint debts of the soldier and family member, by whom those debts were incurred, and the reasons behind them.

(v) The soldier's duty to provide financial support to other family members, including former spouses.

(vi) The financial needs of the soldier and the family member and whether these needs are temporary or permanent in nature.

(vii) The standard of living of the soldier and family member and whether such standard of living is reasonable under the circumstances.

(viii) With regard to spousal support, the duration of the marriage and the circumstances under which the parties separated.

(ix) The extent of the soldier's or family member's compliance with existing court orders and written support agreements. This includes those provisions dealing with child custody, visitation rights, property division, and marital property awards.

(x) The amount in arrears owed by the soldier based on past noncompliance with the minimum support requirements. (See §§ 584.2 (d) and (i).)

(xi) Any other fact which, in the judgment of the commander, has a logical bearing upon the amount of additional support the soldier reasonably should be expected to provide.

(k) *Procedure for making complaints.* (1) Complaints about nonsupport of family members and noncompliance with court orders on financial support and child custody should be sent through command channels. The complainant should be referred to the immediate commander of the soldier concerned.

(2) The Inspector General (IG) may assist in properly routing the complaint. The IG also may assist if the responsible commander has failed to respond in a satisfactory manner or as required by this regulation. (See AR 20–1, para 4–9.)

(3) The USACFSC (DACF–IS–PA) has set up an office to assist in these cases. USACFSC will provide policy interpretations and guidance on unresolved or complex cases, as needed. USACFSC normally will go through command channels to the immediate commander of the soldier concerned requesting that action be taken under this regulation.

(4) Family members who present complaints against a military member of another Service (Air Force, Marine Corps, Navy, or Coast Guard) should be referred to the appropriate Service.

(l) *Commander's actions.* (1) Upon receipt of a complaint of nonsupport or noncompliance with court orders, including provisions on child custody or visitation rights, the commander will review the complaint. He or she will do the following if the information is incomplete:

(i) Acknowledge receipt of the complaint.

(ii) Explain that the information or documentation sent is not enough to give proper help.

(iii) If appropriate, send the complainant DA Form 5460–R (Request for Help in Receiving Support and/or Identification Cards for Family Members).

(iv) Advise that help will be given with the complaint upon return of the completed form and other requested information and documents.

(v) If appropriate, advise that DA Form 5460–R alone is not enough documentation for issuance of a dependent identification card (ID card) (AR 640–3). Documentation (that is, court orders, birth certificates, marriage certificates, etc.) must be provided to support eligibility for benefits.

(vi) Answer any policy or procedural questions that have been asked.

(2) Upon receipt of DA Form 5460–R or a complaint that has enough information to properly respond, the commander will—

(i) Review soldier's legal financial obligations in light of the complaint and the facts presented by all parties concerned.

(ii) If necessary, ask the SJA if the complaint is valid, if the soldier must provide financial support or give up custody of children, and any other related questions.

(iii) Notify the soldier of the complaint of nonsupport or of a violation of a child custody court order.

(iv) Require the soldier to complete and sign DA Form 5459–R. Information obtained from a system of records ordinarily will not be released outside DOD without the soldier's consent. (See § 584.1(f).)

(v) If the soldier is suspected of violating this regulation or of having committed other offenses, the commander, prior to questioning the soldier, will also advise him or her of—

(A) The suspected offense.

(B) The right to remain silent under article 31, UCMJ.

(C) The right to counsel under the Fifth Amendment.

(vi) Explain the following to the soldier:

(A) The Army's policies regarding support of family members and compliance with court orders.

(B) That refusal to give required support per this regulation may result in administrative or punitive action.

(C) That a soldier is not entitled to BAQ at the "with dependents" rate when no part of the allowance is given to family members. Therefore, collection action may be initiated by the Army.

(vii) Explain what garnishment is (§ 584.8) and how it might affect the soldier's pay, allowances, and allotments. For example, explain that the amount garnisheed monthly might significantly exceed monthly support obligations previously agreed upon.

(viii) Tell the soldier of any court order for attachment or garnishment that has been received. Immediately send the court documents to the Commander, U.S. Army Finance and Accounting Center (USAFAC), ATTN: FINCL–G, Indianapolis, IN 46249–0260 for action. (See § 584.8(b).) Also, inform the soldier that if the document is in proper legal form, a portion of the soldier's pay and allowances will be garnisheed.

(ix) Explain involuntary allotments (§ 584.9) if appropriate.

(x) Coordinate with the soldier's servicing finance and accounting office (FAO) for problems of pay, allowances, and allotments.

(xi) Urge soldiers to provide continuous support to family members by allotment. The allotment should be for the mutually agreed amount, court order, or as computed under this regulation. An account may be set up in a financial institution by the recipient to receive the allotment. This action may preclude delays in receipt and other related problems in the future.

(xii) Help the soldier start an allotment to make the required support payments. Also, advise the soldier to let the commander know if there is a change or stoppage to the support allotment.

(xiii) Give the soldier a chance to consult with a legal assistance attorney if he or she desires. However, the commander should ensure that this is not used as a delaying tactic. Where appropriate, a support payment plan should be initiated without delay.

(xiv) Urge soldiers thinking about divorce to seek legal advice from a legal assistance attorney. Also, advise the soldier to ensure an amount of support is included in the court order for their children. This action may help to prevent future disputes.

(xv) Ensure that the soldier is not receiving BAQ at the "with dependents" rate when not entitled to it. (See § 584.7.)

(xvi) Ask the soldier about his or her intentions. Give the soldier the chance to furnish a voluntarily signed statement admitting or denying the complaint and stating his or her intentions.

(xvii) Send complaints received to the soldier's new duty station if he or she has been reassigned. Advise the complainant of the soldier's reporting date and the unit address to which correspondence should be sent. If proper, give the complainant a copy of DA Form 5460–R.

(3) Advise the complainant courteously and promptly—

(i) Of the Army policy in suitable areas of concern.

(ii) Of the soldier's intentions, if the soldier allows release of the information.

(iii) That personal problems outside the requirements of this regulation must be resolved in court if the parties cannot agree.

(4) If proper to the situation, remind complainant of other helping agencies on post, such as the chaplain and Army Community Service. These agencies can give timely, interim help to meet immediate needs pending a more permanent resolution of the problem.

(5) Retain the statements allowing or forbidding release of information to the complainant and the soldier's intentions with the case file for future reference. Documents/records will be filed per AR 600–37 and the Army Functional Files System (AR 340–2 and AR 340–18).

(6) Monitor actions closely to ensure promises of support or other actions by soldiers to complainants are being met.

(7) Consider administrative or punitive action if proper.

(8) Inform the first level field grade commander of the soldier's repeated failure to meet the requirements of this regulation. Also, point out actions taken or contemplated to correct instances of nonsupport of family members or violations of child custody court orders.

§ 584.3 Paternity claims.

(a) *General.* (1) This chapter sets policy and procedures to process paternity claims against male Army soldiers. These procedures apply to claims made in the continental United States and in foreign countries. They apply to claims made by the claimant or on behalf of the claimant by attorneys, court officials, and others.

(2) Soldiers will be informed of paternity claims against them. Commanders will ensure that soldiers are advised of their legal rights and will advise soldiers of their moral and legal obligations in the matter. Soldiers admitting paternity will be urged to provide the necessary financial support to the child. Also, they will take any other action proper under the circumstances.

(b) Procedures for questioning soldiers about paternity claims upon receipt of a claim of paternity against a soldier, the commander will take the following actions:

(1) If there is evidence that an offense (for example, rape, indecent acts with a minor) may have been committed—

(i) Inform law enforcement officials.

(ii) Inform the soldier of the suspected offense. Before questioning, advise the soldier of his right to remain silent under article, 31, UCMJ, and his right to counsel under the Fifth Amendment.

(iii) Coordinate further action under this regulation with the SJA and law enforcement officials if appropriate.

(2) If there is no evidence that an offense was committed—

(i) Allow the soldier a chance to talk with a legal assistance attorney about his legal rights and obligations.

(ii) Require the soldier to complete and sign DA Form 5459–R. Information obtained from a system of records normally will not be released outside DOD without the soldier's consent. (See § 584.1(f).)

(iii) Inform the soldier of Army policy on the support of family members contained in this regulation.

(iv) Advise the soldier that a court order against him on the paternity claim, followed by a refusal to support a child born out of wedlock, could result in—

(A) Administrative or punitive action for violating this regulation.

(B) Garnishment of the soldier's pay account (§ 584.8).

(C) Initiation of an involuntary allotment against the soldier's pay account (§ 584.9).

(D) Contempt of court proceedings.

(v) Ask the soldier about his intentions. Give the soldier the chance to furnish a voluntarily signed statement admitting or denying the claim and stating his intentions.

(c) *Procedures for processing paternity claims.* (1) When one of the conditions in § 584.3(c)(1)(i) applies, a claimant will be advised of the statement in § 584.3(c)(1)(ii).

(i) A soldier—

(A) Refuses to answer questions about the paternity claim.

(B) Denies paternity.

(C) Admits paternity, but refuses to provide financial support.

(ii) No action can be taken on the claim of paternity in the absence of a court order. The court order must identify the soldier in question as the father of the child. Also, the court order must direct that the soldier provide financial support to the child.

(2) The commander will reply directly to the claimant or the attorney or court official she has authorized to act in her behalf. Information obtained from a system of records ordinarily will not be released outside DOD without the soldier's consent. (See § 584.1(f).)

(3) If the soldier admits paternity and agrees to provide financial support, then the commander will—

(i) Ask the claimant to provide a copy of the birth certificate.

(ii) Help the soldier in filing for an allotment or providing other financial aid.

(iii) Advise the claimant of the amount, effective date, and means of payment.

(iv) Help the soldier apply for BAQ at the "with dependents" rate, if applicable. (A birth certificate may be required.)

(v) Ensure an ID card is issued for the child after the relationship is documented, if proper. (A birth certificate may be required.) (See AR 640–3, para 3–3, for dependency criteria for ID cards.)

(vi) Allow the soldier to take ordinary leave in order to marry the claimant, if leave is requested for this purpose. However, the leave may be delayed if it will interfere with military requirements. Travel in connection with leave (including travel to and from overseas commands) is the responsibility of the soldier. Travel will be at no expense to the Government. If the marriage is to take place overseas, the soldier must comply with AR 600–240 and AR 608–61 in applying for authorization to marry (DA Form 2029–R) (Application for Authorization to Marry Outside of the United States).

(d) *Court orders.* If a court order of paternity and support has been issued, the commander will—

(1) Advise the soldier of the policy regarding support of family members.

(2) Advise the soldier that refusal to support his child born out of wedlock could result in—

(i) Garnishment of the soldier's pay account (§ 584.8).

(ii) Initiation of an involuntary allotment against the soldier's pay account (§ 584.9).

(iii) Contempt of court proceedings.

(iv) Administrative or punitive action for violating this regulation.

(3) Refer the soldier to a legal assistance attorney for advice on his legal rights and obligations.

(4) Help the soldier file an attotment or give other financial aid.

(5) Advise the claimant of the amount, effective date, and means of payment.

(6) Help the soldier apply for BAQ at the "with dependents" rate, if applicable.

(7) Ensure an ID card is issued for the child.

(8) Consider administrative or punitive action if the soldier fails to obey the court order. (See § 584.1(d)(5)(viii.)

(9) Inform the first level field grade commander of the soldier's repeated failure to meet the requirements of this regulation. Also, point out actions taken or contemplated to correct instances of nonsupport of family members.

§ 584.4 Adoption proceedings.

(a) *General.* This chapter does not apply to those situations were a soldier is trying to adopt a child. It applies to those situations where another person is trying to adopt a legitimate or illegitimate child of a soldier. A child born in or out of wedlock normally may not be put up for adoption without the consent of the parents. Therefore, communications from a judge or court asking that a soldier appear at an adoption hearing must be answered.

(b) *Commander's actions.* The commander will—.

(1) Inform the soldier or the inquiry.

(2) Urge the soldier to see a legal assistance attorney.

(3) Advise the court or judge, as appropriate, that—.

(i) A request by the soldier for leave to attend an adoption hearing on (date) has been granted.

(ii) A request by the soldier for leave to attend an adoption hearing on (date), if made, would be approved..

(iii) Due to military requirements, the soldier cannot be granted leave to attend any court hearing until (date).

(iv) The soldier has stated that he or she is not the natural parent of the child.

(v) Since the soldier is not present because (give specific reasons), (for example, temporary duty or leave), a complete response cannot be made until (date).

(vi) The soldier is no longer in this command. The commander will provide the soldier's new military address to the court or judge. The commander then will send a copy of the inquiry to the soldier's new commander and advise the court or judge of this action.

(4) Furnish the soldier with a copy of the communication and the reply.

§ 584.5 U.S. citizenship determinations on children born out of wedlock in a foreign country.

(a) *General.* (1) A child born out of wedlock in a foreign country of an American citizen father and an alien mother does not automatically gain U.S. citizenship. The child must first be legally acknowledged by the father. Marriage to the mother may be required in order for the child to acquire U.S. citizenship. The father also must establish that he had at least 10 years of physical presence in the United States prior to the child's birth. Five of those years must have been spent in the United States after the father's 14th birthday. United States military service counts as physical presence in the United States. (See 8 U.S.C. 1101(c)(1), 1401(g), and 1409(c).) Whether the child gains the citizenship of its mother depends entirely upon the laws of the nation in which she is a citizen.

(2) A child born out of wedlock in a foreign country to an American citizen mother and an alien father or U.S. Citizen father gains U.S. citizenship at birth if the mother had been physically present in the United States for a continous period of 1 year prior to the child's birth. (See 8 U.S.C. 1409(c).) The child will gain the citizenship of the father only if the laws of the nation of which the father is a citizen so provide.

(b) *Procedures for claiming U.S. citizenship rights.* (1) A father desiring rights of U.S. citizenship for a foreign-born child must legally acknowledge the child as his own and prepare a case file. Each case is decided on its own merits. The Department of State, if the child is in a foreign nation, or the Immigration and Naturalization Service (INS), if the child is in the United States, will make the decision. Documents that may be important in supporting a citizenship determination are listed below:

(i) Proof of father's citizenship. This may consist of any of the following:

(A) A certified copy of his birth certificate (with a raised seal of the registrar of births).

(B) A report of birth abroad (FS Form 240 (Report of Birth Abroad of a Citizen of the United States)).

(C) A certificate of citizenship.

(D) A certificate of naturalization.

(E) A valid U.S. Passport.

(F) A certified copy of an approved U.S. passport application.

(G) Any secondary evidence acceptable by the State Department or INS.

(ii) Affidavit of paternity.

(iii) Proof of presence in the foreign country at time of conception. (This information can be extracted from the passport, DA Form 2–1 (Personnel Qualification Record—Part II), etc.).

(iv) Child's birth certificate.

(v) Proof of the father's physical presence in the United States for 10 years (5 after age 14).

(vi) Blood type tests of the mother, the father, and the child. (At the request of the examining officer.)

(vii) Two sworn affidavits (at the request of the examining officer) from individuals who personally knew the mother, father, and child at the time of birth and can identify the child.

(viii) A copy of a certified English translation of all needed legal documents that are in a foreign language.

(ix) An executed passport application with three signed pictures of the child.

(2) The soldier may consult a legal assistance attorney for help in preparing the case file. The case file should be taken to the nearest American Embassy, Consulate General, or Consulate in the country where he and his child live. If the father is not present in the country where the child lives, he will do one of the following—

(i) Take the necessary documents to the nearest American Embassy, Consulate General, or Consulate.

(ii) Mail the documents to the Department of State, ATTN: Office of Citizens Consular Service, WASH DC 20520. That office, in conjunction with the American Consul abroad, will decide if the child is a U.S. citizen.

(3) If both father and child are within the United States, a decision of citizenship status can be obtained from the INS. The soldier should file Form N–600 (Application for Certificate of Citizenship) at the nearest INS office. This form can be obtained from the INS. The appendix of AR 608–3 lists the location of INS offices.

(4) Any soldier who claims to be a U.S. citizen has the burden of proving that claim to the Department of State or INS, as applicable.

§ 584.6 Procedures governing nonactive duty or discharged personnel.

(a) *Procedures governing nonactive duty personnel.* (1) Nonsupport complaints and paternity claims against former soldiers or other not on active duty will be sent to the Commander, U.S. Army Reserve Components Personnel and Administration Center (RCPAC), ATTN: DARC–PSE–VS, 9700 Page Boulevard, St. Louis, MO 63132–5200.

(2) After RCPAC verifies the status, the following officials will act as prescribed below:

(i) Chief, National Guard Bureau, WASH DC 20310–2500, for members of the Army National Guard.

(ii) The area commander concerned for Ready Reservists assigned to troop program units under his or her control. (See AR 140–1, para 1–6.)

(iii) Commander, RCPAC for nonunit members assigned to Control Groups of the Ready Reserve, Standby Reserve, and Retired Reserve.

(3) The officials cited above will ensure that correspondence claiming

nonsupport or paternity is delivered to the person concerned, using military channels. When the correspondence cannot be delviered through military channels, it will be sent to the last known mailing address of the person by certified mail (PS Form 3811 (Return Receipt, Registered, Insured and Certified Mail)). It should be marked "Return Receipt Requested—Deliver to Addressee Only." This form is available at U.S. post offices.

(4) After delivery of correspondence, the responsible official will advise the complainant or claimant—

(i) Of the date and method of delivery.

(ii) That the military department does not control the personal affairs of nonactive duty personnel. These personnel usually are in a civilian status and are not subject to military discipline. Therefore, the matter has been left to the person's discretion.

(iii) Of the person's mailing address only if the conditions in § 584.6(c) are met.

(b) *Procedures governing discharged personnel.* Nonsupport complaints or paternity claims against persons who have been discharged from the Service will be sent to RCPAC. These persons do not hold any military status whatsoever. Commander, RCPAC will return the correspondence and all accompanying documentation and advise the complainant or claimant—

(1) That the person is no longer a member of the Army or the Reserve Components.

(2) Of the date of discharge.

(3) That the Army no longer has control or authorty over the discharged member. Therefore, the Army can take no further action in the matter.

(4) Of the person's mailing address only if the conditions in § 584.6(c) are met.

(c) *Conditions for disclosing mailing address.* Nonactive duty and discharged personnel's mailing addresses will not be disclosed except for one of the following reasons:

(1) The person consents in writing to the release of his or her address.

(2) The complainant or claimant sends a court order directing the release of the address.

(3) Any other reason that does not constitute a violation of the Privacy Act of 1974.

(d) *Retired personnel.* (1) Court orders for garnishment or attachment of pay of retired persons will be sent to USAFAC.

(2) The complainant or claimant will be advised that correspondence may be sent to the retired member as follows:

(i) Place correspondence in a stamped envelope with retired member's name typed or printed on the envelope.

(ii) Place stamped envelope in a second envelope and send to the Commander, RCPAC, ATTN: DARC-PSE-VS, 9700 Page Boulevard, St. Louis, MO 63132-5200.

(3) Commander, RCPAC will send the correspondence to the retired member but cannot release the address under the provisions of the Privacy Act of 1974.

§ 584.7 Basic allowance for quarters.

(a) *Eligibility.* (1) Soldiers entitled to basic pay, who have family members, are entitled to BAQ at the rates prescribed for soldiers "with dependents" under certain conditions. The Department of Defense Military Pay and Allowances Entitlements Manual (DODPM) governs entitlements. (See DODPM, part 3, chap 2.)

(2) Soldiers may receive BAQ at the "with dependents" rate as long as they pay at least the difference between BAQ at the with- and without-dependents rate each month in support of their families. (See DODPM, part 3.) This is so even if a divorce decree or court order is silent on support or releases the soldier from the responsibility of supporting the family. (See § 584.2(f)(2).) Normally, a soldier is not entitled to BAQ on behalf of a former spouse or stepchildren after the divorce. BAQ at the "with dependents" rate is not authorized when the soldier or the supported family is residing in Government family quarters. Also, if two soldier member-parents are supporting the same child, only one soldier member is entitled to BAQ at the "with dependents" rate.

(b) *False claims.* BAQ at the "with dependents" rate is not payable to soldier who are not supporting their families. Cases involving alleged failure or refusal of soldiers to pay at least the difference between BAQ at the with- and without-dependents rate for the support of family members will be referred to the proper FAO after investigation. Nonsupport of family members for whom BAQ is claimed may result in—

(1) Collection of BAQ received but not given to the family members.

(2) Stoppage of BAQ at the "with dependents" rate.

(3) Punitive or administrative action against a soldier for—

(i) Violating the minimum support requirements of this regulation.

(ii) Submitting a fraudulent claim for BAQ based on false information.

(c) *Forfeiture of BAQ.* Forfeiture of the "with dependents" portion of BAQ does not relieve the soldier of the obligation to support family members as set up in this regulation.

(d) BAQ entitlements versus Army minimum support requirements Terms for entitlements to BAQ are set forth in DODPM, part 3, chapter 2. Except as provided in this regulation, BAQ entitlements have no relationship to Army minimum support requirements.

§ 584.8 Garnishment.

(a) *General.* (1) Pub. L. 93-647 (42 U.S.C. 659) permits garnishment, attachment, or assignment of Federal wages and retirement payments to enforce court-ordered child support and alimony obligations that are in arrears. It includes foreign court orders when—

(i) Required by treaty or international agreement. (A soldier is subject to garnishment for child support issued by the FRG only while physically stationed in Germany.)

(ii) Recognized by a court of competent jurisdiction. Applicable State laws govern legal procedures to be used by complainants. Jurisdictional or procedural challenges to garnishment actions remain the responsibility of individual members.

(2) In the absence of State law more favorable to the soldier, 15 U.S.C. 1673 limits the amount of pay that can be garnisheed as follows:

(i) Fifty percent of disposable pay when a soldier is supporting a spouse or dependent child who is not the subject of the support order. (See § 584.8(a)(3) for an explanation of disposable pay.)

(ii) Sixty percent of disposable pay when a soldier is not supporting such spouse or dependent child.

(iii) An additional 5 percent in each of the above cases if payments are more than 12 weeks overdue.

(3) The items of pay listed in § 584.8(a)(3)(i) are subject to garnishment except for amounts deducted for the items listed in § 584.8(a)(3)(ii).

(i) Items of pay and bonus subject to garnishment.

(A) Basic pay.

(B) Special pay (including enlistment and reenlistment bonuses).

(C) Incentive pay.

(D) Inactive duty training pay.

(E) Academy officials pay (except personal money allowances).

(F) Accrued leave payments (basic pay portion only).

(G) Retired and retainer pay.

(H) Lump-sum Reserve bonus.

(I) Separation payments (readjustment pay and severance pay).

(ii) Deductions not subject to garnishment.

(A) Federal income tax withholding

(B) State income tax withholding.

(C) Servicemen's Group Life Insurance.

(D) Social Security taxes (Federal Insurance Contributions Act).

(E) United States Soldier's and Airmen's Home.

(F) Survivor Benefit Plan.

(G) Retired Servicemen's Family Protection Plan.

(H) Indebtedness to the United States and delinquent Federal taxes.

(I) Fines and forfeitures ordered by a court-martial or commander.

(b) *USAFAC procedures.* The USAFAC will process most garnishment orders. Unless the order is contrary to Federal law or the laws of the jurisdiction from which it was issued, the soldier's pay will be garnished per the court order. Garnishment orders will be sent by certified or registered mail to the Commander, USAFAC, ATTN: FINCL–G, Indianapolis, IN 46249–0160. However, all legal process issued by German courts will be processed under DODPM, section 70710, when the soldier is stationed in the FRG. The documents must expressly state they pertain to child support or alimony. Also, the name and social security number (SSN) of the soldier must be included. The submission of a divorce decree or support order alone is not enough, as a garnishment order is required.

§ 584.9 Involuntary allotments.

(a) *General.* Pub. L. 97–248 (42 U.S.C. 665) permits involuntary allotments from pay and allowances of soldiers on active duty as child, or child and spousal, support payments when—

(1) The soldier has failed to make payments under a court order for 2 months or in a total amount equal to or in excess of the support obligations for 2 months.

(2) Failure to make such payments is established by notice from an authorized person to the Commander, USAFAC, ATTN: FINCL–G, Indianapolis, IN 46249–0160. An authorized person is—

(i) Any agent or attorney of any State having in effect a plan approved under part D of title IV of the Social Security Act (42 U.S.C. 651–664), who has the duty or authority under the plan to seek recovery of any amoumts owed as child or child and spousal support (including, when authorized under a State plan, any official of a political subdivision).

(ii) A court or agent of the court that has authority to issue an order against the soldier for the support and maintenance of a child.

(3) Such notice must give the soldier's full name and SSN. Also, it must list the name and address of the person to whom the allotment is payable. The amount of the allotment will be the amount needed to comply with the support order. The allotment may include arrearages as well as amounts for current support if provided for in the support order. A copy of this must be included with the notice. If proper, a statement must be included that the support allotment qualifies for the additional 5 percent in excess of the maximum percentage limitations. These limitations are prescribed in 15 U.S.C. 1673.

Also, a copy of the underlying support order must be included with the notice. An allotment under this provision will be adjusted or discontinued only upon notice from an authorized person.

(b) *Procedures.* No action will be taken to set up an allotment until the soldier has the chance to consult a legal assistance attorney. The purpose of the meeting is to discuss the legal and other factors involved with respect to the soldier's support obligation and failure to make payments. If the soldier has not consulted with legal counsel, the allotment will start the first end-of-month payday after 30 days have elapsed since notice was given to the affected soldier.

Appendix A—Reference

Section I—Required Publications

AR 340–17
Release of Information and Records from Army Files. (Cited in § 584.1(f)(2).)

AR 340–21
The Army Privacy Program. (Cited in § 584.1(f)(2).)

AR 600–37
Unfavorable Information. (Cited in §§ 584.1(d)(5)(viii)(B) and 584.2(l)(5).)

AR 640–3
Identification Cards, Tags, and Badges. (Cited in §§ 584.2(l)(1)(v) and 584.3(c)(3)(v).)

Misc Pub 13–1
DOD Military Pay and Allowances Entitlements Manual. (Cited In §§ 584.7a. 584.7(d) and 584.8(b).)

Uniform Code of Military Justice
(Cited In §§ 584.1(d)(5), 584.2(g)(4)(ii), 584.2(l)(2)(v)(B), and 584.3(b)(1)(ii).)

Section II—Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 11–2
Internal Control Systems

AR 20–1
Inspector General Activities and Procedures

AR 140–1
Mission, Organization, and Training

AR 340–2
Maintenance and Disposition of Records for TOE Units and Certain Other Units of the Army.

AR 340–18
The Army Functional Files System

AR 600–240
Marriage in Oversea Commands

AR 601–280
Army Reenlistment Program

AR 608–3
Naturalization and Citizenship of Military Personnel and Dependents

AR 608–61
Application for Authorization to Marry Outside of the United States

AR 635–100
Officer Personnel (Separations)

AR 635–200
Enlisted Personnel (Separations)

Misc Pub 8–1
Joint Travel Regulations, Volume 1: Members of the Uniformed Services

Section III—Prescribed Forms

DA Form 5459–R
Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Complaints. (Cited in §§ 584.1(d)(5)(iv)(B), 584.1(f)(1), 584.2(1)(2)(iv), and 584.3(b)(2)(ii).)

DA Form 5460–R
Request for Help in Receiving Support and/or Identification Cards for Family Members. (Cited in § 584.2(1).)

Section IV—Referenced Forms

DA Form 2–1
Personnel Qualification Record-Part II

DA Form 2029–R
Application for Authorization to Marry Outside of the United States

FS Form 240
Report of Birth Abroad of a Citizen of the United States

Form N–600
Application for Certificate of Citizenship

PS Form 3811
Return Receipt, Registered, Insured, and Certified Mail

Glossary

Section I—Abbreviations

ARNGUS
Army National Guard of the United States

BAQ
Basic allowance for quarters

DA
Department of the Army

DOD
Department of Defense

DODPM
Department of Defense Military Pay and Allowances Entitlements Manual

FAO
Finance and accounting office

FRG
Federal Repubic of Germany

HQDA
Headquarters, Department of the Army

ID cards
Identification cards

IG
Inspector general

INS
Immigration and Naturalization Service

RCPAC
U.S. Army Reserve Components Personnel and Administration Center

SJA
Staff Judge Advocate

SSN
Social Security Number

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UCMJ
Uniform Code of Military Justice
USACFSC
U.S. Army Community and Family Support Center
USAFAC
U.S. Army Finance and Accounting Center
USAR
U.S. Army Reserve
VHA
Variable Housing Allowance

Section II—Terms

Arrearage

The total amount of money a soldier owes a family member for prior months in which the soldier failed to comply with the minimum support requirements of this regulation.

Basic Allowance for Quarters

An amount of money prescribed and limited by law that a soldier receives to pay for quarters not provided by the Government.

Child Custody Complaint

A written or oral complaint by a family member, or a third party acting on behalf of a family member, that alleges that the soldier is violating a court order granting custody of minor children to someone other than the soldier. It also includes a complaint by a mother of a child born out of wedlock against a soldier father who has abducted or detained the child.

Court Order

As used in this regulation, court order includes all judicial and administrative orders and decrees, permanent and temporary, granting child custody, directing financial support, and executing paternity findings. It also includes any foreign nation court or administrative order recognized by treaty or international agreement. Court orders are presumed valid in the absence of evidence to the contrary.

Family Member

For the purpose of this regulation only, a family member includes—

a. A soldier's present spouse. (A former spouse is not a family member. However, except as otherwise indicated, the term "family member" includes any former spouse for whom the soldier is required by any court order to provide financial support.)

b. A soldier's minor children from present and former marriages, including children legally adopted by the soldier. (A family member does not include the child of a soldier who has been legally adopted by another person.)

c. Minor children born out of wedlock to—

(1) A woman soldier.

(2) A male soldier if evidenced by a decree of paternity identifying the soldier as the father and ordering the soldier to provide support.

d. Any other person (for example, parent, stepchild, etc.) for whom the soldier has an obligation to provide financial support under the law of the domicile of either the soldier or the supported person.

Financial Support Provision

The provision in a court order or separation agreement directing the soldier to provide financial support to a family member on a periodic basis.

Government Family Quarters

Any sleeping accommodations or family-type housing owned or leased by the U.S. Government.

Gross Pay

For support purposes, gross pay includes basic pay and allowances to include special, incentive, and other pay when received on a monthly basis. Gross pay does not include funds not received on a monthly basis (that is, enlistment and reenlistment bonuses and accrued leave payments). Gross pay does not include wages from off-duty employment.

Legal Assistance Attorney

Army lawyers designated to advise and assist soldiers and their families on family law matters. Such matters include marriage, divorce, adoption, paternity, child custody problems, and support obligations. In the context of this regulation, a legal assistance attorney also includes a lawyer retained by a soldier at his or her own expense.

Minor Children

Unmarried children under 18 years of age who are not on active duty with the Armed Forces.

Nonsupport Complaint

A written or oral complaint by a family member, or a third party acting on behalf of a family member, that alleges one of the following:

a. Soldier is providing no financial support.

b. Soldier is providing insufficient financial support.

c. Soldier is failing to comply with—

(1) An oral agreement,

(2) A written support agreement, or

(3) A court order that sets up a financial support requirement.

Soldier

As used in this regulation, the term soldier includes commissioned officers, warrant officers, and enlisted personnel.

Staff Judge Advocate

The chief legal officer and his or her staff who advise commanders on laws and regulations affecting the command. Includes command judge advocates and post judge advocates, but not legal assistance attorneys or attorneys assigned to the Trial Defense Service.

System of Records

Any record under DA control from which information is retrieved by the name of the individual or by his or her SSN.

Variable Housing Allowance

An amount of money prescribed by law that a soldier receives to defray high housing costs in the continental United States.

Written Support Agreement

Any written agreement between husband and wife in which the amount of periodic financial support to be provided by the soldier spouse has been agreed to by the parties. A written support agreement may be contained in a separation agreement or property settlement agreement. Also, the support agreement may be shown by letters exchanged between the parties in which the amount of support has been agreed to by the parties.

John O. Roach, II,
Army Liaison Officer with the Federal Register.

[FR Doc. 85-30311 Filed 12-23-85; 8:45 am]
BILLING CODE 3710-08-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 85-6]

Recordation and Certification of Coin-Operated Phonorecord Players

AGENCY: Library of Congress, Copyright Office.

ACTION: Final Regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing final regulations amending portions of 37 CFR 201.16 concerning deletion of certain information from the jukebox certificate. The change facilitates the private administration of an agreement reached between the performing rights societies and the Amusement & Music Operators Association regarding civil enforcement of the jukebox compulsory license of 17 U.S.C. 116.

EFFECTIVE DATE: December 24, 1985.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559 (202) 287-8380.

SUPPLEMENTARY INFORMATION: The Copyright Act, title 17 U.S.C. 116 establishes conditions under which operators of coin-operated phonorecord players—commonly referred to as "jukeboxes"—may obtain a compulsory license for the performance of nondramatic musical works.

A compulsory license permits the use of a copyrighted work without the consent of the copyright owner, if certain conditions are met and royalties paid. Section 116 establishes general rules governing the conditions of the compulsory license for coin-operated phonorecord players, and requires the Register of Copyrights to prescribe regulations governing compulsory license applications and certificates to be affixed to licensed phonorecord players.

The administration and civil enforcement of the complusory licensing system has caused friction between copyright owners and jukebox operators.[1] The royalty fee initially established in the 1976 Copyright Act was $8 annually per coin-operated phonorecord player. In 1981, the Copyright Royalty Tribunal, under its statutory authority, raised the royalty fee. 46 FR 884 (1981). In 1982 and 1983 the fee became $25 per jukebox, and, thereafter, $50 per jukebox, subject to a cost of living adjustment on January 1, 1987. Jukebox operators argued this increase was too high, but the rate adjustment was upheld by the courts. *Amusement and Music Operators Ass'n.* v. *Copyright Royalty Tribunal,* 676 F.2d 1144 (7th Cir. 1982), *cert. denied,* 459 U.S. 907 (1982). The Copyright Office implemented the rate adjustment by publishing final regulations at 47 FR 25004 (June 9, 1982).

The AMOA then sought legislative reform of the jukebox complusory license, particularly with respect to the copyright royalties payable. Several bills were introduced in the 98th Congress (e.g., S. 1734, H.R. 3858, and H.R. 4010), which would have established a one-time royalty fee per jukebox for its entire useful life, in lieu of the current annual licensing fee.

The performing rights societies opposed these bills on the ground of fairness and argued that voluntary compliance with the complusory licensing scheme by operators was low. While significant penalties in the copyright law existed for performance by coin-operated phonorecord players of musical compositions without a license, enforcement of those remedies was expensive. As a result of perceived noncompliance with the licensing scheme, copyright owners lost a significant portion of the royalties to which they were entitled under the existing law.

In order to reach a mutually acceptable solution, Congressional leaders urged the interested parties to enter into private negotiations.[2] Following this advice, the performing rights societies and AMOA succeeded in reaching an agreement to be in effect until 1990, which resolves several points of controversy.

One part of the agreement would allow jukebox operators to transfer certificates from jukeboxes not in service to those which are publicly performing musical compositions. The parties to the agreement believes such a policy is both equitable and consistent with the statute.

In order to facilitate the private administration of this agreement the Copyright Office issued a proposed regulation on October 23, 1985, making two minor changes. 50 FR 42965. Under the existing regulation, the certificate was required to contain the name of the manufacturer of the coin-operated phonorecord player and the player's serial number. In addition, subsection 201.16(c)(2) provided that the certificate consisted of two parts. Under the proposed regulation, information relating specifically to the coin-operated phonorecord player would be deleted from the certificate and subsection 201.16(c)(2) would be modified to reflect the fact that the certificate would no longer consist of two parts.

The Copyright Office received two comments on the proposed regulation,—one from the AMOA, and another from a jukebox operator. Both comments urged adoption of the proposed regulation.

Under section 116 of the copyright law, the Copyright Office is authorized to determine the content of the certificate. The resolution of disputes through private negotiation is clearly a laudable goal. All interested parties appear to agree that the change would facilitate a more equitable administration of the compulsory license. The Copyright Office received no comments opposing the modification. For these reasons the Copyright Office has decided to adopt the proposed regulation as final, without change.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress, which is part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, Chapter 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[3]

List of Subjects in 37 CFR Part 201

Copyrights Copyrights Office Jukeboxes.

PART 201—[AMENDED]

In consideration of the foregoing, Part 201 of 37 CFR, Chapter II is amended as follows:

1. The authority citation for Part 201 is revised to read as follows:

Authority. Sec. 702, 90 Stat. 2541, 17 U.S.C. 702; § 201.16 is also issued under 17 U.S.C. 116.

2. Section 201.16 (c)(1) and (c)(2) is revised to read as follows:

§ 201.16 Recordation and certification of coin-operated phonorecord players.

* * * * *

(c) *Certificate.* (1) After receipt of the prescribed form and fee, the Copyright Office will issue a certificate containing the information set forth in paragraphs (b)(1) (i) and (ii) of this section, together with a unique licensing number, the date of issuance of the certificate and the date of expiration of the license. The date of expiration of the license will be December 31st of the year in which the certificate is issued. Certificates issued upon payment of a half-year fee will be valid only after July 1 of the year in which they are issued and will be so identified.

(2) The certificate may be affixed in the record selection (title strip) panel of a player or in another position on the player where it can be readily examined by the public, but in any case it must be clearly visible.

* * * * *

Dated: December 13, 1985.

Ralph Oman,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 85-30369 Filed 12-23-85; 8:45 am]

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[1] In general, the licensing of performance rights of musical compositions are handled by the performing rights societies. Section 116(e) of the copyright law identifies the performing rights societies as the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music Inc. (BMI), and SESAC, Inc. In copyright matters, jukebox operators have been represented by their trade association, Amusement & Music Operators Ass'n. (AMOA).

[2] Billboard, May 25, 1985, at 1.

[3] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17)," except with respect to the making of copies of copyright deposits) (17 U.S.C. 708(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA–FOIA requirements.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL-014; A-4-FRL-2942-3]

Approval and Promulgation of Implementation Plans; Florida; Elemental Sulfur Storage and Handling Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves the Florida elemental sulfur storage and handling rule. This rule sets up specific regulations for the storage and handling of sulfur, both in the solid and molten form. This rule conforms to all EPA guidelines on particulate matter.

EFFECTIVE DATE: This action will be effective on February 24, 1986 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Kelly McCarty of EPA Region IV's Air Management Branch (see second address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Kelly McCarty, EPA Region IV, Air Management Branch, at the above address, and phone 404/881-3286, or FTS 257-3286.

SUPPLEMENTARY INFORMATION: The Florida Department of Environmental Regulation (FDER) submitted the elemental sulfur storage and handling rule to EPA on May 31, 1985. The only existing sources are located in the Tampa Bay area, which is nonattainment for the secondary standard for Total Suspended Particulates (TSP). The Part D plan for attainment of the secondary TSP standard was submitted, and approved by the EPA on May 2, 1982. This plan contained measures for implementing Reasonably Available Control Technology (RACT) for certain sources, plus a commitment to study certain other non-traditional sources to ascertain their impact. The only part of this Part D plan which would apply to sulfur storage and handling facilities is a generic rule applying to materials handling, sizing, screening, crushing, and grinding operations. This current rule supplements that previous RACT rule with additional requirements for sulfur storage and handling facilities. This sulfur storage and handling rule will not interfere with the current EPA-approved SIP, including the New Source Review (NSR) requirements, because it does not create any additional exemptions, only additional requirements, for these facilities.[1]

Scope

The rule includes revisions to the following sections of the Florida Administrative Code:

- 17-2.100 Definitions: Adds definitions as needed for the rule.
- 17-2.215 Emission Estimates: This section establishes standards for making emission estimates of the sulfur particulates generated during handling for all regulatory purposes including permitting and reporting. The equations used are the same as those used for particulate matter.
- 17-2.540 Source Specific New Source Review Requirements: The requirements of this section apply to specific categories of new and modified sources and/or facilities, and includes a preconstruction sulfur deposition analysis and postconstruction monitoring. All facilities that produce less than 5000 tons per year are exempt from the requirements of this section. This section does not exempt any source from existing new source review requirements (including prevention of significant deterioration requirements).
- 17-2.600 Specific Source Emission Limiting Standards: This section outlines specific work practices that must be followed when transporting, storing, and handling elemental sulfur in the pelletized or molten form. It includes unloading from marine vessels, railcars, and trucks. The section also prohibits the handling, storage or transporting of any form other than pelletized or molten sulfur, except for transferral within the boundaries of a single facility. This section also allows sources to utilize alternate methods or control technologies to control sulfur particulate emissions, provided that they result in emissions that are less than or equal to those achieved by the equivalent methods or technologies stated in the rule, and that prior Department approval is obtained.
- 17-2.700 Stationary Point Source Emissions Test Procedures: This change adds several new subsections of testing procedures by reference, including several Sulfur Development Institute of Canada (SUDIC) test methods, and reformants the Particulate Emissions section.
- 17-2.753 DER Ambient Test Methods: This change adds subsection: (2) DER Reference Method for Monitoring the Deposition of Sulfur Particulate.

The FDER also deleted part of Section 17-2.630 Best Available Control Technology (BACT). This deletion consists of the references to Lowest Reasonably Available Control Technology, since that rule has been replaced by BACT.

EPA's review was based upon particulate matter regulations and guidelines, since EPA has no elemental sulfur emission limitations or guidelines, only sulfur dioxide emission limitations. Since the rule strengthens rather than relaxes the EPA-approved SIP, EPA believes that approval of the rule is consistent with the applicable requirements of the Clean Air Act.

Action. EPA has reviewed the submitted material and is approving it as submitted. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn, and two subsequent notices will be published before the effective date. One notice will withdraw the final action, and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 24, 1986. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Incorporation by reference of the Florida State Implementation Plan was

[1] Prior to this rule, sulfur in the pelletized form was not allowed to be handled in the state, but this prohibition was not part of the EPA-approved SIP.

approved by the Director of the Federal Register on July 1, 1982.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Sulfur oxides, Particulate matter, Incorporation by reference.

Dated: December 16, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 Code of Federal Regulations, is amended as follows:

Subpart K—Florida

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.520 is amended by adding paragraph (c)(57) as follows:

§ 52.520 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(57) Changes to Florida Administrative Code (FAC) Chapter 17–2, submitted on May 31, 1985, by the Florida Department of Environmental Regulation (FDER).

(i) Incorporation by reference.

(A) May 31, 1985 letter from the Florida DER, and Amendments to FAC Chapters 17–2.100, 17–2.215, 17–2.540, 17–2.600, 17–2.700 and 17–2.753 which were adopted by the FDER on April 11, 1985. Allow sulfur in the pelletized form to be shipped and handled in the State. Also establish new source review requirements, emission estimating procedures, emission limiting standards, and test procedures for elemental sulfur storage and handling facilities.

(ii) Additional Information.

(A) None.

[FR Doc. 85-30348 Filed 12-23-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-2943-5]

Approval and Promulgation of Implementation Plans; Rhode Island; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects (1) the table codified at 40 CFR 52.2076 which summarizes the dates for attainment of the National Ambient Air Quality Standards (NAAQS) for the State of Rhode Island; (2) the section codified at 40 CFR 52.2084 which lists the elements of Rhode Island's revisions for which EPA has taken no action; and (3) the section codified at 40 CFR 52.2085 which granted an extension for submission of Rhode Island's plan for attainment and maintenance of the primary standard for suspended particulate matter (TSP) in the Providence primary standard nonattainment area.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 223–4869, FTS 223–4869.

SUPPLEMENTARY INFORMATION: On July 6, 1983 (48 FR 31026) EPA approved the Rhode Island State Implementation Plan for attainment of the primary NAAQS for ozone. On this date the attainment date for ozone was changed from December 31, 1987 to December 31, 1982. The table codified at 40 CFR 52.2076 which lists the dates for attainment of the NAAQS for the State of Rhode Island was not revised to reflect this change on this approval date. This notice corrects the statewide attainment date for ozone listed in the table codified at 40 CFR 52.2076.

On July 12, 1982 (47 FR 30065) EPA approved a request from the Rhode Island Department of Environmental Management to change the attainment status of Providence, Rhode Island from nonattainment for the primary TSP standard to nonattainment for the secondary TSP standard. On this approval date, neither the table codified at 40 CFR 52.2076 which lists the dates for attainment of the NAAQS for the State of Rhode Island nor the section codified at 40 CFR 52.2085 which granted an extension for submission of Rhode Island's primary TSP plan for Providence was revised to reflect the change in the attainment status for TSP in Providence. Since Rhode Island has shown that the primary TSP standard has been attained in Providence, the extension to submit a primary TSP attainment plan in Providence granted by § 52.2085 is no longer relevant. This notice removes § 52.2085 and corrects the attainment status for the primary TSP standard in Providence in the table codified at 40 CFR 52.2076.

On July 6, 1984 (49 FR 27750) EPA approved Rhode Island's Prevention of Significant Deterioration (PSD) plan. On this approval date, the section codified at 40 CFR 52.2084 which lists PSD as one of the elements of Rhode Island's plan on which EPA has taken no action, was not revised. Since EPA has fully approved Rhode Island's PSD plan, this is no longer an element of Rhode Island's plan for which EPA has taken no action. This notice deletes this item.

Dated: December 10, 1985.

Michael R. Deland,

Regional Administrator, Region I.

PART 52—[AMENDED]

Accordingly, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is corrected as follows:

Subpart 00—Rhode Island

1. Section 52.2076 is corrected to read as follows:

§ 52.2076 Attainment of dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. These dates reflect the information presented in Rhode Island's plan, except where noted.

Air quality control region [1]	Pollutant						
	TSP		SO2		NO2	CO	O3
	Primary	Secondary	Primary	Secondary			
Providence	a	d	a	b	a	c	c
E. Providence	a	b	a	b	a	a	c
Cranston	a	b	a	b	a	a	c
Warwick	a	b	a	b	a	a	c
N. Providence	a	b	a	b	a	a	c
Pawtucket	a	b	a	b	a	a	c
Central Falls	a	b	a	b	a	a	c
Remainder of Rhode Island portion of AQCR 120.	a	b	a	b	a	a	c

a. Air quality levels presently better than primary standards or area is unclassifiable.
b. Air quality levels presently better than secondary standards or area is unclassifiable.
c. December 31, 1982.
d. Attainment date not established.

[1] Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by the earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.2076 (1978).

§ 52.2084 [Amended]

2. Section 52.2084 is corrected by removing and reserving paragraph (b)(i).

§ 52.3085 [Reserved]

3. Section 52.2085 is removed and reserved.

[FR Doc. 85-30350 Filed 12-23-85; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

Deletion of Footnotes US249 and US293 From the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends Part 2 of its Rules to delete footnotes US249 and US293 from the Table of Frequency Allocations. Footnote US293 provided an allocation in the 21850–21870 kHz band to the radio astronomy service until January 1, 1985 and US249 provided an allocation in the 25550–25600 kHz band to the fixed and mobile, except aeronautical mobile, services until January 1, 1985. This action will bring the Commission's Rules into conformance with current and projected uses of these bands.

EFFECTIVE DATE: January 23, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Thomas, Office of Science and Technology, 2025 M Street NW. 20554, (202) 653–8162.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Radio.

Order

In the matter of amendment of Part 2 to delete footnotes US249 and US293 from the Table of Frequency Allocations.

Adopted: December 16, 1985.
Released: December 17, 1985.

By the Managing Director.

1. To accommodate the HF spectrum requirements of the radio astronomy service, the 1979 World Administrative Radio Conference changed an allocation for the radio astronomy service from the 21850–21870 kHz band to the 25550–25600 kHz band. In implementing this reallocation domestically, the Commission provided two footnotes to the Table of Frequency Allocations, Section 2.106 of the Commission's Rules, to allow for the transition.[1] Footnote US249 provided an allocation in the 25550–25660 kHz band to the fixed and mobile services, except the aeronautical mobile service, until January 1, 1985. Footnote US293 provided an allocation in the 21850–21870 kHz band to the radio astronomy service until January 1, 1985. Since that date has passed, the footnotes are obsolete. Therefore, footnotes US249 and US293 are being removed from the Table of Frequency Allocations, Section 2.106, as shown in the Appendix.

2. This action is considered to be editorial in nature. Accordingly, it is ordered, That pursuant to authority found in Sections 4(i), 302, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, and 303, and pursuant to Section 0.231(d) of the Commission's Rules, Part 2 of the Commission's Rules and Regulations is amended as specified in the Appendix. This amendment becomes effective January 23, 1986.

3. Point of contact on this matter is Fred Thomas, (202) 653–8162.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

The authority citation in 47 CFR Part 2 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

§ 2.106 [Amended]

Section 2.106 is amended by removing footnote designator US249 at columns 4 and 5 in the 25550–25670 kHz band, by deleting footnote designator US293 at columns 4 and 5 in the 21850–21924 kHz band and by deleting the text of footnotes US249 and US293 from the list of footnotes following the Table of Frequency Allocations.

[FR Doc. 85-30200 Filed 12-23-85; 8:45 am]

BILLING CODE 6712-01-M

[1] See Second Report and Order in General Docket No. 80-739, FCC 83-571, 49 FR 2357 (adopted November 8, 1983).

47 CFR Part 76

[MM Docket No. 85-38; FCC 85-587]

Technical and Operational Requirements of Part 76 Cable Television

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action revises technical signal quality standards for cable television. These standards were established in 1972, when the cable industry was in its early stages of development. Since that time, the industry has matured; and competition has grown. In view of that fact, the purpose of this action is to relax and to better relate these quality standards to marketplace development.

EFFECTIVE DATE: January 23, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

Report and Order

In the matter of review of the technical and operational requirements of Part 76, Cable Television; MM Docket No. 85–38.

Adopted: October 31, 1985.
Released: December 17, 1985.

By the Commission; Chairman Fowler concurring and issuing a statement.

Introduction

1. By this *Report and Order*, the Commission is amending its rules concerning technical and operating requirements for cable television systems. We hereby change the existing rules into standards. These standards may be applied but not exceeded by franchise authorities in the regulation of the technical quality of Class I (broadcast) channels by cable television systems. Enforcement of all such standards by the Commission is eliminated. The decision as to whether such standards should be used and how they should be administered is left to local and state regulatory authorities. This decision reflects the Commission's belief that in an increasingly competitive marketplace there is a reduced need for detailed regulation of technical quality specifications. The decision, however, leaves local regulatory authorities discretion, in

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accordance with the provisions of section 624(e) of the Cable Communications Policy Act of 1984 (1984 Cable Act), to address technical quality issues. Authority of municipal and state regulators to establish requirements for "facilities and equipment" in accordance with section 624(b) of the Cable Act is unaffected by this decision. Certain changes in the cable television signal leakage rules that were proposed in the *Notice* in this proceeding have not been adopted but will be addressed separately at a later date.

Background

2. The present cable technical rules are set forth in Subpart K of Part 76 of the Commission's rules. These rules were adopted in the *Cable Television Report and Order*.[1] The rules specify numerous technical performance criteria and requirements for annual performance tests. The technical standards contained in § 76.605 include: (1) The frequency boundaries of cable television channels delivered to subscriber terminals; (2) the frequency tolerance of CATV visual carriers; (3) the frequency tolerance of CATV aural carriers; (4) the minimum visual carrier levels at subscriber terminals; (5) the allowable tolerance for visual carrier level variations within 24 hours; (6) the maximum and minimum aural carrier specifications with respect to visual carrier levels; (7) the maximum allowable level of visual low frequency distortion; (8) the frequency response of each channel; (9) the allowable visual signal-to-system noise level and to any undesired co-channel signal; (10) the allowable level of intermodulation distortion; (11) the minimum amount of isolation between subscriber terminals; and (12) requirements regarding signal leakage.[2]

3. In adopting the 1972 rules, the Commission was explicit that its standards were not intended to place any barrier in the way of franchising authorities adopting "more stringent technical standards." *Reconsideration of Cable Television Report and Order*, 36 FCC 2d 326, 359–60 (1972). This policy did not succeed, however, and in 1974, the Commission adopted the current preemption policy.[3] This policy prohibits state and local technical regulations for Class I signals that are inconsistent with those adopted by the Commission.[4] In addition, our preemption policy bars any state and local technical regulation for non-Class I signals. This policy was instituted to ensure the growth of cable services and cable-related technology and to avoid the detrimental impact on cable service and technical innovation in the cable industry that would have resulted from the necessity for system operators and equipment manufacturers having to design and comply with numerous different and potentially conflicting standards.

4. On February 12, 1985, the Commission adopted the *Notice of Proposed Rule Making* in this proceeding.[5] The *Notice* proposed revision of certain rules in Subpart K of Part 76 of the Commission's Rules and Regulations. The *Notice* requested comments on the need for cable television subscriber signal quality standards and on the appropriate level of cable signal leakage limits.

5. In response to the *Notice*, the Commission received comments from 50 parties and reply comments from 20 parties. In addition, approximately 70 individual letters were received from cable TV subscribers, amateur radio groups and operators.[6] The vast majority of the letters received were concerned with cable signal leakage requirements.

Discussion

Technical Quality Performance Standards

6. *Federally Enforced Standards.* In the *Notice*, we indicated our belief that competitive forces are sufficient to ensure adequate signal quality for the provision of cable service. Accordingly, we proposed to delete the technical standards for Class I signals from the rules and, alternatively, publish them as guidelines in an Office of Science and Technology bulletin. We indicated in the *Notice* that francise authorities could use these guidelines in their franchise agreements with the cable operator. We also stated that the imposition of technical quality standards more stringent than those in the guidelines would be considered inconsistent with our national policy and would not be permitted.

7. The National Cable Television Association (NCTA), Capital Cities Cable, Inc., and other cable system operators generally support the proposed elimination of the present signal quality standards for Class I signals. They agree with the Commission that competition from alternative video sources now provide cable operators with sufficient incentives to maintain technical signal quality.

8. Other commenters assert that the market forces do not provide sufficient incentives for cable systems to deliver quality signals. In particular, commenters representing State and local governments argue that cable systems generally have monoply-like powers, and therefore, cannot be relied upon to ensure satisfactory cable signal performance. The State of Hawaii, for example, expresses concern that cable systems will not maintain acceptable technical quality and reliability unless required to do so. In addition, some commenters, such as the National Association of the State Cable Agencies (NASCA), make reference to the recent Commission proceeding that implemented the Cable Communications Policy Act of 1984.[7] That proceeding, among other matters, defined effective competition for the purpose of rate regulation of basic cable service.

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[1] 36 FCC 2d 143 1972.

[2] At the time of their adoption in 1972 these standards were referred to as "minimum" standards which caused some confusion at that time and some of that confusion has continued to the present. *See* 49 FCC 2d 470, para 5 (1974). The standards are minimum in that they describe a level of servicethat must be delivered to subscribers at even the worst locations on a system. This necessarily means that most subscribers, including in particular those closer to the system headend, will receive service that is superior to this minimum. It has also been noted that the standards have been referred to by the Commission itself as incomplete. It was for this reason that the Commission created the Cable Television Technical Advisory Committee in 1972 to provide advice on possible changes to the standards. The work of this Committee led to some changes in the standards. Other changes were not made, however, as it was becoming increasingly clear that the technical interrelationships between the standards involved were extremely complex and that commercial incentives were driving the industry in the same direction as the recommended standards but with both greater force and greater flexibility than could be acccomplished with more detailed regulatory requirements. The standards, however, remained valid as a means of defining an acceptable quality of service at the worst subscriber location and thus a better quality of service to the average subscriber. Suggestions that new standards be adopted were received informally in this proceeding. Specific recommendations were not included, however, and this was not, in any case, the focus of this proceeding.

[3] *See Report and Order in Docket 20018*, 49 FCC 2d 470 (October 22, 1974).

[4] Class I channels are television channels received off-the-air or obtained by the cable operator via microwave or direct connection to the television broadcast station. Class II to IV channels are other types of signals that may be provided by a cable system. For example, signals that require an auxiliary decoder, such as most pay cable services, are defined as Class III channels. The Commission's technical performance standards and requirements have traditionally applied only to Class I cable television channels. *See* 47 CFR 76.5(t), (u), (v), and (w).

[5] 50 FR 7801 (February 26, 1985).

[6] A list of commenters appears in Appendix B.

[7] *See Report and Order in Docket 84–1296*, 50 Fed. Reg. 18637 (May 2, 1985); *See also* Cable Communications Policy Act of 1984, Pub. L. No. 98–549, Sec. 1 *et seq.*, 98 Stat. 2779 (1984).

NASCA asserts that the Commission's decision on effective competition should be taken into account in determining whether to deregulate technical standards. Other commenters note that performance would most likely deteriorate in areas where over-the-air reception is already poor.

9. The process of governmental standards setting, in highly complex and evolving fields, carries with it significant risks. Extremely sophisticated economic and technical tradeoffs in a changing environment must be made in order to satisfy consumer demands in an economically sustainable fashion. Standards setting organizations are necessarily removed from this function and react to change in a manner and through processes that invite delay. Nevertheless, there are many areas in which the standard setting function cannot be avoided. In adopting standards in the cable field, the historical record reflects little discussion of whether and in what situations standards could effectively advance the interests of consumers.[8] Recently the Commission recognized that a more rigorous analysis of the areas in which it can play a positive role in standard setting is desirable. In addressing this broad general issue in Docket 83–114, the Commission found it useful to focus on four rationales relating to technical standards regulation: (1) Interference, (2) spectrum efficiency, (3) interoperability, and (4) technical quality. Interference and spectrum efficiency considerations were judged to warrant the highest priority as to the need for regulatory action. Interoperability was also found to be of high priority, varying, however, depending on the particular service involved. In contrast, technical quality matters were generally found not to require regulation in those services that were considered to be sufficiently competitive.[9]

10. Having reviewed the cable television technical standards against this background and in light of the comments in this proceeding, it is our view that the primary determinants of the quality of service that will be provided are the technical state of the art, the underlying economics of the industry, and the market incentives and competitiveness of the markets involved. The state of the art has clearly advanced to the point where a very high level of service can be provided. The economic situation varies greatly depending on local circumstances, but, if not unduly burdened, an economic base for high quality service appears to exist in all but the more rural areas of the country. And, as we have discussed in other contexts,[10] and as Congress has recognized through passage of the 1984 Cable Communications Policy Act of 1984, cable television systems operate in an increasingly competitive environment. Given these factors we are persuaded that in the vast majority of situations the severe penalties that will be imposed in the marketplace for those operations that do not perform satisfactorily far exceed and can safely be used to replace FCC penalties that might be imposed through the regulatory process. Given the authority, described below, that will remain in state and local regulatory authorities to adopt technical standards, we conclude that federally enforced standards are no longer necessary or desirable.

11. *State and Local Standards.* Notwithstanding this decision we continue to believe that there is an important role for the Commission to play in this area. Technical standards that vary from community to community create potentially serious negative consequences for cable system operators and cable consumers in terms of the cost of service and the ability of the industry to respond to technological changes. To address this problem, we proposed in the *Notice* to retain technical standards guidelines at the federal level which could be used, but could not be exceeded, in state and local technical quality regulations.

12. In their comments, cable interests assert that the franchising authorities are primed to reinstitute excessive technical standards if the Commission abandons its preemption policy. They note the comments from some franchising authorities which challenged the adequacy of the Commission's current technical standards. The cable operators suggest that such comments are indicative of an inappropriate and excessive regulatory attitude that is prevalent at the local level.

13. Comments filed by local government interest groups oppose Federal preemption of signal quality standards, stating that under the Cable Act, the Commission lacks authority to preempt non-Federal technical regulation. These groups argue that section 632 of the 1984 Cable Act which authorizes franchising authorities to adopt and enforce customer service provisions and construction-related requirements implicitly authorizes local authorities to adopt non-Federal technical quality standards for cable television.

14. After a review of the record in this proceeding, we continue to believe that the policy adopted in 1974 was effective, should remain in force, and is entirely consistent with both the specific provisions and the general policy objectives underlying the 1984 Cable Act. This preemption policy has constrained state and local regulation of cable technical performance to Class I channels and has prohibited performance standards more restrictive than those contained in the Commission's rules. The reasons that caused the adoption of this policy appear to be as valid today as they were when the policy was first adopted.

15. The video products that cable systems sell and the processing and transmission equipment used in the construction of cable systems are overwhelmingly associated with national markets that can be severely burdened by disparate and conflicting local regulations and standards. Cable systems now operate in more than 18,500 different communities. There can be no doubt that suppliers of cable service and equipment, in the absence of national standards, face a wide array of different operating requirements. The cost of keeping track of and complying with numerous different requirements is undeniably significant and there appear to be few if any countervailing benefits

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[8] In the middle 1960s broadcast interests sought the adoption of such standards for a cable industry which, at the time, still operated on a tube rather than transistor technology. See *Notice of Inquiry and Notice of Proposed Rule Making in Docket 15971*, 1 FCC 2d 453, para. 62 (1965). The Commission later declined to adopt specific quality standards, *First Report and Order in Dockets 14895 et al.*, 38 FCC 683, para. 130 (1965), and then in 1968 raised the issue again stating only that such standards should be considered "to further high quality service to the public" and to promote "compatibility among systems for purposes of interconnection." *Notice of Proposed Rule Making in Docket 18397*, 15 FCC 2d 417, para 29 (1968). More specific proposals were made in 1970, again with the statement that the standards would further the quality of service received by the public. *Notice of Proposed Rule Making in Docket 18894*, 25 FCC 2d 38, para 13 (1970). The standards proposed were adopted in 1972 with the sole discussion of their need consisting of a statement that the standards would "provide much needed uniformity on a nationwide basis yet still allow sufficient flexibility for technical change." *Cable Television Report and Order*, 36 FCC 2d 143, para. 149 (1972).

[9] *Report and Order in Gen. Docket 83–114*, 99 FCC 2d 903 (1984). The *Report and Order* stated that "the pressure of competition and consumer choice have brought about a generally higher level of technical quality than required by our rules." (footnote omitted). It is worth noting in this context that detailed governmental standard setting efforts in complex technical areas have generally been eschewed even in areas where franchised monopolies are involved. In the telephone industry, for example, the function of setting detailed quality of service specifications has been principally performed by the carriers themselves rather than by governmental agencies.

[10] See e.g., *Report and Order in MM Docket 84–1296*, 50 F. R. 18637 (1985) (Implementation of Cable Act).

associated with such disparate requirements.

16. More important, however, is the potential detrimental impact of such standards on technological innovation in the industry. The problem is not hypothetical. One relatively recent example of the potential problems involved, from our own experience, involved the development of "baseband" cable converters (see note 16 below). Cable systems distribute NTSC picture format video. This format involves a complex interlinking of the various components of the video signal, including the sound, picture, and color components. The baseband technology, which makes possible increased flexibility and security in the delivery of cable services, involves unassembling and reassembling these components in a way that potentially conflicts with traditional standards designed to assure reception of a quality video picture service. The service delivered, however, is of good quality and baseband converters are now being used in connection with many modern high capacity cable systems, notwithstanding that such devices were not developed until the early 1980s. The obstacles that would be created to such innovation were it necessary to win the approval of numerous franchise authorities before use was possible would be most formidable, even if local authorities were equipped to respond to the sophisticated technical issues involved. The possibilities are evident of similar problems being created as efforts are made to improve the quality and fidelity of television through high definition or quasi-high definition techniques, to add greater communications capacity through greater use of subcarriers and the vertical blanking interval, or to develop other innovations. Such obstacles burden the delivery of interstate communications service, are not necessary to the fundamental objectives of local cable franchising, and are inconsistent with the congressional intent that competition in cable communications be promoted and that "unnecessary regulation that would impose an undue economic burden on cable systems" be minimized.[11]

17. Section 624(e) of the 1984 Cable Act appears to specifically anticipate the continuation of our existing policy. It specifies that the "Commission may establish technical standards relating to the facilities and equipment of cable systems which a franchising authority may require in a franchise." Contrary to the opinions of some commenters, we find nothing in the legislative history that suggests Congress did not approve of the existing policy or that it intended to limit our ability to continue it.[12] The policy is fact wholly consistent with the Cable Act's intent to establish a national policy that encourages the growth and development of cable television services.[13] The legislative history indicates that franchising authorities are limited to establishing only those standards "which are not inconsistent with standards established by the FCC." On this basis, we believe that Congress intended for the Commission to have authority to oversee technical policy. Further, Congress specifically prohibited local governments from enforcing technical regulations that are inconsistent with Federal policy.[14]

18. In summary, we find our existing preemption policy has furthered the growth and development of cable television service and should be continued, that nothing in the Cable Act limits our authority with regard to technical regulation of cable systems, and that nothing in the statute or its legislative history indicates that Congress intended to alter our 1974 preemption policy in this area.[15]

Review of Standards

19. Two issues regarding the modified approach to technical deregulation deserve more specific attention. First, a few franchise authorities were exempt from our 1974 preemption policy. That grandfathering provision will continue. Second, for those franchise authories that want to enforce the Commission's rules and do not have the rules in current franchise agreements, the rules may be enforced at franchise renewal time in accordance with the provisions of the Cable Act. Subsequent agreements will have to contain the rules or the rules will not apply. In the interim, the Commission's rule provisions remain a standard that is available to judge the implicit franchise obligation to provide service to the cable consumer that is of acceptable quality. A number of commenters suggested changes to the current technical requirements. After review of the record, we concur that some adjustments to our technical rules is appropriate for Class I signals.

20. The General Electric Co. (GE) and Zenith Electronics Corp. (Zenith), in their comments, suggest a relaxation of the aural center frequency requirement contained in § 76.605 (a)(3) of the rules. They suggest that the requirement that the aural carrier be 4.5 MHz ±1 kHz above the frequency of the visual carrier should be changed to 4.5 MHz ±5 kHz. GE and Zenith contend that many commercially available baseband converters create potential problems under the existing aural carrier specifications and that such a change would not degrade signal quality at the subscriber's televisions set. We agree with the commenters that this variance could be changed without affecting signal quality. Therefore, we are relaxing the tolerance of the aural center frequency of ±15 kHz.[16]

21. A further review of the current rules focused on the requirement that the aural signal voltage be maintained between 13 and 17 dB below the associated visual signal level, or between 7 and 17 below if there are no immediate first adjacent channel signals. Because the technical standards only apply to Class I, or television broadcast stations, and the Commission, in Dociet 83.117,[17] eliminated the minimum aural power level requirements for television broadcast stations, the deletion of this provision is appropriate in order to align the cable rules with the broadcast rules on this

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[11] Communications Act of 1934, as amended, section 601(6).

[12] Some commenters asserted that because Section 632 of the Cable Act authorized franchising authorities to adopt and enforce customer service provisions and construction-related requirements, it would implicitly authorize the adoption of non-Federal technical quality standards for cable television. We find nothing in the Cable Act or in its legislative history supporting that assertion. Furthermore, in Docket 20018, the Commission made it clear that the preemptive policy applied only to objective technical standards, i.e., standards that dealt only with shaping amplification, purity, etc., of signals carried in cable systems. We have never preempted in such areas of local concern, as studio capacities, electrical safety codes, or construction requirements.

[13] *See* H.R. Report 98–934, 98th Con., 2d sess. 70 (1984).

[14] It is well established that a clearly articulated policy of deregulation provides a clear basis for federal preemption of inconsistent state regulation. *See, e.g., New York State Commission on Coble Television v. FCC*, 749 F. 2d 804 (D.C. Cir. 1984); *Brookhaven Cable TV, Inc. v. Kelly*, 573 F. 2d 765 (2d Cir. 1978), *cert. denied*, 441 U.S. 904 (1978); *Earth Satellite Communications, Inc.* 95 FCC 2d 1223 (1983), *recons. denied*, FCC 84–206 (May 14, 1984), *off'd sub nom New York State Commission on Coble Television v. FCC*, 749 F. 2d 804 (D.C. Cir. 1984). See generally *Fidelity Federal Savings & Loan Association v. de la Cuesta*, 458 U.S. 141 (1982).

[15] *See* 46 FCC 2d 175.

[16] *See Viacom Cable Television of Wisconsin, Inc.*, 50 RR 2d 1556 (1982). In that order the Commission permitted Viacom to use, under certain conditions, decoders in its cable systems which did not meet the standard aural frequency specifications set forth in § 76.605 (a)(3) of the Rules. This action was taken under § 76.606(b) of the rules which makes special provision for cable systems "using multiple cable techniques or specialized receiving devices."

[17] 49 FR 22089 (May 25, 1984).

point. All changes mentioned in the review of standards are reflected in the attached Appendix A.

22. We are also eliminating the measurement and recordkeeping requirements. For example, § 76.601 sets forth the responsibility of the cable system operator to perform such tests and measurements as necessary to offer reasonable assurance that the system performance is continuously satisfactory. While the information required by Section 76.601 may be considered minimal at the start-up of a system, the periodic measurement requirements and bookkeeping, however, can become costly and unnecessary. Therefore, we are deleting these signal quality measurements as federal requirements. However, § 76.601 also contains requirements for signal leakage tests which, for reasons stated below, we will retain.

Signal Leakage Limitations

23. In the *Notice*, the Commission proposed to relax the signal leakage limits to 50 uV/m at 3 meters in the frequency band 54 to 216 MHz. Response to the *Notice* varied dramatically. Cable operators want further relaxation to 100 uV/m at 3 meters based on the findings of the Final Report of the Advisory Committee on Cable Signal Leakage (NTIS Pub. PB80-119605). Comments from over-the-air frequency users refute our Part 15 analogy and request no leakage relaxation, stating that there are numerous instances of interference to terrestrial radio facilities at the present levels. Review of the comments does not produce sufficient supportive and conclusive engineering data from either side. Therefore, we will retain the periodic measurement tests for signal leakage and plan to issue a *Further Notice of Proposed Rule Making*, requesting additional engineering monitoring and study.

Regulatory Flexibility Final Analysis

24. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. *Need and purpose of this action:*

The regulations affected by this decision were drafted in 1972, when the cable industry was in its early stage of development. Since then, the industry has matured and competition has grown for cable. In view of that maturity and competition, this action is appropriate to update the Commission's standards policy and reflect the competition.

II. *Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:*

The Initial Regulatory Flexibility Analysis estimated that adoption of the *Notice* in its entirety would save over 51,200 work hours. Although one commenter disagreed with that figure, upon careful review of the information before us we still believe that these savings are an accurate estimate.

III. *Significant alternatives considered and rejected:*

The Commission considered all of the alternatives raised in this proceeding, including the deletion of all standards, the retention of the existing standards, and the retention of standards only in certain defined circumstances, and it considered all the timely filed comments directed to the various issues in the *Notice*. After carefully weighing all aspects of this proceeding, the Commission has adopted the course of action under the mandate of the Communications Act of 1934, as amended that appears best calculated to eliminate unnecessary regulatory requirements, preserve the appropriate role of federal, state, and local regulatory authorities, and promote rapid and efficient communications to the public.

Paperwork Reduction Act Statement

25. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burden upon the public.

Actions

26. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981).

27. Accordingly, it is ordered that under the authority contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, and the Cable Communications Policy Act of 1984, Part 76 of the Commissions's Rules is amended as set forth in Appendix A, effective January 23, 1986.

28. Further information on this proceeding may be obtained from Bernard Gorden or John Wong at 202-632-9550.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 76—[AMENDED]

47 CFR Part 76 is amended as follows:

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 601

2. 47 CFR 76.601 is amended by revising paragraph (b) and removing paragraphs (c), (d), (e), and (f).

§ 76.601 Signal leakage measurements.

* * * * *

(b) All cable television systems serving 1,000 or more subscribers, and all cable television systems serving less than 1,000 subscribers that use any frequency spectrum other than that allocated to over-the-air broadcasting (as described in §§ 73.603 and 73.210), shall conduct all tests, measurements and monitoring of radiation and signal leakage to demonstrate compliance with the radiation limits set forth in § 76.605(a)(11) as follows:

(1) The Cable system operator shall conduct signal leakage measurements in accordance with §76.609(h) at least once each calendar year (at intervals not to exceed 14 months) and shall maintain the resulting test data on file at the operator's local business office for at least five (5) years. It shall be made available for inspection by the Commission on request. This data shall include a description of instruments and procedure and a statement of the qualification of the person performing the tests.

(2) Successful completion of the performance tests does not relieve the system of the obligation to comply with all other pertinent technical standards set forth in this subpart. Additional or repeat tests may be required by the Commission in order to secure compliance with these standards.

3. 47 CFR 76.605 is amended by revising paragraph (a)(3), by removing paragraph (a)(6), by redesignating current paragraphs (a)(7) through (a)(12) as new paragraphs (a)(6) through (a)(11) and by adding a note at the end of the section to read as follows:.

§ 76.605 Technical standards.

(a) * * *

(3) The aural center frequency of the aural carrier must be 4.5 MHz± kHz above the frequency of the visual carrier

* * * * *

Note.—The requirements of §§ 76.605(a)(1) through 76.605(a)(10) do not apply directly to cable systems. These rule sections or less stringent versions of them may be used as standards by state or local regulatory authorities. No technical parameter in excess of the above rule sections may be required.

Appendix B—List of Commenters

Initial Comments

1. Adelphia Communications Corporation

2. Addison, Illinois
3. American Radio Relay League, Inc. (ARRL)
4. Association of Maximum Service Telecasters (MST)
5. Atlantic Research Corporation
6. Austin, Texas
7. Cable Television Information Center
8. California Department of Forestry
9. Capital Cities Cable, Inc. (Capital Cities)
10. CBS, Inc.
11. Communications General Corporation
12. Connecticut Department of Public Utility Control
13. County of San Diego (California) Cable Television Review Comm.
14. Forestry, Conservation Communications Association, Inc. (FCCA)
15. General Electric Company (GE)
16. Gill Industries
17. Joseph S. Gans, Inc.; Mid-Coast Cable Television, Inc.; and Service Electric Cable TV, Inc.
18. Hawaii Dept. of Commerce and Consumer Affairs (State of Hawaii)
19. Iowa City, Iowa
20. City of Los Angeles, California
21. Monroe City-County (Michigan) Office of Civil Preparedness
22. Motorola, Inc. (Motorola)
23. Naperville, Illinois
24. National Academy of Sciences (NAS)
25. National Association of Broadcasters (NAB)
26. National Association of State Cable Agencies (NASCA)
27. National Cable Television Association, Inc. (NCTA)
28. National League of Cities
29. National Telephone Cooperative Association
30. New York Citizens' Committee for Responsible Media
31. City of New York
32. New York State Commission on Cable Television
33. Raystay Company
34. Sacramento County, Calif.; California Metro; Montgomery County, Md.; Cincinnati, Ohio; Scottsdale; Ariz.; and East Saint Louis, Mo.
35. Scientific Atlanta
36. State of California, Telecommunications Division
37. State of New York Department of Environmental Conservation
38. State of New York Department of State
39. Suburban Cablevision
40. Telecable Corporation
41. Tele-Communications Inc.
42. Viacom International Inc.
43. Victor Gates
44. Village of Addison, Illinois
45. Village of Brookfield, Illinois
46. Villiage of Lisle, Illinois
47. Village of Mayville, and Town of Chautauqua (New York) Cable TV Advisory Committee
48. Village of Woodridge, Illinois
49. Wheaton, Illinois
50. Zenith Electronics Corporation (Zenith)

Reply Comments

1. ARRL
2. Cable Television Information Center
3. Capital Cities
4. Dallas, Texas
5. Department of Defense
6. Joseph S. Gans, Inc.; Mid Coast Cable Television, Inc.; and Service Electric Cable TV, Inc.
7. Gaylord Broadcasting Company
8. J. Steven Grantham
9. Group W Cable, Inc.
10. Harron Communications Corp., Telecable Corporation, and Tribune Cable Communications, Inc.
11. MST
12. NAB
13. NCTA
14. New York Citizens' Committee for Responsible Media
15. City of New York
16. New York State Sheriffs' Association
17. Riverview, Michigan
18. David Alkire Smith
19. Storer Communications, Inc.
20. Viacom International, Inc.

Concurring Statement of Chairman Mark S. Fowler

Re: Signal Quality Rules for Cable Television

The Commission today correctly decided to continue its 1974 preemption of state and local cable signal quality regulations. The possibility of hundreds or even thousands of different standards being adopted by the more than 18,000 cable franchise authorities creates a clear and present danger both to the provision of economically sound interstate cable communications services and to technical progress and innovation from the equipment manufacturing sector. Particularly in times of great technological change and innovation, technical standards may impede such forces. It is also our responsibility at the federal level to ensure that interstate communications is not substantially burdened by a patchwork of different local regulations. This applies both to cable software and hardware.

As to the local standard setting process, even within federal guidelines, I think the fundamental questions still need to be asked. Where is the compelling government interest? Where is the need for signal quality regulation? Where is the record which shows that the marketplace forces will not accomplish the goal at which signal quality regulation is aimed?

Cable operators, like all providers of video services, depend centrally on signal quality to operate successfully. Cable subscribers have direct access, through their monthly subscription payment, to marketplace mechanisms which control cable operators decisions on matters such as signal quality. I am unable to understand how anyone could think government standard setters—with their lack of practical experience in cable construction and maintenance, and inability to react rapidly and flexibly to technological innovations—can or should be setting quality standards, regulating signal quality, or otherwise second-guessing cable subscribers' decisions as to the signal they receive.

Even if such practical expertise existed, there remains unanswered the justification or governmental intervention. That was my view when we eliminated signal quality standards for broadcast signals; we have not observed any deterioration in that instance. That also was my view when we considered mandating cable carriage of stereo sound. The observations in my separate statement in that stereo must-carry case are relevant here as well: this too is "a situation where marketplace forces will accomplish the goals that a prior Commission—with a proregulatory philosophy and less understanding of the value of unregulation in fostering the development of telecommunications—would have tried to accomplish by imposing rules." That view does not change just because there are intervening parties—the cities—who don't agree with the marketplace approach to communications regulation being implemented by this Commission and who wish for some reason to reverse the basic proposition that proof of need should precede government regulation of the people's lives and commerce.

[FR Doc. 85-30196 Filed 12-23-85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1-205]

Organization and Delegation of Powers and Duties

AGENCY: Office of the Secretary DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Assistant Secretary for Policy and International Affairs authority to issue aviation consumer protection regulations and waivers from these regulations. This authority had been delegated to the Assistant Secretary for Governmental Affairs. By an amendment to 14 CFR Part 385, a portion of that authority was delegated to the Director, Office of Community and Consumer Affairs.

DATE: The effective date of this amendment is December 24, 1985.

FOR FURTHER INFORMATION CONTACT: Becky L. Bentson, Office of the General Counsel, U.S. Department of

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Transportation, Washington, DC. (202) 472–5577.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective fewer than thirty days after publication in the **Federal Register**.

On December 31, 1984, the Department of Transportation reissued the former Civil Aeronautics Board rules (14 CFR Part 385) dealing with the delegation of numerous items of discretionary authority needed to carry out Titles IV and X of the Federal Aviation Act of 1958, as amended, and related statutes (49 FR 50984, December 31, 1984.) Concurrently with the reissuance of Part 385, the Department issued amendments to 49 CFR Part 1 to delegate transferring CAB functions to Secretarial officers within DOT (49 FR 50994, December 31, 1984). Editorial corrections and a new subpart to 14 CFR Part 385 were issued later. (50 FR 7169, February 21, 1985.)

The Secretary has now determined that the authority to issue aviation consumer protection regulations, and waivers from those regulations, should be carried out by the Assistant Secretary for Policy and International Affairs rather than the Assistant Secretary for Governmental Affairs. This amendment redelegates that authority to the Assistant Secretary for Policy and International Affairs. A separate amendment to 14 CFR Part 385 appearing in this issue of the **Federal Register** makes a conforming change to 14 CFR Part 385.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

Accordingly, 49 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322.

§ 1.56 Delegations to Assistant Secretary for Policy and International Affairs.

2. Section 1.56 is amended by adding at the end thereof a new paragraph (j) to read as follows:

* * * * *

(j) Carry out the following consumer protection functions:

(1) Issue consumer protection regulations, and waivers and exemptions therefrom;

(2) Carry out the following statutory provisions relating to consumer protection:

(i) Section 4(a)(5) of the Civil Aeronautics Board Sunset Act of 1984 (October 4, 1984; Pub. L. 98–443), relating to enforcement of the Consumer Credit Protection Act;

(ii) Sections 101(3) (relating to relieving certain carriers from provisions of the Federal Aviation Act), 204 (relating to taking such actions and issuing such regulations as may be necessary to carry out responsibilities under the Act), 404 (relating to enforcing the duty of carriers to provide safe and adequate service), 407(a) (relating to requiring the production of information, entering carrier property, and inspecting records), 411 (relating to determining whether any carrier or ticket agent is engaged in unfair or deceptive practices or unfair methods of competition), and 416 (relating to establishing just and reasonable classifications of carriers and rules to be followed by each) of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1301(3), 1324, 1374, 1377(a) and (e), 1381, and 1386) as appropriate to the consumer protection functions in this paragraph.

§ 1.61 Delegations to Assistant Secretary for Governmental Affairs. [Amended]

3. Section 1.61(d)(4) is removed and marked "[Reserved]".

4. Section 1.61(d)(5) is revised to read as follows:

* * * * *

(d) * * *

(5) Carry out the following statutory provisions:

(i) Section 4(a)(5) of the Civil Aeronautics Board Sunset Act of 1984 (October 4, 1984; Pub. L. 98–443), relating to enforcement of the Consumer Credit Protection Act;

(ii) Sections 204 (a) and (b) (relating to taking such actions as may be necessary to carry out responsibilities under the Federal Aviation Act), 407 (a) and (e) (relating to requiring the production of information, entering carrier property, and inspecting records), and 411 (relating to determining whether any carrier or ticket agent is engaged in unfair or deceptive practices or unfair methods of competition), of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1324 (a) and (b), 1377(a) and (e), and 1381) as appropriate to the consumer information and assistance functions in this paragraph.

Issued in Washington, DC, on December 14, 1985

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85–30387 Filed 12–23–85; 8:45 am]

BILLING CODE 4910-62-M

Proposed Rules

Federal Register
Vol. 50, No. 247
Tuesday, December 24, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Regulations and Standards for Inspection and Certification of Certain Agricultural Commodities and Their Products

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Proposed rule.

SUMMARY: In compliance with requirements for periodic review, the Federal Grain Inspection Service (FGIS or Service) reviewed and proposes to revise Subpart A of the Part 68 regulations under the Agricultural Marketing Act of 1946, as amended (Act), by completely rewriting and reorganizing these regulations. The proposed changes would combine and consolidate compatible requirements, incorporate many procedures currently found in instructions, simplify the overall language, conform certain provisions to present marketing practices, and facilitate the use of the regulations. This proposal would remove the requirement that all factor information determined during the course of an inspection be reported on an official certificate. It would also remove certain definitions that are no longer required and certain provisions that are no longer necessary. The proposal would establish provisions for providing a service on nongraded commodities, permitting appeal inspection services to be performed on a new sample when insect fragments are present, and for applications, terminations, and surrender of licenses issued by the Services.

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1964, as amended (7 U.S.C. 1621–1627) concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.2(e)).

DATE: Comments must be submitted on or before February 24, 1986.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, RM, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue SW., Washington, DC 20250, telephone (202) 382–1738. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)). A summary of comments received on this proposal will be published with the final rule.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., (address above), telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirement for small entities, and this action poses no new or additional duties or obligations to business entities involved in the loading, weighing, handling, or sampling of commodities.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504(h) of this Act, the information collection and recordkeeping requirements contained in this proposed rule have been submitted to OMB for review.

Regulatory Review

The review of the regulations concerning Part 68, Subpart A—Regulations included a determination of continued need for and consequences of the regulations. The objective of the review was to ensure that the regulations are serving their intended purpose, the language is clear, and the regulations are consistent with FGIS policy and authority. FGIS has determined that, in general, these regulations are serving their intended purpose, are consistent with FGIS policy and authority, and should remain in effect. FGIS, however, proposes to revise Part 68, Subpart A—Regulations in its entirety. This proposed action would consolidate compatible provisions, organize them into a more logical order, clarify and remove unnecessary language, and remove provisions that are no longer needed. The proposed revisions will facilitate the use of these regulations. These revisions, if adopted, would remove the regulatory requirements currently found in § 68.40, *Samples to be identified;* § 68.48, *Refunds,* § 68.52, *Political activity;* and § 68.54, *Loaning of samples.* In addition, four definitions in the current § 68.2, *Terms defined* would be removed. They are § 68.2(f), *Division;* § 68.2(g), *Director;* § 68.2(l), *Supervising inspector;* and § 68.2(o), *Office of inspection.* These proposed deletions would eliminate unnecessary, outdated, or duplicative provisions in the regulations. All other provisions in the current Part 68, Subpart A—Regulations have been retained in the proposed revision.

These regulations have not been extensively changed since 1954. In the interim, marketing and inspection practices and procedures have changed; and, when appropriate, such changes have been addressed in the instructions. This proposed revision has incorporated many of these changes. The inclusion of these provisions would update them to current inspection practices and procedures. This proposed incorporation of inspection procedures covered by instructions would not adversely impact on users of inspection services, since they are already following the procedures.

Specifically, the following changes are proposed:

1. The proposed § 68.1, headed as, *Definitions,* would be revised by combining the current §§ 68.1, 68.2, and 68.36, plus consolidating definitions from other sections of the current regulations. Some new definitions would also be added. The definitions in current

§ 68.2(f), (g), (l), and (o) would be removed because they are no longer applicable or necessary. The remaining and new definitions would be placed in alphabetical order for easy reference.

2. The proposed §§ 68.5–68.13, headed as, *Administration*, would include provisions of an administrative nature, such as nondiscrimination policy, procedures for establishing regulations, complaints, provisions for hearings, and public information. These proposed sections reflect, in part, the applicable portions of §§ 68.3, 68.5, 68.49, 68.51, and 68.53 of the current regulations.

3. The proposed §§ 68.20–68.26, headed as, *Conditions for Obtaining or Withholding Service*, would include provisions for obtaining or withdrawing requests for service, dismissing requests for service, conditional withholding of service, denial of service, and payment of expenses incurred by the cooperator or the Service. Current provisions relating to these proposed sections are contained in §§ 68.4, 68.9–68.11, 68.21, 68.22, 68.24, 68.30, 68.32, 68.34, 68.35, 68.43, and 68.50.

4. The proposed §§ 68.30–68.36, headed as, *Inspection Methods and Procedures*, would include the methods and order for performing inspection service, sample requirements, partial inspection, and sampling provisions by level of service. These sections reflect appropriate portions of § 68.6, 68.12–68.14, 68.21, 68.23, 68.33, 68.34, 68.37, and 68.39 of the current regulations. In addition, a section covering loss of identify would delineate situations when the identify of a commodity lot and the identity of a commodity sample would be considered lost.

5. The proposed §§ 68.40–68.44, headed as, *Original Inspection Service*, would provide for who may request inspection service, contract service, how to request original service, certificating original inspection results, and new original inspection service. Current provisions relating to these proposed sections are contained in §§ 68.4, 68.7, 68.8, 68.12, 68.13, 68.29, 68.30, and 68.43. The proposed section on new original inspection service would clarify when an applicant may request a new original inspection. A better guideline is needed for clarity as to when and on what basis a new original inspection can be requested. The proposed clarification would permit new original inspection on previously-inspected commodity lots only when circumstances are such as to prevent a retest, appeal, or Board appeal inspection; and all new original inspections would be performed on new samples drawn from the lot.

6. The proposed §§ 68.50–68.52, headed as, *Retest Inspection Service*, would provide a new level of inspection service for nongraded commodities. The proposed sections would include provisions covering who may request service, how to request retest inspection service, and certificating retest results. The proposed retest service would allow applicants to request additional testing on the file sample for one or more factors when they are dissatisfied with that results of an original inspection. Currently, if an applicant is dissatisfied with the result of one or more factors, the applicant must request an appeal inspection service whereby all factors are retested. The current procedure for retesting all factors as part of an appeal inspection service for nongraded commodities is costly and may not meet the needs of the industry. Many factors are included in contract specifications for nongraded commodities that require tests using specialized laboratory equipment. This results in laboratory charges that average approximately $111 for flour, $127 for corn meal (Export), $145 for soy-fortified corn meal, $145 for corn-soy blend, $116 for rolled oats, and $105 for corn-soya milk. Since each test result is individually compared to contract specifications, it may be costly to retest all factors when the applicant is dissatisfied with the results of one or more factors. To provide inspection services that meet industry needs while at the same time minimizing costs to applicants for service, FGIS is proposing a retest service for nongraded commodities. Under the proposed retest inspection service, certificates issued for retest services will supersede the original inspection certificate. If an applicant for inspection is not satisfied with the retest results, an appeal inspection service may be requested. Under this proposal, all fators that were determined during the original inspection would be tested as part of the appeal inspection service. This proposal would also provide applicants for inspection of nongraded commodities with three levels of service which are consistent with the current provisions for graded commodities. The three levels of service are also consistent with other commodities inspected under the Agricultural Marketing Act of 1946 which provides retest service on one or more factors when laboratory testing services have been performed.

7. The proposed §§ 68.60–68.63, headed as, *Appeal Inspection Service*, would include provisions setting out who may request appeal inspection service, how to request appeal inspection service, who shall perform appeal inspection service, and certificating appeal results. These proposed sections reflect appropriate portions of current §§68.21, 68.22, 68.25, 68.26, 68.28, and 68.28a. In addition, these proposed revisions would permit an appeal inspection for insect fragments found in nongraded processed products to be peformed on a new sample. Currently, the regulations limit appeal inspections to a review of the sampling procedure and an analysis of the file sample when, as a result of the original inspection, the commodity was found to be contaminated with filth or to contain a deleterious substance. In all other cases, an appeal inspection may be based on a new sample or a file sample. Various industry groups have requested that FGIS consider permitting the analysis of new samples under appeal inspections when the insect fragment and rodent hair levels exceed the Food and Drug Administration's Defect Action Levels or contract specifications. Based on day-to-day testing experience, FGIC has determined that rodent hair contamination, like glass, metal, or a toxic substance, may not be homogeneously distributed throughout commodity lots. However, FGIS has determined based upon program test results that insect fragment contamination is usually homogeneous in nongraded processed products. Consequently, FGIS proposes to permit an analysis of new samples for insect fragments in nongraded processed products but not for rodent hairs.

8. The proposed §§ 68.70–68.75, headed as, *Official Certificates*, would include provisions for official certificate issuance and distribution, certificate requirements, certification of results, corrected certificates, divided-lot certificates, and duplicate certificates. The current provisions relating to these proposed sections are in §§ 68.14–68.16a, 68.27, and 68.31. In addition, these proposed sections would remove the requirement that any factor on graded commodities for which an official determination is made during the course of the inspection be shown on the inspection certificate. Various industry groups have indicated that the requirement to report factor information not requested by the buyer is not needed and confuses both the buyer and financial institutions. After reviewing industry concerns that reporting factor information not requested by the buyer may cause confusion in the marketplace, it is proposed that the requirement be removed. However, the requirement to show grade determining factors on all certificates would be retained since the information is generally desired by the industry. This proposal would not prohibit applicants from obtaining

specific factor information, when requested.

9. The proposed §§ 68.80–68.84, headed as, *Licensed Inspectors, Technicians, and Samplers*, would provide for who may be licensed, licensing procedures, and suspension or revocation of licenses. The current regulations provide for licensing in §§ 68.37, 68.38, 68.41, and 68.50.

10. The proposed §§ 68.90.92, headed as, *Fees*, would provide for FGIS fee schedules. These fees have already been reviewed and published as a final rule on June 28, 1984, in the **Federal Register** (49 FR 26547). The specific fees and charges in current §§ 68.42a and 68.42b pertaining to commodity and rice inspection services would not be changed. If this proposal is adopted, the current §§ 68.42a, 68.42b, and 68.43 would be redesignated §§ 68.90, 68.91, and 68.92, respectively. In addition, the current provisions in § 68.43(a) would be moved to § 68.1 and paragraphs (b) through (i) would be redesignated (a) through (h).

List of Subjects in 7 CFR Part 68

Administrative practice and procedure.

Accordingly, it is proposed that 7 CFR Part 68, be amended as follows:

1. The authority citation for Part 68 revised to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*)

2. Subpart A is revised to read as follows:

PART 68—REGULATIONS AND STANDARDS FOR INSPECTION AND CERTIFICATION OF CERTAIN AGRICULTURAL COMMODITIES AND THEIR PRODUCTS

Subpart A—Regulations

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* * * * *

Subpart A—Regulations

Definitions

§ 68.1 Meaning of terms.

(a) *Construction.* Words used in the singular form are considered to imply the plural and vice versa, as appropriate.

(b) *Definitions.* For the purpose of these regulations, unless the context requires otherwise, the following terms have the meanings given for them below.

(1) *Act.* The Agricultural Marketing Act of 1946, as amended (60 Stat. 1087 *et seq.*, as amended, 7 U.S.C. 1621 *et seq.*).

(2) *Administrator.* The Administrator of the Federal Grain Inspection Service or any person to whom authority has been delegated.

(3) *Appeal inspection service.* A review by the Service of the results of an original inspection or retest inspection service.

(4) *Applicant.* An interested person who requests any inspection service with respect to a commodity.

(5) *Authorized inspector.* The Administrator may authorize a Departmental employee to inspect a commodity after the employee has demonstrated a thorough knowledge of a commodity and the Act, regulations, standards, instructions, and procedures under which it is inspected.

(6) *Board appeal inspection service.* A review by the Board of Appeals and Review of the results of an original inspection or appeal inspection service on graded commodities.

(7) *Board of Appeals and Review or Board.* The Board of Appeals and Review of the Service.

(8) *Business day.* The established field office working hours, any Monday through Friday that is not a holiday, or the working hours and days established by a cooperator.

(9) *Carrier.* A truck, trailer, truck/trailer(s) combination, railroad car, barge, ship, or other container used to transport bulk, sacked, or packaged commodity.

(10) *Commodity.* Agricultural commodities and products that the Secretary has assigned to the Service for inspection under the Act, including but not limited to, dry beans, grain, hay, hops, lentils, oilseeds, dry peas, split peas, rice, and straw.

(11) *Continuous inspection.* The conduct of inspection services in an

approved plant where one or more official inspection personnel are present during the processing of a commodity to make in-process examinations of the preparation, processing, packing, and warehousing of the commodity and to determine compliance with applicable sanitation requirements.

(12) *Contract service.* Any service performed under a contract between an applicant and the Service.

(13) *Contractor.* Any person who enters into a contract with the Service to perform specified inspection services.

(14) *Cooperator.* An agency or department of the Federal Government which has an interagency agreement or State agency which has a reimbursable agreement with the Service.

(15) *Cooperator inspection service.* The inspection service provided by a cooperator under the regulations. Under this service, inspection certificates are issued by the cooperator and all fees and charges are collected by the cooperator, except as provided in the agreement.

(16) *Department.* The United States Department of Agriculture.

(17) *Factor.* A quantified physical or chemical property identified in official standards, specifications, abstracts, contracts, or other documents whose measurement describes a specific quality of a commodity.

(18) *Field office.* An office of the Service designated to perform, monitor, or supervise inspection services.

(19) *Grade.* A grade designating a level of quality as defined in the commodity standards promulgated by the Administrator.

(20) *Holiday.* The legal public holidays specified in paragraph (a) of section 6103, Title 5, of the United States Code (5 U.S.C. 6103(a)) and any other day declared to be a holiday by Federal Statute or Executive Order. Under section 6103 and Executive Order 10357, as amended, if the specified legal public holiday falls on a Saturday, the preceding Friday shall be considered to be the holiday, or if the specified legal public holiday falls on a Sunday, the following Monday shall be considered to be the holiday.

(21) *Inspection certificate.* A written printed official document which is approved and which shows the results of an inspection service performed under the Act.

(22) *Inspection service.* (i) Applying such tests and making examinations of a commodity and records by official personnel as may be necessary to determine the kind, class, grade, other quality designation, the quantity, or condition of commodity; (ii) performing condition of container, carrier stowage examinations, and any other services as related to commodities, as necessary; and (iii) issuing an inspection certificate.

(23) *Instructions.* The Notices, Instructions, Handbooks, and other directives issued by the Service.

(24) *Interagency agreement.* An agreement between the Service and other branches of the Federal Government to conduct commodity inspection services as authorized in the Act.

(25) *Interested person.* Any person having a contract or other financial interest in a commodity as the owner, seller, purchaser, warehouseman, carrier, or as otherwise.

(26) *Licensee.* Any person licensed by the Service.

(27) *Nonregular workday.* Any Sunday or holiday.

(28) *Official inspector.* Any official personnel who performs, monitors, or supervises the performance of inspection service and certifies the results of the commodity.

(29) *Official personnel.* Any authorized Departmental employee or person licensed by the Administrator to perform all or specified functions under the Act.

(30) *Official sampler.* Any official personnel who performs, monitors, or supervises the performance of sampling of a commodity.

(31) *Official technician.* Any official personnel who performs, monitors, or supervises the performance of specified inspection services and certifies the results thereof, other than certifying the grade of a commodity.

(32) *Origin.* The geographical area or place where the commodity is grown.

(33) *Original inspection service.* An initial inspection of a commodity.

(34) *Person.* Any individual, partnership, association, corporation, or other business entity.

(35) *Plant.* The premises, buildings, structure, and equipment (including but not limited to machines, utensils, vehicles, and fixtures located in or about the premises) used or employed in the preparation, processing, handling, transporting, and storage of commodities.

(36) *Regular workday.* Any Monday through Saturday that is not a holiday.

(37) *Regulations.* The regulations in this Part.

(38) *Reimbursable agreement.* An agreement between the Service and State agencies to conduct commodity inspection services authorized by the Act.

(39) *Retest inspection service.* To test again a factor(s) of nongraded commodities previously tested using the same laboratory procedures.

(40) *Secretary.* The Secretary of Agriculture of the United States or any person to whom authority has been delegated.

(41) *Service.* The Federal Grain Inspection Service of the United States Department of Agriculture (FGIS).

(42) *Serviced representative.* An employee authorized by the Service or a person licensed by the Administrator.

(43) *Specification.* A document which clearly and accurately describes the essential and technical requirements for items, materials, or services including the inspection procedures.

(44) *Standards.* The commodity standards in this Part that describe the physical and biological condition of a commodity at the time of inspection.

(45) *Submitted sample.* A sample submitted by or for an interested person for inspection.

(46) *Test.* A procedure to measure a factor using specialized laboratory equipment involving the application of established scientific principles and laboratory procedures.

Administration

§ 68.5 Administrator.

The Administrator, under the authority delegated by the Secretary, is charged with administering the regulations and those parts of the Act that relate to the regulations.

§ 68.6 Nondiscrimination—policy and provisions.

In implementing, administering, and enforcing the Act and the regulations, standards, and instructions, it is the policy of the Service to promote adherence to the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.).

§ 68.7 Procedures for establishing regulations and standards.

Notice of proposals to prescribe, amend, or revoke regulations and standards shall be published in accordance with applicable provisions of the Administrative Procedures Act (5 U.S.C. 551, *et seq.).* Any interested person desiring to file a petition for the issuance, amendment, or revocation of regulations or standards may do so in accordance with 7 CFR 1.28 of the regulations of the Office of the Secretary of Agriculture.

§ 68.8 Complaints and reports of alleged violations.

(a) *General.* Except as provided in paragraph (b) of this section, complaints and reports of violations involving the Act or the regulations, standards, and instructions issued under the Act should

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be filed with the Service in accordance with 7 CFR 1.133 of the regulations of the Office of the Secretary of Agriculture and these regulations and instructions issued pursuant to the Act.

(b) *Retest inspection and appeal inspection services.* Complaints involving the results of inspection services shall, to the extent practicable, be submitted as requests for retest inspection, appeal inspection, or Board appeal inspection services as set forth in these regulations.

§ 68.9 Provisions for hearings.

Opportunities shall be provided for hearings either in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (7 CFR, Part 1, Subpart H) or in accordance with FGIS procedures, as would be appropriate.

§ 68.10 Information about the Service, Act, and regulations.

Information about the Service, Act, regulations, standards, rules of practice, instructions, and other matters related to the inspection of commodities may be obtained by telephoning or writing the U.S. Department of Agriculture, Federal Grain Inspection Service, 1400 Independence Avenue SW., Washington, DC 20250, or any field office or cooperator.

§ 68.11 Public information.

(a) *General.* This section is issued in accordance with §§ 1.1–1.16 of the regulations of the Secretary in Part 1, Subpart A, of Subtitle A of Title 7 (7 CFR 1.1–1.16), and Appendix A thereto, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by this section, govern the availability of records of the Service to the public.

(b) *Public inspection and copying.* Materials maintained by the Service, including those described in 7 CFR 1.2(a), will be made available, upon a request which has not been denied, for public inspection and copying at the U.S. Department of Agriculture, Federal Grain Inspection Service, 1400 Independence Avenue, SW., Washington, DC 20250. The public may request access to these materials 8:00 a.m.–4:30 p.m. during regular workdays.

(c) *Indexes.* The Service shall maintain an index of all material required to be made available in 7 CFR 1.2(a). Copies of these indexes will be maintained at the location given in paragraph (b) of this section. Notice is hereby given that quarterly publication of these indexes is unnecessary and impracticable because the material is voluminous and does not change often enough to justify the expense of quarterly publication. However, upon specific request, copies of any index will be provided at a cost not to exceed the direct cost of duplication.

(d) *Requests for records.* Requests for records under 5 U.S.C. 552(a)(3) shall be made in accordance with 7 CFR 1.3(a) and shall be addressed as follows: Office of the Administrator, Federal Grain Inspection Service, FOIA Request, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250.

(e) *FOIA Appeals.* Any person whose request, under paragraph (d) of this section, is denied shall have the right to appeal such denial in accordance with 7 CFR 1.3(e). Appeals shall be addressed to the Administrator, Federal Grain Inspection Service, FOIA Appeal, U.S. Department of Agriculture, Washington, DC 20250.

(f) *Disclosure of information.* FGIS employees or persons acting for FGIS under the Act shall not, without the consent of the applicant, divulge or make known in any manner any facts or information acquired pursuant to the Act and regulations except as authorized by the Administrator, by a court of competent jurisduction, or otherwise by law.

§ 68.12 Identification.

All official personnel shall have in their possession and present upon request, while on duty, the means of identification furnished to them by the Department.

§ 68.13 Regulations not applicable for certain purposes.

These regulations do not apply to the inspection of grain under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) or the inspection of commodities under the United States Warehouse Act, as amended (7 U.S.C. 241 *et seq.*).

Conditions for Obtaining or Withholding Service

§ 68.20 Availability of services.

(a) *Original inspection service.* Original inspection services are available according to this section and §§ 68.40–.45.

(b) *Retest inspection and appeal inspection services.* Retest inspection, appeal inspection, and Board appeal inspection services are available according to §§ 68.50–.52 and §§ 68.60–.63.

(c) *Proof of authorization.* A cooperator or the Service may request satisfactory proof that an applicant is an interested person or their authorized agent.

§ 68.21 Requirements for obtaining service.

(a) *Consent and agreement by applicant.* In submitting a request for inspection service, the applicant and the owner of the commodity consent to the special and general requirements specified in paragraphs (b) through (j) of this section.

(b) *Written confirmation.* Verbal requests for inspection service shall be confirmed in writing upon request. Each written request shall be made in English and shall include (1) the date filed; (2) the identification, quantity, and location of the commodity; (3) the type of service(s) requested; (4) the name and mailing address of the applicant and, if made by an authorized agent, the agent's name and mailing address; and (5) any other relevant information that the official with whom the application is filed may request. A written request or a written confirmation of a verbal request shall be signed by the applicant or a duly authorized agent.

(c) *Names and addresses of interested persons.* When requested, each applicant for inspection service shall show on the application form the name and mailing address of each known interested person.

(d) *Surrender of superseded certificates.* Superseded certificates must be promptly surrendered.

(e) *Accessibility.* (1) *Commodities.* Each commodity lot inspected shall be arranged so the entire lot may be examined or, if necessary, a representative sample can be obtained. If the entire lot is not accessible for examination or a representative sample cannot be obtained, the inspection shall be restricted to an examination or sampling of the accessible portion and the results certified as stated in § 68.34.

(2) *Origin records.* When an applicant requests origin inspection, the records indicating the origin of the commodity to be inspected shall be made accessible for examination and verification by official personnel.

(f) *Plant examination.* Plant surveys shall be performed when required by contract or upon request. Survey results shall be reported in writing to a designated plant official. If the plant is approved as a result of the survey, inspection service may begin or continue at a time agreed upon by the plant management and the cooperator or Service. If the plant is not approved as a result of the survey, inspection service shall be conditionally withheld according to the procedures in § 68.24.

(g) *Working space.* Applicant must provide adequate and separate space when inspection service is performed at a plant.

(h) *Loading and unloading conditions.* Each applicant for inspection service shall provide or arrange for suitable conditions in the (1) loading and unloading areas and the truck and railroad holding areas; (2) pier or dock areas; (3) deck and stowage areas in the carrier; (4) other service areas; and (5) equipment used in loading or unloading, processing, and handling the commodity. Suitable conditions are those which will facilitate accurate inspection, maintain the quantity and the quality of the commodity that is to be inspected, and not be hazardous to the health and safety of official pesonnel as prescribed in the instructions.

(i) *Timely arrangements.* Requests for inspection service shall be made in timely manner; otherwise, official personnel may not be available to provide the requested service. For the purpose of this paragraph, "timely manner" shall mean not later than 2 p.m., local time, of the preceding business day.

(j) *Payment of bills.* Each applicant for inspection service shall pay bills for the service according to §§ 68.90–68.92.

(Approved by the Office of Management and Budget under control number 0580–0012)

§ 68.22 Withdrawal of request for inspection service by applicant.

An applicant may withdraw a request for inspection service any time before official personnel release results, either verbally or in writing. Reimbursement of expenses, if any, shall be made according to § 68.26.

§ 68.23 Dismissal of request for inspection service.

(a) *Conditions for dismissal.*—(1) *General.* A cooperator or the Service shall dismiss requests for inspection service when:

(i) Performing the requested service is not practicable.

(ii) The cooperator or the Service lacks authority under the Act or regulations.

(iii) Sufficient information is not available to make an accurate determination.

(2) *New original inspection service.* A request for new original inspection service shall be dismissed if a retest inspection, appeal inspection, or Board appeal inspection may be performed on the same lot.

(3) *Retest inspection service.* A request for a retest inspection service shall be dismissed by official personnel when (i) the factor requested was not tested during the original inspection; (ii) the condition of the commodity has undergone a material change; (iii) a representative file sample is not available; (iv) the applicant requests that a new sample be obtained; (v) the request is for a graded commodity; or (vi) the reasons for the retest inspection are frivolous.

(4) *Appeal inspection service.* A request for an appeal inspection service shall be dismissed by official personnel when (i) the scope is different from the scope of the original inspection service; (ii) the condition of the commodity has undergone a material change; (iii) the request specifies a file sample and a representative file sample is not available; (iv) the applicant requests that a new sample be obtained and a new sample cannot be obtained; or (v) the reasons for the appeal inspection are frivolous.

(5) *Board appeal inspection service.* A request for a Board appeal inspection service shall be dismissed by official personnel when (i) the scope is different from the scope of the original inspection service; (ii) the condition of the commodity has undergone a material change; (iii) a representative file sample is not available; (iv) the applicant requests that a new sample be obtained; or (v) the reasons for the Board appeal inspection are frivolous.

(b) *Procedure for dismissal.* The cooperator or the Service shall notify the applicant of the proposed dismissal of service. The applicant will then be afforded reasonable time to take corrective action or to demonstrate there is no basis for the dismissal. If corrective action has not been adequate, the applicant will be notified of the decision to dismiss the request for service, and any results of service shall not be released.

§ 68.24 Conditional withholding of service.

(a) *Conditional withholding.* A cooperator or the Service shall conditionally withhold requests for service when an applicant fails to meet any requirement prescribed in § 68.21.

(b) *Procedure for withholding.* The cooperator or the Service shall notify the applicant of the reason for the proposal to conditionally withhold service. The applicant will then be afforded reasonable time to take corrective action or to demonstrate that there is no basis for withholding service. If corrective action has not been adequate, the applicant will be notified of the decision to withhold service; and any results of service shall not be released.

§ 68.25 Denial or withdrawal of service.

(a) *General.* Service may be denied or withdrawn because of (1) any willful violation of the Act, regulations, standards, or instructions or (2) any interference with or obstruction of any official personnel in the performance of their duties by intimidation, threat, assualt, or any other improper means.

(b) The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statues (7 CFR Part 1, Subpart H) shall be followed in the denial or withdrawal of service.

§ 68.26 Expenses of the cooperator or the Service.

For any request that has been withdrawn, dismissed or withheld under §§ 68.22, 68.23, or 68.24, respectively, each applicant shall pay expenses incurred by the cooperator or the Service.

Inspection Methods and Procedures

§ 68.30 Methods and order of performing inspection service.

(a) *Methods.*—(1) *General.* All sampling and inspection services performed by official personnel shall be made in accordance with standards and instructions authorized by the Administrator.

(2) *Lot inspection service.* A lot inspection service shall be based on official personal obtaining representative samples, examining the commodity in the entire lot, and making an accurate analysis of the commodity on the basis of the samples.

(3) *Submitted sample inspection service.* A submitted sample inspection service shall be based on a submitted sample of sufficient size to enable official personnel to perform an accurate, complete analysis. The sample size will be prescribed in the instructions. If an accurate analysis cannot be made because of an inadequate sample size or other conditions, the request shall be dismissed or a factor only inspection certificate issued for factors that can be determined.

(b) *Order of service.* Inspection service shall be performed, to the extent practicable, in the order in which requests for service are received.

(c) *Recording receipt for documents.* Each document submitted by or on behalf of an applicant for inspection service shall be promptly stamped or similary marked by official personnel to show the date of receipt.

(d) *Conflicts of interest.* (1) Official personnel shall not perform or participate in performing an inspection

service on a commodity or a carrier or container in which they have a direct or indirect financial interest.

(2) Official personnel shall not perform, participate in performing, or issue a certificate if they participated in a previous inspection or certification of the lot unless there is only one authorized person available at the time and place of the requestd inspection service.

§ 68.31 Kinds of inspection services.

(a) *General.* The inspection of commodities shall be (1) according to the (i) standards of class, grade, other quality designation quantity, or condition for such commodities promulgated by the Administrator; or (ii) specifications prescribed by Federal agencies; or (iii) specifications of trade associations or organizations approved by the Administrator; or (iv) instructions authorized by the Administrator or (2) for one or more factors of class, grade, other quality designations, quantity, or condition, as defined in such standards, specifications, or instructions and procedures, or otherwise as approved by the Administrator. The kinds of services provided and the basis for performing them are shown in paragraphs (b) through (m) of this section. Some or all of these kinds of services are provided when performing a complete inspection service.

(b) *Lot inspection service.* This service consists of official personnel (1) obtaining representative sample(s) of an identified commodity lot; (2) examining, grading, or testing the sample(s); (3) examining relevant records for the lot; (4) performing other requested services; and (5) certifying results.

(c) *Submitted sample inspection.* This service consists of an applicant submitting a commodity sample; and official personnel grading, or testing the sample or performing other requested services, and certifying results.

(d) *Examination.* This service consists of official personnel examining supplies without the use of special laboratory equipment or procedures to determine conformance ot contract requirements and certifying results.

(e) *Checkweighing service (container).* This service consists of official personnel (1) physically weighing a selected number of containers from a commodity lot; (2) determining the estimated total gross, tare, and net weights, or the estimated average gross or net weight per filled container; and (3) certifying results.

(f) *Bulk weighing.* This service consists of official personnel (1) completely supervising the loading or the unloading of an identified lot of bulk or containerized commodity, (2) physically weighing or completely supervising the weighing of the commodity, and (3) certifying results.

(g) *Checkloading service.* This service consists of official personnel (1) performing a stowage examination; (2) computing the number of filled commodity containers loaded aboard a carrier; (3) permitting only undamaged commodity containers to be loaded into the carrier; (4) if practicable, sealing the carrier for security; and (5) certifying results.

(h) *Checkcounting.* This service consists of official personnel determining the total number of filled outer containers in a lot to verify that the number of containers shown by the applicant is correct and cerifying results.

(i) *Condition inspection.* This service consists of official personnel determining the present physical condition of the commodity by determining whether an identifiable commodity lot has water damage, fire damage, rodent or bird contamination, insect infestation, or any other deteriorating condition and certifying results.

(j) *Condition of food containers.* This service consists of official personnel determining the degree of acceptability of the containers with respect to absence of defects which affect the serviceability, including appearance as well as usability, of the container for its intended purpose and certifying results.

(k) *Observation of loading.* This service consists of official personnel verifying that an identified lot is moved from a warehouse or carrier and loaded into another warehouse or carrier and certifying results.

(l) *Plant approval.*[1] This service consists of official personnel performing a plant survey to determine if the plant premises, facilities, sanitary conditions, and operatring methods are suitable to begin or continue inspection service.

(m) *Stowage examination service.* This service consists of official personnel visually determining if an identified carrier or container is clean; dry; free of infestation, rodents, toxic substances, and foreign odor; and suitable to store or carry commodities and certifying results.

§ 68.32 Who shall inspect commodities.

Commodity inspections shall be performed only by official personnel.

[1] Compliance with the requirements in this paragraph does not excuse failure to comply with all applicable sanitation rules and regulations of city, county, State, Federal, or other agencies having jurisdiction over such plants and operations.

§ 68.33 Sample requirements; general.

(a) *Samples for lot inspection service.*—(1) *Original lot inspection service.* The sample(s) on which the original inspection is determined shall be (i) Obtained by official personnel; (ii) representative of the commodity in the lot; (iii) protected from manipulation, substitution, and improper or careless handling; and (iv) obtained within prescribed geographical boundaries of the cooperator or field office performing the inspection service.

(2) *Retest lot inspection service.* The sample(s) on which the retest is determined shall (i) be obtained by official personnel and (ii) otherwise meet the requirements of pargraph (a)(1) of this section. The retest inspection shall be prformed on the basis of a file sample(s), and the samples must meet the requirements prescribed in § 68.35(e).

(3) *Appeal lot inspection service.* For an appeal lot inspection service, the sample(s) on which the appeal is determined shall (i) be obtained by official personnel and (ii) otherwise meet the requirements of paragraph (a)(1) of this section. If the appeal inspection is performed on the basis of a file sample(s), the samples shall meet the requirements prescribed in § 68.35(e). An applicant may request that a new sample be obtained and examined as part of the appeal inspection service in accordance with § 68.61(b)(2) and (3). The provision for obtaining a new sample shall not apply if obtaining the new sample involves a change in the method of sampling.

(4) *Board appeal lot inspection service.* A Board appeal lot inspection service shall be performed on the basis of a file sample.

(b) *Sampler requirement.* A licensed sampler may be requested to sample commodities and forward the samples to the appropriate field office or other location as specified. A sampling report signed by the licensed sampler shall accompany each sample. The report shall provide the identify, quantity, and location of the commodity sampled; and the name and mailing address of the applicant; and all other information regarding the lot as may be required.

(c) *Representative sample.* A sample shall not be considered representative of a commodity lot unless the sample (1) has been obtained by official personnel; (2) is of the size prescribed in the instructions; and (3) has been obtained, handled, and submitted in accordance with the instructions.

(d) *Protecting samples.* Official personnel shall protect samples from manipulation, substitution, and improper

and careless handling which might deprive the samples of their representativeness or which may change the physicial and chemical properties of the commodity from the time of sampling until inspection services are completed and file samples have been discarded.

§ 68.34 Partial inspection.

When the entire lot is not accessible for examination or a representative sample cannot be obtained from the entire lot, the certificate shall state the estimated quantity of the commodity in the accessible portion and the quantity of the entire lot. The inspection shall be restricted to the accessible portion. Furthermore, the words "Partial Inspection" shall be printed or stamped on the certificate.

§ 68.35 Sampling provisions by level of service.

(a) *Original inspection service.*—(1) *Lot inspection service.* Each original lot ispection service shall be made on the basis of one or more representative samples obtained by official personnel from the commodity in the lot and forwarded to the appropriate location.

(2) *Submitted sample service.* Each original submitted sample inspection service shall be performed on the basis of the sample as submitted.

(b) *Retest inspection service.* Each retest inspection service performed on a commodity lot or a submitted sample shall be based on an analysis of the file sample.

(c) *Appeal inspection service.*—(1) Lot inspection service. Each appeal inspection service on a commodity lot shall be made on the basis of the most representative samples available, including file samples, at the time of the appeal inspection service.

(2) *Submitted sample service.* Each appeal inspection service on the commodity in a submitted sample shall be based on an analysis of the file sample.

(d) *Board appeal inspection service.* Each Board appeal inspection service performed on a commodity lot or submitted sample shall be based on an analysis of the file sample.

(e) *Use of file samples.*—(1) *Requirements for use.* A file sample that is retained by official personnel in accordance with the procedures prescribed in the instructions may be considered representative for retest inspection, appeal inspection, and Board appeal inspection service if (i) the file sample have remained at all times in the custody and control of the official personnel that performed the inspection service in question and (ii) the official personnel who performed the inspection service in question and those who are to perform the retest inspection, the appeal inspection, or the Board appeal inspection service determines that the samples were representative of the commodity at the time the inspection service in question was performed and that the qualify or condition of the commodity in the samples has not since changed.

(2) *Certificate statement.* The certificate for a retest inspection, appeal inspection, or Board appeal inspection service which is based on a file sample shall show the statement "Results based on file sample."

§ 68.36 Loss of identity.

(a) *Lots.* The identity of a packaged lot, bulk lot, or sublot of a commodity shall be considered lost if:

(1) A portion of the commodity is unloaded, transferred, or otherwise removed from the carrier or location after the time of original inspection, unless the identity is preserved; or

(2) More commodity or other material, including a fumigant or insecticide, is added to the lot after the original inspection was performed, unless the addition of the fumigant or insecticide was performed according to instructions; or

(3) At the option of official personnel performing an appeal inspection or Board appeal inspection service; the identity of a commodity is a closed carrier or container may be considered lost if the carrier or container is not sealed or the seal record is incomplete.

(b) *Carriers and containers.* The identity of a carrier or container shall be considered lost if (1) the stowage area is cleaned, treated, fumigated, or fitted after the original inspection was performed or (2) the identification has been changed since the original inspection.

(c) *Submitted sample.* The identity of a submitted sample of a commodity shall be considered lost if:

(1) The identifying number, mark, or symbol for the sample is lost or destroyed; or

(2) The sample has not been retained and protected by official personnel as prescribed in the instructions.

Original Inspection Service

§ 68.40 Who may request original inspection service.

Any interested person may apply for inspection service.

§ 68.41 Contract service.

Any interested person may enter into a contract with a cooperator or the Service whereby the cooperator or Service will provide original inspection services for a specified period, and the applicant will pay a specific fee.

§ 68.42 How to request original inspection service.

(a) *General.* Requests may be made verbally or in writing. All verbal requests shall be confirmed in writing when requested by official personnel. All written requests shall include the information specified in § 68.21. Copies of request forms may be requested from the cooperator or the Service. If all required documentation is not available when the request is made, it shall be provided as soon as it is available. At their discretion, official personnel may withhold inspection service pending receipt of the required documentation.

(b) *Request requirements.* Requests for original inspection service, other than submitted sample inspections, must be made with the cooperator or the Service responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any cooperator or any field office that provides original inspection service. Requests for inspection of commodities during loading, unloading, handling, or processing shall be received for enough in advance so official personnel can be present.

§ 68.43 Certificating original inspection results.

Official certificates shall be issued in accordance with § 68.70 and the instructions.

§ 68.44 New original inspection.

When circumstances prevent a retest inspection, appeal inspection, or Board appeal inspection, an applicant may request a new original inspection on any previously inspected lot; except that a new original inspection may not be performed on an identifiable commodity lot which, as a result of a previous inspection, was found to be contaminated with filth, other than insect fragments in nongraded processed products, or to contain a deleterious substance. A new original inspection shall be based on a new sample and shall not be restricted to the scope of any previous inspection. The applicant may request subsequently any or all of the inspection services provided for by the regulations. A new original inspection certificate shall not supersede any previously issued certificate.

Retest Inspection Service

§ 68.50 Who may request retest inspection service.

(a) *General.* Any interested person may request a retest inspection service on nongraded commodities. When more than one interested person requests a retest inspection service, the first interested person to file is the applicant of record. Only one retest inspection service may be performed on any original inspection service.

(b) *Scope of request.* A retest inspection service may be requested for any or all quality factors tested but shall be limited to analysis of the file sample.

§ 68.51 How to request retest inspection service.

(a) *General.* Requests shall be made with the field office responsible for the area in which the original inspection service was performed. Verbal requests shall be confirmed in writing as specified in § 68.21. Copies of request forms may be obtained from the field office upon request. If at the time the request is filed and the documentation required by § 68.21 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation.

(b) *Request requirements.* Requests will be considered filed on the date they are received by official personnel.

§ 68.52 Certificating retest results.

(a) *General.* Retest inspection certificates shall be issued according to § 68.70 and instructions. The certificate shall show the results of the factor(s) retested and the original results for all other factors and/or service not included in the retest service.

(b) *Required statements on retest certificates.* Each retest inspection certificate shall show the statements required by this section, § 68.71, and the instructions.

(1) Each retest inspection certificate shall clearly show the term "Retest" and a statement identifying the superseded certificate. The superseded certificate shall be considered null and void as of the date of the retest certificate. When applicable, the certificate shall also show a statement as to which factor(s) result is based on the retest inspection service and that all other results are those of the original inspection service.

(2) If the superseded certificate is in the custody of the Service, the superseded certificate shall be marked "Void." If the superseded certificate is not in the custody of the Service at the time the retest certificate is issued, a statement indicating that the superseded certificate has not been surrended shall be shown on the retest certificate.

Appeal Inspection Service

§ 68.60 Who may request appeal inspection service.

(a) *General.* Any interested person may request appeal inspection or Board appeal inspection service. When more than one interested person requests an appeal inspection or Board appeal inspection service, the first interested person to file is the applicant of record. Only one appeal inspection may be obtained from any original inspection or retest inspection service. Only one Board appeal inspection may be obtained from any original or appeal inspection service. Board appeal inspection shall be performed on the basis of the file sample.

(b) *Kind and scope of request.* When the results for more than one kind of service are reported on a certificate, an appeal inspection or Board appeal inspection service, as applicable, may be requested on any or all kinds of services reported on the certificate. The scope of an appeal inspection service will be limied to the scope of the original inspection or, in the case of a Board appeal inspection service, the original or appeal inspection service. If the request specifies a different scope, the request shall be dismissed. An appeal inspection for grade shall include a review of all factors that (1) may determine the grade; or (2) are reported on the original or, in the case of a Board appeal inspection, the original or appeal inspection certificate; and (3) are required to be shown on a certificate for grade.

§ 68.61 How to request appeal inspection service.

(a) *General.* Requests shall be made with the field office responsible for the area in which the original service was performed. Requests for Board appeal inspections may be made with the Board of Appeals and Review or the field office that performed the appeal inspection. Verbal requests must be confirmed in writing as specified in § 68.21. Copies of request forms may be obtained from the field office upon request. If at the time the request is mad the documentation required by § 68.21 is not available, official personnel may, at their discretion, withhold service pending the receipt of the required documentation.

(b) *Request requirements.* (1) This paragraph is applicable to rice inspection only. Except as may be agreed upon by the interested persons, the application shall be made (i) before the rice has left the place where the inspection being appealed was performed and (ii) no later than the close of business on the second day following the date of the inspection being appealed. However, the Administrator may extend the time requirement.

(2) Subject to the limitations of paragraph (b)(3) of this section, the applicant may request that an appeal inspection be based on (i) the file sample or (ii) a new sample. However, an appeal inspection shall be based on a new sample only if the lot can positively be identified by official personnel as the one that was previously inspected and the entire lot is available and accessible for sampling and inspection. Board appeals shall be on the basis of the file sample.

(3) An appeal inspection shall be limited to a review of the sampling procedure and an analysis of the file sample when, as a result of a previous inspection, the commodity was found to be contaminated with filth (other than insect fragments in nongraded processed products) or to contain a deleterious substance. If it is determined that the sampling procedures were improper, a new sample shall be obtained if the lot can be positively identified as the lot which was previously inspected and the entire lot is available and accessible for sampling and inspection.

§ 68.62 Who shall perform appeal inspection service.

(a) *Appeal.* Appeal inspection service shall be performed by the field office responsible for the area in which the original inspection was performed.

(b) *Board appeal.* Board appeal inspection service shall be perfomed only by the Board of Appeals and Review. The field office will act as a liaison between the Board of Appeals and Review and the applicant.

§ 68.63 Certificating appeal results.

(a) *General.* Appeal inspection certificate shall be issued according to § 68.70 and instructions. Except as provided in paragraph (b)(2) of this section, only the results of the appeal inspection or Board appeal inspection service shall be shown on the appeal inspection certificate.

(b) *Required statements.* Each appeal inspection certificate shall show the statements required by this section, § 68.71, and instructions.

(1) Each appeal inspection certificate shall clearly show (i) the term "Appeal," or "Board Appeal" and (ii) a statement identifying the superseded certificate. The superseded certificate shall be considered null and void as of the date

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of the appeal inspection or Board appeal inspection certificate.

(2) When the results for more than one kind of service are reported on a certificate, the appeal or Board appeal inspection certificate shall show a statement of which kind of service(s) results are based on the appeal or Board appeal inspection service; and that all other results are those of the original inspection, retest, or appeal inspection service.

(3) If the superseded certificate is in the custody of the Service, the superseded certificate shall be marked "Void." If the superseded original inspected, retest inspection, or appeal inspection certificate is not in the custody of the Service at the time the appeal certificate is issued, a statement indicating that the superseded certificate has not been surrendered shall be shown on the appeal certificate.

(c) *Finality of Board appeal inspection.* A Board appeal inspection shall be the final appeal inspection service.

Official Certificates

§ 68.70 Official certificates; issuance and distribution.

(a) *Required issuance.* An inspection certificate shall be issued to show the results of each kind and each level of inspection service.

(b) *Distribution.*—(1) *Original.* The original and one copy of each inspection certificate shall be distributed to the applicant or the applicant's order. In addition, one copy of each inspection certificate shall be filed with the office providing the inspection; and, if the inspection is performed by a cooperator, one copy shall be forwarded to the appropriate field office. If requested by the applicant prior to issuance of the inspection certificate, additional copies not to exceed a total of three copies will be furnished at no extra charge.

(2) *Retest and appeal inspection service.* In addition to the distribution requirements in subparagrah(b)(1) of this section, one copy of each retest or appeal inspection certificate will be distributed to each interested person of record or the interested person's order and to the cooperator or field office that issued the superseded certificate.

(3) *Additional copies.* Additional copies of certificates will be furnished to the applicant or interested person upon request. Fees for extra copies may be assessed according to the fee schedules established by the cooperator or the Service.

(c) *Prompt issuance.* An inspection certificate shall be issued before the close of business on the business day following the date the inspection is completed.

(d) *Who may issue a certificte.*—(1) *Authority.* Certificates for inspection services may be issued only by official personnel who are specifically authorized or licensed to perform and certify the results reported on the certificate.

(2) *Exception.* The person in the best position to know whether the service was performed in an approved manner and that the determinations are accurate and true should issue the certificate. If the inspection is performed by one person, the certificate should be issued by that person. If an inspection is performed by two or more persons, the certificate should be issued by the person who makes the majority of the determinations or the person who makes the final determination. Supervisory personnel may issue a certificate when the individual is licensed or authorized to perform the inspection being certificated.

(e) *Name requirement.* The name and the signature of the person who issued the inspection certificate shall be shown on the original and all copies of the certificate.

(f) *Authorization to affix names.*—(1) *Requirements.* The names and the signatures of official personnel may be affixed to official certificates which are prepared from work records signed or initialed by the person whose name will be shown. The agent affixing the name and signature shall (i) be employed by a cooperating agency or the Service, (ii) have been designated to affix names and signatures, and (iii) hold a power of attorney from the person whose name and signature will be affixed. The power of attorney shall be on file with the employing cooperating agency or the Service, as appropriate.

(2) *Initialing.* When a name and signature is affixed by an authorized agent, the initials of the agent shall appear directly below or following the signature of the person.

(g) *Advance information.* Upon request, the contents of an official certificate may be furnished in advance to the applicant and any other interested person, or to their order, and any additional expense shall be borne by the requesting party.

(h) *Certification; when prohibited.* An official certificate shall not be issued for service after the request for an inspection service has been withdrawn or dismissed.

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§ 68.71 Official certificate requirements.

Official certificates shall (1) be on standard printed forms prescribed in the instructions; (2) be in English; (3) be typewritten or handwritten in ink and be clearly legible; (4) show the results of inspection services in a uniform, accurate, and concise manner; (5) show the information required by §§ 68.70–.75; and (6) show only such other information and statements of fact as are provided in the instructions authorized by the Administrator.

§ 68.72 Certification of results.

(a) *General.* Each official certificate shall show the results of the inspection services.

(b) *Graded commodities.* Each official certificate for graded commodities shall show (1) the class, grade, and any other quality designation according to the official grade standards; (2) all factor information requested by the applicant; and (3) all grade determining factors for commodities graded below the highest quality grade.

§ 68.73 Corrected certificates.

(a) *General.* The accuracy of the statements and information shown on official certificates must be verified by the individual whose name and signature is shown on the official certificate or by the authorized agent who affixed the name and signature. Errors found during this process shall be corrected according to this section.

(b) *Who may correct.* Only official personnel or their authorized agents may make corrections, erasures, additions, or other changes to official certificates.

(c) *Corrections prior to issuance.* No corrections, erasures, additions, or other changes can be made which involve identification, quantity, or quality. If errors are found, a new official certificate shall be prepared and issued and the incorrect certificate marked "Void." Otherwise, errors may be corrected provided that (1) the corrections are neat and legible, (2) each correction is initialed by the individual who corrects the certificate, and (3) the corrections and initials are shown on the original and all copies.

(d) *Corrections after issuance.*—(1) *General.* If errors are found on an official certificate at any time up to a maximum of 1 year after issuance, the errors shall be corrected by obtaining the incorrect certificate and replacing it with a corrected certificate. When the incorrect certificate cannot be obtained, a corrected certificate can be issued superseding the incorrect one.

(2) *Certification requirements.* The same statements and information, including permissive statements, that were shown on the incorrect certificate, along with the correct statement or information, shall be shown on the corrected certificate. According to this section and the instructions, corrected certificates shall show (i) the terms "Corrected-Original" and "Corrected-Copy;" (ii) a statement identifying the superseded certificate and the corrections; (iii) a statement indicating the superseded certificate was not surrendered when the incorrect certificate was not submitted; and (iv) a new serial number. In addition, the incorrect certificate shall be marked "Void" when submitted.

(e) *Limitations.* Corrected certificates cannot be issued for a certificate that has been superseded by another certificate or on the basis of a subsequent analysis for quality.

§ 68.74 Divided-lot certificates.

(a) *General.* When commodities are offered for inspection and are certificated as a single lot, the applicant may exchange the inspection certificate for two or more divided-lot certificates.

(b) *Application.* Requests for divided-lot certificates shall be made (1) in writing, (2) by the applicant who made the initial request, (3) to the office that issued the outstanding certificate, (4) within 5 business days of the outstanding certificate date, and (5) before the identity of the commodity has been lost.

(c) *Quantity restrictions.* Divided-lot certificates shall not show an aggregate quantity different than the total quantity shown on the superseded certificate.

(d) *Surrender of certificate.* The certificate that will be superseded shall (1) be in the custody of the cooperator or the Service, (2) be marked "Void," and (3) show the identification of the divided-lot certificates.

(e) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the superseded certificate shall be shown on each divided-lot certificate. Divided-lot certificates shall show (1) a statement indicating the commodity was inspected as an undivided lot; (2) the terms "Divided Lot-Original," and the copies shall show "Divided Lot-Copy;" (3) the same serial number with numbered suffix (for example, 1764–1, 1764–2, 1764–3, and so forth); and (4) the quantity specified by the request.

(f) *Issuance and distribution.* Divided-lot certificates shall be issued no later than the close of business on the next business day after the request and the distributed according to § 68.70(b).

(g) *Limitations.* After divided-lot certificates have been issued, further dividing or combining is prohibited except with the approval of the Service.

§ 68.75 Duplicate certificates.

Upon request, a duplicate certificate may be issued for a lost or destroyed official certificate.

(a) *Application.* Requests for duplicate certificates shall be filed (1) in writing, (2) by the applicant who requested the service covered by the lost or destroyed certificate, and (3) with the office that issued the initial certificate.

(b) *Certification requirements.* The same information and statements, including permissive statements, that were shown on the lost or destroyed certificate shall be shown on the duplicate certificate. Duplicate certificates shall show (1) the terms "Duplicate-Original," and the copies shall show "Duplicate-Copy" and (2) a statement that the certificate was issued in lieu of a lost or destroyed certificate.

(c) *Issuance.* Duplicate certificates shall be issued as promptly as possible and distributed according to § 68.70(b).

(d) *Limitations.* Duplicate certificates shall not be issued for certificates that have been superseded.

Licensed Inspectors, Technicians, and Samplers

§ 68.80 Who may be licensed.

(a) *Inspectors.* The Administrator may license any person to inspect commodities and to perform related services if the individual (1) is employed by a cooperator; (2) possesses the qualifications prescribed in the instructions; and (3) has no interest, financial or otherwise, direct or indirect in merchandising, handling, storing, or processing the kind of commodities or related products to be inspected. The Administrator may require applicants to be examined for competency at a specific time and place and in a prescribed manner.

(b) *Technicians or samplers.* The Administrator may license any person as a technician to perform official specified laboratory functions, including sampling duties and related services or as a sampler to draw samples of commodities and perform related services if the individual (1) possesses proper qualifications and (2) has no interest, direct or indirect in merchandising, handling, storing, or processing the commodities or related products to be chemically analyzed, mechanically tested, sampled, and so forth. The Administrator may require applicants to be examined for competency at a specific time and place and in a prescribed manner.

(The information collection requirements contained in paragraph (b) have been approved by the Office of Management and Budget under contol number 0580–0011.)

§ 68.81 Licensing procedures.

(a) *Application.* An application for a license, the renewal of a license, or the return of a suspended license shall be submitted to the Service on forms furnished by the Service. Each application shall be in English, be typewritten or legibly written in ink, show all information prescribed by the application form, and be signed by the applicant.

(b) *Examinations and reexaminations.* Applicants for a license and individuals who are licensed to perform any or all inspection services shall, at the discretion of the Service, submit to examinations or reexaminations to determine their competency to perform the inspection functions for which they desire to be or are licensed.

(c) *Termination.*—(1) *Procedure.* Each license shall terminate according to the termination date shown on the license and as specified by the schedule in this paragraph. The termination date for a license shall be no less than 3 years or more than 4 years after the issuance date for the initial license; thereafter, every 3 years. Upon request of a licensee and for good cause shown, the termination date may be advanced or delayed by the Administrator for a period not to exceed 60 days.

TERMINATION SCHEDULE

Last name beginning with	Termination date
A	January.
B	February.
C, D	March.
E, F, G	April.
H, I, J	May.
K, L	June.
M	July.
N, O, P, Q	August.
R	September.
S, T, U, V	October.
W	November.
X, Y, Z	December.

The Service shall issue a termination notice 60 days before the termination date. The notice shall give detailed instruction for requesting renewal of license, state whether a reexamination is required, and, if a reexamination is required, give the scope of the examination. Failure to receive a notice from the Service shall not exempt a licensee from the responsibility of having the license renewed by the termination date.

(2) *Exception.* The license of an individual under contract with the Service shall terminate upon termination of the contract.

(d) *Surrender of license.* Each license that is terminated or which is suspended or cancelled under § 68.84 shall be promptly surrendered to the Administrator or other official of the Service designated by the Administrator.

§ 68.82 Voluntary cancellation or suspension of license.

Upon request by a licensee, the Service may cancel a license or suspend a license for a period of time not to exceed 1 year. A license that has been voluntarily suspended shall be returned by the Service upon request by the licensee within 1 year, subject to the provisions of § 68.81(a); a license that has been cancelled shall be considered void and shall not be subject to return or renewal.

§ 68.83 Automatic suspension of license by change in employment.

A license issued to an individual shall be automatically suspended when the individual ceases to be employed by the cooperator. If the individual is reemployed by the cooperator or employed by another cooperator within 1 year of the suspension date and the license has not terminated in the interim, upon request of the licensee, the license will be reinstated subject to the provisions of § 68.81(a) and (b).

§ 68.84 Suspension or revocation of license.

(a) *General.* An inspector's, technician's, or sampler's license may be suspended or revoked if the licensee (1) through willfulness, carelessness, or incompetence fails to perform the duties specified in the regulations and in the instructions and procedures prescribed by the Administrator or (2) becomes incapable of performing required duties.

(b) *In cases of willfulness or those in which the pubic health, interest, or safety are involved.* The Administrator may summarily suspend an inspector's, technician's or sampler's license without hearing pending investigation. However, the licensee shall be advised of the facts which appear to warrant suspension or revocation of the license. The licensee shall also be accorded an opportunity for a hearing before an official in the Department before the license is finally suspended or revoked.

(c) *In cases not involving willfulness or cases which the public health, interest, or safety are not involved.* The Administrator, before instituting proceedings for the suspension or revocation of a license, shall have served upon the licensee, in person or by registered mail, a statement of the facts which appear to warrant such suspension or revocation. The statement shall also specify a reasonable time, depending upon the circumstances, within which the licensee may demonstrate or achieve compliance with the Act, regulations, standards, instructions, and procedures prescribed by the Administrator. A licensee may demonstrate compliance by the presentation of evidence in writing or, at the discretion of the Administrator, at an oral hearing. If, at the end of the time allowed for demonstration or achievement of compliance, the Administrator finds the licensee in compliance, proceeding for the suspension or revocation of the licensee shall not be instituted. If the licensee is not in compliance, the Administrator may institute proceedings. However, a licensee may not be suspended or revoked until the individual (1) has been served notice, in person or by registered mail, that suspension or revocation of the license is under consideration for reasons set out in the previously served statement and (2) has been given an opportunity for a hearings before a proper Departmental official.

Fees

§ 68.90 Fees for certain Federal inspection services.

The following fees apply to the Federal inspection services specified below.

Fees for Inspection of Hops, Pulses, Hay, Straw and Miscellaneous Processed Commodities

TABLE 1—HOURLY RATES

Service[1]	Regular workday (Monday-Saturday)	Nonregular workday (Sunday and Holiday)
Contract (per hour per Service representative)	$18.40	$21.00
Noncontract (per hour per Service representative)	22.40	25.40

[1] Original and appeal inspection services include: grading, sampling, factor analysis, checkweighing, checkloading, condition examination, demonstration of grading, and other services requested by the applicant when performed at the point of service.

TABLE 2—UNIT RATES

Service	Bean, Pea and Lentil	Hay and Straw	Hops	Nongraded, nonprocessed commodities
Lot or sample (per lot or sample)		$15.00	$22.40	
Field run (per lot or sample)	$15.00			
Other than field run (per lot or sample)	11.20			
Factor analysis (per factor)	3.75	3.75		$3.75
Extra copies of certificates (per copy)	0.00	0.00	0.00	0.00

[1] Fees apply to determinations (original or appeal) for kind, class, grade, factor analysis, and any other quality designation as defined in the official U.S. Standards or applicable instructions when performed at other than the point of service.

TABLE 3—LABORATORY FEES [1]

	Fees
Laboratory report	$3.00
Laboratory testing:	
(a) In addition to the fees if any, for sampling or other requested service a fee will be assessed for each laboratory test as follows:	
(1) Acidity Greek	6.30
(2) Acid value-oil	6.30
(3) Aflatoxin (Minicolumn method)	18.90
(4) Aflatoxin (TLC)	44.00
(5) Appearance, flavor and odor-oils	3.15
(6) Arachidic acid	12.10
(7) Ash	7.60
(8) Bacteria count	7.90
(9) Baking test-bread	18.90
(10) Baking test-cake	26.50
(11) Baking test-cookies	13.00

TABLE 3—LABORATORY FEES [1]—Continued

	Fees
(12) Baume	6.30
(13) Bostwick (cooked)	12.60
(14) Bostwick (uncooked)	6.30
(15) Calcium (AOAC)	7.90
(16) Calcium enrichment	7.90
(17) Carotenoid color	9.45
(18) Checked and broken macaroni units	6.30
(19) Clarity of oil involving heating	6.30
(20) Cold test-oil	6.30
(21) Coliform	10.90
(22) Color-bleached	9.45
(23) Color-gardner	3.15
(24) Color-lovibond	3.15
(25) Color-oil and shortening	3.15
(26) Congeal point	15.10
(27) Cooking test	6.30
(28) Crude fat	6.30
(29) Crude fiber	10.10
(30) Density	6.30
(31) Dextrose equivalent	12.60
(32) Diastatic activity of flour	15.90
(33) Enrichment-quick test	3.15
(34) Falling number	6.30
(35) Farinograph characteristics	20.60
(36) Fat-acid hydrolysis	12.60
(37) Fat acidity	6.45
(38) Fat stability-AOM	12.60
(39) Filth-heavy	15.60
(40) Filth-light	18.90
(41) Flash point-open and close cup	6.45
(42) Foam test	15.90
(43) Foots-heated and/or chilled	6.30
(44) Foreign material-processed grain products	9.45
(45) Free fatty acids	6.30
(46) Heating test-oil and shortening	6.30
(47) Hydrogen ion activity pH	6.45
(48) Insoluble bromides	6.30
(49) Insoluble impurities-oil and shortening	6.30
(50) Iodine number or value	9.45
(51) Iron enrichment	12.60
(52) Linolenic acid (fatty acid profile)	12.10
(53) Lipid phosphorous	47.00
(54) Loaf volume	18.90
(55) Lysine from fortification	23.10

TABLE 3—LABORATORY FEES [1]—Continued

	Fees
(56) Lysine form hydrolysis of protein	12.10
(57) Maltose value-flour	[illegible]
(58) Marine oil in vegetable oil-qualitative	6.30
(59) Melting point-Wiley	[illegible]
(60) Moisture-distillation	[illegible]
(61) Moisture-oven	4.40
(62) Moisture and volatile matter-oil and shortening	6.30
(63) Neutral oil loss	[illegible]
(64) Nitrogen solubility index	15.70
(65) Oven leak test-oil can	[illegible]
(66) Oil content-oilseed	[illegible]
(67) Particle size-flour	14.90
(68) Performance test-prepared bakery mix	[illegible]
(69) Peroxide value	[illegible]
(70) Phosphorous	12.60
(71) Popping value-popcorn	[illegible]
(72) Potassium bromate-qualitative	3.15
(73) Potassium bromate-quantitative	9.45
(74) Protein dispersibility index	15.70
(75) Protein, Kjeldahl	[illegible]
(76) Purity-Monosodium glutamate	[illegible]
(77) Reducing sugars	[illegible]
(78) Refractive index	[illegible]
(79) Riboflavin	25.20
(80) Rope spore count	[illegible]
(81) Salmonella	[illegible]
(82) Salt content	[illegible]
(83) Saponification number	[illegible]
(84) Sedimentation	15.70
(85) Sieve test	4.40
(86) Smoke point	[illegible]
(87) Softening point	[illegible]
(88) Solid fat index	[illegible]

TABLE 3—LABORATORY FEES [1]—Continued

	Fees
(89) Specific baking volume-cake mix	[illegible]
(90) Specific gravity-oils	12.60
(91) Starch damage-flour	14.90
(92) Staphylococcus aureas	[illegible]
(93) Sucrose	[illegible]
(94) Test weight per bushel-other than grain	[illegible]
(95) Tilletia controversa Kuhn (TCK)	25.20
(96) Unsaponifiable matter	[illegible]
(97) Urease activity	[illegible]
(98) Viscosity	[illegible]
(99) Water soluble protein	15.70
(100) Xanthydrol test for rodent urine	[illegible]
(101) Other laboratory tests	[illegible]
(b) If a requested test is to be reported on a specified moisture basis, a fee for moisture test will also be assessed.	

[1] When laboratory testing service is provided for FGIS by a private laboratory, the applicant will be assessed a fee which, as nearly as practicable, covers the costs to FGIS for the service provided.
[2] Fees for other laboratory tests not referenced above will be based on the noncontract hourly rate listed in Table 1.

§ 68.91 Fees for certain Federal rice inspection services.

The fees shown in tables 4 and 5 apply to Federal rice inspection services.

Fees for Federal Rice Inspection Services.

TABLE 4—HOURLY RATES

Service [1]	[illegible] workday (Monday-Saturday)	Nonregular workday (Sunday and Holiday)
Contract (per hour per Service representative)	[illegible]	[illegible]
Noncontract (per hour per Service representative)	34.40	[illegible]

[1] The hourly rate includes sampling, grading, weighing and other services requested by the applicant when performed at the point of service.

TABLE 5—UNIT RATES

Service [1]	Rough Rice	[illegible] processing	[illegible] Rice
Inspection for quality (per lot, sublot, or sample inspection)	[illegible]	[illegible]	$14.30
Factor analysis for any single factor (per factor)	8.60	[illegible]	[illegible]
Interpretive line samples: [2]			
(a) Milling degree (per set)			[illegible]
(b) Parboiled light (per sample)			15.00
Extra copies of certificates (per copy)	3.00	[illegible]	[illegible]

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or combined at other than the point of service.
[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, Federal Grain Inspection Service, Field Management Division, Board of Appeals and Review, Richards-Gebaur AFB, Building #221, Grandview, MO 64030. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field office may be obtained from the Deputy Director, Field Management Division, USDA, FGIS, Washington, DC 20250.
The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

§ 68.92 Explanation of service fees and additional fees.

(a) *Costs included in the fees.* Fees for official services in §§ 68.90 and 68.91 include (1) the cost of performing the service and related supervision and administrative costs; (2) the cost of per diem, subsistence, mileage, or commercial transportation to perform the service; (3) the cost of first-class mail service; (4) the cost of overtime and premium pay; and (5) the cost of certification except as provided in § 68.92)(c).

(b) *Computing hourly rates.* Hourly fees will be assessed in quarter hour increments for (1) travel from the FGIS field office or assigned duty location to the service point and return and (2) the performance of the requested service, less mealtime.

(c) *Additional fees.* Fees in addition to the applicable hourly or unit fee will be assessed when (1) an applicant requests more than the original and three copies of a certificate, (2) an applicant requests onsite typing of certificates or typing of certificates at the FGIS field office during other than normal working hours, and (3) an applicant requests the use of express-type mail or courier service.

(d) *Application of fees when service is delayed by the applicant.* Hourly fees will be assessed when (1) service has been requested at a specified location, (2) a Service representative is on duty and ready to provide service but is unable to do so because of a delay not caused by the Service, and (3) FGIS officials determine that the Service representative(s) cannot be utilized elsewhere or cannot be released without cost to the Service.

(e) *Application of fees when an application for service is withdrawn or dismissed.* Hourly fees will be assessed to the applicant for the scheduled service if the request is withdrawn or dismissed after the Service representative departs for the service point or if the request for service is not withdrawn or dismissed by 2 p.m. of the business day preceding the date of scheduled service. However, hourly fees will not be assessed to the applicant if FGIS officials determine that the Service representative can be utilized elsewhere or if the Service represenative can be released without cost to the Service.

(f) *To whom fees are assessed.* Fees for official services including additional fees as provided in § 68.92(c) shall be assessed to and paid by the applicant for the service.

(g) *Advance payment.* As necessary, the Administrator may require that fees shall be paid in advance of the performance of the requested service. Any fees paid in excess of the amount due shall be used to offset future billings, unless a request for a refund is made by the applicant.

(h) *Time and form of payment.* (1) *Fees for Federal inspection service.* Bills for fees assessed under the regulations for official services performed by FGIS shall be paid by check, draft, or money order, payable to U.S. Department of Agriculture, Federal Grain Inspection Service.

(2) *Fees for cooperator inspection service.* Fees for inspection services provided by a cooperator shall be paid by the applicant to the cooperator in accordance with the cooperator's fee schedule.

Dated: December 2, 1985.

D.R. Galliart,

Acting Administrator.

[FR Doc. 85-30277 Filed 12-23-85; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 543 and 544

[No. 85-1058]

Corporate Governance II

Dated: November 22, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board is proposing extensive revisions to its regulations regarding the corporate governance of Federal associations, in order to update and clarify its rules in this important area. Due to the magnitude of the revisions, the Board intends to present the proposal in four parts which will be issued separately for public comment. The proposed regulations would reorganize portions of Subchapter C (the regulations for federally chartered associations), and amend and add sections to provide a more cohesive and complete body of rules for the corporate governance of Federal associations. Part I would provide proposed definitions and set forth rules for the organization and incorporation of Federal associations. Part II would contain provisions regarding Federal stock associations and Federal mutual associations. Part III would propose revisions to the rules governing operations of charter coversion to Federal associations. Part IV would contain provisions regarding conservators, receivers, trust powers, miscellaneous provisions, Board rulings and statements of policy. Part I was proposed on September 13, 1985. (50 FR 38832, September 25, 1985.)

DATE: Comments on the proposal should be received by February 24, 1986.

ADDRESS: Send comments to the Director, Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC, 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: David A. Permut, Senior Attorney, (202-377-6962); V. Gerard Comizio, Attorney, (202-377-6457); Patricia D. Neidecker, Paralegal, (202-377-6410); Laura Patriarca, Deputy Director, (202-377-6411) or Julie L. Williams, Associate General Counsel and Director, (202-377-6459); Corporate and Securities Division, Office of General Counsel, at the above address.

SUPPLEMENTARY INFORMATION:

I. Overview

On October 15, 1982, the Garn-St Germain Depository Institutions Act of 1982 ("Act"), Pub. L. 97-320, was enacted. The Act greatly broadened the types of charters and organizational options open to Federal associations. Previously, Federal associations could be organized on a *de novo* basis only as Federal mutual institutions with accounts insured by the Federal Savings and Loan Insurance Corporation, and only as a direct consequence of a conversion from a state-chartered mutual savings bank. The Act substantially expanded the Board's authority in this area, permitting not only *de novo* organization of Federal savings banks but also allowing any current or future Federal associations to be chartered either as a Federal savings and loan association or Federal savings bank. Further, the Act enabled Federal charters, whether in the stock or mutual form, to be obtained by state-chartered savings banks without the requirement that they surrender their Federal Deposit Insurance Corporation insurance in favor of Federal Savings and Loan Insurance Corporation insurance of accounts.

In recognition of the fact that multiple options exist for the organization of *de novo* Federal associations and the conversion of various corporate entities, the Board directed the staff to study whether the existing regulations adequately covered the multiplicity of structural options for Federal associations. As a result, the Board has concluded preliminarily that the existing regulations cover many of the options, but in a piecemeal fashion, and that a number of important matters relating to the corporate governance of Federal associations either have not been adequately covered or have not been addressed in codified form. Consequently, the Board has preliminarily determined to propose a substantial updating of its regulations for corporate governance of Federal associations. The following proposed amendments to the Federal regulations were developed, following an extensive review of the Model Business Corporation Act ("MBCA"), the corporate codes of Delaware, California, New York and Florida, and the Board's experience with the specific statutory requirements involved in chartering or converting Federal associations, set forth under the Home Owners' Loan Act of 1933, as amended ("HOLA") 12 U.S.C. 1464 *et seq.* *See* Corporate Governance, Part I (50 FR 38832).

II. Reorganization

The Board believes that the existing organization of the Federal Regulations could be improved, in order to present a more logical and cohesive structure, so that the public would not be required to hunt for the various rules governing Federal associations. The following chart was developed to reorganize the Federal Regulations:

Regulations for the Federal Savings and Loan System

Present	Proposed
Part I	
Part 541—Definitions	Part 541—Definitions
Part 542—[removed 8/3/79]	Part 542—Organization and Incorporation of Federal Associations
Part II	
Part 543—Incorporation, Organization and Conversion of Federal Mutual Associations	Part 543—Federal Stock Associations
Part 544—Charter and Bylaws	Part 544—Federal Mutual Associations
Part III	
Part 545—Operations	Part 545—Operations
Part 546—Merger, Dissolution, Reorganization and Conversion	Part 546—Conversion of and to Federal Associations
Part IV	
Part 547—Appointment of Conservators and Receivers	Part 547—Appointment of Conservators and Receivers
Part 548—Powers of Conservator and Conduct of Conservatorship	Part 548—Powers of Conservator and Conduct of Conservatorship
Part 549—Powers of Receiver and Conduct of Receivership	Part 549—Powers of Receiver and Conduct of Receivership
Part 550—Trust Powers of Federal Associations	Part 550—Trust Powers of Federal Associations
Part 551—Service of Process Upon Board	Part 551—Miscellaneous
Part 552—Stock Associations	Part 552—Reserved
Part 553—	Part 553—Reserved
Part 554—	Part 554—Reserved
Part 555—Board Rulings	Part 555—Board Rulings
Part 556—Statements of Policy	Part 556—Statements of Policy

III. Description of the Proposed Amendments in Part II

A. Part 543—Federal Stock Associations

1. Sections of existing Parts 543, 545, 546 and 552, and a number of new proposed sections have been put into this Part to cover the areas of final organization, charters and bylaws, combinations, bulk purchases or sale of assets, reorganization and dissolution of Federal stock associations.

2. The following 60 sections, appendix and reserved sections are proposed:

Sec.

543.1 Procurement for organization of Federal stock association; intitial sale of capital stock; organizational meeting.
543.2 Powers of Federal stock associations.
543.3 Charter for Federal stock associations.
543.4 Preapproved charter amendments.
543.4-1 Additional charter provisions.

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Sec.
543.5 Procedures for obtaining Board approval of charter amendments.
543.6 Reissuance of charter.
543.7 Bylaws.
543.8 Effect of subsequent charter or bylaw change amendment.
543.9 Stockholder meetings.
543.9–1 Stockholder voting.
543.9–2 Voting trusts among stockholders.
543.9–3 Books and records; stockholder access.
543.9–4 Annual reports to stockholders.
543.9–5 Stockholder derivative actions.
543.10 Board of directors.
543.10–1 Director's meetings.
543.10–2 Director's conflicts of interest.
543.10–3 Liability of directors for improper distributions.
543.10–4 Officers.
543.10–5 Indemnification of directors, officers and employees.
543.11 Certificates for stock and their transfer.
543.11–1 Consideration for stock.
543.11–2 Stock rights and options.
543.11–3 Fractional shares of stock.
543.11–4 Liability of stockholders.
543.12 Authority to acquire own stock.
543.12–1 Authority to pay dividends to stockholders.
543.12–2 Limitations on distributions to stockholders.
543.12–3 Reduction of paid-in capital.
543.13 Fiscal year; annual audit.
543.14 Corporate procedures.
543.15–543.19 [Reserved].
543.20 Combinations involving Federal stock associations.
543.21 Merger or consolidation.
543.22 Short-form merger.
543.23 Approval by stockholders for merger or consolidation.
543.24 Articles of combination for merger or consolidation.
543.25 Effective date; date of consummation for merger or consolidation.
543.26 Continuity of corporate existence after merger or consolidation.
543.27 Dissenters' appraisal rights in merger or consolidation.
543.28 Supervisory combinations.
543.29 [Reserved]
543.30 Bulk purchase or sale of assets.
543.31 Approval by stockholders.
543.32 Articles of combination.
543.33 Effective date; date of consummation.
543.34 Continuity of corporate existence after bulk purchase or sale of assets.
543.35 Dissenters' appraisal rights in bulk purchase or sale of assets.
543.36 Partial purchase or sale of assets.
543.37–543.39 [Reserved]
543.40 Reorganization.
543.41–543.49 [Reserved]
543.50 Dissolution.
543.51 Voluntary dissolution.
543.52 Approval by stockholders for dissolution.
543.53 Notice of dissolution.
543.54 Procedure for dissolution after Board and stockholder approval.
543.55 Termination of corporate existence.
543.56 Involuntary dissolution.
543.57–543.59 [Reserved].
543.60 Supervisory waiver.

Appendix A to Part 543—Model Bylaws for Stock Associations

3. *Section 543.1 Procedure for organization of Federal stock association; initial sale of capital stock; organizational meeting*—contains many parts of current § 552.2–1, the outline of information to obtain insurance of accounts, and articulates several longstanding Board policies concerning escrow of funds and bonding of officers. The section also clarifies the circumstances under which organizers may collect organizaitonal expenses from subscribers and the procedures of refunding of subscription and expense funds in the event organization is not completed.

Paragraph (a)—*General*—indicates that the provisions of Part 542 apply to applications for permission to organize a Federal stock association.

Paragraph (b)—*Initial sale of capital stock*—sets forth the requirements for selling the capital stock of the association and includes conditional approval, bonding of officers, directors, employees and agents, compliance with Part 563g, escrow and return of money collected for the offering of stock, necessity for uniform price and terms of the initial offering, Board policy on options and warrants, and par value of stock.

Paragraph (c)—*Organizational meeting*—revises current § 552.2–1(f) to allow an organizational meeting within six months of receiving a certificate of authority to commence business, rather than the current delayed method of opening for business only after a stockholders' meeting with proper notice.

4. *Section 543.2 Powers of Federal stock associations*—is a revised § 552.9 referencing other sections that deal with investments and other activities of Federal associations.

5. *Section 543.3 Charter for Federal stock associations*—is essentially current § 552.3 with clearer directions and certain modifications to the current Federal stock charter.

Paragraph (a)—*Initial charter*—sets out that the initial charter must be in the form specified in paragraph (d) but may contain preapproved optional provisions.

Paragraph (b)—*Converted associations*—contains information from current § 552.3(a).

Paragraph (c)—*Federal savings bank charter*—outlines the additional charter language converting associations must use.

Paragraph (d)—*Federal stock charter*—contains the wording for the standard form of charter from current § 552.3, with the following revisions:

(1) Use of the terms "retained earnings" and "paid-in capital" instead of "surplus" and "stated capital" in section 5 dealing with consideration for stock issued as dividends, to reflect current terminology;

(2) Application of the charter restriction on direct issuance of stock to insiders in section 5 rephrased to apply to beneficial owners of more than 10 percent of an association's stock, rather than to "controlling persons," to make the applicability of the restriction more easily ascertainable; and

(3) A reduction in the minimum size of the board of directors in section 7 to five members rather than seven in recognition of the large number of closely-held associations and to conform to the required number of organizers of a Federal association.

Signature page—A date line has been added to the charter so the effective date of the charter may be specified.

6. *Section 543.4 Preapproved charter amendments*—is essentially current § 552.4(b), which provides for preapproved charter amendments which are deemed to have received preliminary Board approval and therefore can be presented to stockholders without a prior filing with the Board.

Paragraph (a)—*Title change*—sets out the current rule at § 552.4(b)(1) and adds the current § 543.1(b) language regarding prior submission to the Supervisory Agent.

Paragraph (b)—*Change of location*—is essentially current § 552.4(b)(3).

Paragraph (c)—*Number of shares of stock and par value*—is essentially current § 552.4(b)(4).

Paragraph (e)—*Preferred stock*—is essentially current § 552.4(b)(5) with the same changes to section 5 of the charter as noted above in reference to proposed § 543.3(d).

Paragraph (f)—*Limitations on subsequent issuances*—retains the ability of a Federal stock association to amend its charter to require stockholder approval for the issuance of common stock when such approval would be required under the rules of the New York or American stock exchanges, currently 18.5 percent and 20 percent, respectively, of the shares of stock then outstanding, as is now available under § 552.4(b)(6); in addition, allows an association to amend its charter to require stockholder approval for issuance of common stock in excess of 15 percent of the shares of stock then outstanding, to enable institutions to avoid the more complicated

requirements of the stock exchange limitations, a provision that used to be authorized for Charter S-type associations.

Paragraph (g)—*Anti-takeover provisions following conversion*—is essentially current § 552.4(b)(8) which is available for Federal associations which have converted to stock form within the past 5 years. These provisions are available only to institutions that have converted from mutual to stock form within the preceding five years.

Paragraph (h)—*Cumulative voting*—is a new section which allows an association to eliminate cumulative voting on a permanent basis. There appears to be no compelling basis to require cumulative voting and therefore cumulative voting would be made optional. This treatment also reflects current trends in state codes and the Model Business Corporation Act. Any existing Federal stock association with a cumulative voting provision in its charter that wanted to remove the requirement would be required to persent the matter to stockholders for repeal.

Paragraph (i)—*Preemptive rights*—is a new section which allows an association to provide for preemptive rights as an optional charter provision.

7. *Section 543.4–1 Additional charter provisions*—is a section which expands current § 552.4(c) in providing for non-pre-approved charter amendments, which include, but are not limited to, anti-takeover amendments. In a change from current rules, however, the Board would not be governed by any state law in assessing the permissibility of anti-takeover charter provisions. Instead, the Board would look to its own statutes, rules and policies, and also look to Delaware law for guidance in interpreting the permissibility of particular antitakeover provisions. The Board notes that any amendments, including anti-takeover amendments, not consistent with law, regulations or policy of the Board, would not be approved by the Board or its delegate, regardless of their purported permissibility under state law. In addition, any provision requiring greater than majority stockholder votes for certain transactions, or supermajority provisions, could only be adopted if approved by at least the same supermajority of stockholders being proposed. The Board specifically requests public comments on this section of the proposal, and in particular, whether the Board should more specifically describe the type of anti-takeover provisions that will be considered acceptable.

8. *Section 543.5 Procedures for obtaining Board approval of charter amendments*—outlines the procedures for preliminary and final approval now found in §552.4(a).

Paragraph (a)—*Procedure for obtaining preliminary approval of charter amendments*—clarifies that if a proposed amendment's effect would be render more difficult a change in control of the institution, an opinion of counsel independent of the association must accompany the proposal and must express a reasoned opinion that such an amendment is consistent with applicable statutes, regulations and Boards policies and indicate whether such a provison would be permissible for a corporation incorporated under the laws of Delaware.

Paragraph (b)—*Procedure for obtaining final approval of amendments*—restates the filing requirement and the date of effectiveness of amendments now found at § 552.4(a).

9. *Section 543.6 Reissuance of charter*—is essentially current § 552.4(d) with a description of required supporting documents.

10. *Section 543.7 Bylaws*—is essentially current § 552.5, with language requiring an opinion of independent counsel if a proposed bylaw would render more difficult a change of control of the institution, in the same manner as required for charter amendments. The Board wishes to stress that bylaws would not be approved if they were inconsistent with the Board's rules of corporate governance, or with provisions in a association's charter.

Paragraph (a)—*General*—is essentially current § 552.5(a) except for requiring bylaws consistent with the proposed rules governing bylaws.

Paragraph (b)—*Permissible bylaws*—is essentially current § 552.5(b).

Paragraph (b)—*Effectiveness*—establishes when bylaws are effective and the requirement of an opinion of independent counsel in certain circumstances.

Paragraph (d)—*Procedure*—sets forth the procedures for filing bylaws and amendments thereto.

11. *Section 543.8 Effect of subsequent charter or bylaw change amendment*—is essentially current § 552.16.

12. *Section 543.9 Stockholder meetings*—incorporates much of current § 552.6 but separates various stockholder voting paragraphs into a new section.

Paragraph (a)—*Stockholder meetings*—is essentially current § 552.6(a) except (1) annual meetings may now be held within 150 days after the end of an association's fiscal year instead of the current 120 days to allow institutions registered under the Securities Exchange Act to employ materials filed in connection requirements of the rules of the Board and the Securities and Exchange Commission under the Securities Exchange Act of 1934; (2) special meetings can be called by holders of up to 25 percent of the stock, as specified in the bylaws, rather than the existing "10 percent or more" requirement; and (3) meetings of stockholders may now be held in the state where the association has its principal place of business *or* where it maintains branches, in recognition of the growing number of interstate associations.

Paragraph (b)—*Notice of stockholder meetings*—is essentially current § 552.6(b) except that this section will clarify that the method of mailing notice must be calculated to ensure delivery within a reasonable period of time and also that the notice requirement is not necessary for associations wholly owned by a holding company. In addition, the Board invites comments on whether the time limits on notice should be modified; they are currently 20 to 50 days, which times were also applied to the fixing of record dates and availability of the voting list. The Board is aware that a number of state corporate codes call for 10- to 60-day requirements.

Paragraph (c)—*Fixing of record dates*—is essentially current § 552.6(c) except for modification of the time period as discussed above.

Paragraph (d)—*Voting lists*—modifies current § 552.6(d) by providing that a voting list will be made available for inspection for a period beginning 20 days prior to the meeting and at the meeting, only for a purpose germane to the meeting. The Board specifically requests comments concerning the sanction that should be applied in the case of a refusal of directors to provide a voting list.

Paragraph (e)—*Stockholder quorum*—is essentially current § 552.6(e) with the addition of language indicating that the affirmative vote of a majority of shares of stock represented at a meeting is the act of the stockholders when a quorum is present unless a greater number is required by law or the association's charter.

Paragraph (f)—*Nominations*—is a more detailed codification than current § 552.6(g) of the language in the current model bylaws regarding the selection of management nominees and the procedures for stockholder nominations

either prior to the meeting or at the meeting if the nominating committee has failed to act at least 20 days prior to the meeting. It is noted that nonstandard bylaw amendments calling for cumbersome procedural barriers or unreasonable information requirements in connection with stockholder nominations would not be permitted. The same caution should be noted for more cumbersome requirements for the introduction of new business at an annual meeting. The new language also clarifies that the stockholder nomination and new business procedures are available only for stockholders of record.

Paragraph (g)—*New business*—is a more detailed codification than current § 552.6(g) of the language in the current model bylaws regarding the introduction of new business at an annual meeting.

Paragraph (h)—*Informal action by stockholders*—is a new section added from the current model bylaws which the Board felt should be expressed in the regulations. The Board solicits comment on whether actions which can be taken without a meeting should require unanimous consent as provided in this proposal, or only the consent of the number of shares of stock needed to approve the action if such shares of stock had been present at a legal meeting.

13. *Section 543.9–1 Stockholder voting*—expands the current § 552.6(f) pertaining to proxies, treasury shares and cumulative voting, to discuss stock controlled by others and by fiduciaries, receivers or pledgees.

Paragraph (a)—*Proxies*—expands current § 552.6(f)(1) to allow telephonic or electronic proxies and to allow proxies to designate corporations, partnerships or companies as holders. The Board notes in this regard that under certain circumstances, as set forth in the Board's Acquisition of Control regulations, 12 CFR Part 574, the holding of proxies may constitute an acquisition of control requiring prior Board approval.

Paragraph (b)—*Stock controlled by association and others*—encompasses current 552.6(f)(2) and adds rules for listing stock held in the name of another corporation, held by an administrator, executor, guardian or conservator, stock transferred into a trustee's name, stock standing in the name of receiver or under the control of a receiver and stock which is pledged.

Paragraph (c)—*Cumulative voting*—is essentially current § 552.6(f)(3).

14. *Section 543.9–2 Voting trusts among stockholders*—is a new section based on Model Business Corporation Act which clarifies that stockholders may enter into written voting trusts by depositing their stock with a trustee and delivering a copy of the trust agreement to the association, subject to inspection by other stockholders, and for a term not to exceed 10 years. The trustee is directed to maintain a list of the beneficial owners, which must also be delivered to the association.

15. *Section 543.9–3 Books and records; stockholder access*—is essentially current § 552.11 but expands the description of "proper purpose", incorporates certain language modelled upon section 13(b) of the rules under the Securities Exchange Act with regard to maintenance of books and records, and specifies procedures regarding access to stockholder lists for associations subject to such rules, and adds a remedy to compel inspection.

Paragraph (a)—*General*—has modified current § 552.11(a) to include more specific requirements with respect to maintenance of books and records in compliance with generally accepted accounting principles.

Paragraph (b)—*Right to examine*—is essentially current § 552.11(b) with the expanded description of proper purpose and the language concerning stockholder lists noted above.

Paragraph (c)—*Denial of right to examine*—is essentially current § 552.11(c).

Paragraph (d)—*Confidentiality of records*—is essentially curent § 552.11(d) which codifies the Board's longstanding policy on the right to privacy of depositors of a Federal association.

Paragraph (e)—*Compelling inspection*—is a new section which codifies the common law right of a stockholder to pursue a remedy in court if a demand for inspection is refused.

16. *Section 543.9–4 Annual reports to stockholders*—is essentially current § 552.10, with certain clarifications regarding the content of financial statements reflecting the requirements of the Board's rules.

17. *Section 543.9–5 Stockholder derivative actions*—is a new, clarifying section derived primarily from the Model Business Corporation Act and Rule 23.1 of the Federal Rules of Civil Procedure.

Paragraph (a)—*Right to bring an action*—essentially restates Rule 23.1 of the Federal Rules of Civil Procedure providing that derivative actions may only be brought if the plaintiff was a stockholder of record at the time of the transactions of which he complains. In addition, a stockholder is required to obtain approval from the Principal Supervisory Agent for the institution before bringing an action. This latter provision is derived from features of California law. The Board specifically solicits comments on this requirement and on the need to include more specific procedures for obtaining Principal Supervisory Agent approval.

Paragraph (b)—*Payment of expenses*—directs plaintiffs in a derivative action to pay the defendant reasonable expenses, including attorney's fees, if final judgment brings a finding that the action was brought without reasonable cause.

Paragraph (c)—*Security for expenses*—includes a requirement for security for expenses to avoid frivolous suits.

18. *Section 543.10 Board of directors*—includes a number of the provisions currently found in § 552.6–1 with an expanded section describing the duties of a director, a reduction in the size of a board to five members and a new definition of "cause" with regard to director removals. With respect to this definition of "cause," the Board specifically requests comments as to whether the definition should be exclusive.

Paragraph (a)—*General*—expands current § 552.6–1(a) to include the authority to fix compensation and authorize reimbursement for expenses and to allow for non-stockholder directors unless the bylaws so require. In addition, the section would require a majority of directors be independent as defined in § 543.10–1(c). The Board also requests comment on this requirement for independent directors, which is similar to the requirement already imposed on all insured institutions pursuant to § 563.33.

Paragraph (b)—*Performance of duties*—is a new section which defines the director's duty to act in good faith in a manner he reasonably believes to be in the best interests of the association, and with such care as an ordinary prudent person in a like position would use under similar circumstances.

Paragraph (c)—*Number and term*—is essentially current § 552.6–1(b) except for the reduction to five in the allowable size of a board.

Paragraph (d)—*Vacancies*—is essentially current § 552.6–1(e).

Paragraph (e)—*Resignation or removal of directors*—is essentially current §552.6–1(f) and the existing Model Bylaws, with the addition of a definition of the term "cause" and a procedure for a defense to be presented by a director in a removal action. This section also provides that directors may only be removed for cause. The Board specifically requests comments as to

whether stockholders should be able to remove directors other than for "cause."

Paragraph (f)—*Age limitation on directors*—is essentially current § 552.6–1(k).

19. *Section 543.10–1 Directors' meetings*—expands a number of provisions currently found in § 552.6–1 with additional provisions for conference telephone meetings and a new requirement that associations establish an audit committee and an investment committee, at least a majority of the members of which are independent directors.

Paragraph (a)—*Meetings*—includes the language of current § 552.6–1(c) and adds provisions from the current model bylaws for determination of place, frequency, time and procedures for notice for regular meetings of at least 24 hours, unless waived, and provision for telephonic meetings which, unlike the current model bylaws, will be deemed to constitute presence in person for all purposes.

Paragraph (b)—*Quorum*—is essentially current § 552.6–1(d).

Paragraph (c)—*Executive and other committees*—is essentially current § 552.6–1(g) with several important additions. Section 2 of that paragraph requires the appointment of an audit committee of at least three directors the majority of whom shall be independent and who shall not be the same directors as the independent. Section 3 requires the appointment of an investment committee of at least three directors the majority of whom shall be independent directors of the audit committee. The provision also defines independence and sets forth the duties of the audit committee and the investment committee. The Board specifically requests comments on the requirements of an audit committee and investment committee and the further requirement concerning independent directors of both committees.

Paragraph (d)—*Notice of special meetings*—is essentially current § 552.6–1(h).

Paragraph (e)—*Action without a meeting*—is essentially current § 552.6–1(i).

Paragraph (f)—*Presumption of assent*—is essentially current § 552.6–1(j).

20. *Section 543.10–2 Director's conflicts of interest*—is a new section derived from the Board's conflict-of-interest regulations.

Paragraph (a)—*General*—details when contracts or other transactions are not void or voidable even though a director may have a material financial interest in the transaction.

Paragraph (b)—*Presence of interested directors at meeting*—details when contracts or other transactions are not void or voidable even if a director may be an "interested director," if there has been adequate disclosure of his interest and approval by disinterested directors.

Paragraph (c)—*Determining a quorum*—allows interested directors to be counted in determining the presence of a quorum at a meeting that ratifies a contract or transaction discussed above.

Paragraph (d)—*Transactions with affiliates*—preserves the Board's right to object to a contract in conjunction with its regulations on transactions with affiliates.

21. *Section 543.10–3 Liability of directors for improper distributions*—is a new section that sets forth a director's liability for distributions to stockholders in contravention of the Board's rules or the association's charter.

Paragraph (a)—*Director liability*—sets out the circumstances under which a director might be liable, jointly or severally, for certain distributions.

Paragraph (b)—*Right to contribution from stockholders*—sets out the right to receive contributions from stockholders who knowingly receive certain impermissible distributions.

Paragraph (c)—*Right to contribution from directors*—sets out the right of directors to contribution from other directors who assented to certain impermissible distributions in certain circumstances.

Paragraph (d)—*Distribution*—defines the term "distribution."

22. *Section 543.10–4 Officers*—is based upon current § 552.6–3 with the addition of a paragraph on employment contracts.

Paragraph (a)—*Positions*—is essentially current § 552.6–2(a).

Paragraph (b)—*Removal*—is essentially current § 552.6–2(b), with the addition of a new definition of "cause" which is the same as used in the new definition of "cause" applicable in the case of removal of directors.

Paragraph (c)—*Employment contracts*—specifically authorizes employment contracts in conformance with Insurance Regulation § 563.39. The Board specifically requests comments in this regard as to whether it should adopt additional regulations governing so-called "golden parachute" or "silver wheelchair" types of employment contracts.

Paragraph (d)—*Age limitation on officers*—is essentialy current § 552.6–2(a).

23. *Section 543.10–5 Indemnification of directors, officers, and employees*—is a new section derived from current Federal Regulation 545.121. Indemnification is extended for officers directors and employees of the association and specifically permitted for officers, directors and employees of wholly-owned service corporation subsidiaries. The Board specifically requests comments on the extension of indemnification to wholly-owned service corporations, as well as the limitation of persons eligible to be indemnified to officers, directors and employees.

Paragraph (a)—*General*—is essentially current § 545.121(b) with the inclusion of service performed for subsidiaries discussed above.

Paragraph (b)—*Conditions*—is essentially current § 545.121(c) with the retention of the 60-day notice to the Board and the expansion of delegated authority to the Office of Examinations and Supervision with the concurrence of the Office of General Counsel to object to the indemnification. The new section also allows for the stockholders to determine to permit indemnification if a quorum of disinterested directors is not obtainable. The Board is aware that some state codes allow a disinterested attorney to make the determination and the Board specifically solicits comments as to the use of such disinterested counsel, particularly where a quorum of disinterested directors is not available and the question of indemnification would therefore be required to be put to the stockholders in what could be relatively costly proxy solicitation. The Board also solicits comments in this regard on the standard to be used in determining whether a counsel is "disinterested." In addition, this section adds a provision for action to be brought in the right of the association.

Paragraph (c)—*Insurance*—is essentially current § 545.121(d).

Paragraph (d)—*Advance payment of expenses*—is essentially current § 545.121(e) with the addition of disinterested stockholders being allowed to authorize payments.

Paragraph (e)—*Prohibited indemnification*—is a new section prohibiting indemnification if in contravention of public policy, which would include, without limitation, violation of statutes and regulations administered by the Board.

Paragraph (f)—*Exclusiveness of provisions*—is essentially current § 545.121(f) which clarifies the grandfathering of bylaws in effect as of October 1, 1969.

Paragraph (g)—*Definitions and rules of construction*—is essentially current § 545.121(a) with an additional definition of the term "disinterested."

The Board specifically invites comments on the scope of this term.

24. *Section 543.11 Certificates for stock and their transfer*—is essentially paragraphs (a) and (b) of current § 552.6–3.

25. *Section 543.11–1 Consideration for stock*—is a new section derived from the Model Business Corporation Act and several state codes. It includes a discussion of permissible consideration for stock, treasury stock, stock dividends and stock issued in an exchange of indebtedness or for stock.

Paragraph (a)—*General*—sets forth the ability of the board of directors to set consideration for stock as cash or other consideration, or both, on certain terms.

Paragraph (b)—*Treasury stock*—sets forth the method of disposing of such stock.

Paragraph (c)—*Stock dividends*—describes that the consideration for stock dividends is derived from retained earnings.

Paragraph (d)—*Stock issued in exchange*—sets forth the derivation of the consideration for stock issued an exchange of indebtness or for stock.

26. *Section 543.11–2 Stock rights and options*—is a new section setting forth Board policy on stock rights and options, including the conditions under which stock options or rights can be granted to non-employee directors.

Paragraph (a)—*Creation and issuance*—describes the requirements for creation and issuance of stock rights and options.

Paragraph (b)—*Restriction on grants to non-employee directors*—sets forth the conditions under which such stock options or rights could be granted to non-employee directors", including a definition of that term.

Paragraph (c)—*Payments for stock rights or options*—sets forth the right of the association to adopt a plan to redeem or repurchase shares of stock of the association as payment for stock options or rights, as long as the association's net-worth requirement would still be met.

27. *Section 543.11–3 Fractional shares of stock*—is a new section derived from the Model Business Corporation Act and other state corporation codes allowing for the issuance of fractional shares, cash or scrip in lieu of fractional shares.

28. *Section 543.11–4 Liability of stockholders*—is a new section defining a stockholder's obligation to pay full consideration for his shares of stocks.

29. *Section 543.12 Authority to acquire own stock*—is a new section which clarifies the right of a Federal stock association to acquire its own stock.

30. *Section 543.12–1 Authority to pay dividends to stockholders*—is a new section setting forth the association's ability to pay dividends out of retained earnings.

31. *Section 543.12–2 Limitations on distributions to stockholders*—is a new section which defines what constitutes a distribution, sets out the limitations on distributions and describes measurement dates.

Paragraph (a)—*Distributions*—defines the term to mean a direct or indirect transfer of money, other property or indebtedness to or for the benefit of any of the association's stockholders.

Paragraph (b)—*Limitation on distributions*—prohibits distributions such as dividends or repurchases of stock, that would reduce an association's net worth below that required by §563.13 of the Insurance Regulations.

Paragraph (c)—*Measurement date*—sets forth a date to measure when the distribution occurs.

32. *Section 543.12–3 Reduction of paid-in capital*—is a new section setting forth the manner in which an association could reduce its paid-in capital and the restrictions applicable to such a reduction.

33. *Section 543.13 Fiscal year; annual audit*—is essentially current §552.6–4.

34. *Section 543.14 Corporate procedures*—is a new section containing several permissible bylaw provisions found in the current mutual association model bylaws, including provisions concerning execution of instruments, corporate seal and miscellaneous provisions.

Paragraph (a)—*Execution of instruments generally*—is essentially current §544.5(b)(12).

Paragraph (b)—*Seal*—is essentially current §544.5(b)(15).

Paragraph (c)—*Miscellaneous*—is essentially current §544.5(b)(17).

35. *Appendix A to Part 543 Model Bylaws for Stock Associations*—is a set of 12 Articles derived from the current model bylaws for Federal stock associations but containing revisions based upon proposed §§ 543.8 through 543.14, discussed above.

36. Sections 543.15–543.19 are reserved sections to maintain the numbering order for stock and mutual sections and to allow for any necessary additional rules. Other sections described herein are reserved for similar reasons.

37. *Section 543.20 Combinations involving Federal stock associations*—is a section largely derived from current section § 552.13 (1985) with modifications to the merger rules, additions to the required contents of a combination agreement, revised notice requirements and separation of the "bulk purchase of assets" section into a distinct section. In addition, the Board has added a new short-form merger section, based upon state corporate codes, and specifically invites comments on that addition.

38. *Section 543.21 Merger of consolidation*—the first two types of permissible combinations; tracks current § 552.13.

Paragraph (a)—*Permissible merger or consolidation*—lists the two conditions under which a Federal stock association may merge or consolidate with other associations, now found at § 552.13(c), and adds a third condition now found at § 546.2 requiring that mergers with state-chartered institutions be in accordance wih state law. Current § 552.13(b) definitions have been moved to the definitional section of newly proposed Part 541. (*See* Corporate Governance, Part I.)

Paragrpah (b)—*Board approval*—is essentially current § 552.13(d).

Paragraph (c)—*Approval by the Board's Principal Supervisory Agent*—is essentially current § 552.13(e), incorporating recently amended § 563.22 which expands the authority of the Principal Supervisory Agents and the Board's Washington staff to act on many applications pursuant to delegated authority. The section also is expanded to include the delegated authority in current § 546.2 to approve maintenance of branch offices and temporary increases in the size of boards of directors.

Paragraph (d)—*Approval of board of directors*—is essentially current § 552.13(f).

Paragraph (e)—*Conservator or receiver action*—brings the current §546.2(f) provision to the rules for Federal stock associations.

Paragraph (f)—*Combination agreement*—is essentially current § 552.13(g) describing the required contents of the combination agreement, with several additional provisions.

Paragraph (g)—*Corporate title; change of location*—specifies that the charter must be amended in certain instances and is derived from current § 546.2(g).

Paragraph (h)—*Application for Board approval*—is essentially current § 552.13(h) regarding filing requirements, with an additional reminder to applicants that any required Hart-Scott-Rodino antitrust filings must also be made.

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Paragraph (i)—*Notice*—is a modified version of current § 552.13(i). The modifications include the following: The requirement that public notice appear in the communities in which the home offices of all constituent associations are located; deletion of the current "double notice" requirement to stockholders so that notice is required for stockholders only if the combination agreement is not subject to stockholder approval; and revision of contents of the notice to narrow the time when coments will be accepted to expedite processing, and to appraise each stockholder, where applicable, of his dissenters' appraisal rights.

39. *Section 543.22 Short-form merger*—is a new section derived from various state corporation codes. The section sets forth procedures for merging associations that are at least 90-percent owned by another association without the requirement of stockholder approval. Appraisal rights are provided in certain circumstances.

Paragraph (a)—*General*—sets forth the types of transactions where short-form mergers are available and the procedures for effecting such transactions. The Board specifically requests public comment as to whether the short-form merger process should be expanded to allow a short-form merger of a service corporation into its parent association.

Paragraph (b)—*Subsidiary resulting association*—sets forth the requirement that, if the parent insured institution is not the resuling association, evidence must be submitted to the Supervisory Agent that the merger was approved by the affirmative vote of the stockholders of the parent.

Paragraph (c)—*Corporate title*—details what to do to change a corporate title in a short-form merger.

Paragraph (d)—*Processing; delegation*—sets out the processing requirements and delegates approval authority to the Principal Supervisory Agent in many circumstances.

Paragraph (e)—*Appraisal rights*—gives appraisal rights as provided under § 543.27 to stockholders in a short-form merger if the disappearing association is a Federal association.

40. *Section 543.23 Approval by stockholders for merger or consolidation*—is essentially current § 552.13(j).

Paragraph (a)—*General rule*—is essentially current § 552.13(j)(1).

Paragraph (b)—*General exception*—is essentially current § 552.13(j)(2), setting forth the situations where approval of the stockholders of a Federal association is not required to approve a merger or consolidation.

Paragraph (c)—*Exception for certain combinations involving an interim*—is essentially current § 552.13(j)(3).

Paragraph (d)—*Disclosure*—is essentially current § 552.13(k)

41. *Section 543.24 Articles of combination for merger or consolidation*—is essentially current § 552.13(*l*) paragraphs 1 and 2.

42. *Section 543.25 Effective date; date of consummation for merger or consolidation*—is partially derived from current § 552.13(m) and various state codes provisions allowing for a later effective date for a combination if requested. The section on date of consummation of a merger or consolidation was proposed to clarify an ongoing procedural problem that the effective date and date of consummation are often not the same.

Paragraph (a)—*Effective date*—tracks the language of current § 552.13(m) but allows a later effective date of a merger or consolidation if requested. In addition, delegated authority to approve combinations is recognized by this section.

Paragraph (b)—*Date of consummation*—specifies that combinations cannot be concluded until all necessary compliance materials are submitted to the Supervisor Agent's satisfaction, and explicitly provides that the Board or its delegate may suspend, alter or withdraw its approval if such action is warranted on the basis of a material change in circumstances, prior to the date of consummation.

43. *Section 543.26 Continuity of corporate existence after merger or consolidation*—is essentially current § 552.13(n).

44. *Section 543.27 Dissenters' appraisal rights in merger or consolidation*—is largely derived from current § 552.14. The right to apply for the payment of the fair value of stock is limited. Dissenters' appraisal rights would not exist where stock is listed on a national securities exchange or quoted on the NASDAQ or where stockholder action is not required. The section also now defines the term "fair value."

Paragraph (a)—*Right to demand payment of fair value*—is essentially current § 552.14(a).

Paragraph (b)—*Exceptions*—is essentially current § 552.14(b) modified to include NASDAQ quoted stocks within the category where dissenters' appraisal rights are not present.

Paragraph (c)—*Procedure*—is essentially current § 552.14(c) with minor modifications. Stockholders must now receive notice of their appraisal rights, if any, in their proxy materials or in any substitute stockholder notice. The petition to the Board to review an association's offer to dissenting stockholders if an offer is not accepted is now filed with the Office of General Counsel.

Paragraph (d)—*Valuation by the Board or its delegate*—is essentially current § 552.14(c—) (8) and (9).

Paragraph (e)—*Reorganization using interims*—is a new section to recognize that interim associations would have little or no assets, so that in the case of an association recognizing into a holding company form using an interim, where the interim technically is the resulting association, the Board would view the holding company in such a reorganization as the resulting association for purposes of satisfying dissenters' appraisal rights. This provision clarifies and formalizes this treatment, which the Board believes has always been implicit in the structure of a reorganization into a holding company structure using an interim association.

Paragraph (f)—*Definitions*—is a new section to define the terms "fair value," NASDAQ," "National securities exchange" and "Qualified consideration", the latter taken from current § 552.14(b). The Board specifically requests comments on its definition of "fair value" for appraisal purposes.

45. *Section 543.28 Supervisory combinations*—is esentially current § 552.15 with additional language dervied from section 5(o)(2)(F) of the HOLA regarding cases where severe financial conditions exist which threaten the stability of an association.

46. *Section 543.29* is reserved.

47. *Section 543.30 Bulk purchase or sale of assets*—is derived from current § 552.13. The definition of bulk purchase of assets has been expanded.

Paragraph (a)—*Permissible bulk purchase of assets*—is derived from current § 552.13(c)(3) with clarifying language to better address bulk transfers to interim associations as well as to operating associations.

Paragraph (b)—*Permissible bulk sale of assets*—restates the Board's current policy that bulk *sales* of assets by Federal associations are only permissible in supervisory cases. The Board invites comments from the public on this policy.

Paragraph (c)—*Bulk purchase or sale of assets defined*—expands the current definitional § 552.13(b)(2), now appearing in the definitions section of Corporate Governance, Part I, new proposal Part 541, to include a percentage-of-assets test to determine whether substantially all of the assets of an association are involved such that a transaction would constitute a bulk

purchase or sale. The Board invites comments on the choice of 50 percent of total assets of the association prior to the acquisition as the appropriate percentage.

Paragraph (d)—*Board approval*—tracks the language of current § 552.13(d).

Paragraph (e)—*Approval by the Board's Principal Supervisory Agent*—is essentially current § 552.13(e), incorporating recently amended 563.22 which expands the authority of the Principal Supervisory Agent and the Board's Washington staff to act on many applications pursuant to delegated authority.

Paragraph (f)—*Approved by board of directors*—is essentially current § 552.13(f).

Paragraph (g)—*Combination agreement*—refers the applicant to new § 543.21(f)(2).

Paragraph (h)—*Application for Board approval*—refers the applicant to new § 543.21(h).

Paragraph (i)—*Notice*—refers the applicant to new § 543.21(i).

48. *Section 543.31 Approval by stockholders*—refers the applicant to new § 543.23.

49. *Section 543.32 Articles of combination*—refers the applicant to new § 543.24.

50. *Section 543.33 Effective date; date of consummation*—refers the applicant to new § 543.25.

51. *Section 543.34 Continuity of corporate existence after bulk purchase or sale of assets*—makes clear that a bulk purchase or sale of assets does not effect the corporate existence of the transferee or transferor Federal stock association.

52. *Section 543.35 Dissenters' appraisal rights in bulk purchase or sale of assets*—refers the applicant to new § 543.27.

53. *Section 543.36 Partial purchase or sale of assets*—is a new section differentiate between a bulk purchase or sale and a partial purchase or sale. The same percentage-of-assets test is used in this section as was used in new § 543.30, and the Board specifically requests public comments on this aspect of the proposal. In addition, the section refers applicants to § 563.22 of the Insurance Regulations for the rules governing procedures for obtaining required approval of partial purchases or sales of assets.

54. *Sections 543.37–543.39* are reserved.

55. *Section 543.40 Reorganization*—is also reserved.

56. *Sections 543.41–543.49* are reserved.

57. *Section 543.50 Dissolution*—is derived primarily from current § 546.4, the Model Business Corporation Act and the Delaware and California codes.

58. *Section 543.51 Voluntary dissolution*—is derived from current § 546.4.

Paragraph (a)—*Plan for dissolution*—sets forth the requirements for a board of directors to propose a dissolution and the criteria for an approval.

Paragraph (b)—*Board approval*—sets forth the necessity for Board approval of such a plan of dissolution and the criteria for an approval.

59. *Section 543.52 Approval by stockholders for dissolution*—is derived from current § 546.4.

Paragraph (a)—*Stockholder vote*—requires a two-thirds vote of the stockholders to approve a dissolution instead of merely a majority vote.

Paragraph (b)—*Dissenters' appraisal rights*—explains that there will not be such rights in a dissolution.

60. *Section 543.53 Notice of dissolution*—is a new section on notice of dissolution generally derived from the Model Business Corporation Act.

Paragraph (a)—*Notice to creditors*—is a new requirement to notify all known creditors of the intention to dissolve upon filing a plan of dissolution with the Board.

Paragraph (b)—*Notice to accountholders*—sets forth the affirmative duty of the association to notify affected accountholders of the approval of the stockholders to dissolve in accordance with the Board's existing notice requirements for termination of insurance at § 565.5 of the Insurance Regulations.

61. *Section 543.54 Procedure for dissolution after Board and stockholder approval*—is a new section directing the association to do what acts are necessary to liquidate its business and affairs.

62. *Section 543.55 Termination of corporate existence*—is derived from current § 546.4 and the Model Business Corporation Act.

Paragraph (a)—*Completion of dissolution*—is essentially the last two sentences of current § 546.4.

Paragraph (b)—*Continuation of corporate existence after dissolution*—is a new section derived from the Model Business Corporation Act which continues the corporate existence for three years of a dissolving association solely for the purpose of defending or prosecuting legal actions, settling and closing the business, conveying property, discharging liabilities and distributing the remaining assets.

63. *Section 543.56 Involuntary Dissolution*—is a new section which allows the Board to waive any provision of the dissolution section if instituted for supervisory reasons or pursuant to Part 547.

64. *Sections 543.57–543.59* are reserved.

65. *Section 543.60 Supervisory waiver*—is a new section which allows the Board to waive any provision of Part 543 if necessary in specified supervisory circumstances.

B. PART 544—FEDERAL MUTUAL ASSOCIATIONS

66. Sections of existing Parts 543, 544, 545 and 546, and a number of new proposed sections modeled on the proposed sections in new Part 543, have been put into this new Part to cover the areas of final organization, charters and bylaws, combinations, bulk purchases or sale of assets, reorganization and dissolution of Federal mutual associations.

67. The following 60 sections, appendix and reserved sections are proposed:

544.1 Procedures for organization of Federal mutual associations; initial collection of pledged capital; organizational meeting
544.2 Powers of Federal mutual associations
544.3 Charters for Federal mutual associations
544.4 Preapproved charter amendments
544.4–1 Additional charter provisions [Reserved]
544.5 Procedures for obtaining Board approval of charter amendments
544.6 Reissuance of charter
544.7 Bylaws
544.8 Effect of subsequent charter or bylaw amendment
544.9 Members' meetings
544.9–1 Voting by proxy
544.9–2 Communications between members
544.9–3 Annual reports to members
544.10 Board of directors
544.10–1 Directors' meetings
544.10–2 Director's conflicts of interest
544.10–3 [Reserved]
544.10–4 Officers
544.10–5 Indemnification of directors, officers and employees
544.11–544.12 [Reserved]
544.13 Fiscal year; annual audit
544.14 Corporate procedures
544.15–544.19 [Reserved]
544.20 Combinations involving Federal mutual associations
544.21 Merger or consolidation
544.22–544.23 [Reserved]
544.24 Articles of combination for merger or consolidation
544.25 Effective date; date of consummation for merger or consolidation
544.26 Continuity of corporate existence after merger or consolidation
544.27 [Reserved]
544.28 Supervisory combinations
544.29 [Reserved]
544.30 Bulk purchase or sale of assets

544.31 [Reserved]
544.32 Articles of combination for bulk purchase or sale of assets
544.33 Effective date; date of consummation for bulk purchase or sale of assets
544.34 Continuity of corporate existence after bulk purchase or sale of assets
544.35 [Reserved]
544.36 Partial purchase or sale of assets
544.37–544.39 [Reserved]
544.40 Reorganization [Reserved]
544.41–544.49 [Reserved]
544.50 Dissolution
544.51 Voluntary dissolution
544.52 Approval by members of dissolution
544.53 Notice of dissolution
544.54 Procedure for dissolution after Board and member approval
544.55 Termination of corporate existence
544.56 Involuntary dissolution
544.57–544.59 [Reserved]
544.60 Supervisory waiver

APPENDIX A TO PART 544—MODEL BYLAWS FOR MUTUAL ASSOCIATIONS

68. *Section 544.1 Procedures for organization of Federal mutual association; initial collection of pledged capital; organizational meeting*—contains many parts of current § 543.6, the outline of information to obtain insurance of accounts, and codifies several longstanding Board policies on escrow of funds and bonding of officers. The section also clarifies the circumstances under which organizers may collect organizational expenses from subscribers and the procedures for refunding of subscription and expense funds in the event organization is not completed.

Paragraph (a)—*General*—indicates the provisions of Part 542 apply to applications for permission to organize a Federal mutual association.

Paragraph (b)—*Initial collection of pledged capital*—is derived from current § 543.6 and sets forth the requirements for collecting subscription pledges only after receiving conditional approval, the bonding of officers, directors, employees and agents, the escrow and return of pledged capital and the composition of the consideration for the initial minimum capitalization.

Paragraph (c)—*Organizational meeting*—revises current § 543.6(a)(2) to allow an organizational meeting within six months of receiving a certificate of authority to commence business, rather than the current delayed method of opening for business only after a subscribers' meeting with proper notice.

69. *Section 544.2 Powers of Federal mutual associations*—is a revised § 552.9, applicable now to mutual associations, that references other sections that deal with investments and other activities of Federal associations.

70. *Section 544.3 Charters for Federal mutual associations*—is essentially current § 544.1 with clearer directions and certain modifications to the current Federal mutual charter.

Paragraph (a)—*Initial charter*—establishes that the initial charter must be in the form specified in paragraph (c) but may contain preapproved optional provisions.

Paragraph (b)—*Federal savings bank charter*—sets out the additional charter language converting associations must include in their charters.

Paragraph (c)—*Federal mutual charter*—contains the wording for the standard form of charter; derived from current § 544.1 with the following revisions:

(1) The section 6 voting requirements, proxy requirements and quorum requirements have been moved to the bylaws; and

(2) In section 7 directions on vacancies and the election of directors have been moved to the bylaws.

Signature Page—A date line has been added to the charter so the effective date of the charter may be specified.

71. *Section 544.4 Preapproved charter amendments*—is essentially current § 544.2(b) which provides for preapproved charter amendments which are deemed to have received Board approval and therefore can be presented to the members without a prior filing with the Board.

Paragraph (a)—*Purposes and powers*—retains the optional paragraph two in section 4 of the Federal mutual charter now found at 544.2(b)(1).

Paragraph (b)—*Title change*—sets out the current rule of § 544.2(b)(2) and adds the current § 543.1(b) language regarding prior submission to the Supervisory Agent

Paragraph (c)—*Change of location*—is essentially current § 544.2(b)(3).

Paragraph (d)—*Savings bank charter*—is essentially current § 544.3.

Paragraph (e)—*Mutual capital certificates*—is essentially current § 544.2(b)(4).

Paragraph (f)—*Maximum number of votes for members*—is a new section designed to allow existing Federal mutual associations the option of amending their current charter to allow up to 1000 votes per member, a frequently requested amendment in conjunction with mutual to stock conversions.

72. *Section 544.4–1 Additional charter provisions*—is reserved.

73. *Section 544.5 Procedures for obtaining Board approval of charter amendments*—outlines the procedures for preliminary and final approval now found in §§ 552.4(a) and 544.2(a).

Paragraph (a)—*Procedure for obtaining preliminary approval of amendments*—establishes that if a proposed amendment's effect would be to render more difficult a change in control of the institution, an opinion of counsel independent of the association must accompany the proposal and must express a reasoned opinion that such an amendment is consistent with applicable statutes, regulations and board policies, and indicate whether such a provision would be permissible for a corporation incorporated under the laws of Delaware.

Paragraph (b)—*Procedure for obtaining final approval of amendments*—reiterates the filing requirement and the date of effectiveness of amendments now found at § 544.2(a).

74. *Section 544.6—Reissuance of charter*—is essentially current §544.2(c), with a description of required supporting documentation.

75. *Section 544.7—Bylaws*—for mutual associations have been extensively revised with language requiring an opinion of independent counsel if a proposed bylaw would render more difficult a change of control of the institution, in the same manner as required for charter amendments. The Board wishes to stress that bylaws would not be approved if they were inconsistent with the Board's rules of corporate governance or with provisions in an association's charter.

Paragraph (a)—*General*—is essentially current § 552.5(a) now applied to mutual associations, except for requiring bylaws consistent with the proposed rules governing bylaws.

Paragraph (b)—*Permissible bylaws*—is essentially current § 544.5(a).

Paragraph (c)—*Effectiveness*—sets forth when bylaws are effective and the requirement of an opinion of independent counsel in certain circumstances.

Paragraph (d)—*Procedure*—sets forth the procedures for filing bylaws and amendments thereto.

76. *Section 544.8 Effect of subsequent charter or bylaw amendment*—is essentially current § 544.6.

77. *Section 544.9 Members' meetings*—incorporates much of current § 544.5(b) (1), (2), (3), (4), (13) and (14).

Paragraph (a)—*Annual meetings of members*—is essentially current § 544.5(b)(1) except that annual meetings could now be held within 150 days after the end of an association's fiscal year instead of the current 120 days, and meetings could now be held in the state where the association has its principal

place of business or where it maintains branches, in recognition of the growing number of interstate associations.

Paragraph (b)—*Special meetings of members*—is essentially current § 544.5(b)(2).

Paragraph (c)—*Notice of meetings of members*—is essentially current § 544.5(b)(3), except that this section would clarify that the method of publication of notice must be calculated to ensure that notice will be conspicious. In addition, the Board invites comments on whether the time limits on notice should be modified to 20 to 50 days, as has been done in the proposal with respect to stock associations, which times were also applied to the fixing of record dates. The Board is aware that a number of state corporate codes call for 10-to-60 day requirements.

Paragraph (d)—*Fixing of record date*—is essentially current § 544.5(b)(4) except for modification of the time period as discussed above in paragraph (c).

Paragraph (e)—*Member quorum*—is essentially the language taken out of current charter section 6, indicating that the affirmative vote of a majority of votes cast at any properly convened meeting of the association's members is the act of the members when a quorum is present.

Paragraph (f)—*Nominations for directors*—is a more detailed codification than current § 544.5(b)(13) of the language in the current model bylaws regarding the selection of management nominees and the procedures for member nominations either prior to the meeting or at the meeting. It is noted again that non-standard bylaw amendments calling for cumbersome procedural barriers or unreasonable information requirements in connection with member nominations would not be permitted. The same will be true for the introduction of new business at an annual meeting which is discussed below.

Paragraph (g)—*New business*—is a more detailed codification than current § 544.5(b)(14) of the language in the current model bylaws regarding the introduction of new business at an annual meeting. It also provides for the introduction of new business at least 10 days prior to the meeting, rather than the current 30-day requirement.

78. *Section 544.9–1 Voting by proxy*—expands the current § 544.5(b)(5) and will now cover proxies, and other accounts controlled by parties such as fiduciaries, receivers and pledgees, and joint accounts.

Paragraph (a)—*General*—expands the notice requirements of current § 544.5(b)(5) to allow telephonic or electronic proxies and to allow proxies to designate corporations, partnerships or companies as holders.

Paragraph (b)—*Other voting arrangements*—is a new section which encompasses current § 544.5(f)(2), applies it to mutual associations, and adds rules for voting accounts held by an administrator, executor, guardian or conservator, accounts transferred into a trustees' name, accounts standing in the name of a receiver or under the control of a receiver, and accounts which are pledged.

Paragraph (c)—*Joint accounts*—is a new section setting forth rules derived from the opinions of the Office of General Counsel. The section sets out rules for voting joint accounts, splitting votes if agreed to in writing, and the treatment of situations where joint owners cannot agree on how to vote.

79. *Section 544.9–2 Communication between members*—is essentially current § 544.5(b)(6) and also incorporates a Board policy, now found at § 552.11(d), on the right to privacy of depositors of any Federal association.

80. *Section 544.9–3 Annual reports to members*—is a new section referencing § 544.115 which now governs this area.

81. *Section 544.10 Board of directors*—is a new section for mutual associations which partially encompasses current § 544.5(b), (7), (8), (10) and (11) but more closely resembles current § 552.6–1, with a greatly expanded section on the performance of duties of a director and a new definition of "cause" with regard to director removals. With respect to this definition of "cause" the Board specifically requests comments as to whether the definition should be exclusive.

Paragraph (a)—*General*—expands current § 544.5(b)(11) to include the authority to fix compensation and authorize reimbursement for expenses. In addition, the section would require a majority of directors be independent as defined in § 544.10–1(c). The Board also requests comment on this requirement for independent directors, which is similar to the requirement already imposed on all insured institutions pursuant to § 563.33.

Paragraph (b)—*Performance of duties*—is a new section which defines the director's duty to act in good faith, in a manner he reasonably believes to be in the best interests of the association, and with such care as an ordinary prudent person in a like position would use under similar circumstances.

Paragraph (c)—*Number and term*—is essentially current § 544.5(b)(7) and 552.6–1(b).

Paragraph (d)—*Vacancies*—is essentially current § 552.6–1(e) as it applies to mutual associations and is derived from old charter section 7.

Paragraph (e)—*Resignation or removal of directors*—is essentially current §§ 552.4(b)(10) and 552.6–1(f) with the addition of a definition of the term "cause" and a procedure for a defense to be presented by a director in a removal action. This section provides that directors may only be removed for cause. The Board specifically requests comments as to whether the members should be able to remove directors other than for "cause."

Paragraph (f)—*Age limitation on directors*—is essentially current § 552.6–1(k) as applied to mutual associations.

82. *Section 544.10–1 Directors' meetings*—expands a number of provisions currently found in §§ 544.5(b)(8) and 552.6–1 with additional provisions for conference telephone meetings and a new requirement for the establishment of an audit committee and an investment committee.

Paragraph (a)—*Meetings*—includes the language of current § 544.5(b)(8) for determination of place, frequency, time and procedures for notice for regular meetings of at least 24 hours, unless waived, and adds provision for telephonic meetings which will now constitute presence in person the for all purposes.

Paragraph (b)—*Quorum*—is essentially the last two sentences of current § 544.5(b)(8).

Paragraph (c)—*Executive and other committees*—is essentially current §§ 544.5(b)(11)(a) and 552.6–1(g) with several important additions. Section 2 of that paragraph requires the appointment of an audit committee of at least three directors the majority of whom shall be independent. Section 3 requires the appointment of an investment committee of at least three directors, the majority of whom shall be independent directors of the audit committee. The provisions also define independence and sets forth the duties of the audit committee and investment committee. The Board specifically requests comments on the requirement of an audit committee and an investment committee and the further requirement concerning independent directors of both committees.

Paragraph (d)—*Notice of special meetings*—is essentially current § 552.6–1(h) adapted for a Federal mutual association.

Paragraph (e)—*Action without a meeting*—is essentially current § 552.6–1(i) adapted for a Federal mutual association.

Paragraph (f)—*Presumption of assent*—is essentially current § 552.6–1(j) adapted for a Federal mutual association.

83. *Section 544.10–2 Director conflicts of interest*—is a new section

derived from the Board's conflicts-of-interest regulations.

Paragraph (a)—*General*—details when contracts or other transactions are not void or voidable even though a director may have a material financial interest in the transaction.

Paragraph (b)—*Presence of interested directors at meeting*—details when contracts or other transactions are not void or voidable even if a director may be an "interested director," if there is adequate disclosure of his interest and approval by the disinterested directors.

Paragraph (c)—*Determining a quorum*—allows interested directors to be counted in determining the presence of a quorum at a meeting that ratifies a contract or transaction discussed above.

Paragraph (d)—*Transactions with affiliates*—preserves the Board's right to object to a contract or transaction discussed above in conjunction with its regulations on transactions with affiliates.

84. *Section 544.10–3* is reserved.

85. *Section 544.10–4 Officers*—is based upon current §§ 544.5(b)(9) and 552.6–2 with the addition of a paragraph on employment contracts.

Paragraph (a)—*Positions*—is essentially current §§ 544.5(b)(9) and 552.6–2(a).

Paragraph (b)—*Removal*—is essentially current § 552.6–2(b) adapted for Federal mutual associations, with the addition of a new definition of "cause" which is the same as used in the new definition of "cause" applicable to removal of directors.

Paragraph (c)—*Employment contracts*—specifically authorizes employment contracts in conformance with Insurance Regulation § 563.39. The Board specifically requests comments in this regard as to whether it should adopt additional regulations governing so-called "golden parachute" or "silver wheelchair" types of employment contracts.

Paragraph (d)—*Age limitation on officers*—is essentially current § 552.6–2(c).

86. *Section 544.10–5 Indemnification of directors, officers, and employees*—is a new section derived from current § 545.121. Indemnification is extended for officers, directors, and employees of the association and specifically permitted for officers, directors, and employees of wholly-owned service corporation subsidiaries. The Board specifically requests comments on the extension of indemnification to wholly-owned service corporations as well as the limitation of persons eligible to be indemnified to officers, directors, and employees.

Paragraph (a)—*General*—is essentially current § 545.121(b) with the inclusion of service performed for wholly-owned subsidiaries discussed above.

Paragraph (b)—*Conditions*—is essentially current § 545.121(c) with the retention of the 60-day notice to the Board and the expansion of delegated authority to the Office of Examinations and Supervision with the concurrence of the Office of General Counsel to object to the indemnification. In addition, this section adds a provision for action to be brought in the right of the association. The Board is aware some state codes allow a disinterested attorney to make the determination and the Board specifically solicits comments as to the use of such disinterested counsel, particularly where a quorum of disinterested directors is not available. The Board also solicits comments in this regard on the standard to be used in determining whether a counsel is "disinterested."

Paragraph (c)—*Insurance*—is essentially current § 545.121(d).

Paragraph (d)—*Advance payment of expenses*—is essentially current § 545.121(e).

Paragraph (e)—*Prohibited indemnification*—is a new section prohibiting indemnification if in contravention of public policy.

Paragraph (f)—*Exclusiveness of provisions*—is essentially current § 545.121(f) which clarifies the grandfathering of bylaws in effect as of a certain date.

Paragraph (g)—*Definitions and rules of construction*—is essentially current § 545.121(a) with an additional definition of the term "disinterested." The Board specifically invites comments on the scope of this term.

87. *Section 544.11–544.12* are reserved.

88. *Section 544.13 Fiscal year; annual audit*—is essentially current § 552.6–4 adapted for Federal mutual associations.

89. *Section 544.14 Corporate procedures*—is a new section containing several permissible bylaws in the current mutual association model bylaws which include execution of instruments, corporate seal and miscellaneous provisions.

Paragraph (a)—*Execution of instruments generally*—is essentially current § 544.5(b)(12).

Paragraph (b)—*Seal*—is essentially current § 544.5(b)(15).

Paragraph (c)—*Miscellaneous*—is essentially current § 544.5(b)(17).

90. *Appendix A to Part 544—Model Bylaws for Mutual Association*—is a set of 12 Articles derived from the current model bylaws for Federal mutual associations and formatted to look like the current model bylaws for Federal stock associations but containing significant revisions based upon §§ 544.8 through 544.14, discussed above.

91. *Section 544.15–544.19* are reserved sections.

92. *Section 544.20 Combinations involving Federal mutual associations*—is a section largely derived from current §§ 552.13 (1985) and 546.2 with modifications to the merger rules, additions to the combination agreement, revised notice requirements and a severing of the bulk purchase of assets section into a separate section.

93. *Section 544.21 Merger or consolidation*—as the first two types of permissible combinations tracks current §552.13.

Paragraph (a)—*Permissible merger or consolidation*—lists the two conditions under which a Federal mutual association may merge or consolidate with other associations now found at §552.13(c) and adds a third condition now found at § 546.2 requiring that mergers with state-chartered institutions be in accordance with state law. Current § 552.13(b) definitions have been moved to the definitional section of Corporate Governance, Part I, new proposed Part 541.

Paragraph (b)—*Board approval*—is essentially current §552.13(d).

Paragraph (c)—*Approval by the Board's Supervisory Agent*—is essentially current § 552.13(e) expanded to include the delegated authority in current § 546.2 to approve maintenance of branch offices and temporary increases in the size of the board of directors.

Paragraph (d)—*Approval of board of directors*—is essentially current § 552.13(f).

Paragraph (e)—*Approval by members*—is essentially current § 546.2(e).

Paragraph (f)—*Conservator or receiver action*—is essentially current § 546.2(f).

Paragraph (g)—*Combination agreement*—is essentially current §552.13(g).

Paragraph (h)—*Corporate title; change of location*—specifies that the charter must be amended in certain instances and is derived from current § 546.2(g).

Paragraph (i)—*Application for Board approval*—is essentially current § 552.13(h) with an additional reminder to applicants that any required Hart-Scott-Rodino antitrust filing must also be made.

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Paragraph (j)—*Notice*—is a modified version of current § 552.13(i). The modifications include the requirement that public notice must appear in the communities in which the home offices of all constituent associations are located.

94. *Section 544.22–544.23* are reserved.

95. *Section 544.24 Articles of combination for merger or consolidation*—is essentially current § 552.13(1) paragraphs 1 and 2.

96. *Section 544.25 Effective date; date of consummation for merger or consolidation*—is partially derived from current § 552.13(m) and various state code provisions allowing for a later effective date if requested. The section on date of consummation of a merger or consolidation was proposed to clarify an ongoing procedural problem that the effective date and date of consummation are often not the same.

Paragraph (a)—*Effective date*—tracks the language of current § 552.13 (m) but allows the possibility of a later effective date of a merger or combination if requested. In addition delegated authority to approve combinations is recognized by this section.

Paragraph (b)—*Date of consummation*—specifies that combinations cannot be concluded until necessary compliance materials are submitted to the Supervisory Agent's satisfaction and adds that the Board or its delegate may suspend, alter or withdraw its approval if such action is warranted on the basis of a material change in circumstances, prior to the date of consummation.

97. *Section 544.26 Continuity of corporate existence after merger or consolidation*—is essentially current § 546.3.

98. *Section 544.27* is reserved.

99. *Section 544.28 Supervisory combinations*—is essentially current § 552.15 with additional language derived from section 5(o)(2)(F) of the HOLA regarding cases where severe financial conditions exist which threaten the stability of an association.

100. *Section 544.29* is reserved.

101. *Section 544.30 Bulk purchase of sale of assests*—is derived from current § 552.13. The definition of "bulk purchase of assets" has been expanded.

Paragraph (a)—*Permissible bulk purchase of assets*—is essentially current § 552.13(c)(3) with clarifying language to better address bulk transfers to interim associations as well as to operating associations.

Paragraph (b)—*Permissible bulk sale of assets*—restates the Board's current policy that bulk sales of assets are only permissible in supervisory cases. The Board invites comments from the public on this policy.

Paragraph (c)—*Bulk purchase or sale of assets defined*—expands the current definitional § 552.13(b)(2), now appearing in the definitions section of Corporate Governance, Part I, new proposed Part 541, to include a percentage-of-assets test to determine whether substantially all of the assets of an association are involved such that a transaction would constitute a bulk purchase or sale. The Board invites comments on the choice of 50 percent of total assets of the association prior to the acquisition as the appropriate percentage.

Paragraph (d)—*Board approval*—tracks the language of current § 552.13(d).

Paragraph (e)—*Approval by the Board's Principal Supervisory Agent*—is essentially current § 552.13(e), incorporating recently amended § 563.22 which expands the authority of the Principal Supervisory Agent and the Board's Washington staff to act on many applications pursuant to delegated authority.

Paragraph (f)—*Approval by board of directors*—is essentially current § 552.13(f).

Paragraph (g)—*Combination agreement*—refers the applicant to new § 544.21(g)(2).

Paragraph (h)—*Application for Board approval*—refers the applicant to new § 544.21(i).

Paragraph (i)—*Notice*—refers the applicant to new § 544.21(j).

102. *Section 544.31* is reserved

103. *Section 544.32 Articles of combination for bulk purchase or sale of assets*—refers the applicant to new § 544.24.

104. *Section 544.33 Effective date; date of consummation for bulk purchase or sale of assets*—refers the applicant to new § 544.25.

105. *Section 544.34 Continuity of corporate existence after bulk purchase or sale of assets*—makes clear that a bulk purchase or sale of assets does not affect the corporate existence of the transferee or transferor Federal mutual association.

106. *Section 544.35* is reserved

107. *Section 544.36 Partial purchase or sale of assets*—is a new section to differentiate between a bulk purchase or sale and a partial purchase or sale. The same percentage-of-asset test is used in this section as was used in new § 544.30, and the Board specifically requests public comments on this aspect of the proposal. In addition, the section refers applicants to § 563.22 of the Insurance Regulations for the rules governing procedures for obtaining approval of partial purchases or sales of assets.

108. *Section 544.37–544.39* are reserved.

109. *Section 544.40 Reoganization*—is also reserved.

110. *Sections 544.41–544.49* are reserved.

111. *Section 544.50 Dissolution*—is derived from current § 546.4, the Model Business Corporation Act and the Delaware and California Codes.

112. *Section 544.51 Voluntary dissolution*—is derived from current § 546.4.

Paragraph (a)—*Plan for dissolution*—set forth the requirements for a board of directors to propose a dissolution.

Paragraph (b)—*Board approval*—sets forth the necessity for Board approval of such a plan of dissolution and the criteria for an approval.

113. *Section 544.52 Approval by members for dissolution*—is derived from current § 546.4.

114. *Section 544.53 Notice of dissolution*—is a new section derived from the Model Business Corporation Act.

Paragraph (a)—*Notice to creditors*—is a new requirement to notify all known creditors of the intention to dissolve upon filing a plan of dissolution with the Board.

Paragraph (b)—*Notice to accountholders*—sets forth the affirmative duty of the association to notify affected accountholders of the approval of the members to dissolve in accordance with the Board's existing notice requirements for termination of insurance of § 565.5 of the Insurance Regulations.

115. *Section 544.54 Procedure for dissolution after Board and member approval*—is a new section directing the association to do what acts are necessary to liquidate its business and affairs.

116. *Section 544.55 Termination of corporate existence*—is derived from current § 546.4 and the Model Business Corporation Act.

Paragraph (a)—*Completion of dissolution*—is essentially the last two sentences of current § 546.4.

Paragraph (b)—*Continuation of corporate existence after dissolution*—is a new section derived from the Model Business Corporation Act which continues the corporate existence for three years of a dissolving association solely for the purpose of defending or prosecuting legal actions, settling and closing the business, conveying property, discharging liabilities and distributing the remaining assets.

117. *Section 544.56 Involuntary Dissolution*—is a new section which allows the Board to waive any provision of the dissolution section if the dissolution is instituted for supervisory reasons or pursuant to Part 547.

118. *Sections 544.57–544.59* are reserved.

119. *Section 544.60 Supervisory waiver*—is a new section which allows the Board to waive any provision of Part 544 if necessary in specified supervisory circumstances.

C. Comment Period and Effective Date

The Board is soliciting comments on Part II of the proposal for a period of 60 days, but will also accept comments after the 60-day period if made in conjunction with comments regarding later Parts of the proposal. Comments on Part I of the Board's Corporate Governance proposal also may be submitted during the current period for this Part II. The Board specifically requests public comment on procedures for implementing these proposed rules at such time as they become effective. The Board is considering requiring compliance with the proposed regulations by the next annual meeting which occurs 120 days after the effective date of the final regulations.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603 (1982), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rules would apply to all federally chartered savings and loan associations and savings banks ("Federal associations").

3. *Impact of the proposed rules on small institutions.* The policies will affect all Federal associations equally and will not have an adverse impact on small institutions.

4. *Overlapping or conflicting Federal rules.* There are no known Federal rules which duplicate, overlap, or conflict with the proposed rules.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the supplementary information set forth above.

List of Subjects in 12 CFR Parts 543 and 544

Savings and Loan Associations, Savings banks.

Accordingly, the Federal Home Loan Bank Board hereby proposes to revise Parts 543 and 544, Subchapter C, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 543—FEDERAL STOCK ASSOCIATIONS

1. Revise Part 543 as follows:

PART 543—FEDERAL STOCK ASSOCIATIONS

Sec.

543.1 Procedure for organization of Federal stock association; Initial sale of capital stock; organizational meeting.
543.2 Powers of Federal stock associations.
543.3 charter for Federal stock associations.
543.4 Preapproved charter amendments.
543.4–1 Additional charter provisions.
543.5 Procedures for obtaining Board approval of charter amendments.
543.6 Reissuance of charter.
543.7 Bylaws.
543.8 Effect of subsequent charter or bylaw change amendment.
543.9 Stockholder meetings.
543.9–1 Stockholder voting.
543.9–2 Voting trusts among stockholders.
543.9–3 Books and records; stockholder access.
543.9–4 Annual reports to stockholders.
543.9–5 Stockholder derivative actions.
543.10 Board of directors.
543.10–1 Directors' meetings.
543.10–2 Director's conflicts of interest.
543.10–3 Liability of directors for improper distributions.
543.10–4 Officers.
543.10–5 Indemnification of directors, officers and employees.
543.11 Certificates for stock and their transfer.
543.11–1 Consideration for stock.
543.11–2 Stock rights and options.
543.11–3 Fractional shares of stock.
543.11–4 Liability of stockholders.
543.12 Authority to acquire own stock.
543.12–1 Authority to pay dividends to stockholders.
543.12–2 Limitations on distributions to stockholders.
543.12–3 Reduction of paid-in capital.
543.13 Fiscal year; annual audit.
543.14 Corporate procedures.
543.15–543.19 [Reserved]
543.20 Combinations involving Federal stock associations.
543.21 Merger or consolidation.
543.22 Short-form merger.
543.23 Approval by stockholders for merger or consolidation.
543.24 Articles of combination for merger or consolidation.
543.25 Effective date; date of consummation for merger or consolidation.
543.26 Continuity of corporate existence after merger or consolidation.
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543.28 Supervisory combinations.
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543.30 Bulk purchase or sale of assets.
543.31 Approval by stockholders.
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543.33 Effective date; date of consummation.
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543.35 Dissenters' appraisal rights in bulk purchase or sale of assets.
543.36 Partial purchase or sale of assets.
543.37–543.39 [Reserved]
543.40 Reorganization [Reserved]
543.41–543.49 [Reserved]
543.50 Dissolution.
543.51 Voluntary dissolutions.
543.52 Approval by stockholders for dissolution.
543.53 Notice of dissolution.
543.54 Procedure for dissolution after Board and stockholder approval.
543.55 Termination of corporate existence.
543.56 Involuntary dissolution.
543.57–543.59 [Reserved]
543.60 Supervisory waiver.
Appendix A to Part 543–Model Bylaws for Stock Associations

Authority: 12 U.S.C. 1464; Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071.

§ 543.1 Procedure for organization of Federal stock association; initial sale of capital stock; organizational meeting.

(a) *General.* Applications for permission to organize a Federal stock association shall be subject to the provisions of §§542.1 through 542.12 of this Subchapter.

(b) *Initial sale of capital stock.* No stock may be offered or sold until the organizers have received conditional approval of the application for permission to organize. Upon the conditional approval of an application for permission to organize a Federal stock association and after the interim officers, directors, employees and agents have been bonded to the extent required by §563.19 of this chapter, the association may proceed to offer and sell its shares of stock and to make all required related filings in accordance with the following:

(1) No shares of stock shall be offered or sold except pursuant to Part 563g of this Chapter, in such final form as adopted by the Board; [Proposed Part 563g is set forth at 50 FR 38839, September 25, 1985.]

(2) Any funds received in an offering of securities in connection with organization and any interest earned thereon shall be held in an escrow, trust account, or similar separate account (which includes an underwriter's or broker-dealer's account), for the association, until (a) the association has received the certificate of authority to do business specified in §542.7 and the securities are issued or (b) the offering is

terminated. The escrow or trust account is required to be with an independent financial institution insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation and shall not be reachable by personal creditors of an organizer. The association shall not collect any funds from the escrow, trust account or similar separate account until the offering has been completed pursuant to the terms of the offering, all conditions of the Board's approval of the application for Permission to Organize are satisfied and the Principal Supervisory Agent approves the release of the funds. While organizers may make contributions to a separate expense fund, subscribers shall not make such contributions. If an offering is not completed within the term of the proposed offering period, any funds collected shall be promptly refunded in full with any interest earned thereon, less a deduction from any interest earned, *Provided*, that: (i) Such deduction is for reasonable organizational or offering expenses and (ii) the terms of the offering provide for such a deduction from interest;

(3) All shares of stock sold in the initial capitalization shall be offered to all purchasers on the same basis and sold at a uniform price and on uniform terms and conditions, and unless approved specifically by the Board, consideration for the initial minimum capitalization shall consist of cash or tangible property to the extent investment in such property would be permitted to the association. Further all stock sold shall be paid in full and shall be nonassessable. Stock options and warrants granted at or before the completion of organization shall be granted subject to stockholder approval and shall have an exercise price at least equal to the initial offering price of the stock;

(4) The par value of stock, if any, shall be as specified in the charter and if no par value is specified then each share of stock shall have a stated value equal to the purchase price of each share.

(c) *Organizational meeting.* Within six months of receiving the certificate of authority to commence business, the association shall provide notice, pursuant to § 543.9 of this Part, of a meeting of its stockholders to elect a board of directors. Until such time, the interim board of direcors shall be governed by the Model Bylaws. Immediately following such election the directors shall meet to adopt permanent bylaws, elect the officers of the association and undertake any other action necessary to complete corporate organization.

§ 543.2 Powers of Federal stock associations.

In addition to the authority contained in this Part and in its charter, a Federal stock association may make any loan or investment or engage in any activity authorized for a Federal association in Part 545, 550, 555, or 556 of this Chapter and in section 5(c) of the Home Owners' Loan Act of 1933, as amended, or the successor provisions of any of the foregoing.

§ 543.3 Charter for Federal stock associations.

(a) *Initial charter.* The initial charter of a *de novo* Federal stock association shall be in the form specified in paragraph (d) of this section and may also include any preapproved optional provision contained in §543.4 of this Part. Initial federal stock charters of institutions converting from the state stock form may also include additional charter provisions carried over from the association's former charter, provided that such provisions must be approved by the Board in accordance with §543.5 and be separately submitted to the association's stockholders for approval.

(b) *Converted associations.* An association that has converted from the mutual form pursuant to Part 563b of this Chapter shall include in its charter (1) a section establishing a liquidation account as required by § 563b.3(c)(13) of this Chapter and (2) the bracketed clause in the third paragraph of section 5.

(c) *Federal savings bank charter.* A charter for a Federal stock savings bank shall substitute the term "savings bank" for "association" and, for savings banks converting pursuant to §546.10 of this Subchapter shall include the following sentence at the end of section 4 of the Charter set forth at paragraph (d) of this section: "In addition, the savings bank may make any investment and engage in any activity as may be specifically authorized by action of the Board, including authorization by delegated authority, in connection with action approving the issuance of the charter."

(d) *Federal stock charter.* The following is the standard form of Federal stock charter. Associations may vary the wording of charters only in accordance with bracketed instructions.

Federal Stock Charter

Section 1. *Corporate title.* The full corporate title of the association is ———.

Section 2. *Office.* The home office shall be located at ———.

Section 3. *Duration.* The duration of the association is perpetual.

Section 4. *Purpose and powers.* The purpose of the association is to pursue any or all of the lawful objectives of a Federal association chartered under section 5 of the Home Owners' Loan Act and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental therto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Federal Home Loan Bank Board ("Board").

Section 5. *Capital stock.* The total number of shares of all classes of the capital stock which the association has the authority to issue is ———, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of ——— per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its stockholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the stock shall be paid in full before its issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of stock of the association. The consideration for the stock shall be cash, tangible property (to the extent direct investment in such property would be permitted to the association), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of fraud, the value of such property, labor, or services, as determined in good faith by the board of directors of the association, shall be conclusive. Upon payment of such consideration, such stock shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the association which is transferred to common stock or paid-in capital accounts upon the issuance of stock as a stock dividend shall be deemed to be the consideration for their issuance.

Except for stock issued in the initial organization of the association or in the conversion of the association from the mutual to stock form, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or beneficial owners of ten percent or more of any class of capital stock of the association other than as part of a general public offering or as qualifying stock to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting. In the event of any liquidation, dissolution, or winding up of

the association [and subject to any provision for a liquidation account], the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the association, to receive the remaining assets of the association available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respect with all the other shares of common stock.

Section 6. *Preemptive rights.* Holders of the capital stock of the association shall not be entitled to preemptive rights with respect to any stock of the association which may be issued.

Section 7. *Directors.* The association shall be under the direction of a board of directors. The authorized number of directors, as stated in the association's bylaws, shall not be fewer than five nor more than fifteen except when a greater number is approved by the Board or its delegate.

Section 8. *Amendment of charter.* Except as provided in Section 5, no amendment, addition, alteration, change, deletion to or repeal of this charter shall be made, unless such is first proposed by the board of directors of the association, then preliminarily approved by the Board, which preliminary approval may be granted by the Board pursuant to regulations specifying preapproved charter amendments, and thereafter approved by the stockholders by a majority of the total votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required. Any amendment, addition, alteration, change, deletion to or repeal so acted upon shall be effective upon filing with the Board in accordance with regulatory procedures or on such other date as the Board may specify in its preliminary approval.

Attest: ————.

Secretary of the Association.

By: ————,

President or Chief Executive Officer of the Association.

Attest: ————,

Secretary to the Board.

By: Federal Home Loan Bank Board.

————.

————.

Effective date: ————.

§ 543.4 Preapproved charter amendments.

This section constitutes preliminary approval by the Board of proposals to stockholders by the board of directors of any Federal stock association, for the adoption or deletion of any of the following amendments to such association's charter, including the adoption of the Federal stock charter as set forth in § 543.3(d) of this Part: *Provided,* that the association follows the requirements of its charter in adopting the amendments, and *Provided further,* that where a paragraph specifies wording for an amendment, such amendment uses the exact wording as specified in that paragraph. Citations to charter sections refer to the charter set forth at § 543.3(d) of this Part.

(a) *Title change.* A Federal stock association may amend its charter by substituting a new corporate title upon satisfaction of the requirements of this paragraph. Prior to submitting the proposed amendment to its stockholders, the association must file with the Supervisory Agent a written notice setting forth the proposed title. The Supervisory Agent shall provide to the association a timely written acknowledgement of receipt. If, within 30 days of receipt of notice, the Supervisory Agent does not notify the association of his objection on the grounds set forth in § 542.2 of this Subchapter, the association may change its title by amending its charter in accordance with § 543.5(b) of this Part and the amendment provisions of its charter, except that an association may change its title to indicate that it is a Federal savings bank, and an association chartered as a Federal savings bank may change its title to indicate that it is a Federal savings and loan association, only pursuant to paragraph (c) of this section.

(b) *Change of location.* A Federal stock association that has complied with § 545.95 of this Subchapter may amend its charter by substituting a new home office in section 2.

(c) *Savings bank charter.* A Federal stock savings and loan association may amend its charter to read in the form of a Federal stock savings bank charter as specified in § 543.3(c) of this Part and a Federal stock saving bank may amend its charter to read in the form of a Federal stock savings and loan association charter: *Provided,* that such association complies with the requirements of § 546.10 of this Subchapter.

(d) *Number of shares of stock and par value.* A Federal association may amend section 5 of its charter to change the number of authorized shares of stock, the number of shares within each class of stock, and the par or stated value of such stock.

(e) *Preferred stock.* A Federal stock association may amend its charter by revising Section 5 to read as follows:

Section 5. *Captial stock.* The total number of shares of stock of all classes of the capital stock which the association has the authority to issue is ———, of which ——— shall be common stock of par [or if no par value is specified, the stated] value of ——— per share and of which [list the number of each class of preferred and the par or stated value per stock of each such class]. The stock may be issued from time to time as authorized by the board of directors without further approval of stockholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the stock shall be paid in full before its issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of stock of the association. The consideration for the stock shall be cash, tangible property (to the extent direct investment in such property would be permitted to the association), labor, or services actually performed for the association, or any combination of the foregoing. In the absence of fraud, the value of such property, labor, or services, as determined in good faith by the board of directors of the association, shall be deemed to be fully paid and non-assessable. In the case of stock a dividend, that part of the retained earnings of the association which is transferred to paid-in capital upon the issuance of stock as a stock dividend shall be deemed to be the consideration for its issuance.

Except for stock issued in the initial organization of the association or in the conversion of the association from the mutual to the stock form, no shares of capital (including stock issuable upon conversion, exchange, or exercise, or other securities) shall be issued, directly or indirectly, to officers, directors, or beneficial owners of ten percent or more of any class of capital stock of the association other than as part of a general public offering or as qualifying stock to a director, unless the issuance of such stock or the plan under which it would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this Section 5 (or in any supplementary section hereto) shall entitle the holders of any class of or series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting: *Provided,* that this restriction on voting separately by class or series shall not apply:

(i) To any provison which would authorize the holders of preferred stock, voting as a class or series, to elect members of the board of directors constituting fewer than a majority thereof, in the event of default in the payment of dividends on any class or series of preferred stock;

(ii) To any provision which would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the association with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business exchange for securities of a corporation other than the association if the preferred stock is exchanged or securities of such other corporation: *Provided,* that no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the Federal Savings and Loan Insurance Corporation;

(iii) To any amendment which would adversely change the specific terms of any

class or series of capital stock as set forth in this section 5 (or in any supplementary sections thereto), including any amendments which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving association in a merger or consolidation for the association, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the associaiton's capital stock and a statement of the designation, and the relative rights, preferences and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. *Common stock.* Except as provided in this Section 5 (or in any supplmentary sections thereto), the holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors; unless the charter otherwise provides that there shall be no such cumulative voting.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or the retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith and to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the association, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the association available for distribution remaining after: (i) Payment or provision for payment of the association's debts and liabilities; (ii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the association. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. *Preferred Stock.* The association may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately designated so as to distinguish the stock thereof from the stock of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of stock of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The distinctive serial designation and the number of shares of stock constituting such series;

(b) The dividend rate or the amount of dividends to be paid on the shares of stock of such series, whether dividends shall be cumulative and, if so, from which date(s), the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

(c) The voting powers, full or limited, if any, of shares of stock of such series;

(d) Whether the shares of stock of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which, such stock may be redeemed;

(e) The amount(s) payable upon the shares of stock of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association;

(f) Whether the shares of stock of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such stock, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such stock may be redeemed or purchased through the application of such fund;

(g) Whether the shares of stock of such series shall be convertible into, or exchangeable for, shares of stock of any other class or classes of stock of the association and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange;

(h) The price or other consideration for which the shares of stock of such series shall be issued; and

(i) Whether the shares of stock of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares of stock may be reissued as shares of the same or any other series of serial preferred stock.

Each share of stock of each series of serial preferred stock shall have the same relative rights and be identical in all respect with all the other shares of stock of the same series.

Except as otherwise provided in this Section 5, the board of directors shall have authority by resolution or resolutions from time to time adopted to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred stock of a series established by a supplementary charter section adopted by the board of directors, the association shall file with the Supervisory Agent, the Office of General Counsel and with the Secretary to the Board a dated copy of that supplementary section of this charter establishing and designating the series and fixing and determining the relative rights and preferences thereof.

(f) *Limitations on subsequent issuances.* A Federal stock association may amend its charter to require stockholder approval of the issuance or reservation of common stock or securities convertible into common stock under circumstances which would require stockholder approval under the rules of the New York Stock Exchange or the American Stock Exchange if the stock were then listed on the New York or American Stock Exchanges, or to insert in the second paragraph of section 5 before the word "unless" the following: "or shares of common stock exceeding fifteen percent of the total number of stock than outstanding,".

(g) *Anti-takeover provisions following conversion.* A Federal stock association that has converted to the stock from pursuant to Part 563b may amend its charter by renumbering existing sections as appropriate and adding a new section 8 as follows:

Section 8. *Certain Provision Applicable for Five Years.* Notwithstanding anything contained in the association's charter or bylaws to the contrary, for a period of [specify period up to five years from the date of completion of the conversion of the association from mutual to stock form], the following provisions shall apply:

(A) *Beneficial Ownership Limitation.* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of the association. This limitation shall not apply to a transaction in which the association forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenters' appraisal rights, or to the purchase of stock by underwriters in connection with an offering of the association's equity securities.

In the event stock is acquired in violation of this section 8, all stock beneficially owned by any person in excess of ten percent shall be considered "excess stock" and shall not be counted as stock entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

For purposes of this section 8, the following definitions apply:

(a) The term "person" includes an individual, a group acting in concert, or any "company" as defined in § 574.2(e).

(b) The term "offer" includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request for invitation for tenders of, a security or interest in a security for value.

(c) The term "acquire" includes every type of acquisition, whether effected by purchase, exchange, operation or law or otherwise.

(d) The term "acting in concert" means (a) knowing participation in a joint activity or conscious interdependent parallel action towards a common goal whether or not pursuant to an express agreement, or (b) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

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(B) *Cumulative Voting Limitation.* Stockholders shall not be permitted to cumulate their votes for election of directors.

(C) *Call for Special Meetings.* Special meetings of stockholders relating to changes in control of the association or amendments to its charter shall be called only upon direction of the board of directors.

(h) *Cumulative voting.* A Federal stock association may amend its charter by substituting the following sentence for the second sentence in the third paragraph of Section 5: "Each holder of shares of common stock shall be entitled to one vote for each share held by such holder and there shall be no right to cumulate votes in an election of directors."

(i) *Preemptive rights.* A Federal stock association may amend its charter by substituting the following language as a new Section 6: "Each holder of the capital stock of the association shall be entitled to preemptive rights with respect to any stock of the association which may be issued."

§ 543.4–1 Additional charter provisions.

After a Federal stock charter is issued, the board of directors of a Federal stock association may request perliminary approval of additional charter provisions not listed in § 543.3 or § 543.4; *Provided,* that any such provision must be consistent with applicable statutes, regulations and Board policies; and *Provided further* that any such provision having the effect of rendering more difficult a change in control of the association which requires for any corporate actions (other than the election or removal of directors), the affirmative vote of a larger percentage of stockholders than is required by this Part, including approval of the transactions involving certain stockholders, shall not be effective unless adopted by a percentage of stockholder vote at least equal to the highest percentage that would be required to take any action under such provision.

§ 543.5 Procedures for obtaining Board approval of charter amendments.

(a) *Procedure for obtaining preliminary approval of charter amendments.* Preliminary approval is the approval required before submitting charter amendments to a vote of the stockholders. Adoption or deletion of any of the provisions set forth at § 543.3 or § 543.4 of this Part are granted preliminary approval. The board of directors of a Federal stock association may request preliminary approval of amendments to the association's Federal stock charter not listed in § 543.3 or 543.4 by filing with the Office of General Counsel, with a copy to the Supervisory Agent, a certified resolution of the board of directors of the association proposing the amendment and setting forth the text of the amendment. Any such provision must be consistent with applicable statutes, regulations and Board policies. In addition, if the effect of the proposed amendment would be to render more difficult a change in control of the institution, the filing shall include an opinion, acceptable to the Board, of counsel independent from the association, demonstrating that the proposed charter provision is consistent with applicable statutes, regulations and Board policies and indicating whether such a proviaion would be permissible for a corporation incorporated under the laws of Delaware. Any amendment not consistent with statutes, regulations or policies of the Board need not be approved by the Board or its delegate, regardless of their purported permissibility under state law. The Board's General Counsel or his designee has delegated authority to make determinations under this section and grant or deny the preliminary approval of the Board for amendments to Federal stock of the Board for amendments to Federal stock charters or to Charles S or T. Upon making any such determination, the General Counsel shall notify the Supervisory Agent who shall forward a copy of that determination to the association.

(b) *Procedures for obtaining final approval of amendments.* Whenever a Federal stock association whose charter specifies that amendments shall be effective upon filing completes the procedures necessary to amend its charter, or adds supplementary sections thereto, the association shall submit three signed copies of such amendment, along with a certification by the secretary of the association that the amendment has been validly authorized and approved, to the Supervisory Agent, who shall return to the association a signed copy of the charter amendment stamped to demonstrate its filing and forward one copy to the Board's Office of District Banks. Such filing shall constitute filing with the Board for purposes of determining the effectiveness of the amendment. A Federal stock association whose charter provides that any amendment shall be effective on the date it receives final approval of the Board shall be deemed to have obtained such final approval on the date it files a copy of the properly adopted amendment with the Supervisory Agent in the manner specified in the first sentence of this paragraph (b).

§ 543.6 Reissuance of charter.

A Federal stock association that has amended its charter may apply to have its charter, including any amendments thereto, reissued by the Board by filing three executed copies, with the signatures required under § 543.3 of this Part, with the Board's Office of District Banks, with such supporting documents as are needed to demonstrate that the amendments were properly adopted. Supporting documents shall include copies of the letters granting preliminary approval of the amendments and certifications regarding the vote of stockholders. The Board delegates to the General Counsel or his designee authority to sign on its behalf charters submitted for reissuance pursuant to this paragraph. Following attestation by the Secretary to the Board or his designee, a copy shall be returned to the association with copies forwarded to the Supervisory Agent and Office of District Banks.

§ 543.7 Bylaws.

(a) *General.* At its first meeting following election by the stockholders, the board of directors of a Federal stock association shall adopt a set of bylaws for the administration and regulation of its affairs. Except as otherwise provided in this section or in the charter, bylaws may be adopted, amended, or repealed by either a majority of the votes cast by the stockholders at a legal meeting or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the association in accordance with the requirements of §§ 543.8 through 543.13 of this Part.

(b) *Permissible bylaws.* The bylaws and all amendments thereto shall not contain any provision that is inconsistent with §§ 543.8 through 543.14 of this Part or with other applicable laws, rules, regulations, or the policies underlying such rules, or with the charter of the association. Bylaw provisions that adopt the language of the Model Bylaws set out in the Appendix to this Part shall be deemed to comply with the requirements of this section.

(c) *Effectiveness.* Bylaws and amendments thereto that adopt the wording of the Model Bylaws in the Appendix shall be effective upon filing with the Supervisory Agent along with a statement that such provisions conform to the Model Bylaws. Bylaws and amendments that do not adopt the wording of the Model Bylaws shall not be effective unless approved by the Supervisory Agent. Approval by the Supervisory Agent shall constitute the approval of the Board for associations

whose bylaws require such approval for amendment. The Supervisory Agent shall not accept any bylaws or amendments thereto for filing not conforming to the Model Bylaws unless accompanied by an opinion of counsel independent from the association that such bylaws or amendments conform to the requirements of paragraph (b) of this section. Notwithstanding anything in this section, however, no bylaw provision whose effect would be to render more difficult a change in control of the institution or which adversely affects the ability of stockholders to participate in the governance of the institution shall be effective unless such bylaw or amendment has been approved by the General Counsel or his designee. Any such provision must be filed with the Office of General Counsel together with an opinion, acceptable to the Board, of counsel independent from the association, demonstrating that the proposed provision is consistent with applicable statutes, regulations and Board policies and indicating whether such provision would be permissible for a corporation incorporated under the laws of Delaware. The General Counsel may condition approval on the favorable vote of the stockholders or such other conditions as he may deem appropriate.

(d) *Procedure.* Three copies of all bylaws and amendments thereto shall be filed with the Supervisory Agent with a copy of any required legal opinion and a certification from the secretary of the association stating such bylaws or amendments thereto were adopted by resolution of the board of directors or stockholders by the requisite vote. Upon approval the Supervisory Agent shall return one copy to the association, and forward one copy to the Board's Office of District Banks, except that with respect to bylaws requiring the approval of the General Counsel, the association shall file two copies with the General Counsel and one copy with the Supervisory Agent and upon approval the General Counsel shall return one copy to the Supervisory Agent who shall notify the association.

§ 543.8 Effect of subsequent charter or bylaw change amendment.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal stock association to engage in any transaction shall be determined only by the association's charter or bylaws then in effect, unless otherwise provided by federal law or regulation.

§ 543.9 Stockholder meetings.

(a) *Stockholder meetings.* An annual meeting of the stockholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 150 days after the end of the association's fiscal year. Special meetings of the stockholders may be called by the board of directors or as set forth in the charter or in the bylaws, on the request of the holders of a percentage of the total shares of stock entitled to vote at the meeting, provided that such percentage shall not exceed 25 percent, or by such other persons as may be specified in the bylaws of the association as entitled to call special meetings. All annual and special meetings of stockholders shall be held at such places as the board of directors may determine in the state in which the association has its principal place of business or in which the association maintains branches.

(b) *Notice of stockholder meetings.* A Federal association shall provide written notice of each stockholders' meeting setting forth the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called. Such notice shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, president, secretary, or directors, or other persons calling the meeting, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, proper postage prepaid, and addressed to the stockholder at the address appearing on the stock transfer books or records of the association as of the record date prescribed in paragraph (c) of this section, *Provided,* that such mailing is conducted in a manner designed to ensure delivery within a resonable time. When any stockholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Notwithstanding anyting in this section, however, a Federal stock association wholly owned by a holding company, (disregarding any required qualifying shares of directors), shall not be subject to the stockholder notice requirement.

(c) *Fixing of record dates.* For the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or stockholders entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of stockholders. Such date in any case shall not be more than 50 days and, in case of a meeting of stockholders, no fewer than 20 days prior to the date on which the particular action, requiring such determination of stockholders, is to be taken. When a determination of stockholders entitled to vote at any meeting or stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

(d) *Voting lists.* (1) A Federal stock association, at least 20 days before each meeting of the stockholders, shall direct the officer or agent having charge of the stock transfer books for stock of the association to make available a complete list of the record stockholders entitled to vote at such meeting or any adjournment thereof, and including the names of any beneficial owners furnished to the association pursuant to rules of the Securities and Exchange Commission, arranged in alphabetical order, with the address and the number of shares of stock held by each. This list of stockholders shall be kept on file at the home office of the association and shall be subject to inspection, for any purpose germane to the meeting, by any stockholder of record or such stockholder's agent, at any time during usual business hours, for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder of record or the stockholder's agent during the entire time of the meeting. The original stock transfer book shall constitute *prima facie* evidence of the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders. Notwithstanding anything in this section, however, a Federal stock association wholly owned by a holding company (disregarding any required qualifying shares of directors), shall not be subject to the voting list disclosure requirements.

(2) In lieu of making the stockholder list available for inspection by any stockholder as provided in this section, the board of directors may perform such acts as required by paragraphs (a) and (b) of Rule 14a–7 of the General Rules and Regulations under the Securities Exchange Act of 1934 as may be duly requested in writing, with respect to any matter which may be properly considered at a meeting of stockholders, by any stockholder who is entitled to vote on such matter and who shall defray the reasonable expenses to be incurred by the association in performance of the act or acts required.

(e) *Stockholder quorum.* A majority of the outstanding stock of the association

entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockhodlers. The stockholders present at a legal meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares of stock represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the vote of a greater number of stockholders voting together or voting by classes is required by law of the charter.

(f) *Nominations.* The board of directors or a committee of directors appointed by a majority of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of the death or other incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. No nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by stockholders of record are made in writing and delivered to the secretary of the association. Such nominations by stockholders may be submitted until the later of (1) 10 days before the date of the annual meeting; (2) 10 days after a notice of the annual meeting and related proxy statement or information statement containing the names of management nominees is sent to stockholders; or (3) 10 days after management nominations are submitted to the secretary of the association. Ballots bearing the names of all persons nominated by the nominating committee and by stockholders shall be provided for use at the annual meeting. However, if the nominating committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any stockholder of record and shall be voted upon.

(g) *New business.* Any new business to be taken up at the annual meeting must be stated in writing by a stockholder of record and filed with the secretary of the association at least ten days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; and no other proposal shall be acted upon at the annual meeting. Any stockholder of record may make any other proposal at the annual meeting and the same may, but need not, be discussed and considered, but unless stated in writing and filed with the secretary at least ten days before the meeting, such proposal shall be laid over for action at an adjourned, special, or next annual meeting of the stockholders taking place 30 days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as provided in this section.

(h) *Informal action by stockholders.* If the bylaws of the association so provide, any action required to be taken at a meeting of the stockholders, or any other action which may be taken at a meeting of stockholders, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be given by all of the stockholders entitled to vote with respect to the subject matter. The record date for determining stockholders entitled to consent to such action without a meeting shall be the date on which the first written consent is given.

§ 543.9–1 Stockholder voting.

(a) *Proxies.* At all meetings of stockholders, a stockholder may vote in person or by a duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a reasonable procedures, determined to be acceptable by the General Counsel or his designee, for identifying the stockholder. Notwithstanding § 569.3(b) of this Subchapter, a proxy may designate as holder a corporation, partnership, company as defined in Part 574 or other person. Proxies solicited on behalf of the management shall be voted as directed by the stockholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

(b) *Stock controlled by association and others.* (1) Neither treasury shares of its own stock held by the association nor stock held by another company, if such other company is controlled by the association as defined in Part 574 of this Chapter, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

(2) Stock standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such other corporation may prescribe, or, in the absence of such provision, as the board of directors of such other corporation may determine.

(3) Stock held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such stock into his name. Stock standing in the name of a trustee may be voted by him, either in person or by proxy, in accordance with the terms of the trust agreement, but no trustee shall be entitled to vote stock held by him without a transfer of such stock into his name.

(4) Stock standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into the receiver's name if authority to do so is contained in an appropriate order by which receiver was appointed.

(5) A stockholder whose stock is pledged shall be entitled to vote such stock until the stock has been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the stock go transferred.

(c) *Cumulative voting.* Unless otherwise provided in the association's charter, every stockholder entitled to vote at an election for directors shall have the right to vote, in person by proxy, the number of shares of stock owned by the stockholder for as many persons as there are directors to be elected and for whose election the stockholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected multipled by the number of shares of stock shall equal, or by distributing such votes on the same principle among any number of candidates.

§ 543.9–2 Voting trusts among stockholders.

Any number of stockholders of an association may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their stock, for a period not to exceed ten years, by entering into a written voting-trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the association at its home office, and by transferring their stock to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting-trust certificates evidencing a beneficial interest in the voting-trust, giving the

names and addresses of all such holders and the number and claim of the stock in respect of which the voting-trust certificates held by each are issued, and shall deposit a copy of such record with the association's secretary. The counterpart of the voting-trust agreement and the copy of such record so deposited with the association shall be subject to the same right of examination by a stockholder of the association, in person or by agent, as are the books and records of the association, and such counterpart and such copy of such record shall be subject to examination by any holder of record of voting-trust certificates, either in person or by agent at any reasonable time for any proper purpose.

§ 543.9–3 Books and records; stockholder access.

(a) General. Books, records and minutes may be in written from or in any other form capable of being converted into written form within a reasonable time. Each Federal stock association shall: (1) keep correct and complete books and records of accounts which, in reasonable detail, accurately reflect the transactions and dispositions of assets of the association; (2) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that:

(i) Transactions are executed in accordance with management's general or specific authorization;

(ii) Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets;

(iii) Access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(3) Keep minutes of proceedings of its stockholders, board of directors, and committees of directors; and (4) keep at its home office, or at the office of its transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders, and the number, class and series, if any, of the shares of stock held by each.

(b) *Right to examine.* Any stockholder or group of stockholders of a Federal stock association holding of record the number of voting stock of such association specified in this section, upon making written demand to the secretary of the association under oath and stating the purpose thereof, shall have the right to examine for any proper purpose, in person or by agent, at any reasonable time or times, non-confidential portions of its books and records of accounts, minutes, voting trust agreements filed with the association, and record of stockholders, and to make extracts therefrom. A "proper purpose" shall mean a purpose reasonably related to such person's interest as a stockholder. Such right to examination is limited to a stockholder or group of stockholders holding of record (1) voting stock having a cost of not less than $100,000 or constituting not less than one percent of the total outstanding voting stock, provided in either case that such stockholder or group of stockholders have held of record such voting stock for a period of at least six months before making such written demand, or (2) not less than five percent of the total outstanding voting stock. No stockholder or group of stockholders of a Federal stock association shall have any other right under this section or common law to examine its books and records of account, minutes and record of stockholders, except as provided in § 543.9(d) of this Part with respect to inspection of a list of stockholders, or in rules adopted pursuant to section 14 of the Securities Exchange Act for associations subject to such rules.

(c) *Denial of right to examine.* The right to examination authorized by paragraph (b) of this section may be denied to any stockholder or group of stockholders upon the refusal of any stockholder or group of stockholders to furnish the association, its transfer agent or registrar an affidavit that such stockholder has not within the five years preceding the date of the affidavit sold or offered for sale, and does not now intend to sell or offer for sale, any list of stockholders of the association, and that such stockholder has not within said five-year period assisted any person in procuring any list of stockholders for purposes of selling or offering for sale such list. A Federal stock association may deny a demand under paragraph (b) if the requesting stockholder has improperly used any information secured through prior examination of the books and records of accounts, or minutes, or record of stockholders or of holders of voting-trust certificates for stock of the association.

(d) *Confidentiality of records.* Notwithstanding any provision of this section or common law, no stockholder, group of stockholders, or any other person shall have the right to obtain, inspect or copy any portion of any books or records of a Federal stock association containing: (1) A list of depositors in or borrowers from such association; (2) their addresses; (3) individual deposit or loan balances or records; or (4) any data from which such information could be reasonably constructed.

(e) *Compelling inspection.* If a Federal association or an agent or officer thereof refuses to permit an inspection sought by a stockholder or his agent or does not reply to the demand within 30 calendar days after the demand has been made, the stockholder may apply to a court having jurisdiction for an order to compel inspection.

§ 543.9–4 Annual reports to stockholders.

A Federal stock association shall, within 120 days after the end of its fiscal year, mail to each of its stockholders entitled to vote at its annual meeting an annual report containing financial statements the content of which satisfies the requirements of Rule 14a–3(b) under the Securities Exchange Act of 1934, as supplemented by Part 563c of this Chapter. Concurrently with such mailing, a certification of the mailing signed by the chairman of the board, the president or a vice president of the association, together with three copies of the report, shall be sent by the association to the Federal Home Loan Bank of which the association is a member. Notwithstanding anything in this section, however, a Federal stock association wholly owned by a holding company (disregarding any required qualifying stock of directors), shall not be subject to the requirement to provide an annual report to stockholders.

§ 543.9–5 Stockholder derivative actions.

(a) *Right to bring an action.* A stockholder of a Federal stock association may bring an action to enforce a right of the association, *provided that,* no action shall be brought by a stockholder to enforce a right of a Federal stock association unless (1) the plaintiff was a holder of record of stock or of voting-trust certificates therefor at the time of the transaction of which he complains, or his stock or voting-trust certificates thereafter developed upon him by operation of law from a person who was a holder of record at such time and (2) the Principal Supervisory Agent has appoved bringing the action. Any action shall include information as to the efforts, if any, made to obtain the action the stockholder desires from the board of directors and, if necessary, from the stockholders, and the reason for the failure to obtain such action or for not making the effort.

(b) *Payment of expenses.* In any action hereafter instituted to enforce a right of any Federal stock association by the holder or holders of record of stock of such association or of voting-trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant or the association if it has indemnified those parties, the reasonable expenses, including attorneys fees, incurred by them in the defense of such action.

(c) *Security for expenses.* In any action instituted or maintained to enforce a right of any Federal stock association the association on whose behalf such action is brought shall be entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including attorneys fees, that may be incurred by the association in connection with such action or may be incurred by other parties named as defendant for which the association may become legally liable. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. The association shall have recourse to such security in such amount as the court having jurisdiction shall determine upon the termination of such action, whether or not the court finds the action was brought without reasonable cause.

§ 543.10 Board of directors.

(a) *General.* All corporate powers shall be exercised by or under authority of, and the business and affairs of a Federal stock association shall be managed under the director of, a board of directors. Directors need not be stockholders of the association unless the bylaws so require. A majority of the directors shall be "independent" as that term is defined in § 543.10–1(c)(2), except when a majority of the voting stock of the association is owned by a holding company. The board of directors shall have authority to fix reasonable compensation of directors and authorize the reimbursement of expenses for actual attendance at any meeting of the Board or its committees. The board of directors shall annually elect a chairman of the board from among its members and shall designate the chairman of the board, when present, to preside at its meetings.

(b) *Performance of duties.* (1) A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interest of the association, and with such care as a prudent person in a like position would use under similar circumstances. In performing his duties, a director shall be entitled to rely on information, opinion, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(i) One or more officers or employees of the association whom the director reasonably believes to be reliable and competent in the matters presented,

(ii) Counsel, public accountants or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence, or

(iii) A committee of the board upon which he does not serve, duly designated in accordance with a provision of the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence,

(2) However, a director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question, or would have obtained such knowledge through the exercise of appropriate prudence and diligence, that would cause such reliance to be unwarranted. Reports should be reviewed by each director and verified, and if they appear questionable should not simply be accepted at face value.

(c) *Number and term.* The board of directors shall consist of not fewer than five nor more than fifteen members except where authorized by the Board, which number shall be specified in the bylaws. The directors shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually except in the case of converting or *de novo* associations where all directors shall be elected at the first election of directors for first terms which shall be staggered in length from one to three years.

(d) *Vacancies.* Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors even if less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the stockholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the stockholders.

(e) *Resignation or removal of directors.* (1) Any director may resign at any time by sending a written notice of such resignation to the home office of the association addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

(2) At a meeting of stockholders called expressly for that purpose, any director may be removed only for cause by a vote of the holders of a majority of the stock then entitled to vote at an election of directors.

(3) In associations that allow cumulation of votes, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect the director if then cumulatively voted at an election of the class of directors of which such director is a part.

(4) Whenever the holders of the shares of stock of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of stock of that class and not to the vote of the outstanding shares of stock as a whole.

(5) In any solicitation of proxies for removal of a director by stockholder vote, opportunity must be provided to the director whose removal is sought to present a defense to stockholders by means of a written statement not to exceed 500 words which must accompany or precede the initial solicitation for removal of such director. Such statement shall be mailed at the expense of the party seeking removal.

(6) For the purposes of this section, the term "clause" shall mean willful failure, neglect or refusal in any material respect to perform duties as a director or commission of any act of willful misconduct, self-dealing, malfeasance or gross negligence. The foregoing description of cause shall in no way limit the power of the Board or the Corporation to bring an action for removal under the National Housing Act of Home Owners' Loan Act.

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(f) *Age limitation on directors.* A Federal stock association may provide in its bylaws that no person aged 70 years or older will be eligible for election, reelection, appointment, or reappointment to the board of directors of the association. The bylaws may also provide that no director shall serve as such beyond the annual meeting of the association immediately following the attainment of the specified age.

§ 543.10–1 Directors' meetings.

(a) *Meetings.* A regular meeting of the board of directors shall be held immediately after, and at the same place as, the annual meeting of the stockholders. The board of directors shall determine the place, frequency, time and procedure for notice of such meeting shall be at least 24 hours unless waived by the directors, for regular meetings of the board of directors or any committee designated thereby. Meetings may be held with or without notice as prescribed in the bylaws. Members may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other at the same time, and participation by such means shall constitute presence in person at a meeting for all purposes.

(b) *Quorum.* A majority of the authorized number of directors shall constitute a quorum for the transaction of busness at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Board.

(c) *Executive and other committees.* (1) *General.* The board of directors, by resolution adopted by a majority of the authorized number of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in the resolution or bylaws of the association, shall have and may exercise all of the authority of the board of directors, except that no committee shall have the authority of the board of directors with reference to: (i) The declaration of dividends; (ii) the amendment of the charter or bylaws of the association; (iii) recommending to the stockholders a plan of combination or conversion; (iv) the approval of a plan of combination not requiring stockholder approval; (v) the sale, lease, or other disposition of all, or substantially all of the assets of the association otherwise than in the usual and regular course of its business; (vi) a reduction in the capital of the association; (vii) a voluntary dissolution of the association; (viii) a revocation of any of the foregoing; or (vi) the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility or fiduciary duty imposed by law or regulation.

(2) *Audit committee.* Each Federal stock association shall appoint an audit committee of at least three directors the majority of whom shall be independent. A director shall be considered "independent" if he is neither employed by the association, its service corporation, its holding company or its affiliates nor serves as the legal counsel or other professional advisor to the association, its service corporation, its holding company or its affiliates, nor is a member of the immediate family of a person serving in any of the foregoing capacities. The audit committee shall recommend independent auditors, consult with the independent auditors regarding the plan of audit, review that audit report in consulation with the independent auditors, and consult with the independent auditors regrading the adequacy of internal accounting controls.

(3) *Investment committee.* Each Federal stock association shall appoint an investment committee of at least three directors the majority of whom shall be independent as defined in paragraph 2 of this section. The independent directors shall be different persons from those serving on the audit committee. The investment committee will assess the credit and interest rate risk of the association and prepare reports on such risk for the board of directors.

(d) *Notice of special meetings.* Written notice of at least 24 hours regarding any special meeting of the board of directors or of any committee designated thereby shall be given to each director or committee member in accordance with the bylaws, although such notice may be waived by the director. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the notice or waiver of notice of such meeting.

(e) *Action without a meeting.* Any action required or permitted to be taken by the board of directors or any committee thereof at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or committee members.

(f) *Presumption of assent.* A director of the association who is present at a meeting of the board of directors at which action on any matter is taken shall be presumed to have assented to the action taken unless his dissent or abstention shall be entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the association within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

§ 543.10–2 Directors' conflicts of interest.

(a) *General.* No contract or other transaction between a Federal stock association and one or more of its directors, or between a Federal stock association and any corporation, firm or association in which one or more of the association's directors has a material financial interest, is either void or voidable because such director or directors or such other corporation, firm or association are parties or because such director or directors are present at the meeting of the board or a committee thereof which authorizes, approves or ratifies the contract or transaction: *Provided,* that

(1) The material facts regarding the transaction and the director's interest therein are fully disclosed or known to the stockholders and such contract or transaction is approved by the stockholders, with the stock owned by the interested director or directors not being entitled to vote thereon or be counted as outstanding for purposes of determining a quorum and the contract or transaction is just and reasonable as to the association at the time it is authorized, approved or ratified; or

(2) The material facts regarding the transaction and the director's interest are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the interested

director or directors, and the contract or transaction is just and reasonable as to the association at the time it is authorized, approved or ratified.

(b) *Interested directors.* A mere common directorship does not constitute a material financial interest within the meaning of this section. Nor is a director "interested" within the meaning of this section in a resolution fixing the compensation of another director as a director, officer or employee of the association, notwithstanding the fact that the first director is also receiving compensation from the association.

(c) *Presence of interested directors at meeting.* Except with regard to contracts or other transactions addressed in paragraph (a) of this section, no contract or other transaction between a Federal stock association and any corporation or association of which one or more of its directors are directors is either void or voidable because such director or directors are present at the meeting of the board or a committee thereof which authorizes, approves or ratifies the contract or transaction: *Provided,* that (1) The material facts regarding the transaction and the director's other directorship are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the interested director or directors, or the contract or transaction is approved by the stockholders in good faith; or

(2) The contract or transaction is just and reasonable to the association at the time it is authorized, approved or ratified.

(d) *Determining a quorum.* Interested directors may be counted in determining the presence of a quorum at a meeting of the board or a committee thereof which authorizes, approves or ratifies a contract or transaction involving an interested director.

(e) *Transactions with affiliates.* Compliance with this section shall not effect the right of the Board or the Corporation to object to the contract or transaction under §§ 563.40 through 563.44, § 584.3 or any other section of this Chapter or any other law or regulation.

§ 543.10–3 Liability of directors for improper distributions.

(a) *Director liability.* In addition to any other liabilities, a director who votes for or assents to any distribution contrary to the provisions of the Home Owners' Loan Act, this Chapter or the charter of the association shall, unless he complies with the standards provided in § 543.10(b) of this Part for the performance of duties of directors, be liable to the association jointly and severally with all other directors so voting or assenting, for the amount of such distribution which is paid or the value of such distribution in excess of the amount of such distribution which could have been made without a violation of the cited provisions.

(b) *Right to contribution from stockholders.* Any director against whom a claim shall be asserted pursuant to this section for the making of a distribution and who shall be held liable thereon, shall be entitled to contribution from any stockholder[s] who accepted or received any such distribution with knowledge that it had been made in violation of this Part, in proportion to the amounts received by such stockholder[s].

(c) *Right to contribution from other directors.* Any director against whom a claim shall be asserted pursuant to this section shall be entitled to contribution from any other director[s] who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided in § 543.10(b) regarding the performance of the duties of directors.

(d) *Distribution.* For purposes of this section, the term "distribution" shall have the same meaning as specified in § 543.12–2(a).

§ 543.10–4 Officers.

(a) *Positions.* The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The president shall be the chief executive officer, unless the board of diretors designates the chairman of the board as chief executive officer. The president need not be a director of the association. The offices of the secretary and treasurer may be held by the same person and a vice president may also be either the secretary or the treasurer. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

(b) *Removal.* Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby; but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. "Cause" with respect to removal of an officer shall mean willful failure, neglect or refusal in any material respect to perform duties as an officer or commission of any act of willful misconduct, self-dealing, malfeasance or gross negligence.

(c) *Employment contracts.* Upon specific approval of the board of directors a Federal stock association may enter into employment contracts with its officers and other employees in accordance with § 563.39 of this Chapter.

(d) *Age limitation on officers.* A Federal stock association may provide in its bylaws that no person aged 70 years or older will be eligible for election, reelection, appointment or reappointment as an officer of the association. The bylaws may also provide that no officer shall serve as such byond the annual meeting of the association immediately following the attainment of the specified age.

§ 543.10–5 Indemnification of directors, officers and employees.

A Federal stock association may indemnify its directors, officers and employees and the directors, officers and employees of any wholly-owned subsidiary, provided that indemnification may be made only in accordance with the following requirements:

(a) *General.* Subject to the provisions of this section, a Federal stock association may indemnify any person against whom an action is brought or threatened because that person is or was a director, officer or employee of the association or any wholly-owned subsidiary, for:

(1) Any amount for which that person becomes liable under a judgment or settlement in such action; and

(2) Reasonable costs and expenses, including attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his rights under this section if he obtains a favorable judgment in such action; *Provided,* that nothing in this section authorizes indemnification by a Federal stock association of directors, officers or employees of affiliates, affiliated persons, or subsidiaries of the association for actions in their capacity

as such except as provided in this section.

(b) *Conditions.* (1) *Favorable judgment.* Indemnification may be made to a person described in paragraph (a) of this section if final judgment on the merits are in his favor.

(2) *No favorable judgment.* Indemnification may be made to a person described in paragraph (a) if final judgment is not in his favor, but only as provided in this paragraph (b).

(i) *General.* In the case of settlement, final judgment against the person, or final judgment in his favor other than on the merits, indemnification may be made if it is determined that the person was acting in good faith within the scope of his employment or authority as he could reasonably have perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interests of the association and in the case of a criminal action, he had no reasonable cause to believe his conduct was unlawful. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of disinterested directors, or if such a quorum is not obtainable or, even if obtainable, if a quorum of disinterested directors so directs, by the stockholders with only the shares of disinterested stockholders allowed to vote or to be counted for purposes of determining a quorum. However, in no case shall any indemnification be made unless the association gives the Board at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. A copy of such notice, and a certified copy of the resolution containing the required determination by the board of directors, shall be sent to Office of Examination and Supervision, the Office of General Counsel and the Supervisory Agent. The Supervisory Agent shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the Board or the designee advises the association in writing, within such notice period, of its objection thereto. The Office of Examination and Supervision with the concurrence of the Office of General Counsel has delegated authority to make a determination under this paragraph (b)(2)(i).

(ii) *Action by or on behalf of the association.* In addition to the requirements of paragraph (b)(2)(i), when the action is brought or threatened by the association or on behalf of the association, indemnification shall be limited to resonable costs and expenses as described in paragraph (a)(2) of this section and no indemnification shall be made in connection with any claim, issue or matter for which there has been a final judgment that the person was liable for negligence or misconduct in the performance of his duty to the association.

(c) *Insurance.* An association may obtain insurance to protect it and its directors, officers and employees or the directors, officers and employees of its wholly-owned subsidiaries from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts committed in their capacity as directors, officers or employees. However, associations may not obtain insurance which provides for payment of losses of any person incurred as a consequence of his willful or criminal misconduct.

(d) *Advance payment of expenses.* If a majority of the disinterested directors or the stockholders of an association concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, the directors or stockholders may authorize payment of reasonable costs and expenses, including attorneys' fees, arising from the defense or settlement of such action. In any vote of the stockholders to authorize such advances, only the stocks of disinterested stockholders shall be voted or counted towards a quorum. Nothing in this paragraph (d) shall prevent the directors of an association from imposing such conditions on a payment of expenses as they deem warranted and in the interests of the association. Before making advance payment of expenses under this paragraph, the association shall obtain an agreement in writing that the association will be repaid if the person on whose behalf is made is later determined not be to entitled to such indemnification.

(e) *Prohibited indemnification.* Nothing in this section shall authorize or require the Board to approve indemnification of directors, officers, or employees, of the association when such indemnification would contravene public policy as expressed by Federal statutes or the regulations of the Board.

(f) *Exclusiveness of provisions.* No association shall indemnify any person referred to in paragraph (a) of this section or obtain insurance referred to in paragraph (c) of this section other than in accordance with this section. However, an association which had a bylaw in effect on October 1, 1969, relating to indemnification of its personnel shall be governed solely by that bylaw, if such is still in effect, except that the association's authority to obtain insurance shall be governed by paragraph (c) of this section.

(g) *Definitions and rules of construction.* (1) Definitions for purposes of this section:

(i) *Action.* Any judicial or administrative proceeding, or threatened proceeding, whether civil, criminal, or otherwise, including any appeal or other proceeding for review;

(ii) *Court.* Includes, without limitation, any court to which or in which any appeal or any proceeding for review is brought.

(iii) *Disinterested.* When applied to a stockholder or director, a person not named as party to the action in connection with which indemnification or advancement of expenses is sought;

(iv) *Final judgment.* A judgment, decree, or order which is not appealable or as to which the period for appeal has expired with no appeal taken;

(v) *Settlement.* Includes entry of a judgment or dismissal by consent or confession or a plea of guilty or *nolo contendere.*

(2) References in this section to any individual or other person, including any association, shall include any person acting as administrator, executor, guardian, conservator, trustee, legal representative, successor and assign thereof.

§ 543.11 Certificates for stock and their transfer.

(a) *Certificates for stock.* Certificates representing shares of capitol stock of the association shall be in such form as shall be determined by the board of directors and approved by the Board. Certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for

a like number of shares of stock have been surrendered and cancelled, except that in the case of a lost or destroyed certificate a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

(b) *Transfer of shares of stock.* Transfer of shares of capital stock of the association shall be made only on its transfer books. Authority for such transfer shall be given only by the holder of record, a legal representative who shall furnish proper evidence of such authority, or by an attorney authorized by a duly executed power of attorney and filed with the association. The transfer shall be made only upon surrender for cancellation of the certificate, a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

§ 543.11-1 Consideration for stock.

(a) *General.* Stock may be issued from time to time for such consideration as shall be authorized in accordance with the charter by the board of directors through action which establishes a price in cash or other consideration, or both, or a minimum price or a general formula or method by which price can be determined.

(b) *Treasury stock.* Treasury stock may be disposed of by the association for such consideration expressed in dollars as may be fixed from time to time by the board of directors.

(c) *Stock dividends.* That part of the retained earnings of an association which is transferred to paid-in capital upon the issuance of shares of stock as a stock dividend shall be deemed to be the consideration for the issuance of such shares of stock.

(d) *Stock issued in exchange.* Except as provided in § 543.11-2 of this Part, in the event of the issuance of shares of stock upon the conversion or exchange of indebtedness or stock, the consideration for the stock so issued shall be (1) in the case of indebtedness, the principal sum of, and any accrued and unpaid interest on, the indebtedness so exchanged or converted; (2) in the case of shares of stock, the paid-in capital then represented by the shares of stock so exchanged or converted; (3) that part of retained earnings, if any, transferred to paid-in capital upon the issuance of shares of stock for the shares of stock so exchanged or converted, and (4) any additional consideration paid to the association upon the issuance of shares of stock.

§ 543.11-2 Stock rights and options.

(a) *Creation and issuance.* A Federal stock association may create and issue, whether or not in connection with the issuance and sale of any of its shares of stock or other securities, rights or options entitling the holders thereof to purchase from the association shares of stock of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the charter, shall set forth the terms upon which, the time or times within which, and the price or prices at which, such shares of stock may be purchased from the association upon the exercise of any such right or option. If such rights or options are to be issued to directors, officers or employees of the association or of any subsidiary thereof, and not to the stockholders generally, their issuance or the plan under which they would be issued shall be approved by the majority of the votes eligible to be cast at a legal meeting of stockholders. In the absence of fraud, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price or prices to be received for any shares of stock having a par value, other than treasury shares of stock to be issued upon the exercise of such rights or options, shall not be less than the par value thereof.

(b) *Restriction on grants to non-employee directors.* (1) No Federal stock association shall adopt any stock option plan providing for the grant of stock options or rights to non-employee directors, unless all of the following conditions are met:

(i) The plan is fully and fairly disclosed in a proxy statement meeting the disclosure requirements of Schedule 14A of the Proxy Rules under the Securities Exchange Act of 1934, 17 CFR 240.14a-1 *et seq.*;

(ii) The plan is approved by a majority of the total votes eligible to be cast at a legal meeting of stockholders;

(iii) The duration of any options or rights and the amount of stocks allocable to non-employee directors are limited to reasonable duration and amounts and are not, when aggregated with all other forms of compensation received by such non-employee directors from the association, in excess of that which is reasonable and commensurate with their duties and responsibilities;

(iv) The exercise price of the option or rights is not less than the fair market value of the underlying shares of common stock on the date of grant; and

(v) The terms of the plan do not contravene public policy as expressed by Federal statutes or the regulations of the Board.

(2) For purposes of this paragraph (b), the term "non-employee directors" means any director, trustee, advisory director, honorary director, director emeritus or other similar person not currently employed on a full-time basis by the association, its service corporation, its holding company or its affiliates, and notwithstanding the provisions of § 563.17(b) of this Chapter regarding the compensation of officers, directors and employees of an insured institution, shall also include any director who is a former officer or employee of the association, regardless of whether such director regularly performs service for the association under consulting contracts or similar arrangements.

(c) *Payment of stock rights or options.* (1) Notwithstanding the provisions of § 543.11-1(d) of this Part or § 563b.3(g)(1) of this Chapter, a Federal stock association shall have the authority to adopt a stock rights or option plan which provides for the repurchase or redemption of the shares of any class of the association's outstanding common or preferred stock tendered as payment for the exercise of stock rights or options by plan participants: *Provided,* that such authority shall not extend to any repurchase or redemption which, after giving effect to the repurchase or redemption, would cause the association's net worth to be less than the amount required of the association by § 563.13 of this Chapter.

(2) Nothing in this paragraph (c) shall authorize a Federal stock association to repurchase or redeem its shares of stock from any officer or director of the association in contravention of the provisions of § 563b.3(c)(17) of this Chapter.

§ 543.11-3 Fractional shares of stock.

A Federal stock association may: (a) issue fractions of a share of stock; (b) arrange for the disposition of fractional interests by those entitled to them; (c) pay in cash the fair value of fractions of a share of stock as of the time when those entitled to receive such fractions are determined, and (d) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share of stock upon the surrender of such scrip aggregating a full share of stock. A certificate for a fractional share of stock shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise

voting rights, to receive dividends thereon, and to participate in a distribution of any of the assets of the association in the event of liquidation. The Board of directors may cause scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares of stock before a specified date, or subject to the condition that the shares of stock for which scrip is exchangeable may be sold by the association and the proceeds thereof distributed to the holders of scrip, or subject to any other conditions which the board of directors may deem advisable.

§ 543.11-4 Liability of stockholders.

A holder of or subscriber to shares of stock of a Federal stock association shall be under no obligation to the association or its creditors with respect to such shares of stock other than the obligation to pay to the association the full consideration for which such shares of stock were issued or to be issued. Any person becoming an assignee or transferee of shares of or of a subscription for shares of stock in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the association or its creditors for any unpaid portion of such consideration.

§ 543.12 Authority to acquire own stock.

Subject to the limitations in § 543.12-2 and other applicable laws or regulations, a Federal stock association shall have the power to acquire its own stock. All such reacquired stock shall, upon acquisition, constitute authorized by uninssued stock or may be deemed treasury stock, provided that in either case, stockholders' equity is reduced by the amount paid to reacquire the stock.

§ 543.12-1 Authority to pay dividends to stockholders.

Subject to the limitations of § 543.12-2, a Federal stock association, may,from time to time, by resolution of its board of directors, pay dividends on its shares of stock out of retained earnings in cash, in its own securities or in other property, including the securities of other corporations or entities.

§ 543.12-2 Limitations on distributions ot stockholders.

(a) *Distribution.* For purposes of this section, the term "distribution" means a direct or indirect transfer of money or other property (except its own shares of stock) or incurrence of indebtedness, by an association to or for the benefit of any of its stockholders in respect to any of its shares of stock, whether by di idend or by purchase, redemption or other acquisition of its stock, or otherwise.

(b) *Limitation in distributions.* No distribution to stockholders may be made by a Federal stock association if, after giving effect to the distribution, the association's net worth would be less than the amount required of the association by § 563.13 of this Chapter.

(c) *Measurement date.* The effect of a distribution under paragraph (a) of this section is measured as of the earlier of:

(1) The date of its authorization if payment occurs within 120 days after the date of authorization, or the date of payment if payment occurs more than 120 days after the date of authorization; or

(2) In the case of distribution by purchase, redemption, or other acquisition of the association's stock, the earlier of the date money or other property is transferred or debt incurred by the association, or the date stockholders cease to be stockholders of record.

§ 543.12-3 Reduction of paid-in capital.

(a) *General.* A Federal stock association may, by resolution of its board of directors, reduce its paid-in capital by charging against it:

(1) All or any part of any deficit arising from operating or other losses or from diminution in the value of its assets in accordance with generally accepted accounting principles;

(2) Distributions as liquidating dividends as permitted by this chapter;

(3) The paid-in capital represented by stock acquired by the association as permitted by law, to the extent such paid-in capital has not previously been reduced on account of such acquisition; and

(4) Expenses, including commissions, paid or incurred by the association in connection with the issuance of stock.

(b) *Exception.* Nothing in this section shall be construed to permit an association to reduce its paid-in capital where such action would be specifically prohibited by other regulations of the Board or conditions imposed by the Board or to prohibit any such reduction in any other manner permitted by this Part or as directed by the Board.

§ 543.13 Fiscal year; annual audit.

The bylaws of a Federal stock association shall specify the fiscal year for the association. The association shall be subject to an annual audit as of the end of its fiscal year by independent public accountants appointed by and responsible to the board of directors. The appointment of such accountants shall be subject to annual ratification by the stockholders.

§ 543.14 Corporate procedures.

(a) *Execution of instruments generally.* The board of directors shall establish procedures for the execution, verification, acknowledgement, and delivery of instruments or writings of any nature.

(b) *Seal.* The association may have a corporate seal, which may be modified from time to time, and may use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(c) *Miscellaneous.* The bylaws may also address subjects which comply with applicable Federal law, rules, or regulations such as emergency preparedness or any other subjects necessary or appropriate for effective operation of the association.

§ 543.15-543.19 [Reserved]

§ 543.20 Combinations involving Federal stock associations.

Federal stock associations may enter into combinations, which for the purposes of this Part include bulk purchases or sales of assets, mergers and consolidations, only in accordance with the provisions of this Part.

§ 543.21 Merger or consolidation.

(a) *Permissible mergers or consolidation.* Federal stock associations may merge or consolidate with other associations: *Provided,* that—

(1) All constituent associations have accounts insured by the Federal Savings and Loan Insurance Corporation, except for Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and (2) if any constituent is a mutual association, the resulting association shall be mutually held, except in cases involving supervisory combinations, mergers approved under Part 563b of this Chapter or combinations in which one of the constituents is an interim Federal association or an interim state institution; and (3) as to any constituent association which is not a Federal association, the merger is in accordance with the laws of the jurisdiction in which the association was organized.

(b) *Board approval.* Prior written approval of the Board is required for every combination. In determining whether to confer such approval, the Board shall apply the criteria set out in § 571.5 of this Chapter and shall impose any condition it deems necessary or appropriate to ensure conformity with those criteria and the requirements of this Chapter. Prior written approval of the Federal Deposit Insurance Corporation is required for every combination involving a Federal

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association insured by the Federal Deposit Insurance Corporation.

(c) *Approval by the Board's Principal Supervisory Agent.* (1) The specific approval of the Board (including recommending modifications of the combination agreement) required by paragraph (b) of this section may be given by the Board's Principal Supervisory Agent in accordance with the conditions set forth in § 563.22 of this Chapter.

(2) In approving a merger under paragraph (c) of this section, the Principal Supervisory Agent may approve maintenance of an office of the merging association as a facility of the resulting association and may approve a temporary increase in the number of directors of the resulting association, provided that the association submits an acceptable plan for bringing the board of directors into compliance with the requirements of § 543.3 of this Subchapter within a reasonable period of time.

(d) *Approval of board of directors.* Before filing for Board approval, the combination and the combination agreement shall be approved by each constituent association's board of directors: (1) By a two-thirds vote of the entire board of each Federal association, and (2) as required by state law or other applicable law for other constituents.

(e) *Conservator or receiver action.* A conservator or receiver for an association appointed under Part 547 of this Subchapter may merge the association with another under § 543.21 without submitting the combination agreement to the association's board of directors or stockholders for their approval.

(f) *Combination agreement.* (1) All terms, conditions, agreements or understandings, or other provisions with respect to the combination, shall be set forth fully in a written combination agreement.

(2) The combination agreement shall state: (i) That the combination shall not be effective unless and until approved by the Board: (ii) which constituent association is to be the resulting association; (iii) the name of the resulting association; (iv) the location of the home office and any other offices of the resulting association; (v) the terms and conditions of the combination and method of effectuation; (vi) any charter amendments or, if no such amendments are to be made, a statement that the charter of one of the constituent associations, naming it, shall be the charter of the surviving or resulting association, or the new charter in the event of consolidation; (vii) the manner of converting or exchanging the stock of each constituent association into stock, insured accounts, or other securities of the resulting association or cash, property, rights, or securities of any other entity in connection with the combination, including any provision for the payment of cash in lieu of the issuance or recognition of fractional shares, interests or rights, or for any other arrangements with respect thereto consistent with the provisions of § 543.11–3 of this Part; (viii) the basis upon which the insured accounts of the resulting association shall be issued; (ix) the number, names and residence addresses, and terms of directors; (x) the effect upon and assumption of any liquidation account of a disappearing association by the resulting association; and (xi) such other provisions, agreements, or understandings as relate to the combination.

(g) *Corporate title; change of location.* If a combination agreement provides for the resulting association's name or location to be changed, and it is a Federal association, its charter shall be amended accordingly.

(h) *Application for Board approval.* (1) *Contents.* Application shall be in a form prescribed by the Board and shall include appropriate information responsive to the factors enumerated in § 571.5 of this Chapter.

(2) *Filing requirement.* Constituent associations shall file three copies of the application prepared pursuant to this section with the Supervisory Agent. The combination agreement for a bulk purchase of assets shall state the information required by § 543.21(f)(2) of this Subchapter. Applicants shall also comply with section 7A of the Clayton Act (15 U.S.C. 18A) and regulations issued thereunder (16 CFR Parts 801, 802 and 803).

(i) *Notice.* (1) *Public Notice.* Constituent associations shall jointly publish notice pursuant to § 542.4 of this Subchapter, except that the required newspaper publication of notice shall be made in the communities in which the home offices of the constituent associations are located. Promptly after joint publication the constituent associations shall jointly file with the Supervisory Agent a copy of the notice and publisher's affidavit of publication.

(2) *Notice to stockholders.* If the combination agreement is not subject to the approval by stockholders of a Federal stock association pursuant to §§ 543.22 or 543.23, such constituent Federal stock association shall mail notice of the application to its stockholders, within 10 days of being notified by the Supervisory Agent that the application is complete, with a copy of such notice to the Supervisory Agent. The contents of the notice shall include: (i) A statement that an application under this section has been filed with the Board; (ii) the name and address of the home or principal office of each constituent association; (iii) a brief summary of the principal terms of the combination agreement; (iv) the name and address of the home office of the resulting association; (v) a statement as to which offices of constituent associations are to be maintained as home office or branches and which are to be discontinued; (vi) a statement that any person may file written comments concerning the application which will be considered by the Board if filed with the Supervisory Agent within 10 days (or within 17 days if a request is filed within the first 10 days stating that more time is needed to furnish additional information) of publication or such later date as may be permitted by the Supervisory Agent; (vii) a statement notifying each stockholder that pursuant to § 543.27 of this Part, that appraisal rights are not available, and including in such notice a copy of § 543.27; and (viii) a statement that the application and all comments filed pursuant to the notice shall be available for public inspection by any person at the Office of the Supervisory Agent, except for any material exempt from disclosure prsuant to the Freedom of Information Act.

(3) *Procedure.* Processing of an application under this section shall follow the procedures set forth in paragraph (h)(1) and in §§ 542.4(b) and 542.4(c) of this Subchapter: *Provided,* that in the case of mergers involving an acquisition subject to Part 574, instead of the public notice procedures of paragraph (i)(1), the public notice procedures of Part 574 shall be applicable.

(4) *Supervisory exception.* This paragraph (i) does not apply to combinations instituted for supervisory reasons.

§ 543.22 Short-form merger.

(a) *General.* In any case in which at least 90 percent of the outstanding shares of each class of the stock of an insured institution or institutions is owned by another insured institution, and one of the insured institutions is a Federal association and the other insured institution or institutions are Federal associations or are insured state-chartered institutions and with respect to the state-chartered institution, state law permits and insured institution of such jurisdiction to merge with another insured institution, the insured institution having such stock ownership may either merge the other insured

institution into itself and assume all of its obligations, or merge itself into one of the other insured institutions. Such merger may be effected by executing and filing with the Supervisory Agent a copy of the resolution of the parent insured institution's board of directors to so merge, a copy of the combination agreement and the date of the adoption: *Provided,* that in the event the parent insured institution shall end up not owning all the oustanding stock (disregarding any required qualifying shares of stock of directors) of the subsidiary insured institution or institutions that are parties to the merger, the resolution of the board of directors of the parent insured institution shall state the terms and conditions of the merger, including the securities, cash, property, or rights to be issued, paid, delivered or granted by the survivor upon surrender of each share of stock of the disappearing entity or entities not owned by the parent insured institution.

(b) *Subsidiary resulting association.* If the parent insured institution is not the resulting association, the resolution shall include provision for *pro rata* issuance of stock of the resulting association to the holders of stock of the parent insured institution shall file evidence with the Supervisory Agent that the proposed merger has been approved by an affirmative vote of the majority of the outstanding stock of the parent insured institution entitled to vote thereon at a meeting duly called.

(c) *Corporate title.* The resulting association may change its corporate name by the inclusion of a provision to that effect in the resolution of merger adopted, and upon the effective date of the merger the name of the insured institution shall be so changed: *Provided,* that any Federal association which is the resulting association pursuant to this section may only change its corporate title in conformance with § 542.2 of this Subchapter.

(d) *Processing; delegation.* Processing of an application under this section shall follow the procedures set forth in § 543.21(h)(3). Approval by the Board shall be governed by § 543.21(c).

(e) *Appraisal rights.* Whenever any constituent Federal association party to a merger affected by this section is the disappearing association, any notice or proxy materials furnished to stockholders must contain information that the stockholders of the constituent Federal association or associations shall have appraisal rights as set forth in § 543.27 except when the Federal association is wholly owned (disregarding any required qualifying shares of stock of directors).

§ 543.23 Approval by stockholders for merger or consolidation.

(a) *General rule.* Unless a greater percentage is specified in the association's charter, an affirmative vote of two-thirds of the outstanding voting stock shall be required for approval of any combination agreement. If any class of shares of stock is entitled to vote as a class pursuant to § 543.4 of this Part, an affirmative vote of a majority of shares of stock of each voting class and two-thirds of the total voting shares of stock shall be required unless a greater percentage is specified in the charter.

(b) *General exception.* Stockholders of the resulting association need not authorize a combination agreement if: (1) It does not involve an interim Federal association or an interim state institution; (2) the association's charter is not amended; (3) each share of stock outstanding immediately prior to the effective date of the combination is to be an identical outstanding share of a stock or a treasury share of stock of the resulting association after such effective date; and (4) either (i) no shares of voting stock of the resulting association and no securities convertible into such stock are to be issued or delivered under the plan of combination, or (ii) the authorized unissued shares or the treasury shares of voting stock of the resulting association to be issued or delivered under the plan of combination, plus those shares of stock initially issuable upon conversion of any securities to be issued or delivered under such plan, do not exceed 15 percent of the total shares of voting stock of such association outstanding immediately prior to the effective date of the combination.

(c) *Exceptions for certain combinations involving an interim institution.* Stockholders of a Federal stock association need not authorize by a two-thirds affirmative vote combinations involving an interim Federal association or an interim state institution where a company acquires the resulting Federal stock association pursuant to § 574.4 of this Chapter. In those cases, the required approval voting stock of the Federal association. If any class of stock is entitled to vote as a class pursuant to §543.4 of this Part, an affirmative vote of a majority of the stock of each voting class shall be required.

(d) *Disclosure.* The Board may require, in connection with a combination under this section, such disclosure of information as it deems necessary or desirable for the protection of investors in any of the constituent associations.

§ 543.24 Articles of combination for merger or consolidation.

(a) *Contents.* Following stockholder approval, articles of combination shall be executed in duplicate by each association, by its chief executive officer or executive vice president and by its secretary or an assistant secretary, and verified by one of the officers of each association signing such articles, and shall contain: (1) The terms of the combination agreement (either set forth or attached as an exhibit); (2) the number of shares of stock in each association; and (3) the number of shares of stock in each association voted for and against such combination agreement.

(b) *Filing.* Both sets of articles of combination shall be filed with the Supervisory Agent who shall, if he finds that such articles conform to the requirements of this regulation, endorse the articles and return one set to the resulting association.

§ 543.25 Effective date; date of consummation for merger or consolidation.

(a) *Effective date.* No combination under this agreement shall be effective until approved by the Board or its delegate. The effective date of a combination in which the resulting association is a Federal stock association shall be the date of endorsement of the articles of combination by the Supervisory Agent. A later effective date, up to 90 days after the date of approval of the combination, may be requested by the applicant as part of the application subject to approval by the Board or its delegate. The effective date of a combination in which the resulting association is not a Federal association shall be a date subsequent to Board approval prescribed by the law of the state under which the resulting association is chartered, or other applicable law. If a disappearing association combining under this section is a Federal association, its charter shall be deemed to be cancelled as of the effective date of the combination; such charter shall be surrendered to the Supervisory Agent at the time of filing of the articles of combination.

(b) *Date of consummation.* No combination under this section may be concluded until all necessary compliance materials, as required by any conditions to the resolution approving such combination by the Board or its delegate, have been

submitted to the satisfaction of the Supervisory Agent. The effective date and the date of consummation may be simultaneous only if the above noted materials have been submitted to and approved by the Supervisory Agent. Until the compliance materials have been submitted to and approved by the Supervisory Agent, the Board or its delegate shall have the right to alter, suspend or withdraw its approval should any interim development be deemed by the Board or its delegate to be a material change in circumstances warranting such action.

§ 543.26 Continuity of corporate existence after merger or consolidation.

On the effective date of a combination in which the resulting association is a Federal association, all assets and property (real, personal, and mixed, tangible, and intangible, choses in action, rights and credits) of the association shall immediately, without any further act, become the property of the resulting association to the same extent as they were the property of the disappearing association, and the resulting association shall be a continuation of the entity which absorbed the association. All rights, obligations, duties and liabilities of the association shall remain unimpaired, and the resulting association shall, on the effective date of the combination, succeed to all those rights and obligations.

§ 543.27 Dissenters' appraisal rights in merger or consolidation.

(a) *Right to demand payment of fair value.* Except as provided in paragraph (b) of this section, any stockholder of record of a Federal stock association combining in accordance with § 543.21, 543.22 or 543.30 of this Part shall have the right to demand payment of the fair value of his stock: *Provided,* that such stockholder complies with the provisions of paragraph (c) of this section and, where a stockholder vote to approve a combination involving a Federal association is required, such stockholder has not voted in favor of the combination.

(b) *Exceptions.* No stockholder required to accept only qualified consideration for his stock shall have the right under this section to demand payment of the stock's fair value, if (1) such stock was listed on a national securities exchange or quoted on the NASDAQ on the date of the meeting of stockholders at which the combination was acted upon, where a stockholder vote is required; or (2) stockholder action is not required for a combination made pursuant to § 543.21 or 543.22(b).

(c) *Procedure.* (1) *Notice.* If the combination agreement is not subject to the approval by the stockholders of a Federal stock association, such constituent Federal stock association shall notify all stockholders in accordance with the applicable notification provisions set forth in § 543.21(i)(2) of this Part. If the combination agreement is subject to the approval by the stockholders of a Federal stock association, such Federal stock association shall include a statement notifying each stockholder entitled to appraisal rights pursuant to this section of the effective date of the combination, and of the fact that appraisal rights are available for any or all shares of stock pursuant to this section, in the proxy materials furnished to the stockholders, and the association shall also include in such proxy materials a copy of this § 543.27.

(2) *Demand for appraisal and payment.* Each stockholder electing to make a demand under this section shall deliver to the Federal stock association, prior to the later of the effective date of the combination or twenty days after receipt of the notice required in paragraph (c)(1) of this section, a writing identifying himself and stating his intention to demand appraisal of and payment for his stock. Where a stockholder vote is required, such demand must be in addition to and separate from any proxy or vote against the combination by the stockholder.

(3) *Written offer.* Within ten days after the effective date of the combination, the resulting association shall (i) give written notice by mail to stockholders of constituent Federal stock associations who have complied with the provisions of paragraph (c)(2) of this section and have not voted in favor of the combination, of the effective date of the combination; (ii) make a written offer to each stockholder to pay for dissenting shares of stock at a specified price deemed by the resulting association to be the fair value thereof; and (iii) inform those stockholders that, within sixty days of such date, the respective requirements of paragraphs (c) (5) and (6) of this section must be satisfied. The notice and offer shall be accompanied by a balance sheet and statement of income of the association, for a fiscal year ending not more than sixteen months before the date of notice and offer, together with the latest available interim financial statements.

(4) *Acceptance of offer.* If, within sixty days of the effective date of the combination, the fair value is agreed upon between the resulting association and any stockholder who has complied with the provisions of paragraph (c)(2), payment therefor shall be made withn ninety days of the effective date of the combination.

(5) *Petition to be filed if offer not accepted.* If, within sixty days of the effective date of the combination, the resulting association and any stockholder who has complied with the provisions of paragraph (c)(2) do not agree as to the fair value, then any such stockholder may file a petition with the Office of General Counsel of the Board, with a copy by registered or certified mail to the resulting association, demanding a determination of fair value of the stock of all such stockholders. A stockholder entitled to file a petition under this section who fails to file such petition within sixty days of the effective date of the combination shall be deemed to have accepted the terms offered under the combination.

(6) *Stock certificates to be noted.* Within sixty days of the effective date of the combination, each stockholder demanding appraisal and payment under this section shall submit to the transfer agent his certificates of stock for notation thereon that an appraisal and payment have been demanded with respect to such stock and that appraisal proceedings are pending. Any stockholder who fails to submit his stock certificates for such notation shall no longer be entitled to appraisal rights under this section and shall be deemed to have accepted the terms offered under the combination.

(7) *Withdrawal of demand.* At any time within sixty days after the effective date of the combination, any stockholder shall have the right to withdraw his demand for appraisal and to accept the terms offered upon the combination.

(8) *Voting and distribution.* Any stockholder who has demanded appraisal rights as provided in paragraph (c)(2) shall thereafter neither be entitled to vote such stock for any purpose nor be entitled to the payment of dividends or other distributions on the stock (except dividends or other distribution payable to, or a vote to be taken by, stockholders of record at a date which is on or prior to, the effective date of the combination): *Provided:* that if any stockholder becomes unentitled to appraisal and payment of appraised value with respect to such stock and accepts or is deemed to have accepted

the terms offered upon the combination, such stockholder shall thereupon be entitled to vote and receive the distribution described above.

(9) *Status.* Shares of stock of the resulting association into which stock of the stockholders demanding appraisal rights would have been converted or exchanged, had they assented to the combination, shall have the status of authorized and unissued stock of the resulting association.

(d) *Valuation by the Board or its delegate.* (1) *Procedures.* The Board or its delegate shall, as it may elect, either appoint one or more independent persons or direct an appropriate Office of the Board to appraise the shares to determine their fair value, as of the effective date of the combination, exclusive of any element of value arising from the accomplishment or expectation of the combination. The Board, after consideration of the appraisal report or the advice of the appropriate Office, shall, if it concurs in the valuation of the shares, direct payment by the resulting association of the appraised fair value of the shares of stock, upon surrender of the certificates representing such stock. Payment by the resulting association shall be made, together with interest from the effective date of the combination, at a rate deemed equitable by the Board within 30 days after the Board's determination of fair value.

(2) *Cost and expenses.* The cost and expenses of any proceeding under this section may be apportioned and assessed by the Board as it may deem equitable against all or some of the parties. In making this determination the Board shall consider whether any party had acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section.

(e) *Reorganizations using interims.* For reorganizations involving the use of an interim Federal association pursuant to Part 574 herein, the holding company shall constitute the resulting association for purposes of satisfying dissenters' appraisal rights.

(f) *Definitions.* The following definitions shall apply for purposes of this section:

(1) *Fair value.* The term "fair value" shall mean the appraisal of, and valuation assigned by the Board or its delegate to, the stock of a Federal stock association combining in accordance with §§ 543.21, 543.22 or 543.30 of this Part, pursuant to a duly perfected stockholder demand for appraisal, and payment for such stock pursuant to the § 543.27 of this Part. In determining the fair value of the stock of a Federal stock association, the Board or its delegate shall in its discretion take into consideration any factors it deems relevant in appraising the value of shares of stock of an insured institution on a "going concern" basis, including, but not limited to, an evaluation of any arms' length trades in the stock, the association's net asset value, historical earnings, future prospects for earnings, financial condition, dividends record, investment value, and book value.

(2) *NASDAQ.* The term "NASDAQ" shall mean the National Association of Securities Dealers' Automated Quotation system.

(3) *National securities exchange.* The term "national securities exchange" shall mean the New York Stock Exchange or American Stock Exchange.

(4) *Qualified consideration.* The term "qualified consideration" shall mean cash, shares of stock of any association or corporation which at the effective date of the combination are listed on a national securities exchange or quoted on the NASDAQ, or any combination or shares of such stock and cash.

§ 543.28 Supervisory combinations.

Notwithstanding anything in this Part, the Board may determine to waive or deem inapplicable any provision of §§ 543.21–543.27 if the Board determines that severe financial conditions exit that threaten the stability of such an association and that such action is likely to improve the financial condition of the association, or to avert insolvency or imminent failure of an association as defined in § 541.3 of this Subchapter. For purposes of such action under section 5(d) of the Home Owners' Loan Act, the term "member" shall include stockholders of a Federal stock association. The term "insolvency" shall mean that the assets of the association are less than its obligation to its creditors and others, including its depositors.

§ 543.29 [Reserved]

§ 543.30 Bulk purchase or sale of assets.

(a) *Permissible bulk purchase of assets.* Federal stock associations may enter into bulk-purchase-of-asset transactions as transferee with other entities: *Provided:* That (1) all transferor entities are depository institutions, and (2) the transferee Federal stock association (i) will meet the requirements of Federal Home Loan Bank membership and insurance of accounts after the transaction; and (ii) conforms, within the time prescribed by the Board, to the requirements of section 5(c) of the Home Owners' Loan Act; and (3) the transferor is not a mutual association chartered by the Board or insured by the FSLIC, except in cases involving combinations approved under Part 563b of Subchapter D.

(b) *Permissible bulk sale of assets.* Federal stock associations may enter into bulk sales of assets transactions as transferor only in connection with combinations instituted for supervisory purposes.

(c) *Bulk purchase or sale of assets defined.* A purchase or sale of assets by a Federal stock association shall be deemed a bulk purchase or sale if it involves the acquisition or disposition by the Federal stock association of all or substantially all of the association's assets other than in the ordinary course of business. An acquisition or disposition shall be deemed to involve substantially all of an association's assets if the association's and its subsidiaries' net book value of the assets to be acquired or disposed or the amount paid or to be received by the association for such acquisition exceeds fifty percent of the total assets of the association and its subsidiaries prior to the acquisition or disposition.

(d) *Board approval.* Prior written approval of the Board is required for every bulk purchase or sale of assets. In determining whether to confer such approval, the Board shall apply the criteria set out in § 571.5 of this Chapter and shall impose any condition it deems necessary or appropriate to ensure conformity with those criteria and the requirements of this Chapter. Prior written approval of the Federal Deposit Insurance Corporation is required for every combination involving both a Federal association insured by the Federal Deposit Insurance Corporation and an association not insured by such Corporation.

(e) *Approval by the Board's Principa Supervisory Agent.* The specific approval of the Board (including recommending modifications of the combination agreement) required by paragraph (b) of this section may be given by the Board's Principal Supervisory Agent in accordance with the conditions set forth in § 563.22 of this Chapter.

(f) *Approval of board of directors.* Before filing for Board approval of a bulk purchase or sale of assets, the combination shall be approved by each constituent association's board of directors: (1) By a two-thirds vote of the entire board of each Federal association, and (2) as required by state law or other applicable law for other constituents.

(g) *Combination agreement.* (1) All terms, conditions, agreements, understandings, or other provisions with respect to a combination involving a

bulk purchase of assets shall be set forth fully in a written combination agreement.

(2) The combination agreement for a bulk purchase of assets shall state the information required by § 543.21(f)(2).

(h) *Application for Board approval.* Application for Board approval of a bulk purchase of assets shall follow the procedures of § 543.21(h).

(i) *Notice.* Notice requirements for a bulk purchase of assets shall follow the procedures of § 543.21(i).

§ 543.31 Approval by stockholders.

Approval by stockholders of a federal stock association for a bulk purchase of assets shall be required under the circumstances specified in § 543.23 of this Part.

§ 543.32 Articles of combination.

Articles of combination for a bulk purchase of assets shall be executed pursuant to the requirements of § 543.24 of this Part.

§ 543.33 Effective date; date of consummation.

The effective date and the date of consummation for a bulk purchase or sale of assets shall be determined pursuant to § 543.25 of this Part.

§ 543.34 Continuity of corporate existence after bulk purchase or sale of assets.

The continuity of corporate existence of a Federal stock association shall not be affected by a bulk purchase or sale of assets.

§ 543.35 Dissenters' appraisal rights in bulk purchase or sale of assets.

Dissenters' appraisal rights in connection with a bulk purchase or sale of assets shall exist under the circumstances set forth in § 543.27 of this Part.

§ 543.36 Partial purchase or sale of assets.

(a) *General.* A purchase or sale of assets by a Federal stock association shall be considered a partial purchase or sale of assets if the transaction involves the acquisition or disposition by the Federal stock association of assets, other than in the ordinary course of business, in any amount which is less than "all or substantially all of the association's assets," as defined in § 543.30(c) of this Part.

(b) *Percentage of assets test.* A partical purchase or sale of assets by a Federal stock association shall not be deemed to involve all or substantially all of the association's assets if the association's and its subsidiaries' equity in the net book value of such assets to be acquired or disposed or the total amount paid or received for such acquisition or disposition does not exceed fifty percent of the total assets of the association and its subsidiaries prior to the purchase or sale, except where the purchase or sale is part of an overall plan contemplating the sale or purchse of greater than fifty percent of the total assets of the association and its subsidiaries. Partial purchases or sales of assets shall be governed by § 563.22 of this Chapter.

§ 543.37–543.39 [Reserved]

§ 543.40 Reorganization [Reserved]

§ 543.41–543.49 [Reserved]

§ 543.50 Dissolution.

Federal stock associations may voluntarily dissolve themselves only in accordance with the provisions of this Part.

§ 543.51 Voluntary dissolution.

(a) *Plan for dissolution.* A Federal stock association's board of directors may propose a plan for dissolution of the association. The plan shall be approved by a two-thirds vote of the authorized number of directors. The plan may provide for: (1) Appointment of the Federal Savings and Loan Insurance Corporation (under section 5 of the Home Owners' Loan Act or section 406 of the National Housing Act) as receiver for the purpose of liquidation; (2) transfer of all the association's assets to a depository institution under Federal or State charter either for cash sufficient to pay all obligations of the association and retire all outstanding accounts or in exchange for that institution's payment of all the association's outstanding obligations or other evidence of interest to the association's accountholders on a *pro rata* basis; or (3) dissolution in a manner proposed by the directors which they consider best for all concerned. The plan, and a statement of reasons for proposing dissolution and for proposing the plan, shall be submitted to the Board for approval.

(b) *Board approval.* The Board may approve the plan if the Board believes dissolution is advisable and the plan best for all concerned, but if the Board considers the plan inadvisable, the Board may either make recommendations to the association concerning the plan or disapprove the plan.

§ 543.52 Approval by stockholders for dissolution.

(a) *Stockholder vote.* When a plan of dissolution is approved by the association's board of directors and by the Board, the plan shall be submitted to the association's stockholders at a legal meeting, and shall become effective when approved by the affirmative vote of two-thirds of the outstanding voting stock. If any class of stock is entitled to vote as a class pursuant to § 543.4 of this Part, an affirmative vote of a majority of the stock of each voting class and two-thirds of the total voting stock shall be required.

(b) *Dissenters' appraisal rights.* Nothing in this Part shall be interpreted as providing dissenters' appraisal rights to any stockholder of an association dissolving in accordance with this Part.

§ 543.53 Notice of dissolution.

(a) *Notice to creditors.* Upon filing of a plan of dissolution with the Board, the dissolving association shall immediately cause notice thereof to be mailed to each known creditor of the association.

(b) *Notice to accountholders.* Notice of the stockholders' affirmative vote to approve the plan of dissolution shall be furnished to any affected accountholder pursuant to § 565.5 of this Subchapter.

§ 543.54 Procedure for dissolution after Board and stockholder approval.

Upon approval of the plan of dissolution by the Board and a vote of stockholders, the dissolving association shall immediately proceed to collect its assets, convey and dispose of its properties that are not to be distributed in kind to its stockholders, pay, satisfy and discharge its liabilities and obligations, and do all other acts required to liquidate its business and affairs, and after paying or adequately providing for the payment of all its obligations an liabilities, distribute the remainder of its assets, either in cash or in kind, among its class or classes of stockholders according to their respective rights and preferences.

§ 543.55 Termination of corporate existence.

(a) *Completion of dissolution.* After dissolution in accordance with the plan, a certificate evidencing dissolution, supported by such evidence as the Board may require, shall immediately be filed with the Board. When the Board receives such evidence satisfactory to it, it will terminate the corporate existence of the dissolved association and the association's charter shall thereby be cancelled.

(b) *Continuation of corporate existence after dissolution.* Any association dissolving in accordance with this Part shall nevertheless continue its corporate existence for a period of three years from such dissolution, or for such longer period as the Board in its discretion may direct,

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solely for the purposes of prosecuting and defending legal actions, suits, or proceedings, whether civil, criminal or administrative, brought by or against such association, settling and closing business, disposing of or otherwise conveying property and discharging liabilities, and for the distribution to stockholders of any remaining assets, but not for the purpose of continuing the business for which the association was organized. Any association dissolved pursuant to this Part shall, with respect to any action, suit or proceeding, whether civil, criminal or administrative, brought by or against such association, either prior to or within three years of the date of its dissolution, be deemed to continue its corporate existence beyond the three-year period until any and all final judgments, orders or decrees in connection with such action, suit or proceeding have been fully executed.

§ 543.56 Involuntary dissolution.

Notwithstanding the foregoing provisions of this Part, the Board may determine to waive or deem inapplicable any provision of §§ 543.51–543.55 of this Part for dissolutions instituted for supervisory reasons or pursuant to Part 574 of this Subchapter.

§543.57–543.59 [Reserved]

§ 543.60 Supervisory waiver.

Notwithstanding the foregoing provisions of Part 543, the Board may determine to waive or deem inapplicable any provision of §§ 543.1–543.59 of this Part to facilitate: (a) an acquisition to prevent the failure of an institution chartered by the Board or insured by the Corporation; or (b) a transfer of accounts in payment of insurance; or, for (c) supervisory reasons or pursuant to Part 574 of this Subchapter.

Appendix A to Part 543—Model Bylaws for Stock Associations

Article I—Home Office

The home office of the association shall be at ——— in the County of ———, in the State of ———.

Article II—Stockholders

Section 1. *Place of Meetings.* All annual and special meetings of stockholders shall be held at the home office of the association or at such other place in the state in which the principal place of business of the association is located or in which the association maintains branches, as the board of directors may determine.

Section 2. *Annual Meeting.* A meeting of the stockholders of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 150 days after the end of the association's fiscal year on the ——— of ——— if not a legal holiday, and if a legal holiday, then on the next day following which is not a legal holiday, at ———, or at such other date and time within such 150-day period as the board of directors may determine.

Section 3. *Special Meeting.* Special meetings of the stockholders for any purpose or purposes, unless otherwise prescribed by the regulations of the Federal Home Loan Bank Board ("Board") (which as hereinafter used includes the Federal Savings and Loan Insurance Corporation), may be called at any time by the chairman of the board, the president, or a majority of the board of directors, and shall be called by the chairman of the board, the president, or the secretary upon the written request of the holders of not less than one-tenth of all of the oustanding capital stock of the association entitled to vote at a legal meeting. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the home office of the association addressed to the chairman of the board, the president, or the secretary.

Section 4. *Conduct of Meetings.* Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise prescribed by regulations of the Board or these bylaws. The board of directors shall designate, when present, either the chairman of the board or the president, if the president is a director, to preside at such meetings.

Section 5. *Notice of Meetings* Written notice stating the place, day, and hour of the meeting and the purpose(s) for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, or the secretary, or the directors calling the meeting, to each stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the stockholder at the address as it appears on the stock transfer books or records of the association as of the record date prescribed in section 6 of this Article II, with postage prepaid. When any stockholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not be necessary to give any notice of the time and place of any meeting adjourned for fewer than 30 days or of the business to be transacted at the meeting, other than an announcement at the meeting at which such adjournment is taken.

Section 6. *Fixing of Record Date.* For the purpose of determining stockholders entitled to notice or to vote at any meeting of stockholders or any adjournment, or stockholders entitled to receive payment of any dividend, or in order to make a determination of stockholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of stockholders. Such date in any case shall be not more than 50 days and, in the case of a meeting of stockholders, not fewer than 20 days prior to the date on which the particular action requiring such determination of stockholders is to be taken. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this section, such determination shall apply to any adjournment.

Section 7. *Voting Lists.* At least 20 days before each meeting of the stockholders, the officer or agent having charge of the stock transfer books for shares of stock of the association shall make a complete list of the stockholders entitled to vote at such meeting, or any adjournment, arranged in alphabetical order, with the address and the number of shares of stock held by each. This list of stockholders shall be kept on file at the home office of the association and shall be subject to inspection for any purpose germane to the meeting, by any stockholder of record or his agent at any time during usual business hours for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any stockholder of record during the entire time of the meeting. The original stock transfer book shall constitute *prima facie* evidence of the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders.

Section 8. *Books and Records; Stockholder Access.* Stockholder access to books and records shall be governed by § 543.9–3 of the Board's Federal Regulations (12 CFR 543.9–3) as now in effect or any successor provision thereto.

Section 9. *Quorum.* A majority of the outstanding shares of stock of the association entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders. If less than a majority of the outstanding shares of stock is represented at a meeting, a majority of the shares of stock so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have transacted at the meeting as originally notified. The stockholders present at a legal meeting may continue to transact business until adjournment, notwithstanding that the remaining stockholders constitute less than a quorum.

If a quorum is present, the affirmative vote of the majority of the shares of stock represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders unless the vote of a greater number of stockholders or voting by classes is required by law or the charter.

Section 10. *Proxies.* At all meetings of stockholders a stockholder may vote in person or by a duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a reasonable procedure for identifying the stockholder. Proxies shall have been placed on file with the secretary of the association for verification, prior to the meeting. Notwithstanding § 569.3 of the Board's Insurance Regulations, 12 CFR 569.3, a proxy may designate as holder a corporation, partnership or company as defined in Part

574 of the Board's Insurance Regulations, 12 CFR Part 574. Proxies solicited on behalf of the managment shall be voted as directed by the stockholer or in the absence of such direction, as determined by a majority of the proxy committee, or in its absence, by the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

Section 11. *Voting stock in the Name of Two or More Persons.* When ownership stands in the name of two or more persons, in the absence of written directions to the association to the contrary, at any meeting of the stockholders of the association any one or more of such stockholders may cast, in person or by proxy, all votes to which such ownership is entitled. In the event an attempt is made to cast conflicting votes, in person or by proxy, by the several persons in whose names shares of stock stand, the vote or votes to which those persons are entitled shall be cast as directed by a majority of those holding such and present in person or by proxy at such meeting, but no votes shall be cast for such stock if a majority cannot agree.

Section 12. *Voting Stock by Certain Holders.* Stock standing in the name of another company may be voted by any officer, agent, or proxy as the bylaws of such company may prescribe, or in the absence of such provision, as the board of directors of such company may determine. Stock held by an administrator, executor, guardian, or conservator may be voted by that person, either in person or by proxy, without a transfer of such stock into his name. Stock held in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote stock held by him without a transfer of such stock into his name. Stock held in the name of a receiver may be voted by such receiver, and stock held by or under the control of a receiver may be voted by such receiver without the transfer into his name if authority to do so is contained in an appropriate order of the court or other public authority by which such receiver was appointed.

A stockholder whose stock is pledged shall be entitled to vote such stock until the stock has been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the stock so transferred.

Neither treasury shares of its own stock held by the association nor stock held by another company, if such other company is controlled by the association as defined in section 574 of the Board's Insurance Regulations, 12 CFR 574, shall be voted at any meeting or counted in determining the total number of outstanding shares of stock at any given time for purposes of any meeting.

Section 13. *Cumulative Voting.* Every stockholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares of stock owned by the stockholder for as many persons as there are directors to be elected and for whose election the stockholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected multiplied by the number of shares of stock shall equal or by distributing such votes on the same principle among any number of candidates.

Section 14. *Inspectors of Election.* In advance of any meeting of stockholers, the board of directors may appoint any persons other than nominees for office as inspectors of election to act at such meeting or any adjournment. The number of inspectors shall be either one or three. Any such appointment shall not be altered at the meeting. If inspectors of election are not so appointed, the chairman of the board or the president may, or on the request of not fewer than 10 percent of the votes represented at the meeting shall, make such appointment at the meeting. If approinted at the meeting, the majority of the votes present shall determine whether one or three inspectors are to be appointed. In case any person appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting or at the meeting by the chairman of the board or the president.

Unless otherwise prescribed by regulations of the Board, the duties of such inspectors shall include: Determining the number of shares of stock and the voting power of stock, the stock represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies; receiving votes, ballots, or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all stockholders.

Section 15. *Nominating Committee.* The board of directors or a committee of directors appointed by a majority of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of the death or incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. No nominating committee shall be voted upon at the annual meeting unless other nominations by stockholders of record are made in writing and delivered 10 days prior to the date of the annual meeting. Upon delievery, such nominations shall be posted in a conspicuous place in each office of the association. Ballots bearing the names of all persons nominated by the nominating committee and by stockholders shall be provided for use at the annual meeting. However, if the nominating committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any stockholder entitled to vote and shall be voted upon.

Section 16. *New Business.* Any new business to be taken up at the annual meeting, including any proposal to increase or decrease the number of directors, shall be stated in writing and filed with the secretary of the association at least 10 days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting. Any stockholder may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary at least 10 days before the meeting, such proposal shall be laid over for action at an adjourned, special, or annual meeting of the stockholders taking place 30 days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as provided in this section.

Section 17. *Informal action by stockholders.* Any action required to be taken at a meeting of the stockholders, or any other action which may be taken at a meeting of stockholders, may be taken without a meeting if consent in writing, setting forth the action so taken, has been given by all of the stockholders entitled to vote with respect to the subject matter.

Article III—Board of Directors

Section 1. *General Powers.* The business and affairs of the association shall under the direction of its board of directors. The board of directors shall annually elect a chairman of the board and a president from among its members and shall designate, when present, either the chairman of the board or the president to preside at its meetings.

Section 2. *Number and term.* The board of directors shall consist of —— members and shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

Section 3. *Regular Meetings.* A regular meeting of the board of directors shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of stockholders. The board of directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 4. *Qualification.* Each director shall at all times be the beneficial owner of not less than 100 shares of capital stock of the association unless the association is a wholly owned subsidiary of a holding company.

Section 5. *Special Meetings.* Special meetings of the board of directors may be called by or at the request of the chairman of the board, the president, or one-third of the directors. The persons authorized to call special meetings of the board of directors may fix any place for holding any special meeting of the board of directors called by such persons.

Members of the board of directors may participate in special meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person for all purposes.

Section 6. *Notice.* Written notice of any special meeting shall be given to each director at least 24 hours prior thereto when delivered personally or by telegram or at least five days prior thereto when delivered by mail at the address at which the director is most likely to be reached. Such notice shall be deemed to be delivered when deposited in the mail so addressed, with postage prepaid if mailed, and when delivered to the telegraph company if sent by telegram. Any director may waive notice of any meeting by a writing filed with the secretary. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting unless the director is attending the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice of or waiver of notice of such meeting.

Section 7. *Quorum.* A majority of the number of directors fixed by section 2 of this Article II shall constitute a quorum for the transaction of business at any meeting of the board of directors; but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Notice of any adjourned meeting shall be given in the same manner as prescribed by section 6 of this Article III.

Section 8. *Manner of Acting.* The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Board or by these bylaws.

Section 9. *Action Without a Meeting.* Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors eligible to vote thereon.

Section 10. *Resignation.* Any director may resign at any time by sending a written notice of such resignation to the home office of the association addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

Section 11. *Vacancies.* Any vacancy occurring on the board of directors may be filled by the affirmative vote of a majority of the remaining directors, although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve until the next election of directors by the stockholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the stockholders.

Section 12. *Compensation.* Directors, as such, may receive a stated salary for their services. By resolution of the board of directors, a reasonable fixed sum and reasonable expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board of diectors. Members of either standing or special committees may be allowed such compensation for attendance at committee meetings as the board of directors may determine.

Section 13. *Presumption of Absent.* A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his dissent or abstention shall be entered in the minutes of the meeting or unless he shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the association within five days after the date a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 14. *Removal of Directors.* At a meeting of stockholders called expressly for that purpose, any director may be removed only for cause by a vote of the holders of a majority of stock then entitled to vote at an election of directors. If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if cumulatively voted at an election of the class of directors of which such director is a part, where the association's stockholders are permitted to vote cumulatively. Whenever the holders of the shares of stock of any class are entitled to elect one or more directors by the provisions of the association's charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of stock of that class and not to the vote of the outstanding shares of stock as a whole.

In any solicitation of proxies for removal of a director by stockholder vote, opportunity must be provided to the director whose removal is sought to present a defense to stockholders by means of a written statement not to exceed 500 words which must accompany or pecede the initial solicitation for removal of such director. Such statement shall be made at the expense of the party seeking removal. For the purpose of this section, the term "cause" shall mean willful failure, neglect or refusal in any material respect to perform duties as a director or commission of any act of willful misconduct, self-dealing, malfeasance or gross negligence.

Section 15. *Age Limitation on Directors.* No person [fill in any age, 70 or above] years of age shall be eligible for election, reelection, appointment, or reappointment to the board of directors of the association. No director shall serve as such beyond the annual meeting of the association immediately following the directors becoming [fill in any age, 70 or above] except that a director serving on [fill in bylaw adoption date] may complete the term as director. This age limitation does not apply to an advisory director.

Article IV—Executive and Other Committees

Section 1. *Appointment.* The board of directors, by resolution adopted by a majority of the full board, may designate the chief executive officer and two or more of the other directors to constitute an executive committee. The designation of any committee pursuant to this Article IV and the delegation of authority shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

Section 2. *Authority.* The executive committee, when the board of directors is not in session, shall have and may exercise all of the authority of the board directors except to the extent, if any, that such authority shall be limited by the resolution appointing the executive committee; and except also that the executive committee shall not have the authority of the board of directors with reference to: The declaration of dividends; the amendment of the charter or bylaws of the association, or recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all or substantially all of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest.

Section 3. *Tenure.* Subject to the provisions of section 8 of this Article IV, each member of the executive committee shall hold office until the next regular meeting of the board of directors following his designation and until a successor is designated as a member of the executive committee.

Section 4. *Meetings.* Regular meetings of the executive committee may be held without notice at such times and places as the executive committee may fix from time to time by resolution. Special meetings of the executive committee may be called by any member thereof upon not less than one day's notice stating the place, date, and hour of the meeting, which notice may be written or oral. Any member of the executive committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 5. *Quorum.* A majority of the members of the executive committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the executive committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section 6. *Action without a meeting.* Any action required or permitted to be taken by the executive committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the executive committee eligible to vote thereon.

Section 7. *Vacancies.* Any vacancy in the executive committee may be filled by a resolution adopted by a majority of the authorized board of directors.

Section 8. *Resignations and removal.* Any member of the executive committee may be removed at any time with or without cause by resolution adopted by a majority of the authorized board of directors. Any member of the executive committee may resign at any time by giving written notice to the president or secretary of the association. Unless otherwise specified, such resignation shall take effect upon its receipt; the acceptance of such resignation shall not be necessary to make it effective.

Section 9. *Procedure.* The executive committee shall elect a presiding officer from its members and may fix its own rules of procedure which shall not be inconsistent with these bylaws. It shall keep regular minutes of its proceedings and report the same to the board of directors for its information at the meeting held next after the proceedings shall have occurred.

Section 10. *Audit committee.* The board of directors, by resolution adopted by a majority of the authorized board, shall appoint an audit committee of at least three directors the majority of whom shall be independent. A director shall be considered independent if he or she is neither employed by the association, its service corporation, its holding company or its affiliates nor serving as legal counsel or other professional advisor to the association, its service corporation, its holding company or its affiliates, nor is a member of the immediate family or a person serving in any of the foregoing capacities. The audit committee shall recommend independent auditors, consult with the independent autitors regarding the plan of audit, review the audit report in consultation with the independent auditors, and consult with the independent auditors regarding the adequacy of internal accounting controls.

Section 11. *Other committees.* The board of directors may by resolution establish a loan committee or other committee composed of directors as it may determine to be necessary or appropriate for the conduct of the business of the association, and may prescribe the duties, membership, and procedures thereof.

Article V—Officers

Section 1. *Positions.* The officers of the association shall be president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The president shall be the chief executive officer, unless the board of directors designates the chairman of the board as chief executive officer. The president need not be a director of the association. The offices of the secretary and treasurer may be held by the same person and a vice president may also be either the secretary or the treasurer. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

Section 2. *Election and Term of Office.* The officers of the association shall be elected annually at the first meeting of the board of directors held after each annual meeting of the stockholders. If the election is not held at such meeting, such election shall be held as soon thereafter as possible. Each officer shall hold office until a successor has been duly elected and qualified or until the officer's death, resignation, or removal in the manner provided in this Article V. Election or appointment of an officer, employee, or agent shall not of itself create contractual rights. The board of directors may authorize the association to enter into an employment contract with any officer in accordance with regulations of the Board; but not such contract shall impair the right of the board of directors to remove any officer at any time in accordance with section 3 of this Article V.

Section 3. *Removal.* Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. "Cause" with respect to removal of an officer shall have the same meaning as set forth in section 14 of Article III as applied to directors.

Section 4. *Vacancies.* A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

Section 5. *Renumeration.* The renumeration of the officers shall be fixed from time to time by the board of directors.

Section 6. *Age Limitation for Officers.* No person [fill in any age, 70 or above] years of age shall be eligible for election, reelection, appointment, or reappointment as an officer of the association. No officer shall serve beyond the annual meeting of the association immediately following the officer becoming [fill in any age used above] except that an officer serving on [fill in bylaw adoption date] may complete the term. However, an officer shall, at the option of the Board, retire at age 65 if the officer has served in an executive or high policymaking post for at least two years immediately prior to retirement and is immediately entitled to non-forfeitable annual retirement benefits of at least ———— [44,000 (1985) must be in accordance with the Age Discrimination in Employment Act].

Article VI—Indemnification of Directors, Officers, and Employees

Section 1. *General.* The association may indemnify any person against whom an action is brought or threatened because that person is or was a director, officer or employee of the association or a director, officer or employee of any wholly-owned subsidiary, only as provided in this Article VI, for any amount for which that person becomes liable under a judgment or settlement in such action; and reasonable costs and expenses, including attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his rights under this section if he obtains a favorable judgment in such action: *Provided,* that nothing herein shall authorize indemnification by the association of directors, officers or employees of affiliates, affiliated persons, or subsidiaries of the association for actions in their capacity as such unless such person was a director, officer or employee of a wholly-owned subsidiary.

Section 2. *Conditions.* Indemnification may be made to a person described in Section 1 if final judgment on the merits is in his favor. In addition, in the case of settlement, final judgment against him or final judgment in his favor other than on the merits, indemnification may be made to a person described in Section 1 if it is determined that he was acting in good faith within the scope of his employment or authority as he could reasonably have perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interests of the association, and, in the case of a criminal action, he had no reasonable cause to believe his conduct was unlawful. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of disinterested directors, or if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by the stockholders with only the shares of stock of disinterested stockholders allowed to vote or to be counted for purposes of determinating a quorum. However, no indemnification shall be made unless the association gives the Board at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which action arose, the terms of any settlement, and any disposition of the action by a court. A copy of such notice, and a certified copy of the resolution containing the required determination by the board of directors, shall be sent to the Board in accordance with its regulations. No such indemnification shall be made if the Board or its designee advises the association in writing, within such notice period, of its objection thereto. In addition, when the action is brought or threatened by the association or on behalf of the association, indemnification shall be limited to reasonable costs and expenses as described in section 1. Under no circumstances may indemnification be made in connection with any claim, issue or matter with regard to which there has been a final judgment that the person was liable for negligence or misconduct in the performance of his duty to the association.

Section 3. *Insurance.* An association may obtain insurance to protect it and its directors, officers and employees or the directors, officers and employees of a wholly-owned subsidiary from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts committed in their capacity as directors, officers or employees: *Provided,* that the association may not obtain insurance which

provides for payment of losses of any person incurred as a consequence of his willful or criminal misconduct.

Section 4. *Advance Payment of Expenses.* If a majority of the disinterested directors of a majority of the disinterested stockholders of the association concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, such directors or stockholders may authorize payment of reasonable costs and expenses, including attorneys' fees, arising from the defense or settlement of such action. In any vote of the stockholders to authorize such advances, only the shares of disinterested stockholders shall be voted or counted towards a quorum. Nothing in this section shall prevent the directors of an association from imposing such conditions on a payment of expenses as they deem warranted and in the interests of the association. Before making advance payment of expenses under this section, the association shall obtain an agreement in writing that the association will be repaid if the person on whose behalf payment is made is later determined not to be entitled to such indemnification.

Section 5. *Indemnification.* Nothing in this section shall authorize indemnification of directors, officers or employees, of the association when such indemnification would contravene public policy as expressed by federal statutes or the regulations of the Board.

Section 6. *Exclusive of Provisions.* No association shall indemnify any person referred to in section 1 of this Article or obtain insurance referred to in section 3 of this Article other than in accordance with this Article.

Section 7. *Definitions and Rules of Construction.* Definitions and rules of construction for purposes of this Article shall be in accordance with Board regulations on indemnification of directors, officers or employees.

Article VII—Contractors, Loans, Checks and Deposits

Section 1. *Contracts.* To the extent permitted by regulations of the Board, and except as otherwise prescribed by these bylaws with respect to certificates for shares of stock, the board of directors may authorize any officer, employee, or agent of the association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the association. Such authority may be general or confined to specific instances.

Section 2. *Loans.* No loans shall be contracted for on behalf of the association and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

Section 3. *Checks, Drafts, etc.* All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the association shall be signed by one or more officers, employees or agents of the association in such manner as shall from time to time be determined by the board of directors.

Section 4. *Deposits.* All funds of the association not otherwise employed shall be deposited from time to time to the credit of the association in such duly authorized federally insured depositories as the board of directors may select.

Article VIII—Certificates for Shares and Their Transfer

Section 1. *Certificate for Capital Stock.* Certificates representing capital stock of the association shall be in a form or forms determined by the board of directors and approved by the Board. Such certificates shall be signed by the chief executive officer or by any other officer of the association authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the association itself or one of its employees. Each certificate for capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the stock is issued, with the number of shares of stock and date of issue, shall be entered on the stock transfer books of the association. All certificates surrendered to the association for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares of stock has been surrendered and cancelled, except that in case of a lost or destroyed certificate, a new certificate may be issued upon such terms and indemnity to the association as the board of directors may prescribe.

Section 2. *Transfer of Capital Stock.* Transfer of shares of capital stock of the association shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or his legal representative who shall furnish proper evidence of such authority, or by his attorney authorized by a duly executed power of attorney and filed with the association. Such transfer shall be made only on surrender for cancellation of the certificate for such shares of stock. The person in whose name shares of capital stock are held on the books of the association shall be deemed by the association to be the owner for all purposes.

Article IX—Fiscal Year; Annual Audit

The fiscal year of the association shall end on the —— of —— of each year. The association shall be subject to an annual audit as of the end of its fiscal year by independent public accountants appointed by and responsible to the board of directors. The appointment of such accountants shall be subject to annual ratification by the stockholders.

Article X—Dividends

Subject to the terms of the association's charter and the regulations and orders of the Board, the board of directors may, from time to time, declare, and the association may pay, dividends on its outstanding shares of capital stock.

Article XI—Corporate Seal

The board of directors shall provide an association seal which shall be two concentric circles between which shall be the name of the association. The year of incorporation or an emblem may appear in the center.

Article XII—Amendments

These bylaws may be amended in a manner consistent with regulations of the Board at any time by a majority vote of the full board of directors or by a majority vote of the votes cast by the stockholders of the association at any legal meeting.

2. Revise Part 544 as follows:

PART 544—FEDERAL MUTUAL ASSOCIATIONS

Sec.

544.1 Procedures for organization of Federal mutual association; initial collection of pledged capital; organizational meeting.
544.2 Powers of Federal mutual associations.
544.3 Charters for Federal mutual association.
544.4 Preapproved charter amendments.
544.4–1 Additional charter provisions [Reserved]
544.5 Procedures for obtaining Board approval of charter amendments.
544.6 Reissuance of charter.
544.7 Bylaws.
544.8 Effect of subsequent charter or by-law amendment.
544.9 Members' meetings.
544.9–1 Voting by proxy.
544.9–2 Communication between members.
544.9–3 Annual reports to members.
544.10 Board of directors.
544.10–1 Directors' meetings.
544.10–2 Directors' conflict of interest.
544.10–3 [Reserved]
544.10–4 Officers.
544.10–5 Indemnification of directors, officers and employees.
544.11–544.12 [Reserved]
544.13 Fiscal year; annual audit.
544.14 Corporate procedures.
544.15–544.19 [Reserved]
544.20 Combinations involving Federal mutual associations.
544.21 Merger or consolidation.
544.22–544.23 [Reserved]
544.24 Articles of combination for merger or consolidation.
544.25 Effective date; date of consummation for merger or consolidation.
544.26 Continuity of corporate existence after merger or consolidation.
544.27 [Reserved]
544.28 Supervisory combinations.
544.29 [Reserved]
544.30 Bulk purchase or sale of assets.
544.31 [Reserved]
544.32 Articles of combination for bulk purchase or sale of assets.
544.33 Effective date; date of consummation for bulk purchase or sale of assets.
544.34 Continuity of corporate existence after bulk purchase or sale of assets.
544.35 [Reserved]
544.36 Partial purchase or sale of assets

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Sec.
544.37–544.39 [Reserved]
544.40 Reorganization [Reserved]
544.41–544.49 [Reserved]
544.50 Dissolution.
544.51 Voluntary dissolution.
544.52 Approval by membrs of dissolution.
544.53 Notice of dissolution.
544.54 Procedure for dissolution after Board and member approval.
544.55 Termination of corporate existence.
544.56 Involuntary dissolution.
544.57–544.59 [Reserved]
544.60 Supervisory Waiver.
Appendix A to Part 554—Model Bylaws for Mutual Associations.

Authority: 12 U.S.C. 1464; Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., P. 1071.

§ 544.1 Procedures for organization of Federal mutual association; initial collection of pledged capital; organizational meeting.

(a) *General.* Applications for permission to organize a Federal mutual association shall be subject to the provisions of §§ 542.1 through 542.12 of this Subchapter.

(b) *Initial collection of pledged capital.* No pledges may be collected until the organizers have received conditional approval of the application for permission to organize. Upon the conditional approval of an application for permission to organize a Federal mutual association and after the interim officers, directors, employees and agents have been bonded to the extent required by § 563.19 of this Chapter, such association shall proceed to collect its pledged capital. All money collected as pledges shall be placed in escrow with an independent financial institution insured by the Federal Savings and Loan Insurance Corporation or Federal Deposit Insurance Corporation until the association has received the certificate of authority specified in § 542.7 and, unless specifically approved by the Board consideration for the initial minimum capitalization shall consist of cash or tangible property to the extent investment in such property would be permitted to the association.

(c) *Organizational meeting.* Within six months of receiving a certificate of authority to commence business the association shall provide notice, pursuant to § 544.9(a) of this Part, of a meeting of its members to elect a board of directors. Until such time, the interim board of directors shall be governed by the Model Bylaws. Immediately following such election, the directors shall meet to adopt permanent bylaws and to elect the officers of the association and to undertake any other action necessary to complete corporate organization.

§ 544.2 Powers of Federal mutual associations.

In addition to the authority contained in this Part and in its charter, a Federal mutual association may make any loan or investment or engage in any activity authorized for a Federal association in Parts 545, 550, 555, or 556 of this Subchapter or pursuant to the Home Owners' Loan Act of 1933, as amended, or the successor provisions of any of the foregoing.

§ 544.3 Charters for Federal mutual association.

(a) *Initial Charter.* The charter of a Federal mutual association shall be in the form specified in paragraph (c) of this section and may also include any preapproved optional provision contained in § 544.4 of this Part.

(b) *Federal savings bank charter.* A charter for a Federal mutual savings bank shall substitute the term "savings bank" for "association" and, for savings banks converting pursuant to §546.10 of this Subchapter shall include the following sentence at the end of Section 4 of the charter set forth at paragraph (c) of this section; "In addition, the savings bank may make any investment and engage in any activity as may be specifically authorized by action of the Board, including authorization by delegated authority, in connection with action approving the issuance of the chapter."

(c) *Federal mutual charter.* The following is the standard form of Federal mutual charter. Associations may vary the wording of charters only in accordance with bracketed instructions.

Federal Mutual Charter

Section 1. *Corporate title.* The full corporate title of the association is ————.

Section 2. *Office.* The home office shall be located at————.

Section 3. *Duration.* The duration of the association is perpetual.

Section 4. *Purpose and powers.* The purpose of the association is to pursue any or all of the lawful objectives of a Federal mutual association chartered under section 5 of the Home Owners' Loan Act and to exercise all the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thererto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Federal Home Loan Bank Board ("Board").

Section 5. *Capital.* The association may raise capital by accepting payments on savings and demand accounts and by any other means authorized by the Board.

Section 6. *Members.* All holders of the association's savings, demand, or other authorized accounts are members of the association. In the consideration of all questions requiring action by the members of the association, each holder of an account shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. All accounts shall be nonassessable. Borrowers as of the date of this charter shall continue to have one vote for the period of time such borrowings are in existence. No member, however, shall cast more than 1000 votes. Voting may be by proxy, which is subject to the rules and regulations of the Board.

[Associations adopting this charter with existing borrower members must "grandfather" those borrower members i.e. grant them voting rights, if they were members on the date of issuance of the new charter by the Board.]

Section 7. *Directors.* The association shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen persons, as fixed in the association's bylaws, except that the number of directors may be increased to a number greater than fifteen with the prior approval of the Board or its delegate.

[State-chartered savings banks converting to Federal savings banks may retain the term "trustees" and substitute such term throughout the charter and bylaws for the term "director," and may include alternative provisions for the election and term of office of trustees so long as such provisions (1) are authorized by the Board, including authorization pursuant to delegated authority, and (2) provide for compliance with the standard provisions of this section no later than six years after conversion to a Federal association.]

Section 8. *Reserves, surplus, and distribution of earnings.* The association shall maintain for the purpose of meeting losses the amount of general reserves that the Board requires for insurance of accounts referred to in the Board's regulations as "regulatory net worth" or any successor term. Any losses may be charged against general reserves. The association shall distribute net earnings on its accounts on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Board: *Provided,* that the association may establish minimum-balance requirements for accounts to be eligible for distribution of earnings.

All holders of accounts of the association shall be entitled to equal distribution of assets, *pro rata* to the value of their accounts, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the association. Moreover, in any such event, or in any other situation in which the priority of such accounts is in controversy, all such accounts shall, to the extent of their withdrawal value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

Section 9. *Amendment of charter.* Adoption of any preapproved charter amendment pursuant to § 544.4 or 546.10 of the Board's

regulations (12 CFR 544.4, 546.10) or any successor provision shall be effective upon filing the amendment with the Board in accordance with regulatory procedures, after such preapproved amendment has been submitted to and approved by the members at a legal meeting. Any other amendment, addition, alteration, change, deletion to or repeal of this charter must be submitted to and preliminarily approved by the Board prior to submission to and approval by the members at a legal meeting. Any amendment, addition, alteration, change, deletion to or repeal so acted upon and approved shall be effective upon filing it with the Board in accordance with regulatory procedures.

Attest: _____

Secretary of the Association.

By: _____

President or Chief Executive Officer of the Association.

Federal Home Loan Bank Board.

Attest: _____

Secretary of the Board.

By: _____

Effective Date.

§ 544.4 Preapproved charter amendments.

This section constitutes preliminary approval by the Board of proposals to members by the board of directors of any Federal mutual association for the adoption or deletion of any of the following amendments to the charter of a Federal mutual association, including the adoption of the Federal mutual charter as set forth in § 544.3(c) of this Part: *Provided,* that the association follows the requirements of its charter in adopting the amendments; and *Provided further,* that where a paragraph specifies wording for an amendment, such amendment uses the exact wording as specified in that paragraph.

(a) *Purposes and powers.* Add a second paragraph to Section 4, as follows:

Section 4. Purpose and Powers. * * *

The association shall have the express power: (i) To act as fiscal agent of the United States when designated for that purpose by the Secretary of the Treasury, under such regulations as the Secretary may prescribe, to perform all such reasonable duties as fiscal agent of the United States as may be required, and to act as agent for any other instrumentality of the United States when designated for that purpose by any such instrumentality; (ii) To sue and be sued, complain and defend in any court of law or equity; (iii) To have a corporate seal, affixed by imprint, facsimile or otherwise; (iv) To appoint officers and agents as its business shall require and allow them suitable compensation; (v) To adopt bylaws not inconsistent with the Constitution or laws of the United States and rules and regulations adopted thereunder and under this Charter; (vi) To raise capital, which shall be unlimited, by accepting payments on savings, demand, or other accounts, as are authorized by regulations made by the Board, and the holders of all such accounts or other accounts as shall, to such extent as may be provided by such regulations, be members of the association and shall have such voting rights and such other rights as are thereby provided; (vii) To issue notes, bonds, debentures, or other obligations, or securities, provided by or under any provision of Federal statute as from time to time is in effect; (viii) To provide for redemption of insured accounts; (ix) To borrow money without limitation and pledge and otherwise encumber any of its assets to secure its debts; (x) To lend and otherwise invest its funds as authorized by statute and the rules and regulations of the Board; (xi) To wind up and dissolve, merge, consolidate, convert, or reorganize; (xii) To purchase, hold and convey real estate and personalty consistent with its objects, purposes, and powers; (xiii) to mortgage or lease any real estate and personalty and take such property by gift, devise, or bequest; and (xiv) To exercise all powers conferred by law. In addition to the foregoing powers expressly enumerated, this association shall have power to do all things reasonably incident to the accomplishment of its express objects and the performance of its express powers.

(b) *Title change.* A Federal mutual association may amend its charter by substituting a new corporate title upon satisfaction of the requirements of this paragraph. Prior to submitting the proposed amendment to its members, the association shall file with the Supervisory Agent a written notice setting forth the proposed title. The Supervisory Agent shall provide to the association a timely written acknowledgment of receipt. If, within 30 days of receipt of notice, the Supervisory Agent does not notify the association of his objection on the grounds set forth in § 542.2 of this Subchapter, the association may change its title by amending its charter in accordance with § 544.5(b) of this Part and the amendment provisions of its charter, except that an association chartered as a Federal savings and loan association may change its title to indicate that it is a Federal savings bank, and an association chartered as a Federal savings bank may change its title to indicate that it is a Federal savings and loan association, only pursuant to paragraph (d) of this section.

(c) *Change of location.* A Federal mutual association that has complied with § 545.95 of this Subchapter may amend its charter by substituting a new home office in section 2.

(d) *Savings bank charter.* A Federal mutual savings and loan association may amend its charter to read in the form of a Federal mutual savings bank charter as specified in § 544.3(b) of this Part and a Federal mutual savings bank may amend its charter to read in the form of a Federal mutual savings and loan association charter: *Provided,* that such association complies with the requirements of § 546.10 of this Subchapter.

(e) *Mutual capital certificates.* Renumber existing section 9 as section 10, add new section 9 to read as set forth below, and add an additional provision to renumbered section 10 as provided below:

Section 9. *Mutual capital certificates.* The association may issue mutual capital certificates pursuant to the rules and regulations of the Board. Subject to such rules and regulations and without the prior approval of the members, the board of directors of the association is authorized, by resolutions from time to time adopted by it, to provide in supplementary sections hereto for the issuance of mutual capital certificates and to fix and state the voting powers, designations, preferences, and the relative participating, optional, or other special rights of the certificates, and the qualifications, limitations, and restrictions thereon.

Members of the association shall not be entitled to preemptive rights with respect to the issuance of mutual capital certificates, nor shall holders of such certificates be entitled to preemptive rights with respect to any additional issues of mutual capital certificates.

Section 10. Amendment of charter. * * *

[Additional provisions may be added to the section to grant holders of mutual capital certificates the right to vote on amendments, additions, alterations, changes, or repeal of the charter in any of the instances set forth in § 563.7–4 of the Board's regulations.]

(f) *Maximum number of votes for members.* A Federal mutual association may amend its charter by substituting 1,000 votes per member in section 6.

§ 544.4–1 Additional charter provisions. [Reserved]

§ 544.5 Procedures for obtaining Board approval of charter amendments.

(a) *Procedure for obtaining preliminary approval of amendments.* Preliminary approval is the approval required before submitting charter amendments to a vote of the members. Amendments listed in § 544.4 are granted preliminary approval of the Board. The board of directors of a Federal mutual association may request preliminary approval of amendments to the association's Federal mutual charter by filing with the Office of General Counsel, with a copy to the Supervisory Agent, a certified resolution of the board of directors proposing the amendment and setting forth the text of the amendment. Any such provision must be consistent with applicable statutes, regulations and Board policies. If the effect of the proposed amendment would be to render more difficult a change in control of the institution, the

filing shall include an opinion, acceptable to the Board, of counsel independent from the association, demonstrating that the proposed charter provision is consistent with applicable statutes, regulations and Board policies and indicating whether such a provision would be permissible for a corporation incorporated under the laws of Delaware. Any amendment not consistent with regulations or policy of the Board need not be approved by the Board or its delegate, regardless of their purported permissibility under state law. The General Counsel or his designee has delegated authority to make determinations under this section and to grant or deny the preliminary approval of the Board for amendments to all Federal mutual charters. Upon making such a determination, the General Counsel shall notify the Supervisory Agent who shall forward a copy of that determination to the Association.

(b) *Procedures for obtaining final approval of amendments.* Whenever a Federal mutual association whose charter specifies that amendments shall be effective upon filing completes the procedures necessary to amend its charter, or adds supplementary sections thereto, the association shall submit three signed copies of such amendment, along with a certification by the secretary of the association that the amendment is validly authorized and approved, to the Supervisory Agent, who shall return to the association a signed copy of the charter amendment stamped to demonstrate its filing and forward one copy to the Office of District Banks. Such filing shall constitute filing with the Board for purposes of determining the effectiveness of the amendment. A Federal mutual association whose charter provides that any amendment shall be effective on the date it receives final approval of the Board shall be deemed to have obtained such final approval on the date it files a copy of the properly adopted amendment what the Supervisory Agent in the manner specified in the first sentence of this paragraph (b).

§ 544.6 Reissuance of charter.

A Federal mutual association that has amended its charter may apply to have its charter, including the amendments, reissued by the Board by filing three executed copies, with the signatures required under § 544.3 of this Part, with the Board's Office of District Banks, with such supporting documents as may be needed to demonstrate that the amendments were properly adopted. Supporting documents shall include copies of the letters granting preliminary approval of the amendments and certifications regarding the vote of the members. The General Counsel or his designee has delegated authority to sign on the Board's behalf charters submitted for reissuance pursuant to this paragraph. Following attestation by the Secretary to the Board or his designee, a copy shall be returned to the association with copies forwarded to the Supervisory Agent and the Office of District Banks.

§ 544.7 Bylaws.

(a) *General.* At its first meeting following election by the members, the board of directors of a Federal mutual association shall adopt a set of bylaws for the administration and regulation of its affairs. Except as otherwise provided herein or in the charter, bylaws may be adopted, amended, or repealed by either a majority of the votes cast by the members at a legal meeting or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the association in accordance with the requirements of §§ 544.8 through 544.14 of this Part.

(b) *Permissible bylaws.* The bylaws and all amendments thereto shall not contain any provision that is inconsistent with §§ 544.8 through 544.14 or with other applicable laws, rules, regulations, the policies underlying such rules or the charter of the institution. Bylaw provisions that adopt the language of the Model Bylaws set out in the Appendix to this Part shall be deemed to comply with the requirements of this section.

(c) *Effectiveness.* Bylaws and amendments thereto that adopt the wording of the Model Bylaws in the Appendix shall be effective upon filing with the Supervisory Agent along with a statement that such provisions conform to the Model Bylaws. Bylaws and amendments that do not adopt the wording of the Model Bylaws shall not be effective unless approved by the Supervisory Agent. Approval by the Supervisory Agent shall constitute the approval of the Board for associations whose bylaws require such approval for amendment. The Supervisory Agent shall not accept any bylaw for amendments thereto for filing that do not conform to the Model Bylaws unless accompanied by an opinion of counsel independent from the association that states with specificity the reasons that such bylaws or amendments conform to the requirements of paragraph (b) of this section. Any bylaw or amendment whose effect would be to render more difficult a change in control of the institution or which adversely affects the ability of members to participate in the governance of the institution shall not be effective and shall be void unless such bylaw or amendment has been approved by the General Counsel or his designee. Any such provision must be filed with the Office of General Counsel, together with an opinion, acceptable to be Board, of counsel independent from the association, demonstrating that the proposed provision is consistent with applicable statutes, regulations and Board policies and indicating whether such provision would be permissible for a corporation incorporated under the laws of Delaware. The General Counsel may condition approval on the favorable vote of the members or such other conditions as he may deem appropriate.

(d) *Procedure.* Three copies of all bylaws and amendments thereto shall be filed with the Supervisory Agent with a copy of any required legal opinion and a certification from the secretary of the association stating such bylaws or amendments thereto were adopted by resolution of the board of directors or members by the requisite vote, who upon approval shall return one copy to the association, and forward one copy to the Office of District Banks, except that with respect to bylaws requiring the approval of the General Counsel, the association shall file two copies with the General Counsel and one copy with the Supervisory Agent and upon approval the General Counsel shall return one copy to the Supervisory Agent who shall notify the association.

§ 544.8 Effect of subsequent charter or bylaw amendment.

Notwithstanding any subsequent change to its charter or bylaws, the authority of a Federal mutual association to engage in any transaction shall be determined only the association's charter or bylaws then in effect, unless otherwise provided by Federal law or regulation.

§ 544.9 Members' meetings.

(a) *Annual meetings of members.* An association shall provide for and conduct an annual meeting of its members for the election of directors and at which any other business of the association may be conducted. Such meeting shall be held at such place as the board of directors may determine in the state in which the association has its principal place of business or in which the association maintains branches. Such annual meetings shall be held at a date and time within 150 days after the end of the association's fiscal year. At each annaul meeting, the officers shall make a full report of the financial condition of the association and of its

progress for the preceding year and shall outline a program for the succeeding year.

(b) *Special meetings of members.* Procedures for calling any special meeting of the members and for conducting such a meeting shall be set forth in the bylaws. The subject matter of such special meeting must be established in the notice for such meeting. The board of directors of the association or the holders of 10 percent or more of the votes eligible to be cast at a legal meeting shall be entitled to call a special meeting.

(c) *Notice of meeting of members.* Notice specifying the date, time, and place of the annual or any special meeting and adequately describing any business to be conducted shall be published in the business section of a newspaper printed in the English language in the community in which the home office of the association is located for one day for each of two successive weeks immediately prior to the week in which such meeting shall convene. If it is determined that the primary language of a significant number of adult residents of the community is a language other than English, notice may be required to be published simultaneously in the appropriate language(s). Notice shall be published in manner that is conspicuous to the average reader. A similar notice shall be posted in a conspicuous place in each of the offices of the association during the 20 days immediately preceding the date on which such meeting shall convene. Notice may also be mailed, postage prepaid and delivered not fewer than 20 or more than 50 days before the date of the meeting to each member of record at the last address appearing on the books of the association. When any annual meeting is adjourned for 30 days or more, notice of the adjournment shall be given as in the case of an original meeting.

(d) *Fixing of record date.* For purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the bylaws shall provide for the fixing of a record date and a method for determining from the books of the association the members entitled to vote. Such date shall be not more then 50 days nor fewer than 20 days prior to the date on which the action, requiring such determination of members, is to be taken. When a determination of members entitled to vote at any meeting of members has been made as provided in this section, such determination shall apply to any adjournment thereof.

(e) *Member quorum.* Any number of members present and voting, represented in person or by proxy, at a properly called annual or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question. At any adjourned meeting any business may be transacted which might have been transacted at the meeting as originally ratified. The members present at a duly organized meeting may continue to transact business until adjournment.

(f) *Nomination for directors.* The board of directors or a committee of directors appointed by a majority of the directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of death or other incapacity, such nominations shall be prominently posted in each office of the association at least 20 days prior to the date of the meeting. The bylaws shall provide that nominations for directors may be made at the annual meeting by any member of record and shall be voted upon, except that the bylaws may require that nominations by a member be submitted to the secretary and then prominently posted in each office of the association at least 10 days prior to the date of the annual meeting.

(g) *New business.* Any new business to be taken up at the annual meeting shall be stated in writing and filed with the secretary of the association at least 10 days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting. No other proposal shall be acted upon at the annual meeting although it may, but need not, be discussed and considered; unless stated in writing and filed with the secretary at least 10 days before the meeting, such proposal shall be laid over for action at an adjourned, special, or next annual meeting of the members taking place 30 days or more thereafter. Nothing in this paragraph (g) shall prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees, but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as provided in this paragraph.

§ 544.9–1 Voting by proxy.

(a) *General.* At all meetings of members a member may vote in person or by a duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a procedure for identifying the member which is determined to be acceptable by the General Counsel or his designee. Proxies shall have been placed on file with the secretary of the association for verification prior to the meeting. Notwithstanding §569.3(b) of this Chapter, a proxy may designate as holder a corporation, partnership or company as defined in Part 574 of this Chapter. Proxies solicited on behalf of the management shall be voted as directed by the member or, in the absence of such direction, as determined by a majority of the proxy committee, or in its absence, by the board of directors. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors as a whole, or to a committee of directors appointed by a majority of such board.

(b) *Other voting arrangements.* (1) Accounts held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Accounts shown on the books of the association in the name of a trustee may be voted by such trustee, either in person or by proxy in accordance with the terms of the trust agreement, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

(2) Accounts held in the name of a receiver may be voted by such receiver, and accounts held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority to do so is contained in an appropriate order by which such receiver was appointed.

(3) A member whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(c) *Joint accounts.* (1) For voting purposes, funds in any type of joint account with identical joint or co-tenants shall be entitled to not more than 1000 votes. If the joint or co-tenants are not indentical, each such joint account shall be entitled to not more than 1000 votes.

(2) For voting purposes, a joint account shall be considered as being held by a single entity in undivided possession. Thus, only the entity rather than its joint owners may cast the votes to which the account is entitled. Nothing in this section, however, shall prevent the joint account from splitting the votes

to which it is entitled as the joint owners may in writing agree.

(3) If joint owners cannot agree on how to cast the votes of the joint account, neither the joint account or its joint owners shall be entitled to vote.

§ 544.9-2 Communication between members.

Provisions relating to communications between members shall be consistent with § 545.131 of this Subchapter. Notwithstanding any provision of this section or common law, no members or any other person shall have the right to obtain, inspect or copy any portion of any books or records of a Federal mutual association containing: (1) A list of depositors in or borrowers from such association; (2) their addresses; (3) individual deposit or loan balances or records; or (4) any data from which such information could be reasonably constructed.

§ 544.9-3 Annual reports to members.

Provisions relating to annual reports to members shall be consistent with § 545.115 of this Subchapter.

§ 544.10 Board of directors.

(a) *General.* All corporate powers shall be exercised by or under authority of, and the business and affairs of a Federal mutual association shall be managed under the direction of, a board of directors. Each director of the association shall be a member of the association. A majority of the Directors shall be independent as that term is defined in § 544.10-1(c)(2). The board of directors shall have authority to fix reasonable compensation of directors and authorize the reimbursement of expenses for actual attendance at any meeting of the board or its committee. The board of directors shall annually elect a chairman of the board from among its members and shall designate the chairman of the board, when present, to preside at its meetings.

(b) *Performance of duties.* A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the association, and with such care as a prudent person in a like position would use under similar circumstances. In performing his duties, a director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by:

(1) One or more officers or employees of the association whom the director reasonably believes to be reliable and competent in the matters presented,

(2) Counsel, public accountants or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence, or

(3) A committee of the board upon which he does not serve, duly designated in accordance with a provision of the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(2) However, a director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question, or would have obtained such knowledge through the exercise of appropriate prudence and diligence, that could cause such reliance to be unwarranted. Reports should be reviewed by each director and verified, and if they appear questionable should not simply be accepted at face value.

(c) *Number and term.* The board of directors shall consist of not fewer than five nor more than fifteen members, except where authorized by the Board, which number shall be specified in the bylaws. The directors shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually except in the case of converting or *de novo* associations where all directors shall be elected at the first election of directors for first terms which shall be staggered in length from one to three years.

(d) *Vacancies.* Any vacancy occuring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors even if they constitute less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the members.

(e) *Resignation or removal of directors.* (1) Any director may resign at any time by sending a written notice of such resignation to the home office of the association addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the bored of directors.

(2) At a meeting of members called expressly for that purpose, any director may be removed only for cause by a vote of the majority of the shares then entitled to vote at an election of directors.

(3) In any solicitation of proxies for removal of a director by member vote, opportunity must be provided to the director whose removal is sought to present a defense to members by means of a written statement not to exceed 500 words which must accompany or precede the initial solicitation for removal of such director. Such statement shall be mailed at the expense of the party seeking removal.

(4) For the purposes of this section, the term "cause" shall mean willful failure, neglect or refusal in any material respect to perform duties as a director or commission of any act of willful misconduct, self-dealing, malfeasance or gross negligence. The foregoing description of cause shall in no way limit the power of the Board of the Corporation to bring an action for removal under the National Housing Act, Home Owners' Loan Act or other authority.

(f) *Age limitation on directors.* A Federal mutual association may provide in its bylaws that no person of an age 70 years or older will be eligible for election, reelection, appointment, or reappointment to the board of directors of the association. The bylaws may also provide that no director shall serve as such beyond the annual meeting of the association immediately following the attainment of the specified age.

§ 544.10-1 Director's meetings.

(a) *Meetings.* A regular meeting of the board of directors shall be held immediately after, and at the same plae as, the annual meeting of the members. The board of directors shall determine the place, frequency, time, and procedure for notice of such meeting and other meetings of the board of directors. Notice of meetings shall be at least 24 hours unless waived by the directors for regular meeting of the board of directors or any committee designated thereby. Members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other at the same time, and

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participation by such means shall constitute presence in person at a meeting for all purposes.

(b) *Quorum.* A majority of the authorized number of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Board.

(c) *Executive and other committees.* (1) *General.* The board of directors, by resolution adopted by a majority of the authorized number of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in the resolution or bylaws of the association, shall have and may exercise all of the authority of the board of directors, except that no committee shall have the authority of the board of directors with reference to: (i) The amendment of he charter of bylaws of the association; (ii) recommending to the members a plan of combination or conversion; (iii) the approval of a plan of merger not requiring member approval; (iv) the sale, lease, or other disposition of all or substantially all of the assets of the association otherwise than in the usual and regular course of its business; (v) a reduction in the capital of the association; (vi) a voluntary dissolution of the association; (vii) a revocation of any of the foregoing; or (viii) the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility or fiduciary duty imposed by law or regulation.

(2) *Audit committee.* Each Federal mutual association shall appoint an audit committee of at least three directors the majority of whom shall be independent. A director shall be considered independent if he is neither employed by the association, its service corporation, or any person or persons deemed to control the association under § 563.18–1 of this Chapter, or its affiliates or serving as legal counsel or other professional advisor to the association, its service corporation, or any person or persons deemed to control the association under Part 563, or its affiliates. The audit committee shall recommend independent auditors, consult with the independent auditors regarding the plan of audit, review the audit report in consultation with the independent auditors, and consult with the independent auditors regarding the adequacy of internal accounting controls.

(3) *Investment Committee.* Each Federal mutual association shall appoint an investment committee of at least three directors the majority of whom shall be independent, as defined in paragraph 2 of this section. The independent directors shall be different persons from those serving on the audit committee.The investment committee will assess the credit and interest rate risk of the association and prepare reports on such risk for the board of directors.

(d) *Notice of special meetings.* Written notice of at least 24 hours regarding any special meeting of the board of directors or of any committee designated thereby shall be given to each director or committee member in accordance with the bylaws, although such notice may be waived by the director. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in the notice or waiver of notice of such meeting.

(e) *Action without a meeting.* Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

(f) *Presumption of assent.* A director of the association who is present at a meeting of the board directors at which action on any matter is taken shall be presumed to have assented to the action taken unless his dissent or abstention shall be entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the association within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

§ 544.10–2 Directors' conflicts of interest.

(a) *General.* No contract or other transaction between a Federal mutual association and one or more of its directors, or between a Federal mutual association and any corporation, firm or association in which one or more of the association's directors has a material financial interest, is either void or voidable because such director or directors or such other corporation, firm or association are parties or because such director or directors are present at the meeting of the board or a committee thereof which authorizes, approves or ratifies the contract or transaction; *Provided,* that

(1) The material facts regarding the transaction and the director's interest therein are fully disclosed or known to the members and such contract or transaction is approved by the members with the eligible votes of the interested director or directors not entitled to vote on or be counted for purposes of determining a quorum, and the contract or transaction is just and reasonable as to the association at the time it is authorized, approved or ratified; or

(2) The material facts regarding the transaction and the director's interest herein are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratiifies the contract or transaction in good faith by a vote sufficient without counting the vote of the interested director or directors, and the contract or transaction is just and reasonable as to the association at the time it is authorized, approved or ratified.

(b) *Interested directors.* A mere common directorship does not constitute a material financial interest within the meaning of this section. Nor is a director "interested" within the meaning of this section in voting upon a resolution fixing the compensation of another director as a director, officer or employee of the association, notwithstanding the fact that the first director is also receiving compensation from the association.

(c) *Presence of interested directors at meeting.* Except with regard to other transactions addresed in paragraph (a) of this section, no contract or other transaction between a Federal mutual association and any corporation or association of which one or more of its directors are directors is either void or voidable because such director or directors are present at the meeting of the board or a committee thereof which authorizes, approves or ratifies the contract or transaction: *Provided,* that

(1) The material facts regarding the transaction and such director's other directorship are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of

the interested director or directors, or the contract or transaction is approved by the members; or

(2) The contract or transaction is just and reasonable to the association at the time it is authorized, approved or ratified.

(d) *Determining a quorum.* Interested directors may be counted in determining the presence of a quorum at a meeting of the board or a committee thereof which authorizes, approves or ratifies a contract or transaction.

(e) *Transactions with affiliates.* Compliance with this section shall not affect the right of the Board or the Corportion to object to the contract or transaction under §§ 563.40 through 563.44, § 584.3, or any other section of this Chapter or any other law or regulation.

§ 544.10–3 [Reserved]

§ 544.10–4 Officers.

(a) *Positions.* The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The president shall be the chief executive officer, unless the board of directors designates the chairman of the board as chief executive officer. The president need not be a director of the association. The offices of the secretary and treasurer may be held by the same person and a vice president may also be either the secretary or the treasurer. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absense of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

(b) *Removal.* Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby; but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. "Cause" shall mean willful failure, neglect, or refusal in any material respect to perform duties as an officer or commission of any act of willful misconduct, self-dealing, malfeasance or gross negligence.

(c) *Employment contracts.* Upon specific approval of the board of directors, a Federal mutual association may enter into employment contracts with its officers and other employees in accordance with § 563.39 of this Chapter.

(d) *Age limitation on officers.* A Federal mutual association may provide in its bylaws that no person of an age 70 years or older will be eligible for election, reelection, appointment or reappointment as an officer of the association. The bylaws may also provide that no officer shall serve as such beyond the annual meeting of the association immediately following the attainment of the specified age.

§ 544.10–5 Indemnification of directors, officers and employees.

A Federal mutual association may indemnify its directors, officers and employees and directors, officers and employees of any wholly-owned subsidiary, provided that indemnification may be made only in accordance with the following requirements:

(a) *General.* Subject to the provisions of this section, a Federal mutual association may indemnify any person against whom an action is brought or threatened because that person is or was a director, officer or employee of the association or any wholly-owned subsidiary for:

(1) Any amount for which that person become liable under a judgment or settlement in such action; and

(2) Reasonable costs and expenses, including attorney's fees, actually paid or incurred by that person in defending or settling such action or in enforcing his rights under this section if he obtains a favorable judgment in such action; *Provided,* that nothing in this section authorizes indemnification by a Federal mutual association of directors, officers or employees of affiliates, affiliated persons, or subsidiaries of the association for actions in their capacity as such except as provided in this section.

(b) *Conditions.* (1) *Favorable judgment.* Indemnification may be made to a person described in paragraph (a) of this section if final judgment on the merits is in his favor.

(2) *No favorable judgment.* Indemnification may be made to a person described in paragraph (a) if final judgment is not in his favor, but only as provided in this paragraph (b).

(i) *General.* In the case of settlement, final judgment against the person, or final judgment in his favor other than on the merits, indemnification may be made if it is determined that the person was acting in good faith within the scope of his employment or authority as he could reasonably have perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interests of the association or its members and, in the case of a criminal action, he had no reasonable cause to believe his conduct was unlawful. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of disinterested directors. However, in no case shall any indemnification be made unless the association gives the Board at least 60 days' notice of its intentions to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. A copy of such notice, and a certified copy of the resolution containing the required determination by the board of directors, shall be sent to the Office of Examination and Supervision, the Office of General Counsel and the Supervisory Agent. The Supervisory Agent shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the Board or its designee advises the association in writing, within such notice period, of its objection thereto. The Office of Examination and Supervision with the concurrence of the Office of General Counsel has delegated authority to make a determination under this paragraph (b)(2)(i).

(ii) *Action by or on behalf of the association.* In addition to the requirements of paragraph (b)(2)(i), when the action is brought or threatened by the association or on behalf of the association indemnification shall be limited to reasonable costs and expenses as described in paragraph (a)(2) of this section, and no indemnification shall be made in connection with any claim, issue or matter for which there has been a final judgment that the person was liable for negligence or misconduct in the performance of his duty to the association.

(c) *Insurance.* An association may obtain insurance to protect it and its directors, officers and employees or the directors, officers and employees of its wholly-owned subsidiaries from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts committed in their capacity as directors, officers or employees. However, associations may

not obtain insurance which provides for payment of losses of any person incurred as a consequence of his willful or criminal misconduct.

(d) *Advanced payment of expenses.* If a majority of the disinterested directors of an association concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, the directors may authorize payment of reasonable costs and expenses, including attorneys' fees, arising from the defense or settlement of such action. Nothing in this paragraph (d) shall prevent the directors of an association from imposing such conditions on a payment of expenses as they deem warranted and in the interests of the association. Before making advance payment of expenses under this paragraph, the association shall obtain an agreement in writing that the association will be repaid if the person on whose behalf payment is made is later determined not to be entitled to such indemnification.

(e) *Prohibited indemnification.* Nothing in this section shall authorize or require the Board to approve indemnification of directors, officers or employees of the association when such indemnification would contravene public policy as expressed by Federal statutes or the regulations of the Board.

(f) *Exclusiveness of provisions.* No association shall indemnify any person referred to in paragraph (a) of this section or obtain insurance referred to in paragraph (c) of this section other than in accordance with this section. However, an association which had a bylaw in effect on October 1, 1969, relating to indemnification of its personnel shall be governed solely by that bylaw, is such is still in effect, except that the association's authority to obtain insurance shall be governed by paragraph (c) of this section.

(g) *Definitions and rules of construction.* (1) Definitions for purposes of this section:

(i) *Action.* Any judicial or administrative proceeding or threatened proceeding, whether civil, criminal, or otherwise, incuding any appeal or other proceeding for review;

(ii) *Court.* Includes, without limitation, any court to which or in which any appeal or any proceeding for review is brought;

(iii) *Disinterested.* When applied to members or a director, a person not named as party to the action in connection with which indemnification or advancement of expenses is sought;

(iv) *Final judgment.* A judgment, decree, or order which is not appealable or as to which the period for appeal has expired with no appeal taken;

(v) *Settlement.* Includes entry of a judgment or dismissal by consent or confession or a plea of guilty or *nolo contendere.*

(2) References in this section to any individual or other person, including any association, shall include any person acting as administrator, executor, guardian, conservator, trustee, legal representative, successor and assign thereof.

§ 544.11–544.12 [Reserved]

§ 544.13 Fiscal year; annual audit.

The bylaws of a Federal mutual association shall specify the fiscal year for the association. The association shall be subject to an annual audit as of the end of its fiscal year by independent public accountants appointed by and responsible to the board of directors. The appointment of such accountants shall be subject to annual ratification by the members.

§ 544.14 Corporate procedures.

(a) *Execution of instruments, generally.* The board of directors shall establish procedures for the execution, verification, acknowledgment, and delivery of instruments or writings of any nature.

(b) *Seal.* The association may have a corporate seal, which may be modified from time to time, and may use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(c) *Miscellaneous.* The bylaws may also address subjects which comply with applicable Federal law, rules, or regulations such as emergency preparedness or any other subjects necessary or appropriate for effective operation of the association.

§ 544.15–544.19 [Reserved]

§ 544.20. Combinations involving Federal mutual associations.

Federal mutual associations may enter into combinations, which for the purposes of this Part include bulk purchase or sale of assets, mergers and consolidations, only in accordance with the provisions of this Part.

§ 544.21 Merger or consolidation.

(a) *Permissible mergers or consolidation.* Federal mutual associations may merge or consolidate with other associations: *Provided,* that—

(1) All constituent associations have accounts insured by the Federal Savings and Loan Insurance Corporation, except for Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation, (2) if any constituent is a mutual association, the resulting association shall be mutually held, except in cases involving supervisory combinations, mergers approved under Part 563b of this Chapter or combinations in which one of the constituents, is an interim Federal association or an interim state institution, and (3) as to any constituent association which is not a Federal association, the merger is in accordance with the laws of the jurisdiction in which the association was organized.

(b) *Board approval.* Prior written approval of the Board is required for every combination. In determining whether to confer such approval, the Board shall apply the criteria set out in § 571.5 of this Chapter and shall impose any condition it deems necessary or appropriate to ensure conformity with those criteria and the requirements of this Chapter. Prior written approval of the Federal Deposit Insurance Corporation is required for every combination involving a Federal association insured by the Federal Deposit Insurance Corporation.

(c) *Approval by the Board's Principal Supervisory Agent.* (1) The specific approval of the Board (including recommending modifications of the combination agreement) required by paragraph (b) of this section may be given by the Board's Principal Supervisory Agent in accordance with the conditions set forth in § 563.22 of this Chapter.

(2) In approving a merger under paragraph (c) of this section, the Principal Supervisory Agent may approve maintenance of an office of the merging association as a facility of the resulting association and may approve a temproary increase in the number of directors of the resulting association, provided that the association submits an acceptable plan for bringing the board of directors into compliance with the requirements of § 544.3 of this Subchapter within a reasonable period of time.

(d) *Approval of board of directors.* Before filing for Board approval, the combination and the combination agreement shall be approved by each constituent association's board of directors: (1) By a two-thirds vote of the entire board of each Federal association, and (2) as required by state law or other applicable law for other constituents.

(e) *Approval by members.* Notwithstanding any other provision of this part, the Board may require that a plan or merger be submitted to the voting members of any of the associations at a duly called meeting(s)

and that the plan to be effective, be approved by them.

(f) *Conservator or receiver action.* A conservator or receiver for an association appointed under Part 547 of this Subchapter may merge the association with another under § 544.21 without submitting the combination agreement to the association's board of directors or members for their approval.

(g) *Combination agreement.* (1) All terms, conditions, agreements, understandings, or other provisions with respect to the combination, shall be set forth fully in a written combination agreement.

(2) The combination agreement shall specify: (i) Which association will be the resulting association; (ii) the name it will use; (iii) the location of its home office and branch offices; (iv) the bases on which its savings accounts will be issued; and (v) the number of its directors and their names, addresses, and length of their terms.

(h) *Corporate title; change of location.* If a combination agreement provides for the resulting association's name or location to be changed, and it is a Federal association, its charter shall be amended accordingly.

(i) *Application for Board approval.* (1) *Contents.* Applications shall be in a form prescribed by the Board and shall include appropriate information responsive to the factors enumerated in § 571.5.

(2) *Filing requirement.* Constituent associations shall file three copies of the application prepared pursuant to this section with the Supervisory Agent. The combination agreement for a bulk purchase of assets shall state the information required by § 544.21(g)(2) of this subchapter. Applicants shall also comply with section 7A of the Clayton Act (15 U.S.C. § 18A) and regulations issued thereunder (16 CFR Parts 801, 802, and 803).

(j) *Notice.*—(1) *Public Notice.* Constituent associations shall jointly publish notice pursuant to § 542.4 of this Subchapter, except that the required newspaper publication of notice shall be made in the communities in which the home offices of the constiuent associations are located. Promptly after joint publication the constituent associations shall jointly file with the Supervisory Agent a copy of the notice and publisher's affidavit of publication.

(2) *Procedure.* Processing of an application under this section shall follow the procedures set forth in paragraph (i)(1) and in §§ 542.4(b) and 542.4(c) of this Subchapter: *Provided,* that in the case of mergers involving an interim Federal association or an interim state institution where the disappearing institution is immediately acquired under Part 574.4, instead of the public notice procedures of paragraph (j)(1), the public notice procedures of Part 574 shall be applicable.

(3) *Supervisory exception.* This paragraph (j) does not apply to combination instituted for supervisory reasons.

§ 544.22–544.23 [Reserved]

§ 544.24 Articles of combination for merger or consolidation.

(a) *Contents.* Articles of combination shall be executed in duplicate by each association, by its chief executive officer or executive vice president and by its secretary or an assistant secretary, and verified by one of the officers of each association signing such articles, and shall contain the terms of the combination agreement (either set forth or attached as an exhibit).

(b) *Filing.* Both sets of articles of combination shall be filed with the Supervisory Agent who shall, if he finds that such articles conform to the requirements of this regulation, endorse the articles and return one set to the resulting association.

§ 544.25 Effective date; date of consummation for merger or consolidation.

(c) *Effective date.* No combination under this section shall be effective until approved by the Board or its delegate. The effective date of a combination in which the resulting association is a Federal mutual association shall be the date of endorsement of the articles of combination by the Supervisory Agent. A later effective date, up to 90 days after the date of approval of the combination, may be requested by the applicant as part of the application subject to approval by the Board or its delegate. The effective date of a combination in which the resulting association is not a Federal association shall be a date subsequent to Board approval prescribed by the law of the state under which the resulting associated is chartered, or other applicable law. If a disappearing association combining under this section is a Federal association, its charter shall be deemed to be cancelled as of the effective date of the combination; such charter shall be surrendered to the Supervisory Agent at the time of filing of the articles of combination.

(b) *Date of consummation.* No combination under this section may be concluded until all necessary compliance materials, as required by any conditions to the resolution approving such consummation by the Board or its delegate, have been submitted to the satisfaction of the Supervisory Agent. The effective date and the date of consummation may be simultaneous only if the above noted materials have been submitted to and approved by the Supervisory Agent. Until the compliance materials have been submitted to and approved by the Supervisory Agent, the Board or its delegate shall have the right to alter, suspend or withdraw its approval should any interim development be deemed by the board or its delegate to be a material change in circumstances warranting such action.

§ 544.26 Continuity of corporate existence after merger or consolidation.

On the effective date of a combination in which the resulting association is a Federal association, all assets and property (real, personal, and mixed, tangible, and intangible, choses in action, rights and credits) of the association shall immediately, without any further act, become the property of the resulting association to the same extent as they were the property of the disappearing association, and the resulting association shall be a continuation of the entity which absorbed the association. All rights, obligations, duties and liabilities of the association shall remain unimpaired, and the resulting association shall, on the effective date of the combination, succeed to all those rights and obligations.

§ 544.27 [Reserved]

§ 544.28 Supervisory Combinations.

Notwithstanding anything in this Part, the Board may determine to waive or deem inapplicable any provision of §§ 544.21–544.27 if the Board determines that severe financial conditions exist that threaten the stability of such an association and that such action is likely to improve the financial condition of the association, or to avert insolvency or imminent failure of an association as defined in § 541.3 of this Subchapter. For purposes of such action under § 5(d) of the Home Owners' Loan Act, the term "member" shall include the members as defined in the charter of a Federal mutual association. The term "insolvency" shall mean that the assets of the association are less than its obligation to it creditors and others, including its depositors.

§ 544.29 [Reserved]

§ 544.30 Bulk purchase or sale of assets.

(a) *Permissible bulk purchase of assets.* Federal mutual associations may enter into bulk purchase-of-asset transactions as transferee with other

entities: *Provided*, that (1) all transferor entities are depository institutions, and (2) the transferee Federal mutual association (i) will meet the requirements of Federal Home Loan Bank membership and insurance of accounts after the transaction; and (ii) conforms, within the time prescribed by the Board, to the requirements of section 5(c) of the Home Owners' Loan Act.

(b) *Permissible bulk sale of assets.* Federal mutual associations may enter into bulk sales of assets transactions as transferor only in connection with combinations instituted for supervisory reasons.

(c) *Bulk purchase or sale of assets defined.* A purchase or sale of assets by a Federal mutual association shall be deemed a bulk purchase or sale if it involves the acquisition or disposition by a Federal mutual institution of all or substantially all of the association's assets other than in the ordinary course of business. An acquisition or disposition shall be deemed to involve substantially all of an association's assets if the association's and its subsidiaries' net book value of the assets to be acquired or disposed or the amount paid or to be received by the association exceeds fifty percent of the total assets of the association and its subsidiaries prior to the acquisition or disposition.

(d) *Board approval.* Prior written approval of the Board is required for every bulk purchase of assets. In determining whether to confer such approval, the Board shall apply the criteria set out in § 571.5 of this Chapter and shall impose any condition it deems necessary or appropriate to ensure conformity with those criteria and the requirements of this Chapter. Prior written approval of the Federal Deposit Insurance Corporation is required for every combination involving both a Federal association insured by the Federal Deposit Insurance Corporation and an association not insured by such Corporation.

(e) *Approval by the Board's Principal Supervisory Agent*—The specific approval of the Board (including recommending modifications of the combination agreement) required by paragraph (b) of this section may be given by the board's Principal Supervisory Agent in accordance with the conditions set forth in § 563.22 of this Chapter.

(f) *Approval of board of directors.* Before filing for Board approval of a bulk purchase of assets, the combination shall be approved by each constituent association's board of directors: (1) By a two-thirds vote of the entire board of each Federal association, and (2) as required by state law or other applicable law for other constituents.

(g) *Combination agreement.* (1) All terms, conditions, agreements, understandings, or other provisions with respect to a combination involving a bulk purchase of assets shall be set forth fully in a written combination agreement.

(2) The combination agreement for a bulk purchase of assets shall state the information required by § 544.21(g)(2).

(h) *Application for Board approval.* Application for Board approval of a bulk purchase of assets shall follow the procedures of § 544.21(i).

(i) *Notice.* Notice requirements for a bulk purchase of assets shall follow the procedures of § 544.21(j).

§ 544.31 [Reserved]

§ 544.32 Articles of combination for bulk purchase or sale of assets.

Articles of combination for a bulk purchase of assets shall be executed pursuant to § 544.24 of this Part.

§ 544.33 Effective date; date of consummation for bulk purchase or sale of assets.

The effective date and the date of consummation for a bulk purchase or sale of assets shall be determined pursuant to § 544.25 of this Part.

§ 544.34 Continuity of corporate existence after bulk purchase or sale of assets.

The continuity of corporate existence of a Federal mutual association shall not be affected by a bulk purchase or sale of assets.

§ 544.35 [Reserved]

§ 544.36 Partial purchase or sale of assets.

(a) *General.* A purchase or sale of assets by a Federal mutual association shall be considered a partial purchase or sale of assets if the transaction involves the acquisition or disposition by the Federal mutual association of assets, other than in the ordinary course of business, in any amount which is less than "all or substantially all of the associations assets" as defined in § 544.30(c).

(b) *Percentage of assets test.* A partial purchase or sale by a Federal mutual association shall not be deemed to involve all or substantially all of the association's assets if the association's and its subsidiaries' equity in the net book value of such assets to be acquired or disposed or the total amount paid or received for such acquisition or disposition does not exceed fifty percent of the total assets of the association and its subsidiaries prior to the purchase or sale, except where the purchase or sale is part of an overall plan contemplating the sale or purchase of greater than fifty percent of the total assets of the association and its subsidiaries. Partial purchases or sales of assets shall be governed by § 563.22 of this Chapter.

§ 544.37–544.39 [Reserved]

§ 544.40 Reorganization [Reserved]

§ 544.41–544.49 [Reserved]

§ 544.50 Dissolution.

Federal mutual associations may voluntarily dissolve themselves only in accordance with the provisions of this Part.

§ 544.51 Voluntary dissolution.

(a) *Plan for dissolution.* A Federal mutual association's board of directors may propose a plan for dissolution of the association. The plan shall be approved by a two-thirds vote of the authorized number of directors. The plan may provide for (1) appointment of the Federal Savings and Loan Insurance Corporation (under section 5 of the Home Owners' Loan Act or section 406 of the National Housing Act as receiver for the purpose of liquidation; (2) transfer of all the association's assets to a depository institution under Federal or State charter either for cash sufficient to pay all obligations of the association and retire all outstanding accounts or in exchange for that institution's payment of all the association's outstanding obligations or other evidence of interest to the association's accountholders on a *pro rata* basis; or (3) dissolution in a manner proposed by the directors which they consider best for all concerned. The plan, and a statement of reasons for proposing dissolution and for proposing the plan, shall be submitted to the Board for approval.

(b) *Board approval.* The Board may approve the plan if the Board believes dissolution is advisable and the plan best for all concerned, but if the Board considers the plan inadvisable, the Board may either make recommendations to the association concerning the plan or disapprove the plan.

§ 544.52 Approval by members for dissolution.

When a plan of dissolution is approved by the association's board of directors and by the Board, the plan shall be submitted to the association's members at a legal meeting, and shall become effective when approved by the affirmative vote of two-thirds of the votes present at a legal meeting.

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§ 544.53 Notice of dissolution.

(a) *Notice to creditors.* Upon filing of a plan of dissolution with the Board, the dissolving association shall immediately cause notice thereof to be mailed to each known creditor of the association.

(b) *Notice to accountholders.* Notice of the members' affirmative vote to approve the plan of dissolution shall be furnished to any affected accountholder pursuant to § 565.5 of this Subchapter.

§ 544.54 Procedure for dissolution after Board and member approval.

Upon approval of the plan of dissolution by the Board and a vote of members, the dissolving association shall immediately proceed to collect its assets, convey and dispose of its properties pay, satisfy and discharge its liabilities and obligations, and do all other acts required to liquidate its business and affairs, and after paying or adequately providing for the payment of all its obligations and liabilities, distribute the remainder of its assets, either in cash or in kind, among its members according to their respective rights and preferences.

§ 544.55 Termination of corporate existence.

(a) *Completion of dissolution.* After dissolution in accordance with the plan, a certificate evidencing dissolution, supported by such evidence as the Board may require, shall immediately be filed with the Board. When the Board receives such evidence satisfactory to it will terminate the corporate existence of the dissolved association and the association's charter shall thereby be cancelled.

(b) *Continuation of corporate existence after dissolution.* Any association dissolving in accordance with this Part shall nevertheless continue its corporate existence for a period of three years from such dissolution, or for such longer period as the Board in its discretion may direct, solely for the purposes of prosecuting and defending legal actions, suits, or proceedings, whether civil, criminal or administrative, brought by or against such association, settling and closing business, disposing of or otherwise conveying property and discharging liabilities, but not for the purpose of continuing the business for which the association was organized. Any association dissolved pursuant to this Part shall, with respect to any action, suit or proceeding, whether civil, criminal or administrative, brought by or against such association, either prior to or within three years of the date of its dissolution, be deemed to continue its corporate existence beyond the three-year period until any and all final judgments, orders or decrees in connection with such action, suit or proceeding have been fully executed.

§ 544.56 Involuntary dissolution.

Notwithstanding the foregoing provisions of this Part, the Board may determine to waive or deem inapplicable any provision of §§ 544.51–544.55 of this Part for dissolutions instituted for supervisory reasons or pursuant to Part 547 of this Subchapter.

§ 544.57–544.59 [Reserved]

§ 544.60 Supervisory waiver.

Notwithstanding the foregoing provisions of Part 544, the Board may determine to waive or deem inapplicable any provision of §§ 544.1–544.59 of this Part to facilitate: (1) An acquisition to prevent the failure of an institution chartered by the Board or insured by the Corporation; or (2) a transfer of accounts in payment of insurance; or, (3) for supervisory reasons or pursuant to Part 574 of this Subchapter.

Appendix A to Part 544 Model Bylaws for Mutual Associations

Article I—Home Office

The home office of the association shall be at———in the County of———, in the State of———.

Article II—Members

Section 1. *Place of Meetings.* All annual and special meetings of members shall be held at the home office of the association or at such other place in the state in which the principal place of business of the association is located or in which the association maintains branches, as the board of directors may determine.

Section 2. *Annual Meeting.* A meeting of the members of the association for the election of directors and for the transaction of any other business of the association shall be held annually within 150 days after the end of the association's fiscal year on the———of———is not a legal holiday, and if a legal holiday, then on the next day following which is not a legal holiday, at———, or at such other date and time within such 150-day period as the board of directors may determine.

Section 3. *Special Meetings.* Special meetings of the members for any purpose or purposes, unless otherwise prescribed by the regulations of the Federal Home Loan Bank Board ("Board") (which as hereinafter used includes the Federal Savings and Loan Insurance Corporation), may be called at any time by the chairman of the board, the president, or a majority of the board of directors, and shall be called by the chairman of the board, the president, or the secretary upon the written request of the holders of not less than one-tenth of all of the votes eligible to be cast at a legal meeting. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the home office of the association addressed to the chairman of the board, the president, or the secretary.

Section 4. *Conduct of Meetings.* Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise prescribed by regulations of the Board or these bylaws. The board of directors shall designate, when present, either the chairman of the board or president, if the president is a director, to preside at such meetings.

Section 5. *Notice of Meeting.* Written notice stating the place, day, and hour of the meeting and the purpose(s) for which the meeting is called shall be published in the business section of a newspaper printed in the English language in the community in which the home office of the association is located for one day for each of two successive weeks immediately prior to the week in which the meeting shall convene. If it is determined that the primary language of a significant number of adult residents of the community is a language other than English, notice may be required to be published simultaneously in the appropriate language. Notice shall be published in a manner that is conspicuous to the average reader. A similar notice shall be posted in a conspicuous place in each office of the association during the 20 days immediately preceding the date on which the meeting shall convene. Notice may also be mailed, postage prepaid and delivered not fewer than 20 or more than 50 days prior to the date of the meeting, to each member of record at the last address appearing on the books of the association. When any members' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not be necessary to give any notice of the time and place of any meeting adjourned for fewer than 30 days or of the business to be transacted at the meeting, other than an announcement at the meeting at which such adjournment is taken.

Section 6. *Fixing of Record Date.* For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment, or in order to make a determination of members for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of members. Such date in any case shall be not more than 50 days nor fewer than 20 days prior to the date on which the particular action requiring such determination of members is to be taken. When a determination of members entitled to vote at any meeting of members has been made as provided in this section, such determination shall apply to any adjournment.

Section 7. *Quorum.* Any number of members present and voting, represented in person or by proxy, shall constitute a quorum at a properly called meeting of members. A majority of all votes cast at any meeting shall determine any question. At any adjourned meeting any business may be transacted which might have been transacted at the meeting as originally notified. The members present at a duly organized meeting may

continue to transact business until adjournment.

Section 8. *Proxies.* At all meetings of members a member may vote in person or by a duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a reasonable procedure for identifying the member. Proxies shall have been placed on file with the secretary of the association for verification, prior to the meeting. Nothwithstanding § 569.3(b) of the Board's Insurance Regulations, 12 CFR 569.3, a proxy may designate as holder a corporation, partnership or company as defined in Part 574 of the Insurance Regulations, 12 CFR Part 574. Proxies solicited on behalf of the management shall be voted as directed by the member or, in the absence of such direction, as determined by a majority of the proxy committee or, in its absence, by the board of directors. All proxies with a term greater than eleven months or solicited at the expense of the association must run to the board of directors as a whole, or to a committee of directors appointed by a majority of the authorized board of directors.

Section 9. *Joint accounts.* When ownership stands in the name of two or more persons, in the absence of written directions to the association to the contrary, at any meeting of the members of the association, any one or more of such members may cast, in person or by proxy, all votes to which such ownership is entitled. Nothing in this section shall prevent the joint owners from splitting their votes if written direction has been provided to the association prior to the meeting. In the event an attempt is made to cast conflicting votes, in person or by proxy, by the several persons in whose names the account(s) are held, the vote or votes to which those persons are entitled shall not be cast.

Section 10. *Voting by Certain Holders.* Accounts will in the name of another company may be voted by any officer, agent, or proxy as the bylaws of such company may prescribe, or, in the absence of such provisions, as the board of directors of such company may determine. Accounts held by an administrator, executor, guardian, or conservator may be voted by that person, either in person or by proxy, without a transfer of such shares into his name. Accounts held in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote accounts held by him without a transfer or such shares into his name. Accounts held in the name of a receiver may be voted by such receiver, and accounts held by or under the control of a receiver may be voted by such receiver without the transfer into his name if authority to do so is contained in an appropriate order of the court or other public authority by which such receiver was appointed.

A member whose accounts are pledged shall be entitled to vote such accounts until the accounts have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the accounts so transferred.

Section 11. *Communication Between Members.* Communications between members shall be subject to § 545.131 of the Board's regulations (12 CFR 545.131) as now in effect or any successor provision. Notwithstanding any provision of this section or common law, no member or any other person shall have the right to obtain, inspect or copy a portion of any books or records of a Federal mutual association containing: (1) A list of depositors in or borrowers from such association; (2) their addresses; (3) individual deposit or loan balances or records; or (4) any data from which such information could be reasonably constructed.

Section 12. *Inspectors of Election.* In advance of any meeting of members, the board of directors may appoint any persons other than nominees for office as inspectors of election to act at such meeting or any adjournment. The number of inspectors shall be either one or three. Any such appointment shall not be altered at the meeting. If inspectors of election are not so appointed, the chairman of the board or the president may, or on the request of not fewer than 10 percent of the votes eligible to be cast at the meeting shall, make such appointment at the meeting. If appointed at the meeting, the majority of the votes present shall determine whether one or three inspectors are to be appointed. In case any person appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting or at the meeting by the chairman of the board or the president.

Unless otherwise prescribed by regulations of the Board, the duties of such inspectors shall include: Determining the number of members and the voting power of each member, the members represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies; receiving votes, ballots, or consents; hearing and determining all challenges and questions in any way arising in connection with the right to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all members.

Section 13. *Nominating Committee.* The board of directors or a committee of directors appointed by a majority of the authorized board of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of death or the incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. No nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary 10 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the association. Ballots bearing the names of all persons nominated by the nominating committee and by members shall be provided for use at the annual meeting. However, if the nominating committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any member entitled to vote and shall be voted upon.

Section 14. *New Business.* Any new business to be taken up at the annual meeting, including any proposal to increase or decrease the number of directors, shall be stated in writing and filed with the secretary of the association at least 10 days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary at least 10 days before the meeting, such proposal shall be laid over for action at an adjourned, special, or annual meeting of the members taking place 30 days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as provided in this section.

Article III—Board of Directors

Section 1. *General Powers.* The business and affairs of the association shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board and a president from among its members and shall designate, when present, either the chairman of the board or the president to preside at its meetings.

Section 2. *Number and Term.* The board of directors shall consist of ——— members and shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

Section 3. *Regular Meetings.* A regular meeting of the board of directors shall be held without other notice than this bylaw immediately after, and at the same place as, the annual meeting of members. The board of directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 4. *Qualification.* Each director shall at all times be a member of the association.

Section 5. *Special Meetings.* Special meetings of the board of directors may be called by or at the request of the chairman of the board, the president, or one-third of the directors. The persons authorized to call special meetings of the board of directors may fix any place for holding any special meeting of the board of directors called by such persons.

Members of the board of directors may participate in special meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person for all purposes.

Section 6. *Notice.* Written notice of any special meeting shall be given to each

director at least 24 hours prior thereto when delivered personally or by telegram or at least five days prior thereto when delivered by mail at the address at which the director is most likely to be reached. Such notice shall be deemed to be delivered when deposited in the mail so addressed, with postage prepaid if mailed, and when delivered to the telegraph company if sent by telegram. Any director may waive notice of any meeting by a writing filed with the secretary. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting unless the director is attending the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice of or waiver of notice of such meeting.

Section 7. *Quorum.* A majority of the number of directors fixed by section 2 of this Article II shall constitute a quorum for the transaction of business at any meeting of the board of directors; but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Notice of any adjourned meeting shall be given in the same manner as prescribed by section 6 of this Article III.

Section 8. *Manner of Acting.* The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Board or by these bylaws.

Section 9. *Action Without a Meeting.* Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, eligible to vote thereon.

Section 10. *Resignation.* Any director may resign at any time by sending a written notice of such resignation to the home office of the association addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

Section 11. *Vacancies.* Any vacancy occurring on the board of directors may be filled by the affirmative vote of a majority of the remaining directors, although less than a quorum of the board of directors. A director elected to fill a vancancy shall be elected to serve until the next election of directors by the members. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the members.

Section 12. *Compensation.* Directors, as such, may receive a stated salary for their services. By resolution of the board of directors, a reasonable fixed sum, and reasonable expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board of directors. Members of either standing or special committees may be allowed compensation and reasonable expenses of attendance for attendance at committee meetings as the board of directors may determine.

Section 13. *Presumption of Assent.* A director of the association who is present at a meeting of the board of directors at which action on any association matter is taken shall be presumed to have assented to the action taken unless his dissent or abstention shall be entered in the minutes of the meeting or unless he shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the association within five days after the date a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 14. *Removal of Directors.* At a meeting of members called expressly for that purpose, any director may be removed for cause by a vote of a majority of the votes then entitled to vote at an election of directors. In any solicitation of proxies for removal of a director by member vote, opportunity must be provided to the director whose removal is sought to present a defense to members by means of a written statement not to exceed 500 words which must accompany or precede the initial solicitation for removal of such director. Such statement shall be mailed at the expense of the party seeking removal. For purposes of this section, the term "cause" shall mean willful failure, neglect or refusal in any material respect to perform duties as a director or commission of any act of willful misconduct, self-dealing, malfeasance, or gross negligence.

Section 15. *Age Limitations on Directors.* No person [fill in any age, 70 or above] years of age shall be eligible for election, reelection, appointment, or reappointment to the board of the association. No director shall serve as such beyond the annual meeting of the association immediately following the director's becoming [fill in age used above], except that a director serving on [fill in bylaw adoption date] may complete the term as director. This age limitation does not apply to an advisory director.

Article IV—Executive and Other Committees

Section 1. *Appointment.* The board of directors, by resolution adopted by a majority of the authorized board, may designate the chief executive officer and two or more of the other directors to constitute an executive committee. The designation of any committee pursuant to this Article IV and the delegation of authority shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

Section 2. *Authority.* The executive committee, when the board of directors is not in session, shall have and may exercise all of the authority of the board of directors except to the extent, if any, that such authority shall be limited by the resolution appointing the executive committee; and except also that the executive committee shall not have the authority of the board of directors with reference to: the amendment of the charter or bylaws of the association, or recommending to the members a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all or substantially all of the property and assets of the association otherwise than in the usual and regular course of its business; a voluntary dissolution of the association; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest.

Section 3. *Tenure.* Subject to the provisions of section 8 of this Article IV, each member of the executive committee shall hold office until the next regular annual meeting of the board of directors following his designation and until a successor is designated as a member of the executive committee.

Section 4. *Meetings.* Regular meetings of the executive committee may be held without notice at such times and places as the executive committee may fix from time to time by resolution. Special meetings of the executive committee may be called by any member thereof upon not less than one day's notice stating the place, date, and hour of the meeting, which notice may be written or oral. Any member of the executive committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 5. *Quorum.* A majority of the members of the executive committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the executive committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section 6. *Action without a meeting.* Any action required or permitted to be taken by the executive committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the executive committee eligible to vote thereon.

Section 7. *Vacancies.* Any vacancy in the executive committee may be filled by a resolution adopted by a majority of the authorized board of directors.

Section 8. *Resignations and removal.* Any member of the executive committee may be removed at any time with or without cause by resolution adopted by a majority of the authorized board of directors. Any member of the executive committee may resign at any time by giving written notice to the president or secretary of the association. Unless otherwise specified, such resignation shall take effect upon its receipt; the acceptance of such resignation shall not be necessary to make it effective.

Section 9. *Procedure.* The executive committee shall elect a presiding officer from its members and may fix its own rules of procedure which shall not be inconsistent with these bylaws. It shall keep regular

minutes of its proceedings and report the same to the board of directors for its information at the meeting held next after the proceedings shall have occurred.

Section 10. *Audit committee.* The board of directors, by resolution adopted by a majority of the authorized board, shall appoint an audit committee of at least three directors the majority of whom shall be independent. A director shall be considered independent if he or she is neither employed by the association, its service corporation, or any person or persons deemed to control the association under § 563.18–1 of the Insurance Regulations, 12 CFR 563.18–1, or its affiliates, or serving as legal counsel or other professional advisor to the association. The audit committee shall recommend independent auditors, consult with the independent auditors regarding the plan of audit, review the audit report in consultation with the independent auditors, and consult with the independent auditors regarding the adequacy of internal accounting controls.

Section 11. *Other committees.* The board of directors may by resolution establish a loan, or other committees composed of directors as it may determine to be necessary or appropriate for the conduct of the business of the association, and may prescribe the duties, membership, and procedures thereof.

Article V—Officers

Section 1. *Positions.* The officers of the association shall be a president, one or more vice presidents, a secretary, and a treasurer, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The president shall be the chief executive officer, unless the board of directors designates the chairman of the board as chief executive officer. The president need not be a director of the association. The offices of the secretary and treasurer may be held by the same person and a vice president may also be either the secretary or the treasurer. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the association may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

Section 2. *Election and Term of Office.* The officers of the association shall be elected annually at the first meeting of the board of directors held after each annual meeting of the members. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as possible. Each officer shall hold office until a successor has been duly elected and qualified or until the officer's death, resignation, or removal in the manner provided in this Article V. Election or appointment of an officer, employee, or agent shall not of itself create contractual rights. The board of directors may authorize the association to enter into an employment contract with any officer in accordance with regulations of the Board; but no such contract shall impair the right of the board of directors to remove any officer at any time in accordance with section 3 of this Article V.

Section 3. *Removal.* Any officer may be removed by the board of directors whenever in its judgment the best interests of the association will be served thereby, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. "Cause" with respect to removal of an officer shall have the same meaning as set forth in Section 14 of Article III as applied to directors.

Section 4. *Vacancies.* A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

Section 5. *Remuneration.* The remuneration of the officers shall be fixed from time to time by the board of directors.

Section 6. *Age Limitation for Officers.* No person [fill in any age, 70 or above] years of age shall be eligible for election, reelection, appointment, or reappointment as an officer of the association. No officer shall serve beyond the annual meeting of the assocaition immediately following the officer becoming [fill in age used above] except that an officer serving on [fill in bylaw adoption date] may complete the term. However, an official shall, at the option of the board, retire at age 65 if the officer has served in the executive or high policymaking post for at least two years immediately prior to retirement and is immediately entitled to nonforfeitable annual retirement benefits of at least ——— [$44,000 (1985) must be in accordance with the Age Discrimination in Employment Act.]

Article VI—Indemnification of Directors, Officers and Employees

Section 1. *General.* The association may indemnify any person against whom an action is brought or threatened because that person is or was a director, officer or employee of the association or a director,officer, or employer of any wholly-owned subsidiary, only as provided in this Article VI, for any amount for which that person becomes liable under a judgment or settlement in such action; and reasonable costs and expenses, including attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his rights under this section if he obtains a favorable judgment in such action: *Provided,* that nothing herein shall authorize indemnification by the association of directors, officers or employees of affiliates, affilated persons, or subsidiaries of the association for actions in their capacity as such unless such person was a director, officer or employee of a wholly-owned subsidiary.

Section 2. *Conditions.* Indemnification may be made to a person described in sectiion 1 if final judgment on the merits is in his favor. In addition, in the case of settlement, final judgment against him, or final judgment in his favor other than on the merits, indemnification may be made to a person described in Section 1 if it is determined that he was acting in good faith within the scope of his employment or authority as he could reasonably have perceived it under the circumstances and for a purpose he could reasonably have believed under the circumstances was in the best interests of the association or its members, and, in the case of a criminal action, he had no reasonable cause to believe his conduct was unlawful. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of disinterested directors. However, no indemnification shall be made unless the association gives the Board at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. A copy of such notice, and a certified copy of the resolution containing the required determination by the board of directors, shall be sent to the Board in accordance with its regulations. No such indemnification shall be made if the Board or its designee advises the association in writing, within such notice period, of its objection thereto. In addition, when the action is brought or threatened by the association or on behalf the associatioin, indemnification shall be limited to reasonable costs and expenses as described in section 1. Under no circumstances may indemnification be made in connection with any claim, issue or matter with regard to which there has been a final judgment that the person was liable for negligence or misconduct in the performance of his duty to the association.

Section 3. *Insurance.* An association may obtain insurance to protect it and its directors, officers and employees or the directors, officers and employees of a wholly-owned subsidiary from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts committed in their capacity as directors, officers or employees: *Provided,* that the association may not obtain insurance which provides for payment of losses of any person incurred as a consequence of his willful or criminal misconduct.

Section 4. *Advance Payment of Expenses.* If a majority of the disinterested directors of the association concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, such directors may authorize payment of reasonable costs and expenses, including attorney's fees, arising from the defense or settlement of such action. Nothing in this section shall prevent the directors of an association from imposing such conditions on a payment of expenses as they deem warranted in the interests of the association. Before making advance payment of expenses under this section, the association shall obtain an agreement in writing that the association will be repaid if the person on whose behalf payment is made is later determined not to be entitled to such indemnification.

Section 5. *Indemnification.* Nothing in this section shall authorize indemnification of directors, officers or employees of the association when such indemnification would contravene public policy as expressed by

Federal statutes or the regulations of the Board.

Section 6. *Exclusiveness of Provisions.* No association shall indemnify any person referred to in section 1 of this Article or obtain insurance referred to in section 3 of this Article other than in accordance with this Article.

Section 7. *Definitions and rules of construction.* Definitions and rules of construction for purposes of this Article shall be in accordance with Board regulations on indemnification of directors, officers or employees.

Article VII—Fiscal Year; Annual Audit

The fiscal year of the association shall end on the ——— of ——— of each year. The association shall be subject to an annual audit as of the end of its fiscal year by independent public accountants appointed by and responsible to the board of directors. The appointment of such accountants shall be subject to annual ratification by the members.

Article VIII—Contracts, Loans, Checks and Deposits

Section 1. *Contracts.* To the extent permitted by regulations of the Board, and except as otherwise prescribed by these bylaws with respect to certificates for shares, the board of directors may authorize any officer, employee, or agent of the association to enter into any contract or execute and deliver any instrument in the name of and on behalf of the association. Such authority may be general or confined to specific instances.

Section 2. *Loans.* No loans shall be contracted for on behalf of the association and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

Section 3. *Checks, Drafts, etc.* All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the association shall be signed by one or more officers, employees or agents of the association in such manner as shall from time to time be determined by the board of directors.

Section 4. *Deposits.* All funds of the association not otherwise employed shall be deposited from time to time to the credit of the association in such duly authorized federally insured depositories as the board of directors may select.

Article IX—Corporate Seal

The board of directors shall provide an association seal which shall be two concentric circles between which shall be the name of the association. The year of incorporation or an emblem may appear in the center.

Article X—Amendments

These bylaws may be amended in a manner consistent with regulations of the Board at any time by a majority vote of the full board of directors or by a majority vote of the votes cast by the members of the association at any legal meeting.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-30059 Filed 12-23-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-9]

Correction

In FR Doc. 85-29038, beginning on page 50174 in the issue of Monday, December 9, 1985, make the following corrections;

1. On page 50176, third column, in the fifth line of the paragraph beginning "Area A", "21°8'41" N.," should read "21°18'41" N.,";

2. On page 50177, first column, in the eighth line of the paragraph beginning "Area G", "239°T(239°M)" should read "239°T(228°M)"; and

3. On page 50177, first column, same paragraph, in the eleventh line, "286°T(095°M)" should read "286°T(275°M)".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

Proposed Customs Regulations Amendments Relating to Entry of Merchandise

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The Tariff Act of 1930 allows the consignee of imported merchandise to designate a customs broker to make entry. Small shipments of merchandise having various consignees are more efficiently and effectively handled if consolidated into large shipments under a master bill of lading or master air waybill prepared by a foreign freight consolidator which covers the numerous individual packages in the shipment. The foreign freight consolidator normally consigns the consolidated shipment to a freight forwarder, courier service or other person in the U.S. This consignee is normally not the same consignee identifed on the individual bills of lading or individual air waybills which make up the master bill of lading or master air waybill. When the consignee named in the master bill of lading or master air waybill appoints a broker of its own choosing to make entry, the actual consignees of the merchandise named in the individual bills are often frustrated in two respects. First, entry is made by a broker not of their choosing and, second, entry is often made at a port not of their choosing. Further, additional expenses may be incurred. This document proposes to amend the entry procedures to prevent frustration of the wishes of the actual consignees identified on the individual bills.

DATE: Comments must be received on or before February 24, 1986.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jerry Laderberg, Entry, Licensing, and Restricted Merchandise Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229; 202-566-5765.

SUPPLEMENTARY INFORMATION

Background

A customs broker is a person who is licensed by the Customs Service to transact Customs business on behalf of importers and other persons. Section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), provides for the entry of merchandise. Section 484(a)(1)(C) provides that when an entry of merchandise is made, the required documentation shall be filed either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a broker. A problem has arisen with respect to the appointment of a broker by the consignee of consoldiated shipments.

Small shipments of merchandise having various consignees are more efficiently and effectively handled if consolidated into a large shipment. Consolidated shipments to the U.S., usually by containers, have two sets of documents. One set of documents consists of a master bill of lading or master air waybill covering the container and its contents. Individual

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bills of lading or individual air waybills, also known as "house" bills of lading or "house" air waybills comprise the second set of documents. The master bill of lading or master air waybill is prepared by a foreign freight consolidator who ordinarily consigns the ontainer to a freight forwarder, courier service or similar party in the U.S. The consignee designated by the foreign freight consolidator is normally not the same consignee identified on the individual bills of lading or individual air waybills which make up the master bill of lading or master air waybill. When the consignee named in the master bill of lading or master air waybill appoints a broker of its own choosing to make entry, the actual consignees of the merchandise named in the individual bills are often frustrated in two respects. First, entry is made by a broker not of their choosing and second, entry is often made at a port of entry not of their choosing. Further, additional expenses may be incurred.

To prevent the foregoing situation from happening, Customs proposes to amend § 141.11, Customs Regulations (19 CFR 141.11), relating to evidence of the right to make entry for importations by common carrier by adding a new paragraph (c) covering consolidated shipments. The proposal would provide that in the case of consolidated shipments by common carrier, entry will not be made by a broker appointed by the consignee named in the master bill of lading or master air waybill, if (1) a consignee on any one of the individual bills of lading or individual air waybills which make up the master bill of lading or master air waybill, has designated another broker to make entry, or (2) any one of the individual bills of lading or individual air waybills indicates that entry will be made by the actual owner or purchaser. However, if the broker designated on an individual bill of lading or individual air waybill is contacted and fails to timely respond to make entry, the consignee named in the master bill of lading or master air waybill may disregard the designation and appoint a broker of its choosing to make entry. Under the proposal, the consignee named in the master bill of lading or master air waybill will submit with the entry filed with Customs a signed statement to the effect that none of the individual bills of lading or individaul air waybill which make up the master bill of lading or master air waybills have designated a broker, or a different broker from the one identified in the master bill of lading or master air waybill, or have indicated that entry will be made by the actual owner or purchaser, or in the case of an actual designation, the designated broker was contacted and failed to timely respond to make entry. The statement may be stamped, typed or printed on the entry documentation provided to Customs. It will not be treated as a missing document for which a bond may be provided. If the signed statement is not submitted, entry will be made by the broker designated by the consignee of each individual bill of lading or individual air waybill which makes up the master bill of lading or master air waybill or by the actual owner or purchaser.

Because the proposed amendment applies only to consolidated shipments, it will not apply to those aspects of express delivery operations, courier service operations or similar delivery operations that do not involve consolidated shipments, or delivery operations that do not use individual house bills of lading or air waybills. Nor will it apply to any carrier where the shipper contractually agrees that the carrier is the consignee and may appoint a broker of its own choosing to make entry.

Comments

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted timely to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that, if adopted, the proposed regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis requirement of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

This document is subject to the Paperwork Reduction Act. Accordingly, a copy has been submitted to the Office of Management and Budget for review and comment pursuant to 44 U.S.C. 3504(h). Public comments relating to the information collection aspects of the proposal should be addressed to Customs and to the Office of Management and Budget at the addresses set forth in the **ADDRESS** portion of this document.

Drafting Information

The principal author of this document was John E. Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 141

Customs duties and inspection, Imports, Brokers.

Amendments to the Regulations

It is proposed to amend Part 141, Customs Regulations (19 CFR Part 141), as set forth below.

Proposed Amendments

PART 141—ENTRY OF MERCHANDISE

1. It is proposed that the general authority citation for Part 141, Customs Regulations (19 CFR Part 141), continues to read as set forth below:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. It is proposed to amend § 141.11 by adding a new paragraph (c) to read as follows:

§ 141.11 Evidence of right to make entry for importations by common carrier.

* * * * *

(c) *Consolidated shipments by common carrier.* In the case of consolidated shipments by common carrier, entry shall not be made by a broker appointed by the consignee named in the master bill of lading or master air waybill, if (1) a consignee on any one of the individual bills of lading or individual air waybills, which makes up the master bill of lading or master air waybill, has designated on the individual bills of lading or individual air waybills another broker to make entry, or (2) any one of the individual bills of lading or individual air waybills indicates that entry will be made by the actual owner or purchaser. Except that, if the broker designated on the individual bill of lading or individual air waybill is contracted and fails to timely respond to make entry, the consignee named in the master bill of lading or

master air waybill may disregard the designation and appoint a broker of its choosing to make entry. The consignee named in the master bill of lading or master air waybill shall submit with the entry a signed statement to the effect that none of the individual bills of lading or individual air waybills which makes up the master bill of lading or master air waybill have designated a broker, or a different broker from the one identified in the master bill of lading or master air waybill, or have indicated that entry will be made by the actual owner or purchaser, or in the case of an actual designation, the designated broker was contacted and failed to timely respond to make entry. The required statement may be stamped, typed or printed on the entry documentation provided to Customs. The signed statement shall not be treated as a missing document for which a bond may be provided. If the signed statement is not submitted, entry shall be made by the broker designated by the consignee of each individual bill of lading or individual air waybill which makes up the master bill of lading or master air waybill or by the actual owner or purchaser.

William von Raab,

Commissioner of Customs.

Approved December 9, 1985.

David D. Queen,

Assistant Secretary of the Treasury.

[FR Doc. 85-29999 Filed 12-23-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR 625 and 655

[FHWA Docket No. 85-18, Notice 2]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Standards For Performance of Retroreflective Traffic Control Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: This document extends the period of comments on the notice of proposed rulemaking published on April 26, 1985 (50 FR 16515), which requested comments by February 15, 1986, on proposed standards for retroreflective illumination of traffic control devices. If adopted, these standards could be incorporated into the Manual on Uniform Traffic Control Devices (MUTCD). The comment period is being extended upon request until June 15, 1986, in order to provide interested parties additional time to respond to the notice.

DATE: Written comments must be received on or before June 15, 1986.

ADDRESS: Submit comments, preferably in triplicate, to FHWA Docket No. 85-18, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 426-0411, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426-0762, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 17, 1985.

Anthony J. McMahon,

Chief Counsel, Federal Highway Administration.

[FR Doc. 85-30344 Filed 12-23-85; 8:45 am]

BILLING CODE 4910-02-M

Coast Guard

33 CFR Parts 166 and 167

[CGD 84-021]

Port Access Route Study Results

Correction

In FR Doc. 85-28910 beginning on page 49861 in the issue of Thursday, December 5, 1985, make the following corrections:

1. On page 49861, third column, **SUMMARY**, sixth line, "f" should read "of".

2. On page 49863, first column, in the seventh line of the paragraph of block numbers, "5485" should read "5385".

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 111

Plant-Load Operations

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend the Domestic Mail Manual (DMM) to provide uniform and comprehensive regulations governing plant-load operations, which involves the Postal Service receiving mail at a mailer's plant and transporting it to bypass handling that otherwise would be required at one or more postal facilities. The proposed regulations provide procedures for the review of applications for authorizing plant load operations. The regulations would make it clear that plant-load applications would only be authorized when the plant-load would result in a benefit to the Postal Service. To ensure more consistent service, and to more efficiently process plant-loaded mail, the regulations would require that plant-loaded vehicles be prepared according to the destination of the mail and the class or type of mail plant-loaded. The regulations would also require that the Postal Service be reimbursed for charges it incurs in providing nonpostal services to the mailer.

DATE: Comments must be received on or before February 7, 1986.

ADDRESS: Written comments should be directed to the Director, Office of Transportation & International Services, Mail Processing Department, 475 L'Enfant Plaza, W. SW., Washington, DC 20260-7130. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 7914, U.S. Postal Service Headquarters, 475 L'Enfant Plaza W. SW., Washington, DC 20260-7130.

FOR FURTHER INFORMATION CONTACT: James E. Orlando, Director, Office of Transportation & International Services, Mail Processing Department, 475 L'Enfant Plaza W. SW., Washington, DC 20260-7130, 202-268-4360.

SUPPLEMENTARY INFORMATION: The Postal Service has for more than 20 years allowed mailers to have their mail accepted and verified at their plants and to then load their mail into Postal Service vehicles. Plant loaded mail is transported so that one or more handlings at postal facilities are bypassed. The Postal Service benefits from plant loading because it results in cost savings and eases mail processing capacity problems at some postal facilities, since one or more postal facilities are bypassed. Mailers benefit because their mail is verified, accepted and transported at their plant.

In administering plant load operations, each region and many management sectional centers (MSCs) have developed their own procedures for authorizing plant-load operations, for verifying and collecting postage for

plant-loaded mail, and for having the mailer reimburse the Postal Service for charges incurred as a result of providing certain nonpostal services, such as detaining trailers. These different procedures have resulted in a lack of uniformity in adminsitering plant-load operations. In addition, each region and many MSCs have developed different definitions of plant-load operations. Furthermore, there have been no comprehensive regulations governing plant-load operations for either the Postal Service or mailers to follow.

The Postal Service seeks to make plant-load operations available throughout the United States on a uniform basis. The Postal Service believes that adoption of these propsoed DMM regulations would benefit both the Postal Service and mailers by implementing uniform and comprehensive procedures governing every aspect of plant-load operations, by considering the current and future volume of plant-load mailers in deciding whether to authroizing plant-load operations, and by allowing the Postal Service to provide plant-loading wherever equipment is available and the operations will result in cost savings to the Postal Service. It is the Postal Service's belief that adoption of these proposed DMM regulations would result in plant-load operations being provided throughout the United States to all qualified mailers on a uniform basis.

The proposed amendment to the DMM would delete Chapter 154, General Delivery, which contains only a single sentence that refers the reader to Chapter 953 for the regulations concerning general delivery, and substitute Chapter 154, Plant-Load Operations, in its place. Existing Chapter 154 would be deleted because it is unnecessary and redundant.

The following is a detailed discussion of the proposed regulations.

1. Definitions

Section 154.1 would provide uniform and comprehensive definitions for all aspects of plant-load operations. Plant-load operations would be distinguished from the collection of mail so that mailers and the Postal Service would know when each operation should be provided. Section 154.11 would define a plant-load operation as an operation in which the Postal Service receives mail at a mailer's plant and transports it in order to bypass handling that otherwise would be required at one or more postal facilities. Section 154.19 would define collection of mail as an operation where the mail is verified and accepted at the mailer's plant and is transported by the Postal Service to the local post office or other designated postal facility without bypassing any handlings. The proposed regulations do not apply to the collection of mail.

2. Review of Applications for Plant Loading

Current procedures for reviewing an application for plant loading differ virtually from postal facility to postal facility; there is no appeal process if the application is denied; and there is no procedure for the Postal Service to reevaluate plant-load authorizations after they have been granted. Section 154.2 would provide uniform and comprehensive procedures for approving a plant-load application. An application would be reviewed by the MSC manager and the transportation management office (TMO) manager to determine whether the conditions for approving an application set forth in section154.3 have been met. The mailer could appeal a denial of an application by either of those officials to the Regional Plant-Load Committee. If the application is denied by the Regional Plant-Load Committee, the mailer could appeal to the National Plant-Load Policy Committee. The reasons for the denial of an application would have to be set forth in writing by the postal official denying an application. If, at any time, the mailer failed to meet the requirement for plant-load operations or any other provision of these regulations for two consecutive postal accounting periods or some other period agreed to by the Postal Service and the mailer, the plant-load authorization would have to be reevaluated by the Regional Plant-Load Committee.

3. Requirements for Authorizing Plant-Load Operations

There are no current uniform and comprehensive requirements for authorizing plant-load operations. Virtually each postal facility has a different interpretation of existing procedures. Section 154.3 would set forth uniform and comprehensive requirements for approval of an application for authoriztion of plant loads. If the postal facility to which the mail is destined is within the service area of the origin postal facility, the plant load would be an intra-service-area move. An intra-service-area application would be approved if there were equipment available to transport the mail and the plant load would result in cost savings to the Postal Service. Cost savings are demonstrated under either Alternative 1 *or* 2. Under Alternative 1, the current and future volume of mail would have to fill at least 50 percent of a vehicle by weight or cube *and* the mileage from the mailer's plant to the destination postal facility could not exceed 150 miles. Under Alternative 2, if the requirements of Alternative 1 were not met, a detailed cost analysis would have to demonstrate cost savings to the Postal Service.

If the postal facility to which the mail is destined is outside of the service area of the origin postal facility, the plant load would be an inter-service-area move. An application for an inter-service-area plant-load would be granted if equipment is available to transport plant-loaded mail and the plant load would result in cost savings to the Postal Service. Cost savings are demonstrated under either Alternative 1 *or* 2 *or* 3. Under Alternative 1, cost savings would be demonstrated if the current and future volume of mail to be plant loaded filled at least 60 percent of a vehicle by weight or cube *and* the mileage from the mailer's plant to the destination postal facility did not exceed 275 miles, if the origin sectional center facility (SCF) and at least one bulk mail center (BMC), auxiliary service facility (ASF), or area distribution center (ADC) is bypassed, *or* the mileage did not exceed 150 miles, if only the origin SCF is bypassed. Under Alternative 2, if the requirements of Alternative 1 were not met, a detailed cost analysis would have to demonstrate cost savings. Under Alternative 3, if the requirements of Alternatives 1 and 2 were not met, cost savings would be demonstrated if the local origin postal facility was operating at or near its mail processing capacity for the class or type of mail to be plant-loaded.

The cost savings to the Postal Service of providing plant loads are determined by balancing the costs avoided and the costs incurred in providing such operations. Plant loads reduce costs because mail handlings at one or more facilities that are bypassed are avoided. The greater the number of facilities bypassed, the greater the cost savings. At the same time, plant loads result in the incurrence of additional plant load highway transportation costs to the extent that conventional two-way highway transportation movements are supplanted by more expensive one-way transportation movements. Cost savings are determined by adding the costs of the handlings bypassed, and then subtracting the additional transportation costs incurred in providing the plant load. If the result is positive, the plant load will result in cost savings and, hence, be a benefit to the Postal Service.

Using this methodology, the Postal Service has determined that a plant load meeting the minimum volume and maximum mileage requirements under Alternative 1 for either intra- or inter-service-area moves would always result in cost savings to the Postal Service and, hence, a detailed cost analysis would not be necessary. Not meeting the minimum volume and maximum mileage criteria does not necessarily mean there is no cost savings. If these criteria are not met, then a detailed cost savings analysis must be performed to determine if a particular plant load will result in cost savings to the Postal Service.

4. Verification of Plant-Loaded Mail

Plant-loaded mail can now be verified only at a mailer's plant. This has resulted in the denial of some plant-load applications where postal personnel were not available at the mailer's plant to verify and accept the mail. Under section 154.4, intra-service-area plant-loaded mail could be verified and accepted at a mailer's plant *or* at the bulk mail acceptance unit of the origin BMC, ASF, MSC or SCF, if authorized. Due to the difficulty of verifying zone-rated inter-service-area plant-load mail at the destination postal facility, inter-service-area plant-loaded mail would be verified and accepted only at the mailer's plant. In order to avoid any revenue protection problems, payment of postage and fees for plant-loaded mail would have to be made to the origin post office prior to the plant-loaded vehicle's being transported from the mailer's facility.

5. Preparation Requirements for Plant-Loaded Vehicles

Plant-loaded mail now receives inconsistent service in major part because there are no requirements that each vehicle be prepared to the destination ZIP Code or postal facility. Under section 154.5, by definition, intra-service-area plant-loaded vehicles could be filled only with mail addressed to the service area of the origin facility. Inter-service-area plant-loaded vehicles would have to be prepared with mail addressed to the destination ZIP Code or postal facility, depending on the volume of mail plant-loaded, the appropriate class or type of mail, and the number of mailings plant-loaded. These preparation requirements would enable the Postal Service to provide more consistent service.

6. Reimbursement to the Postal Service for Furnishing Nonpostal Services

Under § 154.6, the Postal Service would obtain reimbursement from mailers for nonpostal services furnished by the Postal Service in providing plant-load service where the Postal Service incurs a charge due to some action or inaction of the mailer. These nonpostal services include the detention or demurrage of trailers, and bobtailing, deadheading and waiting/holding charges for trailers before plant-loaded mail is loaded into a trailer, verified, and accepted by the Postal Service. (See § 154.18 for definitions of above terms.) The Postal Service proposes to continue obtaining reimbursement for trailers detained by a mailer. The proposed revisions would make such reimbursement uniform regardless of the mode of transportation utilized. Reimbursement would be obtained where the mailer makes a request in advance to detain trailers and holds them for more than 24 hours, excluding Saturdays, Sundays, and holidays, or if the mailer does not submit a request to detain trailers in advance, but nevertheless detains trailers longer than necessary to load them. The proposed revisions would also make reimbursement for bobtailing, deadheading or waiting/holding uniform. The proposed regulations would enable the Postal Service and mailers to determine the amount of and conditions under which the Postal Service will obtain reimbursement. The Postal Service would not obtain reimbursement from plant-load mailers where trailers are detained, or bobtailing, deadheading or waiting/holding charges are incurred as a result of some action or inaction of the Postal Service.

7. Transportation of Plant-Loaded Mail

Some mailers have on occasion made arrangements with the TMO serving their plant to utilize highway transportation in lieu of railroad transportation. This practice has not been uniform. Under § 154.7, the TMO would select the least costly mode of transportation that will meet the service objectives of the class or type of mail plant-loaded. As a result, the mode of transportation will not be changed at the request of the mailer.

The current requirement that mailers may transport their own plant-loaded mail only if there is a highway contract between the Postal Service and the mailer has not been uniformly followed. Under § 154.7, this requirement would be made uniform. In addition, under § 154.7, the Postal Service would no longer relocate trailers at a mailer's plant.

If these proposed regulations governing plant loading are adopted, existing plant-load operations will continue without the mailer having to file a plant-load application. The Regional Plant-Load Committee will reevaluate existing plant-load authorizations within one year of the adoption of these regulations to determine if the plant load meets these requirements and conditions for plant loading. An application for plant loading filed after the adoption of these regulations will be reviewed pursuant to these regulations.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of subjects in 39 CFR Part 111

Postal Service.

Part 111—(AMENDED)

CHAPTER 1, DOMESTIC MAIL SERVICES

1. The authority citation for 39 CFR Part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101(e), 101(f), 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

2. Revise Part 154 to read as follows:

154 PLANT-LOAD OPERATIONS

154.1 Definitions.

.11 Plant Loading. Plant loading is an operation in which the Postal Service receives mail at a mailer's plant and transports it in order to bypass handling that otherwise would be required at one or more postal facilities. Plant loads are authorized when they result in a benefit to the Postal Service.

.12 Mailer's Plant. The mailer's plant is the non-Postal Service location where the mail is plant loaded.

.13 Service Area.

.131 First- and Second-Class Mail. The service area for plant-loaded First-class and second-class mail is the service area of the sectional center facility (SCF) in which the mailer's plant is located.

.132 Third- and Fourth-Class Mail. The service area for plant-loaded third- and fourth-class mail is the service area of the bulk mail center (BMC) or auxiliary service facility (ASF) in which the mailer's plant is located.

.14 Intra-Service-Area Plant Loads. Intra-service-area plant loads are movements of mail from the mailer's plant to a mail processing facility located within the service area of the

appropriate mail processing facility in which the plant is located. Handling at the local origin post office or other local acceptance facility is bypassed.

.15 Inter-Service-Area Plant Loads. Inter-Service-area plant loads are movements of mail from the mailer's plant to a mail processing facility located outside the service area of the appropriate mail processing facility in which the plant is located. Handling at the local origin post office or other local acceptance facility and one or more intermediate processing facilities is bypassed.

.16 Vehicle. A vehicle is a trailer, straight truck, or other container used to transport mail by highway, railroad, or water.

.17 Trailers.

.171 Highway Transportation Trailer. A highway transportation trailer is a trailer owned or leased for any term by the Postal Service or provided by a Postal Service highway transportation contractor for the transportation of mail exclusively over highways.

.172 Rail Tranportation Trailer. A rail transportation trailer is a trailer provided by a Postal Service rail transportation contractor for the transportation of mail in whole or in part by rail.

.18 Other Operations.

.181 Bobtailing. Bobtailing is the movement of a tractor without a trailer to or from a mailer's plant.

.182 Deadheading. Deadheading is the movement of a tractor and trailer or other container or straight truck to or from a mailer's plant without transporting any mail.

.183 Waiting/Holding. Waiting/holding occurs when a vehicle waits or is held at a mailer's plant for mail to be loaded into the vehicle.

.19 Collection. Collection of mail is different from plant loading. Collection is an operation in which the Postal Service verifies and accepts mail at the mailer's plant or at an authorized location other than a postal facility and transports it to the local post office or other designated local acceptance point. No handlings are bypassed in collection.

Note.—These regulations do not apply to the collection of mail.

154.2 Procedures for Authorization of Plant Loads.

.21 Application. A mailer desiring to have mail plant loaded must complete Form 3815, *Application for Plant-Load Authorization,* and submit it to the postmaster of the post office serving the mailer's plant.

.22 Review. The local postmaster must review the application for completeness and forward it to his management sectional center (MSC) manager. The MSC manager must review the application and approve or deny it in accordance with 154.23 or 154.24. If approved, he will forward the application to the transportation management office (TMO) manager. The TMO manager will review the application and approve or deny it in accordance with 154.23 or 154.24. If approved, he will forward the application to the Regional Plant Load Committee. This committee consists of the following officials or their designees: the Regional General Manager, Logistics Division, (chairman), and the Regional General Managers of the Budget and Cost, Accounting and Revenue Protection, Customer Programs, and Delivery Divisions. The Regional Plant Load Committee must review the application and approve or deny it in accordance with 154.23 or 154.24. Each official or group of officials reviewing the application must act upon it within two business day of receipt.

.23 Approval.

.231 Conditions. The application will be approved if it meets all of the requirements set forth in 154.3 for either intra- or inter-service-area plant loads, as appropriate. If the application is approved, the mailer must enter into the standard Plant Load Agreement with the Postal Service.

.232 Failure to Meet Requirements. The local postmaster of the post office which serves the mailer's plant is responsible for monitoring plant-load operations and must notify the Regional Plant Load Committee if, at any time, a mailer fails to meet the requirements set forth in these regulations for two consecutive postal accounting periods, or a period set forth in the mailer's plant-load agreement. The plant-load authorization must then be reevaluated by the Regional Committee.

.24 Denial. The application will be denied if it does not meet all of the requirements set forth in 154.3 for either intra- or inter-service-area plant loads. Any official or group of officials denying an application must notify the mailer in writing of the denial and the reasons therefor within three business days of the receipt of the application.

.25 Appeal.

.251 Appeal to Regional Plant Load Committee. If the application is denied by the MSC manager or TMO manager, the mailer may appeal in writing to the Regional Plant Load Committee. Such an appeal must be filed with the Chairman of the Regional Plant Load Committee, Regional General Manager Logistics Division, within 10 calendar days of the date of the mailer's receipt of the notice of denial. The Regional Committee must notify the mailer in writing of the action taken on appeal within three business days of receipt of the appeal. If the application is denied, the Regional Committee must also inform the mailer of the reasons for the denial.

.252 Appeal to National Plant Load Policy Committee. If an application is denied by the Regional Plant Load Committee, the mailer may appeal to the National Plant Load Policy Committee at Postal Service Headquarters, which will issue a final ruling on the application. Such an appeal must be filed with the Chairman of the National Committee, the Director, Office of Transportation and International Services, Mail Processing Department, Washington, D.C. 20260–7130, within 10 calendar days of the date of the mailer's receipt of the Regional Plant Load Committee's notice of denial. The National Committee consists of the following officials or their designees: Director, Office of Transportation and International Services, Mail Processing Department, (chairman); Director, Office of In-Plant Processing, Mail Processing Department; Director, Office of Mail Classification, Rates and Classification Department; Director, Office of Fleet Management, Delivery Services Department; Director, Office of Commercial Marketing, Customer Services Department; and Associate General Counsel, Office of Rate and Classification Law, Law Department.

154.3 Requirements for Approval of Plant Load Applications.

.31 Intra-Service Area.

.311 General. An application for an intra-service-area plant load will be approved if there is equipment available (154.312) and cost savings to the Postal Service are demonstrated under *either* Alternative 1 (154.313a) *or* Alternative 2 (154.313b).

.312 Equipment Availability. There must be equipment available to transport the vehicle to the BMC, ASF, MSC, or SCF, in the service area of the mailer's plant. If equipment is not available, sufficient additional transportation equipment must be obtained, if possible. The application will not be granted until additional transportation equipment is obtained.

.313 Cost Savings. The plant load must result in cost savings to the Postal Service. A cost savings can be demonstrated *either* under Alternative 1 (154.313a) *or* Alternative 2 (154.313b) below.

a. Alternative 1: Minimum Volume and Maximum Mileage. The current and future volume of mail to be plant loaded must be at least 50 percent of a vehicle

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by weight or cube, and the mileage from the mailer's plant to the destination postal facility must be 150 miles or less. For mail verified and accepted at a mailer's plant, the Postal Service may allow mailings verified at the plants of two or more mailers located in the same service area to be combined to meet the minimum volume requirement. For mail verified and accepted at the bulk mail acceptance unit of the origin BMC, ASF, MSC, or SCF, the minimum volume requirement must be met by the mailings of only one mailer. (See 154.423 for requirements for verification at postal facility.)

b. Alternative 2: Detailed Cost Saving Analysis. If the mailer does not meet the criteria in Alternative 1 (154.313a), cost savings to the Postal Service must be demonstrated using the detailed analysis on Form 3615.

.32 Inter-Service-Area.

.321 General. An application for an inter-service-area plant load will be approved if there is equipment available (154.322) and cost savings to the Postal Service are demonstrated under *either* Alternative 1 (154.323a) *or* Alternative 2 (154.323b) *or* Alternative 3 (154.323c).

.322 Equipment Availability. There must be equipment available to transport the vehicle to the BMC, ASF, MSC, or SCF outside the postal facility's service area in which the mailer's plant is located. If equipment is not available, sufficient additional transportation equipment must be obtained, if possible. The application will not be granted until additional transportation equipment is obtained.

.323 Cost Savings. The plant load must result in cost savings to the Postal Service. A cost savings can be demonstrated under *either* Alternative 1 (154.323a) *or* Alternative 2 (154.323b) *or* Alternative 3 (154.323c) below.

a. Alternative 1: Minimum Volume and Maximum Mileage.

(1) Minimum Volume. The current and future volume of mail to be plant loaded must be at least 60 percent of a vehicle by weight or cube. Mailings of two or more mailers located in the same service area may be combined to make up the minimum volume.

(2) Maximum Mileage for Highway.

(a) If the plant-load transportation is via highway and bypasses the origin SCF and at least one BMC, ASF, or ADC, the mileage from the mailer's plant to the destination postal facility must be 275 miles or less.

(b) If the plant-load transportation is by highway and bypasses only the origin SCF, the mileage from the mailer's plant to the destination postal facility must be 150 miles or less.

(c) There is no mileage criterion for plant-load transportation by railroad or water.

b. Alternative 2: Detailed Cost Savings Analysis. If the mailer does not meet the applicable criteria in Alternative 1 (154.323a), cost savings to the Postal Service must be demonstrated by using the detailed analysis on Form 3815.

c. Alternative 3: Mail Processing Capacity. Even if the mailer does not satisfy either Alternative 1 (154.232a) or Alternative 2 (154.323b), the cost savings criteria may de deemed to be satisfied if the local origin postal facility is operating at or near its mail processing capacity for the type of mail plant-loaded. The Regional Plant Load Committee shall determine whether a facility is at or near its mail processing capacity and whether to authorize plant load in such cases. If the Regional Plant Load Committee subsequently determines that the local origin postal facility is operating below its mail processing capacity for the class or type of mail plant-loaded, the Regional Committee must reevaluate the plant-load authorization.

154.4 Verification and Collection of Postage.

.41 General. All plant-loaded mail must be verified and postage and fees collected in accordance with the Domestic Mail Manual (DMM) and Management Instruction, DM–120–84–1, *National Bulk Mail Verification Program*, or subsequent reissues thereof, except as provided below.

.42 Verification of Intra-Service-Area Plant Loads.

.421 General. Intra-service-area plant-loaded mail must be verified at the mailer's plant, at the origin MSC or SCF if authorized by the MSC manager, or at the origin BMC or ASF, if authorized by the ASF or BMC manager.

.422 Verification at the Mailer's Plant. Intra-service-area plant-loaded mail must be verified at the plant by a clerk qualified to perform verification procedures unless authorization to verify mail at the origin BMC, ASF, MSC or SFC has been granted under 154.423 and .424.

.423 Verification at Postal Facility. Authorization to verify mail at the origin BMC, ASF, MSC, or SCF may be granted only if all of the following conditions are met:

a. There is no Detached Mail Unit (DMU) at the mailer's plant.

b. The mailer is located within the service area of the BMC, ASF, MSC or SCF where verification will take place.

c. Each vehicle contains the mail of only one mailer.

d. Each vehicle contains no more than five mailings and each mailing is physically separated.

e. If a Form 3541, 3541A, 3602, 3602, 3602PC, or 3605, *Mailing Statement*, is required to be completed, the original mailing statement must accompany each vehicle if there is only one mailing on the vehicle, or mailing in the vehicle. Where a single mailing is contained in more than one vehicle, a separate mailing statement must accompany each vehicle for each mailing segment.

f. The mailer must maintain a plant load control log containing a copy of each mailing statement, numbered sequentially, the number of each vehicle used to transport the plant-loaded mail, and the name of the BMC, ASF, MSC, or SCF where verification will take place.

g. The mail can be physically verified at the BMC, ASF, MSC, or SCF, *i.e.*, the mailing is not shrink-wrapped or otherwise prepared so that an in-depth verification could not be performed.

.424 Conditions for Verification at Postal Facility. If mail is to be verified at the origin BMC, ASF, MSC, or SCF:

a. Before the vehicle leaves the mailer's plant, the mailer must place on the vehicle a distinctive placard provided by the Postal Service which indicates that verification is required. The driver will not pick up the vehicle unless this placard is on the vehicle.

b. The TMO must report the empty weight of the vehicle to the BMC, ASF, MSC, or SCF verification unit prior to the vehicle's arrival at the verification unit.

.425 Correcfive Action. If intra-service-area plant-loaded mail is verified at the BMC, ASF, MSC, or SCF verification unit and the verification shows an error rate of 10 percent or more, the mailer has the following two options:

a. The mailer pays the single-piece rate on that portion of the mailing estimated to be improperly prepared.

b. Within 24 hours, the mailer either transports the mailing or arranges for Postal Service to transport the mailing to the mailer's plant; at the mailer's expense, for reworking the mailing to comply with the applicable make-up requirements for its class. If the mailer does not transport the mail or request transportation for it within 24 hours, the mailer will reimburse the Postal Service for detention in accordance with 154.6.

.43 Verification of Inter-Servie-Area Plant Loads. Intef-service-area plant-loaded mail must be verified at the plant by a clerk qualified to perform verification procedures.

.44 Payment of Postage and Fees. Payment of postage and fees for plant-

loaded mail must be made to the origin post office prior to the vehicle being transported from the mailer's plant.

154.5 Preparation Requirements for Plant-Loaded Vehicles.

.51 Intra-Service-Area Plant Loads. Intra-service-area plant-loaded vehicles must fill 50 percent or more of a vehicle by weight or cube addressed to that service area.

.52 Inter-Service-Area Plant Loads.

.521 Vehicles Containing Five or Fewer Mailings. Inter-service-area plant-loaded vehicles containing five or fewer mailings must be prepared in accordance with the following preparation requirements for the appropriate class or type of mail.

a. First-Class Mail.

(1) 3-Digit ZIP Code Destination. When mail filling 60 percent or more of a vehicle by weight or by cube is addressed to the same 3-digit ZIP Code, the mailer must prepare a direct vehicle for that 3-digit ZIP Code.

(2) SCF Destination. When, after making up all possible 3-digit vehicles, there is mail filling 60 percent or more of a vehicle by weight or by cube addressed to the same SCF service area, the mailer must prepare a direct vehicle for that SCF.

(3) ADC Destination. When, after making up all possible 3-digit and SCF vehicles, there is mail filling 60 percent or more of a vehicle by weight or by cube addressed to the same area distribution center (ADC) service area, the mailer must prepare a direct vehicle for that ADC.

b. Second-Class Mail.

(1) 3-Digit ZIP Code Destination. When mail filling 60 percent or more of a vehicle by weight or by cube is addressed to the same 3-digit ZIP Code, the mailer must prepare a direct vehicle for that 3-digit ZIP Code.

(2) SCF Destination. When, after making up all possible 3-digit vehicles, there is mail filling 60 percent or more of a vehicle by weight or by cube addressed to the same SCF service area, the mailer must prepare a direct vehicle for that SCF.

(3) SDC Destination. When, after making up all possible 3-digit and SCF vehicles, there is mail filling 60 percent or more of a vehicle by weight or by cube addressed to the same state distribution center (SDC) service area, the mailer must prepare a direct vehicle for that SDC.

(4) Transfer Hubs. When, after making up all possible 3-digit, SCF, and SDC vehicles, there is mail filling 60 percent or more of a vehicle by weight or by cube addressed to the service area of the same transfer hub the mailer must prepare a direct vehicle for that transfer hub.

c. Third-Class and Non-Machinable Fourth-Class Mail.

(1) 3-Digit ZIP Code Destination. When mail filling 60 percent or more of a vehicle by weight or by cube is addressed to the same 3-digit ZIP Code, the mailer must prepare a direct vehicle for that 3-digit ZIP Code.

(2) SCF Destination. When, after making up all possible 3-digit vehicles, there is mail filling 60 percent or more of a vehicle by weight or by cube addressed to the same SCF service area, the mailer must prepare a direct vehicle for that SCF.

(3) BMC or ASF Destination. When, after making up all possible 3-digit and SCF vehicles, there is mail filling 60 percent or more or a vehicle by weight or by cube addressed to the same BMC or ASF service area, the mailer must prepare a direct vehicle for that BMC or ASF.

d. Machinable Fourth-Class Mail (Except Bound Printed Matter).

(1) 5-Digit ZIP Code Destination. When mail filling 60 percent or more of a vehicle by weight or by cube is addressed to the same 5-digit ZIP Code, the mailer must prepare a direct vehicle for that 5-digit ZIP Code.

(2) BMC or ASF Destination. When, after making up all possible 5-digit vehicles, there is mail filling 60 percent or more of a vehicle by weight or by cube addressed to the same BMC or ASF service area, the mailer must prepare a direct vehicle for that BMC or ASF.

e. Machinable Bound Printed Matter.

(1) SCF Destination. When mail filling 60 percent or more of a vehicle by weight or cube is addressed to the same SCF service area, the mailer must prepare a direct vehicle for that SCF service area.

(2) BMC or ASF Destination. When, after making up all possible SCF vehicles there is mail filling 60 percent or more of a vehicles by weight or by cube addressed to the same BMC or ASF service area, the mailer must prepare a direct vehicle for that BMC or ASF.

f. Residue. Residue is the part of a mailing which remains after all of the above preparation requirements for the appropriate class of mail have been met. The Postal Service, using appropriate transportation, will transport such residue to the postal facility selected by the TMO.

.522 Vehicles Containing Six or More Mailings. Inter-service-area plant-loaded vehicles containing six or more mailings must be prepared in accordance with the following preparation requirements for the appropriate class or type of mail.

a. First-Class Mail. When there is mail filling 60 percent or more of a vehicle by weight or by cube addressed to the same ADC service area, the mailer must prepare a direct vehicle for that ADC.

b. Second-Class Mail. When there is mail filling 60 percent or more of a vehicle by weight or by cube addressed to the service area of the same transfer hub, the mailer must prepare a direct vehicle for that transfer hub.

c. Third- and Fourth-Class Mail. When there is mail filling 60 percent or more of a vehicle by weight or by cube addressed to the same BMC or ASF service area, the mailer must prepare a direct vehicle for that BMC or ASF.

d. Residue. Residue is the part of a mailing which remains after all of the above preparation requirements for the appropriate class or type of mail have been met. The Postal Service, using appropriate transportation, will transport such residue to the postal facility selected by the TMO.

154.6 Reimbursement for Nonpostal Services.

.61 General. The Postal Service will obtain reimbursement from mailers for nonpostal services furnished by the Postal Service in providing plant-load service only as authorized below.

.62 Detention of Trailers.

.621 General. The Postal Service will obtain reimbursement in accordance with 154.622–.625 from plant-load mailers for detention of trailers where trailers furnished by the Postal Service to provide plant-load service are detained as a result of some action or inaction of the mailer.

.622 Request to Detain Trailers.

a. Plant-load mailers desiring to detain trailers longer than the time necessary to load them must make such a request to the Postal Service at least 24 hours in advance of the requested date and time of the trailer's arrival. The mailer must agree to reimburse the Postal Service for the cost of detaining the trailers. The Postal Service must approve the request to detain trailers before the trailers will be sent to the mailer's plant.

b. If the mailer did not submit a timely request to detain trailers, but nevertheless detains trailers longer than the time necessary to load them, the mailer must reimburse the Postal

Service for the cost of detaining the trailers.

.623 Non-reimbursable Detention Period. Plant-load mailers who submit timely requests to detain trailers may do so for 24 hours without reimbursing the Postal Service for detention. The non-reimbursable period begins at the date and time the trailer arrives at the mailer's plant or, at the date and time at which the mailer requested the trailer to arrive, whichever is later, and ends 24 hours later, excluding Saturdays, Sundays, and holidays. For example, if a trailer arrives at 5:00 p.m. Friday, the non-reimbursable period ends 5:00 p.m. Monday, or 5:00 p.m. Tuesday if Monday is a holiday.

.624 Determination of Reimbursable Detention Period.

a. If the plant-load mailer has submitted timely requests to detain trailers, the reimbursable detention period begins at the expiration of the non-reimbursable detention period.

B. If the mailer did not submit timely requests to detain trailers, the reimbursable detention period begins at the date and time the trailer arrives at the plant, or at the date and time at which the mailer requested the trailer to arrive, whichever is later.

c. The reimbursable period ends when the trailer is ready for dispatch and the mailer so notifies the Postal Service.

.625 Calculation of Reimbursement. Reimbursement will be made for each 24 hours, or fraction thereof, of the reimbursable detention period that a vehicle is detained. After the non-reimbursable detention period ends, Saturdays, Sundays, and holidays will be included in the calculation of detention reimbursement.

a. Highway Transportation Trailers. Reimbursement for each highway transportation trailer will be equal to the average daily cost to the Postal Service of leasing a trailer in the origin TMO service area during the preceding postal quarter.

b. Rail Transportation Trailers. Reimbursement for each rail transportation trailer will be equal to the demurrage or detention charge payable by the Postal Service under the rail transportation contract under which the trailer is furnished to the Postal Service by the railroad.

.63 Bobtailing, Deadheading, Waiting/Holding Charges. The Postal Service will obtain reimbursement from plant-load mailers for bobtailing, deadheading, or waiting/holding, where such charges are incurred in order to provide plant-load service as a result of some action or inaction by the mailer. Reimbursement will equal to the charge for such service payable by the Postal Service under the transportation contract.

.64 Non-Reimbursable Charges.

.641 The Postal Service will not obtain reimbursement from plant-load mailers for detention of trailers which results from some action or inaction of the Postal Service.

.642 The Postal Service will not obtain reimbursement from plant-load mailers where bobtailing, deadheading or waiting/holding charges are incurred as a result of some action or inaction of the Postal Service.

.643 The Postal Service will not obtain reimbursement from plant-load mailers for user's charges paid by the Postal Service to a railroad contractor for the movement of railroad trailers beyond the commercial zone of the railroad terminus.

154.7 Transportation.

.71 Selection of Mode of Transportation. The TMO will select the least costly mode of transportation that will meet the service objectives for the class of mail plant-loaded. The mode of transportation will *not* be changed at the request of the mailer.

.72 Mailer Transportation. Mailers may not transport their own plant-loaded mail unless there is a highway contract between the Postal Service and the mailer. The awarding of a highway contract to the mailer will not be considered in deciding whether to authorize the plant load.

.73 Holding, Storing, or Delaying Dispatch. The Postal Service will not hold, store, or otherwise delay the dispatch of plant-loaded mail released to the Postal Service, except as provided in the plant-load agreement with the mailer.

.74 Relocation of Trailers. The Postal Service will not relocate trailers at a mailer's plant.

154.8 Service Objectives. The service objectives that apply to the class of mail being transported will apply to the plant-loaded mail. Plant-loaded mail may have deferred service objectives, if provided for in the plant-load agreement.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

W. Allen Sanders,

Association General Counsel, Office of General Law and Administration.

[FR Doc. 85-30389 Filed 12-23-85; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[OW-FRL-2920-2]

Water Quality Standards for Surface Waters of the Commonwealth of Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On April 8, 1985, the Kentucky Natural Resources & Environmental Protection Cabinet adopted revisions to the Commonwealth's Water Quality Standards in accordance with section 303(c) of the Clean Water Act. Subsequent to adoption by the Commonwealth, a Johnson County Circuit Court judge issued an injunction blocking the Commonwealth's enforcement of portions of the revised state standards. The most significant enjoined revision is the new chloride criterion for warmwater aquatic life. This notice proposes a rule establishing a chloride criterion to protect warmwater aquatic life in Kentucky to replace the enjoined State criterion. A proposed rule addressing the remaining enjoined provisions of Kentucky's water quality standards will be handled in a separate action.

DATES: All written comments received on or before March 1, 1986, will be considered in the preparation of the final rule. Public Hearings will be held on February 19, 1986 and February 20, 1986 in Slade, Kentucky and Owensboro, Kentucky See Addresses below.

ADDRESSES: Written comments should be addressed to Rosemary M. Patton, Water Quality Section, Water Management Division, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. Hearing addresses: Activity Center, Natural Bridge State Park, Slade, Kentucky, February 19, 1986, 7:00 p.m.; Ohio Room, Executive Inn Rivermont, 1 Executive Boulevard, Owensboro, Kentucky, February 20, 1986, 7:00 p.m.

Both oral and written comments will be accepted at the hearings. The Hearing Officer reserves the right to fix reasonable limits on the time allowed for oral presentations. Written comments are encouraged.

FOR FURTHER INFORMATION CONTACT: Rosemary M. Patton, Water Management Division, Environmental Protection Agency, 345 Courtland Street

NE., Atlanta, Georgia 30365, 404/881-3116.

SUPPLEMENTARY INFORMATION: Section 303 of the Clean Water Act, amended, (hereinafter the Act) requires the adoption of water quality standards, consisting of designated uses and in-stream water criteria to protect such uses, for all waters of the United States. Section 303(c)(4) provides that in any case where it is determined that a revised or new water quality standard is necessary to meet the requirements of the Act, the Administrator shall publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved. The Administrator shall promulgate any new or revised standard not later than ninety (90) days after publication of the proposed standard. The Agency's regulations for implementing section 303(c) of the Act are codified at 40 CFR Part 131. Guidance for these regulations is contained in the Water Quality Standards Handbook (December 1983) and Technical Support Manual: Waterbody Surveys and Assessments for Conducting Use Attainability Analyses (Volumes I, II and III).

A. Background

Kentucky's water quality standards are found at Chapter 401 of the Kentucky Administrations Regulations (KAR), Sections 5:026, 5:029, and 5:031. On April 8, 1985, the Kentucky Natural Resources and Environmental Protection Cabinet (hereinafter the Cabinet) adopted revisions to its water quality standards pursuant to the requirements of section 303(c) of the Act. The revisions were submitted to EPA on May 24, 1985 and approved on July 10, 1985.

Subsequent to adoption of the revised standards by the Cabinet, a Johnson County Circuit Court Judge issued a temporary injunction prohibiting enforcement of the revisions to 401 KAR 5:031. The injunction was the result of a complaint filed by several individuals claiming that portions of 401 KAR 5:031 were not properly promulgated and are contrary to law. The most significant, and perhaps controversial, change to 401 KAR 5:031 was the addition of a chloride criterion for warmwater aquatic life. Heretofore, the standards included a chloride criterion only for domestic water supply.

Chloride represents a significant problem in many of Kentucky's waters and has been shown to be directly related to discharges of brine from oil "stripper" wells. (A stripper well is defined as one that produces less than ten barrels per day.) In an effort to address this significant problem, the Commonwealth has taken several actions in the last few years. One such action was approval of a regulation which mandates underground injection or the transport and disposal off-site of produced water (brine) wherever economically feasible.

Another action by the Commonwealth was the commission of a study to develop numerical criteria for chloride that would assure protection of warmwater aquatic species in the Commonwealth of Kentucky. These criteria would be used to establish water quality based effluent limitations for dischargers who are unable to utilize underground injection techniques or off-site disposal and must continue to discharge to surface waters of the Commonwealth.

The study was conducted by the University of Kentucky in accordance with a Memorandum of Agreement between the Cabinet and the University. The objective of the study was to perform both toxicity tests and monitoring studies to determine the effects of chloride on warmwater species of aquatic life and to recommend numerical criteria appropriate for protecting warmwater species in Kentucky. Direct toxicological monitoring was conducted in the field on both impacted and unimpacted waters and comparative acute toxicity tests were performed in the laboratory. In conducting side-by-side acute toxicity tests on an aquatic invertebrate using the same concentration of chloride in both reconstituted laboratory water and in natural stream water, chloride was found to be approximately twice as toxic in the laboratory water as in the natural water. An extensive field study, involving biotic surveys of a second order stream receiving a chloride effluent, also revealed that standard laboratory tests apparently overestimated the impact of chloride on the natural biotic communities.

Considering the field data and best overall interpretation of laboratory toxicity data, the Commonwealth determined that the average concentration of chloride should not exceed 600 mg/1 and the maximum concentration should not exceed 1,200 mg/1 to protect freshwater aquatic life. Therefore, Kentucky adopted a 600 mg/1 criterion for waters with a freshwater aquatic life designated use.

Numerical criteria represent the most practical and direct mechanism for establishing water quality based treatment controls to protect the designated or existing uses of a waterbody. As a result of the court injunction, Kentucky is unable to implement the numerical criterion for chloride it adopted and is thus hindered in its ability to readily control this significant pollutant.

B. Statutory Basis and Purpose

Under section 303(c) of the Act, a water quality standard for a specific waterbody basically consists of two components: a designated use for which a waterbody is to be protected (such as recreation, fish and wildlife, or agriculture) and numercial or qualitative pollutant criteria which will support the designated use.

Section 303(c) of the Act requires that State water quality standards ". . . be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for propagation of fish and wildlife, . . ." Key concerns of this statutory section are the enhancement of water quality and the protection of the propagation of fish. The ultimate purpose of water quality of water quality standards, as with the other sections of the Act, is to achieve the national goal, wherever attainable, of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water [section 101(a)(2)]

EPA's Water Quality Standards regulations at 40 CFR Part 131 provide that States must review water quality data and information on discharges to identify specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated use or where the levels of toxic pollutants are at a level to warrant concern and must adopt criteria for such pollutants to protect the designated uses.

The adoption of a chloride criterion by Kentucky represents an effort by the Commonwealth to satisfy this requirement (48 FR 51400, 131.11(a)(2)). The Court's injunction prohibiting enforcement of the standard results in a situation which is inconsistent with EPA's regulation in that a specific pollutant adversely affecting the attachment of a use was identified by the State, but the State is now constrained from putting into place environmental controls to resolve a known problem. Accordingly, under the provisions of section 303(c)(4)(B), of the CWA, the Administrator has determined that a new or revised standard is necessary to meet the requirements of the Act and is proposing to promulgate a Federal chloride criterion for Kentucky.

C. The Proposed Criteria

The Agency's proposed rule would establish a chloride criterion to protect warmwater aquatic life in Kentucky. In the absence of published national criteria for chloride under section 304(a) of the Act, EPA is proposing to promulgate the chloride criterion developed by the Commonwealth of Kentucky. In the study conducted by the University of Kentucky, this criterion was found to be protective of warmwater aquatic life in significant stream systems in the State. For warmwater aquatic life, the allowable instream concentration for chloride shall be 600 mg/1 as a 30-day average with a maximum concentration of 1,200 mg/1 not be exceeded at any time. These criteria protect aquatic life from both acute and chronic toxicity.

The Agency's proposed rule does not endorse establishment of this criterion on a national basis nor does it preclude EPA, at some later date, from reconsidering and revising through rulemaking the chloride criterion proposed herein for Kentucky. Development and publication of water quality criteria is an ongoing process and as new scientific information becomes available, criteria are reevaluated and revised as appropriate.

D. Initial Regulatory Flexibility Analysis

Section 303(c) specifies that water quality standards be established for all water which consist of designated use for the segment and criteria to protect the uses. EPA's regulations implementing § 303 provide that criteria must contain sufficient parameters or constituents to protect the designated use.

Because there is a documented chloride problem in Kentucky which can interfere with the uses designated by the Commonwealth the standards for Kentucky waters must include a criterion at a level which protects such uses from chloride. Since the court action has effectively repealed the chloride criterion adopted by Kentucky, its standards no longer meet the requirements of the Act. In such circumstances, section 303(c)(4) directs EPA to promulgate standards which do meet the requirements of the Act.

Accordingly, under the scheme contemplated by Congress and these facts, EPA has no alternative but to promulgate a water quality standard, and in promulgating such a standard, to develop one which contains a criterion which protects the use(s) designated by Kentucky. (Under section 510 of the Act, EPA does not have the option of downgrading a State-designated use.)

The proposed WQS will potentially affect anyone who discharges chloride into navigable waters of the Commonwealth of Kentucky, since anyone discharging into such waters must comply with a NPDES permit whose terms assure compliance with water quality standards. The primary group that potentially will be affected are producers of oil and gas. Produced water which is generally high in chlorides accompanies all production of oil and gas. However, currently all gas producers and oil producers with the exception of those producing from stripper wells are subject to a technology-based no-discharge regulation, 40 CFR 435.32. Therefore, the only producers potentially affected by these proposed water quality standards are those producing oil from stripper wells.

There are approximately 15,500 producing oil wells in the State and 77 percent of these wells are stripper wells, i.e., wells that produce less than 10 barrels of oil per day. Of the wells which produce less than 10 barrels of oil per day, the amount of produced water varies generally from 1 to 10 barrels of produced water for every barrel of oil. The Commonwealth data also indicates that the oil-producing wells are owned by 1,920 producers. Of these, 1,684 are considered as small operators, i.e., owning less than 10 wells each. Approximately 900 own only one well each. The total number of wells owned by small operators (1,684) is approximately 4,000 of the 15,500 total. The fact that a producer may own one well or less than 10 wells, even assuming they are all stripper wells, does not necessarily mean it is a small entity. Many of these wells would not be expected to provide the sole or primary source of income for the producers. For example, the average production of oil from a stripper well, based on Commonwealth research, is approximately 1 barrel of oil a day. This would generate approximately $40 in gross revenue, with a profit range of $5–$10 a barrel. The Agency does not have sufficient data to document the impact on earnings of meeting the standard and requests specific comment on this question during the comment period.

Surface water discharges will be subject to water quality based effluent limitations compatible with the Federal water quality criterion for chloride. Producers on large streams with sufficient assimilative capacity could perhaps meet the instream criteria for chloride with a modest investment whereas dischargers to small, low-flow streams probably would require disposal by reinjection methods. Transportation to a centralized reinjection facility would be the most cost-effective means of disposal for operators on small, low-flow streams. Small operators will probably bear the greatest burden because some large operators are currently achieving zero-discharge through reinjection. Well closures could possibly result in some cases where the cost of compliance prohibits viable production. It is estimated by the Commonwealth that there would be a 5-percent reduction in oil production as a result of this criterion. The Agency invites comment on the economic impact of the proposed rule.

As part of its regulatory flexibility analyses, the Agency also considered possible recordkeeping or reporting impact on small entities. Such recordkeeping and reporting impacts which might occur are minimal and result from the need for a discharger discharging brine directly to surface waters to obtain a national pollutant discharge elimination system permit and then to follow the discharge conditions set forth in that permit. If underground injection or transport and disposal of brine off-site are the methods used, no NPDES permit is required.

Current Commonwealth regulation requires underground injection of transport and disposal of brine off-site wherever economically feasible. The criteria proposed in this rule, if finally promulgated, would be used by the State to establish water quality based effluent limitations for dischargers who are unable to use these techniques and must continue to discharge to surface waters of the Commonwealth.

It is these currently unregulated dischargers who have no current treatment controls in place that the Commonwealth was attempting to control through its adoption of a criterion for chlorides and who would be most directly affected by the Federal proposal. Since this proposed rule is aimed at eventually establishing treatment controls for the discharge of brine from small entities, it is clear that this rule cannot provide exemptions for such small entities.

Under the current EPA water quality standards regulation, short-term variances to water quality standards may be granted to individual dischargers based on any one of several factors including "substantial and widespread economic and social impact" (40 CFR 131.10(g)(6)). It is doubtful, however, that an operator of only one or a few wells could meet the economic test for a variance.

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E. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory and impact analyses of major regulatons. Major rules are those which impose a cost on the economy of $100 million a year or more or have certain other economic impacts. This regulation is not a major rule because its annualized cost, as discussed above, is significantly less that $100 million and it meets none of the other criteria specified in section 1(b) of the Executive Order. Also, as required by Executive Order 12291, this proposed rule has been reviewed by the Office of Management and Budget.

F. Regulatory Flexibility Act Requirements

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Administrator is required to conduct an initial regulatory flexibility analysis describing the impact of the proposed rule. A summary of the analysis is included as Part D of this proposal. Copies of the complete analysis are available from the person listed under the section "For Further Information Contact".

G. Availability of the Record

The entire administrative record concerning the Kentucky Water Quality Standards discussed in this preamble, including the University of Kentucky study on chloride toxicity, is available for public inspection and copying at the Environmental Protection Agency, Region IV Office, Water Quality Section, 345 Courtland Street, NE., Atlanta, Georgia 30365, and the U.S. Environmental Protection Agency Library, 401 M Street SW., Washington, DC 20460.

H. List of Subjects in 40 CFR Part 131

Water pollution control, Intergovernmental relations, Administrative practices and procedures, Reporting and recordkeeping.

Dated: December 12, 1985.

Lee M. Thomas,

Administrator.

PART 131—[AMENDED]

1. The authority citation for Part 131 continues to read as follows:

Authority: 33 U.S.C. 1313(c).

2. Part 131 of Chapter 1, Title 40 of the Code of Federal Regulations is proposed bo be amended by adding § 131.35 as follows:

§ 131.35 Kentucky.

The water quality standards applicable to the waters of Kentucky adopted by the Kentucky Natural Resources and Environmental Protection Cabinet on April 8, 1985, are amended as follows:

Section 4. Aquatic Life. (1) Warmwater aquatic habitat. The following parameters and associated criteria are for the protection of productive warmwater aquatic communities, fowl, animal wildlife, arborous growth, agricultural and industrial uses:

(i) Toxics:

4. Allowable instream concentrations of specific parametefs are outlined in Table I. These values are based on protecting aquatic life from both acute and chronic toxicity.

TABLE I.—WARMWATER AQUATIC HABITAT — CRITERIA

Parameter	Concentration
Chloride	600 mg/l as a 30-day average, not to exceed a maximum of 1,200 mg/l at any time.

[FR Doc. 85-30249 Filed 12-23-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 100

[MM Docket No. 85-32]

In Matter of the Rules Concerning Technical Standards for Direct Broadcast Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Order extending time for filing comments.

SUMMARY: This Order extends the time for filing comments in MM Docket No. 85-32 regarding technical standards for direct broadcast satellite service (50 FR 6971; February 19, 1985). This extension is in response to a Motion for Extension of Time filed by the Direct Broadcast Satellite Association (DBSA).

DATES: Comments must be filed on or before February 14, 1986, and reply comments on or before March 15, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bernard Gorden, Policy and Rules Division, Mass Media Bureau, (202) 632-9660.

Order Extending Time for Filing Comments to Notice of Proposed Rule Making

In the matter of amendment of Subpart C of Part 100 of the Commission's Rules and Regulations with Respect to Technical Standards for Direct Broadcast Satellite Service, MM Docket No. 84-32.

Adopted: December 13, 1985.
Released: December 17, 1985.

By the Chief, Mass Media Bureau.

1. The deadlines for filing comments and reply comments in this proceeding, as extended twice by earlier *Orders*, are now December 6, 1985, and January 10, 1986, respectively. On November 27, 1985, the Direct Broadcast Satellite Association (DBSA), the principal industry coordinating respondent in this proceeding, filed its third request for additional time for submission of comments.

2. In support of its request, DBSA stated that its plans for comprehensive tests of alternative proposed Direct Broadcast Satellite (DBS) systems (including alternative signal formats) have been completed. It also reported that the tests included comparative testing of the NTSC system used for planning at RARC-83, a B-NTSC system, and a B-MAC system. DBSA claimed that the test results should show whether the B-NTSC and B-MAC systems cause more or less interference to other systems than the RARC-83 (NTSC-M) signal format. The DBSA standards committee believes that the results of the tests will be a major contribution to the formulation of voluntary industry standards. However, DBSA stated that the tests produced a voluminous amount of data which its standards committee must fully analyze in order to make a recommendation. Consequently, DBSA claimed that because of the amount of time consumed in making the tests and the time necessary for analysis, it cannot meet the December 6, 1985, comment date. Therefore, DBSA requested an extention of time to March 1, 1986, to file initial comments on the voluntary standards and standards of good industry practice proposed in the *Notice* (adopted February 6, 1985), and until April 4, 1986, to file reply comments.

3. We note that this is the third request for extention of the comment period, resulting in a total delay of a year. We reiterate that our goal in this proceeding is to adopt only those standards which are required to limit interference and to assure a reasonable degree of interoperability among DBS systems and receivers in the hands of the public. While the results of DBSA's

system testing may be pivotal in the selection of a standard signal format, we emphasize that this will be an industry "voluntary" standard as identified in the initiating *Notice*. Thus, any final signal format selection may not necessarily be of benefit to rule amendments, if any are adopted by the Commission in this proceeding. As also stated in the previous *Order* and initiating *Notice*, we do have some reservations as to whether it is necessary to adopt any standards, either mandatory or voluntary.

4. In as much that this proceeding may have only marginal impact on the industry's consensus on voluntary standards, we are reluctant to unduly prolong this proceeding. However, since it does not appear that a further delay will cause undue harm to any party in this proceeding, we are granting a final and limited extention of the comment and reply comment periods.

5. Accordingly, it is ordered that the time for filing comments and replies to comments to the above referenced *Notice* is extended to and including February 14, 1986, for comments and March 15, 1986, for reply comments.

6. This action is taken pursuant to authority found in sections 4(i), 5(c)(i), and 303(r) of the Communications Act of 1934, as amended, and section 01281 of the Commission's Rules.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 85-30197 Filed 12-23-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies the petition of Chrysler Corporation for an amendment to Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* to allow the use of removable transparent headlamp covers on motor vehicles. Currently, the standard prohibits such covers. The petition argued that such an amendment would contribute to an improvement in the aerodynamics of a vehicle and therefore enhance fuel economy. Chrysler averred that it would provide headlamps whose photometrics exceeded the minimum required by Standard No. 108 to compensate for the reduction in light ouput created by the covers. The petition is being denied primarily because of the difficulty of insuring that replacement headlamps used with headlamp covers will provide photometrics exceeding the mimimum sufficiently to compensate for the reduction in light caused by the covers.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Vehicle Safety Standard, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202-426-2720).

SUPPLEMENTARY INFORMATION: Paragraph S4.1.3 of Standard No. 108 prohibits the installation of motor vehicle equipment that impairs the effectiveness of lighting equipment that the standard requires. Furthermore SAE J580 *Sealed Beam Headlamp Assembly*, incorporated by reference and made applicable to replaceable bulb headlamp assemblies by paragraph S4.1.1.36, prohibits styling features in front of headlamps when they are activated. These provisions have been interpreted as forbidding the use of transparent headlamp covers as original equipment on motor vehicles.

On July 24, 1984, Chrysler Corporation petitioned the agency for rulemaking to allow the use of such covers provided that they met performance specifications which the company had developed. These included the assurance that beam pattern and photometrics would continue to be met with the covers in place, durability tests to insure that plastic covers retain their transparency over a period of time, moisture and dust tests, vibration integrity requirements, and requirements relating to corrosion, abrasion and chemical resistance performance. In addition, to facilitate mechanical aiming and cleaning, covers would be capable of being removed and reinstalled without tools.

Chrysler stated that it intended to provide the covers in conjunction with original equipment "halogen" headlamps (this is not a term used in Standard No. 108, but Chrysler has petitioned that the headlamps and covers in combination should be required to meet the Photometrics of SAF J579c). Chrysler indicates that its tests has shown that "non-halogen incandescent headlamps" (meeting SAE J579c) would nevertheless also meet Standard No. 108 with covers in place. According to Chrysler, a change of the nature requested would "allow greater freedom in designing lower drag coefficient front ends for improved fuel economy" with no diminution in motor vehicle safety.

The agency has carefully evaluated Chrysler's petition. NHTSA's primary concern in this review has been the performace of headlamp-covered vehicles with replacement headlamps. Approximately two of every three headlamps manufactured are sold in the aftermarket for replacement purposes. According to Chrysler, use of headlamp covers will cause a reduction in light output between 7.2% and 15.5%, although care will be taken by Chrysler to insure that new vehicles comply with the standard. However, Chrysler cannot assure equivalent performance when original equipment headlamps are replaced by those available in the aftermarket. Although replacement headlamps are certified as complying with Standard No. 108, their actual performance appears to vary widely. Recent experience indicates that a significant portion of replacement headlamps may not meet photometrics at all specified test points, and that some of those that do, will fail to continue to comply when a reduction factor, such as would be the case with lens covers, is applied to test measurements. In 1984, under a contract with NHTSA is connection with an unrelated project, the University of Michigan Transportation Research Institute (UMTRI) measured photometric performance on 20 sealed beam headlamps purchased at random in the aftermarket. Only 15 met the minimum photometric requirements at all test points. When NHTSA applies a reduction factor of 11.35% to these test results (the average of the 7.2% to 15.5% submitted by Chrysler), only 8 of the 15 headlamps would continue to meet or exceed the minimum required for all test points. Given these two factors, NHTSA has concluded that it is impossible to insure that headlamps of equivalent or better performance than originally supplied by Chrysler will be used as replacements.

Chrysler sought to alleviate agency concern on this issue by theorizing that owners bought lamps by part numbers, and that it would provide an advisory statement on headlamp replacement in the operator's manual. The agency is not persuaded. However, NHTSA is concerned that a significant number of owners might ignore a safety warning in the operator's manual, advising of proper headlamp replacement, since consumers normally do not have to refer to an owner's manual to replace sealed

beam headlamps and used car owners are unlikely to have an owner' manual. Further, with a commonly-used commonly-available part such as the standardized sealed beam headlamp, the agency believes that owners tend to comparison shop for the best bargains at self-service stores, as they do for air filters or other commonly replaced parts, rather than to obtain an identical item from their vehicle dealer.

The predicate of NHTSA's actions in permitting additional headlighting systems adopted in the past few years has been that their performance would be at least equivalent to those already in use. However, with the proposed Chrysler system, performance would be degraded *ab initio* and extra care would be required for the life of the vehicles through the use of headlamps with performance higher than that required by the standard, to insure that lighting performance remains above the minimum specified by the standard. Although the agency has other concerns as to the efficacy of the tests proposed by Chrysler for the covers, its primary concern is the potential for noncompliance that exists when the covers are used, and it has concluded that the existing level of motor vehicle safety might be compromised by the allowance of headlamp covers. NHTSA appreciates Chrylser's interest in exploring new technologies which might enhance fuel economy, but notes that safety considerations must prevail in any proposal to amend the Federal motor vehicle safety standards.

At the conclusion of the technical review, the agency has determined that there is not a reasonable possibility that, at the end of the rulemaking proceeding, Standard No. 108 would be amended to allow headlamp covers on motor vehicles. The petition is hereby denied.

The program official and attorney principally responsible for the development of this agency position are Richard Van Iderstine and Taylor Vinson, respectively.

(Secs. 103, 119, and 124, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407, and 1410a); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on December 19, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–30385 Filed 12–23–85; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 50, No. 247
Tuesday, December 24, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Bureau of Standards

[Docket No. 41027-5163]

Approval of Federal Information Processing Standards Publication 68-1, Minimal BASIC and Federal Information Processing Standards Publication 69-1, FORTRAN

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved two revised standards, which will be published as FIPS Publications 68-1, Minimal BASIC, and 69-1 FORTRAN.

SUMMARY: On November 20, 1984, notice was published in the **Federal Register** (49 FR 45774) and a correction notice published December 6, 1984 (49 FR 47647) that two Federal Information Processing Standards for Minimal BASIC and FORTRAN were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve the revised standards and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments recieved, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues NW., Washington, DC 20230.

Each approved standard contains two portions: (1) An announcement portion which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specifications portion which deals with the technical requirements of the standard. The technical specifications, which are voluntary industry standards, have not been changed. Only the announcement portions of the standards are revised and are provided in this notice.

ADDRESS: Interested parties may purchase copies of these revised standards, including the technical specifications portions, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies Section of the announcement portion of each standard.

FOR FURTHER INFORMATION CONTACT: Ms. Mabel Vickers, Center for Programming Science and Techology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921-2431.

Dated: December 18, 1985.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 68-1

(date)

Announcing the Standard for Minimal BASIC

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89-306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* Minimal BASIC (FIPS PUB 68-1)

2. *Category of Standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the revision of Federal Information Processing Standard (FIPS) Minimal BASIC. This revision supersedes FIPS PUB 68 and reflects changes to the Objectives, Applicability, and Implementation portions of FIPS Minimal BASIC. FIPS Minimal BASIC is the adoption of American National Standard Programming Language Minimal BASIC, X3.68-1978. The American National Standard defines the syntax of the Minimal BASIC programming language and the semantics for its interpretation. The standard is used by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors and by other computer professionals who need to know the precise syntactic and semantic rules of the standard language.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institutes for Computer Sciences and Technology).

6. *Cross Index.* American National Standard Programming Language Minimal BASIC, X3.68-1978.

7. *Related Documents.*

a. Federal Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunications Standards.

b. Federal Information Processing Standards Publication 29-1, Interpretation Procedures for Federal Information Processing Standard Programming Languages.

c. NBS Special Publication 500-117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming langauge standards are:

—to encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programming re-training;

—to reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—to reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—to protect this existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for Government use. FIPS Minimal BASIC is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS Minimal BASIC is especially suited for: (1) the rapid development of computer programs to solve small nonrecurrent problems, particularly on computers providing time-shared or interactive service; and (2) for use in computing environments in which ease of learning and casual use are dominant factors.

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.
—The application or program is under constant review for updating of the specifications, and changes may result frequently.
—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.
—The program will or might be run on equipment other than that for which the program is initially written.
—The program is to be understood and maintained by programmers other than the original ones.
—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of this high level language regardless of interchange potential.
—The program is or is likely to be used by organizations outside the Federal Government (i.e., State and local governments, and others).

c. Non-standard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although non-standard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standard or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of report application-oriented software packages. The use of any facility should be considered in the context of system life, system cost, data integrity, and the potential for data sharing.

e. Programmatic requirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a BASIC source program, then the resulting program should conform to the conditions and specifications of FIPS Minimal BASIC.

10. *Specifications.* FIPS Minimal BASIC specifications are the language specifications contained in American National Standard Programming Language Minimal BASIC, X3.68–1978.

The X3.68–1978 document specifies the form of a program written in Minimal BASIC, formats of data for input and output, minimal precision and range of numeric representations for input and output, semantic rules for program and data interpretation, and errors and exceptional circumstances that must be detected by a standard-conforming BASIC processor.

The standard does not specify limits on the size of programs, minimum system requirements, the means of supervisory control of programs, or the means of transforming programs internally for processing. Although Minimal BASIC is primarily an interactive language, the standard does not restrict implementations to the interactive mode.

11. *Implementation.* The implementation of FIPS Minimal BASIC involves three areas of consideration: acquisition of Minimal BASIC processors, interpretation of FIPS Minimal BASIC, and validation of Minimal BASIC processors.

11.1 *Acquisition of Minimal BASIC Processors.* This publication is effective December 24, 1985. Minimal BASIC processors acquired for Federal use after this date should implement FIPS Minimal BASIC. Conformance to FIPS Minimal BASIC should be considered whether Minimal BASIC processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing management, or specified for use in contracts for programming services.

11.2 *Interpretation of FIPS Minimal BASIC.* NBS provides for the resolution of questions regarding FIPS Minimal BASIC specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS Minimal BASIC should be addressed to: Director, Institute for Computer Sciences and Technology, Attn: BASIC Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

11.3 *Validation of Minimal BASIC Processors.* The General Services Administration (GSA), through its Federal Software Management Support Center (FSMSC), provides a service for the purpose of validating the conformance to this standard of language processors offered for Federal procurement. The validation system reports the nature of any deviations that are detected. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the FSMSC which is located at 5203 Leesburg Pike, Suite 1100, Falls Church, Virginia 22041–3467 (703–756–6153).

12. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 68–1 (FIPS PUB 68–1), and title. Payment may be made by check, money order, or deposit account.

Federal Information Processing Standards Publication 69–1

(date)

Announcing the Standard for FORTRAN

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Bureau of Standards pursuant to Section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973), and Part 6 of Title 15 Code of Federal Regulations (CFR).

1. *Name of Standard.* FORTRAN (FIPS PUB 69).

2. *Category of Standard.* Software Standard, Programming Language.

3. *Explanation.* This publication announces the revision of Federal Information Processing Standard FORTRAN. This revision supersedes FIPS PUB 69 and reflects changes to the Objectives, Applicability, and Implementation portions of FIPS FORTRAN. FIPS FORTRAN is the

BEST COPY AVAILABLE

adoption of American National Standard Programming Language FORTRAN, X3.9–1978. The American National Standard specifies the form and establishes the interpretation of programs expressed in the FORTRAN programming language. The Standard consists of a full language and a subset language. The purpose of the standard is to promote portability of FORTRAN programs for use on a variety of data processing systems. The standard is used by implementors as the reference authority in developing compilers, interpreters, or other forms of high level language processors, and by other computer professionals who need to know the precise syntactic and semantic rules of the standard.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

6. *Cross Index.* American National Standard Programming Language FORTRAN, X3.9–1978.

7. *Related Documents.*

a. Federal Information Resources Management Regulation 201–8.1, Federal ADP and Telecommunications Standards.

b. Federal Information Processing Standards Publication 29–1, Interpretation Procedures for Federal Information Processing Standard Programming Languages.

c. NBS Special Publication 500–117, Selection and Use of General-Purpose Programming Languages.

8. *Objectives.* Federal standards for high level programming languages permit Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of Federal programming language standards are:

—to encourage more effective utilization and management of programmers by insuring that programming skills acquired on one job are transportable to other jobs, thereby reducing the cost of programmer re-training;

—to reduce the cost of program development by achieving the increased programmer productivity that is inherent in the use of high level programming languages;

—to reduce the overall software costs by making it easier and less expensive to maintain programs and to transfer programs among different computer systems, including replacement systems;

—to protect the existing software assets of the Federal Government by insuring to the maximal feasible extent that Federal programming language standards are technically sound and that subsequent revisions are compatible with the installed base.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard language specifications.

9. *Applicability.*

a. Federal standards for high level programming languages should be used for computer applications and programs that are either developed or acquired for government use. FIPS FORTRAN is one of the high level programming language standards provided for use by all Federal departments and agencies. FIPS FORTRAN is especially suited for: (1) the generation of programs to solve recurrent numerical, scientific and engineering problems, particularly those which depend upon efficient computation or access to mathematical or statistical libraries of subprograms; (2) the efficient implementation of algorithms on a wide range of computing equipment of varying power and structure.

b. The use of FIPS high level programming languages is strongly recommended when one or more of the following situations exist:

—It is anticipated that the life of the program will be longer than the life of the presently utilized equipment.

—The application or program is under constant review for updating of the specifications, and changes may result frequently.

—The application is being designed and programmed centrally for a decentralized system that employs computers of different makes, models and configurations.

—The program will or might be run on equipment other than that for which the program is initially written.

—The program is to be understood and maintained by programmers other than the original ones.

—The advantages of improved program design, debugging, documentation and intelligibility can be obtained through the use of the high level language regardless of interchange potential.

—The program is or is likely to be used by organizations ouside the Federal Government (i.e., State and local governments, and others).

c. Non-standard language features should be used only when the needed operation or function cannot reasonably be implemented with the standard features alone. Although non-standard language features can be very useful, it should be recognized that their use may make the interchange of programs and future conversion to a revised standared or replacement processor more difficult and costly.

d. It is recognized that programmatic requirements may be more economically and efficiently satisfied through the use of statistical or numerical software packages. The use of any facility should be considered in the context of system life, system cost, data integrity, and the potential for data sharing.

e. Programmatic reqirements may be also more economically and efficiently satisfied by the use of automatic program generators. However, if the final output of a program generator is a FORTRAN source program, then the resulting program should conform to the conditions and specifications of FIPS FORTRAN.

10. *Secifications.* FIPS FORTRAN specifications are the language specifications contained in American National Standard Programming Language FORTRAN, X3.9–1978. The FORTRAN standard describes two levels of the FORTRAN language. FORTRAN referes to the full language and Subset FORTRAN refers to the subset of the full language.

The X3.9–1978 document specifies the form of a program written in FORTRAN, formats of data for input and output, and semantic rules for program and data interpretation.

The standard does not specify limits on the size or complexity of programs, the range or precision of numeric quantities or the method of rounding of numeric results, the results when the rules of the standard fail to establish an interpretation, minimum system requirements, the means of supervisory control of programs, or the means of transforming programs internally for processing.

A facility should be available in the processor that allows a FORTRAN source program to be analyzed with respect to FIPS FORTRAN. Any statement appearing in the source program that does not conform syntactically to the specifications of FIPS FORTRAN should be explicitly identified.

11. *Implementation.* The implementation of FIPS FORTRAN Involves three areas of consideration: acquisition of FORTRAN processors, interpretation of FIPS FORTRAN, and validation of FORTRAN processors.

11.1 Acquisition of FORTRAN Processors. This publication is effective December 24, 1985. FORTRAN processors acquired for Federal use after this date should implement FIPS FORTRAN. Conformance to FIPS

FORTRAN should be considered whether FORTRAN processors are developed internally, acquired as part of an ADP system procurement, acquired by separate procurement, used under an ADP leasing management, or specified for use in contracts for programming services.

11.2 *Interpretation of FIPS FORTRAN.* NBS provides for the resolution of questions regarding FIPS FORTRAN specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of FIPS FORTRAN should be addressed to: Director, Institute for Computer Sciences and Technology, Attn: FORTRAN Interpretation, National Bureau of Standards, Gaithersburg, MD 20899.

11.3 *Validation of FORTRAN Processors.* The General Services Administration (GSA), through its Federal Software Management Support Center (FSMSC), provides a service for the purpose of validating the conformance to this standard of language processors offered for Federal procurement. The validation system reports the nature of any deviations that are detected. This service is offered on a reimbursable basis. Further information about the validation service can be obtained from the FSMSC which is located at 5203 Leesburg Pike, Suite 1100, Falls Church, Virginia 22041–3467–6153).

12. *Where to Obtain Copies.* Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 69–1 (FIPS PUB 69–1), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 85–30335 12–23–85; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Marine Mammals; Proposed Permit Modification; Dr. Robert C. Schneider

Notice is hereby given that Dr. Robert C. Schneider, Department of Anesthesia, Massachusetts General Hospital, Boston, MA 02114 has requested a modification to Permit No. 526 issued on October 11, 1985 (50 FR 42747), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to use an electrical method of immobilizing the seals for tagging purposes using high frequency, low amperage current.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

The permit and modification are available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, MA 01930–3799.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

December 16, 1985.

[FR Doc. 85–30314 Filed 12–23–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing an Import Restraint Level for Certain Cotton Textile Products, Produced or Manufactured in Turkey

December 18, 1985.

On October 24, 1985, a notice was published in the **Federal Register** (50 F.R. 43267) announcing that, on September 30, 1985 the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of Turkey to enter into consultations concerning exports to the United States of cotton sheets in Category 361, produced or manufactured in Turkey.

The purpose of this notice is to advise the public that, inasmuch as no agreement has been reached on a mutually satisfactory solution concerning this category, the United States Government has decided to control imports of cotton sheets in Category 361, produced or manufactured in Turkey and exported during the twelve-month period which began on September 30, 1985 and extends through September 29, 1986 at a level of 189,073 numbers. Should further consultations result in agreement, further notice will be published in the **Federal Register**.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 361, exported during the period which began on September 30, 1985 and extends through September 29, 1986 in excess of the designated restraint limit.

FOR FURTHER INFORMATION CONTACT:
Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212).

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 18, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agriculture Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 24, 1985,

entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 361 produced or manufactured in Turkey and exported during the twelve-month period beginning on September 30, 1985 and extending through September 29, 1986, in excess of 189,073 numbers.[1]

Textile products in Category 361 which have been exported to the United States prior to September 30, 1985 shall not be subject to this directive.

Textile products in Category 361 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(6) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 18, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[Fr Doc. 85-30322, Filed 12-23-85; 8:45 am]

BILLING CODE 3510-DS-M

[1] The level has not been adjusted to reflect any imports exported after September 29, 1985.

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, 14 January 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices .

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C App. II, section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be close to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 18, 1985.

[FR Doc. 85-30339 Filed 12-23-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee; on Military Personnel Testing; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 2:00 pm-5:00 pm on January 9, 1986; 8:00 am-5:00 pm on January 10, 1986; and 8:00 am-11:30 am on January 11, 1986, at the Embassy Suite Hotel, 7750 Briar Ridge Drive, San Antonio, Texas. Meeting sessions will be open to the public.

The purpose of the meeting is to (1) review the development of DoD's computerized adaptive testing (CAT) system scheduled for nationwide implementation as the operational military selection and classification test (2) review the validation of the Armed Services Vocational Aptitude Battery (ASVAB); and (3) review the DoD Student Testing Program. The next Committee meeting will also be discovered.

Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. A. R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (202) 697-9271 no later than January 3, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 19, 1985.

[FR Doc. 85-30372 Filed 12-23-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education; Application Notice for Comprehensive Program for FY 1986

AGENCY: Department of Education.

ACTION: Application Notice for Comprehensive Program for Fiscal Year 1986.

Preapplications and applications are invited for new awards under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education.

Under this competition the Secretary of Education makes grants to and enters into cooperative agreements with institutions of postsecondary education and other public and private educational institutions and agencies for the purpose of improving postsecondary educational opportunities.

Authority for this program is contained in Title X of the Higher Education Act, as amended. (20 U.S.C. 1135)

Closing Date for Transmittal of Preapplications and Applications: Preapplications for awards must be mailed or hand-delivered by February 18, 1986. Applications must be mailed or hand-delivered by May 20, 1986.

Preapplications and Applications Delivered by Mail: A preapplication or application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.116A, Washington, D.C. 20202.

To establish proof of mailing, an applicant must show one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark

or a receipt that is not dated by the U.S. Postal Service as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Preapplications and Applications Delivered by Hand: A preapplication or application that is hand delivered must be taken to the Department of Education, Application Control Center, Attention: 84.116A, 7th and D Streets, S.W., Room 3633, Regional Office Building 3, Washington, D.C. 20202.

The Secretary will accept hand delivered preapplications and applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Preapplications that are hand-delivered will not be accepted after 4:30 p.m. on February 18, 1986. Applications that are hand-delivered will not be accepted after 4:30 p.m. on May 20, 1986.

Program Information

Type of Competition and Guidelines: The Secretary supports a broad range of projects that seek to improve postsecondary education. In accordance with 34 CFR 75.105(c)(1) the following guidelines suggest areas in which proposals would be especially welcome. However, the list is not meant to be exhaustive. Projects that do not fit any of these guideline areas are also eligible for support if they address other significant problems in postsecondary education. Proposals are solicited which seek to—

(1) Ensure that undergraduate curricula provide the knowledge and skills which an educated citizen needs—including knowledge of our intellectual and cultural heritage;

(2) Ensure that recent increases in access to postsecondary education are made meaningful by improving retention and completion rates without compromising program standards;

(3) Improve the quality of undergraduate education by—

(i) Raising academic standards for the bachelor's degree;

(ii) Strengthening the liberal arts component of undergraduate professional programs;

(iii) Developing means of assessing and comparing programs and institutions; and

(iv) Recognizing and rewarding outstanding undergraduate teaching through hiring, tenure, and promotion policies;

(4) Reform the education of school teachers by—

(i) Making it easier for able people to qualify as teachers who have earned degrees in fields other than education and who currently lack pedagogical training;

(ii) Increasing current and prospective teachers' mastery of the subjects they teach;

(iii) Ensuring that prospective teachers have a solid grounding in the liberal arts; and

(iv) Attracting more people of commitment and intellectual ability to the teaching profession;

(5) Reform graduate education by—

(i) Fostering the teaching skills of Ph.D. candidates bound for careers in teaching; and

(ii) Broadening the social ethical perspectives of students in professional graduate programs generally;

(6) Strengthen postsecondary educational instutitions and organizations by providing incentives to develop the abilities of their leaders, administrators, faculty, and staff;

(7) Provide education for a changing economy by offering educational programs and services for workers, unemployed individuals, businesses, and communities; and

(8) Develop educational uses of technology, including computers, television, and other electronic media.

In the coming year the Secretary will solicit suggestions from the field to assist in the development of future priorities.

Preapplications: Preapplications are required for this competition. They are reviewed in the same manner as applications, including review by independent field readers, and are evaluated on the basis of the selection criteria announced below.

Selection Criteria: The Secretary evaluates preapplications and applications on the basis of the following selection criteria:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Address an important problem or need;

(2) Represent an improvement upon, or important department from, existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience; and

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) Potential for continuation of the proposed project beyond the period of the Fund's support (unless the project would be self-terminating).

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Fund in appropriate in terms of the availability of other funding sources for the proposed activities.

For purposes of reviewing *preapplications,* the selection criteria grouped under "significance" ((a) above) are more important than those grouped under "feasibility" ((b) above) and "appropriateness" ((c) above). The group of criteria under "feasibility" ((b) above) is equal in importance to the "appropriateness" criteria ((c) above).

In reviewing *applications,* the selection criteria (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (b)(1), (b)(2), (b)(3), and (c) are of equal importance.

In applying the criteria, the Secretary first analyzes preapplications and applications in terms of individual criteria. The Secretary then bases the final judgment of a preapplication or application on an overall assessment of the extent to which the application satisfactorily addresses the selection criteria.

Other Information To Be Requested From Applicants: In the final stage of the selection process, applicants whose

applications are being considered for funding will be contacted by telephone to verify or clarify information relevant to the their applications.

Available Funds: The Department of Education Appropriation Act, 1986, appropriated $12,710,000 for the Fund for the Improvement of Postsecondary Education. Of the amount, approximately $5,280,000 will be available for new award under the Comprehensive Program. It is estimated that 75 grants ranging from $5,000 to $200,000 per year will be funded. These estimates do not bind the Department of Education to a specific number of grants or the amount of any grant unless that amount is otherwise specified by statute or regulations.

Applications may be submitted for project periods of up to 36 months. In the case of projects approved for multi-year funding, grants awarded in Fiscal Year 1986 will be for the first year of operation only.

Preapplication and Application Forms: Preapplication and application forms are included in the program information package. These materials have been sent directly to everyone on the mailing list for the Fund for the Improvement of Postsecondary Education. Institutions and persons not on this list can obtain these materials from the Comprehensive Program, Attention: 84.116A, Department of Education, Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, S.W. (Room 3100, Regional Office Building 3), Washington, D.C. 20202.

The program information is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulation governing the competition. (Approved by the Office of Management Budget under Control Number 1840–0514)

Applicable Regulations: The regulations governing award made by the Fund for the Improvement of Postsecondary Education are contained in:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, with the exception noted in 34 CFR Part 630.4(b).

(2) The regulations in 34 CFR Part 630.

Further Information: For further information contact the Fund for the Improvement of Postsecondary Education regarding the Comprehensive Program (84.116A). Telephone (202) 245–8091/8100.

(20 U.S.C. 1135)

(Catalog of Federal Domestic Assistance No. 84.116A, Fund for the Improvement of Postsecondary Education)

Dated: December 17, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–30340 Filed 12–23–85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs.

ACTION: Notice of meeting.

SUMMARY: This sets forth the schedule and proposed agenda of the National Advisory Council on Women's Educational Programs and its Executive; Federal Policies, Practices and Programs; WEEA Program; and Civil Rights Committees. The agenda will include discussion of Council goals and objectives, evaluation of Forum proposals, budget review, revisions of draft of annual report, up-date on Civil Rights legislation, Committee reports and general discussion. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES:

January 20, 1986, 7:30 p.m. to 9:00 p.m. Executive Committee.

January 21, 1986, 2:30 p.m. to 3:30 p.m. Meetings of Federal Policies, Practices and Programs Committee; Civil Rights Committee and WEEA Program Committee.

January 22, 1986, 8:00 a.m. to 3:00 p.m. Full Council Meeting.

ADDRESS: All meetings will be held at the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036

For further information contact: Patricia A. Weber, Deputy Director, National Advisory Council on Women's Educational Programs, 2000 "L" Street, NW., Suite 568, Washington, DC 20036, (202) 634–6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95–561. The Council is mandated to (a) advise the Secretary on matters relating to equal education opportunities for women and policy matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The meeting of the Executive Committee will take place on Monday, January 20, 1986 from 7:30 p.m. to 9:00 p.m. The agenda will include Forum review, the Council's 1986 budget, unfinished business and new business.

The meetings of the Federal Policies, Practices, and Programs; Civil Rights; and WEEA Program Committees, will take place on Tuesday, January 21, 1986, from 2:30 to 3:30 p.m.

The agenda for the Federal Policies, Practices and Programs Committee will include the election of officers, unfinished business and new business.

The agenda for the Civil Rights Committee will include new legislation, unfinished business and new business.

The agenda for the WEEA Program Committee will include discussion of site visits, unfinished business and new business.

The meeting of the Council is open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street NW., Suite 568, Washington, DC 20036.

Signed at Washington, DC, on December 19, 1985.

Sally A. Todd,

Executive Director.

[FR Doc. 85–30343 Filed 12–23–85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement".

The subsequent arrangement involves the shipment to U.S. Department of Energy facilities of fuel rods from a research reactor containing approximately 25,500 kilograms of

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natural uranium for reprocessing and storage of recovered nuclear materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: December 18, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-30329 Filed 12-23-85; 8:45 am]

BILLING CODE 6450-01-M

Finding of No Significant Impact, Remedial Action at the Lakeview Uranium Mill Tailings Site, Lakeview, OR

AGENCY: Department of Energy.

ACTION: Finding of No Significant Impact.

SUMMARY: The Department of Energy (DOE) has prepared an environmental assessment (DOE/AE-0271) on the proposed remedial action at the inactive uranium milling site located on private property owned by Precision Pine Company in Lakeview, Oregon. Based on the analyses in the EA, DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42. U.S.C. 4321 *et seq.*).

Background.

On November 8, 1978, the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L. 95-604, was enacted in order to address a Congressional finding that uranium mill tailings located at inactive processing sites may pose a potential health hazard to the public. On November 8, 1979, DOE designated 24 inactive processing sites for remedial action under Title I of UMTRCA including the inactive uranium mill tailings site at Lakeview, Oregon (44 FR 74892).

UMTRCA charges the Environmental Protection Agency (EPA) with the responsibility for promulgating remedial action standards for inactive mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and non-radiological hazards associated with residual radioactive materials at the sites. The final standards (40 CFR Part 192) were published on January 5, 1983, and became effective on March 7, 1983. The DOE has proposed a plan of remedial action that will satisfy the EPA standards. Under UMTRCA, the DOE and the State of Oregon entered into a cooperative agreement, effective June 29, 1984, for remedial action at the Lakeview designated site. Under the agreement, the State of Oregon must concur with the remedial action plan to be developed for the site, comment on the EA, assist in site characterization and disposal site selection, participate in and comment upon the final design, and provide 10 percent of site acquisition, engineering, and construction costs. The DOE will provide the remaining 90 percent of these costs.

All remedial actions must be selected and performed with the concurrence of the Nuclear Regulatory Commission (NRC).

Project Description

The Lakeview mill site and tailings are located in south-central Oreon, in Lake County. The closest town is Lakeview, one mile to the southeast. Klamath Falls is about 96 miles west of the site. The site is about 16 miles north of the California-Oregon border.

The 258-acre Lakeview site, as designated by the DOE, is located in portions of Sections 3, 4, 9, and 10, Township 39 South, Range 20 East, Washington Meridian, at 42 deg 12 min 43 sec north latitude and 120 deg 22 min 09 sec west longitude.

The mill was built in 1958 and operated by the Lakeview Mining Company. The owners of this firm were also the owners of the Gunnison Mining Company, which operated the mill at Gunnison, Colorado. Both companies were acquired in 1961 by Kerr-McGee Oil Industries through its subsidiary, Kermac Nuclear Fuels Corporation.

During the 1958 to 1961 period of operation, 130,000 tons of ore averaging 0.15 percent U_3O_8 were processed; 171 tons of uranium oxide were sold to the Atomic Energy Commission (AEC). The mill processed ores from the White King and Lucky Lass mines located in southern Lake County, Oregon.

Between 1960 and 1968 the property had five owners. In 1968, the Lakeview site was obtained by Atlantic Richfield Company, which, in 1974, initiated and performed a cleanup operation on the site under a plan approved by the Oregon State Health Division. By 1977 the mill buildings and their immediate surroundings had been decontaminated to meet the then existing requirements of the Oregon Regulations for the Control of Radiation. The property was sold on March 8, 1978, to Precision Pine Company, the current owner, which uses the site and remaining structures as a lumber mill and stockpile for sawdust and scrap waste.

The total designated site covers 258 acres. This includes the active sawmill area, the tailings (30 acres), and the evaporation ponds (approximately 69 acres). The tailings have been stabilized with an earthen cover 18 to 24 inches thick. The pile is almost square with a very flat surface, although the stabilization cover has depressions that trap moisture. This cover supports a vigorous growth of vegetation. The average depth of the tailings, including cover, is estimated to be seven feet. An earthen dike was formed around the tailings area before the tailings were originally deposited. The tailings have been fenced with a hogwire type of fence and radiation signs are posted. There is also a barbed-wire fence around the entire site.

The mill building and other structures reportedly were decontaminated, along with the machinery and other salvageable items that have been removed. Materials that were not salvageable or were not able to be decontaminated have been placed on the southeastern portion of the tailings pile and stabilized in the same manner as the remainder of the tailings.

Prior to initiation of the EA, the DOE conducted a preliminary assessment of the tailings pile at Lakeview and a review of possible remedial actions. The geotechnical evaluation of the nearby area identified seven active faults or fault zones with potential for disruption of the site. The are also was identified as having high subsurface heat flows with three hot springs and more than 40 geothermal wells nearby. These factors together indicated the existence of a potential hazard which could jeopardize the integrity of on-site stabilization during the project's design life (up to 1000 but in any case not less than 200 years). Because of this potential hazard, the DOE, in concert with the State of Oregon, embarked on a process for the selection of alternate disposal sites. This process investigated several areas for safe disposal of the tailings in compliance with the EPA standards. During the process the public had extensive opportunity to provide input through a local task force. On the basis of this cooperative public process, two sites were selected for detailed analysis in the EA. The DOE initiated, and is continuing, an extensive date gathering program at the tailings site and both alternate disposal sites.

Proposed Action

The proposed action (Alternative 1) is decontamination of the existing Lakeview mill site with relocation to, and stabilization at, the Collins Ranch site. Located approximately six miles north-northwest of the existing tailing pile on lands adjacent to the Fremont National Forest, the Collins Ranch site (approximately 20 acres) ranges in elevation from 4,886 to 5,000 feet and is characterized by gently sloping terrain without perennial streamflow. Contaminated materials from around the mill site, evaporation ponds, and vicinity properties would be added to the pile and surface runoff diversion ditches would be constructed. The tailings pile would be constructed partially below grade, contoured to be nearly level on top (2 percent slope), and would have 5:1 sideslopes (20 percent). Lesser contaminated materials would be placed on top of the mill tailings thereby reducing the compacted earthen cover to one foot thick. This cover would be capped with a two-foot-thick layer of rock to protect the site from wind and water erosion, limit penetration by plants and animals, and prevent inadvertent human intrusion. A rock-soil matrix would be placed on the erosion protection cover to promote revegetation of the site.

Several alternatives to the proposed action were analyzed in the EA. These include no action (Alternative 2) and decontamination of the Lakeview site and relocation of the wastes to the Flynn Ranch site 26 miles east of the Lakeview site (alternative 3).

Comments Received

The DOE announced the availability of the EA in the Federal Register on May 20, 1985 (50 FR 20828). A 39-day period was provided for public review and comment. Comments were received from the State of Oregon Department of Energy, Environmental Evaluation Branch of the U.S. Environmental Protection Agency, U.S. Nuclear Regulatory Commission, U.S. Department of the Interior, U.S. Department of Agriculture, Lake County Chamber of Commerce, Lake County Task Force on Uranium Mill Tailings Disposal, Forelaws on Board, Fort Bidwell Indian Community Council, and from 27 concerned citizens in the area.

The major concerns expressed relate to the impacts based on specific design details of the stabilized pile, impacts from radiation released during remedial action, health effects from no-action, transportation impacts during remedial action, seismic affects on the stabilized pile, air quality impacts, awarding contracts to local companies, and the potential impacts to historical and cultural significance of the Flynn Ranch area to the Fort Bidwell Indians. All comments received have been reviewed and specific responses are being provided to the commentors.

Finding

The EA focused on the environmental and economic impacts resulting from the proposed remedial action and identified mitigation measures that will be implemented to reduce these effects to an insignificant level. The Finding of No Significant Impact of stabilization at the Collins Ranch site is based on the following findings which are supported by the information and analyses in the EA:

• Radiation release—the increased radiation exposure above background levels to the general population during the remedial action will be extremely low. The estimated excess health effects were projected to be 0.00019 additional cancer death in 10 years (0.019 additional cancer death in 1000 years). (With no action, these projections were increased to 0.0081 and 0.81, respectively). The projected excess health effects for remedial action workers was 0.0027.

The DOE will closely monitor the release of radon and particulates during the remedial action. The release of radon and contaminated particulates will be reduced by dampening contaminated materials with water, by limiting contaminated material-handling operations during adverse weather conditions, and by using trucks with tight-fitting tailgates and covers when the material is to be moved. All waste-water streams will be isolated from surface-water systems by drainage-control methods.

Human exposure to residual radioactive material will be reduced further by restricting access, by providing worker training program, and by the use of appropriate monitoring and protective equipment by the remedial action workers.

Radiation impacts from the proposed remedial action activities are insignificant.

• Air quality—The site and surrounding area are in attainment of the National Ambient Air Quality Standards for hydrocarbons (HC), nitrogen dioxide (NO_2), sulfur dioxide (SO_2), carbon monoxide (CO), and total suspended particulates (TSP). Dispersion modeling indicated that combustion emissions from construction equipment will not exceed Federal primary or secondary standards.

However, TSP (24-hour) could exceed the Federal secondary standards (150 microg/m^3) and the 24-hour primary standard (260 microg/m^3) for a short period of time. The modeling used was conservative in that mitigation measures were credited with only a 50-percent reduction in particulate emissions from the site and the modeling assumed extremely stable wind conditions (i.e., very limited pollutant dispersion). On this basis it was determined that the air-quality impacts of the proposed action will be temporary and will not be significant.

• Surface-water quality—During remedial action, a low possibility exists that surface waters (i.e., Hammersley Creek) would experience an increase in contaminants due to the relocation of tailings and contaminated materials. These impacts would be minimal because of water retention facilities and erosion control measures.

Surface waters would not be impacted after remedial action because the tailings will be isolated from surface-water contact by a one-foot-thick compacted radon cover, a two-foot-thick rock layer for erosion control purposes, and a rock-soil matrix to promote revegetation of the site. A system of drainage diversion ditches will also be installed to control surface runoff. In addition, the nearest perennial stream to the Collins Ranch site is 3000 feet distant.

• Ground-water quality—The proposed remedial action would eliminate further ground-water contamination at the former mill site by removing the principal source of contamination. The design features of the relocated stabilized pile at the Collins Ranch site would essentially prevent further contamination of the shallow aquifers in the area resulting from uranium mill tailings. A two-foot-thick recompacted layer of silty/clayey material will provide the foundation layer beneath the tailings pile. The tailings material will be covered with a 20-foot-thick layer of lesser contaminated materials, averaging 14 pCi/m^2 sec. A one-foot-thick compacted soil radon cover, a two-foot-thick rock cover, and a rock-soil matrix over the cover would further inhibit infiltration of precipitation and thereby inhibit potential contamination of the ground water. The shallow ground water in the area is not presently used for domestic consumption. The deeper aquifers would not be effected by the proposal remedial action.

• Threatened and endangered species—No threatened or endangered species, as identified by the U.S. Fish

and Wildlife (FWS), have been identified at or near the Collins Ranch site or the former mill site. The DOE has consulted with state and Federal agencies concerned with the protection of threatened or endangered species and conducted field surveys of the proposed disposal site. No impacts to threatened or endangered species would occur.

• Cultural resources—A class III archeological field reconnaissance survey was conducted at the Collins Ranch site and proposed borrow area. No archaeological sites were identified at the Collins Ranch site, however two historical sites have been identified alongside of the roadway to the borrow site. One of the sites, a historic can and bottle dump, does not have sufficient integrity of material remains to warrant further study. The second historic site, a dugout with associated corral, fence, road, and dump, dates back to approximately the turn of the century. This a site appears to meet the criteria for the National Register (36 CFR 800) and will be avoided. The Oregon State Historical Preservation Office (SHPO) has been notified of these findings. Mitigative measures have been implemented to avoid this historic site, and thus, this site would not be impacted during or after remedial action.

• Transportation—Utilization of the Collins Ranch disposal site would require use of a private lumber haul road, currently owned by Fremont Sawmill, which runs in a northwesterly direction from behind the current tailings site, to within one mile of the proposed site. The remainder of the haul distance will be on a U.S. Forest Service road. The haul road will be upgraded and maintained to meet DOE and Forest Service standards. Traffic on these roads is minimal and accident rates are low. No significant impacts resulting from project activities would occur.

• Seismicity—The Collins Ranch disposal site is in a moderate seismic risk zone. The nearest active fault is the Goose Lake graben fault zone, approximately four miles east of the disposal site. Based on the Maximum Credible Earthquake (MCE) calculated for the site and the potential ground accelerations, the Collins ranch disposal site has been designed to withstand these events in compliance with the standard. Thus, potential impacts from seismic events are insignificant.

• Floodplains and wetlands—The Collins Ranch site is not within a floodplain or wetlands area. However, removal of contaminated materials from within the 100-year floodplain during the rerouting of Hammersley Creek will require the elimination of a limited lacustrine, unconsolidated bottom wetlands maintained by seasonal flooding within the creek channel. This activity will be accomplished in such a manner as to minimize environmental harm through consultation with the U.S. Army Corps of Engineers, Oregon Division of State Lands, and the Lake County Planning Department.

Single copies of the EA are available from: John Themelis, UMTRA Project Manager, U.S. Department of Energy, UMTRA Project Office, 5301 Central Avenue NE., Suite 1700, Albuquerque, New Mexico 87108, (505) 844–3941.

FOR FURTHER INFORMATION CONTACT: Robert J. Stern, Director, Office of Environmental Guidance EH–23, Office of the Assistant Secretary for Environment, Safety, and Health, Room 3G–092, Forrestal Building, U.S., DOE, Washington, D.C. 20585, (202) 252–4600.

Issued at Washington, D.C. December 16, 1985.

William A. Vaughan,

Assistant Secretary Environment, Safety, and Health.

[FR Doc. 85–30327 Filed 12–23–85; 8:45 am]

BILLING CODE 6450–01–M

Floodplain and Wetlands Statement of Findings; Remedial Action at the Lakeview Uranium Mill Tailings Site, Lakeview, OR

AGENCY: Department of Energy.

ACTION: Floodplain and Wetlands Statement of Findings.

This is a Statement of Findings, prepared pursuant to Executive Orders 11988 and 11990, and 10 CFR Part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements.

Under authority granted by the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95–604, dated November 8, 1978), the U.S. Department of Energy (DOE) proposes to clean up the residual radioactive wastes and other contaminated materials at the inactive uranium mill tailings site located just north of Lakeview, Oregon, and relocate these materials to a new disposal site (Collins Ranch site) six miles northwest.

The proposed remedial action will move and stabilize the radioactive wastes according to a plan to be concurred in by the U.S. Nuclear Regulatory Commission and the State of Oregon. The proposed remedial action is in conformance with the Environmental Protection Agency (EPA) Standards for Cleanup of Inactive Uranium Processing Sites (40 CFR 192).

Most of the radioactively contaminated materials (628,000 cubic yards) are located on the edge of the 100-year floodplain of Hammersley Creek. Hammersely Creek traverses the former mill site. As reported in the Environmental Assessment (EA) (UMTRA–DOE/AL–0271), Appendix I, Floodplains and Wetlands Assessment, the U.S. Army Corps of Engineers indicated that wetlands were not present within the area of construction activities. However, since publication of the EA, the U.S. Fish and Wildlife Service indicated that wetlands exist to a limited extent within the confines of Hammerseley Creek. These wetlands are predominately lacustrine, unconsolidated wetlands maintained by seasonal flood events. Therefore, the remedial action involves action in a floodplain/wetlands.

The principal feature of the proposed action is the transportation of tailings and other contaminated soils (from the floodplain, adjacent windblown areas, and the evaporation ponds area) to the Collins Ranch site approximately six miles northwest of the former mill site. The Collins Ranch site is well out of the reach of the nearest perennial stream and is not subject to flood events. At the Collins Ranch site, the materials will be placed on a prepared surface partially below grade, and contoured into an embankment. Below grade excavation would extend to an average depth of five feet. The upper 15 feet of the stabilized embankment would consist of lesser contaminated soils from the mill site. The tailings and contaminated material would be covered with a one-foot-thick earthen cover to control radon exhalation and water infiltration. This cover would be topped with a two-foot-thick layer of graded rock for erosion protection, and a rock-soil matrix cover to promote revegetation of the site.

The former mill site would be restored with uncontaminated fill to conform with the surrounding terrain, recontoured as necessary for service drainage and revegetated.

Specific construction activities related to the floodplain and wetlands area include: (1) Removal of about 628,000 cubic yards of contaminated soils; (2) rerouting of approximately 2,600 feet of Hammersley Creek and fill of the abandoned channel; (3) filling in, grading, and revegetating the floodplain and wetlands area where contaminated soils were excavated.

The DOE examined three alternatives for the remedial actions in the EA. The DOE's proposed action (Alternative 1 in the EA) is decontamination of the Lakeview mill site and relocation of the wastes to the Collins Ranch site. The two other alternatives analyzed in the

EA include: (2) no action; and (3) relocation of the wastes to the Flynn Ranch site.

Pursuant to 10 CFR Part 1022, the DOE prepared a floodplain and wetlands assessment. This assessment was published as Appendix I, Floodplains and Wetlands Assessment, in the EA.

The remedial action has been designed to conform to applicable Federal and state regulations. Before construction begins, all applicable permits and approvals, such as those required under section 404 of the Clean Water Act, will be obtained from the U.S. Army Corps of Engineers, Oregon Division of State Lands, and other agencies having jurisdiction.

Initial consultation with the agencies has taken place, and as a result, the design has been modified to minimize environmental impacts. Principally, rerouting requires the establishment of a seed base for a grass lining to accommodate the flow velocities during the 500-year flood event.

The no action alternative would leave contaminated material in the floodplain. Cleanup of this material (alternatives 1 and 3) inherently involves action within the floodplain and wetlands areas. On the basis of the flood plain and wetlands assessment, the DOE has determined that there is no practicable alternative to the proposed activities in the floodplain and wetlands, and that the proposed action has been designed to minimize potential harm to or within the floodplain and wetlands.

Issued at Washington D.C., December 16, 1985.

William A. Vaughan,

Assistant Secretary, Environment, Safety, and Health.

[FR Doc. 85-30328 Filed 12-23-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-9-FRL-2943-8]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Pacific Thermonetics, Inc. (EPA Project Number SFB 85-02)

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on December 6, 1985 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a combined-cycle cogeneration plant consisting of two General Electric Frame 7 gas turbines, each followed by a heat recovery steam generator (HRSG) and an extraction-type steam turbine. The facility will be located at the existing C&H Sugar Refinery Plant in Crockett, Contra Costa County, California. The permit is subject to certain conditions, including an allowable emission rate as follows: NO_x (gas turbines)—25 ppmv at 15% when firing natural gas and 42 ppmv at 15% when firing fuel oil (fuel oil firing is limited to 330 hrs/yr), NO_x (duct burners—0.1 lb/MMBtu, and particulate matter—0.04 gr/DSCF.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of multiple combustion nozzles, low sulfur fuel oil, limited hours of fuel oil firing, Lo-NO_x burners, and the use of natural gas in the HRSG burners.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by February 24, 1986.

Carl C. Kohnert,

Acting Director, Air Management Division, Region 9.

[FR Doc. 85-30347 Filed 12-23-85; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. ECAO-CD-81-1; A-4-FRL 2935-2]

Draft Air Quality Criteria for Ozone and Other Photochemical Oxidants

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Second External Review Drafts of Volumes I and V of the Air Quality Criteria for Ozone and Other Photochemical Oxidants.

SUMMARY: The second external review draft of Volumes I and V of the revised criteria document for ozone and other photochemical oxidants are being made available for public review and comment.

DATES: The Agency will make these volumes available on or about December 16, 1985. Comments must be postmarked by February 17, 1986.

ADDRESSES: To obtain a copy of these draft volumes, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 W. St. Clair St., Cincinnati, OH 45268, 513/569-7562, (FTS: 684-7562), and request the second external review drafts of Volumes I and V of the revised Air Quality Criteria for Ozone and Other Photochemical Oxidants. Please provide your name, mailing address, and the EPA document number, EPA-600/8-84-020B. The draft volumes will also be available for public inspection and copying at the EPA library, EPA headquarters, Waterside Mall, 401 M Street, SW, Washington, DC 20460.

Comments on these draft volumes should be sent in writing to the: Project Manager, Air Quality Criteria for Ozone/Oxidants, Environmental Criteria and Assessment Office (MD-52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Ray, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office (MD-52), Research Triangle Park, NC 27711, (919) 541-3637.

SUPPLEMENTARY INFORMATION: After close of the public comment period for these volumes, the Clean Air Scientific Advisory Committee (CASAC) of the Agency's Science Advisory Board (SAB) will hold a public meeting to review the volumes. Advance notice of the time and place of the meeting will be provided in a subsequent **Federal Register** notice.

A copy of the volumes, all public comments received, and the Agency's response to these comments will be included in the docket established for the revision of the ozone/oxidants document (Docket No. ECAOCD-81-1). The docket is available for inspection and copying between the hours of 8:00 a.m. and 4:00 p.m. at EPA headquarters in the Central Docket Section (A-130), Gallery 1, West Tower, Waterside Mall, 401 M Street, SW, Washington, DC 20460.

Dated: November 25, 1985.

Thomas R. Hauser,

Acting Assistant Administrator for Research and Development.

[FR Doc. 85-30464 Filed 12-23-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Change in effective date.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") is postponing implementation of its May 6, 1985 statement of policy, scheduled to become effective on January 1, 1986, which provides for the FDIC to publicly disclose the final orders it issues in conjunction with formal enforcement actions. In light of the decision by the Office of the Comptroller of the Currency ("OCC") to propose comprehensive disclosure rules, the FDIC's Board of Directors feels that it would be beneficial to review its disclosure policy and to work with the OCC on a uniform disclosure approach. Therefore, the FDIC is delaying the effective date of its statement of policy from January 1 to July 1, 1986.

EFFECTIVE DATE: The effective date of the statement of policy published May 17, 1985, is changed from January 1, 1986, to July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Planning and Program Development Specialist, Division of Bank Supervision, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 389–4761.

SUPPLEMENTARY INFORMATION: On May 6, 1985, the Board of Directors of the FDIC adopted a statement of policy, scheduled to become effective on January 1, 1986, which provides for the FDIC to publish and make available to the public in agency press releases the names of all banks and persons to whom the FDIC has issued final orders in conjunction with formal enforcement actions. In addition, brief descriptions of the nature of the enforcement actions taken and summaries of the orders are to be incorporated into the press releases for each action disclosed. This policy applies to insurance termination orders, cease-and-desist orders, removal orders, suspension orders, civil money penalty orders, and capital directives.

On October 30, 1985, the OCC published for a 90-day comment period a comprehensive disclosure regulation that would be applicable to all national banks. 50 *FR* 45372 (1985). In light of this action by the OCC, the FDIC's Board of Directors feels that it would be beneficial to review its disclosure policy and to work with the OCC on a uniform disclosure approach. Therefore, the FDIC is delaying the effective date of its policy on disclosure of enforcement actions for six months.

Accordingly, the Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions that was adopted by the FDIC's Board of Directors on May 6, 1985 (50 *FR* 20609 (May 17, 1985)) is amended by removing the date "January 1, 1986" from the "**EFFECTIVE DATE**" paragraph on page 20609 and from seventh paragraph of page 20619 and inserting in its place the date "July 1, 1986."

By order of the Board of Directors this 16th day of December 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–30240 Filed 12–23–85; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003945–005.

Title: Oakland Terminal Agreement.

Parties: Port of Oakland (Port), Maersk Line Pacific, Ltd. (Maersk).

Synopsis: This agreement amends the basic agreement between the parties whereby the Port assigned certain marine terminal facilities in the Port's Outer Harbor Terminal Area to Maersk. The amendment extends the time to March 31, 1986 in which Maersk may exercise its right to extend the term of the basic agreement for an additional five years.

Agreement No.: 202–010390–010.

Title: United States Atlantic & Gulf/Ecuador Freight Association.

Parties: Ecuadorian Line, Inc., Lykes Bros. Steamship, Inc., Transportes Navieros Equatorianos.

Synopsis: The proposed amendment would reduce the notice period for a member's independent action from seven calendar days to three business days. It would also provide for amendment of any conference tariff to include the new rate or service item to also be effective not earlier than three business days after receipt of notice and would alter the time for a member to withdraw, review or extend its independent action to reflect a period beyond three business days rather than seven calendar days.

Agreement No.: 202–010689–013.

Title: Transpacific Westbound Rate Agreement.

Parties: American President Lines, Ltd., Evergreen Marine Corp., Hanjin Container Lines, Ltd., Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Korean Marine Transport Co., Ltd., Lykes Bros. Steamship Co., Inc., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Yusen Kaisha, Ltd., Orient Overseas Container Line, Inc., Sea-Land Service, Inc., Showa Line, Ltd., United States Lines, Inc., Yamashita-Shinnihon Steamship Co. Ltd.

Synopsis: The proposed amendment would make clear that an increase in agreement rates would operate to increase an independent action rate to the agreed level (in the absence of notification to the manager to the contrary) only as to independent action rates which have become effective.

Agreement No.: 206–010715–001.

Title: Eurospan.

Parties: North Europe-U.S. Gulf Freight Association, Gulf-European Freight Association.

Synopsis: The proposed amendment would add authority for the parties to establish practices in connection with the self-policing and enforcement of their obligations under their respective conference agreements. The parties have requested a shortened review period.

Agreement No.: 224–010863.

Title: Tampa Terminal Agreement.

Parties: Tampa Port Authority (Authority), St. Philip Towing & Transportation Co. (St. Philip).

Synopsis: This agreement provides for the lease by the Authority to St. Philip of 30,000 sq. ft. of uplands and 10,340 sq. ft. of submerged land including a timber dock and a 3,775 sq. ft. building. St. Philip will use the facility to dock tugs and/or barges in performance of tug and/or barge-tug operations which includes the holding out to perform common carrier services in both interstate offshore and foreign

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commerce. The term of the agreement is for 15 years.

Dated: December 19, 1985.

By Order of the Federal Maritime Commission.

Mary F. Whitmore,

Assistant to the Secretary.

[FR Doc. 85-30380 Filed 12-23-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Labor-Management Cooperation Program; Application Solicitation

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final FY 1986 Program Announcement/Application Solicitation.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) published the draft Fiscal Year 1986 Program Announcement for the Labor-Management Cooperation Program in the November 14, 1985, issue (50 FR 220) of the **Federal Register**. No written public comments were received, and no changes have been made.

FOR FURTHER INFORMATION CONTACT: Peter L. Regner, Director, Labor-Management Grant Programs, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427.

Labor-Management Cooperation Program Application Solicitation—FY 1986

A. Introduction

The following is the final solicitation for the Fiscal Year 1986 cycle of the Labor-Management Cooperation Program. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in Fiscal Year 1981. The Act generally authorizes FMCS to provide assistance in the establishment and operation of plant, area, public sector, and industry-wide labor and management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that plant, area, government agency, or industry; and

(B) Are established for the purpose of improving labor management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow as well as a separately published FMCS Financial and Administrative Grants Manual make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978 follows this solicitation. The Act should be reviewed in conjunction with this solicitation.

B. Program Description

Objectives

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communications between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employees in solving problems of mutual concern not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the plan, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance to the formation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term "labor" refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either plant (worksite), area, industry, or public sector levels. A plant or worksite committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related unions producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists of government employees and managers in one or more units of a local or state government. Those employees must be covered by a formal collective bargaining agreement. Employees covered by so-called "meet and confer" agreements are not eligible under this program. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

IN FY86, competition will be open to plant, area, private industry, and public sector committees. In-plant committee applications should offer an innovative or unique effort. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal grant programs (e.g., job training).

Required Program Elements

1. *Problem Statement.* The application, which should have numbered pages, must discuss in detail what specific problem(s) face the plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problems using as much relevant data as possible and discuss the full range of impacts these problems could have or are having on the plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problems. This section basically discusses WHY the effort is needed.

2. *Results or Benefits Expected.* By using specific goals and objectives, the application must discuss in detail WHAT the labor-management committee as a demonstration effort will accomplish during the life of the grant. While a goal of "improving communication between employers and employees" may suffice as one overall

goal of a project, the objectives must, whenever possible, be expressed in measurable terms. Applicants should focus on the impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts.

3. *Approach.* This section of the application specifies HOW the goals and objective will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g. members represent 70% of the area or plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as résumés for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of the past efforts and accomplishments and how they would integrate with the proposed future expanded effort.

4. *Major Milestone.* This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for WHEN they will be finished. A milestone chart must be included that indicates what specified accomplishments (process and impact) will be completed by month over the life of the grant. The chart should identify months as "month 1, 2" etc., rather than by name of month as the grant start date will not be determined until all applications are reviewed. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. *Evaluation.* Applicants must provide for an external evaluation or internal assessment of the project's success in meeting its goals and objectives.

An evaluation plan must be developed which will briefly discuss what basic questions or issues the assessment would examine and what baseline data the committee staff would already have/or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. *Letters of Commitment.* Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and are willing to personally attend scheduled committee meetings. A blanket letter signed by a committee chairperson on behalf of all members is not acceptable.

7. *Other Requirements.* Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on plicies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that written minutes of all committee meetings will be prepared and made available to FMCS.

Selection Criteria

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and jutified the needs that the proposed project will address.

(2) The degree to which appropriate and measurable goals and objectives have been developed to address the problems/needs of the area. For existing committees, the extent to which the committee will focus on expanded efforts.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. For in-plant applicants, this section will address the degree of innovation or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's fiscal feasibility vs. its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration and quality of the application; and,

(8) The cost value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovations, site location, and other qualities that enhance an applicant's value in encouraging the labor-management committee concept.

C. Eligibility

Eligible grantees include State and local units of government, private non-profit labor-management committees (or a labor or management entity on behalf of a committee that will be created through the grant), and certain third party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies are not eligible.

Third party non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applicants from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible.

Applicants who received funding under this program in the past for committee funding are not eligible to apply for funding to continue or expand their prior efforts.

D. Allocations

FMCS has received an FY86 appropriation of $1 million for this program. However, as a result of the Balanced Budget and Emergency Deficit

Control Act of 1985 (Gramm-Rudman-Hollings Act), this amount may be produced. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (inplant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be awarded according to merit without regard to category.

FMCS reserves the right to retain up to 5 percent of the FY86 appropriation to contract for program support purposes (other than administrative).

E. Dollar Range and Length of Grants and Continuation Policy

Awards to continue and expand existing labor-management committees (i.e., in existence at least 12 months prior to the submission deadline) will be for a period of 12 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 12 months at double the initial cash match ratio.

The total project period will thus normally be no more than 24 months.

Initial awards to establish new labor-management committees (i.e., not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and if sufficient appropriations for expansion and continuation projects are available, these grants may be continued up to an additional 18 months at double the initial cash match ratio. The total project period will thus normally be no more than 36 months.

The dollar range of awards is as follows:

—Up to $35,000 in FMCS funds per annum for existing inplant applicants; up to $50,000 over 18 months for new in-plant committee applicants;
—Up to $75,000 in FMCS funds per annum for existing area, industry and public sector committee applicants;
—Up to $100,000 per 18-month period for new area, industry, and public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and grantee match, applicants may supplement these funds through voluntary contributions from other sources.

F. Match Requirements and Cost Allowability

In FY86, applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants of existing committees must provide at least 25 percent of the total allowable project costs. All matching funds must be in cash rather than in-kind goods or services. Matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered "project income," and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs. In addition, grant funds must not be used to supplant private or local/state government funds currently employed for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts only. Also, under no circumstances will business or labor officials participating on a labor-management committee be compensated out of grant funds for time spent at committee meetings or *time* spent in training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* staff time as an expense or match contribution.

For a more complete discussion of cost allowability, applicants are encouraged to consult the FY86 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

G. Application Submission and Review Process

Applications must be signed by *both* a labor and management representative and be postmarked no later than May 17, 1986. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An orginal application, containing numbered pages, plus three copies should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW, Washington, DC 20427. Applications submitted without sufficient copies may be returned.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more FMCS Grant Review Board(s). The Board(s) will decide which applications will be recommended for funding consideration. The Director, Labor-Management Grant Programs, will finalize the scoring and selection process of those applications recommended by the Board(s).

All FY86 grant applicants will be notified of results, and all grant awards will be made, prior to September 30, 1986. Applications submitted after the deadline dates or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Labor-Management Grant Programs.

H. Contact

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit. These kits, as well as additional information or clarification, can be obtained by contacting Peter L. Regner, Federal Mediation and Conciliation Service, Labor-Management Grant Programs, 2100 K Street, NW, Washington, DC 20427, or calling 202/653–5320.

Kay McMurray,

Director, Federal Mediation and Conciliation Service.

[FR Doc. 85–30313 Filed 12–23–85; 8:45 am]
BILLING CODE 6732-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 86-1024—General Electric Company's proposed acquisition of voting securities of Powerex Inc., a joint venture Corporation to be formed.	Nov 27, 1985.
(2) 86-1025—Westnghouse Electric Corporation's proposed acquisition of voting secrurities of Powerex Inc., a joint venture Corporation to be formed.	Do.
(3) 86-0268—Devon Resource Investor's proposed acquisition assets of Stauffer Oil & Gas, Inc., (Chesebrough Pond's Inc., UPE).	Do.
(4) 86-0322—Sudbury Holdings, Inc.'s proposed acquistion of voting securities of Alpha Tube Corporation.	Do.
(5) 86-0234—Zayre Corp.'s proposed acquistion of Metro Vermoegensverwaltungs GMBH & Co. KG., (Metro Cash and Cary Wholesale, Inc., UPE).	Dec. 2, 1985.
(6) 86-0238—The News Corporation Limited's proposed acquisrtion of assets of Studio Properties Company.	Do.
(7) 86-0239—MKDG II's proposed acquisition of assets of Studio Properties Company.	Do.
(8) 86-0310—Laurentian Capital Corp's proposed acquisrtion of voting securities of Prairie State Life Ins. Co.	Do.
(9) 86-0222—Refaat El-Sayed's proposed acquisrtion of voting securities of Vertec Chemical Corporation.	Dec. 3, 1985.
(10) 86-0223—Refaat El-Sayed's proposed acquisrtion of voting securities of SDS Biotech Corporation, (Diamong Shamrock Corporation, UPE).	Do.
(11) 86-0224—Refaat El-Sayed's proposed acquisrtion of voting securities of SDS Biotech Corporation, (Vanderbilt Development Corporation, UPE).	Do.
(12) 86-0233—Claremont Petroleum N.L.'s proposed acquisrtion of voting securities of Triton Energy Corporation.	Do.
(13) 86-0246—The Proctor & Gamble Company's proposed acquisrtion of assets of G.D. Searle & Co. and voting securities of Searle Consumer Products, Inc., (Monsanto Company, UPE).	Do.
(14) 86-0250—United States Steel Corporation's proposed acquisrtion of voting securities of Texas Oil & Gas Corp.	Do.
(15) 86-0251—United States Steel Corporation's proposed acqusrtion of voting securities of Texas Oil & Gas Corp.	Do.
(16) 86-0252—United States Steel Corporation's proposed acquisition of voting securities of Texas Oil & Gas Corp.	Do.
(17) 86-0255—Minnesota Mining & Manufacturing Company's proposed acqusrtion of voting securities of a Newly-Formed Joint Venture.	Do.
(18) 86-0261—Harris Corporation's proposed acquisition of voting securities of a Newly-Formed Joint Venture	Do.
(19) 86-0262—Equity Holdings' proposed acqusrtion of voting securities of Clevepak Corporation.	Do.
(20) 86-0271—Pioneer Hi-Bred International, Inc.'s proposed acquisition of voting securities of TLC, Co.	Do.
(21) 86-0281—Wolseley—Hughes plc's proposed acquisition of voting securities of Carolina Builders Corporation, (Clifton L. Benson, Jr., UPE).	Do.
(22) 86-0291—Primark Corporation's proposed acquisition of voting securities of The Aviation Group, Inc.	Do.
(23) 86-0292—Primark Corporation's proposed acquisition of voting securities of The Aviation Group, Inc.	Do.
(24) 86-0303—Finevest Partners Limited Partnership's proposed acquisition of assets of Pet Dairy Division and voting securities of Spartanburg Dairies, Inc., (IC Industries, Inc. UPE).	Do.
(25) 86-0318—Ermal C. Fraze's proposed acquisition of voting securities of Dayton Reliable Tool & Mfg. Co., (Nestle, S.A., UPE).	Do.
(26) 86-0159—National Healthcare, Inc.'s proposed acquisition of voting securities of 5 hospital subsidiaries, (Republic Health Corporation, UPE).	Dec. 4, 1985.
(27) 86-0256—Ozark Holdings, Inc.'s proposed acquisition of voting securities of Midcoast Aviation, Inc.	Do.
(28) 86-0286—Whirlpool Corporation's proposed acquisition of voting securities of Aspera S.r.L., (Fiat S.p.A., UPE).	Do.
(29) 86-0314—Continental Mortgage Investors', (William Davidson, UPE), proposed acquisrtion of voting securities of G.I.C. Financial Services Corporation, G.I.C. Equipment Leasing Company, (Guardian Industries Corp., William Davidson, UPE).	Do.
(30) 86-0316—Exxon Corporation's proposed acquisition of assets of Phillips Petroleum Company.	Do.
(31) 86-0294—Masco Corporation's proposed acquisition of voting securities of Flint & Walling Industries, Inc., (Edward L. Benson, UPE).	Dec. 5, 1985.
(32) 86-0295—Masco Industries, Inc.'s proposed acquisition of voting securities of Flint & Walling Industries, Inc., (Edward L. Benson, UPE).	Do.
(33) 86-0305)—Koninklijke Wessanen N.V.'s proposed acquisition of voting securities of American National Snacks, Inc. and Tree of Life Distribution Company, (Riverside Group, Inc., J. Steven Wilson, UPE).	Do.
(34) 86-0338—Bally Manufacturing Corporation's proposed acquisition of voting securities of MGM Grand Hotels, Inc., (Kirk Kerkorian, UPE).	Do.
(35) 86-0377—The Goodyear Tire & Rubber Company's proposed acquisition of assets of Chevron Corp.	Do.
(36) 86-0337—Alberta Energy Company Ltd.'s proposed acquisition of assets of Royal Dutch Petroleum Company.	Do.
(37) 86-0329—Sage Energy Company's (K.K. Amini, UPE) proposed acquisition of assets of Shell Western E & P a subsidiary of Shell Oil Company, (Royal Dutch Petroleum Company, UPE), (Operating in the U.S. as Shell Oil Company).	Dec. 6, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-30326 Filed 12-23-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Alcohol, Drug Abuse, and Mental Health Aspects of Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Issuance of program announcement for research of alcohol, drug abuse, and mental health aspects of Acquired Immunodeficiency Syndrome (AIDS).

SUMMARY: The Alcohol, Drug Abuse, and Mental Health Administration announces the availability of a program announcement for research on the Alcohol, Drug Abuse, and Mental Health Aspects of Acquired Immunodeficiency Syndrome (AIDS). This announcement is to encourage research directed toward the psychological and neuropsychiatric problems, important consequences of AIDS which may also represent risk factors for it. Among the concerns are durg abusers who represent an avenue of AIDS infection to the general public. Concern over AIDS also reemphasizes the importance of research on the effects of alcohol consumption on immunologic functioning. Support may be requested for up to 5 years.

Receipt And Review Dates Of Applications

Applications will be accepted and reviewed according to the usual Public Health Service schedule and procedures.

FOR FURTHER INFORMATION CONTACT: Ellen Simon Stover, Ph.D., Deputy Director, Division of Basic Sciences, National Institute of Mental Health, Room 10-104, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-4337.

Robert L. Trachtenberg,

Acting Administrator Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-30316 Filed 11-23-85; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 85E-0444]

Determination of Regulatory Review Period for purposes of Patent Extension; Fortaz; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice that announced that it had determined the regulatory review period for Fortaz. This document corrects the title of the person who signed the document.

FOR FURTHER INFORMATION CONTACT: Agnes B. Black, Regulations Editorial Staff (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 85–28927 appearing on page 50014 in the issue of Friday, December 6, 1985, the following correction is made: In the third column, at the end of the document, "Deputy Associate Commissioner for Regulatory Affairs" should have read "Deputy Associate Commissioner for Health Affairs."

Dated: December 18, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85–30319 Filed 12–23–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85E–0472]

Determination of Regulatory Review Period For Purposes of Patent Extension; Hexabrix Injection; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice that announced that it had determined the regulatory review period for Hexabrix injection. This document corrects the title of the person who signed the document.

FOR FURTHER INFORMATION CONTACT: Agnes B. Black, Regulations Editorial Staff (HFC–222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 85–28925 appearing on page 50014 in the issue of Friday, December 6, 1985, the following correction is made on page 50015: In the second column, at the end of the document, "Deputy Associate Commissioner for Regulatory Affairs" should have read "Deputy Associate Commissioner for Health Affairs."

Dated: December 18, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85–30318 Filed 12–23–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 76F–0118]

Kureha Chemical Industry Co., Ltd.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition (FAP 3B2835) proposing that the food additive regulations be amended to provide for the safe use of di-β-butoxyethyl peroxydicarbonate as a polymerization initiator for vinyl chloride.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 12, 1976 (41 FR 19363), FDA published a notice that it had filed a petition (FAP 3B2835) from Kureha Chemical Industry Co., Ltd., c/o Kreha Corp. of America, 420 Lexington Ave., New York, NY 10017, that proposed to amend the food additive regulations to provide for the safe use of di-β-butoxyethyl peroxydicarbonate as a polymerization initiator for vinyl chloride. Kureha Chemical Industry Co., Ltd., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: December 16, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–30321 Filed 12–23–85; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Workshop on Allergenic Extract Standardization and Allergenic Products Advisory Committee

Date, time, and place. January 8, 8:30 a.m., Wilson Hall, Bldg. 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD; January 9 and 10, Conference Rm. 6, Bldg. 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public workshop, January 8, 8:30 a.m. to 5 p.m.; open public hearing, January 9, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; closed presentation of data, January 10, 9 a.m. to 12:30 p.m.; Clay Sisk, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational allergenic biological products administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease.

Agenda—Open public workshop. The public workshop on January 8 is directed to the manufacturers of allergenic extracts. Topics include (1) the proposed adoption of additional reference preparations for standardized allergenic extracts, (2) an update on analytical methods of standardization, and (3) information on the assignment of "allergy units" to describe the potency of allergenic extracts.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. January 9 will be an orientation of the new members to the their role on the committee, the organization and function of the Food and Drug Administration (FDA), and the advice and involvement expected from the committee at future meetings followed by an introduction to some scientific issues which may be topics for future meetings. These include (1) guidelines for the clinical testing of allergenic extracts for use in immunotherapy and (2) the potential toxicity of the aluminum component of Alum-Precipitated Allergenic Extracts.

Closed presentation of data. The committee will receive briefings on trade secret or confidential commercial information relevant to pending biological product license applications for allergenic products such as new allergenic extracts. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

BEST COPY AVAILABLE

Ophthalmic Devices Panel

Date, time, and place. January 23 and 24, 9 a.m., Auditorium, HHS Bldg., 330 Independence Ave. SW. (enter at C St. entrance), Washington, DC.

Type of meeting and contact person. Open public hearing, January 23, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 5 p.m.; open public hearing, January 24, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulations. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 20, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On January 23, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's) and neodymium:yttrium-aluminum-garnet (Nd:YAG) lasers, and may discuss specific PMA's for these devices. If discussion of all pertinent IOL or Nd:YAG laser issues is not completed, discussion will be continued the following day. On January 24, the committee will discuss PMA's for contact lenses and other ophthalmic devices and requirements for PMA approval.

Closed committee deliberations. On January 23, the committee will conduct reviews of PMA's for IOL's and Nd:YAG lasers. On January 24, the committee may discuss trade secret or confidential commercial information relevant to PMA's for contact lenses or other ophthalmic devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. January 23, 8:30 a.m., Bldg. 29, Rm. 115, 8800 Rockville Pike, Bethesda, MD; January 24, 8:30 a.m., Bethesda Marriott Hotel, 5151 Pooks Hill Rd., Bethesda, MD.

Type of meeting and contact person. Closed committee deliberations, January 23, 8:30 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 4 p.m.; closed committee deliberation, 4 p.m. to 6 p.m.; open committee deliberations, January 24, 8:30 a.m. to 3:30 p.m.; closed committee deliberations (if necessary), 3:30 p.m. to 4:30 p.m.; Jack Gertzog, Center for Drugs and Biologics (HFN–31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On January 23, the committee will discuss the influenza vaccine formulation for the 1986–1987 season. On January 24, the committee will have deliberations to review the safety and effectiveness of live varicella virus vaccine.

Closed committee deliberations. On January 23 and 24 (if necessary), the committee will review trade secret or confidential commercial information relevant to pending license applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits

such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency or matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees

Dated: December 20, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85–30480 Filed 12–20–85; 2:24 pm]

BILLING CODE 4160–01–M

[Docket No. 85E–0522]

Determination of Regulatory Review Period for Purposes of Patent Extensions; Sulcosyn Solution

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Sulcosyn solution and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Sulcosyn, a solution of sulconazole nitrate which is indicated for the treatment of tinea cruris and tinea corporis caused by *Trichophyton mentagrophytes, Epidermophyton floccosum,* and *Microsporum canis,* and for the treatment of tinea versicolor. Based on this approval, Syntex (U.S.A.) Inc. now seeks patent term restoration.

FDA has determined that the applicable regulatory review period for Sulcosyn solution is 1,956 days. Of this time, 1,148 days occurred during the testing phase of the regulatory review period, while 808 days occurred during the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* April 24, 1980. FDA verified that the notice of claimed investigational exemption became effective on April 24, 1980.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* June 15, 1983. The applicant claims that the new drug application for the drug (NDA 18–738) was initially submittd on June 13, 1983. However, FDA did not receive the full application until June 15, 1983.

3. *The date the application was approved:* August 30, 1985. FDA verified that NDA 18–738 was approved on August 30, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before February 21, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petiton FDA, or or before June 23, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review

period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the document number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: Decembr 18, 1985.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 85–30320 Filed 12–23–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Kemmerer Resource Area, Rock Springs District, WY; Availability of Proposed Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice that the proposed resource management plan and final environmental impact statement for the Kemmerer Resource Area, Rock Springs District, Wyoming, is available for public review.

SUMMARY: The Kemmerer Resource Management Plan (RMP) and Environmental Impact Statement (EIS) presents the proposed plan for managing the Kemmerer Resource Area in southwestern Wyoming. Copies are available from the Rock Springs District Office at the address listed below. The document is also available for review at the Kemmerer Resource Area Office in Kemmerer, Wyoming. Note that this final EIS is an abbreviated document. The draft and final EIS's collectively, provide the complete description and analyses of all alternatives that were considered.

The protest period on the proposed RMP and final EIS will begin on the date the Environmental Protection Agency publishes the notice of filing in the **Federal Register** and will end 30 days later. Any person who participated in the planning process and who has an interest which is or may be adversely affected by adoption of the proposed plan may protest its approval. A protest may raise only those issues the person(s) submitted for the record during the planning process.

Protests must be sent in writing to Director (202), Room 906, Premier Building, Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240, before the end of the 30-day protest period. A protest must contain:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue or issues being protested.

3. A statement of the part or parts of the plan being protested.

4. A copy of all documents addresing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.

5. A concise explaining why the proposed management plan is believed to be wrong.

Following the 30-day protest period, the proposed plan, excluding any portion under protest, will be approved and a record of decision will be prepared. Approval will be withheld on any portion of the plan under protest until final action on the protest has been completed.

SUPPLEMENTARY INFORMATION: The Kemmerer Resource Area includes approximately 1,633,000 acres of public land and approximately 1,837,000 acres of Federal mineral estate administered by BLM.

The EIS analyzes six alternative plans that address issues concerning geophysical exploration, oil and gas exploration and development, reclamation, range management, wildlife and riparian habitat, recreation, land tenure adjustment, access, and utility and communication uses of the BLM administered public lands and mineral estate in the Kemmerer Resource Area.

The draft EIS was filed on April 12, 1985. A 90-day public comment period was provided. As a result of public comments and an internal review, the preferred alternative described in the draft EIS has been modified slightly and selected as the proposed plan.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Stein, Team Leader, Rock Springs District, BLM, U.S. Highway 191 North, P.O. Box 1869, Rock Springs, Wyoming 82902–1869.

Hillary A. Oden,

State Director.

[FR Doc. 85–30482, Filed 12–23–85; 8:45 am]

BILLING CODE 4310-22-M

National Wildlife Federation v. Burford; Publication of Court Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Publication of Court Order.

SUMMARY: On December 19, 1985, the United States District Court for the District of Columbia issued an Order in the case of the *National Wildlife Federation* v. *Burford*, Civil Action No. 85–2238, staying the Court's Order of December 4, 1985, published in the **Federal Register** on December 18, 1985 (50 FR 51609), pending the resolution of the defendants' motion to amend, reconsider, and clarify that Order. The Order of December 19, 1985, further required the defendants to publish notice of this stay in the **Federal Register** forthwith. In compliance therewith, the Order of December 19, 1985, is hereby published:

In the United States District Court for the District of Columbia

National Wildlife Federation, *Plaintiff*, v. *Robert F. Burford*, et al., *Defendants*; Civil Action No. 85–2238.

Order

Upon consideration of defendants' motion for a stay of this Court's Order of December 4, 1985, it is by the Court this 19th day of December, 198[5].

Ordered, That defendants' motion is granted and this Court's Order of December 4, 1985, is stayed pending the resolution of defendants' motion to amend, reconsider and clarify that order. Notice of this stay shall be published by defendants forthwith in the **Federal Register**.

J.H. Pratt,

United States District Judge.

Robert F. Burford,

Director.

[FR Doc. 85–30497 Filed 12–23–85; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Notice of Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–702036

Applicant: John Sutterlin, Auburn, WA

The applicant requests a permit to import 3.4 white-eared pheasants (*Crossoptilon crossoptilon*) from Harry J.

Hardy, South View Avaries, Burnaby, British Columbia, for the purpose of enhancement of propagation.

PRT-702031

Applicant: San Diego Zoological Society, San Diego, CA

The applicant requests a permit to offer for sale in foreign commerce six Przewalski's horses (*Equus przewalskii*) to the Chinese Forestry Department, People's Republic of China, for the purpose of enhancement of propagation.

PRT-684687

Applicant: Dr. Jerome A. Jackson, Mississippi State, MS

The applicant requests an amendment to his endangered species permit, PRT-684687, to allow for the capture, banding, and color banding of red-cockaded woodpeckers (*Picoides borealis*) in Fork Polk and the D'Arbonne National Wildlife Refuge in Louisiana for the purpose of scientific research.

PRT-701572

Applicant: Peregrine Fund, Inc., Ithaca, NY

The applicant requests a permit to import up to 6 Mauritius Kestrels (*Falco punctatus*) from the Government of Mauritius aviaries, Black River, Mauritius to establish a separate breeding colony for enhancement of population and protection of the species.

PRT-700592

Applicant: Hugh Kauer, Warren, MI

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Mr. J. D'Alton of Bredasdorp, South Africa, for the purpose of enhancement of propagation.

PRT-701830

Applicant: George E. Norris, Bodfish, CA

The applicant requests a permit to import two white-earned pheasants (*Crossoptilon crossopitilon*) from Harry Hardy, Burnaby, British Columbia, Canada, for the purpose of enhancement of propagation.

PRT-698692

Applicant: Harvard Museum of Comparative Zoology, Cambridge, MA

The applicant requests a permit to export and reimport nonliving museum specimens of endangered or threatened species, accessioned into university collection, for research purposes.

PRT-702299

Applicant: University of North Alabama, Florence, AL

The applicant requests a permit to survey while wading or diving or sample by hand dredging, birdwing pearly mussel (*Conradilla caelata*) and Cumberland monkeyface mussel (*Quadrula intermedia*) in the Duck River, Tennessee; and to use a number of birdwing pearly mussel to parasitize host fish and/or transplant to Cypress Creek, Alabama, and Elk Creek, Tennessee for propagation of the species.

PRT-701648

Applicant: International Animal Exchange, Ferndale, MI

The applicant requests a permit to purchase in interstate commerce a pair of ocelots (*Felis pardalis*) and export said animals to Dianne Best, Anola, Manitoba, Canada, for enhancement of propagation.

PRT-702154

Applicant: Caldwell Schools, Inc., Tyler, TX

The applicant requests a permit to purchase in interstate commerce from the Los Angeles Zoo an ocelot (*Felis pardalis*) for enhancement of propagation.

PRT-702151

Applicant: U.S. Bureau of Land Management and the California Energy Commission, Sacramento, CA

The applicant requests a permit to take (capture, band, attach radio transmitters) bald eagles (*Haliaeetus leucocephalus*) in California for the purpose of scientific research.

PRT-702349

Applicant: Los Angeles Zoo, Los Angeles, CA

The applicant requests a permit to import up to 20 golden-headed tamarins (*Leontopithecus chrysomelas*) from Brazilian Institute of Forestry Development (IBDF), Brazil, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: December 19, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-30381 Filed 12-23-85; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 18, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 8, 1986.

Carol D. Shull,

Chief of Registration, National Register.

The 15-day commenting period for the following property is to be waived in order to assist the buildings preservation.

FLORIDA

Palm Beach County

Palm Beach Daily News Building, 204 Brazilian Ave.

[FR Doc. 85-30356 Filed 12-23-85; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 14, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 8, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Jefferson County

Birmingham, *Morris Avenue—First Avenue North Historic District*, 2000—2400 blks.

Morris Ave., and 2100—2500 blks. First Avenue N.

CALIFORNIA

Los Angeles County

500 Varas Square—Government Reserve

COLORADO

Arapahoe County

Aurora, *Gully Homestead,* 200 S. Chambers Rd.

Denver County

Denver, *Niblock—Yacovetta Terrace,* 1301—1319 W. 35th Ave.
Denver, *Potter Highlands Historic District,* Roughly bounded by W. 38th, Zuni, & W. 32nd Sts. and Federal Blvd.

Saguache County

Crestone, *Crestone School,* Cottonwood St. and Carbonate Ave.

CONNECTICUT

Fairfield County

Norwalk, *United States Post Office—South Norwalk,* 16 Washington St.

Hampden County

Holyoke, *United States Post Office—Holyoke Main,* 650 Dwight St.

Hartford County

Manchester, *United States Post Office—Manchester Main,* 479 Main—Center St.

New Haven County

Meriden, *United States Post Office—Meriden Main,* 89 N. Colony St.
Naugatuck, *United States Post Office—Naugatuck Main,* Church and Cedar Sts.

New London County

New London, *United States Post Office—New London Main,* 27 Masonic St.

LOUISIANA

East Baton Rouge Parish

Baton Rouge, *Louisiana National Bank Building,* 236 Riverside Mall

MARYLAND

Baltimore (Independent City)

Lyric Theatre, 124 W. Mount Royal Ave.

MASSACHUSETTS

Norfolk County

Brookline, *Dutch House (The) (Brookline MRA),* 20 Netherlands Rd.
Brookline, *Spooner, William, House (Brookline MRA),* 191 Clyde St.

NEW YORK

St. Lawrence County

Ogdensburg, *Fine, Judge John, House,* 422 State St.

OHIO

Cuyahoga County

Beachwood, *Hanger (The),* 24400 Cedar Rd.

PENNSYLVANIA

Bucks County

Langhorne, *Langhorne Library,* 160 W. Maple Ave.

Montgomery County

Royersford, *Continental Stove Works,* First St. above Main

SOUTH CAROLINA

Lee County

Bishopville, *Bishopville Commercial Historic District (Bishopville MRA),* N. Main St. between W. Church and Cedar Lane and along Cedar Lane
Bishopville, *Carnes, James, House (Bishopville MRA),* 200 S. Main St.
Bishopville, *Fraser, Thomas, House (Bishopville MRA),* US 15
Bishopville, *Manor (The) (Bishopville MRA),* 529 N. Main St.
Bishopville, *Rogers, William, House (Bishopville MRA),* 531 W. Church St.
Bishopville, *South Main Historic District (Bishopville MRA),* S. Main between E. Harris and W. Ridge Sts.
Bishopville, *Spencer House (Bishopville MRA),* 817 N. Main St.
Bishopville, *Tall Oaks (Bishopville MRA),* OH 341

[FR Doc. 85-30352 Filed 12-23-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 273)]

Burlington Northern Railroad Co.—Abandonment—In Johnson and Nemaha Countries, NE;

The Commission has issued a certificate authorizing Burlington Northern Railroad Company to abandon its 13.07-mile rail line between milepost 60.77 near Tecumseh and milepost 47.70 near Johnson in Johnson and Nemaha Counties, NE. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corned of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-30334 Filed 12-23-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 140X)]

Illinois Central Gulf Railroad Co.—Abandonment Exemption—in Rockford, IL; Exemption

Applicant, Illinois Central Gulf Railroad Company (ICG), has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a segment of railroad from 6th Street to Kishwaukee Street, a distance of approximately 0.3 miles, in Rockford, IL.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen,* 360 I.C.C. 91 (1979).

The exemption will be effective January 23, 1986 (unless stayed pending reconsideration). Petitions to stay must be filed by January 3, 1986, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by January 13, 1986, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative: Richard M. Kamowski, 233 North Michigan Avenue, Chicago, IL 60601.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: December 12, 1985.

BEST COPY AVAILABLE

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-30333 Filed 12-23-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 186)]

Chicago and North Western Transportation Co.; Abandonment and Discontinuance of Service in Leavenworth and Wyandotte Counties, KS, and Platte and Buchanan Counties, MO; Findings

The Commission has issued a certificate authorizing Chicago and North Western Transportation Company to (1) abandon its 30.7-mile line of railroad between Leavenworth, KS (milepost 25.0) and BC Junction, MO (milepost 52.9), and between milepost 61.7 and milepost 64.0 at St. Joseph, MO; (2) discontinue service over a 23.0-mile line of trackage of the Missouri Pacific Railroad Company between Kansas City (milepost 287.5) and Leavenworth, KS (milepost 309.2) and an additional 7,140 feet of track lacking milepost designation at Kansas City, KS; (3) discontinue service over 7.5-mile line of trackage of the Atchison, Topeka and Santa Fe Railway Company between BC Junction (milepost 65.3) and Terminal Yard (St. Joseph), MO (milepost 72.8); (4) discontinue service over 0.5-mile line of trackage of the St. Joseph Terminal. Railroad Company between Station 42+45 and Station 66+27 at St. Joseph, MO; and (5) discontinue service over 0.8-mile line of trackage of the Burlington Northern Railroad Company, between milepost 61.7 and milepost 62.5 at St. Joseph, MO, in Leavenworth and Wyandotte Counties, KS, and Platte and Buchanan Counties, MO.

The abandonment and discontinuance of service certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 85-30371, Filed 12-23-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), the Portland Cement Association ("PCA") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. Specifically, Hawaiian Cement is now a member of the PCA. At present the members of the PCA are:

Aetna Cement Corp.
Alaska Basic Industries
Ash Grove Cement Co.
Ash Grove Cement West, Inc.
Blue Circle Atlantic
Blue Circle Inc.
CalMat Co.
Capitol Aggregates, Inc.
Dragon Products Co.
General Portland Inc.
Genstar Cement Co.
Gifford-Hill & Co., Inc.
Hawaiian Cement
Ideal Basic Industries, Cement Division
Independent Cement Corp.
Lehigh Portland Cement Co.
Lone Star Industries, Inc.
The Monarch Cement Co.
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Rinker Portland Cement Corp.
Rochester Portland Cement Corp.
St. Marys Peerless Cement Co.
St Marys Wisconsin Cement Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Co.
Canada Cement Lafarge Ltd.
Ciment Quebec, Inc.
Federal White Cement Ltd.
Genstar Cement Limited
Lake Ontario Cement Limited
Miron Inc.
North Star Cement Limited St. Lawrence Cement Inc.
St. Marys Cement Limited

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Holderbank Consulting, Ltd.
Humboldt Wedag Co.
Centennial Engineering, Inc.
Allis-Chalmers Corp.
F.L. Smidth and Co.
Claudius Peters, Inc.
Polysius Corp.
The Fuller Co.

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The original notification, identifying the original parties to the venture and describing in general terms the area of planned activities of the venture, is published at 50 FR 5015 (1985).

Joseph H. Widmar,

Director Operations, Antitrust Division.

[FR Doc. 85-30345 Filed 12-23-85; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corp.

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("the Act"), Semiconductor Research Corporation ("SRC") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in the membership of SRC. The changes consist of the addition of the following companies to the Semiconductor Equipment and Materials Institute, Inc. ("SEMI") Chapter of the SRC:

Amedyne
Eagle-Picher Ind. Inc.
E/G Electrograph Inc.
Gryphon Products
Hercules Specialty Chemicals Company
Leighton Electronics Inc.
Machine Intelligence Corporation
Oneac Corporation
Peak Systems, Inc.
The SEMI Group, Inc.
XMR, Inc.

SRC filed its notification of these membership changes for the purpose of extending the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to SRC and SRC's general areas of planned activity are given below.

SRC is a joint venture which, with the addition of the previously identified companies to the SEMI Chapter, consists of the following members:

Advanced MicroDevices, Incorporated
AT&T Technologies, Incorporated

Burroughs Corporation
Control Data Corporation
Digital Equipment Corporation
E.I. du Pont de Nemours & Company
Eastman Kodak Company
Eaton Corporation
GCA Corporation
General Electric Corporation
General Motors Corporation
Goodyear Aerospace Corporation
GTE Laboratories, Incorporated
Harris Corporation
Hewlett-Packard Company
Honeywell, Incorporated
IBM Corporation
Intel Corporation
LSI Logic Corporation
Monolithic Memories, Incorporated
Monsanto Company
Motorola, Incorporated
National Semiconductor Corporation
Perkin-Elmer Corporation
RCA Corporation
SEMI Chapter, consisting of FEP ANALYTIC (division of Verity Instruments, Inc.)
Amedyne
Eagle-Picher Ind. Inc.
Flexible Manufacturing Systems, Inc.
Gryphon Products
Hercules Specialty Chemicals Company
Ion Beam Technologies, Inc.
Isitec Corporation
Micro Mask, Incorporated
Pacific Western Systems, Incorporated
Probe-Rite, Incorporated
Pure Aire Corporation
Mac Dermid, Inc.
Machine Technology, Inc.
Micrion Corporation
Micronix Corporation
Oneac Corporation
Peak Systems, Inc.
Semi-Gas Systems, Incorporated
Silsco, Inc.
The SEMI Group
Universal Energy Systems, Inc.
VLSI Standards, Inc.
XMR, Inc.
Silicon Systems, Incorporated
Sperry Corporation
Texas Instruments, Incorporated
Union Carbide Corporation
Varian Associates, Incorporated
Westinghouse Electric Corporation
Xerox Corporation
Zilog, Incorporated

SRC's purpose is to plan, promote, coordinate, sponsor, and conduct research supportive of the semiconductor industry and directed toward:

1. Increasing knowledge of semiconductory materials and phenomena, and of related scientific and engineering subjects that are required for the useful application of semiconductors;

2. Developing new and more efficient designs and manufacturing technologies for semiconductor devices;

3. Identifying directions, limits, opportunities, and problems in generic semiconductor technologies;

4. Increasing the number of scientists and engineers proficient in research, development, and manufacture of semiconductor devices;

5. Increasing industry-university ties, establishing university semiconductor research centers with major long-term research centers with major long-term research thrusts, and developing university semiconductor research activities with more precisely defined, short-terms objectives;

6. Developing more relevant graduate school education and a larger supply of graduate students in areas related to semiconductor technology;

7. Increasing the ability of universities to attract and retain competent faculty in the semiconductor field;

8. Decreasing fragmentation and redundancy in United States semiconductor research;

9. Establishing advanced research efforts for critical semiconductor technology areas that are beyond the individual resources of many SRC members;

10. Promoting efficient communication of research results to SRC members and to the United States semiconductor community as a whole.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 84-30346 Filed 12-23-85; 8:45 am]

BILLING CODE 4410-01-M

National Institute of Justice

Adult Property Offenders Study; Comment Availability

"The Feasibility of an Ethnographic Study of Adult Property Offenders," by Barry Glassner is currently available for comment. This report is a part of the material that the National Institute of Justice staff will be considering in deciding whether or not to recommend initiating a program of grant support for such research. Issues typifying current research and policy interest might include the following:

1. Individual perceptions of the risks involved in the commission of property crimes and measures adopted to minimize these risks.

2. Offenders' perceptions of the criminal justice sanction threat and the prior experience with crime and the criminal justice system that led to this assessment.

3. Variation in individual crime commission frequencies with factors such as age, employment and drug dependence and, in particular, with accumulated experience with crime and criminal justice system processes.

4. Patterns to behavior in commission of property crimes including such things as choice of victims, networks of co-participants and confederates and outlets for disposal of stolen goods.

A program of research that studies active, non-incarcerated property offenders (if such research is feasible) could be a valuable complement to those studies that allow an analysis of information from and about a much larger number of subjects. We are now seeking comments on the general program idea. The Glassner paper should be viewed as a point of departure for your comments. Copies of the paper are available from: The Offender Perceptions Program Manager, Center for Crime Control Research, National Institute of Justice, 633 Indiana Ave., NW. Room 900, Washington, DC 20531.

Comments should be sent before February 15, 1986 to the above address.

Date: December 16, 1985.

James K. Stewart,

Director.

[FR Doc. 84-30317 Filed 12-23-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: January 14, 1986; 9:30 a.m., Rm. S4215, A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565.

Signed at Washington, DC this 18th day of December 1985.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 85-30376 Filed 12-23-85; 8:45 am]

BILLING CODE 4510-28-M

Mine Safety and Health Administration

[Docket No. M-82-20-M]

Union Oil Co. of California; Petition for Modification of Application of Mandatory Safety Standard

Union Oil Company of California, 2717 County Road 215, P.O. Box 76, Parachute, Colorado 81635 has filed an amendment to a petition for modification. On May 4, 1982, Union Oil Company of California submitted a petition to modify the application of 30 CFR 57.15-31(a) (self-rescue devices) to its Parachute Creek Mine (I.D. No. 05-03143) located in Garfield County, Colorado. On June 4, 1982, MSHA published notice of the petition in the **Federal Register** (47 FR 24485), allowing interested parties 30 days to submit comments. On October 14, 1982, MSHA granted the petition for specified areas of the mine. On November 1, 1985, the petitioner submitted a request to amend the original petition for modification to extend the proposed alternative method of compliance.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that self-rescue devices meeting the requirements of 30 CFR 57.15-30 be worn or carried by all persons underground.

2. On October 14, 1982, MSHA granted the petition allowing miners to enter into an underground office building and change room complex without carrying a self-rescuer. The petitioner wants to extend the provisions to include a modular training building adjacent to the underground office and change room complex.

3. Petitioner states that the training building is situated in the same drift that the office and change room complex is located in and is within 34 feet of a door providing ingress and egress into the office and change room complex. The building is equipped with telephones and the audible emergency alarms can be clearly heard when in this building.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1986. Copies of the amendment and the original petition for modification are available for inspection at that address

Dated: December 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-30377 Filed 12-23-85; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under Section 1-5 of Executive Order 12196 of February 26, 1980, published in the **Federal Register**, February 27, 1980 (45 FR 12769), will meet on January 8, 1986, starting at 10:00 a.m. in Room N3437 ABCD, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC. The meeting will be open to the public.

The agenda provides for:

I. Call to Order (Announcements)
II. Introduction of Reappointees
III. Election of Vice Chairman
IV. Approval of Minutes of October 10. 1984 Meeting
V. Applicability of Hazard Communication Standard in the Federal Sector
VI. Reports
A. President's 3% Goal
B. Safety Belt Executive Order
C. Highlights of 40th Annual Federal Safety and Health Conference
D. Status of use of OWCP Statistics
E. Targeted Inspection Program for 1986
F. Reprisals
VII. New Business
Dates of 1986 FACOSH Meetings:
January 8, April 9, July 9, October 8
VIII. Adjournment

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions received by close of business January 3, 1986, will be provided to the members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business January 3, 1986. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, 200 Constitution Avenue, NW., Room N3613, Washington, DC 20210, telephone (202) 523-9329.

Signed at Washington, DC, this 19th day of December 1985.

Patrick R. Tyson,

Acting Assistant Secretary.

[FR Doc. 85-30375 Filed 12-23-85; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Notice of Hearing

Summary: Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given of a public hearing of the National Commission for Employment Policy in the auditorium of the Murry Bergtraum High School for Business Careers, 411 Pearl Street, New York, New York.

Date: Thursday, January 9, 1986, 9:00 a.m. to 12:00 p.m.

Status: This hearing is open to the public.

Matters to be discussed: Commission members will hear testimony from various local government, business, education and community witnesses regarding basic skills remediation and dropout prevention for New York City youth. Witnesses will testify on the importance of basic academic skills to yourg people's success in the job market.

For further information, contact: Ms. Nancy ReMine Trego, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724-1545.

Supplementary Information: The National Commission for Employment Policy is authorized by the Job Training

Partnership Act (Pub. L. 97–380). The Act gives the Commission the broad responsibility of advising the President and the Congress. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. No public testimony will be authorized except by those asked to do so prior to the hearing date. However, written testimony for the record will be accepted at the Commission office through January 17, 1986.

Copies of the testimony and materials prepared for the hearing will be available for public inspection at the Commission's officies, 1522 K St. NW., Suite 300, Washington, DC 20005.

Signed this 12 day of December, 1985.

Carol J. Romero,

Acting Director.

[FR Doc. 85–30374 Filed 12–23–85; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before January 23, 1986.

ADDRESS: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1110 Pennsylvania Avenue NW., Washington, DC 20506 (202–786–0233) or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW, Room 3208, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW, Washington, DC 20506 (202–786–0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency from number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension
Title: General Programs: General Program Performance Requirements
Frequency of Collection: It varies. It could be quarterly, semi-annually or annually
Respondents: Grantees
Use: Monitoring and evaluating the accomplishment of a grant
Estimated Number of Respondents: 53
Estimated Hours for Respondents to Provide Information: 212

Category: Extension
Title: Reviewer Evaluation
Frequency of Collection: When the application warrants it. On occasion for example, the panel recommends further review; some applications are reviewed if the budget is very large, and some if panel cannot reach an agreement on a proposal or feel that outside expert advice should be sought
Respondents: Experts in specific field of project
Use: To provide more specific information about the quality or rationale of a project in addition to the regular panelist review.
Estimated Number of Respondents: 400 per year
Estimated Hours for Respondents to Provide Information: 800

Category: Extension
Title: General Programs Museums and Historical Organizations Guidelines and Application Instructors
Frequency of Collection: Twice a year at each deadline
Respondents: Museums and historical organizations
Use: Collection of information provides a basis for evaluation of applications in the competitive review process of grant making
Estimated Number of Respondents: 440
Estimated Hours for Respondents to Provide Information: 35,200

Category: Extension
Title: General Programs: Humanities Projects in Libraries/Guidelines and Application Instructions
Frequency of Collection: Twice a year at each deadline
Respondents: Colleges and universities, libraries, private, non-profit organizations, civic and professional groups, or branches of state or local government
Use: Collection of information provides a basis for evaluation of applications in the competitive review process
Estimated Number of Respondents: 35
Estimated Hours for Respondents to Provide Information: 2,800

Category: Extension
Title: General Programs: Humanities Projects in Youth/Guidelines and Application Instructions
Frequency of Collection: Twice a year each deadline
Respondents: Colleges and universities, libraries, private, non-profit organizations, civic and professional groups, or branches of state or local government
Use: Collection of information provides a basis for evaluation of applications in the competitive review process
Estimated Number of Respondents: 11
Estimated Hours for Respondents to Provide Information: 880

Category: Extension
Title: Panelist Evaluation Form
Frequency of Collection: Experts in the field review applications after each application deadline. There are usually two deadlines per program per year
Respondents: Scholars and experts in specific fields
Use: Collection of information serves as a basis for each panelist's evaluation and rating of a proposal. When a panel meets, participants, after discussion based on their notes, then make collectively a final recommendation for each proposal in the competitive process. This information is used extensively as a base from which to respond to applicants on the reasons why they have not received funding.
Estimated Number of Respondents: 270 per year
Estimated Hours for Respondents to Provide Information: 9,945

Category: Extension
Title: General Programs: Humanities Projects in Media/Guidelines and Application Instructions
Frequency of Collection: Twice a year at each deadline
Respondents: Public radio and television stations, private, non-profit organizations, colleges and universities, or branches of state or local government.
Use: Collection of information provides a basis for evaluation of applications in the competitive review process
Estimated Number of Respondents: 355
Estimated Hours for Respondents to Provide Information: 56,800

Category: Extension
Title: General Programs: Humanities Programs for Adults-Guidelines and Application Instructions
Frequency of Collection: Twice a year at each deadline
Respondents: Colleges and universities, libraries, private, non-profit organizations, civic and professional groups, or branches of state or local government
Use: Collection of information provides a basis for evaluation applications in the competitive review process
Estimated Number of Respondents: 56
Estimated Hours for Respondents to Provide Information: 4,480

Susan Metts,

Acting Director of Administration.

[FR Doc. 85-30379 Filed 12-23-85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Core Performance; Meeting

The ACRS Subcommittee on Core Performance will hold a meeting on January 29, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Wednesday, January 29, 1986—8:30 a.m. until 11:30 a.m.*

The Subcommittee will review the potential for recriticality of TMI-2 during defueling operations.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portions of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 14, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-30391 Filed 12-23-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Class 9 (Severe) Accidents; Meeting

The ACRS Subcommittee on Class 9 (Severe) Accidents will hold a meeting on January 29, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Wednesday, January 29, 1986—1:00 p.m. until the conclusion of business

The Subcommittee will review the research activities in regard to risk perspective and rebaselining studies intended for NUREG-1150.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634-3467) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 19, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-30392 Filed 12-23-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on January 23 and 24, 1986. The Subcommittee will meet at the Electric Power Research Institute (EPRI) Offices, 3420 Hillview Avenue, Palo Alto, CA.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, January 23, 1986—1:00 p.m. until the conclusion of business; Friday, January 24, 1986—8:30 a.m. until the conclusion of business.*

The Subcommittee will continue the review of the joint NRC/B&WOG/EPRI/B&W joint IST Program. A visit is planned to the EPRI-sponsored facilities supporting this Program at the Stanford Research Institute and Science Applications, Inc.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with

BEST COPY AVAILABLE

any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 18, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-30393 Filed 12-23-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on November 26, 1985, (50 FR 48662). Individual authorities established or revoked under Schedules A, B, or C between November 1, 1985 and November 30, 1985, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

The following exception is established:

Department of the Air Force

One Chief of Engineering in Detachment 2, 2762 Logistics Squadron (Special), Air Force Logistics Command, Greenville, Texas. Effective November 18, 1985.

Schedule B

No Schedule B exceptions were established or revoked in November.

Schedule C

The following exceptions are established:

Department of Agriculture

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective November 4, 1985.

One Private Secretary to the Executive Assistant to the Secretary. Effective November 6, 1985.

One Special Assistant to the Secretary. Effective November 6, 1985.

One Staff Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective November 6, 1985.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective November 7, 1985.

One Confidential Assistant to the Deputy Secretary. Effective November 7, 1985.

One Private Secretary to the Assistant Secretary for Economics. Effective November 12, 1985.

One Confidential Assistant to the Administrator, Rural Electrification Administration. Effective November 22, 1985.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective November 22, 1985.

One Confidential Assistant to the Chief, Soil Conservation Service. Effective November 22, 1985.

Department of Commerce

One Confidential Assistant to the Deputy Secretary. Effective November 8, 1985.

One Confidential Assistant to the Assistant Secretary for Administration. Effective November 15, 1985.

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Congressional Affairs. Effective November 18, 1985.

One Private Secretary to the Chief Economist. Effective November 19, 1985.

One Confidential Assistant to the Director General for the U.S. and Foreign Commercial Services, International Trade Administration. Effective November 22, 1985.

One Confidential Assistant to the Deputy Under Secretary for International Trade. Effective November 25, 1985.

Department of Defense

One Secretary (Stenography) to the Assistant Secretary of the Army (Installations and Logistics). Effective November 4, 1985.

One Counselor and Director, Long-Range Policy, to the Deputy Assistant Secretary of Defense (Negotiations Policy). Effective November 22, 1985.

Department of Education

One Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective November 1, 1985.

One Special Assistant to the Secretary's Regional Representative, with duty location in Chicago, Illinois. Effective November 5, 1985.

One Special Assistant to the Secretary. Effective November 12, 1985.

One Special Assistant to the Under Secretary. Effective November 27, 1985.

Department of Energy

One Executive Assistant to the Secretary. Effective November 4, 1985.

One Confidential Assistant (Secretary) to the Deputy Secretary. Effective November 7, 1985.

One Secretary (Confidential Assistant) to the Associate Director for Geological Repositories. Effective November 7, 1985.

One Staff Assistant to the Deputy Secretary. Effective November 7, 1985.

One Staff Assistant to the Special Assistant to the Secretary. Effective November 7, 1985.

One Staff Assistant to the Assistant Secretary for Environment, Safety and Health. Effective November 8, 1985.

One Staff Assistant to the Deputy Assistant Secretary for Security Affairs. Effective November 8, 1985.

One Director, Office of Domestic Issues, to the Director, Office of Communications, Office of the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective November 21, 1985.

One Staff Assistant to the Administrator, Bonneville Power Administration. Effective November 22, 1985.

One Confidential Assistant to the Administrator, Economic Regulatory

Administration. Effective November 25, 1985.

Department of Health and Human Services

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison), Office of the Assistant Secretary for Legislation (Congressional Liaison). Effective November 4, 1985.

Department of Housing and Urban Development

One Special Assistant to the Assistant Secretary for Fair Housing and Equal Opportunity. Effective November 5, 1985.

One Special Assistant to the Regional Administrator/Regional Housing Commissioner, with duty location in San Francisco, California. Effective November 12, 1985.

One Executive Assistant to the Deputy Assistant Secretary for Policy, Financial Management and Administration, Office of Housing. Effective November 14, 1985.

One Special Assistant to the President, Government National Mortgage Association. Effective November 25, 1985.

One Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective November 27, 1985.

Department of Interior

One Staff Assistant to the Assistant Secretary for Indian Affairs. Effective November 1, 1985.

One Staff Assistant to the Director, Office of Public Affairs, Office of the Commissioner, Bureau of Reclamation. Effective November 4, 1985.

One Special Assistant for Programs to the Counselor to the Secretary. Effective November 18, 1985.

Department of Justice

One Director, Regulatory and Legislative Affairs Staff to the Assistant Attorney General, Civil Division. Effective November 4, 1985.

One Confidential Assistant to the Deputy Assistant Attorney General, Antitrust Division. Effective November 7, 1985.

One Staff Assistant to the Director, Office of Public Affairs. Effective November 25, 1985.

Department of Labor

One Special Assistant for Public Affairs to the Deputy Under Secretary, Employment Standards Administration. Effective November 1, 1985.

One Special Assistant to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration. Effective November 25, 1985.

Department of State

One Protocol Clerk to the Chief of Protocol. Effective November 21, 1985.

One Member, Policy Planning Staff, to the Chairman Policy Planning Council. Effective November 27, 1985.

One Protocol Specialist to the Chief of Protocol. Effective November 27, 1985.

One Special Assistant to the Assistant Secretary for the Bureau of Inter-American Affairs. Effective November 27, 1985.

Department of Transportation

One Congressional Liaison Officer to the Director, Office of Congressional Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective November 4, 1985.

One Congressional Liaison Specialist to the Director, Office of Congressional Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective November 5, 1985.

One Director, Office of Special Projects, to the Assistant Secretary for Public Affairs. Effective November 5, 1985.

One Intergovernmental Liaison Specialist to the Director, Office of Intergovernmental Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective November 5, 1985.

One Director, Office of Media Relations to the Assistant Secretary for Public Affairs. Effective November 7, 1985.

One Special Assistant to the Administrator, Urban Mass Transportation Administration. Effective November 8, 1985.

One Special Assistant to the Director, Executive Secretariat. Effective November 8, 1985.

Department of Treasury

One Travel Assistant to the Deputy Assistant Secretary for Administration. Effective November 12, 1985.

One Legislative Aid to the Assistant Secretary for Legislative Affairs. Effective November 15, 1985.

ACTION

One Special Assistant to the Deputy Director. Effective November 18, 1985.

Agency for International Development

One Administrative Operations Assistant to the Deputy Assistant Administrator. Effective November 6, 1985.

One Special Assistant to the Deputy Assistant to the Administrator for Management, Bureau for Management. Effective November 14, 1985.

Consumer Product Safety Commission

One Special Assistant (Legal) to a Commissioner. Effective November 18, 1985.

One Staff Assistant to a Commissioner. Effective November 18, 1985.

Equal Employment Opportunity Commission

One Confidential Assistant to a Commissioner. Effective November 14, 1985.

Federal Mine Safety and Health Review Commission

One Special Assistant to the Chairman. Effective November 1, 1985.

General Services Administration

One Deputy to the Associate Administrator for Operations (External Affairs). Effective November 25, 1985.

National Archives and Records Administration

One Congressional Relations Officer to the Archivist of the United States. Effective November 12, 1985.

National Endowment for the Humanities

One Administrative Assistant to the Chairman. Effective November 4, 1985.

Occupational Safety and Health Review Commission

One Confidential Assistant to a Commissioner. Effective November 8, 1985.

One Confidential Assistant to a Commissioner. Effective November 13 1985.

Office of Personnel Management

One Staff Assistant to the Assistant Director for Executive Administration. Effective November 8, 1985.

One Staff Assistant (Typing) to the Director. Effective November 8, 1985.

United States Information Agency

One Special Assistant to the Deputy Director. Effective November 19, 1985.

United States Tax Court

One Secretary (Confidential Assistant) to a Judge of the Tax Court. Effective November 26, 1985.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 85-30394 Filed 12-23-85; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program; Proposed Amendments; Hearing and Opportunity to Comment

AGENCY: Pacific Northwest Electirc Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of proposed amendments, hearings and opportunity to comment.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (Program) including certain measures to improve downstream passage of juvenile fish at U.S. Army Corp of Engineers dams on the lower Columbia and Snake River. On October 10, 1984, the Council amended the Program, and adopted interim survival objectives to improve downstream passage of juvenile fish at such Columbia and Snake River dams. On December 12, 1985, the Council voted to initiate rulemaking pursuant to section 4(d)(1) of the Northwest Power Act and section 1404(a)(1) of the Program to amend the program again. This notice describes the proposed amendments (hereafter "proposed interim survival objectives") and explains how to participate in the amendment process. Because the matters being considered would affect the 1986 fish migration season, these proposed interim survival objectives are being considered separately from the 1986–87 general Program amendment process (see 50 FR 28049). Therefore, those interested in commenting on these proposed interim survival objectives should expect to do so only in the comment period and hearings described in this notice. The Council expects to make a decision on these proposed interim survival objectives in February, 1986, well before its decision on the general Program amendments, which is not expected to occur before early 1987. Comments on these proposed interim survival objectives will not be timely in the Council's general Program amendment process.

DATE AND ADDRESSES: The public comment period regarding these proposed interim survival objectives closes at 5 p.m. Pacific time on January 24, 1986. Public hearings on the proposed passage amendments will be held in January in Idaho, Montana, Oregon and Washington. The places and times for these hearings will be announced at a later date.

The Council currently expects to take final action on the proposed interim survival objectives at its February, 1986 meeting. The actual date on which the Council will make its final decision will be announced in accordance with applicable law and in accordance with , the Council's practice of providing notice of its meeting agendas.

Guidelines for Presenting Oral Comments at Hearings

1. To reserve at time period for presenting oral comments at a hearing, contact Ruth Curtis, Information Coordinator, at the Council's central office (850 S.W. Broadway, Suite 1100, Portland, Oregon 97205 or (503) 222–5161, toll free 1–800–222–3355 in Idaho, Montana, and Washington or 1–800–452–2324 in Oregon) no later than two work days before the hearing.

2. Those who do not reserve a time period will be permitted to present oral comments only as time permits.

3. Use the hearing to *summarize* written comments. The comments themselves should not be read.

4. If possible, ten (10) copies of written comments should be submitted to the Council recorder at the hearings. This person will be sitting at a table near the Council members and will be identified at the start of the hearing by the hearing chairman. When preparing these copies, refer to the instructions below for written comments.

5. Comment time may be limited, to allow all commenters a hearing, when the number of people who signed up to testify is sufficiently large. A 15-minute guideline is suggested.

6. Appearance at more than one hearing is unnecessary. At each hearing, scheduling preference will be given to individuals and groups which have not testified at other hearings.

Guidelines for Submitting Written Comments

1. All written comments must be received in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon, 97205, by 5 p.m. Pacific time on January 24, 1986. Comments should be submitted to the attention of Dulcy Mahar at this address.

2. Comments should be clearly marked "Fish Passage Comments."

3. Written comments should be specific and concise.

4. Please type (double-spaced) comments, if possible. Use only one side of the paper.

5. Provide ten (10) copies of all comments and supporting materials if possible.

FOR FURTHER INFORMATION CONTACT: The Council has prepared an issue paper entitled "Alternative Interim Fish Passage Objectives," which discusses the background of this issue and identifies alternatives the Council is considering in connectionwith this proposed rulemaking. Those wishing to receive a copy of the issue paper should contact Judy Allender at the address and telephone numbers listed above.

SUPPLEMENTARY INFORMATION: The Northwest Power Act and the Columbia River Basin Fish and Wildlife Program call for improvements in the survival of downstream migrating salmon and steelhead at mainstem hydroelectric projects on the Columbia River system. One method of improving survival, which is reflected in the existing program, is to "spill" water at dams, enabling fish to pass the dam without going through the dam's hydroelectric turbines. Turbines are a significant source of mortality to juvenile fish. This proposed rulemaking concerns interim survival objectives to guide the planning and management of spill to improve fish survival. These interim survival objectives may be included in the Program until permanent mainstem passage improvements are completed.

As adopted in 1982, the Fish and Wildlife Program called on the U.S. Army Corps of Engineers (the Corps), which operates eight dams on the lower Columbia and Snake Rivers, to develop and implement a spill plan to protect juvenile fish. This spill plan was to be developed and implemented by the Corps in consultation with the state fishery agencies and affected Indian tribes. The Program's objectives was to achieve a level of survival comparable to or better than that achievable by the best available bypass and screening systems (mechanical systems for passing fish around dams and turbines).

The Corps and the fishery agencies and tribes failed to develop joint juvenile fish passage plans prior to the 1983 and 1984 outmigrations because they could not agree on the appropriate level of fish protection or spill levels.

The Council amended the Program in 1984 to call on the Corps to provide sufficient spills to enable 90 percent of the fish to survive its projects and to develop and implement an annual juvenile fish passage plan to accomplish that objective. At Bonneville Dam a more stringent 85 percent passage efficiency objective was adopted. These provisions are set out in sections 404

and 1504 of the Program as amended in 1984.

In early 1985 the Corps and the fishery agencies and tribes again were unable to develop a joint juvenile fish passage plan as specified by the Program.

At a March 15, 1985 Council meeting, the directors of various fishery agencies and Indian tribes asked the Council to reconsider the interim 90 percent survival objective. At that time the Council agreed to reconsider the interim survival objective prior to the 1986 fish migration, which begins in the Spring. On August 2, 1985, the Council requested that the agencies and tribes submit to the Council an alternative to the 90 percent survival objective, with scientific information sufficient to justify an alternative. The agencies' and tribes' alternative was submitted to the Council on August 15, 1985.

At the August 8, 1985 Council meeting in Portland, the Council chartered the Mainstem Passage Advisory Committee. The Committee is comprised of members of the region's state and federal fishery agencies, Indian tribes, federal operating agencies (the Corps and the Bonneville Power Administration) and utility groups. One of the committee's primary purposes is to provide technical advice and assistance to the Council staff in examining alternative interim survival objectives for the 1986 fish migration season. Toward that end, the Mainstem Passage Advisory Committee has had seven meetings over the course of four months, and developed much of the information and analysis upon which the proposed rule is based.

On November 22, 1985, the fishery agencies and tribes submitted a request to the Council to enter rulemaking at the December 11–12 Council meeting to amend the mainstem passage provisions contained in sections 304, 404, and 1504 of the Program by mid-February, 1986.

Based on its review of the data and analysis developed in connection with the Mainstem Passage Advisory Committee, the Council determined that a Program amendment may be needed to improve the survival of downstream migrating salmon and steelhead smolts at federal hydroelectric projects, and to provide clearer guidance to the fishery agencies, tribes, and federal operating agencies in formulating and implementing interim spill plans.

The Council now seeks public comment on the proposed amendments described below, and on alternative survival objectives discussed in the issue paper referred to in the "For Further Information" section of this notice, above. The Council particularly encourages submission of comments addressing the following issues:

—What is the most appropriate level of spill for juvenile fish at: (a) non-transport dams; and (b) transport dams?
—Should there be a different survival standard for spring and summer migrants?
—Should the spill program affect firm energy or only nonfirm energy?
—If the proposed rule were adopted in February, 1986, would there be any conflict with BPA short-term firm power contracts?
—Is a different process needed to ensure joint development and mutual acceptance of spill plans?
—What period of time should a spill program be in effect?
—Should spill be defined in terms of spill volume or a percentage of average daily flow over a specified period of time?

Proposed Amendments

If adopted by the Council, the proposed amendments would amend section 304, 404 and 1504 of the Columbia River Basin Fish and Wildlife Program.

Interim Survival Objectives for U.S. Army Corps of Engineers Hydroelectric Projects on the Lower Columbia and Snake Rivers

The proposed rule addresses three related issues. First, it addresses the broad issue of what survival objective(s) would provide adequate interim protection for juvenile fish. Second, it responds to the narrower issue of whether it is appropriate to specify a survival objective for fish that are collected and transported around the dam by truck or barge. Third, the rule assigns responsibility for coordinating spill requests.

Regarding the first question, the proposed rule would establish an interim survival objective of 94 percent in average and higher water conditions. In lower-than-average water conditions, the survival objective would be 92 percent.

Regarding the second question, the proposed rule would apply to all first stocks at non-transportation dams (i.e., Lower Monumental, Ice Harbor, John Day, and The Dalles dams, where no fish are collected and transported). At transportation dams (i.e., Lower Granite, Little Goose and McNary dams, where fish are collected and transported), the proposed interim survival objectives would apply only to those stocks that are not not collected and transported. In practical terms, the Council anticipates that at transportation dams the proposed survival objectives would apply only to juvenile spring chinook salmon, consistent with recent transportation policies formulated by the Columbia River Basin Fish and Wildlife Council and the Columbia River Inter-Tribal Fish Commission. Under those transportation guidelines steelhead and fall/summer chinook are, as much as possible, to be collected and transported downstream. In contrast, transportation is not the preferred alternative for protecting juvenile spring chinook. If the transportation guidelines change to emphasize transportation of all fish stocks, then the proposed rule would not apply to the three transportation dams. The proposed rule still would apply to all stocks at the four non-transportation dams.

As to the third question, the rule assigns to the Water Budget managers under section 304(b) of the Program the responsibility to coordinate fishery agency and tribal requests for spill during the passage season.

The proposed rule does not address the merits of the Corps' transportation program, nor does it address the problem of reservoir mortalities. It is the Council's preliminary judgment that those issues should not be resolved in this rulemaking.

The proposed rule also does not address certain management and institutional issues raised by the fishery agencies and tribes, which are detailed in a November 22, 1985 letter to the Council. The Council wishes to consider primarily survival objectives in this rulemaking, and therefore has not included management and institutional issues in the proposed rule. However, the Council recognizes that the management and institutional issues raised by the tribes and agencies are serious. Accordingly, comment is invited on whether it is advisable for the Council to address these issues in this rulemaking, and if so in what manner.

Council staff has estimated the system costs and firm energy (refill) impacts of providing varying amounts of spill to achieve different survival objectives. The analysis shows that, when compared to no spill, the total expected costs of the proposed interim survival objectives, including replacement energy purchases to alleviate refill impacts, range from a low of $3.1 million to a high of $9.7 million. The proposed interim survival can be expected to increase Bonneville's preference rate by about .2 mill, or, when compared to the status quo, by about .07 mill. In the Council's preliminary judgment, these costs and power impacts are consistent with an adquate, efficient, economical and reliable power supply for the region. Details of the economic analyses

conducted to evaluate the costs of alternative spill scenarios are included in the issue paper referred to in the "For Further Information" section of this notice.

Copies of the staff issue paper referred to in the "For Further Information" section of this notice have been mailed to those included on the Council's fish and wildlife mailing list. Others may request copies as directed in the "for Further Information" section of this notice.

Edward Sheets,

Executive Director.

[FR Doc. 85-30312 Filed 12-23-85; 8:45 am]

BILLING CODE [illegible]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2223]

Declaration of Disaster Loan Area; Arkansas

The County of Baxter and the adjacent County of Marion in the State of Arkansas constitute a disaster area because of damage caused by tornadoes which occurred on November 18, 1985. Applications for loans for physical damage may be filed until the close of business on February 10, 1986, and for economic injury until the close of business on September 10, 1986, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051.

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 222312 for physical damage and for economic injury the number is 635500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 10, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-30336 Filed 12-23-85; 8:45 am]

BILLING CODE 8025-01-M

Magna Pacific Investments; Issuance of a Small Business Investment Company License

[License No. 09/09-5362]

On July 26, 1985, a notice was published in the **Federal Register** (30556) stating that an application has been filed by Magna Pacific Investments, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license as a small business investment company.

Interested parties were given until close of business August 25, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-5362 on December 3, 1985, to Magna Pacific Investments to operate as a small business investment company.

Dated: December 12, 1985.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-30360 Filed 12-23-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2222]

Florida; Declaration of Disaster Loan Area; Correction

The above numbered Declaration (50 FR 50697), and Amendments thereto, which were issued in accordance with the President's declaration of December 3, 1985, is hereby corrected to read:

The interest rates are:

Business (EIDL) without credit available elsewhere.....4.000%

All other information remains the same.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 16, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-30361 Filed 12-23-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2222; Amendment No. 2]

Florida; Declaration of Disaster Loan Area

The above-numbered Declaration (50 FR 50697), which are issued in accordance with the President's declaration of December 3, 1985, is hereby amended in accordance with the amendment dated December 13, 1985, to include Leon County because of damage from Hurricane Kate and flooding beginning on or about November 20, 1985. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on February 3, 1986, and for economic injury until the close of business on September 3, 1986.

Dated: December 16, 1985.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Alfred E. Judd,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 85-30362 Filed 12-23-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2225]

New York; Declaration of Disaster Loan Area

The County of Erie and the adjacent County of Chatuaqua in the State of New York constitute a disaster area because of damage caused by a winter storm occurring December 1, 1985, accompanied by high winds causing coastal and inland tidal surges. Applications for loans for physical damage may be filed until the close of business on February 11, 1986, and for economic injury until the close of business on September 15, 1986, at the address listed below: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410; or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	10.500

The number assigned to this disaster is 222506 for physical damage and for economic injury the number is 635800.

Dated: December 13, 1985

BEST COPY AVAILABLE

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

James C. Sanders,

Administrator.

[FR Doc. 85-30359 Filed 12-23-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/9 18]

Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) Meeting

The Department of State announces that Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 17, 1986 in Room CR 1-42, Engineering Center, University of Colorado, Boulder, Colorado. The meeting will begin at 1:00 p.m.

Study Group 5 deals with propagation of radio waves (including radio noise) at the surface of the earth, through the non-ionized regions of the earth's atmosphere, and in space where the effect of ionization is negligible. The purpose of the meeting will be to review the results of the international meeting of Study Group 5 in September, 1985 and discuss preparations for the XVIth CCIR Plenary Assembly in May, 1986.

Members of the general public may attend the meeting and join in the discussions subject to intructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 632-2592.

Dated: December 13, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85-30315 Filed 12-23-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 85-10-31 established the currently effective two-month SFFL applicable through November 30, 1985.

In establishing the SFFL for the two-month period starting December 1, 1985, we have projected nonfuel costs based on the year ended September 30, 1985 data, and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported to the Department.

By Order 85-12-54 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic—1.1051
Latin America—1.3472
Pacific—1.2573
Canada—1.2468

For Further Information Contact: Julien R. Schrenk (202) 472-5126.

By the Department of Transportation.

Dated: December 18, 1985.

Matthew V. Scocozza

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-30386 Filed 12-23-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Jackson Hole Airport, Jackson, WY; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announced its findings on the noise compatibility program submitted by the Jackson Hole Airport Board under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognization of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980). On May 15, 1985, the FAA determined that the noise exposure maps submitted by the Airport Board under Part 150 were in compliance with applicable requirements. On November 8, 1985, the Administrator approved the Jackson Hole Airport noise compatibility program.

EFFECTIVE DATE: The effective date of the FAA's approval of the Jackson Hole Airport noise compatibility program is November 8, 1985.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration: Northwest Mountain Region; Airports Division, ANM-611; 17900 Pacific Highway South; C-68966; Seattle, Washington 98168. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Jackson Hole Airport, effective November 8, 1985.

Under section 104(a) of the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatability program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, Section 150.5. Approval is not a determination concerning the

acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Denver, Colorado.

The Airport Board submitted to the FAA on April 22, 1985, the noise exposure maps, descriptions, and other documentation produced durding the noise compatibility planning study conducted at Jackson Hole Airport. The Jackson Hole Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 15, 1985. Notice of this determination was published in the Federal Register on May 28, 1985.

The Jackson Hole Airport noise compatibility study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on May 15, 1985, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 20 proposed actions for noise mitigation on and off the airport and for review and monitoring of the program. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective November 8, 1985.

Outright approval was granted for 19 specific program elements and part of the 20th. On-airport actions include an access plan to encourage use of quiet aircraft, continued use of the existing curfew and single event noise approach noise limit, a new departure route, preferential runway use, an Automatic Weather Observation System and continuance of pilot education program. Off-airport elements include zoning changes, voluntary noise abatement procedures, avigation easements, transfer of development rights, new subdivision regulations, and preventive land use planning and policies. The program also expands the existing notice complaint system and provides for noise monitoring and program updates.

Part of one program element relating to imposing a nightime curfew on any new airlines was disapproved pending submission to the FAA of additional details to permit an informed analysis under section 104(b) of the ASNA Act. This disapproval does not reflect FAA opposition to the noise mitigation objectives of the proposal or of the concept on which it is based. Rather, as described above, the ASNA Act contemplates approval or disapproval within the 180-day review period. Lacking adequate detail for a proper evaluation, the FAA has disapproved this action. This does not foreclose additional FAA review if additional information is submitted by the airport operator.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on November 8, 1985. The Record of Approval as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Jackson Hole Airport.

Approval by the Administrator of the Part 150 noise compatibility program constitutes approval of the revised noise abatement plan by the Department of Transportation contemplated in the Agreement between the United States Department of the Interior and the Jackson Hole Airport Board of April 27, 1983.

Issued in Seattle, Washington on December 3, 1983.

Wayne Barlow,

Director, Northwest Mountain Region.

[FR Doc. 85-30309 Filed 12-23-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

[RS&I-Ap-No. 1015]

The Atchison, Topeka and Santa Fe Railway Co; Petition

The Atchison, Topeka, and Santa Fe Railway Company has petitoned the Federal Railroad Administration (FRA) seeking an exemption from the requirements of the last sentence of § 236.204 of the Rules, Standards and Instructions which reads, "* * * In absolute permissive block signaling, when a train passes a head block signal it shall cause the opposing head block signal to display an aspect with an indication not more favorable than 'STOP'." This proceeding is identified as FRA Rules, Standards and Instructions Application No. 1015.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on February 25, 1986, in Hearing Room B, Fourth Floor of the Kansas State Office Building at 915 SW., Harrison Street in Topeka, Kansas.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statments. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on December 19, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-30364 Filed 12-23-85; 8:45 am]

BILLING CODE 4910-06-M

[BS-Ap-No. 2402]

Canadian Pacific, Ltd.; Petition

The Canadian Pacific, Ltd. has petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue the automatic block signal system between Newport, Vermont, and Wells River, Vermont, a distance of approximately 64 miles, and between Newport, Vermont, and Magowan, Vermont, a distance of approximately 4 miles. This proceeding is identified as FRA Block Signal Application No. 2402.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on February 12, 1986, in The Lincoln Inn at 20 Hastings Street in St. Johnsbury, Vermont.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 16, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-30365 Filed 12-23-85; 8:45 am]

BILLING CODE [illegible]

[BS-Ap-No. 2482]

Chicago and North Western Transportation Co.

The Chicago and North Western Transportation Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the automatic block signal system between Janesville, Wisconsin, and Madison, Wisconsin, on its Wisconsin Division, a distance of about 51 miles. This proceeding is identified as FRA Block Signal Application No. 2482.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on February 27, 1986, in Room 460 of the U.S. Court House at 120 North Heary Street in Madison, Wisconsin.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on December 19, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-30366 Filed 12-23-85; 8:45 am]

BILLING CODE 4910-06-M

Natchez Trace Railroad (NTR) et al.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that four railroads have petitioned the Federal Railroad Administration (FRA) for a waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad which employs not more than fifteen employees who are subject to the statute to seek an exemption from the twelve-hour limitation.

Natchez Trace Railroad (NTR); FRA Waiver Petition Docket No. HS-85-23

The NTR seeks a continuation of a previously issued exemption so that it can permit certain employees to remain on duty not more than sixteen hours in any twenty-four hour period.

The NTR states that it is not their intention to employ a train crew over twelve (12) hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than fifteen employees and has demonstrated good cause for granting this exemption.

Lackawanna Valley Railroad (LVAL); FRA Waiver Petition Docket No. HS-85-24

The LVAL provides service between Carbon Junction (Moosic), Pennsylvania, and Carbondale, Pennsylvania, a distance of 25 miles. The normal operation of the railroad calls for only one (1) train per day, with work completed within the twelve hour limitation. This exemption, if granted, would allow the carrier to function if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than fifteen employees and has demonstrated good cause for granting this exemption.

Bay Colony Railroad Corporation (BCLR); FRA Waiver Petition Docket No. HS-85-25

The BCLR seeks a continuation of a previously issued exemption so that it can permit certain employees to remain on duty not more than sixteen hours in any twenty-four hour period.

The BCLR states that it is not their intention to employ a train crew other twelve (12) hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than fifteen employees and has demonstrated good cause for granting this exemption.

Oregon, California and Eastern Railway Company (OCE); FRA Waiver Petition Docket No. HS-85-26

The OCE seeks this exemption so that it can permit certain employees to remain on duty not more than sixteen hours in any twenty-four hour period.

The OCE provides service over a 64-mile long system that primarily hauls logs from the woods to a conversion facility in Klamath Falls, Oregon.

The OCE states that it is not their intention to employ a train crew over twelve (12) hours per day under normal operating conditions, but that this exemption, if granted, would help their operation if they encountered unusual operating conditions or circumstances.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs not more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled a hearing or

other opportunity for oral comments since the facts do not appear to warrant it. Communications concerning the proceedings should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Communications received before February 19, 1986, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on December 16, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-30367 Filed 12-23-85; 8:45 am]

BILLING CODE 4910-06-M

[BS-Ap-No. 2424]

Seaboard System Railroad; Postponement of Public Hearing

The public hearing in the captioned block signal application has been postponed by the Federal Railroad Administration (FRA), at the request of the railroad, from January 8, 1986, until March 26, 1986. Because of the change of hearing date, it has also been necessary to move the hearing to a different room in the same building. (See original hearing notice in 50 FR 47319, November 15, 1985.)

In particular, the hearing has been rescheduled for 10 a.m. on Wednesday, March 26, 1986, in Room 199 of the South Tower at 1718 Peachtree Road, N.W., in Atlanta, Georgia.

The FRA regrets an inconvenience occasioned by this change.

In the application that is the subject of this hearing, the Seaboard System Railroad (Seaboard) petitioned the FRA seeking approval of the proposed discontinuance of the automatic block signal system between Augusta, Georgia, and Atlanta, Georgia. This proceeding is identified as FRA Block Signal Application No. 2424.

After examining Seaboard's proposal and the available facts, the FRA determined that a public hearing is necessary before a final decision is made on this proposal. Accordingly, a hearing was scheduled and has now been postponed.

As stated in the original notice, the hearing will be informal and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so, in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on December 19, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85-30368 Filed 12-23-85; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. IP85-20; Notice 1]

Alfa Romeo, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Alfa Romeo, Inc. of Englewood Cliffs, New Jersey, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101 and 571.105, Motor Vehicle Safety Standards No. 101, *Controls and Displays*, and No. 105, *Hydraulic Brake Systems*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

According to paragraph S5 and Table 2 of Standard No. 101, the brake system telltale shall be identified with the word "Brake". Paragraphs S5.3 (a) and (b) of Standard No. 105, require that:

S5.3.5(a) "Each indicator lamp shall display word or words, in accordance with the requirements of Standard No. 101 (49 CFR 571.101) and/or this section, which shall be legible to the driver in daylight when lighted * * *."

(b) If a single common indicator is used, the lamp shall display the word "Brake" * * *."

The petitioner, Alfa Romeo, Inc., produced some 1,150 1986 Spider models with the ISO (International Standards Organization) symbol for "Brake" instead of the word. This was done in anticipation of the ISO symbol being selected over the other methods of identification in proposed changes to the standard pending at the time.

Alfa Romeo indicated that production orders have been given to the instrument cluster supplier to retool and produce the warning lamp lens with the word "Brake", but before the running change can be effected, some 1,150 vehicles will have been manufactured and sold.

Because of the disproportionate high cost due to the small number of vehicles, $520 per vehicle claimed by Alfa Romeo, the petitioner proposes that the following be allowed in lieu of total replacement of the instrument panel:

a. A special label attached to the outside of the instrument cluster, which would clearly tell the driver that the ISO symbol means "Brake".

b. An Owner's Manual insert explaining clearly that the ISO symbol means "Brake".

All vehicles in Alfa Romeo stock would be identified as outlined above. In addition, Alfa Romeo dealers stock would be identified prior to sale to the user. Those vehicles now in the hands of users would be identified by recalling them for application of an instrument cluster label and updating their Owner's Manuals. This would be performed within Alfa Romeo's standard recall procedure, but not according to the requirements of 49 CFR Parts 577 and 579, due to the small quantity involved.

Interested persons are invited to submit written data, views and arguments on the petition of Alfa Romeo, Inc., described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: January 23, 1986.

(Sec. 102, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on December 19, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–30384 Filed 12–23–85; 8:45 am]

BILLING CODE 4910–28–M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and new collections and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: December 18, 1985.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

Extension

1. Department of Veterans Benefits.
2. Designation of Certifying Official(s).
3. VA Form 22–8794.
4. On occasion.
5. State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.
6. 3,200 responses.
7. 534 hours.
8. Not applicable.

New Collections

1. Department of Veterans Benefits.
2. Certification of Attendance for a Course Leading to a Standard College Degree (Under Chapter 30, Title 38, U.S.C.).
3. VA Form 22–8979.
4. On occasion; monthly.
5. Individuals or households; State or local governments.
6. 600 responses.
7. 100 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Certificate of Balance on Deposit.
3. VA Form 22–4718a.
4. On occasion; annually; biennially; triennially.
5. Individuals or households; State or local governments; Federal agencies or employees; non-profit institutions.
6. 20,000 responses.
7. 1,000 hours.
8. Not applicable.

[FR Doc. 85–30363 Filed 12–23–85; 8:45 am]

BILLING CODE 8320–01–M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register
Vol. 50, No. 247
Tuesday, December 24, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 51503.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., December 19, 1985.

CHANGES IN THE MEETING: This meeting is rescheduled for Monday, January 6, 1986.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–30501 Filed 12–20–85; 3:08 pm]
BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., January 3, 1986.

PLACE: 2033 K Street, NW., Washington DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–30502 Filed 12–20–85; 3:08 pm]
BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., January 10, 1986.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–30503 Filed 12–20–85; 3:08 pm]
BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., January 17, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–30504 Filed 12–20–85; 3:08 pm]
BILLING CODE 6351–01–M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., January 24, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–30505 Filed 12–20–85; 3:08 pm]
BILLING CODE 6351–01–M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., January 31, 1986.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 85–30506 Filed 12–20–85; 3:08 pm]
BILLING CODE 6351–01–M

7

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to the **Federal Register** on December 12, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 11:30 a.m., Thursday, December 19, 1985, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting with less than one week's advance notice to the public:

1. Issues relating to cost of Federal Reserve notes.
2. Proposed procedures for handling Board voting during the holiday period.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 19, 1985.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 85–30422 Filed 12–20–85; 10:39 am]
BILLING CODE 6210–01–M

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FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 3:00 p.m., Thursday, December 19, 1985.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: 20th Street and Constitution Avenue, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: December 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30436 Filed 12-20-85; 11:29 am]

BILLING CODE 6216-01-M

B

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, January 7, 1985.

PLACE: NTSB Conference Rooms 8A, B C, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first three items on the agenda will be open to the public; the last two items will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* Galaxy Airlines, Inc., Lockleed L-188C, N5532, Reno Cannon International Airport, Reno, Nevada, January 21, 1985.
2. *Marine Accident Report and Letters of Recommendation:* Capsizing of the U.S. Fishing Vessel AMERICUS and disappearance of the U.S. Fishing Vessel ALTAIR, Bering Sea North of Dutch Harbor, Alaska, Febrary 14, 1983.
3. *Marine Accident Report:* Grounding of the Panamanian-Flag Passenger Carferry M/V A. REGINA at Mona Island, Puerto Rico on Febrary 15, 1985.
4. *Opinion and Order:* Administrator v. Woodward Docket SE-6620; disposition of respondent's appeal.
5. *Opinion and Order:* Administrator v. Heinberg, Docket SE-6733; disposition of appeal from order of dismissal.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa (202) 382-6525

Catherine T. Kaputa,

Federal Register Liaison Officer.

December 20, 1985.

[FR Doc. 85-30430 Filed 12-20-85; 10:55 am]

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federal register

Tuesday
December 24, 1985

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 606, 610, and 640

Biological Products; Blood and Blood Derivatives; Implementation of Efficacy Review; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, and 640

[Docket No. 82N-0163]

Biological Products; Blood and Blood Derivatives; Implementation of Efficacy Review

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations in response to the report and recommendations of the Panel of Review of Blood and Blood Derivatives (the Panel). The proposed rules would affect blood banks, plasmapheresis establishments, and plasma derivative manufacturers. The Panel reviewed the safety, efficacy, and labeling of blood, blood components, blood derivatives, and related products. On the basis of the Panel's findings and recommendations, FDA is proposing to classify products in Category I (safe, effective, and not misbranded), Category II (unsafe, ineffective, or misbranded), and Category IIIB (off the market pending completion of studies permitting a determination of effectiveness). Products recommended for Category IIIA (formerly defined as on the market during further studies in support of effectiveness) will be reviewed by the Blood Products Advisory Committee for reclassification into Categories I or II.

DATES: Comments on the proposed classification of products into Category I and on proposed amendments to the biologics regulations should be submitted by March 24, 1986. Comments on the confidentiality of data submitted for review by the Panel should be submitted by January 23, 1986.

FDA proposes the following: (1) That any final rule based on this proposal become effective 60 days after the date the final rule is published in the **Federal Register**; (2) that amendments to a license application, other than labeling amendments, be submitted to FDA within 180 days after the date the final rule is published in the **Federal Register**; (3) that labeling requirements, other than the requirements in §§ 201.56 and 201.57 (21 CFR 201.56 and 201.57), become effective 12 months after the date the final rule is published in the **Federal Register**; and (4) that the labeling requirements in §§ 201.56 and 201.57 become effective 30 months after the date the final rule is published in the **Federal Register** (see § 201.59).

SUPPLEMENTARY INFORMATION:

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25. Human Plasma as a Source for Fractionation Products
26. Donor Immunization and Hyperimmunization
27. FDA's Response to the Panel's Recommendations

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Office of Biologics Research and Review, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

1. Background

In the **Federal Register** of February 13, 1973 (38 FR 4319), FDA issued § 601.25 (21 CFR 601.25) concerning procedures for the review of the safety, effectiveness, and labeling of biological products licensed prior to July 1, 1972. Under the panel assignments publish in the **Federal Register** of June 19, 1974 (39 FR 21176), the biological products reviewed were assigned to one of the following categories: (1) Bacterial vaccines and bacterial antigens with "no U.S. standard of potency," (2) bacterial vaccines and toxoids with standards of potency, (3) viral vaccines and rickettsial vaccines, (4) allergenic extracts, (5) skin test antigens, or (6) blood and blood derivatives.

Under § 601.25, FDA assigned responsibility for the initial review of each of the biological product categories to a separate independent advisory review panel consisting of qualified experts to ensure objectivity of the review and public confidence in the use of these products. Each panel was charged with preparing an advisory report to the Commissioner of Food and Drugs which was to: (1) Evaluate the safety and effectiveness of the biological product, (2) review the labeling of the biological product, and (3) advise the Commissioner on which biological products under review are safe, effective, and not misbranded. The advisory report includes a statement classifying products into one of three categories.

Category I designates those biological products determined by the Panel to be safe, effective, and not misbranded. The Panel's statement may include any condition relating to active components, labeling, tests required prior to release of batches, product standards, or other conditions necessary or appropriate for their safety and effectiveness.

Category II designates those biological products determined by the Panel to be unsafe, ineffective, or misbranded.

Category III designates those biological products determined by the Panel not to fall within either Category I or II on the basis of its conclusion that the available data are insufficient for classification and for which further testing is therefore required. Those biological products in Category III for which continued licensing, manufacturing, and marketing, during the period of further testing are recommended, are designated as Category IIIA. Those biological products in Category III for which the suspension of their license, pending submission of additional data, is recommended are designated as Category IIIB. The recommendations for either Category IIIA or IIIB are based on assessment of the present evidence of safety and effectiveness of the product and the potential benefits and risks likely to result from the continued use of the product for a limited period of time, while questions raised concerning the products are being resolved by further study.

In the **Federal Register** of December 13, 1974 (39 FR 43413), FDA requested data and information regarding blood, blood components, and blood derivatives.

Some concern has been expressed that confidential information submitted to FDA under § 601.25 will become

public information. Data and information submitted in response to the February 28, 1973, June 19, 1974, and December 13, 1974 notices and falling within the provisions of 5 U.S.C. 552(b), 18 U.S.C. 1905, or 21 U.S.C. 331(j) have been handled as confidential. However, with the publication of this proposed implementation and the Panel's findings, such data and information will, under § 601.25(b)(2), be made publicly available after January 24, 1986 and may be viewed at the Dockets Management Branch (address above), except to the extent that the person submitting the data and information demonstrates that it still falls within the confidentiality provisions of one or more of the above statutes. Accordingly, comments concerning confidentiality should be submitted by January 23, 1986.

The Panel appointed by FDA to review the data and information submitted and to prepare a report on the safety, effectiveness, and labeling of blood, blood components, blood derivatives, and related products included the following individuals:

Panel Chairman, Scott N. Swisher, M.D., Professor, Department of Medicine, Michigan State University, East Lansing, MI 48823;
Joseph R. Bove, M.D., Director, Blood Transfusion Service, Yale-New Haven Hospital, New Haven, CT 06510;
John A. Collins, M.D., Chairman, Department of Surgery, University Medical Center, Stanford, CA 94305;
William S. Howland, M.D., Chairman, Department of Anesthesiology, Memorial Hospital, New York, NY 10021;
Robert D. Langdell, M.D., Professor of Pathology, School of Medicine, University of North Carolina, Chapel Hill, NC 27514;
Jacob Nusbacher, M.D., Director, Rochester Regional Red Cross Program, Rochester, NY 14607;
Sherrill J. Slichter, M.D., Associate Director, Puget Sound Blood Center, University of Washington, Seattle, WA 98104.

The Panel was convened on June 26, 1975, in an organizational meeting. Working meetings were held: August 22–23, October 31–November 1, 1975; January 9–10, March 19–20, May 5–6, June 25, October 1–2, November 12–13, 1976; January 14–15, March 11–12, June 17–19, October 7–8, November 18–19, 1977; January 6–7, March 10–11, May 12–13, July 17–18, December 15–16, 1978; and November 15–16, 1979.

Two nonvoting liaison representatives served on the Panel. Louis M. Aledort, M.D., nominated by the National Hemophilia Foundation, served as the consumer representative. Margaret Hilgartner, M.D., or Robert Schwartz substituted for Dr. Aledort during his absences. John Adams, Ph.D., of the Pharmaceutical Manufacturers Association, nominated by a number of producers with products under review by the Panel, served as the industry representative. Karl Bambach, Ph.D., or Charles B. Cleveland substituted for Dr. Adams during his absences. Morris Schaeffer, M.D., Ph.D., participated in the Panel meetings in his capacity as Director of the Office of Scientific Advisors and Consultants, FDA. Clay Sisk, in the Office of Scientific Advisors and Consultants, FDA, served as Executive Secretary of the Panel.

In addition, the Panel considered the advice of the following consultants:

Edward H. Mealey, Ph.D.
Findlay E. Russell, M.D., Ph.D.
James T. Sgouris, Ph.D.

Over 290 persons attended one or more meetings of the Panel and many participated in the open discussions. Every person who requested an opportunity was heard by the Panel. The names of these persons are on file with the Dockets Management Branch as listed in the Summary Minutes of each meeting.

The Panel on Review of Blood and Blood Derivatives evaluated all data submitted for the following blood, blood derivatives, and other related products:

Licensed Biological Products Considered by the Panel [1]

Blood Bank Products

Stored Red Blood Cell Products (Includes Whole Blood (Human) ACD and CPD)
Whole Blood (Human) Heparin
Whole Blood (Human) Modified
Red Blood Cells (Human)
Red Blood Cells (Human) Frozen
Cryoprecipitated Antihemophilic Factor (Human)
Single Donor Plasma (Human)

Plasma Fractionation Products

Normal Serum Albumin (Human)
Plasma Protein Fraction (Human)
Antihemophilic Factor (Human)
Factor IX Complex (Human)
Fibrinogen (Human)
Fibrinolysin (Human)
Rh_o(D) Immune Globulin (Human)
Thrombin
Fibrinolysin and Desoxyribonuclease Combined (Bovine) (with and without Chloramphenicol)

In Vitro Diagnostics

Blood Group Diagnostics
Blood Grouping Serums
Reagent Red Cells
Anti-Human Serum
Hepatitis B Testing Reagents

Miscellaneous Products

Antivenins (three products)
Normal Horse Serum
Blood Group Substances A & B
Cobra Venom Products

Data submitted for these products are cited by Biologics Efficacy Review (BER) volume numbers. The volumes will be available in accordance with the provisions of 21 CFR 601.25(b)(2) at the Docket Management Branch (address above).

The following products were originally listed for Panel review in the December 13, 1974 notice, but are no longer licensed as biological products and are not reviewed in the Panel's Report:

Albumin Microspheres (Human)
Anti-Human Chorionic Gonadotropic Serum
Modified Plasma (Bovine)
Radioactive Albumin products
Russell Viper Venom

The advisory panel appointed to review data and information concerning the safety, effectiveness, and labeling of blood and blood products has completed its review and has submitted its report to the Commissioner. FDA announced the availability the Panel's report to the public in the **Federal Register** of November 21, 1980 (45 FR 77134). The Final Report of the Panel on Review of Blood and Blood Derivatives follows.

2. Introduction to Panel Report

The last decade has seen rapid progess in those areas of science basic to blood transfusion therapy. This has also been a decade of significant change in clinical practice; many changes have occurred as a result in the ways in which blood and blood products are employed as therapeutic agents.

A few examples can be cited. Our knowledge about the problem of post-transfusion hepatitis has broadened greatly. Testing donors for the presence of the hepatitis B associated antigen has effected significant reduction of the incidence of this disorder following infusion of materials that potentially carry this agent. In turn, this has focused attention on the problem of so-called "non-A, non-B" hepatitis for which adequate testing procedures do not exist. The blood coagulation system and its complex interrelationships with the complement system and the kinin system has been further elucidated. Similiarly, clinical experiences with

[1] Only biological products that have been licensed prior to July 1, 1972, are reviewed in this report.

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therapeutic preparations of procoagulant proteins has increase our understanding of their utility as well as limitations on that utility. We not have a much better understanding of the physiological role of albumin, coupled with greatly improved clinical management of shock and massive blood loss. Factors affecting oxygen transport by intact red cells have become known, and their clinical significance explored.

These and other developments indicate that a review of blood and blood products licensed in earlier times before our new knowledge was available is timely and in the public interest in assuring the safety and effectiveness of these materials. This review is the product of one of six advisory panels of FDA's Bureau of Biologics and is part of the general review of biological products licensed prior to July 1972 (see 21 CFR 601.25). (Note: Since the time of that Panel's submission of his report, FDA has been reorganized. The Bureau of Biologics is now the Office of Biologics Research and Review (OBRR), Center for Drugs and Biologics.)

The work of the Panel on Review of Blood and Blood Derivatives has occupied a stipulating and informative 3 years. At the outset, it seemed that the Panel's task would be an easy one. The Panel was to deal with a well developed, widely distributed, and accepted group of technologies, a number of familiar products and therapeutic materials in widespread use by most physicians in practice. As the work of the Panel progressed, a significantly different picture emerged. In some areas, particularly with older products, it appeared that highly defensible scientific information about safety and efficacy was scarce. In dealing with some of these problems, it became necessary to rely upon consensus based upon common experience. This experience does, however, point out that the standards which are now applied to justify the introduction of new products have evolved along with the scientific knowledge which makes new products possible. It would seem that the complexity of the regulatory process has grown no faster than has understanding of the biological and clinical ramifications related to the introduction of new products.

A second observation was quickly made by the Panel: There are many eminently researchable problems which relate to a wide variety of blood products that present the opportunity for further improvement and refinement of these products and their clinical utility. Much of the effort of the Panel has gone into attempts to define these problems in researchable terms and to direct them, where possible, to appropriate investigators and sources of support for the work. It is the strong feeling of the Panel that this aspect of its work may, in the long run, be the most rewarding in terms of improved safety and effectiveness of the products review.

This Panel has had to deal with a situation rather different from that which has confronted previous panels which have reviewed other biological therapeutic materials. The bulk of the products reviewed are actually produced widely throughout the country in installations which range from large centralized blood banks, through smaller units, down to the size of a blood bank supported by an individual hospital. There are no large industrial "manufacturers" whose submissions and protocols can be reviewed as the basis for safety and efficacy determinations for therapeutic materials produced by blood banks. Thus, in this area, a manufacturer-by-manufacturer review of the Panel of every blood bank product is manifestly impossible. Rather, the Panel has had to rely upon years of experience with these materials, publications in the literature, submissions of procedures and standards of large blood bank organizations, data available in license applications, generic procedures specified by good manufacturing practices and standards of accreditation as the basis upon which to make judgments about safety and effectiveness of those products. In those areas in which commercial manufacturers do operate, as in the case of plasma derivatives, the more typical review of submitted information has been carried out. Some products were therefore reviewed only generically and recommendations made accordingly, leaving the determination of compliance for each manufactured product to the Bureau of Biologics which evaluates each installation.

The Panel has also been impressed with the difficulties encountered in obtaining adequate clinical investigational data upon which certain decisions about safety and effectiveness depend. Frequently the inadequacy of data is quantitative; not enough observations have been made to permit an adequate judgment, although there may be nothing wrong with the data that have been obtained. This problem arises in evaluating materials which have limited or no commercial sponsorship. It is also encountered in circumstances where a commercial manufacturer is unable to recruit enough clinical investigational resources within reasonable cost boundaries to complete a clinical evaluation which has been started. These difficulties are at the heart of the problem of shortening the time required for approval of new products or modification of old ones. Thought should be given to organizing a national clinical investigation resource to solve this problem in a cost-effective way. The Panel has no recommendations in this regard, but it is impressed with the significance of this problem in the effort to provide timely responsive regulatory actions.

The Panel wishes to thank the many people who have supplied it with consultation, expert opinion, data, and statements of interest for its consideration of a wide range of problems. These people have been related to the major blood-banking organizations of this country, academic institutions, industry, and the staff of the Division of Blood and Blood Products in OBRR. Without the help of these people and organizations, the work of the Panel could not have been completed.

Finally, the Panel wishes to express its strong feeling that this one-time review, whereas it has certain values as it stands, will be primarily of value if it is kept current by an on-going dynamic process. The science which underlies blood transfusion is rapidly changing. The potential exists now for development of many new products from blood. Rapid changes in health care delivery practices will occur in the near future. These factors will make a continuing review of this area over some reasonably short cycle of great value in assuring that the regulatory process enhances and supports the delivery of health care by providing safe and effective blood and blood products in a timely fashion to those who use them. The Panel has viewed its responsibilities from this perspective and has diligently attempted to provide a starting point for future activities in this direction. There are a number of the major unresolved issues which the Panel has identified. In most instances, additional information, the product of specific research, will be needed to resolve the problems which remain. Where it has been necessary to make a decision to deal with a specific problem until adequate data become available, conservative positions have been taken which have a "fail safe" character with regard to at least the issue of safety. With regard to effectiveness of products in this category, it should be noted that the materials reviewed have been in

widespread use over a period of years, and effectiveness has been documented at least by common experience. Thus the issue of effectiveness has been a lesser consideration when adequate data are lacking for decisionmaking in these cases.

3. Stored Red Blood Cell Products, History of Blood Transfusion, Donor Standards, Testing Donor Blood, and Labeling

Generic Statement

1. *Introduction*—a. *History of blood transfusion.* Although occasional successful blood transfusions were given in the 19th century, little real progress could be made until two major problems, immunological donor-recipient incompatibility and blood storage without clotting, were solved. In 1900, Landsteiner (Refs. 1 and 2) described what we now know as the ABO blood groups, and in 1911 Ottenberg (Ref. 3) applied this discovery to the selection of blood for transfusion. Progress in delineating other erythrocyte antigens was slow. Although in 1927 Landsteiner and Levine described the MN and P systems (Ref. 4), it was not until the discovery of the Rh system by Landsteiner and Weiner (Ref. 5) and Levine and Stetson (Ref. 6) in the early 1940's that immunologically safe blood transfusion could be practiced. Equally important at this time was the development of the antiglobulin test by Coombs et al. (Ref. 7) for the detection of nonagglutinating red cell antibodies. In subsequent years, new erythrocyte antigens were discovered at a remarkable rate; more than 400 antigenic specificities have now been described.

After the discovery of the ABO blood group, direct transfusion, a surgical procedure in which the donor's artery and recipient's vein were temporarily anastomosed, became popular. This was followed by the introduction of syringes or pumps to convey blood from donor to recipient. Direct donor-recipient transfusion became the standard practice for many years. A major difficulty was the tendency of the blood to clot, and the only logical solution was to find a safe anticoagulant to prevent this complication.

The safety of citrate for intravenous administration was demonstrated by Hustin in 1914 (Ref. 8) and by Agote (Ref. 9) and Lewisohn (Ref. 10) a year later. Rous and Turner (Ref. 11) in 1916 showed the beneficial effect of added dextrose on red blood cell preservation. Many years later, Maizels (Ref. 12) demonstrated that dextrose exerted its favorable effect by providing a source of energy for the synthesis of organic phosphate compounds. The acidification of the anticoagulant-preservative solution was first studied by Loutit, et al. (Ref. 13) in 1943 to prevent caramelization of the dextrose solution during sterilization. Serendipitously, it was found that acidification also gave better red cell preservation as judged by post-transfusion survival. The original Anticoagulant Citrate Dextrose (ACD) solution, suggested by Loutit and Mollison (Ref. 14), in 1943, has been modified primarily to reduce its volume.

Stored blood was first used by Rous and Turner (Ref. 11) in 1916, and in 1917 Robertson (Ref. 15) introduced it for treating battlefield casualties. Transfusion of stored, anticoagulated blood became a reality when the first blood banks were organized in 1937 in Chicago and in 1938 in New York City. Forty-four years later, in 1982, an estimated 9,349,700 units of whole blood were collected in the United States by 5,400 blood banks and transfusion services (Ref. 16).

A major development in blood bank practice occurred in the mid 1960's with the introduction of plastic collection containers which have replaced glass bottles as the standard blood container. This made possible the separation of whole blood into various components in an integral, closed sterile system. An inevitable result of component production from whole blood is the availability of Red Blood Cells (Human) ("packed cells"). This product is now widely used when erythrocyte transfusion is indicated and currently accounts for about 40 percent of all such transfusions in the United States.

b. *Whole Blood (Human) ACD.* Evaluation of the efficacy of ACD anticoagulant-preservative has rested primarily on satisfactory clinical responses following transfusion and on studies of post-transfusion red blood cell viability and survival. The accepted survival standard requires that on the last storage date at least 70 percent of the red blood cells be viable for at least 24 hours after transfusion. Both whole blood and red blood cell concentrates collected into ACD solution and stored at 2 to 6 °C easily meet this standard (Refs. 13, 14, and 28). Post-transfusion survival is related to the maintenance of adenosine triphosphate (ATP) levels in erythrocytes (Refs. 22 and 30).

Optimum storage, however, should encompass both erythrocyte survival and appropriate function. The major erythrocyte function, delivery of oxygen to tissues, is related to many variables, including erythrocyte diphosphoglycerate (DPG) level (Refs. 33 and 34). Red cells depleted of DPG release oxygen to tissues less readily than those which have normal levels. When human blood is collected in ACD, the DPG levels fall precipitously to approximately one-third normal after 1 week of storage (Ref. 35 and 241). However, the clinical significance of transfusion with DPG-depleted red cells is unclear.

c. *Whole Blood (Human) CPD.* In 1957 Gibson et al. (Refs. 36) published studies on modified ACD solutions buffered by phosphate to higher pH levels. This anticoagulant-preservative, citrate-phosphate-dextrose (CPD), was found to be superior to ACD in that 80 percent of the red cells retained viability after 32 days storage. Other studies (Refs. 21, 23, and 28) have confirmed that CPD stored erthrocytes have better survival than those stored in ACD, although not to the extent originally claimed. In addition, DPG levels in CPD-stored blood are better maintained; levels appear to be normal for approximately 1 week of routine blood bank storage (Ref. 35). Appropriate testing also has demonstrated that other blood constituents are not affected deleteriously by this anticoagulant when compared with ACD (Refs. 37 and 39). The formulas for ACD and CPD solution are contained in 21 CFR 640.4(d). In 1971, CPD was licensed as an anticoagulant-preservative by the Bureau of Biologics and has largely replaced ACD in general transfusion practice.

d. *Recommendations for Whole Blood (Human).* The Panel recommends that Whole Blood (Human) ACD and CPD be placed in Category I with changes in collection, processing, and labeling as discussed subsequently in this statement. The designation "Human" should be deleted from the product names.

2. *Possible hazards of red blood cell product transfusion*—a. *Metabolic problems related to transfusion*—(1) *Introduction.* Numerous metabolic changes occur in blood during storage. These are of clinical importance only when transfusion is massive, rapid infusion of large quantities of blood relative to the recipient's blood volume or when the recipient is particularly susceptible to these changes. In all other cases, the metabolic complications resulting from transfusion are minimal. The important changes are discussed in the next 14 sections of this statement.

(2) *Changes in blood during storage in citrate.* Red blood cells stored in ACD or CPD undergo a progressive loss of ATP, loss of membrane lipid, increased rigidity, loss of 2,3-DPG which begins

immediately in ACD and after 1 week of storage in CPD, loss of intracellular potassium, and gain of intracellular sodium. After transfusion, the electrolyte changes reverse, ATP and 2,3-DPG are restored to normal, shape and flexibility return to normal, and the life span for surviving cells is unimpaired. The loss of membrane lipid and increased susceptibility to osmotic hemolysis are not corrected (Refs. 194 through 196).

The plasma of stored whole blood contains a number of potentially significant abnormalities: about 14.5 millimoles of citrate per liter which is in excess of the amount required to bind ionized calcium in the blood collected, a high lactate level and consequently a large metabolic acid load (25 to 40 mEq/L), potassium levels up to 30 mEq/L by the third week of storage, ammonia levels up to 1 mg/dL, a variety of vasoactive agents, and denatured proteins. If given rapidly without warming, blood carries a significant negative thermal load (Refs. 112 and 197).

(3) *Citrate toxicity.* Citrate avidly binds ionized calcium. This is why it is effective as an anticoagulant. To guarantee complete anticoagulation there is a deliberate excess of citrate in each unit of blood. Therefore, recipients of massive transfusion are receiving not just blood that is free of ionized calcium, but also an infusion of free citrate. Theoretically, death can result from the depression of ionized calcium levels below a critical level in the recipient. This can be prevented by the administration of ionized calcium during the infusion of citrate. However, the quantitative aspects of calcium balance change rapidly in vivo, and a great excess of ionized calcium is as lethal as is a severe deficiency. Empirical treatment can thus be quite dangerous.

The patient's defenses against citrate infusion fall into two categories, the removal of the infused citrate and the mobilization of ionized calcium. Citrate is removed primarily by metabolic conversion. Since citrate is a normal intermediary metabolite and part of the tricarboxcylic acid cycle, it is methabolized in every nucleated cell in the body. While citrate levels in the recipient do rise during rapid transfusion, marked elevations are usually found only at transfusion rates of greater than one unit of blood every 5 minutes for the normalsized adult (Ref. 198 through 200). The citrate concentration in recipients falls rapidly upon slowing or stopping the transfusion.

Bunker et al. (Refs. 198) reported impaired rates of metabolism of citrate when the recipient was hypotensive, had diffuse liver disease, or was allowed to become cold. Howland et al. (Refs. 199) found more evidence of impairment with hypotension alone. As hypoperfusion, liver disease, and hypothermia can often be found in massively transfused patients, these critical points need more careful documentation. In massively transfused combat casualties in Vietnam, transfused lactate was found to be removed very rapidly, presumably indicating a similar efficiency in handling transfused citrate because of the similar mechanisms for the metabolic conversion of both organic acids (Ref. 201).

The ability of the transfused patient to mobilize calcium in his or her defense depends on two factors: the release of parathyroid hormone (PTH) and the mobilization of calcium from bone by the effect of the newly released parathormone. The rise in parathormone levels in response to the infusion of citrate is extremely rapid (Refs. 202 and 203). This implies release of preformed PTH and raises the question of whether sustained infusion of citrate, as occurs during extended massive transfusion, can be handled adequately once the stores of PTH have been depleted, and the response then relies on synthesis of new hormone. Blood flow to bone is significantly reduced in hemorrhagic hypotension. This must result in impaired mobilization of calcium, but studies on calcium mobilization following hemorrhage are lacking. Several studies (Refs. 204 and 205) indicate that the relationship between the blood citrate level and the ionized calcium level is not a set one, indicating that the patient's mobilization of calcium can be an effective response even when citrate cannot be removed completely.

These relationships are further complicated by the effect of blood pH. Alkalosis increases the binding of ionized calcium by plasma proteins and, at least in some animals, appears to produce a decrease in the concentration of total calcium in the blood (Refs. 206 through 208). Alkalosis also leads to higher blood levels of citrate and higher tissue levels, especially in the renal cortex and less so in the liver, implying impaired metabolism of citrate (Ref. 209). There have been no studies, however, on the effect of alkalosis on the ability to metabolize infused citrate. In the often-quoted study of Bunker (Ref. 198), clinical signs and symptoms of hypocalcemia were related blood levels of citrate, but estimations of the ionized calcium were made without regard to changes in pH. Sodium citrate was used as the anticoagulant in these studies and produced a marked alkalemia in the recipients, some of whom exhibited a decline in serum total calcium during the citrate infusions rather than the expected rise. Other investigators (Refs. 199 and 210) using standard anticoagulant infusions instead of sodium citrate have noted much less change in human volunteers at similar rates of anticoagulant infusion.

More recently, a number of clinical studies (Refs. 211 through 215), using the calcium ion sensitive electrode, have shown that there is some depression of ionized calcium level in most transfused patients, but the physiologic significance of this degree of depression remains obscure. When studied, the recovery was very rapid after transfusion ceased. An exception is the study of Cooper et al. (Ref. 216) in which rather significant changes in myocardial contractility were related to depression of the ionized calcium level in the blood of patients coming off cardiopulmonary bypass. It is possible, of course, that such patients may be unusually sensitive to alterations of ionized calcium levels as appears to be true for their sensitivity to alternations of acid-base balance. In addition, the rates of transfusion were very rapid. Another, more recent study (Ref. 215), demonstrates no reduction in cardiac output despite lowering of the ionized calcium levels.

Objections to the routine administration of calcium after transfusion have been raised on the basis of sporadic case reports of severe iatrogenic hypercalcemia (Ref. 217). This potentially important problem is still handled in an empirical manner because of the lack of adequate data. The calcium ion sensitive electrode may allow some of these old questions about citrate toxicity to be answered adequately. Perhaps some readily acceptable and practical criteria, such as on-line analysis of electrocardiographic changes as indicators of the need for ionized calcium supplementation can be developed. For the time being, it is probably safe to assume that a normothermic adult with a functioning liver can tolerate a unit of blood every 5 minutes without requiring supplemental calcium. Empirical supplementation with ionic calcium is rarely necessary, but should be considered for those recipients who are doing poorly without apparent cause.

(4) *Coagulation abnormalities.* One complication of massive transfusion is pathological diffuse bleeding. This not only interferes with efforts to control the

original hemorrage, but in turn, leads to the requirement for more blood replacement. Such bleeding abnormalities are often attributed to the dilutional effect on coagulation factors of the transfusions themselves.

Some coagulation factors are absent or deficient in stored blood. Platelets, even if present, do not function normally. Depending upon storage time, concentrations of Factors V and VIII may be as low as 15 to 30 percent, and Factor XI may be 20 percent of normal. Ionized calcium of course is absent, but it is not likely that this has an anticoagulant effect because the cardiac effects of severe hypocalcemia are probably lethal before levels low enough to interfere with coagulation are reached.

Published studies on the coagulation changes in massively transfused patients show a variety of clotting abnormalities such that it is difficult to assign a pattern to the defects (Refs. 218 through 225).

Three groups of observations, however, indicate that the clotting abnormalities in massively transfused patients are due to more than simple dilution from transfusion with stored blood. These observations suggest a superimposed abnormality of clotting factor consumption, presumable disseminated intravascular coagulation (DIC). There is often depression of the various clotting components to levels lower than could be expected from the degree of exchange transfusion that has occurred. In addition, these patients often have hypofibrinogenemia, which cannot be explained by transfusion with stored blood since the fibrinogen content of stored blood is normal. Finally, in some seriously injured patients, marked abnormalities of the coagulation system existed before or very early during the course of transfusion. In these patients, the coagulation abnormalities tended to be corrected during the course of transfusion and reverted to the pretransfusion levels when transfusion was stopped (Ref. 221). Taken together these findings suggest that DIC is one cause of the major coagulation abnormalities found at times in massively transfused patients.

Important confirmation of this concept is found in data presented recently on massively transfused patients (Ref. 226). When a series of coagulation test results were plotted against the amount of blood transfused, there was little evident correlation, but when the patients were grouped according to the amount of time they remained hypotensive, there was a strong correlation. The more prolonged the hypotension, the worse the coagulation abnormalities at the same level of transfusion. This implies that perfusion was the critical variable, not the quantity of blood transfused.

The pathogenesis of DIC with massive transfusion is unclear. Hypoperfusion and extensive tissue damage or necrosis almost certainly contribute. Transfusion itself may also facilitate the development of DIC by a number of mechanisms. There is probably partial activation of some clotting factors during storage, and breakdown of platelets, white cells and some red cells which release thromboplastic material into the stored blood. A hemolytic transfusion reaction is a well-recognized cause of DIC. Whatever the cause for the DIC, the key to management appears to be maintenance of good perfusion for several hours during which the patient will often correct the continuing consumption of clotting factors. This, of course, can be difficult in a massively bleeding patient. There is little indication for heparin therapy in such patients, and enthusiasm for this therapy is waning.

In addition to DIC, impaired platelet function has been associated with massive transfusion. While dilutional thrombocytopenia has been noted repeatedly in these patients, the platelet counts are rarely below 50,000 per cubic millimeter, a level sufficient for adequate hemostasis in most circumstances. A recent study (Ref. 225) on heavily transfused trauma patients suggests an impairment in platelet function but it is not clear if these function tests were corrected for the lower platelet counts seen. DIC itself can cause impaired platelet function. This is an important question because an induced defect in platelet function would complicate management of the bleeding problem and increase the need for further transfusion, but is potentially correctable with platelet concentrates. Platelet function should be a focus of attention in current and subsequent studies on the problems of massive transfusion.

(5) *Acid-base alterations* (Ref. 201). Three-week-old stored citrated blood contains an acid load of up to 30 to 40 mEq per liter, and patients requiring massive transfusion often have a preexisting metabolic acidosis. Studies in animals indicate that the acidity of stored blood may contribute to failure of resuscitation from hemorrhage. It is understandable, therefore, that some authors have proposed the routine administration of alkalinizing solution during massive transfusion, supporting these suggestions with uncontrolled clinical observations.

The situation, however, is more complex than it appears. The excess acidity of stored blood is due mainly to the citric acid in the anticoagulant and the lactic acid generated during storage. Both are organic acids, normal intermediary metabolites, and are rapidly metabolized under normal conditions. The preexisting acidosis is also a lactic acidosis which can be reversed rapidly when perfusion is restored. The impact of the transfusion of stored blood on the acid-base status of the recipient then is not one of simple buffering in a closed system, but is rather complex involving rates of administration, metabolic removal, and the changing status of peripheral perfusion in the recipient which relates both to production and metabolism of lactate.

Studies in Vietnam showed that patients whose blood pressure was restored by the transfusion, and even some who remained hypotensive, easily handled the infused acid load of transfusion and reversed the preexisting metabolic acidosis (Refs. 201 and 227). Those in whom hemorrhage was not controlled during transfusion, most of whom died, exhibited increasing acidosis that was probably due more to persistent and worsening hypoperfusion than to the transfusion itself. Administration of alkalinizing agents to this latter group was futile. Besides being unnecessary, the routine use of alkalinizing solution presents several disadvantages. An induced alkalemia will impair oxygen delivery by shifting the oxyhemoglobin dissociation curve to the left, will increase the sodium load in patients whose ability to excrete salt and water is impaired, and may delay the return of ionized calcium to normal levels following cessation of the infusion.

The results discussed above were obtained in previously healthy young adults whose resuscitation was carried out in a high ambient temperature that prevented the development of hypothermia. In these patients failure to restore perfusion was almost always due to failure to control hemorrhage or to injury to a vital organ, rather than to acidosis per se. The need for alkalinizing agents should be based on objective measurements of blood gases and pH rather than on empirical formulas.

One clinical situation in which acidosis may occur during massive transfusion is exchange transfusion in the newborn. One recent study in infants indicated that transfusion-induced acidosis was not a problem (Ref. 228). The blood used, however,

was 1 to 4 days old and therefore had less lactic acid than is found in blood approaching the third week of storage. Also, none of the infants were less than 5 days old.

(6) *Alterations in oxygen transport.* In the simplest of terms, the oxygen delivering capacity can be thought of as a product of blood flow and oxygen content. Oxygen content, in turn, is a function of hemoglobin concentration and oxygen saturation. Recently, an additional aspect, the affinity of hemoglobin for oxygen, has been of interest. At physiologic gas tensions, a decreased affinity of hemoglobin for oxygen leads to less oxygen uptake in the lungs, but more oxygen release at the periphery, resulting in increased delivery of oxygen, independent of changes in flow or the concentration of hemoglobin (Refs. 229 and 230). A more complete description of the oxygen delivering system then includes blood flow, hemoglobin concentration, oxygen saturation, hemoglobin oxygen transport efficiency, and tissue oxygen tensions which reflect the metabolic need for oxygen. All five of these parameters can be altered by transfusion.

Blood flow can be increased by increasing blood volume in hypovolemic patients. Paradoxically, blood flow can be decreased by transfusing patients to the point of heart failure secondary to hypervolemia. The concentration of hemoglobin is increased by transfusion but the relationship to oxygen delivery is complicated by the fact that an increasing hematocrit is associated with increasing resistance of blood to flow due to increasing viscosity. This relationship is complex, with several variables poorly understood (Refs. 231 through 233). For the severely anemic patient, however, improved delivery of oxygen almost certainly results from transfusion. The saturation of hemoglobin with oxygen will decrease if transfusion leads to circulatory overload and consequent pulmonary edema. Restoring volume and/or hemoglobin concentration toward normal will increase the oxygen tension of mixed venous blood and indirectly will lead to higher arterial oxygen tensions even if the degree of "shunting" in the lung does not change. Finally, the efficiency of hemoglobin as an oxygen delivering agent is also altered by transfusion, and most of the remainder of this section will consider this relationship.

The concentration of 2,3-diphosphoglycerate acid (2,3-DPG) falls essentially to zero by the third week of storage of RBC in either ACD or CPD, although at different rates in the two solutions (Ref. 234). The 2,3-DPG depleted blood has an increased affinity for oxygen, making it a less efficient oxygen delivering agent at physiologic gas tensions. In most clinical situations of stress on the oxygen-delivering system, the affinity of hemoglobin for oxygen changes toward reduced affinity resulting in increased effectiveness of delivery. Patients massively transfused with old stored blood have an alteration in hemoglobin oxygen affinity opposite in direction to what would presumably occur in the absence of massive transfusion (Ref. 235). Several clinical studies have shown that a marked change in the affinity of hemoglobin for oxygen can result from massive transfusion (Refs. 236 through 243). Recovery of 2,3-DPG content and of normal oxygen transport function occur within approximately 1 to 2 days after transfusion of depleted red cells.

In spite of the obvious theoretical considerations, the detrimental effects of an increase in oxygen affinity in stored transfused cells have been difficult to demonstrate. Studies on massively transfused combat casualties in Vietnam (Ref. 201), who routinely received ACD blood in the second or third week of storage, indicated not only good resuscitative effectiveness, but immediate restoration of aerobic metabolism as indicated by rapid clearing of elevated pretransfusion blood lactate levels and intraresuscitative lactate loads.

Studies in rats (Ref. 244) and in humans (Ref. 245) have shown that lowering the 2,3-DPG content and increasing the affinity of hemoglobin for oxygen produces essentially no detectable effects on work performance or maximal oxygen consumption.

Almost all studies showing a detrimental effect of increased affinity of hemoglobin for oxygen have been complicated by the presence of anemia, while the studies showing a minimal physiologic effect were carried out at normal hemoglobin concentrations. The interaction of anemia and 2,3-DPG has been studied (Ref. 246) as related to the ability of rats to survive hemorrhage. At nearly normal hemoglobin concentrations, transfusion with red cells depleted in 2,3-DPG did not impair the ability of the animals to survive two different levels of hemorrhagic challenge. When the animals were studied at acutely anemic levels, however, transfusion with red cells depleted of 2,3-DPG was associated with a much higher mortality. These findings indicate that in stressful circumstances the resiliency and integrity of the oxygen delivering system is such that the degree of impairment produced by depleting red cells of 2,3-DPG is, by itself, insufficient to endanger survival, but that when combined with other circumstances such as acute reductions in red cell mass these shifts may become important.

There may be other circumstances where special attention must be paid to hemoglobin function. It is likely that a fixed and relatively low limit on cardiac output will also impair the patient's ability to compensate for impaired hemoglobin function so that these two together may assume new importance. Indirect evidence indicates that the newborn infant has a less well protected oxygen delivering system and is susceptible to conditions which would be tolerated by the adult.

Recently, Dennis et al. (Ref. 247) reported an increase in cardiac output when red cells rich in 2,3-DPG were used during cardiopulmonary bypass, using patients treated with red cells with lower concentrations of 2,3-DPG as controls. The differences in myocardial performance were greater than predicted from the small differences in hemoglobin oxygen affinity between the two groups, indicating that other variables must have been present. The same group (Ref. 278) subsequently reported better left ventricular performance in patients with abdominal aortic aneurysms operated upon electively and given relatively normal red cells compared with patients with ruptured abdominal aneurysms given old stored red cells. Obviously, hemorrhage was worse in the patient with ruptured aneurysm so it is difficult to see how any legitimate comparison can be made. Better controlled studies are needed on this important point.

(7) *Hypothermia.* Many studies (Refs. 248 and 249) have demonstrated that a massively transfused patient will become cold if the transfused blood is not warmed, especially if transfusion occurs in an air-conditioned operating room and is given to a paralyzed patient who may have one or more body cavities open to the air. It requires nearly 150 Kilocalories to warm five liters of blood from 4 to 37 ° C. This is equivalent to the heat produced by 30 minutes of moderately heavy work and represents a requirement for an additional 30 liters of oxygen. This added requirement for oxygen for the production of heat may come at the time when the patient's survival is being threatened by a challenge to the oxygen delivering system.

It is widely assumed that hypothermia impairs the metabolism of citrate and of lactate, thus increasing the chances for developing hypocalcemia and metabolic

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acidosis during transfusion. Cold increases the affinity of hemoglobin for oxygen, thereby worsening the impairment of hemoglobin function. Cold also promotes the release of potassium from the intracellular compartment which, when added to the increased chance for acidosis, might result in hyperkalemia that would not otherwise exist. Rapid transfusion through central venous catheters could differentially cool areas of the heart and may cause arrhythmias. Hypothermia, then, is potentially disastrous in the massively transfused patient, but many of these possible complications have not been documented.

At least two reported clinical experiences reported better patient survival during massive transfusion when the blood was warmed, but neither was adequately controlled. A recent study on exchange transfusion in the newborn could not document any detrimental effect from cold blood (Ref. 251), although the degree of hypothermia produced in adults in an operating room with an open abdomen is often much greater.

The potential for detrimental effect is apparent, and efforts should be made to warm the transfused blood in an exsanguinating patient. Unfortunately, blood can be hemolyzed by temperatures not far above normal body temperature; at the same time, rapid warming is needed so as not to delay the transfusion. All available devices exhibit some drawbacks (Ref. 252). The microwave equipment, in particular, has a small margin for error (Ref. 253). New devices are being constantly introduced and require careful evaluation.

(8) *Infusion of denatured proteins.* There is preliminary evidence that certain forms of storage may render blood, and particularly plasma, more harmful then beneficial to the acutely hemorrhaged animal. Controlled studies in rats (Ref. 254) indicate that plasma is inferior to almost any reasonable alternative as a treatment for hemorrhage. Denaturation is recognized as a serious problem in cardiopulmonary bypass. Even without cardiopulmonary bypass, foreign surface contact may alter the efficacy of shed blood when reinfused to treat hemorrhage (Refs. 255 and 256). Other studies reporting poor results when comparing the reinfusion of shed blood to other forms of treatment are characterized by harsh handling of the blood ex vivo. Both length of storage and specific plasma protein fractions have been found to make significant differences in the survival of animals treated for hemorrhage (Refs. 257 and 258). These findings indicate that biological effects can be related to the manner in which blood is handled during storage.

(9) *Infusion of vasoactive substances.* Much of the experimental work dealing with the release of vasoactive substances during storage has dealt with single donor or pooled plasma stored under conditions not necessarily applicable to the usual blood banking practices (Ref. 259). There has, in fact, been little study of the release of vasoactive substances into the plasma of stored whole blood. Serotonin levels increase as would be expected from the breakdown of stored platelets (Ref. 260). There is evidence that the kinin system is activated during storage, but much of this work was done on blood stored in glass rather than in plastic containers. It is likely that there is partial activation of Factor XII during storage, which in turn might lead to partial activation of the kininogen systems. The status of the prostaglandins, angiotensin and other as yet undefined vasoactive materials remains to be established. In the massive transfusion situation this array of vasoactive substances, many of which are associated with the production of increased capillary permeability and vasoconstriction, might explain some of the pulmonary problems occasionally encountered in massively transfused patients.

(10) *Impaired bacterial defenses.* There is suggestive evidence that massive transfusion with stored blood may impair antibacterial defenses (Ref. 261), probably through two mechanisms. First, blood that has been run through an extracorporeal circulatory device and then administered to animals produces an impairment of reticuloendothelial function (Ref. 262). More recently the same effects have been shown (Ref. 263) from simple storage of blood. The added observation has been made that less impairment of phagocytic function follows the transfusion of washed erythrocytes when compared with stored whole blood. The second possible mechanism relates to older observations (Ref. 264) that citrated whole blood decreases the phagocytic ability of polymorphonuclear leukocytes.

(11) *Hyperkalemia.* The potassium level in the plasma of stored whole blood rises to approximately 30 mEq/L by the end of three weeks, a 25 mEq/L excess over normal. Therefore, 10 units of blood may contain an excess of up to 75 mEq over the normal expected potassium content in plasma. This suggests that hyperkalemia might be a serious problem in massive transfusion, but the practical problem is less than it might seem. Most of the excess potassium represents leakage from intact viable red cells. Upon transfusion, these viable red cells reverse the lesion that occurred during storage and take up potassium (Ref. 195). Almost every study on massively transfused patients has shown hypokalemia rather than hyperkalemia, reflecting the metabolic and respiratory alkalosis which is so common in these patients (Refs. 222, 265, and 266). There is evidence, however, that even transient hyperkalemia may worsen the effects of hypocalcemia, in vivo as well as in vitro (Refs. 267 and 268). As this situation may occur at the peak rates of massive transfusion, it is possible that potassium may in fact cause trouble for patients in certain circumstances.

(12) *Impaired red cell deformability.* Concomitant with the fall in red cell ATP levels during storage, red cell membrane elasticity decreases so that stored red cells are less deformable than normal (Refs. 22 and 29). This has significance in terms of the function of transfused blood in the microcirculation because red cells have a greater diameter than many of the capillaries of the body which they must traverse and must deform to circulate. Nevertheless, the fact that such cells survive and function indicates that, by some mechanism or another, deformability is rapidly restored.

(13) *Elevated phosphate and ammonia levels.* Plasma phosphate and ammonia levels rise during storage. Even with CPD, however, the phosphate levels represent little threat in terms of the total body phosphate. Similarly, the ammonia in stored blood, as high as 1 mg/dL, is easily handled by a functioning liver and represents a problem only in patients with significant hepatic insufficiency.

(14) *Miscellaneous.* In the newborn, hypoglycemia has been reported as a consequence of exchange transfusion with CPD blood (Ref. 279), probably reflecting the release of insulin triggered by the high glucose levels of the stored blood.

3. *Plastic transfusion equipment*—a. *Introduction.* Compared with glass bottles, the advantages of plastic bags are: (1) Decrease in weight, (2) reduction in storage space, (3) reduction in breakage, (4) ability to prepare components in a sterile closed system, (5) ability to infuse blood under pressure without risk of air embolism, (6) elimination of risk of trauma to the recipient if the container should fall, and (7) easiness of handling.

Most plastic transfusion equipment consists of polyvinyl chloride (PVC),

plasticizers, a mold-release agent, and a variety of other compounds. Although it was recognized that constituents of PVC leach into the stored blood (Ref. 40), it was Jaeger and Rubin (Ref. 41), in 1972, who showed tissue deposition of phthalate ester plasticizers, specifically di-2-ethylhexyl phthalate (DEHP). This report led to renewed concern about the safety of plastic bags and the effects of the plastic, not only on red cells and other blood components, but on organ function as well.

b. *Factors affecting blood during storage in plastic bags.* (1) *Plasticizers.* Polyvinyl chloride, developed in 1933, is a rigid plastic, but the synthesis of DEHP in 1933 permitted interfusion of these two components to yield a plastic with flexibility, extensability, and workability (Ref. 42). Phthalate plasticizers are used extensively in commerce (Ref. 42). Approximately 1 billion pounds of 20 different phthalate compounds were manufactured in 1972 representing about 2 to 3 kg of esters produced for every citizen in the USA per year (Ref. 43). The food and medical products industry accounted for only about 5 percent of the total produced with the building and construction industry using 38 percent, home furnishings 19 percent, transportation 11 percent, and apparel 7 percent.

Diffusion of the plasticizer depends on its molecular weight, compatibility with the plastic, viscosity, affinity of the environment for the plasticizer, and temperature at which the plastic is used (Ref. 42). The plasticizer DEHP represents about 30 to 40 percent of the dry weight of plastic blood bags (Fenwal JA–2 blood pack) and is not firmly bound. DEHP is soluble in blood plasma, accumulating at about 0.25 to 0.361 mg/100mL/day during whole blood storage at 4 °C with ACD or CPD solutions (Refs. 41, 44, and 45). There is no accumulation of DEHP in blood frozen at −80 °C or −150 °C for up to 2 years (Ref. 44).

There is essentially no DEHP in the anticoagulant during storage of the bag at room temperature (Refs. 44 and 46), and DEHP is not extracted by saline (Refs. 44 and 47). About 20 percent of the DEHP in stored blood is in the high-density (greater than 1.21) fraction of plasma, while 60 percent was found in the low-density lipoprotein fraction (less than 1.21) suggesting lipoproteins may solubilize DEHP (Ref. 47); washed red cells contain 4 percent to 6 percent of the DEHP found in the blood (Refs. 44 and 47). Compared with the progressive accumulation of DEHP in blood stored for 21 days, DEHP levels in plasma stored in plastic stabilize after 7 days with a peak of 120 μg/mL (Ref. 48). Even frozen plasma (−20 °C) accumulates levels of DEHP about half that of 4 °C stored plasma (Ref. 48). Among plasma derivatives, the fibrinogen fraction contains 18 to 39 μg/mL, albumin 5 to 25 μg/mL and immunoglobulins 63 to 160 μg/mL (Ref. 48). Of all blood components the highest accumulation of DEHP occurs in the supernatant plasma of platelet concentrates stored at 22 °C (Refs. 44 and 49). Levels of DEHP are 16.7 mg/100 mL after 48 hours of storage and 44 mg/100 mL at 72 hours. In contrast, stored platelet concentrates at 4 °C accumulate only 11 mg of DEHP per 100 mL at 72 hours.

DEHP is the only plasticizer known to leach from plastic blood bags, although other plasticizers are found in blood passed through commonly used biomedical tubing. Studies of tissue, blood, and urine levels of DEHP in man (Refs. 41, 45, 47 and 50) show no correlation between transfusion history and DEHP accumulation. DEHP can be isolated from tissues and urine of nontransfused persons suggesting the importance of other environmental sources of DEHP.

Storage studies with human blood in PVC bags compared to polyolefin from which no measurable DEHP is leached showed that microaggregate formation is not related to DEHP accumulation (Ref. 44). Also, DEHP could not be removed by the usual blood filters which remove microaggregates or by millipore filtration.

Neonates who had umbilical catheters used to administer fluids or blood and then died had higher levels of cardiac DEHP than control stillborns (Ref. 52). Higher levels were also found in the blood of infants dying of necrotizing enterocolitis. It is not clear whether DEHP accumulation is a cause of tissue damage or whether ischemic tissue accumulates DEHP more avidly.

One report has shown a decreased growth of human fibroblasts in tissue culture when the serum of the culture medium was obtained from 21 day old blood stored in plastic compared with blood stored in glass. Even more depression of growth was seen with serum obtained from the supernatant of 48-hour room temperature stored platelets (Ref. 53).

Other studies suggesting various toxic effects on drug metabolism and pulmonary, reticuloendothelial, and cardiac function have been done in animal systems using unphysiologic forms of DEHP, i.e., an emulsion or a poorly solubilized liquid solution (Refs. 51 and 54). Extensive studies by a manufacturer (Fenwal) in both animals and man using plasma extracted DEHP have shown no toxic effects (Ref. 45).

(2) *Bag thickness.* Viability of both red cells (Ref. 55) and platelets (Ref. 56) is influenced during storage by the ability of CO_2 and oxygen to pass through the plastic bag. Gas exchange is a function of bag wall thickness, agitation during storage, and storage surface area per unit volume of the blood product.

c. *Effects on cell viability and AHF activity.* Post-transfusion red cell survival varies among lots of plastic bags (Refs. 40 and 57). Whether this represents a result of plasticizers that leach during storage or some other variable is not known. Platelet viability is also related to the plastic bag (Refs. 58 and 60). Since viability appears to be better maintained at 22 °C than at 4 °C and the amount of DEHP leached is higher during 22 °C storage (Ref. 59), differences in platelet viability are unlikely to be due to plasticizers.

Studies by Kevy (Ref. 61) show a variable cryoprecipitate yield in vivo depending on the plastic bag used. However, no difference has been found in a subsequent report (Ref. 62).

d. *Summary.* The composition of the plastic bag used for blood storage influences the post-transfusion viability of red cells and platelets. Measureable quantities of the plasticizer DEHP accumulate during the blood storage but whether this is related to red blood cell viability derangements during storage is not known. Other potential toxic effects of DEHP on blood products or organ dysfunction following massive blood transfusion have not been well documented.

The production of blood bags and transfusion tubing needs to be standardized so that significant differences between lots do not occur. Furthermore, toxicology studies should be done only with plasma extracted DEHP rather than with other methods of administering the compound.

e. *Recommendations relating to plastic transfusion equipment.* (1) The evidence that leachables from plastic result in toxicity in vivo is not convincing and no action is recommended at this time.

(2) Research support should be provided for further investigation of possible toxicity of leachables in vivo, the interaction between plastics and blood components in vitro, and for the development of plastic bags and tubing which do not interact with blood.

(3) The production of blood bags and transfusion tubing needs to be standardized so that important differences do not occur between lots.

4. *Microaggregates*—a. *Introduction.* During storage of whole blood or red blood cells microaggregates consisting of platelets, granulocytes and possibly fibrin are formed. The number of microaggregates is proportional to the concentration of leukocytes and platelets in blood prior to storage and the progressive accumulation of aggregates is associated with decreasing levels of platelets and granulocytes (Ref. 63). The quantity of aggregates is higher in CPD than ACD blood during the first 24 hours but between 7 and 21 days the amount is the same (Ref. 63). Few aggregates form during the first 2 days of storage. The amount then increases slowly between 2 to 10 days (0.01 to 0.02 mg/mL) and then increases logarithmically during the remaining 21 days of storage (0.1 mg/mL) (Ref. 64). This rapid accumulation of aggregates after 10 days is associated with accumulation of fibrinogen in the aggregates (Ref. 64).

b. *Physiologic effect of aggregate infusion.* Microaggregates in stored blood have been suggested as a cause of pulmonary insufficiency following massive blood transfusion. To determine whether aggregates in stored blood cause or contribute to pulmonary insufficiency in the clinical setting has been a major problem, particularly since platelet microaggregates may be formed intravascularly in response to tissue injury (Ref. 65). Studies in dogs show that pulmonary damage associated with massive blood transfusion can be prevented by dacron wool filtration of stored blood (Ref. 66). Subsequent studies in the baboon also show pulmonary damage on histologic examination (Ref. 67), but this is not prevented by filtering the blood (Ref. 68). Whether these animal studies are applicable to man requires clarification.

One clinical study in man has suggested that pulmonary insufficiency can be reduced by blood filtration, but this was not adequately controlled (Ref. 69). A similar but more tightly controlled study in older patients transfused during elective operations on the abdominal aorta revealed little evidence of pulmonary dysfunction, and no difference between the group receiving blood through the standard filter and a similar group transfused through fine filters (Ref. 31). It has been suggested that pulmonary insufficiency may be more closely related to the type of patient injury than to blood transfusion. Studies on large numbers of transfused casualties in Vietnam yielded no convincing data suggesting that transfusion without special filtering produced pulmonary dysfunction (Ref. 32).

c. *Methods of aggregate removal*—(1) *Filtration.* Standard blood bank filters have a pore size of 170 microns and remove large debris. Filters available to remove microaggregates (16 to 170 microns) are made of: (a) Dacron wool, (b) polyester mesh (40 X 40 micron pore), (c) polyurethane foam, and (d) polyurethane foam-nylon wool. All remove particles greater than 40 microns, but filtration efficiency for smaller particles varies inversely with their resistance to gravity flow (Refs. 70 and 73), i.e., dacron wool, foam-nylon wool, foam and 40-micron mesh. The 40-micron mesh filter is efficient for volumes of 1,600 to 2,000 mL (Refs. 71 and 73), while the others have a limited efficiency for filtering more than 1 unit of blood (Refs. 72 and 73). Pressure filtration (150 to 200 mg Hg applied with an infusion cuff) removes particles with the same degree of efficiency with all filters except the 40 micron pore where pressure decreases the number of particles trapped (Refs. 71 and 73). Filtration of microaggregates is an efficient but costly method of removing microaggregates. Recent work using laser methods to measure microaggregates indicates that there may in fact be a paradoxical increase in the total number of particles with at least some of the fine filters used (Ref. 84). The advisability of using such filters might therefore be open to considerable question.

(2) *Other*—(a) *Age of blood.* Blood less than 2 days old has very few aggregates, and at less than 10-days old the quantity is still very small (Ref. 64).

(b) *Centrifugation.* (i) Centrifuging whole blood causes macroaggregates to form. These can be removed by a standard blood filter (Refs. 63 and 74).

(ii) Preparation of platelet and/or white-cell-poor before storage eliminates microaggregates (Ref. 74).

(c) *Washing with or without freezing.* Saline washing of red cells or freezing followed by deglycerolization and washing effectively removes aggregates (Ref. 74).

(d) *Agitation.* Continuous agitation during storage for 21 days decreases aggregate formation (Ref. 75).

(e) *Aspirin.* Addition of aspirin to blood prior to storage (Refs. 74 and 76) or ingestion of aspirin by donors (Ref. 76) is associated with lower quantities of aggregate formation.

d. *Summary.* Microaggregates progressively form during the storage of whole blood. The final volume of aggregates produced does not depend on the anticoagulant used (ACD vs. CPD). These aggregates might be partially removed by special filtration or by other means. Disadvantages in using microaggregate filters include reduced rate of infusion, added costs, and recent questions regarding overall efficacy. The value of removing these aggregates in preventing pulmonary insufficiency remains to be determined. In view of lack of evidence, there is no basis on which to recommend routine use of microaggregate filter at this time except in cardiopulmonary bypass where the filtering function of the lungs is absent.

e. *Recommendations regarding microaggregate filtration.* (1) Filters that remove microaggregates should be used in patients undergoing cardiopulmonary bypass.

(2) At this time there is insufficient evidence on which to recommend the use of microaggregate filters in other specific transfusion settings.

(3) Investigative efforts in this area should address the question of the optimal characteristics of a single filtering device to be used during transfusion and to be incorporated into the commonly used transfusion sets.

5. *Diseases transmitted by blood transfusion*—a. *Introduction.* A number of diseases, some of serious clinical importance, can be transmitted by transfusion. Since pathogenic organisms are found in different portions of whole blood, risks of post-transfusion diseases vary depending on the blood product or component used. In general, the risk for any disease is directly proportional to the volume of blood transfused.

b. *Viral hepatitis.* Since the first report in 1938 (Ref. 77), there has been increasing awareness of relationship between blood transfusion and some cases of viral hepatitis. Two distinct viruses have been identified as causing post-transfusion hepatitis (Refs. 78 and 79), and there is considerable evidence that additional, as yet unidentified, agents exist (Refs. 80 and 81). Until recently, the inability to transmit the disease to most laboratory animals made research difficult and slow. There is now, however, a practical laboratory test which detects a surface antigen (HBsAg) of one causative agent, hepatitis virus B (HVB). The incidence of post-transfusion hepatitis has been estimated at 4.6 cases per 1,000 units of blood transfused, with one third of these being icteric (Ref. 82). More recent studies indicate a higher risk of between 7 to 10 percent of all blood recipients. The risk of post-transfusion hepatitis is increased when blood from commercial donors is used (Refs. 82, 83, and 85). Elimination of these donors along with routine testing of all donor blood by

sensitive tests for HBsAg, if performed by the most sensitive radioimmunoassay method, will reduce the occurrence of post-transfusion hepatitis. It is becoming apparent, however, that all cases may not be related to HBV (Refs. 80 and 81) or even the recently characterized hepatitis A virus (Ref. 80). Studies (Refs. 87 and 89) attempting to implicate cytomegalovirus (CMV) and Epstein-Barr virus (EBV) have been fruitless, suggesting that most cases of post-transfusion hepatitis result from infections with virus(es) not previously implicated.

Testing of large United States donor populations with sensitive third generation tests for HBsAg shows a carrier rate of 0.33 per hundred (Ref. 90). There is no evidence that recipients of blood containing anti-HBsAg have an increased risk of hepatitis B and no reason to test donors routinely for this antibody (Ref. 91).

c. *Transmission of other infectious diseases.* A syndrome of fever, lymphocytosis with atypical cells, negative heterophile test, inconstant splenomegaly, and mild hepatic dysfunction has been reported 2 to 6 weeks after transfusion (Refs. 92 and 94). Although originally labeled as the "post perfusion" or "post pump syndrome" it can occur after any transfusion of whole blood (Ref. 95). Studies have shown rises in anticytomegalovirus (CMV) titers in these patients supporting the hypothesis that CMV infections transmitted by blood transfusion may be the cause. One large study has shown serologic evidence of CMV infection in 35 percent of patients who had been infused with fresh whole blood (Ref. 96).

Heterophile-positive infectious mononucelosis, the clinical syndrome associated with the Epstein-Barr virus infection, has been transmitted by blood transfusion (Ref. 97). Anti-EBV responses have been reported in 8 percent of patients undergoing transfusions or extracorporeal circulation (Ref. 96). Both CMV and EBV appear to reside in leukocytes.

Transfusion-induced malaria in seen infrequently, although the incidence recently increased (Ref. 98). *P. malariae, P. vivax,* and *P. falciparum* all have been implicated, and a rise in the number of cases due to *P. falciparum* was noted coincident with the return of service personnel from Vietnam (Ref. 98). Current standards for donor acceptance, if followed rigidly, are adequate to eliminate nearly all potentially malaria infectious donors. The malarial parasites reside exclusively in erythrocytes and are transmitted only with transfusion of RBC-containing products.

Chaga's disease, African trypanosomiasis, kala-azar, toxoplasmosis, and infections with micro filaria can be transmitted by whole blood, but these complications are almost unknown in the United States.

Transfusion-induced syphilis, while it does occur, is not an important hazard today. This topic is discussed below regarding the serological test for syphilis.

6. *Hazards related to transfusion of blood elements other than RBC*—a. *Introduction.* Noneythrocytic blood elements—plasma, platelets, and leukocytes—are responsible for a variety of common transfusion problems. Although it would seem logical that red blood cells ("packed cells") which contain smaller quantities of these blood elements would have less risk than whole blood, there is no evidence to substantiate this notion. Problems related to plasma, granulocytes, or platelets are largely, but not completely, obviated by either simple washing or the washing associated with deglycerolization of frozen red cells. Lymphocyte-related problems may, however, still be present. Recent studies indicate that even after freeze-deglycerolization, there are significant numbers of viable lymphocytes in the final product (Ref. 102).

b. *Anaphylactoid reactions to IgA.* Severe transfusion reactions characterized by flushing, abdominal pain, diarrhea, chills, fever, edema bronchospasm, hypotension, and shock have been seen when IgA-deficient patients with antibodies to IgA are transfused with whole blood (Refs. 103 through 105 and 107). Although the incidence of absent IgA is about 0.1 percent (Ref. 106) and about 15 percent of these IgA-deficient persons have high titer antibodies to IgA (Ref. 108), anaphlactoid reactions from this cause are extremely infrequent.

c. *Pulmonary "hypersensitivity" reactions.* There have been several reports of normovolemic pulmonary edema after blood transfusion. In most cases they have been associated with leukocyte antibodies in donor or recipient (Refs. 108 and 109).

d. *Post-transfusion purpura.* A number of cases of acute, severe, thrombocytopenic purpura occurring approximately 1 week after transfusion of whole blood have been described (Refs. 110 and 111). In most cases the antibody in the recipient's plasma has been anti-PL^{A1}, and the patient's own platelets are PL^{A1}-negative. The donor platelets have been PL^{A1}-positive and incompatible with this recipient's antibody. The mechanism suggested in immune destruction of donor platelets by recipient antibody with concurrent immune complex-mediated autoimmune thrombocytopenia (Ref. 110).

e. *Graft vs. host reactions.* A disease process identical with the graft vs. host reaction has been reported in transfused children with immunologic deficiency (Ref. 113). Evidence obtained in vitro has shown that lymphocytes are viable in stored blood for 15 to 20 days (Ref. 115) and that patients who receive fresh or stored whole blood show evidence of cellular activation as manifested by a rise in atypical lymphocytes, or incorporation in vitro of ^3H-thymidine by autologous lymphocytes (Ref. 114). The relationship of these findings to the graft vs. host reaction is unclear, but is in keeping with the concept of lymphocyte stimulation by transfusion.

f. *Allergic reactions.* Allergic reactions, as manifested by pruritis or hives, are seen in about 1 percent of transfusions (Ref. 116). These reactions are usually mild and respond quickly to appropriate treatment, although occasionally an allergic reaction can be more serious. These reactions are presumably related to allergy to plasma factors.

g. *Reactions due to leukocyte antibodies.* The relationship between leukocyte antibodies and febrile transfusion reactions has been clear since 1957 (Refs. 117 and 118). The antibodies, formed as a result of alloimmunization during pregnancy or transfusion, react in vivo with donor leukocytes to produce a reaction marked by an initial flush, a latent period of about 60 minutes followed by a shaking chill, high fever, apathy, and generalized malaise. The development of these reactions in patients with appropriate antibodies is influenced mainly by the dose of white cells administered (Refs. 119 and 120). Fatalities have been reported.

7. *Other hazards of red blood cell product transfusion*—a. *Hemolytic transfusion reactions.* The reaction in vivo between blood group alloantibodies and red blood cells carrying the appropriate antigen is usually marked by an accelerated destruction of the red blood cells. The rate and site of this hemolysis and the severity of the clinical signs and symptoms accompanying it are dependent upon many variables, including class, titer, avidity, specificity, IgG subclass and complement-binding activity of the antibody, strength of the

blood group antigen, clinical condition of the patient, amount of blood administered, general anesthesia, and other drug therapy. Most hemolytic transfusion reactions result from clerical rather than laboratory errors. Misidentification of patients, blood samples, or blood containers is far more frequent and serious than the failure of appropriate laboratory tests to detect the incompatibility before the transfusion is administered. Cross-matching procedures, including the antiglobulin (Coombs) test, are required before transfusion in all but the most urgent cases and, if properly done, detect almost all potential incompatibilities. Prompt recognition and treatment of hemolytic transfusion reactions usually prevents the renal failure which is often seen after acute intravascular hemolysis. Disseminated intravascular coagulation has been reported in patients with hemolytic transfusion reactions (Refs. 121 through 123).

b. *Hemolytic transfusion reactions without demonstrable antibody.* Diminished survival of transfused red blood cells can occur without demonstrable antibody (Ref. 124). The hemolytic rate is generally moderate, although rapid hemolysis with clinical transfusion reactions has been reported. More sensitive methods for detection of antibodies in vitro may reveal some examples of antibodies that do not react by routine cross-matching procedures.

c. *Alloimmunization.* Blood transfusion is, of necessity, associated with the injection of many antigens into a recipient lacking of these antigens. Because of extreme complexity of the blood group systems, the HLA antigens of white blood cells and platelets, and the various polymorphisms of plasma proteins, it is impossible to give transfusions that are antigentically identical—or even similar—to the recipient. The red blood cell antigens A, B and RH_o (D) are of sufficient immunizing potential that pretransfusion tests for them are routine so that these incompatibilities can be eliminated by donor selection. Transfusion to recipients who lack any of these antigens should be from donors who are also negative for the antigen in question. No such routine testing is required or recommended for other red blood cell antigens and, as a consequence of this practice, the risk of alloimmunization in recipients is 1 percent per unit of blood transfused (Ref. 125). Alloimmunized recipients are at increased risk when additional transfusions are required since the alloantibody may be directed against a high-frequency red blood cell antigen making it difficult or impossible to find compatible blood. In addition, the antibody may not be detectable at the time of pretransfusion testing so that apparently compatible blood will lead to an anamnestic response and a delayed hemolytic transfusion reaction. Such reactions are serious and, at times, fatal.

Alloimmunization to white cell and platelet antigens is directed predominately against antigens in the HLA system. HLA immunized recipients may have clinical reactions or, if candidates for granulocyte (Refs. 130 through 132) or platelet (Refs. 126 through 129) transfusions, may show decreased effectiveness of the transfusion.

Alloimmunization to plasma protein antigens is seen in the IgG, IgM, IgA, and lipoprotein systems. Anaphylactic transfusion reactions in such alloimmunized patients have been reported.

d. *Hemolysis from a mixture of blood with dextrose containing solutions* (Ref. 133). Transfusion reactions with intravascular hemolysis have occurred when whole blood was administered through a secondary recipient set containing solutions of dextrose alone. The mechanism of these reactions is related to osmotic swelling of red blood cells that are in contact with the glucose solution followed by lysis when the swollen cells are infused into normal recipients (Ref. 134).

e. *Bacteriologic contamination.* Transfusion reactions from bacterial contamination of blood are rare but serious occurrences. The high contamination rate (about 2 percent) (Ref. 135) seen in blood shortly after collection is not accompanied by clinical signs or symptoms at the time of transfusion because of the small number of bacteria present and their failure to survive or multiply during storage of the blood at refrigerator temperatures (Ref. 136). Those reactions that do occur are usually caused by gram-negative bacilli capable of growing in the cold (Ref. 137). Many of these organisms possess powerful endotoxins and, if transfused, bring about serious rections with a fatality rate of about 50 percent (Ref. 138). This problem has diminished dramatically with development of closed system processing and transfusion using plastic containers.

f. *Circulatory overload.* Circulatory overload is a common complication of whole blood transfusion especially when treating infants, patients with heart failure, and patients with chronic anemia. In the latter groups, cardiovascular compensation may be very precarious and the administration of unnecessary plasma in whole blood may precipitate left ventricular failure and pulmonary edema. Without monitoring pulmonary capillary wedge pressure, which is rarely indicated for the administration of blood, it may be impossible to detect early left ventricular decompensation before the onset of pulmonary edema. The resultant hypoxemia combined with the anemia and acute ventricular failure can be disastrous.

8. *Indications for transfusion of red blood cell products*—a. *Introduction.* Despite a large and long-standing experience, the indications for blood transfusion are not always easy to delineate. This is to be expected because of the complexity of transfusion products, wide variations in the homeostatic capabilities of patients, and the multiplicity of clinical situations that may be encountered. Thus, rules of thumb about when to transfuse, optimal hematocrit levels, and other such notions are unrealistic. The following discussion analyzes the recognized indications for blood transfusion, particularly in regard to the treatment of acute and chronic red cell deficits.

b. *Anemia.* The correction of a red cell deficit is probably the commonest reason for transfusing blood. In considering the indications for transfusing one must consider risk, benefit, and need. Risk is discussed elsewhere. As noted, it may be lower with some types of red cell preparations than with others.

The benefits of red cell transfusions are not as clear as they may seem. The red cell mass in any patient represents a dynamic equilibrium between production and loss. Any disorders of production or loss that can be corrected, should be. This will be more effective than the temporary benefit of transfusing red cells. If the hematocrit remains elevated after transfusion it is because the balance between production and loss has changed favorably, not because the transfused cells are somehow persisting indefinitely.

Given that transfusion brings about only a temporary increase in red cell mass accompanied by significant risk, there are situations where such temporary benefits outweigh the risks. Increasing the hematocrit increases oxygen availability by increasing the oxygen content of blood, while at the same time decreasing oxygen delivery by increasing the intrinsic resistance to blood flow. In order to predict the optimal hematocrit under varying conditions, detailed and accurate quantitative data on blood viscosity are

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required. The few studies in vivo that have been attempted indicate that the resistance of blood to flow is probably an exponential function of hematocrit, but with different relative changes in different vascular beds (Refs. 271 and 272). Factors other than hematocrit are also demonstrably important (Refs. 273 through 275).

Most authors agree that under the conditions that apply in the normal state, there is maximal oxygen delivery at normal hematocrits (Refs. 231 through 233 and 276). As flow rate decreases, there may be an advantage in moderate hemodilution, but more studies of this problem are needed under conditions that more nearly approximate those in vivo.

The hemodynamic changes in acutely anemic patients and animals have been reviewed recently (Refs. 280 and 281). Perhaps the most fundamental observation is that when other variables are kept constant, increased cardiac output is a most important compensatory mechanism to maintain nearly normal oxygen delivery. There are probably elements of both increased left ventricular work and decreased viscosity in the compensatory increase in cardiac output. Such changes in cardiac output can only occur if blood volume is maintained near normal. Therefore, it is mandatory that hypovolemia be avoided in the acutely anemic patient. Indeed, loss of blood volume is more detrimental to oxygen delivery than is loss of blood oxygen-carrying capacity except at extreme levels of anemia. The primacy of volume over red cell mass is a well recognized principle of resuscitation from hemorrhage.

In studies in patients with chronic anemias it has been difficult to detect a deficit in work capacity with hemoglobin concentrations as low as 7 grams per dL (Refs. 282 through 291). Other investigators have found evidence of only moderately impaired function (Refs. 292 through 296). This correlates with the failure to detect much increase in cardiac output at rest with similar hemoglobin levels (Ref. 297). Unfortunately, many of these studies were carried out before the awareness of the liability and responses of oxyhemoglobin affinity in vivo to stresses on oxygen delivery. By changing levels of 2,3-diphosphoglyceric acid (2,3-DPG) in red cells, these shifts could compensate for losses of red cell mass by proportionally increasing the efficiency of hemoglobin as an oxygen-delivering agent at physiologic gas tensions. In view of the importance of the affinity of hemoglobin for oxygen in the oxygen-delivering system, it is surprising how little has been done to investigate the interaction between hemoglobin function and hemoglobin concentration in the response to stress. This question is discussed in the section on Oxygen Transport.

The heart occupies a unique position in the oxygen-delivering system apart from its central role as pump. With loss of volume and/or loss of red cell mass as well as with most other acute stresses to the oxygen delivering system, the heart works harder to increase total flow or to minimize any decrease in flow at lower filling pressures. The oxygen requirements of the heart increase, either absolutely or relatively, at a time when systemic oxygen delivery is decreasing. Oxygen delivery to the heart itself occurs largely during diastole, and is threatened in the bleeding patient by lower diastolic pressure as central aortic pressure declines and less time in diastole as heart rate increases. Most other organs can greatly increase oxygen extraction by working at a lower partial pressure of oxygen, but in man this important mechanism is almost completely unavailable to the heart, which works at all times near the minimum functioning PO_2. This unusual constellation of circumstances, increased oxygen requirements, a tendency to decreased blood supply from purely physical factors, and inability to extract more oxygen from available blood, place extraordinary importance on the ability of the coronary vessels to dilate in order for the heart to perform satisfactorily and the patient to survive during hemorrhage. Against this background, factors such as hemoglobin function and hematocrit could conceivably become survival-limiting variables in patients with coronary vessel disease. There are a number of studies relevant to these questions which are beyond the scope of the current discussion, but some of these studies suggest that the heart with limited coronary perfusion may be very sensitive to the oxygen-delivering properties of the blood perfusing it (Ref. 86).

With respect to oxygen delivery as an integrated system, the body has regulatory mechanisms controlling a number of important components: cardiac output, blood volume, hematocrit, and 2,3-DPG levels. Presumably other variables are manipulated to give high efficiency to the cardiac mechanism, that is, maximum peripheral oxygen delivery per unit of energy consumed in pumping.

For the clinician faced with the problem of what is best for the anemic patient, it is important to keep in mind the risks of transfusion and the transitory nature of the improvement that results from transfusion. Chronic anemia down to hemoglobin concentrations that are half normal is tolerated even by patients who must perform physical work. Even acute anemia can be well tolerated at similar hemoglobin levels if demands on the oxygen delivering system are minimal. On the other hand, factors such as coronary insufficiency, fever, hypovolemia, and likely further acute loss of blood, greatly increase the risks of anemia.

There are no simple guidelines or rules for establishing the need for transfusion to correct anemia. Need will vary with circumstances, and the decision to transfuse must be made on an individual basis considering both the current status and projected future course of the patient and the risks of all courses of action.

c. *Hemorrhage.* Hemorrhage is a clear and logical indication for transfusion when a significant percentage of the patient's blood volume has been lost. Limited hemorrhage can be treated with simple salt solutions or natural or artificial colloidal solutions (Refs. 298 through 300). The use of such solutions results in hemodilutional anemia, and the considerations discussed in the previous section on anemia apply. These solutions can be used as the sole replacement for limited hemorrhages, to keep the patient alive until blood is available, or in combination with blood to lessen the total amount needed.

The important consideration in the management of hemorrhage is that blood volume must be maintained. Most patients can tolerate acute loss of half their red cell mass, but acute untreated loss of half a blood volume is usually fatal. Therefore, volume replacement, not necessarily in the form of blood, must be begun as soon as possible.

Simple electrolyte solutions are effective, safe, and practical for initial resuscitation from hemorrhage. Experience in Vietnam (Refs. 301 and 302) and detailed studies in the United States (Refs. 297 and 298) indicate that blood volume can be restored by electrolyte solutions after hemorrhage. With electrolyte solutions alone, however, each volume of lost blood must be replaced by three volumes of solution. Disadvantages are over-expansion of extracellular fluid requiring subsequent excretion by the patient, failure of the central venous pressure to reflect dangerous degrees of overloading loss of efficacy of the solution in terms of the fraction retained

in the vascular space as hemorrhage progresses, and lowering of plasma colloid osmotic pressure. Advantages are as follows: Administration of electrolyte solutions can be quickly and safely begun even outside the hospital; there are no adverse reactions except for overloading; the risk of post-hemorrhagic renal failure is reduced; losses through sequestration (third space losses) can be treated as they occur. Artificial colloids preserve plasma osmotic activity, but those now available in the United States, dextran and hydroxyethyl starch, may interfere with clotting (Ref. 184). The natural colloids, albumin or albumin plus other plasma protein preparations, do not interfere with clotting and carry little risk of hepatitis, but they are expensive and occasionally of limited availability.

Whatever is used initially, as the hemorrhage approaches half the blood volume, replacement with blood will be necessary. The more rapid the rate of bleeding and the more significant the associated diseases or disorders, the earlier blood must be used. Nonblood replacement of blood loss should be continued only if the anticipated loss is limited, the patient is doing well, and their are no associated conditions that make acute anemia less tolerable.

In severe situations in which exsanguination is imminent, it may be necessary to use uncrossmatched blood in order to save the patient's life. If possible, this will be type and Rh specific. The military experience with the use of uncrossmatched blood has been excellent (Ref. 185), but few of those recipients had been transfused or pregnant previously, and the blood was tested for high-titer anti-A and anti-B. In extensive bleeding the cause of hemorrhage must be identified and corrected as soon as possible. Evaluation of the clotting system early in the course of the hemorrhage occasionally yields evidence of a treatable clotting defect. Some patients with rapid exsanguination must be operated on to control bleeding before resuscitation is complete, as the maximum possible rate of administration of fluid and blood may not equal the rate of loss.

Monitoring central venous pressure can be helpful in the extensively hemorrhaging patient, but may not reflect overloading with simple salt solutions or, occasionally, acute left ventricular failure. Pulmonary capillary wedge pressure is more informative, but carries added risks and should be reserved for difficult situations. Blood pressure, pulse rate, respiratory rate, state of consciousness, urinary output, and skin temperature and color all can be valuable indicators of the adequacy of perfusion, but any of them alone can be misleading. Hematocrit, is a measure of red cell concentration and reflects changes in whole blood volume only over a longer range of time than is appropriate for resuscitation. Hematocrit, therefore, does not accurately reflect acute blood loss. Similarly, the central venous pressure does not always bear a linear relationship to blood volume. The rate of change with fluid administration is often more informative than the absolute level itself. Central venous pressure monitoring is most valuable as an aid to the early detection of fluid overload when administering blood or other fluids with plasma specific colloid activity.

d. *Clotting abnormalties associated with massive transfusion.* Component therapy guided by appropriate laboratory studies is the rational way to manage clotting abnormalities. The use of platelet concentrates, fresh frozen plasma, cryoprecipitate, and cryoprecipitate-poor plasma are indicated in the appropriate clinical setting. The use of clotting fractor concentrates, which are prepared from large plasma pools, are not indicated in the usual massive transfusion setting because of the high risk of hepatitis and other hazards.

The use of blood transfusions to correct coagu[redacted] abnormalities implies the use of fresh whole blood. This becomes rational only when multiple clotting deficiencies are to be treated simultaneously, appropriate components are not on hand, there is a concomitant need for red blood cells, and fresh blood is easily available. Such circumstances are most likely to occur in a small hospital when the need arises for platelet replacement in an actively bleeding patient. Even here, the use of fresh whole blood should be considered a temporary measure until platelet concentrates can be obtained. For replacement of plasma clotting factors, except factor VIII and factor V, blood 24 to 48 hours old is adequate.

e. *Exchange transfusion.* Exchange transfusion is an established therapeutic procedure for hemolytic disease of the newborn (Ref. 277). Special precautions are necessary for this particular version of massive transfusion as the metabolic defense of these sick newborn infants are not as efficient as in adults, especially if the infant is premature. The blood must be warmed, generally should be less than 5.days old, and adjunct therapy with calcium chloride and sodium bicarbonate may be necessary. The exchange rate must be carefully controlled, intake and output balanced, and the infant monitored closely. Mortality rates of 1 to 5 percent have been reported, although most deaths were probably due to underlying disease.

In performing exchange transfusion in the neonatal period, whole blood (CPD), heparinized whole blood, and frozen red cells reconstituted with fresh-frozen plasma are used, each having a number of real and theoretical advantages. It has been suggested, when using citrate-anti-coagulated blood, that half the plasma should be removed (Ref. 269). This will reduce the risk of citrate toxicity and leave the infant with a higher hematocrit at the end of the procedure.

Exchange transfusion has been extended to several other conditions, usually various forms of poisoning or intóxication, Recently, exchange transfusion has been used in the treatment of disseminated intravascular coagulation in infants, but there are no controlled studies. Exchange transfusion is being evaluated in the high-risk infants and in infants with respiratory distress syndrome (Ref. 270). Preliminary results are encouraging. A modification of exchange transfusion has been used for hepatic coma in adults. Total body washout is achieved by rapid exchange with cold asanguineous fluid followed by a short run on cardiopulmonary bypass to support the circulation, restore temperature, and restore red cell mass. The most notable successes have been in patients with Reye's syndrome and not in those with hepatitis A or B. Again, proof of benefit by controlled clinical trials is needed.

f. *Nutritional deficiencies.* Whole blood is occasionally given to provide a "general support," or to treat hypoproteinemia with some degree of concomitant anemia, or even to prepare a nutritionally depleted patient for some form of stressful treatment. All of these approaches and concepts represents serious misconceptions about the efficacy of blood transfusion, the dynamics of blood cell protein turnover in disease and malnutrition, the optimal management of the undernourished patient, and even more serious misconceptions about the risks of transfusion. General support and the correction of malnutrition are not legitimate indications for transfusion.

g. *Wound healing.* Wound healing is impaired by protein deficiency and hypoproteinemia, but is not impaired by anemia. Transfusion to promote wound dealing is not indicated; quite the

contrary, this is usually a florid example of poor medical practice.

h. *Extracorporeal circulation.* Some blood is necessary for cardiopulmonary bypass, but most such operations are now done using very little blood in the priming solution, allowing hemodilution during bypass and slowly replacing red cell mass after bypass. It is difficult to justify the persistent use of large amounts of blood in the priming solution in some institutions or to understand the marked interinstitutional discrepancies in utilization of blood for similar bypass procedures.

i. *Recommendations regarding red blood cell product indications.* (1) Red blood cell products should be administered only after a responsible physician has evaluated the potential benefit in light of the known risks and hazards.

(2) Red blood cell products are indicated to correct a red cell deficit, chronic or acute, when the deficit is severe enough to cause signs or symptoms resulting from oxygen deprivation.

(3) Red blood cell products are indicated to correct a red cell deficit in the absence of signs or symptoms when there is a reasonable expectation that serious signs or symptoms may soon occur if transfusion is not given.

(4) Whole Blood transfusion indications:

(a) Whole Blood is indicated for the replacement of actual or anticipated blood loss, e.g., during the course of major surgery, when the loss is massive, or, if the loss is moderate, when accompanied by signs and symptoms of oxygen deficiency or shock and when simultaneous restoration of red blood cells and volume is necessary.

(b) Extensive blood loss is also an indication for the use of Whole Blood when recognized single or multiple coagulation defects are present. The use of specific blood components is preferable, but in an emergency, or when these are unavailable and there is no reasonable alternative, fresh Whole Blood may be used. In general, this approach is not as efficacious as the judicious use of specific components.

(c) Whole Blood may be used when exchange transfusion is indicated in hemolytic disease of the newborn, and, perhaps, in selected cases of hepatic encephalopathy, acute massive hepatic failure, sickle cell crisis, post-transfusion purpura, drug intoxication, and respiratory distress syndrome in the newborn.

(d) Whole Blood is indicated to prime the pump-oxygenator for extracorporeal circulation in those special circumstances where crystalloid priming fluid alone cannot be used.

(5) Red Blood Cells (Human) (red cell concentrate, "packed cells") is the product of choice to increase the oxygen carrying capacity of blood in most situations requiring transfusion. It can be used in place of Whole Blood if administered in combination with specific components, crystalloid solutions, derivatives, or volume expanders as indicated by the patient's clinical condition.

9. *The donor*—a. *Donor standards*—(1) *Introduction.* A person's suitability to donate blood depends on two general considerations: The donation will not be injurious to the donor and the donated blood will not be unnecessarily hazardous to the recipient. Overly restrictive criteria for donor suitability are harmful because they unnecessarily reduce the number of eligible blood donors, thereby creating difficulty in maintaining adequate blood supplies. It is commonly assumed that only 3 to 4 percent of the eligible population donates in any year; however, this figure is probably inaccurate. The correct figure is probably about 8 to 9 percent, and up to 25 percent of the eligible population have donated at least once within a 10-year period (Ref. 139).

(2) *The physician's role in donor selection.* The Code of Federal Regulations (21 CFR 640.3) requires that a physician take responsibility for developing criteria for suitability as a donor, although he or she may delegate the day-to-day selection of donors to trained responsible individuals. The Code of Federal Regulations further mandates that a procedure manual describing these criteria be available in the blood bank. A physician need not be at a collection site. The American National Red Cross (ANRC) requires that donor selection be delegated to a person "no less professionally qualified than a Registered Professional Nurse" and that a physician or emergency medical facilities must be "available" and "no longer than 15 minutes away by automobile" from the blood-collecting team. Since there are few published data regarding how often serious reactions occur and whether they require the immediate availability of a physician, it is difficult to analyze this problem completely. A study by the United States Army found that 6.7 percent of their donors had reactions on the phlebotomy bed and another 3.8 percent after leaving the bed but before leaving the donor area (Ref. 140). In an unpublished study (Ref. 141) of 65,182 consecutive blood donations during a 12-month period, donor reactions occurred in 3.9 percent. Reactions classified as moderate or severe occurred in only 0.25 percent and only eight donors (0.012 percent) required medical consultation away from the donor site. Moderate or severe reactions include all instances where the donor lost consciousness no matter how transiently. There were no fatalities and no morbidity beyond the day of donation.

(3) *Donor safety.* 21 CFR 640.3 requires only that the donor shall be in good health, have a "normal" temperature and blood pressure, a hemoglobin level of more than 12.5 gm per dL (no distinction is made between males and females) and be free of any acute respiratory disease. Donations of a unit of whole blood may occur no more frequently than every 8 weeks, although this requirement and the blood pressure constraints may be waived in an otherwise acceptable donor at the discretion of an examining physician. All other donor standards listed in the CFR are clearly for the recipient's benefit.

(a) *Criteria to prevent anemia in the donor.* It is well recognized that normal hemoglobin levels are higher in men than in women. Thus, although not required by the CFR, most blood donor centers use a higher minimal level for men, 13.5 gm per dL, than for women, 12.5 gm per dL. The copper sulfate method for estimating safe minimal hemoglobin levels is in wide use today and uses two solutions of differing specific gravities, one for men, the other for women.

It has been suggested (Ref. 145) that the specific gravities of the copper sulfate solutions be increased to avoid phlebotomy of iron-deficient donors. To counterbalance an increased deferral rate of normal donors with this approach, it was also recommended that finger stick microhematocrits be performed on all those who "fail" the copper sulfate test. Spurious results, both high and low, may be obtained with the copper sulfate technique (Ref. 142) owing to technical errors, donor-sampling variables such as use of venous blood, ear or finger prick (Ref. 145), or donor variables such as hyperproteinemia (Ref. 143). Also, quality control on the copper sulfate solutions may not be adequate (Ref. 154).

Of major significance is the site of blood sampling for hemoglobin determination. It has been shown that samples obtained by ear prick give less consistent and generally higher hemoglobin values than samples obtained by finger prick or from venous blood (Refs. 189 through 191). In one

study, the donor rejection rate was 7.96 percent by finger prick and only 1.94 percent by ear prick (Ref. 189).

In healthy individuals with adequate dietary intake, the daily iron requirement depends primarily on age and sex. Within the usual age for donating blood, the donor's sex is the primary variable. Men lose about 1 mg of iron daily and absorb the same amount from the average daily dietary intake of about 10 mg. Menstruating women lose about 2 mg of iron per day and, without dietary supplementation, may or may not increase absorption sufficiently to prevent iron deficiency. Childbearing adds a significant additional requirement for iron in that a net loss of 400 mg occurs during pregnancy. Once iron deficiency anemia occurs, it is generally recognized that increased absorption of normal dietary iron cannot adequately compensate for the deficiency and drug iron supplementation is necessary.

Phlebotomy of 8 percent of the total blood volume, removal of approximately a unit of blood from an average person, causes a 6 percent drop in the donor's hemoglobin level within 1 week. Hemoglobin levels return to normal after another 2 weeks (Ref. 144). However, each 450 mL of donated blood contains about 250 mg of iron or about 5 percent of the total body iron. Thus, a frequent blood donor in good health can become iron depleted in a few years if there is inadequately increased absorption of dietary iron. In donors, particularly women, who have compromised iron reserves, inadequate intake, or impaired absorption, the occurrence of iron deficiency is inevitable.

The prevalence of iron deficiency and/or iron deficiency anemia in the normal adult population has been the subject of a number of studies (Refs. 146 through 150). Broad generalizations are risky because of a number of variables among these studies, particularly those related to dietary iron intake and to criteria for establishing iron deficiency and iron deficiency anemia. A recent study (Ref. 148) of a northwest United States population, using 3 parameters for evaluating iron status, found iron deficiency in 20 percent of menstruating women and in 3 percent of men. The data also suggest that about 10 percent of all persons who might be blood donors are iron deficient, and the current tests for anemia in the donor population would detect fewer than half of them.

The iron status of blood donors has been studied extensively. Decreased serum iron and/or increased iron-binding capacity (Refs. 147 and 152) or diminished stores (Refs. 146, 147, 151, and 152) have usually been found. As early as 1944, anemia was found to correlate with the number of previous blood donations (Ref. 153) and reduced serum ferritin levels have been correlated with donation frequency as well (Ref. 187). The inescapable conclusion of all these considerations is that iron depletion and occasionally iron deficiency anemia will occur with measurable frequency in the blood donor population that donates blood regularly, particularly in women donors.

Iron depletion without anemia does not seem to be associated with any morbidity in man. Mild degrees of iron deficiency anemia are also generally well-tolerated. However, it seems desirable to prevent the occurence of iron deficiency aneima among blood donors so that they would not be subject to unnecessary medical evaluations and would have adequate compensatory capabilities if unexpected hemorrhage should occur.

There are a number of ways of dealing with this problem. One approach is to reduce the permissible frequency of blood donation, particularly among at-higher-risk women donors. A second approach is to recommend iron supplementation after blood donation as is currently being done by the British National Blood Transfusion Service. Even this approach will not be entirely effective in preventing iron depletion in very frequent donors (Ref. 152). A third approach may be to increase the acceptable level of hemoglobin for determining donor suitability.

The presumed benefits of reducing the frequency of blood donation must be weighed against the possibility that such a regulation would reduce the blood supply in this country. While there are undoubtedly a number of donors who donate regularly every 8 weeks, these may represent a small percentage (1.7 percent) of all blood donated (Ref. 188). Irrespective of this, the issue appears to be one of balancing societal interests in the blood supply against those of the individual donor. Similarly, the benefits of iron supplementation to donors must be weighed against the occurrence of gastrointestinal distress from the medications and the possibility of masking iron deficiency from a pathological cause and thereby delaying detection and early treatment of disease.

(b) *The donor must have a normal temperature.* This standard seems directed primarily at protecting the recipient from possible infection from blood obtained from a febrile infected donor. Fever is a clinical sign usually indicating an underlying pathological process and this standard might protect the donor as well. The delineation of normal temperature is more difficult, however. The mean normal oral temperature in a number of studies was 98.34 °F with a standard deviation of 0.47. It has been calculated that the normal range of temperature would then be between 97° to 100.4 °F. Furthermore, there is a diurnal variation in temperature which may be as much as 3 °F (Ref. 99). Fortunately, the peak temperature usually occurs between 6 and 11 p.m., while the nadir occurs at between 4 and 6 a.m., both times not usual for blood donations. These data apply to the resting state; in more usual circumstances other factors, such as degree of activity, play significant roles. Pathological conditions also affect the temperature level significantly, usually by producing an elevation. Conditions which cause low temperature levels, such as hypothyroidism, are distinctly uncommon. Both AABB and ANRC standards require only that the donor's temperature be below 99.6 °F. The rationale behind this limit is not known. Whether increasing the upper temperature limit would increase the donor pool significantly without compromising the quality of the product is unclear.

(c) *Weight.* Although not required in the Code of Federal Regulations, both AABB and ANRC standards require donors to weigh at least 110 pounds if they are to donate one unit (450 mL) of blood. Although apparently an arbitrary standard, it seems a reasonable protection against acute hypovolemic hypotension which might occur in a donor below the weight standards. For example, a 110-pound, five-foot tall woman has a blood volume of about 3 liters. Phlebotomy of one unit of blood amounts to an acute hemorrhage of about 15 percent of her total blood volume, probably the upper limit of acute hemorrhage that is not associated with frequent postural hypotension. While it is recognized that blood volume estimation based on weight alone is inaccurate, the minimum weight criterion seems effective and not unnecessarily exclusive.

(d) *Pulse rate.* Although not required in the Code of Federal Regulations, both the AABB and ANRC have pulse rate standards (AABB 50 to 100 per minute; ANRC 60 to 100 per minute). Bradycardia and tachycardia may occur in normal persons. Here again, while arbitrary and occasionally excluding healthy donors, these standards are reasonable to protect prospective donors who might have heart disease.

As a general practice, donors with irregularities of pulse are referred to

supervisory personnel for evaluation. Donors with sinus arrhythmia or atrial premature contractions are usually acceptable. Similarly, healthy donors with physiological bradycardia, such as can be seen with trained athletes, may be accepted.

(e) *Age limits.* Although age limits are arbitrary, upper limits are based upon well established correlates of the probability of cardiovascular disease as a function of increasing age. The present regulations provide for individual judgments to be made beyond the usually accepted age range for donations.

(4) *Recommendations regarding donor standards.* (a) Acceptable minimum hemoglobin level for males should be increased to 13.5 gm/dL.

(b) Donors may not donate more than four times per year and no more frequently than every 8 weeks. Procedures to bleed donors more frequently may be established with the concurrence of the Bureau of Biologics if adequate means are employed to protect donors from the development of iron deficiency.

(c) Hemoglobin levels must be determined in a manner that correlates with concentration in venous blood.

(d) Research should be encouraged into the feasibility, acceptability and efficacy of administering iron supplements to blood donors.

10. *Testing of donor blood*—a. *Blood typing.* Characterization of the ABO and Rh types of all donor bloods is universally practiced and mandated in the Code of Federal Regulations (21 CFR 640.5). Although there are hundreds of blood group antigens on the red cell surface, those in the ABO and Rh systems are critical because of their immunogenicity, frequency distribution, and the dire consequences of transfusion when incompatibilities exist. The reliability of ABO and Rh typing depends largely on (1) the quality of reagents used for testing, (2) the tests that are performed, (3) the controls used in tests, (4) the competence of the technologist, and (5) the recordkeeping and organizational and operational abilities of the blood collection center.

b. *ABO typing.* The most important test is determination of the ABO type. The serious complication of transfusing ABO incompatible blood, frequently fatal when it occurs, demands that this test be performed by a dedicated technologist using the utmost care, highest quality reagents, and well-controlled labeling procedures.

ABO typing (also called grouping) is usually done with monospecific anti-A and anti-B reagents. In many laboratories, an additional test using anti-A, B (group O serum) is also done to check on the monospecific tests and to detect variants of A or B red cells. Most laboratories also perform so-called reverse grouping (serum typing or "back typing") in which the donor's plasma is tested with known type A and B RBC. This confirms the cell typing since normal persons have serum antibody specificity antithetical to the cell type.

Current standards for antisera used in ABO typing are the subject of another review in this document. These reagents are designed to give strong reactions when tested against cells specific for the labeled antigentic type and are more than adequate to facilitate accurate serological determination by even relatively unskilled technologists. There are, however, situations in which routine testing with anti-A or anti-B is not entirely adequate in that erroneous results will be obtained unless additional tests and/or control observations are made. These include:

(1) *Weak sub-groups of A or B antigens.* Numerous variants of the A antigen give weak or no agglutination when tested with usual blood-typing reagents. In some persons of group AB, the B antigen weakens the reactivity of the associated A leading to weakened agglutination when testing is done with anti-A reagents.

(2) *Positive direct antiglobulin tests.* Blood donors who have positive direct antiglobulin tests may be erroneously type as positive for certain red cell antigens as a result of excessive globulins bound to the red cell surface. This is true particularly with blood-typing reagents diluted in high-protein media or automated blood-typing systems.

(3) *Other conditions.* There are a variety of other conditions that may affect the accuracy of blood-typing reactions. These include acquired B antigens, hypoglobulinemia, hyperglobulinemia, polyagglutinable red cells, and recent previous transfusion with blood of a different type.

c. *Recommendations regarding ABO typing.* According to the Code of Federal Regulations (21 CFR 640.5(b)), blood shall be classified as to ABO blood group by at least two separate blood group tests, and blood-grouping results obtained by the different methods and with different lots of reagents must be in agreement. The Code is not specific about the tests required. In the interest of accurate ABO blood type determinations, the Code of Federal Regulations should be modified to be more specific as follows:

(1) Licensed anti-A and anti-B reagents or equivalent must both be used for determining blood type.

(2) Reverse grouping of donor plasma or serum against red blood cells of known ABO type (A and B) must be part of the routine testing.

(3) Cell and serum grouping must be in agreement before a final label is placed on the blood.

d. *Rh typing.* Typing for the Rh_o(D) antigen is routine on all donor bloods. Because the majority of Rh antibodies are of the coating ("incomplete") type, Rh typing usually is done in the presence of added protein and/or other diluent materials and a control test is required using a high protein solution and/or other diluent solutions without any anti-Rh_o(D) antibody. A positive control test suggests that the Rh typing may be erroneous.

If the test with Rh antisera is positive, the donor is considered to be "Rh positive." If there is no agglutination the donor may ge Rh negative, although some of the persons whose cells fail to react are, in truth, Rh_o positive. These persons are of the D^u phenotype and can be detected by incubating donor erythrocytes with Rh antibody, washing them, and then performing an indirect antiglobulin test. Only persons negative by direct typing and D^u testing are truly Rh_o negative.

Some laboratories further test Rh_o negative blood for other Rh antigens, particularly C and E. Approximately 97 percent of Rh_o(D) negative individuals have the Rh genotype *rr* (*cde/cde*) and thus also lack C and E antigens. In some laboratories the 5 percent of Rh_o(D) negative individuals who are positive for either the C or E antigen are generally not used as donors for Rh_o(D) negative (*rr*) recipients because of the possible immunization of the recipient to the C or E antigens. This practice is unnecessary and inconsistent because: (1) C and E are relatively weakly immunogenic, and (2) there are situations of Rh positive donor-recipient pairs where the donor has C or E while the recipient is negative for these antigens.

Rh typing is second in importance only to ABO typing. The Rh_o(D) antigen is probably the most immunogenic red cell antigen outside the ABO system. Thus, the likelihood of immunization when an Rh_o(D) negative recipient is transfused with Rh_o(D) positive blood is high, although by no means certain. Development of antibodies to the Rh_o(D) antigen compromises the safety of future transfusions should Rh_o(D) blood be used. It also has significance in women recipients with a change of childbearing because of the possible induction of maternal Rh_o antibodies that are crucial in the pathogenesis of hemolytic disease

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of the newborn. These considerations make the requirement for Rh_o (D) typing of considerable importance.

The necessity of D^u typing has been questioned. If D^u testing were not done, these units would be labeled as Rh_o negative and transfused into Rh_o negative recipients. In one study of 45 donor recipient pairs (Ref. 155), there were no instances of immunization of Rh_o(D) negative recipients to the Rh_o(D) antigen after transfusion with D^u positive blood. Immunization with D^u blood has been reported rarely (Refs. 156 and 157), but in one case the specificity of the resulting antibody is in question (Ref. 158). Thus, the immunogenicity of the D^u antigen is low. However, D^u testing does afford an extra measure of protection, perhaps only theoretical, against immunizing women with a potential for childbearing.

e. *Recommendations regarding Rh typing.* (1) Testing for the Rh_o variant D^u is required. Blood that is D^u positive should be labeled Rh_o(D) positive.

(2) Routine testing for C and E or other antigens should not be required.

f. *Antibody detection tests.* Although not required by the Code of Federal Regulations, antibody detection testing on donor serum is common in most blood collection facilities. If the test is negative, the blood is labeled "no unexpected antibodies detected when tested by * * *." Unexpected antibodies are found exclusive of the normally occurring anti-A or anti-B alloantibodies. Unexpected antibodies found may or may not be identified, depending on the practice of the particular blood collection facility. The label must indicate that antibody is present, and if identified, the specificity must be noted. Such units may be transfused at the discretion of the transfusion service director and attending physician. The incidence of significant antibodies is low in healthy individuals who have never been pregnant or transfused with red blood cell products. It has been found (Ref. 192) that 0.322 percent of all donor bloods contain unexpected antibodies, 80 percent of these in women. Antibody screening eliminates the need for minor cross-matching prior to transfusion.

Considerable controversy exists over many facets of antibody screening. Should antibody screening be mandatory for all units of blood collected? If so, which test(s) is (are) most suitable? Should antibody identification be mandatory for those units in which antibody is detected. Which antibodies are clinically significant when transfused into a recipient? The question of clinical significance must be addressed in relation to the transfusion in prospect. For example, the presence of anti-Rh_o (D) in Rh negative donor blood may be significant if transfused into an Rh_o(D) positive recipient, but is insignificant if the recipient is Rh_o(D) negative.

It is advisable to do whatever antibody testing is required as part of the routine processing of donor blood. This permits detection of antibody-positive units at the time of collection rather than in the transfusion service where unexpected findings can delay transfusion to a patient. Serum from donors without antibody need not be tested against recipient cells (minor cross-match) eliminating that time consuming and, at times, confusing procedure in the pretransfusion evaluation.

Antibody screening at the collection center also leads to detection of rare donor units because the presence of antibody implies that the donor is negative for the corresponding antigen. These rare donors should be registered for future recruitment should there be a need for their blood. In addition, the red blood cells may be frozen for use when rare blood is required.

There are numerous procedures, both manual and automated, for antibody detection testing. The goal is to detect all clinically significant antibodies, but not necessarily all antibodies. While the question of which antibodies are clinically significant is thorny, there appears to be agreement that antibodies reacting only in vitrol at 5° C, and/or room temperature, but not at 37° C, usually are of little clinical importance. Most clinically significant antibodies belong to the IgG immunoglobulin class and a test to detect these is necessary. Within these constraints, there are numerous acceptable procedures for antibody screening.

Determination of specificity on antibody detected in donor plasma is desirable to identify special donors who might be needed in the future and to allow development of a frozen red cell inventory. Antibody identification could be done at the blood collection facility or the transfusion service, whichever has greater competence.

An alternative to testing all donor bloods for unexpected antibodies has been developed, which appears efficacious in ascertaining those units which contain antibody (Ref. 192). With this approach, only donors giving a history of previous pregnancy or blood transfusion and all Rh negative donors are tested for irregular antibodies. The incidence of undetected sensitized donors with this approach was estimated at 1 in 10,000.

While it is generally conceded that transfusion of antibody (outside of anti-A, anti-B, and anti-D) in donor plasma is of little clinical significance and there has probably never been a well-documented case of this hazard (Refs. 192 and 193), there appears to be no good way of ensuring this in every case. Undoubtedly, in some cases the passive transfusion of antibody results in a positive direct antigobulin test in the recipient and may create unnecessary laboratory confusion and testing if post-transfusion samples are evaluated. Furthermore, the amount of antibody transfused must be considered relative to the recipient's blood volume. Also, the amount varies with the blood product; whole blood contains about three times as much plasma as red blood cells, while deglycerolized red blood cells contain almost none. Problems with infusion of antibody are thus more likely to be seen with whole blood transfusion. The major drawback in labeling units of blood containing antibody is that some physicians will not use this blood in appropriate and safe settings because they do not understand the issues involved. This problem in medical education does not seem amenable to correction by compromising the quality of testing or by failing to disclose what the blood contains.

In summary, antibody detection and identification procedures on donor blood are valuable: (1) In identifying blood that might be harmful if transfused, (2) in identifying blood that might confuse future serological evaluation of the recipient, (3) in selecting donors who might be called when specific phenotypes are needed, (4) in permitting frozen storage of blood of known phenotypes, and (5) in identifying donors who could be used as a source of blood-typing reagents. Proper selection of test conditions and reagents is vital for adequate antibody screening and idenfitication. Routine testing is not generally useful at a temperature less than 20 °C, and conditions should be appropriate for detecting IgG coating antibodies. While the clinical importance of passive antibody transfusion is slight and is related to the product transfused, the size of the recipient, the specificity and immunoglobulin class and subclass of the antibody, and the presence of the corresponding antigen in the recipient, the designation on the label of any antibody specificity present permits the transfusion therapist and clinician to make sound clinical decisions with all the available facts. For frozen deglycerolized red blood cells, however,

such a designation is unnecessary, inaccurate and, perhaps, confusing.

g. *Recommendation regarding antibody detection tests.* (1) In general, each unit of donor blood should be screened for unexpected antibodies either using Reagent Red Cells intended for this purpose or by an equally effective method. Thus, in carefully selected populations an adequate medical history may be utilized in lieu of laboratory tests for unexpected antibodies provided the procedure meets FDA requirements.

(2) Donor blood found to contain significant antibodies should not be used for transfusion purposes unless the plasma has been removed.

(3) Tests utilizing donor serum and recipient cells should not be required as part of pretransfusion testing.

(4) If the unit of blood is to be transfused without significant levels of donor plasma, antibody screening and identification are not necessary.

(5) Research should be encouraged to develop alternative methods to detect and define antibodies that are of clinical significance.

11. *Testing for serological incompatibility (cross-matching).* The test for serological incompatibility (cross-matching) occupies a central role in determining safety of blood transfusions. It is the final laboratory test performed prior to transfusion and is an attempt to ascertain whether the donor red blood cells to be transfused will have a normal life span in the recipient. This procedure must be performed prior to transfusion except in situations where the time required for such tests would compromise the recipient's chances for survival.

Cross-matching is necessary for two primary reasons. The human red cell contains numerous antigens, each potentially immunogenic. It is impossible and undesirable to phenotype all potential blood donors and recipients in an attempt to transfuse completely matched blood; it is routine to type only for the A, B, and the Rh°(D) antigen. This practice is based on both the known disastrous consequences of transfusion of ABO incompatible blood and on the immunogenicity and relative frequency of the Rh antigen within the population. Furthermore, most transfusion services now routinely test potential recipient's plasma for unexpected antibodies by using specially prepared test cells which bear a large number of erythrocyte antigens. Antibodies in the recipient directed against antigens on donor RBC but not on the test cells are detected by the cross-match. Thus, the cross-match tests recipient's plasma for antibodies against donor RBC antigens (other than ABO and Rh) which may have been missed by routine plasma antibody screening procedures. A second, and no less important, role of the compatibility test is that it helps in discovering errors in ABO and Rh typing or labeling.

a. *Limitations of cross-matching.* Despite its importance, cross-matching has certain limitation:

(1) Not all errors in labeling or typing will be detected by this test.

(2) In vitro testing for serological incompatibility is not always predictive of survival in vivo. Recipient antibody against donor red cells does not always mean that, if transfused, the cells will have a shortened survival. Conversely, the absence of antibody as determined by the cross-match cannot ensure in vivo red cell survival.

(3) Cross-matching will not prevent the immunization of a recipient since it only detects performed antibody.

b. *Technical considerations regarding cross-matching.* The major cross-match tests donor erythrocytes against recipient serum and the minor cross-match tests recipient erythrocytes against donor serum. The importance of the major cross-match has never been questioned seriously because it is designed to detect the presence of antibody in the entire plasma volume of the recipient which is directed against donor erythrocytes. Whether antibody screening alone of recipients would suffice in certain transfusion settings is the subject of considerable recent discussion but beyond the scope of the Panel's work.

The minor cross-match is designed to detect a finite and relatively small quantity of antibody in donor plasma directed against the entire erythrocyte mass of the recipient. This latter test, widely used in the past, is unnecessary because:

(1) The majority of donor processing laboratories now do antibody screening on all donor bloods.

(2) Infusion of plasma containing antibody in the course of a transfusion results in an immediate dilution of that antibody approximately tenfold in the average adult, thus rendering the antibody harmless for the recipient in most cases.

(3) Unexpected donor antibodies almost never cause hemolytic reactions. For more discussion of this issue see section on Antibody Screening.

c. *Recommendations regarding cross-matching.* Tests for incompatibility shall employ methods that demonstrate significant hemolyzing, agglutinating, and coating antibodies which are active at 37° C and shall include antiglobulin tests or their equivalent.

12. *Serological testing for syphilis in blood donors.* The routine testing of blood donors for evidence of syphilitic infection became common practice in the era when blood was transfused in the fresh state and when there was only questionably effective treatment for syphilis. The transmission of syphilis by blood transfusion was a documented hazard with potentially severe consequences for the recipient. Testing of the donors at the time of collection seemed to be a logical and possibly effective control measure (Ref. 159).

Transfusion-related syphilis has not been reported in the United States for over 20 years. There is reason to believe that this success is not due solely or even primarily to routine serological testing of the donor. This practice, which has now become codified (21 CFR 640.5(a)), should be reexamined.

There are three hypothetical reasons for performing serological tests for syphilis (STS) in all blood donors: Prevention of syphilis in the recipient, detection of syphilis in an asymptomatic donor, and detection of "biological false positive" (BFP) reactors and removal of this blood from the blood banking system.

Routine STS probably has little to do with prevention of syphilis in recipients because the STS is often negative during the early period of infectivity. Further, most blood is now usually transfused after at least 4 days of liquid storage (exact figures are not available), which alone is sufficient to eliminate infectivity for syphilis (Refs. 100 and 160 through 163). It is quite likely that the great majority of the recipients of blood less than 4 days in storage receive antibiotic treatment because of the nature of their illnesses. Syphilis is no longer the dreaded, incurable disease it once was. If the control of syphilis were worth of being singled out for such attention, it would be more efficient to test the recipients 3 weeks to 4 months after transfusion. After 3 weeks, passively transfused regain will probably have fallen below the level detected by currently used STS, and any new syphilitic infection in the recipient would be manifested by a positive STS by 4 months (Ref. 164).

As a case-detecting and venereal disease-controlling strategy, routine STS of all blood donors has some rational basis, but the cost-effectiveness ratio should be carefully examined. In testimony in open session before the Panel, it was estimated that there is one true positive STS per 1,400 donor tests in the United States as a whole. Of 26,128 cases of primary and secondary syphilis reported to the United States Public

Health Service (USPHS) in 1975, only 154 were detected by screening blood donors (0.6 percent). Only 521 cases of syphilis in all stages were detected and reported, from an estimated 8 to 9 million tests. Even with this yield, more rigorous systems of followup on reported reactors and their contacts would be necessary in order for the program to be truly effective. If the act of blood donation is to be used as an opportunity to engage in the random screening of the health of asymptomatic adults, it is not logical to single out syphilis as the disease worth this effort.

The final consideration in STS of blood donors is the Biological False Positive (BFP) reaction. Recent data (Refs. 165 and 166) indicate that the BFP now accounts for 90 percent of the positive reactions to STS in the United States. If ture, this seems to reflect a continuing increase in this fraction, which was reported in the early 1950's as 50 percent in some areas of the United States (Ref. 167). The absolute percent of the total population with BFP (0.47 percent then versus 0.4 percent now) indicates that most of this trend is due to the reduced number of true positive reactors reflecting infection. It is clear that most positive reactors now have BFP reactions.

The BFP reaction seems usefully divided into two categories: acute (reversion to negative within 6 months in the absence of treatment for syphilis) and chronic (continued positive reactions in the continued absence of evidence of syphilis with more specific tests and on physical examination). The acute BFP reactions are associated with a wide variety of conditions, most of them infectious (Ref. 175). Most texts now state that almost any acute febrile disorder or immunization can result in an acute BFP (Ref. 168). Some of the better documented causes, however, are infectious diseases that could be transmited by transfusion where they could induce significant illness in the recipient, e.g., malaria, infectious hapatitis, infectious mononucleosis. The temporal relationship between infectivity as a blood donor and the development of a BFP is not known for these illnesses. Other causes for BFP mentioned are Hodgkin's disease, sarcoidosis and, increasingly, intravenous drug abuse. There is some dispute about the role of repeated blood donation in causing BFP reactions.

The chronic BFP reactors are an interesting group of patients who have been studied in detail and followed carefully in several investigations (Refs. 167 through 169). Up to 80 percent develop manifestations of dysgammaglobulinemia. As many as one-half develop laboratory and clinical signs of a "collagen disease," usually systemic lupus erythematosus (SLE), within 10 years. Only about one quarter remain seemingly healthy 10 years after their detection as a BFP reactor. The disorders associated with BFP reactions are serious, sometimes fatal, diseases without known cause or cure. There is no evidence that these conditions can be transmitted by blood transfusion. Conversely, their very slow onset and gradual development make it unlikely that transmission by transfusion would be readily detected. In fact, it would require very long range, careful followup of a type that is rarely done to detect this result because the latent period can exceed 10 years in the donor.

a. *Summary regarding the STS.* The mandatory STS on all blood donors represents an unusual regulatory situation. The practice was instituted for good reasons and was initially probably beneficial to donors and recipients. Both the potential infectivity of the blood and the treatment of the disease have changed drastically, however, and the STS probably has little value now in preventing the transmission of syphilis by transfusion. It may have some small value in case-detection of syphilis, but this does not seem an appropriate indication to mandate its continued use. There is no evidence that the biological false-positive STS reaction is associated with any known acute or chronic diseases that might be transmissible by transfusion. Nevertheless, because the frequency of the BFP reaction is relatively high, it might indicate the presence of a transmissible disease.

b. *Recommendations regarding the STS.* The STS should be eliminated as a mandated test on donor blood prior to release for transfusion.

13. *Testing for hepatitis.* Estimates of the incidence of post-transfusion hepatitis are difficult to find. In 1970 (Ref. 172), the National Research Council (NRC) estimated that perhaps there were 30,000 cases of clinical hepatitis annually, with a mortality rate of 10 percent. They also suggested that there may be up to five times that many cases when one considers subclinical cases. More recent studies (Ref. 173) estimate the risk of post-transfusion hepatitis at 6.4 cases per 1,000 units of blood transfused; one-third of these are icteric. This estimate is consistent with the earlier one of the NRC. The difficulty in defining the precise risk is related to numerous variables including ineffective reporting and followup, variable criteria for diagnosis, and source of donor blood from both a geographic (Ref. 174) and socioeconomic (Refs. 82, 176 and 177) point of view.

Two risk factors for post-transfusion hepatitis have been clearly identified. Blood obtained from paid blood donors carries a higher risk (Refs. 82, 176 and 177), although payment per se does not make the blood more dangerous. Undoubtedly, socioeconomic factors related to donor recruitment are important. The second risk factor is the presence of the hepatitis B surface antigen (HBsAg) (Refs. 178 through 182). The introduction of universal HBsAg testing on all blood donated in the United States, particularly with sensitive third generation tests, has been associated with a reduced incidence of post-transfusion hepatitis. Eliminating the commercial blood source would be even more effective in this regard (Ref. 82). The recently published Food and Drug Administration regulation requiring designation of whether a unit has been obtained from a paid donor is directed at this risk factor.

In recent years, studies have been increasingly directed at elucidating the etiological agent(s) responsible for post-transfusion hepatitis unrelated to the Hepatitis B agent. While hepatitis A may be involved in some cases, it is clear that there are a large number of "non-A and non-B" cases which currently escape detection for lack of appropriate tests. Development of these test must be encouraged (Refs. 80, 81, 183 and 186).

New lines of investigation hold promise for improved control of Hepatitis B infection. Studies on the core antigen, HBcAg, and its antibody, the e antigen and DNA polymerease hold promise for better understanding of Hepatitis B and perhaps ascertainment of which units are truly infectious.

No changes are recommended at this time regarding hepatitis testing of stored red blood cell products.

14. *Labels for blood bags*—a. *Content and design.* The label affixed to the blood bag must be designed to enhance the safety of the product by providing adequate vital information to all individuals who handle it. Unnecessary information, or information that is readily available elsewhere, when present on the label, may interfere with optimal blood bank practice by distracting the eye from the vital information. As it is generally agreed that most avoidable serious complications of blood transfusion result from "clerical" rather than technical errors, the information present on the label and the manner in which it is displayed assume major significance.

Labels currently affixed to units of whole blood or red blood cells contain much information which is almost never read or used. Much of the information documents that the units have been processed in a manner which meets Federal regulations. As blood may not be collected or transfused otherwise, the presence on the label of such information is unnecessary and detracts from the safe use of the product. However, this information should be available in every blood bank as part of the product labeling.

b. *Color coding of labels.* Currently, color codes for blood typing labels are optional. While there are no data to indicate whether color coding of labels for ABO blood types would help reduce blood transfusion errors, the Panel feels that immediate recognition of blood types by label color would be advantageous, particularly in acute, massive transfusion situations.

c. *Recommendations for blood bag labels.* The following information on labels affixed to units of Whole Blood (Human) or Red Blood Cells (Human) is vital to the safety and effectiveness of the product and must appear on the bag with the first four items in greatest prominence:

(1) Name of the product including designation of the anticoagulant-preservative solution. The designation "(Human)" is unnecessary.

(2) Blood type. ABO and Rh (Rh_oD positive or negative) types of blood are of vital importance and must be displayed most prominently.

(3) Expiration date.

(4) A unique number which will permit tracing the unit of blood back to the donor. The number used to identify the unit of blood must be the only prominent number.

(5) Manufacturer's codes, referring to codes of blood bag manufacturers including lot numbers have no intrinsic value in routine use and should be displayed on the label in an unobtrusive place in small print.

(6) The name of the blood collection facility should be on the label in an as unobtrusive manner as possible.

(7) The designation that the unit was collected from a "Volunteer Donor" should be discontinued. The designation "Paid Donor" should be retained and used when appropriate.

(8) Instructions:

(a) Store between 1 to 6 °C.

(b) Do not add medication other than 0.9 percent NaC1 solution.

(c) Transfuse through a filter.

(9) The following statement, "For additional information refer to circular of information."

(10) Space for additional labeling. If the unit has special properties, e.g., donor antibody or an unusual red cell phenotype, this should be noted on the label in an available space.

(11) License number in a small and unobtrusive manner.

(d) *Other label recommendations.* (1) Blood labeling regulations should be modified to require that those items listed above, and only those items, be present on all units of Whole Blood and Red Blood Cells as delivered by the collecting agency.

(2) Research should be encouraged for analysis of the best eye-readable format for blood bag labeling.

(3) The developing of machine-readable costs on labels must be conducted in a way to assure that the results would not detract from the eye-readable aspects of the label.

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4. Whole Blood (Human) Heparin

Generic Statement

1. *Introduction.* The commonly used anticoagulant-preservative solutions for collection of blood contain citrate to provide a calcium binding effect to prevent clotting. There are clinical situations in which citrate might adversely affect the availability of ionic calcium in the blood of the recipient (see the section on anticoagulants in relation to whole blood). In addition there is an acid load of up to 30 to 40 mEq per liter in stored citrated blood. The excess acidity is due mainly to the citric acid in the anticoagulant and the lactic acid generated during storage (see section on acid-base alterations of whole blood). For these reasons, other substances have been considered for use as anticoagulants.

Heparin is a sulfated mucopolysaccharide that acts with a co-factor antithrombin III and is a potent anticoagulant (Ref. 1). The co-factor is present in adequate amounts in normal donor plasma so that the addition of heparin alone will provide the desired anticoagulant effect. Heparin appears to act at more than one point in the sequence of coagulation in that it appears to inhibit the conversion of prothrombin to thrombin and also inhibits the action of thrombin on fibrinogen (Ref. 1).

Heparin is not a suitable anticoagulant for long-term storage of blood. With time, its effects are neutralized by normal constituents of blood (Ref. 1). In addition, it is not a preservative of red blood cells (Refs. 2 through 4). The amount needed as an anticoagulant for human blood intended for transfusion is 75,000 units of Heparin Sodium (U.S.P.) with sufficient Sodium Chloride Injection (U.S.P.) to make 1,000 mL. Six mL of this solution as used for each 100 mL of whole blood (Ref. 6) will provide adequate anticoagulant effect for no more than 48 hours. Plasma separated from heparinized blood is not suitable for use as Single Donor Plasma (Human) or as a starting material for preparation of Cryoprecipitated Antihemophilic (Human) Factor or platelets.

2. *Analysis of indications and labeling*—a. *Indications.* This product is indicated when there is a need to provide both red blood cells and plasma and the administration of a citrate is contraindicated. Depending on the clinical situation, heparinized blood may be indicated in exchange transfusions of newborn infants, when large amounts of blood are required in patients with liver disease and who are unable to metabolize citrate rapidly and in cardiopulmonary surgery with extracorporeal circulation.

b. *Evidence of effectiveness.* It is not possible to find detailed controlled studies which establish the effectiveness of Whole Blood (Human) Heparin. There is anectodal information that it has been used, and no discernable adverse effects have resulted. Current regulations require that heparinized blood be used within 48 hours of collection. It appears that the red blood cell viability is not adversely affected by short-term storage, but the viability of red blood cells in vivo after storage of heparinized

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blood has not been well documented. There is limited evidence to support the current dating time of 48 hours or to document other changes that occur in heparinized blood during storage (Refs. 2 through 5).

c. *Evidence of safety.* Heparinized blood has been used for a variety of reasons, and no documented evidence is available to indicate that when used appropriately it is unsafe. When large amounts of heparinized blood are administered, there may be sufficient heparin infused to result in a hemostatic defect in the recipient. Heparin in relatively large amounts is used in the treatment of thrombin-embolic diseases. Even with therapeutic dosages, reactions to heparin administered intravenously ae rare other than for its effect on blood coagulation and hemostasis.

Heparinized whole blood does not contain the added glucose that is present in ACD or CPD anticoagulants. This must be kept in mind in patients receiving heparinized blood in exchange transfusions.

d. *Benefit/risk evaluation.* As with all human blood products, there are risks associated with this product. Except for the possibility of coagulation or hemostatic problems resulting from the amount of heparin transfused, the risks are the same as those discussed in the section on whole blood. There are clinical situations when use of blood of a more neutral pH and which does not contain a calcium-binding anticoagulant is indicated. For this reason Whole Blood (Human) Heparin should continue to be available.

e. *Recommendations.* (1) Whole Blood (Human) Heparin should be placed in Category III A with a period of 3 years allowed for completion of further studies. The studies should include red cell survival data, the status of the coagulation system in the donor blood, activator levels, degree of kinin activation, the presence of clots, and residual heparin.

(2) Although no adverse effects have been reported following transfusion of heparinized blood stored up to 48 hours, it appears wise to limit storage of such blood to no more than 8 hours prior to use. If the product is to remain licensed during the period of additional studies, the expiration time should be reduced to 8 hours after the initial drawing of the blood.

(3) The general labeling requirements applicable to blood collected in ACD or CPD apply except for those data related to anticoagulation and red cell preservation. The labeling should also indicate that heparinization of recipients is a real possibility when multiple transfusions of heparinized blood are given.

(4) It has been the practice in some institutions to add ACD or CPD anticoagulant to heparinized blood and then to use the blood up to 12 days after collection (Ref. 5). This is not a procedure discussed in the Code of Federal Regulations. If there is a need for such a modification, additional studies will be needed to demonstrate the safety and effectiveness of the product.

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5. Whole Blood (Human) Modified-Antihemophilic Factor Removed and Whole Blood (Human) Modified-Platelets Removed

Generic Statement

1. *Introduction.* Blood collected into interconnected but separable plastic containers containing a suitable anticoagulant may be modified without contaminating the unit. Platelets may be separated from the whole blood by selective centrifugation and transfer of plasma along with most of the platelets to an integrally attached compartment. The platelets can then be concentrated by centrifugation and most of the platelet-poor plasma can be returned to the compartment containing the red blood cells. This modified blood has the characteristics of the starting whole blood except that the majority of the platelets and approximately 50 mL of plasma have been removed.

In a similar manner, Cryoprecipitated Antihemophilic Factor (Human) (cryoprecipitate) can be prepared while the containers are still integrally attached and the cryopreciptiate-poor plasma can be returned to the compartment containing the red blood cells. In this procedure plasma is separated from whole blood and transferred to an integrally attached compartment. The plasma is processed to yield the cryoprecipitated antihemophilic factor while the multicompartmented container remains attached. During the processing, the red blood cells are maintained at 4 to 6 °C. The cryoprecipitate is harvested, and the residual plasma can be returned to the compartment containing the red blood cells. As indicated in the section on Cryoprecipitated Antihemophilic Factor (Human), the residual plasma contains 15 to 35 percent of the original Factor VIII activity, about ⅓ of the original fibrinogen and approximately 90 percent of the original Factor V activity. The activity of other coagulation factors are unchanged from those of fresh plasma. The modified whole blood has the characteristics of whole blood except that most of the Factor VIII, ⅔ of the fibrinogen, and some of the Factor V have been removed.

The two processes can be combined so that both platelets and Factor VIII are removed. It is generally considered to be more practical to seal and detach the compartment containing the red blood cells before proceeding with separation of platelets or cryoprecipitate. In this way, Red Blood Cells (Human) are prepared in the usual way and the processing for platelets and/or cryoprecipitated antihemophilic factor is done independent of the Red Blood Cells (Human).

2. *Effectiveness.* The indications for the modified whole blood products are the same as for whole blood stored for more than 48 hours. When used in this manner, the effectiveness is equivalent to that of stored whole blood for red cell and plasma volume replacement.

3. *Safety.* The safety of the product is equivalent to that of whole blood. The manipulations done do not appear to have any adverse effects.

4. *Benefit/risk evaluation.* The same considerations apply as for whole blood. In most blood bank establishments, the red blood cells will be removed prior to processing for cryoprecipitate and/or platelets. In a few situations with unique requirements, this is a useful product. Because of the hepatitis risk, this product may be safer than providing red blood cells and plasma from two separate donors. However, there are no advantages in using this product in comparison to whole blood.

5. *Recommendation.* It is recommended that these products be placed in Category I, safe and effective.

6. *Labeling analysis.* The labeling requirements for whole blood apply to these products. In addition, the container labels must indicate clearly that platelets and/or cryoprecipitated antihemophilic factor have been removed.

6. Red Blood Cells (Human)

Generic Statement

1. *Introduction.* Red Blood Cells (Human) are also called Concentrated Red Blood Cells by the World Health Organization. The other designation of this whole blood component as "packed red blood cells" usually means red blood cells from which most of the plasma has been removed either by sedimentation or by centrifugation. The term can also include centrifuged cells with the buffy coat largely removed or washed red cells in which plasma and buffy coat have been removed by at least three washings. Thus, four products may be available to the clinician, each with somewhat different characteristics (Ref. 1).

Sedimented red blood cells are the most easily available type since no mechanical equipment is needed to prepare them. Sedimented cells contain practically all of the leukocytes, platelets, and almost the same concentration of potassium (less than 1 mEq difference) in the residual plasma as in the plasma of whole blood of equivalent age (Ref. 2).

Centrifuged red blood cells have similar characteristics, but permit the harvesting of more plasma, yielding a hematocrit of about 60 to 80 percent. They are more viscous because of the high hematocrit.

2. *Indications.* Red Blood Cells (Human) are administered to increase the oxygen-carrying capacity of the blood. This indication was discussed earlier in the statement on "Stored Red Blood Cell Products". Patients with hypoxic symptoms whose anemia is unresponsive to specific treatment; e.g., iron, B_{12}, folic acid, etc., who are not hypovolemic and who do not require plasma-clotting factors or plasma proteins may benefit from administration of red blood cells (Refs. 9 and 10). Red blood cells should not be used in cases in which whole blood is indicated for treatment of hypovolemia, unless accompanied by the administration of plasma volume expanders. Plasma volume may be expanded, at least in the face of moderate degrees of acute blood loss, by administration of crystalloid solutions.

3. *Effectiveness.* Extensive experience and research has proven the effectiveness of administering Red Blood Cells (Human) to increase the oxygen-carrying capacity of the blood (Ref. 8). Stored red blood cells, whether concentrated or not, have an increased affinity for oxygen. Because red blood cells are transfused to provide patients with adequate oxygen transport, it has been suggested that blood with high oxygen affinity is undesirable and that only blood with nearly normal oxygen affinity is suitable for transfusion. However, available data do not indicate the extent of the benefits that might result from blood cells with nearly normal oxygen affinity or the costs and risks that might be incurred in obtaining products to yield such possible benefits (Ref. 11). Red blood cells are the material of choice for transfusion of the anemic patient with limited cardiovascular reserves.

4. *Safety.* The hazards of red blood cell transfusions are the same as whole blood transfusions. The only hazards not associated with whole blood transfusions are possibly those of ammonia accumulation and citrate intoxication (Ref. 12). Since potassium from the red cells equilibrates with the plasma potassium as storage progresses, red blood cells are only slightly deficient in potassium (Ref. 2).

In general, it has been stated that fewer transfusion reactions occur with red blood cells compared with whole blood, but it should be emphasized that this is in reference to "buffy coat poor" red blood cells or previously frozen, washed cells. These latter two products are quite different from the red blood cells available in most blood banks. In one report, 59 percent of transfusion reactions were caused by red blood cells when 48 percent of all red blood cell products were given as red blood cells (Ref. 6). The reduction in plasma volume of sedimented red cell products which have a hematocrit of 65 to 70 percent is insufficient to prevent IgA reactions in sensitive recipients (Ref. 3) or hepatitis (Ref. 4). The deleterious effects of allergic reactions and anaphylactic reactions to IgA are obviated only by washed red cells (Ref. 5). Centrifuged red blood cells with the buffy coat largely, but not completely, removed contain about 30 percent of the leukocytes present in the original donor unit. Sufficient leukocytes and platelets are still present to cause allosensitization to their antigens in the previously unsensitized patient.

The 5 to 10 percent residual plasma in centrifuged red blood cells is too high to provide any protection against the development of hepatitis (Ref. 1). There has been no definitive prospective analysis to substantiate the claim that the incidence of hepatitis with red blood cells is less than that of whole blood.

Washed red blood cells are indicated for patients who have allergic transfusion reactions. Patients who develop anaphylactoid reactions to IgA must receive red blood cells almost completely free of plasma. Even the small amount of plasma (less than 1 percent) that remains in well washed red blood cells can cause transfusion reactions in some of these patients (Ref. 3).

5. *Benefit/risk evaluation.* This product allows the use of red blood cells as a byproduct of the preparation of other blood components, and it is completely adequate to treat the deficiency in red blood cell oxygen-carrying capacity associated with anemia. Red blood cells are difficult to administer rapidly and may be more expensive than whole blood if they must be administered with plasma substitutes to replace blood volume loss (Ref. 8). Sixty percent of the blood collected is used intraoperatively (Ref. 7).

6. *Recommendations.* a. Red Blood Cells (Human) should be placed in Category I.

b. The term "Red Blood Cells" should be substituted for "Red Blood Cells (Human)" and for "packed red blood cells".

c. Red Blood Cells should be labeled to indicate that their only use is to increase the oxygen-carrying capacity of the blood. When they must be used to substitute for Whole Blood then the labeling must indicate that a suitable plasma volume expander must be administered with them if hypovolemia is being treated (Ref. 13). In other situations where whole blood is indicated because of its red blood cells and plasma constituents, red cells can be used with simultaneous administration of the necessary plasma components in a separate form.

d. Labeling should indicate that red blood cells should not be reconstituted or infused with lactated Ringer's solution, 5 percent aqueous dextrose or 5 percent dextrose in 0.225 percent saline, as clumping, hemolysis, or clotting may occur (Ref. 14).

e. There is a need for the scientific community to develop a more extensive evaluation of the usefulness of red blood cells and an analysis of the complications that occur after their administration. This is especially relevant to the belief that the administration of Red Blood Cells will minimize circulatory overload.

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7. Frozen Red Blood Cells (Human)

Generic Statement

1. *Introduction.* The development of methods for cryopreserving blood was predicated on the perceived need for long-term storage. Vagaries in blood collections, daily and seasonal, as well as uncertainties in usage contributed to episodic cycles of blood shortages followed by excesses and, thus, outdating. Prolonged extension of the blood's shelf life was seen as a possible way of circumventing these variables and making more effective use of collected blood.

Expansion of techniques for antibody identification and the description of new red cell phenotypes during the past two decades also resulted in the need for long-term storage. Patients with antibodies directed against high incidence antigens require a ready resource of homologous or autologous blood. This could be accomplished by extending the shelf life of blood indefinitely.

A number of techniques for red cell cryopreservation have been developed and are in routine use (Refs. 1 through 4), but only two have been licensed by the Food and Drug Administration (Refs. 1 and 3). Although methods vary considerably, they have one common major requirement: The necessity of adding the cryoprotective agent, glycerol, prior to freezing. Since the intravenous administration of large amounts of glycerol is undesirable, previously frozen, glycerol-protected blood must be washed prior to transfusion. This is also required to return the cells to an isosmotic state, since glycerol penetrates the red cells in exerting its cryoprotective effect.

The cost of washing, in both dollars and time, has restricted severely the routine use of previously frozen red cells of purposes of balancing inventory. Furthermore, techniques of freezing and washing red cells require multiple entries into the blood pack, thereby restricting the post-thaw shelf life to a mere 24 hours according to current practice. However, an impressive number of other possible advantages resulting from either freezing and/or thawing have come to light which appear to be separate from the long shelf life of frozen red cells but which at this time play a greater role in their clinical use. Verification of these presumed benefits of frozen red cells might well determine the extent of their use in the near future. Despite these considerations, it is estimated, based on data accumulated within The American Red Cross Blood Program, that no more than 3 to 5 percent of all blood transfusions are currently accomplished with frozen red blood cells.

2. *Effectiveness*—a. *Red cell studies.* The recovery of red cells after glycerolization, freezing, thawing and deglycerolization (washing) varies between 70 to 93 percent of the original starting material and depends largely on the method used for the freeze-thaw procedure (Refs. 3 and 27). Most studies report that at least 85 percent of the red cells are recovered when a high-glycerol technique is used and if deglycerolization is done using one of the three currently available centrifuge techniques. More controversy exists in evaluating the technique of cytoagglomeration where some investigators report recoveries as low as 70 percent, although others have found 85 percent recovery (Refs. 1 and 27).

Analysis in vitro of the final deglycerolized product comparing various washing technique has been performed by Valeri (Ref. 28). He found that the red cell products obtained by the cytoagglomeration techniques had higher levels of supernatant hemoglobin, extracellular potassium ion, supernatant osmolality, residual glycerol, and residual plasma protein than did cells washed by any of the currently available centrifuge methods, all of which seem to give comparable results for these measured characteristics.

Measurements of survival of deglycerolized red cells 24 hour after transfusion demonstrate differences depending on the method employed in freeze-thawing and the duration of storage in the frozen sate (Ref. 29). For the cytoagglomeration technique, in one study of 16 units stored frozen for a mean of 3.8 ± 1.5 years, a mean 24-hour survival of 73 percent plus or minus 17.5 (2 S.D.) was found. It has also been demonstrated that with this method there is a correlation between the duration of storage in the frozen state and the 24-hour red cell survival (Ref. 4). When using one of the centrifugal methods for deglycerolization, higher 24-hour survivals are usually obtained, especially in direct comparative studies with the cytoagglomeration method. Furthermore, the results obtained by these methods do not seem to be affected by duration of frozen storage.

When using the cytoaggolmeration technique it has been found that nearly 50 percent of all units have a positive direct antiglobulin test. This finding, however, could not be correlated with any alterations in the 24-hour red cell survival (Ref. 30).

Frozen deglycerolized red cells require a two-faceted evaluation; the recovery of cells in vitro after freeze-thaw injury and the survival of these cells after transfusion. These characteristics are of importance to the recipient as they relate directly to the expected benefit after transfusion of "one unit." As there is red cell loss during the freeze-thaw process which is related to variations in methods used for freeze-thawing, as well as variations in post-transfusion recovery related to the same methods, each technique could result in wide variations in therapeutic effectiveness of the resulting red cell product.

b. *Possible advantages of frozen blood.* Table 1 lists the possible advantages of frozen-deglycerolized red cells.

TABLE 1.—POSSIBLE ADVANTAGES OF FROZEN RED CELLS

	Freezing	Washing
Leukocyte removal	?	+
Removal of hepatitis B antigen	0	?
Plasma protein removal	?	+
Diphosphoglycerate maintenance	+	[illegible]
Long-term storage of rare types	+	[illegible]
Salvage of outdated blood	+	+
Inventory control	+	-
Microaggregate removal	0	+

? Unknown; + Contributes an advantage; 0 Probably unrelated to an advantage; - Deleterious.

In each case in Table 1 the role of either the freezing or thawing processes is assessed as being contributory, unrelated, or deleterious to the desired result. In many cases, the washing procedure appears to be far more important than freezing. This suggests that washing alone without prior freezing may be sufficient to achieve many of the proposed advantages of frozen red cells. Thus, the efficiency of washing is critical in determining some of the possible advantages of frozen red cells. Variables in washing techniques, such as wash volume or whether batch or continuous flow washing is used, may determine how well suited a particular method is for achieving a desired property of the red cell preparation such as leukocyte or hepatitis agent removal. A corollary is that efforts to reduce the time and expense of the washing procedure might result in a loss of some of the possible advantageous aspects of frozen red cells. The limit of effective washing of red cells has not yet been determined.

(1) *Leukocyte removal.* For several transfusion situations, contamination of red cell preparations with leukocytes is undesirable. There are four problem areas in which the presence of leukocytes appears to play a major role: (1) Nonhemolytic febrile transfusion reactions are largely the result of immunization to leukocyte and/or platelet antigens. (2) Refractoriness to platelet transfusion has been correlated with previous transfusions with leukocyte and platelet-containing blood products. The use of previously frozen red blood cells may minimize this problem. (3) Immunization to leukocyte and platelet antigens of the HLA and other systems by transfusion may compromise the survival of future allografts, although this concept has recently been brought into serious doubt. (4) Leukocyte-borne viruses may cause disease in recipients. In addition to these problems, the transfusion of viable lymphocytes to immunosuppressed recipients has been suggested to be hazardous by virtue of causing graft versus host disease.

Compared with liquid-stored blood, frozen-washed red cells have few leukocytes and virtually no platelets. There is considerable disagreement over the extent of leukocyte removal achieved by this method. Table 2 indicates the extent of red cell losses and leukocyte reduction achieved with some current freeze-thawing techniques (Table 2). It appears that the freezing process may play an important role in Facilitating efficient leukocyte removal by simple destruction since current methods for cryopreserving red cells are not effective for preserving leukocytes or platelets. Some studies suggest that some lymphocytes may be resistant to the rigors of this method of cryopreservation (Ref. 13). Undoubtedly, the necessary post-thaw washing also plays a role in leukocyte removal. Despite this, more complete removal of HLA antigenicity may require micropore filtration during transfusion (Ref. 14). Leukocyte removal also can be achieved without freezing using a variety of separation techniques (Table 2).

TABLE 2.—RED CELL LOSSES AND LEUKOCYTE REDUCTION ASSOCIATED WITH VARIOUS CRYOPRESERVATION METHODS

Method	Percent RBC loss	Percent leukocyte reduction	Reference No.
Freezing Procedures:			
Freezing (cytoagglomeration) (ACD)	37	[illegible]	21
Freezing (cytoagglomeration) (CPD)	27	[illegible]	
Freezing (centrifugal) (fresh cells)	[illegible]	[illegible]	17
Other Procedures:			
Inverted spin	24	[illegible]	25
Inverted spin plus continuous flow wash	42	[illegible]	
Dextran sed. plus continuous flow wash	35	92	
Inverted spin	21	73	19
Upright spin	20	72	
Nylon filter	12	65	
Nylon filter then inverted spin	32	97	
Upright spin, then nylon filter	40	97	
Upright spin, then inverted spin	22	[illegible]	
Dextran sedimentation	[illegible]	[illegible]	22
Plasmagel sedimentation	6.5	93 5	

Regardless of the underlying mechanism, the need for transfusions of leukocyte-poor blood is currently the major indication for using frozen-washed red cells.

Frozen-washed red cells appear to be effective for patients who have been transfused frequently and who have had repeated febrile reactions due to antibodies to transfused leukocytes. In some transfusion services frozen-washed red cells are used prophylactically for patients in whom long-term transfusion therapy is anticipated. Most users of frozen blood -for this purpose have noted an almost complete absence of nonhemolytic, febrile transfusion reactions but published data on this point are lacking. These clinical observations have been supported by preliminary studies on the production of cytotoxic and agglutinating luekocyte antibodies following frozen blood transfusion.

Probably the most common use of frozen blood is in patients with chronic renal disease either on a dialysis program or as part of a renal transplant procedure. Approximately 50 percent of all frozen red blood cell transfusions in the Red Cross program are in this category. Here the use of frozen cells is predicated on their presumed lack of immunogenicity in the HLA system because few leukocytes are present in the final transfusion product. It is postulated that the rejection rate of a renal homograft could be diminished with the use of frozen red cell transfusions. Conversely, results from a retrospective, multicenter study have suggested that transfusion might actually be protective against renal allograft rejection possibly by stimulating the production of "blocking" antibodies (Ref. 5). More recent studies indicate that homograft survival is in fact better in recipients previously transfused with liquid stored blood containing leukocytes than in nontransfused recipients (Refs. 31, 32, 33, 39 and 40). These studies bring sharply into question the current general use of this blood product for this indication.

(2) *Risk of hepatitis.* The report of Tullis et al. (Ref. 6) on the absence of hepatitis in recipients of previously frozen blood was a major force in accelerating development of freeze-thaw technology and in the clinical use of this blood product. Another retrospective study confirms this observation (Ref. 34). In a limited prospective study, Valeri (Ref. 35) demonstated that washing blood prior to transfusion reduced the infectivity rate for Hepatitis B. Recent studies indicate, however, that HBsAg infectivity can be transmitted to chimpanzees transfused with frozen deglycerolized red blood cells washed by continuous flow techniques (Ref. 37). More extensive controlled studies on this question are necessary to quantify this effect.

It has been demonstrated that Hepatitis B surface antigen (HBsAg) cannot be detected even by the most sensitive techniques in blood thoroughly used by either a batch process or by continuous flow (Ref. 7). The latter technique, which can achieve a plasma protein dilution of 1:25,000, produce a 40-

fold greater protein dilution than triple washing in a batch process. Therefore, continuous flow might be the preferable method, particularly since HBsAg can be passively transferred to recipients even if it is transfused at great dilution. This question may be crucial since freeze-wash methods that utilize batch washing procedures may be at a theoretical, if not a real, disadvantage (Ref. 35). This difficult question requires very careful study.

(3) *Plasma protein removal.* Frozen-washed red cell preparations are largely devoid of plasma protein. Thus, transfusion reactions resulting from previous immunization to plasma proteins such as anaphylaxis due to sensitivity to IgA, or from passively administered antibodies such as those to penicillin may be eliminated by using frozen blood. Freezing may play some role by facilitating the removal during the washing procedure of some proteins previously bound to the red cell surface. A patient with sensitivity to IgA was transfused safely only with blood that was both frozen and washed but not with blood without prior glycerolization and freezing (Ref. 8).

The absence of anti-A and anti-B alloagglutinins in freeze-washed red cells makes this product safe when used judiciously in recipients of other ABO groups, Group O to any recipient, Group A or B to AB recipients. This is helpful from the point of view of the transfusion service because it permits greater flexibility in selecting compatible blood. Also, units of blood containing unexpected antibodies can be diverted into the frozen blood inventory. The antibodies present in these units are then removed during the deglycerolization-wash procedure.

(4) *Maintenance of red cell diphosphoglycerate (DPG).* Much recent research has been directed towards developing methods for maintaining DPG levels and oxygen-releasing capability in stored erythroocytes. Red cells stored in the frozen state show no diminution of DPG levels after thawing when compared with pre-freeze levels (Refs. 9 and 10). Since most blood is frozen soon after collection, DPG levels are maintained at levels approaching those of freshly drawn blood. Red cells with normal DPG levels may have some applications in special transfusion situations, but more carefully designed and controlled studies are necessary to establish this point (Ref. 12).

(5) *Long-term storage of rare blood types.* Freezing permits long-term storage of red cells which are negative for various high-incidence antigens or other uncommon antigen phenotypes for future transfusion into immunized recipients. This is an important but uncommon application of cryopreservation, which represents less than 5 percent of all frozen blood usage in the Red Cross Blood Service.

(6) *Salvage of outdated blood.* Valeri and Zaroulis have demonstrated recently that blood collected in ACD or CPD and stored at 4° C for up to 28 days can be "rejuvenated" by incubation at 37° C for 1 hour with pyruvate, inosine, glucose, and phosphate (Refs. 10 and 11). Subsequent freezing, thawing, and washing yielded an 86.6 percent in vitro recovery of red cells having a 24-hour post-transfusion survival in vivo of 80 percent. The oxygen transport function of these cells was the same as that of freshly collected blood. Post-thaw washing was necessary to remove the potentially toxic materials used for rejuvenation. This technique offers a possible new approach to control of red cell outdating. Rejuvenation and freezing may play some role where salvage of specially selected red cells such as those of uncommon phenotype is necessary.

(7) *Removal of microaggregates.* It is generally assumed that the majority of microaggregates in stored blood are removed during the washing procedure although data establishing this point are lacking. A recent study suggests that some microaggregates remain which can be removed by micropore filtration (Ref. 14).

3. *Safety.* In general, most of the hazards related to liquid-stored whole blood or red blood cells apply to frozen deglycerolized cells as well. Some of the areas where it has been well established that frozen deglycerolized red cells have higher levels of safety include: treatment of patients with previous nonhemolytic febrile transfusion reactions, treatment of patients with allergy to plasma proteins, in decreasing immunization to leukocyte or platelet antigens where that may be desirable, in maintenance of red cell DPG levels, and in non-ABO specific transfusions where alloantibody removal is desirable. Increased safety related to hepatitis transmission has not been proven. Use of frozen blood in hemodialysis patients for improving later allograft survival now seems questionable.

The freeze-thaw process itself adds certain potential hazards. Adequate removal of glycerol must be achieved. The ionic constitution and concentration of the final wash solutions may be of some concern if they do not approach normal plasma levels in the final preparations. The possibility of bacterial contamination of the final product because of its preparation in an open system is an additional hazard. The current 24-hour post-wash shelf life for frozen deglycerolized blood is consistent with similar guidelines for other blood preparations prepared in open systems. In one study of this issue, units of whole blood were inoculated with a variety of bacteria prior to freezing or after deglycerolization. These units were evaluated for bacterial contamination after postdeglycerolization storage for 72 hours at 4 °C (Ref. 36). It was demonstrated that, (a) the deglycerolization procedure reduces the bacterial inoculum substantially and (b) the bacteria evaluated in this study do not proliferate in the deglycerolized red cell product for up to 72 hours when properly stored. It was later noted that one cryophillic bacterial species did proliferate under these conditions.

4. *Recommendations.* a. The Panel recommends that Frozen Red Blood Cells (Human) be placed in Category I.

b. Frozen deglycerolized red blood cells must be prepared by a method that results in a minimum in vitro yield of 80 percent of the original red cell mass.

c. Frozen deglycerolized red blood cells must meet the same viability requirements as liquid stored blood, namely, the method must be designed to assure that, on the last storage day, at least 70 percent of the cells survive in the recipient 24 hours after transfusion.

d. The effective yield after deglycerolization must be 65 percent. The effective yield is determined by multiplying the mean in vitro yield after deglycerolization by the mean percentage in vivo survival 24 hours after transfusion.

e. If the above criteria are met and if it can be shown that there is no increased risk to the recipient of bacterial contamination when compared with liquid-stored blood prepared in a closed system, the post-deglycerolization shelf life should be extended beyond the presently permitted 24 hours.

f. Glycerolized blood may be stored in the frozen state for any period of time as long as it has been demonstrated that the above criteria are met.

g. After deglycerolization, the final suspending solution should be isotonic and contain between 130 and 160 mEq sodium per liter.

h. In-process controls of the freezing and deglycerolization procedure should be such as to assure that there shall be no more than 0.5 gram per dL of glycerol and 175 mg per dL of supernatant hemoglobin in the final product (Ref. 38).

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8. Cryoprecipitated Antihemophilic Factor

Generic Statement

1. *Introduction.* In 1954 Brinkhous (Ref. 1) first made the observation that factor VIII (antihemophilic factor, AHF) was a cold insoluble protein. In 1959, Pool and Robinson (Ref. 2) made a similar observation while studying plasma preparations of factor VIII. However, it was not until 1965 that Pool and Shannon (Ref. 3) described a method for the practical utilization of factor VIII cryoprecipitability to prepare cryoprecipitated Antihemophilic Factor (Human) ("Cryoprecipitate", "Cryo") as a part of routine blood banking. The procedure involves freezing plasma with subsequent thawing at 4° C yielding a precipitate containing about 45 percent of the original factor VIII and 30 to 40 percent of the fibrinogen. After centrifuging, the supernatant plasma is drained and the residual cryoprecipitated factor VIII is refrozen. It is a simple, inexpensive way to provide factor VIII as a byproduct of component blood banking. The major problem has been the unpredictable yield of factor VIII making dosage calculations difficult (Ref. 4). However, recent studies (Refs. 5 and 6) have analyzed the variables of production which may affect yield. This has given a standardized method which consistently provides an average of 60 percent of the available plasma factor VIII in the cryoprecipitate. In addition to Cryoprecipated Antihemophilic Factor (Human), commercial Antihemophilic Factor (Human) has subsequently been licensed and is reviewed elsewhere in this document.

2. *Factor VIII assay.* The two major techniques of assaying factor VIII are based on the partial thromboplastin time (PTT) (Ref. 7) or thromboplastin generation time (TGT) (Ref. 8). These methods originally were developed for measuring factor VIII levels in plasma. One hundred percent activity was based on an appropriate-sized normal donor pool (10 to 30 donors) or the then-available NIH reference standard. These assays were shown to predict the recovery of factor VIII when plasma was transfused into hemophilia A recipients. Although the assays correlate with each other to a high degree, both have a variability within the assay system of 7 to 10 percent. The increased concentration of factor VIII in more recent cryoprecipitate procedures has required modification of the assay systems to give reliable measurements. The major change suggested for both assays (Refs. 3 and 9) was an initial dilution of cryoprecipitate 1 to 9 in hemophiliac plasma with further dilutions in buffer to give a factor VIII concentration within the range of the standard assay curves; i.e., 0 to 100 percent activity. In spite of these modifications the assays may not predict the recovery in vivo (Refs. 3 and 5). However, studies comparing the two methods for measuring factor VIII in cryoprecipitates have shown that they are comparable (Refs. 5 and 10). Because of the often unexplained differences between in vitro factor VIII assays and in vivo factor VIII recoveries (Refs. 3, 5 and 11 through 15), facilities preparing Cryoprecipitated Antihemophilic Factor (Human) should document the reliability of the in vitro assay system used by measuring in vivo recoveries of factor VIII following the infusion of their cryoprecipitate into hemophilia A recipients (Refs. 3 and 5).

3. *Donor variables.* Several different characteristics of the donor have been claimed to be associated with higher plasma factor VIII levels and presumably a greater yield of factor VIII in cryoprecipitates prepared from this starting plasma.

a. *Factor VIII levels in the normal population.* It has consistently been shown that the normal population has a wide range of factor VIII activity from 50 to 200 percent and that this level may not even be the same for a donor on every occasion (Refs. 7 and 16 through 19). The greater the factor VIII activity of the initial plasma the greater the expected yield of factor VIII in cryoprecipitate. However, some studies have suggested that not all donors have the same degree of cryoprecipitability (Refs. 6 and 17). Nevertheless, this baseline factor VIII variability in the donor is probably the major factor in the spread of factor VIII activity in individual units of cryoprecipitate.

b. *Exercise.* Exercise has been shown to increase the factor VIII concentration in plasma 1½ to 3 times normal (Refs. 14 and 20 through 25) and in those studies where it has been evaluated an increase in factor VIII antigen has also been found. The immunologic data suggest that the increase in procoagulant activity represents a true elevation of factor VIII protein.

However, transfusions of plasma from exercised donors into hemophiliacs have shown a decreased factor VIII recovery (Ref. 20) and shortened half-life of 5 hours compared to the normal of 10 to 13 hours (Ref. 22). In vitro assay of cryoprecipitates prepared from exercised plasma donors over-estimated the in vivo yield (Ref. 14). Therefore, exercising donors does not represent a useful means of increasing the production of factor VIII.

c. *Other variables.* Age, sex, and blood group are other possible donor variables. Preston (Ref. 16) found factor VIII activity to be 6.5 percent greater in females ($p < 0.05$), 6 percent greater in A or B blood group donors than those of group O ($p < 0.01$) and unaffected by the age of the donor in an analysis of plasma from 410 individuals. In contrast, similar studies by Burka (Ref. 17) in 169 donors showed no significant differences in any of these parameters.

4. *Preparation variables*—a. *Sources.* Either single units of whole blood or plasmapheresis may be used as a source of starting plasma. Some studies have reported an averaged 15 percent reduction in factor VIII activity in the second unit of a double plasmapheresis (Refs. 17 and 26), while others have found no differences (Refs. 5 and 6). The reported differences in plasma factor VIII levels between plasmapheresis units are small enough that they do not statistically affect factor VIII yield in cryoprecipitates (Ref. 17).

b. *Collection*—(1) *Anticoagulant.* The anticoagulant used, whether ACD or CPD, does not affect the yield of factor VIII in cryo (Refs. 5, 17, 27, and 28) nor does the addition of adenine (Ref. 29). Factor VIII blood is mixed thoroughly at the end of collection. Factor VIII content is most stable at pH values greater than 6.8 (Ref. 28) and preparation of cryoprecipitate from ACD plasma with a pH of 6.5, as may occur after preparation of platelet concentrates, is associated with a 43-percent average reduction in the in vivo factor VIII yield (Ref. 11).

(2) *Container.* The collection container, plastic or glass, does not affect AHG yield (Refs. 5, 18, and 19).

(3) *Mixing during collection.* Perkins (Ref. 19) found a significant improvement in factor VIII levels in blood collected by a rocking vacuum device compared to gravity blood flow. Plasma Factor VIII levels were better in fresh plasma with approximately 98 percent of expected levels with the vacuum method versus 80 percent by gravity flow ($p < 0.05$). Similar differences were found after frozen storage of the plasma for 2 months. Subsequent studies, however, have shown that as long as the blood is mixed thoroughly at the end of collection, factor VIII content of cryoprecipitate does not differ significantly from that prepared from blood agitated throughout the collection (Refs. 5 and 6).

(4) *Delay before processing.* Whole blood stored at 4° C progressively loses factor VIII activity (Refs. 5, 6, and 30) with a loss at 24 hours approaching 50 percent of the initial factor VIII activity. However, if the plasma has been frozen solid within 6 hours of collection, the loss is only 10 percent (Ref. 5). Further fractionation of this plasma showed recovery of factor VIII in the cryoprecipitate is also 10 percent less both in vitro and in vivo. This loss appears to be acceptable to provide flexibility in processing blood from mobile blood collection facilities. Alternatively, mobile laboratories for cryoprecipitate production have been shown to be feasible (Ref. 31). As expected, outdated 21-day-old blood has been shown to be an unacceptable source of factor VIII because of the low starting levels of factor VIII (30 percent), lower cryoprecipitability of this material, and high plasma hemoglobin levels in blood more than 14 days old (Ref. 32).

c. *Plasma processing*—(1) *Centrifugation.* Centrifugation at 4,500 X g for 10 minutes leaves an average residual platelet count of 25,000/microliter (Ref. 5). Longer periods of centrifugation to reduce the level of platelets was not associated with any difference in factor VIII recovery in cryoprecipitate (Refs. 5 and 17).

(2) *Freezing rate, freezing temperature and volume of plasma.* Fifteen to thirty percent of the original factor VIII activity has been reported to be lost consistently during plasma freezing at −30 °C or −70 °C (Refs. 3, 13, 18, and 33) with subsequent storage at −30 °C. Later studies by Perkins (Ref. 19) and Rappaport (Ref. 34) have documented only a 10-percent loss in factor VIII activity after 2 months of plasma storage

and 20 percent after 1 year at −30 °C. They, as well as others (Ref. 35), have suggested that the major loss of factor VIII activity occurs with freezing and that factor VIII is stable during storage.

Factor VIII yield in frozen plasma can be improved by reducing the plasma volume (Refs. 5 and 13) or conversely, by increasing the size of the bag and thus the surface-to-volume ratio (Ref. 6). Therefore, studies of factor VIII recovery in plasma and its stability with storage must be done using the volume and bag size routinely used in blood banking. Certainly, some of the differences in factor VIII yield in the reported studies may be related to freezing rate if too many bags are put in the freezing container at one time thereby changing the time-temperature relationship and subsequently the rate of freezing. Although the freezing temperature of −30 °C vs. −70 °C has been suggested to be unimportant (Ref. 6), it is not clear that these experiments were done with the usually accepted volume of plasma, i.e., 250 mL. Other investigators have clearly shown that with full plasma volumes the freezing temperature must be −70 °C or below and that this temperature maintains 100 percent factor VIII recovery in the plasma for storage periods up to 3 months (Ref. 5).

Clearly, one significant technical problem may be the speed with which the factor VIII assay is done after sample thawing, as Hawkey (Ref. 18) has shown that after 1 hour at room temperature, the factor VIII level falls by 25 to 56 percent. In addition, Perkins (Ref. 19) has shown the instability of previously frozen factor VIII by documenting that refreezing plasma causes a further 50-percent reduction in factor VIII activity.

These data suggest that freezing at temperatures below −70 °C preserves 100 percent of factor VIII activity and subsequent storage at or below −30 °C will be associated with negligible loss of factor VIII activity. If freezing is done in a liquid medium, an overwrap should be used to prevent interaction of the freezing liquid with the plastic bag and its contents.

(3) *Thawing*—(a) *Temperature of thawing.* The most critical variables in cryoprecipitate production are probably the thawing temperature, the degree of thawing, i.e., to slush with ice crystals or completely thawed, and the solubility of cryoprecipitated factor VIII in its supernatant plasma. The usual yield of factor VIII in cryoprecipitate based on the factor VIII in fresh plasma has been in the range of 35 to 55 percent (Refs. 3, 13, 17, 35, and 36) with an average of 45 percent. These results are found when plasma is thawed at 4 °C in air, a process requiring 18 to 24 hours. Brown (Ref. 9) first demonstrated that rapid thawing of plasma at 6 to 8 °C, which takes approximately 90 minutes, yielded 87 percent of the original factor VIII content of the plasma minus the amount of factor VIII found in the cryo-poor supernatant which averaged 22 percent. However, in this study the plasma was transferred to 610 cc bags for freezing between metal plates, and therefore the results of this study are not applicable to clinical practice. Waumens (Ref. 12) reduplicated the original study, except he employed commonly used plasma volumes and bag sizes. There was a 26-percent factor VIII recovery in cryoprecipitate when plasma was thawed at 4 °C in air compared to 50 percent recovery for 6 to 8 °C water-thawed cryoprecipitate in this study. Subsequent in vivo recovery of this rapidly thawed cryoprecipitate was 90 percent of predicted. A subsequent study comparing 4 °C air to 4 °C water thawing has shown a consistent yield of 58 percent when water thawing is used compared to 45 percent when thawing was in air ($p < 0.01$) (Ref. 5). After in vivo infusion of these materials there was an even greater benefit of the water-thawed compared to the air-thawed material. However, these studies have not been confirmed by others (Refs. 6, 30, 37, and 38).

(b) *Partial thawing.* Cooke (Ref. 39) suggested that cryoprecipitates be thawed until the formation of ice crystals (slush phase) and that the crystals would act as a filter to retain the cryoprecipitate when the supernatant plasma was expressed. Both Burka (Ref. 17) and Slichter (Ref. 5) showed an increased recovery of factor VIII in cryoprecipitates brought to the slush phase compared to complete thawing at 4 °C in air—51 percent vs. 43 percent and 63 percent vs. 45 percent, respectively. However, in vivo infusions demonstrated that recovery was the same for both products (Ref. 5). It is difficult to standardize the end point at the slush phase.

(c) *Complete thawing.* The stability of cryoprecipitated factor VIII in superantant plasma after complete thawing has been studied. With 4 °C water thawing, cryoprecipitated factor VIII is stable for at least 2 hours (Refs. 5 and 6) with levels dropping to 61 percent plus or minus 12 at 33 hours ($p < 0.05$) and to 58 percent plus or minus 11 ($p < 0.01$) at 5 hours compared to a level of 69 percent plus or minus 11 for cryo in which the supernatant is immediately removed (Ref. 6). Similarly with air-thawed material at 4 °C, factor VIII activity in the cryoprecipitate decreases progressively after 12 hours of thawing with a concomitant increase in activity in the cryo supernatant plasma (Ref. 38).

After complete air-thaw factor VIII is stable for at least 6 hours in one study, 46 percent vs. 49 percent (Ref. 5), but significantly different at 4 hours in another, 53 percent vs. 47 percent ($p < 0.01$) (Ref. 6.).

(4) *Removal of supernatant plasma.* It does not seem to matter whether the cryo-poor supernatant plasma is drained off or expressed (Ref. 38).

5. *Cryoprecipitate Antihemophilic Factor storage and preparation for use*—a. *Freezing.* The available data indicate that for best results, cryoprecipitate after preparation should be refrozen at −30 °C or below (Ref. 6).

b. *Storage.* Factor VIII in frozen cryoprecipitate is stable at storage temperatures of −18 °C or below (Ref. 40).

c. *Thawing.* All studies reported in the literature have thawed the cryoprecipitate at 37 °C in a waterbath with gentle mixing. It is important that the bags are thawed for at least 15 minutes to ensure maximum factor VIII recovery (Ref. 5).

d. *Resuspension.* Cryoprecipitate has been reconstituted in either plasma, saline, or buffered saline (Ref. 28). When cryoprecipitate was prepared from small volumes of plasma (50 mL), thawed and resuspended, the dissolving solution made no difference (Ref. 28). Later studies have provided conflicting data on the best way to dissolve the cryoprecipitate. One study (Ref. 6) has shown that 20 ml. of plasma vs. 20 mL of saline gave factor VIII recoveries in the cryoprecipitate of 53 percent plus or minus 17 vs. 49 percent plus or minus 19, not statistically different. Furthermore, the duration of time that the material was within the bag before withdrawing did not affect factor VIII recovery. Another study (Ref. 5) has shown an optimum volume of 20 mL of saline left in the bag for 15 to 20 minutes before withdrawing gave factor VIII yields of 56 percent vs. 42 percent for 10 mL of plasma. These differences, confirmed in vivo by cryoprecipitate infusions into hemophiliac recipients, were significant ($p < 0.001$). In another study, draining the bag completely vs. leaving 5 mL of plasma made a significant difference in factor VIII recovery in vitro, 55 percent vs. 67 percent, respectively (Ref. 38).

Since saline resuspended cryoprecipitates can be provided on a nonblood group specific basis to most recipients, saline would seem to be the preferred diluent. If plasma is used as the diluent, the cryopercipitate has to be given as blood group ABO compatible.

How long the factor VIII activity is stable in the resuspended material has not been documented, but it has been shown that it cannot be refrozen or refrigerated without loss of 20 to 40 percent of the activity (Ref. 12).

e. *Pooling.* Pooling can be accomplished by syringe or vacuum devices, but should be done by experienced personnel either at the blood center before the material is sent out or at the hospital to ensure complete removal of all the concentrated material from each bag. When used for home care by hemophiliacs, appropriate training in its use must be provided. The pooled cryoprecipitates should be used as soon as possible, but must be used within 4 hours of entering the container. The resuspended cryoprecipitate should be left at room temperature prior to use (Ref. 12).

6. *Safety—a. Hepatitis.* Cryoprecipitate is expected to have the same risk of hepatitis as single donor plasma, but no data are available on this point. At least four cases of hepatitis have apparently been transmitted by cryoprecipitates (Refs. 43 through 46).

b. *Reactions.* Aherns (Ref. 47) reported 7 of 46 patients who had received cryoprecipitate from 4,363 donors had febrile reactions without other symptoms. Meyer (Ref. 43) reported no side-effects after the transfusion of 650 units of cryoprecipitate to 13 recipients.

Allergic reactions associated with cryoprecipitate are less severe and less frequent than with plasma (Ref. 40). Anaphylactic reactions have been described (Ref. 47).

c. *Factor VIII anticoagulants.* Two cases of patients with factor VIII inhibitors have specifically been reported following the administration of cryoprecipitates. One patient had received numerous plasma transfusions before being treated with cryoprecipitates for 13 days (Ref. 48) and the other had undergone three short courses of cryoprecipitate treatment in 4 weeks (Ref. 9). In 1969, 4 years after the introduction of cryoprecipitate, Strauss reported the incidence of acquired circulating anticoagulants in hemophilia A as 12 percent in the hemophilic patients studied (Ref. 49). However, the proportion was 16 of 77 (21 percent) of patients with factor VIII levels less than 1 percent of normal. Inhibitors did not occur on a familial basis, were found at a median age of 8 years (range 1 to 19 years), and developed after 20 to 90 exposure-days to factor VIII. No data were given on the relationship between a specific transfusion product and inhibitor formation.

It is apparent that cryoprecipitate transfusions are associated with the development of inhibitors but there is no evidence that their frequency is either more or less than that associated with other transfusion products containing factor VIII.

d. *Hemolysis due to blood group antibodies.* The titers of anti-A and anti-B in cryoprecipitates are the same as those of the starting plasma (Refs. 40 through 42). Severe hemolytic transfusion reactions have been reported after the transfusion of cryoprecipitates dissolved in plasma to ABO incompatible recipients (Refs. 41 and 50).

e. *Blood group isoantigen content of cryoprecipitate.* McShine (Ref. 51) has documented an increase in immune anti-A and anti-B titers following the transfusion of cryoprecipitates to patients with hemophilia and von Willebrand's disease. The exact interpretation of this observation is not clear.

f. *Hyperfibrinogenemia.* Since fibrinogen is concentrated in cryoprecipitates, repeated infusions may lead to high levels of fibrinogen. This hyperfibrinogenemia is usually innocuous (Ref. 39). However, roulex formation may be seen in blood films and samples (Refs. 35 and 52).

g. *Pulmonary reaction.* One case report has documented pulmonary infiltrates and hypoxemia resulting from cryoprecipitate administration (Ref. 53).

7. *Effectiveness—a. Factor VIII deficiency (Hemophilia A).* It has been well documented that Cryoprecipitated Antihemophilic Factor (Human) is effective in controlling spontaneous and operative bleeding in hemophilia (Refs. 9, 13, 39, 41, and 54 through 58). The dosage can be calculated on the basis of recovery of factor VIII in cryoprecipitate and the plasma volume of the recipient. There is an initial rapid disappearance of factor VIII activity, with a half-life of 3 to 5 hours and a subsequent slower disappearance with an apparent half-life of 8 to 12 hours. Transfusions of factor VIII are usually given on a 12-hour schedule in an attempt to maintain minimum levels of 10- to 15-percent factor VIII activity in the postoperative patient to prevent bleeding (Ref. 58).

Cryoprecipitate has also been shown to be effective in preventing spontaneous bleeding in hemophilics (Refs. 59 and 60).

b. *von Willebrand's disease.* Perkins and Bennett (Refs. 61 and 62) have reported correction of the bleeding time defect and elevation of factor VIII levels in patients with von Willebrand's disease given cryoprecipitates. In two of Perkins patients, purified preparations of factor VIII (Hyland's Hemophil™ and the American Red Cross Intermediate Potency AHG) were unable to correct the bleeding time although the factor VIII level was increased. Subsequently, Profilate (Abbott Laboratories) was shown to have similar properties. (Ref. 63). In fact, several studies have shown that failure to correct the bleeding time with commercial AHG concentrates was associated with continued bleeding even though factor VIII activity, factor VIII antigen and VW factor associated with platelet aggregation to ristocetin were appropriately increased following transfusion (Refs. 63 through 65). In the same patients in these studies cryoprecipitate improved the bleeding time and controlled the bleeding.

c. *Hypofibrinogenemia.* Since cryoprecipitates contain approximately one-third to one-fifth of the available plasma fibrinogen, it is possible to use pooled cryoprecipitates as a source of fibrinogen (Refs. 3, 9, 12, 29, and 43). Presumably a small pool of cryoprecipitates would result in a decreased incidence of hepatitis compared to transfusion of fibrinogen pooled commercial derived from plasma (Ref. 66). A fibrinogen level of 60 mg/100 mL is probably adequate to provide hemostasis; a rise in fibrinogen of this amount was obtained in two hemophilic patients with the transfusion of 10 units of cryoprecipitate once a week (Ref. 66). A normal in vivo disappearance rate of fibrinogen transfused from this material has been documented in rabbits (Ref. 67). In addition, Hattersley (Ref. 69) described the successful management of surgery in a woman with congenital fibrinogenemia with cryoprecipitates, as well as the treatment of patients with disseminated intravascular coagulation (DIC) and hypofibrinogenemia (Ref. 70).

8. *Recommendations.* It is recommended that Cryoprecipitated Antihemophilic Factor (Human) be placed in Category I. Further recommendations include:

a. Standardization of the factor VIII assay should be done by each registered establishment with the United States Standard as a reference or alternatively with a donor plasma pool of 10 to 30 normal individuals. In addition, in vitro assay results of cryoprecipitates must be correlated with the results of in vivo cryoprecipitate transfusions in which factor VIII recovery and survival in hemophilia A recipients is measured to document further the validity of the assay. Significant changes in the production process must be validated with repeat in vitro and in vivo factor VIII assays.

b. Assays of at least four units of cryoprecipitate per month should be done by each registered establishment to assure maintainance of an average potency of no less than 80 units of factor VIII per bag.

c. The following studies should be done in the future by the general medical research community of Federal agencies:

(1) To define the freezing and storage temperature of plasma to provide optimal initial and long-term stability of factor VIII,

(2) To document the best freezing temperature of the cryoprecipitate and its stability at varying storage temperatures, i.e., −20 °C, −30 °C vs. −70 °C and

(3) To evaluatte the best way to dissolve the thawed cryoprecipitate to maximize factor VIII yield and stability after resuspension. Measurements should be made at room temperature

d. Labeling should indicate that:

(1) Cryoprecipitate contains approximately 80 units of factor VIII/bag.

(2) Cryoprecipitate usually contains at least 150 mg of fibrinogen/bag.

(3) Good patient management requires monitoring treatment responses to cryoprecipitate transfusions with periodic plasma factor VIII or fibrinogen assays in hemophilia A and hypofibrinogenemic recipients respectively.

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9. Single Donor Plasma (Human)

Generic Statement

1. *Introduction.* As indicated in the review of whole blood, an important consideration in the management of hemorrhage is maintenance of the circulating blood volume. During World War II, plasma was used extensively in combat settings for the treatment of acute blood loss (Ref. 1). Plasma was effective in improving the pathophysiologic defect resulting from trauma and acute blood loss, but there was a significant incidence of hepatitis in patients transfused with plasma. The product used at that time was prepared by pooling plasma from many individuals and freeze-drying large batches. It was noted that the incidence of hepatitis in patients transfused with plasma from a large pool of donors was greater than in patients transfused with plasma from a small pool of donors (Ref. 2). It has been shown that plasma retains hepatitis infectivity even when very dilute (Ref. 3).

At one time, it was believed that the risk of transmission of hepatitis by pooled donor plasma could be reduced by storing the plasma at 30 to 32 °C for 6 months or more prior to use (Ref. 4). In a well-controlled study, however, it was demonstrated that storage of plasma at 30 to 32 °C did not significantly reduce the risk of hepatitis (Ref. 5). In a summary of the clinical use of pooled plasma, the Committee on Plasma and Plasma Substitutes of the National Research Council concluded that the use of whole, pooled human plasma should be discouraged or discontinued unless a clear-cut case could be made that is met a unique requirement (Ref. 6). When plasma infusion is indicated, it is generally believed that the risk of causing post-infusion hepatitis can be greatly reduced by using Single Donor Plasma. Although a risk is still present, it is of the same order of magnitude as that associated with the transfusion of whole blood (Ref. 7).

Plasma is relatively stable during short term storage in the liquid state except for certain labile components. The factors affecting blood during short term storage in plastic bags have been considered in the review of stored Red Blood Cell Products. During prolonged storage there is apparently a loss of fluid from the contents of the plastic container and unless additional glucose is provided, fibrinogen will precipitate. In order to avoid the changes associated with storage in the liquid state, plasma should be stored in the frozen state. Once converted to the frozen state, little or no further change occurs in plasma

during long periods of storage. Individual units of plasma stored in this way, when thawed, are reasonably equivalent to the plasma at the time of freezing.

In addition to its volume and colloid osmotic effect, plasma has been used as a source of plasma coagulation factors. Two of the clotting factors (V and VIII) deteriorate rather rapidly in blood or plasma stored at 4 to 6 °C, but are relatively stable when stored in the frozen state (Refs. 8 through 10). Plasma separated from whole blood and rapidly frozen within 6 hours of collection contains almost all the original activity of factor V and factor VIII. This product is called "Single Donor Plasma-Fresh Frozen" to distinguish it from "Single Donor Plasma" that has been separated from whole blood after longer periods of storage at 4 to 6 °C. The other clotting factors are more stable in plasma, and there is little loss of activity of these clotting factors in plasma which is stored in the frozen state (Ref. 11). No doubt there are a number of plasma constituents that do deteriorate during storage, but the importance of these in transfusion therapy has not yet been demonstrated.

The blood group antigens, except those of the Lewis system, are related to the red blood cells and are not present in the plasma. Provided the blood cells are not inadvertently present in plasma, many of the risks related to transfusion of whole blood are not applicable to the use of plasma. However, there are risks related to antibodies that may be present in plasma. Plasma from individuals whose red blood cells lack A or B antigens contain antibodies active against the antigens which are lacking. Thus, anti-A and anti-B antibodies are present in the plasma of group O individuals; anti-A is present in the plasma of group B individuals, and anti-B is present in the plasma of group A individuals. Antibodies of this type have produced hemolytic transfusion reactions when transfused into individuals whose red blood cells contain the antigen for which the antibodies are specific (Refs. 12 through 14). It has been estimated that approximately 40 percent of group O individuals have sufficient antibody levels to cause hemolysis when their plasma is transfused into a group A recipient (Ref. 12). Hemolytic reactions have been reported with transfusion of plasma with anti-A and anti-B antibodies reactive in the cold (Refs. 12 and 13) as well as those reactive at 37 °C (Ref. 14). Antibodies reactive with other blood group antigens are much less likely to cause hemolysis when infused into a recipient whose red cells carry the relevant antigen (Ref. 15).

The development of vasoactive substances during plasma storage has been considered in the review of Stored Red Blood Cell Products. Mollison (Ref. 16) cites several reports indicating the occurrence of vasoactive substances apparently related to enzyme action on plasma proteins. In view of the recent observations on prekallikrein activator in plasma fractions (Ref. 17) it is clear that under certain circumstances vasoactive substances in plasma can be clinically significant.

2. *Indications for administration of Single Donor Plasma*—a. *Plasma volume expansion*—(1) *Effectiveness.* There is a considerable amount of clinical experience to indicate that infusion of plasma will effectively expand the plasma volume of the recipient, although there is a report that some hypovolemic recipients of homologous plasma may exhibit little expansion of plasma volume (Ref. 18). There are other products that do this equally well or better, but plasma is usually effective.

(2) *Safety.* (a) There is a risk of transmission of hepatitis with the infusion of plasma. This can be decreased by careful selection of donors and testing each unit for HBsAG, but a risk remains.

(b) There is a risk of hemolytic transfusion reaction associated with infusion of plasma without consideration of the ABO groups of the donor and recipient. This can be minimized by using group-specific plasma.

(3) *Benefit/risk.* There are several other products that produce the same or a similar clinical effect that are not associated with the same risks. In comparison to these products, the risks of using single donor plasma exceed the benefits for this indication.

b. *Supply of coagulation factors other than V and VIII*—(1) *Effectiveness.* Plasma clotting factors other than factors V and VIII are present in Single Donor Plasma in approximately normal amount. When administered intravenously, the activity in the circulation is proportional to the volume given. In severely deficient subjects, the circulating level can be increased to approximately 20 percent of normal without producing circulatory overload. This will often provide adequate hemostasis in uncomplicated cases. Such treatment is not adequate for severe bleeding episodes or when surgery is required.

(2) *Safety.* (a) The risk of hepatitis is present.

(b) The danger of circulatory overload must be considered when attempting to produced and maintain hemostatic clotting factor levels.

(3) *Benefit/risk.* When a relatively small increase in circulating levels of deficient coagulation factors is desired, the benefits of Single Donor Plasma are considerably greater than the associated risks for this indication.

c. *Recommendations.* (1) Single Donor Plasma (Human) should be placed in Category I.

(2) The use of this product for plasma fractionation should be encouraged.

(3) The name of the product should be "Single Donor Plasma".

(4) Indications for use in hypovolemia should be stated in labeling in relation to the hepatitis risk.

3. *Indications for the administration of Single Donor Plasma (Human)-Fresh Frozen*—a. *Source of factor V and VIII—(1) Effectiveness.* Plasma clotting factors, including factors V, are present in approximately normal amounts in this product. When administered intravenously, the circulating levels are increased proportionally to the volume infused. Levels approaching 20 percent of normal can be achieved by infusing this product into severely deficient patients.

(2) *Safety.* (a) The risk of hepatitis is present.

(b) The risk of circulatory overload is present.

(3) *Benefit/risk.* (a) This product is the only available source of factor V for human use. When used appropriately in patients with a bleeding episode associated with severe factor V deficiency, the benefits far exceed the risks.

(b) This product is a source of factor VIII in relatively small amounts. In view of the availability of other more concentrated sources of factor VIII the benefits expected are minimal.

(c) As a source of coagulation factors other than factor V and VIII, the benefits/risks are equivalent to those of Single Donor Plasma.

(4) *Recommendations.* (a) Single Donor Plasma (Human)-Fresh Frozen should be placed in Category I as a source for the administration of factor V.

(b) The name of the product should be "Single Donor Plasma (Human)-Fresh Frozen".

(c) The utilizaton of more of this product as a starting material for preparation of factor VIII concentrates should be encouraged.

(d) Studies to develop a factor V concentrate should be encouraged.

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10. Normal Serum Albumin (Human)

Generic Statement

1. *Introduction.* Albumin has at least two major functions, providing plasma-specific osmotic activity, and performing an important carrier function by transporting various substances in a bound state. Both of these functions relate to albumin in the plasma. Most albumin normally exists in extravascular sites. It is not known whether this albumin performs any specific functions or represents preformed, stored material available in case of sudden need.

a. *Plasma-specific osmotic activity.* Starling's law of fluid exchange across the capillary bed postulates a major role for plasma-specific osmotic activity in determining the distribution of fluid across the capillary membrane (Ref. 1). Normally, 70 percent of this activity is provided by albumin. Starling's law is not fundamentally a biological phenomenon, but is rather the application of basic and well-established physical principles to the biological situation. Some relatively recent "criticism" of this law (Ref. 2) has tended to confuse the validity of the formulation with the definition of the conditions under which it operates. Starling's original formulation was clearly a gross oversimplification, but was based on what was known at that time. Almost all relevant conditions have since been defined in much greater detail. Perhaps most importantly, it is now apparent that the conditions under which this principle operates are different in different parts of the body: Interstitial fluid pressure, interstitial albumin concentration, intravascular pressure, and even vascular permeability all vary in different organs and regions. Failure to take these differences into account explains most if not all of the discrepancies that have been claimed to exist relative to Starling's law (Ref. 3).

Understanding of the situtation is further complicated by some of the self-correcting features of lowering the concentration of albumin in the plasma. There is a concurrent lowering of the interstitial concentration of albumin, minimizing the change in the transcapillary gradient, a rise in interstitial fluid pressure as fluid accumulates which also resists egress of fluid from the capillaries, and, in many organs, an increase in lymphatic return to minimize the extravascular accumulation of edema. In addition, the normal level of albumin in plasma is well above that necessary to prevent gross extravascular shifts of fluid. Nevertheless, numerous studies have shown that when albumin concentration is lowered, it is easier to induce the formation of interstitial edema, and this is the essence of Starling's formulation. Clinical experience is also concordant with the above relationship, but the quantitative details are far from clear. Certain populations of patients can tolerate hemodilution quite well; the level of hypo-albuminemia at which clinically worrisome changes appear in other patients is very variable. Thus, empiricism and experience still dominate clinical practice, and much more detailed knowledge of transcapillary fluid dynamic will be needed before clinical use of albumin for its osmotic effects can be placed on a firm rational basis. Some of what is known about various disease states will be reviewed later.

b. *Carrier protein.* Albumin is second only to hemoglobin as the major "carrier" material in the blood. A large number of naturally occurring and therapeutically administered substances are transported in the blood partially bound to albumin (Ref. 4). Albumin can bind substances with positive or negative charges, as well as a wide variety of uncharged substances. Among the natural substances carried by albumin, the most important may be the long-chain fatty acids. These are the major fuel substrates for the body, but are toxic in even small concentrations if unbound or nonesterified. They are carried almost totally bound to albumin, with varying degrees of affinity (Ref. 5). In the bound form they do not damage cell membranes or capillary walls. A variety of other lipids are also carried largely bound to albumin, as are certain divalent metals (calcium, copper and possibly zinc), bilirubin, tryptophan which is the only amino acid present in bound form in the circulation, and many more substances. The binding of bilirubin as in hemolytic disease of the newborn and of tryptophan as in cases of hepatic encephalopathy may be closely related to these and other

disease states. Similar clinical disorders have not been identified for the bound lipids, although marked hyperlipemia is characteristic of severe hypo-albuminemia and reverses when albumin is administered. Binding of certain hormones may also have physiologic significance, as may the binding and transport of many other substances normally carried in the blood.

A very large variety of drugs are carried in the blood partially bound to albumin (Ref. 6). The important pharmacodynamic features of these drugs such as levels in the interstitial fluid and urinary excretion are usually determined by the proportion of the drug that is unbound.

In spite of these considerations, it has been difficult to attribute specific harmful effects to loss of the carrier function of albumin in severe hypoalbuminemia except in hemolytic disease of the newborn. There are many interrelationships between and among substances bound to albumin with some, especially the fatty acids and certain drugs, interfering with the binding of many others. Competitive binding must certainly accentuate effects at lower-than-normal concentrations of albumin. As knowledge of pharmacodynamics increases, the binding function of albumin is likely to be increasingly recognized as important.

c. *Normal albumin dynamics.* Albumin has been difficult to study because of its long persistence, 15 to 20 days, and multicompartmental distribution with varying equilibration times. This requires a long period of steady state conditions for the establishment of equilibration curves and precludes the study of many important but unstable clinical states. The normal total mass of albumin in a 70 kg adult probably exceeds 300 grams with a turnover of 15 grams per day (Refs. 4 and 7).

(1) *Albumin production.* Albumin is synthesized in the liver and seems to be released directly into hepatic sinusoidal blood rather than by way of the thoracic duct. The rate of synthesis is very sensitive to the supply of amino acids presented to the liver. Complete fasting can reduce the rate of synthesis by 50 percent within a few hours, with recovery beginning within minutes of refeeding. A number of amino acids are specifically effective in stimulating synthesis of albumin. All of these also stimulate synthesis of urea. Some of these, tryptophan and ornithine specifically, are incorporated sparingly or not all all into the protein synthesized.

Hormonal balance probably influences the rates of synthesis for albumin. Cortisol, thyroxine, and growth hormone appear to stimulate synthesis. Although not specifically studied, glucagon is likely to have the opposite effect. A certain amount of insulin may be necessary to achieve maximum rates of albumin synthesis.

One of the main mechanisms controlling albumin metoliusm is the concentration of colloid in the interstitial spaces of the liver (Ref. 8). As this concentration increases, the rate of synthesis of albumin decreases. Almost any osmotically active material seems to be effective in decreasing the rate of synthesis: dextran, gamma globulin, or albumin itself. Some authors seem to believe that hyperosmolality due even to small molecular species will inhibit synthesis. The rate of degradation does not decrease proportionately, and the level of albumin in the blood falls until the concentration of large molecular colloid in the hepatic interstitial space returns to normal.

(2) *Degradation of albumin.* Remarkably little is known about the site or control of degradation of albumin, when one considers its physiological importance and the large amount, about 15 grams, normally catabolized daily. Several experiments suggest that synthesis and degradation are not interdependent. In the absence of better data, the liver seems to be a likely site for degradation of albumin, but in vitro studies on liver slices do not confirm this.

Rates of degradation increase markedly with induced hyperalbuminemia and decrease during starvation. The great void in our knowledge regarding albumin degradation and its control seriously impair understanding of the overall control of albumin metabolism.

(3) *Body distribution of albumin.* Although there is some disagreement about details, two different methods of analysis indicate that most of the albumin is normally outside the plasma, probably 60 to 67 percent (Ref. 9). Most of the extravascular albumin is present in the skin, less in muscle which has a low concentration of albumin in a large total volume of interstitial fluid, less in the gut, and very little in the liver or other viscera. Extravascular albumin equilibrates at different rates with the plasma pool; it is most rapid for muscle, slower for the skin, and very slow for the gut. The extravascular albumin returns to the plasma mainly by the thoracic duct. The rate of return of albumin from all extravascular sites is very much slower than the rate of return of interstitial water. This suggests that there is a distinct holding mechanism for albumin in the interstitial matrix similar to molecular sieving, with different features of the general process in different tissues.

2. *Indications for the clinical use of albumin.* Albumin is used clinically for many different reasons. The survey recently reported by Sgouris and Dorsey generally confirms the usually stated categories of reasons given for usage; these are the only such data available in the U. S. (Ref. 10). Some of the present albumin usage is plainly mistaken because of oversights in ordering its administration (Ref. 11), but much of its use follows a certain logic. Before considering some of these specific categories, some general comments may be useful.

Personal experience of members of the Panel indicates that very few physicians, including well-trained house staff, understand the arithmetic of the distribution of administered albumin. Many physicians are completely unaware of the existence of extravascular stores of this protein in equilibrium with the plasma; very few know the approximate size of these stores or are aware of the complex, changing relationships between blood levels and interstitial levels that occur as hypoalbuminemia develops. All of these voids in knowledge lead to very gross underestimations of the amount of albumin needed to achieve a desired effect. Most clinicians also seriously underestimate the half-life of human albumin, but this error is not enough to offset their gross underestimation of requirements. Just as importantly, few clinicians can really explain why the blood level of albumin they have chosen is desirable. Perhaps the most rational practitioners are the complete empiricists who administer albumin until the blood levels increase or, if appropriate, blood pressure, urinary output or arterial oxygen pressure increase, or until edema subsides. Sometimes the end point of this pattern of administration is very vague, but usually it is a rational goal. Given the regrettable ignorance of most clinicians about the physiology of the product they are prescribing and its quantitative aspects, the empirical approach is perhaps the safest for the individual patient. It is not the best for the blood, plasma, and albumin supply system, however. As Lundsgaard-Hansen has implied for Switzerland (Ref. 12), and also in the United States, albumin is used in too many patients in quantities too small to do many of them much good even if they did need it.

a. *Hypovolemia*—(1) *Rationale and effectiveness for use in hypovolemia.* Probably the commonest reason for using albumin is to expand blood volume. Occasionally it is used as the primary agent for this purpose; more commonly it is used to supplement simple salt solutions, and occasionally it is used to supplement administration of sedimented or frozen, washed red cells. Some of this use is for a combined indication of hypovolemia with hypoalbuminemia when an increase in cardiac output is sought in such a patient who may also already have peripheral edema.

The normal response to hemorrhage consists of an initial intravascular shift of protein-poor interstitial fluid. There is a gradual shift of albumin back into the vascular space, largely via the thoracic duct, with an overall "buffering" of the intravascular mass of albumin by a greater decrement in the extravascular mass once equilibrium is reached (Refs. 7 and 13). This is characteristic of the response to sudden loss of albumin regardless of the cause. The sites of extravascular albumin storage are primarily the very organs in which capillary pressure is reduced in response to hypovolemia, especially the skin. This suggests that physical forces have much to do with this buffering mechanism. No other control mechanism has been identified or suggested.

The rate of synthesis of albumin varies inversely, and the rate of degradation varies directly with its concentration in the interstitial space of the liver. The mechanisms of this regulation are unknown. The intravascular concentration of albumin is thus restored back nearly to normal within a few days even without supplementation by administered albumin.

One disadvantage to the use of albumin to restore blood volume is its long persistence. If the need for red cells becomes apparent after administration of a large volume of albumin, one must either wait for its equilibration throughout the system, or perform phlebotomy or plasmapheresis, or run the risk of overloading the circulation with the administered cells. The practical disadvantages of albumin therapy are those of cost and availability.

(2) *Burns.* Burn treatment represents a special situation. Pruitt and associates (Ref. 14) and Baxter (Ref. 59) have presented evidence in patients that supplemental albumin with isotonic or slightly hypotonic salt solutions contributes nothing to the expansion of the plasma volume in the first 24 hours after a major burn. Its use in these circumstances does not seem rational. A recent study, however, indicates that supplemental albumin may be useful in the early post-burn period if used with hypertonic saline solutions (Ref. 60). Interestingly, these patients had normal rates of disappearance of albumin from the circulation, in marked contrast to patients treated with other regimens and studied in this and other series. A number of unanswered questions remain, and more study is clearly needed.

Large amounts of protein are lost into the burn wound for significant periods of time. One of the major sites of albumin storage, i.e., the skin, is partially destroyed and the albumin that has been thermally altered by the burn is almost certainly removed at an accelerated rate. Paralytic ileus usually occurs in burned patients and interferes with nutrition. Some degree of infection is always present, and a prolonged maximum stress response with a prolonged catabolic state is also produced. Massive edema usually develops. Repeated skin grafting operations are necessary. All of this can create the need for administering very large amounts of albumin therapeutically. There is still disagreement about administering albumin early after burn injury, but even extensive nutritional support may have to be supplemented with the administration of albumin later in the care of such patients until the burn wounds are healed.

(3) *Miscellaneous uses of albumin in hypovolemia.* Albumin is used to replace blood volume in a variety of special situations, such as exchange plasmapheresis, "total body washout," and to supplement extensive use of red blood cell concentrates or frozen, washed red blood cells. In these circumstances, clotting factors are not replaced exogenously, and there is often a lack of awareness of the significant amount of citrate in these preparations. Other indications for the use of albumin are quite nonspecific and represent combinations of hypovolemia and hypoalbuminemia as in pancreatitis, trauma, hemorrhage, "shock," cardiopulmonary bypass, and hemodialysis.

(4) *Effectiveness of the use of albumin for hypovolemia.* The older literature confirms the effectiveness of albumin prepared by the Cohn fractionation method in supplementing circulating levels of albumin in the recipient with a variety of illnesses, including hypovolemia, and in restoring blood volume toward normal (Ref. 15). The specific treatment of blood loss with plasma proteins, however, has been an uncertain area. There is much experimental and some clinical evidence of less-than-expected effectiveness of albumin administration in promoting survival (Ref. 16). Most of these studies used raw plasma rather than albumin, and it is likely that there were differences in the degree of protein denaturation. The role of albumin prepared by Cohn fractionation in resuscitating patients from hemorrhage remains to be defined, especially as it can be compared with other currently used treatments for this condition. Recent evidence indicates that simple electrolyte solutions may be equally effective in many patients at far less cost (see section on acute pulmonary insufficiency).

(5) *Safety albumin for use in hypovolemia.* Albumin appears to be inherently safe. The main potential problems of its use relate to its physiologic effects. The restoration of blood volume in a hypovolemic patient may result in renewed bleeding from transected blood vessels. The expansion of blood volume by administering albumin without red blood cells was discussed above. Concentrated albumin, above 5 grams/dL, requires the administration of additional noncolloid containing fluids unless the patient is already overload with interstitial fluid. Administering to much albumin can overload the circulation and precipitate pulmonary edema.

(6) *Benefit/risk evaluation of albumin for use in hypovolemia.* When properly used for hemorrhage, albumin appears to be significantly beneficial at very little risk.

(7) *Recommendations for albumin administration in hypovolemia.* Hypovolemia is a valid indication for administering albumin. It is not however clear that albumin adds any therapeutic effect to the use of simpler electrolyte solutions when treating limited hemorrhages. (See the section on pulmonary insufficiency).

(8) *Labeling changes for use in hypovolemia.* The appropriate precautions discussed here should be included in all labeling. Use of 25-percent albumin as the primary treatment for hypovolemia is questionable, and it should not be used as such unless the patient is already edematous. If the 5-percent preparation of albumin is not available, 25 percent albumin may be used with concurrent administration of an appropriate volume and kind of fluid.

b. *Hypoproteinemia*—(1) *Rationale and effectiveness for use in hypoproteinemia.* Albumin is ofter used to mobilize or prevent the formation of

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periheral edema in patients with significant hypoalbuminemia. As previously discussed, the deficit in albumin is usually grossly underestimated, and in situations with large continuing losses of albumin this treatment will have very temporary effects. Aside from the specific effects on pulmonary function, it is not clear what is gained therapeutically by increasing the plasma concentration of albumin, and what, it any, is the minimum desirable level. Hypoproteinemia is one of the conditions that is associated with impaired healing of wounds (Red. 17). It is not known to what extent hypoalbuminemia contributes to this, and how effective the infusion of albumin might be in restoring the capacity for healing wounds. Congenital analbuminemia is rare but seemingly well tolerated. There are undoubtedly several compensatory mechanisms in this condition which may not operate in acquired hypoalbuminemia. To the extent that the cause of the hypoalbuminemia can be identified and corrected, it should be, as this will be much more effective from every viewpoint.

There are a number of clinical situations in which chronic hypoproteinemia is common. Each has special considerations. There are at least two separate problems in patients with cirrhosis. The rate of sythesis of albumin may be decreased because of functional impairment of the liver, but ofter this can be returned to normal by stopping the ingestion of alcohol and providing adequate nutrition (Ref. 18). The rate of degradation of albumin is also decreased, but not sufficiently to preserve normal blood levels. Administered albumin effectively, but temporarily, restores blood levels toward normal in the absence of ascites. If ascites is present, the sequestration of albumin in ascitic fluid can constitute a marked distributional abnormality. Albumin appears to enter the ascites directly from the liver. The total mass of body albumin may be greater than normal, but severe hypoalbuminemia is usually present. Administered albumin ofter has little effect in reducing the ascites if the ascites has proven resistant to currently available diuretics and/or aldosterone antagonists.

The nephortic syndrome epitomizes the pathological losses of albumin that can occur with renal disease. With marked albuminuria, synthetic rates are markedly increased provided nutrition is maintained. Rates of albumin degradation are decreased. The compensatory shift of extravascular albumin to the plasma can be altered by extensive peripheral edema with expansion of the interstitial space. Infusions of albumin can help mobilize edema, but he effects will be very brief as long as rapid loss of albumin continues.

Interpretation of albumin dynamics in the patient with gastrointestinal disease can be very difficult. The gut can certainly shed large quantities of albumin and, like the kidney, constitutes a site of major loss. Many gastrointestinal diseases will also produce impaired absorption of nutrients (Ref. 19). The responses in albumin production of these patients to total parenteral nutrition indicates that malabsorption dominates in many patients with inflammatory bowel disease.

Pemphigus is another condition in which very large amounts of albumin can be lost continously. If the oral cavity is involved, nutrition may also be impaired. Any extensive exfoliative condition of the skin can do the same.

(2) *Safety of the administration of albumin in hypoproteinemia.* Again, caution is required when using albumin in an anemic patient, because the expansion of plasma volume will decrease the concentration of hemoglobin in the blood.

(3) *Benefit/risk of the administration of albumin for hypoproteinemia.* Older literature and current clinical experience supports the effectiveness of currently available preparations of albumin in restoring the plasma levels of albumin back toward normal in these conditions, if the distributional aberrations are taken into consideration (Ref. 15). With rapid continued loss of albumin, the effects of its administration will be very transient.

The risk of administrating albumin is low except when concentrated albumin is given rapidly to an edematous, hypoalbuminemic patient. It is estimated that 1 gram of albumin holds 17 to 18 mL water in the plasma volume. Rapid administration of the 25-percent concentration material to an edematous patient can easily precipitate pulmonary edema. The concurrent administration of a non plasma expanding diuretic to reduce plasma volume may be useful in this situation, but careful monitoring and slower rates of administration are even more desirable.

(4) *Recommendations for the administration of albumin in hypoproteinemia.* More basic research is needed to define the levels at which hypoalbuminemia becomes harmful, and when correction by supplementation is worthwhile.

(5) *Recommendations for labeling of albumin for administration for hypoproteinemia.* Labeling should emphasize the danger of inducing pulmonary edema when giving concentrated (25 percent) albumin to an edematous, hypoalbuminemic patient. Correction of the underlying defect should also be emphasized as the preferable approach to treating hypoalbuminemia.

c. *Acute pulmonary insufficiency*—(1) *Rationale for use of albumin in acute pulmonary insufficiency.* There is considerable disagreement concerning the role of plasma concentrations in the development and treatment of acute pulmonary insufficiency. On one side, it is clear that decreasing the albumin concentration in the prefusate of the isolated lung increases the ease with which pulmonary edema forms (Refs. 20 and 21). Arterial oxygenation in patients with acute pulmonary insufficiency may improve with the concurrent administration of albumin and diuretics (Refs. 22 and 23). Some studies show a significant degree of hypoalbuminemia in most patients with acute respiratory failure not due to left ventricular failure (Refs. 23 through 25, 61 and 62), but this does not prove a cause-and-effect relationship. Skillman et al. have shown in a prospective, semi-controlled study on surgical patients that adding albumin to the therapeutic fluid regimen is associated with less subsequent impairment of oxygenation (Ref. 26), but the patients were treated with predetermined volumes of fluid. Elective hemodilution with solutions containing albumin appeared to cause less impairment of pulmonary function than hemodilution with simple salt solutions, but the studies were not concurrent or randomized (Ref. 63).

On the other side of the question, there are now several prospective, well-controlled studies in patients resuscitated from serious injury or studied through major intraabdominal operations, in which treatment with isosmotic albumin was compared with treatment with simple electolyte solutions. No differences were observed, either in gross clinical results or on sophisticated testing of pulmonary function (Refs. 64 and 65). Several studies are noteworthy because of the surprisingly small decreases in albumin concentration that were produced by the use of simple salt solutions as treatment for major hemorrhages (Refs. 64 and 66). In one study, serum colloid osmotic pressure was reduced to about 60 percent of normal, perhaps because the study group was comprised of older patients undergoing extensive

retroperitoneal dissection (Ref. 65). These patients were carried through the operative period with acceptable pulmonary function, at least equal to that of the control group treated with supplemental albumin. These patients were very carefully monitored for changes in pulmonary capillary wedge pressure, however, and this may be a requirement for such methods in patients of this type. More clinical studies of a similar type are currently underway, involving various specific groups of patients. Such studies will greatly clarify the extent to which supplemental albumin is needed (or not needed) in the treatment of acutely ill patients. The best current data relate to patients treated for acute hemorrhage and indicate that extensive blood loss can be treated with simple electrolyte solutions without use of supplemental albumin, even when red cell preparations must also be used.

The physiological basis for this surprising result is now being investigated in controlled laboratory experiments. Much of this work is also still in progress, but studies of the lymphatic drainage of the lungs indicates that the consentration of albumin in the interstitial fluid of the lungs falls rapidly with an acute decrease in the concentration in the plasma, thereby tending to minimize a change in the transcapillary gradient. In addition, the rate of pulmonary lymphatic drainage can increase markedly, protecting the lungs from flooding. One result of this relative resistance of the lungs to flooding is that excessive amounts of salt and water tend to be sequestered in other sites in the body, especially skin, fat, and muscle (Ref. 67).

Most of these studies only cover the acute phase and deal with otherwise normal individuals. These results might not occur in other clinical circumstances. It is worth noting that the incidence of pulmonary dysfunction after use of large amounts of salt and water may also be effected by post-resuscitative renal function, indicating that the compensatory mechanisms are limited (Refs. 68 and 69). Even with gross overloading with salt and water, hydrostatic pressure may be a more important determinant of the formation of pulmonary edema than plasma osmotic pressure (Refs. 65 and 70).

The proper use of supplemental albumin in patients with already established acute pulmonary insufficiency without chronic lung disease is even less clear. Several published studies indicate a rough correlation between the degree of hypoproteinemia and various measures of pulmonary insufficiency in such patients, but there is no study showing clear improvement following administration of albumin only (Refs. 23 through 25, 61 and 62). It is possible, especially in infected patients, that this concurrence of hypoproteinemia and pulmonary insufficiency represents the effects of another common cause rather than direct cause and effect. At least one study now in progress on such patients who are also hypovolemic compares resuscitation with simple salt solutions versus isomotic albumin (Ref. 71). No functional differences were found. It is unfortunate that concentrated albumin was not used as a test solution. As with resuscitation from simple blood loss, however, the expected benefits of supplemental albumin in hypoproteinemic patients in ventilatory failure are proving unexpectedly difficult to document.

Established pulmonary failure is often associated with markedly increased amounts of albumin in the lungs, reflecting a probable increase in pulmonary capillary premeability (Ref. 27). If such indeed, occurs, administering albumin would be of little help. Such lesions may be irregular in distribution, however, (Ref. 72), and the relatively normal areas of lung might be protected by maintaining albumin concentrations in the plasma near normal. Recent studies in large primates (Refs. 28 and 29) and in rodents (Ref. 30) indicate that use of albumin or plasma during resusitation from severe hemorrhage may in fact increase the sequestration of fluid in the lungs and the pulmonary ultrastructural changes demonstrable after resuscitation. Some studies in primates come to the opposite conclusion (Ref. 31). Such studies in animals must be balanced against the reported similar studies in patients, with one exception discussed below, in which use of albumin was not demonstrably harmful.

There is a single published study in which use of supplemental albumin in acutely injured patients was associated with higher morbidity, especially pulmonary insufficiency, than use of simple electrolyte solutions (Ref. 73). The patients treated with albumin in this study received the albumin on a predetermined schedule, and had demonstrably higher blood volumes and very much higher cardiac-filling pressures. It seems from the data that too much albumin was given to these patients, with overexpansion of blood volumes to the point of pulmonary edema.

(2) *Safety of albumin administration for acute pulmonary insufficiency.* As noted, the possibility exists that in certain situations, albumin might worsen problems of ventilation and gas exchange. Aside from overexpansion of blood volume, however, this is conjectural, and current evidence favors avoiding hypoalbuminemia if possible in patients in acute respiratory failure. The expected beneficial effects, however, still lack clear documentation in properly controlled studies.

(3) *Benefit/risk of administration of albumin for acute pulmonary insufficiency.* The benefits probably significantly outweigh the risks for this indication, but more study is clearly needed.

(4) *Recommendations for the administration of albumin in acute pulmonary insufficiency.* Considerably more investigation is urgently needed on this important problem. Some of this research is now underway.

(5) *Labeling recommendations for the administration in acute pulmonary insufficiency.* In the absence of better and more complete data, no firm recommendations can be made. Any labeling dealing with this indication should indicate that some controversy exists.

d. *Malnutrition*—(1) *Rationale and effectiveness of the administration of albumin in malnutrition.* Hypoalbuminemia develops during protein or protein-calorie deprivation. Inadequate nutritional intake leads to rapid diminution in rates of albumin synthesis and degradation with some decrease in the total mass of albumin and the expected shift of extra-vascular albumin into the vascular space. This compensatory shift which masks much of the true decrease in total body albumin mass had led to numerous statements about the poor correlation between serum levels of albumin and nutritional status. Better understanding of the dynamic processes involved and more precise methods of measurement have shown that the serum level of albumin does indeed vary in the expected manner with alterations in nutritional status. While administration of albumin is effective in temporarily correcting nutritional hypoalbuminemia (Ref. 15), the clearly preferred treatment is the correction of the malnutrition. Sometimes this requires the use of total parenteral nutrition, which carries with it some danger, so that costs and benefits must be carefully evaluated.

Albumin given intravenously is not a good sole source of high quality protein because of its relative deficiency in two essential amino acids, leucine and

tryptophan, and because of its slow rate of degradation after infusion. It can, however, support growth for short periods. Better products are now available consisting of mixtures of amino acids for parenteral use. These do not require human sources for production and are superior products for parenteral nutritional use.

(2) *Safety of the administration of albumin for malnutrition.* Albumin is safe, if less than optimally effective when used for this indication.

(3) *Benefit/risk of the administration of albumin for malnutrition.* While the benefit/risk ratio is acceptable because of the low risk, there are clearly more effective and efficient methods of treatment of malnutrition available.

(4) *Recommendation for the administration of albumin for malnutrition.* It is recommended that this indication for use be eliminated.

(5) *Labeling recommendations for the administration of albumin for malnutrition.* Labeling should not promote or suggest the use of albumin as either the primary or a supplemental treatment for nutritional deficiencies when preferable forms of treatment are available. Use of these other methods should be strongly suggested, if malnutrition is discussed at all in the labeling.

e. *Trauma and infection*—(1) *Rational for the effectiveness of the administration of albumin for trauma and infection.* Synthesis of albumin decreases markedly after injury in animals; only about half of this is due to inanition (Ref. 32). It is likely that the same occurs in man, as the degree of hypo-albuminemia that develops is greater than would be expected from sequestration in wounds. In some states of infection, hypergammaglobulinemia may be associated with a decrease in the synthesis of albumin, but the quantitative aspects of this relationship are unclear. In addition there can be sequestration of large amounts of albumin in areas of injury, operation, or infection.

Severe trauma and infection are both characterized by prolonged negative nitrogen balance (catabolism) far exceeding that due to starvation, a state that is resistant to supplemental nutrition. An expansion of the interstitial fluid space also occurs. It is likely that much of this is hormonally mediated, but the details of the involved mechanisms are not at all clear (Ref. 33). It seems likely that albumin shares in the generalized protein catabolism. However, the rapid changes in metabolism, pool sizes, and clinical condition have made detailed studies of the metabolism and distribution of albumin in such patients impossible. This is very unfortunate, as these patients represent perhaps the single largest group of potential recipients of albumin in current medical practice. The fate of albumin administered to these patient, for example, is largely unknown.

Supplemental albumin is effective in restoring blood levels after extensive operations or major injury; the effectiveness of albumin administration seems to be somewhat less with major infection. Whether this difference is due to greater sequestration or to increased catabolism is uncertain.

(2) *Safety of the administration of albumin for trauma and infection.* If overloading of the circulation can be avoided, the use of albumin seems safe for these indications.

(3) *Benefit/risk of the administration of albumin for trauma and infection.* With a very low risk, almost any benefit establishes an acceptable ratio. There probably is some benefit in these circumstances, although its exact nature and value is not clear.

(4) *Recommendations for the administration of albumin for trauma and infection.* Methods for evaluating rates of synthesis, rate of degradation, and pool sizes which measure the effects of albumin administered for these conditions are needed.

(5) *Labeling recommendations for the administration of albumin for trauma and infection.* There are no specific recommendations for labeling changes.

f. *Post-operative hypoproteinemia.* Operations involving large wounds are accompanied and followed by sequestration and loss of albumin (Ref. 34). The quantities involved can be very large, especially with extensive procedures in the pelvis or retroperitoneum, where effective immediate sealing of the wound is difficult. If drainage to the outside is present, significant losses may continue for days. These sudden losses occur in a setting of protein starvation, so that the anticipated increase in rates of synthesis is almost certainly delayed. Recent studies indicate that parenteral supplementation of nutrition with amino acids is sufficient to increase rates of synthesis of albumin significantly in post-operative patients (Ref. 35). With extensive surgical procedures, however, infusion of albumin itself during and after the operation may be necessary.

g. *Hemolytic disease of the newborn.* It is the unbound unconjugated fraction of plasma bilirubin that causes neurological damage in icteric newborns. Albumin is the major plasma binding substance and thus offers some protection against brain injury by bilirubin. Synthesis of albumin may be impaired in some sick newborns, and the concentration of the patient's albumin must be measured and maintained near normal. If exchange transfusion becomes necessary, supplemental albumin before and during the exchange may increase the efficiency of removal of bilirubin from infants, even those with relatively normal concentrations of albumin (Refs. 36 through 38). If care is taken to avoid circulatory overloading from induced hypervolemia, little harm and some benefit probably result. Drugs that compete with bilirubin for binding to albumin must be avoided in these infants. Pertinent specific references should be cited in the labeling if this indication is listed.

h. *Cardiopulmonary bypass*—(1) *Rational for the administration of albumin in cardiopulmonary bypass.* Albumin is often used to avoid induction of excessive edema during cardiopulmonary bypass with priming solutions which do not contain blood, and with massive single-pass exchange transfusions ("total body washout"). The amount of albumin that is used varies considerably, and it is clear that normal levels are not necessary during bypass to achieve good results. The minimum acceptable levels are also not known, but restoration of albumin concentration after bypass is clearly more important than maintenance during bypass.

(2) *Safety of the administration of albumin for cardiopulmonary bypass.* Under the circumstances of close monitoring during treatment that prevails in these patients, use of albumin to mobilize excess salt and water from the interstitial space seems safe.

(3) *Benefit/risk of the administration of albumin for cardiopulmonary bypass.* With proper monitoring to detect left ventricular failure, the benefit/risk ratio is acceptible.

(4) *Recommendations for the administration of albumin for cardiopulmonary bypass.* Clinical data indicating the most efficient time for administration and the lowest doses needed for acceptable effects would help reduce wastage of albumin.

(5) *Labeling recommendations for albumin administration for cardiopulmonary bypass.* Labeling should emphasize the need for careful monitoring of patients and the lack of data needed to define the most efficient patterns of administration of albumin if this indication is listed.

i. *Cerebral edema.* Cerebral edema has appeared briefly in the literature as an indication for the parenteral administration of human albumin (Refs.

39 through 41). The clinical experience cited is very brief, completely uncontrolled, and unsubstantiated by documentation of preexisting hypoalbuminemia that was corrected. Current concepts of cerebral edema focus on the mobilization of intracellular fluid as well, by use of small molecular, osmotically active substances such as mannitol. There is little theoretical, experimental, or clinical data to support the use of albumin for the treatment of cerebral edema in a nonhypoalbuminemic patient. This indication should not be approved for labeling.

j. *Miscellaneous.* Most other listed indications for use, such as pancreatitis and toxemia, are not specific but are rather diseases in which hypovolemia and/or hypoalbuminemia may occur in varying combinations of severity.

3. *Safety issues related to the manufacture of albumin*—a. *Polymers.* There is significant variation in the proportion of albumin which exists in polymeric form in various preparations. Factors which bear on this include the quality of the starting material, the amount and duration of heating, the temperature during storage, the method of fractionation, and the concentration of the albumin in solution (Refs. 42 through 47). It is noteworthy that the percentage of monomer declines with reheating during the manufacturing process, increasing age of the starting material, and prolongation of storage. Some manufacturers achieve a product with over 90 percent of the albumin in monomeric form; for others, some lots may be as low as 70 percent and perhaps even lower (Refs. 44 through 47). For all manufacturers, the monomeric fraction apparently decreases with storage, but apparently at different rates.

There is very little evidence on the effectiveness of polymeric albumin. What data there are suggest that it is removed rapidly from the circulation after it is infused. There seems to be only one study on the fate of infused human albumin dimers in man (Ref. 48). That study revealed only a modest shortening of the biological half-life of the albumin in the few subjects studied. There seems to be no evidence of albumin dimers dissociating back to monomers after infusion. If this is the case, the dimeric form would then have half the osmotic effect of the monomeric form on a weight basis. It is likely, but not proven, that higher polymers contribute little or nothing to the desired therapeutic effects of infused albumin. There is, therefore, concern about the variation in composition of albumin monomers and oligomers which may in fact result in surprisingly wide variations in effect in vivo. Clearly, much more data are necessary to evaluate the significance of oligomers in these products, but it seems prudent and reasonable to require better control of the amount of polymers in the products pending the availability of such data.

b. *Placental source materials.* A portion of the source albumin currently used in manufacturing by one producer is derived from human placentas. There are some differences in the processing and properties of this source material compared to venous plasma from blood or plasma donors.

Placental material from each donor is not individually tested for hepatitis B surface antigen (HBsAg). Data from the single current manufacturer indicates that at least 0.2 percent (and probably more) of their donor population carry detectable HBsAg. Numerous previous studies have shown that HBsAg can be carried through the usual cold ethanol fractionation process and be detectable in albumin (Refs. 49 through 53). Similar studies with the exact method used to process placental material have not been done. It is unlikely that albumin produced from placental sources is infectious for hepatitis B virus (HBV), but it is likely that some HBsAg is carried through processing into the final product. The concentration is likely to be too low to be detected by currently available methods, but it is not known if such low concentrations can produce a detectable antibody response in recipients of this product. If such occurs, it could certainly result in diagnostic confusion and uncertainty when later detected in former recipients. If such is to be expected with significant frequency, then at least the labeling should warn of this unexpected and undesired possibility. A rather simply designed study could answer this question and should include as controls, recipients of albumin prepared from venous sources individually tested for HBsAg by radioimmunoassay (RIA).

Albumin can tightly bind a wide variety of biological materials found circulating in blood or produced by placentas. Such physiochemical binding is one of its important biological properties. Placental starting material has more hemoglobin, blood group substances A and B, HL–A antigen and a wide variety of hormonal agents than venous plasma (Refs. 54 and 55). Women in labor in the United States are quite likely to have received a variety of drugs immediately before or during delivery. Some of these drugs would be expected to be bound to albumin in the placental source material. The fact that alkaline phosphatase of placental origin is found in albumin produced from placentas demonstrates that at least some of this material can be expected to remain attached to albumin or be carried through the fractionation process used in the United States and thus be present in the final product (Refs. 56 and 57). Small amounts of placental lactogen are also found in the final product, another demonstration of the same principle. Comparative studies suggest that the method used in the United States to remove excess hemoglobin from the placental source material is less effective than some alternatives in removing hemoglobin, blood group substances A and B, alkaline phosphatase, and transaminase (Ref. 58). The United States manufacturer reports undetectable levels of blood group substances A and B, and the level of hemoglobin meets current standards, but the marketed material is largely diluted with albumin derived from venous plasma, and placental alkaline phosphatase is still present in significant amounts. There are very few data available on the probability of various drugs being carried through the processing into the final product. Of these, penicillin might be the most likely one, but by no means the only one, with significant dangerous potential.

On the other hand, there is a long history of the use of placental albumin in the United States and other countries without recognition of significant clinical problems of the type discussed.

4. *Recommendations for Normal Serum Albumin*—a. Normal Serum Albumin (Human) should be placed in Category I.

b. The sodium content of all products should be limited to 130 to 160 mEq/L.

c. The Bureau of Biologics should be informed by the manufacturer of the amount of "reworking" on the production of each lot released.

d. Manufacturers using placental source material should demonstrate that penicillin is not carried over into the final product by performing a sensitive assay for penicillin allergen on a significant number of lots.

e. The manufacturer's production process should be designed to assure that the final product contains a maximal amount of albumin in the monomeric form. Current data suggest that this should be no less than 85 percent of the albumin in monomeric form at the time of release and no less than 75 percent of the albumin in monomeric form at the time of outdating.

f. *Labeling recommendations.* (1) The name of the product should be "Human Albumin." The terms "Normal" and "Salt Poor" should be discontinued in labeling. "Albumin" alone will suffice if albumin from other species is not

marketed in a form likely to be confused with this.

(2) Much current labeling and advertising do not reflect the best current information as discussed earlier. Albumin should not be promoted as a nutritional agent. When recommended to treat hypoalbuminemia, the labeling should also point out that improvement of the patient's nutritional status is a necessary and preferable approach, where possible. Administration of albumin in the shock phase within 24 hours after major burns is of questionable value as is its administration for cerebral edema. Specific diseases should be listed only as examples of broader, stated indications. Where specific circumstances apply, e.g., hemolytic disease of the newborn, this should be pointed out and appropriate references cited.

(3) More emphasis is needed in most labeling on:

(a) The potential for pulmonary edema with rapid administration of the 25 percent albumin product.

(b) Individualization of doses and rates of administration.

(c) Correcting the underlying cause of the condition requiring use of albumin.

(d) The hazards of use in patients with severe anemia.

(e) The potential for microbial contamination once the package is entered.

(4) Material prepared from placental sources should indicate in the labeling that a variety of biological materials may be present in small amounts which are not found in material from venous plasma.

(5) The approximate concentrations of chloride and potassium ions should be given in the package insert.

d. *Stability.* The current shelf-life expiration times may need to be revised as more studies are performed, and particularly if the requirement for minimum monomer content is adopted.

e. *Research*—(1) There is a great need for methods of measuring the dynamics and in vivo distribution of albumin; these methods must be more rapid and less cumbersome than those now available. This will allow needed studies to be carried out in acutely ill, unstable patients.

(2) It is still not clear at what levels and in what circumstances low concentrations of albumin in patients should be supplemented with albumin administered intravenously, and which are the best methods for doing so.

(3) The fate of albumin administered to acutely ill patients needs to be determined, especially for those patients with large losses of relatively sudden onset and those who are in markedly catabolic states.

(4) The precise relationship between concentration of albumin in the plasma and its effects on pulmonary function is still debated, especially when the lungs are damaged. This is an important clinical question that needs to be answered soon.

(5) The entire area of the clinical importance of the binding and carrier functions of albumin and the same functions of albumin products deserves considerably more investigative support and attention. Modification of regulations may be necessary as a result of such investigations if there are differences in clinically important binding and carrier functions that relate to methods of manufacture.

(6) The fate and function of albumin in monomeric, dimeric, and polymeric forms needs to be established so that proper criteria can be established for the manufactured product. The current Panel recommendation on monomeric limits are based on very incomplete data, but are regarded as reasonable interim standards based upon the results that current manufacturing practices can already achieve.

(7) The use of placental source material raises many potential problems because of the likelihood that a variety of substances are carried over into the final product. Albumin derived from placental source material needs to be tested for immunizing potential against HBsAg, placental lactogen, and perhaps other placental hormones. Drugs commonly administered to women in labor may be present in the final product, and their potential for harm needs to be evaluated. The immunizing potential of the small amounts of HL-A antigenic material in this product needs to be defined. Changes in regulations and labeling of placental albumin may be necessary, depending on the results of such studies.

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Product Reviews

There were 15 different suppliers of Normal Serum Albumin (Human) subject to this review, all with great similarity in the basic plasma processing procedures, but with many differences in details which conceivably could be significant. The products of each individual manufacturer are therefore described only with respect to obvious departures from common practices, along with comments on the labeling and advertising.

1. *Source.* Most manufacturers use Source Plasma (Human) and plasma from outdated whole blood. Both contain citrate anticoagulants and may have been frozen at least for transportation. Some manufacturers specifically state in their data submissions (Refs. 1 through 15) that each source unit was tested for hepatitis-B sulface antigen by radioimmunoassay and was free of such antigen. A few manufacturers are licensed to use placental material.

2. *Processing.* All manufacturers use the cold alcohol plasma fractionation process, described as the Cohn method 6, with many small variations. Placental material is handled by a somewhat different process.

3. *Composition.* The 5-percent (plus or minus 0.3 percent) solution of albumin is brought to volume with 0.15 M sodium chloride, with 0.004 M sodium acetyltryptophanate and 0.004 M sodium caprylate added as stabilizers. The 25-percent (plus or minus 1.5 percent) solution of albumin contains 0.02 M sodium acetyltryptophanate and 0.02 M sodium caprylate. None contain preservatives. All are at least 96-percent albumin, expressed as the percent of total protein present, with less than 3-percent globulins. Heme concentrations are less than 1 mg/5 grams albumin; pH is 6.9 plus or minus 0.5. All are sterilized by filtration, and heated to 60 °C plus or minus 0.5° for at least 10 hours. Final sodium content ranges from 100 to 160 mEq/L.

4. *Safety.* Lots and batches are visually checked during 7 days storage at 18 to 35 °C. Specified samples are randomly selected for culture for bacterial growth. All manufacturers check each lot in animals for febrile response and gross vasomoter reactions. Most manufacturers also check each lot in human volunteers for febrile response, effect on pulse rate and blood pressure, and symptomatic effects. All manufacturers keep records of reported reactions. Some manufacturers have voluntarily recalled lots associated with reported febrile responses. The commonest reported adverse reactions are chills and fever; much less commonly reported are tachycardia, hypotension which is rarely severe, urticaria, nausea, vomiting, increased salivation, and a skin rash. Transmitted diseases have not been documented to occur from properly processed material.

5. *Effectiveness.* No manufacturer has submitted effectiveness data for its specific product. All rely on the assumed similarity and homogeneity of this material in relation to that used in earlier studies. It is likely that some of the early published studies on effectiveness of albumin used material produced by methods similar to present methods in the Massachusetts Public Health Biological Laboratories.

6. *Labeling.* The bottle and package labels are all similar, including the product name, concentration of albumin, total volume, manufacturer's name and location, lot number, various other identifying numbers, United States License Number, osmotic equivalent as citrated plasma, date of expiration and added stabilizers. Instructions and warnings include: Temperature of storage, "contains no preservative", "do not use if turbid", caution against patient dehydration, "single dose container", "for intravenous use", the prescription legend and "see enclosed circular". All 25 percent albumin preparations were labeled "salt poor" at the time of the data submission, but recently published regulations require this designation to be removed.

The package inserts share several features in common. Indications for use include: Hypovolemia, hypoalbuminemia, and hemolytic disease of the newborn. Some inappropriate indications are mentioned below for individual manufacturers. Warnings, precautions and contraindications include cardiac failure due to hypervolemia, renewed bleeding as blood volume expands and perfusion improves, "dehydration" of the patient when 25 percent albumin is used as treatment for hypovolemia without supplemental fluids and electrolytes, severe anemia, and the fact that the material contains no preservatives and thus should not be used if turbid and should not be stored once opened. A statement is made that heat treatment at 60 °C for 10 hours probably eliminates the risk of hepatitis. Possible adverse reactions are described. Suggested doses for various clinical conditions are given. Essentially all of the information from the container and the package labels are usually repeated.

Advertising occasionally makes claims beyond those contained in the labeling. This is discussed where applicable in the review for each of the following products, realizing that manufacturers may have revised their labeling and advertising since the date of the submissions which were reviewed:

(1) *Abbott Laboratories (Albutein™)* (Ref. 1). A reasonable discussion in labeling of individual-specific dosing is present. The labeling also lists "adjunct in hemodialysis and cardiopulmonary bypass" as an indication for use. Advertising separates traumatic from hemorrhagic shock, mentions "ischemic (reversible)" and "stagnant (irreversible)" forms claims that early loss in "endotoxic" shock is plasma loss, and mentions cardiogenic shock as a distinct indication for administration of albumin. All of these statements are questionable if not objectionable. The indication for use of albumin in shock is hypovolemia; various theories of pathophysiology and categorization of shock are better avoided in labeling until more firmly established scientifically. This section of the labeling would be much better if so simplified and clarified. With respect to labeling for administration in burns, see the earlier Generic Statement on Normal Serum Albumin (Human). In discussing hypoproteinemia, correction of the underlying cause is correctly emphasized. Acute pancreatitis,

cerebral edema, and nutritional hypoproteinemia are mentioned as specific indications. It is concluded that the reviewed advertising for this product falls well below the quality of the package insert labeling and borders on being misleading.

(2) *Armour Pharmaceutical Company (Albuminar™)* (Ref. 2). The labeling does not list hemolytic disease of the newborn as an indication for use. It does list use in the shock phase which occurs immediately after major burns (see above). The labeling properly includes severe anemia as a contraindication.

(3) *Connaught Laboratories, Limited* (Ref. 3). The labeling specifies storage at 2 to 10 °C; therefore, it has a 5-year dating period. Apparently there is no testing in humans before lots are released. Connaught was no longer a licensed U.S. producer at the completion of this review.

Labeling is rather minimal. Hemolytic disease of the newborn is not mentioned as an indication for use, but burns are. Severe anemia is not specifically mentioned as a possible contraindication, and the lack of clotting components in this preparation is not pointed out. There has been no advertising in 5 years.

(4) *Cutter Laboratories, Incorporated* (Ref. 4). Burns and cerebral edema are mentioned as indications for use in labeling. Hemolytic disease of the newborn is not listed. Directions for use were not included in the package insert. There is separate packaging for material derived from blood collected from the American National Red Cross and paid for by the Red Cross. Advertising is minimal, but contains the potentially misleading statement that "cardiac output is greater than that produced by whole blood." Testing of lots in human volunteers is not described.

(5) *Dow Chemical (Proserum™)* (Ref. 5). Placental origin material was used until mid-1971. Menthanol is occasionally used as the precipitating alcohol. The process permits the product to be reheated up to five times to eliminate pyrogenic reactions.

The package insert for 25-percent albumin incorrectly suggests use in cerebral edema and use as a vehicle for delivering red cell concentrates as indications. Labeling for other indications has a more balanced presentation. The rise in alkaline phosphatase in recipients of the placental material is mentioned. The package insert for 5 percent albumin lists only hypovolemia as an indication.

Five and three lots of 25 percent and 5 percent albumin respectively have been tested in humans for adverse reactions. Two lots of 25 percent material were recalled in 1974 because of a reported incidence of adverse reactions in 17 patients. Dow Chemical was no longer a licensed producer at the completion of this review.

(6) *Hyland Division, Travenol Laboratories (Buminate™)* (Ref. 6). Production methods are very sketchily outlined in the submission to the Panel.

There are separate packages and labels for material produced for the New York Blood Center, and material for bulk use which is exported. The standard package insert points out lack of clotting factors in albumin and the inability to make absolute statements about the risk of transmission of viral diseases by the material. Hemolytic disease of the newborn is not mentioned as an indication for use. In general, the discussion is reasonably balanced. The precautions do not fully emphasize the necessary safeguards against bacterial contamination, and severe anemia is not mentioned as a contraindication. Instructions for use are detailed. Cerebral edema is incorrectly suggested as an indication for use with the 25-percent preparation. Hemolytic disease of the newborn is not mentioned.

(7) *Lederle Laboratories Division American Cyanamid (Pro-Bumin™)* (Ref. 7). Lederle has used placental starting material in the past, although reportedly this is no longer the case. The package inserts are adequate in their precautionary statements. Cirrhosis, nephrosis, and pancreatitis are listed as specific indications for use of the 25 percent preparation; the potential value of 25-percent albumin for cirrhotic ascites is overstated. In advertising, "prothrombin levels" are mentioned were "clotting factors" are meant; this may be confusing. The Panel disagrees with the statement that 25-percent albumin "has its greatest application in the treatment of shock." There has been some testing for safety in humans in the past.

(8) *Massachusetts Public Health Biologic Laboratories* (Ref. 8). Hemolytic disease of the newborn is not mentioned as an indication in the labeling. Starvation is mentioned twice: this should be updated to indicate currently preferred approaches to treatment of malnutrition. There has been no advertising.

(9) *Merck Sharp and Dohme, Division of Merck and Company, Inc. (Albumisol ™)* (Ref. 9). Nutritive value is inappropriately mentioned in the package insert. Many specific diseases are mentioned under the usual broad categories of indications for use. Severe anemia is not mentioned as a contraindication. Detailed electrolyte content is given on some packages. Hemolytic disease of the newborn is not mentioned as an indication in most package inserts.

There were unusually large numbers of reactions reported in 1972 for the 5 percent product. Two of three lots were withdrawn and distribution of the third was discontinued. Retesting (not described) failed to reveal the cause.

(10) *Michigan Department of Public Health* (Ref. 10). Placental material has been used in the past. A questionable statement "at least 95 percent albumin" is used in the labeling. The package insert is very brief. Nutritional hypoproteinemia is inappropriately mentioned as an indication; hemolytic disease of the newborn is not mentioned. Precautions do not mention the possibility of inducing severe anemia. Each lot is reported to be tested in normal humans for adverse reactions. No adverse reactions were reported from clinical use.

(11) *North American Biologicals* (Ref. 11). The package insert inappropriately mentions effects on the pH buffer capacity of blood, which is minimal when compared with hemoglobin. Suggested use to provide a large mobile reserve of amino acids clearly has inappropriate nutritional implications. Hypoproteinemia of starvation and burns are also listed as indications

Various lots have been tested for adverse effects on over 100 patients and volunteers. No mention is made of adverse reactions in clinical recipients. No data were given on actual composition of the product. This firm was no longer a licensed producer at the completion of this review.

(12) *Ortho Diagnostics, Incorporated (Orthobumin™)* (Ref. 12). Acute pancreatitis and cerebral edema are inappropriately mentioned as indications for use. Four lots were reported to have been tested for safety in normal humans.

(13) *Osterreichisches Institut Fur Haemoderivate* (Ref. 13). All lots are reported to be tested in humans before release. There was no mention of reports of adverse reactions in patients. Cerebral edema and eclampsia which are included as indications in the labeling should be eliminated.

(14) *Parke, Davis and Company* (Ref. 14). Placental source material is used in combination with venous source material. Venous sources are tested for HBsAg, but individual placentas are not tested for HBsAg. Each lot is tested in patients before release. A rather large number of reactions were reported for 1970 without explanatory comment. Nutritional use as mentioned in advertising material should be

eliminated. Safety should be evaluated as recommended for placental source material in the earlier Generic Statement on Normal Serum Albumin (Human).

(15) *E.R. Squibb and Sons* (Ref. 15). The labeling precautions include possible elevation of alkaline phosphatase in recipients, even though the material is not of placental origin. The package insert is well balanced, although hints at nutritional advantages in anuric patients should be eliminated. No information was available regarding further testing, safety, and reported reactions in recipients.

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(8) BER Volume 6035A.
(9) BER Volume 6009.
(10) BER Volume 6042.
(11) BER Volume 6125.
(12) BER Volume 6085, 6086, and 6087.
(13) BER Volume 6101.
(14) BER Volume 6004 and 6004A.
(15) BER Volume 6031.

11. Plasma Protein Fraction (Human)

Generic Statement

Plasma Protein Fraction (PPF) was developed in 1957 (Ref. 1). The composition of the product is essentially that of Fraction IV–4 plus Fraction V which are obtained by method 6 developed by Cohn et al. (Ref. 2) to fractionate the proteins of human plasma. At the time of the development of plasma proteins during World War II only human serum albumin was available as a 25-percent concentration in 100 mL volume (Ref. 3). This solution often proved to be ineffective in restoring blood pressure without the addition of intravenous saline, especially in dehydrated patients. Thus, a 5-percent solution of plasma protein was readily received because of its ease of administration (Ref. 4). Also PPF preserves the national blood resources; there is 25 to 30 percent more yield of usable plasma proteinf solution from a unit of blood than when albumin is produced (Ref. 5).

Nearly all commercial fractionation methods are based upon the exploitation of solubility differences. Thus, the chemistry of protein ractionation is the chemistry of protein solubility. Protein solubility is affected by a number of variables, and if these variables are controlled, they can form the basis of systematic protein fractionation. In the fracttionatio of most natural protein systems, the presence of a large number of components and the similarity of many of them makes it necessary to control a number of variables if sufficiently large differences in solubility are to be obtained to give usefully precise separation.

One of the most difficult problems in protein fractionation is to avoid alterations of the proteins during their separation. Proteins are subject to irreversible alterations from many causes. The extent and nature of these alterations are often difficult to evaluate. In the fractionation of the proteins of human plasma, it is particularly important that unaltered proteins be made available for subsequent use in humans, since irreversible alteration might well lead to substances of new antigenic specificity if not more general changes in biological activity.

Production of PPF requires manufacturing methods that include low temperatures (−3 to −5° C) various concentrations of ethyl alcohol (8 to 30 percent), varying hydrogen ion levels (pH 4.6 to 7.2), and separation of precipitates. Virtually every step in the manufacturing process has the potential for causing protein denaturation, i.e., an alteration in the protein's molecular structure (Ref. 6).

PPF and hypotension. Other labile proteins may be altered by the fractionation process. For example, recent lots of PPF that produced hypotension were found to have high levels of prekallikrein activator (PKA), although most lots of PPF have low levels of this activator. PKA is perhaps better known as Hageman Factor Fragment (Table 1). Activated Hageman Factor can act to trigger blood coagulation and fibrinolysis, and also can activate prekallikrein to kallikrein which in turn acts upon high molecular weight kininogen to produce bradykinin (Table 2).

Table 1.—Some Components of the Kallikrein-Kinin System

1. Hageman Factor	Factor XII–MW about [illegible]
2. Prekallikrein Activator(s) or Hageman Factor Fragment(s).	"PKA"—MW about 28,000. Generated from Factor XII. Catalyze(s) Prekallikrein Kallikrein.
3. Plasma Prekallikrein.	"PK"—MW about 100,000.
4. Plasma Kallikrein ..	MW about 100,000. Catalyzes release of BK from HMWK. Has esterolytic activity
5. High Molecular Weight Kininogen(s).	"HMWK"—MW about 200,000. Preferred substrate for plasma kallikrein.
6. Bradykinin.....	"BK"—a nonapeptide, MW about 1,000. Has vasodilatory activity. Causes smooth muscle contraction

TABLE 2

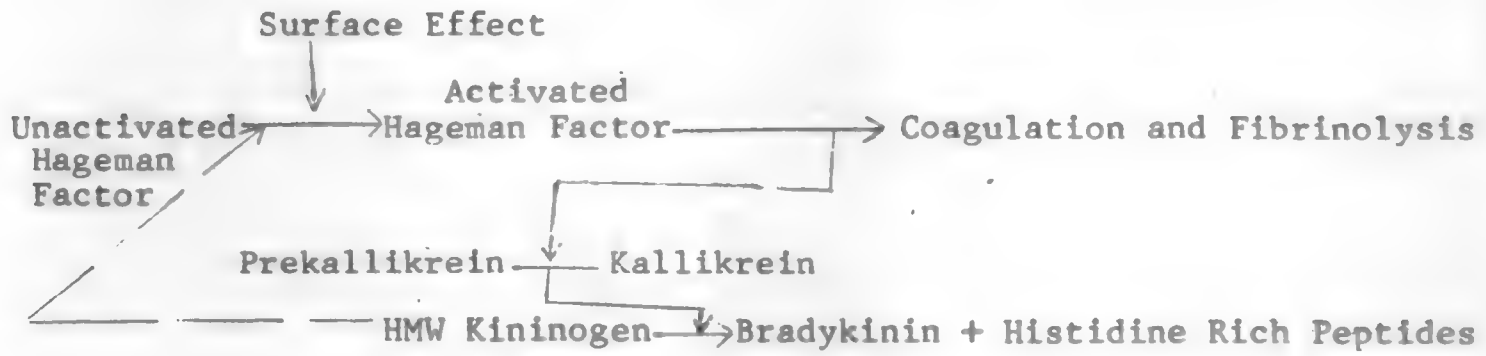


Diagram of the relationship of proteins of the kinin-generating pathway to the mechanism of Hageman factor.

Bradykinin is nonapeptide with a molecular weight of about 1,000 which has vasodilator activity and causes smooth muscle contraction. In the normal circulation, bradykinin is rapidly inactivated largely by kininases, proteolytic enzymes that degrade kinins to inactive forms. The half-life of bradykinin in blood is about 20 seconds; it is almost totally destroyed in one passage through the pulmonary circulation (Ref. 8).

It has previously been reported that during surgical procedures bradykinin levels increase from low (nanogram) levels to considerably higher levels (Ref. 9). If this occurs and another generator of bradykinin is added to the system (PPF) or if a kininase is removed from the system or the level of an inhibitor in this system is suppressed, there can be a resultant increase in bradykinin that can cause hypotension.

In the original work of Bland and his associates (Ref. 10) it was postulated that it was bradykinin that caused the hypotension produced by PPF. Recent studies at the Bureau of Biologics with samples of PPF retained from Bland's original studies were found to be high in PKA activity (Ref. 11). It has been shown that there is direct correlation between high levels of PKA and the amount of hypotension produced in animal models (Ref. 12).

In the "blocked rat" model, treated to inhibit kininases so that any bradykinin generated stays in the circulation, there is a linear correlation between the drop in mean arterial pressure and the concentration of PKA in the product administered. However, in unblocked rats it takes much more bradykinin, either generated or administered to produce a given fall in blood pressure, and the relationship tends to be much less linear (Ref. 13).

There is some evidence that there are higher PKA levels in salvaged plasma than in fresh frozen plasma, although there is not general agreement with this observation (Ref. 14).

PKA activity has been found in only a few lots of albumin. Indeed this is reasonably consistent because a further fractionation process is necessary to produce albumin, Fraction V; most of the PKA is removed by these additional steps. These protein fractions, however, are never so "clean" that the presence or absence of PKA can be absolutely predicted. PKA tends to concentrate in Fraction IV, but on rare occasions may be found in albumin which is made from Fraction V. After heating to 60 degrees for pasteurization bradykinin may still be present, kallikrein has been destroyed, kininogen is still present but at very low levels, and prekallikrein activator in present in various amounts and maintains its activities.

It is well known that the administration of PPF fractions do not cause adverse responses in all people. People have different prekallikrein, kininogen, and enzyme inhibitors in the circulation. Individuals vary in their ability to destroy bradykinin. They may also have differing levels of PKA because the trauma of surgery activates Hageman Factor.

There is evidence that ammonium sulfate as sometimes used in fractionation (Ref. 15) and cooling to a temperature of 4° C both activate Hageman Factor. These steps were used in the manufacturing process for PPF by one supplier until 1976. There is also the possibility that PKA could be generated in plasma which has been thawed to obtain cryoprecipitate (Ref. 16). Kallikrein can be rapidly inhibited by C 1 esterase inhibitor and by alpha 2-macroglobulin and more slowly by antithrombin III. Heating probably inactivates all these inhibitors.

Potentially, chemical reactions producing PKA can occur at almost any stage in plasma derivative manufacture, in the source plasma, during the fractionation, in partially fractionated products, in the paste, in the powder, in the bulk, and finally perhaps even on the shelf.

Composition of PPF. The protein composition of PPF is determined by methods that have been approved for each manufacturer. The protein content is set at 5.0 plus or minus 0.3 percent. In addition to the alpha and beta globulins present in the PPF (usually about 12 percent) the albumin exists at both a monomer and a dimer. The effect of albumin dimer on the oncotic characteristics and drug-binding properties of the albumin has not been determined. PPF is composed of at least 83 percent (usually about 88 percent) albumin, no more than 1 percent gamma globulin, 130–160 mEq/L of sodium, less than 2 mEq/L of potassium, and has a pH of 7.0 plus or minus 0.3. This solution is stabilized with 0.004 molor sodium acetyltryptophanate and 0.004 molar sodium caprylate. After being

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introduced into the final container the PPF solution is heated at an attained temperature of 60°C plus or minus 0.5°C for 10 hours. The dating period is 5 years when stored at 5°C or 3 years at 30°C or less.

Evaluation of PPF for Labeled Indications

1. *Hypovolemia.* Hypovolemia, whether due to blood loss or "third space" sequestration of fluid (exclusive of burns) responds readily to PPF.

a. *Effectiveness.* PPF is effective in the maintenance of a normal circulating blood volume (Ref. 4), but has not been proved to be effective in the maintenance of oncotic pressure. The same labeling claims are made by all the manufacturers of PPF, although there may be possible differences in effectiveness among products relating to the methods of preparation. At the present time there is no information available about the effect of various methods of preparation of PPF upon the metabolism and oncotic effect of its albumin.

Precautions about PPF administration at a rate greater than 10 mL/minute may limit its usefulness as a rapid plasma volume expander when blood is not available unless efforts to reduce the hypotensive reactions are successful.

Much of PPF administration today is arbitrary or pragmatic. The advent of a clinical oncometer so that oncotic pressure could be measured before and after PPF administration should result in a better quantification of the effects of PPF and clarification of the need for its administration. These studies have not been done.

b. *Safety.* The safety of PPF has been assumed in the past to be so high that complications have already been reported even though some may have occurred. The reaction rate for various adverse side effects such as urticaria, chills, fever or vasodepressor effects are few and involve between 0.5 and 1.5 percent of the production lots. These reactions are for the most part mild and short-lived. The vasodepressor effects have been increasingly reported and may be significant in some patients.

As a result of the unusual stability of albumin, it is possible to heat the product routinely during processing to 60°C for 10 hours, thus achieving inactivation of hepatitis viruses. The only established cases of hepatitis after PPF infusion have apparently come from a failure in processing so that 60°C treatment for 10 hours was not achieved (Ref. 17).

c. *Benefit/risk evaluation.* Properly administered, PPF has an acceptable benefit-to-risk ratio. Until clarification of the frequency of occurrence and clinical significance of hypotensive episodes has been determined, an evaluation of the ultimate benefit-to-risk ratio for rapid, emergency administration cannot be achieved.

d. *Recommendations.* (1) Plasma Protein Fraction (Human) should be place in Category I.

(2) It is recommended that more sophisticated clinical studies be sponsored within the medical community to evaluate the effectiveness of PPF in elevating oncotic pressure possibly in conjunction with similar studies recommended for albumin. This information would clarify the many clinical disorders that exist in which there is incomplete or conflicting data on the effectiveness of PPF therapy and should define further the situations in which no benefit from PPF administration occurs, despite the presence of hypoalbuminemia.

(3) Manufacturers of PPF should have a control testing program for measuring PKA consistent with available technology.

(4) Acceptable levels of PKA should be no more than 25 percent of the present Bureau of Biologics reference standard.

(5) Limits for bradykinin content should be established when data are developed to substantiate measurable safe levels.

(6) The product name should be "Plasma Protein Fraction".

e. *Labeling recommendations for hypovolemia.* The package inserts should be revised to inform physicians of the possibilities of hypotension occurring after PPF administration and that this hypotensive effect can be reversed with the use of vasopressors. Also, the package insert should note that no evidence exists that PPF appreciably increases the colloid oncotic pressure of the plasma.

2. *Burns.* Acute therapy in burns is directed during the first 24-hours to the administration of large volumes of crystalloid solution to expand the constructed extracellular fluid volume. For continuation of therapy beyond 24-hours, albumin, often as PPF, and lesser amounts of crystalloids are generally used. Recommendations are the same as for hypovolemia.

3. *Red cell resuspension medium*—a. *Effectiveness.* During certain types of exchange transfusion or when very large volumes of packed red blood cells have been administered to correct blood loss, PPF may be used as a resuspension menstruum in order to avoid excessive hypoalbuminemia during such transfusion therapy. Although such blood is deficient in coagulation factors and platelets, sufficient equilibrium exists between intravascular and extravascular clotting factors to maintain adequate hemostasis during blood exchanges of less than 90 percent.

b. *Safety.* If circulatory overload is avoided and if it is realized that PPF has no plasma-clotting factors, then adequate levels of albumin can be achieved by the resuspension of packed red blood cells, washed red blood cells or previously frozen red blood cells during massive transfusion procedures.

c. *Recommendations.* Recommendations are the same as for hypovolemia.

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12. Antihemophilic Factor (Human)

Generic Statement

1. *Introduction.* Antihemophilic Factor (AHF, factor VIII, antihemophilic globulin, AHG) is generally considered to be a trace protein in normal plasma which has the property of correcting the clotting defect characteristic of hemophilia A (Ref. 1). Recent work indicates that hemophilia A is not a single disease entity in which there is a deficiency of a protein which has coagulant activity. Factor VIII-like antigenic activity can be identified independent of factor VIII coagulant activity (Ref. 2). In addition, von Willebrand's disease is characterized by several plasma defects in addition to a deficiency of factor VIII coagulant activity (Ref. 3). Studies on genetic control mechanisms, synthesis and physical-chemical composition of factor VIII have a relationship to the effectiveness of therapy with factor VIII concentrates in specific disease entities (Ref. 4 through 6). However, potency of the licensed Antihemophilic Factor (Human) products is characterized on the basis of factor VIII coagulant activity. Unless otherwise specified in this review, the term factor VIII relates to only the clot-promoting properties of this protein.

Early attempts to isolate the antihemophilic activity from plasma were limited by the techniques for its assay and failure to recognize that hemophilia was not a single disease entity. It was found that plasma globulin fractions had the ability to correct the prolonged whole blood clotting time characteristic of severe hemophilia (Refs. 6 and 7). The antihemophilic activity was found to separate along with fibrinogen in fraction I of the ethanol precipitation method of Cohn, et al. (Ref. 8). The factor VIII activity of fraction I preparations was variable but it was used in the clinical management of hemophilia (Ref. 9). At the present time, no fraction I preparations are licensed for use in the treatment of hemophilia. A number of other procedures have been used for separation of factor VIII activity from plasma of humans as well as from the plasma of other species (Ref. 1). Work has been done in England on factor VIII from porcine and bovine plasmas (Ref. 10). Although high potency preparations have been obtained, the porcine and bovine materials have been found to be antigenic when used in man (Ref. 11).

Pool and associates (Ref. 12) recognized the potential of what was first regarded as a laboratory curiosity and their observations provided the basis for the materials that are currently licensed. When plasma is frozen and thawed, much of the factor VIII activity is concentrated in a small amount of poorly soluble material. This cryoprecipitate can be separated from the supernatant plasma and is the starting material for currently licensed factor VIII concentrates (Ref. 13). As with other fractionation procedures, there is also a considerable amount of fibrinogen in the cryoprecipitate.

Factor VIII is relatively stable when separated from other procoagulants but small amounts of thrombin will destroy it (Ref. 1). In order to remove procoagulants which might provide a source of thrombin, aluminum hydroxide has been found to be effective (Ref. 1). Aluminum hydroxide absorbs fibrinogen from plasma to a greater extent than factor VIII (Ref. 4). Thus much of the fibrinogen present in cryoprecipitate can be removed by this method. Since the aluminum hydroxide is insoluble it can be removed by centrifugation. Aluminum hydroxide, like other absorbants, will remove a number of other clotting accelerators that influence in vitro test results but have no in vivo antihemophilic activity. It is probably for this reason that there is good correlation between in vitro test results of factor VILL potency and the clinical effectiveness of the products prepared by this procedure.

Studies done on patients undergoing hemodialysis have indicated that aluminum is potentially toxic (Refs. 15 and 16). If aluminum hydroxide is used in the process of manufacturing factor VIII, the product must be tested to demonstrate that the aluminum has been removed.

In some procedures for the isolation of factor VIII small amounts of heparin are added (Ref. 17). This is apparently used to prevent the activation of clotting factors which would lead to thrombin formation. When heparin is added during the manufacturing process, the product must be tested to demonstrate that heparin has been effectively removed, or the residual heparin activity should be measured and indicated in the labeling.

Intermediate purity AHF (Ref. 18) is a term applied to a product in which the cryoprecipitate obtained from plasma is treated with ethanol. The cryoethanol precipitate is extracted with low ionic Tris buffer and then treated with aluminum hydroxide.

Glycine will precipitate factor VIII. Low concentrations of glycine, 3.5 percent, will precipitate nonfactor VIII proteins, mainly fibrinogen, while most of the factor VIII activity remains in the supernatant fluid. When the concentration of glycine is increased to approximately 12 percent, most of the factor VIII will precipitate. The factor VIII activity can then be extracted with a citrate solution (Ref. 19). In a similar manner polyethylene glycol (PEG) can be used as a precipitating agent (Ref. 18). At low concentrations of PEG, 2.5—5.0 percent, nonfactor VIII proteins will precipitate, while at the higher concentration of 2 percent, factor VIII will precipitate. The factor VIII can be recovered by extraction with Tris buffer. These preparations have been termed high purity AHF (Ref. 18).

2. *Indications for use.* Factor VIII concentrates are indicated when there is a hemostatic defect resulting from a deficiency of factor VIII, and it is necessary to increase and maintain factor VIII concentrations to control bleeding.

a. *Evidence of effectiveness.* (1) There is a considerable amount of available information to indicate that factor VIII when given in adequate amounts will correct both the clotting and hemostatic defects associated with factor VIII deficiency. The active material has a relatively short effect in vivo (Ref. 20) and approximately half of the coagulant activity is lost from the circulating plasma in 10 to 12 hours. In order to

maintain circulating factor VIII at therapeutic levels, additional material must be injected at approximately 12-hour intervals (Ref. 12). The currently available materials are effective only when administered intravenously

(2) In disseminated intravascular coagulation (DIC) there is no evidence that factor VIII concentrates are therapeutically useful.

(3) A small percentage of patients with hemophilia A develop antifactor VIII anticoagulants (Ref. 22). This type of anti-factor VIII activity appears to be an antibody response to factor VIII-like antigenic material that has been administered. When this complication occurs, massive amounts of factor VIII must be supplied and even this may not be sufficient to achieve hemostatic effectiveness (Ref. 19). It is important that the in vivo effectiveness of the factor VIII material be determined by a reliable assay procedure since it is not always possible to predict in vivo effectiveness from the vitro test results.

(4) Acquired factor VIII deficiency has been reported in otherwise normal individuals following reactions to penicillin, during pregnancy, in patients with lupus erythematosus and in patients with rheumatic heart disease (Ref. 22). In such cases an anti-factor VIII anti-coagulant is apparently the basis for the coagulation defect. There may be little or no in vivo response to administered factor VIII in these patients. It is necessary to have a reliable method to evaluate the in vivo effectiveness of the infused material before Anithemophilic Factor (Human) can be evaluated for this indication.

(5) Von Willebrand's disease is a disorder in which the affected individuals have decreased levels of factor VIII, a prolonged bleeding time and other recently recognized plasma activity deficiencies (Ref. 3). The relationships among the plasma abnormalities, the hemorrhagic tendency and the genetic defect are not clear. The adminstration of normal plasma or cryoprecipitated antihemophilic factor appears to control hemorrhage, normalize the bleeding time, and increaase the circulating level of factor VIII. The response of these patients to adminstration of normal plasma is unusual in that a secondary increase in circulating factor VIII occurs over and beyond the amount of factor VIII infused. In two recent studies (Refs. 4 and 5) the response of patients with von Willebrand's disease to administration of cryoprecipitated antihemophilic factor and two of the Antihemophilic Factor (Human) concentrate products was determined. Cryhoprecipitated antihemophilic factor increased the factor VIII coagulant activity, the factor VIII antigen-like activity, the platelet aggregating factor, the ristocetin related activity of platelets, corrected the bleeding time and controlled bleeding. In equilvalent doses of factor VIII, based on coagulant activity, the concentrates failed to correct the bleeding time, and clinical evidence of hemorrhage persisted even though high levels of factor VIII coagulant activity were achieved. In view of these findings, until additional data to the contrary are available, none of the Antihemophilic Factor (Human) concentrates can be considered to be effective in controlling bleeding in von Willebrand's disease.

(6) Most commonly Antihemophilic Factor (Human) is used when a patient with a known factor VIII deficiency has an episode of bleeding or when a surgical procedure is to be done. In some patients it has been found to be advantageous to administer factor VIII prophylactically. The rationale for such therapy is that certain individuals are particularly prone to develop bleeding episodes which can be minimized by maintaining factor VIII at relatively low levels. Such therapy is indicated in a few individuals that are carefully selected on the basis of clinical history.

b. *Evidence of safety.* (1) Since pooled human plasma is the source material for Anti-hemophilic Factor (Human), the risk of hepatitis is present. Current regulations required that each donor must be tested and found nonreactive for hepatitis B surface antigen (HDsAg) by "third generation" methods. This is a relatively new requirement, and its effect on the incidence, of associated hepatitis associated with the use of factor VIII is not yet clear. However, at the present time it must be considered that these materials carry a definite hepatitis risk.

(2) Anti-A and anti-B group antibodies are present in Anti-hemophilic Factor (Human) prepared from plasma containing these antibodies. These antibodies do not appear to be concentrated along with factor VIII. When large amounts of factor VIII concentrate are given, these antibodies can cause a mild hemolytic response in the recipient whose red blood cells have the appropriate antigens (Ref. 23). The reactions reported to date have not been serious, but if this possibility is not recognized, the resulting decrease in red cell volume may be misinterpreted as evidence of bleeding.

(3) Mild allergic-type reactions have been observed following the adminstration of Antihemophilic Factor (Human), but these reactions are uncommon.

c. *Benefit-risk evaluation.* When used appropriately to increase the circulating factor VIII coagulant level, the risk is small compared to the benefits to be expected.

3. *Recommendations.* a. The licensed Antihemophilic Factor (Human) products should be placed in Category I since when used appropriately they are relatively safe and effective.

b. Studies should be encouraged within the medical community to provide a source of AHF which is free of the hepatitis agent(s).

c. Further research is needed to determine how to provide information about the content of anti-A and anti-B antibodies in the final product. Although these antibodies are present in trace amounts, they may be clinically significant when massive doses of the product are given to patients. On the basis of current information, the labeling should indicate this possibility. The manufacturers should test each final lot of the product to determine the amount of anti-A and anti-B antibodies in order to detect unexpectedly high levels in relation to those established in the product license. Upper limits should be established if adverse reactions are discovered to relate to specific antibody levels.

d. If aluminum hydroxide is used in the process, the final product must be demonstrated to contain no more than 0.1 microgram of aluminum per unit of antihemophilic factor.

e. If heparin is used in the process, the final product must be demonstrated to be free of heparin activity, or the amount of heparin activity remaining should appear in the labeling.

f. The labeling should contain information about the fibrinogen content of the final product, cautions about the risks of hepatitis and anti-A and anti-B antibody content, and a statement that the product is not indicated for the treatment of von Willebrand's disease.

g. The product name should be "Antihemophilic Factor".

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13. Factor IX Complex (Human)

Generic Statement

1. *Introduction.* Factor IX deficiency (Hemophilia B) is a sex-linked hereditary coagulation disorder. It is approximately ¼ as common as factor VIII deficiency (Hemophilia A) (Ref. 25). Like factor VIII deficiency, it is a heterogenous disorder with several variants. In some patients factor IX antigen is detected by showing an immunological reaction between the patients' plasma and either a spontaneously occurring factor IX antibody or one prepared in rabbits by injecting partially purified factor IX concentrates; this is called Hemphilia B+. Those disorders in which a true deficiency exists, i.e., a factor IX protein (active or inactive) cannot be detected, are called Hemophilia B−. In a total of 179 patients studied by six different investigators, the incidence of Hemophilia B+ has been reported as between 8 and 46 percent. Much of this wide range of incidence may be due to differences in techniques. In addition, there are a small numberof patients with a variant called Hemophilia Bm. These individuals have an abnormal prothrombin time (PT) when tested with ox brain thromboplastin, suggesting that an abnormal protein is formed in these patients which interferes with the PT determination. Every combination of Hemophilia B+ or B− with Bm+ or Bm− has been reported.

Patients with factor IX deficiency can be treated with plasma infusions to control or prevent their bleeding problems. Because of difficulty in achieving levels of factor IX greater than 20 percent by plasma infusions without overloading the circulation, techniques for concentrating factor IX have been developed. Most of the techniques have taken advantage of the absorbant qualities of factor IX, as well as the other prothrombin complex factors (II, VII, X), to materials such as: tricalcium phosphate (Ref. 3), barium sulphate (Ref. 4) DEAE cellulose (Ref. 5), DEAE sephadex (Ref. 6) or aluminum hydroxide (Ref. 7). Recent modifications of the procedures have allowed preparation of factor IX concentrates from residual citrated plasma obtained as a byproduct of routine blood banking.

There are currently two United States licensed producers of factor IX concentrates. These preparations also contain factors II, VII and X. Some of the currently used European products do not contain factor VII. Of the American Factor IX Complex (Human) products, one is marketed under the trade name of Proplex™ (Hyland Laboratories) and the other as Konyne™ (Cutter Laboratories).

2. *Effectiveness*—a. *Congenital deficiencies of factors II, VII, IX or X*—(1) *Prophylaxis and treatment of bleeding disorders.* A general review of the clinical uses of factor IX concentrates by Menache (Refs. 8 and 9) provides data on products similarly prepared to those commercially available in the United States. These studies showed that factor IX concentrates were successfully used to treat hemorrhagic episodes or to prevent bleeding with major surgery in patients with deficiencies of factors II, VII, IX and X.

b. *Patients with inhibitors*—(1) *Factor IX inhibitors.* The reported incidence of these inhibitors varies widely, from 9 to 50 percent (Ref. 10). They have been found to be IgG antibodies and usually do not significantly increase the bleeding tendency of the patient. When tested in vitro they are found to be much more rapidly acting than factor VIII inhibitors. If patients with factor IX inhibitors are treated with factor IX-containing material, the antibody is eventally recalled in high titer.

(2) *Factor VIII inhibitors.* Breen and Tullis (Ref. 11) noticed shortening of the clotting time out of proportion to the elevation of clotting factors in patients with vitamin K deficiency who were infused with a clotting factor concentrate prepared by absorption on DEAE cellulose. In order to evaluate this post-transfusion hypercoagulability, a patient with factor VIII deficiency with bleeding was infused with the factor IX concentrate. Prompt cessation of the bleeding occurred with no change in the factor VIII levels. Subsequent reports (Refs. 12 through 14) have indicated that some factor IX concentrates may be able to bypass the inhibitor and provide

hemostasis. Tishkoff (Ref. 15) has confirmed the presence of variable quantities of IXa, Xa and thrombin in these products and demonstrated that they all shorten the activated partial thromboplastin time (PTT) of normal plasma. Whether this provides an explanation for their beneficial effect remains to be determined.

A recent report by a task force on the clinical use of factor IX concentrates (Ref. 16) generally agreed that the IX concentrates available at that time may have been useful in the treatment of factor VIII inhibitors but indicated that a multi-institutional study was needed to establish their exact role in treatment of this problem.

c. *Multiple coagulation factor deficiencies*—(1) *Coumarin overdosage.* Factor IX concentrates have been used successfully in the treatment of coumarin overdosage of for reversal of anticoagulant therapy in patients prior to surgery (Ref. 17).

(2) *Liver disease.* Factor IX concentrates have been given to large numbers of patients to treat the hemorrhagic diathesis associated with liver disease. The results have not always been successful. In some patients this may be because of other factor deficiencies not corrected with factor IX concentrates such as factor V (Ref. 17) or because of the high incidence of bleeding due to local lesions such as varices or ulcers.

In addition, two other major concerns have arisen about treating patients with liver disease with factor IX concentrates. These are the high risk of post-transfusion hepatitis found after giving factor IX concentrates superimposed on an already damaged liver and a hypercoagulable syndrome with thromboembolism first reported in 1959 (Ref. 18). Because of this latter observation one of the two factor IX products available in the United States also contains added heparin. Some authors originally reported no evidence of an increased incidence of thromboembolism after administration of these materials to patients with chronic liver disease (Ref. 19 through 22). However, other studies have shown a risk of thrombosis or induction of disseminated intravascular coagulation (DIC) in patients with liver disease when these materials were used (Refs. 8, 23, 24, 26 through 28 and 43). Blatt described a patient with congenital factor X deficiency who developed hepatitis following administration of Konyne™ (Ref. 23). A subsequent surgical procedure was required while the patient still had abnormal latex fixation tests (LFT's), and within 2 hours of her second dose of this product she died with diffuse thromboembolism. Cederbaum reported three patients with liver disease who developed DIC after infusions of Proplex™ (two patients) and Konyne™ (one patient) (Ref. 24). Hoag described two patients who developed evidence of fibrinolysis following administration of Konyne™ (Ref. 6). Kasper reported an additional four patients with chronic liver disease who developed DIC following factor IX concentrates (Ref. 26). Similar reports have come from Europe after the use of PPSB (Ref. 8). A factor IX concentrate prepared in Great Britain was associated with acute liver disease (Ref. 27). The high risk of DIC and thrombosis in these patients may be related either to failure of the role that the liver normally plays in clearing activated products of blood coagulation (Ref. 28) or, alternatively, some of these patients may already have had underlying DIC which is exacerbated by this therapy.

(3) *Newborns.* Low birth weight infants have been shown to have a high incidence of intracranial hemorrhage. If the thromboplastin generation test on the first day of life is less than 10 percent, the incidence of hemorrhage is three times greater than in those infants with activities greater than 10 percent (Ref. 29). However, in a controlled trial where factor IX concentrates were administered intraventricular hemorrhage was three times greater in the treated group (Ref. 30). One study has indicated a reduction in intercerebral hemorrhage in infants with respiratory distress syndome (RDS) who required assisted ventilation from 33 percent to 13 percent when the infants were treated with factor IX concentrates (Ref. 31). Other studies have shown that in newborns with infection, RDS, hyaline membrane disease or vitamin K deficiency, use of factor IX concentrates has produced DIC (Ref. 8).

(4) *Open heart surgery.* There are no studies which have evaluated the efficacy of factor IX concentrates in the control of bleeding in open heart surgery patients. However, these concentrates are being used in this situation as documented by a report of a very high incidence of hepatitis following open heart surgery in a group of patients who received Konyne™ (Ref. 32).

3. *Side effects*—a. *Hepatitis.* A high incidence of hepatitis has been reported following the use of factor IX concentrates with reports ranging from 28 to 70 percent (Ref. 33). Most of the patients tested were hepatitis B positive. In a report by Sandler in 1973, a lot of Konyne™ implicated in three cases of hepatitis could not be shown to be HBsAg positive by immunodifussion, immunoelectrophoresis and immunoelectrosmophoresis (Ref. 34). Iwanson's study (Ref. 33) reported two eras of this treatment: (1) 1969–1970 when patients were treated with Konyne™ or a Swedish concentrate and the hepatitis incidence was 9/26 or 35 percent, and (2) since 1971 when an additional 26 patients were treated with the Swedish concentrate with a hepatitis incidence of 2/26, or 8 percent. The reported difference may have been related to hepatitis testing by radioimmunoassay (RIA) of the source plasma since 1971. However, a more recent study reported in 1977 examined samples of Konyne™ and Proplex™ and showed that Proplex™ was positive for HBsAG by radioimmunoassay (RIA) and immune-electron microscopy (IEM), and Konyne™ was found to be positive by IEM. These data suggest that even though routine screening of each unit of plasma by RIA is performed before fractionation, this procedure may not be sufficient to protect recipients against hepatitis transmission by these products (Ref. 35).

b. *Thromboembolic events.* Thromboembolic complications of factor IX concentrates have already been discussed. In addition, there is considerable evidence to show that patients who have congenital deficiencies of factor IX without liver disease when treated with factor IX concentrates have an increased incidence of post-operative thromboembolic phenomenon. There are also scattered reports of thromboembolic problems following administration of factor IX concentrate without apparent precipitating events.

In a review article on this subject, Kasper (Ref. 26) reported only two factor IX deficient patients without liver disease or surgery who developed any such problems. One had a syncopal episode while being treated for a factor IX inhibitor, and the other had pulmonary emboli on three different occasions while being treated for muscle-skeletal bleeding. In a recent conference on thrombogenicity of factor IX concentrates the following data were provided, as shown in Table 1 (Ref. 36):

TABLE 1.—THROMBOGENICITY OF FACTOR IX CONCENTRATES

	Post-surgery	Nonsurgical	Total
Christmas disease	4/21	2/85	6/106
Christmas disease and liver disease	0/6	4/18	4/24
Liver disease	1/3	9/55	10/58
Total	5/30	15/158	[illegible] (11%)

[1] Number of patients with thrombosis/number treated.

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The factor IX concentrates prepared in Europe have been reported to cause fewer complications. However, Preston (Ref. 37) infused the concentrate prepared in England into stable factor IX deficient patients and showed significant decreases in factor VIII and serum antithrombin III in all five patients studies; fibrinogen fell in four, and platelet counts decreased in two. These changes were transient, and there were no detectable clinical sequela. The study does suggest that more careful monitoring of hemostatic parameters in patients receiving these materials might show further evidence of thrombogenicity. There is one report of DIC occurring in a post-operative factor IX deficient hemophiliac which was successsfully treated with heparin; subsequently, DIC did not recur when the lot of concentrate was changed (Ref. 38) Sas (Ref. 39) described studies of the concentrate prepared in Scotland and showed that all lots of diluted concentrates on recalcification generated thrombin. Similarly, studies by Kingdon (Ref. 40) showed that materials prepared by eleven different manufacturers varied considerably regarding their thrombogenic potential as measured in vitro by a PTT assay and in vivo in a rabbit venous stasis model. The in vitro assay was more sensitive, but the in vivo assay may correlate more closely with the in vivo experience in man. Addition of 5 to 10 units of heparin/mL of reconstituted concentrate eliminated thrombus formation in the experimental animal model. However, a soybean trypsin inhibitor which inhibits factor Xa and diisopropyl fluorophosphate, an inhibitor of thrombin, VII or XIa has no effect.

Another approach to prevention of thrombogenicity by factor IX concentrates has been to add heparin in the manufacturing process to prevent factor activation and then provide for heparin removal in latter manufacturing steps (Ref. 41). This material was shown not to shorten in vitro clotting times.

4. *Benefit/risk evaluation.* Because of the high risk of hepatitis and thromboembolic complications, the use of these materials should be restricted to situations where the patient cannot be appropriately managed with single donor plasma. These would include: (1) Major surgery in patients with severe congenital deficiencies of the clotting factors contained in these concentrates, (2) life-threatening bleeding in patients with factor IX inhibitors, and (3) prophylaxis for patients with congenital clotting factor deficiencies where the value of this treatment must be weighed against the risk of hepatitis which is especially great in patients who have had few prior transfusions (Ref. 42). Factor IX concentrates should ordinarily not be used to treat bleeding during open heart surgery or for prophylactic treatment of patients with congenital deficiencies of prothrombin complex factors who also have liver disease.

5. *Recommendations.* Generically, Factor IX Complex (Human) should be placed in Category I. Specific recommendations for each producer follow in separate product reviews. Other recommendations for further research are:

a. Changes in manufacturing which can eliminate production of activated coagulation factors and contamination with hepatitis virus should be investigated.

b. Quality control technique improvements and better in vitro tests are needed for use by the manufacturers to lead to a material that is as nonthrombogenic and free of hepatitis as is possible.

c. Studies are needed to investigate the incidence of hepatitis in recipients who have received concentrates prepared from plasma pools composed of individual units which were HBsAg negative by third generation testing.

d. Studies should be encouraged to provide a source of factor IX which is free of hepatitis agents.

e. Further evaluation of the usefulness of factor IX concentrates in the treatment of patients with factor VIII inhibitors is recommended.

6. *Labeling recommendations.* a. The activity in the final product of any of the prothrombin complex factors (II, VII, IX, X) for which administration of the product is recommended as therapy must be included in the labeling.

b. The quantity of sodium, potassium, and anticoagulants in the final product must be included in the labeling.

c. The labeling should include prominent warnings about risks of hepatitis and thrombosis.

d. Indications for use should be restricted as discussed in this report.

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Product Reviews

1. *Product.* Factor IX Complex (Human) manufactured by Cutter Laboratories, Inc., as "Konyne™" is supplied as a lypholized powder containing 500 units of factor IX per bottle. An isotonic solution for administration is made by reconstituting the powder with 20 mL sterile water (USP) supplied by the manufacturer. The product is given by intravenous administration through a filter. No preservatives are used. Other ingredients are Factors II, VII, and X in amounts roughly proportionate to their respective levels in fresh plasma. The product should be stored at 2 to 8 1°C. For travel purposes, it may be stored for up to 1 month at temperatures not to exceed 37 °C.

In an analysis of the product, Tullis (Ref. 1) reports that Konyne™ contains:

TABLE I.—KONYNE™ Components

[illegible]	Amount	Concentration times plasma protein
Factor IX units [1]	460–550	70X
Factor IX Specific Activity (units/mg protein).	1.1	
Factor II units [2]	140	7X
Factor II Specific Activity	0.28	
Factor VII		36X
Factor X		30X

[1] One unit=factor IX activity of 1 mL of pooled plasma.
[2] One unit=prothrombin activity of 1 mL fresh plasma (not NIH prothrombin units).

2. *Effectiveness*—a. *Treatment of deficiencies of factors II, VII, IX and X (congenital and acquired).* In studies of factor IX deficiency, six patients received 62 transfusions with Konyne™ with a post-transfusion recovery of 58 percent of the factor IX infused. Half-life of the first component was 4.6 hours and of the second 31.5 hours. Equilibration between the first and second component was 22.1 hours, and the volume of distribution was 2.7 times the plasma volume (Ref. 2]. These distribution and turnover rates were the same as those found for fresh frozen plasma in three of the patients. Increases of factor II in these patients ranged from 62 to 299 percent, factor VII from 53 to 180 percent, and factor X from 72 to 232 percent. Factor II returned to control levels in 2 to 4 days, factor VII in 12 to 30 hours, and factor X at 5 days.

Tullis describes treating 14 patients with Konyne™ on 89 occasions and with Proplex™ on four occasions with clinical benefit in all instances. Diagnoses of the treated patients were: factor IX deficiency (6 patients), liver disease (6 patients), Dicumerol induced hypoprothrombinemia (2 patients), and factor VIII deficiency (1 patient) (Ref. 1).

Cutter Laboratories reported results of studies of the deficiency states and treatments shown in Table II (Ref. 20).

TABLE II.—REASONS FOR TREATMENT OF PATIENTS WITH DEFICIENCIES OF FACTORS II, VII, IX AND X

Factor deficiency	Surgery, post-[illegible]	Bleeding epi-[illegible]	Hemar-[illegible]	Dental work	Prophy-[illegible]	Assay	Total number treat-[illegible]
II	[illegible]	[illegible]	[illegible]	1	[illegible]	[illegible]	[illegible]
VII	[illegible]	[illegible]	0	1	2	[illegible]	13
IX	22	[illegible]	13	[illegible]	5	[illegible]	126
X	1	[illegible]	[illegible]	0	[illegible]	0	6
Totals	25	[illegible]	15	[illegible]	7	[illegible]	146

In vivo recovery of factors II, VII, and X in factor IX deficient patients reported by Cutter Laboratories are shown in Table III (Ref. 20).

TABLE III.—IN VIVO RECOVERY OF FACTORS II, VII, AND X IN FACTOR IX DEFICIENT PATIENTS

Deficient Factor	II	VII	X
Number of cases	2	21	1
Increase as %/unit of factor IX infused/lb	15.5	5.1	7.3

For factor IX deficient patients, administration of 2 units of factor IX activity/kg body weight resulted in an immediate increase of 3 percent (range 1.7 to 5.0 percent) in factor IX levels. The same dosage resulted in an increase in factor VII of 4 percent (range 2.5 to 5.4 percent).

In the one factor II deficient patient studied, 73 units of factor IX infused/kg resulted in an increase from 1.5 percent to 185 percent of normal factor II.

In vivo results of therapy in factor X deficiency were found to be somewhat variable. To raise the circulating level by 1 percent, 0.35 to 3.9 units/kg were required (3 studies).

Other studies summarized in Table IV showed increases in in vivo response in severely deficient patients (Ref. 20).

TABLE IV.—IN VIVO RESPONSE IN SEVERELY DEFICIENT PATIENTS

[Congenital and acquired deficiencies]

Deficient factor	Condition	No. cases	Average % increase/unit of factor IX infused/lb	Range
IX	Stable	17	3.2	1.7–5.1
IX	Bleeding	24	4.6	1.7–9.6
VII	Stable	3	5.2	5.0–5.4
VII	Bleeding	8	5.7	2.5–8.4
II	do	1	5.0	2.7–7.4
X	do	7	4.7	2.1–8.6

b. *Treatment of patients with inhibitors*—(1) *Factor IX.* One report has described successful dental extractions in patients from one family with inhibitors of factor IX by using Konyne™ to neutralize the inhibitor and levate the factor IX level (Ref. 3).

(2) *Factor VIII.* Abildgaard (Ref. 4) has reported the use of Konyne™ in 5 hemophilia A patients with inhibitors to treat 64 bleeding episodes with 130 infusions. Prompt control of bleeding was observed in each instance with doses of 15 to 10 units of factor IX/kg. No complications were encountered.

c. *Multiple factor deficiency*—(1) *Coumarin overdosage.* Konyne™ has been used successfully to reverse bleeding secondary to coumarin overdosage in 13 patients; in 5 patients reversal of coumarine effect was required before surgery; and 1 patient was treated for vitamin K deficiency before a biopsy procedure (Refs. 1, 5, 6, and 7).

(2) *Liver disease.* Liver disease has been discussed earlier in the Generic Statement on Factor IX Complex (Human).

3. *Safety analysis.* a. In 163 courses of treatment in 113 patients, Cutter (Ref. 20) reports that 22 patients had a temperature rise above 99.6° F, 4 patients had chills, 3 patients had allergic reactions (hives and itchy eyes), 1 patient had nausea, 3 patients with liver disease had fibrinolytic reactions, and there were 15 deaths (1 patient with thrombosis, 13 in patients with multiple coagulation factor deficiencies and 1 patient with sepsis).

b. *Hepatitis.* Kasper reported that 3 of 10 B hemophiliacs over 4 years old who had received fewer than 10 prior transfusions of blood products developed hepatitis within 6 months of the first infusion of Konyne™ (Ref. 10). Other hepatitis reaction reports in patients treated with Konyne™ are summarized in Table V.

TABLE V.—HEPATITIS IN KONYNE™ Treated Patients

Author	No. hepatitis/No. treated	Disease
Hellerstein (6)	1/2	Factor IX deficiency.
	2/4	Warfarin overdosage.
Faria (11)	5/11	Cardiac surgery (No Konyne™ with cardiac surgery hepatitis incidence was 1/23).
Oken (12)	2/4	Factor IX deficiency.
	1/2	Coumarin overdosage.
	2/2	Cirrhosis.
Sandler (7)	1/8	Coumarin overdosage.
	3/4	Coumarin overdosage with other blood products.
Grammens (5)	3/15	Factor IX deficiency.
	1/12	Coumarin overdosage or hepatic failure.
Boktan (13)	4/10	Factor IX deficiency.
Iwarson (14)	1/26	Do.

Ten patients were studied by bilirubin, SGOT, and SGPT liver function tests following Konyne™ administration, Table VI (Ref. 20). In three, there were abnormalities noted in the liver function tests, two associated with clinical hepatitis and one with transient enzyme changes without overt disease which was considered to be subclinical hepatitis. One additional patient had clinical hepatitis at the time of starting therapy, and this subsided during treatment.

c. *Thrombosis.* Triantaphyllopoulos (Ref. 15) initially described intravascular generation of thrombin in rabbits given Konyne.™ Death occurred in 34 percent of the treated animals. Catheter injection of the material was lethal in 82 percent of the animals, while direct intravenous injection was associated with a 13-percent mortality. These differences may be related to further contact activation of the Konyne™ by the catheter during infusion. Kasper has reported that 6 of the 13 factor IX deficient patients in the post-operative period who were treated with Konyne™ developed thromboembolic problems (5 thrombophebitis and 1 pulmonary embolism) (Ref. 16). Steinbert (Ref. 17), Edson (Ref. 18), and Marchesi (Ref. 19) subsequently reported on three individual factor IX deficient patients in the post-operative period who developed a myocardial infarction associated with Konyne™ administration, elevation of serum fibrin split products after administration of Proplex™ but not after Konyne™, and pulmonary embolism with Konyne™ administration, respectively. Cutter Laboratories' experience is reported in Table VII (Ref. 20).

TABLE VI.—HEPATITIS B IN RECIPIENTS OF KONYNE™ COMPLEX

Patient	Factor deficiency (n=total number of infusions in all patients)	No. of infusions in patients with hepatitis B	Received other blood products	Severity of disease	Incubation period
1	II (2)				
2	VII (28)	1	No	NR	2-3 mo.
3	IX (644)	3	No	NR	5 mo.
4		4	Previously.	Jaundice.	14 d.
5		7	Yes	SGOT, SPGT elevations.	3 mo.
6		13	Yes	Jaundice.	2 mo.
7		4	Yes	NR	3 mo.
8		17	Yes	Jaundice.	2 weeks.
9		10	Yes	Elevated SGOT, SGPT, no jaundice, possible subclinical case.	5 weeks.
10	X (9)	3	Yes	SPGT 1,200, SGOT 1,800, No jaundice.	2 mo.

NR=Not reported.

TABLE VII.—PATIENTS WITH DEFICENCIES OF FACTORS II, VII, IX AND X

[Development of thrombosis or hepatitis]

Factor deficiency	Total No. patients	Total No. treatments	Total No. infusions	Number developing thrombosis	Number developing hepatitis B	Number receiving other blood products
II	1	1	2	0	0	0
VII	7	13	88	0	1	2
IX	78	128	644	1	18	31
X	3	8	8	0	1	1

[1] Includes one possible subclinical case with elevated SGOT, SGPT, and no jaundice.

d. In addition to the above reactions, anaphylaxis has been reported (Refs. 8 and 9).

4. *Manufacturing analysis.* Manufacturing data are confidential, but a review indicated no reason to question the preparation of the product.

5. *Labeling recommendations.* a. It is recommended that the label should also contain:

(1) The amount of factors, II, VII, and X present by analysis if this material is recommended for treating these deficiencies.

(2) Thrombosis and hepatitis warnings.

(3) The amounts of sodium and potassium in the product in the final container.

b. The package circular should also:

(1) Give details of dosage and frequency of administration for each clotting factor deficiency to be treated.

(2) Include information about how to monitor effectiveness of treatment by employing clotting factor assays on the recipient's blood.

(3) Contain indications for use only in congenital deficiencies or urgent need for the rapid reversal of the effects of vitamin K antagonists.

(4) Include contraindications for use in newborns, liver disease, and surgical procedures in nondeficient patients, e.g., open heart surgery.

(5) State that after reconstitution, the material should be used within at least 4 hours.

6. *Recommendation.* It is recommended that the product be placed in Category I with the labeling recommendations as stated.

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(20) BER Volumes 6013 and 6013A.

Product Review

1. *Product.* Factor IX Complex (Human), (Factors II, VII, IX, and X) or Proplex ™ manufactured by Hyland Division of Travenol Laboratories is supplied as a 30-mL vial containing the lyophilized material. It is intended for intravenous administration through a filter after being reconstituted with 30 mL of sterile water for injection. Each bottle is assayed for factor II and factor IX activity or in vivo recoverable units. Other ingredients include heparin not to exceed one unit per Ml of reconsitituted product. No preservatives are used. The product should be stored between 2 and 3 °C.

2. *Effectiveness*—a. *Treatment of factor IX deficiency.* Eleven patients with factor IX deficiency were treated in one study with good hemostatic results in all (Ref. 1). The concentrates used had assay values of 5 units of factor II/mL, 17 units of factor IX/mL, and 20 units of factors VII and X/mL. This represented a purification of 30 times, 272 times, and 320 times, respectively. Protein concentration was 4.4 mg/mL.

Gilchrist (Ref. 2), on the basis of six infusions in four patients with factor IX deficiency, calculated that a dose of two units of factor IX/kg produced approximately one percent rise in factor IX plasma levels. The recovery values ranged from 17.3 to 33.6 percent with a residual factor IX activity of 40 to 59 percent at 24 hours posttransfusion. There were no changes in fibrinogen concentration of fibrinolytic parameters. In these early studies, protamine sulphate, 3 mg/vial of administered material was usually given to counteract the heparin in the concentrate.

Hyland (Ref. 8) provided data from 5 investigators on 42 infusions in 14 patients with factor IX deficiency. All patients treated had evidence of improvement, and there were no untoward reactions.

Levine (Ref. 3) reported 10 patients who used Proplex ™ in a self-therapy program. This material was reported to be effective in controlling hemorrhagic manifestations of spontaneous bleeding.

b. *Treatment of patients with liver disease.* Four patients with chronic liver disease with profuse bleeding from varices and/or hemorrhagic gastritis were given Proplex ™ infusions. Factor II levels were raised to normal with control of bleeding within 1 to 2 hours of the infusion (Ref. 4). One patient rebled and died several hours after completion of the infusion with evidence of accelerated disseminated intravascular coagulation (DIC). Half-life of factor II was 18 hours (recovery 80 percent), of

factor IX, 14 hours (recovery 42 percent), of factor VII and X, 7 hours (recovery 23 percent).

Cederbaum (Ref. 5) reported three patients with liver disease who developed DIC after infusion of Proplex ™ (two patients) and Konyne ™ (one patient).

c. *Other indications.* No data were found regarding effectiveness for treatment of factor II, VII, or X deficiencies, for treatment of patients with factor IX or factor VIII inhibitors, or for treatment of Coumarin overdosage.

3. *Safety*—a. *Hepatitis.* A single reference (Ref. 6) has reported hepatitis following Proplex ™ administration in a patient with factor X deficiency. (Also see the Factor IX (Human) Generic Statement.)

b. *Thrombosis.* A recent publication reported a lot of Proplex ™ documented to have resulted in thrombosis following infusion. On analysis, this material was found to contain activated factors IXa and Xa (Ref. 7). (Also see the factor IX (Human) Generic Statement regarding the thromboembotic potential of this product.)

4. *Recommendations.* a. Proplex ™ should be placed in category I, safe and effective, for the treatment of congenital factor IX deficiency.

b. Proplex ™ should be placed in Category IIIA for use in congenital and acquired deficiencies of factors II, VII, and X. A period of 3 years is recommended for the completion of the necessary studies to demonstrate effectiveness for these indications.

5. *Labeling recommendations.* a. It is recommended that the label should also contain:

(1) The amount of factors, II, VII, and X present by analysis if this material is recommended for treating these deficiencies.

(2) Thrombosis and hepatitis warnings.

(3) The amounts of sodium and potassium in the product in the final container.

b. The package circular should also:

(1) Give details of dosage and frequency of administration for each clotting factor deficiency to be treated.

(2) Include information about how to monitor effectiveness of treatment by employing clotting factor assays on the recipient's blood.

(3) Contain indications for use only in congenital deficiencies or urgent need for rapid reversal of effects of vitamin K antagonists.

(4) Include contraindications for use in newborns, liver disease, and surgical procedures in nondeficient patients, e.g., open heart surgery.

(5) State that after reconstitution, the material should be used within at least 4 hours.

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(8) BER Volume 6066A.

14. Fibrinogen (Human)

Generic Statement

1. *Introduction.* The end stage of coagulation is the conversion of the plasma protein fibrinogen to an insoluble polymeric gel called fibrin. The fibrinogen to fibrin conversion is a complex biochemical event catalyzed by thrombin, an enzyme generated in later stages of blood coagulation. Thrombin releases small polypeptides from fibrinogen leaving altered fibrinogen molecules, known as fibrin monomers, free to polymerize into the large fibrin units we recognize as blood clots. Deficiences or abnormalities of fibrinogen, whether hereditary or acquired, may lead to inadequate fibrin formation, a poor or absent blood clot, and abnormal bleeding.

Fibrinogen is synthesized in the liver, has a molecular weight of 340,000 plus or minus 20,000, and is normally present in plasma at a concentration of about 140–410 mg per dL of plasma (Ref. 1). Levels of fibrinogen increase in pregnancy, infection, cancer, granulomatous disease and many other pathological conditions (Ref. 1).

2. *Measurement of fibrinogen.* Fibrinogen can be measured gravimetrically, chemically, immunologically, or by approaches that utilize turbidity or light scattering (Ref. 2).

In some methods thrombin with or without calcium is added to plasma to generate clottable protein which is then measured and reported as fibrinogen (Ref. 3). Methods that utilize clot formation followed by washing, digestion, and chemical analysis of the clot are highly specific and accurate. Degradation products of fibrinogen and fibrin which are not active in the clot-forming process are not measured. These methods require meticulous attention to detail, accurate equipment, and take several hours before the answer is available, but give a reliable result. Digestion and chemical analysis of the clot can be replaced by carefully weighing the air-dried clot, but this is less accurate (Ref. 4).

The plasma clotting time after the addition of thrombin has been used as a repid screening method for afibrinogenimia (Ref. 5). More sensitive clotting time methods are also available and can be used to quantify fibrinogen in clinical settings. These have the advantage of simplicity and speed, but may not be sensitive to small changes in fibrinogen (Ref. 6).

Several turbidimetric methods are available for estimation of fibrinogen. These include salting out with ammonium sulfate (Ref. 7), sodium sulfite (Ref. 8), sodium sulfate (Ref. 9), or other chemicals. The methods are rapid and simple and in normal persons correlated well with more difficult methods. They are less reliable when the fibrinogen concentration is low or in sick persons where interfering substances may be present. In such cases a "grossly erroneous result" may be seen (Ref. 1). The turbidity that results when a dilute solution of fibrinogen reacts with thrombin can be measures easily and accurately to give a relatively sensitive, but specific, method for fibrinogen (Ref. 10).

Immunologic methods, usually based on the principle of radial immunodiffusion, are less accurate, detect fibrinogen or fibrin degradation products that have no clot-promoting activity, and usually require several days before an answer is available (Ref. 11).

Fibrinogen can be measured accurately, but many methods in common use are not completely reliable, and justification for therapeutic use of fibrinogen based on these techniques must be critically reviewed.

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3. *Method of preparation.* Because fibrinogen is the least soluble of plasma proteins, it is isolated easily by relatively simple techniques. The plasma fractionation methods developed in World War II by E.J. Cohn and his associates allow the separation of plasma into multiple components (Ref. 12). Fraction I, separate at pH 7.2, temperature −3 °C with an 8 to 10 percent final concentration of ethanol, contains fibrinogen, factor VIII, and several other proteins (Ref. 12). Additional purification of the fibrinogen may be done with glycine (Ref. 13), ammonium sulfate (Ref. 14), or by other approaches. The preparation and purification of fibrinogen by these methods is relatively straightforward, and the assay of the final product can be accurately standardized.

4. *Clinical aspects of fibrinogen deficiency.* Fibrinogen is indicated for treatment of patients who are bleeding and have fibrinogen levels low enough to cause or contribute to the abnormal hemorrhage. Fibrinogen may also be used as prophylaxis in patients with abnormally low fibrinogen levels when a major stress to the blood coagulation system, e.g., surgery, is anticipated (Ref. 15). Because the fibrinogen to fibrin reaction is but one of a series of complex vascular and biochemical events leading to normal hemostasis, the fibrinogen level alone cannot be used to determine appropriate therapy. For the same reason, intravenous administration of fibrinogen is not, in most cases, adequate to reverse the hemorrhagic problem. In most cases, multiple abnormalities exist and simple infusion of fibrinogen will not produce normal coagulation.

The relationship of fibrinogen deficiency to abnormal bleeding is further confused by the presence, in many disease states, of abnormal activation of the fibrinolytic system. Thus, low fibrinogen may be a reflection of increased degradation of adequate amounts of fibrinogen; hence, attempts to correct the low level without simultaneously correcting the cause of the increased fibrinolytic activity may be deleterious rather than helpful (Ref. 16).

A similar dilemma occurs in the case of disseminated intravascular coagulation (DIC) (Ref. 17). The relatively recent konwledge that the hemorrhagic complications of many medical, surgical, and obstetrical disorders are related to widespread intravascular coagulation with consumption of coagulation factors, including fibrinogen, required that the treatmen of these problems be reevaluated. Disseminated intravascular coagulation can be acute or chronic and has been seen in such widely divergent states as gram-negative endotoximia, antigen-antibody reactions, abruptio placenta, ammotic fluid embolism, retained dead fetus in utero, hemolytic transfusion reaction, extracorporeal circulation, trauma, promyelocytic leukemia, thrombotic thrombocytopenic purpura, fat embolism, and poisonous snake bites. The laboratory findings vary in degree from patient to patient, but in all cases there is evidence of decreased levels of some coagulation factors, usually V, VIII, and fibrinogen, a low platelet count, and evidence of inceased fibrinolytic activity with the presence of circulating fibrinogen-fibrin degradation products. It is evident that many of the original theories of afibrinogenemia complicating various clinical conditions are better explained by widespread DIC. In this setting the previous emphasis on fibrinogen, both as an etiologic and therapeutic agent, requires reevaluaion (Ref. 17).

5. *Levels needed for coagulation.* Because fibrinogen deficiency is frequently associated with other coagulation abnormalities, it is difficult to assign a critical fibrinogen value below which the risk of abnormal bleeding is increased. In one patient with hereditary afibrinogenemia, bleeding from a cut tongue stopped when the level reached 78 mg per dL, (Ref. 18). Studies in this patient's plasma showed normal clot formation and retraction when fibrinogen values were as low as 50 mg per dL, although clot formation was slow. Other authors, usually reporting on bleeding in obstetrical patients, describe "unstable" clot formation when levels are in the range of 100 mg per dL but give no data (Ref. 19). Most review articles suggest that patients with plasma fibrinogen concentrations below 100 mg per dL have increased bleeding, but do not provide data to document the statement (Ref. 20).

6. *Specific indications—a. Hereditary afibrinogenemia.* Approximately 60 patients with hereditary afibrinogenemia have been reported, all with fibrinogen levels of essentially zero. Clinical features include a hemorrhagic tendency with bleeding after slight trauma. Menses are normal and hemarthroses are rare. There is a long bleeding time and evidence of platelet dysfunction. The abnormalities, both laboratory and clinical, are corrected by small amounts of fibrinogen (Ref. 18).

b. *Hereditary hypofibrinogenemia.* Approximately 25 patients with a disorder marked by moderate reductions in fibrinogen level, with or without a mild hemorrhagic tendency, have been reported. These patients have not been well classified and at least one, an careful reinvestigation, has been shown to have hereditary dysfibrinogenemia (see next paragraph) rather than hypofibrinogenemia. There are no data to substantiate the need for, or efficacy of, fibrinogen in this condition (Ref. 21).

c. *Hereditary dysfibrinogenemia.* Since the first report, in 1958, of congenital abnormality marked by the production of defective fibrinogen at least 10 different varieties of hereditary dysfibrinogenemia have been reported. Some are associated with a bleeding disorder, and in at least three families recurrent thromboembolism has been a problem. The role of fibrinogen therapy is not defined (Ref. 21).

d. *Disseminated intravascular coagulation.* Widespread intravascular coagulation with consumption of circulating coagulation factors, utilization of platelets, and activation of the fibrinolytic mechanism has been established as the etiologic process for the coagulation abnormality seen in a whole host of different clinical conditions (Refs. 22 and 23). Included among these are the serious coagulation abnormalities that accompany the obstetric complications of abruptio placenta, amniotic fluid embolism, retained dead fetus in utero, and induced abortion (Refs. 24, 25 and 26). The bleeding state in gram-negative septicemia, as well as that seen with many medical and surgical complications, is, in most cases, a manifestation of DIC (Ref. 27). Thus, nearly all hemorrhagic situations previously diagnosed and treated as acquired afibrinogenemia are now treated for consumption coagulapathy rather than by attempting to reconstitute the plasma level of fibrinogen with i.v. administration of concentrated fibrinogen. In general, the therapy of DIC is directed at the underlying pathologic problem rather than at attempts to replace deficient coagulation factors (Refs. 24, 25, 26, and 28). When the process is difficult or impossible to control, such as in metastatic cancer, heparin has been used (Refs. 29, 30, 31, and 32). The appropriate and judicious selection of anticoagulation (heparin), coagulation factor replacement, or therapy with fibrinolytic agents is a clinical decision of great difficulty. It is clear, however, that fibrinogen replacement is less important than had been previously believed, and that most patients do not need the infusion of fibrinogen concentrate.

(1) *Abruptio placenta.* The most frequent cause of severe bleeding during pregnancy is premature separation of the normally implanted placenta (Refs. 25, 26 and 33). The mechanism for the DIC is probably related to the destruction of the normal placental implantation with subsequent entry of decidual fragments, serum, and activated coagulation factors into the maternal circulation. Appropriate therapy includes prompt emptying of the uterus, treatment of shock, and blood transfusion (Ref. 24). Most patients do not require specific clotting factor replacement, and heparin, if indicated, is needed infrequently (Ref. 29). In those few cases where fibrinogen replacement is required, a dose of 4 g (Refs. 24 and 26) has been advised.

(2) *Intrauterine fetal death with prolonged retention of dead fetus.* In these cases these is slow continued absorption of thromboplastic materials from the retained dead fetus leading to chronic activation of the coagulation system in vivo. This produces a mild chronic DIC usually requiring about 5 weeks for full development. Appropriate therapy includes frequent monitoring by coagulation tests, including fibrinogen, along with prompt evacuation of the uterine contents as soon as significant abnormalities become evident. Intravenous administration of fibrinogen is rarely, if ever, required (Refs. 24 and 26).

(3) *Amniotic fluid embolism.* The entrance of amniotic fluid into the maternal circulation, usually about the time of delivery, can produce a sudden and catastrophic event marked by respiratory distress, cyanosis, shock, and acute DIC. In most cases the onset is sudden and death occurs within minutes. At times the shock develops more slowly, and widespread bleeding is noted before death (Refs. 25 and 26). Since amniotic fluid is rich in thromboplastic materials, the development of widespread consumption coagulopathy is not surprising (Ref. 26). These patients require immediate and massive treatment for shock, transfusion to replace blood loss, and fibrinogen replacement (Refs. 25 and 26). Four grams of fibrinogen have been recommended (Ref. 24).

(4) *Miscellaneous conditions.* Massive trauma, burns, incompatible transfusions, septicemia (particularly with gram-negative organisms), promyelocytic leukemia, carcinoma, hepatitis, virus infections and, indeed, almost any serious medical or surgical illness may, at times, be associated with DIC. Therapy in these cases varies, but the use of intravenous fibrinogen is not a major therapeutic modality (Refs. 17 and 34).

7. *Risks and complications.* Fibrinogen is prepared from the plasma of large numbers of donors. Because of this and because fibrinogen will not tolerate the 10 hours of heating at 60° C used to inactivate the hepatitis virus in other blood fractions, fibrinogen administration has been associated with a significant risk of transmitting viral hepatitis (Ref. 35). The actual current risk is, however, almost impossible to evaluate since:

a. Most studies do not have a careful followup of recipients.

b. In almost all cases, recipients of fibrinogen have also received other blood products.

c. There are no reports of the hepatitis incidence after fibrinogen prepared from donor plasma that is negative when tested for HBsAg by third generation methods. Since this is now a manufacturing requirement, reports from the 1950's and 1960's may not reflect the current risk.

Bearing these limitations in mind, the reported incidence of postfibrinogen hepatitis has ranged from 1.7 percent to 55 percent. The two most recent reports (Refs. 36 and 37), both from Michigan, give divergent hepatitis rates and also illustrate the difficulty of evaluating the published data. In one study (Ref. 36), the manufacturer received reports on 649 patients who had received an average of 2.2 units of Fibrinogen (Human) per patient. Of these, 452 were followed for 6 months. One case of hepatitis (1.7 percent incidence) was reported in the 50 recipients who received Fibrinogen (Human) alone, while 34 cases (8.6 percent incidence) were reported in the 394 patients who had also received an average of 7.0 units of whole blood. All the plasma from which the Fibrinogen (Human) had been prepared was from volunteer donors, but had not been tested for HBsAg. In addition, there was no effort to follow recipients, hence the reported incidence must be considered as the absolute minimum. A second study (Ref. 37), also from Michigan, where recipients were "followed at close intervals by careful physical examinations and laboratory tests," reported the incidence of hepatitis to be 55.5 percent in the 9 patients who received Fibrinogen (Human) and survived longer than 7 days. Unfortunately, the fibrinogen was partly from commercial donors and partly from volunteers. In addition, of course, the data were collected before HBsAg testing was required.

There are no data about the hepatitis risk from Fibrinogen (Human) prepared from HBsAg negative donors, but it is known that such donors may transmit hepatitis and that with current processing methods HBsAg is found in fibrinogen fraction (Refs. 38, 39 and 40). Thus it is probable, but not proven, that large plasma pools, even though prepared from HBsAg negative starting materials, will be infectious. There are no data for Fibrinogen (Human), but other fractions, such as Antihemophilic Factor (Human) and Factor IX Complex (Human), have been more widely used and studied. Since pool sizes and general processing methods are similar for all of these unheated fractions, it is reasonable to assume that the risk of hepatitis transmission is also similar and that risk is from 36 to 75 percent in recipients who have had little or no other contact with blood products (Refs. 41 through 45). Again, these data were collected before the requirement for HBsAg testing on each donor unit of starting material. This fact notwithstanding, the high hepatitis risk of pooled unheated material is evident. Elimination of HBsAg-positive donors will lower, but not eliminate, this risk, and lacking more current data the wisest course is to accept previous estimates of the hepatitis risk for fibrinogen of about 25 percent.

At least one death has been ascribed to diffuse intravascular thrombosis after fibrinogen administration in a surgical patient (Ref. 46), and several cases of severe pulmonary embolism have been seen (Refs. 47 and 48).

Coomb's positive hemolytic anemia, probably related to the presence of anti-A and anti-B antibodies in the product, has been seen after large doses of fibrinogen (Ref. 49). This complication has been reported only in patients with hemophilia who were treated with large doses of fibrinogen rich in Factor VIII. Although fibrinogen is no longer considered appropriate therapy for hemophilia, similar doses of fibrinogen administered for other indications could have the same effect.

Various side effects including hypotension, tachycardia, nausea, vomiting, paresthesias, urticaria, fever, chills, and headache have been noted occasionally but are difficult to evaluate since, in each case, the product was being administered to an extremely sick patient who had multiple complicating factors (Refs. 50 through 52).

8. *Other sources of fibrinogen.* Fibrinogen (Human) is a licensed product currently recommended for the indications stated above. Fibrinogen replacement, however, can be

accomplished with other blood components or fractions. Cryoprecipitated Antihemophilic Factor (Human), (cryoprecipitate), while usually prepared as a source of Factor VIII for the treatment of hemophilia, is also an excellent source of fibrinogen, since each bag of cryoprecipitate contains approximately 250 mg of fibrinogen (Refs. 53 and 54). Cryoprecipitate has been used in patients who were candidates for fibrinogen replacement (Refs. 55 and 56). The hepatitis risk is unknown, but is probably equal to or less than that associated with whole blood transfusion (Ref. 57).

9. *Recommendations.* Recent evidence including a multitude of well documented studies, has established disseminated intravascular coagulation as the major, or perhaps the only, etiological factor in the development of acquired hypofibrinogenemia. As such, therapy is appropriately directed at the underlying disease. Heparin is sometimes used, and fibrinogen replacement is almost always unnecessary. In those few patients with acquired hypofibrinogenemia or in the rare patient with hereditary a-, hypo-, or dysfibrinogenemia, cryoprecipitate is an adequate source of fibrinogen replacement.

The hepatitis risk of cryoprecipitate relative to Fibrinogen (Human) is unknown and, because of the relative infrequency of patients who require fibrinogen replacement, is not amenable to appropriate study. Thus, there are not and will not be, scientifically sound data from which to decide about the risk of hepatitis from Fibrinogen (Human). Traditionally the hepatitis risk from pooled products that cannot be heat treated is high. The exclusive use of HBsAg negative donors reduces, but does not eliminate, this risk. It is well known that even small amounts of virus can contaminate large pools and that the risk of infection increases as pool size increases. Thus, it seems logical to restrict therapy to components, fractions, and derivatives that supply the required factor with the lowest possible risk of exposure to potentially infectious materials. In the case of fibrinogen deficiency, the desired treatment can be achieved with cryoprecipitate. Even the most generous dosage schedules will expose the patient to relatively few donors. The substitution of cryoprecipitate, Single Donor Plasma (Human), or Single Donor Plasma (Human) Fresh Frozen for Fibrinogen (Human) in those few cases where fibrinogen is indicated will decrease donor exposure and should diminish hepatitis risk. Lacking definitive data about relative risks from cryoprecipitate and fibrinogen, the Panel recommends that cryoprecipitate be used as a source of fibrinogen in the few clinical situations when such therapy is indicated. The Panel recommends that Fibrinogen (Human) as presently prepared be placed in Category II.

The recommendations of the Panel were forwarded to the Commissioner of Food and Drugs following the January 14–15, 1977 meeting of the Panel, and all licenses for Fibrinogen (Human) were subsequently revoked as of December 7, 1977, as reported in the **Federal Register** of January 6, 1978 (43 FR 1131).

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15. Fibrinolysin (Human)

Generic Statement

The coagulation system is complex and rigidly modulated. The "other side" of this system, the clot-lysing system, is apparently nearly as complex and as rigidly controlled, but is less well understood. Clinically, it is not less important. The ability to manipulate this system with certain agents is of potential therapeutic significance. References 1 through 3 support the basic discussion of the fibrinolytic system.

Plasminogen is a protein normally found in plasma. It is a single-chain beta globulin and can be purified from Cohn Fraction III. Its normal concentration is 200 micrograms/mL. Lower levels are found in infants and patients with cirrhosis. Higher levels are found in patients with infection, malignancies, or after injury. Two general forms have been identified, one with glutmatic acid in the N-terminal position (Glu-plasminogen) and one with lysine (Lys-plasminogen). The Glu form is slightly larger and is probably the natural circulating form. The Lys form, molecular weight 82,000–83,000, is probably a partially digested form. It has a shorter half-life after infusion into man (0.8 vs. 2–2. 5 days), and is more quickly activated and is more readily adsorbed to fibrin. This latter property may have therapeutic implications (Ref. 4). Plasminogen is rapidly synthesized, with plasma levels rising from none to normal within 12 to 24 hours after it has been depleted by infusion of an activator.

Plasminogen as it circulates is inactive. When it reacts with plasminogen activator, it is converted to plasmin, which lyses fibrin clots.

Plasminogen activators or precursors of activators are found in blood, many tissues (not liver), urine, saliva, and semen. There are high concentrations in vascular endothelium, more in veins than in arteries. The concentrations of activators in blood increase rapidly after vigorous exercise, emotional stress, injury, adrenergic stimulation, and following venous occulusion or ischemia of tissue or the infusion of various substances. The vascular endothelium may be the site of release of plasminogen activator into the circulation in response to many of these stimuli. Activated Factor XII promotes the formation of a plasminogen activator that may be different from the above. After injury or operation, the early rise in the levels of plasminogen activators in the blood is followed by at least several days of lower-than-normal levels.

The best-characterized plasminogen activator is urokinase. It is found in normal human urine and probably produced by renal parenchymal cells. Urokinase is a single chain beta globulin of molecular weight 54,000. It is not antigenic to humans. Many bacteria produce plasminogen activators, the best known of which is streptokinase. It is produced by beta-hemolytic Streptococci and is a protein with the mobility an *alpha*-2-globulin, and a molecular weight of 47,000. It is strongly antigenic in man.

When plasminogen and a plasminogen activator interact, plasmin is produced. The best defined reaction of this type is with urokinase. The product, plasmin, which forms has one heavy and one light chain linked by a single disulfide bridge. The light chain is the site of plasmin enzymatic activity. With streptokinase the reaction is less well understood, but a double-chain plasmin molecule is also formed. Streptokinase alone has no proteolytic activity. It combines with both

plasminogen and plasmin and undergoes structural rearrangements. The resulting complex acts as the "activator," and the streptokinase is partially fragmented in the process.

Plasmin is a serine protease, like many other enzymes formed from precursors. Like most such enzymes, it is fairly nonspecific and can digest a wide variety of substrates. In the coagulation system these include fibrin, fibrinogen, Factors II, V, VIII, and possibly VII. It also activates Factor XII and thereby can activate the coagulation, complement, and kinin systems (Ref. 35).

Such a powerful and nonspecific system must have a number of control mechanisms. Some of these have been identified. There are inhibitors to both plasmin and plasminogen activators. The anti-activators are found normally in the circulation, are probably *alpha*-2-globulins of molecular weight 75,000–80,000, and are fairly nonspecific (Ref. 37). Antibodies to streptokinase are specific anti-activators. These effectively neutralize infused streptokinase. They are found in almost all normal humans as the results of prior exposure ot streptococcal organisms. The level in the circulation varies widely, and will rise sharply in response to exposure to streptokinase through infection or infusion.

There are a rather large number of anti-plasmins. A fast-reacting inhibitor, highly specific for plasmin, may be the most important (Ref. 36). *Alpha*-2-macroglobulins are thought to be the principal secondary forms; they react rapidly but reversibly with plasmin in the circulation. Alpha-1-antitrypsin is also an anti-plasmin that reacts slowly but irreversibly. Other, perhaps less important, anti-plasmins are the anti-thrombin III-heparin complex, C 1 inactivator, inter-*alpha*-trypsin inhibitor, an inhibitor found in platelets, and inhibitors in granulocytes, arterial walls, and the placenta. The liver seems to be an important site of production of some anti-plasmins, and is also a site of inactivation of circulating activators. Patients with impaired hepatic function seem more prone to develop "out of control" fibrinolytic responses to various stimuli.

The products of the interaction of plasmin with both fibrinogen and fibrin can interfere with fibrin polymerization and can interfere with platelet function and therefore promote the development of clinical bleeding disorders (Ref. 1). Again the liver, or at least the reticuloendothelial system, seems to be an important site of clearance of fibrin or fibrinogen fragments from the circulation.

It is still not clear how the activity of plasmin, once formed, is limited to the area of need. There are a number of theories or hypotheses, but no real proof. The most widely accepted theory holds that plasminogen is adsorbed to fibrin. Plasminogen activator diffuses from the circulation into the clot, where plasmin, inhibitors are absent (Ref. 5). An alternate theory holds that plasmin-anti-plasim dissociates when in contact with fibrin and the plasmin becomes more tightly bound to the fibrin (Ref. 6). Another proposal suggests that plasminogen activators are selectively bound to fibrin (Ref. 7). In the background is preliminary evidence that fibrinolysis, not mediated by plasmin, may be clinically important.

There are marked differences among animal species in the activation and function of the plasminogen-plasmin system. Many laboratory animals respond to streptokinase with little or no activation of plasminogen. Man responds consistently by activating plasminogen when the proper dose is used. This has made evaluation of these agents, especially those containing streptokinase, almost impossible in controlled laboratory experiments and has required careful clinical study in man.

Product Review

1. *Description.* The Merck Sharp and Dohme Fibrinolysin (Human) "Thrombolysin™" product consists of a mixture of streptokinase (SK) and human plasminogen. Plasminogen is prepared from Cohn's Fraction III of human plasma. SK is prepared from the supernatant of cultures of streptococcus organisms. SK is added to the plasminogen, producing a mixture of SK, SK-plasminogen, SK-plasmin, plasmin, and other reaction products. It is not known if the plasmin is in the glutamic acid or lysine form. One vial of the substance containing "50,000 fibrinolytic units," contains about 40 units of plasmin and 20,000 units of SK. The manufacturer's "fibrinolytic units" relate to the ability of the active product to lyse a standard fibrin clot under certain conditions and in a specified period of time. The more commonly used units of measurement are determined by the ability of the active enzyme to hydrolyze casein (proteolytic activity) and the ability to convert additional plasminogen to plasmin as measured by resulting hydrolysis of casein (activator units). This review will refer to the latter two methods of measurement.

No known method of measurement relates simply and directly to human in vivo effects of this product. Most normal individuals have about five plasmin-inhibitory units per mL of plasma, or about 10,000 to 20,000 total circulating plasmin-inhibitery units. This obviously is vastly greater than the amount of plasmin usually infused with this product. Some investigators claim that the entire effect of this material is due to the in vivo activation of the recipient's plasminogen to plasmin by the streptokinase component, and that the preformed plasmin of the product is inconsequential. Most available evidence favors such an interpretation. There is a countervailing hypothesis that the inhibitor-plasmin complex formed almost immediately after infusion remains circulating for a time and is readily reversible. Fibrin forms a stronger bond with plasmin and is irreversible. Therefore, plasmin inactivated by inhibitor remains largely available by dissociation and active in in vivo fibrinolysis. There is little direct evidence to support this hypothesis; its main proponent has claimed therapeutic success with an SK-plasmin preparation from which the activator "had been removed" in a study involving five patients but without adequate controls (Ref. 8).

Normal individuals have about 3.8 plasminogen units per mL of plasma, so that the amount of activator (SK) infused with this product is potentially significant in activating the recipient's own plasminogen. Essentially all patients, however, have detectable levels of antistreptokinase, varying from 10,000 to 6 million circulating anti-SK units. Thus, even apart from the effects of plasmin inhibitors, there will be a wide range of effects from infusion of the SK of this product into a randomly selected population because of varying inactivation of this most important therapeutic component. Various investigators have proposed measuring anti-SK levels on all recipients and adjusting dosage accordingly, or titrating the dose to achieve a predetermined effect on a suitable laboratory test, such as prothrombin time, fibrinogen level, plasma recalcification time, or other tests, or both. Certainly, one of the major problems in evaluating the reported clinical experience is the lack of evidence that a physiologic effect upon the plasmin system was obtained in all patients with the dose used. Very few of the available studies contain satisfactory data in this regard.

The commercial product is supplied in dried form and must be mixed just before use. It should be kept cool during administration. At 4 °C loss of activity rarely exceeds 10 percent in 8 hours, but at room temperature, activity has been

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reported as rapidly lost (up to 25 percent in 15 minutes) in freshly reconstituted products. The manufacturer adds a stabilizer and states that, when reconstituted, the product loses 10 percent of its activity in 2 hours and 25 percent in 4 hours at room temperature. It is not clear from clinical studies whether proper precautions were taken to guard against loss of activity.

2. *Safety.* The most recent reports of clinical use indicate a much lower incidence of febrile reactions than were common when the material was first marketed. This is now a fairly minor problem despite the known pre-immunization of almost every potential recipient to SK. This seems to have followed improvements in the purification of SK.

Anaphylaxis has been rare. The only reactions reported occurred following repeated parenteral administration of SK (Ref. 8). It is clear that careful consideration must be given before the repeated parenteral administration of a product containing SK. The need should be great, the circulating levels of anti-SK probably should be measured and an attempt be made to eliminate or lower the level of circulating antibody by administration of graded doses of SK before attempting a full therapeutic plasminogen-activating exposure.

Four instances of hepatitis were reported in a single series of patients early in the use of this product (Ref. 9). There have been no reported instances in the past 15 years. The product is heated at 60 °C for ten hours before release.

Hemorrhagic complications have been variously reported (Refs. 8 through 13). In general, the development of hemorrhage seems to parallel the induction of an active fibrinolytic state as detected by various laboratory tests; it occurs most easily at sites of recent injury, including venapuncture, and seems more common when anticoagulant drugs are used simultaneously (Refs. 6 and 12).

There is no generally agreed-upon method for monitoring the effects of this product on the recipient's coagulation system. Direct measurement of the components and activities of the plasminogen-plasmin system is technically demanding and is not routinely available. The "indirect" effects of the material have led various investigators to propose serially measuring bleeding time, whole blood-clotting time, thrombinclotting time, prothrombin time, fibrinogen concentration, thromboplastin generation, and plasma recalcification time among others. Fibrinogen concentration and one-stage prothrombin times seem the most consistently affected. Lengthening of the thrombin time or the prothrombin time seems to provide indirect evidence of the desired therapeutic effect at a state before severe effects which may result in bleeding are produced. Serious bleeding has followed the unintended induction of significant hypofibrinogenimia and digestion of other coagulation factors by plasmin with marked prolongation of the one-stage prothrombin time. Such patients have exhibited extensive activation of the plasminogin-plasminogen-plasmin system.

Other reported side effects include nausea, vomiting, abdominal pain, and, rarely, skin reactions or hypotension.

3. *Effectiveness.* The ability to dissolve clots intravascularly seems to vary with the age of the clot (easier when fresh), the circulating levels of fibrinogen and lipids (higher levels seem to impair efficacy) the status of inhibitors and anti-SK antibodies, hepatic function, perhaps the composition of the clot, and certainly the underlying condition(s) causing the intravascular thrombosis (Refs. 1 through 3 and 8). The benefit or harm to the patient from lysing an arterial clot, if such occurs, depends on the reversibility of tissue damage beyond the area of occlusion and the chances for harmful hemorrhage in the reperfused area. With venous clots, there is the theoretical danger of increasing the chances of pulmonary embolization by partially dissolving and "freeing up" thrombi. This seems not to occur.

The greatest problem in evaluating efficacy is the lack of properly controlled clinical trials, and the minimal value of studies on laboratory animals treated with this product. In addition, details of dosage and of handling the material and documentation of an effect on the proteolytic system are often lacking, as is angiographic evidence of the presence of thrombi before treatment and the dissolution of thrombi during treatment. The result is overall poor documentation of claimed benefits. Further, this product should be considered with closely related products, SK alone and urokinase from the point of view of safety and effectiveness.

4. *Specific clinical uses*—a. *Arterial thrombosis and embolization.* There were many reports of the use of this product alone or in conjunction with surgical intervention in the treatment of arterial thrombosis and embolization, mostly in the early 1960's (Refs. 14 through 17). By current standards, none of these studies were properly controlled. Often, there are underlying mechanical problems when an arterial thrombus develops, and the reports available are rather anecdotal and unconvincing. It is unlikely that surgery can be avoided by the use of this material, and there is no evidence that the outcome is improved. Techniques of vascular surgery such as better angiography, noninvasive flow measurements, better suture material, balloon catheterization, and extraction of clots have improved significantly since the earlier clinical studies and supplemental fibrinolysin now seems to be used rarely.

There is one important possible exception. Recent reports on the use of SK locally in structures used for vascular access for hemodialysis (shunts, fistulas, heterografts) have been impressive in that a number of patients who would otherwise have required surgical revision were carried for months after clotting of the devices had occurred and other usual means of restoring flow had failed. This is a small but important group of patients because these devices are literally life sustaining. Much of the time, thrombosis signifies an underlying mechanical problem which must be corrected. Some of the time local fibrinolysis seems to be effective. Since the material is used locally, systemic effects are minimal, making the technique even more attractive. Better-controlled studies are needed to indicate the proportion of such patients that can indeed be helped by this approach, but the reported experience to date is encouraging.

b. *Myocardial infarction.* The theoretical problems encountered when evaluating the effect of fibrinolysis in myocardial infarction are the uncertainty about how many myocardial infarctions are due to fibrin clots in the coronary arteries, and the problems of attaining reperfusion after infarction has occurred. The practical problems are those of establishing proper controls and demonstrating the presence of clots before treatment and their absence after treatment. Many reported studies are too small to draw conclusions or are uncontrolled. One very small study claimed less rise in SGOT in seven treated patients versus five controls (Ref. 18). Another claimed faster restoration toward normal of EKG abnormalities in 15 treated versus 40 historical "controls" (Ref. 19). Another series of papers dealing with a continuing series of patients claimed lower mortality in treated versus untreated patients, but the series was only partially controlled, and if the seemingly early uncontrolled group is removed, the differences disappear (Ref.

20). Three sizeable controlled studies with a total of 178 treated patients versus 182 control patients showed no differences in mortality (Refs. 9, 12 and 17).

c. *Cerebrovascular accidents.* Use of Fibrinolysis in ischemic strokes has not been shown to be beneficial in the best reported study to date (Ref. 21). This was a prospective double-blind study without angiography involving 20 treated patients and 20 control patients. In other smaller uncontrolled series the authors speculated as to benefit, but unconvincingly. The brain is one area where restoring blood flow rapidly to irreversibly damaged tissue undergoing necrosis conceivably could do more harm than good.

d. *Deep venous thrombosis.* This is one of the most troublesome therapeutic problems to evaluate. The recent resurgence of interest and investigation in this disease has clearly shown the inadequacy of relying on clinical criteria for either diagnosing the presence of clots or of detecting their dissolution. None of the early studies were properly documented by venography by modern standards, and very few were properly controlled even for clinical signs and symptoms (Refs. 8, 10, 11 and 17). Some compared such nebulous criteria as pain, disability, and duration of hospital stay with historical controls. In one of the few studies using simultaneous controls and three treatment groups, fibrinolysin, heparin, and rest and elevation only, the group treated with heparin seemed to fare better than the other two, which were indistinguishable from each other (Ref. 22). There was no angiographic documentation, and "superficial" phlebitis was included as were patients with underlying malignancy; this study is thus of doubtful merit. A more recent study indicated earlier lysis of deep venous clots with the infusion of SK and plasminogen separately (Ref. 4). This is not the same material as Thrombolysin™, but it is close.

The other problem with evaluating the treatment of deep vein thrombosis is in the selection of the criteria of success. Most pulmonary emboli result from clinically inapparent clots. The real problem with deep vein thrombosis is in the late sequelae. No study of fibrinolysis has adequately addressed this problem. The experience with ileofemoral thrombectomy indicates that early apparent benefit can disappear when late sequelae are evaluated at 5 to 10 years following the event (Ref. 23). Proof of efficacy in this disease will require a controlled study with angiographic documentation, and prolonged followup with double-blind evaluation of late sequelae.

e. *Pulmonary embolism.* The recent controlled trials with various fibrinolytic agents show that large pulmonary emboli can be lysed more rapidly when such agents are used (Refs. 24 and 25). Spontaneous lysis occurs at a significant rate also, so use of such agents should probably be limited to special circumstances, such as persisting hemodynamic changes or repeated embolization. One of the largest groups in which such criteria are likely to apply are patients soon after accidental or operative injury. This is the group in which the risks of significant hemorrhage are quite high following induced fibrinolysis. A better definition of benefit and risk is needed in such a group of patients before reliable conclusions can be drawn. For those patients without contraindications, use of lytic agents in the above circumstances seems warranted. These comments are based on the assumption that Thrombolysin™ is functionally similar to streptokinase, which was studied in some of these trials. Thrombolysin™ was not itself evaluated in these studies. Reports of the treatment of pulmonary emboli with Fibrinolysis (Human) are seriously lacking in either controls or angiographic documentation or both (Refs. 9, 17, 26 and 27).

f. *Thrombosis of the retinal artery or veins.* There seem to be only two reported instances in which there was significant return of vision following treatment of retinal arterial thrombosis with thrombolysin (Ref. 28). The oxygen demands of the retina are so high and the arterial supply so vulnerable, that it seems unlikely that a complete thrombotic occlusion could be lysed early enough to allow function to recover. It is not clear how often partial occlusions occur. There are more encouraging reports of improvement of vision after the treatment of occlusion of the central retinal veins, but none of these reports have presented proper controls (Refs. 10, 11 and 29).

g. *Traumatic hyphema.* Instillation of fibrinolysin into the eye to remove post-traumatic clots was reported with some frequency but with no controls. The closest to a controlled study seemed to show equal benefits from conservative treatment (Ref. 30). This use of fibrinolysins seems to have ceased in recent years and cannot be recommended.

h. *Priapism.* There have been several reports of the use of systemic and/or local fibrinolysin for the treatment of priapism, all without adequate controls (Refs. 10, 31 and 32). This is a disorder with a wide range of causes, some unlikely to be helped by fibrinolysin. Again, this does not seem to be a currently practiced method of treatment.

i. *Respiratory distress of the newborn.* One rather striking study showed a sharply increased mortality from the use of systemic fibrinolysin for the treatment of respiratory distress of the newborn in which 1 of 6 controls died versus 5 of 5 treated (Ref. 33). Autopsies yielded no clues as to the cause, but this experience suggests that this material should not be used parenterally in premature infants for any reason. Others have used it by pulmonary insufflation in respiratory distress of the newborn without such adverse results but also without apparent benefit.

j. *Intraperitoneal adhesions.* A single study in rats suggested fewer intraperitoneal adhesions after the use of intraperitoneal fibrinolysin (Ref. 34). The experimental model and the problems with extrapolating to another species makes this observation of uncertain significance for man. No clinical studies have been reported.

5. *Labeling.* The label available for review uses the manufacturer's dosage units, which differ from those commonly used in the literature. This can be misleading. The discussion in the labeling of published reports on the use of this product in various conditions does not refer to or properly emphasize some of the negative clinical trials, especially in patients with myocardial infarction and cerebrovascular accidents. The only indications listed for use are "phlebothrombosis, thrombophlebitis, pulmonary embolism, and thrombosis of arteries with exclusion of thrombosis of coronary arteries and cerebral arteries." The limitations of fibrinolytic therapy in such conditions, discussed in this review, are barely or not at all mentioned. There is perhaps an undue impression of accuracy of dosage, but in view of the uncertainty about proper dosage and monitoring, this is not an area in which definite statements can or should be made. The precautions do not list concurrent anticoagulation as probably increasing the risk of hemorrhage; this point seems well enough established to be included in the labeling.

6. *Summary.* Fibrinolysin (Human) was first evaluated clinically several years before the current resurgence of interest in the study of thromboembolic disease. As a result, its evaluation for effectiveness has been inadequate by modern standards. Improper or no controls and lack of angiographic

documentation are the two most serious and common defects. In many published studies, evaluation of hemostatic function was either not done or was inadequate to assess whether or not a fibrinolytic state had been induced. This is a particularly important point with a product containing streptokinase because of the variable level of inactivating antibodies in the human population. The extremely limited relevant data that can be obtained in animals with this product make careful human clinical studies mandatory.

The most likely clinical uses of value are for pulmonary embolism, deep venous thrombosis, and clotted vascular access devices in patients undergoing hemodialysis. The limitations and problems for these uses have been discussed. For all three uses, most of the pertinent data have been derived from studies using urokinase or streptokinase alone. One of the main problems the Panel faced was in deciding to what extent these data on SK could be applied to Thrombolysin™. It seems likely that most of them are applicable, but this is in fact a different product. There is little reason to expect much functional difference between these products, and the available data do indicate that Fibrinolysin (Human) can activate the plasmin system in human recipients. The Panel's first decision, then, was to treat this product in a manner similar to urokinase and streptokinase, and to allow market forces to decide its utilization, even though it seemed logical that if both a plasminogen activator and plasminogen itself were needed in specific circumstances, these should be provided separately in the doses indicated. The regulations in 21 CFR 601.25(d)(4) appear to require specific data supporting the need for each component of such a combination. The recommendation of the Panel follows the regulations, since the requirement for the plasminogen component cannot be documented by present data.

7. *Recommendations.* a. Fibrinolysin (Human) should be placed in Category IIIA, that is, to remain on the market pending proof of effectiveness, but requiring that such proof be presented to retain permanent licensure. A period of 3 years should be allowed for the recommended studies demonstrating the contribution of each component to the labeled indications.

b. During continued marketing, the only indications for which there is reasonable supportive evidence at present are for use in the treatment of pulmonary embolism, deep venous thrombosis, and clotted vascular access devices. Labeling for any of these indications should reflect the problems discussed in this review. Labeling should indicate that spontaneous lysis occurs with both pulmonary emboli and deep venous thrombi, that fibrinolytic agents appear to accelerate the early phases only, that there is no proof that late sequelae are lessened in patients with deep venous thrombosis, and that underlying mechanical factors are often the cause of thrombosis in vascular access devices.

c. All fibrinolytic agents should be rereviewed at a later date by a single panel of experts. Separate reviews of urokinase and streptokinase on one hand and Fibrinolysin (Human) on the other is artificial, duplicative, and could result in unfair inconsistencies.

d. The material should be named "Fibrinolysin."

8. *Other research.* The following are areas for which further research is recommended:

a. There is a great need for a practical laboratory test which can be used to monitor therapy with fibrinolytic agents.

b. The fibrinolytic system itself needs considerable further elucidation.

c. Plasminogen activators are needed which are effective, nonantigenic, and less expensive than urokinase as now produced.

d. The breakdown products of fibrin and fibrinogen need to be further defined, their effects and dynamics studied, and methods for their detection need to developed which will distinguish the various stages of fibrinolytic events in patients.

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16. Rh_o(D) Immune Globulin (Human)

Generic Statement

1. *Introduction.* Hemolytic disease of the newborn due to anti-Rh_o(D) was a significant problem prior to the advent of immunoprophylaxis in 1968. Milestones in the understanding and management of this problem include the discovery of the Rh_o(D) antigen, elucidation of the pathogenesis of the disease, the development of exchange transfusion in the neonate, the development of intrauterine diagnosis by amniocentesis and intrauterine transfusions. Despite these formidable achievements, it was estimated that in 1968, 2.7 deaths per 10,000 live births occurred in the United States as a result of this condition (Ref. 1).

The pathogenesis of Rh hemolytic disease of the newborn is well known. In a primigravid Rh-negative woman who has not been exposed previously to Rh-positive blood, primary immunization occurs most frequently during labor and delivery, particularly during the third stage of labor, when Rh-positive fetal red blood cells (RBC) cross the placenta and enter the maternal circulation in substantial numbers. The risk of immunization is related to the magnitude of feto-maternal hemorrhage: In the presence of ABO compatibility between mother and fetus, the risk is 3 percent when less than 0.1 mL of the fetal RBC are present in the mother, is 25 percent when 0.25 to 1 mL are present, and is 65 percent when more than 5 mL are present. Perhaps 75 percent of delivering women have less than a 0.1 mL feto-maternal hemorrhage while only 0.3 percent have feto-maternal hemorrhage of greater than 15 mL. Thus, the overall risk of Rh immunization in ABO compatible pregnancies is 13 to 15 percent per Rh incompatible pregnancy. In ABO-incompatible pregnancies the risk is 2 to 3 percent (Ref. 2).

A major development in the elimination of this problem occurred in the late 1960's when it was demonstrated by a number of investigators that active immunization of Rh-negative mothers carrrying Rh-positive fetuses could be prevented with the administration to the mother of an intramuscular injection of Rh_o immune globulin within 72 hours after delivery (Refs. 3 through 6). Using the standard dose of 300 micrograms of Rh antibody, there has been a 90-percent reduction of the immunization rate from about 15 percent to about 1.5 percent (Refs. 2 and 7). The reasons for failure to achieve complete prophylaxis are not entirely clear and may reflect, in part, a lack of clear understanding of the mechanism by which prophylactic effect is achieved. Failures may result from a number of factors:

a. Immunization may have already occurred during pregnancy. Fetomaternal hemorrhage has been noted as early as during the early portion of the second trimester and increases in size and frequency as gestation proceeds (Ref. 2). Thus, some women may be immunized early in pregnancy. In recognition of this, some investigators have administered Rh_o immune globulin during pregnancy in either single dose (300 μg) at 34 weeks gestation or twice at 28 and 34 weeks gestation. The evidence to date suggests that as many as 65 to 90 percent of all prophylaxis failures may be eliminated by antepartum administration of Rh_o immune globulin (Refs. 8 and 9). These studies require demonstration that immunization has not occurred by evaluation subsequent pregnancies. Infants born after antenatal treatment show no evidence of increased red cell destruction resulting from the passive antibody administration to the mother, although many manifest a positive direct antiglobulin test of their red cells.

b. A large feto-maternal bleed may have occurred, and the standard 300 microgram dose is therefore inadequate. Studies indicate that 300 micrograms of Rh antibody are sufficient to prevent immunization when up to 15 mL of Rh-positive red cells have been infused into Rh-negative subjects (Refs. 10 and 11). As only 0.3 percent of all pregnancies will have feto-maternal bleeds of greater than 15 mL (Ref. 2), this factor cannot account for more than than a small number of all the Rh_o immune globulin prophylactic failures. In most pregnancies, the dose of anti-Rh_o is probably excessive.

c. It is possible that the intramuscular route of administration may not assure adequate uptake of antibody into the circulation. While there is no direct evidence on this point, European investigators have been using intravenous administration of a preparation prepared especially for intravenous use (Ref. 12). The World Health Organization has recommended that only half the usual dose is necessary if the intravenous route is used.

d. Rh-negative women born of Rh-positive mothers may have been actively immunized by a materno-fetal bleed when they were born ("grandmother theory"). When these women deliver an Rh-positive fetus, Rh_o immune globulin would not be effective because of their prior immunization. Studies (Refs. 13 through 16) suggest this possibility, and a materno-fetal immunization rate of 5 to 11 percent has been observed (Refs. 14 and 16) Other studies have not confirmed these findings (Refs. 17, 18 and 38). Further studies are necessary to confirm the validity of the "grandmother theory." If proven, Rh-negative female children born of Rh-positive mothers might receive Rh_o immune globulin to prevent

such immunization and later instances of hemolytic disease in their children.

While not a factor strictly relevent to the Rh_o immune globulin prophylaxis failure rate, it is noteworthy that failure to administer Rh_o immune globulin still occurs. Estimates by the Centers for Disease Control indicate that only 80 percent of women who should receive immunoprophylaxis actually do so (Ref. 1). Clearly, further educational efforts are needed in the total program aimed at eliminating Rh hemolytic disease of the newborn.

Other situations in which Rh_o immune globulin may be useful include:

(1) *Rh_o immune globulin in abortion.* In cases of abortion, a risk of maternal immunization exists. The overall rate of immunization has been estimated as between 3 to 5.5 percent where the Rh type of the fetus is unknown (Refs. 19 and 20). The method of inducing abortion may influence this rate (Ref. 19); hypertonic saline abortion results in a three times greater frequency of transplacental hemorrhage than does curettage abortion. The risk of immunization also increase directly with gestational age. On the basis of these considerations, Rh immunoprophylaxis has gained general acceptance in cases of abortion. While controlled studies demonstrating the effectiveness of immunprophylaxis in abortion case have not been performed, the argument for use of Rh_o immune globulin in these cases is very compelling.

(2) *Rh_o immune globulin in transfusion.* The third major clinical circumstance where Rh_o immune globulin is used is when Rh_o(D) negative patients have accidentially received a transfusion of Rh_o (D) positive blood. Studies in volunteers indicate up to an 80 percent immunization rate in these circumstances and, administration of 20 micrograms of Rh_o immune globulin for each 1 mL of red blood cells affords total protection against immunization (Refs. 10 and 11). Other reports substantiate these observations (Refs. 21 through 24).

2. *Description of product.* Rh_o immune globulin is manufactured from human plasma containing anti-Rh_o(D) antibody. The plasma undergoes fractionation and the globulin fraction is obtained. The material is tested for specificity and potency in vitro in the latter case, by comparison with an FDA, Bureau of Biologics reference material. The final product may be diluted with serum globulin which does not contain anti-Rh_o(D). Stabilizing and antibacterial materials are added.

The Bureau of Biologics' requirements are that at least 200 mL each of plasmas (or sera) from 20 different donors be represented in the original plasma pool. While this is an apparently arbitrary number, it does permit some confidence that all specificities of the Rh_o(d) mosaic and antibodies of different affinity constants are represented in the final material. The Bureau of Biologics has limits for the presence of red cell antibodies other than anti-Rh_o(D) and these appear prudent and not overly restrictive.

The amount of anti-Rh_o(D) antibody is determined by an antiglobulin titer which must be equal to or greater than the Bureau of Biologics' reference material. This procedure is open to question. Manual titration using doubling dilutions is a highly subjective test. A one tube difference in such an assay system could reflect a 50-percent error in antibody concentration. Further, it has been demonstrated that assay values for Rh_o(D) antibody obtained by either manual or automated methods may be inaccurate as the regression line for the assay depends on both the antigen, i.e., the Rh-phenotype of the test cell, and the heterogeneity of the antibody population being tested. Finally, since the critical literature on efficacy of Rh_o immune globulin is expressed in doses described in micrograms of antibody, it would seem reasonable to demand consistency in standardization and expression of potency in the assay of manufactured lots.

Perhaps the best assay system for Rh antibody is the radioimmunoassay (Refs. 25 and 26). This test was the standard by which efficacy and dosage have been ascertained, and it has been demonstrably satisfactory. Radioimmunoassay procedures are difficult to carry out. A second quantitative technique that is acceptable is the Autoanalyzer™ titration method (Ref. 26). Since Rh_o immune globulin is prepared from plasma pools representing at least 20 different donors, the problem of antibody heterogeneity is reduced. When using this test, dilutions within one log are usually employed, and errors or inaccuracies are minimized.

3. *Effectiveness.* a. There are three clinical situations where administration of Rh_o immune globulin to prevent primary immunization to Rh antigen is currently used:

(1) *Postpartum in Rh-negative mothers who have delivered an Rh-positive child.* Administration within 72 hours after delivery affords 90-percent protection against primary immunization (Refs. 1 through 7).

(2) *After abortion in Rh-negative women.* Controlled studies are not available, but there is no reason to believe effectiveness is not equal to or greater than in term pregnancies.

(3) *After transfusion of Rh-positive blood to an Rh-negative individual.* Efficacy has been demonstrated in both controlled studies (Refs. 10 and 11) and clinical situations (Refs. 21 through 24).

b. There are a number of clinical situations where the use of Rh_o immune globulin has been suggested to prevent primary immunization:

(1) *After transfusion of blood components containing Rh-positive erythrocytes to Rh-negative recipients.* Transfusion of platelet or granulocyte concentrates is usually associated with infusion of substantial numbers of red cells. Primary immunization to the Rh antigen may be prevented with Rh_o immune globulin in those patients in whom it is desirable to do so, e.g., women in childbearing age. There is no evidence that cryoprecipitate from Rh-positive individuals can immunize Rh-negative recipients.

(2) *After abdominal trauma to an Rh-negative woman during pregnancy.* There is evidence that abdominal trauma, particularly amniocentesis, can be associated with feto-maternal bleeding (Refs. 28 through 32). It appears rational in these circumstances to administer intrapartum Rh_o immune globulin, although controlled studies are not available to support this use.

(3) *Intrapartum administration to all Rh-negative women.* Current evidence in a relatively small number of pregnancies suggests that primary immunization may be prevented with this approach, although not completely, (Ref. 8) as determined by postpartum Rh antibody detection (Refs. 2, 8 and 9). However, firm documentation of efficacy would require demonstration of no immunization with subsequent Rh-positive pregnancies. These data are not currently available. Such a program is directed at the 1.5 percent of at risk women who currently fail to be protected by postpartum prophylaxis. As the number of doses of Rh_o immune globulin would increase two- to three-fold with such a program, the impact on health care costs and on immunized plasmapheresis donors, the source of antibody-containing plasma, would be great if intrapartum prophylaxis were widely practiced. Thus, effectiveness should be established unequivocally before considering formal approval of this indication.

(4) *Administration to Rh-negative neonates born of Rh-positive mothers.* Current data do not support this use.

(5) *Administration to D^u women.* There are case reports of D^u women who developed "anti-D" with resulting

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hemolytic disease of the newborn. This must be a rare event. Also, there is no evidence that administration of Rh_o immune globulin in these women would be protective; much of the administered antibody would be adsorbed by maternal cells (Ref. 34). Of greater concern is the clinical situation where the mother's Rh status is unknown prior to delivery. In these cases, a postpartum maternal typing as D^u might indicate the presence of a large feto-maternal hemorrhage of Rh-positive cells in an Rh-negative woman. In these cases, immune globulin should be given.

(6) *Administration later than 72-hours postpartum.* The 72-hour postpartum limit for Rh_o immune globulin resulted from an artifact in the experimental design during the original studies on this material (Ref. 7). This time limit appears valid for optimal protection but, if the antibody has not been administered within this period, it should still be administered later, as protection, albeit to a lesser degree, may still be achieved at little risk (Ref. 39).

c. *Miscellaneous issues affecting efficacy*—(1) *Estimating the size of feto-maternal hemorrhage.* The risk of feto-maternal immunization increases with the size of the feto-maternal hemorrhage (Ref. 2). The standard dose of 300 μg of Rh_o immune globulin protects against up to 15 mL of feto-maternal hemorrhage (Refs. 10 and 11). While hemorrhages greater than 15 mL occur in only 0.3 percent of pregnancies (Ref. 2), these women are at increased risk to become immunized and require more than the standard dose to be adequately protected. Provisions should be made in the labeling to recommend a screening or quantitative procedure for the detection of large (greater than 15 mL) feto-maternal hemorrhages. Appropriate upward adjustment of the dose of Rh_o immune globulin should also be recommended in these cases.

(2) *Low dose Rh_o immune globulin.* The current standard dose of Rh_o immune globuli 300 micrograms, is excessive in most cases (Refs. 5, 10, 11 and 42), although the safety of the product is not affected by the excess. During abortions or abdominal trauma, where the transplacental hemorrhage is generally far less than at term gestations, a lower does of Rh_o immune globulin may be equally efficacious. In Rh-negative male volunteers, it has been shown that 50 micrograms of Rh_o immune globulin completely protects against primary Rh immunization from a dose of 2.5 mL of red blood cells (Ref. 37).

4. *Safety.* Rh_o immune globulin has not been associated with severe toxicity. Localized reaction at the site of intramuscular injection is probably the most frequent side effect. A variety of complications have been reported in association with the administration of Rh immune globulin, but causal relationships are not always clear. Urticaria, temperature elevatio fever, myalgia, hyperbilirubinemia, splenomegaly, and rare sensitivities after repeated injections have been observed. Transmission of hepatitis has not been associated with this product.

Rh immune globulin administered during pregnancy to Rh-negative women carrying an Rh-positive fetus has not been associated with iatrogenic Rh hemolytic disease in the fetus (Refs. 2, 8, 9 and 33), although some infants show a positive direct antiglobulin test. Even when anti-Rh_o is administered to Rh-positive adults, there appears to be little hazard (Ref. 35).

5. *Benefit/risk.* Rh_o immune globulin is a highly effective product with few serious side effects.

6. *Recommendations.* a. The product should be placed in Category I for the currently approved indications.

b. In addition, Rh_o immune globulin should be approved for the following indications:

(1) After transfusion of any blood product containing Rh-positive red cells to an Rh-negative recipient in whom it is desirable to suppress primary immunization; and

(2) After significant abdominal trauma, including amniocentesis, to a pregnant Rh-negative woman.

c. Estimation of a large feto-maternal hemorrhage (greater than 15 mL) of Rh-positive cells should be recommended in all labeling as part of regular postpartum evaluation, and the dose of Rh_o immune globulin should be increased accordingly.

d. The 72-hour time limit for administering Rh_o immune globulin after exposure to Rh-positive red blood cells should be encouraged as preferable for prophylaxis. If more than 72 hours have passed, Rh_o immune globulin should still be given as soon as possible, up to 2 weeks after exposure to Rh-positive red blood cells, with the warning that efficacy may be reduced.

e. Rh_o immune globulin should not be given to:

(1) Rh-positive individuals,

(2) Rh-negative individuals known to be immunized to the Rh antigen, and

(3) in an Rh-negative woman where the fetus is known to be Rh-negative.

f. The requirement for Rh_o immune globulin crossmatch prior to administration should be eliminated.

g. Assay of all lots of Rh_o immune globulin must be performed by an approved method.

h. Encourage educational efforts to eliminate instances of non-administration of Rh_o immune globulin where it is indicated.

i. Further research is needed on (1) intrapartum prophylaxis, (2) immunization of Rh-negative newborns of Rh-positive mothers, (3) low-dose prophylaxis in abortion, (4) low-dose prophylaxis in abdominal trauma, and (5) the use of Rh_o immune globulin for intravenous use when large doses are required.

j. *Labeling recommendations.* (1) Add the new indications noted above.

(2) Add a recommendation for screening or quantitating the size of the feto-maternal bleed.

(3) Change the wording on the 72-hour time limit to permit administration for up to 2 weeks after exposure (Ref. 39).

(4) Eliminate the instructions for the crossmatch.

(5) Eliminate any statement directed specifically at administration to the infant.

(6) Eliminate the statement that Rh_o immune globulin should not be administered to "an Rh-negative woman who has received an Rh-positive transfusion within three months of delivery."

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17. Thrombin

Generic Statement

Thrombin is a proteolytic enzyme that initiates the conversion of fibrinogen to fibrin by splitting arginyl-glycyl bonds at the N-terminal end of the fibrinogen molecule (Ref. 1). As a result of this enzymatic action, two pairs of peptides, fibrinopeptides A and B, are released and the fibrinogen molecule becomes fibrin monomer. The molecules of fibrin monomer polymerize to form a fibrin clot. Thrombin has been reported to cause proteolytic activation of other enzymes and has esterolytic action on a number of synthetic amino acid esters as well (Refs. 2 through 5).

Thrombin activity can be determined by its ability to convert fibrinogen to fibrin, i.e., to form a visible clot or by its esterolytic activity (Ref. 3). It is derived from an inactive precursor, prothrombin, through the interaction of plasma procoagulants, calcium phospholipids (thromboplastin) (Refs. 6 through 8). Active thrombin is rapidly neutralized by several substances known collectively as antithrombins (Ref. 3). Even though considerable thrombin activity may be formed at a site of tissue injury, very little is present in the circulation.

Since thrombin acts directly on fibrinogen, it might appear that it would be an effective therapeutic agent for hemostatic disorders that are the result of defective conversion of prothrombin to thrombin. Thrombin has been found to be both upsafe and ineffective when given parenterally (Ref. 10). Under experimental conditions, dilute solutions of thrombin introduced into the circulation will produce disseminated intravascular coagulation (Ref. 10). When given intravascularly in more concentrated form, thrombin will cause thrombosis at the site of injection (Ref. 10).

Thrombin has been used topically as an aid to hemostasis (Ref. 10). There are several anecdotal reports indicating benefit from its use topically in accessible areas of bleeding from cancellous bone, dental extraction sites, skin-grafting sites, and sites of nasopharyngeal surgery. A few reports suggest that thrombin given orally along with a buffering agent is helpful in controlling bleeding of the upper gastrointestinal tract. No recent or comprehensive data were found concerning this clinical use.

Hemostasis results from interactions of platelets, the fibrin clotting system, and the vascular system (Refs. 11 and

12). At the site of vascular injury platelets clump together and adhere to the vessel wall to form a hemostatic plug. If the vascular defect is not too large, this platelet plug temporarily serves to prevent further bleeding. Later, the platelet plug is reinforced by a fibrin clot. Although the fibrin-clotting mechanism plays an inportant role in hemostasis and eventual repair of an injury, the platelet-vascular response is of primary importance for the prompt control of bleeding. Thrombin has been shown to play a role in platelet aggregation in vitro (Refs. 11 and 12), but there is no evidence that topically applied thrombin plays a direct role in the platelet reaction in vivo. It is well recognized that blood excaping from a denuded surface will promptly clot following the application of thrombin (Ref. 10).

However, the clot that is formed does not appear to prevent the loss of additional blood. Unless pressure is also applied, the clot formed in this way tends to be floated away by the escaping blood.

To provide a mechanism to apply pressure and to apply thrombin directly to the denuded surface, one technique employs a biodegradable sponge which is saturated with thrombin and applied to the surface of a wound (Ref. 23). Although this technique appears to aid in hemostasis, the Panel found no controlled clinical study to indicate whether hemostasis is achieved as a result of the use of the biodegradable sponge alone or as an effect of the thrombin or to both.

Thrombin is useful as a diagnostic reagent and as a reagent for research. The speed with which a visible clot forms is dependent on the concentration of fibrinogen and thrombin (Ref. 13). Under controlled conditions, the speed with which a visible clot forms after the addition of a standardized thrombin solution is a measure of the amount of fibrinogen present. This provides a rapid semiquantitative test for fibrinogen. It has been reported that individuals prone to have thromboemobolic disorders are deficient in antithrombin (Ref. 14). Thrombin is used as a reagent for the measurement of these antithrombins (Ref. 16). Although this test is promising, it is still experimental in nature.

Thrombin is prepared by separating prothrombin from plasma and then converting it to thrombin. Various methods have been used to obtain prothrombin; the principles of isoelectric precipitation, adsorption and elution, salt and alcohol fractionation, and chromatography have been utilized (Ref. 16). Prothrombin can be adsorbed from oxalated plasma by several poorly soluble salts such as barium sulfate, barium carbonate, aluminum hydroxide, and tricalcium phosphate. Prothrombin, along with other coagulation factors, can be eluted with sodium citrate from the adsorbents. The first high quality thrombin was prepared from bovine prothrombin by Seegers, et al. (Ref. 19), who used magnesium hydroxide as the adsorbing agent. Prothrombin was obtained by decomposing the magnesium hydroxide with carbon dioxide. Regardless of the method used, it is essential to separate prothrombin from the antithrombins that are present. Once this has been achieved, the prothrombin can be converted to thrombin by the addition of calcium and tissue thromboplastin. Unless further purified, these thrombin preparations contain at least trace amounts of other proteins. Commercial bovine thrombin has been used extensively as the starting material for the preparation of more purified thrombin (Refs. 18 through 21). In concentrated, lyophilized form, thrombin preparations are stable; once reconstituted to the liquid state, activity rapidly decreases (Ref. 15). If one is to rely on the unitage indicated on the label, freshly reconstituted solutions are essential.

Product Review

1. *Product.* Thrombin (Human) by Ortho Diagnostics, Inc. is a reagent for the qualitative determination of fibrinogen in human plasma. It is packaged in sealed ampules each containing 50 units of thrombin. It is to be reconstituted with 1.0 mL of saline. The recommended procedure is to add 0.2 mL of the reconstituted product to a 0.2 mL sample of plasma in a test tube. With normal plasma a visible clot will form in 15 seconds after the addition of thrombin, and the clot will adhere to the walls of the test tube. If the test plasma contains less than 100 mg/dL fibrinogen, the clot will be slower to form.

2. *Effectiveness.* Effectiveness is readily demonstrated by the routine laboratory control tests (Ref. 22).

3. *Safety.* The label carries a specific warning that this material is not for human administration and that it should be handled as if capable of transmitting hepatitis.

4. *Recommendations.* This product should be placed in Category I for in vitro diagnostic use only.

Product Review

1. *Description.* Thrombin Topical (Bovine) by Parke, Davis & Co. is supplied as a dried powder for solution containing 5,000 units of bovine thrombin, calcium chloride, sodium chloride, glycine, and benzethonium chloride. The potency is measured by determining its activity in clotting a standardized fibrinogen solution.

2. *Effectiveness.* Thrombin Topical (Bovine) is recommended for human use topically wherever oozing blood from capillaries and small venules is accessible to act an as aid to hemostasis. It may be used in conjunction with an absorbable gelatin sponge to aid hemostasis. Information submitted by the manufacturer (Ref. 23) tends to support this general indication. It should be pointed out that adequate, well-controlled clinical studies are not available in support of many of the specific indications mentioned in labeling or in the supporting literature. Much of the supporting data is anecdotal, but is based upon widely accepted clinical practices.

3. *Safety.* The label carries a warning that Thrombin Topical (Bovine) is not to be injected. When used as directed it appears to be safe.

4. *Recommendations.* a. The labeling should be modified to define more precisely the indications for clinical use. The manufacturer has suggested:

> Thrombin is indicated as an aid in hemostasis wherever oozing blood from capillaries and small venules is accessible. In various types of surgery, solutions of thrombin may be used in conjunction with absorbable gelatin sponge, USP, for hemostasis.

This statement is appropriate.

b. There are inadequate data to support the usefulness of thrombin administered orally for the treatment of bleeding peptic ulcer. The labeling should be modified to delete this as an indication for use.

c. With appropriate modifications of the labeling, it is recommended that this product be placed in Category I.

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18. Fibrinolysin and Desoxyribonuclease, Combined (Bovine), and Fibrinolysin and Desoxyribonuclease, Combined (Bovine) With Chloramphenicol

Product Statement

Product Reviews

1. *Introduction*—a. *Products.* Fibrinolysin and Desoxyribonuclease, Combined (Bovine), marketed by Parke, Davis and Company as Elase™ brand powder for solution and as Elase™ ointment.

Fibrinolysin and Desoxyribonuclease, Combined (Bovine) with Chloramphenicol, marketed by Parke, Davis and Company as Elase-Chloromycetin™ ointment.

For the purpose of this document, the brand name "Elase" will be used indicating the combination of Fibrinolysin and Desoxyribonuclease. Elase was issued a biological license in April 1960, and the Elase ointment with chloramphenicol was licensed in September 1963.

b. *Indications.* Elase lyophilized powder for solution is labeled by the manufacturer for topical use as a debriding agent in a variety of inflammatory and infected lesions. These include: (1) General surgical wounds; (2) ulcerative lesions—trophic, decubitus, stasis, arteriosclerotic; (3) second- and third-degree burns; (4) circumcision and episiotomy. Elase is used intravaginally in: (1) Cervicitis—benign, postpartum, and postconization and (2) vaginitis. Elase is also used as an irrigating agent in the following conditions: (1) Infected wounds—abscessed, fistulae, and sinus tracts; (2) othorhinolaryngologic wounds; (3) superficial hematomas (except when the hematoma is adjacent to or within adipose tissue).

Elase ointment is labeled for topical use as a debriding agent in a variety of inflammatory and infected lesions. These include: (1) General surgical wounds; (2) ulcerative lesions—trophic, decubitus, stasis, arteriosclerotic; (3) second and third degree burns; (4) circumcision and episiotomy. Elase is used intravaginally in: (1) Cervicitus—benign, postpartum, and postconization and (2) vaginitis.

Elase-Chloromycetin ointment is labeled for use in the treatment of infected lesions such as burns, ulcers, and wounds where the actions of both a debriding agent and a topical antibiotic are desired.

c. *Manufacturing.* Fibrinolysin is prepared from bovine plasma, isolated by ammonium sulfate fractionation, activated with chloroform, and precipitated by adjusting the pH to the isoelectric point. The desoxyribonuclease is prepared from bovine pancreas by a chromatographic isolation technique. Potency standardization for each ingredient is done on the raw material and on the final product. Proteolytic activity is measured by a fibrinolytic assay measuring the time that it takes for a clot of bovine fibrinogen to be lysed. Desoxyribonuclease is measured by a viscometric assey in which the product is allowed to act upon desoxribonucleic acid (DNA) substrate.

d. *Pharmacology.* The pharmacologic rationale for the combination of these two enzymes is based on the observation that purulent exudates consist largely of fibrinous material and nucleoprotein. Desoxyribonuclease attacks the DNA and also chromatin; therefore, theory would predict that it should lyse exudate that is rich in cell nuclei. Fibrinolysin is an endo-peptidase which ruptures peptide bonds in proteins in which lysine is the amino acid and should thus lyse any clotted protein of plasma origin. Chloramphenicol, a broad-spectrum antibiotic, is included in the Elase-Chloromycetin ointment for use in the treatment of infected lesions where the action of a topical antibiotic "may be helpful."

2. *Evidence of effectiveness.* Data supporting the effectiveness of Elase covers a wide variety of conditions and types of studies. The primary rationale for use is based on the theory that lesions needing debridement might heal better with enzyme therapy. The clinical trials vary from double-blind, controlled studies to anecdotal reports on a few patients.

The most convincing data supporting the effectiveness of Elase comes from the study of Friedman et al. (Ref. 1) on the treatment of post-partum cervicitis. When Elase was used as a solution at each of two dose levels, and compared with a placebo, there was no difference in results. However, when Elase was incorporated in an ointment base and administered more frequently, there was a significant difference between the placebo ointment and Elase ointment in favor of the Elase. This was reflected in a decreased need for post-partum cervical cauterization as well as improvement in other parameters which were evaluated. In these studies there was no additional benefit evident from including chloramphenicol in the ointment.

The other controlled and blinded trial was by Glick et al. (Ref. 2) on postconization cervices. The

investigators reported little difference between Elase and placebo but found the inclusion of chloramphenicol to be beneficial. Since no group was treated with chloramphenicol alone, it was not known whether Elase is of any benefit for this indication.

Kaufman et al. (Ref. 3) in an unpublished study investigated the effect of Elase, Elase plus chloramphenicol, and a placebo upon "postpartum" bacterial cervicitis. There was no statistical difference between the three groups according to a Parke-Davis memorandum (Ref. 3), although it is not clear how the therapeutic results were evaluated. Chloramphenicol did not seem to have any effect on the type of flora seen after treatment.

The other uncontrolled gynecologic studies are of little help in evaluating drug effectiveness. It was noted that in one unpublished study of the chloramphenicol-containing ointment, there seemed to be an increased incidence of vaginal moniliasis (Ref. 4). In this report, 10 percent of the patients were dropped from the study because their white blood count (WBC) had dropped below normal after 2 days of treatment. No mention of this phenomena was made in other studies, although this may be because serial WBC's were not done.

The evaluation of Elase treatment on other surgical lesions has not been reported in well-controlled clinical studies. Several investigators have reported the effect of these agents on chronic lesions unresponsive to standard therapy and have concluded that there is a beneficial effect. The report of Coon et al. (Ref. 5) is an example of this type of study. Patients with chronic ulcers or abscesses were treated with Elase solution or ointment. Ulcers associated with arteriosclerosis showed little response to treatment and none of these healed, whereas trophic and decubitus ulcers were reported to be treated successfully. Four burn patients also were reported as responding well to Elase ointment. Similarly, Connell and Rousselot (Ref. 6) discussed treatment of 125 patients of whom 90 percent were judged to respond to this treatment in 24 to 72 hours. The authors of other studies of this nature all conclude that enzymatic debridement is a useful treatment.

The only available data on the use of Elase in circumcision and episiotomy were found in one table in the paper of Margulis et al. (Ref. 7). In this report, all of the 30 standard treated circumcision patients are classified as healing more slowly than patients treated with Elase ointment for 4 to 6 days. This same report lists eight patients with "inflamed" episiotomy wounds which "healed" quickly when enzyme ointment was applied.

The recommendation for use in otolaryngology is supported by several letters from Dr. Sylvester Daly (Ref. 8) which discuss the use of Elase in a few patients. Analysis of these data is not possible.

One article reports on the treatment of 107 ophthalmic lesions with Elase (Ref. 9). The author concludes "in no instance was healing impaired——. In dendritic keratitis and severe trauma healing was speeded up and morbidity diminished."

During the original licensing of this family of products, the then current regulatory agency, the Division of Biologics Standards of the National Institutes of Health felt the controlled trial indicated fibrinolysin with desoxyribonuclease to be effective, although no clinical data supported the advantage of the combination of fibrinolysin and desoxyribonuclease as compared with the individual components. As shown by the correspondence between the regulatory agency and Parke-Davis (Ref. 10), there was concern about the usefulness of incorporating chloramphenicol into this same ointment. None of the studies then available supported this view. The later report of Glick et al. (Ref. 2) seems to support this contention after conization of the cervix. However, there is no evidence to support the effectiveness of Elase in this investigation. Chloramphenicol ointment alone might have given the same results without the reported side effects of increased bleeding. The Friedman study (Ref. 1) shows no significant difference in favor of chloramphenicol nor does the study at Baylor (Ref. 3).

3. *Evidence of safety.* A review of the studies referenced above indicates that the fibrinolysin-desoxyribonuclease combination exhibits a high degree of safety. During the original licensing there was concern about sensitization of patients to the enzyme proteins of bovine origin. From the data submitted this does not seem to be a problem. Bleeding after conization is an expected sequela of this type of treatment. The report of decreased WBC's in several patients receiving the ointment containing chloramphenicol should be further investigated. There is a report of at least one case of a blood dyscrasia associated with an ophthalmic chloramphenicol ointment, and there is probably significant absorption of chloramphenicol through mucosal and damaged wound surfaces.

4. *Benefit/risk evaluation.* Published studies about Elase and experience with the product indicate that it is probably effective as a general debriding agent. The data on circumcision, episiotomy, and certain other specific indications are still not convincing. The inclusion of chloramphenicol in the ointment remains of concern. None of the studies offer significant evidence of benefits from the combined enzyme-antibiotic compared to the separate ingredients.

The following conclusions were reached:

a. For the Elase ointment with chloramphenicol, there was relatively little bacteriologic data indicating that there is a need for the antibiotic or demonstrating its effectiveness. The only bacteriological studies reported were essentially surface cultures. Newer methods, such as punch biopsies of eschars, were not done to find out whether the chloramphenicol does anything more than cause the surface contamination to be somewhat suppressed.

b. Systemic absorption of the chloramphenicol component and its potential adverse reactions were a cause of concern. Some of the recommended indications would allow a large amount of the ointment to be placed in a body cavity where significant amounts of chloramphenicol could be absorbed, particularly if the application is repeated frequently over a period of several days. It was noted that no hematologic studies have been done on absorption or systemic effects of Elase with chloramphenicol. White blood counts concurrent with treatment may be indicative of a reaction to chloramphenicol even though the development of aplastic anemia may not be detectable until some time after cessation of therapy.

c. The safety of the two enzyme ingredients either in the ointment or in the solution were not questioned. There was no evidence of sensitization resulting from the enzymes.

d. Regarding effectiveness, there are only one or two well-controlled trials. Most of the other reports were more of a testimonial nature. Also, most of the studies were conducted some years ago. With the variety of conditions treated with these products, the progress of wound healing is difficult to assess unless there are adequate controls. Factors such as degree of surgical debridement, frequency of dressing changes, proper cleansing, and other nursing care practices affect the outcome and must be well controlled to provide an objective evaluation. Many of the indications in the current labeling may be treated by alternate methods, some of which have been developed

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since the original studies were done with these products.

e. Therefore, the benefit-to-risk ratio may not be as favorable now as it was at that earlier time. Although there has been extensive use of the products and sales have been increasing over the years, this is not significant evidence of effectiveness. However, it may have some relevance in the judgement of safety.

5. *Recommendations*—a. At the request of the Panel on Review of Blood and Blood Derivatives the Bureau of Biologics, the Surgical Drugs Advisory Committee of the Bureau of Drugs first reviewed the Elase products at meetings held December 15–16, 1977 and March 17, 1978. Although it was recommended by the Surgical Drugs Advisory Committee that Elase powder for solution and Elase ointment be placed in Category I (with the provision that the labeling be modified to remove those specific indications for which there are insufficient data), the Panel on Review of Blood and Blood Derivatives does not concur with this recommendation, but rather recommends that these products be placed in Category IIIA. This recommendation is based upon the combination policy stated in 21 CFR 601.25(d)(4) and is consistent with recommendations made for other combination products. Evidence should be developed by appropriate in vivo or in vitro tests to demonstrate that each component makes a contribution to the claimed effects. A period of 3 years is recommended for the completion of these studies.

b. Indications which are recommended to be deleted if the products remain on the market pending the completion of studies inlcude:

(1) Trophic, decubitus, stasis, and arteriosclerotic ulcers.

(2) Second- and third-degree burns.

(3) Circumcision and episiotomy.

(4) Vaginitis.

(5) Specific use as an irrigating agent in: Abscesses, fistulae, and sinus tracts; otorhinolaryngologic wounds; and superficial hematomas.

c. Elase ointment with chloramphenicol (Elase-Chloromycetin™] should be placed in Category IIIA because there are insufficient data demonstrating effectiveness of this combination product. Additional studies should be completed to demonstrate the effectiveness of the combination product. It is recommended that a period of 3 years be permitted for completion of the studies. The primary study should be a double-blind clinical trial to compare the safety and effectiveness of Elase-Chloromycetin ointment to Elase ointment and to a placebo in a management of a variety of infected skin lesions. The study should be designed to show that each individual ingredient contributes to the claimed effects of the combination. During the period the studies are being conducted, the labeling should be modified to remove the indication for use in burns.

During the deliberations of the Surgical Drugs Advisory Committee, Parke-Davis and Company provided details of a suggested protocol and suggested modified labeling (Ref. 11). It is recommended that the Bureau of Biologics review these submissions. In addition to the application of the protocol suggested by the manufacturer, it is recommended that more objective means to measure wound healing be employed.

This should include photographs taken under controlled conditions and the use of tracings which may be transferred directly to records. Also, wound culture methods should be designed to detect the presence of anaerobic organisms. Swab cultures alone are considered to be inadequate. There is also a need for thorough follow-through of all patients accepted into the study and for careful design for the evaluation of results.

d. Regarding the potential for adverse reactions from chloramphenicol absorption from the wound into the systemic circulation, a separate, smaller study is recommended, selecting patients with more extensive wounds which require larger amounts of the Elase-Chloramphenicol ointment.

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19. Blood Grouping Diagnostics

Generic Statement

1. *Introduction.* The clinical and laboratory investigations that followed discovery of the ABO and Rh blood groups have shown clearly that blood almost always can be infused without acute hemolytic reactions if certain laboratory tests are done before transfusion. These are (1) ABO grouping, (2) Rh typing, (3) testing of donor and recipient for selected blood group antibodies and (4) testing, by means of a crossmatch procedure, for potential incompatibility between donor and recipient. Licensed reagents for these tests include (1) blood grouping serums, (2) reagent red blood cells (human) and anti-human serum. These are used with samples of serum or red cells to do the testing required for some of the processing of donor blood, typing of recipient blood, detecting antibodies in donor serum, and finally, crossmatching between the intended donor and the recipient. All these tests are based on the principles of immunologic reactions involving antigens and antibodies.

The blood group antigens are complex biochemical structures that make up part of the red cell membrane. The corresponding antibodies are similar to other antibodies in that they are formed as a result of previous exposure to a specific antigen and, like other antibodies, they react with these antigens under appropriate conditions. The resulting antigen-antibody complex provides an indicator for the blood typing, antibody detection, or crossmatching tests.

In the laboratory a reaction between red cell antigens and the appropriate antibodies results in one or more of the following events (Ref. 1): (1) Hemolysis (destruction) of the cells, (2) agglutination (clumping) of the cells and/or (3) coating of red blood cells with antibody without demonstrable hemolysis or agglutination.

When hemolysis or agglutination occurs in a crossmatch test for example, positive tests are easily noted and are clear indiators that the recipient's antibody involved may be clinically important. Not all dangerous antibodies, however, react with red cells to produce such obvious evidence of their hazardous potential. In many cases, red cells become coated with antibody (i.e., are sensitized) without demonstrable hemolysis or agglutination. When this

sensitization occurs in vivo the antibody coated cells are frequently recognized by the body as incompatible and are removed rapidly (Ref. 2). Such antibodies can usually be detected by the antiglobulin or Coombs test. This test depends upon the fact that the reaction between red blood cells and these antibodies leaves the cells coated with antibody protein, or with various complement components, or with both. These red cell-bound proteins are detected most easily and reliably by the antiglobulin test in which the cells are reacted with Anti-Human Globulin Serum as discussed later in this section.

2. *The complement system.* Immunologic reactions between red blood cell antigens and their corresponding antibodies involve, at times, a family of plasma proteins known as the complement system (Ref. 3). In the blood stream the complement-antibody-red cell interaction often causes antibody coated red blood cells to be removed from the circulation. In the test tube a reaction between antibody and red blood cells can also involve proteins of the complement system when they are present in active form.

In vitro, complement-antibody-red cell interactions lead to two possible consequences (Ref. 4).

a. If the antibodies are of the complement-fixing variety, red cell hemolysis may occur. Such antibodies are usually IgM, but some antibodies, especially anti-A, in the IgG class also cause hemolysis in this way.

b. Certain antibodies, particularly IgM cold agglutinins, may react with red cells and, as part of this reaction, fix some complement proteins to the red cell membranes. Under some conditions, the bond between the two blood cells and the antibody is subsequently broken, leaving the cells free of antibody but coated with complement components. Hence, a test under these circumstances to detect the original antibody-red cell interaction will be negative unless it is also capable of detecting the presence of the appropriate complement components on the red cells.

The Complement Reaction Sequence

The complement system consists of at least 11 different proteins that interact in a sequential fashion. Complement components are abbreviated by the capital letter C and an appropriate numeral from 1–9, e.g., C1, C2, C3, etc. The addition of a lower case letter, e.g., C3a, C3b, indicates fragments of the components and a bar over the term indicates the activated form, e.g., $\overline{C1}$, $\overline{C2}$, $\overline{C3}$, etc. These components interact in a numerical sequential fashion except for C4 which reacts with $\overline{C1}$ so that the reaction sequence becomes C1, C4, C2, C3, C5 through C9.

This reaction sequence, the so-called classical pathway, can be initiated by diverse biochemical or immunological reactions, but only those related to red cells and blood group antibodies will be considered here. A second reaction sequence, called the alternative pathway, has been described but will not be included in this discussion since current evidence indicates that it is not related to immunological reactions that are important in blood transfusion practice. The reactions can occur in vivo or in vitro and do not always involve the complete sequence of complement proteins. Three phases of the reactions, recognition, attack, and lysis, have been defined. In addition, reaction control mechanisms are present and include either decay of selected components or inhibition of further reactions by specific inhibitors.

a. *Recognition.* The binding of one IgM or two adjacent IgG blood group antibody molecules to a red cell membrane is sufficient to initiate the complement reaction sequence. Calcium links C1q, C1r, and C1s into a macromolecular complex. The C1q fragment of this complex reacts with cell bound antibody and is activated to form $\overline{C1}$ which, in turn, acts on C4.

b. *Activation.* The action of C1, particularly the $\overline{C1s}$ fragment, converts C4 to $\overline{C4b}$ by splitting off a fragment known as C4a. $\overline{C4b}$, in conjunction with the previously established $\overline{C1qrs}$-antibody-red cell complex binds to an adjacent location on the red cell membrane. Here the $\overline{C4b}$ combines with C2a which had been previously generated by the action of $\overline{C4b}$ on circulating C2. $\overline{C4b}$, C2a and magnesium establish the $\overline{C4b,2a}$ activation enzyme which next acts on C3.

c. *Lysis.* C3, under the influence of $\overline{C4b,2a}$ is activated to $\overline{C3b}$ by enzymatic removal of the C3a peptide. Some C3b molecules join the $\overline{C4b,2a}$ complex to establish a new complex $\overline{C4b,2a,3b}$, which reacts with C5, activating it to the C5b form and releasing C5a. Other C3b molecules do not participate in the formation of $\overline{C4b,2a,3b}$ complexes but instead are acted upon by C3 inactivator and converted to C3d (Ref. 5). C3d is a cell-bound component. Although it is apparently biologically inert, its presence can be used as a reliable indicator of previous antibody-red-cell interactions (Ref. 6). When the $\overline{C4b,2a,3b}$ complexes bind to cells there may be a progression of the activation sequence through the C9 state ending in cell lysis. In some cases, the sequence stops at C3, so that red cells are coated with C proteins but not lysed.

3. *Blood grouping serum*—a. *Introduction.* In 1900 Karl Landsteiner observed that the serum of normal humans frequently agglutinated the red blood cells of other individuals. A year later he reported that the reactions showed a "peculiar regularity" which separated human blood into three phenotypes. It is now known that these agglutination reactions were the visible indication of interactions between antibodies in the serum of one individual and the homologous red blood cell antigens of another. The phenotypes he described were A, B and O, although these letter designations were not universally accepted until many years later.

Immediately, Landsteiner and others suspected that human red cells might possess more than the two unique antigens, A and B, already observed and began a search for new blood groups. Looking for additional blood group antibodies, these early workers tested many serums from normal persons, but none were discovered by the methods available at that time. They turned, then, to the injection of human red cells into laboratory animals in an effort to stimulate production of antibodies that would identify new blood groups. These experiments were successful, and the P and MN blood groups were detected and reported in 1926. Shortly thereafter, antibodies specific for P and M were also found in human serum, but it was not until 1940 that the important Rh blood group system was recognized. The Rh antigens, like nearly all of the 400 or more blood group antigens now known (Ref. 7), were detected because the corresponding antibodies were found in the serum of a patient. The Rh antibodies are almost always stimulated by transfusion or by pregnancy. In the latter case, small numbers of fetal red blood cells cross the placenta, enter the maternal circulation, and induce production of one or more blood group antibodies.

b. *Source.* Blood Grouping Serum is serum containing a blood group antibody which, when used as directed by the manufacturer, will detect the presence or absence of one or more specific blood group antigens. Most Blood Grouping Serum is prepared from human rather than animal sources, although some reagents prepared in rabbits and goats are currently licensed. In some cases, plasma is harvested from persons who have been immunized by pregnancy or transfusion and have produced antibodies that can be processed into a suitable reagent.

Nearly all of the less widely used and less important blood grouping serums (e.g., Anti-Kp^a, Anti-Kp^b, Anti-S, Anti-s, Anti-Di^a, etc.) are prepared from such starting material. Other blood grouping serums (e.g., Anti-A, Anti-B and Anti-D) are needed in such large quantities or must be of such potency (see below) that additional stimulation of selected donors is required. In such cases, donors are stimulated by injection with blood group substances or appropriate red cells and, if suitable antibodies result, these donors are then plasmapheresed on a regular schedule to obtain Source Plasma (Human) for further processing into Blood Grouping Serum. As mentioned earlier, only a few blood-grouping serums, such as anti-M, anti-N, anti-P_1, anti-Le^a and anti-Le^b, are prepared by immunization of laboratory animals.

c. *Indications for use*—(1) *Pretransfusion testing of recipients.* Before transfusion, it is essential to test the red blood cells of the recipients with anti-A, anti-B, and anti-D to determine their ABO groups and Rh(D) types. Many other Rh blood antigens are known, and Blood Grouping Serums for some of these are easily available (anti-C, anti-E, anti-C^w, anti-c, anti-e, etc.), but only tests for the D antigen are required for routine purposes. The reasoning for this decision has been developed in the section on Rh typing under Whole Blood (Human).

(2) *Testing of donor blood.* All donor blood must be characterized as to ABO group and Rh(D) type. To accomplish this, the donor red blood cells must be tested with anti-A, anti-B and anti-D. Routine tests for other blood groups are neither required nor advised.

(3) *Pretransfusion testing of donor red cells when the recipient has been previously immunized.* The serum of certain recipients who have been previously transfused or pregnant will contain one or more blood group antibodies. Such persons must be transfused with blood lacking the corresponding antigen if a transfusion reaction is to be avoided. The compatibility test or crossmatch is an important procedure because it can usually detect evidence of potentially dangerous antibodies in the recipient's serum. When the specificity of the antibodies is known and an appropriate blood-grouping serum of the same specificity is available, it is useful to test red cells from the intended donor to be certain that they lack the antigen in question. Such tests, of course, depend upon previous identification of the recipient's serum antibody (see section on Reagent Red Blood Cells).

(4) *Testing of red blood cells for genetic, medicolegal, or research purposes.* Because red blood cell antigens are inherited characteristics and because they do not, for all practical purposes, change throughout life, their presence or absence can serve as useful genetic markers. Red cell antigens, for example, have been used to exclude paternity, identify blood stains, determine twin zygosity, and establish family relationships. Such studies and others rely on blood grouping serums.

d. *Safety and effectiveness.* The effectiveness of any blood-grouping serum is evaluated by its ability, when used as directed by the manufacturer, to type correctly the blood cells being tested. A positive test result is indicated by agglutination (i.e. clumping) of the red cells. An ideal serum is one that is both highly specific and sensitive. Specificity refers to the ability of the serum to react with a given blood group antigen but with no other. Since Blood Grouping Serum is nearly always derived from the plasma of individuals who possess antibodies against more than one blood group antigen, a manufacturing process is required to remove or neutralize the unwanted antibodies. Appropriate tests on the final product are essential to show that unwanted antibodies have been removed and additional tests are required to show that the original specificity is retained at the end of the dating period. In some very rare cases the desirable antibodies do not maintain adequate reactivity throughout the storage period, while activity of antibodies that originally had been adsorbed or inactivated return.

Sensitivity, the capability of a blood grouping reagent to detect the weaker reacting red cell antigens of the claimed specificity, is an equally important characteristic of licensed Blood Grouping Serums.

While many individuals develop blood-group antibodies as a consequence of transfusion or pregnancy, only a few produce serums with sufficient potency to be useful as blood grouping reagents. Unlike chemical reagents that can be measured in absolute terms, standards of potency for blood-grouping serum can be established only by comparing the test serum with a reference serum by titration, a test that applies subjective criteria concerning the strength of the agglutination produced by increasing dilutions of serum. In the usual titration a series of tests is done; each succeeding tube in the series contains half the amount of serum present in the previous tube. The end point is recorded as the greatest serum dilution (e.g., 1:2, 1:4, 1:8, 1:16, 1:32, etc.) in which test cells are agglutinated. The reaction strengths are scored by one of several arbitrary grading systems. Federal regulations (Ref. 8) mandate that actions be graded as follows:

4+—cell button remains in one clump;
3+—cell button dislodges into several clumps;
2+—cell button dislodges into many small clumps of equal size;
1+—cell button dislodges into finely granular, but definite small clumps; and,
D—cell button dislodges into fine granules but not definite small clumps. Results shall be recorded as doubtful.

Requirements for both sensitivity and specificity of Blood Grouping Serums are arbitrary but have resulted in reagents that are reliable and effective. For some reagents (e.g., anti-A, anti-B, anti-D, anti-A,B, anti-CD and others) reference serums are available from the Bureau of Biologics. Manufacturers must demonstrate that their reagents are at least as potent as these reference standard serums. For other blood grouping serums reference standards are not supplied but regulations define minimum potency standards that such serums must meet. These standards are expressed in terms of the titration value that a serum must reach to be acceptable. Reagents that are generally in good supply such as anti-K, anti-k, anti-Fy^a, and anti-C^w must show at least a 1+ reaction with a 1:8 dilution of the antiserum. Others, such as anti-S, anti-s, anti-P_1, anti-M, anti-I, anti-e (saline), anti-c (saline) and anti-A_1, need react only at a 1:4 dilution; antibodies in even shorter supply are acceptable if a 2+ reaction is seen with undiluted serum. Clearly these regulations suggest that weaker reactions are acceptably safe, at least for reagents that are used infrequently and in special circumstances. There are no controlled studies to show that blood grouping serums which meet current regulations are effective, nor are any now needed. The vast clinical experience gained from the millions of accurate blood typing tests done each year indicates a high level of effectiveness for the reagents, as currently prepared.

Whether reagents meeting a different standard, for example, more diluted, would be equally acceptable is unknown. The question is important since the starting material for production of Blood Grouping serum almost always requires hyperimmunization of donors, a procedure not without risk as discussed

elsewhere in this report (See Donor Immunization and Hyperimmunization). If satisfactory reagents can be prepared using smaller amounts of starting plasma, the benefit will be obvious. Unfortunately, the required data relating to effectiveness are not available.

The Panel recommends that studies be designed and instituted to determine the lowest titer of antibody that will produce an effective agent. Such studies should especially address the production of anti-A, anti-B, anti-A,B. anti-D and other Rh antiserums.

Current Federal regulations (21 CFR 660.26(c) (1), (2) and (3)) define specificity tests to ensure that Blood Grouping Serums are free from unwanted or contaminating antibodies. The Panel believes that requirements to test candidate serums against red blood cells containing some antigens, e.g., Co^b, Do^a, Do^b, Yt^b, and M^g, will be difficut to meet since antiserums to prove that test cells possess these antigens are not easily available. Thus, it is recommended that these requirements be reviewed and modified.

e. *Methodological considerations.* (1) There are several commonly used methods for testing blood types. Serums prepared and standardized to produce acceptable results by one method may, when used by another, give weak or even incorrect answers.

(a) *Slide or rapid tube tests.* Blood grouping serums for these tests must react appropriately when tests are done on slides or in tubes. When slides are used, a red cell suspension of approximately 50 percent in autologous or compatible serum or plasma usually is required, although some manufacturers specify cell concentrations of 5 to 15 percent. For some serums (e.g., anti-C, anti-D and others) results must be interpreted by observing the test over a heated viewbox. Such serum usually contains a potentiating agent such as bovine serum albumin. Slide tests are generally less sensitive than tube tests and are not frequently done. There is no evidence, however, that properly performed slide tests are inaccurate, and there is no reason to suggest that reagents for slide tests are unsafe.

When blood from some *patients* is tested with anti-D by slide tests, false-positive results may be seen. Similar considerations apply to modified tube tests. These false results are caused by clumping of the patient's cells by his or her own serum or by some component of the reagent other than the antibody itself. It is essential to provide a control for these false positive results by simultaneously testing the individual's blood alone and with the diluent medium of the blood grouping serum. Recently it has become clear that bovine serum albumin solutions are not ideal for this control purpose (Ref. 9) probably because some marketed reagents contain agglutination-potentiating substances other than albumin. The appropriate control material is the serum diluent medium itself added to serum lacking the specific antibody. Such control materials add a small but definite measure of safety to blood-grouping tests. Manufacturers should be required to make appropriate control materials available for use with their anti-D serum.

When testing donors it is also possible to get false-positive results by the same mechanism. Because donors are almost always healthy, such problems are infrequent. Furthermore, they do not compromise patient safety since the worst that can happen is the classification of an Rh negative donor as Rh positive. As such his/her blood will be given to an Rh positive recipient. But, as is well known, the use of Rh negative blood in Rh positive recipients is without added risk. Hence the Panel does not believe that the added cost of an Rh control is justified in the testing of donor blood.

"Modified tube" tests are done using red cells suspended in serum or plasma. While the relative amounts of cells and serum in the mixture are not critical, acceptable ranges should be defined in the instructions to the user. False-positive reactions, as described above, may be seen and a control reagent lacking the antibody should be available.

(b) *Tube tests.* Red blood cells, suspended in saline or in compatible or autologous plasma, may be tested by any of several methods including:

(i) Incubation at 37°C and centrifugation,

(ii) Incubation at 4°C and centrifugation,

(iii) Incubation at room temperature without centrifugation,

(iv) Immediate centrifugation and reading without incubation,

(v) Incubation at 37°C, washing, and testing with Anti-Human Serum (see below), and

(vi) Some combination of above.

Tube tests are commonly used for most blood bank work. Methods that can be completed without long incubation times or additional procedures such as the use of Anti-Human Serum are preferred for routine tests such as those for A, B, or D. Other methods, including those that use Anti-Human Serum, are used when simpler procedures are not sufficiently sensitive.

(c) *Tests with automated equipment.* Two automated blood-typing machines are currently available. These machines require reagents that are prepared specifically for this purpose since reagents that meet standards for tube or slide tests may not yield satisfactory results when used by automated methods. Licensed reagents for such equipment must, after a two-fold dilution, be potent enough to detect the antigen on heterozygous red cells.

f. *Labeling and packaging*—(1) *Packaging.* Blood grouping serums, excluding those intended for use in automated equipment, are packaged in dropper vials containing between 1 and 10 mL of reagent. Suggestions that packaging should be permitted in amounts greater than 10 mL have been rejected (Ref. 10) because of the potential for error that accompanies the transfer of reagents from larger to smaller containers. The Panel recommends that bulk packaging for some reagents, e.g., anti-A or anti-B, is reasonable for some large users and should be allowed.

The dropper bulb must be black or color matched with labels of reagent bottles that allow for color coding. Suggestions that white dropper bulbs be allowed have been rejected (Ref. 10) because of the desire to restrict the use of white dropper bulbs to Anti-Human Serum. The Panel agrees that these cautions are justified and supports the current regulations as written.

(2) *Labeling.* Labeling for blood grouping serums includes the vial label, the package label if a package is provided, and the package insert. Since some vials contain only 1 or 2 mL of serum, the amount of space on the label itself is restricted and regulations require that only a limited amount of information appear on the label. Additional information may appear either on the container label or the package label. The remainder of the information, including directions for use, may be provided in the package insert. This procedure is satisfactory, and the Panel sees no need to suggest major revisions.

g. *Other recommendations.* (1) The Panel concludes that the reviewed Blood Grouping Serum products should be placed in Category I.

(2) Current labeling arrangements with some information on the vial label, some on the package, and some included in the package insert are appropriate. The Panel recommends that the vial label, because of its small size, be reserved for critical information concerning product identification and

safe storage procedures, the lot number, and the manufacturer's name.

4. *Reagent Red Blood Cells—a. Introduction.* Reagent Red Blood Cells are prepared from selected human red blood cells and are intended to detect or identify human blood group antibodies. The blood from which these cell preparations are made is collected, diluted with an anticoagulant preservative solution, packaged, and distributed. The blood types of the red cells, the packaging, and the circular of instructions determine, to a large extent, the ultimate use of the cells. For example, A and B cells are universally used in the reverse-typing or serum-grouping test to confirm the ABO type determined by cell-typing methods, while O cells are used for either antibody detection or antibody identification outside the ABO blood group system.

b. *Source.* Reagent Red Blood Cells from adults are collected by producers that meet applicable regulations applied to donors of human blood for transfusion. These regulations ensure the safety of both donor and product. Since the same procedures cannot be applied to the collection of blood from newborn infants, manufacturers of cord red cells, which are used for tests of specificity in the I_i blood group system, must collect them in institutions that have large obstetrical services. One donor (i.e., one umbilical cord) can provide only a limited number of red blood cells; thus, products prepared from cord red cells, unlike those from adults, consist of pools from many infants.

c. *Indications for use.* (1) *As reagents to assist in determination of the ABO group of patients or blood donors.* Almost all adults normally have, in their plasma, antibodies against the A and B antigens that are absent from their own red blood cells. For example:

[illegible]	Red blood cell antigens	Serum antibody
A	A	Anti-B.
[illegible]	B	Anti-A.
[illegible]	Neither A nor B	Anti-A, anti-B
AB	A and B	Neither anti-A nor anti-[illegible]

It is appropriate to confirm the ABO typing of patients or of blood donors by testing their serums for the expected antibody. Reagent Red Blood Cells of type A and type B are used for this purpose. The Type A cells must be of the A_1 subtype since the anti-A antibodies in the plasma of group B and group O persons always possess this specificity. Rarely, persons of type A_2B and even more rarely persons of type A_2, have antibodies that react specifically with cells of the A_1 subtype. In such cases, additional testing with A_2 cells may be helpful but is not essential.

(2) *As reagents for the detection of unexpected blood group antibodies.* It is common practice to test the serums of patients and blood donors for clinically important blood group antibodies. This testing, also known as "antibody screening," is done by mixing the serum to be tested with Reagent Red Blood Cells intended for this purpose and subjecting the mixture to one or more tests for an antigen-antibody reaction. These "screening cells" must be of type O since antibodies of other than A or B specificity are being sought by this test.

Issitt and Issitt (Ref. 7) estimate that there are at least 400 different blood group antigens. The red blood cells of any one blood donor can be expected to posses only a proportion of these, although antibodies to most may be dangerous. Blood group antibody screening tests of patients should be able to detect as many as possible of the antibodies that can occur and, of course, must detect those that are clinically most important.

Federal regulations require that Reagent Red Blood Cells used for detection of unexpected blood group antibodies must contain at least the following antigens: D, C, E, c, e, K, k, Fy^a, Fy^b, Jk^a, Jk^b, Le^a, Le^b, P_1, M, N, S, and s. Because it is impractical to find one donor whose cells have all these antigens, tests for antibody detection must be done using cells from two or more donors. These cells may be pooled or used individually, but in either case must together provide all the required antigens. If the test cells are pooled, the final pool must be prepared from equal volumes of cells from no more than two donors. If reagent cells are provided individually, each lot, but not each cell sample in the lot, must have cells positive for each of the listed antigens.

The Panel believes that the goal of having each required antigen present on half of the cells in the final pool is appropriate. Limiting the pool of cells to two donors, as currently is done, is the best way to do this since it reduces the possibility of weak and misleading mixed field reactions.

Because there is a general opinion, unsubstantiated by data, that weakly reacting antibodies are more easily detected using individual rather than pooled cells, the use of pooled cells for testing patient serums has become infrequent. The disadvantage of using individual cells is that each patient's serum must be tested at least twice with the resultant increase in cost and labor. In the case of tests of donors, there is good evidence (Ref. 11) that problems caused by antibodies in donor serum are so infrequent as to warrant a different approach, and antibody testing with pooled cells is acceptable in this situation. This is in part because donor blood, when transfused, results in an immediate dilution of the donor antibodies by the recipient's plasma; this leads to at least a give-fold diminution in their concentration. In addition, the transfused antibodies encounter a large excess of antigen-bearing red cells. As a result, rarely, if ever, is the blood cell antigen to antibody ratio such that the induction of dangerous hemolysis will occur. Finally, healthy donors do not usually have dangerous blood-group antibodies except, of course, for anti-A or anti-B. The Panel believes that testing of donor serum for unexpected antibodies using pooled cells is adequate. This subject is discussed further in the section on stored red cell products, testing of donor blood and antibody detection tests.

For testing of patients' bloods, the circumstances are significantly different. A transfusion of incompatible red blood cells into a patient who has even weak blood-group antibodies may lead to a serious hemolytic reaction. In addition, patients are far more liable to have blood group antibodies than are normal healthy blood donors; many of them have been transfused previously. Thus while pooled test red cells are acceptable for donor testing, they may or may not be acceptable for recipient testing. The Panel believes that the current practice, which allows the use of pooled cells for recipient serum screening, is safe provided tests are read microscopically, although perhaps not as sensitive as tests in which the cells are used individually. Studies are needed to clarify this significant problem.

(3) *As reagents for the identification of unexpected blood group antibodies.* When unexpected red cell antibodies are found in the serum of a patient, it is good practice to identify their specificities. This requires testing the patient serum with a panel of Reagent Red Blood Cells of known antigenic constitution. These red cell panels are prepared by individually packaging from 2 to 5 mL of diluted suspended cells obtained from each donor of a panel usually composed of 8 or 10 selected donors. The user is provided with information in the form of a graphic worksheet that lists the major antigens present or absent on the cells of each donor and a package insert with appropriate instructions.

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Each manufacturer is required to establish a dating period beyond which the test red cell product cannot reasonably be expected to give satisfactory results. The dating period, from 21 days to 45 days after phlebotomy, is based upon data filed by each manufacturer with the Bureau of Biologics. The Panel believes that these products are, at times, used beyond the specified dating period and suggests that an appropriate caution against this practice be included in the package insert. The Panel has concerns about the stability of cell reactivity for periods of up to 45 days, in view of published data (Refs. 12 and 13) about the weakening of some antigens during storage. The Bureau of Biologics should review all current license applications to ensure that the data are adequate to support current dating periods for Reagent Red Blood Cells in view of these new studies.

Regulations specify that Reagent Red Blood Cells must have a cell concentration of no less than 2 percent, but specify no upper limit of concentration. It is common practice to provide this product with cell concentrations of approximately 5 percent. Some users, however, prefer to use a more dilute suspension of cells and routinely dilute the product before use. Because of this, the Panel believes that manufacturers should include instructions about how to dilute these test cells before use and the expected useful life of such diluted cells.

d. *Safety and effectiveness.* When shipped appropriately, stored and used as directed, and when the test results are interpreted properly, Reagent Red Blood Cells are safe and effective for all recommended indications.

e. *Labeling analysis.* Labeling of the vial and the package are appropriate. The package insert should be more specific about loss of reactivity with storage, should caution against use after the end of the dating period, and should indicate how additional information about the test cells can be obtained.

f. *Recommendations.* (1) Reagent Red Blood Cells (Human) should be placed in Category I.

(2) Appropriate studies are needed to evaluate whether pooled test red cells are adequate for antibody detection tests in patients.

(3) Package inserts should give specific instruction about how to obtain additional information about the test cells if it is needed.

(4) Manufacturers should provide information about how to dilute test cells if a lower cell concentration is desired and the useful life of the cells so diluted.

(5) The product name should be "Reagent Red Blood Cells."

5. *Anti-Human Serum*—a. *Introduction.* In 1908, C. Moreschi (Ref. 14) described the principal of a test that could be used to demonstrate the presence of antibody molecules on the surface of cells. Thirty-seven years later that test was rediscovered by Coombs, Mourant, and Race (Ref. 15) who used it to detect what were then known as blood-group blocking antibodies. These antibodies, found in the serum of some Rh-negative women, had been previously identified as the cause of hemolytic disease in Rh-positive newborn infants (Ref. 16). A year later Coombs and his coworkers used the same test to show that in some babies the disease was accompanied by an in vivo reaction between the infant's red blood cells and transplacentally acquired maternal antibodies. Later applications of the same test, now called the antiglobulin test, have included its use in the diagnosis of autoimmune hemolytic disease, the detection of drug-antibody-red cell interactions, the detection and identification of a multitude of blood-group antigens with nonagglutinating alloantibodies, the investigation of suspected transfusion reactions and pretransfusion compatibility testing. The antiglobulin test depends upon the fact that the reaction between red blood cells and some blood group antibodies leaves the cells coated with antibody protein (IgG), with various complement components, or with both, but does not result in agglutination or hemolysis. These red-cell bound proteins are best detected by the antiglobulin test in which the cells are reacted with Anti-Human Serum.

b. *Anti-Human Serum.* Rabbits or other animals such as goats injected with human plasma proteins produce antibodies against these proteins. The injection of human globulin leads to the production of anti-human globulin. When suitably processed, this anti-human globulin serum becomes a reagent capable of reacting with the same categories of human globulins that were present in the original immunizing material. Since a significant proportion of the human globulins are antibodies of the immunoglobulin G class, the reagent is a useful tool for detection of human IgG antibody. IgG molecules that have coated human red cells without causing agglutination will react with the anti-human globulin serum and cause visible agglutination of the antibody-coated red cells. As mentioned previously, antibody coating alone is often not adequate to cause agglutination of the cells, but does alter the red cells sufficiently so that they are recognized as abnormal by the body and are rapidly destroyed.

The injection of almost any human protein into a suitable animal will bring about antibody production. In this way reagents such as anti-IgA, anti-IgM, anti-IgG and antibodies against the various components of the complement system can be produced.

c. *Complement.* As related to the use of antiglobulin reagents in transfusion practice, the salient points about the red blood cell-antibody-complement interaction are:

(1) Some blood group antibodies react with blood cells by binding complement to the cell membrane. The antibodies then elute from the red cells leaving them coated with complement components but very little antibody. In vivo such reactions lead to hemolysis. In vitro they can be detected only by techniques that are sensitive to the presence of complement coating. The complement component that is present when such reactions occur in vitro is initially C3 and eventually C3d.

(2) Antiglobulin reagents intended to detect such complement-coated red blood cells must contain adequate amounts of either anti-C3 or anti-C3d activity (Ref. 17).

(3) The plasma from all normal persons contains small amounts of an IgM cold-reacting antibody called the normal, or naturally occurring, cold autoagglutinin. The amount of this antibody usually present in normal serum does not cause hemolysis of red blood cells. It may, however, lead to complement activation and fixation of C3 and C4 to red blood cells (Ref. 18). Such reactions have no clinical importance. These "false positive" tests can be avoided by limiting the amount of anticomplement in antiglobulin reagents intended for routine blood bank work (Ref. 6).

(4) C3d coated red cells are found in some patients with hemolytic anemia and in some cases of hemolysis associated with drug hypersensitivity (Refs. 5, 18 and 19). In some of these patients the test for complement coating of the red cells is the only one that will be positive (Ref. 5). Thus, the antiglobulin test has diagnostic value besides its usefulness in blood transfusion serology.

(5) Clinically important IgM blood group antibodies that fix complement almost always agglutinate or hemolyze red blood cells as well (Ref. 20). In these cases direct detection of complement by the antiglobulin procedure is rarely, if ever, necessary to prove that an antibody-red cell interaction has occurred, although it may be helpful.

(6) Clinically important IgG blood group antibodies almost always bind directly to red blood cells. If adequate tests for the presence of IgG are done, tests for complement binding usually add nothing (Ref. 21). Occasional exceptions are known.

d. *Direct and indirect antiglobulin tests.* The antiglobulin test is used to demonstrate that red blood cells have reacted with immunoglobulin molecules and are coated by either antibodies or some component of the complement system. The red cell-antibody intereaction may take place while the red cells are circulating (in vivo) or it may occur as part of a laboratory test (in vitro) in which serum to be tested for antibodies is mixed with normal red blood cells which carry the antigen(s) in question.

The direct antiglobulin test detects coating in vivo. Red cells from the patient are washed to remove unbound plasma protein and then reacted with Anti-Human Serum. No intermediate steps are involved.

The indirect antiglobulin test is used to detect alloantibodies or autoantibodies in a patient's serum or plasma. In performing the indirect test, patient's serum is mixed with antigenically appropriate red blood cells and allowed to incubate, usually at 37°C, for from 5 to 120 minutes. The cells are then washed and tested with Anti-Human Serum.

When positive, either test shows that antibody and red cells have reacted together. In the case of the direct test, the reaction occurred in vivo; in the indirect test it occurred in vitro.

e. *Indications*—(1) *Direct antiglobulin test*—(a) *hemolytic disease of the newborn.* In Hemolytic disease of the newborn (also known as erythroblastosis fetalis), antibody produced by the mother crosses the placenta and reacts with the unborn infant's red blood cells. This can occur only if certain conditions are met.

(i) Maternal antibody must be directed against a blood group antigen present on the fetal red cells.

(ii) The maternal antibody must be of the class (IgG) that is readily secreted across the placenta.

When these conditions are met the blood group antibody reacts with the unborn infant's red blood cells and may destroy a variable number of these fetal red cells before the child is delivered. At birth, antibody coating of fetal red cells is evidenced by a positive direct antiglobulin test.

While hemolytic disease of the newborn can result from almost any blood group incompatibility, the cases that occur when an immunized Rh-negative mother delivers an Rh-positive infant are best know. In this disease the infant's red blood cells are always coated with maternally derived IgG antibodies; for that reason only, antibodies with anti-IgG specificity need be present in the Anti-Human Serum reagents used for antibody detection caused by Rh incompatibility. The findings are identical for almost all cases of hemolytic disease of the newborn caused by other antibodies. A very few cases have been reported in which the antibodies are detected by anticomplement reagents but not by anti-IgG (Refs. 22 through 24). Such cases are rare, have been reported only from outside the United States, and were tested only by the less sensitive slide method which is not used much in the United States.

In hemolytic disease of the newborn caused by materno-fetal ABO incompatibility, the mother is usually type O and the child type A or B. In this disease, reactions with some United States licensed Anti-Human Serum reagents are negative, while others are positive. Reasons for these differences are obscure (Refs. 25 and 26).

Anti-Human Serum is an effective reagent when used for the diagnosis of hemolytic disease of the newborn. Lebeling of the reagent should indicate that a negative test does not always rule out the disease, especially when ABO incompatibility is suspected. Anti-Human Serum reagents containing antibodies in addition to anti-IgG are not necessary for this purpose, but can be used if the anti-IgG reactivity is adequate to detect IgG-coated cells using an accepted in vitro test system. Anti-Human Serums that do not contain anti-IgG activity are unsatisfactory for detecting infant red cell sensitization in hemolytic disease of the newborn and should be so labeled.

(b) *Autoimmune hemolytic disease.* The term autoimmune hemolytic disease (AHD) is often considered to be synonomous with autoimmune hemolytic anemia. Since all patients with AHD do not have anemia, the more general term will be used here. Patients with AHD can be classified as follows:

(i) *AHD warm antibody type.* This is a pathological condition in which circulating red blood cells react in vivo with autoantibodies. This reaction, at times in association with complement fixation, leads to variable rates of destruction of circulating red blood cells. Red cells are usually coated in vivo with IgG, rarely with IgA, and/or complement components. The responsible autoantibodies are produced by the patient himself/herself, and react with his/her own red blood cells. Normally a person does not produce antibodies that react with his/her own tissues. In approximately 80 percent of cases of AHD with significant hemolysin the direct antiglobulin test is positive with Anti-Human Serum containing only anti-IgG. In some cases, only complement components, especially C3d, are present on the red blood cells; in other patients both IgG and C3d can be detected (Ref. 27). The pattern of coating protein, i.e., IgG alone, C3d alone, or both, may be of diagnostic value (Ref. 28).

Use of Anti-Human Serum and the direct antiglobulin test is indicated in patients suspected of having AHD of the warm antibody type. An Anti-Human Serum reagent must contain a mixture of anti-C3d and anti-IgG, each in adequate amounts, to be satisfactory for this purpose. For a more definitive diagnosis, separate reagents, one pure anti-IgG and the other without anti-IgG but with adequate anti-C3d activity, are needed.

(ii) *Autoimmune hemolytic disease, cold antibody type.* This disorder is a pathological condition in which circulating red blood cells react in vivo with autoantibodies that react as cold agglutinins in vitro (Ref. 27). The autoantibodies involved are almost always IgM and are characterized by optimum reactivity at temperatures lower than 37° C (Ref. 28). In vivo, therefore, reactions between red cell and cold reactive autoantibodies probably occur predominately in areas of the body where temperature is lowest, for example, finger tips, skin, etc. where temperatures may reach 30–32 °C. These reactions invariably involve red blood cells, autoantibodies, and complement (Ref. 5). As the red blood cells, now coated with both antibodies and complement, circulate through warmer areas of the body, some are taken up by reticuloendothelial tissues and hemolyzed. Others have the unstable bond between the antibodies and red cells broken. This leaves circulating red blood cells coated with C3 which eventually converts into the C3d component of complement (Ref. 29). Because most red cells become coated with C3d by this mechanism, the direct antiglobulin test will be positive only if the Anti-Human Serum contains anti-C3d activity. Reagents intended for screening purposes must contain anti-C3d with or without anti-IgG. Reagents for definitive diagnostic purposes should be monospecific, that is, contain, anticomplement activity, particularly anti-C3d, and no anti-IgG. If anti-C4 is present, the amount should be such that reactions with normal red cells stored in the refrigerator as clotted samples will

be negative. Red cells stored in this way may become sensitized with C components by the small amount of so-called normal cold agglutin present in most samples of human serum.

(iii) *Autoimmune hemolytic disease, drug induced.* Autoimmune hemolytic disease, with or without anemia, is a relatively uncommon complication of therapy with many drugs in common use. Mechanisms by which drugs bring about the autoimmune state include (Ref. 18): Immune complex adsorption to circulating red blood cells; adsorption of drug to red cells followed by in vivo reaction of anti-drug antibodies with drug-coated red blood cells; drug--induced alterations of the red cell membrane causing it to adsorb plasma proteins, including IgG; unknown mechanisms which, in some cases lead to serological findings indistinguishable from AHD, warm antibody type. The direct antiglobulin test is essential for diagnosis of these drug-induced diseases and, as in other types of AHD, the Anti-Human Serum used for screening purposes must contain both anti-IgG and anticomplement activity (Ref. 18). While IgG is the protein most often found in drug-induced AHD, cases are known in which complement occurs either alone or in combination with IgG. A reagents containing a mixture of both anti-IgG and anti-C3d is adequate for screening, but IgG and C3d monospecific reagent are needed for optimum testing in these cases.

(c) *Evaluation of suspected incompatible transfusions.* The infusion of incompatible blood is a serious and occasionally fatal complication of transfusion therapy. Incompatible red cells react promptly with circulating antibodies and either are destroyed immediately in the vascular system or hemolyzed more slowly by the body's reticuloendothelial tissues. In the latter case, antibody-coated red cells may circulate for a variable time before they are destroyed and can be detected in the recipients since they cause a positive reaction in the direct antiglobulin test. This is called a "mixed field" reaction, which is a mixture of agglutinated incompatible donor red cells and unagglutinated recipient cells. The evaluation of suspected incompatible transfusions is an accepted and valid indication for the use of Anti-Human Serum. Reagents for this purpose must contain anti-IgG activity either alone or with anticomplement. Pure anticomplement reagents are unsatisfactory.

(2) *Indirect antiglobulin test.* When red blood cells are incubated in plasma or serum which contain antibody, a reaction will occur if the red cells contain an antigen against which the antibodies are directed. The cells, now coated with antibody, can be detected by any of several methods. The use of Anti-Human Serum is among the best of these, particularly for IgG antibodies that do not bring about agglutination or hemolysis of red cells after the original in vitro reaction (Ref. 30).

(a) *Antibody detection tests (antibody screening).* Serum from patients or blood donors can be tested for blood-group antibodies by mixing their serum with normal red cells selected for their antigen content and then testing these cells with Anti-Human Serum. The red blood cells used cannot possibly bear all of the known blood group antigens, but must possess those antigens considered to be most dangerous to potential blood recipients whose serums contain the corresponding antibodies. To achieve this goal usually requires testing a serum against two or three selected type O red cells, either individually or pooled. The exact techniques employed, for example, the ratio of serum to cells, the incubation time, the incubation medium (saline, normal serum, albumin, etc.) influence the sensitivity of the test. After incubation, the cells are washed and tested with Anti-Human Serum to see if an antigen-antibody reaction had occurred. A positive result indicates that the serum being tested contains blood group antibodies. The specificity of the detected antibody can be established by another series of tests.

Nearly all blood group alloantibodies that require the use of Anti-Human Serum for detection require only a reagent with anti-IgG activity. Such blood-group alloantibodies sometimes also lead to complement coating of the red blood cells, but in nearly all instances the IgG antibody itself is also bound to the cell, usually in greater quantity and more readily detectable than the complement. Occasionally, antibodies that are detected by anticomplement but not anti-IgG have been reported (Refs. 22 through 24 and 31 through 37). However, such antibodies must be very rare. Abelson and Wurzel (Ref. 38) in a communication to this Panel report studies of 4,980 specimens. They found no reactions with "broad spectrum reagents" which were not also found with anti-IgG. Beck and Marsh (Ref. 39) report a combined experience of patient transfusion problems from 500 metropolitan New York hospitals along with blood donor antibody testing on more than 5.5 million units. In no case was a blood-group alloantibody detected solely because of its complement-binding capability. Petz (Ref. 40) has tested 113 sera selected because they contained antibodies with presumed complement-binding ability. Of this group, there were only one specimen, an anti-S, in which the antibody could be detected by anticomplement alone. Applying these statistics to usual transfusion practice, Petz estimates that the largest hospital in the San Francisco Bay area can expect to find such an antibody only once in 12.5 years, while the average-sized hospital will encounter such antibodies only once in 107 years.

While neither of these studies has shown the need for anticomplement activity, the results are preliminary and must be interpreted in light of the more than 20 years of experience with the antiglobulin test. An early report by Millison and Cutbush (Ref. 36) pointed out that to cause a positive antiglobulin reaction, some alloantibodies required an Anti-Human Serum with anticomplement activity. Reports from Stratton's laboratory (Refs. 24, 31 and 33), as mentioned earlier, suggest an important role for anticomplement as component of Anti-Human Serum. Pollack, Reiss and Treacy (Ref. 37) showed that in some cases a large amount of complement was attached to a red cell surface that was only weakly sensitized with IgG. Pollack (Ref. 41) has reported to this Panel that he has studied alloantibodies which caused severe transfusion reactions which were detected only by anticomplement. Finally, Sherwood, Haynes and Rosse (Ref. 34) have reported a hemolytic transfusion reaction caused by the failure of commercial antiglobulin reagent to detect complement. These reports document cases in which antibodies were detected by reagents containing anticomplement but not by anti-IgG alone. While cases where only complement is present on red cells are infrequent, there is little doubt that some blood group antibodies both bind to red cells and fix complement. In these cases, the amount of red cell-bound protein detected by a reagent containing both anti-IgG and anticomplement must be greater than the amount detected by either antiserum alone. Hence, broad spectrum reagents can be expected at times to yield stronger reactions which are easier to interpret that either anti-IgG or anticomplement alone. This appears to be a reason to require the use of reagents with boty specificities, but data to support this contention are inadequate. For the present, the Panel believes that reagents lacking antibodies against complement may be used for detection of red cell alloantibodies provided the package

insert warns that some antibodies may not be detected optimally. A multcenter study is underway to evaluate the requirement for anticomplement activity in the Anti-Human Serum used for this indication. This study should also evaluate the frequency and nature of the problems ("false positive") associated with reagents containing anticomplement.

(b) *Compatibility testing (crossmatching).* Compatibility testing, also known as crossmatching, is done before transfusion to ensure that the red blood cells intended for transfusion will be compatible. The usual procedure (Ref. 42) involves mixing the red blood cells of the intended donor with the serum of the recipient. After incubation the mixture is washed and Anti-Human Serum is added. The procedure is identical to that used for antibody detection tests except that cells of the intended donor replace the selected screening cells used in the latter procedure. Since both antibody detection testing and compatibility testing are identical procedures except for the choice of cells, similar considerations apply to both.

The Panel concludes that Anti-Human Globulin Serum is appropriately used in the indirect antiglobulin procedure as a part of donor-recipient compatibility testing. Anti-IgG is essential in this test. Until more definitive data are available to the contrary, the Panel concludes that additional anticomplement activity is not required. If antiglobulin serum contains anticomplement it must have adequate ant-C3 or C3d. Anticomplement (especially ant-C4), if present, should not be in such amounts that false-positive reactions occur. If antibodies to C3 or C3d are absent in a reagent serum, the package insert should state that some blood group alloantibodies may not be optimally detected. These recommendations are the same as those for the use of Anti-Human Serum in the antibody detection procedure.

(c) *Detection of D^u.* The presence of absence or the D blood group antigen of the Rh blood group system is important since the differentiation of donors and recipients into Rh-positive and Rh-negative groups is based on the presence or absence of this one Rh factor. Some variants of the Rh antigen, termed D^u, react weakly or not at all when tested with usual procedures (Ref. 43). Despite these weak reactions these bloods are antigenically Rh positive and, if transfused into Rh negative recipients with high titered anti-Rh antibodies, could cause serious reactions. The D^u antigen can be detected by several techniques, one of which involves the use of Anti-Human Serum. Cells to be tested are incubated with a reagent antiserum specific for the D blood group antigen. The cells, if D^u positive, react with and become coated by the anti-Rh but are not agglutinated. The addition of Anti-Human Serum after the cells are washed agglutinates these cells, thus showing them to be D^u positive.

The Panel concludes that Anti-Human Serum is indicated for use in the test for D^u. The reagent needs to contain only anti-IgG for this purpose since all anti-Rh reagent antiserums used for D^u testing are of IgG class and do not fix complement.

(d) *Retl blood cell typing.* Red-cell typing is done by mixing the cell to be tested with antiserums of known specificity and examining the mixture for evidence of a reaction. In many cases, the antiserums used do not agglutinate the red cells directly, and the fact that an antigen-antibody reaction has occurred (a positive test) can be determine most efficiently using the indirect antiglobulin test. This type of testing is required for many of the reagents now licensed for red-cell typing. These include anti-Fy^a serum, anti-K serum, anti-Lu^a serum, and many others. The Anti-Human Serum used for these tests needs to contain only anti-IgG activity since complement components are not ordinarily involved in these reactions. The use of Anti-Human Serum in the indirect antiglobulin test is appropriate in these tests.

f. *Labeling analysis.* The major portion of the labeling for Anti-Human Serum reagents is not on the package but in the package insert. This circular should provide the laboratory worker with sufficient information to use, store, and evaluate the product. For the sake of uniformity, package inserts should use similar terminology. For example, either of the terms "crossmatching" or "compatibility testing" are appropriate, but one should be selected as the proper one with appropriate synonyms in brackets. In a like manner, terms for the various immunoglobulins, complement components, and diseases (autoimmune hemolytic anemia versus acquired hemolytic anemia versus autoimmune hemolytic disease) should be standardized.

A paragraph containing information about the specific antiglobulin activities present or absent in the reagent should be included. Methods used to determine these activities should be given in enough detail to allow the user to evaluate the product if necessary. In addition, the vial label should give specific information about the antibody activities included in the product.

Detailed instructions for the use of the product should be included. Information about how to set up necessary controls is essential.

g. *Summary.* Anti-Human Serum is a valuable reagent for blood bank work. The Panel recommends that it be placed in Category I. The use of Anti-Human Globulin Serum is indicated for:

Direct antiglobulin test.

(1) Diagnosis of hemolytic disease of the newborn.

(2) Diagnosis of autoimmune hemolytic disease.

(3) Evaluation of suspected incompatible transfusion reactions.

Indirect antiglobulin test.

(1) Antibody detection.

(2) Compatibility testing.

(3) Detection of D^u.

(4) Red blood cell typing.

Anti-Human Serum may contain antibodies against any of the human plasma proteins; however, reagents for use in blood banks, transfusion services, or laboratories involved in the diagnosis of immunohematologic disorders should contain antibodies specific for immunoglobulin G and selected components of the complement system. These may be present as individual components or may be mixed to produce Anti-Human Serum that has more than a single reactivity. Anti-Human Serum intended to screen patients for autoimmune hemolytic disease must contain activity against IgG and the C3d component of complement. More definitive characterization of these disorders requires reagents with either pure anti-IgG or pure anti-C3d activity. Reagents for all other indications must contain anti-IgG activity and may also have anti-C3 or C3d activity. In all cases the labeling must specify the antibody activities present, how tests for this were done, and the indications for which the reagent is suitable. Sufficient information must be included to allow the user to test the reagent to determine which antibody activities are present.

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20. Hepatitis B Testing

1. *Introduction.* Post-transfusion hepatitis has long been a serious medical problem. In 1970 the National Research Council estimated that there were approximately 30,000 cases of clinical post-transfusion hepatitis annually with a mortality rate of approximately 10 percent (Ref. 1). It was also estimated that there may be up to five times that many cases that are not clinically detectable. Other studies (Ref. 2) estimated the risk at 6.4 cases per 1,000 units of blood transfused, with one-third of these being icteric, but more recent studies suggest a higher risk, of between 7 and 10 percent of all blood recipients (Ref. 20).

The discovery of the hapatitis B surface antigen (HBsAg), previously called Australia antigen (Au) or hepatitis-associated antigen (HAA) was a major scientific breakthrough toward characterizing the hepatitis B virus and decreasing the incidence of post-transfusion hepatitis (Refs. 3 and 4). HBsAg, which is thought to be the outer coat or surface protein of the hepatitis B virus, is released into serum in three major morphologic forms available on electronmicroscopy: as a 20-nm sphere, as an elongated tubular form, and as an outer coat component fragment of the complex 42-nm Dane particle (Refs. 5 and 6). The presence in serum of HBsAg and studies of transfusion hepatitis have demonstrated an association between HBsAg and infectivity (Refs. 7 and 8). Testing all donor blood for HBsAg was mandated the Bureau of Biologics in 1972 (Ref. 9) and has resulted in a significant reduction of hepatitis B related post-transfusion hepatitis (Refs. 8 and 10). Other forms of hepatitis, including hepatitis A, but particularly the group of so-called non-A, non-B hepatitis now comprise the majority of post-transfusion cases (Refs. 12 and 13). However, there continue to occur cases

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of type B post-transfusion hepatitis caused by blood found to be negative by the most sensitive tests currently available. New tests for other markers of hepatitis B infectivity, such as detection of antibody to the hepatitis B core antigen (HBcAg) may permit detection of potentially infective donor blood in some of these cases (Ref. 14).

Test methods for HBsAg have improved rapidly. HBsAg was initially detected by agar gel diffusion, a test of low sensitivity requiring a long incubation time. When HBsAg testing of blood donors became mandatory in 1972, second generation tests were required, that is, tests equal to or greater in sensitivity than counter-immunoelectrophoresis. These tests were more rapid to perform and had greater sensitivity than agar gel diffusion. In 1974, this category of tests was superseded by third-generation tests which are more reliable and reported to be 50 to 1,000 times more sensitive than counter-electrophoresis. Current third generation tests include radioimmunioassay (RIA), reverse passive hemagglutination (RPHA), and ezyme-linked immune adsorbant assay (ELISA).

As set forth by the Bureau of Biologics, third generation tests for HBsAg are defined by the ability to detect certain HBsAg-positive serum samples in a Bureau of Biologics reference panel. This panel is comprised of HBsAg positive and negative samples and includes samples with greater and lesser amounts of the antigen. Both antigen subtypes, adw and ayw, are included. The reference panel also includes a variety of HBsAg positive specimens variously diluted, both to the current limits of detectability by available tests and to dilutions that are not detectable by any currently available method. New tests that may be introduced, must perform acceptably against this Bureau of Biologics' serum panel.

2. *Test methods*—a. *Radioimmunoassay tests (RIA).* Polyethylene tubes or another suitable "solid-phase" carrier such as a bead supplied by the manufacturer are coated with specific anti-HBsAg. When serum containing HBsAg is added to the anti-HBsAg coated "solid-phase," the HBsAg will "attach" to the antibody. Excess serum is removed, and the solid-phase complex is washed, and radiolabeled anti-HBsAg is added. The anti-HBsAg becomes fixed to the "bound" HBsAg forming a (solid-phase) antibody antigen^{-125}I-labeled antibody "sandwich". The radiolabeled antibody remains in the tube or on the "solid-phase" after a series of washes, producing a strongly radioactive tube or "solid-phase". A serum nonreactive for HBsAg will not provide a site for binding of the readioactive antibody. Radioactive anti-HBsAg is therefore removed by the subsequent washes, resulting in a test with low radioactivity.

RIA tests results are determined by counting radioactive emissions in a gamma counter and comparing test samples with control standards. Reading of this test is thus objective.

b. *Reversed passive hemagglutination tests (RPHA).* Reagent human erythrocytes are coated with specific antibody (anti-HBsAg) and stabilized by lyophilization. In the presence of HBsAg, the antibody-coated erythrocytes form a complex leading to a visible hemagglutination. If the antibody coatd cells are not agglutinated because HBsAg is absent or there is insufficient HBsAg in the sample, the antibody-coated erythrocytes settle in a recognizable nonagglutinated pattern, a sharp compact button. The interpretation of this test is subjective; it requires distinguishing agglutinated-positive tests from unagglutinated-negative results.

c. *Enzyme-linked immune absorbent assay (ELISA).* This test is similar in principle to "solid-phase" RIA tests except that enzyme-linked reagent antibodies of anti-HBsAg specificity are employed at the final stage to form a solid-phase antibody-antigen-enzyme-linked antibody "sandwich."

Instead of direct transfer to a gamma counter, a colorless enzyme substrate, *p*-nitrophenyl, is added to the "sandwich." Hydrolysis of the colorless substrate by the enzyme linked to the anti-HBsAg forms a yellow end product. The intensity of the color, measured spectrophotometrically, defines the presence of HBsAg when appropriate controls are employed. Interpretation of this test is also objective.

3. *Antibody used for testing.* Antibodies used for the detection of HBsAg in third generation tests vary considerably among the current licensed procedure. Antibodies raised in a variety of animals immunized with HBsAg as well as antibodies from humans are used. These are summarized in Table 1 below. As all test procedures have a significant incidence of false-positive reactions, some due to the presence of heterospecific antibodies, all manufacturers recommend a neutralization test for confirmation of specificity. For confirmatory testing, all manufacturers provide human anti-HBsAg (with one exception where chimpanzee anti-HBsAg is used) to neutralize specifically the presumed antigen prior to the perfomance of the confirmatory detection test, which should become negative. Antibodies in all test procedures must also contain specificities to the two major subclasses of HBsAg, ay and ad.

In some cases manufacturers offer alternative test procedures employing different temperatures of incubation to shorten the time required for the test. These are to be used when the usual time required for performing the test is too great, and the need for the particular blood product is immediate. Short incubation time tests are usually less sensitive than tests performed in the standard manner with material from the same manufacturer.

TABLE 1.—SOURCE OF ANTIBODY FOR LICENSED TESTS FOR HBsAg

	Raised in solid chains	Label	Neutralization
RIA			
RIA International	Goat	Human	
Electronucleonics	do	Goat	Human.
Abbot	Guinea pig	Human	Do.
Hyland	do	Chimpanzee	Do.
RPAH			
Abbott	do	do	Do.
Ortho	Chimpanzee	do	Chimpanzee.
ELISA			
Cordis	Horse	Human	

4. *Test sensitivity and performance.* Direct Comparisons of test sensitivity between RIA and RPHA have been made. In one study (Ref. 15), when comparisons were made by parallel testing of serial dilutions of HBsAG positive samples, RIA was able to detect one-fourth the quantity of HBsAg subtype ad and one-sixteenth the quantity of a subtype ag antigens when compared with RPHA. Another study, performed by the Bureau of Biologics and shown in Table 2 below, also indicates that RIA, in general, is more sensitive than RPHA. However, a third study (Ref. 16) indicates that the sensitivity of RPHA is comparable to RIA.

TABLE 2.—COMPARATIVE SENSITIVITIES OF LICENSED THIRD GENERATION TESTS*

HBsAg Sample No. (subtype)	RIA-1	RIA-2	RPHA-1	ELISA-1	[illegible]-2
4 (ay)	[illegible]	16	16	8	16
12 (ay)	[illegible]	16,384	16,384	,096	[illegible]
19 (ay)	2,048	[illegible]	512	512	512

TABLE 2.—COMPARATIVE SENSITIVITIES OF LICENSED THIRD GENERATION TESTS*—Continued

HBsAg Sample [illegible]	RIA-1	RIA-2	RPHA-1	ELISA-1	RPHA-2
37 (sy)	[illegible]	[illegible]	[illegible]	[illegible]	32
6 (ad)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
19 (ad)	128	64	128	32	32
20 (ad)	[illegible]	1,024	[illegible]	256	512
27 (ad)	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
32 (ad)	128	128	128	64	64
33 (ad)			64	64	64

*End-point dilution titers.

When comparing RIA and RPHA in their ability to detect HBsAg positive samples in populations containing antigen positive and negative individuals, RIA testing results in a slightly higher detection rate. Some of the published data are summarized in Table 3 below.

TABLE 3

[illegible]	No. RIA positive	No. RIS positive	[illegible]
7,067	[illegible]	[illegible]	(17)
[illegible]	[illegible]	[illegible]	(16)
25,357	173	176	(15)

Proficiency testing indicates superior performance of RIA when compared with RPHA in most cases. The AABB–CAP survey (Ref. 19), including eight proficiency test panels distributed over a 3-year period gave the following results: The percentage of correctly identified positive samples by RIA was between 98.5 and 99.8; by RPHA it was between 79.5 and 98.1. The differences between the two test methods was magnified if only weakly reactive positive samples were compared. This study also reported that in panels of HBsAg positive and negative samples, 87.8 percent of participants correctly identified all samples by RIA but only 55.8 percent by RPHA.

In two more recent AABB–CAP proficiency test panels studied in February 1977 and February 1978, RIA also gave higher detection rates and correct response rates than did RPHA. These data can be summarized as follows:

1977 (AABB–CAP PANEL)

	HBsAg Pos. (15), number of correct [illegible] responses/total [illegible] responses	Percent	HBsAg Neg. (5), number of correct [illegible] responses/total [illegible] responses	Percent
RIA	[illegible]	[illegible]	1776/1845	[illegible]
RPHA	[illegible]	[illegible]	315/320	[illegible]

1978 (AABB–CAP PANEL)

	HBsAg Pos. (7), number of correct responses/total [illegible] responses	Percent	HBsAg Neg. (3), number of correct [illegible] responses/total [illegible] responses	Percent
RIA	3179/3207	99.1	1293/1317	98.2
[illegible]	497/519	95.8	211/220	95.9

Proficiency tests sponsored by the Centers for Disease Control (CDC) gave inconsistent results. In the first CDC Panel (Diagnostic Immunology 1977 I, Hepatitis B, September 1977), RIA gave a 99-percent correct response rate as compared with RPHA which had a 93-percent correct response rate. In the second CDC Panel (November 1977), RIA and RPHA had equally good performance, both 99-percent correct, but RIA showed a higher false-positive rate.

Evaluations of ELISA in comparison with RIA and RPHA have been few. In one study, in titration of HBsAg positive samples, ELISA gave results comparable to RIA (Ref. 19). Titration studies performed by the Bureau of Biologics indicate ELISA to be less sensitive than RIA but comparable to RPHA (Table 2). In field tests, ELISA also gave results comparable to other third-generation tests, although the type of tests is not identified (Ref. 19). ELISA seems to be associated with a relatively high incidence of false-positive results (Ref. 19).

These data must be considered with caution. As there are a number of manufacturers of both RIA and RPHA test kits, it is possible that not all RIA or RPHA products are of equal sensitivity or performance. Although the currently available data are few, there is reason to believe this is correct. Thus, comparisons of tests on a generic basis, e.g., RIA versus RPHA, may not be an entirely valid basis for drawing conclusions with regard to test efficacy. Finally, it must be appreciated that all data agree that any third-generation test is far superior to second-generation tests for screening blood donors for HBsAg.

7. *Summary.* a. Third-generation tests for the detection of HBsAg in blood donors are far more sensitive and proficient than second-generation tests, and their mandated use has reduced the occurrence of hepatitis B in blood recipients.

b. Among third-generation tests, RIA is most sensitive for the detection of small amounts of HBsAg. There are no data that relate such sensitivity to possible infectivity.

c. In general, proficiency testing has demonstrated that RIA detects more HBsAg positive samples than other third generation tests.

d. All currently available licensed third-generation tests meet minimal standards for safety and efficacy.

e. There is some evidence that among RIA or RPHA tests there may be some variability in sensitivity and performance.

f. There is evidence that short-incubation RIA is less sensitive than overnight incubation RIA.

8. *Recommendations.* a. The licensed third-generation hepatitis testing reagents are recommended to be placed in Category I.

b. A workshop should be organized to attempt to redefine third generation tests on the basis of an absolute minimal standard amount of HBsAg that must be detected by any method. All tests must be able to detect this minimal quantity consistently without an inordinate number of false-positive results, in order to be designated a third generation test.

c. Studies relating test sensitivity with infectivity should be encouraged.

d. The standard should be reviewed periodically to reflect new advances in the field which might result in tests of even greater sensitivity.

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21. Antivenins

Generic Statement and Product Reviews

1. *Introduction.* This statement reviews the licensed antivenins and the associated horse serum control materials. The products are Antivenin (*Crotalidae*) Polyvalent and Antivenin (*Micrurus fulvius*) manufactured by Wyeth Laboratories, Inc., and Antivenin (*Latrodectus mactans*) manufactured by Merck Sharp and Dohme.

Therapeutic antivenins are the fractionated globulins from the serum of horses which have been immunized with a clinically important toxic venom. Three major preparations are available: (1) Polyvalent antivenin, (*Crotalidae*), the North American pit vipers, (2) antivenin (*Micrurus fulvius*), the North American Coral Snake, and (3) antivenin (*Latrodectus mactans*), the Black Widow Spider. These antivenins have a long history of development and clinical use and have well-established indications for treatment of the respective envenomations, which include toxic bites of most of the significant indigenous North American animals from which life may be at risk.

It is of note that many toxic animals from throughout the world have been imported into the United States into zoos, research institutes, and, in some instances, private collections. Occasional accidental bites from these animals constitute a small but serious health problem for the involved individuals. A volunteer organization has developed a network of information centers and repositories for antivenins appropriate to these exotic toxic animals, situated through the United States. These materials come from primarily foreign origins and are imported into the United States under individual IND exemptions at the present time, since their distribution is not regarded as primarily commercial in nature.

Most animal venoms are complex mixtures of proteins and peptides that have a wide variety of biochemical and physiological activities which result in their toxic effects (Refs. 25 and 26). In the case of the venom of *Crotalidae*, several of the venom fractions have primarily local effects, resulting in inflammation, tissue necrosis, and vascular thrombosis. Other fractions have more general systemic effects, particularly the so-called "lethal fraction" which is primarily responsible for death of man or test animals. Other prominent systemic effects are induction of hemolysis and activation of the blood coagulation system (Refs. 3 through 10).

This discussion will not include comprehensive consideration of the management of toxic bites, but will focus on the use of antivenins. It is important to recognize the need for comprehensive understanding of the problems prior to treatment of such a patient.

Antivenin is standardized by a biological test in mice for its protective effect primarily against the lethal factor. The components of these venoms which act locally may be variably neutralized by antivenin. Local injury may already have been produced by the time venom neutralization is attempted; and the antivenins themselves are not standardized for their action against these locally injurious components. Thus, it should be recognized that the *Crotalidae* polyvalent antivenin is a useful therapeutic agent primarily for its life-saving effect and that local injuries at the site of a bite may be quite severe even in face of adequate antivenin administration. It is important that the total management of these bites is understood by the person responsible for their treatment and that actions not be taken, such as excessive tissue cooling, obstruction of the arterial circulation, or widespread incision which may well increase the local tissue damage without any therapeutic effect; corticosteroid therapy should not be employed except on very specific indications. By contrast, the venoms of the North American Coral Snake and the Widow Spiders act predominantly against the central nervous system, frequently with little or no local reaction which predicts the degree of envenomation. The first symptoms suggesting that envenomation has occurred may be rapidly developing paralysis, including respiratory paralysis. The administration of antivenin in this situation is quite specific, but again it must be integrated into a program of management which includes support of the patient, with maintenance of adequate respiratory function and oxygen uptake (Refs. 11 through 23).

A wide variety of other systemic effects occur primarily in association with bites of pit vipers and to a lesser extent coral snake envenomations. Many of these appear to be related to activation of the coagulation system with associated fibrinolysis, thrombocytopenia, a variety of hemorrhagic manifestations, hemolysis and impairment of renal function. Maintenance of adequate hydration, blood pressure, and urinary output during recovery from a bite is important for successful outcome. These effects are relatively short lived and commonly begin to correct themselves following

adequate treatment with antivenin during the first 48 to 72 hours of treatment. In some instances, specific interventions such as red cell transfusions or correction of severe hemostatic defects may be indicated on the merits of the specific problem itself (Ref. 2).

a. *Nature and sources of immunizing antigens.* A number of problems exist with regard to the sources and standardization of the immunizing antigens used in the preparation of antivenins. As noted previously, venoms are a complex mixture of materials with wide range of biochemical effects primarily due to their enzymatic activities. There appear to be variations between species and subspecies in the quantitative and qualitative characteristics of the venoms. There are also variations within a species over different geographic ranges and seasonal variability as well. There may well be variability in the venom obtained from a single individual animal depending upon the conditions under which the animal is kept, the frequency of venom removal and other factors not well understood (Refs. 12 and 16).

In general there is not a serious problem of supply of snake venoms since these are available commercially from a number of serpentariums. This, however, does not eliminate the kinds of variability just mentioned.

In the case of the venoms of the widow spiders, the problem is more serious. It should be noted that in most instances the venom is not a secreted product of the animals, but rather an extract of the removed venom sacs of a large number of individual animals. Thus it will contain materials derived from the venom producing apparatus ih addition to the venoms themselves. There have been significant problems in obtaining reliable supplies of standardized venoms for the widow spiders. It is probable that little of the currently available antigenic venom is actually derived from the Black Widow Spider itself; rather it is derived from a variety of related spiders from both North and South America, the venom of which has a high degree of cross-reactivity with that of the Black Widow Spider. Since the antivenin produced with these antigens is useful in the treatment of toxic bites from this group of related spiders, it seems reasonable to rename the material to reflect this fact (Ref. 27).

Not only must venoms be obtained for purposes of immunization of horses, but they must also be available in standardized and stable form for subsequent testing of the potency of the antibody that has been produced. This must be done both by immunochemical means and more importantly by in vivo mouse protective tests conducted by both the manufacturer and by the Bureau of Biologics which also tests the material for potency before release. Thus the secretion, procurement, storage and stability of the antigenic venoms is a crucial problem in the production of these materials. At the present time, the situation with regard to sources of appropriate venoms seems adequate, but one might easily envision situations in which particularly the venoms of the widow spider may be in very short supply.

b. *Antivenins prepared in other species.* Because the products reviewed here are prepared in horses, their principle toxicity relates to horse serum sensitivity of the recipient. This has lead to a number of efforts to develop antivenins in other species, particularly in goats, so that at least small supplies may be made available to patients who are highly sensitive to horse serum, possibly as a result of previous treatment with antivenin. These efforts have not been commercially supported and at the present time there is no such alternative source of antivenin available in the United States. Nevertheless there remains a need for such products. Attention should be given to a variety of ways in which they might be produced, distributed, and utilized for the treatment of these seriously compromised patients in whom desensitization to horse serum may be very hazardous, particularly if it is not carried out by someone thoroughly familiar with the procedure and who has adequate monitoring capability and understanding of the management of anaphylaxis (Ref. 24).

2. *Indications.* The primary indication for administration of antivenin is envenomation as the result of a bite. This deceptively simple criterion has many difficulties in its application. First, as many as 20 percent of toxic snake bites may not be accompanied by the injection of venom (Refs. 3 and 4). Thus, the presence of a bite alone does not provide an indication for the administration of antivenin. In the case of pit viper bites, usually local reactions promptly signal the occurrence of envenomation. Under some circumstances where venom is injected deeply into muscle or into a vascular structure, local reaction may be minimal or absent, and the first indications of envenomation are systemic symptoms. Furthermore, it is important to estimate the degree of envenomation in order to adminjster an adequate amount of antivenin.

Close observation of the patient and the site of the bite with periodic revisions of the estimate of the degree of envenomation and reassessment of the amount of antivenin administered are thus indicated in the management of these injuries. In general, underestimation of the degree of envenomation is more hazardous than overestimation, although maximum treatment with antivenin in every case cannot be justified on this basis.

A number of grading systems for evaluating the degree of envenomation have been employed in the past. These systems may require a period of up to 12 hours to permit accurate evaluation. This is of course well beyond the period of up to 4 hours when antivenin has its maximum therapeutic effectiveness. These delayed grading systems of the amount and/or severity of envenomation may have utility in predicting or evaluating ultimate clinical outcomes, or in clinical investigation, but they should not be employed in labeling as a guide to therapeutic antivenin administration and dosage. Emphasis must be given to the necessity of an early clincial judgment about degree of envenomation as the basis for prompt administration of antivenin. Labeling material should reflect this position.

The bite of the Coral Snake, as noted previously, may be associated with no local symptomatology other than the superficial injury of the bite itself. In these patients, very close attention to clinical manifestations are necessary to judge the degree of envenomation and the appropriate amount of antivenin for administration (Ref. 13). Widow spider bites can be regarded in the same way (Ref. 17).

It is of great importance that the exact identification of the animal responsible for the bite be made if possible. The probable severity of envenomation can be predicted to some degree both by the species and the size of the responsible animal. These judgments must of course be made in the light of the body size of the victim, with the recognition that equivalent amounts of envenomation are much more serious in children, particularly small children. For example, bites of the so-called "pygmy rattlesnake" are rarely lethal in adults but may be severe in small children. The same may be said of Copperhead and Water Moccasin bites. By contrast the venom of the Mojave rattlesnake (*C. scutulatus*) is extremely toxic (Ref. 2).

It should be recognized that the judgment required to estimate the degree of envenomation is not simply acquired, and the help of persons

experienced in the management of toxic bites should be sought where it is available. The always confused and sometime hysterical situation surrounding the management of the snake bite victim should not lead to precipitous and unwise intervention. Rather, a calm and thoughtful examination of the entire situation and an evaluation of the severity of the injury is always preferable to a hurried, routinized intervention. Although these are emergency situations, time is always available to make such an evaluation. It should be recognized that the unwarranted administration of antivenin to a patient, who because of occupational reasons or other factors affecting his/her exposure has a high likelihood of repeated bites, will certainly produce a serious problem if that patient is bitten subsequently. The decision to administer antivenin can be lifesaving and frequently is, but its consequence will almost certainly be a lifetime sensitivity in varying degree to horse serum and possibly related materials.

3. *Effectiveness.* A large volume of literature supports the effectiveness of antivenins in the management of these toxic bites. The principle limitations on effectiveness are the time interval from the occurrence of the bite to the administration of antivenin. Treatment within 4 hours of the bite once the presence of envenomation has been determined appears to be optimal, with declining effectiveness over the following 16 hours. In severe envenomation administration of antivenin has been recommended even if a 24 or more hour interval has occurred since the injury (Ref. 24).

A second limitation on effectiveness appears to be undertreatment. Present package sizes provide 10 mL of reconstituted dry antivenin as the therapeutic dosage unit. Since two to four vials of antivenin are recommended for even mild envenomation and 10 to 20 vials where severe envenomation has occurred, it might be reasonable to increase the individual package size by a factor of at least two.

4. *Safety.* The hazard associated with all of these antivenins is that of horse serum sensitivity of the recipient. Great care must be taken in determining the recipient's status from this point of view both by a carefully obtained history and by appropriate testing with horse serum. Carefully done intradermal testing is mandatory. Severely hypersensitive individuals may have severe reactions to even the small quantities of antigens in the intradermal test. Intradermal testing should not be done unless preparations have been made to manage anaphylaxis. A conjunctival test, whereas it may be of use in detecting severely hypersensitive people, also is subject to significant false positives unless it is very carefully carried out and supervised. The conjunctival test may provoke severe conjunctivitis in severely hypersensitive people, sometimes with threats to vision. Since an intradermal test should be done, there is little reason to carry out the conjunctival test.

Even in the absence of positive skin tests, an anaphylactic reaction may occur shortly after the administration of antivenin, and its immediate management with appropriate measures will be lifesaving. Delayed reactions of the serum sickness type generally occur within 5 to 25 days after administration in patients receiving horse serum for the first time and somewhat earlier in patients who have been immunized to this material previously.

Patients may be sensitive to horse serum in the absence of prior horse serum injections. Contact with horses, possibly by inhalation of horse dander and other exposures, appears to be capable of sensitizing susceptible individuals. In other instances, patients may be sensitive without any known or remembered contact with horses or horses proteins. The history given by patients who must receive horse serum products is thus of limited value. A valid history of prior horse serum administration should always be regarded as strong evidence of presumed hypersensitivity. The absence of such a history cannot be relied upon to indicate lack of sensitivity.

Hypersensitive patients will require desensitization prior to the administration of antivenin. This can be accomplished according to a standard dosage regimen in almost every patient, with little risk in experienced hands. The procedure does clearly have a significant associated risk when it must be carried out by people with inadequate experience or facilities to monitor and support the patient during desensitization. In general, the existence of hypersensitivity in the envenomated patient is not a contraindication for the administration of the antivenin, but it should be recognized that this situation increases the risk to the patient of antivenin treatment. The details of an adequate procedure for desensitization will not be discussed here, although the general procedure is considered in the labeling (package insert) provided with all of these products.

Antivenins should not be injected at the site of a bite, or distal to the wrist or ankle. They are maximally effective when delivered to the envenomated tissues by the circulation.

5. *Benefit/risk evaluation.* An abundant literature supports the position that the benefits of antivenin therapy, appropriately used, markedly outweight the risks involved.

6. *Recommendations.* a. These products are recommended to be placed in Category I.

b. Antivenins from alternative animal sources should be made available in the United States to treat patients who have severe horse serum hypersensitivity, particularly for patients who are at high risk of repeated bites.

c. Package dosage sizes should be increased by a factor of two.

7. *Labeling recommendations.* a. Easily recognizable common names should be included in the official name for the Crotalidae antivenin as is done for the Coral Snake antivenin. The addition of the words "Rattlesnake, Copperhead and Moccasin" is recommended.

b. Since it is likely that the antigen used for the preparation of the "Black Widow Spider Antivenin" is not actually derived from the Black Widow Spider but from closely related species, the name of this product should be changed to reflect this fact. An appropriate common name would be "Widow spider Spp. antivenin". These changes in title would have the purpose of improving the identification of the product for personnel with less training who may be called upon to handle them.

c. Antivenin should be administered intravenously, except in circumstances where this is not possible. Intramuscular administration results in delayed absorption and may well result in inadequate treatment, particularly in severe envenomations. At the persent time, intramuscular administration is still recommended in labeling. The labeling should be revised to remove the recommendation for intramuscular injection, except in circumstances where intravenous administration is impossible.

d. All references to delayed or deferred determination of the degree of envenomation as a basis for determining the appropriate dose of antivenin should be eliminated from labeling materials. Guidelines should be given for estimation of severity of the bite based upon initial observations and further observation over a short time period, an hour or two at most. Emphasis should be placed on prompt treatment, rather than precise calculation of the degree of envenomation.

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e. The limited usefulness and possible hazard of the traditional conjunctival test for horse serum sensitivity should be made explicit in labeling materials. Emphasis should be placed upon proper performance of a skin test and its interpretation. Emphasis should be given to the possibility that anaphylaxis may occur after even a test dose of horse serum in severely hypersensitive patients.

f. Package inserts should be printed in more durable booklet form if possible and the material reorganized in such a fashion as to provide a primer on the management of victims of the specific toxic bit. The most important clinical material should be printed in somewhat larger type to provide inexperienced people with an easily comprehended guide to management of the envenomated patient. Package inserts of this type might have a lasting value as readily available instructional materials in emergency rooms, isolated aid stations, and other places where bitten patients are treated. The assistance of experienced clinicians in this field should be sought in the reorganization and preparation of this material.

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22. Normal Horse Serum

Generic Statement

Normal Horse Serum, a 1:10 dilution of sterile unfractionated normal horse serum is employed in human use as a test antigen to determine the presence or absence of horse serum sensitivity of potential recipients of other injectable products derived from horse serum. Normal Horse Serum is provided as a test antigen with some of these products particularly the antivenins. The details of sensitivity testing procedures are specified in the labeling provided with the individual products. Both conjunctival and skin tests are described.

This test antigen is provided as normal unfractionated horse serum, whereas most horse serum therapeutic products are gamma globulin fractions of the native antibody-containing horse serum. Positive reactions are a common clinical experience in known horse serum sensitive patients. There is no evidence that normal horse serum is in any way inadequate as a test antigen for horse serum sensitivity of recipients, or that the use of the globulin fraction of normal horse serum would provide a better, more specific, more sensitive, or more reliable test antigen. Effectiveness has been demonstrated by the patients' responses to the subsequently administered horse serum products.

The product labeling does not contain warning statements with regard to the interpretation of conjunctival tests, particularly in children. Unless the person being tested by this method is watched continuously during the entire period of the test and irritation by rubbing of the eye is prevented, test results may be falsely interpreted as positive, particularly by inexperienced observers. This problem is most significant in children who tend to react to the instillation of anything into the eyes by rubbing them. This may delay or possibly prevent a therapeutic administration of a horse serum product. Also, severe conjunctivitis can be produced in hypersensitive people by the test. Informed opinion generally indicates that horse serum products should rarely if ever be injected without prior performance of a skin test. Thus the utility of the conjunctival test is low. At most, it may provide confirmation by a less sensitive means of the results of the skin testing procedure which provides a significantly better method of objective evaluation and control.

Recommendations. This material is safe, effective, and necessary for the sefe therapeutic use of horse serum products. Normal Horse Serum should be placed in Category I.

Labeling for horse serum products should call attention to the limitations of conjunctival tests if they are to be mentioned and should require performance of an appropriate skin test with Normal Horse Serum or the horse serum product itself prior to therapeutic administration of any horse serum based product, as noted in the discussions of the antivenins.

23. Blood Group Substances, A, B, and AB

Generic Statement

Review of Products Manufactured by Armour Pharmaceutical Co. and Pfizer, Inc.

1. *Introduction.* The blood group characteristics of red cells are inherited by Mendelian laws and are almost always constant throughout life. The ABO blood groups are defined by the presence or absence of antigens A and B or the red cell surface and the reciprocal presence or absence of two antibodies, anti-A and anti-B, which occur in the plasma when the corresponding antigen is mission. Blood group A and B antigenic substances are not confined to the red cell; they occur on the cell surfaces of probably all endothelial cells and of many epithelial cells. Substances capable of inhibiting either anti-A or anti-B activity are also found in water soluble form in body secretions. The ability to secrete or not secrete these materials is inherited in Mendelian fashion. Secretions such as saliva, gastric juice, seminal fluid, urine, and meconium, as well as pathological secretions, e.g., ovarian cyst fluid, contain A and/or B substance on the basis of this genetic mechanism. Horse and swine gastric secretions, and the mucosae from which they are derived, contain polysaccharide substances which are immunochemically almost identical to the A and B substances of human origin. Indeed, A and B-like substances are widely distributed in nature.

a. *Isolation.* These materials are usually extracted from pepsindigested horse or swine gastric material using cold 95-percent phenol followed by ethanol precipitation. Normally, several successive extraction-precipitation cycles are employed. Sometimes, further precipitation is accomplished with saturated ammonium sulfate at 60° C and even further purification can be performed using column chromatography.

b. *Chemistry.* The blood group substances derived in this way are macromolecules, classified as glycopeptides with molecular weights ranging from 2 X 10^5 to several million daltons. Approximately 85 percent of the weight of these molecules is carbohydrate. Both the A and B substances contain the five sugars, L-fucose, D-galactose, *N*-acetyl-D-glucosamine, *N*-acetyl-D-galactosamine and *N*-acetylneuraminic acid.

c. *Immunological characteristics.* Because of their marked immunochemical similarity to human blood group substances, porcine blood group substance A can be used to stimulate anti-A production in blood group B or O individuals and equine blood group substance B can be used to stimulate anti-B antibodies in blood group A or O individuals. Equine blood group substance B preparations usually also contain measurable quantities of blood group substance A activity.

2. *Uses.* The present principal use of blood group substances A and B is for the in vivo stimulation of anti-A and/or anti-B antibodies in donors whose plasma is to be used for the preparation of diagnostic anti-A and/or anti-B reagents. Former uses of A and B substances were for specific neutralization of anti-A or anti-B antibodies in vitro for out-of-group blood transfusions, and for in vitro neutralization of unwanted anti-A or anti-B antibodies in the preparation of anti-Rh and other similar diagnostic reagents. These are no longer valid uses for the licensed biological blood group substance products.

When blood group substances A and/or B were used to neutralize A and/or B antibodies in Group O blood transfusions given to A, B, or AB recipients, 3-, 10-, or 25-mg doses were ordinarily employed. Between 1956 and the general discontinuation of this use in 1965 and last manufacture in 1969, approximately 100,000 3-mg doses were estimated to have been distributed by one firm for administration to recipients by this route without record of adverse effects (Ref. 5). Blood group substance products, not subject to licensure as biological drugs, are currently sold for use in anti-A or B neutralization steps in the in vitro processing of diagnostic reagents.

3. *Potency.* Licensed materials must have a potency sufficient to neutralize specifically anti-A or anti-B antibodies in vitro as outlined in the procedure in Ref. 8.

Although it was originally thought that differences between naturally occurring and hyperimmune anti-A or B antibodies could be discerned by their patterns of absorption or neutralization by soluble blood group substances, this no longer appears to be the case. Licensed blood group substance products must, however, satisfactorily meet arbitrary minimum potency test requirements. This test determines their immunologic reactivity on the basis of their capacity to inhibit the agglutination of group A red blood cells by anti-A or group B red blood cells by anti-B. In the future, test methods for licensed blood group substances may be developed wherein the products will be compared to reference standards which have been selected to meet the defined conditions.

4. *Safety and effectiveness.* Between 1967 and 1970, 117 donors received A, B, or AB substances for immune stimulation; 25 were successfully stimulated, of whom 17 were strong responders. There was no mention of any adverse reaction (Ref. 4).

In a review (Ref. 5) of 341 immunized subjects the following was observed:

One subject had slight fever with pain at the injection site; two of 219 subjects had mild systemic reactions following the injection; one subject had a nonfatal anaphylaxis.

In general, there were no significant reactions in subjects receiving 30 mg of A or B substance. The manufacturer estimated that a few thousand persons are deliberately immunized each year.

Until early 1977 when the Bureau of Biologics published immunization guidelines, two or three subcutaneous injections of 1- to 3-mg doses were often given at intervals ranging from 2 to 4 weeks (Ref. 7). Approximately 15 percent of the immunized subjects responded with insignificantly elevated isoagglutinin titers. Minor side effects, such as cutaneous wheal reactions, occurred in 1.8 to 3.6 percent of these subjects and were easily treated with an antihistamine.

TABLE 1.—ANTIBODY STIMULATION BY BLOOD GROUP SPECIFIC SUBSTANCES (REF. 5)

[illegible]	Stimulus [illegible]	Route of admin.	Number of subjects	Frequent satisfactory [illegible]	Frequent minor side [illegible]	Source of [illegible]
Knickerbocker Laboratories	A	IM	< 1,000	15	1.8–3.6	Pfizer
Bio-Lab, Inc	A, B	IM	673	[illegible]	3	Metrix
Plasma Derivatives	[illegible]	IM,SC	25	[illegible]	4	Other.

More recent data indicate that a relatively high proportion of subjects will make adequate immune responses if they are not immunized too frequently.

Armour Pharmaceutical Company in studies cited below (Ref. 4) required an eight-fold increase of anti-A or B titer above baseline or a response titer equal to or greater than 1/256 as a definition of an acceptable immune response.

In one study, Armour's objective was to elicit increased anti-A production

using 1 mg/mL intramuscular injections of blood group substance A into group B subjects. Of 89 recipients, 32 of whom were lost to followup, 63 percent had good responses. The rest yielded unacceptable titers even with a second injection given on the third to eleventh day. Of these subjects, 19 had been previously immunized (mean of 22 months earlier; range 6 to 32 months earlier). Thirty-eight subjects had had no prior immunization. Evaluation of subgroup responses within this study revealed the following:

a. Subjects with no prior immunization who were given one injection yielded 100-percent acceptable responses.

b. Subjects with no prior immunization who were given two injections yielded 88-percent acceptable responses.

c. Subjects with prior immunization who were given one more injection yielded 50-percent acceptable responses.

d. Subjects with prior immunization who were given two more injections yielded only 23-percent acceptable responses.

These data indicate that there was no improvement in responsiveness following two closely spaced injections of blood group substances and that the best responses occurred in subjects who had no prior immunization.

In a parallel study by the Armour Company designed to elicit increased anti-B production in group A subjects, a 0.9-mg intramuscular injection was preceded 2 to 21 days earlier by a 0.1-mg intradermal test injection. Of 97 recipients in this study, 29 of whom were lost to followup, 64 percent had acceptable responses.

The subgroup responses were as follows: In all instances the first does was 0.1 mg. When the second 0.9-mg dose was given 2 to 3 days later, 81 percent of the subjects had an acceptable response. If the second injection was given 4 days later, 52 percent had acceptable responses, and if it was given 5 to 21 days later, only 32 percent had an acceptable response.

These data suggest that waiting for more than 3 days between the skin test and the intended immunization caused the skin test dose to interfere with the response to intramuscular immunization.

In another pair of studies by Armour using A and B blood group substances for immunization of group O subjects, 1 mg of each substance was given in divided doses, both on the same day (0.1-mg intradermal plus 0.9-mg intramuscular) to a group of recipients with no prior immunization with these antigens. In 55 group O subjects, with 15 lost to followup, there were 75 percent who had good responses with anti-A. With anti-B, with 14 subjects lost to followup, there were 68 percent who had good responses. In a second similar study these responses in group O subjects were observed: With anti-A, of 51 subjects with 13 lost to followup, 78 percent had good responses; with anti-B, of 51 subjects with 14 lost to followup, 56 percent had good responses. In these studies, there were no adverse reactions noted except for occasional pain and swelling at the injection site.

From these studies, it appears that blood group substances A and B can elicit simultaneous anti-A and anti-B responses in group O subjects. Blood group substance A appears to be slightly more immunogenic than substance B. Both products are relatively safe.

Other data from Ortho Diagnostics, for a recently licensed product not subject to this review, further indicates the safety and effectiveness of these substances in stimulating anti-A and anti-B antibodies (Ref. 6).

Some data also exist about the use of A, B, or AB substance in vivo for neutralization of anti-A and B antibodies in factor VIII concentrate preparations. This is not an indication in the labeling of these products. Although significant hemolysis is recognized when large amounts of factor VIII materials (wet and/or dry) are administered, only anecdotal data are available about the effectiveness and safety of in vivo use of A and B substance to prevent such hemolysis. Preliminary observations have revealed that the substances can be mixed with factor VIII preparations in vitro given to reduce or eliminate in vivo hemolysis without observed adverse reactions (Ref. 7).

5. *Label analysis.* Pfizer, Inc., made no request to update labels, nor has it submitted any product lots for release for several years. Their production is, therefore, essentially defunct and their labeling is obsolete. Their labels have no clear information on actual dosage, side effects, precautions (such as asepsis), contraindications (regarding allergy in general or specifically regarding equine or porcine proteins), or warning regarding use in female subjects for in vivo stimulation.

The newly submitted labeling of Ortho Diagnostics, Inc., and Armour Pharmaceutical Co. is acceptable.

6. *Benefit/risk evaluation.* Side effects are so infrequent that despite varying rates of successful stimulation of anti-A or B antibodies, blood group specific substances for this purpose should continue.

7. *Recommendations.* a. The products should be placed in Category I on a generic basis. The product made by Armour should be placed in Category I. Pfizer's product should be placed in Category IIIB because of obsolete labeling and because no current effectiveness data are available.

b. Bureau of Biologics guidelines and manufacturer's labeling should indicate that reimmunization of subjects within less than a year is likely to result in little or no response.

c. Further studies for other uses are recommended. Although Cryoprecipitated Antihemophilic Factor redissolved in saline solution and antihemophilic factor concentrate can be administered, at least in moderate quantities, without regard to the blood group of the recipient, under some circumstances a hemolytic state is induced. This reaction can be managed by administration of group specific cryoprecipitated antihemophilic factor, but at times this is not practical. The use of A and B substance to neutralize the residual anti-A and/or anti-B content of pooled cryoprecipitated antihemophilic factor and antihemophilic factor concentrate should be investigated as an approach to this problem.

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24. Cobra Venom Products

Generic Statement

Cobra venom is obtained from mature cobra snakes (Naja naja). Lyophilized venom is subsequently fractionated, reduced to a powder, and later reconstituted as cobra venom solution. It was marketed by Hynson, Westcott &

Dunning, Inc., Baltimore, MD, as "Cobroxin"™ and in combination with Silicic and Formic Acids as "Nyloxin"™. The beneficial effects claimed from its parenteral administration is the alleviation of intractable pain.

Three main activities of cobra venom fractions are recognized: the hemolytic factor (phosphatidases); the proteolytic factor (proteases); and the neurotoxic factor (neurotoxins). The fractionation procedures for obtaining the cobra venom product were designed to eliminate the hemolytic and proteolytic factors but to retain the neurotoxic factor. Cobra venom solution is reported to have no effect on hepatic and renal function or blood clotting. It has no addictive properties and does not cause gastrointestinal dysfunction.

Most of the published reports on the use of cobra venom appeared during 1930 to 1945 (Refs. 1 through 33). The pain treated was associated mainly with malignant conditions or was secondary to various manifestations of arthritis. Cobra venom has also been suggested for the relief of pain associated with chronic angina, vascular crises, migraine headaches, and neuroses. Relief of pain in malignant diseases has been reported in as high as 60 to 70 percent of patients so treated. Cobra venom has been mentioned in a few subsequent reports (Refs. 34 through 46), but the Panel has found only one published report relative to human use in the last 10 years (Ref. 47).

Cobra venom solution was first marketed in 1952, but has not been advertised to the medical profession following 1957. Only a few thousand ampules were marketed each year.

1. *Evidence of effectiveness.* There have been no placebo-controlled or double-blind studies of pain relief with the cobra venom products; thus there is only anecdotal evidence of effectiveness. In the latest report (Ref. 47) only 5- to 10-percent effectiveness is claimed and then only after a trial period of 4 to 6 weeks.

2. *Evidence of safety.* Occasional severe vomiting or abdominal cramps have been reported (Refs. 21, 34 and 35). Other reactions observed most frequently are hives, diplopia, and dizziness. Cobra venom solution must be administered by deep intramuscular injection to prevent skin and subcutaneous reactions. The only contraindication to the use of cobra venom solution cited in the literature is its use in the presence of acute or chronic respiratory infection (Refs. 25 and 34).

3. *Benefit/risk evaluation.* There appears to be little substantiated benefit and no known serious risk. If any therapeutic effect from cobra venom solution can be demonstrated by appropriate studies then it may be of value in an attempt to reduce narcotic addiction in chronic pain.

4. *Recommendations.* It is recommended that Cobra Venom Solution and Cobra Venom with Silicic and Formic Acids (Cobroxin and Nyloxin) be placed in Category IIIB. During the Panel deliberations, the licenses were voluntarily withdrawn by the manufacturer on May 17, 1978 for Nyloxin and September 30, 1979 for Cobroxin.

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25. Human Plasma as a Source for Fractionation Products

1. *Plasma as a source for fractionation products.* Human plasma is the source material for albumin, plasma protein fraction, immunoglobulins, factor VIII concentrate, factor IX complex, and blood grouping reagents. The major clinically useful plasma fractions that were prepared when human blood was collected in glass bottles were albumin and gamma globulin (Ref. 1). Since these products are relatively stable on storage, it was possible to salvage plasma from whole blood stored at refrigerator temperatures for 21 days. Although the red cells are no longer suitable for use, the recovered plasma can be used as a source of derivatives such as albumin and gamma globulin.

When blood is collected in glass bottles, the container must be entered to remove the plasma following centrifugation of the bottle or sedimentation of the blood. Because of the potential danger of bacterial contamination, the remaining red cells must be used within 24 hours or discarded. The basic criteria for donor selection when collecting blood in glass bottles are the same as for whole blood to be used for transfusion purposes. The limiting factor for frequency of donation by this procedure is the donor's ability to regenerate red blood cells and maintain iron stores.

As methods were developed for preparation of the labile coagulation product, factor VIII (antihemophilic factor, AHF), it became necessary to freeze the plasma within a few hours after collection of blood from the donor (Refs. 2 and 3). Plasma salvaged from whole blood stored at refrigerator temperatures for more than 4 to 6 hours is not suitable as a starting material for preparation of factor VIII because of the attendant loss of activity (Ref. 4). If AHF concentrates are to be prepared, it is now the usual practice to use only plasma frozen while fresh and stored at −20° C or lower.

2. *Plasmapheresis.* Plasmapheresis is a procedure whereby plasma is removed from whole blood and the cells are returned to the donor as an autotransfusion. The technique had been known for many years (Ref. 5), but with the supplies and equipment available earlier it was a cumbersome and inefficient procedure to obtain plasma. With the availability of plastic transfusion equipment it became possible to separate plasma from cells in a closed system. Thus, with little danger of contamination, it was possible to separate the plasma from whole blood and return the cells to the donor (Ref. 6).

When plasmapheresis is carried out, the donor's ability to regenerate cells and to maintain iron stores are no longer limitations on the frequency of donation of plasma. With the technique of plasmapheresis, the limitations are the volume of blood that can be removed safety from the circulation acutely and the donor's subsequent ability to restore the protein which has been removed. The amount of blood that can be removed acutely depends on the donor's blood volume, which is proportional to body size. On the basis of considerable experience with collection of whole blood, it was established that at least 450 mL of blood can be removed without jeopardizing the health of the donor. This is now the standard transfusion unit. It became general practice in plasmapheresis to collect a unit of whole blood, separate the plasma, and return the cells to the donor and then collect a second unit of blood and repeat the process. In this manner, two units of about 250 mL each of plasma can be obtained at one time. The deficit in the donor's circulating blood volume is promptly restored by a shift of fluid from the interstitial space as well as by fluids administered during the blood collection and the autotransfusion of the cells. Since there are approximately 6 g/dL of plasma proteins, the collection of 500 mL of plasma represents a loss of approximately 30 g of protein with each such procedure.

3. *Donor safety considerations.* The frequency with which plasmapheresis donations can be made without jeopardizing the donor's health depends on the rate at which the lost proteins can be resynthesized. During intensive plasmapheresis over a short period of time in which 5 liters of plasma were removed in 5 days, normal donors replaced up to 49 grams of protein per day (Ref. 7). Protein loss in excess of this amount was reflected in a decrease in the total serum protein (Ref. 7). Two to 4 weeks were required for total serum protein and albumin to return to normal levels after this procedure, but 1 to 3 months were required for the gamma globulins to return to normal levels (Ref. 7).

Of the several different plasma proteins, albumin has been studied more extensively. Even for albumin, there are many unanswered questions regarding its homeostasis in health and disease (Ref. 8). It is apparent that the amount of albumin in the plasma represents only about half of the total body albumin pool. The remainder is in interstitial fluids. Following loss of plasma there is a shift of this albumin into the circulating plasma. The plasma protein level is promptly restored toward normal following the completion of a plasmapheresis procedure even though there is a net loss of protein (Ref. 6). On the basis of studies done in patients that lose plasma proteins over a period of time as a result of burns, renal disease or certain gastrointestinal disorders, it is apparent that there is a limit to the body's ability to compensate for protein loss (Ref. 9). The ability to compensate depends on a number of factors including the general health of the individual and his/her nutritional status (Ref. 9). Although the clinical manifestations of overt deficiency of albumin are well recognized, the possible effects of a borderline deficiency are as yet poorly defined. The procedure to determine total serum protein is relatively simple and rapid. The procedure to determine the amounts of specific plasma proteins is more complex. It is generally considered that, as long as the plasmapheresis donor is able to maintain total plasma proteins at established normal levels, the protein loss being incurred is not detrimental to the individual. However, there is no simple and direct way to determine the protein content of extravascular spaces so that protein reserves cannot be evaluated (Ref. 10).

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There have been several retrospective studies in which accumulated data obtained from individuals participating in less intensive plasmapheresis programs have been evaluated (Refs. 11 through 13). Although these studies provide valuable information on the effects of long-term plasmapheresis on selected individuals, the primary objective was to obtain plasma and not to test the safety of the procedure. Because of the nature of the studies, it is inevitable that those who tolerate the procedure best will elect to continue, while those who do not tolerate the procedure may elect to withdraw from the program voluntarily. In those individuals who participate as plasmapheresis donors for only a short while, it is not clear whether they withdraw because of adverse changes in their health or for some other reason. However, the studies do indicate that as a selected group, plasmapheresis donors can maintain normal plasma protein levels while losing up to 1,000 mL of plasma, about 60 grams of protein, per week (Refs. 11 through 13).

It is of significance that even in a group of plasmapheresis donors selected because of obvious good health and robust nutritional status, changes in plasma proteins occurred (Ref. 13). During the first 4 months an increase in alpha globulins occurred, with a decrease in immunoglobulins. Thus the total protein concentration may remain constant since the decrease in immunoglobulins will be masked by the increase in alpha globulins. In individuals continuing on plasmapheresis for more than 6 months there was a trend toward levels, but the IgM level continued to decrease in those donors studied for up to 3 years.

These changes occurred in individuals that were able to maintain a total protein above 6 g/dL; and when, if there was a trend toward a significant decrease in the measured proteins, the intensity of the plasma withdrawal from these donors were decreased. Although the clinical significance of decreased immunoglobulins is not entirely clear, it is apparent that individuals participating in an intensive plasmapheresis program can become partially deficient in immunoglobulins. For the present it appears that there should be careful monitoring of each patient's immunoglobulins, particularly during the first 6 months, and if total protein, albumin, or immunoglobulin levels fall below the established normal range, the procedure should be discontinued at least until normal protein levels are reestablished.

In some studies it has been noted that enzymes such as serum glutamic oxaloacetic transaminase (SGOT) and glutamic pyruvic transaminase (SGPT) become elevated in individuals undergoing intensive plasmapheresis. These enzymes are associated with cellular activity of the liver and when present in the serum in increased amounts are considered to be an indication of hepatic dysfunction. It is not clear if this represents a physiologic response to increased demands for the synthesis of proteins or represents clinically significant impairment of hepatic function. It may be that a change in these enzymes might be an early indication of excessive protein loss. Currently available data are inconclusive on this point.

Other risks of plasmapheresis to the donor include the possibility that the wrong red cells will be returned to the donor. Thus the technique used must include a system for positive identification of the donor and donor's cells.

4. *Safety of plasma obtained by plasmapheresis.* As with all blood products there is a risk that the plasma obtained by plasmapheresis may be responsible for the transmission of hepatitis. Although the risk has been reduced by the requirement that all donors be tested for HBsAg, there is still a risk of both hepatitis B and so-called "non-A" and "non-B" hepatitis which is not detected by present tests. This risk is minimal in products that can be inactivated by heating such as albumin and plasma protein fraction. Products such as factor VIII concentrate and prothrombin complex concentrates which cannot be heated carry a major risk of transmitting hepatitis.

5. *Evaluation of plasmapheresis regulations*—a. *Medical review before repeated donations.* The protein loss resulting from removal of approximately 500 mL of plasma as currently allowed in a plasmapheresis procedure is equivalent to that occurring from the collection of a unit of whole blood. With whole blood donation there is a loss of protein in red cell hemoglobin in addition to the plasma proteins. However, the protein loss due to the donation of whole blood is not apt to be a problem because of the limitations on frequency of donation. Provided that plasmapheresis is done no more frequently than is being recommended by the Panel for donation of whole blood (four times per year) the protein loss would be of no greater consequence than that in whole blood donors. However, if plasmapheresis is done more frequently, protein abnormalities may result. To evaluate this possibility, specific plasma protein determinations must be done periodically in the more intensely plasmapheresed donors. It appears more appropriate for a qualified physician to review all the accumulated information periodically in order to evaluate whether or not an individual should continue in an intensive serial plasmapheresis program than to perform a physical examination prior to the initial plasmapheresis procedure.

b. *Total serum protein determinations.* Although there are differences of opinion regarding the clinical significance, there is adequate information to indicate that individuals undergoing plasmapheresis as allowed by the current regulations do experience changes in plasma proteins. The Panel believes that plasmapheresis should not be done unless the total serum protein determined prior to donation is within the established normal range.

c. *Specific plasma protein determinations.* A blood sample must now be obtained prior to the first plasmapheresis for determinations of specific plasma proteins. Currently, the results of such tests must be available and be found to be within normal limits within 21 days after the sample is drawn. This would allow collection of the plasma from 6,000 mL of blood prior to evaluating the specific plasma proteins. The results of these tests should be evaluated sooner to protect the donor that may have preexisting protein abnormalities.

d. *Physical examinations.* The panel considered on several occasions the requirement that each donor shall be examined by a qualified licensed physician on the day of the first donation or no more than 1 week before the first donation and at subsequent intervals of no longer than 1 year. It was noted that prior to the donation of whole blood and at subsequent plasmapheresis donations, the examination is permitted to be done by someone under the physician's direction. There are informed opinions that this requirement and the requirement for determination of specific plasma proteins will limit the participation of volunteer donors in plasmaphereses programs (Ref. 14).

e. *Donation frequency.* Current regulations allow the collection of 2,000 mL of whole blood per week. Thus it would be possible to retain approximately 52 liters of plasma per year. On the basis of anecdotal information, relatively few individuals are actually plasmapheresed for a long period of time or at the maximal rate. It appears that most individuals are plasmapheresed at the maximum

allowable rate for only a few months and then discontinue. Although some drop out because they are unable to continue to meet the requirements, there is little or no information concerning why most individuals discontinue donation.

Current regulations allow plasmapheresis to be done at the maximal rate provided that the donor maintains total serum proteins above 6 g/dL. The ability of the donor to maintain plasma protein concentrations appears to be a more important criterion for safety than the amount of plasma retained during a specific time period.

Currently, it is required that tests for specific plasma proteins be done at least every 4 months in individuals in serial plasmapheresis programs. During this period approximately 16,000 mL of plasma may be collected. Since reductions in immunoglobulins appear early, this volume appears to be excessive. It appears appropriate to base the frequency of determination of specific plasma protein levels on both time and volume of plasma collected. There is a lack of firm data on which to base a recommendation concerning the degree of donor safety provided by the current regulations for frequency of plasmapheresis and the volume of plasma that may be retained.

In order to resolve these questions, a prospective and retrospective study is needed. The objective of such a study would be to: (1) Evaluate the utility of the total serum protein measurement as an indicator of protein reserves, (2) evaluate the significance of elevations in liver enzymes such as SGOT as a reflection of developing serum protein abnormalities, and (3) determine whether or not individuals discontinuing their participation in plasmapheresis programs do so because of health reasons that are not detected by currently required tests.

f. *Serological test for syphilis.* There is no indication that the current requirement for serologic testing for syphilis protects either the plasma donor or the recipient of the products prepared from source plasma. Most of the considerations of the serological test for syphilis discussed for whole blood donors apply to plasma donors. There are no data to support the value of the serological test for syphilis in protecting the quality of the donated plasma.

g. *Plasma obtained by techniques other than plasmapheresis.* It is recognized that plasma separated from single unit donations of whole blood is also an important source of material for plasma derivatives. The requirements for donor selection, collection, and initial processing of this source of plasma are covered in the Code of Federal Regulations sections on Whole Blood and Single Donor Plasma (21 CFR Part 640). There are currently no regulations defining conditions of transportation and storage of single units of plasma intended for preparation of plasma derivatives. Some units of plasma will be separated from whole blood and frozen immediately after collection. These units are essentially the same as plasma collected by plasmapheresis. The regulations should be modified to include these recovered units of plasma to encourage their use.

Plasma separated from single units of whole blood more than 6 hours after collection are not a good source of factor VIII. However, such plasma is a useful source of other plasma derivatives and its use should be encouraged.

6. *Recommendations.* a. The requirement for serologic testing for syphilis should be discontinued.

b. Regulations should be modified to require that no more plasma than can be obtained from approximately 2,000 mL of whole blood be retained within 21 days of the first plasmapheresis procedure unless a qualified physician has evaluated all of the accumulated information, including resuts of tests for specific plasma proteins.

c. The requirement for a physician to conduct an examination prior to a donor participating in a serial plasmapheresis program should be discontinued providing adequate safeguards for the donor are developed to allow other trained personnel to screen the donor for acceptability.

d. Regulations should be modified to require the testing for specific plasma proteins at least every 4 months or following the collection of 12,000 mL of whole blood (approximately 6,000 mL of plasma), whichever comes first. In order for an individual to continue as a plasmapheresis donor, the results must be evaluated by a qualified licensed physician and be determined to be within the established normal range.

e. Regulations should be promulgated to permit an individual donor to participate in a single plasmapheresis procedure in lieu of a single donation of whole blood, abiding by the rules governing donor qualification and the frequency of whole blood donations and providing that the total plasma protein level is determined as is presently done for each plasmapheresis procedure. Such donors should be excluded from participation in any plasmapherisis program in which more frequent plasmaphereses are permitted unless physical examination, specific protein determinations, and other donor requirements of 21 CFR Part 640, Subpart G, are met upon the second visit in any 3-month period. Furthermore, all donors engaged in plasmapheresis more frequent than 4 times per year (every 3 months) shall be excluded as donors of whole blood unless at the time of blood donation the person is examined and certified by a physician to be in good health. Written informed consent should be required from each plasmapherisis donor after the hazards of the procedure are explained to the prospective donor by a qualified person.

f. A prospective and retrosspective study should be done to determine the health effects on the donor participating in serial plasmapheresis as it is currently permitted. Such a study is necessary to determine whether or not existing requirements in regard to amount and frequency are appropriate.

g. Regulations should be promulgated to encourage the utilization of single donor plasma recovered from whole blood collections as a source of plasma for fractionation.

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26. Donor Immunization and Hyperimmunization

Human donors of blood components serve as the resource for several materials used to prepare products reviewed by the Panel. Many of these donors are subjected to immunization or hyperimmunization procedures to produce materials with higher antibody levels. Therefore, the Panel reviewed these techniques which are similar for several products.

1. *Immunization with blood group antigens.* The initial studies which demonstrated the red blood cell antigens of the ABO system were done with sera from humans. Since that time human serum has been the primary source of reagents to identify human red blood cell antigens. As a result of blood transfusion or pregnancy, individuals are exposed to antigens not present on their own red cells and may produce alloantibodies active against the foreign antigens. Although a blood transfusion will introduce a number of foreign red cell antigens, the antibody response is not alway predictable. The antigens may be poor immunogens and produce no detectable antibody response. One of the antigens may be particularly immunogenic, and the only detectable response will be an antibody that is specific for that antigen. More than one of the antigens may be immunogenic and result in formation of multiple antibodies that react with more than one type of antigen. Sera containing antibodies which are reactive with more than one antigen may not be suitable for processing into reagents. The desired immune response in respect to an antiserum for reagent purposes is to elicit a potent antibody which is reactive with a single antigen.

The initially available blood-grouping reagents were obtained from the plasma of individuals that had developed antibodies as a result of pregnancy of the transfusion of blood. In general the amount of antibody available from an individual donor decreases with time following exposure to the antigenic material. It was found that more potent antisera could be obtained by reexposing these antibody-producing individuals to the antigenic stimulus. Red blood cells of known antigenic composition are used for these immunizations. Red blood cells are not ideal antigens since they contain a number of different antigens, each of which may be immunogenic and may elicit an antibody response. Thus in an attempt to increase the amount of one antibody, a second antibody may be produced. To minimize this possibility it is necessary to identify the antigens of both the red cells to be injected and the individual being immunized.

Current guidelines indicate that all donors and recipients shall be phenotyped for C, D, E, c, e, Kell and Fy^a. Except for the specific blood group antigen intended to stimulate antibody response, the donor and recipient phenotypes for the above listed blood group antigens should be identical. Since these factors are relatively highly antigenic, matching for all but the desired antigen will reduce the incidence of second antibody responses which make the plasma donor useless. Although more extensive phenotyping and matching is desirable, it is not presently required.

a. *Blood Group A and B antigens.* The ABO system must be considered separately form the point of view of donor immunization since immunogenic materials with A and B specificities are widely present in the environment; thus antibodies develop "naturally" because immunization followed by antibody response occurs spontaneously without deliberate exposure to antigenic materials by blood transfusion. Thus, with rear exceptions, individuals lacking the A antigen on their red blood cells have anti-A antibodies in their plasma and individuals lacking the B antigen on their red blood cells have anti-B. Substances which function like the red blood cell antigens A and B also can be obtained from varous nonhuman sources (see the section on Blood Group Substances A and B). These A and B substances are used to stimulate the production of anti-A or anti-B antibodies in selected individuals. Most of the problems related to the use of human red blood cells as antigens are thus avoided.

b. *Rh_o*(D) antigen. When it was found that Rh immune globulin was effective in prevention of sensitization of Rh-negative women by the Rh_o(D) antigen, the need for human plasma containing anti-D antibody increased. In order to obtain this antibody in sufficient quantities to meet the apparent need for prophylaxis, it became common practice to immunize selected Rh-negative individuals intentionally with red blood cells containing the D antigen. It was rationalized that the presence of a blood group specific antibody such an anti-D is of no immediate harm to a male. The potential danger to a male is that if the individual requires a blood transfusion, it would be essential that only Rh-negative blood be used. It is assumed that there would be no problem in locating the required blood since donor blood is routinely tested for the presence of Rh_o (D), and approximately 15 percent of the population are Rh-negative. The donor-recipient cross match test for compatibility provides another safeguard. For obvious reasons it is not appropriate to stimulate anti-D antibody formation in women who are potentially childbearing.

Current guidelines allow immunization of Rh-negative men with Rh_o(D) cells provided the protocol is filed with the Director, Bureau of Biologics. The maximum volume of red blood cells used shall not exceed 50 mL within any 4-month period. Subjects not responding after receiving a total of 150 mL of red blood cells shall be dropped from the program. Smaller volumes of red blood cells have been shown to elicit an antibody response in some individuals. However, these volumes may be too low to elicit the desired antibody response in those now being exposed. The dosage schedule should be based on the minimal red cell exposure that will produce the maximum results most often in the exposed individuals. The Panel feels that since intentional immunization to produce anti-D has been done for a number of years, the most effective dose schedule could be derived from the existing records of the manufacturers. This supposedly proprietary information was not submitted by the various manufacturers.

C. *Donor/recipient selection and safety.* It is required that all donor blood be tested for A, B, and D antigens. Thus there is a great demand for reagents to test for those antigens. The use of reagents for other red blood cell antigens is more limited. However, there is a need for reagents to identify other red blood cell antigens in order to provide compatible blood in certain problem situations. To obtain these reagents, it is common practice to obtain plasma from individuals that already have a demonstrable antibody. It is rationalized that once an antibody has developed there is little additional danger in stimulating that individual with an appropriate antigen.

Since production of antibody of more than one specificity is undesirable,

identification of the antigenic characteristics of the red blood cells of both the recipient and the donor is essential. In spite of careful selection of the cells to be injected, there remains a possibility that additional antibodies may be produced. It is not practical to remove the unwanted antibodies and thus modify the specificity of the sera. Therefore, when multiple antibodies are produced by a donor of antibody, the recipient individual is exposed to all the risks of immunization but would receive none of the monetary benefits contingent upon becoming a donor. In essence, the immunization procedure is a series of blood transfusions of variable, usually small size. The risks to the recipient are the same as those of a blood transfusion given for therapeutic purposes.

Since red blood cells are used for the immunogenic material, the recipient is exposed to the risk of hepatitis. At the present time it is not possible to eliminate this risk. However, by carefully monitoring the donors and recipients and limiting the number of individuals used as red cell donors, the risk can be minimized. In some programs of immunization of donors, the red cells from some donors have been used to immunize a number of different individuals. As no evidence of hepatitis has been detected in the recipients, this would indicate that it is unlikely that the donor bloods have been transmitting hepatitis. However, the fact that the donor blood was not responsible for transmission of hepatitis in the past cannot be taken to mean that the donor cannot transmit hepatitis in the future if he unknowingly acquires an infection. Thus both the donors of cells used for immunization and the recipients of these cells must be continually monitored for evidence of hepatitis. If it were possible to freeze-preserve sufficient amounts of cells to be used for immunization, failure of transmission of the disease with the first portion of the cells would be strong evidence that the remaining frozen cells were "hepatitis free." However, under existing practices, freeze-preserved cells are rapidly used and new cells must be obtained frequently.

2. *Immunization with other antigens.* Antibodies with specificity for antigens outside the red blood cell systems are also needed. These are antibodies against various infectious agents. Individuals found to have these antibodies may be plasmapheresed sometimes following hyperimmunization with the microbial antigen. The indications for effectiveness and safety of these other immune globulin products are outside the purview of this Panel. However, to the extent that source plasma is used in the preparation of the immune globulins, these immunization procedures will be considered briefly in the recommendations.

3. *Recommendations*—a. *Immunizations for production of anti-A and anti-B.* There appears to be no need to use red blood cells for the purpose of stimulating the formation of anti-A and anti-B antibodies. Immunization for this purpose should be conducted with blood group substances A and B, used according to their licensed use (see the section on Blood Group Substances A and B).

b. *Immunization with red blood cells.* Much of what has been done in the past was done empirically and the Panel was unable to obtain complete data about these practices from the collectors of Source Plasma (Human). Until such information is available, the Panel is limited in what it can recommend that will not jeopardize the availability of essential reagents on one hand and yet provide reasonable safeguards to the individual being immunized on the other. The Panel recognizes that such things as the amount of antigenic red cells used as a primary immunizing dose, the amount of red cells and frequency of administration of the stimulating doses, and the antigenic composition of the cells of the donor and the recipient are critical variables in producing the desired immune response. At the same time the Panel cannot condone indiscriminately exposing individuals to what is essentially the risk of a blood transfusion not for therapeutic purposes.

(1) Although the risk of transmitting hepatitis can be minimized, it cannot be eliminated. The Panel concurs with current guidelines which indicate that cells from a new donor should be given to no more than three recipients during the initial 6 months of his/her use as a donor.

If no evidence of hepatitis occurs in the three recipients or in the donor during the 6-month period, the donor's cells may be used in routine stimulation. The Panel feels that no donor can be considered permanently safe and that all donors and recipients must be continually monitored for evidence of hepatitis. Recipients should be exposed to blood products from as few different donors as is practical.

(2) Although the Panel feels that freeze-preserved red cells of known low risk of hepatitis should be used where possible, more data are needed before making an unqualified recommendation. The immunogenicity of frozen red cells should be established.

(3) The Panel recommends that more extensive phenotyping and matching of donors and recipients of red cell antigens should be required and should include JK^a of the Kidd system, Lu^a and Lu^b of the Lutheran system, k (Cellano) of the Kell system and both S and s of the MNSs system. The rational of this extended typing is mentoned above.

(4) The Panel recommends that women who are potentially child-bearing should not be immunized for either the purpose of increasing titers of existing antibodies or for de novo immunization. This recommendation does not exclude plasmapheresis of women with existing antibody. However, because of the danger of producing antibodies with another specificity, women should not be given red blood cells to maintain the titer of antibody.

(5) In the absence of information about dosage schedules commonly employed by industry for the stimulation of anti-Rh_0 (D) antibody, the Panel recommends that the current FDA guidelines be retained until such time as there are sufficient data to indicate how or if they should be modified.

(6) De novo immunization for specificities other Rh0 (D) should only be performed under investigational new drug procedures. Such immunization protocols should be considered on an individual basis. The Panel was not provided with sufficient information to justify these de novo immunizations. Although it would be ideal to have available potent reagent antisera for all known red blood cell antigens, the risks of routine de novo immunization appear to be too great to justify the benefits.

(7) Current guidelines allow for injection of red blood cells into individuals with preexisting antibodies. Up to 4.0 mL red blood cells can be given as a single injection. This volume may be administered up to five times in a single month, but not more than 40 mL can be given within any 6-month period. the Panel feels that these guidelines are arbitrary and based on a "best guess" logic. However, in the absence of adequate data, it is recommended that these guidelines be retained until such time as more data indicate how and if they should be modified.

(8) Only licensed products should be used for stimulating antibody formation. If no licensed products are available, nonlicensed materials may be used with specific approval from the Director of the Bureau of Biologics.

27. FDA's Response to the Panel's Recommendations

FDA is responding to the Panel's recommendations as follows:

1. The Panel reviewed many blood products only on a generic basis, and the Panel's recommendations are intended to apply to all products in that generic category. In other cases, the Panel identified and made recommendations concerning certain individual licensed products in addition to recommendations concerning that generic category of products. FDA considers the recommendations concerning the individual product, where differing, to supersede that applied to the generic category.

The Panel recommended that blood and blood derivatives be grouped into regulatory categories as follows:

1. Category I. *biological products determined to be safe, effective, and not misbranded* [and may continue in interstate commerce]: Whole Blood (Human) ACD; Whole Blood (Human) CPD; Whole Blood (Human) Modified-Platelets Removed; Whole Blood (Human) Modified-Antihemophilic Factor Removed; Red Blood Cells (Human) Frozen; Red Blood Cells (Human) Deglycerolized; Cryoprecipitated Antihemophilic Factor (Human); Single Donor Plasma (Human); Single Donor Plasma (Human), Fresh Frozen; Normal Serum Albumin (Human); Plasma Protein Fraction (Human); Antihemophilic Factor (Human); Factor IX Complex (Human); Factor IX Complex (Human) (Konyne), Miles Laboratories, Inc. (formerly Cutter Laboratories, Inc.), License No. 8; Factor IX Complex (Human) (Proplex), for the treatment of congenital factor IX deficiency, Travenol Laboratories, Inc., Hyland Therapeutics Division, License No. 140; Rh_o (D) Immune Globulin (Human); Thrombin (for in vitro use), Ortho Diagnostics, Inc., License No. 156; Thrombin, Topical (Bovine), Parke-Davis, Division of Warner-Lambert Co., License No. 1; Blood Grouping Serum (all products); Reagent Red Blood Cells (Human) (all products); anti-Human Serum (all products); licensed third generation hepatitis testing reagents; Antivenin (*Crotalidae*) Polyvalent; Antivenin (*Micrurus fulvius*); Antivenin (*Latrodectus mactans*); Blood Group Substance A, B, AB, Armour Pharmaceutical Co., License No. 149; Normal Horse Serum.

The Panel found Normal Serum Albumin (Human) (NSA) to be safe and effective and not misbranded, and recommended that the product be placed in Category I. This recommendation applied to NSA derived from venous blood sources and that derived, all or in part, from placental sources. At the time of the Panel's review, one manufacturer, Parke, Davis & Co. (since April 15, 1980, named Parke-Davis, Division of Warner-Lambert Co.), License No. 1, was using a venous plasma and placental mixture as the source material for NSA. Subsequently, the Parke-Davis product license was amended at the manufacturer's request to exclude the use of placental materials. Another manufacturer, Michigan Department of Public Health (formerly, Bureau of Laboratories, Michigan Department of Public Health), License No. 99, has discontinued the fractionation of placental source materials for several years, but its product license still provides for the optional use of placental materials in the manufacture of NSA.

In its discussions, the Panel noted the potential existence of several hazardous substances in the placental NSA product for which there were inadequate data to determine the extent of the hazard or the impact of these substances upon the users of the product. The findings of the Panel related to the safety and effectiveness of NSA from placental sources are discussed below.

(i) The Panel observed that, unlike units of venous blood or plasma, placentas are not individually tested for hepatitis B surface antigen (HBsAg). As a result, it is possible that sufficient amounts of HBsAg may be carried over from placental source material to act as an immunogen for recipients of the final product. Accordingly, the Panel suggested that NSA from placental sources be tested for its immunizing potential.

Section 610.40(a) of the biologics regulations requires that each donation of blood or plasma used in preparing a biological product be tested for the presence of HBsAg by a method having a defined sensitivity (a third generation test). (Note: unless otherwise identified, all existing regulations referenced in this Response are in Title 21 of the Code of Federal Regulations.) Although FDA has not in the past required the testing of each placental unit for HBsAg, potential placenta donor populations have been screened for HBsAg, periodically. This testing was not, however, done in a manner which made it possible to link the results with individual placental units, nor was the sensitivity established for the test used.

(ii) The Panel observed that women in labor are more likely to have received a variety of drugs than are blood donors from the general population. Therefore, placental source materials may contain significant amounts of potentially dangerous drugs which are absent, or may be present in lesser quantities, in venous plasma. The extent to which these drugs are carried through to the final product is not known. The possibility that penicillin may be carried over into the final product was of particular concern to the Panel. In a closed Panel session, Parke-Davis representatives presented assay results which showed that there was no detectable penicillin in two lots of their final product. The Panel was, however, unable to determine the sensitivity of the microbiological assay method used. Accordingly, the Panel recommended that a significant number of lots be tested by a sensitive assay for the presence of penicillin allergen.

(iii) The Panel expressed concern that a variety of biological substances, present in placental source material but absent in venous plasma, may be bound by albumin and carried over into the final product. Several biological substances were identified which in fact are carried over to the product. The Panel recommended that the labeling of albumin prepared from placental sources inform users that a variety of biological materials may be present in small amounts.

(iv) During Panel discussions it was noted that although minimal data were available concerning the osmotic effectiveness of albumin prepared from venous plasma, no data concerning this subject were available for albumin from placental sources. Although the Panel did not mention this absence of data in its Final Report, the agency now considers this information necessary to demonstrate the effectiveness of the product in providing the intended osmotic activity in the blood of the recipient.

FDA agrees with the Panels' findings. The agency has carefully considered the findings of the Panel and has determined that the available data are insufficient to classify Normal Serum Albumin (Human) derived wholly or partially from placental sources as being safe, effective, and not misbranded for its intended uses. In addition, the agency finds that, because there remain signficant questions concerning the product's safety, the potential risks from use of this product outweigh its potential benefits. Accordingly, FDA proposes that Normal Serum Albumin (Human), when manufactured wholly or partially from placental source materials, be placed in Category IIIB, rather than Category I as recommended by the Panel.

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Under § 601.25(f), FDA proposes to revoke the product license for Normal Serum Albumin (Human) held by the Michigan Department of Public Health. In the near future, FDA intends to publish a Notice of Opportunity for Hearing (NOH) to revoke the license for the product, unless the licensee applies to amend its license to exclude placentas as an optional source material.

Based upon the available evidence, FDA Agrees that Plasma Protein Fraction (Human) (PPF) should be considered safe and effective for its indicated uses. The agency notes, however, that several significant unresolved questions about PPF remain which are relevant to a complete assessment of the safety and effectiveness of this product. See paragraphs 17, 21, and 22 of FDA's response to the Panel's recommendations. Laboratories at FDA's Center for Drugs and Biologics (CDB) are investigating some of these questions related to the safety and effectiveness of PPF. Upon completion of these studies, FDA intends to reassess the safety and effectiviness of PPF and, if necessary, propose appropriate administrative or regulatory action. (Note: FDA's Bureau of Biologics and Bureau of Drugs have been merged to form the Center for Drugs and Biologics (see 49 FR 14931; April 16, 1984).) The regulatory and scientific functions concerning biological products, formerly performed by the Bureau of Biologics, are now performed by the Office of Biologics Research and Review, Center for Drugs and Biologics (see 49 FR March 19, 1984).

FDA agrees with the Panel's findings and recommedations for the remaining Category I products and hereby proposes to adopt its conclusions, including recommended labeling revisions. Comments and additional data on these classifications are invited.

b. Category II. *Biological products determined to be unsafe or ineffective or to be misbranded and which should not continue in interstate commerce:* Fibrinogen (Human).

As noted by the Panel, all product licenses for Fibrinogen (Human) were revoked as of December 7, 1977, and no further action is necessary.

c. Category IIIA. *Biological Products for which available data are insufficient to classify their safety and effectivenes but which may remain licensed and in interstate commerce for a limited period of time pending completion of further study:* Whole Blood (Human) Heparin: Factor IX Complex (Human) (Proplex ™), for use in congenital and acquired deficiencies of factors II, VII, and X, Travenol Laboratories, Inc., Hyland Therapeutics Division, License No. 140; Fibrinolysin (Human) (Thrombolysin ™), Merck Sharp & Dohme, Division of Merck & Co., Inc., License No. 2; Fibrinolysin and Desoxyribonuclease, Combined (Bovine), and Fibrinolysin and Desoxyribonuclease, Combined (Bovine), with Chloramphenicol (Elase ™ powder for solution, Elase ™ ointment), Parke-Davis, Division of Warner-Lambert Co., License No. 1.

The Category IIIA designation reflects a determination by the Panel that there are doubts about whether data are sufficient to support an action by the agency to reaffirm or revoke a product license and that, based on an assessment of the present evidence of safety and effectiveness of a product, the potential benefits outweigh the potential risks likely to result from continued use of a product for a limited period of time (see § 601.25(f)(3)).

Under procedures by which the review of biological products was established, FDA would permit the continued interim marketing of products classified in Category IIIA, provided the manufacturer undertook the necessary additional studies to fully determine the safety and effectiveness of the product. The agency has reconsidered this policy and has determined that it is in the best interest of the public health to reclassify those biologics previously classified in Category IIIA and to proceed to either reaffirm or initiate proceedings to revoke the license for each Category IIIA product. The procedures for implementing this policy were codified under § 601.26 by final rulemaking of October 5, 1982 (47 FR 44062). Under the new procedures, the data for each product classified in Category IIIA will be reviewed by a second expert panel to recommend whether:

a. The product is safe, effective, and not misbranded (Category I) and may remain licensed;

b. The product is unsafe, ineffective, or misbranded (Category II) due to the lack of sufficient supportive evidence and for which the product license shall be revoked; or

c. The product lacks sufficient supportive evidence of effectiveness (also administratively identified as Category II) but should remain on the market pending the completion of further testing. Such a recommendation may be made only when there is a compelling medical need and no suitable alternative therapeutic, prophylactic, or diagnostic agent is available in sufficient quantity to meet current needs.

FDA is submitting for review by the Blood Products Advisory Committee the available data for those products recommended for Category IIIA by the Panel. Upon completion of its review, the Advisory Committee will submit a report to FDA containing its conclusions and recommendations for reclassification of the affected products. Then FDA will publish a proposal to either implement or reject the Advisory Committee's recommendations and at that time will provide an opportunity for public comment.

d. Category IIIB. *Biological products for which available data are insufficient to classify their safety and effectiveness and which should not continue in interstate commerce:* Blood Group Substance A and Blood Group Substance B, Pfizer Inc., License No. 164; Cobra Venom Solution and Cobra Venom with Silicic and Formic Acids (Cobroxin ™ and Nyloxin™), Hynson, Westcott & Dunning, License No. 125.

The product licenses for Blood Group Substance A and Blood Group Substance B, manufactured by Pfizer, Inc., were revoked at the request of the licensee on June 24, 1980. Accordingly, no further regulatory action is necessary.

As noted by the Panel, FDA has revoked the licenses for the remaining Category IIIB products, Cobra Venom Solution and Cobra Venom with Silicic and Formic Acids, at the manufacturer's request and further action is unnecessary.

2. The Panel recommended a number of labeling changes for Category I and IIIA products, including in some cases revisions of the indications for which the product is recommended. The agency agrees with the majority of the Panel's recommendations for labeling changes. Those recommendations involving labeling with which FDA disagrees, or which require further elaboration and clarification, are discussed elsewhere in this response. The public is invited to comment on the Panel's recommendations affecting product labeling and use. In the preamble to the final rule, FDA will advise licensed manufacturers to submit appropriately revised draft labeling to OBRR, Center for Drugs and Biologics for review and approval. FDA proposes to require that approved labeling, revised in accordance with the final rule, be available for distribution with blood products initially introduced or initlally delivered for introduction into interstate commerce 12 months after the date of publication of the final rule.

On May 16, 1980 (45 FR 32550), FDA published final regulations codifying

under § 201.59 the effective dates for the regulations under §§ 201.56 and 201.57, concerning the content and format for labeling human prescription drugs. The codified effective dates for biologics were further clarified on January 23, 1981 (46 FR 7272). For the blood products reviewed in this report, the effective date for the reformatting of labeling was set at 30 months after the date of publication of the final rule based on this proposal. Draft reformatted labeling was to be submitted to FDA 6 months after publication of the final rule. Consistent with § 201.59, FDA proposes to require that approved labeling, revised in accordance with §§ 201.56 and 201.57, be distributed with products that have been reviewed by the Panel and that are initially introduced or initially delivered for introduction into interstate commerce 30 months after the date of publication of the final rule.

Although FDA is proposing two effective dates for the various required labeling changes, i.e., 12 months for labeling changes specifically required by this rulemaking and 30 months for labeling changes in conformance with §§ 201.56 and 201.57, FDA will promptly review labeling changes proposed by manufacturers who wish to make all of the necessary changes within 12 months, thus avoiding the need to revise and reprint their product labeling twice. Since late 1979 when §§ 201.56 and 201.57 were codified, FDA has reviewed biological product labeling that was submitted for other purposes for consistency with §§ 201.56 and 201.57 and has offered suggestions as to how the labeling could be revised to comply. Thus, many manufacturers of blood products already have voluntarily revised their product labeling to comply with §§ 201.56 and 201.57, and only revisions in accordance with this rulemaking remain necessary. FDA will continue to review labeling submitted at any other time for conformance with §§ 201.56 and 201.57. By this means, FDA believes that manufacturers can readily avoid repetitive revision and reprinting of labeling by having final labeling that complies with this rulemaking and §§ 201.56 and 201.57 available by 12 months after date of publication of the final rule. If a manufacturer so wishes, compliance with §§ 201.56 and 201.57 could be delayed until the proposed effective date, 30 months after date of publication of the final rule.

3. For most of the blood products reviewed, the Panel recommended a new, generally simplified, proper name for each product. Based in part upon the Panel's recommendations, FDA proposed in the **Federal Register** of October 31, 1980 (45 FR 72404) new proper names for biological products, including blood products. FDA published a final rule establishing new proper names for biological products in the **Federal Register** of January 29, 1985 (50 FR 4128). This final rule becomes effective on January 29, 1986. In most cases, the name for a product suggested by the Panel is the same as the one established by FDA. In each case, a simple name was sought that would adequately identify the product. For convenience, FDA is using the former proper names for products in the preamble to this proposed rule, however FDA is using the correct revised proper names in the proposed codified portion of this rule.

4. The Panel stated that the production of blood bags and transfusion tubing needs to be standardized to minimize lot-to-lot variations.

FDA believes that the current regulatory procedures and manufacturing practices achieve this goal. Before a new blood container anticoagulant combination can be marketed, the manufacturer must submit a new drug application (NDA) to FDA for approval. The NDA must include specifications showing the maximum and minimum tolerance limits for each parameter affecting the safety and effectiveness of the product for its intended uses. Extensive clinical data must also be submitted to show that the new product, manufactured in accordance with these specifications, is safe and effective for the uses intended by the manufacturer. After approval of the NDA, it is the manufacturer's responsibility under the current good manufacturing practice (CGMP) regulations for human drugs in Parts 210 and 211 (21 CFR Parts 210 and 211) to ensure that such products continue to meet the specifications in the NDA. Although lot-to-lot variations may occur, the specification limits set in the NDA or approved by FDA as a supplement to the NDA and the manufacturing controls required by the CGMP regulations for human drugs and for blood and blood components in Part 606 (21 CFR Part 606) ensure that the blood products within the containers remain safe and effective throughout their dating periods. Therefore, FDA believes it is unnecessary at this time to require, through issuance of regulations, additional production procedures for blood bags and transfusion tubing. Voluntary performance standards are desirable for such products, however, and the agency is cooperating with the subcommittee of the National Committee for Clinical Laboratory Standards (NCCLS) in their design.

5. The Panel made the following recommendations concerning additional standards for Whole Blood (Human) in Part 640:

a. The maximum number of whole blood donations for an individual should be reduced from 6 to 4 times per year and no more frequently than every 8 weeks. Procedures to bleed donors more frequently could be established with the concurrence of CDB if adequate means are employed to protect donors from the development of iron deficiency.

b. The acceptable minimum hemoglobin level for male donors of whole blood should be increased from 12.5 to 13.5 grams per 100 milliliters of blood. The blood sample used for determining the donor's hemoglobin level should be obtained by finger-stick or by venipuncture.

c. Both cell grouping and serum (reverse) grouping should be required in donor ABO blood grouping. Any discrepancy in the results of these tests should be resolved before the blood is labeled. Licensed reagents or their equivalent should be required for cell grouping tests.

d. The blood should be tested for the D^u variant if the test using Anti-D serum is negative. Routine testing for C and E and other Rh antigens should not be required.

Based in part on these Panel recommendations, in the **Federal Register** of October 31, 1980 (45 FR 72422), FDA proposed to revise the additional standards for Whole Blood (Human). Subsequently, FDA withdrew for reconsideration that proposed rule (July 22, 1983; 48 FR 33494). FDA herein is reproposing to revise additional standards for Whole Blood (Human) consistent with the Panel recommendations. However, several of the reproposed revisions are significantly different from those proposed in October 1980. FDA advises interested persons to resubmit any comments on the October 1980 proposed rule that remain relevant, referencing the docket number found in the heading of this document.

The Panel's recommendation that the maximum permissible donation frequency should be reduced from six to four times per year reflects its concern, based on published data from a number of clinical studies, that under the current donor suitability requirements some individuals may develop an iron deficiency when donating at or near the current maximum rate. The Panel's recommendations concerning the

determination of a donor's hemoglobin level (item b. above) are also related to the protection of individuals with low iron stores.

FDA shares the Panel's concern that the present donation schedule may result in a significant depletion of iron reserves in blood donors, which may not be detectable by the currently required donor-screening procedures. Data made available to FDA since the Panel's review and the October 31, 1980 proposal further substantiate the relationship of frequent blood donation and the development of an iron deficiency, especially for female blood donors (Simon, T.L., "Iron Stores in Blood Donors," *Journal of the American Medical Association*, 246:2038, May 22, 1981). Accordingly, FDA agrees that the present standards concerning donation frequency and donor suitability should be modified to protect individuals with low iron stores. Although FDA agrees that the specific measures recommended by the Panel would ensure the health of all donors, the agency believes that alternative modifications to the standards would be equally effective in protecting the health of blood donors. FDA believes that, in some localities, a fixed reduction in donation frequency could have a significant adverse effect on a community's blood supply and alternative procedures, such as establishing more stringent donor suitability requirements, would be preferable. In other localities, the effect of reducing the donation frequency would be negligible. Consequently, the agency believes that each facility should be allowed maximum flexibility for selecting appropriate standards for adequately protecting the health of its donor population.

Accordingly, for those establishments that elect to operate under routine donor suitability requirements, FDA is proposing to amend § 640.3 to reduce the routine maximum donation frequency to five times per year for male blood donors and four times per year for female blood donors. The lower rate proposed for female donors is consistent with data showing that iron levels are more critical for females. FDA is proposing to retain the requirement that individuals donate no more frequently than once every 8 weeks.

Under the proposed regulation, blood establishments will be offered several alternatives by which an individual may donate blood more frequently than allowed by the proposed routine limits. First, as is provided in the current regulations, an individual may donate more frequently if examined by a licensed physician at the time of donation and the physician certifies in writing that the donor meets all donor requirements described under § 640.3. Second, a licensed blood establishment may submit to OBRR, a protocol describing the procedures the establishment intends to use to protect the health of individuals donating more frequently than allowed by the proposed routine limits, particularly procedures to prevent the development of an iron deficiency by the donor. Upon approval by OBRR, the procedures would be incorporated into the establishment's written standard operating procedures (SOP) and used to protect those individuals donating more frequently than allowed by the proposed routine limits. Finally, FDA invites the submission by any of the organizations representing the blood-banking industry of protocols for procedures to protect donors contributing blood more frequently than allowed by the proposed routine limits. Upon approval by OBRR, the procedures could be published in a procedural manual sponsored by the organization or otherwise distributed to individual blood establishments. Individual establishments could then incorporate the procedures into their SOP and begin implementation without the direct approval of OBRR. By the use of these alternatives, the agency believes that the health of the donors will be protected without any adverse effect on the Nation's blood supply. OBRR will begin the review of submitted protocols immediately upon receipt so that such alternative procedures for protecting donors may be put into effect in a timely manner.

The Panel's recommendation that the blood sample used for determining a donor's hemoglobin level be obtained by fingerstick or venipuncture is based upon data demonstrating that the alternative technique, earlobe puncture, gives less consistent and generally higher hemoglobin values. FDA agrees that the earlobe puncture technique produces results that do not correlate consistently with the hemoglobin level of venous blood; however, FDA believes that the use of this sample technique does not necessarily invalidate the test results. There are some donors who, for reason of comfort, prefer the earlobe puncture technique and in fact may not donate if alternative techniques were used. Many establishments use the earlobe puncture technique only upon the request of the donor. At some of these establishments, a higher minimum acceptable hemoglobin level is used when the blood sample is collected by earlobe puncture. Because of the insensitivity of the method routinely used to determine the hemoglobin level, the copper sulfate method, FDA does not believe that the technique for obtaining the blood sample will significantly alter the health protection characteristics of this screening procedure. Accordingly, although FDA considers venipuncture and finger puncture the preferred techniques, the agency intends to continue to permit the use of the earlobe puncture technique, with each blood establishment establishing appropriate minimum hemoglobin levels as discussed below.

FDA agrees that in most cases the acceptable minimum hemoglobin level for male donors should be 13.5 grams per 100 milliliters (1 deciliter) of blood. Many blood banks have already adopted this level as a voluntary standard. The agency recognizes, however, that the average hemoglobin level of a population varies according to the geographic location. Specifically, individuals residing in a high-altitude location tend to have a higher hemoglobin level. As a result, a specific minimum hemoglobin level may be reasonable for some locations while resulting in the rejection of healthy donors at other locations.

Accordingly, FDA is proposing to amend the regulations in § 640.3(b)(3) by no longer prescribing specific acceptable minimum hemoglobin levels, and placing the responsibility on each blood establishment for determining what minimum hemoglobin levels should be set for the adequate protection of its donors. The hemoglobin levels selected should be based on the geographic location of the establishment and shall be consistent with current scientific knowledge and good blood-banking practices. The minimum acceptable hemoglobin levels and the method of blood sample collection shall be documented in the establishment's SOP. Major organizations representing the blood-banking industry, as part of the protocols for the protection of iron-deficient donors, may recommend appropriate methods and criteria for the screening of donors on the basis of hemoglobin levels. A licensed establishment intending to modify its hemoglobin testing procedures and criteria in a manner other than that established by a major blood-banking organization must notify the Director, OBRR, of the prospective change and have its establishment license amended accordingly.

Currently, the regulations concerning ABO blood grouping under § 640.5(b) require that at least two blood group tests be made on each unit of blood and that these tests must agree before the

unit is issued. Serum grouping (testing the donor's serum against known group A and group B cells) is not specifically required. FDA agrees with the Panel that serum grouping is the most reliable means of confirming the results obtained by cell grouping. Indeed, most blood establishments already perform both of these tests in determining a donor's ABO group. Accordingly, FDA is proposing to revise § 640.5(b) to require that both cell grouping and serum grouping be performed in determining the ABO group of a donor's blood and that any discrepancy in the results of these tests shall be resolved before the blood is labeled. The current regulations already permit the use of unlicensed blood grouping sera if the sera are shown to meet the same regulatory standards as the licensed reagents. This provision is revised only for clarity and to identify the requirements that unlicensed sera must meet.

Under current § 640.5(c), the testing of blood for the D antigen variant known as D^u is optional, provided that blood otherwise tested as Rh negative is labeled to show when testing for D^u was not done. The testing of Rh negative blood for other Rh antigens, such as C and E, is optional. Most blood banks routinely test blood negative for the D antigen for D^u, while tests for the other antigens in the Rh system generally are not done. FDA agrees that D negative blood should always be tested for D^u to ensure the accurate characterization of the blood and to prevent the possible immunization of blood recipients who are Rh negative. Accordingly, FDA is proposing to revise § 640.5(c) to require that blood tested as negative using Anti-D Blood Grouping Serum be tested for D^u. FDA is proposing to clarify the provision in § 640.5(c) concerning the use of unlicensed reagents and to identify the requirements that unlicensed reagents must meet. Provisions for the appropriate labeling of blood according to Rh group were included in the Uniform Blood Labeling proposal of October 31, 1980 (45 FR 72416) and final rule of August 30, 1985 (50 FR 35458).

6. The Panel recommended that: (1) Each unit of blood from selected donors should be tested for clinically significant unexpected antibodies unless the unit of blood will be issued without significant amounts of plasma, in which case antibody screening should not be required; (2) blood found to contain significant antibodies should not be transfused unless the plasma is first removed; and (3) a preliminary donor screening based on the donor's medical history could be allowable as an alternative procedure to testing for clinically significant unexpected antibodies.

FDA agrees that blood from a donor whose medical history indicates that significant unexpected antibodies maybe present should be tested for significant antibodies. The proposal to revise the additional standards for Whole Blood (Human) published on October 31, 1980, included a requirement that blood from previously transfused or previously pregnant donors be screened for significant alloantibodies—antibodies in blood plasma that could react with antigens on a recipient's red blood cells. Although that proposal was subsequently withdrawn for further consideration (July 22, 1983; 48 FR 33494), FDA remains convinced that such a requirement should be promulgated. Accordingly, FDA is reproposing in § 640.5(d) to require the screening of blood from previously transfused or previously pregnant blood donors for the presence of significant alloantibodies. FDA is proposing a cross-reference to this provision in § 640.33(a) of the additional standards for Single Donor Plasma (Human). As discussed in FDA's response to the Panel recommendation that follows, FDA also is proposing to require that the procedures for screening for significant donor alloantibodies be described in each establishment's standard operating procedures manual.

In its Uniform Blood Labeling regulations (August 30, 1985; 50 FR 35458), FDA included a requirement that significant unexpected antibodies be identified on the label of blood and blood components containing significant amounts of plasma. Because the donor blood sample is taken at the time of collection of the unit, the intended use of the unit is usually unclear and plasma may subsequently be used for transfusion. Consequently, FDA is proposing to require that all units of blood from the selected donor be screened for the presence of significant alloantibodies. FDA notes, however, that the screening procedure may be omitted if the plasma is immediately separated from the unit and labeled in a manner to prevent the plasma's use for transfusion. The agency believes that donor blood containing significant alloantibodies does not constitute a hazard to the recipient if the plasma is removed or if it is properly crossmatched with the recipient's cells. The proposed rules would continue to permit the use of such blood for transfusion, provided that the unit is labeled adequately to inform the clinician.

7. The Panel recommended that the major crossmatch (testing the compatibility of donor erythrocytes against recipient serum) should employ methods that demonstrate significant hemolyzing, agglutinating, and coating antibodies which are active at 37° C and should include the antiglobulin test or its equivalent. The Panel also recommended that a minor crossmatch (donor serum tested against recipient cells) should not be required as part of the pretransfusion testing.

FDA agrees with the Panel's recommendations. Section 606.151 of the biologics regulations describes the procedures for compatibility testing of donor and recipient blood which must be included in each blood establishment's written SOP. FDA is proposing to revise this section in response to the above recommendations and other related Panel recommendations, and to update and clarify the section consistent with current medical knowledge and existing regulations. The proposed amendments to each paragraph of § 606.151 are described below:

a. Proposed § 606.151(a) would require that the SOP describe a method to ensure the positive identification of blood samples of donors, as well as the blood samples of recipients, as is currently required. This proposed requirement is consistent with current § 640.4 (e) and (g) which require appropriate handling and positive identification of a donor's blood samples.

b. Current § 606.151(b) would be deleted. Through practical experience it has been determined that the normal length of storage of serum samples does not affect the accuracy of pretransfusion test results. Accordingly, FDA is proposing to delete the requirement to use only recipient serum less than 48 hours old.

c. Proposed § 606.151(b) would require a description in the SOP of the procedures for determining the ABO and Rh groups of donors and recipients using licensed blood grouping sera or their equivalent. The proposed requirement is consistent with the requirements of § 640.5 (b) and (c) concerning the testing of donor blood samples.

(d) Proposed § 606.151(c) would replace current § 606.151(d) concerning the minor crossmatch of each donor's serum with the recipient's cells for the detection of significant antibodies. As noted by the Panel, it is now considered unnecessary to crossmatch a donor's serum with the recipient's red blood cells for the detection of significant antibodies. Proposed § 606.151(c) would

require a description in the SOP of the procedures for the detection of significant alloantibodies in the plasma of those donors who are most likely to have significant alloantibodies, namely, previously transfused or previously pregnant donors. The more general term, "significant alloantibodies," antobodies produced by an individual that react with antigens of another individual of the same species, is substituted for "agglutinating, coating and hemolytic antibodies." Proposed § 606.151(d) is worded consistently.

e. Based on current § 606.151(c), FDA is proposing to revise § 606.151(d) concerning the major crossmatch. Consistent with the Panel's recommendation, FDA is proposing to require that the SOP specify a method that will demonstrate significant alloantibodies which are active at 37° C. Proposed § 606.151(d) would permit the use of alternative methods to the antiglobulin technique, which are equally sensitive for the detection of unexpected alloantibodies. This less restrictive requirement will allow new antibody detection methods to be used as technology develops.

f. FDA is proposing to delete the recordkeeping provisions now included in § 606.151(e). Such recordkeeping requirements already are included in current § 606.160 *Records* under paragraph (b)(3)(v). FDA is proposing to add to § 606.151(e) a requirement to descrive in the SOP the procedures for neonatal and autologous transfusions, two other situations, where the full regimen of pretransfusion testing might not be appropriate.

8. The Panel recommended that the requirements for the serological test for syphilis (STS) be removed from the regulations for determining the suitability of whole blood donors and plasma donors. The Panel's conclusions follows:

a. *STS is a nonspecific and inaccurate test.* The majority of positive test results are "biological false positive" (BFP), due to various acute or chronic conditions and illnesses unrelated to syphilis that are nonspecifically detected by the STS test. In addition, early in the onset of the disease, the STS is often nonreactive, even though the causative agent of syphilis, *Treponema Pallidum,* is circulating in the person's blood stream.

b. *Syphilis is not transmitted by blood transfusion.* Because of modern blood banking and transfusion practices, syphilis is not known to be transmitted by blood transfusion. As described above, blood containing the causative agent of syphilis may be nonreactive by the STS and may be transfused; however, not one case of transfusion-transmitted syphilis has been reported in the past 20 years.

FDA agrees with the Panel's findings; the STS is no longer useful for is original intended purpose, namely, the prevention of the transmission of syphilis through either blood transfusion or the use of other injectable blood products. However, because of considerations evolving subsequent to the Panel's review, FDA intends to publish separately rulemaking to remove the requirements for performing the STS for syphilis.

9. The Panel presented a list of information that should be exclusively included on Whole Blood (Human) and Red Blood Cell (Human) container labels. Of particular note, the Panel suggested that only paid donors and not volunteer donors need to be identified on the blood label. The Panel also suggested that, in the event machine-readable codes are included on the container label, the codes should not detract from the eye-readable aspects of the label.

FDA agrees in part and disagrees in part with the Panel's recommendations. In the **Federal Register** of August 30, 1985 (50 FR 35458), FDA promulgated revised requirements for the uniform labeling of blood and blood components. With several exceptions, the final rule agrees with the Panel's recommendations regarding labeling. FDA will require that the instructions, "transfuse through a filter" and "do not add medication other than 0.9% NaCl solution," be placed in the instruction circular, rather than on the container label as suggested by the Panel. Also, FDA wil retain unchanged the requirement in §606.120(b)(2) regarding the donor classification, "volunteer donor".

In the **Federal Register** of January 13, 1978 (43 FR 2142), FDA promulgated the requirement that a donor classification statement be included on the label to protect public health. FDA based its regulation on data showing that blood from paid donors generally presents a higher risk of transmitting hepatitis than blood from volunteer donors. At a June 1982 meeting, FDA's Blood Products Advisory Committee was asked to consider, among other things, FDA's donor classification requirements. The Blood Products Advisory Committee recommended that the current donor classification requirements be retained without change. A number of States have enacted legislation that requires donor classification on blood labels, with specific labeling requirements varying from State to State. FDA intends to require a uniform label for blood products shipped in interstate commerce and will protect public health by continuing to require a statement of donor classification on the label of each unit of blood.

In its uniform blood labeling final rule of August 30, 1985, FDA recommended that machine-readable (bar-code) information be included on each blood container label. FDA is also recommending that each blood label have all information in a standard position and format. FDA believes that the additional bar coding should not detract from the eye-readable accuracy of the label.

10. The Panel determined that there is limited evidence supporting a 48-hour dating period for Whole Blood (Human) Heparin and recommended that the dating period be reduced to 8 hours.

FDA agrees that the available data are inadequate to support a 48-hour dating period for the product. There is a lack of data to show that adequate red blood cell viability is maintained for 48 hours or data to identify any molecular and cellular changes that may occur in heparinized blood during storage. Accordingly, the agency is proposing to amend § 610.53 *Dating periods for specific products* by prescribing an 8-hour dating period for Whole Blood (Human) Heparin, pending the submission of satisfactory data in support of a longer dating period for this product.

11. The Panel noted that some institutions add ACD or CPD anticoagulant to heparinized blood and use it up to 12 days thereafter. The Panel advised that, if there is a need for such a modification, additional studies would be appropriate to demonstrate the safety and effectiveness of the product.

FDA believes that such a modified product is not safe and effective and its use clearly is not permitted under the regulations. (See §§ 601.12(b), 610.52, 610.53, 640.2(c), and 640.4(d) of the biologics regulations.)

12. The Panel recommended that frozen and deglycerolized red blood cell products should meet the following criteria.

a. Red Blood Cells (Human) Deglycerolized should be prepared by a method resulting in a minimum in vitro yield of 80 percent of the original red blood cell mass.

b. At least 70 percent of the red blood cells should survive in the recipient 24 hours after transfusion.

c. The effective yield (mean in vitro yield multiplied by the mean percent of survival at 24 hours post-transfusion) should be at least 65 percent.

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d. The final suspending solution for deglycerolized red blood cells should be isotonic and contain between 130 and 160 milliequivalents of sodium per liter.

e. The final product should contain no more than 0.5 gram of glycerol and 175 milligrams of supernatant hemoglobin per deciliter.

Three methods, the low- and high-glycerol methods and cytoagglomeration, currently may be used by licensed establishments for the freezing of Red Blood Cells (Human). Each of these methods has been shown by manufacturers' data, scientific literature, and practical experience to produce an isotonic final product that meets the cell viability criteria specified above. New product license applications for Red Blood Cells (Human) Frozen must be accompanied by data demonstrating adherence to one of the established acceptable methods, or, if approval is sought for a significantly modified or new method of freezing and/or thawing, appropriate supportive data must be submitted to demonstrate that the final product is safe and effective. FDA considers the current policy adequate for determining the safety and effectiveness of these products, and no changes to the criteria are proposed at this time.

13. The Panel suggested that the dating period for Red Blood Cells (Human) Frozen may be extended beyond the currently codified 3-year period (§ 610.53(b)), provided the product is shown to meet specified viability and recovery criteria. The Panel also recommended that the shelf-life for Red Blood Cells (Human) Deglycerolized (the period between removal of the product from storage at −65 °C to the time of transfusion) should be extended beyond the currently permitted 24 hours, if specified viability and recovery criteria are met and no increased risk of bacterial contamination is shown when compared with the product stored in a liquid state.

FDA agrees with these recommendations. The agency is aware that on many occasions frozen red blood cells of rare phenotypes have been transfused without apparent adverse effect after storage for significantly longer periods than 3 years. FDA requests that interested persons submit any data available to support a longer dating period for Red Blood Cells (Human) Frozen. The supporting information should be submitted for each of the currently approved cryopreservation methods and should include recovery, survival, and effective yield data at the end of the extended storage period.

FDA also will consider amending the 24-hour post-thaw shelf life period in the current regulatory standards for Red Blood Cells (Human) Deglycerolized upon receipt by FDA of data demonstrating that neither the risk of bacterial contamination nor the level of free hemoglobin is greater with the extended shelf life period than that associated with currently licensed deglycerolized red blood cell products with shelf life limited to 24 hours, and that acceptable viability and recovery criteria are met.

14. The Panel recommended that each registered establishment (blood bank or laboratory) processing Cryoprecipitated Antihemophilic Factor (Human) should standardize its factor VIII assay and correlate the in vitro test results with in vivo recovery and survival testing, and reestablish the correlation each time a significant change in the production process occurs.

FDA agrees that a standardized factor VIII assay should be used by all registered blood establishments and testing laboratories involved in the processing of cryoprecipitate. A dried plasma standard with an assigned potency based on comparison with the World Health Organization (WHO) standard is availale from the Office of Biologics Research and Review, FDA (see § 640.55 (21 CFR 640.55)). Manufacturers should obtain such a standard from FDA to be used to calibrate their house standard for the factor VIII assay.

FDA agrees that in vitro factor VIII assay results should be correlated with the clinical effects of the product. The agency recognizes that there are technical difficulties in obtaining reliable in vivo recovery data known to correlate with in vitro test results. Until an appropriate standard method of in vivo testing can be developed, the agency will consider the in vitro test validated when the assayed product is found to achieve the expected clinical results, as determined by careful patient monitoring. FDA advises that this form of validation is necessary at the time of the initial manufacture of the product and when the production process is significantly changed.

15. In the text of their review of Cryoprecipitated AHF, the Panel made several technical suggestions pertinent to the preparation of cryoprecipitate. The Panel also recommended several changes in the labeling for Cryoprecipitated AHF. The recommendations are summarized below.

a. If the unit is frozen in a liquid medium, an overwrap should be used to prevent interaction of the freezing liquid with the plastic bag and its contents. (All licensed blood banks already follow this procedure.)

b. Cryoprecipitate containers should be thawed at 30° to 37° C for at least 15 minutes to ensure maximum Factor VIII recovery.

c. Saline is the preferred diluent if cryoprecipitates are provided on a non-blood-group-specific basis.

d. Pooling should be performed by experienced personnel to ensure complete removal of all concentrated material from each container.

e. The labeling should indicate that cryoprecipitate usually contains at least 150 milligrams of fibrinogen per unit.

f. The labeling should indicate that good patient management requires monitoring treatment responses to cryoprecipitate transfusions with periodic plasma Factor VIII or fibrinogen assays in hemophilia A and hypofibrinogenemic recipients, respectively.

FDA finds that many of these suggestions are appropriate for inclusion in the SOP manual required for each establishment by § 606.100(b). Accordingly, FDA proposes to require that the above procedures (a) through (d) be added to the SOP manuals for cryoprecipitate production upon the effective date of the final rule. Because the technical suggestions are directed toward the user of the product, FDA finds the information (b) through (d), as well as the specific labeling recommendations listed in (e) and (f), appropriate for inclusion in the instruction circular made available with the product. Accordingly, as provided in the Uniform Blood Labeling final rule of [date pending], FDA will require that the information described in items (b) through (f) be included in the instruction circular.

In regard to suggestion (d) concerning pooling, FDA advises that the final pooled product, except when specifically provided for in the product license, may not be transported in interstate commerce. As a result, it is usually more practical to pool the product at the hospital or at the home of the patient immediately prior to use rather than at the processing facility. Accordingly, the information has been proposed for inclusion in the instruction circular. OBRR has information on the safety of the procedures for pooling cryoprecipitate at the time of manufacture. FDA currently is reviewing license amendments to permit this procedure.

16. The agency has determined that the following biologics regulations

respond fully to specific Panel recommendations, or to suggestions contained in the text of their review concerning Cryoprecipitated Antihemophilic Factor (Human). The regulations are summarized below only to the extent that they relate to a Panel recommendation:

Section 640.56 (a) and (d)—Each blood bank must test at least four units of cryoprecipitate in each month of preparation to assure an average potency of no less than 80 units of antihemophilic factor per container.

Section 606.122(n)(1)—The instruction circular shall bear a statement that the average potency is 80 or more units of antihemophilic factor.

Section 606.122(n)(5)—The instruction circular shall bear instruction to store at room temperature after thawing and to use as soon as possible, but no later than 4 hours after entering or pooling and within 6 hours after thawing.

17. The Panel noted that research is needed to establish the fate and function of monomeric, dimeric, and polymeric forms of Normal Serum Albumin (Human) (NSA). As an interim measure, the Panel recommended that the production process for NSA be designed to assure that the maximum amount of albumin is in the monomeric form. The Panel also noted that if minimum limits are set for the monomeric content of NSA, the expiration times (dating periods) may need to be revised.

The agency agrees and has carried out research to develop suitable methods for measuring the amount of monomeric, dimeric, and polymeric forms of albumin in both NSA and Plasma Protein Fraction (Human) (PPF). Furthermore, FDA has carried out laboratory measurements that show that nonmonomeric albumin is less effective osmotically than the native (monomeric) form. During an open meeting of FDA's Blood Products Advisory Committee on February 8, 1983, FDA discussed with manufacturers of plasma derivatives a number of possible changes in the regulations for NSA, PPF, and immune globulins. FDA discussed determining the monomeric, dimeric, and polymeric albumin content of NSA and PPF by measuring the molecular distribution of each lot of final product. Through separate rulemaking, FDA intends to propose revised additional standards for NSA and PPF. The proposed rule would add new requirements, such as a requirement for a test for molecular distribution, while deleting or relaxing some existing requirements, as indicated by recent advances in technology. FDA will continue to examine stability data and, if appropriate, will propose revised dating periods or storage conditions for NSA and PPF in § 610.53(a).

18. In their review of Normal Serum Albumin (Human), the Panel recommended that:

a. The sodium content of NSA should be limited to 130 to 160 milliequivalents per liter (mEq/L);

b. CDB should be informed by the manufacturer of the amount of "reworking" in the production of each lot released;

c. The term "salt poor" should be discontinued on the product labeling;

d. The approximate concentration of chloride and potassium ions should be given in the package insert.

FDA agrees with the Panel's recommendations. Regulations in accordance with items a. and b. above are already codified under §§ 640.82(d) and 640.85(b)(1) and (3) of the biologics regulations.

FDA advises that the Panel's recommendation concerning the term "salt poor" was implemented in the **Federal Register** of May 31, 1977 (42 FR 27577), and the term is no longer used in product labeling.

FDA agrees that the approximate concentrations of chloride and potassium ions should be included in the product labeling. The potassium ion concentration is of particular significance because high potassium concentrations in a patient's plasma (hyperkalemia) caused, for example, by large volume transfusions, are known to affect cardiac function adversely.

FDA is proposing to amend the additional standards for Normal Serum Albumin (Human) in § 640.82 to require that the potassium concentration of the final product not exceed 2 milliequivalents per liter (2 mEq/L). Laboratories at OBRR have tested a number of recently released lots of NSA at various protein concentrations to determine their potassium content. All lots tested, regardless of the protein concentration, contained less than 1 mEq/L potassium. Under § 640.82(d), manufacturers of NSA are required to determine the sodium content of the final product. The test used by nearly all manufacturers for determining the sodium content of the product (flame photometry) may simultaneously be used for determining the potassium concentration; therefore, the proposed requirement does not impose any additional testing burden upon the manufacturer. An identical requirement is already in effect for a similar licensed product, Plasma Protein Fraction (Human) (§ 640.92(d)).

Consistent with the Panel's recommendations, FDA also intends to require that the package insert note under the "Description" section of the labeling that the product contains less than 2 mEq/L of potassium. Alternatively, the labeling may note the approximate potassium concentration of the product as determined by the assay of a representative number of lots.

The package insert should also include the approximate chloride ion content of the final product. The approximate concentration may be established by determining the range of chloride ion concentrations of an adequate number of representative lots and be expressed in the package insert either as a range of values or by other means which note the possible variation in concentration. For certain patients, the clinician must know the approximate chloride concentration of a product used for replacing lost plasma to ensure that the proper acid-base relationship of electrolytes in the patient is being maintained (Rahilly, G.T., and T. Berl, "Severe Metabolic Alkalosis Caused by Administration of Plasma Protein Fraction in End-Stage Renal Failure," *The New England Journal of Medicine*, 301:824–826, 1979).

The chloride ion concentration is equally relevant for the proper administration of Plasma Protein Fraction (Human). With the exception of the product labeling for two licensees, this information is already included in the package circular. FDA intends to require that all package circulars for Plasma Protein Fraction (Human) include this information.

19. In accordance with FDA's finding that placental plasma is unsuitable as a source material for the manufacture of Normal Serum Albumin (Human), the agency proposes to amend § 640.80(b) of the biologics regulations to delete reference to placentas as an acceptable source material. In addition, because FDA believes that placental plasma should no longer be used for manufacture of NSA, FDA proposes to delete § 640.84(b) which requires that the labeling of the final product identify whether the product was derived from venous plasma, placental plasma, or both.

In a related matter not specifically addressed by the Panel, FDA is proposing to delete reference to serum and blood as allowable source materials for the manufacture or Normal Serum Albumin (Human), Plasma Protein Fraction (Human), Immune Serum Globulin (Human), and Measles Immune Globulin (Human).

Serum has not been used as a source material for blood derivatives since the advent of the modern anticoagulants, more than two decades ago. Since that

time, serum has not been available to derivative manufacturers. In recent years, the blood clotting mechanism has become more completely understood. It is known that a variety of blood enzyme systems are activated during clotting and that many of these activated enzymes have vasoactive properties. Before FDA would again permit the use of serum as a derivative source material, it would be necessary to demonstrate that these extraneous activated enzymes have been removed, either before or during the fractionation process. Accordingly, FDA is proposing to amend §§ 640.80, 640.90, 640.100, and 640.110, to delete the references to serum as an allowable source material for blood derivatives. Furthermore, licensed manufacturers of plasma derivatives no longer receive whole blood and remove the red blood cells at the fractionation facility. Accordingly, FDA proposes to amend the sections above by deleting the word "blood."

20. The Panel stated that manufacturers of Plasma Protein Fraction (Human) should have a control testing program for measuring prekallikrein activator (PKA) in the product and that the acceptable level of PKA should be no more than 25 percent of the then-current Bureau of Biologics (now CDB) reference standard (Reference Lot No. 1). The panel also recommended that, as technology permits, limits for bradykinin content in PPF should also be established.

FDA accepts these recommendations. Both of these issues were discussed at FDA's Workshop, "Roundtable Discussion of PKA and Bradykinin Measurements in PPF and Albumin," held March 16, 1978. At this meeting, it was found that test methods used by manufacturers for determining the enzyme activity yielded values for the PKA concentration in the product which agreed well with those values determined by the agency. Although FDA does not at this time propose limits for PKA levels, all manufacturers of PPF have instituted control testing programs for measuring PKA and a maximum PKA level equal to 25 percent of that in the 1978 reference preparation (Reference Lot No. 1) is now a product-release criterion with which the manufacturers voluntarily comply. FDA also believes it would be appropriate for manufacturers to establish voluntarily a maximum permissible PKA level for Normal Serum Albumin (Human).

Although PPF has caused hypotensive adverse reactions that cannot be related to its PKA content, at present few, if any, of the reported reactions can be ascribed to the bradykinin content of the product; nor are data currently available to establish the magnitude of a safe and appropriate required limit of bradykinin content. The agency has invited the submission of such data (42 FR 27581; May 31, 1977), but none has been received. Some manufacturers have set voluntarily an in-house bradykinin limit for their products.

21. In its review of Plasma Protein Fraction (Human) (PPF), the Panel noted in several instances that there were inadequate data available for accurately determining the benefit-to-risk ratio for the product. In particular, the Panel found that PPF is effective in maintenance of a normal circulating blood volume, but PPF has not been proven to be effective in the maintenance of oncotic pressure and that the degree of effectiveness of this product may be related to the method of preparation. The Panel recommended that more sophisticated in vivo studies be sponsored within the medical community to evaluate the effectiveness of PPF in elevating oncotic pressure and that, in the absence of such data, the package insert should indicate that no evidence exists that PPF appreciably increases the oncotic pressure of the patient's plasma.

FDA agrees that there are inadequate data to support the oncotic effectiveness of PPF and that the recommended study should be performed. Because the recommended study is directly related to demonstrating the effectiveness of the product for its labeled indications, FDA believes that it is primarily the responsibility of the manufacturers of this product to ensure that such studies are done. Consistent with the Panel's Category I recommendation and because adequate methods to measure oncotic effectiveness may not yet be available, FDA is not proposing to require manufacturers of PPF to undertake these studies at this time. FDA agrees that until adequate data are available the labeling should note that there is no evidence that PPF appreciably elevates oncotic pressure. Accordingly, FDA proposes that this revision in PPF labeling be made in accordance with the Panel's recommendations.

22. In its review of Antihemophilic Factor (Human) (AHF), the Panel recommended that:

a. The labeling should include information about the content of anti-A and anti-B antibodies which may cause hemolytic anemia when given in large amounts.

b. Manufacturers should test each lot of the product to determine its anti-A and anti-B levels.

c. When applicable, the final product should be tested to demonstrate that it contains no more than 0.1 microgram of aluminum per unit of antihemophilic factor.

d. When applicable, the final product should be demonstrated to be free of heparin activity, or the amount of heparin activity remaining should appear in the labeling.

e. The labeling should contain information about the fibrinogen content of the final product.

FDA agrees with these recommendations. All current instruction circulars for AHF include a statement that the product contains anti-A and anti-B isoagglutinins which may cause hemolytic anemia when given in large amounts. In addition, each manufacturer of this product has voluntarily set specification limits for these antibodies, which are included in the product license and are subject to approval by OBRR. All manufacturers now test each lot of final product to ensure that the anti-A and anti-B antibody levels are within the specification limits set in their product license.

All manufacturers using aluminum hydroxide in the processing of AHF have submitted data to FDA demonstrating that all recent lots contain aluminum levels below the maximum limit recommended by the Panel. In addition, the majority of manufacturers routinely test each lot of final product for aluminum. FDA proposes to require that any manufacturer using aluminum hydroxide to process AHF amend its product license to provide for the testing of each lot to ensure that the aluminum content falls below 0.1 microgram per unit of antihemophilic factor.

FDA is aware that there are technical difficulties in measuring low levels of heparin in an accurate and reproducible manner. In addition, because the small amount of heparin used in processing this product is not considered to be clinically significant, there is little value in providing to the consumer a precise measurement of the amount of heparin present. Therefore, FDA advises those manufacturers using heparin to revise their labeling to note the maximum amount of heparin which may be present in the final product, as calculated from the amount introduced during processing. Alternatively, the labeling may state the average amount of heparin found in the final product, as determined by a validated assay of a representative number of lots.

Although AHF is not indicated for the treatment of any form of fibrinogen

deficiency (Cryoprecipitated AHF is the indicated product), the approximate fibrinogen content remains relevant to inform the clinician of the composition of the product. Accordingly, FDA proposes that manufacturers revise their product labeling (package insert) to state the fibrinogen content in terms of an average percentage of the total protein.

23. The Panel made the following recommendations concerning the labeling for Factor IX Complex (Human):

a. Because of the potential side effects associated with Factor IX Complex (Human), the product should be administered only when the patient cannot be managed appropriately with single-donor plasma.

FDA agrees with this recommendation. Because of the product's unavoidable potential for inducing thrombosis and transmitting hepatitis, the physician should be informed that use of single-donor plasma may be more appropriate. Therefore, FDA is proposing to require that the statement "Factor IX Complex (Human) should be used only when the patient cannot be managed adequately with plasma" be included under the "Indications" section of the labeling.

b. The Panel recommended that certain additional information be included on the container label for Factor IX Complex (Human).

FDA agrees in part and disagrees in part with the recommendations. FDA recognizes the necessity of limiting the information on the container label to that absolutely necessary for the product's proper handling and use. As additional information is added to the label, the label becomes crowded and overall clarity is reduced substantially. FDA believes that the assayed quantity of each clotting factor used for the treatment of an indicated deficiency should be stated on the container label. FDA also believes that a warning concerning hepatitis should be included on the container label, such as the hepatitis warning that now is required for other blood products capable of transmitting hepatitis.

However, FDA believes that information concerning the sodium and potassium content of the final product should be included in the package insert, rather than on the container label as recommended by the Panel. Similarly, FDA believes that a warning concerning thrombosis should be included in the "Warnings" section of the package insert. Although thrombosis from use of this product is a significant hazard, because of the infrequency of the occurrence of thrombosis this warning need not be highlighted on the container label.

c. The Panel recommended that the quantity of anticoagulant in the product should be included in the labeling.

FDA interprets the term "anticoagulant" to mean heparin or a calcium-binding ion (specifically, citrate or phosphate). Because of the difficulty of reliably assaying low levels of heparin, either the maximum possible heparin level or the amount determined to be in the final product by a reliable and validated assay should be noted in the labeling. The amount of citrate or phosphate may be determined by assaying a representative number of lots. Such assays must be repeated each time a significant change in the manufacturing process occurs, and the quantities shown in the labeling revised if necessary.

d. The Panel recommended that the labeling include more detailed information regarding the dosage and frequency of administration of the product and information about how to monitor effectiveness of treatment for each indicated clotting deficiency.

FDA agrees with this recommendation. FDA recommends that the dosage information include a data summary on in vivo recovery, biologic turnover rates, and hemostatic levels of the appropriate clotting factors. To keep the labeling as concise as possible, readily available references may be provided for the laboratory measurement of the appropriate clotting factors.

24. In the text of their review of Fibrinolysin (Human) (a combination product containing plasminogen and streptokinase (SK)), the Panel summarized the factors that a clinician should consider before initiating repeated parenteral administration of a product containing SK. The Panel also recommended that all fibrinolytic agents (Fibrinolysin (Human), Streptokinase, and urokinase) should be reviewed again at a later date by a single panel of experts.

FDA advises that, at the present time, there are no plans for these products to be reviewed again by an advisory group from outside FDA; however, if the need should arise, FDA intends that this family of products be reviewed as a group. For the present, these fibrinolytic agents are the regulatory responsibility of OBRR and every effort will be made to assure that FDA's regulatory policies for these products are enforced equitably and consistently. As an example, on April 10 and 11, 1980, a public workshop was held in which the current labeling for these fibrinolytic agents was discussed. One of the objectives of this meeting was to develop consistent labeling for these products. In addition, the considerations for SK therapy summarized by the Panel, their other labeling recommendations, and recent scientific information were reviewed with the intent of updating the product labeling in light of current medical knowledge.

25. The Panel recommended that all lots of RH_o(D) Immune Globulin should be assayed by an approved method and that there should be consistency in assay standardization and expression of potency.

For the present, the agency does not consider it necessary to require a specific standardized test method for determining the potency of this product. Although all manufacturers do not use the same potency assay method, each lot must be tested against a U.S. Reference RH_o(D) Immune Globulin obtained from OBRR. Each dose of the final product is contained in a volume between 0.5 and 2.0 mL of immunoglobulin and, as specified in each manufacturer's product license, each dose has a potency equal to or greater than that of 1 mL of the reference material. Consistency in dosage is assured by the above requirements, although the antibody concentration may vary according to the lot being tested. Lot-to-lot consistency is further assured by means of the following procedures:

a. The U.S. Reference RH_o(D) Immune Globulin is tested in parallel with the product on the same day.

b. Several red blood cell phenotypes are used.

c. Potency assays are performed at both the bulk and final container stage during manufacture.

d. Frequently, the potency is confirmed by assays at FDA.

26. The Panel noted three current uses of RH_o(D) Immune Globulin (i.e., postpartum administration to Rh-negative mothers after delivery of an Rh-positive child, post-abortion administration to Rh-negative women and after transfusion of Rh-positive blood to Rh-negative recipients). Six possible uses of the product were also reviewed. The Panel recommended that the requirement for an RH_o(D) Immune Globulin crossmatch prior to administration be eliminated and the labeling revised accordingly.

FDA agrees that an RH_o(D) Immune Globulin crossmatch prior to administration is no longer necessary and has approved amendments to product licenses to eliminate this requirement.

With regard to the current uses, two manufacturers have submitted appropriate data to FDA supporting low-dose RH_o(D) Immune Globulin prophylaxis of Rh-negative women following abortion up to 12 weeks gestation. Product license amendment for this dosage have been approved, and the labeling has been revised accordingly.

In addition to the currently approved indications, the Panel recommended that the product be approved for use after transfusion of any blood product containing Rh-positive red cells to an Rh-negative recipient in whom it is desirable to suppress primary immunization. FDA agrees with this recommendation and advises that manufacturers may revise their product labeling accordingly. In relation to this indication, the Panel mentioned that some preparations of platelets or granulocytes may contain substantial numbers of Rh-positive red cells. FDA advises that the uniform labeling requirements for blood and blood components provide for the inclusion of the Rh group on the container label so that the clinician may determine when primary Rh immunization may occur.

The Panel also suggested that administration of RH_o(D) Immune Globulin should be permitted for a period longer than the present labeling limitation of 72 hours postpartum. The Panel recommended that, although administration within 72 hours after exposure to Rh-negative red cells is highly preferable, administration up to 2 weeks after such exposure should be permitted, provided the labeling warns that efficacy may be reduced. FDA agrees with this recommendation. Because the supporting evidence is very limited, the labeling should continue to emphasize the importance of administering the product within 72 hours after exposure. However, the labeling may be revised to provide, with suitable warnings, for administration up to 2 weeks after exposure.

The Panel also recommended that RH_o(D) Immune Globulin be administered after significant abdominal trauma, including amniocentesis, to a pregnant, non-sensitized, Rh-negative woman. In principle, FDA agrees with this recommendation, but advises that no clinical data are available to support a specific dosage for the product when used in this manner. Therefore, for this indication, any license amendment submitted to FDA requesting approval of a dose which is lower than the usual postpartum dose must be accompanied by adequate, supportive clinical information. For the remaining three suggested uses—routine intrapartum administration, administration to Rh-negative infants of Rh-positive mothers, and administration to D^u-positive women after delivery—FDA agrees with the Panel's finding that further study is needed before recommendations for these uses can be made.

27. In their review of Blood Grouping Serum, the Panel presented the following recommendations:

a. The regulations should be reviewed to reduce, if possible, the number of antigens for which testing must be accomplished in the specificity test.

b. Certain information specified by the Panel should be included on the container label.

c. Manufacturers should provide an Rh control serum for use with anti-D Serum when testing a patient's (but not a normal donor's) blood.

d. Bulk packaging should be permitted for some Blood Grouping Sera.

FDA agrees with the Panel's intent that the regulations not impose unnecessary restrictions which would limit the availability of these products or increase their cost. FDA believes, however, that the present policy meets the Panel's intent, while providing necessary information to the users of this product. Under § 660.26(c), Blood Grouping Serum must be tested with red blood cells having, as a group, the 42 antigens listed in subparagraph (c)(1) of that section. These specificity tests determine whether any contaminating or undesirable antibodies are present in the candidate serum. Under § 660.26(c)(2) and (d)(2), a manufacturer may readily be exempted from testing for any of the less significant antigens when appropriate cells are not available, provided the package insert identifies those antigens for which no specificity test has been performed. In this manner, a user who suspects that the reagent serum is giving nonspecific results may consult the package insert for a list of those factors not tested. If the number of antigens listed for specificity testing were simply reduced, most consumers would have a difficult time in determining what tests the manufacturer was required to perform, and what untested antigens might be suspected.

FDA agrees that because of the vial's small size, the container label should be reserved for only critical information. The container label requirements under § 660.28(a)(2) were promulgated by FDA with the intent of limiting the amount of required information to a minimum. As an additional consideration, this product is often separated from the package insert and package label during use; therefore, it is essential that the vial label include all information necessary for the product's proper use by a knowledgeable consumer, e.g., a trained technician. Accordingly, information in addition to that recommended by the Panel, such as the expiration date, recommended test method, antibody specificity, and the source material used if other than human, is required on the vial label. The volume of the product is also required on the label because it would be a greater burden for manufacturers to print separate package inserts for each volume of product marketed. Accordingly, FDA proposes no changes in the current container label requirements.

As noted by the Panel, an Rh control is not necessary with Anti-D Serum when testing the blood of a normal donor. Current anti-D labeling of high-protein reagents recommends the use of either bovine albumin or an Rh control serum for patient testing. Because Anti-D Serum functions adequately in many situations without a control, FDA does not consider an Rh control serum to be a necessary and integral part of the licensed product. Accordingly, FDA does not require that manufacturers of Anti-D Serum provide an Rh control serum.

FDA agrees that bulk packaging should be permitted for some Blood Grouping Sera. In a proposed rule published in the **Federal Register** of March 5, 1985 (50 FR 8743), FDA proposed to amend § 660.21(e) to remove all specific volume restrictions for the final product.

28. The Panel recommends that the labeling for Reagent Red Blood Cells be revised to include the following information:

a. A caution against use after the end of the dating period.

b. Specific instructions about how to obtain additional information concerning the test cells.

c. Information about how to dilute test cells and the useful life of the cells so diluted.

d. More specific information about the loss of reactivity with storage.

The Panel also recommended that the data supporting the dating periods for these products be reviewed to determine their adequacy.

FDA agrees that more specific information is needed in the labeling about the loss of antigen reactivity with storage of Reagent Red Blood Cells. In the **Federal Register** of June 11, 1985 (50 FR 24546), FDA proposed to amend the labeling regulations in § 660.35 to require that, for Reagent Red Blood Cell products recommended for the detection

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or identification of unexpected antibodies, the package insert identify the specific antigens which are most likely to decrease in reactivity during storage. FDA also proposed to require that the labeling include a statement that the rate at which antigen reactivity is lost is partially dependent upon characteristics of the red blood cell donor, characteristics which are neither controlled nor predicted by the manufacturer.

Although some manufacturers' inserts already warn that Reagent Red Blood Cells are not to be used beyond the expiration date, FDA does not agree that this statement should be required. FDA believes that the technicians using this product are clearly aware of the meaning and implications of the expiration date given on the label and recognize that the performance of the reagent cannot be warranted beyond that date. FDA does not permit use of outdated reagents for required tests in the manufacture of licensed biological products. In some other settings, such as under carefully controlled conditions in a consultant reference laboratory, highly experienced personnel may occasionally use outdated cells successfully for other purposes without endangering the accuracy of the test results.

FDA believes that the current labeling provides appropriate information for the proper use of Reagent Red Blood Cells in normal situations. In addition, manufacturers routinely provide additional information or test results to individual consumers upon request. FDA does not believe, however, that the manufacturer should be required to provide regularly a burdensome compilation of highly technical information and test results. Therefore, FDA believes that at the present time the current system of providing specific information upon individual request functions adequately.

FDA agrees that the data supporting the dating periods for Reagent Red Blood Cells should be reviewed. Currently, in § 610.53(a), a dating period of 35 days is established; however, through the amendment of individual product licenses, a number of manufacturers have been granted dating periods longer than 35 days under the authority of § 610.53(b). The data supporting these dating periods have been reviewed by CDB and confirming data are being sought. FDA will, as appropriate, propose to amend the codified dating period for Reagent Red Blood Cells or advise individual manufacturers to amend their product licenses consistent with the available supportive stability data.

The agency believes that a manufacturer should not provide instructions on how to modify their product by means other than those recommended in the product labeling. Because the current labeling does not recommend dilution of the test cells, consumers who do dilute the cells assume responsibility for the reactivity and stability of the product. Before a manufacturer would be permitted to recommend diluting the test cells, an amendment to the product license accompanied by appropriate supportive data would be necessary.

29. The Panel presented a number of recommendations, further described below, concerning the labeling of Anti-Human Serum. The Panel also identified the antibody specificities that the product should contain when used for each of the reviewed indications.

FDA agrees with the majority of the Panel's recommendations, many of which are already in practice. A guideline concerning the labeling and lot-release requirements for this product was made available and was sent to licensed manufacturers in 1977. The guideline is on file with FDA's Dockets Management Branch (Docket No. 770–0219). FDA believes that the guideline and the current product labeling adequately respond to the Panel's recommendations with few exceptions. The remainder of the recommendations with which FDA agrees are addressed in a proposed rule concerning additional standards for Anti-Human Serum, published in the **Federal Register** of April 30, 1982 (47 FR 18623). FDA advises that the agency published in the **Federal Register** of February 11, 1985 (50 FR 5574) a final rule based on the proposal of April 30, 1982. Elsewhere in that same issue of the **Federal Register**, FDA revoked the guideline on the product.

The Panel recommended that the specific antibodies present in each lot be identified on the vial label. Currently, in conformance with FDA's guideline, the package insert should specify each of the antibody reactivities present. The product is identified on the vial label by a proper name reflecting only the significant antibodies present. For example, a product labeled as "polyspecific" must contain anti-IgG and anti-C3d activity but may or may not also include anti-IgA, anti-IgM, Anti-C3d, anti-C4b and anti-C4d. To require the inclusion on the vial label of each antibody reactivity present could confuse the consumer, who might not be aware of its limited significance, and might be burdensome to the manufacturer by necessitating the printing of customs labels for each lot product. Therefore, FDA intends to continue the current labeling policy for Anti-Human Serum.

For the evaluation of suspected incompatible transfusions, the Panel states that Anti-Human Serum should contain anti-IgG activity, either alone or with anti-complement. FDA requires that both anti-IgG and anti-C3d activity be present in reagents recommended for this use. There is evidence that particular antibody transfusion reactions sometimes are detected best by anti-C3d reagents. Because of the possible serious consequences of an incompatible blood transfusion and because it is not always possible to obtain ideal clinical samples at the optimum time following a suspected transfusion reaction, FDA permits only the polyspecific reagent to be labeled for use in evaluating suspected incompatible transfusions, thereby providing maximum assurance of correct test results.

The Panel recommended that, if anti-C4 activity is present in Anti-Human Serum, the amount should be such that the product is not reactive with normal, clotted, refrigerated red cells. The current guidelines specifies that the product should not agglutinate clotted, normal red cells stored at 2 to 8° C for at least 24 hours. FDA believes that "false positive" reactions may not always be due to anti-C4 activity; high levels of anti-C3d may also agglutinate "normal" cells. In relation to this question, the agency sponsored a study to evaluate the frequency and nature of the "false positive" reactions which are associated with reagents containing anticomplement. The results of the study offer further support for the belief that false positive reactions are not always due to anti-C4 activity. (Nasongkla, M., J. Hummert, and H. Chaplin, Jr., "False positive direct antiglobulin test reactions with polyspecific antiglobulin reagents." *Transfusion*, 22:273–275, 1982).

30. Although all currently available licensed third generation tests for the detection of Hepatitis B Surface Antigen (HBsAg) were found to meet the standards for safety and effectiveness, the Panel urged that a workshop be held for the purpose of redefining "third generation test" sensitivity on the basis of an absolute minimum standard amount of HBsAg that must be detected by an acceptable method, without an inordinate number of false-positive results.

FDA agrees that the development of an appropriate absolute HBsAg standard could improve the

standardization of the third generation test. The FDA Reference Hepatitis B Surface Antigen Panel currently in use is prepared from the sera of known HBsAg positive and negative donors. The quantitation of the HBsAg is not always exactly reproducible as a new reference panel is made; however, licensed manufacturers are given an opportunity to test each panel in order to resolve any disparities before the new panel becomes the standard reference panel.

FDA believes that considerable technical problems remain to be resolved before developing an absolute standard, and that a workshop on this issue is premature. Specifically, FDA considers the available evidence insufficient for establishing the absolute amounts of antigen HBsAg subtypes to be incorporated into such a standard. In addition, present technology cannot assure the preparation of a standard that is suitable for use in determining the sensitivity of licensed third generation tests. Therefore, FDA believes that the use of a reference panel—a procedure which admittedly is somewhat arbitrary, but which is equitable to all test methods—is the best option at present. FDA continues to pursue the development of an absolute standard for HBsAg and, as technology advances, will seek the adoption of a well-defined, absolute minimum reference standard.

31. The Panel recommended that antivenins from sources other than horses should be made available in the United States to treat patients having severe horse serum hypersensitivity.

FDA agrees that antivenins from other animal sources are sometimes needed as alternative drugs to the currently licensed antivenins prepared from horse serum. No such drug presently is licensed in the United States. If antivenins from alternative animal sources are produced in a foreign country, the agency will consider in appropriate circumstances permitting the importation of the product under individual investigational new drug exemptions solely for emergency use for individuals severely hypersensitive to horse serum. FDA expects that new hybridoma technology, now under development, may result in the manufacture of highly purified antivenin products to which recipients would not be severely hypersensitive.

32. The Panel noted that with the presently marketed 10-milliliter size of reconstituted antivenin, 2 to 4 vial doses are recommended for mild envenomation, while 10 to 20 vials may be necessary for treatment of a severe *Crotalidae* envenomation. The Panel stated that a problem with the effective use of these products appears to be undertreatment, partially related to the relatively small amount of material per vial. The small dosage size might encourage an unwarranted over-cautious attitude on the part of the treating physician and result in undertreatment of a patient. Accordingly, the Panel recommended that the container size be doubled.

FDA will consider any application to amend the license for an antivenin product to provide for larger container volumes; however, FDA believes that such a change is unlikely at this time. FDA considers the likelihood of undertreatment due to the small vial size to be minimal. Antivenins have been manufactured in 10 mL volumes for nearly 50 years and many medical texts provide adequate information for aiding the physician in determining an appropriate dosage. Further decreasing the likelihood of undertreatment is the trend toward the designation of regional centers for the treatment of venomous bites, where the personnel are familiar with the proper use of antivenin products.

FDA is also aware that there are technical problems that may outweigh any benefits accured from an increase in container volume. The lyophilization (freeze-drying) of larger product volumes may affect adversely the stability of the product, thereby shortening the dating period of the product. Because emergencies requiring the administration of antivenins rarely occur, a venin product often is held until its expiration date and then discarded. Thus, any decrease in the dating period for antivenins would result in a proportional increase in product wastage through outdating.

33. The Panel recommended that the use of Single Donor Plasma (Human) and of plasma recovered from single unit donations of whole blood should be encouraged for use in fractionation. To this end, the Panel recommended that the regulations be revised to define the appropriate storage and shipping conditions for recovered units of plasma.

Recovered human plasma is an unlicensed source material to be used for further manufacturing only. Blood establishments commonly recover this plasma from units of blood or Single Donor Plasma (Human). The recovered human plasma is then shipped to a manufacturer for fractionation or for preparing in vitro reagents. The agency is reviewing all aspects of the handling, storage, and use of recovered human plasma. Upon completion of this review, the agency intends to take any necessary action to encourage the efficient use of recovered human plasma, while ensuring that the products derived from the plasma are safe and effective.

The agency advises that the current additional standards for Whole Blood (Human) and the plasma derivatives do not prohibit the use of Single Donor Plasma (Human) as a source for blood derivatives. Indeed, Single Donor Plasma (Human), Fresh Frozen, is routinely used by manufacturers as a source of Antihemophilic Factor (Human).

FDA encourages the preparation of as many individual components from a unit of blood as is safely possible, thereby allowing the use of this valuable national resource with the maximum efficiency. As part of this effort, FDA is proposing to amend the regulations in §§ 640.24(b) and 640.34(d) to increase from 4 to 6 hours the time period within which platelet products must be separated from whole blood. With the increased trend toward regionalization of blood-banking centers, there are many instances in which a collection facility is remote from the locations where the components are separated and processed. The proposal would allow such facilities more time to collect and transport blood for the separation of platelet products, thus freeing the remaining components for other uses, including plasma for fractionation. A licensed manufacturer has submitted data to OBRR demonstrating that blood may be held for up to 6 hours at 20° to 24° C before the separation of platelet rich plasma without jeopardizing the safety and effectiveness of the products involved. These data are on file with FDA's Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville MD 20857.

FDA also proposes to clarify § 640.24(b) to apply the proposed 6-hour limit only to the period between the collection of the blood and the separation of the plasma and platelets (platelet rich plasma) from the red blood cells. Previously, if Platelet Concentrate (Human) was the desired product, the regulations were ambiguous as to whether the platelet concentrate had to be separated from the red blood cells and excess plasma within the specified time period. Recently, a representative of a licensed blood bank requested clarification of this provision, noting that there is no scientific basis for prohibiting the separation of platelet concentrate from platelet rich plasma at any time during the 72-hour dating period. Furthermore, it was noted that keeping the full volume of plasma with

the platelets during the storage period would aid in maintaining a proper pH balance, an important element for preserving platelet function. Upon review, FDA agrees that there is no scientific evidence to indicate that the safety and effectiveness of the product would be adversely affected if it were stored initially as platelet rich plasma and subsequently centrifuged to produce platelet concentrate. Accordingly, FDA is proposing to clarify the regulations to provide greater flexibility for maintaining platelet products.

34. Consistent with a proposed amendment to § 640.3(b)(3) in the additional standards for Whole Blood (Human), FDA is proposing to revise the donor suitability requirements in § 640.63(c)(1) to require that donors of Source Plasma (Human) have a blood hemoglobin level within normal limits as prescribed in the written SOP of the establishment. Occasionally a plasma donor's red blood cells cannot be returned to the plasma donor, for example, because of a clot in the collected blood or a leak in the blood container. Accordingly, a plasmapheresis center should determine that a donor's blood has a normal hemoglobin level to assure that the donor can tolerate the loss of up to a unit of whole blood. As recommended by the Panel, FDA believes that the acceptable minimum hemoglobin level generally should be 13.5 grams per deciliter (g/dL) of blood for males and 12.5 g/dL for females. However, the appropriate limits for hemoglobin level at each establishment is dependent on factors such as the establishment's location and the method of collecting the blood sample. Under proposed § 640.63(c)(1), FDA would permit each plasmapheresis establishment to select appropriate normal limits for the hemoglobin level of its donors, based on sound scientific principles. The establishment would be required to include in its written SOP the selected limits and the method of collecting the sample of blood used in determining a donor's hemoglobin level. As provided under § 601.12, establishments should submit the SOP above to the Director, OBRR, for approval as an establishment license amendment. Establishments not submitting an SOP to FDA would be presumed to have adopted the normal limits for hemoglobin level recommended by the Panel, i.e., 13.5 g/dL for males and 12.5 g/dL for females.

35. The Panel recommended that the frequency of testing a plasmapheresis donor's blood for specific plasma proteins should be based upon the cumulative volume of plasma collected, as well as on the time elapsed since the last tests were conducted, as is currently required. The Panel also recommended that, while the blood sample is being tested and the accumulated laboratory data are being reviewed, the amount of plasma collected from the donor should be limited to that obtained from 2 liters of whole blood.

Currently, under § 640.65(b)(1)(i), a blood sample must be taken on or before the day of the first donation and each 4 months thereafter. A variety of tests, including measurement of specific plasma proteins, are performed on the sample. The results of these tests, along with other laboratory data, must then be reviewed to determine whether the donor may continue in the plasmapheresis program. Under § 640.65(b)(2)(i), this review must be completed within 21 days after the sample is drawn. The 4-month period was initially based on data submitted in support of product licenses and has since been supported by additional information gathered by licensees and by the review of records during FDA inspections. These data show that, although the levels of individual plasma components may fluctuate, the total protein remains relatively constant during a 4-month period. Under § 640.65(b)(2)(i), if the 4-month blood sample is found to have a total protein value of less than 6.0 grams per deciliter or a protein composition not within the normal limits established by the testing laboratory, the donor must be removed from the plasmapheresis program until the values return to normal. These provisions are intended to ensure that a donor is removed from an extended plasmapheresis program before his or her health may be clinically impaired. The agency is not aware of any data that suggest that the safety of a donor, having previously been determined to be in good health, may be adversely affected by plasmapheresis during the 4-month interval between blood tests, nor is FDA aware of evidence to support the required retesting of a donor's blood after the donation of a given volume of plasma, e.g., that obtained from 12,000 mL of whole blood as was suggested by the Panel. Lacking such data, FDA rejects the Panel's recommendation and proposes to retain the present 4-month interval for the required testing of a donor's blood.

As stated previously, a donor's serum protein levels and other accumulated laboratory data must be reviewed every 4 months to determine whether long-term plasmapheresis is adversely affecting the donor's plasma protein composition or general health and whether the donor should at least temporarily be removed from the plasmapheresis program. The initial test of a new donor's protein composition primarily serves to establish the normal baseline levels of that donor's plasma components, with which future determinations of the donor's plasma components may be compared. FDA considers the initial medical examination, which includes a urinalysis, and the tests and observations performed on each visit (e.g., weight, blood pressure and pulse, hemoglobin level, and total protein) adequate to ensure that the donor is healthy and has no pre-existing abnormalities which might be significantly aggravated by plasmapheresis during a 4-month interval. Because the protein composition test performed every 4 months is primarily a long-term assessment tool, the agency does not consider it imperative that the results be reviewed immediately to ensure the safety of the donor.

The 21-day interval currently permitted for the completion of the review process allows for possible delays which may occur when the samples and reports are exchanged between a collection facility and a remotely located testing laboratory. For establishments testing their own samples, this process is routinely handled much more expeditiously. During this maximum 21-day interval, as much as 4.4 liters of plasma may be contributed before the donor's plasma protein profile is examined. FDA does not believe that donation of plasma during the 21-day interval will jeopardize the health of a donor who has previously undergone a medical examination and has, on each day of donation, been determined to be suitable as a donor through a regimen of tests and observations. Accordingly, FDA proposes to retain the 21-day interval currently permitted for reviewing a donor's laboratory data, without imposing any additional volume restrictions on the amount of plasma donated during the interval.

36. The Panel recommended that the donor suitability requirements for plasma donors who are plasmapheresed at the frequency recommended for donations of whole blood or less should be revised to be equivalent to the suitability requirements for whole blood donors, except that the total plasma protein should be determined at each donation as is currently required.

FDA agrees that less stringent donor suitability requirements should be provided for plasma donors contributing

at no greater frequency than that proposed for whole blood donors, i.e., those donors not donating more often than once every 8 weeks, nor more frequently than 4 times a year for females, or 5 times a year for males. The existing regulations related to donor suitability in §§ 640.63 and 640.65 are designed to protect donors who may be the subject of a rigorous plasmapheresis schedule, donating up to 50 to 60 liters of plasma per year. For discussion, the existing donor suitability requirements may be divided into three parts:

a. A medical examination is required on or before the first day of donation and once a year thereafter (§§ 640.61 and 640.63(b));

b. Before the initial donation, the hazards of the procedure are explained and written informed consent obtained from the donor. On each day of donation, the donor's medical history is reviewed, the total serum (or plasma) protein is determined, and other tests and observations are made (§ 640.63 (c) and (d));

c. A blood sample is taken to determine the donor's plasma or serum protein composition on or before the day of the initial donation and every 4 months thereafter; the test results, and other accumulated laboratory data, are then reviewed to determine the donor's suitability (§ 640.65(b)).

The initial medical examination and plasma protein tests are intended to provide the necessary information for determining whether the donor may safely engage, or continue, in a long-term serial plasmapheresis program. The medical history review and the other donor suitability requirements determined on each day of donation are intended to ensure that the donor may be plasmapheresed on that day without jeopardizing the safety of the donor or adversely affecting the quality of the product. Except for the required test for total serum protein, requirements under § 640.63(c) are basically the same as those required on the day of a whole blood donation under § 640.3.

The primary limiting factor for the frequency of donating whole blood is the donor's ability to regenerate red blood cells and maintain iron stores. Because the protein portion of the blood is replaced quite rapidly, protein loss has not been shown to be a significant limiting factor when whole blood is donated every 8 weeks. Similarly, plasma donors donating on an 8-week schedule are not subject to the potential long-term effects which might result from the loss of large volumes of protein during intensive plasmapheresis.

Accordingly, FDA is proposing to add new paragraph (f) to § 640.63 to provide for less stringent donor suitability requirements for those donors contributing plasma (and whole blood) at no greater frequency than that proposed for whole blood donors, i.e., once every 8 weeks and no more frequently than 5 times a year for males and 4 times a year for females. Under the proposed rules, establishments plasmapheresing such a donor would not be required to perform a physical examination, nor would a total serum protein test and specific plasma protein determinations be required.

A significant effect of the proposed exemption is that for many new donors a medical examination and a blood sample for protein component analysis will not be required on the initial visit of the donor. New donors meeting the specified criteria, including those donors who intend to contribute plasma on a regular basis, would be considered exempt under proposed § 640.63(f). Accordingly, the blood sample would be taken and medical examination performed on the second or later visit, whenever the donor fails to meet the criteria specified in proposed § 640.63(f).

The proposed exemption would not apply to donors being immunized for the production of high-titer plasma, although previously immunized donors may qualify for exemption. The exemption also would not apply to donors who require careful monitoring for health-related reasons, such as donors being plasmapheresed for therapeutic purposes, hemophilic donors, and hepatitis B surface antigen reactive donors. FDA also proposes to amend the regulations prescribing the initial donor screening (medical examination), plasma protein tests, and periodic laboratory review by referencing the proposed exemption.

Under proposed § 640.63(f), the suitability requirements for plasma donors meeting the specified criteria would be essentially the same as those applied to whole blood donors, except that informed consent as provided under § 640.61 would still be required. A qualified licensed physician or, as provided under proposed § 640.62(b), another adequately trained and qualified person identified to the Director, OBRR, would be required to explain the hazards of the procedure to the prospective donor before the initial donation.

FDA recognizes that the proposed exemption from a total serum protein determination is inconsistent with the Panel's recommendation that it be retained. FDA is not aware of any data in support of the recommendation to retain this test for individuals donating at a frequency no greater than that permitted for donation of whole blood. To require this test would be inconsistent with the requirements for whole blood donors who, if hemoglobin loss is included, experience loss in protein nearly identical to that experienced by plasma donors on each donation. Past experience has shown that the total protein level of even the most extensively plasmapheresed donor rarely falls below the minimum acceptable level, 6 grams per deciliter, established under § 640.65(b)(2)(i). An 8-week interval between donations will be ample time for the resynthesis of plasma components and for the total protein to return to previous levels. Accordingly, the agency finds that the total protein level is not a limiting factor in determining the suitability of donors being plasmapheresed according to the criteria in proposed § 640.63(f).

FDA is also proposing to amend § 640.65(b)(1)(i) by removing a gender-specific pronoun. In the future, the agency will remove other gender-specific pronouns in Subpart G of Part 640.

37. The Panel suggested that trained personnel other than a licensed physician be permitted to screen donors for acceptability providing there are adequate safeguards for the donor.

FDA agrees that adequately qualified and trained persons other than a licensed physician may safely screen normal healthy donors. In addition, the agency has reviewed the routine duties which currently either require the presence or the active participation of a licensed physician. The agency has determined that these routine duties, related to the assessment and plasmapheresis of normal healthy donors, may be performed by an adequately qualified and trained individual other than a licensed physician without jeopardizing the health of the donor or resulting in adverse effects on the quality of the final products. Specifically, these duties includes the following: (1) Explanation of the hazards of the plasmapheresis procedure to a potential donor (§ 640.61); (2) determination of donor suitability, collection of whole blood and return of red blood cells, during which a licensed physician must be on the premises (§ 640.62); (3) the initial medical examination and certification of good health (§ 640.63(b)); and (4) the periodic review of laboratory data (§ 640.65(b)(2)(i)).

Accordingly, FDA is proposing to amend § 640.62 to permit an adequately trained and qualified person other than a licensed physician to perform routine duties specified above, as they relate to

the assessment and plasmapheresis of normal healthy donors, provided the Director, OBRR, is notified at least 30 days in advance of the assumption of such duties by the individual. Before such a person could assume these additional duties, FDA believes there should be a brief training period during which a licensed physician acquaints the person with the procedures and problems particular to the plasma center. Thereafter, the person would be under the direction of a licensed physician, but the presence of the physician during any of the specified duties would not be required.

The proposed provisions would not apply to the assessment to donors with a previously diagnosed disease who are being plasmapheresed for the further manufacturing of in vitro diagnostic reagents, or who are being immunized for the production of high-titer plasma. A licensed physician responsible to the establishment shall continue to determine that the donor remains in generally good health, as judged by the applicable criteria for medical history and laboratory measurements defined under § 640.3. Exceptions to these general health standards, including laboratory measurements, may be made on application to the Director, OBRR. Examples of donors with a previously diagnosed disease who may be in generally good health and, therefore, plasmapheresed for special purposes, but for whom the proposed exemption would not apply, include donors with a coagulation factor deficiency, rheumatoid arthritis, systemic lupus erythematosis, syphilis, or a variety of autoimmune type syndromes.

FDA advises that the term "on the premises" as used in § 640.62 has consistently been interpreted by FDA to include when a physician is available within 15 minutes of the facility to respond to medical emergencies. Although under the proposed provisions a specific licensed physician would no longer need to be available, adequate emergency medical care must continue to be available with 15 minutes. For example, a plasmapheresis establishment could arrange with an ambulance service to provide emergency transport service, when needed, to a nearby hospital.

The extent and elements of the initial medical examination required by § 640.63(b) vary according to the standard operating procedure of the individual plasmapheresis location. However, FDA has established as basic requirements those elements of a medical examination necessary to determine whether the donor has a condition which might jeopardize the safety of the donor during plasmapheresis or affect the quality of the plasma. The basic elements include a blood pressure determination, ausculation of heart and lungs, abdominal palpitation, a brief neurological examination, and a urinalysis. These basic donor screening procedures are not comparable to the more comprehensive physical examination that a person would receive from the person's personal physician. In addition, a medical or physical examination is often construed to involve the direct participation or close supervision of a licensed physician. Accordingly, the agency considers the term "initial medical examination" no longer appropriate in § 640.63(b) and is proposing to revise this paragraph by substituting the term "initial donor screening" for the term "initial medical examination," where appropriate. The basic required elements of the initial donor screening, as established under each establishment's license application, remain unchanged.

The agency recognizes that the provision to permit adequately qualified and trained individuals other than a licensed physician to perform the periodic review of laboratory data is additional to the Panel's recommendation. Currently, the acceptable limits by which the various laboratory data are assessed must be set in the establishment's standard operating procedures and license application. Although considerable expertise is required initially to determine appropriate acceptable limits, the agency believes that an adquately qualified and trained individual other than a licensed physician may readily interpret laboratory data to determine whether they fall within the specified acceptable limits.

A significant effect of the proposed regulations would be that the presence of a licensed physician would no longer be required at many plasmapheresis establishments which only collect plasma from normal healthy donors. A licensed physician shall, however, remain responsible for setting appropriate standard operating procedures and reviewing and assessing all donor reactions, and he/she must be available to offer guidance, as necessary, to the plasmapheresis establishment. FDA advises that State and local laws may place additional restrictions upon the qualifications and degree of supervision required to perform certain medically related duties. Each plasmapheresis establishment is responsible for ensuring that its assignment of duties is in conformance with State and local laws.

Upon initial review, the agency had determined that a physician assistant who has undergone training in a plasmapheresis center is an example of an individual appropriately qualified to perform the duties specified under proposed § 640.62(b). In recent years there has been increased use of professional physician assistants who are trained to perform, under a physician's supervision, some of the more routine duties previously reserved for a licensed physician, such as routine medical examinations and the assessment of laboratory data. These physician assistants, also variously known as Medix, health practitioners, or physician associates, are certified by the National Commission on Certification of Physician Assistants (NCCPA).

FDA recognizes that there may be other para-medical professionals, such as certain specialists within the nursing profession, who are as qualified as a physician assistant for performing routine medical examinations and reviewing laboratory data at a plasmapheresis establishment. FDA invites the submission of information concerning training programs which should be considered adequate in providing the appropriate qualifications. Upon review of the submitted information, FDA will prepare a list of those training programs determined to be acceptable. Thereafter, the list will be updated, as necessary, as additional training programs are determined to be acceptable. At the time of the final rule and thereafter, this list will be made available, through the Director, Office of Biologics Research and Review, to plasmapheresis centers as an aid for selecting individuals whom FDA considers qualified for performing the duties specified in proposed § 640.62(b).

Licensed plasmapheresis establishments intending to employ an individual for the purposes specified in § 640.62(b) will be required to notify the Director, OBRR, at least 30 days in advance of the assumption of duties by the individual. The notification should include the individual's name, information demonstrating that the individual meets appropriate qualification requirements established by FDA, certification that the individual has successfully completed an introductory training period at a plasmapheresis center that was conducted by a licensed physician, and certification that emergency medical care is suitably available.

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38. The Panel presented a number of recommendations regarding the procedures for the immunization or hyperimmunization of plasma donors for the production of high-titer plasma.

Many of these recommendations have already been implemented by FDA in "Guidelines for Immunization of Source Plasma (Human) Donors with Blood Substances," last revised and made available on October 21, 1980 (45 FR 69561). The FDA guideline, is used by blood establishments as a guide for the safe and effective immunization of donors with Blood Group Substances or red blood cells for the production of high-titer plasma. Provisions of the guideline which are consistent with specific Panel recommendations are:

a. Women should not be immunized except when documented to be incapable of childbearing;

b. Protocols for de novo immunization (immunization with an antigen to which the individual has no preexisting antibodies) with red blood cells for elicitation of antibodies other than anti-Rh_o (D) will be considered by FDA only on an individual basis under IND protocol.

c. At each donation, the red blood cell donor should be found nonreactive by a third generation HBsAg test. During the first 6 months that a new donor's red blood cells are used, each recipient should have a monthly HBsAg test. (Thereafter, the recipient's blood is tested for HBsAg reactivity upon each donation of Source Plasma (Human), under § 640.67.)

d. The guideline provides for the extensive characterization of new red blood cell donors, including phenotyping of the red cells, and, as described above, a preliminary 6-month trial period for new donors during which the donor's blood is documented not to have transmitted hepatitis or other blood-transmissible diseases to the recipient. Because adequate donor characterization is time-consuming and expensive, the guideline promotes continued use of well-characterized donors. Thus, the agency believes there is adequate incentive for establishments to limit to a minimum the number of donors used as the source for the immunizing red blood cells.

39. In its review of procedures for immunizing plasma donors with red blood cell antigens, the Panel found that a more complete phenotyping and matching of donors and recipients should be required. The Panel recommended that donors and recipients of red blood cells be phenotyped for the following additional antigens: Jk^a of the Kidd system, Lu^b of the Lutheran system, S and s of the MNSs system, and k (Cellano) of the Kell system.

The current guideline for the red blood cell immunization of Source Plasma (Human) donors, last revised and made available May 5, 1978 (43 FR 19461), calls for the phenotyping of donors and recipients for C, D, E, c, e, Fy^a and K (Kell), and phenotyping for other specificities is recommended. FDA agrees that further characterization is desirable; but, except as described below, it may not be practicable at this time.

In May 1979, FDA surveyed all manufacturers of Source Plasma (Human) who had been approved to immunize donors with red blood cells. The manufacturers reported that a total of 2,219 donors were immunized during the year preceding the survey and that 122 (5.5 percent) of these donors produced an unwanted antibody. The unwanted antibodies were of 24 different specificities, including anti-Jk^b, -Lu^a, -S and -s. No examples of anti-k of anti-Lu^b were found.

Each of the over 2,000 donors immunized yearly must be phenotyped and suitable immunizing red blood cells identified using specific antisera (Blood Grouping Sera). The same reagents are used to select safe blood for transfusing patients sensitized to specific red blood cell antigens, an essential function necessary to prevent a hemolytic transfusion reaction. Currently, no establishment is licensed for the manufacture of anti-Lu^a or anti-Lu^b Blood Grouping Serum; the remainder of those antisera necessary to meet the Panel's recommendation are in short supply. If the Panel's recommendations were implemented, the availability of the reagent antisera for the more important function of selecting safe blood for sensitized patients would be jeopardized.

The agency recognizes that it is especially important to avoid immunization of persons with rare phenotypes. These phenotypes include k (Cellano)-negative (0.2 percent of population) and Lu^b negative (0.15 percent), but there is a long list of such high-incidence antigens which could be considered of equal importance.

In the case of the Cellano antigen, however, persons with the k-negative phenotype may be readily identified with minimal additional testing. Tests for the antithetical antigen, K (Kell), are already required. With rate exceptions, persons who are Cellano-negative are Kell-positive. Therefore, it is reasonable to test only candidate recipients of red blood cells who are Kell-positive (10 percent of the population) for Cellano. The Cellano status of the immunizing cells is irrelevant when the recipient is Cellano-positive. By testing only those recipients who are K (Kell)-positive and not testing the immunizing cells for Cellano, the potential antiserum requirement is reduced by more than 90 percent while adequately protecting the k (Cellano)-negative population.

Accordingly, FDA intends to revise the guideline for the red blood cell immunization of Source Plasma (Human) donors to provide for the testing of Kell-positive recipients of red blood cells for the Cellano antigen. Consistent with the existing guideline, persons found to be k (Cellano)-negative should not be injected with k-positive cells unless they have preexisting anti-k antibody. Pending the consideration of comments, FDA is announcing that the revised guideline will be made available at the time of publication of any final rule based on this proposal.

40. The Panel noted that there is a lack of supportive data for the dosage schedules recommended in the guideline for de novo immunization for anti-Rh_o (D) and for injection of red blood cells into donors with preexisting antibody titers. The Panel recommended the retention of the guideline schedules until such time as more data are available to provide a basis for the modification of the dosage schedules.

FDA recognizes the desirability of gathering data which either support the present schedules or provide the basis for their modification. Source Plasma (Human) manufacturers licensed for the immunization of donors with red blood cells completed a questionnaire in June 1979, which provided some preliminary data regarding the success of the current dosage schedules. Another survey is planned to further define the effectiveness of the current dosage schedules.

Through the continued cooperation of the plasma establishments and the review and analysis of data on file in license applications, FDA will continue to investigate this question. When supportive data are obtained, the agency will revise the dosage schedules recommended in the guideline appropriately.

41. Throughout its Final Report, the Panel identified many areas in which there should be further investigation beyond that immediately required of a manufacturer for a safe, effective, and properly labeled product. In many cases, the Panel identified the appropriate sector of the medical research community and possible sources of support for carrying out the recommended investigations.

FDA believes that these recommendations provide an outline of what may be, through the cooperative efforts of public, private, and governmental research organizations, the major advances in improving the safety and efficacy of blood and blood derivatives throughout the next decade. In several instances in this response to the Panel's recommendations, the agency has identified areas of research recommended by the Panel in which FDA has been, or is now, actively engaged. Furthermore, FDA will continue to use the Panel's recommendations as a basis for initiating or supporting investigative studies in the future. Because FDA is primarily a regulatory agency, the areas and extent of research in which it may justifiably engage are limited to areas supportive of product regulation; therefore, many of the suggested investigations are beyond the scope of FDA's research authority of capabilities. The agency strongly urges the cooperation of all interested research organizations in meeting the objectives defined by the Panel for improving the safety and effectiveness of blood and blood derivatives.

Additional background data, information, and references concerning this proposal may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(c)(10) (April 26, 1985; 50 FR 16636) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor environmental impact statement is required.

FDA has examined the regulatory impact and regulatory flexibility implications of the proposed regulation in accordance with Executive Order 12291 and the Regulatory Flexibility Act. The agency concludes that the requirements would affect four groups of establishments in the blood products industry.

Blood Banks

The economic impact is expected to be neutral on 3,000 blood banks, of which 1,500 are small businesses, because some minor burdens would be imposed while others would be removed.

Plasma Centers

An average yearly savings of about 6,600 dollars is expected to result for each of 350 plasma centers, of which 100 are small businesses, because several significant regulatory burdens would be removed.

Plasma Derivative Manufacturers

An expense increase of about 100 dollars annually is expected to result for each of 18 plasma derivative manufacturers, none of which are small businesses, because some additional product testing burdens would be imposed.

Diagnostic Reagent Manufacturers

A one-time expense of $560 is expected to result for each of seven diagnostic reagent manufacturers, of which three are small businesses, because of additional product labeling burdens for Reagent Red Blood Cells.

The expected economic impact of the proposal on small businesses or on consumers of the affected products are insufficient to warrant designation of the proposal as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291 or to require a regulatory flexibility analysis. Accordingly, under section 605(b) of the Regulatory Flexibility Act, the Commissioner of Food and Drugs certifies that this rulemaking, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch.

Section 606.151 of this proposed rule contains collection of information requirements already reviewed and approved by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980. OMB assigned these collection of information requirements approval number 0910–0116. In this proposal, FDA is continuing these collection of information requirements. Organizations and individuals desiring to submit comments on these requirements are directed to submit them to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., Rm. 3208, Washington, DC 20503, Attention: Bruce Artim.

List of Subjects

21 CFR Part 606

Blood, Laboratories.

21 CFR Part 610

Biologics, Labeling.

21 CFR Part 640

Blood, Reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Administrative Procedure Act, it is proposed that Parts 606, 610, and 640 be amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR Part 606 continues to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–5056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 701–706)); 21 CFR 5.10.

2. By revising § 606.151, to read as follows:

§ 606.151 Compatibility testing.

Standard operating procedures for routine compatibility testing of Whole Blood or Red Blood Cells shall include the following:

(a) A method of collecting and identifying the blood samples of recipients and donors to ensure positive identification.

(b) The determination of the ABO and Rh groups of the donors and recipient using licensed blood grouping sera of their equivalent.

(c) Antibody detection tests that will demonstrate significant alloantibodies active at 37° C in the serum or plasma of a previously transfused or previously pregnant donor.

(d) The testing of the recipient's serum for unexpected alloantibodies, by the antiglobulin technique or an equally sensitive method that will demonstrate significant antibodies reactive with the donor's cells at 37° C.

(e) Procedures to expedite transfusions in life-threatening emergencies and, if applicable, procedures for testing blood for neonatal transfusions and autologous transfusions.

(Collection of information requirements approved by the Office of Management and Budget under approval number 9010–0116.)

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

3. The authority citation for 21 CFR Part 610 continues to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

4. In § 610.53(a), by revising the item "Whole Blood" to read as follows:

§ 610.53 Dating Periods for specific products.

(a) * * *

Whole blood collected in.	(a) ACD solution—21 days, provided labeling recommends storage between 1° and 6° C. Sec. 610.51 does not apply (b) Heparin solution—8 hours, provided labeling recommends storage between 1° and 6° C. Sec. 610.51 does not apply (c) CPD solution—21 days, provided labeling recommends storage between 1° and 6° C. Sec. 610.51 does not apply (d) CPDA–1 solution—21 days, provided labeling recommends storage between 1° and 6° C. Sec. 610.51 does not apply

* * * * *

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

5. The authority citation for 21 CFR Part 640 continues to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

6. In § 640.3, by revising the introductory text of paragraph (b) and by revising paragraphs (b) (3) and (f), to read as follows:

§ 640.3 Suitability of donor.

* * * * *

(b) *Qualifications of donor; general.* Donors shall be in good health, as indicated in part by:

* * * * *

(3) A determination that the hemoglobin level is within normal limits. The technique for obtaining the blood sample and the acceptable normal limits for the hemoglobin level shall be prescribed in the written standard operating procedures of the establishment.

* * * * *

(f) *Frequency of donation.* A donor may not serve as a source of Whole Blood more than once in 8 weeks; female donors of Whole Blood shall donate no more frequently than 4 times per year; and male donors of Whole Blood shall donate no more frequently than 5 times per year; *except,* an individual may donate more frequently if:

(1) The donor is examined by a licensed physician at the time of donation and certified in writing to meet all other donor qualifications of this section; or,

(2) Adequate procedures are employed to protect the health of the donor, including procedures to prevent the development of an iron deficiency. The procedures shall be described in the written standard operating procedures of the establishment and shall have been approved by the Director, Office of Biologics Research and Review, Center for Drugs and Biologics.

7. In § 640.5, by revising the introductory text and paragraphs (b) and (c), by redesignating existing paragraphs (d) and (e) as (e) and (f), respectively, and by adding a new paragraph (d), to read as follows:

§ 640.5 Testing the blood.

All laboratory tests shall be performed on a pilot or processing sample of blood, and these tests shall include the following:

* * * * *

(b) *Determination of the ABO blood group.* Whole Blood shall be classified according to ABO blood group by testing the red blood cells with licensed Anti-A and Anti-B Blood Grouping Sera and by testing the serum or plasma with known group A and B cells. The unit of Whole Blood shall not be labeled unless any discrepancy in the results of the two tests is resolved. The testing facility may use unlicensed blood grouping sera prepared at such facilities, if the blood grouping sera meet the requirements of Part 660 of this subchapter.

(c) *Determination of the Rh group.* Whole Blood shall be classified according to Rh blood group by testing the red blood cells with licensed Anti-D Blood Grouping Serum. If the test using Anti-D Blood Grouping Serum is positive, no further testing is required. If the test using Anti-D Blood Grouping Serum is negative, the results shall be confirmed by further testing for the D antigen variant D^u, using the antiglobulin technique or a technique of equivalent sensitivity. The testing facility may use unlicensed Anti-D Blood Grouping Serum and unlicensed Anti-Human Globulin prepared at such facility, if the sera meet the requirements of Part 660 of this chapter.

(d) *Test for unexpected antibodies.* Whole blood from previously pregnant or transfused donors shall be tested for unexpected antibodies by a method that demonstrates significant alloantibodies.

* * * * *

8. By revising § 640.24(b) to read as follows:

§ 640.24 Processing.

* * * * *

(b) Immediately after collection, the whole blood or plasma shall be held in storage between 20° to 24°C, unless it must be transported from the donor clinic to the processing laboratory. During such transport, all reasonable methods shall be used to maintain the temperature as close as possible to a range between 20° and 24°C until it arrives at the processing laboratory where it shall be held between 20° and 24°C until the platelet rich plasma is separated. The platelet rich plasma shall be separated within 6 hours after the collection of the unit of whole blood.

* * * * *

9. By revising § 640.33(a) to read as follows:

§ 640.33 Testing the blood.

(a) Blood from which plasma is separated shall be tested as prescribed in § 640.5 (a), (b), (c), and (d).

* * * * *

10. By revising § 640.34(d), to read as follows:

§ 640.34 Processing.

* * * * *

(d) *Plasma Platelet Rich.* Plasma Platelet Rich shall be prepared from blood collected by a single uninterrupted venipuncture with minimal damage to and manipulation of the donor's tissue. The plasma shall be separated from the red blood cells by centrifugation within 6 hours after phlebotomy. The time and speed of centrifugation shall have been shown to produce a product with at least 250,000 platelets per microliter. The plasma shall be stored at a temperature between 20° and 24°C, or between 1° and 6°C, immediately after filling the final container. A gentle and continuous agitation of the product shall be maintained throughout the storage period, if stored at a temperature of 20° to 24°C.

11. Section 640.62 is revised to read as follows:

§ 640.62 Medical supervision.

(a) *Supervision by a licensed physician.* Except as provided in paragraph (b) of this section, a qualified licensed physician shall be on the premises when donor suitability is being determined, immunizations are being made, whole blood is being collected, or red blood cells are being returned to the donor.

(b) *Alternative supervision.* An adequately trained and qualified person other than a licensed physician, under the direction of a qualified licensed physician, may assume the functions and responsibilities, otherwise reserved

for such physician by the requirements of this subpart with respect to normal donors contributing plasma by plasmapheresis; *provided*, the Director, Office of Biologics Research and Review, Center for Drugs and Biologics, is notified at least 30 days in advance of an assignment of duties in conformance with this paragraph and raises no objection. The provisions of this paragraph shall not apply to functions and responsibilities pertaining to donors with known diseases, such as hemophilic donors, or when donors are being immunized for the production of high-titer plasma.

12. In § 640.63, by revising the heading of paragraph (b), by revising paragraphs (b)(2)(i) and (c)(3), and by adding new paragraph (f), to read as follows:

§ 640.63 Suitability of donor.

* * * * *

(b) *Initial donor screening.* (1) * * *

(2)(i) If a donor is to be immunized for the production of high-titer plasma, the initial donor screening for immunization shall be performed by a qualified licensed physician within no more than 1 week before the first immunization injection. The initial donor screening for plasmapheresis need not be repeated if the first donation occurs within 3 weeks after the first injection.

* * * * *

(c) * * *

(3) A determination that the hemoglobin level is within normal limits. The technique for obtaining the blood sample and the acceptable normal limits for the hemoglobin level shall be prescribed in the written standard operating procedures of the establishment.

* * * * *

(f) *Exemptions from donor suitability requirements.* An establishment is not required to perform the initial donor screening, total protein test, tests to determine the immunoglobulin composition of the plasma, and review of laboratory data, as prescribed in paragraphs (b) and (c)(5) of this section and § 640.65(b) (1) and (2), provided the donor meets the following criteria:

(1) The donor has neither donated whole blood nor been plasmapheresed in the preceding 8 weeks;

(2) The donor is not donating plasma (and blood) for more than the fourth time, if female, or fifth time, if male, in a year; and

(3) The donor is healthy and is not being immunized for the production of high-titer plasma.

13. In § 640.65, by revising paragraph (b) (1)(i) and (2)(i), to read as follows:

§ 640.65 Plasmapheresis.

* * * * *

(b) * * *

(1)(i) Except as provided under paragraph (f) of § 640.63, a sample of blood shall be drawn from each donor on the day of the initial donor screening or plasmapheresis, whichever comes first, and at least every 4 months thereafter by a qualified licensed physician or by persons under the physician's supervision and trained in such procedure. A serological test for syphilis, a total plasma or serum protein determination, and a plasma or serum protein electropheresis or quantitative immuno-diffusion test or an equivalent test to determine immunoglobulin composition of the plasma or serum shall be performed on the sample.

* * * * *

(2)(i) Expect as provided under paragraph (f) of § 640.63, the accumulated laboratory data, including tracings, if any, of the plasma or serum protein electropheresis pattern, the calculated values of each component, and the collection records shall be reviewed by a qualified licensed physician within 21 days after the sample is drawn to determine whether or not the donor may continue in the program. The review shall be signed by the reviewing physician. If the protein composition is not within normal limits established by the testing laboratory, or if the total protein is less than 6.0 grams per deciliter of sample, the donor shall be removed from the program until these values return to normal.

* * * * *

14. In § 640.80, by revising paragraph (b), to read as follows:

§ 640.80 Albumin (Human).

* * * * *

(b) *Source material.* The source material Albumin (Human) shall be plasma from human donors determined at the time of donation to have been free from disease-causative agents that are not destroyed or removed by the processing method, as determined by the medical history of the donor and from such physical examination and clinical tests as may appear necessary for each donor at the time the blood was obtained. Where the source material is a product for which additional standards are effective, the requirements of those additional standards shall determine the propriety of the source material for use in the production of Albumin (Human). Where no additional standards are effective with respect to the source material for the production of Albumin (Human), such source material shall:

* * * * *

15. In § 640.82, by redesignating existing paragraphs (e) and (f) as (f) and (g), respectively, and adding new paragraph (e), to read as follows:

§ 640.82 Tests on final product.

* * * * *

(e) *Potassium content.* The potassium content of the final product shall not exceed 2 milliequivalents per liter.

* * * * *

16. By revising § 640.84, to read as follows:

§ 640.84 Labeling.

In addition to the labeling requirements of §§ 610.60, 610.61, and 610.62 of this chapter, the container and package labels shall contain the following information:

(a) The osmotic equivalent in terms of plasma and the sodium content in terms of a value or a range in milliequivalents per liter.

(b) The caution "DO NOT USE IF TURBID. NO NOT BEGIN ADMINISTRATION MORE THAN 4 HOURS AFTER THE CONTAINER HAS BEEN ENTERED" placed in a prominent position on the label;

(c) The need for additional fluids when 20 percent of 25 percent albumin is administered to a patient with marked dehydration;

(d) The protein content, expressed as a 4-percent, 5-percent, 20-percent, or 25-percent solution.

17. In § 640.90 by revising the introductory text of paragraph (b), to read as follows:

§ 640.90 Plasma Protein Fraction (Human).

* * * * *

(b) *Source material.* The source material of Plasma Protein Fraction (Human) shall be plasma from human donors determined at the time of donation to have been free from disease-causative agents that are not destroyed or removed by the processing method, as determined by the medical history of the donor and from such physical examination and clinical tests as may appear necessary for each donor at the time the blood was obtained. Where the source material is a product for which additional standards are effective, the requirements of those additional standards shall be the criteria for determining the propriety of the material for use in the production of Plasma Protein Fraction (Human). When no additional standards are effective with respect to source material for the production of Plasma Protein Fraction (Human), such source material shall:

* * * * *

18. In § 640.100, by revising paragraphs (b) and (c), to read as follows:

§ 640.100 Immune Globulin (Human).

* * * * *

(b) *Source material.* The source of Immune Globulin (Human) shall be plasma from human donors determined at the time of donation to have been free of disease-causative agents that are not destroyed or removed by the processing methods, as determined by the donor's history and from such physical examination and clinical tests as appear necessary for each donor at the time the blood was obtained. The source plasma shall not contain a preservative and shall be stored in a manner that will prevent contamination by microorganisms, pyrogens, or other impurities.

(c) *Additives in source material.* Source plasma shall not contain an additive unless it is shown that the processing method yields a product free of the additive to such an extent that the safety, purity, and potency of the product will not be affected adversely.

19. In § 640.110, by revising paragraphs (b) and (c) to read as follows:

§ 640.110 Measles Immune Globulin (Human).

* * * * *

(b) *Source material.* The source of Measles Immune Globulin (Human) shall be plasma from human donors determined at the time of donation to have been free of disease-causative agents that are not destroyed or removed by the processing method, as determined by the donor's history and from such physical examination and clinical tests as appear necessary for each donor at the time the blood was obtained. The source plasma shall not contain a preservative and shall be stored in a manner that will prevent contamination by microorganisms, pyrogens, or other impurities.

(c) *Additives in source material.* Source blood or plasma shall not contain an additive unless it is shown that the processing method yields a product free of the additive to such an extent that the safety, purity, and potency of the product will not be affected adversely.

Interested persons may, on or before March 24, 1986, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 13, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-30007 Filed 12-23-85; 8:45 am]

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federal register

Tuesday
December 24, 1985

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation (FAR); Selling Costs; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Selling Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) 31.205–38, Selling costs, that are intended to clarify the definition and allowability policy for the cost.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 23, 1986 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Street NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–71 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule is, in part a response to the requirements of Pub. L. 99–145, the Defense Procurement Improvement Act of 1986. The proposed definition of selling includes all aspects of marketing the contractor's products. Included are those aspects which are more specifically addressed in other subsections of the contract cost regulations. Those other relevant subsections, such as advertising and public relations, are cross-referenced in the proposed selling rule and remain controlling as to allowability policy. The proposed rule essentially limits allowable selling costs to market planning costs and direct selling, which is defined as those acts or actions to induce particular customers to purchase particular products or services of the contractor. This revised allowability policy was necessitated by the need to achieve compatibility with revisions currently pending to the subsection on advertising and public relations, and to reduce the negotiable range in a cost area in which the Congress and GAO had noted substantial reinstatements of questioned costs.

B. Regulatory Flexibility Act

The proposed changes to FAR 31.205–38 are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because most contracts awarded to small entities are awarded on a competitive fixed-price basis and cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed change to FAR 31.205–28 provides clarifications as to the allowability of selling costs, and does not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 18, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 31.205–38 is revised to read as follows:

31.205–38 Selling costs.

(a) "Selling" is a generic term encompassing all efforts to market the contractor's products, some of which are covered specifically in other subsections of 31.205. Selling activity includes the following broad categories.

(1) Advertising;

(2) Corporate image enhancement including broadly-targeted sales efforts, other than advertising;

(3) Bid and proposal costs;

(4) Market planning; and

(5) Direct selling.

(b) Advertising costs are defined at 31.205–1(b) and are subject to the allowability provisions of 31.205–1 (d) and (f). Corporate image enhancement activities are included within the definitions of public relations at 31.205–1(a) and entertainment at 31.205–14 and are subject to the allowability provisions at 31.205–1 (e) and (f) and 31.205–14, respectively. Bid and proposal costs are defined at 31.205–18 and have their allowability controlled by that subsection. The allowability of market planning cost is controlled by the provisions of 31.205–12. Costs of activities which are disallowed under cost principles referenced in this paragraph (b) are not to be reconsidered for reimbursement under any other provision of this subsection.

(c) Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such activities as familiarizing a potential customer with the contractor's products, conditions of sale, service capabilities, etc. It also includes negotation, liasion between customer and contractor personnel, technical and consulting activities, individual demonstrations, and any other activities having as their purpose the application or adaptation of the contractor's products for a particular customer's use. The cost of direct selling efforts is allowable if reasonable in amount.

(d) The costs of any selling efforts other than those addressed in paragraphs (b) or (c) of this subsection are unallowable.

(e) Costs of the type identified in paragraphs (b), (c), and (d) of this subsection are often commingled on the contractor's books in the selling expense account because these activities are performed by the sales departments. However, identification and segregation of unallowable costs is required under the provisions of 31.201–6 and CAS 405, and such costs are not allowable merely because they are incurred in connection with allowable selling activities.

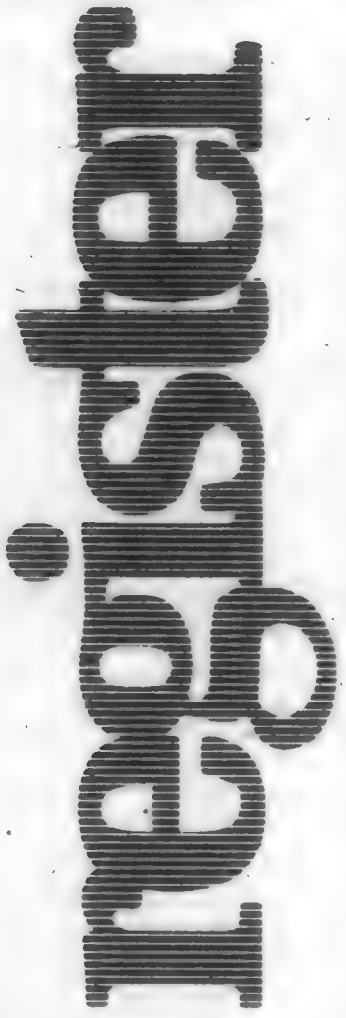
(f) Notwithstanding any other provision of this subsection, selling costs incurred in connection with potential and actual Foreign Military Sales as defined by the Arms Export Control Act, or foreign sales of military products are unallowable on U.S. Government contracts for U.S. Government requirements.

(g) Notwithstanding any other provision of this subsection, sellers' or agents' compensation, fees, commissions, percentages, retainer or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business (see 3.408–2).

[FR Doc. 85–30310 Filed 12–23–85; 8:45 am]

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Tuesday
December 24, 1985

Part IV

Office of Management and Budget

Management of Federal Information Resources; Final Publication of OMB Circular No. A-130

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OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

December 12, 1985.

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: OMB Circular No. A–130; final publication.

SUMMARY: This Circular provides a general policy framework for management of Federal information resources. The Circular implements provisions of the Paperwork Reduction Act of 1980 as well as other statutes, Executive Orders, and policies concerning general information policy, information technology, privacy, and maintenance of Federal records. The Office of Management and Budget (OMB) published a draft Circular for public comment on March 15, 1985, and received comments and suggestions from the public. This Circular supersedes OMB Circular Nos. A–71, A–90, A–108, and A–121.

DATE: This Circular is effective December 12, 1985.

FOR FURTHER INFORMATION CONTACT: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235 New Executive Office Building, Office of Management and Budget, Washington, D.C. 20503. Telephone: (202) 395–4814.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat 2812, codified at Chapter 35 of Title 44 of the United States Code, establishes a broad mandate for agencies to perform their information activities in an efficient, effective, and economical manner. Section 3504 of the Act provides authority to the Director, Office of Management and Budget (OMB), to develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

This Circular implements OMB authority under the Paperwork Reduction Act with respect to section 3504(b), general information policy, section 3504(e), records management, section 3504(f), privacy, and section 3504(g), Federal automatic data processing and telecommunications; the Privacy Act of 1974 (5 U.S.C. 552a); sections 111 and 254 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.); and Executive Order No. 12046 of March 27, 1978. The Circular complements 5 CFR Part 1320, Controlling Paperwork Burden on the Public, which implements other sections of the Paperwork Reduction Act dealing with controlling the reporting and recordkeeping burden placed on the public.

In addition, the Circular revises and consolidates policy and procedures in five existing OMB directives and rescinds these directives.

A–71—Responsibilities for the Administration and Management of Automatic Data Processing Activities
Transmittal Memorandum No. 1 to Circular No. A–71—Security of Federal Automated Information Systems
A–90—Cooperating with State and Local Governments to Coordinate and Improve Information Systems
A–108—Responsibilities for the Maintenance of Records about Individuals by Federal Agencies
A–121—Cost Accounting, Cost Recovery, and Interagency Sharing of Data Processing Facilities

Development of the Circular

On September 12, 1983, OMB published a Notice in the Federal Register, 48 FR 40964, announcing development of the OMB Circular on Federal information resources management and soliciting public comment. In response to this notice, OMB received comments from 14 Federal agencies and 39 members of the public. On March 15, 1985, OMB published its draft Circular on the Management of Federal Information Resources (50 FR 10734–10747), inviting the public to comment by May 14, 1985. OMB informally extended the public comment period in order to allow Federal agencies and the public more time to submit their views. By August 1985, OMB had received about 350 letters of comment; 52 percent of these were from the library and academic community, 28 percent were from other members of the public, and 20 percent from Federal agencies and Members of Congress.

Form of the Circular and Addition of Appendix IV

The draft Circular followed the form of a notice of proposed rulemaking, which is to say that the text of the proposed Circular was accompanied by Supplementary Information containing a lengthy analysis of key sections. The analysis explained the management context and philosophy behind the language of the draft Circular.

The Circular also follows the form of a notice of proposed rulemaking. Many who commented on the draft Circular requested that the explanatory contextual materials not be lost when the Circular was published in final form. OMB accepted this recommendation. Accordingly, in addition to the three appendices included in the draft Circular, OMB has added *Appendix IV, Analysis of Key Sections.* Appendix IV contains a revision and expansion of the analysis of key sections that accompanied the March 15 draft Circular.

This Supplementary Information section focuses on comments received to the March 15 draft Circular and the disposition OMB has made of the comments.

Additional Comment

Because of the perceived seriousness of deficiencies in the draft Circular of March 15, 1985, several commentators urged that OMB revise the draft, and issue the revision for another round of public comment. With the public notices of September 12, 1983, and March 15, 1985, OMB has twice sought public comment. After analyzing public comment on the March 15 draft and revising the Circular, OMB decided not to accept this recommendation. OMB believes that the Circular as now revised accommodates valid criticisms and objections, that adequate public comment has been sought, and sees little benefit and much delay in a third round of public comment.

Section-by-Section Analysis

Section 1. Purpose

OMB rejected a recommendation that the phrase "management of Federal information resources" be changed to "management and dissemination of Federal information resources" because the definitions of information resources management and government information already include dissemination within management.

Section 3. Authorities

OMB expanded the citation of the Federal Property and Administrative Services Act to include section 206 in order to reflect Federal telecommunication standards authorities. Executive Order No. 12472, Assignment of National Security and Emergency Preparedness

Telecommunications Functions, has been added to this section.

Section 4. Applicability and Scope

OMB revised this section to include a reference to national security and emergency preparedness telecommunications activities subject to Executive Order No. 12472. One commentator suggested that a general disclaimer be added here stating that the policies apply only where feasible, cost effective, and appropriate in the context of a particular activity. OMB rejected this suggestion because specific disclaimers are included in specific policies and because section 9a(1) assumes that heads of Federal agencies are responsible for managing their information resources in the context of particular activities and agency missions.

Another commentator suggested that the Circular address which guidance will be controlling in the event of inconsistency: the Circular on national security directives. OMB does not believe such inconsistencies exist until shown in specific instances; if they should exist, they should be resolved on an individual basis. Another commentator recommended that this section should make exception for the exclusions identified in the Warner Amendment in the Department of Defense Authorization Act of 1982. OMB believes these exclusions are appropriately treated in the contexts to which they apply, and notes that statute always takes precedence over policy guidance. For clarity, OMB added an explicit reference to this Department of Defense exclusion in the definition of information technology (Section 6h).

Section 6. Definitions

a. Agency. Although no one commented on the definition of "agency," OMB changed the definition because the previous wording was confusing and did not adequately convey that independent regulatory agencies are included within the meaning of the term.

b. Information. One commentator noted that the definition is broader than the definition of the same term in OMB's regulation, 5 CFR 1320. The breadth of the definition is due to the fact that the scope of the Circular is broader than the scope of the regulation. Another commentator believed there were major omissions in the definition, e.g., micrographics, printing and publishing, mail and distribution, libraries, voice communications, reprographics, audiovisual, and manual information systems. OMB believes these are information media, processes, or institutions, rather than information as such, and that the definition as formulated covers them.

c. Government Information. One commentator noted that the definition of "government information" does not include information that may be required to be maintained by a Federal agency, presumably as in Federal recordkeeping requirements imposed upon members of the public (e.g., individuals' tax records). OMB does not intend that such information should be considered government information, nor does the Circular extend to such information except as specifically provided (e.g., Appendix I, Section 3a(1)). Another commentator pointed out that the definition would include information maintained by the legislative and judicial branches of government. While it is true that the definition encompasses information held by the legislative and judicial branches, the Circular applies only to agencies of the executive branch as defined in Section 6a. Another recommended that the definition of government information be restricted only to information created or collected by the Federal Government, and not be extended to information processed, transmitted, disseminated, used, stored, and disposed of by the Federal Government. OMB rejected this recommendation because 44 U.S.C. 3504 clearly applies, for example, to information processing and records management.

Several commentators recommended that the definition should pertain to information "created . . . or disposed of by, *or on behalf of*, the Federal Government." (emphasis added) The intent of the recommendation was to make clear that the Circular's policies applied to all information under government control or sponsorship, irrespective of the information processing agent; that is, to include all information created, collected, processed, transmitted, disseminated, used, stored, or disposed of by government contractors or grantees.

OMB rejected the recommendation for several reasons. First, while agencies doubtless have the choice to treat information created or collected on their behalf as government information, OMB does not intend, except where explicitly stated, that policies in the Circular extend to persons or entities that create, collect, process, transmit, disseminate, use, store, or dispose of information on behalf of the government. Section 4 of the Circular states that the policies apply to executive agencies; Section 3a(1) of Appendix I is an explicit statement of application to Federal contracts. Second, existing and longstanding policy embodied in OMB Circular No. A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, permits grantees in such institutions to copyright information created or collected under Federal grants. The fact that such information may be copyrighted implies that the information is not government information, because the government may not copyright government information (17 U.S.C. 101 and 105). Third, the courts have held that requests to Federal agencies for release of information under the Freedom of Information Act do not always extend to those performing information activities under grant or contract to a Federal agency; hence, such information is not government information.

Several commentators recommended that government information be subdistinguished, with special definitions being formulated for, and special policy treatment given to, scientific and technical information, statistical information, or printed information. OMB did not accept the recommendation because the Circular is intended to implement the Paperwork Reduction Act, and the Act itself does not distinguish among various kinds of information.

f. and g. Access to Information and Dissemination of Information. The definitions of "access to information" and "dissemination of information," particularly when considered together with Section 8a on information management, drew more comment than any other definitions. Twenty-three persons commented on the definitions. Commentators specially objected to the phrase "upon their request" in the definition of access. They noted that the public may gain access to government information through Freedom of Information Act requests but argued that the Circular makes no provisions to ensure the public knows what information is available or how to obtain the information. They suggested that the tone of the definitions was narrow, negative, and restrictive, and the implications ran contrary to the proper role of government in providing information in a democratic society.

OMB believes that the definitions of access and dissemination, as found in the draft Circular, are sound. In OMB's view, the commentators' objections arose not out of the definitions themselves but out of the uses to which they were put in the draft Circular's policies and their explanation. Accordingly, OMB has made revisions

to the policies and to the Analysis of Key Sections (Appendix IV), but has retained the definitions.

i. Information Technology Facility. Several persons pointed out the desirability of standardizing the definition of "information technology facility," as found in the Circular and Appendix II, with "information technology installation," as found in Appendix III. The two terms are retained because they apply to different contexts, and the relationship between the terms is explained in Appendix II, Section 2b.

k. Government Publication. A new term, "government publication," has been defined because a new policy statement pertains to government publications. The definition of the term is taken directly from statute (44 U.S.C. 1901).

Section 7. Basic Considerations and Assumptions

7a and 7b. These statements have been amended and broadened to reflect points raised in comments, namely, that the statements were too narrowly conceived.

Deleted statement. The draft Circular contained the statement: The value of government information to the government is solely a function of the degree to which the information contributes to achieving agencies' missions. Comments concerning this statement alleged that the statement underestimated the value of government information to the government, and failed to take account of other public needs, including those of State and local government, that are included in the value of information to the Federal Government. Because of other revisions to Section 7, OMB determined the statement was superfluous and deleted it.

7c. A new statement has been inserted in response to many comments that the draft Circular failed to address the positive aspects of government information. The statement incorporates three of the purposes of the Paperwork Reduction Act (44 U.S.C. 3501).

7d. Commentators on this statement objected to the application of cost-benefit analysis to government information activities. Many stated that the benefits of government information cannot be easily calculated and that such information holds more benefits than simply economic. Recalling that the statement is an assumption underlying policy, not itself a policy prescription, OMB notes that the statement does not preclude the existence of benefits other than economic (some of which are enumerated in statement 7b) nor does it necessarily presuppose that benefits can be easily calculated. The statement has been revised to incorporate by reference the purposes of the Paperwork Reduction Act cited in the preceding statement. Ensuring that benefits exceed costs, insofar as these are calculable, is a means to minimizing burden and costs and maximizing usefulness.

7e. Because many commentators misperceived the role accorded the private sector in the draft Circular, a new statement has been added that summarizes the existing policy found in OMB Circular No. A–76, Performance of Commercial Activities. The import of the new statement is simply that policy stated in Circular No. A–76 is and consistently has been assumed to apply to the management of Federal information resources.

7g. Several commentators believed that this statement (formerly statement 7f) did not sufficiently recognize the importance of public disclosure of government information. The statement has been revised to strengthen this point.

One commentary focused on the fact that this statement pertained to the management of Federal agency records rather than management of Federal information resources. Although the Freedom of Information Act and the Privacy Act pertain only to information in agency records, the statement has been broadened, as a basic assumption, to extend to all information resources. The statement is not limited, either by intention or implication, to paper documents, but may also include electronic records.

7h. The comments on this statement (formerly statement 7g) offered suggestions already provided for in statute or policy; for example, a distinction involving statistical uses of personal information. No changes were made to the statement.

7j and 7k. These statements (formerly statements 7h and 7j) were revised to incorporate language suggested by commentators.

Section 8. Policies

a. Information Management.

(1) and (2). Information Collection and Sharing. Many commentators believed that the formulation of 8a(1) in the draft Circular was too narrow and restrictive, that in fact the Circular would limit the collection of information by Federal agencies more than was intended by the Paperwork Reduction Act. Revised policy statement 8a(1) uses the expression "necessary for the proper performance of the functions of the agency," which is taken directly from the language of the Act (44 U.S.C. 3504 (c)(2)), and introduces a requirement for practical utility, also taken from same section of the Act. Some commentators believed the language should be couched in even broader terms, such as information needed by society or the general public. The intent of the Act, however, was to circumscribe, not to broaden, agency discretion to impose information collection and recordkeeping burdens on the public.

Commentators pointed out that many statutes condition the interagency or intergovernmental sharing of information by Federal agencies. Revised policy statement 8a(2) reflects the existence of such conditions. Many also commented on the phrase "or through commercial sources" in this statement. The revision qualifies this phrase and Appendix IV provides further explanatory analysis of the policy.

(3) through (6). Privacy Act and Freedom of Information Act. OMB revised statement 8a(3) to be consistent with statement 8a(1). Statements 8a(4)(b) and 8a(5) have been amended to eliminate ambiguity identified by commentators.

(8) through (12). Information Dissemination. Statements 8a(8) and 8a(9) in the draft Circular received more comments than any other sections. First, as regards the policy that dissemination be either required by law or essential to agency missions, commentators believed these criteria were too negative and restrictive, and failed to emphasize the positive value of government information dissemination and the obligation of the government to inform the citizenry. OMB reformulated both the Circular and the analysis in Appendix IV to emphasize the government's obligations to disseminate information, and to conform more closely to the language and intent of the Paperwork Reduction Act.

Second, commentators challenged the policy that agency information products or services should not duplicate similar products or services "that could reasonably be expected to be provided" by other agencies or the private sector "in the absence of agency dissemination." This policy was believed to be vague and impossible to apply. OMB acknowledges that "could reasonably be expected" is an inadequate formulation and has accordingly revised the policy. However, the general stricture against duplicating products or services that are or would otherwise be provided by other government or private sector organizations has been retained because the criterion of non-duplication for

government information resources is clearly stated in the Act; if it is clear that an agency's dissemination would duplicate that of a private organization, the same considerations apply. The analysis in Appendix IV has been expanded to clarify the meaning of this policy.

Third, many commentators suggested that agencies provide adequate notice and opportunity for public comment before terminating information products and services. OMB believes this suggestion has merit as applied to any significant termination, and has incorporated the idea in the revised policy and Appendix IV. With respect to the non-duplication criterion, OMB added the provision that adequate notice should be provided before *initiating* new information products and services. This provision will allow other agencies and private sector interests to inform the initiating agency if a new product or service will duplicate their product or service, and hence satisfies the intent of the draft Circular's language. Further explanation of this policy is also found in Appendix IV.

Fourth, commentators, questioned the language in the draft Circular's statement 8a(9)(a) requiring that agencies disseminate information products and services "in a manner that reasonably ensures the information will reach the members of the public the agency is responsible for reaching." OMB has slightly altered the language while providing a fuller explanation in Appendix IV.

Fifth, commentators challenged the language in the draft Circular's statement 8a(9)(b) that dissemination should be accomplished "in the manner most cost effective for the government, including placing maximum feasible reliance on the private sector . . ." OMB has retained this language, but added a reference to OMB Circular No. A–76 which provides the context for the policy and conditions that address most points raised by commentators. For example, OMB Circular No. A–76 distinguishes between functions that are inherently governmental in nature, and hence should be performed by government employees, and functions that are commercial in nature and may be performed by the private sector. Again, Appendix IV contains additional discussion of the role of the private sector in disseminating government information products and services.

Sixth, commentators criticized the reference to user charges in the draft Circular's statement 8a(9)(c). OMB has retained the draft Circular's language, because OMB Circular No. A–25 already takes account of objections raised. For example, some pointed out that the costs of assessing user charges can be greater than the revenues yielded from the charges; Circular No. A–25 provides for this contingency. Also, commentators failed to note that this policy statement requires user charges only for costs of dissemination of government information, not for creation, collection, processing, and transmission of the information. User charges also are more fully discussed in Appendix IV.

Seventh, in response to comments OMB added new language requiring that agencies establish procedures for ensuring compliance with 44 U.S.C. 1902 concerning Federal depository libraries. Many commentators referenced the Federal depository library program as an existing institutional mechanism for ensuring that much government information is disseminated to and actually reaches the general public. They believed the Circular should strengthen the depository library system. Because OMB agreed with the comments, and since the law provides that government publications be made available to the depository libraries, OMB accepted this recommendation; the Circular requires agencies to make government publications available to the depository library system, and Appendix IV elaborates this point.

b. Information Systems and Information Technology Management.

(1) through (3). One commentator recommended that these policies be expanded to include a requirement that agencies document a 10 percent return on information technology investments. OMB rejected this recommendation as being too specific for inclusion in a general policy statement.

(4) and (5). Several commentators recommended that these statements also include provision for cost effectiveness and meeting specific agency needs. OMB revised the policy to reflect this recommendation and also expanded on the point in Appendix IV.

(6) and (7). Commentators noted that the desirability of competition is sometimes conditioned by the fact that competitive processes unnecessarily slow down procurement of information technology, and that other requirements, such as the need for compatibility, may legitimately limit competitive processes. OMB recognizes the validity of these points but believes they may be taken into account without altering the policy statements.

(8). Commentators pointed out that agencies have some legitimate needs for customized software, and that acquisition of off-the-shelf software carries its own risks, such as uncertainty over continued maintenance. OMB believes that these quite meritorious considerations do not invalidate the policy statement as it stands.

(9). Several commentators said that the term "interconnectivity" has specific and limited meaning in telecommunications, and that "necessary compatibility" would better convey the meaning intended. OMB revised the policy to reflect these comments and expanded on the point in Appendix IV.

(14). Commentators recommended that the background materials for this policy statement be strengthened to stress the positive values of standards and that national security directives be referenced. OMB revised Appendix IV to reflect this recommendation and the fact that the General Services Administration issues Federal Telecommunications Standards.

(15). Several agencies commented that what may be cost effective for individual program managers may not be cost effective for the agency as a whole and that the policy as drafted places the burden of proof on the agency rather than the program manager. OMB recognizes the potential conflict between agency and program cost effectiveness but believes the burden of proof belongs with the agency to demonstrate that its arrangements for information technology facilities and services are the most cost effective for agency programs.

One commentator recommended that agency information technology facilities be permitted to charge users market rates rather than cost recovery, because cost recovery will not be competitive with market rates. OMB's view is that, if cost recovery is not competitive with market rates, this is prima facie evidence that agency information technology facility arrangements are not cost effective, and that program managers should be freed from mandatory use of such arrangements.

(16). Agencies commented that cost recovery systems may be expensive and should not be required where there is no clear benefit to such systems. OMB recognizes this problem and has revised Appendix II, but not the policy statement, to cover this contingency.

Section 9. Assignment of Responsibilities

Some commentators on this section objected to a perceived concentration in OMB of decisionmaking power over Federal information resources, believing that the Circular places program decisions in OMB's hands. OMB notes first that the Paperwork Reduction Act

requires the director of OMB to develop and implement Federal information policies, principles, standards, and guidelines (44 U.S.C. 3504). Second, the Circular states, and Appendix IV emphasizes, that program decisionmaking for Federal information resources belongs with the heads of agencies, operating within the policy framework set forth by OMB.

Several commentators recommended that this section include a statement concerning the Federal depository libraries. OMB believes the addition of statement 8a(12)(b) regarding the depository libraries covers this recommendation. Also, OMB did not accept a commentator's recommendation that certain responsibilities be assigned to Federal libraries; such libraries are subunits of agencies and the Circular assigns responsibilities only at the agency level.

Several commentators recommended that OMB assign responsibility for the Office of Personnel Management to develop and implement occupational and position standards for information resources managers. OMB does not believe management of Federal information resources requires establishing new job titles and series. Furthermore, such establishment would require legislation and could not be legally accomplished through an OMB Circular.

Several Federal agencies requested that various statements assigning responsibilities be revised to include reference to their statutory or regulatory responsibilities. OMB reviewed these requests and determined that revisions were unnecessary. The Circular presupposes the existence of, and compliance with, other applicable laws and regulations.

a(6). In response to comments OMB revised this statement more accurately to reflect agency responsibilities for Federal records management.

a(9). OMB inserted a reference to convey that the "senior official" is identical to the provision of 44 U.S.C. 3506(b).

b(1). At the suggestion of a commentator, OMB substituted "information resources management policy" for "information policy" because the latter term is not defined or used elsewhere in the Circular.

e(4). One commentator noted that assigning GSA responsibility for providing guidelines and regulations on the *use* of information technology contravenes the Brooks Act (40 U.S.C. 759(g)). OMB revised the statement to reflect this point.

h(12). OMB revised the statement in the same manner as statement 9b(1).

Appendix I

Several commentators expressed concern that promulgation of the appendix would rescind the OMB "Guidelines on Implementing the Privacy Act," and other suggested combining the appendix with all guidance OMB has issued on the Act. OMB did not intend to replace existing guidance with the appendix. The appendix replaces only the procedural requirements contained in OMB Circular No. A–108. All other guidance remains in force, and OMB has revised the appendix to make that clear. OMB declined to follow the suggestion that the appendix and other guidance be combined, because the purposes of each issuance are different.

Other commentators pointed out inconsistencies in the timing of various reviews required by the Circular's different appendices; suggested clarifying by examples what constitutes a "minor change to a system of records"; suggested changing the timing of the review of section (m) contracts to more frequently than every five years, since review is conducted on a random sample basis and should not prove overly burdensome; and suggested that the first triennial review of routine uses be commenced immediately upon issuance of the Circular. OMB revised the appendix to reflect these comments. OMB revised the appendix to reflect these comments. OMB added a requirement for an annual review of all systems notices; added certain data collection requirements for the annual report pursuant to section (p); and dropped a requirement for the Office of the Federal Register to provide OMB with a consolidated list of changes to agencies' systems of records.

Appendix II

Several commentators expressed concern about the cost effectiveness of requiring detailed accounting and chargeback for use of relatively small information technology facilities. OMB agreed with these comments. The intent of Appendix II is to encourage cost effective behavior in the management of Federal information technology resources. In revising the Appendix OMB raised the threshold so that the Appendix applies only to facilities having obligations in excess of $3 million per year.

A number of commentators pointed out that the Appendix does not allow facilities to justify resource requests based upon sharing, except in unusual circumstances. OMB revised the Appendix to clarify that this restriction is included because the normal practice is for users of a facility to include resource requests for the amount of technology use in their budget and appropriation requests.

Several commentators believed that requiring full costs to be recovered from all users within an agency would not be cost effective. OMB disagreed with this viewpoint and retained the draft Circular's formulation. Viable management of a large information technology facility requires that managers know the amount of resources devoted to each user when providing services. Furthermore, effective management of the use of information technology requires that the user have responsibility for and control over the resources consumed by use of the facility.

Finally, a number of commentators questioned the advisability of giving users of significant new applications primary responsibility for selecting which facility will support the applications. OMB disagreed and retained the draft Circular's formulation. When users are dependent on effective technology support to perform their function, control over selection of facility is essential and consistent with holding users responsible for producing their government information products.

Appendix III

Several commentators asked for clarification of the relationship between Appendix III and OMB Circular No. A–123. The Appendix itself relates certain of its requirements to requirements in Circular No. A–123 (e.g., annual reporting of security weaknesses as material weaknesses, and a separate assurance of the security of agency automated information systems in the annual internal control report required by Circular No. A–123). Beyond these specific requirements, application controls specified in the Appendix should be verified in vulnerability assessments and internal control reviews of the functional area supported by the application. Installation controls specified in the Appendix should be reviewed as one of the generic controls of an information technology unit itself.

Several commentators asked how the Circular relates to OMB Circular No. A–127, Financial Management Systems. The evaluation and reporting requirements for the systems integrity objective contained in OMB Circular No. A–127 may be met by fulfilling the evaluation and reporting requirements contained in Appendix III to this Circular and in OMB Circular No. A–123.

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Several commentators also expressed confusion about the relation between Appendix III and security of national security information. OMB revised Appendix III to clarify that the Appendix provides a minimal set of requirements for the security of Federal automated information systems; required agencies to also incorporate additional requirements for security of information classified for national security purposes; and clarified central agency responsibilities related to national security information.

Several commentators suggested that Appendix III use the term "information technology facility" for consistency with the Circular and Appendix II. The term "information technology installation," as used in Appendix III, includes information technology facilities as well as small localized processing capabilities. OMB retained the term "information technology installation" in order to emphasize the importance of assuring adequate security of such smaller systems as well as of larger facilities. OMB expects that management processes for assuring a proper level of security at small installations will be less detailed and resource intensive than at larger facilities.

Several commentators expressed concern that personnel security responsibilities in the Appendix focused only on screening employees. They pointed out that other personnel activities, such as separation of duties and actions relating to employees leaving an agency, may be more cost effective security measures. OMB agreed with these comments and clarified the language concerning agency personnel programs so as not to limit agency personnel programs to employment screening of personnel, while still requiring employment screening as one tool in agency security programs.

Circular No. A–130

To the Heads of Executive Departments and Establishments

December 12, 1985.

Subject: Management of Federal Information Resources

1. *Purpose:* This Circular establishes policy for the management of Federal information resources. Procedural and analytic guidelines for implementing specific aspects of these policies are included as appendices.

2. *Rescissions:* This Circular rescinds OMB Circulars No. A–71, A–90, A–108, and A–121, and all Transmittal Memoranda to those circulars.

3. *Authorities:* This Circular is issued pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a), sections 111 and 206 of the Federal Property and Administrative Services Act of 1949 as amended (40 U.S.C. 759 and 487, respectively), the Budget and Accounting Act of 1921 as amended (31 U.S.C. 11), Executive Order No. 12046 of March 27, 1978, and Executive Order No. 12472 of April 3, 1984.

4. *Applicability and Scope:*

a. The policies in this Circular apply to the information activities of all agencies of the executive branch of the Federal Government.

b. Information classified for national security purposes should also be handled in accordance with the appropriate national security directives. National security emergency preparedness activities should be conducted in accordance with Executive Order No. 12472.

5. *Background:* The Paperwork Reduction Act establishes a broad mandate for agencies to perform their information management activities in an efficient, effective, and economical manner. To assist agencies in an integrated approach to information resources management, the Act requires that the Director of the Office of Management and Budget (OMB) develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

6. *Definitions:* As used in this Circular—

a. The term "agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency. Within the Executive Office of the President, the term includes only the Office of Management and Budget and the Office of Administration.

b. The term "information" means any communication or reception of knowledge such as facts, data, or opinions, including numerical, graphic, or narrative forms, whether, oral or maintained in any medium, including computerized data bases, paper, microform, or magnetic tape.

c. The term "government information" means information created, collected, processed, transmitted, disseminated, used, stored, or disposed of by the Federal Government.

d. The term "information system" means the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual.

e. The term "major information system" means an information system that requires special continuing management attention because of its importance to an agency mission; its high development, operating or maintenance costs; or its significant impact on the administration of agency programs, finances, property, or other resources.

f. The term "access to information" refers to the function of providing to members of the public, upon their request, the government information to which they are entitled under law.

g. The term "dissemination of information" refers to the function of distributing government information to the public, whether through printed documents, or electronic or other media. "Dissemination of information" does not include intra-agency use of information, interagency sharing of information, or responding to requests for "access to information."

h. The term "information technology" means the hardware and software used in connection with government information, regardless of the technology involved, whether computers, telecommunications, micrographics, or others. For the purposes of this Circular, automatic data processing and telecommunications activities related to certain critical national security missions, as defined in 44 U.S.C. 3502(2) and 10 U.S.C. 2315, are excluded.

i. The term "information technology facility" means an organizationally defined set of personnel, hardware, software, and physical facilities, a primary function of which is the operation of information technology.

j. The term "information resources management" means the planning, budget, organizing, directing, training, and control associated with government information. The term encompasses both information itself and the related resources, such as personnel, equipment, funds, and technology.

k. The term "government publication" means informational matter which is published as an individual document at government expense, or as required by law.

Other definitions specific to the subjects of the appendices appear in the appendices.

7. *Basic Considerations and Assumptions:*

a. The Federal Government is the largest single producer, consumer, and disseminator of information in the United States. Because of the size of the government's information activities, the dependence of government information activities upon the public's cooperation, and the value of government information to the entire Nation, the management of Federal information resources is an issue of continuing importance to the public and to the government itself.

b. Government information is a valuable national resource. It provides citizens with knowledge of their government, society, and economy—past, present, and future; is a means to ensure the accountability of government; is vital to the healthy performance of the economy; is an essential tool for managing the government's operations; and is itself a commodity often with economic value in the marketplace.

c. The free flow of information from the government to its citizens and vice versa is essential to a democratic society. It is also essential that the government minimize the Federal paperwork burden on the public, minimize the cost of its information activities, the maximize the usefulness of government information.

d. In order to minimize the cost and maximize the usefulness of government information activities, the expected public and private benefits derived from government information, insofar as they are calculable, should exceed the public and private costs of the information.

e. Although certain functions are inherently governmental in nature, being so intimately related to the public interest as to mandate performance by Federal employees, the government should look first to private sources, where available, to provide the commercial goods and services needed by the government to act on the public's behalf, particularly when cost comparisons indicate that private performance will be the most economical.

f. The use of up-to-date information technology offers opportunities to improve the management of government programs, and access to, and dissemination of, government information.

g. Because the public disclosure of government information is essential to the operation of a democracy, the public's right to access to government information must be protected in the management of Federal information resources.

h. The individual's right to privacy must be protected in Federal Government information activities involving personal information.

i. The open and efficient exchange of government scientific and technical information, subject to applicable national security controls and proprietary rights others may have in-such information, fosters excellence in scientific research and the effective use of Federal research and development funds.

j. The value of preserving government records is a function of the degree to which preservation protects the legal and financial rights of the government or its citizens, and provides an official record of Federal agency activities for agency management, public accountability, and historical purposes.

k. Federal Government information resources management policies and activities can affect, and be affected by, the information policies and activities of other nations.

8. *Policies:*

a. *Information Management.* Agencies shall:

(1) Create or collect only that informtion necessary for the proper performance of agency functions and that has practical utility, and only after planning for its processing, transmission, dissemination, use, storage, and disposition;

(2) Seek to satisfy new information needs through legally authorized interagency or intergovernmental sharing of information, or through commercial sources, where appropriate, before creating or collecting new information;

(3) Limit the collection of individually indentifiable information and proprietary information to that which is legally authorized and necessary for the proper performance of agency functions;

(4) Maintain and protect individually identifiable information and proprietary information in a manner that precludes:

(a) Unwarranted intrusion upon personal privacy (see Appendix I); and

(b) Violation of confidentiality;

(5) Provide individuals with access to, and the ability to amend errors in, systems of records, consistent with the Privacy Act;

(6) Provide public access to government information, consistent with the Freedom of Information Act;

(7) Ensure that agency personnel are trained to safeguard information resources;

(8) Disseminate information, as required by law, describing agency organization, activities, programs, meetings, systems of records, and other information holdings, and how the public may gain access to agency information resources;

(9) Disseminate such information products and services as are:

(a) Specifically required by law; or

(b) Necessary for the proper performance of agency functions, provided that the latter do not duplicate similar products or services that are or would otherwise be provided by other government or private sector organizations;

(10) Disseminate significant new, or terminate significant existing, information products and services only after providing adequate notice to the public;

(11) Disseminate such government information products and services:

(a) In a manner that ensures that members of the public whom the agency has an obligation to reach have a reasonable ability to acquire the information;

(b) In the manner most cost effective for the government, including placing maximum feasible reliance on the private sector for the dissemination of the products or services in accordance with OMB Circular No. A–76; and

(c) So as to recover costs of disseminating the products or services through user charges, where appropriate, in accordance with OMB Circular No. A–25;

(12) Establish procedures for:

(a) Reviewing periodically the continued need for and manner of dissemination of the agency's information products or services; and

(b) Ensuring that government publications are made available to depository libraries as required by law.

b. *Information Systems and Information Technology Management.* Agencies shall:

(1) Establish multiyear strategic planning processes for acquiring and operating information technology that meet program and mission needs, reflect budget constraints, and form the bases for their budget requests;

(2) Establish systems of management control that document the requirements that each major information system is intended to serve; and provide for periodic review of those requirements over the life of the system in order to determine whether the requirements continue to exist and the system continues to meet the purposes for which it was developed;

(3) Make the official whose program an information system supports responsible and accountable for the products of that system;

(4) Meeting information processing needs through interagency sharing and from commercial sources, when it is cost effective, before acquiring new information processing capacity;

(5) Share available information processing capacity with other agencies to the extent practicable and legally permissible;

(6) Acquire information technology in a competitive manner that minimizes total life cycle costs;

(7) Ensure that existing and planned major information systems do not unnecessarily duplicate information systems available from other agencies or from the private sector;

(8) Acquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software is clear and has been documented;

(9) Acquire or develop information systems in a manner that facilitates necessary compatibility;

(10) Assure that information systems operate effectively and accurately;

(11) Establish a level of security for all agency information systems commensurate with the sensitivity of the information and the risk and magnitude of loss or harm that could result from improper operation of the information systems (See Appendix III);

(12) Assure that only authorized personnel have access to information systems;

(13) Plan to provide information systems with reasonable continuity of support should their normal operations be disrupted in an emergency;

(14) Use Federal Information Processing and Telecommunications Standards except where it can be demonstrated that the costs of using a standard exceed the benefits or the standard will impede the agency in accomplishing its mission;

(15) Not require program managers to use specific information technology facilities or services unless it is clear and is convincingly documented, subject to periodic review, that such use is the most cost effective method for meeting program requirements;

(16) Account for the full costs of operating information technology facilities and recover such costs from government users as provided in Appendix II;

(17) Not prescribe Federal information system requirements that unduly restrict the prerogatives of heads of State and local government units;

(18) Seek opportunities to improve the operation of government programs or to realize savings for the government and the public through the application of up-to-date information technology to government information activities.

9. *Assignment of Responsibilities:*

a. *All Federal Agencies.* The head of each agency shall:

(1) Have primary responsibility for managing agency information resources;

(2) Ensure that the information policies, principles, standards, guidelines, rules, and regulations prescribed by OMB are implemented appropriately within the agency;

(3) Develop internal agency information policies and procedures and oversee, evaluate, and otherwise periodically review agency information resources management activities for conformity with the policies set forth in this Circular;

(4) Develop agency policies and procedures that provide for timely acquisition of required information technology;

(5) Maintain an inventory of the agencies' major information systems and information dissemination programs;

(6) Create, maintain, and dispose of a record of agency activities in accordance with the Federal Records Act of 1950, as amended;

(7) Identify to the Director, OMB statutory, regulatory, and other impediments to efficient management of Federal information resources and recommend to the Director legislation, policies, procedures, and other guidance to improve such management;

(8) Assist OMB in the performance of its functions under the Paperwork Reduction Act, including making services, personnel, and facilities available to OMB for this purpose to the extent practicable;

(9) Appoint a senior official, as required by 44 U.S.C. 3506(b), who shall report directly to the agency head, to carry out the responsibilities of the agency under the Paperwork Reduction Act. The head of the agency shall keep the Director, OMB, advised as to the name, title, authority, responsibilities, and organizational resources of the senior official. For purposes of this paragraph military departments and the Office of the Secretary of Defense may each appoint one official.

b. *Department of State.* The Secretary of State shall:

(1) Advise the Director, OMB, on the development of United States positions and policies on international information policy issues affecting Federal Government information activities and ensure that such positions and policies are consistent with Federal information resources management policy;

(2) Ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international information technology standards, and advise the Director, OMB, of such activities.

c. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition, management, security, and use of information technology;

(2) Advise the Director, OMB, on the development of policies relating to the procurement and management of Federal telecommunications resources;

(3) Provide OMB and the agencies with scientific and technical advisory services relating to the development and use of information technology;

(4) Conduct studies and evaluations concerning telecommunications technology, and concerning the improvement, expansion, testing, operation, and use of Federal telecommunications systems and advise the Director, OMB, and appropriate agencies of the recommendations that result from such studies;

(5) Develop, in consultation with the Secretary of State and the Director, OMB, plans, policies, and programs relating to international telecommunications issues affecting government information activities;

(6) Identify needs for standardization of telecommunications and information processing technology, and develop standards, in consultation with the Secretary of Defense and the Administrator of General Servcies, to ensure efficient application of such technology;

(7) Ensure that the Federal Government is represented in the development of national and, in consultation with the Secretary of State, international information technology standards, and advise the Director, OMB, of such activities.

d. *Department of Defense.* The Secretary of Defense shall develop, in consultation with the Administrator of General Services, uniform Federal telecommunications standards and guidelines to ensure national security, emergency preparedness, and continuity of government.

e. *General Services Administration.* The Administrator of General Services shall:

(1) Advise the Director, OMB, and agency heads on matters affecting the procurement of information technology;

(2) Coordinate and, when required, provide for the purchase, lease, and

maintenance of information technology required by Federal agencies;

(3) Develop criteria for timely procurement of information technology and delegate procurement authority to agencies that comply with the criteria;

(4) Provide guidelines and regulations for Federal agencies, as authorized by law, on the acquisition, maintenance, and disposition of information technology;

(5) Develop policies and guidelines that facilitate the sharing of information technology among agencies as requried by this Circular;

(6) Review agencies' information resources management activities to meet the objectives of the triennial reviews required by the Paperwork Reduction Act and report the results to the Director, OMB;

(7) Manage the Automatic Data Processing Fund and the Federal Telecommunications Fund in accordance with the Federal Property and Administrative Services Act, as amended;

(8) Establish procedures for approval, implementation, and dissemination of Federal telecommunications standards and guidelines and for implementation of Federal Information Processing Standards.

f. *Office of Personnel Management.* The Director, Office of Personnel Management, shall:

(1) Develop and conduct training programs for Federal personnel on information resources management, including end user computing;

(2) Evaluate periodically future personnel management and staffing requirements for Federal information resources management;

(3) Establish personnel security policies and develop training programs for Federal personnel associated with the disgn, operation, or maintenance of information systems.

g. *National Archives and Records Administration.* The Archivist of the United States shall:

(1) Administer the Federal records management program in accordance with the National Archives and Records Act;

(2) Assist the Director, OMB, in developing standards and guidelines relating to the records management program.

h. *Office of Management and Budget.* The Director of the Office of Management and Budget shall:

(1) Provide overall leadership and coordination of Federal information resources management within the executive branch;

(2) Serve as the President's principal adviser on procurement and management of Federal telecommunications systems, and develop and establish policies for procurement and management of such systems;

(3) Issue policies, procedures, and guidelines to assist agencies in achieving integrated, effective, and efficient information resources management;

(4) Initiate and review proposals for changes in legislation, regulations, and agency procedures to improve Federal information resources management;

(5) Review and approve or disapprove agency proposals for collection of information from the public, as defined in 5 CFR 1320.7;

(6) Develop and publish annually, in consultation with the Administrator of General Services, a five-year plan for meeting the information technology needs of the Federal government;

(7) Evaluate agencies' information resources management and identify cross-cutting information policy issues through the review of agency information programs, information collection budgets, information technology acquisition plans, fiscal budgets, and by other means;

(8) Provide policy oversight for the Federal records management function conducted by the National Archives and Records Administration and coordinate records management policies and programs with other information activities;

(9) Review, with the advice and assistance of the Administrator of General Services, selected agencies' information resources management activities to meet the objectives of the triennial reviews required by the Paperwork Reduction Act;

(10) Review agencies' policies, practices, and programs pertaining to the security, protection, sharing, and disclosure of information, in order to ensure compliance with the Privacy Act and related statutes;

(11) Resolve information technology procurement disputes between agencies and the General Services Administration pursuant to Section 111 of the Federal Property and Administrative Services Act;

(12) Review proposed U.S. government position and policy statements on international issues affecting Federal Government information activities and advise the Secretary of State as to their consistency with Federal information resources management policy.

10. *Oversight.* the Director, OMB, will use information technology planning reviews, fiscal budget reviews, information collection budget reviews, management reviews, GSA reviews of agency information resources management activities, and such other measures as he deems necessary to evaluate the adequacy and efficiency of each agency's information resources management and compliance with this Circular.

11. *Effective Date.* This Circular is effective upon publication (December 12, 1985).

12. *Inquiries.* All questions or inquiries should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Telephone: (202) 395–3287.

13. *Sunset Review Date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

James C. Miller III,

Director.

Appendix I: Federal Agency Responsibilities for Maintaining Records about Individuals

Appendix II: Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities

Appendix III: Security of Federal Automated Information Systems

Appendix IV: Analysis of Key Sections

Darrell A. Johnson,

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Appendix I to OMB Circular No. A–130—Federal Agency Responsibilities for Maintaining Records About Individuals

1. *Purpose and Scope.*

This Appendix describes agency responsibilities for implementing the Privacy Act of 1974, 5 U.S.C. 552a as amended (hereinafter "the Act"). It applies to all agencies subject to the Act. The Appendix constitutes a revision to procedures formerly contained in OMB Circular No. A–108, now rescinded. Note that this Appendix does *not* rescind other guidance OMB has issued to help agencies interpret the Privacy Act's provisions, e.g., Privacy Act Guidelines (40 FR 28949–28978, July 9, 1975), or Guidance for Conducting Matching Programs (47 FR 21656–21658, May 19, 1982).

2. *Definitions.*

a. The terms "agency," "individual," "maintain," "record," "system of records," and "routine use," as used in this Appendix, are defined in the Act (5 U.S.C. 552a(a)). The definition of "agency" in the Act differs somewhat from the definition in the Circular.

b. The term "minor change to a system of records" means a change that does not significantly change the system; that is, does not affect the character or

purpose of the system and does not affect the ability of an individual to gain access to his or her record or to any information pertaining to him or her which is contained in the system; e.g., changing the title of the system manager.

3. *Assignment of Responsibilities.*

a. *All Federal Agencies.* In addition to meeting the agency requirements contained in the Act, and the specific reporting requirements detailed in this Appendix, the head of each agency shall ensure that the following reviews are conducted as often as specified below, and be prepared to report to the Director, OMB, the results of such reviews and the corrective action taken to resolve problems uncovered. The head of each agency shall:

(1) *Section (m) Contracts.* Review every two years a random sample of agency contracts that provide for the maintenance of a system of records on behalf of the agency to accomplish an agency function, in order to ensure that the wording of each contract makes the provisions of the Act apply. (5 U.S.C. 552a(m)(1))

(2) *Recordkeeping Practices.* Review annually agency recordkeeping and disposal policies and practices in order to assure compliance with the Act.

(3) *Routine Use Disclosures.* Review every three years the routine use disclosures associated with each system of records in order to ensure that the recipient's use of such records continues to be compatible with the purpose for which the disclosing agency originally collected the information. The first such review should commence immediately upon the issuance of this Appendix.

(4) *Exemption of Systems of Records.* Review every three years each system of records for which the agency has promulgated exemption rules pursuant to Section (j) or (k) of the Privacy Act in order to determine whether such exemption is still needed.

(5) *Matching Programs.* Review annually each ongoing matching program in which the agency has participated during the year, either as a source or as a matching agency, in order to ensure that the requirements of the Act, the OMB Matching Guidelines, and the OMB Model Control System and Checklist have been met.

(6) *Privacy Act Training.* Review annually agency training practices in order to ensure that all agency personnel are familiar with the requirements of the Act, with the agency's implementing regulation, and with any special requirements that their specific jobs entail.

(7) *Violations.* Review annually the actions of agency personnel that have resulted either in the agency being found civilly liable under Section (g) of the Act, or an employee being found criminally liable under the provisions of Section (i) of the Act, in order to determine the extent of the problem and to find the most effective way to prevent recurrences of the problem.

(8) *Systems of Records Notices.* Review annually each system of records notice to ensure that it accurately describes the system. Where minor changes are needed, ensure that an amended notice is published in the Federal Register. Agencies may choose to make one annual comprehensive publication consolidating such minor changes. This requirement is distinguished from and in addition to the requirement to report to OMB and the Congress major changes to systems of records and to publish those changes in the Federal Register (see paragraph 4b of this Appendix).

b. *Department of Commerce.* The Secretary of Commerce shall, consistent with guidelines issued by the Director, OMB, develop and issue standards and guidelines for assuring the security of information protected by the Privacy Act in automated information systems.

c. *General Services Administration.* The Administrator of General Services shall, consistent with guidelines issued by the Director, OMB, issue instructions on what agencies must do in order to comply with the requirements of Section (m) of the Act when contracting for the operation of a system of records to accomplish an agency purpose.

d. *Office of Personnel Management.* The Director of the Office of Personnel Management shall, consistent with guidelines issued by the Director, OMB:

(1) Develop and maintain government-wide standards and procedures for civilian personnel information processing and recordkeeping directives to assure conformance with the Act.

(2) Develop and conduct training programs for agency personnel, including both the conduct of courses in various substantive areas (e.g., legal, administrative, information technology) and the development of materials that agencies can use in their own courses. The assignment of this responsibility to OPM does not affect the responsibility of individual agency heads for developing and conducting training programs tailored to the specific needs of their own personnel.

e. *National Archives and Records Administration.* The Archivist of the United States shall, consistent with guidelines issued by the Director, OMB:

(1) Issue instructions on the format of the Agency notices and rules required to be published under the Act.

(2) Compile and publish annually the rules promulgated under 5 U.S.C. 552a(f) and agency notices published under 5 U.S.C. 552a(e)(4) in a form available to the public.

(3) Issue procedures governing the transfer of records to Federal Records Centers for storage, processing, and servicing pursuant to 44 U.S.C. 3103. For purposes of the Act, such records are considered to be maintained by the agency that deposited them. The Archivist may disclose deposited records only according to the access rules established by the agency that deposited them.

f. *Office of Management and Budget.* The Director of the Office of Management and Budget will:

(1) Issue guidelines and directives to the agencies to implement the Act.

(2) Assist the agencies, at their request, in implementing their Privacy Act programs.

(3) Review the new and altered system reports agencies submit pursuant to Section (s) of the Act.

(4) Compile the annual report of the President to the Congress in accordance with Section (p) of the Act.

4. *Reporting Requirements.*

a. *Privacy Act Annual Reports.* To provide the necessary information for the annual report of the President, agencies shall submit a Privacy Act Annual Report to the Director, OMB, covering their Privacy Act activities for the calendar year. The exact format and timing of the report will be established by the Director, OMB. (5 U.S.C. 552a(p)); but, agencies should, at a minimum collect, and be prepared to report the following data on a calendar year basis:

(1) Total number of active systems of records and changes to that population during the year, e.g., publications of new systems, additions and deletions of routine uses, exemptions, automation of record systems.

(2) Public comments received on agency publications and implementation activities.

(3) Number of requests from individuals for access to records about themselves in systems of records *that cited the Privacy Act in support of their requests.*

(4) Number granted in whole or part, denied in whole, and for which no record was found.

(5) Number of amendment requests from individuals to amend records about them in systems of records *that cited the Privacy Act in support of their requests.*

(6) Number granted in whole or part, denied in whole, and for which no record was found.

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(7) Number of appeals of access and amendment denials and the results of such appeals.

(8) Number of instances in which individuals litigated the results of appeals of access or amendment, and the results of such litigation.

(9) Number and description of matching programs participated in either as source or matching agency.

b. *New and Altered System Reports.* The Act requires agencies to publish notices in the **Federal Register** describing new or altered systems of records, and to submit reports on these systems to the Director, OMB, and to the Congress.

(1) *Altered System of Records.* Minor changes to systems of records need not be reported. For example, a change in the designation of the system manager due to a reorganization would not require a report, so long as an individual's ability to gain access to his or her records is not affected. Other examples include changing applicable safeguards as a result of a risk analysis, deleting a routine use when there is no longer a need for the authorized disclosure. These examples are not intended to be all-inclusive.

The following changes are those for which a report is required:

(a) An increase or change in the number or types of individuals on whom records are maintained. For example, a decision to expand a system that originally covered only residents of public housing in major cities to cover such residents nationwide would require a report. Increases attributable to normal growth should not be reported.

(b) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would require a report.

(c) A change that alters the purpose for which the information is used.

(d) A change to equipment configuration (either hardware or software) that creates substantially greater access to the records in the system. For example, locating interactive terminals at regional offices for accessing a system formerly accessible only at the headquarters would require a report.

(e) The addition of an exemption (pursuant to Section (j) or (k) of the Act). Note that, in submitting a rulemaking for an exemption as part of a report of a new or altered system, agencies will meet the reporting requirements of Executive Order No. 12291 and need not make a separate submission under that order.

When an agency makes a change to an information technology installation, telecommunication network, or any other general changes in information collection, processing, dissemination, or storage that affect multiple systems of records, it may submit a single consolidated new or altered system report, with changes to existing notices and supporting documentation included in the submission.

(2) *Contents of the Report.* The report for a new or altered system has three elements: a transmittal letter, a narrative statement, and supporting documentation that includes a copy of the proposed **Federal Register** notice. There is no prescribed format for either the letter or the narrative statement. The notice must appear in the format prescribed by the Office of the Federal Register's *Document Drafting Handbook.*

(a) *Transmittal Letter.* The transmittal letter shoud be signed by the senior agency official responsible for implementation of the Act within the agency and should contain the name and telephone number of the individual who can best answer questions about the system. The letter should contain the agency's assurance that the proposed system does not duplicate any existing agency systems. It should also state that a copy of the report has been distributed to the Speaker of the House and the President of the Senate as the Act requires. The letter may also include requests for waiver of the reporting time period.

(b) *Narrative Statement.* The narrative statement should be brief. It should make reference, as appropriate, to information in the supporting documentation rather than restating such information. The statement should:

(1) Describe the purpose for which the agency is establishing the system of records.

(2) Identify the authority under which the system is maintained. The agency should avoid citing housekeeping statutes, but rather cite the underlying programmatic authority for collecting, maintaining, and using the information. When the system is being operated to support an agency housekeeping program, e.g., a carpool locator, the agency may, however, cite a general housekeeping statute that authorizes the agency head to keep such records as are necessary.

(3) Provide the agency's evaluation of the probable or potential effects of the proposal on the privacy of individuals.

(4) Describe the relationship of the proposal, if any, to the other branches of the Federal Government and to State and local governments.

(5) Provide a brief description of the steps taken by the agency to minimize the risk of unauthorized access to the system of records. A more detailed assessment of the risks and specific administrative, technical, procedural, and physical safeguards established shall be made available to OMB upon request.

(6) Explain how each proposed routine use satisfies the compatibility requirement of subsection (a)(7) of the Act. For altered systems, this requirement pertains only to any newly proposed routine uses.

(7) Provide OMB control numbers, expiration dates, and titles of any OMB approved information collection requirements contained in the system of records. If the request for OMB clearance of an information collection is pending, the agency may simply state the title of the collection and the date it was submitted for OMB clearance.

(c) *Supporting Documentation.* Attach the following to all new or altered system reports:

(1) An advance copy of the new or altered system notice (consistent with the provisions of 5 U.S.C. 552a(e)(4)) that the agency proposes to publish for the new or altered system. For proposed altered systems the documentation should be in the same form as the agency proposes to publish in the public notice.

(2) An advance copy of any new rules or changes to published rules (consistent with the provision of 5 U.S.C. 552a (f), (j), and (k)) that the agency proposes to issue for the new or altered system. If no changes to existing rules are required, the agency shall so state in the narrative portion of the report. Proposed changes to existing rules shall be provided in the same form as the agency proposes to publish for formal notice and comment.

(3) *Timing and Distribution for Submitting New and Altered System Reports.* Submit reports on new and altered systems of records not later than 60 days prior to establishment of a new system or the implementation of an altered system (5 U.S.C. 552a(o)). Submit three copies of each report to:

President of the Senate, Washington, D.C. 20510

Speaker of the House of Representatives, Washington, D.C. 20515

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Agencies may assume that OMB concurs in Privacy Act aspects of their proposal if OMB has not commented

within 60 days from the date the transmittal letter was signed. Agencies may publish system and routine use notices as well as exemption rules in the Federal Register at the same time that they send the new or altered system report to OMB and the Congress. The 60-day period for OMB and Congressional review and the 30-day notice and comment period for routine uses and exemptions will then run concurrently.

(4) *Waivers of Report Time Period.* The Director, OMB, may grant a waiver of the 60-day period if the agency asks for the waiver and can demonstrate compelling reasons. Agencies may assume that OMB concurs in their request if OMB has not commented within 30 days of the date the transmittal letter was signed. When a waiver is granted, the agency is not thereby relieved of any other responsibility or liability under the Act. Note that OMB cannot waive time periods specifically established by the Act. Agencies will still have to meet the statutory notice and comment periods required for establishing a routine use or claiming an exemption.

Appendix H to OMB Circular No. A–130—Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities

1. *Purpose.*

This Appendix establishes procedures for cost accounting, cost recovery, and interagency sharing of Federal information technology facilities. The Appendix revises procedures formerly contained in OMB Circular No. A–121, now rescinded.

2. *Applicability.*

This Appendix applies to all information technology facilities that are operated by or on behalf of a Federal agency; provide information technology service to more than one user; operate one or more general management computers; and have obligations in excess of $3 million per year.

3. *Definitions.*

a. The term "information technology facility" means an organizationally defined set of personnel, hardware, software, and physical facilities, a primary function of which is the operation of information technology. An information technology facility includes:

(1) The personnel who operate computers or telecommunications systems; develop or maintain software; provide user liaison and training; schedule computers, prepare and control input data; control, reproduce, and distribute output data; maintain tape and disk libraries; provide security, maintenance, and custodial services; and directly manage or provide direct administrative support to personnel engaged in these activities.

(2) The owned or leased computer and telecommunications hardware, including central processing units; associated peripheral equipment such as disk drives, tape drives, drum storage, printers, card readers, and consoles; data entry equipment; data reproduction, decollation, booking, and binding equipment; telecommunications equipment including control units, terminals, modems, and dedicated telephone and satellite links provided by the facility to enable data transfer and access to users. Hardware acquired and maintained by users of the facility is excluded.

(3) The software, including operating system software, utilities, sorts, language processors, access methods, data base processors, and other similar multi-user software required by the facility for support of the facility and/or for general use by users of the facility. All software acquired or maintained by users of the facility is excluded.

(4) The physical facilities, including computer rooms; tape and disk libraries; stockrooms and warehouse space; office space; physical fixtures.

b. The term "full costs" means all significant expenses incurred in the operation of an information technology facility. The following elements are included:

(1) Personnel, including salaries, overtime, and fringe benefits of civilian and military personnel; training; and travel.

(2) Equipment, including depreciation for owned, capitalized equipment; equipment rental or lease; and direct expenses for noncapitalized equipment.

(3) Software, including depreciation for capitalized costs of developing, converting, or acquiring software; rental of for software; and direct expenses for noncapitalized acquisition of software.

(4) Supplies, including office supplies; data processing materials; and miscellaneous expenses.

(5) Contracted services, including technical and consulting services; equipment maintenance; data entry support; operations support; facilities management; maintenance of software; and telecommunications network services.

(6) Space occupancy, including rental and lease of buildings, general office furniture, and equipment; building maintenance; heating, air conditioning and other utilities; telephone services; power conditioning and distribution equipment and alternate power sources; and building security and custodial services.

(7) Intra-agency services, including normal agency support services that are paid by the installation.

(8) Interagency services, including services provided by other agencies and departments that are paid by the installation.

c. The term "user" means an organizational or programmatic entity that receives service from an information technology facility. A user may be either internal or external to the agency organization responsible for the facility, but normally does not report either to the manager or director of the facility or to the same immediate supervisor.

d. The term "general management computer" means a digital computer that is used for any purpose other than as a part of a process control system, space system, mobile system, or a system meeting one of the exclusions identified in the Department of Defense Authorization Act of 1982.

4. *Accounting and Reimbursement for Sharing of Information Technology Facilities.*

a. *Interagency Sharing.* Agencies shall:

(1) Share their information technology facilities with users from other agencies to the maximum extent feasible;

(2) Document sharing arrangements, where the total annual reimbursement exceeds $500,000, with individual written agreements that identify:

(a) Services available for sharing;

(b) Service priority procedures and terms (e.g., quality performance standards) to be provided to each user;

(c) Prices to be charged for providing services;

(d) Reimbursement arrangements for services provided; and

(e) Arrangements for terminating the sharing agreement;

(3) Provide standard terms and conditions to users obtaining similar services insofar as possible;

(4) Include such sharing arrangements, when fully documented and part of a formal sharing program, in justifications to OMB for resource requests (see OMB Circular No. A–11, revised) and allocations. Direct funding by a shared facility should be requested only where exceptional circumstances preclude the user agency from using alternative sources.

b. *Cost Accounting.* Agencies shall account for the full cost of the operation of information technology facilities.

c. *User Cost Distribution System.* Agencies shall implement a system to distribute the full cost of providing services to all users. That system will:

(1) Be consistent with guidance provided in the Federal Information Processing Standards Publication No. 96, "Guidelines for Developing and Implementing a Charging System for Data Processing Services" (National Bureau of Standards, Department of Commerce, 1982).

(2) Price each service provided by the facility to the users of that service on an equitable basis commensurate with the amount of resources required to provide that service and the priority of service provided. The price of individual transactions may be estimated provided that they are periodically reconciled to assure that the full costs of operations are equitably distributed among all users.

(3) Directly distribute to the recipient of the services the full costs of dedicated services, including applications developed and maintained; software unique to a single application; and telecommunications equipment, including control units, terminals, modems, and dedicated telephone or satellite links provided by the facility to enable data transfer and computer access to users.

d. *Cost Recovery.* Consistent with statutory authority, agencies shall:

(1) Submit periodic statements to all users of agency information technology facilities specifying the costs of services provided;

(2) Recover full costs from Federal users of the facility; and

(3) Recover costs from nonfederal users of the facilities consistent with OMB Circular No. A–25.

e. *Accounting for Reimbursements Received.* Agencies shall:

(1) Include resource requests for the amount of planned information technology use in user budget and appropriation requests;

(2) Assure that shared facilities reduce budget and appropriation requests by the amount of planned reimbursements from users;

(3) Prepare, at the close of each fiscal year, a report that documents in the agency's official records the full past year cost of operating information technology facilities that recover more than $500,000 per year from sharing reimbursements; and

(4) Use the portion of reimbursements arising from equipment and software depreciation for the replacement of equipment and software capital assets, provided such usage is included in the agency's budget.

5. *Selection of Information Technology Facilities To Support New Applications.*

In selecting information technology facilities to support new applications, agencies shall establish a management control procedure for determining which facility will be used to support each significant application. This procedure shall ensure that:

(a) All alternative facilities are considered, including other Federal agency and nonfederal facilities and services;

(b) Agency rules do not require that priority be given to the use of in-house facilities; and

(c) The user of the application has primary responsibility for selecting the facility.

6. *Assignment of Responsibilities.*

a. *All Federal Agencies.* The head of each agency shall:

(1) Establish policies and procedures and assign responsibilities to implement the requirements of this Appendix; and

(2) Ensure that contracts awarded for the operation of information technology facilities include provisions for compliance with the requirements of this Appendix.

b. *General Services Administration.* The Administration of General Services shall:

(1) Ensure that information technology facilities designated as Federal Data Processing Centers comply with the procedures established by this Appendix;

(2) Ensure that provisions consistent with this Appendix are included in contracts for the operation of information technology facilities when acquiring services on behalf of an agency:

7. *Implementation Requirements.*

Agencies shall implement the provisions of this Appendix effective at the beginning of fiscal year 1987.

Appendix III to OMB Circular No. A–130—Security of Federal Automated Information Systems

1. *Purpose.*

This Appendix establishes a minimum set of controls to be included in Federal automated information systems security programs; assigns responsibilities for the security of agency automated information systems; and clarifies the relationship between such agency security programs and internal control systems established in accordance with OMB Circular No. A–123, Internal Control Systems. The Appendix revises procedures formerly contained in Transmittal Memorandum No. 1 to OMB Circular No. A–71, now rescinded, and incorporates responsibilities from applicable national security directives.

2. *Definitions.*

a. The term "automated information system" means an information system (defined in Section 6d of the Circular) that is automated.

b. The term "information technology installation" means one or more computer or office automation systems including related telecommunications, peripheral and storage units, central processing units, and operating and support system software. Information technology installations may range from information technology facilities such as large centralized computer centers to individual stand-alone microprocessors such as personal computers.

c. The term "sensitive data" means data that require protection due to the risk and magnitude of loss or harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the data. The term includes data whose improper use or disclosure could adversely affect the ability of an agency to accomplish its mission, proprietary data, records about individuals requiring protection under the Privacy Act, and data not releasable under the Freedom of Information Act.

d. The term "sensitive application" means an application of information technology that requires protection because it processes sensitive data, or because of the risk and magnitude of loss or harm that could result from improper operation or deliberate manipulation of the application.

e. The term "security specifications" means a detailed description of the safeguards required to protect a sensitive application.

3. *Automated Information Systems Security Programs.*

Agencies shall assure an adequate level of security for all agency automated information systems, whether maintained in-house or commercially. Specifically, agencies shall:

—Assure that automated information systems operate effectively and accurately;

—Assure that there are appropriate technical, personnel, administrative, environmental, and telecommunications safeguards in automated information systems; and

—Assure the continuity of operation of automated information systems that support critical agency functions.

Agencies shall implement and maintain an automated information systems security program, including the preparation of policies, standards, and procedures. This program will be consistent with government-wide policies, procedures, and standards issued by the Office of Management and Budget, the Department of Commerce,

the Department of Defense, the General Services Administration, and the Office of Personnel Management. Agency programs shall incorporate additional requirements for securing national security information in accordance with appropriate national security directives. Agency programs shall, at a minimum, include four primary elements: applications security, personnel security, information technology installation security, and security awareness and training.

a. *Applications Security.*

(1) *Management Control Process and Sensitivity Evaluation.* Agencies shall establish a management control process to assure that appropriate administrative, physical, and technical safeguards are incorporated into all new applications, and into significant modifications to existing applications. Management officials who are the primary users of applications should evaluate the sensitivity of new or existing applications being substantially modified. For those applications considered sensitive, the management control process shall, at a minimum, include security specifications and design reviews and systems tests.

(a) *Security Specifications.* Agencies shall define and approve security requirements and specifications prior to acquiring or starting formal development of the applications. The results of risk analyses performed at the information technology installation where the applications will be processed should be taken into account when defining and approving security specifications for the applications. Other vulnerabilities of the applications, such as in telecommunications links, shall also be considered in defining security requirements. The views and recommendations of the information technology user organization, the information technology installation, and the individual responsible for security at the installation shall be considered prior to the approval of security specifications for the applications.

(b) *Design Reviews and System Tests.* Agencies shall conduct and approve design reviews and system tests, prior to placing the application into operation, to assure the proposed design meets the approved security specifications. The objective of the system tests should be to verify that required administrative, technical, and physical safeguards are operationally adequate. The results of the design reviews and systems tests shall be fully documented and maintained in the official agency records.

(c) *Certification.* Upon completion of the system tests, an agency official shall certify that the system meets all applicable Federal policies, regulations, and standards, and that the results of the tests demonstrate that the installed security safeguards are adequate for the application.

(2) *Periodic Review and Recertification.* Agencies shall conduct periodic audits or reviews of sensitive applications and recertify the adequacy of security safeguards. Audits or reviews shall evaluate the adequacy of implemented safeguards, assure they are functioning properly, identify vulnerabilities that could heighten threats to sensitive data or valuable resources, and assist with the implementation of new safeguards where required. They are intended to provide a basis for recertification of the security of the application. Recertification shall be fully documented and maintained in the official agency records. Audits or reviews and recertifications shall be performed at least every three years. They should be considered as part of agency vulnerability assessments and internal control reviews conducted in accordance with OMB Circular No. A–123. Security or other control weaknesses identified shall included in the annual internal control assurance letter and report required by Circular No. A–123.

(3) *Contingency Plans.* Agencies shall establish policies and assign responsibilities to assure that appropriate contingency plans are developed and maintained by end users of information technology applications. The intent of such plans is to assure that users can continue to perform essential functions in the event their information technology support is interrupted. Such plans should be consistent with disaster recovery and continuity of operations plans maintained by the installation at which the application is processed.

b. *Personnel Security.* Agencies shall establish and manage personnel security policies and procedures to assure an adequate level of security for Federal automated information systems. Such policies and procedures shall include requirements for screening all individuals participating in the design, development, operation, or maintenance of sensitive applications as well as those having access to sensitive data. The level of screening required by these policies should vary from minimal checks to full background investigations, depending upon the sensitivity of the information to be handled and the risk and magnitude of loss or harm that could be caused by the individual. These policies shall be established for both Federal and contractor personnel. Personnel security policies for Federal employees shall be consistent with policies issued by the Office of Personnel Management.

c. *Information Technology Installation Security.* Agencies shall assure that an appropriate level of security is maintained at all information technology installations operated by or on behalf of the Federal Government (e.g., government-owned, contractor-operated installations).

(1) *Assigning Responsibility.* Agencies shall assign responsibility for the security of each installation to a management official knowledgeable in information technology and security matters.

(2) *Periodic Risk Analysis.* Agencies shall establish and maintain a program for the conduct of periodic risk analyses at each installation to ensure that appropriate, cost effective safeguards are incorporated into existing and new installations. The objective of a risk analysis is to provide a measure of the relative vulnerabilities and threats to an installation so that security resources can be effectively distributed to minimize potential loss. Risk analyses may vary from an informal review of a microcomputer installation to a formal, fully quantified risk analysis of a large scale computer system. The results of these analyses should be documented and taken into consideration by management officials when certifying sensitive applications processed at the installation. Such analyses should also be consulted during the evaluation of general controls over the management of information technology installations conducted in accordance with OMB Circular No. A–123. A risk analysis shall be performed:

(a) Prior to the approval of design specifications for installations;

(b) Whenever a significant change occurs to the installations (e.g., adding a local area network; changing from batch to online processing; adding dial-up capability). Agency criteria for defining significant change shall be commensurate with the sensitivity of the data processed by the installation.

(c) At periodic intervals established by the agency commensurate with the sensitivity of the data processed, but not to exceed every five years if no risk analysis have been performed during that period.

(3) *Disaster and Continuity Plan.* Agencies shall maintain disaster recovery and continuity of operations plans for all information technology installations. The objective of these plans should be to provide reasonable continuity of data processing support

should events occur that prevent normal operations at the installation. For large installations and installations that support essential agency functions, the plans should be fully documented and operationally tested periodically, at a frequency commensurate with the risk and magnitude of loss or harm that could result from disruption of information technology support.

(4) *Acquisition Specifications.* Agencies shall assure that appropriate technical, administrative, physical, and personnel security requirements are included in specifications for the acquisition or operation of information technology installations, equipment, software, and related services, whether procured by the agency or by GSA. These security requirements shall be reviewed and approved by the management official responsible for security at the installation making the acquisition.

d. *Security Awareness and Training Programs.* Agencies shall establish a security awareness and training program to assure that agency and contractor personnel involved in the management, operation, programming, maintenance, or use of information technology are aware of their security responsibilities and know how to fulfill them. Users of information technology systems should be apprised of the vulnerabilities of such systems and trained in techniques to enhance security.

4. *Assignment of Responsibilities.*

a. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue standards and guidelines for assuring the security of Federal automated information systems;

(2) Establish standards, approved in accordance with applicable national security directives, for systems used to process sensitive information the loss of which could adversely affect the national security interest; and

(3) Provide technical assistance to Federal agencies in implementing Department of Commerce standards and guidelines.

b. *Department of Defense.* The Secretary of Defense shall:

(1) Act, in accordance with applicable national security directives, as executive agent of the government for the security of telecommunications and automated information systems that process information the loss of which could adversely affect the national security interest; and

(2) Provide technical material and assistance to Federal agencies concerning security of Federal telecommunications and automated information systems.

c. *General Services Administration.* The Administrator of General Services shall:

(1) Issue policies and regulations for the physical and environmental security of computer rooms in Federal buildings consistent with standards issued by the Department of Commerce and the Department of Defense.

(2) Assure, that agency procurement requests for computers, software, telecommunications services, and related services include security requirements. Delegations of procurement authority to agencies by GSA under mandatory programs, dollar threshold delegations, certification programs, or other so-called blanket delegations shall include requirements for agency specification of security requirements.

(3) Assure that information technology equipment, software, computer room construction, guard or custodial services, telecommunications services, and any other related services procured by GSA meet the security requirements established and specified by the user agency and are consistent with other applicable policies and standards issued by OMB, the Department of Commerce, the Department of Defense, and the Office of Personnel Management.

(4) Issue appropriate standards for the security of Federal telecommunications systems. Standards related to systems used to communicate sensitive information, the loss of which could adversely affect the national security interest, shall be developed and issued in accordance with applicable national security directives.

d. *Office of Personnel Management.* The Director, Office of Personnel Management, shall maintain personnel security policies for Federal personnel associated with the design, programming, operation, maintenance, or use of Federal automated information systems. Requirements for personnel checks imposed by these policies should vary commensurate with the risk and magnitude of loss or harm that could be caused by the individual. The checks may range from merely normal reemployment screening procedures to full background investigations.

5. *Reports.* In their annual internal control report to the President and the Congress, required under OMB Circular No. A–123, agencies shall:

a. Describe any security or other control weaknesses identified during audits or reviews of sensitive applications or when conducting risk analyses of installations; and

b. Provide assurance that there is adequate security of agency automated information systems.

Appendix IV to OMB Circular No. A–130—Analysis of Key Sections

1. Purpose

The purpose of this Appendix is to provide a general context and explanation for the contents of the key sections of the Circular.

2. Background

The Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat 2812, codified at Chapter 35 of Title 44 of the United States Code, establishes a broad mandate for agencies to perform their information activities in an efficient, effective, and economical manner. Section 3504 of the Act provides authority to the Director, Office of Management and Budget (OMB), to develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

The Circular implements OMB authority under the Act with respect to Section 3504(b), general information policy, Section 3504(e), records management, Section 3504(f), privacy, and Section 3504(g), Federal automatic data processing and telecommunications; the Privacy Act of 1974 (5 U.S.C. 552a); Sections 111 and 208 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759 and 487, respectively); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.); and Executive Order No. 12046 of March 27, 1978 and Executive Order No. 12472 of April 3, 1984, Assignment of National Security and Emergency Telecommunications Functions. The Circular complements 5 CFR Part 1320, Controlling Paperwork Burden on the Public, which implements other sections of the Paperwork Reduction Act dealing with controlling the reporting and recordkeeping burden placed on the public.

In addition, the Circular revises and consolidated policy and procedures in five existing OMB directives and rescinds those directives, as follows:

A–71—Responsibilities for the Administration and Management of Automatic Data Processing Activities

Transmittal Memorandum No. 1 to Circular No. A–71—Security of

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Federal Automated Information Systems

A–90—Cooperating with State and Local Governments to Coordinate and Improve Information Systems

A–108—Responsibilities for the Maintenance of Records about Individuals by Federal Agencies

A–121—Cost Accounting, Cost Recovery, and Interagency Sharing of Data Processing Facilities.

OMB's review of the five existing policy directives led to the conclusion that much, but not all, of their content was procedural in nature, concerned chiefly with how policies were to be carried out. OMB determined that it was important clearly to distinguish the statement of policies from the procedures for implementing those policies. For this reason, the main body of the Circular consists of basic considerations and assumptions, policies, and assignments of responsibility; the appendices to the Circular consist of procedures for implementing various policies and with analysis of key sections.

OMB developed the main body of the Circular relying upon comments on the **Federal Register** notice as well as other forms of Federal agency and public input, principally meetings with interested parties. For the procedural revisions, OMB relied on the assistance of interagency task groups.

The revised contents of OMB Circular No. A–71, dealing with assignments of responsibilities, are in the main body of this Circular. The contents of OMB Circular No. A–90 are rescinded entirely, with the exception of a policy statement at Section 8(b)(17) of this Circular. Revisions of the procedural aspects of the other three policy directives—Transmittal Memorandum No. 1 to A–71, A–108, and A–121—are appendices to this Circular. Appendices I, II, and III have the same prescriptive force as the Circular; Appendix IV is an explanatory document.

On September 17, 1984, the President signed National Security Decision Directive (NSDD) No. 145, National Policy on Telecommunications and Automated Information Systems Security. The NSDD requires that the Director, OMB, review for consistency with NSDD, and amend as appropriate, OMB Circular No. A–71, Transmittal Memorandum No. 1. The Circular and Appendix III satisfy the NSDD requirement.

3. Analysis

Section 6. Definitions.

f. Access to information. g. Dissemination of information. The Circular defines "access to information" as the function of providing to members of the public, upon their request, the government information to which they are entitled under law. Access refers to those situations in which the government agency's role is passive; access is what the government's responsibilities are when the public comes to the government and ask for information the government has and the public is entitled to. "Dissemination," in the Circular's usage, refers to the function of distributing government information; dissemination connotes an active outreach by a government agency. Dissemination refers to those situations in which the government provides the public with information without the public having to come and ask for it.

The distinction between access and dissemination is posed in order to elaborate the responsibilities of Federal agencies for providing information to the public. Two fundamentally different situations exist: one in which the public goes to the agency to ask for information the agency holds and may or may not have disseminated; and one in which the agency chooses to take the information it holds to the public. In the first instance—access—Congress has provided specific statutory policy in the Freedom of Information Act (FOIA) and in the Privacy Act. These laws and policies concerning access to government information are explicit, well known, and now so widely accepted in practice by Federal agencies as not to require policy elaboration in this Circular. Agencies should know that, if members of the public ask for information subject to FOIA or the Privacy Act, the agencies should normally provide the information forthwith, because the public has a formal legal process for forcing the agencies to yield the information.

The relationship between access to the dissemination of information is explained below, in the discussion of 8a(8) through (12).

Section 7. Basic Considerations and Assumptions

Basic considerations and assumptions are statements that provide the underpinnings for the prescriptive policies in Section 8; they are not themselves policy statements. They are either derived from statutes or legislative history, or represent executive branch management philosophy as embodied in the Circular.

—Statements 7–a through 7–d provide the general context for management of Federal information resources.

—Statement 7–e summarizes policy found in OMB Circular No. A–76, Performance of Commercial Activities.

—Statement 7–f states a general predisposition to use up-to-date information technology to manage Federal information resources.

—Statements 7-g and 7-h pertain to the Privacy Act and the Freedom of Information Act, respectively.

—Statement 7-i pertains to the National Science and Technology Policy, Organization and Priorities Act.

—Statement 7-j pertains to the Federal Records Act.

—Statement 7-k states a relationship between Federal information policy and international information policy.

Section 8. Policies

This section is divided into two subsections that generally correspond to the twofold definition of information resources management in Section 6-b, namely, information itself and the resources associated with information.

a. Information Management. The Paperwork Reduction Act acknowledges that information is a valuable resource and should be managed as such. Proceeding from this premise, this subsection states policies concerning the management of Federal information.

(1) and (2). Information Collection and Sharing. The Circular's basic considerations and assumptions (Section 7) establish the value of government information activities. Without question, some information created or collected by Federal agencies is so vital that the American form of government, the economy, national security, and citizens' safety and wellbeing could not continue to exist in its absence. Nothing in this Circular is intended to diminish or derogate the creation or collection of such information, nor to serve as a pretext under which a Federal agency could damage the Nation's critical needs by failing to create or collect such information.

At the same time, the Paperwork Reduction Act was designed to remedy deficiencies Congress perceived in Federal information activities. In the words of the report of the House Committee on Government Operations (Report No. 96–835, p. 3):

> The legislation is the result of a growing concern that the way the Government collects, uses, and disseminates information must be improved. Inefficiencies in current Federal information practices drastically reduce the effectiveness of the Government while, at the same time, drowning our

citizens in a sea of forms, questionnaires, and reports.

The Act intends that the creation or collection of information be carried out within the context of efficient, effective, and economical management. When Federal agencies create or collect information—just as when they perform any other vital functions—they consume scarce resources and such activities must be continually scrutinized in light of good management principles. The applicable principles provided in the purposes of the Act are:

—To minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons;
—To minimize the cost to the Federal Government of collecting, maintaining, using and disseminating information; and
—To maximize the usefulness of information collected by the Federal Government. (44 U.S.C. 3501)

Agencies must justify the creation or collection of information in the light of their statutory functions. Policy statement 8a(9) uses the standard, "necessary for the proper performance of agency functions," taken directly from the Paperwork Reduction Act (44 U.S.C. 3504(c)(2)). Further, the policy statement includes the requirement that the information have practical utility, as defined in the Paperwork Reduction Act (44 U.S.C. 3502(15)) and elaborated in Controlling Paperwork Burdens on the Public (5 CFR Part 1320). Note that practical utility includes characteristics pertaining to the quality of information such as accuracy, adequacy, and reliability, and that, in the case of general purpose statistics or recordkeeping, practical utility means that actual uses can be demonstrated (5 CFR 1320.7 (q)).

Good management and the requirement of practical utility dictate that agencies must plan from the outset for the steps in the information life cycle. The Act also stipulates that agencies must "formulate plans for tabulating the information in a manner which will enhance its usefulness to other agencies and to the public" (44 U.S.C. 3507(a)(1)(C)). When creating or collecting information, agencies must plan how they will process and transmit the information, how they will use it, what provisions they will make for access to it, whether and how they will disseminate it, how they will store it, and finally, how the information will ultimately be disposed of. While agencies cannot at the outset achieve absolute certitude in planning for each of these processes, the requirement for information resources planning is clearly contained in the Act (44 U.S.C. 3506(c)(1)), and the absence of adequate planning is sufficient reason not to create or collect information in the first place.

Before creating or collecting new information, agencies should look first to other agencies and the private sector so as not to duplicate existing information sources or services that would satisfy their needs. The Act requires that agencies shall not conduct or sponsor information collections unless they have eliminated collections "which seek to obtain information available from another source within the Federal Government" (44 U.S.C. 3507(a)(1)(A)). Each agency must also "ensure its information systems do not overlap each other or duplicate the systems of other agencies" (44 U.S.C. 3506(c)(2)). The Act also contains provisions governing the sharing of information between agencies (44 U.S.C. 3510). Applying the policy of OMB Circular No. A–76, the Circular also requires agencies to examine the possibility of acquiring the necessary information from private sector sources.

This is not to say that information creation or collection functions should be indiscriminately turned over to other agencies or to the private sector, but rather to say that agencies have an obligation to examine other potential sources of information which may satisfy agency needs. Some information can only be created or collected by Federal agencies themselves in the exercise of the government's sovereign powers. For some information, the government can satisfy its legitimate needs only when a Federal agency is the creation or collection agent. But other information needs can be met, and in many cases are routinely met, through existing services and sources in other agencies or the private sector. In many cases there is no inherently governmental function that is served by having information collected by a Federal agency; agencies should and do consider acquiring information collection services from the private sector. The Circular emphasizes that these sources should always be looked to first in the interests of efficiency and economy.

(3) through (6). Privacy Act and Freedom of Information Act. These statements contain policy statements pertaining to the Privacy Act and incorporating the policies of OMB Circular No. A–108, which is rescinded and superseded. Agencies are to ensure that they meet the requirements of the Privacy Act regarding collection of individually identifiable information. Such information is to be maintained and protected so as to preclude intrusion into the privacy of individuals. Individuals must be accorded access and amendment rights to records, as provided in the Privacy Act. Appendix I prescribes procedures for the maintenance of records about individuals in accordance with the Privacy Act.

In addition to Privacy Act considerations, statements (3) and (4) include provisions concerning proprietary information. Agencies are to minimize their collection of proprietary information, consistent with legal requirements and operational necessity and, when such information must be collected, agencies must provide for its protection.

(7). Training. Agency personnel must receive proper training to safeguard information resources. Training is particularly important in view of the changing nature of information resources management. The development of end user computing and office automation, for example, place the management of information and information technology in the hands of nearly all agency personnel rather than in the hands of a few employees at centralized facilities such as large computer centers. Policies and procedures for computer security, records management, protection of privacy, and other safeguards need to be incorporated into information resources management training programs.

(8) through (12). Information Dissemination.

(8) and (9). General Policy. How does the public know what information is available from Federal agencies? That is, given the distinction the Circular makes between access and dissemination, what is the relationship between the two? How does the public know what government information is accessible? The answer is: through the government's dissemination of information on what is available and how to gain to access it.

The Freedom of Information Act requires each agency to publish currently in the Federal Register, for the guidance of the public, descriptions of agency organization; where and how the public may obtain information; the general course and methods by which agency functions are determined, including all procedural requirements; rules of procedure; descriptions of forms and how to obtain them; substantive regulations; statements of general policy; and revisions to all the foregoing (5 U.S.C. 552(a)(1)). The Privacy Act also requires publication of information

concerning systems of records (see Appendix I); the Government in the Sunshine Act requires agencies to make public announcement of meetings (5 U.S.C. 552b(e)(1)). The Paperwork Reduction Act (44 U.S.C. 3507(a)(2)) and Controlling Paperwork Burdens on the Public (5 CFR Part 1320) require agencies to publish notices when they submit information collection requests for OMB approval.

In sum, every Federal agency has obligations to disseminate basic information to the public concerning what the agency does, how its programs operate, what the public must do to comply with laws or regulations, how to receive benefits, and how the public can use agency services. These obligations are the basic linkage between access to, and dissemination of, government information.

Beyond generic requirements, specific laws affect agency dissemination of information in two ways. First, for some agencies their basic enabling legislation stipulates that information dissemination is part of their statutory mission. General purpose statistical agencies, for example, have information dissemination as part of their very reason for existence. These agencies conduct substantial information dissemination programs in order to carry out their necessary functions. In contrast, other agencies such as some regulatory agencies have basic information access, but minimal information dissemination responsibilities; the existence of substantial information dissemination programs in such agencies would be unusual. Second, statutes may sometimes require that agencies produce and disseminate specific information products or services. For example, the law may state that the President or head of an agency shall make reports to the Congress on given subjects; these would be legally required disseminations of information.

Beyond generic and specific statutory requirements, agencies have positive obligations to disseminate information as a necessary part of performing their functions. Each agency head must clarify the nature of these obligations for the agency's particular mission and set appropriate boundaries for dissemination functions. Before deciding to disseminate an information product or service, and periodically therefore, an agency must be able to demonstrate that the dissemination of the product or service passes the test of either being required by law or being necessary for the proper performance of agency functions.

In conformity with the purposes of the Paperwork Reduction Act, the agency's positive obligations to disseminate information must be discharged within a responsible management framework of minimizing costs to the Federal Government while maximizing the usefulness of the information. Efficient, effective, and economical dissemination does not translate into diminishing or limiting the flow of information from the agency to the public. To the contrary, good management of information resources should result in more useful information flowing with greater facility to the public, at less cost to the taxpayer.

Given an adequate basis for dissemination, agencies must also ask themselves whether a proposed or existing information product or service substantially duplicates similar products or services that would otherwise be available, either from another agency or from the private sector. This requirement of non-duplication, originating in the Paperwork Reduction Act, husbands scarce resources and leads to more efficient, effective, and economical information dissemination by the government.

Similarly, the fact that an agency has created or collected information is not itself a valid reason for creating a program, products, or service to disseminate the information to the public. Agencies create and collect much information, often for purely internal governmental purposes, that is not intended for dissemination, for which there is no public demand, and the dissemination of which would serve no public purpose and would not be cost-justified; e.g., compilations of routine time and attendance records for Federal employees, or publication of the thousands of pages of common carrier tariff filings by regulatory agencies. While such information may be subject to access upon request under provisions of agency statutes, the Freedom of Information Act, or the Privacy Act, the agency must demonstrate in each case the need actively to disseminate such information. Over time, changes in laws, economic conditions, or information technology can result in changes in public demand, public purpose, or dissemination costs; for example, an agency's shift to electronic filing of reports, perhaps carried out primarily in order to improve internal information management, might generate a public demand for electronic dissemination that could be satisfied at minimal cost to the government and also improve the performance of the agency's information access function. The decision to disseminate information, however, entails potentially significant costs, must be addressed separately from the decision to create or collect information, and must hinge upon a determination that dissemination is necessary for proper performance of agency functions.

If agencies do contemplate disseminating particular information, they should plan for its dissemination when creating or collecting the information (see 8a(1)). Planning for dissemination should proceed from the Paperwork Reduction Act premises of minimizing the cost to the government while maximizing the usefulness of information. The focus of information dissemination plans should be on elevating to a policy level decisions regarding the agency's positive obligations to disseminate information and ensuring that the agency discharges the obligations in the most efficient, effective, and economical manner.

(10) Adequate Notice. Because many government information activities are important to the government and to the public, agencies must exercise care not to act capriciously with respect to information products and services. When agencies intend to commence offering new products or services, they should provide adequate advance notice so that the public may comment as to the need for the product or service. For example, if private sector interests believe they are already offering or are about to offer the same or a similar product or service—in which event the government may potentially be entering into unfair competition—such notice will allow these interests to present their case before the product or service is launched. By the same token, if many members of the public greatly depend on a particular product or service, they should be permitted to voice their views to an agency that is contemplating termination of the product or service.

The Circular refers to "significant" information products and services. It is not the Circular's intent that agencies should follow notice and comment procedures when terminating relatively inconsequential information products and services; examples might be minor brochures or flyers, products and services that were never intended to be continuing, or for which there is now little or no public audience. Agencies should determine for themselves whether information products and services are "significant," and in some cases may wish to establish procedures and thershold criteria for making such determinations. If a product or service is considered significant, as determined ultimately by the agency head, the

agency may be well advised to follow notice and comment procedures prior to initiation or termination.

(11)(a). Reaching the Public; Avoiding Information Monopolies. When agencies have justified and made the basic decision to disseminate information, they must also satisfy conditions regarding the manner of dissemination. First, agencies must take steps to ensure that members of the public who the agency has an obligation to reach have a resonable ability to acquire the information. The audiences for information products and services will vary, and agencies should tailor the dissemination methods so as to place the information into the hands of those whom the agency intends to receive it.

Federal agencies are often the sole holders of certain information; hence, when they disseminate, they are sole suppliers and in a position of natural monopoly. When agencies use private sector contractors to accomplish dissemination, they must take care that they do not permit contractors to exercise monopolistic controls in ways that defeat the agencies' information dissemination obligations, for example, by setting unreasonably high prices. In some cases agencies may need to formulate contractual terms with a sole supplier contractor so that the contractor functions as a mere intermediary for the agency in dealing with end users in the public.

(11)(b). Reliance on the Private Sector. In disseminating information—as with other activities—agencies must act in the most cost effective manner, which includes maximum feasible reliance on the private sector. This is merely an application to agency information dissemination programs of the policy stated in OMB Circular No. A–76, Performance of Commercial Activities, and summarized in Section 7f of this Circular. It is "the general policy of the government to rely on commercial sources to supply the products and services the government needs," including products and services the government needs in order to disseminate information to the public. For example, before an agency establishes a service for electronic dissemination of government information via an online computer system, the agency should compare the cost of contracting for operation of the service versus in-house performance and determine whether in-house performance is less costly both for the government and for the public who will receive the service.

Policies contained in OMB Circular No. A–76 are applicable to information dissemination, including the policy that inherently governmental functions should be performed by government employees. The general policy of reliance on the private sector is balanced by the "inherent governmental function" policy, and the Circular in no way intends to abrogate the latter. Where agencies determine that information dissemination activities are inherently governmental, the agencies themselves should carry out the activities.

(11)(c). User Charges. The Federal Government is the sole possessor and supplier of certain types of information, which is frequently of substantial commerical value. Dissemination of such information, or its dissemination in a specific form or medium, may represent a government service from which identifiable recipients derive special benefits, in which case they may be subject to OMB Circular No. A–25, User Charges. For example, where the information is already substantially available in printed form, agencies may consider dissemination in electronic form to be a service of special benefit, the costs of which should be recovered through user charges. Many agencies do not have consistent, agency-wide policies and procedures for setting user charges for information products and services with a view to cost recovery. Agencies must establish user charges for the costs of information dissemination, and recover such costs, where appropriate. Whether user charges are appropriate depends, in principle, on whether identifiable recipients will receive special benefits from information products and services.

The requirement to establish user charges is not, however, intended to make the ability to pay the sole criterion for determining whether the public receives government information. Agencies must balance the requirement to establish user charges and the level of fees charged against other policies, specifically, the proper performance of agency functions and the need to ensure that information products and services reach the public for whom they are intended (see Section 8a(11)(a)). If an agency has a positive obligation to place a given product or service in the hands of certain specific groups or members of the public and also determines that user charges will constitute a significant barrier to discharging this obligation, the agency may have grounds for reducing or eliminating its user charges for the product or service, or for exempting some recipients from the charge.

(12). Periodic Review and Depository Libraries. Agencies must also establish procedures for periodically reviewing their information dissemination programs. Agency information dissemination plans must ask whether the agency should disseminate a given information product or service at all; if the agency is already disseminating the product or service, reviews should ask whether the agency should continue to do so; or whether the manner or medium of dissemination is the most efficient, effective, and economical.

In addition, agencies must establish procedures to ensure compliance with 44 U.S.C. 1902, which requires that government publications (defined in 44 U.S.C. 1901 and repeated in Section 6k of the Circular) be made available to the Federal depository libraries through the Government Printing Office. The depository libraries provide a kind of information "safety net" to the public, an existing institutional mechanism that guarantees a minimum level of availability of government information to all members of the public. Providing publications to the depository library program complies with the law and costs executive agencies virtually nothing.

b. Information Systems and Information Technology Management. This subsection states policies concerning the planning, acquisition, operation, and management of Federal information systems and technology. The Federal information systems and technology budget, which was $14 billion in FY 1985, is projected to increase at a rate faster than that of the overall Federal budget. With outlays at these levels and agencies becoming increasingly dependent upon information technology to accomplish their missions, it is essential that planning processes be applied to the acquisition and application of information technology.

(1). Planning. The Paperwork Reduction Act mandates a stronger central role in information resources planning. Specifically, the Act requires that OMB: (1) publish a five-year government-wide automatic data processing and telecommunications plan; (2) review and coordinate agency proposals for the acquisition and use of information technology; and (3) promote the use of the technology to improve governmental efficiency and effectiveness. In order to meet these objectives, it is necessary to initiate a government-wide process for developing and institutionalizing information technology planning that is based in agency programs and missions. The planning must also be tied to the budget so that budgetary decisions derive from plans, and conversely, so that budgetary constraints are reflected in the plans.

The process must further ensure that sufficient information is available to the central agencies to enable them to monitor compliance with Federal policies and identify major issues, including cross-cutting issues where more active centralized planning and management may be appropriate. Hence, agencies must institute information planning processes tied to both the conduct of programs and the preparation of the agency's budget.

(2) and (3). Management Controls and Accountability. Basic management controls for agency information systems are fundamental to sound information resources management. These controls should ensure the documentation and periodic review of major information systems, as well as periodic cost-benefit evaluation of overall information resources management in light of agency missions. In order to provide greater incentative for management efficiencies, accountability for information systems should be vested in the officials responsible for operating the programs that the systems support.

Program managers depend upon information systems to carry out their programs, and yet frequently they do not have direct control over the technical and operational support for those systems. Program managers often depend upon agency computer centers or contracted service organizations, the heads of which may not be directly accountable to the program managers in a formal organizational sense. Program managers are nonetheless responsible for conducting their programs and, to the extent successful conduct of the programs entails support from information systems, program managers must be held accountable for acquiring that support. The responsibilities of program managers are therefore presumed to include securing information systems support as needed, and planning for contingencies. Technical support organizations have a concomitant responsibility to meet their commitments, contractual or otherwise, to their program clients, but the program official has the ultimate responsibility for delivering a program's product or service.

(4) and (5). Sharing Information Processing Capacity. OMB Circular No. A–121, which is rescinded and superseded, required only that the holder of excess automatic data processing capacity share such capacity. Because the holder of excess capacity has little incentive to seek opportunities for sharing, however, the new policy requires both that the holder share capacity and that the agency seeking information processing capacity fulfill its needs from other agencies or the private sector, whenever possible, before acquiring the new capacity itself. The policy establishes an order of preference in meeting needs—look first to existing sources before acquiring new capacity—but is not intended to assert blindly that sharing or commercial sources are the sole considerations. Agencies must also consider whether existing sources are more cost effective and whether they in fact will meet agency specific needs. Procedural aspects of these policy statements are found in Appendix II.

(6) and (7). Life Cycle Costing; and Avoiding Duplication. Agencies frequently develop information technology incrementally, through a series of interim upgrades, without regard for longer term considerations such as the information systems' life cycle. As part of their planning, agencies need to consider the full information system life cycle when determining the cost of information technology. While competitive procurement is generally to be valued, its costs should be taken into account, including the cost to program effectiveness of unnecessarily lengthy procurement processes. Other conditions, such as the need for compatibility, may also be legitimate limitations on the competitive process. Similarly, agency planning should ensure that information systems are not unnecessarily duplicative of systems available elsewhere in government or from the private sector.

(8). Software Management. The prevailing agency practice of developing customized computer software is a source of inefficiency, as the General Accounting Office and others have noted. While some agency applications can only be satisfied with customized software, the tendency to prefer custom development is excessively costly in terms of initial development, continued maintenance, and eventual conversion to new technology, because it requires the agency to bear the full cost of developing and maintaining the software it uses. While recognizing that off-the-shelf software has pitfalls, such as uncertainty of continued maintenance, managers are generally to prefer acquiring generic, off-the-shelf software available from the private sector instead of developing their own.

(9). Necessary Compatibility. Agencies often acquire technology that is incapable of communicating with other systems with which the agencies need to communicate. Compatibility among information systems has consequently emerged as a significant information resources management problem. Agencies must acquire or develop information systems in a manner that enhances necessary compatibility. The qualifier "necessary" is used because compatibility is not an unrestricted goal; information systems need to be compatible with other systems only to the extent that they must communicate with those systems.

(10) through (13). Security. Security of information systems means both the protection of information while it is within the systems and also the assurance that the systems do exactly what they are supposed to do and nothing more. Information system security entails management controls to ensure the integrity of operations including such matters as proper access to the information in the systems and proper handling of input and output. In this sense, security of information systems is first and foremost a management issue and only secondly a technical problem of computer security.

The recent introduction of smaller and more powerful computer systems and new communications technology and transmission media, together with the greater involvement of end users in managing information resources, have increased the potential vulnerability of Federal information systems and hence the level of management concern. Protecting personal, proprietary, and other sensitive data from unauthorized access or misuse; detecting and preventing computer related fraud and abuse; and assuring continuity of operations of major information systems in the event of emergency related disruptions are increasingly serious policy issues. Policy previously found in Transmittal Memorandum No. 1 to OMB Circular No. A–71 is here revised; procedural aspects of the policy are in Appendix III to the Circular.

The General Accounting Office reported in its review of the first-year implementation of the Federal Managers Financial Integrity Act (FIA) that internal controls in automatic data processing systems received inadequate coverage in FIA evaluations. GAO noted that some agencies were uncertain of the relationship between (a) OMB Circular No. A–71, Transmittal Memorandum No. 1, Security of Federal Automated Information Systems, and (b) OMB Circular No. A–123, Internal Control Systems. The relationship between security of automated information systems and agency internal control reports is now stated clearly in Appendix III.

Appendix III provides a minimal set of requirements for the security of all

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Federal automated information systems. The Appendix also requires agencies to incorporate additional requirements for the security of information classified for national security purposes, in accordance with appropriate national security directives.

(14) Standards. The National Bureau of Standards, Department of Commerce, develops and issues Federal Information Processing Standards. The National Communications System develops and the General Services Administration issues Federal Telecommunications Standards. Some standards are mandatory for Federal agencies, while others are voluntary. Agencies may waive the use of Federal standards under certain conditions and pursuant to certain procedures, which vary depending upon the individual standard. In general, OMB strongly recommends use of these standards government-wide. Such standards can contribute to overall government economy and efficiency by increasing compatibility in computer and telecommunications networks, improving the transportability of software, and enabling computer systems to be developed using components of different manufacturers. These advantages can result in reduced procurement costs for equipment and services, improved competition, and better utilization of staff training and skills. While government-wide standards can result in management efficiencies, agencies should be mindful that standards can also have the untoward effects of regulations, as noted in OMB Circular No. A–119. Agencies should continuously assess relative costs and benefits of standards and their effects upon the agency's accomplishment of its mission. Note also that national security directives prescribe standards for computer security.

(15) Avoiding Information Technology Monopolies. Many agencies operate one or more central information technology facilities to support agency programs. In these agencies, program managers are often required to use the central facilities. The manager of such a monopoly facility has a lesser incentive to control costs, since he or she has a captive clientele. The program manager has little leverage to ensure that information processing resources are efficiently allocated since he or she cannot seek, or can seek only with great difficulty, alternative sources of supply. When users are dependent on effective technology support to perform their functions, control over selection of facility is essential and consistent with holding users responsible for producing their government information products. To provide incentives conducive to more businesslike procedures in information technology facilities, agencies should avoid monopolistic information processing arrangements and should enter into them only if their cost effectiveness is clear and they are subject to periodic review. Appendix II specifies certain procedures with respect to this policy.

(16) Cost Recovery. This policy constitutes a revision to policy stated in OMB Circular No. A–121. Whereas Circular No. A–121 required only that costs for automatic data processing facilities be allocated to users, agencies must now recover the costs of information technology facilities from government users. Viable management of a large information technology facility requires that managers know the amount of resources devoted to each user when providing services. Furthermore, effective management of the use of information technology requires that the user have responsibility for and control over the resources consumed by use of the facility. Experience with Circular No. A–121 showed OMB that allocating costs had little effect on agencies' behavior; recovering costs means that actual transfers of funds will take place between suppliers and users of information technology facilities. Procedural aspects of the policy appear in Appendix II.

(17) Coordination with State and Local Governments. This policy reaffirms policy previously found in OMB Circular No. A–90, Transmittal Memorandum No. 1. The interagency group that worked on the revision of Circular No. A–90 recommended, and OMB agreed, that the Circular should be rescinded except for a single policy statement prohibiting Federal agencies from placing unnecessary restrictions on the information systems that State and local governments use to carry out federally financed program activities.

(18) Application of Up-to-date Information Technology. Recent availability of low cost, highly efficient and effective electronic information technology can greatly increase worker productivity and facilitate operation of Federal agency programs. The Circular states a predisposition, based in the Paperwork Reduction Act, in favor of applying such technology to the information life cycle within a responsible management context. Two broad areas of information technology merit further discussion: (1) electronic information collection and dissemination, and (2) end user computing.

—*Electronic Collection and Dissemination of Information.* Federal agencies are moving rapidly to provide for collection and dissemination of information through electronic media. In developing this Circular, OMB considered whether it was necessary to provide specific policies concerning electronic collection and dissemination of governmental information. OMB concluded that, except for the general predisposition in favor of applying new technological developments to information resources management, the policies that apply to information collection and dissemination in other media also apply to electronic collection and dissemination. It is important, however, that agencies recognize the necessity of systematically thinking through the application of policies stated elsewhere in this Circular to electronic collection and dissemination of information. For example, when developing electronic collection programs, agencies should give particular attention to issues such as privacy, public access, and records management. When developing electronic dissemination programs, agencies should ensure that access is provided to each class of users upon reasonable terms, avoid problems arising from monopolistic control, ensure maximum reliance upon the private sector, and take necessary steps for cost accounting and cost recovery.

—*End User Computing.* Federal agencies are also moving rapidly to acquire end user computing capabilities. OMB endorses the managed innovation approach to end user computing presented in GSA's publication Managing End User Computing in the Federal Government (June 1983). Because end user computing places management of information in the hands of individual agency personnel rather than in a central automatic data processing organization, the Circular requires that agencies train end users in their responsibilities for safeguarding information; Appendix III deals in part with the security of end user computing.

Section 9. Assignment of Responsibilities

This section assigns responsibilities for the management of Federal information resources addressed in this Circular. OMB Circular No. A–71 is

rescinded and its contents are revised and incorporated into this section along with responsibilities assigned under the Paperwork Reduction Act; Section 111 of the Federal Property and Administrative Services Act, as amended; and Executive Order No. 12046. Certain assignments of responsibility from OMB to other agencies, as noted below, are also included. Following are principal noteworthy aspects of this section.

Responsibility for Managing Information Resources. Statement 9a(1) is a key element in the Circular because it establishes that the locus of responsibility for actual management of Federal information resources is the head of each agency. This means, for example, that the determination of what is "necessary for the proper performance of agency functions" with respect to information creation or collection (8a(1)) and information dissemination (8a(9)) lies with the head of the agency. In the Circular OMB sets the policy framework within which such determinations are to be made and the standards and provisions for reviewing the determinations, but the management decisions and their implementation belong properly with the agency holding the information resources.

Triennial Reviews. The Paperwork Reduction Act provides that the Director of OMB ". . . shall, with the advice and assistance of the Administrator of General Services, selectively review, at least once every three years, the information management activities of each agency to ascertain their adequacy and efficiency." (44 U.S.C. 3513) The Administrator of Information and Regulatory Affairs, OMB, and the Deputy Administrator of the General Services Administration, in an exchange of correspondence dated June 13 and July 22, 1983, concurred that GSA has the necessary statutory authority to conduct reviews of Federal agency information resources management activities. Separate triennial reviews of agency activities by OMB and GSA would be unnecessarily duplicative, which would not be consistent with the Act. Accordingly, the triennial reviews conducted by GSA will be designed to meet OMB's requirements under the Paperwork Reduction Act as well as GSA's own needs.

Senior Officials for Information Resources Management. In accordance with 44 U.S.C. 3506(b) and 5 CFR 1320.8, agencies are required to designate a senior official to carry out responsibilities under the Paperwork Reduction Act. The designation of the official is intended to assure clear accountability for setting policy for agency information resources management activities, provide for greater coordination among the agency's information activities, and ensure greater visibility of such activities within the agency. The responsibilities of the senior official for information resources management were identified in OMB Bulletin No. 81–21, which has expired. Those responsibilities are now estabished in this Circular.

International Information Policy. The Circular deals with the management of information resources held by the Federal government. While the creation, collection, processing, transmission, dissemination, use, storage, and disposition of information by the Federal government has international ramifications, Federal government information resources management policy is not the same as "U.S. information policy," which refers to U.S. national interests in the information field vis-a-vis the policies and interests of other nations. The Circular formally acknowledges this distinction and assigns responsibilities for international information policy only insofar as it relates to Federal government information resources management policy.

Timely Technology Procurement. Inherent in effective management of information technology is the ability of program managers to acquire technology in a timely manner. GSA is assigned the responsibility in Section 9 to develop criteria that will streamline procurement procedures and delegate procurement authority to agencies that comply with those procedures. All Federal agencies are directed in Section 9 to develop internal policies and procedures that further provide for timely acquisition of information technology.

Records Management. The Paperwork Reduction Act makes the management of Federal records an integral part of information resources management. While no new policies are embodied in this Circular, responsibilities have been assigned in order to ensure that agency records management programs are considered within the context of Federal information resources management.

Section 10. Oversight

The broad scope of the Circular dictates a strategy of focusing oversight on a series of aspects of information resources management rather than on a single comprehensive reporting scheme. OMB intends to use existing mechanisms, such as the fiscal budget, information collection budget, and management reviews, to examine agency compliance with the Circular. For example, during 1984 the management reviews for the FY 1986 budget year concentrated on five cross-cutting information issues: overall information resources management strategy, telecommunications, software management, "electronic filing," and end user computing. OMB issued data call bulletins requesting information specific to these issues, targeted the issues for special attention during the management reviews, and requested individual agencies to submit management improvement plans on specific aspects of the issues. Pursuit of this kind of selective oversight strategy permits OMB and the agencies the flexibility to shift the focus of oversight as information issues and the technological environment change.

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federal register

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Part V

The President

Proclamation 5423—Amending the Generalized System of Preferences

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Presidential Documents

Title 3—

The President

Proclamation 5423 of December 20, 1985

Amending the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to section 502(b) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2462(b)), as amended, and section 604 of the Trade Act (19 U.S.C. 2483), I have determined that it is appropriate to provide for the termination of preferential treatment under the Generalized System of Preferences (GSP) for articles which are currently eligible for such treatment and which are imported from Portugal. Such termination is the result of the accession of Portugal to the European Economic Community.

2. Section 502(b) of the Trade Act specifies that member states of the European Economic Community are ineligible for such preferential treatment under the GSP.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States of America, including but not limited to sections 502(b) and 604 of the Trade Act, do proclaim that:

(1) General headnote 3(e)(v)(A) to the Tariff Schedules of the United States (TSUS), listing those countries whose products are eligible for benefits of the GSP, is amended by striking out "Portugal."

(2) No article the product of Portugal and imported into the United States after the effective date of this proclamation shall be eligible for preferential treatment under the GSP.

(3) The modifications to the TSUS made by this proclamation shall be effective with respect to articles both: (1) imported on or after January 1, 1976, and (2) entered, or withdrawn from warehouse for consumption, on or after January 1, 1986.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of December, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

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H.J. Res. 465/Pub. L. 99-190

Making further continuing appropriations for the fiscal year 1986, and for other purposes. (Dec. 19, 1985)

H.R. 1789/Pub. L. 99-191

Relating to the authorization of appropriations for certain components of the National Wildlife Refuge System. (Dec. 19, 1985; 2 pages) Price: $1.00

H.R. 3735/Pub. L. 99-192

To designate the pedestrian walkway crossing the Potomac River at Harpers Ferry National Historical Park as the "Goodloe E. Byron Memorial Pedestrian Walkway". (Dec. 19, 1985; 1 page) Price: $1.00

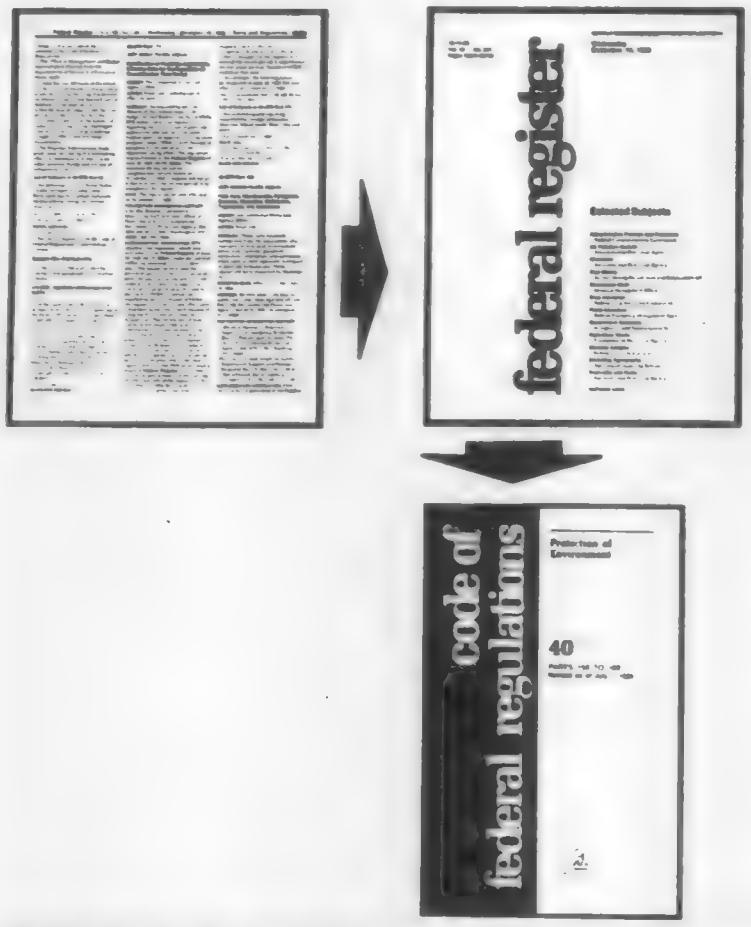
H.J. Res. 424/Pub. L. 99-193

To designate the year of 1986 as the "Year of the Flag". (Dec. 19, 1985; 2 pages) Price: $1.00

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For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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Animal Plant Health Inspection Service

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Television Broadcasting
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Trade Practices
Federal Trade Commission

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227 (Voice)
Melanie Williams 202-523-5229 (TDD)

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447 and 448

[Docket No. 3015S]

Crop Insurance Regulations; Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Forage Seeding, Pea, Wheat, Barley, Grain Sorghum, Cotton, Flax, Rice, Peanut, Combined Crop, Oat, Sunflower, Soybean, Corn, Dry Bean, Tobacco (Quota Plan), Canning and Freezing Sweet Corn, Canning and Processing Tomato, Popcorn, and ELS Cotton Crop Insurance Regulations (7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447, and 448 respectively), effective for the 1985 calendar year only, by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the Actuarial Tables for such crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: *Effective date:* December 31, 1985.

Comment date: Written comments, data, and opinions on this interim rule must be submitted not later than February 24, 1986, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.–based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies, that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Section 16 of the policy for each of the crops affected (Section 7 of Combined Crop) provides that any changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. Due to the workload involved in making changes on the Actuarial Table of each crop insured in each county where such insurance is offered requires that in the counties where changes in the contract must be on file by December 31, 1985, the date must be extended to January 20, 1986.

FCIC is currently reviewing the actuarial tables for the regulations referred to herein to determine whether the adequacy of current actuarial structures and rates levels offered under each crop insurance policy are consistent with sound actuarial principles and if not to make adjustments where necessary. This is an annual review conducted on all crops. The amount of work involved is such that these reviews will not be completed prior to the date for filing such actuarial data in the service offices for the crops and counties involved unless the filing date is extended.

Merritt W. Sprague, Manager, FCIC, has determined and certifies that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Without this review, the statutory mandate that the program be actuarially sound could not be met. The workload involved in these actuarial changes will not permit filing of these actuarial tables by the present contract change date of December 31.

There is not sufficient time to provide for public comment and implement these changes prior to December 31. It has been determined that the date by which such changes are required to be placed on file in the service office will be extended from December 31, 1985, until January 20, 1986, and made effective for the 1985 calendar year only for Forage Seeding, Peas, Wheat, Barley, Grain Sorghum, Cotton, Flax, Rice, Peanuts, Combined Crop, Oats, Sunflowers, Soybeans, Corn, Dry Beans, Tobacco (Quota Plan), Canning and Freezing Sweet Corn, Canning and Processing Tomatoes, Popcorn, and ELS Cotton.

The changes in the actuarial tables for the crops affected by this rule may be beneficial in some instances and detrimental in others. All policyholders should be aware of the changes in the actuarial table affecting their individual crop insurance contract and of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the Federal Register. This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the Federal Register as quickly as possible.

Any comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Buidling, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447, and 448.

Crop insurance, Forage seeding, Pea, Wheat, Barley, Grain sorghum, Cotton, Flax, Rice, Peanut, Combined crop, Oat, Sunflower, Soybean, Corn, Dry Bean, Tobacco (Quota Plan), Canning and freezing sweet corn, Canning and processing tomato, Popcorn, and ELS Cotton.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Forage Seeding, Pea, Wheat, Barley, Grain Sorghum, Cotton, Flax, Rice, Peanut, Combined Crop, Oat, Sunflower, Soybean, Corn, Dry Bean, Tobacco (Quota Plan), Canning and Freezing Sweet Corn, Canning and Processing Tomato, Popcorn, and ELS Cotton Crop Insurance Regulations, effective for the 1985 calendar year only (7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447, and 448, respectively) in the following instances:

1. The Authority citations for 7 CFR Parts 414, 416, 418, 419, 420, 421, 423, 424, 425, 426, 427, 428, 431, 432, 433, 435, 437, 438, 447, and 448 continue to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 418.7(d)16, 419.7(d)16, and 427.7(d)16 are revised to read as follows:

§§ 418.7, 419.7 and 427.7 Application and policy.

* * * * *

(d) * * *

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (January 20, 1986, for the 1985, 1986 transition) and by May 31 preceding the cancellation date for all other counties. Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

3. 7 CFR 416.7(d)16, 423.7(d)16, 428.7(d)16, 433.7(d)16, 433.7(d)16, and 447.7(d)16, are revised to read as follows:

§§ 416.7, 423.7, 428.7, 433.7, 437.7 and 447.7 Application and policy.

* * * * *

(d) * * *

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date (January 20, 1986, for the 1985, 1986 transition). Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

4. 7 CFR 414.7(d)16 is revised to read as follows:

§ 414.7 Application and policy.

* * * * *

(d) * * *

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your amount of insurance is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by December 31 for counties with an April 15 cancellation date (January 20, 1986, for the 1985, 1986 transition) and by April 30 for all other counties. Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

5. 7 CFR 420.7(d)16, 421.7(d)16, 424.7(d)16, 425.7(d)16, 431.7(d)16, 432.7(d)16, and 438.7(d)16 are revised to read as follows:

§§ 420.7, 421.7, 424.7, 425.7, 431.7, 432.7, and 438.7 Application and policy.

* * * * *

(d) * * *

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (January 20, 1986, for the 1985, 1986 transition) and by November 30 preceding the cancellation date for all other counties. Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

6. 7 CFR 426.7(b)6 is revised to read as follows:

§ 426.71 The policy.

* * * * *

(b) * * *

6. In lieu of section 16 of the applicable crop policies, we may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date (January 20, 1986, for the 1985, 1986, transition). Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

5. 7 CFR 435.7(d)16 is revised to read as follows:

§ 435.7 Application and policy.

* * * * *

(d) * * *

16. Contract changes

We may change any terms and provisions of the contract from year to year. All contract changes will be available at your service office by December 31 preceding the cancellation date except that, for the 1985, 1986 transition only, all contract changes will be available at your service office by January 20, 1986. Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

5. 7 CFR 448.7(d) 16 is revised to read as follows:

§ 448.7 Application and policy.

* * * * *

(d) * * *

16. Contract changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by November 30 preceding the cancellation data except that, for the 1985, 1986, transition only, all contract changes will be available at your service office by January 20, 1986. Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

* * * * *

Done in Washington, D.C. on December 5, 1985.

Edward Hews,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-30466 Filed 12-24-85; 8:45 am]
BILLING CODE 3410-08-M

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7 CFR Part 426

[Amdt. No. 2; Docket No. 2951S]

Combined Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Combined Crop Insurance Regulations (7 CFR Part 426), effective for the 1986 and succeeding crop years by revising and reissuing § 426.7. The intended effect of this rule is to: (1) Change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; and (2) change the method of computing indemnities when acreage, share, or practice is underreported. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 25, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the combined crop policy are:

1. Section 3.b.—When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

2. Section 4.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1990 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. Section 6.—Add a new section to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

On Wednesday, November 13, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 46772, amending the Combined Crop Insurance Regulations (7 CFR Part 426), effective for the 1986 and succeeding crop years. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, with the exception of minor changes in language and format, the proposed rule is hereby adopted as a final rule.

Since policy changes must be on file by December 31, 1985, good cause is shown for making this amendment effective in less than 30 days.

List of Subjects in 7 CFR Part 426

Crop Insurance; Combined Crop.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Combined Crop Insurance Regulations (7 CFR Part 426), effective for the 1986 and succeeding crop years, to read as follows:

PART 426—[AMENDED]

1. The authority citation for 7 CFR Part 426 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. Section 426.7 is revised to read as follows:

§ 426.7 The policy.

(a) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a combined crop insurance contract issued under such prior regulations, without the filing of a new application.

(b) The provisions of the Combined Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Combined Crop—Crop Insurance Policy

(This is a continuous contract. See the provisions of the individual crop policies)

Agreement to insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Applicability.

The provisions for each insured crop contained in the individual policy for such crop will apply except as otherwise provided herein. For the purpose of combined crop insurance, those parts of the individual policies which refer to individual crops will be considererd to mean all crops insured under this policy.

2. Crop Acreage and Share Insured.

In addition to section 2 of the applicable individual crop policies, the following will apply:

a. The crops insured are all of the crops grown on insured acreage and for which production guarantees and premium rates are provided by the actuarial table for combined crop insurance.

b. Insurance will not be considered to have attached to any acreage of rye for any crop year when the contract is canceled or terminated for indebtedness for the crop year.

3. Annual Premium.

In lieu of section 5 of the applicable individual crop policies, the following will apply:

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the applicable diversification factor(s) times the applicable premium factor(s).

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the combined crop policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Claim for Indemnity.

In lieu of subsection 9(c) of the applicable individual crop policies, the following will apply:

a. The indemnity will be determined in each unit by:

(1) Multiplying the insured acreage for each insured crop on the unit times the applicable production guarantee, times the applicable price election, times your share;

(2) Multiplying the total production to be counted for each insured crop on the unit, times the applicable price election, times your share;

(3) Adding the dollar amounts obtained for each of the respective insured crops in (1) above; and

(4) Adding the dollar amounts obtained for each of the respective insured crops in (2) above, and subtracting this sum from the sum obtained in (3) above.

b. If the information reported by you results in a lower premium than actual premium determined to be due, the dollar amounts in (3) above will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will be counted in (2) above.

5. Yield Records.

In lieu of section 15.c. of the individual crop policies and prior to the cancellation date for any crop year you must:

(a) Furnish to the Corporation, satisfactory production records for the previous crop year or the contract will be cancelled for the subsequent crop year; or

(b) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

You may furnish the records required by this section for any crop year at least 90 days prior to that crop year's cancellation date. Your election of this option will result in the inclusion of that crop year's production information in the next year's yield guarantee.

6. Cancellation and Termination Dates.

In lieu of section 15.e. of the applicable individual crop policies, the cancellation and termination dates are April 15.

7. Contract Changes.

In lieu of section 16 of the applicable crop policies, we may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

8. Meaning of Terms.

For the purposes of combined crop insurance:

a. "Actuarial table," in lieu of the definition of actuarial table in section 17 of the applicable crop policies, means the forms and related material for the crop year approved by us which are on file for public inspection in the service office, and which show the production guarantees, coverage levels, premium factors, dollar coverage per acre, applicable prices for computing indemnities, the applicable diversification factor table, insurable and uninsurable acreage, and related information regarding combined crop insurance in the county.

b. "Diversification factor" means a factor applied to reduce the premium when there is a diversity of crops planted. The factor is provided by the county actuarial table.

c. "Premium factor" means the factor provided in the county actuarial table for use in determining the premium.

d. "Unit", in lieu of the unit definition in section 17 of the applicable crop policy, means all of the insurable acreage of all applicable insured crops in the county at the time of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop(s) on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

Done in Washington, DC, on December 13, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-30465 Filed 12-24-85; 8:45 am]

BILLING CODE 3410-08-M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 85-098]

African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations in 9 CFR Part 94 to provide a mechanism to allow, under certain conditions, pork and pork products originating in a country believed to be free of African swine fever (ASF) to be imported into the United States after being processed in a country where ASF exists or is reasonably believed to exist. It has been determined that compliance with the provisions in this final rule will be adequate to allow such pork or pork products to be imported into the United States without presenting a significant risk of causing the introduction into the United States of ASF.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations), among other things, regulate the importation into the United States of pork and pork products in order to prevent the introduction into the United States of African swine fever (referred to below as ASF). ASF is considered to be the most dangerous and destructive communicable disease of swine.

Section 94.8 of the regulations lists countries where ASF exists or is reasonably believed to exist (referred to below as ASF countries) and regulates the importation into the United States of pork and pork products from such countries.

In a document published in the Federal Register on June 28, 1985 (50 FR 26782–26785), the Department proposed to amend the regulations by providing a mechanism to allow under certain conditions, pork and pork products originating in a country believed to be free of African swine fever (ASF) to be imported into the United States after being processed in a country where ASF exists or is reasonably believed to exist.

Comments

The document of June 28, 1985, invited the submission of written comments on or before July 29, 1985. A document extending the comment period to August 29, 1985, was published in the Federal Register on July 30, 1985 (50 FR 30857–30858).

Twenty-two comments were received in response to the proposed rule. Comments were received from importers, representatives of foreign governments, and representatives of the pork industry.

Several commenters favored the adoption of the proposed rule without changes. Other commenters opposed the adoption of the proposed rule by asserting that the proposed rule is unnecessarily restrictive. Other commenters opposed the adoption of any rule that would allow pork and pork products originating in a country free of ASF to be imported into the United States after being processed in a country where ASF exists or is believed to exist.

All of the comments submitted in response to the proposal have been carefully considered, and the issues raised by the comments are discussed below.

Based on the rationale set forth in the proposal and in this document, the provisions of the proposal have been adopted as a final rule with a minor change discussed below.

Heating Provisions

It was proposed that as a condition of importation, the pork or pork products must be heated to an internal temperature of at least 156 °F. (68.9 °C.) throughout (this must occur after the bones have been removed). Research has established that heating pork or pork products to 69 °C. is adequate to destroy any ASF virus in the pork or pork products (See "Residual Viruses in Pork Products," McKercher, P.D., W.R. Hess, and F. Hamdy, 1978. *Applied and Environmental Microbiology 35:* 142–145). The reference to 68.9 °C. is changed to 69 °C. to accurately reflect the temperature that was used in the research.

One commenter asserted: (1) That the research document did not specify the number of hams from infected pigs that were processed and tested, but only stated that 2 pound units were injected and cured; (2) that the research document did not provide an estimate or analysis of the salt level or brine concentration in the hams and did not specify how the ham pieces were injected with a brine solution and consequently did not indicate the extent to which they are representative of commercial production; and (3) that the research failed to establish the critical temperature to destroy ASF virus and failed to stipulate a safety margin. Also, it was asserted that a safety margin is extremely critical for commercial systems with inherent temperature variability during heating, especially with respect to the heating of hams weighing more than 2 pounds. No changes are made based on these comments.

With respect to the number of hams used in the study, it should be noted that eight hams were used. The published research states that four swine were inoculated with ASF virus. Four of the hams from the infected swine were used as control hams and four hams were heat treated. With respect to the brine concentration in the hams, a 16 percent brine solution (by weight) was injected into the hams with syringe and needle. As the commenter indicates, the research document does not provide any estimate or analysis of the salt level or brine concentration in the hams. Such an estimate or analysis is not considered necessary since salt levels have no effect toward protecting or weakening ASF virus prior to or during heat treatment.

Further, as indicated by the research, the ASF virus was destroyed at an internal temperature of 69 °C. (156 °F.). The heating provisions in the final rule require that the pork or pork products be heated to an internal temperature of at least 69 °C. (156 °F.) throughout (this must occur after the bones have been removed). The temperature of 69 °C. was selected for the research because this is the temperature commonly used by commercial producers for the heating of cooked pork or pork products imported into the United States. However, it appears that 69 °C. would provide a safety margin of at least 5 °C. based on the heat treatment research concerning ASF virus in blood derived from swine with acute ASF infection and in tissue culture medium containing twenty-five percent swine from ASF-infected swine. (See Plowright, W. and J. Parker 1967. "The Stability of African Swine Fever with Particular Reference to Heat and pH Inactivation." *Arch des virus forsch 21:* 383–402 and Sidorov M.A. 1968. "Resistance of African Swine Fever Virus to Various Temperatures" *Byull. Vses. Inst. Eksp. Vet.* #4 16–18, translated from Russian).

Also, the size of hams is not relevant to the requirement that the hams be heated to 69 °C. throughout. Although the cooking time could be longer for larger hams compared to smaller hams, heating throughout to a minimum internal temperature of 69 °C. would be adequate to destroy the virus.

Another commenter asserted that the study did not thoroughly evaluate "the interactive effects of tissue type, temperature, rate of temperature penetration, time and temperature exposure, and condition of the virus itself on African swine fever virus survival." This commenter also asserted that in order to be considered valid, the research results should be documented at more than one research center. No changes are made based on these comments.

The virus used for the study was highly pathogenic as was demonstrated when susceptible swine became infected with ASF as a result of being innoculated with material from uncooked infected hams.

Based on a review of the McKercher research project, it has been determined that such research is sufficient to establish that heating pork or pork products to 69 °C. is adequate to destroy any ASF virus in the pork or pork products. In addition, as explained above, the results of the McKercher research project are consistent with the results of the two other research projects referred to above. Under these circumstances, it has been determined that the heat treatment is adequate to kill ASF virus regardless of tissue type and other issues raised relating to temperature.

Maintaining Identity

The final rule provides, as a condition of importation, that the pork or pork products must come from a processing establishment operated by persons who entered into a valid written compliance agreement with Veterinary Services whereby such persons have agreed to maintain copies of certain certificates on file at the establishment for at least two years and to allow Veterinary Services personnel to make unannounced

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inspections as necessary to monitor compliance with the regulations.

Commenters objected to the proposed rule based on assertions that periodic visits by Veterinary Services personnel to the processing establishment would be little value in assuring the integrity of the system, and that the retention of records would be of no value if the records are not regularly verified by Veterinary Services personnel. No changes are made based on these comments.

The Department disagrees with the commenters' assertions. Further, it should be noted that under the regulations the pork or pork products must be accompanied by a certificate issued by an official of the national government of the country wherein the processing establishment is located stating that all of the requirements concerning the pork or pork products have been met. It has been determined that the cooperative efforts of Veterinary Services personnel and officials of the national government of the country in which the processing establishment is located, in combination with the other safeguards prescribed by the regulations, would be adequate to ensure that the identity of the pork products would be maintained.

It was proposed that, as a condition of importation, the pork or pork products must have been processed in an establishment that, among other things, does not receive or process any live swine and uses only pork or pork products which originate in the ASF-free countries. These provisions were included to ensure that the pork or pork products intended for importation into the United States are not commingled with other pork or pork products that might be contaminated with ASF virus. One commenter suggested that these provisions are overly restrictive and should not be applied as long as the pork or pork products are protected against being commingled with pork or pork products that originate in ASF countries. No changes are made based on this comment. However, the Department is considering whether changes should be made in the regulations consistent with the commenter's suggestion. Any action to amend the regulations in this regard would be the subject of a future rulemaking proceeding.

Europe

Two commenters suggested that Europe, or at least the European Economic Community, should be considered one jurisdiction for purposes of regulations concerning the importation of pork and pork products. This was based on assertions conerning the lack of control over movement of travelers and products across national boundries in Europe and assertions concerning the ease with which ASF and other exotic diseases spread in Europe. No changes are made based on this comment. There does not appear to be a basis for treating all of Europe, or even European Economic Community, as one jurisdiction with respect to the importation of pork or pork products. Even though some of the countries in Europe are listed in the regulations as countries in which ASF exists or is reasonably believed to exist, ASF has not spread throughout Europe or throughout the European Economic Community. This is due in large part to the effectiveness of animal health programs.

Miscellaneous

This document also adds due process provisions for cancelling compliance agreements.

Effective Date

This final rule is made effective on the date of publication. The final rule relieves certain restrictions which have been found to be unnecessary. Accordingly, prompt action should be taken to delete these restrictions.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579–0015.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets.

It is anticipated that the amount of pork and pork products that will be imported into the United States under these provisions will be insignificant compared to the total amount of pork and pork products imported into the United States.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V).

List of Subjects in 9 CFR Part 94

African swine fever, Animal diseases, Exotic newscastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, 9 CFR Part 94 is amended as follows:

1. The authority citation for Part 94 is revised to read as set forth below, and the authority citations following all the sections in Part 94 are removed:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.8 [Amended]

2. In § 94.8, paragraph (a)(2) is amended to change the period to a semicolon and to add "or" after the semicolon.

3. In § 94.8, a new paragraph (a)(3) is added to read as follows:

§ 94.8 Pork and pork products from countries where African swine fever exists or is reasonably believed to exist

* * * * *

(a) * * *

(3) Such pork or pork product meets the conditions of paragraphs (a)(3)(i) through (a)(3)(VI) of this section;

(i) It was derived from pork or pork products:

(A) Which originated from swine raised and slaughtered in a country not listed in this section;

(B) Which were shipped from the country of origin to a processing

establishment [1] in a country listed in this section in a closed container sealed with serially numbered seals applied by an official of the national government of the country of origin;

(C) Which were accompanied from the country of origin to such processing establishment by a certificate signed by an official of the national government of the country of origin specifying the country of origin, the processing establishment to which the pork was consigned, and the numbers of the seals applied; and

(D) Which were taken out of the container at such processing establishment only after an official of the national government of the country where such processing establishment is located determined that the seals were intact and free of any evidence of tampering, and had so stated on the certificate referred to in paragraph (a)(3)(i)(C) of this section;

(ii) All bones were completely removed;

(iii) It was heated by other than a flash-heating method at the processing establishment referred to in paragraph (a)(3)(i)(B) of this section, to an internal temperature of at least 69 °C. (156 °F.) throughout (this must have occurred after the bones had been removed);

(iv) The processing establishment referred to in paragraph (a)(3)(i)(B) of this section:

(A) Does not receive or process any live swine, uses only pork or pork products which originate in countries not listed in this section, and processes port or pork products only in accordance with paragraphs (a)(3)i) through (a)(3)(vi) of this section;

(B) Is operated by persons who have entered into a valid written compliance agreement with Veterinary Services whereby such persons have agreed to maintain on file at the establishment for at least two years copies of the certificates referred to in paragraph (a)(3)(i)(C) of this section, to allow Veterinary Services personnel to make unannounced inspections as necessary to monitor compliance with the provisions of this section, and have agreed to otherwise comply with the provisions of this section;

(C) Is operated by persons who have entered into a trust fund agreement executed by such persons and Veterinary Services; pursuant to the trust fund agreement the establishment is current in paying the cost for Veterinary Services personnel to inspect the establishment (it is anticipated that such inspections will occur once per year), including travel, salary, subsistence, administrative overhead, and other incidental expenses (including excess baggage provisions up to 150 pounds); and in addition the establishment has on deposit with the Animal and Plant Health Inspection Service an unobligated amount equal to the cost for Veterinary Services personnel to conduct one inspection;

(v) It was processed in a country listed in this section only at one processing establishment; and

(vi) It is accompanied at the time of importation into the United States by a certificate issued by an official of the national government of the country wherein the processing establishment referred to in paragraph (a)(3)(i)(B) of this section is located stating that all of requirements of this section have been met.

§ 94.8 [Amended]

4. In § 94.8, a new paragraph (d) is added to read as follows:

* * * * *

(d) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this section or any conditions imposed pursuant to such provisions. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances allow. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

Done at Washington, DC, this 20th day of December 1985.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-30438 Filed 12-24-85; 8:45 am]

BILLING CODE 3410-34-M

[1] As a condition of entry into the United States, pork or pork products must also meet all of the requirements of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and regulations thereunder (9 CFR Part 301 *et seq.*), including requirements that the pork or pork products be prepared only in approved establishments.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-35-AD; Amendment 39-5207]

Airworthiness Directives; Collins Models 329B-7A, 329B-7J, ADI-44V, ADI-84 and ADI-84A Flight Director Indicators and Models 331A-8H, HSI-45 and HSI-70 Horizontal Situation Indicators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adopts a new Airworthiness Directive (AD), AD 85-22-10 applicable to certain Collins Model 329B-7A, 329B-7J, ADI-44V, ADI-84 and ADI-84A flight director indicators and Model 331A-8H, HSI-45 and HSI-70 horizontal situation indicators and codifies the corresponding emergency AD letter dated October 30, 1985, into the Federal Register. This AD requires inspection and repair or replacement, as necessary, of a gear shaft assembly in the affected indicators. The AD is prompted by a report of erroneous display, with no warning annunciation, of pitch and/or roll command and roll pointer displays (flight director indicators) or course pointer and/or heading displays (horizontal situation indicators) which could cause incorrect interpretation of aircraft attitude and/or navigation information and subsequent loss of the aircraft.

DATES: Effective December 31, 1985, to all persons except those to whom it has already been made effective by priority letter from the FAA dated October 30, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: The Collins Alert Service Bulletins listed in the AD may be obtained from Collins Radio Division/ Rockwell International, 400 Collins Road NE, Cedar Rapids, Iowa 52406. A copy of the information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri, 64106.

FOR FURTHER INFORMATION CONTACT: Ralph W. Rissmiller, Jr., Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209; Telephone (316) 946-4419.

SUPPLEMENTARY INFORMATION: This AD, applicable to certain Collins Model

329B-7A, 329B-7J, ADI-44V, ADI-84 and ADI-84A flight director indicators and Model 331A-8H, HSI-45 and HSI-70 horizontal situation indicators, was prompted by a report of erroneous display, with no warning annunciation, of pitch and/or roll command and roll pointer displays (flight director indicators) or course pointer and/or heading displays (horizontal situation indicators) which could result in loss of control of the airplane. This AD requires inspection and repair or replacement, as necessary, of a gear shift assembly in the affected indicators.

The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating the AD. It was also determined that an emergency condition existed and that immediate corresponding action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known owners and operators affected by this AD by priority mail letter dated October 30, 1985. The AD became effective immediately as to those individuals upon receipt of that letter and is identified as AD 85-22-10. Since the unsafe condition described herein may still exist on other certain Collins Model 329B-7A, 329B-7J, ADI-44V, ADI-84 and ADI-84A flight director indicators and Model 331A-8H, HSI-45 and HSI-70 horizontal situation indicators, the AD is hereby published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective as to all persons who did not receive the priority letter notification. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the FAA to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location under the caption "ADDRESSES."

List of Subjects 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Collins Avionics Division/Rockwell International. Applies to the following flight director indicators and horizontal situation indicators certificated to the applicable requirements of Technical Standard Orders C3a, C3b, C4c, C52a, and C66a (*):

Model	Part No.	Serial No.
329B-7A	522-3066-005	5018 thru and including 5021.
329B-7J	522-3867-003	1000 thru and including 1001.
ADI-44V	822-5139-001	1024 thru and including 1036.
	822-5139-002	1024 thru and including 1036.
	822-5139-003	1024 thru and including 1036.
	822-5139-004	1024 thru and including 1036.
ADI-84	787-8173-013	4079 thru and including 4109.
	787-8173-016	4079 thru and including 4109.
ADI-84A	822-3584-013	5549 thru and including 5646.
	822-3584-015	5549 thru and including 5646.
	822-3584-016	5549 thru and including 5646.
	822-3584-017	5549 thru and including 5646.
331A-8H	777-1028-004	3204 thru and including 3227.
HSI-45	822-4298-001	1246 thru and including 1326.
HSI-70	822-4913-001	1670 thru and including 1681.

(*) This AD only applies to indicators manufactured between June 1, 1985, and October 25, 1985. It does not apply to indicators installed in an aircraft prior to June 1, 1985.

Compliance: Required as indicated unless already accomplished.

To prevent internal gear slippage that many result in erroneous display, with no warning annunciation, of pitch and/or roll command and roll pointer displays in flight director indicators or course and/or heading displays in horizontal situation indicators, accomplish the following:

(a) For affected flight director indicators, prior to further use, or if installed in an aircraft, prior to further flight, remove the indicator, inspect the gear shaft assemblies to determine if the tapef pin is properly installed, and if necessary, modify the assemblies in accordance with the instructions contained in the appropriate Collins' Alert Service Bulletin identified below:

Model	Alert service bulletin No.	Date
329B-7A	A13	Oct. 25, 1985.
329B-7J	A9	Do.
ADI-44V	A4	Do.
ADI-84	A10	Oct. 29, 1985.
ADI-84A	A10	Do.

(b) For affected horizontal situation indicators not installed in an aircraft, prior to further use, inspect the gear shaft assemblies to determine if the taper pin is properly installed, and if necessary, modify the assemblies in accordance with the instructions contained in the appropriate Collins' Alert Service Bulletin identified below:

Model	Alert service bulletin No.	Date
331A-8H	A7	Oct. 29, 1985.
HSI-45	A4	Do.
HSI-70	A1	Oct. 29, 1985.

(c) For affected Models 331A-8H and HSI-45 horizontal situation indicators installed on an aircraft:

(1) Prior to further flight, deactivate the autopilot and flight director by pulling the respective circuit breakers, and,

(2) Fabricate and install on the instrument panel adjacent to the HSI/ADI and visible to the pilot the following placard using letters of a minimum 0.10 inch in height: "AP/FD INOPERATIVE. COURSE AND HEADING INDEX NOT TO BE USED FOR NAVIGATION," and operate the aircraft accordingly.

(3) Within 25 hours time-in-service after the effective date of this AD, inspect the gear shaft assemblies to determine if the taper pin is properly installed, and if necessary, modify the assemblies in accordance with the instructions in the appropriate Collins' Alert Service Bulletin identified below:

Model	Alert service bulletin No.	Date
331A-8H	A7	October 29, 1985.
HSI-45	A4	Do.

(4) The requirements of paragraphs (c)(1) and (c)(2) of this AD are no longer required when paragraph (c)(3) of this AD has been accomplished.

(d) For affected Model HSI-70 horizontal situation indicators installed on an aircraft, prior to further flight, remove the indicator. Prior to further use of the indicator, inspect the gear shaft assemblies to determine if the taper pin is properly installed, and if necessary modify the assemblies in accordance with the instructions contained in Collins' Alert Service Bulletin No. A1, dated October 29, 1985.

(e) The inspection and modification requirements of paragraphs (a) through (d) of this AD must be accomplished by a FAA certified instrument repair station.

(f) Within five (5) days report, in writing, all defects found during accomplishment of this AD to the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209. (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056.)

(g) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(h) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Collins Radio Division-Rockwell International, 400 Collins Road NE, Cedar Rapids, Iowa 52406 or the FAA, Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective December 31, 1985, as to all persons except those persons to whom it was made immediately effective by priority letter AD 85-22-10, issued October 30, 1985, which contained this amendment.

Issued in Kansas City, Missouri, on December 16, 1985.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 85-30401 Filed 12-24-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-126-AD; Amdt. 39-5199]

Airworthiness Directives; Lockheed-California Company Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all known persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Lockheed Model L-1011-385 series airplanes by individual telegrams. This AD requires inspection of the auxiliary power unit (APU) cables and the No. 2 engine generator feeder cables for damage and for minimum clearance from the bleed air duct. This action was prompted by an incident where one operator reported experiencing an in-flight fire while descending through 20,000 feet for landing. This condition, if not corrected, could have hazardous consequences for the airplane and its passengers.

DATES: Effective January 10, 1986. This AD was effective earlier to all recipients of telegraphic AD T85-22-51, dated October 30, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Harold P. Wasinger, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: On October 30, 1985, the FAA issued telegraphic AD T85-22-51, applicable to Lockheed Model L-1011-385 series airplanes, which requires inspection of the auxiliary power unit (APU) cables and the No. 2 engine generator feeder cables for damage and for minimum clearance from the bleed air duct. This action was prompted by an incident where one operator reported experiencing an in-flight fire while descending through 20,000 feet for landing. Cockpit indications were as follows: No. 2 generator fault light illuminated; followed by indication of area "J" overheat warning; followed by No. 2 engine fire warning, loss of cabin pressure, and smoke in the cockpit and cabin. The airplane landed successfully with no reported injuries.

Subsequent examinations of the airplane revealed that the fire originated in the left aft under-floor area of the pressurized fuselage aft of the C-3 cargo compartment and forward of the rear pressure bulkhead. Severe fire damage was evident in that area. An area of the bulkhead was annealed and a hole approximately 8 inches was blown through the pressure bulkhead. Three feet of the titanium bleed air duct was missing in the area immediately forward of the rear pressure bulkhead. The No. 2 engine generator feeder cable routed adjacent to the bleed air duct showed evidence of arcing.

The FAA has determined that an electrical arc occurred which burned a hole in the duct, and that the high pressure bleed air provided the oxygen to propagate the fire. The feeder cable appears to have contacted the No. 2 engine bleed air duct insulation cover, which caused abrasion and subsequent shorting of the cable to the titanium duct. Other materials in the area may have contributed to the damage.

Lockheed-California issued Alert Service Bulletin 093-24-A127 on October 29, 1985, which describes inspection and repair procedures of this area to assure adequate clearance between the cables and the duct.

Since a situation existed, and still exists, that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The Federal Aviation Administration has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Lockheed-California Company: Applies to Lockheed Model L-1011-385 series airplanes, certificated in any category.

To prevent fires which may be ignited by damaged electrical wires, accomplish the following, unless previously accomplished:

A. Within ten (10) days after the effective date of this AD, using the procedure described in Lockhead Service Bulletin 093-24-A127 dated October 29, 1985, inspect the auxiliary power unit (APU) cables and the No. 2 engine generator feeder cables located on the left side, between the second frame

forward of pressure bulkhead and the pressure bulkhead, at approximately Waterline (WL) 179, for a minimum clearance of one-half inch between the cables and the closest part of the bleed air duct insulated cover.

If the clearance is less than one-half inch, before further flight, adjust the cables to provide adequate clearance in accordance with Lockheed Service Bulletin 093–24–A127, dated October 29, 1985.

B. Within ten (10) days after the effective date of this AD, inspect the APU cables and No. 2 engine generator feeder cables located on left side between the second frame forward of pressure bulkhead and the pressure bulkhead at approximately WL 179, which are routed adjacent to the bleed air duct, for proper clamping and condition of insulation. If insulation damage is found, check closely for wire damage.

If damage to insulation or wires is found, before further flight, repair in accordance with FAA-approved maintenance procedures.

C. Alternative means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63–11, U–33, B–1. These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective January 10, 1986, as to all persons, except those persons to whom it was made immediately effective by telegraphic AD T85–22–51, issued October 30, 1985.

Issued in Seattle, Washington, on December 17, 1985.

Wayne Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–30398 Filed 12–24–85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-138-AD; Amdt. 39-5200]

Airworthiness Directives; McDonnell Douglas Model DC–9, and C–9 (Military) Series Airplanes, Fuselage Numbers 1 Through 1248

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) which requires inspection, and repair, if necessary, of the upper anti-collision light doubler on certain McDonnell Douglas DC–9 series airplanes. This amendment is needed to correct two errors in that AD: (1) Two digits in a referenced document number were inadvertently transposed; and (2) an alternate method of compliance which had been previously approved for incorporation in the final rule was inadvertently omitted.

EFFECTIVE DATE: January 10, 1986.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548–2328.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 85–19–03, Amendment 39–5137 (50 FR 36570; September 9, 1985), applicable to certain McDonnell Douglas DC–9 series airplanes, requires inspection and repair, as necessary, of the upper anticollision light doubler at one or both ends of the cutout in the longitudinal axis of the doubler, originating at a plate nut clearance hole.

After the AD was issued, two editorial errors were discovered. First, two digits were transposed in the citation of SB 09530186. Second, an alternative method of compliance with paragraph B. of the AD, identified in SB 09530186, which had been approved for incorporating in the final version of the AD, was inadvertently omitted.

Since this amendment merely corrects two editorial errors, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

The FAA has determined that this document involves an amendment that only corrects editorial errors and does not impose any additional burden on any person. This amendment is, therefore, not major under Executive Order 12291 (46 FR 13193; February 19, 1981) and not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because its anticipated impact is so minimal, it does not warrant preparation of a regulatory evaluation. For these reasons and because few, if any, Model DC–9 or C–9 series airplanes are operated by small entities, I certify that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By amending AD 85–19–03, Amendment 39–5137, as follows:

A. Revise all references made to "SB 09531086" to read "SB 09530186."

B. Revise paragraph B. to read as follows: "If no cracks are found under Condition I, Phase I, as referenced in SB 53–186, perform repetitive eddy current inspections at intervals not to exceed 3,500 landings in accordance with Figure 2 of SB 53–186, until such time as stress coining of plate nut clearance holes, as outlined under Condition 1, Phase II of SB 53–186, or SB 09530186 (originally identified as McDonnell Douglas DC–9 Service Sketch 3626C), is accomplished."

C. Revise paragraph C.1., by deleting the parenthetical phrase after "SB 09530186."

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective January 10, 1986.

BEST COPY AVAILABLE

Issued in Seattle, Washington, on December 17, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-30399 Filed 12-24-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWP-23]

Revised Description of the Santa Maria, CA, Control Zone and Transition Area

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: The revised description of the exising Santa Maria, California, Control Zone and Transition Area is required as a result of the upcoming name change of the Santa Maria Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC). This action does not change the actual airspace of the existing Santa Maria, California, Control Zone and Transition Area.

EFFECTIVE DATE: 0901 G.m.t., March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Joe Fowler, Airspace Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297-1658.

SUPPLEMENTARY INFORMATION:

History

This revision is required to redefine the existing Santa Maria, California, Control Zone and Transition Area description as a result of the upcoming name change of the Santa Maria VORTAC. This action only provides editorial changes and does not alter the existing airspace. To preclude numerous editorial changes to control zone and transition area descriptions, this amendment uses geographical coordinates as reference points which are permanent in nature and not subject to change as name or location of navigational aids. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (FAR) were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) will change the description of the Santa Maria, California, Control Zone and Transition Area using geographical coordinates and delete the reference to the Santa Maria VORTAC used in the definition. This action does not change the actual airspace of the existing control zone and transition area.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to reflect the correct description of the Santa Maria, Caliornia, Control Zone and Transition Area. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the next charting date. Description of the amended control zone and transition are set forth below and depicted on the chart at the end of this document.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procdures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration, Part 71 of the FAR is revised as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Santa Maria, CA—[Revised]

Within a 5-mile radius of the Santa Maria Public Airport (lat. 34°53'56" N., long. 120°27'23" W.); beginning at lat. 34°50'00" N., long. 120°24'25" W.; clockwise via the 5-mile radius to lat. 34°52'00" N., long. 120°22'10" W.; to lat. 34°51'10" N., long. 120°21'20 W.; to lat. 34°49'20" N., long 120°23'20" W.; to the point of beginning.

3. Section 71.181 is amended as follows:

Santa Maria, CA—[Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 34°45'00> N., long. 120°20'10" W.); to lat. 34°49'20" N., long. 120°26'00" W.; thence clockwise via the 5-mile radius of the Santa Maria Public Airport (lat. 34°53'56" N., long. 120°27'23" W.; to lat. 34°54'20" N., long. 120°32'30" W.; to lat. 35°00'50" N., long 120°08'00" W.; to lat. 35°03'45" N., long. 120°32'25" W.; to lat. 34°56'20" N., long. 120°28'15" W.; thence clockwise via the 5-mile radius of the Santa Maria Public Airport (lat. 34°53'56" N., long 120°27'23" W.); to lat. 34°53'20" N., long. 120°21'10" W.; to lat. 34°48'50" N., long. 120°15'50" W.; to the point of beginning.

Issued in Los Angeles, California, on December 10, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 85-30396 Filed 12-24-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3174]

Larry Brog; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires a former chief executive officer of a Salt Lake City, Utah manufacturer and distributor of a dry milk substitute, among other things, to cease making any representations concerning the health benefits or expected shelf life for "Meadow Fresh White", a powdered, dairy-based milk substitute, or other food products, without reliable and competent substantiation. Also, respondent is prohibited from excluding some distributors in computing "average" distributor earnings without proper disclosures concerning the method of computation.

DATE: Complaint and Order issued Dec. 3, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Lawrence Hodapp, FTC/H-238A, Washington, DC 20580. (202) 523-3660.

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[1] Copies of the Complaint and the Decision and Order are filed with the original document.

SUPPLEMENTARY INFORMATION: On Tuesday, Sept. 17, 1985, there was published in the **Federal Register**, 50 FR 37686, a proposed consent agreement with analysis In the Matter of Larry Brog, individually and as a former officer of Meadow Fresh Farms, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: S 13.15 Business status, advantages, or connections; 13.15–60 Earnings and profits; S 13.170 Qualities or properties of product or service; 13.170–52 Medicinal, therapeutic, healthful, etc. Subpart—Corrective Actions and/or Requirements: S 13.533 Corrective actions and/or requirements; 13.533–45 Maintain records; 13.533–45(a) Advertising substantiation. Subpart—Misrepresenting Oneself and Goods—Goods: S 13.1615 Earnings and profits.

List of Subjects in 16 CFR Part 13

Powdered milk products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 85–30439 Filed 12–24–85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM85–1–000 (Parts A–D)]

Regulation of Natural Gas Pipelines After Partial Decontrol; Berkshire Gas Co.

Issued: December 13, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Request for Clarification and Waiver of Regulations.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42,408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Berkshire Gas Company, the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Sharon S. Schellhardt, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8574.

SUPPLEMENTARY INFORMATION:

Order Denying Request for Clarification and Waiver of Regulations

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On November 18, 1985, Berkshire Gas Company filed a request for clarification of the Commission's Regulations. Berkshire alleges that it has engaged in a series of one year contracts with Tennessee Gas Pipeline and Bay State Gas Company, a neighboring utility. Under these contracts, Tennessee has transported gas on behalf of Berkshire pursuant to section 311 of the Natural Gas Policy Act (NGPA). The most recent yearly contract expired on October 29, 1985. Tennessee did not file appropriate extension reports in accordance with §§ 284.105 and 284.106 of the old regulations. The parties had not executed letter agreements prior to October 9, 1985 to continue service for an additional period of time.

Berkshire argues that clarification should be granted because of a mutual understanding of the parties arrived at in 1982 to continue the transportation arrangement on a yearly basis through 1988. Alternatively, Berkshire requests waiver of the regulations based on the high priority category of the customers to be served and the lack of alternative sources of supply.

The facts and circumstances cited in Berkshire's petition do not justify granting a waiver of the regulations. The technical corrections clarify the Commission's intent when it issued Order No. 436. Initiation of service under a new contract signed after October 9, 1985 would constitute a new NGPA section 311 transportation transaction under § 284.102. Accordingly, Berkshire's petition for clarification and waiver of the regulations is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–30489 Filed 12–24–85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 284

[Docket No. RM85–1–000 (Parts A–D)]

Regulation of Natural Gas Pipelines After Partial Decontrol; Entrade Corp.

Issued: December 13, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting Request for Clarification.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42,408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Entrade Corporation, the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Tom Salzer, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–9219.

SUPPLEMENTARY INFORMATION:

Order Granting Request for Clarification

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On November 12, 1985, Entrade Corporation filed a request for clarification of the transition provisions of Order No. 436 [1] with respect to contract changes which are necessary for engineering considerations to move gas under transportation agreements issued pursuant to section 311 of the Natural Gas Policy Act.

A customer of Entrade entered into transportation agreements prior to October 9, 1985 with two pipelines, to transport the gas in sequence from its receipt by the first pipeline to its ultimate delivery by the second. Due to variable pressure differentials, the first pipeline provided in its contract that either of two interconnections with the

[1] 50 FR 42408 (October 18, 1985).

second pipeline could be used. The second pipeline's contract, however, listed only one interconnection, and should be modified to reflect the two possible interconnections.

This modification is minor and technical, and is implied from the contract with the first pipeline. The volumes of gas, their receipt point on the first pipeline, and their delivery point on the second pipeline, all remain unchanged.

On the basis of these facts, we conclude that both of these transportation agreements fall within the scope of the transition provisions of Order No. 436, including the use of the second interconnection point between the two interstate pipeline transporters.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30490 Filed 12-24-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 284

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Decontrol; Mountain Fuel Resources, Inc.

Issued: December 13, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting Request for Clarification.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42,408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Mountain Fuel Resources, Inc., the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Kevin Rees, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, (202) 357-9221.

SUPPLEMENTARY INFORMATION:

Order Granting Request for Clarification

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On November 13, 1985, Mountain Fuel Resources, Inc., filed a request for clarification of § 284.223(g) of the regulations promulgated by Order No. 436.[1]

Mountain Fuel entered into an agreement with the Grand Valley Gas Transmission Company on September 26, 1985 whereby Mountain Fuel was to transport up to 2,500 Mcf of natural gas per day to Northwest Pipeline Corporation for its ultimate redelivery to the end-user.[2] At the time of the agreement, Grand Valley advised Mountain Fuel that the end-user would be a low-priority end-user and that the service would be provided under § 157.209(e) of the Regulations. The agreement between Mountain Fuel and Grand Valley recites that transportation service is for a low-priority end-use and specifically limits the transportation to not more than 120 days (until January 29, 1986). The agreement further limits the term of the transportation service to October 31, 1985, unless Mountain Fuel elects to extend the transportation for the remainder of the 120 days of service.

On October 2, 1985, Grand Valley advised Mountain Fuel that it was able to negotiate a sales contract with a high-priority end-user, J.R. Simplot Company, and that the gas was being transported by Mountain Fuel on behalf of Simplot for its high-priority end-use. The transportation service on behalf of Simplot commenced on October 1, 1985, the first date of service under the agreement.

Mountain Fuel filed its initial report as required by § 157.209(g)(1), summarizing the transportation service provided to Simplot. In its report, Mountain Fuel indicates that the gas was being transported on behalf of a high-priority end-user.

Mountain Fuel states that it has halted transportation service for Simplot as it is unsure of whether the continued transportation for Simplot will require Mountain Fuel to comply with the non-discriminatory access provisions of Order No. 436. Mountain Fuel is seeking clarification as to whether its transportation service agreement with Grand Valley falls within the transition provisions of § 284.223(g)(1) or whether Mountain Fuel will have to offer non-discriminatory access transportation if it wishes to continue performing this service.

We find that Mountain Fuel's transportation service was performed under § 157.209(a)(1). Although the original agreement provided for transportation service for a low-priority end-user, prior to October 9, 1985, Mountain Fuel was informed that such transportation would instead be for a high-priority end-user. Thus, the parties verbally amended their contract. Furthermore, Mountain Fuel indicated in its report that it was performing such service under § 157.209(a)(1). Accordingly, we find that the service falls within the scope of the transition provisions of § 284.223(g)(1). However, Mountain Fuel may continue the service only for the term provided in its contract.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30383 Filed 12-24-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 284

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Decontrol; J. R. Simplot Co.

Issued: December 13, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Denying Request for Clarification.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42,408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by J. R. Simplot Company, the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Robert F. Riley, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8049.

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[1] 33 FERC ¶61,007 (1985), 50 FR 41,408 (October 18, 1985).

[2] Mountain Fuel's agreement was entered into pursuant to its blanket authority in Docket No. CP82-491-000, 20 FERC ¶62,580 (1982).

SUPPLEMENTARY INFORMATION:

Order Denying Request for Clarification

Issued: December 13, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On November 13, 1985, the J. R. Simplot Company, pursuant to Rule 207 of the Commission's rules of practice and procedure,[1] requested clarification of the "grandfathering" provision for blanket certificate transactions for high priority end-users as established in § 284.223(g)(1) of Order No. 436. Specifically, Simplot asks whether a written contract explicitly allowing for contract term extensions and the addition or deletion of receipt and delivery points, which contract had not been extended prior to October 9, 1985, is subject to the transitional provisions after October 9, 1985.

Simplot entered into a transportation agreement with Northwest Pipeline Company on June 17, 1985, and amended that agreement on July 30 and August 5, 1985. The amended agreement is to continue until December 17, 1985. The agreement provides for changes in the term and the delivery and receipt points at any time upon mutual agreement of the parties. Although a written contract was in place and service had commenced, the parties did not agree to extend the December 17, 1985 term before the October 9, 1985 deadline.

Service under a contract for transportation pursuant to § 157.209(a)(1) for which service had commenced by October 9, 1985, may continue after November 1, 1985 under § 284.223(g)(1) for the time remaining in its authorized term. Thus, the existing contract between Simplot and Northwest can remain in effect until December 17, 1985, without obligating Northwest in any way with respect to becoming a non-discriminatory access transporter of natural gas.

However, a transitional transportation arrangement may not be amended after October 9, 1985, because § 284.233(g)(1) specifically limits that transaction to the operative terms and conditions of the transportation arrangements that existed on October 9, 1985. Because the agreement between Simplot and Northwest was not extended prior to October 9, 1985, Simplot's agreement does not qualify for transition treatment beyond the original contract date of December 17, 1985. Further, the transportation arrangement may not be amended to change the points of receipt and/or delivery.[2] Any subsequent changes to the terms and conditions of the originally certificated transaction would require an application for a new blanket certification under section 284.221.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-30493 Filed 12-24-85; 8:45 am]
BILLING CODE 6717-01-M

[1] 18 CFR 385.207.

[2] *Panhandle Eastern Pipeline Co.*, 33 FERC ¶ 61,139 (issued November 13, 1985).

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18 CFR Part 284

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Decontrol; Southern Natural Gas Co.

Issued: December 13, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting and Deferring, in Part, Request for Clarification.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42,408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Southern Natural Gas Company, the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Kevin Rees, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-9221.

SUPPLEMENTARY INFORMATION:

Order Granting Motion for Clarification

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Southern Natural Gas Company (Southern) has filed a motion for clarification of § 284.105 of the Regulations adopted in Order No. 436.[1] Specifically, Southern requests that we clarify that it may continue to provide transportation service on behalf of Power-Tex Joint Venture (Power-Tex), a Texas intrastate pipeline, pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA), after November 1, 1985. We will grant Southern's motion.

Section 284.105 provides that any NGPA section 311 transportation service authorized and commenced on or before October 9, 1985, may be continued, with several exceptions, under the terms that applied prior to November 1, 1985, until the earlier of October 9, 1987, or the expiration of the original or extended term of the contract.

Power-Tex received section 311 transportation service from Southern, pursuant to an oral agreement between Southern and Northern Gas Marketing, Inc. to amend a transportation agreement by adding Power-Tex as a shipper for whom Southern would transport gas, prior to October 9, 1985. We have previously clarified that § 284.105 is applicable to transportation service which commenced pursuant to a verbal agreement prior to October 9, 1985. *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Pacific Gas and Electric Company).* 33 FERC ¶ 62,155 (October 31, 1985). Southern may continue to provide transportation service after November 1, 1985, on behalf of Power-Tex, under § 284.105, as long as Southern complies with all applicable reporting requirements.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-30491 Filed 12-24-85; 8:45 am]
BILLING CODE 6717-01-M

[1] 33 FERC ¶ 61,007, 50 FR 42,408 (October 18, 1985).

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18 CFR Part 284

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Decontrol; Southern Natural Gas Co.

Issued: December 13, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Granting Motion for Clarification.

SUMMARY: On October 9, 1985, the Commission issued Order No. 436, a Final Rule amending its regulations in, among others, Part 284, 50 FR 42,408 (Oct. 18, 1985). In amending its regulations in this Part, the Commission adopted a simplified transportation program, including blanket certificates under section 7 of the Natural Gas Act, and transportation programs under section 311 of the Natural Gas Policy Act of 1978. In response to a petition filed by Southern Natural Gas Company, the Commission issues this order clarifying Order No. 436.

EFFECTIVE DATE: The amendments to Part 284 were effective October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Jim Hostetler, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Washington, DC. 20426, (202) 357–8780.

SUPPLEMENTARY INFORMATION:

Order Granting and Deferring In Part, Request for Clarification

Federal Energy Regulatory Commission

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On November 5, 1985, Southern Natural Gas Company (Southern) filed a request for clarification that certain blanket Certificate transportation arrangements qualify under § 284.223(g)(1) of Order No. 436[1] for continued transportation anthorization after November 1, 1985. The first category concerns transportation services that Southern performs on behalf of local distribution company (LDC) customers acting as agents for end-users whose use of natural gas qualifies as high priority end-uses: The second category concerns transportation services southern performs for LDC customers acting as agents for numerous end-users whose use of natural gas qualifies as both high and low priority end-uses.

Southern states that it performed transportation services on behalf of LDC customers acting as agents for end-users whose use of gas qualified as high priority end-uses. Southern filed reports as required under § 157.209(g) as it existed prior to November 1, 1985, notifying the Commission of the Commencement of the transportation service. In each of its reports, however, Southern failed to specifically cite § 157.209(a)(1), and in the section of the report stating that the gas was eligible for tranportation under Southern's blanket certificate because it was purchased in a first sale and was not dedicated to interstate commerce on November 8, 1978, Southern cited to § 157.209(e).

Southern also states that it has rendered transportation service to LDCs acting as agents for numerous end-users whose plants have both high and low priority end-uses of gas. Southern states that it filed timely reports indicating that such gas would be transported for both high priority and low priority end-users, but Southern did not specifically state what precent of the total volumes would be used high priority end-uses and thus transported under § 157.209(a)(1) or what percent of the total would be transported under § 157.209(a)(2) and (e)(1). However, in its reports, Southern referred to § 157.209(e). During September and October, Southern filed pursuant to § 157.209(e)(2) to extend such transportation beyond the 120-day self-implementing period for those low priority end-users that would have experienced an interruption on or before December 15, 1985.[2]

We are granting Southern's request for clarification regarding its transportation services in the first category. We are deferring ruling on the request for clarification regarding its transportation services in the second category.

Regarding the transportation services in the first category, Southern is allowed to proceed with its transportation under § 284.223(g)(1) as Southern commenced such services under section 157.209(a)(1). Southern will be required to amend its reports to reflect that such services were performed pursuant to the authority of § 157.209(a)(1) as it existed prior to November 1, 1985.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–30492 Filed 12–24–85; 8:45 am]

BILLING CODE 6717–01–M

[1] 33 FERC ¶61,007 (1985), 50 FR 42,408 (October 18, 1985)

[2] See Dockets Nos. CP85–878–000, CP86–14–000, CP86–15–000, CP86–49–000, CP86–55–000, CP86–57–000, CP86–58–000. In each of its filings in these dockets, Southern clearly stated in commenced such transportation under § 157.209(e)(1) for a term of 120 days.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 449

[Docket No. 85N–0136]

Antibiotic Drugs; Nystatin Tablets; Revision of Disintegration Standard

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by revising the disintegration standard for nystatin tablets. The agency is taking this action to assure better quality control of this product.

DATES: Effective January 27, 1986; comments, notice of participation, and request for hearing by January 27, 1986; data, information, and analyses to justify a hearing by February 24, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 26, 1985 (50 FR 30478), FDA proposed to amend the antibiotic drug regulations by revising the disintegration standard for nystatin film-coated tablets from 30 minutes to 2 hours.

As discussed in the proposal, the disintegration test for film-coated tablets (21 CFR 436.212(e)(1)) measures the rate of disintegration of this dosage form by immersion in simulated gastric fluid for the time specified in the individual monograph (regulation). The monograph providing for the nystatin tablets specifies a disintegration time period of 30 minutes for film-coated tablets. If the tablets have not disintegrated in 30 minutes, they do not meet the standard for disintegration.

The agency has concluded that a disintegration standard of 30 minutes is unnecessarily stringent for nystatin film-coated tablets. The agency has determined that a disintegration time period of 2 hours is a more reasonable time period.

In addition, the agency proposed to amend the regulation (monograph) for nystatin tablets by deleting (1) the provision for the plain-coated tablets because they are no longer marketed, and (2) the reference to film-coated tablets containing a starch filler because all nystatin tablets currently marketed fit this description.

Interested persons were given until September 24, 1985, to submit written comments on this proposal and until August 26, 1985, to submit requests for an informal conference. No comments or requests for an informal conference were received in response to the proposal.

Economic Impact

The agency has considered the economic impact of this final rule and has determined that it does not require a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). Specifically, the final rule would refine an existing technical provision to provide a less stringent requirement. Accordingly, the agency

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certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Filing Objections

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before January 27, 1986, a written notice of participation and request for hearing, and (2) on or before February 24, 1986, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 449

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 449 is amended as follows:

PART 449—ANTIFUNGAL ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 449 is revised to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. In § 449.150a by revising paragraph (a)(1) to read as follows:

§ 449.150a Nystatin tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Nystatin tablets are tablets composed of nystatin and suitable and harmless buffer substances, diluents, binders, lubricants, colorings, and flavorings. Each tablet contains 500,000 units of nystatin. Its potency is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of nystatin that it is represented to contain. The loss on drying is not more than 8 percent. The tablets shall disintegrate within 2 hours. The nystatin used conforms to the standards prescribed by § 449.50(a)(1).

* * * * *

Dated: December 18, 1985.

Daniel L. Michels, Director,

Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85-30411 Filed 12-24-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs not Subject to Certification; Tioxidazole Granules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Druge Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering Corp., providing for safe and effective use of tioxidazole granules in horses as an anthelmintic.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033, filed NADA 134-645, which provides for administering tioxidazole granules to horses by mixing with a small amount of the grain ration. Tioxidazole granules are indicated for removal of certain mature large strongyles, mature ascarids, mature and immature pinworms, and mature small strongyles. The NADA is approved and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 is revised to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. By adding new §§ 520.2473 and 520.2473a to read as follows:

§ 520.2473 Tioxidazole oral dosage forms.

§ 520.2473a Tioxidazole granules.

(a) *Specifications.* Each gram of granules contains 200 milligrams of tioxidazole.

(b) *Sponsor.* See No. 000085 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Horses*—(i) *Amount.* 5 milligrams per pound of body weight as a single dose.

(ii) *Indications for use.* Removal of mature large strongyles *(Strongylus edentatus, S. equinus,* and *S. vulgaris),*

mature ascarids *(Parascaris equorum)*, mature and immature (4th larval stage) *(Oxyuris equi)*, and mature small strongyles *(Triodontophorus* spp.)

(iii) *Limitations.* For administration with feed: Sprinkle required amount of granules on a small amount of the usual grain ration and mix. Prepare for each horse individually. Withholding of feed or water not necessary. Not for use in horses intended for food. The reproductive safety of tioxidazole in breeding animals has not been determined. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism. It is recommended that this drug be administered with caution to sick or debilitated horses.

(2) [Reserved].

Dated: December 18, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-30413 Filed 12-24-85; 8:45 am]

BILLING CODE 4160-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Rescission of North Carolina Personnel Commission

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; amendment.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges. Publication of this amendment rescinds the designation of the North Carolina State Personnel Commission as a 706 Agency.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: Miguel Torres, Equal Employment Opportunity Commission, Office of Program Operations, Systemic Investigations and Individual Compliance Programs, 2401 E Street NW., Washington, DC 20507, telephone 202/634-6922.

SUPPLEMENTARY INFORMATION: The Commission was notified that the North Carolina State Personnel Commission's statutory authority to enter into a 706 charge deferral relationship with the Equal Employment Opportunity Commission has been rescinded effective January 1, 1986. Consequently the Director, Office of Program Operations believed that the North Carolina State Personnel Commission should not be considered as a 706 Agency.

The Director received written notice from the Director, Office of State Personnel, State of North Carolina that the State Personnel Commission will cease operation as a 706 Agency on or before January 1, 1986.

Accordingly, the Director hereby makes a final determination that the North Carolina State Personnel Commission will no longer be considered a 706 Agency. Publication of this amendment to § 1601.74 rescinds the designation of the following agency as a designated 706 Agency; North Carolina State Personnel Commission.

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovernmental relations.

1. The authority citation for Part 1601 continues to read as follows:

Authority: Secs. 709, 713, 78 Stat. 263, 265; 42 U.S.C. 2000e-8, 2000e-12.

PART 1601—[AMENDED]

§ 1601.74 [Amended]

Accordingly, 29 CFR Part 1601 is amended in § 1601.74(a) by removing the entry for the North Carolina State Personnel Commission.

Signed at Washington, DC, this 16th day of December 1985.

For the Commission.

James H. Troy,

Director, Office of Program Operations.

[FR Doc. 85-30064 Filed 12-24-85; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-85-08]

Drawbridge Operations Regulations; Tigre Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Develpment (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge over Tigre Bayou, mile 2.3, on LA330 near Delcambre, Vermilion Parish, Louisiana, by requiring that at least four hours advance notice be given for an opening of the draw at all times. Presently, the draw is required to open on signal from 5 a.m. to 9 p.m. and on 12 hours advance notice from 9 p.m. to 5 a.m. This change is being made because of infrequent requests for opening the draw. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw from 5 a.m. to 9 p.m., while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 5 July 1985, the Coast Guard published a proposed rule (50 FR 27624) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated 15 July 1985. In each notice interested persons were given until 19 August 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Five responses were received, two offering no objections and three expressing concern over the four hours advance notice for a bridge opening in an emergency or economic hardship case, and on the potential for reactivation of a defunct small boat repair facility located immediately upstream of the bridge. In a meeting with the three concerned respondents, confirmed in writing, the LDOTD reviewed the low number of bridge openings and how this justified a bridegetender on a four-hour call instead of continually on site, to accommodate a vessel passage. At the same time, the LDOTD assured the parties that it is committed to: (1) Opening the bridge on less than four hours notice in the case of an emergency or economic hardship, (2) assigning a tender at the site to open the bridge on signal in the event of a temporary surge in waterway traffic, and (3) reverting to stationing a tender at the bridge, either part or full time, if the boat repair facility should be reactivated and generate the volume of waterway traffic to warrant this action. In view of the foregoing, the respondents stated that the proposed change in operating the bridge was acceptable.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic imact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the bridge averaged only one vessel opening every three days in 1984 and only one vessel opening every five days in 1985 through October. These few vessels can reasonably give four hours advance notice for a bridge opening, from ashore or afloat, by placing a collect call at any time to the bridge owner at the LDOTD District Office in Lafayette, Louisiana, telephone (318) 233–7404. Mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Should the occasion arise to open the bridge on less than four hours notice for an emergency or to operate the bridge on demand for a temporary surge in waterway traffic, the LTOTD has committed to doing so. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.507 is revised to read as follows:

§ 117.507 Tigre Bayou

The draw of the S330 bridge, mile 2.3 near Delcambre, shall open on signal if at least four hours notice is given. The draw shall open on less than four hours notice for an emergency and shall open on signal should a temporary surge in waterway traffic occur.

Dated: December 13, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85–30510 Filed 12–24–85; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 3

Temporary Programs of Vocational Training

AGENCY: Veterans Administration.

ACTION: Final rules.

SUMMARY: The Veterans Administration (VA) has amended its adjudication regulations to implement certain provisions of Pub. L. 98–543, the Veterans' Benefits Improvement Act of 1984. These amendments are necessary to define Adjudication Division responsibilities with respect to newly established temporary vocational rehabilitation training programs. The effect of these amendments will be to provide authority for actions to insure participation in temporary vocational rehabilitation training programs.

DATES: These rules are effective February 1, 1985, as provided by law.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits (202) 389–3005.

SUPPLEMENTARY INFORMATION: On pages 36631–33 of the **Federal Register** of September 9, 1985, the VA published proposed amendments to 38 CFR 3.341 through 3.343. Interested persons were given until September 30, 1985, to submit comments, suggestions or objections to the proposed amendments. Since no comments, suggestions or objections were received, the amendments have been adopted as proposed.

The Administrator hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act 5 U.S.C. 601–612. Therefore, pursuant to 5 U.S.C. 606(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these regulations impose no regulatory burdens on small entities, and only claimants for VA benefits will be directly affected. Determined that these regulations are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

Approved: November 27, 1985.

By direction of the Administrator.

Everett Alvarez Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, *Adjudication,* is amended as follows:

1. Section 3.341 is amended by adding paragraph (c) to read as follows:

§ 3.341 Total disability ratings for compensation purposes.

* * * * *

(c) *Temporary program of vocational rehabilitation.* (1) Each time a veteran is rated totally disabled on the basis of individual unemployability during the period beginning on February 1, 1985, and ending on January 31, 1989, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be made, as required by § 21.6513, to determine whether the achievement of a vocational goal by the veteran is reasonably feasible. Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that any such veteran, for reasons other than those beyond the veteran's control, has failed to participate in the evaluation process, the veteran's rating shall be reduced, in accordance with § 3.105(e), to the rating applicable to the veteran's service-connected disabilities without consideration of indivdidual unemployability and shall remain so reduced for the duration of such failure.

(2) Veterans described in paragraph (c)(1) of this section from whom it is determined that the achievement of a vocational goal is reasonably feasible and for whom an individualized written plan of vocational rehabilitation is formulated will be required to pursue the program described in that plan.

Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that any such veteran, for reasons other than those beyond the veteran's control, has failed to pursue (or to continue to pursue) such vocational rehabilitation program in accordance with § 21.6517, the rating board, in a promptly scheduled review of the veteran's rating, shall consider the results of the feasibility evaluation for that veteran together with any other evidence concerning the veteran's eligibility for a total disability rating based on individual unemployability and shall adjust the veteran's rating as necessary.

(38 U.S.C. 363)

2. In § 3.342, paragraph (b)(4) is revised and paragraph (c) is added to read as follows:

§ 3.342 Permanent and total disability ratings for pension purposes.

* * * * *

(b) * * *

(4) The following shall not be considered as evidence of employability:

(i) Employment as a member-employer or similar employment obtained only in competition with disabled persons.

(ii) Participation in, or the receipt of remuneration as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C. 618. (But see §§ 3.262 and 3.271 with regard to income for pension purposes.)

(38 U.S.C. 618(f))

* * * * *

(c) *Temporary program of vocational rehabilitation training for certain pension recipients.* (1) When a veteran under age 50 is awarded disability pension during the period beginning on February 1, 1985, and ending on January 31, 1989, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be made, as required by § 21.6050, to determine that veteran's potential for rehabilitation. Upon receipt of notice from the Vocational Rehabilitation and Counseling Division that a veteran, for reasons other than those beyond the veteran's control, has failed to participate in the evalution process, the veteran's disability pension award shall be suspended effective the date of last payment and shall remain suspended for the duration of such failure.

(2) Veterans age 50 or older who are awarded disability pension during the period beginning on February 1, 1985, and ending on January 31, 1989, are also eligible to apply for participation in vocational rehabilitation training; however, such participation is strictly voluntary, and the provisions of paragraph (c)(1) of this section do not apply to such veterans.

(38 U.S.C. 524)

3. In § 3.343, paragraph (c) is revised to read as follows:

§ 3.343 Continuance of total disability ratings.

* * * * *

(c) *Individual unemployability.* (1) In reducing a rating of 100 percent service-connected disability based on individual unemployability, the provisions of § 3.105(e) are for application but caution must be exercised in such a determination that actual employability is established by clear and convincing evidence. When in such a case the veteran is undergoing vocational rehabilitation, education or training, the rating will not be reduced by reason thereof unless there is received evidence of marked improvement or recovery in physical or mental conditions or of employment progress, income earned, and prospects of economic rehabilitation, which demonstrates affirmatively the veteran's capacity to pursue the vocation or occupation for which the training is intended to qualify him or her, or unless the physical or mental demands of the course are obviously incompatible with total disability. Neither participation in, nor the receipt of remuneration as a result of participation in, a therapeutic or rehabilitation activity under 38 U.S.C. 618 shall be considered evidence of employability. (38 U.S.C. 618(f))

(2) If a veteran with a total disability rating for compensation purposes based on individual unemployability begins to engage in a substantially gainful occuption during the period beginning on February 1, 1985, and ending on January 31, 1989, the veteran's rating may not be reduced solely on the basis of having secured and followed such substantially gainful occupation unless the veteran maintains the occupation for a period of 12 consecutive months. For purposes of this subparagraph, temporary interruptions in employment which are of short duration shall not be considered breaks in otherwise continuous employment.

(38 U.S.C. 363(a))

* * * * *

[FR Doc. 85-30469 Filed 12-24-85; 8:45 am]

BILLING CODE 4320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[FRL-2941-1]

Nonferrous Metals Manufacturing Point Source Category, Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA is correcting errors in the preamble and effluent limitations guidelines and pretreatment standards for the nonferrous metals manufacturing point source category which appeared in the **Federal Register** on September 20, 1985 (50 FR 38276).

FOR FURTHER INFORMATION CONTACT: Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION: EPA has promulgated regulations for the nonferrous metals manufacturing point source category in two phases because of the diversity and complexity of the category. Phase I was promulgated on March 8, 1984 (49 FR 8742). Phase II was promulgated on September 20, 1985 (50 FR 38276). The Phase II regulation contained errors which are discussed briefly below and are corrected by this notice.

First, the preamble to the Phase II regulation incorrectly referred to a BAT regulation for the secondary indium and secondary nickel subcategories when no BAT regulations are promulgated for those subcategories. The correct reference is to NSPS. Second, the Phase II regulation erroneously changed the Phase I PSES compliance date to September 20, 1988 for subparts J, K, L, and M. As stated in the March 8, 1984 Phase I final rule, the PSES compliance date for these subparts is March 8, 1987. For subparts N through AE, the PSES compliance date under Phase II is September 20, 1988.

Also, subpart I—Metallurgical Acid Plants Subcategory contained an error. The Preamble to the final Phase II rule clearly explained that EPA was expanding the applicability of the existing BPT requirements to molybdenum metallurgical acid plants. As part of this expanded applicability, the final Phase II preamble discussion explicitly noted that "[t]he pollutants specifically regulated at BPT are arsenic, cadmium, copper, lead, zinc, *flouride, molybdenum,* TSS and pH." (emphasis added). (50 FR 38301). However, due to a typographical error in

preparing the final regulations for **Federal Register** publication, the Agency omitted to include the two pollutants flouride and molybdenum in the BPT table at 40 CFR 421.92 for the metallurgical acid plant subcategory. Today's notice corrects this error.

Finally, the summary of process wastewater sources in the Primary Zirconium and Hafnium subcategory in Section V(A) of the preamble (50 FR 38282) needs to be corrected to indicate that only 14 of the 18 process wastewater sources with allowances in this category are included in the summary. The remaining four are described in detail in the zirconium and hafnium development document. The final regulations for this category provide allowances for each of the zirconium and hafnium process waste water sources.

Dated: December 11, 1985.

Lawrence J. Jensen,

Assistant Administrator for Water.

The following corrections are made in FRL 2872-1, the Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines; Pretreatment Standards and New Source Performance Standards published in the **Federal Register** on September 20, 1985 (50 FR 38276).

1. The sixth full paragraph in the third column on page 38292 which reads, "The sources of process wastewater receiving an allowance in the primary zirconium and hafnium subcategory are listed below along with the pollutants typically found in each:" is revised to read as follows:

"*Fourteen of the remaining 18* sources of process wastewater receiving an allowance in the primary zirconium and hafnium subcategory are listed below, along with the pollutants typically found in each. *The other four sources are described in detail in the accompanying development document for this subcategory.*"

2. On page 38310, second column, line 8, change "BAT" to "NSPS".

3. On page 38310, third column, line 46, change "BAT" to "NSPS".

4. On page 38312, third column, line 14, change "BAT" to "PSES".

5. Section 421.4 on page 38342, column 2, is correctly revised to read as follows:

§ 421.4 Compliance date for pretreatment standards for existing sources (PSES).

The PSES compliance deadline in subparts A through M is March 8, 1987. The PSES compliance deadline for plants in subparts N through AE is September 20, 1988.

§ 421.92 [Corrected]

6. Section 421.92, on page 38343, first column, the table is correctly revised to read as follows:

* * * * *

SUBPART I—METALLURGICAL ACID PLANT

Pollutant or pollutant property	BPT effluent limitations	
	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds of 100% sulfuric acid capacity	
Cadmium	0.190	0.090
Copper	5.000	2.000
Lead	1.600	0.790
Zinc	3.600	0.900
Fluoride [1]	212.800	121.000
Molybdenum [1]	40.180	20.790
Total suspended solids	304.000	152.000
pH	[2]	[2]

[1] For Molybdenum Acid Plants Only.
[2] Within the range of 6.0 to 9.0 at all times.

[FR Doc. 85-30250 Filed 12-24-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-154; RM-4927]

FM Broadcast Station in Mount Pleasant, SC

AGENCY: Federal Communications Commission.

AGENCY: Final rule.

SUMMARY: Action taken herein substitutes Channel 283C2 for Channel 285A at Mount Pleasant, South Carolina, and modifies the license of Station WDXZ to specify operation on the higher powered channel, at the request of Southeast Communications, Inc.

EFFECTIVE DATE: January 27, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio.

The Authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended 1082, as amended; 47 U.S.C. 154, 303. Interpret 47 U.S.C. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the Matter of amendment of § 73.202(b), table of allotments, FM broadcast stations. (Mount Pleasant, South Carolina) (MM Docket No. 85-154, RM-4927

Adopted: December 16, 1985.
Released: December 19, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 Fed. Reg. 23733, published June 5, 1985, soliciting comments on the proposal to substitute Channel 283C2 for Channel 285A at Mount Pleasant, South Carolina, at the request of Southeast Communications, Inc. ("Southeast"). The *Notice* also proposed to modify the license of Station WDXZ to specify operation on the higher-powered channel. Comments were filed by Southeast and Christ Church Parish Broadcasting, Inc. ("Christ Church") and reply comments were filed by Southeast and Resort Broadcasters of Charleston, Inc. ("Resort").

2. As stated in the *Notice*, the Commission may not modify the license of Station WDXZ if another party expresses an interest in the higher powered channel unless an additional equivalent channel is allocated. See, *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984). Both Christ Church and Resort have expressed such an interest and no second equivalent channel is available at Mount Pleasant. However, Christ Church has now withdrawn it interest in the new allocation and Resort's interest was not timely filed as comments but were filed as reply comments.[1]

3. Channel 283C2 can be allocated to Mount Pleasant in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area at least 17.0 kilometers (10.6 miles) southwest of the community to avoid short-spacing to Station WNOK, Channel 284 at Columbia, South Carolina, and to ensure placement of the transmitter on land. In view of the foregoing and the stated need for a wide coverage area FM station, the Commission believes that the public interest would be served by the allocation of Channel 283C2 to Mount Pleasant, South Carolina.

[1] In adopting § 1.420(g), the Commission stated that ". . . its policy of granting modification to stations seeking to upgrade their facilities is not violative of the *Ashbacker* mandate in situations where no other interest in the proposed superior class of channel is expressed in comments." 98 F.C.C. 2d 916, 919 (1984).

BEST COPY AVAILABLE

As for the late expression of interest filed by Resort in the use of the new channel, we have been provided with no reason for the late filing. Therefore, we find no reason to waive the requirement that such expressions of interst be timely filed. Accordingly, we are herein modifying the license of Station WDXZ to specify operation on Channel 283C2 in lieu of Channel 285A.

PART 73—[AMENDED]

4. In view of the above and pursuant to the authority contained in §§ 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 27, 1986 the FM Table of Allotments, § 73.202(b) of the Commission's Rules, IS AMENDED for the community listd below to read as follows:

City	Channel
Mount Pleasant, SC	[illegible]

5. It is further ordered, that pursuant to section 316(a) of the Communications Act of 1934, as amended, the license of Station WDXZ, Mount Pleasant, South Carolina, IS MODIFIED to specify operation of Channel 283C2 subject to the following conditions:

(a) The licensee shall submit to the Commission a minor change application for a construction permit (Form 301);

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of environmental impact statement pursuant to § 1.301 of the Commission's Rules.

6. It is further ordered, That this proceeding is terminated.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission

Charles Schott,

Chief, Policy and Rules Division Mass Media Bureau.

[FR Doc. 85–30428 Filed 12–24–85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[FCC 85–647]

Construction of Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action taken by the Commission on its own initiative extends the time period for construction of TV and radio broadcast stations to 24 and 18 months, respectively. Permittees of other broadcast and auxiliary stations also will have 18 months within which to build their facilities. The FCC adopted these modifications to provide realistic time periods for station construction. However, strict criteria for the granting of applications to extend the time to construct broadcast facilities and for granting modifications and assignment/transfers were adopted in order to avoid unwarranted delays and expedite service to the public. These criteria were not imposed on Instructional TV Fixed and International Broadcast stations. Moreover, we are removing the paperwork burdens on TV permittees by eliminating the requirement to file mid-term progress reports on construction.

EFFECTIVE DATE: December 10, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Mass Media Bureau (202) 632–7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio and Television broadcasting.

Memorandum Opinion and Order

In the matter of amendment of § 73.3598 and associated rules concerning the construction of broadcast stations.

Adopted: December 10, 1985.

Released: December 17, 1985.

By the Commission.

1. The matter before us is the amount of time taken by broadcast permittees to construct their facilities. Currently, Section 73.3598 of the Commission Rules provides that the period for construction of television and radio broadcast stations is 18 and 12 months, respectively. The latter period also applies to other broadcast, auxiliary and Instructional TV Fixed (ITFS) stations.[1] However, the many applications for extension of time (FCC Form 701) granted makes this period to build much greater and thus precludes activation of new broadcast service to the public. We are seriously concerned about this situation and intend to strictly review applications for extensions. However, in recognition of the substantial changes in the complexity and amount of the equipment needed and the growing multiplicity of business decisions involved in establishing a station, we are extending the initial period to construct.[2] We will now allow construction periods of 24 months for television stations and 18 months for AM and FM radio and other broadcast and auxiliary stations.[3]

2. By extending the initial length of time allowed permittees to construct their stations, we have provided an adequate time to build broadcast facilities. Thus, there should be fewer applications to extend time. In any event, permittees would be well advised to note our present determination to limit the grant of extension requests. We are providing strict criteria for the granting of applications to extend time to construct broadcast stations.[4] Thus, an application for extension of time to construct such facilities will be granted only under one of the following three circumstances:[5]

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[1] Specifically, this provision (Rule § 73.3598(b)) includes International Broadcast, low power TV, TV translator, FM translator, FM booster and broadcast auxiliary. Though an oversight, § 73.3598 of the Commission's Rules was not amended to reflect an extension of the construction period for Instructional TV Fixed stations to 18 months which was adopted by the Commission in the ITFS *Report and Order* (MM Docket No. 83–523), 49 FR 32560 (August 15, 1984). This oversight is corrected in the instant document.

[2] Under the Federal Radio Commission, the time period within which to construct broadcast stations was four months, whereas in 1934 the FCC provided an eight month construction time period. In 1970, the construction period was again lengthened, that time to its current amount.

[3] A petition for rule making was filed on July 29, 1985, by Mary P. Norman, requesting that International Broadcast stations be allowed a longer initial period within which to construct their facilities. Since this *Memorandum Opinion and Order* extends the time for construction of broadcast stations in general, including International Broadcast facilities, Ms. Norman's petition is dismissed as moot.

[4] We are not applying these new stricter standards for granting applications for extension of time to construct to International Broadcast stations and ITFS. In view of the size and complexity of the equipment for International Broadcast stations and their frequent location in obscure areas, strict criteria for extensions of time will not be imposed on this service. ITFS, in light of the specialized nature and the limited funds available for its growth, also will not be subjected to the new stricter extension of time criteria.

[5] On May 14, 1984, a *Public Notice* (No. 4177) was released establishing similar guidelines for processing applications for additional time within which to construct AM and FM broadcast stations. This *Memorandum Opinion and Order* is intended to supersede the May 14, 1984 *Public Notice* and establish uniform standards or broadcast (not International or ITFS) stations.

a. Construction is complete and testing is underway looking toward prompt filing of a license application.

b. Substantial progress has been made *i.e.*, demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion.

c. No progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary processes and zoning problems) but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction.

3. In order to expedite service to the public, we also are establishing strict criteria for the granting of applications for modifications and assignment/transfers of unbuilt facilities,[6] and extensions of time relating to them. If a permittee finds it necessary to file either an application to modify its authorized but unbuilt facilities, or an assignment/transfer application, such application shall be filed within the first 9 months of the issuance of the original construction permit for radio and other broadcast and auxiliary stations, or within 12 months of the issuance of the original construction permit for television facilities. Before such an application can be granted, the permittee or assignee must certify that it will immediately begin building after the modification is granted or the assignment is consummated. Modifications and assignment applications filed after the above time periods will not be granted absent a showing that one of the three criteria in paragraph 2, *supra* applies, and a certification by the permittee or the assignee that it immediately will begin building after the modification is granted or the assignment consummated. The seller must make the "one of three criteria" showing in the assignment/transfer application. Moreover, the burden to meet one of the three criteria increases as the period in the second half of the construction period term continues. If a modification is granted, the time period allowed for construction will be 6 months from the issuance of the authorization to modify or the remainder of the construction period, whichever is longer. Also, in the case of an assignment, the time period allowed for construction will be 12 months from the consummation of the assignment or the remainder of the construction period, whichever is longer.[7] The extension will be given subject to the condition that the modification is completed or the assignment is consummated. Failure to modify or consummate within the time allowed will result in cancellation of the construction permit. We will *not* entertain an application for modification or assignment/transfer if filed after the expiration of the initial construction period.

4. We are amending § 73.3598 to provide what, under present circumstances, are more realistic time periods for construction.[8] Permittees should nevertheless be advised that we expect station construction to commence and be brought to fruition expeditiously. Moreover, applications for extension of time to construct broadcast stations will be carefully scrutinized. Thus, unwarranted delays will be avoided and service to the public expedited. If stations are not constructed within the allowed time, permittees will lose their authorizations.[9] Others more able to commence operations and provide expeditious service to the public will be given the opportunity to apply for the frequency involved.

5. We believe that providing more time initially for the building of facilities can substantially reduce the volume of requests for extension of time to construct. This will reduce the administrative burdens imposed on Commission personnel, thus allowing scarce staff resources to be better utilized. For this reason and the others expressed in this document, we conclude that the public interest will be served by extending the time periods for construction of broadcast stations and imposing strict criteria for the granting of applications to extend time to construct as well as for granting modifications and assignment/transfers.[10]

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to decrease requirements or burdens upon the public. This decrease will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. Authority for the action taken herein is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended.[11]

8. Accordingly, it is ordered that the Commission's Rules are amended, effective December 10, 1985,[12] as described above and set forth in the attached Appendix.[13]

9. It is further ordered, that the Petition for Rule Making filed by Mary P. Norman on July 29, 1985, is dismissed as moot.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 73—[AMENDED]

47 CFR Part 73 is amended as follows:

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[6] When referring to assignments and transfers, we mean those requiring long form assignments (FCC Form 314) or long form transfer (FCC Form 315).

[7] We do not contemplate allowing repeated assignments which would each permit 12 months from their consummation for the construction of a facility. Allowing such extended time periods would not be in the public interest as it would delay service to the audience.

[8] In view of the stricter standards being applied to extension of time requests, we believe the requirement in Rule 73.3598 that TV permittees file a report on the progress of station construction is unnecessary. Therefore, that provision is being eliminated.

[9] See *P & R Temmer v. FCC*, 743 F.2d 918 (D.C. Cir. 1984), which the U.S. Court of Appeals affirmed the Commission's decision cancelling authorizations of those who failed to comply with channel loading and construction requirements within the required time period.

[10] Since the Commission already has the requisite information to take this action and the matter is noncontroversial, prior notice and comment proceedings are neither necessary nor required. 5 U.S.C. § 553(b)(3)(B); and Section 1.412(c) of the Commission's Rules.

[11] The amendments being adopted include a conforming editorial revision which substitutes the word "declared" for "automatically" in Rule 73.3599 in order to conform our Rules with our long-standing practice of declaring a construction permit forfeited before considering it actually to have lapsed. For court affirmation of this procedure, *see MG–TV Broadcasting Company v. FCC*, 408 F.2d 1257, 1261 (D.C. Cir. 1968); *Mass Communicators, Inc. v. FCC*, 266 F.2d 661 (D.C. Cir. 1959), *cert. denied*, 361 U.S. 828 (1959); and *United Detroit Theatres Corp. v. FCC*, 178 F.2d 700 (D.C. Cir. 1949).

[12] Since the benefits of these rule changes should be made available to broadcasters and the public immediately, and the matter is noncontroversial, good cause has been found to order this *Memorandum Opinion and Order* effective within less than thirty days from the time it is published in the Federal Register. 5 U.S.C. 553(d)(3) and § 1.427(b) of the Commission's Rules.

[13] The new policies for granting modification and assignment/transfer applications and applications for extensions of time will apply, as will the new time periods for initial construction (§ 73.3598), to all construction permits granted after the effective date of this *Order*. As to those permittees holding unexpired construction permits granted prior to the effective date of this *Order*, if they wish additional time to construct they must file an application for extension (Form 701). At that time such permittees will automatically receive a first extension of six additional months for a total initial construction period of 24 months for TV stations and 18 months for radio, other broadcast and auxiliary stations. We believe this provides current permittees with fair and just treatment. After an initial construction period of 24 or 18 months has been given to current permittees, however, broadcast permittees (not International or ITFS) will be required to meet the new stricter criteria before an extension of time request or an application for modification or assignment is granted.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

* * * * *

2. 47 CFR 73.3534 is revised in its entirety to read as follows:

§ 73.3534 Application for extension of construction permit or for construction permit to replace expired construction permit.

(a) Application for extension of time within which to construct a station shall be filed on FCC Form 701, "Application for Extension of Construction Permit or to Replace Expired Construction Permit." The application shall be filed at least 30 days prior to the expiration date of the construction permit if the facts supporting such application for extension are known to the applicant in time to permit such filing. In other cases, an application will be accepted upon a showing satisfactory to the FCC of sufficient reasons for filing within less than 30 days prior to the expiration date.

(b) Applications for extension of time to construct broadcast stations, with the exception of International Broadcast and Instructional TV Fixed stations, will be granted only if one of the following three circumstances have occurred: (1) Construction is complete and testing is underway looking toward prompt filing of a license application; (2) substantial progress has been made *i.e.*, demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion; or (3) no progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary processes and zoning problems) but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction.

(c) Applications for extension of time to construct International Broadcast and Instructional TV Fixed stations will be granted upon a specific and detailed showing that the failure to complete was due to causes not under the control of the permittee, or upon a specific and detailed showing of other sufficient to justify an extension.

(d) If an application for extension of time within which to construct a station is approved, such an extension will be limited to a period of no more than 6 months except when as assignment or transfer has been approved that provides for a longer period up to a maximum of 12 months from the date of consummation.

(e) Application for a construction permit to replace an expired construction permit shall be filed on FCC Form 701. Such applications must be filed within 30 days of the expiration date of the authorization sought to be replaced. If approved, such authorization shall specify a period of not more than 6 months within which construction shall be completed and application for license filed.

3. New 47 CFR 73.3535 Application to modify authorized but unbuilt facilities, or to assign or transfer control of an unbuilt facility, is added to Subpart H, Part 73, to read as follows:

§ 73.3535 Application to modify authorized but unbuilt facilities, or to assign or transfer control of an unbuilt facility.

(a) If a permittee finds it necessary to file either an application to modify its authorized, but unbuilt facilities, or an assignment/transfer application, such application shall be filed within the first 9 months of the issuance of the original construction permit for radio and other broadcast and auxiliary stations, or within 12 months of the issuance of the original construction permit for television facilities. Before such an application can be granted, the permittee or assignee must certify that it will immediately begin building after the modification is granted or the assignment is consummated.

(b) Modification and assignment applications filed after the time periods stated in paragraph (a) will not be granted absent a showing that one of the following three criteria apply: (1) Construction is complete and testing is underway looking toward prompt filing of a license application; (2) substantial progress has been made *i.e.*, demonstration that equipment is on order or on hand, site acquired, site cleared and construction proceeding toward completion; or (3) no progress has been made for reasons clearly beyond the control of the permittee (such as delays caused by governmental budgetary-processes and zoning problems) but the permittee has taken all possible steps to expeditiously resolve the problem and proceed with construction. A certification by the permittee or the assignee that it immediately will begin building after the modification is granted or the assignment is consummated is also necessary. A seller must make the "one of three criteria" showing in an assignment application.

(c) If a modification is granted, the time period allowed for construction will be 6 months from the issuance of the authorization to modify or the remainder of the construction period, whichever is longer. Also, in the case of an assignment, the time period allowed for construction will be 12 months from the consummation of the assignment or the remainder of the construction period, whichever is longer. The extension will be given subject to the condition that the modification is completed or the assignment is consummated. Failure to modify or consummate within the time allowed will result in cancellation of the construction permit.

(d) We will not entertain an application for modification of an authorized but unbuilt facility or an application for assignment or transfer of control of an unbuilt facility if filed after the expiration of the initial construction period.

4. 47 CFR 73.3598 is revised in its entirety to read as follows:

§ 73.3598 Period of construction.

(a) TV broadcast stations. Each original construction permit for the construction of a new TV broadcast station, or to make changes in an existing station, shall specify a period of no more than 24 months from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

(b) Other broadcast, auxiliary and Instructional TV Fixed Stations. Each original permit for the construction of a new AM, FM or International Broadcast; low power TV; TV translator; FM translator; FM booster; broadcast auxiliary; or Instructional TV Fixed station, or to make changes in such existing stations, shall specify a period of no more than 18 months from the date of issuance of the original construction permit within which construction shall be completed and application for license be filed.

5. 47 CFR 73.3599 is revised in its entirety to read as follows:

§ 73.3599 Forefeiture of construction permit.

A construction permit shall be declared forfeited if the station is not ready for operation within the time specified therein or within such further time as the FCC may have allowed for completion, and a notation of the forefeiture of any construction permit under this provision will be placed in the records of the FCC as of the expiration date.

[FR Doc. 85-30424 Filed 12-24-85; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 525

[Acquisition Circular AC–85–5]

Threshold for Application of Trade Agreements Act

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Temporary regulation.

SUMMARY: This Acquisition Circular provides the new dollar threshold required for the applicability of the Trade Agreements Act of 1979 as authorized by the U.S. Trade Representative under E.O. 12260. The intended effect is to provide guidance to GSA contracting activities pending a revision to the General Services Administration Acquisition Regulation.

DATES: *Effective date:* January 1, 1986.

Expiration date: This Acquisition Circular will expire July 1, 1986, unless canceled earlier or extended.

Comment date: January 27, 1986.

ADDRESS: Comments may be submitted to Ms. Marjorie Ashby, 18th & F Sts., N.W., Room 4026, Office of GSA Acquisition Policy and Regulations, Washington, D.C. 20405, (202) 523–3822.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 566–1224.

SUPPLEMENTARY INFORMATION: Pursuant to section 22(d) of the Office of Federal Procurement Policy Act, as amended, a determination has been made to waive the requirement for publication of procurement procedures for public comment before the regulation takes effect. The January 1, 1986, effective date for the change in the dollar threshold under the Trade Agreements Act of 1979 creates an urgent and compelling circumstance which makes advance publication impracticable. The Director, Office of Management and Budget (OMB), by memorandum dated December 4, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). This rule implements the U.S. Trade Representative's decision to reduce the dollar threshold for applicability of the Trade Agreements Act. Accordingly, no regulatory flexibility analysis has been prepared. This Circular does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq .

Authority: 40 U.S.C. 486(c).

48 CFR Part 525 is amended by the following Acquisition Circular.

General Services Administration Acquisition Regulation, Acquisition Circular No. AC–85–5

December 17, 1985.

To: All GSA contracting activities.

Subject: Threshold for application of Trade Agreements Act.

1. *Purpose.* This Acquisition Circular is issued to implement a change in the dollar threshold for applicability of the Trade Agreements Act, pending a formal revision to the General Services Administration Acquisition Regulation (GSAR).

2. *Background.* The United States Trade Representative (TR) is authorized under Executive Order 12260 to determine the appropriate dollar threshold required for the applicability of the Trade Agreements Act of 1979. By letter dated November 26, 1985, the Trade Representative changed the threshold from $156,000 to $149,000 effective January 1, 1986.

3. *Effective date.* All solicitations issued on or after January 1, 1986, that are subject to the Trade Agreements Act, shall cite the new dollar threshold of $149,000.

4. *Expiration date.* This Acquisition Circular expires July 1, 1986, unless canceled earlier or extended.

5. *Reference to regulation.* Section 525.402(a) of the General Services Administration Acquisition Regulation.

6. *Instructions/Procedures.*

(a) Section 525.402 is amended to revise paragraph (a) to read as follows:

§ 525.402 Policy.

(a) Pursuant to FAR 25.402(a), contracting officers shall evaluate offers of $149,000 or more for an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The $149,000 threshold shall be inserted in paragraph (b) of the FAR clause at 52.225–9 (see Article 30 of the GSA Form 3507, Supply Contract Clauses).

* * * * *

(b) When using the GSA Form 3507, Supply Contract Clauses, contracting officers shall modify the form pending its revision to notify bidders/offerors of the change to the FAR clause by including a notice which reads substantially as follows in solicitations and contracts subject to the Trade Agreements Act:

Trade Agreements Act—Applicability (Dec. 1985)

Article 30 (FAR 52.225–9 Buy American Act—Trade Agreements Act—Balance of Payments Program (Apr. 1984)) of GSA Form 3507 is amended by changing the dollar value specified in paragraph (b) from $161,000 to $149,000.

Richard H. Hopf, III,

Acting Associate Administrator for Acquisition Policy.

[FR Doc. 85–30440 Filed 12–24–85; 8:45 am]

BILLING CODE 6820–61–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Part 702

[AIDAR Notice 85–13]

Duties, Responsibilities, and Authority of the Procurement Executive

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to specify the duties, responsibilities, and authority of the Procurement Executive.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: M/SER/PPE, Mr. James M. Kelly, telephone (703) 235–9855.

SUPPLEMENTARY INFORMATION: We have determined that this Notice does not constitute a significant or major change as defined by FAR 1.301(b), or FAR 1.501, or E.O. 12291.

As required by the Regulatory Flexibility Act, it is hereby certified that this Notice will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Part 702

Government procurement.

1. The authority citation in Part 702 is unchanged and continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR 1979 Comp., p. 435.

PART 702—DEFINITIONS OF WORDS AND TERMS

Subpart 702.170—Definitions

2. Section 702.170–9 is revised as follows:

702.170–9 Head of agency.

"Head of agency" means, for AID, the Administrator, and the Deputy

Administrator, and in accordance with the responsibilities and limitations set forth in 702.170–13(c)(4), the Agency Procurement Executive.

3. Section 702.170–13 is revised as follows:

702.170–13 Procurement Executive.

(a) "Procurement Executive" means the AID official who:

(1) Is responsible to the Administrator, through the Assistant to the Administrator for Management, for management direction of AID's procurement system, including implementation of AID's unique procurement policies, regulations, and standards, and

(2) Oversees development of the system, evaluates system performance in accordance with approved criteria, and certifies to the Administrator, through the Assistant to the Administrator for Management, that the AID procurement system meets approved criteria.

(b) The Procurement Executive for AID is Mr. John F. Owens, the Associate Assistant to the Administrator for Management. Mr. Owens reports and makes recommendations to the Administrator, the Deputy Administrator, or other AID officials, as appropriate, with regard to the implementation and improvement of the procurement system and procurement staffing to meet the objectives and requirements of the Foreign Assistance Act, Executive Order 12352, the Office of Federal procurement Policy Act, and other statutory and Executive Branch procurement policies and requirements applicable to AID operations. These reports and recommendations, including results of case reviews requested by the Deputy Administrator, will deal with the use of effective competition in procurement; establishment of clear lines of authority, accountability, and responsibility for procurement decision making within AID; and development and maintenance of a procurement career management program to assure an adequate professional work force.

(c) The AID Procurement Executive has specific authority to:

(1) Select and appoint contracting officers and terminate their appointments in accordance with section 1.603 of the Federal Acquisition Regulation;

(2) Issue, develop, and maintain the Agency's acquisition regulations, procedures and standards for issuance in accordance with established agency delegations and requirements, as provided in Subpart 1.3 of the Federal Acquisition Regulation;

(3) Exercise in person or by delegation the authorities stated in Subpart 1.4 of the Federal Acquisition Regulation with regard to deviations from that regulation; and

(4) Act for the Administrator, as "head of the agency" for all other purposes of the Federal Acquisition Regulation and the AID Acquisition Regulation, except for the authority in FAR 6.302–7(a)(2), 6.302–7(c)(1), 7.103, 17.602(a), 19.201(c)(2), 19.201(c)(3), 27.306(a), 27.306(b), and 30.201–2 or where the "head of the agency" authority is expressly not redelegable under the FAR or AIDAR.

(d) In the absence of the Procurement Executive, the Director, Office of Acquisition and Assistance Management, or in the absence of both, the Deputy Director for Program Operations, Office of Acquisition and Assistance Management, without authority to redelegate, shall act as the Agency's Procurement Executive.

Dated: December 16, 1985.

John F. Owens,

Procurement Executive.

[FR Doc. 85–30444 Filed 12–24–85; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Administration

48 CFR Chapter 24

[Docket No. R–85–1263; FR–2098]

Implementation of the Competition in Contracting Act of 1984 into the HUD Acquisition Regulation, Announcement of Effective Date

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of announcement of effective date for interim rule.

SUMMARY: This notice announces the effective date for the interim rule published in the **Federal Register** on November 8, 1985 (50 FR 46572) that implemented the requirements of the Competition in Contracting Act of 1984 into the HUD Acquisition Regulation.

The effective date provision of the rule stated that the rule would become effective upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, and announced that future notice of the effectiveness of the rule would be published in the **Federal Register**. Thirty calendar days of continuous session of Congress have expired since the rule was published.

DATE: The effective date for the interim rule published November 8, 1985 (50 FR 46572), is December 18, 1985.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, telephone (202) 755–5294. (This is not a toll-free number.)

Dated: December 20, 1985.

Donald A. Franck,

Acting Assistant General Counsel for Regulations.

[FR Doc. 85–30533 Filed 12–24–85; 8:45 am]

BILLING CODE 4210–01–M

BEST COPY AVAILABLE

Proposed Rules

Federal Register
Vol. 50, No. 248
Thursday, December 26, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 85-330]

7 CFR Part 318

Sharwil Avocados From Hawaii; Reopening of Comment Period

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening of comment period for proposed rule; notice of public hearings.

SUMMARY: A document published in the Federal Register on November 19, 1985, proposed to amend the "Hawaiian Fruits and Vegetables" regulations to allow Sharwil avocados to be moved pursuant to a certificate from Hawaii interstate to any destination based on compliance with certain harvesting and handling provisions. This document reopens the comment period for the proposal, and gives notice of public hearings in Hawaii and California concerning the proposal.

DATES: Written comments on the proposed rule must be received on or before February 4, 1986. Public hearings will be held on January 10, 1986, in Kailua-Kona, Hawaii; and on January 14, 1986, in Los Angeles, California.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, USDA, Room 728, Federal Building, 6506 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-330. Written comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. The public hearings will be held at the following locations: (1) On January 10, 1986 at the Keauhou Beach Hotel, Kahaluu Roo, 78-6740 Alii Drive, Kailua-Kona, Hawaii 96740; and (2) on January 14, 1986, at the Viscount Hotel, 9750 Airport Boulevard, Los Angeles, California, 90045.

FOR FURTHER INFORMATION CONTACT: C.M. Amyx, Senior Staff Officer, Technology Analysis and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 600, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8896.

SUPPLEMENTARY INFORMATION: On November 19, 1985, the Department published in the Federal Register (50 FR 47551-47555) a proposal to amend the "Hawaiian Fruits and Vegetables" regulations to allow Sharwil avocados to be moved pursuant to certificates from Hawaii interstate to any destination based on compliance with certain harvesting and handling provisions.

A 20-day period was provided for receiving comments on the proposal. The comment period expired on December 9, 1985.

Based on a review of the comments received, it appears that there is considerable interest in the proposal by persons involved in the growing and marketing of avocados and other agricultural products and that additional time is needed to allow interested persons adequate time in which to prepare comments. Six commenters (members of Congress and representatives of agricultural trade associations) requested that the Department extend the comment period. Also, ten commenters (members of Congress and representatives of agricultural trade associations) requested that a public hearing be held concerning the proposal.

Under these circumstances, the comment period is extended for an additional 40 days. Also, public hearings on the proposal are scheduled at Kailua-Kona, Hawaii, on January 10, 1986, and at Los Angeles, California, on January 14, 1986 (see the information concerning the location of the hearings under "**ADDRESSES**" above).

Procedures for Public Hearings

A representative of the Animal and Plant Health Inspection Service will preside at each of the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative.

Each hearing will begin at 10 a.m. and is scheduled to end at 5 p.m. local time. However, a hearing may be terminated at any time after it begins if all of those persons at the hearing who desire an opportunity to speak have been heard. Persons who wish to speak are requested to register with the presiding officer prior to the hearing. The prehearing registration will be conducted at the location of the hearing from 9 a.m. to 10 a.m. Registered persons will be heard in the order of their registration. However, any other person who wishes to speak at the hearing will be afforded such opportunity after the registered persons have been heard. It is requested that two copies of any written statements that are presented be provided to the presiding officer at the hearing. If the number of preregistered persons and other participants in attendance at the hearing warrants it, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak the opportunity to be heard.

Done at Washington, DC, this 20th day of December, 1985.

Harvey L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-30582 Filed 12-23-85; 2:15 pm]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 430

[Docket No. 0041A]

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years in all states, except Arizona and California, where they will be effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Add as a cause of loss the unavoidable failure of irrigation water

supply; (2) Limit the insured's share of an indemnity on crops transferred before harvest; (3) Clarify processor contract requirements; (4) Change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (5) Change the method of computing indemnities when acreage, share or practice is underreported; (6) Change the method of crediting the replanting payments; (7) Change the calculation in computing replanting payments; (8) Change the stage guarantees; (9) Shorten the length of time an insured has to give notice when claiming an indemnity; (10) Change the cancellation and termination dates in certain counties; (11) Provide a method for calculating production to count on harvested and appraised production; (12) Define at what stage of guarantee a replanting payment will be determined; (13) Add definitions for the terms "ASCS", "Loss ratio", and "Normal Stand"; (14) Amend definitions for the terms "County", "Crop year", and "Harvest" and (15) change the method of determining if a loss occurs when the beets are harvested and delivered to the processor. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

COMMENT DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than January 27, 1986, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal papework burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the sugar beet policy are:

1. Section 1.—Add the failure of irrigation water supply because of an unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. Section 2.—Add a clause to change the method of calculating the insured's share of an indemnity on crops trnsferred before harvest. This limits indemnities to the insured's insurable interest at the time of loss.

Clarify processor contract requirements and when such requirements must be met in order for sugar beet acreage to be insured.

3. Section 4.b.—Eliminate the current second stage guarantee and make the current third stage guarantee the second stage guarantee to provide protection which more closely reflects the investment cost of producing sugar beets after the first stage. Sugar beets which are destroyed in the second stage will now receive a full indemnity.

4. Section 5.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1990 crop year or until their loss experience causes them to loss the advantage, whichever is earlier.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

5. Section 6.—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date the replanting payment is made it will be deducted and applied to payment of the billed premium. This is a change from the current practice of applying the replanting payment to the outstanding premium in all cases.

6. Section 8.—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

7. Section 9.—If the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted, allow the guarantee only on the acreage, share or practice reported. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the complexity of calculations and reduce the indemnities to those producers underreporting after planting.

Add provisions to prodive a method of calculating production to count for harvested and appraised production when claiming an indemnity.

Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment; clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date; and delete the requirement that the payment be considered an indemnity except for minor coverage requirements. This reduces the number of inspections by eliminating small replant payments and paperwork.

Clarify the stage in determining a replanting payment.

8. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is

required by the proposed change to mandatory APH.

Change cancellation date from July 15 to August 31 in Arizona and Imperial County, California. Add a November 30 termination date for all other California counties. These changes are made to more closely conform to practices in these areas.

9. Section 17.—Add definitions for the terms "ASCS", "Loss ratio", and "Normal stand".

Amend the "County" definition to clarify that land identified by an ASCS farm serial number and located outside the county will be included in the county.

Amend the "Crop year" and "Harvest" definitions.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 430

Crop insurance, Sugar beets.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1503 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years in all states, except Arizona and California, and for the 1987 and succeeding crop years for Arizona and California, to read as follows:

PART 430—SUGAR BEET CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years (1987 and Succeeding Crop Years in California and Arizona)

Sec.

430.1 Availability of sugar beet crop insurance.
430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnites shall be computed.
430.3 OMB controls numbers.
430.4 Creditors.
430.5 Good faith reliance on misrepresentation.
430.6 The contact.
430.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crop Years (1987 and Succeeding Crop Years in California and Arizona)

§ 430.1 Availability of sugar beet crop insurance.

Insurance shall be offered under the provisions of this subpart on sugar beets in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sugar beets which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 430.3 OMB control numbers.

The OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 430.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 430.5 Good faith reliance on misrepresentation.

Notwithstanding any other provisions of the sugar beet insurance contract, whenever: (a) an insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action to give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 430.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the sugar beet crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 430.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the sugar beet crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come

into effect as a continuation of a sugar beet contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR § 400.37, § 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sugar Beet Crop Insurance Policy for the 1986 and succeeding crop years (1987 and succeeding crop years in California and Arizona) are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sugar Beet—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

Agreement to Insure: We will provide the insurance described in this polity in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Cause of Loss.

a. The insurance provided in against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure or breakdown of irrigation equipment or facilities;
(3) The failure to follow recognized good sugar beet irrigation practices;
(4) The failure to follow recognized good sugar beet farming practices;
(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or
(6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be sugar beets grown under a contract with a processor for processing as sugar, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be sugar beets planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured sugar beets at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(2) Which is irrigated and an irrigated practice is not provided for in the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(3) Which is destroyed, it is practical to replant to sugar beets and such acrease is not replanted;
(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;
(5) Of sugar beets not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage);
(6) Planted to a type or variety of sugar beets not established as adapted to the area or excluded by the actuarial table:
(7) Planted to sugar beets:
(a) The preceding crop year in Michigan Minnesota, North Dakota, and Ohio unless the acreage is designated as insurable by the actuarial table; or
(b) The two preceding crop years in all other states unless the acreage is designated as insurable by the actuarial table;
(8) In California except Imperial county, planted before filing of the application until a normal stand is obtained;
(9) Of volunteer sugar beets; or
(10) Planted with another crop.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good sugar beet irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limition established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice.

You must report on our form:

a. All the acreage of sugar beets in the county in which you have a share;
b. The practice; and
c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sugar beets planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The second stage production guarantees are in the actuarial table.

The first stage guarantee is 60 percent of the second stage guarantee. The stages are:

(1) First state is from planting until July 1 except in California and Arizona where the first state is from planting until the earlier of thinning or 90 days after planting. The first stage also applies to any acreage damaged in the first stage to the extent that growers in the area generally would not further care for the sugar beets;

(2) Second stage applies to all insured sugar beets after the first stage.

The production guarantee applicable to any acreage within a unit will be that established for the stage reached by the sugar beets on that acreage.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting.

The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accure at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year (1985 crop year in California and Arizona) under the terms of the experience table contained in the sugar beet policy in effect for the 1985 crop year (1986 crop year in California and Arizona), you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 (1991 crop year in California and Arizona) crop year;
(2) The premium reduction will not increase because of favorable experience;
(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year (1986 crop year in California and Arizona);
(4) Once your loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches when the sugar beets are planted and ends at the earliest of:

a. total destruction of the sugar beets;

b. harvest of the unit;

c. final adjustment of a loss; or

d. the following calendar date:

(1) July 15 for Arizona and Imperial County, California;

(2) The last day of the 12th calendar month after the date of planting on the unit in all other California counties, unless a request for extension of the insurance period is received before such date and we approved the request;

(3) November 25 in Ohio; and

(4) November 15 in all other states.

8. Notice of Damage or Loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sugar beets damaged due to any insured cause (see subsection 9f);

(b) During the period before harvest, the sugar beets on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sugar beets and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days of or during harvest, immediate notice must be given and a representative sample of the unharvested sugar beets (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the sugar beets on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the sugar beets on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the sugar beets which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sugar beets on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sugar beets on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sugar beets to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in tons) to be counted for a unit will include all harvested and appraised production.

(1) Any harvested production of undamaged sugar beets will be determined by:

(a) Dividing the average percentage of sugar in such sugar beets, by the percentage of sugar shown in the actuarial table; and

(b) Multiplying the results (rounded to three places) by the tons of such sugar beets.

The average percentage of sugar will be determined by the processor from individual tests taken at the time of delivery. If individual tests of sugar content are not made at the time of delivery, the factor will be 1.000.

(2) The production to count from acreage damaged due to insurable causes occurring within the insurance period, will be determined by:

(a) Dividing the gross amount received for the damaged sugar beets (including cooperative stock, patronage refunds, dollar values, etc.) by the applicable price per pound of sugar;

(b) Dividing that result by 2,000; and

(c) Dividing that result by the factor contained in the actuarial table for that purpose.

The applicable price per pound for sugar will be the local market price on the earlier of:

(i) The day the loss is adjusted; or

(ii) The day the damaged sugar beets are sold. If the price per pound received for the damaged sugar beets is less than the highest average amount paid by the processor to any producer for sugar beets which were damaged by the cause of loss as claimed by you, you will be considered to have received that average amount per pound in determining the gross amount received.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good sugar beet farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised production in excess of the difference between the first and second stage production guarantee for acreage not covered by (a) and (b) of this subsection (3) and which does not qualify for the second stage guarantee will be counted except as provided in (d) of this subsection (3); and

(d) The total appraisal for uninsured [illegible]

(4) There will be no adjustment for quality on any appraisal.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sugar beets becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any harvested or unharvested sugar beets may be determined on the basis of field appraisals or inspections conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the sugar beets are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. A replanting payment may be made on any insured sugar beets replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit, (as determined on the final planting date).

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the second stage guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed one ton multiplied by the price election times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7

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U.S.C. 1508(c). You must bring suit within 12 months of the data notice of denial is received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgement from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sugar beets are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount.

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be made on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to Farm.

"You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all sugar beets produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceeding such crop year.

c. Prior to cancellation date you must:

(1) Furnish to us satisfactory production records for the crop year or the contract will be cancelled for the next crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood, or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign this claim; or

(2) Payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation	Termination date
Imperial County, CA; and Arizona	August 31	August 31
All other California counties	July 15	November 30
All other states	April 15	April 15

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death or one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract Changes.

We change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by:

a. December 31 preceding the cancellation date for counties with an April 15 cancellation date;

b. April 30 preceding the cancellation date for all other counties.

Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms.

For the purposes of sugar beet crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding sugar beet insurance in the county.

b. "ASCS means the Agricultural Stabilzation and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by an ASCS farm serial number for the county but physically located in another county within the State.

d. "Crop year" means the period within which the sugar beets are normally grown and will be designated by the calendar year in which the sugar beets are normally harvested; however, in California and Arizona, it will be the period from planting until the applicable date for the end of the insurance period and will be designated by:

(1) The calendar year in which planted if planted on or before July 15; or

(2) The next calendar year if planted After July 15.

e. "Harvest" means the completion of topping and lifting of sugar beets on any acreage for delivery to a processor.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means your ratio of indemnity to premium.

i. "Normal stand" means the number of live plants after thinning required to produce an average yield per acre for the area.

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and whereever applicable, a State, a political subdivision of a State, or any agency thereof.

k. "Replanting" means performing the cultural practices necessary to replant insured acreage to sugar beets.

l. "Service office" means the ofice servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the sugar beets or a share of the procees therefrom.

n. "Unit" means all insurable acreage of sugar beets in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sugar beets on such land will be considered as owned by the lessee. Land which would otherwise be on unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree wth our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on October 3, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-30488 Filed 12-24-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Parts 434 and 436

[AmdL No. 1; Docket No. 2578S]

Tobacco (Guaranteed Production Plan) Crop Insurance Regulations and Tobacco (Dollar Plan) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1986 and succeeding crop years, by expanding the provisions of these regulations to incorporate insurance procedures for tobacco types 11, 12, 13, and 14, formerly insured under the Tobacco (Dollar Plan) Crop Insurance Regulations 7 CFR Part 434, and terminate the Dollar Plan effective for the 1986 crop year. The intended effect of this rule is to: (1) Broaden the provisions of the Guaranteed Plan regulations by combining the procedures for insuring tobacco under the Guaranteed Plan and Dollar Plan and terminating the Dollar Guaranteed Plan of insurance; (2) Add end of insurance period dates by tobacco type; (3) Shorten the length of time an insured has to give notice when claiming an indemnity; (4) Add the requirement that stalks of certain tobacco types not be destroyed without consent; (5) Change the cancellation and termination dates for some states and counties; and (6) Redefine "Market price" to clarify its meaning. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than January 27, 1986, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) Major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The current regulations for insuring tobacco under the guaranteed dollar plan are contained in 7 CFR Part 434. FCIC has determined to propose conversion to Actual Production History (APH) on all crops except those under GYC-GYC/IYC plans. Under the Actual Production History (APH) program, the regulations for insuring tobacco under the dollar plan are only slightly different from those for insuring tobacco under the guaranteed production plan of insurance found in 7 CFR Part 436. The proposed conversion to APH would mean that the dollar plan would no longer apply, since this insurance is offered on a dollar guarantee rather than a production guarantee. Therefore, it is

proposed that both policies for insuring tobacco be combined into one differentiating the separate types of tobacco where necessary, effective for the 1986 and succeeding crop years.

In order to more effectively administer the tobacco crop insurance program with regard to these two plans of insurance, FCIC proposes to incorporate those provisions applying to types 11, 12, 13, and 14 tobacco into the policy provisions contained herein through the following changes:

1. Section 7—Add end of the insurance period dates by tobacco type.

2. Section 8—Specify 5 days for inspection of tobacco not sold through auction warehouses prior to its sale or other disposition if an indemnity is to be claimed.

Add a clause requiring insureds to leave tobacco stalks standing in field for inspection on any unit of tobacco of types 11, 12, 13, or 14 on which an indemnity is to be claimed after harvest is completed.

Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities more timely and efficiently.

3. Section 9—Add a clause to enable FCIC to determine the fair market value or tobacco not sold through auction warehouses, by inspecting such tobacco before it is sold, contracted to be sold, or otherwise disposed of.

Add a provision to appraise acreage of tobacco types 11, 12, 13, or 14, at not less than the guarantee, if stalks are destroyed prior to our written consent.

4. Section 15—Add March 31 cancellation and termination dates for some states and counties.

8. Section 17—Amend the "Market price" definition to specify location.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Parts 434 and 436

Crop Insurance; Tobacco (Dollar Plan and Guaranteed Production Plan).

Proposed Rule

PART 434—[AMENDED]

(a) Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the subpart heading to the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434), as follows:

1. The Authority Citation for 7 CFR Part 434 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. The subpart heading in 7 CFR Part 434 is revised to read as follows:

Subpart—Regulations for the 1985 Crop Year

Proposed Rule

PART 436—[AMENDED]

(b) Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501, *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), effective for the 1986 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 436 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 436.7(d) is revised to read as follows:

§ 436.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Guaranteed Production Plan) Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Guaranteed Production Plan of Tobacco—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

Agreement To Insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good tobacco farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow recognized tobacco irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured.

a. The crop insured will be tobacco of the type shown as insurable in the actuarial table, which is grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be tobacco planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) Which is destroyed, it is practical to replant to tobacco, and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table unless you agree, in writing, on our form to coverage reduction;

(5) Planted to tobacco of a discount variety under the provision of the tobacco price support program;

(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table;

(7) Designated as uninsurable by the actuarial table; or

(8) Tobacco planted for experimental purposes.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good tobacco irrigation practice.

(f) We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice.

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the acturial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the acturial table.

b. The production guarantee will be reduced by 35 percent for any unharvested acreage.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual Premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the tobacco policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period.

Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing, or immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. The following dates immediately after the normal harvest period:

(1) Types 11 and 12..... November 30;
(2) Type 13..... October 31;
(3) Type 14..... September 30;
(4) Type 36..... January 31;
(5) Type 35..... February 28;
(6) Types 21, 22, 23, 37, 54, and 55...March 31;
(7) All other types..... April 30.

8. Notice of Damage or Loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) For any unit of tobacco other than types 11, 12, 13, or 14, if probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any insured tobacco is destroyed or damaged by fire during the insurance period.

(5) If tobacco is not to be sold through auction warehouses and an indemnity is to be claimed, notice must be given to allow us 5 days to inspect the cured tobacco prior to its sale or other disposition.

(6) For any unit of tobacco of types 11, 12, 13, or 14 on which an indemnity is to be claimed and the tobacco stalks are to be destroyed notice of loss must be given to us upon completion of harvest. The tobacco stalks must not be destroyed until we give consent.

(7) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco is completed on the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim For Indemnity.

a. Any claim for indemnity on a unit must be submitted to use on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to the counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actural premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) Harvested tobacco production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the value per pound by the market price per pound; and

(b) Multiplying the product by the number of pounds of such tobacco.

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity.

(a) To inspect such tobacco before it is sold, contracted to the sold, or otherwise disposed of, and

(b) At our option to obtain additional offers on your behalf.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tobacco farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or put to another use without our prior written consent; and

(c) Only the appraisal in excess of 35 percent of the production guarantee for all other unharvested acreage.

(4) We may make an appraisal of not less than the guarantee per acre for any acreage of tobacco types 11, 12, 13, and 14 on which the stalks have been destroyed prior to our consent.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and appraised by us; or

(c) Harvested.

(6) The amount of production of any unharvested tobacco may be determined on the basis of field appraisals conducted after the end of the normal harvest period.

(7) If you elect to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannualy on or before January 1, and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tobacco is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access To Farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all tobacco produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Prior to the cancellation date you must:

(1) Furnish to us, satisfactory production records for the crop year or the contract will be cancelled for the next crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood, or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Alabama; Florida; Georgia; Surry, Wilkes, Caldwell, Burke, and Cleveland Counties, North Carolina and all North Carolina counties east thereof; and South Carolina.	March 31.
All other North Carolina counties and all other states.	April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms.

For the purposes of guaranteed tobacco crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

BEST COPY AVAILABLE

b. "ASCS" means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. "County" means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuaril table; and

(3) Any land identified by an ASCS farm serial number for the county even though physically located in another county within the state.

d. "Crop year" means the period within which the tobacco is normally grown and will be designated by the calendar year in which the tobacco is normally harvested.

e. "Harvest" means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Market price" means the average price determined by us for the applicable type of tobacco. Such price will be the:

(1) Average price in the belt or area for the preceding crop year for any unit which is not to be harvested; or

(2) The average price in the belt or area for the current crop year for any unit or part thereof which is harvested.

j. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

k. "Planting" means transplanting the tobacco plant from the bed to the field.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Tenant" means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number of the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconsitution was in whole or in part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC on November 18, 1985.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-30467 Filed 12-24-85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-130-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive applicable to certain Boeing Model 727 series airplanes, which currently requires an initial inspection of the forward entry doorway forward frame prior to 25,000 landings and repair, if necessary. Since issuance of that AD, frames have been found to crack sooner than originally determined. This proposed AD would require the initial inspection to be performed prior to 15,000 landings. This action is necessary to ensure the structural integrity of the forward entry doorway.

DATES: Comments must be received on or before February 14, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-130-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-130-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Amendment 39-4561 (48 FR 5536) AD 83-03-01, was issued on January 26, 1983, to require repetitive inspections beginning at 25,000 landings, and repair, if necessary, of the forward entry doorway forward frame on certain Boeing Model 727 series airplanes. The FAA has determined that a reduction in the compliance time for the initial inspection is necessary because cracks have been detected in three airplanes that have accumulated between 15,000 and 25,000 landings. Since this condition is likely to exist in other aircraft of the same type design, this amendment is proposed to reduce the time for the initial inspection required in AD 83-03-01 from 25,000 to 15,000 landings. The reduction in compliance time for the initial inspection is necessary to ensure

the structural integrity at the forward entry doorway.

It is estimated that 634 airplanes would be affected by this AD, that it would take approximately 45 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Inspection costs are estimated at $1,800 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,503,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 727 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By amending Airworthiness Directive (AD) 83-03-01, Amendment 39-4561 (48 FR 5536) as follows:

Replace paragraphs A, A.1., and A.2. with the following paragraphs:

A. Visually inspect the forward entry doorway frame for cracks in accordance with Boeing Service Bulletin 727-53-153, dated February 1, 1980, or later FAA-approved revisions, at the earlier of the times indicated in subparagraphs A.1. or A.2., below, and repeat the inspection at intervals not to exceed 3,700 landings:

1. Within the next 1,850 landings after March 11, 1983, or prior to accumulating 25,000 landings, whichever occurs later; or

2. Within the next 1,850 landings after the effective date of this amendment, or prior to accumulating 15,000 landings, whichever occurs later.

Issued in Seattle, Washington, on December 17, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-30400 Filed 12-24-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-106-AD]

Airworthiness Directives; British Aerospace Model BAe 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require incorporation of a modification to the Electronic Flight Instrument System (EFIS) power supply on certain British aerospace Model BAe 125-800A series airplanes. This action is promoted by a report of overheating in the EFIS power supply. This condition, if not corrected, can lead to loss of electrical power to the EFIS, which can result in loss of certain critical flight instruments.

DATES: Comments must be received on or before February 14, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-106-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, DC 20041. This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as the may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-106-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority of the United Kingdom (CAA) has classified British Aerospace 125 Service Bulletin 24-248-(3024), dated March 8, 1985, as mandatory. There has been one reported incident of overheating of the heat sink diode assembly which is part of the EFIS electrical power supply. This condition, if not corrected, can lead to loss of the EFIS, which can result in the loss of certain critical flight instruments. Depending upon the power supply utilized, the service bulletin prescribes either: (a) Replacing the existing heat-sink with a new subassembly which will provide better heat dissipation for certain airplanes, or (b) replacing the existing heat-sink subassembly and certain associated power supply cabling for the remaining airplanes.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the action mentioned above.

The following table lists the number of U.S. registered airplanes that would be affected by this AD and it gives an estimate of the manhours per airplane that it would take to accomplish each of the proposed actions:

Case	No. of Airplanes	Manhours/ Airplane
(a)	2	[illegible]
(b)	12	1

Based on an average labor cost of $40 per manhour and the information contained in the table above, the total cost impact of this AD to U.S. operators is estimated to be $960.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportion Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane (approximately $70.). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend §39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace

Applies to Model BAe 125-800A series airplanes with maufacturer serial numbers listed in British Aerospace 125 Service Bulletin 24-248-(3024), dated March 8, 1985, certificated in any category. To prevent complete loss of power to the Electronic Flight Instrument System (EFIS), accomplish the following within the next 60 days after the effective date of this AD, unless previously accomplished:

A. Perform the following actions as applicable:

1. For airplanes with manufacturer serial numbers 258003 and 258010, and for airplanes which have utilized power supplies HN1/HP1, the existing heat-sink must be replaced with a new sub-assembly, as described in Part A of the accomplishment instructions of the service bulletin; or

2. If power supplies HN1/HP1 have not been utilized, the existing heat-sink assembly and associated power supply cabling from ground supply contactor "E" on panel GA must be replaced in accordance with Part B of the accomplishment instructions of the service bulletin.

B. Alternative means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 17, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-30397 Filed 12-24-85 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-109-AD]

Airworthiness Directives; British Aerospace Model BAe 125-800A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the incorporation of a revised flap microswitch layshaft in the stall identification system on certain British Aerospace Model BAe 125-800A series airplanes. This action is prompted by a report of incorrect assembly, which has caused failure of a flap microswitch layshaft flange in the stall identification system. If not corrected, this condition could result in loss of stall warning.

DATES: Comments must be received on or before February 14, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-109-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may also be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-109-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority of the United Kingdom (CAA) has classified British Aerospace 125 Service Bulletin 25-136-(3059A), Revision 1, dated June 24, 1985, as mandatory. Improper assembly during manufacture has caused a failure of a flap microswitch layshaft flange detail in the stall identification system. This failure could result in loss of the stall warning. The

service bulletin prescribes incoporation of a new layshaft assembly which has revised flange details.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the action mentioned above.

It is estimated that 20 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,400.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a signifcant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace:

Applies to Model BAe 125-800A series airplanes listed in BAe 125 Service Bulletin 27-136-(3059A), Revision 1, dated June 26, 1985, certificated in any category. To prevent loss of stall warning, accomplish the following within the next 60 days after the effective date of this AD, unless previously accomplished:

A. Incorporate a new layshaft assembly in the stall identification system in accordance with the accomplishment instructions of British Aerospace 125 Service Bulletin 27-136-(3059A), Revision 1, dated June 24, 1985.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 17, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-30402 Filed 12-24-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AGL-28]

Proposed Transition Area Alteration; Britton, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the transition area currently designated for Britton, South Dakota. The present 1200-foot description excludes Gwinner, North Dakota. The intent of this action is to include Gwinner, North Dakota in the description by deleting the words "Gwinner, ND".

DATE: Comments must be received on or before January 27, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL-7, Attn: Rules Docket No. 85-AGL-28, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Evon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION: The Britton, South Dakota transition area is being modified to include Gwinner, North Dakota in the 1200-foot transition area description. As presently described Gwinner, ND is excluded.

The Gwinner, North Dakota 1200-foot and 700-foot transition areas were established in anticipation that an instrument approach procedure would be developed for Gwinner Municipal Airport and that the areas would be needed to ensure the segregation of aircraft utilizing the instrument approach procedure from other aircraft operating under Visual Flight Rules (VFR) while in controlled airspace. That approach procedure was never developed and there is no pending action for any such development. Therefore, the 700-foot area is neither necessary or warranted.

However, the controlling facility for the Gwinner area has identified a requirement to retain the 1200-foot designated airspace for the area. A modification to the Britton transition area by deleting the words "Gwinner, ND" would provide the required 1200-foot floor of controlled airspace in the area after revocation of the Gwinner transition area is published.

The revocation of the Gwinner, North Dakota transition area to eliminate the 700-foot transition area is the subject of Docket No. 85-AGL-27. That docket along with this Britton docket would be processed and charted simultaneously so as to maintain continuity in the 1200-foot controlled airspace.

Aeronautical maps and charts will reflect the area returned to a non-controlled status.

Comments invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental,

and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AGL–28."

The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the designated transition area for Britton, SD.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

AUTHORITY: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Britton, SD

Delete the words "Gwinner, ND" from the 1200-foot transition area description.

Issued in Des Plaines, Illinois, on December 10, 1985.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 85–30403 Filed 12–24–85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–AGL–26]

Proposed Transition Area Revocation, Grafton, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the transition area currently designated for Grafton, North Dakota and to return the associated 700-foot area to a non-controlled status.

DATE: Comments must be received on or before January 27, 1986.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Regional Counsel, AGL–7, Attn: Rules Docket No. 85–AGL–26, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Evenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Airspace, Procedures, and Automation Branch, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Airspace, Procedures, and Automation Branch, Air Traffic Division, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telehpone (312) 694–7360.

SUPPLEMENTARY INFORMATION: The Grafton, North Dakota 1200-foot and 700-foot transition areas were established in anticipation that an instrument approach procedure would be developed for Grafton Municipal Airport and that the areas would be needed to ensure the segregation of aircraft utilizing the instrument approach from other aircraft operating under Visual Flight Rules (VFR) while in controlled airspace. That approach procedure was never developed and there is no pending action for any such development. Therefore, the 700-foot area is neither necessary or warranted.

The controlling facility for the area has identified a requirement to retain the 1200-foot designated airspace for the area. This requirement has been met. Grafton is included in the description for Grand Forks, ND, 1200-foot transition area.

Aeronautical maps and charts will reflect the area returned to a non-controlled status.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with these comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85 AGL–26." The postcard will be date/time stamped and returned to the Commenter. All communications received before the specified closing date for comments will be considered before taking action on

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the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the designated transition area for Grafton, ND.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Grafton, ND [Revoked]

Issued in Des Plaines, Illinois, on December 10, 1985.

Monte R. Belger,

Acting Director, Great Lakes Region.

[FR Doc. 85–30404 Filed 12–24–85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85–ASO–10]

Proposed Revocation of Transition Area, Tallassee, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to revoke the transition area whch was predicated on the Tallassee, Alabama, Municipal Airport. The airport has been permanently closed and the instrument approach procedures, which previously established the need for the transition area, have been canceled. This action will raise the base of controlled airspace, within a 6.5-mile radius of the former airport site, from 700 feet to 1,200 feet above the surface.

DATES: Comments must be received on or before: February 20, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) which involves revoking a transition area and raising the base of controlled airspace from 700 feet to 1,200 feet above the surface, within a 6.5-mile radius of the former Tallassee Municipal Airport site. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an

established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaulation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); [14 CFR 11.65]; 49 CFR 1.47.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Tallassee, AL—[Revoked]

By revoking the title and text.

Issued in East Point, Georgia, on December 16, 1985.

J. Stiglin,

Acting Director, Southern Region.

[FR Doc. 85-30405 Filed 12-24-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 377

[Docket No. 51298-5198]

Exports of Crude Oil Derived from Alaska's Cook Inlet.

AGENCY: Office of Industrial Resource Administration, International Trade Administration, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 6, 1985, the Secretary of Commerce, with the concurrence of the Secretaries of State, Energy, and Treasury, determined that permitting the export of crude oil derived from Alaska's Cook Inlet is in the national interest and consistent with the purposes of he Energy Policy and Conservtion Act.

Accordingly, the Department of Commerce proposes to revise Part 377 of the Export Administration Regulations (EAR) to permit exports of crude oil derived from Cook Inlet.

Only crude oil derived from state waters in Alask's Cook Inlet and not subject to the restrictions contained in the Export Administration Act of 1979, as amended, Naval Petroleum Reserves Production Act of 1976, Outer Continental Shelf Lands Act, or Mineral Lands Leasing Act of 1920, as amended, will be eligible to be exported under this proposed rule.

DATE: Comments must be submitted on or before February 24, 1986.

ADDRESSES: Send written comments (three copies) to Mr. Rodney A. Joseph, Acting Manager, Short Supply Program, Room 3876, Office Industrail Resource Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The public rulemaking docket may be inspected at the Freedom of Information Records Inspection Facility, International Trade Administration, Room 4104, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230

FOR FURTHER INFORMATION CONTACT: Mr. Rodney A. Joseph, Acting Manager, Short Supply Program, Telephone: 202/377-3984.

SUPPLEMENTARY INFORMATION: On November 6, 1985, Secretary of Commerce Malcolm Baldrige made the following national interest finding:

National Interest Findings for Exports of Crude Oil Derived from Alaska' Cook Inlet

This Administration has concluded that the national interest will be served by permitting the export of crude oil derived from Alaska's Cook Inlet. The benefits that will ensue from these exports include increased incentives for investment in the exploration and development of domestic crude oil, transportation efficiencies, and material enhancements to the energy security of our allies. This initiative will also encourage other countries to remove trade barriers to U.S. goods and services. It does not affect our energy security as we retain the flexibility to react to changes in the world's available oil supply.

Only crude oil derived from Alaska's Cook Inlet and not subject to the restrictions contained in the Export Administration Act of 1979, as amended, Naval Petroleum Production Act of 1976, Outer Continental Shelf Lands Act or Mineral Lands Leasing Act of 1920, as amended, will be eligible to be exported under this initiative. The initiative thus applies to crude oil which is advantageously located for export trade and which is not subject to special statutory provisions on export.

Before any Cook Inlet crude oil may be exported, certain findings and determinations must be made under section 103 of the Energy Policy and Conservation Act (42 U.S.C. 6212). Accordingly, pursuant to authority delegated to the Secretary of Commerce by Executive Order 11912 (41 FR 15825), and based on the consultations with other appropriate U.S. Government officials, I hereby find and detemine that the export of crude oil derived from Alaska's Cook Inlet is in the national interest and consistent with the purposes of the Energy Policy and Conservation Act.

I have directed the International Trade Administration to initiate the necessary rulemaking procedures to implement this decision.

Malcolm Baldridge,

Secretary of Commerce.

This rule proposes to implement that decision by modifying section 377 of the Export Administration Regulations. Under the proposed rule, a new eligibility category would be created—Exports from Alaska's Cook Inlet. Each exporter would be required to submit a license application along with supporting information demonstating that the export qualifies under this new category. No export could be made without the Department of Commerce first issuing an individual validated license.

Only crude oil derived from state waters in Alaska's Cook Inlet and not subject to the restrictions contained in the Export Administration Act of 1979, as amended, Naval Petroleum Reserves Production Act of 1976, Outer Continental Shelf Lands Act, or Mineral Lands Leasing Act of 1920, as amended, will be eligible to be exported under this proposed rule. This excludes domestic crude oil derived from the North Slope or Outer Continental Shelf, or crude oil transported over a federal right-of-way.

Exporters should be aware that any licenses issued will have a term of not greater than one year. Moreover, they should also be aware that outstanding licenses are subject to revocation if

there is serious interruption to available U.S. oil supplies.

In connection with various rulemaking requirements, the Office of Industrial Resource Administration has determined that:

1. This proposed rule is not a major rule within the meaning of section 1 of Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, preparation of a Regulatory Impact Analysis is not required, and neither a preliminary nor a final Regulatory Impact Analysis has been or will be prepared.

2. Consistent with section 103 of the Energy Policy and Conservation Act, these revisions are being issued in proposed form. Comments from the public on this proposed rule will be considered in formulating a final rule, if received no later than February 24, 1986. Comments received after that date will be considered if possible. All public comments received will be placed in the public rulemaking docket and will be available for public inspection and copying.

In the interest of accuracy and completeness, written comments are preferred. Written comments (three (3) copies) should be sent to the address indicated in the address section above. Oral comments should be directed to Rodney A. Joseph, OIRA, (202) 377–3984. If oral comments are received, the Department of Commerce official receiving such comments will prepare a memorandum summarizing the substance of the comments and identifying the individual making the comments, as well as the person on whose behalf they purport to be made. All such memoranda will be placed in the public rulemaking docket and will be available for public review and copying.

Written comments accompanied by a request that part or all or the material contained be treated confidentially will not be considered in developing the final regulation. Such comments and materials will be returned to the submitter.

Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public rulemaking docket concerning this regulation will be maintained in the International Trade Administration's Freedom of Information Records Inspection Facility, at the address indicated in the address section above. Records in this facility may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information pertaining to the inspection and copying of records may be obtained from Ms. Patricia L. Mann, International Trade Administration's Freedom of Information Officer, at the Records Inspection Facility address provided above, or by calling (202) 377–3031.

3. The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small businesses. This is because the proposed rule relieves a U.S. government prohibition on crude oil exports derived from Alaska's Cook Inlet and has no direct or indirect costs of compliance other than a routine licensing requirement. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

4. This rule contains collections of information requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq*). These collections have been approved by the Office of Management and Budget under control numbers 0625–0001 and 0625–0155.

List of Subjects in 15 CFR Part 377

Exports.

PART 377—SHORT SUPPLY CONTROLS AND MONITORING

Acordingly, Part 377 of Title 15, Code of Federal Regulations, is amended to read as follows:

1. The authority citation for Part 377 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat 503, 50 U.S.C. app. 2401 *et seq.* as amended by Pub. L. 97–145, of Dec. 29, 1981 and by Pub. L. 99–64 of July 12, 1985, E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Sec. 103, Pub. L. 97–163, as amended, (42 U.S.C. 6212) as amended by Pub. L. 99–58 of July 2, 1985; Sec. 28 Pub. L. 93–153, (30 U.S.C. 185); Sec. 28 Pub. L. 95–372, (43 U.S.C. 1354); E.O. 11912 of April 3, 1976 (41 FR 15825, as amended); Sec. 101 and 201(11)(e) Pub. L. 94–258, (10 U.S.C. 7420 and 7430(e)); and Presidential Findings (50 FR 25189, June 18, 1985).

2. Section 377.6(d)(1)(ix) is added as follows:

§ 377.6 Petroleum and petroleum products.

* * * * *

(d) * * *

(1) * * *

(ix) Exports from Alaska's Cook Inlet. The Group A commodity was derived from the state waters of Alaska's Cook Inlet and has not been and will not be transported by a pipeline over a federal right-of-way granted pursuant to section 28(u) of the Mineral Lands Leasing Act of 1920 or by section 203 of the Trans-Alaska Pipeline Authorization Act.[1]

* * * * *

Issued: December 20, 1985.

John A. Richards, Director,

Office of Industrial Resource Administration.

[FR Doc. 85–30515 Filed 12–24–85; 8:45 am]

BILLING CODE 3510–DC–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 6, 10, 12, 19 and 54

Proposal to Eliminate Certain Information Collection Requirements

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the directives of the Paperwork Reduction Act, Customs has reviewed its regulations in an attempt to reduce or eliminate obsolete or burdensome regulatory information collection requirements. That review revealed numerous collection requirements which Customs believes may no longer be necessary. This notice invites comments in regard to this matter before making a final decision as to the retention or deletion of these requirements.

DATE: Comments must be received on or before February 24, 1986.

ADDRESS: Comments (preferably in triplicate) may be submitted to, and inspected at, the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Herb Geller, Duty Assessment Division, (202–535–4161), or Pat Barbare, Office of Inspection and Control (202–566–8151), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

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[1] On November 6, 1985, the Secretary of Commerce determined that the export of crude oil derived from state waters in Alaska's Cook Inlet is consistent with the national interest and the purposes of the Energy Policy and Conservation Act.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1983, a general notice was published in the **Federal Register** (48 FR 26831), which advised the public that in compliance with the Regulatory Flexibility Act (5 U.S.C. 601), Customs was undertaking a review of its regulations to identify those regulations having a significant economic impact on a substantial number of small entities and to seek ways of modifying procedures to reduce or eliminate obsolete or burdensome regulatory requirementrs. The initial comment period was to have closed on August 9, 1983, however, by notice published in the **Federal Register** on July 27, 1983 (48 FR 34061), an extension of the comment period was granted to October 11, 1983. Four comments were received in response to this notice. All respondents agreed with the idea of regulatory reduction. There were several specific suggestions for modifying existing regulations and one generalized comment endorsing regulatory reform but only if it could be accomplished without diminishing Customs enforcement and revenue collection capabilities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), as part of Customs continuing effort to ensure that paperwork burdens are not imposed on the public unless the practical value of information sought is worth the burden of its collection, and after analysis of the comments received in response to the 1983 notice, Customs now proposes to amend the Customs Regulations (19 CFR Chapter 1), by deleting certain information collection requirements contained in Parts 4, 6, 10, 12, 19 and 54, Customs Regulations (19 CFR Parts 4, 6, 10, 12, 19, 54). Because of these proposed deletions, conforming changes would also be necessary to other sections of the regulations.

A list of those regulations proposed for removal follows:

19 CFR section	Description
4.41(a)	Application for permission to enter wrecked cargo.
6.12(g)	Requirement to post a copy of schedule of charges for servicing aircraft at an airport.
10.6(a)	Certificate of foreign shipper that boxes or barrels were made from American shooks or staves.
10.6(b)	Certificate of box maker that boxes or barrels were made from American shooks or staves.
10.9(g), (h)	Certificate of owner, importer, consignee or agent that processed articles entered are a portion of articles exported for processing that are covered by a certificate of registration.
10.10	Statement of cameraman, shipper, or other person identifying films and stating that they were exposed abroad and are shipped for use as newsreel or current events abroad.
10.35(b)	Declaration by importer of a model of women's wearing apparel that the article will be used solely as a model, etc.
10.35(d)	Requirement to mark for identification purposes imported models of women's wearing apparel.
10.50	Declaration of American artist residing temporarily abroad in support of duty-free entry of a work of art.
10.53(a), (b)	Declaration in connection with the entry of antiques.
10.54(b)	Certificate of manager or other responsible employee of the Gobelin or other factory or producer establishing the character of the Gobelin or other hand-woven tapestry in support of duty-free entry.
10.56(f)	Declaration of owner or consignee that vegetable oil has been rendered permanently unfit for use as food.
10.58(a)	Requirement as to marking of bolting cloth for milling purposes in support of duty-free entry.
10.64a	Declaration for withdrawal of fuel from a Customs bonded warehouse to be laden as aircraft supplies.
10.66(a)(2), (b)	Declaration of foreign shipper that merchandise was exported from the U.S. for temporary use at an exhibition and is being returned.
10.70(a)	Declaration in connection with the entry of purebred animals for breeding purposes.
10.72	Declaration in connection with the entry of horses or mules imported solely for slaughter.
10.73	Certificate of ultimate consignee of cows being imported solely for dairy purposes in support of claim for reduced rate of duty.
10.74(a)	Owners descriptive list of domestic animals driven across boundary for pasturage.
10.74(b)	Declaration in connnection with the return of domestic animals previously driven across boundary for pasturage.
10.79	Declaration of master of taking vessel in support of duty-free entry of products of American fisheries.
10.82(a)(1)	Certificate of person making withdrawal of salt used in curing fish taken by an American vessel.
10.82(a)(2)	Certificate of master and at least one other person employed on vessel in connection with the withdrawal of salt used for curing fish.
10.82(a)(3)	Certificate of at least two persons employed on shore in curing fish with salt.
10.82(b)	Certificate of person employed on shore curing fish with salt.
10.90(a)	Application of importer for the importation of master records and metal matrices.
10.90(b)	Statement evidencing agreement between importer and manufacturer concerning the use of master records and metal matrices.
10.90(d)	Declaration of importer as to use of master records and metal matrices.
10.93	Record of receipt by manufacturer, processor or dealer who enters, withdraws, or receives wool or hair under bond.
10.94	Records of manufacturer or processor with respect to products or substances resulting from wool or hair.
10.95(a), (c), (f)	Records of manufacturer, processor or dealer pertaining to enumerated articles of wool or hair delivered from his premises.
10.95(b)	Declaration of manufacturer, processor or dealer pertaining to delivery of wool or hair.
10.96	Reports of use of transfer or wool or hair in violation of bond.
10.98(e)	Report of smelting or converting plant pertaining to the use of copper-bearing fluxing material.
10.106	Declaration of importer in connection with wheat unfit for human consumption.
10.108(b)	Statement in connection with entry of articles previously imported into U.S. with duty paid, exported under lease, and now being reimported.
10.110	Certificate for strategic materials acquired by the Commodity Credit Corporation as result of barter or exchange of agricultural commodities or products.
10.134	Declaration by importer of intended use of merchandise imported under actual use provisions of tariff schedules.
12.99	Declaration by importer or consignee in support of a permitted entry of a switchblade knife.
19.16	Various reporting requirements relating to the operation of cigar manufacturing warehouses.
54.6(a)	Statement of importer that articles in chief value of metal are to be used in such a manner which renders them fit only for recovery of the metal content.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However,

personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Parts 4, 6, 10, 12, 19, and 54

Customs duties and inspection, Imports, Exports.

19 CFR Part 4

Cargo vessels, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 6

Airports.

19 CFR Part 10

Art, Exports, Fisheries, Oil imports, Packaging and containers, Tobacco, Wildlife.

19 CFR Part 12

Imports.

19 CFR Part 19

Tobacco.

19 CFR Part 54

Metal.

Proposed Amendments to the Regulations

It is proposed to amend Parts 4, 6, 10, 12, 19, and 54, Customs Regulations (19 CFR Parts 4, 6, 10, 12, 19, 54), as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103.

§ 4.41 [Amended]

2. It is proposed to amend § 4.41(a) by removing the words "written application for permission to enter the wrecked cargo", and inserting in their place the words, "entry on Customs Form 7501".

PART 6—AIR COMMERCE REGULATIONS

1. The general authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 49 U.S.C. 1474, 1509.

§ 6.12 [Amended]

2. It is proposed to amend § 6.12(g) by removing the last sentence.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624.

2. It is proposed to revise the heading and text of § 10.6 to read as follows:

§ 10.6 Shooks and staves; claim for duty exemption.

An importer, seeking an exemption from duty on account of boxes or barrels made from American shooks or staves, must make such claim on Customs Form 3311 at the time of filing the entry. Upon receipt, from the district director at the port of exportation of the shooks and staves, of corroboration that the records of exportation do not conflict materially with such claim, the exemption may be allowed. If the claim for an exemption is disallowed in full or in part, the importer may file a request within 15 days of the date of the district director's notice to him of any disallowance, for referral of the question to the Commissioner of Customs for review.

§ 10.9 [Amended]

3. It is proposed to amend § 10.9 by removing paragraphs (g) and (h) and redesignating paragraphs (i), (j), (k), and (l) as (g), (h), (i), and (j), respectively.

§ 10.10 [Removed and reserved]

4. It is proposed to amend Part 10 by removing § 10.10 and marking it "Reserved". It is also proposed to amend Part 10 by removing footnote 8 to § 10.10.

§ 10.35 [Amended]

5. It is proposed to amend § 10.35 by removing paragraphs (b) and (d), and redesignating paragraph (c) as (b).

§ 10.50 [Removed and reserved]

6. It is proposed to amend Part 10 by removing § 10.50 and marking it "Reserved". It is also proposed to amend Part 10 by removing footnote 45 to § 10.50.

§ 10.53 [Amended]

7. It is proposed to amend § 10.53 by removing paragraphs (a) and (b) and redesignating paragraphs (c), (d), (e), (f), (g), (h), and (i) as (a), (b), (c), (d), (e), (f), and (g), respectively. It is further proposed that Part 10 be amended by removing footnote 48 to § 10.53.

8. In redesignated §§ 10.53 (b) and (c), the phrase, "paragraph (g)" is removed and, "paragraph (e)" is inserted, in its place.

9. In redesignated § 10.53(e)(6), the phrase, "paragraphs (a), (b) and (c)" is removed and, "paragraph (a)" is inserted, in its place.

§ 10.54 [Amended]

10. It is proposed to amend § 10.54 by removing the "(a)" in front of the first paragraph and by removing paragraph (b).

§ 10.56 [Amended]

11. It is proposed to amend § 10.56(f) by placing a period after the word "denatured" and removing the remainder of the paragraph, including the form.

12. It is proposed to revise § 10.58(a) to read as follows:

§ 10.58 Bolting cloths; marking.

(a) As a prerequisite to the free entry of bolting cloth for milling purposes under item 357.25, Tariff Schedules of the United States, the cloth shall be indelibly marked from selvage to selvage at intervals of not more than 4 inches with the words "bolting cloth expressly for milling purposes" in block letters 3 inches in height. Bolting cloths composed of silk imported expressly for milling purposes shall be considered only such cloths as are suitable for and are used in the act of process of grading, screening, bolting, separating, classifying, or sifting dry materials, or dry materials mixed with water, if the water is merely a carrying medium.

* * * * *

§ 10.58 [Amended]

13. It is proposed to amend Part 10 by removing footnote (and footnote reference) 55 to § 10.58.

§ 10.64a [Removed and reserved]

14. It is proposed to amend Part 10 by removing § 10.64a and marking it "Reserved".

§ 10.66 [Amended]

15. It is proposed to amend § 10.66 by removing paragraph (a)(2) and by redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), respectively.

16. It is also proposed to amend § 10.66(b) by removing the last sentence.

§ 10.70 [Amended]

17. It is proposed to amend § 10.70 by removing paragraph (a) and by redesignating paragraph (b) as (a) and revising the section heading and first sentence of (a) to read as follows:

§ 10.70 Purebred animals for breeding purposes; certificate.

(a) In connection with the entry of purebred animals for breeding purposes under item 100.01, Tariff Schedules of the United States, no claim for free entry shall be allowed in liquidation of the entry until the district director has received from the Department of Agriculture a certificate that the animal is purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed.

* * * * *

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18. It is also proposed to amend § 10.70 by redesignating paragraph (c) as (b).

§ 10.70 [Amended]

19. It is proposed to amend Part 10 by removing footnote (and footnote reference) 64 to § 10.70.

§ 10.72 [Removed and reserved]

20. It is proposed to amend Part 10 by removing § 10.72 and marking it "reserved." It is also proposed to amend Part 10 by removing footnote 66 to § 10.72.

§ 10.73 [Removed and reserved]

21. It is proposed to amend Part 10 by removing § 10.73 and marking it "Reserved." It is also proposed to amend Part 10 by removing footnote 67 to § 10.73.

22. It is proposed to revise the heading and text of § 10.74 to read as follows:

§ 10.74 Animals straying across boundary for pasturage; offspring.

When domestic animals for which free entry is to be claimed under item 100.03, Tariff Schedules of the United States, have strayed across the boundary line, they may be returned, together with their offspring, without entry if brought back within 30 days; otherwise entry shall be required. The owner of any such animal shall report its return to the nearest Customs offices and hold it for such inspection and treatment as may be deemed necessary by a representative of the Agricultural Research Service of the Department of Agriculture and any such arrival found not to have been so reported or held shall be subject to seizure and forfeiture pursuant to 18 U.S.C. 545.

23. It is proposed to amend Part 10 by removing footnote (and footnote reference 68 to § 10.74.

24. It is proposed to revise § 10.78(a) to read as follows:

§ 10.78 Entry.

(a) No entry shall be required for fish or other marine products taken on the high seas by vessels of the U.S. or by residents of the U.S. in undocumented vessels owned in the U.S. when such fish or other products are brought into port by the taking vessel, or are transferred at sea to another fishing vessel of the same fleet and brought into port.

* * * * *

§ 10.79 [Removed and reserved]

25. It is proposed to amend Part 10 by removing § 10.79 and marking it "Reserved."

§ 10.82 [Removed and reserved]

26. It is proposed to amend Part 10 by removing § 10.82 and making it "Reserved."

27. It is proposed to revise § 10.83(a) to read as follows:

§ 10.83 Bond; cancellation; extension.

(a) If it shall appear to the satisfaction of the district director holding the bond referred to in § 10.80, that the entire quantity of salt covered by the bond has been duly accounted for, either by having been used in curing fish or by the payment of duty, the district director may cancel the charges against the bond. The district director may require additional evidence in corroboration of the proof of use produced.

* * * * *

§ 10.90 [Amended]

28. It is proposed to amend § 10.90 by removing paragraphs (a), (b), and (d) and by redesignating paragraphs (c), (e), (f), and (g), as (a), (b), (c), and (d), respectively.

29. It is proposed to amend Part 10 by removing footnote (and footnote reference) 81 to § 10.90.

30. It is also proposed to amend newly designated paragraph 10.90(d) by removing the phrase, "If and when the application is approved" and changing the word "entries" to "Entries."

§§ 10.93 and 10.94 [Removed and reserved]

31. It is proposed to amend Part 10 by removing §§ 10.93 and 10.94 and marking them "Reserved." It is also proposed to remove footnote 86 to § 10.94.

§ 10.95 [Amended]

32. It is proposed to amend § 10.95 by removing paragraphs (a), (b), (c), and (f) and by redesignating paragraphs (d) and (e) as (a) and (b), respectively.

§ 10.96 [Removed and reserved]

33. It is proposed to amend Part 10 by removing § 10.96 and marking it "Reserved." It is also proposed to remove footnote 87 to § 10.96.

§ 10.98 [Amended]

34. It is proposed to amend § 10.98 by removing paragraph (e).

§ 10.106 [Removed and reserved]

35. It is proposed to amend Part 10 by removing § 10.106 and marking it "Reserved."

§ 10.108 [Amended]

36. It is proposed to amend § 10.108 by removing the "(a)" in front of paragraph (a), and by removing paragraph (b).

§ 10.110 [Removed and reserved]

37. It is proposed to amend Part 10 by removing § 10.110 and marking it "Reserved." It is also proposed to remove footnote 103 to § 10.110.

§ 10.134 [Amended]

38. It is proposed to amend § 10.134 by removing the words, "filing with the entry for consumption or for warehouse a declaration as to the intended use of the merchandise, or by."

39. It is proposed to revise § 10.136 to read as follows:

§ 10.136 Suspension of liquidation.

Liquidation of an entry covering merchandise pursuant to § 10.134, shall be suspended until proof of use is furnished or the 3-year period allowed for production thereof has expired.

§ 10.139 [Amended]

40. It is proposed to amend § 10.139 by removing the phrase, "the declaration of intent required by § 10.134" and inserting, in its place, "an entry pursuant to § 10.134".

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624. Sections 12.105–12.109 also issued under 19 U.S.C. 2094. Sections 12–110–12.117 also issued under 7 U.S.C. *et seq.* Sections 12.118–12.127 also issued under 15 U.S.C. 2601 *et seq.*

Section 12.1 also issued under 21 U.S.C. 371(b);

Section 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381(b);

Section 12.4 also issued under 21 U.S.C. 381(b);

Section 12.6 also issued under 7 U.S.C. 1854, 19 U.S.C. 1303;

Section 12.10 also issued under 7 U.S.C. 151–162;

Section 12.15 also issued under 19 U.S.C. 1558;

Section 12.16 also issued under 7 U.S.C. 1592(b);

Sections 12.21–12.23 also issued under 42 U.S.C. 262;

Section 12.26 also issued under 18 U.S.C. 42;

Section 12.28 also issued under 42 U.S.C. 42, 19 U.S.C. 1527;

Section 12.34 also issued under 19 U.S.C. 1202 (Sch. 7, 9A, hdnote 1);

Section 12.37 also issued under 27 U.S.C. 203;

Section 12.39 also issued under 19 U.S.C. 1337, 1623;

Sections 12.40–12.41 also issued under 19 U.S.C. 1305;

Sections 12.42–12.44 also issued under 19 U.S.C. 1307;

Section 12.73 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

Section 12.85 also issued under 19 U.S.C. 1623, 46 U.S.C. 4302, 4306, 4310;

Sections 12.95–12.103 also issued under 18 U.S.C. 545.

2. All other statutory authority cited at the end of various sections in Part 12 is removed.

§ 12.99 [Removed and reserved]

3. It is proposed to amend Part 12 by removing § 12.99 and marking it "Reserved."

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for Part 19 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624.

§ 19.16 [Removed]

2. It is proposed to amend Part 19 by removing § 19.16 and marking it "Reserved."

PART 54—CERTAIN IMPORTATION TEMPORARILY FREE OF DUTY

1. The authority citation for Part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624.

§ 54.6 [Amended]

2. It is proposed to amend § 54.6 by removing paragraph (a) and by redesignating paragraphs (b), (c), and (d) as (a), (b), and (c), respectively.

3. It is also proposed that in redesignating paragraph (a), the phrase "paragraph (c)" be removed and "paragraph (b)" inserted, in its place.

4. It is proposed to amend Part 54 by removing footnote (and footnote reference) 1 to § 54.6.

William von Raab,

Commissioner of Customs.

Approved: December 12, 1985.

David D. Queen,

Assistant Secretary of the Treasury.

[FR Doc. 85-30370 Filed 12-24-85; 8:45 am]

BILLING CODE 4820-02-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM86-3]

Rules of Practice and Procedure

December 19, 1985.

AGENCY: Postal Rate Commission.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend Subpart G of the Rules of Practice and Procedure of the Postal Rate Commission found in Part 3001 of Title 39 of the Code of Federal Regulations. Subpart G contains the rules applicable to the filing of periodic reports by the United States Postal Service. Since Subpart G was promulgated in 1976, Postal Service data collection and reporting systems have evolved with changes in technology and needs. This proposed rule would update the list of reports which must be filed by the Postal Service, would eliminate the format requirements for that reporting and would revise filing dates to reflect current practices. The rule changes emphasize receipt of the desired information without rigid format requirements. The scope of this rule is to establish a periodic data reporting system which will allow the Commission to acquire the necessary data to perform its statutory duties more efficiently and to increase its expertise in postal matters.

DATES: Comments due on or before February 4, 1986.

ADDRESSES: Comments should be filed with the Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Gerald E. Cerasale, Legal Advisor to the Chairman, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001 (telephone number (202) 789–6868).

SUPPLEMENTARY INFORMATION: On October 29, 1976, the Postal Rate Commission promulgated Subpart G of its Rules of Practice and Procedure. These rules, including a timetable for filing, listed the periodic reports which must be filed by the Postal Service with the Secretary of the Postal Rate Commission. Since 1976 the data gathering of the Postal Service has undergone many revisions. Some of the reports listed in the current rule are no longer produced by the Postal Service and are not needed for postal management. In those instances the Commission has examined its data needs. In most situations the data needs of the Commission can be satisfied through other sources listed in the proposed rule.

The proposal also changes the date to file the reports to follow more logically the use of the reports within the management stream of the Postal Service, which should reduce the burdens on the Postal Service in making this information available. The proposal also reflects the Commission's concern that the information contained in the reports will be understandable to the Commission and will conform to current operations. In this light, the Commission proposes to eliminate the format requirements which are laid out in the current rule. In essence, the Commission is seeking substance over form.

Since the purpose of this rule is to receive Postal Service reports, the Commission staff has consulted with the staff of the Postal Service to determine what reports are currently produced and in what format, what reports are no longer produced, and when reports are produced. For reports and information that continue to be required by this proposed rule, prior interpretations continue to apply.

Note.—The Commission finds that the proposed rule changes do not constitute a major rule. The proposed rule is an update of the current periodic reporting rule. The proposal would reduce the burden upon the Postal Service by requiring information in the format used by Postal management rather than in prescribed formats. The above analysis that the proposed rule changes do not constitute a major rule applies, as well, to the Regulatory Flexibility Act.

Section by Section Analysis

Section 3001.101 has added that reports are to be filed with the Secretary of the Commission.

Section 3001.102. The opening paragraph is eliminated, and replaced by a requirement that all reports be filed within two weeks of their presentation for use by Postal management. This standard is intended to insure that data currently in use by the Service are also available for the Commission. The new paragraph also requires that data contained in any named source continue to be supplied if the source is changed in future years.

(a) Annual Reports

(1) This section has been changed to reflect the new name of the report, Cost and Revenue Analysis, with the addition that the Postal Service will identify the changes in attribution assumptions from the prior year. The Postal Service will also include portions of LIOCATT, which were used in production of the report, and transportation workpapers 31 and 57. Data collection forms and corresponding training handbooks, if changed, will be filed with the Secretary of the Commission.

(3) The report is duplicative of information provided pursuant to subsections (a) (1) and (11) of this Section. Thus, this requirement has been eliminated.

(4) The audited financial statements are included in the Postmaster General's Annual Report and we have eliminated this requirement.

(5) Nonvolume workload change reports are not generated outside of a

rate case and, therefore, the Commission will not require them to be filed periodically.

(6) For city delivery statistics national totals, the format has been dropped and replaced by a list of information required.

(7) For rural carrier national statistics, the format has been dropped and been replaced by a list of information required.

(8) This section, calling for Regional Operating Plans Summaries, will be deleted.

(10) The Commission is adding the requirement that summary workpapers be included with the workers' compensation report.

(12) The annual budget has been changed to reflect the new title Congressional Budget Submission. The Commission has also required workpapers to accompany that submission. In addition to the Budget Submission the Postal Services will provide summary Tables SE 1, 2 and 6.

New Sections

The Commission has added a new section which requires production of the Audit Adjustment Vouchers, if any.

(b) Quarterly Reports

(3) This report, *Cost Reduction Programs/Trucking System*, is no longer produced and is no longer required.

(c) Accounting Period Data

New Section

The Commission has added the National Consolidated Trial Balances and the Revenue and Expense Summary. These reports have been provided to the Commission by the Postal Service and the Commission is merely adding them to this list.

(d) Miscellaneous Reports

(3) This section has been rewritten to require simply a list be filed with the Secretary of the Commission as it changes.

(e) Formats for Filing Certain Periodic Reports

This entire section has been eliminated in the proposed rule to reflect the desire of the Commission to receive promptly information which is understandable and reflects current operations. Since the Postal Service's operations, data collection and data production have evolved, its data reports have changed. The formats required in the current rule have tended to delay the provision of the information to the Commission. Elimination of this section will hopefully speed the delivery of information to the Commission, and, therefore, to the public.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Commission proceedings—data requirements.

PART 3001—RULES OF PRACTICE AND PROCEDURE

For the reasons stated above, the Commission proposes to Amend 39 CFR Part 3001 as follows:

1. The authority Citation for Part 3001 is revised to read as follows:

Authority: 33 U.S.C 3603, 3622–3624.

§ 3001.101 [Amended]

2. Section 3001.101 is amended so that the phrase "file with the Commission" is changed to "file with the Secretary of the Commission".

3. Section 3001.102 is revised to read as follows:

§ 3001.102 Filing of reports.

Each report listed in this section shall be filed with the Secretary of the Commission within two weeks of its presentation for use by postal management unless otherwise noted. The reports and information required to be provided by this subpart need not include matters exempt from disclosure by law. Whenever a specific source is cited in this section, that citation includes any successor or substitute source.

(a) *Annual reports.* The following information will be filed by the Postal Service annually.

(1) Cost and Revenue Analysis Report which will identify each change in attribution assumptions from the previous year's report. The Postal Service will file concurrently portions of LIOCATT used in the report, transportation workpapers 31 and 57 and, if changed from the previous year, data collection forms and corresponding training handbooks.

(2) Cost Segments and Components.

(3) City Delivery Information including the number of routes by type, the number of possible deliveries by type, the number of collection boxes and businesses served (120 days from the close of the fiscal year).

(4) Rural Carrier Information including the number of routes by type and miles, stops, boxes served and mail pieces by route type (120 days from the close of the fiscal year).

(5) Civil Service Retirement Fund Deficit Report (2 weeks after release of the Annual Report of the Postmaster General).

(6) Worker's Compensation Report including summary workpapers (2 weeks after release of the Annual Report of the Postmaster General).

(7) Annual Report of the Postmaster General.

(8) Congressional Budget Submission including workpapers. The Postal Service will also file concurrently Summary Tables SE 1, 2 and 6 (coincide with submission to Congress).

(9) Audit Adjustment Vouchers, if any.

(b) *Quarterly reports.* The following information will be filed by the Postal Service quarterly:

(1) Revenue, Pieces and Weight by Classes of Mail and Special Services.

(2) Origin/Destination Information Report National Service Index.

(3) Investment Income Statements (60 days from the close of the Quarter, except for the last report for the fiscal year—2 weeks after release of the Annual Report of the Postmaster General).

(c) *Accounting period reports.* The following information will be filed by the Postal Service each accounting period:

(1) Cash Flow Statement (60 days from the close of the Accounting Period, except for the last report for the fiscal year—2 weeks after release of the Annual Report of the Postmaster General).

(2) Summary Financial and Operating Report.

(3) National Payroll Hours Summary.

(4) National Consolidated Trail Balances and the

Revenue and Expense Summary

(d) *Miscellaneous reports.* The following information will be provided by the Postal Service as updated:

(1) Before/After Pay Increase Reports.

(2) Before/After COLA Cost Report.

(3) A master list of publications and handbooks including those related to internal information systems or data collection procedures (when changed).

(4) Notices of Changes in Data Reporting Systems (90 days before implementing changes in data reporting systems).

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 85–30455 Filed 12–24–85; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-013; A-4-FRL-2943-6]

Approval and Promulgation of Implementation Plans; Alabama; SIP Revision for TSP

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to approve a State Implementation Plan (SIP) revision for Total Suspended Particulates (TSP), submitted by the Alabama Department of Environmental Management (ADEM). This revision changes the emission limits for four point sources in Talladega County, one of which is a reliaxation of the current emission limit. This relaxation will allow Kimberly Clark Corporation to burn more bark at the wood-waste boiler in order to decrease fuel costs. To offset this increase in allowable emissions, the allowable emission limits from three other sources have been tightened.

DATES: Comments are due January 27, 1986.

ADDRESSES: Written comments should be addressed to Kelly McCarty of EPA, Region IV's Air Programs Branch (see first address below). Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36130.

FOR FURTHER INFORMATION CONTACT: Kelly McCarty, EPA, Region, IV, Air Programs Branch, at the above listed address and telephone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: Alabama submitted this SIP revision to EPA on October 23, 1984. After a thorough review, EPA found that insufficient dispersion modeling had been performed to adequately support the request. The deficiencies included: no Prevention of Significant Deterioration (PSD) increment consumption analysis; less than five years of meteorological data; and lack of inclusion of all emission points and sources in the area. At that time, EPA and the ADEM Air Division developed a protocol for the dispersion modeling demonstration to show attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for TSP, and what, if any, the PSD increment consumed by these emission changes would be.

The modeling was completed and sent to EPA on May 17, 1985. It was found to be acceptable pending resolution of a few minor issues. All issues were finally resolved by a submittal from the State on July 1, 1985. The results of EPA's review of the modeling analysis indicate the NAAQS and PSD increment are protected. Thus, EPA is proposing to approve the State's request for a SIP revision. The State's revision request and the results of EPA's review of these documents are available for public inspection at the Region IV office listed above.

The proposed SIP revision consists of the relaxation of the allowable emission limit for the wood-waste boiler, so that Kimberly Clark Corporation can burn more bark in it to reduce fuel costs, and the tightening of three other allowable emission limits to offset this increase. The current and proposed allowable SIP emission limits are shown in the table below:

Sources	Emission limits	
	Current	Proposed
Coal-fired boilers up to 300 MMBTU/hour.	0.12 lb/MMBTU [1]	0.10 lb/MMBtu.
Recovery boilers	4 lb/ADTP [2]	2.5 lb/ADTP
Smelt dissolver tanks.	0.5 lb/ADTP	0.3 lb/ADTP.
Wood-waste boilers.	259 lb/hr	347 lb/hr.

[1] Million British thermal units.
[2] Air dried ton of pulp.

The result of all these emission changes is to increase overall allowable emissions from Kimberly Clark slightly.

A modeling analysis consistent with EPA policy and guidance was performed for the plant using allowable emission limits and including nearby and background sources to determine the ambient impact of the proposed emission limits. The modeling analyses showed no violation or exceedance of the primary and secondary NAAQS or PSD increment for TSP.[3] The State's demonstration is consistent with EPA's final revised stack height regulations.

Compliance with the mass emission limit for the wood-waste boiler shall be determined by an annual stack test, while continuous measurement of the capacity of the emissions from the source shall be insured by a transmissometer. An opacity limit of 76% as determined by fixed one-hour averages (the average of each ten six-minute averages per discrete clock hour) was set for the source, to be met at all times. The opacity limit was calculated from a mass-visible emission correlation curve developed from several tests performed at the facility.

PSD increments are set for areas that are cleaner than required by the NAAQS. It is triggered when the first permit application for a major source or modification is received. In Alabama the date is November 20, 1977, and the PSD increment is 37 micrograms per cubic meter (ug/m^3) using a 24-hour average: no combination of emissions increases in the area may have an impact greater than 37 ug/m^3 on the ambient air.

The PSD increment consumed was calculated by modeling the actual emissions from 1977 and the current proposed allowable emissions. The actual emissions from 1977 was used because this was the year that the baseline was triggered. One-hour averages are reported by the State in the technical support document for this rulemaking proposal for the PSD increment analysis, rather than 24-hour averages. Where the predicted values exceeded the Class II increment of 37 ug/m^3 on a one-hour average, a second analysis was performed calculating concentrations on a 24-hour average. The highest estimated increment calculated on a 24-hour average is 9.5 ug/m^3. The highest one-hour value that was not remodeled was 36.3 ug/m^3. This clearly demonstrates that the 24-hour increment will not be violated by this proposed relaxation.

Proposed Action

EPA has reviewed the State's submitted material and found it to comply with current EPA requirements. Therefore, EPA is today proposing to approve the State submittal of revisions to the TSP emission limits for pulp mills in Talladega County, and is soliciting public comment on the proposed regulations.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

For further details on the specifics of the analysis, see EPA's Technical Support Document.

Interested persons are invited to submit comments on this proposed approval EPA will consider all

[3] The primary TSP NAAQS is violated when, in a year, either (1) the annual geometric mean value of TSP concentration exceeds 75 micrograms per cubic meter of air (75 ug/m^3), or (2) the maximum 24-hour concentration of TSP at any site exceeds 260 ug/m^3 more than once. The secondary TSP NAAQS is violated when, in a year, the maximum 24/hour concentration exceeds 150 ug/m^3 more than once.

comments received within thirty days of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Incorporation by reference.

Authority. 42 U.S.C. 7401–7642.

Dated: September 3, 1985.

John A. Little,

Acting Regional Administrator.

[FR Doc. 85–30349 Filed 12–24–85; 8:45 am]

BILLING CODE 4910–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–67

[ADM 7900.10]

Debarment/Suspension of Contractors From Purchases of Federal Personal Property

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Property Management Regulation (GSPMR) that would add Part 105–67 to implement the October 9, 1985, amendment to the Federal Property Management Regulation (FPMR) which applied the Governmentwide policies, procedures and requirements of Subpart 9.4 of the Federal Acquisition Regulation (FAR) on suspension, debarment and ineligibility to contractors who purchase Federal personal property. The new subpart would implement FPMR 101–45.6 within GSA by applying the policies, procedures and requirements of Subpart 509.4 of the General Services Administration Acquisition Regulation (GSAR) on suspension, debarment and ineligibility to contractors who purchase Federal personal property.

DATE: Comments are due by January 27, 1986.

ADDRESS: Comments should be addressed to Mrs. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward C. Loeb, Procurement Analyst, Office of GSA Acquisition Policy and Regulations (VP), (202) 535–7791.

List of Subjects in 41 CFR 105–67

Debarred, Suspended, Ineligible contractors.

Part 105–67 is added to read as follows:

PART 105–67—SALE OF PERSONAL PROPERTY

Sec.

105–67.100 Scope of subpart.
105–67.101 Debarred, suspended and ineligible contractors.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

105–67.100 Scope of subpart.

This subpart prescribes policies and procedures governing the debarment or suspension of contractors from purchases of Federal personal property (see FPMR 101–45).

105–67.101 Debarred, suspended and ineligible contractors.

The policies, procedures and requirements of Subpart 509.4 of the General Services Administration Acquisition Regulation (GSAR) are incorporated by reference and made applicable to contracts for, and to contractors who engage in, the purchase of Federal personal property.

Dated: December 17, 1985.

Patricia A. Szerwo,

Associate Administrator for Acquisition Policy.

[FR Doc. 85–30441 Filed 12–24–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 15, 35, 157, 185, 186, and 187

[CGD 81–059 and 81–059a]

Notice of Hearing for Licensing of Maritime Personnel and Licensing of Officers and Operators for Mobile Offshore Drilling Units

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing.

SUMMARY: In the October 24, 1985 issue of the **Federal Register** (50 FR 43316 and 43366) the Coast Guard published a supplemental notice of proposed rulemaking on Licensing of Maritime Personnel and a supplemental notice of proposed rulemaking for Licensing of Officers and Operators for Mobile Offshore Drilling Units. Those documents discussed the fact that public hearings were planned on both items and that a separate notice would be published giving the exact times, dates, and places for the hearings. A Notice of Public Hearings was published on October 24, 1985 (50 FR 43374) specifying dates and locations of five (5) public hearings. Due to the high public interest in the rulemakings, another public hearing is being scheduled. This document announces the time, date, and location of the additional public hearing.

DATES: The Coast Guard will hold a public hearing on January 10, 1986. The hearing will begin at 10:30 a.m. and end at 4 p.m. or whenever all comments have been heard, whichever occurs first.

ADDRESS: A public hearing will be held January 10, 1986, Building 4, Wing C, Coast Guard Island [formerly known as Government Island), Alameda, CA 94501.

Attendance is open to the public. Persons wishing to present oral statements at the hearing should notify the Executive Secretary no later than three days before the hearing of the item toward which comments will be directed. Written comments may be submitted at any time before the end of the comment period. In order to assure orderly presentations and accurate records, comments will be received on Licensing of Maritime Personnel (CGD 81–059) first. When all comments have been received on this supplemental notice of proposed rulemaking, comments will be received on Licensing of Officers and Operators for Mobile Offshore Drilling Units (CGD 81–059a). Due to the expected volume of comments the Coast Guard encourages the submission of written copies of presentations and reserves the right to limit the length of oral presentations.

FOR FURTHER INFORMATION CONTACT: Captain R.F. Ingraham, Executive Secretary, Marine Safety Council (G–CMC/21), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, telephone (202) 426–1477.

Dated: December 20, 1985.

J.W. Kime,

Rear Admiral (Lower Half), U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85–30511 Filed 12–24–85; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85–390; FCC 85–642]

TV Broadcast Station in Ventura, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

BEST COPY AVAILABLE

SUMMARY: The Commission on its own motion proposes two alternative UHF channels as a substitute for UHF Channel 16 in Ventura, California. The substitutions are proposed in order to facilitate the reallocation of UHF Channel 16 to the Public Safety Land Mobile Service for use in the Los Angeles, California area.

DATES: Comments must be filed on or before January 24, 1986, and reply comments on or before February 10, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Authur D. Scrutchins, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

TV broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the Matter of amendment of § 73.606(d), Table of Assignments, TV Broadcast Stations. (Ventura, California) MM Docket No. 85–390.

Adopted: December 10, 1985.
Released: December 18, 1985.
By the Commission.

1. The Commission on its own motion proposes two alternative UHF channels as a substitute for UHF Channel 16 in Ventura, California. The substitutions are proposed in order to facilitate the reallocation of UHF Channel 16 to the Public Safety Land Mobile Service for use in the Los Angeles, California area.

Background

2. The Los Angeles County Sheriff's Department ("the Sheriff") filed a Petition for Rule Making in August, 1981 and a Supplement in November 1983, requesting reallocation of UHF television channels 14–20 for land mobile use on a nationwide basis. In the Supplement, the Sheriff initially requested the allocation of Channel 19 for public safety purposes in the Los Angeles area to meet the expanding needs of its Department. Alternatively, it requested that Channel 16 be made available immediately by removing the UHF television assignment from Ventura, California and reallocating another UHF television assignment to Ventura in its place.

3. In September 1984, the Commission adopted the *Notice of Proposed Rule Making* [1] in General Docket 84–902, proposing the use of UHF–TV Channel 19 for public safety purposes in the Los Angeles area. The Sheriff filed a motion to modify the *Notice of Proposed Rule Making* to consider the use of Channel 16 as an alternative to the use of Channel 19 due to adjacent channel interference to Station KSCI (Channel 18) in San Bernardino, California.

4. In May 1985, in the *Further Notice of Proposed Rule Making,* [2] the Commission, *inter alia,* proposed the use of Channel 16 as a possible solution to the needs of the Los Angeles County Sheriff. Channel 16 is presently unoccupied in the Los Angeles area, although it has been assigned to Ventura and there are two mutually exclusive applicants presently seeking to operate on Channel 16 at Ventura. To that end, the Commission recently announced that it would condition the grant of a construction permit for the Ventura channel on the outcome of General Docket 84–902 should it decide to reallocate this channel to the Public Safety Service in the Los Angeles area.[3]

5. By *Report and Order* adopted December 10, 1985, in Docket 84–902, the Commission has reallocated UHF television Channel 16 to the Public Safety Land Mobile Service for use in the Los Angeles area. In that *Report and Order,* we indicated that we would make a specific proposal that will reflect our best effort to find a substitute for Channel 16 in Ventura offering the maximum flexibility with respect to site selection and population coverage. We further indicated that only the current application for Channel 16 will be eligible to apply for the substituted channel. However, we have also asked those applicants to inform us whether they wish to pursue their applications on the substitute channel. If both applicants fail to state their intention to apply in comments to this *Notice* then the newly allotted channel would be opened up to the other applicants.

6. In order to implement that determination, we are specifically proposing in the instant proceeding the substitution of UHF Channel 25 for Ventura, California, to compensate for the loss of Channel 16 there. Channel 25 is being proposed because it meets the specific sites proposed by the present applicants for Channel 16 in Ventura.[4] However we note that our proposal for Channel 25 will result in a short spacing of 42.2 km (26.2 miles) to UHF Station KTBN, Channel 40, Santa Ana, California. While it is extremely unusual for the Commission to propose to assign a short spaced channel, we believe that due to the unique circumstances involved here and the limited options available it is appropriate to consider such a proposal. In this regard existing service will not be affected since the interference created by a picture image taboo (N+15) only occurs 15 channels below the proposed channel. Therefore, under this proposal, only the Ventura station would be affected by any resulting interference.[5]

7. In order to assign Channel 25 to Ventura, it will be necessary to make several other changes. First we propose to substitute Channel 41 for Channel 25 in Ridgecrest, California. In addition our present proposal is short spaced to Channel *32 in Santa Barbara, California. In Docket 85–251 (*Notice of Proposed Rule Making,* 50 FR 34519, published August 26, 1985), we have proposed to substitute Channel *51 for Channel *32 in Santa Barbara.

8. As an alternative to Channel 25, we note that Channel 51 can also be assigned to Ventura with a 1.2 km north site restriction to avoid short spacing to KUSI–TV, Channel 51, in San Diego, California. In order to assign this channel, we are also proposing to substitute Channel *55 instead of Channel *51 in Santa Barbara, in order to offer Channel 51 for Ventura. While this proposal has some impact on the pending land mobile television sharing proceeding,[6] by limiting the option available to the land mobile services in selecting a channel pair from the two proposed in the item, it effectively avoids a reduction in the amount of spectrum proposed for land mobile use in Los Angeles.[7] Finally we encourage

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[1] *Notice of Proposed Rule Making,* 49 FR 45875, published November 21, 1984.

[2] *Further Notice of Proposed Rule Making,* 50 FR 19958, published May 13, 1985.

[3] *Memorandum Opinion and Order,* Docket 80–698–99, FCC 85–328 released June 27, 1985.

[4] In an Initial Decision, FCC 84D–21, the Administrative Law Judge recommended the grant of California Broadcasting Corporation's application for a construction permit. However, the Review Board subsequently remanded this proceeding for further evidentiary hearings. *Memorandum Opinion and Order,* 56 R.R. 2d 1319 (1984).

[5] See § 73.698, Table 4, of the Commission's Rules.

[6] See, *Notice of Proposed Rule Making, Further Sharing of the UHF Television Band by Private Land Mobile Services,* General Docket No. 85–172, 50 FR 25587, published June 20, 1985.

[7] In the *Notice of Proposed Rule Making* in General Docket No. 85–172 (See footnote 6, *supra*) we proposed channel pair 26/32 or 32/36 for land mobile use in the Los Angeles area. The instant action will preclude the use of channel pair 26/32 for land mobile use in Los Angeles. However, Channel pair 32/36 will still be available.

the pending applicants for Ventura to provide us with any other alternative channel proposals for Ventura.

PART 73—[AMENDED]

9. Accordingly, we consider it appropriate to elicit comments on the proposals to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules as follows:

City	Channel No.	
	Present	Proposed
Ventura, CA	41 +	25 or 51 +, 57 +
Ridgecrest, CA	25	41 +
Santa Barbara, CA	3 –, 14,[1] *20,[1] *32, and 38.	3 –, 14,[1] *20,[1] 38, and *55 +

[1] Following the decision in Docket 18261, channels so indicated will not be available for television use until further action by the Commission

10. It is ordered, that the Secretary shall send copies of this *Notice of Proposed Rule Making*, certified mail return receipt requested, to the following applicants for Ventura, California, Channel 16:

1. California Broadcasting Corporation, 223 E. Thousand Oaks, Thousand Oaks, California 91360.

2. Channel Islands Television Corporation, 10635 Riverside Drive, Toluca Lake, California 91602.

11. The Commission's authority to institute rule making proceedings, showings required, cut off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

12. Interested parties may file comments on or before January 24, 1986, and reply comments on or before February 10, 1986, and are advised to read the Appendix for the proper procedures.

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the Table of Television Assignments, §73.606(b) of the Commission's Rules. See *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 F.R. 11549, published February 9, 1981.

14. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

William Tricarico,

Secretary.

Appendix

1. Pursuant to authority found in sections 4(i), 5(e)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, §73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.*

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85–30425 Filed 12–24–85; 8:45 am]
BILLING CODE 6712–01–M

* See paragraph 5, *supra*.

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47 CFR Part 76

[MM Docket No. 85–349]

Amendment of the Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: Action taken herein extends the time for filing comments in response to the *Notice of Inquiry and Notice of Proposed Rule Making* in MM Docket No. 85–349. This *Notice* requested comments and proposals on the matter of carriage of broadcast television

signals by cable television systems. The extension of time was requested by the National Association of Broadcasters.

DATES: Comments are due on or before January 29, 1986 and replies to comments are due February 25, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television.

Order Granting Motion for Extension of Time To File Comments

In the matter of amendment of Part 76 of the Commission's Rules Concerning Carriage of Television Broadcast Signals by Cable Television Systems; MM Docket No. 85–349:

Adopted: December 16, 1985.
Released: December 18, 1985.

By the Chief, Mass Media Bureau.

1. On November 14, 1985, the Commission adopted a combined *Notice of Inquiry and Notice of Proposed Rule Making (Notice)* in MM Docket No. 85–349, 50 FR 48232, to consider the matter of carriage of broadcast television signals by cable systems. The *Notice* was released on November 18, 1985, with comments due by December 30, 1985, and reply comments due by Jaunary 21, 1985.

2. On December 13, 1985, the National Association of Broadcasters (NAB) submitted a request that the date for filing comments be extended by 30 days and that the date for filing replies be extended by 5 days. NAB submits that this additional time is necessary to adequately address the complex questions involved in the "must carry" matter and to complete empirical research studies. It states that the time considerations are exacerbated because the comment period coincides with the holiday season. NAB also indicates that it is involved in discussions with representatives of the cable industry concerning the possibility of proposing a compromise resolution of the must carry matter and that the requested extension would allow for a more orderly completion of those discussions. Several parties filed comments in support of NAB's request.

3. The Association of Independent Television Stations, Inc. (INTV), in its filing of December 13, 1985, opposes NAB's request for extension of time. INTV contends that a number of stations are being harmed or threatened in the absence of any must carry rules or guidelines. It argues that this situation necessitates expeditious action and avoidance of the delay that would result from grant of NAB's request. INTV also argues that there is sufficient time for parties to complete and submit research studies prior to the date for filing replies. INTV further states that the Commission would be able to consider the results of any industry consensus agreement in the reply phase or before adoption of a Report and Order in this proceeding.

4. As indicated in the *Notice*, the Commission believes it is important to complete this proceeding in an expeditious manner. However, it recognizes the importance of the must carry issue to broadcasters, cable operators and the public and the demands involved in developing responses to the complex questions involved in this matter. The Commission also believes that negotiations currently in progress between broadcasters and cable operators concerning signal carriage may be of significant value in resolving this matter. In view of these considerations and to ensure a complete record in the must carry proceeding, the Commission finds that an extension of time for filing comments and replies, as requested by NAB, is warranted. While it is attentive to the concerns raised by INTV, the Commission believes these concerns are outweighed by the benefits to be obtained from this relatively brief extension of time.

5. Accordingly, it is ordered that the dates for filing comments and replies to comments in response to the above-captioned *Notice of Inquiry and Notice of Proposed Rule Making* are extended to January 29, 1986 and February 25, 1986, respectively. This action is taken pursuant to authority provided in section 4(i) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's rules.

6. For further information concerning this proceeding, contact Alan Stillwell, Mass Media Bureau, (202) 632–6302.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 85–30426 Filed 12–24–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

Humane and Healthful Transport of Wild Animals and Birds to the United States

Correction

In FR Doc. 85–28556 beginning on page 49709 in the issue of Wednesday, December 4, 1985, make the following correction: On page 49722, in the second column, in § 14.141(a), in the third line, "has been subjected" should read "has not been subjected".

BILLING CODE 1505–01–M

Notices

Federal Register
Vol. 50, No. 248
Thursday, December 26, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Michigan Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m., on January 16, 1986, at the Plymouth Hilton, 14707 Northville Road, Conference Room, Plymouth, Michigan. The purpose of the meeting is to discuss program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Tobias or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7171, (TDD 312/886–2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 19, 1985

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–30494 Filed 12–24–85; 8:45 am]

BILLING CODE 6335-01-M

New Hampshire Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m., on January 8, 1986, at the McLane, Graf, Raulerson & Middleton, 40 Stark Street, Manchester, New Hampshire. The purpose of the meeting is to continue planning FY 86 project activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert A. Wells, or Jacob Schlitt, Director of the New England Regional Office at (617) 223–4671, (TDD 617/223–0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 19, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–30495 Filed 12–24–85; 8:45 am]

BILLING CODE 6335-01-M

Pennsylvania Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Pennsylvania Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 4:30 p.m., on January 16, 1986, at the Federal Building, 1421 Cherry Street, Conference Room B, 11th Floor, Philadelphia, Pennsylvania. The purpose of the meeting is to discuss a proposed project on new civil rights strategies and racial tensions in Philadelphia.

Persons desiring additional information, or planning a presentation to the committee, should contact Committee Chairperson, Murray Friedman or John I. Binkley, Director of the Mid-Atlantic Regional Office at (202) 254–6717, (TDD 202/254–5461). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 19, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–30496 Filed 12–24–85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Survey of Retail Sales and Inventories; Notice of Determination

In accordance with Title 13, United States Code, sections 182, 224, and 225, and due Notice of Consideration having been published October 21, 1985 (50 FR 42574), I have determined that various government agencies need the 1985 annual retail trade data to provide a sound statistical basis for the formation of policy and that these data also serve a variety of public and business needs. This annual survey is a continuation of similar surveys that we have conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases of merchandise and accounts receivable balances for 1985 and year-end inventories for 1984 and 1985. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1985 Annual Retail Trade Survey. The sample will provide, with measurable reliability, statistics on the specified subjects.

We will furnish report forms to the firms covered by this survey and will require their submission within 20 days after receipt. Copies of the forms are available upon written request to the Director, Bureau of the Census, Washington, DC 20233.

I have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: December 20, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 30470 Filed 12–24–85; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

Articles of Quota Cheese; Annual Listing of Foreign Government Subsidies

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Publication of Annual List of Foreign Government Subsidies on Articles of Quota Cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Department of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foregin governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Departmet will incorporate additional programs which are found to consititue subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Deputy Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: December 19, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country and program(s)	Cents per pound	
	Gross[1] subsidy	Net[2] subsidy
Belgium: European Community (EC) Restitution payments	1.3	1.3
Canada: Export Assistance on certain types of Cheese	25.4	25.4
Denmark: EC restitution payments	0.4	0.4
Finland:		
Export subsidy	46.1	46.1
Indirect subsidies	14.5	14.5
	[illegible]	[illegible]
France: EC restitution payments	.0	.0
Ireland: EC restitution payments	2.5	2.5
Italy: EC restitution payments	18.7	18.7
Luxembourg: EC restitution payments	1.3	1.3
Netherlands: EC restitutions payments	.0	[illegible]
Norway:		
Indirect (Milk) subsidy	15.4	15.4
Consumer subsidy	34.1	34.1
	49.5	[illegible]
Switzerland: Deficiency payments	67.4	67.4
United Kingdom: EC restitution payments	.0	.0
W. Germany: EC restitution payments	.0	.0

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 85–30477 Filed 12–24–85; 8:45 am]

BILLING CODE 3510-DS-M

Petitions by Producing Firms for Determinations of Eligibility to Apply for Trade Adjustment Assistance

Petition have been accepted for filing on the dates indicated from the following firms: (1) Pelton Casteel, Inc., 148 West Dewey Place, Milwaukee, Wisconsin 53207, producer of steel castings (November 21, 1985); (2) Dubrowsky & Perlbinder, Inc., 512 Seventh Avenue, New York, New York 10018, producer of women's jackets and coats (November 21, 1985); (3) Norwich Shoe Company, Inc., Hale Street Extension, Norwich, New York 13815, producer of men's and children's footwear (November 22, 1985); (4) Leeco Manufacturing, Inc., P.O. Box 808, Calimesa, California 92320, producer of brush and grass trimmer heads and accessories (November 22, 1985); (5) Pleasant Valley Finishing Company, Inc., P.O. Box 5100, Poughkeepsie, New York 12602, processor of fabric (November 22, 1985); (6) XchangeAIR Corporation, P.O. Box 1565, Fargo, North Dakota 58107, producer of heating equipment (November 25, 1985); (7) Aarrow General, Inc., P.O. Box 702, Shawano, Wisconsin, 54166, producer of valve and pump parts and other iron castings (November 26, 1985); (8) Swirl, Inc., 506 Greenville Road, Easley, South Carolina 29640, producer of women's growns, robes and other loungewear (November 26, 1985); (9) Concept Tool & Machine, Inc., R.R. 3, 45 Cooper Road, Berlin, New Jersey 08009–1007, producer of metal parts for process control equipment (November 27, 1985); (10) Trueform Manufacturing, Inc., 715 Fairfield Avenue, Kenilworth, New Jersey 07033, producer of electronic components (November 27, 1985); (11) Universal Tools and Manufacturing Company, 115 Victory Road, Springfield, New Jersey 07081, producer of electronic components (November 27, 1985); (12) National Graphics, Inc., 2711 Miami, St. Louis, Missouri 63118, producer of photographic papers and chemicals (November 29, 1985); (13) Just-Rite Tool & Mold Corporation, 2112 Stonington Avenue, Hoffman Estates, Illinois 60195, producer of injection molds and other molds (December 2, 1985); (14) Jackl 'N Hides Corporation, 413 South 12th Street, Omaha, Nebraska 68102, producer of office and commercial furniture (December 3, 1985); (15) Gold Star Hat & Cap Company, Inc., P.O. Box 1062, Union City, New Jersey 07087, producer of headwear (December 3, 1985); (16) Hydro-Dynamics, Inc., 2000 Industrial Boulevard, Lake Havasu City, Arizona 86403, producer of waterbed accessories and power boats (December 3, 1985); (17) Moreco Energy, Inc., 7601 West 47th Street, McCook, Illinois 60525, producer of lubricants (December 4, 1985); (18) Candor Hosiery Mill, Inc., Box 459, Candor, North Carolina 27229, producer of socks (December 5, 1985); (19) J & K Button Company, Inc., 315–319 West Mississippi Drive, Muscatine, Iowa 52761, producer of buttons and button blanks (December 6, 1985); (20) Tidewater Sportswear, Inc., 1028 West 27th Street, Norfolk, Virginia 23517, producer of men's, women's and children's pants, shirts, blouses and skirts (December 6, 1985); (21) Russell Pipe and Foundry Company, Inc., P.O. Box 519, Alexander City, Alabama 35101, producer of iron castings (December 6, 1985); (22) Speizman Industries, Inc., 508 West Fifth Street, Charlotte, North Carolina 28202, producer of hosiery knitting equipment, textile machine parts and socks

BEST COPY AVAILABLE

(December 6, 1985); (23) General Headwear of Norwalk, Inc., 18 Marshall Street, South Norwalk, Connecticut 06854, producer of infants' headwear and dresses (December 6, 1985); (24) Kewanna Metal Specialties, Inc., P.O. Box 367, Kewanna, Indiana 46939, producer of baskets, grills and other wire forms (December 6, 1985); (25) Dee-Vee Manufacturing Company, Inc., 14 Catherine Street, Poughkeepsie, New York 12601, producer of women's dresses (December 6, 1985); (26) Spelts-Schultz Lumber Company of Grand Island, P.O. 1447, Grand Island, Nebraska 68802, producer of wood cabinets and trusses (December 6, 1985); (27) O.K. Equipment, Inc., P.O. Box 47A, Mandan, North Dakota 58554, producer of agricultural equipment (December 6, 1985); (28) Aerospace Lighting Corporation, 20 Oser Avenue, Hauppauge, New York 11788, producer of aircraft lighting systems (December 6, 1985); (29) Sea Freeze, Inc., 508 Carolina Street, Bellingham, Washington 98225, producer of marine refrigeration equipment (December 6, 1985); (30) Woods and Rohde, Inc., 6325 Petersburg Street, Anchorage, Alaska 99507, producer of wood trusses, doors and windows (December 9, 1985); (31) Bayside Plastics Corporation, P.O. Box 728, Dover, New Hampshire 03820, producer of footwear soles (December 11, 1985); (32) Debbie Knits, Inc., Route 1, Box 97–B, York, South Carolina 29745, producer of knitted fabric (December 11, 1985); and (33) The Barre' Company, Inc., 201 Park Avenue South, Linden, New Jersey 07036, producer of sheet metal equipment parts (December 12, 1985).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93–618). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration , U.S. Department of Commerce, Washington, DC 20230, no later than the close of businesss of the tenth calendar day following the publication of this notice. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A–95 regarding review by clearinghouses do not apply.

Charles L. Smith,

Acting Chief, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 85–30471 Filed 12–24–85; 8:45 am]

BILLING CODE 3510-DR-M

[41–570–501]

Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Final Determination of Sales at Less than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that natural bristle paint brushes and brush heads from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, and that "critical circumstances" exist with respect to imports of the merchandise under investigation. We have notified the U.S. International Trade Commission (ITC) of our determination and the ITC will determine within 45 days of publication of this notice, whether a U.S. industry is materially injured, or threatened with material injury, by reason of imports of this merchandise. We have directed the U.S. Customs Service to continue to suspend liquidation on all entries of subject merchandise as described in the "Suspension of Liquidation" section of this notice and to require a cash deposit or posting of a bond for each such entry in an amount equal to the dumping margin described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: December 26, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis or John Brinkman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–4136 or (202) 377–3965.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that natural bristle paint brushes and brush heads from the PRC are being, or are likely to be, sold in the United States at less than fair value, pursuant to section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). We have determined the weighted-average margin of sales at less than fair value to be 127.07 percent. We found that the foreign market value of the subject merchandise exceeded the United States price on virtually all of the sales we compared. These margins ranged from 13 to 335 percent.

Case History

On February 19, 1985, we received a petition from the United States Paint Brush Manufacturers and Suppliers Ad Hoc Import Action Coalition, filed on behalf of the U.S. industry producing natural bristle paint brushes and brush heads. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that imports of natural bristle paint brushes and brush heads from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a United States industry.

After reviewing the petition, we determined it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on March 11, 1985 (50 FR 10523). On April 5, 1985, the ITC determined that there is a reasonable indication that imports of natural bristle paint brushes and brush heads from the PRC are threatening material injury to a Untied States industry. On July 2, 1985, petitioner amended its petition to allege that "critical circumstances" exist with respect to imports of this merchandise, as defined in section 733(e) of the Act.

On May 1, 1985, a questionnare on United States price was presented to counsel for the China National Native Produce and Animal By-Products Import-Export Corporation (Animal By-Products Corporation), the only known exporter of natural bristle paint brushes and brush heads to the United States. On June 7, 1985, the Animal By-Products Corporation requested an extension of the time to respond to the Department's questionnaire. On June 12, 1985, we granted a two-week extension to June 21, 1985. On June 21, 1985, the Animal

By-Products Corporation requested an additional extension of 7 days to complete the response. This request was denied. We received a partial response from the Animal By-Products Corporation on July 26, 1985, which was not timely and not in proper form for consideration in our preliminary determination. In response to our August 19, 1985, deficiency letter additional responses were received from the Animal By-Products Corporation on August 28, 1985 and October 25, 1985.

On July 29, 1985, we issued our preliminary determination that natural bristle paint brushes and brush heads were being, or were likely to be, sold in the United States at less than fair value (50 FR 31636). To determine whether sales in the United States were made at less than fair value, we used best information available for calculating United States price. We based foreign market value on a simple average of delivered home market selling prices of the two Sri Lankan respondents for the most common sizes of paint brushes believed to be sold by the PRC to the United States net of discounts. We also preliminarily determined that critical circumstances exist in this case. In our preliminary determination, we stated that we would issue a final determination by October 14, 1985.

On August 14, 1985, the Animal By-Products Corporation requested that we extend the period for the final determination for 60 days, until not later than the 135th day after publication of our preliminary determination, in accordance with section 735(a)(2)(A) of the Act. This request was granted on August 23, 1985, and our final determination was postponed until not later than December 18, 1985 (50 FR 35285).

We conducted verifications in Sri Lanka of the Ravi and Harris responses during the week of August 19, 1985. Verification of the Animal By-Products Corporation's responses took place in the PRC between October 7–12, 1985.

As required by the Act, we afforded interested parties an opportunity to submit oral and written comments, and on November 8, 1985, a public hearing was held to allow parties to address the issues arising in this investigation.

On November 18, 1985, the Animal By-Products Corporation submitted a proposal for suspension of this investigation. The Department was unable to accept this proposed suspension agreement because it was not filed on a timely basis and did not meet the statutory requirements of section 734(e) of the Act.

We have determined that the PRC is a state-controlled-economy country for the purpose of this investigation. This is further discussed under the "Foreign Market Value" section of this notice.

Scope of Investigation

The products covered by this investigation are natural bristle paint brushes and brush heads as currently provided for in item 750.65 of the *Tariff Schedules of the United States (TSUS)*.

The period of investigation is from September 1984, through February 1985.

Fair Value Comparison

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared United States price with the foreign market value based on prices of similar merchandise sold to unrelated purchasers in Sri Lanka and the weighted-average price of imports of similar merchandise into the United States.

United States Price

We used the purchase price of the subject merchandise to represent United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price of the subject merchandise, as provided in section 722(b) of the Act, based on the C.I.F., packed prices net of discounts to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and insurance, brokerage and handling charges in the PRC, ocean freight and marine insurance. In accordance with the policy set forth in recent final determinations involving state-controlled-economy countries, including *Carbon Steel Wire Rod from Poland*, (49 FR 29434 (1984)), we based foreign inland freight and insurance on charges incurred for similar services in a "non-state-controlled-econmy" country. We based those charges denominated in Renminbi Yuan (RMB) on costs for similar services in Sri Lanka.

Foreign Market Value

In accordance with section 773(c) of the Act, we used the home market prices and costs of Sri Lankan paint brush producers and the weighted-average price of brush imports into the United States to determine foreign market value. Petitioner alleged that the PRC is a "state-controlled-economy" country and that sales of the subject merchandise in that country or to third countries do not permit a determination of foreign market value under section 773(a) of the Act. After an analysis of the PRC's economy and consideration of the brief submitted by the parties, we determined that the PRC is a "state-controlled-economy" country for purposes of this investigation. For a further discussion of this issue, see the Department's response to respondent's comment 2.

As a result, section 773(c) of the Act requires us to use price of sales in the home market or to other countries, or the constructed value, of such or similar merchandise of a "non-state-controlled-economy" country. Section 353.8(a) of our regulations establishes a preference for foreign market value based upon prices at which *similar* merchandise is sold for consumption in the home market of that country, or to other countries, including the United States. Section 353.8(b) further provides that, to the extent possible, we should determine foreign market value on the basis of prices in a "non-state-controlled-economy" country that is at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of the countries that produce natural bristle pain brushes, we determined that Sri Lanka would be an appropriate surrogate since it is at a level of economic development comparable to the PRC. Accordingly, we mailed questionnaires to the two known Sri Lankan producers of paint brushes, Harris, Ltd. and Ravi Industries, Ltd., and received responses from these two companies on May 28 and July 26, 1985, respectively.

After reviewing the Harris and Ravi responses, we determined that while the Sri Lankan merchandise is similar to a portion of the Chinese merchandise subject to this investigation, it is not similar to a significant percentage of the Chinese brushes exported to the U.S. In particular, it cannot be considered similar to Chinese "chip" brushes. Section 771(16) of the statute defined "such or similar merchandise" as follows, in the order of preference, as: "(A) The merchandise which is the subject of an investigation and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, the merchandise," or "(B) merchandise (i) produced in the same country and by the same person as the merchandise which is the subject of the investigation, (ii) like that merchandise in component material or materials and in the purposes for which used, and (iii) approximately equal in commerical value to that merchandise," or "(C) merchandise (i) produced in the same country and by the same person and of the same general class or kind as the merchandise which is the subject of

the investigation, (ii) like that merchandise in the purposes for which used, and (iii) which the administering authority determines may reasonably be compared with that merchandise."

Based on our analysis of the Sri Lankan and Chinese merchandise, we have determined that, with respect to Chinese chip brushes, the Sri Lankan product cannot be satisfactorily categorized under definitions (A), (B), or (C) above. The black bristle paint brushes produced in Sri Lanka do not satisfy the criteria under (A) because they are not physically identical to the chip brushes. The Chinese chip brushes are made with significantly fewer bristles and cheaper wooden handles. The Sri Lankan brushes also fail to satisfy the criteria under (B) and (C) because they are not like the Chinese merchandise in the purposes for which they are used. While Sri Lankan brushes (like the non-chip Chinese brushes) are used to apply paint, stain and varnish, the Chinese chip brushers are used extensively in the industrial market to remove chips and other scrap generated during machining operations. and to apply lubricants, glue and other adhesives.

Therefore, having determined that the Sri Lankan merchandise is not such or similar to the Chinese chip brushes, for purposes of our fair value comparisons with respect to chip brush sales, we based foreign market value on the weighted-average F.A.S. price of brushes, both chip and non-chip, imported into the United States. We considered this "basket" information, the most specific information on world chip brush prices compiled by the Department, to be the best information available. We were not able to base foreign market value for chip brushes on the sales of a surrogate or upon constructed value, as provided in section 773(c) of the Act, because we first received information from respondent indicating it sold chip brushes in its supplemental response of August 28, 1985.

For purposes of our fair value determination with respect to shipments of brushes other than chip brushes, we based foreign market value on the delivered, packed, home market selling prices of sales by Harris, Ltd. to its unrelated customers in Sri Lanka. For purposes of this determination, we disregarded the selling prices of Ravi Industries, Ltd., pursuant to § 353.22(b) of the regulations (19 CFR 353.22(b)), since all home market sales by this company were made to a related distributor in Sri Lanka. We made deductions for inland freight and insurance and discounts. We made adjustments for differences in credit terms and advertising expenses in accordance with § 353.15 of the regulations (19 CFR 353.15).

We also made adjustments for known differences in the physical characteristics of the merchandise based on costs of materials and labor in Sri Lanka, in accordance with § 353.16 of the Commerce Regulations. We used PRC inputs furnished by the Wuxi, Shanghai and Lan Xi Brush Factories and the Shanghai Bristle and Brush Factory, since the brush styles included in our final calculations were produced at these locations. With regard to materials, we made adjustments for differences in bristle and ferrule weight, timber usage, epoxy and nails. We disregarded in our adjustments any costs for materials purchased by Harris from related companies because there was no evidence that such purchases were made at arm's length. For these adjustments, we used Ravi's purchases of materials from unrelated sources. Since packing was identical in the two markets, no adjustment was made for this expense.

Petitioner's Comments

Comment 1. Petitioner argues that the Department should make a final affirmative determination that critical circumstances exist. There is a history of dumping as evidenced by a Canadian finding of dumping for natural bristle paint brushes from the PRC in October, 1984. With regard to the second prong of the test, whether there have been massive imports over a ralatively short period, petitioner points out that: (1) The import penetration ratios for PRC brushes have increased from 1982 to 1984; (2) imports from the PRC have surged recently: (3) recent imports are significantly above the average calculated over the last three years; (4) there are no seasonal factors.

DOC Response. We agree that critical circumstances exist in this case. See the section of this notice entitled "Affirmative Determination of Critical Circumstances".

Comment. 2. Petitioner requests that the Department calculate deductions from United States price in accordance with Departmental practice. Specifically, for ocean freight petitioner cites to the Departmental practice of verifying that rates charged by COSCO, the PRC state-owned carrier, are commensurate with rates charged by "non-state-controlled-economy" carriers and requests that we do the same in this case. Moreover, because brokerage and handling charges are included in COSCO's ocean freight rate, that rate should exceed the "non-state-controlled-economy" carrier rate and if it doesn't, brokerage and handling charges incurred by Sri Lankan producers on their export shipments should be deducted from United States price. Finally, for inland freight, petitioner requests that we use the cost per mile for inland freight in Sri Lanka.

DOC Response. Only two of the shipments were transported on PRC flag vessels, the remainder being shipped on vessels from "non-state-controlled" countries. The fees paid to COSCO and the China Foreign Vessel Agent Company for shipments on vessels from "non-state-controlled" countries included both port charges and ocean freight rates.

Therefore, since both rates include brokerage and handling, there is no need to calculate these charges based on costs of similar services in Sri Lanka. We verified that the fees charged by COSCO were comparable to those charged by carriers from "non-state-controlled" countries. Inland freight deductions were calculated using the per mile cost of inland freight in Sri Lanka.

Comment 3. Petitioner agrees with the Department's selection of Sri Lanka as the appropriate surrogate and argues that the Sri Lankan producers' home market prices should be preferred to their export prices as the basis for calculating foreign market value. In regard to the two Sri Lankan producers from whom the Department obtained home market prices, Ravi and Harris, al' the domestic sales of Ravi were to a related distributor. As a result, petitioner claims that these prices cannot be used because there is no way to demonstrate that they are comparable to those that would be charged to unrelated customers. Therefore, petitioner argues that the prices charged by Ravi's distributor and, preferably, the prices charged by Harris, who sells directly to unrelated purchasers in the home market, should be used as the basis for calculating foreign market value.

DOC Response. We agree that the home market prices for similar merchandise charged by a producer in a market economy at a comparable level of economic development to the state-controlled economy in question are preferred to the export prices of that surrogate producer for purposes of calculating foreign market value. (See *Carbon Steel Plate from Romania; Final Results of Administrative Review of Suspension Agreement*, 49 FR 12292 (1984)). Therefore, we have compared the Sri Lankan home market prices for paint brushes to the prices charged for

PRC paint brushes. Because one of the Sri Lankan producers that responded to our questionnaire made sales directly to related customers (Ravi) and we do not have information necessary to make circumstances-of-sale adjustments to the prices charged by Ravi's distributor, we disregarded this producer's prices to its related distributor. Accordingly, we based foreign market value for paint brushes on home market sales to the unrelated customers of Harris.

As discussed elsewhere in this notice, we have determined that the paint brushes sold in Sri Lanka are not similar to the chip brushes sold by the PRC in the United States. Therefore, we developed an alternative measure for foreign market value for the chip brushes, the weighted-average price of imports to the United States from countries other than the PRC.

Comment 4. Petitioner contends that unless the Department has verified: (1) The existence and percentage rates of quantity discounts claimed by respondent for the PRC's sales in the U.S. and (2) that the discounts are consistently applied and justifiable on the basis of a real cost savings for volume production and/or sale, then no adjustments to foreign market value should be made for quantity discounts.

DOC Response. We verified that discounts were actually given on various PRC sales based on, *inter alia*, the quantity ordered and the length of time that the U.S. purchaser had been a customer. Consistent with our practice, we used the price net of discounts for United States price.

As we did not request information relative to specific sales by Harris in its home market, we did not compare PRC paint brush sales to sales of comparable quantities in Sri Lanka. Instead, we relied upon standard prices listed for the various brush sizes, which we verified were the actual prices charged in the home market. We verified that Harris offered a wholesaler discount and that the discount was given on over 80 percent of Harris' sales during the period for which we gathered information. Therefore, also consistent with our practice, we based foreign market value for paint brushes on prices net of the weighted-average discount given on Harris' home market sales during the period of investigation.

For chip brushes, because we used import statistics, no adjustment was made to foreign market value for quantity discounts.

Comment 5. Petitioner urges the Department to reject respondent's claim for a level-of-trade adjustment because respondent has not demonstrated that different costs are incurred in selling at the wholesale and retail levels.

DOC Response. We agree. No evidence has been submitted demonstrating that there are differing costs associated with selling paint brushes at different levels of trade in Sri Lanka. See respondent's comment 8 and the Department's response thereto. Also, no level-of-trade adjustment was made for sales of chip brushes.

Comment 6. Petitioner contends that there is no evidence that the Sri Lankan producers incur costs for warranties, guarantees or technical assistance. Therefore, foreign market value should not be adjusted for these circumstances of sale.

DOC Response. We have not made circumstance of sale adjustments for warranties, guarantees or technical assistance because the Sri Lankan producer, whose home market paint brush prices we have used, did not incur these types of expenses. Circumstances of sale adjustments were made to account for direct advertising expenses incurred by Harris and differences in the credit terms offered by the Sri Lankan and PRC producers on paint brush sales.

No circumstances-of-sale adjustments were made for chip brushes because we did not have the necessary information to adjust the prices of imports to the United States from other countries.

Comment 7. Petitioner contends that there is no evidence of significant differences between the grades of bristle used by the PRC producers as opposed to the Sri Lankan producers, nor that the bristle used in Sri Lanka has undergone further processing. Therefore, no adjustments for differences in quality of the bristle should be made to the per unit price of bristle in Sri Lanka. Moreover, specific deductions requested by respondent to account for the fact that Harris purchases its bristle from its U.K. parent should not be allowed because they have not been quantified or verified.

DOC Response. The paint brushes produced by Ravi and Harris have almost identical physical characteristics. For the reasons stated in the "Foreign Market Value" section, we have used the costs of bristle to Ravi, the Sri Lankan producer who purchases bristles directly from unrelated suppliers, to make adjustments for the differing amounts of bristle contained in the Sri Lankan and PRC paint brushes. Therefore, any additional costs that may be built into Harris's bristles do not affect our calculations. For bristles purchased by Ravi, we verified that no further processing is done to the bristles and, thus, no adjustment is warranted in this regard. Also, no adjustment has been made for differences in the grade of bristle used by Ravi and the PRC producers in their paint brushes because no evidence was submitted to demonstrate that any difference in grades used by Ravi resulted in different costs.

No adjustments were made for any differences in the physical characteristics of chip brushes.

Comment 8. Petitioner argues that no adjustment should be made to the prices of Sri Lankan brushes to account for differences in the physical characteristics of the ferrules used by the PRC producers. In the case of Harris, who purchases ferrules from its U.K. parent, the specific deductions called for by respondent have not been quantified or verified. For Ravi, who purchases nickel-plated ferrules from Italy, neither the cost nor the amount of Italian raw materials or labor inputs associated with nickel-plating is known. In the petitioner's view, even if these were known, comparing Italian costs to the labor-intensive methods of production in the PRC would likely require an upward rather than downward adjustment to foreign market value. Moreover, by respondent's admission, nickel-plating is an inexpensive process and, hence, could be disregarded as an insignificant adjustment. Finally, the Sri Lankan producers' decision to import ferrules and thereby incur additional costs of transportation, freight and insurance reflects responses to economic forces operating in a free market. The PRC producers' decision to produce the ferrules themselves was not a result of such forces. Therefore, the surrogates' choice should be recognized and no adjustments should be made to reflect the potentially higher costs of importing ferrules.

DOC Response. We have used the prices paid by Ravi for its ferrules in examining whether adjustments based upon differences in the types of ferrules used for paint brushes are appropriate. Thus, there was no need to consider the specific adjustments to the prices paid by Harris. The ferrules used by Ravi are nickel-plated whereas some of the PRC brushes have tin-plated ferrules. Ideally, any adjustment for these physical differences in the merchandise would be made by comparing the prices Ravi paid for tin-plated ferrules. However, Ravi did not use the tin-plated ferrules.

We did not seek material or labor input information or costs from the Italian ferrule producers to ascertain or value the differences in physical characteristics between their ferrules and the PRC ferrules. Our reasons for not doing so are twofold. Italy would not

be considered at a comparable level of economic development to the PRC and, hence, a revaluation along the lines offered by petitioner (*i.e.*, one taking into account the labor-intensive production methods in the PRC) would be inappropriate.

Therefore, the adjustment we have made to account for physical differences in the ferrules used by Ravi and the PRC producers for paint brushes reflects only the weight differences in the ferrules. Because the type of plating can affect the weight of the ferrule, this adjustment may account, in part, for different costs of using nickel-plated and tin-plated ferrules.

Comment 9. Petitioner believes that PRC brush producers import timber for manufacture of brush handles. If so, the cost of the handles is easily identified and should exceed the cost of timber to Sri Lankan producers because of the additional charges for transportation.

DOC Response. We verified that the timber used by the PRC brushmakers for the Shanghai and Jiangsu branches is from domestic sources.

Comment 10. Petitioner claims that the Department must use labor hours reported in the PRC response rather than the actual labor hours verified for certain styles of brushes for computing costs related to differences in physical characteristics. The response appears to report total labor hours per brush style. Worksheets from verification, however, report labor input in working days per unit of brushes. These were converted by the Department to a total amount for labor input by multiplying the number of days by the number of hours in an average working day, *i.e.*, eight hours. Because the average working day may exceed eight hours the Department should rely on the standard labor hour total reported in the response.

DOC Response. We disagree. In making adjustments for physical differences in the characteristics of Sri Lankan and PRC paint brushes, we have used the actual, verified labor hours of the Shanghai Branch in our final determination because these numbers were supported by accounting records and daily production reports. The data shown in the accounting records does not represent total labor hours. Rather, these number represent total working days per 10,000 units. The Department multiplied the number of days by the verified average number of hours in a workday. We also divided by ten to convert labor hours per 10,000 units to labor hours per 1000 units.

Respondent's Comments

Comment 1. Respondent urges the Department to find that critical circumstances are not present in this case. Specifically, imports from the PRC should not be considered massive over a relatively short period because increased imports following the filling of the petition are explained by seasonal factors, and because the increase in imports from the PRC is consistent with import growth from other suppliers. Furthermore, Congress intended the critical circumstances remedy to be used in situations where the domestic industry is badly injured by large volumes or a surge of imports and to deter exporters from shipping large quantities before the preliminary determination and thereby circumvent the law. Respondent claims that neither of these considerations are present in this case because the ITC only reached a preliminary determination of threat of material injury and because significant quantities of the post-petition imports were purchased directly by petitioner's members of through importers who are primarily suppliers to petitioner's members. Finally, the overwhelming majority of post-petition imports were ordered prior to the filing of the petition and could not constitute in any way stockpiling of inventories or an attempt to circumvent the intent of the law.

DOC Response. As explainted in the section of this notice entitled "Affirmative Determination of Critical Circumstances", the Department based that determination on its standard analysis of recent import statistics. Based on that analysis, we found that imports increased significantly following the filing of the petition, and that recent imports are significantly above average imports calcualted over the last three years. Furthermore, seasonality is not an issue because, by the respondent's own admission, the bulk of the shipments are of chip brushes. Though there were instances of post-petition imported that had been ordered prior to the filing of the petition, three of these orders were quite large and occurred within two weeks of the filing. Thus, there is evidence that stockpiling may have been untertaken in an attempt to circumvent the intent of the law.

Comment 2. Respondent claims that the most appropriate measure of foreign market value for PRC brushes is home market prices in the PRC. In respondent's view, the current economic climate in the PRC generally and the business practices of the Animal By-Products Corporation particularly, render the use of a surrogate unnecessary and inappropriate because the PRC economy is not state controlled within the meaning of section 773(c) of the Act. According to the respondent, information submitted by the Animal By-Products Corporation establishes that costing of materials and labor are done in PRC factories, that usual and normal markups over cost of production are taken by the factories and the relevant branches, that charges such as ocean freight & insurance are at prevailing rates and that, in an overall sense, at least the brush business in the PRC operates on free market principles.

DOC Response. We are not persuaded that the PRC economy as a whole or the PRC brush producing entities, in particular, operate under economic forces which would permit a determination of foreign market value on the basis of home market prices or costs. The information submitted by respondent does not demonstrate that the quantities and prices of inputs to brushes, including capital and labor, are not centrally controlled. Nor has respondent demonstrated that the quantities, styles and prices of PRC brushes are not in accordance with centrally-set goals. Also, there is no evidence that home market prices of brushes in the PRC are affected by competition among PRC producers of brushes or substitute products or imports. Finally, no information was presented regarding the convertibility of the Renminbi, the national current of the PRC, a factor which the Department takes into account in determining whether an economy can be treated as non-state controlled for purposes of an antidumping duty proceeding.

Comment 3. Assuming a surrogate measure of foreign market value was necessary, respondent argues that it would be more appropriate to select a number of major brush producing countries, including Taiwan and Korea, for pricing comparisons. Such an approach is provided for expressly in section 773(c) of the Act, whereas the criterion of economic comparability is an administrative construct created by regulation rather than law. Respondent claims that by choosing surrogate countries at a comparable level of economic development the Department limited itself to producers that are insignificant in worldwide production.

DOC Response. As respondent has recognized, § 353.8(b) of our regulations provides that in investigations involving state-controlled economies, foreign market value "shall be determined, to the extent possible, from the prices or costs in a 'non-state-controlled-economy' country or countries at a stage of economic development comparable to the 'state-controlled-economy' country from which the merchandise is exported." In accordance with this regulation we have used paint brush

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prices in Sri Lanka, a country we have determined to be at a level of economic development comparable to this PRC. As discussed above, because the Sri Lunkan product is not similar to the PRC chip brushes, we have used the weighted-average prices of imports into the United States for calculating foreign market value for chip brushes. While the Act does not dictate a preference for choosing countries at a comparable level of economic development to act as surrogates, it was clearly within the Department's authority, and a reasonable exercise thereof, to incorporate this preference in its regulations. The antidumping duty statute consistently provides for a fair value comparison between such or similar merchandise, and it allows several adjustments to ensure that the merchandise sold in different markets does not differ in ways that may affect the differences in its price. In promulgating section 353.8(b), the Department recognized that sales of comparable merchandise, at comparable terms, were more likely to occur in countries at equivalent stages of development. Resondent does not dispute that Sri Lanka is at a comparable level of economic development.

Comment. Respondent contends that the inappropriateness of Sri Lanka as a surrogate is further demonstrated by the particular characteristics of the Sri Lankan producer investigated. In particular, for one Sri Lankan producer (Ravi) all home market sales are made to a related distributor who, in turn, sells to unrelated retailers. The prices charged to the distributor cannot be used absent a showing, which respondent believes cannot be made, that the same prices would be charged to unrelated purchasers. Moreover, although prices to retailers were obtained, no information was provided on discounts, credit expenses, and freight or insurance.

For the second Sri Lankan producer (Harris), the primary materials for brush manufacture, bristles and ferrules, are obtained from its parent company in the U.K. The circumstances under which Harris purchases these materials raise the prospect that Harris home prices are inflated; first because they are obtained at transfer prices and, second, because of the additional transportation and duty charges incurred in importing these materials. As a result, any adjustments made to Harris' home market prices to account for differences in the physical characteristics of the marchandise would reflect these additonal layers of costs.

Finally, for both Ravi and Harris, the brushes sold in Sri Lanka are of medium to high quality for the application of paint, stain and varnish. In respondent's view, these cannot be considered such or similar merchandise to the "chip" or industrial brushes which constitute the overwhelming majority of the PRC's sales in the U.S. because of the differences in components and purposes for which the brushes are used. Hence, the Sri Lankan brushes cannot be used for comparison puposes.

In summary, respondent asserts that given the peculiarities of the two Sir Lankan producers, use of their prices and costs without, at the very least. fundamental and extensive accounting adjustments, contradicts Congressional intent and agency rationale for economically comparable merchandise comparisons.

DOC Response. We agree that the paint brushes sold in the Sri Lankan home market are not similar to the chip brushes sold by the PRC in the United States. Therefore, we have only used Sri Lankan home market prices for calulating for foreign market value of paint chip brushes sold by the PRC in the United States. As described elsewhere, we have used the home market prices of Harris, who does sell to a related distributor. Also, adjustments for physical differences in the bristles and ferrules have not been based on Harris' costs.

Comment 5. Respondent argues that if Sri Lankan home market prices are used, an adjustment must be made for differences in quantities sold. Presumably, Sri Lankan home market sales are in significantly smaller quantities than the PRC export sales. Also, the Sri Lankan producers are essentially paint brush assemblers. Although quantity discounts are not reflected in PRC price lists, their prices are negotiated individually with U.S. buyers and reflect the size and volume of the purchases. Such discounts are based on economies of scale achieved by the PRC producers and their totally integrated production process.

DOC Response. An adjustment has been made to Harris' paint brush prices to reflect that firm's wholesaler discounts. Discounts given on PRC sales have also been deducted from United States prices. See DOC position on petitioner's comment 4.

Comment 6. If Sri Lankan prices are used as the basis for foreign market value, respondent argues that adjustments for difference of circumstances of sales must be made. Respondent claims that the Animal By-Products Corporation incurs no direct selling expenses for its U.S. sales, whereas the Sri Lankan producers extend credit and incur such selling expenses as adverstising, salesmen's salaries, management overhead and expenses and travel for salesmen

DOC Response. We made circumstances of sale adjustments to account for differences in credit expenses and direct advertising expenses incurred on Sri Lankan paint brush sales. For PRC sales where the letters of credit were drawn down after shipment, we treated this period as the number of days credit was outstanding and applied Harris' short-term cost of borrowing to this credit period. We adjusted Harris' prices for the difference between PRC credit expenses and credit expenses incurred by Harris based on the average number of days for which Harris extended credit. The other types of expenses allegedly incurred are not considered directly related to Harris' sales and, hence, no adjustment has been made for these. Also, because weighted-average F.A.S. import prices were used for calculating the foreign market value of PRC chip brushes, no circumstances-of-sale adjustments were made.

Comment 7. Given the limited nature of the Sri Lankan operations and the fact that the Sri Lankan producers purchase major components, such as bristles and ferrules, related and/or foreign suppliers, respondent claims that adjustments for differences in the physical characteristics of the Sri Lankan and PRC merchandise should factor out costs which are peculiarly and solely related to the Sri Lankan producers' methods of procurement and production to allow differences in the physical characteristics of the merchandise to be adjusted on a comparable cost basis.

DOC Response. In making adjustments for differences in the PRC and Sri Lankan paint brushes, we have relied on Ravi's costs for bristles and ferrules, since Ravi purchases these materials from unrelated suppliers. As explained in the "Foreign Market Value" section of this notice, we excluded any costs for materials purchased by Harris from related companies. Therefore, the issue of specific adjustments to the Harris prices is moot.

In regard to adjustments to Ravi's costs, respondent would make an adjustment to account for additional processing of bristle in Sri Lanka. The bristle purchased by Ravi undergoes no additional treatment, as claimed by respondent, and, therefore, no adjustment is necessary. For ferrules, respondent would have us factor out the

allegedly higher resulting from producing ferrules in Italy rather than Sri Lanka, the freight and insurance incurred in shipping the product from Italy, and the import duties and other taxes associated with importing the ferrule. We disagree that such adjustments should be made. Ravi chose to purchase ferrules overseas rather than to produce them itself, presumably for sound business reasons. Therefore, it is reasonable to assume that use of the prices paid to Italian ferrule producers does not skew or inflate the cost of components.

Comment 8. Respondent claims that Sri Lankan home market sales are to retailers or related distributors while PRC sales in the U.S. are to manufacturers of importers. For this reason, respondent requests an adjustment an adjustment for differences in levels of trade.

DOC Response. We have not made a level of trade adjustment because no evidence has been provided to demonstrate that different costs are incurred in selling at different levels of trade.

Comment 9. Respondent argues that retroactive imposition of antidumping duties under the critical circumstances provision of the Act is unconstitutional. This provision allegedly violates the due process clause of the Fifth Amendment, under the "vagueness doctrine." The major principle of the vagueness doctrine is that statutes and regulations which purport to govern conduct must give an adequate warning of what they command or forgive.

A critical circumstances determination results in the retroactive application of the preliminary margin, to entries beginning 90 days prior to the preliminary determination. Respondent argues that this violates the vagueness doctrine, because until an antidumping petition is filed and the ITA selects a surrogate, an importer purchasing goods from a "state-controlled-economy" country does not known what sales will be used as a pricing benchmark, and thereby lacks any ability whatsoever to know if the purchases being made are unlawful, i.e., at less than fair value, or to exercise a meaningful choice as to his conduct.

DOC Response. Congress enacted the critical circumstances provisions of the antidumping and countervailing duty laws as part of the Trade Agreements Act of 1979. However, the Antidumping Act of 1921 and the International Antidumping Code of 1967 also contained retroactivity provisions. One of the purposes of the critical circumstances provisions was "to deter exporters whose merchandise is subject to an investigation from circumventing the intent of the law by increasing their exports to the United States during the period between initiation of an investigation and a preliminary determination by the authority." H.R. Rep. No. 96-317, 96th Cong., 1st Sess. 63 (1979). The Department has further stated that "the retroactive levying will serve as necessary and effective warning that merchandise subject to United States antidumping or countervailing duty investigations may not be rushed into the United States in order to avoid possible antidumping or countervailing duties." *Certain Steel Products from France*, 47 FR 35656, 35660 (1982).

Thus, both Congress and the Department view the initiation of an antidumping duty investigation as sufficient notice that the subject merchandise may be subject to antidumpting duties in the future. There is no reason that the initiation serves as notice of the possible imposition of a duty deposit rate only at the time of a preliminary determination. Section 733(e)(2) provides that liquidation may be suspended retroactively with respect to "unliquidated entries of merchandise entered . . . on or after the date which is 90 days before the date on which suspension of liquidation was first ordered." The earliest date upon which suspension of liquidation may be ordered in an antidumping duty investigation is the date of the preliminary determination, which occurs within 160 days after the filing of the petition, pursuant to section 733(b)(1) of the Act. In a normal antidumping investigation where critical circumstances are found to exist, suspension of liquidation would not begin to apply until at least 70 days after the filing of the petition, or 50 days after the date of initiation.

In this investigation, the preliminary determination was issued on July 29, 1985, and the notice was published in the **Federal Register** of August 5, 1985. The retroactive suspension of liquidation applies to entries 90 days prior to the date of publication, or beginning May 7, 1985. This date is actually 77 days after the filing of the petition, and 57 day after the date of initiation, and 53 days after publication of the notice of initiation.

The notice of initiation was therefore sufficient notice to any importer of the subject merchandise that this merchandise could be subject to antidumping duty deposits, under either the critical circumstances provisions or the normal schedule dictated by the Act.

Interest Party Comments

Comment 1. Wagman-Wolf, Inc., an importer of brushes from the PRC, claims that the Department cannot make an affirmative finding of critical circumstances unless it has concluded that imports have been massive over a relatively short period and there is reason to believe (1) massive imports would continue or recur absent the imposition of special antidumping duties applied retroactively; (2) the massive imports have been injuring the domestic industry; and (3) the recent imports were intended to circumvent the U.S. aantidumping law by being entered prior to the Department's preliminary determination.

With respect to massive imports, the importer notes that in examining whether imports have been massive over a relatively short period, imports in the second quarter of 1985 (following filing of the petition in February) declined from the prior quarter and were not significantly greater than import levels during the first and last quarters of 1984. The relatively high level of imports in July, 1985 should not be seen as leading to critical circumstances because import levels are historically high in July and July, 1985 imports are lower than July, 1984 imports. Moreover, the brushes which entered after the filing of the petition were generally ordered long before the filing to fill orders placed by the importers' customers, a standard practice in the industry, and, therefore, did not represent an attempt to circumvent the law. Also, the increase in imports in the first quarter of 1985 may have resulted from the need to replenish depleted stocks occasioned by the low level of shipments arriving in prior months. An additional reason that imports increased was the sharp decline in the Renminbi/dollar exchange rate. The exchange rate has now stabilized, precluding the possibility of imports increasing by substantial amounts in the future. Finally, the importer claims that any perceived surge in imports most probably resulted from petitioners' own activities as they are substantial importers as well as customers of importers.

DOC Response. The Department has determined that critical circumstances exist. See the sections of this notice entitled "Affirmative Determination of Critical Circumstances" and the Department's reponse to respondent's comment 1.

Affirmative Determination of Critical Circumstances

Counsel for the petitioner alleged that imports of natural bristle paint brushes from the PRC present "critical circumstances." Under section 735(a)(3) of the Act, "critical circumstances" exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

For a preliminary determination under section 733(e)(1) of the Act, on the other hand, we determine only "whether there is a *reasonable basis to believe or suspect"* that such elements are present (emphasis added. The standard for a final affirmative determination is more stringent, since we must make an actual finding of whether the necessary elements exist.

In our preliminary determination in this case, we made an affirmative critical circumstances determination. We found a reasonable basis to believe or suspect that imports were massive over a relatively short period, and that there was a history of dumping of the class or kind of the merchandise which is the subject of this investigation.

For purposes of this final determination, we still have found a history of dumping in the United States or elsewhere of natural bristle brushes and brush heads from the PRC. In making this determination, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries, and found a 1984 Canadian antidumping duty order issued on natural bristle paint brushes from the PRC.

Since there is a history of dumping in the United States or elsewhere, we do not need to consider whether there is reason to believe or suspect that importers of this product know or should have known that it was being sold at less than fair value. We generally consider the following concerning massive imports: (1) Recent trends in import penetration levels; (2) whether imports have surged recently; (3) whether recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of recent imports may be explained by seasonal factors. Based on this analysis, we find that imports of the subject merchandise from the PRC during the period subsequent to receipt of the petition have been massive when compared to recent import levels and that recent imports are significantly above average imports calculated over the last three years. We also find that the pattern of recent imports cannot be explained by seasonal factors.

Therefore, we determine that critical circumstances exist with respect to imports of natural bristle paint brushes and brush heads from the PRC.

Verification

In accordance with section 776(a) of the Act, we verified all data used in making this final determination using standard verification procedures, including on-site inspection of manufacturers' facilities and examination of records and selected original source documentation containing relevant information.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, on August 5, 1985, we directed the United States Customs Service to suspend liquidation of all entries of natural bristle paint brushes and brush heads from the PRC for all manufacturers/producers/exporters, which were entered, or withdrawn from warehouse, for consumption 90 days prior to August 5, 1985. As of the date of publication of this notice in the **Federal Register**, the liquidation of all entries or withdrawals from warehouse, or natural bristle paint brushes and brush heads, for consumption, or this merchandise shall continue to be suspended. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The bond or cash deposit amount established in our preliminary determination of August 5, 1985, is no longer in effect. The weighted-average margin is 127.07 percent. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether the domestic industry is materially injured, or threatened with material injury, by reason of these imports within 45 days of the publication of this notice.

If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping duty order, directing Customs officers to assess antidumping duties on natural bristle paint brushes and brush heads from the PRC, as appropriate.

This notice is published in accordance with section 735(d) of the Act.

Dated: December 18, 1985.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 85-30475 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review of Grays Harbor Exporting Trading Company ("GHETCO") This notice summarizes the conduct for which certification has been granted. Note that the Notice or Application (50 FR 42720) referred to the applicant as "Grays Harbor Exporting-Importing Company".

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice

pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct.

Export Trade Products: All products.

Related Services: Provision of technical information and advice related to the export of Products, including site preparation, set-up, and maintenance; engineering, architectural and consulting services; and taking title to goods.

Export Markets: The Exports Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation: To engage in Export Trade in the Export Markets, GHETCO may:

(1) Enter into nonexclusive and/or exclusive agreements with suppliers individually to act as an Export Intermediary wherein:

(a) GHETCO agrees not to represent any competitors of such supplier for Products or Related Services for any Export Market unless authorized by the supplier; and/or

(b) the supplier agrees not to sell, directly or indirectly through any other intermediary, into any part of the Export Markets in which GHETCO exclusively represents the supplier as an Export Intermediary.

(2) Enter into nonexclusive and/or exclusive agreements with Export Intermediaries for the sale of Products and Related Services in the Export Markets wherein:

(a) GHETCO agrees to deal in Products and Related Services in any Export Market only through that intermediary; and/or

(b) that intermediary agrees not to deal in particular Products and Related Services in any Export Market with anyone except GHETCO.

(3) Contract suppliers (including competing suppliers), on a one-to-one basis, to elicit price, volume, estimated delivery, and other information relating to sales in the Export Markets.

(4) Enter into exclusive and/or nonexclusive agreements with individual buyers in any Export Market to act as a purchasing agent with respect to particular transactions.

Definitions

For purposes of this certificate, the following terms are defined:

(1) "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Products and Related Services for Export Trade.

(2) "Agreements with suppliers individually" means the agreements have been entered into independely of agreements with other suppliers.

Members

Mr. O'Dean Williamson, Mr. Ray Ericks, and Mr. John L. Farra (all of whom are from, Aberdeen, Washington) are "members" within the meaning of §325.2(1) of the Regulations.

A copy of each cetificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: December 20, 1985.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 85-30580 Filed 12-24-85; 8:45 am]

BILLING CODE [illegible]

NASA Lewis Research Center et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket Number: 86-044

Applicant: NSAS Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135.

Instrument: Acoustical Scanning Microscope, Model ASM100 with Accessories.

Manufacturer: VG Semicon Limited, United Kingdom.

Intended Use: The instrument is intended to be used to study the real area of contact between two solids, both statically and with relative motion between the solids. The effect of load and elastic and plastic deformation on contact will be addressed as well. In situ loading experiments with tangential motion between the solids will be conducted directly in the microscope experimentally to verify models for the real area of contact between solids. The materials to be examined will include metals, alloys, polymers and ceramics.

Application received by Commissioner of Customs: November 5, 1985.

Docket Number: 86-045.

Applicant: University of Minnesota Hospital and Clinics, 420 Delaware Street, S.E., Minneapolis, MN 55455.

Instrument: Extracorporeal Shock Wave Lithotripter and Accessories.

Manufacturer: Dornier System GmbH, West Germany.

Intended Use: The instrument is intended to be used in studies to evaluate the physiologic effect shock wave therapy may have on a patient and to determine if methods can be developed to lessen these effects. In addition, the instrument will be used for training purposes in the Urology Residency Program.

Application received by Commissioner of Customs: November 5, 1985.

Docket Number: 86-046.

Applicant: Southern Research Institute, 2000 Ninth Avenue, South, P.O. Box 55305, Birmingham, AL 35255-5305.

Instrument: High resolution Mass Spectrometer, Model MM7070S with Accessories.

Manufacturer: VG Instruments, Incorporated, United Kingdom.

Intended Use: The instrument will be used for studies of polychlorinated dibenzo(*p*)dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs), polypeptides, chemotherapy agents and polar compounds from woodfires. PCDDs and PCDFs will be determined by high resolution gas chromatography/high resolution mass spectrometry to achieve parts per trillion detection limits and unambiguous identification of the highly toxic compounds. Polypeptides, chemotherapy agents and other polar organic compounds will be studied by high performance liquid chromatography and fast atom bombardment mass spectrometry or electron ionization mass

spectrometry. The principal objective of the experiment is to charactrize compounds by means of mass spectrometry.

Application received by Commissioner of Customs: November 6 1985.

Docket Number: 86-047.

Applicant: Emory University, Chemistry Department, 1515 Pierce Drive, Atlanta, GA 30322.

Instrument: Monolayer Surface Balance.

Manufacturer: Mayer Feintechnik, West Germany.

Intended Use: The instrument is intended to be used to determined pressure-area isoltherms for fatty acids and other lipids in experiments to learn more about the properties of films and membranes so that the principles of passive diffusion through such structures can be better understood.

Application received by Commissioner of Customs: November 1, 1985.

Docket Number: 86-048.

Applicant: University of Illinois Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, 506 South Wright Street, Urbana, IL 61801.

Instrument: Electron Energy Analyzer, Model EA10/100 with Accessories.

Manufacturer: Leyboid-Heraeu Vacuum Products Incorporated, West Germany.

Intended Use: The instrument is intended to be used for studies of semiconductors such as Si, Ge, GaAs, and metals such as Ag, Au, Al, etc. Photoemission experiments will be conducted with the objectives of obtaining a better understanding of the electronic properties of these systems and to determine the crystal growth habits.

Application received by Commissioner of Customs: November 1, 1985.

Docket number: 86-049.

Applicant: The Johns Hopkins University, Mergenthaler Hall, Charles & 34th Streets, Baltimore, MD 21218.

Instrument: Eight-channel Pulse Generator, Model Master-8-cp.

Manufacturer: A.M.P.I., Israel.

Intended use: The instrument will be used for neurophysiological research involving experiments performed on bullfrog lumbar paravertebral ganglia. The electrical properties of chemical synapses on these ganglion cells will be studied. Following stimulation of the incoming nerve, a chemical is released which has a powerful excitatory effect on the ganglion cells. The objective of the research is to understand the mechanisms that are used by nerve cells to communicate information between them. In addition, the instrument will be used to train graduate students in the Biophysics Department.

Application received by Commissioner of Customs: November 15, 1985.

Docket number: 86-050.

Applicant: Loma Linda University, 11234 Anderson Street, Loma Linda, CA 92530.

Instrument: Electron Microscope, Model CM10.

Manufacturer: N.V. Philips, The Netherlands.

Intended use: The instrument is intended to be used in virological, immunological, histochemical, hematological and neurological research in which the ultrastructural (morphological) characteristics of tumors, cells, etc. will be studied. The instrument will also be used in classes in Cell and Molecular Biology at the graduate level and courses in Pathology and Anatomy for the medical students.

Application received by Commissioner of Customs: November 15, 1985.

Docket number: 86-051.

Applicant: The University of Mississippi Medical Center, 2500 North State Street, Jackson, MS 39216-4505.

Instrument: Circular Dichroism Spectropolarimeter, Model J-500A.

Manufacturer: Japan Spectroscopic Company, Limited, Japan.

Intended use: The instrument is intended to be used for circular dichroism spectra studies of nucleic acids, antibiotics, and proteins. The instrument will also be used in a graduate level course on the physical biochemistry of proteins.

Application received by Commissioner of Customs: November 18, 1985.

Docket number: 86-053.

Applicant: The University of Tennessee Center for the Health Sciences, 800 Madison Avenue, Memphis, TN 38163.

Instrument: Electron Microscope (Side Entry Goniometer), Model JEM-1200EX with Accessories.

Manufacturer: JOEL, Limited, Japan.

Intended use: The instrument will be used in morphological and cytochemical studies of the structure of nervous tissue. In some experiments, specific neurons stained by methods that select small populations of functionally related cells will be studied to establish the patterns of their connections with other cells. In other experiments, molecular structures identified by their enzyme activity or by immunological techiques will be studied in relation to overall synaptic structure.

Application received by Commissioner of Customs: November 20, 1985.

Docket number: 86-054.

Applicant: Emory University, Department of Chemistry, 1515 Pierce Drive, Atlanta, GA 30322.

Instrument: Mass Spectrometer, Model MM7070S with Accessories.

Manufacturer: VG Analytical Instruments Limited, United Kingdom.

Intended use: The instrument is intended to be used for spectroscopic studies of the following:

(1) Synthesis of nucleic acid and nucleotide metal complexes,

(2) Synthesis and properties of organo-cobalt complexes,

(3) Synthesis of fused heterocyclic compounds,

(4) Bacterial identification of multiparameter fluoreacence,

(5) Biologically active compounds—new synthetic methods,

(6) Synthesis of antifeeding agents and

(7) Role of covalent flavin in flavoenzyme catalysis.

Application received by Commissioner of Customs: November 20, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Education and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-30463 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DS-M

U.S. Geological Survey; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, D.C.

Docket No. 85-109R. Applicant: U.S. Geological Survey, Menlo Park, CA 94025. Instrument: Mass Spectrometer, Model MAT 261. Manufacturer: Finnigan MAT, West Germany. Intended use: See notice at 50 FR 26394.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value of the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an automated gas inlet system;

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variable multicollector for simultaneous collection of up to 5 isotopes of a single element and an internal reproducibility of $< \pm 0.007\%$ in the multicollector mode on 2 μg Uranium (U–500). The capability of the foreign instrument described above is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–30449 Filed 12–24–85; 8:45 am]

BILLING CODE 3510-DS-M

University of Chicago, Argonne National Laboratory; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85–039R. Applicant: University of Chicago, Operator of Argonne National Laboratory, Argonne, IL 60439. Instrument: C80 Heatflux Calorimeter and accessories. Original notice of this resubmitted application was published in the **Federal Register** of December 28, 1984.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value of the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a detection sensitivity of 2.0 microcalories per second and can operate to temperatures up to 300 degrees centigrade. The National Bureau of Standards advises in its memorandum dated September 16, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–30446 Filed 12–24–85; 8:45 am]

BILLING CODE 3510-DS-M

University of Illinois, Urbana-Champaign Campus; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85–150. Applicant: University of Illinois, Urbana-Champaign Campus, Urbana, IL 61801. Instrument: Electron Spectrometer, Model LSH–10 with Accessories. Manufacturer: Leybold-Heraeus Vacuum Products, Inc., West Germany. Intended use: See notice at 50 FR 19430.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument performs x-ray and ultraviolet photoelectron spectrometry and Auger electron spectrometry providing an electron energy resolution of 30 MeV at pass energies of 10 eV. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Education and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–30451 Filed 12–24–85; 8:45am]

BILLING CODE 3510-DS-M

University of Rochester et al; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85–228. Applicant: University of Rochester, Rochester, NY 14620. Instrument: Electron Microscope, Model EM 902 with Accessories. Manufacturer: Carl Zeiss Incorporated, West Germany. Intended use: See notice at 50 FR 30217. Instrument ordered: November 19, 1985.

Docket No. 85–231. Applicant: University of Maryland, College Park, MD 20742. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 50 FR 30217. Instrument ordered: June 3, 1985.

Docket No. 85–232. Applicant: LDS Hospital (Intermountain Health Care, Inc.), Salt Lake City, UT 84143. Instrument: Electron Microscope, Model JEM–100SX with Accessories. Manufacturer: JEOL, Limited, Japan. Intended use: See notice at 50 FR 30217. Instrument ordered: April 30, 1985.

Docket No. 85–234. Applicant: University of Massachusetts, Amherst, MA 01003. Instrument: Electron Microscope, Model JEM–2000FX. Manufacturer: JEOL, Limited, Japan. Intended use: See notice at 50 FR 30217. Instrument ordered: November 20, 1984.

Docket No. 85–235. Applicant: University of Washington, Seattle, WA 98195. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: Philips Electronic Instruments, Inc., The Netherlands. Intended use: See notice at 50 FR 30218. Instrument ordered: March 13, 1985.

Docket No. 85–237. Applicant: University of Pennsylvania, Philadelphia, PA 19104–4288. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: Philips Electronic Instruments, Inc., The Netherlands. Intended use: See notice at 50 FR 30218. Instrument ordered: April 9, 1985.

Docket No. 85–238. Applicant: Georgetown University School of Medicine, Washington, DC 20007. Instrument: Electron Microscope (Side Entry Goniometer), Model JEM–1200EX and Accessories. Manufacturer: JEOL, Limited, Japan. Intended use: See notice at 50 FR 32756. Instrument ordered: March 26, 1985.

Docket No. 85–241. Applicant: University of Texas Medical Branch at Galveston, Galveston, TX 77550–2772. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL Company, Limited.

Japan. Intended use: See notice at 50 FR 32756. Instrument ordered: April 9, 1985.

Docket No. 85–243. Applicant: Tulane University, New Orleans, LA 70118. Instrument: Electron Microscope, Model 410LS with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 50 FR 32757. Instrument ordered: June 17, 1985.

Docket No. 85–246. Applicant: University of Washington, Seattle, WA 98195. Instrument: Electron Microscope, Model JEM–1200EX. Manufacturer: JEOL, Limited, Japan. Intended use: See notice at 50 FR 33992. Instrument ordered: March 5, 1985.

Docket No. 85–253. Applicant: Medical College of Pennsylvania, Philadelphia, PA 19129. Instrument: Electron Microscope, Model JEM–100CX with Accessories. Manufacturer: JEOL, Limited, Japan. Intended use: See notice at 50 FR 33993. Instrument ordered: June 4, 1985.

Docket No. 85–254. Applicant: Northwestern University, Evanston, IL 60201. Instrument: Electron Microscope, Model JEM–1200EX with Accessories. Manufacturer: JEOL, Limited Japan. Intended use: See notice at 50 FR 33993. Instrument ordered: March 14, 1985.

Docket No. 85–255. Applicant: Medical College of Georgia, Augusta, GA 30912. Instrument: Electron Microscope, Model JEM–100CXII with Accessories. Manufacturer: JEOL,Company, Limited, Japan. Intended use: See notice at 50 FR 33993. Instrument ordered: May 9, 1985.

Docket No. 85–256. Applicant: Bowman Gray School of Medicine, Wake Forest University, Winston-Salem, NC 27103. Instrument: Electron Microscope, Model H–600 CR/CR with Accessories. Manufacturer: Hitachi, Japan. Intended use: See notice at 50 FR 33993. Instrument ordered: January 18, 1985.

Docket No. 85–257. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: Electron Microscope, Model EM 109TS with Accessories. Manufacturer: Carl Zeiss, Incorporated, West Germany. Intended use: See notice at 50 FR 34538. Instrument ordered: April 18, 1985.

Docket No. 85–261. Applicant: Michigan State University, East Lansing, MI 48824. Instrument: Electron Microscope, Model JEM–100CXII with Accessories. Manufacturer: JEOL, Japan. Intended use: See notice at 50 FR 34538. Instrument ordered: May 3, 1985.

Docket No. 85–265. Applicant: University Medical Center, Tucson, AZ 85724. Instrument: Electron Microscope, Model JEM–100CXII. Manufacturer: JEOL, Limited, Japan. Intended use: See notice at 50 FR 34537. Instrument ordered: March 14, 1985.

Docket No. 85–267. Applicant: East Carolina University, Greenville, NC 27834. Instrument: Electron Microscope, Model JEM–1200EX. Manufacturer: JEOL, Limited, Japan. Intended use: See notice at 50 FR 34537. Instrument ordered: April 18, 1985.

Docket No. 85–270. Applicant: The Arthritis Institute, Arlington, VA 22206. Instrument: Electron Microscope, Model EM 410LS. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 50 FR 36128. Instrument ordered: May 30, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufuactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. WE know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–30452 Filed 12–24–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–505 and C–580–505]

Postponement of Final Antidumping Duty Determination and Final Countervailing Duty Determination: Offshore Platform Jackets and Piles From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On November 21, 1985, we received a request from respondents in the antidumping duty investigation of offshore platform jackets and piles that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)(2)(A)) (the Act). Pursuant to this request, we are postponing our final antidumping duty determination as to whether sales of offshore platform jackets and piles from the Republic of Korea have been made at less than fair value until not later than March 31, 1986.

On July 25, 1985, petitioners filed a request for an extension of the deadline date for the final determination in the countervailing duty investigation of offshore platform jackets and piles from Korea to correspond with the date of the final determination in the antidumping investigations of offshore platform jackets and piles from Korea and Japan. Therefore, this notice also postpones the countervailing duty determination until not later than March 31, 1986.

EFFECTIVE DATE: December 26, 1985. For Further Information Contact; Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–4087.

SUPPLEMENTARY INFORMATION: On May 15, 1985, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of offshore platform jackets and piles from the Republic of Korea are being, or are likely to be sold at less than fair value (50 FR 20254). We issued our preliminary affirmative determination on November 15, 1985 (50 FR 48452). That notice stated that we would issue a final determination on or before January 29, 1986. On November 21, 1985, counsel for the respondents requested that we extend the period for the final determination until not later than the 135th day after the date of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. The respondents account for a significant proportion of exports of the subject merchandise to the United States, and thus are qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly we grant the request and postpone our final determination until not later than March 31, 1986. Also, based on the request of petitioners, we are extending our final determination in the countervailing duty determination to correspond with the date of the final determination in the Korean antidumping duty investigation. This is made pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98–573).

The public hearing for the Korean antidumping investigation is also being

postponed until 10:00 a.m. on February 12, 1985, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by February 5, 1985.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 17, 1985.

[FR Doc. 85-30476 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

[Modification No. 1 to Permit No. 380]

Marine Mammals; Permit Modification, Southwest Fisheries Center

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 380 issued to the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California, 92038 on May 7, 1982 (47 FR 20653), is modified as follows:

Section B-4 is modified by substituting the following:

4. "This Permit is valid with respect to the authorized taking until December 31, 1987.

This modification becomes effective on December 31, 1985.

The Permit, as modified, and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC, and

Director, Southwest Region, National Marine Fisheries Service 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 17, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-30423 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

December 19, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 26, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On October 8, 1985, a notice was published in the **Federal Register** (50 F.R. 40990), which announced that the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of the People's Republic of China to enter into consultations concerning exports to the United States of braided and unbraided luggage of man-made fibers in Category 670pt. (only T.S.U.S.A. numbers 706.3420, 706.4144 and 706.4152), produced or manufactured in China.

No solution has been reached in consultations on a mutually satisfactory limit for the category. The United States Government has decided, therefore, to control imports in Category 670pt., exported during the twelve-month period beginning on September 3, 1985 and extending through September 2, 1986 at a level of 12,042,805 pounds. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 19, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 26, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 670pt.[1], produced or manufactured in China and exported during the twelve-month period which began on September 3, 1985 and extends through September 2, 1986, in excess of 12,042,805 pounds.[2]

Textile products in Category 670pt.[1] which have been exported to the United States prior to September 3, 1985 shall not be subject to this directive.

Textile products in Category 670pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13,1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of

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[1] In Category 670, only T.S.U.S.A. numbers 706.3420, 706.4144 and 706.4152.

[2] The restraint limit has not been adjusted to reflect any imports exported after September 2, 1985.

Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30461 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Restraint Limits for Certain Cotton, and Man-Made Fiber Textile Products From Taiwan

December 19, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 26, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The bilateral agreement of November 18, 1982, concerning cotton, wool and man-made fiber textile products from Taiwan provides, among other things, for percentage increases in certain categories during an agreement year for swing and shift, provided corresponding reductions in equivalent square yards are made in other specific limits or sublimits during the same year. It also provides for the borrowing of yardage from a subsequent year's limit with the amount used being charged to that limit in the succeeding year (carryforward). Pursuant to the terms of the bilateral agreement, the import restraint limits established for Categories 340, 633/634/635, 633/634, and 635, exported during the twelve-month period which began on January 1, 1985 are being increased for swing and carryforward. The limit for Category 640 is being reduced to account for swing applied to Category 340.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

December 19, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: On December 21, 1984, the Chairman of the Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption or withdrawal from warehouse for consumption of goods exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Taiwan, in excess of the designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Effective on December 26, 1985, the directive of December 21, 1984 is hereby further amended to include adjusted restraint limits for cotton and man-made fiber textile products in the following categories:

Category	Adjusted 12-month restraint limit
340	795,207 dozen.
633/634/635	1,648,572 dozen of which not more than 1,087,259 dozen shall be in Category 633/634 and not more than 808,598 dozen shall be in Category 635.
640	3,286,883 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30460 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement of November 18, 1982, concerning cotton, wool and man-made fiber textile products from Taiwan provides, in part, that (1) specific limits or sublimits may be exceeded by certain designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more of specific limits or sublimits during the same year; (2) certain specific limits or sublimits may be increased for carryforward; (3) special shift may be applied to certain categories, provided an equal amount in square yards equivalent is deducted from designated categories; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

December 19, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 26, 1985. For further information contact Jane Corwin, International Trade Specialist Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended, establishes limits, among other categories, for yarn, and fabric of cotton and man-made fibers in Categories 313, 314, 315, 317, 319, 320, 604, 605pt. (only T.S.U.S.A. number 310.9140) and 613, produced or manufactured in Thailand and exported during the twelve-month periods which began on January 1, 1985 and extends through December 31, 1985 and which begins on January 1, 1986 and extends through December 31, 1986. Import controls established for cotton textiles in Category 301pt. (only T.S.U.S.A. numbers 300.6026 and 300.6028) are for the twelve-month period beginning on January 1, 1986 and extends through December 31, 1986 only. In the letter to the Commissioner of Customs which follows this notice the CITA Chairman directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton and man-made fiber textile products in the foregoing categories in excess of the designated restraint limits. Imports charged to the limits established for the foregoing categories, exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985, have amounted to the following and will be charged. Further charges will be made for the period which began on December 1, 1985 and extends through December 31, 1985 when the data become available.

Category	Amount to be charged
	(January 1, 1985—November 30, 1985).
313	10,527,288 square yards.
314	7,612,582 square yards.
315	16,330,714 square yards.
317	5,893,488 square yards.
319	1,681,343 square yards.
320	9,893,415 square yards.

Category	Amount to be charged
604	798,084 pounds of which not more than 594,664 pounds shall be in T.S.U.S.A. number 310.5949.
605pt. (only T.S.U.S.A. [illegible])	391,521 pounds.
613	[illegible] square yards.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

December 19, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended on November 25 and 27, 1985, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 28, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 313, 314, 315, 317, 319, 320, 604, 605pt [1] and 613, produced or manufactured in Thailand and exported during the periods indicated below, in excess of the indicated restraint limits:

Category	12-month restraint limit [1] Jan. 1, 1985–Dec. 31, 1985
313	13,554,800 square yards.
314	10,028,130 square yards.
315	[illegible] square yards.
317	6,516,880 square yards.
319	4,208,311 square yards.
320	11,899,822 square yards.

[1] In Category 605, only T.S.U.S.A. number 310.9140.

Category	12-month restraint limit [1] Jan. 1, 1985–Dec. 31, 1985
604	857,716 pounds of which not more than 608,900 pounds shall be in T.S.U.S.A. number 310.5049.
605pt. [1]	564,198 pounds.
613	16,530,985 pounds.

[1] The limits have not have adjusted to reflect any imports exported after December 31, 1984.

Category	12-month restraint limit [1] Jan. 1, 1985–Dec. 31, 1985
301pt. [1]	4,822,912 pounds.
313	[illegible] square yards.
314	10,123,636 square yards.
315	20,247,272 square yards.
317	[illegible] square yards.
319	[illegible] square yards.
320	11,791,058 square yards.
604	833,711 pounds of which not more than 484,153 pounds shall be in T.S.U.S.A. number 310.5249.
605pt. [2]	543,526 pounds.
613	[illegible] square yards.

[1] In Category 301, only T.S.U.S.A. numbers 300.6026 and 300.6031.
[2] In Category 605, only T.S.U.S.A. number 310.9140.

In carrying out this directive, cotton, wool and man-made fiber textile products in the immediately foregoing categories which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter for the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986.

The limits are subject to adjustment according to the terms of the bilateral agreement of July 27 and August 8, 1983, as amended and extended, between the Governments of the United States and Thailand, which provide, in part, that: (1) under certain specified conditions, certain specific limits or sublimits may be exceeded by not more than 7 percent for cotton and man-made fiber and 1% for wool products, provided that the amount of the increase is compensated for by an equal square yards equivalent decrease in another specific limit in the same group; (2) specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30857 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of an Import Restraint Level for Certain Cotton Textile Products, Produced or Manufactured in Turkey

December 19, 1985.

On August 15, 1985, a notice was published in the Federal Register (50 FR 32883) announcing that, on July 29, 1985 the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of Turkey to enter into consultations concerning exports to the United States of women's girls', and infants' cotton trousers, slacks, and shorts in Category 348, produced or manufactured in Turkey.

The purpose of this notice is to advise the public that, inasmuch as no agreement has been reached on a mutually satisfactory solution concerning this category, the United States Government has decided to control imports in Category 348 (women's, girls', and infants' cotton trousers, slacks and shorts), produced or manufactured in Turkey and exported during the twelve-month period which began on July 29, 1985 and extends through July 28, 1986 at a level of 389,682 dozen. Should further consultations result in agreement, further notice will be published in the Federal Register.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Cataegory 348, exported during the period which began on July 29, 1985 and extends through July 28, 1986 in excess of the designated restraint limit. The level has not been adjusted to include any charges for imports exported after July 28, 1985. Such charges for the August 1, 1985 through October 31, 1985 period have amounted to 52,235 dozen and will be made. As the data become available, further charges will be made for the period which began on

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November 1, 1985 and extends through the remainder of the restraint period.

FOR FURTHER INFORMATION CONTACT: Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. (202/377–4212).

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 19, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 26, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 348 produced or manufactured in Turkey and exported during the twelve-month period beginning on July 29, 1985 and extending through 28, 1986, in excess of 389,682 dozen.[1]

Textile products in Category 348 which have been exported to the United States prior to July 29 shall not be subject to this directive.

Textile products in Category 348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. number was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–30458 Filed 12–26–85; 8:45 am]

BILLING CODE 3510–DR–M

[1] The level has not been adjusted to reflect any imports exported after July 28, 1985. Imports from August 1, 1985 through October 31, 1985 amounted to 52,235 dozen.

Temporary Visa Waiver For Certain Towels and Other Made-up Textile Articles Affected by Customs Ruling on Country of Origin of Certain Shop Towels

December 19, 1985.

On October 24, 1985, the U.S. Customs Service issued a ruling on the country of origin of certain shop towels where the fabric was woven in China and shipped to Cyprus for finishing (CLA–2:CO:R:CV:G 0076879 PR). In Cyprus the fabric was cut to size, the non-selvage edges were overlocked, and the towels were linked, stamped and packed. The U.S. Customs Service ruled that these towels were to be considered country of origin China, rather than Cyprus. This ruling is now being applied to other products produced in a similar manner.

In order to eliminate trade problems resulting from this new ruling, a decision has been made to permit importers having shop towels, other towels or similar merchandise to which this ruling is being applied, which are exported from the country where the cutting, finishing and packing was performed on or before December 31, 1985, to obtain waivers of the requirement for a visa from the country of origin by addressing a request to: Office of Textiles and Apparel, International Agreements and Monitoring Division, Room 3110, U.S. Department of Commerce, Washington, DC 20230, Attention: Waivers.

The following information should be included:

Port of Entry (indicating whether airport or seaport)
Name and Address of Importer
Name and Telephone Number of Customs Broker
Description of Merchandise
Category and TSUSA Number
Entry Number or Bill of Lading Number
Country of Origin
Country of Finishing
Date of Exports
Exporter

Information included in any request for a waiver is subject to section 1001 of Title 18 of the U.S. Code, which provides penalties for making false statements to any department of the United States Government.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 85–30459 Filed 12–24–85; 8:45 am]

BILLING CODE 3510–DR–M

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Peru

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 27, 1985. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

A CITA directive dated April 29, 1985 (50 FR 18547) established limits for certain specified categories of cotton textile products, including Categories 313, 317, 319 and 320, produced or manufactured in Peru and exported during the twelve-month period which began on May 1, 1985. The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 3, 1985, as amended, under the terms of which these limits were established, also includes provision for the carryover of shortfalls from the previous agreement year in certain categories (carryover) and for percentage increases in certain designated categories (swing) provided that a corresponding reduction in equivalent square yards is made in another specific limit. Under the foregoing provisions of the bilateral agreement and at the request of the Government of Peru the limits established for Categories 313 and 317 are being increased and those for Categories 319 and 320 are being reduced for goods exported during the twelve-month period which began on May 1, 1985 and extends through April 30, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was

published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of The United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

December 20, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of April 29, 1985 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru and exported during the twelve-month period which began on May 1, 1985 and extending through April 30, 1985.[1]

Effective on December 27, 1985, paragraph 1 of the directive of April 29, 1985 is hereby further amended to include the following adjusted restraint limits:

Category	Adjusted 12-Month restraint limit [2]
313	18,725,000 square yards.
317	18,939,000 square yards of which not more than 5,681,700 square yards shall be in Category 317pt.[3]
319	20,175,000 square yards.
320	14,931,500 square yards.

[2] The limits have not been adjusted to reflect any imports exported after April 30, 1985.
[3] In Category 317, only T.S.U.S. items 320.——, through 331.—— with statistical suffixes 50, 67 and 93.

The Committees for the Implementation of Textile Agreements has determined that these actions shall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30472 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The Bilateral Cotton, Wool in Man-Made Fiber Textile Agreement, as amended, of January 3, 1985 provides, in part that: (1) Specific limits and sublimits may be exceeded by not more than seven percent for swing in any agreement period provided that a corresponding reduction in equivalent square yards is made in another specific limit; (2) these limits may be adjusted for carryforward and carryover up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

Announcement of Imports Levels for Certain Cotton Textile Products from the Socialist Republic of Romania Effective January 1, 1986

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Eve Anderson, International Trade Specialist Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The Bilateral Cotton Textile Agreements of January 28 and March 31, 1983 between the Governments of the United States and the Socialist Republic of Romania establishes a group limit for textile products in Categories 330-333 and 335-359, and within the group specific limits for individual Categories 335, 340, and 347/348, designated consultation levels for textile products in Categories 338, and 361, and a minimum consultation level for textile products in Category 360, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1986. In the letter published below, the Chairman of the Committee for Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption of textile products in Categories 335, 338, 340 and 347/348, 360 and 361 exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986, in excess of the designated limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 20, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories produced or manufactured in Romania and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986, in excess of the following restraint limits:

Category	Twelve-Month Restraint Limit
Group II—Apparel, [illegible] and [illegible]	28,415,829 square yards equivalent.
[illegible]	[illegible] dozen.
338	256,000 dozen of which not more than 97,222 dozen shall be in T.S.U.S.A. numbers other than 381.0230, 381.0240, 381.3516, 381.4120, 381.4130, 381.4337, 381.6610, 381.8506, and 381.9924, 381.0425.
340	157,787 dozen.
347/348	[illegible] dozen.
[illegible]	[illegible] numbers.
361	483,871 numbers.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Romania, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985 shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of January 28 and March 31, 1983, between the Governments of the United States and Romania, which provide in part, that: (1) Specific limits or specific sublimits may be exceeded by not more than seven percent for swing in any agreement period; (2) these same levels may be adjusted for carryover and carryforward up to 11 percent of the

applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of The United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533.

Sincerely,

Walter C. Lanahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30473 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Wood and Man-Made Fiber Textile Products From the Socialist Republic of Romania Effective January 1, 1986

December 20, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Eve Anderson, International Trade Specialist Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The Bilateral Wool and Man-Made Fiber Textile Agreement effected by exchange of notes dated November 7 and 16, 1984, between the Governments of the United States and the Socialist Republic of Romania establishes a group limit for Categories 431-459 and 630-659, and within the group, specific limits for individual Categories 433/434, 435/444, 443, 604, 635, 638/639, 643/644pt. (all T.S.U.S.A. numbers except 381.2332, 381.2334, 381.2336, 381.2338, 381.8930, 381.8922, 381.8924, 381.8926, 381.8928, 384.1915, 384.2528, 384.7755, 384.9125, 384.8128), 645/646, and a designated consultation level for Category 648, produced or manfactured in Romania and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986. The agreement also provides consultation levels for categories which are not subject to specific limits and which may be adjusted during the year. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the the terms of the bilateral agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption, of wool and man-made fiber textile products in the foregoing categories, exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986, in excess of the designated limits. The limits for Categories 433/434, 443, 643/644 and 645/646 have been adjusted to include intercategory flexibility. A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of The United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreements, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

December 20, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed effective on January 1, 1986, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in Categories produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1986 and extends through December 31, 1986, in excess of the indicated restraint limits:

Category	12-Month restraint level
Group III-Apparel [1]	
431-459 and 630-659	30,271,448 square yards equivalent.
433/434	275,427 square yards equivalent.
435/444	7,470 dozen.
443	7,942 dozen.
604	2,005,163 pounds.
635	52,677 dozen.
638/639	4,596,150 square yards equivalent.
643/644pt. [1]	34,414 dozen.
645/646	182,091 dozen.
648	58,331 dozen.

[1] In Category 643/644 only T.S.U.S.A. numbers 381.3162, 381.3164, 381.3166, 381.3168, 381.3661, 381.8976, 381.8978, 381.9560, 381.9562, 381.9564, 381.9566, 381.9972, 384.2327, 384.2328, 384.2330, 384.2331, 384.2332, 384.2333, 384.2334, 384.2336, 384.2337, 384.2776, 384.2778, 384.2779, 384.2781, 384.2783, 384.2784, 384.2787, 384.2788, 384.5673, 384.5674, 384.5675, 384.5677, 384.5678, 384.5679, 384.5680, 384.5681, 384.5683, 384.7863, 384.7865, 384.7866, 384.7867, 384.7869, 384.7870, 384.7871, 384.7873, 384.7875, 384.9156, 384.9157, 384.9158, 384.9159, 384.9161, 384.9162, 384.9163, 384.9164, 384.9166, 384.9674.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in the Socialist Republic of Romania, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter with the exceptions noted below.

Merchandise exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985 in Category 645/646 shall be permitted entry into the United for consumption, or withdrawal from warehouse for consumption, in an amount not to exceed 36,416 dozen during each month of the January through May 1986 period.

Merchandise entered in 1986 in the foregoing categories, exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985, plus goods exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986, shall not together exceed the 1986 limits established for such goods in this directive.

The 1986 limits are subject to adjustment in the future according to the provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984 between the Governments of the United States and the Socialist Republic of Romania which provide, in part, that: (1) Specific limits may be increased for carryover and carryforward; consultations may be held to

adjust levels for categories not subject to specific limits; and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustment under the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30474 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of the Import Limit for Certain Man-Made Fiber Apparel Products Produced or Manufactured in Taiwan

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued a directive published below to the Commissioner of Customs to be effective on December 27, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated December 21, 1984 (49 FR 50233) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including man-made fiber sweaters in Category 645/646, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Pending completion of a data reconciliation involving this category, the amount of 33,666 dozen is being deducted from import charges made to the restraint limit established in the directive of December 21, 1984 for Category 645/646. The 1986 limit for Category 645/646 will be adjusted, depending on the outcome of the data reconciliation.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

December 20, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the bilateral agreement of November 18, 1982 concerning cotton, wool and man-made fiber textile products from Taiwan, I request that, effective on December 27, 1985, you deduct 33,666 dozen from the imports charged to the restraint limit established in the directive of December 21, 1984 for man-made fiber textile product in Category 645/646, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30462 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Philippines Effective on January 1, 1986

December 20, 1985

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, as issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, as amended, between the Governments of the United States and the Republic of the Philippines establishes an aggregate limit for Categories 300-354, 459-369, 400-448, 459-469, 600-654 and 659-669 and within the aggregate, specific limits for Categories 330, 331, 333/334, 335, 336, 337, 338/339, 340, 341, 342, 345, 347, 348, 352, 400, 431, 433, 434, 435, 443,445/446, 337, 448, 604, 631, 634, 635, 636, 637, 638/639, 640, 641, 642, 643, 645/646NT, 647, 648, 649, 650, 651, 652, 659, 666, and 669 among other categories which have been produced or manufactured in the Philippines and exported during the agreement year beginning on January 1, 1986 and extending through December 31, 1986. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the aforementioned categories, in excess of the desingated restraint limits and which have been exported during that twelve-month period.

Certain categories not subject to specific limits may be adjusted during the year upon agreement between the two governments.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and is Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

December 20, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement effected by exchange of notes dated November 25, 1982, as amended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 on March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986 in excess of the indicated restraint limits:

Category	12-Month restraint limit
300-354, 356-359, 400-446, 459-469, 605-634 and 659-665.	376, 308, 725 square yards equivalent.
330	1,343,547 dozen.
331	696,581 dozen pairs.
333/334	91,216 dozen.
335T	43,853 dozen.
335NT	41,578 dozen.
336T	448,218 dozen.
336NT	82,935 dozen.
337T	410,412 dozen.
337NT	50,711 dozen.
338/339	915,857 dozen.
340	289,746 dozen.
341T	84,210 dozen.
341NT	108,071 dozen.
342T	54,336 dozen.
342NT	64,715 dozen.
345	36,658 dozen.
347	301,592 dozen.
348	245,199 dozen.
352T	87,925 dozen.
352NT	117,358 dozen.
359T	1,216,686 dozen.
359NT	1,139,256 pounds.
400	59,237 pounds.
431	151,500 dozen.
433	3,425 dozen.
434	2,194 dozen.
435	2,283 dozen.
443	2,306 dozen.
445/446	18,485 dozen.
447	5,858 dozen.
448	6,582 dozen.
604	2,221,647 pounds.
631pt.[1]	2,025,045 dozen pairs.
631pt.[2]	424,360 dozen pairs.
634	229,359 dozen.
634T	41,234
635NT	263,076 dozen pairs.
636T	1,093,049 dozen.
636NT	80,658 dozen.
637T	856,268 dozen.
637NT	45,408 dozen.
638/639	941,284 dozen.
640	117,711 dozen.
641T	86,615 dozen.
641NT	208,573 dozen.
642T	54,336 dozen.
642NT	56,046 dozen.
643	53,586 dozen.
645/646NT	106,585 dozen.
646T	254,296 dozen.
647	108,867 dozen.
648T	208,638 dozen.
648NT	67,951 dozen.
649	4,261,365 dozen.
650	13,051 dozen.
651	117,354 dozen.
652T	80,449 dozen.
652NT	686,304 dozen.
659T	4,190,969 pounds.
659NT	1,641,675 pounds.
666	217,259 pounds.
669	177,138 dozen.

[1] In Category 631, all T.S.U.S.A. numbers except 704.3215, 704.8520, 704.8525, 704.8550, 704.9000.
[2] In Category 631, only T.S.U.S.A numbers 704.3215, 704.8520, 704.8525, 704.8550, 704.9000.

In carrying out this directive entires of textile products in the foregoing categories, except Categories 330, 359, 434, 435, 447, 448, 643, 650, 651 and 666, produced or manufactured in the Philippines, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that twelve-month period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories 330, 359, 434, 435, 447, 448, 643, 650, 651 and 666 which have been exported before January 1, 1986 shall not be subject to this directive.

Further, the following factors should be used for conversions, as indicated:

Category	Conversion factor
333/334	39.5 square yards equivalent per dozen.
638/639	15.5 square yards equivalent per dozen.
359 T	8.0 square yards equivalent per dozen.
659 T	13.6 square yards equivalent per dozen.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement between the Governments of the United States and the Philippines which provide, in part, that: (1) specific limits or sublimits may be exceeded by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implemenation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR. 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should contrue entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fail within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

FR Doc. 85-30463 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Limit for Certain Wool Apparel Products Produced or Manufactured in Uruguay

December 20, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1985. For further information contact Nathaniel Cohen, Trade Reference Assistant, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

Under the terms of the Bilateral Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended, between the Governments of the United States and Uruguay, the United States Government has decided to control imports of men's and boys' wool suit-type coats in Category 433, produced or manufactured in Uruguay and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986, at a limit of 13,635 dozen. The letter to the Commissioner of Customs which follows this notice establishes the twelve-month limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

December 20, 1985.

Commissioner of Customs
Department of the Treasury, Washington, DC

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade

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in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Wool Textile Agreement of December 30, 1983 and January 23, 1984, between the Governments of the United States and Uruguay; and in accordance with the provisions of executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 433 produced or manufactured in Uruguay, in excess of 13,635 dozen.

This limit is subject to adjustment in the future according to the provisions of the bilateral agreement of December 30, 1983 and January 23, 1984, which provide, in part, that: (1) The specific limit may be adjusted for carryover and carryforward and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 18, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30528 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia; Effective on January 1, 1986

December 20, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, as issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377-4212

Background

On October 9 and November 12, 1985, the Government of the United States and the Socialist Federal Republic of Yugoslavia exchanged diplomatic notes further amending and extending the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1984 for one-year beginning on January 1, 1986 and extending through December 31, 1986. The amended and extended agreement establishes, among other things, specific limits for Categories 340/640, 433, 434, 435, 443/643, 444 and 447/448, produced or manfuactured in Yugoslavia and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986. The letter from the Chairman of the Committee for the Implementation of Textile Agreements published below directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the foregoing categories in excess of the designated limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States and Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

December 20, 1985.

Commissioner of Customs
Department of the Treasury Washington, DC

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done a Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement effected by exchange of the notes dated October 9 and November 12, 1985, as amended, and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manfactured in Yugoslavia and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986 in excess of the indicated restraint limits:

Category	Twelve-month restraint limit
340/640	340,000 dozen.
443/643	21,348 dozen of which not more than 8,365 dozen shall be in Category 443.
433	7,744 dozen.
444	7,447 dozen.
434	8,565 dozen.
435	37,875 dozen.
447/448	47,470 dozen of which not more than 28,280 dozen shall be in Category 447 and not more than 28,280 dozen shall be in category 448.

In carrying out this directive entries of textile products in the foregoing categories, produced or manufactured in Yugoslavia, which have been exported to the United States during the periods which ended on December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia which provide, in part, that: (1) within the group limit the specific limits may be exceeded by five percent in any agreement period except for Category 340/640 where 6 percent is applicable; (2) the group limit may be exceeded for carryover and carryforward not be exceed 11 percent of the appicable limit; and (3) up to 67% of the carryover and carryforward applied to the group limit may be applied to the Category 443 limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commission of Customs should construe entry into the United States for consumption

to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreement has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FD Doc. 85-30529 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

December 20, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, was amended, has issued the directive published below to the Commissioner of Customs to be effective on December 27, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The Governments of the United States and the Socialist Republic of Yugoslavia have exchanged notes dated October 9 and November 12, 1985 further amending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978 for an additional year, through December 31, 1986. The agreement, as further amended and extended, also establishes specific limits for Categories 340/640, 434, and 435 and 447/448, produced or manufactured in Yugoslavia and exported during the period which began on August 1, 1985 and extends through December 31, 1985. The letter to the Commissioner of Customs which follows this notice establishes these new limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

December 20, 1985.

Commissioner of Customs
Department of the Treasury, Washington, DC

Dear Mr. Commissioner:

This directive cancels and supersedes the directive of September 13, 1985 concerning imports of cotton and wool textile products in Categories 340 and 448, produced or manufactured in Yugoslavia and exported during the period which began on June 28, 1985 and extends through June 27, 1986.

Under the terms of Section 204 of the Agriculture Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973 as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 27, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 340/640, 434, 435 and 447/448, produced or manufactured in Yugoslavia and exported during the period which began on August 1, 1985 and extends through December 31, 1985, in excess of the following restraint limits:

Category	5-mo. restraint limit [1]
340/640	133,648 dozen.
434	3,542 dozen.
435	15,625 dozen.
447/448	19,583 dozen of which not more than 11,667 shall be in Category 447 and not more than 11,667 dozen shall be in Category 448.

[1] The limits have not been adjusted to account for any imports exported after July 31, 1985.

Textile products in the foregoing categories which have been exported to the United States prior to August 1, 1985 shall not be subject to this directive.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of October 26, and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia which provide in part that these limits may be adjusted for carryforward and carryover up to and not to exceed 11 percent, with not more than 6 percent carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30530 Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

December 19, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 26, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated December 21, 1984 (49 FR 50233) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 313, 333/334, 335, 347/348, 640 and 648, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Pending completion of a data reconciliation involving these categories, the following amounts are being deducted from import charges made to the restraint limits established for them in the directive of December 21, 1984. The 1986 limits for these categories will be adjusted, depending on the outcome of the data reconciliation.

Category	Amount of deduction
313	1,028,240 square yards.
333/334	2,510 dozen.
335	2,103 dozen.
345	5,260 dozen.
347/348	18,092 dozen.
640	10,081 dozen.
648	25,450 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

December 19, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC

Dear Mr. Commissioner:

To facilitate implementation of the bilateral agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan, I request that, effective on December 28, 1985, you deduct the following amounts from imports charged to the restraint limits established for cotton and man-made fiber textile products in the categories indicated, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Category	Amount of deduction
313	1,028,240 square yards.
333/334	2,510 dozen.
335	2,103 dozen.
345	5,260 dozen.
347/348	18,092 dozen.
640	10,081 dozen.
648	25,450 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30454, Filed 12-24-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

Intent To Prepare a Supplemental Environmental Impact Statement for San Francisco Bay Ship Homeporting, Naval Station, Treasure Island, CA

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Guidelines (40 CFR Part 1500), the Department of the Navy will prepare a Supplement to the Environmental Impact Statement completed for San Francisco Bay Region Ship Homeporting, Naval Station, Treasure Island.

The Final Environmental Impact Statement was announced in the **Federal Register**, Vol. 49, No. 251 of Friday, December 28, 1984 (49 CFR 50440).

The Department of the Navy announced in the **Federal Register**, Vol. 50, No. 79 of Wednesday, April 24, 1985 its decision to berth four ships (frigate class) at the Naval Station, Treasure Island (Alternative II) in order to provide support to elements of the Naval Reserve Forces. A pier and associated shoreside support facilities were to be constructed to accommodate the additional ships, associated personnel and operational requirements. Other alternatives also considered included the no-project alternative (Alternative I) and a thirteen ship alternative (Alternative III), which included the four Naval Reserve Force ships of Alternative II. The decisions to adopt Alternative II was consistent with the current mission of Naval Station, Treasure Island. Significant adverse impacts were to be avoided by the proper design, construction, operation and maintenance of facilities. Correspondingly, it was determined that any major proposed action in addition to Alternative II would be subject to additional environmental studies and scoping which would be based, in part, on the concerns that were addressed and generated by the NEPA documents supporting this decision.

The Supplemental Environmental Impact Statement will address the additional site alternative of basing the ships and constructing support facilities associated with Alternative II at the Naval Facilities at Hunters Point, San Francisco, California. Federal, state and local agencies, potential developers, and other individuals or organizations who may be interested in or affected by the decision are invited to submit questions, written comments and suggestions concerning the analysis to:

Commander, Western Division, Naval Facilites Engineering Command, P.O. Box 727, 900 Commodore Drive, San Bruno, California 94066-0720.

Attention:

Mr. Dana N. Sakamoto, Head, Planning Implementation Branch, (415) 877-7590.

In order that comments may be considered in a timely fashion, correspondence should be received not later than January 1, 1986. The document is to be available to the public in early 1986.

Dated: December 20, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-30525 Filed 12-24-85; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations; Executive Panel Advisory Committee; Strategic Planning and the Technology Base Task Force; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Planning and the Technology Base Task Force will meet January 14-15, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to explore the relationship between Navy strategic planning process and the Technology Base. The entire agenda for the meeting will consist of discussions of key issues regarding the integration of technology management with strategic planning and requirements definition and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: December 20, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Office.

[FR Doc. 85-30526 Filed 12-24-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee will meet on January 23 and 24, 1986, at the North American Defense Command an Unified Space Command at Peterson Air Force Base, Colorado and at Cheyenne Mountain, Colorado. The meeting will commence at 8:15 A.M. and terminate at 6:00 P.M. on January 23rd and 24th. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the Committee members on C³I and space. The agenda for the meeting will consist of briefings on communications, air and space defense, and intelligence. These briefings will contain classified information that is specifically authorized under criteria established by Executive order to kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to perclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: December 20, 1985.

William R. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-30527 Filed 12-24-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Floodplain/Wetlands Involvement of the Strategic Petroleum Reserve Seaway Complex Distribution Enhancements

AGENCY: Strategic Petroleum Reserve, Energy.

ACTION: Revised floodplain/wetlands assessment and opportunity for comment.

SUMMARY: On December 28, 1984, the Strategic Petroleum Reserve (SPR) published a floodplain/wetlands assessment and opportunity for comment in the **Federal Register** (49 FR 50435) on a proposed 42-inch diameter buried crude oil pipeline from existing facilities of the SPR Seaway Complex, Brazoria County, Texas, to an existing commercial crude oil terminal in Texas City, Galveston County, Texas. No comments were received. An Environmental Assessment [(EA), DOE/EA-0252] and a Finding of No Significant Impact were issued in May 1985. The public notice of floodplain/wetlands involvement and the EA treated as subalternatives three different alignments for routing the pipeline from Bryan Mound past Freeport, Texas. The SPR subsequently has identified and is considering a fourth alternative route through Freeport. This fourth alternative, which would also involve activities within a floodplain/wetlands area, is the subject of the revised floodplain/wetlands assessment provided below. Public comments or suggestions on the floodplain/wetlands involvement of this fourth alternative are invited. Comments received will be incorporated in the revised EA for this action which is in preparation.

DATE: Written comments should be received at the address below by January 10, 1986.

ADDRESS: Address comments to: Mr. Sidney R. Evans., SPR Project Management Office, Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123, Phone: (504) 734-4353.

FOR FURTHER INFORMATION CONTACT:

1. Mr. Sidney R. Evans at the above address.
2. Mr. Walter H. Delaplane, Jr., Strategic Petroleum Reserve, Department of Energy, FE-421, 1000 Independence Ave., SW., Washington, DC 20585, Phone: (202) 252-4730.

SUPPLEMENTARY INFORMATION: The Strategic Petroleum Reserve (SPR) of the U.S. Department of Energy (DOE) proposes to construct at most a 53-mile long, 42-inch diameter buried pipeline to transport crude oil from existing facilities of the SPR Seaway Complex in Brazoria County, Texas to a commercial crude oil terminal in Texas City, Texas.

On December 28, 1984, the SPR published a floodplain/wetlands assessment and opportunity for comment in the **Federal Register** (49 FR 50435) on the proposed pipeline and no comments were received. In May 1985 the SPR issued an EA (DOE/EA-0252), a Finding of No Significant Impact, and a floodplain/wetlands Statement of Findings for this action. The public notice of floodplain/wetlands involvement and the EA addressed three alternative alignments for routing the pipeline from Bryan Mound past Freeport, Texas.

The SPR has identified and is considering a fourth alternative route through Freeport to mitigate logistical problems (primarily crowded corridors) associated with pipeline construction along the previously considered alternative route segments. This fourth alternative, which also involves activities within a floodplain/wetlands area, is an approximately 11-mile long route from Bryan Mound to Stratton Ridge where it shares a common point with the three alternatives considered previously. From the Stratton Ridge common point to the ARCO Terminal in Texas City, the route is essentially the same as that assessed previously. Figure 1 provides a regional overview of Alternatives 1-4 and the remainder of the proposed route. The Stratton Ridge-to-Texas City segment is about 35 miles long.

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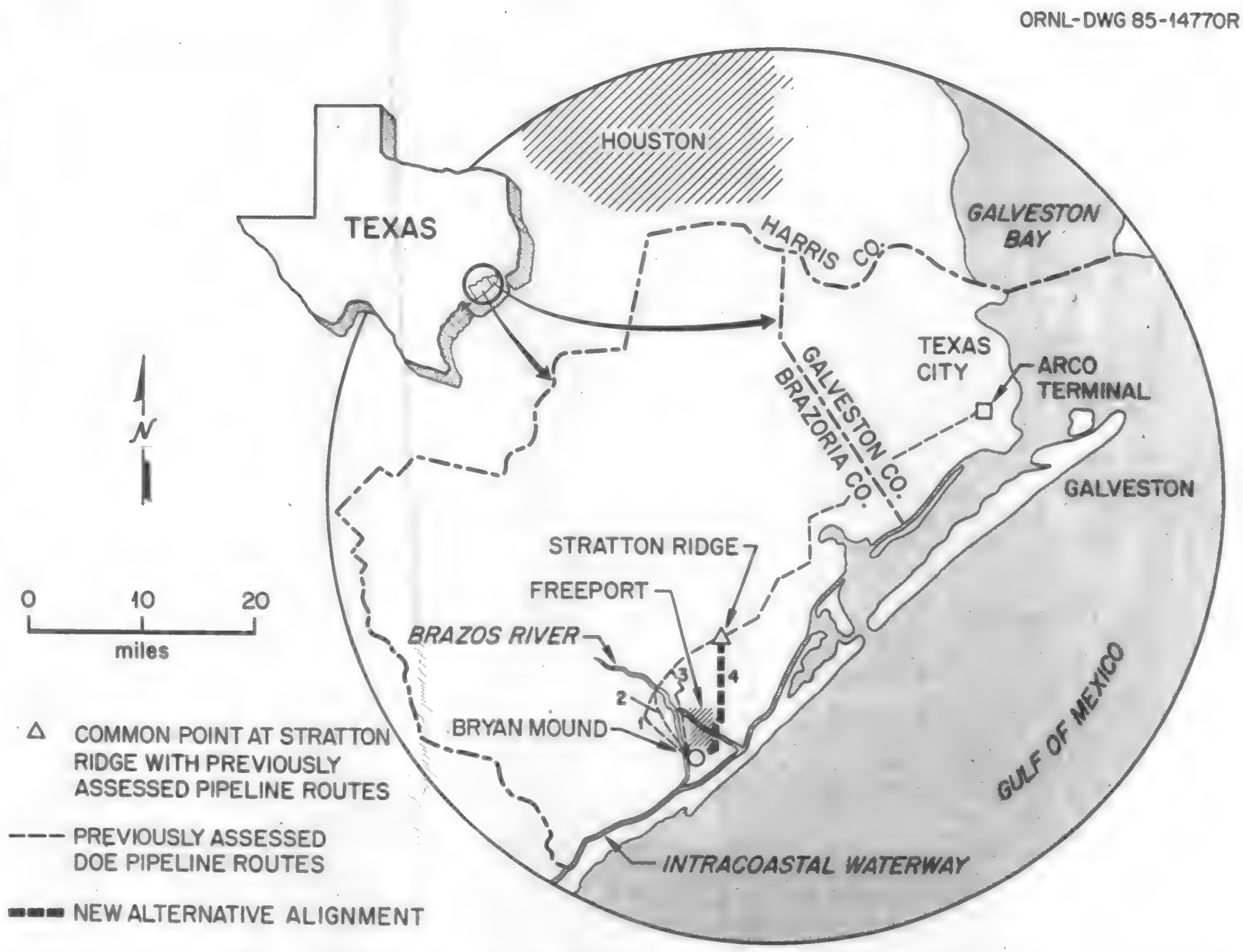


Figure 1. Regional overview of alternative DOE pipeline routes

Floodplain Involvement

Most of the Alternative 4 route is within the 100-year floodplain (Figure 2). From the SPR Bryan Mound storage site, which has an elevation above the 100-year floodplain, the pipeline route crosses the floodplain east-northeast along the north side of an elevated road (Bryan Mound Road). The route leaves the floodplain as it crosses State Highway 288/36 and a levee and enters the City of Freeport.

Within Freeport passes east of a residential area and turns north, crossing levees on either side of the Old Brazos River (Freeport Harbor) near the Stauffer Turning Basin. Except for a 1000-ft stretch beyond the north harbor levee, the route is within the floodplain as it proceeds north until it reaches a levee-protected area at the Dow Barge Canal. The route crosses three levees at this point and proceeds north. Between the Dow Barge Canal and Oyster Creek, the route is within the floodplan except for an 800-ft wide band at State Highway 332 and a 1-mile wide band along the south bank of Oyster Creek. After crossing the seventh and final levee at Oyster Creek, the route remains in the floodplain to the Stratton Ridge common point.

The areas within the 100-year floodplain delineated the Figure 2 are subject to flooding from high rainfall and storm surges associated with hurricanes and other coastal storms. Features shown in Figure 2 are based on current maps published by the Federal Emergency Management Agency supplemented by visual inspection of the proposed route during August 1985. The environments characterizing the floodplain in the vicinity of the proposed pipeline consist mainly of urban/industrial land and coastal prairie (primarily used as range and pasture); small areas of woodlands and coastal marsh are also encountered.

According to Executive Order 11988 (Floodplain Management, May 24, 1977), Federal agencies "shall consider alternatives to avoid adverse effects and incompatible development in the floodplain." If there is no "practicable alternative" to locating a project in a floodplain, an agency is to "design or modify its action in order to minimize potential harm to or within the floodplain." Natural and beneficial floodplain values to be protected include natural moderation or floods, water quality maintenance, groundwater recharge, support of living resources (marshes, fish and wildlife), cultural richness (archaeological, historical, recreational, scientific resources), and agricultural, aquacultural, and forestry production.

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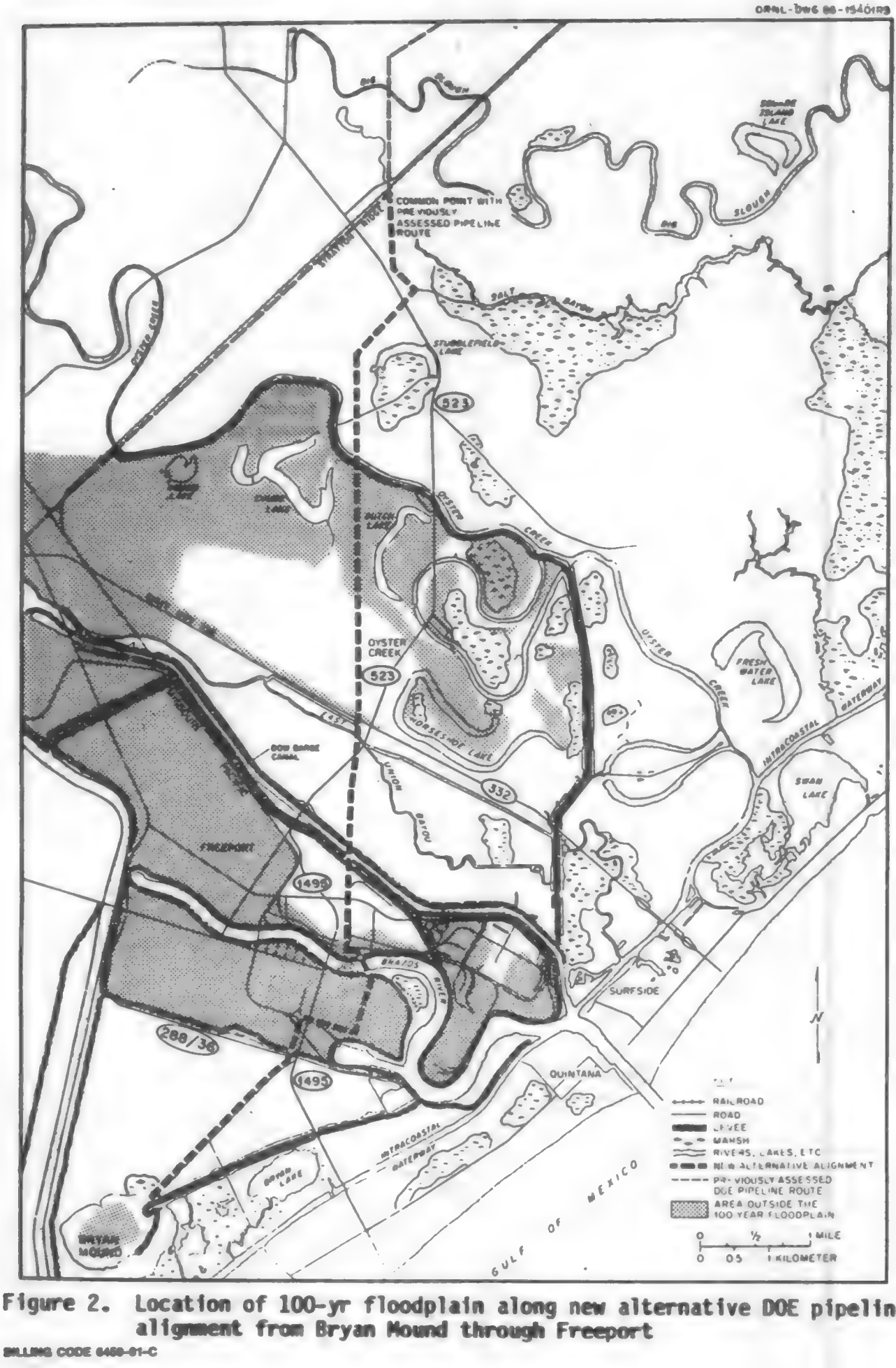


Figure 2. Location of 100-yr floodplain along new alternative DOE pipeline alignment from Bryan Mound through Freeport

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There is no practicable alternative pipeline route from Bryan Mound past Freeport that would entirely avoid activity in the floodplain. About 8 miles, or 71 percent, of Alternative 4 is within the floodplain. This is comparable to the other three alternatives which involve from 8 to 13 miles of floodplain between Bryan Mound and the common point at Stratton Ridge.

Alternative 4 crosses nine water bodies and seven levees. In comparison, Alternatives 1 and 2, which bypass Freeport to the west and north by crossing the Brazos River twice, cross seven water bodies and five levees six water bodies and four levees, respectively. Alternative 3, which parallels the east bank of the Brazos River past Freeport, crosses two water bodies and five levees.

About 84 percent of the 35-mile segment of the project pipeline from the common point at Stratton Ridge to the ARCO Terminal in Texas City is in the floodplain. The 5.5 mile portion that is not in the floodplain is located principally in Galveston County.

Wetlands Involvement

Alternative 4 involves about 0.1 mile of wetlands, all located immediately adjacent to the Bryan Mound site (Figure 2). In comparison, Alternative 3 along the east bank of the Brazos would virtually avoid wetlands. Alternatives 1 and 2 involve about 4 miles and 3 miles of wetlands, respectively. The common segment from Stratton Ridge to Texas City involves about 1 mile of wetlands, mainly associated with stream crossings.

Executive Order 11990 (Protection of Wetlands, May 24, 1977) requires Federal agencies to avoid construction in wetlands (e.g., coastal marshes) unless "there is no practicable alternative" and "all practicable measures to minimize harm" are included. There is no practicable alternative pipeline route from Bryan Mound to Texas City that would entirely avoid wetlands. However, Alternative 3 would avoid wetlands in routing the pipeline from Bryan Mound past Freeport.

Floodplain/Wetlands Effects

The effect of pipeline construction on the floodplain will be direct, minor and short-term. During construction, small areas of pastureland and wildlife habitat will be disturbed for the 100-ft (maximum) construction right-of-way (ROW) and the 50-ft maintenance ROW (maximum). The ROW may be defined as that area consisting of a perpetual easement plus a temporary construction zone. Normally, the ROW will be a total of 125 ft wide. However, at major crossings, the total will be greater due to additional construction zones required. Maximum ROW areas at major crossings are estimated to be 200 ft by 600 ft.

For Alternative 4, a small wooded area is encountered between Oyster Creek and Highway 523; the permanent ROW in this area will be 25 ft wide and will require clearing about 2 acres of oak and other hardwood trees. Since about 70 percent of the Alternative 4 route uses existing ROW, there will be little net change to habitat from the construction ROW or from the maintenance ROW. Alternatives 1–3 each use existing ROW for about 77 percent, 53 percent, and 85 percent of their total lengths, respectively.

Because the pipeline will be buried and designed to minimize the potential for leakage, there will be no interference with natural moderation of floods, water quality maintenance, groundwater recharge, or agricultural production. Similarly, there will be no increase in the threat to life or property from flooding as a result of the buried pipeline.

Effects of pipeline construction on wetlands will also be minor. For Alternative 4, the construction ROW will disturb about 1.1 acre of wetlands outside the northeast corner of Bryan Mound. The portion of this area that will be directly disrupted by digging the 10-ft wide pipeline trench is about 0.1 acre. This wetland area is part of a larger area that is to be filled for future development of an industrial park. For Alternatives 1 and 2, the pipeline trench will disrupt about 4 acres and 3 acres of wetlands, respectively.

The wetlands involved in Alternatives 1 and 2 and the common pipeline segment east of Stratton Ridge are mainly brackish and fresh or intermediate coastal marshes. Although such coastal marshes are important as habitat and in maintaining the bay-estuarine ecosystem, none of the areas involved are specifically set aside for wildlife; further, they are often disturbed by grazing and other uses.

Mitigation

Permit conditions will ensure that the effects of the pipeline on floodplains and associated wetlands will be temporary and localized and will minimize harm to floodplains and wetlands in accordance with E. O. 11988 and E. O. 11990. In particular, return to original bottom contours (U.S. Army Corps of Engineers, General Permit 15800, Special Condition 3), revegetation of riparian areas (General Permit 15800, Special Condition 7), and disposal of dredge spoils in upland areas (General Permit 15800) will minimize construction effects on surface waters. For water bodies to be crossed by directional drilling, General Permit 14114 specifies that there will be no dredging or filling in the waterway or adjacent wetlands (Special Condition f), no disturbance to adjacent wetlands or submerged vegetation (Special Condition g), and restoration of preproject ground conditions (Special Condition h).

Construction techniques will ensure that flood protection levees will not be disturbed during pipeline crossings. For Alternative 4, the Old Town Site levee (the first one encountered) will be crossed by boring. The remaining six levees will be crossed using directional drilling. Either method will prevent disturbance of existing embankments. Also, seasonal limitations on construction activity (e.g., during hurricane season) in the vicinity of levees will be observed. Construction techniques at water crossings should minimize water quality impacts. Buffer zones for water body crossings of up to 200 ft perpendicular to the pipeline and up to 600 ft parallel to the pipeline will separate construction activities from the water's edge on each side.

The risks and potential impacts of crude oil spills will be reduced by routine pipeline inspection and maintenance and implementation of a spill contingency plan.

Issued at Washington, DC Dated: December 19, 1985.

William A. Vaughan,

Assistant Secretary, Environment, Safety, and Health.

[FR Doc. 85–30516 Filed 12–24–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 85–39–NG]

Energy Marketing Exchange, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 11, 1985, of an application filed by Energy Marketing Exchange Inc. (EME), a wholly-owned subsidiary of NUI Corporation (NUI) and affiliate of Elizabethtown Gas Company, for

blanket authorization to import from Canada up to 50 Bcf of natural gas over a two-year period beginning on the date of first delivery. The gas will be supplied by various Canadian producers, pipelines, gas utilities and marketers. EME would then resell the gas to industrial and commercial end-users, agricultural users, and electric utilities or would act as an agent on behalf of Canadian producers and marketers and the U.S. purchasers. EME proposes to file quarterly reports showing the specific terms of each import and sale, including the price and volumes.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and Delegation Order No. 0204–111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on January 27, 1986.

FOR FURTHER INFORMATION CONTACT:

Clifford P. Tomaszewski, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room Ga–076, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–9760;

Diane Stubbs, Office of General Counsel, Natural Gas and Mineral Leasing, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made in accordance with section 3 of the Natural Gas Act and consistent with the Secretary of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076–A, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., January 27, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in despute that are relevant and material to a decision and that a trial-type hearing is necesary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of EME's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 18, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–30432 Filed 12–26–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER86–145–000]

Bangor Hydro-Electric Co.; Filing

December 19, 1985.

Take notice that Bangor Hydro-Electric Company (BH), on December 16, 1985, tendered for filing as a rate schedule an executed agreement date as of November 1, 1985 between BH and Central Vermont Public Service Corporation (CVPS). The proposed rate schedule provides for the sale of non-firm energy by BH to CVPS.

BH states that a copy of the filing was mailed to CVPS.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–30483 Filed 12–24–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER86–146–000]

Bangor Hydro-Electric Co.; Filing

December 19, 1985.

Take notice that Bangor Hydro-Electric Company (BH), on December 16, 1985, tendered for filing as a rate schedule an executed agreement dated as of November 1, 1985 between BH and Green Mountain Power Corporation (GMP). The proposed rate schedule provides for the sale of non-firm energy by BH to GMP.

BH states that a copy of the filing was mailed to GMP.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 26, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30484 Filed 12-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-176-000]

The Dayton Power and Light Co.; Filing

December 18, 1985.

Take notice that on November 25, 1985, the Dayton Power and Light Company (DP&L) tendered for filing an executed Service Agreement For Partial Requirements And/Or Transmission Wheeling Service To Municipalities For Resale (Service Agreement) between DP&L and the Village of Eldorado, Ohio, and a Notice of Cancellation of FERC Electric Tariff, Original Volume 1.

The proposed Service Agreement permits the Village of Eldorado to receive partial requirements and transmission wheeling service from DP&L under its FERC Electric Tariff, Original Volume No. 2. The previous service agreement between DP&L and the Village of Eldorado under which the Village of Eldorado received service pursuant to DP&L's FERC Electric Tariff Original Volume No. 1, is superseded.

No customers will remain on FERC Electric Tariff, Original Volume No. 1 and the same Full Requirement Service is available on FERC Electric Tariff, Original Volume No. 2 on file with the Commission.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed Eldorado Service Agreement and the Notice of Cancellation to become effective December 1, 1985.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 24, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30485 Filed 12-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-355-008]

Natural Gas Pipeline Co. of America; Petition to Amend

December 18, 1985.

Take notice that on December 5, 1985, Natural Gas Pipeline Company of America (Petitioner), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP82-355-008, a petition to amend the order issued January 14, 1985 in Docket No. CP82-355-000, pursuant to section 7(c) of the Natural Gas Act so as to authorize interconnections between the facilities of Petitioner and United Gas Pipeline Company (United) at Deep Lake in Cameron Parish, Louisiana and at the outlet of the Henry plant in Vermilion Parish, Louisiana and to delete two sale points directly to Entex previously authorized but never put in service at Lake Charles in Calcasieu Parish, Louisiana, and at the Henry plant and to delete 16.22 miles of 10-inch pipeline previously authorized but never constructed which would have been required to effectuate deliveries to Entex at Lake Charles, all as more fully described in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by order issued January 14, 1985, the Commission affirmed an Initial Decision issued June 22, 1984, in Docket No. CP82-355-000 which authorized Petitioner to increase its daily contract quantity to Entex from 1,850 Mcf to 50,000 Mcf, to add, among others, the Lake Charles and Henry plant sales points and to construct and operate 16.22 miles of ten-inch pipeline to make the Lake Charles deliveries. Deliveries to Entex at the Henry plant were to be made through existing facilities between Petitioner and Entex.

Petitioner states that Entex has entered into a transportation agreement with United dated September 30, 1985, whereby United would transport volumes of gas from two existing interconnections between Petitioner and United at Deep Lake, and at the outlet of the Henry plant in lieu of the authorized direct deliveries by Petitioner. United would redeliver these volumes to Entex at various existing interconnections between Entex and United. (United filed for authority to provide such transportation on October 31, 1985 in Docket No. CP86-111-000). Petitioner states that because of Entex's transportation arrangment with United, Petitioner would no longer require the Lake Charles and Henry plant sales delivery points or the related pipeline facilities, previously authorized. Petitioner would require, in their place, the new sales points at Deep Lake and at the outlet of the Henry plant described above at which it would deliver to United, on Entex's behalf. No additional facilities would be required for these two new sales points.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before Dec. 31, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385 214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30486 Filed 12-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-19-103]

Salmon River Basin, Idaho; Intent to Prepare an Environmental Impact Statement; Conduct a Scoping Meeting; Conduct a Technical Workshop

December 18, 1985.

The staff (Staff) of the Federal Energy Regulatory Commission has concluded Phases 1 and 2 of the Salmon River Basin Cluster Impact Assessment Procedure (CIAP), and its analysis

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indicates that the development of the 15[1] proposed hydroelectric projects included in the CIAP study constitutes a major Federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) on the 15 proposed projects in accordance with the National Environmental Policy Act. Possible alternatives to the proposed actions will be addressed. Site specific and cumulative environmental impacts will be evaluated in the EIS.

Interested persons and agencies are invited to provide comments and recommendations, including any supporting data, on the scope of the planned EIS. The identified target resources,[2] already under detailed cumulative impact analysis by the Staff, will be evaluated in the EIS, as well as other relevant resources and issues.

The EIS scoping process will entail an evaluation by the Staff of all the environmental issues of primary concern, based on the comments received and the Staff's independent analysis. An EIS scoping document will be prepared, distributed to the interested parties, and discussed in conjunction with the Staff's planned CIAP Phase 3 Technical Session. The technical session will begin on January 27, 1986, at the Boise Inter-Agency Fire Center (BIFC), 3905 Vista Avenue, Boise, Idaho, in the training building auditorium at 9:00 a.m. and will continue through January 29th. The EIS scoping sessions wil be held at 8:30 a.m. and at 7:00 p.m. on January 30th, also at the BIFC auditorium.

Comments and recommendations should be filed with the Commission on or before February 15, 1986, and must be addressed to Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, and should clearly show the following caption on the first page: Salmon River Basin, Idaho, Docket No. EL85–19–103.

For further information, please contact the FERC Project Manager,John Staples, at (202) 376–9064 or Robert F. Koch, FERC Attorney, (202) 357–5776.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–30487 Filed 12–24–85; 8:45 am]

BILLING CODE 6717-01-M

[1] FERC Projects Nos. 6433, 6434, 6435, 7225, 7299, 7300, 7301, 7334, 7340, 7378, 7380, 7382, 7383, 7589, and 7899.

[2] Chinook salmon, steelhead trout, rainbow trout, cutthroat trout, bull trout, elk, mule deer, and riparian habitat.

[Docket No. ER86–79–000]

Western Massachusetts Electric Co.; Supplemental Filing

December 18, 1985.

Take notice that, on December 12, 1985, Northeast Utilities Service Company, as agent for Western Massachusetts Electric Company, filed additional information on its filing in this docket.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 24, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the preceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–30488 Filed 12–24–85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of November 11 Through November 15, 1985

During the week of November 11 through 15, 1985, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy.

Requests for Exception

Mid-West Oil, Ltd, 11/15/85, HEE–0141

Mid-West Oil, Ltd. filed an Application for Exception to be relieved of the requirement to prepare and file Form EIA–782B with the DOE Energy Information Administration. The basis of the request was the firm's claim that the filing requirement posed an inordinate burden. In considering the request, the DOE found that the information supplied by the firm was insufficient to support the exception request and that the firm refused to supply additional, necessary material although requested to do so. Under the circumstances, the application was denied.

Red River Oil Company, 11/14/85, HEE–0164

The Red River Oil Company filed an Application for Exception seeking relief from the requirement that it prepare and file Form EIA–782B (Reseller/Retailers' Monthly Petroleum Product Sales Report) with the DOE Energy Information Administration. In a Proposed Decision and Order issued on October 2, 1985, the DOE found that Red River had failed to show that the burden of completing the Form outweighed the benefit to the nation of having the EIA–782B survey results. The firm filed a Statement of Objections to the Proposed Decision and Order on October 15, 1985. In considering the firm's objections to the Proposed Decision, the DOE concluded that any burden experienced by Red River Oil as a result of the filing requirement was not out of proportion to the burden placed upon other, similarly situated firms. Accordingly, the request was denied.

Ted's Truck Center, 11/15/85, HEE–0156

Ted's Truck Center filed an Application for Exception in which it sought relief from the requirement that it prepare and file Form EIA–782B with the DOE Energy Information Administration. According to the firm, because of its limited staff, the filing requirement creates an undue hardship. In considering the request, the DOE found that the information supplied by the firm was insufficient to support its exception request. When the additional, necessary information which was requested was not provided, the application was denied.

Walthall Oil Company, 11/15/85, HEE–0149

The Walthall Oil Company filed an Application for Exception in which it sought relief from the requirement that it prepare and file Form EIA–821 with the DOE Energy Information Administration. According to Walthall, the filing requirement was unduly burdensome. In considering the request, the DOE found that the firm had not shown that any burden which it experienced as a result of this filing requirement was greater than that of other, similarly situated firms. Nor did Walthall demonstrate that the burden of filing the form outweighed the public policy interest in receiving the data produced by the EIA–821 survey. Accordingly, Walthall's request for exception was denied.

Motion for Discovery

Marathon Oil Co., Economic Regulatory Administration, Growmark, Inc., 11/14/85, HRD-0043, HRD-0036, HRD-0044, HRD-0053, HRD-0062, HRD-0043, HRD-0024

Marathon Oil Company, the Economic Regulatory Adminstration and Growmark, Inc., filed Motions for Discovery and Evidentiary Hearing concerning the class of purchaser issue set forth in a Proposed Remedial Order issued to Marathon. In the PRO, the ERA alleged that based on both a supply contract entered into by Growmark and Marathon, and the manner of Growmark's purchases from Marathon, Marathon improperly included Growmark in its wholesale reseller classes, rather than in its own separate "Growmark contact class." The OHA found that the Growmark supply contract was not the type which warranted the creation of a separate class of purchaser, and that Growmark's manner of purchasers did not result in a significant cost savings to Marathon. As a result the OHA concluded that Growmark properly belonged in Marathon's wholesale reseller class of purchaser. The OHA therefore found it likely that the legal theory set forth in the PRO would not be sustained. Consquently, it decided that the Motions for Discovery and Evidentiary Hearing, which sought information relating to that theory, were irrelevant. Accordingly, all motions filed in connection with the class of purchaser issue were denied.

Motion for Evidentiary Hearing

J.D. Streett & Co., Inc., 11/15/85, HRH-0037

J.D. Streett and Company, Inc. filed a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on May 21, 1982. In its motion, Streett contended that documents which ERA furnished to explain the basis of its margin computations for regular, unleaded, and premium gasoline do not explain the assumptions upon which the calculations are based. The firm thus maintained that an evidentiary hearing should be convened to determine the proper maximum lawful selling prices of its unleaded gasoline sales, including but not limited to an examination of the firm's lawful margins for unleaded gasoline.

In its decision, the DOE noted that evidentiary hearings are convened only for the presentation of evidence on disputed factual issues. It further determined that the arguments which Streett advanced in support of its motion for evidentiary hearing were purely legal in nature. Because an evidentiary hearing is not the proper forum for establishing legal positions, the DOE denied the firm's motion.

Implementation of Special Refund Procedures

Pasco Petroleum Company, 11/15/85, HEF-0146

The DOE issed a Decision and Order implementing a plan for the distribution of $113,842, plus accrued interest, received as the result of a consent order entered into by Pasco Petroleum Company and the DOE. The DOE determined that the Pasco settlement fund should be distributed to customers that were injured as a result of purchases of motor gasoline from Pasco during the period November 1, 1973 through April 30, 1974. The DOE also decided that for small claimants, a separate detailed showing of injury would not be required of applicants for refunds of $5,000 or less. The Decision discusses specific information to be included in refund applications.

Refund Applications

C.C. Dillion Company/Watkins "66" Service Station, 11/14/85, RF148-3

The DOE issued a Decision and Order Concerning an Application for Refund filed by Watkins "66" Service Station, a reseller of motor gasoline purchased from C.C. Dillion Company. Watkins provided purchase volume figures for the consent order period and requested a refund below the $5,000 threshold level. In accordance with the procedures established in the Dillion Special Refund Proceeding, the DOE determined that Watkins should receive a refund based on a prorated portion of the alleged overcharges to the applicant. The total refund amount approved in this Decision is $2,060, representing $1,709 in principal and $351 in interest.

Field Oil Company/Vern's Midtown Amoco Service et al., 11/15/85, RF173-1 et al.

The DOE issued a Decision and Order concening Applications for Refund filed by twelve resellers of motor gasoline purchased from Field Oil Company. Eleven of the applicants were identified in the ERA Filed audit file as having allegedly been overcharged. In addition, each applicant provided documentation of its purchase volumes of Field motor gasoline and requested a refund below the $5,000 threshold level. In accordance with the procedures established in the Field Special Refund Proceeding, the DOE determined that the eleven applicants who were identified in the Field audit file should receive refunds based on the alleged overcharges to the applicant. The DOE found that the twelfth applicant was not injured by Field's pricing practices and therefore was not entitled to a refund. The total amount of refunds approved in this Decision is $24,249, representing $13,493 in principal and $10,756 in interest.

Gulf Oil Corporation/Adams Oil & Tire Company, Inc., et al., 11/14/85, RF40-522, et al.

Adams Oil & Tire Company, Service Oil Company, C.R. Black Coal & Oil Company and Gramco Ltd. filed Applications for Refund seeking portions of the fund obtained through a Consent Order entered into by the DOE and Gulf Oil Corporation. Each of the firms demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the refund it was claiming. Accordingly, the DOE found it appropriate to award the firms refunds totalling $44,821, representing $38,781 in principal and $6,040 in interest.

Gulf Oil Corporation/Gordon C. Varn, Inc., et al., 11/12/85, RF40-841, et al.

Gordon C. Varn, Inc., and 16 other gasoline and middle distillate wholesalers and retailers, filed Applications for Refund in which they sought a portion of the funds obtained through a consent order entered into by the DOE and Gulf Oil Corporation. The DOE found that each of the firms demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund amount that they claimed. The DOE therefore decided that Gordon C. Varn, Inc. and the 16 other wholesalers and resellers would receive a cumulative refund amount totalling $135,935, representing $117,614 in principal and $18,321 in interest.

Gulf Oil Corporation/Simmons Oil Corporation, et al., 11/12/85, RF40-363, et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed by purchasers of Gulf Oil Corporation petroleum products. The claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. All of the claimants demonstrated that they would not have been required to reduce selling prices to their customers by the amount of refund received, and that they had purchased products directly. Therefore, the DOE concluded that the claimants should receive refunds totalling $8,324, representing $7,202 in principal and $1,122 in interest.

Gulf Oil Corporation/Younce Gulf Service, Inc., et al., 11/13/85, RF40-202, et al.

The DOE issued a decision concerning 21 Applications for Refund filed by purchasers of Gulf Oil Corporation petroleum products. The claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. All of the claimants demonstrated that they would not have been required to reduce selling prices to their customers by the amount of refund received, and that they had purchased products directly. Therefore, the DOE concluded that the claimants should receive refunds totalling $36,573, representing $31,645 in principal and $4,928 in interest.

Little America Refining Company/Bree's Oil Company et al., 11/15/85, RF112-37, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by 20 purchasers of Little America Refining Company petroleum products. The applicants documented the volume of their purchases from Larco during the consent order period and requested refunds below the $5,000 threshold level. In accordance with the procedures established in the Larco Special Refund Proceeding, the DOE determined that the applicants should receive refunds based on the volume of product they purchased from Larco during the consent order period. The total amount of refunds approved in this Decision is $31,827, representing $21,874 in principal and $9,953 in interest.

Little America Refining Company/Kraus Oil Company, 11/12/85, RF112-182

The DOE issued a Decision and Order granting an Application for Refund filed by Kraus Oil Company, a purchaser of Little America Refining Company petroleum products. Kraus, a reseller of motor gasoline and middle distillates, documented the volume of its purchases from Larco during the consent order period and requested a refund below the $5,000 threshold level. In accordance with the procedures established in the Larco Special Refund Proceeding, the DOE determined that Kraus should receive a refund based on the volume of product it purchased from Larco during the consent order period. The total amount of refunds approved in this Decision is $1,014, representing $697 in principal and $317 in interest.

Little America Refining Company/Nebraska Public Power District, et al., 11/15/85, RF112–6, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by 20 purchasers of Little America Refining Company petroleum products. The applicants documented the volume of their purchases from Larco during the consent order period and requested refunds below the $5,000 threshold level. In accordance with the procedures established in the Larco Special Refund Proceeding, the DOE determined that the applicants should receive refunds based on the volume of product they purchased from Larco during the consent order period. The total amount of refunds approved in this Decision is $37,975, representing $26,100 in principal and $11,875 in interest.

Little America Refining Company/Olson Brothers, et al., 11/15/185, RF112–144, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by 3 purchasers of Little America Refining Company petroleum products. The applicants documented the volume of their purchases from Larco during the consent order period and requested refunds below the $5,000 threshold level. In accordance with the procedures established in the Larco Special Refund Proceeding, the DOE determined that the applicants should receive refunds based on the volume of product they purchased from Larco during the consent order period. The total amount of refunds approved in this Decision is $6,859, representing $4,724 in principal and $2,135 in interest.

Little America Refining Company/Valley Petroleum Company, 11/14/85, RF112–180

The DOE issued a Decision and Order granting an Application for Refund filed by Valley Petroleum Company, a purchaser of Little America Refining Company petroleum products. Valley documented the volume of its purchases of general refinery products from Larco during the consent order period and requested a refund below the $5,000 threshold level. In accordance with the procedures established in the Larco Special Refund Proceeding, the DOE determined that the applicant should receive a refund based on the volume of product it purchased from Larco during the consent order period. The total refund amount approved in this Decision is $4,522, representing $3,109 in principal and $1,413 in interest.

Little America Refining Company/Wolf Oil Company, 11/13/85, RF112–8

The DOE issued a Decision and Order granting an Application for Refund filed by Wolf Oil Company, a purchaser of Little America Refining Company petroleum products. Wolf documented the volume of its purchases of general refinery products from Larco during the consent order period and requested a refund below the $5,000 threshold level. In accordance with the procedures established in the Larco Special Refund Proceeding, the DOE determined that the applicant should receive a refund based on the volume of product it purchased from Larco during the consent order period. The total refund amount approved in this Decision is $1,000, representing $689 in principal and $311 in interest.

Standard Oil Company (Indiana)/State of Colorado, RQ21–231; State of Wisconsin, RQ21–233; The Navajo Nation, 11/13/85, RQ21–232

The OHA issued a Decision and Order approving the Navajo Nation's second-stage refund plan for use of the Standard Oil Co. (Indiana) (Amoco) escrow funds. OHA also approved restitutionary plans from the States of Colorado and Wisconsin for use of the Amoco moneys remaining for those states. Colorado plans to use $65,000 of the Amoco funds to promote car and vanpooling and ridesharing in the metropolitan Denver area. Wisconsin will use $449,160 of the Amoco funds to provide residential furnace adjustment and apartment demonstration weatherization programs, and to purchase a gas chromatograph. The Navajo Nation will use $7,208 allocated to it to develop an educational brochure to increase solar energy awareness among tribal members. The OHA found these programs to be restitutionary to injured Amoco consumers.

Witco Chemical Corporation/Triangle Gasoline Company of Butler, Inc., 11/14/85, RF115–5

The DOE issued a Decision and Order granting an Application for Refund filed by Triangle Gasoline Company from the Witco Chemical Corporation consent order fund. Triangle documented the volume of its purchases from Witco during the consent order period and requested a refund below the $5,000 threshold level. In accordance with the procedures established in the Witco Special Refund Proceeding, the DOE determined that each applicant should receive a refund based on the volume of product it purchased from Witco during the consent order period. The total refund amount approved in this Decision is $2,164, representing $1,387 in principal and $777 in interest.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 17, 1985.

[FR Doc. 85–30433 Filed 12–24–85; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of November 25 Through November 29, 1985

During the week of November 25 through November 29, 1985, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Tampimex Oil International, Inc., 11/29/85, *HRO–0292, HRD–0292*

On March 25, 1985, the ERA issued a Proposed Remedial Order (PRO) to Tampimex Oil International, Inc., alleging that during the audit period Tampimex violated the crude oil reseller pricing rule set forth at 10 CFR § 212.182, and the anti-layering provision set forth at 10 CFR § 212.186. In its Statement of Objections, Tampimex challenged the ERA's calculation of its permissible average markup, and presented documentation supporting its position. On October 11, 1985, the ERA filed a Motion to Dismiss the PRO, stating that, in view of the material in Tampimex's Statement of Objections, it was necessary to re-evaluate certain of the allegations in the PRO.

OHA determined that good cause existed for allowing the ERA to withdraw the PRO, and that Tampimex would not be unduly prejudiced by such action. Accordingly, OHA granted the motion to dismiss the PRO, and also dismissed the firm's related Motion for Discovery.

Request for Exception

Millard A. Peake, 11/25/85, *HEE–0155*

Millard A. Peake filed an Application for Exception in which he sought relief from his obligation to file Form EIA–782B. Peake's application asserted that it would take three to six hours to complete the form, and that this amount of time would create an inordinate burden for him. In considering the request, the DOE found that because Peake had never filed any of the EIA forms, his claim concerning the time involved in completion of the form was purely speculative, and would not support the approval of exception relief. Peake's request for exception was accordingly denied.

Request for Modification and/or Rescission

Jack W. Grigsby d.b.a. Grigsby Oil & Gas, 11/25/85, *HRR–0098*

Jack W. Grigsby d/b/a Grigsby Oil & Gas filed a Motion for Reconsiderationn of a January 14, 1985 Supplemental Order issued by the Office of Hearings and Appeals, *Jack W. Grigsby d/b/a Grigsby Oil & Gas,* 12 ¶ 82,542 (1985), in which the OHA had determined that none of the proceeds of an escrow account established pursuant to the 1976 DOE order, *Jack W. Grigsby d/b/a Grigsby Oil & Gas,* 5 FEA ¶ 85,004 (1986), should be returned to Grigsby. After considering additional information furnished by the firm in its submission and at a meeting between DOE personnel and Grigsby, the OHA determined that the January 14, 1985 determination should be modified. The amount of money to be remitted to the DOE for providing restitution to injured Grigsby customers was calculated and the remaining escrow funds were ordered to be returned to the firm.

Motions for Discovery

Economic Regulatory Administration, 11/25/85, *HRD–0294*

The DOE's Economic Regulatory Administration (ERA) filed a Motion for Discovery in connection with an enforcement proceeding involving a Proposed Remedial Order (PRO) issued to Texaco Inc. (Texaco) on February 7, 1985. In the PRO, ERA alleges that Texaco determined excessive May 15, 1973 selling prices for certain classes of purchasers. This determination is based on allegations that Texaco made sales on or before May 15, 1973 pursuant to written contracts but did not use the prices charged in those sales as the May 15, 1973 components of its maximum allowable prices. Rather, the PRO finds, Texaco used posted price quotations implemented on June 1, 1973 or thereafter as the May 15, 1973 components of its maximum allowable prices. In its motion, ERA requested discovery with respect to two of the additional factual representations set forth in the firm's Statement of Objections.

The first representation as to which ERA sought discovery was that between the dates that the written contracts became binding and May 15, 1973, Texaco entered into oral contracts with its customers for the pricing system implemented on June 1, 1973 and thereafter. In considering ERA's request for discovery with respect to this representation, the DOE found that under Ruling 1977–5 a presumption existed that oral contracts become binding upon the date of delivery of product and, therefore, Texaco's alleged oral contracts were post-May 15, 1973 contracts. The DOE further found that Texaco's representation concerning these alleged oral contacts was too general and vague to rebut that presumption. Finally, the DOE found that under the DOE procedural regulations Texaco had had ample opportunity to make specific representations concerning the alleged oral contracts, that Texaco has failed to do so, and that Texaco had not presented good cause for such failure. Accordingly, the DOE concluded, Texaco was foreclosed from making any further representations or submitting evidence on the issue. The DOE therefore concluded that ERA's request for discovery on the issue did not seek "relevant and material evidence" under 10 CFR 205.198(c), and this discovery request was denied.

The second representation as to which ERA sought discovery was that "several undercharge/offset situations" existed that warranted reduction of the alleged violation amount. In considering this request, the DOE noted that Texaco did not represent that its alleged undercharges met the standards for "offsets" established in *Mid-Continent, Inc.,* 3 FEA ¶ 80,507 (1975), and therefore, discovery about whether Texaco met these requirements did not relate to a disputed issue. According, this discovery request was also denied.

Economic Regulatory Administration, 11/26/85, *HRD–0295*

The DOE's Economic Regulatory Administration (ERA) filed a Motion for Discovery in connection with a pending enforcement proceeding involving Texaco, Inc. That proceeding involves a Proposed Remedial Order (PRO) in which ERA challenges, *inter alia,* the May 15, 1973 prices that Texaco determined for certain customers. In its motion, the ERA requested discovery with respect to an additional factual representations set forth in Texaco's Statement of Objections. The representation was that May 15, 1973 prices that Texaco utilized for the customers specified in the PRO were the same as the May 15, 1973 prices charged "similarly situated customers with substantively identical variable-priced contracts." The DOE found that since Texaco conceded that it had single-member classes of purchaser, information concerning Texaco's sales to customers other than those specified in the PRO were not relevant to the proper determination of May 15, 1973 prices for the customers specified in the PRO. Accordingly, ERA's request for discovery was denied.

MacMillan Oil Company Inc., 11/25/85, *HRD–0294*

On April 4, 1983, MacMillan Oil Co., Inc. filed a Motion for Discovery requesting that the ERA be directed to produce audit-related documents and answer interrogatories. In addition, the firm reserved the right to request the depositions of certain ERA personnel identified through its discovery requests. In denying the Motion, the DOE determined that the firm's request for audit-related documents was overly broad in that it requested documents other than the audit workpapers which the firm was entitled to receive. The DOE also found that the firm's failure to submit any interrogatories with its Motion rendered its request for answers to interrogatories irrelevant and immaterial. Since the DOE denied the firm's underlying and discovery request, it was not necessary to consider the firm's request to depose ERA personnel.

Patton Oil Company, 11/26/85, *HRD–0238, HRH–0036*

Patton Oil Company filed Motions for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order issued to the firm. In considering the Motions, the DOE found that Patton had not shown that its requested discovery was relevant or material to the disputed factual issues involved in the proceeding. Specifically, Patton's request for contemporaneous construction on the meaning and application of the terms "newly discovered crude oil" and "property" were denied because Patton had not demonstrated that this discovery would further clarify the issues in the proceeding. Patton's request for certain audit file materials was denied because the firm did not show the presence of any special circumstances that would have made the requested information from the audit file relevant and material to the issues raised in the proceeding. The DOE also found that Patton was incorrect in contending that the Freedom of Information Act (FOIA) is a proper basis for discovery. The DOE stated that the releasability of documents pursuant to a FOIA request is irrelevant on the issue of whether discovery is appropriate. Finally, Patton did not identify the factual disputes which it believed could have been resolved by convening an evidentiary hearing. Thus, the firm failed to provide sufficient information to enable the DOE to make a reasoned determination concerning the relevance of any potential facts to be established at the hearing. For the above reasons, Patton's Motions for Discovery and Evidentiary Hearing were denied.

Motion for Evidentiary Hearing

Texaco Inc., Philadelphia Electric Co., et al., Economic Regulatory Administration, *KRH–0003, KRZ–0007, KRZ–0008, KRZ–0009, KRZ–0010*

Several motions and requests were filed with the Office of Hearings and Appeals (OHA) in connection with a pending enforcement proceeding involving Texaco Inc. (Texaco), Case No. DRO–0128. Those motions and requests included: (i) A motion for evidentiary hearing filed by Texaco on July 18, 1985; (ii) two motions to amend filed by Texaco respectively on July 25, 1985 and on August 30, 1985, relating to a Statement of Factual Objections filed by Texaco in the proceeding; (iii) a request to participate filed on May 13, 1985, by Philadelphia Electric Company, National Freight, Inc., RJC Cab Inc., and Geraldine H. Sweeney; and (iv) a request filed by the Economic Regulatory Administration (ERA) on March 4, 1985 that OHA deny Texaco's confidentiality claims or, in the alternative, compel Texaco to justify its confidentiality claims for all past and future submissions in the proceeding. In considering these interlocutory matters, the DOE determined that: (i) Texaco's motion for evidentiary hearing was insufficiently specific and was improperly directed towards a legal matter; (ii) Texaco's motions to amend were untimely and contrary to prior determinations made by OHA in the proceeding; (iii) the request to participate was untimely; and (iv) ERA's request was unnecessary since OHA would independently evaluate Texaco's confidentiality claims at the close of the proceeding. Accordingly, Texaco's motion for evidentiary hearing was denied, Texaco's motions to amend were denied, the request to participate was denied.

and ERA's request concerning confidentiality was dismissed. In addition, OHA closed the record of the proceeding and scheduled a hearing for the purpose of oral argument.

Implementation of Special Refund Procedures

Busler Enterprises, Inc., Eastern Petroleum Corp., FKG Oil Co., General Equities, Inc., Indian Oil Co., 11/25/85, HEF-0045; HEF-0066; HEF-0073; HEF-0078; HEF-0085

The DOE issued a Decision and Order which establishes procedures for the distribution of funds totaling $292,889.48, plus interest, obtained as a result of Consent Orders with the following firms: Busler Enterprises, Inc., Eastern Petroleum Corp., FKG Oil Co., General Equities, Inc., and Indian Oil Co. The Decision sets forth refund application procedures for customers who purchased motor gasoline from the consent order firms during the relevant consent order period. Specific information regarding the data to be included in an Application for Refund is discussed in the Decision.

Northeastern Oil Company, Inc., 11/26/85, HEF-0139

The DOE issued a Decision and Order implementing a plan for the distribution of $30,000 plus interest, received as the result of a consent order with Northeastern Oil Company, Inc. (NOCI). The DOE determined that the settlement fund should be distributed to customers who were injured as a result of purchases of motor gasoline from NOCI during the period, December 18, 1978 through April 30, 1980. The Decision discussed specific information to be included in refund applications.

Pacer Oil Company of Florida, Inc., 11/29/85, HEF-0143

The DOE issued a Decision and Order implementing a plan for the distribution of $39,114.54 plus interest, received as the result of a consent order with Pacer Oil Company of Florida, Inc. The DOE determined that the Pacer settlement fund should be distributed to customers who were injured as a result of purchases of motor gasoline from Pacer during the period July 1, 1979 through December 31, 1979. The Decision discussed specific information to be included in refund applications.

Refund Applications

Allied Materials Corporation and Excel Corporation/Great Plains Corporation, 11/27/85, RF194-4

The DOE issued a Decision and Order concerning an application for refund filed by Great Plains Corporation (GPC), a reseller of petroleum products located in Wichita, Kansas. GPC filed its application following the procedures established in *Allied Materials Corporation and Excel Corporation*, 13 DOE ¶ 85,095 (1985). GPC sought a refund of $142,862 based on its purchases of diesel fuel and No. 6 fuel oil from Allied during the period August 19, 1973 through June 30, 1978. In considering the application, the DOE found that GPC had sufficient banked costs to support the claimed refund amount during the relevant time period. The DOE also found, however, that the prices GPC paid to Allied for diesel fuel placed the applicant at a competitive disadvantage during only three of the fourteen months during which purchases were made. Accordingly, the DOE determined that GPC had suffered injury from Allied's alleged pricing practices in its purchases of diesel fuel during these three months, and in all purchases of No. 6 fuel oil. GPC was granted a refund of $83,059, consisting of $60,624 in principal and $22,435 in interest.

Arkla Chemical Corporation/Halliburton Company et al., RF153-24 et al.; Arkansas Louisiana Gas Company/Halliburton Company et al. 11/26/85, RF154-7 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by purchasers of Arkla refined products. Two of the claimants applied for refunds from Arkla Chemical Corporation (Arkla I) for the amounts listed in the audit file for Arkla I, 13 DOE ¶ 85,043 (1985). Three claimants applied for volumetric refunds from Arkansas Louisiana Gas Company (Arkla II), *id.* Four firms applied for refunds below the 5,000 threshhold amounts, and the other applicant was an end-user. After examining the evidence and supporting information submitted by the applicants, the DOE concluded that they should receive refunds totalling $27,477 ($2,105 from Arkla I and $25,372 from Arkla II) based upon their purchases of Arkla refined products.

Charter Co./Dearybury Oil Company et al., 11/26/85, RF23-11 thru RF23-16

The DOE issued a Supplemental Order concerning a group of Applications for Refund filed in the Charter Company proceeding. *Charter Company/Dearybury Oil Company et al.* 11 DOE ¶ 85,017 (1983). The DOE discovered that the applicants listed in that decision had received incorrect interest payments. Accordingly, all were granted additional interest amounts. The total amount of additional payments awarded in this Decision is $11,668.

Cosby Oil Company/Winall Oil Company, 11/26/85, FR170-2

The DOE issued a Decision and Order concerning an Application for Refund filed by Winall Oil Company, a reseller of motor gasoline purchased from Cosby Oil Company. Winall requested a refund of $14,526, a prorated portion of the alleged overcharges to the firm, but was unable to make a sufficient showing of injury to merit a refund over the $5,000 threshold level. Accordingly, the DOE determined that Winall should receive a refund equal to the $5,000 threshold amount. The total refund amount granted in this Decision is $9,333 ($5,000 principal plus $4,333 interest).

Gulf Oil Corporation/ Avis Rent-a-Car, Inc., 11/27/85, RF40-720

The DOE issued a Decision and Order concerning an Application for Refund filed by Avis Rent-a-Car, Inc. based on purchases of Gulf motor gasoline and diesel fuel. Avis applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with these procedures, reseller claimants were required to demonstrate that they would not have had to pass through to customers a cost reduction equal to the refund claimed. After examining the evidence in the record, the DOE concluded that Avis' refueling fees constituted sales, so Avis was a reseller of the Gulf products. Because Avis was unable to demonstrate that it would have not have been required to pass through any refund by lowering prices charged to its customers for refueling, its Application was denied.

Gulf Oil Corporation/Rollins Leasing Corporation, 11/27/85, RF40-00468

The DOE approved an Application for Refund filed by Rollins Leasing Corporation, a reseller of Gulf petroleum products. Rollins applied for a refund based on its purchases of motor gasoline and diesel fuel, which it resold to its leasing customers, as well as lubricants, which it directly consumed.

Because of the way in which Rollins determined its prices of motor gasoline and diesel fuel on May 15, 1973, Rollins was limited under the pricing regulations to no profit margin throughout the consent order period. Consequently, it would have been ineligible for a refund based on these volumes of Gulf petroleum products. However, Rollins was allowed to increase its prices by $0.01 per gallon after January 1, 1974 in order to account for non-product cost increases. Rollins also granted a refund for the total volume of lubricants it purchases during the consent order period as an end-user. Rollins was granted a total refund of $3,793 including accrued interest.

Inland U.S.A., Inc. 11/25/85, RF176-7

The DOE issued a Decision and Order concerning an Application for Refund filed by UCO Oil Company, reseller of motor gasoline purchased from Inland U.S.A., Inc. UCO requested a refund of $71,446, a prorated portion of the alleged overcharges to the firm, but was unable to make a sufficient showing of injury to merit a refund over the $5,000 threshold level. Accordingly, the DOE determined that UCO should receive a refund equal to the $5,000 threshold amount. The total refund amount granted in this Decision is $7,096 ($5,000 principal plus $2,096 interest).

Little America Refining Company/Harpel Oil Company, 11/26/85, RF112-25

Harpel Oil Company, a reseller of motor gasoline and middle distillates, filed an Application for Refund based on the principles and procedures set forth in *Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985). In seeking a portion of the funds obtained by the DOE through a consent order with the Little America Refining Company, Harpel elected to limit its refund claim to the small claims threshold established in *Seminole*, below which injury is presumed. Accordingly, the DOE granted a refund of $5,000 principal and $2,297 interest to Harpel.

Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Avon LP Gas Company RF26-21, Evans Oil and Gas, Inc., 11/26/85, RF26-22

The DOE issued a Decision and Order concerning two Applications for Refund for monies available from the Sid Richardson

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escrow account. Both firms applied for a volumetric refund based on the presumption of injury for small claims. *See Office of Enforcement,* 10 DOE ¶ 85,056 (1983). After examining the evidence and supporting information submitted by the applicants, the DOE concluded that Avon LP Gas Company should receive a refund of $14,179 and that Evans Oil and Gas, Inc. should receive a refund of $29,261.

Dismissals

The following submissions were dismissed:

Name and Case No.

Evert Oil Company, HRO–0098
Grumman Aerospace Corp., FR115–2

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially publishd loose leaf reporter system.

Dated: December 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85–30434 Filed 12–24–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearngs and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds currently totalling over $550,000 obtained from South Hampton Refining Company in settlement of all issues regarding the firm's application of the federal petroleum price and allocation regulations during the period August 19, 1973 through December 31, 1975.

DATE AND ADDRESS: Applications for refund must be postmarked by March 26, 1986, should conspicuously display a reference to case number HEF–0222, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Geoffrey D. Stein, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order establishes procedures to distribute funds obtained as a result of a consent order between the DOE and South Hampton Refining Company (SHRC). The consent order settled all disputes between the DOE and SHRC concerning possible violations of DOE price and allocation regulations with respect to the firm's sales of refined petroleum products to its customers during the period August 19, 1973 to December 31, 1975.

Any members of the public who believe that they are entitled to refunds in this proceeding may file Applications for Refund. Specific information to be included in Applications for Refund is set forth in Section III of the Decision and Order. All Applications should be postmarked by March 26, 1986, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 17, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: South Hampton Refining Company.

Date of Filing: October 13, 1983.

Case Number: HEF–0222.

The procedural regulations of the Department of Energy (DOE) permit the Economic Regulatory Administration (ERA) to request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for distributing funds received as a result of enforcement proceedings involving alleged violations of DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with these regulatory provisions, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with South Hampton Refining Company (SHRC). Under the terms of the consent order, SHRC agreed to remit a total of $500,000 to the DOE in settlement of all civil and administrative claims by the DOE relating to SHRC's compliance with the federal petroleum price and allocation regulations applicable to refiners of petroleum products during the period from August 19, 1973 through December 31, 1975 (the consent order period).[1]

I. Background

SHRC was a "refiner" of petroleum products as that term was defined in 10 CFR 212.31. During the consent order period, SHRC refined crude oil and marketed products covered by the federal petroleum price and allocation regulations set forth in 6 CFR Part 150 and 10 CFR Part 212. The ERA audited SHRC to determine the firm's compliance with these regulations. In the course of the audit process, SHRC entered into a consent order with the DOE whereby the firm agreed to remit $500,000 to the DOE for distribution to resolve all issues regarding SHRC's application of the regulations during the consent order period.

The consent order refers to the ERA's allegations of overcharges, but emphasizes that there was no finding of actual violations. In addition, the consent order states that SHRC does not admit that it violated the regulations. Notice of this proposed consent order was published for public comment at 45 FR 25114 (1980). Five interested parties responded. The proposed consent order was adopted without modification as a final order of the DOE on June 4, 1980. 45 FR 37722 (1980).

Although the consent order specified that SHRC deposit $500,000 in a DOE escrow account, the firm has fallen into arrears with its payments and had remitted only $325,000 as of November 30, 1985. Enforcement of the consent order may be referred to the Department of Justice; however, it is uncertain whether further payments will be made to fulfill SHRC's obligation. This decision concerns our plans to distribute the funds currently in the consent order, which totaled $549,919.44, including accrued interest, as of November 30, 1985.

On October 23, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the SHRC consent order fund. 50 FR 45660 (November 1, 1985). In the PD&O, we described a two-stage process for disbursing refunds. In the first stage, refunds would be made to identifiable purchasers of SHRC covered products that may have been injured by

[1] The consent order also required SHRC to reduce its bank of unrecovered increased costs attributable to motor gasoline by $1,600,000.

the firm's pricing practices during the consent order period. This decision describes the information that purchasers of SHRC products should submit in order to demonstrate eligibility for a portion of the consent order fund. After these meritorious claims are paid, a second stage may become necessary if funds remain.

Comments were solicited regarding the proposed refund procedures outlined in the PD&O. Seven states—Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia—commented as a group on the distribution of residual funds in a second-stage proceeding. The formulation of procedures for the final disposition of any funds remaining after meritorious claims have been paid will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Accordingly, it would be premature for us to address at this time the issues raised by the states' comments concerning disposition of second-stage funds.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by the OHA in formulating and implementing plans to distribute funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily the persons who may be eligible to receive refunds as a result of enforcement proceedings or to ascertain readily the amounts that such persons should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcment*, 8 DOE ¶ 82,597 (1981).

A. Refunds to Identifiable Purchasers

During the first stage in the refund process, the consent order funds will be distributed to claimants that satisfactorily demonstrate that they were adversely affected by the alleged overcharges in SHRC's sales of covered products. We will accept applications from all parties who can demonstrate that they either directly or indirectly purchased products which originated with SHRC

In order to be eligible to receive a refund, claimants must file an application and, with the three exceptions discussed below, show the extent to which they were injured by the alleged overcharges. Firms or individuals will be eligible for a share of the consent order fund to this extent.

While there are a variety of ways in which a showing of injury may be made, a reseller or retailer will generally be required to demonstrate that competitive market conditions would not permit it to pass through the increased costs associated with the alleged overcharges. In addition, this type of claimant must show that during the consent order period, it maintained a "bank" of unrecovered increased product costs at least equal to the refund amount claimed, indicating that the claimant did not actually pass on alleged overcharges to its own customers. If actual, contemporaneously calculated cost banks are not available for specific reasons, we will accept other information, *e.g.* monthly profit margin data, which conclusively proves that the alleged overcharges were not passed along. *See Husky Oil Company*, 13 DOE ¶ 85,045 (1985); *see also Tenneco Oil Company/Northern Petroleum, Inc.*, 13 DOE ¶ 85,207 (1985).

In this case we will adopt three rebuttable presumptions regarding the demonstration of injury. These presumptions have been used in many previous refund proceedings. First, we will presume that purchasers of SHRC products who are claiming small refunds ($5,000 or less, not including interest) were injured by the alleged overcharges. Claimants in this category need not provide us with a showing of injury, as described above.[2] Second, we will not require a showing of injury from regulated utilities or agricultural cooperatives that passed on the alleged overcharges in sales to their end-user members. In their applications, however, these firms should provide a full explanation of the manner in which refunds would be passed through to customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of a refund. Third, we will adopt a presumption that spot purchasers were not injured and are generally not eligible to apply for refunds.[3] Prior OHA decisions provide detailed explanations of the basis for these presumptions. *E.g., VGS Corporation, et al.*, 13 DOE ¶ 85,165 at 88,451–53 (1985). We also explained the rationale for these presumptions in the PD&O. 50 Fed. Reg. 45660 at 45661–662 (November 1, 1985). The presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Finally, we will adopt a finding made in the PD&O that end-users or ultimate consumers of SHRC products whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges, and therefore need not demonstrate injury. *Id.*

B. Calculation of Refund Amounts

We will adopt a volumetric method of dividing the consent order funds among applicants who demonstrate eligibility to receive refunds. This method, outlined in the PD&O, presumes that the alleged overcharges were spread equally over all the gallons of products which SHRC sold during the consent order period. We have calculated the volumetric amount to be used in this proceeding by dividing the total amount of consent order funds—$325,000 exclusive of interest—by the total volume of regulated petroleum products sales by SHRC during the consent order period, which we estimate to be approximately 211,986,287 gallons. This calculation results in a volumetric refund amount of $.001533 per gallon. A successful claimant will receive a refund equal to its eligible volume of petroleum product purchases from SHRC multiplied by the volumetric amount, plus a pro rata share of accrued interest.[4]

III. Applications for Refund

We have determined that the refund procedures described above are the best means of distributing the SHRC consent

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[2] Resellers or retailers of SHRC products who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the alleged overcharges will be eligible for a refund up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed documentation of their injury. *See* Office of Enforcement, 8 DOE ¶ 82,597 at 85,398 (1981).

[3] If a spot purchaser believes it was injured, it must submit additional documentation of this injury to overcome the presumption that this category of SHRC customers suffered no harm. As in previous cases, however, we will except from the presumption of non-injury cooperative organizations which made spot purchases and resold these products to their members. *See* VGS Corporation, *et al.*, 13 DOE ¶ 85,165 at 88,453 n.8 (1985).

[4] Any applicant that believes it suffered a disproportionate share of SHRC's alleged overcharges may apply for a refund greater than the amount computed by the volumetric method. Such applicants will be required to document conclusively the disproportionate impact. In addition, we intend to set a minimum refund amount for potential claimants. In prior refund cases, we have not granted refunds for less than $15.00 because the cost of issuing such refunds exceeds the restitutionary benefits which may be achieved. *See* Office of Special Counsel, 10 DOE ¶ 85,048 at 88,214 (1982). We will utilize the same minimum refund in the present case.

order fund. Accordingly, we will now accept applications for refunds.

Applications must be in writing, signed by the applicant, and make reference to Case Number HEF-0222. Applications must include the following information:

(i) The business address of the firm during the consent order period, August 19, 1973 through December 31, 1975;

(ii) Monthly schedules indicating the volume of products purchased from SHRC during the consent order period, or, if no documentation is available, a detailed estimate of purchases;

(iii) A showing of injury, as explained above, or a statement that the applicant need not show injury because it was an end-user of the product, an agricultural cooperative or regulated utility which sold the product to members, or is claiming a refund of $5,000 or less;

(iv) An indication of the firm's level in SHRC's chain of distribution, *e.g.*, ultimate consumer, reseller, etc.

(v) A statement of whether there has been a change in the ownership of the firm during the consent order period. If there has been a change of ownership, the applicant must provide the names and addresses of any other owners and either a statement of the reasons why the refund should be paid to the applicant rather than to the other owners, or a signed statement from the other owners indicating that they do not claim a refund.

(vi) The name, title, and telephone number of a person who the OHA may contact for additional information concerning the application; and

(vii) The following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c), 18 U.S.C. 1001.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the application claims is confidential has been deleted, together with a statement specifying why any such informatin is privileged or confidential. All applications should be sent to: South Hampton Refining Company Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

It is therefore ordered that:

(1) Applications for refunds from the funds remitted to the Department of Energy by South Hampton Refining Company pursuant to the consent order executed on June 4, 1980, may now be filed.

(2) All applications must be received no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: December 17, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-30435 Filed 12-24-85; 8:45 am]

BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP 30261; FRL 2942-7]

Applications To Register Pesticide Products; Sumitomo Chemical Co., Ltd. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by January 27, 1986.

ADDRESS: By mail submit comments identified by the document control number [OPP-30261] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TX-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM 15, George LaRocca.	Rm. 204, CM#2 (703-557-2400).	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202.
PM 23, Richard Mountfort.	Rm. 237, CM#2 (703-557-1830).	Do.
PM 25, Robert Taylor.	Rm. 245, CM#2 (703-557-1800).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing an Active Ingredient not Included in any Previously Registered Product

1. File Symbol: 10308-RN. Applicant: Sumitomo Chemical Co., Ltd, 1330 Dillon Heights Ave., Baltimore, MD 21228. Product name: Gokilaht" Technical. Insectide. Active ingredient: (RS)-alpha-cyano-3-phenoxybenzyl (1R)-*cis,trans*-chrysanthemate 87.4%. Proposed classification/Use: Restricted. For formulating use only. (PM 15).

2. File Symbol: 8340-EG. Applicant: American Hoechst Corp., Routes 202-206 North, Somerville, NJ 08876. Product name: Whip 1 EC Herbicide. Herbicide. Active ingredient: (±)-Ethyl 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenxy]propanoate 12.5%. Proposed classification/Use: General. For selective postemergence annual and perennial grass control in rice and soybeans. Type registration: Conditional. (PM 23)

3. File Symbol: 476/EEEA. Applicant: Stauffer Chemical Co., 1200 South 47th St., Richmond, CA 94804. Product name: SC-0224 4-LC. Herbicide. Active ingredient: Trimethylsulfoniumcarboxy-methylaminomethylphosphonate 40.8%. Proposed classification/Use: General.

For weed control in non-crop areas. (PM 25)

4. File Symbol: 476-EEEL. Applicant: Stauffer Chemical Co. Product name: SC-0224 Concentrate. Herbicide. Active ingredient: Trimethylsulfoniumcarboxymethylaminomethylphosphonate 52.2%. Proposed classification/Use: General. For weed control in non-crop areas. (PM 25)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: December 6, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-30246 Filed 12-24-85; 8:45 am]

BILLING CODE 6560-50-M

[PF-432; FRL-2942-6]

Pesticide Tolerance Petitions; Rhone-Poulenc Inc. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF–432] and the petition number, attention Product Manager (PM–16), at the following address:

Information Services Section (TS–757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:

Information Service Section (TS–757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Service Section office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

William Miller, (PM–16), Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 211, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–557–2600).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), and feed additive (FAP) petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 6F3321.* Rhone-Poulenc Inc., P.O. Box 125, Monmouth Junction, NJ 08852. Proposes amending 40 CFR 180.262 by establishing a tolerance for residues of the nematocide and insecticide, ethoprop in or on the commodity brussels sprouts at 0.02 part per million (ppm). The proposed analytical method for determining residues is a gas chromatographic procedure utilizing a phosphorus specific flame photometric detector.

2. *PP 6F3317.* Mobay Chemical Corp., P.O. Box 4913, Kansas City, MO 64120. Proposes amending 40 CFR 180.315 by establishing tolerances for residues of the insecticide methamidophos in or on the commodities as follows:

Commodities	Part per million (ppm)
Lentils	0.1
Lentil, vines	8.0
Melons	1.5
Milk	0.01
Peanuts	0.2
Peanut, hulls	0.4
Peas, dry	0.1
Peas, dry vines	4.0
Peas, green	1.0
Peas, green vines	12.0
Soybeans, dry vines (hay)	1.5
Soybeans, threshed	0.2
Watermelons	1.5

The proposed analytical method for determining residues is a gas chromatographic procedure utilizing a thermionic detector.

3. *FAP 6H5462.* Mobay Chemical Corp. Proposes amending 21 CFR 561.277 by establishing a regulation permitting residues of the above insecticide (PP 6F3317) in or on the commodities soybean hulls at 3.0 ppm, and peanut and soybean meal at 0.4 ppm.

Authority: 21 U.S.C. 346a and 348.

Dated: December 13, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-30245, Filed 12-24-85; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3191/T506; FRL-2943-1]

Diethatyl-Ethyl; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the herbicide diethatyl-ethyl and its metabolites in or on the raw agricultural commodity cottonseed.

DATE: This temporary tolerance expires November 5, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the **Federal Register** of May 1, 1985 (50 FR 18567), announcing the extension of a temporary tolerance for residues of the herbicide diethatyl ethyl and its metabolites (free and bound)

determinable as the *N*-acetyl (*N*-(2,6-diethylphenyl) glycine derivative in or on the raw agricultural commodity cottonseed at 0.05 part per million (ppm). This tolerance was issued in response to pesticide petition PP 5G3191, submitted by Nor-Am Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803.

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 45639-EUP-28, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Nor-Am Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires November 5, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: December 6, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-30242 Filed 12-24-85; 8:45 am]

BILLING CODE 6560-50-M

[PF-430; FRL-2942-9]

Pesticide Tolerance Petitions; Union Carbide Agricultural Products Co., Inc. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed, and food additive petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-430] and the petition number, attention Product Manager (PM-25), at the following address.

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information as marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, (PM-25), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Room 245, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), feed, and food additive petitions (FAP), relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filing

1. *PP 6F3311.* Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, T.W. Alexander Dr., Research Triangle Park, NC 27709. Proposes amending 40 CFR 180.324 by establishing tolerances for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic acid ester and/or butyric acid ester in or on the commodity alfalfa, seedling at 0.10 part per million (ppm). The proposed analytical method for determining residues is gas chromatography with ^{63}Ni electron capture detector.

2. *FAP 6H5479.* E.I. duPont deNemours & Co., Agricultural Products Department, Wilmington, DE 19898. Proposes amending 21 CFR Parts 193 (food) and 561 (feed) by establishing regulations permitting residues of the herbicide ethyl 2-[4-(6-chloroquinozalin-2-yl oxy) phenoxy]propanoate and its acid metabolite, 2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy]proanoic acid, in or on the commodities as follows:

CFR section	Commodities	Part per million (ppm)
21CFR Part 193	Soybean flour	0.5
21CFR Part 561	Soybean hulls	0.2
	Soybean meal	0.5
	Soybean soapstock	1.0

3. *FAP 5H5455.* Velsicol Chemical Corp., 341 East Ohio St., Chicago, IL 60611. Proposes amending 21 CFR Part 193 by establishing a regulation permitting residues of the herbicide dicamba (3, 6-dichloro-o-anisic acid) and its 5-hydroxy metabolite in or on the commodities as follows:

Commodities	Part per million (ppm)
Tomato catsup	[illegible]
Tomato juice	[illegible]
Tomato pomace (wet and dry)	[illegible]
Tomato puree	0.6

BEST COPY AVAILABLE

4. *FAP 6H5477.* Dow Chemical U.S.A., P.O. Box 1706, Midland, NI 48674. Proposes amending 21 CFR Part 193 by establishing a regulation permititng the combined residues of the herbicide triclorpyr, [(3,5,6-trichloro-2-pyridinyl)oxy]acetic acid, and its metabolites, 3,5,6-trichloro-2-pyridinol and 2-methoxy-3,5,6-trichloropyridine, in potable water at 0.1 ppm.

Authority: 21 U.S.C. 346a and 348.

Dated: December 16, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-30244 Filed 12-24-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30256; FRL-2943-1]

Certain Companies; Applications To Register Pesticide Products; E.I. du Pont de Nemours and Co., Inc. et al.

AGENCY: Environmental Protection Agency: (EPA).

ACTION: Notice.

SUMMARY: This notice annunces receipt of applications to register a pesticide product containing an active ingredient not included in any previously registered product and a product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by Janaury 27, 1986.

ADDRESS: By mail submit comments identified by the document control number [OPP-30256] and the registration/file number, attention Product Manager (PM) named in each application at the following address.

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4. p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM 25, Robert Taylor.	Rm. 245, CM#2 (703-557-1800).	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202.
PM 31, John Lee ...	Rm. 252, CM#2 (703-557-3663).	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register a pesticide product containing an active ingredient not included in any previously registered product and a product involving a changed use pattern pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Product Containing an Active Ingredient not Included in any Previously Registered Product

1. File Symbol: 352-UUR. Applicant: E.I. du Pont de Nemours and Co, Inc., Agricultural Chemicals Dept., Wilmington, DE 19898. Product name: Assure+ Herbicide. Herbicide. Active ingredient: 2-[4-[(6-Chloro-2-quinoxalinyl)oxy]phenoxy] propionic acid, ethyl ester 9.5%. Proposed classification/Use: General. For the control of annual and perennial grasses in soybeans and cotton. (PM 25)

2. File Symbol: 352-UGA. Appliant: E.I. du Pont de Nemours and Co., Wilmington, DE 19898. Product name: Du Pont Classic™ Herbicide. Herbicide. Active ingredient: Ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2-yl)amino]carbonyl]sulfonyl]benzonate 25%. Proposed classification/Use: General. For weed control in soybeans. (PM 25)

3. File Symbol: 241-EIO. Applicant: American Cyanamid Co. Agricultural Research Div., PO Box 400, Princeton, NJ 08540. Product name: Scepter Herbicide. Herbicide. Active ingredient: Imazaquin 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinolinecarboxylic acid 18.1%. Proposed classification/Use: General. For use in soybeans. (PM 25)

4. File Symbol: 241-EIT. Applicant: American Cyanamid Co. Product name: Scepter Herbicide Technical. Herbicide. Active ingredient: Imazaquin 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinolinecarboxylic acid 95%. Proposed classification/Use: General. For formulation purposes only. (PM 25)

5. File Symbol: 241-EIL. Applicant: American Cyanamid Co. Product name: Assert+ Herbicide Technical. Herbicide. Active ingredient: Methyl 2-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl)-*p*-toluate and methyl 6-(4-isopropyl-4-methyl-5-oxo-2-imidazolin-2-yl]-*m*-toluate 29%. Proposed classification/Use: General. For terrestrial food use in sunflowers, wheat, and barley. (PM 25)

II. Product Involving a Changed Use Pattern

File Symbol: 40810-A. Applicant: Ciba-Geigy Corp., Plastics and Additives Div., Three Skyline Drive, Hawthorne, NY 10532. Product name: Belclene 329. Algaecide. Active ingredient: Terbuthylazine 2-(*tert*-butylamino)-4-chloro-6-(ethylamine)-*s*-triazine 44.7%. Proposed classification/Use: General. To include in its presently registered manufacturing use only, a new use for control of algae in recirculating water cooling towers. (PM 31)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3236), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: December 16, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-30243 Filed 12-24-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Keystone Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 1986.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Keystone Bancshares, Inc.*, Kankakee, Illinois; to acquire Keystone Data Corporation, Kankakee, Illinois, and thereby engage in processing demand deposit accounts, all types of savings and time deposits, types of loans, General Ledger and investment portfolio, audit functions required by auditor, the preparation of payrolls for bank and non-bank customers, the preparation of ATM cards, and the provision of micro-film services, pursuant to § 225.25(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30417 Filed 12-24-85; 8:45 am]

BILLING CODE 6210-01-M

The Mitsubishi Bank Ltd. and Bancal Tri-State Corp.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1986.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Mitsubishi Bank Limited*, Tokyo, Japan, and *BanCal Tri-State Corporation*, San Francisco, California; to engage *de novo* through its subsidiary, BanCal Investment Services, Inc., San Francisco, California, in providing securities brokerage services and making available self-directed IRA and Keogh account products, pursuant to § 225.25(b)(15) of Regulation Y. These activities would be conducted in the State of California, Oregon and Washington.

Board of Governors of the Federal Reserve System, December 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30416 Filed 12-24-85; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

December 19, 1985.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-6880)

Proposal to approve under OMB delegated authority the extension without revision of the following report:

1. Report title: Domestic Finance Company Report of Consolidated Assets and Liabilities

Agency form number: FR 2248, FR 2248a

OMB Docket number: 7100-0065

Frequency: Monthly, Quarterly

Reporters: Domestic finance companies

Small businesses are affected.
General description of report:

This information collection is voluntary and is given confidential treatment [5 U.S.C. 552 (b)(4) & (b)(8)].

These reports collect information on major categories of consumer and business credit extended and held by finance companies and on major short-term liabilities outstanding. These data are used by the Federal Reserve for assessing aggregate credit market activity.

Board of Governors of the Federal Reserve System, December 19, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-30390 Filed 12-24-85; 8:45 am]

BILLING CODE 6210-01-M

Bank of New England Corp.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 224.21(a) of the Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 15, 1986.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts, 02106:

1. *Bank of New England Corporation,* Boston, Massachusetts; to engage *de novo* through its subsidiary New England Discount Brokerage, Inc., Boston, Massachusetts, in providing securities brokerage services pursuant to § 225.25(b)(15) of Regulation Y. Initially, such activities will consist solely of buying and selling securities as agent for the account of customers and services incidental thereto.

Board of Governors of the Federal Reserve System, December 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30414 Filed 12-24-85; 8:45 am]

BILLING CODE 6210-01-M

Miami Corporation, et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1986.

A. **Federal Reserve Bank of Boston** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Miami Corporation,* Chicago, Illinois; to engage *de novo* through its subsidiary, Boulevard Bancorp, Inc., Chicago, Illinois, in making, acquiring or servicing loans or other extensions of credit for the company's account or for the account of others, pursuant to § 225.25(b)(1) of Regulation Y. Some such loans would be made to officers and directors of the company at rates below that of the general market in which case it is expressly intended that a benefit in the form of compensation be conferred on the recipient. These activities would be conducted in Chicago, Illinois, and its surrounding suburbs.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Lloyds Bank plc,* London, England, and *Lloyds Bank International, Limited,* London, England; to engage *de novo* through its subsidiary, Lloyds International Corporation, New York, New York, in leasing real and personal property, pursuant to § 225.25(b)(5) of Regulation Y from offices in New York, New York, San Francisco, California, and Hyland Park, Illinois. These activities would be conducted in the United States, Canada, Central America and South America.

Board of Governors of the Federal Reserve System, December 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30415, Filed 12-24-85; 8:45 am]

BILLING CODE 6210-01-M

First United Bancorp; Formation of, Acquisition by, or Merger of Bank Holding Companies and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the

Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any question of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First United Bancorp*, Franklin, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Franklin Bank & Trust Company, Franklin, Indiana.

Applicant also has applied to acquire Franklin Financial Corporation, Indianapolis, Indiana, and thereby engage in the origination, package, sale and servicing of commercial and mortgage loans, the origination of small consumer loans, and the origination of finance leases, pursuant to § 225.25(b)(1) and 225.25(b)(5) of Regulation Y, respectively.

Applicant also has applied to acquire Franklin Mortgage Corporation, Indianapolis, Indiana, and thereby engage in residential mortgage lending, servicing and brokering, and commercial mortgage loan servicing and brokering, pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30418 Filed 12-24-85; 8:45 am]

BILLING CODE 6210-01-M

Texas American Bancshares, Inc., et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 17, 1986.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas American Bancshares, Inc.*, Fort Worth, Texas; to acquire 100 percent of the voting shares of Texas American Bank/Cityview, N.A., Fort Worth, Texas, a *de novo* bank.

2. *Texas American Bancshares, Inc.*, Fort Worth, Texas; to acquire 100 percent of the voting shares of Texas American Bank/U.S., Newark, Delaware, *de novo* bank.

Board of Governors of the Federal Reserve System, December 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30419 Filed 12-24-85; 8:45 am]

BILLING CODE 6210-01-M

United Bancorp of Kentucky, Inc., et al., Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifiying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 14, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio, 44101:

1. *United Bancorp of Kentucky, Inc.*, Lexington, Kentucky; to acquire 100 percent of the voting shares of First National Bank of Versailles, Versailles, Kentucky. Comments on this application must be received not later than January 17, 1986.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *SouthTrust Corporation*, Birmingham, Alabama; to acquire at least 60 percent of the voting shares of First Dallas County Bank, Selma, Alabama.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. *Central Wisconsin Bankshares, Inc.*, Wausau, Wisconsin; to acquire 80 percent of the voting shares of Valley View Bank, LaCrosse, Wisconsin.

2. *CSB, Inc.*, Chesterton, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Chesterton State Bank, Chesterton, Indiana.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FNBT Bancshares Perry, OK, Inc.*, Perry, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank and Trust Company of Perry, Perry, Oklahoma.

Board of Governors of the Federal Reserve System, December 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30420 Filed 12-24-85; 8:45 am]

BILLING CODE 6210-01-M

Central Bancshares, Inc.; Correction

This notice corrects a previous Federal Register document (FR Doc. No. 85-28340), published at page 49131 of the issue for Friday, November 29, 1985.

On page 49131, in the middle column, the name of the subsidiary "Central Bancshares, Inc.," has been changed to "Central Technology, Inc."

Board of Governors of the Federal Reserve System, December 19, 1985.

James McAfee

Associate Secretary of the Board.

[FR Doc. 85-30421 Filed 12-24-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 77N-0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators; Drug Efficacy Study Implementation; Extension of Deadline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is extending the deadline announced in two previous **Federal Register** notices for the submission and approval of required bioavailability/bioequivalence data. The two previous notices announced the conditions for marketing various dosage forms of single-entity isosorbide dinitrate and oral controlled-release nitroglycerin tablets and capsules.

DATES: For isosorbide dinitrate, the deadline for approval of bioavailability supplements is June 26, 1987. For oral controlled-release nitroglycerin, the deadline for submission of bioavailability data is June 26, 1987.

ADDRESSES: Communications in response to this notice should be identified with Docket No. 77N-0240 (DESI 1786), directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Cardio-Renal Drug Products (HFN-110), Rm. 16B-45, Center for Drugs and Biologics.

Supplements to conditionally approved abbreviated new drug applications (identify with ANDA number): Division of Generic Drugs (HFN-230), Rm. 16-70, Center for Drugs and Biologics.

Requests for information on conducting bioavailability/bioequivalence tests: Division of Bioequivalence (HFN-250), Center for Drugs and Biologics.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), as amended July 11, 1973 (38 FR 18477), August 26, 1977 (42 FR 43127), October 21, 1977 (42 FR 56156), and September 15, 1978 (43 FR 41282), certain single-entity coronary vasodilators were temporarily exempted from the time limits established for the Drug Efficacy Study Implementation (DESI) program. The notices established conditions for marketing these products, including requirements for both bioavailability and clinical studies. Conditions were established for marketing identical, similar, or related products (21 CFR 310.6) whether or not they had been marketed and whether or not they were subjects of approved new drug applications. An abbreviated new drug application (conditionally approved, pending the results of ongoing studies) was required to market a product not the subject of an NDA.

In notices published in the **Federal Register** of August 3, 1984 and September 7, 1984 (49 FR 31151 and 35428), after completing its review of the data submitted for single-entity isosorbide dinitrate and oral controlled-release nitroglycerin tablets and capsules, the agency announced its conclusions that these drugs are effective. The notices set forth the conditions for marketing and approval of such drug products. The notices stated that within 6 months a manufacturer should submit bioavailability data, and required that supplements be fully approved within a year .

In response to the August 3, 1984 and September 7, 1984 notices, a number of firms have requested that the deadline for submitting bioavailability data be extended. The firms contend that additional time is needed to obtain guidance and other technical information necessary to conduct the required studies, and to find or establish a laboratory capable of performing the required studies before the deadlines established by the August and September 1984 notices.

The agency concludes that additional time is justified, and is extending the date for compliance with the bioavailability requirement.

This notice also reconfirms that blood level determinations are required for the demonstration of bioavailability/bioequivalence of isosorbide dinitrate and oral nitroglycerin. The new deadlines are set forth below.

Isosorbide dinitrate. Supplements demonstrating bioavailability must be approved by June 26, 1987. To provide adequate time for review, the agency suggests that bioavailability data be submitted on or before December 26, 1986. The agency believes this new deadline will provide a sponsor enough time to conduct the required studies and submit the data to FDA. Isosorbide dinitrate products not the subject of approved bioavailability supplements by June 26, 1987, will be subject to regulatory action. Information on conducting dissolution tests and bioavailability/bioequivalence tests may be obtained from the Division of Bioequivalence at the address given above.

Oral nitroglycerin (controlled-release) tablets and capsules. The sponsors shall develop an appropriate protocol for evaluating the bioavailability/bioequivalence of oral controlled-release nitroglycerin. Because attempts to determine intact nitroglycerin have been unsuccessful, the agency suggests that the best approach might be to

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determine the metabolites. Any sponsor unable to demonstrate bioequivalence will be required to conduct clinical studies. Bioavailability data must be submitted by June 26, 1987. The agency recognizes that compliance with the bioavailability requirements of this section may take longer than the extension of time granted. However, any additional requests for an extension will be granted only to a sponsor who documents the need for an extension by showing significant progress toward meeting the bioavailability requirement. If no progress can be shown, the product(s) will be subject to regulatory action.

(Correction to the August 3, 1984 notice: On page 31152, in the third column, in the item numbered "2," the firm name "Ives" is deleted and "Reed & Carnrick" is inserted in its place.)

This notice is issued under the Federal Food, Drug, and Cosmetic Act (Secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: December 19, 1985.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 85–30412 Filed 12–24–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 75N–0187; DESI 10837]

Combid Spansules; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application for Combid Spansules containing a fixed-combination of prochlorperazine maleate and isopropamide iodide. The basis for withdrawal is that the product lacks substantial evidence of effectiveness. The product has been used to treat various gastrointestinal disorders.

EFFECTIVE DATE: January 27, 1986.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with DESI 10837 and directed to the Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Douglas I. Ellsworth, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of September 15, 1978 (43 FR 41278), the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) evaluated fixed-combination drug products containing prochlorperazine maleate and isopropamide iodide as lacking substantial evidence of effectiveness. The Director also proposed to withdraw approval of the relevant new drug application and offered an opportunity for a hearing on the proposal. In response, hearing requests were submitted for the following products containing 10 milligrams (mg) of prochlorperazine maleate and 5 mg of isopropamide iodide:

1. Combid Spansules; NDA 11–162, held by SmithKline & French Laboratories, Division of SmithKline Beckman Corp., 1500 Spring Garden St., Philadelphia, PA 19101.

2. Propazine; no approved application; Cord Laboratories, Inc., 2555 West Midway Blvd., Broomfield, CO 80020.

Subsequently, SmithKline & French withdrew its hearing request on Combid Spansules. Accordingly, the Director of the Center for Drugs and Biologics is withdrawing approval of the new drug application for this product. The other product listed above, which is the subject of a pending hearing request, is not affected by this notice.

Any drug product that is identical, related, or similar to Combid Spansules and is not the subject of an approved new drug application or of a pending hearing request is covered by NDA 11–162 and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under the authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 11–162 and all amendments and supplements thereto is withdrawn effective January 27, 1986. Shipment in interstate commerce of Combid Spansules or any identical, related, or similar product that is not the subject of an approved new drug application or of a pending hearing request will then be unlawful.

Dated: December 18, 1985.

Peter H. Rheinstein,

Acting Director, Center for Devices and Biologics.

[FR Doc. 85–30410 Filed 12–24–85; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Demonstration of Alternative Organizational Structure in Two HDS Regional Offices

AGENCY: Office of Human Development Services, HDS.

ACTION: Notice of one year demonstration of alternative organizational structure in two regional offices.

SUMMARY: This notice announces that the Office of Human Development Services' Regional Offices in Region II (New York City) and Region V (Chicago, Illinois) will participate in a one-year demonstration of new assignments of regional staff to find a method to more efficiently carry out the functions of the HDS regional offices.

FOR FURTHER INFORMATION CONTACT:

Miguel Torrado, HDS Regional Administrator, Region II, Federal Building, 26 Federal Plaza, New York, NY 10278, (212) 264–1487.

Carolyn Woodard, HDS Regional Administrator, Region V, 300 South Wacker, 13th Floor, Chicago, IL 60606, (312) 353–8322.

DATE: This demonstration is expected to be implemented early in 1986.

SUPPLEMENTARY INFORMATION:

Background

The ten HDS regional offices have been operating for several years under a structure which reflects the central office's organization of the Office of Human Development Services (HDS) program responsibilities. Under this organizational structure, HDS has four separate program administrations. These are: the Administration on Developmental Disabilities, the Administration for Native Americans, the Administration on Aging, and the Administration for Children, Youth, and Families. Functional Statements

describing the duties and responsibilities of the HDS and its component programs and staff offices, including the regional offices were published in the **Federal Register** at 43 FR 33345, 45 FR 64269, 46 FR 63388, 47 FR 54553, 49 FR 5682, 49 FR 17586, and 50 FR 30014.

The role and workload of the regional offices have changed during the years since 1980. The roles and workload have increased in some areas and decreased in others, e.g., in the Social Security Act, the reduced Federal monitoring role under the Social Services Block Grant and the increased responsibilities under the new Title IV–E. The personnel and staff resources allocated to the regional offices have decreased during that same time period. HDS has been exploring various strategies to maximize utilization of its resources. Recently, the Administration on Developmental Disabilities consolidated its regional functions into four regional offices, and the Administration for Native Americans eliminated all regional office functions except in Region X.

Demonstration Effort

The Assistant Secretary for Human Development Services has approved a one-year demonstration effort, allowing two regional offices to operate under an alternative organizational structure. The affected regions are Region II (New York) and Region V (Chicago), both of which have experienced staff reductions despite continued heavy workloads. Region II has responsibility for the States of New York and New Jersey and for Puerto Rico, and the Virgin Islands. Region V includes the States of Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin.

These two regions will each demonstrate a different management strategy. Each Regional Administrator will design a new approach to achieve a coordinated organization structure that takes a comprehensive approach to staff utilization. The use of a mix of generalists and specialists, state teams, or other organizational approaches will allow the Regional Administrators more flexibility and efficiency in use of staff.

The functions of the two regional offices in the demonstration will not be changed, except for certain current responsibilities regarding programs of the Administration on Aging. Inquiries on all program matters should continue to be directed to the regional offices. However, specific functions will not necessarily be carried out by the same units or the same personnel as before. Necessary communication between the regional offices and the central office will continue, as will regional office support of special national initiatives.

Statutory Requirements Regarding the Older Americans Act

The Commissioner on Aging, in accordance with statutory authority under sections 201 and 202 of the Older Americans Act, will rescind, for the period of this demonstration, delegations of certain program authorities to officials in Region II and Region V:

The authority to approve State Advocacy Assistance Grants, issued 7/10/79;

The authority to approve grants under the State Education and Training Program, issued 7/18/79; The authority to approve Model Projects—Disaster Relief Reimbursement and Demonstration Projects, issued 8/8/79;

The authority to approve State Plans, issued 8/14/79;

The authority to approve Title IV–A Career Preparation Program, issued 9/7/79.

For the period of this demonstration, final decisions on State grant and discretionary grant awards will be made by the Commissioner on Aging from central office. The approval or disapproval of State plans under the Older Americans Act will also be made at central office. The Commissioner is currently completing an agreement with these two Regional Administrators which guarantees that remaining functions will be carried out in their regional offices in accordance with the provisions of the Older Americans Act.

Implementation

We want to emphasize that the regional offices will continue to serve as point of contact for all inquiries, functions, and responsibilities regarding HDS programs at the regional level, except as noted. Implementation of this demonstration is expected early in 1986. Training will be carried out as needed to assure that staff have the skills necessary to carry out the new functions they will perform. At the end of this demonstration, an evaluation of the success of this effort will be prepared and decisions will be made on similar future efforts.

Dated: December 18, 1985.

Approved.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 85–30437 Filed 12–24–85; 8:45 am]

BILLING CODE 4130–01–M

Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration for Native Americans, OHDS, HHS.

ACTION: Notice of Change to Statement of Organization, Functions, and Delegations of Authority.

SUMMARY: This notice amends Part D of the statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (OHDS) (47 FR 28797) to (1) abolish the Program Operations Division, (2) consolidate and elevate the functions of the Reservations Branch and Special Programs Branch of the Program Operations Division, to create the East Division and West Division, and (3) combine certain functions of the Program Support Branch and the Planning Staff to create the Planning and Support Division.

EFFECTIVE DATE: February 10, 1986.

FOR FURTHER INFORMATION CONTACT: William Engles, Commissioner, Administration for Native Americans.

The changes are as follows:

1. Part D, Chapter DN "The Administration for Native Americans" as published in the **Federal Register** on July 1, 1982, (47 FR 28797), is to be deleted in its entirety and replaced by the following:

DN.00 Mission. The Administration for Native Americans (ANA) represents the concerns of American Indians, Alaskan Natives, and Native Hawaiians, hereinafter referred to as Native Americans.

The Administration for Native Americans has primary responsibility for developing policy, legislative proposals and guidance and for providing staff advice to the Assistant Secretary and the Secretary on matters involving the social and economic development of Native Americans. ANA administers grant programs to eligible Indian tribes and Native American organizations in urban and rural areas with funds authorized under the Native American Programs Act of 1974, as amended.

In conjunction with the Office of the Assistant Secretary for Human Development Services, ANA provides Departmental liaison with other Federal agencies on Native American affairs, working to promote social and economic self-sufficiency for Native Americans. Through its policy, liaison, and granting functions, ANA explores new program concepts and new methods for increasing the social and economic development of Native Americans, assures that information about

Departmental services and benefits and eligibility criteria is available to Native Americans, and fosters the opportunity for the exercise of self-determination of Native Americans and their operation of Native American programs and enterprises.

ANA serves as the lead agency within the Department of Health and Human Services (DHHS) on issues concerning Native Americans. Advocates on behalf of Native Americans in Office of Human Development Services (OHDS) program planning and policy development. Develops standards, provides technical assistance, issues best practices guidelines, and initiates policy relative to OHDS services provided to Native Americans. Provides technical assistance and initiates policy relative to the provisions of services to Native Americans under Section 803, 804, and 805 of the Native American Programs Act, as amended. Works in collaboration with the Office of Program Development in the coordination of OHDS training and technical assistance programs.

DN.10 Organization. The Administration for Native Americans is headed by the Commissioner, who reports directly to the Assistant Secretary for Human Development Services, and consists of:

Administration for Native Americans,
Office of the Commissioner,
Intra-Departmental Council on Indian Affairs,
Planning and Support Division,
East Division,
West Division.

DN.20. Functions.

A. The Office of the Commissioner provides overall direction, management strategy and legislative liaison, in consultation with the Assistant Secretary for Human Development Services and the Office of the Assistant Secretary for Legislation, for all components of ANA. Serves as advisor to the Assistant Secretary for Human Development Services, the Secretary, and the heads of DHHS agencies administering programs which have a significant impact on Native Americans. On behalf of the Department conducts liaison with and obtains advice from Indian tribes and Native American organizations. Has approval authority for ANA grant awards for financial assistance to American Indian tribes, Alaskan Native organizations, and Native Hawaiian groups. Provides policy direction and guidance to the OHDS Regional Offices with respect to programs for urban Indians, off-reservation Indians and other Native American projects. Has ANA approval authority for all interagency agreements. The Commissioner is Chairman of the Intra-Departmental Council on Indian Affairs.

B. Intra-Departmental Council on Indian Affairs provides general staff support to the Council and to the Commissioner of ANA, the Chairperson on the Council. The Council serves as the focal point within the Department for intra-agency coordination activities relating to Indian affairs to effect cooperation and complementary utilization of the Department's resources for Indian people. Promotes consistent policies on Indian affairs for the entire Department and promotes the full and continuous application of these policies throughout the Department.

Identifies adminstrative, legislative and regulatory changes or developments necessary for the application of effective and consistent Federal Indian policy.

C. Planning and Support Division plans, coordinates, and controls ANA plolicy, planning, and management activities. Manages that development or regulations, policies, and guidelines for ANA. Develops and recommends the implementation of policies in coordination and consultation with the Office of Policy and Legislation/Office of Human Development Services.

In coordination with the Office of Program Development and the Office of Management Services in OHDS, directs the development of program plans consistent with the Department's requirements. Formulates budget and legislative plans consistent with Department and ANA requirements.

Coordinates the reporting by ANA units to the OHDS management information system, including reports on short-range initiatives.

Tracks financial status of all Program and Salaries and Expenses accounts and provides financial data to the Commissioner. Furnishes assistance to program specialists on Department financial management and on development of ANA fiscal and budget procedures; coordinates with appropriate Office of Human Development Services staff units in carrying out these functions. Manages the ANA program management information system to support ANA program reporting, planning, and administration.

Provides a wide range of management administrative services in support of all ANA programs and activities. Expedites the progress of all procurements and personnel actions. Serves an ANA Executive Secretariat, Controlling the flow of correspondence. Responsible for receipt of Freedom of Information Requests directed to ANA and coordinates responses to such requests. Coordinates with appropriate OHDS units in implementing administrative requirements and procedures.

Oversees and administers the panel review process for grant applications within ANA. Develops polices and procedures for paneling, rating, and ranking applications. Contacts prospective panelists and completes necessary paperwork. Coordinates logistics for panels.

D. West Division provides financial assistance to American Indian tribal governments, Native Hawaiian organizations, Alaskan Native organizations, urban Indian groups, rural off-reservation Native American groups, and other Native American groups and organizations, including national, regional, statewide, local, and inter-tribal consortia groups in the Western part of the U.S. Serves as a resource for and liaison with Indian tribes and other Native American groups and organizations and as a link with projects of national significance.

Carries out special projects and initiatives for the benefit of the ANA service population. Provides coordination for the ANA Region X Office and ANA activities in other OHDS regional offices serving the Western part of the U.S.

Provides information and program content for plans, budget formulation and policy development for activities authorized under the Native American Programs Act of 1974, as amended. Coordinates, in cooperation with the ANA Planning and Support Division on all matters pertaining to planning, overall ANA management, policy development and control, and program development.

E. East Division provides direct financial assistance to American Indian tribal governments, urban Indian groups, rural off-reservation Native American groups, and other Native American groups and organizations, including national, regional, statewide, local, and inter-tribal consortia groups in the Eastern part of the U.S. Serves as a resource for and liaison with Indian tribes and other Native American groups and organizations and as a link with programs of national significance.

Carries out special projects and initiatives for the benefit of the ANA service population. Provides coordination for ANA activities in OHDS regional offices serving the Eastern part of the U.S.

Provides information and program content for plans, budget formulation and policy development for activities authorized under the Native American Programs Act of 1974, as amended. Coordinates, in cooperation with the ANA Planning and Support Division on all matters pertaining to planning, overall ANA management, policy development and control, and program development.

Dated: December 18, 1985.

Dorcas R. Hardy,

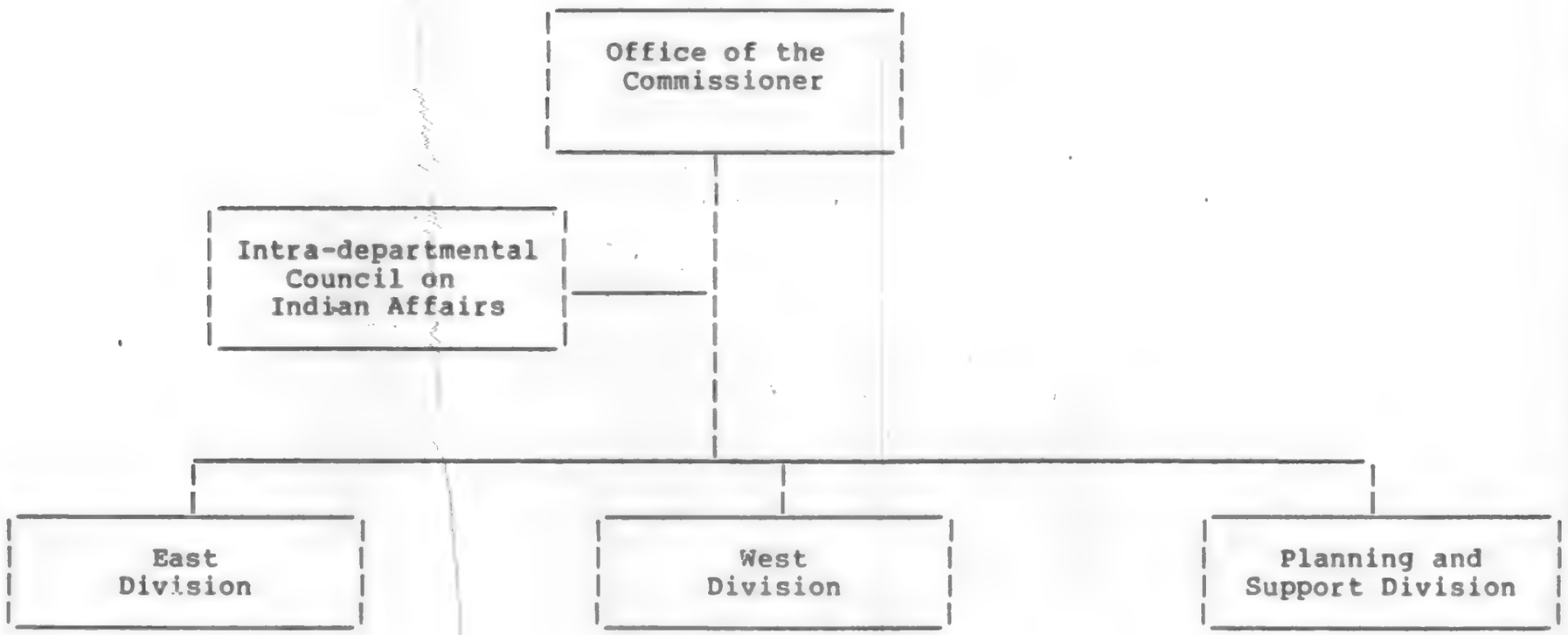
Assistant Secretary for Human Development Services.

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DHHS OFFICE OF HUMAN DEVELOPMENT SERVICES

ADMINISTRATION FOR NATIVE AMERICANS



APPROVED: Lucas R. Hardy

Title : Assistant Secretary for Human Development Services

DATED: DEC 18 1985

[FR Doc. 85-30509 Filed 12-24-85; 8:45 am]

BILLING CODE 4130-01-C

National Institutes of Health

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control, Cancer Control Science Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Control Science Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, January 3, 1986, Building 31, Conference Room 4, 9000 Rockville Pike, Bethesda, Maryland 20892. The entire meeting will be open to the public from 10:30 a.m. to adjournment, and the current and future programs of the Cancer Control Science Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, Nationl Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20892 (301/427–8630) will furnish substantive program information.

Dated: December 20, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–30590 Filed 12–24–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Board of Scientific Counselors, Division of Cancer Prevention and Control, Centers and Community Oncology Subcommittee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Centers and Community Oncology Subcommittee of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, January 7, 1986, O'Hare Hilton Hotel, Room 2015, Chicago, Illinois. The entire meeting will be open to the public from 10:00 a.m. to adjournment, and the current and future programs of the Centers and Community Oncology Program will be discussed. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of meetings and rosters of subcommittee members upon request.

Mr. J. Henry Montes, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Prevention and Control, National Cancer Institute, National Institutes of Health, Blair Building, Room 1A07, Bethesda, Maryland 20205 (301/427–8630) will furnish substantive program information.

Dated: December 20, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–30591 Filed 12–24–85; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Cancer Biology-Immunology Contracts Review Committee; Cancellation of Meeting

Notice of the meeting of the Cancer Biology-Immunology Contracts Review Committee, National Cancer Institute, National Institutes of Health, January 8, 9, 10, 1986, published in the **Federal Register**, (50 FR 49462) on December 2, 1985, is hereby cancelled because of conflicting schedules of the committee members. For further information, please contact Dr. Wilna Woods, Executive Secretary, National Cancer Institute, Westwood Building, Room 807, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7153).

Dated: December 20, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–30594 Filed 12–24–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Emergency Area Closure, Butte District, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency area closure, closed to all vehicles October 15 to July 1, except for authorized access.

SUMMARY: This notice closes an area on Armstead Mountain in the Blacktail Mountains, Southwestern Montana, to all vehicle use, October 15 to July 1, except for authorized uses (43 CFR 8341.2). The purpose of this closure is to reduce watershed degradation. The emergency closure is effective immediately on the following lands, and will remain in effect until the 1984 Interagency Travel Plan for Southwestern Montana is revised.

T. 10 S., R. 9 W., MPM
Section 17: SW¼;
Section 18: E½, E½W½;
Section 19: NE¼;
Section 20: NW¼NW¼.

ADDRESS: Harry R. Cosgriffe, Area Manager, Dillon Resource Area, P.O. Box 1048, Dillon, Montana 59725.

Dated: December 17, 1985.

Jack A. McIntosh,

District Manager.

[FR Doc. 85–30406 Filed 12–24–85; 8:45 am]

BILLING CODE 4310–DN–M

Federal Minerals Exchange; Cibola, McKinley and Valencia Counties, NM; Realty Action

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Exchange, Federal Minerals in Cibola, Mckinley, and Valencia Counties, New Mexico.

SUMMARY: The following described Federal mineral estate which is located under private surface estate has been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

New Mexico Principal Meridian

T. 4 N., R. 2 W.,
Sec. 8, all.
T. 4 N., R. 5 W.,
Sec. 10, all.
T. 5 N., R. 4 W.,
Sec. 24, NW¼, S½.
T. 5 N., R. 5 W.,
Sec. 10, all.
T. 6 N., R. 3 W.,
Sec. 26, NW¼, S½;
Sec. 28, all.
T. 8 N., R. 13 W.,
Sec. 4, Lots 1 through 4, S½N½, S½;
Sec. 6, Lots 1 through 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Secs. 8, 10, all;
Sec. 18, Lots 1 through 4, E½, E½W½.
T. 9 N., R. 13 W.,
Sec. 4, Lots 1 through 4, S½N½, S½;
Sec. 6, Lots 1 through 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Secs. 8, 10, 14, all;
Sec. 18, Lots 1 through 4, E½, E½W½;
Secs. 20, 24, all;
Sec. 30, Lots 1 through 4, E½, E½W½.
T. 9 N., R. 14 W.,
Secs. 10, 12, all;
Sec. 14, N½;

Sec. 24, all;
Sec. 26, E½E½, W½;,
Sec. 28, N½, SE¼;
Sec. 34, E½.
T. 10 N., R. 14 W.,
Secs. 22, 28, 34, all.
T. 11 N., R. 19 W.,
Sec. 2, Lots 1 through 4, S½N½;
Sec. 4, SE¼;
Sec. 6, Lots 1 through 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 12, all;
Sec. 24, S½.
T. 11 N., R. 20 W.,
Sec. 6, Lots 1 through 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, all;
Sec. 10, W½;
Sec. 12, N½, W½SW¼, E½SE¼;
Sec. 24, W½.

Containing 22,357.89 acres, more or less.

In exchange for this Federal mineral estate, the United States has selected approximately 22,234 acres of privately owned minerals within Cibola County in the El Malpais Instant Study Area south of Grants, New Mexico, as listed below:

New Mexico Principal Meridian

T. 8 N., R. 10 W.,
Sec. 1, Lots 1 through 4, S½N½, S½;
Sec. 3, Lots 1 through 4, S½N½, S½;
Sec. 5, Lots 1 through 4, S½N½, S½;
Sec. 7, Lots 1 through 4, E½, E½W½;
Sec. 9, all;
Sec. 11, 15, 17, all;
Sec. 19, Lots 1 through 4, E½, E½W½;
Sec. 21, 27, 29, all;
Sec. 31, Lots 1 through 4, E½, E½W½.
T. 8 N., R. 11 W.,
Sec. 1, Lots 1 though 4, S½N½, S½;
Sec. 3, Lots 1 though 4, S½N½, S½;
Sec. 5, Lots 1 though 4, S½N½, S½;
Sec. 7, Lots 1 though 4, E½, E½W½;
Sec. 9, 11, 13, 15, 17, all;
Sec. 19, Lots 1 through 4, E½, E½W½;
Sec. 21, 23, 25, 27, 29, all;
Sec. 31, Lots 1 through 4, E½, E½W½;
Sec. 33, 35, all.
T. 8 N., R. 12 W.,
Sec. 1, Lots 1 through 4, S½N½, S½;
Sec. 3, Lots 1 through 4, S½N½, S½;
Sec. 11, 25, all.

Containing 22,234.00 acres more or less.

The value of the mineral estates exchanged will be approximately equal.

The purpose of the exchange is to consolidate Federal mineral ownership where the Bureau also owns the surface estate.

The purpose of this Notice of Realty Action is two-fold. First, this notice will provide a response period of forty-five (45) days during which public comments will be accepted regarding this exchange proposal. Secondly, this action as provided in 43 CFR 2201.1(b), shall segregate the Federal minerals as described in this Notice, to the extent that they will not be subject to appropriation under mineral leasing and mining laws, subject to any prior valid rights. The segregative effect shall terminate either upon publication in the **Federal Register** of a termination of the segregation or two years from the date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange may be obtained from the Area Manager, Rio Puerco Resource Area, 3550 Pan American Freeway NE., Albuquerque, New Mexico, 87107.

For a period of forty-five (45) days interested parties may submit comments to the District Manager, Albuquerque District Office, P.O. Box 6770, Albuquerque, New Mexico, 87197–6770.

L. Paul Applegate,
District Manager.

[FR Doc. 85–30481 Filed 12–24–85; 8:45am]
BILLING CODE 4310–JB–M

Shoshone District, ID, Public Lands; Picabo Hills Area; Emergency Closure

AGENCY: Bureau of Land Management (BLM), Interior

ACTION: Emergency closure of public lands (Picabo Hills).

SUMMARY: Notice is hereby given that effective immediately all public lands located in the Picabo Hills Area are closed to motorized vehicles. The area is bounded generally by U.S. Highway 20 on the north, the Picabo Road on the east and south, and Spud Patch Road on the southwest, and the Intermountain Gas Pipeline Road on the West.

The legal description of the area is:

T. 1 S., 19 E., Boise Meridian,
Secs. 32 and 34 and portions of secs. 25, 30, 31, 33, and 35;
T. 1 S., R. 20 E., Boise Meridian,
Portions of secs. 29, 30, 31, 32, and 33;
T. 2 S., R. 19 E., Boise Meridian,
Secs. 5, 8, and 12 and portions of secs. 1, 6, 7, 10, 11, 13, 14, 15, 17, and 18;
T. 2 S., R. 20 E., Boise Meridian,
Secs. 7 and 8 and portions of secs. 4, 5, 6, 9, 17, 18, 19, 20, and 21.

All Federal lands administered by the Bureau of Land Management within the above described area are closed to all motorized vehicles from the date of this notice until April 15, 1986. Signs will be posted to identify the exterior boundaries.

The purpose of this closure is to protect wintering deer from all motor vehicles. The area is crucial winter habitat where deer are concentrated and susceptible to disturbances.

The authority for this closure is 43 CFR 8364.1. The closure will remain in effect until April 15, 1986.

FOR FURTHER INFORMATION CONTACT: Ervin R. Cowley, Monument Resource Area Manager, P.O. Box 2B, Shoshone, Idaho 83352, Telephone (208) 886–2206.

Dated: December 16, 1985.

Jon Ideo,
Acting District Manager.

[FR Doc. 85–20445 Filed 12–24–85; 8:45 am]
BILLING CODE 4310–66–M

Revision of Oil and Gas, and Geothermal Lease Forms

AGENCY: Bureau of Land Management, Interior.

ACTION: Revision of oil and gas, and geothermal lease forms.

SUMMARY: On August 7, 1985 (50 FR 31925), the Bureau proposed certain changes to the standard oil and gas lease from (Form 3100–11) and the geothermal lease form (Form 3200–24). The changes would have: (1) Clarified that the non-exclusive right to conduct geophysical exploration was granted by a lease; (2) required that lessees contact the Bureau prior to entry on their leaseholds (rather than prior to disturbing the surface); and (3) specified that surface use would be subject to regulation by surface managing agencies provided their requirements did not conflict with lease rights granted or the terms and conditions of the leases.

After careful review of the comments received, it has been decided that only the first of the three proposed changes will be made final. Accordingly, at such time as reprinting of the oil and gas, and geothermal lease forms is necessary, language will be added to the respective granting clauses to clarify that lessees have the non-exclusive right to conduct geophysical exploration on their leaseholds.

EFFECTIVE DATE: This action involves only a clarification to existing forms. It is effective immediately and applicable to both existing and future leases.

ADDRESS: Director (140), Bureau of Land Management, 18th & C Streets, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Karl F. Duscher, (202) 653–2187.

SUPPLEMENTARY INFORMATION: Comments were received from fourteen parties; nine from energy developers, two from industry associations, and three from Federal Government offices. The comments were considered and addressed as follows:

There were no objections to the change involving geophysical exploration rights. However, it was suggested that the Bureau be more

comprehensive in the regulations (43 CFR 3162.3–3) addressing geophysical operations conducted by lessees on leaseholds. The regulations will be reviewed and, if changes are deemed necessary, a rulemaking will be proposed. It was also suggested that it would be more efficient for lessees if the Bureau allowed the agency administering the surface to approve exploration operations on leaseholds, particularly since geophysical projects often extend off lease and already require permitting by the surface management agency. In response to this suggestion, the Bureau wishes to clarify that lessees have a choice as to how they obtain approval of geophysical exploration operations on leaseholds. If the lessee chooses to conduct exploration in the capacity of a lessee, then compliance with Bureau regulations at 43 CFR 3162.3–3 is required. However, the lessee may also conduct the exploration as a "non-lessee" since the lessee had the right to apply for an exploration permit prior to lease issuance and is not deprived of this right (shared by all parties) by the existence of a lease. If the lessee so chooses, the geophysical project would not be considered lease operations and would, therefore, not require approval of the Bureau, but would require compliance with applicable regulations of the surface management agency. The Bureau believes that lessees will choose the most convenient method for approval.

With respect to the second proposed change, most of those commenting observed that the change was in conflict with Operating Order No. 1, which specifically allows entry upon leaseholds for surveying and staking of proposed well locations without advance approval. However, the Order does require advance approval where "significant" surface disturbance is likely to occur as a result of surveying and staking. A problem exists in that, in some cases, surface disturbance that is ordinarily thought to be minor (such as cutting vegetation for survey lines) may actually cause significant disturbance. The intent of the proposed change was to provide an apportunity for the Bureau to orient the lessee to unique concerns and environmental sensitivities on the leasehold that may not have been addressed in lease sitpulations since the areas involved were relatively small. With such information, the lessee would be better able to determine whether operations may in fact constitute significant surface disturbance. For this reason, the Order encourages lessees and operators to notify the surface management agency prior to entry upon the lands. However, the problem is not such that a change in the lease form is necessary. Consideration will be given to defining "significant" surface disturbance in either the Order or the regulations.

Comments on the third change indicated that the proposed wording was too broad, that dual permitting of operations could result, and that conflicts involving different sets of regulations and the lease terms would occur. Lessees do have to comply with surface management agency regulations for use of existing roads, acess to the leasehold, securing sand and gravel sources, etc. However, the comments indicated that such compliance was already well understood. Therefore, the Bureau will not adopt this change.

James M. Parker,

Acting Director, Bureau of Land Management.

December 20, 1985.

[FR Doc. 85–30499 Filed 12–24–85; 8:45 am]

BILLING CODE 4310-84-M

[Designation Order UT–020–8601]

Utah Off-road Vehicle Designations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of off-road vehicle designation decisions.

Decision

Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340. The lands described below, under the administration of the Bureau of Land Management, are designated as closed, limited, or open to off-road motorized vehicle use.

The area affected by these designations is known as the Tooele Planning Unit, which includes all public lands in Tooele County, totaling 2,001,166 acres. These designations are a result of land use decisions developed with public involvement in the 1984 Tooele Management Framework Plan.

A. *Open Designation.* Areas which are designated open comprise approximately 1,694,155 acres.

Open designation was determined to be appropriate for these public lands since off-road vehicle use is an important recreational activity and is essential for the conduct of other authorized resource uses. All public lands administered by the Bureau of Land Management in the Tooele Planning Unit which are not designated limited or closed, are designated open.

B. *Limited Designation.* A total of 275,191 acres in the Tooele Planning Unit are designated as limited to motorized vehicle travel. The areas that are designated as limited are:

1. *Rush Lake/Muskrat Springs:* The Rush Lake/Muskrat Springs area contains 23,897 acres of public land in two parcels. One parcel contains 1,631 acres and is located immediately southwest of Stockton, Utah. The second parcel contains 22,266 acres and is located 4 miles south of Timpie Junction, Utah. These two parcels will closed to motor vehicles from April 1 to July 15 of each year and vehicle travel will be restricted to existing roads and jeep trails for the remainder of the year (July 16-March 31). This limitation is necessary to protect the breeding/nesting activities of shorebirds and waterfowl. In addition, the riparian vegetation and unstable soils (mud) are highly susceptible to damage from motor vehicles.

2. *Salt Mountain:* This area is located on the west slope of the Stansbury Mountains, about 3 miles east and northest of Iosepa, Utah. It contains 14,207 acres that have been identified as crucial deer winter range. Motor vehicles use will be restricted to existing roads and jeep trails from May 1 through December 31 of each year. From January 1 through April 30 of each year, the area will be closed to all motor vehicle use except for search and rescue efforts and administrative use by state and federal agencies. This area has been identified as the most crucial habitat for the survival of the Stansbury mule deer herd. The limitations listed above are necessary to ensure the protection of the habitat and to prevent the disturbance of big game animals during the time when they are most vulnerable.

3. *Southwest Stansbury Mountains-Western Onaqui Mountains:* This area contains three separate parcels of public land totaling 9,029 acres. One parcel is located immediately east of the Skull Valley Indian Reservation on the southwest slope of the Stansbury Mountains. The other two Parcels are located approximately 2 and 9 miles, respectively, south of the Johnson Pass on the West slope of the Onaqui Mountains. All three parcels have been identified as crucial mule deer winter range and vehicle travel will be restricted to existing roads and jeep trails for the entire year. This limitation is necessary to emphasize the sensitivity of the parcels to vehicle damage, to prevent the creation of additional roads

that would destroy deer habitat, and to prevent harassment of deer by vehicles.

4. *Simpson Springs Campground:* This area is located about 20 miles south-southwest of Dugway, Utah. Forty acres of land are designated. Motor vehicle use is limited to existing roads and designated trails year-round. This limitation is necessary to limit ORV play near the camping facilities in order to ensure the quiet enjoyment of the area by all recreationists. The limitation still allows motorized access to and from the camping area.

5. *Oquirrh Mountains:* Vehicle use will be restricted to existing roads and trails on almost the entire western slope of the Oquirrh Mountains—an area totaling 34,904 acres. This area runs from 2 miles south of I–80 on the north to 3 miles north of Fivemile Pass in the south. This area serves as an important watershed for the communities which lie below in the Tooele and Rush valleys. Indiscriminate motorized vehicle use in this steep, rugged terrain could destroy vegetation and disturb soils, thereby effectively reducing the suitability of the area for a community watershed. Protecting the intergrity of the elk and deer habitat is an important secondary objective that will be accomplished by this limitation.

6. *Puddle Valley Antelope Area:* This area contains 192,854 acres and includes Puddle Valley, Ripple Valley, the Lakeside Mountains, the Grassy Mountains, and the Greyback Hills. It will be closed to organized motorized vehicle races during the entire year. Antelope were reintroduced into this area in 1975, and the herd was supplemented in 1979. The area is large enough and the animals are dispersed enough that casual motor vehicle use will not conflict greatly with the antelope. However, large motorized vehicle races or other events could have negative impacts on the salt desert shrub vegetation. This impact to the vegetation would reduce the forage for antelope and open the area to erosion. Disturbance and/or harassment of antelope by noise and the presence of motorized vehicles could affect the continued existence of antelope in this area.

7. *Horseshoe Springs Recreation Area:* Between January 1 and April 30 each year 260 acres of public land of the Horseshoe Recreation Knoll is limited to motorized vehicle use. The only access allowed is for camping and other non-motorized recreation use. All other motorized vehicle use and "play" is prohibited during this period. The area is located about 9 miles south of Timpie Springs on the west side of the Stansbury Mountains. The area receives relatively heavy camping and recreation use and it is within crucial areas for both mule deer winter range and waterfowl brooding/nesting activities. Indiscriminate ORV use could be very disturbing to wildlife and destructive of their habitat during a crucial time of year for them. However, casual vehicle use for camping access will not be overly disturbing to wildlife. This area is open to ORVs during the remainder of the year.

C. *Closed Designation.* A total of 31,860 acres in two areas are designated as closed to motorized vehicle use of any kind during the entire year. These two areas are:

1. *North Deep Creek Mountains:* The north Deep Creek Range is located approximately 4 miles east of Ibapah, Utah and 7 miles northwest of Callao, Utah. Closure of this 21,860 acre area is necessary to protect its unique and pristine character and resources.

2. *North Stansbury Mountains:* The North Stansbury Mountains area is located approximately 8 miles west-northwest of Grantsville, Utah. Closure of this 10,000 acre area is necessary to protect valuable resources that are particularly sensitive to ORV use.

The designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impact of these decisions is available for inspection at the office listed below.

ADDRESSES: For further information about these designations contact Gregg Morgan, Outdoor Recreation Planner or Joelle Buffa, Wildlife Biologist at the following office: Bureau of Land Management, Salt Lake District, 2370 South 2300 West, Salt Lake City Utah 84119, (801) 524–5348.

Dated: December 18, 1985.

Frank W. Snell,

Salt Lake District Manager

[FR Doc. 85–30456 Filed 12–24–85; 8:45 am]

BILLING CODE 4310-DQ-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5540, Block 90, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Dulac, Louisiana.

DATE: The subject DOCD was deemed submitted on December 12, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 16, 1985.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–30408 Filed 12–24–85; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–220]

Effects of Proposed Tax Reforms on the International Competitiveness of U.S. Industries

AGENCY: United States International Trade Commission.

ACTION: At the request of the Committee on Finance of the United States Senate, the Commission has instituted investigation No. 332–220 under section 332(b) of the Tariff Act of 1930 (19 U.S.C.

1332(b)) concerning how the President's proposed tax reform and the tax reforms recently proposed by the House Committee on Ways and Means would affect the international competitiveness of U.S. industries.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: Donald J. Rousslang (202–523–0075), Chief, Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC.

SUPPLEMENTARY INFORMATION:

Backgound

The Commission instituted the investigation, No. 332–220, following receipt of December 2, 1985 of a request therefor from the Chairman of the Committee on Finance of the United States Senate. In accordance with the Committee's request, the study will estimate the effects of the proposed tax changes on the exports and imports of individual U.S. industries. It will also analyze other aspects of the effects on U.S. competitiveness.

Public Hearing

A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC., beginning at 10:00 a.m. on January 28, 1986. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on January 14, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs. The deadline for filing prehearing briefs is January 21, 1986.

Written Submission:

In lieu of a public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be received no later than February 4, 1985. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Posthearing briefs must be submitted not later than the close of business on February 4, 1986. A signed original and 14 true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's Rules (19 CFR 201.8).

Hearing-impaired persons are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–001.

By order of the Commission.

Issued: December 19, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 83–30520 Filed 12–24–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-215]

Certain Double-Sided Floppy Disk Drives and Components Thereof; Commission Decision To Review Initial Determination, Schedule for Filing of Written Submissions and Violation and on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review portions of the administrative law judge's initial determination finding no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in sections 210.53–.56 of the Commission's Rules of Practice and Procedure (49 FR 46123 (Nov. 23, 1984); to be codified at 19 CFR 210.53–.56).

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUMMARY: On November 1, 1985, the administrative law judge issued an initial determination (ID) finding no violation of section 337 in the importation or sale of certain double-sided floppy disk drives. Complainant, respondents and the Commission investigative attorney filed petitions for review of certain parts of the ID pursuant to section 210.54(a) of the Commission's rules.

Having examined the record, including the petitions for review and the responses thereto, the Commission has concluded that the following issues warrant review:

(1) Whether the double-sided floppy disk drives that are the subject of the investigation infringe U.S. Patent No. 4,151,573;

(2) Whether the domestic industry is efficiently and economically operated;

(3) Whether the domestic industry includes the activities of complainant Tandon Corporation;

(4) Whether the ALJ's reasoning that the domestic industry does not include 8-inch double-sided floppy disk drive manufacturing operations because "the 8 inch drive only competes against similar sized drives as possible replacements in older systems for existing 8 inch drives, and affords no real market competition to 5¼ inch and 3½ inch double-sided floppy disk drive products" (ID at pages 64–66) is legally erroneous in view of the decision of the Court of Appeals for the Federal Circuit in *Bally Midway Mfg. Co.* v. *U.S. International Trade Commission, 714 F.2d 1117 (Fed. Cir. 1983);*

(5) Whether there is a sufficient causal nexus between the alleged unfair acts of the respondents and the substantial injury to the domestic industry; and

(6) Whether the alleged unfair acts of the respondents have a tendency to substantially injure the domestic industry.

No other issues will be reviewed.

SUPPLEMENTARY INFORMATION: If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States and/or (2) temporary cease and desist orders that could result in one or more respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of relief, if any, that should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates that some form of relief is appropriate, it must consider the effect that the relief would have upon: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) the U.S. production of articles that are like or indirectly competitive with those which are the subject of the investigation, and (4) U.S. consumers. The Commission is, therefore, interested in receiving written submissions concerning the effect, if any, that granting a remedy would have on the public interest.

BEST COPY AVAILABLE

If the Commission finds that a violation of section 337 has occurred and orders permanent relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is, therefore, interested in receiving written submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation and interested Government agencies are encouraged to file written submissions on the issues under review, and the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed remedial order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding.

Written submissions on the issues under review and on remedy, the public interest, and bonding must be filed not later than the close of business on December 30, 1985. Reply submissions on the issues under review and on remedy, the pubic interest, and bonding must be filed not later than January 6, 1986.

Commission Hearing

The Commission does not plan to hold a public hearing in connection with the final disposition of this investigation.

Additional Information

Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment by the administrative law judge. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection in the Office of the Secretary.

Notice of this investigation was published in the **Federal Register** of January 30, 1985 (50 FR 4276).

Copies of the nonconfidential version of the administraive law judge's initial determination and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: December 19, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–30514 Filed 12–24–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–236]

Certain Portable Bag Sewing Machines and Parts Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1327.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 15, 1985, pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Axia, Incorporated, 122 West 22nd Street, Oak Brook, Illinois 60521. Supplements to the complaint were filed on December 4, 5, and 6, 1985. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain portable bag sewing machines and parts thereof into the United States, or in their sale, by reason of alleged (1) direct, contributory, and induced infringement of at least claims, 1–2, 4, 10, 18, 24, and 26–33 of U.S. Letters Patent 4,348,970; and (2) direct, contributory, and induced infringement of at least claims 1–2, 8, and 11 of U.S. Letters Patent 4,441,442. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute and investigation, and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Steven H. Schwartz, Esq., or Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–523–4877 and 202–523–1272, respectively.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12)

Scope of Investigation

Having considered the compliant, the U.S. International Trade Commission, on December 12, 1985, ORDERD THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain portable bag sewing machines and parts thereof into the United States, or in their sale, by reason of alleged (1) direct, contributory, and induced infringement of claims 1–2, 4, 10, 18, 24, and 26–33 of U.S. Letters Patent 4,348,970; and (2) direct, contributory, and induced infringement of claims 1–2, 8, and 11 of U.S. Letters Patent 4,441,442, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upn which this notice of investigation shall be served:

(a) The complainant is—

Axia, Incorporated, 122 West 22nd Street, Oak Brook, Illinois 60521.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the compliant is to be served:

Newlong Machine Works, Ltd., 4–14 Higashi Ueno 6–chome, Taito–Ku, Tokyo 110, Japan.

American-Newlong, Inc., 5310 South Harding Street, Indianapolis, Indiana 46217.

(c) Steven H. Schwartz, Esq., and Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 124 and Room 128, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of

the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: December 13, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–30518 Filed 12–24–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–225]

Certain Multi-Level Touch Control Lighting Switches; Commission Determination Not To Review Initial Determination Joining Respondents

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) joining three respondents to the investigation.

SUMMARY: Notice is hereby given that the Commission has determined not to review the ID of the administrative law judge (ALJ) to join three parties as respondents in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: John Kingery, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1638.

SUPPLEMENTARY INFORMATION: On November 5, 1985, complainant Southwest Laboratories, Inc., moved (Motion 225–2) to amend the complaint and the notice of investigation by joining as respondents: (1) Darjung Industrial Co., Ltd., of Taiwan; (2) Barney Hong Kong, Ltd., of Hong Kong; and (3) COSM Electronics, Ltd., of Hong Kong. On November 21, 1985, the ALJ issued an ID granting the motion. No petitions for review were filed, nor were any comments from other government agencies received.

Copies of the ALJ's ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: December 19, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–30521 Filed 12–24–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–234]

Certain Upper Body Protector Apparatus for Use in Motosports; Change of the Commission Investigative Attoney

Notice is hereby given that, as of this date, Gary J. Rinkerman, Esq., and Ethel L. Morgan, Esq., of the Office of Unfair Import Investigations will be the Commission investigative attorneys in the above-cited investigation.

The Secretary is requested to publish this Notice in the Federal Register.

Dated: December 16, 1985.

Arthur Wineburg,

Dictor, Office of Unfair Import Investigation.

[FD Doc, 85–30512 Filed 12–24–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–201]

Certain Products With Gremlins Character Depictions; Extension of Deadline for Completion of Investigation

AGENCY: International Trade Commission.

ACTION: Extension of deadline for completion of the above-captioned investigation to January 16, 1986.

SUMMARY: The Commission has determined to extend the administrative deadline for completion of the investigation to January 16, 1986. The Commission's action and order and opinion(s) will be issued on the date.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of General Counsel, United States International Trade Commission, telephone 202–523–0498.

SUPPLEMENTARY INFORMATION: The Commission has determined to extend the administrative deadline for completion of this investigation in order to further consider the industry and injury issues. The Commission previously declared this investigation "more complicated" and established an administrative deadline of December 16, 1985. 50 FR 35169 (Aug. 29, 1985).

The authority for this action is contained in section 337 of the Tariff Act of 1930, 19 U.S.C. 1337.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

By order of the Commission.

Issued: December 16, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–30513 Filed 12–24–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–191]

Certain Stretch Wrapping Apparatus and Components Thereof; Institution of Advisory Opinion Proceedings

AGENCY U.S. International Trade Commission.

ACTION: Institution of advisory opinion proceedings.

SUMMARY: The Commission has accepted respondents' request for advisory opinion procedings. The Commission has certified the request to the Chief Administrative Law Judge for appropriate adversary proceedings and has directed the issuance of an initial advisory opinion (IAO) on whether an allegedly new machine is covered by the terms of the consent order issued in the above-captioned investigation in November 1984. The IAO is to be issued as expeditiously as possible, preferably within 4 months.

FOR FURTHER INFORMATION CONTACT: John Kingery, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1638.

SUPPLEMENTARY INFORMATION: This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), and the Commission rule § 211.54(b) (19 CFR 211.54(b)).

Respondents filed a request for an advisory opinion on September 18, 1985. Respondents requested that the Commission issue an advisory opinion concerning whether an allegedly new machine developed by respondents infringes any claim of the patent at issue in the Commission's investigation terminated by the consent order issued in November 1984. Complainant responded that an advisory opinion is appropriate under the circumstances and argued that the allegedly new machine is covered by the terms of the consent order.

Copies of the Commission's action and order and all other nonconfidential documents filed in connection with this investigation and with respect to the request for an advisory opinion are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0160.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: December 13, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–30519 Filed 12–24–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–300 (Preliminary)]

Dynamic Random Access Memory Semiconductors (DRAM's) of 256 Kilobits and Above From Japan

AGENCY: International Trade Commission.

ACTION: Revised schedule for the conference to be held in connection with the subject investigation.

EFFECTIVE DATE: December 20, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202–523–0242), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION: On December 11, 1985, the Commission instituted the subject investigation and established a schedule for its conduct. Subsequently, a number of parties to the investigation requested that the conference to be held in connection with the investigation be rescheduled from January 3, 1986, to January 6, 1986. That request has been granted.

The Commission's new schedule for the investigation is as follows: the conference will be held in room 331 of the U.S. International Trade Commission Building at 9:30 a.m. on January 6, 1986, and the deadline for filing all written submissions, including post-conference briefs, is January 8, 1986.

For further information concerning this investigation see the Commission's notice of investigation and the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

AUTHORITY: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: December 20, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–30522 Filed 12–24–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–200 (Preliminary)]

Radial Ply Tires for Passenger Cars From the Republic of Korea

Determination

In accordance with the August 8, 1985, judgment of the U.S. Court of International Trade[1] reversing and remanding the Commission's negative preliminary determination in Investigation No. 731–TA–200 (Preliminary), the Commission makes the following preliminary determination:

Pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the Republic of Korea of radial ply tires for passenger cars provided for in item 772.51 of the Tariff Schedules of the United States (TSUS), which are alleged to be sold at LTFV.

Background

On July 20, 1984, a petition was filed with the United States International Trade Commission and the U.S. Department of Commerce by counsel on behalf of The Armstrong Rubber Co., Cooper Tire & Rubber Co., The Firestone Tire & Rubber Co., Thje B.F. Goodrich Co., and The Goodyear Tire & Rubber Co., alleging that imports of the subject merchandise are being sold in the United States at less than fair value. Accordingly, effective July 20, 1984, the Commission instituted a preliminary antidumping investigation under section 733(a) of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on July 31, 1984, and all persons who requested the opportunity were permitted to appear in person or by counsel.

On September 4, 1984, the Commission issued a negative preliminary determination in the investigation. 49FR 36712 (September 19, 1984). The negative preliminary determination, accompanied by the views of the Commission and the public version of its report, were subsequently published in *Radial Ply Tires for Passenger Cars from the Republic of Korea.* Investigation No. 731–TA–200 (Preliminary), USITC Pub. 1572 (1984).

On February 4, 1985, the petitioners sought judicial review of the Commission's determination by commencing a civil action in the U.S. Court of International Trade (CIT) under 28 U.S.C. 1581(c).

On August 8, 1985, the CIT entered a judgment reversing and remanding the Commission's determination and ordering the Commission to make a new determination consistent with the CIT's opinion.[2] In the course of its discussion of the issues of material injury and causation and the standard for preliminary determinations, the CIT's opinion makes clear that only an

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[1] Armstrong Rubber Co. v. United States, Slip Opinion 85–84, U.S. Court of International Trade (August 8, 1985). The Commission has appealed the CIT's judgment. Appeal No. 85–2707.

[2] *See* note 1, *supra.*

affirmative preliminary determination would be consistent with its analysis.

On October 25, 1985, the Commission appealed the CIT's judgment to the United States Court of Appeals for the Federal Circuit (CAFC).[3]

On November 22, 1985, the CAFC denied the Commission's motion for a stay of the proceeding of the CIT pending appeal. The denial of the Commission's motion for a stay pending appeal requires the Commission to issue preliminary determinations in the subject investigation. Consistent with the CIT's opinion and judgment, the determination is affirmative. The issuance of this affirmative preliminary determination is affirmative. The issuance of this affirmative preliminary determination does not affect the Commission's appeal seeking reversal of the CIT's August 8, 1985, judgment, nor does it amount to a predetermination of the outcome of any final investigation which may be instituted.

The Commission transmitted this determination to the Secretary of Commerce on December 16, 1985.

By order of the Commission.

Issued: December 16, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-30517 Filed 12-24-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30750]

Burlington Northern Railroad Co.; Trackage Rights Exemption; Southern Pacific Transportation Co.

The Burlington Northern Railroad Company (BN) has entered into an agreement for trackage rights over Southern Pacific Transportation Company (SP) track between Albany and Lebanon, OR, as follows: (1) Between Albany and Page, for the purpose of bridging its freight trains, engines, and cars thereover and not for the purpose of using any industrial, team, loading, or unloading track or other facility; and (2) between Page and Lebanon, for the purpose of bridging its freight trains, engines, and cars thereover, and to serve existing industrial tracks; a distance of approximately 13.62 miles, in the State of Oregon. This trackage rights agreement became effective January 1, 1982.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) will not stay the transaction.

Dated: December 19, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-30479 Filed 12-24-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-10 (Sub-36X)]

Norfolk and Western Railway Co.; Discontinuance of Service in Madison County, IL; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to discontinu service over its 10.4-mile line of railroad between milepost A-20.3 near Troy Junction and milepost A-30.7 near O'Fallon.

Applicant has certified (1) that no local or overhead traffic has moved over the line for at least 2 years and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. (91 1979).

The exemption will be effective January 25, 1986, and (unless stayed pending reconsideration). Petitions to stay must be filed by January 6, 1986, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by January 15, 1986 with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative:

Angelica O. Lloyd, 204 South Jefferson Street, Roanoke, VA 24042-0069.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice of the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: December 17, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-30478 Filed 12-24-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Decree in Clean Air Act Enforcement Action

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent decree in *United States* v. *World Oil Company* (CV F-85-033-EDP) was lodged with the United States District Court for the Eastern District of California on December 16, 1985. The decree requires World to convert its Sunland Refinery from "top-loading" to "bottom loading" in accordance with a compliance schedule, provides for stipulated penalties for violations of the consent decree and requires World to pay a civil penalty of $25,000 for past violations.

The Department of Justice will receive for thirty (30) days from the publication date of this notice written comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *World Oil Company*, 90-5-2-1.741.

The consent decree can be examined at the office of the United States Attorney, 4311 Federal Building, 1130 "O" Street, Fresno, California, at the Region IX office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California and at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, (Room 1515), Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent decree can be obtained in person or by mail from the Environmental Enforcement Section at the above address at a cost of $1.00 (10 cents per page photcopying expense).

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-30442 Filed 12-24-85; 8:45 am]

BILLING CODE 4410-01-M

[3] *See* note 1, *supra*.

Lodging of Proposed Consent Judgement in Action Under the Clean Air Act; American Development Corporation, Hamburg, IA

In accordance with Departmental Policy, 28 CFR 50.7, 30 FR 19029, notice is hereby given that a proposed consent Judgement in *United States of America v. American Development Corporation,* Civil Action No. 84–70–W was lodged with the United States District Court for the Southern District of Iowa, on December 13, 1985.

The compliant filed by the United States alleged that American Devlopment Corporation (ADC) violated the Clean Air Act by failing to comply with the New Source Performance Standards (NSPS), 40 CFR 60.7 and 40 CFR 60.480 *et seq.* and with Prevention of Significant Deterioration (PSD) regulations before commencing construction of an ethanol producing facility which has the potential to emit 100 tons per year of sulfur dioxide and nitrogen oxides. the complaint sought injunctive relief and civil penalties. The Consent Judgement requires ADC to comply with the NSPS regulations and with PSD premit requirements, and to pay a civil penalty of $82,500.

The Department of Justice will receive for a period of thirty (30) days from date of this publication comments relating to the proposed Consent Judgement. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Wahsington, D.C. 20530 and should refer to *United States* V. *American Development Corporation,* D.J. Ref. 90–5–2–1–724.

The proposed Consent Judgement may be examined at the Office of the United States Attorney, 115 U.S. Courthouse, E 1st & Walnut Streets, Des Moines, Iowa 50309; and at the Region VII Office of the United States Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the Consent Judgement may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC., 20530. A copy of the proposed Consent Judgement may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habichet,

Assistant Attorney General and Natural Resources Division.

[FR Doc. 85–30443 Filed 12–24–85; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 85–27]

Daniel R. Zoll, M.D. Brookline, MA; Hearing

Notice is hereby given that on March 28, 1985, the Drug Enforcement Administration, Department of Justice, issued to Daniel R. Zoll, M.D., an Oder To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AZ12221388, for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter is rescheduled to begin at 9:30 a.m. on Tuesday, January 7, 1986, in the U.S. Tax Court Courtroom, 13th Floor, U.S. Customs House, Number 2 India Street, Boston, Massachusetts.

Dated: December 19, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85–30407 Filed 12–24–85; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Veterans' Service Performance Standards; State Employment Security Agency Services

Title 38, United States Code, section 2007(b) requires establishment of definitive performance standards by which State Employment Security Agency (SESA) services for veterans will be measured. The minimum service categories which quantitative standards will be applied for Program Year 1985 are placement (in jobs over three days duration) counseling, enrollment in training and received some reportable service. The standards measure services provided to veterans (including eligible persons), Vietnam-era veterans, and disabled veterans, during PY 1985. For placement in jobs listed by Federal contractors, standards measure placement of Vietnam-era and special disabled veterans in all Federal contractor jobs.

According to Veterans' Program Letter No. 9–85, Veterans' Performance Standards for Program Year 1985, dated July 2, 1985, the methodology to be used for establishing performance standards for each State will be negotiated by the State Director for Veterans' Employment and Training Service and the State Employment Service Administrator. The numerical value for each reporting period for the veterans' performance standards will be published in the **Federal Register** as a public notice. The following performance standards have been established to be in effect through June 1986.

Signed at Washington, D.C. this 20th day of December 1985.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

Veterans' Service Performance Standards

Option No. 1 (Percentage of Veterans vs. Total Applicants 22 and Over)

State	Placement			Counseling		
	Veterans and eligibles	Vietnam era veterans	Disabled veterans	Veterans and eligibles	Vietnam era veterans	Disabled veterans
REGION I						
Connecticut	25	10	1.0	19	7	[illegible]
Maine	[illegible]	[illegible]	0.5	50	30	[illegible]
Massachusetts	17	6.8	[illegible]	29.7	12.7	2.5
New Hampshire	[illegible]	[illegible]	2.0	[illegible]	11	[illegible]
REGION II						
New Jersey	24	9.5	1.0	17	[illegible]	1.5
New York	17	7	1.2	25	9.5	[illegible]

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State	Placement			Counseling		
	Veterans and eligibles	Vietnam era veterans	Disabled veterans	Veterans and eligibles	Vietnam era veterans	Disabled veterans
Puerto Rico	8	3.5	[illegible]	14	4.5	1.4
Region III						
District of Columbia	19	[illegible]	0.7	[illegible]	14	3.0
Pennsylvania	[illegible]	[illegible]	1.0	[illegible]	15	4.0
Virginia	27	12	1.0	[illegible]	[illegible]	[illegible]
West Virginia	19.9	10.3	1.1	34.1	19.1	2.3
Region IV						
Alabama	23	[illegible]	1.0	[illegible]	15	3.0
Georgia	19.4	[illegible]	1.3	26.4	13.7	4.2
Kentucky	[illegible]	[illegible]	1.0	[illegible]	[illegible]	10
Mississippi	17	7.5	[illegible]	[illegible]	10	2.0
North Carolina	22	10	1.4	[illegible]	10.5	[illegible]
South Carolina	[illegible]	[illegible]	1.2	27.2	11.4	3.8
Tennessee	[illegible]	[illegible]	0.7	[illegible]	10	3.0
Region V						
Michigan	21.2	[illegible]	[illegible]	37.9	17.4	1.5
Ohio	27	13	0.5	[illegible]	[illegible]	2.0
Region VI						
Arkansas	[illegible]	10	1.0	[illegible]	[illegible]	10.0
New Mexico	22	10.5	1.0	[illegible]	12	2.0
Oklahoma	[illegible]	12.5	1.6	30	18.3	3.5
Region VII						
Nebraska	[illegible]	10	[illegible]	[illegible]	[illegible]	2.5
Region [illegible]						
Colorado	24	12	1.5	[illegible]	12	2.0
Montana	[illegible]	[illegible]	1.1	[illegible]	14	1.0
North Dakota	[illegible]	[illegible]	0.7	[illegible]	15	1.5
Wyoming	23	11	1.3	25	13	1.5
Region [illegible]						
Arizona	27	12.3	1.5	[illegible]	25	5.0
California	22	10	1.2	[illegible]	14	2.0
Hawaii	25.1	12.3	1.8	[illegible]	[illegible]	8.9
Nevada	[illegible]	15	1.2	24	12	3.0

State	Enrollment in Training		Disabled veterans	Received some reportable [illegible]		[illegible]
	Veterans and eligibles	Vietnam era veterans		Veterans and eligibles	Vietnam era veterans	
Region I						
Connecticut	[illegible]	[illegible]	1.0	21	8	1.0
Maine	(1)	(1)	(1)	[illegible]	8	0.5
Massachusetts	[illegible]	5	1.0	19.5	7.5	0.8
New Hampshire	[illegible]	10	2.0	[illegible]	7	2.0
Region II						
New Jersey	[illegible]	4	[illegible]	22	[illegible]	1.0
New York	14	[illegible]	[illegible]	23.1	9.2	1.3
Puerto Rico	13	5.5	1.0	17	5.9	1.5
Region III						
District of Columbia	7	[illegible]	0.2	16	[illegible]	0.6
Pennsylvania	[illegible]	[illegible]	1.0	[illegible]	14	1.0
Virginia	12	[illegible]	1.0	[illegible]	10	1.0
West Virginia	11.5	5.9	0.3	24.1	13	1.2
Region IV						
Alabama	(1)	(1)	(1)	[illegible]	[illegible]	1.0
Georgia	3.3	2.0	0.2	19.1	8.7	1.2
Kentucky	19	10	1.0	19	10	1.0
Mississippi	13	5.7	0.4	17.5	7.5	0.7
North Carolina	13	5.5	1.0	21	9	1.2
South Carolina	14.6	6.0	0.5	[illegible]	10.5	1.2
Tennessee	[illegible]	[illegible]	0.5	[illegible]	[illegible]	0.5
Region V						
Michigan	22.7	10.4	1.1	[illegible]	12.6	0.9
Ohio	[illegible]	10	1.0	[illegible]	13	1.1
Region VI						
Arkansas	(1)	(1)	(1)	25	10	1.0
New Mexico	15	[illegible]	0.5	25	10	1.0
Oklahoma	(1)	(1)	(1)	[illegible]	13.5	1.7
Region VII						
Nebraska	[illegible]	[illegible]	3.5	[illegible]	10	1.0
Region VIII						
Colorado	[illegible]	15	3.0	25	12	1.5
North Dakota	14	7	[illegible]	[illegible]	9	0.8
Wyoming	23	11	0.7	2.3	11	1.2

State			Veterans and eligibles	Vietnam era veterans	Disabled veterans	Special disabled veterans
Region IX						
Arizona	4	2.5	8.5	20	15.5	1.5
California	35	1.5	1.0	22	10	1.2
Hawaii	5.0	0.4	(1)	20.0	12.6	1.5
Nevada	15	1.0	1.5	25	12	1.3

[1] Waived for prorgram year 1985.

Placements in Federal contractor jobs: State	Vietnam era veterans	Special disabled veterans
Region I		
Connecticut	12	5.0
Maine	5.5	0.3
Massachusetts	4.2	0.1
New Hampshire	8	.05
Region II		
New Jersey	11.5	0.4
New York	5.4	0.2
Puerto Rico	10	1.0
Region III		
District of Columbia	3	0.1
Pennsylvania	10	1.0
Virginia	11	1.0
West Virginia	0.8	0.5
Region IV		
Alabama	9	0.2
Georgia	10	0.8
Kentucky	13	0.4
Mississippi	10	0.4
North Carolina	10	0.5
South Carolina	8	0.4
Tennessee	8	0.3
Region V		
Michigan	0.3	0.3
Ohio	11.5	0.6
Region VI		
Arkansas	9	0.5
New Mexico	8	0.5
Oklahoma	13.5	1.0
Region VII		
Nebraska	20	0.1
Region VIII		
Colorado	20	0.5
Montana	8	0.4
North Dakota	13	0.7
Wyoming	10	0.7
Region IX		
Arizona	8	1.0
California	15	1.0
Hawaii	0.3	0.2
Nevada	8	1.3

Veterans' Service Performance Standards

Option No. 2

In developing standards under this option, it is necessary to determine the number and percentage of total applicants and each of the veteran categories in the file of applicants available (applicants active at any time) who are age 22 and over at the time of the evaluation. The "preference points" or negotiated percentages by which each veteran category must exceed their incidence in the work load are applied to those calculated percentages to determine the standard for each service. Each SESAs performance is evaluated against the resulting percentage which is the percentage of incidence in the file plus the preference percentage for each category of veteran.

Preference points for FY 1985 by which the percentages of incidence are to be multiplied for the SESAs electing Option No. 2 are as follows (in percentages):

Veterans' Service Performance Standards

Option No. 2

State	Veterans and eligibles	Vietnam era veterans	Disabled veterans	Special disabled veterans
Region I				
Vermont	10	20	30	40
Region III				
Delaware	10	20	30	40
Region IV				
Florida	13	20	25	40
Region V				
Illinois	10	20	30	40
Minnesota	10	20	30	40
Wisconsin	20	25	30	40
Region VI				
Texas	10	15	20	25
Region VII				
Iowa	10	20	20	40
Kansas	12	15	20	30
Missouri	10	20	30	40
Region VIII				
Utah	10	15	20	25
Region IX				
Idaho	10	20	30	40
Oregon	10	20	30	40
Washington	10	20	30	40

Veterans' Service Performance Standards

Option No. 3

This option is essentially the same as Option No. 2 except that the negotiated preference points are applied to the rate of service provided to total applicants available age 22 and over for each service to be measured to determine the standard to be achieved for each category of veteran. Each SESAs performance is evaluated against the resulting percentages which are the percentage rate of service plus the preference percentage for each category of veteran.

Preference points for FY 1985 by which the rates of service are to be multiplied for SESA electing Option No. 3 are as follows (in percentages except*):

Veterans' Service Performance Standards

Option No. 3

State	Veterans and eligibles	Vietnam era veterans	Disabled veterans	Special disabled veterans
Region I				
Rhode Island	10	20	30	40
Region III				
Maryland:				
Placement	10	20	30	N/A
FCJI	N/A	10	N/A	0.1
Counseling	10	20	30	N/A
Enrollment in training	1.0	2.0	3.0	N/A
Received some reportable service	1.0	5.0	10	N/A

State	Veterans and eligibles	Vietnam era veterans	Disabled veterans	Special disabled veterans
Region V				
Indiana	*3	*3	*4	*4
Region VI				
[redacted]				
Placement	7	13.5	15.5	N/A
FCJL	N/A	55	N/A	75
Counseling	150	[redacted]	500	N/A
Enrollment in training	(1)	(1)	(1)	(1)
Received some reportable service	[redacted]	50	60	N/A
Region VIII				
[redacted]				
Placement	[redacted]	10	12	N/A
FCJL	N/A	7	N/A	0.3
Counseling	10	15	[redacted]	N/A
Enrollment in training	10	15	[redacted]	N/A
Received some reportable service	[redacted]	10	12	N/A
Region X				
Alaska	10	[redacted]	[redacted]	[redacted]

[1] Waived for program year 1985.
[redacted]

[FR Doc. 85-30508 Filed 12-24-85; 8:45 am]
[redacted]

NUCLEAR REGULATORY COMMISSION

Philadelphia Electric Co. Limerick Generating Station, Unit 1; Consideration of Issuance of Amendment to Facility Operating License and proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

[Docket No. 50-352]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-39, issued to Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station Unit 1 located in Montgomery County, Pennsylvania.

The amendment would revise the Technical Specifications (TS) to allow a one-time-only extension of time to satisfy a limited number of testing requirements for the excess flow check values in certain instrumentation lines which must be performed every 18 months and which require a plant shutdown. Under the amendment, the surveillances would be performed during a plant shutdown beginning no later than May 26, 1986, which will occur a maximum of 96 days beyond the time otherwise designated by TS. The purpose of this amendent is to allow continued operation of the plant until other more extensive surveillance testing needs to be performed, and for which plant shutdown is unavoidable. The Technical Specification requirements for testing every 18 months which are requested to be extended are as follows:

Excess Flow Check Valves, Specification 4.6.3.4 (Primary Containment Isolation Valves), Table 3.6.3-1, Part B.

The testing for this specification is a water leak test to verify that these check valves will check flow when subjected to a differential pressure. These lines are small (1 inch or less), are equipped with one-quarter inch restricting orifices inside primay containment which serve to limit flow and are completely enclosed within primary and secondary containment. The lines provide fluid to pressure transmitting devices in the plant's instrumentation systems.

The leak test of the excess flow check valves in Technical Specification Table 3.6.3-1 cannot be performed during normal operation for the following reasons: (1) Entry of personnel would be required inside the primary containment which is at undersirable temperatures and radiation levels for routine personnel access during power operations; and (2) the instrument lines down stream of the valves must be partially drained in performing the test thus rendering numerous transmitters inoperable or tripped.

The consequences of leakage from an instrumentation line are minimal since the one-quarter inch orifice inside containment limits flow, and the majority of the line outside of primary containment is only three-eights inch in diameter. The lines protected by the check valves are also located within the reactor enclosure which is served by the standby gas treatment system so that any release from the line would be filtered and monitored. The failure of an instrument line is an analyzed event in the Final Safety Analysis Report and no aspect of the proposed change to the Technical Specifications would require a change in the safety analysis.

The 18 month surveillance interval was selected to be consistent with the maximum anticipated interval between refueling outages. However, the Technical Specifications allow an extension of 25% to this frequency to accommodate operations scheduling. Therefore, the end of the most limiting surveillance interval, including the allowable 25% extension, for Limerick Unit 1 is February 19, 1986. The next shutdown is currently expected to start on or before May 26, 1986. The period of plant operation during the requested extensions, therefore, is a maximum of 96 days. The need for the one-time extension in the surveillance interval is a consequence of the operation of Limerick, Unit 1 at less than five percent of rated power for an extended period of time. This amendment is in accordance with the licensee's application for amendment dated December 18, 1986.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a

significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previosly evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its letter of December 18, 1985, has determined and the NRC staff agrees that the proposed amendment will not: 1) Involve a significant increase in the probability or consequences of an accident previous evaluated because no change in the design or accident analysis of an instrument line break in the FSAR is required. Moreover, based on the type of surveillance extended, no significant increase in the probability of equipment failure is postulated, 2) Create the possibility of a new or different kind of accident from any accident previously evaluated because this amendment neither removes or adds any equipment nor does it eliminate required tests; and 3) Involve a significant reduction in the margin of safety because the increased surveillance interval (96-days) does not significantly increase the possibility that an undetected failure will occur in any of the related equipment covered by these Technical Specifications. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request of a hearing. Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By January 26, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be make a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters witihin the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide the opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulator Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Ave., NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained

absent a determination by the Commission, in the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.174(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated December 18, 1985 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland, this 20 day of December 1985.

For the Nuclear Regulatory Commission.

Walter R. Butler,

BWR Project Directorate No. 4 Division of BWR Licensing.

[FR Doc. 85-30409, Filed 12-24-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

State of Maryland, 55 mph Speed Limit Compliance Proceeding; Prehearing Conference

[Docket No. 43656]

Served December 20, 1985

Notice is hereby given that pursuant to the Order of the Secretary of Transportation dated December 9, 1985, instituting the above-titled proceeding and the December 17, 1985 notice of assignment by the Chief Administrative Law Judge, a prehearing conference will be held on January 9, 1986, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC. before the undersigned administrative law judge.

In order to facilitate the conduct of the prehearing conference, the State of Maryland shall serve on the parties, with two copies to the judge, the information and materials required by Appendix A to the Secretary's order by January 7, 1986. In addition, the State of Maryland shall serve any requests for information from the other parties, proposed stipulations, if any, response to the Secretary's order, and a proposed procedural schedule by January 7, 1986.

NHTSA/FHWA shall serve in the parties, with two copies to the judge, by January 7, 1986, the following information; (a) Identify all witnesses which NHTSA/FHWA may present at the Hearing; (b) for each witness identified in (a) provide the following data; (1) employer, (2) position, (3) education, and (4) expertise; (c) submit a summary of the testimony expected to be obtained the person named in (a); (d) copies of all exhibits which NHTSA/FHWA intends to offer as evidence at the hearing in this proceeding. In addition, NHTSA/FHWA shall serve any requests for information, proposed stipulations, if any, and a proposed procedural schedule by January 7, 1986.

All parties should understand that January 7, 1986, is a delivery date and not a mailing date.

Dated at Washington, DC., December 19, 1985.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 85-30531 Filed 12-24-85; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

National Hazardous Materials Transportation Advisory Committee; Advisory Committee Renewal

AGENCY: Research and Special Programs Administration (RSPA); Department of Transportation (DOT).

ACTION: Publication of advisory committee renewal.

SUMMARY: The RSPA announces the renewal of the National Hazardous Materials Transportation Advisory Committee (NHMTAC) a multidisciplinary advisory committee created under the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 720 (FACA) to provide DOT with a non-Federal perspective on issues and developments in all aspects of hazardous materials transportation. This renewal is effective January 1, 1986 to December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Sherwood C. Chu, Office of Hazardous Materials Transportation, Research and Special Programs Administration, Washington, D.C. 20590 (202) 472-2698.

Authority: Sec. 325, Department of Transportation Act (49 U.S.C. 325) and Sec. 5(c), Federal Advisory Committee Act (5 U.S.C. 10).

M. Cynthia Douglass,

Administrator.

[FR Doc. 85-30532 Filed 12-24-85; 8:45 am]

BILLING CODE 4910-60-M

VETERANS ADMINISTRATION

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92-463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, January 16, 1986, at 2:30 p.m.
Thursday, January 30, 1986, at 2:30 p.m.
Thursday, February 13, 1986, at 2:30 p.m.
Thursday, February 27, 1986, at 2:30 p.m.
Thursday, March 13, 1986, at 2:30 p.m.
Thursday, March 27, 1986, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: December 19, 1985.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-30431 Filed 12-24-85; 8:45 am]

BILLING CODE 8320-01-M

BEST COPY AVAILABLE

Sunshine Act Meetings

Federal Register

Vol. 50, No. 248

Thursday, December 26, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 23, 30, 1985, January 6, and 13, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 23

Tuesday, December 24

10:00 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of December 30—Tentative

Thursday, January 2

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of January 6—Tentative

Monday, January 6

2:00 p.m.
Discussion of Management Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Tuesday, January 7

10:00 a.m.
Briefing by Staff on TVA Corporate Plan (Public Meeting)
2:00 p.m.
Status Briefing on Fermi (Open/Portion may be closed—Ex. 5 & 7)

Wednesday, January 8

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Thursday, January 9

10:00 a.m.
Briefing by TVA on Corporate Plan (Public Meeting)
2:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1)

Friday, January 10

2:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1) (Tentative)

Week of January 13—Tentative

Monday, January 13

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Millstone-3 (Public Meeting)

Tuesday, January 14

10:00 a.m.
Briefing by GPU On TMI-2 Cleanup (Public Meeting)
2:00 p.m.
Staff Briefing on Integrated Safety Assessment Program (ISAP) (Public Meeting)

Thursday, January 16

2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, January 17

10:00 a.m.
Discussion of Revisions to NRC Sunshine Act Regulations (Public Meeting)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) was held on December 18.

TO VERIFY THE STATUS OF MEETINGS CALL: (Recording) (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Julia Corrado,

Office of the Secretary.

December 19, 1985.

[FR Doc. 85-30566 Filed 12-23-85; 10:49 am]

BILLING CODE 7590-01-M

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federal register

Thursday
December 26, 1985

Part II

Environmental Protection Agency

40 CFR Part 61

Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[ADL-FRL-2889-4]

Assessment of Perchloroethylene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice describes the results of EPA's preliminary assessment of perchloroethylene (tetrachloroethylene, PERC) as a potentially toxic air pollutant. Based on the health and preliminary risk assessment described in today's notice, EPA now intends to add PERC to the list of hazardous air pollutants for which it intends to establish emission standards under section 112(b)(1)(A) of the CAA. The EPA will add PERC to the list if emission standards are warranted. The EPA will decide whether to add PERC to the list only after studying possible control techniques that might be used to control emissions of PERC and after further assessing public health risks. This notice has no effect on the regulation of PERC as a volatile organic compound in order to attain the national ambient air quality standards for ozone. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of PERC.

Through this notice, the Agency solicits information on the Notice of Intent to List decision. The EPA also solicits information on the potential carcinogencity of PERC, the potential noncarcinogenic health effects of exposure to PERC, the effectiveness of controlling PERC emissions with control equipment, the current level of control of PERC sources, and current PERC emission estimates.

DATES: Written comments are to be submitted by February 24, 1986.

ADDRESSES: Submit written materials (duplicate copies are preferred) to: Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–85–03, 401 M Street SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Availability of Related Information

The final Health Assessment Document (HAD) for PERC is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. The National Technical Information Service number PB85–249704 should be used when ordering. Paper copies of the HAD are available for $22.94 (price code A–13), and microfiche copies are available for $5.95 (price code A–01). Prices are subject to change. For further information on the availability of this document, please contact: ORD Publications, CERI–FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (telephone: 513–684–7562 commercial/684–7562 FTS).

The source assessment document for PERC is also available through the National Technical Information Service and can be ordered at the address provided above. The order number PB85–233518 should be included when ordering. Paper copies are available for $16.95 (price code A–07) and microfiche copies are available for $5.95 (price code A–01). For additional information on the source assessment document, please contact Mr. Robert Rosensteel (telephone 919–541–5671 commercial/629–5671 FTS).

The HAD was reviewed by the Science Advisory Board (SAB), an independent group of recognized scientists and technical experts that provide advice and critical review of scientific issues to the Administrator. The SAB comments are available from the SAB office (contact Cheryl Bentley, A–101F, U.S. EPA, 401 M Street SW., Washington, DC 20460; phone 202–382–2560 commercial/382–2560 FTS). Transcripts of the SAB meetings are available for inspection and copying from the U.S. Environmental Protection Agency, Committee Management Staff. For additional information, please contact Janet Workcuff, PM 213, Room M2515, 401 M Street SW., Washington, DC 20460 (telephone 202–382–4036 commercial/382–5036 FTS).

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone 919–541–5645 commercial/629–5645 FTS).

SUPPLEMENTARY INFORMATION: .

Background

PERC is widely used as a solvent in dry cleaning and metal degreasing operations and as an intermediate in chlorofluorocarbon (CFC) production. In essentially every case of solvent use, much of the PERC employed (93–100%) is lost to the atmosphere through volatilization, with the remainder to incineration or solid waste disposal or released to ground and surface waters. Some of the PERC released to disposal systems or water bodies may volatilize and ultimately be released to the atmosphere.

In the atmosphere, PERC undergoes slow photochemical degradation to the extent that its estimated lifetime is measured in months, although it is appreciably less than 1 year, and little PERC is expected to be conveyed to the stratosphere. Because of the reduced solar energy in winter and seasonal variations in hydroxyl radical concentration, PERC levels in ambient air are expected to be higher in winter than in summer, with a considerable daily fluctuation.

The estimated northern hemisphere average background concentration is 40 parts per trillion (ppt), with urban concentrations about 30 times the background level. The hydroxyl radical-initiated decomposition products include dichloroacetyl chloride and phosgene.

PERC has chemical and physical properties which make it the most desirable solvent available for the dry cleaning of fabrics. There are no known substitutes available which combine the low fire hazard, the desirable solvent properties and the low acute toxicity of PERC. Epoxides and other stabilizers are commonly added to PERC to decrease its decomposition when exposed to light. About 51 percent of PERC production is used in dry cleaning establishments, 15 percent is used in metal degreasing operations and 34 percent as a chemical intermediate and in miscellaneous processes. Production of PERC in 1978 was estimated as 320,000 megagrams per year (Mg/yr), with production in 1983 estimated as 249,000 Mg/yr. A summary of PERC uses and source emissions is provided in Table 1.

In January 1984, the Office of Research and Development's Office of Health and Environmental Assessment (OHEA) published a draft of the Health Assessment Document for Perchloroethylene (HAD). This document was reviewed by the Science Advisory Board (SAB) in May 1984, with a final letter forwarding comments by SAB on the HAD sent to the Administrator, in January 1950. The final Health Assessment Document for Perchlorothylene, which incorporates comments and changes requested by the SAB, was printed in July 1985.

Since review and publication of the HAD, a new National Toxicology Program (NTP) study has been audited and the results validated by the NTP Board of Scientific Counselors. This

positive inhalation study in mice and rats has demonstrated a carcinogenic potential due to inhalation of PERC in both sexes of mice and in male rats, thus increasing the confidence that PERC is carcinogenic. This NTP study, in conjunction with the health effects information summarized in the HAD, has resulted in this Notice of Intent to List.

Adverse Health Effects

A number of studies have been conducted to assess the health effects resulting from exposure to perchloroethylene. The key studies have been compiled, reviewed and evaluated in the Health Assessment Document for Perchloroethylene (EPA, 1985b).

Although ingestion of drinking water contaminated by PERC is one source of exposure, inhalation is the principal route of concern by which PERC enters the body. During inhalation, PERC is absorbed by the blood and distributed throughout the body. There is evidence that PERC will partition selectively into lipid-rich tissues with chronic or long-term exposure until steady-state is attained. Most inhaled PERC is excreted via the lungs in unchanged form, with less that 2 percent of the absorbed PERC excreted in a metabolized form.

Epoxides and other stabilizers are commonly used in commercial formulations of PERC, although many studies on the adverse health effects of exposure to PERC, and in particular the studies on which the Notice of Intent to List is based, have used the compound in a purified form.

Excluding carcinogenicity as an enpoint, toxicity testing in experimental animals, coupled with limited human data derived principally from overexposure situations, suggests that long term exposure of humans to typical environmental levels of PERC is not likely to present a discernible health hazard.

TABLE 1.—SUMMARY OF PERCHLOROETHYLENE USES AND SOURCE EMISSIONS [a]

Source category	Use (percent)	Baseline emissions to U.S. atmosphere (Mg/yr)
Production	[b] N/A	50
Dry Cleaning	51	115,000
Metal Degreasing	15	32,500
Publicly-Owned Treatment Works	N/A	2,000
Chemical Plants	N/A	245
CFC Production	25	34
Drinking Water Treatment Facilities	N/A	40
Miscellaneous [c]	9	20,600
Total	100	171,169

[a] Based on estimates for 1983 (EPA, 1985a).
[b] Not applicable.
[c] Includes use in paints and coatings, adhesive formulations, and general solvent use.

Decrements in task performance and coordination are the first gross signs of central nervous system (CNS) depression and behavioral alterations observed in controlled human studies in which individuals were exposed to about 100 ppm for up to 7 hours. More sensitive tests, however, would have to be performed to determine if PERC affects the nervous system at even lower concentrations.

Evidence in rodent species suggests that PERC has the potential to cause liver damage with acute prolonged exposure at levels that, in humans, would cause only slight CNS depression. However, there are insufficient data to estimate the lowest levels of PERC that are associated with adverse effects upon the liver in humans.

The lowest observed adverse effect level (LOAEL), based on reversible, mild CNS dysfunction (i.e. headaches, sleepiness), is about 100 ppm for a several-hour exposure period. However, the LOAEL may not characterize a level of exposure protective of human health when one considers that intermittent or prolonged exposure of animals to PERC has been observed to result in more severe effects, such as liver and kidney damage, at concentrations near 200 ppm. It should be noted that acute liver damage in humans is generally associated with short-term exposures greatly in excess of 100 ppm.

The mammalian animal tests performed to date do not indicate any significant teratogenic potential of PERC in the species tested. The anatomical effects observed reflect delayed fetal development and can be considered reversible. It is important to note, however, that the reversible nature of an embryonic/fetal effect in one species might, in another species, be manifested in a more serious an irreversible manner. At the current time, the teratogenic potential of PERC for humans must be considered unknown.

PERC itself has not been clearly shown to be a mutagen. Certain commercial and technical preparations have elicited positive responses in some test systems, although the responses were generally weak, and eliciting them required rather high toxic concentrations of PERC. No dose-response relationships were established in these studies. The position findings may be explained by the presence of mutagenic contaminants and/or added stablizers. Highly purified PERC has only been evaluated in the *Ames/Salmonella* test, where negative results were obtained.

Although PERC itself has not been shown to be mutagenic, it should be emphasized that the negative results are not wholly unequivocal. Appropriate concurrent controls, adequate sample sizes, and exposure conditions were sometimes not used, and in some cases the available data are not sufficient to determine whether an adequate test was conducted. Thus, in conclusion, inadequate information exists to warrant a provisional classification of PERC either as nonmutagenic or mutagenic. If PERC is a mutagen, the evidence available thus far indicates that it is only weakly so.

The SAB reviewed an evaluated the data in the draft HAD on the carcinogenic potential of PERC. Using the criteria of the International Agency for Research on Cancer (IARC), the HAD concluded that the chemical cannot be classified as to its carcinogenicity for humans (IARC Category 3), although there was enough concern about the data to suggest that the classification was approaching IARC category 2B (i.e. a probable human carcinogen for humans). The SAB agreed with the Category 3 classification, with one member expressing the opinion that the PERC classification could be considered to be in IARC Category 2B, as well as in IARC category 3.

While the SAB were deliberating their conclusions, EPA completed and published for review proposed Guidelines for Carcinogen Assessment. The EPA announced at that time that the Agency would use these guidelines as interim measures. The proposed Guidelines for Carcinogen Assessment have now been favorably reviewed by the SAB, with the final HAD indicating that PERC is classified under the EPA guidelines as a possible human carcinogen (Group C).

Since publication of the final HAD, a new NTP inhalation study on mice and rats has been reported, showing a significant increase in the incidence of liver tumors in both sexes of B6C3F1 mice and an elevation in the incidence of mononuclear cell leukemia and kidney tumors in male F344/N rats. The NTP Board of Scientific Counselors Peer Review Panel concluded that this study demonstrated clear evidence of carcinogenicity in male and female mice and in male rats, and some evidence of carcinogenicity in female rats. This study impacts the carcinogenicity assessment for PERC in that it provides the first evidence of a positive carcinogenic response in rats, the first positive inhalation response, and increased confidence about PERC's carcinogenic potential. The carcinogenicity data base for PERC is being reevalnated, with a high likelihood

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that it will be considered a probable human carcinogen under the new EPA guidelines (Anderson, 1985). The Agency is preparing an addendum to the HAD that incorporates the results of this NTP study. The addendum is scheduled for completion in 1986, and it will be reviewed by the SAB prior to a listing decision.

Finally, an ongoing epidemiological study of dry cleaning workers exposed to PERC for at least one year prior to 1960 is being conducted by the National Institute of Occupation Safety and Health (NIOSH). Preliminary results indicate a statistically significant increase in mortality due to urinary tract cancer for all dry cleaning workers included in the study, but in the group only exposed to PERC (600 out of 1,600), no urinary tract cancer deaths were found. However, incomplete work history data do not allow the drawing of a conclusion about the role of PERC in the increased mortality. This study is undergoing further analysis, and results are expected in the near future.

Risks to Public Health

Estimates of human exposure to atmospheric PERC emitted from all point sources identified in the source assessment document (EPA, 1985a) have been calculated using the Human Exposure Model (HEM).

For area sources such as the commercial dry cleaning, metal degreasing, publicly-owned treatment works (POTWs) and miscellaneous source categories, it was necessary to use a dispersion algorithm with assigns emissions to an area rather than to a point to estimate emissions and exposures. This area source methodology was used because these emission sources are too numerous to model individually and some of the information required to model them as point sources was unavailable. In the area source methodology, the quantity of emissions assigned to an area is proportional to the population density of that area, with certain assumptions permitting calculation of the maximum individual and annual incidence cancer risk estimates. The maximum individual risks for some of the area source categories may be underestimated because the model treats these sources as diffuse area sources although metal degreasing, dry cleaning, and POTW's may be large enough to be considered point sources. Emissions from these sources may result in higher concentrations, greater exposures and greater individual risks to individuals living near these sources than is predicted by the area source methodology. Since the location of the population with the maximum individual risk from each area source category is not certain, the Agency feels it is appropriate to identify the maximum individual risk estimate for each source category rather than to sum these risk estimates.

The upper-bound incremental unit risk estimate for air was derived from the geometric mean of results from inhalation bioassay data on hepatocellular carcinomas and hepatocellular adenomas in male and female B6C3F1 mice and on mononuclear cell leukemia in male and female F344/N rats (NTP, 1985; Anderson, 1985a; Anderson, 1985b). The unit risk factor is an estimate of the additional probability that an individual will die from cancer resulting from continuous exposure to 1 microgram of PERC per cubic meter of inspired air (assuming a 70-year life-span). The upper-bound nature of the unit risk estimate is such that the true risk is not likely to exceed this value and may be lower. Using the unit risk estimate for air (5.8×10^{-7}), the aggregate risk of cancer due to exposure to PERC for persons living within 50 kilometers of production sites, chemical plants, industrial dry cleaning facilities or drinking water treatment facilities and resulting from emissions from metal degreasing, commercial dry cleaning facilities, publicly-owned treatment or miscellaneous solvent uses, is 5.3 cases of cancer per year (Table 2). The highest individual risk estimate (defined as the additional risk of cancer to an individual continuously exposed to the highest modeled ambient concentration for a 70-year lifespan), is 1.5×10^{-4}. The new unit risk number incorporating the results of the new NTP study will be published in the addendum to the HAD. This analysis does not address potential risks associated with exposure via other media (i.e., food or water), the risks associated with exposure to background concentrations of PERC, or the summation of maximum individual risks for individuals exposed to emissions from area sources.

A study to estimate the cancer incidence rate resulting from exposure to PERC and other chemicals has been reported by Hunt et al. (1984). In the Hunt study estimates of national cancer incidence rates and maximum individual risk were calculated on the basis of limited urban and rural ambient concentrations of PERC. Using the Hunt technique and the most recent unit risk an aggregate cancer incidence of 8.7 cases per year and a maximum individual risk of 1.5×10^{-5} were calculated. These estimates compare favorably with modeling results presented above.

Risks to workers in facilities manufacturing or using PERC have not been estimated. However, if emission controls were applied to degreasers then it is likely that worker exposure to PERC will be reduced.

Current modeling information suggests that noncarcinogenic adverse health effects (i.e., central nervous system dysfunction) due to short-term concentrations may occur in the vicinity of some production facilities. Using a worst-case modeling scenario, fenceline (200 m from emission point) concentrations have been estimated at 13 ppm for an 8-hour averaging time and 410 ppm for a 15-minute averaging time. The Occupational Safety and Health Administration (OSHA) 8-hour Permissible Exposure Limit (PEL) is 100 ppm, and the lowest observed noncarcinogenic adverse health effects level is also about 100 ppm for an exposure period of 20 to 30 minutes. The American Conference of Governmental Industrial Hygienists (ACGIH) has recommended that the 8-hour Threshold Limit Value of 100 ppm be reduced to 50 ppm. In order to determine the extent to which modeled concentrations and potential health effects might occur, it will be necessary to examine the sources in much more detail along with the distribution of populations in the vicinity of facilities that emit PERC. Given the uncertainties of the present analysis, it is difficult to estimate the extent to which short-term emission of PERC pose risks to public health. As the Agency moves forward toward a decison on the listing of PERC, efforts to refine this analysis and characterize the risk to populations from short-term exposures will be performed.

There are a number of assumptions underlying these estimates that can yield either over or underestimates of the risk posed by PERC. Further study and assessment will not likely narrow the uncertainties associated with some of the inputs to the risk assessment or yield an improvement in some of these assumptions (e.g., the carcinogenic potency of a chemical estimated through the use of a mathematical model for extrapolating animal studies to the much lower concentrations present in the ambient air). There are other inputs to the risk estimates that are very preliminary at the current stage of assessment and that will be substantially refined through further study. The primary example of this is the source information: number and types of sources, their locations, emission rates, stack parameters,

variability of emissions, etc. Current source information is based on engineering estimates, data obtained under section 114 of the Clean Air Act, and other readily available information in the literature. This information, in many cases, will be improved through plant visits and source tests. The Agency has concluded that the preliminary risk estimates presented here are sufficient to warrant further study for possible regulation. The Agency will improve these estimates, particularly with respect to emissions and exposure, before making a final decision on whether to add PERC to the list under section 112.

TABLE 2.—HEALTH RISK ESTIMATES FOR PERCHLOROETHYLENE SOURCE CATEGORIES

Source category	Annual incidence	Maximum individual risk [a]
Metal degreasing [b]	1.2	3.4×10^{-5}
Industrial dry cleaners	0.37	7.5×10^{-5}
Commercial dry cleaners [c]	3.2	1.5×10^{-4}
Publicly-owned treatment works [b]	0.052	2.2×10^{-6}
Production facilities	0.0052	6.5×10^{-5}
Chemical plants	0.0019	4.7×10^{-5}
Drinking water treatment facilities	0.0001	6.2×10^{-7}
Miscellaneous [b,d]	0.54	2.3×10^{-5}
Total all sources	5.3	

[a] The maximum individual risk estimates do not include the summation of risks for individuals exposed to emissions from area sources, thus these risk estimates are likely to understate the risks to the most exposed individuals.
[b] Area sources
[c] Includes non-industrial commercial and coin-operated facilities
[d] Includes use in paints and coatings, adhesive formulations, and general solvent use

Statement of Intent

Section 112(b)(1)(A) of the CAA defines hazardous air pollutants as air pollutants that contribute to mortality or serious irreversible, or incapacitating reversible, illness. Section 112(b)(1)(A) provides that the Administrator shall maintain ". . . a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section." In deciding whether to establish such emission standards for carcinogens, EPA considers both public health risks and the feasibility and reasonableness of control techniques (e.g., 49 FR 23522, 23498, 23558 (June 6, 1984) (emission standards for benzene)).

Based on the health and preliminary risk assessment described in today's notice, EPA now intends to add PERC to the section 112(b)(1)(A) list. EPA will decide whether to add PERC to the list only after studying possible techniques that might be used to control emissions of PERC and after further improving the assessment of the public health risks. EPA will add PERC to the list if emission standards are warranted. EPA will publish this decision in the **Federal Register.**

If standards are not warranted under section 112 of the Clean Air Act, the Agency will consider other options as described in EPA's report "A Strategy to Reduce Public Health Risks from Air Toxics," June 1985. For example, in that strategy EPA described other approaches for dealing with routine releases of toxic air pollutants from stationary sources such as working with State or local air pollution control agencies to address problems that do not warrant federal regulatory action but which account for elevated risks in some areas.

Standards Development Process

The following discussion has been prepared to provide the reader with an explanation of the standards development process and the timing of the process. The standards development process involves two phases, each taking about two years. The first phase is the identification of the emission sources and the need and ability to control those sources. The second phase involves Agency decisionmaking and public review prior to a final action.

During the first phase, EPA identifies the sources that are significant emitters of the pollutant and the specific emission points within each source and then determines the quantities of pollution emitted, the alternative control systems available, and their cost and effectiveness in reducing emissions and associated public health risks. A set of alternative regulations is developed and the environmental, economic, energy, and public health risks are evaluated.

The first phase requires investigation of the many different ways in which a candidate pollutant can be emitted and controlled. As indicated earlier, PERC is emitted from production and chemical plant use of PERC, from metal degreasing and dry cleaning uses, from drinking water treatment facilities, from publicly-owned treatment works, and from miscellaneous uses in paints and coatings, adhesive formulations, and general solvent use. Within a source category there is wide variation in designs, sizes, and processes. This variation affects the emission rates, the public health risks, and the cost and controllability of the pollutant. Assessment of source emissions and controls is further complicated by the fact that emissions are not necessarily contained in stacks or ducts (i.e., some are fugitive emissions) and emission test programs are technically difficult and costly.

The decisionmaking and review phase involves a series of EPA internal and external activities. Prior to publication of proposed rules, the Agency reviews all of the technical, cost, and exposure/risk data and makes decisions on the level of standards. The data and conclusions are reviewed publicly by an independent technical advisory committee. The standard is proposed for public comment. The comment period is open a minimum of two months and a public hearing is held, if requested. Following the comment period, Agency technical staff review the comments and resolve technical issues, an activity that often requires obtaining and analyzing new data.

Miscellaneous

PERC is currently listed as a hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Under section 101(14) of CERCLA, Reportable Quantities (RQs) are established for substances specified in the CERCLA, as well as substances listed or designated under certain sections of the Clean Water Act, the Resource Conservation and Recovery Act, the CAA (section 112) and the Toxic Substances Control Act (50 *FR* 13456; April 4, 1985). Section 103(a) of the CERCLA requires any release of PERC to the environment (including the air) that is equal to or greater than one pound in any 24-hour period must be reported to the National Response Center [NRC] (Telephone 800–424–8802 or 202–426–2675 for the Washington DC, metropolitan area). The current RQ for PERC does not reflect consideration of its potential as a human carcinogen and is currently under review by the Agency. Since PERC is already listed under section 101(14) of the CERCLA, a decision to list PERC under section 112 of the CAA would not pose any additional reporting requirements.

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements on States or sources. This proposal was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and any written EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: December 14, 1985.

Lee M. Thomas,

Administrator.

PART 61—[AMENDED]

40 CFR Part 61 is proposed to be amended as follows:

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416 and 7601.

2. Section 61.01 paragraph (b) is amended by adding the following entry in the alphabetized list of substances.

§ 61.01 Lists of pollutants and applicability of Part 61.

* * * * *

(b) * * *

Perchloroethylene (50 FR [Page number]; December 26, 1985.)

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[FR Doc. 85-30252 Filed 12-24-85; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 10, 13, and 14

Wildlife Import/Export Fees; Inspection Fees Whenever Wildlife Is Imported Into or Exported From the United States by Persons Engaged in Business as an Importer or Exporter of Wildlife; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 10, 13 and 14

Wildlife Import/Export License Fees; Inspection Fees Whenever Wildlife Is Imported Into or Exported From the United States by Persons Engaged in Business as an Importer or Exporter of Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service amends its regulations relating to the import and export of wildlife. The license fee for a wildlife import/export license is increased from $50 to $250; only persons who import or export more than $25,000 worth of wildlife in one year require a license. The license term is changed from 2 years to 1 year. A new $25 inspection fee is charged for each commercial wildlife shipment imported into or exported from the U.S. by any licensee. Holders of the new $250 license will not pay inspection fees for the first five shipments under such license. Non-licensees who import or export wildlife pay no inspection fees except for inspections at a non-designated port or at special hours or locations, where charges are for expenses to accomodate the inspection request.

These "user" fees are authorized by both the Endangered Species Act of 1973 and general statutory authority permitting Federal agencies to charge fees, and are charges collected from recipients of Service-regulated benefits or services that are supplied to them upon request. Recipients reimburse the Service for expenses incurred to provide benefits or services, including the costs to maintain the regulatory system under which the services are delivered.

EFFECTIVE DATE: February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, D.C. 20005 telephone: (202) 343–9242.

SUPPLEMENTARY INFORMATION:

Background

The Fish and Wildlife Service (Service) enforces a variety of statutes and implementing regulations relating to the conservation of wildlife.

Some of the statutes and regulations apply only to specific species of wildlife, while others are of general applicability. Some are primarily domestic in thrust, while others result from obligations imposed upon the United States as a result of various international treaties or agreements concerning conservation of wildlife.

Among those treaties and statutes are the Convention of International Trade in Endangered Species of Wild Fauna and Flora, the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531–1545, and the Lacey Act Amendments of 1981,16 U.S.C. 3371–3378. Based upon the law and regulations, the Service regulates with varying emphases the importation, exportation, and transportation of wildlife species.

Pursuant to its statutory authority and responsibility to regulate the importation, exportation and transportation of wildlife, the Service has instituted an inspection program for shipments of wildlife imported into and exported from the United States. By regulation, except for shipments under special permit or exempted by regulation, all wildlife imported into or exported from the United States, must be imported or exported through ports designated for that purpose (50 CFR 14.11–14.12, 14.19) to enable representatives of the Service to inspect the shipments to ensure compliance with requirements of the law and regulations concerning those shipments. The inspection system is necessary to monitor effectively within a comprehensive system of regulation of domestic and foreign wildlife trade and to intercept and interdict illegal importations and exportations of wildlife.

Historically, the inspection services provided to persons importing or exporting wildlife by the Service were rendered without assessment of fee or cost. As part of its inspection program implementing the laws governing importation, exportation, and transportation of wildlife, the Service required persons engaged in business as importers or exporters of wildlife, with limited exceptions, to obtain a wildlife import/export license issued by the Service (50 CFR 4.91–14.93) and to comply with requirements concerning reporting and documenting the business uses of wildlife. This requirement went into effect January 1, 1981 (45 FR 56668).

In furtherance of its wildlife inspection responsibility, the Service has assigned uniformed wildlife inspectors at designated, border and special ports identified by the regulations as wildlife ports-of-entry. The Service also relies upon information and assistance from inspectors of the Department of Agriculture and of the Customs Service who have related duties to inspect imports and exports under their agency missions. The uniformed Service inspectors, together with the assistance of special agents of the Law Enforcement Division, check the legality of wildlife imports by reviewing permits, declarations, and other documents submitted to demonstrate authorization for the shipments and conduct physical inspections as needed to verify the documentation. The nature of a physical inspection and the detail in the review of a document package for each wildlife shipment does not vary with the value of the shipment. As much work may be required of a wildlife inspection for the importation of a few live tropical fish as for live giraffes. The same document review is necessary for the export of one or two raw or rough tanned hides as for a finished, and obviously more expensive, fur coat, and each may require a physical inspection to support clearance. Discernment of the propriety of documents or identification of species is not a direct function of the value of the wildlife species. Low dollar value specimens may require as much, or more, effort as higher dollar shipments to assure compliance with the law. Nor does the dollar value of an import or export necessarily reflect the extent to which the wildlife may be protected under law. Some endangered or threatened species have little, if any, extrinsic value, but are totally prohibited from most importations or exportations. Therefore, it is impossible to relate cost of inspection to the dollar value of a wildlife shipment.

With reference to imposing a wildlife import/export license fee, it was possible by reviewing available data concerning declared values of wildlife shipments for 1984 to determine that approximately 31% of the shippers of wildlife caused approximately 82% of the wildlife shipments. This percentage represents those wildlife shipments worth more, by declared value, than $25,000.00; the Service already has imposed a licensing requirement for those persons engaged in the business of wildlife import/export shipping whose shipments are valued at $25,000 or more per year. Shipments valued between $10,000 and $25,000 in a year per shipper accounted for approximately 7% of the total shipments while shipments valued between $5,000 and $10,000 and between $2,500 and $5,000 were each approximately 3%; shipments valued at less than $2,500 accounted for approximately 5% of the total shipments.

Public Comment

In consequence of the review of its programs, on June 18, 1984 (49 FR 24898), the Service proposed changes and

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amendments to its regulations affecting wildlife imports and exports, raising the license fee for those engaged in the business of importing and exporting wildlife and imposing an inspection fee to be charged to all persons who are engaged in the business as an importer or exporter of wildlife for each shipment imported or exported.

Comment period on the proposed rule closed August 17, 1984. In response to requests received from the Government of Canada as well as from other sources, the Service reopened the comment period on the proposed rule on September 7, 1984 (49 FR 35389). Comments submitted under the reopened comment period were due by October 9, 1984.

A total of 151 comments were received within the comment and reopened comment periods. In addition, several comments were received after the close of the reopened period, and, to the extent possible, have also been considered in evaluating the proposed rulemaking.

Comments came from foreign governments, governmental representatives within the United States or the various States, public interest groups, individuals, large and small commercial interests, and trade associations. Commercial activities represented by the commentors included trappers, traders or brokers of furs or hides; traders in live animals or fish; merchandisers of shell or coral; breeders of reptiles; suppliers of zoological specimens; furriers and taxidermists.

Thirty-five responses generally favored increase of the import/export license fee. Several large commercial interests and trade associations proposed even larger increases, with the largest proposed increased fee for being $1,000.00. Twenty-four comments generally favored the concept of the inspection fee. Twelve comments from foreign businesses or business associations engaged in the fur or hide trade were in the form of identical mailgrams, differing only as to signature line which opposed both the increases in the license fee and the imposition of an inspection fee.

Evaluation of the comments was made difficult by the fact that many commentors mixed responses on the proposal, offered several reasons for opposing the proposals, or added suggestions to their comments.

One Congressman, while concerned about the impact of the proposed rule upon his constituents, small domestic tropical fish dealers, stated that he wished to commend the agency "for its effort to reduce the costs of government operations and to have users pay for the services which the government provides; however, a flat fee system which does not take into account the extent of the service provided . . . and does not take into account the relative cost of the examination fee to the cost of the articles being shipped can cause great hardship to small industries. . ."

The Congressman's comments fairly mirror the concern of many of the smaller businesses. Some of the brokers or trade associations objected to the proposed requirements that fees be paid by certified check or money order and suggested a monthly billing by the Service. Several who commented were involved in the importation of live animals or fish, and were concerned about the availability of inspection services at unusual hours or locations and suggested that fees be related to the availability of the inspection. Many of the business people who commented objected generally, characterizing the proposal as an additional "tax" upon their respective operations. Representatives of some businesses, while generally opposing the concept of an inspection fee or an increase in license fees applied to their respective operations, commented that the fee should be used either against competitors, or as a means of evening out competition by or with foreign interests.

Inspection Fees

The Endangered Species Act provides that:

> The Secretary [of the Interior]. . .[is] authorized to promulgate such regulations as may be appropriate to enforce this Act, and charge reasonable fees for expenses to the Government connected with permits or certificates authorized by this Act including processing applications and reasonable inspections. . . 16 U.S.C. 1540(f).

Based upon this authorization, and statements of Congress concerning imposition of user's fees where appropriate, the Service re-examined its inspection program in the light of the proposed rule. Each inspection of a wildlife shipment is estimated to cost at least $25, depending upon complexity and size of the shipment. Data indicates most commercial shippers average 5 shipments a year; however approximately 61% of the licensed importers/exporters of wildlife exceed 5 shipments annually.

In reviewing the comments, expecially from those involved in import or export of live wildlife, it was apparent that the proposed rule assumed inspections would occur at locations where Service personnel was assigned and during regular Service business hours.

The comments made clear, and an informal survey of Service personnel verified, that imports or exports, especially of live wildlife, do not always occur at hours usual for other business operations. Sometimes it is necessary to import or export or to inspect imported or exported items at special locations. The Service had decided to accommodate the request for expanded special services and to impose a charge which reflects actual costs of these services.

The regulations already contain provisions (50 CFR 14.19, 14.31–14.33) for permits to allow inspections at special ports. Costs incurred by the Service for imports or exports at non-designated ports must already be paid by the importer or exporter (50 CFR 14.32–14.33). These regulations remain, and the new expansion of services is now added to the existing system.

The Service could, without hindrance to its own program requiring inspection before clearance of wildlife shipments (50 CFR 14.52–14.54), detain all wildlife shipments and cause them to be inspected at the convenience of the Service employees (50 CFR 14.51). Such detention would, however, obviously not be to the benefit of commercial transactions in the wildlife. Commercial transactions require some degree of promptitude in the inspection and clearance processes so that deadlines can be met and expenses related to delay minimized. The comments are quite clear as to that point. It is equally clear that it is not cost effective for the Service to commit itself to a twenty-four hour, seven day a week schedule or to inspection upon demand; there are too few inspectors and agents, too many ports, and too many inspections.

However, instead, the Service has reviewed comments and its proposed rule and has determined as a policy that two alternatives will be allowed. Regions within the Service will be allowed, based upon any special conditions in the region, to define a work schedule for Service personnel who perform inspections so that the personnel will be available at more commercially reasonable periods to the degree that this is compatible with other needs of the Service's enforcement program. The Service will collect a fee for any specially timed or located inspections to recoup costs based upon actual cost to the Service for the overtime or other special inspection conditions. Such fees may be collected on a case-by-case arrangement between the regional Special Agent in Charge

and the importer or exporter requesting the special inspection.

Also in response to the public comments, the Service determined to accommodate the public requests as follows: Inspection fees for inspections performed at designated ports during regular business hours for that port location will only be charged for imports or exports of wildlife made by one presently required to be licensed under 50 CFR 14.92. For holders of the new license issued subsequent to this rulemaking the inspection fee for the first five imports and/or exports will be included as part of the license expense. A monthly billing will ba available to document services. Payments of fees will not be required to be made by certified check or money order; however, to assure payment, the license itself will be conditioned upon payment and revocation or suspension of the privilege to import or export wildlife will be a consequence of nonpayment. Also, to reflect the more business-like format of the licensing process, the term of the license will be changed from two years to one year.

Wildlife Import/Export License Fee

On August 25, 1980 (45 FR 56668), the Service published a final rule revising 50 CFR Part 14 (Importation, Exportation, and Transportation of Wildlife) to implement provisions of a number of wildlife laws enforced by the Service. As part of that rulemaking, and under authority of section 9(d) of the Endangered Species Act of 1973, 16 U.S.C. 1538(d), an import/export license requirement was imposed on any person who engages in business as an importer or exporter of fish or wildlife.

Only a person who imports or exports during a calendar year wildlife with a declared value greater than $25,000.00 must have a license although all persons importing or exporting wildlife must keep and maintain appropriate records. (See 50 CFR 14.92). The current license fee is $50 and the license is biennial.

Under this rule, the license fee is raised from $50 to $250 and the term of the license is changed from two (2) years to one (1) years. The increase in fee covers costs to issue or renew licenses and to conduct compliance inspections of licensees. It costs the Service approximately $60 to issue a wildlife import/export license and slightly less to renew one.

During FY 1986 and beyond, the Service will increase emphasis on compliance inspections of licensees. The exact costs of compliance inspections cannot be determined prior to the fact; however, the average hourly pay rate alone for a journeyman agent during FY 1984 was $24. Based upon past experience, the Service expects each compliance inspection to require about 4 hours. At $24/hour of journeyman agent time per year per licensee beginning in FY 1985, the total cost to conduct compliance inspections during the effective period of each license is approximately $90 per year. The Service estimates costs to issue a license, inspect the licensee, and to inspect shipments at approximately $250 per year based upon data including an average of 5 shipments per importer/exporter.

The Service, through its computerized record system, will be able to provide a billing to licensees. The computerized system of records maintained by the Service is dependent upon accurate data input and accountability for the import or export of wildlife. Accuracy of wildlife import and export data require that there be a "one name, one license" policy. Fees may then be incidentally and easily apportioned to the licensee by license number.

Payment of the inspection fees for shipments will be a condition of the license as well as for clearance of subsequent shipments. The Service will revoke or suspend licenses when inspection fees are not paid within 90 days of the licensee being notified of the fees due. In addition, regional personnel will be allowed as a matter of policy to pass on and to collect on a case-by-case basis for actual costs to the Service caused by accommodating any requests for special inspections occurring at other than regular Service business hours or locations other than where physical inspections are regularly made.

Conclusion

User fees are based upon special benefits to recipients of services performed by the government. "Although . . . the public benefits from routine inspections which protect . . . these inspections are nonetheless needed to assure licensee's compliance with the . . . Act and with . . . regulations necessary for the retention of the license." *Mississippi Power & Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979). "The receipt and retention of the license is of unquestionable benefit to the applicant" (*Id.*) since the person engaged in the business of import or export of wildlife cannot do so without meeting the license or regulatory requirements. The standards for user fees under these circumstances are that no fee may be charged to a private party when the identification of the ultimate beneficiary of the service is obscure or the service can be primarily considered to be as broadly benefiting the general public; and, the fee cannot exceed the cost to the agency rendering the Service.

After evaluation of its inspection program, the Service has determined that inspections specially benefit commercial shippers of wildlife by assuring that they are in compliance with the law and can legally sell, purchase, ship, transport, acquire, or receive the wildlife; avoid seizure of the shipment or penalties by other governments; and lawfully maintain their businesses. Commenters requested additional availability of inspection services for special needs.

The Service, therefore, will institute inspection fees for commercial wildlife shipments which exceed the 5 shipments which data indicate are the annual average for commercial wildlife shipments, or are inspected at the request of a shipper at a time outside Service business hours or at a special location, to reflect costs to the public for the inspection program and to induce effective compliance.

Commenters sought to have any inspection fee related to the value of the shipment, as was the case in the imposition of the import/export license fee. Since current data indicates that the bulk of inspection work is generated by shippers who import or export in excess of $25,000 per year, it was felt that acceding to the public comment in this area was appropriate because in fact the work of the Service involved in inspecting documents and shipments is identical regardless of the value of the shipment. Consideration is being given to future rulemaking lowering the dollar valuation threshold for imposing a requirement for an associated license and inspection charges; but, additional data and public comments will be obtained prior to institution of any such charge.

Noncommercial shippers pay no fee, reflecting the fact that such noncommercial uses are primarily either those of the casual tourist or traveler which require little effort by the Service employees to determine if the shipment is in compliance with the law or are under special permits or other sponsorships which may be deemed to be in the public interest.

Paperwork Reduction Act

The information collections contained in this document have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022.

Primary Author

The primary author of this final rule is Kathleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC 20005.

Determinations of Effects of Rules

The Department of the Interior had determined that this is not a major rule under Executive Order 12291. The Department has also certified that the rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The increase in the fee for a wildlife import/export license is valid from $50 to $250. The change from a biennial to an annual term should have an inconsequential effect on the paperwork burden since billings and renewals will be provided by the Service. During any calendar year, a person may engage in business as an importer or exporter of wildlife and import or export wildlife with a declared value of up to $25,000 without a license. Therefore, the most any licensee would pay for the license is 1% of the total value of commercial wildlife imports and exports. For most licensees, the fee actually would be a much lower percentage of the total value of commercial imports and exports during a year.

It is difficult to make projections about inspection fees because of fluctuations in annual wildlife trade and the possibility that the number of commercial wildlife shipments will decrease as shipments are consolidated to reduce the fees paid. The service expects commercial shipments to remain near 1981–1982 levels based upon random samples of 1983 and 1984 wildlife trade data, and utilized 1984 data in assessing effects.

The data also indicates, depending upon the value of commercial wildlife trade and the number of shipments, the total inspection fee collected is likely to vary from approximately .13% to .15% of the total value of commercial wildlife imports and exports. Therefore, the institution of an inspection fee is not expected to have any significant economic effect on wildlife trade as a whole. Collecting an inspection fee is broad-based among all those who engage in wildlife trade and does not single out any particular group.

These determinations are discussed in more detail in a Determinations of Effects which has been prepared by the Service. A copy of that document may be obtained by contacting the person identified above under the caption "**FOR FURTHER INFORMATION CONTACT.**"

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Division of Law Enforcement, 1375 K Street, NW., Suite 300, Washington, DC 20005, and may be examined during regular business hours. Single copies are also available upon request by contacting the person identified above under the caption "**FOR FURTHER INFORMATION CONTACT.**" This assessment forms the basis for the decision that this final rule is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

List of Subjects

50 CFR Part 10

Exports, Fish, Imports, Law enforcement officers, Wildlife.

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Reporting requirements, Wildlife.

50 CFR Part 14

Exports, Fish, Imports, Labeling, Reporting requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, Subchapter B, Chapter I of Title 50, Code of Federal Regulations is amended as follows:

PART 10—GENERAL PROVISIONS

1. The authority citation for Part 10 is revised to read as follows:

Authority: Lacey Act, 62 Stat. 687, as amended, 63 Stat. 753, 83 Stat. 281 and 95 Stat. 1073 [18 U.S.C. 42–44]; Lacey Act Amendments of 1981, 95 Stat. 1073 [16 U.S.C. 3371 et seq.]; Migratory Bird Treaty Act, [16 U.S.C. 703–712]; Bald and Golden Eagle Protection Act, [16 U.S.C. 668–668d]; Tariff Classification Act of 1962, sec. 102, 76 Stat. 73 [19 U.S.C. 1202, Schedule I, Part 15D, Headnote 2(d), "Tariff Schedules of the United States"]; Endangered Species Act of 1973, [16 U.S.C. 1531–1545]; Fish and Wildlife Act of 1956, sec. 13(d), 86 Stat. 905 amending 85 Stat. 480; Marine Mammal Protection Act of 1972, sec. 112(a), 86 Stat. 1042, unless otherwise noted [16 U.S.C. 1375 et seq.].

§ 10.12 [Amended]

2. Amend § 10.12, Definitions, by revising the definition "permit" to read as follows:

"Permit" means any document designated as a "permit," "license," "certificate," or any other document issued by the Service to authorize, limit, or describe activity and signed by an authorized official of the Service.

PART 13—GENERAL PERMIT PROCEDURES

3. The authority citation for Part 13 is revised to read as follows:

Authority: Lacey Act, [18 U.S.C. 42]; Lacey Act Amendments of 1981, [16 U.S.C. 3374]; Migratory Bird Treaty Act, [16 U.S.C. 704,712]; Bald and Golden Eagle Protection Act, [16 U.S.C. 668a]; Tariff Classification Act, of 1962, [19 U.S.C. 1202 "Schedule 1, Part 15D, Headnote 2(d), Tariff Schedules of the United States"], Endangered Species Act of 1973, as amended, [16 U.S.C. 1539,1540(f)]; [16 U.S.C. 1538(d)]; sec. E.E. 11911, 41 FR 15683, 3 CFR, 1976 Comp., p. 112; Airborne Hunting Act, [16 U.S.C. 742j–1]; Marine Mammal Protection Act [16 U.S.C. 1382]; 31 U.S.C. 9701.

§ 13.11 [Amended]

4. Amend § 13.11, paragraph (d)(4) by removing the amount of "$50" under the fee for the import/export license (§ 14.93) and inserting in its place "$250 and inspection fees."

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

5. The authority citation for Part 14 is revised to read as follows:

Authority: Lacey Act, [18 U.S.C. 42–44]; Lacey Act Amendment, 1981, as amended, [16 U.S.C. 3371 et seq.]; Endangered Species Act of 1973, as amended [16 U.S.C. 1532, 1538, 1541, 1542]; Marine Mammal Protection Act [16 U.S.C. 1382]; Migratory Bird Treaty Act [16 U.S.C. 703 et seq.]; Pub. L. 97–1581, 96 Stat. 1051 [31 U.S.C. 9701].

§ 14.51 [Amended]

6. Add at the end of § 14.51, a sentence as follows:

The Director may charge reasonable fees, including salary, overtime, transportation and per diem of Service officers, for wildlife import or export inspections specially requested by the importer or exporter at times other than regular work hours or locations other than usual for such inspections at the port.

§ 14.52 [Amended]

7. Amend § 14.52, paragraph (c)(2) by adding a comma after the word "permits" followed by adding the word "licenses."

8. Amend § 14.53, paragraph (c) by adding a comma after the word "permit" followed by adding the word "license", adding a comma after the word "available"; removing the word "or"; and, adding the phrase, "is not currently valid or has been suspended or notice of revocation made; or," before the word "is".

9. Amend § 14.53, paragraph (d) by removing the period and adding the word "or" preceded by a semicolon.

10. Amend § 14.53 by adding paragraph (e) to read as follows:

§ 14.53 Refusal of clearance.

* * * * *

(e) Any fee or portion of balance due for inspection fees required by § 14.93 has not been paid.

§ 14.92 [Amended]

11. Amend § 14.92(b)(6) by removing the word "calendar".

12. Amend § 14.93 by removing paragraph (c).

13. Amend 14.93 by redesignating (d) as "(c)" and adding paragraph (c)(7) to read as follows:

§ 14.93 License Application procedure, conditions, and duration.

* * * * *

(c) Additional license conditions.

* * * * *

(7) Licensees agree to pay, as a condition of the license, reasonable user fees for inspections of commercial wildlife shipments imported or exported under the authorization of the license.

14. Amend § 14.93 by redesignating (e) as "(d)" and by removing the words "2 years" and substituting "1 year".

15. Amend § 14.93 by redesignating (f) as "(e)" and by inserting at the beginning of the text and before the word "additional" the following sentences: "Payment of all license and inspection fees shall be a condition of the license. It shall be grounds for suspension or revocation of any license, or for denial or renewal of a license, or of grant of a new import/export license to any person named as the holder, or a principal officer or agent of a holder, of a previous license issued pursuant to this Subpart, that any license fees or any fees owing for inspections of wildlife shipments remain unpaid at the time of application for renewal or of new application."

16. Add new paragraph (f) to § 14.93 as follows:

§ 14.93 License Application procedure, conditions, and duration.

* * * * *

(f) *Fees.*

(1) The basic license fee is $250 per year.

(2) Each licensee shall pay an inspection fee of $25 per shipment for each wildlife shipment imported into or exported from the United States. For licenses issued after December 26, 1985, the first five shipments imported or exported shall be included as part of the licensing fee. In addition, importers or exporters or wildlife will pay fees for actual costs of inspections conducted at special times or locations at the shipper's request.

(3) No fee or any portion of any license or inspection fee shall be refundable or payment of fee excused because importation or clearance of wildlife shipment is refused for any reason.

Dated: December 20, 1985.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-30237 Filed 12-24-85; 8:45 am]

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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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Administrative Conference of United States
Equal Employment Opportunity Commission
Merit Systems Protection Board

Air Carriers
Labor-Management Relations and Cooperative Programs Bureau

Air Pollution Control
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Selective Service System

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Federal Mediation and Conciliation Service

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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Personnel Management Office

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General Services Administration
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Natural Gas
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Parachutes
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Quarantine
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Railroads
Interstate Commerce Commission

Supplemental Security Income
Social Security Administration

Television Broadcasting
Federal Communications Commission

Vessels
Panama Canal Commission

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227 (Voice)
Melanie Williams 202-523-5229 (TDD)

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

NOTE: There will be a sign language interpreter for hearing impaired persons at this briefing.

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Presidential Documents

Title 3—

The President

Proclamation 5424 of December 23, 1985

Made in America Month, 1985

By the President of the United States of America

A Proclamation

America's current trade problems have caused some to wonder whether this country may not be in danger of losing its reputation as a supplier of high quality products at competitive prices. As America's strong economic growth has led to increased demand for goods and services, imports have become more attractive because of the relative strength of the dollar. U.S. exports have become less attractive to foreign buyers for the same reason. Recently, however, increased growth in the economies of our trading partners and movement of the dollar toward a more sustainable equilibrium give us reason to expect that our trade deficit should ease in the near future. Tough foreign competition, in the last few years, has presented our manufacturers and our work force with a stiff challenge.

But America's producers are responding to that challenge, and it is time for consumers both here and abroad to take a fresh look at what America has to offer. Those who do will find the traditional variety, high quality, and dependability that "Made in the U.S.A." has come to symbolize. They also will find this quality at more competitive prices.

Made in America Month also provides an opportunity for American firms and workers to resolve to take greater advantage of new competitive opportunities both here at home and in overseas markets. We Americans do not shrink from competition; we believe in competition—*fair* competition. Historically, competition constantly creates pressure for innovation, product improvement, and customer satisfaction. The open marketplace makes the consumer the king, and we are all consumers.

In an increasingly competitive world, we Americans must redouble our efforts to make products of the highest quality in the most efficient way and market them aggressively. As we do I have no doubt that more and more Americans and foreigners will be drawn to the products with the proud label: "Made in America."

The Congress of the United States, by Senate Joint Resolution 206, has authorized and requested the President to proclaim December 1985 as "Made in America Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim December 1985 as Made in America Month. I invite the people of the United States to observe this month with appropriate programs and activities to recognize and celebrate the excellence of American products.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of December, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Parts 305 and 310

Recommendations and Statements of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations and Statement.

SUMMARY: The Administrative Conference of the United States, at its Thirty-first Plenary Session, adopted two recommendations and a statement. A proposed recommendation regarding procedural requirements in pending immigration legislation for the imposition of employer sanctions was recommitted to the Conference's Committee on Rulemaking.

Recommendation 85–4, Administrative Review in Immigration Proceedings, deals with administrative appeals from initial decisions in certain immigration proceedings. Recommendation 85–5, Procedures for Negotiating Proposed Regulations, supplements and refines an earlier Conference recommendation respecting the desirable procedures to be used. In its Statement on Hearing Procedures for the Resolution of Scientific Issues the Conference urges continued experimentation with alternative types of hearing procedures for the resolution of scientific issues.

Recommendations of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing general interest, are published in the Code of Federal Regulations (1 CFR Parts 305 and 310).

DATES: These recommendations were adopted December 12–13, 1985 and issued December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, General Counsel (202–254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States. (5 U.S.C. 574(1).)

At its Thirty-first Plenary Session, held December 12–13, 1985, the Assembly of the Administrative Conference of the United States adopted two recommendations and one statement.

Recommendations 85–4, Administrative Review in Immigration Proceedings, deals with administrative appeals from initial Justice Department decisions in deportation, exclusion, and other imigration proceedings. These appeals are decided by one of two very different bodies: the formal, relatively independent Board of Immigration Appeals or the smaller, less independent Administrative Appeals Unit. The recommendation urges the Justice Department to review the assignment of cases to these two bodies in light of several factors, such as the importance of the type of case to the parties, the type of issues raised, and the number of cases of each particular type, and suggests specific assignments for some case types. It also recommends statutory recognition for the Board of Immigration Appeals and the adoption by it of a three-member panel system.

Recommendation 85–5 reaffirms the Conference's earlier advice to agencies that negotiated rulemaking can be a practical technique in certain circumstances. In negotiated rulemaking an agency faced with a regulatory problem brings together representatives of potentially affected parties to negotiate a rule in face-to-face meetings. In 1982, the Conference outlined procedures for negotiation of rules, and advised agencies to experiment with the concept. Since that time, it has been used successfully by the Federal Aviation Administration and the Environmental Protection Agency. On the basis of a study of agency experience with negotiated rulemaking, the Conference now supplements and refines the procedures described in Recommendation 82–4.

In the Statement on Hearing Procedures for the Resolution of Scientific Issues, the Conference suggests that continued experimentation by agencies with alternative types of hearing procedures for the resolution of scientific issues is justified. The Conference takes note of the Food and Drug Administration's Public Board of Inquiry procedure, an innovative attempt to provide an informal hearing by a panel of scientists as an alternative to the formal adjudication by an administrative law judge, as a procedure to review certain decisions concerning food additives or new drugs. Based primarily on a study of the FDA experience, the Conference urges that agencies with regulatory programs that depend on scientific determinations consider experimental use of a process similar to the FDA's Board, as a voluntary alternative to a hearing that would otherwise be held to resolve issues of scientific uncertainty. The statement notes several steps that can be taken to improve the management of such proceedings to make them more efficient and more accurate.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street, NW., Washington, DC.

Lists of Subjects in 1 CFR Part 305

Administrative practice and procedure, Immigration procedure, Negotiated rulemaking, Resolution of scientific issues.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571–576.

2. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

BEST COPY AVAILABLE

Sec.
305.85–4 Administrative Review in Immigration Proceedings (Recommendation No. 85–4).
305.85–5 Procedures for Negotiating Proposed Regulations (Recommendation No. 85–5).

3. Section 305.85–4 is added to Part 305 as follows:

§ 305.85–4 Administrative Review in Immigration Proceedings (Recommendation No. 85–4).

The Immigration and Nationality Act of 1952, as amended, requires the Justice Department to make two major types of decisions affecting aliens—whether to exclude aliens seeking to enter the United States and whether to deport those already in the country. The Act and the accompanying regulations also require a host of collateral decisions concerning visa petitions, waivers of grounds for exclusion or deportation, adjustment of status from non-immigrant to permanent resident, and many other immigration-related matters. Responsibility for making these decisions resides in two very different types of officials. Immigration judges, who are part of the Justice Department's Executive Office for Immigration Review, conduct formal evidentiary hearings in deportation, exclusion, and certain other proceedings. District directors and their subordinates are part of the Immigration and Naturalization Service (I.N.S.). They decide numerous other matters in far less formal proceedings. While the immigration judges have only adjudicative responsibilities, the district directors are principally responsible for the administration and enforcement of the immigration laws within their local geographic districts.

Similarly, there are two channels of administrative appeal for the Justice Department's immigration decisions. The Board of Immigration Appeals (B.I.A.), like the immigration judge, is located within the Executive Office for Immigration Review. The Board reviews almost all immigration judges decisions and some district director decisions. It is composed of five attorney members, all of whom normally participate in every case. It reviews cases *de novo* on the basis of the administrative record and publishes precedential opinions binding on the immigration judges and on the I.N.S.

Twenty-five other categories of district director decisions are appealable to the Associate Commissioner for Examinations, an I.N.S. policymaking official whose appellate jurisdiction has been subdelegated to the Administrative Appeals Unit (A.A.U.) In that unit, cases are decided *de novo* by individual non-attorney staff members and reviewed by the unit chief. The A.A.U. does not ordinarily publish its decisions.

The Justice Department's current regulations specify with a high degree of clarity which immigration decisions are administratively appealable and to which appellate body. However, reasons for the various assignments are not always evident.

The factors that should influence the choices of forum for administrative review of agency adjudication can be developed through a three-part methodology: (1) identify those attributes of the possible review forums that affect the accuracy, the efficiency, the acceptability, or the consistency of the administrative process; (2) identify the attributes of cases that favor the selection of a review forum with particular forum attributes; (3) determine the extent to which those case attributes tend to be present in the particular class of cases under consideration.

In Recommendation 75–3, the Administrative Conference set forth criteria to guide Congress in selecting the appropriate forum for judicial review of administrative agency action. Using the methodology described above, the present recommendation suggests some additional criteria and describes ways in which that expanded list of factors, with only slight modification, can be employed also to select a forum for administrative review. Applying those criteria, the recommendation then suggests forums for administrative review of various classes of immigration decisions.

Recommendation

A. Forum For Administrative Review

1. The Justice Department should undertake a comprehensive review of its regulations governing the assignment of forums for administrative review of immigration orders. In examining the categories of Board of Immigration Appeals (B.I.A.) and Administrative Appeals Unit (A.A.U.) jurisdiction, the Justice Department should consider the following factors to the extent applicable.

a. Factors favoring selection of the B.I.A. for a particular class of cases include (i) high likelihood of a substantial impact on the litigants; (ii) the prevalence of issues of law or discretion, particularly when the public impact of a decision will be widespread; (iii) the desirability of providing for judicial review of the class of cases in the courts of appeals.

b. Factors favoring selection of the A.A.U. for a particular class of cases include (i) a high volume of cases; (ii) the prevalence of questions of descriptive fact, rather than issues of law or discretion; (iii) high likelihood that administrative review will require the taking of additional evidence.

c. Once one class of cases is committed to a particular review forum, there is benefit in assigning to that same forum (i) other classes of cases tending to raise similar issues and (ii) other cases which, if sent elsewhere, would frequently result in the bifurcation of proceedings affecting the same individual.

d. With all else equal, the status quo should be preserved.

2. In revising its regulations, the Justice Department should make the following specific case assignments:

a. Appeals from orders of deportation and exclusion should continue to be heard by the B.I.A.

b. Appeals from orders rescinding adjustment of status should continue to be heard by the B.I.A.

3. The Justice Department should also, subject to the development of new information in the review recommended in paragraph 1, make the following case assignments:

a. All appeals from district directors' denials of visa petitions should be heard by the B.I.A.; thus orphan, fiance(e), and occupational petitions should be transferred from the A.A.U. to the B.I.A.

b. If administrative appeals from district directors' denials of waivers of the grounds of exclusion under section 212(c) of the Immigration and Nationality Act (applicable to aliens who are returning to a lawful unrelinquished domicile in the United States of seven years) are preserved,* they should continue to be heard by the B.I.A.

c. Appeals from district directors' denials of waivers under sections 212(h) and 212(i) of the Act (applicable to certain close relatives of American citizens and permanent residents) should be transferred from the A.A.U. to the B.I.A.

d. Appeals from district directors' denials of applications to waive the two-year foreign residence requirement for exchange visitors should be transferred from the A.A.U. to the B.I.A.

e. Appeals from denials of waivers under section 212(d)(3) of the Act (applicable to nonimmigrants) should be transferred from the B.I.A. to the A.A.U.

f. Appeals from district directors' denials of applications for permission to reapply for admission after exclusion or deportation should continue to be heard by the A.A.U.

B. Structure and Independence of the Board of Immigration Appeals

1. The B.I.A. should adopt a system of randomly selected three-member panels to decide cases. En banc review should be afforded, upon a determination by a majority of the B.I.A., only in the following circumstances: (a) When invoked by any B.I.A. member; (b) at the request of the I.N.S. Commissioner or the Attorney General following decision; or (c) when the aggrieved party petitions for review of a split panel decision.

2. If necessary to accommodate the case transfers recommended in part A above, the B.I.A.'s membership should be slightly increased.

3. Congress should enact legislation to give the B.I.A. statutory recognition. Under the legislation, the B.I.A. should remain within the Department of Justice. The statute should confer jurisdiction over deportation, exclusion and rescission orders, and should authorize the Attorney General to adjust the Board's jurisdiction as to other matters.

4. The Attorney General should retain the power to review individual B.I.A. decisions. In accordance with current practice, this power should be exercised only in extraordinary circumstances.

4. Section 305.85–5 is added to Part 305 as follows:

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*A pending Justice Department proposal would eliminate administrative appeals from these orders. The issue of whether these orders should be administratively appealable is beyond the scope of this recommendation.

§ 305.85–5 Procedures for Negotiating Proposed Regulations (Recommendation No. 85–5).

Negotiations among persons representing diverse interests have proven to be effective in some cases in developing proposals for agency rules. In 1982, the Administrative Conference of the United States adopted Recommendation 82–4, 1 CFR § 305.82–4, encouraging the use of negotiated rulemaking by federal agencies in appropriate situations.[1] The concept of negotiated rulemaking arose from dissatisfaction with the rulemaking process, which since the 1960's, in many agencies, had become increasingly adversarial and formalized—unlike the brief, expeditious notice and comment procedure envisioned in section 553 of the Administrative Procedure Act. Experience has now shown that negotiated rulemaking can be a practical technique in appropriate instances.

Since Recommendation 82–4 was adopted, its recommended procedures have been followed four times by federal agencies. The Federal Aviation Administration used negotiated rulemaking to develop a new flight and duty time regulation for pilots. The Environmental Protection Agency used negotiated rulemaking to develop proposed rules on nonconformance penalties for vehicle emissions and on emergency exemptions from pesticide regulations. The Occupational Safety and Health Administration encouraged labor, public interest, and industry representatives to negotiate a standard for occupational exposure to benzene. The benzene negotiations did not result in agreement among the parties on a proposed rule, but the other three negotiations did lead to substantial agreement resulting in two final rules (which have thus far not been challenged) and one draft rule which, after public comment, is pending before the agency.

The experience of these four cases has shown that the original recommendation was basically sound, and has provided a basis for the Administrative Conference to use in supplementing Recommendation 82–4.

It is important to view Recommendation 82–4 and the present recommendation, taken together, as a guide to issues to be considered rather than a formula to be followed. Negotiation is intrinsically a fluid process that cannot be delineated in advance. Accordingly, what will "work" in a particular case depends on the substantive issues, the perception of the agency's position by interested parties, past and current relationships among the parties, the authority of party representatives in the negotiations, the negotiating style of the representatives, the number and divergence of views within each constituency represented, and the skill of the participants and mediators. These factors are mostly dynamic and their charcter is likely to change during the negotiating process. Proponents of negotiated rulemaking must recognize the unavailability of neat formal solutions to questions of who should participate, how the negotiations should be conducted, or even the definition of "successful" negotiations.

Agencies undertaking negotiated rulemaking must be prepared to deal with these real world uncertainties by pursuing a thoughtfully flexible approach. Elements of Recommendation 82–4 and the present recommendation provide a conceptual framework within which to plan and conduct negotiations in a particular proceeding, but should not be taken as a formal model. An agency cannot merely transplant a pattern followed successfully by another agency, or even by itself on another occasion. Nevertheless, agencies that are considering negotiated rulemaking for the first time should find it helpful to discuss their plans with other agencies and persons experienced with the process.

Some agencies have indicated a concern about the effect of the Federal Advisory Committee Act on negotiated rulemaking proceedings. The four agency experiences reviewed by the Administrative Conference have not shown that the Act, as interpreted by the sponsoring agencies and participants, impeded effective negotiations. Under current judicial and agency interpretations of the Act, it appears that caucuses and other working group meetings may be held in private, where this is necessary to promote an effective exchange of views.

Another concern expressed by some agencies has been the potential costs associated with negotiated rulemaking. While aspects of the recommended process may entail some short-term additional costs, the Conference believe that potential long-range savings will more than offset the costs. Moreover, agencies should be aware of opportunities for assistance from within the government, for example, training provided by the Legal Education Institute of the Department of Justice, and mediation assistance by the Federal Mediation and Conciliation Service and the Community. Relations Service.

Recommendation

1. An agency sponsoring a negotiated rulemaking proceeding should take part in the negotiations. Agency participation can occur in various ways. The range of possibilities extends from full participation as a negotiator to acting as an observer and commenting on possible agency reactions and concerns. Agency representatives participating in negotiations should be sufficiently senior in rank to be able to express agency views with credibility.

2. Negotiations are unlikely to succeed unless all participants (including the agency) are motivated throughout the process by the view that a negotiated agreement will provide a better alternative than a rule developed under traditional processes. The agency, accordingly, should be sensitive to each participant's need to have a reasonably clear expectation of the consequences of not reaching a consensus. Agencies must be mindful, from the beginning to the end of negotiations, of the impact that agency conduct and statements have on party expectations. The agency, and others involved in the negotiations, may need to communicate with other participants—perhaps with the assistance of a mediator or facilitator—to ensure that each one has realistic expectations about the outcome of agency action in the absence of a negotiated agreement. Communications of this character always should consist of an honest expression of agency actions that are realistically possible.

3. The agency should recognize that negotiations can be useful at several stages of rulemaking proceedings. For example, negotiating the terms of a final rule could be a useful procedure even after publication of a proposed rule. Usually, however, negotiations should be used to help develop a notice of proposed rulemaking, with negotiations to be resumed after comments on the notice are received, as contemplated by paragraphs 13 and 14 of Recommendation 82–4.

4. The agency should consider providing the parties with an opportunity to participate in a training session in negotiation skills just prior to the beginning of the negotiations.

5. The agency should select a person skilled in techniques of dispute resolution to assist the negotiating group in reaching an agreement. In some cases, that person may need to have prior knowledge of the subject matter of the negotiations. The person chosen may be styled "mediator" or "facilitator," and may be, but need not be, the same person as the "convenor" identified in Recommendation 82–4. There may be specific proceedings, however, where party incentives to reach voluntary agreement are so strong that a mediator or facilitator is not necessary.

6. In some circumstances, federal agencies such as the Federal Mediation and Conciliation Service or the Community Relations Service of the Department of Justice may be appropriate sources of mediators or facilitators. These agencies should consider making available a small number of staff members with mediation experience to assist in the conduct of negotiated rulemaking proceedings.

7. The agency, the mediator or facilitator, and, where appropriate, other participants in negotiated rulemaking should be prepared to address internal disagreements within a particular constituency. In some cases, it may be helpful to retain a special mediator or facilitator to assist in mediating issues internal to a constituency. The agency should consider the potential for internal constituency disagreements in choosing representatives, in planning for successful negotiations, and in selecting persons as mediators or facilitators. The agency should also recognize the possibility that a group viewed as a single constituency at the outset of negotiations may later become so divided as to suggest modification of the membership of the negotiating group.

8. Where appropriate, the agency, the mediator or facilitator, or the negotiating group should consider appointing a neutral outside individual who could receive confidential data, evaluate it, and report to the negotiators. The parties would need to agree upon the protection to be given

[1] Recommendation 82–4 used the term "regulatory negotiation" to refer to this process. The present recommendation substitutes "negotiated rulemaking" to emphasize that it is addressing negotiation of rules, and not other uses of negotiations in the regulatory process.

confidential data. A similar procedure may also be desirable in order to permit neutral technical advice to be given in connection with complex data.

9. Use of a "resource pool" may be desirable, to support travel, training, or other appropriate costs, either incurred by participants or expended on behalf of the negotiating group. The feasibility of creating such a pool from contributions by private sources and the agency should be considered in the pre-negotiation stages.

PART 310—MISCELLANEOUS STATEMENTS

5. The table of contents of Part 310 of Title 1 CFR is amended to add the following new section:

Sec.
310.11 Statement on Hearing Procedures for the Resolution of Scientific Issues.

6. Section 310.11 is added to Part 310 to read as follows:

§ 310.11 Statement on hearing procedures for the resolution of scientific issues.

The development of effective decisionmaking techniques for the evaluation of scientific studies has been one of the most elusive problems for the administrative process. The implementation of health and safety laws often requires an evaluation of the scientific reliability of laboratory animal, clinical, or epidemiological test data, a determination of risks and benefits based upon those data and other factors, and a final "regulatory conclusion" in which the relevant law is applied in light of the previous conclusions. For example, health and safety agencies commonly are required to determine whether a particular chemical is carcinogenic or otherwise harmful as a prerequisite to reaching a regulatory conclusion.

The quality and legitimacy of these agency decisions can be improved by counseling with eminent scientific experts outside of the agency. Some scientists and others have supported the idea of a "science court" or an institution to which administrative agencies could refer scientific disputes for resolution by expert scientists. In response, agencies have developed several methods of obtaining scientific input, including the use of advisory committees. Science advisory committees are the most common method used to obtain such assistance before an agency reaches a decision. In addition, the Food and Drug Administration (FDA) has created and used twice a unique procedure, the Public Board of Inquiry (PBOI), to obtain independent scientific review of particular regulatory decisions. The PBOI combines the elements of a "scientific hearing" with the more typical "adversarial hearing" approach for the evaluation of scientific evidence.

The PBOI is one of three alternative informal methods of proceeding that FDA offers applicants in lieu of the formal adjudication by an administrative law judge (ALJ) that would otherwise be held to review certain decisions concerning the approval of food additives and new drugs. The other two alternatives are a hearing before an advisory committee or an informal hearing before the Commissioner of FDA. The PBOI consists of a panel of three scientists appointed by the Commissioner. Two of the three scientists are selected from recommendations of the parties. The Board obtains scientific "testimony" within an informal quasi-adjudicative hearing framework, in which the advocacy role of lawyers is minimized in favor of a "scientific forum" approach—although the Board's decision is an "initial decision" and has the same legal status as an initial decision of an ALJ.

FDA's two PBOI hearings occurred in 1980 and 1983. In the first, a PBOI was convened to determine whether Aspartame, now a widely used artificial sweetener, should be approved as a food additive. In the 1983 proceeding, a PBOI was convened to determine whether Depo Provera, a drug approved in other countries as a contraceptive, should be approved for that use in the United States.

Some analysts contend that FDA's experiences confirm the validity of the "science court" idea for the evaluation of scientific evidence. They argue that techniques like the PBOI are more effective for obtaining scientific advice than traditional adversarial hearings because a PBOI provides the presiding scientists with the flexibility to operate according to procedures that are customary in scientific inquiry. Others suggest that the PBOI costs too much for the value of the opinions obtained from it. A study commissioned by the Conference, however, suggests that the costs or delays of the two PBOI proceedings were significantly enlarged by unanticipated management problems that can be remedied.

The Administrative Conference suggests that continued experimentation with alternative types of hearing procedures for the resolution of scientific issues is justified. Improvements are needed in management of such procedures to make them more efficient and more accurate. Examples include:

(1) Appointing the chairperson at the start of the hearing process;

(2) Providing additional administrative support for board members;

(3) Separating, to the extent possible, the matters of scientific inquiry from any policy issues that may be addressed concerning the ultimate legal or regulatory actions that the agency ought to take;

(4) Encouraging boards to utilize an experienced employee as a management adviser in the conduct of the process;

(5) Providing an improved opportunity for direct communication between the board and the agency head upon submission of the board's decision;

(6) urging boards to adhere to procedures intended to ensure that the administrative record is complete and usable for successive stages of the administrative and legal process; and

(7) Urging persons conducting agency scientific hearings in significant cases to identify the bases for their conclusions.

Other agencies with regulatory programs that depend on scientific determinations should consider experimental use of a process similar to the PBOI as a voluntary alternative to a hearing that would otherwise be held to resolve issues of scientific uncertainty. Examples of other agencies that may have similar needs and objectives include the Environmental Protection Agency, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, and the National Highway Traffic Safety Administration.

Dated: December 23, 1985.

Richard K. Berg,

General Counsel.

[FR Doc. 85-30625 Filed 12-26-85; 8:45 am]

BILLING CODE 6110-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 540

Performance Management and Recognition System; Minimum Performance Award Funding

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising the minimum percentage for calculating funds to pay performance awards to Performance Management and Recognition System (PMRS) employees for Fiscal Year 1986. Establishing a new minimum percentage each year is required by title II of the Civil Service Retirement Spouse Equity Act of 1984, which established the PMRS.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Pokoyk, (202) 632-5653.

SUPPLEMENTARY INFORMATION: On September 16, 1985, at 50 FR 37537, OPM published a proposed regulation setting the minimum funding for performance awards to be paid to PMRS employees for fiscal year 1986, with a 15-day comment period.

During the comment period, which ended October 1, 1985, OPM received no written comments on the proposed regulation. However, a number of agencies called to inquire about section 540.109 of the proposed regulation specifying that fiscal year 1985 was to be used as the base year to estimate the aggregate amount of PMRS employees' basic pay for performance awards. This was a typographical error. The proposed regulation should have read fiscal year 1986. The final regulation has been amended to show the correct fiscal year.

Waiver of 30-Day Delay in Effective Date of Final Regulation

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director

finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective retroactively to meet the requirement in section 5406(c)(2)(A)(i)(II) of title 5, U.S. Code, that provides that the minimum percentage used by an agency to determine the aggregate amount for performance awards paid during any fiscal year shall, for each of the four fiscal years after FY 85 ". . . be adjusted incrementally (by equal increments or otherwise) over the percentage for the preceding fiscal year by the appropriate agency head in accordance with regulations which the office of Personnel Management shall prescribe." October 1, 1985, begins a new fiscal year (FY 86) and, therefore, OPM must adjust the minimum percentage of performance awards incrementally over the minimum percentage used in the previous fiscal year (FY 85) on that date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees and agencies.

List of Subjects in 5 CFR Part 540

Government employee, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM amends 5 CFR Part 540 as follows:

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

(1) The authority citation for Part 540 continues to read as follows:

Authority: 5 U.S.C. Chapters 43 and 54.

(2) Section 540.109(b)(1)(i) is revised to read as follows:

§ 540.109 Performance awards.

* * * * *

(b) * * *

(1) * * *

(i) Each agency is required to pay a minimum of .85 percent of the estimated aggregate amount of PMRS employees' basic pay for fiscal year 1986 for performance awards;

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[FR Doc. 85-30676 Filed 12-26-85; 8:45 am]

BILLING CODE 6325-01-M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1613

Special Panel; Organization and Proceedings

AGENCIES: Merit Systems Protection Board and Equal Employment Opportunity Commission.

ACTION: Interim regulations.

SUMMARY: The Civil Service Reform Act of 1978 established an administrative tribunal, the Special Panel, to resolve conflicts between the Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC). These regulations developed by the Special Panel, provide for the organization and proceedings of the Panel. These regulations will appear in the Board's section of the Code of Federal Regulations and in that of the EEOC.

DATES: *Effective date:* December 27, 1985.

Comment date: Comments must be received on or before March 31, 1986.

ADDRESS: Send written comments to Joseph J. Ellis, Acting Deputy Clerk of the Board, Merit Systems Protection Board, 1120 Vermont Avenue, NW, Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Joseph J. Ellis, Acting Deputy Clerk of the Board, Merit Systems Protection Board, (202) 653-7200.

SUPPLEMENTARY INFORMATION: The Civil Service Reform Act of 1978 established an administrative tribunal, the Special Panel, to resolve conflicts between the Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC). The three (3) member Special Panel is composed of a Chairman, appointed by the President for a six (6) year term, one member of the EEOC designated on an ad hoc basis by the Chairman of the EEOC, and one member of the MSPB designated on an ad hoc basis by the Chairman of the MSPB.

The Special Panel has found that good cause exists for publication of these regulations for interim effect in view of the forty-five (45) day statutory time limit permitted for adjudication of appeals certified to the Special Panel. The Special Panel invites public comment on these regulations through March 31, 1986.

Regulatory Flexibility Act

The Chairman of the Special Panel certifies that the Panel is not required to prepare initial or final regulatory analysis of this interim rule, pursuant to sections 603 or 604 of the Regulatory Flexibility Act, because of her determination that this rule would not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

List of Subjects

5 CFR Part 1201

Government employees, Administrative practice and procedure.

29 CFR Part 1613

Administrative practice and procedure, Aged, Equal employment opportunity, Government employees, Handicapped, Sex discrimination.

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter II—Merit Systems Protection Board

1. In Title 5 of the Code of Federal Regulations, Part 1201, Subpart D is amended by revising §§ 1201.171 and 1201.172; by redesignating § 1201.173 as § 1201.175; and by adding new §§ 1201.173 and 1201.174. The table of contents for Subpart D is set forth below. The authority citation for Part 1201 continues to read as set forth at the end of the table of contents. The text of the regulation is set out at the end of this document.

PART 1201—PRACTICES AND PROCEDURES

* * * * *

Subpart D—Procedures for Cases Involving Allegations of Discrimination Special Panel

Sec.

1201.171 Referral of case to Special Panel.
1201.172 Organization of the Special Panel.
1201.173 Practices and procedures of the Special Panel
1201.174 Enforcement of Panel decision.
1201.175 Judicial review of cases decided under 5 U.S.C. 7702.

Authority: 5 U.S.C. 7702.

TITLE 29—LABOR

Chapter XIV—Equal Employment Opportunity Commission

2. In Title 29 of the Code of Federal Regulations, Part 1613, Subpart D is amended by redesignating § 1613.417 as § 1613.421, and §§ 1613.417 through 1613.420 are added. The table of contents for Subpart D is set forth

below. The authority citation for Part 1613 continues to read as set forth at the end of the document. The text of the regulation is set out at the end of this document.

PART 1613—EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

* * * * *

Subpart D—Processing Mixed Case Complaints

Sec.

1613.417 Referral of case to Special Panel.
1613.418 Organization of Special Panel.
1613.419 Practices and procedures of the Special Panel.
1613.420 Enforcement of Panel decision.
1613.421 Right to file a civil action.

Authority: 5 U.S.C. 1205, 7702.

§ ——— Referral of case to Special Panel.

If the Merit Systems Protection Board (Board) reaffirms its decision under 5 CFR 1201.162(a)(2) with or without modification, the matter shall be immediately certified to the Special Panel established pursuant to 5 U.S.C. 7702(d). Upon certification, the Board shall, within five days (excluding Saturdays, Sundays, and Federal holidays), transmit to the Chairman of the Special Panel and to the Equal Employment Opportunity Commission (EEOC) the administrative record in the proceeding including—

(a) The factual record compiled under this section which shall include a transcript of any hearing(s);

(b) The decisions issued by the Board and the Commission under 5 U.S.C. 7702; and

(c) A transcript of oral arguments made, or legal brief(s) filed, before the Board and/or the Commission.

§ ——— Organization of the Special Panel.

(a) The Special Panel is composed of—

(1) A Chairman appointed by the President with the advice and consent of the Senate, and whose term is six (6) years;

(2) One member of the MSPB, designated by the Chairman of the Board each time a panel is convened;

(3) One member of the EEOC designated by the Chairman of the Commission each time a panel is convened.

(b) *Designation of Special Panel member*—(1) Time of designation. Within five days of certification of the case to the Special Panel, the Chairman of the MSPB and the Chairman of the EEOC shall each designate one member from their respective agencies to serve on the Special Panel.

(2) *Manner of designation.* Letters of designation shall be served on the Chairman of the Special Panel and the parties to the appeal.

§ ——— Practices and procedures of the Special Panel.

(a) *Scope.* The rules in this subpart apply to proceedings before the Special Panel.

(b) *Suspension of rules.* In the interest of expediting a decision, or for good cause shown, the Chairman of the Special Panel may, except where the rule is required by statute, suspend these rules on application of a party, or on his or her own motion, and may order proceedings in accordance with his or her direction.

(c) *Time limit for proceedings.* Pursuant to 5 U.S.C. 7702(d)(2)(A), the Special Panel shall issue a decision within 45 days after a matter has been certified to it.

(d) *Administrative assistance to Special Panel.* (1) The MSPB and the EEOC shall provide the Panel with such reasonable and necessary administrative resources as determined by the Chairman of the Special Panel.

(2) Assistance shall include, but is not limited to, processing vouchers for pay and travel expenses.

(3) The Board and the EEOC shall be responsible for all administrative costs incurred by the Special Panel and, to the extent practicable, shall equally divide the costs of providing such administrative assistance. The Chairman of the Special Panel shall resolve the manner in which costs are divided in the event of a disagreement between the Board and the EEOC.

(e) *Maintenance of the official record.* The Board shall maintain the official record. The Board shall transmit two copies of each submission filed to each member of the Special Panel in an expeditious manner.

(f) *Filing and service of pleadings.* (1) The parties shall file the original and six copies of all submissions with the Clerk, Merit Systems Protection Board, 1120 Vermont Avenue , NW, Washington, DC 20419. One copy of each submission shall be served on the other parties.

(2) A certificate of service specifying how and when service was made must accompany all submissions of the parties.

(3) Service may be by mail or by personal delivery during normal business hours (8:30 a.m.—5:00 p.m.). Due to the short statutory time limit, parties are required to file their submissions by overnight Express Mail, provided by the U.S. Postal Service, should they file by mail.

(4) The date of filing shall be determined by the date of mailing as indicated by the order date for Express Mail. If the filing is by personal delivery, it shall be considered filed on the date it is received in the office of the Clerk, Merit Systems Protection Board.

(g) *Briefs and responsive pleadings.* If the parties wish to submit written argument, briefs shall be filed with the Special Panel within fifteen (15) days from the date of the Board's certification order. Due to the short statutory time limit responsive pleadings will not ordinarily be permitted.

(h) *Oral argument.* The parties have the right to oral argument if desired. Parties wishing to exercise this right shall so indicate at the time of filing their brief, or if no brief is filed, within fifteen (15) days from the date of the Board's certification order. Upon receipt of a request for argument the Chairman of the Special Panel shall determine the time and place for argument and the time to be allowed each side, and shall so notify the parties.

(i) *Postargument submissions.* Due to the short statutory time limit, no postargument submissions will be permitted, except by order of the Chairman of the Special Panel.

(j) *Procedural matters.* Any procedural matters not addressed in these regulations shall be resolved by written order of the Chairman of the Special Panel.

§ ——— Enforcement of Special Panel decision.

The Board shall, upon receipt of the decision of the Special Panel, order the agency concerned to take any action appropriate to carry out the decision of the Panel. The Board's regulations regarding enforcement of a final order of the Board shall apply. These regulations are set out at 5 CFR Part 1201, Subpart E.

Barbara J. Mahone,

Chairman of the Special Panel.

Herbert E. Ellingwood,

Chairman, Merit Systems Protection Board.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 85-30647 Filed 12-26-85 8:45 am]

BILLING CODE 7400-01-M

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ASW-26; Amdt. 39-5181]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 206A, 206B, 206L, 206L-1, and 206L-3 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that requires inspection of the cyclic control stick assembly on the Bell Helicopter Textron, Inc., (BHTI), Model 206A, 206B, 206L, 206L-1, and 206L-3 helicopters. The AD is prompted by three reports of excessive corrosion of the cyclic control stick in the area of its attachment to the cyclic pivot lever assembly. In one report, during a "hydraulics-off" flight control check, the cyclic control stick fractured resulting in complete separation of the cyclic control stick from the cyclic pivot lever assembly. If this were to occur in flight, it would result in loss of flight control and probable loss of the helicopter.

EFFECTIVE DATE: December 30, 1985.

The incorporation by reference of certain publications listed in this amendment is approved by the Director of the **Federal Register** as of December 30, 1985.

Compliance: As prescribed in body of AD.

ADDRESSES: The applicable technical bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

A copy of the alert service bulletin is contained in the Rules Docket located at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Room 158, Building 3B, 4400 Blue Mound Road, Forth Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Gary B. Roach, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877-2593.

SUPPLEMENTARY INFORMATION: There have been three reports of excessive corrosion of the cyclic control stick in .he area of its attachment to the cyclic pivot lever assembly. In one report, during a "hydraulics-off" flight control check, the cyclic control stick fractured resulting in complete separation of the cyclic control stick from the cyclic pivot lever assembly. Since this condition is likely to exist or develop or other helicopters of the same type design, an airworthiness directive is being issued which requires a one-time inspection of the cyclic control stick assembly on the BHTI Model 206A, 206B, 206L, 206L-1, and 206L-3 helicopters.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order Executive 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By adding the following new AD:

Bell Helicopter Textron, Inc: Applies to Model 206A, 206B, 206L, 206L-1, and 206L-3 helicopters, certified in any category.

Compliance is required within the next 25 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent failure of the cyclic control stick, accomplish the following:

(a) Perform the "Accomplishment Instructions" of BHTI Alert Service Bulletin (ASB) 206-85-29, dated June 21, 1985, for the Model 206A or 206B; or ASB 206L-85-36, dated June 21, 1985, for the Model 206L, 206L-1, or 206L-3, as appropriate.

(b) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Manager, Helicopter Certification Branch, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

(c) In accordance with FAR sections 21.197 and 21.199, flight is permitted to a base where the inspection and repair procedures required by this AD may be accomplished.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Bell Helicopter Textron, Inc., P.O. Box 482, Forth Worth, Texas 76101. These documents may also be examined in Room 158, Building 3B, Office of Regional Counsel, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

This amendment becomes effective December 30, 1985.

Issued in Fort Worth, Texas, on December 2, 1985.

C. R. Melugin, Jr.,
Director, Southwest Region.

[FR Doc. 85-30542 Filed 12-26-85; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ACE-10]

Alteration of Transition Area, Wellington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Wellington, Kansas, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Wellington Municipal Airport, Wellington, Kansas, utilizing the Wichita VORTAC as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist,

Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION: To enhance airport usage, a new instrument approach procedure to the Wellington Municipal Airport, Wellington, Kansas, is being established utilizing the Wichita VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of a transition area at Wellington, Kansas, at and above 700 feet above the ground within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Discussion of Comments

On page 40566 of the **Fedeal Register** and October 4, 1985, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Wellington, Kansas. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Wellington, Kansas

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Wellington Municipal Airport (Latitude 37°19'28"N; Longitude 97°23'13"W) and 3 miles either side of the Wellington NDB (Latitude 37°19'26"N; Longitude 97°23'21"W) 017° bearing extending from the 5 mile radius area to 8.5 miles northeast of the NDB and 5 miles either side of the Wichita VORTAC 160° radial from 12 miles northwest of the Wellington Municipal Airport extending to the 5 mile radius area excluding that portion which overlaps the Wichita, Kansas transition area.

This amendment become effective at 0901 GMT March 13, 1986.

Issued in Kansas City, Missouri, on December 18, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85–30548 Filed 12–26–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 373, 374, 375, 379 and 399

[Docket No. 51215–5215]

Exports to the People's Republic of China; Amendments to the Export Administration Regulations

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Office of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls. The "Advisory Notes" in various entries of the CCL list those commodities covered by a particular entry that are more likley than others to be approved for export.

This rule adds or revises Advisory Notes to certain CCL entries listing commodities likely to be approved for export to the People's Republic of China (PRC). These additions result from the review of the system of strategic export controls maintained by the United States and certain allied countries through the Coordinating Committee (COCOM). Exports of those commodities described in the Advisory Notes generally do not require multilateral review. The net effect of these changes will be a substantial decrease in overall license processing times. In addition, these commodities may be reexported to the PRC from COCOM countries under licenses issued by those countries.

This rule also raises the maximum value of parts that may be shipped to the PRC under the "Service Supply" procedure established by Export Administration. Those parts identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List may be exported to the PRC if the value of the parts does not exceed $50,000. Exporters are reminded that the parts must not upgrade the performance of the legally exported equipment being serviced, and all controlled parts replaced must be returned to a COCOM country for disposal.

This rule also adds a new section to Part 375 of the Export Administration Regulations, "Documentation Requirements," regarding the requirement for PRC End-User Certificate accompanying a license application to export or reexport commodities valued at more than $5,000.

The U.S. exporter is responsible for including the End-User Certificate with each license application to export or reexport commodities identified by the code letter "A" on the Commodity Control List to the People's Republic of China (PRC). The Chinese importer must provide the U.S. exporter with a copy of the PRC End-User Certificate.

EFFECTIVE DATE: December 15, 1985.

ADDRESS: End-User Certificates will be provided by: The Technology Import and Export Department, MOFERT, No. 2 Dong Chang An Street, Beijing, PRC, Telephone: 553031, Telex: 22478MFERTCN.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Regulations Branch, Export Administration, Telephone: (202) 377–3856.

For questions of a technical nature regarding metal-working machinery, general industrial equipment, transportation equipment, or chemicals

and metalloids, call Bruce Webb, Capital Goods Technology Center, Export Administration, Telephone: (202) 377–3806.

For questions of a technical nature regarding computers, call Dan Hoydysh, Computer Systems Technology Center, Export Administration, Telephone: (202) 377–4516.

For questions of a technical nature regarding electronics and precision instruments, call Randy Williams, Electronic Components Technology Center, Export Administration, Telephone: (202) 377–3109.

SUPPLEMENTARY INFORMATION:

Grace Period

The requirement for submitting PRC End-User Certificates with export license applications will take effect on February 25, 1986. Before that date, applications will be accepted if supported by a Form ITA–629P. However, applications already pending and those submitted before February 25, 1986 will receive much more expeditious handling if a PRC End-User Certificate is available.

Rulemaking Requirements

1. This rule is exempted from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) under section 13(a) of the Export Administration Act of 1979, as amended. This regulation also involves a foreign and military affairs function of the United States.

2. This rule contains collection of information requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Applicants for the validated export license required by this rule will use Form ITA–622P. The collection of this information has been approved by the Office of Management and Budget under control number 0625–0001. The End-User Certificate requirement set forth in the new § 375.8 supersedes the requirement for Form ITA–629P, Statement by Ultimate Consignee and Purchaser (approved by the Office of Management and Budget under control number 0625–0136), to accompany license applications for exports and reexports to the People's Republic of China (PRC). The PRC information collection requirement is pending approval by the Office of Management and Budget. Comments from the public on the collection of information contained in this rule should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, Attention: Desk Officer for the Department of Commerce/International Trade Administration.

3. Because a notice of proposed rulemaking is not required for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, 5 U.S.C. 601(2) and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Therefore, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

List of Subjects in 15 CFR Parts 373, 374, 375, 379 and 399

Exports, Science and technology.

Accordingly, Parts 373, 374, 375, 379 and 399 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for Parts 373, 379 and 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

2. The authority citation for Parts 374 and 375 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 373—[AMENDED]

3. Section 373.7 is amended by revising (i)(4) to read as follows:

§ 373.7 Service Supply Procedure.

* * * * *

(i) * * *

(4) *Restriction on parts to be exported.* Parts identified by the code letter "A" following the Export Control Commodity Number on the Commodity Control List may not be exported or reexported under this procedure to Country Groups Q, W or Y, or to Afghanistan if the value of the parts included in a shipment is more than $8,000 or if the parts are listed in § 373.7(b). Parts identified by an "A" may not be exported or reexported to the People's Republic of China if the value of the parts included in a shipment is more than $50,000 or if the parts are listed in § 373.7(b).

* * * * *

PART 374—[AMENDED]

4. Section 374.2 is amended by adding a paragraph (j), reading as follows:

§ 374.2 Permissive Reexports.[2]

* * * * *

(j) Reexports from a COCOM country to the People's Republic of China that meet the requirements set forth in Advisory Notes for the People's Republic of China in the Commodity Control List (Supplement No. 1 to § 399.1) and are licensed for shipment by that country.

PART 375—[AMENDED]

5. The chart in § 375.1 is amended by redesignating the fifth entry as "6" and adding a new entry "5" to read as follows:

§ 375.1 Introduction.

* * * * *

If the commodity is	And the country of destination is	Required document is	For specific regulations see
5 Identified by the code letter A	People's Republic of China (PRC)	PRC End-User Certificate	§ 375.8

6. Section 375.2 is amended by revising paragraph (b)(1) to read as follows:

§ 375.2 Form ITA–629P, Statement by Ultimate Consignee and Purchaser.

* * * * *

(b) *Exemptions.* * * *

(1) An International Import Certificate (§ 375.3), a Swiss Blue Import Certificate (§ 375.4), a Yugoslav End-Use Certificate (§ 375.5), or a People's Republic of China End-User Certificate (§ 375.6) is required in support of the application.

* * * * *

7. The footnote to § 375.3(b) is revised to read as follows:

§ 375.3 International Import Certificate and Delivery Verification Certificate.

* * * * *

(b) * * *

[1] See § 375.4 for Swiss Blue Import Certificate requirements, § 375.5 for Yugoslav End-Use Certificate requirements, and § 375.6 for People's Republic of China End-User Certificate requirements.

8. The second sentence of § 375.3(i)(1)(i) is amended by adding the phrase "(and, in certain instances, to the People's Republic of China)" after the phrase "listed in paragraph (b) of this section".

§§ 375.6 and 375.7 [Redesignated as 375.7 and 375.8 respectively].

8A. Sections 375.6 and 375.7 are redesignated as §§ 375.7 and 375.8.

§ 372.6 [Amended].

9. The reference to "§ 375.5" in § 372.6(d) is revised to read "§ 375.7".

10. A new § 375.6 is added, reading as follows:

§ 375.6 People's Republic of China End-User Certificate.

(a) *Requirements.* A license application to export or reexport to the People's Republic of China (PRC) commodities identified by the code letter "A" on the Commodity Control List and valued at $5,000 or more must be accompanied by the original PRC End-User Certificate issued to the PRC importer by the Ministry of Foreign Economic Relations and Trade's (MOFERT) Technology Import and Export Department in Beijing. This agency certifies that all items identified by the code letter "A" exported to the PRC are for use in the PRC and will not be reexported to a third country. When the commodity is described in an Advisory Note for Country Groups QWY on the Commodity Control List, a Form ITA–629P may be substituted for the PRC End-User Certificate.

(b) *Information included on the End-User Certificate.* The following information shall be included on the PRC End-User Certificate:

(1) Title of contract and contract number;

(2) Names of importer and exporter;

(3) End-user and end-use;

(4) Commodity description, quantity and dollar value; and

(5) Signature of the importer and date. The completed End-User Certificate shall be signed by a deputy director of the Technology Import and Export Department of MOFERT and have MOFERT's seal affixed to it.

§ 375.7 [Amended]

11. References to "§ 375.7" are revised to read "§ 375.8" in § 375.1, the undesignated paragraph following § 375.3(e)(1)(iii), § 375.3(f)(3), the undesignated paragraph following § 375.4(c)(3), and § 375.5(c).

§ 375.8 [Amended]

12. The phrase "Swiss Blue Import Certificates, Yugoslav End-Use Certificates" in the introductory paragraph of the newly designated § 375.8 and in newly designated § 375.8(a) is revised to read "Swiss Blue Import Certificates, Yugoslav End-Use Certificates, People's Republic of China End-User Certificates".

13. The phrase "a Swiss Blue Import Certificate or a Yugoslav End-Use Certificate" in paragraph (b)(3) of the newly designated § 375.8 is revised to read "a Swiss Blue Import Certificate, a Yugoslav End-Use Certificate, or a People's Republic of China End-User Certificate"; and the title of § 375.8(b)(3) is revised to read "Swiss Blue Import Certificates, Yugoslav End-Use Certificates, or People's Republic of China End-User Certificates".

14. The phrase "Swiss Blue Import Certificate or Yugoslav End-Use Certificate" in paragraphs (c), (e), (f)(1), and (f)(2) of the newly designated § 375.8 is revised to read "Swiss Blue Import Certificate, Yugoslav End-Use Certificate, or People's Republic of China End-User Certificate".

15. The phrase "Swiss Blue Import Certificate, or Yugoslav End-Use Certificate" in the second certification under paragraph (f)(2) of the newly designated § 375.8 is revised to read "Swiss Blue Import Certificate, Yugoslav End-Use Certificate, or People's Republic of China End-User Certificate".

16. The phrase "Swiss Blue Import Certificate, or Yugoslav End-Use Certificate [2] " in paragraph (g)(1) of the newly designated § 375.8 is revised to read "Swiss Blue Import Certificate, Yugoslav End-Use Certificate, or People's Republic of China End-User Certificate [2] ".

17. Supplement No. 1 to Part 375 is amended by adding a new entry following "Belgium", reading as follows:

Supplement No. 1 to Part 375—Authorities Administering Import Certificate Delivery Verification System in Foreign Countries [1]

Country	IC/DV Authorities	System Administered [2]
•	•	•
China, People's Republic of	Technology Import and Export Department: MOFERT, No. 2 Dong Chang An Street, Beijing, PRC, Telephone: 553031, Telex 22478MFERTCN.	PRC End-User Certificate
•	•	•

PART 379—[AMENDED]

18. Section 379.8 is amended by adding paragraph (b)(4), reading as follows:

§ 379.8 Reexports of technical data and exports of the product manufactured abroad by use of United States technical data.

* * * * *

(b) * * *

(4) *People's Republic of China.* Separate specific authorization by Export Administration is not required to reexport software from a COCOM country to the People's Republic of China if that software meets the requirements set forth in the Advisory Note for the People's Republic of China in Supplement No. 3 to Part 379 and if the license has been approved by a COCOM country.

* * * * *

19. In Supplement No. 3 to Part 379, "Computer Software", Advisory Note 13 is revised, to read as follows:

Supplement No. 3 to Part 379—Computer Software

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "software" controlled for export in this Supplement No. 3 to Part 379, as follows:

(a) "Software" controlled only by sub-paragraph (a)(1) (of the "List of Software Subject to this Supplement to Part 379") for computers designed and produced within the People's Republic of China;

(b) "Software" controlled by sub-paragraph (a)(3)(ii) for equipment that is covered by an Advisory Note to ECCN 1565A in the Commodity Control List;

(c) "Software" not specially designed for computer-aided design, manufacture, inspection or testing of products controlled for export on the Commodity Control List;

(d) "Cross-hosted" compilers or "cross-hosted" assemblers controlled by sub-paragraph (b)(2)(i);

(e) "Software" controlled by sub-paragraphs (b)(2)(ii) or (b)(3) for microprocessor or microcomputer development systems that are covered by an Advisory Note on the Commodity Control List;

(f) "Operating systems" controlled by sub-paragraph (b)(4) for computers that are covered by an Advisory Note to ECCN 1565A on the Commodity Control List.

PART 399—[AMENDED]

20. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 0 (Metal-Working Machinery), ECCN 1091A is amended by revising the "Advisory Note for the People's Republic of China" to read as follows:

1091A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China, other than nuclear and aerospace end-users, of numerical control units, numerically controlled machine tools, dimensional inspection machines and specially designed software therefor, and specially designed sub-assemblies therefor, as follows:

(a) Numerical control units having all of the following characteristics:

Note.—Numerical control units exported separately from equipment must be for use with and specially configured for equipment permitted by paragraph (b) of this Advisory Note. Exporters must submit specifications of equipment to which the numerical control units will be interfaced.

(1) No more than four contouring interpolating (any mathematical function including linear and circular) axes can be simultaneously coordinated. Units may have:

(i) One or more additional axes in which the rate of movement is not coordinated, varied, or modulated with that of another axis; *or*

(ii) One additional set of four contouring axes provided that separate feedrate numbers, standard or optional, do not control more than any four contouring axes;

(2) Minimum programmable increment equal to or greater than 0.001 mm;

(3) Interfaces as follows:

(i) No more than one integral interface designed to meet ANSI/IEEE standard 488–1978, IEC publication 625–1, or any equivalent standard; *and*

(ii) An unlimited number of interfaces meeting EIA standard RS–232–C or any equivalent standard;

(4) On-line (real-time) modification of the tool path, feedrate and spindle data limited to the following:

(i) Cutter diameter compensation normal to the center line path;

(ii) Automatic acceleration and deceleration for starting, cornering and stopping;

(iii) Axis transducer compensation including lead screw pitch compensation (measurements on one axis may not compensate another axis);

(iv) Constant surface speed with or without limits;

(v) Spindle growth compensation;

(vi) Feedrate and spindle speed override;

(vii) Fixed and repetitive cycles, including automatic cut vector generation;

(viii) Tool and fixture offset;

(ix) Part program tape editing, including source program language and centerline location data (CLDATA);

(x) Tool length compensation;

(xi) Part program storage;

(xii) Variable pitch threading;

(xiii) Inch/metric conversion; *and*

(xiv) Feedrate override based on spark voltage for electrical discharge machines;

(5) Word size equal to or less than 32 bits (excluding parity bits);

(6) "Software" or "firmware", including "software" or "firmware" of any programmable unit or device furnished, not exceeding control unit functions as provided in paragraphs (a)(1) to (a)(5) of this Advisory Note, and restricted as follows:

(i) Application programs executable without further compilation, assembly, interpretation or processing, other than control unit parameter initialization, and memory storage loading, and each supplied as an entity rather than in modular form, as follows:

(a) An operating program to allow the unit to perform its normal functions;

(b) One or more diagnostic programs to verify control or machine performance and to permit localization of hardware malfunctions; *and*

(c) A translator program for programming the control-to-machine interface;

(ii) Documentation for application programs not containing the following:

(a) Listing of program instructions, *except* that necessary for diagnostics for routine hardware maintenance;

(b) Description of program organization or function beyond that required for program use and for maintenance of exported hardware and "software";

(c) Flow charts, logic diagrams or algorithms employed, *except* those necessary for use of diagnostics for routine hardware maintenance;

(d) Any reference to specify memory storage locations, *except* those necessary for diagnostics for routine hardware maintenance; *and*

(e) Any other information that would assist in the analysis or modification of all or of part of the software;

(b) Machine tools and dimensional inspection machines that, according to the manufacturers' technical specifications, can be equipped with numerical control units covered by paragraph (a) of this Advisory Note, as follows:

(1) Boring mills, milling machines and machining centers having all of the following characteristics:

(i) No more than four axes capable of simultaneously coordinated contouring motion, of which no more than three axes shall be linear and no more than one axis shall be rotary;

Note.—A secondary contouring axis, parallel with a primary axis, *e.g.*, W-axis on horizontal boring mills, is not counted in the total of four contouring axes. A secondary rotary table with the centerline parallel to the primary rotary table is also not counted in the total of four contouring axes. (Machines may have non-contouring parallel or non-contouring non-parallel rotary axes in addition to the four axes capable of simultaneously coordinated contouring motion.)

(ii) Maximum traverse (X-axis) travel equal to or less than 30,000 mm;

(iii) Maximum vertical (Y-axis) travel equal to or less than 8,000 mm;

(iv) Maximum horizontal (Z-axis) travel equal to or less than 5,000 mm;

(v) Unlimited spindle drive motor power;

(vi) No more than two simultaneously working spindles (the machine may have multiple tool heads or turrets; a spindle capable of driving a multiple drill head is considered as a single spindle);

(vii) Axial and radial axis motions measured at the spindle axis in one revolution of the spindle equal to or greater than $D\times2\times10^{-5}$ mm TIR (peak-to-peak) where D is the spindle diameter in mm;

(viii) An incremental positioning accuracy equal to or greater (coarser) than ±0.002 mm in any 200 mm of travel;

(ix) An overall positioning accuracy in any axis equal to or greater (coarser) than:

(a) ±0.003 mm for machines with a total length of axis travel equal to or less than 300 mm;

(b) $\pm\{0.003+\{0.001/300\times(L-300)\}\}$ mm for machines with a total length of axis travel, L, greater than 300 mm and equal to or less than 3,300 mm;

(c) ±0.013 mm for machines with a total length of axis travel greater than 3,300 mm;

(2) Machine tools, other than boring mills, milling machines and machining centers described in sub-paragraph (b)(1) of this Advisory Note, and dimensional inspection machines, having all the following characteristics:

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(i) No more than four axes capable of simultaneously coordinated contouring motion, of which no more than three axes shall be linear and no more than one axis shall be rotary;

Note.—Up to four secondary contouring axes parallel with the primary axis but not simultaneously coordinated with the four primary axes may be permitted.

(ii) No more than two simultaneously working spindles (the machine may have multiple tool heads or turrets);

(iii) Radial axis motion measured at the spindle axis equal to or greater than 0.0008 mm TIR (peak-to-peak) in one revolution of the spindle (for lathes, turning machines, contour grinding machines, etc.);

(iv) An incremental positioning accuracy equal to or greater (coarser) than ±0.002 mm in any 200 mm of travel;

(v) An overall positioning accuracy in any axis equal to or greater (coarser) than:

(a) ± 0.005 mm for machines with a total length of axis travel equal to or less than 300 mm;

(b) ± (0.005 + (0.002/300 × (L-300))) mm for machines with a total length of axis travel, L, greater than 300 mm and equal to or less than 3,300 mm;

(c) ± 0.025 mm for machines with a total length of axis travel greater than 3,300 mm.

21. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1312A is amended by adding at the end of that entry an "Advisory Note for the People's Republic of China", reading as follows:

1312A [Amended]

* * * * *

Advisory Note * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of presses having no controlled thermal environment within the closed cavity and that are used for the manufacture of industrial refractory and ceramic products.

22. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1353A is amended by adding at the end of that entry an "Advisory Note for the People's Republic of China", reading as follows:

1353A [Amended]

* * * * *

Advisory Note * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of equipment specially designed for the manufacture of silicon-based optical fiber or cable, provided that it is designed to produce non-militarized silicon-based optical fiber or cable that is optimized to operate at a wavelength of 1,350 nm or less and provided that the equipment has been commercially available before May 1, 1985.

23. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1354A is amended by adding an "Advisory Note for the People's Republic of China" after the Technical Note, reading as follows:

1354A [Amended]

* * * * *

Technical Note * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of equipment for the manufacture of printed circuit boards, as follows:

(a) Equipment specially designed for the removal of resists or printed circuit board materials by dry (*e.g.*, plasma) methods;

(b) "Digitally controlled" multi-spindle drills and routers with the following characteristics:

(1) Absolute positioning accuracy of ±5 micrometers or worse; *and*

(2) X and Y positioning speeds of 0.210 meter/second or slower for drilling or for routing.

24. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising the "Note for the People's Republic of China" to read as follows:

1355A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of silicon semi-conductor manufacturing equipment, as follows:

(a) Equipment for the production of polycrystalline silicon;

(b) Crystal pullers, *except* those that:

(1) Are rechargeable without replacing the crucible; or

(2) Operate at pressures above 1 atmosphere;

(c) Diffusion furnaces, *except* those that use computer feedback control operated from an "associated" computer;

Note.—"Associated" with equipment or systems means:

(a) Can feasibly be either:

(i) Removed from the equipment or systems; *or*

(ii) Used for other purposes; *and*

(b) Is not essential to the operation of such equipment or systems.

(d) Vacuum induction-heated zone refining equipment;

(e) Epitaxial reactors, *except* those that are:

(1) For molecular beam epitaxy; *or*

(2) Specially designed for organo-metallic deposition or liquid-phase epitaxy;

(f) Magnetically enhanced multiple-wafer sputtering equipment;

(g) Ion implantation, ion-enhanced or photo-enhanced diffusion equipment, *except* that having:

(1) Patterning capability;

(2) An accelerating voltage for more than 200 keV; *or*

(3) A current greater than 0.5 mA;

(h) "Batch" planar, "batch" reactive ion, barrel or barrel-planar dry etching equipment, *except* equipment incorporating end-point detection;

Note.—"Batch" refers to equipment capable of etching two or more wafers simultaneously;

(i) Low-pressure chemical vapor deposition equipment, *except* equipment capable of metal deposition;

(j) Wafer sawing equipment;

(k) Single-side lapping and polishing equipment for wafer surface finishing;

(l) Hard surface (*e.g.*, chromium, silicon, iron oxide) coated substrates (*e.g.*, glass, quartz, sapphire) for the preparation of masks having dimensions greater than 12.5 cm x 12.5 cm;

(m) Photo-optical mask fabrication equipment that was either commercially available before January 1, 1980, or has a performance no better than such equipment;

(n) Manually operated mask inspection equipment;

(o) Photo-optical mask alignment and exposure equipment, *except* equipment capable of producing patterns finer than 3 micrometers;

(p) Contact image transfer equipment;

(q) Wafer and chip inspection equipment that was either commercially available before January 1, 1981, or has a performance no better than such equipment;

(r) Equipment for concurrent etching and doping profile analysis employing capacitance-voltage or current-voltage analysis techniques;

(s) "Digitally controlled" wire or die bonders;

(t) "Digitally controlled" wafer probing equipment that does not include associated test equipment or drive circuitry other than those identified in paragraphs (u) or (v) of ECCN 1355A;

(u) Test equipment for:
(1) Television circuit testing;
(2) Operational amplifier testing;
(3) Voltage regulator testing;
(4) Analog-to-digital and digital-to-analog converter testing; *or*
(5) Discrete semi-conductor testing at frequencies of 18 GHz or less;
(v) "Digitally controlled" equipment for functional testing (truth table) at a pattern rate of 10 MHz or less for microcircuits or microcircuit assemblies.

Note.—Favorable consideration may be given to exports for satisfactory end-uses in the People's Republic of China of:

(a) Equipment controlled for export by sub-paragraphs (b)(1) or (2) of ECCN 1355A that can etch or produce patterns finer than 3 micrometers but not finer than 2 micrometers;

(b) Ion implantation equipment controlled for export by sub-paragraph (b)(1) of this Advisory Note operating at a current greater than 0.5 mA but less than 1.5 mA.

25. In Supplement No. 1 to §399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1358A is amended by adding an Advisory Note for the People's Republic of China at the end of the entry, reading as follows:

1358A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) "Automatic" and "semi-automatic" equipment for monitoring, grading, exercising or testing recording media controlled by paragraph (d) of ECCN 1572A or free from export control under paragraph (c)(4) of Exception 3 to ECCN 1572A having the following characteristics:

(1) For digital recording tape, a maximum recording density of less than 3,937 bits per cm; *or*

(2) For analog recording tape, a coating thickness greater than 2.54 micrometers;

(b) Diskette unit test equipment.

26. In Supplement No. 1 to §399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1359A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China", reading as follows:

1359A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of tooling and fixtures for the manufacture of fiber-optic connectors and couplers controlled for export by ECCN 1526(f), provided that the tooling and fixtures are not specially designed to manufacturer fiber-optic connectors and couplers for use with:

(a) Non-silicon-based fiber cable; *or*

(b) Fiber-optic bulkhead or hull penetrators in ships or vessels.

27. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1391A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China", reading as follows:

1391A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) "Robots" controlled for export by sub-paragraph (a) of this ECCN 1391A that are for civil use and not covered by sub-paragraph (a)(2) to (a)(8), (a)(10) or (a)(11);

(b) Electronic controllers covered by sub-paragraph (b) for the control of "robots" eligible for treatment under this Advisory Note;

(c) "End effectors" covered by sub-paragraph (c) for use with "robots" eligible for treatment under this Advisory Note;

(d) Vision systems, limited as follows:

(1) Capable of processing no more than 200,000 pixels using an industrial television camera or a solid-state camera;

(2) Not programmable by the user *except:*

(i) To input reference images through the system's camera;

(ii) To input values of fixed parameters, including teach-in parameters; *or*

(iii) To select pre-programmed sub-routines;

(3) Not capable of continuous reaction or continuously updating the "robot" position while the "robot" is moving;

Note.—This limitation precludes the use of vision systems for weld seam tracking during the welding operation but does not preclude straight-line or single-plane weld seam tracking using a single pass.

(4) Capable of no more than one scene analysis every 0.02 second;

(5) The "software" provided for the vision processor shall be in "object code" only and shall not be capable of full three-dimensional mathematical modeling or full three-dimesional scene analysis;

Note.—This scene analysis limitation does not preclude approximation of the third dimension by viewing at a given angle, nor limited gray scale interpretation for the perception of depth or texture for the approved tasks (2½D).

28. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 1460A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China", reading as follows:

1460A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of aircraft and helicopters considered to be of types that are in *bona fide* normal civil use, containing equipment controlled for export by ECCNs 1485A or 1501A, provided that:

(a) Any controlled components in such aircraft or helicopters are limited to those normally installed by the manufacturer;

(b) Repair and maintenance of controlled inertial navigation systems and complete overhaul of controlled engines will be performed in a non-proscribed country or by representatives of the Western suppliers; *and*

(c) Parts controlled for export will be replaced on a one-for-one basis.

29. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1510A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China", reading as follows:

1510 [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) Acoustic systems or equipment for positioning surface vessels or underwater vehicles, provided that:

(1) They are not capable of processing responses from more than 8 beacons in the calculation of a single point;

(2) They have neither devices nor "software" for correcting automatically velocity-of-propagation errors for point calculation;

(3) They have no coherent signal processing means; *and*

(4) Transducers, acoustic modules, beacons or hydrophones therefor are not designed to withstand pressure during

normal operation at depths greater than 1,000 meters.

(b) Side-scan sub-bottom profile systems, no portion of which is specially designed for operation at depths greater than 1,000 meters.

30. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1519A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China", reading as follows:

1519A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment or components and accessories controlled by paragraphs (b) or (d) of this ECCN 1519A:

(a) General communication transmission equipment, provided that:

(1) The equipment is to be used in non-strategic applications;

(2) It is for other than underwater use;

(3) It is to be permanently installed in a circuit (radio, coaxial cable, or multimode optical fiber) operated by the civilian authorities of the importing country; *and*

(4) It is to be used for general commercial traffic with a total digital bit rate at the highest level multiplex point of 45 Mbits per second or less for optical fiber or 140 Mbits per second or less for radio or coaxial cable, as follows:

(i) With a total number of voice channels per each physical bearer of 672 or less for optical fiber or 1,920 or less for radio or coaxial cable; *or*

(ii) With one monochrome or color television channel with a maximum nominal bandwidth of 6 MHz and associated sound channels in the case of optical fiber or four of those television channels and associated sound channels in the case of radio or coaxial cable;

(b) Intra-city communication transmission equipment, provided that it is:

(1) Designed for operation at a total digital data signalling rate at the highest level multiplex point of 140 Mbits per second or less;

(2) Installed under the supervision of the seller in a permanent circuit (radio, coaxial cable, multimode optical fiber with, or single mode optical fiber without repeaters/regenerators) between communication switching equipment; *and*

(3) Intended for general commercial traffic in an intra-city civil communication system;

(c) The minimum set of spare parts;

(d) Test or measurement equipment necessary for the use (*i.e.*, installation, operation and maintenance) of equipment exported under the conditions of this Advisory Note:

Note.—If this equipment is specially designed for operation above 45 Mbits per second, it must remain under the supervision of the exporter.

Note 1.—For communication equipment using optical fiber as the communication medium, the transmission wave length must not exceed 1,350 nm.

Note 2.—The license application must include the locations of the connection points, types of equipment being connected, and transmission rates.

31. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1520A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China", reading as follows:

1520A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following radio relay communication equipment:

(a) Microwave radio links for fixed civil installations operating at fixed frequencies not exceeding 19 GHz with a capacity of up to 1,920 voice channels of 4 kHz each or of a television channel of 6 MHz maximum nominal bandwidth and associated sound channels;

(b) Ground communication radio equipment for use with temporarily-fixed services operated by the civilian authorities and designed to be used at fixed frequencies not exceeding 19 GHz;

(c) Radio transmission media simulators/channel estimators designed for the testing of equipment covered by paragraphs (a) and (b) of this Advisory Note;

(d) Power amplifiers not exceeding 10 W and 6/4-GHz-transmitters/receivers for communication satellites.

32. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1522A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China", reading as follows:

1522A Lasers and laser systems, and equipment containing them.

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following:

(a) Tunable pulsed flowing-dye lasers having all of the following characteristics, and specially designed components therefor:

(1) An output wavelength shorter than 0.8 micrometer;

(2) A pulse duration not exceeding 100 ns; *and*

(3) A peak output power not exceeding 15 MW;

(b) CO_2, CO or CO/CO_2 lasers having an output wavelength in the range from 9 to 11 micrometers and a pulsed output not exceeding 2 joules per pulse and a maximum rated average single- or multi-mode output power not exceeding 5 kW of a continuous wave maximum rated single- or multi-mode output power not exceeding 10 kW;

(c) *Reserved;*

(d) Laser systems for trimming resistors or thick/thin film electronic circuits;

(e) Equipment incorporating CO_2 lasers with average or continuous wave output power not exceeding 5 kW, not exceeding the parameters of ECCN 1091A, and specially designed for welding, cutting, bonding or drilling metals for civil applications.

33. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended by revising the "Advisory Note for the People's Republic of China", to read as follows:

1529A [Amended]

* * * * *

Advisory Note for the People's Republic of China—Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) Quartz or rubidium frequency standards not specially designed for military use;

(b) Swept frequency network analyzers for use at frequencies not exceeding 40 GHz and that cannot be controlled remotely;

(c) Swept frequency network analyzers for the automatic measurement of complex equivalent circuit parameters over a range of frequencies where the maximum frequency does not exceed 18 GHz;

(d) Instruments in which the functions can be controlled by the injection of digitally coded electrical signals from an external source where the maximum frequency does not exceed 18 GHz;

(e) Spectrum analyzers employing time compression of the input signal or Fast Fourier Transform techniques not capable of:

(1) Analyzing signals with a frequency greater than 100 kHz if the instrument uses time compression, *or*

(2) Calculating 512 complex lines in less than 50 ms;

(f) Instruments incorporating computing facilities with "user-accessible reprogramming capability" and an alterable program and data memory of a total of less than 32 Kbytes;

(g) Digital test instruments with "user-accessible reprogramming capability" controlled by sub-paragraph (b)(6)(i) of this ECCN 1529A, required for the use (installation, operation or maintenance) of microcircuits or computers exported to the People's Republic of China under the Advisory Notes to ECCNs 1564A or 1565A;

(h) Microprocessor and microcomputer development instruments for 8 bit microcircuits, *i.e.*, microcircuits having an operand (data) word length of less than or equal to 8 bit(s) and an arithmetic logic unit (ALU) of less than or equal to 16 bit;

(i) Digital counters with any of the following characteristics:

(1) Not capable of counting successive input signals with less than 1.8 ns time difference without prescaling (digital division) of the input signal;

(2) Employing prescaling of the input signal in which the prescaler is not capable of resolving successive input signals with less than 0.5 ns time difference; *or*

(3) Not capable of measuring burst frequencies exceeding 250 MHz for a burst duration of less than 2 ms;

(j) Time interval measuring equipment employing digital techniques, not capable of measuring time intervals of less than 1 ns on a single shot basis;

(k) Instruments controlled by sub-paragraph (f) of this ECCN 1529A, not capable of more than 1,000 independent measurements per second;

(l) Transient recorders, not capable of sampling single input signals at successive intervals of less than 20 ns.

34. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronic and Precision Instruments), ECCN 1513A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China" reading as follows:

1531A Frequency synthesizers.

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following, and specially designed components and accessories therefor:

(a) Frequency synthesizers controlled for export only by sub-paragraph (a) of this ECCN 1531A, *except* those incorporating cesium beam standards;

(b) Instrument frequency synthesizers and synthesized signal generators controlled only by sub-paragraph (b) (1) and (3) of this ECCN 1531A and having a maximum output frequency of 18 GHz, provided that it takes 2.0 ms or more (switching speed) to reach a frequency within 100 Hz of the final frequency, or provided that it takes 2.0 ms or more to reach an output level within 1.0 dB of the final output level;

(c) Instrument frequency synthesizers and synthesized signal generators not controlled by sub-paragraph (b)(4) of this ECCN 1531A and having a maximum output frequency of 2.6 GHz, provided that it takes 0.3 ms or more (switching speed) to reach a frequency within 100 Hz of the final frequency, or provided that it takes 0.3 ms or more to reach an output level within 1.0 dB of the final output level.

35. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China" reading as follows:

1533A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following equipment:

(a) Non-programmable spectrum analyzers incorporating a tracking signal generator, provided that the display bandwidth is 4.4 GHz or less;

(b) Programmable spectrum analyzers, including those with a scanning preselector or a tracking signal generator, having all the following characteristics:

(1) Operating at frequencies of 2 GHz or less;

(2) A display bandwith of 1.5 GHz or less; and

(3) An overall display dynamic range not exceeding 100 dB.

36. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1537A is amended by adding between the "Advisory Notes" and the "Note" referring to paragraph (g) an "Advisory Note for the People's Republic of China" reading as follows:

1537A [Amended]

* * * * *

Advisory Notes: * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of microwave equipment controlled for export by sub-paragraphs (a), (b) or (c) of this ECCN 1537A, when designed for use at frequencies not exceeding 40 GHz and when specially designed for use with conventional commercial instruments described in ECCNs 1529A, 1531A or 1533A, provided that the equipment does not in any way extend the frequency range of the basic instrument.

* * * * *

37. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1555A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China" reading as follows:

1555A Electron tubes and specially designed components therefor.

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of electron tubes, as follows:

(a) Image intensifier and image conversion tubes that incorporate fiber optic face-plates or microchannel-plates, *except* image tubes specially designed for cameras controlled for export by ECCN 1585A;

(b) Television and video camera tubes that incorporate:

(1) Fiber optic face-plates; *or*

(2) Microchannel-plate electron multipliers not controlled by ECCN 1556A.

Note.—This Advisory Note does not apply to electron tubes incorporating a gallium arsenide (or similar semi-conductor) photocathode.

38. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1564A is amended by revising the "Advisory Note for the People's Republic of China" to read as follows:

1564A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of electronic component assemblies, sub-assemblies, printed circuit boards and microcircuits not specially designed to military standards for radiation hardening and temperature, as follows:

(a) Substrates for printed circuits, *except* those exceeding the limits of sub-paragraphs (a)(i)(5) or (a)(ii) of this ECCN 1564A;

(b) Silicon-based devices exceeding the limits of:

(1) Sub-paragraphs (d)(ii)(1) or (2), *except* those with more than 28 terminals;

(2) Sub-paragraphs (d)(ii)(6) or (7);

(3) Sub-paragraphs (d)(ii)(9) to (21); *or*

(4) Sub-paragraphs (d)(ii)(23) or (24);

(c) Silicon-based 8-bit or less microcomputer microcircuits exceeding the limits of sub-paragraphs (d)(ii)(3)(a) to (h);

(d) Silicon-based microprocessor microcircuits with an operand length of 16 bit or less and an arithmetic logic unit (ALU) not wider than 32 bit and exceeding the limits of sub-paragraphs (d)(ii)(4)(a) to (g), *except:*

(1) Those with a total processing data rate exceeding 28 Mbits per second;

(2) Bit-slice microprocessors;

(e) Silicon-based memory devices, as follows:

(1) MOS DRAMs with no more than 64 Kbits;

(2) MOS SRAMs with no more than 16 Kbits;

(3) Mask programmed ROMs with no more than 64 Kbits;

(4) UV–EPROMs with no more than 64 Kbits;

(5) EAROMs with no more than 32 Kbits;

(6) EEROMs with no more than 64 Kbits.

Note.—1 Kbit = 1,024 bits.

(f) Operational amplifier microcircuits exceeding the limits of sub-paragraph (d)(ii)(8) that do not have a slew rate greater than 100 volts per microsecond;

(g) Analog-to-digital and digital-to-analog converter microcircuits exceeding the limits of sub-paragraph (d)(ii)(22), *except:*

(1) Analog-to-digital converter microcircuits with less than a 500 ns conversion time to a maximum resolution of 12 bit;

(2) Digital-to-analog converter microcircuits with less than 500 ns settling time for voltage output and a maximum resolution of 8 bit;

(3) Digital-to-analog converter microcircuits with less than 25 ns settling time for current output and a maximum resolution of 8 bit;

(h) Silicon-based 8-bit or less user-programmable single chip microcomputers controlled for export by sub-paragraph (d);

(i) Integrated optical microcircuits:

(1) Controlled for export by sub-paragraph (d);

(2) With no more than 2048 elements; *and*

(3) Not exceeding the limits of ECCN 1548A (a) and (b);

(j) Non-reprogrammable silicon-based microcircuits specially designed or programmed by the manufacturer for business or office use.

39. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by redesignating Advisory Note 17 as a "Note" and moving it to the end of the entry; by revising Advisory Note 18; and by adding new Advisory Notes 17, 19, 20 and 21, reading as follows:

1565A [Amended]

* * * * *

Advisory Note 17 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "digital computers" or "related equipment" therefor controlled for export by sub-paragraph (h) of this ECCN 1565A, provided that:

(a) The "digital computers" or "related equipment" therefor:

(1) Will be operated by civil end-users for civil applications;

(2) Are exported as complete systems or enhancements to previously exported systems up to the limits of sub-paragraph (b) of this Advisory Note;

(3) Have been primarily designed and used for non-strategic applications; *and*

(4) Do not fall within the scope of both sub-paragraphs (h)(1)(ii) (a) and (b);

(b) The "digital computers" or "related equipment" therefor do not exceed *any* of the following limits:

(1) Central processing unit—"main storage" combinations, *either*

(i) "Total processing data rate"—155 Mbit per second and "total connected capacity" of "main storage"—72 Mbit; *or*

(ii) "Total processing data rate"—100 Mbits per second and "total connected capacity" of "main storage"—134.5 Mbit;

(2) Input/output control unit—drum or disk drive combinations:

(i) "Total bit transfer rate"—101 Mbit per second;

(ii) "Maximum bit transfer rate" of any drum or disk drive—34 Mbit per second;

(iii) Total connected "net capacity"—74,000 Mbit;

(3) Array transform processors:

(i) "Equivalent multiply rate"—800,000 operations per second;

(ii) Fast Fourier Transform of 1,024 complex points—40 ms;

(iii) Word length—38 bit;

(c) The "digital computers" or "related equipment" therefor do not have the following characteristics:

(1) Those identified in sub-paragraphs (h)(1)(i)(d) to (h) and (m);

(2) Those identified in sub-paragraph (h)(1)(i)(b) having an "equivalent multiply rate" of more than 2 million operations per second;

Note.—[Reserved]

Advisory Note 18 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "digital computers" or "related equipment" therefor in accordance with Advisory Note 5 not exceeding 28 million bit per second under Advisory Note 5(c).

Advisory Note 19 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of peripheral equipment as follows:

(a) Cathode ray tube graphic displays that do not exceed any of the following parameters:

(i) 1,024 resolvable elements along one axis and 1,280 resolvable elements along the perpendicular axis;

(ii) 11.8 million bit of refresh storage; *or*

(iii) 256 shades of gray or color (8 bit per pixel);

(b) Plotting equipment and digitizing equipment that has an accuracy of 0.002% or worse and an active area of 254 cm x 254 cm or smaller.

Advisory Note 20 (for the People's Republic of China): Licenses are likely to be approved for bulk shipments to satisfactory end-users in the People's Republic of China of personal computers and small business computer systems controlled by sub-paragraph (h) of this ECCN 1565A that do not exceed any of the following parameters:

(a) "Total processing date rate"—15 million bit per second;

(b) "Virtual storage" capability—512 million Bytes (4,096 million bit); *or*

(c) The other technical parameters of the system—the limits contained in Advisory Note 9(b) without taking into account Advisory Note 9(b)(2)(v).

Advisory Note 21 (for the People's Republic of China): Licenses are likely to be approved for export of satisfactory end-users in the People's Republic of China of spare parts in accordance with Advisory Note 7 (a) and (b) to this ECCN 1565A.

40. Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1567A is amended by removing the phrase "and the People's Republic of China (PRC)" from Advisory Notes 2, 3, 4, 5, 6, and 7; and

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by adding at the end of the entry Advisory Notes for the People's Republic of China, designated 9 through 14, reading as follows:

1567A [Amended]

* * * * *

Advisory Note 9 (for the People's Republic of China): Licenses are likely to be approved for export of satisfactory end-users in the People's Republic of China of "data (message) switching" equipment or systems, controlled for export by sub-paragraph (a) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed to meet the requirements of either:

(1) CCITT Recommendations F.1 to 79 for store-and-forward systems (Volume II—Fascicle II.4, VIIth Plenary Assembly, November 10–21, 1980); *or*

(2) ICAO Recommendations for store-and-forward civil aviation communication networks (Annex 10 to the Convention on International Civil Aviation, including all amendments agreed upon, up to and including December 14, 1981);

(b) The equipment or systems:

(1) Are designed and used for fixed civil "data (message) switching" applications;

(2) Will be used primarily for the specified civil application; *and*

(3) Will be operated in the importing country by:

(i) The Post, Telegraph and Telephone Authority in order to provide public "data (message) switching" services for:

(a) Domestic civil use; *or*

(b) International civil use with Western countries;

(ii) A civil authority that is a member of an intergovernmental organization including Western countries (*e.g.*, ITU or ICAO) in order to provide an extension of international "data (message) switching" services in the importing country to fulfill a commitment to the intergovernmental organization; *or*

(iii) A civil public service organization in order to provide "data (message) switching" services in a densely populated, commercial area for:

(a) Private domestic civil use; *or*

(b) Private international civil use with Western countries;

(c) The number, type and characteristics of such equipment or systems are normal for the approved application;

(d) [Reserved];

(e) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565A(f);

(2) ECCN 1565A(h)(1)(i) (a) to (j), or (l) or (m); *or*

(3) ECCN 1565A(h)(1)(ii);

(f) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (*i.e.*, installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 379 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 370); or

(ii) To permit user-modification of generic "software" or its associated documentation;

(g) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(h) [Reserved];

(i) [Reserved];

(j) A license application to export any commodities covered by this Advisory Note includes:

(1) A statement identifying:

(i) The equipment or system to be provided; *and*

(ii) The intended application and traffic load; *and*

(2) A complete identification of all end-users and their activities.

Advisory Note 10 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "stored-program-controlled telephone circuit switching" equipment or systems controlled by sub-paragraph (b) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use as "space-division digital exchanges" or "time-division digital exchanges" that fullfill the definition of "private automatic branch exchanges" ("PABXs");

(b) The equipment or systems:

(1) Are designed and used for fixed civil "stored-program-controlled telephone circuit switching" applications; *and*

(2) Will be operated in the importing country by a civil end-user who has furnished to the supplier a signed statement certifying that the equipment or systems will be used for the specified end-use at a specified location only;

(c) The number, type and characteristics of such equipment or systems are normal for the approved application;

(d) The equipment or systems do not contain "digital computers" or "related equipment" controlled for export by:

(1) ECCN 1565A(f);

(2) ECCN 1565A(h)(1)(i) (a) to (k) or (m); *or*

(3) ECCN 1565A(h)(1)(ii);

(e) The "PABXs" do not have the following features:

(1) Multi-level call pre-emption, including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note.—This limitation does not preclude single level call pre-emption (*e.g.*, executive override).

(2) "Common channel signalling";

(3) Automatic tandem "trunk circuit" switching, including adaptive routing, or algorithms that would permit a search for "trunk circuit" connection paths within a network;

(4) [Reserved];

(5) [Reserved];

(6) Digital synchronization circuitry for networking two or more exchanges *except* that permitting slave exchanges to be synchronized by master exchanges;

(7) [Reserved];

(8) Centralized maintenance by means of transmission or reception of instructions for the purpose of:

(i) Controlling traffic;

(ii) Directionalizing paths;

(iii) Altering routing tables;

(iv) Connecting or disconnecting subscriber circuits or "trunk circuits"; *or*

(v) Managing the network;

(f) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; *and*

(2) Do not exceed a "total data signalling rate" of 19,200 bit per second;

(g) [Reserved];

(h) [Reserved];

(i) [Reserved];

(j) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (*i.e.*, installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlleld by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 379 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 370); or

(ii) To permit user-modification of generic "software" or its associated documentation;

(k) If the equipment or systems are not designed for installation by the user

without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(l) [Reserved];

(m) A license application to export any commodities covered by this Advisory Note includes:

(1) A statement identifying:

(i) The equipment or system to be provided; *and*

(ii) The intended application and traffic load; *and*

(2) A complete identification of all end-users and their activities.

Advisory Note 11 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "stored-program-controlled circuit switching" equipment or systems controlled for export by sub-paragraph (b) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use of "stored-program-controlled telegraph circuit switching" for data;

(b) The equipment or systems:

(1) Are designed and used for fixed civil"stored-program-controlled telegraph circuit switching" applications; *and*

(2) Will be operated in the importing country by a civil end-user who has furnished to the supplier a signed statement certifying that the equipment or systems will be used for the specified end-use at a specified location only;

(c) The number, type and characteristics of such equipment or systems are normal for the approved application;

(d) The equipment or systems do not contain "digital computers" or "related equipment" controlled by:

(1) ECCN 1565A(f);

(2) ECCN 1565A (h)(1)(i)(a) to (k) or (m); *or*

(3) ECCN 1565A(h)(1)(ii);

(e) The equipment or systems do not have the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note.—This limitation does not preclude single level call pre-emption (*e.g.*, executive override).

(2) "Common channel signalling";

(f) The maximum internal bit rate per channel does not exceed 19,200 bit per second;

(g) [Reserved];

(h) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (*i.e.*, installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 379 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 370); or

(ii) To permit user-modification of generic "software" or its associated documentation;

(i) [Reserved];

(j) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier;

(k) [Reserved];

(l) A license application to export any commodities covered by this Advisory Note includes:

(1) A statement identifying:

(i) The equipment or system to be provided; *and*

(ii) The intended application and traffic load; *and*

(2) A complete identification of all end-users and their activities.

Advisory Note 12 (for the People's Republic of China): Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of "stored-program-controlled circuit switching" equipment or systems, controlled for export by sub-paragraph (b) of this ECCN 1567A, provided that:

(a) The equipment or systems are designed for fixed civil use as "stored-program-controlled telephone circuit switching" exchanges that fulfill the definitions of either "terminal exchange" or "transit exchange";

(b) [Reserved];

(c) The equipment or systems:

(1) Are designed and used for fixed civil "stored-program-controlled telephone circuit switching" applications; *and*

(2) Will be operated in the importing country by a civil end-user who has furnished to the supplier a signed statement certifying that the equipment or systems will be used for the specified end-use at a specified location only;

(d) The number, type and characteristics of such equipment or systems are normal for the approved application;

(e) The equipment or systems cannot be adapted to mobile use or security use, as described in ECCN 1565A(f) (1) to (4), (g) or (h)(1)(ii) (a) and (b);

(f) [Reserved];

(g) The equipment or systems do not have the following features:

(1) Multi-level call pre-emption including overriding or seizing of busy subscriber lines, "trunk circuits" or switches;

Note.—This limitation does not preclude single level call pre-emption (*e.g.*, executive override).

(2) "Common channel signalling";

(3) Adaptive routing or algorithms that would permit a search for "trunk circuit" connection paths within a network;

(4) [Reserved];

(5) [Reserved];

(6) Digital synchronization circuitry for networking two or more exchanges *except* that permitting slave exchanges to be synchronized by master exchanges; *or*

(7) Centralized maintenance by means of transmission or reception of instructions for the purposes of:

(i) Controlling traffic;

(ii) Directionalizing paths;

(iii) Altering routing tables;

(iv) Connecting or disconnecting subscriber circuits or "trunk circuits"; *or*

(v) Managing the network;

(h) "Communication channels" or "terminal devices" used for administrative and control purposes:

(1) Are fully dedicated to these purposes; *and*

(2) Do not exceed a "total data signalling rate" of 19,200 bit per second;

(i) [Reserved];

(j) [Reserved];

(k) The "software" supplied:

(1) Is limited to:

(i) The minimum "specially designed software" necessary for the use (*i.e.*, installation, operation and maintenance) of the equipment or systems; *and*

(ii) Machine-executable form; *and*

(2) Does not include "software":

(i) Controlled by ECCN 1527A or paragraph (a)(5) of Supplement No. 3 to Part 379 or Item 11 on the U.S. Department of State's Munitions List (Supplement No. 2 to Part 370); or

(ii) To permit user-modification of generic "software" or its associated documentation;

(1) If the equipment or systems are not designed for installation by the user without support from the supplier, then the "software" necessary for commissioning is:

(1) Exported on a temporary basis only; *and*

(2) Kept under the control of the supplier; *and*

(m) A license application to export any commodities covered by this Advisory Note includes:

(1) A statement identifying:

(i) The equipment or system to be provided; *and*

(ii) The intended application and traffic load; *and*

(2) A complete identification of all end-users and their activities.

Advisory Note 13 (for the People's Republic of China): ECCN 1567A(b)(3)(v) does not apply for exports to the People's Republic of China.

Advisory Note 14 (for the People's Republic of China): Favorable consideration may be given for export to satisfactory end-users of circuit switching systems eligible for export to the People's Republic of China under Advisory Notes 10 and 12 but including, contrary to the provisions of those Notes, "common channel signalling", provided that:

(a) Only functions covered by Q 701 to Q 707 (CCITT Yellow Book) or Q 721 to Q 725 (CCITT Red Book) are included;

(b) No equipment or "software" to support data networks or integrated services applications, including any form of Integrated Services Digital Network or Information Network System, will be provided;

(c) Equipment or "software" for "common channel signalling" will be restricted to those necessary for the operation of circuit switching systems within a city;

(d) No facilities for "common channel signalling" between cities will be provided;

(e) No equipment or "software" that will allow "common channel signalling" to be connected to analog transmission links will be provided;

(f) The "common channel signalling" will be restricted to "associated mode of operation";

(g) No equipment or "software" will be provided to support "signal transfer point" functions;

(h) All the applicable equipment or "software" conditions in paragraphs (a) to (g) of this Advisory Note will be accomplished by omission or physical removal of equipment, physical removal of coding or by over-writing with non-functioning statements; *and*

(i) [Reserved].

Note— Definitions of "signal transfer point" and "associated mode of operation" according to CCITT Yellow Book, Volume X, fascicle X.1.

41. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1568A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China", reading as follows:

1568A Equipment as defined in the List below.

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of analog-to-digital or digital-to-analog converters, as follows:

(a) Analog-to-digital converters with more than a 200 ns conversion time to a maximum resolution of 12 bit;

(b) Digital-to-analog converters with more than 200 ns settling time for voltage output and a maximum resolution of 8 bit;

(c) Digital-to-analog converters with more than 25 ns settling time for current output and a maximum resolution of 8 bit.

42. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1572A is amended by revising the "Advisory Note for the People's Republic of China" to read as follows:

1572A Recording or reproducing equipment and specially designed components therefor.

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of recording and reproducing equipment, as follows:

(a) Graphic instruments capable of continuous direct recording of sinusoidal waves at frequencies exceeding 20 KHz *except* those containing a cathode ray tube with a fiber optic face plate;

(b) Analog magnetic tape recorders with all the following characteristics:

(1) Bandwidth of up to:

(i) 4 MHz per track and having up to 28 tracks; *or*

(ii) 2 MHz per track and having up to 42 tracks;

(2) Tape speed of 610 cm per second or less;

(3) Not designed for underwater use;

(4) Not ruggedized for military use; *and*

(5) Recording density not exceeding 6,532 magnetic flux sine waves per cm;

(c) Instrumentation digital recorders with all the following characteristics:

(1) "Packing density" of 12,992 bits per cm or less;

(2) Maximum of 28 tracks;

(3) Tape speed of 305 cm per second or less;

(4) Not designed for underwater use; *and*

(5) Not ruggedized for military use;

(d) Magnetic tape appropriate for use with magnetic tape recorders free from export control or approvable under this Advisory Note or under any other Advisory Note on the Commodity Control List for exports to the People's Republic of China, provided that the tape length, "packing density" or "recording density" do not exceed the performance limits of the magnetic tape recorders;

(e) Disks appropriate for use with disk drives free from control or approvable under this Advisory Note or under any other Advisory Note on the Commodity Control List for exports to the People's Republic of China, provided that the "packing density" and inner and outer diameters do not exceed the performance limits of the disk drives;

(f) Video magnetic tape recorders specially designed for television recording.

43. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1584A is amended by revising the "Advisory Note for the People's Republic of China" to read as follows:

1584A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of cathode-ray oscilloscopes *not* having any of the following characteristics:

(a) An amplifier bandwidth exceeding 350 MHz;

(b) A horizontal sweep speed faster than 1 ns per cm and an accuracy (linerity) better than 2%;

(c) Using sampling techniques for the analysis of recurring phenomena that increase the effective bandwidth of an oscilloscope or time-domain reflectometer to a frequency greater than 5 GHz;

(d) Digital oscilloscopes with sequential sampling of the input signal at intervals of less than 20 ns;

(e) Ruggedized to meet military specifications; *or*

(f) Rated for operation over a temperature range of below −25 °C to above +55 °C.

44. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1587A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China," reading as follows:

1587A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of the following:

(a) Temperature-compensated crystal oscillators (TCXOs) controlled for export only by sub-paragraph (c)(1) of this ECCN 1587A;

(b) Quartz crystals for use as oscillator elements specially designed for temperature-controlled crystal ovens or for TCXOs covered by sub-paragraph (c) and having an average aging rate of $\pm 1 \times 10^{-11}$ per day or better (less) *except* stress compensated (SC) cut crystals.

45. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1767A is amended by adding at the end of the entry an "Advisory Note for the People's Republic of China," reading as follows:

1767A [Amended]

* * * * *

Advisory Note for the People's Republic of China: Licenses are likely to be approved for export to satisfactory end-users in the People's Republic of China of optical fiber preforms specially designed for the manufacture of silicon-based optical fibers, provided that they are designed to produce non-militarized silicon-based optical fibers that are optimized to operate at a wavelength of 1,350 nm or less.

Dated: December 20, 1985.

John K. Boidock,

Acting Director, Office of Technology and Policy Analysis.

[FR Doc. 85-30507 Filed 12-24-85; 8:45 am]

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15 CFR Part 391

[Docket No. 50222-5196]

Addition of "Foreign Availability Procedures and Criteria" to the Export Administration Regulations

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On March 15, 1985 (50 FR 10501), Export Administration solicited public comments on a proposed rule to add "Foreign Availability Procedures and Criteria" to the Export Administration Regulations. Export Administration has reviewed the public comments on the proposal and is now issuing a final rule establishing "Foreign Availability Procedures and Criteria."

The Department of Commerce (DOC) is required by the Export Administration Act of 1979, as amended, to initiate and review claims of foreign availability on items controlled for national security purposes. These regulations set out the procedures for initiating foreign availability claims and the criteria by which such claims shall be assessed and reviewed by the Department. The Department's program of foreign availability assessment is intended to lead to the elimination of those export controls that are ineffective in achieving their national security objectives.

The final rule clarifies certain key aspects of the proposed rule. In particular, the requirements for making foreign availability claims are treated in more depth. In addition, the period allowed for submitting foreign availability information for license approval has been extended to 90 days from the date of denial. Finally, more explicit procedures have been established for publication of foreign availability findings.

DATE: This is effective January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Rarog, Office of Foreign Availability, Department of Commerce, Washington, DC (Telephone: (202) 377-3564).

SUPPLEMENTARY INFORMATION:

Background

A foreign availability assessment capability was mandated as a function of the Department of Commerce by the Export Administration Act of 1979, as amended. Accordingly, Commerce has established an Office of Foreign Availability to implement this function. This Office is to provide timely, technically sound and objective assessments of foreign availability for the purpose of determining appropriate levels of export controls.

These regulations set out the procedures and criteria for establishing foreign availability for commodities and technical data controlled for national security purposes.

The final Foreign Availability Procedures and Criteria reflect careful consideration of the 22 comments received by the Department of Commerce from the public.

A number of important issues were raised in these public comments:

1. Burden of Proof

Many of the commentors maintained that the proposed regulations placed the burden of proof on the exporter. They contended that the detailed information required in the Foreign Availability Submission (FAS) placed the entire burden on the exporter. The Department recognizes that it has the primary responsibility in gathering and assessing information pertaining to foreign availability. The exporter, however, plays a critical role in the process by submitting factual data in support of a claim. All factual representations supported by reasonable evidence will be accepted by the Department, unless contradicted by reliable evidence. The Department, after assessing all information generated either internally or from exporters, will then make a determination based on the criteria provided in these final regulations.

2. Non-U.S. Origin

The comments also pointed out that while a FAS may be made citing availability from any source outside the U.S., the commodities or technical data must not be of U.S. origin. That is, technical data or commodities cited as evidence of foreign availability must not be subject to U.S. export controls.

This provision is said to exclude from consideration a significant range of items that may be finding their way to Q, W, and Y destinations contrary to U.S. law. It is of particular significance regarding foreign products incorporating U.S. subcomponents and technical data.

However, removal of the non-U.S. origin requirement from the regulations could create a situation where illegal activities, if engaged in consistently, would result in lifting of export controls through a formal administrative procedure. Such official recognition of illegal activity was considered unacceptable; the non-U.S. origin provisions were therefore retained.

3. West-West Trade

The proposed regulations stated that availability-in-fact must be established to Q, W, and Y destinations considered as an aggregate. No provision was made for establishing foreign availability to an individual Western country in order to decontrol or approve a validated license to that country.

Many of the commentors pointed out that validated licenses are required for exports to all destinations other than Canada. If availability-in-fact could be established to a particular Western country, it would be reasonable that a license be approved or the requirement for a license to that country be rescinded. It is availability to proscribed destinations, not availability to countries in the West, that can render controls ineffective in achieving the national security objectives. Thus, availability to the West is not "foreign availability" within the meaning of section 5(f) of the Export Administration Act of 1979, as amended, (EAA) and

should not be made the basis for licensing of decontrol under these regulations.

4. Quantity Issue

The proposed regulations required that non-U.S. origin commodities be available to proscribed destinations in such quantities that exports resulting from decontrol would make no significant contribution to the military potential of the proscribed countries. Industry comments noted that such information might not be available to the exporter. It was further contended that the term "significant contribution to military potential" is so broad as to preclude any positive findings.

The Department recognizes that exporters cannot be expected to provide estimates of Warsaw Pact military requirements. Thus, while this standard is required by the legislation, information supporting such estimates is not explicitly required of the exporter. The exporter must include in the FAS only the best available evidence pertinent to the foreign availability comparison standards. The Government has the responsibility for developing data on this aspect of the assessment.

5. Single Comparability Standards

Assessments currently require the same standards of comparability for individual license approval and total decontrol. Industry comments noted that this would place an undue burden on the individual license applicant.

This approach was taken from the perspective that mandatory license approval was the functional equivalent of decontrol. In principle, once a license is approved on foreign availability grounds, all subsequent licenses for the same item should be likewise approved. To require less stringent standards for individual license approval raises the possibility that as a result of repeated applications the item is in fact decontrolled, but under the less stringent standards applicable to license approval. To avoid this eventuality, the standards for license approval and decontrol have remained the same.

6. Deadline for FAS Submissions

Under the proposed regulations, the exporter could forward a FAS at any time up to 30 days after license denial. Most comments noted that this is an unreasonably short period in which to assemble a foreign availability case. The Department recognizes this problem, and has consequently lengthened the period to 90 days.

7. Processing Deadlines

With the exception of decontrol assessments resulting from certifications made by Department of Commerce Technical Advisory Committees, there are no mandatory processing deadlines found in the EAA for foreign availability assessments. The proposed regulations adopted a 90-day standard for both license approval and decontrol processing, but have not made it mandatory. This was done because foreign availability assessments require not only a very large input in terms of man-hours relative to license applications, but also need significant lead times in original data collection. This fact, coupled with the wide variation in analytical resources required for foreign availability cases, militates against a processing deadline.

8. Concurrent Processing of Foreign Availability Assessments and Licenses

Under the proposed regulations, a foreign availability assessment for license approval is undertaken only at the time a license is denied on national security grounds. Comments suggested that the assessment should commence at the time of the license application if accompanied by an appropriate FAS.I11While initiation of foreign availability assessments before license denial would accelerate the assessment process, it was not found to be administratively feasible. Less than 1% of the licenses processed by Export Administration are ultimately denied. To process foreign availability claims before denial would needlessly diffuse limited Export Administration resources on many licenses that would have been approved in any event. Further, information received by Export Administration in connection with all FASs will be retained for use in decontrol assessments.

9. Time Limits on Federal Register Notices

While notices of positive and negative assessments for decontrol, as well as the results of national security overrides, were to be published in the **Federal Register** under the proposed regulations, several comments called for a limit to be imposed on the time between the DOC actions and the actual publication of such notice.

In response to these comments, procedures for publication have been clarified in the final rule. To the extent consistent with national security and foreign policy interests of the United States and with the protection of proprietary information, the Department of Commerce will publish the result of all assessments within thirty days of their completion by Export Administration.

Rulemaking Requirements

In connection with various rulemaking requirements, Export Administration had determined that:

1. This rule is exempted from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) pursuant to section 13(a) of the Export Administration Act of 1979, as amended. Nevertheless, to help ascertain the economic impact of the regulation upon the general public, the regulation was issued in proposed form and public comment was solicited. This regulation also involves a foreign and military affairs function of the United States.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*. The collection of this information has been approved by the Office of Management and Budget (OMB) under control number 0625–0150.

3. Because a notice of proposed rulemaking was not required by law to be published for this rule, it is not a rule within the meaning of Section 601(2) of the Regulatory Flexibility Act and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a military and foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order No. 12291 and, therefore, is not subject to the requirements of that Order. Accordingly, no preliminary of final Regulatory Impact Analysis has been or will be prepared.

List of Subjects in 15 CFR Part 391

Exports, Foreign availability, Science and technology, Technical advisory committees.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended by adding Part 391 to read as follows:

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PART 391—FOREIGN AVAILABILITY PROCEDURES AND CRITERIA

Sec.

391.1 Definitions.
391.2 Foreign availability submission.
391.3 Criteria for determination.
391.4 Procedures.
391.5 Appeals.
391.6 Negotiations to end foreign availability.

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.* as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; and E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 391.1 Definitions.

(a) *Available-in-fact.* As used in this part, "available-in-fact" means that a non-U.S. origin item may be obtained by one or more of the proscribed countries.

(b) *Proscribed countries.* As used in this part, "proscribed countries" means Country Groups Q, W, and Y and Afghanistan. These countries are: The USSR, Albania, Bulgaria, Afghanistan, Czechoslovakia, the German Democratic Republic (including East Berlin), Hungary, Laos, the Mongolian People's Republic, Poland and Romania. Country Group Z (North Korea, Vietnam, Kampuchea, and Cuba) is not included since these countries are subject to a virtual embargo notwithstanding any foreign availability.

(c) *Foreign availability.* "Foreign availability" for a national security-controlled item exists when the Secretary of Commerce determines that a non-U.S. origin item of comparable quality is available-in-fact to proscribed countries in quantities sufficient to satisfy their needs so that U.S. exports of such an item would not make a significant contribution to the military potential of such countries.

(d) *Foreign Availability Submission.* A "Foreign Availability Submission" (FAS) is a written claim submitted by an applicant requesting a foreign availability assessment for items controlled for national security purposes in accordance with the requirements contained in § 391.2 of this part.

(e) *Item.* An "item," as used in this part, may be a commodity or technical data.

(f) *Non-U.S. origin.* A commodity or technical data is of "non-U.S. origin" when it is not subject to U.S. export or re-export controls.

§ 391.2 Foreign Availability Submission.

(a) *General requirements.* Foreign Availability Submissions (FASs) must be in writing and refer to specific items controlled for national security purposes (reasons for control are noted in each Commodity Control List entry of Supplement No. 1 to § 399.1). A FAS must relate to either (1) a validated license or (2) decontrol.

(b) *Validated licenses.* A claim of foreign availability may be made in connection with an application for a validated license or a request for re-export authorization for exports to any destination (except Country Group Z). A foreign availability claim consists of a Foreign Availability Submission (FAS), which is part of the license application. An assessment of foreign availability, however, will be initiated only on items in applications that have been denied on national security grounds. A FAS may be submitted at the time an export license application or request for re-export authorization is filed, or at any time up to 90 days after the date of a denial.

(c) *Decontrol.* (1) A FAS may also be submitted for the purpose of removing commodities or technical data from national security controls. FASs involving similar items may be consolidated. The Office of Foreign Availability, in consultation with the Department of Defense and other appropriate Government agencies, has responsibility for reviewing and consolidating FASs for action to determine appropriate levels of control.

(2) Any person, including a trade association or a Department of Commerce Technical Advisory Committee, may submit a decontrol FAS. The Department may also begin foreign availability assessments on its own initiative to determine whether national security controls should be maintained on specific items.

(d) *Submission requirements.* (1) A FAS should contain at least the following elements:

(i) Names of sources outside the U.S. and their overseas business addresses;

(ii) Product names and model designations of both the U.S. commodities or technical data and their non-U.S. origin counterparts;

(iii) Available technical information, including known performance attributes and quality considerations needed for comparison of U.S. and non-U.S. origin commodities or technical data; and

(iv) Information on production and demand, including quantities of known trade in such commodities to proscribed countries.

(2) *Supporting evidence.* (i) A submission should be accompanied by the best available supporting evidence. The Department may request more information from the applicant if necessary or if it appears that the claim is lacking in substance.

(ii) Information on foreign availability provided in the FAS will be reviewed in conjunction with any other pertinent information available to the Department of Commerce. Such information may include data received from other sources, including the Department of Defense and other appropriate governmental agencies. A detailed description of foreign availability sources, including any supporting information available to the applicant, will greatly assist in a timely and complete assessment.

(iii) Supporting information may include such items as foreign manufacturers' catalogs, brochures, operation or maintenance manuals, articles from reputable trade publications, photographs, depositions based on eyewitness accounts, and other credible data. Foreign availability assessment criteria outlined in section 391.3 of this part should be considered when assembling data in support of a FAS.

(3) FASs that do not accompany a license application must be addressed to:

Office of Foreign Availability, Room 2606, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW, Washington, DC 20230

(Information collection requirements in paragraph (d)(3) have been aproved by the Office of Management and Budget (OMB) under control number 0625–0150)

§ 391.3 Criteria for determination.

(a) *Non-U.S. origin.* Only information pertaining to availability of non-U.S. origin commodities or technical data (as defined in § 391.1 of this part) will be considered in support of foreign availability claims. Notwithstanding the foregoing, the Department welcomes the submission at any time of specific information concerning the availability of U.S. origin commodities or technical data to proscribed destinations so that appropriate measures can be taken to make U.S. controls more effective.

(b) *Availability-in-fact. Only non-U.S. origin commodities or technical data that are available-in-fact to the proscribed countries will be considered in establishing foreign availability.*

(c) *Standards of comparison for commodities.* All of the following tests must be met in determining the comparability and quantitative sufficiency of U.S. and non-U.S. origin commodities:

(1) *Comparable quality.* U.S. and non-U.S. origin commodities must be substantially similar in: (i) Function; (ii) technological approach; (iii) performance thresholds; (iv) maintainability and service life or any other attributes relevant to the purposes

for which controls were placed on that commodity.

(2) *Sufficient quantity.* For all submissions, comparable non-U.S. origin commodities must be available-in-fact to the proscribed countries in quantities sufficient to satisfy their needs so that U.S. exports would not make a significant contribution to the military potential of such countries.

(d) *Standards of Comparison for Technical Data.* Non-U.S. origin technical data submitted as evidence of foreign availability must meet the following standards of comparison as to comparable quality:

(1) Non-U.S. origin technical data is or can be used or adapted for use in ways and with results similar to those of its U.S. counterparts; and

(2) End products of the use of non-U.S. origin technical data are substantially similar to end products resulting from the use of its U.S. counterparts.

(e) *Evidence.* The Department of Commerce may consider evidence from any source in determining foreign availability. A claim of foreign availability for an item supported by reasonable evidence shall be accepted unless contradicted by reliable evidence available to the Department. To the extent consistent with the national security and foreign policy interests of the United States and with the protection of proprietary information, the Department of Commerce will inform the claimant of information contradicting the representations and supporting information where such evidence is the basis for a negative determination of foreign availability. The Department of Commerce will normally rely upon its own and other governmental sources for evidence bearing on the needs of proscribed countries and will determine whether the denial of a license or continuation of controls would be ineffective in achieving the national security purposes of the controls.

§ 391.4 Procedures.

(a) *Claims Associated with License Applications.* (1) Assessments of foreign availability for items included in a validated license application (or request for reexport authorization) will be initiated only when all the following conditions are met:

(i) A license has been denied based only on national security grounds, and

(ii) An FAS is received no later than 90 days from the date of the license denial.

(2) If a complete FAS has been submitted prior to the license denial, the applicant will be notified that an assessment of foreign availability has been initiated at the time of license denial. The Department of Commerce will seek to complete its evaluation of the claim within 90 days of the date of denial.

(3) If an incomplete FAS was submitted, the applicant will be informed that a foreign availability assessment will be initiated upon the Department's receipt of a timely and complete FAS. The Department of Commerce will seek to complete its evaluation of the claim within 90 days of the submission of a completed FAS.

(4) Formal notice of both positive and negative determinations will be published in the **Federal Register** within thirty days of their completion, to the extent consistent with U.S. national security and foreign policy interests and with the protection of proprietary information. Such notice will include a description of the relevant item and the results (positive or negative) of the evaluation. Information permitting the identification of the claimant will not appear in the notice. Except as provided in paragraph (c)(5) of this section, if a positive determination is made, a validated license will be forwarded to the applicant; if a positive determination is not made, to the extent consistent with the U.S. national security and foreign policy interests, a negative foreign availability determination notice will inform the applicant of the reasons for denial.

(5) Despite a positive determination of foreign availability, the Secretary of Commerce, in consultation with the Secretary of Defense, may determine that approval of a validated license would be detrimental to national security. In such cases, no approval will occur, and the applicant will be so informed. The Department shall publish that determination in the **Federal Register** with a concise statement of its basis. Negotiations provided in § 391.6 will then be pursued.

(6) In cases where a positive determination of foreign availability has been made and a validated license issued, the Office of Foreign Availability will decide whether to initiate a foreign availability assessment to determine whether national security controls should be maintained on such items.

(b) *Review of Decontrol Submissions.* (1) The Office of Foreign Availability will collect and evaluate all foreign availability information for decontrol purposes and initiate appropriate assessments. Such assessments will refer to generic equipment categories or characteristics or will propose changes to the Commodity Control List. Standards outlined in § 391.3 of this part shall be use to make the assessments. When appropriate, preliminary findings will be forwarded to the Department of Defense, other relevant U.S. Government agencies, and/or the Department of Commerce's Technical Advisory Committee (TACs) for review and comment. Notice of both positive and negative foreign availability findings will be published in the **Federal Register** within thirty days of their completion to the extent consistent with U.S. national security and foreign policy interests and with the protection of proprietary information. Except as provided in paragraphs b(1) through (5) of this section, in cases where the Department of Commerce determines the existence of foreign availability, action ot decontrol the relevant commodities or technical data will be taken and notice of such action will be published in the **Federal Register**.

(2) Information used to arrive at final determinations may come from any source, Government or non-Government, deemed appropriate by the Department of Commerce.

(3) In cases where a decontrol submission consists of a TAC certification, the Department will seek to complete its evaluation within 90 days.

(4) Despite positive foreign availability determinations, the President may determine that decontrol would be detrimental to the national security. In such cases, no decontrol will occur.

(5) Where such a determination has been made, the Department will publish that determination in the **Federal Register** with a concise statement of its basis and the estimated economic impact of the decision. In addition, negotiations will be initiated to eliminate sources of foreign availability on such items pursuant to § 391.6 of this part.

(6) When the Department of Commerce determines that conditions under which a positive determination of foreign availability were made have changed so as to cast doubt on the continued existence of foreign availability, a review of the original decontrol action will be undertaken.

(7) If foreign availability is determined no longer to exist, controls may be re-imposed. Appropriate notice will be published in the **Federal Register**.

§ 391.5 Appeals.

Appeals of negative foreign availability determinations must be received by the Office of the Assistant Secretary for Trade Administration, International Trade Administration, 14th Street and Pennsylvania Ave. NW.,

Room 3896B, U.S. Department of Commerce, Washington, DC 20230 no later than 45 days after the date appearing on the negative foreign availability assessment notice. Appeals will be conducted according to standards and procedures outlined in 15 CFR Part 389. A decision to deny a license or continue controls notwithstanding a determination of foreign availability shall not be subject to appeal.

§ 391.6 Negotiations to end foreign availability.

In any case in which national security export controls are maintained notwithstanding foreign availability, negotiations will be actively pursued with the governments of the appropriate foreign countries for the purpose of eliminating such availability. If such negotiations have not resulted in the elimination of foreign availability within 6 months of the publication of the finding of foreign availability in the **Federal Register**, the item in question will be removed from the Commodity Control List. The President may extend this 6 month period for an additional 12 months if he certifies to the Congress that the negotiations are progressing and that the absence of the export control involved would be detrimental to the national security.

Dated: December 23, 1985.

James K. Pont,

Acting Director, Office of Foreign Availability.

[FR Doc. 85-30649 Filed 12-24-85; 8:57 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-60]

Staff Accounting Bulletin No. 60; Financial Guarantees; Accounting for and Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: The interpretations in this Staff Accounting Bulletin express certain views of the staff regarding accounting for and disclosure of certain financial guarantees.

DATE: December 20, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence Salva or Jeremiah J. Harrington, Office of the Chief Accountant (202-272-2130), or Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal Securities Laws.

John Wheeler,

Secretary.

December 20, 1985.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 60 to the table found in Subpart B.

Staff Accounting Bulletin No. 60

The staff hereby adds Section J to Topic 11 of the staff accounting bulletin series. Section J discusses the staff's views regarding disclosures by issuers of certain financial guarantees.

Topic 11: Miscellaneous Disclosure

. . . . . .

J. Financial guarantees

Facts: Insurance companies and other financial institutions have been issuing guarantees of the debts of municipalities and other entities at an increasing rate during recent years. [1] Typically the issuer of debt pays a fee to obtain an enhancement of the credit rating attached to its debt [2] with a corresponding decrease in the interest rate it must offer. In return for the fee, guarantors promise to make payment of interest and principal, either as they become due under terms of the debt instrument or on an accelerated basis, if the issuer of the debt is unable to pay.

The fee is generally a negotiated portion of the interest savings attributed to the guarantee [3] and is not necessarily related to the risk undertaken. [4] Guarantors, of course, may attempt to underwrite only risks where potential loss is deemed to be remote. However, the confidence level in predictions of any entity's future financial condition decreases as the number of future years involved increases. Some issues of guaranteed debt have maturities that exceed thirty years.

In mid-1985 the Emerging Issues Task Force ("EITF") of the Financial Accounting Standards Board ("FASB") addressed the following two issues:

—When the guarantor should recognize the fees in income, and

—Whether the guarantor should recognize a liability for the obligation under guarantee.

On June 27, the members of the EITF reached a consensus that the guarantor should:

—Recognize fee income over the guarantee period.

—Disclose the guarantee by footnote if material.

—Perform an ongoing assessment of the probability of loss to determine if a liability and a loss should be recognized under FASB Statement No. 5 "Accounting for Contingencies", and

—Recognize direct costs associated with the guarantee in a manner relative to the fee income.

Registrants have raised questions about the applicability of the EITF consensus to insurance companies.

Question 1: Does the staff believe that the June 1985 consensus of the EITF regarding accounting for and disclosure about loan guarantees applies to all registrants?

Interpretive Response: The staff believes that the consensus of the EITF should be applied by all registrants where the aggregate amounts guaranteed are material to consolidated equity or where there is a material effect on results of operations before income taxes and realized gains or losses on investments.

Question 2: What kind of disclosure does the staff expect?

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[1] "... Outstanding guarantees [of all types] backed by banks and insurance companies have increased from $161 billion in 1980 to more than $437 billion in 1984 ..." according to "Bests' Review-Property/Casualty Edition" in an October 1985 article entitled "Financial Guarantees: Too Hot to Handle".

[2] At times, the guarantees are purchased by persons attempting to resell large blocks of debt securities in the secondary market.

[3] "Usually, the insurer and issuer split the difference between the insured rate interest and the interest that would be paid without the insurance: the isurer's portion is its 'premium' ", according to the article from Bests' Review cited above.

[4] According to an article in the October 9, 1985 edition of Forbes entitled "Spores of disaster": "Since no acturial table can forecast the future course of economic events, it is impossible to predict with any reliability what the long-term soundness of any investment will be. Thus, there is no possible way to price accurately the risk of the guarantee itself. As a result, pricing is based not on risk to the guarantor (the normal arrangement for insurance underwriting) but on how much in interest charges the borrower saves by floating paper with a guarantee attached to it."

Interpretive Response: The staff believes that the disclosure should cover matters such as the following:

—A general description of the type of obligations guaranteed (e.g. corporate, municipal general obligation, industrial revenue, etc.), the relative amount and range of maturity dates of each, and the degree of risk involved.

—The amount of exposure with respect to the debts of others guaranteed at the date of each balance sheet presented including a discussion of how the participation by other parties and other factors that may reduce exposure are treated in determining the amount reported.

—The manner in which the registrant recognizes revenue with respect to the guarantees.

—The amount of unearned premiums as of the date of each balance sheet.

—Whether the registrant provides a reserve for losses by charges against income and, if so, the basis for the reserve and its amount at each balance sheet date.

—Any other information that may be necessary to adequately describe the nature and extent of the obligations guaranteed and the degree of risk related to the guarantees.

[FR Doc. 85-30701 Filed 12-26-85; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 442

[Docket No. 85N-0301]

Antibiotic Drugs; Ceftazidime Pentahydrate for Injection

Correction

In FR Doc. 85-28039 beginning on page 48396 in the issue of Monday, November 25, 1985, make the following corrections:

1. On page 48399, in the middle column, in § 436.360(c)(3), in the second line under the formula, "X", should read "X".

2. On page 48402, in § 442.216(b)(6)(iv), in the formula at the bottom of the first column, "P_p", should read "P_s".

BILLING CODE 1505-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1401

Fee Schedule and Office Address Changes

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule.

SUMMARY: The Federal Mediation and Conciliation Service is revising the schedule of fees the Service charges for services provided to the public pursuant to the Freedom of Information Act (5 U.S.C. 552). FMCS in increasing its fees for the search and retrieval of public documents, and establishing a fee schedule for the use of computer and programming time. The purpose of these fees is to allow FMCS to recover administrative expenses caused by requests for information given current personnel and machine costs.The Service is also updating the names and addresses of the various offices within the agency responsible for Freedom of Information Act related activities. These charges are significant enough so that the entire Freedom of Information Act regulation is being republished, as amended.

EFFECTIVE DATE: February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Daniel P. Dozier, Counsel, (202) 653-5305.

SUPPLEMENTARY INFORMATION: FMCS has not changed its fees or published office and address changes since 1979. The Agency must increase its fees to cover the costs incurred by Freedom of Information Act requests. This change reflects the actual costs associated with document retrieval reproduction given actual computer, clerical and administrative costs. These fees are established to meet the actual and overhead costs associated with their retrieval and production. Address and office changes are necessary due to such changes occurring within the Agency.

List of Subjects in 29 CFR Part 1401

Freedom of Information.

PART 1401—[AMENDED]

1. The authority citation for Part 1401 is revised to read as follows:

Authority: Sec. 202, 61 Stat. 153, as amended; 29 U.S.C. 712; 5 U.S.C. 552.

2. Part 1401 is amended by revising Subpart B to read as follows:

* * * * *

Subpart B—Production or Disclosure of Information

Sec.
1401.20 Purpose and scope.
1401.21 Information policy.
1401.22 Partial disclosure of records.
1401.23 Preparation of new records.
1401.24 Notices of dispute are public.
1401.30 Applicability of procedure.
1401.31 Filing a request for records.
1401.32 Logging of written requests.
1401.33 Description of information requested.
1401.34 Time for processing requests.
1401.35 Appeals from denials of request.
1401.36 Fees—Duplication cost and search.
1401.37 Annual report.

Subpart B—Production or Disclosure of Information

§ 1401.20 Purpose and scope.

This subpart contains the regulations of the Federal Mediation and Conciliation Service providing for public access to information from records of the Service. These regulations implement the Freedom of Information Act, 5 U.S.C. 552, and the policy of the FMCS to disseminate information on matters of interest to the public and to disclose on request information contained in agency records insofar as is compatible with the discharge of its responsibilities and the principle of confidentiality and neutrality of dispute resolution by third party neutrals.

§ 1401.21 Information policy.

(a) Except for matters specifically excluded by subsection 552(b) of Title 5, United States Code, matters covered by the Privacy Act, or other applicable statutes, all documents and records maintained by this agency or in its custody shall be available to the public upon request filed in accordance with these regulations. To the extent permitted by other laws, the Service also will make available records which it is authorized to withhold under 5 U.S.C. 552(b) whenever it determines that such disclosure is in the public interest.

(b) Any document released for inspection under the provisions of this part may be manually copied by the requesting party. The Service shall provide facilities for copying such documents at reasonable times during normal working hours so long as it does not interfere with the efficient operation of the agency.

(c) The Service will also publish and maintain a current index, revised quarterly, providing identifying information for the public as to statements of policy and interpretation adopted by the agency and still in force but not published by the Federal

Register, and administrative staff manuals and instructions to staff that affect the public. The Service will also maintain on file all material published in the Service in the Federal Register and currently in effect.

(d) Records or documents prepared by the Service for routine public distribution, e.g., pamphlets, speeches, and educational or training materials, will be furnished upon request to the Office of Information, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, as long as the supply lasts. The provisions of § 1401.36 (fees) is not applicable to such requests except when the supply of such material is exhausted and it is necessary to reproduce individual copies upon specific request.

(e) All existing FMCS records are subject to routine destruction according to standard record retention schedules.

§ 1401.22 Partial disclosure of records.

If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so inextricably intertwined that it is not feasible to separate them or release of the disclosable information would compromise or impinge upon the nondisclosable portion of the record.

§ 1401.23 Preparation of new records.

(a) Freedom of Information Act and the provisions of this part apply only to existing records that are reasonably described in a request filed with the Federal Mediation and Conciliation Service pursuant to the procedures established in §§ 1401.31—1401.36.

(b) The Director may, in his or her discretion, prepare new records in order to respond to a request for information when he or she concludes that it is in the public interest and promotes the objectives of the Labor-Management Relations Act, 1947, as amended.

§ 1401.24 Notice of dispute are public.

Written notices of disputes received by the Service pursuant to sections 8(d)(3), 8(d)(A), 8(g) and 9(c)(1) of the Labor-Management Relations Act, 1947, as amended, or pursuant to 29 Code of Federal Regulations 1425.2, are not exempt from disclosure. Parties at interest have the right to receive certified copies of any such notice of dispute upon written request. Requests for copies of notices should be submitted to FMCS, Notice Processing Unit, 2100 K Street, NW., Washington, DC 20427.

§ 1401.30 Applicability of procedures.

Requests for inspection or copying of information from records in the custody of the FMCS which are reasonably identifiable and available under the provisions of this part shall be made and acted upon as provided in the following sections of this subpart. The prescribed procedure shall be followed in all cases where access is sought to official records pursuant to the provisions of the Freedom of Information Act, except with respect to records for which a less formal disclosure procedure is provided specifically in this part.

§1401.31 Filing a request for records.

(a) Any person who desires to inspect or copy any record covered by this part shall submit a written request to that effect to the Legal Services Office, FMCS, 2100 K Street, NW., Washington, DC 20427. (202) 653–5305.

(b) The Legal Services Office will determine what office or division within FMCS is custodian of the records. The Office will then send the request to the appropriate FMCS office or division as provided in § 1401.32(b) below.

§1401.32 Logging of written requests.

(a) All requests for records should be clearly and prominently identified as a request for information under the Freedom of Information Act, and if submitted by mail or otherwise submitted in an envelope or other cover, should be clearly and prominently identified as such on the envelope or other cover.

(b) Upon receipt of a request for records from the FMCS Legal Services Office, the FMCS office or division responding to the request shall enter it in a public log. The log shall state the date and time received, the name and address of person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to § 1401.34 (b) and (d), the date(s) any records are subsequently furnished, the number of staff hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

§1401.33 Description of information requested.

(a) Each request should reasonably describe the records being sought, in a way that they can be identified and located. A request should include all pertinent details that will help identify the records sought.

(b) If the description is insufficient, the officer processing the request will so notify the person making the request and indicate the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the records sought.

§1401.34 Time for processing requests.

(a) All time limitations established pursuant to this section shall begin as of the time at which a request for records is logged in by the officer or employee processing the request pursuant to § 1401.32(b). An oral request for recordsd shall not begin any time requirement. A written request for records sent to an office or division of FMCS other than the one having authority to grant or deny access to the records shall be redirected to the appropriate office for processing, and the time shall begin upon its being logged in there in accordance with § 1401.32(b).

(b) The officer or employee passing upon the request for records shall, within ten (10) working days following receipt of the request, respond in writing to the requester, determining whether, or the extent to which, the Agency shall comply with the request.

(1) If all of the records requested have been located and a final determination has been made with respect to disclosure of all the records requested, the response shall so state.

(2) If all of the records have not been located or a final determination has not been made with respect to disclosure of all records requested, the response shall state the extent to which the records involved will be disclosed pursuant to the rules established in this part.

(3) If the request is expected to involve an assessed fee in excess of $50.00, the response shall specify or estimate the fee involved and shall require prepayment before the records are made available.

(4) Whenever possible, the response relating to a request for records that involves a fee of less than $50.00, shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Agency.

(c) In the following circumstances, the time for passing upon the request may be extended for up to an additional 10 working days by written notice to the person making the request, setting forth the reasons for such extension and the time within which a determination is expected to be made:

(1) The need to search for and collect the requested records from the field facilities or other establishments that are separate from the office processing the request;

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(2) The need to search for, collect and appropriately examine a voluminous amount of records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Agency having substantial subject matter interest therein.

(b) If any request for records is denied in whole or in part, the response required by paragraph (b) of this section shall notify the requester of the denial. Such denial shall specify the reason therefor and also advise that the denial may be appealed to the Office of Deputy Director of the Agency as specified in § 1401.35.

§ 1401.35 Appeals from denials of request.

(a) Whenever any request for records is denied, a written appeal may be filed with the Deputy Director, FMCS, 2100 K Street, NW., Washington, DC 20427, within 30 days after requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial. The appeal shall state the grounds for appeal, including any supporting statements or arguments.

(b) Final action on the appeal shall be taken within 20 working days from the time of receipt of the appeal. Where novel and complicated questions have been raised or unusual difficulties have been encountered, the Deputy Director may extend the time for final action up to an additional 10 days, depending upon whether there had been an extension pursuant to § 1401.34(c) at the initial stage. In such cases, the applicant shall be notified in writing of the reasons for the extension of time and the approximate date on which a final response will be forthcoming.

(c) If on appeal the denial of the request for records is upheld in whole or in part, the Deputy Director shall notify the applicant of the reasons therefor, and shall advise the requester of the provisions for judicial review under 5 U.S.C. 552(a) (4) and (6).

§ 1401.36 Fees—Duplication cost and search.

(a) Unless waived in accordance with paragraph (d) of this section, the following schedule of fees shall be imposed for the production and copying of any record pursuant to this part.

(1) *Copy of records.* Twenty ($0.20) cents per copy per page.

(2) *Clerical searches.* $2.25 for each one-quarter hour or fraction thereof spent in excess of the first quarter-hour in searching for or producing a requested record or otherwise processing the request, including time spent copying any record.

(3) *Nonclerical searches.* $7.00 for each one-quarter hour spent by professional or managerial personnel searching for or producing a requested record or otherwise processing the request, including time spent copying any record.

(4) *Computer time.* $3.00 per minute of computer time expended for search and production programming, searching, and production of any record. Computer time expressed in fractions of minutes will be rounded to the next whole minute.

(5) *Certification or authentication of records.* $2.00 per certification or authentication.

(6) *Forwarding material to destination.* Postage, insurance, and special fees will be charged on the basis of actual costs.

(b) *Rules of construction:* In providing the foregoing fee schedule pursuant to the provisions of 5 U.S.C. 552(4)(a), it is the intent of this section to apply 29 CFR Part 70 and the user charge statute, 31 U.S.C. 9701, to cover those situations where the Agency is performing for a requester services which are not required under the Freedom of Information Act.

(c) No fee shall be charged if a record requested is not found or for any record that is totally exempt from disclosure.

(d) The officer or employee processing the request for records may, in his or her discretion, waive, or reduce fees otherwise applicable under paragraph (a) of this section for services in producing and copying record information under the following circumstances:

(1) Where inability to pay is demonstrated and it is clear that a significant public interest would be served by providing the service free of charge.

(2) Where it is in the public interest because furnishing the information can be considered primarily as benefiting the general public.

(3) In making a determination of the broad public interest involved, the officer shall weigh the Agency resources involved against the likely benefit to the public.

(e) *Payment of fees:* Payment shall be made by check or money order payable to "Federal Mediation and Conciliation Service," and shall be sent to the Legal Services Offices, 2100 K Street, NW., Washington, DC 20427.

§ 1401.37 Annual report.

The Office of the Director shall annually, within 60 days following the close of each calendar year, prepare a report covering each of the categories or records to be maintained in accordance with 5 U.S.C. 552(d) for such calendar year and shall forthwith submit the same to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

Dated: December 19, 1985.

Duane M. Buckmaster,

Deputy Director.

[FR Doc. 85-30498 Filed 12-26-85; 8:45 am]

BILLING CODE 6373-01-M

PANAMA CANAL COMMISSION

35 CFR Part 133

Tolls for Vessels in Ballast

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Panama Canal Commission is today approving changes to revise its regulation in Title 35, Code of Federal Regulations, § 133.34 which pertains to tolls for vessels in ballast. This amendment conforms the present regulations to the rules for measurement of vessels for the Panama Canal pursuant to § 135.390 of 35 Code of Federal Regulations.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, telephone (202) 634-6441 or Mr. John L. Haines, Jr., General Counsel, telephone in Balboa Heights, Republic of Panama, 011-507-52-7511.

SUPPLEMENTARY INFORMATION: On September 6, 1985, a notice of proposed rulemaking was published in the **Federal Register** (50 FR 36444) setting forth changes to § 133.34. Interested parties were given the opportunity to submit comments by October 7, 1985. During the time period, the agency received one comment agreeing with the proposed wording of § 133.34; accordingly, the substantive changes hereby adopted by this document are as follows:

The amendment of § 133.34 is necessary to conform the provision to the "Rules of Measurement of Vessels" for the Panama Canal, 35 CFR Part 135, 41 FR 13583 of March 31, 1976. Prior to 1976, in order for a vessel to secure the reduced rate of toll for vessels in ballast without passengers or cargo, the amount of fuel a vessel could carry for its own consumption was 125 percent of the volume of its engine room as measured.

The 1976 amendments to Rules for Measurement of Vessels made it necessary to determine the actual volume of tanks or fixed compartments for the carriage of fuel which have been certified for the vessel's own use, as provided in § 135.390, "Spaces available for the carriage of fuel".

The Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, when implemented, would not have an annual effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs or prices for consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Further, the Commission has determined that this rule is not subject to the requirements of section 603 and 604 of Title 5, United States Code, in that its promulgation will not have a significant impact on a substantial number of small entities, and the Administrator of the Commission so certifies pursuant to 5 U.S.C. 605(b).

List of Subjects in 35 CFR Part 133

Panama Canal, Tolls, Vessels.

Accordingly, 35 CFR, Part 133 is amended as follows:

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for Part 133 is revised to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR [illegible].

2. Section 133.34 is revised to read as follows:

§ 133.34 Tolls for vessels in ballast.

In order for a vessel to secure the reduced rate of toll for vessels in ballast, it may not be carrying any passengers or cargo nor any fuel for its own consumption in a quantity which exceeds either—

(a) 125 percent of the volume of its engine room as measured and as shown on its Panama Canal tonnage certificate; or

(b) The spaces on the vessel which are available for the carriage of fuel (i.e., the actual volume of tanks or fixed compartments, including settling tanks, used for the storage of lubricating oil or fuel, which spaces cannot be used to stow cargo or stores and which have been certified by official marking to be spaces for the vessel's own fuel).

Dated: November 22, 1985.

D. P. McAuliffe,

Administrator, Panama Canal Commission.

[FR Doc. 85-30540 Filed 12-26-85; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[A-7-FRL-2944-1; EPA Action IA 1807]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Iowa; Section 111(d) Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The State of Iowa has submitted its plan for the control of fluoride emissions from existing phosphate fertilizer plants, and for the control of sulfuric acid mist emissions from existing sulfuric acid production plants. This plan was submitted in response to Section 111(d) of the Clean Air Act, which requires states to establish emission controls for existing sources which would be subject to EPA's new source performance standards if these sources were new sources. This notice advises the public that EPA today takes final action to approve Iowa's 111(d) plan.

EFFECTIVE DATE: This action will be effective February 25, 1986, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments should be sent to Larry Hacker, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The State submission is available for inspection during normal business hours at the above address; and at the Iowa Department of Water, Air and Waste Management, 900 East Grand, Des Moines, Iowa.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker at (913) 236-2893, (FTS) 757-2893.

SUPPLEMENTARY INFORMATION:

I. Plan Requirements

Section 111 of the Clean Air Act provides authority for EPA to establish standards of performance for new stationary sources of air pollution. Section 111(d) and 40 CFR Part 60, Subpart B, require that each State adopt and submit a plan for the control of designated pollutants from existing facilities. Designated pollutants do not include those for which air quality criteria have been established or which are already listed under section 108(a), relating to development of air quality criteria for certain pollutants, or section 112(b)(1)(A), Hazardous Air Pollutants. After promulgation of a standard of performance for a designated pollutant from an affected facility, EPA publishes an applicable emission control guideline document and then publishes a notice in the **Federal Register** as to its availability. The State must submit its Section 111(d) plan within nine months after the final guideline notice of availability. If there are no such designated facilities located within a State, the State is required to submit a letter of certification to that effect, i.e., a negative declaration.

The requirements for section 111(d) plans are contained in 40 CFR 60.23 through 60.26. The State is required to give proper notification and conduct at least one public hearing. The plan must contain emission standards and compliance schedules. The emission standards must be at least as stringent as those required by the federal standard with certain case-by-case exemptions. The plan must also include an inventory of all designated facilities, including emissions data for the designated pollutants. The State must demonstrate that it has adequate legal authority to carry out the plan unless previously approved under section 111(d) or Section 110 of the Act. For a complete description of the plan requirements, the reader is referred to the above-mentioned sections of the Code of Federal Regulations. Part 62 of the CFR provides the procedural framework for the submission of these plans.

II. Review of the State Submittal

On June 12, 1985, the State of Iowa submitted the final portion of its plan for the control of fluoride emissions from existing phosphate fertilizer plants, and for the control of sulfuric acid mist emissions from existing sulfuric acid production plants. In previous submittals (discussed hereinafter), the State had not fully addressed all of the requirements for a Section 111(d) plan. State plans for the control of fluoride emissions from existing phosphate fertilizer plants were due on December 1, 1977, and those for the control of sulfuric acid mist emissions from

existing sulfuric acid production plants were due on July 18, 1978. Iowa's June 12, 1985, submittal, in conjunction with its previous submittals, is intended to complete the requirements for the State's 111(d) plan.

On February 23, 1978, the State of Iowa submitted rule 4.3(3)d for the control of sulfuric acid production plants. The effective date of this rule was June 16, 1972, and was included in the State's original State Implementation Plan (SIP). Proper notice and public hearings were held prior to the State's adoption and submittal of its original SIP. The State's sulfuric acid mist emission limit in rule 4.3(3)d is 0.5 pounds of sulfuric acid mist per ton of acid produced. This is identical to the limit contained in EPA's "Final Guideline Document: Control of Sulfuric Acid Mist Emissions from Existing Sulfuric Acid Production Units" (EPA–450/2–77–019).

On October 19, 1979, the State submitted rule 4.4(10) for the control of fluoride emissions from existing phosphate fertilizer plants. This rule became effective on August 29, 1979, after proper notice and public hearing.

The Administrator has determined that fluorides may cause or contribute to endangerment of public welfare, but that adverse effects on public health have not been demonstrated. Emission limit guidance is contained in EPA's "Final Guideline Document: Control of Fluoride Emissions from Existing Phosphate Fertilizer Plants" (EPA–450/2–77–005).

The State's fluoride emission limits for phosphoric acid plants and diammonium phosphate plants are .04 lbs. per ton and .15 lbs. per ton, respectively. These limts are less stringent than those specified in the guideline; however, because fluoride has been determined to be a welfare-related pollutant, states have considerable latitude in setting emission limits and can balance the applicable emission guidelines against other factors of public concern (see 40 CFR 60.24(d)).

The guideline document mentions that a 30-day average ambient ground-level fluoride concentration of 0.5 micrograms per cubic meter has been reported to cause an accumulation of more than 40 parts per million fluoride in cattle forage. This concentration in their feed represents a damage threshold for cattle.

The State has provided a dispersion model analysis which demonstrates that its fluoride emission limit is sufficient to keep ambient fluoride concentrations below 0.5 micrograms per cubic meter (30-day average). Therefore, the potential for fluoride accumulation in cattle forage will be below the damage threshold.

On February 7, 1983, the State submitted public hearing documentation for the fluoride emission limits (rule 4.4(10)), as required by 40 CFR 60.23(f). The February 7 submittal also included a demonstration of the State's legal authority to implement and enforce the plan as required by 40 CFR 60.26.

All designated facilities in Iowa are in compliance with the applicable emission limits for the designated pollutants. Therefore, the State's plan does not include compliance schedules. However, the State has demonstrated that it has the legal authority to implement compliance schedules for designated facilities when necessary.

The State's plan includes an inventory of all designated facilities, including emission data for the designated pollutants. Additional inventory data is maintained on EPA's National Emissions Data System (NEDS), which is updated periodically. The State's Section 111(d) emission inventory meets the requirements of 40 CFR 60.25 and 40 CFR Part 60, Appendix D. Reporting and recordkeeping requirements are specified in the State's compliance rule, Chapter 21, which was previously approved under Section 110 of the Act after adequate notice and public hearing.

On May 13, 1985, the State submitted a letter (negative declaration) certifying that there are no existing primary aluminum reduction plants in the State. The negative declaration was submitted in lieu of a section 111(d) plan for the control of fluorides from primary aluminum reduction plants.

Iowa's regulations for controlling air pollution were recodified on July 1, 1983. The fluoride standard, submitted as 4.4(10), is now codified at 23.4(10). In addition, the sulfuric acid mist standard, submitted as 4.3(3)d, is now codified at 23.3(3)d. The recodification did not change any substantive requirements, but merely incorporated the new numbering system.

III. EPA Action

Today's notice takes final action to approve the State of Iowa's Section 111(d) plan for the control of sulfuric acid mist emissions from existing sulfuric acid production plants and for the control of fluoride emissions from existing phosphate fertilizer plants. EPA also takes final action to approve the State's negative declaration in lieu of a Section 111(d) plan for the control of fluoride emissions from existing primary aluminum reduction plants.

EPA believes these submissions are noncontroversial and is taking final action to approve them without prior proposal. The public should be advised that this action will be effective (insert date 60 days after publication). However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I hereby certify that this section 111(d) plan and negative declaration will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publiction. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Phosphate, Aluminum, Fertilizers, Paper and paper products industry, Sulfuric oxides, Sulfuric acid plants.

Dated: December 16, 1985.

Lee M. Thomas,

Administrator.

PART 62—[AMENDED]

Part 62 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Part 62 is amended by adding the following centerheadings and sections to Subpart Q.

Subpart Q—Iowa

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

* * * * *

Sec.

62.3850 Identification of plan.

Sulfuric Acid Mist From Existing Sulfuric Acid Production Plants

62.3851 Identification of sources.

Fluoride Emissions From Existing Phosphate Fertilizer Plants

62.3852 Identification of source.

Sec.

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

62.3853 Identification of plan—negative declaration.

Fluoride Emissions From Existing Primary Aluminum Reduction Plants

62.3854 Identification of plan—negative declaration.

62.3855—62.3869 [Reserved]

Subpart Q—Iowa

Plan for the Control of Designated Pollutants From Existing Facilities [Section 111(d) Plan]

§ 62.3850 Identification of plan.

(a) Identification of plan: Iowa Plan for Control of Designated Pollutants from Existing Facilities [Section 111(d) Plan].

(b) The plan was officially submitted as follows:

(1) Control of sulfuric acid mist from existing facilities at sulfuric acid production plants, effective on June 16, 1971, having been submitted by the State on February 23, 1978. Additional information was provided in letters of February 7, 1983; May 13, 1985; and June 12, 1985.

(2) Control of fluoride emissions from existing facilities at phosphate fertilizer plants, effective on August 29, 1979, having been submitted by the State on October 19, 1979. Additional information was provided in letters of February 7, 1983; May 13, 1985; and June 12, 1985.

(c) Designated facilities: The plan applies to existing facilities in the following categories of sources:

(1) Sulfuric acid production plants.

(2) Phosphate fertilizer plants.

Sulfuric Acid Mist From Existing Sulfuric Acid Production Plants

§ 62.3851 Identification of sources.

(a) The plan applies to existing facilities at the following sulfuric acid production plants:

(1) Agrico Chemical Company, Fort Madison, Iowa

(2) Koch Sulfur Products Company, Dubuque, Iowa

Fluoride Emissions From Existing Phosphate Fertilizer Plants

§ 62.3852 Identification of sources.

(a) The plan applies to existing facilities at the following phosphate fertilizer plants:

(1) Agrico Chemical Company, Fort Madison, Iowa.

(2) Chevron Chemical Company, Fort Madison, Iowa.

(3) Occidental Chemical Company, Buffalo Iowa.

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.3853 Identification of plan—negative declaration.

Letter from Executive Director of Iowa Department of Environmental Quality submitted on February 7, 1983, certifying that there are no kraft pulp mills in the State of Iowa subject to Part 60, Subpart B of this chapter.

Fluoride Emissions From Existing Primary Aluminum Reduction Plants

§ 62.3854 Identification of plan—negative declaration.

Letter from the Iowa Department of Water, Air and Waste Management submitted on May 13, 1985, certifying that there are no primary aluminum reduction plants in the State of Iowa subject to Part 60, Subpart B of this Chapter.

§§ 62.3855–62.3869 [Reserved]

[FR Doc. 85-30626 Filed 12-26-85; 8:45 am]

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40 CFR Part 81

[A-5-FRL-2944-2]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA approves the State of Indiana's modified request to change the Total Suspended Particulates (TSP) designation for a portion of Dearborn County (Lawrenceburg Township) from primary nonattainment to secondary nonattainment for TSP. The rest of the County will remain attainment. This revision is based on a request from the State of Indiana to redesignate this area and on the supporting data the State submitted.

EFFECTIVE DATE: This final rulemaking becomes effective on January 27, 1986.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 S. Dearborn Street, Chicago, Illinois 60604.

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886–6036.

SUPPLEMENATARY INFORMATION: Under section 107(d) of the Act, the Administrator of USEPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of Indiana. See 40 CFR 81.315. These area designations may be revised whenever the data warrant.

The TSP designations for Dearborn County, Indiana, as condified at 40 CFR Part 81.315 (1984), are:

Dearborn County:

Lawrenceburg Township: Primary Nonattainment

Remainder of the County: Attainment

On April 14, 1983, the State of Indiana requested USEPA to revise the TSP designation of Dearborn County to full attainment. On September 2, 1983, USEPA notified the State of Indiana that it had not sufficiently supported its redesignation request, and, therefore, it was not approvable. On February 16, 1984, the State submitted a revised redesignation request and additional technical support. Additional technical support was submitted to USEPA on April 13, 1984; May 16, 1984; August 31, 1984; and September 20, 1984.

In its February 16, 1984, submittal, Indiana included ambient air quality data collected at one TSP monitor in Dearborn County during the period 1981–1984 and a dispersion modeling analysis.

In addition to the monitoring data provided by the State of Indiana, USEPA also considered TSP data from another site in the County. Although the most recent 2 years of data show no violations, this period coincides with the shift from daily to once in 6 day sampling. For example, at the Lawrenceburg monitor, there were nine exeedances in 1981 through the end of September when daily sampling was done, while there have been no exceedances since November 1981 when sampling was done only every 6th day.*

In its February 16, 1984, submittal, Indiana also included a revised Climatological Dispersion Modeling (CDM) analysis of Dearborn County. On August 31, 1984, the State submitted revised modeling reflecting all sources operating at State Implementation Plan allowable emissions.

The State's modeling indicates that the secondary 24-hour TSP standard is not being attained in Lawrenceburg Township. Although no monitored

* USEPA regulations at 40 CFR Part 58 require at least one 24-hour sample every 6 days.

violations have been measured during the last 2 years, no valid reasons could be cited for these recent lower TSP concentrations. This lead USEPA to question whether TSP levels less than the secondary NAAQS will continue to be measured and whether the apparent improvement in TSP levels at this monitor are due to the change is sampling frequency, rather than actual, enforceable control measures.

Therefore, on March 27, 1985 (50 FR 12044), USEPA proposed to disapprove the State of Indiana's request to redesignate the area to full attainment. However, it also proposed that, if the State requested during the public comment period that the area be redesignated as a secondary nonattainment area, USEPA would approve that request.

Only the State responded to this proposal. On May 8, 1985, it formally requested that Lawrenceburg Township (Dearborn County) be designated secondary nonattainment for TSP. As a result, based on the data submitted by the State, USEPA approves the redesignation of Lawrenceburg Township (Dearborn County) to secondary nonattainment for TSP. The rest of the County remains attainment. Further discussion may be found in the technical support document for this rulemaking action which is available at USEPA's Region V Office.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 25, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

Dated: December 16, 1985.

Lee M. Thomas,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 81.315 is amended by revising the Dearborn County designation in the Indiana Table for Total Suspended Particulates (TSP) as follows:

§ 81.315 Indiana.

INDIANA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Dearborn County:				
Lawrenceburg Township		X		
Remainder of Dearborn County				X

[FR Doc. 85–30627 Filed 12–26–85; 8:45 am]

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40 CFR Part 716

[OPTS–84017A; FRL–2945–4]

Submission of Lists and Copies of Health and Safety Studies on Vinyl Acetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding vinyl acetate, Chemical Abstracts Service Registry number (CAS) 108–05–4, to the list of chemical substances and mixtures in the Health and Safety Data Reporting Rule, 40 CFR Part 716. Past, current, and prospective manufacturers, importers, and processors of vinyl acetate are required to provide EPA with lists and copies of unpublished health and safety studies on this substance. The information received by the Agency will be used to support a detailed assessment of the health and environmental risks of this substance.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern "standard" time on January 13, 1986. This rule shall become effective on February 10, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460, Toll free: (800–424–9065), In Washington, DC: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 8(d) of the Toxic Substances Control Act (TSCA, 15 U.S.C. 2607(d)), EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) model rule requires manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with very useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

Detailed guidance for reporting unpublished health and safety data is provided in 40 CFR Part 716. Also found in Part 716 are the reporting exemptions. Listed below are the general reporting requirements of the section 8(d) model rule.

1. Persons who, in the 10 years preceding the date a substance is listed, either have proposed to manufacture, import, or process; or have manufactured, imported, or processed; the listed substance must submit to EPA:

A copy of each health and safety study which is in their possession at the time the substance is listed.

2. Persons who, at the time the substance is listed, propose to manufacture, import, or process; or are manufacturing, importing, or processing the listed substance must submit to EPA:

a. A copy each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the

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substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture, import, or process the listed substance must submit to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of the completion date.

II. Summary of This Rule

EPA is adding vinyl acetate, CAS 108–05–4, to the list of substances in 40 CFR 716.17. By listing this substance in the section 8(d) model rule, EPA is triggering the model rule's reporting requirements for past, current, and prospective manufacturers, importers, and processors of this substance. The model rule requires manufacturers, importers, and processors of listed substances to submit data within 60 days of the effective date of any amendment to the model rule. Therefore, for this substance, respondents must submit copies and lists of unpublished health and safety data to EPA by April 9, 1986. The health and safety data must be sent to: U.S. Environmental Protection Agency, TSCA 8D–1, P.O. Box 2060, Rockville, MD 20852.

This amendment to the section 8(d) model rule was proposed for public comment in the **Federal Register** of August 8, 1985 (50 FR 32095). Since EPA received no comments, the final rule is published as proposed. The TSCA Assistance Office has received two telephone inquiries concerning the scope of this rule. The callers questioned whether this rule requires the reporting of health and safety studies of the polymers and co-polymers of vinyl acetate. EPA responded that this rule does not require the reporting of any health and safety studies on any polymers or co-polymers of vinyl acetate. This rule only covers unpublished health and safety studies of vinyl acetate, CAS No. 108–05–4.

III. Agency Objectives

Vinyl acetate is a major industrial chemical. It is prepared from petrochemicals and then polymerized and copolymerized with other monomers to produce a wide variety of plastics and resins. EPA currently estimates production of vinyl acetate at 1.9 billion pounds annually. Polymers containing vinyl acetate are used in a wide variety of consumer goods.

Exposure to vinyl acetate can occur during manufacture, importation and processing as well as from residual monomers in consumer goods. In 1978, the National Institute for Occupational Safety and Health estimated that 70,000 U.S. workers were potentially exposed to vinyl acetate. EPA has conducted a preliminary evaluation of the health and environmental risks posed by vinyl acetate as part of its ongoing chemical assessment activities, and has determined that more health and safety information on vinyl acetate is needed in order to adequately assess the degree of risk posed by this chemical. Therefore, EPA has concluded that this current lack of health and safety data and the potential for worker and consumer exposure to the unreacted vinyl acetate monomer is sufficient justification for this information-gathering rule. For additional information concerning the Agency's objectives see the proposed vinyl acetate rule (50 FR 32095).

IV. Economic Impact

EPA estimates that the section 8(d) reporting requirements for vinyl acetate will cost the chemical industry approximately $12,700. This cost estimate may be higher than the actual costs due to relatively conservative assumptions used in the economic analysis concerning the likely number of respondents to the rule. Although EPA has used the best available data to estimate the costs of this rule, much of this data is not current. In view of this, EPA's assumptions tend to overestimate rather than underestimate the reporting burden. The total industry cost is broken down as follows:

Initial corporate review	$7,752
Site identification	684
File search at site	1,323
Title listing	57
Photocopying	288
Managerial review	2,128
Ongoing reporting	456
Total	$12,688

EPA calculates the cost per company for an initial submission of health and safety data at $1,797.

V. Public Record

The following documents constitute the public record for this rule (docket control number OPTS–84017A). All of these documents are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Rm. E–107, 401 M St., SW., Washington, DC.

1. The proposed rule.
2. The chemical hazard information profile for vinyl acetate.
3. Criteria for a recommended standard for vinyl acetate (NIOSH, 1978).
4. Economic analysis.

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a regulatory impact analysis. The Agency has determined that this rule is not "major" because it does not have an effect of $100 million or more on the economy. EPA also anticipates that this rule will not have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. In a study of submitters reporting under the section 8(d) model rule, EPA found that only 1 of 69 submitters had less than $100 million in sales. EPA does not expect these amendments to affect this distribution. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 95–354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44

U.S.C. 3501 *et seq.* and has assigned them OMB Control Number 2070–0004.

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements.

Dated: December 20, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, 40 CFR Part 716 is amended as follows:

1. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. By adding § 716.17(a)(15) to read as follows:

§ 716.17 Substances and listed mixtures to which this subpart applies.

(a) * * *

(15) As of February 10, 1986, the following chemical substance is added to this subpart.

Substance: Vinyl acetate
CAS Number: 108–05–4

* * * * *

(Approved by the Office of Management and Budget under control number 2070–0004.)

[FR Doc. 85–30719 Filed 12–26–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM–188B, Notice No. 85–5]

Transportation of Hazardous Materials Between the United States and Canada

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for comments on petition for reconsideration.

SUMMARY: The Research and Special Programs Administration (RSPA) recently published amendments to the Department of Transportation's Hazardous Materials Regulations (HMR) in order to permit transportation of hazardous materials between the United States and Canada, with certain conditions and limitations, in accordance with the recently published Canadian Transport of Dangerous Goods Regulations (TDG Regulations). This notice requests public comment regarding a petition for reconsideration filed in connection with these amendments.

DATE: Comments must be received on or before March 1, 1986.

ADDRESS: Address comments to: Dockets Branch, Office of Hazardous Materials Transportation (DHM–53), U.S. Department of Transportation, Washington, D.C. 20590. Comments should be submitted, when possible, in five copies. The Dockets Branch is located in room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, DC. Office hours are 8:30 A.M. to 5:00 P.M., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 426–0656.

SUPPLEMENTARY INFORMATION: On October 11, 1985, the RSPA published a final rule in the Federal Register under Docket No. HM–188B (50 FR 41516) which permitted, with certain conditions and limitations, the transport of hazardous materials between Canada and the United States in conformance with the TDG Regulations recently published by Transport Canada. The amendments to the HMR published in that final rule imposed no requirements on persons offering or transporting hazardous materials and were intended only to grant relief to such persons and to facilitate the transport of hazardous materials between Canada and the United States by allowing, under certain conditions, hazardous materials to be transported within the United States in conformance with the TDG Regulations.

On November 12, 1985, the RSPA received a petition for reconsideration of this final rule filed in accordance with the provisions of 49 CFR 106.35. The petitioner, Air Products and Chemicals, Inc. (APCI), contends that the RSPA's failure to fully recognize the TDG regulations for certain hazardous materials moving within the United States enroute to Canada constitutes an unnecessary burden on United States shippers and requested that the final rule be modified to grant "full reciprocity" to the TDG Regulations by permitting compliance with the TDG Regulations in lieu of the provisions of the HMR for the shipment to Canada of hazardous materials classed in Divisions 2.3 and 2.4 (i.e. poison and corrosive gases, respectively) of the TDG Regulations.

Although the RSPA questions how a rulemaking that imposes no requirements can be considered to create an unnecessary burden as stated by the petitioner, in accordance with the procedures regarding proceedings on petitions for reconsideration the RSPA has determined to act upon this petition by permitting the public the opportunity to submit comments on the merits of this petition. This course of action has been selected because the modifications sought by the petitioner would allow conformance to the TDG Regulations considerably in excess of that proposed in the notice of proposed rulemaking.

Although the RSPA is not in full agreement with certain of the factual statements in the petition, in order to afford potential commenters the opportunity to consider the merits of the APCI petition, the substantive paragraphs are quoted in the following:

Under the provisions of 49 CFR 106.35, Air Products and Chemicals, Inc. (APCI), wishes to petition for reconsideration of a final rule which appeared in the **Federal Register** of 11 October 1985 under the above referenced docket number. The final rule is very burdensome on U.S. shippers of poison gases (2.3) and corrosive gases (2.4) to Canada.

Paragraph 171.12a(a) allows shipments of hazardous materials (dangerous goods) which originate in Canada to be classed, packaged, marked, labeled, placarded, and described on a shipping paper in accordance with TDG Regulations with certain additional requirements. The TDG Regulations allow shipments to enter Canada if in accordance with 49 CFR for all hazard classes with the exception of hazard classes 2.3 (poison gases) and 2.4 (corrosive gases). Paragraph 171.12a(c) of the final rule allows U.S. shippers to use Canadian Poison Gas and Corrosive Gas labels and placards for shipments enroute to Canada. The final rule does not allow the U.S. shipper to use Canadian package markings and shipping paper descriptions for gases in 2.3 and 2.4 classifications. This failure to authorize Canadian markings and documentation creates an unnecessary burden on U.S. shippers to Canada and creates the possibility of conflicting information on package markings and shipping papers.

Two examples will illustrate this point:

1. Some compressed gas mixtures are most appropriately shipped to Canada under proper shipping name "Compressed gases, toxic, n.o.s." (UN 1955) which is listed in both the TDG regulations and IMD regulations (M1.102) (sic) but which is not listed in 172.101. In the U.S. the proper shipping name is "Compressed gas, n.o.s., nonflammable gas" (UN 1956). Under the final rule, the U.S. shipper must comply with both 49 CFR and TDG for marking and shipping papers. This requires dual marking on packages and dual descriptions on shipping papers. The markings do not agree and even worse, two different UN identification numbers are displayed on the package. Likewise, shipping papers will contain conflicting information.

2. A compressed gas such as Silane also illustrates this problem. Under 49 CFR, silane is shipped as "Compressed gas, n.o.s.,

flammable gas, UN 1954" because silane is not listed by name in Table 172.101. However, TDG lists Silane by name, classifies it as 2.3 (Poison Gas) and shows UN identification number 2203. Again, for shipments to Canada, package markings and shipping papers will show two proper shipping names and two conflicting identification numbers.

APCI believes that 171.12a(c), as currently written, is unnecessarily restrictive and, as illustrated above, creates confusion. We wish to petition for an amendment to this paragraph which would allow TDG classification, packaging, marking, and documentation for gases in the 2.3 and 2.4 classifications. We believe this amendment to be justified for the following reasons:

1. Shipments from Canada to the U.S.A. are given complete reciprocity. We see no reason why complete reciprocity cannot be given to shipments from the U.S.A. to Canada.

2. As has been mentioned on numerous occasions, the UN identification number is the key to the identification of hazardous materials and the key to the appropriate response in the event of an accident, spill or leak.

3. Conflicting shipping names on packages and documents will undoubtedly raise questions with regulatory authorities and cause delays while explanations are sought. In the event of an accident or incident, conflicting information may be a detriment to safety. Use of one shipping name with the appropriate identification number would solve these potential problems.

In view of the foregoing, APCI believes that paragraph 171.12a(c) must be amended to authorize use of TDG regulations for shipments of 2.3 and 2.4 gases from the United States to Canada.

Comments are invited regarding the desirability of amending § 171.12a(c) as requested by APCI. Information is also requested regarding the overall magnitude of the problems described by APCI and the seriousness of the "burdens" the present regulations impose.

(49. U.S.C. 1803, 1804, 1808; 49 CFR 1.53, unless otherwise noted)

Issued in Washington, DC, on December 20, 1985.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 85-30692 Filed 12-26-85; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Part 173

[Docket No. HM-172B; Amdt. No. 173-194]

Cylinder Retester Identification Procedures; Delay of Effective Date

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Delay of effective date.

SUMMARY: RSPA published a final rule in the **Federal Register** on November 6, 1985, (50 FR 46054), under Docket HM-172B (FR Document 85-26499). The amendments concerned DOT's ability to provide safety oversight of cylinder retesting, and the implementation of procedures and requirements to identify persons who retest DOT cylinders. The final rule has an effective date of January 15, 1986. A petition has been received from the Cylinder Specification Committee of the Compressed Gas Association requesting that an additional 90 days be provided for the effective date of the rule so that special dies containing the individual retester's identification number may be obtained by the companies involved.

In consideration of foregoing, RSPA grants the petition and hereby extends the effective date of the final rule isued under Docket HM-172B, Amendment No. 173-194, to April 15, 1986.

EFFECTIVE DATE: April 15, 1986.

FOR FURTHER INFORMATION CONTACT: Marilyn Morris, Exemptions and Regulations Termination Branch, Standards Division, Office of Hazardous Materials Transportation, Washington, DC 20590 (202-426-2075).

Issued in Washington, DC, on December 20, 1985, under authority delegated in 49 CFR 1.53(b).

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration.

[FR Doc. 85-30691 Filed 12-26-85; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 387 (Sub-No. 958)]

Exemption From Regulation; Shipments Subsequently Made Subject to a Contract Rate

AGENCY: Interstate Commerce Commission.

ACTION: Final rule and exemption.

SUMMARY: The Commission is amending its regulations at 49 CFR Part 1039 by adding new section 1039.19, which exempts the waiver of undercharges or payment of reparations representing the difference between tariff charges and a subsequent contract rate when: (1) A railroad and shipper have agreed to a contract; (2) the shipment moved before the contract was filed with the Commission; and (3) the contract was subsequently filed with the Commission and approved under 49 U.S.C. 10713.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: The text of the final rule follows as an appendix to this notice.

Additional information is contained in the Commission's full decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

This action will not have a significant economic impact on a substantial number of small entities, and will not significantly affect the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1039

Railroads, Contracts, Reparations, Undercharges, Exemptions.

Authority: 5 U.S.C. 553, 49 U.S.C. 10321, 10505, and 10713.

Decided: November 20, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Strenio concurred with a separate expression. Commissioner Lamboley concurred in part and dissented in part with a separate expression. Chairman Taylor dissented in part with a separate expression. Commissioner Simmons dissented in part with a separate expression.

James H. Bayne,

Secretary.

Appendix A

PART 1039—[AMENDED]

Title 49 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 49 CFR 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10713, 10762 and 11105; 5 U.S.C. 553.

2. Paragraph 1039.2(e) is amended by revising the first sentence to read as follows:

§ 1039.2 Contract implementation date.

* * * * * *

(e) Except as provided in § 1039.19, transportation or service may not begin under a contract or an amendment to a contract before the filing date of either the contract or the amendment, respectively.

3. By adding new § 1039.19 to read as follows:

§ 1039.19 Transportation of shipments subsequently made subject to a contract rate.

Railroad transportation or service is exempt from the requirements of 49 U.S.C. 10761, 11902, 11903, and 11904 to the extent that a railroad may apply a contract or amended contract rate rather than an otherwise applicable tariff rate, and accordingly, pay reparations or waive undercharges, under the following conditions:

(a) A transportation contract under 49 U.S.C. 10713 has been filed with the Commission and has been approved by the Commission or by operation of law; and

(b) The shipment at issue falls within the terms of the contract; and

(c) The shipment was transported before the contract was approved but:

(1) After the contract was signed; or

(2) After the parties agreed on the rate to be charged and they either agreed to be bound by the contract or intended the movement to be covered by it.

Appendix B—Parties Submitting Comments

Railroads and Railroad Associations

Association of American Railroads, Union Pacific Railroad Company, Missouri Pacific Railroad Company, Chicago and North Western Transportation Company, Consolidated Rail Corporation, The Chessie System, and Seaboard System Railroad, Inc., Norfolk and Western Railway Company, Southern Railway Company, and The Pittsburgh and Lake Erie Railroad Company.

Ports

Houston Port Bureau, Inc.

Shippers and Shipper Associations

Northwestern Steel and Wire Company, Stupp Corporation, Phillips Petroleum Company, FMC Corporation, Union Carbide Corporation, International Minerals and Chemical Corporation, Farmland Industries, Inc., Dow Chemical Company, LTV Steel Company, Inc., Westvaco, Ralston Purina Company, Empire-Detroit Steel Division, American Bakers Association, American Furniture Manufacturers Association, United States Steel Corporation, Armco, Inc., Western Coal Traffic League, The Committee on Transportation and Distribution of the Society of the Plastics Industry, Inc., Bethlehem Steel Corporation, Weyerhaeuser Company, Tennessee Eastman Company, and CF Industries.

State Agencies

Nebraska Public Power District and Platte River Power Authority.

[FR Doc. 85-30619 Filed 12-26-85; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 50, No. 249
Friday, December 27, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 352

Reemployment Rights

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management is updating its regulations to permit Federal agencies to grant reemployment rights to Senior Executive Service Employees who take other civilian employment under certain circumstances. The proposed regulations would make the reemployment of SES employees comparable to the existing rights of other civilian employees.

COMMENT DATE: February 25, 1986.

ADDRESS: Send or deliver written comments to Richard B. Post, Associate Director for Staffing, Office of Personnel Management, Room 6F08, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: John Schultz, 202–632–6817.

SUPPLEMENTARY INFORMATION: Title 5 of the Code of Federal Regulations, Part 352, permits a Federal agency to grant reemployment rights to nontemporary Federal employees in both the competitive and excepted service under terms and conditions specified by law when they accept special assignments or other hard to fill positions outside their agenices. These regulations predate the establishment of the SES in 1979 (see 5 U.S.C. 3131) and therefore have no reference to SES employees. This document updates these regulations to bring SES employees within the coverage of Part 352.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions.

List of Subjects in 5 CFR Part 352

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, the Office of Personnel Management is proposing to amend Part 352 of Title 5, Code of Federal Regulations, as follows:

PART 352—REEMPLOYMENT RIGHTS

1. The authority citation for Part 352 is revised to read as follows:

Authority: 5 U.S.C. 3101 note, 3131 *et seq.* 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

2. Section 352.204 is amended by redesignating paragraph (a)(2) as (a)(3), adding a new paragraph (a)(2), and revising paragraph (b)(1) to read as follows:

§ 352.204 Basic eligibility for reemployment rights.

(a) * * *

(2) An employee serving under a career appointment in the Senior Executive Service (SES); or

* * * * *

(b) * * *

(1) An employee who is serving a probationary or trial period under an appointment to a position in the excepted or competitive service or the SES.

* * * * *

3. Section 352.205a is revised to read as follows:

§ 352.205a Authority to return employee to his or her former or successor agency.

The transfer of an employee with a grant of reemployment rights under this subpart authorizes the return of the employee to his or her former or successor agency without regard to Parts 351, 752, or 771 of this chapter when the employee is reemployed in his or her former or successor agency—

(a) Without a break in service of 1 workday or more in a position at the same or higher grade in the same occupational field and geographical area as the position he or she last held in the former or successor agency; and

(b) At not less than the rate of pay he or she would have been receiving in the position last held in the former or successor agency if he or she had not been transferred.

4. Section § 352.205b is added to read an follows:

352.205b Authority to return as SES employee to his or her former or successor agency.

The transfer of a career SES appointee with a grant of reemployment rights under this subpart authorizes the return of the employee to his or her former or successor agency when the employee is reemployed in his or her former or successor agency—

(a) Without a break in service of 1 workday or more in any position in the SES for which the employee is qualified and

(b) At not less that the SES pay level at which the employee was being paid immediately before his or her transfer.

5. Section 352.208 is amended by revising paragraph (a); redesignating paragraphs (c) and (d) as (d) and (e), respectively; and adding a new paragraph (c) to read as follows:

§ 352.208 Agency's obligation to reemploy.

(a) *Employee's right to reemployment.* An employee is entitled to be reemployed by the reemploying agency as promptly as possible but not more than 30 calendar days after receipt of his application. Except as provided in paragraph (c), the employee is entitled to reemployment in the occupational field and at the same grade or level and in the same geographical area as the position which the employee last held in that agency. If the reemployment would cause the separation or demotion of another employee, the applicant shall then be considered an employee for the purpose of applying the reduction-in-force regulations (5 CFR Part 351) to determine to what, if any, position, he or she is entitled.

* * * * *

(c) *Reemployment in SES.* When the employee's right is to a position in the SES, reemployment or return may be to

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any position in the SES for which the employee is qualified.

* * * * *

6. Section 352.305 is revised to read as follows:

§ 352.305 Eligibility for detail.

An employee, including a person serving under a career appointment in the Senior Executive Service (SES), is eligible to be detailed to an international organization with the rights provided for in, and in accordance with, section 3343 of title 5, United States Code, and this subpart.

7. Section 352.307 is amended by redesignating paragraphs (c), (d), and (e) as (d), (e), and (f), respectively, and adding a new paraghraph (c) to read as follows:

§ 352.307 Eligibility for transfer.

* * * * *

(c) A person serving under a noncareer, limited emergency, or limited term appointment in the SES.

* * * * *

8. Section 352.311 is revised to read as follows:

§ 352.311 Reemployment.

(a) A transferred employee is entitled to be reemployed in his or her former position or one of like seniority, status, and pay within 30 days of his or her application for reemployment if he or she meets the following conditions:

(1) He or she is separated, either voluntarily or involuntarily, within his or her term of employment with an international organization; and

(2) He or she applies for reemployment to his or her former agency or its successor no later than 90 days after his or her separation.

(b) When an employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

9. In § 352.405, paragraph (a) is revised to read as follows:

§ 352.405 Resumption of Federal services.

(a) *Pay increase.* Except for an employee whose right is to a position in the Senior Executive Service (SES), an officer who is reemployed in the Federal position which he or she left or one of like seniority, status, and pay within 90 days of his or her separation from the agency following a term of employment, is entitled to the rate of basic pay to which he/she would have been entitled had he or she remained in the Federal service. When the employee's right is to a position in the SES, this subpart authorizes reemployment to any position in the SES for which the employee is qualified at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

10. Section 352.502 is amended by redesignating paragraphs (b) and (c) as (c) and (d), respectively, and by adding a new paragraph (b) to read as follows:

§ 352.502 Coverage.

* * * * *

(b) A person serving under a career appointment in the Senior Executive Service (SES).

* * * * *

11. Section 352.504 is revised to read as follows:

§ 352.504 Basic entitlement.

Subject to the conditions specified in this subpart, an employee who is appointed to a position under authority of section 233(d) or section 625(b) of the Act is entitled, on termination of that appointment for any reason other than his or her own misconduct or delinquency, to be reinstated in his or her former position or in one of like seniority, status, and pay in the same agency. When the employee's right is to a position in the SES, reinstatement may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer. If the functions with which the employee's former position was identified have been transferred to another agency, the employee's right to reinstatement is in the gaining agency.

12. Section 352.703 is amended by revising the introductory texts to paragraph (a) and adding paragraph (a)(3) to read as follows:

§ 352.703 Basic entitlement to reemployment rights on leaving Federal employment.

(a) *Employees entitled.* The following employees of the Bureau of Indian Affairs, Department of the Interior, and the Indian Health Service and the Public Health Service of the Department of Health and Human Services, are granted reemployment rights subject to the condition of this subpart, to the Bureau of Indian Affairs, the Indian Health Service, or the Public Health Service, as appropriate, if they leave their Federal Employment to be employed, with no break in service following separation from their agency, by an Indian tribal organization to work in a funcation of their respective agency contracted under the Indian Self-Determination Act to be performed by that tribal organization:

* * * * *

(3) An employee serving under a career appointment in the Senior Executive Service (SES) who is not serving a probationary period.

* * * * *

13. Section 352.706 is amended by redesignating paragraphs (d) and (e) and (f) respectively; and adding a new paragraph (d) to read as follows:

§ 352.706 Agency response to reemployment application.

* * * * *

(d) *Reemployment to an SES position.* When the employee's right is to a position in the SES, reemployment or return may be to any position in the SES for which the employee is qualified. The employee shall be returned at not less than the SES pay level at which the employee was being paid immediately before his or her transfer.

* * * * *

[FR Doc. 85-30677 Filed 12-26-85; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-386]

Africanized Honey Bee; Removal of Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Domestic Quarantine Notices by removing the "Africanized Honey Bee" regulations. These regulations quarantine a portion of Kern County in California because of the Africanized honey bee, and restrict the insterstate movement of bees of the genus *Apis* (in any life stage) and certain other regulated articles from the quarantined portion of Kern County. It appears that bees in the quarantied area no longer a threat to other bees, and that the regulations are no longer necessary.

DATES: Written comments concerning this proposal must be received on or before January 27, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal

Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-386. Written comments received may be inspected at Room 728, of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Assistant Director of the National Program Planning Staff in charge of the Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION: A document published in the **Federal Register** on August 20, 1985 (50 FR 35507-35512) set forth an interim rule amending the Domestic Quarantine Notice in 7 CFR Part 301 by adding "Africanized Honey Bee" regulations (7 CFR 301.94 *et seq.;* referred to below as the regulations). The regulations quarantine a portion of Kern County in California because of the Africanized honey been and restrict the interstate movement of the following articles from the quarantined portion of Kern County:

(a) Bees of the genus *Apis*, in any life stage;

(b) Fresh or frozen bee sperm;

(c) Equipment, and shipping and storage containers that have been used at an apiary;

(d) Unporcessed comb;

(e) Vehicles that have been used to carry regulated articles other than fresh or frozen bee sperm; and

(f) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) through (e) of this section, when it is determined by an inspector that it present a risk of spread of the Africanized honey bee and the person in possession therof has actual notice that the product, article, or means of coveyance is subject to the restrictions of this subpart.

The following portion of Kern County is designated as a quarantined area:

That portion of the county beginning at a point where Graces Highway intersects Corcoran Road; then west along an imaginary line from said point to the northwest corner of sec. 14, T. 25 S., R. 19 E.; then south along an imaginary line from said corner to the southwest corner of sec. 35, T. 28 S., R. 19 E.; then east from said corner along an imaginary line to its intersection with Seventh Standard Road; then east along said road to the southwest corner of sec. 31, T. 28 S., R. 23 E.; the north from said corner alaong an imaginary line to its intersection with Graces Highway; then west along said highway to the point of beginning.

Africanized honey bees are very difficult to manage. Due to their nervousness, aggressiveness, and defensiveness, theya re a danger to humans and animals. They also have a much greater tendench to swarm then other bees and often abscond without leaving any bees in the colony. The difficulty in managing Africanized honey bees and their tendency to abscond result in severe decreases in pollination services. This can severely damage important agricultural commodities that depend upon pollination by bees for production. These agricultrual commodities include forage crops, fruits, vegetables, oil crops, and fiber crops.

It now appears that there is no longer a need to regulate the interstate movement of bees of the genue *Apis* or other articles because of the Africanized honey bee. Based on surveys conducted by the Department and the California Department of Food and Agriculture it has been determined that all honey bees in the quarantined area with a high probability of Africanization have been destroyed. The surveys also establish that the probability of finding honey bees with Africanized characteristics is continually decreasing. It further appears that any remaining honey bees in the quarantined area that could still cause a degree of Africanization have intermixed with other nonAfricanized honey bees and have sufficiently lost the characteristics of Africaniżed honey bees so as not to be a threat to other bees.

Under the circumstances referred to above, this document proposes to remove the regulations.

The document of August 20 which established the regulations, indicated that comments would be accepted for a 60-day period, which ended October 21, 1985.

Two comments were received. One commenter expressed support for the regulations. The other commenter asserted that the interstate movement of regulated articles should be restricted from all of Kern County, and further asserted that bees moving interestate from California should be required to be accompanied by a document stating the county of origin of the bees. Since this document proposes to remove the regulations, no changes in the regulations have been considered based on the comments.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information complied by the Department, it has been determined that this proposed rule would have an effect on the economy of less thann 100 million dollars; would not cause a major increase in costs or price for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This proposed rule effects the enterstate movement of regulated articles from a portion of Kern County in California. The regulated articles that are affected by this proposed rule represent significantly less than 1 percent of such articles in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq*).

List of Subjects in 7 CFR Part 301

Agricultural commodites, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Africanized Honey Bee.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, it is proposed to amend 7 CFR Part 301 by removing "Subpart—Africanized Honey Bee" (§§ 301.94–301.94–9)

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51 and 371.2(c).

Done at Washington, DC, this 20th day of December 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-30583 Filed 12-26-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-29-AD]

Airworthiness Directives; Mooney Models M20 and M20A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of NPRM comment period.

SUMMARY: This action extends the comment period of the subject NPRM which provides for inspections and proof load testing of the wooden primary structure Mooney Models M20 and M20A airplanes to preclude structural failure.

DATES: Extends comment period of Docket No. 85-CE-29-AD to February 14, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Garry D. Sills, Aerospace Engineer, Airplane Certification Branch, ASW-150, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Texas 76101; Telephone (817) 877-2073.

SUPPLEMENTARY INFORMATION: The FAA issued an NPRM on August 26, 1985, applicable to Mooney Models M20A and M20 Airplanes was published in the **Federal Register** on September 4, 1985 (50 FR 35830). The comment period closed December 9, 1985. This Notice would require inspections and proof load testing of the wooden primary structure to preclude structural failure.

Subsequent to the closing date for comments on this NPRM, a request was received from the Aircraft Owners and Pilots Association to extend the comment period to allow additional time to comment on the proposed rule.

The FAA believes it is in the public interest to reopen and extend the comment period in order to allow any comments deemed necessary. This document involves only an extension of a comment period for a proposed regulation. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A regulatory evaluation has not been prepared for this action as the anticipated impact is so minimal.

List of Subjects in 14 CFR 39

Air Transportation, Aviation safety, Aircraft, Safety.

Adoption of Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR by revising the effective date of the comment period for Docket No. 85-CE-29-AD as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new date for comment:

Dates: Comments must be received on or before February 14, 1986.

Issued in Kansas City, Missouri, on December 18, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-30547 Filed 12-26-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ASO-27]

Proposed Alteration of Control Zone, Anniston, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to reduce the size of the Anniston, Alabama, control zone arrival extension. The arrival extension, as presently described, was predicated upon an instrument approach procedure which was based on the Anniston radio beacon. The radio beacon was decommissioned several months ago due to on-airport construction and the associated instrument approach procedure was cancelled. While an arrival extension is still required for another existing instrument approach procedure, it requires much less airspace. Thus, the floor of controlled airspace in an area southwest of the airport may be raised from the surface to 700 feet above the surface. In addition, the present description of the control zone contains a provision which permits use of the FAA's Notice to Airmen (NOTAM) system to publicize the effective days and hours of the control zone. As the Anniston Flight Service Station, which is located on the airport, operates on a full-time basis, this NOTAM provision is no longer required and will be removed from the control zone description.

DATES: Comments must be received on or before: February 10, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ASO-27." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available

for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will greatly reduce the size of the arrival extension associated with the Anniston, Alabama, control zone. The geographical coordinates of the airport will be corrected in this action as those presently listed are slightly in error. In addition, the provision which permits changes in hours of operation of the control zone by NOTAM will be removed from the description. Section 71.171 of Part 71 of the Federal Aviation Regulations was published in FAA Order 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified tat this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexbility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulation (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983) [14 CFR 11.65]; 49 CFR 1.47.

§ 71.171 [Amended]

2. By amending § 71.171 as follows:

Anniston, AL—[Revised]

Within a 5-mile radius of Anniston-Calhoun County Airport (lat. 33°35'17" N., long. 85°51'29" W.); within 2 miles each side of the Anniston southwest localizer course, extending from the 5-mile radius zone to the LOM.

Issued in East Point, Georgia, on December 17, 1985.

William H. Pollard,

Deputy Director, Southern Region.

[FR Doc. 85-30545 Filed 12-26-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ASO-28]

Proposed Alteration of Transition Area, Lawrenceburg, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Lawrenceburg, Tennessee, transition area by revising the coordinates of the airport and reducing the size of the associated transition area arrival extension. The coordinates of the airport are inaccurate and this action will correct the error. The Lawrenceburg radio beacon, which was previously located 1.4 miles north of the airport, has been relocated to a on-airport site. This relocation required a change in the instrument approach procedures which, in turn, permits a reduction in the size of the transition area arrival extension. Thus, the floor of controlled airspace north and northwest of the airport, may be raised from 700 to 1,200 feet above the surface.

DATES: Comments must be received on or before: February 10, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530 P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rule making by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ASO-28." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division , P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the

notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) which will correct the geographical coordinates of Lawrenceburg Municipal Airport and raise the floor of controlled airspace north and northwest to the airport from 700 to 1,200 feet above the surface. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The FAA has detemined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities unde the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 contnues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); [14 CFR 11.65]; 49 CFR 1.47.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Lawrenceburg, TN—[Revised]

That airspace extending upwards from 700 feet above the surface within a 7-mile radius of Lawrenceburg Municipal Airport (Lat. 25°14'07" N., Long. 87°15'30" W.); within 3 miles each side of the 005° bearing from Lawrenceburg RBN (Lat. 35°14'08" N., Long. 87°15'39" W.), extending from the 7-mile radius area to 8.5 miles north of the RBN.

Issued in East Point, Georgia, on December 17, 1985.

William H. Pollard,

Deputy Director, Southern Region.

[FR Doc. 85–30544 Filed 12–26–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 105

[Docket No. 24873; Notice No. 85–26]

Requirements for Parachute Jumps in Terminal Control Areas and Reporting Altitudes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to require ATC authorization for nonemergency parachute jumps in or into terminal control areas (TCA). Such authorization is currently required for other categories of controlled airspace and serves to prevent uncontrolled jumps in areas of heavy aircraft traffic. The proposed amendment would also require that aircraft operators and parachutists, as appropriate, provide notice of altitude information in terms of man sea level (MSL). Currently, altitudes are sometimes reported in levels above the ground, leading air traffic controllers and other pilots to misunderstand the altitude of the jump relative to other flight activity in the area. This proposal would make altitude reporting of jump activities consistent with other altitude terminology used by pilots and controllers.

DATES: Comments must be received on or before February 25, 1986.

ADDRESS: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 24873, 800 Independence Avenue S.W., Washington, DC 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Falsetti, Airspace and Air Traffic Rules Branch, Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposal by submitting such written data, views, or arguments as thay may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions on the proposals. Comments are specifically invited on the overall economic, environmental, and energy aspects of the proposals. Communications should identify the notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24873." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the administrator before taking any further action on the proposal. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this proposal will be filed in the docket.

Availability of MPRM

Any person may obtain a copy of this MPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention, Public Information Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further notices should also request a copy of Advisory Circular No. 11–2, "Notice of Proposed Rulemaking Distribution System," which describes the application procedures.

Background

Parachute Jumping in TCAs

The TCA program was established in 1970 to help prevent midair collisions in terminal areas which contained a high volume of traffic. Aircraft may not enter

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TCA airspace without specific air traffic control (ATC) authorization, and they must be equipped with specific radio and navigation equipment to allow ATC to separate them from other aircraft. The TCA program does not currently address the problem of separating TCA aircraft traffic from parachute jumpers who, because of the lack of a requirement in Part 105, may jump in or into TCA airspace without prior ATC authorization.

Currently, §§ 105.19, 105.20, and 105.21 of Federal Aviation Regulations (FAR) Part 105, require that ATC authorization be obtained before parachute jumps may be conducted in or into control zones, airport radar service areas (ARSA), and positive control areas. This proposal would impose a similar requirement for jumps in or into TCAs, thereby providing ATC with added flexibility to ensure separation of air traffic and parachute operations in TCA airspace. The ATC authorization would be granted or denied on the basis of the details contained in the notice and in conjunction with the air traffic situation confronting ATC at the time of the planned jump. The authorization could be issued in writing, by telephone, or as is more likely, by radio to the jump aircraft.

Unauthorized, uncontrolled parachute jumping activity is operationally incompatible with the nature of TCA airspace. Except for certain helicopter operations, ATC separation services are meant to be provided to all airspace users within a TCA to reduce the probability of midair collisions. Under current regulations, the pilot of a jump aircraft need only obtain ATC authorization to enter a TCA. Even this authorization is not required if the jump aircraft is operating above the TCA ceiling. In the absence of specific ATC authorization requirements, jumping in or into a TCA may begin at pilot or jumper prerogative, without permission from ATC.

Experience indicates that the vertical trajectory, near invisibility, and lack of maneuverability of free-falling jumpers make it extremely difficult for pilots to see and avoid them. For example, on August 23, 1980, a free-falling parachutist was killed when he collided with a Lockheed 382 cargo airplane. That accident occurred in clear Visual Flight Rules weather in airspace beneath the floor of the San Diego TCA. Although the accident did not occur within TCA airspace, it demonstrated the accident potential of an unknown, uncontrolled jump within TCA airspace even under good weather conditions. Under marginal weather conditions or at night, visual separation between aircraft and parachute jumpers is even more difficult.

This proposal would make parachute jumping in or into the TCA subject to ATC authorization just as now required in control zones, ARSAs and positive control areas. It would thus make the rule regarding parachute jumping consistent with the safety-related concept and purpose of a TCA.

Altitude Notice Information

Currently, ATC authorization is required before jumping in or into control zones, ARSAs and positive control areas. In addition to authorization, notice is required for jumps in all airspace. In all cases, certain specific information is required to be submitted with the notice. One item to be included in jump information is the altitude in terms of above ground level (AGL) at which jumping will take place.

The requirement to submit altitude information in terms of AGL can create the potential for confusion. Some pilots of jump aircraft have reported actual operating altitude to ATC while in flight in terms of AGL rather than MSL. It is possible this has occurred because of the notice requirement which states that altitude information must be given in terms of AGL. The confusion factor could be hazardous. In the flight environment, flight altitudes are expressed in terms of MSL. Therefore, controllers may naturally expect that altitudes reported by jump aircraft are also in terms of MSL. The provision of altitude information in terms of AGL can create the serious potential for a midair collision between parachutists, the aircraft carrying parachutists, and other aircraft operating in the vicinity. That danger was initially documented in a 1978 National Aeronautics and Space Administration Alert Bulletin (AB–78–54).

Subsequent to the alert bulletin, the FAA took action to alert pilots and controllers to the problem through nonregulatory means. FAA Advisory Circular 105–2A, SPORT PARACHUTE JUMPING now advises pilots to report all altitudes to ATC in feet above mean seal level. Advisory information was published on the AGL/MSL problem in the publication GENERAL AVIATION NEWS and also in the AIRMAN'S INFORMATION MANUAL. In addition, the United States Parachute Association published an advisory note concerning the problem in its PARACHUTIST magazine.

The nonregulatory actions were effective but they are not considered a long range solution or means of eliminating the potential for pilots to misinterpret the pertinent FARs. Accordingly, there is a need to ensure a uniform, universal, and unmistakable MSL altitude reporting standard in the Part 105 notice requirement. This proposal would accomplish that objective by substituting the MSL reference for the AGL reference.

If implemented, this proposal would entail a substitution of terms in an existing notice requirement and application of an ATC authorization requirement to make a nonemergency jump in a TCA. Little or no impact is seen regarding the change in notice terms since no new requirement is imposed and since the substitution of terms is seen as making no greater economic, energy, cost or reporting demand on parachutists. The ATC authorization requirement is also seen as having minimal impact. This provision would apply to a limited amount of nonemergency sport parachutist operations. There are presently 23 TCAs in the country with no current plans for increasing their number. Within the TCAs, there are relatively few published parachute jumping areas, usually two or less in each TCA. The areas that are published are generally located away from the primary airport and from primary arrival and departure routes. In addition, the proposed rule would make no change to the requirement that ATC authorization be obtained before entry into a TCA. It would only require that an ATC authorization be obtained before jumping begins. The proposed rule would help maintain the integrity of the TCA by ensuring that parachute operations are conducted free of traffic conflicts and are safely integrated into a positive separation environment that includes all other airspace activity. A draft regulatory evaluation of this proposal has been placed in the docket.

For the reasons set forth in the preamble to this proposal, the FAA has determined that this document involves a proposed regulation which is—(1) not major under Executive Order 12291, and (2) not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entites. A copy of the regulatory evaluation prepared for this action may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 105

Parachuting, Air traffic control.

The Proposal

In consideration of the foregoing, it is proposed to amend Part 105 of the Federal Aviation Regulations as follows:

PART 105—[AMENDED]

1. The authority citation for Part 105 is revised to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1421; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. By revising the title of § 105.21 to read as follows:

§ 105.21 Jumps into or within positive control areas and terminal control areas.

3. In § 105.21, paragraph (a) is revised to read as follows:

§ 105.21 Jumps into or within positive control areas and terminal control areas.

(a) No person may make a parachute jump, and no pilot in command of an aircraft may allow a parachute jump to be made from that aircraft, in or into a positive control area or terminal control area without, or in violation of, an authorization issued under this section.

* * * * *

4. In § 105.25, paragraph(a)(4) is revised to read as follows:

§ 105.25 Information required, and notice of cancellation or postponement of jump.

(a) * * *

(4) The altitudes above mean sea level at which jumping will take place.

* * * * *

Issued in Washington, DC, on November 18, 1985.

John R. Ryan,

Director, Air Traffic Operations Service.

[FR Doc. 85–30541 Filed 12–26–1985; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM86–3–000]

Ceiling Prices; Old Gas Pricing Structure

Issued December 20, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of procedural schedule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is establishing the schedule for public comment on a Notice of Proposed Rulemaking issued by the Department of Energy under section 403 of the Department of Energy Organization Act, 42 U.S.C. 4273 (1982), for action by the Commission. 50 48540 (Nov. 25, 1985). Under the Secretary's proposed rule, the Commission would exercise its authority: (1) Under sections 104 and 106 of the Natural Gas Policy Act of 1978 (NGPA), to establish just and reasonable prices for "flowing" old gas, and (2) under section 107 of the NGPA, to establish incentive prices for certain categories of old gas. Under the proposal, the Commission would act to eliminate vintaging and replace the current myrid of old gas ceiling prices with a single ceiling price (the ceiling price for post-1974 gas). In addition, the Commission would establish incentive prices for certain categories of old gas, in order to increase significantly the production of old gas and to encourage long-term investment in natural gas exploration, development, and production.

DATES: Written comments must be received by the Commission by February 25, 1985. A public conference on the rule will be announced at a later date.

ADDRESSES: All filings should refer to Docket No. RM86–3–000, and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8400.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Protection Regulatory Commission (Commission) is establishing a procedural schedule for addressing the Notice of Proposed Rulemaking issued by the Secretary of Energy under section 403 of the Department of Energy (DOE) Organization Act, 42 U.S.C. 4273 (1982), for action by the Commission. 50 FR 48540 (Nov. 25, 1985). The Commission also requests specific comments on the interrelationship between this proposal and the Commission's ongoing proceeding in Docket No. RM85–1–000 (Part D) regarding billing of purchased gas costs. 50 FR 24130 (June 7, 1985) and 50 FR 42372 (Oct. 18, 1985).

II. Background

On May 30, 1985, the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket No. RM85–1–000 (Parts A–D). Final action was taken on Parts A–C in the Commission's Order No. 436, on October 9, 1985. 50 FR 42372 (Oct. 18, 1985), *reh'g*, issued December 12, 1985. In a separate document, the Commission requested supplemental comments on Part D of the proposal. Part D proposed a new requirement that gas supplies subject to the maximum lawful prices of sections 104, 106(a), and 109 of Natual Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3314, 3316(a), and 3319 (1982), be billed separately from all other gas supplies.

On November 18, 1985, the Secretary of Energy proposed, under section 403 of the DOE Organization Act, that the Commission exercise its authority:

1. Under sections 104 and 106 of the NGPA, to establish just and reasonable prices for "flowing" old gas; and

2. Under section 107 of the NGPA, to establish incentive prices for certain categories of old gas.

Under the Secretary's proposal, the Commission would also act to eliminate vintaging and replace the different old gas ceiling prices with a single ceiling price. According to the Secretary, adoption of its proposal would establish incentive prices for certain categories of old gas, in order to increase significantly the production of old gas and to encourage long-term investment in natural gas exploration, development, and production.

Persons interested in the Secretary's proposals are directed to the **Federal Register** of November 25, 1985. 50 FR 48540.

III. Request for Specific Comments

Although the Commission is interested in receiving comments generally on the Secretary's proposal, the Commission is particularly interested in obtaining information on the following:

A. Please comment on the Commission's legal authority to adopt the Secretary's proposal, including the legal authority to establish new just and reasonable rates for NGPA sections 104 and 106(a) gas and to eliminate vintaging. Assuming the Commission has the legal authority, what type of record support must the Commission have to adopt such a proposal.

(1) In determining just and reasonable rates for NGPA sections 104 and 106(a) gas and in eliminating vintaging, to what extent may the Commission rely on non-cost-based factors such as market factors.

(2)(a) the cost-based methodologies used in the past by the Commission to establish just and reasonable rates were

developed in the context of different market needs, different competitive conditions and a different regulatory framework than those which exist today. The Commission requests comments on the legal and practical effects of using prior methodologies for making contemporary determinations of just and reasonable rates for NGPA sections 104 and 106(a) gas.

(b) The Commission also requests suggestions for any other methodologies for determining just and reasonable rates not only for contemporary market needs and conditions but also future conditions.

(3) Can the Commission find that a new just and reasonable rate for NGPA sections 104 and 106(a) gas is not automatically triggered by existing indefintie price esacalator clauses in interstate gas contracts?

B. The Commission is particularly interested in obtaining information relating to the interrelationship as a matter of law, policy, and technical operation between the block billing proposal and the Secretary's proposal. For example, the following issues require complete examination:

(1) Are the proposals mutually-exclusive, or inconsistent as a matter of law, policy, economics or technical operation? That is, does adoption of one preclude or impair adoption of the other?

(2) Can the proposals be adopted concurrently, or merged, as a matter of law, policy, and technical operation?

C. Several of the comments filed on the block billing propsoal, including but not limited to those filed by the Antitrust Division of the U.S. Department of Justice, recommend that the Commission consider, as a alternative to block billing, proposals that raise the maximum lawful price for old gas. Consequently, the Commission also seeks (1) general comment on any such alterntive proposals, such as those included in the block billing comments; and (2) specific comment from a legal, policy, economic, or technical perspective on the merits of any such proposal as compared with the Secretary's proposal.

D. The Secretary bases his proposal, in part, on the "old gas supply response" and the "benefits of higher old gas ceiling prices." [1] The Commission seeks specific comment on the analysis in the Secretary's proposal on the old gas supply response, including (1) premature abandonment, (2) new infill wells and (3) production enhancement; and on the benefits of higher old gas ceiling prices, including (a) stable average prices, (b) immediate economic benefits, and (c) old gas production increases and reduced imports. Also, provide comments on the effect of the proposal on long-term supplies.

Please provide the Commission with information on the possible practical economic and market impacts of the Secretary's proposal in specific and of raising NGPA sections 104 and 106(a) gas prices in general. In particular, the Commission would like commenters to identify the effects of this type of action on each segment of the market, including producers, both independent and integrated, pipelines and gas consumers.

The comments should provide, wherever appropriate and possible, quantitative as well as qualitative analyses of the legal, policy, economic and technical issues raised in the Secretary's proposal.

IV. Regulatory Flexibility Act Statement

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), requires certain statements, descriptions, and analyses of rules that will have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 603(a). The Commission is not required to make an RFA analysis if it certifies that a rule will not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b).

The RFA requires the Commission to analyze only the impacts on small entities that would be subject to this rule. There are approximately 10,000 natural gas producers in the United States, many of which would probably be classified as small entities under the appropriate RFA definition. This rule, if promulgated, may affect many of these entities by increasing the ability of these producers to sell their gas. If adopted, the rule also would raise the maximum lawful prices of gas under NGPA sections 104, 106(a), and 109; and would establish incentive prices for certain gas under NGPA section 107.

The Commission believes that the increased ability to sell gas and the increase in the maximum lawful prices will have a positive impact on these small producers. Since the impact on these small entities is expected to be beneficial, the Commission does not believe that the economic impact will be "significant" within the meaning of the RFA.

Pursuant to section 605(b), the Commission accordingly certified that this rule, if promulgated, will not have a "significant economic impact on a substantial number of small entities."

V. Paperwork Reduction Act

The information collection provisions in this notice of proposed rulemaking are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [2] and OMB's regulations.[3] Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown [202] 357–8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VI. Comment Procedures

The Commission invites interested persons to submit comments, data, views, and other information concerning the matter set out in this notice. The original and 14 copies of such comments must be received by the Commission before 5:00 p.m., February 25, 1985. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM86–3–000.

All written comments will be placed in the Commission's public files, and will be available for public inspection in the Commission's Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washinton, DC 20426, during regular business hours.

The Commission will provide an opportunity for the oral presentation of data, views, and arguments on the Secretary's Notice. That public conference will be announced at a later date.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–30621 Filed 12–26–85; 8:45 am]

BILLING CODE 6717–01–M

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[1] *See* 50 FR 48543–48544 (Nov. 25, 1985).

[2] 44 U.S.C. 3501–3520 (1982).

[3] 5 CFR 1320.13 (1985).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 85P-0119]

Proposed Exemption of Required Label Statements on Food Containers With Separate Lids

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to broaden an exemption from the food labeling rule that requires information to appear on the same panel. The exemption permits certain dairy foods and frozen confections to bear required labeling on more than one panel of the container. To qualify for this exemption, the package must, among other things, have a separate lid that is used as a principal display panel. FDA believes that extending the exemption would benefit manufacturers and consumers by lowering labeling costs without decreasing the quantity or comprehensibility of the label information provided to consumers.

DATES: Comments by February 25, 1986. FDA proposes that any final rule based on this proposal become effective on the date of its publication in the **Federal Register.**

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raymond W. Gill, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0180.

SUPPLEMENTARY INFORMATION: In 21 CFR 101.2(d)(1), FDA has spelled out requirements for the placement of information in food labeling. In general, the regulation provides that all information that is required to appear in food labeling must be shown on a single labeling panel, called the principal display panel. Usually the principal display panel is affixed to the food containers, although some food containers with large enough lids have the principal display panel on the lids.

FDA has issued an exemption from the general requirement that all information appear on the same food labeling panel for certain dairy products and frozen confections that are packaged in food containers with separate lids that serve as the products' principal display panel and that bear nutrition labeling (21 CFR 101.2(d)(2)). FDA promulgated this exemption to accommodate manufacturers who found that when nutrition labeling is required, there is not always adequate room for other required information to appear on the principal display panel. For example, under the exemption, when nutrition labeling appears on the container (21 CFR 101.9), name and place of business information (21 CFR 101.5) may be placed on the lid of the container, and ingredient information (21 CFR 101.4) may be placed on either the lid or the container itself.

The National Association of Margarine Manufacturers (NAMM), in a petition dated March 7, 1985, has requested that the information placement exemption provided for in 21 CFR 101.2(d)(2) be revised to include in the list of foods permitted the exemption margarine and margarine-type spreads in containers with separate lids. The grounds stated in the petition are as follows: (1) The lid of a margarine tub is an appropriate place for the name and place of business of the manufacturer, packer, or distributor due to considerations of availability of label space and visibility; (2) tubs of margarine and spreads are displayed for retail sale in close proximity to dairy products that currently are exempted and should be similarly labeled; and (3) duplicating label information on the lid and body is costly.

FDA has determined that NAMM's petition to exempt margarine and margarine-type spreads from the requirement that all required labeling information be shown on the same labeling panel (21 CFR 101.2(d)(1)) has merit and should be granted. The agency also believes that it would be in the best interest of consumers to allow all foods that are in containers with separate lids and that bear nutrition labeling to be labeled as allowed in the exemption.

The lid is a highly visible display surface for labeling. Broadening the exemption will enhance the usefulness of the lid for purposes of labeling and, as discussed below, will reduce labeling costs. FDA notes that, in proposing to broaden the exemption, the agency is not proposing to amend any of the criteria and conditions necessary to qualify for an exemption under current 21 CFR 101.2(d)(2).

Economic Impact

In accordance with Executive Order 12291, the agency has reviewed the economic effects of this proposal and has determined that the proposed rule is not a major rule as defined by the Order. This proposal, if adopted, would provide an optional exemption for some foods from the requirement that all mandatory label information appear on the same food label panel unless there is insufficient space. Under this proposal, manufacturers would have greater flexibility in designing and stocking product labels without depriving consumers of any label information. No increase in manufacturers' labeling costs is therefore expected.

FDA, in accordance with the Regulatory Flexibility Act (Pub. L. 96-354), has considered the effect this proposal would have on small entities including small businesses. Because the effect of this proposal is to provide an optional exemption for some foods from certain labeling requirements, the agency has determined that no increase in manufacturers' labeling costs is expected. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

The agency has determined under 21 CFR 25.24(a)(11) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Comments

Interested persons may, on or before February 25, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 101

Food labeling, Misbranding, Nutrition labeling, Warning statements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR Part 101 is revised to read as follows:

Authority: Secs. 4, 6, Pub. L. 89-755, 80 Stat. 1297, 1299, 1300 (15 U.S.C. 1453, 1455); secs. 403, 602, 701, Pub. L. 717, 52 Stat. 1047, 1054, 1055-1056 as amended (21 U.S.C. 343, 362,

371); 21 CFR 5.10, 5.11. § 101.2 is issued only under secs. 403 and 701(a), 52 Stat. 1047–1048 as amended, 1055 (21 U.S.C. 343 and 371(a)); 21 CFR 5.10.

2. In § 101.2 by revising the introductory text of paragraph (d)(2), to read as follows:

§ 101.2 Information panel of package form food.

* * * * *

(d) * * *

(2) Any food, not otherwise exempted in this section, if packaged in a container consisting of a separate lid and body and bearing nutrition labeling pursuant to § 101.9, and if the lid is designed and serves as a principal display panel, shall be exempt from the placement requirements of this section in the following respects:

* * * * *

Dated: November 22, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-30551. Filed 12-26-85; 8:45 am]

BILLING CODE 4160-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange-Visitor Program

AGENCY: United States Information Agency.

ACTION: Advance Notice of Proposed Rulemaking No. 1.

SUMMARY: The United States Information Agency announces that the regulations regarding Teenager Exchange Visitors which appear at 22 CFR 514.13(b), will be the subject of a proposed rulemaking. The rules first appeared in 1979 and were modified in 1983 and 1985. The rulemaking will completely re-examine all the rules in 22 CFR 514.13(b), including the possibility that the rules should be with drawn in their entirety. The Agency will be publishing an analysis of the regulations.

DATE: The public is invited to comment. An oral hearing will be held.

DATES: Parties wishing to participate should notify the Agency in writing no later than February 25, 1986.

ADDRESS: Send notice of desire to participate to: Merry Lymn, Attorney-Advisor, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn , Attorney-Advisor, United States Information Agency, 301 4th Street, SW., Washington, DC 20547 (202) 485–7176.

SUPPLEMENTARY INFORMATION: The United States Information Agency administers a program for the international exchange of teenage visitors to the United States under the Mutual Educational and Cultural Exchange Act of 1961, as amended. Pursuant to that Act regulations were published at 22 CFR Part 514 as early as 1979. Modifications were made at 48 FR 50707, November 3, 1983 and at 50 FR 31709, August 6, 1985.

Some teenage exchange organizations have questioned the underlying regulations as well as the recent modifications. Thus, the Agency believes it is necessary to re-examine the regulations and the underlying premises upon which they were based.

The Agency will consider further modifications of the regulations as well as the possibility of withdrawing the regulations in their entirety.

The Agency will outline the regulations with comments as to the reasons they were promulgated. The Agency will seek answers to questions relating to the need for the regulation. The Agency also will seek suggestions for alternate means of addressing the problems the regulations were designed to meet should it be determined that the perception of the problem in valid.

The Agency is notifying the public of its intent by publication in the **Federal Register**, by mailing copies of this notice to all teenage exchange sponsors, and to school administration organizations and to others known or thought to be interested in this proceeding. Those parties responding to this notice will receive copies of the Agency's outline of the regulations as described above.

List of Subjects in 22 CFR Part 514

Cultural exchange programs.

Authority: Sec. 4, 63 Stat. 111; secs. 102, 109(a)(b)(d), 75 Stat. 527, 534, 535; secs. 101(a)(15)(J), 104(a), 212(e), 66 Stat. 166, 174, 182, 184; sec. 2, 84 Stat. 116, 117 (22 U.S.C. 2658, 2452); (8 U.S.C. 1101(a)(15)(J), 1104(a), 1182(e), 1258); Reorganization Plan No. 2 of 1977; Executive Order 12048 of March 27, 1978; the United States Information Agency Authorization Act, Fiscal Years 1982 and 1983, Pub. L. 97–241, Title III, August 24, 1982; Pub. L. 97–116, 75 Stat. 1611, 1612, 1613 (8 U.S.C. 1182(a)(15)(J)). Pub. L. 97–241, 96 Stat. 291, Pub. L. 87–256, 75 Stat. 527, as amended; Delegation Order No. 85–5, June 27, 1985, 50 FR 27393.

Dated: December 9, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85–30686 Filed 12–26–85; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Ch. I

[FHWA Docket No. 86–1]

Review of Longer Combination Vehicle Operations in Western States; Opening of Docket, Request for Comments, and Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Request for comments and announcement of public meeting.

SUMMARY: The Committee Report accompanying the Senate Appropriations Bill for the Department of Transportation (DOT) directs the DOT to review longer combination vehicle (LCV) use in the West and to report findings to the Congress by March 1, 1986. The purpose of this Notice is to describe the scope of the review, to open a docket for receipt of any information and comments that should be considered in conducting this study, and to announce that a public meeting will be held to allow shippers, trucking company officials, State representatives and other interested parties to discuss issues concerning LCV operations in Western States.

DATES: Information and comments to the docket must be received on or before February 1, 1986. The public meeting will be held on Tuesday, January 21, 1986, from 9:00 a.m. to 4:00 p.m. Mountain Time, at the U.S. Geological Survey Auditorium, Building 25, Denver Federal Center, Denver, Colorado (Lakewood Section of Denver at Kipling and Alameda Streets). Requests to make statements at the meeting must be received by January 6, 1986.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket Number 86–1, Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. Address requests to speak at the meeting to: Federal Highway Administration, Transportation Studies Division, Room 3326, HPP–11, 400 Seventh Street, SW., Washington, DC. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur J. Balek, Chief, Industry and Economic Analysis Branch, (202) 426–0282; or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426–0825, 400

BEST COPY AVAILABLE

Seventh Street, SW., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m. ET., Monday through Friday.

SUPPLEMENTARY INFORMATION:

Study Mandate

The Committee Report (S. Rep. No. 152) on the Senate Appropriations Bill for the DOT (H.R. 3244, 99th Cong., 1st Sess. (1985)) directs the DOT to conduct a comprehensive and balanced review of LCV use in the West, focusing on (1) how the current system of State permits might be modified for LCV use in the West; (2) the designation of a routing system for LCVs in Western States; (3) a listing of steps that might be taken to ensure a routing system that provides maximum safety to the public; and (4) an analysis for increases in trucking productivity that have resulted from provisions of the Surface Transportation Assistance Act (STAA) of 1982 (Pub. L. 97–424, 96 Stat. 2097). Findings of the review are to be reported to the Congress no later than March 1, 1986.

Background

On June 27, 1985, the DOT transmitted to Congress a report on the LCV Study called for in Sections 138 and 415 of the STAA of 1982.[1] That study examined many aspects of LCV operations, including safety, productivity, pavement and bridge damage, highway investment needs to operate LCVs, and current State regulations and permit requirements for LCVs. Potential productivity gains from LCVs were not quantified, but the report noted they would be substantial. The safety record of current LCV operations was examined and found to be generally good. Reviews of operational tests that have been conducted by several States, however, raised questions about the stability and maneuverability of specific LCV configurations. There is considerable uncertainty about whether the good safety record of LCVs could be maintained if operations were entended to highways with higher traffic volumes than are typical or roads currently used by LCVs, or if they were allowed to operate without tight controls on equipment, drivers and permits.

In addition to potential safety and operational problems, a number of other issues were identified in the Section 138 study that would have to be resolved before any LCV network could be designated. Among those issues were (1) how local access from the network could be provided; (2) how needed highway improvements would be financed in an equitable manner; (3) how the varying operational characteristics of turnpike doubles, triples, and Rocky Mountain doubles could be considered in designating an LCV network; and (4) how State highway agencies and the Federal Government could coordinate implementation of an LCV network. Because of these and other uncertainties and because many States already provide opportunities for controlled use of LCVs, the DOT concluded that "There is no compelling reason for designation of a federally mandated LCV network at this time."[2]

Eighteen States now permit one or more of the LCV types to operate; 12 allow them on State highways and 6 others permit LCVs on toll roads, but not on other highways. There is considerable diversity among the States in the sizes, weights and types of combinations allowed, and the mileage on which LCVs may operate varies among States, ranging from less than 30 miles in one State to the entire State highway system in others. Several States consider offtracking or other vehicle characteristics in designating highways for LCVs, and in some States there are different networks for different LCV configurations.

Differences in allowable sizes and weights and in network extent would have to be reconciled before a regional network could be established that would be any more uniform or productive than the current system of individual State networks. The Western Highway Institute (WHI), an organization sponsored by the trucking industry and others in the West, developed a set of model regulations for operating LCVs under special permits on designated highways as part of a 1980 study [3] conducted for the Transportation Research Education Development (TRED) Foundation. Special rules for LCVs cover (1) types of equipment that may be used; (2) maximum lengths of vehicles to be permitted (90 feet for Rocky Mountain doubles, 98 feet for triples, and 105 feet for turnpike doubles); (3) special driver qualifications; (4) maximum speeds; (5) the required stability of LCVs; (6) maximum axle and gross vehicle weights; (7) load sequencing of trailing units; (8) operating procedures; (9) accident reporting; and (10) minimum insurance requirements. Most States have regulations covering each item included in the WHI model regulations, but there are significant differences among States on specific requirements. Perhaps the biggest area where the States differ is in the sizes, weights, and types of LCVs that are allowed to operate. Of the 11 Western States that allow LCVs on State highways, all permit Rocky Mountain doubles, 7 permit triples, and 6 permit turnpike doubles. Allowable weights range from 80,000 pounds in Colorado to 129,000 pounds in Nevada, South Dakota, and Utah. Maximum lengths for Rocky Mountain doubles range from 75 feet in Oregon and Washington to 110 feet in North Dakota, but maximum lengths for other LCVs are uniformly 105 to 110 feet.

Study Scope

The purpose of this review is to examine the use of longer combination vehicles in Western States to determine what steps might be taken to increase the uniformity, productivity, and safety of LCV operations. Shippers, trucking companies, State officials, and other interested parties will be given the opportunity to comment on all issues relevant to this study. In conducting this review, the DOT will be particularly interested in views on ways that more uniform operating provisions for LCVs could be developed in light of the quite different operating characteristics of Rocky Mountain doubles, triples, and turnpike doubles.

The short time allowed for completing the review precludes conducting any new research on the safety, productivity, or operational impacts of LCV use. The primary bases of information for this study will be materials previously provided for the Section 138 study, comments submitted to the docket established by this notice, and information obtained in discussions with industry, State officials and other interested parties. It is hoped that specific and reasonable suggestions for improving LCV operations in the West will be provided so that this study can achieve its expected goals. The experience of the FHWA since passage of the STAA of 1982 in designating the national truck network for use by tractor-semitrailer-trailers (doubles) and larger tractor-semitrailers (48-foot minimum semitrailer) has revealed a deep-seated reluctance on the part of the States to yield such an important local concern to the Federal Government. This reluctance is founded primarily in the diversity of highway conditions and usage patterns among different States. For example, the Federal-aid primary system has

[1] U.S. Dept. of Transportation, Federal Highway Administration, *The Feasibility of a Nationwide Network for Longer Combination Vehicles*, Washington, D.C., 1985.

[2] Ibid., p. S–8.

[3] Western Highway Institute, *Motor Vehicle Size and Weight Standards, Western Regional Objectives*, A Study for the TRED Foundation, San Bruno, California, 1980.

highways with lane widths as narrow as 9 feet, topographical differences of overwhelming proportions, and an array of users ranging from urban manufacturing facilities generating thousands of trips each day to rural distribution centers and agricultural areas generating very few daily trips.

Because of the differences in highway characteristics and local conditions noted above, the extent of the national truck network differs in various States. FHWA has coordinated as closely as possible with the individual States to ensure that connectivity is maintained and that major areas are provided with service. Reasonable access has been left for the States to determine since they know best the condition of local roads and bridges and work closely with local elected officials.

The same factors that have affected the designation of the national truck network have also affected the designation of routes for LCVs. Another important factor that has affected where LCVS may operate and how much they may weigh is the maximum weight limit of 80,000 pounds on Interstate highways imposed by 23 U.S.C. 127. Several States issue special permits for LCVs to operate at higher weights under the "grandfather" provisions of section 127, but before network designation or uniform permit procedures could effectively increase productivity, this 80,000 pound weight limit would have to be reevaluated and perhaps modified.

Congress specifically directed the DOT to reexamine LCV usage and to focus on:

1. *The current permit system and how it might be modified or changed for LCV use in the West.*

We invite comments on the need to develop a uniform permit system; the adequacy of the current system; and whether the current system or some modified uniform system should be made a part of the Federal law. We are particularly interested in the comments of shippers, truckers, and industries regarding difficulties they have encountered or attractive features of the current system. We are also interested in the views of the States concerning the underlying factors considered in developing the current permit system; the need for a more uniform approach; alternatives to increased Federal involvement, and local conditions which must be considered in developing a permit system for LCVs.

2. *The designation of a routing system for LCVs in those Western States where operating experience exists.*

We invite comments on the adequacy of the network of highways open to LVCs in States currently allowing those vehicles. Comments are also requested concerning whether a federally designated network should be limited to highways in those States or should include highways in other States. We also invite comments on whether a routing system should be limited to Interstate highways, or whether other highways should also be included. We invite comments on provisions of reasonable access for LCVs.

3. *A listing of those steps the Department of Transportation and Western States might take to ensure a routing system that provides maximum safety to the public.*

We invite comments from all parties on steps that could be taken to enhance the safety of any federally designated routing system, including increased enforcement, additional Federal safety regulations, or other coordinated actions to improve safety and road improvements.

4. *An analysis of whether the trucking industry has received those productivity benefits by the STAA of 1982.*

We welcome comments from shippers, trucking industry representatives, and other interested parties on specific provisions of the STAA of 1982 that are not yielding their anticipated productivity gains, and how additional gains might be realized.

Comments are also requested on the following topics:

1. What factors have led several States recently to reject proposed legislation that would have allowed various longer combinations of highways under their jurisdiction?

2. How should highway improvements needed to safely accommodate longer combinations be financed?

3. How should greater use of LCVs in the West be promoted? Would raising the 80,000 pound weight limit on Interstate highways be sufficient, or is Federal involvement also required to designate LCV routes, promote greater uniformity in LCV permit systems/regulations, etc.?

Based on information gathered during the course of this review and information collected during the section 138 study, the DOT will evaluate LCV operations in Western States and analyze steps that might be taken to improve the safety and productivity of those operations. Persons need not submit the same information to the Docket opened by this Notice as was submitted to FHWA Docket Number 83-9 (48 FR 17673, April 25, 1983) that was established for the section 138 study of LCVs. Any new information or additional comments pertaining to the review of Western LCV operations are welcome.

Meeting Procedures

1. Request procedures. Any person who is a representative of a group which has an interest in the topics for this meeting and can present the results of experience or an analysis may make a written request to make an oral presentation. Requests must be received before January 6, 1986. The person making the request should describe the topics of concern, should indicate why he or she or the group represented has an interest in the topics, should summarize the proposed oral presentation, and should provide a telephone number where he or she may be contacted. Each person selected to make an oral presentation will be notified by FHWA by telephone by January 13, 1986.

2. Conduct of meeting. The FHWA reserves the right to select the persons to be heard, to schedule their respective presentations, and to establish procedures regarding the conduct of the meeting. Time allotted for each presentation is limited to 10 minutes. Each person making a presentation should be prepared to submit his or her statements and attachments for the record and to make a summary oral presentation.

The FHWA officials will preside at the meeting and will be the only ones allowed to ask questions during the meeting.

A transcript will be made of the meeting, the entire record of the meeting including that transcript will be retained by FHWA and will be available for inspection in Room 3326 of the FHWA Headquarters at 400 Seventh Street, SW., Washington, DC.

(23 U.S.C. 315, 49 CFR 1.48(b))

Issued on: December 19, 1985.

L.P. Lamm,

Deputy Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 85-30690 Filed 12-26-85; 8:45 am]

BILLING CODE 4910-22-M

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23 CFR Part 658

[FHWA Docket No. 86-5]

Truck Size and Weight; Specialized Equipment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Public comment is requested by the Federal Highway Administration in regard to a petition to designate a particular combination of vehicles as

specialized equipment under the provisions of section 411(d) of the Surface Transportation Assistance Act of 1982 (STAA).

DATE: Comments on this docket must be received on or before February 10, 1986.

ADDRESS: Submit written comments preferably in triplicate to FHWA Docket No. 86–5, Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. J.B. Smith, Office of Motor Carrier Transportation (202–426–6282) or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426–0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: LHT Industries has filed a petition with FHWA seeking a determination that the "Maxi-Cube" should be classified as "specialized equipment" within the meaning of 411(d) of the STAA, 49 U.S.C. 2311(d). A Maxi-Cube is a combination of vehicles consisting a three axle short-cab truck so designed to accommodate a removable 24-foot 2-inch cargo box, and a 28-foot 5-inch or a 33-foot 5-inch tandem wheel semitrailer connected to the power unit frame by means of a drawbar and single pintle hook hitch device. The total length of the combination of vehicles is no more than 65 feet. (See Figure 1)

The cargo box is secured to the power unit frame at the front by hold-down clamps and near the center of the cargo box by a kingpin and fifth wheel plate. It is also secured at the rear of the truck frame by 2-inch pins. The cargo box can be raised by means of jacks at its four corners, enabling the power unit to drive out from under it. The fifth wheel connection does not function in a conventional manner. The cargo box does not swivel or turn at the fifth wheel; it is used as a clamp-on device only. The tandem wheel semi-trailer to be pulled by the power unit is so designed that when loaded a portion of the weight of the trailer and the load therein is borne by the power unit.

Several states have classified the Maxi-Cube power unit as a single unit truck, causing the combination to be subject to state length limitations for that type of vehicle combination, and resulting in severe use restrictions of the Maxi-Cube in many states. The petitioner, LHT Industries of Bala-Cynwyd, Pennsylvania, contends that the power unit of the Maxi-Cube, with the cargo box attached, constitutes a truck tractor-semitrailer. As such, the petitioner contends that the entire combination should be classified as a truck tractor-semitrailer-trailer under the STAA, and be subject to the preemptive effects of that statute.

FHWA has determined that the Maxi-Cube does not qualify as a truck tractor-semitrailer-trailer combination. This decision is based on the fact that the Maxi-Cube does not meet the statutory or regulatory definitions pertaining to truck tractor-semitrailer-trailer combinations. In particular, the STAA and FHWA's implementing regulations at 23 CFR 658.5(k) provide that a "truck tractor" is the noncargo carrying power unit that operates in combination with a semitrailer or trailer, except that a truck tractor and semitrailer engaged in the transportation of automobiles may transport motor vehicles on part of the power unit. The power unit of the Maxi-Cube carries cargo.

Also, 49 CFR 390.6 provides that the term "semitrailer" means any motor vehicle other than a "pole trailer," with or without motive power, designed to be drawn by another motor vehicle and so constructed that some part of its weight rests upon the towing vehicle. The front box on the Maxi-Cube is not designed to be drawn by another vehicle and is so designed that all of its weight, rather than part of it, rests upon the towing vehicle.

As a result of FHWA's determination that a Maxi-Cube is not a truck tractor-semitrailer-trailer combination LHT Industries has requested that the Maxi-Cube be designated as "specialized equipment" pursuant to section 411(d) of the STAA. LHT further requests that if the Maxi-Cube is designated as "specialized equipment," FHWA should also find that this combination is entitled to the preemptive effects of the STAA, i.e., be permitted to operate on the Interstate System and designated Federal-aid Primary highways subject to Federal law rather than state regulation.

Under the provisions of section 411(d) of the STAA, which provides that the Secretary is authorized to establish rules to implement the provisions of the section, and to make such determinations as are necessary to accommodate specialized equipment (including, but not limited to, automobile transporters) subject to subsections (a) and (b) of the section.

The petitioner has argued that the Maxi-Cube should be designated as "specialized equipment" because the combination offers greater cargo-carrying capacity, increased fuel efficiency, more maneuverable drive, and greater safety benefits than traditional combinations.

The FHWA is requesting public comments relative to this request by LHT Industries. FHWA is primarily seeking comments and information on the following issues relating to the Maxi-Cube: maneuvering characteristics, safety, control, offtracking, crosswind effects, and the need for overall length limits on such a configuration. FHWA would also appreciate comments on the petitioner's stated advantages to this vehicle. Finally, FHWA would appreciate comments regarding the need to preempt current state regulation of this vehicle. Any other comments and information are welcomed.

FHWA is also considering the adoption of a definition for the term "specialized equipment." Comments regarding the types of vehicles that should be considered as "specialized equipment" as well as proposals regarding an actual definition are being sought.

Those desiring to comment on this advance notice of proposed rulemaking are asked to submit their views in writing. Comments will be available for public inspection both before and after the closing date at the above address. All comments received to this advance notice will be considered before further rulemaking action is undertaken.

The FHWA has determined, at this time, that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. This determination will be reevaluated and a draft regulatory evaluation will be prepared if necessary, based upon the data received in response to this notice.

Based upon the information available to FHWA at this time, the action taken in this rulemaking will not have significant economic impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation and Federal programs and activities apply to this program.) (23 U.S.C. 315; 49 U.S.C. 2311(d); 49 CFR 1.48)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highway and roads, Motor carriers—size and weight.

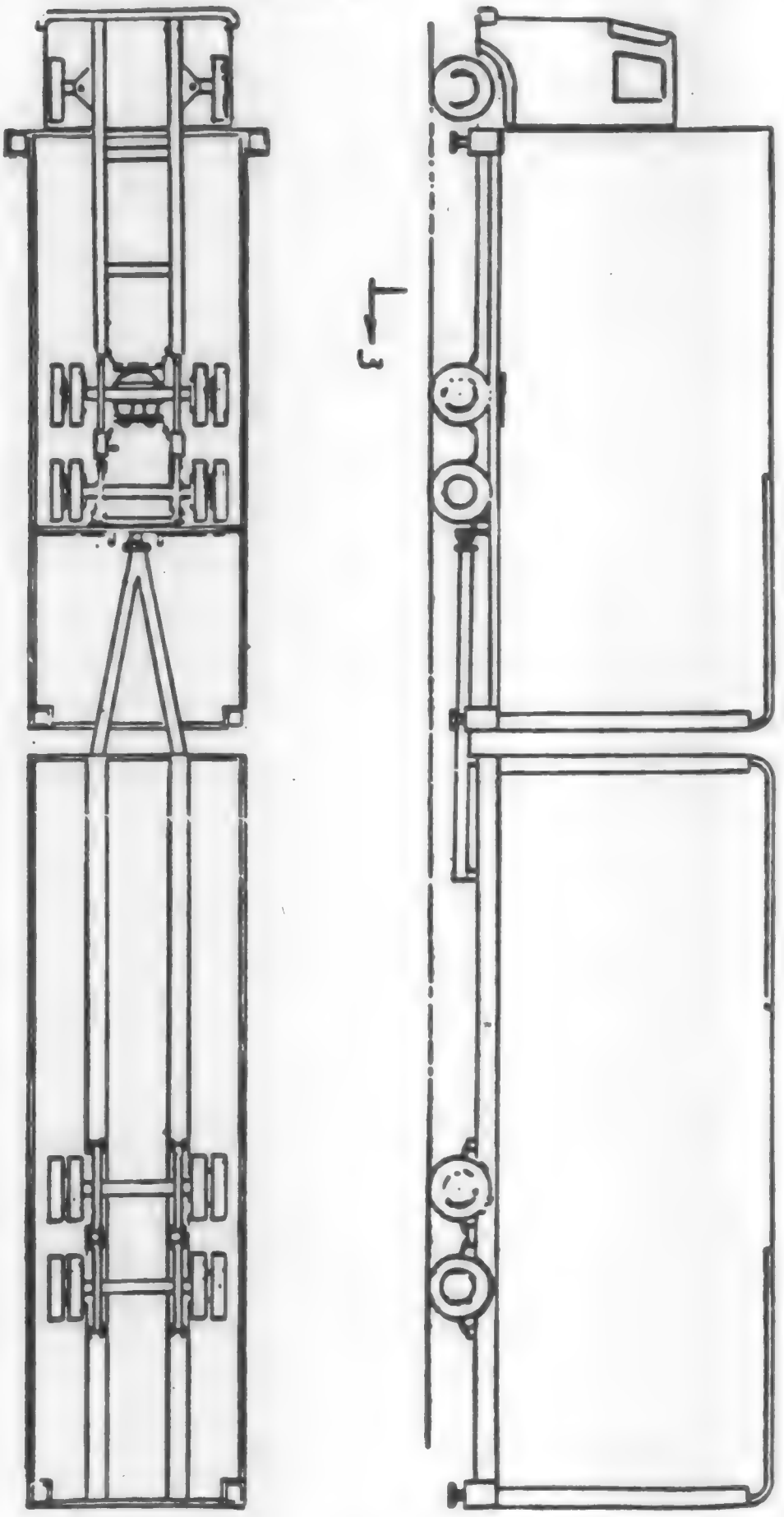
Issued on December 23, 1985.

L. P. Lamm,

Deputy Federal Highway Administrator, Federal Highway Administration.

BILLING CODE 4910-22-M

FIGURE 1



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[FR Doc. 85-30687 Filed 12-26-85; 8:45 am]
BILLING CODE 4910-22-C

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DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 20

Debt Collection Act of 1982; Salary Offset

Correction

In FR Doc. 85–29587, beginning on page 51354 in the issue of Monday, December 16, 1985, as Part V, make the following correction:

On page 51356, first column, in § 20.78(c), first line, "Credit" should have read "Creditor".

BILLING CODE 1505-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1450

Debt Collection

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule.

SUMMARY: The Federal Mediation and Conciliation Service is proposing to amend its rules by adding a new Part 1450 establishing rules for the collection of debts owed to the United States. The proposed rules reflect changes to debt collection procedures authorized by the Federal Claims Collection Act (31 U.S.C. 3701–3719) as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749). These laws have been implemented by the Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101–105), regulations issued by Office of Personnel Management (5 CFR Part 550) and the procedures prescribed by the Office of Management and Budget in Circular A–129 of May 9, 1985.

DATES: Written comments must be received by February 7, 1986.

ADDRESS: Send comments to Ted Chaskelson, Legal Services Office, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Ted Chaskelson, Legal Services Office, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427 (202 653–5305).

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (the Act) authorizes new procedures for the collection of debts owed to the United States, including (1) disclosure of information to consumer reporting agencies; (2) contracting for collection services to recover debts; (3) administrative offset; and (4) salary offset. Although these are separate procedures, any procedure may be used by itself, or in conjunction with other procedures.

Disclosure to a Consumer Reporting Agency

Section 3 of the Debt Collection Act (codified at 31 U.S.C. 3711(f) authorizes agencies to report delinquent debtors to to a consumer reporting agency. This provision applies, however, to individuals, and therefore is limited to natural persons. The Act requires that an individual be provided notice of a debt and the opportunity to review the record and enter into a written payment agreement before the Government releases information to a consumer reporting agency. Also, notice for the system of records from which information is disclosed must be published in the **Federal Register** stating that information may be provided to consumer reporting agencies. The Act also requires that the Government report any significant change in circumstances (for example payment of the debt) to the consumer reporting agency.

Contracts for Collection Services

Section 13 of the Debt Collection Act (codified at 31 U.S.C. 3718) authorizes Government agencies to enter into contracts for collection services to recover debts owed the United States. The Act requires that certain provisions be contained in any contract entered into, including:

(1) The agency retains the authority to resolve a dispute, including the authority to terminate a collection action or refer the matter to the Attorney General for civil remedies; and

(2) The contractor is subject to the Privacy Act of 1974, as it applies to private contractors, as well as subject to State and Federal laws governing debt collection practices.

Administrative Offset

The procedures authorized for administrative offset are contained in section 10 of the Debt Collection Act (codified at 31 U.S.C. 3716). As with the provision for disclosure to a consumer reporting agency, the Act requires that notice procedures be observed by the agency.

The debtor is also afforded an opportunity to inspect and copy Government records pertaining to the claim, to enter into an agreement for repayment, and to a review of the claim if requested. Agencies of the Government may cooperate with one another in order to effectuate recovery of the claim.

Salary Offset

Section 5 of the Debt Collection Act (codified at 5 U.S.C. 5514) establishes new procedures to be used when an agency collects money owed it by offsetting the salary of a Federal employee. Like administrative offset, agencies may cooperate with one another in order to recover the debt.

The new salary offset procedures permit an employee to review the determination of indebtedness before offset is implemented, and an employee against which an offset is sought is automatically entitled to a hearing on matters such as the determination of the debt, the amount of the debt, or the percentage of disposable pay to be deducted each pay period.

Executive Order 12291

This proposed rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

The FMCS finds that the proposed rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 605(b)). The FMCS has so certified to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the proposed rule does not, in itself, impose any additional requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), any reporting recordkeeping provisions that are included in this rule will be submitted for approval to the Office of Management and Budget (OMB).

List of Subjects in 29 CFR Part 20

Claims, Debts, Government Employees, Administrative practice and procedure.

Accordingly, 29 CFR is proposed to be amended by adding Part 1450 to read as follows:

PART 1450—COLLECTION OF CLAIMS OWED THE UNITED STATES

Subpart A—General Provisions

Sec.
1450.1 Definitions.
1450.2 Exceptions.
1450.3 Use of procedures.
1450.4 Conformance to law and regulations.
1450.5 Other procedures.
1450.6 Informal action.
1450.7 Return of property.
1450.8 Omissions not a defense.

Subpart B—Administrative Offset—Consumer Reporting Agencies—Contracting for Collection

1450.9 Demand for payment.
1450.10 Collection by administrative offset.
1450.11 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.
1450.12 Collection in installments.
1450.13 Exploration of compromise.
1450.14 Suspending or terminating collection action.
1450.15 Referrals to the Department of Justice or the General Accounting Office.
1450.16 Use of Consumer Reporting Agencies.
1450.17 Contracting for collection services.

Subpart C—Salary Offset

1450.18 Purpose.
1450.19 Scope.
1450.20 Definitions.
1450.21 Notification.
1450.22 Hearing.
1450.23 Deduction from pay.
1450.24 Liquidation from final check or recovery from other payment.
1450.25 Non-Waiver of rights by payments.
1450.26 Refunds.
1450.27 Interest, penalties and administrative costs.
1450.28 Recovery when paying agency is not creditor agency.

Subpart D—Interest, Penalties, and Administrative Costs

1450.29 Assessment.
1450.30 Exemptions.

Authority: 31 U.S.C. 3701; 31 U.S.C. 3711 et seq.; 5 U.S.C. 5514; 4 CFR Parts 101–105; 5 CFR Part 550.

§ 1450.1 Definitions.

(a) The term "agency" means the Federal Mediation and Conciliation Service.

(b) The term "agency head" means the Director of the Federal Mediation and Conciliation Service.

(c) The terms "appropriate agency official" or "designee" mean the Director of the Financial Management Staff of FMCS, or such other official as may be named in the future by the Director of FMCS.

(d) The terms "claim" and "debt" are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

(e) A debt is considered "delinquent" if it has not been paid by the date specified in the agency's written notification or applicable contractual agreement, unless other satisfactory payment arrangements have been made by that date, or if at any time thereafter the debtor fails to satisfy obligations under a payment agreement with the agency.

(f) The term "referral for litigation" means referral to the Department of Justice for appropriate legal proceedings.

§ 1450.2 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated or settled in accordance with regulations published under the authority of 31 U.S.C. 3726 (see 41 CFR parts 101–41).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulations (FAR) shall be determined, collected, compromised, terminated, or settled in accordane with those regulations. (See 48 CFR Part 32). If not otherwise provided for in the FAR system, contract claims that have been the subject of a contracting officer's final decision in accordance with section 6(a) of the Contract Disputes Act of 1978 (41 U.S.C. 605)(a)), may be determined, collected, compromised, terminated or settled under the provisions of this regulation, except that no additional review of the debt shall be granted beyond that provided by the contracting officer in accordance with the provisions of section 6 of the Contract Disputes Act of 1978 (41 USC 605), and the amount of any interest, administrative charge, or penalty charge shall be subject to the limitations, if any, contained in the contract out of which the claim arose.

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice (DOJ) as only the DOJ has authority to compromise, suspend, or terminate collection action on such claims.

(d) Tax claims are also excluded from the coverage of this regulation.

§ 1450.3 Use of Procedures.

Procedures authorized by this regulation (including, but not limited to, disclosure to a consumer reporting agency, contracting for collection services, administrative offset and salary offset) may be used singly or in combination, so long as the requirements of applicable law and regulation are satisfied.

§ 1450.4 Conformance to law and regulations.

The requirements of applicable law (31 U.S.C. 3701–3719 as amended by Pub. L. 97–365, 96 Stat. 1749) have been implemented in Governmentwide standards: (a) The Regulations of the Office of Personnel Management (5 CFR Part 550), (b) The Federal Claims Collection Standards issued jointly by the General Accounting Office and the Department of Justice (4 CFR Parts 101–105), and (c) the procedures prescribed by the Office of Management and Budget in Circular A–129 of May 9, 1985. Not every item in the above described standards has been incorporated or referenced in this regulation. To the extent, however, that circumstances arise which are not covered by the terms stated in this regulation, FMCS will proceed in any actions taken in accordance with applicable requirements found in the sources referred to in paragraphs (a) (b) and (c) of this section.

§ 1450.5 Other procedures

Nothing contained in this regulation is intended to require FMCS to duplicate administrative proceedings required by contract or other laws or regulations.

§ 1450.6 Informal action.

Nothing contained in this regulation in intended to preclude utilization of informal administrative actions or remedies which may be available.

§ 1450.7 Return of property.

Nothing contained in this regulation is intended to deter FMCS from demanding the return of specific property or from demanding, the return of the property or the payment of its value.

§ 1450.8 Omissions not a defense.

The failure of FMCS to comply with any provision in this regulation shall not serve as a defense to the debt.

Subpart B—Administrative Offset—Consumer Reporting Agencies—Contracting for Collection

§ 1450.9 Demand for payment.

Prior to making an administrative offset, demand for payment will be made as stated below:

(a) Written demands shall be made promptly upon a debtor in terms which inform the debtor of the consequences of failue to cooperate. A total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of demand letters, FMCS will give due regard to the neeed to act promptly so that, as a general rule, if necessary to refer the debt to the Department of Justice for litigation, such referral can be made within one year of the agency's final determination of the fact and the amount of the debt. When necessary to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand may be preceded by other appropriate actions under this chapter, including immediate prefereral for litigation.

(b) The initial demand letter will inform the debtor of: (1) The basis for the indebtedness and the right of the debtor to request review within the agency; (2) the applicable standards for assessing interest, penalties, and administrative costs (Subpart D of this regulation) and (3) the date by which payment is to be made, which normally should be not more than 30 days from the date that the initial demand letter was mailed or hand-delivered. FMCS will exercise care to insure that demand letters are mailed or hand-delivered on the dame day that they are actually dated. Apart from this, there is no prescribed format for the demand letters.

(c) As appropriate to the circumstances, FMCS may include either in the initial demand letter or in subsequent letters, matters relating to alternative methods of payment, policies with respect to use of consumer reporting agencies and collection services, the agency's intentions with respect to referral of the debt to the Department of Justice for litigation, and, depending on applicable statutory authority, the debtor's entitlement to consideration of waiver.

(d) FMCS will respond promptly to communications from the debtor, within 30 days whenever feasible, and will advise debtors who dispute the debt that they must furnish available evidence to support their contentions.

(e) If, either prior to the initiatiion of, at any time during, or after completion of the demand cycle, FMCS determines to pursue administrative offset, then the procedures specified in §§ 1450.10 and 1450.11, as applicable, will be followed. The availability of funds for offset and the agency determination to purse it release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section. If the agency has not already sent the first demand letter, the agency's written notification of its intent to offset must give the debtor the opportunity to make voluntary payment, a requirement which will be satisfied by compliance with the notice requirements of §§ 1450.10 and 1450.11 as applicable.

§ 1450.10 Collection by administrative offset.

(a) Collection by administrative offset will be undertaken in accordance with these regulations on all claims which are liquidated or certain in amount, in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(1) For purposes of this section, the term "administrative offset" has the meaning provided in 31 U.S.C. 3716(a)(1).

(2) Whether collection by administrative offset is feasible is a determination to be made by the agency on a case-by-case basis, in the exercise of sound discretion. FMCS will consider not only whether administrative offset can be accomplished practically, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, FMCS may give due consideration to the debtor's financial condition, and is not required to use offset in every instance in which there is an available source of funds. FMCS may also consider whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, offset will normally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement.

(b) Before the offset is made, a debtor shall be provided with the following: written notice of the nature and amount of the debt, and the agency's intention to collect by offset; opportunity to inspect and copy agency records pertaining to the debt; opportunity to obtain review within the agency of the determination of indebtedness; and opportunity to enter into a written agreement with the agency to repay the debt. FMCS may also make requests for offset to other agencies holding funds payable to the debtor, and process requests for offset that are received from other agencies.

(1) FMCS will exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination will weigh the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, FMCS will normally accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(2) In cases where the procedural requirements specified in paragraph (b) of this section have previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit allowance, the agency is not required to duplicate those requirements before taking administrative offset.

(3) FMCS may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. When the debt first accrued is to be determined according to existing law regarding the accrual of debts, such as under 28 U.S.C. 2415.

(4) FMCS is not authorized by 31 U.S.C. 3716 to use administrative offset with respect to: (i) Debts owed by any State or local Government; (ii) debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or (iii) any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(5) FMCS may effect administrative offset against a payment to be made to a debtor prior to completion of the

procedures required by paragraph (b) of this section if: (i) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, and (ii) the time before the payment is to be made does not reasonably permit the completion of these procedures. Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(6) FMCS will obtain credit reports on delinquent accounts to identify opportunities for administrative offset of amounts due to a delinquent debtor when other collection techniques have been unsuccessful.

(c) Type of hearing or review: (1) For purposes of this section, whenever FMCS is required to provide a hearing or review within the agency, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when: (i) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or (ii) the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the FMCS will carefully document all significant matters discussed at the hearing.

(2) This section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity.

(3) In those cases where an oral hearing is not required by this section, the agency will make its determination on the request for waiver or reconsideration based upon a "paper hearing" that is, a review of the written record.

(d) Appropriate use will be made of the cooperative efforts of other agencies in effecting collection by administrative offset. Generally, FMCS will not refuse to comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States, unless the requesting agency has not complied with the applicable provisions of these standards or the offset would be otherwise contrary to law.

(e) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

(f) Whenever the creditor agency is not the agency which is responsible for making the payment against which administrative offset is sought, the latter agency shall not initiate the requested offset until it has been provided by the creditor agency with an appropriate written certification that the debtor owes a debt (including the amount) and that full compliance with the provisions of this section have taken place.

(g) When collecting multiple debts by administrative offset, FMCS will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1450.11 Administrative Offset Against Amounts Payable from Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, FMCS may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment, or a minimal number of payments, debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, FMCS shall include written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The FMCS has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The FMCS has complied with the requirements of § 1450.10 of this part, including any required hearing or review.

(c) Once FMCS decides to request administrative offset under paragraph (a) of this section, it will make the request as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor requests or become eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory payment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If FMCS collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, FMCS shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

(e) This section does not require or authorize the Office of Personnel Management to review the merits of the FMCS determination with respect to the amount and validity of the debt, its determination as to waiver under an applicable statute, or its determination to provide or not provide an oral hearing.

§ 1450.12 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs as required by this regulation should be collected in full in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment may be accepted in regular installments. FMCS will obtain financial statements from debtors who represent that they are unable to pay the debt in one lump sum. If FMCS agrees to accept payment in regular installments it will obtain a legally enforceable written agreement from the debt which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relation to the size of the debtor and debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than 3 years. Installment payments of less than $50 per month will be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, FMCS will apply payments to various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 1450.13 Exploration of Compromise.

FMCS may attempt to effect compromise, preferably during the course of personal interviews, in accordance with the standards set forth in Part 103 of the Federal Claims Collection Standards (4 CFR Part 103).

§ 1450.14 Suspending or Terminating Collection Action.

The suspension or termination of collection action shall be made in accordance with the standards set forth in Part 104 of the Federal Claims Collection Standards (4 CFR Part 104).

§ 1450.15 Referrals to the Department of Justice or the General Accounting Office.

Referrals to the Department of Justice or the General Accounting Office shall be made in accordance with the standards set forth in Part 105 of the Federal Claims Collection Standards (4 CFR Part 105).

§ 1450.16 Use of Consumer Reporting Agencies.

(a) The term "individual" means a natural person, and the term "consumer reporting agency" has the meaning provided in the Federal Claims Collection Act, as amended, at 31 U.S.C. 3701(a)(3).

(b) FMCS may disclose to a consumer reporting agency, from a system of records, information that an individual is responsible for a claim if—

(i) Notice required by section 5 U.S.C. 552(a)(e)(4) indicates that information in the system may be disclosed to a consumer reporting agency;

(ii) The claim has been reviewed and it is decided that the claim is valid and overdue;

(iii) FMCS has notified the individual in writing—

(A) That payment of the claim is overdue;

(B) That, within not less than 60 days after sending the notice, FMCS intends to disclose to a consumer reporting agency that the individual is responsible for that claim;

(C) Of the specific information to be disclosed to the consumer reporting agency; and

(D) Of the rights the individual has to a complete explanation of the claim, to dispute information in the records of the agency about the claim, and to administrative appeal or review of the claim; and

(iv) The individual has not—

(A) Repaid or agreed to repay the claim under written repayment plan that the individual has signed and the agency has agreed to; or

(B) Filed for review of the claim under paragraph (g) of this section;

(C) FMCS will also—

(i) Disclose promptly, to each consumer reporting agency to which the original disclosure was made, a substantial change in the condition or amount of the claim;

(ii) Verify or correct promptly information about the claim, on request of a consumer reporting agency for verification of information disclosed; and

(iii) Get satisfactory assurances from each consumer reporting agency that they are complying with all laws of the United States related to providing consumer credit information; and assure that

(d) The information disclosed to the consumer reporting is limited to—

(i) Information necessary to establish the identity of the individual, including name, address, and taxpayer identification number;

(ii) the amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose.

(e) All accounts in excess of $100 that have been delinquent more than 31 days will normally be referred to a consumer reporting agency.

(f) Before disclosing information to a consumer reporting agency FMCS shall take reasonable action to locate an individual for whom the head of the agency does not have a current address to send the notice.

(g) Before disclosing information to a consumer reporting agency, the FMCS shall provide, on request of an individual alleged by the agency to be responsible for the claim, for a review of the obligation of the individual, including an opportunity for reconsideration of the initial decision on the claim.

(h) Under the same provisions as described above, FMCS may disclose to a credit reporting agency, information relating to a debtor other than a natural person. Such commercial debt accounts are not covered by the Privacy Act.

§ 1450.17 Contracting for Collection Services.

(a) FMCS has authority to contract for collection services to recover delinquent debts, provided that the following conditions are satisfied:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation is retained by the agency;

(2) The contractor shall be subject to the Privacy Act of 1974, as amended to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor must be required to account strictly for all amounts collected;

(4) The Contractor must agree that uncollectible accounts shall be returned with appropriate documentation to enable FMCS to determine whether to pursue collection through litigation or to terminate collection efforts, and

(5) The contractor must agree to provide any data contained in its files relating to paragraphs (a)(1), (2), and (3) of § 105.2 of the Federal Claims Collection Standards (4 CFR Part 105) upon returning an account to FMCS for subsequent referral to the Department of Justice for litigation.

(b) Funding of collection service contracts:

(1) FMCS may fund a collection service contract on a fixed-fee basis, that is, payment of a fixed fee determined without regard to the amount actually collected under the contract. Payment of the fee under this type of contract must be charged to available agency appropriations.

(2) FMCS may also fund a collection service contract on a contingent-fee basis, that is, by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract. The fee should be based on a percentage of the amount collected, consistent with prevailing commercial practice.

(3) FMCS may enter into a contract under paragraph (b)(1) of this section only if and to the extent provided in advance appropriation acts or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute.

(4) Except as authorized under paragraph (b)(2) of this section, or unless the receipt qualifies as a refund to the appropriation, or unless otherwise specifically provided by law, FMCS must deposit all amounts recovered

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under collection service contracts (or by agency employees on behalf of the agency) in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

(c) FMCS will consider the use of collection agencies at any time after the account is 61 days past due. In all cases, accounts that are six months or more past due shall be turned over to a collection agency unless referred for litigation or unless arrangements have been made for a workout procedure, or the agency has exercised its authority to write off the debt pursuant to § 1450.14.

(d) FMCS will generally not use a collection agency to collect a delinquent debt owed by a currently employed or retired Federal employee, if collection by salary or annuity offset is available.

Subject C—Salary Offset

§ 1450.18 Purpose.

This subpart provides the standards to be followed by FMCS in implementing 5 U.S.C. 5514 to recover a debt from the pay account of an FMCS employee, and establishes procedural guidelines to recover debts when the employee's creditor and paying agencies are not the same.

§ 1450.19 Scope.

(a) *Coverage.* This subpart applies to Executive Agencies and employees as defined by § 1450.20.

(b) *Applicability.* This subpart and 5 U.S.C. 5514 apply in recovering certain debts by offset, except where the employee consents to the recovery, from the current pay account of that employee. Because it is an administrative offset, debt collection procedures for salary offset which are not specified in U.S.C. 5514 and these regulations should be consistent with the provisions of the Federal Claims Collection Standards (4 CFR Parts 101–105).

(1) Excluded debts or claims. The procedures contained in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 et seq.), the Social Security Act (42 U.S.C. 301 et seq.) or the tariff laws of the United States, or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Waiver requests and claims to the General Accounting Office. This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with procedures prescribed by the General Accounting Office. Similarly, in the case of other types of debts, it does not preclude an employee from requesting waiver, if waiver is available under any statutory provision pertaining to the particular debt being collected.

§ 1450.20 Definitions.

For purposes of this subpart—

"Agency" means the Federal Mediation and Conciliation Service (FMCS).

"Creditor agency" means the agency to which the debt is owed.

"Debt" means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines and forfeitures (except those arising under the Uniform Code Military Justice), and all other similar sources.

"Disposable pay" means that part of current basic pay, special pay, incentive pay retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 (b) through (f) to determine disposable pay subject to salary offset.

"Employee" means a current employee of FMCS or of another Executive Agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

"Executive Agency" means an agency as defined by section 105 of title 5 of the U.S. Code, the U.S. Postal Service, the U.S. Postal Rate Commission, and a Military Department as defined by section 102 of 5 U.S. Code.

"FCCS" means the Federal Claims Collection Standards jointly published by the Justice Department and the General Accounting Office at 4 CFR Parts 101–105.

"Paying agency" means the agency employing the individual and authorizing the payment of his or her current pay.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

"Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 1450.21 Notification.

(a) Salary offset deductions shall not be made unless the Director of the Financial Management Staff of FMCS, or such other official as may be named in the future by the Director of FMCS, provides to the employee—at least 30 days before any deduction—a written notice stating at a minimum:

(1) The agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The agency's intention to collect the debt by means of deduction from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) An explanation of the agency's policy concerning interest, penalties, and administrative costs (Subpart D of this regulation), a statement that such assessments must be made unless excused in accordance with the FCCS;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, the opportunity (under terms agreeable to the agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Director of the Financial Management Staff of FMCS, and documented in agency files (4 CFR 102.2(e)).

(7) The employee's right to a hearing conducted by an official arranged by the agency (an administrative law judge, or alternatively, a hearing official not under the control of the head of the agency) if a petition is filed as prescribed by FMCS under this Subpart.

(8) The method and time period for petitioning for a hearing;

(9) That the timely filing petition for hearing will stay the commencement of collection proceedings;

(10) That a final decision on the hearing (if one if requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petiton requesting the hearing unless

the employee requests and the hearing official grants a delay in the proceedings;

(11) That any knowingly false, misleading, or frivolous statements, representations, or evidence may subject the employee to:

(A) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, Part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(B) Penalties under the False Claims Act sections 3729–3731 of title 31, Untied States Code, or any other applicable statutory authority; or

(C) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United State Code or any other applicable statutory authority.

(12) Any other right and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

(b) Notifications under this section shall be hand delivered with a record made of the date of delivery, or shall be mailed by certified mail return receipt requested.

(c) No notification hearing, written responses or final decisions under this regulation are required of FMCS for any adjustment to pay arising out of an employee's election of coverage under a Federal benefit program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 1450.22 Hearing.

(a) Petition for Hearing.

(1) A hearing may be requested by filing a written petition with the Director Financial Management Staff of FMCS, or such other official as may be named in the future by the Director of FMCS, stating why the employee believes the determination of the agency concerning the existence or the amount of the debt is error.

(2) The employee's petition must be signed by the employee and fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.

(3) The petition must be filed no later than fifteen (15) calendar days from the date that the notification was hand delivered or the date of delivery by certified mail, return receipt requested.

(4) If a petiton is received after the fifteen (15) calendar day deadline referred to above, FMCS will nevertheless accept the petition if the employee can show that the delay was because of circumstances beyond his or her control, or because of failure to receive notice of the time limit (unless otherwise aware of it).

(5) If a petition is not filed within the time limit specified in paragraph (3) above, and is not accepted pursuant to paragraph (4) above, the employee's right to hearing will be considered waived, and salary offset will be implemented by FMCS.

(b) Type of Hearing. (1) The form and content of the hearing will be determined by the hearing official who shall be a person outside the control or authority of FMCS. In determining the type of hearing, the hearing officer wil consider the nature and complexity of the transaction giving rise to the debt. The hearing may be conducted as an informal conference or interview, in which the agency and employee will be given a full opportunity to present their respective positions, or as a more formal proceeding involving the presentation of evidence, arguments and written submissions.

(2) The employee may represent himself or herself, or may be represented by an attorney.

(3) The hearing official shall maintain a summary record of the hearing.

(4) The decision of the hearing officer will be in writing, and will state:

(i) The facts purported to evidence the nature and origin of the alleged debt;

(ii) The hearing official's analysis, findings, and conclusions, in the light of the hearing, as to—

(A) The employee's and/or agency's grounds,

(B) The amount and validity of the alleged debt and,

(C) The repayment schedule, if applicable.

(5) The decision of the hearing official shall constitute the final administrative decision of the agency.

§ 1450.23 Deduction from pay.

(a) Deduction by salary offset, from an employee's current disposable pay, shall be subject to the following conditions:

(i) Ordinarily, debts to the United States should be collected in full, in one lump-sum. This will be done when funds are available. However, if funds are unavailable for payment in one lump sum, or if the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection will normally be made in installments.

(ii) The installments shall not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount.

(iii) Deduction will generally commence with the next full pay interval (ordinarily the next biweekly pay period) following written consent by the employee to salary offset, waiver of hearing, or the decision issued by the hearing officer.

(iv) Installment deductions must be made over a period not greater than the anticipated period of employment except as provided in 1450.24.

§ 1450.24 Liquidation from final check or recovery from other payment.

(a) If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset of the entire remaining balance on the debt may be made from a final payment of any nature, including but not limited to, final salary payment or lump-sum leave due to the employee as of the date of separation, to such extent as is necessary to liquidate the debt.

(b) If the debt cannot be liquidated by offset from a final payment, offset may be made from later payments of any kind due from the United States, including, but not limited to, the Civil Service Retirement and Disability Fund, pursuant to § 1450.11 of this regulation.

§ 1450.25 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless statutory or contractual provisions provide to the contrary.

§ 1450.26 Refunds.

(a) Refunds shall promptly be made when—

(1) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(2) The employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay.

(b) Refunds do not bear interest unless required or permitted by law or contract.

§ 1450.27 Interest, penalties, and administrative costs.

The assessment of interest, penalties and administrative costs shall be in

accordance with Subpart D of this regulation.

§ 1450.28 Recovery when paying agency is not creditor agency.

(a) Format of the request for recovery.

(1) Upon completion of the procedures stablished by the creditor agency under 5 U.S.C. 5514, the creditor agency shall complete and certify the appropriate debt claim form as specified by OPM.

(2) The creditor agency shall certify in writing, that the employee owes the debt, the amout and basis of the debt, the date on which payment is due, the date the Government's right to collect the debt first accrued, and that the creditor agency's regulations implementing section 5514 have been approved by OPM.

(3) If the collection must be made in installments, the creditor agency shall also advise the paying agency of the number of installments to be collected, the amount of each installment, and the commencing date of the first installment, if a date other than the next officially established pay period is required. Ordinarily, hearings may consist of informal conferences before a hearing official in which the employee and creditor agency will be given full opportunity to present evidence, witnesses, and argument. The employee may represent him or herself or be represented by an individual of his or her choice. The creditor agency shall provide for maintaining a summary record of the hearings provided under this subpart.

(4) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim form, the creditor agency shall also indicate the action(s) taken under section 5514 and give the date(s) the action(s) were taken.

(b) *Submitting the Request for recovery*—(1) *Current employees.* The creditor agency shall submit the appropriate debt claim form, agreement, or other instruction on the payment schedule, to the employee's paying agency.

(2) *Employees who are separating or have separated.*—(i) *Employees who are in the process of separating.* If the employee is in the process of separating, the creditor agency shall submit its debt claim to the employee's paying agency for collection as provided in section 1450.24. The paying agency shall certify the total amount of its collection and notify the creditor agency and the employee as provided in paragraph (iii) of this section. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it should send a copy of the debt claim and certification to the agency responsible for making such payments as notice that a debt is outstanding. However, the creditor agency must submit a properly certified claim to the agency responsible for making such payments before collection can be made.

(ii) *Employees who have already separated.* If the employee is already separated and all payments due from his or her former paying agency have been paid, the creditor agency may request, unless otherwise prohibited, that monies which are due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR 831.1801 et seq.) or other similar funds, be administratively offset in order to collect the debt (31 U.S.C. 3716 and the FCCS).

(iii) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the employee's paying agency, he or she transfers to a position served by a different paying agency before the debt is collected in full, the paying agency from which the employee separates shall certify the total amount of the collection made on the debt. One copy of the certification shall be furnished to the employee, another to the creditor agency along with notice of the employee's transfer. The original of the debt claim from shall be inserted in the employee's official personnel folder along with a copy of the certification of the amount which has been collected. Upon receiving the official personnel folder, the new paying agency shall resume collection from the employee's current pay account and notify the employee and the creditor agency of the resumption. It will not be necessary for the creditor agency to repeat the due process procedures described by 5 U.S.C. 5514 and this subpart in order to resume the collection. However, it will be the responsibility of the creditor agency to review the debt upon receiving the former pay agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(c) Processing the debt claim upon receipt by the paying agency—

(1) *Incomplete claims.* If the paying agency receives an improperly completed debt claim from, it shall return the request with a notice that procedures under 5 U.S.C. 5514 and this subpart must be provided and a properly ccompleted debt claim form received before action will be taken to collect from the employee's current pay account.

(2) *Complete claim.* If the paying agency receives a properly completed debt claim form, deductions should be scheduled to begin prospectively at the next officially established pay interval. A copy of the debt claim form shall be given to the debtor, along with notice of the date deductions will commence if different from that stated on the debt claim form.

(3) The paying agency is not required or authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt as stated in the debt claim form.

Subpart D—Interest, Penalties, and Administrative Costs

§ 1450.29 Assessment.

(a) Except as provided in paragraph (h) of this section, or § 1450.30, FMCS shall assess interest, penalties and administrative costs on debts owed to the United States pursuant to 31 U.S.C. 3717. Before assessing these charges, FMCS will mail or hand-deliver a written notice to the debtor. This notice shall include a statement of the agency's requirements concerning these charges. (Sections 1450.9 and 1450.21).

(b) Interest shall accrue from the date on which notice of the debt and the interest requirements is first mailed or hand-delivered to the debtor, using the most current address that is available to the agency. If FMCS should use an "advance billing" procedure—that is, if it mails a bill before the debt is actually owed—it can include the required interest notification in the advance billing, but interest may not start to accrue before the debt is actually owed. FMCS will exercise care to insure that the notices required by this section are dated and mailed or hand-delivered on the same day.

(c) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (i.e., the Treasury Tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the **Federal Register** and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717. FMCS may assess a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the interests of the United States. The rate of interest, as initially assessed, shall remain fixed for the duration of the indebtedness except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, FMCS may set a

new interest rate which reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest will not be assessed on interest, penalties, or administrative costs required by this section. However, if the debtor defaults on a previous repayment agreement, charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(d) FMCS shall assess against a debtor charges to cover administrative costs incurred as a result of a delinquent debt—that is, the additional costs incurred in processing and handling the debt because it became delinqent. Calculation of administrative costs shall be based upon actual costs incurred or upon cost analyses establishing an average of actual additional costs incurred by the agency in processing and handling claims against other debtors in similar stages of delinquency. Administrative costs may include costs incurred in obtaining a credit report or in using a private debt collector, to the extent they are attributable to delinquency.

(e) FMCS shall assess a penalty charge, not to exceed 6 percent a year, on any portion of a debt that is delinquent for more than 90 days. This charge need not be calculated until the 91st day of delinquency, but shall accrue from the date that the debt became delinquent.

(f) When a debt is paid in partial or installment payments, amounts received by the agency shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal.

(g) FMCS will waive the collection of interest on the debt or any portion of the debt which is paid within 30 days after the date on which interest began to accrue. FMCS may extend this 30-day period, on a case-by-case basis, if it reasonably determines that such action is appropriate. Also, FMCS may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section under the criteria specified in Part 103 of the Federal Claims Collection Standards (4 CFR Part 103) relating to the compromise of claims (without regard to the amount of the debt), or if the agency determines that collection of these charges would be against equity and good conscience, or not in the best interests of the United States. Waiver under the first sentence of this paragraph (g) is mandatory. Under the second and third sentences, it may be exercised under the following circumstances:

(1) Waiver of interest pending consideration of a request for reconsideration, administrative review, or waiver of the underlying debt under a permissive statute, and

(2) Waiver of interest where FMCS has accepted an installment plan under § 1450.12, there is no indication of fault or lack of good faith on the part the of debtor, and the amount of interest is large enough in relation to the size of the installments that the debtor can reasonably afford to pay, that the debt will never be repaid.

(h) Where a mandatory waiver or review satute applies, interest and related charges may not be assessed for those periods during which collection action must be suspended under section 104.2(c)(1) of the Federal Claims Collection Standards (4 CFR Part 104).

§ 1450.30 Exemptions.

(a) The provisions of 31 U.S.C. 3717 do not apply: (i) To debts owed by any State or local government; (ii) to debts arising under contracts which were executed prior to, and were in effect on (i.e., were not completed as of), October 25, 1982; (iii) to debts where an applicable statute, regulation required by statute, loan agreement, or contract either prohibits such charges or explicitly fixes the charges that apply to the debts arising under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States.

(b) However, FMCS is authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

Dated: December 19, 1985.

Duane M. Buckmaster,

Deputy Director.

[FR Doc. 85-30373 Filed 12-26-85; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-041]

Occupational Exposure to 1,3-Butadiene

AGENCY: Occupational Safety and Health Administration [OSHA]; Labor.

ACTION: Request for comments.

SUMMARY: On October 10, 1985, the Environmental Protection Agency (EPA), acting under section 9(a) of the Toxic Substances Control Act (TSCA), referred 1,3-butadiene to OSHA for consideration and possible regulatory action (50 FR 41393). This notice summarizes information contained in EPA's report and invites interested parties to submit comments regarding EPA's report and actions required by OSHA, including OSHA's response to EPA, which must be made by April 8, 1986.

DATE: Comments in response to this Notice should be submitted by January 27, 1986.

ADDRESS: Comments should be submitted in quadruplicate to the Docket Officer, Occupational Safety and Health Administration, Docket No. H-041, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue, NW.; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3637, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

I. Background

The chemical 1,3-Butadiene (BD; Chemical Abstracts Service (CAS) Registry Number 106-99-0) is a colorless, noncorrosive, flammable gas at ordinary temperature and pressure with a mild aromatic odor. It is highly reactive, dimerizes to 4-vinylcyclohexene, and polymerizes easily. Because of its low odor threshold, flammability, and explosiveness, BD has been handled with extreme care in industry.

BD is a major commodity product of the petrochemical industry. Total U.S. consumption of BD in 1981 was 3.5 billion pounds. About 70% is used in the production of styrene-butadiene rubber and polybutadiene rubber for the tire industry. Other uses include copolymer latexes for carpet backing and paper coating, as well as resins and polymers for pipes and automobile and appliance parts. It is also used as an intermediate in the production of such chemicals as fungicides.

The present OSHA standard for BD requires employers to assure that employee exposure does not exceed 1,000 parts per million parts of air (ppm) determined as an 8-hour time-weighted average (TWA) (29 CFR 1910.1000, Table Z-1). This standard was adopted by OSHA in 1971 pursuant to section 6(a) of the OSH Act, 29 U.S.C. 655. The source of this standard was the threshold limit

value (TLV) for BD developed in 1968 by the American Conference of Governmental Industrial Hygienists (ACGIH).

New Health data suggest that the current OSHA standard may not adequately protect workers. Specifically, two animal studies on the effects of BD, completed in 1983, demonstrate that BD causes cancer in rodents (Exs. 2–32; 2–33). The six available epidemiological studies on workers in synthetic rubber plants do not establish a link between BD and human carcinogenicity, but neither do they show the absence of such a link. Based on the strength of the animal studies, ACGIH in 1983 classified BD as an animal carcinogen and, in 1984 it recommended a TLV of 10 ppm. Additionally, on the same basis, the National Institute for Occupational Safety and Health (NIOSH) published, on February 9, 1984, a Current Intelligence Bulletin recommending that BD be regarded as a potential occupational carcinogen, teratogen and reproductive hazard.

Both OSHA and EPA published notices on January 5, 1984, indicating they were joining together to request information on BD (49 FR 844, 49 FR 845). Comments were to be submitted by March 5, 1984.

Petitions for an Emergency Termporary Standard (ETS) of 1 ppm or less for workers' exposure to BD were submitted to OSHA on January 23, 1984, by the United Rubber, Cork, Linoleum and Plastic Workers of America (URW), the Oil, Chemical and Atomic Workers (OCAW), the International Chemical Workers Union (ICWU), and American Federation of Labor and Congress of Industrial Organizations (AFL–CIO). OSHA denied the petitions, on the ground that the Agency was still in the process of evaluating the health data on BD to determine whether regulatory action would be appropriate.

On April 4, 1984, OSHA extended the comment period until further notice. OSHA has received a total of 23 comments from interested parties including one labor union, seven trade associations, seven companies, and three federal agencies. The information primarily concerned the toxicological and epidemiological studies, occupational exposure populations and their exposure level, and control technologies. A number of commenters noted that the occupational exposure to BD should be regulated by OSHA under the authority of OSH Act. The docket is still open for receiving additional information.

On May 15, 1984, EPA announced an Advance Notice or Proposed Rulemaking (ANPR) for BD (49 FR 20524). EPA received information in response to the ANPR and developed risk assessments. Subsequently, EPA published, on October 10, 1985, a notice entitled 1,3-Butadiene; Decision to Report to OSHA (50 FR 41392). In it, EPA identified BD as a probable human carcinogen (Group B2). In addition, EPA made two findings. EPA found that current exposure during the manufacture of BD and its processing into polymers present an unreasonable risk fo injury to human health. Secondly, EPA further determined that the risks asssociated with exposure to BD may be reduced to a sufficient extent by action taken under the OSH Act. When these findings are made, EPA is required under Section 9(a) of TSCA, to give OSHA an opportunity to regulate. Therefore, EPA has referred BD to OSHA and requested a response within 180 days, by April 8, 1986.

II. Summary of Findings by EPA

A. The Effects of the Chemical Substance on Health

In conducting the risk assessment of this suspected carcinogen, EPA evaluated the evidence of carcinogenicity of BD in accord with its proposed guidelines (49 FR 46294). EPA concluded that the overall weight of currently available evidence indicated that BD is a probable human carcinogen [Group B2] base on sufficient evidence in long-term animal studies, including metabolism and short-term tests (Ex. 17–21). The epidemiological studies were judged inadequate to assess cancer mortality in the exposed population.

B. Human Exposure and Cancer Risk Assessment

Data complied from various source indicate there are 480 to 740 workers in monomer production plants and 4,800 to 7,500 workers in polymerization plants exposed to BD. Typical workday exposures ranged from less than 1 ppm to levels as high as 500 to 1,000 ppm in a few instances. Based on this information, EPA determined a range of hypothetical exposure profiles for the various job categories. These exposure profiles were employed using two different methods in the preparation of the quantitative risk assessment.

In the first method, the evidence of carcinogencity in animals provided the basis for the quantitative assessment of risks to workers exposed to BD. When the EPA's risk assessment methodology was applied to the hypothetical exposure profile developed for each of the job categories identified in monomer production and polymerization plants, the resulting upper limit risk estimates varied within each job category. For some job categories, the estimated individual risk ranged from 1 lifetime excess cancer incidence in 1,000 workers to 1 incidence in 1 worker. For some other job categories, the range of the estimated risk was from 1 cancer incidence in 10,000 workers to 1 in 10. The magnitude of the estimated risk depended on the range of BD airborne levels to which the individual worker was exposed.

The second method for expressing the cancer risk from BD in monomer and ploymer production plants involved calculating the extra lifetime cancer incidences in a work populations (i.e., population at risk) in these two industry segments. For the total population of 480 to 740 workers in the monomer production plants, EPA calculated the estimated number of lifetime cancer cases caused by 40 years of exposure to BD to range from 22 to 80 (Ex. 17–5). These numbers reflect the range in the number of workers and the range of individual risk depending on exposure levels. In the polymerization plants the number of extra lifetime cancer cases was estimated to be in the range of 148 to 838 for a total population of 4,800 to 7,500 workers.

It should be emphasized that the extra lifetime individual risk estimates upon which the EPA's calculations are based represent upper-limit risks . Although these estimates are considerd to be plausible upper bounds, indicating the upper end of the range of cancer risks that might be expected for the workers, the actual risks may be lower.

C. The Benefits of 1,3-Butadiene

EPA estimates that the current volume of 1,3-Butadiene production in the U.S. is approximately 3 billion pounds per year, with an industry capacity of about 4 billion pounds. Over 95 percent of all domestic BD consumption is used in manufacturing the following polymers: styrene-butadiene (SBR) elastomers and latexes; polybutadiene elastomers; polychloroprene; nylon fibers and resins; acrylonitrile-butadiene-styrene (ABS) resins; acrylonitrile-butadiene (nitrile) rubbers; and ethylene-propylene-diene modification (EPDM) elastomers.

BD is employed in a number of minor polymer applications, including modified polybutadiene as propellant binders, specialty copolymer sins and latexes for paints, coatings and adhesive applications, and hydrogenated butadiene-styrene polymers used as lubricating oil additives. BD is also used as an intermediate in the production of a

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number of non polymers, including the agricultural fungicides Captan and Captofol, anthraquinone dyes, and the industrial extraction solvent Sulfodane.

Although technically suitable substitutes are available for most of the major users of BD, the cost of replacing this large-volume chemical is very high (Ex. 17–15).

D. The Reasonably Ascertainable Consequences of Potential Regulation

According to the EPA, workplace control methods could include engineering controls or the use of personal protective equipment. Effective, yet relatively inexpensive engineering controls consist of installation of dual mechnical seals to prevent BD leaks from pumps and compressors. These engineering controls are known and currently employed by several BD producing facilities. Fugitive emissions from pumps, compressors, transfer lines, and sampling equipment can be controlled by relatively standardized engineering designs.

Personal protective equipment and industrial hygiene practices can be effective means to protect the worker from exposure to BD in certain situations (e.g., protective gloves to prevent dermal contact with the liquified chemical). However, the use of personal protective equipment, such as NIOSH-approved respirators, may be less effective than engineering controls due to the physical layout of BD manufacturing and processing plants. Consequently, EPA's estimates of the cost of effective workplace controls are based on engineering controls.

EPA prepared a preliminary economic analysis of the cost associated with imposition of workplace engineering controls of both the manufacturing and the processing of BD (Ex. 17–21). In it, EPA reported that the imposition of workplace controls that should be capable of achieving workplace exposures of less than 1 ppm would result in estimated incremental costs of $118,000 to $320,000 per facility. On an annualized cost basis the costs would range from $20,000 to $53,000 per plant, assuming 10 percent discount rate over a 10-year period. Given the large volume of BD produced annually, the potential impact on costs of requiring engineering controls would not be significant.

E. Unreasonable Risk Determination

For the workers in the plants that produce and process BD into polymers, EPA estimated that the upper-bound lifetime risk is in the range of 1 in 1 to 1 in 10,000, resulting in up to 900 extra lifetime cases of cancer. EPA, therefore, concluded that it is reasonable to determine that current exposures during the manufacture of BD and its processing into polymers present an unreasonable risk of injury to the health of exposed workers.

EPA further concluded that the imposition of more effective engineering controls appears to be capable of reducing all workplace exposures to less than 1 ppm, thereby, reducing the cancer risk to 1 in 100 or less and the extra lifetime cases of cancer to less than 100. EPA's best estimate of their industry wide total cost of the improved engineering controls is in the range of $8 million to $21 million, expressed in current dollars. (On an annualized cost basis, these engineering controls would cost from $1.3 million to $3.4 million per year, calculated over a 10-year period at a 10 percent discount rate). Accordingly, up to 800 cancer cases over a 40-year period, at a total cost of $10,000 to $26,000 per cancer case, could be avoided. Thus, through relatively inexpensive engineering controls, which are already in place at some BD manufacturing and processing facilities, about 90 percent of the cancer risk may be eliminated.

F. Unreasonable Risk May Be Prevented or Reduced to a Sufficient Extent by Action Taken Under OSH Act

EPA has found that a significant concern about human exposures to BD relates to inhalation of this chemical in the workplace. That agency noted that a revised workplace standard may reduce unreasonable risks from the manufacture and processing of BD to a sufficient extent. The OSH Act is the primary statute for protecting the health and safety of workers and, as such, provides broad authorities to achieve this objective. Furthermore, EPA noted that OSHA has experience and expertise in enacting and enforcing these types of regulations. Therefore, EPA concluded that the unreasonable risk of injury to the health of exposed workers may be reduced or prevented to a sufficient extent by actions taken by OSHA under the Federal law it administers.

Once EPA has found that workplace exposures present an unreasonable risk of injury to human health and that such risks may be reduced to a sufficient extent by action taken under the OSH Act, OSHA must be given an opportunity to regulate. Therefore, as required by Section 9(a) of TSCA, EPA published the referral and requested OSHA to respond.

III. Action Required of OSHA

Following receipt of EPA's referral report, OSHA, under section 9(a) of TSCA, is required to first "... determine if the risk may be prevented or reduced to a sufficient extent by action taken under [the OSH Act] ..." To meet this requirement, the Agency must initially determine whether the OSH Act contains the appropriate legal authority to prevent or reduce the risk. Once that authority is ascertained, the Agency must decide if actions taken pursuant to the Act would be effective to reduce the risk to a sufficient extent. If OSHA determines that it lacks legal authority or that Action under the OSH Act will not effectively reduce the risk, no further determinations are necessary, and the Agency, using one of these bases, publishes its response to EPA as required below.

However, if the agency determines that the OSH Act can be used to so prevent or reduce the risk, OSHA then is required to issue an order "... declaring whether or not the activity ... [specified in the EPA report] ... presents such risk ..."

Finally, OSHA is required to respond to EPA. The response, which in this case is due within 180 days of EPA's referral report, must be published in the Federal Register and must include a detailed statement of OSHA's findings and conclusions.

IV. Request for Comments

So that the Agency's reponse may be as complete as possible, OSHA requests information on:

—Preventing or reducing the risk under the authority of fthe OSHA Act; and
—Determining whether the activities (occupational exposures) specified by EPA present the risks described.

In addition, since OSHA health regulations must be based upon a finding of "significant risk," the Agency seeks data which can be used to help the Agency make that determination. In short, OSHA solicits comments on all issues related to the regulation of BD, including the EPA supporting documents and conclusion.

Information on BD that has already been submitted to EPA (EPA Docket Nos. OPTS–91002, 62034, 48502) is now part of the OSHA record (Docket No. H-041) and should not be resubmitted. Comments and data previously submitted to OSHA remain part of this record and likewise need not be resubmitted.

Comments should be sent in quadruplicate to the Docket Officer, at the address noted above where they will be available for inspection and copying. The date received will be carefully reviewed by OSHA for use in preparation of a response to EPA and in

the preparation of a Notice of Proposed Rulemaking for BD, should OSHA decide that is the appropriate action.

V. Authority

This Notice was prepared under the direction of Patrick R. Tyson, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act (Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1910; and Secretary of Labor's Order No. 9-83 (48 FR 35736)).

Signed at Washington, D.C., this 19th day of December, 1985.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

[FR Doc. 85-30447 Filed 12-26-85; 8:45 am]

BILLING CODE 4510-26-M

SELECTIVE SERVICE SYSTEM

32 CFR Parts 1602, 1605, 1609, 1618, 1621, 1624, 1630, 1633, 1636, 1639, 1642, 1648, 1651, 1653, 1656, and 1657

Selective Service Regulations; Processing of Registrants

AGENCY: Selective Service System.

ACTION: Proposed rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) are revised to assure greater fairness and efficiency in administration.

DATES: Comment Date: Written comments received on or before January 27, 1986 will be considered. Effective date: Subject to the comments received, the amendments are proposed to become effective upon publication in the **Federal Register** of a final rule not earlier than 30 days after the Final Rule is published in the **Federal Register.**

ADDRESS: Written comments to: Selective Service System, ATTN: General Counsel Washington, D.C. 20435.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435 Phone (202) 724-1167.

SUPPLEMENTARY INFORMATION: These amendments to Selective Service Regulations are published pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)) and Executive Order 11623. These Regulations implement the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

Discussion or Proposed Regulations

A—Eliminated postponements because of hardship to dependents.

Reason: The provision permitting postponements of induction up to 90 days in lieu of granting hardship deferments raises very serious doubt as to the statutory authority to grant such postponements. The provision, if not changed, will lead to unequal treatment of registrants in substantially the same circumstances.

B—Clarify provisions relative to assignment of registrants to local boards and transfers for classification.

Reason: To simplify registrant processing.

C—Provide for immediate induction of registrants whose deferments or exemptions have expired.

Reasons: Eliminates possiblity that registrant who has been granted a deferment or exemption will avoid all military service when the reason for his deferment or exemption expires, if he is beyond the ages group that is currently being selected for induction. The Military Selective Service Act does not sanction this effect. The System cannot administratively circumvent the language and thrust of the provision in section 17(c) of the Military Selective Service Act, which extends liability for registrants who have received deferments.

D—Effect changes in and indicated by the 1933 revision of alternative service regulations (Part 1656).

Reason: To harmonize related provisions.

E—Processing of overseas registrants.

Reason: Issurance of regulations covering overseas registrants has been delayed due to the urgency of completing domestic registrant processing. These changes are an essential step for governing the processing of overseas registrants.

F—Restrict Part 1633 to administration of classification.

Reason: To clarify and simplify the text.

G—Members of National Appeal Board to be uncompensated.

Reason: Members of all other boards in the System are uncompensated. There is no apparent reason for members of the National Board to be compensated.

H—Assure registrants seeking conscientious objector status (Class 1-O) are qualified for induction, prior to consideration of the 1-O claim.

Reason: This change requires that a registrant's acceptability for military service be satisfactorily determined prior to local board consideration of his claim for conscientious objection classification. It effectively implements the Military Selective Service Act requirement that a registrant's acceptability for military service be determined prior to his placement in Alternative Service. Furthermore, it will substantially reduce the work load of local and appeal boards and save time of registrants.

I—The requirement that a list of names and telephone numbers of persons who desire to advise registrants of their rights under Selective Service law be posted in the area office eliminated.

Reason: The innovation of requiring the System to post such list reflects unwise policy. The System should not advertise the availability of persons to advise registrants or others on Selective Service matters.

J—Eliminate right of appeal from the denial of a claim for classification in Class 4-F (unacceptable for military service).

Reason: The System has no discretion in classifying a person in Class 4-F or denying a claim therefor. Such action is based entirely on the determination of a Military Entrance and Processing Station. This change eliminates the possibility that a registrant may use the appeal procedure to harass the System and possibly avoid his military service obligation.

K—Establish Class 1-O-S as an administrative class for registrants discharged from military service by reason of their conscientious objection.

Reason: There is no occasion for a local board to exercise its judgment in this situation. The classification can and should be made administratively, based on documentation of the Service granting the discharge.

L—Proceedings of local boards and district appeal boards to be closed to the public.

Reason: Proceedings of the National (Presidential) Appeal Board are closed to the public and that practice should apply also to local and district appeal boards. The possibility of abuse of the personal appearance process and potential harassment of the registrant are substantially reduced by having

members of the public excluded from such proceedings.

M—The automatic scheduling of a registrant for a second personal appearance on his claim for Class 1–O (Conscientious Objector) to be eliminated.

Reason: The present provision creates opportunity for delay without any compensating benefits. The registrant concerned would be fully protected by the procedures which exist for registrants scheduled for personal appearances with respect to other claims.

N—Restrict appeals from local board decisions on administrative classifications to instances in which the decision of the local board is not unanimous.

Reason: Issued to be decided by a local board when reviewing an administrative classification are so narrow that it is unlikely that the board's decision will be overturned on appeal, if the registrant has not gained the support of at least one board member. This change will eliminate the potential harassment of the System, and submission of frivolous claims and appeals.

O—Clarify meaning of quorum of boards.

Reason: Question raised at local board training sessions prompted these proposals.

P—Establish Class 3–A–S for registrants separated from military service because of hardship to dependents.

Reason: Registrants separated from military service because of hardship to their dependents should be administratively classified on the basis of the services' determinations.

Q—Establish 4–A–A for registrants who have served in the military service of a foreign government.

Reason: Registrants who would now be placed in Class 4–A because of their service in the military forces of a foreign government should be easily identifiable in time of war.

R—Clarify authority to administer oaths of interpreters.

Reason: An oath is required of interpreters, but currently the persons authorized to administer it are not identified.

S—Substitute "delay" for "postponement" because of filing claim for reclassification.

Reason: The current use of "postponement" in two senses is confusing.

T—Require examination of registrants who have filed claims for judgmental classifications.

Reason: To assure that all registrant claims considered by the board are pertinent, and applicable only to registrants qualified for induction. Otherwise, claims consideration and processing will waste time, when registrant is classified into a class other than 1–A, and subsequently found unacceptable for military service.

U—To correct printing errors and cross-references and to clarify language.

Reason: To make the indicated corrections.

Interested persons are invited to submit written comments on the proposed regulations. Reference should be made to the number of the paragraph(s) to which comments are directed. All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of the General Counsel from 9:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

As required by Executive Order 12291, I have determined that this proposed rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), I have determined that these regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 32 CFR Parts 1602, 1605, 1609, 1618, 1621, 1624, 1630, 1633, 1636, 1639, 1642, 1648, 1651, 1653, 1656, 1657

Armed forces—Draft.

Dated: December 11, 1985.

Thomas K. Turnage,

Director.

PART 1602—DEFINITIONS

1. The authority citation for Part 1602 continues to read as follows:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

2. § 1602.2 is revised to read:

§ 1602.2 Administrative Classification.

A reclassification action relating to a registrant's claim for Class 1–C, 1–D–D, 1–D–E, 1–H, 1–O–S, 1–W, 3–A–S, 4–A–A, 4–A, 4–B, 4–C, 4–F, 4–G, 4–T, or 4–W. These classes shall be identified as administrative classes.

3. § 1602.11 is revised to read:

§ 1602.11 District Appeal Board.

A district appeal board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in accord with the provisions of Part 1651 of this chapter.

4. § 1602.14 is revised to read:

§ 1602.14 Local Board.

A local board or a panel thereof of the Selective System is a group of not less than three civilian members appointed by the President after nomination by a Governor to act on cases of registrants in accord with the provisions of Part 1648 of this chapter.

5. § 1602.15 is revised to read:

§ 1602.15 Local Board of Jurisdiction.

The local board of jurisdiction is the local board to which a registrant is assigned and which has authority, in accord with the provisions of this chapter, to determine his claim or to issue to him an order. "His local board" and "registrant's local board" refer to the local board of jurisdiction.

6. § 1602.18 is revised to read:

§ 1602.18 National Appeal Board.

The National Appeal Board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in accord with the provisions of Part 1653 of this chapter.

7. § 1602.24 is added to read:

§ 1602.24 Claim.

A "claim" is a request for postponement of induction or classification into a class other than 1–A.

8. § 1602.25 is added to read:

§ 1602.25 Director.

Director is the Director of Selective Service.

PART 1605—SELECTIVE SERVICE SYSTEM ORGANIZATION

8A. The authority citation for Part 1605 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

9. § 1605.6 is revised to read:

§ 1605.6 National Appeal Board.

(a) There is hereby created and established within the Selective Service System a civilian agency of appeal which shall be known as the National Appeal Board. The President shall appoint not less than three members to the National Appeal Board, and he shall designate one member as chairman.

(b) The President shall appoint members of the National Appeal Board from among citizens of the United States who:

(1) Are not active or retired members of the Armed Forces or any reserve component thereof;

(2) Have not served as a member of the National Appeal Board for a period of more than five years;

(3) Are at least 18 years of age;

(4) Are able to perform such duties as are necessary;

(5) Are abe to devote sufficient time to Board affairs; and

(6) Are willing to fairly and uniformly apply Selective Service Law.

(c) The National Appeal Board may sit *en banc*, or upon the request of the Director or as determined by the chairman of the National Appeal Board, in panels, each panel to consist of at least three members. The Chairman of the National Appeal Board shall designate the members of each panel and he shall designate one member of each panel as chairman. A majority of the members of a panel shall constitute a quorum for the transaction of business, and a majority of the members present at any meeting at which a quorum is present, shall decide any question. Each panel of the National Appeal Board shall have full authority to act on all cases assigned to it. The National Appeal Board or a panel thereof shall hold meetings in Washington, DC, and, upon request of the Director or as determined by the Chairman of the National Appeal Board, at any other place.

The National Appeal Board or panel thereof shall classify each registrant whose classification has been appealed to the President under Part 1653 of this chapter.

(e) No member of the National Appeal Board shall act on the case of a registrant who is the member's first cousin or closer relation either by blood, marriage, or adoption, or who is the member's employer, employee or fellow employee or stands in the relationship of superior or subordinate of the member in connection with any employment, or is a partner or close business associate of the member, or is a fellow member or employee of the National Appeal Board. A member of the National Appeal Board must disqualify himself in any matter in which he would be restricted for any reason in making an impartial decision.

(f) Each member of the National Appeal Board while on the business of the National Appeal Board away from his home or regular place of business shall receive actual travel expenses and per diem in lieu of subsistence in accordance with rates established by Federal Travel Regulations.

(g) The National Appeal Board shall in all respects be independent of the Director, except that the Director shall provide for the payment of the expenses of the members of the National Appeal Board, shall furnish that Board and its panels necessary personnel, suitable office space, necessary facilities and services. The Director and the chairman of the National Appeal Board shall furnish to each other such information, advice and assistance as will further the attainment of the objectives of the Military Selective Service Act, and promote the effective administration of the Act.

§ 1605.51 [Amended]

10. § 1605.51(b) is removed and reserved.

11. § 1605.81(b) is revised to read:

§ 1605.81 Interpreters.

* * * * *

(b) The following oath shall be administered by a member of the board or a compensated employee of the System to an interpreter each time he or she interprets:

Do you swear (or affirm) that you will truly interpret in the matter now in hearing?

* * * * *

PART 1609—UNCOMPENSATED PERSONNEL

11A. The authority citation for Part 1609 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

12. § 1609.1 is revised to read:

§ 1609.1 Uncompensated positions.

Members of civilian review boards, local boards, district appeal boards, and the National Appeal Board and all other persons volunteering their services to assist in the Administration of the Selective Service Law shall be uncompensated. No person serving without compensation shall accept remuneration from any any source for services rendered in connection with Selective Service matters.

PART 1618—NOTICE TO REGISTRANTS

12A. The authority citation for part 1618 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

§ 1618.3 [Removed]

13. § 1618.3 is removed.

PART 1621—DUTY OF REGISTRANTS

13A. The authority citation for part 1621 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

14. § 1621.1 is revised to read:

§ 1621.1 Reporting by registrants of their current status.

Until otherwise notified by the Director of Selective Service, it is the duty of every registrant who registered after July 1, 1980:

(a) To notify the System within 10 days of any change in the following items of information that he provided on his registration form: Name, current mailing address and permanent residence address; and

(b) To submit to the classifying authority, all information concerning his status within 10 days after the date on which the classifying authority mails him a request therefor, or within such longer period as may be fixed by the classifying authority; and

(c) Who has a postponement of induction, or has been deferred or exempted from training and service, to notify the System immediately of any changes in facts or circumstances relating to the postponement, deferment or exemption; and

(d) Who has a postponement of examination, to notify the System immediately of any changes in facts or circumstances relating to the postponement.

15. § 1621.3 is added to read:

§ 1621.3 Duty to report for and submit to examination.

When the Director orders a registrant for examination, it shall be the duty of the registrant to report for and submit to examination at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for examination is postponed, it shall be the continuing duty of the registrant to report for and submit to examination at such time and place as he may be reordered. Regardless of the time when or the circumstances under which a registrant fails to report for examination when it is

his duty to do so, it shall thereafter be his continuing duty from day to day to report for and submit to examination at the place specified in the order to report for examination.

PART 1624—INDUCTIONS

15A. The authority citation for part 1624 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

16. § 1624.3(c)(3) is revised to read:

§ 1624.3 Age selection groups.

* * * * *

(c) * * *

(3) They have been classified in one of the following classes:

(i) Class 1–D–D.
(ii) Class 2–D.
(iii) Class 3–A.
(iv) Class 4–B.
(v) Class 4–C.
(vi) Class 4–F.

* * * * *

17. § 1624.4 (b) and (c) are revised to read:

§ 1624.4 Selection and/or rescheduling or registrants for induction.

* * * * *

(b) Registrants whose postponements have expired in the order of expiration.

(c) Registrants who previously have been ordered to report for induction and whose exemptions or deferments have expired, in the order of their random sequence number (RSN) established by random selection procedures in accord with § 1624.1.

* * * * *

18. § 1624.5(a) is revised to read:

§ 1624.5 Order to report for induction.

(a) Immediately upon determining which persons are to be ordered for induction, the Director of Selective Service shall issue to each person selected an Order to Report for Induction. the order will be sent to the current address most recently provided by the registrant to the Selective Service System. The date specified to report for induction shall be at least 10 days after the date on which the Order to Report for Induction is issued. The filing of a claim for reclassification in accord with § 1633.2 of this chapter delays the date the registrant is required to report for induction until not earlier than the tenth day after the claim is determined to have abandoned or is finally determined in accord with the provisions of this chapter. A claim is finally determined when the registrant does not have a right to appeal the last classification action with respect to the claim or he fails to exercise his right to appeal.

* * * * *

19. § 1624.6, paragraphs (a) and (e) are removed and reserved, (b) is revised, and (j) is added to read as follows:

§ 1624.6 Postponement of induction.

(a) [Reserved]

(b) In the case of the death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant's control, the Director, after the Order to report for Induction has been issued, may postpone for a specific time the date when such registrant shall be required to report. The period of postponement shall not exceed 60 days from the date of the induction order. When necessary, the Director may grant one further postponement, but the total postponement shall not exceed 90 days from the reporting date on the induction order.

* * * * *

(e) [Reserved]

* * * * *

(j) The initial determination of claims for all postponements is made by area office compensated personnel. After a denial of a claim for a student postponement, the registrant may request the local board to consider the claim. Such registrant shall be afforded an opportunity to appear before the board in accord with the procedures of §§ 1648.4 and 1648.5.

20. § 1624.7 is revised to read:

§ 1624.7 Expiration of deferment or exemption.

The Director shall issue an Order to Report for Induction to a registrant who is liable for induction whenever his deferment or exemption expires.

21. § 1624.10 is revised to read:

§ 1624.10 Order to report for examination.

(a) The Director of Selective Service may order any registrant in Class 1–A who has filed a claim for classification in a class other than Class 1–A or whose induction has been postponed, to report for an Armed forces examination to determine acceptability for military service. The date specified to report for examination shall be at least 7 days after the date on which the Order to Report for Examination is issued. Such registrant will not be inducted until his claim for reclassification has been decided or abandoned.

(b) The reporting date for examination may be postponed for any reason a reporting date for induction may be postponed in accordance with § 1624.6(b), (d) or (f)(1).

(c) If a registrant fails to report for or complete an examination the local board will determine that he has abandoned his claim.

(d) If a registrant is determined not acceptable for military service, he will be reclassified in Class 4–F.

(e) If a registrant is determined acceptable for military service, the processing of his claim will be completed.

PART 1630—CLASSIFICATION RULES

21A. The authority citation for Part 1630 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq., E.O. 11623.

22. § 1630.13 is revised to read:

§ 1630.13 Class 1–D–D: Deferment for certain members of a reserve component or student taking military training.

In Class 1–D–D shall be placed any registrant who:

(a)(1) Has been selected for enrollment or continuance in the Senior (entire college level) Army Reserve Officer's Training Corps, or the Air Force Reserve Officer's Training Corps, or the Naval Reserve Officer's Training Corps, or the Naval and Marine Corps officer candidate program of the Navy, or the platoon leader's class of the Marine Corps, or the officer procurement programs of the Coast Guard and the Coast Guard Reserve, or is appointed an ensign, U.S. Naval Reserve, while undergoing professional training; and

(2) Has agreed in writing to accept a commission, if tendered, and to serve subject to order of the Secretary of the military department having jurisdiction over him (or the Secretary of Transportation with respect to the U.S. Coast Guard), not less than 2 years on active duty after receipt of a commission; and

(3) Has agreed to remain a member of a regular or reserve component until the eighth anniversary of his receipt of a commission. Such registrant shall remain eligible for Class 1–D–D until completion or termination of the course of instruction and so long thereafter as he continues in a reserve status upon being commissioned except during any period he is eligible for Class 1–C under the provisions of § 1630.12; or

(b) Is a fully qualified and accepted aviation cadet applicant of the Army, Navy, or Air Force, who has signed an agreement of service and is within such numbers as have been designated by the

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Secretary of Defense. Such registrant shall be retained in Class 1–D–D during the period covered by such agreement but in no case in excess of four months; or

(c) Is other than a registrant referred to in paragraph (a) or (d) of this section who:

(1) Prior to the issuance of orders for him to report for induction; or

(2) Prior to the date scheduled for his induction and pursuant to a proclamation by the Governor of a State to the effect that the authorized strength of any unit of the National Guard of that State cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction; or

(3) Prior to the date scheduled for his induction and pursuant to a determination by the President that the strength of the Ready Reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction: Enlists or accepts an appointment before attaining the age of 26 years, in the Ready Reserve of any Reserve component of the Armed Forces, the Army National Guard, or the Air National Guard. Such registrant shall remain eligible for Class 1–D–D so long a he serves satisfactorily as a member of an organized unit of such Ready Reserve or National Guard, or satisfactorily performs such other Ready Reserve service as may be prescribed by the Secretary of Defense, or serves satisfactorily as a member of the Ready Reserve of another reserve component, the Army National Guard, or the Air National Guard, as the case may be; or

(d) At any time has enlisted in the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, or the Coast Guard Reserve and who thereafter has been commissioned therin upon graduation from an Officer's Candidate School of such Armed Force and has not been ordered to active duty as a commissioned officer. Such registrant shall remain eligible for Class 1–D–D so long as he performs satisfactory service as a commissioned officer in an appropriate unit of the Ready Reserve, as determined under regulations prescribed by the Secretary of the department concerned; or

(e) Is serving satisfactory as a member of a reserve component of the Armed Forces and is not eligible for Class 1–D–D under the provisions of any other paragraph of this section: Provided, That, for the purpose of this paragraph, a member of a reserve component who is in the Standby Reserve or the Retired Reserve shall be deemed to be serving satisfactorily unless the Armed Force of which he is a member informs the Selective Service System that he is not serving satisfactorily.

23. § 1630.16 is added to read:

§ 1630.16 Class 1–O: Conscientious objector to all military service.

Any registrant whose acceptability for military service has been satisfactorily determined and who, in accord with Part 1636 of this chapter, has been found, by reason of religious, ethical, or moral belief, to be conscientiously opposed to participation in war in any form and to be conscientiously opposed to participation in both combatant and noncombatant training and service in the Armed Forces shall be classified in Class 1–O.

24. § 1630.17 is revised to read:

§ 1630.17 Class 1–O–S: Conscientious objector to all military service (separated).

Any registrant who has been separated from the Armed Forces (including their reserve components) by reason of conscientious objection to participation in both combatant and noncombatant training and service in the Armed Forces shall be classified in Class 1–O–S unless his period of military service qualifies him for Class 4–A. A registrant in Class 1–O–S will be required to serve the remainder of his obligation under the Military Selective Service Act in Alternative Service.

25. § 1630.18 is revised to read:

§ 1630.18 Class 1–W: Conscientious objector ordered to perform alternative service.

In Class 1–W shall be placed any registrant who has been ordered to perform alternative service contributing to the maintenance of the national health, safety, or interest.

26. § 1630.30 is revised to read:

§ 1630.30 Class 3–A: Registrant deferred because of hardship to dependents.

(a) In accord with Part 1642 of this chapter any registrant shall be classified in Class 3–A:

(1) Whose induction would result in extreme hardship to his wife when she alone is dependent upon him for support; or

(2) Whose deferment is advisable because his child(ren), parent(s), brother(s), grandparent(s), or sister(s) is dependent upon him for support; or

(3) Whose deferment is advisable because his wife and his child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support.

(b) The classification of each registrant in Class 3–A will not be granted for a period longer than 365 days.

27. § 1630.31 is added to read:

§ 1630.31 Class 3–A–S: Registrant deferred because of hardship to dependents (Separated).

Any registrant who has been separated from active military service by reason of dependency or hardship shall be placed in Class 3–A–S unless his period of military service qualifies him for Class 4–A or 1–D–E. No registrant shall be retained in Class 3–A–S for more than six months.

28. § 1630.40(a) introductory text is revised and (a)(4) is removed and reserved:

§ 1630.40 Class 4–A: Registrant who has completed military service.

(a) In Class 4–A shall be placed any registrant other than a registrant eligible for classification in Class 1–C, 1–D–D, or 1–D–E who is within any of the following categories:

* * * * *

(4) [Reserved]

* * * * *

29. § 1630.44 is revised to read:

§ 1630.44 Class 4–F: Registrant not qualified for military service.

In Class 4–F shall be placed any registrant who is found by the Secretary of Defense, under applicable physical, mental or administrative standards, to be not acceptable for service in the Armed Forces; except that no such registrant whose further examination or re-examination is determined by the Secretary of Defense to be justified shall be placed in Class 4–F until such further examination has been accomplished and such registrant continues to be found not acceptable for military service.

30. § 1630.45—the section heading and (a) are revised to read as follows:

§ 1630.45 Class 4–G: Registrant exempted from service because of the death of his parent or sibling while serving in the armed forces or whole parent or sibling is in a captured or missing in action status.

* * * * *

(a) A surviving son or brother:

(1) Whose parent or sibling of the whose blood was killed in action or died in the line of duty while serving in the Armed Forces of the United States after Decembr 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in the line of duty during such service; or

(2) Whose parent or sibling of the whole blood is in a captured or missing status as a result of such service in the Armed Forced during any period of time; or

* * * * *

31. § 1630.48 is added to read:

§ 1630.48 Class 4–A–A: Registrant who has performed military service for a foreign nation.

In Class 4–A–A shall be placed any registrant who, while an alien, has served on active duty for a period of not less than 12 months in the armed forces of a nation determined by the Department of State to be a nation with which the United States is associated in mutual defense activities and which grants exemptions from training and service in its armed forces to citizens of the United States who have served on active duty in the Armed Forces of the United States for a period of not less than 12 months; Proveded: That all information which is submitted to the Selective Service System concerning the registrant's service in the armed forces of a foreign nation shall be written in the English language.

PART 1633—ADMINISTRATION OF CLASSIFICATION

31A. The authority citation for Part 1633 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

32. § 1633.1(e) and (f) are revised to read as follows:

§ 1633.1 Classifying authority.

* * * * *

(e) A local board may also classify a registrant into Class 1–C, 1–D–D, 1–D–E, 1–O–S, 1–W, 3–A–S, 4–A, 4–A–A, 4–B, 4–C, 4–G, 4–T or 4–W for which he is eligible upon request by the registrant for a review of a classification denial action under § 1633.1(f).

(f) Compensated employees of an area office may in accord with § 1633.2 classify a registrant into Class 1–C, 1–D–D, 1–D–E, 1–O–S, 1–W, 3–A–S, 4–A, 4–A–A, 4–B, 4–C, 4–F, 4–G, 4–T or 4–W for which he is eligible. No individual shall be classified into Class 4–F unless the Secretary of Defense has determined that he is unacceptable for military service.

33. § 1633.2 is revised to read:

§ 1633.2 Claim for other than Class 1–A.

(a) Any registrant who has received an order to report for induction may, prior to the day he is scheduled to report, submit to the Selective Service System a claim that he is eligible to be classified into any class other than Class 1–A. The registrant may assert a claim that he is eligible for more than one class other than Class 1–A. The registrant cannot subsequently file a claim with respect to a class for which he was eligible prior to the day he was originally scheduled to report. Information and documentation in support of claims for reclassification and postponement of induction shall be filed in accordance with instructions from the Selective Service System.

(b) Any registrant who has received an order to report for induction that has not been canceled may, at any time before his induction, submit a claim that he is eligible to be classified into any class other than Class 1–A based upon events over which he has no control that occurred on or after the day he was originally scheduled to report for induction.

(c) (1) Claims will be filed with the area office supporting the local board of jurisdiction.

(2) Claims will be considered by the local board identified in (1) or its supporting area office as prescribed in this part.

(d) The initial determination of claims for all administrative classifications are made by area office compensated personnel. After a denial of a claim for an administrative classification other than Class 4–F the registrant may request the local board to consider the claim.

(e) The initial determination of a judgmental classification is made by a local board.

(f) A registrant may request and shall be granted a personal appearance whenever a local or appeal board considers his claim for reclassification. Personal appearances will be held in accord with Parts 1648, 1651 and 1653 of this chapter.

(g) A registrant who has filed a claim for classification in Class 1-A-0 or Class 1–0 shall be scheduled for a personal appearance in accord with § 1648.4 before his claim is considered.

(h) If granted, a deferment or exemption supersedes the original order to report for induction. When a deferment or exemption expires or ends, a new order to report for induction will be issued.

34. § 1633.6 is revised to read:

§ 1633.6 Consideration of classes.

Claims of a registrant will be considered in inverse order of the listing of the classes below. When grounds are established to place a registrant in one or more of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class 1-A-0 considered the highest class and Class 1–H considered the lowest class, according to the following table:

Class 1–A–0: Conscientious Objector Available for Noncombatant Military Service Only.
Class 1–0: Conscientious Objector to all Military Service.
Class 1–0–S: Conscientious Objector to all Military Sevice (Separated).
Class 2–D: Registrant Deferred Because of Study Preparing for the Ministry.
Class 3–A: Registrant Deferred Because of Hardship to Dependents.
Class 3–A–S: Registrant Deferred Because of Hardship to Dependents (Separated).
Class 4–D: Minister of Religion.
Class 1–D–D: Deferment for Certain Members of a Reserve Component or Student Taking Military Training.
Class 4–B: Official Deferred by Law.
Class 4–C: Alien or Dual National.
Class 4–G: Registrant Exempted From Service Because of the Death of his Parent or Sibling While Serving in the Armed Forces or Whose Parent or Sibling is in a Captured or Missing in Action status.
Class 4–A: Registrant Who Has Completed Military Service.
Class 4–A–A: Registrant Who Has Performed Military Service For a Foreign Nation.
Class 4–W: Registrant Who Has Completed Alternative Service in Lieu of Induction.
Class 1–D–E: Exemption of Certain Members of a Reserve Component or Student Taking Military Traning.
Class 1–C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.
Class 1.–W: Conscientious Objector Ordered to Perform Alternative Service in Lieu of Induction.
Class 4–T: Treaty Alien.

Class 4–F: Registrant Not Acceptable for Military Service.

Class 1–H: Registrant Not Subject to Processing for Induction.

35. § 1633.7(b) is revised to read as follows, and (c) removed:

§ 1633.7 General principles of classification.

* * * * *

(b) The classifying authority in considerating a registrant's claim for classification shall not discriminate for or against him because of his race, creed, color or ethnic background

36. § 1633.10 is revised to read:

§ 1633.10 Notification to registrant of classification action.

The Director will notify the registrant of any classification action.

37. § 1633.11 is revised to read:

§ 1633.11 Assignment of registrant to a local board.

(a) A registrant is assigned to the local board that has jurisdiction over his permanent address that he last furnished the Selective Service System prior to the issuance of his induction order.

(b) The Director may change a registrant's assignment when he deems it necessary to assure the fair and equitable administration of the Selective Service Law.

PART 1636—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

37A. The Authority Citation for Part 1636 Continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App 451 et seq.; E.O. 11623.

38. § 1636.3(a) is revised to read:

§ 1636.3 Basis for classification in Class 1-A-O.

(a) A registrant must be conscientiously opposed to participation in combatant training and service in the Armed Forces.

* * * * *

39. § 1636.6—the section heading is revised to read:

§ 1636.6 Analysis of belief.

* * * * *

40.1636.8(a)(3) is revised to read:

§ 1636.8 Considerations relevant to granting or denying a claim for classificaion as a conscientious objector.

(a) * * *

(3) The oral statements of the registrant's witnesses, if any, at his personal appearance(s) before the local board; and

* * * * *

PART 1639—CLASSIFICATION OR REGISTRANTS PREPARING FOR THE MINISTRY

40A. The authority citation for Part 1639 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

41. § 1639.3(a)(1) is revised to read:

§ 1639.3 Basis for classification in Class 2-D.

(a) * * *

(1) Who is satisfactorily pursuing a full-time course of instruction required for entrance into recognized theological or divinity school in which he has been pre-enrolled or accepted for admission; or

* * * * *

42. § 1639.6 the section heading is revised to read as follows:

§ 1639.6 Considerations relevant to granting or denying claims for Class 2-D.

* * * * *

43. § 1639.7 is amended by adding paragraph (c) to read:

§ 1639.7 Types of decisions.

* * * * *

(c) The board may deny a claim for Class 2-D when the evidence fails to meet any of the criteria established in this section.

PART 1642—[AMENDED]

43A. The authority citation for Part 1642 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

44. Part 1642—Heading is revised to read:

PART 1642—CLASSIFICATION OF REGISTRANTS DEFERRED BECAUSE OF HARDSHIP TO DEPENDENTS

45. § 1642.3 is revised to read:

§ 1642.3 Basis for classification in Class 3-A.

(a) In Class 3-A shall be placed any registrant:

(1) Whose induction would result in extreme hardship to his wife when she alone is dependent upon him for support; or

(2) Whose deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support; or

(3) Whose deferment is advisable because his wife and child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support.

(b) In its consideration of a claim by a registrant for classification in Class 3-A, the board will first determine whether the registrant's wife, child(ren), parent(s), grandparents(s), brother(s), or sister(s) is dependent upon the registrant for support. Support may be financial assistance, personal care or companionship. If financial asssitance is the basis of suppport, the registrant's contribution must be a substantial portion of the necessities of the dependent. Under most circumstances 40 to 50% of the cost of the necessities may be considered substantial. If that determination is affirmative, the board will determine whether the registrant's induction would result in extreme hardship to his wife when she is the only dependent, or whether the registrant's deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s) or sister(s) is dependent upon him for support, or because his wife and his child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support. A deferment is advisable whenever the registrant's induction would result in hardship to his dependents.

(c) The registrant's classification shall be determined on the basis of the written information in his file, oral statements, if made by the registrant at his personal appearance before a board, and oral statements, if made by the registrant's witnesses at his personal appearances.

46. § 1642.4(a)(4) is revised to read as follows, and (b) is removed.

§ 1642.4 Ineligibility for Class 3-A.

(a) * * *

(4) There are other persons willing and able to assume the support of his dependents; or

* * * * *

§ 1642.5 [Removed]

47. § 1642.5 is removed.

48. § 1642.7(a) is revised to read as follows, and (c) is removed and reserved.

§ 1642.7 Types of decisions.

(a) A board may grant a classification into Class 3-A for such period of time it deems appropriate but in no event shall the period exceed one year.

* * * * *

(c) [Reserved]

* * * * *

PART 1648—CLASSIFICATION BY LOCAL BOARD

48A. The authority citation for Part 1648 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

49. § 1648.1 is revised to read:

§ 1648.1 Authority of local board.

A local board shall consider and determine all claims which it receives in accord with § 1633.2 or § 1648.6 of this chapter. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

§ 1648.2 [Removed]

50. § 1648.2 is removed.

51. § 1648.3 (a) and (c) are revised to read as follows:

§ 1648.3 Opportunity for personal appearances.

(a) A registrant who has filed a claim for classification in Class 1-A-O or Class 1-O shall be scheduled for a

personal appearance in accord with § 1648.4 before his claim is considered.

* * * * *

(c) Any registrant who has filed a claim for classification in Class 1–C, 1–D–D, 1–D–E, 1–O–S, 1–W, 3–A–S, 4–A, 4–A–A, 4–B, 4–C, 4–G, 4–T, or 4–W and whose claim has been denied, shall be afforded an opportunity to appear before the board if he requests that the denial of such claim be reviewed by the board.

52. § 1648.4(b) is revised to read:

§ 1648.4 Appointment for personal appearances.

* * * * *

(b) Should the registrant who has filed a claim for classification in Class 1–A–O or Class 1–O fail to appear at his scheduled personal appearance, the board will not consider his claim for classification in Class 1–A–O or Class 1–O. The board shall consider any written explanation of such failure that has been filed within 5 days (or extension thereof granted by the board) after such failure to appear. If the board determines that the registrant's failure to appear was for good cause it shall reschedule the registrant's personal appearance. If the board does not receive a timely written explanation of the registrant's failure to appear for his scheduled personal appearance or if the board determines that the registrant's failure to appear was not for good cause, the registrant will be deemed to have abandoned his claim for Class 1–A–O or 1–O and will be notified that his claim will not be considered. The board will notify the registrant in writing of its action under this paragraph.

* * * * *

53. § 1648.5 (a) and (i) are revised to read:

§ 1648.5 Procedures during personal appearance before the local board.

(a) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

* * * * *

(i) Proceedings before local boards are closed to the public.

54. § 1648.6(a) is revised to read:

§ 1648.6 Registrants transferred for classification.

(a) Before a board of jurisdiction has undertaken the classification of a registrant, the file may, at his request, be transferred for classification to a local board nearer to his current address than is the local board of jurisdiction.

* * * * *

PART 1651—CLASSIFICATION BY DISTRICT APPEAL BOARD

54A. The authority citation for Part 1651 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

55. § 1651.1(b) is revised to read:

§ 1651.1 Who may appeal to a district appeal board.

* * * * *

(b) The registrant may appeal the denial of his claim for a judgmental classification by the local board to a district appeal board. The registrant may appeal to a district appeal board the denial of his claim for an administrative classification by the local board whenever its decision is not unananimous.

56. § 1651.4(a), (j), (n)(3) and (r) are revised to read as follows:

§ 1651.4 Review by district appeal board.

(a) An appeal to the district appeal board is determined by its classification of the registrant in a class other than 1–A or by its refusal to take such action. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

* * * * *

(j) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

* * * * *

(n) * * *

(3) Has abandoned his right to an opportunity to appear; or

* * * * *

(r) Proceedings before district appeal boards are closed to the public.

PART 1653—APPEAL TO THE PRESIDENT

56A. The authority citation for Part 1653 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

57. § 1653.3(a) and (k) are revised to read:

§ 1653.3 Review by the National Selective Service Appeal Board.

(a) An appeal to the President is determined by the National Appeal Board by its classification of the registrant in a class other than 1–A or by its refusal to take such action. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

* * * * *

(k) a quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

* * * * *

PART 1656—ALTERNATIVE SERVICE

57A. The authority citation for Part 1656 continues to read:

Authority: Sec. 6(j) Military Selective Service Act; 50 U.S.C. App. 456(j).

58. § 1656.2 is revised to read:

§ 1656.2 Order to perform alternative service.

(a) The local board of jurisdiction shall order any registrant who has been classified in Class 1–O or 1–O–S to perform alternative service at a time and place to be specified by the Director.

(b) When the local board orders a registrant to perform alternative service, it shall be the duty of the registrant to report for and perform alternative service at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for alternative service is postponed, it shall be the continuing duty of the registrant to report for and perform alternative service at such time and place as he may be reordered. Regardless of the time when or the circumstances under which a registrant fails to report for and perform alternative service when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for and perform alternative service at the place specified in the order to report for and perform alternative service.

(c) In the case of the death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant's control, the Director, after the order to perform alternative service has been issued, may postpone for a specific time the date when such registrant shall be required to report. The period of postponement shall not exceed 60 days from the date of the order to perform alternative service. When necessary, the Director may grant one further postponement but the total postponement shall not exceed 90 days

from the reporting date on the order to perform alternative service.

(d) The Director may authorize a postponement of the reporting date to perform alternative service when the registrant qualifies and is scheduled for a State or National examination in a profession or occupation which requires certification before being authorized to engage in the practice of that profession or occupation.

(e) The Director shall issue to each registrant whose reporting date to perform alternative service is postponed a written notice thereof.

(f) A postponement of reporting date to perform alternative service shall not render invalid the order to report for alternative service which has been issued to the registrant, but shall operate only to postpone the reporting date, and the registrant shall report on the new date scheduled without having issued to him a new order to report for alternative service.

(g) Any registrant receiving a postponement under the provisions of this section, shall, after the expiration of such postponement, be rescheduled to report for alternative service at the place to which he was originally ordered.

(h) The Director may authorize a delay of reporting for alternative service for any registrant whose date for reporting conflicts with a religious holiday historically observed by a recognized church, religious sect or religious organization of which he is a member. Any registrant so delayed shall report for alternative service on the next business day following the religious holiday.

§ 1656.5 [Amended]

59. § 1656.5 is amended by adding (a)(1)(iii) to read as follows:

(a) * * *

(1) * * *

(iii) Those who do not require as a condition of the employment of an ASW (A) his commitment to any political or religious belief or doctrine or (B) his membership or non-membership in a political or religious group.

* * * * *

§ 1656.5 [Amended]

60. § 1656.5(e) is revised to read:

* * * * *

(e) A registrant classified in Class 1-O may seek his own alternative service work by identifying a job with an employer he believes would be appropriate for Alternative Service assignments and by having the employer advise the ASO in writing that he desires to employ the ASW. The acceptability of the job and employer so identified will be evaluated in accordance with Section 1656.5(a).

61. Part 1657 is added to read:

PART 1657—OVESEAS REGISTRANT PROCESSING

Sec.

1657.1 Purpose: definition.
1657.2 Local boards.
1657.3 District appeal boards.
1657.4 Consideration of claims.
1657.5 Place of induction.
1657.6 Transportation.

Authority: Military Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

§ 1657.1 Purpose; definition.

(a) The provisions of this part apply to the processing of overseas registrants, and, where applicable, they supersede inconsistent provisions in this chapter

(b) An overseas registrant is a registrant whose bona fide current address most recently provided by him to the Selective Service System is outside the United States, its territories or possessions, Commonwealth of Puerto Rico, Canada and Mexico.

§ 1657.2 Local boards.

The Director shall establish local boards with jurisidiction to determine claims of overseas registrants. Such boards shall consist of three or more members appointed by the President. The Director shall prescribe the geographic jurisdiction of each board, and designate or establish an area office to support it.

§ 1657.3 District appeal boards.

The Director shall establish district appeal boards with jurisdiction to determine appeals of claims of overseas registrants. Such boards shall consist of three or more members appointed by the President. The Director shall prescribe the geographic jurisdiction of each board.

§ 1657.4 Consideration of claims.

An overseas registrant's claim shall be determined by a local board (or its supporting area office) or appeal board as may be established in accord with this part or, upon the request of the registrant filed no later than the filing of his claim for reclassification, by the board having geographic jurisdiction over his permanent address within the United States last reported by him to the Selective Service system prior to issuance of his induction order.

§ 1657.5 Place of induction.

The Director may order an overseas registrant to any place in the world for induction.

§ 1657.6 Transportation.

(a) The Director shall furnish transportation for an overseas registrant from the place at which the registrant's order to report for induction was sent to the place he is required to report for induction. If such registrant is not inducted, the Director shall furnish him transportation from the place he reported for induction to the place to which his order to report for induction was sent.

(b) In the event the personal appearance before a local board or appeal board of an overseas registrant is required by regulation or occurs at the registrant's request, travel expenses incurred in personally appearing before the board shall be at the registrant's own expense.

[FR Doc 85-30450 Filed 12-26-85; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 50716-5116]

Variety Naming Requirements for Plant Patent Applications

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Revision of proposed rules of practice; Public hearing.

SUMMARY: Extensive comments have been received by the Patent and Trademark Office in reponse to proposed rules of practice for naming and registering the names of new plant varieties, published in the Federal Register, Vol. 50, page 33062 on August 16, 1985. The proposed rules of practice will be revised in light of these comments. The revised rules will be published for comments and a public hearing will be announced.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley D. Scholosser, Office of Legislation and International Affairs, by telephone at (703) 557-3065 or by mail addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

Dated: December 11, 1985.

Donald J. Quigg,

Assistant Secretary and Commissioner

[FR Doc. 85-30539 Filed 12-26-85; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300141A; FRL-2946-1]

Proposed Tolerance for Ethylene Dibromide; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Extension of Comment Period.

SUMMARY: This notice announces the extension of the comment period on the proposed rule published in the **Federal Register** on November 27, 1985 (50 FR 48779) that proposed a tolerance for residues of ethylene dibromide (EDB) *per se* of .03 ppm (30 ppb) in the edible pulp of mangoes that have been fumigated after harvest with the insecticide ethylene dibromide (EDB). The comment period has been extended from December 27, 1985 to January 10, 1986.

DATE: Comments identified by the document control number [OPP-300141], must be received on or before January 10, 1986.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Linda K. Vlier, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 711, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-7451).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 27, 1985 (50 FR 48779) that proposed the establishment of a tolerance of 30 ppb (.03 ppm) in 40 CFR 180.397 for residues of the insecticide ethylene dibromide (EDB) in the edible pulp of the raw agricultural commodity mangoes resulting from fumigation of this commodity after harvest in accordance with the Mediterranean Fruit Fly Control Program of the U.S. Department of Agriculture, effective until September 30, 1986, with the possibility of extension for an additional year.

The Florida Fruit and Vegetable Association has requested that EPA extend the comment period on this proposed rule in order to allow that association a meaningful opportunity to comment. In support of this request, the Florida Fruit and Vegetable Association points out that the real time for submitting comments to the rule is substantially shorter than the allowed time because of the two major national holidays falling within this period.

The Agency has carefully reviewed the request of the Florida Fruit and Vegetable Association, and has concluded that allowing some additional comment time is reasonable to afford all interested parties a meaningful opportunity to comment. Accordingly, the comment time on this proposal has been extended 14 days until January 10, 1986.

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agriculture commodities, Pesticides and pests.

Dated: December 23, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-30802 Filed 2-26-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 78-72; CC Docket No. 80-286; FCC 85-639]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Recommended Decision and Order in the Matter of MTS and WATS Market Structure and Amendment of Part 69 of the Commission's Rules and Establishment of a Joint Board—CC Docket Nos. 80-286 and 78-72.

SUMMARY: On December 9, 1985, the Federal-State Joint Board recommended that the Commission adopt broader lifeline assistance measures in order to assist low income households in affording telephone service. The Joint Board recommended that federal assistance be provided through a waiver of the subscriber line charge up to the amount of the state assistance provided for qualifying households. This matching assistance would be made available to subscribers receiving assistance under highly targeted programs which provide for verification of eligibility. The state contribution could take the form of reduced local telephone service rates, reduced connection charges or deposit requirements for a single telephone line to the principal residence of eligible households. The Joint Board recommended that the federal assistance be funded through the interstate carrier common line charge. The Joint Board made this recommendation because the record showed that telephone subscribership is below average in the lowest income groups, although telephone subscribership levels for all income groups have remained stable in recent years and should remain stable in the future. Implementation of this recommendation will assist low income households in affording telephone service during this period of rapid change in the telephone industry.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Margot Bester or Claudia Pabo, Common Carrier Bureau at (202) 632-6363.

SUPPLEMENTARY INFORMATION:

Recommended Decision and Order

In the Matter of MTS and WATS Market Structure; CC Docket No. 78-72. Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board; CC Docket No. 80-286.

Adopted: December 2, 1985.
Released: December 9, 1985.

By the Federal-State Joint Board.

I. Introduction

A. Summary

1. The Federal-State Joint Board hereby presents its recommendations concerning the adoption of broader lifeline assistance measures. The existing record demonstrates that telephone subscribership levels have

remained stable in recent years, and should remain stable or increase in the future, although telephone subscribership is substantially below average in the lowest income groups. In order to assist low income households in affording telephone service during this period of rapid change in the telephone industry, we recommend that the Commission establish a federal lifeline assistance program. We believe that our goals in this regard can best be accomplished by making federal assistance available to supplement the benefits provided under state approved local lifeline service offerings which meet certain guidelines. We recommend that the federal assistance be provided through a waiver of the full subscriber line charge up to the amount of the state assistance provided for qualifying households. This matching assistance would be available for highly targeted programs which provide for verification of eligibility. The state contribution could take the form of reduced local telephone service rates, reduced connection charges or deposit requirements for a single telephone line to the principal residence of eligible households. No restrictions would be imposed on the source of funding for the intrastate assistance. The federal assistance would be funded through the interstate carrier common line charge. We recommend that this program be re-evaluated in conjunction with the Joint Board's re-examination of subscriber line charges as a method of recovering non-traffic sensitive (NTS) costs scheduled to begin in late 1986.

B. Background

2. The preservation of universal service has been a basic goal of the Joint Board and the Commission thoughout the proceedings concerning the allocation and recovery of non-traffic sensitive (NTS) local exchange costs. The statutory basis for this goal is found in Section 1 of the Communications Act of 1934 which states that the Commission was created:

> [f]or the purpose of regulating interstate and foreign commerce in communications by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication. . . .[1]

[1] 47 U.S.C. 151 (1934).

In the *Third Report and Order* in the *MTS and WATS Market Structure* proceeding,[2] the Commission stated that the goal of preserving universal service required that it "[avoid] actions that would cause a significant number of local exchange service subscribers to cancel [telephone] service."[3] At that time, the Commission also stated that it would consider requests by local exchange carriers for waiver of the mandatory flat subscriber line charge in the case of low income households which might otherwise be unable to afford telephone service.[4]

3. The issue of a federal lifeline telephone assistance mechanism was again raised in the Commission's *Second Reconsideration Order* in the *MTS and WATS Market Structure* proceeding.[5] In that decision, the Commission found that the existing record did not contain enough information to allow the development of a federal assistance program for low income households, but stated that it would conduct further proceedings on this matter. The Commission subsequently requested comments concerning a subscriber line charge exemption or other assistance measures to help low income households afford telephone service, and asked the Joint Board to prepare recommendations regarding this issued.[6]

4. The Joint Board adopted recommendations concerning assistance measures for low income households on November 15, 1984.[7] Although we concluded that implementation of limited subscriber line charges would not undermine universal service, we acknowledged the concern of some parties that implementation of subscriber line charges in conjunction with the general upward pressure on local rates could undermine universal telephone service. As a result, the Joint Board recommended a two-phase approach for dealing with this issue. First, we recommended that the Commission implement a mechanism providing the equivalent of a waiver of the subscriber line charge for low income households.[8] Second, we recommended an expedited study of broader measures to assist low income households in affording telephone service. The Commission adopted the Joint Board recommendations in its December 19, 1984 *Decision and Order*[9] in this proceeding, and directed the Joint Board to prepare recommendations concerning broader lifeline assistance measures on an expedited basis.

[2] CC Docket No. 78-72, 93 FCC 2d 241 (1983).

[3] *Id.* at 266.

[4] In the First *Reconsideration Order* reaffirming the subscriber line charge concept, the Commission noted that it had not received any petitions for waiver. *See* CC Docket No. 78-72, 48 FR 42984 at 42987 (September 21, 1983). Requests for waivers of the subscriber line charge were subsequently filed by the New York Telephone Company and the Pacific Telephone and Telegraph Company. *Second Reconsideration Order*, CC Docket No. 78-72, FR 7810 at 7812 (March 2, 1984).

[5] CC Docket No. 78-72, 49 FR 7810 (March 2, 1984).

[6] *Further Notice of Proposed Rulemaking, MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78-72 and 80-286, 49 FR 18918 (April 20, 1984). The *Further Notice* requested comments on the type of assistance needed by low income households and how such a program should be funded.

[7] *Recommended Decision and Order*, CC Docket Nos. 78-72 and 80-286, 49 FR 48325 (December 12, 1984).

II. Summary of Comments

A. Initial Comments

5. We released an *Order Inviting Comments*[10] on March 29, 1985, requesting comments on the following issues: (1) The proper state and federal roles in implementing assistance measures for low income households; (2) the criteria for determining eligibility for assistance; (3) the type of lifeline telephone service which should be made available to eligible subscribers; and (4) the mechanism for funding these assistance measures.[11]

6. In its comments, the American Telephone and Telegraph Company (AT&T) states that any assistance program should involve coordinated federal and state efforts. It asserts that such programs should be limited to households eligible for state welfare payments, and cover only basic telephone service at the household's principal residence. AT&T states that such assistance programs should be funded from general tax revenues, and opposes funding lifeline programs through an increase in the carrier common line charge. Satellite Business System, Inc. (SBS) argues that the states should be permitted to implement lifeline assistance programs if they wish

[8] We recommended that this be accomplished through an optional program for a 50 percent reduction in the subscriber line charge for customers who satisfy a state determined means test which is subject to verification. The resulting shortfall in subscriber line charge revenues would be recovered through an increase in the nationwide average carrier common line charge. States wishing to take advantage of this assistance mechanism would be required to implement an equal monetary reduction in the local exchange rate for qualifying subscribers to be funded from intrastate sources.

[9] CC Docket Nos. 78-72 and 80-286, 50 FR 939 (January 8, 1985).

[10] CC Docket Nos. 78-72 and 80-286, 50 FR 14727 (April 15, 1985).

[11] Comments in response to this *Order* were filed on April 26, 1985. Replies were filed on May 17, 1985.

SBS also states that eligibility for lifeline service should be limited to basic local exchange service for those eligible for state welfare payments. It argues that such assistance should be funded from general tax revenues. US Telecom Inc. (US Telecom) argues that the Communications Act requires the Commission to ensure the availability of telephone service. It supports keying eligibility to the national poverty level income adjusted to reflect regional cost of living differentials. US Telecom also maintains that flat rate telephone service should be included in assistance programs only where local measured service is not available. It states that funding for such assistance programs should come from both federal and state sources, but opposes funding this assistance through an increase in the state or interstate carrier common line charge.

7. The Bell Operating Companies (BOCs) argue that the states should have primary responsibility for developing and administering lifeline telephone assistance programs. They contend that the states are in the best position to evaluate local needs and tailor assistance programs to fit them. The BOCs, with the exception of Pacific Bell Telephone Company (Pacific), assert that such assistance programs should be funded from general tax revenues, not an increase in the carrier common line charge. Pacific supported funding telephone assistance through a tax on intrastate interLATA toll services. The other BOCs, however, expressed concern that funding assistance measures through a surcharge on the carrier common line charge would increase the incentives for uneconomic bypass.

8. The BOCs differed somewhat in their views concerning eligibility criteria and the type of lifeline service which should be made available. The Ameritech Operating Companies (Ameritech) state that the development of eligibility criteria should be left to the states, although they support use of existing welfare criteria. Ameritech argues that it is unnecessary to limit the service options available to lifeline subscribers. Bell Atlantic Corporation (Bell Atlantic) states that existing state welfare agencies should certify eligibility. It argues that lifeline service should consist of basic dial tone. BellSouth Corporation (BellSouth) states that eligibility criteria should be based on the standards for existing welfare programs. In addition to reduced monthly rates, it supports provisions for waiver of service connection charges and deposit requirements once every twelve months. New York Telephone Company and New England Telephone Company (NYNEX) argue that the states should determine eligibility for lifeline service. It states that lifeline assistance should apply only to charges for residential customer access lines including installation and service connection charges as well as the monthly charge. NYNEX argues that toll service, local usage, and custom calling features should be excluded.

9. Mountain States Telephone, Northwestern Bell and Pacific Northwest Bell (US West) state that eligibility for lifeline assistance measures should be based on income. It states that lifeline service offerings could include reduced local exchange rates for measured or flat rate service. Pacific states that eligibility criteria should be established by the states, and emphasizes that any federal action should avoid interfering with existing programs. Pacific states that telephone assistance programs should include reduced rate local exchange service with subsidies for installation and a telephone instrument. Southwestern Bell Telephone Company (Southwestern) urges the use of existing federal and state assistance program eligibility criteria for lifeline assistance programs. It states that lifeline service should include a discounted basic dial tone connection, but believes that a range of usage options should be made available.

10. The independent telephone companies, with the exception of the Puerto Rico Telephone Company, argue that the states should have primary responsibility for developing and administering lifeline assistance programs. They express a variety of views concerning eligibility standards, the type of lifeline service to be offered and funding, although there is strong opposition to funding lifeline assistance through telephone industry revenues. GTE Corporation (GTE) argues that lifeline programs should be limited to local measured service or supplemental payments under existing entitlement programs. It contends that no Commission action should be taken until actual experience demonstrates a need for lifeline service. GET argues that any such program should be funded from general tax revenues or credits against exchange carrier tax liabilities. It maintains that the telephone industry should not be required to fund social welfare programs, such as lifeline telephone service. United Telephone Systems, Inc. (United) suggests basing eligibility on the criteria for existing social welfare programs. It states that lifeline assistance should not be limited to a particular type of local service, and urges funding of the revenue shortfall through tax revenues or reductions in the telephone company tax liability. United does not support a funding mechanism that would require telephone industry subsidies.

11. Southern New England Telephone Company (SNET) recommends using eligibility standards similar to those for other public assistance programs. It states that lifeline assistance should consist of a fixed dollar rate discount for eligible subscribers regardless of the class of exchange service chosen. SNET also argues that lifeline programs should be funded from broadly based state revenue sources, not telephone company operating revenues. Cincinnati Bell Telephone Company also supports use of eligibility criteria for existing public assistance programs. It believes that lifeline service should not include more than current budget service offerings. Central Telephone Company (Centel) argues that development of eligibility criteria should be left to the states. It also argues that local measured service should be used as a low cost alternative to lifeline service. Centel maintains that lifeline programs should be funded from general tax revenues like other social welfare programs. Continental Telecom, Inc. (Contel) also argues that the states should determine the eligibility criteria, the service options included, and should be the source of funding for these programs. Contel is concerned that federally mandated guidelines would result in a uniform response to a problem which requires diverse solutions geared to local conditions. The Puerto Rico Telephone Company (PRTC) argues that expanding service to areas with telephone penetration rates that are below the national average should be the goal of assistance programs. PRTC also states that the funds used to pay for lifeline assistance should be generated on a nationwide basis.

12. The United States Telephone Association (USTA) maintains that the states should have primary responsibility for lifeline assistance programs, with funding generated from the widest possible base, not other telephone users. The Rural Telephone Coalition (RTC) argues that lifeline assistance is a national responsibility and should be funded from general tax revenues, not telephone company revenues. The Oregon Independent Telephone Association states that lifeline assistance is the responsibility of the states and should be funded by subsidies within local telephone company operations.

13. The Alabama Public Service Commission (Alabama) states that eligibility for lifeline assistance should be based on income. It supports assistance for basic local service and toll service as well as a portion of service connection charges with incentives to prevent abuse and maximize benefits. Alabama argues that such assistance measures should be funded by both the federal and state jurisdictions, with the federal share recovered through a tapered carrier common line charge. The California Public Utilities Commission and the State of California (California) assert that a federal lifeline plan should assist the states in developing telephone assistance measures without interfering with ongoing state programs. California states that eligibility for assistance should be based on household income with lifeline rates set at one-half of the existing local exchange rate. California also recommends including a waiver of installation charges once a year and elimination of deposit requirements. California argues that federal funding should be derived from a tax on toll service.

14. The Public Service Commission of the District of Columbia (D.C.) states that funding for lifeline assistance programs should come from general tax revenues. The Florida Public Service Commission (Florida) asserts that a federally mandated lifeline program would not ensure universal telephone service. Instead, Florida recommends that the local exchange companies be allowed to design a variety of service options with different rate levels.

15. The Illinois State Commerce Commission supports state developed and funded lifeline programs. The New Jersey Board of Public Utilities (New Jersey) opposes a mandatory federally administered lifeline program, stating that a national solution to a local problem is unwarranted. However, it supports the development of optional state programs where deemed necessary by state regulators. New Jersey strongly opposes a surcharge on interstate telephone traffic to fund lifeline service. The New York State Department of Public Service (New York) maintains that the states should determine the type of lifeline service to be offered, although it supports federal funding for half of the costs involved. New York recommends generating the federal contribution from interstate toll services. The North Carolina Utilities Commission (North Carolina) asserts that telephone assistance programs should be dealt with at the state level.

16. The Oregon Public Utility Commissioner (Oregon) asserts that the states should have primary responsibility for lifeline assistance programs. Oregon suggests that funding could be provided from general tax revenues, excise taxes on local telephone service, taxes on intrastate toll carriers, or voluntary contributions by organizations that place a high value on universal service. The Vermont Public Service Board (Vermont) maintains that the states are in a better position than the federal government to develop lifeline plans. It argues that the bulk of the funding for lifeline assistance should be derived from interstate services because intrastate toll services cannot provide a major financial contribution due to the threat of bypass, arbitrage and customer comparisons with interstate rates. Vermont recommends that initial service connection fees be included in assistance programs. Representative Bob Wise of West Virginia asserts that the federal government should play a very limited role in the development of lifeline plans.

17. The Colorado Public Utilities Commission (Colorado) strongly supports a federally mandated lifeline assistance plan. Colorado argues that the FCC is obligated to aid the states in efforts to preserve universal service because it controls the allocation of non-traffic sensitive (NTS) costs. Colorado states that assistance should be limited to households with incomes at or below 150 percent of the federally established poverty level income. It argues that assistance should be provided through a fifty percent discount on the charge for basic flat rate service, with funding from state and federal general tax revenues. If this approach to funding is not viable, Colorado suggests generating the federal contribution through an increase in the interstate carrier common line charge. The Commonwealth of Puerto Rico (Puerto Rico) supported a federally mandated lifeline plan funded from interstate services.

18. The Ad Hoc Telecommunications Users Committee (Ad Hoc) argues that the ultimate responsibility for designing and administering lifeline programs lies with the states, although the FCC should determine the amount and type of funding from interstate sources. Ad Hoc states that funding should be provided from general tax revenues or a surcharge on the subscriber line charge. The Associated Telephone Answering Exchanges, Inc. states that funding for any assistance program should be paid by all telephone subscribers. It asserts that a lifeline program should offer the same services provided to customers paying the full rate with a limitation on long distance calling. The Communication Workers of America (CWA) urges establishment of a lifeline plan modeled after California's Moore Act and Congressional legislative proposals. CWA supports measured service as a lifeline offering in areas where it is available. It suggests that funding be provided by a surcharge on the intrastate toll services of all interexchange carriers, an adjustment to local service rates or a combination of the two.

19. The Consumer Federation of America and the U.S. Public Interest Research Group (CFA) strongly support a federally mandated lifeline program for low income households. CFA argues that the need for lifeline service should not be determined solely on the basis of a decline in subscribership levels because many low income households will give up other essential goods and services before discontinuing telephone service. It argues that the responsibility for funding lifeline service should be split between the state and federal jurisdictions with federal lifeline funding provided through an increase in the interstate carrier common line charge. The Office of Consumers' Counsel, State of Ohio (OCCO) contends that the Commission should fund a full waiver of the subscriber line charge from interstate carrier revenues.[12]

B. Further Comments

20. After reviewing the comments and replies filed in response to the *Order Inviting Comments*, the Joint Board concluded that additional information was necessary for resolution of this issue. As a result, we adopted an *Order Inviting Further Comments* on July 26, 1985,[13] requesting further comments on three basic issues: (1) The types of service offerings and assistance programs currently available to low income households; (2) telephone subscription levels and toll usage by low income households; and (3) the need for and/or appropriate level of federal funding for such assistance programs.

21. In its further comments, AT&T urges the Joint Board to recommend guidelines to assist the states in implementing narrowly targeted, state funded local lifeline assistance plans. AT&T supports state funding for these programs and reiterates its opposition to

[12] A more detailed summary of these comments was attached to the Joint Board's *Order Inviting Further Comments* on these issues. CC Docket Nos. 78–72 and 80–286, 50 FR 31738 (August 6, 1985).

[13] CC Docket Nos. 78–72 and 80–286, 50 FR 31738 (August 6, 1985).

funding this assistance through surcharges on toll services or carrier access charges because of the threat of bypass.

22. Ameritech states that it has found no evidence to indicate that universal service is in danger. As a result, it does not believe that there is an immediate need for lifeline service offerings in addition to the low priced local exchange service options already available. Ameritech also opposes any funding mechanism using telephone industry revenues. Bell Atlantic argues that the best strategy for maintaining universal service is an economically sound rate structure for all telephone services. Bell Atlantic supports development of state funded lifeline plans, but maintains that any federal funds should be distributed based on subscriber need, not the relative rate level for basic telephone service. Bell Atlantic opposes funding lifeline assistance through the carrier common line pool. BellSouth argues that a federally mandated lifeline program is not necessary at this time, but states that if such programs are developed, they should be funded solely through state tax revenues, not from increased telecommunications service charges.

23. NYNEX asserts that telephone subscription levels have risen even among the lowest income groups despite increases in local telephone rates. It maintains that any lifeline assistance programs should be funded through general tax revenues, not telephone industry revenues. Southwestern Bell reiterates its position that lifeline plans should be administered by the states with federal involvement limited to the provision of a reduced interstate subscriber line charge for eligible subscribers. US West states that the data derived from its internal monitoring programs has not identified any decline in subscribership levels due to rate increases in its region. All of the BOCs also stated that they offer low priced budget service options in most of the states they serve.

24. Cincinnati Bell states that it sees no need for lifeline assistance since the subscription rate in its territory is 94.5 percent. SNET does not perceive a need for lifeline service since Connecticut, which constitutes the majority of its service territory, has a 97 percent telephone subscription rate. SNET also indicates that it offers several basic exchange service options with rates dependent on the amount and type of calling. SNET supports funding assistance through an excise tax on telephone service. Contel asserts that lifeline programs should be administered by state regulatory agencies which can best determine local needs and target assistance. The Puerto Rico Telephone Company supports a federally mandated lifeline program funded from the broadest possible nationwide base. The Anchorage Telephone Utility (ATU) argues that a federally mandated lifeline program is unnecessary unless current telephone penetration rates drop significantly. It argues that lifeline programs threaten universal service by forcing local exchange companies to adopt subsidy mechanisms which could lead to bypass. ATU opposes funding lifeline assistance through telephone industry revenues. USTA opposes funding lifeline programs through the charges for interstate telephone services. It also states that 93.9 percent of U.S. households have telephone service, with a 80.53 percent penetration rate for those below the poverty line.

25. Vermont asserts that funding for lifeline service should be derived from general tax revenues wherever possible, but suggests interstate toll revenues as an alternative source of funding. The Iowa State Commerce Commission (Iowa) does not support a federal lifeline program and maintains that the 1983–84 data which it has compiled indicates that telephone subscription levels in Iowa have remained the same despite increases in local exchange rates and a decrease in population. D.C. states that its local exchange carrier currently offers an economy local exchange service, and notes that it has implemented an experimental lifeline assistance program for eligible senior citizens. D.C. opposes funding lifeline plans through interstate toll charges. New York reiterates its belief that lifeline funding should be derived from a uniform nationwide surcharge on interstate toll rates. The Virginia State Corporation Commission (Virginia) argues that basic telephone service is already available to Virginia residents at affordable rates. It states that lifeline telephone service is a social issue which should be addressed by state legislatures or Congress, not the Commission.

26. The American Association of Retired Persons (AARP) supports implementation of a federally mandated lifeline program. The AARP emphasizes that the elderly rely heavily on telephone service, and states that 75 percent of those over 65 years old have experienced increases in their local telephone rates, and that 20 percent of those individuals report cutting back on telephone use in some way. The Consumer Federation of America (CFA) states that there is an immediate need for implementation of a federally mandated lifeline program to be funded through interstate telephone industry revenues.

III. Discussion

A. Introduction

27. Telephone subscribership levels have remained stable in recent years and should remain stable or increase in the future. While local telephone rates will probably continue to increase gradually, there is no basis for anticipating increases of sufficient magnitude to undermine universal telephone service. However, telephone subscribership levels are substantially below average in the lowest income groups. As a result, we recommend that the Commission adopt assistance measures for low income households in order to assist them in affording telephone service during this period of rapid change in the telephone industry.

B. Universal Telephone Service

28. The April 1980 Census showed that 92.9 percent of American households subscribed to telephone service. Census Bureau data for April 1983, prior to the AT&T divestiture and the implementation of subscriber line charges, showed that 91.9 percent of households subscribed to telephone service. The Census Bureau has conducted a survey of 58,000 households in March, July and November of each year since November 1983 to determine the percentage of households with telephone service. This data shows that telephone subscribership levels have remained stable since November 1983, although there is a slight seasonal variation, with subscribership levels generally lower in the fall and higher in the spring. A table showing national subscribership levels is set out below:

TELEPHONE SUBSCRIBERSHIP IN THE UNITED STATES [1]

[In percent]

	[illegible]	1984	1985
March	[illegible]	[illegible]	91.8
July	[illegible]	91.6	91.8
November	91.4	91.4	[illegible]

[1] Letter to Mr. Edward J. Minkel, Managing Director, FCC from Kenneth A. Riccini, Chief, Current Population Surveys Branch, Demographic Surveys Division, Bureau of the Census, at Table 1, dated October 3, 1985. This data shows the percentage of households with a telephone in their home. The percentage of households which report that telephone service is available to them is somewhat higher.

Due to the seasonal variation, comparisons should be based on data for the same month each year.

29. Recent Census Bureau data shows that telephone subscribership levels

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among low income households have also remained relatively stable as the following table concerning telephone subscribership among the unemployed demonstrates:

TELEPHONE SUBSCRIBERSHIP AMONG UNEMPLOYED PERSONS [1]

[In percent]

	1983	1984	1985
March		[illegible]	82.9
July		81.2	83.6
November	82.5	81.8	

[1] *Id.* at Table 2. This data shows the percentage of households with a telephone in their home. The percentage of households which report that telephone service is available to them is somewhat higher.

[In percent]

	1983	1984	1985
Telephone Subscribership—Households With Less Than $5,000 in Annual Income [1]			
March		71.4	71.1
July		71.8	72.0
November	71.7	70.3	
Telephone Subscribership—Households with $5,000-$7,499 in Annual Income [2]			
March		83.6	82.5
July		82.6	83.2
November	82.7	83.7	
Telephone Subscribership—Households With $7,500-$9,999 in Annual Income [3]			
March		85.8	86.3
July		86.5	86.9
November	88.2	87.0	
Telephone Subscribership—Households With $10,000-$12,499 in Annual Income [4]			
March		90.0	89.5
July		89.7	89.7
November	89.7	89.4	

[1] *Id.* at Table 4. The data on this and the following three tables shows the percentage of households with a telephone in their home. The percentage of households which report that telephone service is available to them is somewhat higher.
[2] *Id.*
[3] *Id.*
[4] *Id.*

As these charts demonstrate, telephone subscribership levels have not changed significantly, even among the groups that would be most affected by rate increases. A comparison of the data for July 1984 and 1985 even shows an increase in subscribership levels for all but one group, although the changes are relatively small and are probably not statistically significant.

30. The comments in this proceeding also confirmed this conclusion. Although certain parties expressed concern about declines in subscribership, none of the telephone companies stated that they had experienced such declines. In fact, a number of the local telephone companies participating in this proceeding stated that they had implemented significant local rate increases without declines in subscribership levels.

31. Despite the current stability in telephone subscribership levels, certain parties argue that local rates will increase dramatically in the next few years, seriously threatening universal telephone service. The information currently available does not support this contention. The Commission has issued two reports concerning the effect of federal decisions on local rates and the availability of local service. The initial *Michigan Report* was issued in December, 1983.[14] It found that existing Commission policies would not threaten the availability of universal service. Among other things, the report concluded that:-(1) In almost all cases revenue requests by exchange telephone companies vastly exceeded actual revenue authorizations by state commissions; (2) the bulk of the current revenue requests by exchange telephone companies are linked to factors other than federal decisions; (3) federal decisions will not cause sharply higher minimum charges for obtaining residential telephone service; and (4) federal decisions will not cause residential subscribers to discontinue service. The Common Carrier Bureau subsequently requested comments on the initial report, and issued a second report based on these filings, referred to as the *Michigan II Report*, in January, 1985.[15] The *Michigan II Report* affirmed the conclusions reached by the Commission in the *Michigan Report*. At that time, the Commission also stated that it would monitor subscribership levels and would work closely with the Joint Board and the states to ensure the continued preservation of universal service.

32. The conclusions contained in the *Michigan I and II Reports* have been confirmed by the actual pattern of rate increase requests filed by the local telephone companies. In fact, the amount of rate increase requests currently pending is significantly lower than in 1983. There were approximately $6.9 billion in state rate increase requests before the state commissions by the end of 1983.[16] At present, only about $2.6 billion in state rate increases are under consideration nationwide, and rate cases filed by Pacific Bell in California and New York Telephone account for approximately half of this amount.[17] Furthermore, the state commissions have granted only about half of the increases rquested. For example, in 1984, $7.3 billion in revenue increases requested by local telephone companies were acted on in state rate cases, but only 53 percent of the amounts requested or $3.9 billion in rate increases were actually granted nationwide. In the second quarter of 1985, only $580 million in rate increases were acted on in state rate cases and only 51 percent of the amounts requested were granted by state commissions nationwide. In addition, the state commissions have generally chosen to increase rates for specialized business services, intrastate toll and enhanced services before increasing rates for basic residential local exchange service. Local telephone flat rate monthly service charges increased by 8.9 percent from January 1982 to January 1983. The increase was 4.7 percent for the period January 1983 to January 1984, with an increase of 7.6 percent from January 1984 to January 1985.[18] The charges for all local service, including installation, inside wiring, equipment and taxes as well as local service charges increased 13.4 percent from January 1982 to January 1983, 9.7 percent from January 1983 to January

[14] *Order, Petition by the State of Michigan Concerning the Effect of Certain Federal Decisions on Local Telephone Service ("Michigan Report")*, 96 FCC 2d 941 (1983). The report was issued in response to a petition filed by the State of Michigan, on February 24, 1983, which asked the FCC to investigate the effects of decisions in the following five areas on local rates and the availability of local service: (1) Depreciation; (2) interstate access charges; (3) expensing station connections and amortizing previously capitalized investment; (4) the CPE-phase out; and (5) divestiture of AT&T. At that time, the Commission had adopted a plan for implementation of a monthly minimum subscriber line charge of $2.00 per loop for residential subscribers and ¢4.00 per loop for business subscribers, with additional usage charges up to a certain maximum level. Under this approach, most interstate non-traffic sensitive (NTS) costs would have been shifted to end users over a seven year transition period. *Third Report and Order*, CC Docket No. 78-72, 48 FR 10319 (March 11, 1983). The Commission subsequently referred the issues related to subscriber line charges as a means of recovering NTS costs to the Joint Board in this proceeding. *Further Notice of Proposed Rulemaking*, CC Docket Nos. 78-72 and 80-286, 49 FR 18318 (April 30, 1984). The Joint Board subsequently recommended the implementation of a $1.00 monthly subscriber line charge for residential and single line business subscribers, effective June 1, 1985, with an increase to $2.00 per month June 1, 1986. The Commission adopted these recommendations. *Decision and Order*, CC Docket No. 78-72 and 80-286, 50 Fed. Reg. 939 (January 8, 1985). Since the filing of the Michigan Petition, the Commission has also taken a number of other steps, based on Joint Board recommendations, to ease the transition to a more cost based system of allocating and recovering costs.

[15] *Further Report on the Effects of Federal Decisions on Universal Service*, FCC No. 84-636, released January 9, 1985.

[16] *Summary of State Telephone Rate Cases* (released September 30, 1985).

[17] *Id.*

[18] U.S. Department of Labor, Bureau of Labor Statistics, Producer Price Index, Series 4811-111, Local Service, Residential.

1984, and 8.3 percent from January 1984 to January 1985.[19]

33. Despite the stability in telephone subscribership levels demonstrated by the Census data and the fact that there is no reason to expect dramatic increases in local rates, subscribership levels for the unemployed and those in the lowest income categories are significantly below the national average. In order to promote telephone subscribership among low income households during this period of rapid change in the telephone industry, we recommend that the Commission adopt broader lifeline assistance measures.

34. We believe that this can best be accomplished by provisions for federal assistance to supplement the benefits provided under state or local telephone company lifeline plans which meet certain minimum federal guidelines. We are confident that state regulators working in conjunction with the local companies will be able to identify local subscriber needs and respond to them in an appropriate manner. In light of this, and the current data concerning telephone subscribership levels, a mandatory federal program is not required.[20] Although the present record leads us to conclude that universal telephone service is not threatened, we would be deeply concerned should the states fail to respond appropriately to any developments which caused a decline in subscribership levels.

35. Accordingly, the Joint Board recommends that the Commission match state assistance for low income households under qualifying lifeline programs up to the amount of the subscriber line charge.[21] This would be accomplished through a waiver of the subscriber line charge (or the matching portion of it) for eligible households, and funded through an increase in the interstate carrier common line charge. The waiver would be available to participating subscribers in states or individual telephone company service areas having highly targeted local lifeline programs. For example, programs directed to individuals who are eligible to receive Supplemental Security Income (SSI) or Aid to Families with Dependent Children (AFDC) would be included. Of course, we encourage those states which believe it is appropriate, to adopt additional lifeline measures as well. We also recommend limiting the qualifying state plans to those in which eligibility is subject to verification. If states or telephone companies choose to implement assistance programs that do not meet these criteria, their subscribers would not be eligible for supplemental federal assistance. Under our recommendation, federal assistance would be available for a single telephone line at the principal residence of eligible households. We recommend that state assistance for basic local telephone service, connection charges and customer deposit requirements be included in determining the level of the state contribution to be matched by federal assistance. The state contribution may be generated from any intrastate source. We do not believe that any showing of actual or imminent declines in telephone subscribership levels should be required as a pre-condition to receiving federal assistance.

36. We also recommend that local companies and states seeking to obtain supplemental federal benefits be required to submit information to the Commission demonstrating that their plan meets these criteria. We recommend that the supplemental assistance be made available immediately upon certification that the plan meets the federal standards described above. In order to facilitate action on these filings, we recommend that the Commission delegate authority to act on such plans to the Chief, Common Carrier Bureau.[22] We recommend that federal supplemental assistance for eligible lifeline plans be made available as soon as the Commission certification is issued and the necessary tariff revisions become effective. The amounts involved at this initial stage in the program will be minimal, and we believe that they can be covered through the existing carrier common line charge without reducing the carriers' access earnings below the authorized level. The carrier common line charge should be revised effective June 1, 1986 to reflect lifeline funding requirements.

37. In addition, we recommend that the Joint Board review the effectiveness of this plan in conjunction with its review of subscriber line charges which is scheduled to begin in late 1986. To facilitate this, we recommend that the Commission require participating local companies to monitor the effectiveness of their assistance programs and provide the Joint Board and the Commission with annual reports. These reports should include a description of the assistance measures, the cost of the program, information on the number of households taking advantage of the assistance program, including information on the number of existing subscribers who switch to lifeline service from other service offerings and the number of new subscribers using the service. We are also asking that these reports contain any available information concerning the effect of the plan on subscribership levels among low income groups.

38. We believe that this approach will provide state regulators with a strong incentive to develop lifeline assistance programs, while ensuring that they are able to respond appropriately to local conditions. Although we strongly encourage local telephone companies and state regulators to participate in this program, we do not believe that the existing record warrants implementation of a mandatory federal program. Furthermore, we have every reason to believe that state regulators and the local companies will respond in a responsible manner to ensure that universal service is maintained.

39. Providing the federal assistance through waiver of the full subscriber line charge will ensure an adequate level of assistance based on existing local rate levels. Based on the present residential and single line business subscriber line charge of $1.00, this approach would provide a maximum of $2.00 per month in assistance for participating subscribers. When the subscriber line charge increases to $2.00 on June 1, 1986, this approach will generate a maximum of $4.00 per month in assistance. We believe that these amounts are reasonable in light of existing local rate levels, and the targeting and verification measures which we are recommending will ensure that the benefits of this program are directed to the groups which currently have the lowest telephone subscribership levels, and are most in need of assistance.

40. Re-evaluation of this approach in conjunction with the Joint Board's re-examination of subscriber line charges

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[19] The consumer price index, also maintained by the Bureau of Labor Statistics, contains a subindex of local telephone charges. This index, unlike the producer price index, includes charges for installation, wiring, equipment and taxes.

[20] At present, a number of states have constitutional, statutory or judicially imposed prohibitions on implementation of telephone assistance programs for low income households. We strongly urge these states to eliminate any such restrictions to ensure that state regulators and the local telephone companies are able to respond appropriately to any circumstances which may warrant implementation of a state lifeline program.

[21] This would be in addition to the existing provisions which allow the equivalent of a subscriber line charge waiver for low income households. States or local telephone companies which wish to continue to participate in this more limited program may do so.

[22] We believe that the Joint Board should prepare a recommendation in any case where a party seeks Commission review of a Bureau Chief decision not to approve supplemental assistance.

to begin in late 1986 will allow us to study the effectiveness of this program and recommend adjustments if experience indicates that they are necessary.

IV Ordering Clauses

41. Accordingly, the Joint Board recommends, that the Commission adopt the recommendations set out above concerning assistance measures to aid low income households in affording telephone service and the revisions to Part 69 of the Commission's Rules set out in Attachment A.[23]

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 69—[AMENDED]

Attachment A

Recommended Amendments to Part 69 of the Commission's Rules

1. Amend § 69.203(d) by substituting the phrase "paragraphs (f) and (g)" for "paragraph (f)".

2. Amend § 69.203 by adding the following paragraph (g):

(g)(1) The End User Common Line charge for residential subscribers shall be reduced to the extent of the state assistance as calculated in (g)(2), or waived in full if the state assistance equals or exceeds the residential End User Common Line Charge under the circumstances described below. In order to qualify for this waiver, the subscriber must be eligible for and receive assistance or benefits provided pursuant to a narrowly targeted telephone lifeline assistance plan requiring verification of eligibility, implemented by the state or local telephone company. A state or local telephone company wishing to implement this End User Common Line reduction or waiver for its subscribers shall file information with the Commission Secretary demonstrating that its plan meets the criteria set out in this section, and showing the amount of state assistance per subscriber as described in (g)(2). The reduction or waiver of the End User Common Line Charge shall be available as soon as the Commission certifies that the state or local telephone plan statisfies the criteria set out in this subsection, and the relevant tariff provisions become effective.

(2)(i) The State assistance per subscriber shall be equal to the difference between the charges to be paid by participating subscribers and those to be paid by other subscribers for comparable monthly local exchange service, service connections and customer deposits, except that benefits or assistance for connection charges and deposit requirements may only be counted once annually. In order to be included in calculating the state assistance, such benefits must be for a single telephone line to the household's principal residence.

(2)(ii) The monthly state assistance per participating subscriber shall be calculated by adding the amounts calculated in paragraphs (A) and (B).

(A) The amount of the monthy state assistance per participating subscriber for local exchange service charges shall be calculated by dividing the annual difference between the charges paid by all participating subscribers for local exchange service and the amount which would have been charged to non-qualifying subscribers for comparable service by twelve times the number of subscribers participating in the state assistance program. Estimates may be used when historic data is not available.

(B) The amount of the monthly state assistance for service connections and customer deposits per participating subscriber shall be calculated by determining the annual amount of the reduction in these charges for participating subscribers each year, and dividing this amount by twelve times the number of participating subscribers. Estimates may be used when historic data is not available.

[Doc. 85-30427 Filed 12-26-85; 8:45 am]

BILLING CODE 6712-01-M

[23] This recommendation is made pursuant to sections 4(i) and (j), 5, 201, 202, 203, 205, 218, 221, 403 and 410 of the Communications Act, as amended, 47 U.S.C. 154(i) and (j), 155, 201, 202, 203, 205, 218, 221, 403 and 410.

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47 CFR Part 73

[MM Docket No. 85-81; RM-4833]

TV Broadcast Station in San Clemente and Brawley, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to assign UHF television Channel 26 to San Clemente, California, in response to a petition filed by Steve Newhart. UHF television Channel *48 must be substituted for Channel *26 at Brawley, California in order to accommodate this assignment. The assignment of Channel 26 at San Clemente could provide a first television service to that community.

DATES: Comments must be filed on or before February 10, 1986, and reply comments on or before February 25, 1986.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rulemaking

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (San Clemente and Brawley, California) MM Docket No. 85-81, RM-4833.

Adopted: March 13, 1985.

Released: December 19, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Steve Mewhort ("petitioner"), proposing the assignment to UHF Television Channel 26 to San Clemente, California. The substitution of UHF Television Channel *48 for unused UHF Television Channel *26 in Brawley, California, would be required to allow the San Clemente assignment to be made in accordance with the mileage requirements. Petitioner submitted information in support of the proposal and expressed an interest in applying for the San Clemente channel, if assigned. The substitution and the assignment can be made in compliance with the minimum distance separation requirements and other technical criteria. However, since San Clemente and Brawley, California, are both located within 199 miles of the common U.S.-Mexican border, Mexican concurrence in the proposal is required.

2. San Clemente (population 27,325) [1] in Orange County (population 1,932,709) is located in southern California, approximately 80 kilometers (50 miles) southeast of Los Angeles.

3. Currently pending before the Commission is a rule making proceeding to institute further land mobile sharing arrangements within the UHF band (See General Docket 85-172, *Notice of Proposed Rule Making*, 50 FR 25587, published June 20, 1985). In that proceeding, specific sharing plans are mentioned which could affect this proposal. Thus, this proceeding will be considered in connection with General Docket 85-172.

PART 73—[AMENDED]

4. In view of the fact that San Clemente would receive its first local television service, the Commission finds that it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments, § 73.606(b) of the

[1] Population figures were taken from the 1980 U.S. Census.

Commission's Rules, for the following communities:

City	Channel No.	
	Present	Proposed
Brawley, CA	*26	*48 +
San Clemente, CA		

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before February 6, 1986, and reply comments on or before February 25, 1986, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner, as follows: Dwight R. Magnuson, OMNI Communications, Inc., One Regency Square, Suite 450, Knoxville, Tennessee 37915 (consultant to the petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to the Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than coments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 85–30429 Filed 12–26–85; 8:45 am]
BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 334 (Sub-No. 6)]

Review of Car Hire Regulation

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time of file replies.

SUMMARY: The due date for filing replies is extended.

DATE: Reply comments are due by February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking published April 29, 1985 (50 FR 16724) established due dates of June 28 and August 27, 1985, respectively, for the filing of initial and reply comments in this proceeding. In response to two extension requests, opening comments were filed on October 28, 1985, and reply comments are due on January 8, 1986. By petition filed December 17, 1985, the Atlantic & Western Railway Company, NRUC Corporation, Peninsula Terminal Company, Pickens Railroad, and Mississipian Railway, Inc., joined by the Bessemer & Lake Erie Railroad Company, Elgin, Joliet & Eastern Railway Company, Grand Trunk Western Railroad Company, Illinois

Central Gulf Railroad Company, and US Rail Services, Inc., request an extension of time to file reply comments until January 27, 1986. These parties request the extension in order to analyze the numerous and novel plans that have been proposed. The American Short Line Railroad Association, BRAE Corporation, and Itel Rail Corporation request a 30-day extension.

Because of the complex issues, an extension is warranted. This will enable all parties to better define their positions, and thus produce a better ultimate disposition of this proceeding in a manner that will promote the public interest.

Decided: December 19, 1985.

By the Commission, Heather J. Gradison, Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-30615 Filed 12-26-85; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 19)]

Boxcar Car Hire and Car Service

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments.

SUMMARY: The Commission grants an extension of time to file comments in response to the notice of proposed rulemaking published December 3, 1985 (50 FR 49576). A 60- or 75-day extension was requested by a number of railroads to enable the preparation of detailed comments and to avoid scheduling difficulties during the holiday season. BRAE Corporation, Itel Rail Corporation, and the American Short Line Railroad Association reply that a 30-day period is warranted.

DATE: Comments are due February 3, 1986.

ADDRESS: An original and 15 copies of comments in Ex Parte No. 346 (Sub-No. 19) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Comments must be served on all parties of record in Ex Parte No. 346 (Sub-No. 19).

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

Decided: December 20, 1985.

By the Commission, Heather J. Gradison, Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-30614 Filed 12-26-85; 8:45 am]

BILLING CODE 7035-01-M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 50, No. 249
Friday, December 27, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 20, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indiciation of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, ATTN: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Food and Nutrition Service

State Plan & Operating Guidelines, Forms, and Waivers
FNS–366A, FNS–366B
Annually
State or local governments; 106 responses; 3496 hours; not applicable under 3504(h)
Paul Jones (703) 756–3427

Extension

- Agricultural Marketing Service

Reporting requirements under the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products
FV–159, FV–356, FV–468
On occasion
Businesses or other for-profit; State and local governments; 12,421
Responses; 652 hours; not applicable under 3504(h)
Joe A. Fly (202) 447–4693

Revision

- Statistical Reporting Service

Integrated Survey Program
Monthly; Quarterly
Farms; 132,500 responses; 40,618 hours; not applicable under 3504(h)
Lee Sandberg (202) 447–6820

Revision

- Agricultural Marketing Service

Potatoes Grown in Idaho and Malheur County, Oregon, Marketing Order 945
Recordkeeping; On occasion
Farms; Businesses or other for-profit; 2617 responses; 435 hours; not applicable under 3504(h)
Charles W. Porter (202) 447–2615

Revision

- Animal and Plant Health Inspection Service

Prohibited and restricted importation of meats, animals, animal by-products, poultry, organisms and vectors into the U.S.
VS 16–3, VS 16–25
Recordkeeping; Quarterly, On occassion
Businesses or other for-profit, State or local government; Federal agencies or employees; non-profit institutions; small businesses or organizations; 3241 responses; 4,936 hours; not applicable under 3504(h)
David Herrick (301) 436–8499

New

- Agricultural Cooperative Service

Agricultural Exports by Cooperatives, 1985
Five Year Intervals
Businesses and other for-profit; Small businesses or organizations; 113 responses; 57 hours; not applicable under 3504(h)
Tracey L. Kennedy (202) 382–1759

Donald E. Hulcher,
Acting Department Clearance Officer.

[FR Doc. 85–30645 Filed 12–26–85; 8:45 am]
BILLING CODE 3410–01–M

Federal Grain Inspection Service

Cancellation of Designation Issued to Enid Grain Inspection Co., Inc.; Interim Assignment of Designation to Enid Grain Inspection Co., Inc.; and Request for Designation Applicants (OK)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the cancellation of designation of Enid Grain Inspection Co., Inc. (Enid), effective January 1, 1986. The sole stockholder has sold his stock to Barry Hibbets, Enid, Oklahoma, who proposes to continue the business as Enid Grain Inspection Co., Inc. (Hibbets), and has requested that a designation be granted to that corporation. Hibbets will provide official inspection services, in the geographic area specified below, on an interim basis, from January 1, 1986, to June 30, 1986. A request for designation applicants is also included in this notice.

DATE: Applications to be postmarked on or before February 10, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and

determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

This notice announces the cancellation of designation of Enid Grain Inspection Co., Inc. (Enid), effective January 1, 1986. The sole stockholder sold his stock to Barry Hibbets, Enid, Oklahoma, who proposes to continue the business as Enid Grain Inspection Co., Inc. (Hibbets), and has requested that a designation be granted to that corporation. Hibbets will provide official inspection services, in the geographic area specified below, on an interim basis, from January 1, 1986, to June 30, 1986. A request for designation applicants is also included in this notice.

The Administrator of FGIS has determined that the interim assignment of this geographic area to Hibbets is consistent with the provisions and objectives of the U.S. Grain Standards Act, as amended (Act) and that this Action will facilitate the providing of official inspection services in the specified geographic area.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Section 7(g)(1) of the act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area in the State of Oklahoma to be provided service by Hibbets, on an interim basis, and which is available for assignment to the applicant selected for the new designation is as follows:

Atoka, Blaine, Bryan, Canadian, Carter, Cleveland, Coal, Commanche, Cotton, Craig, Creek, Garfield, Garvin, Grady, Grant, Harmon, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Lincoln, Logan, Love, McClain, Marshall, Mayes, Murray, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Pawnee, Payne, Pontotoc, Pottawatomie, Rogers, Seminole Stephens, Tillman, Tulsa, Wagoner, and Washington Counties.

Interested parties, including Hibbets, are hereby given opportunity to apply for official agency designation to provide official inspection services in the geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period July 1, 1986, through June 30, 1989. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: December 23, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–30718 Filed 12–26–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to D.L. Boltenhouse Grain Inspection Service (OH)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of one agency will terminate, in accordance with the Act, and requests applications from parties, including the agency currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to specified agency. The official agency is D.L. Boltenhouse Grain Inspection Service.

DATE: Applications to be postmarked on or before February 10, 1986.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Department Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

D.L. Boltenhouse Grain Inspection Service (Boltenhouse), 301 North Street, P.O. Box 96, BEllevue, OH 44811, was designated under the Act as an official agency to provide inspection functions on July 1, 1983.

The official agency's designation terminates on June 30, 1986. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Boltenhouse, in the States of Michigan and Ohio, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Ohio, the area shall be:

Bounded on the North by the northern Lucas County line east to Lake Erie; the Lake Erie shoreline east to the Ohio-Pennsylvania State line;

Bounded on the East by the Ohio-Pennsylvania State south to State Route 154;

Bounded on the South by State Route 154 west to Lisbon, Ohio; U.S. Route 30 west to Bucyrus, Ohio; and

Bounded on the West by State Route 19 north to Seneca County; the southern Seneca County line west to State Route 53; State Route 53 north to Sandusky County; the southern Sandusky County line west to State Route 590; State Route 590 north to Ottawa County; the southern and western Ottawa and Lucas County lines.

In Michigan, the area shall include those sections of Jackson, Lenawee, and Monroe Counties which are east of State Route 127 and south of State Route 50.

An exception to the described geographic area is the following location situated inside Boltenhouse's area which has been and will continue to be serviced by Grain Inspection Services, Inc.: Crop Aid, Hudson, Lenawee County, Michigan.

Additional exceptions to the described geographic area are the following export port locations situated inside Boltenhouse's area which have been and will continue to be serviced by FGIS: The Andersons, Toledo and Maumee, Ohio; Cargill, Inc., Toledo and Maumee, Ohio; and Mid-States Terminals, Inc., Toledo, Ohio.

Interested parties, including Boltenhouse, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning July 1, 1986, and ending June 30, 1989. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: December 23, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–30716 Filed 12–26–85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Detroit Grain Inspection Service, Inc. (MI) and Grain Inspection Services, Inc. (MI)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Detroit Grain Inspection Service, Inc. (Detroit), and Grain Inspection Services, Inc. (Battle Creek).

DATE: Comments to be postmarked on or before February 10, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the October 25, 1985, **Federal Register** (50 FR 43428). Applications were to be postmarked by November 25, 1985. Detroit was the only applicant for designation in the area currently assigned to that agency and applied for designation renewal in its present geographic area. FGIS received two applications for the Battle Creek area. Battle Creek applied for designation renewal in the area currently assigned to that agency. Andrew J. Matako, Reese, Michigan, proposes to establish Michigan Grain Inspection Services, Inc., and has applied for designation in a portion of the geographic area presently assigned to Battle Creek. The area in Michigan that this applicant is applying for is as follows:

Bounded on the North by the northern Montcalm County line; the western, northern, and eastern Isabella County lines; the northern Gratiot and Saginaw County lines; the western Bay County line; the western and northern Arenac County lines; the western and northern Iosco County lines;

Bounded on the East by the Lake Huron and Saginaw Bay shorelines south and east to State Route 53; State Route 53 south to State Route 46;

Bounded on the South by State Route 46 west to Sheridan Road; Sheridan Road south to Barnes Road; Barnes Road west to State Route 15; State Route 15 south to the Genesee County line; the northern Genesee County line west to the the Shiawassee County line; the Shiawassee County line west to State Route 52; State Route 52 south to State Route 21; State Route 21 west to Clinton County; the eastern and northern Clinton County lines west to U.S. Route 27; U.S. 27 north to State Route 57; State Route 57 west to the western Gratiot County line; the western Gratiot County line north to Washington Road; Washington Road west to State Route 66; State Route 66 north to State Route 46; State Route 46 west to U.S. Route 131; and

Bounded on the West by U.S. Route 131 north to the northern Montcalm County line.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Staff, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7) U.S.C. 71 *et seq.*))

Dated: December 23, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–30715 Filed 12–26–85; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicant in Portions of the States of Illinois and Iowa

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicant for official agency designation in portions of the States of Illinois and Iowa, previously assigned to Keokuk Grain Inspection Service, Inc. (Keokuk). This area is currently being provided service on an interim basis by John H. Oliver, Inc., doing business as Keokuk Grain Inspection Service (Oliver).

DATE: Comments to be postmarked on or before Febrary 10, 1986.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Staff, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not be a rule or regulation as defined in Executive Order 12291 and

Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within a specified geographic area in the October 25, 1985, **Federal Register** (50 FR 43429). Applications were to be postmarked by November 25, 1985. Oliver was the only applicant, and applied for designation in the entire geographic area available for assignment.

This notice provides interested persons; the opportunity to present their comments concerning the designation applicant. All comments must be submitted to the Information Resources Staff, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision., Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: December 23, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–30714 Filed 12–26–85; 8:45 am]

BILLING CODE 3410–EN–M

Designation Renewal of Lima Grain Inspection Service, Inc. (OH) and Virginia Department of Agriculture and Consumer Services (VA)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of the Lima Grain Inspection Service, Inc. (Lima), and Virginia Department of Agriculture and Consumer Services (Virginia), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: February 1, 1986.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced the Lima's and Virginia's designations terminate on January 31, 1986, and requested applications for official agency designation to provide official services within specified geographic areas in the August 1, 1985, **Federal Register** (50 FR 31208). Applications were to be postmarked by September 3, 1985. Lima and Virginia were the only applicants for their respective designations and each applied for designation renewal in the areas currently assigned to those agencies.

FGIS announced that applicant names and requested comments on same in the September 20, 1985, **Federal Register** (50 FR 38145). Comments were to be postmarked by November 4, 1985; no comments were received.

FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), determined that Lima and Virginia are able to provide official services in the geographic area for which FGIS is renewing their designation. Effective February 1, 1986, and terminating January 31, 1989, Lima will provide official inspection services and Virginia will provide official inspection services and Class X or Class Y weighing services in their specified geographic areas, which are the entire areas previously described in the August 1 **Federal Register.**

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Review Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the appropriate agency at one of the following addresses:

Lima Grain Inspection Service, Inc., 2242 Arcadia Avenue, Lima, OH 45805

Virginia Department of Agriculture and Consumer Services, 1100 Bank Street, Washington Building, Richmond, VA 23209

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: December 23, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–30717 Filed 12–26–85; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Noxious Weed and Poisonous Plant Control, Helena National Forest; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement to identify methods for controlling noxious weeds on the Helena National Forest.

The proposed Helena National Forest Plan has been prepared. One of the Forest-wide Standards and Guidelines was to contain present infestations and prevent the spread of noxious weeds.

The Helena National Forest has many acres of land that contain noxious weeds. These weeds have been identified as noxious by the State of Montana. These plants can severely affect the productivity of forest and rangelands. Infestations on National Forest lands have the potential to spread to adjacent private lands.

A range of alternatives for treating these sites will be considered. One of these will be no treatment of problem plants by any means. Other alternatives may include.

1. Hand spraying with chemicals and/or hand application of pelleted herbicides.
2. Control by biological methods.
3. Hand grubbing and hand-held mechanical methods.
4. Mechanical treatment.
5. Broadcast application of herbicides by truck mounted sprayer.
6. Integrated pest management using a combination of above methods.

Federal, State, and local agencies, local landowners, and other individuals or organizations who may be interested in or affected by the decisions will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be considered in depth.
3. Elimination of insignificant issues of those which have been covered by a previous environmental review.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species

habitat if any such species are found to exist in the area of consideration.

No public meetings are scheduled at this time, but the public is invited to comment. Written comments should be mailed by January 30, 1985, to: Robert S. Gibson, Forest Supervisor; Helena National Forest; Federal Office Building, Drawer 10014; Helena, Montana 59626.

Robert S. Gibson, Forest Supervisor, Helena National Forest, Helena, Montana 59626, is the responsible official.

The Draft Environmental Impact Statement should be available for public review by March, 1986. The Final Environmental Impact Statement is scheduled to be completed by April, 1986.

Questions about the proposed action and Environmental Impact Statement should be directed to John Padden, Range Staff Officer, Helena National Forest, phone 406–449–5201.

Dated: December 20, 1985.

Robert S. Gibson,

Forest Supervisor.

[FR Doc. 85–30633 Filed 12–26–85; 8:45 am]

BILLING CODE 3410-11-M

Mono Basin National Forest Scenic Area Comprehensive Management Plan; Inyo National Forest, Mono County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement to determine future management practices for the Mono Basin National Forest Scenic Area (hereafter referred to as the Scenic Area), located on the Mono Lake Ranger District, Inyo National Forest. A range of alternatives will be considered. These alternatives will analyze various management practices and policies and their effects on resources, recreational opportunities, and the protection of the geologic, ecologic, natural, cultural, and scenic values as identified in Pub. L. 98–425, which created the Scenic Area.

Federal, State, and local agencies, affected Indian tribes, and individuals or organizations who may be interested in or affected by the decisions will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues, those which have been covered by previous environmental review or which are outside the authority granted by the enabling legislation.

4. Determination of potential cooperating agencies and assignment of responsibilities.

Public input and comments may be solicited in a variety of ways including requests for written comments, and public meetings and/or workshops. Methods, times, and locations of scoping sessions will be announced.

Eugene E. Murphy, Forest Supervisor, Inyo National Forest, is the responsible official.

The analysis is expected to take about 19 months. The draft environmental impact statement is currently scheduled for public review in November, 1986. The final environmental statement is currently scheduled for completion by August, 1987.

Written comments and suggestions concerning the analysis should be sent to the Forest Supervisor, Inyo National Forest, 873 N. Main St., Bishop, California 93514 by May 1, 1986.

Questions about the proposed action and environmental impact statement should be directed to Dick Warren, Recreation Planner, Inyo National Forest, 873 N. Main St., Bishop, California 93514, telephone (619) 873–5841.

Dated: December 19, 1985.

Eugene E. Murphy,

Forest Supervisor.

[FR Doc. 85–30656 Filed 12–26–85; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

East Menomonie Watershed Critical Area Treatment RC&D Measure, WI

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the East Menomonie Watershed Critical Area Treatment, RC&D Measure, Dunn County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Cliffton A. Maguire, State Conservationist, Soil Conservation Service, 4601 Hammersley Road Madison, Wisconsin, 53711, telephone 608–264–5577.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Cliffton A. Maguire, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project. East Menomonie Watershed Critical Area Treatment RC&D Measure, Wisconsin Notice of a Finding of No Significant Impact.

The measure concerns the primary objective to reduce excessive runoff water from the rolling lands in the watershed causing soil erosion and flooding in a public use area; the secondary objective is to reduce sediment deposition. This action will stabilize, protect, improve the quality of our natural resource base, and provide a quality environment for citizens of the area.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Cliffton A. Maguire.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.

Cliffton A. Maguire,

State Conservationist.

December 17, 1985.

[FR Doc. 85–30646 Filed 12–26–85; 8:45 am]

BILLING CODE 3410-16-M

Tyler County Fairgrounds Critical Area Treatment and Land Drainage RC&D Measure Plan, WV

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40

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CFR Part 1500); and the Soil Conservation Service Guidelines. (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tyler County Fairgrounds Critical Area Treatment RC&D Measure, Tyler County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Morgantown, West Virginia 26505, Telephone 304–291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure consists of critical area treatment and land drainage. The area to be affected by the project is located on a recreation area between Route 18 and Middle Island Creek at the Tyler County Fairgrounds. Approximately 10 acres will be altered to permit intensive use for school, fair, and community functions. Lack of vegetation in areas has caused sheet and gully erosion. Presently the area is poorly drained. During wet weather the area is limited for recreation purposes. Surface water will be controlled by reshaping the land surface. Tile drains will be installed to remove excess water. The erosion areas will be stabilized with rock riprap and by vegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Rollin N. Swank,

State Conservationist.

December 12, 1985.

[FR Doc. 85–30552 Filed 12–26–85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.
Title: Atlantic Tuna Fisheries.
Form Number: Agency—N/A; OMB—N/A.
Type of Request: Existing Collection in use without OMB approval.
Burden: 4 respondents; 43 reporting/recordkeeping hours.
Needs and Uses: Data are used by the National Marine Fisheries Service and the International Commission for the Conservation of Atlantic Tunas to determine effects of fishing on tuna abundance. Management decisions are based on the data.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion, weekly.
Respondent's Obligation: Mandatory:
OMB Desk Officer: Sheri Fox., 395–3785.

Agency: National Oceanic and Atmospheric Administration.
Title: Specifications for Portrayal of Marine Information on Electronic (Chart) Displays.
Agency—N/A; OMB—0648–0166.
Form number:
Type of Request: New collection.
Burden: 65 respondents; 260 reporting hours.
Needs and Uses: This information will be used to establish a minimum standard for portrayal of nautical charting information on an electronic display.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: One time only.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Sheri Fox., 395–3785.

Agency: National Oceanic and Atmospheric Administration.
Title: Interim Capital Construction Fund Agreement and Certification.
Form Number: Agency—NOAA 88–14; OMB—0648–0090.
Type of Request: Extension of the expiration date.
Burden: 1,000 respondents; 2,250 reporting hours.
Needs and Uses: Information is used to establish eligibility for agreements for the Capital Construction Fund Program, and to certify completion of the agreement's objectives.
Affected Public: Businesses or other for-profit institutions; small businesses or organization.
Frequency: On occasion.
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Sheri Fox., 395–3785.

Agency: National Oceanic and Atmospheric Administration.
Title: Certificate of Origin.
Form Number: Agency—SF 369–1, SF 370–1; OMB—0648–0040.
Type of Request: Extension of the expiration date.
Burden: 40 respondents; 400 reporting hours.
Needs and Uses: Information is used to verify that fish or fishery products being imported originated in countries meeting standards set in the Marine Mammal Protection Act.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations.
Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Sheri Fox., 395–3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 23, 1985.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 85–30665 Filed 12–26–85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.
Title: Prelist Survey of Special Districts—1987 Census of Governments.
Form Number: Agency—G–24; OMB–NA.
Type of Request: New collection.
Burden: 3,000 respondents; 1,500 reporting hours.
Needs and Uses: This survey will be used to verify the existence of special districts for the 1987 Census of Governments.
Affected Public: State or local governments.

Frequency: Quinquennially.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Timothy Sprehe, 395–4814.
Agency: Bureau of the Census.
Title: Current Trade Report.
Form Number: Agency—B–310; OMB—0607–0190.
Type of Request: Revision of a currently approved collection.
Burden: 5,560 respondents; 5,332 reporting hours:
Needs and Uses: This survey provides the only continuous measure of monthly wholesale sales, end-of-month inventories, methods of inventory valuation, and stock/sales ratios. The Bureau of Economic Analysis uses the information on methods of inventory valuation and changes in the valuation methods to improve the inventory valuation adjustments applied to estimates of the gross national product.
Affected Public: Business or other for-profit institutions.
Frequency: Monthly.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: December 23, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–30666 Filed 12–26–85; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Docket No. 44–85]

Foreign-Trade Zone 65—Panama City, FL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Panama City Port Authority (PCPA), grantee of Foreign-Trade Zone 65, requesting authority to expand its zone within the Port terminal area in Panama City, and to include two industrial park sites in Bay County, Florida, adjacent to the Panama City Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 10, 1985.

On January 16, 1981, PCPA received authority from the Board to establish a foreign-trade zone, (Board Order 171, 46 FR 8072, 1/26/81). The project currently involves 15 acres at the Port of Panama City. Most existing zone activity involves a steel pipe manufacturer and a crane company.

The proposed expansion would add 542 acres to the zone project. The present site would be expanded to encompass the entire 125-acre Port terminal area, and to industrial park sites would be added to the project. One of the latter sites is at the Hugh Nelson Industrial Park, a 174-acre facility located off Highway 390, northeast of the Panama City-Bay County Airport and owned by the Panama City-Bay County Airport and Industrial District Authority. The other is a PCPA planned industrial park covering 259 acres on U.S. Highway 231 northeast of the intersection with Highway 167 in Bay County. The additional space will allow PCPA to offer zone services to companies that cannot be accommodated at the existing site.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Douglas Angle, District Director, U.S. Customs Service, South Central Region, 250 N. Water St., P.O. Box 27418, Mobile, AL 36628; Colonel Carroll H. Dunn, District Engineer, U.S. Army Engineer District Mobile, P.O. Box 2288, Mobile, AL 36628.

Comments concerning the proposed zone expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before February 3, 1986.

A copy of the application is available for public inspection at each of the following locations:

U.S. Customs Service, Port Director's Office, James H. Moor Bldg., Rm. 212, P.O. Box 469, Panama City, FL 32401.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: December 20, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–30586 Filed 12–26–85; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 321]

Resolution and Order Approving the Application of the Louisville and Jefferson County Riverport Authority for a Special-Purpose Subzone for General Electric Corporation in Jefferson County, KY

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, filed with the Foreign-Trade Zones Board (the Board) on December 7, 1984, requesting authority for a special-purpose subzone for the home appliance manufacturing plant of General Electric Corporation in Jefferson County, Kentucky, adjacent to the Louisville Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is subject to certain conditions, approves the application subject to the condition that any basic steel shape classifiable under Schedule 6, Part 2, Subpart B of TSUS and not incorporated into merchandise otherwise classified, shall be subject to Customs duty in accordance with applicable law if the same item, with comparable performance qualities and availability, is then being produced by a steel mill in the United States.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone for General Electric Corporation in Jefferson County, Kentucky, Adjacent to the Louisville Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone No. 29, has made application (filed December 7, 1984, Docket No. 54–84, 49 FR 48581) in due and proper form to the Board for authority to establish a special-purpose subzone at the home appliance manufacturing plant complex of General Electric Corporation, in Jefferson County, Kentucky, adjacent to the Louisville Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed December 7, 1984, the Board hereby authorizes the establishment of a subzone at the home appliance manufacturing plant complex of General Electric Corporation in Jefferson County, Kentucky, designated on the records of the Board as Foreign-Trade Subzone No. 29C at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations, those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The Executive Secretary shall be notified by the grantee or operator for approval prior to the commencement of any manufacturing operations not approved as part of the application and when manufacturing activity is changed to include foreign items subject to inverted tariffs.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 19th day of December 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–30587 Filed 12–26–85; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 40–85]

Foreign-Trade Zone 105—Providence, RI; Application for Special-Purpose Subzone (Stainless Steel), Pawtucket Fasteners, Inc.

The period for comments on the above case, involving request by the Rhode Island State Port Authority and Economic Development Corporation, grantee of Foreign-Trade Zone 105 for a special-purpose subzone at the stainless steel fastener manufacturing plant of Pawtucket Fasteners, Inc., in Pawtucket, Rhode Island (50 FR 46678, 11/12/85), is extended to January 31, 1986, to allow interested parties additional time to comment on the proposal.

Comments are invited in writing during this period. Submissions shall include 5 copies. Materials submitted will be available at Import Administration Central Records Unit, U.S. Department of Commerce, Room B-099, 14th & Pennsylvania Ave., NW, Washington, DC 20230.

Dated: December 20, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–30588 Filed 12–26–85; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 41–85]

Foreign-Trade Zone 84—Harris County, TX; Application for Special-Purpose Site (Fuel Blending), GATX Terminals

The period for comments on the above case, involving amendment of the Foreign-Trade Zone 84 zone plan to include a special-purpose zone site for the motor fuel storage and blending facilities of GATX Terminals Corporation, in the Houston, Texas area (50 FR 46678, 11/12/85), is extended to January 31, 1986, to allow interested parties additional time to comment on the proposal.

Comments are invited in writing during this period. Submissions shall include 5 copies. Materials submitted will be available at Import Administration Central Records Unit, U.S. Department of Commerce, Room B-099, 14th & Pennsylvania Ave., NW, Washington, DC 20230.

Dated: December 20, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–30589 Filed 12–26–85; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[Docket No. 51200–5200]

Finding for Foreign Availability Assessments

AGENCY: Export Administration, Office of Foreign Availability, Commerce.

ACTION: Notice of Finding for Foreign Availability Assessments.

SUMMARY: The Office of Foreign Availability (OFA) of Export Administration (EA) is required by the Export Administration Act of 1979, as amended by the Export Administration Amendments Act of 1985, to initiate and review claims of foreign availability on items controlled for national security purposes. OFA has completed assessments on step and repeat mask alignments and exposure systems (controlled under ECCN 1355A of the Commodity Control List) and Winchester disk drives (controlled under ECCN 1565A of the Commodity Control List) and has found no foreign availability for these commodities. Specific control parameters applicable to this equipment may be found in 399.1 of the Export Administrations Regulations (October 1, 1985).

FOR FURTHER INFORMATION CONTACT: Robert Rarog, Office of Foreign Availability, Department of Commerce, Washington, DC (Telephone: (202) 377–4890).

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability has completed assessments on foreign availability for decontrol of national security export controls of the following items:

Step and Repeat Mask Alignment and Exposure Systems

Such systems are a category of semiconductor manufacturing equipment controlled for national security purposes under ECCN 1355A of the Commodity Control List.

Winchester Disk Drives

These drives are a category of computer peripheral controlled for national security purposes under ECCN 1565A of the Commodity Control List.

Export Administration gives notice that the Office of Foreign Availability has completed assessments of foreign availability on the above-mentioned equipment and has found no foreign availability as defined by law.

If and when OFA receives substantive new evidence of foreign availability, assessments in these product categories will be re-evaluated.

Inquires concerning the scope of these assessments may be directed to the Office of Foreign Availability.

Dated: December 23, 1985.

James K. Pont,

Acting Director, Office of Foreign Availability

[FR Doc. 85–30648 Filed 12–26–85; 8:45 am]

BILLING CODE 3510–DT–M

[Docket Nos. 3641–01 and 3641–02]

Peter K. Gopal, and Semiconductor Systems International, Inc. Respondents; Order Affirming Imposition of Civil Penalty and Denying Export Privileges

On October 21, 1985, the Administrative Law Judge entered a default Order (50 FR 45138, Oct. 30, 1985) in the above matter, which was referred to the Assistant Secretary pursuant to Section 13(c) of the Export Administration Act of 1979, 50 U.S.C. App. sections 2401–2420 as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985), for his action affirming, modifying or vacating the subject Order. On November 21, 1985, the Acting Assistant Secretary, pursuant to his delegated authority affirmed the Order of the Administrative Judge, which constitutes the final Agency action in this matter. That Order provides:

> Pursuant to section 13(c) of the Export Administration Act, the record and Administrative Law Judge Hugh Dolan's Order Imposing A Civil Penalty and Denying Export Privileges were referred to me on November 12, 1985. Having examined the record, I find that it supports Judge Dolan's order in all respects. His order is affirmed.
>
> Dated: November 21, 1985.
>
> William T. Archey,
>
> *Acting Assistant Secretary.*

A copy of the Order has been served upon the Respondent and will be published in the **Federal Register**, pursuant to 15 CFR 387.12(c).

Dated: December 23, 1985.

Hugh J. Dolan

Administrative Law Judge.

[FR Doc. 85–30667 Filed 12–26–85; 8:45 am]

BILLING CODE 3510–DT–M

Minority Business Development Agency

Minority Business Development Center, Washington, DC; Application

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency's Request for Applications for the operation of a Minority business Development Center (MBDC) in the Washington, DC. Metropolitan statistical area is hereby concelled. The announcement appeared at page 50336 of the **Federal Register** on December 10, 1985.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office, Room 6711 H.C. Hoover Building, Washington, DC 20230. Telephone (202) 377–8275.

Dated: December 20, 1985.

Margaret Matta,

Special Projects Officer, Washington Regional Office.

[FR Doc. 85–30635 Filed 12–26–85; 8:45 am]

BILLING CODE 3510–21–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Intent To Prepare a Draft Environmental Impact Statement on the Proposed New Hampshire Coastal Program (NHCP)

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to prepare a draft environmental impact statement as required under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA).

SUMMARY: Notice is hereby given of the intent to prepare a Draft Environmental Impact Statement (DEIS) on the proposed approval of the New Hampshire Coastal Program (NHCP) under the provisions of section 306 of the Federal Coastal Zone Management Act of 1972 (Pub. L. 92–583, as amended), and distribute it in April 1986. The program incorporates the Great Bay area with the existing Ocean and Harbor Coastal Program, which was approved by the Office of Ocean and Coastal Resource Management in May of 1982.

Federal approval of the NHCP would make the State eligible for program administration grant funds and require that Federal actions in and directly affecting the coastal zone be consistent with the NHCP.

The NHCP consists of numerous policies on diverse management issues which will be prescribed and enforced by the existing laws of the State and is the culmination of several years of development. The New Hampshire Program will condition, restrict or prohibit some uses in parts of the management area, while encouraging development and other uses in other parts. The Program should improve the decisionmaking process for determining appropriate coastal land and water uses in light of resource considerations and increase public awareness of coastal resources. The Program will possibly result in some short-term economic impacts on coastal users but should lead to increased long-term protection of the

State's coastal resources. Federal alternatives will include delaying or denying approval if certain requirements of the Coastal Zone Management Act have not been met. State alternatives include the possibility of modifying parts of the Program or withdrawal of the request for Federal approval.

In order to determine the scope and significance of issues to be addressed in the DEIS, the Office of Ocean and Coastal Resource Management (OCRM) would like to solicit comments on the proposed action, particularly with respect to the following issues:

(1) The adequacy of the scope of the Program's enforceable policies, laws and regulations in meeting the requirements of the Coastal Zone Management Act;

(2) The adequacy of the geographic boundary;

(3) The adequacy of the mechanisms for administrative review and enforcement of compliance of agency decisions;

(4) The adequacy of the mechanisms for State agency coordination and consultation in order to effectively implement the NHCP.

A scoping meeting will be held on January 16, 1986 in the Navy Conference Room B–100, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC at 2 p.m. All interested parties are invited to attend.

Persons or organizations wishing to submit comments on these or other issues should do so by January 25, 1986. Any comments received after that time will be considered in the response to comments received on the DEIS.

FOR FURTHER INFORMATION CONTACT: Kathryn Cousins, Manager, North Atlantic Region, Office of Ocean and Coastal Resource Management, 3300 Whitehaven Street, NW., Washington, DC 20235, (202) 634–4126.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration

Dated: December 23, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–30683 Filed 12–26–85; 8:45 am]

BILLING CODE 3510-08-M

Marine Mammals; Application for Permit; North Wind Undersea Institute

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: North Wind Undersea Institute (P339A).

b. Address: 610 City Island Avenue, City Island, New York 10464.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Harbor seals *(Phoca vitulina richardii)*, 3.

4. Type of Take: Captive maintenance.

5. Location of Activity: Transfer from the New England Aquarium.

6. Period of Activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and Director, Northwest Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930–3799.

Dated: December 17, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85–30554 Filed 12–26–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Gulf World, Inc.

On October 29, 1985, notice was published in the **Federal Register** (50 FR 43759) that an application had been filed by Gulf World, Inc., 15412 West Alt. Highway 98, Panama City Beach, Florida 32407, for a permit to take one (1) Atlantic bottlenose dolphin *(Tursiops truncatus)* for public display.

Notice is hereby given that on December 18, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above

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taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: December 18, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 85-30555 Filed 12-26-85; 8:45 am]

BILLING CODE [illegible]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Product From the Polish People's Republic Effective on January 1, 1986

December 20, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5 and 31, 1984, between the Governments of the United States and the Polish People's Republic establishes an aggregate limit and within the aggregate, group limits for Categories 330-359, 630-642, 645-659, as a group, 431-442 and 444-459, as a group, and 443/643/644, as a group. Within those overall limits are individual limits for Categories 333, 334, 335, 338, 339, 433, 435, 440, 444, 445, 446, 447, 459, 634, 635, 638, 645/646, 647, 648, and 659, produced or manufactured in Poland and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of wool and man-made fiber textile products in the foregoing categories in excess of the designated twelve-month restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55807), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilaternal agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 5 and 31, 1984 between the Governments of the United States and the Polish People's Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories produced or manufactured in Poland and exported in the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986, in excess of the following levels of restraint:

Category	12 month restaint limits
Group II (300-359, 630-642 and 645-659)	55,784,683 yd² equivalent
Group III 431-442 and 444-459	2,328,142 yd² equivalent
Group IV 443/643/644	15,609 doz of which not more than 13,663 doz shall be in T.S.U.S.A. Nos. in these categories except 381.8351, 381.8352, 381.8820, and 381.9560.
333	99,019 doz.
334	242,925 doz.
335	47,854 doz.
338	743,459 doz of which not more than 297,384 doz shall be in T.S.U.S.A. No. 381.4130
339	305,488 doz.
410	2,312,222 yd.²
433	7,520 doz.
435	6,016 doz.
440	7,884 doz.
444	5,013 doz.
445	14,555 doz.
446	12,735 doz.
447	12,032 doz.
459	108,286 lb.
634	162,066 doz of which not more than 120,213 doz shall be in T.S.U.S.A. Nos. 381.2315, 381.2325, 381.2857, 381.3551, 381.3554, 381.6671, 381.6673, 381.8523, 381.8706, 381.8808, 381.8811, 381.9223, 381.9232 and 791.7460 and not more than 51,520 doz shall be in T.S.U.S.A. Nos. 376.5612, 381.3120, 381.3331, 381.3365, 381.3341, 381.6968, 381.6984, 381.9505, 381.9520, 381.9525, 381.9530, 381.9836, 381.9842, 381.9855, 381.9962, and 791.7471
635	849,023 doz of which not more than 38,592 doz. shall be in T.S.U.S.A. Nos. 384.2318, 376.5812, 384.2316, 384.2323, 384.2555, 384.2565, 384.2678, 384.2772, 384.2773, 384.5565, 384.5586, 381.7859, 384.7860, 384.8805, and 791.7473
638	225,294 doz.
639	168,903 doz.
645/646	121,533 doz.
647	161,176 doz of which not more than 62,679 doz shall be in T.S.U.S.A. Nos. 376.5618, 381.3180, 381.3190, 881.333, 381.3549, 381.6984, 381.9310, 381.9675, 381.9580, 381.9585, 381.9846, 381.9885, 381.9974, and 791.7481
648	89,542 doz of which not more than 35,817 doz. shall be in T.S.U.S.A. Nos. 376.5623, 384.2341, 384.2343, 384.2345, 384.2348, 384.2351, 384.2355, 384.2667, 384.2681, 384.2788, 384.5684, 384.7858, 384.9168, 384.9169, 384.9172, 384.9174, 384.9176, 394.9481, 384.9678, and 791.7481
659	204,339 lb.

In carrying out this directive, entries of wool and man-made fiber textile products in the foregoing categories, produced or manufactured in Poland, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels of restraint limits established for such goods during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of December 5 and 31, 1984, between the Governments of the United States and the Polish People's Republic, which provide, in part, that: (1) Within the aggregate and applicable group limits of the agreement, specific limits may be exceeded by designated percentages; (2) these same specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR

15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30584 Filed 12-26-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey Effective on January 1, 1986

December 20, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On October 18, 1985, the Governments of the United States and the Republic of Turkey exchanged letters for a new bilateral textile agreement dating from January 1, 1985 and extending through December 31, 1987. The agreement establishes specific limits on plied acrylic yarn in Category 604pt. (only T.S.U.S.A. number 310.5049) and cotton sheeting in Category 313, produced or manufactured in Turkey and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986. The letter from the Chairman of the Committee for the Implementation of Textile Agreements which follows this notice directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textiles and textile products in Categories 313 and 604 pt. In excess of the designated twelve-month limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textiles Agreements.

Commission of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of October 18, 1985, between the Governments of the United States and the Republic of Turkey; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 313 and 604 pt.,[1] produced or manufactured in Turkey and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986 in excess of the following limits:

Category	12-mo. restraint limit
313	15,900,000 yd.[2]
604 pt.[1]	[illegible] lbs.

[1] In Category 604, only T.S.U.S.A. number 310.5049.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Turkey, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the restraint limits established for them during that period. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

[1] In Category 604, only T.S.U.S.A. number 310.5049.

The restraint limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of October 18, 1985, between the Governments of the United States and the Republic of Turkey, which provided, in Part, that specific limits may be increased by designated percentages for swing, carrover and carryforward; however, carryforward will not be available in the final twelve-month agreement period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include the entry for consumption into the Commonwealth of Puerto Rico.

The Committe for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementotion of Textile Agreements.

[FR Doc. 85-30585 Filed 12-26-85; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in India, Effective on January 1, 1986

December 23, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, between the Governments of the United States and India establishes, among other things, levels of restraint for cotton, wool and man-made fiber textile products in Group II (Categories 330-359, 431-459 and 630-659), and in individual

Categories 310, 313, 318, 334, 335, 336, 337, 338/339/340, 341, 342, 347/348 and 363, produced or manufactured in India and exported during the agreement year which begins on January 1, 1986 and extends through December 31, 1986. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in India and exported during 1986, in excess of the designated restraint limits.

The limits for Group II and Categories 313, 334, 335, 336, 337, 338/339/340, 341, 342 and 347/348 have been adjusted to account for carryforward used in 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 21, 1982, as amended and extended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories produced or manufactured in India and exported during 1986, in excess of the following levels of restraint:

Category	12-month level of restraint
300–359, 431–459, and 630–659 [1].	115,534,800 square yards equivalent.
310	749,000 square yards.
313	19,687,386 square yards.
318	4,066,000 square yards.
334	[illegible] dozen.
335	[illegible] dozen.
336	272,776 dozen.
337	65,541 dozen.
338/339/340	[illegible] dozen.
341	2,275,411 dozen.
342	[illegible] dozen.
347/348	291,270 dozen.
363	[illegible] numbers.

[1] Excluding Categories 355, 356, 455, 456, 655, and 656.

Floor coverings in Categories 369 (only T.S.U.S.A. numbers 360.7600 and 361.5420), 465 (only T.S.U.S.A. numbers 360.0600, 360.1015, 361.1200, 361.4200 and 361.4500), and 665 (only T.S.U.S.A. numbers 360.7600 and 361.5426) are exempt from visa and certification requirements and from the limits set forth in this directive.

In carrying out this directive, cotton, wool and man-made fiber textile products in all of the foregoing categories, produced or manufactured in India and exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that twelve-month period. In the event the limits established during that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The 1986 restraint limits are subject to adjustment in the future, as applicable, according to the provisions of the bilateral agreement of December 21, 1982, between the Governments of the United States and India which provide, in part, that: (1) Group and specific limits may be exceeded by designated percentages for swing, carryover and carryforward, and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(1)(a).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for Implementation of Textile Agreements.

[FR Doc. 85-30671 Filed 12-26-85; 8:45 am]

BILLING CODE 3510-DR-M

Announcing an Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Nepal

December 23, 1985.

On October 22, 1985, a notice was published in the Federal Register (50 FR 42751) announcing that, on September 29, 1985, the United States Government under section 204 of the Agricultural Act of 1956, as amended (7 U.S.C 1854) had requested the Government of Nepal to enter into consultations concerning exports to the United States of cotton playsuits in Category 337, produced or manufactured in Napal.

The United States has decided, inasmuch as consultations have not been held with the Government of Napal, to control imports of textile products in Category 337, produced or manufactured in Nepal and exported during the twelve-month period which began on September 29, 1985 and extends through September 28, 1986, at a level of 51,188 dozen. If a different level is agreed in consultations further notice will be published in the Federal Register.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983(48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

For further information contact: Nathaniel Cohen, Trade Reference Assistant Office of Textiles and Apparel, U.S. Department of Commerce. Washington, DC (202/377–4212).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 30, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 337, produced or manufactured in Napal and exported during the twelve-month period which began on September 29, 1985 and extends through September 28, 1986, in excess of 51,118 dozen.[1]

Textile products in Category 337 which have been exported to the United States prior to September 29, 1985 shall not be subject to this directive.

Textile products in Category 337 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1)

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 85-30674 Filed 12-26-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Singapore Effective on January 1, 1986

December 23, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and the Republic of Singapore have agreed to extend their expiring Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 21, 1981, as amended, for three months, beginning on January 1, 1986 and extending through March 31, 1986. The agreement, as amended and extended, includes limits for the aggregate and three groups and for individual Categories 301, 331, 333/334/335, 336, 337, 338/339, 340, 341, 347/348, 359, 442, 445/446, 447, 448, 459, 631, 633/634/635, 636, 637, 638/639, 640, 641, 643/644, 646, 647/648 and 659, produced or manufactured in Singapore and exported during the aforementioned three-month period. In the letter published below, the CITA Chairman directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the aggregate, group and individual limits which are in excess of those limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commission: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 21, 1981, as amended and extended, between the Governments of the United States and the Republic of Singapore; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the three-month period which begins on January 1, 1986 and extends through March 31, 1986 in excess of the following limits:

Category	3-month restraint limit
300-352, 359-369, 400-448 459-469, 600-652, and 655-669	88,652,715 square yards equivalent of which not more than 19,889,734 square yards equivalent shall be in Categories 360-326, 360-369, 600-627, and 665-669; not more than 68,103,396 square yards equivalent shall be in Categories 330-352, 359, 630-652 and 659, and not more than 921,876 square yards equivalent shall be in Categories 400-448, [illegible]
301	54,348 pounds.
331	62,500 dozen pairs.
333/334/335	52,766 dozen of which not more than 3,034 dozen shall be in Category 333, not more than 16,020 dozen shall be in Category 334 and not more than 41,628 dozen shall be in Category 335.
336	8,750 dozen.
337	8,750 dozen.
338/339	175,866 dozen of which not more than 99,966 dozen shall be in Category 338 and not more than 117,115 dozen shall be in Category 339.
340	123,121 dozen.
341	24,412 dozen.
347/348	175,866 dozen of which not more than 151,483 dozen shall be in Category 347 and not more 66,376 dozen shall be in Category 348.
359	75,000 pounds of which not more than 50,000 pounds shall be in T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0648, 384.0652, 384.4300, and 384.4420.
442	1,389 dozen.
445/446	5,000 dozen.
447	1,389 dozen.
448	1,389 dozen.
459	12,500 pounds.
631	62,500 dozen pairs.
633/634/635	140,710 dozen of which not more than 7,462 dozen shall be in Category 633, not more than 61,240 dozen shall be in Category 634 and not more than 78,235 dozen shall be in Category 635.
636	11,000 dozen.
637	11,750 dozen.
638/639	836,314 dozen of which not more than 104,540 dozen shall be in Category 639.
640	19,250 dozen.
641	31,970 dozen.

[1] The level has not been adjusted to reflect any imports exported after September 28, 1985.

Category	3-month restraint limit
643/644	83,642 dozen of which not more than 14,416 dozen shall be in Category 643 and not more than 76,148 dozen shall be in Category 644.
646	25,000 dozen
647/648	474,897 dozen of which not more than 61,264 dozen shall be in Category 647.
659	300,000 pounds.

In carrying out this directive, entries of textile products in the foregoing categories, except Categories 442, 447, 448, 459, 633/634/635, 643/644, 646, 647/648 and 659, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories 442, 447, 448, 459, 633/634/635, 643/644, 646, 647/648 and 659 exported before January 1, 1986 shall not be subject to this directive.

The three-month limits are subject to adjustment in the future on a prorata basis according to the provisions of the bilateral agreement of August 21, 1981, as amended, and extended, between the Governments of the United States and the Republic of Singapore, which provide, in part, that: (1) Within the aggregate and applicable group limits of the agreement, specific limits may be exceeded by certain designated percentages; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include the entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30673 Filed 12-26-85; 8:45 am]

BILLING CODE 3510-DR-M

Establishing Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products From Taiwan Effective on January 1, 1986

December 23, 1985

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202)377-4212.

Background

The bilateral agreement of November 18, 1982 concerning cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan, establishes specific limits among other categories, for Category 313, 314, 315, 317, 319, 320, 331, 333/334, 335, 336, 337, 338/339, 340, 341, 342, 345, 347/348, 350, 351, 353/354/653/654, 433, 434, 435, 438, 444, 445/446, 447, 448, 604, 605pt. (only in T.S.U.S.A. number 310.9500), 612, 613, 631, 633/634/635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645/646, 647, 648, 650, 652, 659, 669, and 670, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986. Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that entry into the United States for consumption or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the foregoing categories be limited to the designated amounts during the agreement year which begins on January 1, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 18, 1982 concerning cotton, wool and man-made fiber textile products from Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986 in excess of the indicated restraint limits:

Category	12-mo restraint limit
313	44,834,372 square yards.
314	3,440,637 square yards.
315	26,439,474 square yards
317	19,326,733 square yards.
319	19,489,574 square yards
320	85,955,334 square yards
331	480,137 dozen pair.
333/334	70,604 dozen
335	84,433 dozen
336	84,515 dozen.
337	141,167 dozen.
338/339	584,064 dozen
340	654,264 dozen.
341	778,095 dozen.
342	188,533 dozen.
345	88,305 dozen
347/348	950,610 dozen of which not more than 466,876 dozen shall be in Category 347 and not more than 753,707 dozen shall be in Category 348.
350	97,041 dozen.
351	313,654 dozen.
353/354/653/654	22,429 dozen
433	12,590 dozen.
434	9,296 dozen.
435	19,911 dozen.
438	35,564 dozen
444	14,788 dozen.
445/446	128,190 dozen.
447	5,421 dozen.
448	11,910 dozen.
604	482,413 pounds
605 pt.[1]	1,031,719 pounds.
612	9,692,016 square yards
613	28,883,648 square yards
631 pt.[2]	210,125 dozen pairs

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Category	12 mos. restraint limit
633/634/635	1,534,030 dozen of which not more than 1,011,717 dozen shall be in Category 633/634 and not more than 752,416 dozen shall be in Category 635.
636	317,682 dozen.
637	354,881 dozen.
638	1,651,166 dozen.
639	5,033,179 dozen.
640	3,303,344 dozen.
641	714,335 dozen.
642	873,003 dozen.
643	45,697 dozen.
644	163,946 dozen.
645/646	4,926,555 dozen.
647	2,487,273 dozen.
648	3,136,227 dozen.
650	45,191 dozen.
652	1,365,813 dozen.
659 pt.[3]	4,296,491 pounds.
659 pt.[4]	1,5211,560 pounds.
659 pt.[5]	3,539,916 pounds.
659 pt.[6]	3,493,442 pounds.
659 pt.[7]	1,804,318 pounds.
669 pt.[8]	1,071,934 pounds.
669 pt.[9]	538,446 pounds.
669 pt.[10]	1,750,061 pounds.
670 pt.[11]	68,946,866 pounds of which not more than 3,156,866 pounds shall be in T.S.U.S.A. number 706.3420.
670 pt.[12]	39,205,676 pounds of which not more than 445,676 pounds shall be in T.S.U.S.A. number 706.3410.
670 pt.[13]	3,801,965 pounds of which not more than 111,965 pounds shall be in T.S.U.S.A. number 706.3410.

[1] In Category 605, only T.S.U.S.A. number 310.9500.
[2] In Category 631, only T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550 and 704.9000.
[3] In Category 659, only T.S.U.S.A. numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400, 384.9353.
[4] In Category 659, only T.S.U.S.A. numbers 384.1815, 384.8022.
[5] In Category 659, only T.S.U.S.A. numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, [illegible] 384.9361.
[6] In Category 659, only T.S.U.S.A. numbers 703.0510, 703.9520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000.
[7] In Category 659, only T.S.U.S.A. numbers 703.1610, 703.1620, 703.1630, 703.1640, 703.1650.
[8] In Category 669, only T.S.U.S.A. numbers 355.4520 and 355.4530.
[9] In Category 669, only T.S.U.S.A. number 385.5300.
[10] In Category 669, only T.S.U.S.A. numbers 386.1105, 386.5100, and 389.6210.
[11] In Category 670, only T.S.U.S.A. numbers 706.4144, 706.4152 and 706.3420.
[12] In Category 670, only T.S.U.S.A. numbers 706.4140 and 706.3410.
[13] In Category 670, only T.S.U.S.A. numbers 706.3900 and 706.3430.

In carrying out this directive entries of textile products in the foregoing categories, except Categories 605 and 652, produced or manufactured in Taiwan, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The 1986 limits are subject to adjustment pursuant to the provisions of the agreement of November 18, 1982, which provide, in part, that: (1) Specific limits or sublimits may be exceeded by designated percentages, provided a corresponding reduction in equivalent square yards is made in one or more specific limits of sublimits during the same agreement year; (2) certain specific limits and sublimits may be increased by carryforward; (3) special shift may be applied to certain categories, provided an equal amount to square yards equivalent is deducted from designated categories; and (4) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of the Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30672 Filed 12-26-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

December 24, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 27, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On September 9 and 19 and October 29, 1985 notices were published in the Federal Register (50 F.R. 36645, 38023 and 43762) announcing that, in August and September 1985, the American Institute in Taiwan (AIT), under the terms of the agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan, had requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of combed cotton yarn in Category 301, cotton headwear in Category 359pt., spun filament combination fabrics in Category 614pt., and man-made fiber brassieries in Category 649. Agreement was reached in consultations to establish limits for textile products in Categories 359pt., 614pts., and 649, produced or manufactured in Taiwan and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985. Because no agreement was reached on Category 301, the United States has decided to establish a limit on textile products in this category produced or manufactured in Taiwan and exported to the United States during the twelve-month period beginning January 1, 1985 and extending through December 31, 1985.

No charges have been made to the levels for the foregoing categories to account for any imports exported during 1985. Such adjustments will be made as the data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3, of the Tariff Schedules of the United States Annotated (1985).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 24, 1985

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 21, 1984, which established limits for certain categories, produced or manufactured in Taiwan and exported during 1985.

Effective on December 27, 1985, the directive of December 21, 1984 is hereby further amended to include the following levels for cotton and man-made textile products in the Categories 301, 359pt.,[1] 614pt.[2] and 649:

[1] In Category 359, only TSUSA numbers 702.0800 and 702.1200.

[2] In Category 614 only T.S.U.S.A. numbers 338.5040, 338.5045, 338.5051, 338.5056, 338.5081, 338.5085, 338.5088, 338.3072, 338.3075, 338.3078, 338.5084, 338.5087, 338.5092, 338.5095 and 338.5098.

Category	12-mo restraint level 3
301	407,252 lb.
359 pt. [1]	[redacted] lb.
614 pt. [2]	13,925,000 yd[2].
649	643,000 doz.

[1] In Category 359, only TSUSA numbers 702.0600 and 702.1200

[2] In Category 614 only T.S.U.S.A. numbers 338.5040, 338.5045, 338.5051, 338.5056, 338.5061, 338.5065, 338.5069, 338.5072, 338.5075, 338.5079, 338.5084, 338.5087, 338.5092, 338.5095 and 338.5098.

[3] The levels has not been adjusted to account for any imports exported after December 31, 1984. Imports during the January—October 1985 period have amounted to 502,739 pounds in Category 301; 1,883,733 pounds in Category 359pt.; 5,356,606 pounds in Category 614pt., and 446,170 dozen in Category 649.

Textile products in the foregoing categories which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1448(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30762 Filed 12-26-85; 8:45 am]

[redacted] CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia Effective on January 1, 1986

December 23, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, as issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement between the Governments of the United States and Malaysia, effected by exchange of notes dated July 1 and 11, 1985, as amended, establishes specific limits for cotton, wool and man-made fiber textile products in Categories 313, 331, 333/334/335, 336, 338/339, 340, 341, 345, 347/348, 369pt. (only T.S.U.S.A. number 366.2840), 438pt. (only women's knit shirts and blouses), 445/446, 604, 613, 631, 634, 635, 640, 645/646, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the foregoing categories in excess of the designated twelve-month restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 57709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 23, 1985.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C.1954), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Texitle Agreement effected by exchange of notes dated July 1 an 11, 1985 between the Governments of the United States and malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohitit, effective on January 1, 1986, entry into the United States for comsumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986 in excess of the indicated restraint limits:

Catetgory	Twelve-month restaraint limit
313	13,780,000 yd.[2]
331	657,306 doz pairs.
333/334/[redacted]	106,242 doz of which not more than 53,121 doz shall be in category 333, not more than 47,809 doz shall be in category 334 and not more than 53,121 doz shall be in category 335.
336	[redacted] doz.
338/339	540,600 doz of which not more than 211, 366 doz shall be in category 339.
340	[redacted] doz.
341	269,240 doz.
345	78,705 doz.
347/348	221,381 doz of which not more than 115,755 doz shall be in category 348.
369pt.[1]	[redacted] lbs
438pt.[2]	11,110 doz.
445/446	[redacted] doz.
[redacted]	5,936,000 yd [2] equivalent.
613	17,000,000 yd [2].
[redacted]	371,000 doz yd [2].
[redacted]	238,500 doz.
635	159,000 doz.
636	135,000 doz.
638/639	235,599 doz.
640	275,600 doz.
641	604,200 doz.
645/646	163,117 doz.
647/648	848,983 doz of which not more than 551,200 doz shall be in T.S.U.S.A Nos. 381.2370, 381.2375, 381.2659, 381 3380, 381 6679, 381.8531, 381.8730, 381.8815, 381.8835, 381.8840, 381.9234, 384.1926, 384.1928, 384.1950, 384.1950, 384.2010, 384.2020, 384.2030, 384.2040, 384.2050, 384.2267, 384.2273, 384.2722, 384.5482, 384.7756, 384 8241, 384.8243, 384 8245, 384 8247, 387.8256, 384.8258, 384.8262, 384 8264.

[1] In Category 369, only T.S.U.S.A. number 366.2840

[2] In Category 438, only T.S.U.S.A. numbers 384.1307, 384.1309, 384.2711, 384.5434, 3894.5910, 384.6310, 384.7724, and 384 9640.

In carrying out this directive entries of textile products in the foregoing categories, except Categories 613, 631, produced or manufactured in Malaysia, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985. In the event the levels of restraint established for the period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in Categories 613 and 631 which have been exported before January 1, 1986 shall be subject to this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement between the Governments of the United States and Malaysia which provide, in part, that: (1) specific limits or sublimits may be exceeded by not more than 5 percent, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be adjusted for carryover and carry forward up to 11 percent of the applicable category limits; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47

FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26822), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533 (a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30670 Filed 12-26-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement ist.

SUMMARY: The Committee has received proposals to add to Procurement List 1986 commodities to be produced by and service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 29, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshop for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1986, October 15, 1985 (50 FR 41809):

Commodities

Holder, Binder Label, 7510-00-272-3044
(GSA Regions 3, 4, 7 and 10 only)
Coin Bags:
8105-00-NSH-0005
8105-00-NSH-0006
8105-00-NSH-0008
8105-00-NSH-0009
8105-00-NSH-0010
8105-00-NSH-0011
8105-00-NSH-0012
(Portion of Government requirement not on Procurement List)

Services

Commissary Shelf Stocking, Naval Air Station, Pensacola, Florida
Commissary Shelf Stocking and Custodial, Redstone Arsenal, Alabama
Commissary Shelf Stocking and Custodial, Fort Monroe, Virginia
Grounds Maintenance, DOT/Federal Aviation Administration, Airway Facilities Sector, ARTC Center, 299 Woolsey Road, Hampton, Georgia

C.W. Fletcher,

Exective Director.

[FR Doc. 85-30652 Filed 12-26-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1986 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1986 services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: December 27, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 30 and September 27, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 35287 and 50 FR 39160) of proposed additions to Procurement List 1986, October 15, 1985 (50 FR 41809).

Additions

After consideration of the relevant matter presented, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.5.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. the actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the services listed.

c. The actions will result in authorizing small entities to provide the services procured by the Government.

Accordingly, the following services are hereby added to Procurement List 1986:

Janitorial/Custodial, U.S. Department of Agriculture, National Finance Center, NASA Facility, 13800 Old Gentilly Road, Building 350, New Orleans, Louisiana
Janitorial/Custodial, Federal Building, 240 West Third Street, Williamsport, Pennsylvania

C. W. Fletcher,

Executive Director.

[FR Doc. 85-30651 Filed 12-26-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation; Information Collection Activities Under OMB Review

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Office of Federal Acquisition and Regulatory Policy, 202-523-5168.

SUPPLEMENTARY INFORMATION:

a. *Purpose:* Contractor inventory schedules (SF 1423 through 1434) are forms prepared by Government personnel to inventory Government property held by contractors. The inventories are used to redistribute and dispose of excess government property after contract completion.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents *12,500;* responses per respondent *4;* total annual responses, *50,000;* hours per response, *1;* and total burden hours, *50,000.*

Obtaining copies of proposals: Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GS Building, Washington, DC 20405, telephone 202–523–4755. Please cite OMB Control No. 9000–0015, Contractor Inventory Schedule forms.

Dated: December 19, 1985.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 85–30534 Filed 12–26–85; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, January 7, 1986; Tuesday, January 14, 1986; Tuesday, January 21, 1986; and Tuesday, January 28, 1986; at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency" (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 23, 1985.

[FR Doc. 85–30597 Filed 12–26–85; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Small ICBMs; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Small ICBMs will meet in closed session on January 24, 1986 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will receive classified briefings on ICBMs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 23, 1985.

[FR Doc. 85–30598 Filed 12–26–85; 8:45 am]

BILLING CODE 3810–01–M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 130. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 130 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: January 1, 1986.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 130

To the Heads of the Executive Departments and Establishments

Subject: Table of Maximum per Diem Rates in Lieu of Subsistence for United States Government Civilian Officers and Employees for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated 17 August 1966, subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702 (a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with

regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 129 except for the cases identified by asterisks which rates are effective on the date of this Bulletin.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$115
£Anaktuvuk Pass	£140
£*Anchorage	£122
£Atqasuk	£115
£*Barrow	£144
£*Bethel	£124
£Coldfoot	£122
£*College	£105
£*Cordova	£113
£*Deadhorse	£145
£Dillingham	£114
£Dutch Harbor-Unalaska	£105
£*Elelson AFB	£105
£*Elmendorf	£122
£*Fairbanks	£113
£*Ft. Richardson	£122
£*Ft. Wainwright	£105
£Juneau	£109
£*Kenai	£119
£Ketchikan	£113
£*Kodiak	£110
£*Kotzebue [2]	£126
£*Murphy Dome [2]	£105
£*Noatak	£126
£Nome	£136
£*Noorvik	£120
£Petersburg	£113
£Point Hope	£160
£Point Lay	£179
£Prudhoe Bay	£131
£Sand Point	£103
£Shemya AFB [3]	£30
£*Shungnak	£126
£Sitka-Mt. Edgecombe	£113
£Skagway	£113
£*Spruce Cape	£110
£St. Mary's	£100
£Tanana	£136
£*Valdez	£136
£Wainwright	£165
£Wrangell	£113
£Yakutat	£100
£*All Other Localities [3]	£91
£American Samoa	£61
£Guam M. I.	£91
Hawaii:	
£Hawaii, Island of	£81
£Oahu	£94
£All Other Islands	£81
£Johnston Atoll [3]	£23
£Midway Islands [1]	£13
Puerto Rico:	
Bayamon:	
£12-16—5-15	£132
£5-16—12-15	£105
Carolina:	
£12-16—5-15	£132
£5-16—12-15	£105
Fajardo (Including Luquillo):	
£12-16—5-15	£132
£5-16—12-15	£105
Ft. Buchanan (Incl GSA Service Center, Guaynabo):	
£12-16—5-15	£132
£5-16—12-15	£105
£Ponce (Incl. Ft. Allen NCS)	£88
Roosevelt Roads:	
£12-16—5-15	£132
£5-16—12-15	£105
Sabana Seca:	
£12-16—5-15	£132
£5-16—12-15	£105
San Juan (Including San Juan Coast Guard Units):	
£12-16—5-15	£132
£5-16—12-15	£105
£All Other Localities	£111
Virgin Islands of U.S.:	
£12-1—4-30	£128
£5-1—11-30	£112
£Wake Island [3]	£30
£All Other Localities	£30

[1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the following Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[3] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 20, 1985.

[FR Doc. 85-30599 Filed 12-26-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB), TRADOC Operations Research Activity Ad Hoc Subgroup.

Dates of meeting: Tuesday–Thursday, 21–23 January 1986.

Times of meeting: 0830–1630 hours.

Places: TRADOC Research Element Monterey, Monterey, CA.

Agenda: The Army Science Board Ad Hoc Subgroup for TRADOC Operations Research Activity (TORA) will meet for briefings by analysis and research agencies. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-30606 Filed 12-26-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday & Friday, 23–24 January 1986.

Times of Meeting: 0800–1700 hours.

Places: SRI International, Menlo Park, CA.

Agenda: The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense Follow-On will meet to discuss Army Free Electron Laser Program and Active Midcourse Discrimination. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-30637 Filed 12-26-85; 8:45 am]

BILLING CODE 3710-08-M

Defense Contract Audit Agency

Privacy Act of 1974; Amendments of Records Systems

AGENCY: Defense Contract Audit Agency (DCA), DOD.

ACTION: Notices to amended records sytems.

SUMMARY: The Defense Contract Audit Agency is giving notice of the amendment of five existing systems of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The specific changes to the notices being amended are set forth below followed by the records systems notices, as amended, published in their entirety.

DATES: This proposed action will be effective without further notice on or before January 27, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mr. John van Santen, Assistant Director, Resources, Cameron Station, Alexandria, VA 22304-6178. Telephone: 202/274-7308, Autovon: 284-7308.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been previously published in the Federal Register as follows:

FR Doc. 85–10237 (50 FR 22884) May 29, 1985
FR Doc. 85–29260 (50 FR 50339) December 10, 1985

None of the following five amended systems of records are subject to an altered system report as required by 5 U.S.C. 552a(o).

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 23, 1985.

AMENDMENTS

RDCAA 152.2

System Name:

Personal Security Date Files (50 FR 22886, May 29, 1985).

Changes:

categories of records in the system:

In the first paragraph, after "requests" delete "for an approval or disapproval of" and substitute "for, and approval or disapproval of,".

RDCCA 152.5

System Name:

Notification of Security Determination (50 FR 22887, May 29, 1985).

Changes:

Retrievability:

Delete "file series" and substitute with "origanizational element."

RDCAA 152.7

System Name:

Clearance Certification (50 FR 22888, May 29, 1985).

Changes:

System Location:

In the first paragraph, after "Field Audit Offices" and: "Field Detachment." In the second paragraph, after "Chiefs of Personnel" add: "Divisions, DCAA Regional Offices,".

Categories of Records in the System:

After "Field Audit Offices" add: Field Detachment."

RDCAA 358.3

System Name:

Grievance & Appeal Files (50 FR 22893, May 29, 1985).

Changes:

Storage:

Delete entry; substitute: "Paper records in file folders."

Safeguards:

Delete entry; substitute: "Grievance files are under the control of the personnel office staff during duty hours. During nonduty hours, the personnel office and/or filing cabinet is locked."

RDCAA 371.5

System Name:

Locator Records (50 FR 22894, May 29, 1985).

Changes:

System Location:

Delete entry; substitute: "Director of Personnel, HQ, DCAA, Cameron Station, Alexandria, VA 22304–6178; Regional Offices, whose addresses are in the DoD directory in the appendix to DCAA's systems notices; and Field Audit Offices, whose addresses may be obtained from their cognizant regional office.

System Manager(s) and Address:

Delete entry; substitute: "Director of Personnel, HQ, DCAA, Cameron Station, Alexandria, VA 22304–6178; Personnel Officers in regional offices, whose addresses are in the DoD directory in the appendix to DCAA's systems notices; and Managers of field audit offices, whose addresses may be obtained from their cognizant regional office.

RDCAA 152.2

SYSTEM NAME:

Personnel Security Data Files.

SYSTEM LOCATION:

Primary System—Security Officer, Defense Contract Audit Agency (DCAA), Headquarters, DCAA.

Decentralized Segments—Director of Personnel, DCAA; DCAA Regional Offices: Chiefs of Personnel Divisions and Regional Security Officers whose addressess are in the DoD directory in the appendix to DCAA's system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants for employment with DCAA; all DCAA employees; all military personnel assigned, detailed, or attached to DCAA; all persons hired on a contractual basis by, or serving in an advisory capacity to DCAA, who require access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Section One contains copies of individual's employment applications, security investigative questionnaires, requests for, and approval or disapproval of, emergency appointment authority; requests for investigation or security clearance; interim and final security clearance certificates.

Section Two contains non record copies of investigations, or summaries or extracts of the results of investigations, furnished by investigative agencies, conducted to determine suitability, eligibility or qualifications for Federal civilian employment, military service, or access to classified information.

Section Three contains summaries or extracts of reports of investigation, internal Agency memorandums and correspondence furnishing analysis of results of investigations in so far as their relationship to the criteria set forth in the Executive Order 10450, in the Federal Personnel Manual and in Department of Defense and DCAA Directives and Regulations; comments and recommendations of the DCAA Central Clearance Group to the Director, DCAA, and determination by the Director, DCAA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 USC 2904, 3102; 5 USC 7531 through 7533; Executive Order 10450, 'Security Requirements for Government Employees,' as amended; Executive Order 12356, 'National Security Information'.

PURPOSE(S):

To provide a basis for requesting appropriate investigations; to permit determinations on employment or retention; to authorize and record access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See blanket routine uses at the beginning of this component's listing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Sections One and Three—Paper records in file folders. Section Two—Paper records and microfiche in file folders.

RETRIEVABILITY:

Folders are filed by file series then by organizational element (DCAA Headquarters or DCAA field activities) and then alphabetically by last name of individual concerned.

SAFEGUARDS:

Records are accessible only to authorized personnel who are properly cleared and trained and who require access in connection with their official duties. Records are stored in locked filing cabinets after normal business hours.

RETENTION AND DISPOSAL:

Section One and Three: Records pertaining to Federal employees, military personnel, and persons furnishing services to DCAA on a contract basis are destroyed upon separation of employees, transfer of military personnel from DCAA, and upon termination of the contracts of contractor personnel. Records pertaining to applicants are destroyed if an appointment to the Agency is not made.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, DCAA, Headquarters, DCAA, Cameron Station, Alexandria, VA 22304–6178.

NOTIFICATION PROCEDURE:

Information may be obtained from Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178, Telephone: Area Code 202/274–7288.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

Written requests for information should contain the full name of the individual, current address and telephone number and current business address. Visits are limited to those offices (Headquarters and 6 regional offices) listed in the DoD directory in the appendix to DCAA systems notices.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or employing offices' identification card.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

RECORD SOURCE CATEGORIES:

Headquarters, DCAA: Security Officer and Director of Personnel; DCAA Regional Offices: Chiefs of Personnel Divisions, Regional Security Officers, Chiefs of Field Audit Offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

RDCAA 152.5

SYSTEM NAME:

Notification of Security Determinations.

SYSTEM LOCATION:

Primary System—Regional Security Officer, DCAA Regional Office; Security Control Officer, DCAI.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA personnel and applicants for DCAA employment on whom specific security or suitability action must be taken.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain a summary of pertinent security or suitability information; the results of security determinations approved by the Director, DCAA; and directed or recommended actions to be taken at DCAA Regional Office, Field Audit Office or DCAI level.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 USC 2904, 3102; 5 USC 7531 through 7533; Executive Order 10450, "Security Requirements for Government Employees," as amended, and Executive Order 12356, "National Security Information".

PURPOSE(S)

To permit required actions of a suitability or security nature to be taken by appropriate DCAA officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See blanket routine uses at the beginning of this component's listing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Folders are filed by organizational element, then alphabetically by name of person concerned.

SAFEGUARDS:

Records are accessible only to authorized personnel who are properly cleared and trained and who require access in connection with their official duties. Records are stored in locked filing cabinets after normal business hours.

RETENTION AND DISPOSAL:

Destruction is directed individually in each case upon completion of final security or suitability actions or automatically upon non-appointment of applicants or separation of employees, whichever is earlier.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Headquarters, DCAA, Cameron Station, Alexandria, VA 22304–6178.

NOTIFICATION PROCEDURE:

Information may be obtained from: Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178, Telephone: Area Code 202/274–7288.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

Written requests for information should contain the full name of the individual, current address and telephone number and current business address. Visits are limited to those offices (Headquarters and 6 regional offices) listed in the DoD directory in the appendix to DCAA systems notices.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or employing offices' identification card.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

RECORD SOURCE CATEGORIES:

Results of investigations received from Federal agencies and recommendations for action from appropriate DCAA Headquarters staff elements.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

RDCAA 152.7

SYSTEM NAME:

Clearance Certification.

SYSTEM LOCATION:

Primary System—Regional Security Officers, DCAA Regional Offices; Security Control Officers, DCAA Field Audit Offices, Field Detachment, and DCAI, whose addresses are in the DoD

directory in the appendix to DCAA's systems notices.

Decentralized Segments—Security Officer, DCAA, and Director of Personnel, Headquarters, DCAA; Chiefs of Personnel Divisions, DCAA Regional Offices, whose addresses are in the DoD directory in the appendix to DCAA's systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DCAA personnel who require access to classified information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain interim and final security clearance certificates attesting to type of investigation conducted and degree of access to classified information which is authorized as well as at the Field Audit Offices, Field Detachment, and DCAI, copies of security acknowledgment certificates and special access briefing statements executed by individuals upon being granted security clearances or access to special access information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 USC 2904, 3102, 5 USC 7531 through 7533; Executive Order 10450, 'Security Requirements for Government Employees,' as amended, and Executive Order 12356, 'National Security Information'.

PURPOSE(S):

To maintain a record of the security clearance status of all DCAA personnel as well as certification of briefings for access to classified information and special access information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To DoD contractors to furnish notice of security clearance and access authorization of DCAA employees. See blanket routine uses at the beginning of this component's listing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of individual concerned within subject file.

SAFEGUARDS:

Records are accessible only to those authorized personnel required to act upon a request for access to classified defense information. Records are stored in locked filing cabinets after normal business hours and stored in locked rooms or buildings.

RETENTION AND DISPOSAL:

Files pertaining to Federal employees, military personnel, and persons furnishing services to DCAA on a contract basis are destroyed upon separation or transfer of employee or military personnel and upon termination of contractor personnel. Files of individuals transferring within DCAA are transferred to security control office of gaining element for maintenance.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, DCAA, Headquarters, DCAA, Cameron Station, Alexandira, VA 22304–6178.

Regional Security Officers in DCAA Regional Offices whose addresses are in the DoD directory in the appendix to DCAA's systems notices.

NOTIFICATION PROCEDURE:

Information may be obtained from: Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178, Telephone: Area Code 202/274–7288.

RECORD ACCESS PROCEDURE:

Requests from individuals should be addressed to Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

Written requests for information should contain the full name of the individual, current address and telephone number and current business address. Visits are limited to those office (Headquarters and 6 regional offices) listed in the DoD directory in the appendix to DCAA systems notices.

For personal visits, the individual should be able to provide some acceptable identification, that is, driver's license or employing offices' identification card.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

RECORD SOURCE CATEGORIES:

Security Officer, DCAA; Regional Security Officers, DCAA Regional Offices and Security Control Officers of DCAA Field Audit Offices and DCAI.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

RDCAA 358.3

SYSTEM NAME:

Grievance & Appeal Files.

SYSTEM LOCATION:

Grievant's servicing personnel office in Headquarters or in the regional offices whose addresses are in the DoD directory in the appendix to DCAA's systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees who have filed formal grievances that may be adjudicated under either Chapter 58, DCAA Personnel Manual or a negotiated grievance procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The written grievance; assignment of examiner; or selection of an arbitrator or referee; statements of witnesses; written summary of interviews; written summary of group meetings; transcript of hearing if one held; correspondence relating to the grievance and conduct of the inquiry; exhibits evidence; transmittal; memorandums and letters; decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301; 10 USC 133; 44 USC 2901; Part 771, Civil Service Regulations.

PURPOSE(S):

To record the grievance, the nature and scope of inquiry into the matter being grieved, and the treatment accorded the matter by management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To arbitrators, referees, or other third party hearing officers selected by management and/or the parties to the grievance to serve as factfinders or deciders of the matter grieved. See blanker routine uses at the beginning of this component's listing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Grievance files are filed by subject matter, contract clause, or by name alphabetically.

SAFEGUARDS:

Grievance files are under the control of the personnel office staff during duty hours. During nonduty hours, the

personnel office and/or filing cabinet is locked.

RETENTION AND DISPOSAL:

Review annually; destroy entire file 1 year after the grievance has been decided or after the transfer or separation of the employee, whichever is shorter.

SYSTEM MANAGER(S) AND ADDRESS:

Each servicing personnel officer in Headquarters or the Regions whose addresses are in the DoD directory in the appendix to DCAA's systems notices.

NOTIFICATION PROCEDURE:

Requests for information should be made to the region in which the grievance originated.

Written requests should contain individual's full name, current address, telephone number and office of assignment. Individuals may visit the personnel office of the region in which the grievance was filed. For personal visits, individual must furnish positive identification.

Information will be at the Personnel Office of the Region in which the grievance originated or HQ, DCAA.

RECORD ACCESS PROCEDURES:

Individuals may obtain information on access to records by communicating in writing or personally with the SYSMANAGER or Personnel Officer of the region of record.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

RECORD SOURCE CATEGORIES:

Grievant;

Witnesses;

Exhibits furnished in evidence by grievant and witnesses;

Grievance examiner; and persons interviewed by the grievance examiner;

Deciding official arbitrator, referee, or other third party factfinder or decider.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

RDCCA 371.5

SYSTEM NAME:

Locator Records.

SYSTEM LOCATION:

Director of Personnel, HQ, DCAA, Cameron Station, Alexandria, VA 22304–6178; Regional Offices, whose addresses are in the DoD director in the appendix to DCAA's system notices; and Field Audit Offices, whose addresses may be obtained from their cognizant regional office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees of DCAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, office room number, office telephone number, office symbol, home address, home telephone number, date prepared, spouse's name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301; 10 USC 133; 44 USC 2901, et seq.

PURPOSE(S):

To provide a ready reference to employee home address and telephone number for business, protocol and social purposes.

ROUTINE USES OF RECORD MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See blanket routine uses at the beginning of this component's listing.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

3 x 5 card, stored in index card box.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Under control of office staff during duty hours. Building and/or office locked and/or guarded during nonduty hours.

RETENTION AND DISPOSAL:

Retained until separation of employee, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, HQ, DCAA, Cameron Station, Alexandria, VA 22304–6178; Personnel Officers in regional offices, whose addresses are in the DoD directory in the appendix to DCAA's systems notices; and Managers of field audit offices, whose addresses may be obtained from their cognizant regional office.

NOTIFICATION PROCEDURE:

Information may be obtained from the SYSMANAGER.

Written requests for information must include individual's full name, current address, telephone number and office of assignment.

Individual may visit the Office of the SYSMANAGER.

For personal visit, individual must furnish positive identification.

RECORD ACCESS PROCEDURES:

A personal or written request to the SYSMANAGER.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations may be obtained from the Records Administrator, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304–6178.

RECORD SOURCE CATEGORIES:

Employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85–30595 Filed 12–26–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

Privacy Act of 1974; Amended Systems of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice of amendments to systems of records.

SUMMARY: The Department of the Navy proposes to amend nine systems of records in its inventory of systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The specific changes to the notices being amended are set forth below followed by the particular notice as amended.

DATES: The proposed action will be effective without further notice on or before January 27, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the systems manager identified in the particular system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn B. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op–09B30), Department of the Navy, The Pentagon, Washington, DC 20350–2000, Telephone: 202/694–2004, Autovon: 224–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub.

L. 93–579 were published in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22735) May 29, 1985
FR Doc. 85–16564 (50 FR 28442) July 12, 1985
FR Doc. 85–20719 (50 FR 35290) August 30, 1985
FR Doc. 85–21577 (50 FR 36914) September 10, 1985

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 23, 1985.

N05350–1

System name:

Navy Personnel Rehabilitation Support System (50 FR 36914) September 10, 1985.

Changes:

System location:

In lines 12 and 13, delete the phrase: "* * * Navy Corrections Centers, * * *"

Categories of records in the system:

Delete the entire entry and substitute with the following: "Copies of interview appraisals, progress reports, psychosocial histories, counselor observations and impressions of client's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, and personnel, service, biographical and educational data."

Purpose(s):

Delete the entire entry and substitute with the following: "To identify alcohol and drug abusers and either restore such persons to effective duty or identify rehabilitation failures for separation from Government service. Information is used to treat, diagnose, counsel and rehabilitate individuals in the drug or alcohol abuse programs. For counselors and counselor candidates to use in the screening and evaluation of candidates for counselor school and the continuing evaluation of counselors during the course of their duties."

Notification Procedures:

In lines 9 through 12, delete the sentence: "(Those inquiring about records at Confinement Centers must have their signatures notarized, if not confined at the time of the request)."

N05350–1

SYSTEM NAME:

Navy Personnel Rehabilitation Support System.

* * * * *

SYSTEM LOCATION:

Primary system—Naval Military Personnel Command, Navy Department, Washington, DC 20370;

Decentralized segments—Navy Drug Rehabilitation Centers, Navy Alcohol and Drug Information System Processing Office, Navy Alcohol Rehabilitation Centers, Naval Regional Medical Centers, Navy Counseling and Assistance Centers, Navy Alcohol Rehabilitation Drydocks, Naval Health Research Centers, and local activities to which an individual is assigned (see Directory of Department of the Navy Mailing Addresses).

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of interview appraisals, progress reports, psychosocial histories, counselor observations and impressions of client's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinanalysis for alchohol/drug abuse, and personnel, service, biographical and educational data.

* * * * *

PURPOSE(S):

To identify alchohol and drug abusers and either restore such personms to effective duty or identify rehabilitation failures for separation form Government service. Information is used to treat, diagnose, counsel and rehabilitate individuals in the drug or alcohol abuse programs. For counselors and counselor candidates to use in the screening and evaluation of candidates for counselor school and the continuing evaluation of counselors during the course of their duties."

* * * * *

NOTIFICATION PROCEDURES:

Written requests should be addressed to activity to which the individual received treatment or to the Commander, Naval Military Personnel Command, Navy Annex, Washington, DC 20370. Requests must contain full name, social security number, military status, address and signature of requester. The individaul may visit the Commander, Naval Military Personnel Command, Arlington Annex (FOB–2) for assistance with records located in the Naval Military Personnel Command; the individual may also visit local activities concerned (See Directory of Department of the Navy mailing addresses). Proof of identification will consist of military ID card for persons having them or other picture-bearing identification.

* * * * *

N05810–2

System name:

Military Justice Correspondence File (50 FR 22811) May 29, 1985.

Changes:

System Manager(s) and Address:

In line 2, delete the phrase: "* * *(Civil Law)* * *" and substitute with: "* * *(Military Law)* * *"

N05810–2

SYSTEM NAME:

Military Justice Correspondence File.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

* * * * *

N05813–3

System name:

General Courts-Martial Records of Trial (50 FR 22813) May 29, 1985.

Changes:

System manager(s) and address:

In line 2, delete the phrase: "* * * (Civil Law) * * *" and substitute with: "* * * (Military Law) * * *"

N05813–3

SYSTEM NAME:

General Courts-Martial Records of Trial.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

* * * * *

N05814–1

System name:

Summary courts-martial and non-bad conduct discharge courts-martial—Navy and Marine Corps (50 FR 22814) May 29, 1985.

BEST COPY AVAILABLE

Changes:

System manager(s) and address:

In line 2, delete the phrase: "* * * (Civil Law) * * *" and substitute with: "* * * (Military Law) * * * "

At the end of the entry, add the following phrase: "* * * and appropriate officers having supervisory authority over naval activities."

N05814–1

SYSTEM NAME:

Summary courts-martial and non-bad conduct discharge courts-martial—Navy and Marine Corps.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332 and appropriate officers having supervisory authority over naval activities.

* * * * *

NO5815–1

System name:

Special courts-martial resulting in bad conduct discharges or concerning commissioned officers (50 FR 22815) May 29, 1985.

Changes:

System manager(s) and address:

In line 2, delete the phrase: " * * * (Civil Law) * * * " and substitute with: " * * * (Military Law * * * "

NO5815–1

System name:

Special courts-martial resulting in bad conduct discharges or concerning commissioned officers.

* * * * *

Changes:

System manager(s) and address:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

* * * * *

NO5817–1

System name:

Courts-Martial Statistics (50 FR 22815) May 29, 1985.

Changes:

System manager(s) and address:

In line 2, delete the phrase: " * * * (Civil Law) * * * " and substitute with: " * * * (Military Law) * * * "

NO5817–1

System name:

Courts-Martial Statistics.

* * * * *

Changes:

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

NO5819–1

System name:

Article 96 Petitions (50 FR 22816) May 29, 1985.

Changes:

System manager(s) and address:

In line 2, delete the phrase: " * * * (Civil Law) * * * " and substitute with: " * * * (Military Law) * * * "

NO5819–1

SYSTEM NAME:

Article 69 Petitions.

* * * * *

Changes:

System manager(s) and address:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

* * * * *

NO5819–2

System name:

Article 73 Petitions for New Trial (50 FR 22817) May 29, 1985.

Changes:

System manager(s) and address:

In line 2, delete the phrase: " * * * (Civil Law) * * * " and substitute with: " * * * (Military Law) * * * "

NO5819–2

SYSTEM NAME:

Article 73 Petitions for New Trial.

* * * * *

Changes:

System manager(s) and address:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, VA 22332.

* * * * *

N12950–5

System name:

Navy Civilian Personnel Data System (NCPDS) (50 FR 22866) May 29, 1985.

Changes:

System location:

In line 4, after the phrase: " * * * Personnel Command (NCPC), * * * add the phrase: " * * * Naval Military Personnel Command (NMPC) * * * ".

At the end of the entry, add the following: "Included in this notice are those records duplicated for retrievability at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area)."

Categories of individuals covered by the system:

Delete the entire entry and substitute with the following: "Department of the Navy civilian employees paid from appropriated and nonappropriated funds, and foreign national direct and indirect hire employees."

Categories of records in the system:

In line 8, after the word "basis", add the following phrase: " * * * or other compensation and allowances * * * ".

In line 19, delete the word "and", and change the word "reason" to "reasons".

In line 21, after the word employee add the phrase: " * * * and case files pertaining to EEO, MSPB, labor and employee relations, and incentive awards."

In line 22, after the word "the" delete the remainder of the entry and substitute with the following: " * * * NCPDS subsystems: the Navy Automated Civilian Manpower Information System (NACMIS), the Training Information Management System (TIMS), the Personnel Automated Data System (PADS), the Computerized Employee Management Program Administration and Research (CEMPAR), the OP–14/NCPC Customer Support Centers, the Executive Personnel Management Information System (EPMIS) and the NCPDS base level and Headquarters systems."

Authority for maintenance of the system:

Delete the entire entry and substitute with the following: "5 USC 301; 5 USC 4118; Executive Order 9397; 5 USC 2951; Executive Order 10450; 42 USC 2000e, 5 USC 3135, 5 USC 4301 et seq., 5 USC 4501 et seq., 5 USC 4705 and Subparts D, E, F and G of Title 5, USC, and 29 CFR Part 1613 et seq."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In paragraph 6, delete the phrase: " * * * card punch recording * * * " and substitute with: " * * * automated processing * * * ".

Delete paragraph 7 in its entirety, and substitute with the following: "To a duly appointed hearing examiner or arbitrator in connection with a grievance."

Add a new paragraph 11 as follows: "To representatives of the Federal Labor Relations Authority." In the existing paragraph 11, add the following phrase at the end of the entry: " * * * and its subsystems." Change existing paragraph 11 to paragraph 13.

Add a new paragraph 12 as follows: "To representatives of the Merit Systems Protection Board."

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retrievability:

In line 1, after the phrase " * * * SSN * * * " add the following phrase: " * * * or similar substitute if there is no SSN * * * ". At the end of the entry, delete the sentence: "Manual records are retrieved by name."

SYSTEM NAME:

Navy Civilian Personnel Data System (NCPDS).

SYSTEM LOCATION:

Chief of Naval Operations (Codes 14 and 16), Department of the Navy and Designated Contractors; Navy Civilian Personnel Command (NCPC), Naval Military Personnel Command (NMPC), NCPC Field Divisions; operating civilian personnel officers and Navy commands and management offices; and the Navy Regional Data Automation Center (NARDAC) and its designated contractors. The addresses of the activities are furnished in the Department of the Navy Directory published in the Federal Register. Included in this notice are those records duplicated for retrievability at a site closer to where the employee works (e.g., in an administrative office or a supervisor's work area).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Navy civilian employees paid from appropriated and nonappropriated funds, and foreign national direct and indirect hire employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system comprises automated and non-automated records describing and identifying the employee (e.g., name, social security account number, sex, birth date, minority designator, citizenship, physical handicap code); the position occupied and the employee's qualifications; salary and salary basis; or other compensation and allowances; employee's status in relation to the position occupied and the organization to which assigned; tickler dates for impending changes in status; education and training records; previous military status; functional code; previous employment record; performance appraisal and other data needed for screening and selection of an employee; referral records; professional licenses and publications; reasons for position change or other action affecting the employee; and case files pertaining to EEO, MSPB, labor and employee relations, and incentive awards. The records are those found in the NCPDS subsystems: the Navy Automated Civilian Manpower Information System (NACMIS), the Training Information Management System (TIMS), the Personnel Automated Data System (PADS), the Computerized Employee Management Program Administration and Research (CEMPAR), the OP-14/NCPC Customer Support Centers, the Executive Personnel Management Information System (EPMIS) and the NCPDS base level and Headquarters systems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301; 5 USC 4118; Executive Order 9397; 5 USC 2951; Executive Order 10450; 42 USC 2000e, 5 USC 3135, 5 USC 4301 et seq., 5 USC 4501 et seq., 5 USC 4705 and Subparts D, E, F And G of Title 5, USC, and 29 CFR Part 1613 et seq.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To The Comptroller General or any of his authorized representatives, in the course of the performance of duties of the General Accounting Office

To the Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement, or other matters under the direct jurisdiction of the Department of Justice or carried out as a legal representative of Executive Branch agencies.

To officials and employees of other departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the screening and selection of candidates for vacant positions.

To representatives of the United States Department of Labor on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice training programs or on other such matters under the jurisdiction of the Labor Department.

To representatives of the Veterans Administration on matters relating to the inspection, survey, audit or evaluation of the Navy's apprentice and on-the-job training program.

To contractors or their employees for the purpose of automated processing of data from employee personnel actions and training documents, or data collection forms and other documents.

To a duly appointed hearing examiner or arbitrator in connection with a grievance.

To an appointed complaints examiner for the purpose of conducting a hearing in connection with an employee's formal Equal Employment Opportunity (EEO) complaint.

To officials and employees of schools and other institutions engaged to provide training.

To labor organizations recognized under 5 USC Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

To representatives of the Federal Labor Relations Authority.

To representatives of the Merit Systems Protection Board.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system and its subsystems.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

RETRIEVABILITY:

Information is retrieved by SSN, or other similar substitute if there is no SSN, position number, name, or by specific employee characteristics such as date of birth, grade, occupation,

employing organization, tickler dates; academic specialty level.

* * * * *

[FR Doc. 86–30596 Filed 12–26–86; 8:45 am]
BILLING CODE 3816-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Eduction

State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of closing date for receipt of State applications for fiscal year 1986.

The Secretary gives notice of the closing date for receipt of State applications for Fiscal Year 1986 funds under the State Student Incentive Grant (SSID) Program. This program, through matching formula grants to States for student awards, provides a nationwide delivery system of grants for students with substantial financial need.

A State that desires to receive SSIG funds for any fiscal year must have an agreement with the Secretary as provided for under the authorizing law, and must submit an application through the State agency that administers its program of student grants.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Marina Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands, provided they have executed the required agreement.

Authority for this program is contained in sections 415A through 415B of the Higher Education Act of 1965, as amended. (20 U.S.C. 1070c–1070–3)

Closing Date for Transmittal of Applications

Applications for Fiscal Year 1986 SSIG funds must be mailed or hand-delivered by JanuarY 31, 1986.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Office of Student Financial Assistance, 400 Maryland Avenue, SW., Washington, DC 20202 and marked for the attention of Dr. Neil C. Nelson, Chief, State Student Incentive Grant Program, Room 4026, ROB #3. The Department of Education requires proof of mailing. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (2) a legible dated U.S. Postal Servcie postmark; or (3) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. State Agencies should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, State Agencies should check with their local post offices. The Department of Education encourages State Agencies to use registered or at least first-class mail.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Eduction, Office of Student Financial Assistance, 7th and D Streets, SW., Room 4026, GSA Regional Office Building #3, Washington, DC. Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information

The Secretary requires an annual submission of an application for receipt of SSIG funds. In preparing an application, each State Agency should be guided by the table of allotments provided in the application package.

Basic State allotments, to the extent needed by the States, are determined by formula and are not subject to negotiations. The States may also request a share of reallotments, in addition to their basic allotments, contingent upon the availability of such funds from allotments to any States unable to use all their basic allotments. In FY 1985, all 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and the Trust Territory of the Republic Islands participated in the SSIG assistance delivery network.

Application Forms and Information

The required application form for receiving SSIG funds will be mailed to officials of appropriate State Agencies at least 30 days before the closing date. This form contains the basic allotment tables with the amount computed for individual States under the SSIG Program authorization, as well as instructions for requesting Federal funds. The amounts available to State Agencies are limited to the statutory allotment formula and the level of appropriations for the program.

Applications must be prepared and submitted in accordance with the program regulations cited in this notice and the instructions provided in the application package. However, the application package is only intended to aid applicants in applying for assistance. Nothing in the application package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond these imposed under the statute and regulations. The Secretary strongly urges that applicants not submit information that is not required.

Applicable Regulations

The following regulations are applicable to the SSIG Program:

(1) The State Student Incentive Grant Program regulations (34 CFR Part 692).

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administrated Programs), Part 77 (Definitions), and Part 78 (Education Appeal Board).

(3) The Federal-State Relationship Agreements regulations (34 CFR Part 604).

FOR FURTHER INFORMATION CONTACT: For further information contact Dr. Neil C. Nelson, Chief, State Student Incentive Grant Program, Office of Student Financial Assistance, U.S. Department of Eduction, Washington, DC 20202; telephone (202) 472–4265.

(20 U.S.C. 1070c–1070–2)

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program)

Dated: December 20, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85–30641 Filed 12–26–85; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council; U.S. Refinery Capability Task Group; Date Change for Meeting

The date of the December 17, 1985, tenth meeting of the U.S. Refinery Capability Task Group has been changed. The meeting will now be held on Tuesday, January 7, 1986, starting at 8:30 a.m., in the Lubbock Room of the Houston Airport Marriott Hotel, 18700 Kennedy Boulevard, Houston, Texas. Notice of this meeting first appeared in 50 FR 50658, Wednesday, December 11, 1985 (FR Doc. 85–29342).

Issued at Washington, D.C., December 18, 1985.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 85-30576 Filed 12-26-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-C&E-86-21 OFP Case No. 50076-9142-20, 21-22]

Acceptance of Petition for Exemption and Availability of Certification by Municipal Light and Power

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On December 6, 1985, Municipal Light and Power, Anchorage, Alaska, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent reliability of service exemption for a combined cycle electric powerplant from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8302 *et seq.*) ("FUA" or "the Act"). The proposed combustion gas turbine facility will be known as the George M. Sullivan Powerplant Units 11 and 12 [hereafter referred to as Sullivan 11 and/or Sullivan 12] and will be physically located within the boundries of the existing George M. Sullivan Plant No. 2 facility. An exemption is required for each unit. Title II of the FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant facility. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the reliability of service exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982) and are found at 10 CFR 503.40.

Sullivan 11 and Sullivan 12 as proposed, will be constructed in phases starting in the Spring of 1997. Each thermal unit will, when construction is complete, operate in a combined cycle with a heat recovery steam unit as a base load integrated system. The combustion gas turbine at Sullivan 11 and also at Sullivan 12 will each be nameplate rated at 80 MW (the two units total 160 MW), with the steam unit rated at 65 MW. The base load integrated system, when construction is complete, will meet forecast electrical demand for the Winter of 1999–2000 and beyond. § 503.40 states that section 212(f) of the Act provides for a permanent exemption necessary to maintain reliability of service, in addition, section 317 of Pub. L. 97–394 (U.S.C. 8322) reads as follows:

In the case of any new electric power plant located in Alaska for which a petition is accepted after the date of enactment of this Act, but before December 31, 1985, pursuant to section 212(f) of the Powerplant and Industrial Fuel Use Act of 1978, to use natural gas (as that term is defined in such act), as a primary energy source in such power plant, the petitioner shall be deemed to have made the demonstrations required by clauses (1) and (2) of such section and such exemption, subject to the other applicable provisions of such Act, shall be granted by the Secretary of Energy. Nothing in this section shall apply to any new electric power plant using natural gas produced from the Prudhoe Bay unit of Alaska.

Natural gas for Sullivan 11 and Sullivan 12 will be produced from various gas fields (Beaver Creek, Kenai and Beluga) located in the upper Cook Inlet area of Southcentral Alaska. This gas is, or will be delivered to the George M. Sullivan Powerplant via existing facilities or facilities currently under construction. Gas supplies are expected to be sufficient to service both proposed units in all modes of operation. Finally, Sullivan 11 and Sullivan 12 will *not* use any gas produced from the Prudhoe Bay Unit of Alaska. Accordingly, the proposed Sullivan 11 and Sullivan 12 facility is, when completed with the heat recovery boiler and turbine, a combined cycle electric powerplant in accordance with the definition of "electric powerplant" contained in 10 CFR 500.2.

A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing. The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before February 10, 1986. A request for a public hearing must be made within this same 45–day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA–C&E–86–21 should be printed on the outside of the evelope and the documentation contained therein.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–045, Washington, DC 20585, Telephone: (202) 252–1774

Seven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washinton, DC 20585, Telephone: (202) 252–6947

SUPPLEMENTARY INFORMATION:

Municipal Light and Power is owned and operated by the Municipality of Anchorage, Alaska, and has been in existence since 1932. Approximately 31,000 customers are served, wholly within the Municipality of Anchorage. Because Municipal Light and Power, as with other Alaskan electric utilities, is a small isolated system without the security of a regional or national grid, and more importantly, because of the length and severity of Alaskan winters, the need for system reliability is absolutely essential. Current generation capacity is 313 MW, including the purchase of 16 MW from the Eklutna Hydroelectric project administered by the Alaska Power Administration. The George M. Sullivan Powerplant is located 5.5 miles east of the downtown area of Anchorage on Municipal property shared with the Anchorage Municipal Water Treatment facility.

The proposed Sullivan 11 and Sullivan 12 units will be constructed at Plant No. 2 in phases. Construction will begin in the Spring of 1997 of Sullivan 11; Sullivan 12 construction will begin in the Spring of 1998. The complete plant addition is targeted to be on line by the Winter of 1999–2000.

Section 212(f) of the Act and 10 CFR 503.40 provide for a permanent exemption from the prohibitions of Title II of FUA for powerplant necessary to maintain reliability of service. In

accordance with the requirements of § 503.40(a), Municipal Light and Power has certified to ERA that:

1. Petitioner is not able to construct an alternate fuel fired unit in time to prevent an impairment of reliability of service;

2. Despite diligent good faith efforts, the petitioner is not able to make the demonstration necessary to obtain a permanent exemption for lack of alternate fuel supply, site limitations, environmental requirements, or State and local requirements;

3. No alternate power supply exists, as required under § 503.8; and

4. Use of mixtures is not feasible, as required under § 503.9.

Impairment of Municipal Light and Power's reliability of service was calculated as measured by the loss of load probability techniques, as required under the provisions of § 503.40(b).

In accordance with the evidentiary requirements of 503.40(c) (and in addition to the certifications discussed above),

Municipal Light and Power has included as part of its petition:

1. Exhibits containing the basis for the certifications described above;

2. Duly executed certifications required; and

3. An environmental impact analysis, as required under 10 CFR § 503.13.

In processing this exemption request for Sullivan 11 and exemption request for Sullivan 12, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 et seq; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980.

NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Municipal Light and Power is entitled to the exemptions requested for Sullivan 11 and Sullivan 12. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on December 19, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-30577 Filed 12-26-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP86-221-000, et al.]

El Paso Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. El Paso Natural Company

[Docket No. CP86-221-000]

December 17, 1985.

Take notice that on December 5, 1985, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP86-221-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate a meter station in Hidalgo County, New Mexico, in order to permit the direct sale and delivery of natural gas to Phelps Dodge Corporation (Phelps Dodge) under the certificate issued in Docket No. CP82-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso explains that Phelps Dodge, an existing customer of El Paso, requests natural gas service for its Hidalgo Smelter facility in Hidalgo County, New Mexico. It is stated that the Hidalgo Smelter is a copper smelting facility consuming residual oil, propane, diesel oil, electrical power and coal, which provides Phelps Dodge with a more fuel efficient and economic smelting process. El Paso, therefore, proposes to install a 2⅜-inch tap and valve assembly and dual 4½-inch standard orifice-type meters at a point on El Paso's existing 12¾-inch El Paso-Douglas line and 12¾-inch El Paso-Douglas loop line in Hidalgo County, New Mexico, in order to serve the Hidalgo Smelter facility. The estimated cost of the Hidalog Smelter Meter Station is $85,666.

It is stated that Phelps Dodge estimates the annual and maximum peak day deliveries required to serve its Hidalgo Smelter during the full third year of service would be 1,890,000 Mcf per year and 6,500 Mcf per day, respectively. It is further stated that the requested quantities of natural gas would be utilized by Phelps Dodge to displace partially certain fossil fuels presently utilized in its copper operations at the Hidalgo Smelter.

Comment date: January 31, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. K N Energy, Inc.

[Docket No. CP86-219-000]

December 17, 1985.

Take notice that on December 3, 1985, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP86-219-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate three sales taps for the delivery of gas to domestic end-users in Ellis and Cheyenne Counties, Kansas, and Platte County, Nebraska, under the certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N states that the proposed sales would not be prohibited by any of its existing tariffs, and that the additional taps would have no significant impact on K N's peak day and annual deliveries.

Comment date: January 31, 1986, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP86-213-000]

December 17, 1985.

Take notice that on November 25, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86-213-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to construct and operate an additional sales point for the use of Central Illinois Public Service Company (CIPSCO) under the certificate issued in Docket No. CP83-83 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to construct facilities to allow the addition of a new delivery point at Pleasant Hill, Illinois to CIPSCO. It is stated that the Pleasant Hill Station has an existing 4-inch meter run. It is further stated that CIPSCO would require up to 10,000 Mcf of gas per day at 400 lbs delivery pressure at

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the Pleasant Hill Station and that CIPSCO has over the past few winters experienced severe pressure problems because of an increase in customers in the Pleasant Hill area. Panhandle therefore proposes to construct a second 4–inch meter run to alleviate the pressure problems. Panhandle states that at the Pleasant Hill delivery point North Illinois Gas Company, also an existing customer, would further transport the gas on behalf of CIPSCO for delivery into the CIPSCO system. Panhandle further states that there would be no change in total volumes delivered to CIPSCO. The estimated cost of the meter run is $82,000 which would be financed with funds on hand, borrowings under revolving credit arrangements or short-term financing, it is explained.

Comment date: January 31, 1986, in accordance with standard Paragraph G at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP86–222–000]

December 18, 1985.

Take notice that on December 5, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP86–222–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of certain high priority end-users, and for permission and approval to abandon such services on June 30, 1986, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authority to implement certain transportation agreements among Panhandle, its local distribution companies (LDC) and certain high priority end-users with various execution dates. It is indicated that the transportation authorization requested is under the same terms as previously authorized by the Commission pursuant to § 157.209 of the Commission's Regulations. The following table lists the end-user and LDC's involved and the transportation quantity requested.

End-user	LDC	Transportation volumes (Mcf per day)
A.E. Staley Manufacturing Co.	Indiana Gas Co	8,000
Do	Illinois Power Co	7,000
Archer Daniels Midland Co	Union Electric Co	2,000
Do	Central Illinois Light Co	7,500
Eastern Illinois University	Central Illinois Public Service Co.	2,500
Morbeson-Walker Refractories	Direct	3,500
Manville Building Materials Corp.	do	4,000

It is explained that the transportation rate is based on Panhandle's currently effective Rate Schedule OST. Panhandle also requests authority to add point of receipt and delivery subject to certain reporting requirements, and authority to construct new points of receipt subject to the annual reporting requirements for construction activity pursuant to its blanket certificate in Docket No. CP83–83–000.

Comment date: January 8, 1986, in accordance with standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.

[Docket No. CP86–178–000]

December 18, 1985.

Take notice that on November 1, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86–178–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Tenngasco Corporation, acting as agent for C.F. Industries, Inc., and for permission and approval to abandon the transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to transport gas for Tenngasco pursuant to a gas transportation agreement (agreement) between Tennessee and tenngasco Corporation, as agent for C.F. Industries, Inc., dated October 30, 1985. Tennessee states that it has agreed to receive up to 12,000 Mcf of natural gas per day on an interruptible basis for the account of Tenngasco from the various points of receipt. It is stated that Tennessee would, in turn, deliver a thermally equivalent quantity of gas, less volumes for Tennessee's fuel and uses, gas lost and unaccounted for and plant volume reduction (PVR) due to processing, to Tenngasco at various points of delivery.

Tennessee states that it would charge a rate for this transportation service, based upon Rate Schedule IT, of its PERC Gas Tariff, Sheet No. 22. The rates for transportation of PVR, if any, would also be based on Tennessee's Rate Schedule IT, it is stated. In addition, the rates for transportation of liquids, if any, would be established pursuant to the provisions of the Agreement, it is asserted.

It is indicated that the term of the agreement expires December 31, 1988. Tennessee requests abandonment authorzation, to be effective 11:59 p.m. CST, December 31, 1988, at which time transportation service rendered by Tennessee pursuant to the agreement would terminate.

It is claimed that the proposed transportation service would be in the public interest because it would assist C. F. Industires, Inc., in obtaining gas supplies at market-clearing prices, enabling it to maintain its business operations on a profitable basis.

Comment date: January 8, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP84–379–015]

December 18, 1985.

Take notice that on December 9, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP84–379–015 a petition to amend the order issued May 31, 1984, in Docket No. CP84–379–000, as amended, pursuant to Section 7 of the Natural Gas Act so as to authorize the extension of the term of its currently effective Discount Rate Schedule (DRS) from its current expiration date of December 31, 1985 to December 31, 1986, all as more fully set forth in the petition to amend which is on file and open to public inspection.

United indicates that on May 31, 1984, the Commission initially approved the DRS for a term beginning June 1, 1984 and ending December 31, 1984. It is stated that the success of and continuing need for the DRS prompted United to file for an extension of the DRS through December 31, 1985, and that the Commission approved this extension along with other changes on December 21, 1984.

In summary, United states that the DRS provides for all of United's present jurisdictional customers a discount rate for gas purchased from United above a certain volume (the threshold volume). It is indicated that there are no restrictions on the use to which the purchased gas would be put. For customers under DG and G rate schedules, the threshold volume would equal the volume purchased during the corresponding month of 1983, it is indicated. It is further stated that for any rate schedule DG or G customer for which United has contracted to supply a stated percentage

(less than 100 percent) of specified requirements of the customer, the threshold volume would equal such customer's specified requirements for each month in 1983 multiplied by the percentage stipulated to be supplied by United. It is stated that the discount rate would apply to those volumes in excess of the threshold volume and for certain other volumes that each rate schedule D or DG customer may designate (discount volumes). United explains that designated volumes are those that the customer may obtain even if the threshold volume is not met. United states that DG and G rate schedule customer may affirm by affidavit that the volumes could not be sold if purchased from United without the discount rate. These volumes would receive the discount rate whether or not the customer reaches the threshold volume, it is indicated.

It is stated that for customers under the PL–N rate schedule, the threshold volume would equal each customers's minimum bill volume as formerly set out on Sheet No. 22 of United's tariff computed in accordance with the minimum bill provisions of the PL–N rate schedule in effect as of March 1, 1984. It is indicated that although the minumum bill volume is an annual volume, pipeline customers which either have purchased, or expect to purchase, the minimum bill volume would designate as purchases under this rate schedule each month a portion of the gas to be purchased in that month. United states that for all months except December 1985, PL–N customers would have to designate the amount of DRS gas for any month before the first working day of that month. For December 1985, PL–N customers would designate discount volumes by January 1, 1986, it is stated.

The DRS rate would be determined monthly and it would be no higher than $3.09 per Mcf and no lower than the acutal weighted average cost of gas for the month in which gas would be delivered plus the variable costs incurred in providing the service plus the Gas Research Institute surcharge, if applicable. To implement any change in the monthly rate, United states that it would file an abbreviated Section 4 application at least five days before the beginning of the month and so notify its jurisdictional customers.

Comment date: January 6, 1985, in accordance with first subparagraph of Standard Paragraph F at the end of this notice.

7. Mid Louisiana Gas Company

[Docket No. CP86–214–000]

December 18, 1985.

Take notice that on November 26, 1985, Mid Louisiana Gas Company (Applicant), 300 Poydras Street, New Orleans, Louisiana 70130, filed in Docket No. CP86–214–000 an application, as supplemented December 6, 1985, pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it would comply with the conditions set forth in Subpart A of Part 284 of the Commission's Regulations.

Applicant further states that the interim rate it would charge would be its Rate Schedule T–1 tariff rate, currently 16.58 cents per Mcf plus 3 percent fuel use and loss. Applicant further states that it would file to restructure its rates prior to June 1, 1986.

Comment date: January 8, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Natural Gas Pipeline Company of American

[Docket No. CP85–57–003]

December 18, 1985

Take notice that on December 9, 1985, Natural Gas Pipeline Company of America (Petitioner), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85–57–003 a petition to amend the order issued November 12, 1985, in Docket No. CP85–57–000, pursuant to section 7(c) of the Natural Gas Act so as to authorize an extension of the term in which Natural can utilize its Interruptible Optional Service (IOS), Rate Schedule IOS and Rate Schedule X–IOS, from December 31, 1985, until December 31, 1986, all as more fully described in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the order dated November 12, 1985, approved the settlement submitted to the Administrative Law Judge by Petitioner on August 29, 1985, and was subsequently certified to the Commission on September 17, 1985. It is stated that the settlement provided for a term ending December 31, 1985. Petitioner requests an extension of the term of the IOS until December 31, 1986, and that all other conditions in the approved settlement be the same.

Petitioner states that its IOS program was designed to assist Petitioner in balancing its sales with its supply, which supply, it claims, was developed to meet its existing customers' total entitlements. It is explained that the IOS program would help Petitioner meet competition in its traditional markets by making available IOS volumes to on-system customers and customers of on-system customers. It is claimed that the sale of IOS volumes would enhance Petitioner's ability to retain or regain load and thus avoid or limit take or pay liabilities by providing a vehicle for supply-demand balancing.

It is asserted that the major provisions of Petitioner's IOS program as currently authorized are as follows:

(1) Blanket authority for on-system sales for a limited period ending December 31, 1985. Within limitations described below, IOS gas would be available to on-system customers.

(2) Total IOS sales would be limited to the cumulative aggregate volume for the period commencing October 1, 1984, by which Petitioner's sales fell short of the entitlements of its customers.

(3) IOS sales would be made at rates between a floor and a ceiling. The floor is Petitioner's average gas costs per the Purchased Gas Adjustment (inclusive of deferred purchase gas cost adjustment), plus fuel, a 6-cent increment for out-of-pocket expenses and the GRI surcharge. A ceiling of the DMQ–1 or G–1 commodity rate, as applicable, would apply to jurisdictional sales only. The IOS rate for jurisdictional sales would be determined monthly and reflected on a revised tariff sheet posted five days prior to the beginning of a month.

(4) Petitioner would credit to Account 191 the gas cost component of revenues from IOS sales to on-system customers and would retain all other revenues from such sales. Petitioner would credit to Account 191 all revenues from sales to customers of on-system customers.

(5) IOS sales to customers of on-system customers would be fully subordinate to existing services and to requests by on-system customers for IOS gas. Petitioner's distribution company customers would be eligible to make IOS purchases in any month to the extent they had purchased a threshold volume that month. This threshold volume is based on the lower of a percentage of purchases by that customer for the corresponding month of the prior year. Such percentages are to be published in Petitioner's tariff prior to the beginning of each month and may not exceed 90 percent. IOS sales to end-users served by customers of Petitioner would be permitted only to the extent

the IOS sale displaces a non-traditional marketing arranegment such as an SMP or discount sale or an end-user transportation arrangement.

(6) IOS gas would not be offered to customers of on-system customer's at a price lower than that available to on-system customers. Petitioner would continue to deliver all IOS volumes through its on-system customer.

(7) The program provides for monthly reports and customer affidavits of eligibility.

Petitioner states that for the month of November 1985, and subsequent to Commission order dated November 12, 1985, Petitioner offered to its customers IOS volumes at five cents below its effective DMQ–1 and G–1 commodity rates for all volumes purchased in excess of a threshold percentage of either 90 percent of the customers current entitlements or 90 percent of the customers purchases for the corresponding month of calendar year 1984. It is asserted that although sales for November are not final as yet, a number of Petitioner's customers have purchased IOS volumes. It is estimated that approximately 7,200,000 Mcf of gas has been sold under the IOS Program during November, resulting in a savings to Petitioner's existing customers of over $360,000. Petitioner avers that it would be in the public interest to allow this program to continue for an additional one-year period to allow its customers to reduce their purchase gas costs and to continue to enable Petitioner to balance better its supply and demand.

In addition, Petitioner claims it is continuing to experience increased competition from spot supplies purchased by its traditional jurisdictional customers. Petitioner states that deliverability of gas supply under current contracts is well above current sales levels and that Petitioner should be given the opportunity to carry out programs that would allow it to deal with supply and demand imbalances and reduce potential take or pay by being able to compete effectively in the market place.

Petitioner asserts that its IOS Service is non-discriminatory since each of its existing on-system customers has an equal opportunity to participate once the threshold percentage has been attained.

Petitioner states its IOS service would also result in an economic benefit to its existing on-system customers who participate by allowing them to purchase gas volumes at a price lower than Petitioner's applicable commodity rate. Petitioner claims it would receive the benefit of reduced take-or-pay exposure with a resulting benefit of reduced gas casts to all of Petitioner's existing on-system customers.

Comment date: January 3, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rule of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in acoordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–30581 Filed 12–26–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER86–204–000, et al.]

Pennsylvania Electric Co., et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Electric Company

[Docket No. ER86–204–000]

December 17, 1985.

Take notice that on December 6, 1985, Pennsylvania Electric Company (Penelec) filed tariff changes increasing its rates for wholesale all requirements, partial requirements and wheeling service. Penelec also filed an initial transmission service agreement for the delivery of Power Authority of State of New York power as to which it requests a retroactive effective date of July 1, 1985. The rate increase request is in two phases. Penelec states that the changes reflect an annual increase in revenues of $4,696,000 for Phase A and $5,176,000 for Phase B. Penelec requests an effective date of February 4, 1986 for Phase A and February 5, 1986 for Phase B.

Comment date: December 31, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp doing business as Pacific Power & Light Company

[Docket No. ES86–18–000]

December 19, 1985.

Take notice that on December 9, 1985, PacifiCorp d.b.a. Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an order (1) authorizing its to issue and sell not more than 5,000,000 additional shares of its common stock pursuant to its Divided Reinvestment and Stock Purchase Plan and (2) exempting the issuance from competitive bidding pursuant to 18 CFR 34.2(b)(2).

Comment date: January 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Ohio Power Company, Appalachian Power Company, Wheeling Electric Company

[Docket No. ER86-188-000]

December 19, 1985.

Take notice that on December 16, 1985 American Electric Power Service Corporation tendered for filing on behalf of its affiliates Appalachian Power Company (Appalachian), Ohio Power Company (Ohio Power), and Wheeling Electric Company (Wheeling), sometimes collectively referred to as the AEP Parties, Modification No. 18 dated October 15, 1985 to the Operating Agreement dated June 1, 1971 (1971 Agreement) among Ohio Power, Wheeling, Appalachian, Monongahela Power Company (Monongahela), and West Penn Power Company (West Penn). Monongahela and West Penn are members of the Allegheny Power System (APS) and are sometimes collectively referred to as the APS Parties.

Section 1 of Modification No. 18 changes the demand rate for Weekly Short Term Power from "$1.25" to "up to $1.25" per kilowatt per week and similarly for Daily Short Term Power when the AEP Parties are the supply party. Section 2 changes the energy rate from "110%" to "up to 110%" of the out-of-pocket cost of supplying the energy when the AEP Parties are the supplying party. Section 3 adds a statement that the sum of the demand charge and the energy charge will not be less than 110% of the out-of-pocket cost of supplying the energy when the AEP Parties are the supplying party. THE APS Parties at this time are not revising their rates when they are the supplying party. AEP requests an effective date of December 1, 1985.

Copies of the filing were served upon the APS Parties, the Virginia State Corporation Commission, Public Service Commission of Ohio and Public Service Commission of West Virginia.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30579 Filed 12-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-750-000]

Transcontinental Gas Pipe Line Corp. and Columbia Gulf Transmission Co.; Renotice of Application

December 19, 1985.

In Docket No. CP85-750-000 Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001 (Applicants), requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self-implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Transco and Columbia Gulf have, however, indicated that they desire the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on August 1, 1985, Applicants filed in Docket No. CP85-750-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange and transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that both Transco and Columbia Gas Transmission Corporation (Columbia Gas), an affiliate of Columbia Gulf, purchase gas from South Lake Arthur wells (McDonell Estate well No. 1 and the State Lease 7712 well Nos. 1, 3, and 4 located in the South Lake Arthur field, Vermilion Parish, Louisiana). It is explained that some of the South Lake Arthur wells are connected to Transco's Lake Arthur lateral and that the remaining South Lake Arthur wells are connected to the Columbia Gulf system. It is stated that pursuant to the terms of a gas exchange agreement between them dated December 31, 1981 (the exchange agreement), as amended October 3, 1983, and July 14, 1984, Transco has agreed to receive for the account of Columbia Gulf at the point where gas enters Transco's system in the South Lake Arthur field, and Columbia Gulf has agreed to receive for the account of Transco at the point where gas enters Columbia Gulf's system in the South Lake Arthur field, quantities of gas up to a maximum of 25,000 Mcf per day.

Applicants state that they intend the quantities of gas received at South Lake Arthur field receipt points to be approximately equal. It is explained that the exchange agreement, as amended, provides that any imbalances in the quantities of natural gas received at the receipt points would be delivered by the owing party's delivering, or causing to be delivered, quantities of gas at the existing interconnections between Transco and Columbia Gulf located (1) in Terrebonne Parish, Louisiana, (2) at the outlet of Conoco Inc.'s Acadia plant in Acadia Parish, Louisiana, and (3) at any other mutually agreeable points. Applicants state that neither Transco nor Columbia Gulf shall charge a rate for providing the exchange service or for delivering any imbalance quantities as provided by the exchange agreement, as amended.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 26, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of practice and procedure, a hearing will be held

without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30580 Filed 12-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM85-1-000 (Parts A-D); RP86-14; RP86-15]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Columbia Gulf Transmission Co. and Columbia Gas Transmission Corp.; Petition for Emergency Clarification

December 20, 1985.

On December 16, 1985, Columbia Gas Transmission Corporation (Columbia) and Columbia Gulf Transmission Company (Columbia Gulf) jointly filed a petition for emergency clarification or Order No. 436.

In compliance with the order issued November 25, 1985, in Docket Nos. RP86-15 and RP86-14, 33 FERC ¶ 61,259 (1985), Columbia and Columbia Gulf, respectively, submitted revised tariff sheets on an expedited basis in such dockets on December 2, 1985. Columbia's GTS Rate Schedule and Columbia Gulf's GTS-1 and GTS-2 Rate Schedules provide for firm and interruptible transportation in conformity with Order No. 436 and the rules and regulations promulgated thereunder.[1] In particular, the rate schedules provide for non-discriminatory transportation on a "first-come/first-served" basis.

Columbia and Columbia Gulf assert that they desire to implement the "first-come/first-served" principle on their systems consistent with Order No. 436 and on an equitable basis. During the course of preparing the above rate schedules, however, they began to confront numerous operational and practical considerations surrounding this principle that they say are unanswered by Order No. 436. In particular, they claim that considerable uncertainty surrounds the various potential events which could either trigger the beginning or the end of an individual transportation service in connection with the implementation of the "first-come/first-served" allocation system.

These concerns, they state, are compounded for Columbia because it is a downstream pipeline largely dependent upon five nonaffiliated upstream interstate pipelines to deliver sales and transportation supplies to its system. The total daily entitlements of Columbia's customers presently equal approximately 7 MMDth. However, the maximum daily deliverability of Columbia Gulf to Columbia is approximately 2 MMDth. The remaining customer entitlements are delivered from Columbia's nonaffiliated pipeline suppliers, Appalachian purchases and production, and Columbia's storage. Because none of Columbia's non-affiliated uptream pipeline suppliers have to date formally indicated a willingness to provide non-discriminatory transportation on a self-implementing basis, sufficient capacity is not available upstream of the Columbia system to deliver the volumes of gas requested to be transported to Columbia for redelivery. Moreover, because Columbia appears to be the only interestate piepline in its market area formally providing nondiscriminatory transportation, it has recently been inundated with transportation requests. These circumstances have made inevitable the allocation of capacity under Categories 2 and 3 Columbia Gulf's GTS-1 and GTS-2 Rate Schedules.

Petitioners state that the Columbia Gulf pipeline is already full to capacity. As a result, Columbia Gulf was forced to "freeze" transportation on its system in mid-November 1985. New requests for transportation applicable to Categories 2 and 3 of Columbia Gulf's GTS-1 and GTS-2 Rate Schedules, requests for increased volumes (even if within contractual transportation volumes) and requests for changes in suppliers, receipt and delivery points have been denied. Since Columbia Gulf now and for the forseeable future is Columbia's only upstream pipeline supplier transportation gas on a self-implmenting basis, petitioners claim that Columbia and its customers need expedited approval of the proper allocation of capacity under Categories 2 and 3 of Columbia Gulf's GTS-1 and GTS-2 Rate Schedules.

The petition states that in the absence of clarification, Columbia and Columbia Gulf had no choice but to comply with the literal terms of Order No. 436 by applying the "first-come/first-served" principle to allocate capacity on Columbia Gulf based upon flowing transportation volumes at the time Columbia Gulf became full, "notwithstanding that this method is clearly inequitable to historical customers."

Columbia and Columbia Gulf believe that the available capacity on the Columbia Gulf system should be allocated on the basis of customer contract demands on Columbia's system. Moreover, allocating capacity based upon contract demands, they assert, would provide more flexibility and customer service of gas sources than does the present allocation system, which requires transportation customers to keep the same transportation volumes and receipt and delivery points or lose their place in the queue for allocating capacity.

Columbia and Columbia Gulf request the Commission to issue an emergency clarifying order that (i) the manner by which Columbia Gulf's capacity has been alllocated is lawful for periods prior to the date of such clarifying order; (ii) that Columbia Gulf's capacity should be allocated upon the basis of Columbia's customers' Contract Demands on a prospective basis after the date of such order; and (iii) that in the event the Commission does not agree that capacity in Columbia Gulf should prospectively be so allocated upon Contract Demands, the Commission should clarify that a change in suppliers, receipt or delivery points, or an increase in volumes transported within contractual transportation volumes will not be considered "new" service for "first-come/first-served" allocation purposes.

Copies of the petition were served by Columbia and Columbia Gulf on all parties by express mail. Due to the urgency of the situation, petitioners request that a shortened ten-day response period be provided.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such motions or protests should be filed on or before January 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

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[1] 33 FERC ¶61,007 (1985); 50 FR 42408 (October 18, 1985).

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must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30623 Filed 12-26-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-41020; FRL-2924-6]

Seventeenth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

Correction

In FR Doc. 85-27385, beginning on page 47603 in the issue of Tuesday, November 19, 1985, make the following corrections:

1. On page 47604, third column, fifth line from the bottom of the page, "Representative" should have read "Representatives".

2. On page 47605:

a. In the first column, fifteenth line from the bottom of the page, the word "assistance" was misspelled;

b. In the third column, second paragraph, eleventh line, "Pigment Green" should have read "Pigment Green 7".

3. On page 47608, third column, under the heading **References**, paragraph (4), the third line should have read: "of selected areas. Atmos. Environ. 15(9):1643-".

BILLING CODE 1505-01-M

[A-4-FRL-2944-4]

PSD Permit Modification for the Georgia Pacific Corporation; Palatka, FL

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Prevention of Significant Deterioration (PSD) construction permit issued to the Georgia Pacific Corporation in Palatka, Florida (PSD-FL-079) has been modified. The modification limits the opacity of emissions from Recovery Boiler No. 5 to 20% during normal operation and a maximum of 35% during malfunctions of the electrostatic precipitator. The modification also corrects a typographical error in the specific conditions regarding compliance test methods for Lime Kiln No. 5.

DATES: PSD permit PSD-FL-079 was issued on December 4, 1984, and the modifications and permit became effective on November 15, 1985.

ADDRESSES: Copies of the correspondence between EPA and the Georgia Pacific Corporation and the letter of modification are available for public inspection upon request at the following location: Environmental Protection Agency, Region IV, Air Programs Branch, Air, Pesticides, & Toxics Management Division, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Michael Brandon of the EPA Region IV Air Programs Branch at the Atlanta address given above; telephone 404/881-4901, (FTS) 257-4901.

SUPPLEMENTARY INFORMATION: On December 4, 1984, a Federal Prevention of Significant Deterioration permit (PSD-FL-079) was issued to the Georgia Pacific Corporation (G-P) to construct Recovery Boiler No. 5 and two smelt dissolving tanks, Combination Boiler No. 5, and Lime Kiln No. 5 at their kraft pulp mill in Palatka, Florida.

By letter dated January 8, 1985, G-P filed a petition for review, pursuant to 40 CFR 124.19(a), with the Administrator of the United States Environmental Protection Agency (EPA) concerning the above referenced permit. Specifically, G-P requested a revision to Specific Condition No. 9 on the proposed No. 5 Recovery Boiler, which provided that "visible emissions (VE) shall not exceed 20% opacity . . . ."

Subsequent to G-P's petition, several discussions between G-P and EPA personnel transpired. In addition, engineers from both EPA and the Florida Department of Environmental Regulation (FDER) conducted an on-site inspection of the facility at Palatka on May 16, 1985. As a result of these discussions and G-P's May 8, 1985, and September 9, 1985, proposals to withdraw the company's January 8, 1985, petition for review with the Administrator, EPA modified Specific Condition No. 9 for the No. 5 Recovery Boiler as follows:

9(a) Visible emissions (VE) shall not exceed 20% opacity, as determined by EPA method No. 9, except as provided in 9(b). A continuous emissions monitor for opacity shall be required (40 CFR 60.284).

9(b) If any maintenance or upset of the air pollution control system (APCS) occurs, the permittee shall immediately diagnose the cause of the upset and establish the course of action to repair the APCS. Repair of the APCS shall commence as expeditiously as possible, unless a component has to be ordered from a vendor. However, the permittee shall maintain a stock of components of the APCS that have a history of repetitive failures. The VE shall not exceed 35% opacity, as determined by EPA method No. 9, during maintenance or upset conditions only.

The following shall be required, but not limited to, as a source of action to repair the APCS during an upset condition: Assessment of the availability of the defective component(s) and the purchase/delivery time involved (in days), assessment of the time required to repair the APCS (in man-hours), and a commitment date to the Florida Department of Environmental Regulation for repairing the APCS. In addition, records shall be kept of each maintenance and/or upset condition where the opacity limit is exceeded in accordance with General Condition No. 5.

In consideration of modification of Specific Condition No. 9, Specific Condition No. 11 for the No. 5 Recovery Boiler was also modified as follows:

11(a) Immediately after construction has been completed, initial performance tests for PM, SO_2, TRS and VE shall be requird. Test procedures shall be EPA reference methods 1, 2, 3, 5 or 17, 6, 9, and 16 as published in 40 CFR Part 60, Appendix A, dated July 1, 1978. Minimum sampling volume and time shall be as defined in 40 CFR Part 60, Subpart BB.

11(b) As part of the initial performance tests for PM and VE on the No. 5 Recovery Boiler, the company shall also demonstrate compliance with Specific Conditions No. 5 and No. 9(b) by testing the APCS with all exhaust gases from the boiler going into half of the APCS representing maintenance or upset conditions (i.e., half of them system energized). During these tests, a maximum black liquor solids (BLS) feed rate shall be established in which compliance can be achieved with Specific Condition, No. 5 and No. 9(b) for each side of the APCS. This BLS feed rate shall then be the maximum feed rate during periods of APCS maintenance or upset conditions, unless compliance can be demonstrated with Specific Conditions No. 5 and No. 9(b) at a higher BLS feed rate under APCS maintenance or upset conditions.

The original PSD permit issued on December 4, 1984, and the revisions described above became effective on November 15, 1985. If construction does not commence within 18 months after this date, or if construction is

discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time, the permit shall expire and authorization to construct shall become invalid.

(Secs. 160–169 of the Clean Air Act (42 U.S.C. 7470–7479))

Dated: December 17, 1985.

Sanford W. Harvey, Jr.,

Acting Regional Administrator.

[FR Doc. 85–30630 Filed 12–26–85; 8:45 am]

BILLING CODE 6560-50-M

[ER–FRL–2944–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 9, 1985 through December 13, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FEDERAL REGISTER dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–COE–F90007–MI, Rating E02, Keweenaw Waterway Navigation Channel, Polluted Dredged Material Confined Disproval Facility, Construction, MI.

Summary: EPA determined that the draft EIS was incomplete. Additional information is needed on the organic constituents of the sediments to be dredged from the waterway, the effects of these sediments on terrestrial wildlife, the design and monitoring system for the confined disposal facility to be constructed, the type and amount of habitat that would be lost, and the groundwater resources in the project area. This information is necessary to identify the impacts of the project and to assess their significance.

ERP No. D–FHW–F40283–IL, Rating LO, Federal Aid Primary Rt. 412/US 51 Improvement, Normal to Oglesby, 404 . Permit, IL. Summary: EPA reviewed the DEIS and has no objection to the project. EPA encourages selection of an alternative which minimizes disruption and consumption of prime farmland.

ERP No. D–FWH–H401135–IA, Rating EC2, Greenhill Rd. Construction, IA–57 in Cedar Falls to Hackett Rd. Bypass in Waterloo, 404 Permit, IA. Summary: EPA is concerned that the proposed new roadway would create substantial noise impacts, and that noise abatement measures had not been adequately considered. EPA requests that noise abatement measures be reconsidered consistent with the requirements of Federal Highway Administration regulations and that the FEIS include criteria used to determine the cost-effectiveness of noise barriers.

Final EISs

ERP No. F–BLM–J70001–CO, Grand Junction Resource Area, Resource Mgmt. Plan. CO. Summary: EPA's concerns on the DEIS are generally resolved, except that EPA's concerns for water quality degradation and monitoring provisions of increased sedimentation and salinization will be addressed during development of activity management plans.

ERP No. F–BPA–L08044–ID, Fall R.—Lower Valley Transmission System Reinforcement, Stability and Reliability, ID. Summary: EPA made no formal comments. EPA's review of the FEIS finds the project to be satisfactory.

ERP No. F–CDB–C89023–NY, Rochester Science Park Development, Expansion and Replacement, CDBG, NY.

Summary: EPA has no objections to the project as proposed.

ERP No. F–COE–D32032–DE, Wilmington Harbor Federal Navigation Project, Dredged Material Disposal Area, Development and Designation, Christina R., DE.

Summary: EPA feels that the COE has responded to most EPA concerns in the FEIS. However, since the final mitigation plan which includes artificial reefs and wetlands creation, is not complete in the FEIS, EPA will reserve final comment until the mitigation plan is formally presented.

ERP No. F–FHW–F40239–MN, MN TH–33 Improvements, I–35 to TH–53, 404 Permits, MN. Summary: EPA's concerns have been adequately addressed in the FEIS. Because final water quality and wetland mitigation measures have not yet been agreed upon, EPA remains interested in the project.

ERP No. F–FHW–G40099–TX, US–287/Ennis Bypass Construction, US–287 to I–45, TX. Summary: EPA expressed no objections to the proposed action as described.

ERP No. F–MMS–A02214–00, 1986 Central and Western Gulf of Mexico OCS Oil and Gas Sale Nos. 104 and 105, Leasing, Offshore AL, MS, LA, and TX. Summary: EPA believes the FEIS is generally responsive to concerns raised in the DEIS. EPA is still concerned that the Minerals Management Service has not yet proposed any means to avoid ocean use conflicts at the proposed Gulf Ocean Incineration site in the Western Gulf lease sale area.

ERP No. F–USA–G11015–LA, Fort Polk Multipurpose Range Complex, Construction and Operation, 5th Infantry Division (Mechanized) Designation, LA.

Summary: EPA expressed no objections to the proposed action as described.

Amended Notice

The following review was completed during the week of November 4 through 8, 1985 and should have appeared in the FEDERAL REGISTER Notice published on November 22, 1985.

ERP No. FS–AFS–J65098–CO, Arapaho and Roosevelt Nat'l Forests and Pawnee Nat'l Grassland, Land and Resource Mgmt. Plan, Mineral Leasing Criteria, CO. Summary: EPA believes the amendment to the mineral leasing criteria to be environmentally acceptable subject to NEPA documentation of future mining activity.

Dated: December 23, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–30684 Filed 12–26–85; 8:45 am]

BILLING CODE 6560-50-M

[ER–FRL–2944–7]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements filed December 16, 1985 Through December 20, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850542, DSuppl, COE, TX, Galveston Multipurpose Deepwater Port and Crude Oil Distribution System Construction, Worst Case Oil Spill Analysis and Environmental Impacts of Bulk Commodities Activities, Permit, Galveston County, Due: February 10, 1986, Contact: C.R. Harbaugh (409) 766–3044.

EIS No. 850543, Final, FHW, TX, Beltway 8 Construction, US 59 North to I–10 East, Harris County, Due: January 27, 1986, Contact: John Inabient (512) 482–5516.

EIS No. 850544, Final, AFS, CA, Peppermint Mountain Resort Development Plan, Sequoia National Forest, Fresno, Tulare and Kern Cos., Due: January 27, 1986, Contact: Julie Allen (209) 784–1500.

EIS No. 850545, Draft, FHW, PA, PA–23/LR–1124/New Holland Avenue Relocation, US 30 to Walnut and

Chestnut Streets, Lancaster County. Contact: Manuel Masks (717) 782–4422.

EIS No. 850546, Draft, UPS, NY, Manhattan General Mail Facility Development, New York County, Due: February 20, 1986, Contact: Edward Wandelt (202) 268–3135.

EIS No. 850548, DSuppl, USN, NY, Stapleton-Fort Wadsworth Complex Surface Action Group Homeporting Facility, Development Plans Modification and Family Housing Alternatives, Richmond County, Due: February 12, 1986, Contact: T.W. Boone (215) 897–6270.

Amended Notices

EIS No. 850540, Draft, AFS, VT, NY, Green Mountain National Forest, Land and Resource Management Plan, Due: March 31, 1986, Published FR 12–20–85—Incorrect accession number.

EIS No. 850541, Final, COE, NY, Sheepshead Bay Navigation Channel Improvements, Kings County, Due: January 21, 1986, Published FR 12–20–85—Incorrect accession number.

Dated: December 23, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–30686 Filed 12–26–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2945–3]

Intent To Prepare an Environmental Impact Statement; Full Containment Facility; Cincinnati, OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Preparation of an environmental impact statement for the construction of a full containment facility in Cincinnati, Ohio.

Purpose: In accordance with section 102(2)(c) of the National Environmental Policy Act, EPA has identified a need to prepare an environmental impact statement and therefore publishes this Notice of Intent pursuant to 40 CFR 1501.7

FOR FURTHER INFORMATION CONTACT: Russell Kulp, PE, U.S. Environmental Protection Agency, 401 M Street, SW (PM–215–F), Washington, DC 20460, Telephone No: (202) 382–2172.

Summary

1. Proposed EPA Action

It is the intent of the EPA to construct a free standing full containment facility (FCF) of approximately 7500 square feet on the site of the Andrew W. Breidenbach Environmental Research Center. The site is located at 26 West St. Clair Street, Cincinnati, Hamilton County, Ohio. The FCF is proposed to accommodate the use and handling of hazardous and toxic material associated with a research and development program. The facility will be designed to physically confine and control the associated hazardous and toxic materials.

2. Alternatives

a. No action.

b. Remodel the sixth floor of the Andrew W. Breidenbach Environmental Research Center to accommodate the use and handling of hazardous and toxic material associated with a research and development program.

c. The proposed action. The construction of a free standing building situated on the site of the Andrew W. Breidenbach Environmental Research Center.

3. Issues Involved

a. Procedures for handling hazardous and toxic materials and measures to be used during emergency situations.

b. Additional traffic and transportation of hazardous and toxic materials increasing the probability for accidents and spills in a highly populated area.

c. Discharge of hazardous and toxic materials into the Metropolitan sewer systems.

d. Effect on the surrounding community of a serious accident in the FCF.

e. Discharge of hazardous and toxic material into the air and its effect on the surrounding community.

4. Scoping Process

The scope consists of the range of proposed EPA actions and their potential impact upon the surrounding community, to be considered in the Environmental Impact Statement (EIS). It is the intent that there shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant environmental issues related to the proposed action.

The scoping process shall consist of a public meeting to be held February 4, 1986, at 6:30 p.m., in the Andrew W. Breidenbach Environmental Research Center, 26 West St. Clair Street, Cincinnati, Ohio. At this meeting the public will be invited to present concerns they would like to see addressed in the EIS.

5. Timing

EPA expects to issue a draft EIS for public review and comment within approximately three (3) months.

6. Request for Copies of the Draft EIS

All interested parties are encouraged to submit their names and addresses to the person indicated above for inclusion on the distribution list for the draft EIS and related public notices.

Dated: December 23, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–30685 Filed 12–26–85; 8:45 am]

BILLING CODE 6560–50–M

[FRL–2944–6]

Chesapeake Bay Executive Council Meeting; Open Meeting

The Chesapeake Bay Executive Council established in accordance with the Chesapeake Bay Agreement of December 1983, will be held from 8:00 a.m. to 1:00 p.m. on January 16, 1986, at the Harrisburg Marriott, 4650 Lindle Road, Harrisburg, Pennsylvania. This notice is published pursuant to section 10(a)(2) of Pub. L. 92–463, "The Federal Advisory Committee Act."

The agenda of the quarterly council meeting will include, but is not limited to:

1. Approve minutes from October 17, 1985 meeting,

2. Citizen Advisory Committee—Quarterly Report to the Executive Council,

3. Report and recommendation from the Implementation Committee on requesting an EIS from the Navy on the use of organotins in the Bay,

4. Fiscal Year 1986 Implementation Grants—schedule, conditions, apportionment of funds,

5. Update on Phase II Implementation program,

6. Frequency of Executive Council meetings, and

7. Pennsylvania's Chesapeake Bay Initiatives.

Comments from the public will be welcomed at the end of the meeting as time permits. Questions about the meeting may be directed to Ms. Patricia Bonner, U.S. EPA, Chesapeake Bay Liaison Office, Annapolis City Marina, Suite 109–110, Annapolis, Maryland 21403. The telephone number is: Area 301/266–6873.

Charles S. Spooner,

Director, Chesapeake Bay Liaison Office.

[FR Doc. 85–30631 Filed 12–26–85; 8:45 am]

BILLING CODE 6560–50–M

[SAB-FRL-2946-6]

Science Advisory Board, Radiation Advisory Committee; Open Meeting—January 21–22, 1986

Under Pub. L. 92–463, notice is hereby given that a meeting of the Science Advisory Board's Radiation Advisory Committee will meet January 21–22, 1986, in the Second Floor Conference Room of the Environmental Protection Agency's La Plaza Building, 4220 South Maryland Parkway (Building C), Las Vegas, Nevada. The meeting will begin at 9:00 a.m. on January 21 and adjourn at approximately 1:00 p.m. on January 22.

The primary focus of the meeting will be the Agency's radon program, including the efforts of the Office of Drinking Water and the Office of Research and Development as well as the Office of Radiation Programs. The Committee will learn abut EPA's facilities in Las Vegas and be briefed on a computerized system for assessing environmental transport of radionuclides. The Committee will develop a tentative review schedule for 1986.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments to the Committee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101F) Radiation Advisory Committee, Science Advisory Board, by the close of business Friday, January 17, 1986. The telephone number is (202) 382–2552.

Dated: December 19, 1985.

Kathleen Conway,

Acting Director, Science Advisory Board.

[FR Doc. 85–30632 Filed 12–26–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 58–1201]

Periodic Reports Required of Savings Institutions; Sections A, B, C, D, E, F, G, H, I and K

Date: December 20, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection, "Periodic Reports Required of Savings Institutions Sections A, B, C, D, E, F, G, H, I and K", to the Office of Management and Budget for expeditied approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 10 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects on the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board at the address given below.

Requests for copies of the propsed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Richard Pickering, Office of Policy and Economic Research. Phone: (202) 377–6770.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–30640 Filed 12–26–85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Truck Detention at the Port of New York; Filing of Petition To Amend Rules

December 23, 1985.

Notice is hereby given that a petition has been filed by the New York Terminal Conference requesting the Commission to amend its rules pertaining to truck detention at the Port of New York (46 CFR Part 530). Specifically, petitioner requests that §§ 530.7(f) and 530.7(g) be amended by changing the penalty charge specified in each from $4.00 per 15 minutes to $8.00 per 15 minutes.

In order for the Commission to make a thorough evaluation of the petition, interested persons are requested to submit views, arguments or data on the petition no later than January 10, 1986. Responses shall be directed to the Acting Secretary, Federal Maritime Commission, Washington, DC 20573, in an *original and 15 copies.* Responses shall also be served on counsel for petitioner: Thomas D. Wilcox, Esq., 2011 Eye Street, NW., Suite 601, Washington, DC 20006.

Copies of the petition are available for examination at the Washington, DC, office of the Commission, 1100 L Street, NW., Room 11101.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–30567 Filed 12–26–85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

December 20, 1985.

Background

Notice is hereby given of final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

For further information contact:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3822)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–6880)

Proposal to approve under OMB delegated authority the following report:

1. Report title: Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks

Agency form number: FR 2225

OMB Docket number: 7100–0216

Frequency: Semi-annually

Reporters: U.S. Branches and agencies of foreign banks

Small businesses are not affected

General description of the report:

The report is designed to collect worldwide capital data from foreign banks that participate on private-sector large-dollar wire transfer systems or that incur daylight overdrafts on Fedwire. The information would be used to monitor the respondents' compliance with the Board's voluntary program to reduce risks on large-dollar payment systems.

The collection is voluntary and information is given confidential treatment. 5 U.S.C. 552(b)(4).

The Board published its proposal to collect information on worldwide capital of foreign banks in October. 50 FR 41742 (Oct. 15, 1985). After examining all of the comments received, that Board has

modified the information collection request in the following ways:

(1) Information will be requested only on a semi-annual basis, rather than quarterly, as originally proposed;

(2) Respondent will submit reports at the end of March and September, rather than February and August as originally proposed, except that the initial report will be due by February 28, 1986, so that information will be available when the daylight overdraft monitoring program begins on March 27.

By order of the Board of Governors of the Federal Reserve System, December 20, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-30553 Filed 12-26-85; 8:45 am]

BILLING CODE 6210-01-M

Huntington Bancshares Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Huntington Bancshares Incorporated, Columbus, Ohio; to engage *de novo* through its subsidiary, The Huntington Company, Columbus, Ohio, in providing securities brokerage services, related securities credit activities, pursuant to the Board's Regulation T (12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services, pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, December 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30739 Filed 12-26-85; 8:45 am

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Federal Telecommunications Standards

AGENCY: Information Resources Management Service, General Services Administration.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on a Federal Telecommunications Standard (FED-STD) proposed for adoption: FED-STD 1065 "Telecommunications: Facsimile Coding Schemes And Coding Control Functions For Group 5 Facsimile Apparatus."

DATE: Comments are due on or before March 27, 1986.

ADDRESS: Send comments to National Communications Systems, Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Bodson, National Communications System, Telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunications standards for NCS interoperability and the computer communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Request for copies of the Proposed Draft FED-STD 1065 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Dated: November 26, 1985.

Francis A. McDonough,

Deputy Commissioner, Information Resources Management Service.

[FR Doc. 85-30341 Filed 12-26-85; 8:45 am]

BILLING CODE 6820-25-M

Federal Telecommunications Standards

AGENCY: Information Resources Management Service, General Services Administration.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on a Federal Telecommunications Standard (FED-STD) proposed for adoption: FED-STD 1070, "Telecommunications: Standard Optical Fiber Waveguide Material Classes and Optional Sizes for On-Premises Installation."

DATE: Comments are due on or before March 27, 1986.

ADDRESS: Send comments to National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Mr. Frank McClelland, National Communications System, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunications standards for NCS

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interoperability and the computer-communication interface.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Request for copies of the Proposed Draft FED-STD 1070 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Dated: November 22, 1985.

Francis A. McDonough,

Deputy Commissioner, Information Resources Management Service.

[FR Doc. 85-30342 Filed 12-26-85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on December 20, 1985.

Social Security Administration

Subject: Report by Former Representative Payee. Extension—(0960-0112)
Respondents: State or Local Governments
OMB Desk Officer: Judy A. McIntosh

Public Health Service

Centers for Disease Control

Subject: Cost of Water Fluoridation Evaluation. New.
Respondents: State or Local Governments

National Institutes of Health

Subject: Yale University's Health and Aging Project Substudy #3 "Adjustment to Widowhood"—Extension (0925-0246)
Respondents: Individuals or housholds
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

Subject: Information Collection Requirements in HCFA-Pub. 14-3 Carrier Manual Sections 2070.2, 3060.2.D, 4110.2 and 4110.4 Physician/Supplier Background Information—Existing Collection
Respondents: Businesses or other for-profit
Subject: Medicare Interim Payment Update Report, Reinstatement—(0938-0180)
Respondents: Businesses or other for-profit
Subject: Departmental Clinical Laboratory Survey Report Form, Extension—(0938-0032)
Respondents: State or Local Governments
OMB Desk Officer: Fay S. Iudicello

Office of the Secretary

Office of Inspector General

Subject: Program Inspection on Accuracy of Social Security Numbers in Aid to Families with Dependent Children/Medicaid Cases—New
Respondents: Individuals or Households
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn.: (name of OMB Desk Officer).

Dated: December 20, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-30578 Filed 12-26-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 79N-0113; DESI 2847]

Drugs for Human Use; Certain Parenteral Multivitamin Products; Withdrawal of Approval of Pertinent Parts of a New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of portions of the new drug application that provide for M.V.I. Injectable marketed by USVA Pharmaceutical Corp. The withdrawal is based on lack of substantial evidence that the product is effective. A reformation has been approved.

EFFECTIVE DATE: January 27, 1986.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the DESI number 2847 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 17, 1984 (49 FR 36446), FDA announced the conditions under which an effective parenteral multivitamin formulation may be marketed. The notice, published as part of the Drug Efficacy Study Implementation, also offered an opportunity for a hearing on a proposal to withdraw approval of portions of new drug applications (NDA's) for certain formulations. The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), 21 CFR 300.50, and 21 CFR 314.111 (now 21 CFR 314.126). In response to that notice, USV Pharmaceutical Corp. requested a hearing for M.V.I. Injectable.

USV has since withdrawn its hearing request. Accordingly, FDA is now withdrawing approval of parts of the following NDA:

NDA 8-809; those parts that provide for M.V.I. Injectable containing ascorbic acid, vitamin A, ergocaliciferol, thiamine hydrochloride, riboflavin, niacinamide, pyridoixine hydrochloride, dexpanthenol, and dl-alpha tocopherol acetate; USV Laboratories Division, USV Pharmaceutical Corp., Tarrytown, NY 10591.

This notice applies to all portions of NDA 8-809 except those that provide for M.V.I.-12, which was formulated in accordance with the September 1984 notice.

Any drug product that is identical, related, or similar to M.V.I. Injectable and is not the subject of an approved new drug application or of a pending hearing request is covered by the new drug application for this product and is subject to this notice (21 CFR 310.6) Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food,

Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under the authority delegated to him (21 CFR 5.82) finds that, on the basis of new information before him with respect to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 8–809 that provide for the original formulation of M.V.I. Injectable described above and all the amendments and supplements that provide for that product is withdrawn effective January 27, 1986. Shipment in interstate commerce of the product above or any identical, related, or similar product that is not subject to an approved new drug application or of a pending hearing request will then be unlawful.

Dated: December 20, 1985.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 85–30550 Filed 12–26–85; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BDMS–37–N]

ICD–9–CM Coordination and Maintenance Committee; Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the second meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) Coordination and Maintenance Committee.

DATE: The meeting will be held on Wednesday, January 22, 1986 and Thursday, January 23, 1986 beginning at 9:30 a.m. to 4:00 p.m. e.s.t.

ADDRESS: The meeting will be held in Room GC7–GD7 West High Rise Building, Social Security Administration Headquarters, 6401 Security Boulevard, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Lisa Levine, (301) 597–0610.

SUPPLEMENTARY INFORMATION: The ICD–9–CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid and all other health-related HHS programs. The work of the ICD–9–CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use by Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use for Federal programs. It is Co-Chaired by the National Center for Health Statistics and the Health Care Financing Administration.

At the second meeting of the ICD–9–CM Committee, members will discuss requests received for updating ICD–9–CM, Volume 3 procedures. These requests include proposals for developing additional ICD–9–CM codes for new technologies such as lithotripters, cardio-vertor defibrillators, and magnetic resonance imaging. The meeting is open to the public and attendance, proposal submittals and participation by interested parties are encouraged.

Dated: December 20, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85–30574 Filed 12–26–85; 8:45 am]

BILLING CODE 4120–01–M

National Institutes of Health

National Institute of Neurological and Communicative Disorders and Stroke; Meetings

Pursuant to Pub. L. 92–463, notice is hereby given of the meetings of the committees of the National Institute of Neurological and Communicative Disorders and Stroke.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary or Program Director indicated.

Name of Committee: Subcommittee on Convulsive, Developmental, and Neuromuscular Disorders, Scientific Programs Advisory Committee.

Date: January 9, 1986.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Federal Building, Room B119, Bethesda, Maryland 20892.

Open: 9:00 a.m.–1:00 p.m.

Agenda: To discuss the need for development in various areas of scientific interest to the Convulsive, Developmental, and Neuromuscular Disorders Program (CDNDP) and the National Institute of Neurological and Communicative Disorders and Stroke.

Closed: 1:00 p.m.–5:00 p.m.

Closure reason: To discuss applications that are pending review in CDNDP in various areas of scientific interest to CDNDP.

Program Director: Dr. Floyd J. Brinley, Jr., Federal Building, Room 812A, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–6541.

Name of Committee: National Advisory Neurological and Communicative Disorders and Stroke Council and Its Planning Subcommittee.

Dates: January 29–31, 1986.

Place: National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: January 29, 1:00 p.m.–3:00 p.m. (Planning Subcommittee). January 30, 9:00 a.m.–1:00 p.m. (Council).

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: January 29, 3:00 p.m.–5:00 p.m. (Planning Subcommittee). January 30, 1:00 p.m.–4:00 p.m. (Council). January 31, 8:30 a.m.–adjournment (Council).

Closure reason: For review of grant applications.

Executive secretary: John C. Dalton, Ph.D., Director, NINCDS–EAP, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496–9248.

Name of Committee: Communicative Disorders Review Committee.

Dates: February 20–21, 1986.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland 20814.

Open: February 20, 8:00 a.m.–8:30 a.m.

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: February 20, 8:30 a.m.–recess. February 21, 8:00 a.m.–adjournment.

Closure reason: To review grant applications.

Executive secretary: Dr. Marilyn Semmes, Federal Building, Room 9C–14, National

Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9223.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Dates: March 6-8, 1986.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: March 6, 8:30 a.m.-9:00 a.m.

Closed: March 6, 9:00 a.m.-recess. March 7, 8:30 a.m.-recess. March 8, 8:00 a.m.-adjournment.

Closure reason: To review grant applications.

Acting executive secretary: Dr. A Beau White, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9223.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: December 23, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-30613 Filed 12-26-85; 8:45 am]

BILLING CODE 4140-01-M

National Library of Medicine; Meetings of the Board of Regents and the Extramural Programs Subcommittee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on February 6-7, 1986, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Extramural Programs Subcommittee of the Board of Regents on the preceding day February 5, from 3:00 to 5:00 p.m. in the 5th-floor Conference Room of the Lister Hill Center Building. The meeting of the Board will be open to the public from 9:00 a.m. to 4:30 p.m. on February 6 and from 9:00 a.m. to 11:00 a.m. on February 7 for administrative reports and program discussions. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4), 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the entire meeting of the Extramural Programs Subcommittee on February 5 will be closed to the public, and the regular Board meeting on February 7 will be closed from approximately 11:00 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material and personal information concerning individuals associated with the would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, Telephone Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.879—Medical Library Assistance, National Institutes of Health)

Dated: December 12, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-30600 Filed 12-26-85; 8:45 am]

BILLING CODE 4140-01-M

Division of Research Grants; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for January 1986, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Grants Inquiries Office, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20205, telephone 301-496-7441 will furnish summaries of the meetings and rosters of committee members. Substantive program informaiton may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are A.M. unless otherwise specified.

Study section	January 1986 meeting	Time	Location
Behavioral and Neurosciences-1 Ms. Janet Cuca, Rm. A13, Tel. 301-496-5352	16-17	8:30	Holiday Inn, Georgetown, DC.
Behavioral and Neurosciences-3, Ms. Janet Cuca Rm. A13, Tel. 301-496-5352	23	8:30	Room 9, Bldg. 31C, Bethesda, MD.
Biomedical Sciences-2, Dr. Daniel Eskinazi Rm. A10, Tel. 301-496-1067.	30-31	9:00	Room 8, Bldg. 31C, Bethesda, MD.
Biomedical Sciences-3, Dr. Charles Baker, Rm. A10, Tel. 301-496-7150.	27-28	8:30	Holiday Inn, Bethesda, MD.
Biomedical Sciences-4, Dr. Charles Baker, Rm. A10, Tel. 301-496-7150.	14-15	8:30	Holiday Inn, Bethesda, MD.
Biomedical Sciences-5, Dr. W. Elbert Wilson, Rm. A25, Tel. 301-496-7600	15-17	8:30	Room 10, Bldg. 31C, Bethesda, MD.
Biomedical Sciences-5, Dr. W. Elbert Wilson, Rm. A25, Tel. 301-496-7600	22-24	8:30	Ramada Inn, Bethesda, MD.
Biomedical Sciences-6, Dr. Nicholas Mazarella, Rm. A10, Tel. 301-496-3117.	27-29	8:30	Holiday Inn, Bethesda, MD.
Clinical Sciences-1, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301-496-7510.	15-17	8:30	Sheraton Inn, Silver Spring, MD
Clinical Sciences-2, Dr. Bernice Liptin, Rm. A19, Tel. 301-496-7477	27-28	8:30	Room 4, Bldg. 31A, Bethesda, MD.
Clinical Sciences-3, Dr. Lynwood Jones, Jr., Rm. A19, Tel. 301-496-7510	23-24	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences-4, Dr. Bernice Liptin, Rm. A19, Tel. 301-496-7477	16-17	8:30	Room 8, Bldg. 31C, Bethesda, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: December 12, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–30610 Filed 12–26–85; 8:45 am]

BILLING CODE 4140-01-M

National Eye Institute; National Advisory Eye Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Eye Council, National Eye Institute, January 27–28, 1986, Building 31, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public from 9:00 a.m. until approximately 12:00 noon on Monday, January 27. Following opening remarks by the Director, National Eye Institute, there will be presentations by the staff of the Institute including budget and average grant costs.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 12:00 noon until recess on Monday, January 27, and from 9:00 a.m. to adjournment on Tuesday, January 28, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Kay Valeda, Committee Management Officer, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4903, will provide summaries of meetings and rosters of committee members.

Dr. Ronald G. Geller, Associate Director for Extramural and Collaborative Programs, National Eye Institute, Building 31, Room 6A03, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4903, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Programs, Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Corneal Diseases Research; 13.869, Cataract Research; 13.870, Glaucoma Research; and 13.871, Sensory and Motor Disorders of Visual Research; National Institutes of Health)

Dated: December 12, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–30609 Filed 12–26–85; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meetings of the National Heart, Lung, and Blood Advisory Council and Its Research Subcommittee and Manpower Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 13–14, 1986, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, Maryland 20892. In addition, the Research Subcommittee and the Manpower Subcommittee of the above Council will meet on February 12, 1986, at 1:00 p.m. and 8:00 p.m. respectively, in Building 31, Conference Room 9.

The Council meeting will be open to the public on February 13 from 9:00 a.m. to approximately 3:30 p.m. for discussion of program policies and issues. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the Council meeting will be closed to the public from approximately 3:30 p.m. on February 13 to adjournment on February 14 for the review, discussion, and evaluation of individual grant applications. The meetings of the Research Subcommittee and the Manpower Subcommittee of the above Council on February 12 will be closed from 1:00 p.m. and 8:00 p.m. respectively, to adjournment for the review, discussion, and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Public Inquiries Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21 National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Council members.

Dr. Samuel H. Joseloff, Executive Secretary of the Council, Westwood Building, Room 7A–15, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–7548, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837,, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 12, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–30603 Filed 12–26–85; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National High Blood Pressure Education Coordinating Committee sponsored by the National Heart, Lung, and Blood Institute, on January 17, 1986, 9 a.m. to 4 p.m., Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814, (301) 657–1234.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in The National Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants and meeting summary, contact: Dr. Edward G. Roccella, Coordinator, Health Education Branch, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A18, Bethesda, Maryland 20892, (301) 496–1051.

Dated: Dec. 11, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–30612 Filed 12–26–85; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meeting; National Advisory General Medical Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Science, National Institutes of Health, on January 23 and 24, 1986, Building 31, Conference Room 10, Bethesda, Maryland.

This meeting will be open to the public on January 23, 1986, from 8:30 a.m. to 11:00 a.m. for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552(c)(4) 552(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 23 from 11:00 a.m. to 6:00 p.m., and on January 24, 1986, from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892, Telephone: 301, 496–7301 will provide a summary of the meeting and a roster of council members. Dr. Ruth L. Kirschstein, Executive Secretary, NAGMS Council, National Institutes of Health, Westwood Building, Room 926, Bethesda, Maryland 20205, Telephone: 301, 496–7891 will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13–821, Physiology and Biomedical Engineering; 13–859, Pharmacology-Toxicology Research; 13–862, Genetics Research; 13–863, Cellular and Molecular Basis of disease Research; and 13–880, Minority Access to Research Careers [MARC])

Dated: December 12, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–30611 Filed 12–26–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological and Communicative Disorders and Stroke; Meeting of the Neurological Disorders Program Project Review A Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Neurological Disorders Program Project Review A Committee, National Institutes of Health, February 9–11, 1986, at The Holiday Inn at Union Square, 480 Sutter, San Francisco, California 94108.

The meeting will be open to the public from 8:30 a.m. until 9:30 a.m. on February 9, 1986 to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 2b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. on February 9 to adjournment on February 11, for the review, discussion and evaluation of individual grant applications. The applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Leon Jack Greenbaum, Jr., Executive Secretary, Federal Building, Room 9C14, Bethesda, MD 20205 (Tel. No. 301/496–9223) will furnish summaries of the meeting, the roster of committee members and substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: December 12, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–30604 Filed 12–26–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meetings; National Advisory Allergy and Infectious Diseases Council; Allergy and Immunology Subcommittee; Microbiology and Infectious Diseases Subcommittee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, and its subcommittees on January 23–24, 1986, at the National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20892.

The meeting will be open to the public on January 23 from approximately 9:00 a.m. to 9:30 a.m., for opening remarks of the Institute Director and again from 1:30 p.m. to approximately 5:00 p.m. for discussion of procedural matters, Council business, and a report from the Institute Director which will include a discussion of budgetary matters. The primary program discussions will be on Sexually Transmitted Diseases (other than AIDS). On January 24 the meeting will be open to the public from approximately 8:30 a.m. to 9:30 a.m. for the reports of the Director of the Microbiology and Infectious Diseases Program and the Director of the Immunology, Allergic and Immunologic Diseases Program.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92–463, the meeting of the NAAIDC Allergy and Immunology Subcommittee and of the NAAIDC Microbiology and Infectious Diseases Subcommittee will be closed to the public for approximately three hours for the review, evaluation, and discussion of individual grant applications. It is anticipated that this will occur from 9:30 a.m. until approximately 12:30 p.m. on January 23. The meeting of the full Council will be closed from approximately 9:30 a.m. until adjournment on January 24, for the review, evaluation, and discussion of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Gwendolyn Trible, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496–5717, will provide summaries of the meetings and rosters of the Council members as requested.

Dr. John W. Diggs, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301) 496–7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: December 12, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–30605 Filed 12–26–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting; National Advisory Child Health and Human Development Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, January 27–28, 1986, in Building 31, Conference

BEST COPY AVAILABLE

Room 6, National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on January 27 from 8:30 a.m. to 9:30 a.m. in Building 31, Room 2A03.

The Council meeting will be open to the public on January 27 from 9:30 a.m. until 5:00 p.m. The agenda includes a report by the Acting Director, NICHD, and a presentation by the Reproductive Sciences Branch, Center for Population Research. The meeting will be open on January 28 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on January 27 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 28 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Council Secretary, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland 20205, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health)

Dated: December 12, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–30606 Filed 12–26–85; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting; National Advisory Dental Research Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on January 27–28, 1986, Conference Room 7, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public form 9:00 a.m. to recess on January 27 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on January 28 from 9:00 a.m. to adjourment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personsal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Marie U. Nylen, Executive Secretary National Advisory Dental Research Council, and Associate Director, Extramural Programs, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 503, Bethesda, Maryland 20892 (telephone 301 496–7723), will furnish roster of committee members, a summary of the meeting, and other information pertaining of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Support Tissues; Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13.845—Dental Research Institutes; National Institutes of Health)

Dated: December 12, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–30607 Filed 12–26–85; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences; Meeting; National Advisory Environmental Health Sciences Council

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, January 30–31, 1986, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on January 30 from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public January 30, from approximately 1:00 p.m. to adjournment on January 31, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. Robert Mayfield, Extramural Program, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7628, FTS 629–7628, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: December 12, 1985.

Betty J. Beveridge,

Committee Management Office, NIH.

[FR Doc. 85–30608 Filed 12–26–85; 8:45 am]

BILLING CODE 4140-01-M

Meeting of the General Clinical Research Centers Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, Division of Research Resources (DRR), February 10–11, 1986, Conference Room 6, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.

This meeting will be open to the public on February 10 from 9:00 a.m. to approximately 11:00 a.m. during which time there will be comments by the Director, DRR; an update on the GCRC Program; and reports on the Clinical Associate Physician Program; the diffusion of the CLINFO System; possible new technologies for GCRCs; and clinical research data management. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code a Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public February 10 from

approximately 11:00 a.m. to recess and from approximately 8:00 a.m. to adjournment on February 11 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B–10, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the Committee members. Dr. Ephraim Y. Levin, Executive Secretary of the General Clinical Research Centers Review Committee, Bldg. 31, Room 5B51, National Institutes of Health, Bethesda, Maryland 20892, (301) 946–6595, will furnish program information.

(Catalog of Federal Domestic Assistance Program No. 13.333, Clinical Research, National Institutes of Health)

Dated: December 12, 1985.

Betty J. Beveridge,

NIH Committee Management Office.

[FR Doc. 85–30601 Filed 12–26–85; 8:45 am]

BILLING CODE 4140–01–M

Cancer Control Intervention Contract Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Control Intervention Contract Review Committee, National Cancer Institute, National Institutes of Health, January 30–31, 1986, Building 31, Conference Room 4, Bethesda, Maryland 20892.

This meeting will be open to the public on January 30, from 8:30 a.m. to 9:30 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 30, from approximately 9:30 a.m. until recess, and January 31, from 8:30 a.m. to adjournment for the review, discussion and evaluation of contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Courtney Michael Kerwin, Executive Secretary, Cancer Control Intervention Contract Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7030) will furnish substantive program information.

Dated: December 12, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–30602 Filed 12–26–85; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Blood Diseases and Resources Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, February 24–25, 1986, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The Committee will meet in Building 31, Conference Room 8, C Wing.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on February 24, and from 9:00 a.m. to adjournment on February 25, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Fann Harding, Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A–08, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–1817, will furnish substantive program information.

December 20, 1985.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–30592 Filed 12–26–85; 8:45 am]

BILLING CODE 4140–01–M

National Diabetes Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Diabetes Advisory Board and its subcommittees on January 16, 1986, 8:30 a.m. to adjournment, at the Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, Maryland 20814. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, Federal Building, Room 616, Bethesda, Maryland 20892, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: December 20, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–30593 Filed 12–26–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Environmental Impact Statement on North Key Largo (Florida) Habitat Conservation Plan and Endangered Species Act Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Availability of scoping document.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (FWS) has completed a scoping document as part of the preparation of an Environmental Impact Statement (EIS) of the North Key Largo (Florida) Habitat Conservation Plan (HCP) and proposed Endangered Species Act Section 10(a) permit. The HCP is being prepared by the North Key Largo Habitat Conservation Plan Study Committee in conjunction with the

preparation by Monroe County, Florida of a Comprehensive Plan for development of the County. The FWS is working closely with the County and the Florida Department of Community Affairs (DCA) in preparation of the EIS. On May 16 and October 23, 1985, the FWS held scoping meetings to receive comments from the public. The scoping document is based upon comments received at those meetings an upon writtten comments received by the FWS.

DATES: The scoping document is available as of December 27, 1985.

ADDRESS: Copies of the scoping document may be obtained from the Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley at the above address (904/791–2580).

SUPPLEMENTARY INFORMATION:

Description of the Proposed Action

The FWS may issue a permit pursuant to section 10(a) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a), that would authorize the take of listed species incidental to development and other activities in North Key Largo, Florida. Section 10(a) of the Endangered Species Act was amended in 1982 to authorize the issuance of permits to take endangered species as an incident to otherwise lawful activities provided that the permit application is supported by a habitat conservation plan that will further the long term conservation of the species. The proposed issuance of the incidental take permit may have a signficant effect on the quality of the human environment and thus will be the subject of an EIS prepared pursuant to section 102(2)(C) of the National Environment Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C).

Monroe County, Florida, where North Key Largo is located, is in the process of preparing a Comprehensive Plan for development of the County under the Florida Area of Critical State Concern process, Florida Statutes, Chapter 380. Any successful HCP for North Key Largo must be consistent with the requirements of the Monroe County Comprehensive Plan. In addition, Congress has allocated $98,000, to be matched with non-Federal funds, for the development of an HCP for North Key Largo. The FWS has subsequently entered into a grant agreement with the DCA under which the County, in cooperation with the DCA, will prepare an HCP for North Key Largo. In preparing the HCP, the County and its staff will work with the North Key Largo Habitat Conservation Plan Study Committee to explore the possibilities for allowing reasonable levels of development on North Key Largo, while meeting the goals of section 10(a), which include ensuring the long term conservation of any affected listed species. Pursuant to the FWS-DCA grant agreement and in accordance with 40 CFR Part 1506, the FWS will be working closely with the County to prepare an EIS on the possible incidental take permit.

Scoping Process

On May 18, 1985, FWS held a scoping meeting as part of the process of preparing the EIS. The meeting was attended by 33 persons and 3 written comments were received. A draft scoping document was prepared, based upon information received at the public meeting and written comments. Copies were sent to all participants in the May 18, 1985, meeting as well as all persons who have attended the HCP meetings. A second scoping meeting was held on October 23, 1985. Twenty-five persons attended, and one written comment was received. The comment period closed on November 15, 1985. Appropriate information and comments were incorporated in the final scoping document, which is now available (see above).

The environmental review of this proposed action is being conducted in accordance with the requirements of NEPA, the regulations of the Council on Environmental Quality, 40 CFR Parts 1500–1508, other applicable Federal regulations, and FWS procedures for compliance with these regulations.

(Notice Availability of scoping document for Environmental Impact Statement on North Key Habitat Conservation Plan)

Dated: December 18, 1985.

Daniel B. Allen,

Acting Regional Director, FWS, Alanta, Georgia.

[FR Doc. 85–30558 Filed 12–26–85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[CA–17695]

Realty Action; Exchange of Public Lands in San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public lands located in San Diego County, California, have been examined, and through the development of land use planning decisions based on public input, resource considerations, regulations, and Bureau policies, it has been determined that these public lands are suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

San Bernardino Meridian, California

T. 17 S., R. 1 E.,
Sec. 20, NE¼, N½SE¼, SE¼SE¼;
Sec. 21, N½, N½S½;
Sec. 29, W½, W½ SE¼.
Containing 840 acres.

All minerals in these public lands will be included in the exchange.

In exchange for these lands the United States will acquire land or interests in land throughout California from the Trust for Public Land, 82 Second Street, San Francisco, California 94105. The lands or interests in lands are in three different locations. The value of the lands or interests in lands to be exchanged are approximately equal and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands. The lands or interests in lands to be acquired are as follows, listed in order of descending priority for acquisition. The lands listed first will be acquired first, and so on, until the values of public and private land are equalized:

1. Eagle Lake Conservation and Public Access Easements

The United States will acquire interests in these lands, located along the southeast shore of Eagle Lake, in Lassen County, California. The interests to be acquired are conservation and public access easements. The area involved is the longest shoreline of undeveloped private land remaining at Eagle Lake, which is the second largest natural freshwater lake entirely within California. The conservation easement would prevent any subdivision of the land, and would protect in perpetuity the predominantly natural, scenic, agricultural, open space and aesthetic attributes of the land. The public access easement would allow public pedestrian access to and over the entire property (except 80 acres of residential area), with the right of the public to hunt and fish on the land. The easements described above will be acquired on the following private lands:

Mount Diablo Meridian, California

T. 32 N., R. 11 E.,
Sec. 11, lots 1,2,3,8, E½SE¼, SW¼SE¼;

Sec. 12, lots 1,2,3,4, NW¼NW¼, SW¼ SE¼, S½SW¼;
Sec. 13, lots 1,2,3, W½NE¼, NW¼, E½SW¼, W½SE¼;
Sec. 14, lots 3,4,5, NE¼NE¼, S½NE¼, NW¼SE¼;
Sec. 24, NW¼NE¼, NE¼NW¼.

T. 32 N., R. 12 E.,
Sec. 7, tracts 39, 40;
Sec. 18, tracts 42, 43.

Containing 1578.91 acres, more or less.

2. Western Otay Mountain WSA Inholding

The United States will acquire fee title (including all minerals) to the following private land, located within the Western Otay Mountain Wilderness Study Area, in San Diego County, California:

San Bernardino Meridian, California

T. 18 S., R. 1 E.,
Sec. 10, S½NE¼, NE¼SE¼;
Sec. 11, NW¼SW¼.

Containing 160 acres.

3. Cleveland National Forest Inholdings

The United States will acquire fee title (including all minerals) to various parcels of private land located within the Cleveland National Forest, in San Diego County, California. These lands will later be transferred from the Bureau of Land Management to the U.S. Forest Service. The lands to be acquired are as follows:

San Bernardino Meridian, California

T. 15 S., R. 4 E.,
Tract 50;
Tract 55, excluding that portion lying within Calif. State Highway Interstate 8;
Tract 56, excluding that portion lying within Calif. State Highway Interstate 8;
Tract 57, excluding that portion lying within Calif. State Highway Interstate 8;
Tract 58, excluding that portion lying within Calif. State Highway Interstate 8;
Tract 59, Tract 60;
Tract 61, excluding that portion lying north of the southerly boundary of Calif. State Highway Interstate 8.
T. 16 S., R. 4 E.,
Sec. 5, lot 4.

Containing approximately 1,137 acres.

The purpose of this exchange is to acquire non-Federal lands that have significant multiple-use values, including recreational, wildlife, wilderness, scenic, and endangered species values that far outweigh values found on the Federal lands to be exchanged. The exchange is consistent with the Bureau of Land Management Susanville District's Willow Creek Management Framework Plan, and the California Desert District's Escondido Management Framework Plan. These public lands have been identified for disposal in the BLM's Southern California Metropolitan Projects Area's Management Action Summary. The exchange is consistent with the management objectives of the Cleveland National Forest. This exchange has been discussed with Lassen County, San Diego County, and various State of California agencies. The public interest will be well served by making this exchange.

There will be reserved to the United States in the public lands to be exchanged, a right-of-way thereon for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

The publication of this notice in the **Federal Register** segregates the public lands described herein from all other forms of appropriation and entry under the public laws, including the mining laws, for a period of two years from the date of publication. The exchange is expected to be completed before the end of that period.

Detailed information concerning the exchange, including the environmental analysis, is available for review at the Bureau of Land Management's Susanville District Office, 705 Hall Street, Susanville, CA 96130 and at the California Desert District Office, 1695 Spruce Street, Riverside, CA 92507.

DATE: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Deputy State Director, Division of Operations, California State Office of the Bureau of Land Management.

ADDRESSES: Comments should be sent to: Deputy State Director (CA–943.1), Bureau of Land Management, 2800 Cottage Way, Room E–2841, Sacramento, California 95825. (Reference exchange number CA–17695). Objections will be evaluated by the California State Director of the Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Peter Humm or Jacqueline Gratton, Susanville District Office, at (916) 257–5381.

Dated: December 19, 1985.

Bruce P. Conrad,

Deputy State Director, Division of Operations.

[FR Doc. 85–30562 Filed 12–26–85; 8:45 am]

BILLING CODE 4310-40-M

DEPARTMENT OF THE INTERIOR

Filing of Plats of Survey; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on November 29, 1985.

Willamette Meridian

OR T. 20 S., R. 10 W.;
OR T. 21 S., R. 32½ E.

The above two plats represent dependent resurveys and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N. E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: December 17, 1985.

Leland D. Morrison,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–30561 Filed 12–26–85; 8:45 am]

BILLING CODE 4310-33-M

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

OR T. 21 S., R. 8 W.;
OR T. 26 S., R. 14 E.;
WA T. 7 N., R. 13 E.

Officially filed, October 22, 1985.

OR T. 13 S., R. 6 W.;
OR T. 9 S., R. 39 E.

Officially filed, November 13, 1985.

All of the above-listed plats represent dependent resurveys, subdivisions, and a supplemental plat.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah, P.O. Box 2965, Portland, Oregon 97208.

Dated: December 17, 1985.

Leland D. Morrison,

Acting Chief, Branch of Lands and Mineral Operations.

[FR Doc. 85–30569 Filed 12–26–85; 8:45 am]

BILLING CODE 4310-33-M

Filing of Plat of Survey; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plat of survey of the following described land will be officially filed at 8:30 a.m., February 4, 1986, in the Oregon State Office, Portland, Oregon.

Willamette Meridian

T. 12 N., R. 6 E.,
Sec. 37 Lot 1

The area described aggregates 2.9 acres.

Section 37 is situated between sections one and twelve. The lands are located within Lewis County, Washington about one and one half miles northwest of the town of Randle. Access is by a private logging road off of U.S. Highway No. 12.

The terrain is mountainous. Elevations range from 1,840 to 3,600 feet above sea level. The soil is composed of loam, sand, and rock with a variety of timber and undergrowth.

Section 37 is administered by the Gifford Pinchot National Forest and is open to such forms of disposition as may bylaw be made of the national forest land.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 NE Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: December 17, 1985.

Leland D. Morrison,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-30570 Filed 12-26-85; 8:45 am]

BILLING CODE 4310-33-M

Carson City District Office; Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: The Carson City District Office will conduct a hearing regarding the routine use of helicopter to gather wild horses and burros, and motorized vehicles to transport them, in accordance with Pub. L. 94-579, Sec. 404, during the present fiscal year.

DATE: January 17, 1986; 10:00 a.m.

ADDRESS: 1535 Hot Springs Road, Suite 300, Carson City, Nevada.

FOR FURTHER INFORMATION CONTACT: Steve Weiss, Environmental Protection Specialist, 1535 Hot Springs Road, Suite 300, Carson City, NV 89701, (702) 882-1631

Thomas J. Owen,

District Manager.

[FR Doc. 85-30560 Filed 12-26-85; 8:45 am]

BILLING CODE 4310-HC-M

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held January 30, 1986.

On January 30, the meeting will begin at 1:00 p.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include:

A presentation by members of the Medford District's task force on public involvement; a discussion by staff members on the District's FY 1986 budget, plans and programs; and the District's 1986 timber sale program.

The meeting of the advisory council is open to the public. Interested persons may make oral statements to the board following conclusion of its other agenda items on January 30, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford Oregon 97504, by January 30, 1986. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the district office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date Signed: December 18, 1985.

Hugh R. Shera,

District Manager.

[FR Doc. 85-30568 Filed 12-26-85; 8:45 am]

BILLING CODE 4310-33-M

[W-87233]

Wyoming; Proposed Withdrawal and Opportunity for Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 20 acres of public land for the Sugarloaf Petroglyph and Pine Spring Cultural Site in Sweetwater County, Wyoming. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received by March 27, 1986.

ADDRESS: Comments and meeting requests should be sent to: Wyoming State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Tamara J. Gertsch, Wyoming State Office, 307-772-2072.

On December 2, 1985, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the nondiscretionary public land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Wyoming

T. 14 N., R. 107 W.,
Sec. 27, E½NW¼SE¼NW¼.
T. 14 N., R. 109 W.,
Sec. 19, S½SW¼SW¼SE¼;
Sec. 30, NW¼NW¼NE¼.

The area described contains 20 acres in Sweetwater County.

The purpose of the proposed withdrawal is to segregate the above described lands from appropriation under the nondiscretionary public land laws and the mining laws, but not the mineral leasing laws, to conserve the significant scientific, artistic, educational, and archeological values of the Sugarloaf Petroglyh and Pine Spring Cultural Site.

Effective on the date of publication, these lands are segregated from all forms of appropriation under the public land laws, including the mining laws. The lands remain open to mineral leasing subject to concurrences by the Department of the Interior. The lands will remain open to surface uses which are compatible with the project until the withdrawal is final and until construction is started. The segregative effect of this pending application will terminate 2 years from the date of this publication unless final withdrawal action is taken or the application is terminated prior to that date. Notice of any action will be published in the Federal Register.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal may present their views in writing to the State Director, Wyoming State Office.

Pursuant to section 204(h) of the Federal Land Policy and Management

BEST COPY AVAILABLE

Act of 1978, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on this proposed action must submit a written request for a hearing to the Wyoming State Director within 90 days from the date of this publication.

If it is determined that a public hearing should be held, notice of the time and place of the hearing will be published in the Federal Register at least 30 days prior to the hearing. The hearing will be scheduled and conducted in accordance with Bureau of Land Management Manual, Section 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demands for the land and its resources. The authorized officer will also undertake negotiations with the applicant agency to assure that the area sought is the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the land for purposes other than the applicant's, and to reach an agreement on the concurrent management of the land and its resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn and reserved as requested by the applicant agency. The determination of the Secretary on this application will be published in the Federal Register.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

Dated: December 18, 1985.

Hillary A. Oden,

State Director.

[FR Doc. 85-30539 Filed 12-26-85; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Union Oil Company of California

AGENCY: Minerals Management Service, Interiors.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Oil Company of California has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0204, Block 38, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on December 19, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: December 20, 1985.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-30557 Filed 12-26-85; 8:45 am]

BILLING CODE 4310-MR-M

Environmental Processes and Effects Subcommittee and Living Resources Subcommittee of the Scientific Committee Outer Continental Shelf (OCS) Advisory Board; Notice and Agenda of Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. Appendix I, and the Office of Management and Budget Circular A-63, Revised.

The Scientific Committee of the OCS Advisory Board will convene a joint meeting of its Environmental Processes and Effects Subcommittee and its Living Resources Subcommittee on Friday, January 17, 1986, in the Galvez Room at the New Orleans Marriott, 555 Canal Street, New Orleans, Louisiana 70140. The Subcommittees will meet during the period 9:00 a.m. to 3:00 p.m.

The Agenda for the meeting will include the following subjects:

- The National Academy of Science's (NAS) Review of the Environmental Studies Program; and
- Development of a List of Topics for the NAS Review.

This meeting is open to the public. Approximately 15 visitors can be accommodated on a first come/first served basis. All inquiries concerning this meeting should be addressed to:

Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division (644), Minerals Management Service, U.S. Department of the Interior, 18th & C Streets, NW., Washington, DC 20240; telephone: (202) 343-7744.

Dated: December 20, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-30534 Filed 12-26-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Agriculture Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: December 23, 1985.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC. 20423. The Notices are

in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Dairyman, Inc.

(2) 10140 Linn Station Road, Louisville, KY 40223.

(3) Eatonton, GA; Franklinton, LA; Louisville, KY and Bristol, VA.

(4) Mr. Jim Stapleton, 10140 Linn Station Road, Louisville, KY 40223.

James H. Bayne,

Secretary.

[FR Doc. 85-30618 Filed 12-26-85; 8:45 am]

BILLING CODE 7035-01-M

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: December 23, 1985.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Southern States Cooperative, Inc.

(2) P.O. Box 26234, 6606 West Broad Street, Richmond, VA 23260.

(3) 6606 West Broad, P.O. Box 26234, Richmond, VA 23260.

(4) Mr. Garry L. Horn, P.O. Box 26234, Richmond, VA 23260.

James H. Bayne,

Secretary

[FR Doc. 30678 Filed 12-26-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 50)]

Missouri Pacific Railroad Co. Abandonment in Salina and McPherson Counties, KS; Notice of Findings

The Commission has found that the public convenience and necessity permit the Missouri Pacific Railroad Company to abandon its 21.8-mile line of railroad between Trigo (milepost 499.3) and Marquette (milepost 521.1), in Salina and McPherson Counties, KS.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-30620 Filed 12-26-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30753]

Guilford Transportation Industries, et al.; Exemption; Issuance of Securities

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Delaware and Hudson Railway Company from the prior approval requirements of 49 U.S.C. 11361 to permit it to supplement its First Mortgage Trust Indenture with the State Bank of Albany. Corresponding notes and guarantees are not subject to the Commission's regulation under 49 U.S.C. 11301.

DATES: This exemption and decision will be effective on December 10, 1985. Petitions to reopen must be filed by December 30, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30753 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: James E. Howard, Kirkpatrick & Lockhart, Exchange Place, 53 State Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room, 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 6, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Lamboley dissented in part with a separate expression. Commissioner Simmons did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85-30617 Filed 12-26-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Quotas for Controlled Substances in Schedules I and II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of Established 1986 Aggregate Production Quotas.

SUMMARY: This notice establishes 1986 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

DATE: This order is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 Eye Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration (DEA) by § 0.100 of Title 28 of the Code of Federal Regulations.

On Tuesday, October 1, 1985, a notice of the proposed 1986 aggregate production quotas for certain controlled substances in Schedules I and II was published in the Federal Register (50 FR 40070). All interested parties were invited to comment on or object to those proposed aggregate production quotas on or before October 31, 1985.

Hoffmann-LaRoche, Inc. of Nutley, New Jersey, Ciba-Geigy Corporation of Summit, New Jersey and MD Pharmaceutical, Inc. of Santa Ana, California, through their counsel, submitted comments relative to the proposed quotas.

Relative to alphaprodine, Hoffmann-LaRoche, Inc. commented that the proposed quota was inadequate to meet their expected 1986 needs. Based upon sales higher than estimated for 1985 and in expectation of a continuing trend of increased sales during 1986, Hoffmann-LaRoche requested that the aggregate production quota for alphaprodine be increased. At this time, DEA has determined that no increase is necessary; however, DEA will reconsider these comments when the established quotas are reviewed in early 1986. Relative to methylphenidate, Ciba-Geigy Corporation and MD Pharmaceutical, Inc., through their counsel, commented that the proposed 1986 aggregate production quota will be insufficient to meet 1986 needs. MD Pharmaceutical requested that the 1986 aggregate production quota for methylphenidate be increased sufficiently to permit for viable competition for generic methylphenidate. Ciba-Geigy requested that the proposed aggregate production quota be increased to some amount in excess of their individual manufacturing needs. Both companies requested a hearing on the proposed 1986 aggregate production quota for methylphenidate. In order to ensure that these firms manufacturing methylphenidate may remain in production during the pendency of the consideration of the matter for hearing, a final initial aggregate production quota will be established for this interim period. This quota will be the amount which was initially proposed, and will be subject to revision upon further consideration and possible hearing. No other comments were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(b) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1986 aggregate production quotas for Schedules I and II controlled substances, expressed as grams of anhydrous acid or base, be established as follows:

Basic Class and established 1986 quotas:

Schedule I:	
Alfentanil	7,500
2,5-Dimethoxyamphetamine	10,500,000
Tetrahydrocannabinols	30,000
Schedule II:	
Alphaprodine	35,000
Amobarbital	1,743,000
Amphetamine	195,000
Cocaine	800,000
Codeine (for sale)	53,844,000
Codeine (for conversion)	3,657,000
Desoxyephedrine	1,300,000

1,178,000 grams for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product, and 122,000 grams for the production of methamphetamine.

Dextropropoxyphene	75,379,000
Dihydrocodeine	1,094,000
Diphenoxylate	900,000
Ecgonine (for conversion)	850,000
Fentanyl	5,000
Hydrocodone	1,788,000
Hydromorphone	271,000
Levorphanol	19,000
Meperidine	11,000,000
Methadone	1,459,000
Methadone Intermediate (4-Cyano-2-dimethyl-amino-4,4-diphenylbutane)	1,824,000
Methylphenidate	1,295,000
Mixed Alkaloids of Opium	10,000
Morphine (for sale)	1,407,000
Morphine (for conversion)	57,575,000
Opium (tinctures, extracts, etc. expressed in terms of USP powered opium)	1,705,000
Oxycodone (for sale)	1,998,000
Oxycodone (for conversion)	5,300
Oxymorphone	3,500
Pentobarbital	12,00,000
Phenmetrazine	0
Phenylacetone	1,135,000
Secobarbital	2,094,000
Sufentanil	500
Thebaine	7,941,000

DEA will review the above established quotas early in 1986 to take into consideration actual 1985 sales and actual December 31, 1985 inventories as well as other information which might be available to DEA. At that time, DEA will again consider those comments received in response to the proposal of October 1, 1985.

Dated: December 9, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-30042 Filed 12-26-85; 8:45 am
BILLING CODE 4410-09-M

Controlled Substances; Proposed 1986 Aggregate Production Quota for Methamphetamine (for conversion)

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of a Proposed 1986 Aggregate Production Quota.

SUMMARY: This notice proposes a 1986 aggregate production quota for methamphetamine (for conversion), a Schedule II controlled substance.

DATE: Comments or objections must be received on or before January 27, 1985.

ADDRESS: Send comments or objections in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537. Attn: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537. Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. Code 826), requires that the Attorney General establish on an annual basis aggregate production quotas for all controlled substances listed in Schedules I and II. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

An application has been made for a manufacturing quota for the Schedule II substance methamphetamine (for conversion). Methamphetamine will be

used to manufacture a Schedule III controlled substance.

The Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated to the Administrator by § 0.100 of Title 28 of the Code of Federal Regulations, hereby proposes the 1986 aggregate production quota for methamphetamine (for conversion) expressed in grams of anhydrous base.

Basic class	Proposed 1986 aggregate production quota (grams)
Methamphetamine (for conversion)	1,936,000

All interested persons are invited to submit comments or objections in writing regarding this proposal. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative, and must be received by January 27, 1986. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall cause such hearing to be convened pursuant to the provisions of Title 21 of the Code of Federal Regulations, § 1303.31(a).

Pursuant to sections (3)(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, et seq. The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantely upon major manufacturers of the affected controlled substances.

Dated: December 9, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85-30643 Filed 12-26-85; 8:45 am]

BILLING CODE 4410-09-M

National Institute of Justice

Sponsored Research Programs; Publication of 1986 Program Plan

The National Institute of Justice announces the publication of its Program Plan for 1986, *Sponsored Research Programs.*

It outlines the Institute's criminal justice research agenda for which funds will be awarded, and provides application instructions and forms.

For a copy of the *Sponsored Research Programs,* write: National Institute of Justice/National Criminal Justice Reference Service, Box 6000, Rockville, MD 20850, Attn: Program Plan or call: (800) 851-3420.

In Maryland and the Metropolitan Washington area, call: (301) 251-5500.

Dated: December 16, 1985.

James K. Stewart,

Director, National Institute of Justice.

[FR Doc. 85-30634 Filed 12-26-85; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

Correction

In the document beginning on page 51182 in the issue of Friday, December 13, 1985, make the following correction:

On page 51184, the file line was omitted and should have appeared as follows:

[FR Doc. 85-29402 Filed 12-12-85; 8:45 am]

BILLING CODE 1505-01-M

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice of New Publication Procedures

Correction

In the document appearing on page 51185 in the issue of Friday, December 13, 1985, make the following correction:

In the third column, the file line at the end of the document was inaccurate and should have read as follows:

[FR Doc. 85-28851 Filed 12-5-85; 8:45 am]

BILLING CODE 1505-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-76]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by January 6, 1986. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Michael Weinstein, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl Steinmetz, NASA Agency Clearance Officer, (202) 453-1080.

Reports

Title: Tape Use Survey.
OMB Number: 2700-0012.
Type of Request: Revision.
Frequency of Report: On occasion.
Type of Respondent: Businesses or other for-profit, non-profit institutions, small-businesses or organizations.
Annual Responses: 580.
Annual Burden Hours: 174.

Abstract-Need/Uses: NASA produces audio and video tapes to report status on its programs and research underway. These tapes are mailed to TV and radio stations throughout the country for use as public service programming or as news features. The "post-card" report is

used to measure the effectiveness of the tapes and provides the date and time they were aired.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 85-30536 Filed 12-26-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-78]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Task Force on the Role of Man in Geostationary Orbit (GEO).

DATE AND TIME: January 20, 1986, 9 a.m. to 5 p.m.

ADDRESS: Fairchild Corporate Offices, 499 S. Capitol Street, SW, Suite 502, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Mr. Carl R. Praktish, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council Task Force on the Role of Man in Geostationary Orbit was established under the NASA Advisory Council to provide counsel to NASA on the respective roles of manned and unmanned operations in geostationary orbit. It will also aid NASA in its efforts to understand the requirements for further space infrastructure. The Task Force, chaired by Dale Myers, has a total of 10 members. Visitors will be admitted to the meeting room up to its capacity, which is approximately 20 persons, including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Open

Agenda:

January 20, 1986

9 a.m.—Discussion of Possible Scenarios.

5 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-30538 Filed 12-26-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-77]

NASA Advisory Council (NAC), Space Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronatutics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee (SAAC).

DATE AND TIME: January 13, 1986, 1:30 p.m.-5 p.m., January 14, 1986, 8 a.m.-5 p.m., January 15, 1986, 8:30 a.m.-1 p.m.

ADDRESS: Jet Propulsion Laboratory (JPL), 4800 Oak Grove Drive, Room Nos. as noted in the agenda below, Pasadena, California 91101.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-1420.

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications programs. The Committee is chaired by Artur Mager and is composed of 34 members. The Committee operates both through a number of informal Subcommittees and as a whole. The agenda which follows includes all Committee and Subcommittee sessions. Each of the sessions will be open to the public up to the seating capacity of each room.

Type of meeting: Open.

Agenda:

Full Committee

January 14, 1986—Room 180-101

8 a.m. Opening Remarks.

8:15 a.m. Review of Agenda, Subcommittee Assignments, Approve Minutes..

8:30 a.m. Fiscal Year 1986/Fiscal Year 1987 Budget Impacts and Planning.

8:45 a.m. Full Committee Recess for Subcommittee Meetings.

January 15, 1986—Room 180-101

11 a.m. Full Committee Reconvenes for Subcommittee Reports.

12 Noon Full Committee Adjourns.

1 p.m. Meeting of Subcommittee Chairpersons to Outlilne Meeting Report to NASA.

Information Systems Subcommittee

January 13, 1986—Room 180-802

1:30 p.m. Review Subcommittee Activities and Plans for the Coming Year.

4:30 p.m. Adjourn.

January 14, 1986—Room 180-400

9 a.m. Teleconference Discussion by the Information Systems Office on Near-Term Planning of the Space and Applications Information Systems, and Earth Observing Information Systems.

10:30 a.m. Longer-Term Planning.

1 p.m. Review of JPL Information System Activities, including Advanced Digital Synthetic Aperture Radar Processor, Hypercube, Pilots, and so forth.

4:30 p.m. Adjourn.

January 15, 1986—Room 180-400

8:30 a.m. Formulate Report to NASA.

11 a.m. Adjourn to Reconvene with the Full Committee.

Remote Sensing Subcommittee

January 13, 1986—Room 180-400

1:30 p.m. Review of JPL Remote Sensing Research and Development (R&D).

Opening Remarks
Atmospheric Trace Molecules Observed by Spectroscopy (ATMOS) Spacelab-3 Results
Geology Research Program
Shuttle Imaging Radar Program
Imaging Spectrometer Program
Ocean Research Program
Scatterometer Development
Ocean Topography Experiment (TOPEX) Program Planning
Commercial Ocean Color Imager (OCI) Planning

5 p.m. Adjourn.

January 14, 1986—Room 180-101

9 a.m. Review of Policy Paper on NASA R&D Support for Private Operational Systems.

1:30 p.m. Review and Comment on NASA's Objectives for Earth Science and Applications.

January 15, 1986—Room 180-101

8:30 a.m. Final Editing of Policy Paper.

9:30 a.m. Formulated Recommendations and Earth Science and Applications Objectives.

11 a.m. Adjourn for Meeting of Full Committee.

Communications Subcommittee

January 14, 1986—Room 180-802

9 a.m. Briefing on Results of Recent Mobile Experimenters Meeting.

BEST COPY AVAILABLE

10 a.m. Review of Mobile Program at JPL.

1 p.m. Communications Program Update.

2 p.m. Discussion of Elements of the NASA Communications Program Plan.

5 p.m. Adjourn.

January 15, 1986—Room 180–802

8:30 a.m. Formulate Report to NASA.

11 a.m. Adjourn for Full Committee Meeting.

Microgravity Subcommittee

January 14, 1986—Room 180–501

9 a.m. Report of Spacelab Results.
Mercury Iodide Crystal Growth
Solution Crystal Growth
Drop Dynamic Module Results
Intensity and Spectra of Measured "g" Levels
Remarks on the Spacelab-3 Mission

1 p.m. Review "Nuggets" of Achievements.

4:30 p.m. Adjourn.

January 15, 1986—Room 180-501

8:30 a.m. Plan Report to NASA on Achievements.

11 a.m. Adjourn for Full Committee Meeting.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

December 20, 1985.

[FR Doc. 85–30537 Filed 12–26–85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before January 27, 1986.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202–395–7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202–786–0233) from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agneey form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension

Title: Division of Education Programs Review and Evaluation Process Letters and Forms
Form Number: ———
Frequency of Collection: Collections occur once or twice yearly, according to individual program application deadlines. (Once per application)
Respondents: Academic scholars—teachers, administrators
Use: Used by staff and reviewers to process applications submitted to the Endowment
Estimated Number of Respondents: 150
Estimated Hours for Respondents to Provide Information: 4

Title: Division of Education Programs Summary Report on Institute Participants (ES)
Form Number: ———
Frequency of Collection: Collections occur once or twice yearly, according to individual program application deadlines. (Once per application)
Repondents: Academic scholars—teachers, administrators.
Use: Provides NEH with statistical and other data on the participant composition of funded institutes for college and university teachers. This information is needed for program evaluation and planning
Estimated Number of Respondents: 25
Estimated Hours for Respondents to Provide Information: 4

Title: Division of Education Programs Summary Report on Institute Participants (EH)
Form Number: ———
Frequency of Collection: Collections occur once or twice yearly, according to individual program application deadlines. (Once per application)
Respondents: Academic scholars—teachers, administrators.
Use: Provides NEH with statistical and other data on the participant composition of funded institutes for college and university teachers. This information is needed for program evaluation and planning
Estimated Number of Respondents: 15
Estimated Hours for Respondents to Provide Information: 4

Title: Division of Education Programs Application Instructions
Form Number: ———
Frequency of Collection: Collections occur once or twice yearly, according to individual program application deadlines. (Once per application)
Respondents: Academic scholars—teachers, administrators.
Use: These application instructions provide direction for preparing narrative and budgetary parts of applications for grant funds and request additional information regarding grants recently received by applicant
Estimated Number of Respondents: 275
Estimated Hours for Respondents to Provide Information: 4

Title: Division of Education Programs Application Instructions
Form Number: ———
Frequency of Collection: Collections occur once or twice yearly, according to individual program application deadlines. (Once per application)
Respondents: Academic scholars—teachers, administrators.
Use: The guidelines and application instructions provide directions for preparing narrative and budgetary parts of application for grant funds
Estimated Number of Respondents: 25
Estimated Hours for Respondents to Provide Information: 4

Susan Metts,

Acting Director of Administration.

[FR Doc. 85–30624 Filed 12–26–85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Availability of Final Generic Technical Position in High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Generic Technical

Position on Design Information Needs in the Site Characterization Plan."

ADDRESSES: This document is available for public inspection and coping at the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 H Street, NW., Washington, DC 20555, Telephone 202/634–3273.

FOR FURTHER INFORMATION CONTACT: David Tiktinsky, Engineering Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 427–4649.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act (NWPA) of 1982 (Pub. L. 97–425) and the Commission regulation 10 CFR Part 60 promote interaction between the Department of Energy (DOE) and the NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform the DOE about the level of information that be must provided in a license application to allow a licensing decision to be made by the NRC.

The principal mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Analysis (SCA's) which document staff reviews of the DOE Site Characterization Plans (SCP's) submitted according to the NWPA and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA's. These include staff technical positions on both generic and site specific issues. Generic Technical Positions (GTP's) establish the staff's position on broad technical issues that would be applicable to any site. Site Technical Positions (STP's) establish the staff's position on a site specific technical issue. A number of GTP's will be developed by the staff to establish lists of generic issues or information requirements for sites being investigated by the DOE.

On April 12, 1985, the Nuclear Regulatory Commission published for comment a draft version of the "Generic Technical Position on Design Information Needs in the Site Characterization Plan" (50 FR 14479). Changes and clarifications have been made in the final Generic Technical Position as a result of comments received. Copies of comments may be examined in the U.S. Nuclear Regulatory Commission Public Document Room,—1717 H Street NW., Washington, DC.

Section 113(b) of the NWPA requires the DOE to include in its plan for site characterization a conceptual geologic repository design that takes into account likely site-specific requirements. This GTP provides guidance to the DOE on what type and level of design information the NRC staff considers necessary for inclusion in the Site Characterization Plans to enable the NRC to fulfill its NWPA responsibilities. The GTP identifies the information that is needed by the NRC pertaining to the aspects of the design and the site that contribute to meeting the performance objectives and design criteria of 10 CFR Part 60. The design information in the Site Characterization Plans needs to be presented in sufficient detail to allow the NRC to make a determination about the completeness and relevancy of planned site characterization activities. This GTP summarizes guidance which has been given to the DOE through technical correspondence, documented technical meetings, and other mechanisms provided by the NRC/DOE Procedural Agreement (48 FR 38701, dated 8/25/83).

Dated at Silver Spring, Maryland, this 19 day of Dec 1985.

For the Nuclear Regulatory Commission.

Hubert J. Miller,

Chief, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 85–30679 Filed 12–26–85; 8:45 am]

BILLING CODE 01-/5[illegible]

Availability of Final Generic Technical Position in High-Level Waste Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Generic Technical Position on In Situ Testing During Site Characterization for High-Level Nuclear Waste Repositories."

ADDRESSES: This document is available for public inspection and copying at the U.S. Nuclear Regulatory Commission, Public Document Room, 1717 M Street, NW, Washington, DC 20555, telephone 202/634–3273.

FOR FURTHER INFORMATION CONTACT: Dr. Mysore Nataraja, Section Leader, Engineering Branch, Division of Waste Management, U.S Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/427–4319.

SUPPLEMENTARY INFORMATION: The Nuclear Waste Policy Act of 1982 (NWPA) (Pub. L. 97–425) and the Commission regulation 10 CFR Part 60 promote interaction between the Department of Energy (DOE) and NRC prior to submittal of a license application for a geologic repository. These interactions are to fully inform DOE about the level of information that must be provided in a license application to allow a licensing decision to be made by NRC.

The principal mechanism for providing guidance to the DOE is completion by the NRC staff of Site Characterization Analyses (SCA) which document staff reviews of DOE Site Characterization Plans (SCP) submitted according to the NWPA and 10 CFR Part 60. Additional means have been developed to supplement the guidance provided in the SCA's. These include staff technical positions on both generic and site specific issues. Generic Technical Positions (GTP) establish the staff's position on broad technical issues that would be applicable to any site. Site Technical Positions establish the staff's position on a site specific technical issue. A number of GTP's will be developed by the staff to establish lists of generic issues or information requirements for sites being investigated by DOE.

On October 10, 1984, the NRC published for comment a draft version of the "Generic Technical Position on In Situ Testing During Site Characterization for High-Level Nuclear Waste Repositories" (49 FR 39763). Public comment on the draft version was received from ten groups and individuals. Changes and clarifications have been made in the final GTP as a result of comments received. Copies of comments may be examined in the U.S. Nuclear Regulatory Commission Public Document Room—1717 H Street, NW, Washington, DC 20555.

Section 113(b) of NWPA requires the DOE to include plans for on-site testing in its plans for site characterization. This GTP provides guidance to DOE on the kind of in situ testing the staff considers necessary for inclusion in the SCP's to enable the NRC to fulfill its NWPA responsibilities. Before submitting a license application, sufficient in situ testing at depth on the host rock, coupled with surface based and laboratory investigations, must be performed to support determinations on whether or not technical criteria of 10 CFR 60 have been met. The intent of the GTP is to provide guidance to the DOE that is applicable throughout the site characterization period. In situ testing is essential to assess the suitability of a geologic repository site for hosting high-level nuclear waste and to provide realistic input parameters fore the repository design. The GTP summarizes guidance which has been given to DOE through technical correspondence, documented techincal meetings, and other mechanisms provided by the

NRC/DOE Procedural Agreement (48 FR 38701, dated August 25, 1983). The plans for in situ exploration and testing program must be addressed in the SCP's for each site.

Dated at Silver Spring, Maryland, this 20 day of December 1985.

For the Nuclear Regulatory Commission.

Hubert J. Miller,

Chief, Repository Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 85-30680 Filed 12-26-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co., et al.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendmen ts to facility Operating License Nos. NPF-10 and NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riversie, California and The City of Anaheim, California (the licensees), for operation of the San Onofre Nuclear Generating Station, Units 2 and 3 located in San Diego County, California.

The amendments would revise the technical specifications relating to the allowable range for the moderator temperature coefficient (reference PCN-213). The proposed amendments were requested by the licensee's letters of November 27, and December 10, 1985.

Before issuance of the proposed license amendments, the Commission will hae made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facilities in accordance with the proposed amendments would not (1) invole significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain example (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan; for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. The proposed change is similar to this example of 48 FR 14870.

The proposed change revises Technical Specification 3/4.1.1.3, "Moderator Temperature Coefficient". Technical Specification 3/4.1.1.3 defines limitations on moderator temperature coefficient (MTC) to ensure that the assumptions used in the accident and transient analyses remain valid through each fuel cycle. The surveillance requirements for measurement of the MTC during each fuel cycle are performed to confirm the MTC value since this coefficient changes slowly due principally to the reduction in reactor coolant system (RCS) boron concentration associated with fuel burnup. The confirmation that the measured MTC value is within its limit provides assurances that the coefficient will be maintained within acceptable values throughout each fuel cycle.

Technical Specification 3/4.1.1.3 currently states that the moderator temperature coefficient shall be less negative than -2.5×10^{-4} delta k/k °F at rated thermal power. This limit is based on transient analysis of overcooling events, in which a more negative MTC results in a more severe transient. The MTC normally becomes more negative during an operating cycle, primarily because boron is progressively removed from the moderator to compensate for fuel burnup. However, recent mid-cycle measurements of MTC at San Onofre Unit 2 have indicated that the MTC is becoming more negative faster than predicted. This is predicted to result in the existing technical specification limit being exceeded before the end of the cycle. The licensees have re-examined the transient analysis used to set the lower MTC limit and have found that the analysis was in error. Specifically, the reactivity uncertainty associated with CEA worth was included twice in the analysis, rather than once. Correction of this error results in a change in the lower limit on MTC from -2.5×10^{-4} to -3.0×10^{-4} delta k/k °F at rated power. Consequently, SCE has proposed to change TS 3.4.1.1.3 to reflect the revised lower limit.

The proposed change is similar to Example (vi) of 48 FR 14870 in that the change in limiting Moderator Temperature Coefficient is a reduction in a margin of safety, but the results of the change are within the guidelines of the Standard Review Plan (SRP), Section 4.3, "Nuclear Design." This change does not make changes in analytical methods or results of analyses previously found to be acceptable by the NRC and used to demonstrate conformance with the regulations. Furthermore, a re-evaluation of the most limiting transient shows that the present safety analyses remain valid and bounding. Thus, the proposed change to relax the Technical Specification MTC limit is compensated for by the removal of an erroneous CEA rod worth uncertainty and does not change the overall conclusion of the present safety analyses.

Because the proposed change is similar to Example (vi) of 48 FR 14870, the NRC staff proposes to determine that the change does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch.

By January 27, 1986 the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing

Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment requests involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to George W. Knighton: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800 Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petitioner and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the applications for amendments which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Dated at Bethesda, Maryland, this 20th day of December 1985.

For the Nuclear Regulatory Commission.

George W. Knighton,

Director, PWR Project Directorate No. 7, Division of PWR Licensing–B.

[FR Doc. 85–30662 Filed 12–26–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on January 9–11, 1986, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on December 16, 1985.

Thursday, January 9, 1986

8:30 A.M.–9:00 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

9:00 A.M.–10:30 A.M. Recent Operating Events at Nuclear Facilities (Open/Closed)—The members will hear and discuss the reports of its subcommittee and representatives of the NRC Staff regarding recent incidents and accidents at nuclear power plants.

Portions of this session will be closed as needed to discuss Proprietary Information and detailed security arrangements applicable to the project being discussed.

10:45 A.M.–11:45 A.M.: Security Provisions at Nuclear Power Plants (Open)—The members will hear reports on and discuss proposed revisions to the NRC regulations to preclude sabotage of nuclear facilities by "inside" personnel.

11:45 A.M.–12:15 P.M.: Future Activities (Open)—The members will discuss anticipated subcommittee activities and items proposed for consideration by the full Committee.

1:15 P.M.–3:15 P.M.: NRC Reactor Safety Research Program (Closed)—The members will discuss proposed ACRS comments and recommendations regarding the proposed NRC Safety Research Program for Fiscal Year 1987.

This portion of the meeting will be closed to discuss information the

premature release of which is likely to significantly frustrate the agency in the performance of its statutory function.

3:30 P.M.–4:30 P.M.: General Electric Standard Safety Analysis Report (GESSAR II) (Open/Closed)—The members will discuss proposed comments and recommendations regarding the request for an FDA for this type of standardized plant.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

4:30 P.M.–6:00 P.M.: ACRS Subcommittee Activities (Open)—Chairmen and members of designated ACRS subcommittees will discuss the status of activities regarding safety-related regulatory matters, including the handling and disposal of radioactive wastes, characteristics of standard plant designs, and ACRS procedures and practices for the conduct of ACRS activities.

Friday, January 10, 1986.

8:30 A.M.–9:30 A.M.: Activities of the Office of Nuclear Reactor Regulation (Open)—The members will hear a report regarding the activities of the NRC Office of Nuclear Reactor Regulation.

9:30 A.M.–10:45 A.M.: Davis-Besse Nuclear Power Station, Unit 1 (Open)—The members will hear and discuss a report by representatives of the NRC Staff regarding the status of the review for restart of the Davis-Besse Nuclear Power Station following a loss of all feedwater incident. Representatives of the licensee will participate, as appropriate.

11:00 A.M.–12:00 Noon and 1:00 P.M.–1:45 P.M.: Reorganization of TVA Nuclear Activities (Open)—The members will hear a report by representatives of the NRC Staff regarding the status of the reorganization of TVA nuclear power activities. Representatives of the Applicant will participate, as appropriate.

1:45 P.M.–3:15 P.M.: Reactor Pressure Vessel Integrity (Open)—The members will hear and discuss reports of a consultant and an ACRS Fellow regarding the pressurized thermal shock of reactor pressure vessels.

3:30 P.M.–4:15 P.M.: General Electric Standard Safety Analysis Report (GESSAR II) (Open/Closed)—The members will discuss proposed ACRS comments and recommendations regarding the request for an FDA for this type of standardized nuclear plant.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this facility.

4:15 P.M.–6:00 P.M.: NRC Safety Research Program (Closed)—The members will continue the discussion of the proposed NRC safety research program for FY 1987.

This portion of the meeting will be closed to discuss information the release of which is likely to significantly frustrate the agency in the performance of its statutory functions.

6:00 P.M.–6:30 P.M.: ACRS Subcommittee Activities (Open)—The members will hear reports of and discuss the activities of designated subcommittees with respect to safety-related matters, including the pre- and post-operational inspections of nuclear power facilities and the resolution of allegations with respect to nuclear power plant design and construction.

Saturday, January 11, 1986

8:30 A.M.–12:30 P.M. and 1:30 P.M.–3:30 P.M.: Preparation of ACRS Reports to the NRC and the U.S. Congress (Open/Closed)—The members will prepare reports to the Nuclear Regulatory Commission and the U.S. Congress regarding topics considered during this meeting and items considered during the 308th ACRS meeting with respect to the General Electric Standard Safety Analysis Report (GESSAR II), the state of nuclear power plant safety, proposed operation of the Palo Verde Nuclear Generating Station, and the Indian Point Nuclear Generating Station.

Portions of this session will be closed, as necessary, to discuss Proprietary Information or detailed security information applicable to the project being discussed and to discuss information the premature release of which would be likely to significantly frustrate the ability of the agency to perform its statutory function.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1985 (50 FR 191). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4)), detailed security information (5 U.S.C. 552b(c)(3)), and information the release of which would significantly frustrate the agency in the performance of its statutory function (5 U.S.C. 552b(c)(9)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m.

Dated: December 20, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–30563 Filed 12–26–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Safeguards and Security; Meeting

The ACRS Subcommittee on Safeguards and Security will hold a meeting on January 7, 1986, Room 1167, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 7, 1986—3:00 p.m. Until 5:30 p.m.

The Subcommittee will review and discuss SECY–85–381, "Inside Safeguards Rules," and related issues.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; Written statements will be accepted and made available to the Committee; Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring

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to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. John Schiffgens (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 19, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–30564 Filed 12–26–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Combined Subcommittees on Waste Management and Reactor Radiological Effects; Meeting

The ACRS Subcommittees on Waste Management and Reactor Radiological Effects will hold a combined meeting on January 15, 16, and 17, 1986, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, January 15, 1986—8:30 a.m. until the conclusion of business

Thursday, January 16, 1986—8:30 a.m. until the conclusion of business

Friday, January 17, 1986—8:30 a.m. until the conclusion of business

The Subcommittees will review: (1) EPA's Low-Level Waste Standards (currently being developed), (2) Proposed Revision of 10 CFR 20, Standards for Protection Against Radiation, including the supporting AIF/NESP effort, (3) other topics in support of NMSS/WM High-Level Waste Management Program, (4) the organization, role, and activities of the Committee on Interagency Radiation Research and Policy Coordination (CIRRPC), and (5) waste management and radiation protection research.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to resent oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 19, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–30565 Filed 12–26–85; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.153, "Criteria for Power, Instrumentation, and Control Portions of Safety Systems," describes a method acceptable to the NRC staff for complying with the Commission's regulations with respect to the design, reliability, qualification, and testability of the power, instrumentation, and control portions of safety systems of nuclear power plants. This guide endorses, with certain exceptions and modifications, IEEE Std 603–1980, "Criteria for Safety Systems for Nuclear Power Generating Stations."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Documents Room, 1717 H Street NW., Washington, DC. Copies of active guides may be purchased at the current Government Printing Office price. Information on current prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 19th day of December 1985.

For the Nuclear Regulatory Commission.

Denwood F. Ross,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 85–30681 Filed 12–26–85; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Agreement of Government Procurement; Value of Special Drawing Rights

Under the authority delegated to the United States Trade Representative by section 1–104 of Executive Order 12260, I hereby determine that, effective on January 1, 1986, the dollar equivalent of 150,000 Special Drawing Right units referred to in the Agreement on Government Procurement is $149,000.

The Trade Representative may modify this determination as appropriate.

Alan Woods,

Acting United States Trade Representative.

[FR Doc. 85-30723 Filed 12-26-85; 8:45 am]

BILLING CODE 3190-01-M

PRESIDENT'S ECONOMIC POLICY ADVISORY BOARD

Meeting; January 23, 1986

The President's Economic Policy Advisory Board will meet on January 23, 1986, at the White House, Washington, D.C. from, 9:00 a.m. to 1:00 p.m. The purpose of this meeting is to review and discuss:

Economic Outlook for 1986
The Budget Process
Debt Problems—International and Domestic

All agenda items concern matters listed in section 552b(c) of Title 5, United States Code, specifically sub-paragraphs (1), (4), (8) and (9) thereof, and will be closed to the public.

For further information, please contact the Office of Policy Development, the White House, at (202) 456-6515.

John A. Svahn,

Assistant to the President for Policy Development.

[FR Doc. 85-30754 Filed 12-26-85; 8:45 am]

BILLING CODE 3195-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, and Information Services, Washington, DC 20549.

Extension

Rule 6c-7 [17 CFR 270.6c-7], File No. 270-209
Rule 11a-2 [17 CFR 270.11a-2], File No. 270-267
Rule 204-3 [17 CFR 275.204-3], File No. 270-42
Rule 0-2 [17 CFR 275.0-2], File No. 270-214
Form 4-R [17 CFR 279.4], File No. 270-214
Form 5-R [17 CFR 279.5], File No. 270-214
Form 6-R [17 CFR 279.6], File No. 270-214
Form 7-R [17 CFR 279.7], File No. 270-214

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following: under the Investment Company Act of 1940, Rule 6c-7, Texas ORP Exemptive Relief, and Rule 11a-2, Offers of Exchange Not Requiring Commission Approval, and, under the Investment Advisers Act of 1940: Rule 204-3, Written Disclosure Statements; Rule 0-2, Consent to Service of Process to be Furnished by Non-resident Investment Advisers and by Non-resident General Partners or Managing Agents of Investment Advisers; and Forms 4-R, 5-R, 6-R, and 7-R, Irrevocable Appointments of Agent for Service of Process, Pleadings and Other Papers, by Individual Non-resident Investment Advisers, and Non-resident General Partners of Investment Advisers, Respectively.

Comments should be submitted to OMB Desk Officer: Sheri Fox, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

December 18, 1985.

[FR Doc. 85-30693 Filed 12-26-85; 8:45 am]

BILLING CODE 9010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Extension of Approval
Form 10-K
No. 270-48

Notice is hereby given that pursuant to the Paperwork Reduction Action of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Form 10-K (17 CFR 249.310) under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*) which requires corporations which issue publicly-traded securities to file with the Commission material information concerning their financial condition and business operations. The number of affected entities are approximately 8,799 a year.

Submit comments to OMB Desk Officer: Ms. Sheri Fox, (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

John Wheeler,

Secretary.

December 20, 1985.

[FR Doc. 85-30700 Filed 12-26-85; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Extension of Approval
Regulation A and Forms 1-A, 2-A, 3-A, 4-A, 5-A, 6-A, and 7-A.
No. 270-110

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Regulation A (17 CFR 230.251-264, and Forms 1-A, 2-A, 3-A, 4-A, 5-A, 6-A, and 7-A (17 CFR 239.90-96) which provides a general exemption from the registration provisions of the Securities Act of 1933 and may be used by certain issuers to raise up to $1.5 million during any 12 month period. The number of affected entities are approximately 176 per year.

Submit comments to OMB Desk Office: Ms. Sheri Fox, (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

John Wheeler,

Secretary.

December 20, 1985.

[FR Doc. 85-30702 Filed 12-26-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14530]

Application and Opportunity for Hearing; Chesebrough-Pond's Inc.

December 19, 1985.

Notice is hereby given that Chesebrough-Pond's Inc., a New York corporation (the "Company"), has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citibank, N.A. ("Citibank") under (i) the indenture of the Company dated as of July 15, 1960 (the "1960 Indenture") and (ii) the indenture of Chesebrough-Pond's

Finance Corporation, a Connecticut corporation ("Finance Corporation"), dated as of May 15, 1985 (the "May 1985 Indenture") and the trusteeship of Citibank under the indenture of the Company dated as of October 10, 1985 (the "October 1985 Indenture") is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under the 1980 or May 1985 Indenture. The 1980 and May 1985 Indentures were heretofore qualified under the Act.

In support of its application the Company alleges that:

1. The Company has outstanding as of November 22, 1985 $100,000,000 aggregate principal amount of its 10½% Notes due 1991 (the "10½% Notes") issued under the October 1985 Indenture between the Company and Citibank. Inasmuch as the 10½% Notes were offered and sold outside the United States, its territories and possessions to non-U.S. persons, the 10½% Notes were not registered under the Securities Act of 1933, as amended (the "Securities Act"), and the October 1985 Indenture was not qualified under the Act.

2. The Company has outstanding as of November 22, 1985 $69,200,000 aggregate principal amount of its 10⅝% Notes due July 15, 1990 (the "10⅝% Notes") issued under the 1980 Indenture between the Company and Morgan Guaranty Trust Company of New York ("Morgan Guaranty"). Morgan Guaranty was subsequently succeeded by Citibank as successor trustee under the 1980 Indenture. the 10⅝% Notes were registered under the Securities Act (File No. 2–68428), and the 1980 Indenture was qualified under the Act (File No. not available).

3. Finance Corporation has outstanding as of November 22, 1985 $50,000,000 aggregate principal amount of its Extendible Notes due May 15, 2000 (the "Extendible Notes") issued under the May 1985 Indenture among Finance Corporation, Citibank and the Company, as Guarantor. The Extendible Notes were registered under the Securities Act (File No. 2–91351), and the May 1985 Indenture was qualified under the Act (File No. not available).

4. Portions of the 1980 and May 1985 Indentures substantially conform to section 310(b)(1) of the Act which, with exceptions, prohibits service by a trustee under two indentures of one obligor, unless an order under section 310(b)(1)(ii) of the Act is obtained.

5. Execution of the October 1985 Indenture may involve Citibank in a conflict of interest within the meaning of section 7.08 of the 1980 Indenture and section 608 of the May 1985 Indenture since the October 1985 Indenture has not been qualified under the Act and is not the subject of any other proceeding of the Commission.

6. The Company's obligations with respect to the 10⅝% Notes, the Extendible Notes and the 10½% Notes are wholly unsecured and rank on parity with each other. The only material differences between the provisions of the 1980 and May 1985 Indentures and the October 1985 Indenture, and between the rights of holders of the 10⅝% Notes and the Extendible Notes and the holders of the 10½% Notes, relate to the fact that the Company is the Guarantor with respect to the Extendible Notes but is the primary obligor under the 1980 and October 1985 Indentures, and also relate to the aggregate principal amounts, dates of issue, events of default, maturity and interest payment dates, interest rates, redemption provisions, sinking fund provisions, Trustee's reports, restrictions on transferability provisions relating to the non-United States offering of the 10½% Notes, and other provisions of a similar nature. Any such differences and any other differences in the provisions of the 1980 and May 1985 Indentures and the October 1985 Indenture are unlikely to cause any conflict of interest among the respective trusteeships of Citibank under said Indentures.

7. The Company is not in default under the 1980, May 1985 or October 1985 Indenture.

8. The Company has waived (a) notice of hearing, (b) hearing on the issues of its application and (c) all rights to specify procedures under the Commission's Rules of Practice with respect to the application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission at 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after January 14, 1986, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of Section 310(b)(1) of the Act. Any interested person may, not later than January 13, 1986 at 5:30 p.m., Eastern Standard Time, in writing, submit to the Commission his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–30703 Filed 12–26–85; 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–14459]

Application and Opportunity for Hearing; Commercial Credit Company

December 19, 1985.

Notice is hereby given that Commercial Credit Company (the "Applicant") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the successor trusteeship of J. Henry Schroder Bank & Trust Company ("Schroder") under an indenture dated February 15, 1972 (File No. 22–7023) of the Applicant, which was qualified under the Act, and the proposed successor trusteeship of Schroder under another indenture dated October 15, 1976 (File No. 22–9004) qualified under the Act is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Schroder from acting as successor trustee under either of the Applicant's indentures.

Section 310(b) of the Act provides in part that, if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, that with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of Subsection (1), there shall be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing, that trusteeship under such qualified indenture and such

other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Applicant alleges that:

1. The Applicant had outstanding as of November 7, 1985 $75,000,000 of its 7¾% Notes due February 15, 1992 (the "7¾% Notes") issued under an indenture dated as of February 15, 1972 (the "1972 Indenture"), between the Applicant and Bankers Trust Company, as trustee ("Bankers Trust") which was qualified under the Act. The 7¾% Notes were registered under the Securities Act of 1933.

2. The Applicant had outstanding as of November 7, 1985 $100,000,000 of its 8.35% Notes due October 15, 1986 (the "8.35% Notes") issued under an indenture dated as of October 15, 1976 (the "1976 Indenture") between the Applicant and The First National Bank of Chicago, as trustee ("First Chicago") which was qualified under the Act. The 8.35% Notes were registered under the Securities Act of 1933. The 1972 Indenture and the 1976 Indenture each contain the provisions required by section 310(b)(1)(ii) of the Act. (Section 9.04 of Indentures.)

3. On February 28, 1985 Schroder was appointed successor trustee to Bankers Trust under the 1972 Indenture.

4. The Applicant desires to appoint Schroder to act as successor trustee under the 1976 Indenture.

5. The Applicant is not in default under either of the Indentures.

6. The Applicant's obligations under the indentures and the notes issued thereunder are wholly unsecured and rank *pari passu inter se*. There are no material differences between the 1972 Indenture and the 1976 Indenture. There are only variations as to aggregate principal amounts, dates of issue, maturity and interest payment dates, interest rates and redemption provisions.

7. In the opinion of the Applicant, the provisions of the aforementioned indentures are not so likely to involve a material conflict of interest so as to make it necessary in the public interest or for the protection of any holder of any of the notes issued under such indentures to disqualify Schroder from acting as successor trustee under either the 1972 or the 1976 Indenture.

The Applicant has waived notice of hearing, any right to a hearing on the issues raised by the application, and all rights to specify procedures under the Rules of Practices of the Commission with respect to its application.

For a more detailed account of the matters of fact and law asserted, all person are referred to said application, File No. 22–14459, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than January 13, 1986, submit to the Commission his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after such date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporate Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–30704 Filed 12–26–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14860; File No. 812–6158]

Application and Opportunity for Hearing; Equitable Variable Life Insurance Company, et al.

December 18, 1985.

Notice is Hereby given that Equitable Variable Life Insurance Company ("EVLICO"), Separate Account FP of EVLICO ("Account FP"), Separate Account I of EVLICO ("Account I"), Integrity Life Insurance ("Integrity"), The Hudson River Fund, Inc. (the "Fund"), Equitable Investment Management Corporation ("EIMC"), The Equitable Life Assurance Society of the United States ("Equitable"), 1285 Avenue of The Americas, New York, New York 10014, and certain life insurance companies and their separate accounts investing in the Fund (together, "Applicants") filed an application, on July 23, 1985, and amendments thereto, on November 8, and December 13, 1985, for an order of the Securities and Exchange Commission ("Commission"), pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15), 6e–3(T)(b)(15), 6e–3(T)(c)(1) and 6e–3(T)(c)(2), to the extent necessary, as described in the application, (1) to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies, (2) to permit allocation of amounts provided for investment under certain flexible premium variable life insurance contracts ("Contracts") issued by Account FP to EVLICO's general account, and (3) to permit a disability waiver insurance rider as an incidental insurance benefit.

The Fund is an open-ended management company of the series type organized under Maryland law. EIMC and Integrity are co-advisers to the Fund. Applicants state that the Fund currently serves as the underlying investment medium for single and scheduled premium variable life insurance contracts issued by Account I, and is expected to serve as the underlying investment medium for flexible premium variable life insurance contracts issued by Account FP. Both Account I and Account FP are separate accounts of EVLICO and are registered under the Act as unit investment trusts.

(1) Mixed and Shared Funding

The Fund proposes to offer its shares to other separate accounts which issue either variable annuity contracts or scheduled or flexible premium variable life insurance contracts (together, "variable life"). These separate accounts will be separate accounts of other affiliated or unaffiliated insurance companies ("Participating Insurance Companies"). (The use of a common management company as the investment medium of both variable annuities and variable life insurance is referred to herein as "mixed funding". The use of a common management company as the investment medium for separate accounts of unaffiliated insurance company is referred to herein as "shared funding.")

Rules 6e–2 and 6e–3(T) under the Act provide certain exemptions from the Act in order to permit insurance company separate accounts to issue variable life insurance. Rule 6e(2)(b)(15), however, precludes mixed and shared funding, and Rule 6e–3(T)(b)(15) precludes shared funding. Applicants propose that the requested relief extend to a class consisting of life insurers and variable life separate accounts investing in the Fund (and principal underwriters and depositors of such separate accounts) which would otherwise be precluded from investing in the Fund by virtue of the Fund offering its shares to variables annuity separate accounts or unaffiliated separate accounts.

Applicants assert that granting the request for relief to engage in mixed and

shared funding will benefit variable contractowners by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for the development of larger pools or assets resulting in greater cost efficiencies; and (3) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract charges. Applicants state that the Fund will not be managed to favor or disfavor any particular insurer or type of insurance product.

(a) Disqualification

Applicants request relief from section 9(a) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding; *i.e.*,

Applicants propose that the relief granted by paragraphs (b)(15) of Rule 6e–2 and Rule 6e–(T) from section 9(a) be extended to a class of insurance companies and variable life separate accounts which may use to Fund as an investment medium to fund variable life insurance contracts, subject to the conditions regarding conflicts set out in the appication and summarized *infra*. In support of this request for relief, Applicants assert that the same policies that led the Commission to limit the provisions of section 9(a) to those employees of the insurance company engaged in managing the separate account are applicable to insurance companies and their separate accounts that are funded by a fund offering mixed and shared funding. Thus, Applicants argue that there is no regulatory purpose to apply the provisions of section 9(a) to the many employees of the insurance companies whose separate accounts may utilize the Fund as a funding medium for variable life insurance contracts. Moreover, Applicants submit that applying the requirements of section 9(a) in such cases would increase the costs of monitoring for compliance with that section, which would reduce the net rates of return realized by contractowners.

(b) Voting

Applicants request relief from sections 13(a), 15(a) and 15(b) of the act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessry to permit mixed and shared funding *i.e.*, Applicants propose that the relief granted by paragraphs (b)(15) of Rule 6e–2 and 6e–3(T) from sections 13(a), 15(a), and 15(b) be extended to a class of insurance companies and variabe life separate accounts which may use the Fund as an investment medium to fund variable life contracts, subject to the conditions regarding conflicts set out in the application and summarized *infra*.

In support of this request for relief, Applicants state that all variable annuity and variable life contractowners will be provided pass-through voting rights with respect to Fund shares. Because paragraphs (b)(15) of both Rule 6e–2 and Rule 6e–3(T) permit the insurance company to disregard these voting instructions in certain limited circumstances, Applicants acknowledge that this may cause an irreconcilable conflict to develop among the separate accounts. Applicants propose to resolve these potential conflicts through certain undertakings it proposes as conditions to receipt of exemptive relief set out *infra*. Thus, according to Applicants, if a particular insurance company's disregard of voting instructions conflicted with a majority of contractowners' voting instructions, or precluded a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investments in the Fund.

(c) Conditions

Applicants state that they will comply with certain conditions set forth in the application, which are summarized as follows: (1) A majorty of the board of directors of the Fund ("board") shall consist of persons who are not interested persons of the Fund, as defined by the Act. (2) The board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners; or (f) a decision by an insurer to disregard the voting instructions of contractowners. (3) Participating Insurance Companies will report any potential or existing conflicts to the Fund's board. Participating Insurance Companies will be responsible for assisting the board in carrying out its responsibilities by providing the board with all information reasonably necessry for the board to consider any issues raised. The responsibility to report such information and conflicts and to assist the board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund. (4) If it is determined by a majority of the board of the Fund, or a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense, take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, which steps could include: (a), withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any particular group (*i.e.*, annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (b), establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed against a separate account as a result of such a withdrawal. The responsibility to take remedial action in the event of a board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of contractowners. For purposes of this condition 4, a majority of the disinterested members of the board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition 4 to establish a new

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funding medium for any variable contract if an offer to do so has declined by vote of a majority of affected contractowners. (5) The board's determination of the existence of an irreconcilable material conflict and its implications shall be made know promptly to all Participating Insurance Companies. (6) Participating Insurance Companies shall provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act to require pass-through voting privileges for variable contractowners. Participating Insurance Companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund. (7) All reports received by the board of potential or existing conflicts, determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

(2) General Account

Applicants request an exemption from Rule 6e–3(T)(c)(1) to the extent necessary to permit the allocation of premiums and transfers of cash value under the Contracts to EVLICO's general account. Applicants represent that no charges are deducted from cash value held in the general account that are not also deducted from cash value held in the separate account unless the contractowner directs a deduction to be allocated only to the general account. Applicants assert that such exemption is consistent with prior administration of Rule 6e–2 in the context of allocations of loans to general accounts of insurance companies under scheduled premium variable life insurance contracts. Applicants further assert that such exemption is consistent with Commission practice in declaring effective registration statements for variable annuity contracts providing for allocations to general accounts. Applicants have been advised and understand that any Commission order granting exemptive relief in this regard will not constitute a judgment of the Commission as to the impropriety of registration or nonregistration of either interests in the General Account as securities under the Securities Act of 1933 or the General Account as an investment company under the Act.

(3) Definition of "Incidental Insurance Benefits"

Applicants request exemption from Rule 6e–3(T)(c)(2) to the extent that the disability waiver of premium insurance ("Rider") may be deemed not to meet the definition of "incidental insurance benefits" in that rule, with the result that charges therefor may be deemed to be "sales load" by implication of Rule 6e3(T)(c)(4)(vii). The Rider provides that, in the event of disability of the insured, as defined therein, EVLICO will waive the Monthly Deduction (covering the cost of insurance, the costs of any benefits provided by riders and the monthly administrative charge under a Contract) during the period of disability. The Monthly Deduction can vary with the investment experience of Account FP in certain respects. Nevertheless, Applicants state that the benefit, *i.e.*, the waiver of the Monthly Deduction, is a fixed benefit in its most significant respect and is incidental in nature. Moreover, Applicants state that it is within the Commission's intent in adopting Rule 6e–3(T) that payments for the benefit not be deemed "sale load."

(4) General

Applicants represent that if and to the extent that Rules 6e–2 and 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act, or the rules promulgated thereunder, that materially differ from any exemptive order issued by the Commission in connection with this Application, then the appropriate Applicants shall take all steps as mat be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

Notice is further given that any interested person wishing to request a hearing on the application may, no later than January 13, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices or orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–30697 Filed 12–26–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14861; (File No.812–6241)]

The Hudson River Fund, Inc.; Application Permitting Applicant To Implement a Deferred Compensation Plan for Its Directors

December 19, 1985.

Notice is hereby given that The Hudson River Fund, Inc. ("Applicant") 787 Seventh Avenue, New York, NY 10019, filed an application on October 31, 1985, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicant from the provisions of sections 13(a)(2), 18(f)(1), 22(f) and 22(g) of the Act and an order pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, to the extent necessary to permit Applicant to implement a Deferred Compensation Plan (the "Plan") for its directors. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of their provisions.

According to the application, Applicant is registered under the Act as a diversified, open-end management investment company that presently consist of two operating portfolios: a common stock portfolio and a money market portfolio. Applicant states that it issues separate series of capital stock that represent a separate investment in either the common stock portfolio or the money market portfolio. Applicant further states that the investment policy of the common stock portfolio is to purchase primarily common stock and other equity-type instruments with the objective of long-term growth of capital and increasing income, and that the investment policy of the money market portfolio is to purchase high quality, shorter-term money market instruments with the objective of preserving assets, maintaining liquidity and obtaining a high level of current income.

Applicant represents that it will offer and sell its shares to separate accounts of Equitable Variable Life Insurance Company ("Equitable Variable"), a New York stock life insurance company that is wholly-owned by The Equitable Life Assurance Society of the United States ("Equitable"), a New York mutual life insurance company. Applicant also represents that it will sell its shares to other insurance companies some of which are expected to be affiliates of Equitable Variable, such as Integrity Life Insurance Company ("Integrity"), an Arizona life insurance company also wholly-owned by Equitable.

Applicant represents that currently none of its Board of Directors ("Directors") is an "interested person," as defined in section 2(a)(19) of the Act, of Applicant, Equitable Variable, Integrity, Equitable, or any of Equitable's other subsidiaries. Applicant states that each Director will receive from Applicant an annual retainer fee of $10,000 and fees of $1,000 per board meeting (four are regularly scheduled annually) and $600 per committee meeting attended, with the meeting fee paid to the Director acting as the meeting chairman to be increased by 50%.

Applicant represents that the purpose of the Plan is to permit any Director to voluntarily elect to defer the receipt of all, or a portion of, the fees he or she is due for services as a Director of Applicant. A Director may wish to defer fees in order to put off the payment of income taxes thereon, to avoid a loss or reduction of social security benefits, or for other reasons.

According to the application, Directors electing to defer fees will enter into a deferred compensation agreement with Applicant and an account will be established and fees will be credited for each Director with whom Applicant has entered into an agreement ("Account"). In addition, Applicant states that it will, from time to time, credit to each Account balance interest in an amount equal to the interest rate credited to fixed income accounts under Equitable's investment plan for employees, managers, and agents ("Equitable's Investment Plan"). Further, Applicant states that it has reserved the right to prospectively change the rate of interest credited to Account balances. Payments of deferred fees and credited interest are to commence on a date specified by the Director, which may be the earlier of retirement from the Board or the attainment of a designated age.

Applicant states that the amount credited to an Account, including deferred fees and accrued interest, will represent an unsecured obligation of Applicant to the Director, payable solely from Applicant's general assets. Applicant represents that it will not purchase any of its shares for any Account, nor create any specified fund or segregate any of its assets for purposes of the Plan and the Directors will have the status of general creditors.

Applicant submits that neither the Plan, nor any deferred compensation agreement or Account, will create a trust or fiduciary relationship between Applicant and any Director, nor will those arrangements constitute a security interest of any kind in any of Applicant's assets. Applicant further submits that no provisions of the Plan requires Applicant to retain a Director on its Board or to pay a Director any level of fee income. Furthermore, Applicant states that the interest rate for fixed income accounts under Equitable's Investment Plan will merely be used as a reference Applicant believes to be fair in crediting interest to Account balances.

Applicant contends that the proposed deferred compensation agreements are contractual arrangements, not in the nature of securities, and do not give rise to any of the concerns of Congress that led to the enactment of sections 13(a)(2) or 18(f)(1) of the Act. In this regard, Applicant states that it will not borrow from its Directors for securities speculation; the agreements will not disturb the perception of an investment company as a mutual enterprize with mutuality of risk; nor will they provide an opportunity for manipulation of expenses and profits; and control of Applicant will not be affected. Applicant further represents that in view of the widespread use of deferred compensation arrangements today and the immaterial amounts expected to be involved relative to Applicant's size, the Plan will not confuse investors, make it difficult for them to value Applicant's shares or convey a false impression of safety.

As to its request for exemptive relief from section 22(f) of the Act, Applicant represents that the deferred compensation agreements will plainly set forth applicable restrictions against the assignment, communication and encumbrance of any amount credited to an account under the Plan. These restrictions, Applicant states, are designed to benefit Directors and would not adversely affect their interests or the interests of any shareholder of Applicant.

With respect to section 22(g) of the Act, Applicant asserts that the deferred compensation agreements will not be issued for services, but for Applicant not having to pay Director's fees on a current basis. Applicant notes that the deferred fees would, in any event, be due to the Director independent of the Plan, and that the Directors' compensation arrangements, including the right to defer fees under the Plan, will be described in Applicant's proxy statements pursuant to the Commission's disclosure requirements.

Applicant submits, with respect to section 17(d) of the Act and Rule 17d–1 thereunder, that the deferred compensation agreements do not possess profit sharing characteristics as contemplated by Rule 17d–1, and that participating Directors will be deferring fees they are otherwise entitled to receive on a current basis. In support of its requested order, Applicant points out that the amounts deferred will remain as its assets until paid to the Director; there will be no segregation of any monies or assets for purposes of the Plan; and Directors will not share in any increase or decrease in the value amounts retained by Applicant or otherwise participate in its investment experience. Applicant states that except for accrued interest to be paid on account balances, Directors will receive the same fixed amount they would have received if fees were paid on a current, rather than a deferral basis. Applicant asserts that the deferred of Directors' fees will have a negligible effect on its assets, liabilities and net income per share and that, under the Plan, the Directors essentially will be in the same position as if their fees were paid on a current basis. In Applicant's view, its participation in the Plan would not be different from or less advantageous than that of the Directors in all the circumstances.

Finally, Applicant believes that it will be in a better position to attract and retain qualified Directors if it is able to offer them the opportunity to defer receipt of their fees, and believes that the benefits to its shareholders will outweigh any benefit that may be realized by a Director under the Plan. Applicant submits that the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 13, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should

be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30706 Filed 12-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14859; File No. 812-6133]

Application and Opportunity for Hearing; Keystone Provident Life Insurance Co., et al.

December 18, 1985.

Notice is hereby given that Keystone Provident Life Insurance Company ("Company'), Keystone Provident Variable Account I ("Account") and Keystone Provident Financial Services Corporation (together, "Applicant"), 99 High Street, Boston, Massachusetts 02110, filed an application on June 7, 1985, and amendments thereto on October 9, November 27 and December 13, 1985, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act'), exempting Applicants from the provisions of sections 2(a)(32), 2(a)(35), 9(a), 12(b), 13(a), 15(a), 5(b), 22(c), 26(a)(1), 26(a)(2), 27(a)(1), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rules 12b-1, 22c-1 and 6e-2 (b)(1), (b)(12), (b)(13)(i), (b)(13)(iii), (b)(13)(iv), (b)(15), (c)(1) and (c)(4) thereunder, to the extent necessary, as described in the application, to permit them to offer certain single premium variable life insurance contracts. Interested persons are referred to the application on file with the Commission for a statement of Applicants' representations, which are summarized below, and to the Act and rules thereunder for a statement of the relevant provisions.

The Company, a stock life insurance company organized under the laws of Rhode Island, is sponor of the Account. The Account is a separate account of the Company registered under the Act as a unit investment trust and was established for the purpose of funding certain single premium variable life insurance contracts ("Contracts"). Applicants propose that the Account fund the Contracts through investments in certain eligible open-ended management investment companies. ("Eligible Funds") which are part of the Keystone complex of mutual funds.

1. Open Account

Applicants request relief from sections 26(a)(1), 26(a)(2) and 27(c)(2) of the Act and Rule 6e-2(b)(13)(iii) thereunder to the extent necessary to permit the Account to hold shares of the Eligible Funds under an open account arrangement and without a trust indenture. In support of its request for relief, Applicants note that the Commission has codified this same relief for separate accounts offering variable annuities and flexible premium variable life insurance contracts and has proposed to do so for separate accounts offering scheduled premium variable life insurance contracts. Applicants further assert that there is no need for the Account's assets to be held pursuant to a trust indenture or similar instrument and that such relief would result in administrative ease and cost savings.

2. Mixed Funding

Applicants request an exemption from sections 9(a), 13(a), 15(a) and 15(b) of the Act and Rule 6e-2(b)(15) thereunder to the extent necessary to permit the Account and other separate accounts of the Company or insurance companies affiliated therewith to invest in shares of the Eligible Funds, notwithstanding that the Eligible Funds also offer their shares to separate accounts issuing variable annuity contracts. Applicants assert that this arrangement ("mixed funding") will result in significant cost savings (e.g., from not having to establish and manage separate investment companies to fund both the Contracts and variable annuity contract) and will not compromise the regulatory purposes of the above-cited sections.

Applicants state that they consent to the following conditions to the order granting the exemption, which are summarized as follows: (1) The majority of each Eligible Fund's board of directors shall be persons who are not interested persons of the Eligible Fund, as defined in the Act, (2) each Eligible Funds' board of directors will monitor whether, from the standpoint of variable life insurance contractowners or variable annuity contractowners, mixed funding would create an irreconcilable material conflict for reasons such as those discussed in the application, (3) the Company and any affiliated insurance company whose separate account invests in an Eligible Fund shall monitor each Eligible Fund and shall promptly provide each board of directors with information regarding any potential or existing irreconcilable material conflict, among other information (such as when contractowner voting instructions are disregarded), and shall assist the board in carrying out its responsibilities, (4) if it is determined by either an Eligible Fund's board of directors, a majority of its disinterested directors, or by the company whose separate account invests in the Eligible Fund that an irreconcilable material conflict has occured, the relevant company, at its expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors) shall take whatever steps are necessary to eliminate the conflict, including (a) establishing a new registered management investment company or separate account, and (b) segregating assets attributable to the Contracts from the assets attributable to variable annuity contracts (or submitting the question of such segregation to a vote of all affected contractowners). Applicants further state that no Eligible Fund shall be required to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of the holders of all variable contracts materially adversely affected by the irreconcilable material conflict.

3. Cost of Insurance Charge

Applicants request relief from sections 26(a) and 27(c)(2) of the Act and Rules 6e-2 (b)(13)(i) and (b)(13)(iii) thereunder to the extent necessary to deduct a cost of insurance charge on a monthly basis from cash values of the Contracts. Applicants represent that this charge is based on the 1980 Commissioners Standard Ordinary Mortality ("CSO") Table, Blended Table B, and that, in using this table, the cost of insurance charges will never be greater than charges based on the 1958 CSO table. Applicants assert that their request for relief is consistent with amendments to Rule 6e-2 proposed in Investment Company Act Release No. 14421 (March 15, 1985).

4. Policy Maintenance Charge

Applicants request relief from sections 26(a) and 27(c)(2) of the Act and Rule 6e-2 (b)(13)(iii) thereunder to the extent necessary to deduct premium taxes from the cash values of the Contracts as part of the Policy Maintenance Charge. Applicants propose that the Company advance premium taxes due upon payment of the single premium and amortize this expense by deducting amounts from cash values over 15 years. Applicants represent that those deductions will

accumulate to an amount not greater than the premium tax levied. Applicants believe this is advantageous to contractowners because more funds can initially participate in the investment experience of the Account.

Applicants also request relief from sections 26(a) and 27(c)(2) of the Act and Rule 6e-2(b)(13)(iii) thereunder to the extent necessary to deduct from cash values to portion of the Policy Maintenance Charge attributable to the Guaranteed Minimum Death Benefit charge. The Contracts provide for a guaranteed minimum death benefit regardless of the investment performance of the Account and that no additional premiums are required to keep the Contract in force. Applicants state that the Guaranteed Minimum Death Benefit Charge amounts to a maximum of $.80 per year and is reduced after 15 years and for issue ages under 40. Applicants represent, however, that for issue age above 45 the amount per $1000 of death benefit be will increased by 3.2% for each issue age. In addition, Applicants request relief from Section 12(b) of the Act and Rule 12b-1 thereunder to the extent that profits from the Guaranteed Minimum Death Benefit Charge may be used to finance distribution of the Contracts and shares of the Eligible Funds. In support of this request for exemption, Applicants assert that this charge is an insurance charge appropriately deducted from cash values. In addition, they make certain representations in connection therewith, which they assert are those required to be made in connection with similar relief granted to separate accounts offering flexible premium variable life insurance contracts, and proposed amendments to Rule 6e-2. Thus, Applicants represent that the Guaranteed Minimum Death Benefit Charge is reasonable in relation to the risks assumed under the Contracts. Applicants further represent that the Company has concluded that there is a reasonable likelihood that such distribution financing arrangement of the Account will benefit the Account and contractowners. This representation is based on the assumption that explicit sales load may not be sufficient to cover expected costs, and that surplus arising from the Guaranteed Minimum Death Benefit charge and from other sources may be used for distribution. Applicants also represent that a memorandum has been prepared in connection with the analysis of the Guaranteed Minimum Death Charge. The Company undertakes to keep and make available to the Commission on request such memorandum. The Company also represents that the memorandum will also set forth the basis for the representation regarding the benefits to the Account and contractowners. Finally, Applicants represent that the Account will invest only in management investment companies that have undertaken to have a board of directors, a majority of whom are not interested persons of the Company, formulate and approve any subsequent plan under Rule 12b-1 to finance distribution expenses.

5. Mortality and Expense Risk Charge

Applicants request relief from and sections 26(a) and 27(c)(2) and Rule 6e-2 (b)(13)(iii) thereunder to the extent necessary to deduct the Mortality Expense Risk Change which is equal, on annual basis, to .60 of the net assets in each sub-account. Applicants also request relief from section 12(b) and Rule 12b-1 thereunder to the extent that profits from the Mortality and Expense Risk Charge may be used to fund distribution of the Contracts and the Eligible Mutual Fund Shares. In support of this request for exemption, Applicants make certain representations in connection therewith, which they assert are those required to be made in connection with similar relief granted to separate accounts offering flexible premium variable life insurance contracts, and proposed amendments to Rule 6e-2. Thus, Applicants represent that the charge is reasonable in relation to the risks assumed under the Contracts and that it has analyzed the charge taking into consideration such factors as other current administrative charge levels, potential adverse mortality, the manner in which the charges are imposed, the markets in which the Contracts will be offered, and the anticipated number of Contracts and lapse rates. Applicants further represent that the Company has concluded that there is a reasonable likelihood that the distribution financing arrangement of the Account will benefit the Account and contractowners. This representation is based on the assumption that explicit sales load may not be sufficient to cover expected costs, and that surplus arising from the Mortality and Expense Risk Charge and from other sources may be used for distribution. Applicants also represent that a memorandum has been prepared in connection with the analysis of the Mortality and Expense Risk Charge. The Company undertakes to keep and make available to the Commission on request such memorandum. The Company also represents that the memorandum will also set forth the basis for the representation regarding the benefits to the Account and contractowners. Finally, Applicants represent that the Account will invest only in management investment companies that have undertaken to have a board of directors, a majority of whom are not interested persons of the Company, formulate and approve any subsequent plan under Rule 12b-1 to finance distribution expenses.

6. Sales Load

Applicants request relief from the provisions of sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(a)(1), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rules 22c–1, 6e–2 (b)(1), (b)(12), (b)(13)(i), (b)(13)(iii), (b)(13)(iv) and (c)(4) thereunder to the extent necessary to deduct the sales load from cash values over 108 months in equal monthly installments, although if surrender occurs before this period is completed, the balance will be deducted thereupon. Applicants assert that contractowners benefit from the deferral of the sales load, and in no event will the sales load exceed 6.264% of the single premium. Applicants assert that the relief request is consistent with prior grants of exemptive relief permitting the deduction of contingent deferred sales loads, although the sales load under the Contracts is not contingent, and with relief granted to separate accounts offering flexible premium variable life insurance, and proposed amendments to Rule 6e–2.

7. General Account

Applicants request an exemption from Rule 6e–2(c)(1) to the extent necessary to permit the allocation of the single premium and transfers of cash value under the Contracts to the Company's general account. Applicants assert that such exemption is consistent with prior administration of Rule 6e–2 in the context of allocations of loans to general accounts of insurance companies under scheduled premium variable life insurance contracts. Applicants represent that only the monthly deduction and sales load will be deducted from values in the general account and that no other fees or charges are deducted therefrom. Applicants further assert that such exemption is consistent with Commission practice in declaring effective registration statements for variable annuity contracts providing for allocations to general accounts. Applicants have been advised and understand that any Commission order granting exemptive relief in this regard will not constitute a judgment of the Commission as to the propriety or

impropriety of registration or nonregistration of either interests in the general account as securities under the Securities Act of 1933 or the general account as an investment company under the Act.

8. General

Applicants represent that if and to the extent that Rule 6e–2 is amended to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to the relief requests contained herein, including mixed funding, on terms different from Proposed Rule 6e–2, then Applicants, the Eligible Funds, or both, shall take such steps as are necessary to comply with the amended rule.

Notice is further given that any interested person wish to request a hearing on the application may, no later than January 13, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–30694 Filed 12–26–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23953; 70–7189]

Metropolitan Edison Co. and York Haven Power Co.; Proposed Capital Contribution

December 18, 1985.

Metropolitan Edison Company ("Met-Ed") and its wholly-owned subsidiary, York Haven Power Company ("YHP"), both of 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605, have filed a declaration pursuant to section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder. They request authorization for Met-Ed to make cash capital contributions to YHP in an aggregate amount up to $1,750,000 through December 31, 1987. The top registered holding company parent of Met-Ed is General Public Utilities Corporation.

YHP is the licensee under Part I of the Federal Power Act of 1935 of the York Haven hydroelectric power project located on the Susquehanna River. By order dated August 14, 1980, the Federal Energy Regulatory Commission ("FERC") granted YHP a new license to the FERC for approval (1) a recreation plan, describing utilization, design and development of the project's recreational facilities, and (2) a debris management study to determine the magnitude and appropriate means for disposing of river-borne debris. The FERC has approved YHP's proposed recreation plan, which provides, among other things, for YHP to construct boat launching facilities at the project. Met-Ed and YHP estimate that approximately $700,000 will be required to complete construction of these facilities. Expenditures in connection with the required debris management study are estimated at approximately $450,000.

In addition, it has become necessary to enlarge the project's administration building, originally constructed in 1904, to accommodate expanded staff and administrative activities at the project site. YHP has commenced engineering work for a building addition, the cost of which is estimated at approximately $350,000. YHP also intends to undertake an in-depth feasibility study of alternative schemes for redeveloping and improving the project's capacity and output. The cost of that study is estimated at approximately $250,000.

Pursuant to a Power Supply Agreement dated April 30, 1974, as amended, Met-Ed and YHP have agreed that Met-Ed shall purchase the total power and energy generated by YHP at the York Haven hydroelectic project on a rate based upon YHP's costs and expenses in generating and transmitting that power and energy plus an additional amount representing a rate of return on the net investment. Thus, to enable YHP to carry out the activities described above, it will be necessary for Met-Ed to make cash capital contributions to YHP, since YHP's internal cash generation under the Power Supply Agreement will not be sufficient to provide the necessary funds. No federal or state commission, other than this Commission has jurisdiction with respect to the proposed transaction.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 13, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy of Met-Ed at the address specified above. Proof of service (by affidavit or, in the case of an attorney-at-law, be certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any notice or order issued in this matter. After said date the application, as amended or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–30705 Filed 12–26–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23952; 70–7181]

New England Electric System; Proposed Stock Split by Issuance of Additional Shares of Common Stock

December 18, 1985.

New England Electric System ("NEES"), a registered holding company, 25 Research Drive, Westborough, Massachusetts 01582, has filed a declaration pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act").

NEES is a voluntary association created in Massachusetts by an Agreement and Declaration of Trust dated January 2, 1926. At a meeting held on November 26, 1985, NEES's board of directors voted, subject to receipt of all necessary regulatory approvals, to effect a two-for-one stock split through the issuance of one additional common share, par value $1.00 (the "Additional Shares"), to its shareholders of record at the close of business on January 24, 1986, for each share owned. It is expected that the Additional Shares will be issued on or about February 21, 1986. On the record date NEES expects to have approximately 26,600,000 common shares issued and outstanding, with 75,000,000 currently authorized; the proposed issuance of the Additional Shares would thus not increase the number of common shares issued and outstanding above the number authorized.

According to the declaration, during the past few years the price of NEES's common shares has increased significantly to a level above the industry average. On November 19, 1985,

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the closing price for NEES's common shares was $46.50 per share. Currently, more than 95% of the electric utility stocks listed on the New York Stock Exchange trade at prices below that of NEES's common shares. Although issuance of the Additional Shares will not alter the proportionate ownership interest of any shareholder, it will lower the price of NEES's common shares, which NEES anticipates will provide a number of benefits. Specifically, NEES expects that the marketability of its common shares will be increased through increases in both trading volume and the number of its shareholders. In addition, the ability of individual shareholders to buy and sell NEES's common shares is expected to be enhanced by reducing the price of a round lot (100 shares) of the common shares, allowing shareholders greater diversification and reduced odd-lot brokerage costs. Furthermore, because of the favorable attitude with which NEES believes investors typically view splits, NEES anticipates that the proposed split would increase public awareness of the company.

NEES computes the price at which it sells shares pursuant to the New England Electric System Dividend Reinvestment and Common Share Purchase Plan, the New England Electric System Thrift Plan II, and the NEES Goals Program based upon the price reported in the Wall Street Journal for its common shares. Because "when issued" trading with respect to the Additional Shares is expected to begin on the New York Stock Exchange on or about January 24, 1986, the price for NEES's common shares reported in the Wall Street Journal during that period will not reflect the share split. To compensate for this situation, NEES intends to adjust the price for shares it sells to the above-mentioned plans during that period to reflect the fact that these shares will be issued after the record date and, therefore, will not be entitled to receive any of the Additional Common Shares when they are issued.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 8, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on NEES at the address specified above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any notice or order issued in this matter. After said date the application, as amended or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30696 Filed 12-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. SIPA-128; File No. SIPC 85-1]

Securities Investor Protection Corp.; Proposed Bylaw Change Relating to SIPC Fund Assessments on SIPC Members

Pursuant to Section 3(e)(1) of the Securities Investor Protection Act of 1970, 15 U.S.C. 78ccc(e)(1), notice is hereby given that on December 2, 1985 the Securities Investor Protection Corporation ("SIPC") filed with the Securities and Exchange Commission a proposed bylaw change. The Commission is publishing this notice to solicit comments on the proposed bylaw change from interested persons.

I. Description of Proposed Bylaw Change

The proposed bylaw change would amend Section 1(a) of Article 6 of SIPC's bylaw regarding SIPC Fund assessments on SIPC members.[1] The bylaw provides that if SIPC determines that the SIPC Fund [2] totals or is reasonably likely to total less than (i) $250 million, the amount of each member's assessment shall be 1/8 of 1 percent of such member's gross revenues from the securities business, (ii) $150 million, the amount of each member's assessment shall be ¼ of 1 percent of such member's gross revenues from the securities business and (iii) $100 million, the amount of each member's assessment shall be ½ of 1 percent of such member's gross revenues from the securities business. Regardless of whether or not assessments based on a percentage of gross revenues from the securities business are in effect during any calendar year, the minimum amount of each member's assessment would be $100 per annum.

Under the present SIPC bylaw, SIPC members are currently paying assessments at the rate of ¼ of 1 percent of their respective gross revenues from the securities business with a minimum assessment of $25 per annum.

The SIPC Board of Directors took two other actions affecting assessments. The SIPC Board voted to (i) obtain a $500 million line of credit with a consortium of banks and (ii) discontinue the current ¼ of 1 percent assessment on member's gross revenues from the securities business on April 1, 1986 contingent on the line of credit being in place. Thus, under the proposed bylaw change a minimum assessment of $100 per annum would be in effect after April 1, 1986.

SIPC indicated that the SIPC Fund currently exceeds $300 million. SIPC expects that, absent any extraordinary costs, the fund will total approximately $325 million by April 1, 1986. SIPC indicates that it would have as of that date resources exceeding $800 million which could be tapped before any need to draw on the statutory $1 billion line of credit with the U.S. Treasury Department. SIPC indicated that the proposed bylaw provides for the automatic imposition of assessments on gross revenues at the rate of ⅛ of 1 percent in the event the fund drops below $250 million or in the event the SIPC Board determines the fund is "reasonably likely" to drop below that level. SIPC indicated that this and the other provisions of the proposed bylaw give SIPC considerable flexibility in maintaining the fund at a level adequate to carry out SIPC's primary goal of enhancing and maintaining investor confidence in the securities markets.

SIPC indicated that the SIPC Board's actions described above were based principally on the *Report To The Board of Directors Of The Securities Investor Protection Corporation By The Special Task Force To Consider Questions Relating To The SIPC Fund And Assessments*, and on the data gathered and analyzed by the task force. The task force was composed of representatives of SIPC members, self-regulatory organizations, securities industry associations, U.S. government agencies, and the SIPC staff.

II. Need for Public Comment

Section 3(e)(1) of the Securities Investor Protection Act of 1970 ("SIPA") provides that SIPC must file with the Commission a copy of proposed bylaw changes. That section further provides that bylaw changes shall take effect 30 days after filing, unless the Commission either (i) disapproves the change as contrary to the public interest or the purposes of SIPA, or (ii) finds that the change involves a matter of such

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[1] All broker-dealers registered under section 15(b) of the Securities Exchange Act of 1934, with some minor exceptions, are SIPC members.

[2] The SIPC Fund consists of cash and amounts invested in U.S. government or agency securities.

significant public interest that public comment should be obtained. Thus, under Section 3(e)(1) of the SIPA, a proposed bylaw change does not have to be noticed for public comment. However, under Section 3(e)(1)(B) of SIPA, the Commission can find that "such proposed bylaw change involves a matter of such significant public interest that public comment should be obtained", in which case, the Commission may, after notifying SIPC in writing of such finding, require that the proposed bylaw change be considered by the same procedures as a proposed rule change including, among other things, publication in the Federal Register and opportunity for public comment. Since the SIPC Fund is built from assessments on its members and the interest earned on the fund and since that fund is used for the protection of customers of members liquidated under SIPA to maintain investor confidence in the securities markets, the Commission finds that the proposed bylaw change involves a matter of significant public interest, seeks comment thereon, advised SIPC of the Commission's finding, and requires the procedures applicable to proposed SIPC rule changes in Section 3(e)(2) of SIPA to be followed.

III. Date of Effectiveness of the Proposed Bylaw Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SIPC consents, the Commission will:

(A) By order approve such proposed bylaw change, or

(B) Institute proceedings to determine whether the proposed bylaw change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed bylaw change that are filed with the Commission, and all written communications relating to the proposed bylaw change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. All submissions should refer to the file number in the caption above and should be submitted on or before January 15, 1986.

By the Commission.

Dated: December 24, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-30382 Filed 12-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22734; File No. SR-MSE-85-11]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange, Inco. Relating to the Automatic Execution System (MAX)

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 4, 1985, the Midwest Stock Exchange, Incorporated, filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of four changes to the rules regarding the use of Midwest's Automatic Execution System (MAX) in order to facilitate the routing and execution of transactions in a portfolio of equity securities ("portfolio execution"). The four changes, which apply only to portfolio executions are as follows:

1. Orders sent may be principal orders.

2. The time frame between the time a market order is entered into MAX and the time it is automatically executed ("order exposure time") will be reduced from 15 seconds (see SR-MSE-85-5) to 0 seconds.

3. Participation by a specialist in a portfolio execution is voluntary for principal orders or agency orders above 1099 shares.

4. A portfolio execution over MAX may not commence before 9:30 a.m. (CST) or conclude after 2:45 p.m. (CST).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement for the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to change certain rules regarding the use of the MAX System in order to provide member organizations with an easy, efficient method of order entry and execution with timely reports for portfolio executions.

The first change will allow principal orders to be sent over MAX for portfolio executions. Currently, only agency orders are allowed to be sent over MAX.

Many member firms utilize portfolio executions to hedge against index options and futures and for arbitrage activities for their proprietary accounts. This change will enable member firms to execute more efficiently a portfolio for the firm's own account as well as for customers.

The second change reduces the order exposure time from 15 seconds to zero seconds. Firms requesting to use MAX for portfolio executions have stated that executions must take place as quickly as possible. The need for a timely execution is significantly more important to the customer and the firm in this type of transaction than the possibility that a better fill may be obtained in a particular issue in a portfolio by exposing the order for 15 seconds.

The third change clarifies that specialist participation in a portfolio execution is voluntary for principal orders or agency orders above 1099 shares. This is consistent with the current MAX requirements. Successful portfolio executions require the cooperation of numerous parties to the transaction. Portfolio executions over MAX beyond the existing MAX requirements will only be executed in accordance with arrangements agreed

upon in advance by the specialist and the order sending firm.

The fourth change precludes the use of the MAX System for portfolio executions before 9:30 a.m. and after 2:45 p.m. (CST). This restriction will avoid creating any problems at the opening or closing in periods of heavy volume.

A limited number of portfolio executions have taken place using the MAX System under the preceding parameters upon agreement by all parties involved on a pilot basis. Such utilization of the System will continue on a pilot basis until the Commission approves this filing. It is anticipated that further enhancements to the System may be developed as experience shows where efficiencies can be improved. Where appropriate, such enhancements will also be submitted for Commission approval.

Implementation of the proposed changes is consistent with those provisions of Sections 6(b)(5) and 11A(a)(1) of the Act which encourages the use of data processing and communications techniques which create more efficient and effective facilitation of transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written date, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Pubic Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file name in the caption above and should be submitted by January 17, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 20, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-30708 Filed 12-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22730; SR-MSRB-85-20]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

Introduction

The Municipal Securities Rulemaking Board ("MSRB") on October 8, 1985 submitted copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB rule G-34 on CUSIP numbers, and provide an interpretation of the application of rule G-12(c) and rule G-12(f) on inter-dealer confirmations to a when-issued transaction that takes place during the time when application for CUSIP numbers for a new issue is pending.

Rule G-34 requires a municipal securities dealer acting as an underwriter of a new issue of municipal securities to apply to the MSRB or its designee (currently the CUSIP Service Bureau) for CUSIP numbers for the issue. The CUSIP number serves as the universal identification of a security issue. In the case of competitive issues, the issuer customarily applies for CUSIP number assignment prior to the award of the issue. In negotiated issues, however, the underwriter is usually responsible for the application.

If application for a CUSIP number is delayed, as is permitted under the current rules, trading on a when-issued basis, particularly in the case of a negotiated issue, can commence before a CUSIP number is assigned. This does not present an immediate problem because there is currently no system for automated clearance of when-issued trading. Such automated clearance, however, is scheduled to take effect in early 1986 and CUSIP numbers must be assigned to an issue in order to submit transactions to the automated system.

The proposed rule change would require a dealer serving as an underwriter in a negotiated issue to apply for a CUSIP number in sufficient time to ensure assignment of a number on or prior to the day on which the contract to purchase is executed. An underwriter for a competitive issue would be required to apply for a number on the date of the award. In addition, a broker or dealer acting as a financial advisor in connection with a competitive sale would be required to ensure that an application for a CUSIP number is made in sufficient time to allow for assignment of a number prior to the date of award. Requiring underwriters to obtain a number at the earliest possible date will facilitate automated trading in when-issued securities.

Rule G-12(c) requires that physical confirmations of when-issued transactions be sent out within two business days of the trade date. Rule G-12(f) requires trades to be submitted for comparison in an automated comparison system operated by a registered securities clearing agency if certain conditions are met. Rule G-12(a) provides that trades submitted for comparison in the automated system need not be confirmed physically under rule G-12(c).

The MRSB has received inquiries from dealers concerning the requirements of rules G-12 (c) and (f) once the automated comparison system for when-issued trades becomes operational. The issue raised is whether when-issued trades should be compared using the physical is whether when-issued trades should be compared using the physical confirmation process set forth in rule G-12(c) if the trades cannot be submitted immediately into the automated comparison system due to lack of CUSIP numbers.

The MSRB in response is providing an interpretation, stating that a when-issued transaction in a new issue for which no CUSIP number will be

assigned is not eligible for automated comparison and must be compared by the use of physical confirmations. The MSRB is interpreting rule G–12(f) to require that, if a request for a CUSIP number is pending, the trade should be submitted into the automated system on an "as of" basis once the CUSIP number is assigned.

Notice of the proposed rule changes was given in Securities Exchange Act Release No. 22605, published in the **Federal Register** (50 FR 47482; November 18, 1985) ("November 18 release"). A complete description of the amendments is contained in that release.

Comments

In response to the November 18 release, the Commission received three comment letters.[1] All three commentators supported the proposed rule change. One commentator agreed with the MSRB that expansion of an automated comparison system to when-issued trading of municipal securities would provide considerable cost savings and bring greater efficiency to the clearing process. This commentator also believe that any inconvenience to dealers resulting from the amendment would be out-weighed by lower clearance costs and reduction in the number of "fails" that will result from application of the automated system to when-issued trades. Another commentator believed that the amendment would have the same benefit to an automated confirmation system (used for confirmation and affirmation of all municipal issues with a CUSIP number and book-entry settlement of customer transactions in depository eligible municipal issues) as it would for an automated comparison system and therefore endorsed the proposed amendment. A third commentator believed the amendment is necessary to facilitate trading in when-issued securities, but suggested that exceptions be made in rare instances when underwriters have insufficient information to request a CUSIP number.

The Commission finds that the proposed rule changes is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of Section 15B and the rules and regulations thereunder. The Commission supports the proposed rule change and its goal of facilitating automated trading in when-issued municipal securities.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

Dated: December 19, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–30710 Filed 12–26–85; 8:45 am]

BILLING CODE 8010–01–M

[1] Letters from Richard Porzio, Dirctor & ID Product Manager, The Depository Trust Company (November 20, 1985); James D. McLaughlin, Government Relations Counsel, American Bankers, Association (December 11, 1985); Richard L. DeCair, Executive Director, Dealer Bank Association (December 11, 1985) to John Wheeler, Secretary, SEC.

[Release No. 34–22735; File No. SR–NASD–85–35]

Self-Regulatory Organizations; Temporary Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., relating to Modifications of the Computer Assisted Execution System

Pursuant to section 19 (b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 19, 1985, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of a rule change by the National Association of Securities Dealers, Inc. relating to modification of the facilities description of the Computer Assisted Execution System ("CAES") for transactions in listed and NASDAQ/NMS securities approved by the Commission in SR–NASD–81–1. The rule change shall be effective for a period of 90 days to permit consideration by the Commission of approval of the proposed modification on a permanent basis which is the subject of a separate rule filing. The Commission intends to seek comment on whether there should be a "flash" feature added to the NASD's current modifications, which would allow for customer price improvement.

The National Association of Securities Dealers, Inc. ("NASD") has filed as a stated policy, practice or interpretation, certain modifications to the operation of the CAES system, which have been developed for implementation by NASD Market Services, Inc., to permit the automatic execution of round lot and mixed lot agency orders at the prevailing inside market. The calculation of the inside market for listed securities shall include all exchange quotations in such securities. Such inside market shall consist of at least two open, active, two-sided quotations.

Henceforth, the system will process only designated agency market orders, designated agency limit orders, undesignated agency market orders and undesignated agency limit orders for automatic execution at the inside bid (for sell orders) and inside ask (for buy orders). This change will not, however, effect the current operating characteristics and procedures of the ITS/CAES linkage which remains unchanged.

A designated market order for 1,000 shares or less will be executed against the designated CAES market maker at the existing inside market whenever the market maker's size in CAES is greater than zero. Where a designated order for more than 1,000 shares is received by CAES, and the designated market maker's quote is equal to the inside, the order shall be automatically executed up to the size displayed by the market maker and the balance of the order shall be priced at the inside and forwarded to the market maker for acceptance within 90 seconds.

If there is no current inside market the designated order, regardless of size, will be forwarded to the market maker with a notation that a price is required. If there is an inside market, but the market maker's size is zero, the designated order will be priced at the inside and forwarded to the market maker for acceptance within 90 seconds.

A designated limit order for 1,000 shares or less will be executed against the designated market maker at the inside, unless there is no current inside market, the market makers size is zero or the inside is inferior to the limit price, whereupon the order shall be priced at the limit and forwarded to the designated market maker for acceptance as a day order. A designated limit order in excess of 1,000 shares shall be processed in the same manner as an order for 1,000 shares except that where a portion of the order has been automatically executed at the inside, up to the size displayed by the CAES market maker, the balance of the order shall be priced at the limit and forwarded to the market maker for execution as a day order, and where specialized execution instructions accompany the order, i.e. All or None or

Fill or Kill, the entire order will be priced at the limit and forwarded to the market maker for acceptance within the time frame applicable to such qualified orders.

An undesignated market order for up to 1,000 shares will be automatically executed against an eligible CAES market maker at the inside market for that security. A market maker shall be eligible for receipt and automatic execution of an order at the inside market if his displayed size remains greater than zero. If an execution reduces a market maker's displayed size to zero additional orders received in CAES will be executed at the inside market against the next eligible market maker in rotation priority within CAES until the size displayed by each of the succeeding market makers is exhausted. When the size of all eligible market makers is exhausted, orders will be priced at the inside quote and forwarded to all CAES market makers in the security. If there is no inside market at the time the order is received in CAES, the order will be forwarded to all CAES market makers in the security with an appropriate notation indicating that the market maker may price and accept the order within 90 seconds.

An undesignated market order in excess of 1,000 shares will be executed against market makers up to their displayed size or against succeeding market makers up to their displayed size, so long as the CAES market maker's quote is equal to the inside market. If no CAES market maker is at the inside quote, the order shall be priced at the inside and forwarded to all CAES market makers in the security for acceptance. If there is no inside market the entire order will be forwarded to the CAES market makers with a notation indicating that a price and acceptance is required within 90 seconds. Similarly if a qualified order is received by CAES, i.e. All or None, the entire order will be priced at the inside and forwarded to all CAES market makers.

An undesignated limit order of 1,000 shares or less will be automatically executed against the next eligible CAES market maker with size greater than zero if the inside market is equal to or better than the limit price. If there is no inside market, if there is no CAES market maker with size greater than zero, or if the inside market is inferior to the limit price, the order shall be priced at the limit and forwarded to all CAES market makers in the security for acceptance as a day order.

An undesignated limit order in excess of 1,000 shares shall be executed against market makers up to their displayed size or against succeeding market makers up to their displayed size, so long as the CAES market maker quote is equal to the inside market. The balance, if any, shall be priced at the limit and forwarded to all CAES market makers in the security for acceptance. If no CAES market maker is at the inside market, if that market is inferior to the limit price, or if there is no inside market then the entire order will be priced at the limit and forwarded to all CAES market makers in that security for acceptance as a day order. If the limit order is qualified, i.e. All or None, Fill or Kill, and the total size available from CAES market makers is less than the size of the order, the entire order will be placed at the limit and forwarded to all CAES market markers for acceptance.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the development and implementation of this modification to CAES is to improve the efficiency of execution of transactions in listed and NASDAQ/NMS securities through the use of new data processing and communication techniques. Transactions automatically executed through CAES are presently effected at the best current quotation of a CAES market maker, which may be inferior to the inside market. This modification will ensure that transactions executed through CAES will be effected only at the prevailing inside market for any securities in CAES.

The statutory basis for the development and implementation of CAES is found in sections 11A(a)(1)(B) and in (C)(i), 15A(b)(6), and 17(A)(a)(1)(B) and in (C) of the Securities Exchange Act of 1934 ("Act"). Section 11(a) (1)(B) and (C)(i) sets forth a Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communication techniques. Section 15A(b)(6) requires that the rules of the Association be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect a mechanism of a free and open market. . . ." Section 17(A)(a)(1) (B) and (C) sets forth a Congressional goal of reducing cost involved in the clearance and settlement process through new data processing and communication techniques. The Association believes that the modification of CAES will further these ends by providing an enhanced mechanism for the efficient and economic execution and clearance of transactions in both listed and NASDAQ/NMS securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

CAES is a service to which participants subscribe on a voluntary basis and as such the Association believes the modification imposes no burden on competition. To the extent that any burden on competition may be found to exist, the Association believes that the benefit of increased efficiency of CAES together with the protection of the investing public provided by a guarantee that transactions will be effected in CAES only at the best price displayed by any market maker or market center will outweight any potential burden upon competition and materially advance the purposes to be served under the foregoing sections of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Comments were neither solicited nor received in connection with the enhancement to the CAES system.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The Association requests the Commission to find good cause for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**, and, in any event, before December 20, 1985, the scheduled commencement date for the modification to CAES. The Association believes that the enhancement to CAES will benefit members and public investors by providing more efficient and cost-effective processing of transactions in listed and NASDAQ/

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NMS securities while assuring that such transactions are executed at the best displayed price available anywhere in the market at any particular point in time.

The Association believes that good cause exists to accelerate the effectiveness of the proposed rule change prior to December 20, 1985 for application during the pendency of the Commission's consideration of the permanent rule proposal covering the modification to CAES.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 11A(a)(1)(B) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that accelerated approval and the implementation of the modification to CAES will benefit public investors by providing more efficient and cost-effective processing of transactions in listed and NASDAQ/NMS securities while assuring that such transactions are executed at the best displayed price available anywhere in the market at any particular point in time. The Commission recognizes that the NASD has prepared its system for implementation of the modification on that date. The Commission also notes that the issues involving CAES will be noticed for public comment and, as discussed above, the Commission believes that the benefits of approval of this temporary rule change outweigh any potential adverse effects to the commentators or other market participants during the short period of the rule change's effectiveness.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Station, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 17, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30707 Filed 12-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22725; File No. SR-NYSE-85-44]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to Rate Increases Affecting the Regulatory Oversight Services Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 12, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Scheduled of Proposed Increases in Fees and Charges (effective January 1, 1986).

Additions italicized; deletions [bracketed].

REGULATORY OVERSIGHT SERVICES

	[Current]	Proposed
Fee per $1,000 Gross Revenue (FOCUS) (a)	[$.35]	*$.42*

Notes: (a) As reported in the FOCUS Report.
FOCUS: *financial and operational uniform combined single* report.

The 1985 forecast is presented in its pre-reorganization format; the 1986 forecast reflects the new reorganization. With the exception of two new cost centers added in 1986, and the consolidation of cost center 4534 into cost center 4533 the only difference between the 1985 and 1986 formats is the reporting relations of the cost centers. The new cost centers are as follows:

4347—Broker-Dealer Oper. & Fin. Resp.—responsible for rule interpretation and development of net capital, customer protection and operational rules

4573—Audit & Control—addresses the quality and assurance of data bases, and SIAC product and development

It should be noted that the new cost centers were staffed with existing personnel.

The revenue generated from the Regulatory Services Oversight fee is used exclusively to defray FINOPS expenses. As pointed out in previous filings, the cost of FINOPS Services has increased over the years, and the Exchange's fee has been insufficient to cover such expenses.

It should be noted that with the proposed fee change there will still be a projected loss of $12.0 million in 1986 in the Regulatory Services Group, $4.8 million of which will be with respect to FINOPS. It is anticipated that FINOP revenues for 1986 will be approximately $18.3 million.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), And (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) The primary purpose of the proposed rule change is to continue to recover a portion of the cost of Financial and Operational ("FINOPS") services.

As of July 1, 1985 MF Regulation was reorganized and renamed the Regulatory Services Group. The reorganization entailed dividing the cost centers of Member Firm Regulatory Services into two distinct divisions: Member Firm Regulation, which is primarily responsible for the examination and surveillance of member firms, and

compliance with financial and sales practice requirements; and Enforcement and Regulatory Standards, which is concerned primarily with enforcement activities, rule development, and the upgrading of automated systems to analyze member firm's financial and operational standing. Moreover, cost center 4534 fingerprinting was consolidated into cost center 4533 staff services.

(2) *Statutory Basis.* The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other changes among its members and other persons using its facilities. It is also consistent with the Exchange's self-regulatory responsibilities as provided in Section 6(b)(1) and 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor recived written comments on the preposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule Change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 17, 1986.

Dated: December 18, 1985.

For the Commission, by the Division of Market Regulation, Pursuant to delegated authority

John Wheeler,

Secretary.

[FR Doc. 85-30699 Filed 12-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22733; SR-PSE-85-26; SR-CBOE-85-42]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Chicago Board Options Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes

The Pacific Stock Exchange, Inc. ("PSE") and Chicago Board Options Exchange, Inc. ("CBOE") submitted proposed rule changes, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] to amend their rules concerning accommodation liquidations, also known as cabinet trading.[3]

Accommodation or cabinet trading of options contracts is intended to accommodate closing transactions in series of options in which there is no auction market due to the absence of a bid or offer at the lowest fractional price per contract. Under existing PSE and CBOE rules cabinet orders only can be entered for closing or liquidating transactions. Accordingly, a closing order will remain unexecuted, if there is no closing cabinet order with which it can be paired.

PSE's and CBOE's proposed rule changes would permit the entry of opening orders in the cabinet, at a limit price of one dollar per contract, against closing cabinet bids or offers, but only if such closing bids or offers are displayed on the public limit order book. All such opening orders, however, would have to yield to any matching closing order in the cabinet and thus opening orders only would be permitted to the extent there is no matching closing bid or offer. In addition, customers, firms and market makers only could enter opening orders in cases where closing orders already exist in the cabinet. For example, under the proposal, if the cabinet already contains a closing sell order but no closing buy order, then a person may enter an opening buy order in the cabinet, and the closing sell order will be executed.

PSE and CBOE believe that their proposed rule changes will increase the likelihood that cabinet orders can be matched and closed out. In addition, the PSE states that the rule change may also increase a market maker's capacity to make markets in other series in the class.

PSE and CBOE also are making some other minor changes in their rules' text by changing the reference to option contracts at "$.01 per share price" to "$1.00 per option contract." In addition, the CBOE will amend its rules so that closing sell orders for $1.00 will be displayed by the Order Book Official if it cannot be immediately executed.

Under the CBOE's proposed rule change opening orders would be permitted in the cabinet for options on government securities as well as equity and index options. In addition, the proposal establishes a cabinet trading rule for foreign currency options.[4] We note, however, that the CBOE's procedure for cabinet trading involving government securities options are different from those involving equity and index options because there is no Order Book Official ("OBO") or Board Broker in such options to accept cabinet orders. It is our understanding that accommodation transactions in such options are conducted through public outcry because of the absence of an OBO. The CBOE is proposing to apply this procedure to accommodation liquidations involving foreign currency options because there is also no OBO present at the post for these options.

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] The PSE and CBOE filed their proposed rule changes on September 25, 1985 and November 15, 1985, respectively. The CBOE filed Amendment No. 1 to its proposal on November 15, 1985. The Amendment sets forth an accommodation liquidation rule for foreign currency options and makes some changes to the accommodation rule applicable to government securities options to conform that rule to the proposed changes in the general rule.

[4] There is no provision under the existing foreign currency rules for cabinet trading.

The Commission is publishing this release to solicit comment on the proposed rule changes. Persons interested in commenting on the proposals should submit six copies of their comments within 21 days from the date of publication of this notice in the Federal Register. Comments should be sent to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the proposed rule changes, and all documents relating to the proposed rule changes, except those that may be withheld from the public pursuant to 5 U.S.C. 552, are available for inspection and copying at the Commission's Public Reference Room. Copies of the PSE and CBOE filings also are available at the PSE and CBOE, respectively.

The Commission finds that the proposed rule changes may facilitate the closing out of cabinet orders and thereby accommodate investors who wish to close out positions in inactive, out-of-the-money options series for which there are no displayed bids or offers at the lowest fractional price per contract. However, because certain questions remain on how accommodation liquidations would be executed in a public outcry system when opening orders in the cabinet must yield to closing orders, the Commission is only approving opening cabinet orders on the CBOE in options where an OBO or Board Broker is present. Closing cabinet orders can continue to be matched against other closing orders in options on government securities. In addition, the Commission is approving the matching of closing cabinet orders in CBOE's foreign currency options. For these reasons, the Commission finds that the proposed rule change and certain portions of the CBOE's proposed rule change are consistent with the requirements of the Act applicable to a national securities exchange and, in particular, the requirements of Section 6.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in that the proposals are substantially similar to a rule change proposed by the Philadelphia Stock Exchange, Inc. ("Phlx") that was published for comment and approved by the Commission.[5] No comments were submitted in response to the Phlx, Amex and NYSE rule proposals. In addition, the Commission finds good cause for permitting accommodation liquidations in closing orders for foreign currency options because the same procedures that have existed for options on government securities will be applied.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the PSE's proposed rule change and those portions of the CBOE's proposed rule change that would permit opening orders in the cabinet in those options where an OBO or Board Broker is present and that would permit matching closing cabinet orders for foreign currency options is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 20, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-30709 Filed 12-26-85; 8:45 am]

BILLING CODE 8010-01-M

[5] *See* File No. SR-Phlx-84-20, Securities Exchange Act Release Nos. 21390 (October 10, 1984), 49 FR 40752 (October 17, 1984) and 21515 (November 21, 1984), 49 FR 46859 (November 28, 1984). The Commission also approved, on an accelerated basis, similar proposals submitted by the American Stock Exchange, Inc. ("Amex") and New York Stock Exchange, Inc. ("NYSE"). *See* File No. SR-Amex-85-7, Securities Exchange Act Release No. 21936 (April 11, 1985), 50 FR 15258 (April 17, 1985) and File No. SR-NYSE-85-29, Securities Exchange Act Release No. 22530 (October 11, 1985), 50 FR 43051 (October 23, 1985).

[Release No. 34-22728; SR-PHLX-85-23]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx") submitted on October 22, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] to amend its By-Laws and reduce the potential proportion of the Governors on the Board who could be from the floor. Among other things, the amendments provide that of the 21 previously unclassified member firm or "broker" governors on the Phlx Board, 9 would be categorized as On-Floor Governors,[3] 9 as Off-Floor Governors [4] and 3 as At-Large Governors.[5] In addition, the Board will continue to include the Chairman, 2 Vice Chairmen (1 from the floor and 1 from off the floor) the President of the Corporation and 3 public governors.[6] Both the immediate past Chairman and the past President of the Corporation can serve as ex-officio members of the Board.

Because current Phlx By-Laws set no limit on the number of the 21 unclassified broker governors who can be On-Floor or Off-Floor Governors, such By-Laws could result in domination of the Board by one sector of the Phlx membership.[7] The Commission, however, in connection with its review of a proposal by the Chicago Board Options Exchange ("CBOE"),[8] recently determined that it would be inconsistent with sections 6(b)(1), 6(b)(3) and 6(b)(5) of the Act if one segment of an exchange membership dominated the Board of the exchange.[9] Accordingly, the Phlx

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] On-Floor Governors are described in Section 4-1 of the Phlx By-Laws as members who are primarily engaged in business on the Exchange floor or general partners, executive officers (vice president and above) or members associated with member organizations primarily engaged in business of the Exchange floor.

[4] Off-Floor Governors are described in Section 4-1 of the Phlx By-Laws as general partners, executive officers (vice president or above) or members associated with member organizations which conduct a non-member public customer business and who individually are not primarily engaged in business activities on the Exchange floor.

[5] At-Large Governors are described in Section 4-1 of the Phlx By-Laws as persons who qualify either as On-Floor or Off-Floor Governors.

[6] Public Governors are described in § 4-1 of the Phlx By-Laws as representatives of the public unaffiliated with the Exchange or any broker or dealer and appointed by the Board.

[7] Phlx has provided the staff with data collected from the past 5 years indicating that the Phlx Board has been composed of a disproportionate number of broker governors and officers representing the floor. In 1981, 56% of the unclassified broker governors were from the floor as were 50% of the Board as a whole; in 1982, the figures were 60% and 55%, respectively; in 1983, 62% and 50%, in 1984, 67% and 57%, and in 1985, 81% and 64%.

[8] Section 6(b)(1) of theAct requires that the exchange be organized so as to have the capacity to carry out the purposes of the Act. Section 6(b)(3) requires that the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. Section 6(b)(5) requires that exchange rules be designed, in general, to protect investors and the public interest.

[9] In Securities Exchange Act Release No. 21439 (October 31, 1984), 49 FR 44577 (November 7, 1984), the Commission instituted proceedings to determine whether to disapprove a proposed rule change by CBOE which would have enlarged the size of its Board of Directors from 21 to 34 by increasing from 6 to 9 the minimum number of floor directors on the Board. In Securities Exchange Act Release No. 22058 (May 21, 1985), 50 FR 23080 ("CBOE order") the Commission disapproved CBOE's proposal to increase the number of floor directors.

In brief, the Commission noted that, because voting power within an exchange is allocated based on membership on the exchange, as a practical matter on-floor members (*e.g.*, specialists and floor traders) consistently would be able to dominate the exchange election process to the exclusion of retail broker-dealer firms doing a public customer business. While the Commission did not conclude that public member firm directors were necessarily better representatives of the public interest in governing an exchange, the Commission did conclude that it was important that no one segment of the exchange membership achieve structural control of the Board. *See* CBOE order at 23092, 23093 and discussion therein of H.R. Doc. No. 85, 74th Cong., 1st Sess. at 4, 8 (1935); SEC, *Report of*

Continued

proposal would conform the structure of the Phlx Board of Governors with the fair representation principles the Commission set forth in reviewing CBOE's proposal.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22594, November 7, 1985) and by publication in the **Federal Register** (50 FR 46851, November 13, 1985). No comments were received with respect to the proposed rule filing.

The Commission commends Phlx for initiating this proposed rule change which will remedy the problems of domination of the Board by one sector of the Phlx membership and Board imbalance that Phlx has faced in the past.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirement of Section 6 and the rules and regulations thereunder. Specifically, the Commission finds the proposal to be consistent with Section 6(b)(1), 6(b)(3) and 6(b)(5) of the Act.

Section 6(b)(1) requires that the exchange be organized so as to be able to carry out the purposes of the Act. A diversified Board which no single membership group could dominate would better represent the interests of all of the Phlx's constituencies and would be more likely to enforce the rules of the Act and the phlx.

Section 6(b)(3) of the Act requires that the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provides that one or more directors must be representative of issuers and investors. Currently, up to 22 of the 30 Board members (73%) could be from one portion of the exchange membership. Under the proposal, up to 13 of the 30 Board members (43%) could be from one segment. This represents a substantial reduction in the potential for domination of the Board by one group. In that no single membership group could be dominant, the proposal would assure a fair representation of Phlx members on the Board.

Special Study of Securities Markets, 88th Cong., 1st Sess. pt. 4, at 572, 763–65 (Comm. Print 1973); Subcomm. on Com. Fin. of the Comm. on Interstate and For. Com., *Securities Industry Study*, H. Rep. No. 1519 92nd Cong. 2nd Sess. at 103, 107 (Comm. Print 1972).

Section 6(b)(5) of the Act requires that the rules of an exchange be designed, in general, to protect investors and the public interest. Unlike the CBOE proposal under which the proportionate representation of public and off-floor directors on the Board would have decreased, the proportion of Public Governors on the board remains constant under the Phlx proposal.

In the Commission's view, this rule change will help ensure that the Phlx Board is responsive to its constitutents and strengthen the ability of the Board to carry out the purpose of the Act and enforce compliance with Exchange and Commission rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

By the Commission.

Dated: December 19, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–30695 Filed 12–26–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22726; File No. SR–OCC–85–19]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change of Options Clearing Corp. (File No. SR–OCC–85–19) Regarding its On-Line System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 20, 1985, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

On May 22, 1984, the Commission approved a proposed rule change filed by OCC that established OCC's on-line system ("C/MACS").[1] C/MACS was created to enable each participating Clearing Member to send to and receive from OCC directly options clearance and settlement data through an automated, on-line terminal system. The rule change essentially authorized OCC to permit clearing members to submit to OCC reports, notices, instructions, data or other items via an on-line computer terminal.

[1] *See* Securities and Exchange Act Release No. 20983 (May 22, 1984), 49 FR 22427 (May 29, 1984), approving File No. SR–OCC–83–15.

In its present filling, OCC would enable C/ MACS participating Clearing Members to perform various data input services for other Clearing Members. For a C/MACS user (the "Managing Firm") to provide these services to another Clearing Member (the "Managed Firm"), both firms must enter into a Facilities Management Agreement ("FMA") [2] and submit a copy of the agreement to OCC. Thus, the proposal essentially extends OCC's existing facilities management requirements to C/MACS participants. The proposal also modifies some of those requirements to reflect special automated system needs. Each Managed Firm must execute a supplemental agreement to the C/MACS FMA agreement that outlines the duties and liabilities of both the Managed Firm and OCC. Pursuant to the supplemental agreement, Managing Firms must supply OCC with a list of all employees who will have access to C/MACS. OCC will assign to each authorized employee a "logon id" (*i.e.*, secret access code). Managing Firms are responsible for ensuring that logon ids remain confidential. Furthermore, Managing Firms will be jointly responsible, with Managed Firms, for maintaining overall C/MACS security.

OCC states that the proposed rule change is consistent with Section 17A of the Act in that it provides for the use of new data processing and communications techniques. Thus, the proposal should result in more efficient, effective and safe procedures for options clearance and settlement.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the filing, all

[2] *See* Securities Exchange Act Release No. 22239 (July 16, 1985), 50 FR 29777 (July 22, 1985), approving File No. SR–OCC–83–22, for a description of OCC's Rules and procedures guiding facilities management arrangements, including the FMA.

subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number in the caption above and should be submitted by January 17, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 18, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-30696 Filed 12-26-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 23, Rev. 1]

Delegation of Authority by the Administrator to the Inspector General

Delegation of authority No. 23 (50 FR 12678) is hereby revised to expand the delegation to the Inspector General of investigative authorities under the Small Business Act and the Small Business Investment Act of 1958, and make clear that the authorities delegated to the Inspector General to administer oaths and affirmations may be exercised by an SBA employee officially designated as acting in that position. Delegation of Authority No. 23 is revised to read as follows:

I. Pursuant to the authority vested in the Administrator by the Small Business Act, 72 Stat. 384, as amended, the Small Business Investment Act of 1958, 72 Stat. 689, as amended, and pursuant to section 9(a)(2) of the Inspector General Act of 1978, 91 Stat. 1101, there is hereby delegated to the Inspector General:

A. Investigation Authority: Small Business Act

The authority to permit any person to file with him or her a statement in writing, under oath or otherwise as the Inspector General shall determine, as to all the facts and circumstances concerning the matter to be investigated; the authority to administer oaths and affirmations; and, for the purpose of verifying compliance with subpoenas issued under section 6(a)(4) of the Inspector General Act of 1978, 5 U.S.C. App. I, the authority to subpoena witnesses, compel their attendance and take evidence.

B. Investigation Authority: Small Business Investment Act

The authority to permit any person to file with him or her a statement in writing, under oath or otherwise as the Inspector General shall determine, as to all the facts and circumstances concerning the matter to be investigated; the authority to administer oaths and affirmations; and, for the purpose of verifying compliance with subpoenas issued under section 6(a)(4) of the Inspector General Act of 1978, 5 U.S.C. App. I, the authority to subpoena witnesses, compel their attendance and take evidence.

II. The authorities previously delegated to the Inspector General and those delegated herein may be exercised by an SBA employee officially designated as acting in that position.

III. The authorities delegated herein may be redelegated.

Dated: December 4, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-30664 Filed 12-26-85; 8:45 am]

BILLING CODE 8025-01-M

Minneapolis Advisory Council Meeting

The U.S. Small Business Administration Region V District Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting at 7:30 a.m. on Tuesday, February 4, 1986, at First Bank West, 26th Floor-Executive Dining Room, 120 South Sixth Street, Minneapolis, MN, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call James N. Thomson, District Director, U.S. Small Business Administration, 610-C Butler Square, 100 North Sixth Street, Minneapolis, MN 55403 612/349-3530.

Jean M. Nowak,

Director, Office of Advisory Councils.

December 20, 1985.

[FR Doc. 85-30659 Filed 12-26-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 02/02/0493]

NYSTRS/NV Capital, Limited Partnership; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)), by NYSTRS/NV capital, Limited Partnership (Applicant), 1215 Western Avenue, Albany, New York 12203, for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*), and the rules and Regulations promulgated thereunder.

The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the Regulations.

The initial investors and their percent of ownership of the Applicant are as follows:

NSV Corp., 1215 Western Avenue, Albany, NY 12203, General Partner, 1 percent

Norstar Bancorp Inc., 1215 Western Avenue, Albany, New 12203, Limited Partner, 49.5 percent

New York State Teachers' Requirement System, 10 Corporate Woods Drive, Albany, New York 12211, Limited Partner, 49.5 percent

NSV Corp., a New York corporation, is a wholly-owned subsidiary of Norstar Venture Capital Corp. Norstar Bancorp Inc. owns all of the outstanding stock of Norstar Venture Capital Corp. Norstar Bancorp also owns all of the outstanding stock of another SBIC, Norstar Capital Inc., Abany, New York (License No. 02/02-0482).

NAV Corp. will manage the Applicant. The offices and directors of NSV Corp. are:

Raymond A. Lancaster, 9 Coventry Road, Glenmont, New York 12077, President, Director

John B. Robinson, Jr., 206 Graffunder Drive, Menands, New York 12204, Treasurer, Director

Harry P. Meislahn, 16 Axbridge Lane, Delmar, New York 12054, Secretary, Director

These same individuals are officers and directors of Norstar Capital Inc. Section 107.602 of the Regulations calls for SBA's prior written approval when two or more Licensees will have common officers, directors, managers, or a Control Persons or a stockholder or

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partner owning or controlling directly or indirectly ten or more precent of the stock or ownership interest of the Licensees. SBA intends to grant that approval in this instance.

The Applicant, a Delaware limited partnership, will begin operations with an initial partnership capital of $2,050,00, and will operate primarily in the northeastern United States with an emphasis on New York State.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is hereby given that any persons may, not later than January 27, 1986, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Albany, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 18, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-30661 Filed 12-26-85; 8:45 am]

BILLING CODE 8025-01-M

[Delegation of Authority No. 23-B]

Redelegation of Authority by the Assistant Inspector General for Investigations to Deputy Assistant Inspectors General for Investigations, Chief Inspector, Special Agents-in-Charge, and Special Agents, Investigations Division, Office of Inspector General

Delegation of authority No. 23-B is hereby made to effect a redelegation of investigative authorities from the Assistant Inspector General for Investigations to the following positions in the Investigations Division, Office of Inspector General: Deputy Assistant Inspectors General for Investigations, Chief Inspector, Special Agents-in-charge, and Special Agents. These investigative authorities were delegated by the Inspector General to the position of the Assistant Inspector General for Investigations and Delegation of Authority No. 23-A, and were expressly made redelegable.

I. Pursuant to the authority delegated to the Assistant Inspector General for Investigations in Delegation No. 23-A (published in this issue of the **Federal Register**), which authority was expressly made redelegable, investigative authorities are hereby redelegated as follows:

A. Investigation Authority: Small Business Act

Deputy Assistant Inspector General for Investigations, Chief Inspector, Special Agents-in-Charge, and Special Agents. The authority to permit any person to file with him or her a statement in writing, under oath or otherwise as he or she shall determine, as to all the facts and circumstances concerning the matter to be investigated; the authority to administer oaths and affirmations; and, for the purpose of verifying compliance with subpoenas issued under section 6(a)(4) of the Inspector General Act of 1978, 5 U.S.C. App. I, the authority to take evidence from witnesses subpoenaed by the Inspector General.

B. Investigation Authority: Small Business Investment Act

Deputy Assistant Inspectors General for Investigations, Chief Inspector, Special Agents-in-Chrge, and Special Agents. The authority to permit any person to file with him or her a statement in writing, under oath or otherwise as he or she shall determine, as to all the facts and circumstances concerning the matter to be investigated; the authority to administer oaths and affirmations; and, for the purpose of verifying compliance with subpoenas issued under section 6(a)(4) of the Inspector General Act of 1978, 5 U.S.C. App. I, the authority to take evidence from witnesses subpoenaed by the Inspector General.

II. The authorities delegated herein may be exercised by an SBA employee officially designated as acting in the following positions: Deputy Assistant Inspector General for Investigations, Chief Inspector and Special Agent-in-Charge.

III. The authorities delegated herein may not be redelegated.

Dated: December 19, 1985.

William O. Jones,

Acting Assistant Inspector General for Investigations.

[FR Doc. 85-30663 Filed 12-26-85; 8:45 am

BILLING CODE 8025-01-M

[Delegation of Authority No. 23-A]

Redelegation of Authority by the Inspector General to the Assistant Inspector General for Investigations.

Delegation of authority No. 23-A is hereby made to effect a redelegation of investigative authorities from the Inspector General to the position of the Assistant Inspector General for Investigations, Investigations Division, Office of Inspector General. These investigative authorities were delegated by the Administrator to the position of the Inspector General by Delegation of Authority No. 23 and Delegation of Authority No. 23, Rev. 1 thereto and were expressly made redelegable.

I. Pursuant to the authorities delegated to the Inspector General in Delegation No. 23 (50 FR 12678) and Delegation No. 23 Rev. 1 (published in today's **Federal Register**), investigative authorities are hereby redelegated to the Assistant Inspector General for Investigations, as follows:

A. Investigation Authority: Small Business Act

The authority to permit any person to file with him or her a statement in writing, under oath or otherwise as he or she shall determine, as to all the facts and circumstances concerning the matter to be investigated; the authority to administer oaths and affirmations; and, for the purpose of verifying compliance with subpoenas issued under section 6(a)(4) of the Inspector General Act of 1978, 5 U.S.C. App. I, the authority to take evidence from witnesses subpoenaed by the Inspector General.

B. Investigation Authority: Small Business Investment Act

The authority to permit any person to file with him or her a statement in writing, under oath or otherwise as he or she shall determine, as to all the facts and circumstances concerning the matter to be investigated; for the purpose of any investigation conducted under this authority, the authority to administer oaths and affirmations; and, for the purpose of verifying compliance with subpoenas issued under section 6(a)(4) of the Inspector General Act of 1978, 5 U.S.C. App. I, the authority to take evidence from witnesses subpoenaed by the Inspector General.

II. The authorities delegated herein may be exercised by an SBA employee officially designated as acting in that position.

III. The authorities delegated herein may be redelegated.

Dated: December 19, 1985.

Mary F. Wieseman,

Inspector General.

[FR Doc. 85-30662 Filed 12-26-85; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of the Lower Rio Grande Valley of Texas, will hold a public meeting at 2:00 p.m. on Tuesday, January 21, 1986, at the Cano Coors Distributing Co., 101 N. Ware Road, McAllen, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Rodney W. Martin, District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas—(512) 423-8933.

Jean M. Nowak,

Director, Office of Advisory Councils.

December 20, 1985.

[FR Doc. 85-30660 Filed 12-26-85; 8:45 am]

BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: SBA is in the process of discontinuing the West Virginia Small Business Development Center (SBDC) at the request of the host organization (the University of Charleston) effective December 31, 1985. Efforts are being taken within the State of West Virginia to start up a new SBDC as soon as possible after December 31, 1985; the target start up date is January 1, 1986. This notice provides for public awareness of SBA's intention to fund a different SBDC in West Virginia as soon as possible after December 31, 1985. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC expected to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

Pursuant to § 135.8 of SBA's regulations, SBA must provide a comment period of 60 days for SBDC fundings, except in unusual circumstances. In addition, § 135.13 authorizes the Administrator to waive any provision of the Intergovernmental Review regulations in an emergency. SBA deems this situation to be an unusual circumstance within the meaning of §135.8 and will limit the comment period for this funding to seven days. The West Virginia State single point of contact has been informed of this decision and fully supports and the shortening of this comment period.

DATE: Comments will be accepted through January 3, 1986.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See. 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 7-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this SBDC and providing the mailing address of the proposal developer is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The single point of contact and other interested State and local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing management assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments must also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration , 1441 L Street, NW., Washington, DC 20416. Comments will be accepted by the relevant proposal developer and SBA for a period of 7 days from the date of publication of this notice. The proposal developer will make every effort to accommodate these comments during the 7-day period. If the comments cannot be accommodated by the proposal developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained prior to funding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance devlivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with

other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed toward specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: November 8, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-30658 Filed 12-26-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Dockets 43656 (Maryland); 43657 (Arizona); 43658 (Vermont)]

55 Mile Per Hour Hearings

Correction

In FR Doc. 85-30178 beginning on page 51959 in the issue of Friday, December 20, 1985, on page 51960, third column, in the paragraph designated, "*Prehearing Conference*" the date reading, "December 30, 1985" should read, "January 7, 1986".

BILLING CODE 1505-01-M

Federal Aviation Administration

Advisory Circular; Certification of Small Airplanes for Flight in Icing Conditions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Proposed Draft Advisory Circular (AC) and Request for Comments.

SUMMARY: This AC provides information and guidance concerning compliance with Part 23 of the Federal Aviation Regulations (FAR) applicable to ice protection requirements for small airplanes.

DATE: Commenters must identify File AC 23.1419–XX; Subject: Certification of Small Airplanes for Flight in Icing Conditions, and comments must be received on or before March 27, 1986.

ADDRESS: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jess Lewis, Aerospace Engineer, Regulations and Policy Office (ACE–110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374–6941, or FTS 758–6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited to submit comments on the proposed draft AC. The proposed draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE–110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

In the latter part of 1968, the FAA instituted an extensive review of the airworthiness standards of Part 23 of the FAR. As a result of this review, in November 1973, the FAA issued amendment 23–14 which made several substantive changes in the interest of safety to Part 23 of the FAR. Among these substantive changes were a new § 23.929 requiring engine installation ice protection, a revised § 23.1419 establishing standards for ice protection systems, and a new § 23.1309 which established reliability requirements for installed equipment and systems. These three sections are directly related as defined in § 21.101 to the certification of an ice protection system because of the increased reliance on this system when operating in an icing environment.

Issued in Kansas City, Missouri, December 17, 1985.

Earse L. Tankesley,

Acting Manager, Aircraft Certification Division.

[FR Doc. 85–30543 Filed 12–26–85; 8:45 am]

BILLING CODE 4910–13–M

Future Air Navigation Systems Committee; Meeting

A meeting to discuss the International Civil Aviation Organization (ICAO) Future Air Navigation Systems (FANS) Committee activity in pursuing standardization efforts for future aeronautical satellite communications system capability for air-ground communciations will be held for potential satellite system providers at the Federal Aviation Administration (FAA) headquarters, 800 Independence Avenue, SW., Washington, D.C., in Conference Rooms 5ABC, on January 22, 1986, beginning at 9:30 a.m.

The U.S. Member of the ICAO FANS Committee will briefly review the Committee's activity and the direction being taken by the Committee to help ensure a minimum system standardization to allow system interoperability among the possible satellite systems that are anticipated to be available worldwide. A future communications, navigation, and surveillance (CNS) system concept and related operational requirements developed by the FANS Committee will be discussed vis-a-vis an opportunity for potential satellite system providers to develop specific system design responses to these requirements and possibly participate in the activities of the U.S. Delegation at the FANS working group meeting scheduled for March 17–21, 1986.

A package of information on the March 1986 FANS Committee working group meeting, including the future CNS concept and operational requirements, is available from FAA by contacting Victor E. Foose, ADL–5, Room 800W, at the above address (zip code 20591) or by calling (202) 426–8795. In order to make the subject meeting as productive as possible, prospective attendees are encouraged to obtain and begin considering this information prior to the meeting.

Issued in Washington, DC., on December 20, 1985.

S.B. Poritzky,

U.S. Member of FANS.

[FR Doc. 85–30549 Filed 12–26–85; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

National Motor Carrier Advisory Committee; Public Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on January 30 and 31, 1986, beginning at 9:00 a.m., each day, in Washington, DC, at the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, DC, Room 2230. The meeting is open to the public.

The agenda includes the following topics: Federal highway user fee and related issues, weigh-in-motion activities, status report on National Governors' Association Working Group on State Motor Carrier Procedures, changes in organization of the office of the Associate Administrator for Motor Carriers, various motor carrier safety issues, status of implementation of truck-related provisions of the Surface Transportation Assistance Act of 1982, status report on Heavy Truck Study and Study on Truck Occupant Protection, the Department's trucking deregulation proposal, various legislative issues, and a demonstration project concerning high performance traffic barriers.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Stapleton, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HCC–20, Room 4224, 400 Seventh Street, SW., Washington, DC 20590, (202) 426–0834. Office hours are from 7:45 a.m. to 4:15 p.m. e.s., Monday through Friday.

Issued on: December 18, 1985.

R.D. Morgan,

Executive Director, Federal Highway Administration.

[FR Doc. 85–30689 Filed 12–26–85; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: December 19, 1985.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed.

Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0146
Form Number: IRS Form 2553
Type of Review: Extension
Title: Election by a Small Business Corporation
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph J. Maty,
Departmental Reports Management Office.
[FR Doc. 85–30855 Filed 12–26–85; 8:45 am]
BILLING CODE 4810–25–M

Office of the Secretary

[Amendment to Department Circular—Public Debt Series—No. 10–85]

12% Treasury Bonds of 2005

Washington, November 13, 1985.

Department of the Treasury Circular, Public Debt Series—No. 10–85, dated March 20, 1985, as supplemented, descriptive of 12% Treasury Bonds of 2005, hereafter referred to as Bonds, is hereby amended effective November 18, 1985.

The following Section and Subsections in the original circular dated March 20, 1985, are hereby redesignated:

From 6. to 7
From 6.1 to 7.1
From 6.2 to 7.2

Subsections 2.6. and 6.3. in the original circular are replaced by the Subsections 2.6. and 7.3. below and, in addition, the following Sections and Subsections are now included. The other terms and conditions remain unchanged.

2. Description of Securities

2.6. A book-entry Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The provisions specifically applicable to the separation, maintenance, and transfer of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.5. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest Components is set forth in Section 6 of this circular.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS program (Separate Trading of Registered Interest and Principal of Securities), a book-entry Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The components of a Bond are: each future semiannual interest payment (hereafter referred to as an Interest Component) and the principal payment (hereafter referred to as the Principal Component). Each Interest Component and Principal Component shall have its own CUSIP number and designation, which are set forth in Attachment A hereto.

6.2. In order for a book-entry Bond to be separated into the components described in Subsection 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. The minimum and multiple par amount required to obtain the separate components for this offering is $50,000.

6.3. Only Bonds in book-entry form may be separated into their components. Such separation may be effected at any time from the effective date of the amendment of this circular until maturity. A request to obtain the separate components must be made to the Federal Reserve Bank maintaining the account for the book-entry Bonds. Normally, any such request shall be executed by the Federal Reserve Bank within 3 business days after it is received.

6.4. The Principal Component will be payable on May 15, 2005.

6.5. Each Interest Component will be payable on its particular due date designated in Attachment A hereto.

6.6. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

6.7. Once a book-entry Bond has been separated into its components, each Interest Component and the Principal Component may be maintained and transferred in multiples of $1,000, regardless of the par amount initially required for separation or the resulting amount of each Interest Component.

6.8 Interest Components and Principal Components may be held only in book-entry form.

6.9. Once there is a disposition of any amount of an Interest Component or of a Principal Component, the holder of the Bond will be considered for tax purposes to have stripped the amount of principal allocable to the amount of the components disposed of as of the date such first disposition occurs. Both the retained amount allocable to the stripped principal and the amount disposed of are thereafter treated as discount obligations, and the holders of such are subject to periodic income inclusion and other provisions of the Internal Revenue Code of 1954.

6.10. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies at such time and such value as will be determined by the Secretary of the Treasury. They will not be acceptable in payment of Federal taxes.

6.11. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4. Attachment A is incorporated as part of this circular.

The foregoing amendment was effected under authority of Chapter 31 of Title 31, United States Code. Notice and public procedures thereof are unnecessary as the fiscal policy of the United States is involved.

Gerald Murphy,
Acting Fiscal Assistant Secretary.

Attachment

Cusip Numbers and designations for the Principal Component and Interest Components of 12% Treasury Bond of May 15, 2005, CUSIP No. 912810 DQ 8

The Principal Component is designated 12% Treasury Principal (TPRN) 2005 due May 15, 2005, CUSIP No. 912803 AD 5.

INTEREST COMPONENTS

Designation	CUSIP No. 912803	Designation	CUSIP No. 912833
Treasury Interest (TINT) 2005 due			
Treasury Interest (TINT) 2005 due			

BEST COPY AVAILABLE

INTEREST COMPONENTS—Continued

Designation	CUSIP No.	Designation	CUSIP No.
May 15, 1986	EG [illegible] 1May 15, 1986		FC 9
Nov. 15, 1986	EH 9	Nov. 15, 1986	FD 7
May 15, 1987	EJ 5	May 15, 1987	FE 5
Nov. 15, 1987	EK 2	Nov. 15, 1987	FF 2
May 15, 1988	EL 0	May 1988	FG 0
Nov. 15, 1988	EM 8	Nov. 15, 1988	FH 8
May 15, 1989	EN 6	May 15, 1989	FJ 4

INTEREST COMPONENTS—Continued

Designation	CUSIP No.	Designation	CUSIP No.
Nov. 15, 1989	EP 1	Nov. 15, 199	FK 1
May 15, 1990	EQ 9	May 15, 200	FL 9
Nov. 15, 1990	ER 7	Nov. 15, 200	FM 7
May 15, 1991	ES 5	May 15, 2001	FN 5
Nov. 15, 1991	ET 3	Nov. 15, 2001	FP 6
May 15, 1992	EU 0	May 15, 2002	FQ 4
Nov. 15, 1992	EV 8	Nov. 15, 2002	FR 2
May 15, 1993	EW 6	May 15, 2003	
Nov. 15, 1993	EX 4	Nov. 15, 2003	FT 2
May 15, 1994	EY 2	May 15, 2004	FU 9

INTEREST COMPONENTS—Continued

Designation	CUSIP No.	Designation	CUSIP No.
Nov. 15, 1994	EZ 9	Nov. 15, 2004	FV 7
May 15, 1995	FA 3	May 15 2005	FW 5
Nov. 15, 1995	FB 1	May 15, 2005	FX3

[FR Doc. 85-30573 Filed 12-26-85; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 249
Friday, December 27, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, December 30, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Applications for Federal deposit insurance:

American Bank of Connecticut, an operating noninsured savings association located at Two West Main Street, Waterbury, Connecticut.

Evansville Morris Plan/Thrift, Inc., an operating noninsured industrial bank located at 222 Main Street, Evansville, Indiana.

Fidelity Investment, Inc., an operating noninsured industrial bank located at 714 North Michigan Street, South Bend, Indiana.

Citicorp Person-to-Person Financial Center, Inc., an operating noninsured industrial bank located at 7550 France Avenue South, Suite 180, Edina, Minnesota.

Request for reconsideration of a previous denial of request for relief from reimbursement of violations under Regulation Z:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(A)(ii)).

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,376
Northern California Consolidated Office, San Jose, California
Case No. 46,392-L (Amendment)
United American Bank in Knoxville, Knoxville, Tennessee and
United American Bank in Hamilton County, Chattanooga, Tennessee and
City and County Bank of Knox County, Knoxville, Tennessee and
First Peoples Bank of Washington County, Johnson City, Tennessee and
City and County Bank of Anderson County, Lake City, Tennessee

Recommendations regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

Request for financial assistance pursuant to section 13(i) of the Federal Deposit Insurance Act.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: December 23, 1985.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 85-30759 Filed 12-24-85; 11:04 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, December 30, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities and establish one branch:

The Savings Bank of Manchester, Manchester, Connecticut, an insured mutual savings bank, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the Tolland, Connecticut, branch of Heritage Savings and Loan Association, Manchester, Connecticut, a non-FDIC-insured institution, and for consent to establish that office as a branch of The Savings Bank of Manchester.

Application for consent to purchase assets and assume liabilities:

Bank One, Milford, National Association, Milford, Ohio, for consent to purchase certain assets of and assume the liability to pay deposits made in the Mount Orab Branch, Goshen Branch, and Bethel Branch of Security Savings Association, Milford, Ohio, a non-FDIC-insured institution.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as

receiver, liquidator, or liquidating agent of those assets:

Case No. 46,380–SR
Gamaliel Bank, Gamaliel, Kentucky
Case No. 46,384–SR
American Bank, St. Joseph, Tennessee
Case No. 46,389–SR
Southwestern Bank, Tucson, Arizona
Case No. 46,391–L
Union Trust Company, San Juan, Puerto Rico

Memorandum regarding the Division of Bank Supervision's rotation policies for staff assignments.

Memorandum regarding the buildout of office space in the Corporation's Kansas City Regional Office.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum regarding a contract renewal.

Memorandum regarding extension of time to comply with certain provisions of the Corporation's regulations governing securities activities of subsidiaries and affiliates of insured nonmember banks (12 C.F.R. 337.4).

Memorandum and resolution re: Notice of withdrawal of final amendments to Part 330 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage," which amendments limited insurance coverage on deposits placed by deposit brokers.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: December 23, 1985.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 85–30760 Filed 12–24–85; 11:04 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:48 p.m. on Thursday, December 19, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to:

(A)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of Panama, Panama, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Thursday, December 19, 1985; (2) accept the bid for the transaction submitted by Farmers State Bank, Douglas, Nebraska, an insured State nonmember bank; (3) approve the application of Farmers State Bank, Douglas, Nebraska, for consent to purchase certain assets of and assume the liability to pay deposits made in Bank of Panama, Panama, Nebraska, and for consent to establish the sole office of Bank of Panama as a branch of Farmers State Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(B)(1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Farmers State Bank, Sargent, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Thursday, December 19, 1985; (2) accept the bid for the transaction submitted by First National Bank in Ord, Ord, Nebraska; (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction;

(C) adopt a resolution making funds available for the payment of insured deposits made in Farmers & Merchants Bank, Comstock, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Thursday, December 19, 1985; and

(D) adopt a resolution making funds available for the payment of insured deposits made in Princeton State Bank, Princeton, Missouri, which was closed by the Commissioner of Finance for the State of Missouri on Thursday, December 19, 1985.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 23, 1985.

Federal Deposit Insurance Corporation.

Janice M. Smith,

Acting Assistant Executive Secretary.

[FR Doc. 85–30761 Filed 12–24–85; 11:04 am]

BILLING CODE 6714-01-M

4

COUNCIL ON ENVIRONMENTAL QUALITY

December 23, 1985.

TIME AND DATE: 10:00 a.m., Thursday, January 9, 1986.

PLACE: Conference Room, First Floor, 722 Jackson Place, NW., Washington, DC.

MATTERS TO BE CONSIDERED:

1. The General Counsel will brief the Council on comments received in response to the proposal to amend 40 CFR 1502.22. (50 FR 32234 (1985)).

2. Other business.

A. Alan Hill,

Chairman.

[FR Doc. 85–30724 Filed 12–24–85; 8:50 am]

BILLING CODE 3125-01-M

5

POSTAL SERVICE

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, January 6, 1986, in Washington, D.C., and at 8:30 a.m. on Tuesday, January 7, 1985, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington DC. As indicated in the following paragraph, the January 6 meeting is closed to public observation. The January 7 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

At its meeting on December 2, 1985, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for January 6, 1986. (See 50 FR 50382, December 10, 1985.) By telephone vote on December 23, 1985, a majority of the Members contacted and voting, the Board voted to add to the closed meeting agenda consideration of *Rose v. USPS.*

AGENDA

Monday Session

January 6, 1986–1:00 p.m. (Closed)

1. Consideration of Postal Rate Commission Recommended Decision in *Complaint of Tri-Parish Journal, Inc.* (Docket No. C85–2).

2. Consideration of court ruling in *Mason H. Rose* v. *United States Postal Service.*

Tuesday Session

January 7, 1986–8:30 a.m. (Open)

1. Mintues of the Previous Meeting, December 2–3, 1985.

2. Remarks of the Postmaster General.

3. Selection of Chairman and Vice Chairman.

(Under the Board's bylaws, the first regular meeting of each calendar year is designated as the Annual Meeting. The terms of the Chairman and Vice Chairman of the Board expire at the end of the first Annual Meeting following the meeting at which they were elected. Accordingly, the Board will consider the election of a Chairman and Vice Chairman.)

4. Appointment of Commttee Members by Chairman.

(The bylaws also provide that the terms of the Chairman and members of the several committees of the Board expire at the end of this meeting.)

5. Annual Report on Open Meeting Compliance.

(Mr. Harris will present for approval by the Board the annual report to Congress that is required by the Government in the Sunshine Act regarding the Board's compliance with the Act.)

6. Consideration of a request to the Postal Rate Commission for an advisory opinion on a change in the nature of COD service.

(Ms. Uemoto, Assistant Postmaster General, Rates and Classification, will present this item.)

7. Capital Investments:

a. Midland, Texas, General Mail Facility;

b. Flat sorters.

c. Extension of lease for Southern Region headquarters.

8. Tentative agenda for February 3–4, 1986, meeting in San Diego, California.

David F. Harris,

Secretary.

[FR Doc. 85–30736 Filed 12–24–85; 10:32 am]

BILLING CODE 7710–12–M

federal register

Friday
December 27, 1985

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation (FAR); Nominal Changes; Proposed Rule

BEST COPY AVAILABLE

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Nominal changes to FAR

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing changes to the Federal Acquisition Regulation (FAR) 31.205–8, Contributions and donations; 31.205–15, Fines and penalties; and 31.205–47, Defense of fraud proceedings.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before January 27, 1985 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–73 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Section 911, paragraphs (e) (1) (C), (D), and (G) of the Defense Procurement Improvement Act of 1985 (Pub. L. 99–145, Department of Defense Authorization Act of 1986) specifies that (1) costs of defense of fraud or similar proceedings (including filing of any false certification), (2) payments of fines and penalties resulting from violations, or failure to comply with Federal, State, local or foreign laws and regulations, and (3) contributions and donations, regardless of the recipient, are to be unallowable. Section 911 of the Act also authorizes amendments to procurement regulations to provide appropriate definitions, exclusions, limitations, and qualifications. The Councils have examined the language of the three cost principles in light of the requirements of the Act and have developed proposed changes to clarify the present wording and fulfill the intent of the Act.

B. Regulatory Flexibility Act

The proposed changes to FAR 31.205–8, 31.205–15, and 31.205–47 are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because most contracts awarded to small entities are awarded on a competitive fixed-price basis and cost principles do not apply.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because this proposed rule does not impose any additional reporting or recordkeeping requirements on the public which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 20, 1985.

Harry S. Rosinski,

Deputy Director, Office of Federal Acquisition and Regulatory Policy.

PART 31—[AMENDED]

Therefore, it is proposed that 48 CFR Part 31 be amended as follows:

1. The authority citation for Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

2. Section 31.205–8 is revised to read as follows:

31.205–8 Contributions or donations.

Contributions or donations, including cash, property and services, regardless of the recipient, are unallowable, except as provided in 31.205–1(e)(3).

3. Section 31.205–15 is revised to read as follows:

31.205–15 Fines and penalties.

Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, local, or foreign laws and regulations are unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

4. Section 31.205–47 is amended by revising paragraph (b) and the first sentence of paragraph (d) to read as follows:

31.205–47 Defense of fraud proceedings.

* * * * *

(b) Costs incurred in connection with defense of any (1) criminal or civil investigation, grand jury proceeding, or prosecution, (2) civil litigation, (3) suspension or debarment proceedings, or (4) similar proceedings (including those associated with the filing of any false certification), or any combination of the foregoing, brought by the Government against a contractor, its agent or employee, are unallowable when the charges, which are the subject of the investigation, proceedings, or prosecution, involve fraud or similar offenses (including filing of a false certification) on the part of the contractor, its agent or employee, as defined in (a) above, and result in conviction (including conviction entered on a plea of nolo contendere), judgment against the contractor, its agent or employees, or decision to debar or suspend, or are resolved by consent or compromise.

* * * * *

(d) Costs which may be unallowable under 31.205–47, including directly associated costs, shall be differentiated and accounted for by the contractor so as to be separately identifiable. * * *

[FR Doc. 85–30535 Filed 12–26–85; 8:45 am]

BILLING CODE 6820–61–M

federal register

Friday
December 27, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

Iowa	
IA84–4042	June 15, 1984.
Pennsylvania	
PA84–3004	Feb. 17, 1984.
West Virginia	
WA83–3023	Nov. 25, 1983.

Signed at Washington, D.C. this 20th Day of December 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATION P. 1

DECISION #IA84-4042-MOD.#8 (49 FR 24855 - 6/15/84) WOODBURY COUNTY, IOWA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Plumbers & Fipefitters	$14.49	$3.25

DECISION NO. PA84-3004 - MOD. NO. 9 (49 FR 6209 - February 17, 1984) Armstrong, Beaver, Butler, Fayette, Indiana, Washington, Allegheny & Westmoreland Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Asbestos Workers	$16.45	5.72
Cement masons		
Zone 1	14.86	29.5%
Carpenters		
Zone 1	15.12	33 & 1/10%
Elevator Constructors	17.95	3.58+ a+b
Elevator Constructors Helpers	70%JR	3.58+ a+b
Elevator Constructors Helpers (Prob)	50%JR	
Lathers		
Zone 1	15.12	33 & 1/10%
Piledrivermen	16.23	.08+ 32%
Steamfitters		
Zone 1	17.30	4.79
Sprinkler Fitters		
Zone 1	17.75	4.34
Soft Floor Layers		
Zone 1	15.50	32.5%
Plasterers		
Zone 1	14.44	4.29
Plasterers		
Zone 1		
"Board Coaters"	13.00	4.29
Plumbers		
Zone 2	17.10	4.79

DECISION #WV83-3023 - MOD. #5 (48 FR 53273 - November 25, 1983) Statewide, West Virginia (Heavy & Highway Construction)	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS:		
Heavy Construction:		
Class I	15.17	2.70
Class II	14.57	2.70
Class III	14.13	2.70
Class IV	13.64	2.70
Class V	13.25	2.70
Highway Construction:		
Class I	14.91	2.70
Class II	14.30	2.70
Class III	13.81	2.70
Class IV	13.31	2.70
Class V	12.87	2.70

Classifications Definitions for Laborers Heavy & Highway Construction:

Class I - Blacksmith, Tunnel Driller Tunnel miner, Powderman;

Class II - Mucker-chucker, Reinforcing bar handler (structures);

Class III - Caison Bottom Man, Pipe layer (including laser beam set-up) Form setter (road), Drill operator, Inside laborer, Air tool Operator, Grade Checker, Asphalt Raker;

Class IV - Vibrator man, Whacker, Chainsaw operator, Mortarman, Mason tender, Blacksmith tender, Cement finisher tender, Drill Tender, Powderman tender, Waterproofer, Sheeter & Shorer, Pipe layer tender Bull float man, Pavement Reinforcing Placer, Handyman, Signal man, Green cutter, Georgia Power buggie burner, Cement blower man, Bituminous hand sprayer;

Class V - Laborer, Deckhand, Mulcher & Seeder (Hand or Machine), Tree trimmer.

(2)

[FR Doc. 85-30523 Filed 12-26-85; 8:45 am]
BILLING CODE 4510-27-C

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice of New Publication Procedures

Note.—This document was originally published on Dec. 6, 1985 at 50 FR 50116. It is reprinted in this issue at the request of the Department of Labor.

Beginning January 3, 1986, general wage determinations issued under the Davis-Bacon and Related Act will no longer be published in the **Federal Register**. Instead, notices of wage determinations issued will be published in the **Federal Register**. General wage determinations will be published in full in the Government Printing Office (GPO) document entitled *"General Wage Determinations Issued Under The Davis-Bacon And Related Act."* This change is being made to enhance the availability and use of Davis-Bacon wage determinations information while lowering Federal Government costs.

The GPO publication *"General Wage Determinations Issued Under The Davis-Bacon And Related Acts"* is organized into three volumes—East, Central, and West. Subscriptions may be purchased for one, two, or all three volumes (at a cost of $227 per volume) from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3283.

This publication is to be available for examination at all 80 Regional Government Depository Libraries and many other of the 1,400 Government Depository Libraries across the country. The State covered by each volume are as follows:

Volume I—East

Alabama
Connecticut
Delaware
Florida
Georgia
Kentucky
Maine
Maryland
Massachusetts
Mississippi
New Hampshire
New Jersey
New York
North Carolina
Pennsylvania
Rhode Island
South Carolina
Tennessee
Vermont
Virginia
West Virginia
District of Col.
Canal Zone
Puerto Rico
Virgin Islands

Volume II—Central

Arkansas
Illinois
Indiana
Iowa
Kansas
Louisiana
Michigan
Minnesota
Missouri
Nebraska
New Mexico
Ohio
Oklahoma
Texas
Wisconsin

Volume III—West

Alaska
Arizona
California
Colorado
Hawaii
Idaho
Montana
Nevada
North Dakota
Oregon
South Dakota
Utah
Washington
Wyoming

On or about January 1 of each year, an annual edition will be issued that includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers and libraries providing any modifications or supersedeas wage determinations issued. Each volume's annual and weekly editions will be printed in loose-leaf format, thereby faciliating the orderly and continuous availability of a comprehensive listing of up-to-date general wage determinations.

Susan R. Meisinger,

Deputy Under Secretary for Employment Standards.

Herbert J. Cohen,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 85–29402 Filed 12–5–85; 8:45 am]

BILLING CODE 4510–27–M

BEST COPY AVAILABLE

Federal Register

Friday
December 27, 1985

Part IV

Department of Labor

Bureau of Labor-Management Relations and Cooperative Programs

29 CFR Part 220

Airline Employees Protection Program; Final Rule

DEPARTMENT OF LABOR

Bureau of Labor-Management Relations and Cooperative Programs

29 CFR Part 220

Airline Employee Protection Program

AGENCY: Bureau of Labor-Management Relations and Cooperative Programs, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor, through the Bureau of Labor-Management Relations and Cooperative Programs (BLMRCP), is issuing regulations to implement the Airline Employee Protection Program established by Section 43 of the Airline Deregulation Act or 1978 (Pub. L. 95–504). By Secretary's Orders Number 1–79 and 5–84, the (BLMRCP) has been assigned responsibility for provisions concerning protected employees' priority hire rights, air carriers' duty to hire and the comprehensive job listing. These rules are designed to effectuate those provisions.

EFFECTIVE DATE: January 27, 1986.

FOR FURTHER INFORMATION CONTACT: Jeffrey Salzman, Airline Employee Protection Program, Division of Employee Protections, Room N–5416 U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Phone: (202) 357–0473.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1978, the Airline Deregulation Act of 1978, Pub. L. 95–504 (the Act), was signed into law to bring to a close economic regulation of the airline industry. Although airline deregulation is expected to result in expanded overall employment opportunities over the long term, Congress recognized the possibility of reduction of the labor force of one or more air carriers as they make the adjustment from government regulation to an economic environment governed by market forces. Section 43 of the Act provides in general terms for certain employee protective provisions to be administered by the Secretary of Labor. Those provisions include both a legal hiring preference for certain unemployed airline workers and, under contain defined circumstances, a benefit program. These regulations apply only to the first-right-of-hire and job list provisions contained in Section 43 of the Act (the Rehire Program).

Under the Act, those persons (other than members of the board of directors or corporate officers) who as of October 24, 1978 (the Trigger Date) had been employed for at least four years by an air carrier which had been certificated under section 401 of the Federal Aviation Act of 1958 on or before that date (any such carrier being hereinafter called a covered air carrier) are protected employees for purposes of the Rehire Program. All protected employees who are furloughed or terminated (other than for cause) by their employer during the ten year period subsequent to the Trigger Date (hereinafter called "designated employees") are entitled to a first-right-of-hire in their occupational specialty by any covered air carrier which is hiring new employees, except that any such covered air carrier is specifically entitled to recall its own furloughed or terminated employees or promote or transfer existing employees before hiring a designated employee. Air carriers which are not covered carriers for purposes of the Act do not have any duty to hire designated employees. In addition, the Act requires the Secretary to compile and publish a comprehensive list of jobs available with certificated air carriers, whether or not such carriers are subject to the duty to hire designated employees.

In January of 1979, public meetings were held with interested parties from the airline industry to obtain their views concerning development of this program. Proposed regulations were published in March of 1979 in the **Federal Register** and public comments were received. However, a final rule from this rulemaking proceeding was never published.

The Department published a revised proposal on September 17, 1982, 47 FR 41304, with a 30-day review and comment period.

Final Regulations were published on November 22, 1983, 48 FR 52854, with an effective date of 60 legislative days after submission to Congress. The regulations were submitted to Congress on November 17, 1983, and took effect on May 17, 1984. Technical amendments to reflect the re-organization of the Labor-Management Services Administration and provide information collection control numbers were published on May 18, 1985. The Department also published a notice of effective date at that time. 49 FR 21053.

On May 17, 1984, however, the United States District Court for the District of Columbia held that the legislative veto provision in section 43 of the Airline Deregulation Act was unconstitutional and that other provisions of section 43 were also invalid because they were not severable from the legislative veto provision. *Alaska Airlines, et al.* v. *Donovan* 594 F. Supp. 92 (D.C.D.C. 1984). On May 24, 1984, the Department published a notice rescinding the May 18 notice of effective date, pursuant to court order. 49 FR 21499. On July 16, 1985, the United States Court of Appeals for the District of Columbia Circuit reversed the District Court. *Alaska Airlines,* v. *Donovan* (D.C. Cir. 1985). The mandate from the Court of Appeals was issued on October 9, 1985.

The Court of Appeals remanded the case, now titled *Alaska Airlines,* v. *Brock* to the District Court for further proceedings on other issues raised by the carriers. In the absence of further legal impediments to implementation of the Rehire Program and because there have already been lengthy delays, the Department intends to implement the Rehire Program at the end of the normal 30-day notice period.

Discussion of Major Comments and Changes

The Department received written responses from 34 air carriers, labor organizations, civil rights organizations, and employees. The Department gave full consideration to all comments and suggested changes. Discussed below are the major comments and changes.

Rehire Program and Qualifying Dislocation

Section 43 of the Act distinguishes between protected employees and eligible protected employees. In the proposal accordingly we took the position that protected employees who are furloughed or terminated other than for cause ("designated employees" under this rule) are entitled to a first-right-of-hire. There is no requirement for determinations by the Civil Aeronautics Board or its successor, the Department of Transportation (DOT), that there has been a major contraction in employment or that such contraction was due to deregulation. Eligible protected employees may receive monetary benefits if the DOT makes the above determinations.

Air carriers took issue with the foregoing interpretation. They argued that the distinction between protected and eligible protected employees is not supported by the Act nor by its legislative history. Moreover, the air carriers stated that such a distinction, providing the first-right-of-hire without the need for a major employment impact or a finding of cause by the DOT was not consistent with other protective statutes, which were specifically remedial.

The Department has reviewed the legislative history and has concluded

that the interpretation set forth in the proposed regulations accurately reflects Congressional intent to provide the first-right-of-hire even though a bankruptcy or major contraction has not occurred. Key to the Department's interpretation is the deletion from the legislation as finally enacted of the precise language which formerly conditioned the first-right-of-hire on the triggering requirements outlined above for monetary benefits. These triggering requirements were clearly a condition for both forms of benefits (hiring and monetary) when the deregulation bill (S. 2493) was passed by the Senate. However, the final bill which emerged from the joint House-Senate Conference dropped the triggering conditions for the first-right-of-hire provisions. The conference bill was passed into law unchanged. In the face of this clear and deliberate action on the part of the Congress, the Department has no latitude to reintroduce these requirements for the hiring priority benefit.

Waiting Period

The Department proposed that covered air carriers could hire nondesignated employees if no qualified designated employees had applied in a timely manner. The waiting period before carriers could hire nondesignated employees would end 30 days after the listing had been called in to the Center. Carriers stated that this period would be too long and would place an excessive burden on their operations. The Department, however, believes that the prevalent practice in the industry of accepting advance applications, which this regulation recognizes, will relieve carriers of delays in filling vacancies. A carrier will be free to fill a job with a designated employee from an advance application at the same time it lists the vacancy with the Center, and there will be no waiting period. Such a listing should indicate that the job has already been filled, and the carrier would not receive unwanted applications.

A number of smaller covered carriers stated that the 30-day waiting period worked a particular hardship on their operations They generally do not hire in large classes, and their small work forces at many stations have greater difficulty performing additional duties while a job is being filled. We agree that any burden which might occur as a result may be greater on such smaller carriers. The Department seriously considered reducing the waiting period for carriers operating smaller aircraft. But the period of time that elapses between a listing and its availability to employees precludes any significant relief which would still afford designated employees an opportunity to apply for the job. We have concluded that a 30-day period is necessary to effectuate the statutory rights of protected employees. Smaller carriers, however, can mitigate any possible burdens by maintaining files of advance applications or by listing anticipated vacancies.

One commentator suggested that carriers should be required to retain applications for a 12-month period. The Department rejected this provision because a uniform requirement might unduly burden some carriers. However, we suggest that carriers develop prudent retention policies for unsolicited and advance applications in the event that a designated employee alleges that a carrier did not consider the employee's application prior to hiring a non-designated employee.

Exemption From the Duty to Hire

Several small regional and former charter carriers sought exemption from the duty to hire on a variety of grounds. Two carriers, for example, had obtained their certificates only weeks before the Act became effective. Others suggested that it was anomalous to cover such carriers, many of which had no protected employees. These carriers commented that they had not enjoyed the benefits of the regulated system and thus should not be encumbered with the protective requirements under deregulation. Congress, they stated, could not have intended to burden this group of carriers. Several noted that they essentially resembled the new entrants, which do not have a duty to hire.

The Department cannot agree with these claims. The explicit language of Section 43(d) imposing the duty on all covered carriers is clear and compelling. Congress anticipated that carriers would experience economic adjustments in a deregulated environment. Under the statute, protected employees, who lose jobs at a shrinking carrier, will be able to obtain employment with a growing one. Statutory language must be construed in the context of the overall statutory purposes—in this case, the reemployment of designated employees. The Department therefore has concluded it would be inappropriate to provide exemptions and reduce preferential hiring opportunities.

Definition of Protected Employee

The proposal provided protection based on accrued seniority as well as employment. The Department received comments supporting its proposed definition as well as comments seeking to broaden the definition or to restrict it. An industry association suggested that we amend proposed section 220.01(j) to require a protected employee to be in compensated service for 48 consecutive months and have an employment relationship with that carrier on the Trigger Date (October 24, 1978). We believe that the suggested requirement of consecutive compensated service would be excessively restrictive and would not provide an accurate measure of long term attachment to the industry, which is the general basis on which Congress conferred protection on airline employees.

Upon review of the statutory definition of a protected employee, however, we do agree with the association that protected employees should have an employment relationship with a covered air carrier on the effective date of the Act. Employees who have been furloughed and recalled display that attachment to the industry. Similarly, employees who have the four years of service or accrued seniority with a particular carrier, but who shift employment to another covered carrier, also have had that same reliance on the regulated system as the employee whose entire career is spent at one carrier.

Pursuant to our requirement for an employment relationship, we have altered the notice of protected status in § 220.25(c)(1) so that such notice would go the carriers workers who had an employment relationship on October 24, 1978. This requirement would focus the notice on those employees who meet at least one of the two criteria for attaining protected status and will facilitate the process of determining who is protected.

Other commentators stated that the Department was too restrictive. One union suggested utilizing an employee's date of hire as the beginning of the service period for determining protected status because contracts differ on determining accrual of seniority. We note, however, that the contractual provisions which that union submitted generally provide for accrual of seniority during major breaks in compensated service such as furloughs, sick leave, maternity leave. While we recognize that the Department's definition may lead to differential results among similarly situated employees, we do not believe that the differentiation will be substantial.

Several commentators disagreed with the Department's position that four years of service or seniority had to be with a single carrier in order to achieve protected status. Thus an employee who had spent only two years with one carrier and only two years with another

carrier prior to 1978 would not be protected. The Department bases its position on the explicit language of Section 43(h)(1): "* * * employed for at least four years by *on* [emphasis added] air carrier * * *" The Senate Commerce Committee in reporting out the legislation, used the term service with "a *particular* [emphasis added] airline." We believe that the statutory language and the committee report reflect a Congressional intent that service or seniority must be with only one carrier in order to qualify as a protected employee.

Equal Employment Opportunity

Section 29 of the proposed rule stated that the first-right-of-hire shall take precedence over any equal employment opportunity [EEO] obligations which a carrier may have. After consultations between the Department of Labor and the Equal Employment Opportunity Commission, it was agreed that latitude existed to accommodate the requirements of both the ADA and EEO statutes. Since covered air carriers remain free to select any applicant from among the pool of designated employees, the Department believes that air carriers will be able to accommodate both their duty to hire designated employees and their equal employment obligations in most cases. Where this is not possible, a carrier having a specific equal employment requirement as defined in section 220.01(j) of the regulation may hire a non-designated employee. Every carrier remains responsible for following the hiring procedures set forth in the regulation.

New Entrants' Requirement to List Vacancies

The Department had proposed that new entrant carriers as well as the prederegulation carriers list their job vacancies in the comprehensive listing. Several new entrants objected to this obligation. They argued that the comprehensive list required by Section 43(d)(2) was intended only to complement the duty to hire and that the Department's application of this requirement to new entrants was unreasonable and unnecessary. Such listings, they believe, would be futile since carriers which do not have an obligation to hire would be required to list jobs they already may have filled by the time designated employees applied.

In proposing this section, the Department was guided by the explicit language of section 43(d)(2) which establishes the requirement for a comprehensive list of jobs available with *all* carriers certificated under section 401 of the Federal Aviation Act. By contrast, the duty to hire is imposed on carriers certificated prior to deregulation. Furthermore, publication of a truly comprehensive list is consistent with the overall statutory pupose of section 43. The Congress anticipated that while the industry as a whole would grow, there might be some job losses at some carriers. A protection program was written to cushion adverse effects on workers. Publication of a comprehensive list will announce job vacancies to these workers and facilitate their reemployment. To the extent that some of these workers may be eligible for monetary benefits, assistance to them in obtaining any reasonably comparable employment will lessen the cost of the monetary benefits program.

Recall Rights

The proposed rule preserved, in accordance with express statutory language, seniority and recall rights at the designated employee's former carrier. In implementing this provision, the Department proposed to permit carriers to require disclosure of any such rights. Several unions objected to the disclosure of recall rights on the grounds that it would either preclude hiring of designated employees possessing these rights or coerce employees into relinquishing these rights.

While the Department recognizes that the commentators' contentions may have some validity, it believes that carriers hiring designated employees have a compelling interest in retaining these designated employees. Considerable time and expense is usually invested in new hires, and the regulations must reflect these practical considerations. Disclosure does not, in any event, diminish the carrier's duty to hire. It only permits a carrier to distinguish among designated employees according to the extent of seniority or recall rights in addition to other criteria.

Several commentators sought to have carriers hire on the basis of the seniority of the designated employees. It is clear, however, that the statute does not require this approach. Moreover, any program based on it would be virtually impossible to administer. The Department has sought to implement this program without imposing any new obligations on the carriers that are not required by the statute as it pertains to the selection of employees.

Temporary and Seasonal Employees

Recognizing the prevailing practice in the industry of hiring temporary and seasonal employees, such as college students and military personnel during the Christmas holidays and periods of peak summer travel, the Department proposed to permit carriers to fill seasonal and temporary positions outside of the Rehire Program. Under the proposed rule, carriers could not promote or reassign such employees into permanent positions unless the employees held seniority or recall rights.

Several carriers opposed this restriction on promotion because their typical employee selection procedure is to hire initially on a temporary or seasonal basis and promote into permanent positions. The regulations would force them to change their hiring practices. The Department cannot accept these comments without defeating the overall purpose of the Rehire Program. Where carriers utilize temporary or seasonal employment as a means of selecting permanent employees, they should list the vacancies and hire designated employees. They would then be free to promote them into permanent jobs; we have modified § 220.20(b) accordingly. In other instances where carriers accord seniority or recall rights to temporary or seasonal workers, those workers would not be defined as temporary or seasonal under these regulations, and the restriction on promotion would not apply.

One union requested that the Department specify the duration of temporary or seasonal employment. However, because seasonal or temporary periods may vary greatly from carrier to carrier and a uniform time period may be unworkable for some carriers, the Department does not believe that it would be appropriate to make a fixed rule concerning the duration of seasonal or temporary periods.

Responsibilities of Non-Operating Carriers

Several commentators noted that carriers which were no longer operating might not be able to provide the lists of protected employees or the notices of rights required by §§ 220.25 and 220.27. The statute requires all certificated carriers, whether operating or not, to meet the requirements of §§ 220.25 and 220.27. However, we recognize that compliance may be more difficult for some carriers. We have written letters to officials or owners of those carriers which we believe are not presently operating seeking information on any problems they might expect in complying. The Department is attempting to provide an opportunity for

full participation of all designated employees in the Rehire Program.

Participation of Labor Organizations

Several unions sought an enhanced role in the implementation of the program. One union suggested that the list of protected employees should be made available to collective bargaining representatives to minimize subsequent appeals. The Department naturally hopes to minimize appeals, but since consultations appear to be in the interests of both carriers and unions, we think it is unnecessary to regulate this activity. In § 220.26 the commentator sought authorization for unions to file appeals on behalf of their members. We agree, to the extent that representation is authorized, and have made the appropriate change.

In addition, this union also wanted collective bargaining representatives to receive copies of the comprehensive job list. The Department has made provision for some 500 additional copies of the list beyond those to be sent to the local offices of the employment service. Prior to the effective date of these regulations, the Department will determine those unions, media, or other organizations which will receive the job listings.

Eligibility for Designated Status

Under the proposed § 220.10 the Department set forth criteria to determine whether or not a protected employee has been furloughed or terminated within the meaning of the Act. In addition to retirees and voluntary quits, we stated that strikers, employees who respect picket lines, or employees who had been terminated for being on strike would not be eligible for the Rehire Program. Several unions opposed these positions arguing that our prohibitions would have a chilling effect on the exercise of rights to concerted activity under the Railway Labor Act.

We think it is evident that strikes and sympathy strikes are neither furloughs nor terminations, which the Act requires to initiate a preference in hiring. A contrary interpretation would be inconsistent with the Act and would provide striking employees with a significant weapon in labor disputes. We do not believe that Congress intended such a result. On the other hand, we agree that terminations for being on strike are similar to other forms of involuntary termination, and we have deleted that exclusion.

One union noted that the phrase "has withheld services" in § 220.10(b)(4) could be interpreted to exclude employees who had ever done so. The Department did not intend this; and we have changed the paragraph to make it parallel to the exclusion for being on strike.

Notices of Rights

In proposed § 220.27 carriers would have as much as 180 days to provide furloughed employees with notices of their designated status. We have reduced that period to 60 days. Carriers should not have any difficulty in meeting this requirement, regardless of whether they use automated personnel systems. Employees should not have to wait six months to obtain the document which confirms designated status and eligibility for the Rehire Program. In addition, we specifically require carriers to replace lost notices of rights.

Effective Period

The Department indicated in its notice of proposed rulemaking that the regulations would apply on their effective date. Certain carriers construed the proposed rule to indicate that the duty to hire and the first-right-of-hire would not apply until the regulations become effective. This is a misunderstanding of the Department's position. While any requirements imposed by the regulations will of course not be in force before the rule's effective date, the rights and duties under section 43(d) which flow directly from the Act have existed since October 24, 1978. These regulations merely facilitate the exercise of statutory rights and duties. We have modified §§ 220.01(g) and 220.50 to prevent any further misunderstanding with respect to the effective date of these regulations and the statutory rights and obligations.

Additional Modifications

In addition to the modifications discussed above, the Department has also made the following changes: (1) In § 220.25(c)(3) we have imposed a 15-day period for carriers to answer appeals and a correspoinding change in section 220.26(a). (2) In § 220.28 we require two copies of the semi-annual report.

Summary of the Final Rule

There follows a summary of the final rule, as modified in the fashion discussed above. The regulations are divided into six subparts:

Subpart A contains the purpose, scope, responsibilities and definitions applicable to this Part 220. It should be noted that a number of these provisions contain significant administrative interpretations of the Act. Of particular importance is the definition of a protected employee contained in § 220.01(1). This definition limits the scope of the Rehire Program to an employee who had a employment relationship with a covered air carrier on the Trigger Date and who occupies a position which entitles the individual to accrue seniority rights or to possess recall rights under the applicable collective bargaining agreement or company policy. Specifically, this definition exempts a seasonal or temporary employee who does not occupy such a position.

Similarly, positions which are seasonal or temporary and do not confer seniority or recall rights have been exempted from the vacancy filing requirements contained in Section 220.22 This interpretation recognizes the industry practice of hiring temporary or seasonal workers, such as college students and military personnel, over Christmas holidays and periods of peak summer travel. These workers do not accrue any seniority rights, and their employment is terminable at will without recall rights. Because the Rehire Program is intended to facilitate the permanent reemployment of employees with a long-term commitment to the industry, the Department believes that coverage of seasonal and temporary employees and positions, so long as they do not confer seniority or recall rights, was not intended by the Act.

While air carriers are free to hire non-designated employees to fill seasonal or temporary positions. Section 220.20(b) prohibits an air carrier from filing a vacancy which would otherwise be available to a designated employee by promoting a seasonal or temporary employee until the carrier has made the vacancy available to designated employees in accordance with the regulations. Conversely, carriers which fill permanent jobs by selection from among their temporary or seasonal employees can maintain this practice by listing their temporary and seasonal positions with the Center established under these regulations and hiring designated employees to fill those positions.

It should also be noted that under the regulations the Rehire Program is applicable only to certain protected employees. A "designated employee" is defined in § 220.01(f) as a protected employee who meets certain statutory eligibility tests as set forth in § 220.10. Only designated employees are entitled to exercise the first-right-of-hire.

Subpart B prescribes the eligibility requirements for, as well as the rights of, designated employees under the Rehire Program.

Section 220.10 implements the statutory limitation that only designated employees are eligible for the first-right-of-hire. Specifically excluded from

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eligibility as designated employees are protected employees who retire, voluntarily quit, strike, or withhold services in support of other employees on strike.

Section 220.11 provides that designated employees shall have a first-right-of-hire, regardless of age, in their occupational specialty and also protects existing seniority and recall rights with their former air carriers. This section additionally permits covered carriers to establish job qualifications or other hiring criteria which applicants must satisfy, subject to the limitations on such criteria set forth in § 220.21.

Subpart C enumerates the duties of covered air carriers under the Rehire Program.

Section 220.20 implements the statutory duty of covered air carriers to hire qualified designated employees before hiring any other applicant from outside the furloughed or existing work force of the hiring carrier. This section also explicitly recognizes a covered carrier's right to select the applicant of its choice from among the designated employees who apply for a given position.

Section 220.21 provides that, solely with respect to the Rehire Program, employment opportunities for designated employees may not be limited by a covered air carrier on the basis of initial hiring age, seniority or recall rights, or previous experience with another air carrier. This provision implements the express language of the Act that protected employees have a first-right-of-hire "regardless of age," thereby invalidating existing initial hiring age criteria of covered air carriers as they apply to designated employees in the Rehire Program.

Further, the Department believes that air carriers may not require the absence of seniority, recall rights or previous experience as a condition of employment for protected employees in the Rehire Program. However, these regulations are not intended to affect in any manner the hiring practices of covered air carriers regarding persons who are not designated employees or retirement policies of such carriers which do not discriminate against designated employees.

Section 220.22 provides that all certificated air carriers, including those certificated after the passage of the Act, must list their job vacancies with a Center established by the Secretary which will maintain and publish a comprehensive listing of available airline jobs (See § 220.40). This requirement was established in order to ensure that the comprehensive listing contains a listing of all available jobs, even if some listed jobs are not subject to the express duty to hire imposed under the Rehire Program. In addition, the availability of such a comprehensive list should provide the maximum opportunity for unemployed airline workers to obtain reasonably comparable employment at the earliest possible time.

Section 220.23 prescribes the content of vacancy listings which must be filed by air carriers.

Section 220.24 prohibits covered air carriers from filling a vacancy (other than on a temporary basis) with anyone other than a designated employee until the vacancy has been listed with the Center, pursuant to § 220.22, for at least 30 days.

Section 220.25 establishes a list of protected employees to be published by the Department. Covered air carriers are required to report specific identifying information for all persons who qualify as protected employees. Additionally, air carriers are required to notify each employee who had an employment relationship with the carrier on the Trigger Date as to whether or not that employee is deemed a protected employee. It should be emphasized that the employer is not required to use any particular form in notifying employees as to whether or not they are protected. Thus, for example, the carrier is free to notify current employees of their status by placing a statement to that effect on their pay stub.

An employee whom the air carrier determines is not a protected employee may submit evidence in support of his or her claim to protected employee status to the air carrier, and, under procedures outlined in § 220.26, the employee or his or her representative may appeal any adverse final determination by the air carrier to the Secretary. Any air carrier contemplating hiring a designated employee will be able to verify the employee's initial status as a protected employee by reviewing the list published by the Department.

Section 220.27 requires an air carrier to furnish each protected employee who is furloughed or terminated, other than for cause, during the ten years following the Trigger Date with appropriate written evidence that such employee is a designated employee at the time of such action. This requirement applies unless the furlough is for a specific period of less than 90 days. This requirement applies to all such furloughs or terminations between the effective date of the regulations and October 24, 1988. In addition, covered air carriers are required to make reasonable efforts to provide comparable evidence to protected employees who were furloughed or terminated by such carrier between October 24, 1978 and the effective date of the regulations.

Section 220.28 requires covered air carriers to make a semi-annual report of vacancies filled to the Department. For each vacancy filled by a non-designated employee, this report must contain a certification that no qualified designated employee filed a timely application.

Section 220.29 provides that a carrier under a specific EEO requirement emanating from a federal court or administrative order, consent decree, or conciliation agreement shall, to the extent possible, satisfy this obligation by hiring qualified designated employees. Where no such designated employees are available, the carrier may meet its EEO requirement by hiring nondesignated employees. The EEO obligation does not change a carrier's responsibility for following the hiring procedures established by this regulation.

Subpart D prescribes the obligations of designated employes in seeking to exercise the first-right-of-hire, including seeking suitable employement, making application for specific positions with covered air carriers and providing proof of eligibility for the first-right-of-hire.

Subpart E prescribes the responsibilities of the Department of Labor under the Rehire Program.

Section 220.40 provides that the comprehensive list of jobs available with air carriers will be established and maintained at the Center established by the Secretary. Air carriers may list jobs with this facility by telephone or in writing. The comprehensive list of vacancies will be published on a periodic basis, probably weekly, or as determined necessary by the Secretary.

Section 220.41 provides for the list of protected employees to be published by the Department and circulated to covered carriers.

Subpart F prescribes the beginning and ending dates of the effective period of these regulations and provides for the disclosure of information, collected by the Department, consistent with the Privacy Act (5 U.S.C. 552a).

Enforcement

The Act and its legislative history are silent on the existence of a means to enforce the Rehire Program, whether by seeking damages for failure to carry out requirements of the Act or any accompanying regulations or otherwise. After careful study, the Department has concluded that it is without specific enforcement authority under the Act. However, it appears that a private right of action may be available to a qualified

designated employee who actually applied for job vacancies. (See *Cort. v. Ash*, 442 U.S. 66, 78 (1975).

Drafting Information

This document was prepared under the direction and control of Hugh Reilly, at the time, Executive Assistant to the Assistant Secretary for Labor-Management Relations

Privacy Act

These regulations will create a system of records, which will include a list of protected airline employees, appeals and decisions on protected status, and reports of designated employees hired. The Department will publish in the **Federal Register** a notice of that system in accordance with section 552a(e)(4) of the Privacy Act.

Executive Order 12291

These regulations contain several provisions which entail economic costs for certificated air carriers and the Federal Government. In particular, these regulations establish: (1) Eligibility requirements and procedures for implementing the first-right-of-hire obligation established under the Act; (2) a comprehensive listing of airline job openings for all air carriers, including those certificated after the Trigger Date; (3) a list of protected employees to be published by the Department; (4) a one-time notice to all employees of covered carriers employed on the Trigger Date stating whether or not they qualify for protected status under the Act; (5) notices to furloughed and terminated employees; and (6) semi-annual reporting of any new hires to the Department, which includes certification for all jobs filled by someone other than a designated employee.

For several reasons the Department expects the actual economic impact of the regulations to be minimal. First, the essential element of the regulations—the duty to hire designated employees—is a statutory obligation, not one created by these regulations. Second, the program does not interfere with covered air carriers' internal promotion and recall practices for existing employees. Many job vacancies are filled internally through promotions of existing employees, while the Act and this rule are limited to outside hiring to fill job vacancies. This reduces substantially the number of actual job openings where first-right-of-hire provisions will apply. In addition, covered carriers are entitled to recall their own furloughed or terminated employees prior to offering positions to designated employees. Finally, the regulations contain an exemption allowing carriers to hire temporary and seasonal employees without preference to covered workers so long as such workers are not subsequently granted seniority or recall rights, or given permanent employment. Thus the regulations will affect neither existing seniority, promotion, or layoff policies nor short-term hiring practices.

Additionally, the exemption of seasonal and temporary positions recognizes a prevalent practice in the industry and allows employers maximum flexibility in meeting work force requirements during peak demand periods. Several carriers indicated it is common practice to use temporary and seasonal jobs to test employees, who may then be offered permanent employment. Under this rule these airlines may continue this practice, provided the initial temporary and seasonal job offering give the same perference in hiring as would be given to permanent jobs under these rules. This option gives the airlines maximum flexibility in dealing with temporary and cyclical employment while still assuring the first-right-of-hire for permanent jobs.

A third reason the Department expects the economic impact of the regulations to be minimal is that the regulations recognize the right of covered carriers to impose their own qualifications and hiring criteria (subject to certain prohibitions) on job applicants and to freely select from among all designated employee applicants who possess the requisite qualifications. Thus, the regulations maintain existing employer personnel policies and job criteria intact, and they do not impose dual personnel systems for qualified designated employees and other applicants. The only change from present carrier practices is that they are required by the Airline Deregulation Act to give preference to qualified designated employees in any outside hiring.

Two costs stemming from the obligation to hire designated workers come from the statutory prohibition against age discrimination and the statutory guarantee of a worker's recal rights. The Department recognizes that covered air carriers may experience some increase training costs because of the statute's prohibition against age restrictions and the requirement which insures preservation of seniority and recall rights. Since investments in training are amortized over a number of years, employers incur higher training costs for short tenure workers, everything else being equal. The designated employee pool may have a shorter tenure horizon on average than other applicants because it includes some older workers close to retirement or those who may be recalled back to their previous employer with their seniority rights intact.

In addition, carriers have commented that hiring experienced employees sometimes involves certain costs of "untraining" and that some workers may find it difficult to adjust to the system of a new employer. Nevertheless, many carriers have found it beneficial to hire experienced, displaced employees. The skills and experience of these employees will offset the problems associated with hiring them.

The problem with worker recall rights is particularly troublesome for airlines with wage scales below those of the older established airlines. Workers may choose to hire on with a smaller airline in today's hard times, but may want to return to their old employer when the economy recovers and industry growth resumes. This puts a potential burden on the carriers hiring these employees, because they may go through a costly period of breaking in these employees only to lose them to their former employers. For this reason, these regulations permit any covered carrier to require designated employees to reveal the status of their recall rights when exercising their first-right-of-hire. While arguably this may reduce the attractiveness of a designated employee who has good prospects for recall to his previous job, such a provision is necessary to allow these airlines to make informed hiring and personnel decisions with respect to designated employees. This policy will help reduce the costs of the program to carriers without undermining the basic protection afforded by the Act.

In sum, while the duty-to-hire obligation imposes some costs on employers, these regulations afford the carriers maximum flexibility in meeting this obligation. At the same time, workers are afforded their full rights as established by the Act. The Department concludes that its regulations defining the first right-of-hire impose no significant costs beyond those required by the Act.

The regulations detailing the administration of the program naturally impose some costs on the airlines. The principal administrative burdens placed on the airlines are: (1) The statutory requirement for all certificated airlines to list job vacancies, (2) a requirement that each covered carrier create a list of its protected employees, (3) a requirement that each covered carrier notify its protected employees of their protected status, (4) a requirement that each covered carrier notify furloughed

and terminated workers of their rights and (5) a requirement that each covered carrier submit a semi-annual list to the Department of Labor of all new employees hired. These reporting requirements are the minimum necessary to administer the program, and to guarantee employees their rights under the Act.

The statute requires all certificated airlines to list available jobs with the Center established by the Department. Several commentators argued that only covered carriers should be required to list jobs, because the more recently certificated airlines have no duty-to-hire obligation. However, neither the express language of the statute nor the legislative history support such an interpretation, and indeed they suggest that a comprehensive list be provided about a broad range of job opportunities. The requirement for listing vacancies is a clear statutory obligation for all airlines holding a Section 401 certificate.

In practice, the requirement for a listing will impose minimal costs in most hiring circumstances. First, the job listing generally requires only nine pieces of information. Thus each listing will be easy to prepare. In addition, a number of openings may be covered by a single job listing. For example, a single listing may solicit applicants for 20 flight attendant openings. Second, the rule allows employers to list job vacancies entirely by telephone, rather than through written job orders. This increases the efficiency of the job listing program and reduces unnecessary employer delays in filling job vacancies. Third, while the rules prescribe a minimum "waiting period" for each listing, a carrier must abide by this waiting period only if it hires a non-designated employee. The purpose of the waiting period is to assure that designated employees have the opportunity to exercise their rights, and it would be needlessly burdensome to require employers to wait out the listing period before hiring a designated employee. Thus, for example, carriers may retain applications of designated employees on file, and hire them at the same time they file the vacancy with the Center.

Even in cases when the carrier must wait 30 days, this requirement is not always burdensome. For example, the larger airlines generally hire entire classes of employees rather than isolated individuals. This type of hiring decision takes place well in advance, at which time employers may list the anticipated vacancies. Similarly, under negotiated union contracts many jobs must be bid to existing employees for a period of time before outside hiring can take place. These listings may be placed simultaneously with internal bidding procedures.

Finally, the listing of jobs with the Center is not without benefits. The national listing of openings and list of protected employees will increase the efficiency of the labor market in the airline industry by facilitating the matching of job vacancies with qualified applicants.

The remaining administrative requirements are not specifically required by the statute, but are held to be the minimum necessary to ensure the effectiveness of the first-right-of-hire and job listing programs. First, each covered carrier is required to submit to the Secretary a list of protected employees who were employed by that carrier at the time of deregulation. The Department had considered an alternative to such a list under which each individual had to declare his or her protected status whenever he or she asserted the first-right-of-hire, with this declaration subject to confirmation by the former employer. This alternative may be less expensive for any small airline which may not have automated employment records. However, several of the smaller carriers, which received their certificates shortly before deregulation have no protected employees and are not subject to this provision. And for many of the bigger airlines, the one-time generation of a master list of protected employees may be the most efficient alternative.

However, apart from the issue of costs, the overriding consideration in requiring a list was to assure that protected employee status is ascertained while employment records are still relatively current. This will avoid the costs of having to confirm employment records potentially ranging back 10 or more years in the later years of the program. In addition, requiring the list at the outset of the program assures that employment records will not be wiped out by any future bankruptcies or mergers of covered airlines. Therefore, while this alternative imposes higher initial costs than the case-by-case treatment, in the long run it may cost the same or less, and it will assure a much more effective administration of the program in the later years.

The requirement that covered carriers notify potentially protected employees (those with an employment relationship on October 24, 1978) of their protected status also is not a statutory requirement, but the Department considers it a necessary one if the program is to operate effectively. The employees so notified would know that they are protected or, at a minimum, they would know that they met one of the two criteria necessary for protected status. Those deemed not protected would then also be informed of the appeal rights available to them. Carriers could easily accomplish this notice on pay stubs or on other forms of internal communication for current employees. Similarly, notices of rights required by § 220.27 can be given to employees already furloughed along with the notices of protected status. Workers furloughed after the regulations become effective can receive notices of rights along with their separation papers.

The other requirement is that each covered carrier submit a semi-annual list of new employees hired (excluding recalls). While the precise costs of these reporting requirements cannot be estimated because the number of jobs to be filled through outside hiring is not known, they are expected to be minimal.

The cost to the Federal Government to establish the Center and to publish a minimum number of job vacancies would be $22,000 per year. If vacancies in the industry occurred at the same rates they occurred in the 1970's, the cost would be about $100,000 per year.

The increased administrative costs imposed on air carriers and the Federal Government as a result of the job listing program and the filing and processing of one-time notices and semi-annual reports will not be major. While the precise costs on air carriers cannot be estimated, the flexibility given to carriers to meet these requirements and the existence of automated personnel files for most of the carriers should reduce the costs to a minimum.

In conclusion, the Department has determined that this rule does not meet the tests for a "major rule" under Executive Order 12291. These rules carry out the statutory mandate of the Airline Deregulation Act to put the first-right-of-hire program into place, and they do so without expanding the scope of the program beyond the intent of Congress. The economic impact of these rules for implementing the first-right-of-hire program is substantially below the threshold for designation as a "major rule" by the Office of Management and Budget. It is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

The Department has sought to keep paperwork requirements to that minimum which would be necessary to secure the rights of protected employees. The regulation requires covered air carriers to: (1) Develop a list of their protected employees, (2) send notices of possible protected status, (3) send notices of furloughs and terminations and (4) file semi-annual reports on their hiring. In addition, all air carriers would also list job vacancies to create a comprehensive list of the industry. The latter provision is a direct statutory requirement, which can be accomplished by telephone.

Several commentators objected to the costs of preparing the list of protected employees and the notices. We believe, contrary to their assertions, that the existence of automated data systems will make the costs low. In any event, the alternative of verification of protected status at the time of a prospective hire could ultimately be more costly and less effective. The Department received no specific comments on the reporting requirements.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the information collection requirements that are included in this regulation have been submitted for review to the Office of Management and Budget. They are not effective until OMB approval has been obtained and the public notified to that effect through a technical amendment to this regulation.

Regulatory Flexibility Act

As indicated in the notice of proposed rulemaking, the Department finds that these regulations do not have a "significant economic effect upon a substantial number of small entities."

This is true both because the regulations do not impose substantial costs beyond those required by the Act, and because the costs fall to a large degree on large establishments. Contrary to the suggestions of several commentators, Congress gave no indication that distinctions should be drawn among the different certificated airlines. In addition, as noted already in this preface, the regulations afford maximum flexibility to airlines to prelist prospective positions and to take whatever other steps may reduce their costs of complying with the first-right-of-hire program. The reporting requirements generally are proportional to the number of employees affected, and therefore will not disproportionately burden the smaller carriers. In addition, several of the small carriers do not have protected employees, and they will not incur the costs of creating lists and notifying employees.

In addition, most of the covered carriers are large entities whether the definition of small entity is based upon annual revenues, or, as some commenters suggested, the definition is based upon employment or upon the kind of aircraft operated by the airline. In the notice of proposed rulemaking it was indicated that four of the carriers affected have gross annual revenues of under $10 million. In terms of employment, 19 of the carriers have fewer than 1,000 employees. In terms of aircraft type, if the 60-seat/18,000 pound payload standard is used, only seven carriers would be small businesses. Hence, these regulations do not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Regulatory Flexibility Act Certification

I, William E. Brock, Secretary of Labor, hereby certify, pursuant to 5 U.S.C. 605(b) that the final rule published hereinafter (29 CFR Part 220), for the Airline Employee Protection Program, will not have a significant economic impact on a substantial number of small entities. This conclusion is reached because this rule only has a minimal economic impact on a limited number of small air carriers certificated under section 401 of the Federal Aviation Act of 1958.

Signed at Washington, D.C. this 23rd day of December 1985.

Secretary of Labor.

List of Subjects in 29 CFR Part 220

Labor, Airline employees, Air carriers.

Accordingly, a new 29 CFR Part 220 is added to read as set forth below.

Signed at Washington, D.C. this 23rd day of December 1985.

William E. Brock,

Secretary of Labor.

PART 220—AIRLINE EMPLOYEE PROTECTION PROGRAM

Subpart A—Purpose and Scope of the Airline Employee Protection Program

Sec.
220.01 Definitions.
220.02 Purpose.
220.03 Scope.
220.04 Responsibilities of the Secretary of Labor.

Subpart B—Designated Employees' Eligibility and Rights

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220.22 Listing a vacancy.
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220.30 Designated employees' responsibilities.

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Subpart F—Administration

220.50 Effective period of the program.
220.51 Disclosure of information.
Appendix I—U.S. carriers certificated as of October 23, 1978 under Section 401 of the Federal Aviation Act of 1958, as amended.

Authority: Section 43(f) of the Airline Deregulation Act of 1978, Pub. L. No. 95–504, 92 Stat. 1750–1753 (49 U.S.C. 1552) (Secretary's Order No. 1–79, 44 FR 13093; Secretary's Order No. 3–84, 49 FR 29578).

Subpart A—Purpose and Scope of the Airline Employee Protection Program

§ 220.01 Definitions.

As used in this Part, unless the content otherwise indicates:

(a) "Act" means the Airline Deregulation Act of 1978, Public Law 95–504, 92 Stat. 1705.

(b) "Air Carrier" means an air carrier certificated under Section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(c) "Center" means the entity or location which from time to time may be designated by the Secretary to receive, maintain and distribute the job listing information required by this Part.

(d) "Corporate officer" means an individual who holds any officer's position established pursuant to the Articles of Incorporation or bylaws of any air carrier, or who is otherwise identified as an officer by any air carrier, in filings with the Federal Aviation Administration, Civil

Aeronautics Board or Securities and Exchange Commission or in any reports to stockholders or any public communications of an air carrier.

(e) "Covered air carrier" means an air carrier which was certificated prior to October 24, 1978 [A listing of such carriers appears as an appendix to these regulations].

(f) "Designated employee" means a protected employee who meets the eligibility requirements set forth in Section 220.10.

(g) "Effective period" means the period commencing on the effective date of these regulations and ending on the later of: (1) October 23, 1988, or (2) the last day of the final month in which the Secretary is required to make a payment under Section 43 of the Act; except that nothing in these regulations shall preclude the exercise of statutory rights and duties between October 24, 1978, and the effective date of these regulations.

(h) "Eligibility period" means the ten-year period beginning on October 24, 1978.

(i) "Employment relationship" means an attachment to a covered air carrier which includes, but is not limited to, compensated service, furlough, leave, or strike.

(j) "Equal employment opportunity requirement" means a specific equal employment requirement, pursuant to a federal court or administrative order, consent decree, or conciliation agreement, requiring that named individuals or specific members of a class are entitled to relief by virtue of the carrier's unlawful employment discrimination.

(k) "Occupational specialty" means the class, craft, or field of endeavor in which an individual was employed at the time of separation from a covered air carrier or in which the employee was employed during the 12 months immediately preceding the date of separation.

(l) "Protected employee" means a person other than a member of the Board of Directors or corporate officer of a covered air carrier:

(1) Who had an employment relationship with a covered air carrier on October 24, 1978, and

(2) Who on October 24, 1978, had four years of employment or four years accrued seniority with a single covered air carrier. The term employee shall include any full or part-time employee other than an employee in seasonal or temporary employment as defined herein. As used herein four years of employment shall mean not less than 48 months (whether or not consecutive) in which the employee actually completed the minimum number of hours of regular employment required for such employee's craft, class or position under the then applicable requirements of the employing carrier.

(m) "Seasonal employment" means employment during limited periods of the year due to peak market conditions or other factors which are periodic in nature, and in positions which do not confer seniority or recall rights.

(n) "Secretary" means the Secretary of Labor of the United States.

(o) "Temporary employment" means employment of limited duration which does not confer seniority or recall rights.

(p) "Terminated," means, unless expressly provided to the contrary, termination of employment, other than for cause.

(q) "Terminated for cause" means the separation of an individual from employment initiated by an air carrier for violation of such carrier's rules, policies, procedures, or practices pertaining to employee standards of conduct, job performance, or dependability.

(r) "Vacancy" means an employment opportunity other than seasonal or temporary employment, which an air carrier seeks to fill from outside its existing or furloughed work force.

§ 220.02 Purpose.

Section 43(d) of the Act provides a first-right-of-hire for designated employees of covered air carriers. The regulations in this Part are issued to effectuate section 43(d) (1) and (2) of the Act (hereinafter referred to as the Rehire Program).

§ 220.03 Scope.

(a) The Rehire Program is applicable only to designated employees, as more fully set forth herein, and only those employees who are expressly granted a hiring preference under the Act and these regulations have any rights under the Rehire Program. The Secretary of Labor will also publish a comprehensive list of jobs available with air carriers.

§ 220.04 Responsibilities of the Secretary of Labor.

The Secretary of Labor is responsible for administering the Rehire Program, and the Deputy Under Secretary for Labor-Management Relations and Cooperative Programs, Bureau of Labor-Management Relations and Cooperative Programs (BLMRCP) has been delegated responsibility for the following:

(a) The development and promulgation of policies, regulations and procedures covering the first-right-of-hire provisions of Section 43(d)(1) of the Act;

(b) The development and promulgation of policies, regulations, and procedures covering the comprehensive job list required under Section 43(d)(2) of the Act; and

(c) The establishment and implementation of reporting requirements for air carriers to obtain pertinent information necessary for fulfilling the Secretary's responsibilities under Section 43(d)(2) of the Act.

Subpart B—Designated Employees' Eligibility and Rights

§ 220.10 Eligibility requirements.

(a) To qualify as a designated employee eligible for rights under this Part 220, an applicant must be a protected employee who is involuntarily placed on furlough or is terminated by a covered air carrier during the eligibility period.

(b) A protected employee shall not be deemed to be furloughed or terminated if such employee:

(1) Retired voluntarily;

(2) Was required to retire by virtue of reaching the mandatory retirement age, if any, established by a covered air carrier or as prescribed by any government agency with regulatory authority over a covered air carrier;

(3) Retired due to a disability;

(4) Is on strike or is withholding services in support of other employees who have struck the covered air carrier;

(5) Is terminated for cause as defined in § 220.01;

(6) Resigned or voluntarily quit for any reason.

(c) A designated employee who is recalled by his former carrier is no longer eligible under this section to exercise the first-right-of-hire. Such a person may become a designated employee in the future due to a subsequent termination or furlough which occurs on or prior to the expiration of the eligibility period.

§ 220.11 Designated employees' rights.

(a) A designated employee shall have a first-right-of-hire in such employee's occupational specialty, regardless of age, with any covered air carrier hiring additional employees; *Provided, however,* That each designated employee must satisfy all qualifications or other requirements established by the hiring carrier (subject to the limitations contained in Section 220.21) and must make a timely application in accordance with normal carrier procedures for any particular job vacancy.

(b) A designated employee hired by any covered air carrier pursuant to the provisions of the Act shall not be

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required, as a condition of employment, or in any other manner, to relinquish, waive, or forfeit any seniority or recall rights which such person may possess with any other air carrier; *Provided, however,* That the provisions of this part shall not be deemed to create or prolong any such seniority or recall rights.

Subpart C—Carriers' Responsibilities

§ 220.20 Duty to hire.

(a) Subject to § 220.24, a covered air carrier shall have the duty to hire a designated employee, regardless of age, who otherwise meets the qualification requirements established by such carrier before it hires any other applicant when such carrier is seeking to fill a vacancy in the designated employee's occupational specialty from outside its work force. As used herein "work force" shall include all present employees and any furloughed or terminated employees who, at the time of furlough or termination, possessed recall or seniority rights.

(b) Subject to the provisions of § 220.24, a covered air carrier shall not fill a vacancy, which would otherwise be available to a designated employee, by promoting or reassigning a seasonal or temporary employee, *unless* such seasonal or temporary employee is a designated employee.

(c) When considering applications from more than one designated employee for a particular vacancy, a covered air carrier shall be entitled to offer employment to any such designated employee in its absolute discretion.

§ 220.21 Criteria for Employment.

(a) A covered air carrier shall be entitled to apply any prerequisites or qualifications determined by it for any vacancy, except that, solely with respect to the duty to hire created by the Act, a covered air carrier shall not be entitled to limit employment opportunities for designated employees on the basis of:

(1) Initial hiring age (provided that such prohibition shall not be applicable to retirement ages applicable to all of any class or craft of such air carrier's employees); or

(2) The existence of any seniority, recall rights or previous experience with any other air carrier; *Provided, however,* That covered air carriers shall be entitled to require prospective employees to disclose the existence of any such seniority or recall rights in making application for employment and to take the existence or nonexistence of such rights into account in selecting from among those qualified designated employees who have applied for a particular job vacancy.

(b) In filling job vacancies during the effective period, covered air carriers shall be entitled to require applicants to furnish evidence that they are designated employees.

§ 220.22 Listing a vacancy.

(a) During the effective period all air carriers shall be required to list each vacancy with the Center at the earliest practicable time, and to include with such listing a statement as to whether the carrier is subject to an equal employment opportunity requirement, as defined in these regulations, in filling the vacancy. In addition, any air carrier shall be entitled to list anticipated vacancies with the Center at any time.

§ 220.23 Content of vacancy listing.

Air carriers shall provide the Center with a description for each job listing, which shall include, but need not be limited to, the following—

(a) Job title;

(b) Type of position (full or part-time);

(c) Salary;

(d) Basic qualifications and/or training requirements;

(e) Brief description of duties;

(f) Location of vacancy (if known);

(g) Special requirements such as type rating, licensing, skill requirements, etc.;

(h) Whether the vacancy is subject to the duty to hire;

(i) Information on how to apply, such as contact peson, mailing address, and any special application procedures; and

(j) Whether the carrier is subject to an equal employment opportunity requirement, as defined in these regulations, in filling the vacancy.

(Approved by the Office of Management and Budget under OMB Control Number 1214–0002.)

§ 220.24 Filling a vacancy.

(a) A covered air carrier may fill a vacancy with a designated employee at any time after a vacancy has been listed with the Center.

(b) A covered air carrier may fill a vacancy with someone who is not a designated employee after the vacancy has been listed with the Center for at least 30 days; if

(1) No designated employee with the requisite occupational specialty has applied for the vacancy in accordance with § 220.30 within that time;

(2) No designated employee who did apply within that time period meets the carriers' criteria for employment as set forth in § 220.21; or

(3) The vacancy is subject to an equal employment opportunity requirement and the carrier cannot satisfy such equal employment opportunity requirement by hiring a designated employee.

(c) A covered air carrier may fill a vacancy on a temporary basis with someone who is not a designated employee while the carrier is considering applications for the vacancy which were received from designated employees during the listing period.

(d) The date of the listing shall be the date on which the listing is received by the Center.

§ 220.25 List of protected employees.

(a) Within 60 calendar days of the effective date of these regulations, each covered air carrier shall provide the Secretary with a list of all protected employees who were employed by it on October 24, 1978.

(Approved by the Office of Management and Budget under OMB Control Number 1214–0002.)

(b) The list shall contain the following information:

(1) Protected employee's name;

(2) Social Security number (if available); and

(3) Current occupational specialty for present employees or occupational specialty at the time of separation from employment for former employees.

(c) Not later than 90 calendar days after the effective date of these regulations, each covered air carrier shall provide a onetime notice to each employee with an employment relationship with the carrier on October 24, 1978, stating whether or not the carrier has determined that employee to be a protected employee within the meaning of these regulations, and if so that the carrier has reported his or her name to the Secretary. Employees who are determined to be not protected shall be advised of their rights to appeal.

(2) Employees who dispute the carrier's determination of protected status may submit evidence of their status to the covered air carrier within 60 calendar days of receiving the notice required by paragraph (c)(1).

(3) The covered air carrier shall consider the evidence submitted by the employee and shall inform the employee of its final determination within 15 calendar days of the submission of evidence. In the event the carrier determines that the employee qualifies as a protected employee, it shall forward the information required by paragraph (b) of this section to the Secretary.

§ 220.26 Appeals to the Secretary.

(a) If the employee disagrees with the carrier's final determination under § 220.25 that he or she is not a protected

employee within the meaning of this part, the employee (or his or her designated representative with express authorization) may appeal such determination to the Secretary within 60 calendar days of the carrier's final decision under § 220.25(c)(3) or the date when such decision was required.

(b) An appeal must be written, dated, and signed by the employee. It must set forth:

(1) The full name, address, and telephone number of the employee;

(2) The full name and address of the carrier making the determination; the full name of the individual(s) who made the determination for the carrier and the date of that determination;

(3) A summary of the pertinent events and circumstances concerning the employee's status and the basis of the disagreement, including the original date of hire, date of all periods of furlough, leave or termination, and copies of relevant documents; and

(4) Such other information as may be required by the Secretary.

(c) Any appeal hereunder may be filed with the Airline Employee Protection Program, Bureau of Labor-Management Relations and Cooperative Programs, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210.

(d)(1) Upon receipt of an appeal, the Secretary will request information from the parties or conduct such other investigation as may be required.

(2) Upon review of the entire record, the Secretary shall determine either that—

(i) The employee qualifies for protected status, and the Secretary shall add the employee's name to the list of protected employees and so notify the parties; or

(ii) The employee does not qualify for protected status and so notify the parties.

§ 220.27 Notice of Rights.

(a) Not later than the date of separation from employment, a covered air carrier which furloughs or terminates a protected employee during the eligibility period, unless such furlough is limited to a specific period of less than 90 calendar days, shall furnish such protected employee with a notice of rights in the form of a letter or other written documentation that such employee is a designated employee and thereby is entitled to exercise a first-right-of-hire. Such notice of rights shall include, but not be limited to, the following information:

(1) Name;

(2) Social Security number (if available);

(3) Occupational specialty;

(4) Date of furlough or termination;

(5) An official of the covered air carrier who can verify the individual's status as a designated employee; and

(6) Signature, name, and location of the certifying official.

(b) As soon as practicable, but not later than 60 calendar days following the effective date of these regulations, each covered air carrier shall make a reasonable effort to provide the notice or rights required in paragraph (a) of this section to any designated employee who was furloughed or terminated by such carrier on or after October 24, 1978, and prior to the effective date of these regulations and who has not been recalled to employment by such covered air carrier.

(c) A covered air carrier shall provide a verified true copy of the notice of rights to a designated employee who has lost his or her original copy.

(Approved by the Office of Management and Budget under OMB Control Number 1214–0002.)

§ 220.28 Air carrier actions to be reported to the Secretary.

(a) A covered air carrier shall report to the Secretary:

(1) The names and Social Security numbers (if available) of all designated employees hired by it, and

(2) The filling of any vacancy with other than a designated employee.

With respect to any occurrences reported under paragraph (a)(2) of this section, the report of the covered air carrier shall contain the job order number assigned to that vacancy by the Center, the date of hire, and a certification by a corporate officer that the carrier complied with the provisions of this part and that no qualified designated employee with the requisite occupational specialty applied in a timely manner.

(b) Two copies of the reports required by this section shall be filed with the Secretary covering the six-month periods ending June 30 and December 31 of each calendar year in which these regulations are in effect and shall be submitted within 60 calendar days of the end of the reporting period.

(Approved by the Office of Management and Budget under OMB Control Number 1214–0002.)

§ 220.29 Equal Employment Opportunity.

(a) Where a covered air carrier is under an equal employment opportunity requirement, the covered air carrier shall, to the extent possible, satisfy this equal employment obligation by hiring qualified designated employees.

(b) Where a covered air carrier is under an equal employment opportunity requirement and cannot satisfy such requirement by hiring from the pool of qualified designated employees, the carrier may meet its equal employment requirement by hiring non-designated employees. *Provided, however,* That this provision shall not change or reduce the responsibilities of carriers in regard to the hiring procedures required by §§ 220.21, 220.22, 220.23, and 220.24.

Subpart D—Designated Employees' Responsibilities

§ 220.30 Designated employees' responsibilities.

It is the responsibility of each designated employee to:

(a) Make application to any covered air carrier for whom the designated employee desires to work in the time and manner required by such carrier.

(b) To insure that an application previously submitted to a covered air carrier which currently lists a vacancy is in an active status so as to be considered for such vacancy;

(c) To provide a copy, if requested, of the notice of rights to a potential employing air carrier; and

(d) To retain the original notice of rights for future use.

Subpart E—Department of Labor's Responsibilities

§ 220.40 Comprehensive job list.

(a) The Secretary shall establish a Center to maintain a comprehensive listing of all vacancies listed by air carriers in accordance with §§ 220.22 and 220.23.

(b) The Center will be accessible by telephone throughout the United States to facilitate the listing or modifying of vacancy information by air carriers.

(c) The Center shall provide an air carrier with an identifying number for each vacancy listed on the comprehensive listing.

(d) The comprehensive listing shall be compiled, published and distributed to each local office of the State Employment Security Agencies on a periodic basis as determined necessary by the Secretary, and it shall be distributed to such other individuals or organizations as may desire to receive copies thereof in accordance with criteria established by the Secretary from time to time.

§ 220.41 List of protected employees.

The Secretary shall establish and publish a list of protected employees as reported by covered air carriers under § 220.25. A copy of this list shall be sent to all covered air carriers as soon as available.

Subpart F—Administration

§ 220.50 Effective period of the program.

(a) *Beginning date.* (1) The requirements set forth in this part shall be effective thirty (30) days after publication in the **Federal Register.**

(b) *Ending date.* This program and these regulations terminate on the last day of the effective period.

(c) Nothing in this Part shall affect the rights and duties of protected employees and covered air carriers under the Act prior to the effectie date of this part.

§ 220.51 Disclosure of information.

The Department of Labor shall make available to covered air carriers and to designated employees or their authorized representatives, all reports, certifications, or lists collected under this Part, to the extent permitted by the Privacy Act (5 U.S.C. 552a) and the Department's regulations issued pursuant to that Act (29 CFR Part 70a).

Appendix I—U.S. Carriers Certificated as of October 23, 1978, Under Section 401 of the Federal Aviation Act of 1958, as Amended

(Annotations Reflect Operating Status as of December 2, 1985.)

1. Airlift International, Inc.
2. Air Micronesia, Inc.
3. Air Midwest
4. Air New England, Inc.*
5. Air Wisconsin, Inc.
6. Alaska Airlines, Inc.
7. Allegheny Airlines, Inc. (*2*)
8. Aloha Airlines, Inc.
9. American Airlines, Inc.
10. Aspen Airways, Inc.
11. Braniff Airways, Inc. (*1*)
12. Capitol International Airways, Inc.*
13. Chicago Helicopter Airways, Inc.*
14. Colonial Airlines, Inc.*
15. Continental Air Lines, Inc.
16. Delta Air Lines, Inc.
17. Eastern Airlines, Inc.
18. Evergreen International Airlines, Inc.
19. The Flying Tiger Line, Inc.
20. Frontier Airlines, Inc.
21. Hawaiian Airlines, Inc.
22. Hughes Air Corp.* (*4*)
23. Kodiak Western Alaska Airlines, Inc.*
24. Mackey International Airlines, Inc.*
25. McCulloch International Airlines, Inc.
26. Midway Airlines, Inc.
27. Midway (Southwest) Airways, Co.*
28. Modern Airways, Inc. (*1*)
29. Munz Northern Airlines, Inc.*
30. National Airlines, Inc.* (*5*)
31. New York Airways, Inc.*
32. North Central Airlines, Inc.* (*4*)
33. Northwest Airlines, Inc.
34. Overseas National Airways, Inc.* (*6*)
35. Ozark Air Lines, Inc.
36. Pan American World Airways, Inc.
37. Piedmont Aviation, Inc.
38. Reeve Aleutian Airways, Inc.
39. Rich International Airlines, Inc. (*1*)
40. Seaboard World Airways, Inc.* (*7*)
41. Southern Air Transport, Inc.
42. Southern Airways, Inc.* (*4*)
43. Texas International Airlines, Inc. (*8*)
44. Trans International Airlines, Inc. (*9*)
45. Trans World Airlines, Inc.
46. United Airlines, Inc.
47. Western Air Lines, Inc.
48. Wien Air Alaska, Inc.
49. World Airways, Inc.
50. Wright Air Lines, Inc.
51. Zantop International Airlines, Inc.

* No longer holds certificate.

(*1*) Holds certificate, but not operating.

(*2*) Renamed U.S. Air, Inc.

(*3*) Renamed Capitol Air, Inc.

(*4*) Merged into Republic Airlines, Inc.

(*5*) Merged into Pan American World Airways, Inc.

(*6*) Ceased operation in September 1978. United Air Carriers, Inc., dba National Airlines and dba Overseas National Airways, may be a successor.

(*7*) Merged into Flying Tiger Line, Inc.

(*8*) Merged into Continental Airlines.

(*9*) Renamed Transamerica Airlines, Inc.

Note.—This appendix will appear in the Code of Federal Regulations.

[FR Doc. 85-30644 Filed 12-26-85; 8:45 am]

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Friday
December 27, 1985

Part V

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources: Opacity Provisions; Final Rule and Proposed Rule

BEST COPY AVAILABLE

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2881-9(b)]

Standards of Performance for New Stationary Sources; Opacity Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Amendments to the opacity provisions affecting emissions from new stationary sources were proposed in the **Federal Register** on July 31, 1984 (49 FR 30676). This action promulgates the opacity amendments. These amendments implement Section 114 of the Clean Air Act and are based on the Administrator's determination that opacity recordkeeping and reporting are necessary to demonstrate compliance with the respective opacity standards. These data will also be used during reviews of the opacity standards so that EPA can make a sound judgment as to whether the standards are appropriate. The intended effect of these amendments is to require that owners or operators of affected facilities that are subject to opacity standards in 40 CFR Part 60 record and report the opacity of emissions during the initial performance test.

In addition to this final rulemaking action, a separate notice in this issue of the **Federal Register** is being proposed which would allow the use of continuous opacity monitors (COM) (transmissometers) as an alternative method of determining compliance with the opacity standards contained in 40 CFR Part 60.

EFFECTIVE DATE: December 27, 1985. Under section 307(b)(1) of the Clean Air Act, judicial review of the actions taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated opacity amendments may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Background Information for Promulgated Opacity Provisions," EPA-450/3-85-013. The BID contains (1) a summary of all the public comments made on the proposed amendments and the Administrator's responses to the comments, and (2) a summary of the changes made to the opacity provisions since proposal.

Docket. A docket, number A-83-43, contining information considered by EPA in development of the promulgated opacity provisions, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5778.

SUPPLEMENTARY INFORMATION:

I. The Opacity Provisions

The amendments to the opacity provisions apply to owners or operators of affected facilities that are subject to opacity standards in 40 CFR Part 60 and require that such owners or operators conduct opacity observations during the initial performance test, and record and report the results. For the purpose of demonstrating compliance with the opacity standard, the minimum total time for the observation is 3 hours (30 6-minutes averages). This is consistent with the item required for mass performance tests but also applies to observations at sources subject only to an opacity standard.

For the purpose of demonstrating initial compliance, opacity observations are to be conducted concurrently with the initial performance test required in 40 CFR 60.8, unless one of the following conditions apply. If no performance test under § 60.8 is required, then the opacity observations are to be conducted within 60 days after achieving the maximum reduction rate at which the affected facility will be operated but no later than 180 days after initial startup of the facility. If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial performance test required under § 60.8, the opacity observation is to be rescheduled as soon after the initial performance test as possible, but not later than 30 days after the initial test. In these cases, the amendments allow the 30-day prior notice to the Administrator of the opacity observation test to be waived. The rescheduled opacity observations will be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under § 60.8. The visible emissions observer will determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial performance test. This determination will be made in accordance with procedures contained in Method 9 of Appendix B (40 CFR Part 60) and the observer's experience in reading opacity.

As allowed under § 60.11(e)(1), the Administrator may request the records necessary to determine the conditions under which the visual observations were made. The opacity amendments also require the owner or operator of an affected facility collecting Method 9 data to provide to the Administrator evidence indicating proof of current visible observer emission certification.

The amendments allow a source owner or operator to request the Administrator to use an EPA-certified visible emissions observer, if available, to conduct and to record to opacity observations. These requests will be included in the notification required under § 60.7(a)(6). If, for some reason, EPA cannot furnish a certified observer, then the source owner or operator must obtain a certified observer to conduct and record the opacity. In either case, it is the responsibility of the source owner or operator to report the opacity results. The inability of a source owner or operator to secure a visible emissions observer will not be considered a reason for not conducting the opacity observations concurrent with the initial performance test.

In addition, the amendments require owners or operators of affected facilities already required to monitor opacity continuously by COM to report the opacity monitoring data for the duration of the initial performance test required in § 60.8. The COM must be certified according to Performance Specification 1 contained in Appendix B of 40 CFR Part 60 before the performance test is conducted.

II. Public Participation

The amendments to the opacity provisions were proposed in the **Federal Register** on July 31, 1984 (49 FR 30676). Public comments were solicited at the time of proposal. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed amendments, a public hearing was

scheduled to be held on August 28, 1984, at Research Triangle Park, North Carolina. However, a public hearing was not held because it was not requested.

The public comment period was from July 31 to October 1, 1984. Nineteen comment letters were received concerning issues relative to the proposed opacity amendments. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed opacity amendments.

III. Significant Comments and Changes to the Proposed Standards

Comments on the proposed opacity provisions were received from industry, State and local air pollution control agencies, and a law firm representing members of the Utility Air Regulatory Group (UARG). A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the ADDRESSES section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the opacity provisions between proposal and promulgation. The major comments and responses are summarized in this preamble.

In response to public comments received on the proposed rulemaking and as a result of EPA reevaluation, three major changes were made in the proposed opacity provisions prior to promulgation. The proposed requirement to conduct opacity observations and to record and report the opacity results during each performance test has been changed to require that these tasks be performed during the initial performance test only.

The promulgated revisions allow a source owner or operator to request the Administrator to use an EPA-certified visible emissions observer, if available, to conduct and record the opacity observations. However, if for some reason, EPA cannot furnish a certified observer, then the source owner or operator must obtain a certified observer to conduct and record the opacity. In either case, it is the responsibility of the source owner or operator to report the opacity results.

The promulgated revisions also allow the 30-day prior notice to the Administrator of the opacity observation test for compliance purposes to be waived if visibility or other conditions prevent the opacity observations from being taken concurrently with the initial performance test. In these cases, the opacity observation test would be rescheduled as soon after the performance test as possible.

In addition to the previously discussed changes which are being promulgated, a separate revision to the opacity provisions in 40 CFR Part 60 is being proposed in this issue of the **Federal Register** in response to public comments and EPA reevaluation. The proposed revision would allow a source owner or operator the option of submitting to the Administrator the results of continuous opacity monitoring by transmissometer for the purpose of determining compliance with the respective opacity standard in lieu of Method 9 results for the initial performance test. If monitoring results are submitted for compliance purposes, the owner or operator would not be required to conduct an opacity observation test using Reference Method 9.

Most of the comment letters contained multiple comments. Eight major comments and responses are summarized in this preamble.

Comment: One commenter suggested that EPA consider adding a provision to allow for the waiver of opacity tests after the initial performance test. Another commenter felt that the statement in proposed § 60.11(e)(1) which indicates additional Method 9 observations shall be taken "at such times as may be required by the Administrator" should be clarified to state that Method 9 observations are not required during periodic particulate emission tests conducted after the initial performance test. The commenter went on to say many States which have received delegation authority from EPA to carry out the new source performance standards (NSPS) program do require sources to perform periodic particulate emission tests for compliance purposes, in addition to requiring excess emission reports based on continuous opacity monitoring.

Response: In consideration of these comments and in an effort to reduce the recordkeeping and reporting costs associated with periodic opacity observations, the final rule has been revised to require that the owner or operator of an affected facility, to which an opacity standard applies, conduct, record, and report opacity observations during the initial performance test only. (Generally, NSPS require only an initial compliance test for each affected facility. Therefore, the opacity recordkeeping and reporting requirements have been limited to the initial compliance test.) However, this limitation does not affect either the EPA's or the States' authority to require a source owner or operator to conduct periodic emission and opacity observation tests after the initial performance test.

Comment: A trade association questioned whether the 30-day prior notification to EPA of the opacity observation was practical because there is no assurance that the plant would actually be operating on a specific day, or that visibility conditions would permit opacity observations on that date. The commenter felt that the uncertainty of operating and visibility conditions at a future date did not justify the cost of this procedure and, therefore, recommended that the 30-day prior notice to EPA of the opacity observation not be implemented. A second commenter felt that requiring advance notification of opacity observations in all instances was unnecessary, but offered no support for this conclusion.

Another commenter was concerned about the provision which states ". . . if visibility conditions prevent opacity observations [concurrently with the performance test], then observations shall be conducted within 60 days after achieving the maximum production rate . . . but no later than 180 days after initial startup . . ." The commenter stated that startup problems could delay a facility from achieving the maximum production rate or otherwise force a facility to conduct the intitial performance test near the end of the 180-day period. For example, if weather conditions did not permit the opacity observation to be taken simultaneously with the performance test and there was not enough time to reschedule the opacity observation within the 180-day time period, a source could fail to meet the provision through no fault of its own. Further, such a situation might not permit a source to give the 30-day notice required. Thus, the commenter recommended that the provision be revised to allow the opacity observations to be rescheduled within 60 days of the completion of the performance test if visibility conditions prevent opacity observations concurrently with the performance test.

Response: The purpose of the 30-day prior notification to EPA of the opacity observation test is to allow time for the appropriate EPA, State, or local enforcement agency to have an observer present during testing. Once a source reaches its maximum production level and the level at which the opacity observation would be performed, it can be assumed that it will continue to operate at that level on a daily basis unless something unforseen occurs, such

as a breakdown in the process or emission control equipment or adverse weather conditions. However, the prediction of these types of occurrences is beyond the control of both the source owner or operator and the EPA. The Agency cannot justify eliminating the 30-day prior notification requirement based on the likelihood that something unforeseen might prevent the opacity observation from taking place on the scheduled date. The Administrator believes the 30-day prior notification requirement is practical and necessary. However, if visibility or other conditions prevent the opacity observation from being taken on a scheduled date or prevent the opacity observation from being taken simultaneously with the initial performance test required under 40 CFR 60.8, then the opacity observation should be rescheduled as soon after the mass emission performance test as possible, depending on the particular circumstances. In these cases, the 30-day prior notice to EPA would be waived and the source owner or operator would advise EPA of the rescheduled date for the opacity observation. Also, if the affected facility is already using a COM, an amendment to Section 60.11(b) is being proposed to allow the submittal of those monitoring results for compliance purposes along with the mass emission test results in lieu of conducting an opacity observation.

In addition, it does not appear that the cost of this procedure would be a significant factor because (1) the 30-day notification would be required only for the initial opacity observation test, and (2) if an EPA, State or local official is present during the opacity observation, the owner or operator may elect to request that official to record the opacity readings in lieu of contracting for that function, thus eliminating the cost of an observer. The Administrator believes that the 30-day prior notification to EPA of the opacity observation is necessary for effective enforcement and, therefore, this requirement has not been changed in the promulgated revision.

Comment: Several commenters requested that consideration be given to reducing the proposed minimum opacity observation period of 30 6-minute averages (3 hours) for each performance test for the following reasons:

1. A 3-hour period probably would not produce better data and may decrease the quality of the data by increasing the burden on the opacity observer, i.e., visual fatigue, and a corresponding reduction in the validity of the Method 9 results.

2. This quantity of testing is not necessary to determine compliance with opacity limitations.

3. It would require several extra persons on every test in order to take readings every 15 seconds over a 3-hour period.

4. A 3-hour period is excessive and redundant. If a unit is operating smoothly and at a steady production rate, the opacity should not be fluctuating over the course of 3 hours.

5. The requirement to conduct 720 opacity readings (30 6-minute averages) without concurrent performance testing appears unreasonable.

The commenters offered the following alternatives for minimum opacity observation periods:

1. Seventy-five opacity readings (three Method 9 runs).

2. One hour of observations taken concurrently with one of the three particulate runs.

3. A minimum of two representative 6-minute average opacity readings taken concurrently with each one of the required three particulate sampling runs.

4. Four 6-minute average opacity observations during a performance test.

5. One hour of observations during the same time period as required for performance tests in Section 60.8 or as approved by the Administrator.

6. Thirty 6-minute readings only for the initial performance test, not for subsequent performance tests.

Response: The EPA has considered the reasons given for reducing the minimum opacity observation period of 30 6-minute averages (3 hours) for a performance test and the alternatives offered by the commenters and has decided that a minimum of 30 6-minute averages for the opacity observation test is necessary in order to provide the Agency with enough data upon which to determine compliance with the opacity standard.

During the standard-setting process, opacity data from many different emission sources are obtained. An analysis of the opacity data from many different emission sources are obtained. An analysis of the opacity data will result in identifying the highest opacity levels reached by one or more emission sources. The opacity standard is based on considertion of the highest opacity levels normally expected from complying sources within the source category.

The Administrator does not agree that a 3-hour period would result in visual fatigue for the observer, a corresponding reduction in the validity of the Method 9 results, or would require extra persons for every test. Most sources subject to an opacity standard are also subject to a mass emission limit. In these cases, the initial performance tests to determine compliance with both standards should, if possible, be conducted simultaneously. The performance tests would consist of three separate runs using the applicable test method. Generally, each run would last at least one hour but these three test runs would seldom be made without a break in between. It would be necessary to allow time after each run to prepare for the next one, which would also provide a rest period for the opacity observer. Even if the opacity observation test were not conducted concurrently with a mass emission performance test (for example, some affected facilities are subject only to an opacity standard), the opacity observer should take periodic breaks during the 3-hour period to avoid any visual fatigue as described in the method. This procedure would ensure the validity of the Method 9 results and would alleviate any need for extra persons in conducting the opacity observation test.

Another reason given by the commenters for reducing the 3-hour period was that the opacity should not fluctuate over the course of 3 hours. However, it has been the Agency's experience that opacity does sometimes vary during the 3-hour period. For example, in the NSPS for lime manufacturing plants promulgated on April 6, 1984 (49 FR 18076), the opacity standard for kilns was revised from 10 to 15 percent based upon available data. A total of over 1,200 Method 9 6-minute averages were gathered simultaneously with Reference Method 5 mass emission tests (each test lasted 3 hours); 889 were zero, but 4 of the 6-minute average opacities exceeded 10 percent. All opacity averages were normalized to a 3.0 meter stack diameter. Test data for one facility showed that there were two 6-minute average opacities at 10.6 percent during the 3-hour period. This clearly illustrates that opacity does sometimes vary during a 3-hour period. Consequently, it is important to conduct enough observations to assure variations during the performance test to ensure that representative opacity data are collected.

Although the comments offered several aternative minimum time periods of 1 hour or less, the Administrator does not believe that these time periods are of sufficient length to obtain enough data to ensure that representative results are obtained.

For these reasons, the Administrator believes that a 3-hour observation period is reasonable and has not

reduced the minimum opacity observation period of 30 6-minute averages. However, as discussed previously, the opacity observation, recordkeeping, the reporting requirements apply only to the initial performance test, not to any subsequent performance tests.

Comment: Several commenters recommended that facilities required to install COM be exempt from the opacity observation test for the following reasons:

1. Opacity monitors cannot be used as an enforcement tool; the opacity monitor could supply opacity data which, however, would indicate whether revisions to opacity limits are needed.

2. The opacity monitor results should be more reliable than opacity observations. The proposal requires 30 6-minute average visible emissions observations (720 15-second observations), whereas the opacity monitor can record continuous readings (unaffected by the normal problems encountered with opacity observations (meteorological conditions, fatigue)).

3. Requiring opacity observations during performance tests would require using additional testing personnel. The costs in terms of time and money outweigh any perceived benefit from the data collected. Use of the opacity monitor to obtain the necessary data would eliminate this expense to the source operator.

4. Requiring opacity observations is of particular concern for owners or operators of facilities with tall stacks, which must be observed at a significant distance from the stack. In some cases, a transmissometer may be the only accurate method for obtaining opacity readings from tall and large diameter stacks and plumes which contain condensed, uncombined water vapor.

5. The use of opacity monitors would be less costly, especially in the Northwest where clouds often preclude visual readings. Since the transmissometer is used to calibrate/certify the Method 9 observers, it seems appropriate to permit its use for sources which do not contain significant condensable matter.

6. Continuous opacity monitors are already required by EPA at affected facilities. Therefore, to require Method 9 visual observations also would place another burden on owners/operators to collect data already being recorded by the COM.

Response: After review and consideration of these comments, the Administrator has determined that sources required to use COM should be allowed the option of submitting monitoring results in lieu of conducting a Method 9 visual observation during the initial performance test or any subsequent performance test requested by the Administrator for the purpose of determining compliance. Recent studies (Docket A–85–08, Item II–A–1) have shown that continuous opacity monitoring results are reliable if the monitors have been properly operated and maintained. Since COM are capable of producing reliable data, it is, therefore, reasonable to allow those results to be used in lieu of Method 9 results. In a separate **Federal Register** notice, the agency is proposing to revise the General Provisions, 40 CFR 60.11 (b), to allow for the alternative of submitting opacity monitoring results for compliance determination in lieu of conducting an opacity observation during any performance test requested by the Administrator.

Comment: One commenter asked EPA to consider the proposed requirement for facility owners or operators to conduct opacity observations rather than EPA furnishing qualified observers for the following reasons. Observers would have to come from engineering consultants, test firms, or from the owner or operator's own staff if the Agency were to discontinue furnishing them. Such observers would likely never achieve the experience level of the present EPA observers because they would probably conduct opacity observations much less frequently. As a result, EPA would be required to train and certify a significantly larger, nonagency observer force than would otherwise be required, and the present quality of opacity compliance observations would be at risk.

Another commenter stated that 40 CFR 60.11(e)(1) presently allows an owner or operator of an affected facility to request the Administrator to determine the opacity of emissions. The commenter added that EPA, State, and local agencies already have certified visible emissions readers on staff. The owner or operator may not have this capability and, therefore, would have to train someone or contract someone to collect the data requested. The commenter cited a specific example of a recent performance test where the local Agency had a certified reader inspector record opacity, and the owner/operator contracted for a certified reader to also record opacity because he thought that was required by the proposal.

A third commenter expressed concern over the objectivity of industry-collected opacity data, especially in instances where it is used to demonstrate compliance with opacity standards. The Agency believed that Method 9 observations either by the firm conducting the emission test or by State/local air officials would be a more viable alternative.

Response: It is the source owner or operator's responsibility to conduct the opacity observations and to record and report the opacity during the initial performance test. In order to accomplish this, the owner or operator may (1) request a certified visible emissions observer from the EPA, State, or local agency to conduct the test, (2) conduct the opacity test in-house, or (3) hire a contractor to conduct the test.

Prior to today's revision of § 60.11(e)(1), an owner or operator could request the Administrator to determine the opacity of emissions from the affected facility during the initial performance tests, but there was no specification as to the number of observations or provision for recording and reporting the results. The proposed revision of § 60.11(e)(1) would have required that the owner or operator of an affected facility subject to an opacity standard conduct opacity observations, record, and report the opacity results. It was not the Agency's intent that an owner or operator should contract for a certified visible emissions reader if an EPA, State, or local certified reader were available during the test to record the opacity. therefore, The final rule § 60.11(e)(3)] has been clarified to indicate that the owner or operator of an affected facility may use a certified visible emissions reader from the EPA, State, or local agency, if available, to conduct opacity observations and to record the opacity readings. However, if for some reason, the EPA, State or local official cannot be present during the test or cannot conduct the opacity observation, then it is the responsibility of the owner or operator to obtain a certified reader to conduct and record the opacity. In addition, the owner or operator is responsible for maintaining the data file and reporting the test results.

Comment: One commenter referred to docket item II–F–1 which contains the estimated annual industry burden hours associated with the proposed recordkeeping and reporting. The estimate for steam generators (Subparts D and Da) was 128 hours per year, based on a total of 32 respondents. The commenter stated that the estimated burden seemed low for two reasons: (1) EPA had omitted the burden that would accompany Subpart Db regulations, and (2) the estimate appeared to ignore the fact that the revision would apply to compliance determinations made at any time not just those at initial startup, and would include pollutants in addition to

particulate matter. The commenter claimed that there are over 160 steam generators subject to the NSPS and that compliance determinations are made approximately once per year. Therefore, the burden for the electric utility industry could be five times higher than estimated. A second commenter (IV–D–10) believed that EPA had significantly underestimated the average annual industrywide recordkeeping and reporting burden because it did not include approximately 800 new steam generators proposed to be regulated over a 5-year period under 40 CFR Part 60, Subpart Db, and possibly an equal number of affected sources under the advanced notice of proposed rulemaking (ANPR) for industrial boilers smaller than 250 million Btu/hr.

Response: The estimated annual industry burden hours associated with the proposed recordkeeping and reporting requirements for steam generators (Subparts D and Da) did not include compliance determinations made after the initial compliance test. This is consistent with the final revision which requires opacity recordkeeping and reporting only during the initial compliance test; therefore, it is not necessary to recalculate the average annual industry-wide burden. The annual industry burden estimate included only source categories for which opacity standards had been promulgated as of January 1984. Therefore, the opacity recordkeeping and reporting requirement for Subpart Db sources and sources under the ANPR for industrial boilers smaller than 250 million Btu/hr were not included in the estimate. Rather, the opacity recordkeeping and reporting burden associated with these source categories, as well as other source categories promulgated after January 1984, will be calculated and submitted to the Office of Management and Budget (OMB) for review and approval on a standard-by-standard basis.

The OMB agreed to review one information collection requirement (ICR) for the opacity recordkeeping and reporting to cover 20 source categories. It was also agreed that once OMB approves the ICR and the final opacity provisions are promulgated, the appropriate burden hours from this ICR will be moved to the ICR's for each of the 20 source categories. Any necessary adjustments in the opacity recordkeeping and reporting burden will be made in the ICR for the individual source category.

Comment: One commenter stated that EPA apparently did not consider the total costs associated with the proposal. Travel time and expenses for a Method 9 observer would be in addition to the 3 hours for plume viewing. If the particulate testing results were found to be unacceptable or could not be carried out as scheduled or, for some reason, the Method 9 observation could not be conducted, the observer would have to return. According to the commenter, some industrial facilities may have a certified observer on site who could be used for the Method 9 observations. However, this observer would have to maintain his or her qualification by being recertified every 6 months, which normally involves travel and expenses for attending a government-run smoke reading certification program.

Another commenter was also concerned about the costs for obtaining a certified observer. This commenter estimated that a 2-day compliance test would cost between $1,000–2,000. This cost could double because of delays attributable to poor reading conditions. According to the commenter, most facilities cannot justify the costs involved in keeping a reader certified and, therefore, would require the use of consultants.

In addition, one commenter requested that EPA identify for OMB review the costs to train additional certified observers or hire consultants and the costs of scheduling the necessary tests. It was requested that EPA address these cost considerations prior to promulgating the proposed requirements.

Response: The final opacity provisions allow a source owner or operator to use an EPA-certified visible emissions observer, if available, to conduct and record the opacity observations. However, if an EPA observer is not available, it is estimated that the certification costs for a visible emissions observer employed by the source would be about $1,400 (includes travel, per diem, hotel, and wages for 2 days, twice a year; the twice-a-year assumption is very conservative in that only a one-time test is being required and no more than one certification would be necessary); the visible emission observation costs for a 3-hour test would be about $100 (includes 1 hour for data reduction). Therefore, the maximum total certification and observation costs are estimated to be about $1,500. If the source's observer is employed at a central facility off-site (for example, in the headquarters' environmental department), there would be travel time but this would be offset by the fact that the certification cost would be prorated among the various plants owned by the firm.

The Administrator believes that, in many cases, an EPA, State or local agency certified opacity observer would be available to conduct and record the opacity observations during the performance test and there would be no costs involved for the source owner or operator. In the event one is not available, the Administrator believes the total costs would be reasonable and, in addition, would be only a fraction of the total cost of a performance test conducted under § 60.8.

Comment: One commenter asked EPA to consider the proposed requirement to record and report continuous opacity monitoring data during compliance testing. The commenter stated that monitor certification typically involves 1 or 2 weeks of field activity, about 30 days for report preparation and about an equal amount of time for Agency analysis and response. Since compliance demonstrations are required to be conducted within 60 days after achieving the maximum production rate, certification procedures may not be complete at the time the demonstration is conducted. Therefore, EPA may have to accept opacity compliance demonstration reports pending the outcome of instrument certification.

Response: The General Provisions for NSPS (40 CFR 60.13) currently require that (1) all continuous monitoring systems be installed and operational prior to conducting a performance test, (2) verification of operational status must include, as a minimum, completion of the manufacturer's requirements for installation, operation, and calibration of the monitoring device, and (3) monitoring system performance evaluations must be conducted during the performance test or within 30 days thereafter and a written report of the results must be submitted within 60 days.

Much of the certification of opacity monitors is performed initially by the manufacturer; that is, the manufacturer certifies that the monitor does meet design criteria in Performance Specification 1 (Appendix B, 40 CFR Part 60). However, as required in Performance Specification 1 and in Section 60.13, after the monitor is installed, it must be operated for a specified length of time and its performance evaluated to ensure conformance with specific operational criteria. This evaluation requires a week to complete. This period of evaluation should take place before the opacity compliance test is conducted to ensure the accuracy of the monitoring results. Therefore, a change to § 60.13(c) is being made to specify that the continuous

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opacity monitor be ceritified according to Performance Specification 1 in Appendix B before the compliance test is conducted.

It is important to note that continuous opacity monitoring provides the only means through which an owner or operator can with precision assess the relative performance of a control device (Docket A–83–43, entry IV–J–1). As such, the monitor represents a valuable tool which can be used to optimize control equipment and process operations during the time these are coming on line. In most cases, it is to the advantage of the source to utilize the monitor for such purposes before performing the mass compliance test.

IV. Administrative

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated opacity provisions and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review [section 307(d)(7)(A)].

These amendments become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (July 31, 1984).

Information collection requirements associated with these amendments (those included in 40 CFR 60.7 and 60.11) have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2060–0076.

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to the requirements of a regulatory impact analysis (RIA). The Agency has determined that the amendments to the opacity provisions would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." The Agency has, therefore, concluded that these amendments are not a "major rule" under Executive Order 12291. This rulemaking was submitted to OMB for review as required by the Executive Order. Any written comments from OMB to EPA and any EPA response to those comments will be included in the docket.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because these amendments impose only a one-time testing, recordkeeping, and reporting requirement and would result in no adverse economic impacts, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the promulgated rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Reporting and recordkeeping requirements, Incorporation by reference, and Intergovernmental relations.

Dated: December 18, 1985.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60, Subpart A, is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Sec. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. In § 60.7, a new paragraph (a)(6) is added to read as follows:

§ 60.7 Notification and recordkeeping.

(a) * * *

(6) A notification of the anticipated date for conducting the opacity observations required by § 60.11(e)(1) of this part. The notification shall also include, if appropriate, a request for the Administrator to provide a visible emissions reader during a performance test. The notification shall be postmarked not less than 30 days prior to such date.

* * * * *

3. In § 60.11: 1. Paragraph (b) is revised. 2. Paragraphs (e)(1) and (e)(2) are revised. 3. Paragraphs (e)(3) and (e)(4) are redesignated as paragraphs (e)(6) and (e)(7). 4. New paragraphs (e)(3), (e)(4), and (e)(5) are added.

* * * * *

§ 60.11 Compliance with standards and maintenance requirements.

* * * * *

(b) Compliance with opacity standards in this part shall be determined by conducting observations in accordance with Reference Method 9 in Appendix A of this part or any alternative method that is approved by the Administrator. For purposes of determining initial compliance, the minimum total time of observations shall be 3 hours (30 6-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Following initial compliance, the minimum period of time allowed for determining compliance with the opacity standard using Method 9 shall be one 6-minute period.

* * * * *

(e)(1) For the purpose of demonstrating initial compliance, opacity observations shall be conducted concurrently with the initial performance test required in § 60.8 unless one of the following conditions apply. If no performance test under § 60.8 is required, then opacity observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial startup of the facility. If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial performance test required under § 60.8, the source owner or operator shall reschedule the opacity observations as soon after the initial performance test as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. In these cases, the 30-day prior notification to the Administrator required in § 60.7(a)(6) shall be waived. The rescheduled opacity observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under § 60.8. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial performance test in accordance with procedures contained in Reference Method 9 of Appendix B of this part. Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determing compliance with opacity standards. The owner or operator of an affected facility shall make available, upon request by the Administrator, such records as may be necessary to determine the conditions under which the visual observations

were made and shall provide evidence indicating proof of current visible observer emission certification. The results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B of this part, has been properly maintained and (at the time of the alleged violation) calibrated, and that the resulting data have not been tampered with in any way.

(2) Except as provided in paragraph (e)(3) of this section, the owner or operator of an affected facility to which an opacity standard in this part applies shall conduct opacity observations in accordance with paragraph (b) of this section, shall record the opacity of emissions, and shall report to the Administrator the opacity results along with the results of the initial performance test required under § 60.8. The inability of an owner or operator to secure a visible emissions observer shall not be considered a reason for not conducting the opacity observations concurrent with the initial performance test.

(3) The owner or operator of an affected facility to which an opacity standard in this part applies may request the Administrator to determine and to record the opacity of emissions from the affected facility during the initial performance test and at such times as may be required. The owner or operator of the affected facility shall report the opacity results. Any request to the Administrator to determine and to record the opacity of emissions from an affected facility shall be included in the notification required in § 60.7(a)(6). If, for some reason, the Administrator cannot determine and record the opacity of emissions from the affected facility during the performance test, then the provisions of paragraph (e)(1) of this section shall apply.

(4) An owner or operator of an affected facility using a continuous opacity monitor (transmissometer) shall record the monitoring data produced during the initial performance test required by § 60.8 shall furnish the Administrator a written report of the monitoring results along with Method 9 and § 60.8 performance test results.

(5) Upon receipt from an owner or operator of the written reports of the results of the performance tests required by § 60.8, the opacity observation results and observer certification required by § 60.11(e)(1), and the continuous opacity monitoring results, if applicable, the Administrator will make a finding concerning compliance with opacity and other applicable standards. If the Administrator finds that an affected facility is in compliance with all applicable standards for which performance tests are conducted in accordance with § 60.8 of this part but during the time such performance tests are being conducted fails to meet any applicable opacity standard, he shall notify the owner or operator and advise him that he may petition the Administrator within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility.

* * * * *

4. In § 60.13, paragraph (c) is amended by replacing the first sentence with three sentences to read as follows:

§ 60.13 Monitoring requirements.

* * * * *

(c) It shall be demonstrated that the continuous opacity monitoring system meets the specifications in Performance Specification 1 in Appendix B of this part before the performance test required under § 60.8 is conducted. Other continuous emission monitoring systems shall be evaluated during any performance tests required under § 60.8 or within 30 days thereafter. The owner or operator of an affected facility shall conduct continuous emission monitoring system performance evaluations at such other times as may be required by the Administrator under Section 114 of the Act and shall furnish the Administrator within 60 days thereof two or, upon request, more copies of a written report of the results of all tests referenced in this paragraph.* * *

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2881-9(a)]

Standards of Performance for New Stationary Sources; Amendment to Opacity Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This action proposes to amend the opacity provisions in 40 CFR Part 60 affecting emissions from new stationary sources. This action implements Section 114 of the Clean Air Act and provides for the use of continuous opacity monitors (COM) as an alternative method of determining compliance with the opacity standards contained in 40 CFR Part 60.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentations of data, views, or arguments concerning the proposed amendments.

DATES: *Comments.* Comments must be received on or before March 12, 1986.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by January 17, 1986, a public hearing will be held on February 10, 1986, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541–5578 to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by January 17, 1986.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate if posssible) to: Central Docket Section (LE–131), Attention: Docket Number A–85–08, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons wishing to present oral testimony should notify Ms. Shelby Journigan, Standards Development Branch (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5578.

Docket. Docket No. A–85–08, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell, (919) 541–5624, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. Background and Rationale for Proposed Amendments

On July 31, 1984, the EPA proposed a requirement in the **Federal Register** (49 FR 30676) for owners and operators of affected facilities subject to opacity standards in 40 CFR Part 60 to conduct opacity observations record, and report the opacity of emissions during a performance test. This requirement was proposed under the authority of section 114 of the Clean Air Act, as amended, and was based on the Administrator's determination that the recordkeeping and reporting were necessary to demonstrate compliance with the repective opacity standards. The data would also be used during 4-year reviews of standards of performance for new stationary sources. The proposed opacity provisions included a public comment period from July to October 1, 1984. A total of 19 comment letters were received. The comments that were submitted, along with responses to these comments, are summarized in a document entitled "Background Information for Promulgated Opacity Provisions" (EPA–450/3–85–013). The document may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777.

Changes were made in the proposed opacity provisions, and the promulgated opacity provisions appear in this issue of the **Federal Register.** Several of the comment letters recommended that facilities already required to install COM be allowed to use COM in lieu of Method 9 and presented reasons for this recommendation.

In the past, Method 9, "Visual Determination of the Opacity of Emissions from Stationary Source," contained in 40 CFR Part 60, Appendix A, has been the only method specified for determining compliance with opacity limitations in new source performance standards (NSPS) (40 CFR 60.11(b)). However, after review and consideration of these comments, the Administrator has determined that sources using COM (transmissometers) should be allowed the option of submitting monitoring results in lieu of conducting a Method 9 visual observation during any performance test required under § 60.8 for the purpose of determining compliance with the respective opacity standard. Continuous opacity monitor results submitted in accordance with this option would be used by EPA to determine compliance. Recent studies (Docket No. A–85–08, Item II–A–1) have shown that COM results are reliable if the monitors (transmissometers) have been properly operated and maintained. Therefore, the Agency is proposing a revision to the opacity provisions, 40 CFR 60.11, to allow for the alternative of submitting COM results in lieu of conducting a Method 9 opacity observation during any performance test required under Section 60.8 for the purpose of determining compliance with opacity standards.

Any decision to elect the COM option would be made by the source owner or operator before the initial performance test is conducted and would be included in the 30-day prior notification required under 40 CFR 60.7(a)(6). After the initial performance test is conducted, the opacity provisions in § 60.11 do not require opacity testing on a routine basis. However, the EPA, State, or local enforcement agency may require that a mass emission performance test and opacity test be conducted for compliance purposes subsequent to the initial performance test. If a source owner or operator elects the COM option for compliance purposes during the initial performance test, the enforcing agency can use future COM data collected from that source during a subsequent performance test to document a violation, unless the Administrator is notified otherwise. That is, if after the initial performance test, a source owner or operator decides to use Method 9 or an alternative method for determining compliance with the opacity standard, he must notify EPA, in writing, before any subsequent compliance test is conducted.

The minimum period of time allowed for any opacity compliance test conducted after the initial performance test would be one 6-minute period in case where Method 9 is used. In cases

where a COM is used, the minimum time required for an opacity compliance test would be the same period of time as the initial performance test.

In order for the COM results to be reliable, the COM must be operated and maintained at all times in accordance with the requirements under § 60.13. In addition, the source owner or operator must evaluate the performance of the COM according to procedures in Performance Specification 1 of Appendix B, 40 CFR Part 60, before the initial performance test is conducted. Also, at a minimum, the procedures specified in paragraph 7.2.1 or 7.2.2 of Performance Specification 1 must be completed at least one time during each quarterly period subsequent to the initial performance test. It is the responsibility of the source owner or operator to ensure that these requirements are completed as specified. Otherwise, the source would be cited in violation of these requirements in addition to a possible violation of the opacity standard.

It is not the intent of this notice to alter current Agency policy on the use of quarterly excess emissions reports required under 40 CFR 60.7(c). Excess opacity data are used as an indicator of the compliance status of the source and may be used to target inspections, performance tests, or other enforcement activities, but not as the sole evidence of a violation of the standard. Neither is this notice intended, in any way, to negate the authority of the enforcing agency in determining a source's compliance with the opacity standard. The enforcing agency has the authority to use Method 9 at any time to determine a source's compliance with the opacity standard. This notice is intended to allow the use of COM as an alternative means of determining compliance with the opacity standard during performance tests required by EPA or the enforcing agency.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed amendments in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–85–08.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of these amendments. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A)).

C. Office of Management and Budget Reviews

1. *Paperwork Reduction Act.* There are no information collection requirements associated with this proposed rulemaking.

2. *Executive Order 12291 Review.* Under Executive Order 12291, EPA must judge whether a regulatory action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposed amendment is not major because it would result in none of the adverse economic effects set forth in section 1 of the Order. This proposed rulemaking is amending the general provisions for NSPS in 40 CFR Part 60 to provide an alternative means of compliance, and there would be no significant adverse effects associated with the amendment.

This proposed rulemaking was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments will be included in Docket A–85–08. This docket is available for public inspection at EPA's Central Docket Section that is listed under the **ADDRESSES** section of this notice.

D. Regulatory Flexibility Act Compliance

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the impact of the proposed rule is not significant.

List of Subjects in 40 CFR Part 60

Air pollution control, Reporting and recordkeeping requirements, Incorporation by reference, and Intergovernmental relations.

Dated: December 18, 1985.

Lee M. Thomas,

Administrotor.

PART 60—[AMENDED]

It is proposed that 40 CFR Part 60, Subpart A, be amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. In § 60.11: 1. Paragraph (b) is revised. 2. Paragraph (e)(1) is amended by revising the last sentence as set forth below. 3. Paragraphs (e)(6) and (e)(7) are redesignated as paragraphs (e)(7) and (e)(8). 4. Paragraph (e)(5) is redesignated as paragraph (e)(6) and revised. 5. New paragraph (e)(5) is added.

§ 60.11 Compliance with standards and maintenance requirements.

* * * * *

(b) Compliance with opacity standards in this part shall be determined by conducting observations in accordance with Reference Method 9 in Appendix A of this part, any alternative method that is approved by the Administrator, or as provided in paragraph (e)(5). For purposes of determining initial compliance, the minimum total time of observations shall be 3 hours (30 6-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Following initial compliance, the minimum period of time allowed for determining compliance with the opacity standard using Method 9 shall be one 6-minute period.

* * * * *

(e)(1) * * * Except as provided in paragraph (e)(5) of this section, the results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B of this part, has been properly maintained and (at the time of the alleged violation) calibrated, and

that the resulting data have not been tampered with in any way.

* * * * *

(5) An owner or operator of an affected facility subject to an opacity standard may submit, for compliance purposes, continuous opacity monitor (COM) data results produced during the initial performance test required under § 60.8 in lieu of conducting Method 9 observations.

(i) For purposes of determining initial compliance with the opacity standard using a COM, averages of all 6-minute continuous periods within the duration of the mass emission performance test shall be submitted along with the results of the performance test required under § 60.8. If COM data results are to be used for compliance purposes, the source owner or operator shall meet the burden of proving that the COM used meets Performance Specification 1 of Appendix B of this part, that it has been properly maintained and calibrated, and that the resulting data have not been altered in any way.

(ii) If a source owner or operator subject to an opacity standard is required to conduct a performance test under § 60.8 subsequent to the initial performance test, COM data, in lieu of Method 9, may be used to determine compliance with the opacity standard. The COM compliance period shall be the same period of time as the performance test conducted under § 60.8. If COM results are to be used for compliance purposes after the initial performance test is conducted, the procedures specified in paragraph 7.2.1 or 7.2.2 of Performance Specification 1 of Appendix B of this part shall be completed at least one time during each quarter subsequent to the initial performance test and the COM shall, at all times, be properly maintained and calibrated.

(6) Upon receipt from an owner or operator of the written reports of the results of the performance tests required by § 60.8, the opacity observation results and observer certification required by § 60.11(e)(1), and the COM results, if applicable, the Administrator will make a finding concerning compliance with opacity and other applicable standards. If COM data results are used to comply with an opacity standard, only those results are required to be submitted along with the performance test results required by § 60.8. If the Administrator finds that an affected facility is in compliance with all applicable standards for which performance tests are conducted in accordance with § 60.8 of this part but during the time such performance tests are being conducted fails to meet any applicable opacity standard, he shall notify the owner or operator and advise him that he may petition the Administrator within 10 days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility.

* * * * *

[FR Doc. 85-30629 Filed 12-26-85; 8:45 am]

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Friday
December 27, 1985

Part VI

Department of Health and Human Services

Social Security Administration

20 CFR Parts 404 and 416
Personal Appearance Demonstration Projects; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

Federal Old-Age, Survivors, and Disability Insurance; Supplemental Security Income for the Aged, Blind, and Disabled; Personal Appearance Demonstration Projects

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing regulations describing how we will carry out the personal appearance demonstration projects which are required by section 6 of Pub. L. 98–460, the Social Security Disability Benefits Reform Act of 1984. The demonstration projects will test, on a limited basis, the use of personal appearance interviews in connection with initial determinations about disability or blindness which are made by State agencies. The demonstration projects will involve disability cases under title II of the Social Security Act (the Act) as well as blindness and disability cases in the Supplemental Security Income (SSI) program under title XVI of the Act. Participants in the demonstrations will be selected randomly from among individuals who have applied for benfits but have not received an initial determination about their eligibility, and from among individuals who have been receiving benefits but whose condition is being reviewed to determine whether they are still disabled or blind.

Under the demonstration projects, individuals who are selected to participate will be provided an opportunity for an interview with a State agency disability examiner prior to any initial determination of ineligibility. In some locations a State agency medical consultant may participate in the interview together with the disability examiner, although the rest of this preamble will refer only to the disability examiner. Medical examinations will not be conducted as part of the interview process. The demonstration projects will be conducted in several States. Their purpose is to test whether an interview with the State agency disability examiner at this stage of the decisionmaking process will result in a better evaluation of the person's condition and simplify and expedite the decisionmaking process.

DATES: We will consider your comments if we receive them no later than January 27, 1986.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Office of Regulations, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7519.

SUPPLEMENTARY INFORMATION: Pub. L. 98–460, the Social Security Disability Benefits Reform Act of 1984, enacted October 9, 1984, addresses selected aspects of the standards and procedures for determining whether people are disabled or blind for purposes of eligibility for benefits under titles II and XVI of the Act. (In the rest of this preamble, we use "disability" and "disabled" to include blindness.) A much-discussed issue in the past few years has been the process of reviewing the condition of people already receiving disability benefits to determine whether they continue to be disabled. One point of concern in that process has been the fact that the initial determination as to whether an individual's disability has ceased is based on a paper review of the evidence in the individual's case record, and is usually made without the adjudicator having personally observed the individual or having heard firsthand the individual's own description of his or her condition. The decisionmaking process is the same for new applications for disability benefits, and the same concerns have been voiced about it.

Section 6 of Pub. L. 98–460 calls for demonstration projects to test the use of personal appearance interviews at the initial stage of the decisionmaking process for continuing disability reviews and for initial disability claims under both title II and title XVI of the Act. Under section 6 of Pub. L. 98–460, the Secretary of Health and Human Services is required to conduct demonstration projects in which beneficiaries who are undergoing continuing disability review, and claimants who have just applied for disability benefits, and provided an opportunity for an interview with the State agency disability examiner prior to any initial determination of ineligibility.

Existing Procedures

Our first level of decisionmaking about a person's eligibility or continuing eligibility for benefits is called an "initial determination." The initial determination of whether a person is disabled for purposes of title II or title XVI benefits is usually made by a State agency under the regulations at 20 CFR Part 404, Subpart Q, and Part 416, Subpart J. The State agency employees who make the determination are a physician or psychologist called a medical consultant and a non-physician called a disability examiner. the disability examiner must be qualified to interpret and evaluate medical reports and other evidence relating to a person's physical or mental impairments and, as necessary, to determine the capacities of the person to perform substantial gainful activity as defined at 20 CFR 404.1572 and 416.972. A person who is dissatisfied with the initial determination in his or her case usually has three levels of administrative appeal available. Except for certain title XVI and concurrent title II/XVI cases described below, the first level of appeal is called reconsideration. The second and third levels, respectively, are a hearing before an administrative law judge and a review by the Appeals Council.

For title XVI and concurrent title II/XVI cases in which the initial determination is that a person's benefits must be terminated because his or her disability has ceased due to medical reasons, the first level of appeal is an administrative law judge hearing, and the second level is a review by the Appeals Council. By "medical reasons" we mean both what the existing disability program regulations call "medical considerations" (§§ 404.1525—404.1530 and 416.925—416.930) and what they call "vocational considerations" (§§ 404.1560—404.1569 and 416.960—416.969).

Section 4 of Pub. L. 97–455, enacted January 12, 1983, effective with reconsiderations requested after 1983, provides a new reconsideration process which we call a disability hearing. The statute makes disability hearings available to title II beneficiaries who request reconsideration of an initial determination that the physicial or mental impairment on the basis of which benefits have been payable has ceased, did not exist, or is no longer disabling. The disability hearing is a face-to-face evidentiary hearing before a disability hearing officer, usually a State agency

employee. Under the Secretary's rulemaking authority, our Notice of Proposed Rulemaking published August 15, 1983 (48 FR 36831) proposed to provided the same kind of hearing in comparable title XVI cases.

A principal goal of the disability program is to provide benefits under the law in as accurate and timely a manner as possible. To accomplish this, the Social Security Administration (SSA) has operated under procedures designed to assure that all relevant evidence is obtained and considered in making disability determinations at the State agency level of decisionmaking and to provide an opportunity for face-to-face appeal of an initial unfavorable State agency decision at a later stage in the decision process.

Under existing procedures, an initial determination as to whether the claimant (the person who has applied for benefits) or beneficiary (the person whose entitlement has been established) is disabled or continues to be disabled is usually made by the State agency on the basis of the evidence (written medical and vocational reports) in the person's case file. Currently, the claimant or beneficiary can give us or have us get any additional or new informaiton on paper, including reports from doctors, hospitals, emloyers or others, that he or she believes we should have before the determination is made. The claimant or beneficiary also talks to an SSA district office employee, but the SSA employee does not make the disability determination in the great majority of cases, namely those where the determination is based on medical/vocational factors. The SSA employee writes down all pertinent information the claimant or beneficiary tells the emplyee, and anything the employee observes by seeing and hearing the claimant or beneficiary that may be relevant in evaluating his or her condition. The SSA employee then sends this information and any information or evidence the claimant or beneficiary provided on paper to the State agency.

The State agency evaluates the available evidence and obtains any additional evidence necessary, including reports from the individual's own medical sources as well as reports from physicians who examined the individual at the State agency's request. The state agency they makes an initial determination as to whether the individual is disabled on the basis of the evidence in the case file. In the process of appealing an unfavorable determination, at a later stage in the decisionmaking process, a beneficiary or claimant is entitled to a face-to-face meeting with a decisionmaker (a disability hearing officer or an administrative law judge).

The Demonstration Projects

In passing Pub. L. 98–460, Congress decided we should test potential changes in the disability determination process by offering a face-to-face interview between the claimant or beneficiary and the State agency disability examiner at the first stage of decisionmaking. The Ways and Means Committee of the House of Representatives stated:

"The committee believes that such a meeting at the initial stage in the adjudicative process would permit State agency disability examiners to better assess the individual's residual functional capacity and assure that all relevant medical and vocational information has been obtained. Moreover, an interview at the initial State agency level, rather than at some later stage, would both simplify and expedite the decisionmaking process." (H. R. Rep. No. 618, 98th Cong., 2d Sess. 17 (1984)).

Accordingly, sections 6(d) and (e) of Pub. L. 98-460 require us, as soon as practicable after October 9, 1984, the date of enactment, to implement demonstration projects in which the opportunity for a personal appearance is provided to disability claimants and beneficiaries prior to an initial disability denial or periodic review cessation determination by a State agency under titles II and XVI of the Act.

For determinations in continuing disability review cases, the provision specifies that the opportunity for a personal appearance at the initial level of decisionmaking takes the place of the evidentiary hearing at the reconsideration level of review which is required under section 205(b)(2) of the Act. For initial claims, the statute does not specify that the opportunity for a personal appearance at the initial level of decisionmaking will replace the reconsideration level of review, but the legislative history indicates that this was Congress's intent. Additionally, we see no advantage to maintaining the reconsideration level of appeal for these initial claims. By providing the claimant with a pre-decision notice followed by the opportunity to submit additional evidence and to meet face-to-face with the decisionmaker, we are, in effect, folding the reconsideration process into the initial step of adjudication. To offer a reconsideration in such cases would only delay cases from moving through the appeals process.

The demonstrations involving claimants are to be conducted in at least five States and the demonstrations involving beneficiaries are to be conducted in at least five States. We are required to report to Congress on the demonstration projects, together with any recommendations, by December 31, 1986.

Section 6(d) of Pub. L. 98–460 requires us to implement these demonstration projects in continuing disability review cases where the review is required by section 221(i) of the Act (periodic review cases) or is made under title XVI of the Act. However, our proposed regulations also include "medical diary" cases in the demonstrations. These are the cases which are selected for continuing disability review because medical improvement was expected. We decided to include these cases because the issues to be decided are the same as in the periodic review cases, and excluding medical diary cases would lengthen the time required to obtain adequate sample sizes with which to assess the results of the demonstrations. We believe this decision is supportable based on the Conference Committee report, which indicates that the section 6(d) demonstration projects will provide for "face-to-face pre-termination interviews for continuing disability review issues at the initial rather than the reconsideration level," suggesting congressional intent to include continuing disability review cases of any kind. (H.R. Rep. No. 1039, 98th Cong., 2d Sess. 32 (1984).)

We are proposing regulations to inform people who may be selected to participate in the demonstration projects of the change in the procedures for deciding their cases and of the change in their appeal rights. We emphasize, however, that the demonstration projects are only tests of a different method of getting evidence of disability; the projects do not involve changes in standards used for determining whether or not a person is disabled.

Our proposed regulations describe the demonstration projects and explain the procedures and the individual's rights in connection with the interview.

The proposed regulations specify that, in connection with his or her interview, the claimant or beneficiary has the right to—

(1) Meet face-to-face with a State agency disability examiner before a medical/vocational denial or cessation determination is made;

(2) Have us or the State agency assist in getting evidence;

(3) Be represented at the interview;

(4) Review the evidence in the file either on or before the date of the interview;

(5) Present additional evidence at the interview; and

(6) Present witnesses at the interview.

The claimant or beneficiary and his or her representative or witnesses may be eligible for reimbursement under the State agency's rules for travel expenses incurred in connection with the interview if the distance from the person's residence or office (whichever he or she travels from) to the interview site exceeds 75 miles.

The proposed regulations specify that the first level of appeal from the State agency initial determination following the opportunity for an interview (regardless of whether or not the claimant or beneficiary takes advantage of the opportunity) is a hearing before an administrative law judge.

We will select people to participate in the demonstrations from among claimants in all or part of at least five States and from among beneficiaries in all or part of at least five States. We will select participants randomly from among individuals who will have their initial determinations about disability made by a State agency under §§ 404.1613 or 416.1013. Thus, people whose disability determinations will not be made by a State agency will not be included in the projects. For example, SSA offices (rather than State agencies) determine that people are not disabled if they are in fact performing substantial gainful activity in spite of their medical condition. We plan to include in the demonstrations all kinds of State agency cases expect those described in items (4)–(6) below, but because unforeseen circumstances may arise, we have provided in item (7) for exclusion of any cases we may find it would be impractical in include.

For people in the followng categories, State agencies will continue to make disability determinations without the interviews required by Pub. L. 98–460:

(1) People not randomly selected to participate in the demonstration projects;

(2) People who can be determined to be disabled on the basis of the evidence in their files;

(3) People who, without good cause, fail to make a timely reply to (or who decline) the offer of an interview (however, their first level of appeal of our disability determination in these cases will also be a hearing before an administrative law judge);

(4) People who have been determined not disabled but whose cases are being reexamined under the new disability standards in accordance with the Social Security Disability Benefits Reform Act of 1984;

(5) Claimants who, after being selected to participate in a project, move to an area where the State agency is not participating in a project for claimants;

(6) Beneficiaries who, after being selected to participate in a project, move to an area where the State agency is not participating in a project for beneficiaries; and

(7) People the Social Security Administration finds it would be impractical to include in the projects.

We are excluding the people described in item (4) above from the demonstration projects because these people, although their cases are being reexamined, have already been through a disability determination process (including, in some cases, several levels of administrative review) and including them in the demonstration could possibly deter the expeditious processing of their cases and might bias the results of the demonstrations.

As item (2) above implies, the State agency will offer the opportunity for an interview only after concluding that a determination based only on the written reports in the case record would be a denial or cessation. The proposed regulations indicate that where this occurs, the State agency will mail the individual a notice informing him or her of the preliminary unfavorable determination and of the opportunity for an interview before a formal determination is made. The notice will state that the individual has 30 days from the date he or she receives the notice to request an interview but explain that this deadline can be extended for good cause under the standards in §§ 404.91 and 416.1411. (The existing regulations at §§ 404.901 and 416.1401 explain that the date the individual receives notice means "5 days after the date on the notice, unless you show us that you did not receive it within the 5-day period.")

If the claimant or beneficiary makes a timely request for an interview, the State agency will mail a notice of its time and place at least 20 days in advance, unless the claimant or beneficiary waives (in writing) his or her right to the 20-day advance notice. The claimant or beneficiary will be informed that he or she should not waive the right to the 20-day advance notice if he or she needs time to get ready for the interview. It a claimant or beneficiary waives (in writing) his or her right to the 20-day advance notice, an interview will be scheduled as soon as possible and the State agency will mail a notice of the time and place of the interview at least 10 days in advance, unless the interview is scheduled by telephone as explained below.

Occasionally, for the convenience of all parties involved, an interview may be scheduled by telephone. In such instances, the State agency will mail a notice of the time and place of the interview only if it is scheduled for a date not less than 5 days from the date the telephone arrangements were made. If an interview was scheduled by telephone and the claimant or beneficiary does not appear for the interview, the disability examiner will take one of the following actions:

(1) If a notice of the time and place of the interview was not mailed at least 20 days before the scheduled date of the interview and the claimant or beneficiary did not waive (in writing) his or her right to the 20-day advance notice, the disability examiner will schedule another interview. The State agency will mail a notice of the time and place of the interview at least 20 days in advance.

(2) If a notice of the time and place of the interview was not mailed to the claimant or beneficiary and he or she waived (in writing) his or her right to the 20-day advance notice, the disability examiner will schedule another interview. The State agency will mail a notice of the time and place of the interview at least 10 days in advance.

In any case where the 20-day advance notice (or, if the right to the 20-day advance notice is waived, the 10-day or 5-day notice) or the interview was mailed to the claimant or beneficiary and he or she does not appear for the interview, the disability examiner will make a determination as to whether the claimant or beneficiary is disabled based on the evidence in his or her case file. A written notice of that determination will be mailed to the claimant or beneficiary at his or her last known address.

At the request of the claimant or beneficiary, the State agency may allow up to 15 days after the interview for receipt of additional evidence which was not available at that time. The State agency may also obtain additional evidence, including a consultative medical examination as described in §§ 404.1517 and 416.917, after the interview if it believes it is necessary for a sound determination.

In preparing our report to Congress on the demonstration projects, we will evaluate them primarily by comparing the demonstration procedures with our usual procedures in terms of such things as—

(1) Elapsed time to final decision either from the claimant's application or

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from starting the review of the beneficiary's continued eligibility;

(2) Acceptance rate for interviews offered;

(3) Frequency of favorable determinations;

(4) Accuracy of determinations;

(5) Appeal rates;

(6) Reversal rates on appeal; and

(7) Program and administrative costs.

Regulatory Procedures

Executive Order 12291.

These proposed regulations have been reviewed under Executive Order 12291. They will not have an annual effect on the economy of $100 million or more and and do not meet any of the other criteria for a major regulation. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because the regulations will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This proposed rule contains information collection requirements in §§ 404.906(d) and 416.1406(d). As required by section 3504(h) of the Paperwork Reduction Act of 1980, we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attention: Desk Officer for HHS.

(Catalog of Federal Domestic Assistance Program Nos. 13.802—Social Security—Disability Insurance and 13.807—Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: May 16, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: July 2, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subpart J of Part 404 and Subpart N of Part 416 of 20 CFR are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart J of Part 404 is revised to read as follows:

Authority: Secs. 205 and 1102 of the Social Security Act, sec. 5 of Reorganization Plan No. 1 of 1953, sec. 6 of Pub. L. 98–460; 53 Stat. 1368, 49 Stat. 647, 98 Stat. 1802 (42 U.S.C. 405 and 1302).

2. Section 404.906 is added to read as follows:

§ 404.906 Opportunity for personal appearance interview before initial disability denial or cessation determination—demonstration projects.

(a) *Applicability and scope.* Notwithstanding any other provision in this Part or Part 422, we are establishing the procedures set out in this section for demonstration projects involving certain initial determinations about eligibility or continued eligibility for benefits based on disability. There will be two types of demonstration projects: projects involving individuals who have applied for benefits but have not received an initial determination about their eligibility, and projects involving individuals who have been receiving benefits but whose condition is being reviewed to determine whether they are still disabled. Each of the two types of projects will be conducted in at least five States. Projects may be conducted on a Statewide basis or in only part of the State. Participants will be selected randomly from among individuals who will have their initial determinations about disability made be a State agency (see §§ 404.1503 and 404.1613), excluding—

(1) Individuals who have been determined not disabled but whose cases are being reexamined under the new disability standards in accordance with Pub. L. 98–460;

(2) Claimants who, after being selected to participate in a project, move to an area where the State agency is not participating in a project for claimants;

(3) Beneficiaries who, after being selected to participate in a project, move to an area where the State agency is not participating in a project for beneficiaries; and

(4) Individuals the Social Security Administration finds it would be impractical to include in the projects.

(b) *Summary of procedure.* The individuals selected to participate will be given an opportunity, before any initial determination is made that they are not disabled, for a personal appearance interview with the State agency disability examiner who will make the disability determination. In some locations, a State agency medical consultant may participate in the interviews together with the disability examiner, although the rest of this section will refer only to the disability examiner. Medical examinations will not be conducted as part of the interview process. The reconsideration level of review will be eliminated for individuals who are given the opportunity for an interview under the demonstration projects. Thus, for individuals who are given the opportunity for an interview, whether or not they take advantage of the opportunity, the first level of appeal from the initial determination will be a hearing before an administrative law judge. Determinations for individuals not included in the projects will be made under current usual procedures. The demonstration projects will begin as soon as practicable and will end as soon as a large enough sample of cases is completed to permit proper evaluation of the demonstration projects, but no later than December 31, 1987.

(c) *Authority and purpose.* The demonstration projects are required by section 6 of Pub. L. 98–460, the Social Security Disability Benefits Reform Act of 1984. Their purpose is to test whether a face-to-face interview with the State agency disability examiner at this stage of the decisionmaking process will result in a better evaluation of the person's condition, assure that all relevant information is obtained, and simplify and expedite the decisionmaking process. The projects are only tests of a different method of getting evidence of disability; they do not involve changes in standards used for determining whether or not a person is disabled.

(d) *Procedures for cases included in the projects.* If you are selected to participate in the projects, the State agency disability examiner will review all medical and vocational evidence in your file, including any you provided and any the State agency obtained, just as under the usual procedures. If the disability examiner then determines that you are disabled, you will receive a

written notice of that determination as under usual procedures. But if the disability examiner believes the evidence in your file requires a determination that you are not disabled, the disability examiner will mail a written notice to you at your last known address telling you his or her preliminary conclusion and why he or she believes that such a determination is required. The notice will also tell you that before a formal determination about your disability is made, you may have an interview with the State agency disability examiner if you request it within 30 days after the date you receive the notice. If you make a late request for an interview but show in writing that you had good cause under the standards in § 404.911 for missing the deadline, the disability examiner will extend the deadline. If you do not request an interview, or if you requested an interview and notice of its time and place was mailed to you as provided in this paragraph (or paragraph (e)(2) of this section) but you do not appear for the interview, the disability examiner will make a determination as to whether you are disabled based on the evidence in your case file. A written notice of that determination will be mailed to you at your last known address. The notice will state the reasons for the determination and its effects, and will inform you of the right to a hearing before an administrative law judge. If you do request an interview within the 30-day time period (or if you make a late request and the disability examiner extends the time period under the good cause provision as provided above), the disability examiner will mail a notice to you at your last known address informing you of the time and place of your interview. The notice will be mailed at least 20 days before the date of the interview, unless you waive (in writing) your right to the 20-day advance notice. You should not waive this right if you need time to get ready for the interview. If you do waive this right, an interview will be scheduled for you as soon as possible and a notice of the time and place of your interview will be mailed to you at your last known address. In this instance, the notice will be mailed at least 10 days before the date of the interview, unless arrangements for the interview are made by the telephone as explained in paragraph (e) of this section.

(e) *Interviews scheduled by telephone.* Notwithstanding paragraph (d) of this section, occasionally, for the convenience of all parties involved and as a means of processing your case sooner, arrangements for the time and place of the interview may be made by telephone. If such arrangements are made and the interview is scheduled for a date not less than 5 days from the date of the telephone arrangements, a notice will be mailed to you at your last known address, confirming the time and place of the interview. If an interview is scheduled for a date less than 5 days from the date of the telephone arrangements, a notice confirming the interview will not be mailed to you. If an interview is scheduled by telephone and you do not appear for the interview, the disability examiner will take one of the following actions:

(1) If a notice of the time and place of the interview was not mailed at least 20 days before the scheduled date of the interview and you did not waive (in writing) your right to the 20-day advance notice explained in paragraph (d) of this section, the disability examiner will schedule another interview for you. A notice informaing you of the time and place of the rescheduled interview will be mailed to you at your last known address. The notice will be mailed at least 20 days before the date of the interview.

(2) If a notice of the time and place of the interview was mailed to you, and you waived (in writing) your right to the 20-day advance notice explained in paragraph (d) of this section, the disability examiner will make a determination as to whether you are disabled based on the evidence in your case file. A written notice of that determination will be mailed to your last known address.

(3) If a notice of the time and place of the interview was not mailed to you, and you waived (in writing) your right to the 20-day advance notice explained in paragraph (d) of this section, the disability examiner will schedule another interview for you. A notice informing you of the time and place of the rescheduled interview will be mailed to you at your last known address. The notice will be mailed at least 10 days before the date of the interview.

(f) *Change in time or place of interview.* If you are unable to travel or have some other reason why you cannot attend your interview at the scheduled time or place, you should request at the earliest possible date that the time or place be changed. The disability examiner will change the time or place if there is good cause for doing so under the standards in § 404.936 (c) and (d).

(g) *Your rights.* In connection with your interview—

(1) You may request that we or the State agency assist you in obtaining pertinent evidence about your disability;

(2) You may have a representative, appointed under Subpart R of this Part, at your interview, or you may represent yourself;

(3) You or your representative may review the evidence in your case file, either on the date of your interview or at an earlier time at your request;

(4) You or your representative may present additional evidence and bring witnesses to support your case at your inteview; and

(5) You, your representative, and your witnesses may be eligible for reimbursement under the State agency's rules for travel expenses incurred in connection with your interview if the distance from the person's residence or office (whichever he or she travels from) to the interview site exceeds 75 miles.

(h) *After your interview.* At your request, the disability examiner may allow up to 15 days after your interview for receipt of evidence which was not available at the time of the interview. This disability examiner may also obtain additional evidence, including a consultative medical examination as described in § 404.1517, after the interview if he or she believes it is necessary for a sound determination. The disability examiner will then follow the sequential evaluation guidelines in § 404.1520(a)–(f) and the disability standards in Pub. L. 98–460, and determine whether you are disabled. A written notice of the determination made in your case will be mailed to you at your last known address. The notice will state the reasons for the determination and its effect, and will inform you of the right to a hearing before an administrative law judge.

(i) *Effect of the State agency's determination for project participants.* The State agency disability examiner's determination is an initial determination that is binding unless—

(1) You request a hearing before an administrative law judge within the time period described in paragraph (j) of this section, and a decision is made; or

(2) The initial determination is revised as provided in § 404.987.

(j) *Appeal rights for project participants.* If you were given the opportunity for an interview (whether or not you requested or appeared for the interview) and you ar dissatisfied with the initial determination, you may request a hearing before an administrative law judge. You must file your request for the hearing within 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in § 404.933(c)). Section 404.933 explains how to request a

hearing before an administrative law judge. (See §§ 404.929–404.961 for the rules concerning administrative law judge hearings.)

3. The authority citation for Subpart N of Part 416 is revised to read as follows:

PART 416—[AMENDED]

Authority: Secs. 1102, 1631(c), and 1633 of the Social Security Act, section 6 of Pub. L. 98–460; 49 Stat. 647, 86 Stat. 1457, 86 Stat. 1478, 98 Stat. 1802 (42 U.S.C. 1302, 1383, 1383b).

4. Section 416.1406 is added to read as follows:

§ 416.1406 Opportunity for personal appearance interview before initial disability denial or cessation determination—demonstration projects.

(a) *Applicability and scope.* Notwithstanding any other provision in this Part or Part 422, we are establishing the procedures set out in this section for demonstration projects involving certain initial determinations about eligibility or continued eligibility for benefits based on disability. (For purpose of this section, "disability" and "disabled" include blindness.) There will be two types of demonstration projects: projects involving individuals who have applied for benefits but have not received an initial determination about their eligibility, and projects involving individuals who have been receiving benefits but whose condition is being reviewed to determine whether they are still disabled. Each of the two types of projects will be conducted in at least five States. Projects may be conducted on a Statewide basis or in only part of the State. Participants will be selected randomly from among individuals who will have their initial determinations about disability made by a State agency (see §§ 416.903 and 404.1013), excluding—

(1) Individuals who have been determined not disabled but whose cases are being reexamined under the new disability standards in accordance with Pub. L. 98–460;

(2) Claimants who, after being selected to participate in a project, move to an area where the State agency is not participating in a project for claimants;

(3) Beneficiaries who, after being selected to participate in a project, move to an area where the State agency is not participating in a project for beneficiaries; and

(4) Individuals the Social Security Administration finds would be impractical to include in the projects.

(b) *Summary of procedure.* The individuals selected to participate will be given an opportunity, before any initial determination is made that they are not disabled, for a personal appearance interview with the State agency disability examiner who will make the disability determination. In some locations, a State agency medical consultant may participate in the interviews together with the disability examiner, although the rest of this section will refer only to the disability examiner. Medical examinations will not be conducted as part of the interview process. The reconsideration level of review will be eliminated for individuals who are given the opportunity for an interview under the demonstration projects. Thus, for individuals who are given the opportunity for an interview, whether or not they take advantage of the opportunity, the first level of appeal from the initial determination will be a hearing before an administrative law judge. Determinations for individuals not included in the projects will be made under current usual procedures. The demonstration projects will begin as soon as practicable and will end as soon as a large enough sample of cases is completed to permit proper evaluation of the demonstration projects, but no later than December 31, 1987.

(c) *Authority and purpose.* The demonstration projects are required by section 6 of Pub. L. 98–460, the Social Security Disability Benefits Reform Act of 1984. Their purpose is to test whether a face-to-face interview with the State agency disability examiner at this stage of the decisionmaking process will result in a better evaluation of the person's condition, assure that all relevant information is obtained, and simplify and expedite the decisionmaking process. The projects are only tests of a different method of getting evidence of disability; they do not involve changes in standards used for determining whether or not a person is disabled.

(d) *Procedures for cases included in the projects.* If you are selected to participate in the projects, the State agency disability examiner will review all medical and vocational evidence in your file, including any you provided and any the State agency obtained, just as under the usual procedures. If the disability examiner then determines that you are disabled, you will receive a written notice of that determination as under usual procedures. But if the disability examiner believes the evidence in your life requires a determination that you are not disabled, the disability examiner will mail a written notice to you at your last known address telling you his or her preliminary conclusion and why he or she believes that such a determination is required. The notice will also tell you that before a formal determination about your disability is made, you may have an interview with the State agency disability examiner if you request it within 30 days after the date you receive the notice. If you make a late request for an interview but show in writing that you had good cause under the standards in § 416.1411 for missing the deadline, the disability examiner will extend the deadline. If you do not request an interview, or if you requested an interview and notice of its time and place was mailed to you as provided in this paragraph (or paragraph (e)(2) of this section) but you do not appear for the interview, the disability examiner will make a determination as to whether you are disabled based on the evidence in your case file. A written notice of that determination will be mailed to you at your last known address. The notice will state the reasons for the determination and its effect, and will inform you of the right to a hearing before an administrative law judge. If you do request an interview within the 30-day time period (or within the extended time period if you make a late request and the disability examiner extends the time period under the good cause provision as provided above), the disability examiner will mail a notice to you at your last known address informing you of the time and place of your interview. The notice will be mailed at least 20 days before the date of the interview, unless you waive (in writing) your right to the 20-day advance notice. You should not waive this right if you need time to get ready for the interview. If you do waive this right, an interview will be scheduled for you as soon as possible and a notice of the time and place of your interview will be mailed to you at your last known address. In this instance, the notice will be mailed at least 10 days before the date of the interview, unless arrangements for the interviews are made by the telephone as explained in paragraph (e) of this section.

(e) *Interviews scheduled by telephone.* Notwithstanding paragraph (d) of this section, occasionally, for the convenience of all parties involved and as a means of processing your case sooner, arrangements for the time and place of the interview may be made by telephone. If such arrangements are made and the interview is scheduled for a date not less than 5 days from the date of the telephone arrangements, a notice will be mailed to you at your last known address, confirming the time and place of the interview. If an interview is scheduled for a date less than 5 days

from the date of the telephone arrangements, a notice confirming the interview will not be mailed to you. If an interview is scheduled by telephone and you do not appear for the interview, the disability examiner will take one of the following actions:

(1) If a notice of the time and place of the interview was not mailed at least 20 days before the scheduled date of the interview and you did not waive (in writing) your right to the 20-day advance notice explained in paragraph (d) of this section, the disability examiner will schedule another interview for you. A notice informing you of the time and place of the rescheduled interview will be mailed to you at your last known address. The notice will be mailed at least 20 days before the date of the interview.

(2) If a notice of the time and place of the interview was mailed to you, and you waived (in writing) your right to the 20-day advance notice explained in paragraph (d) of this section, the disability examiner will make a determination as to whether you are disabled based on the evidence in your case file. A written notice of that determination will be mailed to you at your last known address.

(3) If a notice of the time and place of the interview was not mailed to you, and you waived (in writing) your right to the 20-day advance notice explained in paragraph (d) of this section, the disability examiner will schedule another interview for you. A notice informing you of the time and place of the rescheduled interview will be mailed to you at your last known address. The notice will be mailed at least 10 days before the date of the interview.

(f) *Change in time or place of interview.* If you are unable to travel or have some other reason why you cannot attend your interview at the scheduled time or place, you should request at the earliest possible date that the time or place be changed. The disability examiner will change the time or place if there is good cause for doing so under the standards in § 416.1436(c) and (d).

(g) *Your rights.* In connection with your interview—

(1) You may request that we or the State agency assist you in obtaining pertinent evidence about your disability;

(2) You may have a representative, appointed under Subpart O of this Part, at your interview, or you may represent yourself;

(3) You or your representative may review the evidence in your case file, either or the date or your interview or at an earlier time at your request;

(4) You or your representative may present additional evidence and bring witnesses to support your case at your interview; and

(5) You, your representative, and your witnesses may be eligible for reimbursement under the State agency's rules for travel expenses incurred in connection with your interview if the distance from the person's residence or office (whichever he or she travels from) to the interview site exceeds 75 miles.

(h) *After your interview.* At your request, the disability examiner may allow up to 15 days after your interview for receipt of evidence which was not available at the time of the interview. The disability examiner may also obtain additional evidence, including a consultative medical examination as described in § 416.917, after the interview if he or she believes it is necessary for a sound determination. The disability examiner will then follow the sequential evaluation guidelines in § 416.920(a) through (f) and the disability standards in Pub. L. 98–460, and determine whether you are disabled. A written notice of the determination made in your case will be mailed to you at your last known address. The notice will state the reasons for the determination and its effect, and will inform you of the right to a hearing before an administrative law judge.

(i) *Effect of the State agency's determination for project participants.* The State agency disability examiner's determination is an initial determination that is binding unless—

(1) You request a hearing before an administrative law judge within the time period described in paragraph (j) of this section, and a decision is made; or

(2) The initial determination is revised as provided in § 416.1487.

(j) *Appeal rights for project participants.* If you were given the opportunity for an interview (whether or not you requested or appeared for the interview) and you are dissatisfied with the initial determination, you may request a hearing before an administrative law judge. You must file your request for this hearing within 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in § 416.1433(c)) Section 416.1433 explains how to request a hearing before an administrative law judge. (See §§ 416.1429—416.1461 for the rules concerning administrative law judge hearings.)

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 664/Pub. L. 99-195

To amend the Panama Canal Act of 1979 with respect to the payment of interest on the investment of the United States. (Dec. 23, 1985; 2 pages) Price: $1.00

H.R. 1534/Pub. L. 99-196

To convert the temporary authority to allow Federal employees to work on a flexible or compressed schedule under title 5, United States Code, into permanent authority. (Dec. 23, 1985; 1 page) Price: $1.00

H.R. 1627/Pub. L. 99-197

Kentucky Wilderness Act of 1985. (Dec. 23, 1985; 3 pages) Price: $1.00

H.R. 2100/Pub. L. 99-198

Food Security Act of 1985. (Dec. 23, 1985)

H.R. 2976/Pub. L. 99-199

To direct the Secretary of Agriculture to release the condition requiring that a parcel of land conveyed to New York State be used for public purposes and to convey United States mineral interests. (Dec. 23, 1985; 2 pages) Price: $1.00

H.R. 3085/Pub. L. 99-200

To clear title to certain lands along the California-Nevada boundary. (Dec. 23, 1985; 2 pages) Price: $1.00

H.R. 4006/Pub. L. 99-201

To extend until March 15, 1986, the application of certain tobacco excise taxes and certain medicare reimbursement provisions. (Dec. 23, 1985; 1 page) Price: $1.00

H.J. Res. 436/Pub. L. 99-202

To designated 1986 as "Save for the U.S.A. Year", and for other purposes. (Dec. 23, 1985; 2 pages) Price: $1.00

H.J. Res. 450/Pub. L. 99-203

To authorize and request the President to issue a proclamation designating April 20 through April 26, 1986 as "National Organ and Tissue Donor Awareness Week". (Dec. 23, 1985; 1 page) Price: $1.00

S. 947/Pub. L. 99-204

Overseas Private Investment Corporation Amendments Act of 1985. (Dec. 23, 1985; 9 pages) Price: $1.00

S. 1884/Pub. L. 99-205

Farm Credit Amendments Act of 1985. (Dec. 23, 1985; 35 pages) Price: $1.00

S.J. Res. 32/Pub. L. 99-206

To authorize and request the President to designate September 21, 1986, as "Ethnic American Day". (Dec. 23, 1985; 1 page) Price: $1.00

S.J. Res. 70/Pub. L. 99-207

To proclaim March 20, 1986, as "National Agriculture Day". (Dec. 23, 1985; 1 page) Price: $1.00

S.J. Res. 213/Pub. L. 99-208

To designate January 19 through January 25, 1986, "National Jaycee Week". (Dec. 23, 1985; 1 page) Price: $1.00

H.R. 729/Pub. L. 99-209

To amend the Panama Canal Act of 1979 in order that claims for vessels damaged outside-the-locks may be resolved in the same manner as those vessels damaged inside the locks, and for other purposes. (Dec. 23, 1985; 3 pages) Price: $1.00

H.R. 2694/Pub. L. 99-210

Designating the United States Post Office Building located at 300 Packerland Drive, Green Bay, Wisconsin, as the "John W. Byrnes Post Office and Federal Building". (Dec. 23, 1985; 1 page) Price: $1.00

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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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Federal Aviation Administration

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Public Health Service

Chemicals
Environmental Protection Agency

Customs Duties and Inspection
Customs Service

Exports
International Trade Administration

Flood Insurance
Federal Emergency Management Agency

Hazardous Substances
Environmental Protection Agency

Maritime Carriers
Federal Maritime Commission

Meat Inspection
Food Safety and Inspection Service

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Howard Landon 202-523-5227 (Voice)
Melanie Williams 202-523-5229 (TDD)

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. Dates and locations will be announced later.

NOTE: There will be a sign language interpreter for hearing impaired persons at this briefing.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 309

[Docket No. 84-023]

Biological Residues; Rescission of Obsolete Regulatory Provision Concerning Cattle Which Had Been Treated With DES

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is rescinding an obsolete regulatory provision concerning cattle which had been treated, or were suspected of having been treated, with diethylstilbestrol (DES) on or after November 1, 1979. The program which was the subject of that provision has been terminated and the provision is, therefore, obsolete. A proposed rule was published in the Federal Register of September 5, 1985 which solicited public comments on this rescission. (50 FR 36094) No comments were received.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: Dr. John E. Spaulding, Director, Residue Evaluation and Planning Division, Food Safety and Inspection Service, Department of Agriculture, 14th and Independence SW., Washington, DC 20250, (202) 447-2807.

SUPPLEMENTARY INFORMATION:

Executive Order 12291/Effect on Small Entities

The Administrator has determined that this final rule is not a major rule under Executive Order 12291. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Additionally, the Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601 *et seq.*)

These determinations have been made because this amendment will simply rescind an obsolete regulatory provision without affecting current Agency policies or impacting upon industry or the consuming public.

Background

In 1979 the FDA withdrew approvals for use of diethylstilbestrol (DES) as a feed additive and as a subcutaneous implant. During March of 1980, it came to the attention of FDA and USDA that some cattle producers were continuing to treat cattle with DES implants under the mistaken impression that DES supplies on hand could be used until exhausted. This finding prompted a joint USDA/FDA program to identify violators or suspected violators of the ban, and provide for pre-slaughter segregation of treated and untreated cattle.

In the Federal Register of April 22, 1980, USDA took "emergency action . . . in order to protect the public health from animals exposed to DES." (45 FR 26947) This rule was codified at 9 CFR 309.16(c).

The new rule announced a special program requiring that cattle which had been treated with DES on or after November 1, 1979 would be processed for slaughter separately from untreated cattle. This program permitted the slaughter of treated cattle provided that the implant was surgically removed by or under the supervision of a USDA-accredited veterinarian, and imposed certain other procedural requirements to ensure meat safety. That program was brought to a successful conclusion. Paragraph 309.16(c) has since remained in the regulations, but is now considered obsolete and no longer needed to ensure meat safety.

On September 5, 1985, the Food Safety and Inspection Service (FSIS) published a proposed rule which would rescind this provision. (50 FR 36094) No public comments were received on this proposal, and FSIS is now proceeding with a final rule to remove that provision from the Federal Meat Inspection regulations.

Indexing Terms

Following are the indexing terms for this regulation.

List of Subjects in 9 CFR Part 309

Meat inspection, Livestock.

For reasons explained in the preamble, Part 309, Subchapter A, Chapter III of Title 9, Code of Federal Regulations, is amended as set forth below.

PART 309—ANTE-MORTEM INSPECTION

9 CFR Part 309 is amended as follows:

1. The authority citation for Part 309 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C., 601 *et seq.*, 33 U.S.C. 1254(b), unless otherwise noted.

§ 309.16 [Amended]

2. In Part 309, § 309.16 is amended to remove the reference to paragraph (c) in the first sentence of paragraph (a).

3. In Part 309, § 309.16(c) is removed and reserved for future use.

Dated: December 11, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-30840 Filed 12-27-85; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-90-AD; Amdt. 39-5201]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspection of the cargo compartment blowout panel assemblies on certain Boeing Model 757 airplanes for adhesive bonding and subsequent rework, if necessary, and reinstallation. Several blowout panels have been detected that were glued to the retainer. Gluing may prevent proper separation during a sudden decompression which could result in overloading of the main deck floor.

DATE: Effective February 3, 1986.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-2924. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive that would require inspection of the cargo compartment blowout panel assemblies on certain Boeing Model 757 airplanes for adhesive bonding was published in the **Federal Register** on September 5, 1985 (50 FR 36098). The comment period for the proposal closed on October 27, 1985.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Only one comment was received, the commenter had no objections to the contents of the proposed rule.

After a careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 29 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $11,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 757 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 757 airplanes listed in Boeing Service Bulletin Number 757-25-0047, Revision 1, certificated in any category. To prevent the overloading of the main deck floor as the result of a sudden decompression, accomplish the following within 120 days after the effective date of this AD, unless already accomplished:

A. Inspect and, if necessary, rework and reinstall the cargo compartment blowout panel assemblies in accordance with Paragraph III of Boeing Service Bulletin 757-25-0047, Revision 1, or later FAA-approved revision.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 3, 1986.

Issued in Seattle, Washington, on December 18, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-30729 Filed 12-27-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-67-AD; Amdt. 39-5205]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends an existing airworthiness directive (AD) applicable to certain Boeing Model 737 airplanes. The existing AD requires repetitive inspection and repair, as necessary, of the wing to body drag angles and provides for a terminating modification. However, the terminating action did not include acceptable modifications as specified in previous versions of the manufacturer's service bulletin. This action would allow those modifications as a terminating action.

DATE: Effective February 3, 1986.

ADDRESSES: The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2926. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an amendment to an existing AD which requires inspection and repair, as necessary, of the wing to body drag angles at Body Station 540 on certain Boeing Model 737 airplanes, was published in the **Federal Register** on October 7, 1985 (50 FR 40866). The comment period for the proposal closed on November 26, 1985.

The existing rule, Amendment 39-4998 (50 FR 5569; February 11, 1985), AD 85-03-06, was prompted by numerous reports of cracking and allows as terminating action, modification in

accordance with Boeing Service Bulletin 737–53–1031, Revision 3, or later FAA-approved revisions. The terminating action consists of replacing the aluminum angles with titanium parts. The FAA has determined that replacement of the angles in accordance with Revision 1 or Revision 2 of Boeing Service Bulletin 737–53–1031 is also acceptable terminating action.

This amendment was prompted by several requests from operators who had modified airplanes in accordance with earlier versions of the service bulletin.

Interested persons have been afforded an opportunity to participate in the making of this AD and due consideration has been given to all comments received.

Only one comment was received in response to the NPRM. The Air Transport Association of America (ATA), on behalf of its operator members, supports the amendment.

After careful review of all available data and the comment received, the FAA has determined that air safety and the public interest require adoption of the amendment as proposed.

This amendment will allow as terminating action to AD 85–03–06, modification in accordance with Boeing Service Bulletin 737–53–1031, Revision 1 or Revision 2. Since the amendment provides clarifying information that expands terminating action for an existing AD, there is no significant economic or regulatory impact on affected operators.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority Citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85.

2. By amending Airworthiness Directive 85–03–06, Amendment 39–3996 (50 FR 5569; February 11, 1985), by revising paragraphs B. and C. to read as follows:

"B. If cracks are found, replace cracked parts with new aluminum parts and continue the inspections of paragraph A., above, or modify in accordance with the Accomplishment Instructions in Boeing Service Bulletin 737–53–1031, Revision 1, or later FAA-approved revisions.

C. Modification of airplanes in accordance with Accomplishment Instructions of Boeing Service Bulletin 737–53–1031, Revision 1, or later FAA-approved revisions, constitutes terminating action for this AD."

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 3, 1986.

Issued in Seattle, Washington, on December 20, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–30728 Filed 12–27–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–NM–133–AD; Amdt. 39–5204]

Airworthiness Directives; British Aerospace Viscount Model 700 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires modification of the aircraft hydraulic system cut out value on British Aerospace (BAe) Viscount Model 700 series airplanes. This action is prompted by a report of an inadvertent withdrawal of the mechanical nose landing gear downlock, which caused the nose landing gear to collapse.

DATE: Effective February 3, 1986.

ADDRESSES: The service information specified in this AD may be obtained upon request to British Aerospace Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation regulations to include an airworthiness directive which requires modification to the hydraulic system cut out valve on British Aerospace Viscount Model 700 series airplanes was published in the Federal Register on June 20, 1985 (50 FR 25584).

Interested parties have been afforded an opportunity to participate in the making of this amendment. A comment was received from the manufacturer which stated that an AD was not necessary since monitoring of the system cycle times and gauge readings provide adequate warning of developing conditions. The FAA does not concur with the commenter since one failure has already occurred and since the conditions which initiated that failure are likely to exist or develop on other airplanes of the same type design.

Paragraph A. of the final rule has been clarified to reflect the correct hydraulic system cut out valve part number, to correct a typographical error in the Automotive Products Modification Standard number, and to add a reference to a British Aerospace Technical News Sheet.

After careful review of available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with minor clarifying editorial changes mentioned above.

It is estimated that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated at $600 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $14,000.

For the reasons discussed above, the FAA has determined that this regulation

is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($1,000.). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Vickers Viscount Model 700 series airplanes certificated in any category. Compliance is required as follows, unless previously accomplished. To prevent nose-landing gear collapse as a result of a faulty hydraulic cut out valve, accomplish the following:

A. Within the next 1000 hours time-in-service or nine months after the effective date of this AD, whichever occurs first, modify the aircraft hydraulic system cut out valve, Part Number AIR 41916, in accordance with Automotive Products Modification Standard SA 3490, dated December 16, 1959 (reference BAe Technical News Sheet No. 369, Issue 1, dated August 5, 1985).

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to British Aerospace Inc., Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 3, 1986.

Issued in Seattle, Washington, on December 20, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-30727 Filed 12-27-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370, 372, 387 and 388

[Docket No. 51201-5201]

Revision of Enforcement and Administrative Proceedings Provisions of the Export Administration Regulations

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The agency is revising Part 387 (Enforcement) and Part 388 (Administrative Proceedings) of the Export Administration Regulations (Parts 387 and 388, Title 15, Code of Federal Regulations). These revisions are limited to those changes mandated by the Export Administration Amendments Act of 1985 (Pub. L. 99-64, 99 Stat. 120), which amended and extended the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 ((1982)) (Act). These changes implement both new and revised statutory provisions concerning violations and set forth revised procedures governing the imposition of administrative sanctions for violation of any regulation relating to export control, or any license, order or other authorization under the Act. Procedures governing the imposition of administrative sanctions for violations of the antiboycott provisions remain unchanged.

EFFECTIVE DATE: These rules are effective December 30, 1985.

FOR FURTHER INFORMATION CONTACT: Daniel C. Hurley, Jr., Office of the Assistant General Counsel for Export Administration, 202/377-5311.

SUPPLEMENTARY INFORMATION: This rule revises the Export Administration Regulations to incorporate changes in the Export Administration Act (for example, changes establishing as distinct violations conspiracy to violate or attempt to violate, possession with intent to export illegally and evasion), to conform specific violation provisions to the Export Administration Act, and to reflect organizational changes within the International Trade Administration. This rule also revises procedures for imposing administrative sanctions for violation of the export control provisions of the Act or Regulations, or any order, license, or other authorization issued under the Act.

The revisions provide that an administrative law judge will preside over proceedings charging violations of the export control provisions of the Act.

The regulations use common procedures in proceedings charging violations of the antiboycott and the export control provisions, except as otherwise set forth. One notable difference concerns the type of decision rendered by the administrative law judge. As required by section 13(c) of the Act, the administrative law judge issues a *recommended* decision in proceedings charging violations of the export control provisions. The recommended decision is immediately referred to the Assistant Secretary for Trade Administration who must issue a written order affirming, modifying or vacating the recommended decision within 30 days of its receipt. Another difference required by the Act concerns the time available for decision. Proceedings involving export control violations, as opposed to antiboycott violations, shall be concluded, including the review by the Assistant Secretary, within one year after the charging letter is submitted to the administrative law judge, unless the administrative law judge extends the period for good cause shown.

Regulations governing procedures applicable to temporary denial orders issued on or after July 12, 1985, which were originally promulgated on October 18, 1985 (50 FR 42666, October 21, 1985), are republished here so that Part 388 may appear in the **Federal Register** as one complete document for easier reference and citation purposes.

The regulations add new provisions to Parts 370 (Export Licensing General Policy and Related Information) and 372 (Individual Validated Licenses and Amendments) to implement new statutory authority under section 11(h) of the Act to deny export privileges to any person convicted of certain offenses. Administrative actions taken by the Director, Office of Export Licensing, under these new provisions are separate and distinct from any sanctions imposed under Part 388 for violations of the Act.

These regulations are published in final form because they are limited solely to changes required by the 1985

Amendments to the Act and because they are exempted from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking.

Rulemaking Requirements

In connection with various rulemaking requirements, the Department has determined that:

1. This rule is exempt from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) pursuant to section 13(a) of the Act and will become effective immediately. This rule also involves military and foreign affairs functions of the United States.

2. This rule contains collections of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* The recordkeeping requirements contained in this rule have been approved by the Office of Management and Budget under control numbers 0625–0036, 0625–0052 and 0625–0104.

3. Because a notice of proposed rulemaking is not required for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act, 5 U.S.C 601(2) and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns military and foreign affairs functions of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Therefore, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

List of Subjects

15 CFR Part 387

Exports, Enforcement, Criminal and administrative sanctions, Penalties, Violations, Reporting and recordkeeping requirements.

15 CFR Part 388

Administrative practice and procedure, Denial of export privileges, Exports, Temporary denial of export privileges.

Accordingly, the regulations governing export licensing general policy, individual validated licenses, enforcement and administrative proceedings, 15 CFR Parts 370, 372, 387 and 388, are amended as set forth below.

1. The authority citations for 15 CFR Parts 370 and 372 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E. O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 370—[AMENDED]

2. 15 CFR Part 370 is amended by adding a new § 370.15 to read as follows:

§ 370.15 Administrative action denying permission to apply for or use export licenses.

(a) *General.* The Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may deny permission to apply for or use any export license to any person convicted of a violation of 18 U.S.C. 793, 794 or 798, section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(b) *Procedure.* Upon notification that a person has been convicted of a violation of one or more of the provisions specified in paragraph (a) of this section, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny permission to apply for or use any export license, including a general license, to any such person. The Director, Office of Export Licensing, shall notify each person denied under this section by letter stating that permission to apply for or use export licenses has been denied.

(c) *Duration.* Any denial of permission to apply for or use licenses under this section shall not exceed 10 years.

(d) *Effect.* Any person denied permission to apply for and use licenses under this section shall be considered a "person denied export privileges" for purposes of § 387.12.

(e) *Publication.* The name and address(es) of any person denied permission to apply for or use export licenses under this section shall be published in Supplements 1 and 2, Part 388, noting that such action was taken pursuant to this section and section 11(h) of the Act.

(f) *Appeal.* An appeal of an action under this section shall be pursuant to Part 389.

PART 372—[AMENDED]

3. 15 CFR Part 372 is amended by adding a new paragraph (h) to § 372.1 to read as follows:

§ 372.1 General provisions.

* * * * *

(h) *Administrative action revoking validated export licenses.*—(1) *General.* The Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may revoke any export license, including a general license, issued or otherwise available to any person convicted of a violation of 18 U.S.C 793, 794 or 798, section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)) or section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(2) *Procedure.* Upon notification that a person has been convicted of a violation of one or more of the provisions specified in paragraph (h)(1) of this section, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to revoke any validated export license issued to such person. The Director, Office of Export Licensing, shall notify each person whose validated export license is revoked under this section by letter specifying each license revoked.

(3) *Appeal.* Any appeal of an action under this section shall be pursuant to Part 389.

4. 15 CFR Part 387 is revised to read as follows:

PART 387—ENFORCEMENT

Sec.

387.1 Sanctions.
387.2 Causing, aiding, and abetting a violation.
387.3 Solicitation, attempt, and conspiracy.
387.4 Acting with knowledge of a violation; possession with intent to export illegally.
387.5 Misrepresentation and concealment of facts; evasion.
387.6 Export, diversion, reexport, transshipment.
387.7 Failure to comply with reporting requirements.
387.8 Failure to answer interrogatories or respond to requests for admission or to produce documents.
387.9 Licensee accountable for use of license.
387.10 Unauthorized use and alterations of export control documents.
387.11 Trafficking and advertising export control documents.
387.12 Transactions with persons subject to denial orders.
387.13 Recordkeeping.
387.14 Where to report violations.

Authority: Secs. 4, 5, 6, 7, 8, 11, 12, 13, 15 and 21 of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120; E.O. 12525 (50 FR 28757, July 16, 1985), E.O. 12214 (3 CFR 256 (1981)), E.O. 12002 (3 CFR 133 (1978)); Department Organization Order 10–3, effective September 6, 1984, and International Trade Administration Organization and Function Orders 41–1 (48 FR 26854, June 10, 1983 and 48

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FR 46831, October 14, 1983), as amended September 14, 1984, and 41-4 (47 FR 29582, July 7, 1982), as amended February 9, 1984.

§ 387.1 Sanctions.

(a) Criminal—(1) *Violations of Export Administration Act.*—(i) *General.* Except as provided in paragraph (a)(1)(ii) of this section, whoever knowingly violates or conspires to or attempts to violate the Export Administration Act ("the Act") or any regulation, order, or license issued under the Act is punishable for each violation by a fine of not more than five times the value of the exports involved or $50,000, whichever is greater, or by imprisonment for not more than five years, or both.

(ii) *Willful violations.* (A) Whoever willfully violates or conspires to or attempts to violate any provision of this Act or any regulation, order, license issued thereunder, with knowledge that the exports involved will be used for the benefit of or that the destination or intended destination of the goods or technology involved is any controlled country or any country to which exports are controlled for foreign policy purposes, except in the case of an individual, shall be fined not more than five times the value of the export involved or $1,000,000 whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both.

(B) Any person who is issued a validated license under this Act for the export of any goods or technology to a controlled country and who, with the knowledge that such export is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than five years, or both.

(C) Any person who possesses any goods or technology with the intent to export such goods or technology in violation of an export control imposed under section 5 or 6 of the Act or any regulation, order, or license issued with respect to such control, or knowing or having reason to believe that the goods or technology would be so exported, shall, in the case of a violation of an export control imposed under section 5 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section and shall, in the case of a violation of an export control imposed under section 6 of the Act (or any regulation, order, or license issued with respect to such control), be subject to the penalties set forth in paragraph (a)(1)(i) of this section.

(D) Any person who takes any action with the intent to evade the provisions of this Act or any regulation, order, or license issued under this Act shall be subject to the penalties set forth in paragraph (a)(1)(i) of this section, except that in the case of an evasion of an export control imposed under section 5 or 6 of the Act (or any regulation, order, or license issued with respect to such control), such person shall be subject to the penalties set forth in paragraph (a)(1)(ii)(A) of this section.

(2) *Violations of False Statements Act.* The submission of false or misleading information or the concealment of material facts, whether in connection with license applications, boycott reports, Shipper's Export Declarations, investigations, compliance proceedings, appeals, or otherwise, is also punishable by a fine of not more than $10,000 or by imprisonment for not more than five years, or both, for each violation (18 U.S.C. 1001).

(b) *Administrative* [1]—(1) *Denial of export privileges.* Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is also subject to administrative action which may result in suspension, revocation, or denial of export privileges conferred under the Export Administration Act (*see* § 388.3 *et seq*).

(2) *Exclusion from practice.* Whoever violates any law, regulation, order, or license relating to export controls or restrictive trade practices and boycotts is further subject to administrative action which may result in exclusion from practice before the International Trade Administration (*see* § 390.2(a)).

(3) *Civil penalty.* A civil penalty may be imposed for each violation of the Export Administration Act or any regulation, order or license issued under the Act either in addition to, or instead of, any other liability or penalty which may be imposed. The civil penalty may not exceed $10,000 for each violation except that the civil penalty for each violation involving national security controls imposed under Section 5 of the Act may not exceed $100,000. The payment of such penalty may be deferred or suspended, in whole or in part, for a period of time that may exceed one year. Deferral or suspension shall not operate as a bar in the collection of the penalty in the event that the conditions of the suspension or deferral are not fulfilled. When any person fails to pay a penalty imposed under this § 387.1(b)(3), civil action for the recovery of the penalty may be brought in the name of the United States, in which action the court shall determine *de novo* all issues necessary to establish liability. Once a penalty has been paid, no action for its refund may be maintained in any court.[2]

(4) *Seizure.* Commodities or technical data which have been, are being, or are intended to be, exported or shipped from or taken out of the United States in violation of the Export Administration Act or of any regulation, order, or license issued under the Act are subject to being seized and detained, as are the vessels, vehicles, and aircraft carrying such commodities or technical data. Seized commodities or technical data are subject to forfeiture (50 U.S.C. app. 2411(g)) (22 U.S.C. 401, *see* § 386.8(b)(6)).

§ 387.2 Causing, aiding, and abetting a violation.

No person may cause, or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the Export Administration Act or any regulation, order, or license issued under the Act.

§ 387.3 Solicitation, attempt, and conspiracy.

(a) *Solicitation and attempt.* No person may do any act that solicits the commission of, or that constitutes an attempt to bring about, a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

(b) *Conspiracy.* No person may conspire or act in concert with one or more persons in any manner or for any purpose to bring about or to do any act that constitutes a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

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[1] Violations of the Act or regulations, or any order or license issued under the Act, may result in the imposition of administrative sanctions, and also or alternatively of a fine or imprisonment as described in paragraph (a) of this section, seizure or forfeiture of property under section 11(g) of this Act or 22 U.S.C. 401, or any other liability or penalty imposed by law. The U.S. Department of Commerce may compromise and settle any administrative proceeding brought with respect to such violations.

[2] The U.S. Department of Commerce may refund the penalty at any time within two years of payment if it is found that there was a material error of fact or of law.

§ 387.4 Acting with knowledge of a violation; possession with intent to export illegally.

(a) No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.

(b) No person may possess any commodities or technical data, controlled for national security or foreign policy reasons under section 5 or 6 of the Act: (1) With the intent to export such commodities or technical data in violation of the Export Administration Act or any regulation, order, license or other authorization under the Act, or (2) knowing or having reason to believe that the commodities or technical data would be so exported.

§ 387.5 Misrepresentation and concealment of facts; evasion.

(a)(1) *Misrepresentation and concealment.* No person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, whether directly to the Office of Export Licensing, the Office of Export Enforcement,[3] the Office of Antiboycott Compliance, any customs office, or an official of any other United States agency, or indirectly to any of the foregoing through any other person or foreign government agency or official:

(i) In the course of an investigation or other action instituted under the authority of the Export Administration Act;

(ii) In connection with the preparation, submission, issuance, use, or maintenance of any export control document, as defined in § 370.2, or restrictive trade practice or boycott request report, as defined in § 369.6;

(iii) For the purpose of or in connection with effecting an export from the United States, or the reexport, transshipment, or diversion of any such export.

(2) *Scope.* Paragraph (a)(1) of this section applies to all representations, statements, and certifications made to, and material facts concealed from, the Office of Export Licensing, the Office of Export Enforcement, the Office of Antiboycott Compliance, and the U.S. Customs Service, or other agencies with respect to matters within the jurisdiction of these agencies under the statutes, Executive Orders, and regulations relating to export control, restrictive trade practices or boycotts, and orders or licenses issued or established under the Act.

(3) *Representations to be continuing in effect; notification.* All representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify, in writing, the Office of Export Licensing, the Office of Export Enforcement, or the Office of Antiboycott Compliance, as well as any other cognizant agency(ies), of any change of any material fact or intention from that previously represented, stated, or certified. Such notification shall be made immediately upon receipt of any information which would lead a reasonably prudent person to believe that a change of material fact or intention has occurred or may occur in the future.

(b) *Evasion.* No person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of the Act, or any regulation, order, license or other authorization issued under the Act.

§ 387.6 Export, diversion, reexport, transshipment.

Except as specifically authorized by the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may export, dispose of, divert, direct, mail or otherwise ship, transship, or reexport commodities or technical data to any person or destination or for any use in violation of or contrary to the terms, provisions, or conditions of any export control document, any prior representation, any form of notification of prohibition against such action, or any provision of the Export Administration Act or any regulation, order, or license issued under the Act.

§ 387.7 Failure to comply with reporting requirements.

No person may fail or refuse to comply with reporting requirements in violation of the Export Administration Act or of any order, regulation or license issued under the Act. *See,* for example, §§ 369.6, 372.9(e) and 379.6(b).

§ 387.8 Failure to answer interrogatories or respond to requests for admission or to produce documents.

(a) *Interrogatories and requests for admission or to produce documents.* Whenever the Office of Export Enforcement or the Office of Antiboycott Compliance finds it impracticable, during the course of an investigation, other proceeding or action, to subpoena a person, or books, writings, records, or other tangible things bearing upon the matter being investigated, the Office of Export Enforcement or the Office of Antiboycott Compliance may serve upon such person interrogatories, requests for admission of facts, requests for the production of books, records and other writings, or requests to produce or make available other tangible things for inspection, including commodities or technical data exported from the United States, as therein specifically set forth. If a person, within 20 days after receiving interrogatories or requests, fails or refuses to:

(1) Furnish responsive answers to such interrogatories or requests for admissions;

(2) Produce the requested books, records and other writings; or

(3) Produce or make available for inspection other tangible things requested, including commodities or technical data exported from the United States, which are in that person's possession, custody or control, without good cause being shown, an order may be issued as provided in § 388.3(a)(2), denying export privileges to such person. This order shall remain in effect for five years or until such person responds to the interrogatories or requests or gives adequate reasons for failure or refusal to so respond.

(b) *Service.* Interrogatories or requests shall be served in the same manner as provided in § 388.4 (b) and (c) for service of a charging letter.

(c) *Enforcement Procedures.* The procedure regarding applications for denial orders under § 387.8(a) and motions to vacate or modify such orders shall conform substantially to that provided for temporary denial orders by § 388.19.

§ 387.9 Licensee accountable for use of license.

The person to whom a license is issued becomes the licensee and will be held strictly accountable for use of the license. The licensee may not, without prior written approval of the Office of Export Licensing, in consultation with the Office of Export Enforcement, permit any other person to facilitate or effect

[3] For purposes of Part 387, the Office of Export Enforcement enforces the Export Administration Regulations relating to short supply controls imposed under section 7 of the Act. Such controls are otherwise the responsibility of the Office of Industrial Resource Administration.

the export of any commodity or technical data described in the license, except under this direction and responsibility as his true agent in fact. No term of sale or export or other agreement between the licensee or the order party and the purchaser or ultimate consignee of such commodity or technical data may provide otherwise.

§ 387.10 Unauthorized use and alterations of export control documents.

Except as otherwise specifically authorized in the Export Administration Regulations or in writing by the Office of Export Licensing, in consultation with the Office of Export Enforcement, no licensee or other person, may obtain, use, alter, or assist in or permit the use or alteration of, any export control document, for the purpose of or in connection with facilitating or effecting any export or reexport other than that set forth in such document and in accordance with all the terms, provisions, and conditions thereof.

§ 387.11 Trafficking and advertising export control documents.

(a) *Unlawful practices.* Without prior written approval of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may do any of the following with respect to any export or reexport under any export control document:

(1) *Transfers or changes of authority.* Effect any transfer of, or other change of the authority granted in such document, whether by sale, grant, gift, loan or otherwise, to any person; or permit any person to use the same other than for the true account of and as true agent in fact for the licensee; or, if that person is not the licensee, to receive or accept a transfer or other change of the authority granted in, or otherwise use an export control document except for the true account of and as true agent in fact for the licensee.

(2) *Change in named parties.* Effect any change of, substitution for, or addition to, the parties named in an export control document; or transfer, obtain, purchase, or create any interest or participation in the transaction described in any export control document.

(3) *Unlawful advertising or soliciting.* Offer or solicit by advertisement, circular, or other communication any transfer or change of an export control document or any interest therein prohibited above. Such communication shall be deemed unlawful:

(i) Even though coupled with a condition requiring approval by the Office of Export Licensing of a new consignor or consignee or other change in the export license, by way of transfer, amendment or otherwise;

(ii) Where, in offering or soliciting the sale for export of any commodities or technical data, the communication indicates that the proposed seller of such commodities or technical data holds or will furnish a license or other export control document for the export of such commodities or technical data;

(iii) Where, in offering or soliciting the purchase for export of any commodities or technical data, that communication is addressed by the proposed buyer directly or indirectly to any person on the condition that such person as a seller then holds or will furnish a license or other export control document for the export of those commodities or technical data.

(4) *Other unlawful practices.* Sections 387.10, 387.11, and 387.12, among other things, make it unlawful:

(i) For a licensee or other person holding an export control document to sell or offer to sell, or for any person to purchase or to offer to purchase, the commodities or technical data described in such document with the understanding that the document may be used by or for the benefit of the purchaser to effect export of those commodities or technical data;

(ii) For any person to effect the export of the commodities referred to in § 387.11(a)(4)(i) for the benefit of or "for the account" of any person other than the licensee, regardless of the device, means, or fiction employed;

(iii) For the licensee to act fictitiously as principal or agent of another person who actually is effecting the export, or for such other person to act fictitiously as the licensee's principal or agent for the same purpose;

(iv) For the named consignee to act "for the account" of a new unlicensed consignee; or

(v) For any person to use a license, originally issued for a specified transaction which was not effected, for any other transaction without the specific written authorization of the Office of Export Licensing.

(b) *Transfer of dock receipts, bills of lading, or liens.*—(1) *Use of certain export control documents.* Section 387.12(a) is not to be construed as affecting the transfer and other use of dock receipts, bills of lading, or other commercial documents necessary to complete a transaction authorized by the export license, or impairing the validity of liens or other security titles or interests created in good faith with respect to commodities or technical data or documents in the course of financing, warehousing, forwarding, or transporting commodities or technical data.

(2) *Disposition of export.* A person who is entitled to foreclose on any lien or other security title or interest, or who may exercise any rights as holder of the lien or other security title or interest, or who contemplates an export under the license by someone other than the licensee or to someone other than the purchaser or ultimate consignee designated in the license, must apply for a new license in accordance with the provisions of Part 372.

§ 387.12 Transactions with persons subject to denial orders.

(a) *Prohibited activities.* Without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity:

(1) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the International Trade Administration; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate:

(i) In any transaction which may involve any commodity or technical data exported or to be exported from the United States;

(ii) In any reexport thereof; or

(iii) In any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

(b) *Definition of "Person Denied Export Privileges".* For the purpose of this section the term "person denied export privileges" means:

(1) Any person, firm, corporation, or other business organization whose export privileges are revoked or denied by any order or who is excluded by such order from practice before the International Trade Administration; and

(2) Any other person, firm, corporation, or other business organization also denied export privileges or excluded from practice before the International Trade Administration because of a relationship to any person denied export privileges through affiliation, ownership, control, position of responsibility, or

other connection in the conduct of trade or related services during the period of such order.

(c) *Applicability of orders.* Orders which revoke or deny the export privileges of any person or which exclude any person from practice before the International Trade Administration may provide that the terms and prohibitions of such orders apply not only to the persons expressly named therein but also, for the purpose of preventing evasion, to any other person, firm corporation, or other business organization with which that person may then or thereafter (during the term of the order) be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services. The Table of Denial Orders (*See* Supplement No. 1 to Part 388 and § § 388.3 and 390.2) contains all orders which currently deny export privileges in whole or in part. The table also lists the names and addresses of such persons, the effective and expiration dates of the orders, a brief summary of the export privileges affected, and the citations to the volumes and pages of the **Federal Register** where complete texts of the orders are published. The publication of such orders in the **Federal Register** constitutes legal notice of the terms thereof to all persons.

§ 387.13 Recordkeeping.

(a) *Transactions subject to this regulation.* This section applies to—(1) transactions involving restrictive trade practice or boycott requirements or requests, (2) exports of commodities or technical data from the United States and any known reexports, transshipments, or diversions of commodities or technical data originally exported from the United States, or (3) any other transactions subject to these Regulations, regardless of whether the export or reexport is made, or proposed to be made, by any person with or without authorization by a validated license, a general license, or any other export authorization. This section also applies to all negotiations connected with those transactions, except that for export control matters a mere preliminary inquiry or offer to do business and negative response thereto shall not constitute negotiations, unless the inquiry or offer to do business proposes a transaction which a reasonably prudent exporter would believe likely to lead to a violation of export orders or regulations. It also applies to any exports to Canada, if, at any stage in the transaction, it appears that a person in a country other than the United States or Canada has an interest therein or that the commodity or technical data involved is to be reexported, transshipped, or diverted from Canada to another foreign country.

(b) *Persons subject to this regulation.* Any person subject to the jurisdiction of the United States who, as principal or agent (including a forwarding agent), participates in any transaction described in § 387.13(a), and any person in the United States or abroad who is required to make and keep records under any provisions of the Export Administration Regulations, shall keep all the records described in § 387.13(c), which are made or obtained by that person, and shall produce them in the manner provided in paragraph (f) of this section.

(c) *Records to be kept.* The records to be kept under this § 387.13 shall include export control documents, as defined in § 370.2, memoranda, notes, correspondence, contracts, invitations to bid, books of account, financial records, restrictive trade practice or boycott documents and reports, and other written matter pertaining to the transactions described in § 387.13(a), which are made or obtained by a person described in § 387.13(b). In addition to the records required to be kept by this section, other sections of the Regulations require the retention of records, including but not limited to § § 368.2, 369.6, 371.9, 371.10, 371.12, 371.17, 371.19, 371.22, 372.1, 372.5, 372.6, 372.7, 372.8, 372.10, 372.11, 372.13, 373.2, 373.3, 373.7, 373.8, 374.7, 375.2, 375.3, 375.4, 375.5, 375.7, 376.4, 376.6, 376.7, 376.8, 376.9, 376.10, 376.11, 376.12, 378.6, 378.7, 379.4, 379.8, 379.9, 386.2, 386.5, 386.3, 386.6 and 391.2. The revocation or revision of any provision of the Export Administration Regulations which requires the making and keeping of records shall not be retroactive in effect unless specifically provided and shall not affect the original requirement to keep these records for the prescribed period.

(d) *Reproduction of records*—(1) *Definition.* "Reproduction" for the purpose of this § 387.13(d) is defined to include any photographic, photostatic, micrographic, miniature photographic or other process which completely, accurately and durably reproduces the original record.

(2) *Use of reproductions.* Reproductions may not be substituted for original documents with respect to all categories of records required to be retained under any provisions of the Export Administration Regulations or of any order, until all of the following conditions are met:

(i) The original documents have been retained for twelve months after the beginning of the retention period set forth in § 387.13(e) or an exception has been granted under the provisions of § 387.13(g).

(ii) All significant information, marks and/or other characteristics on the original document must be clearly visible and legibly reproduced.

(iii) Appropriate facilities must be provided and maintained for the preservation of the reproduced records during the retention period and for the ready location and inspection of the records, including a projector for viewing films, if needed.

(e) *Period of retention.* (1) Except for records relating to restrictive trade practice or boycott requests, which must be kept for three years (*see* § 369.6(b)(8)), records required under this section shall be kept for a period of two years from the latest of the following times:

(i) The export from the United States; or

(ii) Any known reexport, transshipment, or diversion; or

(iii) Any other termination of the transaction, whether formally in writing or by any other means. It may be advisable to maintain records longer than the mandatory two-year retention period because the statute of limitations for criminal actions brought under the Export Administration Act of 1979 and its predecessor Acts is five years (18 U.S.C. 3282). The statute for administrative compliance proceedings is also five years (28 U.S.C. 2462).

(2) If the Department of Commerce or any other Government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the agency concerned.

(f) *Producing and inspecting records.* (1) Persons within the United States may be requested to produce records which are required to be kept by any provision of the Export Administration Regulations or by any order, and to make them available for inspection and copying by any authorized agent, official or employee of the International Trade Administration, the U.S. Customs Service, or the U.S. Government, without any charge or expense to such agent, official or employee. The Office of Export Enforcement and the Office of Antiboycott Compliance encourage voluntary cooperation with such requests. When voluntary cooperation is not forthcoming, the Office of Export Enforcement and the Office of Antiboycott Compliance are authorized

to issue subpoenas for books, records, and other writings. In instances where a person does not comply with a subpoena, the Department of Commerce may petition a district court to have the subpoena enforced.

(2) Every person abroad, required to keep records by any provision of the Export Administration Regulations or by any order, shall produce all records or reproductions of records required to be kept, and make them available for inspection and copying upon request by an authorized agent, official, or employee of the International Trade Administration, the U.S. Customs Service, or a U.S. Foreign Service post, or by any other accredited representative of the U.S. Government, without any charge or expense to such agent, official or employee. Persons located outside the United States who fail to comply with certain requests, including requests to produce documents, may be subject to orders denying export privileges. (*See* § 387.8.)

(g) *Requests for exceptions to recordkeeping requirements.* (1) *Effect of exception.* Recordkeeping entities (as defined in § 387.13(b)) wishing to maintain records on micrographic systems prior to the second year of the retention period may request an exception to the recordkeeping requirements. An exception, if granted, permits the recordkeeping entity or substitute micrographic records for original documents for the full retention period.

(2) *Basis for consideration.* When reviewing requests for exceptions, the Office of Export Licensing, in consultation with the Office of Export Enforcement or the Office of Antiboycott Compliance, will take into consideration the requestor's previous performance with respect to general export control matters and antiboycott matters, respectively.

(3) *Guidelines for micrographic systems.* To maintain records under this exception, a micrographic system shall have the following minimum requirements:

(i) The system shall provide commercial permanence of all records.

(ii) The system shall provide for frequent quality control inspection to ensure readability of all records.

(iii) Micrographed records must have a degree of legibility and readability, when displayed on a viewer and when reproduced on paper, equal to that of the original records. (*See* section 5 of IRS Revenue Procedure No. 81–46, 1981–40 C.B. 6 concerning technical standards of micrographed records.)

(iv) A detailed index of all micrographic data shall be maintained, and arranged in such a manner as to permit the immediate location of any particular record, location of all documents relating to a given transaction, and determination of disposition of corresponding original documents.

(4) *Submission of requests for exception.* (i) The recordkeeping entity shall submit requests for exceptions involving general export matters to: Office of Export Licensing, International Trade Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

(ii) The recordkeeping entity shall submit requests for exceptions involving antiboycott matters to: Office of Antiboycott Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Room H3886, Washington, DC 20230.

(iii) The requesting firm shall include in the request:

(A) Data on the proposed micrographic system, including specific information as to how the system conforms to requirements set forth in § 387.13(g)(3);

(B) A statement concerning intended disposition of corresponding original documents; and

(C) Samples of records to be kept on the system.

(5) *Micrographing records under an exception.* Upon receiving written notice that an exception has been granted under this § 387.13(g), the recordkeeping entity may substitute micrographic reproductions for only those records *already* in the retention period and approved under the exception. Originals of records that have not entered the retention period must be kept until the retention period begins (as set forth in §§ 369.6(b)(8) and 387.13(e)) and micrographed records may then be substituted for the originals.

(6) *Disposition of original documents.* The recordkeeping entity shall include with micrographed records a signed document indicating final disposition of original documents, and the date of final disposition.

(7) *Revocation of exception.* The Department of Commerce may revoke an individual exception at any time if it determines that the firm has acted improperly, or for other good cause. A decision to revoke this exception may be appealed under the provisions of Part 389 of these Regulations.

(h) *Records exempt from recordkeeping requirements.* The following kinds of records have been determined to be exempt from recordkeeping requirements:

—Export Information Page
—Special Export Price List
—Vessel Log from Freight Forwarder
—Inspection Certificate
—Warranty Certificate
—Guarantee Certificate
—Packing Material Certificate
—Goods Quality Certificate
—Notification to Customer of Advance Mailings
—Letter of Indemnity
—Financial Release Form
—Financial Hold Form
—Export Parts Shipment Problem Form
—Draft Number Log
—Expense Invoice Mailing Log
—Financial Status Report
—Bank Release of Guarantees
—Cash Sheet
—Commission Payment Back-up
—Commissions Payable Worksheet
—Commissions Payable Control
—Check Request Forms
—Accounts Receivable Correction Form
—Check Request Register
—Commission Payment Printout
—Engineering Fees Invoice
—Foreign Tax Receipt
—Individual Customer Credit Status
—Request for Export Customers Code Forms
—Acknowledgement for Receipt of Funds
—Escalation Development Form
—Summary Quote
—Purchase Order Review Form
—Proposal Extensions
—Financial Proposal to Export Customers
—Sales Summaries

Information collection requirements in paragraph (a)(1) of this section approved under OMB Control No. 0625–0036; information collection requirements in paragraph (a) (2) of this section approved under OMB Control Nos. 0625–0052 and 0625–0104)

§ 387.14 Where to report violations.

(a) *Notification.* The Office of Export Enforcement has the primary responsibility for enforcing these Regulations except that the Office of Antiboycott Compliance has the responsibility for enforcing the Restrictive Trade Practices or Boycott Regulations in particular.

(1) If a person obtains knowledge that a violation of these Regulations has occurred or will occur, that person may notify:

Office of Export Enforcement, International Trade Administration, U.S. Department of Commerce, P.O. Box 7138, Washington, DC 20044, Telephone (202) 377–4608, or

Office of Antiboycott Compliance, U.S. Department of Commerce, International Trade Administration, 14th Street and Constitution Avenue, NW., Room H3886, Washington, DC (202) 377–2381,

as appropriate

(2) Any Federal, State, or local government agency obtaining

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knowledge of a potential violation under these Regulations should immediately report such potential violation to:

Office of Export Enforcement, P.O. Box 7138, Washington, DC 20044, Telephone (202) 377–4608, and

Office of Antiboycott Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW. Room 3886, Washington, DC 20230, Telephone (202) 377–2381.

Failure to report such potential violations may result in the unwarranted issuance of validated export licenses or unlicensed exports to the deteriment of national security, foreign policy or short supply interests of the United States.

(b) *Reporting requirement distinguished.* The notification provisions set forth in paragraph (a) of this section are not "reporting requirements" within the meaning of § 387.7.

5. 15 CFR Part 388, except for Supplement No. 1 which is unchanged and Supp No. 3 which is removed, is revised to read as follows:

PART 388—ADMINISTRATIVE PROCEEDINGS

Sec.

388.1 Purpose and limitations.
388.2 Definitions.
388.3 Denial of export privileges and imposition of civil penalties.
388.4 Institution of administrative proceedings.
388.5 Representation.
388.6 Filing and service of papers other than charging letter.
388.7 Answer and demand for hearing.
388.8 Default.
388.9 Discovery.
388.10 Subpoenas.
388.11 Matter protected against disclosure.
388.12 Prehearing conference.
388.13 Hearings.
388.14 Proceeding without a hearing.
388.15 Procedural stipulations extension of time.
388.16 Decision of the administrative law judge.
388.17 Consent proceedings.
388.18 Reopening.
388.19 Temporary denials.
388.20 Record for decision and availability of documents.
388.21 Consolidation of proceedings.
388.22 Appeals.
388.23 Review by Assistant Secretary.
Supplement No. 1—Table of Denial Orders Currently in Effect.
Supplement No. 2—Geographical Listing of Parties Subject to Denial Order.

Authority: Secs. 4, 5, 6, 7, 8, 11, 12, 13, 15 and 21 of the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120; E.O. 12525 (50 FR 28757, July 16, 1985), E.O. 12214 (3 CFR 256 (1981)) E.O. 12002 (CFR 133 (1978)); Department Organization Order 10–3, effective September 6, 1984, and International Trade Administration Organization and Function Orders 41–1 (48 FR 26854, June 10, 1983 and 48 FR 46831, October 14, 1983), as amended September 14, 1984, and 41–4 (47 FR 29582, July 7, 1982), as amended February 9, 1984.

§ 388.1 Purpose and limitations.

The regulations in this part set forth the procedures for imposing administrative sanctions for violation of the Export Administration Act of 1979 (50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985 (Pub. L. 99–64, 99 Stat. 120)) (Act), the regulations, or any order, license or other authorization issued under the Act. An administrative law judge shall conduct the proceedings, except for purposes of appeals under § 388.22 or reviews by the Assistant Secretary under § 388.23. Nothing in this part shall be construed as applying to or limiting other administrative or enforcement action relating to the Act, including any exercise of the investigative authorities conferred by sections 8 and 12(a) of the Act. These regulations implement the requirements of section 11(c)(2) of the Act, with respect to violations of the antiboycott provisions of the Act and regulations, that administrative sanctions be determined only after notice and opportunity for an agency hearing on the record in accordance with the applicable provisions of the Administrative Procedure Act (5 U.S.C. 554–557). These regulations also implement the requirements of section 13(c)a of the Act, with respect to violations of the export control provisions of the Act and the regulations, that administrative sanctions be determined only after notice and opportunity for an agency hearing on the record in accordance with the applicable provisions of the Administrative Procedure Act (5 U.S.C. 556–557). These regulations do not confer any procedural rights or requirements based upon the Administrative Procedure Act to proceedings charging violations under the Act, except as expressly provided for in this part.

388.2 Definitions.

As used in this part:

Administrative Law Judge. The person authorized to conduct hearings in administrative proceedings brought under the Export Administration Act. The administrative law judge may impose sanctions only after notice and opportunity for an agency hearing on the record.

Department. The Office of Antiboycott Compliance, the Office of Export Enforcement, the Office of Export Licensing, or the Office of Technology and Policy Analysis, International Trade Administration, United States Department of Commerce.

Party. The Department and any person named as a respondent in a charging letter or order proposed or issued under this part.

Regulations. The Export Administration Regulations (15 CFR Parts 368–399), including the regulations concerning Restrictive Trade Practices or Boycotts (15 CFR Part 369).

Respondent. Any person named in a charging letter, temporary denial order, or order to show cause proposed or issued under this part.

§ 388.3 Denial of export privileges and imposition of civil penalties.

(a) *Administrative sanctions.*[1] A respondent who is found to have violated the Act, the Regulations, or any order, license or other authorization issued under the Act, is subject to any or all of the following sanctions under this part:

(1) *Suspension or revocation of validated export licenses.* Any outstanding validated export license affecting any transaction in which the respondent may have any interest, direct or indirect, may be suspended or revoked [2] and ordered returned immediately to the Office of Export Licensing;

(2) *General denial of export privileges.* The respondent may be denied [3] the privilege of participating,

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[1] Violations of the Act of regulations may result in: (a) the imposititon of administrative sanctions, either in addition to or instead of a fine or imprisonment as described in § 387.1(a) of the regulations; (b) forfeiture of any property interest in and/or proceeds from goods or tangible items involved in an export or attempted export in violation of controls imposed for national security reasons under section 5 of the Act; (c) seizure or forfeiture of property under 22 U.S.C. 401; (d) any other liability or penalty imposed by law, or (e) any combination of these penalties.

[2] Revocation of outstanding validated licenses and general denial of export privileges, authorized here as sanctions in administrative proceedings, are separate and distinct from administrative actions that the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, may take under section 11(h) of the Act to deny permission to apply for or use any export license (*see* § 370.15) or to revoke validated export licenses (*see* § 372.1(h)) to a person convicted of a violation of sections 793, 794, or 798 of Title 18, United States Code, section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C 2778).

[3] See footnote 2.

directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States, or produced abroad by persons subject to the jurisdiction of the United States, or which are otherwise subject to the Act or the Regulations. Such participation may include:

(i) Participation as a party or as a representative of a party to any validated exported license application;

(ii) Participation in the preparing or filing of an application for, or the obtaining or using of, any validated or general export license, reexport authorization, or other export control document;

(iii) Participation in the carrying on of negotiations with respect to, or in the receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data; and

(iv) Participation in the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges may be partial or entire, may be by commodity or geographical area, and may be for any specified period of time.

(3) *Exclusion from practice.* Any respondent acting as attorney, accountant, consultant, freight forwarder, or in any other representative capacity with regard to any export license application or other matter before the Department may be excluded from any or all such activities before the Department.

(4) *Civil penalty.* In addition to or instead of any or all of the administrative sanctions described in paragraphs (a)(1), (2) and (3) of this section, a civil penalty not to exceed $10,000 for each violation may be imposed, except that a civil penalty not to exceed $100,000 may be imposed for each violation involving national security controls imposed under section 5 of the Act.

(b) *Suspension of sanctions.* The imposition of any of these sanctions may be suspended under § 388. 16(c).

(c) *Applicability to related persons.* In order to prevent evasion, certain types of orders under this part may, after notice and opportunity for comment such as through an order to show cause, be made applicable not only to the respondent, but also, to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or related services. Orders applicable to related persons include: those that deny or affect export privileges, those that exclude a respondent from practice before the International Trade Administration and those that contain provisions implementing § 387.12 of the Regulations.

§ 388.4 Institution of administrative proceedings.

(a) *Charging letters.* The Director of the Office of Export Enforcement [4] or the Director of the Office of Antiboycott Compliance, as appropriate, may begin administrative proceedings under this part by issuing a charging letter in the name of the Department. The charging letter shall constitute the formal complaint and will state that there is reason to believe that a violation of the Act, the regulations, or any order, license or other authorization issued under the Act, has occurred. It will set forth the essential facts about the alleged violation, refer to the specific regulatory or other provisions involved, and give notice that the respondent, if found to have committed the alleged violation, will be subject to sanctions under § 388.3(a). The charging letter will inform the respondent that failure to answer as provided in § 388.7 may be treated as a default under § 388.8; that he is entitled to a hearing if he files a written demand for one with his answer, and that if he so desires he may be represented by counsel. A copy of the charging letter shall be filed with the administrative law judge. Charging letters may be amended, supplemented or withdrawn at any time before an answer is filed, or, with permission of the administrative law judge afterwards.

(b) *Service of charging letter on resident.* A charging letter, or any amendment or supplement thereto, shall be served upon a respondent:

(1) By mailing a copy by registered or certified mail addressed to the respondent at his last known address;

(2) By leaving a copy with the respondent or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for respondent; or

(3) By leaving a copy with a person of suitable age and discretion who resides at the respondent's last known dwelling. Service made in the manner described in paragraph (b)(2) or (3) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left and shall be filed with the administrative law judge.

[4] By agreement with the Director of the Office of Industrial Resource Administration, the Director of the Office of Export Enforcement enforces short supply controls imposed under section 7 of the Export Administration Act.

(c) *Service of charging letter on non-resident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (b) of this section inappropriate or ineffective, service of the charging letter on a respondent not a resident of the United States may be made by any method that is permitted by the country in which the respondent resides and satisfies the due process requirements under United States law with respect to notice in administrative proceedings.

(d) *Date.* The date of service of a charging letter shall be the date of its delivery, or of its attempted delivery if delivery is refused.

§ 388.5 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee thereof, and a partnership by a member thereof. Any respondent may appear by counsel, who shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia. A respondent personally or through counsel shall file notice of appearance with the administrative law judge. The Department shall be represented by the Office of Assistant General Counsel for Export Administration, U.S. Department of Commerce.

§ 388.6 Filing and service of papers other than charging letter.

(a) *Filing.* All papers to be filed shall be delivered or mailed, to "EAR Administrative Proceedings," U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue, NW., Washington, DC, 20230, or such other place as the administrative law judge may designate. Filing by United States mail, first class postage prepaid, or by express or equivalent parcel delivery service, is acceptable. Filing by mail from a foreign country shall be by airmail. A copy of each paper filed shall be simultaneously served on each party.

(b) *Service.* Service shall be made by personal delivery or by mailing one copy of each paper to each party in the proceeding. Service by delivery service in the manner set forth in paragraph (a) is acceptable. Service on the Department shall be addressed to the Assistant General Counsel for Export Administration, Room H–3845, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Service on a respondent shall be to the address to

which the charging letter was sent or to such other address as respondent may be provided. When a party has appeared by counsel, service on such counsel shall constitute service on that party.

(c) *Date.* The date of service or filing shall be the day when the papers are deposited in the mail or are delivered in person, or by delivery service.

(d) *Certificate of service.* The original of every paper filed and served upon parties other than the charging letter shall be endorsed with a certificate of service signed by the party making service, stating the date and manner of service.

§ 388.7 Answer and demand for hearing.

(a) *When to answer.* The respondent must answer the charging letter within 30 days after service unless time is extended under § 388.15.

(b) *Contents of answer.* An answer must be responsive to the charging letter and must fully set forth the nature of the respondent's defense or defenses. The answer must admit or deny specifically each separate allegation of the charging letter; if the respondent is without knowledge, the answer shall so state and shall operate as a denial. Failure to deny or controvert a particular allegation will be deemed admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except upon good cause shown.

(c) *Demand for hearing.* If the respondent desires a hearing, a written demand for one must be submitted with the answer. Any demand by the Department for a hearing must be filed with the presiding official within 14 days after service of the answer. Failure to make a timely written demand for a hearing shall be deemed a waiver of the party's right to a hearing, except for good cause shown.

(d) *Documentary evidence.* If the respondent does not demand a hearing, he must file with the answer originals or photocopies of all correspondence, papers, records, and other documentary evidence that support his position.

(e) *English language required.* The answer, and all other documentary evidence, must be submitted in English or translations into English must be filed at the same time.

§ 388.8 Default.

(a) *General.* If a timely answer is not filed, the Department shall file with the administrative law judge a proposed order together with supporting evidence for the allegations in the charging letter. The administrative law judge may require further submissions and shall issue any order he deems justified by the evidence of record. Any order so issued shall have the same force and effect as an order issued following the disposition of contested charges.

(b) *Petition to set aside default.*—(1) *Procedure.* Upon petition filed by a respondent against whom a default order has been issued, which petition is accompanied by an answer meeting the requirements of § 388.7(b), the administrative law judge may, after giving all parties opportunity to comment, and for good cause shown, set aside the default and vacate the order entered thereon and resume the proceedings.

(2) *Time limits.* A petition under this section must be made either within one year of the date of entry of the order which the petition seeks to have vacated, or before the expiration of any administrative sanctions imposed thereunder, whichever is later.

§ 388.9 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery shall apply to the extent consistent with these regulations and except as otherwise directed by the administrative law judge or by waiver or agreement of the parties. The administrative law judge may make any order which justice may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve upon any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may then apply to the administrative law judge for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of hearing unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such further time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make any determination or enter any order in the proceeding as he deems reasonable and appropriate. He may strike related charges or defenses in whole or in part, or he may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In addition, enforcement by a district court of the United States may be sought under section 12(a) of the Act.

§ 388.10 Subpoenas.

At the request of any party, the administrative law judge may issue subpoenas requiring the attendance of witnesses at any hearing and the production of such books, records or other documentary or physical evidence as he deems relevant and material to the proceedings, and reasonable in scope.

§ 388.11 Matter protected against disclosure.

(a) *General.* The public availability of documentary evidence is subject to § 388.20.

(b) *Protective measures.* In administering the Act, it is necessary for

the Department of Commerce to receive and consider information and documents that are sensitive from the standpoint of national security or business confidentiality and are to be protected against disclosure. Accordingly, and without limiting the discretion of the administrative law judge to give effect to any other applicable privilege, it shall be proper for the administrative law judge to limit discovery or introduction of evidence or to issue such protective or other orders as in his judgment may be consistent with the objective of preventing undue disclosure of such sensitive documents or information. Where the administrative law judge determines that documents containing such sensitive matter need to be made available to a respondent to avoid prejudice, he may direct the Department to prepare an unclassified and non-sensitive summary or extract of such documents. The administrative law judge may compare such extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain classified or undisclosed. The summary or extract may be admitted as evidence in the record.

(c) *Arrangements for access.* If the administrative law judge determines that this procedure is unsatisfactory and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, he may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising the confidentiality of the national security or business information. Such arrangements may include obtaining security clearances, obtaining a national interest determination under section 12(c) of the Act, or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

(d) *In camera proceedings.* With the approval of the administrative law judge, the Department may present information and documents in camera in the presence of the respondent or respondent's counsel.

§ 388.12 Prehearing conference.

(a) The administrative law judge, on his own motion or on request of a party, may direct the parties to attend a prehearing conference to consider: (1) Simplification of issues; (2) the necessity or desirability of amendments to pleadings; (3) obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) such other matters as may expedite the disposition of the proceedings. The administrative law judge may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the administrative law judge. For all conference proceedings, the administrative law judge will prepare a summary of any actions agreed upon or taken at the conference, and will incorporate therein any written stipulations or agreements made by the parties.

(b) If a prehearing conference is impracticable, the administrative law judge may direct the parties to correspond with him to achieve the purposes of such a conference. The administrative law judge, as in paragraph (a) of this section, will prepare a summary of such correspondence and any actions taken or agreed upon and will incorporate into it any written stipulations or agreements made by the parties.

§ 388.13 Hearings.

(a) *Scheduling.* The administrative law judge, by agreement with the parties or upon notice to all parties of not less than 30 days, will schedule a hearing. All hearings will be held in Washington, DC unless the administrative law judge determines, based upon good cause shown, that another location would better serve the interests of justice.

(b) *Hearing procedure.* Hearings shall be conducted in a fair and impartial manner by the administrative law judge who may limit attendance at any hearing or portion thereof to the parties, their representatives and witnesses if he deems this necessary or advisable in order to protect sensitive matter (see § 388.11) from improper disclosure. The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material deemed by the administrative law judge to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight.

(c) *Testimony and record.* Witnesses will testify under oath or affirmation. A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, transcribed and filed with the administrative law judge. A respondent may examine the transcript and may obtain a copy upon payment of proper costs. Upon such terms as the administrative law judge deems just, he may direct that the testimony of any person be taken by deposition and may admit an affidavit as evidence, provided that affidavits shall have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant testify at the hearing and be subject to cross examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed, and that party's failure to appear will not affect the validity of the hearing or any proceedings or action taken thereafter.

§ 388.14 Proceeding without a hearing.

If the parties have waived a hearing, the case shall be decided on the record by the administrative law judge. Proceeding without a hearing does not relieve the parties from the necessity of proving the facts supporting their charges or defenses. Affidavits, depositions, admissions, answers to interrogatories and stipulations may supplement other documentary evidence in the record. The administrative law judge shall give each party reasonable opportunity to file rebuttal evidence.

§ 388.15 Procedural stipulations; extension of time.

(a) *Procedural stipulations.* Unless otherwise ordered, a written stipulation agreed to by all parties and filed with the administrative law judge may modify any discovery procedures or other procedures established by this part, except as set forth in paragraph (b) of this section.

(b) *Extension of time.*—(1) *Before* expiration of the applicable time limitation, parties may stipulate to its extension as set forth in paragraph (a) of this section.

(2) The administrative law judge may, on his own initiative or upon application by any party, either *before* or *after* expiration of the applicable time limitation, extend the time within which to prepare and submit an answer to a charging letter or do any other act required by this part.

§ 388.16 Decision of the administrative law judge.

(a) *Predecisional matters.* Except insofar as the default procedures of § 388.8 may be applicable, the administrative law judge shall give the parties reasonable opportunity to submit:

(1) Exceptions to any ruling by him or the admissibility of evidence preferred at the hearing; (2) Proposed findings of fact and conclusions of law; (3) Supporting legal arguments for the exceptions and proposed findings and conclusions submitted; and (4) A proposed order. Such exceptions, proposed findings and conclusions.

arguments in support thereof, and proposed order shall be made a part of the record, together with the administrative law judge's ruling on each.

(b) *Decision and order.* After considering the entire record in the proceeding, the administrative law judge shall issue a written decision. (1) *Initial decision.* For proceedings charging violations relating to section 8 of the Act, the decision rendered shall be an *initial* decision. The decision shall include findings of fact, conclusions of law, and findings as to whether there has been a violation of the Act, the regulations, or any order, license or other authorization issued under the Act. If the administrative law judge finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more charges, he shall order dismissal of the charges in whole or in part as appropriate. If the administrative law judge finds that one or more violations have been committed, he shall order appropriate disposition of the case. He may issue an order imposing administrative sanctions, including civil penalties as provided in § 388.3, or take such other action as he deems appropriate. A copy of the decision and order shall be served on each party.

(2) *Recommended decision.* For proceedings not involving violations relating to section 8 of the Act, the decision rendered shall be a *recommended* decision. The decision shall include recommended findings of fact, conclusions of law, and findings as to whether there has been a violation of the Act, the regulations or any order, license or other authorization issued under the Act. If the administrative law judge finds that the evidence of record is insufficient to sustain a recommended finding that a violation has occurred with respect to one or more charges, he shall recommend dismissal of the charges in whole or in part as appropriate. If the administrative law judge finds that one or more violations have been committed, he shall recommend appropriate disposition of the case. He may recommend an order imposing administrative sanctions, including civil penalties as provided in § 388.3, or recommend such other action as he deems appropriate. The administrative law judge shall immediately refer a copy of the recommended decision and order to the Assistant Secretary of Commerce for Trade Administration ("Assistant Secretary") for review in accordance with § 388.23. The administrative law judge shall also immediately serve a copy of the recommended decision upon all parties. Because of the time limits, service upon parties shall be by personal delivery, express mail or other overnight carrier.

(c) *Suspension of sanctions.* Any order providing administrative sanctions may provide that the imposition of any sanction shall be suspended in whole or in part upon such terms of probation or other conditions as the administrative law judge may specify. Any final decision may be modified or revoked by the administrative law judge or by the Assistant Secretary, upon application of the Department showing a violation of the probationary terms or other conditions, after service upon the respondent of notice of the application in accordance with the service provisions of § 388.4 and with such opportunity for response as the responsible official in his discretion may allow. A copy of any order modifying or revoking suspension shall also be served on the respondent in accordance with the provisions of § 388.4.

(d) *Effect of decision.* For proceedings charging violations relating to section 8 of the Act, the initial decision and implementing order shall become final upon expiration of the time for filing an appeal unless an appeal shall have been filed under § 388.22.

(e) *Time for decision.* As required by section 13(c) of the Act, proceedings not involving violations relating to section 8 of the Act shall be concluded, including the review of the Assistant Secretary under § 388.23, within one year of submission of a charging letter, unless the administrative law judge, for good cause shown, extends such period. The charging letter shall be deemed to have been submitted to the administrative law judge on the date of filing of an answer or on the date of filing by the Department of a proposed default order pursuant to § 388.8(a), whichever shall first occur.

§ 388.17 Consent proceedings.

(a) The parties may submit a consent proposal to the administrative law judge at any time after the service of a charging letter but before issuance of an initial or recommended decision by the administrative law judge. The consent proposal shall include the proposed consent agreement and a proposed order. If the administrative law judge does not approve the proposal, he will notify the parties and the case will proceed as though no consent proposal had been made. If the administrative law judge approves the proposal, he will: (1) With respect to proceedings charging violations relating to section 8 of the Act, issue a decision and order on the basis of the proposal or such modification thereof as the parties may have agreed to in writing and the order shall immediately become final, and (2) with respect to proceedings not involving violations relating to section 8 of the Act, issue a recommended order approving the consent agreement which shall be referred to the Assistant Secretary under § 388.23.

(b) Cases may also be settled before service of a charging letter. In such event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for approval and signature to the Deputy Assistant Secretary of Commerce for Export Enforcement (Deputy Assistant Secretary). The consent proposal shall include a consent agreement and a proposed order. If the Deputy Assistant Secretary does not approve the proposal, he will notify the parties and the case will proceed as though no consent proposal had been made. If the Deputy Assistant Secretary approves the proposal he will issue an order, and no action by the administrative law judge shall be required. The Deputy Assistant Secretary may order that any administrative sanction imposed shall be suspended in whole or in part upon such terms of probation or other conditions as he deems appropriate. Any such suspension may be modified or revoked by the Deputy Assistant Secretary, as provided in § 388.16(c).

(c) Cases which are settled may not be reopened or appealed.

§ 388.18 Reopening.

Procedures. A party may petition the administrative law judge within one year of the date of the final decision to reopen proceedings to receive any relevant and material evidence which was unknown or unobtainable at the time the proceedings were held. The petition shall include a summary of such evidence, the reasons why it is deemed relevant and material, and the reasons why it could not have been presented at the time the proceedings were held. The administrative law judge shall grant or deny the petition after providing other parties reasonable opportunity to comment. If proceedings are reopened, the administrative law judge may make such arrangements as he deems appropriate for receiving the new evidence and completing the record. Where proceedings have been reopened, the administrative law judge shall issue a new decision and order, reaffirming, vacating or modifying the prior decision and order in accordance with § 388.16.

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§ 388.19 Temporary denials.

(a) *General Denial of Export Privileges.* The following procedures apply to temporary denial orders issued on or after July 12, 1985. For temporary denial orders issued on or before July 11, 1985, the proceedings will be governed by the applicable regulations in effect at the time the temporary denial orders were issued.

(1) Without limiting any other action the Department may take under the regulations (including §§ 370.2(b), 372.1(e) and 388.4) with respect to any application, license or other authorization issued under the Act, the Department may ask the Deputy Assistant Secretary to issue a temporary denial order on an *ex parte* basis to prevent an imminent violation, as defined below, of the Act, the regulations, or any order, license or other authorization issued under the Act. Such temporary denial order shall summarily deny any or all of the export privileges specified in § 388.3(a) (1) and (2) to any person named in the order.

(2) In order to prevent evasion or circumvention of the temporary denial order, the order or any renewal thereof can name and deny export privileges to, in addition to any person designated as a respondent, any other person who is then related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. The Department may seek to add to a temporary denial order, at a time other than initial issuance or renewal, any person who the Department then has reason to believe is related to a respondent by following the procedures in § 388.3(c) for issuance of an order to show cause.

(b) *Issuance.* (1) The Deputy Assistant Secretary may issue a temporary denial order upon a showing by the Department that the order is necessary in the public interest to prevent an imminent violation of the Act, the regulations, or any order, license or other authorization issued under the Act.

(2) The temporary denial order shall define the imminent violation and state why it was issued without a hearing. Because all denial orders are public, the description of the imminent violation and the reasons for proceeding on an *ex parte* basis set forth therein shall be stated in a manner that is consistent with national security, foreign policy and investigative concerns.

(3) A violation may be "imminent" either in time or in degree of likelihood. To establish grounds for the temporary denial order, the Department may show either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations. In support of its position concerning the likelihood of future violations, the Department may show that the violations under investigation or charges were significant, deliberate, covert and/or likely to occur again, rather than technical or negligent, and that it is appropriate to give notice to companies in the United States and abroad to cease dealing with the person in U.S.-origin goods and technology in order to reduce the likelihood that a person under investigation or charges continues to export or acquire abroad such goods and technology, risking subsequent disposition contrary to export control requirements. Lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.

(4) The temporary denial order shall be issued for a period not exceeding 60 days.

(c) *Non-resident respondents.* To facilitate timely notice of renewal requests, a respondent not a resident of the United States may designate a local agent for this purpose and provide written notification of such designation to the Department in the manner set forth in § 388.6(b).

(d) *Renewal.* (1) If, no later than 20 days before the expiration date of a temporary denial order, the Department believes that renewal of the denial order is necessary in the public interest to prevent an imminent violation, the Department may file a written request setting forth the basis for its belief, including any additional or changed circumstances, asking that the Deputy Assistant Secretary renew the temporary denial order for an additional period not exceeding 60 days, with modifications if any are appropriate. The Department's request shall be delivered to the respondent, or any agent designated for this purpose, in accordance with § 388.6(b) which shall constitute notice of the renewal application.

(2) *Hearing.* (i) A respondent may oppose renewal of a temporary denial order by filing with the Deputy Assistant Secretary a written submission, supported by appropriate evidence, to be received not later than seven days before the expiration date of such order. For good cause shown, the Deputy Assistant Secretary may consider submissions received not later than five days before the expiration date. The Deputy Assistant Secretary ordinarily will not allow discovery; however, for good cause shown in respondent's submission, he may allow the parties to take limited discovery, consisting of a request for production of documents. If requested by the respondent in the written submission, the Deputy Assistant Secretary shall hold a hearing on the renewal application. The hearing shall be on the record and ordinarily shall consist only of oral argument. The only issue to be considered on the Department's request for renewal is whether the temporary denial order should be continued to prevent an imminent violation as defined herein. (ii) Any person designated as a related party may not oppose issuance or renewal of the temporary denial order but may file an appeal in accordance with § 388.19(e). (iii) If no written opposition to the Department's renewal request is received within the specified time, the Deputy Assistant Secretary may issue the order renewing the temporary denial order without a hearing.

(3) A temporary denial order may be renewed more than once.

(e) *Appeals.*—(1) *Filing.* (i) A respondent may, at any time, file an appeal of the initial or renewed temporary denial order with the Administrative Law Judge. (ii) The filing of an appeal shall stay neither the effectiveness of the temporary denial order nor any application for renewal, nor shall it operate to bar the Deputy Assistant Secretary's consideration of any renewal application.

(2) *Grounds.* Grounds shall be specified. (i) A respondent may appeal to the Administrative Law Judge from an order issuing or renewing a temporary denial order on the ground that a finding of an imminent violation is unsupported. (ii) Any related party may appeal any finding that he is related to a respondent but may not appeal the underlying issuance or renewal of the temporary denial order.

(3) *Appeal Procedure.* A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on the Department which shall have seven working days to file a reply. Service on the Administrative Law Judge shall be addressed to the Office of the Administrative Law Judges, U.S. Department of Commerce, Room H6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Service on the Department shall be as set forth in § 388.6(b). The Administrative Law Judge normally will not hold hearings or entertain oral argument on appeals.

(4) *Recommended Decision.* Within 10 working days after an appeal is filed, the Administrative Law Judge shall submit a recommended decision to the Assistant Secretary, stating whether the issuance or the renewal of the temporary denial order should be affirmed, modified or vacated.

(5) *Final Decision.* Within five working days after receipt of the recommended decision, the Assistant Secretary shall issue a written order accepting, rejecting or modifying the recommended decision. Because of the time constraints, the Assistant Secretary's review shall ordinarily be limited to the written record for decision, including the transcript of any hearing. The issuance or renewal of the temporary denial order shall be affirmed only if there is reason to believe that the temporary denial order is required in the public interest to prevent an imminent violation of the Act, the regulations, or any order, license or other authorization issued under the Act. The Assistant Secretary's written order shall be final and is not subject to judicial review.

(f) *Delivery.* A copy of any temporary denial order issued or renewed and any final decision on appeal shall be published in the **Federal Register** and shall be delivered to the respondent, or any agent designated for this purpose, and to any related party in the same manner as provided in § 388.6 for filing for papers other than a charging letter.

§ 388.20 Record for decision and availability of documents.

(a) *General.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings and, for purposes of any appeal under § 388.22 or review under § 388.23, the decision of the administrative law judge and such submissions as are provided for by §§ 388.22 and 388.23, shall constitute the record and the exclusive basis for decision. When a matter is settled before service of a charging letter, the record shall consist of the proposed charging letter, the consent agreement and the order.

(b) *Restricted access.* On his own motion, or on the motion of any party, the administrative law judge may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record under § 388.20(b) is responsible for submitting at the time the claim of confidentiality is asserted, a version of the document proposed for public availability that reflects the requested deletion. The restricted access portion of the record shall be placed in a separate file and the file shall be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The administrative law judge may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted portion of the record.

(c) *Availability of documents*—(1) *Scope.*—(i) For proceedings started on or after October 12, 1979, all charging letters, answers, decisions, and orders disposing of a case shall be made available for public inspection in the International Trade Administration Freedom of Information Records Inspection Facility, Room H–4104, U.S. Department of Commerce, Washington, D.C. 20230, 202/377–3031. The complete record for decision, as defined in § 388.20 (a) and (b), shall be made available on request. In addition, all decisions on appeal and those final orders providing for denial, suspension or revocation of export licensing privileges shall be published in the **Federal Register.**

(ii) For proceedings started before October 12, 1979, the public availability of the record for decision will be governed by the applicable regulations in effect when the proceedings were begun.

(2) *Timing.*—(i) *Antiboycott cases.* For matters brought under section 8 of the Act, documents are available immediately upon filing, except for any portion of the record for which a request for segregation is made. Parties that seek to segregate any portion of the record under § 388.20(b) must make such a request, together with the reasons supporting the claim of confidentiality, simultaneously with the submission of material for the record.

(ii) *Other cases.* In all other cases brought under the Export Administration Act, the availability of documents shall begin after the final administrative disposition of the case. In these cases, parties desiring to segregate a portion of the record under § 388.20(b) shall assert their claim of confidentiality, together with the reasons for supporting the claim, before the close of the proceeding.

§ 388.21 Consolidation of proceedings.

On his own motion or on motion of any party, and with reasonable notice to all parties affected, the administrative law judge may consolidate two or more proceedings under this part involving different respondents, if all parties to the proceedings agree in writing to consolidation and if the administrative law judge, in his discretion, determines that consolidation would serve more efficiently to resolve common questions of law or fact raised in such proceedings.

§ 388.22 Appeals.

(a) *Grounds.* For proceedings charging violations relating to section 8 of the Act, a party may appeal to the Assistant Secretary from an order disposing of a proceeding, granting or denying a request for a proceeding, denying a petition to set aside a default or denying a petition for reopening, or from refusal to approve a proposed consent agreement, on the grounds:

(1) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record; (2) that a necessary legal conclusion or finding is contrary to law; (3) that prejudicial procedural error occurred, or (4) that the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion. The appeal must specify the grounds upon which the appeal is based and the provisions of the order from which the appeal is taken.

(b) *Filing of appeal.* An appeal of an order must be filed with the Office of the Assistant Secretary for Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H–3898B, Washington, DC 20230, within 30 days after service of the order appealed from. If the Assistant Secretary cannot act on an appeal for any reason, the Under Secretary for International Trade may designate another Department of Commerce official to receive and act on the appeal.

(c) *Effect of appeal.* The filing of an appeal shall not stay the operation of any order, unless the order by its express terms so provides or unless the Assistant Secretary, upon application by a party and with opportunity for response, shall grant a stay.

(d) *Appeal procedure.* The Assistant Secretary normally will not hold hearings or entertain oral argument on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his discretion, the Assistant Secretary may accept new submissions but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The decision shall be in writing and shall be accompanied by an order signed by the Assistant Secretary

giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the administrative law judge or may refer the case back to the administrative law judge for further proceedings.

§ 388.23 Review by Assistant Secretary.

(a) *Recommended decision.* For proceedings not involving violations relating to section 8 of the Act, the administrative law judge shall immediately refer the recommended decision and proposed order to the Assistant Secretary of Commerce for Trade Administration ("Assistant Secretary"). Because of the time limits provided under the Act for review by the Assistant Secretary, service upon parties shall be by personal delivery, express mail or other overnight carrier. If the Assistant Secretary cannot act on a recommended decision for any reason, the Under Secretary for International Trade shall designate another Department of Commerce official to receive and act on the recommendation.

(b) *Submissions by parties.* Parties shall have 12 days from receipt of the recommended decision in which to submit simultaneous responses. Parties thereafter shall have 8 days from receipt of any response(s) in which to submit simultaneous replies. Any response or reply must be received within the times specified by the Office of the Assistant Secretary for Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3898–B, Washington, DC 20230. Service upon the Assistant Secretary and upon parties shall be as described in paragraph (a) of this section.

(c) *Final decision.* Within 30 days after receipt of the recommended decision, the Assistant Secretary shall issue a written order affirming, modifying or vacating the recommended decision of the administrative law judge. Because of the time limits, the Assistant Secretary's review shall ordinarily be limited to the written record for decision, including the transcript of any hearing plus any submissions by the parties concerning the recommended decision. The Assistant Secretary's written order shall be final and is not subject to judicial review.

(d) *Delivery.* A copy of the final decision and implementing order shall be delivered to the parties and shall be publicly available in accordance with § 388.20.

Supplement No. 1—Table of Denial Orders Currently in Effect

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Supplement No. 2—Geographical Listing of Parties Subject to Denial Orders

Note: The Geographical Listing of Parties Subject to Denial Orders issued under this supplement does not appear in the Code of Federal Regulations. This listing is based on the Table of Denial Orders (Supplement No. 1 to 15 CFR Part 388) which is compiled from orders denying export privileges published in full in the **Federal Register** and is frequently amended. Readers are cautioned that orders denying export privileges and any modifications to such orders are effective upon signature. All persons affected are deemed to have notice of the provisions of the orders upon publication in the **Federal Register**. A copy of the Geographical Listing of Parties Subject to Denial Orders, which is revised semiannually, is available from the Office of Technology and Policy Analysis, P.O. Box 273, Washington, DC 20044. Addenda subsequent to the semiannual revisions are published in Export Administration Bulletins.

Issued in Washington, DC, on December 23, 1985.

William T. Archey,

Deputy Assistant Secretary for Trade Administration.

[FR Doc. 85–30836 Filed 12–26–85; 12:36 pm]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[TD 86–1]

Amendment to the Customs Regulations Concerning the Coastwise Transportation of Certain Articles by Vessels of Guatemala or the Bahamas

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to add Guatemala and The Bahamas to the lists of nations which permit vessels of the U.S. to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports.

Customs has been furnished satisfactory evidence that neither Guatemala nor The Bahamas place any restrictions on the transportation of certain specified articles by vessels of the U.S. between ports in that country. This amendment provides reciprocal privileges for vessels registered in either Guatemala or The Bahamas.

EFFECTIVE DATE: The reciprocal privileges for vessels registered in Guatemala became effective on October 11, 1985. The privileges extended to vessels registered in The Bahamas became effective on November 29, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Carriers, Drawback, and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229, (202–566–5706).

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883) (the "Act"), provides generally that no merchandise shall be transported by water, or by land and water, between points in the U.S. except in vessels built in and documented under the laws of the U.S. and owned by U.S. citizens. However, the 6th proviso of the Act, as amended, Pub. L. 89–194 (79 Stat. 823, T.D. 66–176) and Pub. L. 90–474 (82 Stat. 700, T.D. 68–227), provides that upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the U.S., reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)), lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks. Section 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with these barges; certain empty instruments of international traffic; and certain stevedoring equipment and material.

On October 9, 1985, the Department of State advised the Director, Carriers, Drawback and Bonds Division, of the Customs Service Headquarters that Guatemala places no restrictions on the transportation of the articles listed in the Act by vessels of the U.S. between ports in Guatemala. The effective date of such notification was October 11, 1985.

On November 19, 1985, the Embassy of the Commonwealth of The Bahamas

advised the Commissioner of Customs that The Bahamas place no restrictions on the transportation of the articles listed in the Act by vessels of the U.S. between ports in The Bahamas. The effective date of such notification was November 29, 1985.

The Carriers, Drawback and Bonds Division of Customs is of the opinion that satisfactory evidence has been furnished to establish the reciprocity required in § 4.93(b). Therefore, the Director of the Division has determined that, effective retroactively to the dates of notification stated above, Guatemala and The Bahamas should be added to the lists of nations set forth in § 4.93(b)(1) and (2).

By Treasury Department Order 165–25 the Secretary of the Treasury has delegated authority to the Commissioner of Customs to prescribe regulations relating to §§ 422, 4.81a(b), 4.93 (b)(1) and (b)(2), 4.94(b) and 10.59(f), Customs Regulations (19 CFR 4.22, 4.81a(b), 4.93 (b)(1) and (b)(2), 4.94(b), and 10.59(f)).These sections relate to lists of nations entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82–201), dated October 13, 1982, the Commissioner delegated this authority to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then re-delegated it to the Director, Regulations Control and Disclosure Law Division.

Finding

On the basis of the information received from the Secretary of State, and the Embassy of the Commonwealth of The Bahamas, as described above, it is determined that neither the Government of Guatemala nor The Bahamas places any restrictions on the transportation of the articles specified in the 6th proviso of section 27 of the Merchant Marine Act of 1920, as amended, by vessels of the U.S. between ports in either Guatemala or The Bahamas, respectively. Therefore, reciprocal privileges are accorded as of October 11, 1985, to vessels registered in Guatemala, and as of November 29, 1985, to vessels registered in The Bahamas.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

Regulations Amendments

To reflect the reciprocal privileges granted to vessels registered in either Guatemala or The Bahamas, Part 4, Customs Regulations (19 CFR Part 4), is amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103;

Section 4.93 also issued under 19 U.S.C. 1322(a); 46 U.S.C. 883.

§ 4.93 [Amended]

2. Sections 4.93 (b)(1) and (b)(2), Customs Regulations (19 CFR 4.93 (b)(1), (b)(2)), are amended by adding "Guatemala" and Bahamas, The", in appropriate alphabetical order to the list of nations entitled to reciprocal privileges.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this is a minor amendment in which the public is not particularly interested and there is a statutory basis for the described extension of reciprocal privileges, notice and public procedure pursuant to 5 U.S.C. 553(b)(B) are unnecessary. In accordance with 5 U.S.C. 553(d)(1), a delayed effective date is not required because this amendment grants an exemption.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of 5 U.S.C. 603, 604, as added by section 3 of Pub. L. 96–354, the "Regulatory Flexibility Act." That Act does not apply to any regulations such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices in the Customs Service participated in its development.

Dated: December 20, 1985.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 85–30725 Filed 12–27–85; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS–42048B; FRL–2944–9]

Hydroquinone; Testing Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On January 4, 1984, the EPA proposed, under section 4 (a) of the Toxic Substances Control Act (TSCA), that manufacturers and processors of hydroquinone (CAS No. 123–31–9) conduct health and environmental effects testing of that chemical (49 FR 438). EPA has reviewed the comments on the proposal as well as new testing results and additional data that have become available since the publication of the proposed rule. Based on these reviews the Agency is today promulgating a final test rule that requires manufacturers and processors of hydroquinone to evaluate hydroquinone's toxicokinetics and to determine its potential to produce nervous system, reproductive and teratogenic effects.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271; February 21, 1985), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on January 13, 1986. This rule shall become effective on February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm, E–543, 401 M St., SW., Washington, DC 20460, Toll free (800–424–9065), In Washington D.C.: (554–1404), Outside the USA: (Operator-202–554–1404).

SUPPLEMENTARY INFORMATION: EPA is requiring health effects testing of hydroquinone as stated in this final rule.

I. Introduction

This notice is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94–469; 90 Stat. 2006 *et seq.*; 15 U.S.C. 2603 *et seq.*) which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or

environmental data if the Administrator finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed test rule package (chloromethane and chlorinated benzenes, published in the **Federal Register** of July 18, 1980 (45 FR 48510)) and to the second package (dichloromethane, nitrobenzene and 1,1,1-trichloroethane, published in the **Federal Register** of June 5, 1981; (46 FR 30300)) for in-depth discussions of the general issues applicable to this action.

On January 4, 1984, EPA proposed, under section 4(a) of TSCA, that manufacturers and processors of hydroquinone conduct health and environmental effects testing of that chemical (49 FR 438). EPA, in response to requests by Goodyear Tire and Rubber Company and the Chemical Manufacturer's Association for additional time to comment, published a notice in the **Federal Register** of March 9, 1984 (49 FR 8969) extending the 60-day comment period an additional 30-days to April 3, 1984. On April 18, 1984, EPA also held a public meeting to allow interested persons to present oral comments on the proposed rule.

II. Background

A. Profile

Hydroquinone ($C_6H_4(OH)_2$, CAS No. 123-31-9] is a white crystalline solid at room temperature and is very soluble in water, ethanol, and acetone. It acts chemically as a reducing agent, being oxidized to quinone.

Hydroquinone is produced in a photographic grade for use as a developing agent and in a technical grade which is primarily used as a chemical intermediate in the production of rubber chemicals. Most of the technical grade hydroquinone is converted into chemical for use in polymers. Smaller amounts of the technical grade are used as polymerization inhibitors during the manufacture of vinyl monomers, as inhibitors for stabilizing unsaturated polyester resins and as a chemical intermediate to prepare other derivatives such as dyes and pigments. Hydroquinone is also used in dermatologic preparations designed to bleach hyperpigmented skin, and as such is regulated by the Food and Drug Administration.

The annual U.S. production volume of photograde, technical, and other grades of hydroquinone is estimated to be as high as 27 million pounds (Ref. 37). U.S imports of technical grade hydroquinone in 1981 totaled 50 thousand pounds (Ref. 32). The U.S. imports of photographic grade are negligible. The manufacturers of hydroquinone have commented that 26 million pounds of the chemical are manufactured and imported annually (Ref. 1).

B. ITC Recommendations

Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The ITC designated hydroquinone for priority consideration in its Fifth Report published in the **Federal Register** on December 7, 1979 (44 FR 70684). The ITC recommended that hydroquinone be considered for testing for carcinogenicity and teratogencity and that epidemiology, human metabolism and environmental fate studies also be considered.

The ITC's recommendations were based on the widespread use of the chemical substance by people having little knowledge of its health and environmental effects. The ITC estimated that the U.S. production of hydroquinone in 1977 was about 11 million pounds. The carcinogenicity and teratogenicity recommendations were also based on suggestive evidence derived from animal studies.

C. Proposed Rule

EPA published a proposed rule in the **Federal Register** of January 4, 1984 (49 FR 438) which would require health effects, chemical fate and environmental effects testing for hydroquinone.

In evaluating the ITC's testing recommendations for hydroquinone, EPA considered all available relevant information including information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by manufacturers of hydroquinone under TSCA section 8(a) (40 CFR Part 712—Chemical Information Rule, Subpart B—Manufacturers Reporting—Preliminary Assessment Information); unpublished health and safety studies submitted by manufacturers, processors and distributors of hydroquinone under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and other published and unpublished data available to the Agency. On the basis of the evaluation, as described in the proposed rule and the accompanying technical support document, EPA proposed metabolism (toxicokinetics), nervous system effects, reproductive effectives, teratogenicity (developmental toxicity), and mutagenicity testing requirements, as well as epidemiologic studies, for hydroquinone under both sections 4(a)(1)(A) and 4(a)(1)(B) of TSCA. EPA also proposed chemical fate and environmental effects testing requirements for hydryquinone under section 4(a)(1)(A) of TSCA. By these actions, EPA responded to the ITC's designation of hydroquinone.

In basing its proposed hydroquinone health effects testing on the authority of section 4(a)(1) (A) and (B) of TSCA:

1. EPA found that hydroquinone is produced in substantial quantities, and that the manufacture, processing and use of hydroquinone may result in substantial human exposure to the chemical. Furthermore, EPA found that there are insufficient data available to reasonably determine or predict either the result of this exposure in the areas of carcinogenic, mutagenic, teratogenic, nervous system, and reproductive health effects or the incidence of hydroquinone-related effects among humans. Finally, EPA found that testing of hydroquinone for these health effects and epidemiologic parameters is necessary to develop data needed to evaluate the health risks posed by exposure to hydroquinone.

The findings were based on the following information:

a. There are substantial amounts of hydroquinone produced in the United States each year. The annual U.S. production volume of hydroquinone is estimated to be as high as 27 million pounds (Ref. 37).

b. In 1980 the National Institute for Occupational Safety and Health estimated that approximately 470,000 U.S. workers, in 137 occupations, are potentially exposed to hydroquinone annually. Of major concern to the Agency was the estimated 2.2 million photohobbyists who develop their own film and prints, because much of this involves the development of black and white film using solutions containing hydroquinone. The Agency believed that both workers and hobbyists would receive inhalation and dermal exposure.

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2. In addition, EPA found that the manufacture, processing and use of hydroquinone may present an unreasonable risk of injury to human health. There was evidence of potential human health risks from nervous system, mutagenic, teratogenic, reproductive, and carcinogenic effects resulting from the manufacture, processing, and use activities associated with hydroquinone. Exposure to hydroquinone may be sufficient to result in such effects. The existing data were inadequate to reasonably predict or determine the effects of these exposures to hydroquinone and testing was necessary for these effects. Therefore, EPA believed that requiring epidemiologic studies and testing of hydroquinone for nervous system effects, mutagenicity, teratogenicity, reproductive effects, and carcinogenicity could also be based upon section 4(a)(1)(A) of TSCA.

EPA did not propose oncogenicity testing of hydroquinone, since the National Toxicology Program (NTP) is currently conducting a 2-year bioassay on hydroquinone. However, the Agency did propose some metabolism (toxicokinetic) studies of hydroquinone via dermal and oral routes of exposure. These studies would provide a reliable means by which the internal dose administered in the NTP bioassay could be related to doses expected to be received by workers and hobbyists.

In addition, the Agency concluded that the acute toxicity (lethality) and the subchronic toxicity of hydroquinone were adequately characterized and, therefore, no further testing would be required at this time.

The Agency based its chemical fate and environmental effects testing on the authority of section 4(a)(1)(A) of TSCA. (1) EPA found that there was evidence of potential environmental risks to aquatic organisms resulting from the processing and use activities associated with hydroquinone. (2) While there were existing data to support this belief with respect to these effects, the data were inadequate to reasonably predict or determine the effects of these exposures to hydroquinone. (3) Testing was necessary to develop data with respect to these effects.

Although the ITC did not recommend environmental effects testing for hydroquinone, the Agency was concerned with effluents from photoprocessing facilities and proposed a series of environmental effects tests. Based on existing aquatic toxicity data and the limited data on photoprocessing effluents, the Agency believed that the levels of hydroquinone in these effluents, although not so substantial as to dictate a section 4(a)(1)(B) finding, may present an unreasonable risk (section 4(a)(1)(A)) to aquatic organisms. Testing was needed to provide data to establish whether an unreasonable risk to freshwater and saltwater aquatic species existed.

The Agency also proposed chemical fate testing for hydroquinone. EPA believed that this testing was essential, because the existing chemical fate data are limited and more data are needed to assess the magnitude of the possible risks to aquatic organisms. EPA needed information to establish biodegradation rates in order to assess the levels of hydroquinone exposure to aquatic organisms.

TABLE 1—TESTING RECOMMENDATIONS FOR HYDROQUINONE

Effect or study	ITC recommendation	EPA proposal
Mutagenicity	x	
Carcinogenicity	x	*_
Teratogenicity	x	x
Nervous system effects	–	x
Reproductive effects	–	x
Epidemiology x	x	
Metabolism (Toxicokinetics)	x	x
Environmental fate	x	x
Environmental effects	–	x

*Not proposed since NTP is conducting a 2-year bioassay.

III. Response to Public Comments

The comments received by the Agency in response to the proposed rule for hydroquinone were from individual companies, the National Association of Photographic Manufacturers, and the Chemical Manufacturers' Association. The Agency did not receive any comments which, in the Agency's judgment, rebutted the substantial production and substantial human exposure findings for hydroquinone. However, new information concerning the environmental release of hydroquinone has become available since publication of the proposed rule and has led EPA to reconsider its chemical fate and environmental effects testing requirement. Major issues identified during the comment period are discussed below.

A. Human Exposure

EPA cited the NOHS (1980) survey that estimated that approximately 470,000 U.S. workers, in 137 occupations, are potentially exposed to hydroquinone annually. Also of concern were the estimated 2.2 million photohobbyists who develop their own film and prints, because much of this involves the development of black and white film and the process utilizes hydroquinone. Workers and hobbyists may receive inhalation and dermal exposures.

EPA also found that the manufacture, processing and use of hydroquinone may present an unreasonable risk of injury to human health.

The industry has commented that there are two major uses for hydroquinone, photographic uses and rubber chemical uses. Regarding the photographic uses, they report that only four percent of still pictures taken by amateurs are in black and white (Ref. 2) and that only 30,000 kg (66,000 lbs) (Ref. 2) of hydroquinone are used by home darkroom hobbyists each year and this use is in dilute solutions (0.2–0.3 percent) (Refs. 3, 5, and 27).

The industry estimates that about 800,000 people use black and white developers in home darkrooms (Ref. 1). Each person averages eight sessions per-year, with the average exposure time of 5 to 10 minutes each of these developing and printing sessions (Refs. 1 and 5). As a result of these limited periods and label warnings on containers, commenters believe dermal absorption of hydroquinone is extremely minimal and that inhalation exposure is also unlikely because of hydroquinone's low vapor pressure (Ref. 5).

The Agency believes that in many instances the industry's conclusion, that consequential exposure of photohobbyists to hydroquinone is unlikely, may be accurate. It also appears that both the number of photohobbyists potentially exposed to hydroquinone and the levels of exposure are much lower than the Agency's earlier estimates. However, EPA still believes there are a substantial number of photohobbyists that are intensively involved in black and white photography much more frequently than the "average" photohobbyist profiled by the industry. This would result in longer and more frequent exposure periods for these individuals.

Regarding exposure of individuals employed at photoprocessing plants, the industry reports that at least 90 percent of the photofinishing dollar volume is color negative films and prints, where no hydroquinone is used (Refs. 1 and 5). The industry, estimating there are 2,000 photofinishing labs in the U.S. (Refs. 1 and 5) versus the Agency's estimate of 10,000, states that only some of these facilities process black and white negative film and paper using developers containing hydroquinone. Additionally, since most labs use automatic processing equipment, any exposure would be likely to involve only one-half hour for one worker mixing chemicals once a week (Refs. 1 and 5). The industry cites both a NIOSH report concerning a photofinishing lab and an

industry study of airborne hydroquinone in a darkroom that showed no hydroquinone detected at a 0.02 mg/m³ limit of detection (Refs. 4 and 6).

While automated labs may result in minimal worker exposure to hydroquinone, the Agency believes there are varying amounts of automation found in the photoprocessing labs in the U.S. that develop black and white films and papers. Older, less sophisticated operations will involve more direct worker involvement with hydroquinone and greater exposure, especially dermal, will result. Moreover, the monitoring data provided to the Agency are extremely limited; thus, the Agency cannot be assured that the data are truly representative of all photoprocessing labs.

The industry has defined the group of hydroquinone manufacturing workers as 80 individuals at two plants (Ref. 1). They claim minimal worker inhalation exposure due to the closed production processes, with one facility reporting "an arithmetical average concentration of 0.79 mg/m³ (±0.52 standard deviation)" and the other reporting the "highest average concentration as 0.2 mg/m³" (Ref. 1). One production facility reported the arithmetic average air concentration in the unloading area as 0.13 mg/m³ (standard deviation ±0.15 mg/m³) (Ref. 1). These summary data were supplied by the industry; EPA is unable to interpret these further since frequency, averaging time and other supporting documentation were not provided.

The Agency agrees that exposure of certain manufacturing workers to hydroquinone may be limited. However, while the industry has described its production workforce as essentially 80 workers, the NIOSH NOHS Survey has estimated that, overall, approximately 470,000 U.S. workers in 137 occupations are potentially exposed to hydroquinone. Workers involved in distributing and processing hydroquinone as it is incorporated into rubber chemicals and other uses and the actual potential for exposures through these activities have not been characterized by the industry. While the Agency believes the 470,000 figure may overestimate the number of workers actually exposed to hydroquinone, the Agency believes that the available information indicates that substantial numbers of persons in the workplace are or may be receiving dermal and inhalation exposure to hydroquinone.

B. Human Health Effects

1. *Metabolism* (Toxicokinetics). EPA stated in the support document to the proposed rule that although 92 to 97 percent of hydroquinone administered to rats is excreted in the urine, studies in man, dog and rabbit show considerably lower percentages of hydroquinone absorption/excretion. These studies were incomplete and deficient in several areas. The Agency believed that the currently available data were not sufficient for purposes of reasonably predicting the toxicokinetic of hydroquinone. Toxicokinetic studies via dermal and oral routes were proposed because: (1) The primary route of human exposure to hydroquinone is expected to be direct dermal contact, although the potential exists for some direct ocular contact and inhalation of dust or vapors; and (2) the NTP is currently performing a 2-year bioassay on hydroquinone via an oral exposure route (gavage).

The industry has supplied the Agency with numerous comments on the toxicokinetics of hydroquinone based on new data and ongoing test programs. Also, they have discussed (1) the dermal uptake of hydroquinone, based on a study by Marty *et al.* (Ref. 7), where the chemical was applied to rodent and human skin and (2) a dermal absorption study in dogs by Kodak (Ref. 8). Based on the Marty study and the preliminary results of the Kodak study, the industry concludes that hydroquinone is poorly absorbed through the skin.

With regard to the Marty study, the Agency believes the hydroquinone formulation used, and to a lesser extent the methodology, render the use of this study questionable as an accurate characterization of actual hydroquinone penetration of human skin in the workplace. A major concern with this study is the use of a preparation of hydroquinone which contained 75 percent water. Hydroquinone is water soluble and when administered to the skin in a predominately aqueous form, it may have a tendency to stay in the solvent rather than penetrate the lipid membrane of the skin. Because of the expected low diffusional driving force of an aqueous solution of hydroquinone as compared to the expected higher diffusional driving force of hydroquinone itself, the Marty study may underestimate actual hydroquinone penetration that persons would experience when exposed to non-aqueous (e.g. powdered) forms of the chemical.

Limitations to the study are also imposed by the use of rats for the parenteral dosing while mice were used for *in vivo* topical administration. While both species are equally sensitive to the toxic effects of orally administered hydroquinone, usually the excretion kinetics of parenteral dosing are developed utilizing the same species; there may be significant species differences with respect to biotransformation and excretion of hydroquinone.

The industry has informed the Agency of an ongoing testing program that will explore the area of metabolic fate of hydroquinone, percutaneous absorption and blood elimination kinetics. Although the data from these studies may provide adequate information to relate dose levels of hydroquinone from expected human exposures to doses administered in a bioassay being conducted by the National Toxicology Program, the Agency does not currently have the complete industry studies in hand for evaluation. Therefore, the Agency is requiring the metabolism testing delineated in the proposed rule.

2. *Developmental toxicity and reproductive effects.* At oral doses of 50 mg/kg/day and higher, Racz reported that hydroquinone prolonged the diestrus period of the sexual cycle in female albino rats (Ref. 9). Skalka (Ref. 10), subcutaneously injecting male rats at a dose of 100 mg/kg/day for 51 days, reported decreased weights in testes, epididymides, seminal vesicles and adrenal glands; histological changes in testes indicating disrupted spermiogenesis; and diminished DNA content of sperm heads. Telford *et al.* reported that at a dose level of 0.5g of hydroquinone in the diet administered to female rats during pregnancy, fetal resorptions resulted (Ref. 11). Because of the aforementioned reproductive system effects, the Agency proposed reproductive effects testing for hydroquinone.

There were no reports in the literature of hydroquinone studies explicitly dealing with teratogenic or developmentally toxic effects; however because of the evidence of fetal resorptions, the Agency determined that testing of hydroquinone for developmental toxicity is warranted.

The industry, commenting on EPA's basing hydroquinone's teratogenic activity on the Telford *et al.* study (Ref. 11), stated that the increased fetal resorptions are not necessarily indicative of terata formation and moreover, the study is incompletely described. The industry commented that the poor quality of the study and the low human exposure do not justify teratology testing.

Concerning reproductive effects, the industry stated that in a study by Ames *et al.* (Ref. 12), feeding hydroquinone at a level of 0.3 percent in the diet of female rats for 10 days prior to insemination caused no impairment. They also commented that the results of

the Racz study do not suggest a female reproductive problem. They expressed no surprise at reproductive effects in male rats in the Skalka study (Ref. 10) because 51 subcutaneous injections of 100 mg/kg were used while the subcutaneous LD_{50} in rats has been reported to be between 300 and 350 mg/kg.

The industry has pointed out that the Agency's questions raised by these papers are being addressd by a dominant lethal assay and a teratology study, both being conducted by Kodak. Industry argues that preliminary evidence indicates the absence of adverse effects in these studies and refutes any suggestion of reproductive toxicity by the data of Skalka and Telford.

While the industry's comments relative to teratogenicity and reproductive effects are valid in some respects, they do not alleviate the Agency's concerns. The Agency considers the Telford *et al.* study (Ref. 11) showing resorptions very meaningful. Although the industry's comment that resorptions do not necessarily indicate terata is valid, resorptions do indicate some type of developmental toxicity of which terata are but one aspect. The Agency's concern, therefore, is over the potential of hydroquinone to be a developmental toxicant. The four manifestations of developmental toxicity are death (which includes resorptions), malformations (terata), growth retardation, and functional deficits.

It is true that the Ames *et al.* reproductive study (Ref. 12) was negative; however, dose levels may not have been high enough; no toxic effects of any kind were reported. This study may be a false negative.

EPA and CMA disagree on the dosing regimen and levels in the Racz *et al.* study (Ref. 9). If the industry's contention that the animals first received a high dose, which was lowered later, is correct, then this study is of questionable value.

The Skalka study (Ref. 10) showed clear testicular toxicity via the subcutaneous route. Although subcutaneous dosing is not representative of expected routes of human exposure to hydroquinone, the results of this study suggest that if hydroquinone is absorbed as a result of dermal or inhalation exposures it could produce testicular toxicity. The industry is correct in pointing out that the testicular effects were noted at about 0.3 LD_{50}, a high dose. However, EPA cannot ignore the positive effects noted and cannot predict the effects of other dose levels and other routes of exposure. The Agency needs further data before this effect can be assessed.

Because EPA's concerns in the areas of developmental toxicity and reproductive effects have not been allayed, the Agency is requiring testing in these areas as described in the proposed rule.

3. *Oncogenicity.* EPA reported that several long-term animal bioassays (mice) were negative although they did not meet current testing standards. In one study (Ref. 13) bladder carcinomas were produced in mice implanted with cholesterol pellets containing hydroquinone. This test is not recognized as a valid measure of carcinogenic potential. However, because of this positive result and the positive result in a *in vitro* cell transformation assay (Ref. 14), further oncogenicity testing is warranted. Because the NTP is conducting a 2-year bioassay with hydroquinone, no additional oncogenicity studies were proposed in the rule.

Industry has commented that although the Agency has asserted that hydroquinone is a suspected carcinogen, EPA has provided no support and industry is unaware of any studies in any animal species that demonstrate this assertion.

While the two studies cited are viewed by EPA as suggestive that the compound may be carcinogenic, the NTP bioassay is needed to confirm or refute the suspicions. This study is planned to be completed by mid-1986.

4. *Mutagenicity and Cytotoxicity.* The Agency concluded in the proposed rule published in the **Federal Register** of January 4, 1984 (49 FR 438), that the mutagenicity studies involving hydroquinone showed equivocal results. Hydroquinone had been reported: (a) to be mutagenic in one *Salmonella* test (Ref. 33), (b) to be mutagenic in a bacterial DNA repair assay (Ref. 34), and (c) by the National Toxicology Program, to induce sister chromatid exchanges and chromosomal aberrations in Chinese hampster ovary cells (Ref. 35). Prior to issuance of the proposed rule, Goodyear (Ref. 36) submitted data including: (i) DNA damage in *E. coli*, (ii) sex-linked recessive lethal (SLRL) assay in *Drosophila m.*, (by Serva and Murphy) (iii) *Salmonella* microbial assay (Ames), and (iv) *in vitro* cell transformation assay. The DNA damage assay and the cell transformation assay were reported as postive, while the *Salmonella* microbial assay was negative. The SLRL assay was reported negative but there were inadequacies in the protocol and reporting. With postive results in cytogenetics and sister chromatid exchange in tests by the NTP, EPA considered a dominant lethal test in mice to be the appropriate next step in testing for chromosomal effects.

Hydroquinone had not been adequately tested for its ability to induce gene mutations. Because of equivocal result in the *Salmonilla typhimurium*/mammalian microsomal assay, EPA proposed that hydroquinone be tested for its ability to induce gene mutations in mammalian cells in culture. Positive results in this test would dictate a SLRL assay in *Drosophila*, and, if the latter test was positive, a mouse specific locus assay.

With regard to the proposed gene mutation test requirement, Goodyear Tire and Rubber Company has now submitted a complete report of the *Drosophila* SLRL test by Serva and Murphy (Ref. 15). The Agency has reviewed the data and agrees that this test adequately demonstrates that hydroquinone does not increase recessive lethal mutations under the test conditions. A second *Drosophila* test was part of a battery of three assays reported by Gocke *et al.* (Ref. 16) which included the *Salmonella*/mammalian liver microsome test (Ames test), the Basc test on *Drosophila* detecting sex-linked recessive lethal mutations, and the micronucleus test detecting chromosome aberrations in mouse bone-marrow cells. This second *Drosophila* test also provides sufficient information to indicate no increase in recessive lethal mutations under the test conditions. Therefore, EPA finds no further gene mutation testing of hydroquinone to be necessary at this time.

With regard to the proposed chromosomal aberration tests, positive results were reported in the mouse bone marrow micronucleus test by Gocke (Ref. 16). Because hydroquinone caused a dose-dependent increase in the number of micronclei found in mouse bone marrow, a dominant lethal test in rodents was indicated.

Kodak has submitted a dominant lethal assay of hydroquinone in rats (Ref. 17) and the Agency has reviewed this study. This assay showed no lethality up to a dose causing signs of clinical toxicity and some spontaneous death.

Since negative results have been reported in two SLRL tests and the dominant lethal assay in rats submitted by Kodak is also negative, EPA concludes that no further testing for gene mutations or chromosomal aberrations is necessary at this time.

5. *Nervous System Effects.* The Agency concluded that the test data

identified did not adequately characterize the possible neurotoxic effects of hydroquinone. Proposed testing included a functional observational battery, neuropathology and motor activity or operant behavior.

The industry has commented that the information requested by the Agency is either already available or may be readily available from ongoing testing programs. They state that only acute tests conducted in intact animals provide any meaningful data because they account for the blood-brain barrier; research type neuropharmacologic and neurophysiologic studies are inapplicable.

The commenters state that the NTP hydroquinone oncogenicity and chronic toxicity studies will generate data similar to those developed in a functional observational battery. The neuropathology data can similarly be obtained from modified NTP studies. Finally, they believe that motor activity data have already been reported by Christian *et al.* (Ref. 18). EPA agrees that the motor activity data derived from this study satisfy the motor-activity or operant behavior testing endpoint. EPA, however, disagrees that ongoing and planned NTP testing could generate data similar to a functional observational battery because the NTP protocols, developed for the purposes of oncogenicity testing, severely limit the quality and extent of clinical observation. Therefore, a functional observational battery is required as proposed.

The industry has also stated that the NTP studies could be readily modified to adequately screen for neuropathology. While this may be true, the two-year bioassay for hydroquinone has already progressed to the stage of sacrificing of test animals and this option is no longer available. Therefore, neuropathology testing for hydroquinone is required.

6. *Epidemiology*. The ITC recommended epidemiologic studies for hydroquinone if an appropriate cohort could be identified.

Limited epidemologic studies involving exposure to hydroquinone have been identified by the Agency. The existing literature includes occupational cross-sectional studies and case reports of exposure of populations through dermal application and accidental ingestion, as well as experimental exposure to hydroquinone by either ingestion or topical application. To date, the most reliable reported human effects attributed to hydroquinone exposure have been restricted to the eye and skin. A positive correlation between the degree of eye injury and duration of occupational exposure to hydroquinone has been reported (Refs. 19 through 22).

Additional concern for potential human risk comes from two studies of Kodak employees. First, a case-control study of brain cancers by Greenwald *et al.* (Ref. 24) observed elevated odds ratio with black and white developer exposure. Hydroquinone is known to be a component of black and white developer mixes. Secondly, a cohort study of photographic processors in nine Eastman Kodak Color Print and processing laboratories also reports an excess of brain cancer mortality. Individual exposures were not examined in this study, but hydroquinone and quinone were identified among the many possible exposures (Ref. 23).

EPA proposed that a cohort study be conducted, designed to detect a 50 percent increase in total cancer incidence with at least 80 percent probability when both random and nonrandom sources of error have been considered. Incidence and mortality from a full spectrum of endpoints were to be examined (e.g., specific forms of cancer, and a variety of ocular effects including loss of visual acuity and conjunctival or corneal changes). Additionally, to address the Agency's concerns regarding the possibility of teratogenic effects and adverse reproductive effects, the Agency believed a study of these areas would be appropriate. Such a study, preferably prospective and including both spouses, would complement the Agency's request for animal teratology and reproductive studies.

The industry commenters believe a suitable study population does not exist. Commenters identified two populations for possible study, manufacturing workers and photohobbyists, and stated that a study of either population is not feasible (Ref. 5). A small number of employees work in the manufacturing of hydroquinone, totaling 100 workers between two different plants. Industry stated that epidemiologic study of this population would have low power to detect small relative risks for cancer or reproductive endpoints. The Agency agrees with this comment. EPA also agrees with the comment that photohobbyists may not be a feasible population for study due to potentially lower exposure levels and multiple chemical exposures (Ref. 1).

The Agency has been unable to identify another group, aside from the aforementioned, that may prove to be a suitable population for epidemiologic study. Therefore, the Agency is not requiring epidemiologic studies at this time.

C. Chemical Fate and Environmental Effects

The ITC, in its Fifth Report, stated that there is substantial opportunity for human and environmental exposure to hydroquinone and possibly to its oxidation products, semiquinone and quinone, and recommended environmental fate testing.

The Agency based its chemical fate and environmental effects testing for hydroquinone on the authority of section 4(a)(1)(A) of TSCA.

Although the ITC did not recommend environmental effects testing for hydroquinone, the Agency was concerned with effluents from photoprocessing facilities and proposed a series of environmental effects tests. Based on existing aquatic toxicity data and the limited data on photoprocessing effluents, the Agency believed that the levels of hydroquinone in those effluents, although not so substantial as to indicate a section 4(a)(1)(B) finding, could present an unreasonable risk to aquatic organisms.

The Agency proposed chemical fate testing for hydroquinone because the existing chemical fate data were limited and more data were needed to assess the magnitude of the possible risks to aquatic organisms. EPA needed information to establish biodegradation rates in order to assess the levels of hydroquinone exposure to aquatic organisms.

In the "Environmental Release" section of its technical support document for the proposed rule, EPA reported that concentrations of hydroquinone in photographic processing effluents range from 10 to 390 ppm and noted that there was no information regarding the total volume of release. A pilot plant study of photographic effluents by Eastman Kodak reported hydroquinone concentrations to be less than 0.04 mg/L (0.04 ppm) after biodegradation by treatment with an activated sludge (Ref. 25). However, although natural aquatic ecosystems may contain acclimated organisms, the ability of these ecosystems to degrade various concentrations of hydroquinone and quinone is unknown.

The Agency proposed chemical fate testing of hydroquinone that would establish the rate of biodegradation in order to assess possible risks to aquatic organisms.

EPA was concerned with the levels of hydroquinone remaining in effuents from photoprocessing activities (after treatment) because at levels approaching 0.04mg/L, hydroquinone

could present an unreasonable risk of injury to aquatic organisms. The Agency proposed aquatic testing to provide data regarding no-effect levels, LC_{50}'s and dose-response relationships. These tests would involve both freshwater and saltwater organisms and included acute tests, acute-chronic ratios in aquatic animals, tests with algae or chronic testing with vascular plants, and bioconcentration tests in aquatic animal species. This variety of tests would provide sufficient data to support regulatory action under the Clean Water Act.

The comments the Agency has received from the industry adequately support their contention that manufacturing processes and darkroom hobbyists do not provide consequential environmental releases of hydroquinone.

With regard to possible releases of hydroquinone from photoprocessors, the results of a Kodak survey by Ambrose *et al.* (Ref. 26) suggest that the majority of 34 plants sampled discharged effluents containing 30 μg/L to mg/L of hydroquinone. Irrespective of dilution, the concentration of hydroquinone will be reduced to 50 μg/L from mg/L if 95 percent removal occurs as in typical POTW (Ref. 28). Further, the combined effects of dilution with domestic and other wastes entering the POTW and dilution after discharge to the river will normally lead to at least an additional 10 to 100 fold reduction in hydroquinone concentration (0.5–5μg/L) (Ref. 28). Therefore, since it appears that the sample is representative of the industry, EPA considers it is reasonable to estimate that maximum in-stream hydroquinone concentrations should not exceed 5μg/L.

Additionally, the industry has provided information that indicates hydroquinone and quinone will be released from photoprocessing plants as hydroquinone monosulfonate which is less toxic to aquatic life (Ref. 1).

The Agency also was concerned with the possible direct discharge of hydroquinone and hydroquinone monosulfonate from photoprocessing plants to receiving waters. The study by Ambrose *et al.* (Ref. 26) suggests that motion picture photofinishers represent a category that may deserve more attention. Only five labs were sampled, but two of those discharged effluents containing 3–6.9 mg/L of hydroquinone and 16.4–41.2 mg/L of hydroquinone monosulfonate. All four samples from these two labs contain hydroquinone and hydroquinone monosulfonate.

The industry, however, has provided information on the use of hydroquinone for motion picture processing. According to Kodak (Refs. 29 and 30), this use has substantially decreased in the last 5 years from 14,000 kg/yr to less than 4,000 kg/yr. Furthermore, Kodak states that "all" large photoprocessors are located in urban areas and are, therefore, likely to discharge to POTW's and that any direct dischargers would be subject to the NPDES permit program and effluent limitations and guidelines of 40 CFR Part 459. Kodak also has provided statistics to show that currently there are 500 motion picture processors in the U.S. (Ref. 30).

The industry's comments do not completely support their statement that "no consequential environmental release occurs from photoprocessing operations" (Ref. 1). The commenters state that 99 percent of the plants discharge into POTW's; the remaining 1 percent must be assumed to be discharging directly to receiving waters (Ref. 1). The Agency has only been able to identify limited information regarding the actual number of plants that would comprise this 1 percent, and has no information regarding the volume of discharges or the flow of the receiving waters. However, in conducting a search through EPA's Water Permit Compliance Systems records (Ref. 31), the indication was that this segment (approximately 40 dischargers) is a very minor segment of the entire hydroquinone/hydroquinone monosulfonate discharge in terms of total releases. Additionally, the decline in use of hydroquinone and the switching to new products should lower risk from direct discharges of hydroquinone. In summary, given that most of the releases of hydroquinone and hydroquinone monosulfonate are processed through POTW's and should not be released into receiving waters at concentrations likely to pose any unreasonable risk, and that the 40 processors who may be direct dischargers do not appear to represent a major or significant portion of the total discharge, the Agency is not requiring chemical fate and environmental effects testing as part of the hydroquinone final rule.

D. Ongoing Testing

On June 15, 1983, industry representatives notified EPA that they were planning to conduct various health effects tests in the near future. Eastman Kodak Company provides EPA with protocols for testing in the areas of metabolic fate, percutaneous absorption, blood elimination kinetics, mutagenicity, teratology and reproductive effects and requested EPA's comments on the adequacy of these protocols. Having received the Agency's comments, the industry embarked on many of these studies and EPA anticipates that many of these will meet the testing requirements established by the Agency in the hydroquinone final rule. However, since many of these studies have only recently reached completion or are still underway, EPA currently has received in many cases only summary or interim reports. Because EPA has not yet received sufficient raw data and other backup materials relating to the already completed studies and only progress reports in the case of ongoing studies, the Agency presently has insufficient data to reasonably predict or determine the human health effects resulting from exposure to hydroquinone.

IV. Final Test Rule for Hydroquinone

A. Findings

EPA is basing its hydroquinone health effects testing requirements on the authority of sections 4(a)(1) (A) and (B) of TSCA.

1. EPA finds that hydroquinone is produced in substantial quantities, and that the processing, distribution and use of hydroquinone may result in substantial human exposure to this chemical.

These findings are based on the following information:

a. There are substantial amounts of hydroquinone produced in the United States each year. The annual U.S. production volume of hydroquinone is estimated to be as high as 27 million pounds.

b. In 1980, the National Institute for Occupational Safety and Health estimated that approximately 470,000 U.S. workers, in 137 occupations, are potentially exposed to hydroquinone annually. Although this figure may overestimate the number of workers actually exposed to hydroquinone, even a few percent of the estimate would be substantial.

The Agency believes there are substantial numbers of people in the workplace involved in distributing and processing hydroquinone as it is incorporated into rubber chemicals and other uses.

EPA also believes that there are varying amounts of automation found in the 2,000 photofinishing labs reported by the industry; older operations, and specifically those dealing with large volumes of black and white developing, may result in significant worker exposure.

By industry estimates, there are 800,000 people who use photographic developers in home darkrooms. The Agency believes that included in this group are some hobbyists and

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individuals involved in specialty work who, because they are intensively involved in black and white photography, will have more frequent exposures for longer periods to hydroquinone than the "average" photohobbyist.

The Agency believes that these workers and hobbyists may receive both inhalation and dermal exposure to hydroquinone.

2. In addition, EPA has found that the processing and use of hydroquinone may present an unreasonable risk of injury to human health from nervous system, developmentally toxic, reproductive, and carcinogenic effects. The Agency's basis for these findings is presented in the technical support document for the proposed rule and in Unit III.B. of this preamble.

3. EPA finds that existing data and experience are inadequate to reasonably predict or determine the developmental toxicity and nervous system, reproductive and carcinogenic effects of exposures to hydroquinone. The Agency's basis for these findings is presented in the technical support document for the proposed rule and in Unit III.B. of this preamble.

4. EPA also finds that, except in the case of carcinogenicity where adequate testing by NTP is ongoing, testing is necessary for these effects.

Toxicokinetic testing is also necessary for the purpose of reasonably predicting the toxicokinetic behavior of hydroquinone and to help interpret the other testing being required by EPA and performd by NTP. The Agency is requiring limited metabolism (toxicokinetic) studies of hydroquinone via dermal and oral routes of exposure. These studies will provide a reliable means by which the internal dose administered in the NTP bioassay and EPA-required studies can be related to doses expected to be received by workers and hobbyists.

EPA does not believe that this rule will result in a loss to society of the benefits of hydroquinone because the Agency's economic evaluation has shown that the economic impact of the testing being required for this substance will be minimal.

B. Required Testing

EPA is requiring that hydroquinone be tested for reproductive, teratogenic and nervous system effects and that its toxicokinetics be evaluated.

TABLE 2—TESTING REQUIREMENTS FOR HYDROQUINONE

Effect or study	ITC recommendation	EPA proposal	Final rule
Mutagenicity	–	x	[1] –
Carcinogenicity	x	[2] x	–
Teratogenicity/developmental toxicity.	x	x	x
Nervous system effects	–	x	[3] x
Reproductive effects	–	x	[3] x
Epidemiology	x	x	[4] –
Metabolism (toxicokinetics).	≡	x	x
Environmental fate	x	x	[5] –
Environmental effects	–	x	[5] –

[1] Data received by EPA since proposal indicates negative results in appropriate tests.
[2] Not proposed because NTP is conducting a 2-year bioassay.
[3] Adequate data on motor activity have been reported but neuropathology and testing in a functional observational battery are still needed.
[4] EPA agrees with commenters that suitable cohorts cannot be identified at this time.
[5] Data provided in response to proposed rule show lack of sufficient environmental concentrations to support testing.

C. Test Substance

EPA is requiring that hydroquinone of at least 99 percent purity, available commercially, be used as the test substance. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributed to hydroquinone itself. This requirement will increase the likelihood that any toxic effects observed are related to hydroquinone and not to any impurities.

D. Persons Required To Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibilities for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal. Because EPA has found that the processing, distribution in commerce, and use of hydroquinone gives rise to substantial human exposure to the chemical and that such activities may present unreasonable risks to human health, EPA is requiring that persons who manufacture or process, or who intend to manufacture or process this chemical, at any time from the effective date of this test rule to the end of the reimbursement period, be subject to the rule. The end of the reimbursement period will be 5 years after the final hydroquinone reproductive effects report is submitted. As discussed in the Agency's test rule and exemption procedures (40 CFR Part 790), EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

EPA is, however, exempting from these testing requirements those manufacturers and processors which produce and process hydroquinone only as an impurity. "Impurity" is defined in 40 CFR 790.3 to mean "a chemical substance which is unintentionally present with another chemical substance." The Agency is exempting those manufacturers and processors because the EPA's findings under sections 4(a)(1)(A) and 4(a)(1)(B) are based on exposures to hydroquinone which are a result of intentional processing, distribution in commerce and use and which represent a potential unreasonable risk. The Agency would find it difficult to apply both the exemption and reimbursement processes to those who manufacture and/or process hydroquinone solely as an impurity. In fact, the Agency's reimbursement regulations issued pursuant to section 4(c) state that those manufacture or process chemical substances as impurities will not be subject to test requirements unless the rule specifically states otherwise (40 CFR 791.48b).

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to a test rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement. The Agency anticipates that the current manufacturers of hydroquinone will form the reimbursement pool and sponsor the testing required. Manufacturers and processors who are subject to the testing requirements of this rule must comply with the test rule and exemption procedures in 40 CFR Part 790. EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing. As noted in Unit IV. B, EPA is interested in evaluating the effects attributable to hydroquinone itself and has specified a relatively pure substance for testing.

E. Test Rule Development and Exemptions

Elsewhere in today's Federal Register, the Agency is proposing that certain

OTS test guidelines and EPA-approved industry protocols be utilized as test standards for the development of data under this rule for hydroquinone. As discussed in that notice and in previous notices (50 FR 20652), EPA has reviewed the method for development of test rules and has decided that for most section 4 rulemakings, the Agency will utilize single-phase rulemaking. In light of this decision, EPA has reevaluated the process for developing test standards for section 4 rulemakings initiated under a two-phase process and has determined that for certain of these two-phase rules, OTS test guidelines are available for promulgation as relevant test standards. EPA has decided that where OTS or other appropriate test guidelines are available, the Agency in most cases will propose the relevant guidelines as the test standards for those rules.

EPA believes that, in line with its commitment to expedite the section 4 rulemaking process, it is appropriate to propose the applicable OTS test guidelines as test standards at the same as a Phase I final test rule is issued. With regard to the rulemaking for hydroquinone, OTS test guidelines and EPA-approved industry protocols are available for all the testing requirements included in this Phase I final rule. Thus, in the accompanying notice, the Agency is proposing these OTS test guidelines and industry protocols as test standards.

The public, including the manufacturers and processors subject to the Phase I rule, will have an opportunity to comment on the use of the OTS test guidelines and industry protocols. The Agency will review the submitted comments and will modify the OTS guidelines, where appropriate, when the test standards are promulgated.

During the development of a test rule under the two-phase process, persons subject to the Phase I final rule are normally required to submit proposed study plans within 90 days after the effective date of the Phase I rulemaking. See 40 CFR 790.30(a)(2). However, because EPA is proposing applicable OTS test guidelines as the test standards for the studies required by this Phase I final rule, persons subject to the rule, i.e., manufacturers and processors of hydroquinone, are not required to submit proposed study plans for the required testing at this time. Persons subject to this rule, however, are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.25. For the rule, once the test standards are promulgated, persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 30 days before the initiation of each required test.

Processors of hydroquinone subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent, exemption applications or study plans (before testing is initiated) unless manufacturers fail to sponsor the required tests. The basis for this decision is that manufacturers are expected to pass an appropriate portion of the tests costs on to processors through the pricing of products containing hydroquinone.

EPA's final regulations for the issuance of exemptions from testing requirements are in 40 CFR Part 790. In accordance with those regulations, any manufacturer or processor subject to this Phase I test rule may submit an application to EPA for an exemption from conducting any or all of the tests required under this rule. If manufacturers perform all the required testing, processors will be granted exemptions automatically without having to file applications.

Because persons subject to this rule for hydroquinone are not required to submit proposed study plans for approval, EPA will grant conditional exemptions under this rule. These exemptions will be granted following EPA's receipt of a letter of intent to conduct the required tests rather than after receipt and approval of a study plan. Notice of EPA's adoption of the proposed test standards and deadlines will be announced in a final Phase II test rule.

In the accompanying **Federal Register** notice, EPA is proposing deadlines for the submission of test data. Such deadlines are required under section 4(b)(1)(C) of TSCA. These proposed data submission deadlines are open for public comment and may be modified, where appropriate, when the final Phase II test rule is promulgated.

F. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with the EPA Good Laboratory Practice (GLP) standards pursuant to 40 CFR Part 792, published in the **Federal Register** of November 29, 1983 (48 FR 53922).

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing these deadlines elsewhere in today's **Federal Register**.

TSCA section 12(b) requires that persons who export or intend to export to a foreign country any hydroquinone subject to the testing requirements of this rule notify EPA of such exportation or intent to export. While the results of required testing may not be available for some time, a notice to the foreign government that these exported substances are subject to test rules serves to alert them to the Agency's concern about the substances. It gives these governments the opportunity to request such data that the Agency may currently possess plus whatever data may become available as a result of testing activities. Thus, upon the effective date of this rule, persons who export or intend to export hydroquinone must submit notices to the Agency pursuant to TSCA section 12(b)(1) and 40 CFR Part 707. For additional information, see the **Federal Register** of November 19, 1984 (49 FR 45581).

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will announce the receipt within 15 days in the **Federal Register** as required by section 4(d). Test data received pursuant to this rule will be made available for public inspection by any person except in those cases where the Agency determines that condifential treatment must be accorded pursuant to section 14(b) of TSCA.

G. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of

determining compliance with the final rule for hydroquinone. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to the TSCA GLP standards and in the test standards proposed rule of this rulemaking.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data.

These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they had never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation. Intentional violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment of up to 1 year. Other remedies are available to EPA under sections 7 and 17 of TSCA such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA.

EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Rule

To assess the potential economic impact of this proposed rule, EPA has prepared an economic impact analysis that examines the cost of the required testing and analyzes four market characteristics of the chemical substance: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations.

The economic analysis of this final hydroquinone test rule, which estimates the total testing costs to range from $202,200 to $607,700, indicates that the potential for adverse economic effects due to the estimated testing costs is low. This conclusion is based on the following observations:

1. The relative magnitude of the test cost is minor. On an annualized unit cost basis, the hydroquinone test costs are estimated to range from 0.19 to 0.57 cents per pound. The unit costs represent 0.10 to 0.29 percent of the current price of technical grade hydroquinone.

2. Market growth for hydroquinone is expected to remain stable.

3. The price elasticity of demand for hydroquinone in its primary uses is relatively inelastic.

For a detailed discussion of hydroquinone markets and the criteria for evaluating the potential for economic impact, see the Economic Impact Analysis of the Final Test Rule for Hydroquinone (Ref. 37).

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," October, 1981, can be obtained through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161 (PB 82–140773).

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this test rule.

VII. Public Record

EPA has established a record for this rulemaking (docket number OPTS–42048B). This record includes the basic information the Agency considered in developing this rule, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of final rule on hydroquinone.

(b) Notice of proposed rule on hydroquinone (January 4, 1984, 49 FR 438).

(c) Notice containing the ITC designation of hydroquinone to the Priority List (December 7, 1979, 44 FR 70684).

(d) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (November 29, 1983, 48 FR 53922).

(e) Notice of final rule on test rule development and exemption procedures (October 10, 1984, 49 FR 39774).

(f) Interim final rule for Test Rule Development and Exemption Procedures (May 17, 1985, 50 FR 20652).

(g) Notice of final rule concerning data reimbursement (July 11, 1983, 48 FR 31786).

(2) Support documents consisting of:

(a) Hydroquinone technical support document for proposed test rule.

(b) Economic impact analysis of final test rule for hydroquinone.

(3) Communications consisting of:

(a) Written public comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries including transcript of public meeting on proposed test rule.

(d) Reports—published and unpublished factual materials, including contractors' reports.

B. References

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(2) Testimony of the National Association of Photographic Manufacturers, Inc.; Proposed Test Rules for Hydroquinone/Quinone; Thomas J. Dufficy, Esq., April 18, 1984.

(3) Eastman Kodak, "Comments by Eastman Kodak Company on EPA's Proposed Test Rules, Hydroquinone 49 FR 438 and Quinone 49 FR 456, April 10, 1984. Appendix II.

(4) Eastman Kodak, "Comments by Eastman Kodak Company on EPA's Proposed Test Rules, Hydroquinone 49 FR 438 and Quinone 49 FR 456, April 10, 1984. Appendix I.

(5) Eastman Kodak, "Comments by Eastman Kodak Company on EPA's Proposed Test Rules, Hydroquinone 49 FR 438 and Quinone 49 FR 456, April 10, 1984.

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(14) Litton, "Evaluation of hydroquinone in the *in vitro* transformation of BALB/3T3 cells assay." 1981. (Submitted by W.D. Davis of Goodyear Tire and Rubber Co. on May 27, 1983).

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(18) Christian, R.T., *et al.* "The development of a test for the potability of water treated by a direct reuse system." U.S. Army Medical Research and Development Command. Wash. D.C. 20314. Contract No. DADA-17-73-C-3013. University of Cincinnati. 1980.

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(22) Anderson, B., Oglesby, F. "Corneal changes from quinone hydroquinone exposure." *Arch. Ophthalmol.* 59:495–501. 1958.

(23) Friedlander, B.R., Hearne, F.T., and Newman, B.J. "Mortality cancer incidence, and sickness-absence in photographic processors: an epidemiologic study." *JOM* 24 (8), 605–613. 1982.

(24) Greenwald, P. *et al.* "Diagnostic sensitivity bias—An epidemiologic explanation for an apparent brain tumor excess." *JOM* 24 (6), 690–694. 1981.

(25) Harbison, K.G., Belly, R.T. "The biodegradation of hydroquinone." Rochester, NY: Eastman Kodak Company Technical Report. March 10, 1975.

(26) Ambrose, R.T. *et al.* "A survey of photographic processing effluents." Technical Memorandum. Kodak Research Laboratories. Rochester, N.Y. August 1, 1977.

(27) National Association of Photographic Manufacturers. Letter to David Price, Test Rules Development Branch, Office of Toxic Substances, EPA. August 23, 1984.

(28) USEPA. Memorandum from Exposure Evaluation Division to Test Rules Development Branch. July 30, 1984.

(29) USEPA. Conference call between EPA and CMA, Kodak and Goodyear. Discussion of various issues. August 20, 1984.

(30) Eastman Kodak Company. Letter to David Price, Test Rules Development Branch, Office of Toxic Substance. Follow-up discussion of points covered in August 20, 1984 conference call (Ref. 29). Includes appendices A–E and 1983–84 Wolfman Report as appendix B. August 27, 1984.

(31) USEPA. Memorandum from Health and Environmental Review Division to Test Rules Development Branch. September 7, 1984.

(32) Mathtech Inc. Economic impact analysis of proposed test rule for quinone and hydroquinone. Washington, D.C. Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency. Contract 68–01–6630. December 5, 1983.

(33) Cotruvo, J.A., *et al.* Investigation of mutagenic effects of products of ozonation reactions in water. *Ann. N.Y. Acad. Sci.* 298:124–140. 1977.

(34) Bilimoria, M.H. The detection of mutagenic activity of chemicals and tobacco smoke in a bacterial system. *Mutat. Res.* 31:328. 1975.

(35) EMTDP. Environmental Mutagenesis Testing Development Program. Computer Printout. National Toxicology Program. December 3, 1982.

(36) Davis, W.D. The Goodyear Tire and Rubber Company, Akron, Ohio 44316–0001. Letter to D. Price, Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. 20460. 1983.

(37) Mathtech, Inc. Economic impact analysis of final test rule for quinone and hydroquinone. Final Report. Washington, D.C.: Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency. Contract 68–01–6630. 1985.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E–107, 401 M Street, SW, Washington, D.C.

VIII. Other Regulatory Requirements

A. Classification of Rule

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The regulation for this chemical substance is not major because it does not meet any of the criteria set forth in section 1(b) of the order. First, the annual costs of testing are expected to range from $52,000 to $158,000 over the expected market life of hydroquinone (Ref. 37). Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects on producers' costs of users' prices for this chemical substance. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA, and EPA response to those comments, are included in the public record.

B. Regulatory Flexibility act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA certifies that this test rule will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There are no small manufacturers of hydroquinone.

2. Small processors are not expected to perform testing themselves, or to participate in the organization of the testing effort.

3. Small processors will experience only minor costs if any in securing exemption from testing requirements.

4. Small processors are unlikely to be affected by reimbursement requirements.

EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: December 20, 1985.

J. A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.2200 is added, to read as follows:

§ 799.2200 Hydroquinone.

(a) *Identification of test substance.* (1) Hydroquinone (CAS No. 123–31–9) shall be tested in accordance with this section.

(2) Hydroquinone of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests and submit data.* (1) All persons who manufacture or process hydroquinone, other than as an impurity, from January 13, 1986 to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and shall conduct tests and submit data as specified in this section, Subpart A of this Part and Part 790 of this chapter for two-phase rulemaking.

(2) Persons subject to this section are not subject to the requirements of § 790.30(a) (2), (5), (6), and (b), and § 790.87(a)(1)(ii) of this chapter.

(3) Persons who notify EPA of their intent of conduct tests in compliance with the requirements of this section must submit plans for those tests no later than 30 days before the initiation of each of those tests.

(4) In addition to the requirements of § 790.87(a) (2) and (3) of this chapter, EPA will conditionally approve exemption applications for this rule if EPA has received a letter of intent to conduct the testing from which exemption is sought and EPA has adopted test standards and schedules in a final Phase II test rule.

(c) *Health effects testing*—(1) *Toxicokinetic studies*—(i) *Required testing.* Skin and oral dosing studies, which will provide data regarding both rate and extent of absorption, shall be conducted with hydroquinone.

(ii) *Test standards.* [Reserved]

(iii) *Reporting requirements.* [Reserved]

(2) *Developmental Toxicity*—(i) *Required testing.* Developmental toxicity studies in both a rodent and nonrodent species shall be conducted with hydroquinone. These tests must be conducted using the oral route of exposure.

(ii) *Test standards.* [Reserved]

(iii) *Reporting requirements.* [Reserved]

(3) *Reproductive Effects*—(i) *Required testing.* A two-generation reproductive effects study in a rodent species shall be conducted with hydroquinone. This test must be conducted using the oral route of exposure.

(ii) *Test standard.* [Reserved]

(iii) *Reporting requirements.* [Reserved]

(4) *Neurotoxicity*—(i) *Required testing.* The following neurotoxicity testing shall be conducted for hydroquinone using oral exposure of a rodent species:

(A) A functional observational battery.

(B) A neuropathology test.

(ii) *Test standards.* [Reserved]

(iii) *Reporting requirements.* [Reserved]

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033)

[FR Doc. 85–30722 Filed 12–27–85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 55a

Program Grants for Black Lung Clinics; Office of Management and Budget Approval of Information Collection Requirements

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The Public Health Service (PHS) announces that the Office of Management and Budget (OMB) has approved the information collection requirements in §§ 55a.201 and 55a.301 of the Black Lung Clinics regulation as published on February 27, 1985 at 50 FR 7912. The Department is amending the regulation to reflect OMB's approval under OMB control number 0915–0081. Upon publication, §§ 55a.201 and 55a.301 as amended below will become effective.

EFFECTIVE DATE: 42 CFR 55a.201 and 55a.301 will become effective on December 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Corrigan, Associate Bureau Director for Legislation and Policy, Bureau of Health Care Delivery and Assistance, Room 7–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2380.

SUPPLEMENTARY INFORMATION: Because this amendment is a technical change merely reflecting OMB's approval of information collection requirements, notice and public comment and delayed effective date are unnecessary.

List of Subjects in 42 CFR Part 55a

Black Lung benefits, Grant programs, Health care, Health facilities, Miners, Occupational safety and health.

Accordingly, Part 55a of Title 42, Code of Federal Regulations is amended as set forth below.

(Catalog of Federal Domestic Assistance Program No. 13.965, Coal Miners Respiratory Impairment Treatment Clinics and Services (Black Lung Clinics))

Dated: September 30, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

Approved: December 12, 1985.

Margaret M. Heckler,

Secretary.

PART 55a—PROGRAM GRANTS FOR BLACK LUNG CLINICS

42 CFR 55a.201 and 55a.301 are amended by adding at the end of both of these sections the parenthetical statement.

(Approved by the Office of Management and Budget under control number 0915–0081)

[FR Doc. 85–30656 Filed 12–27–85; 8:45 am]

BILLING CODE 4160-16-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 83–1096; FCC 85–602]

Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings

Correction

In FR Doc. 85–29419, beginning on page 51522, in the issue of Wednesday, December 18, 1985, make the following corrections.

1. On page 51527, in the third column, in amendatory language instruction 6, "22.6(b)" should read "22.6(d)".

2. On the same page, in the third column, amendatory language instruction 9 is corrected to read as follows:

9. Section 22.913 is amended by revising paragraph (b)(2), redesignating paragraph (b)(4) as (b)(5), revising and redesignating paragraph (b)(3) as (b)(4) and by adding a new paragraph (b)(3) to read as follows:

BILLING CODE 1501-01-M

BEST COPY AVAILABLE

Proposed Rules

Federal Register
Vol. 50, No. 250
Monday, December 30, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-123-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) which would require structural inspections and repair, as necessary, of the forward lower cargo doorway frames. The AD is prompted by numerous reports of cracking in both vertical frame members at the lower cargo doorway. Continued operation with undetected frames could result in skin cracks and eventual rapid decompression.

DATES: Comments must be received on or before February 17, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-123-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Holmes, Airframe Branch, ANM-120S; telephone (206) 431-2926. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the rules docket.

Availability of NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-123-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Boeing Company issued a Service Bulletin 737-53-1051 on July 16, 1978, which specifies inspection and repair procedures for the forward lower cargo doorway frames, following reports by six different operators of 14 instances of cracking. The cracking was found on airplanes with 9,550 to 36,550 flight cycles, and typically occurred near door stop fittings. Since the original issue of this service bulletin, there have been 61 additional reports by 13 operators of cracking on 39 airplanes.

Based on a structural reassessment of the Model 737 airplane, it has been determined that the structure affected is structurally significant and should be inspected in accordance with a flight safety inspection program. Continued operation with cracks in the doorway frames could result in rapid decompression, possible blowout of the forward lower cargo door, or the inability to carry fail-safe loads required by FAR 25.571(b).

Since this condition is likely to exist on other airplanes of the same type design, the FAA proposes to adopt an airworthiness directive which would establish repetitive inspections of the forward lower cargo door frames on certain Boeing Model 737 airplanes in accordance with a Flight Safety Addendum in Boeing Service Bulletin 737-53-1051, Revision 3, dated July 12, 1985.

It is estimated that 186 airplanes of U.S. registry would be affected by this AD, that approximately one manhour per airplane would be required to perform the necessary inspections, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators would be $7,440 per inspection cycle.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

Lists of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-499, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 737 series airplanes listed in Boeing Service Bulletin 737–53–1051, Revision 3, dated July 12, 1985, certificated in any category. To prevent rapid loss of cabin pressure resulting from undetected frame cracking, accomplish the following upon the accumulation of 6,000 landings or within 90 days aft the effective date of this AD, whichever occurs later, unless previously accomplished:

A. Visually inspect the forward and after body frames adjacent to the forward lower cargo door for cracks, in accordance with the Flight Safety Inspection Program in Boeing Service Bulletin 737–53–1051, Revision 3, or later FAA–approved revisions. Repeat the inspection at intervals not to exceed 4,000 landings.

B. If cracks are found, prior to further flight, repair in accordance with Part III. A. or Part III. B., as applicable, of Boeing Service Bulletin 737–53–1051, Revision 3, or later FAA–approved revisions.

C. For airplanes that have had cracks repaired in accordance with Part III. A. of Boeing Service Bulletin 737–53–1051, initial release, or later FAA–approved revisions, visually inspect the frames for cracks in the area of repair upon the accumulation of 25,000 landings after the repair, and repeat at intervals not to exceed 17,000 landings thereafter. Parts found cracked must be repaired prior to further flight in accordance with an FAA–approved repair method.

D. For airplanes that have had cracks repaired in accordance with Part III. B. of Boeing Service Bulletin 737–53–1051, Revision 3, or later FAA-approved revisions, visually inspect the frames for cracks in the area of the repair upon the accumulation of 6,000 landings after the repair and repeat at intervals not to exceed 4,000 landings thereafter. Parts found cracked must be repaired prior to further flight in accordance with an FAA-approved repair method.

E. Modification of uncracked frames in accordance with the Preventative Modification of Boeing Service Bulletin 737–53–1051, Revision 3, or later FAA–approved revisions, constitutes terminating action for the requirements of the AD.

F. Airplanes with cracked frames may be flown in accordance with FAR 21.197 and 21.199 to a maintenance base for repairs or replacement required by this AD.

G. For the purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's number of hours time in service by the operator's fleet average time from takeoff to landing for the airplane type.

H. Upon request by an operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals in this AD, if the request contains substantiating data to justify the increase for that operator.

I. Alternative means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, Seattle, Washington.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 18, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–30728 Filed 12–27–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–ACE–68]

Proposed Alteration of Transition Area—Abilene, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Abilene, Kansas, by adding a new instrument approach procedure to the south of the Abilene Municipal Airport. This alternation will provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Abilene, Kansas, Municipal Airport utilizing the Salina, Kansas, VORTAC as a navigational aid.

DATES: Comments must be received on or before February 3, 1986.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Traffic Management and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale E. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the supplemental proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Traffic Management and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this supplemental notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this supplemental NPRM by submitting a request to the Federal Aviation Administration, Traffic Management and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374–3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Discussion

In an NPRM published in the **Federal Register** on September 17, 1985 (50 FR 37685), the FAA proposed an amendment to Subpart G, § 71.181, of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at Abilene, Kansas. The need for the proposal resulted from the establishment of an additional instrument approach procedure from the north to the Abilene, Kansas, Municipal Airport utilizing the Salina, Kansas, VORTAC as a navigational aid.

Subsequent to the publication of the NPRM, the FAA determined that an instrument approach procedure from the south to the Abilene Municipal Airport would provide lower minimums than the original proposal of an approach from the north. Accordingly, action is taken herein to modify the transition area description in this regard by the issuance of a Supplemental NPRM. The

establishment of this new instrument approach procedure, based on the Salina, Kansas, VORTAC, entails alteration of the transition area at Abilene, Kansas, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.64 dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Abilene, Kansas

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Abilene Municipal Airport (Latitude 38°54'20" N; Longitude 97°14'08" W); within 3 miles either side of the 360° bearing from the ADELA waypoint (Latitude 38°47'05"; Longitude 97°14'06" W); extending from 8 miles south of the airport to the 5 mile radius area and within 2 miles either side of the 086° bearing from the Salina VORTAC extending from 5.75 miles west of the Airport to the 5 mile radius area.

Issued in Kansas City, Missouri on December 18, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85–30546 Filed 12–27–85; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A–4–FRL–2919–3]
[GA–009]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Ozone Nonattainment Areas in Alabama and Georgia

Correction

In FR Doc. 85–26527 beginning on page 46089 in the issue of Wednesday, November 6, 1985, make the following corrections:

1. On page 46093, in the third column, in the twentieth line of the first complete paragrpah, "38°" should read "28°";

2. On page 46095, in the second column:

a. In the fourth line of the first complete paragraph, "Tier ??" should read "Tier I";

b. In the fifth line of the third complete paragraph, "lowest" was misspelled; and

c. In the fifteenth and sixteenth lines of the same paragraph, "¶ 797.1600" and "¶ 799.500(d)(3)(i)(B)" should read "§ 799.1600" and "§ 799.500(d)(3)(i)(B)", respectively.

BILLING CODE 1505–01–M

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40 CFR Part 271

[SW–4–FRL–2946–6]

North Carolina; Intent To Approve Revision of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to approve a substantial program revision to the North Carolina Hazardous Waste Program, comment period, and opportunity for public hearing.

SUMMARY: EPA intends to approve a substantial program revision to the North Carolina hazardous waste program. This action is based upon North Carolina's modification of its regulatory authority in July 1985 by adopting the new definition of solid waste and resource recovery provisions which were promulgated by EPA on January 4, 1985. Subsequent technical corrections were promulgated April 11, 1985, and August 20, 1985. In accordance with 40 CFR 271.21(e), modification of approved State programs is required when EPA changes Parts 124, 260–266, and 270. States must adopt these changes if the changes expand the scope of the Federal program or make the Federal program more stringent. EPA reviewed North Carolina's adopted rules, considers them to be substantial modification in accordance with § 271.21(b)(2), and intends to approve North Carolina's revision.

North Carolina's rules and the certification by the Attorney General are available for public review and comment, and a public hearing will be held to solicit comments on the program revision if significant public interest is expressed.

DATES: If significant public interest is expressed in holding a hearing, a public hearing if scheduled for 7:00 p.m., Wednesday, January 29, 1986, in Raleigh, NC. EPA reserves the right to cancel the public hearing is significant public interest in holding a hearing is not communicated to EPA either by telephone or in writing by January 27, 1986. EPA will determine on January 27, 1986, whether there is significant interest to hold the public hearing. North Carolina will participate in the public hearing if a hearing is to be held. All written comments on the North Carolina program revision must be received by the close of business January 27, 1986.

ADDRESSES: Copies of North Carolina's solid waste rules are available from 8:00 a.m. to 4:30 p.m. at the following addresses for inspection and copying.

Solid and Hazardous Waste Management Branch, Environmental Health Section, Department of Human Resources, Division of Health Services, 306 N. Wilmington, Raleigh, North Carolina 27602, Contact: William L. Myer, (919) 733–2178

Environmental Protection Agency, Residuals Management Branch, Waste Management Division, 345 Courtland Street, NE., Atlanta, Georgia 30365, Contact: Tricia Herbert, (404) 347–3016

Written comments on the application and written or telephoned communication of interest in EPA's holding a public hearing on North Carolina's program revision must be communicated to: Otis Johnson, Jr., Chief, Waste Planning Section, U.S. EPA, 345 Courtland Street, Atlanta, Georgia 30365, (404) 347–3016.

If you wish to find out whether a public hearing will be held on the North

Carolina program revision, you may either write or telephone the EPA contact person listed above, after January 27, 1986. Local callers may prefer calling Mr. William L. Meyer, Head, Solid and Hazardous Waste Management Branch, Environmental Health Section, Department of Human Resources, Division of Health Services, P.O. Box 2091, Raleigh, North Carolina 27602, (919) 733-2178.

If significant public interest is expressed, EPA will hold a public hearing on North Carolina's program revision on Wednesday, January 29, 1986 at 7:00 p.m., at the Cooper Building, J.W. Norton Boardroom, 215 McDowell St., Room 614, Raleigh, North Carolina.

FOR FURTHER INFORMATION CONTACT: Susan Absher, (202) 382-2229.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Under EPA's current regulations, changes to the Federal program can have a profound impact on States that either are applying for or have received Final Authorization. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. States must adopt these changes if the changes expand the scope of the Federal program or make the Federal program more stringent. The "moving target" regulation (40 CFR 271.21(e)) requires modification of approved State programs when EPA changes Parts 124, 260–266, and 270. Modification must be made within one year of the date of promulgation of each new regulation.

On January 4, 1985, EPA promulgated the new definition of solid waste at 50 FR 614. This rule deals with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. This rule also provides general and specific standards for various types of hazardous waste recycling activities, explains EPA's jurisdiction over hazardous waste recycling activities, and sets forth the regulator regime for recycling subject to the Agency's jurisdiction. Technical corrections to the new definition were made on April 11, 1985, at 50 FR 14216 and on August 20, 1985, at 50 FR 33541.

A State with final authorization must either adopt regulatory analogues equivalent to and no less stringent than this new rule in its entirety or show through a revised Attorney General's Statement that its current regulations are equivalent to and no less stringent than EPA's new regulations.

B. North Carolina

The State received Final Authorization for RCRA on December 31, 1984. On August 30, 1985, the North Carolina Department of Human Resources, notified EPA of its intent to modify its program to include the new definition of solid waste. The State adopted the redefinition of solid waste on May 3, 1985, and it became effective under State law on July 1, 1985. North Carolina submitted a copy of the newly-adopted rules and a certification from the Attorney General that the State's new regulations were equivalent and no less stringent than the Federal regulation.

EPA has reviewed North Carolina's regulation and the Attorney General's certification and believes that it is equivalent to EPA's regulation. Consequently, EPA intends to approve this modification to North Carolina's program.

EPA will consider all comments on its intent to approve the revision. Issues raised by those comments may be the basis for a decision to disapprove North Carolina's program modification. EPA expects to make a final decision on whether or not to approve North Carolina's program modification and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all significant comments.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(B), I hereby certify that this authorization will not have a significant economic impact on a substantial number of entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental Relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C., 6912(a), 6926, 6974(b).

Dated: December 16, 1985.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 85-30804 Filed 12-27-85; 8:45 am]

BILLING CODE [illegible]

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40 CFR Parts 798 and 799

[OPTS-42048C; FRL-2945-1]

Hydroquinone; Proposed Testing Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that certain Toxic Substances Control Act (TSCA) test guidelines and industry-submitted guidelines be utilized as the test standards for the required studies for hydroquinone (CAS No. 123-31-9) and that test data be submitted within specified time frames. In a related document appearing elsewhere in this issue of the **Federal Register**, EPA is issuing a final test rule establishing testing requirements under section 4(a) of the Toxic Substances Control Act (TSCA) for manufacturers and processors of hydroquinone.

DATES: Submit written comments on or before February 13, 1986. If persons request time for oral comment by January 29, 1986, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VI of this preamble.

ADDRESS: Submit written comments identified by the document control number (OPTS-42048C), in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, DC. 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC., 20460. Toll Free: (800-424-9065). In Washington, DC., (5545-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the Federal Register, EPA is promulgating a Phase I final rule pursuant to TSCA section 4 that establishes testing requirements for manufacturers and processors of hydroquinone. That Phase I rule specifies the following testing requirements for hydroquinone: (1) Metabolism (Toxicokinetics), (2) developmental toxicity studies in both a rodent and a non-rodent species, (3) a 2-generation reproductive effects test in rodents, and (4) nervous system effects testing including both a functional observational battery and neuropathology.

Once the Phase I test rule becomes effective, manufacturers and processors of hydroquinone would normally be required, under the existing two-phase process, to submit proposed study plans and schedules for both the initiation of testing and the submission of study data in accordance with 40 CFR 790.30. EPA would review the submitted study plans and schedules and would thereafter issue them (with any necessary modifications) in a Phase II test rule proposal. That proposal would request comment on the ability of the proposed study plans to ensure that the resulting data would be reliable and adequate. After evaluating and responding to public comment, EPA would adopt, with any necessary modifications, the study plans and reporting schedules, in a Phase II final rule as the required test standards and data submission deadlines in 40 CFR 790.32.

However, in the case of the hydroquinone test rule which was initiated under the two-phase process, EPA has now decided to propose the relevant TSCA test guidelines in this document as the test standards, Unit III, and at the same time issue the hydroquinone final rule. In addition, EPA is proposing that the data from the required studies be submitted within certain time periods. These time periods will serve as the data submission deadlines required by TSCA section 4(b)(1), Unit IV. The reasons for this change in the test rule process for hydroquinone are discussed below.

II. Change in the Test Rule Development Process

A. Test Standards and Data Submission Deadlines

TSCA section 4(b)(1) specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under a two-phase process utilized by EPA since 1982 (March 26, 1982; 47 FR 13012) and formally adopted in the Fall of 1984 (Oct. 10, 1984; 49 FR 39774), test standards and data submission deadlines were to be adopted during the second phase of the rulemaking process. Upon issuance of the Phase I final rule, which established the effects and characteristics for which a given chemical substance must be tested, persons subject to the rule would be required by a specified date to submit study plans detailing the methodologies and protocols they intended to use to perform the required tests. Such study plans were to include proposed schedules for the initiation and completion of testing and submission of test data in accordance with 40 CFR 790.30 (a) and (c). The Agency would then publish these study plans and solicit public comment. In the second phase, after consideration of public comment, the Agency would promulgate the Phase II final rule adopting the study plans (with any necessary modifications) as the test standards for the development of test data and deadlines for submission of test data.

In December 1983, the Natural Resources Defense Council (NRDC) and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) filed an action under TSCA section 20 challenging, among other things, the use of the two-phrase process. In an August 23, 1984 Opinion and Order, the U.S. District Court for the Southern District of New York found that utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgation test rules within a reasonable time frame (*NRDC v. EPA*, 595 F Supp. 1255 (S.D.N.Y. 1984)).

Subsequent to the issuance of that Opinion, the Agency decided that in order to expedite the development of section 4 test rules, EPA would utilize a single-phase rulemaking process for most test rules. In the Notice announcing this decision, EPA stated that the single-phase approach offers a number of advantages over the two-phase process published in the Federal Register of May 17, 1985, (50 FR 20652). In this single-phase approach, the Agency proposes (in one notice) not only the effects for which testing will be required but also proposes pertinent TSCA or other appropriate guidelines as the test standards and time frames for the submission of test data. After receiving and evaluating public comment on the proposed testing requirements, test guidelines, and data submission deadlines, EPA promulgates a final rule.

This single-phase approach shortens the rulemaking period and expedites the initiation of required testing relative to the two-phase rulemaking process. The single-phase process also eliminates the requirement under the two-phase approach for industry to submit test protocols for approval. Moreover, by allowing comments or to submit alternative testing methodologies during the comment period, the single-phase appraoch preserves the flexibility of the two-phase process.

These same advantages, i.e., expedited initiation of testing and the elimination of study plan submission requirements for persons subject to a Phase I rule, are factors EPA considered in deciding to modify the rulemaking process for hydroquinone. By proposing both pertinent TSCA test guidelines as the test standards and data submission deadlines at the time of issuance of the Phrase I rule, EPA expects that the Phase II final rule will be issued 6 months sooner than would occur if the usual two-phase process was followed. Thus, required testing will be initiated on a expedited basis. In addition, for each of the required tests for hydroquinone, appropriate TSCA test guidelines or Agency-reviewed industry protocols are available, Unit III. Thus, EPA believes that there is no need for manufacturers and processors of hydroquinone to develop proposed study plans for EPA and public review during the rulemaking process.

B. Modifications to Requirements Under a Phase I Final Rule for Hydroquinone

As indicated above, persons subject to the hydroquinone Phase I final rule and who have notified EPA of their intent to test would normally be required to submit proposed study plans and proposed data submission deadlines within a specified time of the final rule's effective date in accordance with 40 CFR 790.30 (a) and (c). However, because EPA is proposing certain TSCA guidelines and Agency-reviewed industry protocols as the test standards, and data submission deadlines, persons subject to the Phase I final rule are not required at this time to submit study plans for the required testing or poposed dates for the initiation and completion of that testing. Manufacturers and processors of hydroquinone are invited to comment on both the proposed test standards and the data submission deadlines. The Agency will consider these comments in issuing the phase II final rule.

However, persons subject to the Phase I final rule for hydroquinone are still required to submit notices of intent

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to test or exemption applications in accordance with 40 CFR 790.25. Moreover, once the test standards and reporting deadlines are promulgated in the Phase II final rule, those persons who have notified EPA of their intent to test must submit specific study plans (which adhere to the promulgated test standards) no later than 30 days before the initiation of each required test, 40 CFR 790.39(a)(1).

III. Proposed Test Standards

In the final test rule for hydroquinone, the required testing includes toxicokinetics, developmental toxicity, reproductive effects and nervous system effects.

EPA is proposing that the toxicokinetic testing be conducted according to the toxicokinetic guideline under 40 CFR 798.7650, which is contained in this proposed test standard. The required toxicokinetic studies, via dermal and oral routes of exposure, will allow the Agency to reasonably predict the toxicokinetic behavior of hydroquinone. In addition, the National Toxicology Program (NTP) is currently performing a two-year bioassay on hydroquinone via an oral exposure route. Since gavage studies are generally not designed to provide information on either the rate or extent of absorption of a test material, the toxicokinetic studies will provide data relevant to comparing the doses of hydroquinone received by workers and hobbyists through dermal contact with those administered internally in the ongoing NTP bioassay.

The required developmental toxicity studies that were in two species, are designed to determine the potential of hydroquinone to induce structural and/or other abnormalities in the fetus which may arise from exposure of the mother during pregnancy. These developmental effects include permanent structural or functional abnormalities that occur during the period of embryonic development. EPA is proposing that the two developmental toxicity studies be conducted according to the protocols that were submitted by Eastman Kodak (Ref. 1) and reviewed by the Agency.

The required two-generation reproductive effects testing is designed to provide general information concerning the effects of hydroquinone on gonadal function, conception, parturition, and the growth and development of the offspring. The study may also provide information about effects of hydroquinone on neonatal morbidity, mortality, and preliminary data on teratogenesis. EPA is proposing that the reproductive effects testing be conducted according to the protocols that were submitted by Eastman Kodak (Ref. 1) and reviewed by the Agency.

The required nervous system effects testing falls into two categories. The functional observational battery is a non-invasive procedure designed to detect gross functional deficits in young adult rodents resulting from exposure to chemicals and to better quantify neurotoxic effects detected in other studies. While this battery of tests is not intended to provide a detailed evaluation of neurotoxicity, it is designed to be used in conjunction with neuropathologic evaluation and/or general toxicity testing.

The data from the neuropathology testing will detect and characterize morphologic changes in the nervous system, if and when they occur, and determine a no-effect level for such changes. EPA is proposing that the functional observational battery and the neuropathology testing be conducted according to 40 CFR 798.6050 and 798.6400, respectively.

IV. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its final TSCA Good Laboratory Practice (GLP) standards, which appear in 40 CFR Part 792, published in the **Federal Register** of November 29, 1983 (48 FR 53922).

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Specific reporting requirements for each of the proposed test standards follow:

1. The toxicokinetic tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final Phase II test rule. Interim progress reports shall be provided quarterly.

2. The developmental toxicity tests shall be completed and the final results submitted to the Agency within 18 months of the effective date of the final Phase II test rule. Interim progress reports shall be provided quarterly.

3. The two-generation reproductive effects toxicity test shall be completed and final results submitted to the Agency within 29 months of the effective date of the final Phase II test rule. Interim progress reports shall be provided quarterly.

4. The neurotoxicity tests shall be completed and final results submitted to the Agency within 1 year of the effective date of the final Phase II test rule. Interim progress reports shall be provided quarterly.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will announce the receipt within 15 days in the **Federal Register** as required by section 4(d). Test data received pursuant to this rule will be made available for public inspection by any person except in those cases where the Agency determines that confidential treatment must be accorded pursuant to section 14(b) of TSCA.

V. Issues for Comment

EPA invites comment on the use of the proposed TSCA test guidelines and Agency-reviewed industry protocols as the test standards for the required testing of hydroquinone. EPA also invites comment on the proposed schedule for the required testing.

VI. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, D.C. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800–424–9065); In Washington, D.C.: (554–1404); Outside the U.S.A. (Operator-202–554–1404), by January 29, 1986. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency would transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

VII. Public Record

EPA has established a record for this rulemaking, [docket number (OPTS–42048C)]. This record includes basic information considered by the Agency in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

The supporting document for this rulemaking consist of proposal and final Phase I test rules on hydroquinone.

B. References

(1) Eastman Kodak Company. 1983. Protocols for a Voluntary Test Program on Hydroquinone. Submitted to Steven Newburg-Rinn, Chief, Test Rules Development Branch. June 15, 1983.

(2) USEPA. 1983. Letter to C.J. Terhaar, Eastman Kodak. Office of Toxic Substance's review of Kodak protocols for reproductive effects and teratology testing. September 14, 1983.

The record is open for inspection from 8 a.m. to 4 p.m. Monday through Friday except legal holidays, in Rm. E–107, 401 M Street, SW, Washington, D.C. 20640.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of hydroquinone is discussed in the Phase I test rule appearing elsewhere in this issue of the Federal Register.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

(1) There are not a significant number of small businesses manufacturing hydroquinone.

(2) Small processors are not expected to perform testing themselves, or to participate in the organization of the testing efforts.

(3) Small processors will experience only very minor costs if any in securing exemption from testing requirements.

(4) Small processors are unlikely to be affected by reimbursement requirements, and any testing costs passed on to small processors through price increases will be small.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention" Desk Officer of EPA". The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Parts 798 and 799

Testing, Environmental protection, Hazardous substances, Chemicals, Record Keeping and Reporting Requirements.

Dated: December 20, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 798—[AMENDED]

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

1. Part 798 is amended as follows:

a. The authority citation for Part 798 40 CFR Chapter I, continues to read as follows

Authority: 15 U.S.C. 2603, 2611, 2625.

b. Section 798.7650 is added, to read as follows:

§ 798.7650 Toxicokinetic test.

(a) *Purpose.* These studies are designed to:

(1) Determine the bioavailability after dermal or oral treatment.

(2) Ascertain whether the metabolites of hydroquinone are similar after dermal (assuming significant penetration) and oral administration, and

(3) Examine the effects of a multiple dosing regimen on the metabolism of hydroquinone after *per os* administration.

(b) *Definition of Scope of Study.* Absorption toxicokinetics refers to the bioavailability, i.e. the rate and extent of absorption of the test chemical, and metabolism and excretion rates of the test chemical after absorption.

(c) *Test Procedures*—(1) *Animal Selection*—(i) *Species.* The rat is the animal species of choice since it has been used extensively for absorption, metabolism, and toxicological studies.

(ii) *Rat strain.* Adult male and female Fischer-344 rats shall be used. At seven to nine weeks of age, the males should weigh 125 to 175 g and the females 110 to 150 g. The rats should be purchased from a reputable dealer and identified with ear tags upon arrival. The animals shall be randomly selected for the testing groups and no sick animal is to be used for experimentation.

(iii) *Animal care.* (A) Animal care and housing shall be in accordance with DHEW Publication No. (NIH)–78–23, 1978. "Guidelines for the Care and Use of Laboratory Animals."

(B) The animals shall be housed in environmentally controlled rooms with 10 to 15 air changes per hour. The rooms shall be maintained at temperature of 25±2 °C and humidity of 50±10 percent with a 12 hour light/dark cycle per day. The rats shall be kept in a quarantine facility for at least 7 days prior to use.

(C) During the acclimatization period, the rats shall be housed in polycarbonate cages on hardwood chip bedding. All animals shall be provided with certified feed and tap water *ad libitum.*

(iv) *Number of animals.* There shall be at least four animals of each sex in each experimental group.

(2) *Administration of Hydroquinone*—(i) *Test Compound.* Hydroquinone of at least 99 percent purity, commercially available, should be used as the test substance. Since both nonradioactive and radioactive (^{14}C-uniformly-labelled) hydroquinone are to be used, they should be chromatographed, separately and together, to ascertain purity and identity. The use of ^{14}C-labelled hydroquinone, diluted with unlabelled hydroquinone, is recommended for all of the studies outlined in paragraph (a) as it would greatly increase the reliability and sensitivity of the quantitative assays and facilitate the identification of metabolites.

(ii) *Dosage and treatment.* (A) Two doses shall be used in the study, a "low" dose and a "high" dose. When administered orally, the "high" dose level should ideally induce some overt toxicity, such as weight loss. The "low" dose level should not induce observable effects attributable to the test substance. If feasible, the same "high" and "low" doses should be administered orally and dermally.

(B) Oral dosing shall be accomplished by gavage after dissolving the hydroquinone in a suitable vehicle. For dermal treatment, the doses shall be administered in a suitable solvent and applied at a volume adequate to deliver the prescribed doses. The backs of the rats should be shaved with an electric clipper one day before treatment. The dose should be applied with a disposable micropipette on a specific area (2 cm^2 for rats) on the shaven skin. The dosed areas shall be occluded with an aluminum foil patch which is secured in place with adhesive tape.

(iii) *Determination of hydroquinone kinetics.* Each experimental group shall contain at least four (4) rats of each sex for a total of eight (8) rats.

(A) *Oral Studies.* (*1*) *Group A* shall be dosed once *per os* with the low dose of

Hydroquinone. (*2*) *Group B* shall be dosed one *per os* with the high dose of hydroquinone. For the oral studies, the rats shall be placed in individual metabolic cages to facilitate collection of urine and feces at 8, 24, 48, 72, 96 hours following administration. The cages shall be cleaned at each time period to collect any metabolites that might adhere to the metabolic cages.

(B) *Dermal Studies.* (*1*) *Group C* shall be dosed once dermally with the low dose of hydroquinone.

(*2*) *Group D* shall be dosed once dermally with the high dose of hydroquinone. (*i*) for the dermal studies, the hydroquinone is to be applied for 24 hours. Immediately after application, each animal shall be placed in a separate metabolic cage for excreta collection. At the time of removal of the aluminum foil, the occluded area is to be washed, with an appropriate solvent (see below), to remove any hydroquinone that may be on the skin surface. At the termination of the experiments, each animal is to be sacrificed and the exposed skin area removed. The skin (or an appropriate section) will be solubilized and assayed for radioactivity to ascertain if the skin acts as a reservoir for hydroquinone or its metabolites.

(*ii*) Before initiation of the dermal studies, an initial washing efficiency experiment shall be conducted to assess the removal of the applied hydroquinone by washing the exposed skin area with soap and water or organic solvents. Four rates, two of each sex, shall be lightly anesthesized and then hydroquinone applied to a specific area. After application (five to ten minutes), the areas shall be washed with soap and water (two rats) or ethanol and water (two rats). The amount recovered shall be determined to assess efficacy of hydroquinone removal by washing of the skin.

(C) *Repeated Dosing Study Group E.* Four rats (two of each sex) shall receive a series of single daily oral doses of nonradioactive hydroquinone over a period of at least 14 days, followed at 24 hours after the last dose by a single oral dose of ^{14}C-hydroquinone. Each dose shall be at the low dose level.

(3) *Observation of Animals.*—(i) *Bioavailability.* (A) *Blood Levels.* The levels of ^{14}C shall be determined in whole blood, blood plasma or blood serum at appropriate intervals from 1 to 96 hours after dosing rats in Groups A through E. Four rats (two of each sex) of each group shall to be used for this purpose.

(B) *Urinary and Fecal Excretion.* The quantities of ^{14}C-excreted in the urine and feces by rats in groups A through E shall be determined at eight hours, 24 hours, 48 hours, 72 hours and 96 hours after dosing, and if necessary, daily thereafter until at least 90 percent of the applied dose has been excreted or until seven days after dosing (whichever occurs first). Four animals (two of each sex) shall be used for these analyses.

(ii) *Biotransformation after Oral and Dermal Dosing.* Appropriate qualitative and quantitative methods shall be used to assay hydroquinone and metabolites in the urine and fecal specimens collected from rat Groups A through D.

(iii) *Changes in Biotransformation.* Appropriate qualitative and quantitative assay methodology shall be used to compare the composition of ^{14}C-labelled compounds in excreta collected at 24 and 48 hours after dosing rate Group A with those in the excreta collected at 24 and 48 hour after the ^{14}C-hydroquinone dose in the repeated dose study (Group E).

(d) *Data and Reporting—(1) Treatment of Results.* Data should be summarized in tabular form.

(2) *Evaluation of Results.* All observed results, quantative or incidential, should be evaluated by an appropriate statistical method.

(3) *Test Report.* In addition to the reporting requirements specified in the EPA Good Laboratory Practice Standards under 40 CFR Part 792, Subpart J the following specific information shall be reported:

(i) Specie(s) and strain(s) of laboratory animals.

(ii) Information on the degree (i.e., specific activity for a radiolabel) and site(s) of labeling of the test substance;

(iii) A full description of the sensitivity and precision of all procedures used to produce the data.

(iv) Percentage absorption by oral and dermal routes of rats administered ^{14}C-hydroquinone.

(v) Quantity of isotope, together with percent recovery of administered dose in feces, urine, blood and skin and skin washings (dermal study only for last portions).

(vi) Quantity and distribution of ^{14}C-hydroquinone in various tissues, including bone, brain, fat, gonads, heart, kidney, liver, lung, muscle, spleen, and in residual carcass.

(vii) Counting efficacy data shall be made available to the Agency upon request.

(4) *Reporting requirements.* The toxicokinetic tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final test rule. Interim progress reports shall be provided quarterly.

PART 799—[AMENDED]

2. Part 799 is amended as follows:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. By amending § 799.2200 by adding paragraphs (c)(1)(ii), (iii), (2)(ii), (iii), (3)(ii), (iii), (4)(ii), and (iii) to read as follows:

§ 799.2200 Hydroquinone.

* * * * *

(c) * * *

(1) * * *

(ii) *Test standards.* The toxicokinetic testing shall be conducted in accordance with § 798.7650.

(iii) *Reporting requirements.* (A) The toxicokinetic tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) Interim progress reports shall be provided quarterly, beginning with the start of the toxicokinetic testing and ending with the submission of the Final Test Report.

(2) * * *

(ii) *Testing standards.* The development toxicity testing shall be conducted according to the protocols entitled "Protocol for a Teratology Study of Hydroquinone in Rats" and "Protocol for a Teratology Study of Hydroquinone in Rabbits", submitted for the EPA on June 15, 1983 (Eastman Kodak Company, 1983) and reviewed by the Agency. Copies of these study plans are located in the public record for this rule (Docket No. OPTS–42048C) and are available for inspection in the OPTS Reading Rm., E–107, 401 M St., SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. These study plans are hereby incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register on [date]. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

(iii) *Reporting requirements.* (A) The developmental toxicity tests shall be completed and the final results submitted to the Agency within 18 months of the effective date of the final Phase II test rule.

(B) Interim progress reports shall be provided quarterly beginning with the start of the development toxicity testing and ending with submission of the Final Test Reports.

(3) * * *

(ii) *Test standard.* The reproductive effects testing shall be conducted

according to the protocol entitled "Protocol for a Two-Generation Reproduction Study in the Rat" submitted to the EPA on June 15, 1983. A copy of this study plan is located in the public record for this rule (docket no. OPTS–42048C) and is available for inspection in the OPTS Reading Rm., E–107, 401 M St., SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This study plan is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on [date]. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the **Federal Register.**

(iii) *Reporting requirements.* (A) The two-generation reproductive effects toxicity test shall be completed and final results submitted to the Agency within 29 months of the effective date of the final test rule.

(B) Interim progress reports shall be provided quarterly beginning with the start of the reproductive effects testing and ending with the submission of the Final Test Report.

(4) * * *

(ii) *Test standard.* The neurotoxicity testing of hydroquinone, consisting of a functional observational battery and neuropathology shall be conducted in accordance with § 798.6050 and 798.6400, respectively.

(iii) *Reporting requirements.* (A) The neurotoxicity tests shall be completed and final results submitted to the Agency within one year of the effective date of the final rule.

(B) Interim progress reports shall be provided quarterly beginning with the start of the neurotoxicity testing and ending with the submissions of the Final Test Reports.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070–0033).

[FR Doc. 85–30721 Filed 12–27–85; 8:45 am]

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40 CFR Part 799

[OPTS–42047B; FRL–2945–2]

Quinone; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rulemaking to test quinone (*p*-Benzoquinone, CAS No. 106–51–4) for certain health and environmental effects under the Toxic Substances Control Act. Comments and data received in response to the proposal indicate that human and environmental exposure to quinone are so small as to be unlikely to present an unreasonable risk to humans or to the environment.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, DC 20460. Toll free: (800–424–9065). In Washington, DC: (554–1404). Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: EPA has decided to withdraw the proposed rulemaking for health and environmental effects testing of quinone.

I. Background

Section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2006 *et seq.; 15 U.S.C. 2603 et seq.*) authorizes the Administrator of EPA to promulgate rules which require manufacturers and processors to test chemical substances and mixtures. Data developed through these test programs are used by EPA in assessing the risks that the chemicals may present to health and the environment.

Section 4(e) of TSCA established the Interagency Testing Committee (ITC) to recommend chemical substances or mixtures for priority testing consideration by EPA under section 4(a) of the Act. The ITC designated quinone (CAS No. 106–51–4) for priority consideration in its fifth Report, published in the **Federal Register** on December 7, 1979 (44 FR 70664). The ITC based its recommendation for carcinogenicity and teratogenicity testing on its belief that there was potentially high exposure of humans to quinone in manufacturing and processing operations.

The ITC also recommended environmental fate testing for quinone because, if released to the environment, it would possibly form a potentially stable oxidation/reduction system involving hydroquinone and a theoretical intermediate, semiquinone.

EPAs response to this designation was published in the **Federal Register** on January 4, 1984 (49 FR 456) as a proposed rule on quinone. EPA proposed that the following tests be performed on quinone by industry.

PROPOSED TESTING

	ITC recommendation	EPA proposal
Health effects:		
Teratology	x	
Carcinogenicity	x	x

PROPOSED TESTING—Continued

	ITC recommendation	EPA proposal
Environmental fate	x	x
Environmental effects		x

EPA did not propose teratogenicity testing of quinone; there were no data providing evidence under TSCA section 4(a)(1)(A) for the potential unreasonable risk of teratogenic effects.

II. EPA's Response to Public Comments

The Agency received comments from the Eastman Kodak Company, the National Association of Photographic Manufacturers, and from the Chemical Manufacturer's Association (CMA). The Tennessee Eastman Company, a subsidiary of Eastman Kodak, is the sole producer of quinone in the U.S.

EPA reported in the proposed rule, based on the EPA Toxic Substances Inventory, that from 100,000 to 1,000,000 pounds of quinone were produced in the United States in 1977. Kodak has reported that in 1983 they produced 170,000 pounds of isolated quinone as a water-wet, crystalline solid product (Refs. 1 and 3). The bulk of the quinone produced, greater than 98 percent, is not part of this portion that is isolated. It remains nonisolated in the process equipment for quinone's primary use, which is as an intermediate in the production of hydroquinone.

The major comments from the industry focused on the small number of people (less than 50) involved in the production of quinone and the low exposure levels. Kodak reports that "in the last 15 years, the highest average airborne concentration of hydroquinone and quinone ever monitored in the manufacturing workplace was 0.2 mg/m^3". They added that, because the method measures total hydroquinone and quinone, the average concentration of quinone is actually lower (Ref. 1). These are summary data provided by industry; EPA is unable to interpret these further since frequency, averaging time and other supporting documentation were not provided.

Eastman Kodak also commented that they have developed a new manufacturing process for hydroquinone which does not involve the production of quinone as an intermediate (Ref. 4). Because the production of hydroquinone will no longer involve quinone in an intermediate step, the overall production of quinone is expected to decline.

Exposure to quinone through its minor uses is expected to be negligible. As an in-process polymerization inhibitor, it is

added during vinyl monomer manufacture at levels of 500 to 2,000 ppm; after distillations to produce the purified vinyl monomer, quinone and its decomposition products remain in the still bottoms (Ref. 1). Quinone is also used to stabilize unsaturated polyester resins against undesired crosslinking during manufacture, shipment and storage. Formulations, typically containing about 500 ppm quinone, are sold to fabricators who add other chemicals to form plastic products. Although low levels of quinone are incorporated into the fabricated articles (Ref. 1), EPA does not expect migration and release of quinone. Kodak's 1983 isolated quinone production volume was 170,000 pounds, of which approximately one-third was for a company-limited use (Ref. 1).

Quinone is not currently used in the photographic developing trade (Refs. 1 and 2).

III. Decision Not To Require Testing

EPA has decided not to promulgate a rule to require the testing proposed for this substance, for the reasons stated below.

A. Health Effects

Oncogenicity was the only health effect for which testing was proposed in the January 4, 1984 notice. Kodak commented that their scientific analysis, provided by Dr. Robert Squire, indicates that EPA based its proposed testing on two flawed studies. Dr. Squire commented that the papers by Takizawa and Kanizawa (Ref. 5) and Otsu (Ref. 6) were flawed by improper methodologies; they do not provide for an accurate assessment of the effects, by current standards, or even when applying standards typical when the papers were published (Ref. 7). While EPA does believe the two studies in question provide some suggestive evidence, the Agency agrees with the commenters that the flawed nature of the studies detracts from their credibility.

Kodak also points out that there is little potential for human exposure, with the highest air sample recorded as 0.2 mg/m^3 and the fact that there are less than 50 workers employed by Kodak who manufacture of process quinone.

Given the small number of people exposed, the low levels of exposure and the lack of credible data, EPA has determined that a section 4(a)(1)(A) finding cannot be supported.

Therefore, EPA is withdrawing the rule for carcinogenicity testing of quinone.

B. Chemical Fate and Environmental Effects

EPA is withdrawing the proposal to require chemical fate and environmental effects studies for quinone. After considering the comments and new data, the Agency has decided that a section 4(a)(1)(A) finding for this substance cannot be supported.

In the proposed rule the Agency stated that it believed that hydroquinone is released to surface waters from photoprocessing operations and that a substantial portion of this material is converted to quinone. These levels were believed to possibly pose an unreasonable risk to freshwater and saltwater aquatic species.

After review of the comments provided by CMA, Kodak, and Goodyear and examination of additional monitoring data, EPA now believes that any releases of hydroquinone are very limited ($<5\mu g/L$) and, accordingly, any quinone formed from the oxidation of hydroquinone would also be extremely low levels. A more complete discussion of this issue appears elsewhere in this issue of the **Federal Register** in the final test rule for hydroquinone [OPTS–42048B].

IV. Public Record

EPA has established a public record for this decision not to pursue section 4 testing [docket number OPTS–42047]. This record includes:

A. Supporting Documentation

(1) **Federal Register** notice of the ITC designation of quinone to the priority list (44 FR 70684).

(2) Comunications consisting of:

(a) Written public comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries.

(d) Reports—published and unpublished factual materials, including contractors reports.

(3) **Federal Register** notice of the proposed test rule on quinone, (49 FR 456, January 4, 1984).

(4) **Federal Register** notice on quinone announcing the final decision not to require testing.

B. References

(1) Chemical Manufacturer's Association. Comments on EPA's proposed rule for quinone. April 10, 1984.

(2) National Association of Photographic Manufacturer's, Inc. Comments of NAPM on Hydroquinone/Quinone Proposed Test Rules. April 6, 1984.

(3) Eastman Kodak Company. "Comments by Eastman Kodak Company on EPA's Proposed Test Rules; Hydroquinone, 49 FR 438 and Quinone, 49 FR 456." April 10, 1984.

(4) Eastman Kodak. Letter to Gary Timm, Test Rules Development Branch. August 21, 1984.

(5) Takizawa, E., Kanizawa S. "Experimental induction of pulmonary carcinoma." *Jpn. J. Cancer Clin.* 9:172–173. 1963.

(6) Otsu H. "The study of the malignant changes of bronchial epithelial cells in mice induced by the innalation of parabenzoquinone." *J. Chiba Med. Soc.* 46:461–472. 1970.

(7) Chemical Manufacturer's Association. Testimony of the Program Panel on Hydroquinone/Quinone before the Environmental Protection Agency, Washington, DC. April 18, 1984.

This record, which includes the basic information considered by the Agency in developing this decision, is available for inspection from 8 a.m. to 4 p.m. Monday through Friday except legal holidays in Rm. E–107, 401 M St., SW., Washington, DC 20460. The Agency will supplement the record with additional relevant information as it is received.

PART 779—[AMENDED]

Therefore, the proposal to add § 779.3600 to 40 CFR Part 799 is hereby withdrawn.

Authority: 15 U.S.C. 2603.

Dated: December 20, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–30720 Filed 12–27–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 799

[OPTS–42028C; FRL 2931–3]

Propylene Oxide; Proposed Testing Standard

Correction

In FR Doc. 85–28299 beginning on page 48803 in this issue of Wednesday, November 27, 1985, make the following corrections:

1. On page 48804, in the second column, in the twelfth line from the bottom of the page, "could" should read "would".

2. On the same page, in the third column, in the first line of the third

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paragraph under the heading "*IV. Reporting Requirements*", "development" should read "developmental".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1600

Planning, Programming, Budgeting: Planning Guidance; Availability of Draft Supplemental Program Guidance

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability for Public Review and Comment on Draft Supplemental Program Guidance.

SUMMARY: This notice is to advise the public of the availability of planning guidance setting forth proposed program specific requirements and standards for use in resource management planning. This guidance, when adopted, will supplement procedural and plan content requirements established in the Bureau of Land Management's planning regulations (43 CFR Part 1600) and related Manual Sections. The draft guidance now available for review includes the following program activities: air resources, coal resources, cultural resources, engineering, fluid minerals, locatable minerals, mineral materials, natural history, recreation, social and economic, soil and water resources, visual resources, and wilderness. The suplemental program guidance for resource management planning is being developed in two phases. The first phase guidance was available for a 45-day public review period beginning on March 13, 1985. It has been revised considering comments and adopted into the Bureau of Land Management directives for planning.

DATES: Comments are due by February 14, 1986.

ADDRESS: Copies of the draft supplemental program guidance may be obtained by writing: Director (202), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gordon Knight 202–653–8824, Christopher Muller 202–653–8830.

Robert F. Burford,

Director.

December 10, 1985.

[FR Doc. 85–30575 Filed 12–27–85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA 6665]

Proposed Flood Elevation Determinations; Maine

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations previously published at 50 FR 27324 on July 2, 1985. This correction notice provides a more accurate representation of the Flood Insurance Study and Flood Insurance Rate Map for the Town of Phippsburg, Sagadahoc County, Maine.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Town of Phippsburg, previously published at 50 FR 27324 on July 2, 1985, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
MAINE	
PHIPPSBURG, TOWN SAGADAHOC COUNTY	
Kennebec River:	
East shoreline at Fort Popham State Park	*16
Entire shoreline of Dix Island	*10
Entire shoreline of Mill Pond	*10

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Entire western shoreline of Drummore Bay	*10
Entire shoreline of Fiddler Reach within community	*9

Issued: December 17, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–30750 Filed 12–27–85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550 and 580

[Docket No. 85–19]

Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers and Their Agents

AGENCY: Federal Maritime Commission.

ACTION: Amended Notice of Proposed Rulemaking; Referral to Administrative Law Judge for Hearing.

SUMMARY: The Federal Maritime Commission has determined that significant issues of law and fact remain unresolved in the subject rulemaking after notice and comment procedures have been utilized. The proposed rule is amended to include an alternative exemption from tariff filing requirements. This matter is referred to an Administrative Law Judge for legal briefing and evidentiary hearing.

ADDRESS: Office of Administrative Law Judges, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573 (202) 523–5750.

FOR FURTHER INFORMATION CONTACT: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5725.

SUPPLEMENTARY INFORMATION: This proceeding was instituted by a Notice of Proposed Rulemaking published in the **Federal Register** on August 8, 1985 (50 FR 32097). In that Notice the Commission proposed amendments to regulations governing the contents of tariffs filed by common carriers in the foreign and domestic offshore commerce of the United States (46 CFR Parts 580 and 550, respectively). Those amendments in essence would require

(1) carriers to include in their tariffs the terms and conditions, including free time and detention, for the use of carrier-provided equipment, and (2) standard form equipment interchange agreements to be published in tariffs.

These amendments were initially proposed in a Petition For Rulemaking (Petition) filed by American President Lines (APL) (50 FR 9904). APL's Petition was essentially based upon a legal interpretation of the tariff filing requirements of the Shipping Act of 1984 (46 U.S.C. app. 1701 *et seq.*) (1984 Act), the Shipping Act, 1916 (46 U.S.C. app. 801 *et seq.*) (1916 Act) and the Intercoastal Shipping Act, 1933 (46 U.S.C. 843 *et seq.*) (ISA). Replies to the Petition opposing the requirements generally did not challenge APL's legal analysis but raised significant policy issues concerning their effect on contractual relationships between ocean carriers and inland carriers.

Although more parties have come forward in response to the Notice of Proposed Rulemaking to support and oppose the amendments, the Commission is not satisfied that an adequate record has been developed to resolve the legal and policy issues raised in the proceeding. Therefore, the Commission has determined that this matter should be referred to an Administrative Law Judge to conduct a formal hearing on the issues presented and issue an Initial Decision recommending a disposition based upon the entire record developed herein.[1] Specifically, the hearing should address the following issues:

(1) Whether the 1984 Act, the 1916 Act and the ISA require the filing and publication in tariffs of equipment interchange agreements between ocean common carriers and shippers [2] and between ocean common carriers and inland carriers; and,

(2) If so, whether there exist sufficient policy reasons to exempt such agreements from the Commission's tariff filing requirements, pursuant to section 16 of the 1984 Act (46 U.S.C. app. 1715) and section 35 of the 1916 Act (46 U.S.C. app. 833a).[3]

All entities that have filed comments in response to the August 8, 1985 Notice of Proposed Rulemaking are made parties to the proceeding. APL and those commenters urging adoption of the proposed rule bear the burden of proof therefor in accordance with section 7 of the Administrative Procedure Act (APA) (5 U.S.C. 556). Those parties opposing the rule on the basis of policy considerations are deemed to be proponents of an exemption and bear the burden of proof therefor.[4] *Id.*

The Administrative Law Judge shall have full discretion to conduct the proceeding so as to develop a complete record on the issues noted.

Therefore, It Is Ordered, That the Notice of Proposed Rulemaking issued in the Proceeding is amended as follows:

"Alternatively, pursuant to sections 7 and 8 of the Administrative Procedure Act (5 U.S.C. 556 and 557), section 16 of the Shipping Act of 1984 (46 U.S.C. app. 1715) and section 35 of the Shipping Act, 1916 (46 U.S.C. App 833a), the Federal Maritime Commission proposes to amend Parts 550 and 580 of Title 46 of the Code of Federal Regulations as follows:

PART 550—[AMENDED]

1. The authority citation for Part 550 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817(a), 820, 833a, 841a, 843, 844, 845, 845a and 847.

2. In § 550.1 add a new paragraph (h) to read as follows:

§ 550.1 Exemptions.

* * * * *

(h) Equipment interchange agreements between common carriers subject to this Part and inland motor and rail carriers.

PART 580—[AMENDED]

3. The authority citation for Part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716 and 1718.

4. In § 580.1 add a new paragraph (c)(8) to read as follows:

§ 580. Exemptions and exclusions.

* * * * *

(c) * * *

(8) Equipment interchange agreements between common carriers subject to this Part and inland motor and rail carriers.

* * * * *

It Is Further Ordered, That this proceeding is referred to the Commission's Office of Administrative Law Judges for the purpose of conducting a hearing and issuing an Initial Decision in accordance with this Amended Notice of Proposed Rulemaking; and,

It Is Further Ordered, That all parties that filed comments in response to the original Notice of Proposed Rulemaking in this proceeding shall be permitted to participate in the hearing ordered above; and

It Is Further Ordered, That the Commission's Bureau of Hearing Counsel is also made a party to this proceeding; and

It Is Further Ordered, That additional interested parties may be granted intervention in this proceeding in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72).

By the Commission.

Bruce A Dombrowski,

Acting Secretary.

[FR Doc. 85–30650 Filed 12–27–85; 8:45 am]

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[1] APL also filed a request to file a reply to certain of the comments received pursuant to the Notice of Proposed Rulemaking. APL's reply was also forwarded as a separate pleading. Certain commenters replied to APL's request. Given the determination to refer this proceeding to an Administrative Law Judge for hearing, it is not necessary to consider APL's reply, and the Acting Secretary is directed to return it to APL. All parties will be free to submit information for the record in accordance with the presiding officer's procedural schedule.

[2] There appears to be no dispute that equipment interchange terms and conditions directly applicable to shippers must be reflected in tariffs. However, it is anticipated that a full analysis of the legal status of intercarrier agreements will also require an analysis of the status of carrier/shipper agreements. The presiding Administrative Law Judge is granted full discretion to fashion the hearing to adequately address the arguments of the commenting parties on this issue.

[3] Under both the 1984 Act and the 1916 Act proponents of an exemption must show that such exemption "will not substantially impair effective regulation by the Commission," "be unjustly discriminatory," "or be detrimental to commerce." The 1984 Act also requires a showing that the exemption will not "result in a substantial reduction in competition."

[4] This is not to be construed as preventing parties opposed to the proposed rule from challenging the legal basis therefor.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC-176]

Short Notice Effectiveness for Independently Filed Motor Passenger Carrier Rates

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to applications filed by several motor passenger carriers, the Commission, under 49 U.S.C. 10762(d)(1), proposes to amend the regulations at 49 CFR Part 1312 to reduce the notice period required for independent rate

filings by motor carriers of passengers, including express and special and charter operations. Rate reductions, rate increases, and new rates for motor passenger carrier fares would be permitted to become effective on 1-day's notice, rather than the 30-day notice period currently required by 49 CFR 1312.4(e)(ii)(A).

DATES: Comments are due January 29, 1986.

ADDRESS: Send comments (original and 15 copies) to: Ex Parte No. MC–176, Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Robin Williams Denick, (202) 275–7711 or Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area) or toll free (800) 424–5403.

Adoption of the proposals in this notice will not have a significant economic impact on a substantial number of small entities because we are only affecting the notice period required for motor passenger carrier rate filings. Reducation of the notice period is consistent with the National Transportation Policy, 49 U.S.C. 10101, which encourages the Commission to reduce regulatory burdens and promote an economic and efficient transportation system.

List of Subjects in 49 CFR Part 1312

Buses, Tariffs, Motor carriers.

Authority: 5 U.S.C. 533 and 49 U.S.C. 10321 and 10762(d)(1).

Decided: November 22, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

Appendix

PART 1312—[AMENDED]

Proposed Revisions to the Code of Federal Regulations, Title 49 Part 1312

Title 49 CFR Part 1312, would be amended as follows:

1. Section 1312.4(e)(ii) would be amended by deleting language from subparagraph (A) and by adding a new subparagraph (C) to read as follows:

§ 1312.4 Filing tariffs.

(e) *Period of notice required.* * * *

(ii) For all other carriers.

(A) 30 days notice is required.

* * * * *

(C) For independently set rates of motor carriers of passengers, including package express and special and charter operations, the rule generally is 1-day's notice for reductions and increases of passenger rates. *See* § 1312.39(i) for details.

2. Section 1312.39 would be amended by deleting language in paragraph (f) and by adding a new paragraph (i) to read as follows:

§ 1312.39 Miscellaneous provisions that may be filed on less than statutory notice.

* * * * *

(f) *Roundtrip excursion fares.* Fares for a roundtrip excurison limited to a designated period may be established upon posting and filing the tariff on 1 workday's notice.

* * * * *

(i) *Motor Passenger Tariffs—Notice for Independent Rate Changes—New, Reduced and Increased Rates.* Except as otherwise provided in paragraph (h)(5) above, each independently established new or changed rate, charge, rule, or other provision must be filed with the Commission in Washington, DC at least 1 day before the date upon which it is to become effective. Similarly, each independently established increased rate or charge and each independently established change in a rule or other provision that effects a reduction in the value of service or increase in a rate or charge must be filed with the Commission in Washington, DC, at least 1 day before the date upon which it is to become effective.

[FR Doc. 85–30768 Filed 12–27–85; 8:45 am]

BILLING CODE 7035–10–M

Notices

Federal Register
Vol. 50, No. 250
Monday, December 30, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Joint Nutrition Monitoring Evaluation Committee; Re-Establishment

The Joint Nutrition Monitoring Evaluation Committee is being re-established to continue evaluation of the findings of the Nationwide Food Consumption Survey (NFCS), the National Health and Nutrition Examination Survey (NHANES), and other Federal nutrition monitoring efforts and development of reports on the nutritional status of the U.S. population. The Advisory Committee is composed of four members, two selected by the Department of Agriculture (USDA) and two by the Department of Health and Human Services (DHHS). The Committee is chaired by an official of the Office of the Secretary of Agriculture and/or the Assistant Secretary for Health, DDHS. The Human Nutrition Information Service and units of the Office of the Assistant Secretary of Health, DDHS, will be responsible for processing, publishing, and distributing reports.

It has been determined that the establishment of the Committee is in the public interest in connection with the work of the U.S. Department of Agriculture and the Department of Health and Human Services.

Interested persons may send comments to Dr. Susan Welsh, Nutrition Education Division, Human Nutrition Information Service, USDA, Room 363 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, on or before January 14, 1986.

Done at Washington, DC, this 18th day of December 1985.

John J. Franke, Jr.,

Assistant Secretary for Administration.

[FR Doc. 85-30765 Filed 12-27-85; 8:45 am]

BILLING CODE 3410-88-M

National Arboretum Advisory Council; Renewal of Advisory Council

Notice is hereby given that the Secretary of Agriculture has renewed the National Arboretum Advisory Council. The purpose of the Council is to provide the Secretary of Agriculture with an independent overview of the work of the Arboretum by a body of qualified individuals who represent national organizations. The National Arboretum was created by an Act of Congress (Pub. L. 799, 69th Congress, 20 U.S.C. 191–194) on March 4, 1927, for purposes of research and education concerning tree and plant life.

The Council meets annually at the National Arboretum in Washington, DC, to receive reports from the Arboretum staff on research progress with trees and environmental plants, educational activities, site development, and long-range goals. The Council's findings are reported in writing to the Secretary of Agriculture.

It was determined that the renewal of this Council would be in the public interest in connection with the work of the U.S. Department of Agriculture.

Done at Washington, DC, this 19th day of December 1985.

John J. Franke, Jr.,

Assistant Secretary of Agriculture for Administration.

[FR Doc. 85-30841 Filed 12-27-85; 8:45 am]

BILLING CODE 3410-01-M

Food and Nutrition Service

Food Stamp Program; Electronic Benefit Transfer Alternative Issuance Demonstration Project

AGENCY: Food and Nutrition Service, Department of Agriculture.

ACTION: Amended General Notice.

SUMMARY: The Department is hereby amending its General Notice for the Electronic Benefit Transfer (EBT) Alternative Issuance Demonstration Project in Reading, Pennsylvania to extend the project for 15 additional months. During this time the Pennsylvania State Agency will assume responsibility for administering the EBT system and begin the process of transferring the system onto their own hardware. The continuing project is being conducted under the authority of section 17 of the 1977 Food Stamp Act, as amended.

EFFECTIVE DATE: December 30, 1985.

FOR FURTHER INFORMATION CONTACT: M. Patricia Warner, Chief, Legislative Policy, Planning and Demonstration Branch, Program Planning, Development and Support Division; Family Nutrition Programs; Food and Nutrition Service, USDA; Alexandria, Virginia 22302, telephone (703) 756–3383.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This notice has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1, and has been classified "not major". The notice will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. Because this notice will not have a major effect on the business community, it will not result in significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Act Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related Notice to 7 CFR 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This notice has also been reviewed with regard to the requirements of the Regulatory Flexibility Act, Pub. L. 96–354. Mr. Robert E. Leard, Administrator of the Food and Nutrition Service (FNS), has certified that this action will not have a significant economic impact on a substantial number of small entities because it will be conducted in a limited area. The State and local welfare agencies will be affected to the extent that they are involved in administering

this alternative system. Food retailers and banks will be affected to the extent that they agree to participate in the test. Individuals participating in the Food Stamp Program and living within a four-zip code area of Reading, Pennsylvania, will be affected to the extent that they will continue using a new benefit issuance instrument and continue to be subject to the new issuance procedures.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Comments

This notice provides for an extension of a current demonstration project and does not provide any significant changes to the demonstration's current operating procedures. Consequently, comments are not being requested and the provisions of this notice will be effective upon publication.

Background

On July 8, 1983, the Department of Agriculture published a General Notice in the **Federal Register** (48 FR 31431) which, in accordance with 7 CFR 282.5, established the specific operational procedures and explained the basis and purpose for the Alternative Issuance Demonstration Projects, including the EBT demonstration. On August 21, 1984, the Department published an Amended General Notice in the **Federal Register** (49 FR 33152) which provided additional details on the operational procedures of the project.

Implementation of the EBT system began in October 1984. Following the phase-in of participating recipients, the system became fully operational in January 1985. The contract with Planning Research Corporation (PRC) of McLean, Virginia was for the administration of operations through December 1985.

Preliminary reaction to the system by the different groups participating in the demonstration has been favorable. Recipients have not shown any problems using the system. Retailers and banks have expressed their pleasure regarding the time and effort saved by not having to process coupons. While there have been some system problems during the test which have raised concern by all parties, system imnprovements have been implemented to minimize the chance for problem recurrence and to satisfy the retailers and recipients Further enhancements were not viewed as appropriate by the Department during this phase of the demonstration because of the limited time available. The final evaluation report for this period of operations is expected to be completed by Fall 1986.

Current Action

In consultation with the State of Pennsylvania, the Department has decided to extend demonstration operations for 15 additional months. For the first three months, the current contractor will continue administering the EBT system. Subsequent to this period, Pennsylvania will administer the EBT system by moving the EBT equipment and EBT Center operations to their own offices in Harrisburg, Pennsylvania. During this period, all operations will be coordinated by the State personnel in Harrisburg. In addition, the State will begin the process of moving the system onto their own hardware. The Department believes that these actions will enhance the system operations and make the system more cost effective.

During this extension, the operating procedures will remain as published in the August 1984 Amended General Notice except that the EBT center will be operationsl 24 hours per day instead of the 18 hours stated in the Notice. Consequently, manual transactions will be processed, if necessary, 24 hours per day. An evaluation of the EBT demonstration will continue through the extension period.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-30772 Filed 12-27-85; 8:45 am]

BILLING CODE 3410-30-M

COMMISSION ON CIVIL RIGHTS

Iowa Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 8:45 p.m. and adjourn at 5:00 p.m., on January 27, 1986 and convene at 9:00 a.m. and adjourn at 12:00 noon on January 28, 1986, at the Phillips House Hotel, 12th and Baltimore, Kansas City, Missouri. The purpose of the meeting is to discuss a regional project on Bigotry and Violence and to make plans for a series of civil rights forums in the Central States Region.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Ralph S. Scott, or Melvin Jenkins, Director of the Central States Regional Office at (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 20, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-30755 Filed 12-27-85; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Education Subcommittee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m., on January 8, 1986, at the Anne Arundel County Board of Education, 2644 Riva Road, Conference Room #2, Annapolis, Maryland. The Education Subcommittee will receive reports of special assignments and plan the community forum on Special Education and programs for the gifted and talented.

Persons desiring additional information, or planning a presentation to the Subcommittee should contact Committee Chairperson, Lorretta Johnson or John I. Binkley, Director of the Mid-Atlantic Regional Office at (202) 254-6717, (TDD 202/254-5461). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 20, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-30756 Filed 12-27-85; 8:45 am]

BILLING CODE 6335-01-M

BEST COPY AVAILABLE

Nevada Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nevada Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:00 p.m., on January 18, 1986, at the Alexis Park, 345 Harmon Avenue, Las Vegas, Nevada. The purpose of the meeting is to review a draft proposal on the Casino Employment Study and engage in other program planning activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Elizabeth Nozero or Philip Montez, Director of the Western Regional Office at (213) 688–3437. (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 20, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–30757 Filed 12–27–85; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island Advisory Committee; Meeting Date Change

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission originally scheduled for January 8, 1986, convening at 12:00 noon and adjourning at 1:30 p.m., at the Girl Scouts of Rhode Island, 125 Charles Street, Council Room, Providence, RI (FR Doc. 85–28759, page 49739) has a new meeting date.

The meeting times and location will remain the same. The meeting date will change to January 7, 1986.

Dated at Washington, DC, December 19, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–30758 Filed 12–27–85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–505]

Preliminary Affirmative Countervailing Duty Determination; Oil Country Tubular Goods from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of oil country tubular goods (OCTG) in Canada. The estimated net subsidy is 0.72 percent *ad valorem*.

We have notified the United States International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to suspend liquidation of all entries of oil country tubular goods from Canada that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, except for companies that have been excluded from this determination, and to require a cash deposit or bond on entries of this product in an amount equal to the estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by March 4, 1986.

EFFECTIVE DATE: December 30, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1248 (Morrison) or (202) 377–2438 (Tillman).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers or exporters of oil country tubular goods (OCTG) in Canada. For purposes of this investigation, the following programs are found to confer subsidies to manufacturers, producers, and exporters of OCTG in Canada:

- Investment Tax Credits for machinery and equipment.
- Regional Development Incentives Program.
- General Development Agreement/ Canada-Saskatchewan Subsidiary Agreement on Iron, Steel and Other Related Metal Industries.

We preliminarily determine the estimated net subsidy for OCTG to be 0.72 percent *ad valorem*.

Case History

On July 22, 1985, we received a petition filed in proper form by the Lone Star Steel Company and CF&I Steel Corporation, producers of oil country tubular goods. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26) the petition alleges that manufacturers, producers or exporters of oil country tubular goods in Canada directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. In addition, the petition alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 12, 1985, we initiated the investigation (50 FR 33383).

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On September 5, 1985, the ITC determined that there is a reasonable indication that these imports materially injure a U.S. industry (50 FR 37066).

On August 21, 1985, we presented a questionnaire concerning the petitioners' allegations to the government of Canada. Responses to the questionnaire were received on September 23, 1985 and September 24, 1985.

There are eleven known producers and/or exporters of oil country tubular goods to the United States from Canada. These are Siegfried Kreiser Pipe and Tube, IPSCO, Inc., Stelco Inc., Sonco Steel Tube (a division of Ferrum, Inc.), Algoma Steel Corp. Ltd., Welded Tube of Canada, Ltd., Prudential Steel, Ltd., Frank Pipe Co., Christianson Pipe, Ltd., Dominion Steel Export Co., Ltd., and Matthew Tube & Pipe Supply Inc.

We received timely requests for exclusion from these eleven producers

and/or exporters to which we sent copies of the detailed questionnaire. Eight respondents indicated that they received no benefits. Algoma Steel Corporation received benefits which we preliminarily determine are *de minimis*. Therefore, these nine companies are excluded from this preliminary determination. IPSCO receives countervailable benefits above the *de minimis* rate of 0.50 percent and Siegfried Kreiser Pipe and Tube did not respond to our questionnaire.

On September 23, 1985, we received a timely request by petitioners for an extension of the deadline date for the preliminary determination. An extension was granted on September 26, 1985 (50 FR 40209). We stated that we expected to issue our preliminary determination by December 19, 1985.

Because of the extension of the preliminary determination, we were able to verify the responses to the questionnaires. Verification was conducted in Canada from October 23, 1985 to November 14, 1985.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods," which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casings, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244. This investigation includes oil country tubular goods that are in both finished and unfinished condition.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

For purposes of this preliminary determination, the period for which we are measuring subsidies (the review period) is calendar year 1984. Based upon our analysis of the petition, the responses to our questionnaries submitted by the federal and provincial governments as well as those of the ten responding companies, and amendments to the responses submitted after verification, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers and/or exporters of oil country tubular goods under the following programs:

A. Certain Investment Tax Credits for Machinery and Equipment

Under the Canadian Income Tax Act, an investment tax credit (ITC) for machinery and equipment is available to businesses. The credit is based on a percentage of a company's investment in certain assets. The tax provision allows the business to subtract a percentage of its applicable investments directly from business income taxes owed. All companies throughout Canada are eligible for at least a seven percent investment tax credit. Companies are automatically eligible for a ten percent or higher investment tax credit (for investment in machinery and equipment) if the investment is made in designated regions of the country. Of the respondents, only two producers or exporters of OCTG have facilities in these designated regions, Algoma and IPSCO, and both received ten percent investment tax credits for machinery and equipment. In addition to ITCs for machinery and equipment, there is also an ITC benefit for research and development which, at the time, was at uniform rates for businesses throughout Canada. IPSCO claimed this research and development ITC, in addition to machinery and equipment ITCs.

Canadian tax law provides that ITCs may be subtracted from taxes owed, but if no taxes are owed (either because a company is initially in a tax loss position or because some of the ITCs have been used to satisfy all tax liability), excess ITCs earned after April 19, 1983, have a one time cash value of twenty percent of the remaining ITC value. Algoma did redeem some post-April 19, 1983 machinery and equipment ITCs for cash on tax returns filed in 1984.

We preliminarily determine that ITCs at 7 percent and research and development ITCs are not countervailable because they are not limited to a specific enterprise, industry or group of enterprises or industries. The ITCs for machinery and equipment in excess of seven percent are countervailable because they are limited to companies in specific regions. Therefore, because all industries throughout Canada can claim at least seven percent (machinery and equipment) ITCs, only that portion of these ITCs in excess of 7 percent is countervailable.

Under the Department's tax methodology, we allocate an income tax benefit to the year in which the tax return was filed. Thus, we looked at the tax return filed in 1984, covering fiscal year 1983. We examined the tax return filed during the review period and found that portion of machinery and equipment ITCs in excess of the seven percent threshold. We then divided this amount by each company's total sales to calculate an estimated net subsidy of 0.01 percent *ad valorem* for Algoma and 0.01 percent *ad valorem* for IPSCO.

B. Regional Development Incentive program (RDIP)

The RDIP was administered by the former Department for Regional Economic Expansion (DREE) for the purpose of creating stable employment opportunities in areas of Canada where employment and economic opportunities are chronically low. The program provided development incentives (grants) to manufacturers whose capital investment projects for establishing new facilities or expanding or modernizing existing facilities would create jobs and economic opportunities in areas designated as economically disadvantged.

The prime creation for DREE approval of a proposed project was the likelihood that the project would provide needed economic opportunities and social adjustment. Projects which could proceed without RDIP assistance were ineligible. Although the program was terminated in 1983, several RDIP grants were provided to two producers of the product under investigation prior to that termination. We determine that grants provided through the RDIP program of DREE confer subsidies because the benefits are limited to companies located within specific regions.

Two grants reported in the responses were for products other than oil country tubular goods: one for a spiral pipe facility and one for a slab facility which would not be used in the production of

oil country tubular goods. Consistent with our methodology, when a grant is tied specifically to a product not under investigation, we do not include it in our calculation of benefits.

Additionally, two other grants were used for several facilities, not all of them involved in the production of oil country tubular goods. We preliminarily determine that these grants are not specifically tied to products not under investigation. Therefore, we included the full amount of these grants in our calculation of benefits.

Because RDIP grants are not provided automatically every year, we allocate the benefits received over time. To calculate the benefits from RDIP, we used the methodology for grants outlined in the Subsidies Appendix. The average useful life of equipment in the steel industry is 15 years. Thus, for all grants received by each company in the past 15 years, we aggregated all grants received by each company in each year and divided by the company's total sales in that year.

If the resulting benefit was less than 0.50 percent (*de minimis*), we expensed that benefit to the year of receipt. If the resulting benefit was 0.50 percent or greater, we spread the grant over the average useful life of equipment using our declining balance methodology. We used the average long-term lending rate from data supplied by Statistics Canada for Algoma because the firm had no commercial loans in the relevant year. We had informtion to calculate IPSCO's weighted cost of capital and used that as our discount rate. Using this method, we preliminrily determine the estimated net subsidy to be 0.71 percent *ad valorem* for IPSCO and 0.04 percent *ad valorem* for Algoma.

C. Grant Provided Under the General Development Agreement and the Canada-Saskatchewan Iron, Steel and Other Related Metal Industries Subsidiary Agreement

As part of its activities to spur development in Canada, the former Department of Regional Economic Expansion entered into a General Development Agreement (GDA) with Saskatchewan. Among the considerations of the GDA were the creation and maintenance of employment, economic opportunities, and income levels; the improvement of the well-being of the disadvantaged, the environment, and the quality of life; and the need for the continuing subsidization of industrial and commercial activity. Under the GDA, there was a provision for subsidiary agreements. The Government of Canada (GOC) and Saskatchewan entered into a subsidiary agreement of the GDA in 1974. It was intended to enhance the viability of the existing iron and steel industry in Saskatchewan, to expand and diversify iron and steel production, and to increase employment opportunities in the iron, steel and related metal industries in Saskatchewan. IPSCO was and is the only steel manufacturer in Saskatchewan.

We preliminarily determine that the grants through the GDA and the Iron, Steel and Related Metal Industries Subsidiary Agreement confer subsidies because the benefits are limited to companies in specific regions. Further, we also preliminarily determine that grants through the subsidiary agreement on steel also confer subsidies because they are limited to a specific enterprise or industry.

IPSCO received two grants under the GDA and the Subsidiary Agreement. One grant under GDA was paid to IPSCO in 1976 and 1978. The funds received under this granf were less than one-half percent of total IPSCO sales in each of those years and therefore the benefit would have been allocated to the year of receipt. Funds under the other grant were received in 1980, 1981, 1982 and 1983. The grant was jointly approved and funded under RDIP, and GDA and the Subsidiary Agreement. We have included benefits from this second grant in our calculation of benefits under RDIP.

II. Programs Preliminarily Determined Not To Confer Subsidies

We preliminarily determine the following programs do not confer subsidies on manufacturers, producers or exporters of oil country tubular goods from Canada.

A. Grant Under the Enterprise Development Program (EDP)

The EDP was established to provide loans, loan guarantees and contributions to those engaged in manufacturing or processing. In the "Final Negative Countervailing Duty Determinations: Certain Softwood Products from Canada" (48 Fed. Reg. 24159 (1983)), we found EDP grants not countervailable and EDP loan programs not used. Based on that determination, we initiated only on EDP loan programs and not EDP grants. However, IPSCO's 1984 annual report stated that the company was being assisted by an EDP grant for research on a new alloy while the government of Canada response said the EDP program was terminated in 1983. Because of this inconsistency in the information provided on the two responses we asked for additional information in order to check whether a new EDP program had been established.

Based on information obtained after the initial responses, we learned that companies could continue to receive funds for projects approved prior to the termination of the EDP program and that there was no new EDP program. In addition, although project funding for the grant has been approved, IPSCO has not yet received any funds under this program. Accordingly, we are not re-examining the EDP grant program nor changing our determination that EDP grants are not limited to a specific enterprise or industry, or group of enterprises or industries, or to companies in specific regions.

B. Employment Development Fund (EDF)

The Employment Development Fund (EDF), which was terminated in 1982, was an Ontario provincial grant program intended to increase long-term investment and employment in the province. In its response, one OCTG manufacturer reported receipt of an EDF grant. As part of the application procedure, applicants are required to predict the growth of production and exports, although information on the record indicates that there are no default provisions if the projected export goals are not met.

We preliminarily determine that EDF was not an export subsidy because these grants were not provided only to exporters nor was receipt of EDF grants contingent on export performance. Based on our examination of a report on recipients of EDF, funding was provided to a wide range of industries in Ontario. We also preliminarily determine that EDF grants were not domestic subsidies because they were not limited to a specific enterprise or industry, a group of enterprises or industries, or to companies in specific regions.

C. Alberta Opportunity Company

The Alberta Opportunity Company (AOC), a crown corporation, issues loans and loan guarantees to companies in Alberta in order to stimulate new businesses and assist expansion of existing enterprises when financing from other sources is unavailable. In the "Final Negative Countervailing Duty Determinations: Certain Softwood Products from Canada," (48 FR 24159 (1983)), we determined that AOC loans were not limited to a specific enterprise or industry or group of enterprises or industries, or to companies in specific regions. However, we initiated on this program because we had information that AOC loans may be intended for

export promotion. According to the responses, IPSCO had a loan outstanding from the AOC during the review period.

IPSCO's AOC loan is not a part of normal AOC loan program. It is part of a settlement reached in court for IPSCO's purchase of the physical assets of Ram Steel, a company placed into receivership by one of its creditors. The court assigned an officer of Peat Marwick, Ltd. as the receiver to negotiate the best deal possible on behalf of Ram Steel's creditors and stockholders. AOC had two loans outstanding with Ram, but was not the primary secured creditor. According to the receiver, the company could not be operated by the receiver or Ram Steel at a profit and the price offered by IPSCO was the highest price they could obtain. IPSCO made its offer to buy contingent upon receiving a loan from AOC to cover part of the purchase price. By granting that loan, AOC was able to recover most of the money owed it by Ram and to receive the full principal and interest on deferred terms, as was a condition of IPSCO's offer.

Given the above information, we preliminarily determine that AOC's loan to IPSCO was not inconsistent with commercial considerations because of the commercial advantages to both the seller and the purchaser in this transaction, and because of the apparent lack of interest by any other party to purchase Ram's assets.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs are not used by manufacturers, producers, and/or exporters of oil country tubular goods in Canada.

A. Loans Under Subsidiary Agreements

Petitioners allege that under the General Development Agreement and federal-provincial subsidiary agreements, loans were provided on terms inconsistent with commercial considerations. The responses indicate that none of the companies had outstanding loans under the GDA or subsidiary agreements during the review period. Therefore, we preliminarily determine this program not to be used.

B. Defense Industry Productivity Program (DIPP)

The DIPP, administered by the Department of Regional and Industrial Expansion (DRIE) has several purposes. Among these purposes is the stimulation of exports of military hardware and the provision of assistance to upgrade equipment, processes and facilities to make companies more competitive in bidding for military hardware contracts.

According to the responses, only Algoma received DIPP benefits. The grant was for a facility to desulfurize steel. Desulfurized steel is used in producing OCTG and other steel products. DIPP funds were paid to Algoma in 1980 and 1981. Although the Department may determine that DIPP grants serve as exports subsidies in other cases, there were no conditions in the Algoma DIPP grant which were tied to export performace or which made the grant contingent on exporting. Algoma has a large home market for desulfurized steel and products made from desulfurized steel. This DIPP grant benefits Algoma's entire production, and not exports alone. Thus, we preliminarily determine that this grant was not an export subsidy.

Although we have preliminarily determined that this program is not an export subsidy, we must still determine whether any benefits were received during the review period an if so whether this program is limited to a specific enterprise or industry or group of enterprises or industries. Consistent with the Subsidies Appendix, we divide the sum of all grants received in each year by the total sales of the company in the same year. Algoma received no other grants in the two years DIPP benefits were received.

The calculated benefits were *de minimis;* therefore we expensed them in the year of receipt. Because the DIPP grants received by Algoma were expensed prior to the review period and because no DIPP grants were received the Algoma during the review period, we preliminarily determine this program was not used.

C. Community-Based Industrial Adjustment Program of the Industry and Labor Adjustment Program (CIAP/ILAP)

This program, now terminated, provided loans and grants to firms in designated communities affected by high unemployment. The response and subsequently furnished information from the government of Canada stated that during the life of the program, twelve communities were eligible for CIAP. None of the OCTG respondents were located in these communities. Therefore, we preliminarily determine that this program was not used.

D. Promotional Projects Program (PPP)

The PPP is run by the Department of External Affairs. At selected foreign trade shows the government of Canada rents space, furniture, and facilities which it subleases at minimal charge to Canadian exhibitors. The government of Canada reported that one OCTG respondent, Stelco, used PPP in 1983 at one trade show in the United States where it exhibited pictures of its industrial park locations and technologies. This benefit was received outside the period of review and according to the responses no benefit was received during the review period. Therefore, we preliminarily determine that this program was not used during the review period (1984) by any manufacturer, producer or exporter of OCTG.

E. Program for Export Market Development (PEMD)

The PEMD program is also run by the Department of External Affairs. One PEMD subprogram was reportedly used by Stelco, by Algoma and by IPSCO to recover certain transportation expenses to sell specific products in potential markets. None of these trips were for selling OCTG in the United States. Therefore, we preliminarily determine that this program was not used.

F. Industrial And Regional Development Program (IRDP)

In 1983 DRIE was created, incorporating the activities of DREE and the Department of Industry, Trade, and Commerce. At this time RDIP and some other programs of DREE were modified and incorporated in a new program, the IRDP. IRDP's purpose is to improve industrial development and the overall economic climate by providing funds for new facilities or for the expansion or modernization of existing facilities. All regions of Canada are divided into four tiers based on the level of economic development of the region. The amount of eligibility differs for each tier with the greatest amount going to the most economically disadvantaged tier. The petitioners alleged that DRIE provides discretionary grants, interest-free loans and loan guarantees under IRDP. No IRDP loans or loan guarantees were reported. IPSCO and Siegfried Kreiser have been approved for IRPD grants, but have not yet received any funds. Therefore, we preliminarily determine that this program was not used. Should these firms receive any money in the future under IRDP, the program will be considered in any administrative review that may occur.

G. Saskatchewan Economic Development Commission (SEDCO)

SEDCO issues loans, loan guarantees and in some cases invests in Sakatchewan industries and commerce. None of the OCTG respondents has received assistance from SEDCO.

Therefore, we preliminarily determine that SEDCO programs were not used.

H. Ontario Development Corporation (ODC) Export Support Loans, Other Loans, and Loan Guarantees

The Ontario Development Corporation controls, approves and administers loan and loan guarantee programs in addition to administering, but not approving, grant programs (such as the Employment Development Fund, discussed earlier in this notice). According to the responses, no OCTG producer has received assistance under these programs. Therefore, we preliminarily determine that ODC loans and loan guarantees were not used.

I. Enterprise Development Program (EDP) Loans

Petitioners alleged that loans were provided on terms inconsistent with commercial considerations under EDP. Based on information in the responses, none of the manufacturers, producers and/or exporters of OCTG had EDP loans outstanding during the review period.

J. Interest-Free Loans and Below-Commercial Rate Loans

Petitioners alleged that loans have been provided on terms inconsistent with commercial considerations by the government or at the direction of the government. Based on the responses, we have no information that any government-funded or directed loan programs were used by manufacturers, producers and/or exporters of OCTG other than those programs already addressed in this notice.

K. Government Grants for Purchase of Fixed Assets

Petitioners alleged that government grants have been provided to IPSCO for purchase of fixed assets. Based on information in the responses, IPSCO and Algoma received grants for acquisition of fixed assets under the RDIP and DIPP. These grant programs are addressed elsewhere in this notice. The responses indicate that there are no other government grant programs, not specifically cited by petitioners, for acquisition of fixed assets which have been used by respondents.

Preliminary Negative Determination of Critical Circumstances

Petitioners alleged that imports of oil country tubular goods from Canada present "critical circumstances." Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that (1) the alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement of Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period. Based upon our analysis, there were no export subsidies bestowed upon oil country tubular goods in Canada during the review period. Accordingly, we preliminarily determine that the subsidies received are not inconsistent with the Subsidies Code.

Since we have determined that the subsidies are not inconsistent with Code commitments, we need not determine whether there have been massive imports. Accordingly, we preliminarily determine that "critical circumstances" do not exist with respect to oil country tubular goods from Canada.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of OCTG from Canada which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or bond for each such entry of this merchandise equal to 0.72 percent *ad valorem* except for OCTG from Stelco Inc., Sonco Steel Tube (a division of Ferrum Inc.), Algoma Steel Corp., Ltd., Welded Tube of Canada, Ltd., Prudential Steel Ltd., Frank Pipe Co., Christianson Pipe, Ltd., Dominion Steel Export Co., Ltd., and Matthew Tube & Pipe Supply Inc.

Verification

In accordance with 776(a) of the Act, we conducted a verification of the information provided in the questionnaire response. Our final determination will be based on verified information.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after publication of our notice in the **Federal Register**.

Public Comment

In accordance with section 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 14, 1986 at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice.

Requests for a hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by January 8, 1985. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 19, 1985.

[FR Doc. 85–30770 Filed 12–27–85; 8:45 am]

BILLING CODE 3510-DS-M

[A–583–502]

Welded Carbon Steel API Line Pipe from Taiwan; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION Notice.

SUMMARY: We have preliminarily determined that welded carbon steel API line pipe (line pipe) from Taiwan is being, or is likely to be, sold in the

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United States at less than fair value and that critical circumstances exist, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of line pipe from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by March 10, 1986.

EFFECTIVE DATE: December 30, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377–5404 or (202) 377–5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that line pipe from Taiwan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins were based on the best information available as explained below in the section of this notice which describes our fair value comparisons. We also preliminarily found that critical circumstances exist. The margins preliminarily found for the companies investigated are listed in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by March 10, 1986.

Case History

On July 16, 1985, we received a petition filed in proper form from the Line Pipe Subcommittee of the Committee on Pipe and Tube Imports and by each of the member companies who produce line pipe on behalf of the U.S. industry producing line pipe. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on August 5, 1985 (50 FR 32245), and notified the ITC of our action.

On August 16, 1985, questionnaires were presented to counsel for the respondents. On August 30, 1985, the ITC found that there is a reasonable indication that imports of line pipe from Taiwan are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1742, August 1985).

On October 31, 1985, counsel for the respondents notified us that they would not be responding to our questionnaire.

Scope of Investigation

The product covered under this investigation is welded carbon steel line pipe with an outside diameter of 0.375 inch or more but not over 16 inches, and with a wall thickness of not less than .065 inch, currently classifiable in the Tariff Schedules of the United States, Annotated (TSUSA), under items 610.3208 and 610.3209. This product is produced to various API specifications for line pipe, most notably API–5L or API–5LX.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used the best information available as required by section 776(b) of the Act because the respondents did not submit a response.

United States Price

We calculated the purchase price of welded carbon steel API line pipe as provided in section 772 of the Act, on the basis of the average f.o.b. packed values for the six month period of investigation as provided in the IM146 statistics compiled by the Bureau of the Census. We used these data as the best information available instead of the average FAS values for a 17 month period which were provided in the petition.

Foreign Market Value

In accordance with section 773 of the Act, we used the best information available, in the absence of a response, to calculate foreign market value. The best information available for calculating foreign market value was statistics provided in the petition. These statistics were published by the Taiwan Department of Statistics for the fourth quarter of 1984. These statistics encompass all pipe and tube production in Taiwan.

Preliminary Affirmative Determination of Critical Circumstances

The petitioners alleged that imports of line pipe from Taiwan present "critical circumstances." Under section 733(e) of the Act, critical circumstances exist if we have a reasonable basis to believe or suspect that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether the importer knew, or should have known that the exporter was dumping the merchandise, we normally consider margins of 25 percent or more to constitute knowledge of dumping. Since the margins in this case exceed this level, we find that knowledge of dumping can be imputed to the importers. Because we believe that the importers knew or should have known that the exporter was dumping the merchandise, we do not have to determine whether there is a history of dumping.

We generally consider the following concerning massive imports: (1) Whether imports have surged recently; (2) recent trends in import penetration level; (3) whether recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for line pipe from Taiwan for equal periods immediately preceding and following the filing of the petition. We also took into consideration seasonal factors. Based on this analysis, we find that imports of the subject merchandise from Taiwan during the period subsequent to receipt of the petition have been massive when compared to recent import levels and import penetration ratios.

Therefore, for the reasons described above, we preliminarily determine that

"critical circumstances" exist with respect to line pipe from Taiwan.

Verification

As provided in section 776(a) of the Act, if a timely response is received, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of line pipe from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before the date of publication of this notice in the **Federal Register.** The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination on line pipe from Taiwan, we found that the export subsidies were *de minimis.* Therefore, the bonding rate will not be reduced by the amount of any export subsidies.

Manufacturer/producer/exporter	Weighted-average margin percentage
Far East Machinery Company, Ltd.	[illegible]
Kao Hsing Chang Iron & Steel Corp.	27.98
All others	[illegible]

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determiniation or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on February 12, 1986, at the United States Department of Commerce, Room 1851, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary of Import Administration, Room B–099, within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by February 5, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 23, 1985.

[FR Doc. 85–30769 Filed 12–27–85; 8:45 am]

BILLING CODE 3510-DS-M

[C–507–501]

Preliminary Affirmative Countervailing Duty Determination: In-Shell Pistachios From Iran

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to growers, processors or exporters in Iran of in-shell pistachios. The estimated net bounty or grant is 56.86 percent *ad valorem.*

We are directing the U.S. Customs Service to suspend liquidation of all entries of in-shell pistachios from Iran that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination on or before March 5, 1986.

EFFECTIVE DATE: December 30, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–3174 or 377–2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to growers, processors or exporters in Iran of in-shell pistachios. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Preferential Exchange Rate
- Foreign Exchange Retention Scheme

We preliminarily determine the estimated net bounty to grant for in-shell pistachios to be 56.86 percent *ad valorem.*

Case History

On September 26, 1985, we received a petition in proper form filed by the California Pistachio Commission, Blackwell Land Company, California Pistachio Orchards, Keenan Farms Inc., Kern Pistachio Hulling and Drying Co-op, Los Rachos de Poco Pedro, Pistachio Producers of California, and T.M. Duche Nut Company, Inc. on behalf of growers and processors in the U.S. pistachio nuts industry. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that growers, processors and exporters in Iran of pistachios receive bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act).

Since Iran is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303 (a)(1) and (b) of the Act apply to this investigation. Accordingly, the petitioners are not required to allege that, and the U.S. International Trade

Commission is not required to determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on October 16, 1985, we initiated such an investigation (50 FR 42980). We stated that we expected to issue a preliminary determination on or before December 20, 1985.

We presented detailed questionnaires to the government of Algeria in Washington, DC on October 25, 1985, and requested that they forward the questionnaire to the Iranian authorities in their capacity as the protecting power for Iran in the United States. We requested a response to our questionnaire by November 25, 1985. On November 27, 1985, the government of Algeria forwarded to the Department a message from the Iranian authorities requesting that the deadline for submitting a response be extended by two months. On December 6, 1985, we informed the Iranian authorities, through the government of Algeria, that if we did not receive a response to our questionnaire by December 9, 1985, we may have to use the best information available for our preliminary determination as required by § 355.39 of our regulations (19 CFR 355.39). We did not receive a response on December 9, either from the government of Iran or the growers, processors or exporters of the subject merchandise in Iran.

Scope of Investigation

The product covered by this investigation is in-shell pistachio nuts from which the hull has been removed, leaving the inner hard shells and the edible meat, currently specifically provided for under item 145.26 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Because we did not receive a response to our questionnaire, we are using the best information available as required under § 355.39 of our regulations (19 CFR 355.39), adversely inferring countervailability and receipt of benefits based on the absence of a response. The Department has no record of past countervailing duty investigations or administrative reviews involving Iran and, therefore, we are unable to include our own information in estimating the benefit from programs alleged to be bounties or grants in the petition. In addition, we have been unable to obtain information from independent sources regarding the alleged subsidies that would supplement or replace that supplied by the petitioners. If we do not receive a complete response in time to verify the information submitted, we will continue to seek information from our own sources to determine the countervailability and level of benefits of the programs under investigation. As best information available, we are using the estimates of benefits included in the petition. For those programs on which the petitioners provided no estimates of benefits, we are seeking additional information to determine whether a bounty or grant has been conferred.

I. Programs Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties of grants are being provided to growers, processors or exporters in Iran of in-shell pistachios under the following programs.

A. Preferential Exchange Rate

Petitioners allege that exporters of pistachios in Iran are entitled to exchange foreign currency earned from export sales at a premium of 10 percent above the official rate and that this preferential rate is limited to exporters.

As best information available, we preliminarily determine that the companies under investigation received an additional 10 percent above the official exchange rate on repatriated foreign exchange earned from export sales. On this basis, we preliminarily determine an estimated net bounty or grant of 10.00 percent *ad valorem*.

B. Foreign Currency Retention Scheme

Petitioners allege that exporters of pistachios in Iran may benefit from retained foreign exchange earned from export sales. According to information submitted in the petition, exporters of pistachios in Iran may benefit from retained foreign currency in two ways.

First, the exporter can use the extra foreign exchange gained as a result of the preferential exchange rate to import goods for resale in Iran at whatever price the market will bear. According to the petition, the free market price of imported goods is often five to six times higher than the price set by the government of Iran.

Second, a pistachio exporter may sell retained foreign exchange at the free market rate to any person in Iran with a need for foreign currency. According to the most recent International Monetary Fund statistics provided by the petitioners, the difference between the official and free market dollar/rial exchange rate is 537.5 rials.

Because we have not received a response to our questionnaire in this investigation, we have no information beyond that in the petition to use in analyzing this program. We have no way of knowing whether pistachio exporters in Iran do, in fact, have the ability to import goods and sell them or foreign currency at a premium over official prices or exchange rates, and whether this right would confer a countervailable benefit. Therefore, as best information available, we preliminarily determine that this program confers a bounty or grant. To calculate the benefit, we assume that the exporters use both methods of foreign exchange retention, and we averaged the two estimates of benefits provided by the petitioners. On this basis, we preliminarily determine an estimated net bounty or grant of 46.86 percent *ad valorem*. If we receive a timely and complete response in this investigation, we will verify any information relating to currency retention for our final determination.

II. Programs for Which We Need Additional Information

Information regarding the level of benefits received under the following programs was not supplied by petitioners. We have also been unable to discover any information on the level of benefits or potential countervailability of these programs from any sources other than the petition. Therefore, we preliminarily determine that we need additional information on the following programs.

A. Price Supports and/or Guaranteed Purchase of All Production

Petitioners allege that pistachio growers in Iran may benefit from a government policy of granteeing purchase of, and subsidizing prices for, certain major food commodities. Petitioners state that the government of Iran gave the Rafsanjan Cooperative, the country's principal pistachio cooperative, a $100 million loan on terms inconsistent with commercial considerations to purchase and stockpile pistachios.

Since the respondents did not provide a response in this investigation, and neither the petitioners nor the Department was able to find information upon which to determine the countervailability of this loan, we cannot quantify the amount of any bounty or grant that may have been received.

B. Preferential Provision of Fertilizer and Machinery

Petitioners allege that agricultural cooperatives, such as the Rafsanjan

Cooperative, can obtain fertilizer and machinery from the government at preferential prices.

According to the petition, the extent of the benefit varies with the crop produced. Petitioners further allege that these cooperatives, in turn, provide both fertilizer and machinery to their members on terms inconsistent with commercial considerations.

Because the respondents did not provide a response in this case and the petitioners were unable to provide information as to whether and to what degree the pistachio industry receives countervailable benefits under this program, we cannot determine whether this program provides a bounty or grant or quantify any estimated bounty or grant.

C. Preferential Credit

Petitioners allege that agricultural cooperatives in Iran make preferential credit available from funds provided by the government to their members. Petitioners argue that the Rafsanjan Cooperative is the principal cooperative for pistachios in Iran and that this organization may provide loans on terms inconsistent with commercial considerations to its members. He did not receive a response to our questionnaire in this case, and neither the Department nor the petitioners was able to develop any information on which to make a preliminary determination.

D. Tax Exemptions

Petitioners allege that pistachio farmers may benefit from legislation exempting farmers and livestock breeders from paying taxes, provided they follow government agricultural guidelines.

The respondents have not provided any information about any tax exemptions available to farmers in Iran. Neither the Department nor the petitioners were able to find any information regarding the potential countervailability or level of benefit under this program.

E. Provision of Water and Irrigation

Petitioners allege that pistachio growers in Iran may benefit from construction of soil dams, flood barriers, canals and other irrigation projects undertaken by the government to increase agricultural production.

Because we have not received a response in this case, we do not have any information on which to base a determination. Petitioners did not provide any information on the amount of benefit conferred by this program. Therefore, we are unable to quantify an estimated net bounty or grant.

F. Technical Support

Petitioners allege that pistachio growers in Iran may receive technical support as part of the government's program to support agricultural development. Petitioners argue that technical support has included research projects to improve cultivation techniques, and assistance in harvesting, marketing and use of fertilizer. The respondents have not provided any information about any benefits available under this program to pistachio growers. Neither the petitioners nor the Department was able to find any information regarding the level of benefits or potential countervailability of this program.

Verification

In accordance with section 776(a) of the Act, if we receive complete responses in a timely manner, we will verify the data used in making our final determination. We will not accept any statement in a response that cannot be verified for our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of in-shell pistachios from Iran which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each entry in the amount of 56.86 percent *ad valorem*. This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on January 29, 1986, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, room B–099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, at least 10 copies of the pre-hearing briefs must be submitted to the Deputy Assistant Secretary by January 22, 1986. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: December 20, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–30773 Filed 12–27–85; 8:45 am]

BILLING CODE 3510-DS-M

U.S. Department of Agriculture; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85–197.

Applicant: U.S. Department of Agriculture, Albany, CA 94710.

Instrument: Thermal Ionization Mass Spectrometer System, Model 261 and Accessories.

Manufacturer: Finnigan MAT, West Germany.

Intended use: See notice at 50 FR 26394.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides (1) automatic sample feed and computer-controlled thermal ionization for large sample analysis, and (2) a total transmission (ratio of ions leaving the filament to ions collected) of more than 45 percent. The National Institutes of Health advises in its memorandum dated September 25, 1985 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the aplicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-30774 Filed 12-27-85; 8:45 am]

BILLING CODE 3510-DS-M

U.S. Department of Commerce; for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-189.

Applicant: U.S. Department of Commerce, Gaithersburg, MD 20899.

Instrument: Accessories for an Ion Microanalyzer.

Manufacturer: Cameca, France.

Intended use: See notice at 50 FR 26395.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: This is a compatible accessory for an instrument previously imported for the use of the applicant. The instrument and accessory were made by the same manufacturer. The National Institutes of Health advises in its memorandum dated September 24, 1985 that the accessory is pertinent to the intended uses and that it knows of no comparable domestic accessory.

We know of no domestic accessory which can be readily adapted to the instrument.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-30775 Filed 12-27-85; 8:45 am]

BILLING CODE 3510-DS-M

National Institute on Aging; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Important Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-097.

Applicant: National Institute on Aging, Baltimore, MD 21224.

Instrument: NMR Spectrometer, Model TMR-32A with Accessories.

Manufacturer: Oxford Research Systems, United Kingdom.

Intended use: See notice at 50 FR 11232.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, was being manufactured in the United States at the time the instrument was ordered (September 6, 1983).

Reasons: The foreign instrument provides a magnet bore diameter sufficient for whole-body, horizontal imaging of the the animals under study and for the required probe configurations. The National Institutes of Health advises in its memorandum dated September 10, 1985 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the foreign instrument being manufactured at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-30776 Filed 12-27-85; 8:45 am]

BILLING CODE 3510-DS-M

Oakland University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 85-248.

Applicant: Oakland University, Rochester, MI 48063.

Instrument: Electron Microscope, Model LEM-2000 with Accessories.

Manufacturer: Akashi-Seisakusho, Ltd., Japan.

Intended use: See notice at 50 FR 33992.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides examination of the identical area of a specimen by light and electron microscopy. The National Institutes of Health advises in its memorandum dated September 10, 1985 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-30777 Filed 12-27-85; 8:45 am]

BILLING CODE 3510-DS-M

The Rockefeller University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-178, Applicant: The Rockefeller University, New York, NY 10021. Instrument: Micromanipulators, Model 520137 and 520138. Manufacturer: Leitz, West Germany. Intended Use: See notice at 50 FR 24552.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufacturerd in the United States.

Reasons: The foreign instrument can control the movement of microinstruments in the X-Y plane with a single lever having a range of gear ratios from 1:1/16 to 1:1/800. The National Institutes of Health advises in its memorandum dated September 10, 1985

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that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-30778 Filed 12-27-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Georgia; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85-175. Applicant: University of Georgia, Athens, GA 30602. Instrument: Picosecond Fluorescence Spectrometer, Model PS 60 with Accessories. Manufacturer: Applied Photophysics Ltd., United Kingdom. Intended Use: See notice at 50 FR 23754.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides time-resolved lifetime fluorometry in the picosecond range with single photon counting. The National Institutes of Health advises in its memorandum dated September 10, 1985 that (1) this capability is pertinent to applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-30779 Filed 12-27-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Minnesota; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No.: 85-204. Applicant: University of Minnesota, St. Paul, MN 55105. Instrument: Mass Spectrometer, Model VG 7070EQ with Accessories. Manufacturer: V.G. Instruments, Inc., United Kingdom. Intended Use: See notice at 50 FR 26394.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (March 15, 1985).

Reasons: The foreign instrument provides high resolution tandem mass spectrometry in parent, daughter, and neutral loss scanning models and mass range of 1 to 12,000 atomic mass units at an accelerating potential of 1,000 volts. This capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received no response to a formal request for quotation sent to it, it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-30780 Filed 12-27-85; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China Effective on January 1, 1986

December 24, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Government of the United States and the People's Republic of China establishes specific limits for Categories 313, 314, 315, 317, 320pt. (only T.S.U.S. items 320.— through 322.— and 326.—

through 328.— with statistical suffixes 21, 22, 24, 31, 36, 49, 57, 74, 80 and 96), 331, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 345, 347/348, 350, 351, 352, 359pt., (only T.S.U.S.A. numbers 381.0822, 381.6510, 384.0928, and 384.5227), 363, 438, 443, 444, 445/446, 447, 448, 613pt. (only T.S.U.S.A. numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058, and 338.5059), 631, 634, 635, 636, 639, 640, 641, 645/646, 647, 648, 649, and 669pt. (only T.S.U.S.A. number 385.5300), produced or manufactured in China and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986.

The agreement also provides a consultation mechanism for categories of textile products which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the designated categories, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986 in excess of the indicated restraint limits.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754, November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986 in excess of the indicated restrain limits:

Category	12-month restrain limit
313	51,940,934 square yards.
314	16,390,905 square yards.
315	165,000,000 square yards.
317pt.	16,224,000 square yards of which not ore than 3,244,800 square yards shall be in T.S.U.S. items 320.—through 331.—with statistical suffixes 50, 87 and 93.
320pt.[1]	14,331,200 square yards
331	3,837,207 dozen pairs
333	90,197 dozen.
334	225,314 dozen.
335	304,094 dozen.
336	122,004 dozen.
337	860,134 dozen.
338	851,462 dozen of which not more than 609,795 dozen shall be in T.S.U.S.A. numbers 381.0240 and 381.4130
339	[illegible] dozen.
340	[illegible] dozen.
341	499,114 dozen.
342	184,607 dozen.
345	[illegible] dozen.
347/348	1,947,761 dozen
350	[illegible] dozen.
351	335,711 dozen.
352	1,310,430 dozen.
359pt.[2]	744,188 pounds.
363	21,136,345 numbers
438	[illegible] dozen.
443	10,045 dozen.
444	15,302 dozen.
445/446	[illegible] dozen.
447	71,312 dozen.
448	[illegible] dozen.
613pt.[3]	24,931,150 square yards.
631	753,401 dozen pairs
634	429,350 dozen.
635	446,563 dozen.
636	351,350 dozen.
639	982,334 dozen.
640	1,169,218 dozen.
641	973,007 dozen.
645/646	[illegible] dozen.
647	844,722 dozen.
648	1,087,145 dozen.
649	627,328 dozen.
669pt.[4]	2,640,460 pounds.

[1] In Category 320, only T.S.U.S. items 320.—through 322.—and 326.—through 328.—with statistical suffixes, 21, 22, 24, 31, 36, 49, 57, 74, 80 and 96.
[2] In Category 359pt. only T.S.U.S.A. numbers 381.0822, 381.6510, 384.0928 and 384.5227.
[3] In Category 613, only T.S.U.S.A. numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058, 338.5059.
[4] In Category 669, only T.S.U.S.A. number 385.5300

In carrying out this directive entries of textile products in the foregoing categories, produced or manufactured in China, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter with the exceptions noted below.

Merchandise exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985 in Categories 314, 320pt.[5], 331 and 340, shall be permitted entry into the United States for consumption, or withdrawal from warehouse for consumption, in the following amounts during each month of the January through May 1986 period:

Category	Amount to be entered per month
314	3,278,181 square yards
320pt.[1]	[illegible] square yards
331	767,441 dozen pairs.
340	[illegible] dozen.

[1] In Category 320, only those T.S.U.S. items shown in footnote 1 on page 1.

Merchandise entered in 1986 in the foregoing categories, exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985, plus goods exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986, shall not together exceed the 1986 limits established for such goods in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of August 19, 1983 as amended, which provide, in part, that: (1) With the exception of Category 315, certain specific limits may be exceeded by not more than 5 or 7 percent of its square yard equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) subject to consultations, specific limits may be increased for carryover and carryforward up to 10 percent of the applicable category limit in any agreement year according to the terms specified in the agreement; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 533(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30873 Filed 12-27-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Closed Meeting

December 20, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Close Air Support will meet January 16, 1986 from 9:00 a.m. to 4:30 p.m. at HQ Army Training and Doctrine Command, Ft. Monroe, VA, and on January 17, 1986 at AF Armament Division Headquarters, Eglin AFB, FL, from 9:00 a.m. to 4:00 p.m.

The purpose of this meeting is to review Army doctrine on the employment of close air support, review Air Force initiatives to upgrade close air support aircraft, and review weapon development programs.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-30819 Filed 12-27-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Publication of Approved Systems of Need Analysis for the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of approved systems of need analysis for academic year 1986-87.

SUMMARY: The Secretary of Education announces approved need analysis systems that institutions of higher education must use in calculating a student's financial need during academic year 1986-87 under the National Direct Student Loan (NDSL), College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) Programs. These programs are known collectively as the campus-based programs. The Secretary takes this action under the authority of the Student Financial Assistance Technical Amendments Act of 1982 (Pub. L. 97-301) as amended and 34 CFR 674.13, 675.13, and 676.13 of the NDSL, CWS, and SEOG program regulations, respectively.

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry or Anna S. Borlaug, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, 400 Maryland Avenue, SW., Room 4018, ROB-3, Washington, DC 20202, Telephone (202) 245-9720.

SUPPLEMENTARY INFORMATION:

Program Information

The campus-based programs are "need based" student financial aid programs. Under each program, an institution must determine whether a student has financial need. It determines need by subtracting from the student's educational costs, his or her expected family contribution, i.e., the amount the student and his or her parents may reasonably be expected to contribute toward his or her educational costs. Institutions determine a student's expected family contribution by using a need analysis system.

The systems listed below qualified as approved systems of need analysis under the above cited regulations for each program, or are approved under the Notice of publication of sample cases and expected parental contributions for the National Direct Student Loan, College Work-Study and Supplemental Educational Opportunity Grant Programs published in the **Federal Register** of July 22, 1985 (50 FR 29720-29721), and the correction notice published in the **Federal Register** of September 9, 1985 (50 FR 36651). To determine a student's expected family contribution under the National Direct Student Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs for academic year 1986-1987, an institution must use one of the following organizations' and agencies' systems of need analysis:

1. Advanced Process Laboratories, Omaha, Nebraska.
2. The American College Testing Program, Iowa City, Iowa.
3. Calculator Systems Associates, Corona, California.
4. The College Board, The College Scholarship Service, New York, New York.
5. Compugrant, Inc., Hiram, Ohio.
6. Diversified Financial Aid Services, Inc., Albuquerque, New Mexico.
7. Financial Analysis Service, Hiram, Ohio.
8. G.E. White Needs Analysis System, Lake Forest, Illinois.
9. Graduate and Professional School Financial Aid Service, (For graduate and professional students only), Princeton, New Jersey.
10. Illinois State Scholarship Commission, Springfield, Illinois.
11. Information and Communications, Inc., SAFE System, San Diego, California.
12. M-Data, Big Rapids, Michigan.
13. National Education Corporation, Irvine, California.
14. Pan American University, Edinburg, Texas.
15. Pennsylvania Higher Education Assistance Agency, Harrisburg, Pennsylvania.
16. Sigma Systems, Inc., Los Angeles, California.
17. Family Contribution (FC) printed on the Student Aid Report, United States Department of Education.
18. The method of calculating student aid indices used in the Pell Grant Program (34 CFR Part 690), United States Department of Education.
19. The Income Tax System (dependent students only), United States Department of Education.

(Sec. 4 of Pub. L. 97-301)

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant Program)

Dated: December 23, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85-30734 Filed 12-27-85; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Indian Education; Cancellation of Closed Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Cancellation of Closed Meeting.

SUMMARY: Notice is hereby given of the cancellation of the National Advisory Council on Indian Education meeting, January 7-10, 1986, in Washington, D.C., as published in the **Federal Register** on Monday, December 16, 1985, Volume 50, No. 241, Page 51283.

Dated: December 23, 1985. Signed at Washington, D.C.

Lincoln C. White,

Executive Director, National Advisory Council on Indian Education.

[FR Doc. 85-30753 Filed 12-27-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

National Energy Extension Service Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: National Energy Extension Service Advisory Board Subcommittee.

Date and Time: Thursday, January 23, 1986—8:00 a.m.–5:00 p.m. Friday, January 24, 1986—8:00 a.m.–5:00 p.m.

Place: The Henley Park Hotel, 926 Massachusetts Avenue, NW, Washington, DC [illegible].

Contact: Susan D. Heard, Department of Energy, Forrestal Building—6A081, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202-252-8292.

Purpose of the Board: The Board was established to carry on a continuing review of the National Energy Extension Service and the plans and activities of each State in implementing Energy Extension Service programs. Additionally, the Board is responsible for reporting on an annual basis to the Congress, the Secretary of Energy, and the Director of the Energy Extension Service.

Tentative Agenda

Thursday, January 23, 1986

- Preparation of a draft of the Board's Seventh Annual Report.
- Public comment (10 minute rule).

Friday, January 24, 1986

- Preparation of a draft of the Board's Seventh Annual Report.
- Public comment (10 minute rule).

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Susan D. Heard at 202-252-8292. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday thru Friday, except Federal holidays.

Issued at Washington, DC, on December 24, 1985.

K. Dean Helms,

Advisory Committee Management Officer.

[FR Doc. 85-30845 Filed 12-27-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA86-1-48-004]

ANR Pipeline Co.; Notice of Rate Change Filing

December 23, 1985.

Take notice that on December 16, 1985, ANR Pipeline Company ("ANR"), pursuant to ordering paragraph (B) of the Commission's October 28, 1985 Order at Docket No. TA 86-1-48-000, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets to Original Volume No. 1 of its F.E.R.C. Gas Tariff:

Second Substitute Third Revised Sheet No. 18. Effective Date: November 1, 1985

Substitute Fourth Revised Sheet No. 18. Effective Date: January 1, 1986

Second Substitute Third Revised Sheet No. 18 reflects the elimination of the effect of concurrent exchange imbalances from the Account No. 191 balances as filed in ANR's November 1, 1985 PGA filing.

Substitute Fourth Revised Sheet No. 18 reflects the cumulative effect of the adjustment of the exchange imbalances described above and the GRI adjustment to be effective January 1, 1986. Such GRI adjustment is in compliance with the Commission's Opinion No. 243.

ANR has also tendered for filing Substitute First Revised Sheet No. 41 to be effective August 1, 1985. This tariff sheet reflects the correction of an inadvertent statement of a rate on ANR's Rate Schedule EUT-1 and corrects the 74.63¢ rate reflected on such sheet to 74.59¢.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30786 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-30-000]

Alabama-Tennessee Natural Gas Co.; Petition of Authority to Institute Direct Billing Procedure for Retroactive Order No. 94 Payments

December 23, 1985.

Take notice that on December 16, 1985, Alabama-Tennessee Natural Gas Company (ATNG) filed a Petition for Authority to Implement A Direct Billing Mechanism To Recover Retroactive Order No. 94 Production-Related Costs. ATNG states that it seeks authorization to bill customers directly for retroactive Order No. 94 costs (1) to match Order No. 94 cost responsibility with customer purchases and (2) to avoid distortions inherent in recovering such costs through purchased gas adjustment filings. As is more fully explained in the filing, ATNG proposes to allocate retroactive Order No. 94 costs based upon each customer's share of ATNG's total sales for the production period over which the Order No. 94 obligation arose and to directly bill the resulting amounts, including carrying charges and accrued interest.

ATNG requests waiver of Commission regulations, rules and orders to the extent necessary to permit the proposed direct billing mechanism.

ATNG states that it has served a copy of the Petition on its customers, interested state Commissions and others. ATNG also requests expeditious consideration of the Petition and a shortened period for the filing of interventions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30783 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-20-000 & 001]

Algonquin Gas Transmission Co., Tariff Filing Under Purchased Feedstock Adjustment Clause

December 20, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on December 11, 1985, tendered for filing Substitute Ninth Revised Sheet No. 202 and Substitute Tenth Revised Sheet No. 202 pursuant to its Rate Schedule SNG-1 Purchased Feestock Adjustment Clause, as contained in its FERC Gas Tariff, Second Revised Volume No. 1, decreasing the feedstock reimbursement rate by $1.31 per MMBtu to reflect a lower cost of feedstock for the 1985-86 season. The sheets are filed to be effective on November 1, 1985 and January 1, 1986.

Algonguin Gas notes that a copy of this filing is being served upon all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions of protests should be filed on or before December 31, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30784 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-28-000]

Algonquin Gas Transmission Co.; Rate Schedule SNG-1 Revision for Increased Operating Flexibility

December 23, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on December 11, 1985, tendered for filing four (4) tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, all related to its Rate Schedule SNG-1.

Algonquin Gas states that such revised tariff sheets reflect revisions to Rate Schedule SNG-1, made at the request of its Rate Schedule SNG-1 customers ("Customers"), to increase the presently effective operating flexibility by permitting a futher reduction in SNG deliveries for the 1985-86 delivery season. This expansion of operating flexibility reflects a continuation of the evolution of such operating adjustments to meet, more closely, the needs of Algonquin Gas' Customers under changing operating, supply, and economic conditions, Algonquin Gas states. Algonquin Gas has requested special permissions and waivers, as necessary, of the Commission's Regulations to allow the tendered tariff sheets to become effective November 1, 1985 since negotiations with and among Customers to develop the tariff changes were lengthier than anticipated.

Algonquin Gas states that its filing is being posted in accordance with § 154.16 of the Commission's Regulations under the Natural Gas Act by mailing a copy of its filing to each of Algonquin Gas' affected Customers and interested State Commissions and by making it available for public inspection at Algonquin Gas' general office in Boston, Massachusetts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 31, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are currently on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30785 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST86-637-000]

Arkansas Oklahoma Gas Corp.; Notice of Application

December 23, 1985.

Take notice that on December 9, 1985, Arkansas Oklahoma Gas Corporation (Applicant), P.O. Box 2406, Fort Smith, Arkansas 72902, filed, pursuant to §§ 284.224(e)(1) and 284.123(b)(2) of the Commission's regulations, 18 CFR 284.224 and 284.123(b)(2), and pursuant to Ordering Paragraph (D)(1) of the order issued November 13, 1985 in Docket No. CP85-535-000, a petition for approval of a proposed maximum, system-wide rate of $.3182 per MMBtu, plus an allowance of $1.461 per MMBtu for lost and unaccounted for gas, applicable to all transportation service rendered by AOG pursuant to its Order No. 63 blanket certificate, all as more fully discribed in the petition and exhibits filed therewith which are on file with the Commission and open to public inspection.

Applicant states that it is Applicant's understanding that, the proposed rate, if approved by the Commission, will be a maximum rate only, and that the approval thereof will not preclude Applicant from charging any lower rate which may be negotiated by AOG.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 7, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30787 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

BEST COPY AVAILABLE

[Docket No. CP86-240-000]

Columbia Gas Transmission Corp.; Application

December 20, 1985.

Take notice that on December 13, 1985, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP86-240-000 an application pursuant to section 7(c) of the Natural Gas Act and Section 285.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing Applicant to transport natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it intends to transport natural gas on behalf of shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85-1-000. Applicant states further that it accepts and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 31, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30788 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-239-000]

Columbia Gulf Transmission Co.; Application

December 20, 1985.

Take notice that on December 13, 1985, Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama, Houston, Texas 77027, filed in Docket No. CP86-239-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing Columbia Gulf to transport natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gulf states that it intends to transport natural gas on behalf of shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985 in Docket No. RM85-1-000. Columbia Gulf states that it accepts and will comply with the conditions in paragraph (c) of § 284.221, which paragraph references Subpart A of Part 284 of the Commission's Regulations. Columbia Gulf notes that its currently effective rates for transportation (Rate Schedules GTS-1 and GTS-2) are on file with the Commission for transportation under Part 284 which conforms, it states, with the requirements for "interim rates" prescribed at § 284.7(b)(1) of the Commission's Regulations. Columbia Gulf further states that it intends to file new transportation rates to be effective no later than July 1, 1986, in compliance with the provisions of § 284.7(b)(2) of the Commission's Regulations.

Any persons desiring to be heard or to make any protest with reference to said application should on or before December 31, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gulf to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30789 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-51- 000, 001)

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

December 23, 1985.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on December 13, 1985, tendered for filing Fifty-Sixth Revised Sheet No. 57 and First Revised Sheet No. 56-B to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective January 1, 1986.

Fifty-Sixth Revised Sheet No. 57 reflects the GRI adjustment related to the Gas Research Institute's 1986 Research and Development Program as approved by Commission Opinion No. 243 (RP85-154-000) issued September 26, 1985.

First Revised Sheet No. 56-B reflects a change in the GRI remittance period from 30 days to 15 days.

Great Lakes has requested various waivers of the Commission's Regulations so as to permit the GRI adjustment to become effective January 1, 1986.

Great Lakes states that copies of this filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 31, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30790 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-398-002]

Northern States Power Co.; Notice of Refund Report

December 23, 1985.

Take notice that on October 31, 1985, Northern States Power Company (NSP) tendered for filing a report of refunds made to wholesale customers affiliated with Docket No. ER85-398-000 in compliance with a Commission letter dated September 27, 1985.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before December 31, 1985. Comment will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30794 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-13-009]

Northwest Pipeline Corp.; Notice of Proposed Change in FERC Gas Tariff

December 23, 1985.

Take notice that on December 13, 1985 Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff. Original Volume No. 1-A, the following tariff sheets.

Original Sheet Nos. 1 through 200
Substitute Original Sheet No. 409
Substitute Original Sheet No. 410
Substitute Original Sheet No. 415
Substitute Original Sheet No. 417
Substitute Original Sheet No. 504
Substitute Original Sheet No. 512

On July 12, 1985 Northwest tendered for filing and acceptance Original Volume No. 1-A pursuant to Northwest's Offer of Settlement in the above referenced docket which was approved by Commission order dated May 31, 1985.

On November 6, 1985, Northwest, in response to a Staff request for additional information, agreed to make specific revisions to the above referenced filing. The tariff sheets listed above constitute those revisions.

Northwest requests and effective date on May 1, 1985, for the above tariff sheets which is the effective date of the rates approved by a Commission order dated May 31, 1985.

Any persons desiring to be heard or protested said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must filed a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30795 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-16-001 and RP86-17-001]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

December 23, 1985.

Take notice that on December 11, 1985, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Sixth Revised Sheet No. 127
Fourth Revised Sheet No. 127-A

On November 4, 1985 and November 7, 1985, respectively, Northwest filed amendments at the above referenced dockets for Rate Schedules X-36 and X-46 to allow Northwest to charge the "posted off-system price(s)" for those volumes offered by Westcoast Transmission Company Ltd. ("Westcoast") and posted with the National Energy Board of Canada. By Commission order Dated December 4, 1985 the Commission approved the amendments to Rate Schedules X-36 and X-46. In connection with sales made under this agreement, Westcoast has offered to credit Northwest's monthly demand charge by 13.7 cents per Mcf for each Mcf sold under the off system sales agreement. By this filing, Northwest seeks to revise the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1, to allow for the flow through to its jurisdictional customers of the demand credits received from Westcoast.

Northwest has requested an effective date of November 4, 1985 for all tendered tariff sheets. A copy of this filing has been mailed to Pacific Interstate Transmission Company, all jurisdictional customers and interested state commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 31, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30796 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-29-000]

Northwest Pipeline Corp.; Filing of Annual Compliance Report

December 23, 1985.

Take notice that on December 16, 1985, Northwest Pipeline Corporation ("Northwest") tendered for filing its Annual Compliance Report and Cost-of-Service Study pursuant to sections 13 and 14 of its Rate Schedule T-1 as contained in its FERC Gas First Revised Volume No. 1 Tariff.

Northwest proposes a change in its Rate Schedule T-1 Facility Charge effective February 1, 1986, in accordance with Section 13 of Rate Schedule T-1, as supported by its Cost-of-Service Study and to implement an Amortizing Adjustment effective February 1, 1986, in accordance with Section 14 of Rate Schedule T-1.

Copies of this filing have been served on Pacific Interstate Transmission Company and all jurisdictional customers and affected state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 31, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-30797 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-194-023]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 23, 1985.

Take notice that on December 13, 1985 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Second Substitute Fifty-Third Revised Sheet No. 3-A
Second Substitute Thirtieth Revised Sheet No. 3-B
Twenty-Third Revised Sheet No. 22
Fifteenth Revised Sheet No. 24-A
Twenty-Sixth Revised Sheet No. 25
Seventeenth Revised Sheet No. 26-B
Seventeenth Revised Sheet No. 26-E

The proposed effective date of these revised tariff sheets is October 1, 1985. Therefore, Panhandle respectfully requests waiver of Section 154.22 of the Commission's Regulations.

On October 30, 1985, Panhandle Eastern Pipe Line Company (Panhandle) filed a request for rehearing and for stay of Ordering Paragraph (C) of the Commission's Order issued September 30, 1985 in the above-referenced proceeding which required Panhandle to file revised tariff sheets eliminating variable costs from its minimum bill. On November 29, 1985, the Commission issued an Order "Denying Request for Rehearing and Stay". Therefore, pursuant or Ordering Paragraph C of the Commission Order issued September 30, 1985, Panhandle submits herewith the attached revised tariff sheets.

Copies of this letter and enclosures are being served on all intervenors, jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, and 385.214). All such motions or protests should be filed on or before January 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30793 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-28-003]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

December 23, 1985.

Take notice that on December 13, 1985 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Fifty-Fourth Revised Sheet No. 3-A
First Substitute Thirty-First Revised Sheet No. 3-B

The proposed effective date of these revised tariff sheets is January 1, 1986.

On November 19, 1985 Panhandle filed revised tariff sheets in the above-referenced proceeding which adjusted the GRI funding unit pursuant to Opinion No. 243 in Docket No. RP85-154-000 and in accordance with Section 19 of the General Terms and Conditions of Panhandle's FERC Gas Tariff, Original Volume No. 1. The GRI funding unit filing adjusted those rates in Docket No. RP85-194-000 approved pursuant to Commission Orders dated September 30, 1985 and November 12, 1985.

Concurrently herewith, Panhandle is filing revised tariff sheets in compliance with Ordering Paragraph C of the Commission's Order dated September 30, 1985 in Docket No. RP85-194-000. Accordingly, the revised tariff sheets submitted herewith by Panhandle are being filed to reflect the compliance filing made in Docket No. RP85-194-000.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 31, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30792 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-735-005]

Pacific Gas and Electric Co.; Compliance Filing

December 23, 1985

Take notice that on November 27, 1985, Pacific Gas and Electric Company (PGE) submitted for filing its compliance filing in accordance with the Commission's order of October 30, 1985.

Any person desiring to be heard or to protest said filing should file comments with the Federal Energy Regulatory Comission 825 North Capitol Street, NE., Washington, DC 20426, on or before December 31, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30791 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-9-000]

Southwest Gas Corp.; Informal Technical Conference

December 23, 1985

Pursuant to the Commission's Order Accepting Filing Subject To Refund And Conditions, And Convening Informal Technical Conference issued on November 27, 1985, in the above-captioned docket, an informal technical conference will be convened on Thursday, January 9, 1986 at 10:00 a.m. in a room to be designated at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Staff will be permitted to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30799 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-9-001]

Southwest Gas Corp.; Change in FERC Gas Tariff

December 23, 1985

Take notice that on December 12, 1985, Southwest Gas Corporation (Southwest) submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Substitute Twenty-ninth Revised Sheet No. 10
Substitute Third Revised Sheet No. 30
Substitute Fifth Revised Sheet No. 31

The tendered tariff sheets provide for revisions to Southwest's purchased gas adjustment provisions to reflect the inclusion of storage injections and withdrawals in the calculation of the Account No. 191 balances to be reflected in the PGA surcharge adjustment, as required in Ordering Paragraph (B) of the Commission's order in Docket No. RP86-9-000 issued November 27, 1985. In addition, Southwest states that the proposed tariff sheets reflect the deletion of language referencing Southwest's authority under Docket No. RP82-96 to track transportation and gathering costs. Further, Southwest indicates that the proposed tariff sheets provide for a revised Base Tariff Rate from that set forth in Southwest's October 31, 1985 filing in Docket No. RP86-9-000 in order to reflect a subsequent rate increase from Southwest's supplier, Northwest Pipeline Corporation. Southwest also states that the proposed tariff sheets clarify that the storage injections and withdrawals to be included in the calculations of Southwest's cost of gas pertain to Southwest's liquefied natural gas storage facility near Lovelock, Nevada.

Southwest requests an effective date of December 1, 1985 for the tendered tariff sheets, reflecting the effective date provided in the Commission's November 27, 1985 order.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30798 Filed 12-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-41-000]

Indexes of Essential Power Site Withdrawals; Request for Public Comment

December 20, 1985.

Summary

The Federal Energy Regulatory Commission (Commission) is proposing Form FERC-587 for the indexing of essential power site withdrawals. The Commission is required to review power site land withdrawals purusant to section 24 of the Federal Power Act which states that lands owned by the United States are automatically withdrawn from sale or other disposal upon the filing of applications for preliminary permit or license under Part I of the Act. In order to eliminate unnecessary withdrawals, thereby unlocking Federal lands for mineral exploration and other uses the Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary of the Interior to review and where possible vacate certain withdrawals in 11 western states by October 21, 1991. The Commission has been asked by the Secretary of the Interior to assist in this clean-up by reviewing the several thousand withdrawals effectuated by the filing of hydropower applications. Identification of essential withdrawals in an index and vacation of all nonessential withdrawals will ensure that the rights and protection afforded hydropower license and permit holders and applicants under section 24 are not jeopardized.

Background

Under section 24 of the Federal Power Act, all lands currently withdrawn for waterpower purposes may not be disposed of without Commission approval. These lands consist of: (a) Approximately 13.4 million acres of United States lands reserved for waterpower purposes pursuant to orders issued by the President and the Secretary of the Interior, and (b) several million acres withdrawn under section 24 by the filing of applications for preliminary permit or license. Withdrawals placed in effect under section 24 frequently overlap the power withdrawals effectuated by the President and the Secretary of the Interior.

The Federal Land Policy and Management Act of 1976 (FLPMA), 90 Stat. 2743, requires the Secretary of the Interior to review by October 21, 1991

certain withdrawals in 11 western states. The goal of the withdrawal review is to eliminate unnecessary withdrawals, thereby unlocking Federal lands to mineral exploration, development, and other uses. To help accomplish this goal, the Secretary of the Interior, by letter dated October 5, 1981, requested FERC support in identifying and eliminating non-essential withdrawals effectuated by the filing of hydropower applications.

BLM files numerous applications asking FERC to determine whether use of withdrawn power sites would be accepted for mining, mineral leases, geothermal steam leases, and other non-hydro purposes. Over 300 of these applications are expected to be filed in FY-1986. In addition, over 60 applications will be filed by BLM asking FERC to vacate individuals withdrawals. Many of these applications would not be filed if unnecessary withdrawals were vacated.

On September 11, 1985, the Commission approved a plan to identify the essential withdrawals in an index and vacate non-essential withdrawals. This would be accomplished by directing applicants, permittees, and licensees to prepare indexes documenting withdrawals effectuated by pending hydropower applications and effective permits, licenses, or amendments. Copies of the indexes, consisting of completed land description forms and aperture cards, will be sent by the applicants, permittees, and licensees to FERC and the appropriate BLM state offices. The completed indexes will contain pertinent data necessary to quickly identify the geographical area involved: thus, facilitiating our response to future BLM requests for vacation of withdrawn power site lands and for secondary uses of project lands. Additionally, the indexes will serve as the key source of information necessary to vacate power site lands when they become non-essential because of termination of permits or licenses.

Request for Comments

FERC invites the public to comment on the new form within 30 days of the publication of this notice. A copy of Form FERC–587 is reproduced following this notice. The following general guidelines are provided to assist in the preparation of responses.

(As a potential respondent):

a. Are the instructions and definitions clear and sufficient?

b. Can the data be submitted using the definitions included in the instructions?

c. Can the data by submitted within 60 days of receipts, i.e., the response time specified in the letter to permittees and licensees.

d. How many hours, including time for preparation and administrative review will your firm require to complete and submit a form?

e. What is the estimated cost of completing this form including the direct and indirect costs associated with the data collection? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

f. How can the form be improved?

g. Do you know of other Federal, State, or local agencies that collect similar data? If you do, specify the agency and the means of collection.

h. Would your company collect and organize the data required in the proposed form if the form were not required?

Comments submitted in response to this notice will be included in the request for Office of Management and Budget approval of this data collection and will become a matter of public record.

Issued in Washington, D.C. December 20, 1985.

Don Garber,

Acting Deputy Director, Office of Hydropower Licensing, Federal Energy Regulatory Commission.

General Information

[Form FERC–587].

I. Purpose

Form FERC–587 is designed to obtain information, locate, and identify Federal lands withdrawn for power sites.

II. Who Must Submit

Every firm municipality, state and local government, or individual that receives a form must complete it and submit it to the Federal Energy Regulatory Commission.

III. When to Submit

Submit this form within 60 days of receipt.

IV. Where to Submit

Send the completed form to Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

If you have any question concerning this form call Ernest Sligh (202) 376–9294.

V. Sanctions

The timely submission of Form FERC–587 by a firm municipality state and local government or individual is required under the Federal Land Policy & Management Act of 1976. 90 Stat. 2743. Late filing failure to file or failure otherwise to comply with these instructions may result in the vacation of Federal land essential for a power site.

VI. Provision for Confidentiality of Information

Information on this form is public information, therefore not confidential.

General Instructions

A. Public Lands States

1. Identify the project boundary maps in the license or preliminary permit or in the application for license amendment of license or preliminary.

2. Identify the Federal tracts that are located within the project boundaries as shown on the maps.

3. Complete a copy of the land description form for each township identified. All entries should be typed.

4. Project boundary map(s) are identified by sheet numbers. Exhibit G (or Exhibit K or F in older licenses) identifies boundaries for licenses. Exhibit 4 identifies the boundaries for preliminary permits. These sheet numbers should be entered on the lines provided under "EXHIBIT SHEET NUMBERS." If there are any questions, please contact FERC at 202–376–1733.

5. Microfilm aperture cards of each exhibit sheet should be included with the land description form. Two copies of each map in Exhibit G, K, or F for licensees or Exhibit 4 for permittees must be reproduced on silver or gelatin 35 mm microfilm mounted on type D (3¼" x 7⅜") aperture cards. The project number exhibit designation and sheet number must be typed on the upper right corner of each card.

6. Mail 2 copies of the completed land description forms and aperture cards to Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426.

Another copy should be mailed to the BLM office(s) in which the project is located. The completed forms and aperture cards should be mailed within 60 days from the date of this request.

7. Keep the land description forms and aperture cards up-to-date. If the project boundaries change revised Land Description forms and aperture cards should be provided immediately Mail up-dates in accordance with instruction 6.

B. Non-Public Lands States

1. Identify the project boundary maps in the license or preliminary permit or in the application for license amendment of license, or preliminary permit.

2. Identify the Federal tracts that are located within the project boundaries as shown on the maps.

BEST COPY AVAILABLE

3. Complete a copy of the land description form for each county with United States owned project lands. If more than one land description form is required to list the Federal tracts in a county page numbers must be shown in the upper right corner of the form, e.g., page 1 of 2. Do not list more than one county or one project number on each form. All entries should be typed.

4. Project boundary map(s) are identified by sheet numbers. Exhibit G (or Exhibit K or F in older licenses) identifies boundaries for licenses. Exhibit 4 identifies the boundaries for preliminary permits. These sheet numbers should be entered on the lines provided under "EXHIBIT SHEET NUMBERS." If there are any questions, please contact FERC at 202–376–1733.

5. Microfilm aperture cards of each exhibit sheet should be included with the land description form. Two copies of each map in Exhibit G, K, or F for licensees or Exhibit 4 for permittees must be reproduced on silver or gelatin 35 mm microfilm mounted on type D (3¼" x 7⅜") aperture cards. The project number exhibit designation and sheet number must be typed on the upper right corner of each card.

6. Mail 2 copies of the completed land description forms and aperture cards to Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426.

Another copy should be mailed to the BLM office for eastern States. The completed forms and aperture cards should be mailed within 60 days from the date of this request.

7. Keep the land description forms and aperture cards up-to-date. If the project boundaries change, revised Land Description forms and aperture cards should be provided immediately. Mail up-dates in accordance with instruction 6.

FERC–387, Approved
OMB No. 1902–00
(Expires ————)

LAND DESCRIPTION

Non-Public Land States

State ————, FERC Project No. ————
Check one:
License ————
Preliminary Permit ————
Pending ————
Issued ————
If permit is issued, give expiration date ————
County ————
Federal land holding agency ————

Name of Federal reservation	Federal tract(s) identification	Exhibit sheet number(s) or sheet letter(s)

Contact ————
Telephone ————
Date Submitted ————

Under provision of the Federal Power Act Sec. 24 Lands that are not identified and indexed could be vacated.

Instructions

Non-Public Land States

1. Identify the project boundary maps in the license or preliminary permit, or in the application for license, amendment of license, or preliminary permit.

2. Identify the Federal tracts that are located within the project boundaries as shown on the maps.

3. Complete a copy of the land description form for each county with United States owned project lands. If more than one land description form is required to list the Federal tracts in a county, page numbers must be shown in the upper right corner of the form, e.g., page 1 or 2. Do not list more than one county or one project on each form. All entries should be typed.

4. Each project boundary map filed with an acceptable application for license is given a Federal Energy Regulatory Commission (FERC) map number (Federal Power Commission (FPC) numbers are considered FERC numbers) consisting of the project number followed by a hyphen and a sheet number assigned by the Commission. If FERC sheet numbers have been assigned, they must be used on the Land Description Forms. In those cases where FERC has not assigned sheet numbers, it is your responsibility to assign letter designations A, B, C, etc., in lieu of FERC sheet numbers. Permittees and permit applicants must assign letter designations since FERC does not assign sheet numbers for permits or permit applications. These sheet numbers or letters should be entered on the lines provided under "Exhibit Sheet Numbers." If there are any questions, please contact FERC at 202–376–1733.

5. Microfilm aperture cards of each exhibit sheet should be included with the Land Description Form. Two copies of each map in Exhibit G, K, or F for licensees or Exhibit 4 for permittees must be reproduced on silver or gelatin 35 mm microfilm mounted on type D (3¼ " x 7⅜ ") aperture cards. The project number, exhibit designation, and sheet number must be typed on the front of each card in the upper right corner.

6. Mail a copy of the completed Land Description Forms and aperature cards to: Secretary, Federal Energy Regulatory Commission, Room 3110, 825 North Capitol Street, Washington, DC 20426.

Another copy should be mailed to: Director, Bureau of Land Management, 350 S. Pickett Street, Alexandria, VA 22304.

7. Keep the Land Description Forms and aperture cards up-to-date. If the project boundary changes, revised Land Description Forms and aperture cards should be provided immediately. Mail up-dates in accordance with instruction 6.

BILLING CODE 6717-01-M

FERC-587, Approved
OMB No. 1902-00
(Expires

LAND DESCRIPTION
Public Land States

STATE _____ FERC PROJECT NO. _____

TOWNSHIP _____ RANGE _____ MERIDIAN _____

CHECK ONE:
License _____
Preliminary Permit _____

CHECK ONE:
Pending _____
Issued _____

If permit is issued, give expiration date _____

EXHIBIT SHEET NUMBERS OR SHEET LETTERS

Section 6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

Contact _____ Telephone No. _____ Date Submitted _____

Under provision of the Federal Power Act Sec. 24 Lands that are not identified and indexed could be vacated.

BILLING CODE 6717-01-C

Instructions

Public Land States

1. Identify the project boundary maps in the license or preliminary permit, or in the application for license, amendment of license, or preliminary permit.

2. Identify the townships of the public land surveys (official protractions thereof if unsurveyed) located within the project boundary as shown on the maps. A Land Description Form is to be completed for each township identified. All entries should be typed. Only one project number should appear on each form.

3. Each project boundary map filed with an acceptable application for license is given a Federal Energy Regulatory Commission (FERC) map number (Federal Power Commission (FPC) numbers are considered FERC numbers) consisting of the project number followed by a hyphen and a sheet number assigned by the Commission. If FERC sheet numbers have been assigned, they must be used on the Land Description Forms. In those cases where FERC has not assigned sheet numbers, it is your responsibility to assign letter designations A, B, C, etc., in lieu of FERC sheet numbers. Permittees and permit applicants must assign letter designations since FERC does not assign sheet numbers for permits or permit applications.

The sheet numbers or letters are to be entered in the appropriate place on the Land Description Forms to provide references to the maps. For example, if sheets 38 and 44 show the project boundary in section 32 of a township, the numbers 38 and 44 would be inserted in the box on the Land Description Form representing section 32. The completed Land Description Form will identify the sections of the township affected by the project and provide references to the maps that show the project boundary in those sections.

4. Microfilm copies of the project boundary maps must submitted with the Land Description Forms. Two copies of each map involved must be reproduced on silver or oelatin 35 mm mircofilm mounted on type D (3¼" x ⅜") aperture cards. The project number followed by a hyphen and the sheet number or letter must be typed on the front of each card in the upper right corner.

5. Mail a copy of the completed Land Description Forms and aperture cards to: Secretary, Federal Energy Regulatory Commission, Room 3110, 825 North Capitol Street, Washington, DC 20426.

Another copy must be mailed to the Bureau of Land Management (BLM) State Office(s) involved.

6. Keep the Land Description Forms and aperture cards up-to-date. If the project boundary changes, revised Land Description Forms and aperture cards should be provided immediately. Mail up-dates in accordance with instruction 5.

If there are any questions, please contact FERC at 202–376–1733.

[FR Doc. 85–30622 Filed 12–27–85; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Objection to Proposed Remedial Orders Filed; Office of Hearings and Appeals; Week of December 2 Through December 6, 1985

During the week of December 2 through December 6, 1985, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

December 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Atlantic Richfield Co., Los Angeles, California; KRO–0170

On December 6, 1985, Atlantic Richfield Company, 515 South Flower Street, Los Angeles, California 90071 filed a Notice of Objection to a Proposed Remedial Order which the DOE Office of Enforcement Programs, Economic Regulatory Administration issued to the firm on November 13, 1985. In the PRO the Office of Enforcement Program found that during August 1, 1977 to January 28, 1981, Arco sold domestic price controlled crude oil and conditioned the sales on its receipt of price concessions from the purchaser on linked transactions involving uncontrolled crude oil. According to the PRO, the price concessions took the form of discounts on Arco's purchases of exempt foreign or domestic crude oil or premiums on its sales of exempt foreign crude oil.

According to the PRO during the period March 1, 1978 through January 27, 1981 Arco unlawfully received a total excess consideraton of $239,948,207.00.

Lea Exploration, Inc., Shreveport, Louisiana: KRO–0160

On December 5, 1985, Lea Explorations, Inc., P.O. Box 127, Shreveport, LA 71161 filed a Notice of Objection to a Proposed Remedial Order which the DOE Houston District Office of Enforcement issued to the firm on 11/12/85. In the PRO the Houston District found that during June 1979 to December 1980, Lea has charged prices in excess of ceiling prices in first sales of domestically produced crude oil.

According to the PRO the pricing violation resulted in $339,179.94 of overcharges.

Port Petroleum Inc., Shreveport, Louisiana: KRO–0150

On December 5, 1985, the Controller of the State of California filed a Notice of Objection to an amended Proposed Remedial Order which the DOE Office of Field Operations in Dallas, Texas issued to the firm on August 13, 1985. In the PRO the Dallas Office found that during the period October 1978 to December 1980, Port committed pricing violations in connection with its purchase and resale of crude oil.

According to the PRO the violation resulted in $6,292, 351 plus interest of overcharges.

[FR Doc. 85–30842 Filed 12–27–85; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–51603; FRL–2946–3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-seven PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-286 and 86-287	Mar. 12, 1986.
P 86-288, 86-289, 86-290, 86-291, 86-292 and 86-293.	Mar. 15, 1986.
P 86-294, 86-295, 86-296, 86-297, 86-298, 86-299, 86-300, 86-301, 86-302 and 86-303.	Mar. 16, 1986.
P 86-305, 86-306, 86-307, 86-308, 86-309 and 86-310.	Mar. 17, 1986.
P 86-311, 86-312, and 86-313.	Mar. 18, 1986.

Written comments by:

P 86-286 and 86-287	Feb. 10, 1986.
P 86-288, 86-289, 86-290, 86-291, 86-292 and 86-293.	Feb. 13, 1986.
P 86-294, 86-295, 86-296, 86-297, 86-298, 86-299, 86-300, 86-301, 86-302 and 86-303.	Feb. 14, 1986.
P 86-305, 86-306, 86-307, 86-308, 86-309, and 86-310.	Feb. 15, 1986.
P 86-311, 86-312, and 86-313.	Feb. 16, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51603]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-210, 401 M St., SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 86-286

Manufacturer. Confidential.
Chemical. (S) Polymer of 1,4-butanediol, adipic acid and 1,12-dodecanedioic acid.
Use/Production. (G) Open use. Prod. range. 1000-1500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hrs/da, up to 12 da/yr.
Environmental Release/Disposal. Minimal release to air. Disposal by biological treatment, lagoons and a licensed landfill.

P 86-287

Importer. Confidential.
Chemical. (G) Aliphatic, aromatic saturated polyester.
Use/Import. (G) Paint polymer with an open use. Import range. 33,000-130,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-288

Importer. Confidential
Chemical. (G) Quaternary ammonium compound.
Use/Import. (G) Lubricant on intermediate products in textile manufacturing, dispersive use. Import range. Confidential.
Toxicity Data. Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-289

Manufacturer. Reichhold Chemicals, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Industrial and commercial automotive body patch. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 8 workers/site.
Environmental Release/Disposal. 1 kg released to landfill. Disposal by approved landfill.

P 86-290

Manufacturer. Ethyl Corporation.
Chemical. (S) Sodium aluminum tetrafluoride.
Use/Production. (S) Industrial electrolyte. Prod. range. Confidential.
Toxicity Data. No data on the PMN substance submitter.
Exposure. Confidential.
Environmental Release/Disposal. Release to air.

P 86-291

Manufacturer. Confidential.
Chemical. (G) Substituted phenyl azo phenyl azo substituted carbopolycyclicsulfonic acid salt.
Use/Production. (S) Site-limited intermediate. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 86-292

Manufacturer. Confidential.
Chemical. (G) Trisubstituted benzenesulfinic acid.
Use/Production. (S) Site-limited intermediate. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Dosposal. Confidential. Disposal by POTW.

P 86-293

Manufacturer. Confidential.
Chemical. (G) Alkyl oligoglycoside.
Use/Production. (S) Surface active agents for cleaning compounds and dispersants for water insoluble organic chemicals. Prod. range. Confidential.
Toxicity Data. Acute oral: 5 g/kg. Irritation: Skin—Slight; Eye—Moderate.
Exposure. Manufacture: dermal, a total of 15 workers, up to 8 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. Confidential.

P 86-294

Importer. Pacific Anchor Chemical Corporation.
Chemical. (G) Polymeric aliphatic polyol metharylate ester.
Use/Import. (S) Industrial anaerobic adhesives and sealants and electron beam cured printing inks. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 20 workers, up to 4 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. Less than 100 kg/year released. Disposal by landfill.

P 86-295

Importer. Pacific Anchor Chemical Corporation.
Chemical. (G) Polymeric aliphatic polyol methacrylate ester.
Use/Import. (S) Indastrial anaerobic adhesive and sealants and electron beam cured printing inks. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 20 workers, up to 4 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. Less than 100 kg/year released. Disposal by landfill.

P 86-296

Manufacturer. Synthron, Inc.
Chemical. (G) 2-propylimidazole salt of an organic acid.

Use/Production. (S) Industrial catalyst and latent co-hardener for epoxy resins molding powder, powder coatings and latent co-hardener for epoxy sealants and adhesives. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. 3 kg/batch released to water. Disposal by biological holding pond and POTW.

P 86-297

Manufacturer. E.I. du Pont de Nemours & Company, Inc.

Chemical. (G) Crosslinked ethylene interpolymer/polyolefin polymer.

Use/Production. (S) Reinforced hose, tubing, wire and cable jackets, convoluted bellows for automobiles, seals and gaskets, weather stripping, fuel line hose connectors, and mechanical goods. Prod. range. Confidential.

Toxicity Data. Acute Oral: >11,000 mg/kg; Irritation: Skin—Non-irritant.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 86-298

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane polymer.

Use/Production. (G) Polymeric industrial coating component. Prod. range. 50,000–505,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: Dermal, a total of 38 workers, up to 8 hrs/da, up to 191 da/yr.

Environmental Release/Disposal. 2 to 42 kg/batch released to land.

P 86-299

Importer. Confidential.

Chemical. (G) 1-H-pyrazole-3-carboxyic acid, 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-4-[(4-sulfophenyl)azo]-, mixed salt.

Use/Production. (S) Paper dye. Import range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-300

Manufacturer. Capital City Products Company.

Chemical. (S) Complete ester derived from trimethylolethane and palm kernel derived from fatty acid.

Use/Production. (S) Industial and consumer lubricant finish on nylon tire yarn, polyester tire yarn, and nylon carpet yarn. Prod. range. 500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 4 hrs/da, up to .068 da/yr.

Environmental Release/Disposal. 398 to 996 kg/batch released to water with 1.5 to 250 kg/batch to land. Disposal by POTW.

P 86-301

Importer. The Minnesota Mining and Manufacturing Company.

Chemical. (G) Ammonium carboxylate containing fluorochemical urethane.

Use/Import. (G) Surface treatment, non-dispersive use. Import range. Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative; Skin sensitization: Non-sensitizer.

Exposure. Processing: dermal.

Environmental Release/Disposal. No release.

P 86-302

Importer. Confidential.

Chemical. (S) Silica, [(dimethylhydrogensilyl)oxy] and [(trimethylsilyl)oxy], modified.

Use/Import. (S) Crosslinker for silicone polymers. Import rangte. 1,200–2500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Very slight; Ames test: Non-mutagenic.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-303

Importer. Confidential.

Chemical. (S) Silica, [(dimethylhydrogensilyl)oxy], modified.

Use/Import. (S) Industrial crosslinker for silicone polymers. Import range. 1,200–2,500 kg/yr.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames test: Non-mutagenic.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-305

Manufacturer. Confidential.

Chemical. (G) Styrenated acrylic copolymer.

Use/Production. (G) Polymer used in product formulation having a partially contained use. Prod. range. 5,000–13,500 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 27 workers, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. 0.1 to 75 kg/batch released to air. Disposal by incineration and approved landfill.

P 86-306

Manufacturer. Confidential.

Chemical. (G) Styrenated drying oil alkyd resin.

Use/Production. (S) Industrial and consumer fast dry primers and topcoats for metal, wood, and paper. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers.

Environmental Release/Disposal. Confidential.

P 86-307

Manufacturer. Confidential.

Chemical. (G) Epoxy resin adduct.

Use/Production. (G) Reactive binder. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. 20 kg/batch released. Disposal by inceneration.

P 86-308

Importer. Confidential.

Chemical. (G) Triazolium azo dye.

Use/Import. (G) Textile dye. Import range. Confidential.

Toxicity Data. Acute oral: 2,289 mg/kg; Irritation: Skin—Irritant, Eye—Corrosive; Ames test: Negative; LC_{50} 96 hr (Zebra fish): 11.5 mg/1; BOD_5: 0 mg/$g0_5$; COD: 1,440 mg/10_5; COD/TOC: 1.10

Exposure. Processing: dermal and inhalation, a total of 17 workers, up to 0.5 hr/da, up to 77 da/yr.

Environmental Release/Disposal. .002 to .6 released to water. Disposal by navigable waterway.

P 86-309

Importer. American Hoechst Corporation.

Chemical. (S) Hydroxymethoxyacetic acid, methyl ester.

Use/Import. (S) Industrial comonomer/modifier for formaldehyde based polymers and starting materials for polymer additives. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-310

Manufacturer. Venture Chemicals, Inc.

Chemical. (G) Organophilic ester/humic acid derivative.

Use/Production. (S) Industrial fluid loss additive for invert oil emulsion

BEST COPY AVAILABLE

drilling fluids used in oil and gas well drilling and shale control additive for water base drilling fluids. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 8 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 4.25 to 16. 35 kg/batch released to air.

P 86-311

Manufacturer. Confidential.

Chemical. (G) Alkyl oligoglycoside.

Use/Production. (S) Surface active agents for cleaning compounds and dispersants for water insoluble organic chemicals. Prod. range. Confidential.

Toxicity Data. Acute oral: 5.0g/kg; Irritation: Skin—Slight, Eye—Non-irritant.

Exposure. Manufacture: dermal, a total of 15 workers, up to 8 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Confidential. Disposal by POTW after in-plant treatment.

86-312

Importer. Confidential.

Chemical. (G) Amine salt of partial ester of phosphoric acid.

Use/Import. (S) Industrial antiwear and extreme pressure additive for lubricating oils. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-313

Importer. Urethane Concepts, Inc.

Chemical. (G) Sucrose based polyol.

Use/Import. (S) Industrial polyol component in rigid polyurethane foam. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: a total of 50 workers, up to 8 hrs/da, up to 240 da/yr/

Environmental Release/Disposal. No data submitted.

Dated: December 23, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-30880 Filed 12-27-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59745]; FRL 2946-2

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 48066)(40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary.

DATES: Close of Review Period: Y 86-46, January 8, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86-46

Importer. Urethane Concepts, Inc.

Chemical. (G) Polyether diol.

Use/Import. (S) Industrial polyol component in the manufacture of polyurethane elastomers. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 10-50 workers.

Environmental Release/Disposal. No data submitted.

Dated: December 23, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-30901 Filed 12-27-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-756-DR]

Amendment to Notice of a Major-Disaster Declaration; Florida

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA-756-DR), dated December 3, 1985, and related determinations.

DATED: December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Florida, dated December 3, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 3, 1985: Jefferson County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-30746 Filed 12-27-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-752-DR]

Amendment to Notice of a Major-Disaster Declaration; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-752-DR), dated November 1, 1985, and related determinations.

DATE: December 20, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of Louisiana dated November 1,

1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 1, 1985: Cameron and Iberia Parishes for Public Assistance limited to facilities of the State Department of Natural Resources and the State Department of Wildlife and Fisheries.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-30747 Filed 12-27-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-751-DR]

Amendment to Notice of a Major-Disaster Declaration; Massachusetts

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Massachusetts (FEMA-751-DR), dated October 28, 1985, and related determinations.

DATED: December 18, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

Notice

The notice of a major disaster for the Commonwealth of Massachusetts, dated October 28, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 28, 1985: The Towns of Edgartown and West Tisbury in Dukes County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-30748 Filed 12-27-85; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-745-DR]

Amendment to Notice of a Major-Disaster Declaration; Pennsylvania

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA-745-DR), dated October 8, 1985, and related determinations.

DATE: December 20, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the Commonwealth of Pennsylvania, dated October 8, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 8, 1985: Falls Township in Wyoming County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-30749 Filed 12-27-85; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 224-003130-005.

Title: Anchorage Terminal Agreement.

Parties: Municipality of Anchorage (Anchorage), Totem Ocean Trailer Express, Inc. (TOTE).

Synopsis: This agreement amends the basic agreement between the parties which provided for the lease by Anchorage to TOTE of a preferential berthing area and transit area at Anchorage City Dock to be used in a roll-on/roll-off trailer-ship service. The amendment provides for the adjustment of rates for the coming five-year period, and it grants TOTE use of newly developed property in Transit Area D. TOTE will relinquish control and use of an equal sized parcel in Transit Area B.

Agreement No. 224-010864.

Title: St. Thomas, VI Terminal Agreement.

Parties: The Virgin Islands Port Authority (Authority), The West Indian Co., Ltd. (WICO).

Synopsis: This is a settlement agreement between the Authority and WICO which provides for specified minium rates for passenger wharfage and dockage representing minimum compensatory levels for the passenger terminal facilities operated by the parties. The settlement resulted from the proceeding under FMC Docket No. 85-23. This is a one time agreement and does not provide for any continuing rate making discussions or agreements.

By Order of the Federal Maritime Commission.

Dated: December 24, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-30809 Filed12-27-85; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed; Request for Additional Information

Agreement No: 203-010852.

Title: Three Lines' Discussion Agreement.

Parties: Nippon Yusen Kaisha, Mitsui O.S.K. Lines, Ltd., Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C app. 1701-1720), has requested additional information from the parties to the agreement in order to complete the statutory review of Agreement No. 203-010852 as required by the Act. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Dated: December 24, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-30810 Filed 12-27-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Anderson Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection a the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 20, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Anderson Bancshares, Inc.*, Hemingway, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Anderson State Bank, Inc., Hemingway, South Carolina.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois, [illegible]

1. *Iron Horse Bancshares, Inc.*, Mazomanie, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of The Peoples State Bank, Mazomanie, Wis., Mazomanie, Wisconsin. Comments on this application must be received not later than January 14, 1986.

C. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First American Bancorp*, Athens, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First American Bank and Trust Company, Athens, Georgia.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Towner Bancorporation, Ltd.*, Towner, North Dakota; to become a bank holding company by acquiring 99.369 percent of the voting shares of State Bank of Towner, Towner, North Dakota. Comments on this application must be received not later than January 17, 1986.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, vice president) 400 South Akard Street, Dallas, Texas 75222:

1. *CBN Bancshares, Inc.*, Murdock, Kansas; to merge with Mayfield Bancshares, Inc., Mayfield, Kansas, thereby indirectly acquiring Mayfield State Bank, Mayfield, Kansas.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Stratford Bancshares, Inc.*, Stratford, Texas; to become a bank holding company by acquiring 87 percent of the voting shares of The First State Bank of Stratford, Stratford, Texas. Comments on this application must be received not later than January 17, 1986.

Board of Governors of the Federal Reserve System, December 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30743 Filed 12-27-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Dust Control for Falling Solids; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: January 22, 1986.

Time: 9:00 a.m.–4:30 p.m.

Place: Conference Room C, National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Purpose: To review a project entitled "Dust Control for Falling Solids." The study objective is to improve understanding of the manner in which free-falling powders create airborne dust; specifically, how the mass flux of a falling powder, the drop height, and the bulk density of the powder affect dust generation. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: William A. Heitbrink, Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephones: FTS: 684-4369, Commercial: 513/841-4369.

Dated: December 23, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-29400 Filed 12-27-85; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Application Announcement for Nurse Anesthetist Traineeship Grants and Professional Nurse Traineeship Grants

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Nurse Anesthetist Traineeship and Professional Nurse Traineeship grants will be accepted in 1986.

Applicants should be advised that this application announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. The Administration's budget request for Fiscal Year 1986 did not include funding for these programs. This notice regarding applications does not reflect any change in this policy.

Nurse Anesthetist Traineeships

Section 831 of the Public Health Service Act, 42 U.S.C. 297–1(a)(1), as amended by Pub. L. 99–92, the Nurse Education Amendments of 1985, authorizes grants for traineeships to prepare licensed, registered nurses to be nurse anesthetists in eligible nurse anesthetist programs.

Eligible Applicants

To be eligible to receive support, an applicant must be a public or private nonprofit institution which provides registered nurses with fulltime nurse anesthetist training. The training program must be accredited by the Council on Accreditation of Nurse Anesthesia Educational Programs/Schools and must currently have full-time students who are registered nurses who are beyond the 12th month of study.

In determining the amount of the grant award, the Department will use a

formula based on the number of approved applications and the number of full-time registered nurses who are beyond the 12th month of study.

This program is listed at 13.124 in the *Catalog of Federal Domestic Assistance.*

Professional Nurse Traineeships

Section 830 of the Public Health Service Act, 42 U.S.C. 297, as amended by Pub. L. 99–92, the Nurse Education Amendments of 1985, authorizes grants for: (1) Traineeships to prepare registered nurses in masters' degree and doctoral degree programs which educate such nurses to serve as nurse administrations, nurse educators, nurse researchers, nurse practitioners or in other professional nursing specialties determined by the Secretary to require advanced education; and (2) traineeships to educate nurses as nurse midwives.

Eligible Applicants

To be eligible to receive support, an applicant must be a public or nonprofit private institution providing registered nurses with full-time advanced education leading to a graduate degree in eligible professional nursing specialties, or a public or nonprofit private school of nursing or entity which prepares registered nurses to practice as nurse midwives. The nurse midwife program must be approved by the American College of Nurse Midwives.

This program is listed at 13.358 in the *Catalog of Federal Domestic Assistance.*

Application Deadlines

Nurse Anesthetist Traineeships—2/24/86.

Professional Nurse Traineeships—2/24/86.

Applications shall be considered as meeting the deadline if they are either:

1. *Received* on or before the deadline date, or

2. *Postmarked* on or before the deadline date and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

For specific guidelines and information regarding the program aspects, contact: Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6333.

Questions regarding grants policy should be directed to: Grants Management Officer, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C–22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6915.

These programs are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 42 CFR Part 100.

Dated: December 23, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85–30735 Filed 12–27–85; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974—Revision of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising a notice describing a system of records maintained by the Minerals Management Service. Except as noted below, all changes being published are editorial in nature, and reflect organization, address, and other minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register** on June 2, 1983 (48 FR 24793). The notice being revised, which is published in its entirety below, is titled "Security—Interior, MMS–4."

The portions of the system notice describing the categories of individuals and records have been revised to provide a more accurate and precise description of the individuals and information included in the records system. In addition, the existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. Also, the retention and disposal statement is amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

Since these changes do not involve any new or intended use of the information in the system of records, the notice shall be effective on or before December 30, 1985. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PIR), Room 7357, Main Interior Building, U.S. Department of the Interior, Washington, D.C. 20240.

Dated: December 17, 1985.

Oscar W. Mueller, Jr.,

Director, Office of Information Resources Management.

INTERIOR/MMS–4

SYSTEM NAME:

Security—Interior, MMS–4.

SYSTEM LOCATION:

Department of the Interior, Minerals Management Service, Office of Administration, Procurement and General Services Division, Security Office, Mail Stop 635, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Minerals Management Service (MMS) employees who have been subject to personnel security investigations to determine suitability for placement in sensitive positions and those granted access to classified information on MMS computer systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Security files for MMS personnel include: name, grade, organization, place and date of birth, social security number, the type of security clearance, ADP Access Authorization or suitability certification granted, and the investigative basis.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10501.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary use of the records is to ensure that investigative requirements of Federal Personnel Manual 731 are satisfied and to provide a current record of MMS employees with clearance and ADP access authorizations. Disclosure outside of the Department may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license

to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) to a Congressional office from the record of an individual in response to an inquiry the individual has made to the Congressional office; (4) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee or issuance of a security clearance, license, contract, grant, or other benefit; and (5) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee or the issuance of a security clearance, license, contract, grant, or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual systems maintained in locked GSA approved security containers.

RETRIEVABILITY:

Indexed by individual name.

SAFEGUARDS:

Maintained with security meeting the requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

These records are maintained in accordance with the General Records Schedule Number 18, Item Number 23.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Procurement and General Services Division, Minerals Management Service, Mail Stop 635, 12203 Sunrise Valley Drive, Reston, Virginia 22091.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written signed request stating that the requester seeks information concerning records pertaining to him or her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom record is maintained.

[FR Doc. 85-30822 Filed 12-27-85; 8:45 am]

BILLING CODE 4310-RK-M

Determination Regarding Right-of-Way Reservation on Lands Held in Trust for the Cocopah Indian Tribe of Arizona

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Determination.

SUMMARY: An engineering study has determined that there is no need for the United States to utilize its reserved right-of-way for the disposal of sludge from the Yuma Desalting Plant on lands held in trust for the Cocopah Indian Tribe of Arizona with respect to the following described lands:

San Bernardino Meridian, Arizona

T. 16 S., R. 21 E.,
Secs. 24 and 25 (excluding lots 5 and 6);
T. 16 S., R. 22 E.,
Sec. 19 and 30.

DATED: November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Wilborn, Chief, Lands Branch, Lower Colorado Regional Office, Bureau of Reclamation, Nevada Highway at Park Street, Boulder City, Nevada 89007, Telephone (702) 293-8427.

SUPPLEMENTARY INFORMATION: Section 4(a)(6) of the Act of April 15, 1985, (99 Stat. 47), reserves to the United States of America (United States) the option for a righ-of-way for sludge disposal from the Yuma Desalting Plant authorized under section 101(b)(1) of the Colorado River Basin Salinity Control Act of June 24, 1974 (88 Stat. 266). As a result of engineering studies, it had been determined that the United States will have no further need for utilization of the reserved lands for the sludge disposal site. Section 4(a)(6) of the Act of April 15, 1985 (*Supra*), further provides that any determination by the Secretary of the Interior shall be published in the **Federal Register.** Accordingly, public notice is hereby given that the United States will not exercise this reserved option for a right-of-way on the land described.

Dated: December 23, 1985.

Ann McLaughlin,

Acting Secretary of the Interior.

[FR Doc. 85-30783 Filed 12-27-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Indian Affairs

Program Announcement; FY 86 Indian Child Welfare Act Grant Program

December 23, 1985.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Announcement of availability of funds to improve child welfare services to Indian children and their families.

SUMMARY: This is an announcement of grant funds available from the Bureau of Indian Affairs, Department of the Interior.

FOR FURTHER INFORMATION CONTACT: For further information concerning the Bureau of Indian Affairs' Indian Child Welfare Act Title Grant Program contact the nearest area office to the applicant. See listing at the end of this announcement, or contact: BIA/Division of Social Services, 1951 Constitution Avenue, NW., Washington, DC 20245, Code 450, Room 312-S, Dr. Eddie F. Brown, Chief, Telephone: (202) 343-6434.

DATED: The closing date for receipt of applications for this program is February 14, 1986.

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Background

This announcement provides information on opportunities to apply for Indian Child Welfare Act grant funds for FY 86. The policies established by the Indian Child Welfare Act of 1978 (ICWA Pub. L. 95-608, 25 U.S.C. 1902, 25 U.S.C. 1931 and 1982), for which these grant funds may be used are:

—To prevent separation of Indian children from their families when possible;

—When separation is necessary, to reunite Indian children with their families as soon as possible;

—When reunification is not possible, to find permanent families through permanent placement with extended families or through adoption; and

—To carry out work with Indian children and their families in accordance with the preferences of the ICWA, following procedures and practices which reflect the unique values of Indian culture. An applicant for an Indian Child Welfare Act Grant (BIA) may submit only *one* grant application for this program during this application period (refer to 25 CFR 23.21(b)).

BEST COPY AVAILABLE

B. BIA Indian Child Welfare Grant Program Purpose

The purposes of Bureau of Indian Affairs' Indian Child Welfare grants as specifically stated in the law are:

(1) the establishment and operation of Indian child and family service programs which promote the stability of Indian families, and

(2) the provision of non-Federal matching shares for other Federal financial assistance programs for "on or near" reservation programs which contribute to that same purpose.

These purposes are further defined in Pub. L. 95–608 sections 201 and 202 or 25 U.S.C. 1931 and 1932, or 25 CFR 23.22. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families, and insure that the permanent removal of an Indian child from the custody of his/her parent or Indian custodian shall be a last resort.

C. Eligible Applicants

The governing body of any tribe or tribes, or any nonprofit off-reservation Indian organization or multi-service Indian center, may apply individually or as a consortium for a grant.

A consortium is an agreement or association of two or more eligible applicants.

Applicants for projects of one year or three years duration may be submitted. Regulations published December 16, 1985, in the Federal Register allow multi-year projects, in accordance with 25 CFR 23.37. Applicants who are proposing projects for multi-year project must submit full applications on all program activities for the entire project period, that is, for three years. This includes budget information. The budget period for each grant award will be for twelve (12) months. Funding after the first year of a multi-year project will depend upon the grantee's progress in achieving the objectives of the project according to the approved work plan, the availability of funds, and compliance with appropriate program regulations.

II. Available Funds

This announcement is being published in anticipation of an appropriation for these programs. When an appropriation is approved, grant awards will be made using the following guidelines. Grants will be awarded to individual tribes, organizations, or to consortia of tribes and organizations within the following categories:

A. A maximum of up to $50,000 for eligible applicants with a total service area population of 2,500 or less;

B. A maximum of up to $75,000 for eligible applicants with a total service area population greater than 2,500 but less than 5,000;

C. A maximum of up to $100,000 for eligible applicants with a total service area population greater than 5,000 but less than 7,500;

D. A maximum of up to $150,00 for eligible applicants with a total service area population of 7,500 but less than 15,000;

E. A maximum of $300,000 for eligible applicants with a total service area of greater than 15,000.

Applicants in the State of Alaska will be allowed a 25 percent cost of living adjustment to the total maximum amount for which they may apply. Notwithstanding the above grant guidelines, consortia having a total service area population of 5,000 or less, may apply for a maximum grant of up to $100,000 because of the greater administrative costs associated with operating a small consortium. Consortia with service area populations greater than 5,000 must comply with the grant guidelines set above.

Service area population means the total number of Indians eligible for service under 25 CFR 23.2(d)(2) and/or (3) in the geographical area to which the tribe, or organization, or multi-service center can realistically provide the services proposed in the application. The service area population is used only to determine maximum grant allocations that a tribe, multi-service center, or organization may be eligible to receive. These population figures must be based on identifiable statistical resources.

In lieu of an indirect cost rate, all costs associated with the administration of proposed projects shall be line itemed. Due to the limited amount of program funds, administrative costs will be carefully scrutinized in relation to funds used for direct services. In accordance with 25 CFR 23.25(a)(8), the reasonableness and relevance of the estimated costs for the project are considered in the rating of all project applications. These administrative costs are only allowable within the funding specified by the grant formula, and limitations specified in this announcement.

Applicants will not be funded for more than their demonstrated need, as specifically addressed in 25 CFR 23.24 and 23.25. The statistical requirements established in these regulations, as well as the tribe's mult-service center's, or organization's prior service record will be used in determinating need. Examples of necessary data include the number of actual or estimated Indian family breakups, and the number of persons who will receive direct services from any portion of the proposed program, by program area.

In accordance with 25 CFR 23.27(c)(3), if an applicant has been a grantee during the preceding fiscal year and proposes to continue essentially the same service program, the applicant, at the time of application, must provide satisfactory evaluations from the area office along with the other materials required in this subsection. At no time may any Indian tribe, organization, or multi-service center which is either an eligible individual applicant in accordance with 25 CFR 23.21 or a member of a consortium receive Indian Child Welfare Act grant funds greater than a maximum grant of $300,000 through a direct grant or through subgranting procedures with approved applicants.

III. Application and Selection Criteria

A. Fiscal Year 1986 Review Process

The BIA's Assistant Secretary or his/her designated representative shall select for grants under the Indian Child Welfare Act those proposals which will in his/her judgement best promote the purposes of the Act. Such selection will be made through a review process in which each application will be scored competitively using the BIA review criteria listed below at the appropriate Bureau Social Service Office referred to in 25 CFR 23.30, 23.31, or 23.33. Grant applications will be reviewed by a panel of reviewers qualified by training and/or experience in human services to Indian populations. These recommendations will be used by the Assistant Secretary's designated representative to preliminarily approve or disapprove all grant applications, and make funding recommendations to the Central Office. The Assistant Secretary has final funding authority.

B. The Closing Date for Receipt of Applications

The closing date for receipt of all applications under this Program Announcement is February 14, 1986.

Applications for Indian Child Welfare Act Grants must be received in the appropriate Bureau of Indian Affairs' Social Services Area/Agency Office, as specified in 25 CFR 23.28, on or before 4:15 p.m., or the applicable close of business for that office on the closing date of the application period. The names and addresses of Bureau Social Service Area Offices and staff are listed at the end of this announcement. Hand delivered applications are accepted during the normal working hours

Monday through Friday. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Sent by first class mail, postmarked on or before the deadline date.

Applicants are cautioned to request a legible U.S. Postal Service postmark or to use express, certified or registered mail and obtain a legibly dated mailing receipt from the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.

(3) Applications submitted by other means. Applications submitted by any means except through U.S. Postal Service shall be considered as meeting the deadline only if they are physically received before close of business on or before the deadline date.

(4) Late applications. Applications which do not meet these criteria are considered late applications and will not be considered in the current competition.

C. Statutory Authority

The Indian Child Welfare Program from the Bureau of Indian Affairs is authorized by Title II of Pub. L. 95–608, The Indian Child Welfare Act (25 U.S.C. 1901 et seq., 25 CFR Part 23). The anticipated appropriation for the grant program is $8,800,000. A minimum of twenty-five percent of these funds will be utilized for one-year projects and the remainder for multi-year projects. The central office will retain 15 percent of the total funds to assure funding for any applicant who may appeal a denial at the area office level. If these funds are not utilized for appeals they will be redistributed to the area offices.

D. Program Priorities

Indian Child Welfare Act grants are for the purpose of:

(1) Establishment and operation of Indian children and family service programs. In accordance with the policy in 25 CFR 23.2 to emphasize the design and funding of programs to promote the stability of Indian families, program priorities have been established to be utilized by area offices in the competitive review process when more than one application obtains the same competitive score. These priorities re-emphasize the programmatic interest in maintaining the family and preventing out-of-home placements. Program priorities are listed below in descending order:

(a) Operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children.

(b) Family assistance (including homemaker and home counselors), day care, after school care, recreational activities, respite care, and employment.

(c) A system for tribes or Indian organizations to license or otherwise regulate Indian foster and adoptive homes or the preparation and implementation of child welfare codes within their legal jurisdictional authority, or pursuant to a state-tribal and/or Indian organization agreement.

(d) Guidance, legal representation, and advice to Indian families involved in tribal, state or federal child custody proceedings.

(e) Employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters.

(f) Education and training of Indians (including tribal court judges and staff) in skills relating to child and family assistance and service programs.

(g) Subsidy programs under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate state standards of support for maintenance and medical needs.

(h) Home improvement programs.

(i) Other programs designed to meet the purpose of the Act. Planning or feasibility grants may be undertaken for any one of the above listed program purposes. These applications will be ranked according to the priority of the program under consideration.

(2) Providing non-Federal matching shares for other Federal financial assistance programs as prescribed in 25 CFR 23.43. The order of priority of matching share grants will correlate with the purpose of the program receiving the match.

E. Content of the Application

The application shall be no longer than 40 pages, double spaced (excluding appendices) and shall include standard form 424 and the following information:

(1) Name and address of Indian tribal governing body(s) or Indian organization applying for a grant,

(2) Descriptive name of project,

(3) Grant funds requested,

(4) The unduplicated client service population directly benefiting from the project,

(5) Length of project,

(6) Beginning date,

(7) Project budget categories or items,

(8) Program narrative statement including second and third year plans if appropriate,

(9) Certification or evidence of request by Indian tribe or board of Indian organization (preferably covering the duration of the proposed project),

(10) Evidence of substantial community support for the proposed program. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the tribal constitution or current practice requires;

(11) Name and address of the Bureau office to which an application is submitted,

(12) Date application is submitted to the Bureau, and

(13) Additional information pertaining to grant applications for funds to be used as matching shares.

F. Evaluation Criteria

The content of the application and the following factors are considered in the competitive review of these grant applications:

(1) The degree to which an applicant demonstrates in the program narrative an understanding of the social service problems or issues impacting the client population which the applicant proposes to serve.

(2) The degree to which and the methods by which the applicant intends to fulfill the purpose of the grant, specifically relating to goals and the objectives of the program to the issues and problems impacting the client population.

(3) Whether the applicant presents narrative, quantitative data, and demographics of the client population to be served. Examples of such data include:

(a) The number of actual or estimated Indian child placements outside the home;

(b) The number of actual or estimated Indian family breakups; and

(c) The need for a directly related preventive program.

(4) The relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing prevention of Indian family breakup. Factors to be considered in determining accessibility include:

(a) Cultural barriers;

(b) Discrimination against Indians;

(c) Inability of potential Indian clientele to pay for services;

(d) Lack of programs which provide free service to indigent families;

(e) Technical barriers created by existing public or private programs;

(f) Availability of transportation to existing programs;

(g) Distance between the Indian community to be served under the proposal and the nearest existing programs;

(h) Quality of service provided to Indian clientele; and

(i) Relevance of service provided to specific needs of Indian clientele.

(5) The proper justification of the extent to which the proposed program would duplicate any existing child and family service program emphasizing prevention of Indian family breakup, taking into consideration all of the factors listed in paragraphs (1), (2), (3), and (4) of this section. Proper justification must be given for any duplication of services.

(6) Evidence of substantial community support for the proposed program from the Indian community or communities to be served. Such support may be evidenced by:

(a) Letters of support from individuals and families to be served;

(b) Local Indian community representation in and control over the Indian entity requesting the grant;

(c) Letters from local and social service or social service related agencies familiar with the applicant's past work experience.

(7) The explanation of proposed facilities and of the structure of the tribal or Indian organization including the structure of the particular unit within the organization requesting grant funds, and the position description of any position to be funded with grant funds, identifying qualifications, responsibilities, and lines of supervision.

(8) The reasonableness and relevance of the estimated costs of the proposed program or service. An application shall not receive a preliminary approval unless a review of the application determines that it:

(a) Contains all the information required in "E. Content of an application",

(b) Receives at least the minimum score of 85 in a competitive review under the scoring process using the selection criteria established in regulation,

(c) If an applicant has been a grantee during the year immediately preceding the year for which an application is being made, and has made an application to continue essentially the same service program, satisfactory evaluation(s) from the Area office review of the program must be provided in addition to the other materials required in this subsection.

Part IV. List of BIA Area Offices

BIA Area Offices; Area Social Workers

Aberdeen—Dean Krabulec, 115 4th Avenue, SE, Aberdeen, SD 57401, 605–[illegible].

Albuquerque—Robert C. Carr, P.O. Box 8327, Albuquerque, NM 87198, 505–225–3321.

Anadarko—Jerry Bridges, P.O. Box 368, Anadarko, OK 73005, 405–247–6673, extension 257.

Billings—Bill Webber, 316 N. 26th Street, Billings, MT 59101, 406–657–6651.

Juneau—Bill Petillo, P.O. Box 3–8000, Juneau, AK 99802–1219, 907–586–7209.

Minneapolis—Karen Grey Eyes, Chamber of Commerce Building, 15 South Fifth Street, 6th Floor, Minneapolis, MN 55402, 612–349–3809.

Muskogee—James Clemmons, Old Federal Building, Muskogee, OK 74401, 918–687–2507.

Navajo—Nancy Evans, P.O. Box M, Window Rock, AZ 86515, 602–871–5151.

Phoenix—James B. Graves, P.O. Box 7007, Phoenix, AZ 85011, 602–241–2261.

Portland—June McKellar, 1425 NE Irving St., Portland, OR 97208, 503–231–[illegible]781.

Sacramento—Charles Toyebo, Community Service Officer, 2800 Cottage Way, Sacramento, CA 95825, 916–978–4631.

Eastern—Linda Guy, Division of Social Services, 1951 Constitution Avenue, NW., Code 1000, Washington, D.C. 20245, 703–235–3179.

Hazel E. Elbert,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85–30730 Filed 12–27–85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Salmon District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Salmon District of the Bureau of Land Management (BLM) announces a forthcoming meeting of the Salmon District Advisory Council.

DATE: The meeting will be held Wednesday, February 12, 1986, at 9:00 a.m.

ADDRESS: The meeting will be held at the Salmon District Office, Bureau of Land Management, Conference Room, South Highway 93, Salmon, Idaho 83467.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92–463 and 94–579. The main purpose for the meeting is the review of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Lemhi Resource Area. The agenda will also include an update and discussion of current resource programs on the Salmon District.

The meeting is open to the public. Interested persons may make oral statements to the Council between 10:00 a.m. and 10:30 a.m. or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Salmon District Office by February 10, 1986.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting. Notification of oral statements and requests for summary minutes should be sent to: Kenneth G. Walker, District Manager, Salmon District BLM, P.O. Box 430, Salmon, Idaho 83467.

Dated: December 20, 1985.

Kenneth G. Walker,

District Manager.

[FR Doc. 85–30813 Filed 12–27–85; 8:45 am]

BILLING CODE 4310-GG-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (sub-2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of approval of rail cost adjustment factor and decision.

SUMMARY: The Commission had decided to approve a modified version of the cost index filed by the Association of American Railroads (AAR) under the procedures of Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.*

Application of the index provides for a first quarter 1986 RCAF of 1.069 and a maximum rate increase of 1.1 percent above the levels authorized in our decision served June 20, 1984. No rate actions have been ordered since that time because, until now, the index declined from the third quarter 1984 level which was 1.058.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 275–0938; Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: By decision served January 2, 1985 (50 FR 87, January 2, 1985) we outlined the procedures for the calculation of the all

inclusive index of railroad input costs and the methodology for the computation of the RCAF. These procedures replaced an interim methodology which was formerly used. AAR is required to calculate the forecasted index on a quarterly basis and submit it on the fifth day of the last month of each calendar quarter.

We have reviewed AAR's calculations of the index for the first quarter of 1986 and find that, with the exceptions of the lease rental portion of the equipment rents component and the handling of a one-time only lump sum payment due to certain United Transportation Union (UTU) members, these calculations comply with the rules contained in our decision served January 2, 1985. AAR's handling of lease rentals is acceptable on an interim basis. We have restated the lump sum payment calculations to conform to our rules.

The indexing rules call for the lease rental portion of the epuipment rents component of the index to be calculated using actual data. On November 15, 1985, AAR filed a petition to reopen this proceeding for the purpose of modifying our rule concerning this component. Replies from shipper parties have been received as late as December 5, 1985. AAR's petition is currently under consideration. At this time we will continue to accept use of the Producer Price Index for Industrial Commodities, less Fuel, Power and Related Products as a surrogate for the lease rental portion of the equipment rents component of the index. We have previously observed that the lease rental portion of the index is only 2.4 percent of the total and is not likely to have a major effect on the RCAF.

We believe that the lump sum payment to certain railroad employees covered under the new UTU contract should have been amortized over the life of that contract with interest at the three-month Treasury Bill interest rate rather than included on a one-time basis. This one-time lump sum payment was due to be made to eligible employees in a single separate check no later than December 20, 1985. Amortizing the one-time payment over the life of the contract serves to smooth out its effect, while including it on a one-time basis serves onlyto artificially inflate the index.

We have applied our rules for the calculation of the opportunity cost of funds collected in anticipation of the settlement of labor contracts to this lump sum payment situation. AAR's estimate of an average payment of $482.60 per UTU employee has been amortized over the remaining period of the UTU contract (30 months or 10 quarters) using the three-month Treasury Bill interest rate (7.42 percent) in effect on December 5, 1985, the date of the most recent submission. This calculation yields an annuity payment of $53.32 for each of the ten quarters based on interest rate of 7.42 percent. The $53.32 amount is predicated on the 7.42 percent Treasury Bill interest rate remaining constant over the remaining life of the UTU contract. If, as expected, interest rates change throughout the remaining life of the UTU contract, AAR is directed to recalculate a new annuity payment schedule for each quarterly index submission based on the three-month Treasury Bill interest rates available seven days prior to the submission date of the quarterly index. For example, if interest rates are 8 percent on February 28, 1986 AAR must recalculate a new annuity payment schedule based on the 8 percent rate for the nine remaining quarters and a princial balance of $438.23.[1]

We find the RCAF for the first quarter of 1986 to be 1.069. This is an increase of 0.057 from the fourth quarter of 1985 and 0.011 above the highest previous RCAF of 1.058 for the third quarter of 1984. Additionally, a 0.001 reduction ordered in our decision served June 20, 1984 has been in effect since that time. We have considered the 0.001 reduction in calculating the maximum increase permitted under these provisions at this time. Since the maximum allowable increase is calculated by dividing the current RCAF by the highest prior RCAF we have divided 1.069 by 1.057 (the effective rate ceiling under these provisions) to produce a maximum increase of 1.1 percent. The first quarter 1986 RCAF provides for a maximum increase of 1.1 percent above the levels authorized in our decision served June 20, 1984.

The indices and the RCAF derived from AAR's first quarter calculations are shown in Table A (see Appendix). Table B (see Appendix) shows the third quarter 1985 index calculated on both an actual basis and a forecasted basis for comparative purposes.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources. This proceeding will not have a significant adverse impact on a substantial number of small entities because these procedures simplify a formerly complex and burdensome rate increase procedure.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.

Dated: December 20, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio. Commissioners Taylor and Strenio did not participate.

James H. Bayne,

Secretary.

Appendix

TABLE A.—EX PARTE 290 (SUB-NO. 2)

[All inclusive index of railroad input costs]

Line No. and index component	1984 weights (pct)	Fourth quarter 1985 forecast	First quarter 1986 forecast
1. Labor	38.5	139.0	139.4
2. Fuel	10.8	87.1	101.8
3. Materials and supplies	7.8	107.7	107.1
4. Equipment rents	9.4	151.8	151.5
5. Depreciation	7.4	116.0	116.5
6. Other items [1]	14.1	133.0	133.1
7. Weighted average	100.0	127.8	135.1
8. Linked index [2]		122.3	129.3
9. Rail cost adjustment factor [3] (10/1/82=100) 120.9=100		1.012	1.069

[1] Other items are a combination of Purchased Services, Casualties and Insurance, General and Administrative, Other Taxes and Loss and Damage, all of which are measured by the Producer Price Index for Industrial Commodities, less Fuel, Power and Related Products.

[2] Linking is necessitated by a change to 1984 weights beginning with the fourth quarter 1985. The following formula was used for the first quarter 1986 index:

$$\frac{\text{1st Quarter 1986 Index (1984 Weights)}}{\text{4th Quarter 1985 Index (1984 Weights)}} \times \text{4th Quarter 1985 Index (Linked Index)} = \text{1986 Linked Index (1984 Weights to 1986 Weights)}$$

or

$$\frac{135.1}{127.8} \times 122.3 = 129.3$$

[3] The denominator was rebased to an October 1, 1982 level in accordance with the requirements of the Staggers Rail Act of 1980

[1] The $438.23 amount was calculated as follows. We divided the three-month Treasury Bill interest rate of 7.42 percent by 4 (the number of quarters in a year) to arrive at a quarterly rate of 1.855 percent. AAR's estimate of the average payment to each UTU employee ($482.60) was mutliplied by the quarterly interest rate of 1.855 to produce a quarterly interest payment of $8.95. The quarterly interest payment of $8.95 was subtracted from the first quarter annuity payment of $53.32 to produce a first quarter 1986 principal payment of $44.37. This principal payment was subtracted from the beginning principal balance to produce an outstanding principal balance of $438.23 at the end of the first quarter.

TABLE B.—EX PARTE 290 (SUB-No. 2)
Comparison of Third Quarter 1985 Index

[Calculated on both a forecasted and an actual basis]

Line No. and [illegible]	1983 weights [illegible]	Third quarter 1985 forecast	Third quarter 1985 actual
1. Labor	[illegible]	144.9	144.9
2. Fuel	10.8	[illegible]	89.6
3. Materials and supplies	7.5	108.5	[illegible]
4. Equipment rents	[illegible]	151.7	[illegible]
5. Depreciation	7.7	117.4	116.2
6. [illegible]	14.0	[illegible]	119.5
7. Weighted average	100.0	131.4	130.8
8. Linked index		125.7	125.1
9. Rail cost [illegible] factor		[illegible]	[1] 1.035

[1] For comparative purposes only, an RCAF for the third quarter 1985 has been calculated using actual data. The published RCAF for the third quarter 1985 was computed using forecasted data.

[FR Doc. 85-30616 Filed 12-27-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30663]

Chicago, Central & Pacific Railroad Company; Purchase (Portion), Trackage Rights, and Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from (1) 49 U.S.C. 10901, the acquisition by Chicago, Central & Pacific Railroad Company (CCP) of (a) a 679-mile line of the Illinois Central Gulf Railroad Company (ICG) between Chicago, IL and Omaha, NE, and (b) trackage rights over ICG from Hawthorne yard to Plaines Station and to Markham Yard and IMX Yard, in the Chicago, IL, switching district; and (2) 49 U.S.C. 11301, the issuance by CCP of not more than $90 million in debt and equity securities.

DATES: The exemptions are effective on December 24, 1985. Petitions to reopen are due on January 13, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30663 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Peter A. Gilbertson, Wiener, McCaffrey, Brodsky & Kaplan, P.C., 1350 New York Ave., NW., Suite 800, Washington, DC 20005-4797.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 20, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85-30767 Filed 12-27-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Pursuant To the Clean Water Act; Corsicana, TX

In accordance with Department policy, 28 CFR 50.7c notice is hereby given that on December 18, 1985 a proposed Consent Decree in *United States* v. *City of Corsicana, et al.*, Civil Action No. 3-84-2193-D, was lodged with the United States District Court for the Northern District of Texas. The proposed decree concerns the discharge of pollutants from the City of Corsicana's wastewater treatment plant. The proposed decree requires the defendant to comply with the effluent limitations, and pretreatment and operation and maintenance requirements of its National Pollutant Discharge Elimination System permit upon lodging of the decree. In addition, the City will pay a civil penalty of $20,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Corsicana* D.J. Ref. 90-5-1-1-2271.

The proposed Consent Decree may be examined at the office of the United States Attorney, 16G28 U.S. Federal Building & Courthouse, 1100 Commerce Street, Dallas, Texas 75242 and at the Region VI Office of the Environmental Protection Agency, 1201 Elm Street, Dallas Texas 75270. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-30820 Filed 12-27-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Agreed Order Concerning Waste Management Pursuant to 1982 Consent Decree Under Resource Conservation and Recovery Act; Vertac Chemical Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 9, 1985 a proposed Agreed Order Concerning Waste Management in *United States et al.* v. *Vertac Chemical Corporation, et al.*, Civil Action No. LR-C-80-109 (Consol.) was lodged with the United States District Court for the Eastern District of Arkansas. The United States in 1980 had filed a complaint against defendant Vertac alleging *inter alia* that hazardous waste handling, storage and disposal practices at its Jacksonville, Arkansas plant site had created an imminent and substantial endangerment to human health and the environment, and seeking relief under the Resource Conservation and Recovery Act, 42 U.S.C. 6973. The parties in 1982 agreed to a Consent Decree which mandated a comprehensive program to address conditions at the Vertac site. The Agreed Order implements the provisions of Paragraph XI of the 1982 Consent Decree, which required defendant Vertac to develop a waste management plan for disposition of certain containerized waste materials stored on its plant site.

BEST COPY AVAILABLE

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Agreed Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States et al.* v. *Vertac Chemical Corporation, et al.*, D.J. Ref. 90–7–1–18.

The proposed Agreed Order may be examined at the Office of the United States Attorney, Courthouse and Federal Building, Little Rock, Arkansas and at the Region VI Office of the Environmental Protection Agency, InterFirst Two Building, 1201 Elm Street, Dallas, Texas 75270. Copies of the Agreed Order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Agreed Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $5.00 (10 centers per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–30821 Filed 12–27–85; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Employment and Training Administration
Job Order
1205–0005
Recordkeeping
State or local governments
52 recordkeepers; 208 hours; 0 forms

The job order is used to obtain basic job information to provide assistance to employers in need of workers and jobseekers in need of employment. The information describes job requirements and must be maintained for 1 year. ETA proposes to eliminate the Federally required Form ETA 514.

Extension

Employment Standards Administration
Notice of Final Payment of Compensation Payments
1215–0024; LS–208
On occasion
Business or other for-profit
34,000 respondents; 8,500 hours, 1 form

This report is used by insurance carriers and self-insured employers to report the payment of benefits under the Act.

Employment Standards Administration
Request for Employment Information
1215–0105; CA–1027
Businesses or other for-profit; Small businesses or organizations
1,000 responses; 250 hours; 1 form

The report is used to collect information regarding Federal employees' wage earning capacities. Information is necessary for determination of continued eligibility for compensation payments under the FECA.

Employment Standards Administration
Economics Survey Schedule
1215–0028, WH–1 and WH–1 Instructions
Biennially
State or local governments; Businesses or other for-profit; Small businesses or organizations
100 responses; 100 hours; 1 form

Form WH–1 is used by the Wage–Hour Division to prepare an economic report used by an industry committee to set industry wage rates in American Samoa.

Mine Safety and Health Administration
Rock Bolt Test Procedures and Rock Bolt Anchorage Capacity Tests
1219–0066
On occasion
Businesses or other for-profit; small businesses or organizations
450 respondents; 7,200 hours

Requires metal and nonmetal mine operators that use rock bolting to perform anchorage method tests and anchorage capacity tests. Records are required to be kept of the test results. The purpose of the records are to establish that tests have been made and that adequate anchorage is achieved.

Reinstatement

Occupational Safety and Health Administration
Acrylonitrile
1218–0010; OSHA–250
On occasion, Monthly, Weekly, Annually
Business or other for-profit
21 respondents; 9,302 hours; 0 forms

To provide protection for employee exposed to acrylonitrile.

Employers must monitor employee exposure, keep employee exposures within limits, and provide medical examination, training, and other information to employees.

Signed at Washington, DC, this 24th day of December 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85-30612 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; A.B.S. Embroidery et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 9, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 9, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 16th day of December 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of)—	Location	Date received	Date of petition	Petition No.	Articles produced
A.B.S. Embroidery (UTWA)	Cliffside Park, NJ	12/6/85	11/23/85	TA-W-16,762	Embroidered goods.
A. Joseph Schneider (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,763	Embroidered goods.
ACE Shiffli Emblem Co., Inc. (UTWA)	West New York, NJ	12/6/85	11/23/85	TA-W-16,764	Embroidered goods.
Admiralon Embroidery Co./Nova Embroidery, Inc (UTWA)	Weehawken, NJ	12/6/85	11/23/85	TA-W-16,765	Embroidered goods.
Alos Lace & Embroidery Corp. (UTWA)	West New York, NJ	12/6/85	11/23/85	TA-W-16,766	Embroidered goods.
All American Emblem Corp. (UTWA)	Fairview, NJ	12/6/85	11/23/85	TA-W-16,767	Embroidered goods.
All Over Emb. Works, Inc. (UTWA)	North Bergen, NJ	12/6/85	11/23/85	TA-W-16,768	Embroidered goods.
Allied Embroidery Co. (UTWA)	Fairview, NJ	12/6/85	11/23/85	TA-W-16,769	Embroidered goods.
Ambassador Laces Embroidery Co. (UTWA)	Fairview, NJ	12/6/85	11/23/85	TA-W-16,770	Embroidered goods.
Ambassador Laces Emb. Co., Inc. (UTWA)	Union City, NJ	12/6/85	11/26/85	TA-W-16,771	Embroidered goods.
American Fabrics Co., Inc. (The) (UTWA)	Cliffside Park, NJ	12/6/85	11/23/85	TA-W-16,772	Embroidered goods.
American Thread & Scallop Cutting Co. (UTWA)	West New York, NJ	12/6/85	11/26/85	TA-W-16,773	Embroidered goods.
American Swiss Embroidery Co. (UTWA)	West New York, NJ	12/6/85	11/23/85	TA-W-16,774	Embroidered goods.
Am-Len Corp. (UTWA)	Guttenberg, NJ	12/6/85	11/23/85	TA-W-16,775	Embroidered goods.
Ann Del Embroidery Corp. (UTWA)	Cliffside Park, NJ	12/6/85	11/23/85	TA-W-16,776	Embroidered goods.
Ansonia Cutters, Inc. (UTWA)	Guttenberg, NJ	12/6/85	11/26/85	TA-W-16,777	Embroidered goods.
Arco Embroidery Inc. (UTWA)	Fairview, NJ	12/6/85	11/23/85	TA-W-16,778	Embroidered goods.
Ansta Embroidery Co. (UTWA)	North Bergen, NJ	12/6/85	11/23/85	TA-W-16,779	Embroidered goods.
Aristocrat Embroidery (UTWA)	Guttenberg, NJ	12/6/85	11/23/85	TA-W-16,780	Embroidered goods.
Art Embroidery Corp (UTWA) (5 factiones)	West New York, NJ	12/6/85	11/23/85	TA-W-16,781	Embroidered goods.
Artiste Laces (UTWA)	Guttenberg, NJ	12/6/85	11/23/85	TA-W-16,782	Embroidered goods.
Atlas Embroidery Work, Inc. (UTWA)	West New York, NJ	12/6/85	11/23/85	TA-W-16,783	Embroidered goods.
August Embroideries Inc. (UTWA)	Fairview, NJ	12/6/85	11/23/85	TA-W-16,784	Embroidered goods.
AZTEC Embroidery Co. (UTWA)	Fairview, NJ	12/6/85	11/23/85	TA-W-16,785	Embroidered goods.
B & D Embroidery Corp. (UTWA)	West New York, NJ	12/6/85	11/23/85	TA-W-16,786	Embroidered goods.
B.J. Noveltes (UTWA)	North Bergen, NJ	12/6/85	11/23/85	TA-W-16,787	Embroidered goods.
Barbara Embroidery Co. (UTWA)	North Bergen, NJ	12/6/85	11/23/85	TA-W-16,788	Embroidered goods.
Barila Embroidery Co. (UTWA)	Fairview, NJ	12/6/85	11/23/85	TA-W-16,789	Embroidered goods.
Beau Emblem Corp. (UTWA)	North Bergen, NJ (2 factiones)	12/6/85	11/23/85	TA-W-16,790	Embroidered goods.
Beleve Thread & Scallop Cutting (UTWA)	Guttenberg, NJ	12/6/85	11/26/85	TA-W-16,791	Embroidered goods.
Berger Brothers Embroidery (UTWA)	West New York, NJ	11/6/85	12/23/85	TA-W-16,792	Embroidered goods.
Borden Thread & Scallop Cutting Corp. (UTWA)	West New York, NJ	12/6/85	11/26/85	TA-W-16,793	Embroidered goods.
Briamonte Embroidery Co. (UTWA)	Fairview, NJ	12/6/85	11/23/85	TA-W-16,794	Embroidered goods.
Broadway Thread & Scallop Cutting Inc. (UTWA)	Guttenberg, NJ	12/6/85	11/26/85	TA-W-16,795	Embroidered goods.
Brunner Bros. Embroidery Co. (UTWA)	Moonachie, NJ	12/6/85	11/23/85	TA-W-16,796	Embroidered goods.
Calta, Embroidery Co., Inc. (UTWA)	Union City, NJ	12/6/85	11/23/85	TA-W-16,797	Embroidered goods.
Castle Scallop Cutting Co., INC. (UTWA)	Fairview, NJ	12/6/85	11/26/85	TA-W-16,798	Embroidered goods.
Calway Corp. (UTWA)	Union City, NJ	12/6/85	11/23/85	TA-W-16,799	Embroidered goods.
Century Embroidery Co. (UTWA)	West New York, NJ	12/6/85	11/23/85	TA-W-16,800	Embroidered goods.
Charles Grunwerg & Sons (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,801	Embroidered goods.
Cliffside Thread & Scallop (UTWA)	Fairview, NJ	12/6/85	11/26/85	TA-W-16,802	Embroidered goods.
Colby Embroidery Co. (UTWA)	West New York, NJ	12/6/85	11/23/85	TA-W-16,803	Embroidered goods.
Columbia Embroidery Works, Inc. (UTWA)	Union City, NJ	12/6/85	11/23/85	TA-W-16,804	Embroidered goods.
Complete Thread and Scallop (UTWA)	Fairview, NJ	12/6/85	11/26/85	TA-W-16,805	Embroidered goods.
Culver Textile Corp. (UTWA)	West New York, NJ	12/6/85	11/26/85	TA-W-16,806	Embroidered goods.
D. Haemmerle & Sons Inc. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,807	Embroidered goods.
D.F.S. Embroidery Corp. (UTWA)	Guttenberg, NJ	12/6/85	11/23/85	TA-W-16,808	Embroidered goods.
Dako Lace Corp. (UTWA)	Guttenberg, NJ	12/6/85	11/23/85	TA-W-16,809	Embroidered goods.
Danelle Embroidery Corp. (UTWA)	Jersey City, NJ	12/6/85	11/23/85	TA-W-16,810	Embroidered goods.
De Martin Embroidery Co. (UTWA)	West New York, NJ	12/6/85	11/23/85	TA-W-16,811	Embroidered goods.
Diament Embroidery Co. (UTWA)	West New York, NJ	12/6/85	11/23/85	TA-W-16,812	Embroidered goods.
Distinctive Embroidery Co. (UTWA)	Guttenberg, NJ	12/6/85	11/23/85	TA-W-16,813	Embroidered goods.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Doerig Embroidery Co. (UTWA)	Fairview, NJ	12/6/85	11/23/85	TA-W-16,814	Embroidered goods.
Dora's Embroidery (UTWA)	Fairview, NJ	12/6/85	11/23/85	TA-W-16,815	Embroidered goods.
Don Rita Embroidery Co. (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,816	Embroidered goods.
Eastern Thread & Scallop Co., Inc. (UTWA)	North Bergen, NJ	12/6/85	11/25/85	TA-W-16,817	Embroidered goods.
Embassy Embroidery Corp. (UTWA)	North Bergen, NJ	12/6/85	11/25/85	TA-W-16,818	Embroidered goods.
Empact Div. of Artistic Ident. Systems (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,819	Embroidered goods.
Empact II Div. of Artistic Ident. Systems (UTWA)	Union City, NJ	12/6/85	11/25/85	TA-W-16,820	Embroidered goods.
Ess-Ell Embroidery Corp. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,821	Embroidered goods.
Eureka Cutting Service (UTWA)	North Bergen, NJ	12/6/85	11/26/85	TA-W-16,822	Embroidered goods.
Everready Embroidery Inc. (UTWA)	Jersey City, NJ	12/6/85	11/5/85	TA-W-16,823	Embroidered goods.
Excellent Thread & Scallop Cutting Corp. (UTWA)	Cliffside Park, NJ	12/6/85	11/26/85	TA-W-16,824	Embroidered goods.
Exclusive Embroidery Frame Work Co., Inc. (UTWA)	Union City, NJ	12/6/85	11/25/85	TA-W-16,825	Embroidered goods.
Eyelet Embroidery (UTWA)	Edgewater, NJ	12/6/85	11/25/85	TA-W-16,826	Embroidered goods.
Famex Embroidery (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,827	Embroidered goods.
Ferguson Embroidery Co. (UTWA)	Union City, NJ	12/6/85	11/25/85	TA-W-16,828	Embroidered goods.
Flair Embroidery (UTWA)	North Bergen, NJ	12/6/85	11/25/85	TA-W-16,829	Embroidered goods.
Forest Emblem Corp. (UTWA)	North Bergen, NJ	12/6/85	11/25/85	TA-W-16,830	Embroidered goods.
Frank Gaetano Cutting Co. (UTWA)	Fairview, NJ	12/6/85	11/26/85	TA-W-16,831	Embroidered goods.
Frank-Lin Embroidery Co., INc. (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,832	Embroidered goods.
Frei & Co., Inc. (UTWA)	Union City, NJ	12/6/85	11/25/85	TA-W-16,833	Embroidered goods.
Garrett Embroidery (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,834	Embroidered goods.
Gehrig Embroideries (UTWA)	Union City, NJ	12-6-85	11-25-85	TA-W-16,835	Embroidered goods.
Gallender Embroidery, Co. (UTWA)	Union City NJ	12-6-85	11-25-85	TA-W-16,836	Embroidered goods.
Geoffrey Embroidery, Corp. (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,837	Embroidered goods.
Gene Emb. Workers, Inc. (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,838	Embroidered goods.
Gold Star Emb. Corp. (UTWA)	West New York, NJ	12-6-85	11-25-85	TA-W-16,839	Embroidered goods.
Gonyou Embroidery (UTWA)	Union City, NJ	12-6-85	11-25-85	TA-W-16,840	Embroidered goods.
Great Lace & Emb. Co.	Fairview, NJ	12-6-85	11-25-85	TA-W-16,841	Embroidered goods.
Grove Embroidery, Co. Inc. (UTWA)	West New York, NJ	12-6-85	11-25-85	TA-W-16,842	Embroidered goods.
Guttenberg Embroidery (UTWA)	Guttenberg, NJ	12-6-85	11-25-85	TA-W-16,843	Embroidered goods.
H&G Thread & Scallop Cutting Co. Inc. (UTWA)	Fairview, NJ	12-6-85	11-26-85	TA-W-16,844	Embroidered goods.
H.M. Frank Emb. Co. (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,845	Embroidered goods.
Halle Cutting Co. (UTWA)	West New York, NJ	12-6-85	11-26-85	TA-W-16,846	Embroidered goods.
Haller Embroidery, Inc. (UTWA)	Union City NJ	12-6-85	11-25-85	TA-W-16,847	Embroidered goods.
Hamilton Embroidery, Inc. (UTWA)	Union City, NJ	12-6-85	11-25-85	TA-W-16,848	Embroidered goods.
Hampshire Embroidery, Corp. (UTWA)	West New York, NJ	12-6-85	11-25-85	TA-W-16,849	Embroidered goods.
Harry Gutschmidt & Co. (UTWA)	West New York, NJ	12-6-85	11-25-85	TA-W-16,850	Embroidered goods.
Herman Ott Emb. Corp. (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,851	Embroidered goods.
Herman Stern & Son, Corp. (UTWA)	West New York, NJ	12-6-85	11-25-85	TA-W-16,852	Embroidered goods.
Horizon Emb. (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,853	Embroidered goods.
Huber Embroidery Works (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,854	Embroidered goods.
Huff Embroidery (UTWA)	Union City, NJ	12-6-85	11-25-85	TA-W-16,855	Embroidered goods.
I&F Cutting Co. (UTWA)	West New York; NJ	12-6-85	11-26-85	TA-W-16,856	Embroidered goods.
I.S. Emb., Inc. (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,857	Embroidered goods.
Ima Embroidery, Inc. (UTWA)	Guttenberg, NJ	12-6-85	11-25-85	TA-W-16,858	Embroidered goods.
Immaculate Emb. Inc., (UTWA)	Guttenberg; NJ	12-6-85	11-25-85	TA-W-16,859	Embroidered goods.
Imperial Emb. Co., (UTWA)	Union City; NJ	12-6-85	11-25-85	TA-W-16,860	Embroidered goods.
J&H Embroidery, (UTWA)	West New York; NJ	12-6-85	11-25-85	TA-W-16,861	Embroidered goods.
J. Schwarzwald & Sons Inc. (UTWA)	West New York; NJ	12-6-85	11-25-85	TA-W-16,862	Embroidered goods.
J.C. Emb. Co. (UTWA)	Fairview; NJ	12-6-85	11-25-85	TA-W-16,863	Embroidered goods.
J.O.S. Embroidery, (UTWA)	Guttenberg; NJ	12-6-85	11-25-85	TA-W-16,864	Embroidered goods.
Jacney Emb. Inc. (UTWA)	West New York; NJ	12-6-85	11-25-85	TA-W-16,865	Embroidered goods.
Joan Emb. Co. (UTWA)	West New York; NJ	12-6-85	11-25-85	TA-W-16,866	Embroidered goods.
Jobro Lace & Emb. (UTWA)	Weehawken; NJ	12-6-85	11-25-85	TA-W-16,867	Embroidered goods.
Joel & Aronoff Inc. (UTWA)	Ridgefield, NJ	12-6-85	11-26-85	TA-W-16,868	Embroidered goods.
John Charles Emb. (UTWA)	Carlstadt; NJ	12-6-85	11-23-85	TA-W-16,869	Embroidered goods.
Jolie Embroidery Crop. (UTWA)	West New York; NJ	12-6-85	11-25-85	TA-W-16,870	Embroidered goods.
Jonic Embroidery, Corp; (UTWA)	North Bergen; NJ	12-6-85	11-25-85	TA-W-16,871	Embroidered goods.
Joseph E. Barnert Emb. Co. (UTWA)	Guttenberg; NJ	12-6-85	11-23-85	TA-W-16,872	Embroidered goods.
Joseph Rutz Emb. Corp. (UTWA)	Guttenberg; NJ	12-6-85	11-25-85	TA-W-16,873	Embroidered goods.
Joseph Shalhoub & Sons Inc. (UTWA)	West New York; NJ	12-6-85	11-25-85	TA-W-16,874	Embroidered goods.
Joseph Solar & Sons Inc. (UTWA)	West New York; NJ	12-6-85	11-26-85	TA-W-16,875	Embroidered goods.
Jubilee Emb. Corp. (UTWA)	Woodridge; NJ	12-6-85	11-25-85	TA-W-16,876	Embroidered goods.
June Embroidery Corp. (UTWA)	Union City; NJ	12-6-85	11-26-85	TA-W-16,877	Embroidered goods.
K.R. Embroidery (UTWA)	West New York ; NJ	12-6-85	11-25-85	TA-W-16,878	Embroidered goods.
Koeppel Embroidery, (UTWA)	West New York; NJ	12-6-85	11-25-85	TA-W-16,879	Embroidered goods.
L&R Emb. Co. Inc. (UTWA)	West New York; NJ	12-6-85	11-25-85	TA-W-16,880	Embroidered goods.
Lace & Other Things Inc. (UTWA)	Union City; NJ	12-6-85	11-25-85	TA-W-16,881	Embroidered goods.
Lanor Emb. Co. (UTWA)	North Bergen; NJ	12-6-85	11-25-85	TA-W-16,882	Embroidered goods.
Laurie Lace Corp. (UTWA)	West New York, NJ	12-6-85	11-25-85	TA-W-16,883	Embroidered goods.
Linmark Schiffli Emb.'s (UTWA)	Edgewater, NJ	12-6-85	11-25-85	TA-W-16,884	Embroidered goods.
London Yarn (UTWA)	West New York, NJ	12-6-85	11-26-85	TA-W-16,885	Embroidered goods.
Lorina Emb. (UTWA)	Guttenberg, NJ	12-6-85	11-23-85	TA-W-16,886	Embroidered goods.
Louis Felsen, Inc. (UTWA)	West New York, NJ	12-6-85	11-25-85	TA-W-16,887	Embroidered goods.
Lucky Novelty Corp. (UTWA)	West New York, NJ	12-6-85	11-23-85	TA-W-16,888	Embroidered goods.
Lucky Schiffli Fashions Inc. (UTWA)	West New York, NJ	12-6-85	11-25-85	TA-W-16,889	Embroidered goods.
M&J Emb. Co. Inc. (UTWA)	West New York, NJ	12-6-85	11-25-85	TA-W-16,890	Embroidered goods.
M&V Embroidery (UTWA)	Union City, NJ	12-6-85	11-25-85	TA-W-16,891	Embroidered goods.
Mahadeen Bros., Inc. (UTWA)	Jersey City, NJ	12-6-85	11-25-85	TA-W-16,892	Embroidered goods.
Majestic Emb. Co. (UTWA)	West New York, NJ	12-6-85	11-25-85	TA-W-16,893	Embroidered goods.
Mano DeLuca Emb. (UTWA)	Union City, NJ	12-6-85	11-23-85	TA-W-16,894	Embroidered goods.
Mark Emb. Co. (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,895	Embroidered goods.
Mark Roberts Emb. (UTWA)	North Bergen, NJ	12-6-85	11-25-85	TA-W-16,896	Embroidered goods.
Marlene Embroidery Inc. (UTWA)	West New York, NJ	12-6-85	11-25-85	TA-W-16,897	Embroidered goods.
Matthew Embroidery Corp. (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,898	Embroidered goods.
Maunce Ludmer & Co. Inc. (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,899	Embroidered goods.
Metropolitan Emb. Co. (UTWA)	North Bergen, NJ	12-6-85	11-25-85	TA-W-16,900	Embroidered goods.
Milaine Embroidery Co. (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,901	Embroidered goods.
Modern Thread & Scallop & Lace Cutting Co. (UTWA)	West New York, NJ	12-6-85	11-26-85	TA-W-16,902	Embroidered goods.
Mohawk Emb. Inc. (UTWA)	Fairview, NJ	12-6-85	11-25-85	TA-W-16,903	Embroidered goods.
Morris Dolkart Emb. Co. (UTWA)	Fairview, NJ	12-6-85	11-23-85	TA-W-16,904	Embroidered goods.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Naglieri Emb. Corp. (UTWA)	North Bergen, NJ	12/6/85	11/25/85	TA-W-16,905	Embroidered goods.
National Embroidery Co. (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,906	Embroidered goods.
Navajo Embroidery Corp. (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,907	Embroidered goods.
Nat Embroidery Corp. (UTWA)	Cliffside Park, NJ	12/6/85	11/25/85	TA-W-16,908	Embroidered goods.
Nu Art Cutting Co. (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,909	Embroidered goods.
P&A Embroidery Co. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,910	Embroidered goods.
Paris Schiffli Fashions Corp. (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,911	Embroidered goods.
Paula Embroidery Co. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,912	Embroidered goods.
Philette Embroidery Corp. (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,913	Embroidered goods.
Prince Fairview Embroideries (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,914	Embroidered goods.
R&P Embroidery Co., Inc. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,915	Embroidered goods.
Rayo Embroidery Corp. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,916	Embroidered goods.
Ranaudo Embroidery Co., Inc. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,917	Embroidered goods.
Ro-Nat Embroidery Corp. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,918	Embroidered goods.
Rose Ann Embroidery Corp. (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,919	Embroidered goods.
Royal Thread & Scallop Cutting Co., Inc. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,920	Embroidered goods.
Riviera Embroidery Corp. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,921	Embroidered goods.
Rob E. Embroidery Corp. (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,922	Embroidered goods.
Robert Koch Inc. (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,923	Embroidered goods.
Robinson Anton Textile (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,924	Embroidered goods.
Roblyn Embroidery, Inc. (UTWA)	Cliffside Park, NJ	12/6/85	11/25/85	TA-W-16,925	Embroidered goods.
S.G. Embroidery Corp. (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,926	Embroidered goods.
S. Zinick Inc. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,927	Embroidered goods.
Schiffli Arts Corp. (UTWA)	North Bergen, NJ	12/6/85	11/25/85	TA-W-16,928	Embroidered goods.
Sequins International Corp. (UTWA)	Englewood, NJ	12/6/85	11/25/85	TA-W-16,929	Embroidered goods.
Sheffield Emb. Corp. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,930	Embroidered goods.
Silver Star Co. (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,931	Embroidered goods.
Simeron Textile, Inc. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,932	Embroidered goods.
Skill Craft Cutting Co. (UTWA)	North Bergen, NJ	12/6/85	11/25/85	TA-W-16,933	Embroidered goods.
Stein-Tobler Emb. (UTWA)	Union City, NJ	12/6/85	11/25/85	TA-W-16,934	Embroidered goods.
Stitch-O-Matic Inc. (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,935	Embroidered goods.
Stucki Embroidery Inc. (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,936	Embroidered goods.
Superior Thread & Scallop Cutting Co., Inc. (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,937	Embroidered goods.
Supreme Emb. (UTWA)	North Bergen, NJ	12/6/85	11/25/85	TA-W-16,938	Embroidered goods.
Swisscraft Novelty., Inc. (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,939	Embroidered goods.
Swissloom Emb. Works (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,940	Embroidered goods.
T&R Embroidery Corp. (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,941	Embroidered goods.
Treadway Embroidery Inc. (UTWA)	Fort Lee, NJ	12/6/85	11/25/85	TA-W-16,942	Embroidered goods.
Tiger Emb. Works, Inc. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,943	Embroidered goods.
Tom & Cris Emb. Inc. (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,944	Embroidered goods.
Tonly Emb. Inc. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,945	Embroidered goods.
Top Stitch Emb. Corp. (UTWA)	Cliffside Park, NJ	12/6/85	11/25/85	TA-W-16,946	Embroidered goods.
Union City Emb. Co., Inc. (UTWA)	North Bergen, NJ	12/6/85	11/25/85	TA-W-16,947	Embroidered goods.
United Embroidery Inc. (UTWA)	North Bergen, NJ	12/6/85	11/25/85	TA-W-16,948	Embroidered goods.
United Embroidery Inc. (UTWA) (Cutting Div.)	North Bergen, NJ	12/6/85	11/25/85	TA-W-16,949	Embroidered goods.
United States Schiffli Corp. (UTWA)	Fairview, NJ	12/6/85	11/25/85	TA-W-16,950	Embroidered goods.
V&J Embroidery Corp. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,951	Embroidered goods.
Valor Company (UTWA)	Guttenberg, NJ	12/6/85	11/26/85	TA-W-16,952	Embroidered goods.
Vincent Emb. Co., Inc. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,953	Embroidered goods.
Vogue Cutting (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,954	Embroidered goods.
Voltex Schiffli Corp. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,955	Embroidered goods.
W.R. Cutting Works (UTWA)	Union City, NJ	12/6/85	11/26/85	TA-W-16,956	Embroidered goods.
Walker Eight Corp. T/A Universal Thread & Scallop Cutting (UTWA).	North Bergen, NJ	12/6/85	11/26/85	TA-W-16,957	Embroidered goods.
Wartsky Embroidery Co. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,958	Embroidered goods.
Washington Embroidery Co. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,959	Embroidered goods.
Windsor Coverlet Co. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,960	Embroidered goods.
Zandonella Bros., Inc. (UTWA)	Guttenberg, NJ	12/6/85	11/25/85	TA-W-16,961	Embroidered goods.
Zembrow Embroidery Co. (UTWA)	West New York, NJ	12/6/85	11/25/85	TA-W-16,962	Embroidered goods.

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[TA-W-16,003]

Wilson-Jones Co., Elizabeth, NJ; Revised Determination

On its own motion, the Department reopened an investigation on the basis of additional information provided by counsel and the company on behalf of former workers at Wilson-Jones Company, Elizabeth, New Jersey. The Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance was published in the **Federal Register** on September 18, 1985 (50 FR 37921).

According to the additional information, the worker group producing expanding wallets, envelopes and files—commonly referred to as "Cooke & Cobb" items—is separately identifiable. These workers were laid off on March 31, 1985 when production ceased. The "Cooke & Cobb" items were contracted to another firm and produced at a plant in Nogales, Mexico. The contract provides for specific controls—review, inspection and audit—by Wilson-Jones on the articles produced in Mexico. Further, raw materials are supplied by Wilson-Jones to the Mexican plant and all the finished articles are imported by Wilson-Jones. In April, 1985 the first shipment of Cooke & Cobb items was imported from Mexico where Wilson-Jones marketed the articles for final sale to its customers.

Conclusion

After careful review of the facts obtained on reopening the investigation, it is concluded that increased imports of articles like or directly competitive with expanding wallets, envelopes and files produced at the Wilson-Jones Company of Elizabeth, New Jersey contributed importantly to the decline in production and to the total or partial separation of former workers at Wilson-Jones Company, Elizabeth, New Jersey. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of the Elizabeth, New Jersey plant of Wilson-Jones Company who were

engaged in employment related to the production of expanding wallets, envelopes and files who became totally or partially separated from employment on or after February 1, 1985 and before May 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of December 1985.

Robert A. Schaerfl,

Director, Office of Program Management, UIS

[FR Doc. 85-30824 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification; Utah International, Inc., et al.

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101(c) of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor may modify the application of a mandatory safety standard to a mine if the Secretary determines either or both of the following: That an alternate method exists at the petitioner's mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard to the petitioner's mine will result in a diminution of safety to the affected miners.

Summaries of petitions received by the Secretary appear periodically in the **Federal Register.** Final decisions on these petitions are based upon the petititoner's statement, comments and information submitted by interested persons and a field investigation of the conditions at the petitioner's mine. The Secretary has granted or partially granted the requests for modification submitted by the petitioners listed below. In some instances the decisions are conditioned upon the petitioner's compliance with stipulations stated in the decision.

FOR FURTHER INFORMATION CONTACT: The petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: December 17, 1985.

Patricia W. Silvey,

Director Office of Standards, Regulations and Variances.

AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION

Docket No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M-81-65-M	47 FR 2427	Utah International, Inc.	30 CFR 56.9300	Petitioner's proposal to fence the area surrounding the pond and restrict access to the embankment and dike roadways by means of a locked gate with specific conditions as outlined in the petition considered acceptable alternate method. Granted with conditions.
M-83-22-M	48 FR 48878	Lemaster Construction Co.	30 CFR 57.4053	Petitioner's proposal to use propane gas underground as the source of power for portable light plants installed on pickup trucks considered acceptable alternate method. Granted with conditions.
M-83-40-M	49 FR 15157	Consolidated Mines, Inc.	30 CFR 57.4043	Use of a sprinkler-type fire suppression device in the hoist building and installation of a fire hydrant and suitable fire hoses considered acceptable alternate method. Granted with conditions.
M-84-29-M	50 FR 7149	Texasgulf, Inc.	30 CFR 55.9022	Use of a berms or guards on the elevated roadways of the mine's dikes would result in a diminution of safety Granted with conditions.
M-85-4-M	50 FR 27074	Texasgulf Chemicals Co.	30 CFR 57.21046	Petitioner's proposal to make crosscuts at intervals not in excess of 250 ft between entries and between rooms considered acceptable alternate method. Granted with conditions.
M-84-49-C	49 FR 13767	Sewell Coal Co	30 CFR 75.1103-4(a)	Installation of an early-warning fire detection system using low-level carbon monoxide monitoring devices in all belt entries used as intake aircourses considered acceptable alternate method. Granted with conditions.
M-8-84-97-C	49 FR 22577	Olga Coal Co	30 CFR 75.305	Petitioner's proposal to establish an air measurement station where the quantity, quality, and the direction of the air current will be measured by a certified person on a daily basis considered acceptable alternate method. Granted with conditions.
M-84-104-C	49 FR 21130	Bartley & Bartley Coal Co.	30 CFR 75.1710	Use of cabs or canopies in specified low mining heights would result in a dimunition of safety Granted in part.
M-84-172-C	49 FR 31178	Keystone Coal Mining Corp.	30 CFR 73.326	Use of belt air to ventilate the working faces and installation of low-level carbon monoxide devices in belt entries used as intake air courses considered acceptable alternate method. Granted with conditions.
M-84-173-C	49 FR 31179	Kitt Energy Corp.	30 CFR 75.326	Use of belt air to ventilate the working faces and installation of low-level carbon monoxide devices in belt entries used as intake air courses considered acceptable alternate method. Granted with conditions.
M-84-198-C	49 FR 44332	H & T Coal Co	30 CFR 75.301	Proposed airflow reduction, which would maintain a safe and healthful atmosphere, considered acceptable alternate. Granted with conditions.
M-84-203-C	49 FR 40495	Bethlehem Mines Corp.	30 CFR 75.1700	Petitioner's proposal to plug and mine through abandoned oil and gas wells considered acceptable alternate method to leaving coal barriers around the wells. Granted with conditions.
M-84-204-C	49 FR 40497	Consol Pennsylvania Coal Co.	30 CFR 75.1103-4(a)	Installation of an early-warning fire detection system using low-level carbon monoxide monitoring devices in all belt entries used as intake air courses considered acceptable alternate method Granted with conditions.

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AFFIRMATIVE DECISIONS ON PETITIONS FOR MODIFICATION—Continued

Docket No.	FR Notice	Petitioner	Regulations affected	Summary of findings
M-84-205-C	49 FR 40497	do	30 CFR 75.326	Use of air in the belt entry to ventilate active working places and planned longwall panels considered acceptable alternate method. Granted with conditions.
M-84-208-C	50 FR 574	Omega Mining Co., Inc.	30 CFR 75.319	Petitioner's proposal that each producing section be on a separate split of intake air considered acceptable alternate method. Granted with conditions.
M-84-219-C	50 FR 572	Jim Walter Resources, Inc.	30 CFR 75.326	Petitioner's proposal to install haulage tracks in the same entries with the belts and to isolate the belt entries from other intake and return entries with the use of permanent-type stoppings considered acceptable alternate method. Granted with conditions.
M-84-220-C	49 FR 48587	Westmoreland Coal Co.	30 CFR 75.326	Use of belt air to ventilate the working faces and installation of low-level carbon monoxide devices in belt entries used as intake air courses considered acceptable alternate method. Granted with conditions.
M-84-221-C	49 FR 48587	do	30 CFR 75.1103-4(a)	Installation of an early-warning fire detection system using low-level carbon monoxide monitoring devices in all belt entries used as intake air courses considered acceptable alternate method. Granted with conditions.
M-84-222-C	49 FR 48587	do	30 CFR 75.1105	Use of air currents which are used to ventilate transformers, permanent pumps, and rectifiers to ventilate active working places and installation of a low-level carbon monoxide detection system in all belt entries used as intake air courses considered acceptable alternate method. Granted with conditions.
M-84-240-C	50 FR 574	Paramont Coal Co.	30 CFR 77.214(a)	The construction of a mine seal that will allow placement of refuse over the mine portals and prevent the contact of refuse with any exposed coal seam considered acceptable alternate method. Granted with conditions.
M-84-247-C	50 FR 7	Westmoreland Coal Co	30 CFR 77.214(a)	Petitioner's proposal to seal and backfill abandoned mine openings prior to use as refuse piles considered acceptable alternate method. Granted with conditions.
M-84-252-C	50 FR 7	Peabody Coal Co.	30 CFR 75.503	Use of a metal spring-loaded locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-85-6-C	50 FR 13891	Nowacki Coal Co.	30 CFR 75.301	Proposed airflow reduction in petitioner's mine which would maintain a safe and healthful atmosphere considered acceptable alternate method. Granted with conditions.
M-85-8-C	50 FR 13892	Pocahontas Fuel & Co.	30 CFR 75.503	Use of a metal locking device in lieu of a padlock for the purpose of locking battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines considered acceptable alternate method. Granted with conditions.
M-85-10-C	50 FR 13887	Barnes & Tucker Co.	30 CFR 75.1100-3	Petitioner's proposal to use a dry waterline with an automatic actuating valve along the slope belt during the winter months considered acceptable alternate method. Granted with conditions.

[FR Doc. 85-30825 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-158-C]

Badger Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Badger Coal Company, 145 Sago Road, Buckhannon, West Virginia 26201 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Grand Badger No. 1 Mine (I.D. No. 04819) located in Upshur County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that belt haulage air not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt haulage air to ventilate the active workings.

3. In support of this request petitioner states that:

a. An automatic fire detection system will be installed on the underground belt conveyors. Sensors will be capable of giving an early warning when a fire occurs in the belt entry. Visual and audible warning signals will be activated when the carbon monoxide concentration reaches 10 parts per million (ppm) above ambient. The fire detection system will be activated at an attended surface location where there is two-way communication. The fire detection system will be capable of identifying any activated sensor;

b. If the automatic fire detection system is de-energized, the belt conveyors will continue to function with a qualified person stationed to continuously monitor for carbon monoxide;

c. Each carbon monoxide monitor and sensor will be visually examined daily, the units will be checked weekly and the monitors will be checked monthly for operating accuracy with a known concentration of carbon monoxide gas and will be calibrated as necessary. A record of these tests will be kept and available for all interested persons; and

d. Stoppings separating the belt haulage entry from the intake escapeway will be constructed of concrete blocks, cinder blocks, brick or tile with mortared joints.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1986. Copies of the petition are available for inspection at that address.

Date: December 17, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-30826 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-160-C]

Badger Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Badger Coal Company, 145 Sago Road, Buckhannon, West Virginia 26201 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Grand Badger No. 1 Mine (I.D. No. 46-04819) located in Upshur County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight (each belt unit operated by a belt drive).

2. As an alternate method, petitioner proposes to use a fire sensor and automatic fire detection system that will be capable of identification of fire by activated sensors rather than identification of fire within each belt flight.

3. In support of this request petitioner states that:

a. An automatic fire detection system will be installed on the underground belt conveyors. Sensors will be capable of giving an early warning when a fire occurs in the belt entry. Visual and audible warning signals will be activated when the carbon monoxide concentration reaches 10 parts per million (ppm) above ambient. The fire detection system will be activated at an attended surface location where there is two-way communication. The fire detection system will be capable of identifying any activated sensor;

b. If the automatic fire detection system is de-energized, the belt conveyors will continue to function with a qualified person stationed to continuously monitor for carbon monoxide;

c. Each carbon monoxide monitor and sensor will be visually examined daily, the units will be checked weekly and the monitors will be checked monthly for operating accuracy with a known concentration of carbon monoxide gas and will be calibrated as necessary. A record of these tests will be kept and available for all interested persons; and

d. Stoppings separating the belt haulage entry from the intake escapeway will be constructed of concrete blocks, cinder blocks, brick or tile with mortared joints.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1986. Copies of the petition are available for inspection at that address.

Dated: December 17, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-30827 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-145-C]

C & B Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

C & B Coal Company, Inc., Route 1, Box 507, Norton, Virginia 24273 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Colliers Creek No. 1 Mine (I.D. No. 15-15225) located in Letcher County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs and canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of a canopy on the mine's equipment would result in a dimunition of safety for the miners affected because it could strike and dislodge roof support due to uneven roof and soft and uneven bottom. In addition, the canopy would limit the equipment operator's visibility.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1986. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: December 17, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-30828 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-161-C]

C. & W. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

C. & W. Coal Company, P.O. Box 569, Clarksburg, West Virginia 26301 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Redstone No. 8 Mine (I.D. No. 46-06241) located in Barbour County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate methods, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking device in lieu of padlocks to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines. The metal locking devices will be designed, installed and used to prevent the threaded rings securing the battery plugs to the battery receptacles

from unintentionally loosening. The fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets. The locking devices will be securely attached to the bracket to prevent accidental loss of the locking devices.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, trained in the hazards of breaking battery-plug connections under load, and trained in the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Requests for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1986. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: December 17, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-30829 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-150-C]

Florence Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Florence Mining Company, 855 Church Street, Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1101 (deluge-type water sprays) to its Florence No. 1 Mine (Black Lick Portal) (I.D. No. 36-00924), its Florence No. 1 Mine (Robinson Portal) (I.D. No. 36-00925), and its Florence No. 2 Mine (I.D. No. 36-02448) all located in Indiana County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that deluge-type water sprays, foam generators actuated by rise in temperature, or other no less effective means of controlling fire, be installed at main and secondary belt-conveyor drives.

2. Petitioner states that placing water sprinklers over or near a belt starter box would result in a diminution of safety because the equipment is unattended and could get activated inadvertently creating a risk of electrical shock or possible electrocution to the miners.

3. As an alternate method, petitioner proposes to install either a foam generator system, single line closed head sprinkler system, closed head sprinkler system, or a dry chemical/water deluge system at specific remote head, belt starter and take-up units.

4. For these reasons, petitioner requests a modification of the standard.

Requests for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1986. Copies of the petition are available for inspection at that address.

Dated: December 17, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-30830 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-22-M]

The General Crushed Stone Co.; Petition for Modification of Application of Mandatory Safety Standard

The General Crushed Stone Company, P.O. Box 231, Easton, Pennsylvania 18044-0231 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning back-up alarms) to its Rock Cut Mine (I.D. No. 30-00051) located in Onondaga County, New York. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that heavy duty mobile equipment be provided with audible warning devices or an observer to signal safe backup when the operator of the equipment has an obstructed view to the rear.

2. As an alternate method, petitioner proposes to use high intensity blue strobe lights on front end loaders in lieu of audible back-up alarms after 6:00 p.m. In addition, the truck operator will be instructed to sound the horn when backing up a haul truck.

3. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1986. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: December 17, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-30831 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-161-C]

Martin County Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Martin County Coal Corporation, HC 69, Box 640, Inez, Kentucky 41224 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its No. 1-C Mine (I.D. No. 15-03752) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight (each belt unit operated by a belt drive).

2. As an alternate method, petitioner proposes to use an automatic fire detection system which is based on carbon monoxide monitoring of the underground belt conveyors. The system would provide identification of a fire

within an area rather than in each belt flight.

3. In support of this request petitioner states that:

a. An automatic fire detection system will be installed on the underground belt conveyors. Sensors will be capable of giving an early warning when a fire occurs in the belt entry. Visual and audible warning signals will be activated when the carbon monoxide concentration reaches 10 parts per million (ppm) above ambient. The fire detection system will be activated at an attended surface location where there is two-way communication. The fire detection system will be capable of identifying any activated sensor;

b. If the automatic fire detection system is de-energized, the belt conveyors will continue to function with a qualified person stationed to continuously monitor for carbon monoxide;

c. Each carbon monoxide monitor and sensor will be visually examined daily, the units will be checked weekly and the monitors will be checked monthly for operating accuracy with a known concentration of carbon monoxide gas and will be calibrated as necessary. A record of these tests will be kept and available for all interested persons; and

d. The integrity of the primary intake escapeway will not be diminished. Permanent stoppings will continue to separate the primary intake from the belt conveyor entry.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1986. Copies of the petition are available for inspection at that address.

Dated: December 17, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-30832 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-116-C]

NotroCoal, Inc.; Petition for Modification of Application of Mandatory Safety Standard

NotroCoal, Inc., Rt. 1 Box 273, Airport Road, Elkins, West Virginia 26241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Enviro Energy No. 5 Mine (I.D. No. 46-06866) located in Randolph County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket and a metal locking device in lieu of padlocks to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines. The metal locking devices will be designed, installed and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening. The fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets. The locking devices will be securely attached to the bracket to prevent accidental loss of the locking devices.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, trained in the hazards of breaking battery-plug connections under load, and trained in the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1986. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: December 17, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-30833 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-173-C]

T. and H. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

T. and H. Coal Company, HC 82 Box 1065, Jackhorn, Kentucky 41825 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 7 Mine (I.D. No. 15-13880) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of canopies on its mining equipment would result in a diminution of safety for the miners affected because the canopy cuts or damages cables due to the height and uneven conditions of the bottom and roof, thus creating an electrical hazard to the operator. In addition, the canopies can strike and dislodge roof support, impair the operator's visibility, and create a cramped and uncomfortable seating position for the operator.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1986. Copies of the petition are available for inspection at that address.

Dated: December 17, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-30834 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-178-C]

Trophy Coal Sales; Petition for Modification of Application of Mandatory Safety Standard

Trophy Coal Sales, HC 31 Box 485, Belcher, Kentucky 41513 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-11218) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 1 Mine is in the No. 2 Elkhorn Seam ranging from 42 to 52 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that use of a canopy on the mine's equipment would result in a diminution of safety for the miners affected because the canopy will restrict the operator's visibility, increasing the chances of an accident. In addition the canopies could strike and destroy roof support and over hanging cables.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this amendment to the petition for modification may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1986. Copies of the amendment and the original petition for modification are available for inspection at that address.

Dated: December 17, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-30835 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

[Application Nos. D-4952 et al.]

Proposed Exemptions; Roland Land Investment Co., Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Pension and Welfare Benefit Programs, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Roland Land Investment Co., Inc. Money Purchase Pension Plan and Roland Land Investment Co., Inc. Profit Sharing Plan (the Plans) Located in Encino, California

[Application Nos. D-4952 and D-4953]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of second deeds of trust to the Plans by Roland Land Company (the Employer), to the guarantee by the Employer to repurchase any second deeds of trust which are in default and the repurchase by the Employer of such second deeds of trust, provided that the terms of the transactions are not less favorable to the Plans than those obtainable in an arm's length transaction with an unrelated person.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire 5 years after the date of grant. Should the Employer wish to continue to sell second deeds of trust to the Plans beyond the 5 year period, the Employer may submit another application for exemption. Repurchase of second deeds of trust by the Employer may take place after the 5 year period provided the second deeds of trust were purchased by the Plans during the 5 year period.

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Summary of Facts and Representations

1. The Plans are a money purchase pension and a profit sharing plan with each plan having 22 participants as of May 31, 1983. The Plans are administered by an administrative committee comprised of Anton G. Roland, Philips S. Vardi, Emanuel Robins and Susan B. Roland (Administrative Committee). The Plan's trustee is the Ahmanson Trust Company of Los Angeles, California (Trustee). Investment decisions are made on behalf of the Plans by the Administrative Committee subject to the review and approval of the Trustee. The money purchase plan and the profit sharing plan had combined net assets of $4,727,448.52 as of October 31, 1984.

2. The Employer [1] is engaged in the business of buying, subdividing and reselling land in the suburban areas surrounding Los Angelas. In acquiring this land for development the Employer typically pays a part of the purchase price in cash and gives a note secured by a first deed of trust on the property for the balance. The term of the note is typically from 5 to 12 years.

Once acquired, the land is subdivided and sold as raw land to the general public. A typical purchaser makes a cash down payment of between 10% and 15% of the purchase price and executes a second deed of trust. The term of the second deed of trust ranges from 10 to 12 years.

3. In order to finance its operations, the Employer has from time to time sold the second deeds of trust (Notes). Prior to the effective date of the Act, a portion of the Plan's operations. The applicant represents that on the advice of legal counsel that a clean exemption [2] issued by the Department covered the sale to the Plan of such Notes, the Plans purchased $188,887.23 worth of Notes from the Employer in September 1980 and $240,094.31 in May 1982. The applicant recognizes that the prior sales of Notes were not covered by the class exemption and therefore constituted prohibited transactions. Accordingly, the applicant represents that it will pay such amounts of excise tax as the Internal Revenue Service may find due in connection with the prior sales within 60 days of the date of grant of the final exemption.

4. The applicant requests an exemption to sell Notes to the Plans over a period of 5 years. The Notes to be offered to the Plans will be aged for a minimum of 3 years. The applicant represents that through this aging process, Notes of purchasers who are not credit worthy will be excluded from sale to the Plans. Only Notes which are current and have a good payment history will be offered to the Plans. Each Note will be secured by a second deed of trust on the property and by the guarantee of repayment by the Employer and the members of the Plans' Administrative Committee. The Employer has net worth in excess of $60 million and the members of the Administrative Committee have combined net worth exceeding $18 million.

5. The applicant proposed that no more than 25% of the Plans' assets be invested in Notes purchased from the Employer. No more than 1% of each Plans' assets however, will be invested in any one Note and the Plans will not purchase more than one Note made by the same individual. The Plans will not purchase any Note where the loan to value ratio (considering both first and second deeds of trust) exceeds 80%. The Plans will not purchase any Notes which are made to parties in interest. The applicant represents that the Notes sold to the Plans will typically be discounted between 50 and 60%. The discount rate however, is subject to change by the independent fiduciary appointed by the Plans (see representation #7). The property securing the Notes will be appraised prior to the purchase and will be kept fully insured. The Employer has guaranteed that it will repurchase any Note sold to the Plans that is in default in excess of 30 days, at the higher of the Plans' cost or the current fair market value of the Notes. The Notes will be serviced by the Employer at no charge to the Plans.

6. The properties which will secure the Notes are located in the area of Southern California known as the Antelope Valley. The Antelope Valley, which covers approximately 2,500 square miles, occupies large portions of Los Angeles and Kern Counties.

7. The Plans have appointed Mr. Gerald Cogan (Mr. Cogan), president of Liden, Cogan & Associates of Los Angeles, California, to serve as independent fiduciary with respect to the proposed transactions. Mr. Cogan represents that his firm provides design, administration and consulting services to over 800 qualified plans and as a result of this experience is fully aware of his duties, responsibilities and potential liabilities associated with serving as an independent fiduciary. Mr. Cogan represents that his firm has not provided any services to the Employer or the Plans.

Mr. Cogan represents that he has reviewed samples of the Notes and deeds of trust which the Plans propose to purchase, the history of the Plans and the Employer, the current and projected cash needs of the Plans and the terms of the proposed purchases. Based upon this review and particularly upon the historic performance of similar investments by the Plans and the guarantees, Mr. Cogan has concluded that the purchases of the Notes would be appropriate and suitable for the Plans. In connection with this review, he considered the formula used to discount the Notes and determined that under present market conditions the formula is appropriate. If at any time Mr. Cogan determines that the formula has become inappropriate for any reason, he has the power to and will change the formula to effect an appropriate result.

Prior to the purchase of any Notes by the Plans, Mr. Cogan will review the payment histories of the Notes offered for purchase to the Plans, and will make the final determination on behalf of the Plans to accept or reject each of the Notes offered. In arriving at this conclusion, he will review the Plans' overall investment portfolio, the cash flow needs of the Plans, the necessity for the sale of any of the Plans' assets and the diversification of the Plans' assets both before and after each purchase.

In reviewing the individual Notes offered for purchase, Mr. Cogan will use the following criteria:

a. The Notes accepted by the Plans will be at least three years old and have an established record of timely payments.

b. Each Note will be secured by a second deed of trust on real estate.

c. To the extent possible, the security for the Notes will be geographically disbursed throughout the Antelope Valley.

d. The Notes will be guaranteed by the Employer and members of the Administrative Committee.

In addition, Mr. Cogan represents that he will enforce the terms of the guarantee agreement between the Plans and the Employer and the members of the Administrative Committee.

8. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

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[1] The applicant represents that the Employer is currently organized and operated through a number of corporations including Roland Land Investment Co., Inc., Roland Land Company, Roland Heights Development and California Resources Enterprises, Inc.

[2] See PTE 79-6, Customer Notes Class Exemption, 44 FR 17819, March 23, 1979.

(a) No more than 1% of the Plans' assets will be invested in any one Note nor will more than 25% of the Plans' assets be invested in Notes;

(b) The Employer has guaranteed to repurchase any Note which is in default in excess of 30 days;

(c) The exemption is temporary expiring 5 years from the date of grant; and

(d) Mr. Cogan will make an independent decision whether or not the Plans should purchase any Note and the appropriate discount rate for each Note purchased.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

UPS Company Defined Benefit Pension Plan and Trust (the Plan) Located in Torrance, California

[Application No. D–5413]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 405(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 cf the Code, by reason of sections 4975(c) (A) through (E) of the Code shall not apply to (1) the periodic purchases by the Plan of undivided interests in a parcel of property (the Property) located in Malibu, California from Mr. Hiram C. Sloan (Mr. Sloan), provided the Plan pays no more for such interests in the Property than their fair market value on the date of the purchase; and (2) the leasing of the Plan's interest in the Property by the Plan to Mr. Sloan, UPS Company (the Employer) or Malibu Paradigm (MP), under the terms set forth in this notice of proposed exemption, provided such terms are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with one participant, Mr. Sloan. Mr. Sloan, who is the president and treasurer of the Employer, is also the trustee of the Plan. As of October 7, 1985, the Plan had total assets of approximately $302,000. The Employer is a non-profit corporation and therefore has no shareholders.

2. The Property consists of an 11.6 acre parcel of land located at 4004 Decker Road, Malibu, California. The Property is currently owned by Mr. Sloan. Mr. Sloan wishes to sell undivided interests in the Property to the Plan on a periodic basis such that the fair market value of the Plan's interest in the Property will never exceed 25% of the assets of the Plan.

3. Mr. M.E. Morton (Mr. Morton) of Red Carpet Real Estate, Malibu, California, and independent real estate broker, has appraised the Property as having a fair market value of $140,000 as of October 4, 1985. The Plan's initial purchase is to be for 25% of its current assets or $75,500, which represents approximately a 54% interest in the Property. The Plan's interest in the Property will be recorded with the Los Angeles County Recorder, as will any subsequent interests purchased by the Plan from Mr. Sloan.

4. Mr. Sloan also proposes that the Plan will lease its interest in the Property. The lease will be a triple net lease for a five year duration, with a month-to-month extension thereafter at the option of both parties. Mr. Sloan intends to build a house on the Property which will be used as a residence. The Property may be leased to Mr. Sloan, the Employer, or MP, which is a California corporation in which Mr Sloan is the majority shareholder. The lease will not provide for reversion of title in the house to the Plan at the end of the term of the lease.

5. Mr. Morton has appraised the Property as having a fair market rental value of $14,000 per year as of October 4, 1985. Thus, the initial annual rental for the Plan's interest in the Property will be $7,550. The proposed lease provides that on the last day of each calendar year during the term of the lease, the annual rental will be adjusted by a percentage equal to the percentage increase from the base period of the Department's Consumer Price Index. The Index published for the calendar year in which the Property is initially leased shall be the base period. The annual rental for the Plan's interest in the Property will not fall below $7,550. At the end of the five year period, the rental will be the fair market rental value for the Property. Mr. Sloan will then obtain an independent appraisal not less than once a year to determine the rent.

6. Before the Plan makes any subsequent purchases of interests in the Property which will be leased to Mr. Sloan, the Employer, or MP, Mr. Sloan will obtain appraisals of the fair market value and fair market rental value of such interests if the most recent appraisal is more than one year old. The appraisals will be performed by a qualified, independent appraiser. The Plan will pay no more than the fair market value of such interests and receive no less in rent than the fair market rental value of such interest. The fair market value of the Plan's interest in the Property will never exceed 25% of the assets in the Plan.

7. In the event that the Employer subsequently hires any employees who become eligible to participate in the Plan, the Employer will establish a separate but identical plan for such employees, so that Mr. Sloan is the only participant who will ever be affected by the subject transactions.

8. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (1) The transactions will involve no more than 25% of the Plan's assets at all times; (2) the fair market value of the Property and the annual rental to be paid to the Plan for its interest in the Property have both been determined by a qualified, independent real estate broker; and (3) Mr. Sloan is the only participant in the Plan to be affected by the transactions, and he desires that the transactions be consummated.

Notice to Interested Persons: Since Mr. Sloan is the only participant in the Plan to be affected by the proposed transactions, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

H & E Electric Supply Company Employees Retirement Plan and Trust (the Plan) Located in Carlsbad, New Mexico

[Application No. D–5462]

Proposed exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the leasing of certain real property by the Plan to H&E Electric Supply Company (the Employer), provided that the terms and conditions of the leasing

are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: If the proposed exemption is granted, it will be effective on April 2, 1985.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with 34 participants. The Plan had total assets of $677,726 as of April 30, 1983. The trustees of the Plan are George E. Hartwell, Sr., George E. Hartwell, Jr., and Elizabeth L. Hartwell (the Hartwells). The Hartwells are employees, shareholders, officers and directors of the Employer. The Employer is a New Mexico corporation organized primarily to wholesale electric supplies and apparatus and was incorporated on May 1, 1956.

2. The Plan owns certain real property and a building located at 113 N. Main Street in Carlsbad, New Mexico (the Property). The Property represents 14 percent of the total assets of the Plan. The Plan constructed the building located on the Property in 1969, and leases it to the Employer pursuant to a lease agreement (the Lease) dated January 28, 1969. The Lease was renewed by the Employer on December 15, 1979.[1]

3. The Plan and the Employer have executed a new lease which was effective on July 1, 1984 (the New Lease). The New Lease is for a 20-year period expiring June 30, 2004. The New Lease is a triple-net lease which provides for a rental adjustment every five years to reflect the then current fair market rental value of the Property as determined by an independent appraiser. At no time however, will the rental amount be lower than the initial rent.

4. Under the terms of the New Lease, the Employer will pay all expenses relating to the Property including maintenance, utilities, repair, taxes, insurance and common area expenses. The Employer will indemnify the Plan for any loss due to Employer's use of the Property. The New Lease provides that any expansion, improvements or renovations are to be made only by the Employer at the Employer's expense with any improvements belonging to the Plan at the termination of the Lease. In the event of default by the Employer in payment of the rentals, the New Lease provides that the Plan, at its discretion, could either sell the Property to a third party or relet it to another tenant.

5. The initial annual rental rate for the New Lease was determined by an independent appraiser, R.N. Robinson, of R.N. Robinson Enterprises (the Appraiser) located in Hobbs, New Mexico. The annual rent for the first year of the New Lease is $14,400 which reflects the fair rental value of the Property as determined on May 17, 1984 by the Appraiser.

6. The Western Commerce Bank (the Bank) has been appointed as the Independent fiduciary for the New Lease and has been given exclusive authority to manage and control the Property. The Bank formally accepted its appointment on April 2, 1985. The application represents that although the Bank formally accepted its appointment as independent fiduciary on April 2, 1985, the Bank, as a fiduciary engaged in specified actions with respect to the New Lease beginning April 10, 1984. Notwithstanding the above and the fact that the Bank had an appraisal of the Property as of May 17, 1984, the Plan did not receive the fair market rent reflected by the appraisal until April 2, 1985. Accordingly, the Department has determined that the exemption be effective April 2, 1985.[2] The Bank represents that it has no relationship to the Employer, the Hartwells and the Plan except that they are depositors of the Bank. The total deposits for the Hartwells, the Employer and the Plan equal less that 1% of the Bank's deposit base.

7. The Bank represent that it has reviewed all of the terms of the New Lease and has determined that the New Lease would be in the Plan's best interest. The Bank further represents that it will determine the rental adjustments at the end of each five year periods under the terms of the New Lease and will obtain the necessary appraisal by an independent appraiser or determine the amount of the adjustment. In addition, the Bank will also collect all the rental payments on behalf of the Plan and have exclusive authority to insure compliance with the terms and conditions of the New Lease. The Bank represents that when it accepted its appointment as independent fiduciary on April 2, 1985, it collected $12,500 from the Employer. This amount represented all rent due, plus interest, from the effective date of the New Lease.

8. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) the Bank has reviewed the New Lease and has determined that it is in the Plan's best interest;

(b) the fair market rental value of the Property has been determined and will continue to be determined by an independent appraiser, and

(c) the Bank will have exclusive authority to monitor the New Lease and to insure compliance with its terms and conditions.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Security Pacific National Bank (the Bank) Located in Los Angeles, CA

[Application No. D-5942]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to: (1) effective June 1, 1979, the provision by the Bank of a line of credit (the Loan) to Desert Horizons, Inc. (DH), a wholly-owned subsidiary of the Alaska Teamsters-Employer Pension Plan (the Plan); (2) effective June 1, 1979, the guarantee (the Guarantee) of the Loan by the Plan; and (3) effective October 1, 1981, the purchase by the Bank in October, 1981, of a Class C membership (the Membership) in the Desert Horizons Country Club (DHCC), a wholly-owned subsidiary of DH.

Effective Date: If granted, the effective date of this exemption will be June 1, 1979 with respect to the Loan and the Guarantee, and October 1, 1981 with respect to the purchase of the Membership.

Summary of Facts and Representations

1. The Bank is a large national bank, based in Los Angeles, which is regulated by state and federal banking authorities.

2. The Plan is a multiemployer, collectively bargained plan, established and managed under section 302(a) of the Labor Management Relations Act of 1947 which had approximately 15,500 participants and $314,628,000 in assets as of July 31, 1983. The Plan is administered by a board of trustees (the Trustees) made up of 4 union and 4

[1] The applicant represents that the Lease was covered by the provisions of section 414 of the Act. The Department expresses no opinion as to the applicability of section 414 in this instance.

[2] The applicant represents that any excise tax which may be due as a result of the New Lease will be paid within 60 days of the granting of a final exemption.

employer trustees. The applicant represents that neither the Bank nor any of its affiliates is a contributing employer under the Plan.

3. Beginning in the mid-1970's, increasing constraints on the investment of Plan assets in the State of Alaska led the Trustees to consider diversifying plan investments in other parts of the country, principally California. The Trustees had considerable experience in real estate development in Alaska and sought to apply that experience in California. After study, they concluded that a development located in Indian Wells, California, comprised of a golf course, club house, fairway lots and residential units would be an attractive investment opportunity for the Plan. The Trustees organized DH as a California corporation. Several Trustees serve as the officers of DH.

The Bank's involvement with DH began in January of 1978 when DH opened a checking account at a branch office of the Bank. The average balances in the account have ranged as high as $300,000 and are currently in the range of $100,000.

In January of 1979 the Bank agreed to provide DH with the Loan of up to $22,009,000 to finance its ongoing operations. The Loan is evidenced by a revolving credit agreeement dated as of June 1, 1979, is guaranteed by the Plan, and the Guarantee is secured by assignments of deeds of trust (the Mortgages) on Alaska real estate and money market instruments (the Securities, collectively, the Collateral) pledged to the Bank and held for the Bank by Merrill Lynch Pierce Fenner and Smith. The Loan provided for interest on the outstanding balance at a fluctuating rate equal to 2% above the Bank's prime rate in effect from time to time. The Loan has been amended on five occasions increasing the maximum outstanding loan balance to $32,000,000 and reducing the interest rate to a fluctuating rate equal to ½% above the Bank's prime lending rate. The Collateral securing the Guarantee has also been increased, from a value of $44,000,000 to a value of $65,000,000.

4. In October, 1981, the Bank purchased the Membership for the benefit of its Palm Desert Branch Manager, Richard Landorf, for $10,000, which the applicant represents was the introductory price for the first 10 such memberships. The membership was subsequently transferred to David Beal when Mr. Landorf was transferred from the Palm Desert Branch at a cost of $3,500.

5. The applicant represents that the terms and conditions of the Loan to DH and the Guarantee by the Plan were similar to those entered into between the Bank and unrelated third parties. Furthermore, the decision to enter into the transactions at such terms and conditions was made by the Trustees of the Plan, who are independent of the Bank.

6. The applicant further represents that the purchase of memberships in country clubs such as DHCC for Bank officers is a common practice of the Bank and are viewed as appropriate and necessary for business development.

7. In summary, the applicant represents that the transactions satisfy the criteria of section 408(a) because: (a) the decision to enter into the transactions was made by the Plan Trustees, who are independent of the Bank; and (b) the terms and conditions of the transactions were established on an arm's-length basis between the Plan and DH and the Bank.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Robert P. Padousis, D.D.S., Constantine J. Kaminaris, D.D.S., P.A. Defined Benefit Pension Plan and Trust (the Plan) Located in Baltimore, Maryland

[Application No. D-6328]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the cash sale of a certain parcel of real property (the Property) by the Plan to Robert P. Padousis, D.D.S., a party in interest with respect to the Plan, provided that the sale price of the Property is not less than the higher of either the sum of $82,000 of the fair market value on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan, which, as of September 30, 1985, consisted of six participants and had assets of approximately $413,970. It is in the process of being terminated and being replaced by a defined contribution plan. The assets of the Plan will be rolled over into individual accounts of the new plan. The sponsoring employer of the Plan is the Robert P. Padousis, D.D.S., Constantine Kaminaris, D.D.S., P.A. (the Employer), a professional association conducting a dental practice in Baltimore, Maryland. The Plan's fiduciaries are Drs. Padousis and Kaminaris.

2. During September 1983, the Plan acquired from an unrelated party a certain undeveloped parcel of land located at 1801-1803 Joppe Road and Oakleigh Road in Baltimore County, Maryland, consisting of 21,182 square feet (the Property). In acquiring the Property, the Plan paid $62,000 as the purchase price plus $3,500 in settlement costs. Since the acquisition of the Property, the Plan has expended $1,242 for property taxes, $500 for tree removal, and $128 for insurance. A special zoning exemption, which will expire in 1988, permits the construction of an office building upon the Property. The Property was originally acquired by the Plan because the fiduciaries of the Plan mistakenly thought an office building could be constructed on the Property and space in the office building leased to the Employer without violating the liquidity and diversity requirements of the Act or its prohibited transaction provisions.

3. The Property was appraised on June 4, 1985, by Bernard A. Page, Jr. M.A.I., S.R.A. of The Page Appraisal Company, Bel Air, Maryland. The appraisal company is represented as being independent and having no relationship with the Plan or its fiduciaries or any party related to the Plan. The appraisal concluded that the estimated market value of the Property, as of June 4, 1985, was $82,000.

4. Dr. Padousis, as an individual, proposes to purchase the Property from the Plan for the higher of either the cash sum of $82,000 or the fair market value on the date of the sale. The Plan will incur no costs with respect to the proposed transaction.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because (a) the proposed sale of the Property will be a one-time transaction for cash; (b) the Plan will be able to invest the proceeds from the sale in income producing assets; (c) the Plan will be able to avoid a decrease in the value of its assets before the expiration of the special zoning exemption in 1988; and (d) the Plan will receive the highest fair market price for the Property, as determined by a qualified independent appraiser.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

John H. Ten Pas, M.D. Retirement Trust (the Plan) Located in Grand Haven, Michigan

[Application No. D-6418]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale of 10.04 acres of vacant land located in Robinson Township, Michigan, from the individual segregated account of John H. Ten Pas (Ten Pas) in the Plan to Ten Pas, provided the Plan receives no less than fair market value at the time of sale. Section 408(d)(3) of the Act provides that the Department does not have the authority to grant an exemption under section 408(a) of the Act for the sale of any property of a plan to an owner-employee. Therefore, the Department cannot grant an exemption under Title I for the subject sale. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975(c)(2) of the Code.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan adopted by Ten Pas pursuant to the Old Kent Bank of Grand Haven, Michigan, Master Defined Contribution Plan. The Old Kent Bank of Grand Haven is the trustee (the Trustee) for the Plan. There are currently three participants in the Plan. As of July 31, 1985, the assets of the Plan totaled $66,996. The Plan established an individual segregated account for each participant and provides that a participant may direct the investments in his or her account.

2. The applicant represents that Ten Pas is an owner-employee (as defined in section 401(c)(3) of the Code) with respect to the Plan as well as the administrator of the Plan and a Plan participant. The assets in Ten Pas' account equaled $55,960 on July 31, 1985. In March 1979, the Trustee acquired for the account of Ten Pas 10.04 acres of vacant land situated in Robinson Township, Ottawa County, Michigan. The land was purchased for $10,000 in cash from a party unrelated to Ten Pas. The Trustee has held title to the parcel of real property since that time. The property is a heavily wooded piece of land located approximately eight miles from Grand Haven, Michigan.

3. An appraisal was made on the parcel of real property on August 9, 1985, by Byron VanVelzen (VanVelzen), a realtor with the firm of RE/MAX in Grand Haven, Michigan. According to the applicant, VanVelzen is independent of Ten Pas. VanVelzen placed the fair market value of the property at $11,044, or $1,100 an acre. In appraising the property, VanVelzen considered the per-acre valuations in recent sales of similar pieces of property in nearby locations. Factors considered in the appraisal included the desirability of the land, the type of road access, utilities available, and neighboring properties.

4. Because the parcel of land is not producing income and the applicant feels that it is not reasonably appreciating in value, the Plan proposes to sell the property from Ten Pas' individual account in the Plan to Ten Pas. Ten Pas will pay the appraisal price stated in the application for the property as determined by VanVelzen or fair market value at the time of sale, whichever is higher. The transaction will be entirely for cash and no commissions will be paid in connection with the sale. The cash realized from the sale will be re-invested in the individual account at the direction of Ten Pas and should result in a faster rate of growth for the account.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 4975(c)(2) of the Code because: (1) The sale of the real property will be entirely for cash and the Plan will pay no commissions in regard to the sale; (2) Ten Pas will pay fair market value for the land based on a recent appraisal made by an independent realtor; (3) the transaction will involve only Ten Pas' individual segregated account in the Plan and will not affect the assets of other Plan participants; and (4) the cash realized from the sale will be re-invested and should result in more income and appreciation for Ten Pas' individual account.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 17th day of December 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-30712 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85-209; Exemption Application No. D-4328 et al.]

Grant of Individual Exemptions; Whataburger, Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income

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Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Whataburger, Inc. Profit Sharing Plan and Trust (the Plan) Located in Corpus Christi, Texas

[Prohibited Transaction Exemption 85–209; Exemption Application No. D–4328]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sactions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the subordination by the Plan of its interest in three parcels of land (the Properties) in favor of the owners of the Whataburger franchised restaurants located thereon after the franchises were acquired by Whataburger, Inc. (Whataburger), the Plan sponsor, from the original third party franchisees (the Selling Franchisees), provided that no change occurred in the terms and conditions of the Plan's subordination of its interest in the Properties as a result of Whataburger's acquisition of the franchises from the Selling Franchisees.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 25, 1985 at 50 FR 43478.

Effective Dates: The effective dates of this proposed exemption are June 1, 1978 through September 30, 1983.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Schenley Industries, Inc. Employees Retirement and Benefit Plan (the Plan) Located in New York, New York

[Prohibited Transaction Exemption 85–210; Exemption Application No. D–5848]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the code, shall not apply to the cash sale by the Plan to John Hancock Mutual Life Insurance Company (the Company) of the Plan's interests in certain real property maintained by the Company in a non-pooled separate account, provided that the amount paid for the interests is not less than fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 8, 1985 at 50 FR 41054.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523–7901. (This is not a toll-free number.)

Central States, Southeast and Southwest Areas Pension Fund (the Plan) Located in Chicago, Illinois

[Prohibited Transaction Exemption 85–211; Exemption Application No. D–5991]

Exemption

The Department hereby extends, until January 21, 1990, certain portions of Prohibited Transaction Exemption (PTE) 77–11 (42 FR 54041, October 7, 1977).

Accordingly, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the code, shall not apply, until January 21, 1990, to the arrangement by any investment manager for the Plan for the provision of supplemental services (as described in Part V of PTE 77–11 and PTE 84–114, (49 FR 30609, July 31, 1984)) on behalf of the Plan with respect to existing real estate-related assets.

In addition, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply until January 21, 1990 to the following:

(A) The adjustment and/or continuation by investment managers of any pre-existing loan, lease, service agreement, or other arrangement, or the holding by the Plan of any pre-existing employer security or real property (as described in Part VIII of PTE 77–11 and PTE 84–114), but only to the extent that PTE 84–14 (49 FR 9494, March 13, 1984) is not applicable with respect to such transaction by reason of either (1) the assets of the Plan represent more than 20 percent of the total client assets under the management of the investment manager at the tme of the transaction, or (2) the investment manager does not satisfy the equity requirement of Part V(a)(4) of PTE 84–14; and

(B) New transactions between the Plan and certain non-fiduciary parties in interest and disqualified persons (as described in Part IX of PTE 77–11 and as extended by PTE 83–57 (48 FR 14091, Aprl 1, 1983) and PTE 84–114), but only to the extent that PTE 84–14 is not applicable with respect to such transaction for either of the reasons cited in subparagraph (A).

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 25, 1985 at 50 FR 43479.

Effective Date: This exemption is effective January 1, 1985. It will expire on January 20, 1990.

Written Comments. The Department received one written comment to the notice of proposed exemption and no requests for a public hearing. The written comment was submitted by Morgan Stanley Group, Inc. (MSG) which was formerly known as Morgan Stanley, Inc. MSG said it wished to

correct a statement in the proposed exemption which appeared at page 43481 and which referred to McCowan Associates, Inc. (McCowan) as a current investment manager of the Plan. MSG explained that in the interim between the submission of the exemption application and the publication of the pendency notice in the Federal Register, McCowan had been terminated by MSG as an investment manager of the Plan.

In addition, MSG indicated it wished to amend the proposed exemption by requesting a change in the effective date from January 20, 1985 to January 1, 1985. MSG stated that on January 1, 1985, two new real estate investment managers (First Interstate Investment Services, Inc., acting through Thomas L. Karsten Associates, Inc., and Eastdil Advisers, Inc.), who had been appointed by MSG on behalf of the Fund, were given authority and responsibility to control, manage and supervise the operation of certain real estate-related assets of the Plan. Further, MSG explained that Victor Palmieri and Company Incorporated, which had previously been operating as a real estate investment manager for the Plan, began performing its services under a new contract with MSG which became effective January 1, 1985. Accordingly, MSG requested that the effective date of the exemption be changed to January 1, 1985 in order to give these real estate investment managers appropriate protection from the prohibited transaction provisions of the Act and the Code.

After consideration of the entire record, the Department has determined to grant the exemption.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Union Oil Employees Profit Sharing Plan (the Profit Sharing Plan), the Employee Stock Ownership Plan for Employees of Union Oil Company of California and Participating Companies (the Union ESOP), and The PureGro Company Employee Stock Ownership Plan (the PureGro ESOP, collectively, the Plans) Located in Los Angeles, California

[Prohibited Transaction Exemption 85–212; Exemption Application No. D–6139]

Exemption

The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to: (1) the acquisition by the Plans of certain Unocal Corporation (Unocal) debt securities which were not qualifying employer securities on the date of acquisition, in exchange for Unocal stock held by the Plans; and (2) the holding of such non-qualifying employer securities until July 2, 1985.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 21, 1985 at 50 FR 42619.

Effective Dates: This exemption is effective from June 6, 1985 to July 2, 1985.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Sacramento Plastic & Reconstructive Surgery Medical Group, Inc., Pension Plan (Pension Plan), Sacramento Plastic & Reconstructive Surgery Medical Group, Inc. Profit Sharing Plan (Profit Sharing Plan; collectively, the Plans) Located in Sacramento, California

[Prohibited Transaction Exemption 85–213; Exemption Application Nos. D–6236 and D–6258]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan of $300,000 by the Profit Sharing Plan and $200,000 by the Pension Plan to Plastic Surgery Associates (the Partnership) and to the guarantee of repayment by the partners of the Partnership, provided that the terms of the transaction are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 21, 1985 at 50 FR 42621.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Bruce J. Coan, M.D., P.C. Pension Plan and Trust (the Plan) Located in Huntley, MT

[Prohibited Transaction Exemption 85–214; Exemption Application No. D–6317]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of unimproved real property (the Property) from the Plan to Bruce J. Coan, M.D. the sole owner of the Plan sponsor and the Plan's sole participant, for $185,000, provided that the sale price is not less than the Property's fair market value as of the date of sale.*

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 6, 1985 at 50 FR 46205.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsiblity provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all

*Since Dr. Coan is the sole owner of the Plan sponsor and the sole participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 17th day of December 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-30713 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefit Plans: Termination Task Force; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans (Advisory Council) will be held at 9:30 A.M., Monday, January 13, 1986, at the U.S. Department of Labor, 200 Constitution Ave., NW., Room S-4215, Washington, DC 20210.

The Advisory Council has formed a 12-member task force to study issues relating to pension plan terminations in which excess assets revert to the sponsors of employee benefit pension plans covered by ERISA.

The purpose of the meeting is to take testimony from employee representatives, employer representatives, and other interested individuals and groups on the following subjects: (1) The effects on benefit security of plan terminations involving asset reversions; (2) Whether there are any adverse effects that cannot be dealt with satisfactorily within the context of existing law as interpreted in the guidelines promulgated by the Department of Labor, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation in May 1984; (3) What criteria should be used to evaluate any proposed changes in the statute; and (4) What specific legislative or administrative recommendations should the Advisory Council make to the Secretary of Labor? Witnesses are encouraged to include quantitative data supporting their testimony or submission. Witnesses may also address such other matters relating to the issue as they deem relevant.

Individuals, or representatives of organizations, wishing to address the Advisory Council should submit written requests on or before January 6, 1986 to Edward F. Lysczek, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Ave., NW., Washington, D.C. 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before January 17, 1986.

Signed at Washington, D.C. this 24th day of December 1985.

T. Timothy Ryan, Jr.,

Chairman, ACEWPBP Task Force on Termination Reversions.

[FR Doc. 85-30782 Filed 12-27-85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Qualifications Review Panel for the Position of Director, John Fitzgerald Kennedy Library; Meeting

Notice is hereby given that the Qualifications Review Panel for the Position of Director, John Fitzgerald Kennedy Library will meet on Friday, January 17, 1986, from 11:00 a.m. to 2:00 p.m. in Room 105 of the National Archives Building, Washington, DC.

The agenda for the meeting will be:

1. Discuss personnel procedures leading to the selection of the Director.
2. Propose individuals who might be solicited to apply for the position.
3. Discuss qualifications of those who have been suggested as possible candidates.

The meeting will be closed to the public in accordance with 5 U.S.C. 552b(6) in order to avoid unwarranted invasion of the personal privacy of the applicants.

Dated: December 17, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-30225 Filed 12-27-85; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL CRITICAL MATERIALS COUNCIL

Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Critical Materials Council.

Date and Time: Tuesday, January 14, 1986; 9 a.m., to 1 p.m.

Place: Room 5160, Interior Building, 18th & C Streets, NW., Washington, DC.

Contact: Ms. Gully Walter, U.S. Department of the Interior, Room 6650, 18th and C Streets, NW., Washington, DC 20240, (202) 343-2136.

Purpose of the council: The Council was established by the National Critical Materials Act of 1984 (Pub. L. 98-373; 98 Stat. 1248; 30 U.S.C. 1801) to coordinate critical materials policies, and to bring to the attention of appropriate government agencies and the public key critical materials issues.

Tentative Agenda:

—Opening remarks by Chairman.
—Comments, recommendations, and discussion by the public.
—Questions and comments from National Critical Materials Council.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public may make oral statements at the meeting. Those wishing to do so are requested, but not required, to contact Gully Walter at the address or telephone listed above, at least five days prior to the meeting.

Transcripts: Available for public review at Natural Resources Library, Room 1140, Main Interior Building, 18th and C Streets, NW., Washington, DC. Reproductions will be available upon request.

Danny J. Boggs,

Chairman, National Critical Materials Council.

December 24, 1985.

[FR Doc. 85-30843 Filed 12-27-85; 8:45 am]

BILLING CODE 6450-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance/Film/Video Section) to the National Council on the Arts will be held on January 22, 1986, from 9:00 am-6:00 pm, January 23, 1986, from 9:00 am-8:00 pm and January 24, 1986, from 9:00 am-6:00 pm in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 24, 1986 from 2:00-6:00 pm to discuss Policy issues.

The remaining sessions of this meeting on January 22, 1986 from 9:00 am-6:00 pm, January 23, 1986 from 9:00 am-8:00 pm and January 24, 1986 from 9:00 am-1:00 pm are for the purpose of Panel review, discussion, evaluation,

and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections(c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

December 23, 1985.

[FR Doc. 85–30816 Filed 12–27–85; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Recording Section) to the National Council on the Arts will be held on January 15, 1986, from 9:00 a.m.–6:00 p.m. and January 16, 1986, from 9:00 a.m.–6:00 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 16, 1986, from 11:45 a.m.–1:00 p.m., to discuss Guidelines.

The remaining sessions of this meeting on January 15, 1986, from 9:00 a.m.–6:00 p.m., January 16, 1986, from 9:00 a.m.–11:30 a.m. and from 2:00–5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment of the Arts.

December 23, 1985.

[FR Doc. 85–30817 Filed 12–27–85; 8:45 am]

BILLING CODE 7537-01-M

Office for Partnership Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office for Partnership Advisory Panel (State Programs Section) to the National Council on the Arts will be held on January 22–23, 1986 from 9:00 a.m.–5:00 p.m. and January 24, 1986 from 9:00 a.m.–4:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 22, 1986, from 9:00 a.m.–11:00 a.m., January 23, 1986, from 9:00 a.m.–5:00 p.m. and January 24, 1986, from 9:00 a.m.–4:30 p.m., to discuss Orientation, Application Review, Guidelines and Application Format Review and discussion of consultant analysis of 35 application narratives.

The remaining sessions of this meeting on January 22, 1986, from 11:00 a.m.–5:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Titie 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

December 23, 1985.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85–30818 Filed 12–27–85; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

Date: January 13, 1986.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of General Programs, for projects beginning after July 1, 1986.

Date: January 16–17, 1986.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of General Programs, for projects beginning after July 1, 1986.

Date: January 23–24, 1986.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of General Programs, for projects beginning after July 1, 1986.

Date: January 30–31, 1986.
Time: 9:00 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications submitted for Museums and Historical Organizations Humanities Projects, Division of General Programs, for projects beginning after July 1, 1986.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

Susan H. Metts,

Acting Director for Administration.

[FR Doc. 85–30811 Filed 12–27–85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of appications for permits and licenses.

The draft guide, temporarily identified by its task number, FC 414–4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Guide for the Preparation of Applications for Licenses for Medical Teletherapy Programs" and is intended for Division 10, "General." It is being developed to provide guidance in conformance with the revised NRC Form 313 for preparing applications for licenses for medical teletherapy programs.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Comments will be most helpful if received by February 21, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 20th day of December 1985.

For the Nuclear Regulatory Commission.

Denwood F. Ross,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 85–30838 Filed 12–27–85; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice include all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on December 18, 1985 (50 FR 51618), through December 20, 1985.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of

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publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addresed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By February 3, 1986 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commmission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commisssion will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way woud result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendment: April 26, 1985 and June 28, 1985.

Description of amendment request: The proposed amendments would change the Unit 1 and Unit 2 Technical Specifications (TS) 3/4.8.2.3, "D.C. Distribution-Operating" and TS 3.8.2.4, "D.C. Distribution-Shutdown" as follows: (1) The Limiting Condition for Operation (LCO) and associated Actions would be changed to reflect use of the station "Reserve Battery", (2) a modification would be made to the battery cell voltage and capacity test, and (3) a grammatical error would be corrected. Consideration of the above items would conclude our actions on the applications dated April 26, 1985 and June 28, 1985.

Basis for proposed no significant hazards consideration determination: With regard to use of the "Reserve Battery", on July 31, 1979, and November 2, 1981, the staff issued Amendments Nos. 49 and 22, and Amendments Nos. 58 and 40 to the Facility Operating Licenses for Calvert Cliffs Units 1 and 2. These license amendments provided TS for the use of a "Reserve Battery" as a replacement for any one of the site's four vital 125 v batteries if one is unavailable due to surveillance testing or is otherwise inoperable. The staff's safety evaluations in support of these amendments concluded that the reserve battery and associated interconnections are fully safety grade, the reserve battery installation provides protection for the battery that is equivalent to the existing 125 v battery installations at Calvert Cliffs and, because the same surveillance is required on the reserve battery as on the normal vital batteries, the reserve battery is an acceptable replacement for a vital battery.

The April 26, 1985, proposed TS change adds to the LCO of the DC Distribution System the option of utilizing the reserve battery in lieu of a vital battery. This option existed originally only in the action statements, which put in effect TS 3.0.4 that prohibited entry into other operational modes when using the reserve battery. The proposed change would therefore allow entry into other operating modes when using the reserve battery as a replacement for a vital battery.

The proposed change would also allow use of the reserve battery as a replacement for a vital battery in operational modes 5 and 6, as described in TS 3.8.2.4, as well as modes 1 through 4, as described in TS 3.8.2.3. The original specification only allowed its use in operational modes 1 through 4.

An additional proposed change to the LCO would add the word "associated" when discussing the battery and charger for each train in the LCO, in TS 3.8.2.3 and 3.8.2.4. This is to specify that the battery and charger must both be part of that respective train.

The proposed changes to the LCOs do not, in any way, reduce the reliability of the vital D.C. distribution system. The staff has already concluded that the "Reserve Battery" can be freely used on a vital 125 volt bus. For this reason, there are no changes to the probability or consequences of accidents which assume operation of the vital 125 volt DC system. Since the reliability of the 125 volt DC system is not changed by the proposed LCOs, no new or different types of accidents will be created. Finally, since no changes in battery design or operation are involved, no reduction in safety margins will be created by the proposed changes to the LCOs. Accordingly, the Commission proposes to determine that the proposed changes to the LCOs for TS 3.8.2.3 and 3.8.2.4 involve no significant hazards considerations.

A final proposed change to the LCO for TS 3.8.2.3 would delete two Action statements and change a third Action statement. These Action statements allowed the reserve battery to replace the normal vital battery during the surveillance tests which render the tested battery inoperable. Because the LCO would now recognize the reserve battery as a replacement for a vital battery in any circumstances, the surveillance condition need not be accounted for in the Action statements. Accordingly, the deletion of the referenced Action statements and renumbering the remaining Action statements would provide consistency within the proposed LCO.

On April 6, 1983, the NRC published guidance in the Federal Register (48 FR 14870) concerning examples of amendments that are not likely to involve a significant hazards consideration. One example provided in 48 FR 14870 of amendments not likely to involve significant hazards considerations is example (i) which provides for "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." Since these proposed changes to the Action statements provide consistency within the TS, the Commission proposes to determine that the proposed changes involve no significant hazards considerations.

With regard to the battery capacity tests, the June 28, 1985, proposed TS would change the battery service test surveillance TS 4.8.2.3.2d.2 for the 125 v vital batteries 12 and 22 to reflect their updated design load cycle. The loads of the updated design load cycle are greater than the simulated or dummy loads currently used for batteries 12 and 22 during the battery service test performed every 18 months. The load cycle time periods remain unchanged (2 hours total endurance). BG&E states that a safety analysis has been completed which verifies that 125 v batteries 12 and 22 have ample capacity to supply power for the updated design load cycle. This proposal would also increase the battery minimum terminal voltage required to be maintained during the battery service test for the four vital 125 v batteries from 100 volts to 105 volts. A voltage of 105 volts is required for operability of the emergency loads supplies by the batteries. BG&E states in their June 28, 1985 application that a safety analysis has been conducted which verifies that all the 125 v batteries have adequate capacity to supply the emergency loads to the design load cycle while maintaining battery terminal voltage of at least 105 volts.

Both the revised load cycle test and the increased terminal voltage represent more rigorous surveillance that increases the confidence that the 125 v DC vital batteries will perform as required.

On April 6, 1983, the NRC published guidance in the Federal Register (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. One such example, (ii), involves "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." The proposed change to the TS 4.8.2.3.2d.2 represents a more stringent surveillance requirement and thus the Commission proposes to determine that the proposed change involves no significant hazards considerations.

Finally, a change has been proposed TS 3.8.2.4 to correct a grammatical error. The word "bus" would be changed to "buses" to provide proper grammatical agreement with the remainder of the LCO requirements. As indicated previously, correction of these types of errors are administrative in nature and represent an example of a license amendment that is not likely to involve a significant hazards consideration. Accordingly, the Commission proposes to determine that the proposed change to TS 3.8.2.4, to correct a grammatical error, involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendment: September 9, 1985 as supplemented by letter dated October 29, 1985.

Description of amendment request: The proposed amendments would

change the Unit 1 and Unit 2 Technical Specifications (TS) to delete requirements for the post-accident sampling systems (PASS) in TS 3/4.7.13 and the post-accident main vent iodine and particulate monitors in TS Tables 3.3–6, "Radiation Monitoring Instrumentation," and Table 4.3–3, "Radiation Monitoring Instrumentation Surveillance Requirements." A new TS, 6.15.2, "Post-accident Sampling," would address the requirements for the PASS and the post-accident main vent iodine and particulate filters.

Basis for proposed no significant hazards consideration determination: On November 1, 1983, the NRC issued Generic Letter No. 83–37 (GL 83–37) to all pressurized water reactor licensees. This letter contained guidance concerning TS which the NRC believed to be appropriate as addressed in NUREG–0737, "Clarification of TMI Action Plan Requirements". The licensee responded, in part, to GL 83–37 via their applications for license amendments dated September 9, 1985 as supplemented by letter dated October 29, 1985 regarding the PASS and the post-accident main vent iodine and particulate monitors.

The proposed TS submitted by BG&E meets all NRC objectives for this requirement, as contained in GL 83–37, in that it requires the licensee to establish a program with the following elements for the PASS and post-accident main vent iodine and particulate monitors:

(i) Training of personnel,

(ii) Procedures for sampling and analysis,

(iii) Provisions for maintenance of sampling and analysis equipment.

The existing requirements in TS 3/4.7.13 and TS Tables 3.3–6 and 4.3–3 would be deleted in that these requirements would be unnecessary.

Although TS 3.7.3 and TS Table 3.3–6 contain Limiting Conditions for Operation (LCO) for the subject equipment, these conditions were never intended nor were they ever restricting with regard to reactor operation. In the event that the subject equipment was inoperable, the LCOs required alternate sampling methods to be available. This requirement is retained and is implicit in the "program" requirements of proposed TS 6.15.2. The remaining LCO requirement of TS 3.7.13 and TS Table 3.3–6 required a special report to be submitted to the NRC when the subject equipment became inoperable for an extended period. This requirement has no direct impact on the availability of the subject equipment since it can be fulfilled without actually returning the equipment to operation. With regard to the surveillance requirements of TS 4.7.13 and TS Table 4.3–3, an equivalent level of surveillance would be transferred to the "maintenance" provision of proposed TS 6.15.2.

Based upon the above, we conclude that the major provisions of TS 3/4.7.13 and TS Tables 3.3–6 and 4.3–3 would be incorporated in proposed TS 6.15.2. Moreover, TS 6.15.2 has additional requirements which are important with regard to the subject equipment. Proposed TS 6.15.2 requires "training of personnel" and "procedures for sampling and analysis" which provide the only periodic experience for use of this equipment since there is no function for this equipment during expected plant operating conditions.

Since, overall, no decrease in TS requirements would be associated with the proposed TS change, no change in the probability or consequences of accidents will occur where functioning of the subject post-accident equipment is required and, thus, no new or different type of accidents would be created. In addition, since no design changes or new modes of equipment operation are involved in the proposed TS change, no decrease in any safety margin will result. Accordingly, the Commission proposes to determine that the proposed deletion of TS 3/4.7.13 and TS Tables 3.3–6 and 4.3–3, and the adoption of new TS 6.15.2 involves no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M. Street, NW., Washington, DC 20036.

NRC Project Director: Ashok C. Thadani.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: December 3, 1985.

Description of amendment request: The proposed amendments to Operating License NPF–11 and Operating License NPF–18 would revise the La Salle Units 1 and 2 Technical Specifications to require issuance of a Radiation Work Permit for entrance to high radiation areas to prevent unauthorized entry to these areas. Presently, each high radiation area at La Salle Units 1 and 2 in which the intensity of radiation is greater than 100 mrem/hr but less than 5000 mrem/hr is controlled by a security computer system. The computer is programmed to permit entry by the use of security badge key cards and card readers. High radiation areas not equipped with the computerized card readers are maintained locked in accordance with 10 CFR 20.203(c)(4). The revised Specification will control the high radiation area in which the intensity of radiation is greater than 100 mrem/hr but less than 1000 mrem/hr by requiring issuance of a Radiation Work Permit. These Areas will also be barricaded and conspicuously posted.

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). Example (ii) stated, "A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications."

The proposed change is more restrictive because it required a Radiation Work Permit to enter into a high radiation area in which the intensity of radiation is greater than 100 mrem/hr but less than 1000 mrem/hr. For areas of radiation of intensity greater than 1000 mrem/hr but less than 5000 mrem/hr, the controls will remain the same. The Commonwealth Edison Company (licensee) requested this request pursuant to 10 CFR 20.203(c)(5) which allows for a licensee to apply to the Commission for approval of an alternate method of controlling access to high radiation areas. In addition, this same type of control has been approved by the Commission for the Byron Station.

Accordingly, the Commission proposes that the changes would fall into the category of a no significant hazard consideration determination as it contains additional limitations or controls.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

NRC Project Director: Elinor G. Adensam.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: May 10, 1985 as modified August 28, 1985 and November 5, 1985.

Description of amendment request: The proposed amendment would modify the Technical Specifications by adding

to the required suspension of fuel movement when water level decreases below the minimum level a provision permitting the return of fuel to the reactor core in accordance with the applicable emergency procedure.

Basis for proposed no significant hazards consideration determination: The current Technical Specifications require termination of fuel handling operations if the reactor cavity water level should decrease below the required limit. If a fuel assembly were being moved within the reactor vessel envelope the proposed technical specification change would permit the placement of the grappled fuel assembly into the core region of the reactor vessel.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). An example of a proposed amendment not likely to involve significant hazards considerations is example (vi) which is a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. We have reviewed the licensee's proposed amendment for movement within the reactor vessel and conclude that it falls within the envelope of example (vi).

Movement of a fuel assembly in the presence of decreasing reactor cavity water level would not be expected to increase the probability of a fuel handling accident inside containment because the required actions would be similar to those performed under normal circumstances. The radiological consequences of a fuel handling accident inside containment have been previously evaluated and described in a safety evaluation dated December 20, 1979. If a fuel assembly were being moved within the reactor vessel and the reactor cavity water level falls below the required minimum levels, the replacement of the grappled assembly into the core barrel region would provide radiological protection to plant personnel, would assure compliance with the staff's Regulatory Guide 1.25 assumption that 23 feet of water above the assembly would be maintained at all times and while the offsite radiological consequences may be increased, by this amendment, the calculated values will remain well within the acceptance criteria of Standard Review Plan Section 15.7.4. Based on the above, the staff proposed to determine that the licensee amendment request involves no significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: April 30, 1985.

Description of amendment request: This proposed amendment involves a Technical Specification change to clarify the action statement when the primary coolant system leakage limit is exceeded and to delete a specification that only applied to cycle 2 operation which ended many years ago.

Basis for proposed no significant hazards consideration determination: The existing Technical Specification requires the plant to be in hot shutdown within 12 hours after the primary coolant leakage exceeds certain limits (1 gpm unidentified, 10 gpm identified). The proposed change requires the same, but clarifies that the shutdown need not commence immediately, allowing 6 hours for leakage identification and repair.

Since the proposed change continues to limit operation to the same time with excess leakage as the existing Technical Specification, it does not involve a significant increase in the probability or consequences of an accident previously evaluated or a significant reduction in a margin of safety. Since the same consideration, i.e., primary coolant system leakage, and the same limits are being addressed as in the existing Technical Specification, it does not create the possiblity of a new or different kind of accident from any accident previously evaluated. Therefore, the staff proposes to determine that this change involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Ashok C. Thadani.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 22, 1985.

Description of amendment request: The amendment would change the method for performing the monthly operability test of the containment radiation channels required by the Technical Specifications.

Basis for proposed no significant hazards consideration determination: The licensee has concluded that the proposed Technical Specification Change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The containment high radiation isolation monitors are to be changed out with environmentally qualified monitors. The feature that allows verification of instrument operation using a remote-operated integral radiation check source will not be incorporated into the new monitors. However, the new monitors will have continuous circuit failure monitoring which is annunciated and an electronic circuit check of the circuit amplifier. Like the present monitors, calibration with a known external radiation source will be done at least once per 18 months for the purpose of verifying correct detector response. The daily comparison check of the four containment high radiation indicators coupled with the circuit failure monitoring feature along with the monthly electronic circuit check features provides a high level of assurance the new radiation monitoring system will be operating properly and provide the 2 out of 4 logic required for a containment isolation signal.

The new monitor system will not create the possibility of a new or different kind of accident from any accident previously evaluated, as the change in methods of conducting the surveillance does not affect any accident analysis. The new monitors will provide the same function as the old monitors and the change in surveillance methods has no effect on the margin of safety that is defined in the basis for any of the Technical Specifications.

The staff agrees with the licensee's discussion and, therefore, proposes to determine that the proposed change does not involve significant hazards considerations.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company,

212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Ashok C. Thadani.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 28, 1985.

Description of amendment request: Consumers Power Company submitted on September 17, 1984 a proposed Technical Specification Change Request to reflect modifications to the Auxiliary Feedwater System. The requested change responded to Generic Letter 83–37 and Item II.E.1.1 of NUREG–0737, Long Term Auxiliary Feedwater System Evaluation and included a provision to extend the maximum period of inoperability of an auxiliary feedwater pump from 72 hours to 7 days. A preliminary determination of no significant hazards considerations was published in the Federal Register on October 24, 1984 (49 FR 42815). By letter dated May 31, 1985, Consumers Power Company requested a change to the Palisades Plant Technical Specifications to reduce the frequency of Auxiliary Feedwater (AFW) System flow testing. The purpose of the change was to reduce the thermal cycling of the AFW inlet nozzles on the steam generators.

On June 21, 1985, Consumers Power Company submitted two letters incoporating additional information. One letter utilized the Risk Ratio method specified in NUREG/CR–3082 to address NRC staff concerns regarding the Station Blackout Event to support the 7 day limiting condition for operation (LCO) for the steam driven auxiliary feedwater pump. The other letter included revisions to the May 31, 1985 submittal that established the ISI Code requirements for quarterly flow testing of the AFW system as optimum.

The October 28, 1985 submittal consolidates all previous submittals. The proposed Technical Specification pages supersede those previously submitted since they include minor revisions from those previously submitted to resolve concerns raised by the NRC Project Manager. However, the information supplied in the cover letters of the September 17, 1984, May 31, 1985 and June 21, 1985 submittals has been reproduced by this change request, and is therefore considered pertinent to this change request.

Basis for proposed no significant hazards consideration determination: The licensee's determination of a no significant hazards consideration is stated as follows:

This change request results from a modification that utilized a spare high-pressure safety injection pump to provide a third auxiliary feedwater pump with its own independent auxiliary feedwater train to both steam generators. In addition to the new auxiliary feedwater train, the system now has 2 secondary suction sources to the auxiliary feedwater pumps. The modification responded to Item II.E.1.1 of NUREG–0737, Long Term Auxiliary Feedwater System Evaluation. The modification improves the reliability and performance of the auxiliary feedwater system.

The requested specification changes reflect operability, action statements, surveillance requirements and basis for the new system. They are consistent with the format and content requirements of the Standard Technical Specifications within the constraints of the existing plant design and construction. The limiting conditions of operation (LCO) for the auxiliary feedwater pumps P–8A and P–8B however have been extended from 3 days to 7 days. The change request also reduces the existing flow testing of the system from monthly to quarterly in accordance with the ASME B&PV Code requirements. The LCO extension and the reduction in flow testing from existing Technical Specification requirements are consistent with the improved reliability and performance of the auxiliary feedwater system. Therefore this request does not involve an increase in the probability or consequences of previously evaluated accidents since system reliability has been improved. Based on engineering judgment and the partially completed Probabilistic Risk Assessment for Palisades Plant, it is concluded that quarterly flow testing of the AFW system is optimum in establishing operability yet providing for a reduction in the thermal cycling of the AFW inlet nozzles on the steam generators. Furthermore, the design of the new nozzles incorporates the results of our analysis of the previous failed sparger thermal liner and external piping to assure a different or new type of accident is not created. Therefore, this proposed change request does not create the possibility of a new or different kind of accident from any previously evaluated.

The changes proposed by this request involve an increase in the margin of safety as defined in the proposed Technical Specification Basis. The Auxiliary Feedwater System is designed so that an automatic start signal is generated to the auxiliary feedwater pumps upon low secondary side steam generator level. If pump P–8A fails to start or establish flow within a specified period of time, pump P–8C receives an automatic start signal. If both pumps P–8A and P–8C fail to start or establish flow within each pump's specified period of time, auxiliary feedwater pump P–8B receives an automatic start signal. The previous margin of safety was established via the operation of only two pumps. The service water makeup to the auxiliary feedwater pump suction in addition to the firewater suction source also contributes to an increase in the margin of safety.

The staff agrees with this assessment and, therefore, proposes to determine that this requested action involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Jedd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Ashok C. Thadani.

Dairyland Power Cooperative, Docket No. 50–409, La Crosse Boiling Water Reactor, Vernon County, Wisconsin

Date of amendment request: July 11, 1984 as revised September 17, 1985.

Description of amendment request: The proposed amendment would revise the technical specifications (TS) for the containment ventilation isolation valves operability and isolation time, limiting conditions for operation, surveillance requirements, and periodic replacement of resilient valve seats and for the associated bases for these specifications. This amendment request was originally noted in the Federal Register on July 3, 1985 (50 FR 27505).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for making these determinations by providing certain examples (April 6, 1983, 48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to a change that constitutes an additional limitation, restriction, or control not presently included in the TS. The proposed changes fall within this example since they are all additional requirements not currently included in the TS. In addition, during the review, the staff determined that the July 11, 1984 application did not justify the 12 hours proposed to restore containment ventilation isolation valves to operability or isolate the affected penetration. The staff also found that the proposed TS, if read literally, would require the licensee to shut down if both valves in a penetration fail to open. In addition, the proposed TS contained an inconsistent instruction to simultaneously deactivate a containment ventilation valve and maintain it operable. By letter dated September 17, 1985 the licensee modified its application to reflect the staff's concerns. The new application reduced the time allowed for action when a containment ventilation isolation valve is inoperable and also revised the action statement to clarify the actions required when both containment ventilation isolation valves in a penetration are inoperable. On this

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basis, the staff proposed to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

Attorney for licensee: Q. S. Hesitand, Jr., Esquire, Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 6, 1985.

Description of amendment request: The proposed amendments would add limiting conditions for operation and surveillance requirements for existing engineered safety features actuation instrumentation which detects accumulation of water in the doghouse and provides a feedwater isolation signal if a high doghouse water level (indicative of a feedwater line break) is reached.

Technical Specification 3.3.2 requires, as a limiting condition for operation, that the engineered safety features actuation system instrumentation channels shown in Table 3.3–3 be operable, and that their trip setpoints be set consistent with values in Table 3.3–4. The proposed change would supplement Specification Table 3.3–4 to reflect the high doghouse water level trip setpoint (12") and associated allowable value (13"). Specification Table 3.3–3 would be supplemented to reflect the total number of channels (3/train/doghouse), channels to trip (2/train/doghouse), minimum channels operable (2/train/doghouse), and applicable modes (power operation and startup). The change to Table 3.3–3 would also add required action in the event of an inoperable train(s) (i.e., with one of the two trains of doghouse water level instrumentation inoperable (less than the minimum required number of channels operable), restore the inoperable train to operable status in 72 hours. After 72 hours with one train inoperable, or within one hour with 2 trains inoperable, monitor doghouse water level in the affected doghouse continuously until both trains are restored to operable status.) The change would also supplement the surveillance requirements of Table 4.3–2 to require a channel check once per shift and a trip actuating device operational check once per 18 months.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards consideration by providing certain examples published in the **Federal Register** on April 6, 1983 (48 FR 14870). One of the examples of an amendment likely to involve no signif-cant hazards consideration relates to changes (ii) that constitute additional limitations, restrictions, or controls not presently included in the Technical Specifications. The proposed amendments of the Technical Specifications match the example because they would imposed additional limitations for operation and additional surveillance requirements for doghouse water level instrumentation. No requirements regarding this instrumentation are presently in the Technical Specifications. Therefore, the Commission proposeds to determine that the proposed amendments do not involve a significant hazards consideration.

The licensee's letter of September 6, 1985, also proposes changes regarding the Containment pressure Control System. These changes are outside the scope of this notice.

Local Public Document Room locations: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B. J. Youngblood.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. I, Dauphin County, Pennsylvania

Date of amendment request: December 9, 1985.

Description of amendment request: Section 4.4.1.2.5 of the TMI–1 Technical Specifications requires that local leak detection tests shall be performed at a frequency of at least each refueling period. Section 1.2.8 defines a refueling interval as the time between normal refuelings of the reactor but not to exceed 24 months without prior approval of the NRC.

The proposed amendment would change Section 4.4.1.2.5 to require that local lead detection tests shall be performed at a frequency as required by 10 CFR 50 Appendix J. The proposed amendment also states that if an exemption from the frequency as specificed by the exemption shall apply. Appendix J of 10 CFR 50 has a current maximum limitation of two years for local leak detection tests.

Basis for propose no significant hazards consideration determination: The present Technical Specifications provide specific test intervals for local leak detection tests which are in accordance with 10 CFR Part 50 Appendix J. The proposed amendment clarifies the Technical Specifications to state that frequency of local leak rate testing shall always be in accordance with the regulations. If Appendix J is amended in the future, the test frequency is automatically amended with the regulations change without a need for an administative Technical Specification change.

The proposed amendment does not change the current physical test requirement or modify it frequency. The proposed amendment also does not affect the plant design or method of operation, does not involve modification of plant equipment, and therefore will not create the possiblility of a new or different accident from any previously evaluated. It does not physically change the current test frequency and therefore does not involve an increase in the probability or consequences of any accident previously analyzed or reduce any margin of safety.

The application for amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possiblity of a new or different kind of accident from any accident previously evaluated, and does not ivolve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92, the Commission's staff proposes to determine that the application involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licenses: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: John F. Stolz.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 13, 1985, October 24, 1985,

October 30, 1985, and December 11, 1985.

Decsription of amendment request: The amendment would make two changes in the Technical Specifications: (1) revise Specification 6.3.1 "Unit Staff Qualification" providing a one-time exception to the qualification requirements for the Chemistry/ Radiation Control Superintendent and (2) in Table 3.3.7.4–1 "Remote Shutdown System Controls", delete the controls for a value isolating the residual heat removal (RHR) system from the reactor head spray line.

Basis for proposed no significant hazards consideration determination: The Technical Specifications Section 6.3.1 "Unit Staff Qualifications" require, among other things, that the plant' Chemistry/Radiation Control Superintendent meet or exceed the qualifications in Regulatory Guide 1.8 "Personnel Selection and Training", September 1975. Section C of this Regulatory Guide states that a radiation protection manager (designated Chemistry/Radiation Control Superintendent at Grand Gulf) should have at least five years of professional experience in applied radiation protection. In a September 13, 1985, submittal, licensee provided the work experience, training, and education of the Chemistry/Radiation Control (C/RC) Superintendent. Based on its preliminary evaluation, the NRC staff concluded that the five year experience requriement is not met by the present C/CR Superintendent. By letters dated October 24, 1985, and December 11, 1985, the licensee proposed that a Technical Assistant who is qualified to serve as radiation protection manager be assigned to the present C/RC Superintendent and that the C/RC Superintendent completed a training program to qualify as a radiation protection manager. The proposed Technical Assistant would act as radiation protection manager for Grand Gulf during the absence of the C/RC Superintendent from the site and assist the Superintendent in his radiation protection responsibilities until the Superintendent completes the training program or until an NRC approved individual is placed in that position. Because a qualified radiation protection manager meeting Technical Specification requirements will assist the superintendent until his training is completed, the staff concludes that the one-time exception to the qualification requirements or Regulatory Guide 1.8 for the Chemistry/Radiation Control Superintendent requested in change (1) does not involve a significant increase in the probability or consequences of an accident previously evaluated, nor does it create the possibility of a new or different kind of accident from any accident previously evaluated. For the same reason and because change (1) does not involve any change to the plant equipment or limiting conditions for operation, the staff concludes change (1) does not involve a significant reduction in a margin of safety.

Change (2), the deletion from Table 3.3.7.4–1 of the control for a valve isolating the RHR system from the reactor head spray line, is described in a separate submittal dated September 13, 1985. This deletion is made because a design change eliminated the need for the valve control on the remote shutdown panel. The control for this valve was put on the remote shutdown panel when this line was used to inject water into the reactor from the reactor core isolation cooling system, (RCIC), a system used for safe shutdown following emergency evacuation of the control room. The design was changed to inject RCIC water through the feedwater line; therefore, this valve is no longer use for RCIC injection. By letter dated October 30, 1985, the licensee stated it would remove the hand switch for this valve from the remote shutdown panel thus preventing inadvertent opening of the valve and overpressurization of the RHR System. The valve serves as a containment isolation and pressure isolation valve and operability of the valve to perform these functions will continue to be maintained in accord with Technical Specifications 4.6.4 and 4.4.3.2.2. Change (2) does not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated because the valve's primary function after the design change which has been made is containment and reactor pressure isolation. It is normally closed and its operability is not required for any safe shutdown or accident analysis. The proposed change does not involve a significant reduciton in a margin of safety because remote shutdown operability of the valve is not required for safe shutdown.

Accordingly, the Commission proposes to determine that these two changes to the Technical Specifications do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell & Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit 2, New London County, Connecticut

Date of amendment request: May 28, as supplemented October 1, 1985.

Description of amendment request: Northeast Nuclear Energy Company's proposed revision to Technical Specification Section 3/4.7.10, Penetration Fire Barrier, contained in their application dated May 28, 1985 has been modified per their October 1, 1985 submittal. The licensee proposes to retain the present requirement to protect safety-related system and equipment. They poropose to revise the limiting condition for operation and surveillance requirements to be consistent with the wording of the Standard Technical Specifications.

The previous proposal to implement a fire watch patrol on a frequency of every 8 hours on either side of an inoperable barrier is revised to a frequency of 1 hour consistent with the Standard Technical Specifications. The previous proposal to provide the NRC a special report if a barrier is not permanently repaired within 30 days has been deleted. Instead, a continuous fire watch or hourly fire watch patrol will be implemented until the temporary or inoperable barrier is permanently repaired. The proposed change to Technical Specification 6.9.2, Special Reports, is also no longer needed consistent with the above discussion.

Basis for proposed no significant hazards consideration determination: The staff proposed to determine that the proposed changes as submitted in the May 28, 1985 application do not involve a significant hazard consideration. This proposed finding was published in the **Federal Register** on July 3, 1985 (50 FR 27507). Because the October 1, 1985 supplement made changes which are more restrictive than the initial May 28, 1985 application and no other changes are made to invalidate the previous determination, the no significant hazards determination made previously remains applicable. Therefore, the supplemental changes would not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously

evaluated or involve a significant reduction in a margin of safety.

Local Public Document Room location: Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Connecticut.

Attorney for licensee: Gerald Garfield, Esq, Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut, 06103.

NRC Project Director: Ashok C. Thadani.

Northern States Power Company, Docket no. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: September 24, 1982, as supplemented by submittals dated September 29, 1983 and November 15, 1985.

Description of amendment request: The original amendment request of September 24, 1982 was initially noticed on August 23, 1983 (49 FR 38414). Supplemental information revises the proposed changes to the Technical Specifications to clarify the Limiting Conditions for Operation and Surveillance Requirements associated with jet pump operability.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (April 6, 1983, 48 FR 14870). One of these, example (ii) of amendments not likely to involve significant hazards considerations is "A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications; for example, a more stringent surveillance requirement." The proposed changes in this application for amendment are encompassed by this example because the revisions to the Technical Specifications would clarify the Limiting Conditions for Operation and Surveillance Requirements associated with jet pump operability. The license presents that the proposed surveillance program would provide additional assurance that jet pump degradation will be detected before actual jet pump failure. The proposed changes would prescribe a program to monitor various parameters, such as core flow, core plate differential pressure, recirculation pump flow and speed, so the acceptability of jet pump performance can be clearly determined. The proposed Limiting Conditions for Operation contain the minimum acceptable standards for jet pump operability and when they are not met, the reactor would be shut down within 24 hours. In addition, the proposed surveillance requirements will include evaluation of the jet pump deviation every 24 hours whenever the recirculation pump speed is below 60%. The proposed surveillance program would provide additional assurance that jet pump degradation will be detected before actual jet pump failure. By being a better diagnostic tool, the proposed changes would add more control for plant operations.

Therefore, since the application for amendment involves proposed changes similar to example (ii), the staff has made a proposed determination that this application involves no significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

Project Director: John A. Zwolinski.

Pennsylvania Power & Light Company, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: October 10, 1985.

Description of amendment request: In the proposed amendment the licensee has requested that: (1) Technical Specification 4.8.4.1.a.1 be modified to achieve a greater level of clarity for this surveillance, which was previously ambiguous in cases where no trip setpoint or response time was provided. The difference between the current Technical Specification and the proposed revision is in specifying how acceptance criteria shall be met for each type of breaker, i.e., magnetic-only (HFB–M) and thermal-magnetic (HFB–TM, KB–TM). The degree of testing for a given breaker remains unchanged due to the proposed revision. (2) Technical Specification Table 3.8.4.1–1 be revised to reflect the replacement of magnetic-only circuit breakers with thermal-magnetic circuit breakers. Changing the containment penetration overcurrent protection from magnetic-only to thermal-magnetic circuit breakers allows detection of substantially lower short circuit currents. (3) Additional changes to Table 3.8.4.1–1 are deletion of the following:

Frame Rating/UL: Control of breaker frame size and UL rating is ensured by the design change control process, which is governed by 10 CFR 50–59, and therefore the information need not be included in the Technical Specifications.

Trip Setpoint: Due to the replacement of magnetic-only with thermal-magnetic circuit breakers, the number of adjustable (Type HFB–M, magnetic-only) breakers has decreased by approximately two-thirds. Trip setpoints are not applicable to non-adjustable breakers. The setpoint control of the adjustable breakers is ensured by the setpoint change control process, which is governed by 10 CFR 50.59, and therefore the information need not be included in the Technical Specifications.

Response Time: The response time column is currently "NA" for all entries. This is because, as described in FSAR subsection 4.8.4.1.a.1, manufacturer's data is used to determine acceptable response time. Therefore, the column has been deleted.

(4) Other changes to Table 3.8.4.1–1 are the following editorial changes:

a. "Circuit Breaker Location" has been changed to "Circuit Breaker Designation."

b. "Molded Case Circuit Breaker" headings were deleted. The need for this heading is tied, by the Standard Technical Specifications, to a need to differentiate test methods from those used for metal case circuit breakers. The surveillance is now tied to the types listed in the proposed change, and no metal case breakers are in use, so that the information which the licensee proposes to delete serves no useful purpose.

c. Editorial descriptions of specific equipment have been deleted. Systems and equipment numbers is sufficient for this purpose.

d. Footnotes referring to vendors have been deleted since they are unnecessary; the type definitions they provided are covered by the revised surveillance.

e. Footnote "#" was revised (new footnote*) to drop the reference to series arrangement, because this is not always the correct designation. Furthermore, such specific information is unnecessary; the key information is that two redundant breakers are to be OPERABLE.

f. The entire listing has been reorganized to be grouped by system, rather than randomly.

Basis for proposed no significant hazards consideration determination:

1. In Technical Specification 4.8.4.1.a.1 the degree of testing has not changed for any given breaker but, the amount of prescriptiveness required to clarify the acceptance criteria applicable to any given breaker has been increased. Therefore, this change falls under example (ii) "a change that constitutes an additional limitation, restriction or

control not presently included in the Technical Specifications" of the Commission's guidance in (48 FR 14870) on types of amendments which are not likely to involve significant hazards considerations.

2. In Technical Specification Table 3.8.4.1–1 by replacing magnetic-only circuit breakers with thermal-magnetic circuit breakers safety has been improved by the addition of this equipment, which can detect lower short circuit currents. This design improvement provides additional control over penetration protection and it therefore falls under example (ii) "a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specification" of the Commission's guidance in (48 FR 14870) on types of amendments that are not likely to involve significant hazards considerations.

3. In Technical Specification Table 3.8.4.1–1 the licensee has proposed deletion of design information related to the overcurrent protection devices (Frame Rating-UL, Trip Setpoint and Response Time). This equipment is covered under the requirements of 10 CFR 50.59 which states that the licensee may make equipment changes without prior Commission approval, unless the proposed change involves a change to the Technical Specifications or an unreviewed safety question. Although the change would delete design information from the Technical Specifications this equipment would still be covered under 10 CFR 50.59 which does not permit any changes or replacement of equipment that is not the same as or equivalent to that currently installed. Therefore this deletion merely provides flexibility within the bounds of 10 CFR 50.59 without requiring changes to the Technical Specifications. The proposed changes therefore do not: (1) involve a significant increase in the probability or consequence of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in the margin of safety.

4. In Technical Specification Table 3.8.4.1–1 other changes have been proposed which are purely administrative and clearly fall under example (i) of actions not likely to involve significant hazards considerations, "A purely administrative change to Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nomenclature.

On the basis of the above, the Commission proposes to conclude that all the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: E. Adensam.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: December 18, 1985.

Description of amendment request: The amendment would revise Technical Specifications (TS) 4.6.1.2.d and g to allow a one-time-only extension of time to satisfy local leak rate testing requirements on primary containment isolation valves as listed in the amendment application. The tests are required by the Technical Specifications to be performed at intervals no greater than 24 months, except for valves in hydrostatically tested lines which shall be leak tested at least once per 18 months. The Commission's regulations in Section III.D.3 of Appendix J to 10 CFR Part 50 require that Type C local leak rate tests be performed during each reactor shutdown for refueling but in no case at intervals greater than two years. Accordingly, the licensee has also applied for a temporary exemption from these specific requirements of Appendix J.

Under the amendment the surveillances would be performed during a plant shutdown beginning no later than May 26, 1986 which will occur a maximum of 84 days beyond the time otherwise required by the Technical Specifications. The purpose of this amendment is to allow continued operation of the plant until other more extensive surveillance tests need to be performed, and for which plant shutdown is also required.

The testing for this specification is a Type C test as defined in Appendix J to measure containment isolation valve leakage rates. The tests cannot be performed during power operations since entry would be required by personnel into the primary containment which is at undesirable temperatures and radiation levels for routine personnel access. The end of the most limiting surveillance interval for these tests for Limerick Unit 1 is March 3, 1986.

The next shutdown is currently expected to start on or before May 26, 1986. The period of plant operation during the proposed extensions, therefore, is a maximum of 84 days. The need for the one-time extension in the surveillance interval is a consequence of the operation of Limerick, Unit 1 at less than five percent of rated power for an extended period of time.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the proposed amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee in its letter of December 18, 1985, has determined and the NRC staff agrees that the proposed amendment will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated since allowances for leakage through isolation valves are included in the Final Safety Analysis Report safety analyses and information provided by the licensee suggests that any leakage through these valves would be well within the allowed valves and that based on the type of surveillances extended, no significant increase in the probability of degradation of the valves during the extension is postulated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated because this amendment neither removes or adds any equipment nor does it eliminate required tests; and (3) Involve a significant reduction in the margin of safety because the increased surveillance interval (84-days) does not significantly increase the possibility that an undetected degradation will occur in any of the isolation valves covered by these Technical Specifications. Accordingly, the staff proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document room: Pottstown Public Library, 500 High Street, Pottstown Pennsylvania 19464.

Attorney for Licensee: Conner and Wetterhahn, 1747 Pennsylvania Ave., NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: June 20, 1985.

Description of amendment request: This application seeks to amend Section 6.2 "Plant Staff" of the IP–3 Technical Specifications in accordance with the requirements of NUREG–0737 Item I.A.1.3 and NRC letter of March 15, 1985. There are two revisions within Section 6.2 as part of this submittal. The first revision limits overtime for those individuals who perform safety-related functions in accordance with the requirements of Generic Letter No. 82–12, dated June 15, 1982. The second revision provides for the minimum shift crew composition (Table 6.2–1) as detailed in NUREG–0737 Item I.A.1.3.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing certain examples (48 FR 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications. The staff proposes to determine that the proposed change does not involve a significant hazards consideration since it consists of additional limitations on operation of the facility not currently in the Technical Specifications.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Steven A. Varga.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: November 25, 1985.

Description of amendment request: This submittal supersedes the request for amendment dated January 23, 1984, which was noticed in the Federal Register on May 23, 1984 (49 FR 21838).

The proposed Technical Specification amendment adds operational criteria for several hardware modifications which were incorporated in the facility as a direct consequence of lessons learned from the Three Mile Island accident. The hardware modifications were required by the NRC and are described in NUREG–0737. The Technical Specification changes associated with the NUREG–0737 modifications are prescribed by Generic Letter 83–37. This submittal is the licensee's consolidated response to the recommendations in Generic Letter 83–37 and supersedes portions of any previous submittals which may have addressed Technical Specification changes associated with Generic Letter 83–37.

The proposed Technical Specification changes address operational criteria for the following components/systems: reactor coolant system vents, post accident sampling, auxiliary feedwater, noble gas effluent monitors, effluent sampling, containment high range radiation monitor, contaiment pressure monitor, containment water level monitor, containment hydrogen monitor, inadequate core cooling instrumentation, and control room habitability.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples of actions likely to involve no significant hazards considerations is a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications: for example, a more stringent surveillance requirement. All of the changes requested are additional limitations, restrictions and controls not presently included in the Technical Specifications. Accordingly, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: John F. Stolz.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 23, 1985.

Description of amendment request: The proposed amendment would revise the Kewaunee Technical Specifications (TS), Section 4.2.b (Steam Generator Tubes), Table TS 4.2–2 and the Bases. In all, there are ten changes being proposed. The key change is to TS 4.2.b.4, TS 4.2.b.5.a and Table TS 4.2–2. This key change would permit the licensee to either plug or repair defective steam generator tubes. The current TS permit only tube plugging. The remaining nine changes involve clarifications, gaining consistency between sections of TS 4.2.b, correction of a typographical error and providing consistency between the Kewaunee TS and our Rules in regards to reporting requirements.

Basis for proposed no significant hazards consideration determination: The key portion of the proposed changes are in Section 4.2.b.4, 4.2.b.5.a and Table TS 4.2–2 of the Technical Specifications. These sections would permit the licensee to either plug or repair a defective steam generator tube. Plugging or repair decisions can only be made after a tube inspection, while the reactor is in a cold shutdown (stable) condition. Prior to starting the repairs the licensee must first perform a safety analysis of the impact of the repairs on future reactor operation under our Rule 10 CFR 50.59. As a consequence we conclude that the proposed changes are consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations, 10 CFR 50.92 (48 FR 14871). The proposed revisions to the Technical Specifications will not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident previously evaluated or involve a significant reduction in margin of safety as the reactor is in a cold shutdown condition during the repair operation and future impact of repairs was analyzed under our Rules.

In regard to the remaining nine proposed TS changes, the Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: (i) A purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. These remaining nine changes concern items of clarity, consistency and correction of a typographical error and are clearly administrative changes as in example (i).

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Therefore, since the application for amendment involved proposed changes that are similar to examples for which no significant hazards considerations exist, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Project Director: George E. Lear.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: October 15, 1985.

Description of amendment request: The proposed change would modify the Technical Specifications (TS) to add the following to the list of required instrumentation: (1) Containment High Range Radiation Monitor; (2) Core Exit and Reactor Vessel Head Thermocouples; (3) Containment Pressure Monitors; and (4) Containment Water Level Monitors. Additionally, the proposed change would add surveillance requirements for the listed instruments.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). Example (ii) of actions not likely to involve a significant hazards consideration involves a change that constitutes an additional limitation, restriction, or control not presently included in the TS: For example, a more stringent surveillance requirement. USNRC Generic Letter No. 83–37, dated November 1, 1983, identified the need to establish TS for certain systems specified in the TM-Task Action Plan. The proposed change would add TS listings of required instrumentation, and surveillance requirements for that instrumentation, for these TMI/related TS. Since the instrumentation being added by the proposed change does not currently exist in the TS, the proposed changes fit the example.

Based on this discussion, the staff proposes to determine that the requested action would not involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: George E. Lear.

Yankee Atomic Electric Company, No. 50-29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of Amendment Request: October 31, 1985.

Description of Amendment Request: The proposed change would modify the Technical Specification (TS) for the containment hydrogen monitors to: (1) increase the number of monitors from one to two; (2) add a new functional test surveillance requirement for each monitor; (3) require the performance of a channel calibration on each monitor; and (4) modify the action statement in the Limiting Condition for Operation (LCO) for the monitors.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for making a no significant hazards consideration determination by providing certain examples (April 6, 1983, 48 FR 14870). Example (ii) of actions not likely to involve a significant hazards consideration involves a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications; for example, a more stringent surveillance requirement. The current TS only address one containment hydrogen monitor. The proposed change adds LCOs and surveillance requirements for a second containment monitor. The LCO action statements have been modified to add an action statement for the case where one of the monitors is out of service. In addition, the action statement for the case where no monitors are operable has been modified to require action within 72 hours, instead of the current TS requirement of seven (7) days.

A surveillance requirement for functional testing of both containment hydrogen monitors has been added. In addition, a channel calibration requirement has been added for the new containment hydrogen monitor, such that a channel calibration of both monitors is now required. All of the listed changes are either new TS T.S. On this basis, the staff proposes to determine that the requested action would not involve a significant hazards consideration.

Local Public Document Room Location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for Licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: November 1, 1985.

Brief description of amendment: The amendments would revise the Technical Specifications to reflect organizational changes.

Date of publication of individual notice in Federal Register: November 25, 1985 (50 FR 48501)

Expiration date of individual notice: December 26, 1985.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: November 14, 1985.

Brief description of amendment: The amendment would: (1) change Technical Specification Figure 6.2.1–1 "Offsite Organization" and make other changes in Section 6 "Administrative Controls" to reflect proposed changes in the Grand Gulf Nuclear Station (GGNS) Nuclear Production Department (NPD); and, (2) terminate the requirement in License Condition 2.C.(28) that an MP&L staff member (or members) who has substantial commercial nuclear power

plant operating management experience act as advisor to the vice president in charge of nuclear operations until the plant has operated for at least six months at power levels above 90% of full power.

Date of publication of individual notice in Federal Register: December 3, 1985 (50 FR 49633).

Expiration date of individual notice: January 1, 1985.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter, 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Commonwealth Edison Company, Docket Nos. 50–237/249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of application for amendments: August 13, 1985.

Brief description of amendments: The amendments relocate certain license conditions into Appendix A Technical Specifications, change the criteria for limiting the K_{eff} Factor in the spent fuel pools from grams of U–235 per axial centimeter to a K–INF limit and add a limitation to the storage capacity of the new-fuel vault.

Date of issuance: December 12, 1985.

Effective date: December 12, 1985.

Amendment Nos. 91. 85.

Provisional Operating License No. DPR–19 and facility Operating License No. DPR–25. The amendments revise the Technical Specifications and the license.

Date of initial notice in **Federal Register:** October 23, 1985 (50 FR 43022). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 12, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut, Northeast Nuclear Energy Company, et al., Docket Nos. 50–245 and 50–336, Millstone Nuclear Power Station, Unit Nos. 1 and 2, New London County, Connecticut

Date of application for amendments: July 9, 1985.

Brief description of amendments: These amendments add subparagraph 6.2.2.g to the Technical Specifications. Subparagraph 6.2.2.g commits to develop and implement procedures governing use of overtime which will follow the general guidance of the NRC Policy Statement on working hours as stated Generic Letter no. 82–12.

Date of Issuance: December 10, 1985.

Effective date: December 10, 1985.

Amendment No.: 71, 108 and 106.

Facility Operating License Nos. DPR–61 and DPR–65 And Provisional Operating License No. DPR–21: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34933 at 34936).

TheCommission's related evaluation of the amendments is contained in a Safety Evaluation dated December 10, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Russell Library, 123 Broad Street, Middletown, Connecticut 06457 (Haddam Neck) and Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385 (Millstone Units 1 and 2).

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: February 14, 1983.

Brief description of amendment: The amendment revises the Technical Specifications to conform more closely with the Standard Technical Specifications regarding boric acid addition capabilities by adding operability requirements for the boric acid transfer pump, boric acid storage system and refueling water storage tank to the existing specifications. A specification concerning operation with reactor coolant temperature below 295° F is also added. By letter dated August 1, 1985 Consolidated Edison provided a change to the original amendment request which was administrative in nature and in no way changed the meaning or technical content of the specification.

Date of issuance: December 5, 1985.

Effective date: Immediately to be implemented within 60 days.

Amendment No.: 105.

Facilities Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 1983 (48 FR 43134).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation date December 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Marine Avenue, White Plains, New York, 10610.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application of amendment: October 17, 1985 as supplemented by letter dated December 2, 1985.

Brief description of amendment: This amendment changes the Linear Heat Generation Rate Limiting Condition for Operation, the associated figures and Bases and deletes the fuel densification and thermal expansion uncertainty factor. It requires the submittal of a supplemental report that covers the complete large break Loss-Of-Coolant Accident spectrum results.

Date of Issuance: December 12, 1985.

Effective Date: December 12, 1985.

Amendment No.: 70.

Facility Operating License No. DRP–67: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 31, 1985 (50 FR 45506). Since the initial notice, the licensee submitted a supplement dated December 2, 1985 that clarifies information concerning the actual axial linear heat rate that will be generated and actual numbers dealing with steam generator tubes that have been plugged to date. This information does not revise the proposed TSs, therefore, the Commission staff concluded that renoticing was not necessary. The Commission's related evaluaton of the amendment is contained in a Safety Evaluation dated December 12, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, Florida.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of application for amendments: June 15, 1983, as supplemented and modified by letters dated September 1, 1983, and August 20, 1985.

Brief description of amendments: The amendments revise the TSs for Hatch Units 1 and 2 to (1) eliminate the time restriction on opening the purge and vent isolation valves during operating Modes 1, 2 and 3 for the purpose of inerting, deinerting and pressure control; (2) add a Limiting Condition for Operation and surveillance requirements for fast acting dampers in the standby gas treatment system; and (3) require replacement of resilient seats on the purge and vent isolation valves.

Date of issuance: December 11, 1985.

Effective date: December 11, 1985.

Amendment Nos.: 118 and 58.

Facility Operating Licenses Nos. DPR–57 and NPF–5. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 24, 1984 (49 FR 7036) and October 9, 1985 (50 FR 41249).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 11, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

GPU Nuclear Corporation, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: February 11, 1985.

Brief description of amendment: This amendment authorizes changes to the Appendix A Technical Specifications (TS) pertaining to Section 3.13, Accident Monitoring Instrumentation. The limiting conditions for operation for the Relief Valve and Safety Valve Position Indicators are being revised to be the same as the TS in Generic Letter 83–36, NUREG–0737 Technical Specifications, dated November 1, 1983.

In the application dated February 11, 1985, GPU Nuclear (the licensee) also requested the following changes to Sections 3.13 and 3.14 of the TS: (1) clarification of TS Table 3.13.1 on Relief Valve Position Indicators; (2) addition of limiting conditions for operation and surveillance requirements on the Torus Water Level Monitors, the Drywell Pressure Monitors and the Drywell Hydrogen Monitors; and (3)-Revision of TS 3.13.A.1 for Relief Valve Position Indicators. The requested changes (1) and (3) above were withdrawn by the licensee in the August Progress Review Meeting on Licensing Actions of September 18, 1985. The meeting minutes for this meeting are dated October 29, 1985. The requested change (2) above is the subject of a separate staff action on Generic Letter 83–36.

Date of issuance: December 9, 1985.

Effective date: December 9, 1985.

Amendment No. 96.

Provisional Operating License No. DPR–16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16004) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: July 18, 1985.

Brief description of amendment: The amendment revises the Technical specifications to incorporate an additional surveillance testing requirement for leak testing of the Automatic Depressurization System (ADS) nitrogen accumulator check valves; a description of ADS nitrogen supply system in the Bases, and a correction of a typographic error.

Effective date: December 5, 1985.

Amendment No.: 127.

Facility Operating License No. DPR–49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 32795). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 5, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 19, 1985, as amended August 22, 1985.

Brief description of amendments: These amendments revise certain sections of the Radiological Effluent Technical Specifications which were issued on August 3, 1984.

Date of Issuance: December 10, 1985.

Effective date: December 10, 1985.

Amendments Nos.: 115 and 119.

Facility Operating Licenses Nos. DPR–44 and DPR–56. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 9, 1985 (50 FR 41254) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 10, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Southern California Edison Company, et al. Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of application for amendments: May 9, 1985.

Brief description of amendments: The amendment revises 3.10.1 "Special Test Exception—Shutdown Margin" to allow the surveillance requirements for Control Elements Assemblies to be performed within seven days rather than 24 hours.

Date of Issuance: December 12, 1985.

Effective date: December 12, 1985 and fully implemented within 30 days of the date of issuance.

Amendment Nos.: 40 and 29.

Facility Operating License Nos. NPF–10 and NPF–15: Amendments revised the Technical Specifications.

Dates of Initial notice in Federal Register: September 11, 1985 (50 FR 37090).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 12, 1985.

No significant hazards consideration comments were received.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mr, San Clemente, California.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: March 16, 1982, as supplemented June 28, August 3, and August 9, 1982, June 30, and October 27, 1983, March 22, and November 2, 1984, and April 17, and August 30, 1985; and by letter dated November 30, 1984, as supplemented April 12 and August 30, 1985.

Brief description of amendments: Revises the Technical Specifications to reflect changes to the VEPCO offsite and the Surry Power Station organizations, and revises the immediate notification requirements and the Licensee Event Reports System to be consistent with §§50.72 and 50.73 of 10 CFR Part 50.

Date of issuance: December 11, 1985.

Effective date: December 11, 1985.

Amendment Nos. 104 and 104.

Facility Operating License Nos. DPR–32 and DPR–37: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 20, 1983 (48 FR 33092); Renoticed June 20, 1984 (49 FR 25378), April 23, 1985 (50 FR 16019), and February 27, 1985 (50 FR 8011); Renoticed June 4, 1985 (50 FR 23555), and November 6, 1985 (50 FR 46208).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 1985.

No significant hazards consideration comments received: No.

Local Public Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Bethesda, Maryland this 23rd day of December 1985.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Acting Director,

Division of PWR Licensing–A, NRR.

[FR Doc. 85–38839 Filed 12–27–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–267]

Public Service Company of Colorado; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–34 issued to Public Service Company (the licensee) for operation of the Fort St. Vrain Nuclear Generating Station located in Platteville, Colorado.

The amendment would change the Fort St. Vrain Technical Specifications concerning shock suppressors (snubbers). Specifically, the change deletes the reference to the snubber type, i.e., mechanical or hydraulic, in LCO 4.3.10 and SR 5.3.8. This deletion allows the licensee to change or modify snubbers under 10 CFR 50.59. This change is in accordance with NRC policy as stated in Generic Letter 84–13 on Technical Specifications for Snubbers. These revisions to the Technical Specifications would be made in response to the licensee's application for amendment dated December 6, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance for the application of these criteria by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). The proposed changes to the Fort St. Vrain Technical Specifications (LCO 4.3.10 and SR 5.3.8) pertain to deleting the distinction between hydraulic and mechanical snubbers. This change is administrative and will have no effect on the ability of a shock suppressor to provide structural integrity of a safety related system during and following a seismic or other event initiating dynamic loads. The proposed changes will not delete any requirement or the number of shock suppressors installed or safety related systems. The changes will allow an orderly transition from mechanical shock suppressors to hydraulic shock suppressors. The hydraulic shock suppressors are design equivalent and appropriately qualified to provide equivalent seismic protection.

This change is consistent with Commission's example (i) in 48 FR 14870 of examples of amendments that are considered not likely to involve significant hazards considerations. Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in extending the shutdown at Fort St. Vrain to avoid violating the Technical Specifications. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the Federal Register at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity

for a prior hearing will be published in the **Federal Register** and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to Herbert N. Berkow, Director, Standardization and Special Projects Directorate, by collect call to 301–492–7564 or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. All comments received by January 9, 1986 will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Greely Public Library, Greely, Colorado.

Dated at Bethesda, Maryland, this 23rd day of December 1985.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing-B.

[FR Doc. 85–30837 Filed 12–27–85; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstem Passage Advisory Committee; Meeting Notice

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee of the Mainstem Passage Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Federal hydro system requirments and constraints
- Additional studies
- Other
- Public comment

DATE: January 10, 1986. 1:00 p.m.

ADDRESS: The meeting will be held in the Council's Meeting Room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–30733 Filed 12–27–85; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular on Qualification of Fuels, Lubricants, and Additives for Aircraft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Advisory Circular (AC) No. 20–24B.

SUMMARY: This notice is to notify the aviation public of the issuance of AC No. 20–24B, Qualification of Fuels, Lubricants, and Additives for Aircraft Engines. The AC provides acceptable procedures, but not the only procedures, by which fuels, lubricants, and additives may be qualified for use in certificated aircraft engines.

FOR FURTHER INFORMATION CONTACT: Locke Easton, Engine and Propeller Standards Staff, ANE–110, Aircraft Certification Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, MA 01803; telephone (617) 273–7088.

SUPPLEMENTARY INFORMATION: It is FAA practice to update and revise ACs to bring them in line with current policies and practices. AC No. 20–24B updates and replaces old AC No. 20–24A, Qualification of Fuels, Lubricants, and Additives, issued in April 1967.

Interested parties were given the opportunity to review and comment on the draft AC during the proposal and development phases. The notice to announce the availability of and request comments to the draft AC was published in the **Federal Register** (49 FR 31027) on August 2, 1984. All comments were reviewed and appropriate comments were incorporated in the AC.

AC No. 20–24B was issued by the Engine and Propeller Certification Directorate in Burlington, Massachusetts, on December 20, 1985.

A copy of AC No. 20–24B may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Section, M–494.3, 400 Seventh Street, SW, Washington, DC 20590.

Issued in Burlington, Massachusetts, on December 20, 1985.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 85–30766 Filed 12–27–85; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

National Conference on Barge Fleeting; Meeting

The Maritime Administration and Inland Rivers Ports and Terminals Inc., are jointly sponsoring a National Conference on Barge Fleeting in Memphis, Tennessee on April 8–9, 1986. The workshop conference is being held to broaden awareness of the technical findings of a study on barge fleeting, conducted jointly by the Maritime Administration and the State of Louisiana. The study, "Lower Mississippi River Regional Barge Fleeting Assessment, Plan, and Handbook Guide," was completed last spring and covers the Mississippi River from Baton Rouge to the Gulf of Mexico. E.J. Bentz and Associates, Inc., of Springfield, Virginia was the principal investigator of the study. Further information on the conference is available from the Maritime Administration, Office of Port and Intermodal Development, 400 Seventh Street SW, Washington, DC 20590 (Attention: William Bristor; telephone (202) 426–4357).

Dated: December 24, 1965.

Georgia P. Stamas,

Secretary.

[FR Doc. 85–30808 Filed 12–27–85; 8:45 am]

BILLING CODE 4910–81–M

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Part II

Department of Energy

Economic Regulatory Administration

Electric and Gas Utilities; Notice

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-79-43B]

Electric and Gas Utilities Covered in 1986 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Titles II and VII of the National Energy Conservation Policy Act of 1978 and Requirements for State Regulatory Authorities to Notify the Department of Energy

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) and section 211(b) of the National Energy Conservation Policy Act (NECPA) require the Secretary of Energy to publish a list before the beginning of each calendar year, identifying each electric utility and gas utility to which Titles I and III of PURPA and Titles II and VII of NECPA apply during such calendar year. The 1986 list is published here as two separate tabulations. Appendix A lists the covered utilities by State, and Appendix B lists them alphabetically.

Each State regulatory authority is required, pursuant to sections 102(c) and 301(d) of PURPA and section 211(b) of NECPA, to notify the Secretary of Energy of each electric utility and gas utility on the list for which such State regulatory authority has ratemaking authority. In addition, written comments are requested on the accuracy of the list of electric utilities and gas utilities.

DATE: Notifications by State regulatory authorities and written comments must be received by no later than 4:30 p.m. on February 14, 1986.

ADDRESS: Notifications and written comments should be forwarded to: Department of Energy, Coal and Electricity Division, 1000 Independence Avenue, SW., (Room GA-045), Docket No. ERA-R-79-43B, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Coal and Electricity Division, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, 202/[illegible].

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*), and section 211(b) of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3206 *et seq.*, (42 U.S.C 8211 *et seq.*), hereinafter referred to as the "Acts," the Department of Energy (DOE) is required to publish a list of utilities to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1986.

State regulatory authorities are required by the above cited Acts to notify the Secretary of Energy as to their ratemaking authority over the listed utilities. The inclusion or exclusion of any utility on or from the list does not affect the legal obligations of such utility or the responsible authority under the Acts.

The term "State regulatory authority" means any State, including the District of Columbia and Puerto Rico, or a political subdivision thereof, and any agency or instrumentality, either of which has authority to fix, modify, approve, or disapprove rates with respect to the sale of electric energy or natural gas by any utility (other than such State agency) and in the case of a utility for which the Tennessee Valley Authority (TVA) has ratemaking authority, the term "State regulatory authority" means the TVA.

Title I of PURPA sets forth ratemaking and regulatory policy standards with respect to electric utilities. Section 102(c) requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility to which Title I applies during such calendar year. An electric utility is defined as any person, state agency or Federal agency, which sells electric energy. An electric utility is covered by Title I for any calendar year is it had total sales of electric energy for purposes other than resale in excess of 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. An electric utility is covered in 1986 if it exceeded the threshold in 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, or 1984.

Title III of PURPA addresses ratemaking and other regulatory policy standards with respect to natural gas utilities. Section 301(d) of Title III requires the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each gas utility to which Title III applies during such calendar year. A gas utility is defined as any person, State agency or Federal agency, engaged in the local distribution of natural gas and the sale of natural gas to any ultimate consumer of natural gas. A gas utility is covered by Title III if it had total sales of natural gas for purposes other than resale in excess of 10 billion cubic feet during any calendar year beginning after December 31, 1975, and before the immediately preceding calendar year. A gas utility is covered in 1986 if it exceeded the threshold in 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, or 1984.

Title II, Part 1, of NECPA, addresses residential conservation programs, and Title VII of NECPA, enacted as part of the Energy Security Act, Pub. L. 96-294, 94 Stat. 611 *et seq.* (42 U.S.C. 8701 *et seq.*), addresses commercial building and mulit-family dwelling conservation programs. Section 211(b) contains a requirement, similar to that of PURPA, that the Secretary of Energy publish a list of electric and gas utilities to which Titles II and VII apply. The NECPA requirements for coverage of electric utilities and gas utilities differ from the PURPA requirements in only three respects:

(1) The threshold for electric utilities is 750 million kilowatt-hours for purposes other than resale;

(2) A utility is covered for any calendar year if it exceeded the threshold during the second preceding calendar year. A utility is covered in 1986 if it exceeded the threshold in 1984; and

(3) Only utilities which have residential sales are covered by Title II and only utilities which have sales to commercial buildings or multi-family dwellings are covered by Title VII.

In compiling the list published today, DOE revised the 1985 list (49 FR 50957, December 31, 1984), upon the assumption that all entities included on the 1985 list are properly included on the 1986 list unless DOE has information to the contrary. In doing this, DOE took into account information which was received from the Rural Electrification Agency, or included in public documents, regarding entities which exceeded the PURPA and NECPA thresholds for the first time in 1984. DOE believes that it will become aware of any errors or omissions in the list published today by means of the comment process called for by this notice. DOE will, after consideration of any comment and other information available to DOE, provide written notice of any further additions or deletions to the list.

II. Notification and Comment Procedures

No later than 4:30 p.m. on February 14, 1986, each State regulatory authority must notify the Department of Energy in writing of each utility on the list over which it has ratemaking authority. Five copies of such notification should be

submitted to the address indicated in the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. ERA–R–79–43B." Such notification should include:

1. A complete list of electric utilities and gas utilities over which the State regulatory authority has ratemaking authority;

2. Legal citations pertaining to the ratemaking authority of the State regulatory authority; and

3. For any listed utility known to be subject to other ratemaking authorities within the State for portions of it service area, a precise description of the portion to which such notification applies.

All interested persons, including State regulatory authorities, are invited to comment in writing, no later than 4:30 p.m. on February 14, 1986, on any errors or omissions with respect to the list. Five copies of such comments should be sent to the address indicated in the "ADDRESS" section of this Notice and should be identified on the outside of the envelope and on the document with the designation "Docket No. ERA–R–79–43B." Written comments should include the commenter's name, address and telephone number.

All notifications and comments received by DOE will be available for public inspection in the Freedom of Information Reading Room, 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585 between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday.

III. List of Electric Utilities and Gas Utilities

DOE is published in Appendix A and Appendix B, two different tabulations of the list of utilities which meet both PURPA and NECAP coverage requirements. In both appendices, the listed utilities not covered by NECPA are noted. As stated above, the inclusion or exclusion of any utility on or from the lists does not affect its legal obligations or those of the responsible State regulatory authority under PURPA and NECPA.

Appendix A is a tabulation of utilities which separately indentifies, by State, and each State regulatory authority, the covered utilities it regulates, and other covered utilities in the State which are not regulated by the State regulatory authority. This tabulation, including explanatory notes, is based on information provided to DOE by State regulatory authorities in response to the December 31, 1984 **Federal Register** Notice (49 FR 50957) requiring each State regulatory authority to notify DOE of each utility on the list over which it has ratemaking authority, comments received with respect to that notice, and information subsequently available to DOE.

The utilities classified in Appendix A are not regulated by the State regulatory authority may in fact be regulated by local municipal authorities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA indentical to those of the State regulatory authority. Therefore, each such municipality is to notify DOE of each utility on the list over which it has ratemaking authority.

In Appendix B, the utilities are listed alphabetically, subdivided into electric utilities and gas utilities, and further subdivided by type of ownership: investor-owned utilities, publicly-owned utilities, and rural cooperatives.

The changes to the 1985 list of electric and gas utilities are as follows:

Additions

* Bluebonnet Electric Cooperative (TX)
* Blue Ridge Electric Membership Corporation (NC)
* CP National Corporation (OR)
* Intermountain Rural Electric Association (CO)
* Lea County Electric Cooperative, Inc. (NM)
* Sumter Electric Cooperative, Inc. (FL)

Modifications:

CHANGE—Arizona Public Service Company (gas division) (AZ) to—Southwest Gas Corporation (AZ)
CHANGE—Chattanooga Gas Company (GA) to—Atlanta Gas Light Company (GA)

Asterisk (*) Removed:

Cobb Electric Membership Corporation (GA)
Florence Electric Department (AL, TN)
Northern Virginia Electric Cooperative (VA)
Northwestern Public Service Company (SD)
Pennyrile Rural Electric Cooperative Corporation (KY, TN)
Rural Electric System (AL)
South Central Power Company (OH)
Turlock Irrigation District (CA)
Warren Rural Electric Cooperative Corporation (KY, TN)

Erroneously Listed in 1984 List:

Citizens Utilities Company (CT)
Concord Natural Gas Company (NH)

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 *et seq.*, (42 U.S.C. 8211 *et seq.*))

Issued in Washington, D.C. on December 16, 1985.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Appendix A

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983 or 1984. All except those marked (*) are covered by PURPA Title III, and NECPA Titles II and VII Utilities marked (*) are not covered by NECPA Titles II and VII because they either did not exceed the NECPA threshold of 10 billion cubic feet in 1984 for purposes other than resale, or do not have residential or commercial sales.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1976, 1977, 1978, 1979, 1980, 1981, 1983 or 1984. All, except those marked (*) are covered by PURPA Title I and NECPA Titles II and VII. Utilities market (*) are not covered by NECPA Titles II and VII because they either did not exceed the NECPA threshold of 750 million Kilowatt-hours in 1984 for purposes other than resale, or do not have residential or commerical sales.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:
Alabama Gas Corporation
* Alabama-Tennessee Natural Gas Company
Mobile Gas Service Corporation
Northwest Alabama Gas Dist.

Electric Utilities

Investor-Owned:
Alabama Power Company

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

Publicly-Owned:
Decatur Electric Department
* Dothan Electric Department
Florence Electric Department
Huntsville Utilities

Rural Electric Cooperatives:
Rural Electric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned:
Enstar Natural Gas Company

Electric Utilities

Rural Electric Cooperatives:
Chugach Electric Association

Publicly-Owned:
* Anchorage Municipal Light & Power Department

State: Arizona

Regulatory Authority: Arizona Corporation Commission.

Gas Utilities

Investor-Owned:

Southern Union Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:

Arizona Public Service Company
Tucson Electric Power Company

Publicly-Owned:

*Trico Electric Cooperative, Inc.

The following covered utilities within the State of Arizona are not regulated by the Arizona Corporation Commission:

Electric Utilities

Publicly-Owned:

Salt River Project Agricultural Improvement and Power District

State: Arkansas

Regulatory Authority: Arkansas Public Service Commission.

Gas Utilities

Investor-Owned:

Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Arkansas Western Gas Company
Associated Natural Gas Company

Electric Utilities

Investor-Owned:

Arkansas Power and Light Company
Empire District Electric Company
Oklahoma Gas and Electric Company
Southwestern Electric Power Company

Rural Electric Cooperatives:

* First Electric Cooperative Corporation

The following covered utility within the State of Arkansas is not regulated by the Arkansas Public Service Commission:

Publicly-Owned:

* North Little Rock Electric Department

State: California

Regulatory Authority: California Public Utilities Commission.

Gas Utilities

Investor-Owned:

Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:

Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company

The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Electric Utilities

Publicly-Owned:

Anaheim Public Utilities Department
Burbank Public Service Department
*Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of Water and Power
Modesto Irrigation District
Palo Alto Electric Utility
Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
Santa Clara Electric Department
Turlock Irrigation District
Vernon Municipal Light Department

Gas Utilities

Publicly-Owned:

Long Beach Gas Department

State: Colorado

Regulatory Authority: Colorado Public Utilities Commission.

Gas Utilities

Investor-Owned:

Greeley Gas Company
Iowa Electric Light and Power Company
Kansas-Nebraska Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Public Service Company of Colorado

Publicly-Owned:

Colorado Springs Department of Utilities (Jurisdiction only sales to another gas utility)

Electric Utilities

Investor-Owned:

Public Service Company of Colorado
Southern Colorado Power Division of Centel

The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities

Publicly-Owned:

Colorado Springs Department of Utilities (except sales to another gas utility)

Electric Utilities

Publicly-Owned:

Colorado Springs Department of Utilities (within city limits)

Rural Electric Cooperatives:

*Intermountain Rural Association
Moon Lake Electric Association

State: Connecticut

Regulatory Authority: Connecticut Department of Public Utility Control

Gas Utilities

Investor-Owned:

Connecticut Light and Power Company
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company

Electric Utilities

Investor-Owned:

Connecticut Light and Power Company
United Illuminating Company

Publicly-Owned:

*Groton Public Utilities

State: Delaware

Regulatory Authority: Delaware Public Service Commission.

Gas Utilities

Investor-Owned:

Delmarva Power and Light Company

Electric Utilities

Investor-Owned:

Delmarva Power and Light Company

State: District of Columbia

Regulatory Authority: Public Service Commission of the District of Columbia

Gas Utilities

Investor-Owned:

Washington Gas Light Company

Electric Utilities

Investor-Owned:

Potomac Electric Power Company

State: Florida

Regulatory Authority: Florida Public Service Commission.

Gas Utilities

Investor-Owned:

*City Gas Company of Florida
Peoples Gas System

Electric Utilities

Investor-Owned:

Florida Power Corporation
Florida Power and Light Company
Gulf Power Company
Tampa Electric Company

Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—

Gainesville Regional Utilities
Jacksonville Electric Authority
Lakeland Department of Electricity and Water
*Ocala Utilities
Orlando Utilities Commission
Tallahassee, City of

Rural Electric Cooperative: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—

Clay Electric Cooperative
Lee County Electric Cooperative
*Sumter Electric Cooperative, Inc.
Withlacoochee River Electric Cooperative

State: Georgia

Regulatory Authority: Georgia Public Service Commission.

Gas Utilities

Investor-Owned:

Atlanta Gas Light Company
Gas Light Company of Columbus

Electric Utilities

Investor-Owned:

Georgia Power Company
Savannah Electric and Power Company

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The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission.

Electric Utilities

Publicly-Owned:

*Albany Water, Gas & Light Commission
*Dalton Water, Light & Sink

Rural Electric Cooperatives:

*Douglas County Electric Membership Corporation
Cobb Electric Membership Corporation
*Flint Electric Membership Corporation
Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation
*Walton Electric Membership Corporation

State: Hawaii

Regulatory Authority: Hawaii Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:

Hawaiian Electric Company, Inc.

State: Idaho

Regulatory Authority: Idaho Public Utilities Commission.

Gas Utilities

Investor-Owned:

Intermountain Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:

Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Light Company

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:

Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
Panhandle Eastern Pipeline Company
Peoples Gas, Light and Coke Company

Electric Utilities

Investor-Owned:

Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities

Publicly-Owned:

Springfield Water, Light and Power Department

State: Indiana

Regulatory Authority: Indiana Public Service Commission.

Gas Utilities

Investor-Owned:

Indiana Gas Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company
Terre Haute Gas Corporation

Publicly-Owned:

Citizens Gas and Coke Utility

Electric Utilities

Investor-Owned:

Indiana and Michigan Electric Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
Public Service Company of Indiana
Southern Indiana Gas and Electric Company

Publicly-Owned:

*Richmond Power and Light

State: Iowa

Regulatory Authority: Iowa Commerce Commission.

Gas Utilities

Investor-Owned:

Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Peoples Naturtal Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:

Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Union Electric Company

Publicly-Owned: The Iowa Commerce Commission has service and safety regulation over the following utilities—

*Muscatine Power and Water
Omaha Public Power District

State: Kansas

Regulatory Authority: Kansas State Corporation Commission.

Gas Utilities

Investor-Owned:

Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Union Gas System Inc.

Electric Utilities

Investor-Owned:

Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Light Company
Southwestern Public Service Company
Western Power Division of Centel

Rural Electric Cooperatives:

Midwest Energy Incorporated

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities

Public-Owned:

Kansas City Board of Public Utilities

State: Kentucky

Regulatory Authority: Kentucky Energy Regulatory Commission.

Gas Utilities

Investor-Owned:

Columbia Gas of Kentucky, Inc.
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities

Investor-Owned:

Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company

Rural Electric Cooperatives:

Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Energy Regulatory Commission.

Bowling Green Municipal Utilities
Owensboro Municipal Utilities
Pennyrile Rural Electric Cooperative Corporation
Warren Rural Electric Cooperative Corporation
West Kentucky Rural Electric Cooperative Corporation

State: Louisiana

Regulatory Authority: Louisiana Public Service Commission.

Gas Utilities

Investor-Owned:

Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company
Louisiana Gas Service Company
New Orleans Public Service, Inc. (East and West Bank)

Electric Utilities

Investor-Owned:

Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (West Bank)
New Orleans Public Service, Inc. (East Bank)

Southwestern Electric Power Company

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Electric Utilities

Publicly-Owned:

Lafayette Utilities System

Rural Electric Cooperatives:

Dixie Electric Membership Corporation
Southwest Louisiana Electric Membership Corporation

State: Maine

Regulatory Authority: Maine Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:

Bangor Hydro-Electric Company
Central-Maine Power Company

State: Maryland

Regulatory Authority: Maryland Public Service Commission.

Gas Utilities

Investor-Owned:

Baltimore Gas and Electric Company, Washington Gas Light Company

Electric Utilities

Investor-Owned:

Baltimore Gas and Electric Company, Conowingo Power Company
Delmarva Power and Light Company of Maryland
Potomac Edison Company
Potomac Electric Power Company

Rural Electric Cooperatives:

Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities

Gas Utilities

Investor-Owned:

Bay State Gas Company
Boston Gas Company
Colonial Gas Energy System
Commonwealth Gas Company
Lowell Gas Company

Electric Utilities

Investor-Owned:

Boston Edison Company
Cambridge Electric Light Company
Commonwealth Electric Company
Eastern Edison Company
Massachusetts Electric Company
Western Massachusetts Electric Company

State: Michigan

Regulatory Authority: Michigan Public Service Commission.

Gas Utilities

Investor-Owned:

Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:

Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
*Lake Superior District Power Company
*Michigan Power Company
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilities within the State of Michigan are not regulated by the Michigan Public Service Commission.

Gas Utilities

Investor-Owned:

Battle Creek Gas Company

Electric Utilities

Publicly-Owned:

Lansing Board of Water and Light

State: Minnesota

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities

Investor-Owned

Inter-City Gas Company
Interstate Power Company
Iowa Electric Light and Power Company
Minnegasco, Inc.
Montana-Dakota Utilities Company
Northern States Power Company
Peoples Natural Gas Company-Division of InterNorth, Inc.

Electric Utilities

Investor-Owned:

Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company

Rural Electric Cooperative:

*Dakota Electric Association

The following covered utility within the State of Minnesota is not regulated by the Minnesota Public Service Commission:

Electric Utilities

Publicly-Owned:

*Rochester Department of Public Utilities

Rural Electric Cooperatives:

*Anoka Electric Cooperative

State: Mississippi

Regulatory Authority: Mississippi Public Service Commission.

Gas Utilities

Investor-Owned:

Entex, Inc.
Mississippi Valley Gas Company

Electric Utilities

Investor-Owned:

Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission.

Electric Utilities

Rural Electric Cooperatives:

*4-County Electric Power Association
*Singing River Electric Power Association
*Southern Pine Electric Power Association

State: Missouri

Regulatory Authority: Missouri Public Service Commission

Gas Utilities

Investor-Owned:

Associated Natural Gas Company
Gas Service Company
Laclede Gas Company Consolidated
Missouri Public Service Company
Peoples Natural Gas Company Division of InterNorth, Inc.

Electric Utilities

Investor-Owned:

Empire District Electric Company
Kansas City Power and Light Company
Missouri Public Service Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by Missouri Public Service Commission.

Gas Utilities

Investor-Owned:

Cities Service Gas Company

Publicly-Owned:

Springfield City Utilities

Electric Utilities

Publicly-Owned:

*Independence Power and Light Department
Springfield City Utilities

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Utilities

Investor-Owned:

Montana-Dakota Utilities Company
Montana Power Company

Electric Utilities

Investor-Owned:

Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska

Regulatory Authority-Nebraska Public Service Commission.

The Commission does not regulate the rates and service of the gas and electric utilities of the State of Nebraska

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission.

Electric Utilities

Publicly-Owned:

Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

Gas Utilities

Investor-Owned:

Gas Service Company
Iowa Electric Light and Power Company
Iowa Public Service Company
KN Energy, Inc.
Minnegasco, Inc.
Northwestern Public Service Company
Peoples Natural Gas Company Division of Internorth, Inc.

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned:

Metropolitan Utilities District of Omaha

State: Nevada

Regulatory Authority: Nevada Public Service Commission.

Gas Utilities

Investor-Owned:

Southwest Gas Corporation

Electric Utilities

Investor-Owned:

Idaho Power Company
Nevada Power Company
Sierre Pacific Power Company

State: New Hampshire

Regulatory Authority: New Hampshire Public Utilities Commission.

Electric Utilities

Investor-Owned:

Public Service Company of New Hampshire

State: New Jersey

Regulatory Authority: New Jersey Department of Energy Board of Public Utilities.

Gas Utilities

Investor-Owned:

Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

Electric Utilities

Investor-Owned:

Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

State: New Mexico

Regulatory Authority: New Mexico Public Service Commission.

Gas Utilities

Gas Company of New Mexico

Electric Utilities

Investor-Owned:

El Paso Electric Company
Public Service Company of New Mexico
Southwestern Public Service Company
Texas-New Mexico Power Company

Rural Electric Cooperative:

*Lea County Electric Cooperative, Inc.

State: New York

Regulatory Authority: New York Public Service Commission.

Gas Utilities

Investor-Owned:

Brooklyn Union Gas Company
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York, Inc.
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

Electric Utilities

Investor-Owned:

Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York States Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

Electric Utilities

Publicly-Owned:

Power Authority of New York

State: North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:

North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina

Electric Utilities

Investor-Owned:

Carolina Power and Light Company
Duke Power Company
*Nantahala Power & Light Company
Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities

Publicly-Owned:

Fayetteville Public Works Commission
*Greenville Utilities Commission
*High Point Electric Utility Department
*Rocky Mount Public Utilities
*Wilson Utilities Department

Rural Electric Cooperatives:

*Blue Ridge Electric Membership Corp.
*Rutherford Electric Membership Corporation

State: North Dakota

Regulatory Authority: North Dakota Public Service Commission.

Gas Utilities

Investor-Owned:

Montana Dakota Utilities Company
Northern States Power Company

Electric Utilities

Investor-Owned:

Montana Dakota Utilities Company
Northern States Power Company
Otter Tail Power Company

State: Ohio

Regulatory Authority: Ohio Public Utilities Commission.

Gas Utilities

Investor-Owned:

Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

Electric Utilities

Investor-Owned:

Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities

Publicly-Owned:

*Cleveland Division of Light and Power

Rural Electric Cooperatives:

South Central Power Company

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission

Gas Utilities

Investor-Owned:

Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Gas Service Company
Lone Star Gas Company
Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System Inc.

Electric Utilities

Investor-Owned:

Empire District Electric Company

Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company

Rural Electric Cooperative:

*Cotton Electric Cooperative

Gas Utilities

Investor-Owned:

Cities Service Gas Company

State: Oregon

Regulatory Authority: Public Utility Commissioner of Oregon.

Gas Utilities

Investor-Owned:

Cascade Natural Gas Corporation
Northwest Natural Gas Company

Electric Utilities

Investor-Owned:

*CP National Corporation
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commissioner of Oregon:

Electric Utilities

Publicly-Owned:

Central Lincoln People's Utility District
*Clatskanie People's Utility District
Eugene Water and Electric Board
*Springfield Utilities Board

Rural Electric Cooperatives:

*Umatilla Electric Cooperative Association

State: Pennsylvania

Regulatory Authority: Pennsylvania Public Utility Commission.

Gas Utilities

Investor-Owned:

Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T.W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities

Investor-Owned:

Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
*UGI—Luzerne Electric Company
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities

Investor-Owned:

Phildelphia Gas Works

State: Puerto Rico

Regulatory Authority: Puerto Rico Public Service Commission.

Gas Utilities

None.

Electric Utilities

None.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities

Publicly-Owned:

Puerto Rico Electric Power Authority

State: Rhode Island

Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities

Investor-Owned:

Providence Gas Company

Electric Utilities

Investor-Owned:

Blackstone Valley Electric Company
Narragansett Electric Company

State: South Carolina

Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities

Investor-Owned:

Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

Electric Utilities

Investor-Owned:

Carolina Power and Light Company
Duke Power Company
South Carolina Electric and Gas Company

The following covered utilities within the State of South Carolina is not regulated by the South Carolina Public Service Commission:

Electric Utilities

Publicly-Owned:

South Carolina Public Service Authority

Rural Electric Cooperatives:

*Berkeley Electric Cooperatives, Inc.

State: South Dakota

Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities

Investor-Owned:

Iowa Public Service Company
Minnegasco, Inc.
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities

Investor-Owned:

Black Hills Power and Light Company
Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities

Publicly-Owned:

Nebraska Public Power District

State: Tennessee

Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities

Investor-Owned:

Chattanooga Gas Company
Nashville Gas Company

Electric Utilities

Investor-Owned:

Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:

Electric Utilities

Publicly-Owned:

*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
*Greensville Light and Power System
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis Light Gas and Water Division
*Murfreesboror Electric Department
Nashville Electric Services

Rural Electric Cooperatives:

*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*Gibson County Electric Membership Corporation
*Meriweather Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electirc Membership Corporation
Volunteer Electirc Cooperative

Gas Utilities

Publicly-Owned:

Memphis Light, Gas and Water Division

State: Tennessee

Regulatory Authority: Tennessee Valley Authority.

Gas Utilities

None.

Electric Utilities

Publicly-Owned:

*Bowling Green Municipal Utilities
*Bristol Tennessee Electric System
Chattanooga Electric Power Board

*Clarksville Department of Electricity
*Cleveland Utilities
Decatur Electric Department
Florence Electric Department
*Greeneville Light and Power System
Huntsville Utilities
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis Light, Gas and Water Division
*Murfreesboro Electric Department
Nashville Electric Service

Rural Electric Cooperatives:

*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*Four-County Electric Power Association
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
Pennyrile Rural Electric Cooperative Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

State: Texas

Regulatory Authority: Texas Public Utility Commission.

Gas Utilities

Investor-Owned:

None.

Electric Utilities

Investor-Owned:

Central Power and Light Company
El Paso Electric Company
Gulf States Utilities
Houston Lighting and Power Company
Southwestern Electric Power Company
*Southwestern Electric Service Company
Southwestern Public Service Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
West Texas Utilities Company

Publicly-Owned:

*Lower Colorado River Authority

Rural Electric Cooperatives:

*Bluebonnet Electric Cooperative, Inc.
*Guadalupe Valley Electric Cooperative
Pedernales Electric Cooperative
*Sam Houston Electric Cooperative

The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates, operations and services provided by an electric utility (whether privately owned or publicly owned), within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decisions of such municipalities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The municipally-owned electric utilities listed below are not under the commission's original ratemaking jurisdiction.

Electric Utilities

Publicly-Owned:

Austin Electric Department
Garland Electric Department
*Lubbock Power and Light
San Antonio City Public Service Board

State: Texas

Regulatory Authority: Railroad Commission of Texas.

Gas Utilities

Investor-Owned:

Arkansas-Louisiana Gas Company
Energas Company
Entex, Inc.
Lone Star Gas Company
Peoples Natural Gas Division of Northern Natural Gas Company
Southern Union Gas Company

The Railroad Commission of Texas has special appellate jurisdiction over ratemaking decisions of the governing body of any municipality which affect the rates of a municipally-owned gas utility as provided by State statute. The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas:

Gas Utilities

Investor-Owned:

City Service Gas Company

Public-Owned:

City Public Service Board (San Antonio)

State: Utah

Regulatory Authority: Utah Public Service Commission.

Gas Utilities

Investor-Owned:

Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:

Utah Power and Light Company

Rural Electric Cooperatives:

Moon Lake Electric Association

State: Vermont

Regulatory Authority: Vermont Public Service Board.

Gas Utilities

None.

Electric Utilities

Investor-Owned:

Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire

State: Virginia

Regulatory Authority: Virginia State Corporation Commission.

Gas Utilities

Investor-Owned:

Columbia Gas of Virginia, Inc.
Commonwealth Gas Services, Inc.
Virginia Natural Gas
Washington Gas Light Company

Electric Utilities

Investor-Owned:

Appalachian Power Company
Delmarva Power and Light Company
*Old Dominion Power Company
Potomac Edison Company
Potomac Electric Power Company
Virginia Electric and Power Company

Rural Electric Cooperatives

Northern Virginia Electric Cooperative
Rappahannock Electric Corporation

The following covered utility within the State of Virginia is not regulated by the Virginia State Corporation Commission.

Gas Utilities

Publicly-Owned:

City of Richmond, Virginia, Department of Public Utilities

Electric Utilities

Publicly-Owned:

*Danville Water, Gas & Electric

State: Washington

Regulatory Authority: Washington Utilities and Transportation Commission.

Gas Utilities

Investor-Owned:

Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:

Pacific Power and Light Company
Puget Sound Power and Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission.

Electric Utilities

Publicly-Owned:

*Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County

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Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
*Public Utility District No. 1 of Douglas County
*Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grant County
Public Utility District No. 1 of Grays Harbor County
*Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
*Richland Energy Service Department
Seattle City Light Department
Tacoma Public Utility—Light Division

State: West Virginia

Regulatory Authority: West Virginia Public Service Commission.

Gas Utilities

Investor-Owned:

Columbia Gas of West Virginia, Inc.
Consolidated Gas Supply Corporation
Equitable Gas Company

Electric Utilities

Investor-Owned:

Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Virginia Electric and Power Company
Wheeling Electric Company

State: Wisconsin

Regulatory Authority: Wisconsin Public Service Commission

Gas Utilities

Investor-Owned:

Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:

*Lake Superior District Power Company
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

State: Wyoming

Regulatory Authority: Wyoming Public Service Commission.

Gas Utilities

Investor-Owned:

Cheyenne Light Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:

Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company

Rural Electric Cooperative:

Tri-Country Electric Association, Inc.

Appendix B

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt hours in 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983 or 1984. All except those marked (*) are covered by PURPA Title I and NECPA Title II and VII. Utilities marked (*) either did not exceed the NECPA threshold of 750 million kilowatt-hour in 1984 for purposes other than resale, or do not have residential or commerical sales and therefore, are not covered by NECTA Titles II and VII. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned:

Alabama Power Company
Appalachian Power Company [VA]
Appalachian Power Company [WV]
Arizona Public Service Company
Arkansas Power & Light Company [AR]
Arkansas Power & Light Company [LA]
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company [MT]
Black Hills Power & Light Company [SD]
Black Hills Power & Light Company [WY]
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company [NC]
Carolina Power & Light Company [SC]
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Commonwealth Electric Company
Connecticut Light & Power Company
*Conowingo Power Company
Consolidated Edison Company of New York
Consumer Power Company
*CP National Corporation
Dayton Power & Light Company
Delmarva Power & Light Company [DE]
Delmarva Power & Light Company [VA]
Delmarva Power & Light Company of Maryland
Detroit Edison Company
Duke Power Company [NC]
Duke Power Company [SC]
Duquesne Light Company
Eastern Edison Company
El Paso Electric Company [NM]
El Paso Electric Company [TX]
Empire District Electric Company [AR]
Empire District Electric Company [KS]
Empire District Electric Company [MO]
Empire District Electric Company [OK]
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company [LA]
Gulf States Company [TX]
Hawaiian Electric Comopany Inc.
Houston Lighting & Power Company
Idaho Power Company [ID]
Idaho Power Company [NV]
Idaho Power Company [OR]
Illinois Power Company
Indiana & Michigan Electric Company [IN]
Indiana & Michigan Electric Company [MI]
Indianapolis Power & Light Comopany
Interstate Power Company [IA]
Interstate Power Company [IL]
Interstate Power Company [MN]
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company [IA]
Iowa-Illinois Gas & Electric Company [IL]
Iowa Power & Light Company
Iowa Public Service Company [LA]
Iowa Public Service Company [SD]
Iowa Southern Utilities Company
Jersey Central Power & Light Company
Kansas City Power & Light Company [KS]
Kansas City Power & Light Company [MO]
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company
Kingsport Power Company
*Lake Superior District Power Company [MI]
*Lake Superior District Power Company [WI]
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Metropolitan Edison Company
*Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Public Service Company
Monongahela Power Company [OH]
Monongahela Power Company [WV]
Montana-Dakota Utilities Company [MT]
Montana-Dakota Utilities Company [ND]
Montana-Dakota Utilities Company [SD]
Montana-Dakota Utilities Company [WY]
Montana-Dakota Power Company
*Nantahala Power & Light Company
Narragansett Electric Company
Nevada Power Company
New Orleans Public Service Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
Northern Indiana Public Service Company
Northern States Power Company [MN]
Northern States Power Company [ND]
Northern States Power Company [SD]
Northern States Power Company [WI]
Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company [AR]
Oklahoma Gas & Electric Company [OK]
Old Dominion Power Company
Orange & Rockland Utilities

Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Gas & Electric Company
Pacific Power Light Company (CA)
Pacific Power Light Company (ID)
Pacific Power Light Company (MT)
Pacific Power Light Company (OR)
Pacific Power Light Company (WA)
Pacific Power Light Company (WY)
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Edison Power Company (DC)
Potomac Edison Power Company (MD)
Potomac Edison Power Company (VA)
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Colorado Power Division of Centel (CO)
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas-New Mexico Power Company
Texas Utilities Electric Company
Toledo Edison Company
Tucson Electric Power Company
*UGI-Luzerne Electric Division
Union Electric Company (LA)
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
*Upper Peninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Utah Power & Light Company (WY)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Virginia Electric & Power Company (WV)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Western Power Division of Centel (KS)
Wheeling Electric Company
Wisconsin Electric Power Company (MI)
Wisconsin Electric Power Company (WI)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned:

*Albany Water, Gas & Light Commission (GA)
Anaheim Public Utilities Department (CA)
*Anchorage Municipal Light & Power Department (AK)
Austin Electric Department (TX)
*Bowling Green Municipal Utilities (KY)
*Bristol Tennessee Electric System (TN)
*Brownsville Public Utility Board (TX)
Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
*Clarksville Department of Electricity (TN)
*Clatskanie People's Utility District (OR)
*Cleveland Division of Light & Power (OH)
*Cleveland Utilities (TN)
Colorado Springs Department of Utilities (CO)
*Dalton Water, Light & Sink (GA)
*Danville Water, Gas & Electric (VA)
Decatur Electric Department (AL)
*Dothan Electric Department (AL)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
Florence Electric Department (AL,TN)
Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
Glendale Public Service Department (CA)
*Greeneville Light & Power System (TN)
*Greenville Utilities Commission (NC)
*Groton Public Utilities (CT)
*High Point Electric Utility Dept. (NC)
Huntsville Utilities (AL)
Imperial Irrigation District (CA)
*Independence Power & Light Department (MO)
Jackson Utility Division—Electric Department (TN)
Jacksonville Electric Authority (TN)
Johnson City Power Board (TN)
Kansas City Board of Public Utilities (KS)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electricity and Water (FL)
Lansing Board of Water & Light (MI)
*Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
*Lower Colorado River Authority (TX)
*Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
*Murfreesboro Electric Dept. (TN)
*Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
*North Little Rock Electric Department (AR)
*Ocala Utilities (FL)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
*Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
*Power Authority of New York (NY)
*Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
*Public Utility District No. 1 of Douglas County (WA)
*Public Utility District No. 1 of Franklin County (WA)
Public Utility District No. 1 of Grant County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
*Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Puerto Rico Electric Power Authority
*Richland Energy Services Department (WA)
*Richmond Power & Light (IN)
Riverside Public Utilities (CA)
*Rochester Department of Public Utilities (MN)
*Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
South Carolina Public Service Authority
*Springfield City Utilities (MO)
*Springfield Utilities Board (OR)
Springfield Water, Light & Power Department (IL)
Tacoma Public Utilities—Light Divison (WA)
*Trico Electric Cooperative, Inc. (AZ)
Tallahassee, City of (FL)
Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
*Wilson Utilities Department (NC)

Rural Electric Cooperatives

*Anoka Electric Cooperative (MN)
*Appalachian Electric Cooperative (TN)
*Berkeley Electric Cooperative (SC)
*Bluebonnet Electric Cooperative, Inc. (TX)
*Blue Ridge Electric Membership Corporation (NC)
Chugach Electric Association (AK)
Clay Electric Cooperative (FL)
Cobb Electric Membership Corporation (GA)
*Cotton Electric Cooperative (OK)
Cumberland Electric Membership Corporation (TN)
*Dakota Electric Association (MN)
*Douglas County Electric Membership Corporation (GA)

*Dixie Electric Membership Corporation (LA)
Duck River Electric Membership Corporation (TN)
*First Electric Cooperative Corporation (AR)
*Flint Electric Membership Corporation (GA)
*Four County Electric Power Association (MS)
*Gibson County Electric Membership Corporation (TN)
Green River Electric Corporation (KY)
*Guadalupe Valley Electric Cooperative (TX)
Henderson-Union Rural Electric Cooperative Corporation (KY)
*Intermountain Rural Electric (CO)
Jackson Electric Membership Corporation (GA)
*Lea County Electric Cooperative, Inc. (NM)
Lee County Electric Cooperative (FL)
*Meriwether Lewis Electric Cooperative (TN)
Middle Tennessee Electric Membership Corporation (TN)
*Midwest Energy Incorporated (KS)
Moon Lake Electric Association (CO)
*Northern Virginia Electric Cooperative (VA)
North Georgia Electric Membership Corporation (TX)
Pedernales Electric Cooperative Corporation (TX)
Pennyrile Rural Electric Cooperative Corporation (KY, TN)
Rappahannock Electric Cooperative (VA)
Rural Electric System (AL)
*Rutherford Electric Membership Corporation (NC)
*Sam Houston Electric Cooperative (TX)
*Singing River Electric Power Association (MS)
South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
*Southern Pine Electric Power Association (MS)
Southwest Louisiana Electric Membership Corporation (LA)
*Southwest Tennessee Electric Membership Corporation (TN)
*Sumter Electric Cooperative (FL)
Tri-County Electric Association, Inc. (WY)
*Tri-County Electric Membership Corporation (TN)
*Umatilla Electric Cooperative Association (OR)
*Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
*Walton Electric Membership Corporation (GA)
Warren Rural Electric Cooperative Corporation (KY)
*West Kentucky Rural Electric Cooperative Corporation (KY)
Withlacoochee River Electric Cooperative (FL)

Federal Agencies

*Bonneville Power Administration (OR)
*Tennessee Valley Authority (TN)
*Western Area Power Administration (CO)

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983 or 1984. All except those marked (*) are covered by PURPA Title III and NECPA Titles II and VII. Utilities marked (*) are not covered by NECPA Titles II and VII because they either did not exceed
the NECPA threshold of 10 billion cubic feet in 1984 for purposes other than resale, or do not have residential or commercial sales. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parentheses.

Investor-Owned

Alabama Gas Corporation
Alabama-Tennessee Natural Gas Company
Anadarko Production Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Louisiana Gas Company (OK)
Arkansas-Louisiana Gas Company (TX)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas Western Gas Company
Associated Natural Gas Company (AR)
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Baltimore Gas & Electric Company
Battle Creek Gas Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (TN)
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Services Gas Company (covered by NECPA only)
*City Gas Company of Florida
City Service Gas Company
Colonial Gas Energy System
Columbia Gas of Kentucky, Inc.
Columbia Gas of New York, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
Columbia Gas of West Virginia, Inc.
Commonwealth Gas Company
Commonwealth Gas Service Incorporated
Commonwealth Gas Services, Incorporated
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consolidated Gas Supply Corporation
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Elizabethtown Gas Company
Energas Company
Enstar Natural Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Mexico
Gas Light Company of Columbus
Gas Service Company (KS)
Gas Service Company (MO)
Gas Service Company (NE)
Gas Service Company (OK)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Gulf States Utilities Company
Illinois Power Company
Indiana Gas Company
Inter City Gas Company
Intermountain Gas Company
Interstate Power Company (IA)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (CO)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (MN)
Iowa Electric Light & Power Company (NE)
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (NE)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (CO)
Kansas-Nebraska Natural Gas Company (KS)
Kansas-Nebraska Natural Gas Company (WY)
Kansas Power & Light Company
KN Energy, Inc.
Laclede Gas Company Consolidated
Lone Star Gas Company (OK)
Lone Star Gas Company (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Light Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Minnegasco, Inc. (MN)
Minnegasco, Inc. (NE)
Minnegasco, Inc. (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MN)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Company
North Carolina Natural Gas Corporation
North Shore Gas Company
Nothern Illinois Gas Company
Northern Indiana Public Service Company
Northern Natural Gas Company (KS)

Northern Natural Gas Company (NE)
Nothern States Power Company (MN)
Nothern States Power Company (ND)
Nothern States Power Company (WI)
North Penn Gas Company
Northwest Alabama Gas District
Northwest Natural Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (KS)
Peoples Natural Gas Company, Division of Internorth, Inc. (MN)
Peoples Natural Gas Company, Division of Internorth, Inc. (MO)
Peoples Natural Gas Company, Division of Internorth, Inc. (NE)
Peoples Natural Gas Company, Division of Internorth, Inc. (TX)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company, Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
South Carolina Gas & Electric Company
South Jersey Gas Company
Southeastern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Gas Company (AZ)
Southern Union Gas Company (OK)
Southern Union Gas Company (TX)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Terre Haute Gas Corporation
T.W. Phillips Gas and Oil Company
UGI Corporation
Union Gas System, Inc. (KS)
Union Gas System, Inc. (OK)
Union Light, Heat & Power Company (KY)
Virginia Natural Gas
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Public-Owned

Citizens Gas & Coke Utility (IN)
City of Richmond, Virginia, Department of Public Utilities (VA)
City Public Services Board (San Antonio) (TX)
Colorado Springs, Department of Public Utilities (CO)
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)

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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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federal register

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For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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Federal Home Loan Bank Board

South Africa
State Department

Superfund
Environmental Protection Agency

Transportation
Animal and Plant Health Inspection Service

Veterans
Veterans Administration

Water Pollution Control
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WHO: The Office of the Federal Register.

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WASHINGTON, DC

WHEN: January 17; at 9 am.

WHERE: Office of the Federal Register
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RESERVATIONS: Howard Landon 202-523-5227 (Voice)
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 225, 226, 235 and 245

Information Collection/ Recordkeeping; OMB Assigned Control Numbers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This document makes minor technical amendments to the Child Nutrition Program regulations by removing existing Office of Management and Budget (OMB) control number paragraphs and adding a new section at the end of each part to display in chart form all OMB control numbers assigned to the sections where collection/ recordkeepng requirements are descibed. In accordance with the Paperwork Reduction Act of 1980 and the OMB regulations regarding controlling paperwork burdens on the public, any regulation which requires the collection/reporting of information must be approved by OMB and a valid OMB control number must be displayed. This document places all OMB control numbers in a single section at the end of each part rather than scattered throughout. The affected programs are the National School Lunch Program (Part 210), Special Milk Program (Part 215), Summer Food Service Program (Part 225), Child Care Food Program (Part 226), State Administrative Expense Funds (Part 235) and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (Part 245).

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302 or call (703) 756–3620.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and OMB regulation 5 CFR Part 1320, Controlling Paperwork Burdens on the Public, OMB must approve all regulations which require the collection or reporting of information by individuals, businesses and other private institutions, and State and local governments. Currently, OMB control numbers assigned to such requirements are recorded at the end of the relevant regulatory section. Additionally, regulations implemented prior to 5 CFR Part 1320, although approved by OMB, do not have OMB control numbers displayed. The purpose of this document is to display and consolidate all OMB control numbers in chart form at the end of each part.

This document relates to internal agency management and, therefore, notice and comment are unnecessary and good cause exists for making this rule effective upon publication.

Further, since this rule relates to internal agency management, it is exempt from the provisions of E.O. 12291. Also, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612), and thus is exempt from the provisions of that Act.

These programs, National School Lunch Program, Special Milk Program, Child Care Food Program, Summer Food Service Program and State Administrative Expense Funds are listed in the Catalog of Federal Domestic Assistance under 10.555, 10.556, 10.558, 10.559, and 10.560. The programs are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant programs—Social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 225

Food assistance programs, Grant programs—Health, Infants, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 226

Day Care, Food assistance programs, Grant programs—Health, Infants, Children, Surplus agricultural commodities.

7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Child Care Food Program, Food Distribution Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

7 CFR Part 245

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Grant—Social programs, and Reporting and recordkeeping requirements.

Accordingly, Parts 210, 215, 225, 226, 235 and 245 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779, unless otherwise noted.

2. In Part 210, remove all OMB control number paragraphs throughout and add a new § 210.22 to read as follows:

§ 210.22 Information collection/ recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control Number
210.3(c)	[illegible]
210.5(a), (b)	[illegible]
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PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation for Part 215 continues to read as follows:

Authority: Secs. 3, 10; 80 Stat. 885, 889, as amended (42 U.S.C. 1772, 1779), unless otherwise noted.

2. In part 215, remove all OMB control number paragraphs throughout and add a new §215.17 to read as follows:

§ 215.17 Information collection/ recordkeeping—OMB assigned control numbers.

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215.12 (a), (d), (e), (g)	0584-0005
215.13(a)	0584-0005
215.13a(a)–(e)	0584-0026
215.14	0584-0005
215.14a(a)–(c)	0584-0005
215.15	0584-0005

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for Part 225 continues to read as follows:

Authority: Secs. 803, 807, 809, 816 and 817, Pub. L. 97–35, secs. 203 and 208, Pub. L. 96–499, secs. 5, 7, 10, Pub. L. 95–627, 95 Stat. 3603 (42 U.S.C. 1771); sec. 2, Pub. L. 95–166, 91 Stat. 1325 (42 U.S.C. 1761); sec. 7, Pub. L. 91–248, 84 Stat. 211 (42 U.S.C. 1859a), unless otherwise noted.

2. In Part 225, a new § 225.24 is added to read as follows:

§ 225.24 Information collection/ recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control Number
225 3(b)	0584-0057
225.5(b)	0584-0057
225 6(a)	0584-0057
225 7(k)	0584-0057
225 8(a)	0584-0017
225.8(b)	0584-0057
225.9 (a), (d), (f), (g)	0584-0057
225 9(e)	0584-0021
225.10(a)	0584-0284
225.10(b)	0584-0057
225.11(c)	0584-0041
225.12(a)	0584-0057
225.14(a)	0584-0057
225.15(a)	0584-0057
225.16 (a), (c), (e), (i)	0584-0057
225.16(c)(6)	0584-0061
225.17	0584-0057
225.18(f)	0584-0280
225.19(f)	0584-0280
225.21(a)(b)	0584-0057
225.21(b)(4)	0584-0280
225 22(b)(2)	0584-0057

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 803, 810 and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); Sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); Sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In part 226, a new §226.27 is added to read as follows:

§ 226.27 Information collection/ recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control Number
226.3–226.4	0584-0055
226.6–226.10	0584-0055
226.14–226.16	0584-0055
226.23–226.24	0584-0055

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for Part 235 continues to read as follows:

Authority: Secs. 7 and 10, Pub. L. 89–642, 80 Stat. 888, 889 (42 U.S.C. 1776, 1779), unless otherwise noted.

2. In part 235, a new §235.12 is added to read as follows:

§ 235.12 Information collection/ recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control Number
235 3(b)	0584-0327
235 4 (d), (e)	0584-0319
235.7(a)	0584-0319
235.7(b)	0584-0341
235.7(c)	0584-0319
235.8 (a), (b)	0584-0319
235.9 (c), (d)	0584-0319
235.11(b)(2)	0584-0006
	0584-0002
	0584-0341
235.11(b)(5)(ii)	0584-0319
235 11(f)	0584-0319

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for Part 245 continues to read as follows:

Authority: Secs. 3, 4, and 10, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2–12, 60 Stat. 230, as amended (43 U.S.C. 1751–60), unless otherwise noted.

2. In part 245, remove all OMB control number paragraphs throughout and add a new §245.14 to read as follows:

§ 245.14 Information collection/ recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB Control Number
245 3 (a), (b)	0584-0026
245.4	0584-0026
245.5 (a), (b)	0584-0026
245.6 (a), (b), (c), (e)	0584-0026
245.7(a)	0584-0026
245.9 (a), (b), (c)	0584-0026
245.10 (a), (d), (e)	0584-0026
245.11 (a), (a–1), (b), (c), (d), (j)	0584-0026
245.13(a)–(c)	0584-0026

Dated: December 26, 1985.

John H. Stokes,

Acting Administrator.

[FR Doc. 85–30952 Filed 12–30–85; 8:45 am]

BILLING CODE 3410-30-M

Animal and Plant Health Inspection Service

7 CFR Part 371

[Docket No. 85–408]

Organization, Functions, and Delegations of Authority

AGENCY: Animal and Plant Health Inspection Service, Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the statement of organization, functions, and delegations of authority of the Animal and Plant Health Inspection Service, by making a minor change in the regional structure of Veterinary Services (VS). The regional office located at Forth Worth, Texas, previously known as the South Central Regional Office is renamed the Central Regional Office.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: John C. Frey, Classification, Employment, and Executive Resources Program, Human Resources Division, 6505 Belcrest Road, Room 221 Federal Building, Hyattsville, MD, 20782, (301) 436–6466.

SUPPLEMENTARY INFORMATION: As a result of a comprehensive comparative study of current and anticipated staffing patterns and workload analyses levels for its regional alignments, VS has determined as part of its continuing efforts to improve the efficiency, economy, and effectiveness of its operations, coupled with the abolishment of its Western Regional Office at Reno, Nevada, and the assumption of certain North Central Regional and South Central Regional responsibilities by a newly formed Western Region, that the Regional Office located in Forth Worth, Texas, known as the south Central Region should be renamed the Central Region, such identity being commensurate with Federally mandated standard regional office locations and the general geographical area served by this particular regional headquarters.

This rule relates to internal management and, therefore, pursuant to 5 USC 553, notice of proposed rulemaking and opportunity to comment thereon are not required and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal Agency management, it is exempt from the provisions of E.O. 12291. Finally, this subject is not a rule as defined by Pub. L. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 371

Authority delegations (government agencies), Organization and functions (government agencies).

PART 371—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Accordingly, 7 CFR Part 371 is amended as follows:

1. The authority citation for Part 371 continues to read as follows:

Authority: 5 U.S.C. 301.

2. Section 371.1 is amended by revising paragraph (c)(2) to read as follows:

§ 371.1 General statement.

* * * * *

(c) * * *

(2) Veterinary Services.

Laboratories

National Veterinary Services Laboratories, P.O. Box 844, Ames, IA, 50010.

Regions

Western: 317 Inverness Way South, Englewood, CO, 80112.
Northern: Building 12, GSA Depot, Scotia, NY, 12302.
Southeastern: 700 Twiggs St., Room 828, P.O. Box 560, Tampa, FL, 33601.
Central: 221 West Lancaster Avenue, Suite 310, Forth Worth, TX, 76102.

* * * * *

Issued at Washington, DC this 18th date of December 1985.

Bert W. Hawkins,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 85–30846 Filed 12–30–85; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Stabilization and Conservation Service

7 CFR Part 798

[Amdt. 1]

Availability of Information to the Public

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the name and address of the Washington office of the Agricultural Stabilization and Conservation Service at which the public may request access to certain material under the Freedom of Information Act for inspection and copying. This amendment is necessary due to agency reorganization.

EFFECTIVE DATE: December 31, 1985.

ADDRESS: Information Division, ASCS, USDA, Room 3608 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jim Jamison, (ASCS) (202) 447–5875.

SUPPLEMENTARY INFORMATION: The name and address of the Washington office of the Agricultural Stabilization and Conservation Service at which the public may request access to certain materials under the Freedom of Information Act for inspection and copying is being changed due to agency reorganization.

Since the amendment includes changes in matters relating to agency organization, management or personnel, the provisions of 5 U.S.C. 553 concerning notice of proposed rulemaking, public procedure and 30 day effective date, and the provisions of Executive Order 12291 do not apply.

List of Subjects in 7 CFR Part 798

Freedom of Information.

Accordingly, 7 CFR Part 798 is amended as follows:

1. The authority citation for Part 798 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 7 CFR 1.1–1.16.

2. Section 798.2 is revised to read as follows:

§ 798.2 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by ASCS and/or CCC at the Office of the Director, Information Division, Agricultural Stabilization and Conservation Service, Room 3608 South Building, P.O. Box 2415, Washington, DC 20013, between the hours of 8:15 and 4:45 p.m., Monday through Friday.

* * * * *

Signed at Washington, DC, on December 23, 1985.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85–30764 Filed 12–30–85; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 619]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 619 establishes the quantity of California-Arizona navel oranges that may be shipped to market

BEST COPY AVAILABLE

during the period December 27 through January 2, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 619 (§ 907.919) is effective for the period December 27, 1985–January 2, 1986.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985–86 adopted by the Navel Orange Administrative Committee. The committee met publicly on December 23, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges has become weak. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.919 Navel Orange Regulation 619 paragraph (a) through (e) is hereby added to read:

§ 907.919 Navel Orange Regulation 619.

The quantities of navel oranges grown in California and Arizona which may be handled during the period December 27, 1985, through January 2, 1986, are established as follows:

(a) District 1: 700,000 cartons;
(b) District 2: Unlimited cartons;
(c) District 3: Unlimited cartons;
(d) District 4: Unlimited cartons.

Dated: December 24, 1985.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–30994 Filed 12–27–85; 12:39 pm]

BILLING CODE 3410–02–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 545, 563, 571, and 584

[No. 85–1155]

Finance Subsidiaries of Federal Associations; Financings Through Subsidiaries of Insured Institutions and Appraised Equity Capital

December 9, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule and request for further comment.

SUMMARY: The Federal Home Loan Board ("Board") is amending its regulations pertaining to the establishment and operation of finance subsidiaries by Federal associations. The amendments revise the current regulation to permit the use of third party intermediaries, to authorize the transfer of liabilities of a parent association to its finance subsidiary, to increase the maximum authorized amount of transfers per issuance by a finance subsidiary, and to delegate the Board's authority to grant certain waivers to an association's Principal Supervisory Agent ("PSA"). The amendments also clarify the accounting treatment of certain transactions, particularly remittances of proceeds by a finance subsidiary to its parent association. Finally, the Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is requiring all institutions whose accounts are insured by the Corporation ("insured institutions") to include in their computation of their net-worth requirements the net proceeds of certain securities issuances through subsidiaries except for an amount equal to the net proceeds from an issuance of securities: (1) Remitted in exchange for a liability issued by its parent institution or (2) collateralized by assets that are substantially duration matched to the issued securities and that will remain so matched throughout the life of the securities without active management. The Board also is requesting comment on types of preferred stock or other securities issuances in addition to collateralized mortgage obligations and pay-through bonds that effectively avoid interest-rate risk to issuing subsidiaries and their parent institutions.

DATES: Effective Date: December 31, 1985.

Comments on Additional Securities Issuances: March 3, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Attorney, (202) 377–6455, Regulations and Legislation Division, Office of General Counsel; Robert J. Pomeranz, Policy Analyst, (202) 377–6209, or Donald Bisenius, Research Economist (202) 377–6766, Office of Policy and Economic Research; or Edward Taubert, Associate Director, Policy Development, Office of Examinations and Supervision (202) 377–6484, at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Direct all questions on the application and computation of the duration matching requirement to the Office of Policy and Economic Research.

SUPPLEMENTARY INFORMATION: On July 12, 1984, the Board adopted the current finance subsidiary regulation ("current regulation"), both to recognize the incidental authority of Federal associations to establish finance subsidiaries and to ensure that the establishment and operation of these subsidiaries is in keeping with this authority and with safe and sound practices. (Board Res. No. 84–369, 49 FR 29357 (July 20, 1984)) (codified at 12 CFR 545.82). The relationship between a Federal association and its finance

subsidiary is based on the parent's ability to exercise, through the subsidiary, its own authority to issue debt and equity securities. Thus, the sole purpose of a finance subsidiary is to issue only those securities that the parent association is or could be authorized to issue, and to remit the proceeds of such an issuance (less reasonable costs) to its parent association.

The current regulation authorizes Federal associations to establish one or more finance subsidiaries ("finance subsidiary"), whose sole purpose is to issue securities that the parent association is authorized to issue directly, and requires finance subsidiaries to remit the proceeds of such issuances of securities to their parent associations. The current regulation does not relate to state-chartered insured institutions and their subsidiaries, although some state laws have authorized such institutions to create subsidiaries organized and operating in compliance with the provisions of § 545.82.

To create a finance subsidiary, the board of directors of a Federal association must authorize its establishment pursuant to a written business plan to reduce interest-rate risk and to control credit risk. An association must own 100 percent of its finance subsidiary's common stock, but a finance subsidiary may issue preferred stock to persons other than the association. This preferred stock may have voting rights in designated circumstances. An association may capitalize its finance subsidiary without Board approval by transferring assets, which (1) do not have an aggregate book value exceeding, without prior written Board approval, 30 percent of the book value of the parent's total assets and (2) do not have an aggregate current market value exceeding, without prior written Board approval, the lesser of the amount necessary and customary to a particular type of issuance or 200 percent of the gross proceeds of the issuance. An association may guarantee the unpaid principal balance of its finance subsidiary's obligations, except that the finance subsidiary's resources must be exhausted prior to recourse to the parent's guarantee. An off-shore finance subsidiary established pursuant to the current regulation may make certain otherwise restricted investments. The current regulation prohibits a finance subsidiary from (1) dealing in accounts of its parent association, (2) stating that its securities are insured by the FSLIC, or (3) issuing securities accelerating upon its parent's insolvency or receivership. Finally, an association must notify and provide certain information to its PSA before the creation of a finance subsidiary or the transfer of additional assets to a finance subsidiary. Similarly, a finance subsidiary must notify and provide certain information to its parent association's PSA within 10 days after any issuance of securities by a finance subsidiary. Finally, the current regulation provides that a finance subsidiary of a Federal association shall not be consolidated with its parent association for purposes of calculating its parent's net-worth requirement under § 563.13.

In adopting the current regulation, the Board intended to relieve an implied restriction and found that it was in the public interest for Federal associations to be permitted to take immediate advantage of their authority to issue securities through finance subsidiaries. Therefore, the rule was made effective upon publication. However, the Board solicited comments on the provisions of the rule and on any other steps necessary to ensure that finance subsidiaries are established and operated in accordance with safe and sound practices. The comment letters received supported the regulation and suggested various modifications. In addition, the Board's staff received numerous inquiries and requests for opinions to clarify the meaning of certain provisions of the regulation.

Proposed Amendments

On April 30, 1985, the Board proposed amendments responsive to these suggested modifications and requested clarifications (Board Res. No. 85–322, 50 FR 20422 (May 16, 1985)) ("proposed regulation"). The proposed regulation would amend numerous provisions of the current regulation, including provisions relating to the transfer of assets and the remittance of proceeds. Section 563.13–2 of the proposed regulation would require the net proceeds of certain financings through a subsidiary of a Federal association or state-chartered insured institution to be included in a parent insured institution's liabilities when computing its net-worth requirement. The Board proposed these changes to clarify provisions of the current regulation, to respond to inquiries and comments from the thrift industry, and to prevent finance subsidiary actions and resulting consequences not intended by the Board.

The proposed regulation would revise various provisions of § 545.82 controlling the creation and operation of finance subsidiaries by Federal associations. The Board is aware that these revisions also affect finance subsidiaries of state-chartered institutions (included in the definition of finance subsidiary in § 563.13–2(a)(4) of the final regulation) established pursuant to parity provisions under state law and in compliance with the provisions of § 545.82. The proposed regulation also would include exemptions for finance subsidiaries of Federal associations from the loan-to-one-borrower regulation (§ 563.9–3) and holding company restrictions (§ 584.6).

One of the most significant provisions of the Board's proposed regulation is § 563.13–2, which relates to all institutions whose accounts are insured by the FSLIC, and which would require that a parent institution when computing its net-worth requirement must include in its total liabilities for purposes of § 563.13(g)(1) an amount equal to the net proceeds of any financing through a subsidiary as defined in § 563.13–2(a) of the proposed regulation unless one of the two following exceptions applies. The first exception would permit exclusion of a financing through a subsidiary to the extent that the proceeds of the securities issuance are remitted to its parent institution in exchange for a liability issued by the parent that is otherwise included in the parent's total liabilities pursuant to § 563.13(g)(1). The second exception would apply to the extent that the duration of securities issued is substantially the same, at the time of issuance, as the duration of the assets pledged to or funding the securities issued by the subsidiary. The Board intended this amendment to prevent institutions from transferring their interest-rate risk to their finance subsidiaries without the imposition of a higher net-worth requirement on the parent institution. The substantive comments received on this issue and a discussion of the Board's position on this matter are set forth below.

The Board's proposed amendments to § 545.82 would set forth the authorized type, amount, and treatment of transfers by a parent Federal association to its finance subsidiary. First, the proposal's preamble clarified that the equity accounting method applied in accordance with generally accepted accounting principles ("GAAP") does not require associations to recognize losses upon the transfer to a wholly-owned subsidiary of assets yielding below-market interest rates, generally referred to as "underwater assets". Second, proposed paragraph (c)(1)(ii) would increase the maximum per-issuance transfer limitation so that the

market value of the collateral for an issuance could equal up to 250 percent of the issuance's gross proceeds, instead of the current 200 percent limit. The Board preliminarily determined that this higher limit is necessary for some recently developed types of transactions. Revised paragraphs (c)(1)(i) and (ii) as proposed would authorize an association's PSA, instead of the Board, to give prior written approval for an association to exceed (1) the aggregate transfer limitation of 30 percent of the book value of an association's assets or (2) the per-issuance transfer limitation restricting the market value of transferred collateral for a finance subsidiary's issuance to the amount necessary and customary for that type of issuance or 250 percent of the gross proceeds of the issuance. Third, the Board's proposal also would amend paragraph (c)(1) to enable an association to transfer or make available liabilities issued by the association, such as certificates of deposit ("CDs") and subordinated debt, to their finance subsidiaries. The Board indicated in proposing this change that such transactions would not violate the prohibition of a subsidiary dealing in the deposits or savings accounts of its parent, even if the collapse of the subsidiary could cause the collateralized CDs to be transferred to the holders of the finance subsidiary's securities. The Board further stated that the same method of computing aggregate and per-issuance transfer limitations that applied to collateralized guarantees would apply to collateralized liabilities. Finally, the proposed regulation would also amend § 571.5(a) to clarify that the transactions between an insured institution and its finance subsidiary, in accordance with § 545.82 of this chapter, would not be considered to be transfers under § 571.5(a).

The proposal also would revise the authorized extent of an association's guarantees of its finance subsidiary's securities issuances and the recourse of securities holders to those guarantees. Proposed paragraph (c)(3) would enable an association to guarantee accrued but unpaid interest and redemption premiums, as well as the unpaid principal balance, of its finance subsidiary's obligations. Furthermore, because of the impracticality and cost of identifying and exhausting all of a finance subsidiary's resources, as required by the current regulation, proposed paragraph (c)(3) would only require exhaustion of those resources collateralizing a finance subsidiary's securities issuance prior to recourse to its parent's guarantee.

The proposal also would set forth authorized ways for a finance subsidiary of a Federal assocation to operate and to remit proceeds to its parent association. First, proposed paragraph (d)(1) would expressly recognize the right of a finance subsidiary to issue its securities through a third-party intermediary, a provision designed to aid small associations unable to gain favorable market access directly. Additionally, proposed parargaph (e) sets out a number of authorized ways for a finance subsidiary to remit proceeds to its parent association and addresses the accounting impact of each manner of remittance. The numerous comments received on these issues are discussed below. Finally, proposed paragraph (e) also would authorize expressly finance subsidiaries to retain as part of the reasonable cost of issuing securities any necessary reserves. The proposal would also authorize "multi-tiered" finance subsidiaries. However, the proposal would eliminate, as discussed below, paragraph (c)(4) of the current regulation, which permits certain otherwise prohibited investments of off-shore finance subsidiaries. The Board preliminarily determined that such investment is unnecessary and could permit certain unsound practices.

The proposal's preamble also specified the regulatory treatment of a finance subsidiary within a total corporate setting. Since the finance subsidiary is a separate corporation, any assets transferred to it by its parent would not be authorized to be included with the parent association's assets for purposes of determining whether an association is a "qualified institution" for purposes of section 5(r) of the Home Owners' Loan Act (12 U.S.C. 1464(r)) pertaining to interstate branching by Federal associations, or section 408(n) of the National Housing Act (121 U.S.C. 1730a(n)) and 12 CFR 584.2–2, concerning activities of unitary savings and loan holding companies. On another matter, paragaraph (f)(1) would provide that a finance subsidiary is not an affiliate of its parent association for purposes of the Savings and Loan Holding Company Act provisions on transactions between affilates (121 U.S.C. 1730a(d)). Nevertheless, proposed paragraphs (f)(2) and (f)(3) would prohibit specific activities between a finance subsidiary and its parent or its parent's affiliates, if the parent is a holding-company subsidiary. The Board preliminarily determined that such activities could be harmful to an institution and the FSLIC and evasive of its regulations controlling transactions within a holding-company context.

Finally, the Board's proposal would revise the requirement for an insured institution to notify its PSA at designated times and increases the PSA's control over the creation of certain finance subsidiaries. The proposed regulations would require the board of directors, or an executive committee of the board of directors, of an insured institution failing to meet its net-worth requirement pursuant to § 563.13 or operating under a supervisory agreement, to obtain PSA approval to establish a finance subsidiary. This requirement reflected the Board's concern relating to a failing institution transferring a significant portion of its most marketable assets to a finance subsidiary to collateralize the issuance of preferred stock or debt obligations.

The Board indicated its expectation that PSAs would approve the establishment of a finance subsidiary unless the PSA found that the establishment and operation of a finance subsidiary was likely to adversely affect the finance condition or safe and sound operation of the parent association. In order to ensure timely review, the proposal would require the PSA,within 10 days of receiving the information required by paragraph (g)(1), to notify an applicant that its application was complete or that additional information was required. The proposal would deem an application approved unless the PSA ruled upon it within 30 days of the date of written notice that all required information has been filed, and would authorize appeals of any adverse determination to the Board.

Comment Overview

The Board received 36 comment letters on its proposed regulation: 11 from Federal associations, 7 from state-chartered insured institutions, 6 from law firms, 2 from economic consulting firms, 3 from trade or professional associations, 5 from brokerage firms or investment banks, 1 from a professor of finance, and 1 miscellaneous comment. The Board also received a comment from the Federal Home Loan Mortgage Corporation. These comments addressed a variety of issues, raised a number of substantive objections, and suggested alternative methods for the Board to achieve its goals. These comments and the resolution of the issues presented, as well as any changes from the proposed regulation, are discussed below.

The commenters unanimously supported the Board's decision to authorize the creation of finance subsidiaries by Federal associations. They expressed the view that the issuance of securities through finance subsidiaries and collateralizing such securities issuances with assets transferred from parent associations will enhance market access by associations. Furthermore, they indicated confidence that the separate corporate structure of finance subsidiaries and the collateralization of most finance-subsidiary issuances give adequate protection to holders of finance subsidiaries' securities. They stated their belief that these factors will cause those issuances to be rated highly by the national rating agencies, thereby reducing the interest-rates carried by such issuances and providing a low-cost source of capital for associations; such low-cost financing should help to enhance the financial viability of associations.

Most commenters appreciated the need for the Board to control potential harm to insured institutions and to the FSLIC by assuring that the securities issuances by subsidiaries of insured institutions would not increase an institution's interest-rate risk. Most commenters supported the view that the issuances of a subsidiary should not be allowed to increase its parent institution's overall interest-rate risk exposure. Most commenters also concurred with the Board's requirement in the current regulation that associations create and use finance subsidiaries in accordance with a formal business plan to reduce interest-rate risk. These commenters also generally urged extensive updating and strenuous enforcement of the business-plan process. In addition, a considerable number of commenters supported the Board's goal of using some method to identify when securities issuances through subsidiaries would increase the interest-rate risk of an institution and understood the need for the Board to take measures to control such risk.

However, commenters voiced considerable concern over certain provisions of the proposed regulation, with the largest number of comments either objecting to the structure and effect of the Board's proposed requirement for duration matching of a finance subsidiary's securities issuances and the assets collateralizing such issuances ("collateralizing assets"), or requesting clarification of or objecting to the proposed accounting treatment of transactions between parent associations and their finance subsidiaries. Some commenters objected to the differing treatment of varying methods of remitting proceeds to parent associations. Other commenters simply requested the Board to clarify the way that various transactions should be computed under the proposed transfer limitations. Some commenters took strenuous exception to the Board's proposed provision regarding duration matching, particularly as it relates to state-chartered insured institutions.

After consideration of the comments and other available information, the Board has determined to adopt the regulatory changes substantially as proposed, as discussed below.

Accounting Treatment

Four commenters argued that, contrary to statements made in the proposed regulation's preamble, an association's level of transfers to its finance subsidiary is identical whether proceeds are remitted by the subsidiary's redeeming its common stock or purchasing assets from its parent. They objected to the proposed provision which would have allowed reduction of the parent's investment in its subsidiary only by the finance subsidiary's redemption of its capital stock held by its parent. These commenters also argued that a netting concept should be introduced to permit reducing the amount of assets transferred by a parent association by remittances from a finance subsidiary to its parent by means of the redemption of common stock, payment of dividends, return of capital on capital contributions, or the purchase of assets.

The Board agrees with these commenters that all of the enumerated forms of remittance should be treated consistently. The Board has determined, as set forth in the current regulation, that no method of remittance shall reduce the level of an association's outstanding aggregate or per-issuance transfers of assets to its finance subsidiary. Although all of the forms of remittance specified in the proposed and final regulations are authorized transactions, the Board has decided not to authorize netting for any form of remittance. As stated in the preamble to the current regulation:

> The limit would be calculated as of the date of a proposed transfer, so that the current book value of any previous transfers (the book value less any decrease resulting from, for example, receipt of payments of principal, rather than the book value at the time the previous transfer was made) would be added to the current book value of the proposed transfer and divided by the current book value of the association's assets. (49 FR 29359, July 20, 1984)

Consequently, if an association viewed on an unconsolidated basis has transferred 30 percent of its assets to its finance subsidiary, the current book value of the finance subsidiary's assets would have to decrease as a percentage of the current book value of its parent's assets on an unconsolidated basis before the finance subsidiary could increase its assets. For example, more assets could be transferred to the finance subsidiary if the current book value of the finance subsidiary's assets decreased due to the receipt of payments of principal or the repayment of any mortgage assets by the mortgagor.

Reducing an association's level of outstanding transfers due to the remittance of proceeds would after several cycles allow the transfer of most of an association's assets to its subsidiary. Such a level of transfers could limit the association's other activities, including the extension of housing credit, and make the finance subsidiary the preliminary operating entity. The Board recognizes that the preamble to the proposed regulation did indicate that the redemption of common stock would reduce a parent association's investment in its finance subsidiary for purposes of the 30 percent aggregate investment limitation. Nevertheless, the Board is concerned that netting could allow excessive transfers to finance subsidiaries and that such action could endanger the safety and soundness of associations.

The Board is aware that some associations, as a result of deducting the amount of certain remittances by finance subsidiaries of proceeds of securities issuances from the amount of assets transferred to a finance subsidiary, may have exceeded the transfer limitations as finally interpreted in this regulation (December 31, 1985). Such associations shall not be authorized to make further transfers (unless required for collateral maintenance purposes) until such associations are in compliance with this final interpretation of the transfer limitations.

Five commenters requested that the Board set out the method for calculating the 30 percent aggregate transfer limitations after the transfer, sale, or exchange of the assets initially transferred from a parent association. As described above: an institution must compare the current book value of a finance subsidiary's assets with the current book value of its parent's assets. This method must always be used to identify the level of assets transferred to

a finance subsidiary regardless of the passage of time or any other factor.

One commenter stressed that the Board should clarify that assets will not be counted twice under the transfer limitations when (1) assets constituting part of the finance subsidiary's initial capitalization are used later to collateralize a securities issuance or (2) assets are transferred and proceeds remitted between a parent association and a second-tier finance subsidiary. The Board affirms these interpretations; the regulation never intended that associations would be required to count such assets twice.

One commenter opined that the 30 percent and 250 percent transfer limitations should not be imposed on the transfer of a parent association's liabilities, except when collateralized. This commenter also requested that if the Board decides to count the transfer of such liabilities, it should state that this is a new requirement and should include a grandfather provision for transfers which occurred before the date of adoption of the final regulation. The Board finds no basis for such treatment. As the Board indicated in the preamble to the proposed regulation, the Board's reference in the current regulation to the transfer of assets "was intended to describe the financial resources from the point of view of the finance subsidiary, *i.e.* assets carried on the books of the finance subsidiary." (50 FR 20423, May 16, 1985). The Board therefore has determined that inclusion of a grandfather provision for such transactions is neither necessary nor appropriate.

The Board does wish, however, to emphasize that the regulation excludes an amount of securities issued through a subsidiary from its parent's computation of its net-worth requirement if the proceeds of the issuance are remitted in exchange for a liability issued by the parent institution that is otherwise included in the parent institution's total liabilities pursuant to § 563.13(g)(1). This prevents double-counting in the parent's computation of its net-worth requirements of liabilities of the parent transferred to its finance subsidiary.

Finally, a commenter requested that the Board clarify that a parent association's agreement to indemnify underwriters against a finance subsidiary's failure to perform its obligations to them pursuant to an underwriting agreement does not constitute a guarantee under § 545.82(a)(2). The Board does not consider such indemnification agreements to constitute guarantees, and they are not subject to the restrictions of § 545.82(c). Similarly, the Board does not consider standard representations and warranties that are substantially the same as those made when an association sells mortgages to the Federal Home Loan Mortgage Corporation or Federal National Mortgage Corporation to be guarantees. The Board anticipates that investors may require associations to make such representations respecting mortgages transferred from an association as collateral for collateralized mortgage obligations ("CMO's") or other securities issued by finance subsidiaries. Unless the association is transferring the mortgages with recourse or is guaranteeing payment of its finance subsidiary's obligations, the association simply is providing standard representations relating to the lawfulness and validity of mortgages transferred from its own portfolio that the association originated and serviced.

Duration Matching Requirement

As indicated in the preamble to the proposed regulation, the Board is seriously concerned that under the current regulation an insured institution can, in effect, transfer its interest-rate risk resulting from the mismatch of maturities of an institution's assets and liabilities to a subsidiary without the imposition of a net-worth requirement on the subsidiary's securities issuances. The effect of large levels of interest-rate risk on the thrift industry is well documented. Interest-rate risk was the primary cause of the merger or failure of over 1,100 savings institutions between June 1980 and September 1984, with over a third of these institutions either liquidated or merged under supervisory or FSLIC mandate.

The Board believes that interest-rate risk stemming from the securities issuances of a subsidiary and the assets collateralizing such securities issuances can harm signficantly a parent institution's financial position. Absent an adequate net-worth cushion, the finance subsidiary can cause considerable harm to an institution and the FSLIC by draining away valuable resources from its parent institution, perhaps resulting in the institution's insolvency.

The Board never intended to exclude the net proceeds of a finance subsidiary's securities issuances from calculation of its parent's net-worth requirement if the securities issuances, coupled with the assets collateralizing those issuances, continue to expose the parent to interest-rate risk. The Board originally anticipated that the obligations issued by finance subsidiaries would be collateralized mortgage obligations or similar pass-through types of instruments that effectively transfer any interest-rate risk to the holders of the securities. The Board believes that the net-worth requirement of the parent institution should exclude the finance subsidiary's securities issuance only when there is effectively a sale of the collateralizing assets by the issuance of pass-through securities.

The Board's final regulation achieves the goals set forth in the proposed regulation by adopting the basic structure of the proposed duration matching requirement [1] as modified in three significant respects based on the comments and further Board consideration. First, the Board has determined that, in addition to duration matching at initial issuance, the nature of a subsidiary's securities issuance and collateralizing assets must be such that the duration matching is maintained throughout the life of the securities without active management. This standard requires a parent institution computing its net-worth requirement to include those securities that were initially duration matched but that could become unmatched over time. This provision has the effect of restricting those duration-matched issuances excluded from a parent institution's net worth requirement to CMOs, pay-through bonds, and other pass-through types of financing that effectively avoid exposing institutions to interest-rate risk as initially intended by the Board. Second, the Board has determined that a parent institution must include in its total liabilities pursuant to § 563.13(g)(1) the net proceeds of securities issued through a subsidiary (defined in section 563–2(a)(1) as an "amount of securities issued through a subsidiary"), in computing the parent's net-worth requirement if any of the proceeds are remitted to the parent, since such remittance reflects the purpose of funding the parent institution. Third, the Board not apply the net-worth inclusion requirement of § 563.13–2 to (1) certain

[1] The final regulation, as did the proposed, requires insured institutions to use the duration measure developed by Macaulay. *See* Macaulay, F.R. *Some Theoretical Problems Suggested by the Movement of Interest Rates, Bond Yields, and Stock Prices in the U.S. Since 1956.* New York: National Bureau of Economic Research (1938). This measure, similar to other duration-matching methods, measures the weighted average maturity or repricing period of a stream of payments. If the duration of an asset exactly equals the duration of the liability being matched, then both the asset and liability will on the averge reprice at the same time, and the resulting income stream is, in effect, immunized against changes in interest rates. The Board specifically requested comment on the application and effects of Macaulay's duration measure.

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securities issuances for which a registration statement has been filed with the Securities and Exchange Commission or other designated action has been taken, (2) promissory notes executed, or (3) transactions undertaken pursuant to binding contracts with a term of one year or less entered into on or before December 31, 1985.

Section 563.13–2(c) of the final regulation thus requires that, unless one of two exceptions applies, the net proceeds of an amount of securities issued through a subsidiary shall be included in a parent insured institution's total liabilities (as defined in § 563.13(g)(1)) when computing the parent institution's net-worth requirement pursuant to § 563.13 or its growth limitation pursuant to § 563.13–1. This provision requires inclusion under § 563.13(g)(1) of the net proceeds of an amount of securities issued through a subsidiary that is: (1) A finance subsidiary (as defined in § 563.13–2(a)(4)) of a Federal association or state-chartered insured institution established and operated in compliance with the provisions of § 545.82; [2] or (2) a service corporation, operating subsidiary, or other type of subsidiary not in compliance with § 545.82 if any proceeds of such securities are remitted to a parent insured institution. This rule does not apply to an amount of securities issued by a subsidiary, such as a service corporation, totally for its own purposes, *i.e.* to use the proceeds for its own operations and not to remit a portion of the proceeds to its parent. Furthermore, the Board understands that a subsidiary may issue securities for its own purposes, but for a temporary period or for a reason incidental to the subsidiary's own operations, remit some portion of the proceeds to its parent institution. In such a case the net proceeds of an amount of securities issued through such a subsidiary would not be subject to the inclusion requirement of § 563.13–2(c) if the subsidiary demonstrates to the PSA of its parent institution that the securities were issued for the subsidiary's own reasonable business purposes in accordance with its own reasonable written projections of its financing requirements.

The final regulation, like the proposal, provides two exceptions from the net-worth inclusion requirement for an amount of securities issued through a subsidiary. The first exception applies if the proceeds of such an issuance are remitted in exchange for a liability issued by the subsidiary's parent insured institution if the liability is otherwise included in the parent's total liabilities pursuant to § 563.13(g)(1). This exception avoids double counting of the liability in the parent's computation of its net-worth requirement. The second exception applies if the duration of the securities issued and any collateralizing assets are substantially duration matched at the time of issuance, and if the relationship of the securities and collateralizing assets is such that the match will be maintained without active management throughout the life of the securities. The duration of the assets collateralizing a securities issuance is considered substantially similar to the duration of the subsidiary's securities issuance if the duration of the assets is between 90 percent and 110 percent of the duration of the securities issued.[3] Many structured financings, such as CMOs and pay-through bonds, would fall within this range and the Board intends to continue favorable net-worth treatment for such securities. This duration-matching exception is evaluated on an issuance-by-issuance basis determined by whether a particular securities issuance and its collateralizing assets expose a parent institution to interest-rate risk. Therefore, the net proceeds of an amount of one issuance of securities may be required to be included in a parent institution's computation of its net-worth requirement, while the net proceeds of other securities issued through the same subsidiary will be excluded.

Finally, in response to comments, the Board has decided that section 563.13–2 will not apply to certain securities offered, promissory notes executed, or certain binding contracts with a term of one year or less entered into on or before December 31, 1985. Among other things, this means that an amount of securities issued through a subsidiary on or before that date will not be required to be included in the subsidiary's parent institution's liabilities when calculating its net-worth requirement. However, the regulation requires the parent institution to include in its net-worth computation any renewal, extension, or rollover of securities after December 31, 1985, unless such a transaction is undertaken pursuant to a binding contract with a term of one year or less outstanding on or before December 31, 1985. For example, if a finance subsidiary executed a binding contract on August 1, 1985, authorizing that finance subsidiary to issue commercial paper (assuming 30 day maturity) and to redeem and reissue such commercial paper every 30 days until July 31, 1986, those issuances of commercial paper would not be subject to the net-worth inclusion requirement and growth effects of § 563.13–2(c). On the other hand, if such a contract executed on August 1, 1985, extended for 10 years until 1995, securities issued under such a contract after December 31, 1985, would be included in the finance subsidiary's parent institution's computation of its net-worth requirement.

Comments on the Requirement for Duration Analysis

Commenters addressed various aspects of the Board's duration-matching requirement, as well as proposing alternative approaches to interest-rate risk problems. These commenters argued that if the Board adopts a requirement to limit interest-rate risk, that it should: (1) Permit no exclusions for purposes of computing the parent's net worth; (2) compare the finance subsidiary's securities issuances and the association's use of the proceeds; (3) view the interest-rate risk of the consolidated institution; (4) use gap analysis on a consolidated basis as a simpler and more effective way to limit interest-rate risk; and (5) incorporate the use of interest-rate futures, options, and swaps as methods of reducing interest-rate risk. They also asked that the Board resolve certain technical problems related to calculating the duration of adjustable-rate assets

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[2] It should be noted, however, that the inclusion of an amount of securities issued through a subsidiary that is a finance subsidiary (as defined in § 563.13–2(a)(4)) for purposes of calculating the parent's "total liabilities" pursuant to § 563.13(g)(1), its growth factor pursuant to section 563.13(g)(4) and the growth regulation (§ 563.13–1) will not require consolidation for purposes of the direct-investment component of the contingency factor. [Section 563.13(g)(5) (iii)]. The Board does not consider investments of institutions in finance subsidiaries as defined in § 563.13–2(a)(4) to be direct investments subject to § 563.9–8, the direct-investment regulation. Board Res. No. 85–79–A, 50 FR 6912, 6922 (Feb. 19, 1985) (to be codified at 12 CFR 563.9–8) ("direct-investment regulation").

[3] For example, if a finance subsidiary has one asset which is a five-year, $100 par bond with a 12-percent coupon interest rate and a current market yield of 10 percent, the duration of the bond is a 3.95 years. If the subsidiary issues a security to support the bond with a duration between 3.56 and 4.35 years, the security will be considered to have a duration that is substantially similar. If the security was, for example, a $160 par value, four-year bond with zero-percent interest rate and a 12-percent market yield, the security would have a duration of four years at the time of issuance. Since this duration is in the acceptable range of 3.56 years to 4.35 years, the securities issuance would not be added to the liabilities of the parent for purposes of calculating the net-worth requirement. If, however, the subsidiary issued a $100 par value, four-year note with a 12-percent coupon and market yield, the duration of the security would be 3.29 years. Since the duration of the four-year note is less than 90 percent of the duration of the five-year asset, it is not substantially duration matched. *See* 50 FR at 20426.27.

and liabilities, as well as adjusting the duration measurement for varying interest rates, maturities, and prepayment assumptions.

One comment urged inclusion of the total amount of all securities issued through a subsidiary in computing the parent institution's net-worth requirement. This commenter reasoned that the parent institution retains the same interest-rate risk for securities issued through a wholly-owned subsidiary as if it had issued such securities directly. Therefore, this commenter contended that, since the institution's risk is not decreased, use of the subsidiary should have no bearing on the institution's net-worth requirement, which should be the same as if the institution issued the securities directly.

The Board acknowledges that imposing a net-worth requirement on all securities issuances by a subsidiary serving as a financing vehicle for its parent arguably could have a positive effect on insured institutions and the FSLIC. However, the Board proposed the exemption for duration-matched issuances on the grounds that a subsidiary's securities issuance that is substantially free of interest-rate risk to the subsidiary and its parent may safely be excluded from its parent's net-worth requirement and will secure the benefits of using such finance subsidiaries to a broader group of institutions. As mentioned above, the exception for a subsidiary's securities issuances if proceeds are remitted in exchange for liabilities issued by the subsidiary's parent avoids double-counting when calculating the parent's net-worth requirement. The Board therefore believes that retaining these exceptions provides the most effective way to maximize the benefits of finance subsidiaries while minimizing interest-rate risk.

Conversely, eight commenters contended that the Board should retain its current regulation and rely on business plans and Board supervision to prevent abuse of finance subsidiaries and increases in interest-rate risk, while giving needed management flexibility to institutions. Although the Board concurs that such supervision is beneficial to insured institutions and the FSLIC, it does not find this supervisory process to be an adequate substitute for the imposition of a net-worth requirement on the amount of securities issued through a subsidiary in cases where a subsidiary's mismatching of its securities and any collateralizing assets exposes the subsidiary and its parent to interest-rate risk. As with regulation of the parent institution, the Board must rely both on its supervisory oversight and on an adequate amount of net worth to cushion the FSLIC from excessive risk of loss.

Five commenters opposed the entire concept of including a subsidiary's securities issuances in its parent's calculation of its net-worth requirement because such a requirement restricts issuances by subsidiaries to CMOs and other types of pass-through securities rather than allowing institutions to issue commercial paper and short-or-intermediate-term debt collateralized by long-term, low-yield assets with fixed interest rates. The commenters contended that such securities issuances provide the greatest benefit to institutions by allowing them to take advantage of underwater assets already on their books to obtain low-cost financing traditionally available on the short-to-intermediate end of the yield curve.

The Board acknowledges the potential benefits to be derived from low-cost financing, but does not deem those benefits to eliminate the need for the imposition of a net-worth requirement on such issuances if not duration-matched. As seen from recent industry experience, an institution's duration mismatch of long-term assets and short-term liabilities can prove profitable but also poses the significant risk of large negative spreads if short-term interest rates rise dramatically due to general market forces. An adequate level of net worth helps to protect institutions from the severe consequences stemming from such economic fluctuations.

In a similar vein, five commenters contended that the Board should achieve its goal of controlling interest-rate exposure by comparing the duration of a subsidiary's securities issuances and the assets acquired by the parent institution with the proceeds remitted by the subsidiary. These commenters argued that this method would deter a parent institution from using proceeds remitted by its subsidiary to pursue activities that generate greater interest-rate risk. They suggested that this alternative would give subsidiaries the opportunity to issue low-cost, short-or-intermediate-term financing. They expressed the view that such low-cost financing benefits a parent institution if it reinvests the proceeds in higher-yield assets matching the duration of the subsidiary's securities issuances.

The Board finds this suggestion unpersuasive because it does not adequately address the Board's concerns. Under this proposal, a parent institution could still shift its interest-rate risk to its subsidiary without a concomitant increase in, or even with a decrease of, the parent's net-worth requirement, even though interest-rate risk to the parent may be increased by a mismatch of maturities of the subsidiary's securities and collateralizing assets. As discussed in response to the previous comment, an approach relying on a favorable interest-rate spread may be profitable but contains significant interest-rate risk from future market movements. The Board, therefore, finds that it would be inappropriate to exclude an amount of securities issued through the subsidiary from the calculation of its parent's net-worth requirement unless the duration match of the securities and any collateralizing assets passes through any interest-rate risk to a subsidiary's securities holders. Furthermore, as a practical matter, the Board believes that monitoring the match suggested by these comments is not feasible. To isolate and track the specific assets purchased with the proceeds remitted by the subsidiary is an unmanageable task.

Eight commenters suggested that the appropriate approach to determine if an amount of securities issued through a subsidiary should be included in the subsidiary's parent's calculation of its net-worth requirement is to measure the interest-rate risk exposure of the consolidated entity before and after the subsidiary's issuance of securities and the investment of the proceeds by the parent institution. These commenters argued that to the extent that an institution's interest-rate risk, including that of the parent and subsidiary, remains constant or decreases, the amount of securities issued through a subsidiary should be exempt from the Board's net-worth requirements. Some commenters linked this proposal with the suggested alternative, discussed above, to match the duration of a subsidiary's securities issuance and the reinvestment of the proceeds by the parent. Another alternative presented by six commenters was the use of gap analysis on a consolidated basis, rather than duration analysis, as a less complicated measurement already used for other purposes. Some of the commenters that recommended alternatives to the proposed duration-matching requirement also urged use of a weighted sliding scale, so that the percentage of a finance subsidiary's securities issuance included in computation of its parent's net-worth requirement would be based on the degree of interest-rate risk exposure, rather than using an all-or-nothing approach if the duration of an issuance

falls outside of the Board's duration parameters. These commenters opined that such a system would provide an additional incentive for managers to reduce interest-rate risk to the greatest possible extent.

All of these comments, although reasonable recommendations, misconstrued the Board's primary policy focus underlying the duration-matching provision. First, it is not Board policy to exclude from a parent's net-worth requirement the amount of a securities issuance, whether at the parent or subsidiary level, simply because it reduces interest-rate risk exposure. Rather, the justification for the proposed exclusion of substantially duration-matched securities issuances, such as CMOs, rests on the similarity of these transactions with actual sales of the supporting collateral. The Board believes that it is appropriate to exclude an amount of securities issued through a subsidiary from its parent's calculation of its net-worth requirement if the relationship between the securities issuance and the collateral for that issuance, in effect, avoids any interest-rate risk to the finance subsidiary and its parent. Second, there is a fundamental concern preventing the Board from imposing any particular measure of interest-rate risk on a consolidated basis for a parent institution and its finance subsidiary. The Board is not aware of any universally-accepted measure of interest-rate risk exposure, and the Board is hesitant to impose any standard on a consolidated institution if the measure is not so accepted. The Board is using duration-matching in the final regulation for the limited purpose of exempting duration-matched securities from the general requirement that parent institutions include any amount of securities issued through a subsidiary in their total liabilities under § 563.13(g)(1). The Board is not, however, imposing a rigid requirement that institutions rely on such a measure to the possible exclusion of other innovative actions to control interest-rate risk on a consolidated basis.

Another concern with the proposed duration-matching concept, as expressed by three commenters is that it requires measurement only at the time of issuance. These letters correctly noted that while a subsidiary's securities issuances and collateralizing assets may be duration-matched at issuance, this match may not be maintained over the life of the securities. Thus, over time, the parent may be reexposed to interest-rate risk from the subsidiary. As a result, some commenters suggested that the Board should require continual duration-matching. The Board agrees that under the proposed requirement, duration mismatches could occur subsequent to initial issuance. The final regulation requires that a subsidiary's securities and supporting collateral be duration-matched at the time of issuance and that the structure of the transaction guarantee that this match will be maintained without active management. This ensures that such a securities issuance will not expose the parent at some future date to increased interest-rate risk. The Board believes that the types of securities fulfilling this requirement are pass-through instruments, including CMOs and pay-through bonds. Thus, this requirement will limit the potential type of securities issuances that subsidiaries can issue if their parents do not wish to include the net proceeds of those securities issuances in total liabilities when computing their minimum net-worth requirement or growth.

Six comment letters also questioned the proposal's exclusive reliance on the duration-matching standard, contending that it ignores numerous off-balance-sheet techniques that can be used to manage interest-rate risk. These include swaps, options, and futures. While the Board encourages institutions to use such tools within regulatory parameters to manage interest-rate risk exposure, the Board is concerned with reducing the net-worth requirements of institutions based on the use of such strategies. The Board has no assurance that these hedging techniques will be maintained by a subsidiary. To the extent that positions in swaps, options, or futures are closed out, the hedged position is re-exposed to interest-rate risk. Also, many of these hedging techniques suffer from "basis" risk.[4] Thus, price movements in the hedging instrument do not correspond precisely with those of the asset or liability being hedged. To the extent that basis risk is present, the interest-rate risk is not completely hedged. Hence, the Board believes the use of these techniques does not justify eliminating a net-worth requirement for such issuances.

Finally, ten commenters, including organizations providing sophisticated duration calculations and methodologies,[5] contended that institutions will not be able to conduct their duration measurements uniformly with those of other institutions unless the Board expressly sets forth the underlying economic and financial assumptions that it intends institutions to use. In addition, these commenters suggested that it may be difficult for an institution to measure uniformly the duration of adjustable-rate assets and securities.

The Board agrees with these commenters that there will be numerous computational issues and that the use of varying assumptions by institutions may cause an initial lack of uniformity in reporting. However, the Board believes that prescribing uniform standards for duration measurements could impose an overly rigid framework on an analytical methodology that is still evolving. A significant number of sophisticated financial institutions and the national rating agencies, as well as the Board, are attempting to resolve the complex computational issues involved in the application of duration analysis, particularly with regard to mortgage-backed securities. Furthermore, as reflected by recent financial history, the appropriate assumptions concerning interest rates, maturities, and other duration measurement factors will change based on varying general economic conditions and the innovative financial structures created by financial industry participants.

Rather, the Board has decided to use two alternative methods to address the problems of computational questions and the lack of uniform reporting. First, the Board's Office of Policy and Economic Research will provide general guidance on appropriate assumptions after it monitors initial implementation by the industry and will also respond to individual inquiries regarding the implementation of the Board's duration-matching requirement. Second, in addition to requiring that institutions report the amount of securities issued through a subsidiary, the Board is requiring such subsidiaries to furnish their parents' PSAs and the Board's Office of Policy and Economic Research with duration calculations in written form for each amount of securities issued through a subsidiary and provide written certifications of the accuracy and validity of those duration calculations. Such statements should clearly reflect the underlying assumptions of the calculations, including interest rate, maturity, and prepayment assumptions. Furthermore, if a different calculation of duration is being relied upon for rating purposes, a subsidiary shall state the disparate

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[4] Basis risk results from the fact that the asset or liability being hedged usually is not the same as the underlying asset of the futures contract.

[5] For example, see the comment letters of Smith Breeden Associates (July 2, 1985) and the Federal Home Loan Mortgage Corporation (June 21, 1985).

assumptions used for rating and Board reporting and the differing effects of using such assumptions. The certifications of accuracy and validity may be provided by the institutions themselves, or by underwriters, economic consulting firms, or other persons acting on institutions' behalf. The Board will monitor certifications to determine what guidance is needed by the industry.

The Board also specifically requested comment on the level of remittance of proceeds by a subsidiary to a state-chartered insured institution in order to be considered "substantially remitted" pursuant to § 563.13–2(a) of the proposal, thus triggering the requirement that the amount of the securities issued by a finance subsidiary be included in the parent's total liabilities for purposes of calculating its net-worth requirement, absent certain conditions. The one commenter that addressed this issue argued that the Board should only consider a subsidiary to fall under § 563.13–2(a) if the subsidiary is established primarily for the purpose of issuing securities and remitting 50% of the proceeds to the parent within 60 days. The Board finds this suggestion unpersuasive. First, the Board does not consider the timeframe of remittance to be an appropriate determining factor, since insured institutions could avoid application of this regulation by holding the proceeds for sixty days or whatever timeframe was designated.

Second, the Board disagrees with the commenter's suggestions that only securities issuances of which 50 percent or more of the proceeds are remitted to a parent institution should be included in its parent's net-worth requirement. The Board has determined to include the net proceeds of an amount of securities issued through a subsidiary in its parent institution's net-worth requirement if any of the securities' proceeds are remitted to the parent institution. The Board believes that the remittance of proceeds of securities issued through a subsidiary can serve the same purpose of funding a parent institution as issuances by a finance subsidiary. Such issuances would be subject to a net-worth requirement if issued by the parent institution and should be subject to a net-worth requirement when issued through a subsidiary unless any attendant interest-rate risk is passed through to the holders of those securities. Although the Board initially believed that a parent institution should include in its total liabilities the amount of the subsidiary's securities issuance only if the proceeds were substantially remitted to the parent, the Board has now determined that interest-rate risk is present if a securities issuance and its collateralizing assets are duration-mismatched, no matter what percentage of proceeds are remitted. Only the dollar amount of the remittance would vary.

The Board is also aware that interest-rate risk and other types of risk may stem from a subsidiary's securities issuance no matter what use is made of the proceeds, even if the proceeds are used for the subsidiary's own investment. However, in this regulation the Board is only seeking to impose a net-worth requirement on those issuances operating, at least in part, as a financing vehicle for a parent institution whether through securities issued by a finance subsidiary as defined in § 563.13–2(a)(4) or other subsidiaries.

Restricting the scope of § 563.13–2 to finance subsidiaries organized and operating in accordance with the protective provisions of § 545.82 would create incentives for institutions to issue securities through other types of subsidiaries to avoid the net-worth inclusion requirement of § 563.13–2. The Board believes it is imperative to avoid such a result in order to accurately monitor interest-rate risk exposure and to ensure better financial management and adequate capital to support such financing. Institutions could similarly avoid the regulation by remitting an amount to the parent lower than the amount considered to be "substantially remitted" if such a standard was adopted as proposed. The Board believes that corporations including subsidiaries other than financing types of subsidiaries, generally only issue securities in amounts needed for their own operating purposes and the Board does not seek to cause institutions to change normal practices to avoid the effects of § 563.13–2, particularly since interest-rate risk is caused by any securities issuance if the duration of the securities issuance and the collateralizing assets are mismatched. Accordingly, unless excepted, an amount of securities issued through a subsidiary, as well as an institution's pro-rata portion of the net proceeds of such securities issued through a jointly-owned subsidiary, will be subject to the net-worth consolidation and growth requirements of the final regulation if any proceeds of an issuance are remitted to a parent institution.

Preferred Stock

Commenters urged the Board to adopt an exception to proposed § 563.13–2(b) to clarify that preferred stock issued by a finance subsidiary is not treated as an amount of securities issued through a subsidiary and therefore is not included with its parent's liabilities for purposes of computing the parent's net-worth requirement and growth. If so excepted, institutions would not be required to apply duration matching to preferred stock. These commenters noted the advantages of adjustable-rate preferred stock, allowing the issuer to pay a dividend rate that is significantly lower than the alternative cost of such capital, primarily because of the special 85 percent "dividend received" deduction generally allowed investor corporations that receive dividends from other corporations. Institutions, including some institutions with severe financial problems, may also use their substantial tax loss carry-forwards to offset income generated by the subsidiary, compensating for the lack of deductibility of preferred stock dividends by the issuing subsidiary. Such preferred stock may constitute the lowest-cost financing available to such insured institutions.

While the Board agrees that the issuance of preferred stock by a subsidiary, particularly adjustable-rate preferred stock, can provide low-cost financing to an institution, it is the Board's view that such preferred stock poses the same type of interest-rate risk to an institution as other types of securities issuances and should be subject to a net-worth requirement in the same manner as other securities issuances unless duration matched. The Board is concerned with the potential effect of such interest-rate risk to the FSLIC, particularly if such securities are issued by a subsidiary of an institution failing to meet its net-worth requirement or that is a supervisory case. The Board also is concerned about the consequences in case of an institution's insolvency if the institution could transfer a large percentage of its most marketable assets to a subsidiary and then issue preferred stock or other securities. In short, the Board has determined to treat preferred stock in the same manner as other amounts of securities issued through a subsidiary posing interest-rate risk to a finance subsidiary and its parent institution and potentially to the FSLIC.

Because this is a fairly new area of activity, however, the Board is specifically requesting comments and suggestions by interested persons on types of preferred stock or other securities issuances other than pass-through securities, such as CMOs and pay-through bonds, that would effectively be free of interest-rate risk to a finance subsidiary and its parent institution and that would transfer any attendant interest-rate risk to the

securities holders. Such comments must be submitted on or before March 3, 1986.

Treatment of Parent's Securities Held by Finance Subsidiaries

Two commenters contended that the Board should allow at least partial inclusion in the parent's net worth of the parent institution's subordinated debt, capital stock, mutual capital certificates or other instruments held by its finance subsidiary. The Board believes that a subsidiary's holdings of a parent's securities generally leaves the parent institution at risk through its ownership of the subsidiary. The Board believes that it would be inappropriate to permit the parent institution to count additional items in its regulatory net worth in this manner unless the institution can show the transfer of risk to third parties.

Joint Ownership of Finance Subsidiaries

One commenter argued that several Federal associations, particularly small associations, should be authorized to own a finance subsidiary jointly so that they can pool their resources for better access to capital markets. While some insured institutions are authorized to jointly own a subsidiary to conduct financing under independent state authority, the legal basis for the establishment of finance subsidiaries by Federal associations presents a major obstacle to authorizing a finance subsidiary jointly-owned by Federal associations. There is no explicit statutory authority for a Federal association to establish or invest in a finance subsidiary. Instead, a Federal association's authority to create finance subsidiaries and to issue securities through such finance subsidiaries is derived as an incident to the direct exercise of the association's authority to issue notes, bonds, debentures, or other securities (including capital stock) pursuant to section 5(b)(2) of the Home Owners' Loan Act ("HOLA"), 12 U.S.C. 1464(b)(2) (1982). In order for the establishment of a finance subsidiary to be incidental to the parent association's authority to issue securities, the subsidiary must be owned and controlled by that parent. Authorization of a finance subsidiary jointly-owned by Federal associations, in effect, would require a legal finding that the issuance of securities by one association is incidental to the issuance of securities by another association. The Board does not believe there is a sound basis for such a determination and a review of the case law in analogous areas, such as securities issuances by operating subsidiaries of national banks, reveals no precedent for such joint securities issuances.

Furthermore, the economic benefit of such issuances would be doubtful. First, associations jointly owning such a subsidiary generally would have to recognize losses on the transfer of underwater assets to such a jointly-owned entity. Second, such an entity could not be consolidated for tax purposes with a parent association owning an inadequate percentage of the subsidiary, thereby preventing the offsetting of the parent's net operating loss carryforwards against the subsidiary's income.

Miscellaneous Issues

Two commenters argued that assets transferred to a finance subsidiary should be included in determining if the parent is a qualified institution for purposes of section 5(r) of the HOLA. The Board continues to hold the view that such inclusion would be inappropriate since a finance subsidiary is a separate corporate entity.

Finally, one commenter objected to the proposed requirement of § 563.13–2(c)(1) that an insured institution, that fails to meet its net-worth requirement pursuant to § 563.13 or that is operating under a supervisory agreement, obtain the prior written approval of its PSA to establish a finance subsidiary. The commenter argued that state-chartered institutions in some states have been authorized for some time to establish finance subsidiaries under state authority, but with state approval. According to this commenter, the Board's requirement creates an unnecessary and illegal additional layer of supervision.

The Board finds this contention without merit in view of its authority to protect the FSLIC from adverse effects stemming from the transfer to subsidiaries of liquid, marketable assets by insured institutions that do not meet their net-worth requirements or that are supervisory cases. This final regulation, prevents, in the absence of PSA approval, the institution from placing such assets beyond the reach of the FSLIC. As discussed extensively in the preamble to the Board's direct-investment regulation, the Board has the legal authority and the obligation, pursuant to Title IV of the National Housing Act (12 U.S.C. 1724–1730) to take appropriate action to protect depositors and the FSLIC from undue risk, and that authority encompasses the power to prevent by regulation the risk caused by the inappropriate transfer of assets from insured institutions. (*See* 50 FR 6913–14, February 19, 1985).

In fact, §§ 545.82(f)(3) and 563.13–2(e)(3) of the Board's final regulation modify the proposal to clarify the Board's intention that such an institution, failing to meet its net-worth requirement or operating under a supervisory agreement, must obtain PSA approval to transfer additional assets to an existing finance subsidiary or to issue additional securities through an existing subsidiary, as well as to create such a finance subsidiary.

Finally, one commenter requested the Board to set forth in this regulation those factors that would cause courts to place assets transferred to a finance subsidiary beyond the reach of the FSLIC in case of a parent institution's insolvency. Since the resolution of this issue relies on the precedential decisions and future deliberations of the various federal and state courts, the Board does not consider it to be necessary or beneficial to the industry for the Board to set forth the criteria for corporate separateness in this regulation.

Other Clarifications and Technical Changes in the Final Regulation

Based on the public comments and further consideration of the proposed regulation the Board is making several additional clarifications and technical conforming amendments to the current regulation in addition to those incorporated in the proposed regulation.

First, in light of certain concerns raised by associations, the Board is adding a definition of "security", incorporating the definition from § 561.41, to clarify that the issuance of a security includes the issuance of a promissory note incident to a borrowing by an insured institution.

Second, as discussed above with regard to an association's guarantees, the Board is amending § 545.82(c)(3) to clarify that an association may also guarantee post-default interest on an obligation of its finance subsidiary.

Third, the Board is defining the term "finance subsidiary" in § 563.13–2(a)(4) to include (1) a finance subsidiary of a Federal association organized pursuant to § 545.82, or (2) a subsidiary of a state-chartered insured institution organized under state law but in compliance with the provisions of § 545.82.

Fourth, proposed § 545.82(c)(3) provided that a parent institution's guarantee of a finance subsidiary's obligations meeting the requirements of that section would not be considered to be an outstanding loan for purposes of the loans-to-one-borrower limitations of § 563.9–3. This final regulation is eliminating that specific provision. However, the Board is adopting § 563.9–3(b)(2)(iii) to provide that the amount of assets transferred by an insured

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institution to a finance subsidiary (as defined in § 563.13–2(a)(4)) should not be subject to the limitations of § 563.9–3(b) on aggregate loans or commerical loans to one borrower.

Fifth, the Board also is making conforming changes to its regulations governing savings and loan holding companies in Part 584. The amendments are intended to permit a finance subsidiary as defined in § 563.13–2(a)(4) to engage in transactions, specifically authorized for such a finance subsidiary, with its parent Federal association or state-chartered insured institution. Another provision of the holding company regulations is being amended to permit such finance subsidiaries to incur debt without application to the Corporation.

The Board also wishes to clarify that any investment by an insured institution in a finance subsidiary as defined in § 563.13–2(a)(4) or in the equity securities of such a finance subsidiary, does not constitute a "direct investment" for purposes of the direct investment regulation. 50 FR 6912 (Feb. 19, 1985) (to be codified at 12 CFR 563.9–8).

Due to the liberalizing, clarifying, and technical nature of these proposed amendments, and the public comment already received on these and related issues, the Board does not believe that it is necessary or beneficial to the public to provide an additional comment period. Therefore, the Board is adopting these amendments on a final basis.

Technical Changes to Other Regulations

The Board is taking this opportunity to correct its recent Resolution amending the appraised-equity-capital regulation. *See* (Board Res. No. 85–949, 50 FR 45988 (Nov. 6, 1985)). The substance of the Board's amendments to the appraised-equity-capital regulation is unchanged.

Effective Date and Transactions Not Subject to Requirements of This Regulation

This final regulation will become effective on December 31, 1985, the date of the regulation's publication in the **Federal Register**. First, the amendments to § 545.82, except paragraph (f), relieve restrictions of the current regulation. Second, the Board finds good cause to make § 563.13–2 and paragraph (f) of § 545.82 effective upon publication in the **Federal Register** because (1) the effective date of the regulation does not cause any of a subsidiary's securities to be included in its parent's total liabilities under § 563.13(g)(1) beyond those included by the limits of the savings provision of § 563.13–2(b); (2) the savings clause must become operative on the date of publication to prevent insured institutions and their subsidiaries from hastily and unadvisedly commencing the issuance of securities in order to come within the saving provisions and to avoid the requirements of §§ 545.82 and 563.13–2, which are designed to protect the public, the FSLIC, and insured institutions by requiring net worth adequate to support safe and sound operation; and (3) securities issuances subject to § 563.13–2, except for those issued between the date of publication and December 31, 1985, will not be included in computing insured institutions' total liabilities under § 563.13(g)(1) until the end of the first quarter of 1986.

The final regulation will apply only to the creation of finance subsidiaries, to the issuance of securities through subsidiaries, and other actions within the purview of §§ 545.82 or 563.13–2 occurring after December 31, 1985. Furthermore, such inclusion is subject to the savings provision discussed above regarding the inclusion of an amount of securities issued through a subsidiary in a parent's total liabilities for purposes of sections 563.13 and 563.13–1.

Final Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 1167 (1980), the Board is providing the following final regulatory flexibility analysis.

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION** regarding the rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION** regarding the rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Board rejects the alternatives discussed above in **SUPPLEMENTARY INFORMATION** for the reasons given therein.

List of Subjects in 12 CFR Parts 545, 563, 571 and 584

Savings and loan associations, Savings banks, Securities.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 545, 563, 571, and 584, Subchapters C, D, and F, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

1. The authority citation for Part 545 is revised to read as follows:

Authority: 12 U.S.C. 1464; Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

2. Revise § 545.82 as follows:

§ 545.82 Finance subsidiaries.

(a) *Definitions.* As used in this section:

(1) "Assets collateralizing" means any assets of a finance subsidiary securing, pledged to, or committed to a securities issuance by a finance subsidiary.

(2)(i) "Assets transferred" or "transferring assets" means assets of or liabilities issued by a parent association that are transferred or made available by such association to a finance subsidiary. Assets transferred include guarantees of a finance subsidiary's securities issuances by its parent association.

(ii) For the purpose of calculating the 30 percent aggregate and 250 percent per-issuance transfer limitations set forth in paragraphs (c)(1) (i) and (ii), respectively, of this section, assets transferred by an association to a finance subsidiary include—

(A) Assets or liabilities used to capitalize a finance subsidiary, to collateralize an issuance of securities by an established finance subsidiary, or to maintain collateral levels for any security issued by a finance subsidiary;

(B) Any guarantee issued by a parent association with respect to the securities issued by a finance subsidiary or any collateral for such guarantee as provided in paragraph (c)(4) of this section;

(C) Any portion of the proceeds of a securities issuance by a finance subsidiary held by a finance subsidiary for collateral maintenance, fee payment, or other necessary expenses related to the securities issuance or collateralizing assets; and

(D) Any assets or liabilities received by a finance subsidiary from its parent association by or after remitting to the parent association the proceeds of a securities issuance by such finance subsidiary.

The remittance of proceeds of a securities issuance to a parent association by any method, including those set out in paragraph (e) of this section, shall not decrease the amount of assets transferred for the purposes of paragraphs (c)(1) (i) or (ii) of this section.

(3) "Finance subsidiary" means a Federal association's subsidiary subject to the provisions of this section whose sole purpose is to issue securities (as defined in § 561.41 of this chapter) that the association is authorized to issue directly (or, if the parent association is a

mutual association, would be authorized to issue if it converted to the stock form) and to remit the net proceeds of such securities issuances to its parent association.

(b) *Establishment of finance subsidiaries.* A Federal association may establish one or more finance subsidiaries as defined in paragraph (a)(3) of this section. Prior to the establishment of any finance subsidiary, the board of directors of a Federal association shall, by resolution, vote to authorize the creation of a finance subsidiary in furtherance of a written business plan to reduce interest-rate risk and to control credit risk, and shall agree to make the books and records of its finance subsidiary available to the Board. The board of directors of an association shall be responsible for monitoring the use of all proceeds obtained through the issuance of securities by the finance subsidiary and shall ensure compliance with the business plan pursuant to which the finance subsidiary was established.

(c) *Transactions between a parent association and its finance subsidiaries.* (1) A Federal association may provide the capital to establish one or more finance subsidiaries by transferring assets to such a finance subsidiary: *Provided,* that:

(i) The aggregate current book value of all assets transferred by an association to a finance subsidiary shall not, without the prior written approval of the Principal Supervisory Agent of the parent association's Federal Home Loan Bank district ("association's Principal Supervisory Agent"), exceed 30 percent of the current book value of the association's total assets determined as of the date of any transfer of assets; and

(ii) The aggregate current market value of all assets transferred shall not, without the prior written approval of the association's Principal Supervisory Agent, exceed the amount necessary and customary for the issuance of the type of securities to be issued by a finance subsidiary (which may be the amount required by the rating criteria of a nationally recognized investment rating service) or 250 percent of the gross proceeds of a finance subsidiary's securities issuance, whichever is less.

(2) A finance subsidiary shall not be consolidated with its parent association for purposes of calculating the net-worth requirement of the parent association pursuant to § 563.13 of this chapter, but the parent association shall be subject to the requirements of § 563.13–2 of this chapter.

(3) An association may guarantee any securities issued by its finance subsidiary: *Provided,* that the guarantee shall not exceed the sum of the unpaid principal balance, any accrued but unpaid interest, any redemption premium, and any post-default interest on such securities, and *Provided further,* that the guarantee shall provide that the assets collateralizing the payment of such securities of the finance subsidiary shall be exhausted before recourse may be had to the guarantee.

(4) If a guarantee of a finance subsidiary's securities by its parent association is collateralized or if a liability issued by a parent association to its finance subsidiary is collateralized, then the greater of the face amount of such guarantee or liability or the current book value of the collateral shall be included in the total amount of assets transferred by a parent association under the limitation of paragraph (c)(1)(i) of this section. The greater of the face amount of such guarantee or liability or the market value of the collateral shall be included in the total amount that may be transferred by a parent association under the limitation of paragraph (c)(1)(ii) of this section.

(5) The amount of assets transferred (as defined in paragraph (a)(2) of this section) by an association to a finance subsidiary shall not be subject to the loans-to-one-borrower limitations imposed by § 563.9–3 of this chapter.

(d) *Issuance of securities by finance subsidiaries.* (1) A finance subsidiary of a Federal association may issue, either directly or through a third-party intermediary, any security that its parent association is authorized to issue (or, if the parent association is a mutual association, would be authorized to issue if it converted to the stock form), subject to the provisions of this section.

(2) A finance subsidiary shall not issue or deal in the deposits or savings accounts of its parent association, or state or imply that securities issued by it are insured by the Federal Savings and Loan Insurance Corporation.

(3) A finance subsidiary shall not issue any security the payment, maturity, or redemption of which may be accelerated upon the condition that its parent association is insolvent or has been placed into receivership.

(4)(i) An association providing capital to a finance subsidiary shall own 100 percent of the finance subsidiary's outstanding voting common stock. An association shall not transfer or otherwise assign any interest in its finance subsidiary's common stock to any other person or entity without the prior written approval of the Board.

(ii) A finance subsidiary may provide for voting rights for holders of preferred stock in the manner, for the time period, and to the extent customary to protect the rights of such preferred stockholders: *Provided,* that upon the expiration of any event giving rise to the exercise of such voting rights, such rights shall be vested exclusively as provided in paragraph (d)(4)(i) of this section. Such events include, without limitation, the following:

(A) The finance subsidiary fails to pay dividends for at least one dividend period;

(B) Authorization is sought for any merger, consolidation, or reorganization of the finance subsidiary or its parent association (except in a supervisory case) in which the issuing finance subsidiary or its parent association is not the survivor and the net worth of the resulting finance subsidiary or parent association available for payment of any class of preferred stock is less than the net worth available for such class prior to the merger, consolidation, or reorganization;

(C) Authorization is sought to create a class of preferred stock having a preference or priority over an outstanding class or classes of preferred stock;

(D) Authorization is sought for any action that would adversely change the specific terms of a class of preferred stock;

(E) Authorization is sought to increase the number of shares of a class of preferred stock; and

(F) Authorization is sought for the issuance of an additional class or classes of preferred stock without the finance subsidiary having met specified financial standards.

(e) *Transfer of proceeds of the issuance of securities.* All proceeds from the issuance of any security by a finance subsidiary, net of the reasonable costs (including any proceeds held in the subsidiary for collateral maintenance, fee payment, or any other necessary expenses related to the finance subsidiary's securities issuances or collateralizing assets) associated with the issuance of securities by the finance subsidiary and the organization of the finance subsidiary, shall be remitted to the finance subsidiary's parent Federal association. Such remittance may be made by the payment of dividends on the common stock issued by the finance subsidiary to its parent; by a redemption of the common stock issued by the finance subsidiary to its parent association; by the repayment of any loan made by the parent to the finance subsidiary as part of the capitalization of the subsidiary; or by the purchase of assets of, or liabilities issued by, the parent association (subject to the

limitations of paragraph (c)(1) of this section on the aggregate and per-issuance transfers by a parent association to a finance subsidiary): *Provided,* that any capital stock (common or preferred), mutual capital certificate, subordinated debt, or any other security that would otherwise be considered to be regulatory net worth as defined in § 561.13 of this chapter shall not, if issued by the parent association to its finance subsidiary, be included in the parent association's regulatory net worth unless (1) no assets of the parent association have been transferred to the finance subsidiary, (2) the transaction transfers the risk of equity ownership to parties other than the finance subsidiary or any insured institution, and (3) the Board approves the transaction. The remittance of proceeds to a parent insured institution by any method shall not reduce the amount of assets transferred to a finance subsidiary for purposes of the transfer limitations of paragraph (c)(1) of this section. If an association on December 31, 1985, has exceeded the transfer limitations of paragraph (c)(1) (i) or (ii) of this section due to deducting from the amount of the association's assets transferred any amount of remitted proceeds from a finance subsidiary's securities issuances, the association shall not make additional transfers (unless necessary for collateral maintenance) until the association is in compliance with such transfer limitations.

(f) *Notification to the Principal Supervisory Agent.* (1) Prior to the establishment of any finance subsidiary, the transfer of any additional assets to an existing finance subsidiary, or the issuance of any additional securities by an existing finance subsidiary, the board of directors of the parent association, or a duly authorized executive committee thereof, shall submit written notification to the association's Principal Supervisory Agent specifying:

(i) The name of the finance subsidiary;

(ii) The jurisdiction of incorporation of the finance subsidiary;

(iii) The amount of assets of the parent association to be transferred (including the terms of any guarantee to be issued by the association or any affiliate of the association); the current book value of all such assets previously transferred to the finance subsidiary; and the amount representing 30 percent of the current book value of the parent association's total assets; and

(iv) When known and to the extent permitted by the Securities Act of 1933:

(A) A description of the securities to be issued by the finance subsidiary, including the term thereof;

(B) The aggregate amount of the securities issuance; the anticipated amount of gross proceeds of the securities issuance; and the current market value of assets collateralizing the securities issuance;

(C) The anticipated interest or divided rates and yields, or the range thereof, and the frequency of payments on the finance subsidiary's securities;

(D) The minimum denomination of the finance subsidiary's securities; and

(E) Where the finance subsidiary intends to market the securities.

(2) Within 10 days after the issuance of any securities through a finance subsidiary, its parent association shall send written notification and a copy of any prospectus, offering circular, or other similar document concerning such an issuance of securities to its Principal Supervisory Agent.

(3)(i) Any association that fails to meet its net-worth requirement, as provided in § 563.13 of this chapter, or that is operating under any supervisory agreement, shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through an existing finance subsidiary without the prior written approval of the association's Principal Supervisory Agent. To obtain the written approval of the Principal Supervisory Agent, the board of directors of the association, or an authorized executive committee thereof, shall submit a written application containing the information specified in paragraph (f)(1) of this section, as well as any additional information required by the Principal Supervisory Agent.

(ii) Within 10 days of the filing of an application specifically designated as filed pursuant to paragraph (f)(3)(i) of this section or any additional information by an association subject to paragraph (e)(3)(i) of this section, the Principal Supervisory Agent shall notify the applicant in writing either that all information required has been filed or that additional specified information must be filed. If the Principal Supervisory Agent does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(iii) The Principal Supervisory Agent shall approve the application of an association, subject to the requirements of paragraph (f)(3)(i) of this section, unless he or she finds that the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary, or the issuance of additional securities by an existing finance subsidiary is likely to affect adversely the financial condition or the safe and sound operation of the parent association. An adverse determination made by the Principal Supervisory Agent may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Board. The association shall file its petition with the Office of the Secretary to the Board and shall send a copy to the Principal Supervisory Agent. The Board shall grant or deny a petition for reconsideration filed pursuant to paragraph (f)(3)(iii) of this section in writing within 30 days of receipt. If the Board does not deny such a petition for reconsideration within the prescribed time, the Board shall be deemed to have granted the petition for reconsideration.

(g) *Examination of finance subsidiaries.* A finance subsidiary shall agree in writing to permit and to facilitate examinations and to pay any association costs of such examinations as the Board may deem necessary or appropriate.

SUBCHAPTER D—FEDERAL SAVINGS AND LOANS INSURANCE CORPORATION

PART 563—OPERATIONS

3. The authority citation for Part 563 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–405, 407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

4. Amend § 563.9–3 by inserting after paragraph (b)(2)(ii) of § 563.9–3 the following paragraph (b)(2)(iii):

§ 563.9–3 Loans to one borrower.

* * * * *

(b) * * *

(2) * * *

(iii) The amount of assets transferred (as defined in § 563.13–2(a)(3) of this part) by an insured institution to a finance subsidiary (as defined in § 563.13–2(a)(4) of this part), subject to the provisions of § 545.82 of this chapter, shall not be subject to the limitations imposed by paragraphs (b)(1) and (b)(2) of this section.

5. Amend § 563.9–8 by adding paragraph (b)(3) to read as follows:

§ 563.9–8 Regulation of direct investment in equity securities, real estate, service corporations, and operating subsidiaries.

* * * * *

(b) * * *

(3) "Finance subsidiary" means a corporation as defined in § 563.13–2(a)(4) of this part.

6. Amend Board Resolution No. 85–949, 50 FR 45988 (Nov. 6, 1985), which revised 12 CFR 563.13(c), by removing the following language from paragraph 2 of Resolution No. 85–949, 50 FR 45989: "by removing the phrase 'reserve requirements of paragraphs (a) and (b) of this section' and inserting in lieu thereof the phrase 'net-worth requirements of this section', and".

§ 563.13 [Amended]

7. Amend § 563.13(g)(1) by adding at the end thereof the following sentence: "Total liabilities shall also include an amount of securities issued through a subsidiary (as defined by § 563.13–2(a)(1) of this part) as required by § 563.13–2 of this part.".

§ 563.13–1 [Amended]

8. Amend § 563.13–1(a)(1) by adding at the end thereof the following sentence: "For purposes of this section, 'total liabilities,' as defined in § 563.13(g)(1) of this part, shall also include an amount of securities issued through a subsidiary (as defined by § 563.13–2(a)(1) of this part) as required by § 563.13–2 of this part.".

9. Add a new § 563.13–2 as follows:

§ 563.13–2 Securities issued through subsidiaries.

(a) *Definitions.* As used in this section:

(1) "Amount of securities issued through a subsidiary" means the net proceeds from the issuance of securities (or the pro-rata portion of the net proceeds from securities issued through a jointly owned subsidiary), other than capital stock issued by a subsidiary to its parent institution, after December 31, 1985, by:

(i) A finance subsidiary as defined in paragraph (a)(4) of this section; or

(ii) An operating subsidiary (as defined in § 563.9–8(b)(9) of this part), a service corporation (as defined in § 561.28 of this subchapter), or any other subsidiary of a state-chartered insured institution not organized in compliance with § 545.82 of this chapter, if any proceeds of such securities are remitted to a parent institution (unless such a subsidiary demonstrates to its parent institution's Principal Supervisory Agent that the purpose for such an issuance was totally for the subsidiary's reasonable corporate needs based on reasonable written projections of its financing requirements).

(2) "Assets collateralizing" or "collateralizing assets" means any assets of a subsidiary (including guarantees of its securities issuance by its parent institution) securing, pledged to, or committed to an amount of securities issued through a subsidiary.

(3) "Assets transferred" means assets of or liabilities issued by an insured institution (including guarantees by an insured institution of its subsidiary's securities issuances) that are transferred or made available by an insured institution (i) to a finance subsidiary as defined in paragraph (a)(4) of this section or (ii) to collateralize an amount of securities issued through a subsidiary as defined in paragraph (a)(1) of this section.

(4) "Finance subsidiary" means (i) a Federal association's subsidiary as defined in § 545.82(a)(3) of this chapter, or (ii) a state-chartered insured institution's subsidiary in compliance with the provisions of § 545.82 of this chapter. Investment by an insured institution in a finance subsidiary as defined in this paragraph is not subject to the provisions of the direct-investment regulation set forth in § 563.9–8 of this part.

(5) "Insured institution" means an institution as defined in § 561.1 of this subchapter, including institutions subject to § 543.11–1 of this chapter, but excluding Federal associations the deposits of which are insured by the Federal Deposit Insurance Corporation.

(6) "Securities" means any securities as defined in § 561.41 of this subchapter.

(b) *Issuances affected.* (1) the amount of securities issued through a subsidiary does not include proceeds from securities:

(i) Offered or sold by a subsidiary, either directly or through a third party intermediary, if such offer or sale terminated no later than March 3, 1986, and if the offer or sale was preceded by (A) a registration statement filed with the Securities and Exchange Commission on or before December 31, 1985, or (B) for securities exempt from such registration requirements, an offering document relating to the securities offered filed with an appropriate regulatory agency or lawfully provided to prospective purchasers on or before December 31, 1985.

(ii) Issued in connection with a borrowing, when a note evidencing such borrowing was executed on or before December 31, 1985.

(2) The amount of securities issued through a subsidiary includes the renewal, extension, or rollover of securities after December 31, 1985, unless such a transaction was undertaken pursuant to a binding written contract with a term of one year or less which was executed and became effective on or before December 31, 1985.

(c) *Inclusion of securities issuances through a subsidiary in computation of an insured institution's net-worth requirement.* In calculating total liabilities under § 563.13(g)(1) of this part, the amount of securities issued through a subsidiary shall be included in the total liabilities (as defined in § 563.13(g)(1) of a parent insured institution for purposes of computing such insured institution's net-worth requirement and its compliance with § 563.13–1 of this part: *Provided,* that such amount shall not include an amount equal to the net proceeds from the issuance of securities:

(1) Collateralized by assets that have substantially the same duration as the securities issued and have a relationship to the issued securities such that the duration match will be maintained within the Board's prescribed parameters throughout the life of the securities without active management; or

(2) Remitted in exchange for a liability issued by a parent institution which is otherwise included in the parent institution's total liabilities pursuant to § 563.13(g)(1) of this part.

(d) *Certification of duration analysis.* Within 10 days after an amount of securities is issued through a subsidiary, such subsidiary shall furnish its parent insured institution's Principal Supervisory Agent with a written certification of the accuracy and validity of the duration measurement required by paragraph (c)(1) of this section. The subsidiary shall also send a copy of the certification to the Director, Office of Policy and Economic Research, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Such certification shall specify:

(1) The duration calculation (in complete or summarized form);

(2) The underlying financial assumptions, including those related to interest rates, maturity, and prepayment;

(3) Any different calculations or assumptions being relied upon for purposes of the rating of the securities by a national rating agency; and

(4) The certification of accuracy and validity by the subsidiary and by any organization performing the duration analysis on behalf of the subsidiary.

(e) *Notification to the Principal Supervisory Agent.* (1) Prior to the establishment of any finance subsidiary, the transfer of any additional assets to an existing finance subsidiary, or the issuance of securities through a subsidiary as described in paragraph (a)(1)(ii) of this section, the board of directors of the parent insured institution, or a duly authorized

executive committee thereof, shall submit written notification to the institution's Principal Supervisory Agent specifying:

(i) The name of the subsidiary conducting the issuance and the nature of the subsidiary (e.g., service corporation organized pursuant to state law primarily for direct real estate investment);

(ii) The jurisdiction of incorporation of the subsidiary;

(iii) The amount of assets of the parent insured institution to be transferred (including the terms of any guarantee to be issued by the institution or any affiliate of the institution); the current book value of all such assets of the subsidiary; and the percentage that the amount of assets to be transferred represents of the current book value of parent institution's total assets on an unconsolidated basis; and

(iv) When known and to the extent permitted by the Securities Act of 1933:

(A) A description of the securities to be issued by the subsidiary, including the term thereof;

(B) The aggregate amount of the securities issuance; the anticipated amount of gross proceeds of the securities issuance; and the current market value of assets collateralizing the securities issuance;

(C) The anticipated interest or dividend rates and yields, or the range thereof, and the frequency of payments on the subsidiary's securities;

(D) The minimum denomination of the subsidiary's securities; and

(E) Where the subsidiary intends to market the securities.

(2) Within 10 days after the issuance of any securities through a subsidiary, its parent institution shall send written notification and a copy of any prospectus, offering circular, or other similar document concerning such an issuance to its Principal Supervisory Agent.

(3) Any insured institution that fails to meet its net-worth requirement as provided in § 563.13 of this part, or that is operating under any supervisory agreement, shall not establish a finance subsidiary, transfer assets to an existing finance subsidiary, or issue additional securities through a subsidiary described in paragraph (a)(1)(ii) of this section without the prior written approval of the insured institution's Principal Supervisory Agent. To obtain the written approval of the Principal Supervisory Agent, the board of directors of the institution, or an authorized executive committee thereof, shall submit a written application containing the information specified in paragraph (e)(1) of this section, as well as any additional information required by the Principal Supervisory Agent.

(4) Within 10 days of the filing of an application specifically designated as filed pursuant to paragraph (e)(3) of this section or any additional information by an institution subject to paragraph (e)(3) of this section, the Principal Supervisory Agent shall notify the applicant in writing either that all information required has been filed or that additional specific information must be filed. If the Principal Supervisory Agent does not act on an application within 30 days of the date of written notice that all required information has been filed, such application shall be deemed to be approved.

(5) The Principal Supervisory Agent shall approve the application of an institution subject to the requirements of paragraph (e)(3) of this section, unless he or she finds that the establishment and operation of a finance subsidiary, the transfer of assets to an existing finance subsidiary, or the issuance of an additional amount of securities issued through a subsidiary described in paragraph (a)(1)(ii) of this section is likely to affect adversely the financial condition or the safe and sound operation of the parent institution. An adverse determination made by the Principal Supervisory Agent may be challenged by filing, within 30 days of receipt of written disapproval, a petition for reconsideration with the Corporation. The institution shall file its petition with the Office of the Secretary to the Board and shall send a copy to the Principal Supervisory Agent. The Corporation shall grant or deny a petition for reconsideration filed pursuant to paragraph (e)(3) of this section in writing within 30 days of receipt. If the Corporation does not deny such a petition within the prescribed time, the Corporation shall be deemed to have granted the petition for reconsideration.

PART 571—STATEMENTS OF POLICY

10. The authority citation for Part 571 is revised to read as follows:

Authority: 12 U.S.C. 1725, 1726; Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

§ 571.5 [Amended]

11. Amend § 571.5(a) by inserting after the third sentence thereof the sentence: "Transactions in accordance with § 545.82 of this chapter between a Federal association or a state-chartered insured institution and a finance subsidiary as defined in § 563.13–2(a)(4) of this subchapter shall not be considered 'transfers' for purposes of this paragraph.".

SUBCHAPTER F—REGULATIONS FOR SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

12. The authority citation for Part 584 is revised to read as follows:

Authority: Sec. 12 U.S.C. 1730a as revised, unless otherwise noted.

13. Amend § 584.3 by adding new paragraphs (c)(3) and (h) as follows:

§ 584.3 Transactions with affiliates.

* * * * *

(c) *Exclusion of consideration or payments in transactions with affiliates.* * * *

(3) The amount of the consideration given or received or required to be paid in the future, or the payments made, by the institution in connection with any such transactions, agreements, or understandings with its finance subsidiary as defined in § 563.13–2(a)(4) of this chapter.

* * * * *

(h) *Finance subsidiaries as affiliates.* For purposes of this section, a finance subsidiary, as defined in § 563.13–2(a)(4) of this chapter, of an insured institution shall be deemed to be a service corporation subsidiary.

14. Amend § 584.6 by redesignating paragraph (c)(2) as paragraph (c)(3) and adding a new paragraph (c)(2) as follows:

§ 584.6 Holding Company Indebtedness.

* * * * *

(c) *Exemptions from computation of 15 percent limitation.* The Corporation, without limitation upon and in addition to the exemption contained in paragraph (a)(2) of this section, hereby approves without application the issuance, sale, renewal or guarantee of any debt security or the assumption of any debt incurred:

* * * * *

(2) By a finance subsidiary (as defined in § 563.13–2(a)(4) of this chapter) of an insured institution that is a subsidiary of a savings and loan holding company.

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–30639 Filed 12–30–85; 8:45 am]

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12 CFR Parts 561, 563, and 571

[No. 85-1154]

Classification of Assets

Date: December 9, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; solicitation of comments.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is adopting a new method of classifying certain assets and revising its regulation regarding the re-evaluation of real estate assets.

DATES: This regulation is effective January 30, 1986. Comments must be received by March 3, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Jane W. Katz, Senior Policy Analyst, Office of Policy and Economic Research, (202) 377-6782; Francis E. Raue, Financial Analyst, Office of Examinations and Supervision, (202) 377-6360; Susan McC. van den Toorn, Attorney, Office of General Counsel, (202) 377-6525, at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board, as operating head of the FSLIC, is authorized, pursuant to section 403(b) of the National Housing Act ("NHA"), 12 U.S.C. 1726(b), to conduct examinations of institutions the accounts of which are insured by the FSLIC ("insured institutions"). Pursuant to this authority, the Board has the responsibility to examine and evaluate insured institutions' assets and to require reporting and to prescribe treatment of assets for regulatory evaluation purposes. Section 403(b) of the NHA also requires all insured institutions to maintain adequate reserves established in accordance with FSLIC regulations. *See* 12 CFR 563.13.

The Garn-St Germain Depository Institutions Act of 1982 ("DIA"), Pub. L. 97-320, 96 Stat. 1469 (1982), granted new powers to federally chartered savings and loan associations and mutual savings banks ("Federal associations"). Section 325 of the DIA amended section 5(c)(1)(R) of the Home Owners' Loan Act ("HOLA") to authorize Federal associations to invest in secured or unsecured loans for commercial, corporate, business, or agricultural purposes. 12 U.S.C. 1464(c)(1)(R). The Board implemented this authority by adopting final regulations on April 28, 1983. Board Res. No. 83-241, 48 FR 23032 (May 23, 1983). State laws, which have generally followed or exceeded federal law in this area, have similarly expanded the investment authorities for state-chartered thrift institutions.

Prior research by Board economists in the Board's Office of Policy and Economic Research ("OPER") confirmed the greater risk of commercial lending.[1] After two years of reviewing insured institution's commercial loans, the Board has determined that its traditional method of classifying assets is not effective for most commercial loans. The current classification system, which is keyed to the timely receipt of periodic payments, evolved primarily to classify owner-occupied home loans and has been sufficient for that limited purpose. Under this system a loan that is contractually delinquent is treated as a scheduled item. 12 CFR 561.15, 561.16. An institution's minimum net-worth requirement is increased by 20 percent of such scheduled items. 12 CFR 563.13(g)(5)(ii). The Board believes, however, that this system does not adequately identify credit weaknesses in commercial loans, whose payment schedules and other indicia of "current" status are often of a different nature.

The Proposed Rule

To address this concern, on June 21, 1985, the Board proposed to adopt a new method of classifying certain commercial loans and to revise its regulation regarding the re-evaluation of real estate assets by examination staff. Board Res. No. 85-504, 50 FR 27290 (July 2, 1985). Specifically, the Board proposed to adopt the basic concepts contained in the "Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks" ("Uniform Agreement"), issued in revised form on May 7, 1979, as a Joint Statement of the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), the Board of Governors of the Federal Reserve System ("FRB"), and the Conference of State Bank Supervisors. Under the proposal, "problem assets" would be classified as Substandard, Doubtful, or Loss. As proposed, this new classification system would apply to commercial loans of the type described in 12 U.S.C. 1464(c)(1)(R) and 12 CFR 545.40, excluding commercial loans secured by first liens on real estate and other assets which could be described as "commercial, agricultural or business" loans but which have long been authorized investments for Federal associations and many state-chartered associations and which have been assessed under the "scheduled items" approach. Under the proposed rule, "problem assets" classified as Substandard would be treated as a type of scheduled item, and the institution's minimum net-worth requirement would be increased to reflect 20 percent of such loans. "Problem assets" classified as Doubtful or Loss, however, would require establishment of a specific reserve (50 and 100 percent, respectively), which would be drawn from the institution's net-worth accounts and thus would lower the amount of an institution's actual regulatory net worth, as specific reserves do not count as eligible net-worth items.

The Board's proposal also specifically requested public comment on whether the classification system should apply to other assets. For example, the Board solicited comments on whether the classification system should be applied to nonreal-estate-secured commercial loans, all types of commercial loans, all loans without meaningful periodic payment schedules, and other investments, such as those in securities and subsidiaries. The Board also proposed to revise the appraisal provision in the Board's examinations and audits regulation for insured institutions, 12 CFR 563.17-2(b). The proposed change would authorize evaluations that take into consideration economic factors other than direct appraisal of the property that directly affect the immediate value of the assets to the insured institution.

The Board received 56 comment letters on the proposal. Forty-two comments were received from insured institutions. Of the remainder, one was from a law firm representing a group of twenty insured institutions, one was from a brokerage firm, two were from private consulting groups, two were from state supervisors of financial institutions, four were from trade associations, and four were from federal agencies.

Generally, the comments supported the establishment of a new classification system for commercial loans, as defined in the proposal. Those supporting the proposal recognized the

[1] G. Stacy Sirmans, OPER, "Deriving a Thrift Institution's Efficient Frontiers in Constrained and Unconstrained Environments" (1984), and "A Reestimation of a Thrift Institution's Efficient Frontiers" (1984).

need for a commercial loan classification system and commended the Board for proposing the system used by the bank regulatory agencies. In fact, only three commenters opposed the proposed application of the classification system. The Board also received support for the proposal from the FRB, the FDIC, the OCC, and the Federal Home Loan Bank System.

With respect to the proposal for re-evaluation of real estate, a majority of commenters opposed it. They believed that the proposed amendment would give examiners too much discretionary authority and could lead to arbitrary decision-making.

The Board has carefully considered all comments, which are discussed more fully below, and has determined to adopt the regulation with several significant modifications.

Scope of the Final Classification Regulation

The Board is adopting without change the proposed basic framework for classification of assets contained in the Uniform Agreement. As noted in the proposal, the asset classifications set forth in the Uniform Agreement are expressions of different degrees of a common factor: Risk of nonpayment. All assets involve some risk, but the degree varies greatly. The final regulation classifies problem assets as Substandard, Doubtful, or Loss. The final regulation also defines and discusses each of these categories, largely following the language of the Uniform Agreement.

The final regulation applies the classification system to all assets except loans secured by one-to-four-family, owner-occupied homes, consumer credit, and securities. *See* 12 CFR 561.14, 561.38, 561.41. Covered assets may fall within more than one category, and a portion of an asset may remain unclassified. As in the proposal, assets classified Substandard would be treated as a type of scheduled item, increasing the institution's minimum net worth requirement by an amount equal to 20 percent of the dollar amount of the Substandard asset. Assets classified Doubtful or Loss would require establishment of specific reserves (50 percent for Doubtful and 100 percent for Loss). The reserve would be drawn from the institution's net worth, thereby lowering actual regulatory net worth. The Principal Supervisory Agent ("PSA") or a Supervisory Agent ("SA") designated by him or her has the authority to approve or disapprove the examiner's classification. In the event of any disagreement over the value of reappraised real estate, the PSA has final authority to approve or disapprove appraisals and valuations.

Substandard

The final regulation defines Substandard assets as assets which must have a well-defined weakness or weaknesses. Such an asset is inadequately protected by current net worth and paying capacity of the obligor or pledged collateral, if any. It is characterized by the distinct possibility that the insured institution will sustain some loss if the weaknesses are not corrected. Weaknesses are to be based upon objective evidence. The possibility that liquidation would not be timely requires classification as Substandard even if there is little likelihood of total loss. If the deficiencies are not corrected, the insured institution may sustain some loss.

Assets classified Substandard have characteristics such as (1) collateral which is not subject to adequate inspection and verification; (2) the primary source of repayment is gone and the lending institution is relying upon the secondary source; (3) a loss does not seem likely, but sufficient problems have arisen to cause the insured institution to go to abnormal lengths to protect its position in order to maintain a high probability of repayment; (4) obligors are unable to generate enough cash flow for debt reduction; (5) deterioration in collateral; (6) flaws in documentation, leaving a lending institution in a subordinated or unsecured position; or (7) with regard to assets secured by real estate, the appraisal does not conform with Board appraisal standards, or the assumptions underlying an appraisal which conformed with the Board's appraisal standards at the time it was made are demonstrably incorrect. In addition, Board examiners should also consider the following in determining whether a Substandard classification is appropriate: (1) Restructuring of loans regarding payment schedule or term, collateral, or in any other manner adverse to the institution; (2) deterioration in the borrower's affairs sufficient to cause the institution to look to the sale of collateral for repayment; (3) loans to unprofitable or undercapitalized businesses; (4) special problems arising from conditions of a given industry; or (5) significant deterioration in market conditions.

The Board notes that it is incumbent upon the examiner to avoid classification of sound assets. The presence of one or these factors does not mandate that the asset be classified as Substandard if the examiner does not believe that the presence of that factor indicates a well-defined weakness that jeopardizes the timely liquidation of the asset, or realization on the collateral, at the asset's book value.

Doubtful

The final rule states that assets classified Doubtful would exhibit discernible loss potential if some loss, but not complete loss, seems very likely but there is still sufficient uncertainty that permits the asset to remain on the books at its full value. In addition, a Doubtful asset could reflect the fact that the primary source of repayment is gone and serious doubt exists as to the quality of the secondary source of repayment.

The possibility of loss on a Doubtful assets is high, But because of certain important and reasonably specific pending factors which may work to the strengthening of the asset its classification as an estimated loss is deferred until its more exact status may be determined.

A Doubtful classification would most likely not be repeated at a subsequent examination because there should be enough time to resove pending factors. If pending events did not occur and repayment were deferred awaiting new developments, a Loss classification normally would be warranted. In the case of assets secured by real estate, if an appraisal conforms to Board appraisal standards but the examiner, in consultation with the District Appraiser, determines the assumptions underlying the appraisal are demonstrably incorrect (for example, market conditions have made the assumptions underlying the appraisal materially overoptimistic) and the asset has an additional, distinct weakness inherent in an asset classified Substandard, the asset should be classified Doubtful. Additionally, in the absence of an appraisal, the asset should be classified Doubtful.

Loss

Assets classified Loss are considered to be uncollectible and of such little value that their continuance as assets without the establishment of a specific reserve is not warranted. A Loss classification does not mean that the asset has absolutely no recovery or salvage value, but rather it is not practical or desirable to defer writing off all or a portion of a basically worthless asset even though partial recovery may be effected in the future.

Summary and Discussion of the Comments

1. Acquisition, Development, and Construction ("ADC") Loans, Nonresidential and Multifamily Residential Loans, and Investments

The Board, as noted above, specifically solicited public comments on whether the classification system should apply to other assets, particularly those without meaningful periodic payments. Commenters that supported a broadening of the regulations argued that real estate-backed commercial loans should be classified by the same standards that are used to classify other commercial loans. One comment favored applying the proposed classification system to all assets because the system could provide clearer and more definite guidelines as thrifts engage in more sophisticated and complex commercial lending. The OCC, the FRB, and the FDIC also favored broadening the application of the classification system to other assets.

One supportive comment noted that many state examiners, who review both state banks and federally insured, state-chartered thrifts, are familiar with the bank regulatory agencies' classification system and have applied it to all assets, and that such experience would be of benefit to the Board. Additionally, it was noted that because commercial loans comprise only a small portion of an institution's portfolio, it would be important to apply the new classification system to all assets in order to arrive at a uniform measure of overall asset quality.

Twenty-four commenters opposed broadening the scope of the regulation, with twenty-one of those commenters specifically opposing the inclusion of real estate assets. Generally, these commenters argued that the application of the classification system should be limited to the commercial loans authorized by HOLA 5(c)(1)(R) because the Board's traditional examination techniques—including the use of appraisals and the inclusion of scheduled items in the calculation of an insured institution's minimum net-worth requirement—are sufficient to protect insured institutions and the FSLIC fund from losses associated with all other types of assets.

In particular, one commenter urged the Board not to apply the system to commercial assets secured by real estate or other investments such as investment securities and investments in subsidiaries because the Board's traditional methods of classifying assets rely on fairly objective measurements, such as timeliness of payments and the appraised value of the underlying security. By contrast, the Uniform Agreement depends more on subjective measurements, such as the general conditions of the borrower's business affairs and deficiencies in loan documentation. The commenter suggested that the Board should rely on subjective measurements only when the objective standards of its current procedures are demonstrably inadequate.

The Board believes the current procedures are demonstrably inadequate for certain assets. ADC loans and similar loans and investments have long been recognized as relatively risky assets. These assets are often characterized by very low or nonexistent borrower equity in the project, high fee income, the payment of interest through an interest reserve, and "equity kickers" that give the lender a percentage of any profit. Many problem ADC loans are improperly reported by thrifts to the Board as loans when, under proper accounting principles, they are in economic substance direct investments. Because of the absence of any substantial borrower equity, the lender must generally depend upon the success of the underlying project to receive payment of the principal and interest on an ADC loan. The absence of borrower equity also increases the incentive for a borrower to walk away from a failing project, absent a firm personal guarantee backed by significant assets. All of these factors make ADC loans and similar investments far riskier than conventional thrift investments. The high fees, interest rates, and equity kickers so common to these assets exist because of the higher risks they pose. Borrowers must pay a high rate of return to compensate the lender for the increased risk of ADC loans and analogous loans and investments. A recent study by Professors Crockett, Fry, and Horvitz [2] confirmed this link between increased expected rate of return and risk in Texas thrifts they examined. Statistics computed by the OPER have found that thrifts with very high levels of ADC-type loans reported substantially higher levels of problem assets (real estate owned ("REO") and loans to facilitate sale) than other institutions.[3]

The Board's supervisory experience supports these statistics. The institutions that have failed recently and caused the largest losses to the FSLIC have all involved substantial losses from ADC-type loans, many of which were actually direct investments. Examples include Empire Savings and Loan Association of Mesquite, Texas, San Marino Savings and Loan Association of San Marino, California, Beverly Hills Savings and Loan Association of Beverly Hills, California, and Sunrise Savings and Loan Association of West Palm Beach, Florida.[4] The bank regulatory agencies have increasingly experienced similar problems with real estate loans.[5] Moreover, the known problem institutions likely to cause future losses to the FSLIC often have substantial troubled ADC and other investments.

In one case the institution's assets skyrocketed, from under $100 million in June 1982 to over $1 billion in June 1985. Its phenomenal growth began late in 1982 with a dramatic increase in ADC loans. By December 1983, its construction loans were over 80 percent of its total mortgage portfolio. These construction loans were largely 100 percent financed. The borrower normally had no cash equity in the project, and the institution's fees as well as the interest came out of the loan proceeds. Even if the borrower experienced problems (for example, construction seriously behind schedule or cost overruns) as long as the periodic interest payments were paid from the

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[2] "Equity Participations in Real Estate by Savings and Loans: Implications for Profitability and Risk," OPER Invited Working Paper No. 52 (May 1985).

[3] Memorandum from Joe McKenzie to Eric Hemel, Director, OPER, dated December 6, 1985. For the first half of 1985, the average return on average assets for institutions larger than $100 million in assets was 0.274 percent. The top 40 holders in relative terms of ADC loans had an average return on average assets of 0.597 percent. This difference is not significant in a statistical sense. However, the sum of REO plus loans to faciliate the sale of REO averaged 1.029 percent of assets for all institutions larger than $100 million in assets, but it averaged 1.762 percent of assets for the top 40 holders of ADC loans. This difference is statistically significant at the approximate 95 percent confidence level. Institutions larger than $100 million in assets which ranked among the top 40 institutions in proportion of residential and nonresidential construction loans and nonresidential mortgages also were associated with statistically significant increased levels of REO plus loans to facilitate the sale of real estate.

[4] By March 14, 1984, when the Board found Empire Savings and Loan to be insolvent and ordered that it be liquidated, it had approximately 317 outstanding ADC-type loans on its books, substantially all of which were delinquent. Additionally, the institution had 658 loans on its books that financed the purchase of completed condominium units, most of which were similarly delinquent. In accordance with generally accepted accounting principles, these assets were reclassified from loans to real estate investments, and the institution was required to establish the appropriate loss reserves and to make the necessary adjustments to net worth. At the time the receiver was appionted, the restated net worth as of December 1983 was estimated to be negative $22.4 million, a substantial decline from the reported net worth of positive $20.8 million.

[5] *See* "Guidelines for Troubled Real Estate Loans," Examining Circular of the OCC (Oct. 30, 1985).

loan in process the asset would not be listed as a scheduled item. In the March 1984 examination, scheduled items were 16.8 percent of assets. In some cases, after the loan in process account had run out and the loan became delinquent, the institution immediately refinanced the loan, advancing funds to pay the interest and bring the loan current. In such cases, the institution avoided establishing the reserves that would be required for scheduled items, and, although the examiner saw serious problems in the credit file, he had to order a reappraisal to force the institution to write down the asset.

As this example indicates, the Board's current scheduled items approach to identifying problem ADC loans and similar assets is completely inadequate to deal with such loans when there are no real periodic payments. As noted, many such loans have nominal periodic "paper" payments from an interest reserve. Such loans cannot become delinquent as long as the interest reserve lasts.

Indeed, ADC loans and similar assets can allow thrifts to report dramatic profitability from large up-front fees and high interest rates credited from an interest reserve at the same time that the underlying project becomes a disaster. Empire reported record profits at the very time that it in fact became hopelessly insolvent. Reported profits at thrifts with high levels of ADC loans and similar assets can be grossly exaggerated. This is consistent with the OPER's findings that thrifts with very high levels of ADC loans report higher net income and higher rates of REO and loans to facilitate sales, and that thrifts with high levels of ADC, commercial, residential and nonresidential construction loans, and multifamily and nonresidential mortgages all report statistically significant increased percentages of mortgage fee income to operating income compared to other thrifts.[6]

Unfortunately, there can be very substantial lags before the interest reserve runs out and the loan turns sour. Thus, it may be several years, and hundreds of millions of dollars of further improvident investments later, before such loans become scheduled items.[7] Indeed, by growing rapidly, an institution can run a variant of a pyramid scheme whereby it keeps its reported net income positive even after the earlier real estate loans begin to go into default and the thrift plummets into ever greater insolvency in reality (but not on its books). This situation was virtually out of control before the Board amended its net-worth rule. Even after the amendments, however, thrifts with very large ADC portfolios grew roughly 250 percent faster than other thrifts.[8] Other thrifts have avoided defaults by simply refinancing the loans once the interest reserve runs out or by enagaging in a "backscratching" arrangement with another troubled thrift whereby they refinance each other's problem loans to avoid adverse examiner comment.

Despite the virtually complete inability of the current scheduled items approach to identify problem ADC loans and similar assets on a timely basis, many commenters opposed any application of a classification of assets system to such assets. The thrust of these comments was that the classification standards would be too subjective and would grant the examiners almost unchecked powers to classify an asset. Most commenters suggested that the Board rely on scheduled items treatment for residential property and on reappraisals of problem ADC loans and similar assets. This was believed to be a more objective system.

The Board agrees that scheduled items treatment is effective for owner-occupied residential property and with the comments on the desirability of adopting more objective standards for classifying other real estate assets and on the importance of the Board's regulations requiring proper appraisals. To address these latter concerns the Board is adopting a policy statement that sets out criteria for each classification. Although the classification system necessarily entails a certain amount of subjectivity, based upon the history of its use by the bank regulatory agencies the Board believes that the system is extremely effective.

The Board considers the definitive interpretation of its appraisal regulations to be its Office of Examinations and Supervision Memorandum No. R41b ("R41b"), Appraisal Policies and Practices of Insured Institutions and Service Corporations (March 12, 1982). The Board agrees that R41b establishes objective standards for thrift appraisals. Accordingly, the Board has clarified in this final rule the bases for classifying troubled real estate assets, and it refers the reader to the discussion below of the re-evaluation of real estate.

Some commenters pointed out that in order for the classification system to work effectively it will be necessary to train the Board's examiners and supervisory agents to use the classifications. The Board wishes to assure those commenters that examiners and other supervisory personnel will be trained and will be provided with guidelines similar to those used by the bank regulatory agencies.

2. One-to-Four-Family, Owner-Occupied Homes

As noted, the final regulation retains the scheduled items approach keyed to the timeliness of payments for traditional consumer loans, loans for one-to-four-family, owner-occupied homes, and securities, and at the same time incorporates a classification system that has been used effectively by the bank regulatory agencies for ADC loans and similar loans and investments. As a result, the scheduled item treatment for slow loans contained in 12 CFR 561.15 will apply only to consumer loans, loans secured by one-to-four-family, owner-occupied homes, and other slow loans not classified as Doubtful or Loss pursuant to new § 561.16c(b) (2) or (3).

The Board believes a distinction should be made between one-to-four-family, owner-occupied homes and nonowner-occupied dwellings. The source of payments received on a mortgage from an owner-occupant is derived primarily from earnings of the family members. There is a greater likelihood that such payments will be made because of pride in ownership and the stigma associated with delinquency and foreclosure. On the other hand, cash flow to service mortgages of nonowner-occupied units may be derived from sources which are less reliable over an extended period of time. For example, a syndicator can use proceeds from a new project to service old debt instead of outstanding debt of the new project itself. Such schemes can make problem assets for extended periods of time if loan performance is the only classification measure.

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[6] Memorandum from Joe McKenzie to Eric Hemel, Director, OPER, dated December 6, 1985.

[7] One institution granted over $160 million in loans during the period between the December 27, 1982, and October 13, 1984, exams, 77 percent of which were ADC loans. The institution funded the closing costs, loan fees, and interest, and in some cases other amounts (as much as $222,370) for unspecified purposes. While the borrowers held legal title to the property, they had *no* equity in the projects. Because the institution funded the interest payments from loan proceeds rather then collecting them from the borrower, the loan would not appear as a scheduled item until the interest reserves were depleted and the loan was contractually delinquent or the institution foreclosed. Combined REO and delinquent assets rose from $1.7 million in June 1982 to $93 million in July 1985, or about 20 percent of [illegible].

[8] Memorandum from Joe McKenzie to Eric Hemel, Director, OPER, dated December 6, 1985.

3. Consumer Loans

The final regulation also excepts consumer credit from the new classification system. As in the case of owner-occupied homes, the Board's supervisory experience indicates that the scheduled items approach has been a successful means of evaluating the quality of such loans, which are keyed to the timely receipt of periodic payments. The Board will continue to monitor developments in this area, however, and will re-evaluate including such loans in the classification system should experience suggest the need for such modification.

4. Securities

The final regulation would not apply to assets which are securities. The Board believes that while it may be desirable to apply the same classification system to credit provided to a company regardless of the form such credit takes (for example, loan or corporate debt security), it is necessary to review further the implications of applying the classification system to securities. Therefore, the Board is not applying the system to investments in securities at this time.

In excluding securities from the scope of the final classification system, it is generally the Board's intent to exempt equity and debt securities which are readily marketable and whose value can be readily ascertained by reference to widely recognized exchange quotations. The Board recognizes, however, that the broad terminology of its § 561.41 definition of "security," which refers to any "investment contract" and any "participation in any profit-sharing agreement," might be interpreted by institutions to encompass investments in real estate investment trusts, real estate joint ventures, or similar ventures for which no ready market or easily ascertainable market value exists. It is the Board's view that such investments, which are collateralized by real estate, are subject to the same risk factors characterizing real estate loans and investments subject to the classification system, and can be effectively evaluated only by applying the standards set out in the classification system. The Board therefore emphasizes that it will not deem such investments to fall within the "securities" exclusion of § 561.16c for the purposes of this rule. Further interpretations clarifying the scope of the exclusion will be issued as experience with the classification system warrants.

5. Other Assets Especially Mentioned ("OAEM")

Several commenters also urged the Board to adopt the OAEM category used by some of the other banking agencies. Those commenters believed that this category serves a useful function by allowing examiners to note concerns about an asset without requiring its classification. An examiner can highlight in a timely manner those assets that potentially are problem assets through OAEM, and thereby avoid classifying such assets as Substandard and subjecting the institution to the 20 percent increase in its minimum net-worth requirement. The Board has considered this suggestion and has determined not to adopt the OAEM category since it has been the long standing practice of the Board's examiners to report this type of asset as "Loans Subject to Comment."

6. Effect of Classification

A majority of commenters opposed the increase in required minimum net worth of 20 percent of the amount of assets classified as Substandard. Commenters believed that the proposed rule would treat insured institutions more stringently than financial institutions under the supervision of the banking agencies, with the result that insured institutions would be disadvantaged in their competition with commercial banks.

Commenters argued that such reserve requirements would tend to discourage savings institutions from attempting to develop a commercial loan business because of the expense involved. One comment stated that the additional reserve would be onerous because, by definition, a Substandard classification is "characterized by the distinct *possibility* that the insured institution will sustain some loss *if* the deficiencies are not corrected" (emphasis added), and because the possibility of a loss which is not yet defined should be covered by the institution's contingency reserve (that is, a percentage of loan portfolio) based on historical losses. The commenter noted that loans classified as Substandard are not the same as residential real estate scheduled items in that a Substandard loan may not be delinquent because a loan is often classified for negative trends revealed during a credit analysis of a borrower's financial statement. These "deficiencies" may, however, be in the process of correction, and the loan could remain "current" throughout the entire period of credit quality deterioration. This commenter recommended that, if a credit deteriorates to the point where the primary source of repayment is no longer sufficient to cover debt service and the marginal borrowing base of the collateral is not sufficient, the Board should adopt a policy of splitting the classification between Substandard and Doubtful and/or Loss. Finally, the commenter suggested it would be more appropriate to require any increase in the reserve on a case-by-case basis. It was also suggested that the Board consider a modification of the "slow loans" definition so that a loan would not be classified as Substandard if there is a valid business reason for the loan to be past due.

The Board has carefully considered the arguments raised by the commenters and has determined to treat Substandard assets as scheduled items. As noted in the proposed regulation, Substandard assets do not increase banks' net worth requirement comparable to insured institutions' reserve requirement for scheduled items. Banks, however, unlike insured institutions, are subject to variable net-worth requirements based upon the quality of their assets, as determined by bank regulators.

Moreover, the bank regulatory agencies require that all national and state nonmember banks insured by the FDIC, regardless of size, maintain a ratio of capital to total assets of not less that 6 percent and a ratio of primary capital to total assets of not less that 5.5 percent. Other insured banks submitting applications to the FDIC are subject to the same requirements. This minimum capital requirement is for fundamentally sound, well managed banks which have no material or significant financial weaknesses. When the FDIC determines that a bank does not meet this definition, it may determine that a higher minimum primary and/or total capital ratio is required. Because insured institutions generally are required to maintain a ratio of capital to total liabilities of approximately 3 percent, which is substantially lower than the capital requirement for insured banks, the Board believes that it is necessary to impose stricter capital standards on insured institutions with regard to the quality of their assets.

The Board notes that the classification system will, as a commenter suggested, permit assets to be split among the various classifications and that it gives examiners the flexibility to classify a part of an asset which may well be deficient while not classifying the entire assets. Further, the Board believes that the classification system of the bank regulatory agencies deals more effectively with problem assets than

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would a modification in the definition of "slow loans." Furthermore, a loan that is past due is not automatically classified as Substandard because being past due is merely one factor in determining such a classification.

The proposal also provided that assets classified as Doubtful or Loss would require establishment of a specific reserve (50 and 100 percent, respectively). The specific reserves would be drawn from the institution's net-worth account and thus would lower the amount of an institution's actual regulatory net worth, as specific reserves do not count as eligible net-worth items. The majority of commenters supported this section of the proposal. Several commenters urged that the Board adopt a "loss reserve approach" rather than requiring specific reserves. Other commenters stated that an institution should not be required to establish reserves until the SA has reviewed and approved the classification and directed the institution, in writing to establish such reserves.

After careful consideration of the comments, the Board has determined that assets classified as Doubtful shall have specific loss reserves of 50 percent of book value established for them. Assets classified as Loss shall have specific loss reserves of 100 percent of book value established for them. However, when an asset secured by real estate has been classified in any of the three categories, and either the Corporation or the insured institution obtains an appraisal that the PSA determines is in conformance with the Board's appraisal standards, the insured institution shall establish and maintain a loss reserve equal to the overvaluation instead of treating the asset as a scheduled item or establishing the reserve imposed by the classification system. Similarly, for other classified assets, as long as methodology utilized to arrive at the overvaluation is acceptable to the SA the insured institution shall establish and maintain a loss reserve equal to the overvaluation instead of treating the asset as a scheduled item or establishing the loss reserve imposed by the classification system. The remaining portion of the asset will not be classified as Doubtful or Substandard unless there are additional, distinct weaknesses that justify the classification.

The Board wishes to emphasize in response to the comments that in some circumstances an asset may well be classified in more than one category and that a portion of the asset may remain unclassified. In addition, factors such as the coverage of a loan by private mortgage insurance should be taken into account in determining the appropriate reserve requirement when the probability of a full insurance payment is substantial.

An example of proper utilization of the classification system is the case of a company being liquidated, for which the bankruptcy court has approved a plan with a minimum disbursement of 40 percent and a maximum of 65 percent to unsecured creditors, including an insured institution lender. Then the only portion of the credit which is doubtful is the 25 percent difference between 40 and 65 percent. A proper classification of such a credit would show 40 percent Substandard, 25 percent Doubtful, and 35 percent Loss.

7. FASB 15

A question arose regarding the relationship between the proposal and loans which are restructured or modified. Under this rule, as is the case when applying the Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructuring (June 1977), of the Financial Accounting Standards Board ("FASB") in accordance with generally accepted accounting principles and as applied by the banking regulatory agencies, at the time of restructuring the loan and periodically thereafter the loan and its underlying collateral should be evaluated and allowances for losses should be provided as appropriate to the restructuring.

8. Re-evaluation of Real Estate

The Board also proposed to revise 12 CFR 563.17–2(b), the appraisal provision in the Board's examinations and audits regulations for insured institutions. The proposed rule allowed for evaluations that take into consideration economic factors other than direct appraisal of property that directly affect the immediate value of the assets to the insured institution.

The majority of commenters opposed the re-evaluation of real estate as proposed. They believed that the proposal might lead to arbitrary decision-making by examiners because it was highly subjective and, consequently, they believed that it would give examiners too much discretionary authority. Many commenters believed that certified appraisers were more qualified because the appraisal process is more structured, has more consistent standards, and is more objective. These commenters acknowledged that while there is considerable disagreement over the contents and effectiveness of R41b, it provides a better method of evaluation than the one proposed.

The Board agrees that R41b establishes important objective appraisal standards, and it also agrees with those commenters who desired more objective standards than those proposed for re-evaluating assets secured by real estate. Therefore, the final regulation authorizes examiners to re-evaluate assets in accordance with the newly adopted classification system. The Board believes that this will result in more objective re-evaluations. In this regard, the Board notes that all re-evaluations performed by examiners must be based on substantiated facts and contain sufficient documentation to support the evaluation. Such documentation is necessary in order to provide supervisory authorities with the information needed to order adjustment of charges.

In addition, the Board is amending 12 CFR 563.17–2(b) to provide that a re-evaluation of real estate shall be based on an appraisal as provided by § 563.17–1, except in the following circumstances. A loan or investment that requires an appraisal under the Board's rules but for which the institution has no appraisal in its files shall be classified as Doubtful. If there is an appraisal in the institution's files but it does not conform with the Board's appraisal standards (currently set out in R41b), the asset should be classified as Substandard. If the examiner determines that the assumptions underlying an appraisal that complied with the Board's appraisal standards at the time the appraisal was made are demonstrably incorrect, the asset should also be classified as Substandard. If the examiner determines, with the aid of the District Appraiser, that an appraisal is no longer accurate because the assumptions underlying the appraisal are demonstrably incorrect (for example, because market conditions have rendered these assumptions materially overoptimistic), and that the asset has an additional weakness inherent in an asset classified Substandard, the asset should be classified Doubtful. An asset, or portions thereof, are classified Loss only upon the basis of reappraisals of that asset or substantially identical assets. In sum, the final rule does apply objective standards for classifying problem assets, and in the case of real estate assets those standards do place critical importance on appraisals conforming with the Board's standards.

In addition to applying objective standards, the final rule provides further protection against the fear of arbitrary

classifications by the examiners. It is the SA who is empowered to order a valuation allowance. The express role provided for the District Appraiser in the final rule acts as a further check and balance.

In the event of any disagreement regarding the value assigned in any reappraisal of real estate, the PSA will have the final authority to approve or reject any or all appraisals or valuations.

The Board has determined, however, that it cannot rely solely upon reappraisals as an alternative to adopting a classification system for real estate assets. Currently, the Board must rely on such reappraisals to identify problem real estate assets that are not in default because of interest reserves or refinancings. Sometimes institutions fail to order reappraisals as agreed.[9] Reappraisals typically take many months to conduct. In the Federal Home Loan Bank of Dallas district, the average time to conduct a reappraisal is approximately eight months. Even when the reappraisal is received, it may not comply with R41b, and the entire process may have to begin anew.[10] Problem institutions often refuse to establish loss reserves even when a reappraisal complying with R41b substantiates the loss. The situation becomes a true nightmare in the worst problem thrifts because hundreds of properties may require reappraisal.

In a recent failure, the Board's appointment of a receiver for a severely troubled thrift was substantially delayed by the problem of substantiating losses through reappraisals. In another recent failure, even though the Board was ultimately able to secure reappraisals establishing the need for substantial loss reserves, the thrift refused to establish the reserves and secured a back-scratching takeout loan from another problem thrift for several of the loans that had long been in default. The very act of ordering reappraisals gives months of notice to the worst problem institutions that they need to cover their tracks. The Board's supervisory experience compels the conclusion that continued reliance on reappraisals as the sole means for classifying problem real estate assets would be disastrous for the FSLIC.

The Board is also amending § 563.17–2(c) to provide that if a re-evaluation of assets by an insured institution discloses that any assets of the institution or its service corporation is overvalued on its books, such institution or service corporation shall, at the direction of the SA, make an adjustment of the book value of such asset, and, unless otherwise directed by the SA, such adjustment shall be made by establishing and maintaining a specific reserve in an amount equal to the overvaluation.

9. Initial Regulatory Flexibility Analysis Comments

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board provided in its proposed regulation an initial regulatory flexibility analysis. As a result of that analysis the Board received a comment letter from the United States Small Business Administration ("SBA") Office of Chief Counsel for Advocacy, which stated that it believed the initial regulatory flexibility analysis published with the proposed rule overlooked the potential deterrent to small business lending that the proposed classification system may have on insured institutions due to the subjective nature of the proposed loan classifications and examination procedures. The SBA suggested that the proposed regulation be amended to recognize the unique problems of insured institutions lending to small businesses. The Board is aware of the unique problems of small businesses and encourages insured institutions to recognize these differences. The Board, however, does not believe it is necessary at this time to amend its proposal to include specific factors to be taken into account for small businesses. If in the future the Board believes such special notice is required, it will issue a proposed amendment.

Effective Date and Solicitation of Comments

The Board believes that it is important to implement this new method of classifying assets expeditiously. Therefore, the classification system for all assets, other than consumer loans, loans secured by one-to-four-family, owner-occupied homes and securities will be effective 30 days following publication of the regulation in the Federal Register. Likewise, the Board believes it is important that the re-evaluation of real estate as proposed become effective 30 days after publication.

As noted previously, the Board has determined to include in the coverage of the classification system all assets except consumer loans, loans secured by one-to-four-family, owner-occupied homes, and securities. Since the Board in its proposal specifically requested comments on whether the classification system should also apply to all or some of the loans currently assessed under the "scheduled items" approach, the Board has determined pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 that additional notice and public comment is unnecessary.

The Board, however, solicits further comments on the general scope of the classification system and accordingly is providing for a 60-day comment period after which, if appropriate, the scope may be modified, extended, or otherwise addressed.

Final Regulatory Flexibility Analysis. Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 1167 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in SUPPLEMENTARY INFORMATION regarding the rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in the SUPPLEMENTARY INFORMATION regarding the rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* These elements are incorporated above in SUPPLEMENTARY INFORMATION regarding the rule.

List of Subjects in 12 CFR Parts 561, 563 and 571

Savings and loan associations.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 561, 563, and 571 of Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

PART 561—DEFINITIONS

1. The authority citation for Part 561 is revised to read as follows:

Authority: 12 U.S.C. 1724–26, 1730; Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

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[9] In one institution the independent auditors requested that management obtain 72 appraisals on property securing its construction loans. In December 1984, management agreed to order these appraisals. During the February 1985 examination, examiners discovered that management had failed to do so. Moreover, most of the existing appraisals were not in conformance with R41b. As a result, the examiners ordered independent appraisals on 61 of the 72 loans identified by the independent auditors. The losses from the first group of 27 reappraisals requested by the examiner made the institution insolvent.

[10] In one institution, examiners order reappraisals on 5 projects and requested appraisals on others through lead lenders. The institution's auditors also requested 12 reappraisals. On the average, it took 4–6 months for examiners to receive the appraisals they requested, and 6–8 months passed before examiners obtained those ordered by the auditors. Without exception, these reappraisals did not conform to R41b.

2. Amend § 561.15 by revising paragraph (a) as follows. The introductory text of the section is printed for the convenience of the reader.

§ 561.15* Scheduled items.

The term "scheduled items" means:

(a) Assets or portions thereof classified Substandard under § 561.16c of this part (other than loans specified in paragraph (b) of this section), slow consumer credit, and slow loans (other than loans classified Doubtful or Loss under § 561.16c of this part).

* * * * *

§ 561.16 [Amended]

3. Amend § 561.16 by revising the introductory text to read as follows: "With respect to loans on the security of a 'home,' as defined in § 541.14 of this chapter, which is owner-occupied, the term 'slow loans' means:* * *".

4. Add a new § 561.16c as follows:

§ 561.16c Classification of certain assets.

(a) *Scope.* The classification system described in this section applies to all assets or portions thereof held by an insured institution *except* for loans secured by "homes," as defined in § 541.14, that are owner-occupied, "consumer credit," as defined in § 561.38, and all "securities," as defined in § 561.41 of this chapter.

(b) *Classifications.*—(1) *Substandard.* Assets classified Substandard are inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged, if any. Assets so classified must have a well-defined weakness or weaknesses. They are characterized by the distinct possibility that the insured institution will sustain some loss if the deficiencies are not corrected.

(2) *Doubtful.* Assets classified Doubtful have all the weaknesses inherent in those classified Substandard with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable.

(3) *Loss.* Assets classified Loss are considered uncollectible and of such little value that their continuance as assets without establishment of a specific reserve is not warranted. This classification does not mean that an asset has absolutely no recovery or salvage value, but, rather, that it is not practical or desirable to defer writing off a basically worthless asset even though partial recovery may be effected in the future.

(c) *Effect of Classification.* (1) Except as set forth in paragraph (c)(2) of this section, assets classified Substandard shall be treated as scheduled items, assets classified Doubtful shall have specific loss reserves of 50 percent of book value established for them, and assets classified Loss shall have specific loss reserves of 100 percent of book value established for them.

(2)(i) When an asset secured by real estate has been classified and either the Corporation or the insured institution obtains an appraisal that the Supervisory Agent determines is in conformance with the Board's appraisal standards, the institution shall establish and maintain a loss reserve equal to the amount by which the valuation of the asset on the books of the institution exceeds the value established by such appraisal, instead of the reserve imposed or the scheduled item treatment mandated by the classification system. The remaining portion of the asset shall not be classified Doubtful or Substandard unless there are additional, distinct weaknesses that justify such classification.

(ii) Similarly, for a classified asset not secured by real estate, as long as the methodology used to arrive at the overvaluation is acceptable to the Supervisory Agent, the insured institution shall establish and maintain a loss reserve equal to the overvaluation instead of the reserve imposed or the scheduled item treatment mandated by the classification system. The remaining portion of the asset shall not be classified Doubtful or Substandard unless there are additional, distinct weaknesses that justify such classification.

(d) *Delegations and interpretations.* (1) The Principal Supervisory Agent or a Supervisory Agent disignated by him or her shall have authority to approve or disapprove the classification of assets made pursuant to this section.

(2) When an appraisal is required or made in connection with any re-evaluation of assets, the Principal Supervisory Agent shall have the final authority to approve or reject any or all appraisals or valuations related thereto.

(3) The Board's Office of Examinations and Supervision shall, from time to time, issue interpretations and other informational material regarding classification of assets. See § 571.1a of this subchapter, containing the Corporation's statement of policy on the classification of assets.

PART 563—OPERATIONS

5. The authority citation for Part 563 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 USC 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–405, 407, 48 Stat. 1255–1260, as amended (12 USC 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

6. Amend § 563.17–2 by revising the title of paragraph (a) and by revising paragraphs (b) and (c) as follows:

§ 563.17–2 Re-evaluation of assets; adjustment of book value; adjustment charges.

(a) *Real estate owned.* * * *

(b) *Re-evaluation of other assets.* In connection with each examination of an insured institution or service corporation, the Board's examiner shall make such re-evaluation of such institution's or service corporation's assets (exclusive of insured or guaranteed loans) as he or she deems advisable or necessary. Any such re-evaluation of real estate shall be based on an appraisal as provided by § 563.17–1 of this subchapter, except that: (1) Re-evaluation of parcels of real estate that are similar in all essential respects may be based on an appraisal of one or more of such parcels; (2) if the appraisal does not conform with Board appraisal standards or the assumptions underlying the appraisal are demonstrably incorrect, the examiner shall classify the asset Substandard in accordance with § 563.16c(b) of this subchapter; (3)(i) if there is no appraisal the examiner shall classify the asset Doubtful in accordance with § 561.16c(b); or (ii) if there is a conforming appraisal but the assumptions underlying the appraisal are demonstrably incorrect and the examiner's analysis has identified a well-defined weakness or weaknesses inherent in an asset classified Substandard, the examiner shall classify the asset Doubtful in accordance with § 561.16c(b) and request the District Appraiser to analyze the asset and the appraisal to determine whether the Doubtful or a Loss classification is appropriate for some portion of the asset.

(c) *Adjustment of book value.* If the re-evaluation of assets by an insured institution or otherwise, as ordered by the Corporation, disclose that any asset of an institution or service corporation is overvalued on its books (exclusive of overvaluation due to fluctuations in value which are caused by changes solely in market interest rates), such institutions or service corporation shall, at the direction of the Supervisory Agent, make an adjustment of the book value of such asset, and, unless otherwise directed by the Supervisory Agent, such adjustment shall be made

by establishing and maintaining a specific reserve in an amount equal to the overvaluation. When an appraisal is required and made in connection with any re-evaluation of assets, the Principal Supervisory Agent shall have the final authority to approve or reject any or all appraisals or valuations related thereto.

* * * * *

PART 571—STATEMENTS OF POLICY

7. The authority citation for Part 571 is revised to read as follows:

Authority: 12 U.S.C. 1725, 1728; Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071, unless otherwise noted.

8. Add a new § 571.1a as follows:

§ 571.1a Classification of certain assets.

This statement of policy provides guidance in the classification of assets pursuant to § 561.16c of this subchapter. Assets subject to this classification requirement may fall within more than one category, and a portion of an asset may remain unclassified. Reserves established by an insured institution for such assets must be based on an appraisal made in accordance with Board appraisal standards and should take into consideration the availability of compensation by private mortgage insurance when the probability of full insurance payment is substantial.

(a) *Substandard.* An asset classified substandard must have a well-defined weakness or weaknesses. A Substandard asset is an asset inadequately protected by the current net worth and paying capacity of the obligor or pledged collateral, if any. It is characterized by the distinct possibility that the institution will sustain some loss if the deficiencies are not corrected. Weaknesses are to be based upon objective evidence. The possibility that liquidation would not be timely requires a Substandard classification even if there is little likelihood of total loss. If the deficiencies are not corrected, the insured institution may sustain some loss. Assets classified Substandard would exhibit one or more of the following characteristics:

(1) Collateral which is not subject to adequate inspection and verification;

(2) The primary source of repayment is gone and the lending institution is relying upon the secondary source;

(3) A loss does not seen likely, but sufficient problems have arisen to cause the institution to go to abnormal lengths to protect its position in order to maintain a high probability of repayment;

(4) Obligors are unable to generate enough cash flow for debt reduction;

(5) Deterioration in collateral;

(6) Flaws in documentation, leaving the lending institution in a subordinated or unsecured position;

(7) With regard to assets secured by real estate, the appraisal does not conform with Board appraisal standards, or the assumptions underlying the appraisal are demonstrably incorrect;

(8) Board examiners may also consider the following in determining whether a Substandard classification is appropriate:

(i) Restructuring of loans regarding payment schedule or term, collateral, or in any other manner adverse to the institution;

(ii) Deterioration in the borrower's affairs sufficient to cause the institution to look to the sale of collateral for repayment;

(iii) Loans to unprofitable or undercapitalized businesses;

(iv) Special problems arising from conditions of a given industry; or

(v) Significant deterioration in market conditions.

It is incumbent upon the examiner to avoid classification of sound assets. The presence of one of these factors does not mandate that the asset be classified Substandard if the examiner does not believe that the presence of that factor indicates a well-defined weakness that jeopardizes the timely liquidation of the asset, or realization on the collateral, at the asset's book value.

(b) *Doubtful.* (1) An asset classified Doubtful would exhibit discernible loss potential if some loss, but not complete loss, seems very likely but there is still sufficient uncertainty to permit the asset to remain on the books at its full value. In addition, a Doubtful classification could reflect the fact that the primary source of repayment is gone and serious doubt exists as to the quality of the secondary source of repayment.

(2) The possibility of loss on a Doubtful asset is high, but, because of certain important and reasonably specific pending factors which may work to the strengthening of the asset, its classification as an estimated loss is deferred until its more exact status may be determined.

(3) A Doubtful classification would most likely not be repeated at a subsequent examination because there should be enough time to resolve pending factors which may work to the strengthening of an asset. If pending events did not occur and repayment was deferred awaiting new developments, a Loss classification normally would be warranted. In the case of assets secured by real estate, if an appraisal conforms to Board appraisal standards but the examiner, in consultation with the District Appraiser, determines that the assumptions underlying the appraisal are demonstrably incorrect and that the asset has a well-defined weakness or weaknesses inherent in an asset classified Substandard, the asset should be classified Doubtful. Additionally, in the absence of an appraisal, the asset should be classified Doubtful. However, the entire asset should not be classified Doubtful if the probability of a partial recovery is substantial (for example, there is private mortgage insurance and the probability of full insurance payment is substantial).

(c) *Loss.* An asset classified Loss is considered uncollectible and of such little value that continuance as an asset without the establishment of a specific reserve is not warranted. A Loss classification does not mean that an asset does not have recovery or salvage value, but simply that it is not practical or desirable to defer writing off all or a portion of a basically worthless asset, even though partial recovery may be effected in the future.

(d) *Effect of Classification.* (1) Except as set forth in paragraph (d)(2) of this section, assets classified Substandard shall be treated as scheduled items, assets classified Doubtful shall have specific loss reserves of 50 percent of book value established for them, and assets classified Loss shall have specific loss reserves of 100 percent of book value established for them.

(2)(i) When an asset secured by real estate has been classified and either the Corporation or the insured institution obtains an appraisal that the Supervisory Agent determines is in conformance with the Board's appraisal standards, the insured institution shall establish and maintain a loss reserve equal to the amount by which the valuation of the asset on the books of the institution exceeds the value established by such appraisal, instead of the reserve imposed or the scheduled item treatment mandated by the classification system. The remaining portion of the asset shall not be classified Doubtful or Substandard unless there are additional, distinct weaknesses that justify such classification.

(ii) Similarly, for a classified asset not secured by real estate, as long as the methodology used to arrive at the overvaluation is acceptable to the Supervisory Agent, the insured institution shall establish and maintain a loss reserve equal to the overvaluation instead of the reserve imposed or the scheduled item treatment mandated by the classification system. The remaining

portion of the asset shall not be classified Doubtful or Substandard unless there are additional, distinct weaknesses that justify such classification.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-30638 Filed 12-30-85; 8:45 am]

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12 CFR Parts 563, 563c, and 563g

[No. 85-1197]

Securities Offerings; Federal Savings and Loan Insurance Corporation

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is adopting regulations governing certain offers or sales of securities issued by an institution ("issuer"), where (1) the institution is an "insured institution" as that term is defined in § 561.1 of the Board's Insurance Regulations, (2) the institution is a federally-chartered insured institution in organization, or (3) the institution is a state-chartered institution in organization and is approved for insurance of accounts by the Corporation. The final rules provide that an issuer's offer or sale of securities shall be made only through the use of an offering circular which has been filed with, and declared effective by, the Corporation. Exemptions would be available for offerings (1) made prior to the effective date of the final rules, (2) of securities and transactions which would be exempt from registration under certain sections of the Securities Act of 1933 ("Securities Act") if the issuer were subject to the registration requirements of the Securities Act, (3) of certain collateralized debt securities in minimum denominations of $100,000 or more, (4) complying with the Board's regulations on retail repurchase agreements, except where the issuer has a net-worth deficiency, (5) in conversions from mutual to stock form other than in a supervisory case, (6) in certain non-public offerings, (7) to employees and directors pursuant to a qualified pension, profit sharing or stock bonus plan, and (8) of securities distributed exclusively abroad to foreign nationals. The offering circular is required to comply with certain items of Form OC and Form PS under the Board's Conversion Regulations and with all of the items of the registration form that the issuer could use if it were required to register the securities under the Securities Act. The Board also is amending its regulations governing mutual capital certificates, outside borrowings, and subordinated debt to eliminate offering-circular requirements that would be rendered unnecessary by the final regulations, eliminate the minimum-denomination requirements for outside borrowing and subordinated debt securities, and permit an insured institution or an affiliate to offer or sell its securities in the offices of the insured institution under specified circumstances. Finally, the Board is amending its retail-repurchase-agreement regulations to clarify the offering circular requirements.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Scott E. Bartel, Attorney, (202 377-6963); John P. Harootunian, (202 377-6415), Deputy Director for Securities; Julie L. Williams, (202 377-6459), Associate General Counsel, Director, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: By Resolution No. 85-822, dated September 13, 1985 (50 FR 38839, September 25, 1985) the Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC") re-proposed regulations for securities offerings by insured institutions. The re-proposal was essentially a modified version of an earlier proposal adopted by Resolution No. 83-126, dated March 3, 1983 (48 FR 10684, March 14, 1983). The principal modifications made by the re-proposal: (1) Deleted the first proposal's exemption for certain exchange offerings, intrastate offerings, and offerings to employees, officers or directors pursuant to certain stock plans; (2) provided an exemption for certain collateralized debt securities issued in minimum denominations of $100,000 or more; (3) required issuers in a public offering to register under the Securities Exchange Act of 1934; (4) provided that the exemption for a non-public offering is only available upon compliance with the Board's requirements; (5) revised the first proposal's exemption for a non-public offering, from sales to not more than 15 persons to sales to not more than 35 investors having a personal or business relationship with the issuer or who are otherwise sophisticated investors; (6) provided a procedure for shelf-registration; and (7) added provisions for enforcement which provided for the Corporation to direct a rescission offer.

Upon further consideration and in response to the comments received on both the first proposal and the modified re-proposal, the Board is adopting final rules which, *inter alia*, (1) re-instates all of the available exemptions under the Securities Act of 1933 except for section 3(a)(5), the general exemption for thrift securities, and section 3(a)(11), the intrastate offering exemption; (2) provides for a "safe harbor" non-public offering exemption; (3) does not require all issuers making public offerings to register under the Securities Exchange Act of 1934, but instead requires the filing of certain current and periodic reports for a one year period; (4) redefines the term "offer" and "sale" to exclude securities issued upon the exercise of certain warrants and conversion rights; (5) expands the exemption for collateralized debt securities offered by insured institutions; (6) revises the escrow requirement to apply only to offerings made on a best efforts all-or-none or, minimum-maximum basis; (7) defines what constitutes an unsafe or unsound practice within the meaning of the National Housing Act of 1934 and the Home Owners" Loan Act of 1933 in connection with the issuance of securities; and (8) deletes the power of the Corporation to require a rescission offer be made by an insured institution under certain circumstances.

By adopting the final rules, the Board is imposing uniform disclosure requirements on all insured institutions making public offerings of their securities. In doing so, the Board has determined to regulate an area of thrift activity currently left unregulated by an exemption in the Securities Act for securities issued by regulated thrift institutions. The Board has decided to regulate securities offerings by an exercise of its authority over insured institutions and federally-chartered thrifts vested in it by the provisions of the National Housing Act of 1934 and the Home Owners' Loan Act of 1933. (For a detailed discussion of the Board's authority to adopt final rules regulating securities offerings by insured institutions, *see* Resolution No. 85-822 dated September 13, 1985 (50 FR 38839, September 25, 1985.) In this respect, the Board has determined that the imposition of fair and reasonable uniform disclosure requirements for securities offerings by insured institutions would reduce the risk that securities offerings without uniform disclosure requirements would have a

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negative effect on the ability of institutions to raise capital and a concomitant adverse effect on the safety and soundness of such institutions and the FSLIC. By adopting final rules regulating public securities offerings in thrift securities, the Board desires to foster integrity, confidence and discipline in the market-place for such securities.

The Board has decided to regulate securities offerings through final rules which require full and adequate disclosure of material information by insured institutions. In deciding on the method of regulation the Board would implement, it considered all three principal methods for securities regulation used in the United States: (1) Regulation solely through anti-fraud provisions; (2) merit regulation; and (3) disclosure requirements. Regulation of securities offerings solely with anti-fraud provisions, however, lacks the uniformity of disclosure desired by the Board. Anti-fraud provisions, in and of themselves, do not ordinarily create an affirmative disclosure obligation. Basically, implicit obligations under the anti-fraud provisions require an issuer who makes certain voluntary disclosure in connection with the sale of its securities to make truthful disclosure and prohibits "half truths" which may mislead investors. However, the anti-fraud provisions do not require an issuer to make *any* disclosure at all nor do such provisions provide any guidance to issuers on what types of disclosure are adequate enough to enable potential investors to make a fully informed investment decision. For these reasons, Congress and almost all of the states have chosen not to rely solely on anti-fraud provisions to regulate securities offerings.

Some states, however, regulate offers and sales of securities on the basis of merit. In these jurisdictions, the state makes a determination that the offering is "fair, just, and equitable" to the investor. Such states, like California for example, will not permit offerings of securities to be made to residents of the state if the offering, in the opinion of the state, is too speculative or otherwise not fair and reasonable to the investor. Such *parens patriae* regulation over securities offerings, however, may take more time and personnel to implement and may otherwise be more burdensome on issuers then regulation on the basis of full disclosure.

As already mentioned, Congress and many of the states have chosen to regulate securities offerings on the basis of disclosure. Full disclosure of material information serves to place the owners of securities on a party, so far as possible, with the management of the institution, and to place the buyer on the same plane, so far as available information is concerned, with the seller. [1] Its fundamental purpose is to substitute a philosophy of full disclosure for the philosophy of *caveat emptor*. [2] As Louis D. Brandeis once wrote, "sunlight is said to be the best of disinfectants, [3] and in the words of Professor Louis Loss, "people who are forced to undress in public will presumably pay some attention to their figures."[4]

Regulation of securities offerings through the final rules' system of full and fair disclosure most effectively implements the desire of the Board to foster integrity, confidence and discipline in the marketplace for thrift securities. The final rules require uniform minimum disclosure be made in public offerings of thrift securities, provide potential investors in thrift securities with adequate information to make fully informed investment decisions, and implement a fair system of disclosure for the issurance of securities by thrift institutions.

Offering Circular Requirement—Section 563g.2

The final rules provide that, unless an exemption is available, no insured institution offer or sell any security issued by it unless such offer or sale is accompanied or preceded by an offering circular which includes certain uniform disclosure and which has been filed with, and declared effective by, the Corporation. The rules also provide for the use of preliminary offering circulars and certain limited pre-filing and post filing public notifications. The offering circular filing requirements are designed to operate consistently with industry practice and, in this respect, attention has been given to make the final rules no more burdensome on thrift institutions than the requirements applicable to other entities subject to the similar registration requirements under the Securities Act.

One person commenting on the proposed rules pointed out that proposed § 563g.2 appeared to prohibit oral offers *after* the filing of the offering circular—an effect inconsistent with the proposed rule's counterpart under the Securities Act. The effect of prohibiting oral offers after the filing of the offering circular would be inconsistent with the industry practice of selling securities wherein oral statements are permitted under the Securities Act after the filing of a registration statement. However, all written offers must be made with a Securities Act prospectus. It was not the Board's intention to be inconsistent with industry practice under the Securities Act. Therefore, the final rules have been revised to provide at § 563g.2(b)(3) that *oral* offers of securities covered by an offering circular made after the offering circular is filed with the Corporation is a "communication not deemed to be an offer" under Part 563g.

Like registration statements filed under the Securities Act, § 563g.6 provides that offering circulars filed by insured institutions are automatically declared effective by the Corporation on the twentieth day after filing or on such earlier date determined by the Corporation. The Board expects that the traditional delaying amendment will be used by insured institutions and, in all but unusual cases, timely requests for acceleration of the effective date will be honored. In this respect, the proposed rules provided that the Corporation could deem an offering circular "not effective" if it determined that the offering circular failed to comply with the requirements of the regulations. On further consideration, however, the Board has revised this requirement of proposed § 563g.6(d) by providing that only if it appears to the Corporation that an offering circular contains a false or misleading statement of material fact, or omits to state facts required to make the disclosure therein not misleading, then the Board itself, as operating head of the Corporation, may pursue any remedy it is authorized to pursue under the National Housing Act of 1934 or the Home Owners' Loan Act of 1933, including, but not limited to, cease-and-desist proceedings after notice and opportunity for a hearing. (See section 5(d) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(d); section 407 of the National Housing Act of 1934, 12 U.S.C. 1730). Ordinarily, failure to substantially comply with the disclosure requirements provided for in the final rules will constitute sufficient grounds for the Corporation to refer the institution to the Board for enforcement action under the above standard.

The disclosure required to be included under the final rules essentially consists of the items of required disclosure under the forms for registration that the institution would be eligible to use if it were required to register the securities offering under the Securities Act.

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[1] *See*, 77 Cong. Rec. 2918 (1933).

[2] *See, Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128, 151 (1972); *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963).

[3] L.D. Brandeis, Other People's Money, C. 5 ¶1.

[4] L. Loss, Fundamentals of Securities Regulation, 36 (1983).

However, if the institution is not in compliance with the Corporation's regulatory net-worth requirements, then it must provide the disclosures required by the Securities and Exchange Commission's ("Commission") Form S-1. In addition, insured institutions must provide certain limited information required by the Board's Forms OC and PS of the Part 563b. (See 12 CFR 536b.101 and 563b.102). Furthermore, an institution's financial statements must comply with the Commission's Regulation S-X and Part 563c of the Insurance Regulations.

The final rules also provide for administrative procedures necessary to implement the offering circular requirement, including provisions for the number of copies, required signatures and undertakings and the procedure for confidential treatment of certain parts of the public filing. Finally, like registration statements filed with the Commission under the Securities Act, insured institutions making public offerings must file a securities sales report disclosing the use of the proceeds of the offering.

Most of the persons commenting on the proposed rules were generally in favor of modeling the Corporation's securities regulations on the time tested system of regulation implemented by the Commission under the Securities Act. Several comments were received, however, which highlighted areas of the proposed rules which, in their view, appeared to impose burdens significantly greater on insured institutions offering their securities under the proposed rules than the burdens imposed upon similarly situated registrants under the Securities Act. The Board has considered each of these comments and believes that the changes to the proposed rules reflected in the final rules are responsive to the comments received. Some of the most significant changes made in the final rules appear in the exemption provisions discussed below.

Exemptions—Sections 563g.3 and 563g.4

Generally, the final rules will not apply to offers or sales of securities made prior to the effective date of the final rules with certain qualifications and exceptions. As re-proposed, the proposed rules also exempted securities and transactions which would be exempt under sections 3(a) and 4 under the Securities Act, except by reason of sections 3(a)(5) (for regulated savings and loan associations), 3(a)(9) (for certain exchange offerings), 3(a)(11) (for intrastate offerings) and 4(2) (for non-public offerings). Several persons commenting on the re-proposal argued that it was not fair to deprive insured institutions of exemptions generally available to other entities under the Securities Act and that such deprivation would result in unduly burdensome regulation. In addition, failure to provide insured institutions with the availability of the non-public offering exemption generally available under section 4(2) of the Securities Act would subject insured institutions to unnecessary risks by depriving such institutions of alternate legal arguments that an offering is exempt from the offering circular requirements even though it may not have fully complied with the literal requirements, including the notice provisions, of the proposed non-public offering exemption. On reconsideration and in response to the comments received, the Board is re-instating the availability of the general non-public offering exemption provided for under section 4(2) of the Securities Act. In addition, the Board is also reinstating the exemption for exchange offers available under section 3(a)(9) of the Securities Act.

In addition to restoring the above exemptions to the offering circular requirement, the Board has also revised its own non-public offering exemption by making it a "safe-harbor" instead of an exclusive method for exemption. As revised, the final rules provide that offerings complying with either a modified version of the Commission's Regulation D or, in the alternative, the requirements for offers to not more than 35 qualified investors, shall be deemed to be transactions not involving any public offering within the meaning of the non-public offering exemption provided for in section 4 (2) of the Securities Act. Almost all of the persons commenting objected to the pre-offering notice requirement. In response to these comments, the Board has reconsidered the necessity for pre-offering notice requirements and has decided to eliminate such requirements altogether. The "Safe-harbor" exemption still provides a required post sale notice requirement, but has been revised to provide that the exception will not be lost merely because a notice is not timely filed. Section 563g.21 also requires a copy of the offering circular, or similar document, be mailed to the Corporation solely for its information.

Several persons commenting on the proposed rule's 2 year restriction on transfer of securities issued in a non-public offering posited that the restriction was unduly restrictive. In addition, it was suggested that such restriction may have the effect of making the securities "non-legal" investments under institutional fiduciary standards. In response to these comments, the Board has revised the 2 year restriction on transfer to not apply to transfers which would otherwise be exempt from the offering circular requirements if the transfer was made by an insured institution. In addition, several other transfers are specifically identified as not subject to the 2 year restriction, including, *inter alia*, transfers to accredited investors, transfers by gift and transfers to certain members of the transferor's family.

The re-proposal also eliminated the exemption contained in the first proposal for offers and sales to officers, directors and employees pursuant to certain compensation and benefit plans. Many comments were received pointing out that, as re-proposed, the proposed rules would likely require the filing of offering circulars for plans which would otherwise be exempt for registrants under the Securities Act. Upon reconsideration, the Board is adopting in its final rules an exemption for offers and sales to an insured institution's employees or directors pursuant to qualified pension, profit-sharing, and stock bonus plans meeting the requirements of section 401(a) of the Internal Revenue Code ("Code"). There is no requirement that the plans actually be submitted to the Internal Revenue Service so long as the requirements of section 401(a) of the Code are satisfied. Because such qualified plans are subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), the Board has determined that there is little need to regulate the offer of interests in such plans at this time. Compensation and benefit plans not meeting the requirements of section 401(a) of the Code could still be exempt, however, if they can avail themselves of another exemption generally available.

The re-proposal also added an exemption for debt securities fully collateralized by interests in mortgage notes secured by real property. Several persons commenting on the proposed rules pointed out that the exemption was unnecessarily restrictive and was not consistent with industry practice because government securities and other similar securities are often used initially to collateralize interests in collateralized mortgage pools. Therefore, the Board has revised this exemption in the final rules to include securities issued, or guaranteed as to principal and interest, by the United States, Federal Home Loan Mortgage Association, Federal National Mortgage Association and the Government National Mortgage Association as permissible collateral in addition to

interests in mortgage notes secured by real property. Section 561.21 also requires a copy of the offering circular, or similar document, be mailed to the Corporation solely for its information.

Definitions—Section 563g.1

Numerous comments were received expressing concern over the effect the final rules would have over warrants, options and rights, including convertible securities, which were issued prior to the adoption of the final rules but which may be construed to be continious offers under the final regulations. Generally, an offering of warrants, options or rights, including convertible securities, involves a sale of a security when the option, warrant or right is issued, and again another sale of the underlying security when the option, warrant or right is exercised. Between the issuance of the option, warrant or right and its exercise, a continuous offer is being made and, therefore, may theoretically be subject to the offering circular requirements of the final rules. In an effort to eliminate uncertainty in this area and also to abstain from affecting the expectations of parties to prior contracts, the Board has decided to revise the definition of "offer" and "sale" subject to the final rules by excluding from the definition underlying securities issued upon the exercise of options, warrants, rights and convertible securities. Under the revised definition, the offer and sale of the underlying security occurs only at the time of the offer and sale of the option, warrant, right or convertible security. However, insured institutions required to file an offering circular in connection with such offerings must undertake to provide a copy of the institution's most recent financial statements to persons exercising such options, warrants and rights of conversion.

Escrow Requirements—Section 563g.9

As re-proposed, all offerings made pursuant to the proposed rules would have required the proceeds from the offering be placed in a federally insured escrow account until completion of the offering. Several persons commenting on the re-proposal pointed out that to require such an escrow requirement on all offerings would be inconsistent with the industry practice for underwritten offerings on a firm commitment basis. On reconsideration, the Board has revised the requirement for a separate escrow account to include only offerings made on a best-efforts all-or-none or, minimum-maximum basis. Under the final rules, other offerings may be made without the requirement of an escrow.

Current and Periodic Reports—Section 563g.18

As re-proposed, all insured institutions making public offerings pursuant to the proposed rules would have been required to register under section 12 of the Exchange Act and not de-register for a period of 120 days after one full fiscal year after the offering was made. Upon reconsideration, however, the Board believes that it would be unduly burdensome to require many insured institutions to submit to all of the statutory requirements incumbent upon registrants under the Exchange Act which include the proxy rules, tender offer rules and the insider trading and beneficial ownership reporting obligations. Therefore, in an effort to make the offering circular requirements no more burdensome than the requirements for others under the Securities Act, the Board has revised this provision in the final rules to require certain current and periodic reports be made similar to the reporting obligation imposed by section 15(d) of the Exchange Act on registrants under the Securities Act. In this respect, an issuer not otherwise required to register under the Exchange Act who makes a public offering will be required to file current and periodic reports on Forms 8–K, 10–Q and 10–K.

Unsafe and Unsound Practices—Section 563g.10

Both the original proposal and the re-proposal contained a general anti-fraud provision modeled after the Commission's Rule 10b–5. Many persons commenting on the proposed rules believed that there was no need for an additional anti-fraud provision because insured institutions are already subject to the provisions of Rule 10b–5. The Board has considered these comments and has made certain revisions to the anti-fraud provision in the final rule to clearly reflect the intention of the Board. First, it is not the intention of the Board to merely duplicate or limit the applicability of the Commission's Rule 10b–5. Instead, the Board is making clear that the making of materially false or misleading statements or material omissions in connection with the purchase or sale of thrift securities will constitute an unsafe and unsound practice within the meaning of the National Housing Act of 1934 and the Home Owners' Loan Act of 1933. In this respect, the anti-fraud provision was modeled after the Commission's Rule 10b–5 to make it more clear exactly which types of mistatements and omissions are covered by the rule. However, it is not the Board's intention to create any private rights of action by promulgating the rule. On the other hand, the Board does intend that all of the defenses available under the Commission's Rule 10b–5 would also be available under the final rule. In addition, the final rule is applicable only to those persons over whom the Board has jurisdiction pursuant to the National Housing Act of 1934 and the Home Owners' Loan Act of 1933. In comparison, the Commission's Rule 10b–5 applies to all persons who may participate in connection with the purchase or sale of any security.

Rescission Offers—Proposed Section 563g.20

The re-proposal provided for the power of the Corporation, by delegated authority, to require insured institutions to do a rescission offer if it determines that a securities offering was made in violation of the rules. Several persons commenting on the re-proposal expressed grave concerns over the Corporation's authority to direct a rescission offer without providing the institution the opportunity for a hearing. Upon re-consideration, the Board has decided to delete this provision. However, other revisions made in the final rules make it clear that the Corporation may refer an insured institution to the Board's Office of Enforcement to seek an appropriate remedy under the Board's enforcement powers when it appears to the Corporation that an offering circular contains any untrue statement of material fact, or omits to state material facts required to be disclosed under the circumstances in order to make other statements made therein not misleading. Failure to substantially comply with the disclosure requirements of the final rules will constitute grounds for such referral.

Availability of Interpretive Advice—Section 563g.15

The final rules adopt the proposed rule's provision for requests to the Corporation for interpretive advice. Many persons commenting on the proposed rules believed clarification was necessary in certain instances. For example, whether the Corporation will follow the interpretations of the Commission concerning offerings to foreign nationals, whether a particular debt instrument is fully collateralized under the exemption set forth in § 563g.3(f) or whether a particular offering falls within the grandfather exemption set forth in § 563g.3(a) are all areas where the facts and circumstances of each case may be relevant to the

ultimate determination of the issues involved. Therefore, the Corporation will give interpretive advice on these areas, and any other area of the final rules, when requested to do so by persons following the procedures set forth in § 563g.15.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 1167 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in Supplementary Information regarding the rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in Supplementary Information regarding the rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Board rejects the alternatives discussed above in Supplementary Information for the reasons given therein.

List of Subjects in 12 CFR Parts 563, 563c, and 563g

Accounting, Savings and Loan Associations, Securities.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 563 and 563c and adds Part 563g under Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The statutory authority for Part 563 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–405, 407, 48 Stat. 1255–1268, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 563.7–4 [Amended]

2. Amend § 563.7–4 by removing paragraphs (e), (f), and (h); and redesignating paragraphs (g), (i), (j), (k), and (l) as paragraphs (e), (f), (g), (h), and (i), respectively.

§ 563.8 [Amended]

3. Amend § 563.8 by removing paragraphs (f), (g), and (h); and redesignating paragraph (i) as paragraph (f).

§ 563.8–1 [Amended]

4. Amend § 563.8–1 (d) by removing paragraph (d) (1) (v) and redesignating paragraph (d) (1) (vi) as (d) (1) (v).

5. Amend § 563.8–4 by revising paragraph (b)(5), as follows:

§ 563.8–4 Transfer and repurchase of government securities.

* * * * *

(b) * * *

(5) *Disclosure.* An institution issuing repurchase agreements to the public shall provide each prospective repurchase agreement purchaser with an offering document which shall contain full and accurate disclosure of all material information regarding the repurchase agreement and the issuing institution. Any material change in any of the material representations set forth in the offering document shall be reflected in a revised offering document that shall be provided to purchasers before any renewal or automatic renewal of a repurchase agreement may be effected. An institution that has a net-worth deficiency under paragraph (b)(7) of this section shall be subject to the requirements of Part 563g of this Subchapter, except that the following financial statements may be substituted for those required to be included in an offering circular required under Part 563g:

(i) The institution's audited statements of condition and operations for its last fiscal year prepared in accordance with the requirements of § 563c.1 of this Subchapter;

(ii) On a comparative basis, the institution's latest unaudited statement of condition for the quarter ending within 135 days of any sale, renewal, or automatic renewal of a repurchase agreement, and an unaudited statement of operations for the period then ended, prepared in accordance with the requirements of § 563c.1; and

(iii) The institution's latest monthly financial report filed with the Corporation.

* * * * *

PART 563c—ACCOUNTING REQUIREMENTS

Subpart A—Form and Content of Financial Statements in Offering Circulars

6. The statutory authority for Part 563c continues to read as follows:

Authority: Secs. 402, 403, 407 of the National Housing Act, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726 and 1730); sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 3(b), 12, 13, 14, 16, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895, 898, and 901, as amended (15 U.S.C. 78c(b), 78 *l*, *m*, *n*, *p*, and *w*); and Reorg. Plan No. 3 of 1947, 12 Fr 4981, 3 CFR, 1943–48 Comp., p. 1071, unless otherwise noted.

7. Amend § 563c.1 by revising paragraph (a)(2), as follows:

§ 563c.1 Application of this subpart.

(a) * * *

(2) any offering circular or non-public offering materials required to be used in connection with an offer or sale of securities under Part 563g of this Subchapter.

* * * * *

8. Add a new part 563g, as follows:

PART 563g—SECURITIES OFFERINGS

Sec.

563g.1 Definitions.
563g.2 Offering circular requirements.
563g.3 Exemptions.
563g.4 Non-public offerings.
563g.5 Filing and signature requirements.
563g.6 Effective date.
563g.7 Form, content, and accounting.
563g.8 Use of the offering circular.
563g.9 Escrow requirement.
563g.10 Unsafe or unsound practices.
563g.11 Withdrawal or abandonment.
563g.12 Securities sale report.
563g.13 Public disclosure and confidential treatment.
563g.14 Waiver.
563g.15 Requests for interpretive advice or waiver.
563g.16 Delayed or continuous offering and sale of securities.
563g.17 Direct sales of securities at an office.
563g.18 Current and periodic reports.
563g.19 Approval of the security.
563g.20 Form for securities sale report.
563g.21 Filing of copies of offering circulars in certain exempt offerings.
563g.22 Delegation of authority.

Authority: Secs. 402, 403 and 407 of the National Housing Act, 48 Stat. 1256, 1257 and 1260, as amended, 12 U.S.C. 1725, 1726 and 1730; sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; secs. 3(b), 12, 13, 14, 16, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895, 898, and 901, as amended, 15 U.S.C. 78c(b), 78 *l*, *m*, *n*, *p*, and *w*; the Federal Home Loan Bank Act, 12 U.S.C. 1421 *et seq.*; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 563g.1 Definitions.

(a) For purposes of this Part, the following definitions apply:

(1) "Accredited investor" means the same as in Commission Rule 501(a) (17 CFR 230.501(a)) under the Securities Act, and includes any insured institution.

(2) "Beneficial owner" means the same as in Commission Rule 13d–3 (17 CFR 240.13d–3) under the Exchange Act.

(3) "Business combination" means the same as in Commission Rule 501(d) (12 CFR 230.501(d)) under the Securities Act.

(4) "Commission" means the Securities and Exchange Commission.

(5) "Exchange Act" means the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj).

(6) "Filing date" means the date on which any documents are actually received during business hours, 9:00 a.m. to 5:00 p.m. Eastern Standard Time, by the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. However, if the last date on which documents can be accepted falls on a Saturday, Sunday, or holiday, such documents may be filed on the first business day following such Saturday, Sunday or holiday.

(7) "Insured institution" means the same as in § 561.1 of this Subchapter, and includes a federally-chartered insured institution in organization under this Chapter, and a state-chartered institution in organization which is granted conditional approval of insurance of accounts by the Corporation. In addition, for purposes of this Part, "insured institution" includes any underwriter participating in the distribution of securities of an insured institution.

(8) "Issuer" means an insured institution which issues or proposes to issue any security.

(9) "Offer," "Sale" or "sell." For purposes of this Part 563g, the term "offer," "offer to sell," or "offer for sale" shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. However, these terms shall not include preliminary negotiations or agreements between an issuer and any underwriter or among underwriters who are or are to be in privity of contract with the issuer. "Sale" and "sell" includes every contract to sell or otherwise dispose of a security or interest in a security for value. Every offer or sale of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, includes an offer and sale of the other security only at the time of the offer or sale of the warrant or right or convertible security; but neither the exercise of the right to purchase or subscribe or to convert nor the issuance of securities pursuant thereto is an offer or sale.

(10) "Person" means the same as in § 563b.2(a)(24) of this Subchapter, and includes an insured institution.

(11) "Purchase" and "buy" means the same as in § 563b.2(a)(28) of this Subchapter.

(12) "Securities Act" means the Securities Act of 1933 (15 U.S.C. 77a–77aa).

(13) "Security" means the same as in § 561.41 of this Subchapter.

(14) "Underwriter" means the same as in § 563b.2(a)(36) of this Subchapter.

(b) A term not defined in this Part but defined in another part of this Subchapter, when used in this Part, shall have the meanings given in such other part, unless the context otherwise requires.

(c) When used in any rules, regulations, or forms of the Commission referred to in this Part, the term "Commission" shall be deemed to refer to the Corporation or the Board, the term "registrant" shall be deemed to refer to an issuer defined in this Part, and the term "registration statement" or "prospectus" shall be deemed to refer to an offering circular filed under this Part, unless the context otherwise requires.

§ 563g.2 Offering circular requirements.

(a) *General.* No insured institution shall offer or sell, directly or indirectly, any security issue by it unless:

(1) The offer or sale is accompanied or preceded by an offering circular which includes the information required by this Part and which has been filed and declared effective pursuant to this Part; or

(2) An exemption is available under this Part.

(b) *Communications not deemed an offer.* The following communications shall not be deemed an offer under this Part:

(1) Prior to filing an offering circular, any notice of a proposed offering which satisfies the requirements of Commission Rule 135 (17 CFR 230.135) under the Securities Act; and

(2) Subsequent to filing an offering circular, any notice, circular, advertisement, letter, or other communication published or transmitted to any person which satisfies the requirements of Commission Rule 134 (17 CFR 230.134) under the Securities Act.

(3) Oral offers of securities covered by an offering circular made after filing the offering circular with the Corporation.

(c) *Preliminary offering circular.* Notwithstanding paragraph (a) of this section, a preliminary offering circular may be used for an offer of any security prior to the effective date of the offering circular if:

(1) The preliminary offering circular has been filed pursuant to this Part;

(2) The preliminary offering circular includes the information required by this Part, except for the omission of information relating to offering price, discounts or commissions, amount of proceeds, conversion rates, call prices, or other matters dependent on the offering price; and

(3) The offering circular declared effective by the Corporation is furnished to the purchaser prior to, or simultaneously with, the sale of any such security.

§ 563g.3 Exemptions.

The offering-circular requirements of § 563g.2 of this Part shall not apply to an issuer's offer or sale of securities:

(a) Made prior to March 1, 1986: *Provided,* that (1) the offer or sale does not continue for more than 60 days after March 1, 1986, and (2) the issuer is not a *de novo* federally-chartered institution in organization;

(b) Complying with the requirements for retail repurchase agreements of § 563.8–4 of this Subchapter, except where the issuer has a net-worth deficiency under that section;

(c) Exempt from registration under either sections 3(a) or section 4 of the Securities Act, but only by reason of an exemption other than section 3(a)(5) (for regulated savings and loan associations), and 3(a)(11) (for intrastate offerings) of the Securities Act;

(d) In a conversion from the mutual to the stock form of organization pursuant to Part 563b of this Subchapter, except for a supervisory conversion undertaken pursuant to Subpart C of Part 563b of this Subchapter;

(e) In a non-public offering which satisfies the requirements of § 563g.4 of this Part;

(f) That are debt securities issued in denominations of $100,000 or more, which are fully collateralized by any security issued, or guaranteed as to principal and interest, by the United States, the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association or by interests in mortgage notes secured by real property; or

(g) Distributed exclusively aboard to foreign nationals: *Provided,* that (1) the offering is made subject to safeguards reasonably designed to preclude distribution or redistribution of the securities within, or to nationals of, the United States, and (2) such safeguards include, without limitation, measures that would be sufficient to ensure that registration of the securities would not

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be required if the securities were not exempt under the Securities Act.

(h) To its employees or directors pursuant to any qualified pension, profit-sharing, or stock bonus plan meeting the requirements of section 401(a) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 401(a)).

§ 563g.4 Non-public offering.

Offers and sales of securities by an issuer that satisfy the conditions of paragraph (a) or (b) and the requirements of paragraphs (c) and (d) of this section shall be deemed to be transactions not involving any public offering within the meaning of Section 4(2) of the Securities Act and §§ 563g.3(c) and 563g.3(e) of this Part. However, an issuer shall not be deemed to be not in compliance with the provisions of this section solely by reason of making an untimely filing of the notice required to be filed by paragraph (c) of this section so long as the notice is actually filed and all other conditions and requirements of this section are satisfied.

(a) *Regulation D.* The offer and sale of all securities in the transaction satisfies the Commission's Regulation D (17 CFR 230.501–230.506), except for the notice requirements of Commission Rule 503 (7 CFR 230.503) and the limitations on resale in Commission Rule 502(d) (17 CFR 230.502(d)).

(b) *Sales to 35 persons.* The offer and sale of all securities in the transaction satisfies each of the following conditions:

(1) Sales of the security are not made to more than 35 persons during the offering period, as determined under the integration provisions of Commission Rule 502(a) (17 CFR 230.502(a)). The number of purchasers referred to above is exclusive of any officer, director or affiliate of the issuer. For purposes of this paragraph (b), a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation or other organization which was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person.

(2) All purchasers either have a pre-existing personal or business relationship with the issuer or any of its officers, directors or controlling persons, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement.

(c) *Filing of notice of sales.* Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in an offering pursuant to this section, the issuer shall file with the Corporation a report describing the results of the sale of securities as required by § 563g.12(b) of this Part.

(d) *Limitation on resale.* Except as provided for in paragraph (d)(3) of this section, securities acquired in a transaction under this exemption shall not be resold or otherwise disposed of for a period of two years from the date of the initial sale without the prior written consent of the Corporation.

(1) The issuer shall exercise reasonable care to ensure that the purchasers of the securities are not purchasing for resale or distribution, which reasonable care shall include, but not be limited to, the following:

(i) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(ii) Written disclosure to each purchaser prior to sale that the securities cannot be resold or otherwise disposed for a period of two years without the prior written consent of the Corporation except as to transfers provided for in paragraph (d)(3) of this section; and

(iii) Placement of an appropriate legend on the certificate or other document that evidences the restricted nature of the securities.

(2) When the securities are lawfully transferred without the consent of the Corporation pursuant to paragraph (d)(3) of this section, or transferred with the consent of the Corporation, then the holding periods may run consecutively from the date of sale in connection with the initial transaction exempt under this § 563g.4.

(3) Prior written consent of the Corporation shall not be required under this paragraph for a transfer:

(i) To the issuer;

(ii) Pursuant to an order or process of any court;

(iii) To an "accredited investor;"

(iv) To the transferor's ancestors, descendants or spouse, or any custodian or trustee for the account of the transferor or the transferor's ancestors, descendants or spouse; or to a transferee by a trustee or custodian for the account of the transferee or the transferee's ancestors, descendants or spouse;

(v) By way of gift or donation *inter vivos* or on death;

(vi) By a trustee to a successor trustee when such transfer does not involve a change in the beneficial ownership of the securities;

(vii) In a transaction which would have been exempt from the offering circular requirements of § 563g.2, by operation of § 563g.3 or § 563g.4 of this Part, if the transfer was made by an insured institution.

§ 563g.5 Filing and signature requirements.

(a) *Procedures.* An offering circular, amendment, notice, report, or other document required by this Part shall, unless otherwise indicated, be filed in accordance with the requirements of § 563b.8(e)(1), (3) and (4), (f) through (q), and (s), of this Subchapter.

(b) *Number of copies.* (1) Unless otherwise required, any filing under this Part shall include 10 copies of the document to be filed with the Corporation, as follows:

(i) Seven copies, which shall include one manually signed copy with exhibits, three conformed copies with exhibits, and three conformed copies without exhibits, to the Corporate and Securities Division, Office of General Counsel; and

(ii) Three copies, which shall include one manually signed copy with exhibits and two conformed copies without exhibits, to the Principal Supervisory Agent.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, 25 copies of the offering circular used shall be filed with the Corporation, as follows: 22 copies to the Corporate and Securities Division, Office of General Counsel, and three copies to the Principal Supervisory Agent.

(3) After the effective date of an offering circular, an offering circular which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until 10 copies have been filed with the Corporation in the manner required.

(c) *Signature.* (1) Any offering circular, amendment, or consent filed with the Corporation pursuant to this Part shall

include and attached manually signed signature page which authorizes the filing and has been signed by:

(i) The issuer, by its duly authorized representative;

(ii) The issuer's principal executive officer;

(iii) The issuer's principal financial officer;

(iv) The issuer's principal accounting officer; and

(v) At least a majority of the issuer's directors.

(2) Any other document filed pursuant to this Part shall be signed by a person authorized to do so.

(3) At least two copies of every document filed pursuant to this Part shall be manually signed, and every copy of a document filed shall:

(i) Have the name of each person who signs typed or printed beneath the signature;

(ii) State the capacity or capacities in which the signature is provided;

(iii) Provide the name of each director of the issuer, if a majority of directors is required to sign the document; and

(iv) With regard to any copies not manually signed, bear typed or printed signatures.

§ 563g.6 Effective date.

An offering circular filed by an insured institution shall be deemed to be automatically declared effective by the Corporation on the twentieth day after filing or on such earlier date as the Corporation may determine for good cause shown: *Provided*, that:

(a) If any amendment is filed prior to the effective date, the offering circular shall be deemed to have been filed when such amendment was filed;

(b) The period until automatic effectiveness under this section shall be stated at the bottom of the facing page of the Form OC or any amendment;

(c) The effectiveness will be delayed if a duly authorized amendment, telegram confirmed in writing, or letter states that the effectiveness date is delayed until a further amendment is filed specifically stating that the offering circular will become effective in accordance with this section; and

(d) If it appears to the Corporation at any time that the offering circular includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, then the Federal Home Loan Bank Board, as the operational head of the Corporation, may pursue any remedy it is authorized to pursue under Section 407 of the National Housing Act of 1934, as amended, (12 U.S.C. 1730) including, but not limited to, institution of cease-and-desist proceedings.

§ 563g.7 Form, content, and accounting.

(a) *Form and content.* Any offering circular or amendment filed pursuant to this Part shall:

(1) Be filed under cover of Form OC, which is under Part 563b of this Subchapter;

(2) Comply with the requirements of Items 3 and 4 of Form OC and the requirements of all items of the form for registration (17 CFR Part 239) that the issuer would be eligible to use were it required to register the securities under the Securities Act;

(3) Comply with all item requirements of the Form S–1 (17 CFR Part 239) for registration under the Securities Act, if the institution issuing the securities is not in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made;

(4) Where a form specifies that the information required by an item in the Commission's Regulation S–K (17 CFR Part 229) should be furnished, include the information as modified by any corresponding item in Form PS, which is under Part 563b of this Subchapter, and all of the information required by Item 7 of such Form PS;

(5) Include after the facing page of the Form OC a cross-reference sheet listing each item requirement of the form for registration under the Securities Act and indicate for each item the applicable heading or subheading in the offering circular under which the required information is disclosed;

(6) Include in Part II of the Form OC the applicable undertakings required by the form for registration under the Securities Act;

(7) If the issuer has not previously been required to file reports pursuant to section 13(a) of the Exchange Act or § 563g.18 of this part, include in Part II of Form OC the following undertaking: "The issuer hereby undertakes, in connection with any distribution of the offering circular, to have a preliminary or effective offering circular including the information required by this Part distributed to all persons expected to be mailed confirmations of sale not less than 48 hours prior to the time such confirmations are expected to be mailed."

(8) In offerings involving the issuance of warrants, subscription rights or conversion rights within the meaning of § 563g.1(9), include in Part II of Form OC an undertaking to provide a copy of the issuer's most recent audited financial statements to persons exercising such warrants or rights prior to or simultaneously with the exercise thereof.

(9) Include as supplemental information and not as part of the Form OC and only with respect to *de novo* offerings, a copy of the application for permission to organize for federally-chartered institutions, and a copy of the application for insurance of accounts for state-chartered institutions; and

(10) In addition to the information expressly required to be included by this section, there shall be added such further material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(b) *Accounting requirements.* To be declared effective, an offering circular or amendment shall satisfy the accounting requirements in Subpart A of Part 563c of this Subchapter and, to the extent they are not inconsistent, the accounting rules in the Commission's Regulations S–X (17 CFR Part 210) and the financial information requirements in the Commission's Regulation S–K (17 CFR Part 229).

§ 563g.8 Use of the offering circular.

(a) An offering circular or amendment declared effective by the Corporation shall not be used more than nine months after the effective date, unless the information contained therein is as of a date not more than 16 months prior to such use.

(b) An offering circular filed under § 563g.5(b)(3) of this Part shall not extend the period for which an effective offering circular or amendment may be used under paragraphs (c) of this section.

(c) If any event arises, or change in fact occurs, after the effective date and such event or change in fact, individually or in the aggregate, results in the offering circular containing any untrue statement of material fact, or omitting to state a material fact necessary in order to make statements made in the offering circular not misleading under the circumstances, then no offering circular, which has been declared effective under this part, shall be used until an amendment reflecting such event or change in fact has been filed with, and declared effective by, the Corporation.

§ 563g.9 Escrow requirement.

(a) Any funds received in an offering which is offered and sold on a best efforts all-or-none condition or with a minimum-maximum amount to be sold shall be held in an escrow or similar separate account until such time as all

of the securities are sold with respect to a best efforts all-or-none offering or the stated minimum amount of securities are sold in a minimum-maximum offering.

(b) If the amount of securities required to be sold under escrow conditions in paragraph (a) of this section are not sold within the time period for the offering as disclosed in the offering circular, all funds in the escrow account shall be promptly refunded unless the Corporation otherwise approves an extension of the offering period upon a showing of good cause and provided that the extension is consistent with the public interest and the protection of investors.

§ 563g.10 Unsafe or unsound practices.

It shall constitute an unsafe or unsound practice within the meaning of section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)) and section 407(e) of the National Housing Act of 1934 (12 U.S.C. 1730(e)) for any person, directly or indirectly,

(a) To employ any device, scheme or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates as a fraud or deceit upon any person,

in connection with the purchase or sale of any security of an insured institution. Nothing in this § 563g.10 shall be construed as a limitation on the applicability of section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) or Rule 10b–5 promulgated thereunder (17 CFR 240.10b–5).

§ 563g.11 Withdrawal or abandonment.

(a) Any offering circular, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal shall be signed and state the grounds upon which it is made. Any documents withdrawn will not be removed from the files of the Corporation, but will be marked "Withdrawn upon the request of the issuer on (date)."

(b) When an offering circular or amendment has been on file with the Corporation for a period of nine months and has not become effective the Corporation may, in its discretion, determine whether the filing has been abandoned, after notifying the issuer that the filing is out of date and must either be amended to comply with the applicable requirements of this Part or be withdrawn within 30 days after the date of such notice. Where a filing is abandoned, the documents will not be removed from the files of the Corporation, but will be marked "Declared abandoned by the FSLIC on (date)."

§ 563g.12 Securities sale report.

(a) Within 30 days after the first sale of the securities, every six months after the first sale of securities and not later than 30 days after the last sale of securities in an offering pursuant to § 563g.2 of this Part, the issuer shall file with the Corporation a report describing the results of the sale of the securities, which shall include all of the information required by Form G–12 set forth at § 563g.20 of this Part and shall also include the following:

(1) The name, address, and docket number of the issuer;

(2) The title, number, aggregate and per-unit offering price of the securities sold;

(3) The aggregate and per-unit dollar amounts of actual itemized expenses, discounts or commissions, and other fees;

(4) The aggregate and per-unit dollar amounts of the net proceeds raised, and the use of proceeds therefrom; and

(5) The number of purchases of each class of securities sold and the number of owners of record of each class of the issuer's equity securities after the issuance of the securities or termination of the offer.

(b) Within 30 days after the first sale of the securities, every six months after the first sale of the securities and not later than 30 days after the last sale of securities in a offering pursuant to § 563g.4 of this Part, the issuer shall file with the Corporation a report describing the results of the sale of securities, which shall include all of the information required by Form G–12 set forth at § 563g.20 of this Part, and shall also include the following:

(1) All of the information required by paragraph (a) of this section;

(2) A detailed statement of the factual and legal grounds for the exemption claimed; and

§ 563g.13 Public disclosure and confidential treatment.

(a) Any offering circular, amendment, exhibit, notice, or report filed pursuant to this Part will be publicly available. Any other related documents will be treated in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and Parts 505 and 505a of this Chapter.

(b) Any requests for confidential treatment of information in a document required to be filed under this Part shall be made as required under Commission Rule 24b–2 (17 CFR 240.24b–2) under the Exchange Act.

§ 563g.14 Waiver.

(a) The Corporation may waive any requirements of this Part, or any required information:

(1) Determined to be unnecessary by the Corporation;

(2) In connection with a transaction approved by the Corporation for supervisory reasons, or

(3) Where a provision of this Part conflicts with a requirement of applicable state law.

(b) Any condition, stipulation or provision binding any person acquiring a security issued by an insured institution which seeks to waive compliance with any provision of this Part shall be void, unless approved by the Corporation.

§ 563g.15 Requests for interpretive advice or waiver.

Any requests to the Corporation for interpretive advice or a waiver with respect to any provision of this Part shall satisfy the following requirements:

(a) A copy of the request, including any attachments, shall be filed with the Office of General Counsel, Corporate and Securities Division;

(b) The provisions of this Part to which the request relates, the participants in the proposed transaction, and the reasons for the request, shall be specifically identified or described; and

(c) The request shall include a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

§ 563g.16 Delayed or continuous offering and sale of securities.

Any offer or sale of securities under § 563g.2 of this Part may be made on a continuous or delayed basis in the future, if:

(a) The securities would satisfy all of the eligibility requirements of the Commission's Rule 415, 17 CFR 230.415; and

(b) The institution issuing the securities is in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made.

§ 563g.17 Direct sales of securities at an office.

Securities of an insured institution or an affiliate shall only be offered or sold at an office of an insured institution or an affiliate, if:

(a) No commissions are paid to any employee or other person;

(b) No offers or sales are made by tellers or at the teller counter, or by

comparable persons at comparable locations;

(c) Offers and sales are made only by regular, full-time employees;

(d) The institution issuing the securities is in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made, except that such compliance is not required for repurchase agreements issued in compliance with § 563.8–4 of this Subchapter.

§ 563g.18 Current and periodic reports.

(a) Each insured institution which files an offering circular which becomes effective pursuant to this part, after such effective date, shall file with the Corporation periodic and current reports on Forms 8–K, 10–Q and 10–K as may be required by section 13 of the Exchange Act (15 U.S.C. 78m) as if the securities sold by such offering circular were securities registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78*l*). The duty to file periodic and current reports under this section shall be automatically suspended if and so long as any issue of securities of the insured institution is registered pursuant to Section 12 of the Exchange Act (15 U.S.C. 78*l*). The duty to file under this section shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such offering circular became effective, if, at the beginning of such fiscal year, the securities of each class to which the offering circular relates are held of record by less than three hundred persons.

(b) For purposes of registering securities under sections 12(b) or 12(g) of the Exchange Act, as issuer subject to the reporting requirements of paragraph (a) of this section may use the Commission's registration statement on Form 10 or Forms 8–A or 8–B as applicable.

§ 563g.19 Approval of the security.

Any securities of an insured institution which are not exempt under this Part and are offered or sold pursuant to an offering circular which becomes effective under this Part, are deemed to be approved as to form and terms for purposes of § 563.1 of this Subchapter.

§ 563g.20 Form for securities sale report.

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552

Form G–12—Securities Sale Report Pursuant to Rule 563g.12

FHLBB No. ———
Issuer's Name: ———
Address: ———
If in organization, state the date of certification of insurance of accounts:
———
State the title, number, aggregate and per-unit offering price of the securities sold:
———
State the aggregate and per-unit dollar amounts of actual itemized offering expenses, discounts, commissions, and other fees:
———
State the aggregate and per-unit dollar amounts of the net proceeds raised:
———
Describe the use of proceeds. If unknown, provide reasonable estimates of the dollar amount allocated to each purpose for which the proceeds will be used: ———
State the number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities at the close or termination of the offering: ———
For a non-public offering, also state the factual and legal grounds for the exemption claimed (attach additional pages if necessary): ———
For a non-public offering, all offering materials used should be listed: ———
Person to Contact: ———
Telephone No.: ———

The issuer has duly caused this securities sale report to be signed on its behalf by the undersigned person.

Date of securities sale report: ———
Issuer: ———
Signature: ———
Name: ———
Title: ———

Instruction: Print the name and title of the signing representative under his signatures. Ten copies of the securities sale report should be filed, including two copies manually signed, as required under 12 CFR 563g.5.

Attention: ———

Intentional misstatements or omissions of fact constitute violations of Federal law (See 18 U.S.C. 1001 and 12 CFR 563.18(b)).

§ 563g.21 Filing of copies of offering circulars in certain exempt offerings.

A copy of the offering circular, or similar document, if any, used in connection with an offering exempt from the offering circular requirements of § 563g.2 by reason of §§ 563g.3(f) or 563g.4 of this Part shall be mailed to the Corporation within 30 days after the first sale of such securities. Such copy of the offering circular, or similar document, is solely for the information of the Corporation and shall not be deemed to be "filed" with the Corporation pursuant to § 563g.2 of this Part. The mailing to the Corporation of such offering circular, or similar document, shall not be a pre-condition of the applicable exemption from the offering circular requirements of § 563g.2 of this Part.

§ 563g.22 Delegation of authority.

The General Counsel, Deputy General Counsel, Associate General Counsel for Corporate and Securities or their designee, is authorized to act on or exercise the Corporation's authority pursuant to this Part.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–30731 Filed 12–30–85 8:45 am]

BILLING CODE 6720–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Insurance and Voluntary Termination of Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA has received Office of Management and Budget (OMB) approval of its information collection requirements in its regulation providing for capitalization of the National Credit Union Share Insurance Fund through the maintenance of a deposit by each insured credit union. This document confirms the control numbers and expiration dates assigned by OMB for the information collection requirements.

EFFECTIVE DATE: December 31, 1985.

ADDRESS: National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance or Wilmer A. Theard, Program Officer, Telephone (202) 357–1142 and (202) 357–1065, respectively.

SUPPLEMENTARY INFORMATION: On Wednesday, October 17, 1984, the final rule entitled "Capitalization of the National Credit Union Share Insurance Fund" was published in the **Federal Register** (49 FR 40561) (12 CFR 741 and 746). A statement regarding OMB clearance of information collection requirements in the final rule was inadvertently omitted. On Thursday, October 25, 1984 (49 FR 429181) a statement regarding submission of the final rule to OMB was published. OMB approval of the information collection requirements found in Section 741.5(f) was obtained on December 13, 1985. The approval is valid through December 31, 1987. The OMB control number assigned to the information collection requirements is 3133–0073. OMB approval of the information collection requirements found in 741.7(a) was obtained on December 16, 1985. The

approval is valid through December 31, 1987. The OMB control number assigned to the information collection requirements is 3133–0004. Section 795.1 of the NCUA Regulations (12 CFR 795.1) lists current OMB control numbers. The control numbers for Part 741 are already listed as the control numbers for the regulation prior to its October 1984 revision. Therefore, Section 795.1 need not be amended.

Dated: December 23, 1985.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 85–30572 Filed 12–30–85; 8:45 am]

BILLING CODE 7535-01-M

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12 CFR Part 748

Report of Crime or Catastrophic Act

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This rule revises Part 748 of the NCUA Rules and Regulations. The revised rule provides a new criminal referral form, NCUA Form 2362, for use by federally insured credit unions in reporting suspected criminal activity to the NCUA Regional Directors, the U.S. Attorney, and the Federal Bureau of Investigation.

EFFECTIVE DATE: December 31, 1985.

ADDRESS: National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, or Wilmer A. Theard. Telephone Number (202) 357–1065.

SUPPLEMENTARY INFORMATION:

Background

The Bank Fraud Working Group (Group) was formed in 1984 for the purpose of bringing together the various federal financial institutions' regulatory and law enforcement agencies to meet and recommend improvements in the federal bank fraud enforcement effort. The Group is comprised of representatives from NCUA, the Federal Reserve Board, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, the Federal Bureau of Investigation, and the Department of Justice.

Among other things the Group drafted suggestions on procedures and forms with respect to criminal referrals. The Group endorsed the preparation of a uniform referral form to be used by the signatory financial supervisory agencies and by their regulated financial institutions when referring suspected criminal activities to the Department of Justice, the various U.S. Attorneys, and the Federal Bureau of Investigation. The NCUA Form 2362, Criminal Referral Form, reflects that agreement.

The NCUA published the proposed rule in the **Federal Register** issue of September 13, 1985 (50 FR 37380).

Scope of Rule Change

The previous rule required all federally insured credit unions to report criminal and catastrophic acts. The major change reflected in the revised rule is that it sets forth a specific form, NCUA Form 2362 for use in referring crimes. The form is to be completed and filed with the NCUA Regional Director, the local U.S. Attorney and the Federal Bureau of Investigation in the case of any crime or suspected crime, with limited exceptions discussed below. The form contains the minimal essential information needed by the Department of Justice to meet its commitment to regularly investigate and prevent crime in our nation's financial institutions. The content of the NCUA form closely follows the format and questions of the form drafted by the Working Group. However, terms common to credit union operations have been used whenever possible.

The reporting requirements for crimes and the new NCUA form are set forth in a new § 748.1(c) of the regulation. Section 748.1(b) which previously dealt with both crimes and catastrophic acts, has been revised to address only catastrophic acts. Also, § 748.1(b) has been clarified by adding a definition of "catastrophic act."

Other Comments

The NCUA Board received four comments on the Criminal Referral Form and its implementing Regulation. Two comments were from Federal credit unions and two were from trade associations. Generally, each of the commenters expressed concern regarding two areas:

1. A need to provide definitions for many of the terms used in the form.
2. Potential civil liability for FCUs who, in good faith, may submit referrals on innocent persons.

In response to the first concern, the Working Group has taken the issue of definitions of key terms under consideration and supplementary guidance may be provided at a later date.

With respect to potential civil liability for defamation, NCUA does not agree that Federal credit unions will be exposed to civil liability for making good faith reports. Federal credit unions have a common law duty to report and will have a statutory duty to report crimes and suspected criminal activity upon adoption of this amendment.

One commenter suggested that we include a reference to the confidentiality of the report. NCUA believes that a statement regarding the confidentiality of the report would be helpful and has included such a statement on the final draft of the form.

Two other revisions have been made to the form. First, consistent with a recommendation of the Working Group a minimum dollar amount ($2,500) has been added, which must be exceeded before an institution is required to submit the report in cases where the name of the suspect is unknown. Reports must be made in all cases, however, where the name of the suspect is known. This change was made to avoid burdening institutions with filing reports for numerous small crimes or disappearances such as credit card fraud, ATM fraud, check kiting etc., where the name of the suspect is unknown.

Second, NCUA has decided to combine the long and short form into one form. In those situation where a short form would normally be used, the preparer will simply complete the first two pages of the form and discard the remaining pages. This change was implemented to further simplify the form and its use.

Some commenters suggested that NCUA provide guidelines in Section 748 for developing a written security program. In response to those comments it is noted that the NCUA Accounting Manual for Federal Credit Unions, Section 5193, Security Devices and Procedures, provides criteria for developing a security program.

Regulatory Procedures

The NCUA Board hereby certifies that this rule will not have a significant economic impact on credit unions. As indicated by the Federal Bureau of Investigation's 1984 statistics, only 172 violations were reported and investigated in federally insured credit unions.

Paperwork Reduction Act

The information collection requirements contained in this rule (NCUA Form 2362) have been submitted to and cleared by the Office of Management and Budget (OMB). The collection is approved for use through July 31, 1988, unless continued, and is assigned the OMB Number 3133–0094.

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List of Subjects in 12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements, Report of Crime or Catastrophic Act, Security measures.

By the National Credit Union Administration on the 12th day of December 1985.

Rosemary Brady,

Secretary of the NCUA Board.

Part 748 is revised to read as follows:

PART 748—REPORT OF CRIME OR CATASTROPHIC ACT

Sec.

748.0 Security program.
748.1 Filing of reports.

Authority: 12 U.S.C. 1766(a).

§ 748.0 Security Program.

(a) Each federally insured credit union will develop a written security program within 90 days of the effective date of insurance.

(b) The security program will be designed to protect each credit union office from robberies, burglaries, and larcenies; to prevent destruction of vital records as defined in the *Accounting Manual for Federal Credit Unions;* and to assist in the identification of persons who commit or attempt such crimes.

§ 748.1 Filing of reports.

(a) *Compliance Report.* Each federally insured credit union shall file with the regional director an annual statement certifying its compliance with the requirements of this Part. The statement shall be dated and signed by the president or other managing officer of the credit union. The statement is contained on the Report of Officials which is submitted annually by federally insured credit unions after the election of officials. In the case of federally insured state-chartered credit unions, this statement can be mailed to the regional director via the state supervisory authority, if desired. In any event, a copy of the statement shall always be sent to the appropriate state supervisory authority.

(b) *Catastrophic Act Report.* Each federally insured credit union will notify the regional director within 5 business days of any catastrophic act that occurs at its office(s). A catastrophic act is any natural disaster such as a flood, tornado, earthquake, etc., or major fire or other disaster resulting in some physical destruction or damage to the credit union. Within a reasonable time after a catastrophic act occurs, the credit union shall ensure that a record of the incident is prepared and filed at its main office. In the preparation of such record, the credit union should include information sufficient to indicate the office where the catastrophic act occurred; when it took place; the amount of the loss, if any; whether any operational or mechanical deficiency(ies) might have contributed to the catastrophic act; and what has been done or is planned to be done to correct the deficiency(ies).

(c) *Criminal Referral Form.* Each federally insured credit union will notify the NCUA regional director, the U.S. Attorney, and the Federal Bureau of Investigation within 7 business days of any crime or suspected crime that occurs at its office(s), utilizing NCUA form 2362, Criminal Referral Form. Copies of this form have been distributed to all federally insured credit unions. Additional copies may be obtained by contacting the appropriate NCUA Regional Office.

BILLING CODE 7535-01-M

Control No. (Agency use only)

OMB No. 3133-0094

CRIMINAL REFERRAL FORM

Attention: This form should be filed by the reporting credit union not later than 7 business days following the discovery of the suspected violation. Additional information not readily available at the time of filing should be submitted on an amended form.

One copy of the completed form should be filed with each of the following: (1) the local U.S. Attorney, (2) the local FBI office, and (3) the National Credit Union Administration (NCUA) Regional Office where the credit union is located.

Complete only pages one and two if suspected criminal activity involves actual or probable loss of less than $10,000 (before any recovery of reimbursement) not involving an elected or appointed official within the meaning of 12 U.S.C. Section 1761 or an employee of the credit union. Criminal activity involving less than $2,500 per transaction need not be reported *unless* the name of the suspect is known or it is reasonably believed that the suspect can be identified. In all cases, regardless of amount, a report should be submitted if the name of the suspect is known.

Complete all items on this form where suspected criminal activity involves actual or probable loss (before reimbursement or recovery) of $10,000 or greater and in all cases, regardless of the amount, involving an elected or appointed official as defined by Section 111 of the Federal Credit Union Act (12 U.S.C. Section 1761) or an employee of the credit union. For purposes of this form, "suspected criminal activity" is anything for which there is a factual basis for believing that a crime has occurred.

The NCUA Board considers this report confidential pursuant to applicable provisions of the Privacy Act, 5 U.S.C. Section 552a, and the Freedom of Information Act, 5 U.S.C. Section 552. Accordingly, the report and the information that it contains may be shared with appropriate law enforcement agencies consistent with applicable laws and regulations. In addition, persons identified in the report may in some circumstances be entitled to access to the report under provisions of the Privacy Act. **In no case should information in this report be disclosed by a credit union official or employee to any source (except a law enforcement agency) or person not specifically designated for distribution on this form.**

See Detailed Instructions on Page 6

1. **Name, location, and charter or insurance certificate number of credit union.**

   Name _____

   Location _____
   Street City State Zip

   Charter/Insurance certificate number _____

   If activity occurred at branch office(s), please identify _____

   _____

2. **Asset size of credit union** (millions of dollars) _____

3. **Approximate date and dollar amount (prior to any allowance for restitution or recovery) of suspected violation.**

   Date _____ Amount (thousands of dollars) $ _____
   Month Day Year

4. **Summary characterization of the suspected violation** Check **appropriate box(es)**

   - ☐ Defalcation/Embezzlement
   - ☐ False Statement
   - ☐ Check Kiting
   - ☐ Other (Describe) _____
   - ☐ Bribery/Gratuity
   - ☐ Misuse of Position or Self-Dealing
   - ☐ Mysterious Disappearance

   Applicable Section(s) of Title 18, U.S. Code (if known) (See list on page 7.) _____

5. **This matter is being released to the FBI in** _____
   City State

   and the U.S. Attorney in _____ _____
   City State Judicial District (if known)

Name of Financial Institution

6. **Person(s) Suspected of Criminal Violation** (if more than one, use continuation sheet)

a Name _____ (First) (MI) - (Last)

Address _____ (Number) _____ (City) (State) (Zip Code)

Date of Birth _____ (Month) (Day) (Year) Social Security No (if known) _____

b Relationship to the financial institution (check all applicable blocks)

☐ Officer ☐ Employee ☐ Broker ☐ Shareholder
☐ Director ☐ Agent ☐ Borrower ☐ Other (specify) _____

c Is person still affiliated with the financial institution ☐ Yes ☐ No

If no, ☐ terminated ☐ resigned Date _____ (Month) (Day) (Year)

Describe Circumstances of Separation (if necessary, use continuation sheet) _____

d. Prior or related referrals ☐ Yes ☐ No If yes, please identify briefly by name and date.

e. Is person affiliated with any other financial institution ☐ Yes ☐ No
or business enterprise. ☐ Yes ☐ No If yes to either or both, please identify.

7. **Explanation/Description of Suspected Violation.** (Give a brief summary of the suspected violation, explaining what is unusual or irregular about the transaction.) (If necessary, use continuation sheet).

8. **Has there been a confession?** ☐ Yes ☐ No If so, by whom? _____

9. **Offer of Assistance.** The individuals listed below are/will be authorized to discuss this referral with FBI and Department of Justice officials and to assist in locating or explaining any documents pertinent to this referral, provided that contact is first made with

Name _____ Position _____

Telephone _____

Name _____ Telephone _____

Name _____ Telephone _____

Name _____ Telephone _____

Name of Financial Institution

10. **Form Prepared by** _____

Position _____

Agency/Institution _____

Telephone _____ Date _____

Complete the remaining questions if suspected criminal activity involves probable loss (before reimbursement or recovery) of $10,000 or greater and in all cases, regardless of amount, involving an elected or appointed official within the meaning of 12 U.S.C. Section 1761 or an employee of the credit union.

11 **Give a Chronological and Complete Account of the Suspected Violation.** (If necessary, use continuation sheet)

- Relate key events to documents and attach copies of those documents.
- Explain who benefited, financially or otherwise, from the transaction, how much, and how.
- Furnish any explanation of the transaction provided by the suspect and indicate to whom and when it was given.
- Furnish any explanation of the transaction provided by any other person.
- Indicate where the suspected violation took place (e.g., main office, branch, other).
- Recommend any further investigation that might assist law enforcement authorities in fully examining the potential violation.

12 **Indicate Whether the Suspected Violation Appears to Be an Isolated Incident or Whether It Relates to Other Transactions.** (Explain)

Name of Financial Institution

13. **Exclusion of Information from the Referral.** Has any pertinent information been excluded from this referral as a result of any legal or other restraint? ☐ Yes ☐ No.

If so, why? _____

_____

Have the excluded information or documents been segregated for later retrieval? ☐ Yes ☐ No

14 **Witnesses.** List any witness who might have information about the suspected violation and describe their position or employment. Indicate if they have been interviewed (if necessary, use continuation sheet)

	Name	*Position*	*Address*	*Telephone*	*Interviewed* Yes	No
1.					☐	☐
2.					☐	☐
3.					☐	☐
4.					☐	☐
5.					☐	☐

15. **Discovery and Reporting**

a. Who discovered the suspected violation and when?

b. Has the suspected violation been reported to the Board of Directors? ☐ Yes ☐ No By whom and when?

c. Has the Board of Directors taken action? ☐ Yes ☐ No If so, what and when?

d. Has the suspected violation previously been reported to federal or local law enforcement or to any federal or state supervisory agency? ☐ Yes ☐ No If so, by whom, to whom, and when?

16. **Loss**

a. Amount of loss known $ _____

b. Restitution by _____

In the amount of $ _____

c. Name of Applicable Surety Bond Company _____

d. Amount of Bond $ _____

e. Amount of deductible $ _____

f Was claim filed? ☐ Yes ☐ No _____

g. Settlement by Surety company to date $ _____

h. Total restitution and settlement to date $ _____

i Net loss (after subtracting any amounts paid in the form of restitution of settlement) $ _____

j. Is additional loss suspected? ☐ Yes ☐ No (If yes, explain)

k Has the suspected violation had a material impact on or otherwise affected the financial soundness of the institution? ☐ Yes ☐ No (If yes, explain)

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Name of Financial Institution

Continuation Sheet

Item No.	Remarks

Principal Criminal Statutes

18 U.S.C. 2—"To aid, abet, counsel, command, induce or procure" the commission of federal offense.

18 U.S.C. 201—Bribery of "public officers," including elected representatives, jurors and employees of any department or agency of the federal government, and witnesses in official proceedings, e.g., anyone who gives, offers or promises anything of value to a public official or a witness with the intent to influence that person's official functions.

18 U.S.C. 215—Kickbacks, bribes. Makes it unlawful for any officer, director, employee, agent or attorney to solicit, accept or give anything of value in connection with any transaction or business of any financial institution.

18 U.S.C. 371—Conspiracy of two or more persons to either commit a federal offense or to defraud the United States (or any agency of the U.S.).

18 U.S.C. 657—Theft, embezzlement or misapplication of credit union funds, willfully, by an officer, director, agent or employee of a credit union with intent to injure or defraud the credit union. Can infer intent to injure from the fact of injury or from acts knowingly done in reckless disregard for the interests of the credit union.

18 U.S.C. 1001—General false statements statute—knowingly and willfully falsifying or concealing a material fact or making a false statement or making or using false writing knowing it to be false.

18 U.S.C. 1006—False entries and reports or statements, including material omissions, with intent to injure or defraud the credit union, the National Credit Union Administration, NCUA examiners or other individuals or companies.

18 U.S.C. 1014—False statement (oral or written), e.g., loan application, made knowingly for the purpose of influencing any credit union whose deposits are insured by NCUA, upon any application, purchase agreement, commitment, loan (or any change or extension of same) including willfully overvaluing land, property or security.

18 U.S.C. 1029—Credit Card Fraud; knowingly and with intent to defraud, produce, use or traffic in counterfeit access devices.

18 U.S.C. 1030—Computer Fraud; knowingly accessing a computer without authorization, or using it for unauthorized purposes, including obtaining information contained in records of financial institutions.

18 U.S.C. 1341—Mail Fraud—scheme or artifice to defraud that makes use of the Postal Service.

18 U.S.C. 1343—Wire Fraud—scheme or artifice to defraud using transmission by wire, radio or television for the purpose of carrying out the scheme.

18 U.S.C. 1344—Bank Fraud; scheme or artifice to defraud a federally insured institution or take money funds, credits, assets, securities or other property by misrepresentation.

18 U.S.C. 1621—Perjury/false statement made under oath (if false statement is made under oath, individual may still be prosecuted under 18 U.S.C. 1001 or 1014).

18 U.S.C. 1951, 18 U.S.C. 1961, et seq.—Racketeer Influenced and Corrupt Organization ("RICO") statutes. Investing in any enterprise affecting commerce if the funds for the investment are derived from "a pattern of racketeering activity" (these activities are defined to include: murder, drug dealing, bribery, robbery, extortion, counterfeiting, mail fraud, wire fraud, embezzlement from pension funds, obstruction of criminal investigations, fraud in the sale of securities, etc.).

18 U.S.C. 2113—Bank robbery and incidental crimes, including tking of any property in excess of $100 in value belonging to a bank, savings and loan or credit union, and receiving, possessing or disposing of [redacted].

31 U.S.C. 5311, 31 CFR 103—Currency Transactions/Bank Secrecy Act.

NCUA Regional Offices

Region I (Boston)

Regional Director, 441 Stuart Street, 6th Floor, Boston, MA 02116, (617) 223–6807

Region II (Capital)

Regional Director, 1776 G Street, N.W., Suite 700, Washington, D.C. 20006, (202) 682–[illegible]

Region III (Atlanta)

Regional Director, 1365 Peachtree Street, N.E., Suite 540, Atlanta, GA 30367, (404) 881–3127

Region IV (Chicago)

Regional Director, 230 South Dearborn, Suite 3346, Chicago, IL 60604, (312) 886–9697

Region V (Austin)

Regional Director, 611 East 6th Street, Suite 407, Austin, TX 78701, (512) 482–5131

Region VI (Walnut Creek)

Regional Director, 2890 North Main Street, Suite 101, Walnut Creek, CA 94596, (415) 556–6277

Instructions

Introduction: The purpose of this form is to provide a consistent means by which credit unions can make referrals of known or suspected criminal activity perpetrated against the credit unions whether by insiders or those outside the credit union. The form will provide an effective means by which appropriate law enforcement and supervisory authorities will be made aware of known or suspected criminal activity. Credit unions should use care in filling out this form and should ensure that it is filled out in as completed a manner as practicable under the circumstances.

The Following Instuctions Should Be Referred to When Filling Out the Items Referenced

Item 1. Federal credit unions use charter number. State-chartered credit unions use insurance certificate number.

Item 2. As of end of most recent calendar quarter.

Item 3. Self-explanatory.

Item 4. Enter a check mark next to those descriptions in 4(a) which most generally describe the nature of the criminal activity. Use the list of criminal statutes provided on page 6 as an aid to filling out item 4(b).

Item 5. Self-explanatory.

Item 6. Complete subparagraphs (a) through (g) on each individual suspected of criminal activity. This list should include primary suspects only. Individuals who may have knowledge of the suspected criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under item 14. Provide any additional details known with respect to prior referrals or affiliations.

Item 7. Provide a brief narrative description of the activity giving rise to the referral. For those filing the long version of this form, details will be provided later in the form. The purpose of this paragraph is to provide a summary description of the overall transaction.

Items 8 through 10. Self-explanatory.

Item 11. This section of the referral is critical. It should be as detailed as circumstances permit. The care with which this section is written may make the difference in whether or not the described conduct and its criminal nature are clearly understood. The discussion points listed in this section are not exhaustive. They should be covered, but to the extent an additional category should be addressed, it should be done here. Feel free to use attachments or to continue the description on a separate sheet. Include any suggestions for the interviewing of any witnesses, gathering of any documents or methods of investigation which might prove useful in following up on the referral (e.g., tracing of proceeds).

Items 12 through 16. Self-explanatory.

Additional Instructions for Examiners

Examiners should fill out this form whenever suspected criminal activity has been identified in a credit union and either has not yet been reported by the credit union or the referral made by the credit union is deemed to be inadequate. It is important to note that the form should be filled out whenever criminal activity is suspected; examiners are not required to make any initial finding that such referrals would, if pursued, result in a criminal conviction. That judgment will be made by responsible law enforcement authorities.

Any questions regarding whether or not any particular activity would constitute a crime for purposes of making a criminal referral should be resolved through communications with regional office.

The purpose of the referral is to provide appropriate law enforcement authorities with complete and accurate information relating to suspected criminal activity. All information requested within the body of the form should be supplied at the time of the referral unless such information is not known or can only be supplied at a later date by operation of the Right to Financial Privacy Act. In filling out this form, examiners should avoid overly

technical descriptions of transactions which might not be readily understood by law enforcement authorities unfamiliar with credit union operations.

Distribution: If made by credit union

1. Retain one copy in the credit union files.
2. Send one copy to the NCUA regional office for your credit union.
3. Send one copy to the nearest office of the FBI.
4. Send one copy to the nearest office of the U.S. Attorney.
5. Send one copy to the nearest office of the Secret Service if credit card or ATM fraud is involved.

Distribution: If made by Examiners

1. Retain one copy in the credit union field file.
2. Send four copies to the NCUA Regional Office.
3. Send one copy to the nearest office of the Secret Service if credit card or ATM fraud is involved.

Distribution: If made by NCUA Regional Office

1. Retain one copy in regional office under name of the credit union.
2. Send one copy to Director, Office of Examination and Insurance, NCUA, Washington, DC 20456.
3. Send one copy to the nearest office of the FBI.
4. Send one copy to U.S. Attorney. If also a criminal violation of state law, consider sending the referral to the appropriate state prosecuting authority.
5. Send one copy to the nearest office of the Secret Service if credit card or ATM fraud is involved.

Distribution: If made by State Examiners

1. Follow the instructions of your State supervisor concerning the distribution of this form.

Distribution: If made by State Supervisors

1. Follow instructions 3, 4, 5, and 6 above.

[FR Doc. 85-30571 Filed 12-30-85; 8:45 am]
BILLING CODE 7535-01-M

FEDERAL TRADE COMMISSION

16 CFR Parts 0, 1, 2, 3, 4 and 5

Miscellaneous Revisions and Corrections

AGENCY: Federal Trade Commission.

ACTION: Final Rules.

SUMMARY: The Federal Trade Commission (FTC) is amending its Rules of Practice to reflect changes in law and organizational and operational changes, to make various corrections in spelling, grammar, punctuation, and style, and to make other technical corrections and revisions to conform the rules to current agency practice.

EFFECTIVE DATE: These amendments are effective December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Jerome A. Tintle, 202-523-3521; Marc Winerman, 202-523-3665; or Alex Tang, 202-523-3786; Attorneys, Office of the General Counsel, Federal Trade Commission, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The provisions of *PART 0—Organization* are amended to reflect the following changes in organization and operational assignments: (1) The abolishment of the Office of Policy Planning; (2) the transfer of the congressional liaison function from the Office of the General Counsel to the Office of the Chairman; (3) the transfer of the advisory opinion function from the Office of General Counsel to the Bureaus of Competition and Consumer Protection; (4) the transfer of the information and publishing function from the Deputy Executive Director for Management to the Deputy Executive Director for Planning and Information; (5) the termination of the quarterly financial reporting program within the Bureau of Economics; and (6) changes and corrections to the addresses of certain regional offices.

The provisions of *Part 1—General Procedures* are amended as follows: (1) § 1.7 is amended to clarify which rulemaking procedures are governed by the provisions of Subpart B and which are governed by the provisions of Subpart C; (2) the text of § 1.13 is amended to reinstate § 1.13(c)(3)(ii), which first appeared at 40 FR 33966, 33967 (August 13, 1975) as former § 1.13(c)(2)(ii) but was not carried forward in the recent CFR volume; (3) the heading of § 1.9 is amended to make clear that the provisions of § 1.9 apply to petitions to commence trade regulation rule proceedings rather than to the commencement of such proceedings; (4) § 1.10 is amended to make clear that advance notice of proposed rulemaking is not issued before the Commission determines whether to commence a rulemaking proceeding under § 1.9, but rather that such notice precedes the notice of proposed rulemaking issued under § 1.11; (5) § 1.18 is amended to reinstate material appearing at 45 FR 78626, 78628 (Nov. 26, 1980) that was not reproduced in the current CFR volume; and (6) the authority citation for Subpart I is corrected.

The provisions of *Part 2—Nonadjudicative Procedures* are amended as follows: (1) To reflect the abolishment of the position of Director of Federal-State and Consumer Relations and the quarterly financial reporting program mentioned above in the explanation of Part 1 amendments; (2) to eliminate the provision in § 2.12 regarding Congressional review of Commission rulemaking, in accordance with the decision in *Consumers Union of U.S., Inc.* v. *FTC*, 691 F.2d 575 (D.C. Cir. 1982), *aff'd sub nom. Process Gas Consumers Group* v. *Consumer Energy Council of America*, 463 U.S. 1216 (1983), and the expiration of the Congressional review provision of the FTC Improvements Act of 1980, *see* 15 U.S.C. § 57a-1 and note; and (3) to reflect the existing practice of placing consent agreements under § 2.32 on the public record only after they are accept by the Commission.

The provisions of *Part 3—Rules of Practice for Adjudicative Proceedings* are amended to reflect the change in the previous title of "hearing examiners" to "Administrative Law Judges". In addition, Subpart I of this part has been amended to reflect the extension and amendment of the Equal Acess to Justice Act pursuant to Pub. L. No. 99-80, 99 Stat. 183 (August 5, 1985), as follows: (1) By incorporating into § 3.81(a) the new statutory standard for determining whether an agency's position is "substantially justified"; (2) by amending § 3.81(b) to reflect the revised time period for when the Act applies; (3) by amending §§ 3.81(d)(2)(i), (ii) and (v) to reflect the revised limits on the net worth of a "party" under the Act; and (4) by removing from § 3.83(j) the former statutory restrictions on the source of funds for award payments under the Act. In addition, the parenthetical citation in § 3.81(d)(2)(iii) has been corrected.

The provisions of *Part 4—Miscellaneous Rules* are amended as follows: (1) section 4.7(e) is made consistent with § 3.55 by changing the word "rehearing" to "reconsideration"; and (2) § 4.11(b) is amended to reflect current agency practice whereby submitters of materials marked confidential or within the scope of § 4.10(a)(9) may receive notice from staff other than the General Counsel when the materials are requested by Congress.

The provisions of *Part 5—Standards of Conduct* are amended in Subpart D to reflect the creation of Associate Director positions in the Bureau of Consumer Protection and changes in the titles of various Directors responsible to the Deputy Executive Director for Management and the Deputy Executive Director for Planning and Information.

In addition, various grammatical and stylistic changes *(e.g.,* punctuation, spelling, gender references) have been made throughout Parts 0-5.

Since the amendments relate solely to rules of agency practice, they are not subject to the notice and comment

requirements of the Administrative Procedure Act. 5 U.S.C. 553(a)(2). For the same reason, the requirements of the Regulatory Flexibility Act do not apply. 5 U.S.C. 601(2).

List of Subjects

16 CFR Part 0

Organization and functions (government agencies).

16 CFR Part 1

Administrative practice and procedure, Advisory opinions, Rulemaking, Trade Regulation Rules.

16 CFR Part 2

Administrative practice and procedure, Claims, Equal access to justice.

16 CFR Part 3

Administrative practice and procedure, Investigations.

16 CFR Part 4

Administrative practice and procedure, Freedom of Information Act, Privacy Act, Sunshine Act.

16 CFR Part 5

Administrative practice and procedure, Conflicts of interest.

Accordingly, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A, the Code of Federal Regulations as follows:

PART 0—ORGANIZATION

1. The authority for Part 0 continues to read as follows:

Authority: Section 6(g); 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383, as amended (5 U.S.C. 552).

2. Section 0.8 is revised to read as follows:

§ 0.8 The Chairman.

The Chairman of the Commission is designated by the President, and, subject to the general policies of the Commission, is the executive and administrative head of the agency. He presides at meetings of and hearings before the Commission and participates with other Commissioners in all Commission decisions. Attached to the Office of the Chairman, and reporting directly to him, and through him to the Commission, are the following staff units: (a) The Office of Public Affairs, which furnishes information concerning Commission activities to news media and the public; and (b) the Office of Congressional Relations, which coordinates all liaison activities with Congress.

§ 0.9 [Amended]

3. Section 0.9 is amended by removing the words "Office of Policy Planning".

§ 0.10 [Amended]

4. Section 0.10(b) is amended by inserting the word "and" before the words "initiates and develops long-range plans" and by removing the semicolon after the words "accomplish its mission" and inserting in its place a period and removing the remainder of the sentence.

5. Section 0.10(c) is amended by removing the phrase "and coordinates the Commission's information processing systems." and inserting in its place the following:

* * * * *

* * * coordinates the Commission's information processing systems; and is responsible for the publication of all Commission actions which must appear in the **Federal Register** and for the publication of *Federal Trade Commission Decisions* and *Court Decisions—Federal Trade Commission.*

§ 0.11 [Amended]

6. Section 0.11 is amended by removing from the first sentence the words "adviser. He" and inserting in their place the words "adviser, who"; by removing the phrase "assists businessmen in obtaining advice from the Commission as to the legal propriety of proposed courses of action in particular situations under the statutes which it administers,"; and by changing the comma after "restraints" to a period and removing the remainder of the sentence.

§ 0.13 [Reserved]

7. Section 0.13 is removed and the heading is revised to read "§ 0.13 [Reserved]".

§ 0.16 [Amended]

8. Section 0.16 is amended by removing from the first sentence the words "This bureau" and inserting in their place the words "The bureau".

§ 0.18 [Amended]

9. Section 0.18 is amended by removing from the first sentence the words "This bureau" and inserting in their place the words "The bureau", and by removing the last sentence of the section.

§ 0.19 [Amended]

10. Section 0.19(b)(4) is amended by removing "Saint Clair Avenue," and inserting in its place "Saint Clair Avenue N.E.,"; § 0.19(b)(5) is amended by removing the phrase "Suite 2665, 2001 Bryan Street, Dallas, TX 75201." and inserting in its place "8303 Elmbrook Drive, Dallas, TX 75247."; and § 0.19(b)(8) is amended by removing "10007" and inserting in its place "10278".

PART 1—GENERAL PROCEDURES

11. The authority for Part 1 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46(g), unless otherwise noted.

* * * * *

Subpart B—Rules and Rulemaking Under Section 18(a)(1)(B) of the FTC Act

§ 1.7 [Amended]

12. Section 1.7 is amended by revising the last sentence to read as follows:

* * * All other rulemaking proceedings shall be governed by the rules in Subpart C, except as otherwise required by law or as otherwise specified in this chapter.

13. The heading for § 1.9 is revised to read as follows:

§ 1.9 Petitions to commence trade regulation rule proceedings.

§ 1.10 [Amended]

14. Section 1.10(a) is amended by removing the word "initiation" and inserting in its place the word "commencement".

15. Section 1.11(b)(4) is revised to read as follows:

§ 1.11 Commencement of a rulemaking proceeding.

* * * * *

(b) * * *

(4) the information required by the Regulatory Flexibility Act at 5 U.S.C. 603.

§ 1.12 [Amended]

16. Section 1.12 is amended by removing from the first sentence the words "**Federal Register**, and to" and inserting in their place the words "**Federal Register** and, to".

17. Section 1.13(c)(3)(ii) is reinstated by adding, after § 1.13(c)(3)(i), the following:

§ 1.13 Rulemaking proceeding.

* * * * *

(c) * * *

(3) * * *

(ii) *Review without certification by the presiding officer.* Within ten (10) days after publication of the final notice, any interested person may petition the Commission for addition, modification or deletion of a designated issue, accompanied by a filing not to exceed fifteen (15) pages. Additional submissions on the issue by other

interested persons, not to exceed fifteen (15) pages, may be made within twenty (20) days of the publication of the final notice. The Commission may thereupon, in its discretion, permit the appeal. Commission review, if permitted, will be based on the petition and any additional submissions, without oral argument or further briefs, unless otherwise ordered by the Commission. A petition hereunder shall not stay the rulemaking proceeding unless the presiding officer or the Commission shall so order. All petitions filed under this paragraph shall be a part of the rulemaking record. Notice of the filing of any such petition may be obtained from the Office of the Secretary of the Commission. In the event any designated issue is added or substantially modified by the Commission, interested persons shall be given a further opportunity to identify their interests with respect to those issues.

* * * * *

§ 1.13 [Amended]

18. Section 1.13(d)(1)(i) is amended by removing the comma immediately after the word "fact".

19. The heading of § 1.13(d)(2) is amended by removing the designation "*§ 1.31(d)*" and inserting in its place "*§ 1.13(d)(5)*".

20. Section 1.13(d)(5)(i)(A) is amended by removing the comma immediately after the word "specific".

21. Section 1.13(d)(5)(ii) is amended by removing the words "Such groups" and inserting in their place the words "Any such group".

§ 1.14 [Amended]

22. Section 1.14(a)(1)(iv) is amended by removing the word "State" and inserting in its place the word "state".

23. Section 1.14(a)(2)(vi) is revised to read as follows:

(a) * * *

(2) * * *

(vi) The information required by the Regulatory Flexibility Act at 5 U.S.C. 604.

* * * * *

24. Section 1.14(d) is removed.

§ 1.18 [Amended]

25. Section 1.18(a) is corrected by removing the words "verbatim transcripts of oral presentations to the Commission" and inserting in their place the words "verbatim transcripts or summaries of oral presentations to the Commission", and by removing the words "if any" and inserting in their place the words "any communications placed on the rulemaking record pursuant to § 1.18(c)".

§ 1.19 [Amended]

26. Section 1.19 is amended by removing the phrase ", as amended by Pub. L. 93–637,".

Subpart C—Rules and Rulemaking

27. The heading for Subpart C is revised to read "**Subpart C—Rules Promulgated Under Authority Other Than Section 18(a)(1)(B) of the FTC Act**".

28. Section 1.21 is revised to read as follows:

§ 1.21 Scope of the rules in this subpart.

This subpart sets forth procedures for the promulgation of rules under authority other than section 18(a)(1)(B) of the FTC Act except as otherwise required by law or otherwise specified in the rules of this chapter. This subpart does not apply to the promulgation of industry guides, general statements of policy, rules of agency organization, procedure, or practice, or rules governed by Subpart B of this part.

29. Section 1.26(c) is amended by adding to the end of the first sentence the phrase ", unless otherwise expressly required by law."

Subpart D—Administration of the Wool Products Labeling Act of 1939, Fur Products Labeling Act, and Textile Fiber Products Identification Act

§ 1.32 [Amended]

30. Section 1.32 is amended by removing from the last sentence the words "the Division of Energy and Product Information" and inserting in their place the words "the Enforcement Division of the Bureau of Consumer Protection".

Subpart I—Procedures for Implementation of the National Environmental Policy Act of 1969

31. The authority for Subpart I of this part is revised to read as follows:

Authority: 15 U.S.C. 46(g), 42 U.S.C. 4321 *et seq.*

§ 1.81 [Amended]

32. Section 1.81 is amended by removing from the heading the word "Incorporation" and inserting in its place the word "incorporation"; by removing from the first sentence the parenthetical citation "(42 U.S.C. 4371 *et seq.*)" and inserting in its place the parenthetical citation "(42 U.S.C. 4321 *et seq.*)"; by inserting in the second sentence immediately after the words "Executive Order 11514 (March 5, 1970, as amended by Executive Order 11991, May 24, 1977)" the words ", and the Environmental Quality Improvement Act of 1980, as amended (42 U.S.C. 4371 *et seq.*)"; and by removing from the same sentence the parenthetical citation "(43 FR 55978–56007)" and inserting in its place the parenthetical citation "(40 C.F.R. 1500–1508)".

PART 2—NONADJUDICATIVE PROCEDURES

33. The authority for Part 2 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46, unless otherwise noted.

Subpart A—Inquiries; Investigations; Compulsory Process

§ 2.1 [Amended]

34. Section 2.1 is amended by inserting the word "and" after the words "Bureau of Consumer Protection", and by removing the phrase ", and the Director of Federal-State and Consumer Relations,".

35. Section 2.9(b)(1) is revised to read as follows:

§ 2.9 Rights of witnesses in investigations.

* * * * *

(b) * * *

(1) Counsel for a witness may advise the witness, in confidence and upon the initiative of either counsel or the witness, with respect to any question asked of the witness. If the witness refuses to answer a question, then counsel may briefly state on the record if he has advised the witness not to answer the question and the legal grounds for such refusal.

* * * * *

36. Section 2.9(b)(6) is amended by removing the citation "§ 4.1(d)" and inserting in its place the citation "§ 4.1(e)".

§ 2.10 [Amended]

37. Section 2.10 is amended by removing from the final sentence the words "and depose" and inserting in their place the words "and be deposed".

§ 2.12 [Amended]

38. Section 2.12(b) is removed, and §§ 2.12 (c), (d), (e) and (f) are redesignated §§ 2.12 (b), (c), (d) and (e), respectively.

§ 2.13 [Amended]

39. Section 2.13(b)(2) is removed and §§ 2.13(b)(3), (4), and (5) are redesignated §§ 2.13(b)(2), (3), and (4), respectively.

§ 2.14 [Amended]

40. Section 2.14(c) is amended by adding the word "and" after "Bureau of Consumer Protection" and by removing

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the phrase, "and the Director of Federal-State Consumer Relations,".

§ 2.16 [Amended]

41. Section 2.16(b) is amended by removing from the first sentence the words "Executive director" and inserting in their place the words "Executive Director".

Subpart C—Consent Order Procedure

§ 2.32 [Amended]

42. Section 2.32 is amended by removing from the third sentence the words "and that the Commission will place the order" and inserting in their place the words "and, if the agreement is accepted, that the Commission will place the order".

Subpart D—Reports of Compliance

43. Section 2.41(c) is amended by revising the third sentence to read:

§ 2.41 [Amended]

* * * * *

(c) * * * An order of the Commission to cease and desist becomes final on the date and under the conditions provided in the Federal Trade Commission Act and the Clayton Act. * * *

* * * * *

Subpart E—Requests to Reopen

§ 2.51 [Amended]

44. Section 2.51(a) is amended by inserting a comma after the word "final".

45. Section 2.51(b) is amended by inserting a comma after the word "part".

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

46. The authority for Part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

§§ 3.1—3.83 [Amended]

47. Sections 3.1 through 3.83 are amended by capitalizing the words "Administrative Law Judge", "Judges" and "Judge's" wherever the initial letters of these words appear in lower case.

Subpart B—Pleadings

48. Section 3.11(c) is revised to read as follows:

§ 3.11 Commencement of proceedings.

* * * * *

(c) *Motion for more definite statement.* Where the respondent makes a reasonable showing that it cannot frame a responsive answer based on the allegations contained in the complaint, the respondent may move for a more definite statement of the charges against it before filing an answer. Such a motion shall be filed within ten (10) days after service of the complaint and shall point out the defects complained of and the details desired.

§ 3.12 [Amended]

49. Section 3.12(a) is amended by removing the words "hearing examiner" and inserting in their place the words "Administrative Law Judge".

50. Section 3.12(c) is amended by removing the word "his" and inserting in its place the words "the respondent's".

Subpart C—Prehearing Procedures; Motions; Interlocutory Appeals; Summary Decisions

§ 3.23 [Amended]

51. Section 3.23 is amended by inserting in paragraph (a)(1) the word ", that" immediately after the word "*Provided*".

52. Section 3.23(a)(3) is amended in the sentence that begins, "The application for review should specify * * *", by inserting a semicolon between the words "relies" and "and".

53. Section 3.23(b) is amended in the sentence that begins, "except as hereinbefore provided * * *", by removing the word "hereinbefore" and by inserting a comma immediately after the word "section".

54. Section 3.23(c) is amended by removing the word "examiner" and inserting in its place the word "Judge".

§ 3.24 [Amended]

55. Section 3.24(a)(1) is amended by removing from the first sentence the word "his" and inserting in its place the words "the party's".

56. Section 3.24(a)(2) is amended by removing from the third sentence the word "interrogators" and inserting in its place the word "interrogatories".

57. Section 3.24(a)(4) is amended by inserting in the first sentence a comma immediately after the word "cannot".

§ 3.25 [Amended]

58. Section 3.25(f) is amended by removing from the second sentence the comma immediately following the word "thereby"; by removing from the fourth sentence the word "for" and inserting in its place the word "For"; and by removing from the fifth sentence the words "other party" and inserting in their place the word "parties".

Subpart D—Discovery; Compulsory Process

§ 3.31 [Amended]

59. Section 3.31(b)(2) is amended by removing the word "Act" and inserting in its place the word "act".

60. Section 3.31(b)(3) is amended by removing from the first sentence the words "including his attorney" and inserting in their place the words "including the party's attorney", and by removing from the same sentence the words "preparation of his case and that he is unable" and inserting in their place the words "preparation of its case and that the party is unable".

61. Section 3.31(e) is amended by removing the heading *"Rulings on applications for compulsory process."* and inserting in its place the heading *"Rulings on applications for compulsory process."* and by removing from the first sentence the words "if so mad ." and inserting in their place the words "if so made.".

62. Section 3.32(b) is amended by revising the fourth, fifth and sixth sentences to read as follows:

§ 3.32 Admissions.

* * * * *

(b) * * * A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify its answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that it has made reasonable inquiry and that the information known to or readily obtainable by the party is insufficient to enable it to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may deny the matter or set fourth reasons why the party cannot admit or deny it. * * *

§ 3.37 [Amended]

63. Section 3.37(a) is amended by removing from the first sentence the word "his" and inserting in its place the words "the party's".

§ 3.38 [Amended]

64. Section 3.38(a) is amended by removing from the second sentence the word "his" and inserting in its place the word "its".

65. Section 3.38(b) is amended by removing from the first sentence the

semicolon after the word "admissions" and inserting in its place a comma.

66. Section 3.38(c) is amended by removing from the final sentence the word "subpena" and inserting in its place the word "subpoena".

§ 3.39 [Amended]

67. Section 3.39(b) is amended by removing the words "hearing examiner" and inserting in their place the words "Administrative Law Judge".

Subpart E—Hearings

§ 3.42 [Amended]

68. Section 3.42(a) is amended by removing the words "hearing examiner" and inserting in their place the words "Administrative Law Judge".

69. Section 3.42(b) is amended by removing the words "Director of Administrative Law Judges or" and inserting in their place the words "Chief Administrative Law Judge or,".

Subpart I—Recovery of Awards Under the Equal Access to Justice Act in Commission Proceedings

70. In Section 3.81 paragraphs (a) and (b) are revised to read as follows:

§ 3.81 General Provisions

(a) *Purpose of these rules.* The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to adjudicative proceedings under Part 3 of this title. An eligible party may receive an award when it prevails in the adjudicative proceeding, unless the Commission's position in the proceeding was substantially justified or special circumstances make an award unjust. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record as a whole that is made in the adversary proceeding for which fees and other expenses are sought. The rules in this subpart describe the parties eligible for awards, how to apply for awards, and the procedures and standards that the Commission will use to make them.

(b) *When the Act applies.* The Act applies to any adjudicative proceeding pending before the Commission at any time after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date.

* * * * *

71. Section 3.81(d)(2)(i) is amended by changing "$1 million" to read "$2 million".

72. Section 3.81(d)(2)(ii) is amended by changing "$5 million" to read "$7 million".

73. Section 3.81(d)(2)(iii) is amended by removing the parenthetical citation "(25 U.S.C. 501(c)(3))" and inserting in its place the parenthetical citation "(26 U.S.C. 501(c)(3))".

74. Section 3.81(d)(2)(v) is revised as follows:

* * * * *

(d) * * *

(2) * * *

(v) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

§ 3.83 [Amended]

75. Section 3.83(j) is amended by removing from the second sentence the words "Subject to the funding provisions of the Act, the" and inserting in their place the word "The".

PART 4—MISCELLANEOUS RULES

76. The authority for Part 4 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46, unless otherwise noted.

§§ 4.1 and 4.3 [Amended]

77. The following sections of Part 4 are amended by capitalizing the term "Administrative Law Judge": §§ 4.1(d) and 4.3(a).

§ 4.7 [Amended]

78. Section 4.7(e) is amended by removing from the first sentence the word "rehearing" and inserting in its place the word "reconsideration".

§ 4.8 [Amended]

79. Section 4.8(c)(1) is amended by removing from the second sentence the words "primarily to the public" and inserting in their place the words "primarily the public".

§ 4.11 [Amended]

80. Section 4.11(a)(2)(i)(A) is amended by removing from the first sentence the word "Appeal" and inserting in its place the word "appeal".

81. Section 4.11(a)(2)(iii)(B) is amended by changing the word "soley" throughout to read "solely".

82. Section 4.11(b) is amended by removing from the first sentence the words "subcommittees shall be referred to the General Counsel" and inserting in their place the words "subcommittees for nonpublic records shall be referred to the General Counsel"; and by removing from the second sentence the words "the General Counsel will notify the submitter" and inserting in their place the words "notice will be given to the submitter".

§ 4.14 [Amended]

83. Section 4.14(b) is amended by removing the words ", duly appointed and confirmed,".

PART 5—STANDARDS OF CONDUCT

84. The authority for Part 5 continues to read as follows:

Authority: E.O. 11222 of May 8, 1985, 30 FR 6469; 3 CFR 1985 Supp., 5 CFR 735.104.

Subpart A—General Provisions

§ 5.6 [Amended]

85. Section 5.6(b) is amended by removing from the first sentence the words "the bureau director of office head" and inserting in their place the words "the bureau director or office head".

§ 5.12 [Amended]

86. Section 5.12(f) is amended by removing the word "Comisioner" and inserting in its place the word "Commissioner".

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 5.11 [Amended]

87. Section 5.11(a)(1) is amended by removing the word "contractural" and inserting in its place the word "contractual".

§ 5.14 [Amended]

88. Section 5.14 is amended by removing from the first sentence the word "thr" and inserting in its place the word "the"; by removing from the same sentence the word "organizaion" and inserting in its place the word "organization"; and by removing from the second sentence the word "Convition" and inserting in its place the word "Conviction".

§ 5.19 [Amended]

89. Section 5.19(b) is amended by removing the word "stature" and inserting in its place the word "statute".

Subpart D—Financial Disclosures

90. Section 5.32(e)(1) is revised to read as follows:

§ 5.32 Statements of employment and financial interest under Executive Order 11222.

* * * * *

(e) * * *

(1) Assistant Directors and Associate Directors;

* * * * *

91. Section 5.32(f)(1) is revised to read:

* * * * *

(f) * * *

(1) The Director of the Division of Procurement and General Services;

* * * * *

92. Section 5.32(f)(4) is removed.

93. Section 5.32(g)(1) is revised to read:

* * * * *

(g) * * *

(1) The Director of the Division of Automated Systems;

* * * * *

94. Section 5.32(g)(3) is revised to read:

* * * * *

(g) * * *

(3) The Director of the Division of Information Services.

* * * * *

Dated: December 23, 1985.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc 85-30738 Filed 12-30-85; 8:45 am]

BILLING CODE 6760-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Standards for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (FF 3-71) and 7 Through 14 (FF 5-74); Technical Amendments

AGENCY: Consumer Product Safety Commission.

ACTION: Amendment of final rules.

SUMMARY: The Commission is amending two footnotes in its children's sleepwear flammability regulations because the ordering numbers for copies of referenced voluntary standards have changed.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen E. Joyce, Division of Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6626.

SUPPLEMENTARY INFORMATION: In the Federal Register of December 30, 1975, the Consumer Product Safety Commission published final regulations on the flammability of children's sleepwear in sizes 0-6X and 7-14 (16 CFR Parts 1615 and 1616; 40 FR 59903 and 59917). These regulations contain definitions that refer to certain voluntary product standards, and two separate footnotes currently state that copies of three such standards are available from the National Technical Information Service (16 CFR 1615.1(b) and 1616.2(b)). This is still correct, as is the address of NTIS, but new ordering numbers must be used to obtain the standards. Therefore, the Commission is amending the two footnotes to provide those numbers. The Commission finds for good cause that opportunity for public comment and a delayed effective date are unnecessary because the amendment merely provides information and has no substantive impact on anyone.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer protection, Infants and children, Labeling, Reporting and recordkeeping requirements, Textiles.

PARTS 1615 AND 1616—[AMENDED]

Accordingly, the Commission amends Parts 1615 and 1616 of Title 16, Chapter II, Subchapter D as follows:

1. The authority citation for Subpart A of Parts 1615 and 1616 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569-70; 15 U.S.C. 1193.

2. The footnote to § 1615.1(b) is revised to read:

[1] "Copies are available from the National Technical Information Service, 5285 Port Royal Street, Springfield, VA 22151, and should be ordered as CS 15150.

3. The footnote to § 161.2(b) is revised to read:

[1] "Copies are available from the National Technical Information Service, 5285 Port Royal Street, Springfield, VA 22151. The ordering number for PS 54-72 (CS 153-48), on girls' apparel sizing, is COM 73-50603; the ordering number for PS 38-70 (CS 155-50), on boys' apparel sizing, is PB 86125848.

Dated: December 24, 1985.

Sheldon D. Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 85-30855 Filed 12-30-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79-14]

Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357-8500.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Issued December 24, 1985.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(l) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of January 1986 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to January 1986 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar year 1985]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing threshold	$2.373	[illegible]	[illegible]	[illegible]	$2.399	$2.410	[illegible]	$2.427	[illegible]	[illegible]	[illegible]	[illegible]
NGPA section 102 threshold	[illegible]	[illegible]	3.911	3.932	[illegible]	[illegible]	[illegible]	4.045	[illegible]	[illegible]	4.116	4.141
NGPA section 109 threshold	2.452	2.457	[illegible]	[illegible]	2.478	[illegible]	2.500	2.506	2.512	2.518	[illegible]	2.532
130 pct of No. 2 fuel oil in New York City threshold	7.170	7.310	[illegible]	[illegible]	7.210	7.120	7.400	[illegible]	[illegible]	6.630	[illegible]	7.140

[Calendar year 1986]

	Jan.											
Incremental pricing threshold	[illegible]											
NGPA section 102 threshold	4.166											
NGPA section 109 threshold	2.539											
130 pct of No. 2 fuel oil in New York City threshold	7.370											

[FR Doc. 85-30917 Filed 12-30-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701, 702 and 703

Longshore and Harbor Workers' Compensation Act and Related Statutes

AGENCY: Employment Standards Administration, Labor.

ACTION: Extension of interim final rule.

SUMMARY: This notice extends the interim final rules published in the Federal Register on January 3, 1985 (50 FR 384) until February 3, 1986. These rules, which implement the Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. 98-426, 98 Stat. 1639, were effective on December 27, 1984, and were to remain in effect (as extended 50 FR 39661) until December 31, 1985, unless extended. The Department has determined that additional time is necessary to complete the review of the interim final regulations in light of the concerns expressed in the written comments submitted to the Department.

EFFECTIVE DATE: December 27, 1985. The interim final rules will remain in effect until February 3, 1986, unless extended or superseded by another issuance.

FOR FURTHER INFORMATION CONTACT: Richard A. Staufenberger, Deputy Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor 20210, telephone (202) 523-7503.

Signed at Washington, DC, this 27th day of December 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85-30950 Filed 12-27-85; 10:24 am]

BILLING CODE 4510-27-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 442

[Docket No. 85N-0301]

Antibiotic Drugs; Ceftazidime Pentahydrate for Injection

Correction

In FR Doc. 85-28039 beginning on page 48396 in the issue of Monday, November 25, 1985, make the following corrections:

1. On page 48398, in the second column, in § 436.358(b), in the tenth line, "milliliters" should read "millimeters".

2. On page 48399, in the second column, in § 442.16a(a)(1), in the fourth line, "[[2-" should read "[[(2-".

3. On the same page, in the third column, in § 442.16a(b)(1)(i)*(b)*, in the fourth line, "milliters" should read "milliliters".

4. "(L)oss on drying" should read "loss of drying" in the following places:

a. Page 48400, second column, § 442.16a(b)(4), first line;

b. Page 48401, first column, § 442.216(a)(3)(i)(*b*), third line; and

c. Page 48401, second column, § 442.216(b)(1)(ii)(*a*), in the fourteenth line below the equation.

5. Also on page 48401, in the first column, in § 442.216(a)(3), in the second line, "complying with" should read "complying with the".

BILLING CODE 1505-01-M

DEPARTMENT OF STATE

22 CFR Parts 60 Through 65

[Departmental Regulations 108.846]

South Africa and Fair Labor Standards

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: On November 8, 1985, the Department of State published a proposed rule (50 FR 46455) to implement the fair labor provisions of Executive Order 12532 of September 9, 1985 (50 FR 36861). This final rule implements the EO's fair labor provisions, taking into account the public comments received.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Paula Reed Lynch, Program Officer, (202) 331-9275; F. Allen Harris, Deputy Office Director, Office of Southern African Affairs (202) 647-8252; or Mr. Edward Cummings, (202) 647-1571, Office of the Legal Adviser, Department of State.

SUPPLEMENTARY INFORMATION: Section 2 of E.O. 12532 (50 FR 36861) deals with the labor practices of U.S. nationals and their firms in South Africa. On November 8, the Department of State

published draft implementing regulations as a proposed rule for public comment (50 FR 46455). The supplementary information portion of the proposed rule explains the background for the regulations and the basic scheme established.

Six written comments were received from the public. The Department of State has reviewed the comments and has made certain changes to the regulations as a result. (The changes are to §§ 63.1(a), 63.1(b), 63.1(d)(1), 63.1(d)(2), 63.1(d)(3), 64.1, 65.1(b), 65.1(b)(5), and 65.1(b)(6).)

The comments dealt primarily with the relation of the requirements of the voluntary Sullivan system to those of the proposed regulations. For example, it was pointed out that the evaluation method of the Sullivan system takes into account the performance of firms in relation to each other with respect to some of the principles. Questions were raised as to whether the Department would do likewise with respect to those firms that choose to report directly to the Department of State. The Department intends to make decisions on good faith compliance based on an evaluation of each report on a case-by-case basis. The Department does not intend to rate the companies in relation to each other.

Another Sullivan-related question dealt with the reporting requirements for firms that sign the Sullivan principles during 1986. A new subsection (d)(3) was added to § 63.1 to address this issue.

Section 61.1(a)(6) of the proposed rule would have prohibited the furnishing of routine authentication services related to the other penalties described in that subsection to firms that do not adhere to the principles. Upon review, and based in part on public comments, the Department has concluded that it is highly unlikely that routine authentication services would be involved in such instances. Maintaining a specific provision on this matter would give the erroneous impression that routine authentications are to be denied even in cases where there is no intercession of the kind proscribed in the EO. The Department has accordingly decided not to include a specific provision on this matter. Authentication services will be denied if the services requested constitute intercession within the meaning of § 65.1(b).

Some of the comments dealt with the basic requirements of the EO. For example, one comment recommended that firms employing less than 25 individuals in South Africa be subject to the requirements of the regulations, while another suggested that the requirement apply only to firms employing more than 50. The purpose of these regulations is to implement the EO and accordingly such comments were not accepted in preparing the final rule.

List of Subjects

22 CFR Part 60

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 61

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 62

United States investments abroad, Fair labor standards, South Africa, Reporting and recordkeeping requirements.

22 CFR Part 63

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 64

United States investments abroad, Fair labor standards, South Africa, Reporting and recordkeeping requirements.

22 CFR Part 65

United States investments abroad, Fair labor standards, South Africa, Exports, Penalties.

Subchapter G, consisting of Parts 60 through 65 and an Appendix, is added to Chapter I of Title 22, Code of Federal Regulations, to read as follows:

SUBCHAPTER G—SOUTH AFRICA AND FAIR LABOR STANDARDS

Part

60 Purpose and scope of application.
61 Definitions.
62 Registration.
63 General policies and reporting requirements.
64 Administrative procedures.
65 Non-adherence and penalties.
Appendix to Subchapter G—Examples of Fair Labor Practices

PART 60—PURPOSE AND SCOPE OF APPLICATION

Sec.

60.1 Purpose.
60.2 Scope of application.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532, Sept. 9, 1985 (50 FR 36861).

§ 60.1 Purpose.

(a) *General.* Section 2 of Executive Order 12532 of September 9, 1985 (50 FR 36861) provides that it is the policy of the United States to encourage all United States firms in South Africa to adhere to certain fair labor standards. It provides furthermore that no department or agency of the U.S. may intercede with any foreign government regarding the export marketing activities in any country of any national of the U.S. employing more than 25 individuals in South Africa who does not adhere to the principles stated in the Order. It is the purpose of this subchapter to implement these requirements of E.O. 12532.

(b) *Relation to the Voluntary Sullivan System.* It has been the policy of the United States since 1977 to encourage voluntary adherence to the Sullivan Code agreed to by a majority of U.S. business firms that operate in South Africa. The requirements of the voluntary code exceed those of the E.O 12532 in certain respects, and the voluntary nature of the code has set an example for all firms in South Africa. The regulations set forth in this subchapter recognize that some U.S. nationals are not willing to subscribe to the Sullivan Code, and these regulations do not require firms to subscribe to the voluntary system. All U.S. nationals described in § 62.2 and § 63.1 are subject to the requirements of this subchapter. Such nationals who are *bona fide* participants in the Sullivan system are exempt from certain reporting requirements in accordance with § 63.1(d).

§ 60.2 Scope of application.

The requirements of this subchapter are applicable to U.S. nationals (defined in § 61.5) who:

(a) Employ at least 25 individuals in South Africa;

(b) Own or control more than 50 percent of the outstanding voting securities of a foreign subsidiary or other entity that employs at least 25 individuals in South Africa; or

(c) Control in fact any other foreign entity that employs at least 25 individuals in South Africa. Such control consists of the authority or ability of the domestic concern to establish or direct the general policies or day-to-day operations of a foreign subsidiary or entity in South Africa. Such authority or ability will be presumed under the circumstances described below, subject to rebuttal by competent evidence provided to the Department of State at the time of registration (see § 62.1):

(1) The domestic concern beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the foreign subsidiary or entity, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

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(2) The foreign subsidiary or entity is operated by the domestic concern pursuant to the provisions of an exclusive management contract;

(3) A majority of the members of the board of directors of the foreign subsidiary or entity are also members of the comparable governing body of the domestic concern;

(4) The domestic concern has the authority to appoint the majority of the members of the board of directors of the foreign subsidiary or entity; or

(5) The domestic concern has the authority to appoint the chief operating officer of the foreign subsidiary or entity.

PART 61—DEFINITIONS

Sec.
61.1 Adherence.
61.2 Fair labor standards.
61.3 Office of Southern African Affairs.
61.4 United States.
61.5 U.S. national.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701): E.O. 12532 Sept. 9, 1985 (50 FR 36861).

§ 61.1 Adherence.

For purposes of this subchapter, adherence means—

(a) Agreeing to implement the principles specified in § 61.2 in South Africa,

(b) Taking good faith measures to implement each of these principles, and

(c) Reporting accurately to the Department of State on the measures taken to implement the principles in accordance with § 63.1.

§ 61.2 Fair labor standards.

(a) The fair labor standards referred to in this subchapter are as follows:

(1) Desegregating the races in each employment facility;

(2) Providing equal employment opportunity for all employees without regard to race or ethnic origin;

(3) Assuring that the pay system in South Africa is applied to all employees without regard to race or ethnic origin;

(4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families;

(5) Increasing by appropriate means the number of persons in managerial, supervisory, administrative, clerical and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs;

(6) Taking reasonable steps to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation, and health;

(7) Implementing fair labor practices by recognizing the right of all employees, regardless of racial or other distinctions, to self-organization and to form, join or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity.

(b) The supplement to this subchapter contains illustrative examples of the fair labor practices referred to in this subchapter.

§ 61.3 Office of Southern African Affairs.

"Office of Southern African Affairs" means the Office of Southern African Affairs, Bureau of African Affairs, Department of State, Washington, D.C. 20520.

§ 61.4 United States.

"United States," when used in the geographical sense, includes the several States, the Commonwealth of Puerto Rico, the insular possessions of the United States, and the District of Columbia.

§ 61.5 U.S. National.

For purposes of this subchapter, "U.S. national" means:

(a) Citizens or nationals of the United States or permanent residents of the United States (defined in the Immigration and Nationality Act (8 U.S.C. 1101, 101(a)20, 60 Stat. 163)); and

(b) Corporations, partnerships, and other business associations organized under the laws of the United States, any state or territory thereof, or the District of Columbia.

PART 62—REGISTRATION

Sec.
62.1 Registration.
62.2 Notification of changes in information furnished by registrants
62.3 Maintenance of records by registrants.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701): E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 62.1 Registration.

Any U.S. national referred to in § 60.2 is required to register with the Department of State and to indicate whether the U.S. national or entity referred to in § 60.2 agrees to implement the principles stated in § 61.2. They may also indicate whether they are participants in the voluntary Sullivan system. Registration can be accomplished by filing a completed form DSP–95 with the Office of Southern African Affairs. Any such national who believes that it should not be required or is unable to report on the fair labor practices of a foreign subsidiary or entity described in § 60.2 (c) of this subchapter should provide a detailed explanation of the reasons. The explanation should be in the form of a letter, and should accompany the completed registration form. A detailed questionnaire on fair labor practices will be provided by the Office of Southern African Affairs on an annual basis to all registrants. No fee is required for registration.

§ 62.2 Notification of changes in information furnished by registrants.

A registered U.S. national must notify the Department of State of any material changes in the information contained in the registration. Examples of material changes include the establiahment, acquisition, or sale of a subsidiary or of a foreign affiliate, a merger, a change of location, or engaging in a different kind of business in South Africa. Such information should be provided within 60 days from the date of the material change.

§ 62.3 Maintenance of records by registrants.

(a) A U.S. national who is required to register pursuant to § 62.1 must maintain records concerning the fair labor practices employed in South Africa by the U.S. national or any entity referred to in § 60.2 effective January 1, 1986. Such records must be maintained for a period of 3 years.

(b) Records maintained under this section shall be available at all times for inspection by the Director of the Office of Southern African Affairs or a person designated by the Director.

PART 63—GENERAL POLICIES AND REPORTING REQUIREMENTS

Sec.
63.1 General policies.
63.2 Influencing activities outside the workplace.
63.3 State Department review.
63.4 Waiver.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701): E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 63.1 General policies.

(a) *General.* Any U.S. national or entity described in § 60.2 who does not adhere to the fair labor standards stated in § 61.2 of this subchapter shall be ineligible to receive the assistance specified in § 65.1 (b).

(b) *Failure to register.* Any such U.S. national who does not register with the Department of State prior to February 15, 1986, in accordance with § 62.1 shall be ineligible for the assistance specified in § 65.1 and shall be subject to the penalties specified in § 65.2.

(c) *Annual reports.* All U.S. nationals subject to the requirements of this

subchapter shall provide an annual report to the Department of State describing their implementation of the fair labor principles specified in § 61.2, including implementation by any entity described in § 60.2. They shall do so by submitting a completed questionnaire furnished by the Department of State at the time of registration to the Office of Southern African Affairs. The first report shall be provided no later than February 15, 1987.

(d)(1) *Sullivan participants.* Any U.S. national who is a *bona fide* participant in the Sullivan reporting and implementing system is exempt from submitting the questionnaire referred to in paragraph (c) of this *"Bona fide"* participation means (i) subscribing to the Sullivan Code and (ii) filing the report required by the Sullivan monitoring mechanism with that organization and (iii) receiving a Category I, II, or IIIA standing. *Bona fide* participants are deemed to be adhering to the fair labor standards for purposes of this subchapter. Such U.S. nationals shall be required to file a letter with the Office of Southern African Affairs on an annual basis certifying that they are *bona fide* participants in the Sullivan system. Each such letter shall be provided not later than February 15 of each calendar year, commencing on February 15, 1987. Each such letter shall include the following statement:

> I certify that [name of firm] is a *bona fide* participant in the Sullivan system for fiscal year [insert], and the firm received a [insert] rating from the Sullivan system for that period.

Any U.S. national participating in the Sullivan system who receives a Category IIIB standing must inform the Department of State by February 15. If such a national receives a Category IIIB standing for the next fiscal year, it shall not be deemed to be a *bona fide* participant pursuant to this subsection and must thereafter complete the required State Department questionnaire.

(2) U.S. nationals who become participants in the Sullivan system in 1986 will be required to submit the first letter referred to in paragraph (d)(1) of this section no later than November 15, 1987.

§ 63.2 Influencing activities outside the workplace.

U.S. nationals referred to in subsection § 60.2 are encouraged to take reasonable measures to extend the scope of their influence on activities outside the workplace by measures such as (a) supporting the right of all businesses, regardless of the racial character of their owners or employees, to locate in urban areas; (b) by influencing other companies in South Africa to follow the principles specified in § 62.2; (c) by supporting the freedom of mobility of all workers, regardless of race, to seek employment opportunities wherever they exist, and (d) by making provision for adequate housing and education for families of employees within the proximity of the employee's place of work.

§ 63.3 State Department review.

(a) The Office of Southern African Affairs shall review each report submitted pursuant to § 63.1(c) to determine whether the U.S. national is adhering to the principles stated in §61.2. The Office of Southern African Affairs may request additional information from the U.S. national and take any steps that may be deemed necessary to verify the information submitted.

(b) If the Office of Southern African Affairs concludes that a person is not taking such steps, it shall afford the person thirty days to provide additional written information to the Department of State.

(c) If a U.S. national who was a participant in the Sullivan system does not file the reports required by the Sullivan monitoring system or otherwise fails to meet the standards for continued participation in the Sullivan system, the U.S. national shall immediately inform the Department of State. Such notification should be provided no later than 30 days after receipt of a notification from the Sullivan system that the person is no longer a *bona fide* participant.

§ 63.4 Waiver.

The Director, Office of Southern African Affairs, may make exceptions to the provisions of this subchapter in cases of exceptional or undue hardship or when it is otherwise in the interest of the United States Government.

PART 64—ADMINISTRATIVE PROVISIONS

Sec.
64.1 Administrative procedures.
64.2 Annual report.
64.3 Disclosure of information to the public.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701): E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 64.1 Administrative procedures.

(a) If the Assistant Secretary for African Affairs concludes that a U.S. national or entity referred to in § 60.2 is not adhering to the principles specified in § 61.2, the Office of Southern African Affairs shall immediately inform the U.S. national concerned and other U.S. Government agencies by appropriate means.

(b) Any U.S. national who has been the subject of an adverse decision pursuant to paragraph (a) of this section shall be entitled to file a written appeal within 30 days of notification of the decision with the Board of Appellate Review of the Department of State. The requirements of Part 7 of Subchapter A of this title of CFR shall be applicable to proceedings before the Board of Appellate Review.

§ 64.2 Annual report.

The Office of Southern African Affairs shall prepare an annual report regarding implementation of Part 63 of this subchapter, which shall be forwarded to other affected U.S. Government agencies and the appropriate committees of the United States Congress.

§ 64.3 Disclosure of information to the public.

Subchapter R of this title of CFR contains regulations on the availability to the public of information and records of the Department of State. The provisions of Subchapter R apply to such disclosures by the Office of Southern African Affairs.

PART 65—NON-ADHERENCE AND PENALTIES

Sec.
65.1 Denial of export marketing support.
65.2 Civil and criminal penalties.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701): E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 65.1 Denial of export marketing support.

(a) In accordance with Part 63 of this subchapter, no department or agency of the United States may intercede with any foreign government regarding export marketing activity in any country of any U.S. national or entity referred to in § 60.2 who does not adhere to the principles stated in § 61.2 with respect to that U.S. national's operations in South Africa.

(b) For purposes of this section, "intercede with any foreign government regarding export marketing activity" means any contact by U.S. Government personnel with officials of any foreign government which involves or contemplates any effort to assist in selling a good, service, or technology in a foreign market. The following are examples of the activities prohibited:

(1) Assisting non-complying firms by arranging appointments with foreign government officials relating to the

pursuit by the firm of a bid, project, or other commercial activity.

(2) Intervening with a foreign government on behalf of a non-complying firm in pursuit of a bid or project, unless such intervention is necessary to ensure a foreign government's compliance with its obligations, if any under the Agreement on Government Procurement of April 12, 1979 (T.I.A.S. No. 10403);

(3) Assisting non-complying firms in obtaining end-user or other foreign government certificates or documentation necessary for the issuance of U.S. export licenses;

(4) Taking any action to assist a non-complying firm in selling its products, services or technology with respect to a foreign government, including assistance in making appeals regarding foreign government procedures and practices adversely affecting the firm's ability to gain access to the foreign marketplace;

(5) Participation by non-complying firms in Department of Commerce sponsored trade exhibitions and video catalog shows, trade missions and certified shows in foreign countries in which business is conducted primarily with the host government;

(6) Intervening with foreign government officials on behalf of a non-complying firm at any trade fairs, trade missions, and video catalogue shows (i.e., other than those in paragraph (b)(5) of this section).

(c) The following activities with respect to non-complying firms are not prohibited pursuant to this section of the Executive Order:

(1) Preparing market research for use by more than one company and providing general export information;

(2) Distributing generally available informational publications such as Overseas Business Reports, Foreign Economic Trends, and Business America; and

(3) Multilateral and bilateral, government-to-government trade negotiations to resolve trade issues which may affect non-complying firms.

§ 65.2 Civil and criminal penalties.

(a) This subchapter is promulgated pursuant to the authority of E.O. 12532 and the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA)). Section 206 of this Act provides that:

> A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.
>
> Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent to any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

Section 206 of the International Emergency Economic Powers Act is applicable to violations of this subchapter and to any license, ruling, regulation, order, direction, or instruction issued hereunder. These criminal and civil penalties are applicable to failures to comply with the registration and reporting requirements established in this subchapter. However, they are not applicable to failures to adhere to the principles stated in § 61.2.

(b) Attention is also directed to 18 U.S.C. 1001, which provides:

> Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) This section does not apply to the financing of exports by the Export-Import Bank to South Africa. Such financing continues to be the subject of the requirements contained in section 2(b)(9) of the Export-Import Bank Act of 1945, as amended.

Appendix to Subchapter G—Examples of Fair Labor Practices

The following are illustrative examples of the fair labor standards specified in § 61.2.

(1) Desegregating the races in each employment facility:

(a) Removing all race designation signs;

(b) Desegregating all eating, medical, recreation, and work facilities; and

(c) Terminating all regulations which are based on racial discrimination or preference.

(2) Providing equal employment opportunity for all employees without regard to race or ethnic origin:

(a) Assuring that any health, accident, pension, or death benefit plans that are established are nondiscriminatory and open to all employees without regard to race or ethnic origin; and

(b) Implementing equal and nondiscriminatory terms and conditions of employment for all employees, abolishing job restrictions and differential employment criteria which discriminate on the basis of race or ethnic origin.

(3) Assuring that the pay system is applied to all employees without regard to race or ethnic origins:

(a) Assuring that any wage and salary structure that is implemented is applied equally to all employees without regard to race or ethnic origin;

(b) Eliminating any distinctions between hourly and salaried job classifications on the basis of race or ethnic origin; and

(c) Eliminating any differences in seniority and in grade benefits which are based on race or ethnic origin.

(4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families:

(a) Offering a minimum wage or salary structure that is 30 percent or more higher than the most recent University of South Africa Minimum Living Level for a family of 5 or 6 for the area in which the South African subsidiary or affiliate operates; or

(b) Offering a minimum wage or salary that is 30 percent or more higher than the most recent University of Port Elizabeth Household Subsistence Level for a family of 5 or 6 for the area in which the South African subsidiary or affiliate operates.

(5) Increasing, by appropriate means, the number of persons in managerial, supervisory, administrative, clerical, and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs:

(a) Developing training programs that will prepare substantial numbers of persons disadvantaged by apartheid for such jobs as soon as possible, including: (i) Expanding existing programs and forming new programs to train, upgrade, and improve the skills of all categories of employees, including establishing and expanding programs to enable employees to further education and skills at recognized educational facilities; and (ii) creating on-the-job training programs and facilities to assist employees to advance to higher paying jobs requiring greater skills.

(b) Establishing procedures to assess, identify, and actively recruit employees with potential for further advancement;

(c) Identifying persons disadvantaged by apartheid with significant management potential and enrolling them in accelerated management programs; and

(d) Establishing timetables to carry out this principle.

(6) Taking reasonable steps to improve the quality of employee's lives outside the work environment with respect to housing, transportation, schooling, recreation, and health:

(a) Providing assistance to employees disadvantaged by apartheid for housing, health care, transportation, and recreation either through the provision of facilities or services or providing financial assistance to employees for such purposes, including the expansion or creation of in-house medical facilities or other medical programs to improve medical care for employees disadvantaged by apartheid and their dependents; and

(b) Participating in the development of programs that address the educational needs of employees, their dependents, and the community.

(7) Implementing fair practices by recognizing the right of all employees, regardless of racial or other distinctions, to

self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity:

(a) Refraining from: (i) interfering with, restraining, or coercing employees in the exercise of their rights of self-organization under this paragraph; (ii) dominating or interfering with the formation or administration of any labor organization or sponsoring, controlling, or contributing financial or other assistance to it; (iii) encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment; (iv) discharging or otherwise disciplining or discriminating against any employee who has exercised any rights of self-organization under this principle; and (v) refusing to bargain collective with any organization freely chosen by employees pursuant to this principle.

(b) Allowing employees to exercise rights of self-organization, including solicitation of fellow employees during nonworking hours, distribution and posting of union literature by employees during nonworking hours in nonworking areas, and reasonable access to labor organization representatives to communicate with employees on the employer's premises at reasonable times where there are no other available channels which will enable the labor organization to communicate with employees through reasonable efforts.

Dated: December 23, 1985.

George P. Shultz,

The Secretary of State.

[FR Doc. 85-30928 Filed 12-30-85; 8:45 am]

BILLING CODE 4710-05-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates by reference certain interest rates published by another federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from January 1, 1986, to March 31, 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202-956-5050 (202-956-5059 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On May 31, 1984 (49 FR 22842), the Pension Benefit Guaranty Corporation (the "PBGC") published a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default on or after July 2, 1984 (the effective date of the regulation), or to be credited by such plans on overpayments of withdrawal liability made on or after that date. The regulation allows plans to set such rates, subject to certain restrictions. Where a plan does not set such rates, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H. 15 ["Selected Interest Rates"].

Since the regulation incorporates by reference interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. See 50 FR 39664 (September 30, 1985). This amendment adds to this appendix the interest rate of 9½ percent, which will be effective from January 1, 1986, to March 31, 1986. This is the same interest rate that was in effect for the fourth quarter of 1985. This rate is based on the prime rate in effect on December 16, 1985, as reported by the Federal Reserve in Statistical Release H.15.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed by the regulation are those published in the Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans and Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: Secs. 4002(b)(3) and 4219(c), Pub. L. 93-406, as amended by secs. 403(l) and 104 (respectively), Pub. L. 96-364, 94 Stat. 1208, 1302 and 1286-1238 (1980) (29 U.S.C. 1302(b)(3) and 1399(c)(6)).

2. Appendix A is amended by adding to the end of the table of interest rates therein the following new entry:

From	To	Date of quotation	Rate (%)
01/01/86	03/31/86	12/16/85	9.50

Issued at Washington, DC, on this 23d day of December, 1985.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-30653 Filed 12-30-85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 223

Financial Guidelines for Qualification of Surety Companies Under 31 U.S.C. 9304-9308

AGENCY: Financial Management Service, Fiscal Service; Treasury.

ACTION: Final Financial Guidelines.

SUMMARY: The Secretary of the Treasury is required by 31 U.S.C. 9305 to determine that each surety company that wishes to do business with the United States is financially sound and is able to keep and perform its contracts. The financial guidelines that Treasury hereby publishes supplement the financial standards that are already being used to make those determinations. These guidelines will be used to evaluate applications for (and renewals of) Certificates of Authority received by Treasury on or after January 1, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Terry L. Boyer, (202) 634–2319.

SUPPLEMENTARY INFORMATION: On September 5, 1985, the Financial Management Service (FMS) published a Notice of Revised Proposed Guidelines (50 FR 36115), which proposed new guidelines to supplement the current financial standards which are used to assist FMS in making a statutorily-required determination that a surety company is solvent and able to keep and perform its contracts in order to qualify as an acceptable surety on federal bonds.

Eight comments were received. The majority of the comments were highly supportive of the proposed guidelines. Some of the respondents suggested modifications. This Notice adopts some of these and explains how others will be incorporated within internal operating procedures.

Three respondents expressed concern that Treasury had not specifically stated that a company would be provided a chance to respond to Treasury's concern over its financial condition. Specific wording to this effect has been added.

Two respondents expressed concern that strict adherence to the ratios, would penalize companies for taking proper corrective measures in those instances where such measures negatively impacted ratio results. Treasury's present financial guidelines (Instruction XIII), state that a company should submit a supporting memorandum to Treasury that would explain significant actions taken which would not be evident from a review of the company's financial statements. This would include actions which would distort ratio results. Should a company fail to submit appropriate explanations with its annual Treasury filing, the company would have an opportunity to submit such an explanation if Treasury notifies the company of concerns it may have relative to its ratio results. We feel that these procedures will prevent a company from being unjustly penalized.

One respondent expressed concern that reinsurers, because of the nature of their business, may regularly fail one or more tests, without such results necessarily reflecting their stability. The response included statements specifically describing perceived problems with certain ratios and recommended modifications. While recognizing the validity of these concerns, in some circumstances, we determined that the most appropriate manner in which to address them would be to include the respondent's statements of problems within our internal operating procedures. These statements will then be considered in determining whether a reinsurer should receive a notice of concern over its ratio results.

Finally, we have included an additional paragraph within the final notice addressing the consideration of ratios based on consolidated financial data in certain instances. This paragraph was added at the suggestion of one respondent.

The Department of the Treasury has determined that this notice is not a major rule for purposes of E.O. 12291. Therefore, no regulatory impact analysis is required.

Furthermore, it has been determined in accordance with 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, the regulatory flexibility analysis referred to by 5 U.S.C. 604 is not required and has not been conducted.

The Department of the Treasury will therefore adopt the following financial guidelines:

Additional Financial Guidelines

Effective December 31, 1985, in order to qualify for a Certificate of Authority to do business with the Government as a surety, or to be recognized as an admitted reinsurer on non-federal business, a company will be expected to maintain usual results for the following ratios.

Ratio	Usual ranges	
	Over	Under
1. Premium to surplus		300
2. Change in writings	-33	33
3. Surplus aid to surplus		15
4. Two year overall operating ratio		100
5. Investment yield	6	
6. Change in surplus	-10	
7. Liabilities to liquid assets		105
8. Agents' balances to surplus		40
9. One year reserve development to surplus		25
10. Two year reserve development to surplus		25
11. Estimated current reserve deficiency to surplus		25

In those instances where a company cedes a substantial portion of its premiums to an affiliated company, the ratios for the consolidated statements of the company and its affiliates will also be considered.

In those instances where a company's ratio results do not fall within the usual ranges, the Treasury may notify the company of Treasury's concern over tis financial condition. The company will be afforded an opportunity to respond to Treasury's concern.

If information submitted by the company to support its continued financial strength is not sufficient to satisfy Treasury of the company's continued ability to keep and perform its contracts, Treasury will commence proceedings to terminate the company's Certificate of Authority.

Termination procedures as described at 31 CFR 223.17 will be followed in all instances.

Treasury may revise these guidelines in the future should industry conditions change significantly.

Dated: December 13, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85–30951 Filed 12–30–85; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

38 CFR Part 3

Basic Eligibility for Loan Guaranty Benefits

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) has amended its adjudication regulations concerning loan guaranty eligibility for Vietnam era veterans. This amendment is necessary because of a 1978 change of law. The effect of this amendment will be to equalize the loan guaranty eligibility of Vietnam era veterans with that of veterans of World War II and the Korean Conflict.

BEST COPY AVAILABLE

DATES: This amendment is effective October 18, 1978, as provided by law.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service (211B), Department of Veterans Benefits (202) 389–3005.

SUPPLEMENTARY INFORMATION: On page 28224 of the **Federal Register** of July 11, 1985, the VA published a proposed amendment to 38 CFR § 3.315(b) to correct a previous oversight with respect to loan guaranty eligibility for Vietnam era veterans. Interested persons were given until August 12, 1985, to submit comments, suggestions or objections to the proposal. While no official comments were received, a claims examiner from the VA's New York Regional Office identified a technical error in the publication and suggested that a pertinent cross-reference be added.

The published proposal to amend paragraph (b) inadvertently ended with the United States Code citations for paragraph (c) which is not being amended. This error has been corrected in the final rule.

It was suggested that a cross-reference to the minimum active duty service requirements of § 3.12a might also be appropriate. We agree that such an addition is desirable for purposes of clarity and have amended the final rule to alert VA adjudicators to that requirement.

The proposed rule has been adopted with the amendment noted above.

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604. In accordance with Executive Order 12291, Federal Regulation, we have determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans, Veterans Administration.

(Catalog of Federal Domestic Assistance Program number is 64.119)

Approved: November 27, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 3—[AMENDED]

38 CFR Part 3, COMPENSATION AND PENSION, § 3.315(b) is revised to read as follows:

§ 3.315 Basic eligibility determinations—dependents, loans, education.

* * * * *

(b) *Loans.* If a veteran of World War II the Korean conflict or the Vietnam era had less than 90 days of service, or if a veteran who served after July 25, 1947, and prior to June 27, 1950, or after January 31, 1955, and prior to August 5, 1964, or after May 7, 1975, has less than 181 days of service on active duty as defined in §§ 36.4301 and 36.4501, eligibility of the veteran for a loan under 38 U.S.C. ch. 37 requires a determination that the veteran was discharged or released because of a service-connected disability or that the official service department records show that he or she had at the time of separation from service a service-connected disability which in medical judgment would have warranted a discharge for disability. These determinations are subject to the presumption of incurrence under § 3.304(b). Determinations based on World War II, Korean conflict and Vietnam era service are also subject to the presumption of aggravation under § 36.306(b) while determination based on service on or after February 1, 1955, and before August 5, 1964, or after May 7, 1975, are subject to the presumption of aggravation under § 3.306 (a) and (c). The provisions of this paragraph are also applicable, regardless of length of service, in determining eligibility to the maximum period of entitlement based on discharge or release for a service-connected disability. (See also the minimum service requirements of § 3.12a.)

(38 U.S.C. 1802, 1807, 1818)

* * * * *

[FR Doc. 85–30859 Filed 12–30–85; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 271

[FRL–2947–1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today is amending the list of hazardous wastes under the Resource Conservation and Recovery Act (RCRA) by redefining the universe of solvents considered listed hazardous wastes. EPA is taking this action to close a major loophole created by the manner in which spent solvents were originally listed as hazardous wastes. The effect of today's rule will be to bring certain spent solvent mixtures under RCRA Subtitle C control.

DATES: *Effective Date:* This regulation becomes effective January 30, 1986. (See Section II–E for further details.)

Notification—The Agency has decided not to require persons who generate, transport, treat, store, or dispose of these hazardous wastes to notify the Agency within 90 days of promulgation that they are managing these wastes. The Agency views the notification requirement as unnecessary in this case since we believe that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. Persons who generate, transport, treat, store, or dispose of these wastes, and have not previously notified and received an identification number must get an identification number pursuant to 40 CFR 262.12 before they can generate, transport, treat, store, or dispose of these wastes.

Interim Status—All existing hazardous waste management facilities (as defined in 40 CFR 270.2) which treat, store, or dispose of hazardous wastes under interim status (section 3005(e) of RCRA), must file with EPA a Part A permit application. Under the Hazardous and Solid Waste Amendments of 1984, a facility is also eligible for interim status if it was in existence on the effective date of any statutory or regulatory change under RCRA that requires it to obtain a section 3005 permit. Facilities which have qualified for interim status, under section 3005(e)(1)(A)(ii), will not be allowed to manage the wastes covered by today's rule after January 30, 1986.

unless they have an EPA identification number and they submit a Part A permit application to EPA by January 30, 1986.

If the facility has received a permit pursuant to section 3005, however, it will not be allowed to treat, store, or dispose of the wastes covered by today's rule until it submits an amended permit application pursuant to 40 CFR 124.5, and the permit has been modified pursuant to 40 CFR 270.41 to allow it to treat, store, or dispose of these wastes.

ADDRESSES: The official record for this rulemaking is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Jacqueline Sales, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4770.

SUPPLEMENTARY INFORMATION:

I. Background

On April 30, 1985, EPA proposed to amend the regulations for hazardous waste management under RCRA by redefining the spent solvent listing—EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005—to include mixtures containing ten percent or more total listed solvent (by volume). See 50 FR 18378. EPA initiated this action to close a major regulatory loophole created by the manner in which the original listings were drafted (*i.e.*, only the technical grade, practical grade, or pure form of the solvents were covered).

The Agency listed these solvents as hazardous waste based on their toxicity, mobility, and persistence in the environment (and in some cases, ignitability). Also, spent solvents have been involved in hazardous waste damage incidents more frequently than any other type of waste. In establishing a regulatory threshold for solvent mixtures, the Agency attempted to determine the concentrations at which solvents are known to cause damage to human health or the environment. Since the Agency has not yet developed health-based thresholds for many of these solvents, however, we sought to establish regulatory thresholds for mixtures based on considerations other than minimum concentrations of solvents that can cause adverse health effects. Thus, the Agency proposed to expand the category of spent solvents considered hazardous wastes to include spent solvent mixtures containing ten percent or more (by volume) of total listed solvents. As a point of clarification, the ten percent threshold applies to solvent mixtures, before use.[1] The Agency believes that establishing a threshold level well below the minimum solvent concentration typically used in solvent formulations would bring the majority of solvent mixtures used in commerce into the hazardous waste management system, while excluding dilute mixtures or *de minimis* concentrations. Furthermore, Agency data demonstrate that at these concentrations these solvents are known to cause substantial harm to human health. As noted above, the Agency has not developed health-based standards or regulatory thresholds for all of the listed solvents. See 50 FR 18379, April 30, 1985. The level set by today's rule is an interim measure, and may be modified or superceded when work on the Toxicity Characteristic is completed.[2]

In addition, the Agency proposed to renumber the list of solvents by deleting F002, F003, F004, F005, and modifying F001 to include all solvents formerly listed as F001 through F005. We specifically requested comments on whether solvents should be listed under a single hazardous waste number, or whether halogenated solvents should be listed separately from non-halogenated solvents. The Agency also invited comments on whether we should continue to list as hazardous wastes solvents which originally were listed solely on the basis of their ignitability (F003).

We received a number of comments on the proposed listing. We have evaluated these comments and revised the rule and the original background document to the solvent listing accordingly. This notice makes final the rule proposed on April 30, 1985, and outlines EPA's response to major comments received during the 30-day comment period. Comments received on the following issues and the Agency's responses appear in the revised background document, which is available in the public docket for this rule—(1) process wastes containing solvents, (2) effect of solvents on liners, (3) human health effects posed by solvents, (4) expression of solvents by volume versus weight, and (5) format of the listing. The final rule partially fulfills EPA's obligation under the Hazardous and Solid Waste Amendments of 1984 (HSWA), which requires EPA to consider whether to list additional wastes, including additional solvents, as hazardous within 15 months of the date of enactment (HSWA section 222(a)). The Agency has proposed to add four additional solvents to the list of hazardous wastes (See 50 FR 30908, July 30, 1985). When that proposal becomes final, the ten percent threshold will also apply to mixtures containing these newly regulated solvents, as well as any additional solvents listed in the future.

II. Response to Comments

Comments were submitted by generators, trade associations, State regulatory agencies, and environmentalists. This section outlines the major comments and provides responses. As stated earlier, other comments are addressed in the revised background document.

A. Clarification of the Scope of the Spent Solvent Listings

In addition to comments received during the comment period for this rule, the Agency has received numerous telephone inquiries regarding the interpretation of the spent solvent listings (*i.e.*, the scope and applicability). Thus, in response to these comments the Agency is clarifying the universe of waste covered by the listing. We believe this will aid generators and treatment, storage, and disposal facilities in determining whether solvent-bearing wastes (including solvent mixtures) handled or generated at their facility will be regulated as a result of this rule.

First, the spent solvent listings cover only those solvents that are used for their "solvent" properties—that is, to solubilize (dissolve) or mobilize other constituents. For example, solvents used in degreasing, cleaning, fabric scouring, as diluents, extractants, reaction and synthesis media, and similar uses are covered under the listing (when spent). A solvent is considered "spent" when it has been used and is no longer fit for use without being regenerated, reclaimed, or otherwise reprocessed.

On the other hand, process wastes where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listing. The products themselves also are not covered. See the original solvent listing background

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[1] In cases (such as enforcement actions) where the regulatory status of a spent solvent mixture containing listed solvents is questionable, the Agency considers the waste to be the listed waste, unless the generator can prove that the virgin solvent mixture contained less than ten percent total listed solvents. The Agency takes this position based on data which indicate that solvent mixtures used in commerce typically contain greater than ten percent total solvents.

[2] The Agency intends to propose to expand the EP toxicity characteristic within the next two months.

document (November 14, 1980) available in the docket.

Since the threshold level promulgated today is not based on health criteria, but rather on typical use patterns, we are not applying this threshold to all wastes that may contain one or more of these solvents. Instead, we will rely on the expansion of the EP toxicity characteristic to bring these waste streams into the hazardous waste management system.

B. Applicability of the Ten Percent Threshold Level for Solvent Mixtures

The majority of commenters support the ten percent threshold level. In addition, no one questioned whether these wastes are hazardous. However, several commenters suggested that the Agency develop health-based thresholds which would be protective of human health and the environment.

The Agency agrees with the commenters; however, at this time, we do not have the benefit of pre-established health-based thresholds for many of the listed solvents. Accordingly, this rule does not define the minimum concentration at which mixtures are considered hazardous, rather, it expands the category of materials considered "spent solvents" to include certain mixtures containing one or more of the listed solvents.

Another commenter stated that the ten percent threshold will relax current hazardous waste management practices since many persons in the regulated community have interpreted the solvent listings to include *all* solvent mixtures.

The Agency does not agree with the commenter. Agency data indicate that the ten percent threshold will capture the majority of solvents (mixtures) used in commerce simply because it represents a level well below the minimum concentration that is needed to impart the characteristics for which solvents are used. Also, the Agency believes that solvent formulators cannot successfully reformulate below the ten percent level and retain the desired characteristics of solvent mixtures.

In addition, one commenter asked whether the ten percent threshold applies to solvents listed solely for ignitability (*i.e.*, F003).

When EPA proposed the ten percent threshold for solvent mixtures, we included the ignitable solvents. The Agency has determined, however, that these solvents may not be ignitable at such low concentrations. Since the Agency has not evaluated these solvents for their toxicity, we are not applying the ten percent threshold to ignitable solvents.

C. Renumbering of EPA Hazardous Waste Nos. F001–F005

One commenter stated that renumbering of the listing will increase compliance costs for persons generating and handling hazardous waste due to the cost of relabeling containers, retraining workers, and revising hazardous waste management plans. Another commenter stated the renumbering would cause confusion in the future when annual reports, data manifests, transportation and storage logs are evaluated and compared with past records. Several commenters are also concerned that workers handling these toxic or ignitable solvents would be unaware of hazards posed by the waste (*e.g.*, corrosivity, toxicity or ignitability) if all solvents are grouped under a single waste code. Another commenter stated that many TSD's are "permitted" to handle only chlorinated solvents (F001 and F002). Thus, if all 27 solvents are listed under a single waste code, these facilities would face difficulties in distinguishing non-ignitable solvents from ignitable solvents (F003) which they may not be equipped to handle. Several commenters also stated that halogenated solvents should be distinguished from non-halogenated solvents because of differing management standards.

In considering these comments, the Agency has concluded that renumbering may not accomplish the objective for which it was initially considered—that is, to simplify recordkeeping and reporting for those who generate and manage these wastes. Rather, commenters have indicated that the proposed change will increase compliance costs and cause confusion in recordkeeping. In view of these concerns, we are retaining the original F001–F005 listings. Therefore, for purposes of recordkeeping and reporting, notification and manifesting, generators should specify each solvent constituent in a mixture, provided that a particular solvent constituent is not a contaminant or present in *de minimis* concentrations.

D. Regulation of Ignitable Solvents—F003

Several commenters were in favor of deleting ignitable spent solvents (F003) from the list of hazardous wastes. They stated that these solvents also are considered "hazardous waste" under the characteristic of ignitability; therefore, the listing is duplicative and unnecessary. One commenter, however, favored retaining the listing because many small facilities are not likely to have access to flash point testing.

Although the commenters are correct that ignitable spent solvents would exhibit the ignitability characteristic, these solvents are likely to contain other toxic contaminants. In fact, solvents become spent when they have been contaminated with other materials (*i.e.*, toxic heavy metals, or toxic organic compounds) and must be disposed, reprocessed, or reclaimed. If we were to remove these solvents from the list of hazardous wastes, we believe such action would conflict with the spirit of one of the new requirements under the Hazardous and Solid Waste Amendments of 1984. In particular, the Administrator is required, in evaluating delisting petitions, to consider factors (including additional constituents) other than those for which the waste originally was listed if there is a reasonable basis to believe that the waste still may be hazardous. (See 50 FR 28742, July 15, 1985.) Although this provision discusses generator-specific delisting petitions, we believe it consistent to make the same finding for a generic delisting as well, since such action ordinarily has far more potential impact on the environment than a generator-specific delisting. Thus, since spent solvents reasonably are likely to contain other toxicants at levels of regulatory concern, and since we have not evaluated those wastes for these other toxicants, we believe it inappropriate to remove these solvents from the hazardous waste list. Rather, persons who wish to delist these wastes will need to submit a site-specific delisting petition pursuant to the provisions in 40 CFR 260.20 and 260.22.

E. Effective Date

Several comments were received regarding the "effective immediately" provision of the rule. One commenter stated that the effective immediately provision is appropriate; however, several commenters stated that industry needs time to comply with the rule. They specifically stated that smaller companies or newly regulated facilities will be burdened by the provision. Companies need time to train personnel, and to design and build hazardous waste storage and processing equipment.

On November 29, 1985, the Agency promulgated a final rule to regulate waste and used oil burned for energy recovery in boilers and industrial furnaces (see 50 FR 49164). These rules prohibit the burning of hazardous waste in non-industrial boilers, including used oils adulterated by mixing with spent chlorinated solvents.

We believe the effectiveness of the rules on burning in non-industrial boilers will be reduced if solvent mixtures remain unregulated. Generators would be able to continue to commingle these solvents with waste oils destined for energy recovery. Based on the toxicity of chlorinated compounds, the Agency is concerned with possible adverse health effects posed by the burning of these wastes.

In balancing both of these concerns, the agency is establishing an effective date of thirty days for this rulemaking. This should allow generators adequate time to come into compliance and will still support the goals of the rule on burning in non-industrial boilers. The above reasons constitute good cause under the effective date section of RCRA, 42 U.S.C. 6930(b) and the Administrative Procedure Act, 5 U.S.C. 5531.

III. Effect of Today's Action

Today's amendment will close a major regulatory loophole which allows toxic solvent mixtures to remain unregulated; persons generating, treating, storing, transporting, or disposing of the wastes will be subject to the appropriate requirements under 40 CFR Parts 260 to 271. Effective in thirty days wastes covered by today's rulemaking are subject to the requirements for transportation, storage, and disposal of hazardous waste.

IV. Regulatory Impact

Under Executive Order 12291, EPA Must judge whether a proposed or final rule is "major" and, therefore subject to the requirement of a Regulatory Impact Analysis. This final rule is not a major rule because it is not expected to result in an effect on the economy of $100 million or more. Although some generators may be newly regulated, data from the RCRA notification data base indicate that many solvent generators also generate other RCRA hazardous wastes. The Agency believes, therefore, that the majority of solvent generators are already regulated under RCRA. Some of these generators may experience increased regulatory requirements; however, many generators of solvent mixtures are currently regulated under State hazardous waste regulations.

The Agency has completed an initial analysis of the potential impacts of this rule. (No comments were received on this analysis. The analysis indicates that worst-case costs may be substantial, but they are expected to be experienced by only a few generators. There will be no adverse impact on the ability of U.S.-based enterprises to compete with the foreign-based enterprises in domestic or export markets. Since this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

Although some generators will be newly regulated and some will experience an increased regulatory burden, this amendment is not expected to have a significant economic impact on a substantial number of small entities. The majority of these generators are already regulated under RCA and many are regulated under State hazardous waste regulations. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

This rule does not contain any information collection requirements subject ot OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

VII. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Impacts

The solvent mixtures designated as hazardous waste by today's rule become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101 (14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center for release. (See CERCLA section 103 and 5.0 FR 13456–13522, April 25, 1985.)

The final RQs for the solvent waste streams (*i.e.*, F001–F005) and the individual solvent constituents were published on April 4, 1985, (see 50 FR 13487). According to this rule, if the waste has more than one constituent of concern, the lowest RQ assigned to any one of the constituents present in the waste represents the RQ for the waste stream (see 50 FR 13463).

VIII. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule is promulgated pursuant to section 3001(e)(2) of RCRA, a provision added by the HSWA. Therefore, it is being added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA, and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules, and the modification is approved by EPA. Because the rule is promulgated pursuant to the HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of regulations that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs already may have regulations similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these regulations in lieu of EPA until the State program modification is approved. States with existing regulations may continue to administer and enforce their regulations as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including regulations equivalent to those promulgated. However, once authorized, a State must modify its program to include regulations substantially equivalent or equivalent to EPA's within the time periods discussed above.

List of Subjects

40 CFR Part 261

Hazardous materials, Recycling.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: December 23, 1985.

Lee M. Thomas,

Administrator.

For reasons set out in the preamble, 40 CFR Parts 261 and 271 are amended as follows:

Part 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. 40 CFR 261.31 is amended by revising EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005 to read as follows:

§ 261.31 Hazardous wastes from non-specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Generic: F001	The following spent halogenated solvents used in degreasing: tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F002	The following spent halogenated solvents: tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,2,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, and trichlorofluoromethane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F001, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F003	The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I)*
F004	The following spent non-halogenated solvents: cresols and cresylic acid, and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(T)
F005	The following spent non-halogenated solvents: toluene, methyl ethyl ketone, carbon disulfide, isobutanol, and pyridine; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.	(I)

*(I,T) should be used to specify mixtures containing ignitable and toxic constituents.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

3. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

4. Section 271.1(j) is amended by adding the following entry to Table 1 In chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

BEST COPY AVAILABLE

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation
. . . .	
Dec. 31, 1985	Amendment of spent solvent listings to [illegible]
. . . .	

[FR Doc. 85-30890 Filed 12-30-85; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6693]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, 500 C Street, Southwest, FEMA—Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain [illegible] assistance no longer available in special flood hazard areas
Region I					
Maine, Cumberland	Brunswick, town of	230042B	July 15, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Nov. 1, 1974, June 14, 1977, and Jan. 3, 1986	Jan 3, 1986
Rhode Island					
Washington	South Kingstown, town of	445407D	Sept. 11, 1970, Emerg.; June 23, 1972, Reg.; Jan. 3, 1986, Susp.	Nov. 1, 1974, June 14, 1977, and Jan. 3, 1985	Do

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area [illegible]	[illegible] assistance no longer available in special flood hazard areas
Providence	Pawtucket, city of	440022D	Jan. 15, 1971, Emerg., July 16, 1971, Reg.; Jan. 3, 1986, Susp.	July 16, 1971, July 1, 1974, June 11, 1976, Apr. 1, 1982, and Jan. 3, 1986.	Do.
Region II					
New Jersey: Bergen	Ho-Ho-Kus, borough of	340044B	Jan. 14, 1972, Emerg.; June 1, 1977, Reg.; Jan. 3, 1986, Susp.	June 22, 1973 and Jan. 3, 1986	Do.
New York: Jefferson	West Carthage, village of	[illegible]	July 30, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	May 10, 1974, Nov. 28, 1975, and Jan. 3, 1986.	Do.
Region IV					
Florida: Flagler	Beverly Beach, town of	120569B	May 12, 1977, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	June 24, 1977 and Jan. 3, 1986	Do.
North Carolina:					
Beaufort	Belhaven, town of	370015	Oct. 27, 1972, Emerg.; May 16, 1977, Reg.; Jan. 3, 1986, Susp.	Apr. 13, 1973, May 16, 1977, and Jan. 3, 1986	Do.
Do	Aurora, city of	370014B	June 4, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	May 3, 1974, May 28, 1976, and Jan. 3, 1986	Do.
Georgia: Glynn	Brunswick, city of	130093B	Mar. 6, 1974, Emerg.; June 19, 1985, Reg.; Jan. 3, 1986, Susp.	May 24, 1974, Jan. 9, 1976, and June 19, 1985	Do.
Region V					
Illinois:					
Mercer	Unincorporated areas	170806	Apr. 8, 1974, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Dec. 23, 1977 and Jan. 3, 1986	Do.
Pike	....do	170551	May 1, 1974, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Dec. 13, 1974, Feb. 18, and Jan. 3, 1986.	Do.
Scott	....do	170905B	Apr. 16, 1979, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Jan. 26, 1977 and Jan. 3, 1986	Do.
Alexander	....do	170811B	June 6, 1974, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Dec. 27, 1974, July 22, 1977, and Jan. 3, 1986	Do.
Ohio: Richland	Mansfield, city of	390477C	Apr. 2, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	May 17, 1974, Oct. 17, 1975, Mar. 2, 1979, and Jan. 3, 1986.	Do.
Region VII					
Missouri: Moniteau	Lupus, city of	[illegible]	Mar. 13, 1985, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Jan. 3, 1986	Jan. 3, 1987
Region VIII					
Colorado: Garfield	Unincorporated areas	[illegible]	Mar. 27, 1974, Emerg.; Dec. 15, 1977, Reg.; Jan. 3, 1986, Susp.	Dec. 15, 1977, and Jan. 3, 1986	Jan. 3, 1986
Region I—Minimal Conversions					
Maine: Oxford	Stoneham, town of	230340A	Oct. 1, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Feb 21, 1975 and Jan. 3, 1986	Jan. 3, 1986.
Massachusetts: Hampshire	Middlefield, town of	250166B	Jan. 22, 1976, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Dec. 20, 1974, Dec. 10, 1976, and Jan. 3, 1986	Do.
Rhode Island: Kent	West Greenwich, town of	440037A	Oct. 10, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Jan. 24, 1975 and Jan. 3, 1986	Do.
Vermont: Orleans	Albany, town of	500243A	Feb. 10, 1976, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Feb. 7, 1975 and Jan. 3, 1986	Do.
Region II					
New York: Otsego	Cherry Valley, village of	361449B	Oct. 1, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Nov. 15, 1974, May 28, 1976, and Jan. 3, 1986	Do.
Do	Morris, town of	361273C	Apr. 12, 1976, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Nov. 15, 1974, July 9, 1976, July 1, 1977, and Jan. 3, 1986.	Do.
Do	Richard Springs, village of	[illegible]	Sept. 11, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	Nov. 15, 1974 and Jan. 3, 1986	Do.
Region VI					
Arkansas: Lonoke	England, city of	050133B	May 6, 1975, Emerg.; Jan. 3, 1986, Reg.; Jan. 3, 1986, Susp.	May 10, 1974, Oct. 3, 1975, and Jan. 3, 1986.	Do.
Region V					
Wisconsin:					
Walworth	Genoa City, village of	550465B	Mar. 5, 1975, Emerg.; Sept. 4, 1985, Reg.; Jan. 3, 1986, Susp.	Jan. 9, 1974, May 15, 1976, and Sept. 4, 1985	Do.
Bayfield	Bayfield, city of	550017A	June 6, 1974, Emerg.; Sept. 4, 1985, Reg.; Jan. 3, 1986, Susp.	July 16, 1976, Sept. 18, 1985	Do.
Region VII					
Nebraska: Buffalo	Shelton, village of	310019B	Oct. 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.; Nov. 1, 1985, Rein.; Jan. 3, 1986, Susp	Mar. 19, 1976, Sept. 3, 1976, and Sept. 27, 1985.	Do.
Region I					
Maine: Sagadahoc	Bath, city of	230118B	Mar. 27, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Nov. 1, 1974, May 10, 1977 and Jan. 17, 1986	Jan. 17, 1986.
Massachusetts: Essex	Gloucester, city of	250082C	Dec. 1, 1972, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	July 26, 1974, Feb. 18, 1977, Oct. 1, 1986, and Jan. 17, 1986.	Do.
Region II					
New Jersey:					
Morris	East Hanover, village of	340341C	Aug. 18, 1972, Emerg.; Apr. 16, 1979, Reg.; Jan. 17, 1986, Susp.	Aug. 31, 1973, Apr. 16, 1979 and Jan. 17, 1986	Do.
Steuben	North Hornell, village of	361477A	Oct. 3, 1974, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Jan 3, 1975 and Jan. 17, 1986	Do.
Region V					
[illegible]					
Champaign	Sidney, village of	170033B	July 10, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Jan. 16, 1974, Oct. 10, 1975, and Jan. 17, 1986.	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain federal assistance no longer available in special flood hazard areas
Morgan	Unincorporated areas	[illegible]	Apr. 4, 1979, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	May 13, 1977 and Jan. 17, 1986.	Do.
Michigan: Shiawassee	Corunna, city of	[illegible]	Dec. 24, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Sept. 19, 1975 and Jan. 17, 1986.	Do.
Ohio:					
Hocking	Logan, city of	[illegible]	July 16, 1976, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	May 31, 1974, Sept. 10, 1970, July 13, 1979, and Jan. 17, [illegible]	Do.
Athens	Nelsonville, city of	[illegible]	July 7, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	May 10, 1974, Apr. 16, 1976, and Jan. 17, 1986.	Do.
Do	Chauncey, village of	[illegible]	Dec. 17, 1976, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	June 21, 1974, Apr. 16, 1976, and Jan. 17, 1986.	Do.
Region VI					
Texas: Brazoria	Freeport, city of	485467D	June 19, 1970, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Nov. 17, 1970, July 1, 1974, Oct. 31, 1975, and Jan. 17, 1986.	Do.
Region VII					
Kansas: Barton	Albert, city of	[illegible]	Apr. 3, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Dec. 27, 1974, and Jan. 17, [illegible]	Do.
Region I—Minimal Conversions					
[illegible]	Foster, town of	[illegible]	May 14, 1975, Emerg.; Dec. 4, 1985, Reg.; Jan. 17, 1986, [illegible]	Sept. 13, 1974, Sept. 10, 1976, and Dec. 4, 1985.	Do.
Region VI					
Arkansas:					
Mississippi	Dyess, town of	050143A	Sept. 10, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Oct. 18, 1974 and Jan. 17, [illegible]	Do.
Prairie	De Valls Bluff, city of	[illegible]	Apr. 22, 1975, Emerg.; Jan. 17, Jan. 17, Reg., 1986, Susp.	Dec. 27, 1974 and Jan. 17, 1986.	Do.
Arkansas	Gillett, city of	[illegible]	May 23, 1975, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Apr. 11, 1975 and Jan. 17, [illegible]	Do.
Louisiana: Vernon	Leesville, town of	220229B	Oct. 17, 1974, Emerg.; Jan. 17, 1986, Reg.; Jan. 17, 1986, Susp.	Nov. 23, 1973, Nov. 14, 1975 and Jan. 17, 1986.	[illegible]

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: December 20, 1985.

Jeffrey S. Bragg,

Administrator Federal Insurance Administration.

[FR Doc. 85-30751 Filed 12-30-85; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 64

[Docket No. FEMA 6694]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The date listed in the fifth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 646-2717, 500 C Street, Southwest, Donohoe Building—Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has indentified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subject in 44 CFR Part 64

Flood insurance, floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard areas identified
Iowa: Polk	Grimes, City of	[illegible]	Nov. 6, 1985, Emerg.; Nov. 6, 1985, Reg.	Mar. 5, 1976 and Sept. 30, 1983.
Nevada: Clark	Mesquite, City of	[illegible]	Nov. 6, 1985, Emerg	Nov. 1, 1985.
Wisconsin: Lincoln	Tomahawk, City of	550235B	Nov. 29, 1974, Emerg.; Sept. 4, 1985, Reg.; Sept. 4, 1985, Susp.; Nov. 1, 1985, Rein.	Sept. 4, 1985.
California: San Diego	Poway, City of	060702	Apr. 8, 1981, Emerg.; Aug. 19, 1985, Reg.; Aug. 19, 1985, Susp.; Nov. 6, 1985, Rein.	Nov. 30, 1982.
Vermont: Orleans	Derby, Town of [1]	500248B	Feb. 13, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.; Nov. 5, 1985, Rein.	Dec. 13, 1974, Nov. 19, 1976 and Sept. 27, [illegible].
New York: Herkimer	Newport, Town of [1]	361111B	June 3, 1976, Emerg.; Aug. 5, 1985, Reg.; Aug. 5, 1985, Susp.; Nov. 15, 1985, Rein.	Nov. 15, 1976.
Pennsylvania: Indiana	Conemaugh, Township of	421715	Nov. 18, 1985, Emerg	Dec. 6, 1974.
California: Ventura	Moorpark, City of	060712	Nov. 20, 1985, Emerg	
Vermont: Addison	Ripton, Town of [1]	[illegible]	Feb. 6, 1976, Emerg.; Aug. 18, 1985, Reg.; Aug. 18, 1985, Susp.; Nov. 22, 1985, Rein.	Jan. 17, 1975, Mar. 4, 1977 and Sept. 18, [illegible].
Virginia: Rockbridge	Goshen, town of [2]	510217B	June 10, 1975, Emerg.; Aug. 15, 1978, Reg.; Aug. 15, 1978, Susp.; Nov. 15, 1985, Rein.	Sept. 6, 1974, May 28, 1976 and Aug. 15, 1978.
New York: Lewis	Leyden, Town of [1]	[illegible]	July 7, 1975, Emerg.; June 19, 1985, Reg.; June 19, 1985, Susp.; Nov. 25, 1985, Rein.	July 19, 1974 and Mar. 26, 1976
Tennessee: Maury	Unincorporated Areas	470123	Nov. 29, 1985, Emerg	Dec. 2, 1977.
Texas: Fort Bend	Big Oaks Municipal Utility District [3]	481596 [4]	do	
Iowa: O'Brien	Sheldon, City of	190216B	July 25, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.; Nov. 27, 1985, Rein.	Dec. 24, 1976 and Sept. 18, 1985
Nebraska: Buffalo	Shelton, Village of	310019B	Oct. 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.; Nov. 1, 1985, Rein.	Mar. 19, 1976, Sept. 3, 1976 and Sept. 27, 1985.

[1] Minimal Conversions.
[2] Declared Disaster area.
[3] This community, Big Oaks Municipal Utility District, has adopted by reference Fort Bend County, Texas (#480228) Flood Hazard Boundary Map dated 7-9-76 for floodplain management and insurance purposes.
[4] New.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Region I				
Massachusetts: Essex	Newburyport, city of	250097C	Suspension withdrawn, Nov. 1, 1985	July 26, 1974, Oct. 22, 1976, Feb. 15, 1978 and Nov. 1, 1985.
Region II				
New Jersey: Bergen	Oakland, borough of	345309C	do	July 1, 1970, July 1, 1974, July 23, 1976, Aug. 20, 1982 and Nov. 1, 1985
New York: Ulster	Rosendale, town of	[illegible]	do	May 31, 1974, July 2, 1976 and Nov. 1, [illegible]
Region III				
Pennsylvania: Franklin	Waynesboro, borough of	420473A	do	Dec. 3, 1976 and Nov. 1, 1985.
Region IV				
Florida: Okaloosa	Valparaiso, city of	120176C	do	June 17, 1970, Jan. 9, 1976, Apr. 1, 1977 and Nov. 1, 1985.
Kentucky: Pike	Elkhorn City, city of	210356B	do	Mar. 16, 1979 and Nov. 1, 1985.
Region VI				
Louisiana:				
Jefferson	Gretna, city of	225198D	do	June 18, 1971, July 1, 1974, Feb. 13, 1976 and Nov. 1, 1985.
Do	Kenner, city of	225201B	do	June 28, 1971, July 1, 1974, Aug. 22, 1975 and Nov. 1, 1985.
Texas: Harris	LaPorte, city of	485487D	do	Feb. 17, 1971, July 1, 1974, Aug. 22, 1975 and Nov. 1, 1985.
Region VII				
Missouri: St. Louis	Unincorporated areas	290327E	do	Sept. 15, 1978, July 13, 1979, Nov. 16, 1983 and Nov. 1, 1985.
Region VIII				
Wyoming: Uinta	Evanston, city of	560054	do	May 21, 1976.
Region I—Minimal Conversions				
Maine:				
Piscataquis	Brownville, town of	230161B	do	Sept. 6, 1974 and Nov. 1, 1985.
Somerset	Caratunk, town of	[illegible]	do	Nov. 1, 1985.
Waldo	Liberty, town of	230259A	do	Mar. 4, 1975 and Sept. 27, 1985.
Vermont:				
Chittenden	Hinesburg, town of	[illegible]	do	Jan. 31, 1975, Feb. 7, 1978 and Sept. 27, [illegible].
Bennington	Readsboro, town of	500017B	do	May 31, 1974, Feb. 16, 1977 and Sept. 27, 1985.
Region IV				
Mississippi: Tallahatchie	Glendora, city of	280210B	do	Jan. 10, 1975, Dec. 8, 1978 and Sept. 27, 1985.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Region V				
Minnesota: Hennepin	Eden Prairie, city of	2701598	do	Mar. 1, 1974, Sept. 28, 1975 and Sept. 27, 1985.
Region VII				
Iowa: Sioux	Rock Valley, city of	1902538	do	Nov. 1, 1985.
Nebraska: Buffalo	Gibbon, city of	3109108	do	May 31, 1974, July 23, 1976 and Sept. 27, 1985.
Region II				
New Jersey:				
Middlesex	Old Bridge, township of	340286K	Nov. 15, 1985, suspension withdrawn	June 28, 1974, Apr. 30, 1976, Nov. 23, 1981 and Nov. 15, 1985.
Hunterdon	Raritan, township of	340249A	do	July 26, 1974 and Nov. 15, 1985.
New York:				
Orange	Blooming Grove, town of	3600998	do	June 7, 1974, Sept. 17, 1976 and Nov. 15, 1985.
Westchester	Yorktown, town of	360877B	do	Sept. 20, 1974, July 16, 1976 and Nov. 15, 1985.
Region III				
Washington, DC	District of Columbia	110001B	do	Nov. 1, 1974, Oct. 10, 1978 and Nov. 15, 1985.
Maryland: Wicomico	Fruitland, city of	240139B	do	Jan. 28, 1977 and Nov. 15, 1985.
Region IV				
Florida:				
Santa Rosa	Milton, city of	120275B	do	May 24, 1974, June 1, 1977, July 18, 1985
Okaloosa	Unincorporated areas	120173D	do	Jan. 3, 1975, July 1, 1977, Oct. 1, 1983 and July 18, 1985
Region V				
Illinois: Cass	Unincorporated areas	170809B	do	Jan. 30, 1981 and Nov. 15, 1985
Wisconsin: Shawano	do	550417	do	Oct. 14, 1977 and Nov. 15, 1985
Louisiana: East Baton Rouge Parish	Unincorporated areas	220066C	do	Nov. 22, 1974, July 2, 1979, July 6, 1982 and Nov. 15, 1985.
Region VIII				
Colorado: Grand	Winter Park, town of	080085A	do	Nov. 15, 1985
Region IX				
Guam	Territory of Guam	660001B	do	Aug. 8, 1978 and Nov. 15, 1985
Nevada: Churchill	Unincorporated areas	320036C	do	Dec. 27, 1977, June 12, 1979 and Nov. 15, 1985
Region X				
Oregon:				
Lane	Cottage Grove, city of	4101888	do	Feb. 22, 1974, Feb. 6, 1976 and Nov. 15, 1985.
Curry	Gold Beach, city of	410054C	do	Nov. 23, 1973, Sept. 13, 1974, July 30, 1976 and Nov. 15, 1985
Regional Technical Commissioner				
Vermont: Caledonia	Waterford, town of	500200	do	Nov. 15, 1985.
Region VIII				
South Dakota:				
Spink	Redfield, town of	460087B	do	Aug. 2, 1974, Jan. 2, 1976 and Nov. 15.
Hutchinson	Parkston, city of	460047B	do	June 14, 1974, Jan. 2, 1976 and Nov. 15, 1985.

Code for reading 4th column: Emerg.—Emergency, Reg.—Regular, Susp.—Suspension, Rein.—Reinstatement.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

Issued: December 20, 1985.

[FR Doc. 85-30752 Filed 12-30-85; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

48 CFR Parts 214, 215, 227 and 252

Department of Defense Federal Acquisition Regulation Supplement; Technical Data; Correction

AGENCY: Department of Defense.

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule on technical data which was published in the **Federal Register** on Thursday, October 24, 1985 (50 FR 43158). The action is necessary to correct the effective date which was shown in error.

DATE: Effective for all solicitations issued on or after October 18, 1985. Comments on the interim rule must be received on or before January 9, 1986.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council ODASD(P)/DARS, c/o OUSDRE(M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the Department of Defense is correcting the effective date to read: "Effective for all solicitations issued on or after October 18, 1985."

[FR Doc. 85-30881 Filed 12-30-85; 8:45 am]

BILLING CODE 3810-01-M

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Part 750

[AIDAR Notice 85-12]

Miscellaneous Changes to the AID Acquisition Regulation

Correction

In FR Doc. 85-29081 beginning on page 50301 in the issue of Tuesday, December 10, 1985, make the following correction on page 50303: In the first column, in amendatory instruction 18, in the sixth line, "Procedure" should read "Procurement".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 41155-5175]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions and request for comments.

SUMMARY: NOAA issues this notice establishing restrictions to limit the levels of fishing in 1986 for widow rockfish, the *Sebastes* complex of rockfish, Pacific ocean perch, and sablefish taken off the coasts of Washington, Oregon, and California, and seeks public comment on these actions. These actions are authorized under regulations implementing the Pacific Coast Groundfish Fishery Management Plan and are necessary because biological stress to these stocks has been identified or is expected to occur if landings are not restricted. These actions are intended to lower fishing rates, reduce or prevent biological stress, and avoid or reduce the probability of a fishery closure before the end of the year. This action supersedes fishing restrictions imposed in 1985 for these species.

EFFECTIVE DATE: 0001 hours (Pacific Standard Time) January 1, 1986, until modified, superseded, or rescinded. Comments will be accepted through January 15, 1986.

ADDRESSES: Submit comments on these actions to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115; or Mr. E.C. Fullerton, Director, Southwest Region, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, E.C. Fullerton at 213-548-2575, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: This action supersedes the Federal Register notices closing the sablefish fishery (50 FR 50399, December 16, 1985) and setting trip limits for widow rockfish (50 FR 30195, July 24, 1985), the *Sebastes* complex of rockfish (50 FR 41159, October 9, 1985), and Pacific ocean perch (50 FR 24777, June 13, 1985).

The Pacific Coast Groundfish Fishery Management Plan (FMP) provides the means for managing over 80 species of groundfish caught in ocean waters off Washington, Oregon, and California. The FMP differentiates between species with numerical and nonnumerical optimum yields (OYs). A species which may be harvested fairly selectively has a numerical OY which is the maximum amount of that species that may be landed in a year; landings in excess of OY are prohibited. Widow rockfish (*Sebastes entomelas*), Pacific ocean perch (*S. alutus*), and sablefish (*Anoplopoma fimbria*) have numerical OYs. When landing rates become too high, trip limits are imposed to extend the fishery as long as possible throughout the year and to avoid complete closure. Nonetheless, in 1985 the coastwide sablefish fishery was closed before the end of the year because its OY quota was reached.

Species which are not harvested selectively, or for which there is very little commercial interest, or about which there is little scientific data, are part of the non-numerical OY group and are managed most commonly by gear, area, and landing restrictions. An estimate of the acceptable biological catch (ABC), the annual catch that could be taken without jeopardizing the resource's productivity, has been made for most species in this group. Some species in the non-numerical OY group may be fished above the ABC. However, when a species in the group is biologically stressed, or is expected to be, the Secretary of Commerce (Secretary) may determine that harvest of the group as a whole should be reduced even though some species in the group may not be stressed. This usually has been done by establishing a "harvest guideline" for the group as a whole and setting trip limits to achieve this harvest goal. The harvest guideline may be, but is not necessarily, designated as a quota.

The regulations implementing the FMP at 50 CFR Part 663 allow the Secretary to reduce fishing levels if it is determined that continued fishing at current levels would cause biological stress to any species. The Pacific Fishery Management Council (Council) documented biological stress to widow rockfish in 1982 and to another species, yellowtail rockfish, within the multi-species *Sebastes* complex (all species of rockfish managed under the FMP except Pacific ocean perch, shortbelly and widow rockfish and *Sebastolobus* rockfishes) in 1983. Pacific ocean perch, which is managed under a 25-year rebuilding schedule set forth in the FMP, is considered to be under long-term stress. The Council also acknowledged the increased likelihood of biological stress occurring in sablefish if fishing levels were not reduced. Management regimes were implemented for widow rockfish, Pacific ocean perch, and sablefish, all regulated by quotas in 1985, with the intent of avoiding the closure of these fisheries which would occur if the quota were reached before the end of the year. Limits also were placed on the *Sebastes* complex fishery in an attempt to keep landings close to the harvest guideline.

In its deliberations for 1986 management, the Council considered advice from its Groundfish Management Team (State and Federal fishery and social scientists), Groundfish Advisory Subpanel (fishing industry and consumer representatives), Scientific and Statistical Committee (State, Federal, and university scientists), the concerned public, and an *ad hoc* Task Group created by the Council for the purpose of recommending methods of limiting landings with minimal disruption to the fishing industry. The Task Group included representatives from the Council, the Groundfish Management Team, and the fishing industry.

At its November 13-14, 1985, meeting in Seattle, Washington, the Council reviewed the latest data and developed management measures intended to limit landings of groundfish in 1986, thereby minimizing the likelihood or intensity of biological stress on groundfish stocks, and reducing the chances of having to close a fishery before the end of the year. In each case, the Council recommended some kind of trip limit. The Council's recommendations for 1986 and actions taken by the Secretary on those recommendations are presented below. Because the vast majority of groundfish landed off Washington,

Oregon, and California is taken from the fishery conservation zone (FCZ), 3 to 200 nautical miles offshore, all groundfish taken and retained or landed in violation of these restrictions will be treated as though they were taken in the FCZ, the same as in 1984 and 1985.

Widow Rockfish

Council Recommendation: The Council recommended a trip limit of 30,000 pounds of widow rockfish, with only one landing above 3,000 pounds per vessel per week. This limit will be applied coastwide and is subject to inseason adjustments so that the OY is not exceeded before the end of 1986.

Rationale: The widow rockfish resource is in better condition than was indicated by previous analyses. The maximum sustainable yield (MSY), an average of the largest catch which can be taken continuously over time without depleting the stock, is estimated at, 9,200 mt (6,880 mt to 11,100 mt) rather than the previous estimate of 5,880 mt. It appears that the stock is close to levels which produce MSY. Evidence of juvenescence still is apparent but it is not clear whether this indicates stress: In 1984, over 60 percent of the widow rockfish landed were less than nine years old, the age at which all fish of this species are mature.

Trip limits have been used to limit landings of widow rockfish since 1982. Even though OY will be 10 percent higher in 1986 than in 1985, it is clear that the rate of landings will need to be restricted in 1986 in order to extend the fishery throughout the year.

In 1985, the year started with a 30,000-pound trip limit and a biweekly option which gave fishermen the choice of landing 60,000 pounds of widow rockfish once every two weeks. However, by choosing the biweekly option, fishermen were able to avoid bad weather and had more likelihood of taking their limit than if they had fished for two weeks under the weekly limit. The biweekly option also favors larger vessels, many of which are involved in joint ventures later in the year. In May, the biweekly option was eliminated in order to slow landings (50 FR 18668, May 2, 1985). Landing rates remained too high, however, and when 90 percent of OY was reached in July, a 3,000-pound trip limit was imposed (50 FR 30195, July 24, 1985) which remained in place the rest of 1985. The OY was not reached in 1985.

In 1986, the year will start with a 30,000-pound weekly trip limit as in 1985, but the biweekly option will not be available early in the year when weather is poor and large vessels are available and capable of fishing. If landings are not curtailed sufficiently, further limits may be imposed later in the year.

Secretarial Action: The Secretary concurs with the Council's recommendation and herein announces:

(1) No more than 30,000 pounds (round weight) of widow rockfish may be taken and retained, or landed, per vessel per fishing trip in a one-week period. Only one landing of widow rockfish above 3,000 pounds (round weight) may be made per vessel in that one-week period. "One-week period" means seven consecutive days beginning 0001 hours Sunday and ending 2400 hours Saturday, local time.

(2) Only one landing above 3,000 pounds of widow rockfish may be made during the week of December 29, 1985–January 4, 1986. It is unlawful to take and retain, possess, or land fish in excess of the 1985 trip limits until the new trip limits are effective on Janaury 1, 1986.

(3) This restriction applies to all widow rockfish taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

Sebastes Complex

Council Recommendation: The Council recommended that the harvest guideline for the *Sebastes* complex should equal the sum of the ABCs for those species taken north of Coos Bay, Oregon (43°22′ N. latitude), which equals 10,100 mt. To achieve this, the Council recommended a trip limit of 25,000 pounds on the *Sebastes* complex taken north of Coos Bay (of which no more than 10,000 pounds could be yellowtail rockfish), with only one landing above 3,000 pounds allowed per vessel per week. It also provided fishermen with the option of a biweekly limit which allows landing up to 50,000 pounds in one trip (of which no more than 20,000 pounds could be yellowtail rockfish) in a two-week period, or a twice-weekly limit which allows two landings up to 12,500 pounds each (of which no more than 5,000 pounds could be yellowtail rockfish) in a one-week period, but only if proper notification is made. The Council also recommended maintaining the 40,000-pound trip limit for landings of the *Sebastes* complex caught south of Coos Bay, with no limit on the number of landings allowed per week.

Rationale: The harvest guideline for the *Sebastes* complex of rockfish caught north of Coos Bay, Oregon (43°22′ N. latitude) is 10,100 mt, the same in 1986 as in 1985 and 1984 (in spite of slight changes in the management area), and equals the sum of the ABCs of the species in the complex. Yellowtail rockfish, a dominant component in the *Sebastes* complex in the Vancouver and Columbia areas, was documented as biologically stressed in March 1983 (48 FR 8283, February 28, 1983). Trip limits have been imposed since that time in attempts to reduce the harvest of this species which had been landed at rates exceeding the annual ABC estimates for six of the past seven years. Because yellowtail frequently are caught with other species in the multispecies *Sebastes* complex, limits were placed on the complex as a whole. In 1985, weekly trip limits for the *Sebastes* complex in the Vancouver and Columbia areas were adjusted from 30,000 pounds (containing no more than 10,000 pounds of yellowtail rockfish) in January to 15,000 pounds (containing no more than 5,000 pounds of yellowtail rockfish) in May, and to 20,000 pounds (containing no more than 5,000 pounds of yellowtail rockfish) in October. Biweekly and twice weekly landing options were available. Landings of the *Sebastes* complex in 1985 are expected to be below the 10,100 mt harvest guidelines and landings of yellowtail rockfish are expected to be slightly above the 1985 ABC of 2,700 mt for the Vancouver and Columbia areas combined.

The stock biomass of yellowtail rockfish has been declining for the past 19 years although it has stabilized in the past three years. Recent analyses indicate that the stock may not be stressed as previously thought; the Columbia area stock is assumed to be relatively healthy whereas the current biomass in the Vancouver area is at the low end of the estimated range of biomass needed to produce MSY. However, it is clear from historical data that unrestricted landings would exceed ABC significantly, thereby increasing the likelihood of biological stress on yellowtail rockfish. Accordingly, trip limits will be set for 1986 which will be very similar to those in effect in 1985 which kept landings close to the 1986 harvest guideline for the *Sebastes* complex and ABC for yellowtail rockfish.

Secretarial Action: The Secretary concurs with the Council's recommendations and herein announces—

(1) Definitions

(a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* species of rockfish (which includes idiot rockfishes).

(b) "One-week period" means seven consecutive days beginning 0001 hours Sunday and ending 2400 hours Saturday, local time.

(c) "Two-week period" means 14 consecutive days beginning at 0001 hours Sunday and ending 2400 hours Saturday, local time.

(d) All weights are round weights of the whole fish.

(2) General

(a) These restrictions apply to all fish of the *Sebastes* complex taken and retained in ocean waters (0-200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

(b) There is no limit on the number of landings under 3,000 pounds of the *Sebastes* complex allowed per week.

(c) It will be presumed that all fish of the *Sebastes* complex which are possessed or landed north of the north jetty at Coos Bay, Oregon (43°22' N. latitude), hereafter referred to as Coos Bay, were caught north of Coos Bay unless compliance with paragraphs (3) can be demonstrated.

(d) It is unlawful to take and retain, possess, or land fish in excess of the 1985 trip limits until the new trip limits are effective on January 1, 1986.

(3) Restrictions on the Sebastes Complex Caught North of Coos Bay

(a) Weekly trip limit. Except for the biweekly and twice-weekly trip limits provided in paragraphs (3)(b) and (3)(c), no more than 25,000 pounds of the *Sebastes* complex, including no more than 10,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a one-week period north of Coos Bay. Only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that one week period.

Note.—If fishing under the weekly trip limit, only one landing above 3,000 pounds of the *Sebastes* complex may be made during the week of December 29, 1985–January 4, 1986.

(b) Biweekly trip limit. If the appropriate agency is notified as required by this paragraph, up to 50,000 pounds of the *Sebastes* complex, including no more than 20,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip in a two-week period north of Coos Bay. Having so notified the appropriate agency, only one landing of the *Sebastes* complex above 3,000 pounds may be made per vessel in that two-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to use the biweekly trip limit and must use only the biweekly trip limit unless rescinded in writing.

Note.—Biweekly trip limit options in effect on December 29, 1985, will continue until modified or terminated under the provisions set forth in this notice.

The State of Oregon or California must receive a written notice declaring intent to use the biweekly limits before the first day of the first two-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the two-week period in which this rescission is to occur. The State of Washington must receive written notice declaring intent to use the biweekly limits postmarked at least seven days before the first day of the first two-week period in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this rescission is to occur.

Notifications must be submitted to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 98365, telephone 503–867–4741; P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515; between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462; or to the Washington Department of Fisheries, 115 General Administration Building, Olympia, WA 98504; or to the California Department of Fish and Game, Branch Office, 619 Second Street, Eureka, CA 95501.

(c) Twice-weekly trip limit. If the appropriate agency is notified as required by this paragraph, up to 12,500 pounds of the *Sebastes* complex, including no more than 5,000 pounds of yellowtail rockfish, may be taken and retained, possessed, or landed, per vessel per fishing trip north of Coos Bay. Having so notified the appropriate agency, only two landings of the *Sebastes* complex above 3,000 pounds may be made per vessel in a one-week period, and only if compliance with this paragraph can be demonstrated. The vessel owner or operator must notify the fishery agency of the State where the fish will be landed in order to use the twice-weekly trip limit and must use only the twice-weekly trip limit unless rescinded in writing.

Note.—If fishing under the twice-weekly trip limit, only two landings above 3,000 pounds of the *Sebastes* complex may be made during the week of December 29, 1985–January 4, 1986. Twice-weekly trip limit options in effect on December 29, 1985, will continue until modified or terminated under the provisions set forth in this notice.

The State of Oregon or California must receive a written notice declaring intent to use the twice-weekly limits before the first day of the first one-week period in which such landings are to occur; the notice is binding for entire one-month periods (defined as two consecutive two-week periods). This notice of intent may be cancelled by notifying the appropriate State in writing prior to the week in which this rescission is to occur. The State of Washington must receive a written notice declaring intent to use the twice-weekly limits postmarked at least seven days before the first day of the first week in which such landings are to occur. This notice of intent may be cancelled by notifying the State in writing postmarked at least seven days before the calendar month in which this rescission is to occur. Notifications must be submitted to the same addresses given in paragraph (3)(b) of this section for biweekly trip limits.

(4) Restrictions on the Sebastes Complex Caught South of Coos Bay

No more than 40,000 pounds of the *Sebastes* complex may be taken and retained, possessed, or landed, per vessel per fishing trip south of Coos Bay. There is no limit on the number of landings allowed per week of the *Sebastes* complex caught south of Coos Bay.

(5) Operating both North and South of Coos Bay on a Fishing Trip

(a) Unless compliance with this paragraph (5) can be demonstrated, fishing for any groundfish species during a single fishing trip must occur either north or south, but not on both sides, of Coos Bay if more than 3,000 pounds of the *Sebastes* complex is landed from that trip. The vessel owner or operator must notify the State of Oregon of his intent to fish in one area and possess or land in the other, in which case fishing may occur both north and south of Coos Bay. Unless compliance with paragraph (5)(c) can be demonstrated, this notification must be made before leaving port on a fishing trip. If fishing occurs both north and south of Coos Bay during a single fishing trip, then the restrictions on the *Sebastes* complex caught north of Coos Bay apply.

(b) This notification, submitted by telephone or in writing, should be made to the Oregon Department of Fish and Wildlife, Marine Regional Office, Marine Science Drive, Building No. 3, Newport, OR 97365, telephone 503–867–4741; or P.O. Box 5430, Charleston, OR 97420, telephone 503–888–5515, between 8:00 a.m. and 4:30 p.m., and other times at 503–269–5000 or 503–269–5999; or 53 Portway Street, Astoria, OR 97103, telephone 503–325–2462.

(c) A vessel owner or operator at sea who has not made notification under this paragraph and who wishes to do so, or who wants to change the notification for the current fishing trip may do so by radio telephone (which must be confirmed in writing immediately on return to port). In this event, the provisions in paragraph (3) for the *Sebastes* complex caught north of Coos Bay will apply to all of the *Sebastes* complex taken in that trip, no matter where the fish are caught.

Pacific Ocean Perch

Council Recommendation: The Council recommended that, as long as more than 1,000 pounds of Pacific ocean perch are on board, the trip limit for that species caught north of Cape Blanco, Oregon (42°50; N. latitude) should be 20 percent (by weight) of all fish on board, or 10,000 pounds, whichever is less. As in 1985, landings of Pacific ocean perch less than 1,000 pounds per trip are unrestricted, regardless of the percentage on board.

Rationale: Pacific ocean perch is managed under a 20-year rebuilding schedule designed to rebuild the stressed stock to levels that will produce the MSY. Pacific ocean perch is considered to be under long-term stress and has been managed by trip limits since the FMP became effective in 1982.

In 1985, the fishery opened in January with a 20 percent (by weight) trip limit. This resulted in high landings and a subsequent restriction in May of 20 percent of 5,000 pounds, whichever is less. Landings for 1985 of Pacific ocean perch are expected to be below the 950-mt OY for the Columbia area and the 600-mt OY in the Vancouver area. The recommended action for 1986 raises the poundage limit to 10,000 pounds but retains the percentage limit at 20 percent in hopes that OY will be achieved in 1986.

Secretarial Action: The Secretary concurs with the Council's recommendation and herein announces—

(1) For Pacific ocean perch caught north of Cape Blanco, Oregon (42°50′ N. latitude), no more than 10,000 pounds or 20 percent (in round weights) of all fish on board, whichever is less, may be taken and retained, or landed, per vessel per fishing trip, with the following exception. Up to 1,000 pounds (round weight) of Pacific ocean perch may be taken and retained, or landed, per vessel per fishing trip, without regard to the 20 percent limitation.

(2) These restrictions apply to all Pacific ocean perch taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California.

Sablefish

Council Recommendation: The Council recommended that the 1985 management measures for sablefish should be continued in 1986. Accordingly, in 1986 the trip limit allowing retention of only 5,000 pounds of sablefish smaller than 22 inches applies to all ocean waters north of Point Conception (34°27′ N. latitude). As in 1984 and 1985, no size or trip limit for sablefish is imposed south of Point Conception.

Rationale: A 5,000-pound trip limit on sablefish smaller than 22 inches has been imposed since 1983 to reduce the likelihood of biological stress which is expected if landings of juvenile sablefish are not curtailed. The Council decided that there were compelling reasons to continue the size and trip limits in 1986. These reasons include the presence of a strong year class of small fish, the higher price per pound of larger fish, and the prudence of minimizing landings of juvenile fish which become the future brood stock.

Secretarial Action: The Secretary concurs with the Council's recommendation and hereby announces:

(1) No more than 5,000 pounds (round weight) of sablefish smaller than 22 inches (total length) may be taken and retained, or landed, per vessel per fishing trip in the area north of Point Conception, California (34°27′ N. latitude) to the U.S.-Canada border.

(2) Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length of the fish.

(3) For sablefish which have been "headed," the minimum size limit is 16 inches measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

(4) No sablefish may be retained which is in such condition that its length has been extended or cannot be determined by the methods stated above.

(5) The above restrictions apply to all sablefish taken and retained in ocean waters (0–200 nautical miles) offshore of, or landed in, Washington, Oregon, and California north of Point Conception.

Inseason Adjustments

At its April 1986 meeting, the Council will review the data available through March 1986, and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries during the year in order to avoid overfishing and to extend the fisheries as long as possible throughout the year.

Other Fisheries

These limits for sablefish, widow rockfish, Pacific ocean perch and the *Sebastes* complex apply to vessels of the United States, including those vessels delivering groundfish to foreign processors. Retention of these species by foreign fishing or processing vessels is limited by incidental percentage limits established under 50 CFR 611.70.

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions.

Landings of groundfish in the pink shrimp and spot and ridgeback prawn fisheries are governed by regulations at 50 CFR 663.28. If fishing for groundfish and spot or ridgeback prawns in the same fishing trip, the groundfish regulations in this notice apply.

Classification

The determination to impose these fishing restrictions is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours until the end of the comment period.

These actions are taken under the authority of §§ 663.22 and 663.23, and are in compliance with Executive Order 12291. The actions are covered by the Regulatory Flexibility Analysis prepared for the authorizing regulations.

Section 663.23 of the groundfish regulations states that the Secretary will publish a notice of action reducing fishing levels in proposed form unless he determines that prior notice and public review are impracticable, unnecessary, or contrary to public interest. If unrestricted, landings unquestionably will result in several ABCs being

exceeded in 1986. Prompt action to limit those fishing rates is necessary to protect the widow rockfish, *Sebastes* complex, Pacific ocean perch, and sablefish stocks and alleviate the necessity for fishery closures before the end of 1986. Consequently, further delay of these actions is impracticable and contrary to the public interest, and these actions are taken in final form effective January 1, 1986.

The public has had opportunity to comment on these management measures. The public participated in the Task Force, Groundfish Management Team, Groundfish Advisory Subpanel, and Council meetings in October and November 1985 that generated the management actions endorsed by the Council and the Secretary. Further public comments will be accepted for 15 days after publication of this notice in the **Federal Register.**

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries.

(16 U.S.C. 1801 *et seq.*)

Dated: December 26, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 85–30894 Filed 12–30–85; 8:45 am]

BILLING CODE 3510-22-M

BEST COPY AVAILABLE

Proposed Rules

Federal Register
Vol. 50, No. 251
Tuesday, December 31, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

Cost-of-Living Allowance and Post Differential—Nonforeign Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking; notice of extension of public comment period.

SUMMARY: OPM is extending for sixty days the public comment period for responding to the proposed regulations covering the nonforeign area cost-of-living allowance and the post differential. The proposed regulations were published at 50 FR 42531 on October 21, 1985. The original expiration date of the comment period was December 20, 1985. One commenter requested extension of the comment period until March 1, 1986, to provide additional opportunity for analysis and comment. The public comment period is now extended to February 21, 1986.

DATES: The comment period is extended from December 20, 1985, to February 21, 1986.

ADDRESS: Send or deliver written comments to U.S. Office of Personnel Management, Compensation Group, Allowances and Special Rates Division, Room 3353, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Barry E. Shapiro, (202) 632–7471.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 85–30897 Filed 12–30–85; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 84–118]

Interstate Movement of Cattle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations concerning the requirement that an owner-shipper statement or other document containing specified information accompany certain cattle during interstate movement.

It is proposed to delete the requirement that cattle be accompanied by such an owner-shipper statement or other document when moved interstate if the following conditions are met: If the cattle are moved interstate to a slaughtering establishment operating under Federal or State inspection or to a stockyard specifically approved under 9 CFR 78.25(b); if the cattle are moved from a farm or other premises where the cattle to be moved interstate have been kept for not less than four months prior to the date of movement; and if such farm or other premises have not had on the premises any cattle or bison from any other premises within four months prior to the date of movement. This action appears to be warranted. The information on the owner-shipper statement or other document, in combination with the individual identification on the animal, is intended to allow an animal found to be infected with a disease to be traced back through marketing channels, and thereby help identify the source of the disease and other animals affected with or exposed to the disease. It appears that the proposed changes would not lessen the ability to accomplish these purposes.

Further, for those movements of cattle for which an owner-shipper statement or other document would still be required, it is proposed to require additional information on the owner-shipper statement or other document. It appears that the additional information would be helpful in determining the source and extent of spread of a disease in the event of a disease outbreak.

DATE: Written comments must be received on or before March 3, 1986.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, Hyattsville, MD 20782. Comments should state that they are in response to Docket No. 84–118. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. R.E. Wagner, Chief Staff Veterinarian, Interstate Inspection and Compliance, VS, APHIS, USDA, Room 809, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8884.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 71 (referred to below as the regulations) contain general provisions concerning the interstate transportation of animals and animal products. The regulations are designed to help prevent the interstate spread of communicable diseases of livestock and poultry.

Under § 71.18 of the regulations, as a condition of interstate movement, certain cattle two years of age or older must meet specified requirements concerning individual identification, and must be accompanied by a statement signed by the owner or shipper of the cattle, or other document [1] stating: (a) The point from which the animals are moved interstate; (b) the destination of the animals; (c) the number of animals covered by the statement, or other document; and (d) the name and address of the owner or shipper. Under specified circumstances, it is required that the owner-shipper statement or other document also state the identifying numbers of backtages, eartags, or other approved identification applied.

The information on the owner-shipper statement or other document, in combination with the individual identification on the animal, is intended to allow an animal found to be infected with a disease to be traced back through marketing channels and thereby help identify the source of the disease and other animals affected with or exposed to the disease.

[1] Other document means a shipping permit, an official health certificate, an official brand inspection certificate, a bill of lading, a waybill, or an invoice on which is listed the required information.

Deletion of Requirement for Owner-Shipper Statement or Other Document for Certain Movements

Records generated as a result of requirements that certain cattle be accompanied by an owner-shipper statement or other document are often the only feasible means of tracing such cattle from a destination back to previous places where the cattle have been. However, it appears that under certain limited circumstances it is not necessary to require that cattle be accompanied by an owner-shipper statement or other document. In this connection, it is proposed to amend § 71.18 of the regulations by deleting the requirement that cattle be accompanied by such an owner-shipper statement or other document if the following conditions are met: If the cattle are moved interstate to a slaughtering establishment operating under Federal or State inspection or to a stockyard specifically approved under 9 CFR 78.25(b); if the cattle are moved from a farm or other premises where the cattle to be moved interstate have been kept for not less than four months prior to the date of movement; and if such farm or other premises have not had on the premises any cattle or bison from any other premises within four months prior to the date of movement.

The proposal to delete the requirement that such cattle be required to be accompanied by an owner-shipper statement or other document appears to be warranted. Records kept in the ordinary course of business at such slaughtering establishments and stockyards would be adequate to identify the farm or other premises from which the cattle were moved. Further, if cattle with a communicable disease have been moved directly from a farm or other permises where they have been kept for not less than four months prior to the date of movement and which have not had on the premises cattle or bison from any other premises within four months prior to the date of movement, such premises are likely to be the primary foci of infection for cattle moved from the primises that are later found to be diseased. Under the circumstances described above, it is likely that an animal found to be infected with a communicable disease would have contracted the disease and have exposed other animals to the disease at the farm or other premises where it has been for the previous four month period. Accordingly, traceback to such premises would likely be adequate to identify the source of the disease and other animals affected with or exposed to the disease.

Under the proposal, cattle would not be exempt from the requirements concerning the owner-shipper statement or other document if the cattle are moved from a farm or other premises where they have been kept for less than four months prior to the date of movement; or if such farm or other premises have had on the premises cattle or bison from any other premises within four months prior to the date of movement. An interstate movement of such cattle would likely contain cattle that in the previous four months had either been on several different premises or had been mingled with cattle or bison from several different premises. Without the requirement for an owner-shipper statement, the point from which such cattle were moved interstate may not be adequately identified by records kept at such slaughtering establishments or stockyards, thus making it difficult to trace diseased animals back to their herds of origin. Also, even if diseased cattle can be traced back to the point from which the cattle were moved interstate to the slaughtering establishment or stockyards, it is likely that further traceback would be necessary to locate the primary source of the disease. Experience has indicated that in a subsequent traceback of diseased cattle there is often difficulty in securing the name and address of the last previous owner from the owners or shippers who moved the cattle interstate.

The proposed provisions concerning animals from other premises relate only to cattle or bison. It is unlikely that facilities on such premises used for cattle or bison would be used for other animals.

Information on Owner-Shipper Statement or Other Document

Further, for those movements of cattle for which an owner-shipper statement or other document would still be required, this document proposes to change the provisions concerning the information that must be included on an owner-shipper statement or other document. As noted above, § 71.18 currently requires that the owner-shipper statement, or other document, include the name and address of the owner or shipper. It is proposed to require that the owner-shipper statement or other document include both the name and address of the owner at the time of movement and the name and address of the shipper, in addition to the other information currently required to be included. It is further proposed to require that the owner-shipper statement or other document include the name and address of the last previous owner if ownership changed within four months prior to movement.

It appears that this additional information would be available to the owner or shipper at the time of the interstate movement of the animal. Further, in the event of disease outbreak, this information would be helpful to State and Federal officals trying to trace movements, if any, of cattle and thereby determine the source and extent of spread of a disease.

It is not proposed to require that the owner-shipper statement or other document include the name and address of any owners prior to the last previous owner. It appears that such a requirement would be impracticable, since in most instances the information would not be readily available.

Further, it is not proposed to require the name and address of the last previous owner if ownership has not changed within the four month period prior to the interstate movement of the animal. Based on Departmental experience (including consideration of incubation periods for communicable diseases), it would be likely that cattle found to be infected with a communicable disease would have contracted the disease within the four month period prior to movement.

Miscellaneous

Also, certain nonsubstantive changes would be made for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is not anticipated that this action would have any significant effect on the

number of cattle moved interstate within the United States or on the cost of moving such animals interstate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

Paperwork Reduction Act

In accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), the information collection provisions that are included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Written comments concerning any information collection provisions should be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, D.C. 20503. A duplicate copy of such comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, 6505 Belcrest Road, Hyattsville, MD 20782.

List of Subjects in 9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

PART 71—GENERAL PROVISIONS

Accordingly, it is proposed to amend 9 CFR Part 71 as follows:

1. The authority citation for Part 71 would be revised to read as set forth below and the authority citations following all the sections in Part 71 would be removed:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17 2.51, and 371.2(d).

§ 71.18 [Amended]

2. In § 71.18 footnote number 1 would be revised to read as follows:

[1] Department approved backtags are available at slaughtering establishments operating under Federal or State inspection, at stockyards specifically approved under § 78.25(b) of this chapter, and from State representatives and Veterinary Services representatives as defined in § 78.1 of this chapter. Information with respect to slaughtering establishments operating under Federal inspection and stockyards specifically approved may be obtained as indicated in §§ 78.24 and 78.25 of this chapter.

3. In paragraph (a)(1)(i) of § 71.18 "except as provided in paragraph (a)(5) of this section," would be added after "and if".

4. In paragraph (a)(1)(i) of § 71.18 "(e)" would be changed to "(g)" and "(d) the name and address of the owner or shipper, and" would be changed to "(d) the name and address of the owner at the time of movement; (e) the name and address of the previous owner if ownership changed within four months prior to the movement of the cattle; (f) the name and address of the shipper; and".

5. In paragraph (a)(1)(i) of § 71.18 "slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or slaughtering establishment specifically approved under § 78.16(b) of this subchapter;" would be changed to "slaughtering establishment operating under Federal or State inspection;"

6. In paragraph (a)(1)(ii) of § 71.18 "slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or slaughtering establishment specifically approved under § 78.16(b) of this subchapter;" would be changed to "slaughtering establishment operating under Federal or State inspection;"

7. In paragraph (a)(1)(ii) or § 71.18 "subdivision (i), and when moved interstate," would be changed to "paragraph (a)(1)(i) of this section and, except as provided in paragraph (a)(5) of this section, when moved interstate,".

8. In paragraph (a)(1)(ii) of § 71.18 "(d) the name and address of the owner or shipper:" would be changed to "(d) the name and address of the owner at the time of movement; (e) the name and address of the previous owner if ownership changed within four months prior to the movement of the cattle; and (f) the name and address of the shipper:".

9. In paragraph (a)(1)(ii) of § 71.18 "federally inspected or specifically approved slaughtering establishment" would be changed to "slaughtering establishment operating under Federal or State inspection" each time it appears.

10. In paragraph (a)(1)(iii) of § 71.18 "(e) the name and address of the owner or shipper:" would be changed to "(e) the name and address of the owner at the time of movement; (f) the name and address of the previous owner if ownership changed within four months prior to the movement of the cattle; and (g) the name and address of the shipper:".

11. In paragraph (a)(1)(iii) of § 71.18, "and are accompanied" would be changed to "and, except as provided in paragraph (a)(5) of this section, are accompanied".

12. In § 71.18, a new paragraph (a)(5) would be added to read as follows:

§ 71.18 Individual identification of certain cattle 2 years of age or over for interstate movement.

(a) * * *

(5) Cattle that would otherwise be required to be accompanied by an owner-shipper statement or other document as a condition of interstate movement under paragraph (a)(1) of this section, shall not be required to be accompanied by such an owner-shipper statement or other document if the following conditions are met: if the cattle are moved to a slaughtering establishment operating under Federal or State inspection or to a stockyard specifically approved under § 78.25(b) of this chapter; if the cattle are moved from a farm or other premises where the cattle to be moved interstate have been kept for not less than four months prior to the date of movement; and if such farm or other premises have not had on the premises any cattle or bison from any other premises within four months prior to the date of movement.

Done at Washington, DC, this 24th day of December 1985.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–30856 Filed 12–30–85; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 78

[Docket No. 85–073]

Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations governing the interstate movement of cattle because of brucellosis. It is proposed to amend the regulations to provide that as a condition of attaining and maintaining status for a State or Area as Class Free, Class A, Class B, and Class C, such States or Areas must meet certain conditions concerning individual herd plans. It is further proposed to amend the criteria for designating States or Areas as quarantined. In addition, it is proposed to quarantine the State of

Oklahoma. It appears that these actions are necessary in order to help prevent the interstate spread of brucellosis.

DATE: Written comments must be received on or before March, 3, 1986.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket No. 85–073. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 pm., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. G.H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

The brucellosis regulations (contained in 9 CFR Part 78 and referred to below as the regulations) regulate the interstate movement of certain animals because of brucellosis, a contagious disease of cattle, other bovine, and swine. The regulations provides a system for classifying States or portions of States according to the rate of brucella infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or Areas which do not meet the minimum standards for Class C are required to be placed under Federal quarantine Restrictions on the interstate movement of cattle are generally more stringent for movements from Class A States or Areas compared to movements from Class Free States or Areas, and are more stringent for movements from Class B States or Areas compared to movements from Class A States or Areas, and so on. The most stringent restictions are on the interstate movement of cattle from quarantined States or Areas. This document proposes to amend the criteria for classifying States as Class Free, Class A, Class B, and Class C, and further proposed to designate Oklahoma as a quarantined State.

The basic standards for the different classifications of States or Areas concern maintenance of: (1) A State or Area-wide accumulated 12 consecutive month herd infection rate not to exceed a stated level; (2) a Market Cattle Identification (MCI) reactor prevalence rate not to exceed a stated rate (this concerns the testing of cattle at auction markets, stockyards, and slaughtering establishments); (3) a surveillance system which includes a testing program for dairy herds and slaughtering establishments, and provisions for identifying and monitoring herds at high risk of infection, and (4) minimum procedural standards for administering the program.

Approved Individual Herd Plans

The basic standards referred to above include provisions concerning approved individual herd plans (also referred to in the regulations as approved action plans). This docket proposes to amend the criteria for classifying States as Class Free, Class A, Class B, and Class C by making changes concerning approved individual herd plans.

An approved individual herd plan is defined in § 78.1(xx) of the regulations as:

(xx) *Approved action plan or approved individual herd plan:* (1) A herd management and testing plan which is designed by the herd owner, his veterinarian if so requested, and a veterinarian of the Cooperative Brucellosis Eradication Program to control and eventually eradicate brucellosis from an affected herd. Plans must be approved jointly by the State animal health official and the Veterinarian in Charge. A similar plan for determining the true status of suspects and preventing exposure to brucellosis within the herd is also within the meaning of the term "Individual Herd Plan" or "Approved Action Plan."

(2) The plan must call for the most appropriate veterinary procedures and proven herd management procedures to control the spread of brucellosis within the herd and thereby eradicate the disease from the herd.

The regulations provide that as a condition for attaining and maintaining Class Free or Class A status, all herds that are adjacent to reactor herds and all herds having contact with cattle in reactor herds must have approved individual herd plans for testing or monitoring the herd in effect within 15 days of notification of infection in the reactor herd. The regulations contain a similar condition for attaining and maintaining Class B and Class C status, with a 45 day time limit.

The regulations further provide that, as a condition for attaining and maintaining Class Free and Class A status, all herds from which cattle are sold into an infected herd and all herds which have received cattle from an infected herd must have approved individual herd plans for testing or monitoring the herd in effect within 15 days of locating the source herd(s) or recipient herd(s). The regulations contain a similar condition for attaining and maintaining Class B and Class C status, with a 45 day time limit.

Although the standards for attaining and maintaining Class Free, Class A, Class B, and Class C status contain certain requirements for testing and monitoring herds with reactor cattle, the regulations contain no requirements for approved individual herd plans for herds with reactor cattle.

A herd in which any animal has been classified as a brucellosis reactor would be placed under a State or Federal quarantine because of a risk of the herd causing the spread of brucellosis. Any herd in which any animal has been classified as a brucellosis reactor, and which has not been released from quarantine is defined in § 78.1(aaa) of the regulations as a "herd known to be affected." Even if all the known reactors in a herd known to be affected had been removed, the herd would remain quarantined during the time that there is a significant risk of animals in the herd harboring brucellosis in the incubation stage. It appears necessary to require approved individual herd plans for herds known to be affected in order to help reduce and then eliminate brucellosis within the herd, to prevent spread to other herds, and to prevent reintroduction of brucellosis in a given herd after the herd has become free of the disease.

Further, it appears that any State, regardless of any previous classification that does not have in place approved individual herd plans for herds known to be affected would not have sufficient control and eradication procedures adequate to prevent the spread of brucellosis to adjacent herds and from adjacent herds to other herds throughout a given State. Under these circumstances, it appears that failure to have such approved individual herd plans in place for herds known to be affected should be a basis for lowering a State's status.

Therefore, it is proposed to amend the regulations to provide that as a condition of attaining and maintaining Class Free and Class A status, all herds known to be affected must have approved individual herd plans for testing or monitoring the herd in effect within 15 days of notification by State or Veterinary Services representatives of reactors in the herd. Further, it is proposed to amend the regulations to provide that as a condition of attaining and maintaining Class B and Class C status, all herds known to be affected must have approved individual herd plans for testing and montoring the herd in effect within 45 days of notification by State or Veterinary Services

representatives of reactors in the herd. The proposed time limits of 15 and 45 days, respectively, correspond with the current time limits for having in effect approved individual herd plans for other types of herds, as specified above.

Although the current regulations provide for individual herd plans for certain types of herds, they do not contain provisions specifying that the provisions of the individual herd plans must be complied with in order to attain or maintain a particular status. It intended with respect to the current and proposed provisions relating to individual herd plans that as a condition of attaining and maintaining a particular status, each State must ensure that such herd plans are effectively complied with as determined by the Deputy Administrator, Veterinary Services. This document proposes to include language for the current and proposed provisions concerning individual herd plans to accomplish this purpose. Without effective compliance, individual herd plans would not accomplish their purpose.

Criteria for Quarantining States or Areas

This document also proposes to amend the criteria for quarantining States or Areas. Section 78.22 of the regulations provide for quarantining areas because of:

> . . . the existence of the contagion of brucellosis and the nature and extent of such contagion in certain areas which do not have control and eradication procedures adequate to prevent the interstate dissemination of the disease.

It is proposed to revise § 78.22 to provide that a State or Area that does not meet the criteria for Class Free, Class A, Class B, or Class C shall be designated as a quarantined State or Area. Within the framework of the system for classifying States, it was intended that a State or Area that does not meet the criteria for Class C or higher be designated as quarantined, regardless of whether any other criteria are met. It appears that cattle moved interstate from a State not eligible for Class C status or higher would present a significant risk of spreading brucellosis unless moved in accordance with the provisions set forth in § 78.12a for moving cattle from quarantined areas.

Proposed Quarantine of Oklahoma

There are a number of herds of cattle in southeastern Oklahoma which have a high incidence of brucellosis. These herds are currently under a State quarantine because of brucellosis. However, these herds present a risk of causing the spead of brucellosis to adjacent herds and from the adjacent herds to herds throughout Oklahoma. Owners of some herds either have not agreed to an individual herd plan for the elimination of brucellosis from their herds, or have agreed to individual herd plans but have not followed the part of the individual herd plans providing for regular testing of their herds and removal of reactors. Therefore, it appears that it is necessary to designate the entire State of Oklahoma as a quarantined State in order to help prevent the interstate dissemination of brucellosis.

Accordingly, it is proposed to amend § 78.22 of the regulations by designating the entire State of Oklahoma as a quarantined State. If the proposal to quarantine Oklahoma becomes effective, movements of cattle from Oklahoma would be subject to the provisions applicable to movements of cattle from quarantined States or Areas set forth in § 78.12a.

Procedures for Downgrading

As noted above, the regulations provide for classifying States or Areas as Class Free, Class A, Class B, Class C, or quarantined. It is proposed to amend the regulations concerning the downgrading of States or Areas. The regulations in § 78.25 provide, among other things, that:

> In the case of any reclassification to a lower class, the State animal health official of the State involved will be notified of such downgrading and shall be given an opportunity to request an administrative review and to present his objections and arguments to the Deputy Administrator prior to the downgrading taking effect.

Similar but less detailed procedural provisions for downgrading States or Areas, including downgrading States or Areas to quarantined status, are set forth in other places in the regulations (see 9 CFR 78.1 (t), (u), (v), and (w)). It is proposed to delete the less detailed procedural provisions. For purposes of clarity it appears that the procedural provisions should be set forth in full in one place in the regulations. It is also proposed to amend the provisions of § 78.25 quoted above to specify that such procedures also apply to downgrading States or Areas to quarantined status. It was intended that the procedural provisions apply to downgrading States or Areas to quarantined status.

Proposal of September 12, 1985

It should be noted that a document published in the **Federal Register** on September 12, 1985 (50 FR 37201–37229), proposed to make numerous changes in the regulations, including nonsubstantive changes in the provisions refered to above concerning approved individual herd plans, criteria for quarantining States or areas, and procedures for downgrading. It is not necessary to discuss provisions of the proposal of September 12, 1985, to make determinations concerning the issues raised by this document. However, if the provisions of the proposal of September 12 are adopted as a final rule, the concepts discussed in this document could be readily incorporated into the provisions set forth in the proposal of September 12.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579–0064.

Executive Order 12291 and Regulatory Flexibility Act

This proposed action had been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule would not have a significant annual effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is not anticipated that the proposed changes concerning approved individual herd plans would have a significant effect on affected persons.

As noted above, it is proposed to quarantine the State of Oklahoma. Records concerning the movement, testing, and slaughter of cattle indicate that most of the cattle sold at markets in Oklahoma remain in Oklahoma. Cattle moved interstate from Oklahoma are moved for feeding, for slaughter, or for use as breeding stock. Approximately two million cattle move interstate from Oklahoma annually. Approximately half of these cattle are steers and, consequently, would not be subject to additional restrictions if Oklahoma is quarantined. Other cattle moved interstate would be subject to additional testing. However, it is not anticipated that the additional testing would significantly increase the cost of

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marketing cattle. Further, it is not anticipated that there would be a significant change in the number of cattle moved interstate from Oklahoma if Oklahoma is quarantined.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, it is proposed to amend 9 CFR Part 78 as follows:

1. The authority citation for Part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.1 [Amended]

2. In the introductory text of paragraphs (t), (u), (v), and (w) of § 78.1, the second sentence would be removed.

3. In paragraphs (t)(1)(iii) (A) and (B); (u)(1)(iii) (A) and (B); (v)(1)(iii) (A) and (B); and (w)(1)(iii) (A) and (B) of § 78.1, a sentence would be added at the end of each paragraph to read: "Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Deputy Administrator."

4. In § 78.1, new paragraphs (t)(2)(iii), (u)(2)(iii), (v)(2)(iii), and (w)(2)(iii) would be added to read as follows:

§ 78.1 Definitions.

* * * * *

(t) * * *

(2) * * *

(iii) All herds known to be affected shall have approved individual herd plans in effect within 15 days after notification by a State representative or Veterinary Services representative of a brucellosis reactor in the herd. Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Deputy Administrator.

* * * * *

(u) * * *

(2) * * *

(iii) All herds known to be affected shall have approved individual herd plans in effect within 15 days after notification by a State representative or Veterinary Services representative of a brucellosis reactor in the herd. Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Deputy Administrator.

* * * * *

(v) * * *

(2) * * *

(iii) All herds known to be affected shall have approved individual herd plans in effect within 45 days after notification by a State representative or Veterinary Services representative of a brucellosis reactor in the herd. Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Deputy Administrator.

* * * * *

(w) * * *

(2) * * *

(iii) All herds known to be affected shall have approved individual herd plans in effect within 45 days after notification by a State representative or Veterinary Services representative of a brucellosis reactor in the herd. Each State shall ensure that such approved individual herd plans are effectively complied with, as determined by the Deputy Administrator.

* * * * *

5. Section 78.22 would be revised to read as follows:

§ 78.22 Quarantined States or Areas.

The following States or Areas do not meet the criteria for classification as Class Free, Class A, Class B, or Class C, and are therefore designated as quarantined.

The entire State of Oklahoma.

6. In paragraph (a) of § 78.25, the second sentence is revised to read:

§ 78.25 Designations of States/Areas and approved stockyards.

(a) * * * In the case of any reclassification to a lower class or reclassification as a quarantined State or Area, the State animal health official of the State involved will be notified of such reclassification, and shall be given an opportunity to present objections and arguments to the Deputy Administrator prior to the reclassification taking effect.

Done at Washington, DC, this 24 day of December 1985.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–30857 Filed 12–30–85; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM–40–25]

State of Alabama; Receipt of a Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment a notice of receipt of a petition for rulemaking submitted by the State of Alabama. The petition requests that the NRC amend its regulations governing unimportant quantities of source material. The petitioner suggests that the NRC examine the exemption from licensing requirements for products or parts fabricated of or containing tungsten or magnesium-thorium alloys whose thorium content is less than 4 percent by weight and either remove the restriction on this exemption or set out the restriction as part of a general license. The petitioner requests this action so that a person who obtains an exempt product covered by the exemption would be aware of limitations placed on its use.

DATE: Submit comments by March 3, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Correspondence and Records Branch.

For a copy of the petition write: Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Inspect and copy the petition or comments received on the petition at: The NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington,

DC 20555, Telephone: (301) 492–7086 or Toll Free (800) 368–5642..

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has received a petition for rulemaking from the State of Alabama. This petition for rulemaking has been assigned Docket No. PRM–40–25. The petitioner requests that the NRC amend its regulations governing unimportant quantities of source a material.

Section 40.13(c)(4) sets out an exemption from licensing requirements for any person who receives, possesses, uses, or transfers a product or part fabricated of, or containing tungsten or magnesium-thorium, alloys if the thorium content of the alloy does not exceed four percent by weight. This provision also restricts the exemption by not authorizing the chemical, physical, or metallurgical treatment or processing of the exempt product.

The petitioner believes that in placing a restriction on an exemption, the NRC has created a structurally deficient regulation that may lead to unintentional violations by persons who may receive products covered by the exemption and be unaware of any further regulatory restriction. The petitioner identified a situation where materials were distributed under this exemption in scrap metals which were melted and cut by an oxyacetylne torch.

To remedy this situation, the petitioner suggests that a safety evaluation be performed to determine whether or not this restriction is necessary. If the safety evaluation does not indicate that the restriction is needed, the petitioner believes it should be removed. However, if the restriction is needed, for the use of four percent magnesium-thorium alloys, it should not be present as part of an exemption, but should be included under a general license.

The petitioner believes the appropriate course of action is to place these products in the general license provisions of 10 CFR 40.25 and suggests the following amendments to the regulations to accomplish this action.

1. In § 40.25, add a new paragraph (f) to read as follows:

Section 40.25 General license for use of certain industrial products or devices.

* * * * *

(f) A general license is hereby issued to receive, acquire, possess, and us any finished product or part fabricated of, or containing tungsten or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed 4 percent by weight and that the general license contained in this paragraph (f) shall not be deemed to authorize the chemical, physical, or metallurgical treatment or processing of any such product or part. Any general licensee is authorized to transfer such product or part to another general licensee only:

(1) When the product or part remains in use at the same location, or

(2) Where the product or part is held in storage in the original shipping container at its intended location of use prior to the initial use by a general licensee.

2. In § 40.34, paragraph (d) is added to read as follows:

Section 40.34 Special requirements for the issuance of a specific license.

* * * * *

(d) An application for a specific license to manufacture or initially transfer the products or parts containing not more than 4 percent thorium to persons generally licensed under § 40.25(f) of this Chapter or equivalent regulations of an Agreement State will be approved if:

(1) The applicant has satisfied the general requirements of § 40.32 of this Chapter;

(2) The applicant submits sufficient information relating to the manufacture, quality control, labels, proposed uses and potential hazards of the product or part to provide reasonable assurance that:

(i) Under ordinary condition of handling, storage, and use the product or part the thorium contained in the product or part will not be released or inadvertently removed from the product or part and it is unlikely that any person will receive in any period of one calendar quarter a dose in excess of 10 percent of the limits specified in the table in § 20.101(a) of this Chapter or if the exposure may be to radioactive materials in air in excess of 10 percent of the limits specified in § 20.103(a) this Chapter; and,

(ii) Under accident condition such as fire and/or explosion associated with the handling, storage, and use of the product or part, it is unlikely that a person would receive an external radiation dose or an internal dose commitment in excess of the dose to the appropriate organ as specified in column IV of the Table in § 32.24 of this Chapter.

(3) Each product or part bears or has an accompanying label or instructions approved by the Commission which contain in a clearly identified and separate statement instructions and precautions necessary to assure safe installation, operation, servicing, and disposal of the product or part;

(4) Each person licensed under this section shall furnish a copy of the general license contained in § 40.25(f) or an Agreement State's regulation equivalent to § 40.25(f) to each person to whom he directly or through an intermediate person transfers thorium in a product or part. Further, each person licensed under this section shall report the transfer of such product or parts in the manner required for generally licensed devices pursuant to § 32.52 of this Chapter.

The NRC invites public comment on PRM–40–25. Those who intend to submit comments on the petition may obtain a copy of the petition from the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Washington, DC, this 26 day of December 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–30912 Filed 12–30–85; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 85–1196]

Over-the-Counter Financial Options Trading; Accounting for Financial Options

December 20, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing to amend its regulations pertaining to financial options transactions by institutions whose accounts are insured by the FSLIC ("insured institutions"). The Board is proposing to allow insured institutions to engage in over-the-counter ("OTC") financial options transactions with certain types of counterparties in addition to primary dealers in government securities, which presently are the only entitles with which an insured institution may trade OTC options. The Board believes that federally regulated banks and savings institutions, securities brokers that are registered with the Securities and Exchange Commission ("SEC") and are members of the National Association of Securities Dealers, ("NASD") as well as

futures commission merchants registered with the Commodity Futures Trading Commission ("CFTC"), may be subject to capital adequacy standards and regulatory oversight that is sufficiently comparable to the standards applicable to primary dealers that such other entities would also be permissible counterparties in OTC options transactions. The proposed amendments are intended to allow insured institutions to use more effectively the authority previously granted to them to trade OTC options.

The Board also is proposing to revise the manner in which insured institutions account for "short call" options positions. Under the existing regulations, an institution that enters into a short call option matched against a specific asset, liability, or intended cash-market transaction, may defer any realized losses on the options position over the estimated life of the matched item and recognize the option commitment fee as income over the term of the option. The Board believes that the present accounting rules may encourage insured institutions to enter into short call positions solely to take advantage of the favorable accounting treatment, rather than for sound economic reasons. To eliminate that incentive, the Board is proposing to require that the commitment fee received by an institution writing a call option be deferred until the option position is terminated. At that time, any gains or losses resulting from the options position shall be recognized, together with the fee income that had previously been deferred.

DATE: Comments must be received by March 3, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Comments will be available f or public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Robert J. Pomeranz, Senior Policy Analyst, Office of Policy and Economic Research, (202) 377–6209; M. Christian Mitchell, Accounting Fellow, Office of Examinations and Supervision, (202) 377–6837; or neil Crowley, Attorney, Office of General Counsel, (202) 377–6451; Federal Homle Loan Band Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On August 11, 1982, the Board, as operating head of the FSLIC, adopted regulations governing the extent to which an institution the accounts of which are insured by the FSLIC may trade financial options. Board Resolution No. 82–557, 47 FR 36621 (Aug. 23, 1982). Those regulations permitted an institution to engage in financial options transactions by using any financial options contracts designated by the CFTC or approved by the SEC, and based upon a financial instrument in which the insured institution may invest, or based upon a financial futures contract. Such transactions further were required to be conducted under the terms and conditions established by an exchange designated or regulated by the CFTC or the SEC. *See* 12 CFR 563.17–5 (1983). Thus, under the terms of that regulation insured institutions were not permitted to engage in OTC financial options transactions because such transactions do not involve standardized contracts and are not considered to be part of an exchange. *See* Office of Examinations and Supervision, Memorandum No. T74, Prohibition Against Over-the-Counter Options Trading (Feb. 14, 1985).

As a separate part of that regulation, the Board also established certain accounting rules to be used by insured institutions engaging in financial options transactions. The Board reasoned that the establishment of such rules was necessary because at that time there was no single accounting treatment for financial options transactions recognized by the accounting profession. The rules adopted by the Board required insured institutions to use hedge accounting in recognizing gains or losses on long and short call, and long put options positions that were properly matched against cash or forward market positions. Unmatched long and short call positions, unmatched long put positions, and any short put position were required to be accounted for on a marked-to-market basis. When using hedge accounting, an institution would treat the gain or loss from an option position as an adjustment to the carrying amount of the cash or forward market position against which the option was matched. In order to use hedge accounting, the Board's rules required that an institution match its options position against cash or forward market positions, and that the options transactions reduce the interest-rate risks of the corresponding transactions. The rules further required that an institution divide the option premium paid or recieved into two parts: an option commitment fee and the immediate exercise value of the option. The commitment fee was to be recognized as an expense or revenue item over the term of the option, and the change in immediate exercise value was to be treated as gain or loss subject to hedge accounting treatment.

On April 18, 1985, the Board amended 12 CFR 563.17–5 with regard to permissible types of financial options transactions and the accounting rules applicable to short call options positions, and also requested public comment on the amendments, which were adopted in final form. Board Resolution No. 85–293, 50 FR 16459 (April 26, 1985). As part of those amendments, the Board permitted insured institutions to engage in all types of OTC options transactions (*i.e.*, long calls, long puts, short calls, and short puts), but limited the permissible counterparties in an OTC transaction to entities that were "primary dealers" in government securities (*i.e.*, members of the Association of Primary Dealers in United States Government Securities). The Board adopted the limitation on permissible counterparties as a means of minimizing the potential credit and liquidity risks to which an insured institution trading in OTC financial options could be exposed. *See id.* Because primary dealers are actively engaged in the distribution of government securities, are substantially capitalized, make continuous markets in government securities, have a long-term commitment to the market, are capable of maintaining a market in OTC options contracts, and are monitored by the Federal Reserve Bank of New York, the Board reasoned that permitting primary dealers to act as counterparties in OTC financial options transactions would not involve any substantial credit risk to insured institutions. Moreover, such a limitation made it unnecessary for the Board to monitor the capital adequacy of all potential counterparties with which an institution could trade OTC options. The Board also allowed insured institutions to conduct OTC options trading with affiliates of a primary dealer, provided, however, that the affiliate was substantially engaged in dealing in government securities and its performance under an OTC options contract was guaranteed by the primary dealer.

In those amendments, the Board also revised its accounting rules for short call options transactions in order to eliminate the potential for certain abusive practices that were possible under the initial accounting rules adopted in 1982. Under the prior rules, an institution receiving a fee for writing a short call option would recognize the option commitment fee as income over the term of the option. If the option were matched against a specific asset, liability, or intended cash market position, any realized gains or losses on the option position would be deferred

over the estimated life of the matched item. The Board expressed its belief at that time that such accounting treatment could lead an institution to enter into short call options transactions that are not economically sound in order to record the option commitment fee as current income. In order to deter insured institutions from entering into short call options positions solely for the benefit derived from a favorable accounting rule, the Board amended 12 CFR 563.17–5(g) to require that option commitment fees received for the sale of matched short call options be recorded as a discount on the matched item. That fee, as well as any related losses from the options transactions, would be deferred and amortized over the estimated life of the matched item.

On May 24, 1985, the Board rescinded the accounting portion of the amendments that had been adopted on April 18, 1985, and reinstated the initial accounting rules in order to give further consideration to the most appropriate method of accounting for short call options. Board Resolutions No. 85–420, 50 FR 23395 (June 4, 1985). On the same date, the Board separately issued an advance notice of proposed rulemaking, which requested public comment on all of the related accountancy aspects of short call options transactions in which insured institutions may engage. Board Resolution No. 85–421, 50 FR 23432 (June 4, 1985). After considering the comments received in response to the advance notice and the solicitation of comments made in conjunction with the April 18, 1985 amendments, the Board is now proposing to amend 12 CFR 563.17–5 with regard to the permissible counterparties for OTC options transactions and the accounting rules for short call options, as described below.

Permissible Counterparties

As discussed previously, the limitation of permissible counterparties to primary dealers was incorporated into the current regulations in order to minimize the credit and liquidity risks that may be associated with trading OTC financial options. After reviewing the comments received on this matter, however, the Board now believes that the present regulations may be unnecessarily restrictive and that there may be other entities that are sufficiently well capitalized and regulated to be capable of acting as counterparties in OTC options transactions without exposing the insured institutions to appreciable credit risk. In addition, the Board is concerned that the present regulations may have the unintended effect of denying smaller insured institutions access to the OTC option market. Because of their small asset size, such institutions generally do not need to take substantial positions in the OTC financial options market in order effectively to manage their portfolios. In many cases, however, the options transactions that such institutions may desire to make are smaller than the minimum amount required by primary dealers that trade OTC options. Thus, such an institution may effectively be precluded by the primary dealer restriction from utilizing OTC options as a financial tool, which is contrary to the intent of the Board in allowing insured institutions to trade OTC options. Moreover, because there are only 36 primary dealers, the Board also is concerned that the present counterparty restriction could prove to be anti-competitive by prohibiting other well-capitalized entities from dealing with insured institutions and by making the prices of OTC options transactions less competitive than in an open marketplace.

The comments received by the Board indicate that there are a variety of entities other than primary dealers that trade OTC options and whose operations are subject to capital adequacy standards, regulation and inspection by governmental and/or self-regulatory agencies. Banks and thrift institutions that are subject to regulation by the Comptroller of Currency ("OCC"), Federal Reserve Board ("FRB"), Federal Deposit Insurance Corporation ("FDIC"), or FSLIC must observe capital requirements, submit periodic reports on their financial condition, subject themselves to examinations and audits, and restrict their activities to those permitted by statute and the regulations of the particular agency. Similarly, broker-dealers that are registered with the SEC are subject to financial responsibility, recordkeeping, reporting, capital maintenance and other regulatory requirements. NASD members must monitor and maintain the adequacy of their capital and are subject to NASD-conducted audits to test compliance with the above standards. In addition, such dealers are subject ot enforcement by the NASD of ethical standards for the conduct of the securities business and of the applicable federal securities laws and regulations. Similar types of standards are applied to futures commission merchants subject to the jurisdiction of the CFTC. The Board believes that the above types of regulated entities are subject to capital adequacy standards, regulation and inspection such that they also should be considered as permissible counterparties for insured institutions engaging in OTC option transactions. Accordingly, the Board is proposing to amend 12 CFR 563.17–5 by allowing insured institution to engage in OTC options transactions with the following additional types of entities:

—Banks that are subject to regulation and supervision by the OCC, the FDIC, or FRB and are in compliance with their applicable regulatory capital or net worth requirement.

—Institutions that are subject to regulation and supervision by the FSLIC and are compliance with their regulatory net worth requirement.

—Brokers registered with the SEC and subject to regulation and supervision by the NASD and that are in compliance with their capital requirements.

—Futures commission merchants registered with the CFTC and that are in compliance with their capital requirements.

—The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association.

—Other entities, upon application, that the FSLIC determines are adequately regulated by a governmental entity or a self-regulatory agency, are subject to capital adequacy standards, and are regularly audited and examined.

The Board requests public comment on whether the types of institutions described in the above categories would be appropriate counterparties for insured institutions and whether there exist any additional entities whose capital adequacy, stability, and regulatory supervision are such that they also should be included in the category of entities permitted to act as counterparties in OTC options transactions. Without intending to limit comment regarding the types of additional potential counterparties, the Board specifically requests whether insured institutions should be permitted to engage in OTC transactions with the Federal Home Loan Banks, or with other types of unregulated entities, *e.g.* unregulated securities dealers, if the dealer voluntarily complies with the Federal Reserve Bank of New York's minimum capital guidelines and follows certain procedures to verify such compliance to the insured institution. The Board also requests comment or whether it should require that depository institutions that act as counterparties be in compliance with their regulatory capital or net worth

requirements as a condition of acting as a counterparty to an insured institution.

As a separate but related matter, the Board wishes to take this opportunity to articulate an interim treatment of insured institutions that wish to enter into OTC options transactions with entities other than primary dealers. In light of the concerns discussed previously regarding the possible unintended effects of the current restriction of counterparties, the Board believes it may be inappropriate to continue to limit insured institutions to conducting OTC transactions only with primary dealers. Thus, the Board has decided that during the interim period until final regulations are adopted on this subject, the Board will forbear from taking any enforcement action against an insured institution that enters into an OTC options position with one of the types of counterparties enumerated in the proposed regulation, provided, (1) that the institution initiating the OTC transaction must be in compliance with its regulatory net worth requirement under 12 CFR 563.13, and (2) that the counterparty is ascertained to be in compliance with its applicable net worth or capital requirement. Thus, if an insured institution is not presently satisfying its net worth requirements, it may trade OTC options only with primary dealers, as is authorized under the existing regulations. The Board also may consider requests for forberances from other entitles seeking permission to act as counterparties to insured institutions in OTC options transactions, and requests comment on what other types of entitles may be suitable counterparties and what standards should be applied to such entitles in determining whether they may trade OTC options with insured institutions.

Accounting for Short-Call Options

The Board received letters from a total of 34 commenters in response to the request for comments included as part of the advance notice of proposed rulemaking, dated May 24, 1985. Each of the accounting alternatives identified in the advance notice received the support of some of those persons commenting on the matter. Many commenters expressed their strong belief that the existing regulatory accounting rules accurately reflect the economic substance of a short call options transaction and that those rules should not be changed until such time as the Financial Accounting Standards Board ("FASB") establishes generally accepted accounting principles ("GAPP") applicable to short call options positions. There was also significant support among the commenters for the deferral accounting rules that the Board adopted in April 1985 and later rescinded in May 1985. *See* Board Resolutions 85–420 and 85–421, 50 FR 23395, 23432 (June 4, 1985). Those rules would have required an insured institution to defer and amortize over the estimated life of the matched item any commitment fees received for writing the option, as well as any gains or losses that resulted on the options position.

It is the Board's belief that the present accounting rules are inadequate for dealing with short call options transactions. The present regulatory accounting rules, when applied to short call options transactions, do not accurately reflect the true economic nature of those transactions because the rules allow an institution to recognize as current income a fee received for entering into an options position, without regard to whether the transaction itself produces a gain or a loss to the institution. To the extent that any loss on an options position exceeds the commitment fee received, the net economic result to the institution would be a loss. Under the present rule, an institution could recognize the fee as income over a period of a few months, but could amortize the loss on the options position over a period of many years. The recognition of current income in those circumstances is illusory and the Board believes that its accounting rules should not encourage that practice. Although the rescinded rules would have discouraged institutions from entering into options positions solely to take advantage of favorable accounting treatment, the Board believes that the rules proposed herein would accomplish the same result and would be more readily accepted by the accounting profession. Thus, there is a present need to amend the existing accounting rules. The absence of any GAAP treatment for short call options transactions and the unlikelihood that the FASB will establish GAAP treatment in the near future, as well as the possibility that the present regulatory accounting rules may encourage uneconomical options transactions, requires that the Board amend its accounting rules for short call options. At such time as the FASB determines the appropriate GAAP treatment for short call options, the Board will, of course, reconsider this issue.

Accordingly, the Board is proposing to adopt a simplified market-to-market approach for accounting for short call options transactions. Under the proposed rules, the option commitment fee received for writing a matched call option would be referred until the option expires, the institution is called to perform under the options contract, or the institution offsets its short position. At the time that an institution terminates its short call position through one of the above methods, it would be required to aggregate the commitment fee received with any resulting gain or loss on the options position and record the net result as income or expense. The proposed rules would eliminate any incentive for an institution to enter into short call options positions solely to obtain the benefits of the existing favorable accounting treatment by realizing the commitment fee as current income. The Board believes that by requiring institutions to recognize the net gain or loss at the time the options position is terminated, the resulting accounting will more accurately reflect the true economic substance of a short call options transaction. The Board further notes that the rules proposed herein follow closely the accounting rules used by the federal banking agencies and, in the absence of any GAAP treatment, will provide a more appropriate means to account for short call options transactions.

Because many insured institutions use a fiscal year that ends on December 31, the Board believes that it would be desirable to have any uncertainty regarding the method of accounting for short call options resolved perior to the beginning of the next fiscal year. In light of the fact that the Board already has requested and received public comments on this matter, and in order to eliminate the incentive to engage in financial options transactions solely for accounting reasons, the Board is informing the public of its intention to use January 1, 1986, as the effective date of any final accounting amendments for short call options, if that regulation is adopted substantially in its proposed form.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following initial regulatory flexibility analysis.

1. *Reasons, objectives and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rule would apply.* The proposed rule would apply to all insured institutions.

3. *Impact of the proposed rule on small entities.* The proposed rule would allow smaller institutions greater access

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to the OTC options market than may exist under the present rules.

4. *Overlapping or conflicting federal rules.* There are no known rules that duplicate, overlap, or conflict with this proposal.

5. *Alternative to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the supplementary information set forth above.

List of Subjects in 12 CFR Part 563

Savings and loan associations, Savings banks, Securities.

Accordingly, the Board hereby proposes to amend Part 563, of Subchapter D, Chapter V, of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 is revised to read as follow:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 401–405, 407,48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 563.17–5 by revising paragraphs (a)(4), (c), (e)(2), (g)(2), (g)(3)(ii)(*b*), (g)(3)(ii)(*c*); by redesignating paragraph (g)(3)(ii)(*d*) as paragraph (g)(3)(ii)(*e*); and by adding new paragraphs (a)(13) and (g)(3)(ii)(*d*), as follows:

§ 563.17–5 Financial options transactions.

(a) *Definitions.* * * *

(4) *Financial options contract.* An agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract at any time prior to the expiration date specified in the agreement, under terms and conditions established either by (i) an exchange designated or regulated by the Commodity Futures Exchange Commission or the Securities Exchange Commission, or (ii) the insured institution and a "permissible counterparty," as defined paragraph (a)(13) of this section, that are counter-parties in an over-the-counter transaction.

* * * * *

(13) *Permissible counterparty.* Any entity that is:

(i) A primary dealer;

(ii) A bank subject to the regulation and supervision of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Federal Reserve Board and that is in compliance with its applicable regulatory capital requirements;

(iii) An institution that is subject to the regulation and supervision of the Federal Savings and Loan Insurance Corporation and is in compliance with its regulatory net worth requirements;

(iv) A broker-dealer registered with the Securities and Exchange Commission and a member of the National Association of Securities Dealers and that is in compliance with its capital requirements;

(v) A futures commission merchant registered with the Commodity Futures Trading Commission and that is in compliance with its capital requirements;

(vi) The Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association; or

(vii) Any other entity that the Board, upon application, determines to be adequately regulated, capitalized, and audited or examined such that acting as a counterparty in an over-the-counter options transaction with an insured institution would not entail substantial credit risks for the institution.

The Board delegates to the Office of Examination and Supervision, with the concurrence of the Office of General Counsel, the authority to consider and approve such applications.

* * * * *

(c) *Authorized contracts.* An insured institution may engage in financial options transactions using any financial options contracts either (1) designated by the Commodity Futures Trading Commission or approved by the Securities and Exchange Commission; or (2) entered into with a "permissible counterparty" (as defined in paragraph (a)(13) of this section), and based upon a financial instrument that the institution has authority to invest in or to issue, or based upon a financial futures contract.

* * * * *

(e) *Notification and reporting.* * * *

(2) An insured institution shall not engage in over-the-counter financial options transactions with any permissible counterparty unless such counterparty notifies the District Director—Examinations of the Federal Home Loan Bank district in which the insured institution is located immediately following the entering into such transaction, and reports monthly on the outstanding position of such insured institution.

* * * * *

(g) *Accounting.* * * *

(2) *Option commitment fee.* (i) The option commitment fee paid for a long position or received from the sale of a short option shall be amortized to income or expense over the term of the option, except as provided in paragraph (g)(3)(ii) of this section.

(ii) The option commitment fee received from the sale of a matched short call option shall be deferred until the option position is terminated. The option commitment fee received from the sale of an unmatched short call option shall be amortized to income over the term of the option.

(3) *Options contracts.* * * *

(ii) * * *

(*b*) If a commitment fee has not been received with respect to a matched asset, the option commitment fee (except if received for the sale of a short call option) shall be amortized to income or expense over the commitment period by the straight-line method;

(*c*) Any resulting gain or loss from an options position (except from a short call option) shall be treated as a discount or premium on the matched asset of liability;

(*d*) Any resulting gain or loss from a short call options position shall be recognized as income or expense upon termination of the options position;

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–30732 Filed 12–30–85; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Social Security Benefits; Deductions, Reductions, and Nonpayments of Benefits; Spouse's Government Pension

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: In these proposed regulations, we are amending our rules on reducing the Social Security benefit amounts of spouses who are receiving Government pensions. The amendments, which implement section 2 of Pub. L. 98–617, provide that, for beneficiaries subject to this reduction, the benefit reduction in all cases will be two-thirds (instead of 100 percent the amount of the spouse's Government pension. The amendments also extend by one month the periods for meeting the existing exceptions to reduction in cases where

an employee's pension eligibility was delayed by one month solely because of a requirement which postponed eligibility for the pension until the month after the month in which all other requirements were met. The changes are effective for benefits payable for December 1984 and later months.

DATES: Comments must be submitted on or before March 3, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6785.

SUPPLEMENTARY INFORMATION: The Social Security Amendments of 1977 (Pub. L. 95–216) introduced in section 334 a provision for reducing dollar-for-dollar the Social Security spouse's benefits of a person who is receiving a Government pension based on work not covered by Social Security. That same section also provided for an exception to the reduction if the spouse was eligible for a Government pension for one or more months in the period December 1977 through November 1982 and met certain other requirements. The Social Security Amendments of 1983 (Pub. L. 98–21) changed the amount of the reduction to two-thirds the amount of the Government pension if the person became eligible for the pension after June 1983. Also in 1983, Pub. L. 97–455 provided an alternative exception if the spouse was eligible for a Government pension before July 1983 and met certain other requirements.

Pub. L. 98–617, enacted November 8, 1984, has further amended the exception and the amount of reduction. Section 2(a) of that Act provides that for December 1984 and later months, the Social Security benefits of spouses or surviving spouses who do not meet one of the exceptions to reduction will be reduced by two-thirds the amount of the person's Government pension which is based on work not covered by Social Security, regardless of when the person first became eligible for the pension.

Under section 2(b) of Pub. L. 98–617, we will consider a person to be eligible for a pension within the appropriate period if the person was otherwise eligible for the pension except for a special requirement which delayed eligibility by one month. For example. Federal employees whose eligibility for a pension was delayed by legislation one month to December 1982 or July 1983 will be considered to be eligible for the pension in November 1982 or June 1983. Thus, those employees can meet an exception to reduction if they also meet the other requirements of the exception. This provision protects against reduction of Social Security benefits for months after November 1984.

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. We estimate that these provisions of Pub. L. 98–617 will cost the Social Security trust funds $10 million per year in additional benefit payments. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

The proposed regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they involve only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility-Act, is not required.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, survivors, and disability insurance.

(Catalog of Federal Domestic Assistance Programs No. 13,802 Social Security—Disability Insurance, 13,803 Social Security—Retirement Insurance, 13.805 Social Security—Survivors Insurance)

Dated: October 3, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: November 6, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Subpart E of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Supart E would be revised to read as follows:

Authority: Secs. 202, 203, 205, 207, and 1102 of the Social Security Act; 49 Stat. 623, 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 402, 403, 405, 407, and 1302.

2. Section 404.408a is amended by adding a new paragraph (b)(4), and by revising paragraph (d)(2) to read as follows:

§ 404.408a Reduction where spouse is receiving a Government pension.

* * * * *

(b) *Exceptions.* * * *

(4) If you would have been eligible for a pension in a given month except for a requirement which delayed eligibility for such pension until the month following the month in which all other requirements were met, we will consider you to be eligible in that given month for the purpose of meeting one of the exceptions in paragraphs (b) (2) and (3) of this section. If you meet an exception solely because of this provision, your benefits will be unreduced for months after November 1984 only.

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(d) *Amount and priority of reduction.*

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(2) If you became eligible for a Government pension before July 1983 and do not meet one of the exceptions in paragraph (b) of this section, we will reduce (to zero, if necessary) your monthly Social Security benefits as a spouse by the full amount of your pension for months before December 1984 and by two-thirds the amount of your monthly pension for months after November 1984.

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[FR Doc. 85–30657 Filed 12–30–85; 8:45 am]

BILLING CODE 4190–11–M

POSTAL SERVICE

39 CFR Part 111

Sacking Regulations for Bulk Third-Class Mail

AGENCY: Postal Service.

ACTION: Proposal rule.

SUMMARY: This proposed rule involves changes in mail preparation requirements for bulk third-class mail and is based upon a survey of third-class mail sacking characteristics and a recently completed Postal Service study which analyzed the current minimum sacking requirements for bulk third-class mail. This study was designed to determine a more economical set of minimum sacking requirements for bulk third-class mail which, in turn, would lower operating costs and help relieve sack sorting capacity problems at Bulk Mail Centers ("BMCs"). The results of this study indicate that the current minimum sacking requirements for bulk third-class mail are significantly below the levels that were determined to be the most economical. Consequently, the Postal Service has developed a proposal that would change the minimum sacking requirements for bulk third-class mail.

In general, the proposal would increase the minimum sack fullness requirement for most sacks of bulk third-class mail from current levels to 125 pieces or 15 pounds of mail. Also, under the proposal, carrier route and 5-digit presort mailers would be able to qualify for those respective rates by sacking existing qualifying packages to 3-digit destinations. It is anticipated that implementation of these new regulations could begin as early as April, 1986. In addition to this proposal, a mail classification filing has been submitted to the Postal Rate Commission requesting a language change it the Domestic Mail Classification Schedule which, as currently written, prevents the Postal Service from extending presort discounts to 5-digit packages in 3-digit sacks. Consequently, implementation of a complete final rule must await a change in the Domestic Mail Classification Schedule.

This proposal affects only bulk third-class minimum sacking requirements. The minimum quantity required per mailing remains unchanged at 200 pieces or 50 pounds of mail. Similarly, packaging requirements are unchanged.

DATES: Comments must be received on or before January 30, 1986.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, DC 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday, in the Rates and Classification Department, Room 8629, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas P. Shipe, (202) 268–2678.

SUPPLEMENTARY INFORMATION:

I. Background

In general, preparation requirements for bulk third-class mail are stated in terms of pieces per package and some minimum quantity per sack. These requirements are set forth in 667 of the Domestic Mail Manual. In the case of carrier route mail, this minimum sacking requirement is currently one package of 10 pieces of mail presorted to a particular carrier route. Carrier route mailers may place their qualifying packages either in carrier route sacks which contain mail for a single carrier, or in carrier routes sacks which contain packages for more than one carrier within a 5-digit ZIP Code destination. The choice between carrier route or carrier routes sacking is left largely up to the mailer; however, if there are 20 pounds or 1,000 cubic inches of mail for the same carrier route, that mail must be placed in a carrier route sack.

Availability of the 5-digit presort rate requires a minimum of 50 pieces or 10 pounds of mail for either a 5-digit ZIP Code area or a unique 3-digit multi-coded city area. If there are 50 pieces or 10 pounds of mail for a single 5-digit ZIP Code destination, that mail must be placed in a 5-digit sack. If, after preparing all required 5-digit sacks, there are 50 pieces or 10 pounds of presorted mail for 5-digit areas within a unique 3-digit city, then those pieces can qualify for the 5-digit rate if placed in a unique 3-digit city sack. Remaining pieces must be sacked in accordance with the requirements for basic rate third-class mail and must pay postage at the basic rate.

Sacks of basic rate mail may contain as few as 1 package or 10 pieces of mail. The only requirement is that twelve or more packages for a particular 5-digit, 3-digit, or state destination area must be placed in a separate sack. This requirement must first be fulfilled for 5-digit sacks, followed by 3-digit sacks, and finally state sacks. Sacks containing fewer than twelve packages may be prepared. Packages remaining after state sacks have been prepared must be made up into mixed-states sacks. There are also several optional sack types which basic rate mailers may prepare, such as Optional City, Optional SCF and Optional SDC sacks.

From time to time it is necessary for the Postal Service to change mail preparation requirements. Changes may be necessary to deal with various operational problems but may also be required to adapt to refinements in mail processing activities or changes in mailer practices. In the past, a number of changes have been required in the bulk third-class sacking requirements. For example, prior to February, 1980, the minimum sacking requirement for bulk third-class mail was one-third of a sack. This minimum was developed during the time when most mail was transported by rail. In order to minimize the charges for sack handling assessed by the railroads, the Post Office Department required the preparation of sacks which were at least one-third full.

In February, 1980, the minimum sacking requirement for bulk third-class mail was reduced from one-third of a sack to one package or 10 pieces of mail. The Postal Service identified three primary reasons for this change. First, because of changes in the modes of transportation used by the Postal Service, the need for a one-third of a sack standard was no longer considered paramount. Second, the changes would encourage the preparation of sacks that would require opening by the Postal Service at a facility very near the final destination of the enclosed mail. This, in turn, would reduce the volume of individual packages of mail to be sorted at Sectional Center Facilities (SCFs) and State Distribution Centers (SDCs). Finally, by making the minimum requirements optional (*i.e.*, the decision to prepare sacks at the minimum quantity was left up to the mailer) mailers could rely on their own cost analyses in determining if it would be advantageous to prepare lightweight minimum quantity sacks. It was generally believed that, for cost reasons, mailers would not make up large numbers of lightweight "skin" sacks.

In March, 1981, the Postal Service established distinct rates for the three categories of bulk third-class mail that had been created by the Governors in Rate Commission Docket No. MC78–2. Separate rates were established for carrier route presorted mail, 5-digit presorted mail and all other bulk third-class mail. Under this three-tiered rate structure, mailers found it financially beneficial to prepare more sacks of fewer pieces and the Postal Service found itself inundated with lightweight sacks of bulk third-class mail. This

created two major problems: (1) Sack sorting capacity problems at BMCs and (2) an inability to accommodate demands of many mailers for sacks. A review of the situation indicated that these problems primarily involved "skin" sacks of bulk third-class 5-digit rate mail. Consequently, in September, 1981, the minimum sacking requirement for 5-digit mail was increased from 1 package or 10 pieces to 50 pieces or 15 pounds of mail. At the same time, the eligibility requirement for the 5-digit rate was relaxed so that 5-digit packages in unique 3-digit city sacks qualified for the rate provided the sacks also met the 50-piece or 15-pound minimum requirement.

A final rule, published in December, 1981, lowered the above minimum from 50 pieces or 15 pounds of mail to 50 pieces or 10 pounds of mail. Since 1981 there have been no changes in bulk third-class minimum sacking requirements.

II. Continued Problems

Volume growth of bulk third-class mail since 1981 has again created sack sorting capacity problems at BMCs. In September, 1983, the Board of Governors authorized funding of approximately $50 million for additional sack sorting equipment at four BMCs. However, at that time, projections of continuing volume growth indicated that additional sack sorting capacity would be required at virtually all BMCs by the latter part of the 1980s. In an effort to identify and evaluate potential solutions to the sack sorting capacity problems, a task force was established by the Postal Service's Operations Group in January, 1984. One of the primary alternatives under consideration was a reduction in the number of sacks generated by mailers to be brought about through changes in the mail make-up requirements.

A primary concern of the task force was the degree to which the capacity problems were caused by large numbers of lighweight "skin" sacks. As a result, a survey was undertaken to determine the number of lightweight third-class sacks in the BMC network and to assess their contribution to sack sorting workloads.

The results of this survey showed that lightweight sacks of bulk third-class mail make up a substantial portion of BMC sack sorter workloads. Approximately 21 percent of the third-class sacks sampled contained less than 5 pounds of mail; nearly 38 percent had less than 10 pounds. These lightweight sacks most prevalent in the discounted rate categories. For example, 44 percent of the carrier route sacks sampled contained less than 5 pounds of mail; most of these contained only one package. Five-digit rate mail, which represented the largest portion of the third-class sack sorter workload, showed similar, although somewhat less pronounced, characteristics. Based on the results of this survey, a study was initiated to examine the merits of the current minimum sacking regulations.

III. Minimum Sacking Study

The objective of minimum sacking study was to determine the optimal minimum sack size for bulk, third-class mail and use this to develop a more economical set of minimum sacking requirements. This, in turn, would allow the Postal Service to better control its costs and potentially provide relief from the BMC sack sorting capacity problems. The minimum sacking study was designed to determine the quantity of mail needed in a sack in order to justify the cost of handling that sack. The study specifically examined carrier route, carrier routes, 5-digit, and 3-digit sacks and examined the merits of allowing 3-digit sacking of carrier route and 5-digit mail.

The results of this study showed that the Postal Service's current minimum sacking requirements are significantly below the levels determined to be most economical. In addition, the study revealed that for carrier route, carrier routes and 5-digit sacks below the minimum levels, costs could be reduced if the mail were sacked to 3-digit destinations. This is so because the costs avoided by eliminating sacks below the minimum fullness level are greater than the additional package handling costs incurred from having this mail placed in 3-digit sacks. Based on this conclusion, the Postal Service is proposing a minimum sacking requirement of 125 pieces or 15 pounds of mail for most sacks of bulk third-class mail.

Additionally, carrier route and 5-digit rate mailers could qualify for the discounted rates by preparing 3-digit sacks of qualifying packages at or above the minimum levels. However, only those 5-digit packages and pieces which currently qualify for the presort discount rate would be eligible to be sacked to 3-digit ZIP Code destinations and pay the 5-digit rate. Also, only one rate category of mail could be placed in any particular 3-digit sack, *i.e.*, a 3-digit sack of 5-digit rate mail could contain only 5-digit rate mail; carrier route rate and basic rate mail would be required to be placed in separate 3-digit sacks.

Two elements of the proposed rule distinguish it from the 1980–1981 third-class preparation changes described above. First, the proposed changes are designed not to alter substantially the availability of discounted 5-digit rates. Unlike the eligibility for the carrier-route category, which is currently based simply upon the number of pieces separated for an individual carrier route, eligibility for the 5-digit rate has been based upon the preparation of a 5-digit sack containing a minimum of 50 pieces or 10 pounds of mail. Because the proposed rule would extend discounts to 5-digit packages in 3-digit sacks, mail currently not qualifying for the 5-digit rate could become eligible for this lower rate. The Postal Service wishes to avoid the loss of revenue that would result; thus, the proposed rule calls for maintenance of the 50-piece/10 pound requirement for rate eligibility. Consequently, a minimum of 50 pieces or 10 pounds of mail would be required for each 5-digit ZIP Code area presented in a 3-digit sack to qualify for the 5-digit presort rate.

The second distinguishing feature involves portions of carrier-route mailings destined for the smallest 5-digit ZIP Code service areas. In these small service areas, carrier-route mailers could not possibly assemble enough mail to permit the preparation of a 5-digit carrier routes sack. Thus, the proposed rule would be provide an exception to the 125-piece/15-pound fullness requirement for 5-digit carrier routes sacks containing pieces addressed to 90 percent or more of the residential delivery points served by such offices.

IV. Benefits From the New Requirements

As explained above, the proposed sacking requirements are expected to produce lower operating costs and to relieve the strain on BMC sack sorting capacity. Eliminating the inefficiencies associated with handling lightweight sacks from the postal system, of which mailers bear the cost, would benefit mailers and the Postal Service in the future. The Postal Service estimates that BMC sack sorter workloads could be reduced by 23 percent and that capital expenditures for additional sack sorting equipment at individual BMCs could be reduced, delayed, or possibly eliminated in some cases.

Overall, the Postal Service expects that the new sacking requirements would result in more reliable and consistent service for bulk third-class mail. The reduction in the number of sacks processed at BMCs would eliminate many of the periodic sack sorting capacity shortfalls currently experienced. However, benefits will not accrue only at BMCs. Inefficient handling and sorting of lightweight

sacks at other postal facilities would also be eliminated.

Package sorting activities would necessarily increase under the new proposed sacking requirements. However, the offsetting reduction in sack handling activities would be more than enough to provide overall system-wide cost reductions. The additional package sorting activities are not expected to have any adverse effect on bulk third-class service.

Under the new proposal, carrier route rate and 5-digit rate mail in 3-digit sacks would undergo a package handling at 3-digit (Sectional Center) facilities. Distribution of packages of carrier route presorted mail to 5-digit separations does occur in our present operating environment. However, this new activity would require only minor adjustments for the facilities involved and, given the reduction in the number of sacks in the system, would maintain or improve the overall service provided bulk third-class mail. It is important to note that the Postal Service's service commitment for carrier route and 5-digit packages in 3-digit sacks would be the same as the existing service commitment for these packages in carrier route, carrier routes or 5-digit sacks. To ensure that this commitment is met, the Mail Processing Department at Headquarters would work closely with regional and field managers to identify the necessary adjustments required in field operations. The Postal Service plans to monitor service performance under the new proposed regulations, and would develop appropriate operating procedures for the new package handling activities so that service commitments are maintained.

The proposed new third-class sacking requirements should also provide some direct benefits to mailers. The proposal would reduce the number of sacks prepared by most mailers. This, in turn, should act to lower mailer preparation costs. Also, the reduction in required sack preparations should lower sack demand, providing relief from sack shortages experienced by many mailers.

A comparison of current and proposed sack minimums including a detailed description of the new proposed sacking requirements is provided below.

General

Overall, the minimum quantity required per mailing remains unchanged at 200 pieces or 50 pounds of mail. Similarily, packaging requirements are unchanged at 10 pieces per package. Only the sacking requirements would be changed. The changes for each presort level would be as follows:

Carrier Route Presort Level

Current Sack Minimums

Carrier Route Sack 5-Digit Carrier Routes Sack	10 pieces per sack

Proposed Sack Minimums

Carrier Route Sack 5-Digit Carrier Routes Sack 3-Digit Carrier Routes Sack	125 pieces or 15 pounds of mail

When there are 125 pieces or 15 pounds of qualifying mail to the same carrier route, the mail MUST be placed in a carrier route sack. Carrier Route sacks containing fewer than 125 pieces or less than 15 pounds of mail for the same carrier route WILL NOT be accepted.

If, after preparing all required Carrier Route sacks, there are 125 pieces or 15 pounds of qualifying mail to different carrier routes within the same 5-digit ZIP Code area, the mail MUST be placed in 5-Digit Carrier Routes Sacks. Five-Digit Carrier Routes Sacks containing fewer than 125 pieces or less than 15 pounds of mail WILL NOT be accepted.

Exception: Saturation mailers of carrier route presorted mail may, at their option, prepare 5-digit Carrier Routes sacks containing fewer than 125 pieces of mail for those 5-digit ZIP Code areas that do not have a sufficient number of residential deliveries to meet the 125-piece minimum at a 90% saturation level. A saturation mailing is defined as a mailing sent to at least 90% of the total residential addresses within a 5-digit ZIP Code area.

If, after preparing all required Carrier Route and 5-Digit Carrier Routes sacks there are 125 pieces or 15 pounds of qualifying mail to different carrier routes within the same 3-Digit ZIP Code area, the mail MUST be placed in 3-digit ZIP Code area.

Residual Pieces: All pieces not meeting the minimums required above are residual pieces and must be placed in 3-digit Carrier Routes Sacks. In other words, to qualify mail for the carrier route presort rate, a minimum of 125 pieces or 15 pounds of carrier presorted mail for a 3-digit ZIP Code area is required. As currently required, the number of residual pieces to any single 5-digit ZIP Code area may not exceed 5 percent of the total qualifying presorted carrier route pieces addressed to that 5-digit area. Residual pieces must have postage paid at the third-class "basic" level bulk rate.

Five-Digit Presort Level

Current Sack Minimums

5-Digit Sack Unique 3-Digit City Sack	50 pieces or 10 pounds of mail

Proposed Sack Minimums

5-Digit Sack Unique 3-Digit City Sack 3-Digit Sack*	125 pieces or 15 pounds of mail.

*Note: A minimum of 50 pieces or 10 pounds of mail is required for each 5-Digit ZIP Code destination within a (non-unique) 3-Digit sack to qualify for the 5-Digit presort rate.

When there are 125 pieces or 15 pounds of qualifying 5-digit mail for the same 5-digit desination the mail MUST be placed in a 5-digit sack. Five-digit sacks containing fewer than 125 pieces or less than 15 pounds of mail WILL NOT be accepted.

If, after preparing all required 5-digit sacks, there are 125 pieces or 15 pounds of qualifying 5-digit mail to different 5-digit ZIP Code destinations within a 3-digit service area, they MUST be placed in a 3-digit sack. Only 5-digit ZIP Code destinations with a minimum of 50 pieces or 10 pounds of mail may be

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placed in these 3-digit sacks. Three-digit sacks containing fewer than 125 pieces or less than 15 pounds of mail WILL NOT be accepted.

Unique 3-digit city sacking requirements remain optional. A mailer with a total of 125 pieces or 15 pounds of 5-digit mail for 5-digit ZIP Code destinations within a unique 3-digit city, may place this mail in a Unique 3-digit City sack. This mail qualifies for the 5-digit rate.

All pieces not meeting the minimums required above are residual pieces and must be sacked in accordance with the requirements for basic rate mail described below.

Machinable Parcel Preparation Requirements

Five-digit presort requirements for machinable parcels remain essentially unchanged with the exception that 10 or more pounds for a single 5-digit area must be placed in a 5-digit sack.

Basic Rate Mail

Current Sack Minimums

5-Digit Sack Optional City Sack 3-Digit Sack Optional SCF Sack Optional SDC Sack State Sack	No minimums

Twelve or more packages for any sack level MUST be made up to that sack level. This requirement must be fulfilled beginning with 5-digit sacks and working down to State sacks. City, SCF, and SDC sacking is optional.

Proposed Sack Minimums

5-Digit Sack Optional City Sack 3-Digit Sack Optional SCF Sack Optional SDC Sack State Sack	125 pieces or 15 pounds of mail

Beginning with 5-Digit sacks and working down to State sacks—125 pieces or 15 pounds of mail for each sack level MUST be sacked to that level. This is requird for 5-digit, 3-digit and State sacks. City, SCF, and SDC sacking remains optional but must also contain 125 pieces or 15 pounds of mail when prepared. After complying with the above requirements, all remaining packages must be placed in Mixed States Sacks. There are no minimums for Mixed States Sacks.

V. Recommended Changes

The proposed changes to bulk third-class sacking requirements would, in part, be contingent upon the outcome of a mail classification proceeding before the Postal Rate Commission. A request for a recommended decision on a change in the Domestic Mail Classification Schedule ("DMCS") has been submitted to the Postal Rate Commission. That portion of these proposed regulation changes pertaining to carrier route rate and basic rate mail is not affected by that filing. However, the 5-digit portion of these proposed changes would allow qualifying 5-digit pieces and packages (those consisting of 50 pieces or 10 pounds to a 5-digit area) to be placed in 3-digit sacks and retain eligibility for the 5-digit rate. The requested change in the DMCS is designed to be consistent with that portion of this proposed rule. Consequently, implementation of the 5-digit portion of the proposed sacking requirements would not take place until the DMCS change is made.

List of Subjects in 39 CFR Part 111

Postal Service.

Accordingly, although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1. Comments regarding an adequate conversion period would be particularly helpful. The Postal Service plans to permit *voluntary* compliance with the new regulations upon publication of a final rule, but *require* compliance after 60 days.

PART 111—[AMENDED]

1. The authority for 39 CFR continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14.

2. In 622, 622.11a, 622.11b, and 622.12a are revised to read as follows:

PART 622—THIRD-CLASS BULK MAIL

622.1 Eligibility

.11 Carrier Route Presort Level

a. Minimum Quantity. Each mailing must consist of at least 200 pieces or 50 pounds of mail presorted to carrier routes in accordance with 667.3. Each piece must be part of a group of 10 or more pieces packaged to the same carrier route, rural route, highway contract route, post office box section, or general delivery unit. Packages must be placed in either a carrier route, 5-digit carrier routes, or 3-digit carrier routes sack. Each sack must contain a minimum of 125 pieces or 15 pounds of qualifying carrier route packages to be eligible for the carrier route presort level rate.

Exception: Saturation mailers of carrier route presorted mail may, at their option, prepare 5-digit carrier routes sacks containing fewer than the 125 pieces of mail for those 5-digit ZIP Code areas that do not have a sufficient number of residential deliveries to meet the 125 piece minimum at a 90% saturation level. A saturation mailing is defined as a mailing sent to at least 90% of the total residential addresses within a 5-digit ZIP Code area.

b. Residual. Those pieces not part of a group of 10 or more pieces packaged to a particular carrier route, or those which are part of a group of 10 or more pieces packaged to a particular carrier route but which cannot be placed in a sack containing a minimum of 125 pieces or 15 pounds of qualifying mail, are residual pieces. Residual pieces may be included in a carrier route presort rate mailing and may bear the Carrier Route Presort endorsement subject to the following provisions:

(1) Residual pieces do not count towards the minimum quantity requirements for the carrier route presort level rate.

(2) The number of residual pieces to any single 5-digit ZIP Code area may not exceed 5% of the total qualifying presorted carrier route pieces addressed to that 5-digit area.

(3) Residual pieces are not eligible for the carrier route presort level rate and must have postage paid at the appropriate third-class "basic" level bulk rate.

(4) Residual pieces must be prepared in accordance with 667.3.

* * * * *

622.12 Five-Digit Presort Level

.12 Five-Digit Presort Level

a. Minimum Quantity. Each mailing must consist of at least 200 pieces or 50

pounds of qualifying mail presorted to 5-digit destinations. Each piece must be part of a package of 10 or more pieces to the same 5-digit ZIP Code destination and the package must be placed in a 5-digit or 3-digit sack. Five-digit sacks must contain a minimum of 125 pieces or 15 pounds of mail. Three-digit sacks must contain a minimum of 125 pieces or 15 pounds of mail with a minimum of 50 pieces or 10 pounds to each 5-digit ZIP Code destination contained within the 3-digit sack. Sacks containing fewer than 125 pieces or less than 15 pounds of mail may NOT be prepared. Fifty pieces or 10 pounds of mail for a 5-digit destination will qualify for the 5-digit present level rate when prepared in packages and bundles presented on pallets in accordance with 667.5.

Exception: For unique 3-digit multi-ZIP Code cities listed in Exhibit 122.63b, mailers may commingle different 5-digit packages of 10–49 pieces in sacks providing:

(1) Each sack contains at least 125 pieces or 15 pounds of mail, and

(2) 3-digit city packages are NOT included in the sack, and

(3) 125 pieces or 15 pounds of mail for a single 5-digit ZIP Code (within the unique 3-digit city) must be sacked separately.

3. In 667, 667.132, 667.221, 667.222, 667.312, 667.32, and 667.42 are revised to read as follows:

667.1 Preparation Requirements for Basic Rate

* * * * *

.13 Sacking Requirements

* * * * *

.132 Sortation

a. 5-Digit Sacks. When there are 125 pieces or 15 pounds of mail packaged to the same 5-digit ZIP Code destination, the packages must be placed in 5-digit sacks labeled to the 5-digit destination.

Five-digit sacks containing fewer than 125 pieces or less than 15 pounds of mail may NOT be prepared. Each sack must be labeled in the following manner:

Line 1: City, State and 5-digit destination.

Line 2: Contents.

Line 3: Office of Mailing.

Sample:

PHILADELPHIA PA 19118
3C FLATS
BOSTON MA

Note.—If a mailing consists of both machinable parcels and irregular parcels as defined in 128 and as provided for in 622.14, the contents line of 5-digit sack labels must read "3C MACH and IRREG." When there are 10 pounds of material for a 5-digit ZIP Code destination, it must be placed in a 5-digit sack. Sacks containing less than 10 pounds of material may be prepared. Pieces in a 5-digit sack that contains machinable and irregular parcels need not be packaged as required by 667.121b.

b. Optional City Sacks. If after preparing required 5-digit sacks, there are 125 pieces or 15 pounds of mail packaged to the multi-ZIP Coded cities listed in Exhibit 122.63a, mailers are encouraged to place those packages into city sacks. City sacks containing fewer than 125 pieces or less than 15 pounds may NOT be prepared. Each sack must be labeled in the following manner:

Line 1: City, State and Lowest 5-Digit ZIP Code.

Line 2: Contents.

Line 3: Office of Mailing.

Sample:

AURORA IL 60504
3C LTRS
BOSTON MA

Note.—An optional city sack may contain both machinable and irregular parcels (as defined in 128) when there are at least 10 pounds of material for the optional city sack. The contents line for optional city sack labels for sacks which are part of a mailing containing machinable and irregular parcels must read "3C MACH AND IRREG." Pieces in an optional city sack that contains both machinable and irregular parcels need not be packaged as required by 667.121c.

c. 3-Digit Sacks. When, after preparing required 5-digit and optional city sacks, there are 125 pieces or 15 pounds of mail packaged to the same 3-digit ZIP Code destination, the packages must be made up into 3-digit sacks. Three-digit sacks containing fewer than 125 pieces or less than 15 pounds of mail will NOT be accepted. Each sack must be labeled in the following manner:

Line 1: City, State and 3-Digit ZIP Code prefix.

Line 2: Contents.

Line 3: Office of Mailing.

Sample:

PHILADELPHIA PA 191
3C FLTS
ROCHESTER NY

d. Optional SCF Sacks. When, after preparing required 5-digit, optional city, and required 3-digit sacks, there are 125 pieces or 15 pounds of mail packaged to post offices in the same sectional center facility (SCF) service areas listed in 122.63d, mailers are encouraged to place the packages into SCF sacks. SCF sacks containing fewer than 125 pieces or less than 15 pounds of mail will NOT be accepted. Each sack must be labeled in the following manner:

Line 1: Name and State of SCF and Lowest 3-Digit ZIP Code for that SCF.

Line 2: Contents.

Line 3: Office of Mailing.

Sample:

SCF PHILADELPHIA PA 190
3C FLATS
BOSTON MA

Note.—A list of all SCF's serving more than one 3-digit ZIP Code area, the first three digits of all ZIP Codes served by these facilities, and the principal 3-digit ZIP Code prefix that are to be used on SCF sack labels is contained in Exhibit 122.63d.

e. Optional SDC Sacks. When, after preparing required 5-digit, optional city, required 3-digit and optional SCF sacks, there are 125 pieces or 15 pounds of mail addressed to post offices in the same state distribution center (SDC) service areas listed in Exhibits 122.63g and 122.63h, mailers are encouraged to prepare SDC packages and place them into SDC sacks. SDC sacks containing fewer than 125 pieces or less than 15 pounds will NOT be accepted. Each sack must be labeled in the following manner:

Line 1: Name of SDC for Destination Area.

Line 2: Contents and 2 Letter State Abbreviation.

Line 3: Office of Mailing.

Sample:

DIS PITTSBURGH PA 150
3C FLTS PA
SAN FRANCISCO CA

f. State Sacks. When after preparing required 5-digit, optional city, required 3-digit, optional SCF, and optional SDC sacks, there are 125 pieces or 15 pounds of mail packaged to the same state, the packages must be placed into state sacks. Sacks containing fewer than 125 pieces or less than 15 pounds will NOT be accepted. Each sack must be labeled in accordance with Exhibits 122.63j, 122.63k, or 122.63l., as applicable, and in the following manner:

Line 1: Name of SDC for State of Destination.

Line 2: Contents and 2 Letter State Abbreviation.

Line 3: Office of Mailing.

Sample:

DIS KANSAS CITY MO 640
3C LTRS MO
SCRANTON PA

g. Mixed States Sacks. Packages remaining after required states sacks have been prepared must be made up into mixed states sacks. Each sack must be labeled in the following manner:

Line 1: Mixed States Distribution Location.

Line 2: Contents followed by the words "MIXED STATES" OR "MXD STATES."

Line 3: Office of Mailing.

Sample:

DIS CHICAGO IL 606
3C LTRS MIXED STATES OR MXD STATES

CHICAGO IL

h. Loose Pack Sack. The term loose pack sack refers to the placement of unpackaged, unbound mail pieces in a receptacle such as a mail sack. Management Sectional Center (MSC) managers may authorize mailers to loose pack pieces in full No. 3 sacks without packaging when all material in a sack would normally be "worked" at the point where the sack is opened, e.g., if a 3-digit sack contains no more than nine pieces for any one 5-digit destination. Pieces must be placed to maintain orientation of the pieces while in transit. Mailers desiring to loose pack pieces must request authorization through the post office of mailing.

Note.—The following abbreviations may be used on the contents line of sack labels:

LTRS.....LETTERS
FLTS.....FLATS
MXD.....MIXED

* * * * *

667.2 Machinable Parcel Preparation Requirements.

* * * * *

.22 Sacking Requirements.

.221 5-Digit Sacks. When there are 10 pounds of material addressed to the same 5-digit ZIP Code destination, they must be placed in 5-digit sacks. Each sack must be labeled in the following manner:

Line 1: City, State and 5-Digit Destination.
Line 2: Contents.
Line 3: Office of Mailing.
Sample:

BINGHAMTON NY 13901
3C MACH
WASHINGTON DC

.222 Destination Bulk Mail Center (BMC) Sacks. If, after preparing required 5-digit sacks there are 10 pounds or more of material to a destination BMC delivery area, they must be placed in a destination BMC sack. Each sack must be labeled in the following manner:

Line 1: Destination BMC.
Line 2: Contents.
Line 3: Office of Mailing.
Sample:

BMC CHICAGO IL 608
3C MACH
ATLANTA GA

667.3 Preparation Requirements for Carrier Route Presort Level Rate

.31 Packaging

* * * * *

.312 Residual Packages. All residual packages MUST be labeled with a Red label "D" to facilitate postal verification and handling and be placed in 3-digit carrier routes sacks. Residual packages MUST be prepared in one of the following ways:

a. Residual packages of 10 or more pieces to the same carrier (those which could not be placed in a sack containing at least 125 pieces or 15 pounds of mail) must be labeled with a Red Label "D" and placed in a 3-digit carrier routes sack. In addition to the Red Label "D", residual carrier packages may also be labeled to the carrier route in accordance with 667.311a or b.

b. Residual pieces of fewer than 10 pieces to a single carrier route may be secured in packages in accordance with 667.311. In addition to the Red Label "D" residual carrier packages may also be labeled to the carrier route in accorance with 667.311a or b.

c. Residual pieces for an individual carrier route not packaged to a carrier route as provided in 667.312a or 667.312b, must be made up into 5-digit packages.

.32 Sacking. All qualifying packages of 10 or more pieces to the same carrier route must be placed in a sack and must be prepared as follows:

.321 Carrier route sacks. When there are 125 pieces or 15 pounds of qualifying mail to the same carrier route the mail must be placed in a carrier route sack. Carrier route sacks containing fewer than 125 pieces or less than 15 pounds of mail for the same carrier route may NOT be prepared. Each sack must be labeled in the following manner:

Line 1: City, State and 5-Digit ZIP Code Destination.
Line 2: Contents and Carrier Route, Rural Route, Post Office Box Section, Highway Contract Route, or General Delivery Unit.
Line 3: Office of Mailing.
Sample:

SAN FRANCISCO CA 94133
3C LTRS—CARRIER ROUTE 18
PORTLAND OR

.322 Five-Digit Carrier Routes Sacks. When, after preparing all required Carrier Route sacks, there are 125 pieces or 15 pounds of qualifying mail to different carrier routes within the same 5-digit ZIP Code area the mail must be placed in 5-digit Carrier Routes sacks labeled to the 5-digit ZIP Code destination. Five-Digit Carrier Routes sacks containing fewer than 125 pieces or less than 15 pounds of mail may only be prepared under the following exception:

Exception: Saturation mailers of carrier route presorted mail may, at their option, prepare 5-digit Carrier Routes sacks containing fewer than the 125 pieces of mail for those 5-digit ZIP Code areas that do not have a sufficient number of residential deliveries to meet the 125 piece minimum at a 90% saturation level. A satuation mailing is defined as a mailing sent to at least 90% of the total residential addresses within a 5-digit ZIP Code area.

Five-Digit Carrier Routes sacks must be labeled in the following manner:

Line 1: City, State and 5-Digit ZIP Code Destination.
Line 2: Contents followed by the words CARRIER ROUTES.
Line 3: Office of Mailing.
Sample:

SAN FRANCISCO CA 94133
3C LTRS CARRIER ROUTES
SYRACUSE NY

.323 Three-Digit Carrier Routes Sacks. When, after preparing all required Carrier Route and 5-digit Carrier Routes sacks, there are 125 pieces or 15 pounds or more of qualifying mail to different carrier routes within the same 3-digit ZIP Code area, they MUST be placed in 3-digit Carrier Routes sacks and labeled to the 3-digit ZIP Code destination.

Note.—All packages of residual pieces must be placed in 3-digit Carrier Routes sacks labeled to the 3-digit ZIP Code destination.

Each 3-digit Carrier Routes sack must be labeled in the following manner:

Line 1: City, State and 3-Digit ZIP Code Prefix.
Line 2: Contents followed by the words MIXED CARRIER ROUTES.
Line 3: Office of Mailing.
Sample:

BINGHAMTON NY 137
3C FLATS MIXED CARRIER ROUTES
WASHINGTON DC

Note.—The following abbreviations may be used on the contents line of sack labels:

LTRS.....LETTERS
FLTS.....FLATS
MXD.....MIXED
CAR RTS.....CARRIER ROUTES

* * * * *

667.4 Preparation Requirements for 5-Digit Presort Level Rate.

* * * * *

.42 Sacking. All packages of 10 or more pieces to the same 5-digit ZIP Code destination must be placed in a 5-digit or 3-digit sack containing a minimum of 125 pieces or 15 pounds of mail and must be prepared as follows:

.421 5-Digit Sacks.

When there are 125 pieces or 15 pounds of qualifying 5-digit mail for the same 5-digit destination, they must be placed in a 5-digit sack. Five-digit sacks containing fewer than 125 pieces of less than 15 pounds of qualifying mail will NOT be accepted. Each sack must be labeled in the following manner:

Line 1: City, State and 5-Digit ZIP Code destination.

Line 2: Contents.
Line 3: Office of Mailing.
Sample:

ARLINGTON, VA 22202
3C LTRS
BOSTON MA

.422 3-Digit Sacks. When, after preparing all required 5-digit sacks, there are 125 pieces or 15 pounds of qualifying 5-digit presort mail to different 5-digit ZIP Code destinations within a 3-digit service area, they MUST be placed in 3-digit sacks. To qualify for the 5-digit presort level rate there must be:

1. A minimum of 50 pieces or 10 pounds of 5-digit presort mail for any 5-digit ZIP Code separation within the 3-digit sack.

OR

2. A minimum of 10 or more pieces of 5-digit presort mail for any 5-digit ZIP Code separation within a unique 3-digit multi-ZIP Code city sack. A list of unique 3-digit multi-ZIP Code cities is provided in Exhibit 122.63b.

ONLY qualifying 5-digit packages may be placed in the 3-digit sacks. Each 3-digit sack must be labeled in the following manner:

Line 1: City, State and 3-digit ZIP Code Prefix.
Line 2: Contents followed by the words "MIXED 5-DIGIT PKGS".
Line 3: Office of Mailing.
Sample:

BINGHAMTON NY 137
3C LTRS MIXED 5-DIGIT PKGS
PHILADELPHIA PA

Note.—The following abbreviations may be used on the contents line of sack labels:

LTRS	LETTERS
FLTS	FLATS
MXD	MIXED
CAR RTS	CARRIER ROUTES
PKGS	PACKAGES
DG	DIGIT

An appropriate amendment to 39 CFR 111.3 reflect these changes will be published when the final rule is adopted.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-30901 Filed 12-30-85; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300125; FRL-2936-1]

Revocation of Heptachlor Tolerances

Correction

In FR Doc. 85-29116 beginning on page 50643 in the issue of Wednesday, December 11, 1985, make the following correction: On page 50645, in the second column, in table 3, in the first entry ("Fat of meat . . ."), in the third column, "0.02" should read "0.2".

BILLING CODE 1505-01-M

40 CFR Part 435

[OW-FRL-2947-2]

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the public comment period on the proposed best available technology effluent limitations guidelines and new source performance standards for the offshore oil and gas industry that were published in the Federal Register on August 26, 1985. (50 FR 34592).

DATES: The comment period for the proposed rule is extended by 60 days to end on March 15, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Ruddy, Industrial Technology Division (WH-552), U.S. EPA, 401 M Street, SW., Washington, DC 20460, or call (202) 382-7131.

SUPPLEMENTARY INFORMATION: On August 26, 1985, EPA published best available technology effluent limitations guidelines and new source performance standards in the Federal Register for review and comment (50 FR 34592). The comment period began on September 16, 1985 and was to end on December 16, 1985.

On November 13, 1985, the Agency extended the comment period to end on January 15, 1986. (50 FR 46784.)

The Agency recently received a request by the American Petroleum Institute (API) to extend the comment period to end 90 days beyond the December 16, 1985 date. The basis of API's request was to provide additional time to complete certain projects that would serve to support API's comments on the proposed regulation. The Agency has reviewed the request and has determined that it is appropriate to extend the comment period to end on March 15, 1986.

Dated: December 23, 1985.

L.J. Jensen,

Assistant Administrator for Water.

[FR Doc. 85-30891 Filed 12-30-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 799

[OPTS-42002D; FRL 2946-7]

Fluoroalkenes; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule on fluoroalkenes. The extension responds to a request by the Fluoroalkenes Industry Group (FIG) for additional time.

DATE: Written comments on the proposal should be submitted on or before March 7, 1986.

ADDRESS: Submit written comments, identified by the document control number [OPTS-42002D], in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, DC 20460.

The public record supporting this action is available for inspection in Rm. E-107 at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M. St., SW., Washington, DC 20460. Toll Free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule for the fluoroalkenes vinylidene fluoride, vinyl fluoride, hexafluoropropene, and tetrafluoroethene, published in the Federal Register of November 6, 1985 (50 FR 46133), announcing EPA's conclusion that health effects testing for the fluoroalkenes is warranted under section 4(a) of the Toxic Substances Control Act. The document proposes testing for (1) inhalation subchronic toxicity for hexafluoropropene (HFP), (2) inhalation oncogenicity for vinylidene fluoride (VDF), and vinyl fluoride (VF), and if triggered by the results of the proposed mutagenicity testing, for tetrafluoroethene (TFE) and HFP, (3) reproductive effects for VDF, and (4) mutagenicity testing for VF, VDF, TFE, and HFP. The document also requested public comment on the proposed testing and on related issues.

The FIG has requested an extension of the comment period for the following

reasons: (1) The proposed testing is much more extensive than was originally proposed as part of the previous negotiated testing agreement, and therefore extra time is needed to review the appropriateness of the additional required tests; (2) the fluoroalkenes encompass a chemical category of four different chemicals involving five different companies, and therefore extra time is needed to coordinate the different companies' responses; and (3) the FIG expects new test data from an industry-sponsored study on VDF to become available in late February 1986, and these test data are expected to have an improtant bearing on the details of the testing proposed in the NPRM and should therefore be included in FIG's comments.

Therefore, in response to the FIG's request the Agency is extending the comment period to March 7, 1986.

Authority: 15 U.S.C. 2603.

Dated: December 23, 1985.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 85-30000 Filed 12-30-85; 8:45 am]

BILLING CODE 6560-50-M

BEST COPY AVAILABLE

Notices

Federal Register
Vol. 50, No. 251
Tuesday, December 31, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL RIGHTS COMMISSION

Kansas Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 8:45 a.m. and adjourn at 5:00 p.m., on January 27, 1986 and convene at 9:00 a.m. and adjourn at 12:00 noon on January 28, 1986, at the Phillips House Hotel, 12th and Baltimore, Kansas City, Missouri. The purpose of the meeting is to discuss a regional project on Bigotry and Violence and to make plans for a series of civil rights forums in the Central States Region.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett Loomis, or Melvin Jenkins, Director of the Central States Regional Office at (816)374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–30907 Filed 12–30–85; 8:45 am]

BILLING CODE 6335–01–M

Missouri Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 8:45 p.m. and adjourn at 5:00 p.m., on January 27, 1986 and convene at 9:00 a.m. and adjourn at 12:00 noon on January 28, 1986, at the Phillips House Hotel, 12th and Baltimore, Kansas City, Missouri. The purpose of the meeting is to discuss a regional project on Bigotry and Violence and to make plans for a series of civil rights forums in the Central States Region.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Morris Zimring, or Melvin Jenkins, Director of the Central States Regional Office at (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–30908 Filed 12–30–85; 8:45 am]

BILLING CODE 6335–01–M

Nebraska Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 8:45 a.m. and adjourn at 5:00 p.m., on January 27, 1986 and convene at 9:00 a.m., and adjourn at 12:00 noon on January 28, 1986, at the Phillips House Hotel, 12th and Baltimore, Kansas City, Missouri. The purpose of the meeting is to discuss a regional project on Bigotry and Violence and to make plans for a series of civil rights forums in the Central States Region.

Persons desiring additional information, or planning a presentation to the Committee, should contacf Committee Chairperson, Richard Nebraska, or Melvin Jenkins Director of the Central States Regional Office at (816) 374–5253, (TDD 816/374–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–30909 Filed 12–30–85; 8:45 am]

BILLING CODE 6335–01–M

Ohio Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee on the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon, on January 18, 1986, at the Clarion Hotel, 141 W. 6th Street, Cincinnati, Ohio. The purpose of the meeting is to discuss a project on fair housing in Parma, another project on education, and proposals for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald G. Prock or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7371, (TDD 312/886–2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC December 24, 1985.

Bert Silver;

Assistant Staff Director for Regional Programs.

[FR Doc. 85–30910 Filed 12–30–85; 8:45 am]

BILLING CODE 6335–01–M

Wisconsin Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin

Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m., on January 22, 1986, at the Wisconsin Union, 800 Langdon, Madison, Wisconsin. The purpose of the meeting is to discuss Indian civil rights in Wisconsin, school desegregation in Milwaukee, and new projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Kwame Salter or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2388). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-30911 Filed 12-30-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 319]

Resolution and Order Approving the Application of the South Louisiana Port Commission, for a Foreign-Trade Zone in the Parishes of St. Charles, St. John the Baptist, and St. James, LA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the South Louisiana Port Commission, a Louisiana Public Corporation, filed with the Foreign-Trade Zones Board (the Board) on January 18, 1985, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in the Louisiana Parishes of St. Charles, St. John the Baptist, and St. James, adjacent to the Grammercy Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the Zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board-Order.

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone in the Parishes of St. Charles, St. John the Baptist, and St. James, Louisiana

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in port of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the South Louisiana Port Commission (the Grantee) has made application (filed January 18, 1985, Docket No. 2-85, 50 FR 3944) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at 3 sites in the Parishes of St. Charles, St. John the Baptist, and St. James, Louisiana, adjacent to the Grammercy Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 124 at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The Grantee shall notify the excutive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed thereto by its Chairman and Executive Officer at Washington, DC this 20th day of December 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 85-30909 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-570-506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from the People's Republic of China ("PRC") is being, or is likely to be sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 21, 1986, and we will make ours on or before May 13, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On December 4, 1985, we received a petition filed by the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and General Housewares Corp. on behalf of the U.S. industry producing porcelain-on-steel cooking ware. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of this merchandise from the People's Republic of China are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended ("the Act"), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on porcelain-on-steel cooking ware from the PRC and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from the PRC is being, or is likely to be, sold in the United States at less than fair value. In the course of our investigation, we will determine whether the economy of the PRC is state-controlled to an extent that sales of such or similar merchandise in the home market or to third country markets do not permit determination of foreign market value. If it is determined to be a state-controlled economy, we will then choose a non-state-controlled economy surrogate country for purposes of determining foreign market value. If our investigation proceeds normally, we will make our preliminary determination by May 13, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedule of the United States Annotated* (*TSUSA*). Kitchenware, which is currently reported under item 654.0828 of the TSUSA, is not subject to this investigation.

United States Price and Foreign Market Value

United States price was derived from Customs FOB value per unit and per pound of porcelain-on-steel cooking ware from the PRC. Petitioners, alleging that the PRC is a state-controlled-economy country, derived foreign market value from information on the Customs values per unit and per pound for porcelain-on-steel cooking ware from Singapore and Thailand, in accordance with the provisions of 19 CFR 353.36(a)(8). Petitioners selected Sinagpore and Thailand as possible surrogate countries because they export the product named in the petition to the United States and because the Department has expressed a willingness to use them as surrogates for the PRC in past investigations. Based on their calculations using these figures, petitioners allege a dumping margin ranging from 95 percent to 710 percent if calculated on the basis of unit value, and from 58 percent to 112 percent if calculated on the basis of value per pound.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 21, 1986, whether there is a reasonable indication that imports of porcelain-on-steel cooking ware from the People's Republic of China materially injure, or threatening injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85-30921 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-504]

Porcelain-on-Steel Cooking Ware From Mexico; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import, Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the Department of Commerce, we are initiating an antidumpting duty investigation to determined whether porcelain-on-steel cooking ware from Mexico is being, or is likely to be sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its

preliminary determination on or before January 21, 1986, and we will make ours on or before May 13, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5288.

SUPPLEMENTARY INFORMATION:

The Petition

On December 4, 1985, we received a petition filed in proper form on behalf of the Porcelian-on-Steel Committee of the Cookware Manufacturers Association and General Housewares Corp. with respect to porcelain-on-steel cooking ware from Mexico. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of porcelain-on-steel cooking ware from Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on porcelain-on-steel cooking ware from Mexico and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from Mexico is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by May 13, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are currently provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedule of the United States Annotated (TSUSA)*. Kitchenware, currently reported under item 654.0828 of the *TSUSA* is not subject to this investigation.

United States Price and Foreign Market Value

In its sales at less than fair value allegation, the petitioners based United States price on price quotations, FOB Nuevo Laredo, from the two possible respondents. Foreign market value is based on home market prices of the possible respondent, FOB factory. Based on the comparison of United States price and foreign market value, petitioners allege dumping margins ranging from ten percent to 131 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms in writing that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 21, 1986, whether there is a reasonable indication that imports of porcelain-on-steel cooking ware from Mexico materially injure, or threaten material injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85–30923 Filed 12–30–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–508]

Porcelain-on-Steel Cooking Ware From Taiwan; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from Taiwan is being, or is likely to be sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before January 21, 1986, and we will make ours on or before May 13, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5288.

SUPPLEMENTARY INFORMATION:

The Petition

On December 4, 1985, we received a petition filed on behalf of the Porcelain-on-Steel Committee of the Cookware Manufacturers Association and General Housewares Corp. with respect to porcelain-on-steel cooking ware from Taiwan. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of this merchandise are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on porcelain-on-steel cooking ware and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether porcelain-on-steel cooking ware from Taiwan is being, or is likely to be, sold

in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination on or before May 13, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedule of the United States Annotated (TSUSA)*. Kitchenware currently reported under item 654.0828 of the *TSUSA* is not subject to this investigation.

United States Price and Foreign Market Value

Petitioners based United States price on price quotations by Taiwanese exporters for sales to unrelated purchasers. Petitioners based foreign market value on both constructed value and, in the case of two companies with significant home market sales, on actual home market prices. Based on the comparison of actual home market prices and United States price, petitioners allege dumping margins ranging from 7 percent to 65 percent. Based on the comparison of the constructed value and United States price, petitioners allege dumping margins ranging from 21 percent to 70 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 21, 1986, whether there is a reasonable indication that imports of porcelain-on-steel cooking ware from Taiwan materially injure, or threatening material injury to, a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85-30922 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-853-509]

Initiation of Countervailing Duty Investigation; Porcelain-On-Steel Cooking Ware From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in Taiwan of porcelain-on-steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before January 21, 1986.

If our investigation proceeds normally, we will make a preliminary determination on or before February 27, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On December 4, 1985, we received a petition in proper form filed by the Porcelain-On-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers or exporters in Taiwan of porcelain-on-steel cooking ware receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a U.S. industry producing a like product.

Since Taiwan is entitled to an injury determination under section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on porcelain-on-steel cooking ware from Taiwan and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in Taiwan of porcelain-on-steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before February 27, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0324 and 654.0827 of the *Tariff Schedules of the United States Annotated (TSUSA)*. Kitchen ware, currently provided for under item 654.0828 of the *TSUSA*, is not subject to this investigation.

Allegations of Subsidies

The petition lists a number of practices by the Taiwan authorities which allegedly confer subsidies on manufacturers, producers or exporters in Taiwan of porcelain-on-steel cooking ware. We are initiating an investigation on the following programs:

- Preferential Export Financing.
- Export Loss Reserves.
- Domestic Benefits under the Statute for Encouragement of Investment:

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- Accelerated Depreciation and Tax Holidays;
- Duty Exemptions and Deferral on Imported Equipment;
- Preferential Long-Term Loans;
- Preferential Income Tax Rate Ceiling of 22 Percent.

We are not initiating an investigation on the following programs:

- Tax Exemptions for Export Sales.
- Tax Deduction for Investment in Production Equipment.
- Domestic Benefits under the Statute for Encouragement of Investment—Preferential Income Tax Rate Ceiling of 25 Percent.

These programs were determined not to confer subsidies in *Final Negative Countervailing Duty Determination: Welded Carbon Steel Line Pipe from Taiwan* (signed on December 23, 1985). Under the Act, the non-excessive remission of indirect taxes is not considered a subsidy. The rebate or exemption conferred by Tax Exemptions for Export Sales does not exceed the amount of tax borne by goods sold domestically. Therefore, this program does not confer countervailable benefits within the meaning of the countervailing duty law. The benefits conferred by Tax Deduction for Investment in Production Equipment, and Preferential Income Tax Rate Ceiling of 25 percent, are not limited to an industry or enterprise or group of industries or enterprises. Therefore, these programs do not confer countervailable benefits within the meaning of the countervailing duty law.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 21, 1986, whether there is a reasonable indication that imports of porcelain-on-steel cooking ware from Taiwan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

This notice is published pursuant to section 702(C)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85-30925 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-505]

Initiation of Countervailing Duty Investigation; Porcelain-On-Steel Cooking Ware From Mexico

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Mexico materially injure, or threaten material injury to, a U.S. industry. The ITC will make its preliminary determination on or before January 21, 1986. If our investigation proceeds normally, we will make our preliminary determination on or before February 27, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On December 4, 1985, we received a petition in proper form filed by the Porcelain-On-Steel Committee of the Cookware Manufacturers Association and the General Housewares Corporation. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a U.S. industry producing a like product.

On April 23, 1985, the Office of the United States Trade Representative announced that Mexico is a "country under the Agreement", within the meaning of section 701(b)(2) of the Act. Consequently, Title VII of the Act applies to this investigation and the ITC is required to determine whether imports of the subject merchandise from Mexico materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on procelain-on-steel cooking ware from Mexico and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before February 27, 1986.

Scope of Investigation

The products covered by this investigation are porcelain-on-steel cooking ware, including teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. These products are provided for in items 654.0815, 654.0824, and 654.0827 of the *Tariff Schedules of the United States, Annotated*. Kitchen ware, currently reported under item 654.0828 of the *TSUSA*, is not subject to this investigation.

Allegations of Subsidies

The petition lists a number of practices by the government of Mexico which allegedly confer subsidies on manufacturers, producers, or exporters in Mexico of porcelain-on-steel cooking ware. We are initiating an investigation on the following programs:

- Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX).
- Preferential Federal Tax Credits (CEPROFI).
- Fund for Industrial Development (FONEI).
- Energy Discounts and Rebates.
- Guarantee and Development Fund for Medium and Small Industries (FOGAIN).
- Article 94 Loans.
- Accelerated Depreciation Allowances.
- Import Duty Reductions and Exemptions.
- Preferential Vessel, Freight, Terminal and Insurance Benefits.
- Nacional Financiera, S.A., Loans (NAFINSA).
- National Fund for Industrial Development (FOMIN).
- Loans from the Mexican National Bank for Foreign Trade (BANCOMEXT).
- Export Credit Insurance.
- Trust For Industrial Parks, Cities, and Commercial Centers (FIDEIN).
- The Mexican Institute of Foreign Trade (IMCE).
- Port Facilities.
- New Exchange Risks Trust Fund Program (FICORCA).
- Preferential State Investment Incentives.

Although not specifically alleged by petitioners, we are initiating an investigation to ascertain whether the Mexican porcelain-on-steel cooking ware industry receives any benefits under the following programs:

- Foreign Currency Financing of Imports (PROFIDE).
- Government-Financed Technology Development.

Based on information available to the Department, we are also initiating an investigation on the following programs to determine whether they may constitute subsidies and whether they benefit the porcelain-on-steel cooking ware industry:

- Drawback Adjusted for Changes in Exchange Rates.
- Temporary Importation Scheme.

We are not initiating an investigation on the following program:

- National Preinvestment Fund for Studies and Projects (FONEP):

Petitioners allege that the Mexican government provides financing for economic, technical, and feasibility studies through FONEP, which is administered by the national development bank (NAFINSA). In the *Final Affirmative Countervailing Duty Determination: Bars and Shapes from Mexico* (49 FR 32889) (August 17, 1984), the Department ruled that such loans are available to all companies in Mexico and are not limited to a specific enterprise or industry, or group of enterprises or industries. Because petitioners have not presented any new information or alleged changed circumstances with respect to FONEP, we are not initiating on this program.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all non-privileged and non-confidential information. We also will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by January 21, 1986, whether there is a reasonable indication that imports of porcelain-on-steel cooking ware from Mexico materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to statutory procedures.

This notice is published pursuant to section 702(C)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85-30924 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-533-502]

Certain Welded Carbon Steel Standard Pipe and Tube From India; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain welded carbon steel standard pipe and tube (standard pipe and tube) from India are being, or are likely to be, sold in the United States at less than fair value and that critical circumstances do not exist with respect to imports of this merchandise for two respondents (Gujarat and Zenith) and do exist for the third (TISCO). We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by March 10, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Terri A. Feldman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965 or (202) 377-0160.

SUPPLEMENTAL INFORMATION:

Preliminary Determination

Based upon our investigation, we have preliminarily determined that standard pipe and tube from India are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) (19 U.S.C. 1673b(b)) of the Tariff Act of 1930, as amended (the Act). The margins preliminarily found for all companies investigated are listed in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by March 10, 1986.

Case History

On July 16, 1985, we received a petition in proper form filed by the Standard Pipe and Tube Subcommittee of the Committee on Pipe and Tube Imports (CPTI), and by each of the member companies who produce standard pipe and tube. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports are materially injuring, or threatening material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on August 9, 1985 (50 FR 32244). On August 30, 1985, the ITC determined that there is a reasonable indication that imports of standard pipe and tube are materially injuring, or threatening material injury to, a U.S. industry (50 FR 37068).

On September 26, 1985, we received an amendment to the petition alleging critical circumstances.

On September 6, 1985, a questionnaire was presented to counsel for respondents. On October 21 and 22, 1985, Tata Iron & Steel Co., Ltd. (TISCO) and Zenith Steel Pipes & Industries, Ltd. (Zenith) responded to our questionnaire. On November 13, 1985, Gujarat Steel Tubes, Ltd. (Gujarat) presented a voluntary response to our questionnaire. Because the above-named companies accounted for at least 60 percent of exports of the merchandise to the United States during the period of investigation, we limited our investigation to them. We investigated virtually all sales of standard pipe and tube by these companies for the period of February 1, 1985, through July 31, 1985.

Scope of Investigation

The products covered by this investigation are welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products are commonly referred to in the industry as standard pipe or tube produced to various ASTM specifications, most notably A–120, A–53 orA–135.

Fair Value Comparison

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price based on purchase price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise as the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the packed F.O.B. or C&F price to unrelated customers in the United States. Where appropriate, we made deductions for foreign inland freight, ocean freight, government quality control and inspection charges, and clearing/forwarding charges. Where appropriate, we made additions for cash compensatory support (CCS) and duty drawback.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market prices. We used packed C&F and F.O.B. delivered prices to unrelated home market purchasers to determine the foreign market value. We made deductions, where appropriate, for freight charges and discounts. We made comparisons of such or similar merchandise based upon product subgroups selected by Department of Commerce industry experts and, where appropriate, made adjustments for differences in physical characteristics based upon data provided by the companies and Department of Commerce industry experts. In accordance with § 353.15 of the Commerce Regulations, we made circumstances of sale adjustments for differences in commissions and credit terms in the two markets for all respondents.

We disallowed claimed circumstances of sale adjustments by TISCO for the differences in advertising, technical services, legal expenses and bad debt. We disallowed these adjustments because they were not directly related to sales under consideration as required by § 353.15(a) of the Commerce Regulations. In addition, we disallowed an adjustment for the Import Price Reimbursement Scheme (IPRS) because there is no provison in the law for such an adjustment.

We made currency conversions in accordance with § 353.36(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Critical Circumstances

The petitioners alleged that imports of standard pipe and tube from India present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of standard pipe and tube from India in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries. We did not find that there was a history of dumping of standard pipe and tube in the United States or elsewhere. Therefore, we considered whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. For Zenith and Gujarat, we found the dumping margins too small to lead us to believe importers knew these firms were dumping. For TISCO, we found that the margin of dumping, 50.37%, was large enough so that importers knew or should have known that the products under investigation were being sold at less than fair value.

Since for Zenith and Gujarat, we did not find a history of dumping in the United States or elsewhere, nor did we find any reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value, we did not need to consider whether there have been massive imports from Zenith and Gujarat over a relatively short period. Therefore, for the reasons described above, we preliminarily determine that critical circumstances do not exist with respect to standard pipe and tube from Zenith and Gujarat.

Since we found reason to believe our suspect that importers of pipe and tube from TISCO knew or should have known that this product was being sold at less than fair value, we considered the issue of massive imports from TICO. We generally consider the following concerning massive imports: (1) Recent trends in import penetration level; (2) whether imports have surged recently; (3) whether recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels, import penetration ratios for standard pipe and tube from India for equal periods immediately preceding and following the filing of the petition, and seasonal factors. Based on our analysis of recent trade data, we find that imports of standard pipe and tube from India during the period subsequent to receipt of the petition have been massive when compared to recent import levels and import penetration ratios. Therefore, we determine that critical circumstances exist with respect to imports of standard pipe and tube from TISCO, who accounted for the majority of the exports. We have notified the International Trade Commission (ITC) of this determination.

Verification

As provided in section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of standard pipe and tube from India produced by Zenith and Gujarat that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. With respect to entries of pipe and tube by TISCO, the suspension of liquidation and security requirement will apply to all unliquidated entries of the subject merchandise which were entered, or withdrawn from warehouse, for consumption on or after the day, which is 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until futher notice. The margins are as follows:

Weighted-average	Manufacturers/seller/exporters margin percentage
TISCO	50.37
Zenith	5.01
Gujarat	[illegible]
All other manufacturers/producers/exporters	27.29

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in or files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our perliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 or our regulations (19 CFR 353.47). If requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on February 17, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by February 10, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 23, 1985.

[FR Doc. 85-30874 Filed 12-30-85; 8:45 am]

BILLING CODE [illegible]

[A-479-501]

Certain Welded Carbon Steel Pipe and Tube Products From Yugoslavia; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminary determined that certain welded carbon steel pipe and tube products (standard pipe and tube) from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value and that "critical circumstances" do not exist with respect to imports of the merchandise under investigation. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise as described in the "Suspension of liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by March 10, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we have preliminarily determined that standard pipe and tube from Yugoslavia is being, or is likely to be, sold in the United States at less than fair value, as provided for in section 733(b) (19 U.S.C. 1673b(b)) of the Tariff Act of 1930, as amended (the Act). The margin preliminarily found for the one company investigated is listed in the "Suspension of liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by March 10, 1986.

Case History

On July 16, 1985, we received a petition in proper form filed by the Standard Pipe and Tube Subcommittee and the Line Pipe Subcommittee of the Committee on Pipe and Tube Imports (CPTI) and by each of their member companies who produce standard pipe and tube and line pipe. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports materially injure, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping duty investigations. We notified the ITC of our action and initiated such investigations on August 5, 1985 (50 FR 32246). On August 30, 1985, the ITC determined that there is a reasonable indication that imports of standard pipe and tube from Yugoslavia materially injure, or threaten material injury to, a United States industry. On August 30, 1985, the ITC also determined pursuant to section 733 (a) of the Act (19 U.S.C. 1673 b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the

United States is materially retarded, by reasons of imports from Yugoslavia of welded carbon steel line pipes and tubes (50 FR 37068).

On September 24, 1985 we received an amendment to the petition alleging critical circumstances.

On September 11, 1985, questionaires were sent via certified mail to 2 Yugoslavian companies, "FZC 11 Oktomvri" (Oktomvri) and "Zeljezara Sisak". We received a response from Zeljezara Sisak on November 13, 1985. In a letter dated November 27, 1985, the Department requested supplemental information from Zlejezara Sisak that was received on December 12. Imformation contained in the responses of Oktomvri established that this company did not have any sales to the United States during the period of investigation. Therefore, for purposes of this investigation, Zeljezara Sisak is the only Yugoslavian respondent.

Scope of Investigation

The products covered by this investigation are wedled carbon steel pipe and tube products with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A–120, A–53, or A–135.

We investigated sales of the subject merchandise during the period February 1, 1985 to July 31, 1985. Since Zeljezara Sisak accounts for virtually all exports of the merchandise from Yugoslavia, we limited our investigation to them.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value.

U.S. Price

As provided in section 772 of the Act, we used the purchase price of standard pipe and tube to represent the United States price for sales by the respondent because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price on the packed, f.o.b., Yugoslavian port price to unrelated purchasers in the United States. We made deductions for foreign inland freight.

Foreign Market Value

In accordance with section 733 of the Act, we used home market prices as the basis for foreign market value. We calculated the home market price on the basis of the f.o.b., packed price to unrelated purchasers. Home market prices were derived from home market price lists which the respondent stated were adhered to during the period of investigation.

In calculating foreign market value we made currency conversions to United States dollars in accordance with § 353.56(a)(1) of the regulations.

Verification

As provided on section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation. We will use standard verification procedures, including examination of relevant sales and financial records of the company.

Preliminary Negative Determination of Critical Circumstances

Counsel for the petitioners alleged that imports of standard pipe and tube from Yugoslavia present "critical circumstances." Under section 733(e) of the Act, critical circumstances exist if we have a reasonable basis to believe or suspect that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there were massive imports we generally consider the following: (1) Recent trends in import penetration levels, (2) whether imports have surged recently, (3) whether the recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for standard pipe and tube from Yugoslavia for the periods immediately preceding and subsequent to the filing of the petition. Based on our analysis of recent trade data, we find that import of standard pipe and tube from Yugoslavia during the period subsequent to the receipt of the petition have not been massive when compared to recent levels and import penetration ratios. Accordingly, we did not have to reach a determination with respect to a history of dumping or whether the importers knew or should have known that the exporter was selling the merchandise under investigation at less than fair value.

Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of standard pipe and tube from Yugoslavia.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of standard pipe and tube from Yugoslavia that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Article VI, paragraph 5, of the General Agreement on Tariffs and Trade provides that "no product shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization". This provision is implemented by section 772(d)(1)(D) of the Act. Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, the level of export subsidies, as determined in the countervailing duty order on standard pipe and tube from Yugoslavia will be subtracted from the dumping margin for deposit or bonding purposes. The weighted-average margin is:

Manufacture/sellers/exporters	Weighted-average margin percentage
Zeljezara Sisak	31.24
All other manufacturers/producers/exporters	[illegible]

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential

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information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with l § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on February 11, 1986 at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by February 4, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of the publication of this notice, at the above address and in at least 10 copies.

December 23, 1985.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-30671 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-479-503]

Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Welded Carbon Steel Pipe and Tube Products From Yugoslavia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to producers, manufacturers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products. The estimated net bounty or grant for the review period is 74.50 percent *ad valorem.*

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain welded carbon steel pipe and tube products from Yugoslavia that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice and to require a cash deposit on entries of these products in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Bombelles or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3174, or (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determinations and Orders

Based upon our investigations, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers, manufacturers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products. For purposes of these investigations, the following programs are found to confer bounties or grants:

- Export Bonuses.
- Preferential Export Credit.
- Foreign Exchange Retention Scheme.

The estimated net bounty or grant for the review period for certain welded carbon steel pipe and tube products is 74.50 percent *ad valorem.*

Case History

On July 16, 1985, we received a petition in proper form from the standard pipe and tube subcommittee and the line pipe subcommittee of the Committee on Pipe and Tube Imports (CPTI) and by each of their member companies which produce standard pipe and tube and line pipe. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products receive benefits which constitute bounties or grants within the meaning of section 303 of the Act.

Since Yugoslavia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 303(b) of the Act apply to these investigations. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission (ITC) is not required to determine whether, imports of these products materially injure, or threaten material injury to, a U.S. industry (19 U.S.C. 1303 (a)(1), (b)).

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 5, 1985, we initiated such investigations (50 FR 32247). We stated that we expected to issue our preliminary determinations on or before October 9, 1985.

We presented detailed government and company questionnaires concerning the allegations to the government of Yugoslavia in Washington, DC on August 15, 1985, and we requested a response by September 16, 1985. We did not receive responses on September 16 from the government or any manufacturers, producers or exporters of the subject merchandise in Yugoslavia.

On October 2, 1985, we informed the government of Yugoslavia that if we did not receive responses to our questionnaires by October 16, 1985, we might have to use the best information available for our final determinations as required by § 355.39 of our regulations (19 CFR 355.39). On October 9, 1985, we made our preliminary affirmative determinations stating that benefits which constitute bounties or grants are being provided to producers, manufacturers or exporters in Yugoslavia of carbon steel pipe and tube products (50 FR 41921). Because we had not received a response from the Yugoslav government or companies, we based our preliminary determinations on the best information available, which was information supplied by the petitioners. On October 14, 1985, the government of Yugoslavia requested that the deadline for submitting a response be further extended. On October 18, 1985, we informed the government of Yugoslavia that we would consider for our final determinations complete responses if they were submitted to us in proper form, in Washington, DC, no later than November 1, 1985.

On November 8, 1985, the government of Yugoslavia submitted partial responses which included information from the government, Zeljezara Sisak Integrated Metallurgical Works (Sisak), and F.Z.C. 11 Oktomvri Works (11

Oktomvri). We thoroughly reviewed these partial responses and determined that none of the questions asked in the questionnaires was answered adequately. The government response failed to provide even the basic information requested in all countervailing duty questionnaires such as the names and addresses of all producers and exporters of the subject mechandise to the United States, value and volume of sales figures of the subject merchandise, the fiscal year for each company, Yugoslav tariff schedule numbers for the subject merchandise, and general banking and financial data relevant to the case. The government provided some general, but incomplete, information on five alleged subsidy programs. The government provided no response whatsoever to our questions on three other alleged subsidy programs.

The response of Sisak was also unusable because it omitted the figures for value of both total sales and export sales in 1984. These statistics are necessary for the Department to calculate the benefit from any potential subsidy received by the company. In addition, we cannot evaluate company responses without complete and detailed information from the government regarding alleged subsidies. The response of 11 Oktomvri provided virtually no information regarding our program-specific questions and, thus, cannot be considered as responsive to our questionnaire.

On November 22, 1985, we informed the government of Yugoslavia that the November 8 responses were inadequate and that, therefore, our final determinations would be based on the best information available, as required by § 355.39 of our regulations (19 CFR 355.39).

In our "Notice of Initiation" of these cases, we stated that we considered Yugoslavia to be a market economy for the purpose of initiation (50 FR 32247). We based our decision on information provided in the petition, as well as material gathered by us independent of the petition. Because the government of Yugoslavia has not submitted an adequate response, or made any arguments in other submissions that Yugoslavia is not a market economy, we determine that Yugoslavia is a market economy for the purposes of these investigations.

We initiated an investigation on line pipe, as defined in the "Scope of Investigations" section, based on information supplied by the petitioners that an importer has made an irrevocable offer of sale of line pipe for delivery in the United States in the second half of 1985 or the first quarter of 1986. The response of 11 Oktomvri indicates that the company has contracted to sell line pipe to the United States in 1985 and 1986. Therefore, on the basis of best information available, we determine that there is a "likelihood" of sale of line pipe within the meaning of section 701(a) of the Act and line pipe remains within the scope of these investigations.

Scope of Investigations

The products covered by these investigations are:

(1) Welded carbon steel pipe and tube with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120, A–53 or A–135; and

(2) Welded carbon steel line pipe with an outside diameter of .375 inch or more but not over 16 inches, and with a wall thickness of not less than .065 inch, currently classifiable in the *TSUSA* under items 610.3208 and 610.3209. These products are produced to various API specifications for line pipe, most notably API–5L or API–5LX.

Analysis of Programs

Because we did not receive sufficient responses to our questionnaires, we are using the best information available as required under § 355.39 of our regulations (19 CFR 355.39), adversely inferring countervailability and receipt of benefits based on the absence of adequate responses. The Department has no record of past countervailing duty investigations or administrative reviews involving Yugoslavia and, therefore, we are unable to include our own information in determining whether the benefits alleged in the petition are bounties or grants within the meaning of the countervailing duty law. We also sought and examined other sources of information on the Yugoslav economy and trade regime. This reseach did not yield any information sufficiently specific to the allegations to supplement or replace petitioners' estimates of benefits as as best information available. Therefore, as best information available, we are using petitioners' information regarding the countervailability and level of benefits of the alleged subsidy programs.

We are classifying those programs for which the petitioners provided no numerical estimates of benefits as "Programs For Which We Have No Information". We will investigate these programs in the administrative review of this case under section 751 of the Act, if such a review is requested.

I. Programs Determined to Confer Bounties or Grants

We determined, based on best information available, that bounties or grants are being provided to manufacturers, producers or exporters in Yugoslavia of certain welded carbon steel pipe and tube products under the following programs:

A. Export Bonuses

Petitioners allege that export bonuses are paid to designated priority industries in Yugoslavia. These payments, which can be as high as 25 percent of the value of export sales, are bestowed on a company within a priority industry by Regional Committees for Foreign Economic Relations (CIFERs). According to information submitted by the petitioners, iron and steel was designated as a priority industry in the 1981–1985 national development plan. As best information available, we determine that the companies under investigation received bonuses on exports from the CIFERs in their regions. To determine the amount of the benefit conferred by this program, we assume that the highest rate of bonus quoted in the petition was provided on exports of the subject merchandise to the United States. On this basis, we determine an estimated net bounty or grant of 25.00 percent *ad valorem*.

B. Preferential Export Credit

Petitioners allege that exporters in Yugoslavia have access to short-term credit from the National Bank of Yugoslavia and long-term credit from the Yugoslav Bank for International Economic Cooperation at interest rates inconsistent with commercial considerations. According to information supplied in the petition, the short- and long-term commercial lending rates in July 1984 were 48 percent *per annum*, while the interest rate for export loans was between 27 and 42 percent *per annun*. As best information available, we determine that the companies under investigation financed 100 percent of their exports at the lowest rate possible, 27 percent. To calculate the benefit from this program, we took the difference between the commercial lending rate supplied in the petition, 48 percent per year, and the 27 percent annual rate. We thus determine an

estimated net bounty or grant of 21.00 percent *ad valorem*.

C. Foreign Exchange Retention Scheme

Petitioners allege that exporters of standard pipe and tube and line pipe in Yugoslavia benefit from a foreign exchange retention scheme which permits exporting companies to retain their foreign exchange earnings. According to information submitted in the petition, exporters that earn foreign exchange in excess of the amount they need to pay for imports are allowed to retain a certain amount for their own purposes and not turn it in to the government at the official exchange rate. Petitioners state that exporters may sell foreign exchange at a premium over the official exchange rate, thus receiving a benefit from the right to retain foreign exchange earned from export sales.

Petitioners further argue that this benefit confers an export bounty or grant because foreign exchange sold by exporters at a premium yields more dinars than importers pay to purchase the equivalent amount of foreign exchange for imports. Because we have not received an adequate response to our questionnaires in this case, and we have not been able to uncover any information on this program other than that supplied by the petitioners, we accept petitioners' characterization of this program. We have no way of knowing whether exporters in Yugoslavia do in fact have the ability to sell foreign exchange at a premium over the official exchange rate and whether this right would confer a bounty or grant. Therefore, as best information available, we determine that this program constitutes a bounty or grant to exporters of standard pipe and tube and line pipe in Yugoslavia. To calculate the benefit, we assume that the companies under investigation received a bounty or grant equal to the highest amount of benefit calculated by the World Bank in an analysis of the foreign exchange retention scheme provided by the petitioners. On this basis, we determine an estimated net bounty or grant of 28.50 percent *ad valorem*.

II. Programs for Which we Have no Information

Information regarding the level of benefits received under the following programs was not supplied by petitioners. We have also been unable to develop any information on the potential countervailability of these programs or on the level of benefits from any sources other than the petition. Therefore, we determine that we have no information from which to determine whether these programs are bounties or grants and, if so, how to quantify the possible benefits conferred by the following programs:

A. Export Credit Insurance

Petitioners allege that the Yugoslav Bank of International Economic Cooperation (YBIEC) provides export credit insurance to exporters at rates and on terms inadequate to cover its long-term operating costs. Since the respondents did not provide an adequate response in these investigations, and neither the petitioners nor the Department was able to find information upon which to estimate a benefit from this program, we cannot quantify the amount of any bounty or grant that may be received.

B. Income Tax Exemptions on Export Earnings

Petitioners allege that exporters of standard pipe and tube and line pipe may receive income tax exemptions on export earnings. We did not receive a usable response to our questionnaires in this case, and neither petitioners nor the Department was able to develop information on which to base a determination.

C. Import Duty Refunds and Duty Exemptions on Non-Physically Incorporated Imported Inputs

Petitioners allege that the government of Yugoslavia refunds import duties or permits duty-free importation of goods and services on inputs other than those physically incorporated in the final exported product. Because the respondents did not provide a sufficient response in this case and the petitioners were unable to provide information as to whether, or to what degree, the pipe and tube industry receives countervailable benefits under this program, we cannot determine whether this program provides a bounty or grant or quantify any estimated bounty or grant.

D. Preferential Credit for Priority Sector Development

Petitioners allege that ferrous metallurgy in the 1981–1985 national development plan is designated as a priority sector and, therefore, receives preferential access to investment funds. Petitioners further allege that other benefits may be available on preferential terms to encourage development. The respondents have not provided information about any benefits available to industries located in designated priority sectors. Neither the petitioners nor the Department was able to find any information regarding the level of benefits or potential countervailability of this program.

E. Loans to Firms in Less Developed Regions

Under the Yugoslav Law on Permanent Funds to Finance Underdeveloped Regions, federal funds are channelled to enterprises through regional governments. Petitioners allege that, given the priority attached to the steel industry, it is likely that the regional governments have provided low-interest loans to the steel industry to promote development in the less developed regions of the country. Because we have not received a complete response in this case, and petitioners did not provide any information on the amount of benefit conferred by this program, we do not have any information on which to quantify a bounty or grant.

Best Information Available

In accordance with section 776(b) of the Act, we used the best information available in making our final determinations.

Administrative Procedures

We afforded interested parties an opportunity to submit written views in accordance with § 355.34 of our regulations (19 CFR 355.34). No written comments were received. We also afforded the parties to the proceeding an opportunity to present views orally before the Department at a public hearing in accordance with § 355.35 of our regulations (19 CFR 355.35). No hearing was requested.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative determinations shall remain in effect until further notice (50 FR 41921). The estimated net bounty or grant for duty deposit purposes is 74.50 percent *ad valorem*. In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of certain welded carbon steel pipe and tube products from Yugoslavia which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 167d(d)).

December 23, 1985.

Paul Freedenberg,

Assistant Secretary for Trade Administration.

[FR Doc. 85–30870 Filed 12–30–85; 8:45 am]

BILLING CODE 3510-DS-M

[C–583–503]

Final Negative Countervailing Duty Determination; Welded Carbon Steel Line Pipe From Taiwan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters of welded carbon steel line pipe (line pipe) in Taiwan. The net subsidy is 0.02 percent *ad valorem*. This rate is *de minimis*, and therefore this determination is nagative. We have notified the United States International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0189 (LaCivita) or 377–2830 (Martin).

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that the following programs are countervailable:

- Preferential Export Financing
- Export Loss Reserves

We determine that not countervailable benefits for line pipe to be 0.02 percent *ad valorem*. Although we have determined these programs to be countervailable, the respondent received *de minimis* benefits during the review period. Therefore, we determine that no benefits which constitute subsidies within the meaning of secton 701 of the Tariff Act of 1930, as amended, are being provided to manufacturers, producers or exporters of line pipe in Taiwan.

Case History

On July 16, 1985, we received a petition in proper form filed by the Line Pipe Subcommittee of the Committee of Pipe and Tube Imports (CPTI) and each of its member companies who produce line pipe. In compliance with the filing requirements § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers or exporters of line pipe in Taiwan directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 5, 1985, we initiated such an investigation (50 FR 32751). We stated that we expected to issue a preliminary determination by October 19, 1985.

Since Taiwan is entitled to an injury determination under the secton 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Taiwan materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On August 30, 1985, the ITC perliminarily determined that there is a reasonable indication that these imports materially injure a U.S. industry (50 FR 36159).

On August 15, 1985, we presented a questionnaire concerning the petitioners' allegations to the American Institute on Taiwan in Washington, DC. Responses to the questionnaire were received on September 20, 1985 and September 23, 1985.

There are two known producers of welded carbon steel line pipe in Taiwan, the Far East Machinery Company. Ltd. (FEMCO) and Kao Hsing Chang Iron and Steel Corporation (KHC). China Steel Corporation (China Steel) responded to the Department questionnaire concerning preferentially-priced inputs.

On the basis of information contained in these responses, we made a preliminary determination on October 9, 1985 (50 FR 41924). We verified the responses of the Taiwan authorities, KHC, FEMCO and China Steel in Taiwan from October 15, 1985, to November 5, 1985

At the request of both petitioners and respondents, we held a hearing on November 19, 1985, to allow the parties opportunities to address the issues arising in the investigation. Both petitioners and respondents filed briefs discussing these issues before and after the hearing.

Scope of the Investigation

The product covered by this investigation is welded carbon steel line pipe, with an outside diameter of 0.375 inch or more but not over 16 inches, and with a wall thickness of not less than 0.065 inch, currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA) under items 610.3208 and 610.3209. This product is produced to various American Petroleum Institute (API) specifications for line pipe, most notably API–5L or API–5X.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the Federal Register (49 FR 18006).

For purposes of this determination, the period for which we are measuring subsidies (the review period) is calendar year 1984.

Based upon our analysis of the petition, the responses to our questionnaires submitted by the Taiwan authorities, FEMCO, KHC, China Steel, the verification, and the amended response submitted after verification, we determine the following:

I. Programs Determined To Be Countervailable

We determine that the following programs provide countervailable benefits to manufacturers, producers, or exporters of line pipe in Taiwan:

A. Preferential Export Financing

The Export Loan Discount Regulations of the Central Bank of China permit registered exporters in possession of a letter of credit to apply for low-cost export loans covering up to 85 percent of the value of the export transaction. Export loans are arranged through authorized foreign-currency banks, which may apply for an interest-rate reduction from the Central Bank. Exporters settle the loan with foreign exchange within 180 days or pay an interest-rate penalty on the full amount of the loan.

The Central Bank sets the maximum and minimum interest rates for commercial lending in Taiwan. Export loans are set at rates equal to or below the minimum rates established for commercial lending.

FEMCO obtained export loans to finance exports of the products under investigation to the United States. Because these loans are contingent upon

export performance and provide funds to borrowers at interest rates lower than those available for other purposes, we determine that this program confers a benefit which constitutes an export subsidy.

To calculate the benefit, we compared the Central Bank's export-loan rate with its maximum short-term loan rate. We then multiplied the difference by the principal amount and allocated the benefit over the value of FEMCO's and KHC's 1984 exports of the products under investigation to the United States. KHC did not provide verifiable information with respect to their exports of line pipe to the U.S. Therefore, we used the best information available to arrive at KHC's portion of the denominator. The net subsidy is 0.002 percent *ad valorem*.

B. Export Loss Reserves

Article 31 of the Statute for Encouragement of Investment (SEI) permits exporters to establish an export loss reserve of up to one percent of the previous year's export exchange settlement to be used exclusively to compenate export losses. Companies treat the export loss reserve as a business expense and deduct it from taxable income in one year, then settle the account and carry the reserve funds forward as taxable income for the next year. FEMCO and KHC received benefits from export loss reserves during the review period.

Because this program is contingent upon export sales, we determine that it confers a benefit which constitutes an export subsidy. To calculate the benefit received in 1984, we treated tax savings from the export loss reserve as a one-year interest-free loan received mid-1983 at the time the income tax forms were filed. We compared the interest-free rate with the maximum lending rate set by the Central Bank. We divided the benefit by the value of KHC's and FEMCO's total 1984 exports and found the net subsidy to be 0.02 percent *ad valorem*.

II. Programs Determined not to Confer Subsidies

We determine the following programs do not confer subsidies on the manufacturers, producers or exporters of line pipe in Taiwan:

A. Business Tax Exemptions for Export Sales

The authorities on Taiwan levy a business tax on selling goods, rendering services or other profit seeking activities within the territory of Taiwan. Article 29 of the SEI exempts export sales, which include sales to trading companies and to manufacturers for further processing before export, from the business tax. The amount of the exemption equals the amount of business tax due on each sale destined for export. Companies pay the business tax monthy and receive exemptions for export at that time. However, if the export remains unconfirmed at the time the taxes are due, or, if goods are sold to trading companies or to other manufacturers for further processing before export, companies initially report the sale as a domestic sale, then apply for the business tax exemptions at the time of export. Such exemptions take the form of a rebate of taxes paid. Under the Act, the non-excessive remission of indirect taxes levied at the final stage is not considered a subsidy. We verified that the amount of the exemption or rebate is not greater than the amount of business tax due. Therefore, we determine that this program does not confer countervailable benefits within the meaning of the countervailing duty law.

8. Stamp Tax Reductions

The authorities on Taiwan levy a stamp tax on sales invoices Article 33 of the SEI permits the reduction of the stamp tax from 0.4 percent to 0.1 percent for all invoices issued by a profit-seeking enterprise for transactions exempt from the business tax. The stamp tax reduction is less than the amount of stamp tax due on each sale destined for export. Under the Act, the non-excessive remission of indirect taxes levied at the final stage is not considered a subsidy. Because we verified that the amount of the reduction is not greater than the amount of the stamp tax due, we determine that this program does not confer countervailable benefits within the meaning of the countervailing duty law.

C. Preferential Prices for Raw Materials

Petitioner alleged that the Taiwan authorities direct China Steel Corporation (China Steel) to provide coil at preferential prices to exporters.

China Steel, a state-owned corporation and a supplier of pipe-and-tube inputs, maintains a two-tiered pricing policy. The higher first-tier price is applicable to domestic producers who manufacture goods for the Taiwan market. It is based on the landed, duty-paid price of imported hot-rolled coil. The lower second-tier price is offered to manufacturers who purchase coil to produce export products and is based on the landed, duty-free price of hot-rolled coil.

Under item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, a price preference for inputs used in the production of export goods constitutes a subsidy only if the preference lowers the price below world-market levels (*See, Final Neogative Countervailing Duty Determination: Certain Steel Wire Nails from the Republic of Korea*, 47 FR 39549). Based on our examination of China Steel's second-tier coil prices to the pipe-and-tube producers under investigation and on world-market prices for coil, we found that China Steel's prices were at world-market levels. Therefore, we determine that China Steel's two-tiered pricing policy does not confer a countervailable benefit with the meaning of the countervailing duty law.

D. Preferential Income Tax Ceiling—25 Percent

Petitioner alleged that manufacturers, producers or exporters of line pipe in Taiwan benefit from a preferential income tax ceiling. Article 15 of the SEI permits productive enterprises and big trading companies to pay no more than 25 percent in corporate income taxes on income exceeding NT$500,000 rather than the 35 percent required by Taiwan's graduated corporate income tax law.

Article 15 benefits are available to all productive enterprises, defined in the SEI as stock companies engaged in manufacturing, handicrafts, mining, agriculture, forestry, fishery, animal husbandry, transportation, warehousing, public utilities, public facility construction and development, public housing construction, technical services, hotels and heavy machinery construction.

In prior cases, we found this program to be a subsidy based upon insufficient evidence that the program is non-specific. However, the evidence in this case indicates that these benefits are not limited to an industry or enterprise or group of industries or enterprises. Therefore, we determine that this program does not confer countervailable benefits within the meaning of the countervailing duty law.

E. Tax Credit for Investment in Production Equipment

Under Article 10 of the SEI, productive enterprises may deduct from income tax payable an amount of up to 15 percent of the value of capital equipment purchased during the year. In the event that the amount of the tax credit exceeds the value of income tax

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payable, the balance may be carried forward for up to four subsequent years.

Article 10 benefits are available to all productive enterprise defined above. In prior cases, we found this program to be a subsidy based upon insufficient evidence that the program is non-specific, However, the evidence in this case indicates that these benefits are not limited to an industry or enterprises or group of industries or enterprises. Therefore, we determine that this program does not confer countervailable benefits within the meaning of the countervailing duty law.

III. Programs Determined Not To Be Used

We determine that the following programs are not used by the manufacturers, producers, or exporters of line pipe in Taiwan:

A. Preferential Income Tax Ceiling—22 Percent

Article 15 of the SEI also permits enterprises engaged in the basic metal production industry, heavy machinery industry, petrochemical industry or other important productive enterprises which conform with the needs for development of economic and national defense industries and are capital-intensive and/or technology-intensive in nature to use a marginal tax rate of no more than 22 percent. We verified that neither KHC nor FEMCO used the 22 percent tax ceiling. Therefore, we determine this program not to be used.

B. Accelerated Depreciation and Tax Holiday

Article 6 of the SEI permits newly-established productive enterprises to select one of the following benefits: (1) A tax holiday of up to five years providing the company depreciates its assets according to Taiwan's Service Life of Fixed Assets; or (2) accelerated depreciation on the service life of machinery, equipment and buildings, construction facilities, and communication and transportation facilities. In addition, Article 6 permits expanding enterprises to select (1) a tax-holiday of up to four years on the income derived from increased capacity, if it depreciates its assets according to Taiwan's Service Life of Fixed Assets, or (2) a rapid depreciation of the newly purchased equipment beginning in the year in which the machines begin operation.

We verified that neither KHC nor FEMCO claimed accelerated depreciation or took a tax holiday during the period of review. Therefore, we determine this program not to be used.

C. Duty Exemptions and Deferral on Imported Equipment

Article 21 of the SEI allows productive enterprises to pay import duties in a series of installments beginning one year from the date of importation on selected machinery and equipment that is not manufactured domestically. In addition, qualified enterprises may be exempt from paying import duties on selected machinery and equipment which is used for the establishment or expansion of an approved project or for research and development.

We verified that neither KHC nor FEMCO recieved duty exemptions or deferrals. Therefore, we determine this program not to be used.

D. Preferential Long-Term Loans

Article 84 of the SEI permits the Executive Yuan to establish and administer a special development fund to promote investments of interest to national economic development. We vertified that neither KHC nor FEMCO used Article 84 financing in relations to the products under investigation. Therefore, we determine this program not to be used.

Petitioner's Comments

Comment 1: Petitioner argues that China Steel Corporation, a state-owned supplier of pipe-and-tube inputs, is able to offer a two-tiered pricing policy due to Taiwan's high tariff barrier. Under this policy, customers who produce line pipe for export pay lower prices for hot-rolled coil than those who produce line pipe for domestic consumption. Petitioner argues that this two-tiered pricing policy gives preferential treatment to exports because coil is sold to exporters at the lower-tier price.

DOC Position: We disagree. A two-tier pricing policy does not in itself confer and export subsidy. As we explained in our discussion of preferential pricing under the section of this notice entitled *Programs Determined Not to Confer Subsidies,* under item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, a price preference for inputs used in the production of export goods constitutes a subsidy only if the preference lowers the price below world-market levels (*See, Final Negative Countervailing Duty Determination: Certain Steel Wire Nails from the Republic of Korea,* 47 FR 39549). Based on our examination of China Steel's second-tier coil prices to the pipe-and-tube producers under investigation and on world-market prices for coil, we found that China Steel's prices were at world-market levels. Therefore, we determine that China Steel's two-tiered pricing policy does not confer a countervailable benefit.

Comment 2: Petitioner argues that China Steel Corporation, as a state-owned enterprise, is an "agency" of the authorities on Taiwan. Therefore, further directions from the authorities on Taiwan is not required to establish the presumption of government direction or control with respect to China Steel's two-tiered pricing policy.

DOC Position: We determine that the prices FEMCO and KHC paid for export-destined hot-rolled coil from China Steel were at world-market levels and, therefore, the issue of direction from the authorities on Taiwan is moot.

Comment 3: Petitioner argues that a subsidy provided by a private corporation is countervailable absent government action or direction.

DOC Position: We disagree. The "private" subsidies cited by petitioner were provided by private corporations who were administering funds levied and collected by the government on the government's behalf. *See. Final Affirmative Countervailing Duty Determination Prestressed Concrete Steel Wire from South Africa.* (47 FR 33310). Paragraph (d) of the Annex to the Subsidies Code stipulates that an export subsidy is conferred by the delivery by governments or their agencies of imported or domestic products or services for use in the production of exported goods, on terms or conditions *more favorable* than for delivery of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favorable than those commercially available on world markets to their exporters. (Emphasis added) We verified that the actual price FEMCO and KHC paid China Steel for hot-rolled coil was at world-market price levels.

Comment 4: Petitioner argues that the pertinent world-market price for determining whether China Steel's coil prices are preferential is the actual price domestic users of hot-rolled coil pay for imported coil used to produce line pipe.

DOC Position: We disagree. Under item (d) of the Illustrative List of Export Subsidies annexed to the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, a price preference for inputs used on the production of export goods

constitutes a subsidy only if the preference lowers the price below "those commercially available on the world market to their exporters:" *i.e.*, below world-market levels. Accordingly, we compared the actual prices FEMCO and KHC paid China Steel to the actual prices FEMCO and KHC paid for imported coil as well as to the generally available world-market prices for coil, and determined that China Steel's prices were at world-market levels.

Comment 5: Petitioner argues that the subsidy resulting from preferential prices should be measured as the difference in price between the first- and second-tier price and not as the difference between the world-market price and the lower-tier price.

DOC Position: We disagree. See the Department's response to petitioner's first comment.

Comment 6: Petitioner agrees with the Department's preliminary determination that the export loss reserves and the tax exemption for export sales confer countervailable benefits within the meaning of the countervailing duty law.

DOC position: In our final determination, we found that the export loss reserves confer an export subsidy. However, at verification, we learned that the business tax and stamp tax are indirect taxes. We verified that the exemption, remission or reduction of these taxes on export sales is non-excessive. Therefore, as described in this notice, these programs do not provide countervailable benefits within the meaning of the countervailing duty law.

Respondents' Comments

Comment 1: Respondents argue that low-cost export financing loans which are not discounted through the Central Bank should not be included under the export financing program since they do not involve government participation.

DOC Position: We disagree. We verified that all of the export financing loans under consideration were discounted through the Central Bank and therefore included these loans in the export financing program.

Comment 2: Respondents state that none of the export financing loans involved the products under investigation exported to the United States.

DOC Position: We verified that one export financing loan covered exports of line pipe to the United States and included it in the export financing program.

Comment 3: Respondents claim that the export loss reserve, which is claimed as a tax exemption under Taiwan's corporate income tax law, operates as a one-year deferral of income. They argue that the benefit should be calculated by treating the tax savings from the exemption as a one-year interest-free loan.

DOC Position: We agree. However, we note that there is a two-year lag between the time an export loss reserve is established and the time the benefit is realized. The export loss reserves established in calendar year 1982 were claimed as exemptions on the tax forms filed in 1983. Under our methodolgy, the resulting tax savings are considered to be interest-free loans for a one year period beginning on the date the income tax forms were filed. Therefore, the interest benefits were realized in 1984.

Comment 4: Respondents argue that the business tax exemptions and stamp tax reductions provide non-excessive remissions of indirect taxes which are not countervailable within the meaning of the countervailing duty law.

DOC Position: We agree. See our comments in the body of the notice.

Comment 5: Respondents argue that the 25-percent income tax ceiling provision of Article 15 of the SEI is available to a variety of industries in Taiwan and is therefore not countervailable within the meaning of the law.

DOC Position: We agree.

Comment 6: Respondents claim that the investment tax credit provisions of Article 10 of the SEI are not limited to an industry or enterprise or a group of industries or enterprises.

DOC Position: We agree.

Comment 7: Respondents argue that the Department should calculate the value of total export sales of all products to all markets by adding the value of the "indirect exports" reported on the monthly business and stamp tax declarations to the value of exports reported in the questionnaire response. Respondents state that allocating benefits over total exports, without including indirect exports, overstates any benefits received by the respondent companies.

DOC Position: We disagree. We verified that the export sales figures reported in the questionnaire responses and the amended questionnaire responses were accurate and had already been included the above-mentioned indirect export sales.

Comment 8: Respondents argue that the prices China Steel charges for export-destined hot-rolled coil are not preferential since there is no government direction or control of China Steel's pricing policy. Respondents further argue that government ownership does not *per se* indicate government direction or control.

DOC Position: See the Department's response to petitioner's second comment.

Comment 9: Respondents argue that Japanese prices of coil should not be used as the prices with which China Steel's prices should be compared to determine if they are below world-market prices. Furthermore, they argue that the test as to whether or not there is preferential pricing does not depend on the prices actually paid by a company for alternate coil, but the price Taiwan exporters would have to pay on the world market for the input they used.

DOC Position: See petitioner's Comment 4 and the Department's response.

Comment 10: Respondents argue that if a subsidy is found with respect to the pricing issue, the measure of the subsidy should not be the difference between the first- and second-tier price, but the difference between the world-market price and the preferential price.

DOC Position: See petitioner's first comment and the Department's response.

Comment 11: Respondents argue that neither KHC nor FEMCO keep their records in such a fashion as to provide the value of the exports to the U.S. of the product under investigation.

DOC Position: The Department verified FEMCO's value of line pipe exports to the U.S. Because KHC did not provide verifiable information on the value of its line pipe exports to the U.S., we used Department statistics to calculate this value.

China Steel's Comments

Comment 1: China Steel asserts that the world-market price is the price available to customers in the position of the respondents, which in this investigation, is the price available to Southeast Asian coil users on the open world market.

DOC position: See petitioner's fourth comment and the Department's response.

Comment 2: China Steel argues that the appropriate price comparison for world-market-price analysis is between China Steel's base price for hot-rolled coil and the base price for hot-rolled coil offered by foreign suppliers.

DOC position: We disagree. In this case, the appropriate price comparison is between the final F.O.B. price offered by foreign suppliers for each grade, quality, and size of hot-rolled coil and between China Steel's second-tier ex-works price of the comparable grade, quality and size of hot-rolled coil.

Verification

In accordance with 776(a) of the Act, we conducted a verification of the information provided in the questionnaire response. During verification, we followed normal verification procedures, including meeting with government officials and inspection of documents, as well as on-site inspection of the companies producing and exporting the merchandise under investigation to the U.S.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). A hearing was held on November 19, 1985. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been received and considered in this determination.

Termination of Suspension of Liquidation

In accordance with this determination, and section 705(c)(2) we are directing the U.S. Customs Service to terminate suspension of liquidation on the products under investigation and to release any bond, or other security, and refund any cash deposit placed upon welded carbon steel standard pipe and tube from India as described in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since this determination is negative, the investigation will be terminated upon the publication of this notice in the **Federal Register.** Hence, the ITC is not required to make a final injury determination.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

December 23, 1985.

[FR Doc. 85-30872 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-533-503]

Final Negative Countervailing Duty Determination; Welded Carbon Steel Standard Pipe and Tube From India

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in India of welded carbon steel pipe and tube. The estimated net subsidy is *de minimis*, and therefore our final countervailing duty determination is negative. We have notified the United States International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Betsy Killian, Loc Nguyen, or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-1673, 377-0167, or 377-2830.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain countervailable benefits are being provided to one manufacturer/producer/exporter in India of welded carbon steel standard pipe and tube. For purposes of this investigation, the following program is found to confer a countervailable benefit:

- Packing Credit Program.

We determine the estimated net subsidy to be 0.42 percent *ad valorem* and hence *de minimis* for the one manufacturer/producer/exporter in India of welded carbon steel standard pipe and tube. The other two companies did not use this program and so the country-wide subsidy rate is also *de minimis*. Therefore, we reach a negative final countervailing duty determination because no countervailable benefits which constitute subsidies within the meaning of section 701 of the Act are being provided to manufacturers, producers, or exporters in India of the products under investigation.

Case History

On July 16, 1985, we received a petition in proper form from the Standard Pipe and Tube Subcommittee of the Committee on Pipe and Tube Imports (CPTI) and each of its member companies which produce standard pipe and tube. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that manufacturers, producers, or exporters in India of welded carbon steel standard pipe and tube directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on August 5, 1985, we initiated such an investigation (50 FR 32249). We stated that we expected to issue a preliminary determination by October 9, 1985. On September 24, 1985, the petitioners alleged critical circumstances with respect to welded carbon steel standard pipe and tube from India.

Since India is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the ITC of our initiation. On August 30, 1985, the ITC determined that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of welded carbon steel standard pipe and tube from India (50 FR 37068).

On August 14, 1985, we presented a questionnaire concerning the petitioners' allegations to the government of India in Washington, DC. Responses to the questionnaire were received on September 26 and 27, and on October 4, 1985. There are three known producers/exporters of welded carbon steel standard pipe and tube in India: Zenith Steel Pipes and Industries, Ltd. (Zenith); Tata Iron and Steel Co., Ltd (TISCO); and Gujarat Steel Tubes, Ltd. (Gujarat). On the basis of the information contained in these responses, we made a preliminary determination on October 9, 1985 (50 FR 41926). We verified the responses of the government of India and the respondent companies from October 28 through November 8, 1985.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We received written views from interested parties and have taken them into consideration in this determination.

Scope of Investigation

The products covered by this investigation are welded carbon steel pipe and tube, with an outside diameter of .375 inch or more, but not over 16 inches, of any well thicknes; currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610,3258, and 610.4925. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, mostly notably A-120, A-53 or A-135.

Analysis of Programs

For purposes of this determination, the period for which we are measuring subsidization ("the review period") is calendar year 1984.

Based upon our analysis of the petition, the responses to our questionnaire, our verification and comments filed by petitioners and respondents, we determine the following:

I. Programs Determined to Confer Countervailable Benefits

We determine that countervailable benefits are provided to one manufacturer/producer/exporter in India of welded carbon steel standard pipe and tube under the following program:

A. The Pack Credit Program

Under this program, the Reserve Bank of India, through commercial banks, provides pre-shipment credit to exporters for financing the purchase, processing or packing of goods. These credits may be received upon presentation of: (1) Letters of credit opened by an importer of goods outside India; (2) a confirmed and irrevocable order for export of goods from India; or (3) any other evidence of an order for an export from India having been placed with the exporter. In general, the loans are granted for a period of 90 to 290 days. The interest rates applicable to steel pipes and tubes during the review period were 12 percent for loans of up to 180 days and 14.5 percent for loans of 180 to 290 days. For purposes of this determination, we have used 18 percent as the national average interest rate for short-term loans in India in 1984. This benchmark rate was published in the Reserve Bank of India Bulletin and was used as the benchmark for both short-term "packing credit" loans bearing either of the two aforementioned interest rates.

Since packing credit financing is only available for use by exporters and the rates of interest charged are less than our benchwork, we determine that the provision of such financing provides a countervailable benefit.

Only one company received packing credit financing during the review period. The benefit provided under this program was determined by multiplying the interest rate differential between our benchmark and the interest rate paid by the company by the fraction of a year that each loan was outstanding, as well as by the principal amount of all packing credit loans received by the company for the subject merchandise exported to the United States during the review period. We then allocated the aggregate benefit over the company's value of exports of the subject merchandise to the United States. On this basis, we calculated an estimated net subsidy of 0.42 percent *ad valorem*.

II. Programs Determined Not To Confer a Subsidy

We determine that subsidies are not being provided to manufacturers, producers, or exporters in India of welded carbon steel standard pipe and tube under the following program:

A. The Cash Compensatory Support Program (CCS)

The cash compensatory support program is designed to rebate indirect taxes upon exported merchandise. The rebates are paid as a percentage of the F.O.B. invoice price.

Under the Act, the non-excessive rebate of indirect taxes levied at the final stage, and of prior stage cumulated indirect taxes borne by inputs that are physically incorporated into the final product, is not considered a subsidy. In order to determine whether a cash payment upon export is a *bona fide* rebate of indirect taxes, we examine whether: (1) The program operates for the purpose of rebating indirect taxes; (2) there is a clear link between eligibility for payments on exports and indirect taxes paid; and (3) the government has reasonably calculated and documented the actual indirect tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

We verified that the CCS Program satisfies these three criteria with respect to exports of the products under investigation and that the indirect taxes paid by the companies under investigation exceed the CCS rebate rate. Therefore, we determine that this program is not countervailable in this case.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in India of welded carbon steel standard pipe and tube did not use the following programs:

A. Import Replenishment Licenses (REPS)

Petitioners alleged that REPS are given to exporters in India both as an incentive and as a necessary condition for increased export activity. They also alleged that, although in theory the REPS were supposed to supply only necessary inputs for the exporter himself, these import licenses are actually negotiable and therefore can have a market value. Because these licenses have a market value, petitioners alleged, they may confer a countervailable benefit to the exporter.

We verified that the companies under investigation did not receive, utilize, or transfer REPS with respect to exports of the subject merchandise during the review period. Therefore, we determine that this program was not used.

B. Regional Benefits to New Facilities in Madhya Pradesh

Petitioners alleged that producers of the subject merchandise may be benefitting from certain regional development incentives in the state of Madhya Pradesh including: (1) Preferential power rates; (2) investment grants; (3) sales tax exemptions or deferrals; (4) feasibility study cost reimbursements; and (5) preferential water rates.

Since none of the companies under investigation nor any of their plants or factories is located in Madhya Pradesh, we determine that this program was not used.

Negative Determination of Critical Circumstances

On September 24, 1985, in an amendment to the petition, petitioners alleged that imports of welded carbon steel standard pipe and tube from India present "critical circumstances." Under section 703(e)(1) of the Act, critical circumstances exist when the Department has a reasonable basis to believe or suspect that (1) the alleged subsidy is inconsistent with the Agreement; and (2) there have been massive imports of the subject merchandise over a relatively short period. The Department may find that "critical circumstances" exist only when there is an affirmative determination.

In this case, we preliminarily determined that the government of India conferred export subsidies on welded carbon steel standard pipe and tube and preliminarily determined that "critical circumstances" existed. However, we now determine the amount of the subsidy to be *de minimis* and, therefore, our final determination is negative. Because our final determination is negative, the issue of "critical circumstances" is moot.

Petitioners' Comments

Comment 1: Petitioners argue that in instances in which "critical circumstances" are alleged and in which the ITC makes a preliminary injury determination, the ITA should determine that "critical circumstances" exist based

on the ITC's preliminary determination regardless of whether or not imports have been cumulated. Petitioners further argue that the role of the ITA is to determine whether subsidies exist and to measure the amount of subsidies, and that it is not equipped to investigate the effects of imports on the domestic industry.

DOC Position: Since the final determination is negative, it is not necessary for the Department to determine if "critical circumstances" exist.

Comment 2: Petitioners allege that the central sales, the excise and the octroi indirect taxes are paid only on input items purchased domestically and that, on imported inputs, the importer pays only a countervailing excise duty (CVED) which is the equivalent of the sum of the aforementioned taxes and the customs duty.

DOC Position: This is not correct. We verified that the CVED is the equivalent of the excise tax only. It is not the equivalent of the sum of the customs duty and the excise, central sales and octroi taxes.

Comment 3: Petitioners allege that if a company imported hot-rolled coil and/or zinc, these input items would only be assessed the CVED tax. Thus, if the company receives an exemption from or drawback of the CVED upon exportation of goods manufactured from the imported inputs, the CVED must not be included in the Department's unrebated indirect tax calculations for purposes of determining whether or not the CCS is an excessive rebate.

DOC Position: The petitioners' allegation is incorrect. We verified that zinc was the only input item against which the CVED was levied during the review period. It was also the only input imported during the review period. The Department has determined that the CVED is an indirect tax which, in the case of zinc, was not fully rebated under the duty drawback scheme. Therefore, we included the unrefunded portion of the CVED in our indirect tax calculations in order to determine whether or not the CCS rebate was excessive.

Comment 4: Petitioners argue that it is possible that Gujarat and Zenith used nothing but domestic coil in 1984, the period of investigation; however, since in 1985 the two companies used imported coil for their exports (as respondents claim in the antidumping investigation of the same product), for duty deposit purposes, it must be determined that the products under investigation bear no indirect taxes and the CCS payments are excessive rebates.

DOC Position: We disagree. We verified that zinc is a "canalized" item, imported exclusively by the government in bulk through its Minerals and Metals Trading Company (MMTC). The MMTC then sells the zinc to the pipe and tube companies. We also verified that the indirect tax incidence on zinc as a percentage of the F.O.B. price of the products under investigation is well above the 5 percent CCS rebate rate. In addition, we verified that the companies paid indirect taxes on other physically incorporated inputs, such as steel sockets and rings, chemicals, paints and varnish, and packing materials. Therefore, hypothetically, even if hot-rolled coil were imported and no indirect tax were levied on it, the incidence of indirect tax on zinc and the other physically incorporated inputs would still exceed the 5 percent CCS rebate rate.

Comment 5: Petitioners argue that the tax paid by TISCO to the Steel Development Fund (SDF), a government-run program funded by steel producers, is recycled back to the steel company contributors and, to the extent that TISCO receives benefits from the SDF, it cannot use the contribution to offset the CCS rebates.

DOC Position: Since we verified that the indirect tax incidence on zinc and other physically incorporated inputs already exceeds the 5 percent CCS rebate rate, the issue of whether the SDF contribution should be taken into account in offsetting the CCS rebate is moot.

Respondents' Comments

Comment 1: Respondents argue that critical circumstances do not exist since there have not been massive imports from India of the products under investigation over a relatively short period of time and since these imports do not cause "serious prejudice" to the trade or production of the United States as required by Article 14, paragraph 3 of the Subsidies Code.

DOC Position: Since the final determination is negative, it is not necessary for the Department to determine if "critical circumstances" exist.

Verification

In accordance with section 776(a) of the Act, we verified all the data used in making our final determination. During verification we followed normal verification procedures, including meeting with government officials and inspection of documents and ledgers, and the tracing of information in the response to source documents, accounting ledgers and financial statements.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). Neither petitioners nor respondents requested a public hearing. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been received and considered in this determination.

Termination of Suspension of Liquidation

In accordance with this determination and section 705(c)(2) we are directing the U.S. Customs Service to terminate suspension of liquidation on the products under investigation and to release any bond, or other security, and refund any cash deposit placed upon welded carbon steel standard pipe and tube from India as described in the "Scope of Investigation" section of this notice.

ITC Notification

In accordance with Section 705(d) of the Act, we will notify the ITC of our determination. Since this determination is negative, the investigation will be terminated upon the publication of this notice in the **Federal Register.** Hence, the ITC is not required to make a final injury determination.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

December 23, 1985.

[FR Doc. 85-30869 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-501]

Postponement of Final Antidumping Duty Determination; Offshore Platform Jackets and Piles From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On December 5, 1985, we received a request from one of the respondents in the antidumping duty investigation of offshore platform jackets and piles that the final determination be postponed as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d (a)(2)(A)). Pursuant to this request, we are postponing our final

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antidumping duty determination as to whether sales of offshore platform jackets and piles from Japan have been made at less than fair value until not later than March 31, 1986.

EFFECTIVE DATE: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 377–4087.

SUPPLEMENTARY INFORMATION: On May 15, 1985, we published a notice in the **Federal Register** that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine wherther imports of offshore platform jackets and piles from Japan are being, or are likely to be sold at less than fair value (50 FR 20252). We issued our preliminary affirmative determination on November 15, 1985 (50 FR 48454). This notice stated that we would issue a final determination on or before January 29, 1986. On December 5, 1985, counsel for one of the respondents requested that we extend the period for the final determination until not later than the 135th day after the date of our preliminary determination in accordance with section 735(a)(2)(A) of the Act. This respondent accounts for a significant proportion of exports of the subject merchandise to the United States, and thus is qualified to make this request. If a qualified exporter properly requests an extension after an affirmative preliminary detemination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly we grant the request and postpone our final detemination until not later than March 31, 1986.

The public hearing is also being postponed until 10:00 a.m. on February 13, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by February 6, 1986.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

December 24, 1985.

[FR Doc. 85–30875 Filed 12–30–85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Sanctuaries

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of Availability of Evaluation Findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Mississippi, and Rhode Island Coastal Management Programs. Section 312 of the Coastal Zone Management Act of 1972, as amended, requires a continuing review of the performance of each coastal state with respect to the implementation of its federally approved Coastal Management Program. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate.

Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in section 303(2) (A)–(I) of the Coastal Zone Management Act.

A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, DC 20235 (telephone: 202/634–4245)

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: December 13, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–30884 Filed 12–30–85; 8:45 am]

BILLING CODE 3510-08-M

Intent to Evaluate

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Maryland Coastal Management Program (CMP); Guam CMP; Northern Marianas Island CMP and Oregon CMP; and the Chesapeake Bay Interstate Allocation Award through March 31, 1986. These reviews will be conducted pursuant to section 312 of the Coastal Zone Management Act (CZMA) which requires a continuing review of the performance of the states with respect to coastal management, and their adherence to the terms of financial assistance awards funded under the CZMA.

Coastal zone management is funded under CZMA section 306, and the Inter state Allocation Award Program is authorized by CZMA section 309. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, state and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. A subsequent notice will be placed in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven St., NW., Washington, DC 20235 (telephone: 202/634–4245).

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: December 13, 1985

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–30883 Filed 12–30–85; 8:45 am]

BILLING CODE 3510-08-M

National Technical Information Service

Intent To Grant Exclusive Patent License; The Upjohn Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to The Upjohn Company in Kalamazoo, Michigan, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "New Antineoplastic Platinum (IV) Complexes," U.S. Patent Application 6–585–111, filed March 1, 1984. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the attention of George Kudravetz, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85–30847 Filed 12–30–85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing a Change in Quota Category Requirement for Coats and Jackets Without Full Frontal Openings From Categories 359 and 659 to Categories 334, 335, 634 and 635

December 27, 1985.

Effective January 1, 1986 the Committee for the Implementation of Textile Agreements is changing the category requirement for visa and quota purposes for jackets without full frontal openings (pullover jackets) from Categories 359 and 659 to Categories 334, 335, 634, and 635. Pullover jackets without full frontal openings are being entered and later altered to add full frontal openings in circumvention of limits on coats and jackets. CITA has decided pending consultations with the major suppliers of these pullover jackets (Taiwan, Korea, Hong Kong and Thailand) to waive the requirement that these garments be charged to Categories 334, 335, 634 and 635 for visa and quota purposes for shipments imported on or before February 28, 1986. CITA reserves the right to charge these shipments previously waived exported on or after January 1, 1986 to Categories 334, 335, 634, and 635 following consultations with suppliers, as appropriate.

Importers having shipments of coats and jackets without full frontal openings in the TSUSA numbers listed below may obtain a waiver of the requirement for Categories 334, 335, 634 and 635 for goods imported on or before February 28, 1986 by addressing a request to:

Office of Textiles and Apparel, International Agreements and Monitoring Division, Room 3110, U.S. Department of Commerce, Washington, D.C. 20230, Attention: Waivers

The following information should be included:

Port of Entry (indicating whether airport or seaport)
Name and Address of Importer
Name and Telephone Number of Customs Broker
Description of Merchandise
Category and TSUSA Number [1]
Entry Number or Bill of Lading Number
Country of Origin
Date of Exports
Exporter

[1] Note:

TSUSA Number	[illegible] category	[illegible] category
381.0418	359	334
381.0827	359	[illegible]
381.4332	[illegible]	334
381.6505	359	334
384.0436	359	335
384.0926	359	335
384.3432	359	335
384.5210	359	335
381.2835	659	[illegible]
381.3323	659	634
381.9222	659	634
381.9838	659	634
384.2207	659	635
384.2601	659	635
384.8672	659	635
384.9403	659	635

Information included in any request for a waiver is subject to Section 1001 of Title 181 of the U.S. Code, which provides penalties for making false statements to any department of the United States Government.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

December 27, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, DC. 20229.

Dear Mr. Commissioner: In order to facilitate the implementation of the U.S. bilateral textile/apparel program, I request that, effective on January 1, 1986, you require that coats and jackets without full frontal openings (currently classified in Categories 359 and 659), be visaed and charged as follows:

TSUSA Number	Textile [illegible]
381.0418	[illegible]
381.0827	[illegible]
381.4332	[illegible]
381.6505	[illegible]
384.0436	[illegible]
384.0926	335
384.3432	335
384.5210	[illegible]
381.2835	[illegible]
381.3323	[illegible]
381.9222	[illegible]
381.9838	[illegible]
384.2207	[illegible]
384.2601	635
384.8672	[illegible]
384.9403	[illegible]

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–30944 Filed 12–30–85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Consultations With the Government of the People's Republic of China Concerning Category 360 (Cotton Pillowcases)

December 26, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 2, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On November 29, 1985, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of cotton pillowcases in Category 360, produced or manufactured in China and exported to the United States. A summary market

disruption statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the "Tariff Schedules of the United States Annotated (1985)."

Anyone wishing to comment or provide data or information regarding the treatment of Category 360 under the agreement with the People's Repulic of China, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Pursuant to the terms of the bilateral agreement, the People's Republic of China is obligated under the consulatation provision to limit its exports to the United States of this product during the ninety-day period which began on November 29, 1985 and extends through February 26, 1986 to 687,597 units.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve months following the ninety-day consultation period to 2,716,916 units (February 27, 1986–February 26, 1987).

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Category 360, exported during the ninety-day period at the level described above. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limit established for Category 360 for the ninety-day period is exceeded, such excess amounts, if allowed to enter at the end of the restraint period, shall be charged to the level (described above), defined in the agreement for the subsequent twelve-month period.

Supplementary Information

On December 28, 1984, a letter to the Commissioner of Customs was published in the **Federal Register** (49 FR 50432) from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1985. The notice document which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Category 360, which is not subject to a specific ceiling and for which a level may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of apparel products in Category 360, produced or manufacfured in the People's Republic of China and exported during the indicated ninety-day period, in excess of the designated level.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 360—Pillowcases

November 1985.

Summary and Conclusions

U.S. imports of Category 360 from China totaled 1.1 million pillowcases (213,682 dozens) during the year ending September 1985. This level was 68 percent higher than the number imported during year-ending September 1984. China is the largest supplier of cotton pillowcases, accounting for 23 percent of total imports.

The sharp and substantial increase of low-valued imports of Category 360 from China is disrupting the U.S. market.

U.S. Production and Market Share

Domestic production which had declined from 1979 to 1982, but had begun to recover in 1983, failed to continue to increase with increased market demand. Production of cotton pillowcases declined 2 percent to 259,000 dozens in 1984. During the second quarter of 1985, production was down 55 percent below the first quarter of 1985 matching the same level as second quarter 1984.

The market for U.S. produced and imported pillowcases remained relatively stable from 1979 through 1982. During the following two years, the market showed considerable growth, increasing from 440,000 in 1982 to 522,000 in 1983 and 866,000 dozens in 1984 Despite the stable market for cotton pillowcases in the 1979–1982 period, U.S. producers lost market share, declining from 78 percent in 1979 to 51 percent in 1983. In 1984, the loss of market share for U.S. producers accelerated as imports expanded more rapidly than did the market: The U.S. producers' share of the market fell to 30 percent in 1984.

U.S. Imports and Import Penetration

U.S. imports of cotton pillowcases doubled from 1979 to 1981 and tripled from 1981 to 1984. Imports for the first nine months of 1985 were nearly twice as large as those a year earlier.

The ratio of imports to domestic production climbed sharply from 28.8 percent in 1979 to 97.7 percent in 1983. It rose to 234.4 percent in 1984 and probably will be higher in 1985 since imports were up substantially, 92 percent, during the first nine months of 1985.

Committee for the Implementation of Textile Agreements

December 26, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner:

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States, and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 2, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 360, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on November

29, 1985 and extends through February 28, 1986, in excess of 687,579 units.[1]

Textile products in Category 360 which have been exported to the United States prior to the first day of the indicated ninety-day period shall be subject to this directive.

Textile products in Category 360 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1984 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30899 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Exported From Pakistan Effective on January 1, 1986

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On March 9 and 11, 1982, the Governments of the United States and Pakistan signed a Bilateral Cotton Textile Agreement which establishes an aggregate limit for Categories 300-369, as a group and within the aggregate limit, specific limits for Categories 313, 315, 319, 331, 334, 335, 336, 338, 339, 340, 341, 347/348, 350, 363, and parts of 369, and a specific limit for part of Category 631, among others, during the agreement year which begins on January 1, 1986 and extends through December 31, 1986. It also provides consultation levels for categories, such as Categories 317, 320 and 369pt., which are not subject to specific limits and which may be adjusted during the agreement year. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the foregoing categories, produced or manufactured in Pakistan and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986 in excess of the designated limits. The aggregate limit has been adjusted to account for carryforward used during previous restraint periods. The limits for Category 331, 341, 347/348 and 369pt. have been adjusted to account for carryforward used in 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

Committee for the Implementation of Textile Agreements

December 26, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton Textile Agreement of March 9 and 11, 1982, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986 in excess of the following restraint limits:

Category	12-mo restraint limit
300-369	235,123,446 yd [2] equivalent.
313	94,267,621 yd.[3]
315	55,047,189 yd.[3]
317	6,512,000 yd.[3]
319	18,491,696 yd.[3]
320	6,000,000 yd.[3]
331	605,214 doz. pairs.
334	36,271 doz.
335	41,059 doz.
336	122,504 doz.
338	2,808,274 doz.
339	610,494 doz.
340	131,060 doz.
341	213,838 doz.
347/348	779,381 doz.
350	19,784 doz.
363	24,585,648 numbers.
369 pt.[1]	5,673,739 lb.
369 pt.[3]	2,166,006 lb.
631 pt.[3]	424,000 doz. pairs.

[1] In Category 369, all T.S.U.S.A. numbers except 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840.

[2] In Category 369, only T.S.U.S.A. numbers 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840.

[3] In Category 631, only T.S.U.S.A. numbers 704.3215, 704.8525, 704.8550, 704.9000.

In carrying out this directive entries of cotton and man-made fiber textile products in the foregoing categories, produced or manufactured in Pakistan, which have been exported to the United States on and after January 1, 1985 and extending through December 31, 1985, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1985 and extending through December 31, 1985. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter with the exceptions noted below.

Merchandise exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985 in Categories 331, and 369pt.[1] shall be permitted entry into the United States for consumption, or withdrawal from warehouse for consumption in the following amounts during each month of the January through May 1985 period:

Category	Amount to be entered per month
331	121,043 doz pairs.
369pt.[1]	1,334,748 lb.

[1] In Category 369, all T.S.U.S.A. numbers except 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840.

Merchandise entered in 1986 in the foregoing categories, exported during the restraint periods which ended on December 31, 1985, plus goods exported during the twelve-month period which begins on January 1, 1986 and extends through December 31, 1986, shall not together exceed

[1] The level has not been adjusted to reflect any imports exported after November 28, 1985.

[1] In Category 369, all T.S.U.S.A. numbers except 366.1720, 366.1740, 366.1955, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2840.

the limits established for such goods during the latter twelve-month period.

The 1986 limits are subject to adjustment according to the terms of the bilateral agreement of March 9 and 11, 1982, between the Governments of the United States and Pakistan, which provide, in part, that: (1) within the aggregate limit, specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryforward and carryover; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.533(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

[FR Doc. 85-30867 Filed 12-30-85 8:45 am]

BILLING CODE 3510-DR-M

Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in Thailand

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 1, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On December 2, 1985 a notice was published in the Federal Register (50 FR 49438) which established staged entry periods for man-made fiber textile products in Category 639, produced or manufactured in Thailand and imported during the thirty-day periods which began on December 2, 1985 and extend through May 1, 1986. Inasmuch as it has been determined that these staged entry periods are no longer needed, they are being cancelled.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 28, 1985.

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended between the Governments of the United States and Thailand, I request that, effective on January 1, 1986, you cancel that portion of the directive of November 27, 1985 concerning staged entry for man-made fiber textile products in Category 639, produced or manufactured in Thailand and exported during the eleven-month period which began on January 1, 1985 and extended through November 30, 1985.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5. U.S.C. (a) (1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-30868 Filed 12-30-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Education Intergovernmental Advisory Council; Meeting

AGENCY: Intergovernmental Advisory Council on Education, Ed.

ACTION: Notice of meeting.

SUMMARY: This notice set forth the schedule and proposed agenda of a meeting of the Intergovernmental Advisory Council on Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: January 21, 1986.

ADDRESS: 200 L Street, NW., Room 555, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jacqueline E. McGregor, Executive Director, Intergovernmental Advisory Council on Education, Department of Education, 300 7th Street, SW., Washington, DC 20202, (202) 472-6484.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council is established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The meeting of the Council is open to the public. The meeting is scheduled from 1:30 pm to 4:00 pm on January 21.

The proposed agenda:

Plan for IACE Networking conference on job training and retraining March 6-7, 1986

Effect of Gram-Rudman on Federal Programs

Departmental Support for IACE

Records are kept of all Council proceedings and are available for public inspection at the office of the Intergovernmental Advisory Council on Education 300 7th Street, SW., Room 513, Washington, DC. Signed at Washington, DC on December 26, 1985.

Jacqueline E. McGregor,

Executive Director, Intergovernmental Advisory Council on Education.

[FR Doc. 85-30876 Filed 12-30-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP85-133-002 et al.]

Natural Gas Certificate Filings; ANR Pipeline Co. et al.

December 20, 1985.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP86-133-002]

In Docket No. CP85-133-002, ANR Pipeline Company (Petitioner), 500 Renaissance Center, Detroit, Michigan 48243, requested specific certificate authorization to continue an amended transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under section 311 of the Natural Gas Policy Act of 1978, Petitioner was eligible for

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"grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long-term under the terms and conditions promulgated by Order No. 436. Petitioner has, however, indicated that it desires the Commission to process this separate request under the standard Section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436–A, in Docket No. RM85–1–000, the application filed in the referenced docket is being renoticed.

Take notice that on September 18, 1985, Petitioner filed in Docket No. CP85–133–002 a petition to amend the order issued February 26, 1985, in Docket No. CP85–133–000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas from additional receipt points and a change in the contract demand volume, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP85–133–000 it received authorization to transport up to 2,500 Mcf of natural gas per day on a firm basis for Michigan Consolidated Gas Company (MichCon) from Newaygo County, Michigan, to Mecosta County, Michigan.

Petitioner proposes to add the Wolverine Jansma 1–29 and Jennings Hudson 1–35 wells in Newaygo County as additional receipt points for the transportation. Petitioner further proposes that the transportation contract demand be increased to 12,000 Mcf of gas per day.

Petitioner further requests authorization to add points of receipt and/or delivery to the transportation service and to report such changes in an annual tariff sheet filing. Petitioner also requests authorization to reduce the contract demand pursuant to the redetermination provision of amendment to the transportation agreement with MichCon, to no less than 1,000 Mcf per day, if mutually agreed to by Petitioner and MichCon.

Comment date: January 6, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gulf Transmission Company

[Docket No. CP85–328–000]

In Docket No. CP85–328–000, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436–A, in Docket No. RM85–1–000, the application filed in the referenced docket is being renoticed.

Take notice that on March 4, 1985, Columbia Gulf Transmission Company (Applicant) filed in Docket No. CP85–328–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Natural on an interruptible, best-efforts basis up to 8,000 Mcf of natural gas per day and such further volumes as Applicant agrees to accept, pursuant to a gas transportation agreement dated November 12, 1984. Applicant submits that Natural is purchasing gas produced from Main Pass Block 77, offshore Louisiana. It is stated that Natural would transport or cause the transportation of this gas from offshore Louisiana to the point of receipt at the interconnection of Applicant's and Sea Robin Pipeline Company's facilities located in Vermilion Parish, Louisiana. Applicant states that it would receive Natural's volumes of gas for transportation at the point of receipt and redeliver thermally equivalent volumes to Natural, by displacement, either at the tailgate of Texaco Inc.'s Henry processing plant, located in Vermilion Parish, Louisiana (Henry point of delivery) or at existing Measuring Station No. 426 connecting the facilities of Applicant and Natural in Cameron Parish, Louisiana (Cameron point of delivery). Deliveries would be made at the Cameron point of delivery only when deliveries cannot be made at the Henry point of delivery, it is stated. Applicant states that the volumes delivered would be reduced to reflect the retainage of 1.2 percent of the total volumes of gas received at the point of receipt for Natural's *pro rata* share of gas used as fuel and unaccounted-for volumes.

It is stated that Natural would pay Applicant 6.20 cents per Mcf for gas received at the point of receipt for transportation to the Henry point of delivery and would pay Applicant 8.56 cents per Mcf for gas received at the point of receipt for transportation to the Cameron point of delivery.

Applicant submits that the transportation service commenced on January 4, 1985, pursuant to authorization granted in Docket No. CP80–105 in Docket No. ST85–456–000 and that the service would continue in effect for a period of eight years from the date of initial receipt of gas and from year to year thereafter.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Locust Ridge Gas Company

[Docket No. CP85–728–000]

In Docket No. CP85–728–000, Locust Ridge Gas Company (Applicant), 3400 West Marshall Avenue, Suite 201, Longview, Texas 75608, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436–A, in Docket No. RM85–1–000, the application filed in the referenced docket is being renoticed.

Take notice that on July 22, 1985, Applicant filed in Docket No. CP85–728–000 application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 6,750 Mcf of natural gas per day for Southern on an interruptible basis. Applicant would receive the gas from Southern in Jefferson County, Mississippi, and transport and deliver it to ANR Pipeline Company in Tensas Parish, Louisiana. Applicant proposes to

charge Southern 45.34 cent per million Btu for the transportation service.

It is claimed that the proposed transportation service would provide Southern with a means of transporting an additional supply of gas without the construction of duplicative facilities.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85–615–000]

In Docket No. CP85–615–000, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Northern has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436–A, in Docket No. RM85–1–000, the application filed in the referenced docket is being renoticed.

Take notice that on June 14, 1985, Northern filed in Docket No. CP85–615–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport, on a firm basis for the account of Tennessee, a maximum daily quantity of 20,000 Mcf of gas produced from Matagorda Island Blocks (MAT) 711 and 712, offshore Texas. It is stated that Northern would accept such volumes for Tennessee's account at the interconnection in MAT 713 of the jointly-owned lateral pipeline facilities of Northern and Tennessee, which connect the MAT 712 production platform and the jointly-owned pipeline facilities of Northern, Southern Natural Gas Company, Natural Gas Pipeline Company of America, Florida Gas Transmission Company and Transcontinental Gas Pipe Line Corporation known as the 758 Lateral. It is further stated that Northern would redeliver thermally equivalent volumes for Tennessee's account to Houston Pipe Line Company (HPL) in Refugio County, Texas, for further transportation. Additionally, it is asserted that Northern would transport on a best-efforts basis volumes in excess of the maximum daily quantity (MDQ) that are delivered by Tennessee in MAT 713.

Northern proposes to charge Tennessee a cost of service based monthly transportation charge (MTC). It is explained that the agreement provides for an MTC of $132,240 for the firm service and 21.75 cents per Mcf of gas delivered in excess of the MDQ. It is further explained that since the agreement was executed, compression was installed on Matagrada Offshore Pipeline System (MOPS) pursuant to Commission order issued in Docket No. CP83–186–002 and Northern has filed, in Docket No. CP85–247–000 for authorization to acquire Transco's ownership interest in the 758 Lateral. Northern proposes to charge Tennessee an MTC, based on an expanded MOPS, of $78,548 per month for the firm service and 12.59 cents per Mcf for overrun service. The proposed service, which it is indicated commenced August 31, 1984, on a best efforts basis pursuant to Part 284 of the Commission's Regulations, would continue for a primary term of eight years and from year to year thereafter.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

5. Sea Robin Pipeline Company

[Docket No. CP85–412–000]

In Docket No. CP85–412–000 Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Sea Robin has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of the Order Nos. 436 and 436–A, in Docket No. RM85–1–000, the application filed in the referenced docket is being renoticed.

Take notice that on April 3, 1985, Sea Robin filed in Docket No. CP85–412–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 87 Mcf of natural gas per day for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin proposes to transport up to 87,000 Mcf of natural gas per day for Southern from the East Cameron area, offshore Louisiana, to Erath, Louisiana. It is stated that the transportation service would continue for five years from the date of first delivery after receipt of the requested authorization. It is stated that the transportation service commenced February 8, 1984, in Docket No. ST84–623–000 pursuant to Order No. 60.

It is indicated that Sea Robin would charge Southern a monthly demand charge and a commodity charge for the gas transported, pursuant to Sen Robin's FERC Gas Traiff, Original Volume No. 1, Sheet No. 4–A (currently $3.86 and 73 cents per Mcf, respectively). Sea Robin states that existing facilities would be used for the transportation service and that Sea Robin's other customers would not be adversely affected.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Sea Robin Pipeline Company

[Docket Nos. CP76–428–002 and CP76–428–003]

In Docket Nos. CP76–428–002 and CP76–428–003, Sea Robin Pipeline Company (Sea Robin), Post Office Box 1478, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Sea Robin has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85–1–000, the application filed in the referenced docket is being renoticed.

Take notice that on April 9, 1985 and April 17, 1985, Sea Robin filed in Docket No. CP76–428–002, and Docket No. CP76–428–003, respectively, petitions to amend the order issued February 12, 1977, in Docket No. CP76–428 pursuant to section 7(c) of the Natural Gas Act so as to authorize the designation of a new receipt point and an additional transportation redelivery point to United Gas Pipe Line Company (United), all as more fully described in the petitions to amend which are on file with the Commission and open to public inspection.

Sea Robin states that it is authorized to provide transportation service for United for the transportation and redelivery of United's gas purchased from certain offshore Louisiana delivery points. Sea Robin further states that it is authorized to redeliver United's gas at the terminus of Sea Robin's system onshore near Erath, Vermilion Parish, Louisiana, into the facilities of United. Sea Robin also states that the transportation agreement between United and Sea Robin dated June 1, 1976, has been amended on March 13, 1984, and December 5, 1984, to provide for a new redelivery point at the inlet side of the measuring station of Faustina Pipeline Company located at the onshore terminus of the Sea Robin system and a new receipt point at South Marsh Island Area Block 127, offshore Louisiana.

No other changes are proposed by the transportation agreements.

Comment date: January 6, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP85–825–000]

In Docket No. CP85–825–000, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85–1–000, the applications filed in the referenced in docket is being renoticed.

Take notice that on August 28, 1985, Applicant, filed in Docket No. CP85–825–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Columbia Gas Transmission Corporation (Columbia) and Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Columbia and Texas Gas purchased separately from Texaco Inc. and Amoco Production Company, produced from the B and C production platforms in Block 273, Eugene Island area, offshore Louisiana. Applicant proposes to transport on an interruptible basis by means of its existing faciities up to 1 billion Btu per day for both Columbia and Texas Gas, or such greater quantities as Applicant may accept from time to time. Applicant states that Columbia and Texas Gas would each deliver its gas to Applicant for transportation at the inlet of Applicant's existing facilities located on the Eugene Island Block 260 B production plantform. Applicant would redeliver to Columbia and Texas Gas an equivalent quantity of gas at the existing subsea point of interconnection between the 10-inch pipeline facilities of Applicant and the 24-inch pipeline facilities of Sea Robin Pipeline Company located in Eugene Island Block 273, less Columbia's and Texas Gas' separate *pro rata* shares of gas used as fuel, company-used gas and unaccounted-for gas losses, and less their *pro rata* share of gas lost or vented during transportation for any reason except gross negligence on the part of Applicant. Applicant further states that Columbia and Texas Gas have each agreed to pay Applicant a transportation rate of 24.7 cents per million Btu.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket no. CP82–276–008]

In Docket No. CP82–276–008, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmington, Alabama 35202–2563 requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Southern has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436–A, in Docket No. RM85–1–000, the application filed in the referenced docket is being renoticed.

Take notice that on August 7, 1985, Southern filed in Docket No. CP82–276–008 a petition to amend the Commission's order issued July 15, 1982, in Docket No. CP82–276–000 pursuant to section 7(c) of the Natural Gas Act so as to authorize the transporation of natural gas, from a new source of gas supply from offshore Louisiana, for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By Commission order issued July 15, 1982, in Docket No. CP82–276–000, Southern was authorized, among other things, to transport up to 45 billion Btu equivalent of natural gas per day for Transco from Mississippi Canyon Area Blocks 150, 151, 194 and 195, (Block 194 Field) offshore Louisiana, to an interconnection of Transco's facilities and Southern's 20-inch Duck Lake-Franklinton Pipeline in Livingston Parish, Louisiana. Southern rendered the subject transportation pursuant to an agreement dated February 24, 1982. By an amendment, dated November 9, 1984, to the agreement, Southern states it has agreed to transport gas purchased by Transco from Mississippi Canyon Area Block 20 in addition to the gas produced from the Block 194 Field. It is asserted that the receipt points and the redelivery points, the quantity of gas transported and the rate charged for the transportation service would remain unchanged as originally set forth in the original gas transportation agreement.

Southern states that it currently transports Block 20 gas for Transco under the terms of a letter agreement dated November 9, 1984, pursuant to Southern's blanket certificate issued April 16, 1980, in Docket No. CP80–219–000. The self-implementing transportation service was reported to the Commission in Docket No. ST85–1218–000.

By the instant petition, Southern requests the Commission amend its order in Docket No. CP82–276–000, by authorizing the transportation of this

new gas supply source, from Block 20 offshore, Louisiana, to be included in the gas volumes presently being transported for Transco.

Comment date: January 6, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice

9. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85–530–000]

In Docket No. CP85–530–000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Tennessee has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436–A, in Docket No. RM85–1–000, the application filed in the referenced docket is being renoticed.

Take notice that on May 21, 1985, Tennessee filed in Docket No. CP85–530–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a transportation service for Texas Eastern Transmission Corporation (Texas Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that it has agreed to receive, on an interruptible basis, up to 2,000 Mcf of natural gas per day from a point of receipt located in Main Pass Block 69, offshore Louisiana. Tennessee would transport and deliver a thermally equivalent quantity less volumes for Tennessee's fuel and use and lost and unaccounted-for gas to a point of interconnection near Kinder, Allen Parish, Louisiana (Fords).

It is stated that in accordance with the transportation agreement, Texas Eastern would pay Tennessee a volume charge equal to the product of 15.80 cents mutiplied by the total volume in Mcf of gas delivered by Tennessee for the account of Texas Eastern during the month. Tennessee states that it would charge a minimum monthly bill which would consist of the greater of the volume charge of 15.08 cents multiplied by the total volume in Mcf of gas delivered during the month or a volume charge of 15.80 cents multiplied by the minimum bill volume, which would consist of the number of days in said month, mutliplied by 66⅔ percent of the transportation quantity; provided that the minimum bill volume would be reduced by the volumes, if any, tendered by Texas Eastern and not taken by Tennessee, and would be reduced by the volumes retained for Tennessee's system fuel and uses.

In addition, Texas Eastern would provide to Tennessee, at no cost to Tennessee, 2 percent of the volumes received by Tennessee at the point of receipt for Tennessee's system fuel and uses and gas lost and unaccounted for.

Tennessee states that it is currently transporting natural gas for Texas Eastern pursuant to the provisions of Section 284.221 of the Commission's Regulations and Tennessee's Order No. 60 blanket certificate issued February 21, 1980, in Docket No. CP80–132. Tennessee also states that reports of this transaction have been filed by Tennessee in Docket No. ST85–545.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP85–586–000]

In Docket No. CP85–586–000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) P.O. Box 2511, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Tennessee has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436–A, in Docket No. RM85–1–000, the application filed in the referenced docket is being renoticed.

Take notice that on June 6, 1985, Tennessee filed in Docket No. CP85–586–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to render an interruptible transportation service of up to 65,000 Mcf of natural gas per day for Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee proposes to receive, at the onshore terminus of Tennessee's and Columbia Gulf Transmission Company's (Columbia Gulf) jointly-owned Project South Pass 77 facilities in Plaquemines Parish, Louisiana, up to 65,000 Mcf of natural gas for transportation and delivery to any or all of the following existing points: (1) An interconnection of Tennessee and Natural near Chalkey, Cameron Parish, Louisiana; (2) an interconnection of Natural and the tail gate of Mobil Oil Corporation's (Mobil) Cameron Meadows Gas Processing Plant, Cameron Parish, Louisiana; (3) an interconnection of Trunkline Gas Company and Tennessee near Kinder, Jefferson Davis Parish, Louisiana; (4) an interconnection of Natural and Tennessee in Wharton County, Texas; and (5) an interconnection of Natural and the tailgate of Mobil's LaGloria Gas Processing Plant, Jim Wells County, Texas. The Ysclosky Processing Plant, St. Bernard Parish, Louisiana, would be the point of delivery for plant volume reduction (PVR) if any of the gas transported must be processed.

Tennessee states that it is presently transporting the subject gas for Natural pursuant to Section 284.221 of the Commission's Regulations and Tennessee's blanket certificate issued February 21, 1980, in Docket no. CP80–132. Reports of the transportation have been filed by Tennessee in Docket No. ST85–364–000.

Pursuant to the terms of the transportation agreement dated March 1, 1984, as amended January 24, 1985. Tennessee proposes to charge Natural

(1) A volume charge of 16.61 cents for gas delivered at Chalkey 17.85 cents for deliveries at Cameron Meadows, 14.86 cents for deliveries at Kinder, 30.12 cents for deliveries at Wharton County and 38.13 cents for deliveries at LaGloria.

(2) A PVR charge of 6.38 cents per Mcf for the PVR for deliveries at the Ysclosky plant.

(3) A minimum monthly bill consisting of a volume charge of 16.61 cents times the minimum bill volume multiplied by 66.66 percent of the quantity of gas transported as adjusted.

It is stated that in addition, Natural would provide Tennessee a daily volume of gas for fuel and unaccounted-for gas lost as follows: 1.2 percent for

PVR gas, 1.91 percent of deliveries at Chalkey, Cameron Meadows and Kinder and 2.58 percent for deliveries at Wharton County and LaGloria.

Tennessee alleges the proposed service would benefit Natural since it would provide a means of attaching an offshore reserve of gas without the construction of costly duplicative pipeline facilities. Natural advises it would use the gas to maintain long-term reserve and deliverability base to assure future customer service.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

11. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-7-000]

In Docket No. CP86-7-000, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, requested specific certificate authorization to continue a transportaton service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on October 2, 1985, Transcontinental Gas Pipe Line Corporation (Applicant) filed in Docket No. CP86-7-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing a transportation service for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport on an interruptible basis for Southern up to the thermal equivalent of 10,000 Mcf of natural gas per day, pursuant to a transportation agreement dated July 1, 1985. Applicant states that Southern would purchase such gas from Elf Aquitaine, Inc., successor to Texas Gulf, Inc., in Brazos area, South Addition, Block A-47. Applicant states that it would normally receive all such quantities at the terminus of its Central Texas Gathering System (CTGS) near its compressor station No. 30 in Wharton County, Texas, following transportation by Southern through its own capacity in the looping on such system known as Project Central Texas Loop (PCTL). However, should the combination of Southern's Block A-47 quantities and other Southern gas moving through PCTL exceed Southern's capacity, then Applicant would receive excess Block A-47 quantities into its CTGS at Block A-47, it is explained.

Applicant further states that it would deliver quantities thermally equivalent to those received at either of the above points, less a percentage for gas lost and unaccounted for and fuel, to Trunkline Gas Company (Trunkline) for the account of Southern at the existing interconnection between Applicant and Trunkline near Katy, Waller County, Texas.

Initially, Applicant states, it would charge 4.3 center per dt equivalent of gas for the transportation of quantities received at the terminus of its CTGS and 12.4 cents per dt equivalent for the transportation of quantities received at Block A-47. Applicant would also retain, initially, 6 percent of all quantities received for transportation to compensate for compressor fuel and line-loss make up and, in the case of Block A-47 receipts, would retain fuel gas for dehydration at the CTGS Markham plant in Matagorda County, Texas, based on Southern's proportional share of all fuel gas used in dehydration there.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

12. Transcontinental Gas Pipe Line Corporation; United Gas Pipe Line Company

[Docket No. CP85-492-000]

In Docket No. CP85-492-000, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001 requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under their Order No. 60 blanket certificates and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Transco and United have, however, indicated that they desire the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on May 7, 1985, Transco and United filed in Docket No. CP85-492-000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas and for permission and approval to abandon an existing transportation service all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to exchange up to a maximum daily quantity of 15,000 Mcf of natural gas. Applicants state that a portion of the gas reserves underlying Eugene Island (EI) Block 57, offshore Louisiana is committed to Transco by a gas purchase agreement with Amerada Hess Corporation and that a portion of the gas reserves underlying High Island Blocks 110, 111, 137 and 138 (HI Block 111 Field), offshore Texas, is committed to United by a gas purchase agreement with Texaco Producing Inc. As proposed, Transco would receive United's natural gas at HI Block 111 and United would receive equivalent quantities on behalf of Transco at EI Block 32. Applicants propose that any imbalances would be eliminated at existing interconnections located (1) at Starks in Calacsieu Parish, Louisiana; (2) in Victoria County, Texas; (3) at Johnson's Bayou in Cameron Parish, Louisiana; (4) at Gibson in Terrebonne Parish, Louisiana; and (5) at any other mutually agreeable points. Applicants state that the exchange agreement would remain in force for five years and would be continued year to year thereafter and that neither company would assess a transportation charge for the proposed service.

Applicants also request that Transco be granted authorization to abandon the transporation service currently provided for United pursuant to Transco's Rate Schedule X-164. Under this service, Transco was authorized by the Commission's August 8, 1978, order in Docket No. CP78-212 (4 FERC § 61,130) to transport on a firm basis up to 30,000 Mcf per day of United's gas produced from the HI Block 111 field and deliver equivalent quantities to United in Victoria County, Texas. As part of the exchange agreement, Applicants agreed to terminate this transportation service, it is stated.

BEST COPY AVAILABLE

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

13. Transcontinental Gas Pipe Line Corporation; ANR Pipeline Company

[Docket No. CP79-3-017]

In Docket No. CP79-3-017, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and ANR Pipeline Company (ANR), 500 Rennaissance Center, Detroit, Michigan 48243 (both companies hereinafter sometimes collectively called Petitioners) requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under their Order No. 60 blanket certificates and were eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Petitioners have, however, indicated that they desire the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on May 6, 1985, Petitioners filed in Docket No. CP79-3-017 a petition to amend the order issued April 4, 1979, in Docket No. CP79-3, as amended, pursuant to section 7 of the Natural Gas Act, so as to authorize ANR to transport all gas made available by Transco at its Mayfield West field, Beckham County, Oklahoma, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that by order issued April 4, 1979, as amended, they were granted authorization to transport and exchange natural gas in accordance with the provisions of a gas transportation and exchange agreement, as amended (agreement).

Petitioners state that pursuant to the terms of the agreement, Transco delivers or causes to be delivered to ANR natural gas from certain wells located in the Mayfield West field, Beckham County, Oklahoma, which wells are specifically set out in Article I of the agreement. ANR redelivers thermally equivalent exchange volumes to Transco at the points of redelivery identified in Article V of the agreement.

Petitioners state that pursuant to a similar provision in Article II of the agreement, ANR delivers gas to Transco at receipt points in Jefferson Davis and Covington Counties, Mississippi, and Transco agrees to take receipt of additional gas which ANR is purchasing from East Cameron Block 38, offshore Louisiana, ANR being responsible for having such gas delivered to Transco at a point of interconnection between the Vermilion 22 pipeline (jointly owned by Transco, Florida Gas Transmission Company and Sea Robin Pipeline Company) with Transco's Central Louisiana gathering system at Pecan Island, Vermilion Parish, Louisiana (East Cameron 38 point of receipt). Transco redelivers thermally equivalent exchange volumes to ANR at the points of redelivery identified in Article V of the agreement.

It is stated that Petitioners use their best efforts to keep in balance the cumulative quantities of gas exchanged under the agreement, and any imbalance of exchange deliveries is eliminated by an appropriate adjustment of gas deliveries at the redelivery point located at the tailgate of Mobil Oil Corporation's Cameron Meadows processing plant located in Cameron Parish, Louisiana, where both Transco and ANR take gas deliveries from others. It is also stated that to the extent that volumes of gas which Transco receives in Mississippi and at the East Cameron 38 point of receipt are in excess of the volumes which ANR receives, Transco would transport these excess volumes, by displacement, to ANR at the points of redelivery.

Petitioners further state that Transco has obtained the right to purchase from Texaco, Inc. quantities of gas from the Green Estate No. 2 Well and the Ellis No. 3-33 Well in the Mayfield West field. Also, by letter amendment dated August 20, 1984, Petitioners added to Article I of the agreement such additional wells from which ANR would receive gas from Transco. By the subject petition, Petitioners request that the certificate issued in Docket No. CP79-3, as amended, be further amended to authorize ANR to transport all gas purchased by Transco from the Green Estate No. 2 Well and the Ellis No. 3-33 Well in Mayfield West field.

Comment date: January 6, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

14. Trunkline Gas Company

[Docket No. CP85-563-000]

In Docket No. CP85-563-000, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Trunkline has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436-A, in Docket No. RM85-1-000, the application filed in the referenced docket is being renoticed.

Take notice that on June 4, 1985 (Applicant), filed in Docket No. CP85-563-000 an application pursuant to section 7(c) of the Natural Gas Act and the regulations thereunder for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Applicant and Southern dated January 23, 1985, Applicant has agreed to transport up to 2,000 Mcf of gas per day on behalf of Southern. Applicant states that it would receive gas for Southern's account at existing points of interconnection with Texas Eastern Gas Pipeline Company (Texas Eastern) in Allen and Beauregard Parishes, Louisiana. It is indicated that Texas Eastern is presently transporting gas for Southern pursuant to Part 284 of the Commission's Regulations under Docket No. ST85-666 from West Cameron Block 250, offshore Louisiana, to receipt points mentioned. Applicant explains that it would redeliver gas to Southern at a point of interconnection with Southern in St. Mary Parish, Louisiana and that Southern would pay a monthly demand charge of $2,400.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

15. Trunkline Gas Company

[Docket Nos. CP85-167-000 and CP85-167-001]

In Docket Nos. CP85-167-000 and CP85-167-001, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, requested specific certificate authorization to continue a

transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under section 311 of the Natural Gas Policy Act, and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. United has, however, indicated that it desires the Commission to process this separate request under the standard Section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436–A, in Docket No. RM85–1–000, the application filed in the referenced docket is being renoticed.

Take notice that on December 12, 1984, Trunkline filed in Docket No. CP85–167–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 50,000 Mcf of natural gas per day for Louisiana Industrial Gas Supply System (LIGS), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Take notice that on April 15, 1985, Trunkline filed in Docket No. CP85–167–001 pursuant to section 7(c) of the Natural Gas Act for authorization to transport natural gas on behalf of LIGS, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Trunkline proposes to implement the terms of a transportation agreement between Trunkline and LIGS dated July 12, 1984, whereby Trunkline has agreed to transport, on an interruptible basis, up to 50,000 Mcf per day of natural gas for LIGS. Trunkline proposes a transportation charge of 3.79 cents per Mcf. Trunkline states that it would receive gas for LIG's account at a point of receipt in Cameron Parish, Louisiana, and redeliver it at a point of interconnection with LIGS in St. Mary Parish, Louisiana.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

16. Trunkline Gas Company

[Docket No. CP85–208–000]

In Docket No. CP85–208–000, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under section 311 of the Natural Gas Policy Act and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. Applicant has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order Nos. 436 and 436–A in Docket No. RM85–1–000, the application filed in the referenced docket is being renoticed.

Take notice that on January 7, 1985, Applicant filed in Docket No. CP85–208–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Bridgeline Gas Distribution Company (Bridgeline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Applicant and Bridgeline dated August 28, 1984, Applicant states it has agreed to transport up to 120,000 Mcf of gas per day on behalf of Bridgeline in the first year with annual contract reductions through the term. Applicant explains it would receive gas for Bridgeline's account at points of receipt in West Cameron Blocks 536 and 565, offshore Louisiana, using its allocated capacity in the system of Stingray Pipeline Company. Applicant states it would redeliver the gas for Bridgeline's account at points of interconnection with Riverway Gas Pipeline Company in St. Mary Parish, Louisiana, Columbia Gulf Transmission Company in St. Mary Parish, Louisiana, and ANR Pipeline at the superior Lowry plant in Cameron Parish Louisiana. For this transportation service Bridgeline would pay $5.38 for firm volumes. Applicant states that the gas to be transported would be purchased by Bridgeline from Texaco Inc. in West Cameron Blocks 536–565, offshore Louisiana.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

17. United Gas Pipe Line Company

[Docket No. CP85–809–000]

In Docket No. CP85–809–000, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, requested specific certificate authorization to continue a transportation service pursuant to section 7(c) of the Natural Gas Act which was self implemented under its Order No. 60 blanket certificate and was eligible for "grandfathered" treatment pursuant to § 284.105. This specific transaction could continue over the short term under the "grandfathered" provisions of Order No. 436 and can continue over the long term under the terms and conditions promulgated by Order No. 436. United has, however, indicated that it desires the Commission to process this separate request under the standard section 7(c) procedures.

In view of the issuance of Order No. 436 and 436–A, in Docket No. RM85–1–000, the application filed in the referenced docket in being renoticed.

Take notice that on August 21, 1985, United filed in Docket No. CP85–809–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement between the parties dated February 14, 1984, United proposes the transportation of up to 60,000 Mcf of natural gas per day attributable to production in East Cameron Area Block 240, offshore Louisiana, on behalf of Southern. It is stated that the gas would be delivered to Applicant at the outlet side of Sea Robin Pipeline Company's (Sea Robin) measuring station at or near the onshore terminus of Sea Robin's existing pipeline system near Erath, Vermilion Parish, Louisiana. Applicant states that it would redeliver equivalent quantities of gas to Southern at the existing point of interconnection at Southern's Shadyside compressor station near Bayou Sale, St. Mary Parish, Louisiana, and/or Perryville, Ouachita Parish, Louisiana, and/or the outlet side of Applicant's measuring station at the existing interconnection between Southern's 20-inch crossover in St. Martin Parish, Louisiana (south Section 28 redelivery point).

It is asserted that for each Mcf of natural gas redelivered at the aforesaid redelivery points, except the South Section 28 redelivery point, Applicant would charge Southern an amount equal to Applicant's Southern or Northern Zone rate in effect from time to time, as applicable, less cost for company-used

gas. Applicant states that effective July 1, 1985, the rates in Applicant's Northern Zone is 37.79 cents per Mcf and in Applicant's Southern Zone is 26.18 cents per Mcf excluding cost of company-used gas.

It is further explained that Applicant and Southern are parties to an exchange agreement dated July 1, 1985, as amended, which provides, *inter alia*, for the exchange of gas by Southern and Applicant at various delivery points, including the South Section 28 redelivery point, on a fee free basis. Based on the exchange agreement, Applicant would not charge a rate to Southern for volumes delivered to Southern at the South Section 28 delivery point.

Comment date: January 6, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North capitol Street, N.E., Washington, DC 20426, a motion to intervene or protect in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30918 Filed 12-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-206-000 et al.]

Electric Rate and Corporate Regulation Filings; Arizona Public Service Co. et al.

December 23, 1985.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER86-206-000]

Take notice that Arizona Public Service Company, on December 6, 1985, tendered for filing Amendment No. 1 to the Agreement for Transmission Service for Delivery of Public Service Company of New Mexico's Palo Verde Entitlement between Arizona Public Service Company (APS) and Public Service Company of New Mexico (PNM), executed November 4, 1985.

APS requests a waiver so that the Agreement will become effective November 4, 1985.

Copies of this filing have been served upon the Arizona Corporation Commission and upon PNM.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Light and Power Company

[Docket No. ER86-45-000]

Take notice that, on December 16, 1985, Northeast Utilities Service Company, as agent for Connecticut Light and Power Company, submitted for filing materials supplementing its filing in this docket. The materials provide clarification of the investment return shown on page 7 of Appendix A of the contract in the subject docket.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Central Hudson Gas & Electric Corporation

[Docket No. ER86-178-000]

Take notice that on December 5, 1985 Central Hudson Gas & Electric Corporation (CHG&E) filed as a rate schedule an executed agreement dated October 1, 1985 between CHG&E and Rockland Utilities, Inc. (O&R). The proposed rate schedule provides for Transmission of Capacity and Energy by CHG&E for O&R between CHG&E's 69 Kv. transmission interconnection with New York State Electric & Gas Corporation's (NYSEG) West Woodbourne Substation and CHG&E's 115 Kv. interconnection with O&R at O&R's Sugarloaf Substation.

The rate schedule provides for a monthly transmission charge of $1.00 per megawatt hour of Energy received from NYSEG for O&R's account at NYSEG's West Woodbourne Substation for delivery to O&R's Sugarloaf Substation.

CHG&E states that copies of the subject filing were served upon O&R.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Light Company

[Docket No. ER86-129-000]

Take notice that on December 11, 1985, Central Illinois Light Company (CILCO) tendered for filing proposed amendments to its filing of November 1, 1985 of rate changes for full-requirements service to the Villages of Riverton and Chatham, Illinois. CILCO requests waiver of the Commission's notice requirements to permit the filing to become effective on January 1, 1986 as originally requested.

The increase to Riverton reflects a settlement agreement between CILCO and Riverton which provides for a phase-in through the end of 1990.

The original filing stated that CILCO was unable to obtain a settlement with Chatham and that no phase-in is proposed as to it. However, Chatham has not opposed the filing, and therefore the Company states that it is uncontested.

The original filing stated that the total increase to Chatham and Riverton does not exceed $200,000 based upon actual billing data for twelve months ending September 30, 1985.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service Corporation

[Docket No. ER86-149-000]

Take notice that on December 9, 1985, the Central Vermont Public Service Corporation (CVPS) tendered for filing as an initial rate schedule a System Sales Agreement (the Agreement) between the Green Mountain Power Corporation (GMP) and CVPS. The Agreement, dated January 16, 1984, provides for the sale of energy (a Transaction) from the CVPS system to GMP and the purchase by GMP of energy from the CVPS system.

Copies of the filing were served upon the respective jurisdictional customers

of the parties hereto, as well as the Vermont Public Service Board. CVPS further states that the filing is in accordance with Section 35 of the Commission's Regulations.

CVPS states that in order to permit GMP to achieve the mutual benefits of this Agreement, it requests that the Commission, pursuant to § 35.11 of its regulations, waive the sixty-day notice period and permit the rate schedule filed herewith to become effective on January 16, 1984. The waiver, if granted, will have no effect upon purchasers under any other rate schedule. If said waiver is not granted, according to CVPS, the parties to the Agreement will have to defer receiving the benefits accruing from the Agreement, i.e. their respective systems will be compelled to operate at less than optimum efficiency.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Kansas City Power & Light Company

[Docket No. ER86-150-000]

Take notice that, on December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 84, Supplement Number 6. KCPL states that it is filing this notice of cancellation because Kansas Electric Power Cooperative has given notice to KCPL that it wishes to terminate its Amoco delivery point.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this document.

7. Kansas City Power & Light Company

[Docket No. ER86-151-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 57. KCPL states that this rate schedule has expired on its own terms.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this document.

8. Kansas City Power & Light Company

[Docket No. ER86-152-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 29. KCPL states that this rate schedule has expired on its own terms.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Kansas City Power & Light Company

[Docket No. ER86-153-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 56, Supplement Number 20. KCPL states that this rate schedule has expired on its own terms.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Kansas City Power & Light Company

[Docket No. ER86-154-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 75. KCPL states that this rate schedule has expired on its own terms.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this document.

11. Kansas City Power & Light Company

[Docket No. ER86-155-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) filed a notice of cancellation for KCPL's Rate Schedule FPC No. 56, Supplement Number 21. KCPL states that this rate schedule has expired on its own terms.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Company

[Docket No. ER86-165-000]

Take notice that, On December 9, 1985, Kansas City Power & Light Company (KCPL) tendered for filing an Amendatory Agreement No. 2, and an associated Capacity Exchange Service provided to the City of Independence, Missouri—service Schedule H-MPA-1 (KCPL Rate Schedule FPC No. 56). KCPL states that the rates for the service covered by the above-mentioned schedule are negotiated rates based upon KCPL's capacity and energy rates associated with the Montrose 2 generating unit.

KCPL also states that it is filing an initial rate schedule for Transmission Service, service Schedule I-MPA; and an initial rate schedule for Load Regulation and Energy Displacement Service, service Schedule J-MPA for service provided to the City of Independence, Missouri. KCPL states that the rates for the services covered in the above mentioned rate schedule are similar to rates previously approved by the FERC.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

13. Maine Electric Power Company

[Docket No. ER86-207-000]

Take notice that Maine Electric Power Company (MEPCE), on December 9, 1985, tendered for filing a rate schedule with Maine Public Service Company (MPSC) providing for the transmission of thirty (30) megawatts of electric energy from the New Brunswick Electric Power Commission over MEPCO's transmission lines to Central Maine Power Company (CMP) under MEPCO's existing filed tariff for such service.

MEPCO states that it is anticipated that this service will produce revenues of $163,980, based on the twelve month period following the initiation of service.

Copies of the filing were served on MPSC and the Maine Public Utilities Commission.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER86-210-000]

Take notice that, On December 11, 1985, the New England Power Pool (NEPOOL) filed an Agreement Amending the New England Power Pool Agreement (AMENDMENT), dated as of August 15, 1985, which modifies the provisions of the New England Power Pool Agreement, dated as of September 1, 1971, and amended by seventeen amendments, the most recent of which was dated as of October 1, 1983, and as proposed to be amended by an amendment dated as of August 1, 1985.

The NEPOOL Executive Committee states thas the AMENDMENT amends the definition of "Incremental Costs" in § 15.17 of the NEPOOL Agreement. The purpose of the AMENDMENT is to clarify the treatment of savings resulting from the receipt of energy or Spinning Reserve or Ready Reserve service received pursuant to arrangements entered into under § 12.10 of the NEPOOL Agreement (including purchases from Hydro-Quebec), and to ensure that savings from such transactions are properly reflected in, and distributed through, the pool Savings Fund. Pursuant to § 35.11 of the Commission's Regulations (18 CFR 35.11), the NEPOOL Executive Committee has requested that the Commission waive prior notice requirements and permit the AMENDMENT to become effective on the date specified in the AMENDMENT, December 1, 1985.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER86-211-000]

Take notice that on December 11, 1985, the new England Power Pool (NEPOOL) filed an Agreement Amending the New England Power Pool Agreement (AMENDMENT), dated as of August 1, 1985, which modifies the provisions of the New England Power Pool Agreement, dated as of September 1, 1971, and amended by seventeen amendments, the most recent of which was dated as of October 1, 1983.

The NEPOOL Executive Committee states that the AMENDMENT gives the NEPOOL Operations Committee authority to adopt rules governing the treatment, for pool purposes, of power purchases by NEPOOL participants from small power production facilities or qualifying cogeneration facilities as defined in section 201 of the Public Utility Regulatory Policies Act of 1978. The NEPOOL Executive Committee further states that the AMENDMENT was adopted in order to clarify treatment of such power purchases by NEPOOL Participants in the determination of Participant's System Capability, and energy and Spinning Reserve and Ready Reserve service. Pursuant to § 35.11 of the Commission's Regulations (18 CFR 35.11), the NEPOOL Executive Committee has requested that the Commission waive prior notice requirements and permit the AMENDMENT to become effective on the date specified in the AMENDMENT, November 1, 1985.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER86-105-000]

Take notice that on December 6, 1985 Virginia Electric and Power Company (VEPCO) tendered a supplement to its earlier filing of a revised rate for transmission service contained in a contract between VEPCO and the Southeastern Power Administration (SEPA). VEPCO requests an effective date of December 31, 1985 and, therefore, requests waiver of the notice requirements.

VEPCO states that the increase in the transmission service charge is necessary to place the charge on a compensatory basis.

Copies of the revised rate were served upon SEPA and upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 3, 1986, in accordance with Standard Paragraph E at the end of this notice.

17. Ohio Power Company

[Docket No. ER86-203-000]

Take notice that on December 5, 1985 American Electric Power Service Corporation (AEP) filed on behalf of its affiliate Ohio Power Company (OPCO), which is an AEP affiliated operating subsidiary, Modification No. 7 dated August 30, 1985 to the Operating Agreement dated December 1, 1985 between the Toledo Edison Company (Toledo) and OPCO.

Section 1 of Modification No. 7 increased the transmission demand rate for Emergency Energy to 2.75 mills per kilowatthour when OPCO is the supplying party. Section 2 revises the provisions for Economy Energy by adding a 3.75 miles per kilowatthour minimum to OPCO's provisions for the transmission of Economy Energy. Section 4 of this Modification updates the transmission provisions for Non-Displacement Power and Energy by adding a 2.75 mills per kilowatthour demand charge when OPCO is the supplying party and a 2.00 mills per kilowatthour demand charge when Toledo is the supplying party.

AEP requests that this Modification become effective in two parts, allowing the 2.75 mills per kilowatthour transmission rate for Non-Displacement Power and Energy to become effective as of September 23, 1985 and the remainder of this Modification to become effective November 30, 1985. These effective dates would update OPCO's rates with Toledo to levels in effect between OPCO and other interconnected electric utility systems for the time periods specified allowing OPCO to charge similar rates for similar services.

Copies of this filling were served upon Toledo and the Public Utilities Commission of Ohio.

Comment date: January 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30919 Filed 12-30-85; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 9134-000 et al.]

Applications Filed With the Commission; Hydroelectric Applications (D&D Stauffer et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Conduit Exemption.

b. Project No.: P-9134-000.

c. Date Filed: April 26, 1985.

d. Applicant: D&D Stauffer.

e. Name of Project: Dry Creek.

f. Location: On an irrigation conduit between Dry and Wet Creeks in Butte County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Bruce R. Gravette, Forgren—Perkins Engineering, 350 North 2nd East, Rexburg, ID 83440.

i. Comment Date: January 21, 1985.

j. Description of Project: The proposed project would utilize an irrigation conduit that is under construction and would consist of a powerhouse containing one generating unit having a capacity of 3.6 MW and an average annual generation of 17.7 GWh.

k. *Purpose of Exemption*—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

2 a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 9140-000.

c. Date Filed: April 29, 1985.

d. Applicant: Charles F. Heimerdinger.

e. Name of Project: Elizabethtown.

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f. Location: Branch Stream in Essex County, New York.

g. Filed Pursuant to: Energy Security Act of 1980 section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Mr. Charles F. Heimerdinger, 27 Rome Avenue, Apt. 2B, Bedford Hills, NY 10507.

i. Comment Date: January 21, 1986.

j. Description of Project: The proposed project would consist of: (1) A proposed 4-foot-wide, 5-foot-high, 40-foot-long intake structure; (2) a 20-inch-diameter, 500-foot-long penstock at water surface elevation 740 feet m.s.l.; (3) a proposed powerhouse containing a generating unit with a rated capacity of 100 kW; and (4) a proposed 100-foot-long transmission line tying into the existing New York State Electric and Gas Corporation System. The Applicant estimates a 400,000 kWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protests the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D3a.

3 a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 8627–000.

c. Date Filed: July 18, 1985.

d. Applicant: City of Ithaca.

e. Name of Project: Van Natta.

f. Location: Six Mile Creek in Tompkins County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C., 2705 and 2708 as amended.

h. Contact Person: Mr. John C. Gutenberger, Mayor, City of Ithaca, City Hall, 108 East Green Street, Ithaca, New York 14850.

i. Comment Date: January 21, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 12-foot-high, 142-foot-long, reinforced concrete gravity dam; (2) an existing reservoir with a normal water surface area of 2.3 acres, a storage capacity of 8.6 acre-feet and a normal water surface elevation of 502.5 feet m.s.l.; (3) an existing intake structure; (4) a new 58-foot-long, 8-foot-diameter brick-lined, concrete-capped penstock; (5) a new 67-foot-long, 4-foot-diameter steel penstock; (6) an existing powerhouse containing one new generating unit with a capacity of 400 kW; (7) a new transmission line, 110 feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual generation would be 1,425,000 kWh. The existing dam is owned by the City of Ithaca.

k. Purpose of Project: Project power would be sold to the New York State Electric and Gas Company

l. This notice also consists of the following standard paragraphs A3, A9, B, C, and D3a.

m. Purpose of Exemption; An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

4 a. Type of Application: Exemption (5MW or less).

b. Project No.: 9437–000.

c. Date Filed: September 6, 1985.

d. Applicant: Mr. John Neerhout, Jr.

e. Name of Project: Yellowjacket Electric Power Project.

f. Location: On Yellowjacket Creek in Sonoma County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended).*

h. Contact Person: Mr. John Neerhout, Jr., c/o Yellowjacket Ranch, 16665 Highway 128, Calistoga, CA 94515.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would be located on lands owned by the Applicant and would consist of: (1) An existing concrete dam, 10 feet high and 30 feet long; (2) a reservoir having minimal pondage; (3) an existing outlet works and a pipeline/penstock, 8 inches in diameter and 3,700 feet long; (4) an existing powerhouse to contain a new turbine-generator unit rated at 70 kW and operating under a 600-foot head; (5) a tailrace returning flow to Yellowjacket Creek; (6) a new 12-kV transmission line, 1,600 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 312,000 kWh.

k. Purpose of Project: Project energy would be sold to the Pacific Gas & Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

5a. Type of Application: Exemption from Licensing (5MW or Less).

b. Project No.: 6367–002.

c. Date Filed: November 26, 1984.

d. Applicant: Western Hydro Electric, Incorporated.

e. Name of Project: Jefferson Creek.

f. Location: On Jefferson Creek in Mason County, Washington near the town of Eldon within the Olympic National Forest.

g. Filed Pursuant to: Energy Security Act of 1980 (16 U.S.C. 2705 and 2708).

h. Contact Person:

Mr. Donald J. White, President, Western Hydro Electric, Incorporated, 4702 Hillside Drive, Provo, UT 84601;

Mr. Wayne Gibbs, J–U–B Engineers, Inc., 250 S. Beechwood Ave., Boise, ID 83709.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high, 74-foot-long intake structure located along the bank of the creek at approximate elevation 1,040 feet; (2) a 66-inch-diameter, 3,200-foot-long steel buried pipeline; (3) a 66-inch-diameter, 300-foot-long penstock; (4) a powerhouse containing three generating units with a combined capacity of 1.45 MW operating under a head of 185 feet; (5) a tailrace discharging flows back into the creek; (6) a 6-mile-long, 12.5-kV transmission line tying into an existing line; and (7) a 2,500-foot-long access road.

This application has been accepted for filing as of May 25, 1982, the submittal date of the Applicant's originally accepted exemption application pursuant to Eagle Power Company et. al., FERC ¶61,061, issued July 18, 1984.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6a. Type of Application: Minor License.

b. Project No: 9246–000.

c. Date Filed: May 28, 1985.

d. Applicant: John C. Simmons.

e. Name of Project: Argenta.

f. Location: On Lake Fork of the Gunnison River, near Lake City, in Hinsdale County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John C. Simmons, Mr. Kenneth T. Meredith, P.O. Box 582, Lake City, CO 81235, (303) 944–2760.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) An existing natural rock diversion located on Lake Fork of the Gunnison River, immediately upstream of Argenta Falls, at elevation 8,910 feet msl; (2) an existing headgate; (3) a 4-foot-high, 12-foot-wide, 200-foot-long flume; (4) an 8-

by 12- by 16-foot surge tank; (5) a 4-foot-high, 10-foot-wide, 75-foot-long steel penstock; (6) a 20 feet by 26 feet powerhouse, located below Argenta Falls, containing two 750 kW crossflow turbine-generator units and producing an estimated average annual generation of 4.43 GWh; (7) a short tailrace; and, (8) a 200-foot-long, 14.4-kV transmission line to interconnect the project to an existing Gunnison County Electric Association line. The project would be located entirely on private lands. Project power would be sold to Colorado-Ute Electric Association. Applicant estimates total project cost at $1 million.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

l. An exemption from licensing for the Argenta Project No. 6923 was issued to John C. Simmons on June 3, 1983.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 9482–000.

c. Date Filed: September 25, 1985.

d. Applicant: Wisconsin Creek Limited Partership.

e. Name of Project: Wisconsin-Noble Hydro Project.

f. Location: On Wisconsin Creek and Noble Fork in the Beaverhead National Forest near Sheridan, Madison County, Montana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Rhett Hurless, Water Engineering, Inc., P.O. Box 3474, Bozeman, MT 59772.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) Two 3-foot-high diversion dams at elevation 6,800 feet, one on Wisconsin Creek and one on Noble Fork; (2) two 6,000-foot penstocks, one from the Wisconsin Creek diversion and one from the Noble Fork diversion; (3) a powerhouse containing one generating unit with a rated capacity of 663 kW; and (4) approximately one-quarter mile of transmission line. Applicant estimates the average annual energy production to be 2.5 million kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $12,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to Montana Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: P–9452–000.

c. Date Filed: September 12, 1985.

Applicant: Anita Kay Hardy, Barbara J. Harker, and Earl M. Hardy.

e. Name of Project: Hardy Box Canyon.

f. Location: On Box Canyon Creek, a tributary to the Snake River near Wendell, Gooding County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Earl M. Hardy, 1301 Vista Street, Boise, ID 83705.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high diversion dam at elevation 3,195 feet; (2) a 1,800-foot-long, 96-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 1,011 kW; and (4) a 3,000-foot-long transmission line. Applicant estimates the average annual energy production to be 8,437,509 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $34,100. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to area power companies.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9412–000.

c. Date Filed: August 20, 1985.

d. Applicant: Middle Fork Ditch Hydro Partners.

e. Name of Project: Middle Fork Ditch Hydroelectric Project.

f. Location: On Middle Fork Mokulmne River, near the town of Wilseyville, in Calaveras County, California Sections 12, 13, 14 & 23 of T6N, R13E, MDB&M Sections 7, 8 & 18 of T6N, R14E, MDB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: David C. Auslam, Jr., Auslam & Associates, Inc., 3327 Longview Drive, Suite 250, North Highlands, CA 95660.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 4-foot-high diversion structure at elevation 2,775 feet; (2) an existing 6-foot-wide, 4-foot-deep, 3.8-mile-long ditch; (3) a 6-foot-wide, 4-foot-deep, 5,000-foot-long ditch; (4) a 36-inch-diameter, 1,900-foot-long penstock; (5) a powerhouse with a total installed capacity of 1,200 kW operating under a head of 500 feet; and (6) a small tap line to connect to an existing 60-kV Pacific Gas and Electric Company (PG&E) transmission line. The project's estimated annual generation of 4.6 million kWh will be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

10 a. Type of Application: Major License.

b. Project No.: 8377–001.

c. Date Filed: May 9, 1985.

d. Applicant: Consolidated Hydroelectric Corporation.

e. Name of Project: Isabella Project.

f. Location: On Kern River in Kern County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Kenneth Peters, Mutual Energy Company, Inc., 3451 Longview Drive, Suite 130, North Highlands, CA 95660.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would utilize the existing outlet works of the U.S. Army Corps of Engineers' existing Isabella Dam and Reservoir and consist of: (1) Lining the existing 162-inch-diameter, 448-foot-long outlet tunnel; (2) three 5.67-foot-high, 10-foot-wide slide gates; (3) a 108-inch-diameter, 130-foot-long penstock; (4) a powerhouse containing one 1,300-kW and three 3,550-kW generating units, operating under head of 132 feet; and (5) a 900-foot-long, 66–kV transmission line connecting with Southern California Edison Company (SCE) transmission line. No recreational facilities are proposed. The project power would be sold to SCE.

k. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9450–000.

c. Date Filed: September 11, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Stevens Brook.

f. Location: Stevens Brook, Bridgton, Cumberland County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson and Joseph D. Brostmeyer, Burlington Energy Development

Associates, 64 Blanchard Road, Burlington, MA 01803 (617) 229–6103.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 17.5-foot-high, 280-foot-long concrete gravity dam with a 12-foot-high, 40-foot-wide spillway and a 9-foot-wide, 12.5-foot-long concrete intake structure; (2) an existing 0.5 acre impoundment with 2 acre-feet of storage capacity, at a normal maximum surface elevation of 318 feet USGS datum; (3) a proposed 700-foot-long steel penstock providing flow to an existing masonry powerhouse, 20-feet-long and 38-feet-wide, containing one proposed 200 kW capacity turbine/generator, and discharging into a proposed 325-foot-long gravel trailrace before returning to Stevens Brook; (4) a proposed 50-foot-long, 480-volt transmission line; and (5) appurtenant facilities.

The estimated annual energy production is 400,000 kWh at a net hydraulic head of 50 feet. Project power would be sold to Central Maine Power Company. The dam is owned by the State of Maine Environmental Protection Agency.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $11,000.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 8571–000.

c. Date Filed: August 31, 1984.

d. Applicant: Messrs. Ernest R. Field and Robert A. Bernhard.

e. Name of Project: C. M. Harden Dam.

f. Location: On the Big Raccoon Creek in Parke County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contract Person: Rajeev K. Chaudhary P.E., Lawson-Fisher Associates, 525 W. Washington Street, South Bend, Indiana 46601.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would utilize the existing C. M. Harden Dam and Reservoir owned by the U.S. Army Corps of Engineers and would consist of: (1) A proposed penstock 426 feet long and 8.5 feet in diameter; (2) a proposed powerhouse 50 feet long, and 60 feet wide containing two new turbine/generators with a total rated capacity of 1,400 Kw; (3) a proposed tailrace 70 feet long; (4) new transmission lines and; (5) appurtenant facilities. The estimated average annual energy produced by the project would be 5.0 million kWh operating under a net hydraulic head of 64 feet. Project power would be sold to the Public Service Company of Indiana and Indiana & Michigan Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be preformed under the preliminary permit would be $65,000.

13 a. Type of Application: Perliminary Permit.

b. Project No.: 9471–000.

c. Date Filed: September 20, 1985.

d. Applicant: Musty Buck Hydro Company.

e. Name of Project: Musty Buck Hydroelectric Project.

f. Location: On Big Chico Creek within lands administered by the Bureau of Land Management in Butte County, California (In sections 8, 17, 19, 30, 29, & 30 of T24N, R3E, M.D.M.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contract Person: Mr. Daniel Lee Ostrander, 12750 Quail Run Drive, Chico, California 95928.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 50-foot-long concrete diversion dam at elevation 2,060 feet; (2) and 8-foot-diameter, 17,000-foot-long steel-lined conduit; (3) a 4-foot-diameter, 2,000-foot-long steel penstock; (4) a powerhouse containing generating units with a combined rated capacity of 7,000 kW to operate under a head of 660 feet; and (5) a 60-kV, 7,500-foot-long transmission line connecting the project with an existing Pacific Gas and Electric Company (PG&E) line.

k. Purpose of Project: The estimated annual generation of 21 million kWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No: 9446–000.

c. Date Filed: September 10, 1985.

d. Applicant: Camp Williams Associates.

e. Name of Project: Utah and Salt Lake Canal Project.

f. Location: On Jordan River in Salt Lake County, Utah.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contract Person: Mr. Mike Graham, 484 East 300 North, Manti, Utah 84642.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would be located entirely on privately owned lands and would consist of: (1) An intake structure on the Utah and Salt Lake Canal at a point about 4 miles downstream from its source on the Jordan river; (2) a penstock, 48 inches in diameter and 1,700 feet long; (3) a powerhouse with an installed capacity of 650 kW operating under a head of 91 feet; (4) a tailrace returning flow to the Jordan River; (5) a transmission line, about 13,000 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 5,500,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

15a. Type of Application: Preliminary Permit.

b. Project No.: 9388–000.

c. Date Filed: August 5 , 1985.

d. Applicant: Auburn Ravine Hydro Partners.

e. Name of Project: Auburn Ravine Hydroelectric Project.

f. Location: On the Auburn Ravine in Placer County, California (Sections 11&14, T12N, R7E, M.D.B. & M.).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contract Person: Mr. David C. Auslam, Jr., Auslam & Associates, Inc., 3327 Longview Drive, Suite 250, North Highlands, CA 95660.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) The applicant's existing 4-foot-high, 25-foot-long concrete dam at elevation 491 feet;

(2) a 42 to 48-inch-diameter, 1,800-foot-long, low-pressure conduit; (3) a 30 to 42-inch-diameter, 1,800-foot-long penstock; (4) a powerhouse containing a single generating unit with a rated capacity of 800 kW to operate under a head of 105 feet; and (5) a 12-kV, 1,800-foot-long transmission line connecting the project with an existing Pacific Gas & Electric Company (PG & E) line due south of the powerhouse.

k. Purpose of Project: The estimated annual generation of 3.6 million kWh would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5,A7,A9,B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 9517–000.

c. Date Filed: October 2, 1985.

d. Applicant: The White Chuck Water Company.

e. Name of Project: Clear Creek.

f. Location: On Clear Creek in the Mount Baker-Snoqualmie National Forest near Darrington, Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. William S. Fowler, Mitex, Inc., 91 Newbury St., Boston. MA 02116.

i. Comment Date: January 27, 1986.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high diversion dam at elevation 1,000 feet; (2) a 7,000-foot-long, 5-foot-diameter penstock; (3) a powerhouse containing two generating units with ratings of 6,000 kW and 1,500 kW, respectively; and (4) a 5-mile-long transmission line. Applicant estimates the average annual energy production to be 30,000 kWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 30 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $75,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to an investor owned or public utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 8569–000.

c. Date Filed: August 31, 1984.

d. Applicant: Messrs. Ernest R. Field and Robert A. Bernhard.

e. Name of Project: Huntington Dam.

f. Location: On the Wabash River in Huntington County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Rajeev K. Chaudhary P.E., Lawson-Fisher Associates; 525 W. Washington Street, South Bend, Indiana 46601.

i. Comment Date: January 24, 1986.

j. Description of Project: The proposed project would utilize the existing Huntington Dam and Reservoir owned by the U.S. Army Corps of Engineers and would consist of: (1) A proposed penstock 370 feet long and 11.0 feet in diameter; (2) a proposed powerhouse 56 feet long and 48 feet wide containing two new turbine/generators with a total rated capacity of 2,400 kW; (3) a proposed tailrace 170 feet long; (4) proposed transmission lines and; (5) appurtenant facilities. The estimated average annual energy produced by the project would be 7.0 million kWh. Project power would be sold to the Public Service Company of Indiana and Indiana & Michigan Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed perliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $65,000.

18 a. Type of Application: Preliminary Permit.

b. Project No:: 8570–000.

c. Date Filed: August 31, 1984.

d. Applicant: Messrs. Ernest R. Field and Robert A. Bernhard.

e. Name of Project: Patoka Dam.

f. Location: On the Patoka River in Dubois County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Rajeev K. Chaudhary P.E., Lawson-Fisher Associates, 525 W. Washington Street, South Bend, Indiana 46601.

i. Comment Date: January 24, 1986.

j. Description of Project: The proposed project would utilize the existing Patoka Dam and Reservoir owned by the U.S. Army Corps of Engineers and would consist of: (1) A proposed penstock 357 feet long and 8.0 feet in diameter; (2) a proposed powerhouse 48 feet long and 40 feet wide containing two new turbine/generators with a total rated capacity of 1,700 kW; (3) a proposed tailrace 60 feet long; (4) proposed transmission lines and; (5) appurtenant facilities. The estimated average annual energy produced by the project would be 4.4 million kWh. Project power would be sold to the Public Service Company of Indiana and Indiana & Michigan Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $65,000.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed

project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR §§ 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments.*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments.*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency

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does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 24, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-30920 Filed 12-30-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $216,196.10 obtained as a result of a consent order which the DOE entered into with Marine Petroleum Company, Mars Oil Company, their parents, subsidiaries and affiliates (Marine), a reseller-retailer of refined petroleum products located in St. Louis, Missouri. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0122.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $216,196.10 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Marine Petroleum Company, Mars Oil Company, their parents, subsidiaries, and affiliates (Marine). The funds were provided to the DOE by Marine to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period November 1, 1973, through April 30, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to 50 first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from Marine or to submit a statement verifying that it purchased motor gasoline from Marine and is willing to rely on the data in the audit files. Reseller and retailer applicants will also be required to submit proof of injury as discussed in the Decision, although a detailed demonstration of injury will not be required of those applicants that file at or below the $5,000 threshold level. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit, including customers of Marine's company-affiliated wholesale and retail firms. Unidentified customers who purchased directly from Marine will be required to provide schedules of their monthly purchase volumes. These applicants will be subject to the same requirements regarding proof of injury as are identified purchasers, except in the case of customers which purchased from Marine's retail stations. These customers were ultimate consumers, and as such, do not have to provide a detailed demonstration of injury. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All coments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: December 23, 1985

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

December 23, 1985.

Name of Firm: Marine Petroleum Company and Mars Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0122.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Marine Petroleum Company, Mars Oil Company, their parents, subsidiaries and affiliates (Marine).

I. Background

Marine is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in St. Louis, Missouri. A DOE audit of Marine's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Based on the audit, the DOE alleged that between November 1, 1973 and April 30, 1974, Marine committed certain pricing violations with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Marine and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Marine and the DOE entered into a consent order on September 1, 1981. The consent order resolved a Notice of Probable Violation (NOPV) issued on November 28, 1980, and it represents 10.18 percent of the potential liability amount. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Marine does not admit that it violated the regulations.

Under the terms of the consent order, Marine agreed to deposit $198,50 plus installment interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Marine was required to make its payments in 24 equal monthly installments. The consent order was paid in full on June 18, 1982. Including installment interest, Marine's actual deposits total $216,196.10. That sum will be considered to be the principal amount in this proceeding. This decision concerns the distribution of the funds in the Marine escrow account.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products that were injured by Marine's alleged pricing practices between November 1, 1973 and April 30, 1974 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified Purchasers

A special refund proceeding is designed to provide restitution to parties that were injured as a result of alleged or actual regulatory violations. In this proceeding, we have the benefit of access to material developed by the DOE during its audit of Marine and we intend to rely in part on that information. In other Subpart V cases where audit material was available identifying purchasers, for example, the refund process has been facilitated by the use of that material. At the same time, these audit files do not necessarily provide conclusive evidence on which to base the distribution of refunds. We have consistently maintained, however, that the information contained in ERA's audit files may reasonably be used to determine the identities of allegedly overcharged purchasers and the amounts of the overcharges. *See, e.g., Marion Corp.* 12 DOE ¶ 85,014 (1984) (the information contained in the audit file may be used to fashion a more accurate refund plan than that devised by using a general volumetric approach). *See also Armstrong and Associates/City of San Antonio,* 10 DOE ¶ 85,050 at 88,259 (1983).

During the DOE audit, 50 identified first purchasers were alleged to have been overcharged in purchases of motor gasoline from Marine. The results of this audit also indicated that overcharges had also occurred in sales to customers of Marine's company-affiliated wholesale and retail firms. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the purchasers identified by the audit, and other as yet unidentified customers that may have been injured by purchases from the consent order firm. *See, e.g., Bob's Oil Co.,* 12 DOE ¶ 85,024 (1984); *Richards Oil Company,* 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit and the share of the settlement earmarked for each are listed in the Appendix.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. To aid us in our assessment of a purchaser's injury, we propose the adoption of certain presumptions.

We intend to use both the information in the audit files along with these presumptions to distribute the funds in the escrow account. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seeking small refunds were injured by the pricing practices of the company from which they purchased products. In addition, we plan to use a volumetric presumption for applicants who were not identified during the audit. As a separate matter, we are making a proposed finding that end-users experienced injury. The volumetric presumption and the end-user finding will be discussed in Section B.

There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury, a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the expected refund and whatever benefits are derived from any additional precision. Consequently, without simplified procedures, some potential claimants would be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and the government of compiling and analyzing information

[1] As of November 30, 1985, the Marine escrow account contained a total of $305,620.31, representing $216,196.10 in principal (including installment interest) and $89,424.21 in accrued interest.

sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the consent order period is many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein. The record in this proceeding indicates that most of the 50 identified customers made small purchases.

However, a reseller or retailer which seeks a refund of more than $5,000 will be required to document its claim. While there are a variety of methods by which a claimant could show that it did not pass the alleged overcharges on to its customers, the claimant would generally have to show that at the time of the alleged overcharges, it maintained a "bank" of unrecovered costs, and that market conditions would not permit it to pass through those increased costs.[2]

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we proposed to distribute a portion of the escrow funds to the firms listed in the Apendix, provided they can successfully document their injury with regard to their purchases from Marine. The refund amounts attributable to each firm have been adjusted from those listed in the consent order to reflect the larger principal amount in escrow resulting from Marine's payments of installment interest.[3] Refunds will be authorized to successful applicants in the amounts indicated, plus accrued interest.

B. Refunds to Unidentified Purchasers

As previously noted, this Decision concerns the distribution of the entire $216,196.10 that Marine deposited into the escrow account through June 18, 1982, plus accrued interest since that date. Since the refunds tentatively allotted to identified purchasers total only $101,720.24, the remaining portion of the Marine consent order funds may be distributed among first purchasers other than those identified by the ERA audit, and to customers of Marine's company-affiliated retail and wholesale firms, provided they can make the necessary demonstration of injury.

To assist potential claimants in deciding whether to apply for a refund, we propose using the small-claims presumption discussed above. In addition, we will adopt a presumption that the alleged overcharges were dispersed evenly among all sales of motor gasoline made by Marine during the consent order period. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, the volumetric presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Using a volumetric approach means that a portion of the Marine consent order amount would be allocated to each gallon of product which a successful claimant purchased from the consent order firm. The average per gallon refund, or volumetric refund amount, in this proceeding is $0.002529 per gallon.[4] Potential applicants that were not identified by the ERA audit of Marine may use this volumetric figure to estimate the refund to which they may be entitled.

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein. Similarly, purchasers identified in the ERA audit may attempt to show that they should receive refunds greater than those indicated in the Appendix. If valid claims exceed the funds available in escrow, all refunds will be reduced proportionately. Actual refunds will be determined only after analyzing all appropriate claims.

As noted above, we are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of injury. *See Office of Enforcement* 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, we propose that for end users of motor gasoline sold by Marine, documentation of purchase volumes will provide a sufficient showing of injury.

Finally, if a reseller or a retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from Marine not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of motor gasoline from Marine during the consent order period.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with Marine's sales of motor gasoline. *See, e.g., Office of Special Counsel*, 9 DOE ¶82,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶82,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

III. Applications for Refund

In order to receive a refund, each claimant indentified by ERA will be

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[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond documentation of volumes purchased. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,398. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[3] These amounts were recalculated according to the following formula: we divided the $198,500 original principal amount into the new principal amount, $216,196.10 to obtain a factor of 1.089149. We then multiplied this factor by the amounts attributed to each firm to obtain the revised refund amounts.

[4] This per gallon factor is computed by dividing the $114,475.86 available for distribution to customers of Marine's company-affiliated retail and wholesale firms, by 45,273,041 gallons, which represents an estimate of the total sales volumes of those firms during the consent order period.

requried to submit either a schedule of its monthly purchases of motor gasoline from Marine or a statement verifying that it purchased motor gasoline from Marine and is willing to rely on the data in the audit file. Purchasers not identified by the ERA audit will be required to provide schedules of their monthly purchases of motor gasoline from Marine. If they claim injury at a level greater than the volumetric level, they must document this injury in accordance with the procedures described above. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Marine Oil Company pursuant to the consent order executed on September 1, 1981, will be distributed in accordance with the foregoing decision.

Appendix I

Name/Address	Escrow amount
Star Service, 156 Progress Parkway, Maryland Heights, MO 63043	[illegible]
Checker Oil Co., P.O. Box 162, Hazel Crest, IL 60429	2,420.98
Martin Oil, 144 Weldon Parkway, Maryland Heights, MO 63043	4,600.83
Sirroco Oil, 7756 Carondelet, Clayton, MO 63105	1,713.49
Leonard, 7756 Carondelet, Clayton, MO 63105	[illegible]
J.D. Street, 144 Weldon Parkway, Maryland Heights, MO 63043	4,495.66
Triangle Refineries, Inc., P.O. Box 3367, Houston, TX 77001	[illegible]
Lincoln Treas. City, GPO Box 1, New York, NY 10116	811.20
Sid Blankenship, Hillsboro, IL 62049	[illegible]
Robert Brace Service, Wellsville, MO 63384	[illegible]
Charles Browder Manne, P.O. Box 323, Fulton, KY 42041	682.23
City Ice & Fuel Co., Wickliffe, KY 42087	190.34
Central Petroleum, Centralia, IL 62801	[illegible]
C.J. Coddington, 1727 West 50th, O'Fallon IL 62269	[illegible]
Raymond Cornwell, Cornwell Oil Company, 401 E. Main Street, E. Prairie, MO 63845	211.36
C.S.C. Oil Co, P.O. Box 1713, Louisville, KY 40201	416.22
C.C. Dillon Oil Co., 1342 Lonedell Rd., Arnold, MO 63010	1,752.21
Herbert Duck, Marine Service Station, Dyer, TN 38330	[illegible]
Feld Chevrolet, 7700 Manchester Road, St. Louis, MO 63143	*12.10
Gold Oil Co., 701 Sherman Road, Belleville, IL 62221	[illegible]
Henry County Board of Education, Paris, TN 38242	152.20
James Jennings Summit Service, Rt. 1, Desota, MO 63020	[illegible]
Keys & Son Oil Co., Villa Ridge, MO 63089	261.27
Billy J. Lawson, Frankclay, MO 63644	[illegible]
Laws Enterprises (Bi-Rate), 2110 Chouteau, St. Louis, MO 63103	[illegible]
Manchester Leasing 1075 S. Brentwood Blvd., St. Louis, MO 63117	*10.34
Marvel Oil, 6258 Etzel Avenue, St. Louis, MO 63133	[illegible]
McCollum Service Station, Vandalia, MO 63382	[illegible]
Midwest Petroleum, 6760 Southwest Avenue, St. Louis, MO 63143	1,156.00
Lewis Mirviss, 4517 Minnetonka Blvd., Minneapolis, MN 55416	539.55
Mofitt Oil Co., R.R. 3, Waterloo, IL 62298	91.44
Mullinicks & Boone, Marine Service Station, McEwen, TN 37101	167.34
Clyde Nixon, Highway 21 East, Potosi, MO 63364	224.33
Niemeyer Brothers, Hwy 54 West, Bowling Green, MO 63334	84.72
Fred Nixon Service Station, R.R. 1, Mineral Point, MO 63660	283.41
Obion County Highway Department, E. Jackson Street, Union City, TN 38261	116.97
Obion County Board of Education, Troy, TN 38260	*8.63
Onyx Oil, 11345 Olive St. Rd., Creve Coeur, MO 63141	424.32
James Petty, Route 5, Trenton, TN 38382	107.36
Reynolds Service Station, 1403 Church Street, Tiptonville, TN 38079	[illegible]
Saveway Oil Company, P.O. Box 336, Cape Girardeau, MO 63701	4,591.55
Super Gas, P.O. Box 248, Arnold, MO 63010	11,462.81
Tenneco Oil Co., P.O. Box 101229, Atlanta, GA 30302	507.00
Len Theole, 1020 Hawthorn, St. Charles, MO 63301	399.35
Weldon Turner, 1300 N. Main, Desota, MO 63020	115.47
Walker Oil Co., P.O. Box 130, Dyersburg, TN 38024	[illegible]
Wides Oil Co., Murphysboro, IL 62966	3,730.79
Flash Oil, 7755 Carondelet, Clayton, MO 63105	32,272.98
Star Service, 156 Progress Parkway, Maryland Heights, MO 63043	87.55
Site Oil, 7756 Carondelet, Clayton, MO 63105	19,208.66

* As noted in the text of the Decision, we do not intend to process refunds below $15.

[FR Doc. 85–30928 Filed 12–30–85; 8:45 am]

BILLING CODE [illegible]

ENVIRONMENTAL PROTECTION AGENCY

[AAA–FRL–2945–7]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Debarred, Suspended, or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred, suspended, or voluntarily excluded from participation in EPA assisted programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of December 2, 1985.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475–8025.

Dated: December 17, 1985.

Harvey G. Pippen, Jr.,

Director, Grants Administration Division (PM–216).

EPA Master List of Debarred, Suspended and Voluntarily Excluded Persons

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
A.C. Lawrence Leather Co., Inc. (Danvers, MA)	85-0007-00	D	5-12-84	4-11-87	§ 32.200(a)(3)
A.F. Bell Electric Co., Inc. (Youngstown, OH)	85-0014-00	D	5-27-85	6-26-88	§ 32.200(a)
Altman, Larry L. (Charleston, SC)	85-0063-03	I	7-29-85	OPEN	§ 32.300(b)
Anderson, Scott (Walnut Creek, CA)	83-0004-01	D	5-17-83	5-16-86	§ 32.200(a)(3)(ii)
Atlas Prestressing Corp. (Panorama City, CA)	83-0050-00	D	5-02-83	5-01-86	§ 32.200(a)
Averill, Ernest Jr. (Fort Myers, FL)	83-0055-00	D	12-02-83	10-29-88	§ 32.200(a)
Barber, Lawrence (Hazelwood, NC)	83-0007-00	D	4-12-84	4-11-87	§ 32.200(a)(3)(ii)
Barnum, James Charles (Utica, MI)	85-0010-01	S	12-10-85	OPEN	§ 32.200(a)
BECO, Inc. (High Point, NC)	85-0017-01	VE	12-10-85	12-09-88	§ 32.200(a)(3)
Blackwelder, Ray Martin (Concord, NC)	84-0011-01	D	6-27-85	6-26-88	§ 32.200(a)
Bowe, Walsh & Associates Inc. (Melville, NY)	83-0060-00	D	4-14-83	4-13-86	§ 32.200(a)(a)
Boyette, Willie Eugene (Wilson, NC)	83-0068-01	D	5-15-85	4-14-87	§ 32.200(a)
Byrant-Durham Electric Co., Inc. (Durham, NC)	85-0026-00	D	5-30-85	5-29-88	§ 32.200(a)(3)
Croft, William A. (Madison, WI)	83-0067-00	D	5-20-84	5-19-87	§ 32.200(a)
Cryer, John P. (Baton Rouge, LA)	85-0062-03	S	7-29-85	OPEN	§ 32.300(b)
Cull, Vincent J., Jr. (Huntington, NY)	83-0040-03	D	4-30-85	4-29-88	§ 32.200(a)
Dellinger, Theodore C. (Monroe, NC)	84-0012-01	VE	3-12-86	3-11-88	§ 32.200(a)
Dobson, Arthur A. (Lincoln, NE)	83-0030-01	D	5-30-85	4-19-87	§ 32.200(i)
Domanski, Gary Henry (Utica, MI)	85-0010-02	S	12-10-85	OPEN	§ 32.200(a)
Enmanco (Utica, MI)	85-0010-05	I	12-10-85	OPEN	§ 32.200(a)
Environmental Management Corp. (Utica, MI)	85-0010-00	S	12-10-85	OPEN	§ 32.200(a)
Errichetti, Angelo J. (Camden, NJ)	83-0040-04	D	4-14-83	4-13-86	§ 32.200(a)(b)
Floyd D. Stuckey & Associate (Winfield, KS)	84-0028-00	D	6-26-85	6-25-88	§ 32.200(a)
Franklin Wiring Co. (Youngstown, OH)	85-0044-00	D	8-02-85	8-01-88	§ 32.200(a)(3)
FSA Engineering Consultants (Winfield, KS)	84-0028-00	D	6-26-85	6-25-88	§ 32.200(a)
Gabey, Martin (Northport, NY)	83-0040-02	D	12-16-83	12-15-86	§ 32.200(a)
Galber, Joseph L. (Bronx, NY)	85-0022-01	S	7-30-85	OPEN	§ 32.300(b)
G.E. Moore Co., Inc., (Greenwood, SC)	85-0031-00	D	12-19-85	12-18-88	§ 32.200(a)(3)
Goodspeed, Robert (North Hampton, NH)	83-0007-02	D	4-12-84	4-11-87	§ 32.200(a)(3)
Hansen, Leonard A. (St. Peter, MN)	85-0019-02	D	9-26-85	9-25-88	§ 32.200(a)(3)
Harry Johnson Plumbing Co., Inc. (Walla Walla, WA)	85-0060-00	D	7-22-83	7-21-86	§ 32.200(a)(3)(ii)(A)
Herring, Donald W. (Wilson, NC)	84-0044-01	D	10-11-84	10-10-87	§ 32.200(a)
Hi-Way Surfacing, Inc. (Marshall, MN)	85-0053-00	D	12-17-85	12-16-88	§ 32.200(a)(3)
Hunter, James C. (Gardena, CA)	83-0032-02	D	7-07-83	7-06-86	§ 32.200(a)
Insulation Specialty & Supply, Inc. (Cleveland, OH)	84-0025-00	D	10-04-84	10-03-87	§ 32.200(a)(3)
Jackson, Manly (San Jose, CA)	80-0048-02	D	5-27-83	5-26-86	§ 32.200(a)
Johnson, Mark (Walla Walla, WA)	83-0060-01	D	7-22-83	7-21-86	§ 32.200(a)(c)
Johnson, Richard (Hinsdale, NH)	83-0007-03	D	4-12-84	4-11-87	§ 32.200(a)(3)
Jopel Contracting & Trucking Corp. (Bronx, NY)	85-0022-00	S	7-30-85	OPEN	§ 32.300(b)
Komatz Construction Co., Inc. (St. Peter, MN)	85-0019-00	D	9-26-85	9-25-88	§ 32.200(a)(3)
Komatz, Thomas P. (St. Peter, MN)	85-0019-01	D	9-26-85	9-25-88	§ 32.200(a)(3)
Krueger, Joseph (Cleveland, OH)	84-0025-01	D	10-04-84	10-03-87	§ 32.200(a)(3)
L.A. Reynolds Co., (Winston Salem, NC)	83-0035-00	D	7-01-83	6-30-86	§ 32.200(a)
Law, David P. (Greenwell Springs, LA)	85-0064-00	I	7-29-85	OPEN	§ 32.300(b)
Law, Theresa McBeth (Greenwell Springs, LA)	85-0064-01	I	7-29-85	OPEN	§ 32.300(b)
Lee, Herbert P., III. (Sumter, SC)	84-0013-01	VE	2-14-86	12-31-87	§ 32.200(a)
Long, Harold Delmar (Los Gatos, CA)	83-0056-01	D	7-07-83	7-06-86	§ 32.200(a)
Marshall, Weymouth (Gloucester, MA)	83-0007-01	D	4-12-84	4-11-87	§ 32.200(a)(3)(i)
Masselli, William P. (Bronx, NY)	85-0022-02	S	7-30-85	OPEN	§ 32.300(b)
Mattlin, Thomas B. (Delta, PA)	84-0007-01	VE	10-24-85	4-23-86	§ 32.200
Moorehead, Dennie L. (Graniteville, SC)	84-0006-01	D	1-11-85	1-10-88	§ 32.200(a)
Moorse, Lawrence (Marshall, MN)	85-0053-1	D	12-17-85	12-16-88	§ 32.200(a)(3)
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA)	83-0601-1½ 82-04091	D	10-07-82	2-16-87	§ 32.200(a)(3)(ii)(C)(4)(iii)
Murray Paving Co., Inc. (Whitesboro, NY)	84-0032-00	D	5-19-85	10-18-88	§ 32.200(a)
Murray, Harry (Whitesboro, NY)	84-0032-01	D	5-19-85	10-18-88	§ 32.200(a)
Newman, Fred M. (Vienna, VA)	83-0072-01	D	9-30-83	9-29-86	§ 32.200(i)
Newman, Richard Gordon (Pierre, SD)	83-0041-00	D	11-29-83	11-28-86	§ 32.200(a)
Newt Solomon, Inc. (Nashville, TN)	85-0058-00	D	10-10-85	10-09-88	§32.300(e)(i)
Post-Tensioning Service Corp. (Saratoga, CA)	83-0001-00	D	7-08-83	7-07-86	§ 32.200(a)
Regenschald, Charles E. (St. Peter, MN)	85-0019-03	VE	12-19-85	12-18-87	§ 32.200(a)(3)
Reynolds, Jon R. (Winston Salem, NC)	83-0026-01	D	7-01-83	6-30-86	§ 32.200(a)
Richmond, Elwood). (Grand Forks, ND)	83-0006-01	D	6-06-83	6-05-86	§ 32.300(a)(f)
Richmond Engineering, Inc. (Grand Forks, ND)	83-0006-00	D	6-06-83	6-05-86	§ 32.300(a)(f)
Richmond, Lloyde W., Jr. (Grand Forks, ND)	83-0006-02	D	6-06-83	6-05-86	§32.300(a)(f)
Rio Grande Construction Co. (Bunkie, LA)	85-0063-00	I	7-29-85	OPEN	§ 32.300(b)
Rothrock Construction, Inc. (Murrells Inlet, NC)	83-0054-00	D	5-17-84	5-16-87	§ 32.200(a)
Rothrock, Steve D. (Murrells Inlet, NC)	83-0054-01	D	5-18-84	5-17-87	§ 32.200(a)
Sargent Electric Co., Inc. (Pittsburgh, PA)	85-0029-00	I	7-26-85	OPEN	§ 32.200(a)(3)
Sargent, Frederic B. (Pittsburgh, PA)	85-0029-01	I	7-26-85	OPEN	§ 32.200(a)(3)
Saunders, George F. (High Point, NC)	85-0017-02	VE	12-10-85	12-09-88	§ 32.200(a)(3)
Sauseda, Roy (Bunkie, LA)	85-0062-02	S	7-29-85	OPEN	§ 32.200(b)
Shackleford, Robert S. (Durham, NC)	85-0028-01	D	5-30-85	5-29-88	§ 32.200(a)(3)
Slattery, Edward J. (Youngstown, OH)	85-0015-01	D	9-15-85	3-14-87	§ 32.200(a)(3)
Solomon, Newt (Nashville, TN)	85-0058-01	D	10-07-85	10-06-88	§ 32.200(e)(i)
Stone, Francis (Swanzey, NH)	83-0007-04	D	4-12-84	4-11-87	§ 32.200(a)(c)(i)
Stuckey, Floyd D. (Winfield, KS)	84-0028-01	D	6-26-85	6-25-88	§ 32.200(a)
Toy, Daniel Lee (Utica, MI)	85-0010-03	S	12-10-85	OPEN	§ 32.200(a)
Tubre Enterprises (Bunkie, LA)	85-0062-01	I	7-29-85	OPEN	§ 32.300(b)
Tubre Enterprises, Inc. (Bunkie, LA)	85-0062-00	I	7-29-85	OPEN	§ 32.300(b)
Tubre, Charles (Baton Rouge, LA)	85-0062-02	I	7-29-85	OPEN	§ 32.300(b)
Tubre, Thomas (Bunkie, LA)	85-0062-01	S	7-29-85	OPEN	§ 32.300(b)
Tucker Brothers Contracting Co. (Pell City, AL)	83-0061-00	D	11-26-84	11-25-87	§ 32.200(a)
Tucker, Harold Ray (Pell City, AL)	83-0061-02	D	11-26-84	11-25-87	§ 32.200(a)
Tucker, Kenneth W. (Pell City, AL)	83-0061-01	D	11-26-84	11-25-87	§ 32.200(a)
Tweddell, David Bruce (Gainesville, FL)	83-0029-01	D	5-30-85	5-29-87	§ 32.200(a)
Vanderhurst, William (Saratoga, CA)	83-0001-01	D	7-06-83	7-07-86	§ 32.200(a)
Vryenhoek, Ralph D. (Pittsburgh, PA)	85-0029-02	S	7-26-85	OPEN	§ 32.200(a)(3)
Walsh, Charles T. (Huntington Bay, NY)	83-0040-01	D	4-14-83	4-13-86	§ 32.200(a)
Walstad, Merrill (Huntington Beach, CA)	83-0013-03	D	6-27-83	5-26-86	§ 32.200(a)
Watson Electrical Construction Co. (Wilson, NC)	83-0044-00	D	4-15-85	4-14-87	§ 32.200(a)
Wilson, John Bruff (Lebanon, TN)	84-0014-01	VE	10-16-85	10-15-86	§ 32.200(a)

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EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
Wirt, David (Douglasville, GA)	[illegible]	D	10-07-82	2-16-87	§ 32.200(b)(c)(e)(i)
Wirt, Gordon D. (Douglasville, GA)	[illegible]	D	12-07-82	2-16-87	§ 32.200(c)(e)
Wirt, Judith C. (Douglasville, GA)	[illegible]	D	12-07-82	2-16-87	§ 32.200(c)(e)(i)
Zeigler, Beaty Stevens (Sumter, SC)	83-0045-01	VE	7-15-83	[illegible]	§ 32.200(a)

[1] D=Debarred; S=Suspended; VE=Voluntarily Excluded

[FR Doc. 85-30805 Filed 12-30-85; 8:45 am]

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[OPTS-51600; FRL-2935-6]

Certain Chemical Premanufacture Notices

Correction

In FR Doc. 85-29123 beginning on page 50225 in the issue of Monday, December 9, 1985, make the following corrections:

1. On page 50226, in the third column, under **P 86-218**, in the second line under *Exposure*, "of workers" should read "of 6 workers".

2. On page 50227, in the first column, under **p 86-221**, in the third line under *Exposure*, "hrs/da" should read "2 hrs/da".

BILLING CODE [illegible]

[OPTS-59742; FRL-2932-9]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85-29040, beginning on page 50006 in the issue of Friday, December 6, 1985, make the following corrections:

On page 50006, under **Y86-36**, in *"Toxicity Data"*, in the first line, "110,000" should read "10,000".

On page 50007, in the first column, under **Y86-38**, in *"Use/Production"*, in the second line, "automobile" should read "automotive".

BILLING CODE [illegible]

[OPTS-51566A; FRL 2946-8]

Substituted Pyridine Disazo Dye; Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notice (PMN) P 85-735, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on March 22, 1986.

FOR FURTHER INFORMATION CONTACT: Charlotte White, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-613, 401 M St., SW., Washington DC 20460, (202-382-3373).

SUPPLEMENTARY INFORMATION: On April 2, 1985, EPA received PMN P 85-735 for a new chemical substance, substituted pyridine disazo dye. The submitter claimed the chemical identity, production volume, and portions of a mixture to be confidential business information. Notice of receipt was published in the **Federal Register** of April 12, 1985 (50 FR 14439). The original 90-day review period, including a voluntary suspension by the submitter, was scheduled to expire on December 22, 1985.

Based on its analysis, EPA finds that there is a possibility that the substance submitted for review in this PMN may be regulated under TSCA. The Agency requires an extension of the review period, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents, should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to March 22, 1986.

PMNs are available for public inspection in Rm. E-107, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: December 8, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-30887 Filed 12-30-85; 8:45 am]

BILLING CODE [illegible]

FEDERAL RESERVE SYSTEM

Ameritrust Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulaton Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 17, 1986.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *AT Indiana Corporation;* Cleveland, Ohio (a Subsidiary of Ameritrust Corporation, Cleveland, Ohio); to

become a bank holding company by acquiring 100 percent of the voting shares of First Indiana Bancorp, Elkhart, Indiana thereby indirectly acquiring First National Bank, Elkhart, Indiana.

Ameritrust Corporation, Cleveland, Ohio; to acquire First Indiana Bancorp, Elkhart, Indiana, thereby indirectly acquiring First National Bank, Elkhart, Indiana.

Ameritrust Corporation, Cleveland, Ohio; to acquire through AT Indiana Corporation, Cleveland, Ohio (Ameritrust Corporation's wholly-owned subsidiary), First Indiana Life Insurance Company ("Company"), Elkhart, Indiana, and thereby engage in the activity of underwriting credit life and accident and health insurance that is directly related to extensions of credit by any bank subsidiary of Company's parent, pursuant to § 225.25(b)(9) of Regulation Y. These activities would be conducted in the nonbank office to be acquired in Elkhart, Indiana, and throughout the United States.

Board of Governors of the Federal Reserve System, December 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30853 Filed 12-30-85; 8:45 am]

[illegible] CODE 6210-01-M

Area Bancshares Corp. et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities; AT Indiana Corp. et al.

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 22, 1986.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Area Bancshares Corporation,* ("Applicant") Hopkinsville, Kentucky, to acquire indirectly 50 percent of North American Financial Services of Kentucky ("Company"), Louisville, Kentucky, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of Regulation Y. Applicant and North American Financial Services Ltd., St. Petersburg, Florida, a nonbanking company, each own 50 percent of Datanet, Inc., ("Datanet"), Hopkinsville, Kentucky. Datanet and Mid-American Data Processing, Inc., a wholly owned subsidiary of Mid-America Bancorp, Louisville, Kentucky, a bank holding company, will each own 50 percent of Company. Immediately after Applicant acquires 50 percent of Company, Company will acquire all of the voting shares of L.H.F Information Processing, Inc. of Louisville ("L.H.F."), Louisvillle, Kentucky. L.H.F. is a wholly-owned subsidiary of North American Financial Services, Ltd. These data processing activities would be conducted by Company and L.H.F. Information Processing, Inc., in Kentucky, its contiguous states and South Carolina. The nonbank offices to be acquired are located in Louisville, Kentucky.

2. *Mid-American Bancorp,* Louisville, Kentucky; to engage, *de novo,* through its wholly-owned subsidiary, Mid-America Data Processing, Inc. ("MDP"), Louisville, Kentucky, in data processing activities pursuant to § 225.25(b)(7) of Regulation Y. MDP and Datanet, Inc. ("Datanet") will each acquire 50 percent of North American Financial Services of Kentucky ("Company"), Louisville, Kentucky. Area Bancshares Corporation, Hopkinsville, Kentucky, and North American Financial Services, Ltd., St. Petersburg, Florida, each own 50 percent of Datanet. Immediately after MDP and Datanet acquire Company, Company will acquire all of the voting shares of L.H.F. Information Processing, Inc., of Louisville, Kentucky, a wholly-owned subsidiary of North American Financial Services, Ltd. These activities would be conducted by Company and L.H.F. Information Processing, Inc., in Kentucky, its contiguous states and South Carolina. The nonbank offices to be acquired are located in Louisville, Kentucky.

Board of Governors of the Federal Reserve System, December 24, 1985.

James MacAfee,

Associate Secretary of the Board.

[FR Doc. 85-30852 Filed 12-30-85; 8:45 am]

[illegible] CODE 6210-01-M

Cornerstone Financial Corp. et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written persentation would not suffice in lieu of a hearing, identifying specificially any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieve by approval or the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 1986.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Cornerstone Financial Corporation,* Derry, New Hampshire; to engage *de novo* directly with its wholly-owned subsidiary, Derry Bank and Trust Company, Derry, New Hampshire in participations on an ongoing basis in commercial lending, pursuant to § 225.25(b)(1) of Regulation Y.

2. *The Conifer Group, Inc.,* Worcester, Massadchusetts; to engage *de novo* through its subsidiary, Conifer Life Insurance Company Inc., Phoenix, Arizona, in underwriting, through reinsurance, of credit life and credit accident and health insurance that is directly related to extensions of credit by the banking subsidiaries of The Conifer Group Inc., pursuant to § 225.25(b)(9) of Regulation Y., These activities would be conducted in the Commonwealth of Massachusetts.

B. **Federal Reserve Bank of New York** (Willian L. Ruglege, Vice President) 33 Liberty Street, New York, New York 10045:

1. *European American Bancorp,* New York, New York; to engage *de novo* through its subsidiary, EAB Brokerage Services, Inc., Uniondale, New York, in providing securities brokerage services, related securities credit activities, pursuant to the Board's Regulation T (12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts, and cash management services. All such brokerage services will be restricted to buying and selling securities solely as agency for the account of customers and will not include securities underwriting or dealing or offering investment advice or providing research services, pursuant to § 225.25(b)(15) of Regulation Y.

2. *United Jersey Banks,* Princeton, New Jersey; to engage *de novo* through its subsidiary, United jersey Credit Life Insurance Company, Phoenix, Arizona in underwriting credit life and accident and health insurance with respect to open end credit card and "Line of Credit" extensions of credit, pursuant to § 225.25(b)(9) of Regulation Y. These activities would be conducted on a nationwide basis.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mark Twain Bancshares, Inc.,* St. Louis, Missouri; to engage *de novo* through its subsidiary, Mark Twain Brokerage Services, Inc., St. Louis, Missouri, in securities brokerage services, related securities credit activities, pursuant to the Board's Regulation T (12 CFR Part 220), and incidental activities such as offering custodial services, individual retirement accounts and cash management services, pursuant to § 225.25(b)(15) of Regulation Y. Applicant will not provide investment advice. Comments on this application must be received not later than January 15, 1986.

2. *Liberty United Bancorp, Inc.,* Louisville, Kentucky; to engage *de novo* through its subsidiary, Banker's Investment Group, Inc., Louisville, Kentucky, in securities brokerage services, pursuant to § 225.25(b)(15) of Regulation Y.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *National Mercantile Bancorp,* Los Angeles, California; to engage *de novo* directly to supplement and/or participate in loans made by its bank subsidiary, Mercantile National Bank, Los Angeles, California, until that portion of those loans could be placed with another financial institution, pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 24, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-30854 Filed 12-30-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Permerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 86-0294—Masco Corporation's proposed acquisition of voting securities of Flint & Walling Industries, Inc., (Edward L. Benson, UPE).	Dec. 5, 1985.
(2) 86-0295—Masco Industries, Inc.'s proposed acquisition of assets of Flint & Walling Industries, Inc., (Edward L. Benson, UPE).	Do.
(3) 86-0337—Alberta Energy Company Ltd.'s proposed acquisition of assets of Royal Dutch Petroleum Company.	Dec. 6, 1985.
(4) 86-0247—Universal Foods Corp.'s proposed acquisition of voting securities of Universal Group Limited.	Dec. 9, 1985.
(5) 86-0258—ConAgra, Inc.'s proposed acquisition of assets of Joel and Dave Abramson, (Camerican International, Inc., UPE).	Do.
(6) 86-0284—The Boston Five Cents Savings Bank, FSB's proposed acquisition of voting securities of Commerce McGehee Mortgage, Inc., (National Commerce Bancorporation, UPE).	Do.
(7) 86-0292—William H. Goodwin, Jr.'s proposed acquisition of voting securities of Min Union Machinery, Inc., (Minster, Inc., UPE).	Do.
(8) 86-0297—Pilkington Brothers plc's proposed acquisition of voting securities of Syntex Ophthalmics, (Syntex Corporation, UPE).	Do.
(9) 86-0319—The "1984 Simmons Trust's" proposed acquisition of voting securities of Sea-Land Corporation.	Do.
(10) 86-0321—Pleasant Travel Service's, (Edward J. Hogan and Marilyn J. Hogan, UPE's proposed acquisition of voting securities of ITT Corporation.	Do.
(11) 86-0331—Material Sciences Corporation's proposed acquisition of voting securities of Deposition Technology Inc., (Richard L. Burns, UPE).	Do.
(12) 86-0334—Triumph International Spiesshofer & Braun's proposed acquisition of voting securities of NCC Industries, Inc..	Do.
(13) 86-0360—Elsevier-NDU N.V.'s proposed acquisition of voting securities of CDA Investment Technologies, Inc., (Robert A. Leavy, UPE).	Do.
(14) 86-0330—Beecham Group p.l.c.'s proposed acquisition of voting securities of Reheis Chemical Company, (Pantry Pride, Inc., UPE).	Dec. 10, 1985.
(15) 86-0345—Leslie A. Hynes' proposed acquisition of assets of South Buffalo Railway Company and certain real property including a ship canal, (Bethlehem Steel Corporation, UPE).	Do.
(16) 86-0356—The Moonie Oil Company Limited's proposed acquisition of voting securities of Avalon Corporation.	Do.
(17) 86-0312—Enserch Corporation's proposed acquisition of voting securities of Oceaneering International, Inc..	Dec. 11, 1985.
(18) 86-0320—Arabian Investment Banking Corporation's proposed acquisition of voting securities of Dellwood Foods, Inc., (Finevest Partners, UPE).	Do.
(19) 86-0342—PacifiCorp's proposed acquisition of voting securities of Hyster Credit Corporation, (ESCO Corporation, UPE).	Do.
(20) 86-0279—Continental Telecom Inc.'s proposed acquisition of voting securities of IPC Communications, Inc..	Dec. 12, 1985.

Transaction	Waiting period terminated effective
(21) 86-0293—Century Communications Corp.'s proposed acquisition of assets of Westinghouse Electric Corporation.	Do.
(22) 86-0309—CBI Management, Inc.'s proposed acquisition of assets of Rogers Cablesystems, Inc., (Edward S. Rogers, UPE).	Do.
(23) 86-0324—Knight-Ridder Newspapers, Inc.'s proposed acquisition of assets of The Evening News Association, (Gannett Co., Inc., UPE).	Do.
(24) 86-0333—Southmark Corporation's proposed acquisition of voting securities of Servico, Inc..	Do.
(25) 86-0361—Fox Meyer Corporation's proposed acquisition of voting securities of Ben Franklin Stores Division; (HMI Holding, Inc., UPE).	Do.
(26) 86-0365—Broken Hill Propretary Company Limited's proposed acquisition of voting securities of Monsanto Oil Company, (Monsanto Company, UPE).	Do.
(27) 86-0371—Mr. Charles Robin's proposed acquisition of voting securities of Dunham-Bush, Inc., (Allied-Signal, Inc., UPE).	Do.
(28) 86-0373—Texas Medical Center, Inc.'s proposed acquisition of voting securities of Shamrock Hilton Hotels, (Hilton Hotels Corporation, UPE).	Do.
(29) 86-04000—Royal Dutch Petroleum Company's proposed acquisition of assets of Phillips Petroleum Company.	Do.
(30) 86-0276—Freedom Newspaper, Inc.'s proposed acquisition of assets of WRGB, Inc., (UniCom Partners, L.P., UPE).	Dec. 13, 1985.
(31) 86-0339—William L. Hutchison's proposed acquisition of voting securities of United States Steel Corporation.	Do.
(32) 86-0347—Healthwest Foundation's proposed acquisition of assets of Riverside General Hospital Associates, dba Riverside General Hospital.	Do.
(33) 86-0348—Whirlpool Corporation's proposed acquisition of assets of Mastercraft Industries Corp..	Do.
(34) 86-0355—Minerals and Resources Corporation Limited's proposed acquisition of voting securities of Danville Resources, Inc., (Inspiration Resources Corporation, UPE).	Do.
(35) 86-0346—Pennwalt Corporation's proposed acquisition of voting securities of Turco Purex Industrial Corp. and Turco Products, Inc., (Purex Industries, Inc., UPE).	Do.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 523-3894.

By direction of Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-30696 Filed 12-30-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. appendix I) announcement is made of the following national advisory bodies scheduled to assemble during the month of January 1986.

National Advisory Council on Alcohol Abuse and Alcoholism, January 23-24; 10:30 a.m., Hubert H. Humphrey Building, Humphrey Auditorium, 200 Independence Avenue, S.W., Washington, DC 20201

Open—January 23: 10:20 a.m.-5:00 p.m.

Closed—Otherwise

Contact: James Vaughan, Parklawn Building, Room 16C20, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4375

Purpose: The Council advises the Secretary, Department of Health and Human Services regarding the policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: From 10:30 a.m.-5:00 p.m., January 23, the open session will be devoted to general business of the Council and a discussion of current budget, legislative, and program activities. From 9:00 a.m. to adjournment, January 24, which will be the closed session, the Council will conduct a final review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

National Advisory Council on Drug Abuse, January 28-29; 9:00 a.m., National Institutes of Health Building 31C, Conference Room 9, Bethesda, MD 20205

Open- January 28; 9:00 a.m.-12 noon, January 29; 9:00 a.m.-5:00 p.m.

Closed—Otherwise

Contact: Sheila Gardner, Parklawn Building, Room 10A-03, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6480

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services; the Administrator, Alcohol, Drug Abuse, and Mental Health Administration; and the Director, National Insititute on Drug Abuse, on the development of new initiatives and priorities and the efficient prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Agenda: On January 28, from 9:00 a.m.-12 noon, and on January 29, from 9:00 a.m.-5:00 p.m., the meeting will be open for discussion of administrative announcements, program development, and policy issues. On January 28, from 1:30 a.m.-to 5:00 pm., the Council will be performing final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Public Law 92-463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375. NIDA: Ms. Mary Kielkopf, Committee Management Officer, Room 10-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1644.

Dated: December 24, 1985.

Brenda L. Williamson,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-30695 Filed 12-30-85; 8:45 am]

BILLING CODE 4160-20-M

Health Care Financing Administration

[BERC-367-N]

Medicare Program; Definition of Disproportionate Share Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth two definitions: (1) Hospitals that serve a significantly disproportionate share of low income patients; and (2) hospitals that serve a significantly disproportionate share of Medicare Part A beneficiaries. The notice addresses section 2315(b)(1) of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which requires that the Secretary develop and publish a definition of these hospitals. It also meets the requirements of an order of the United States District Court for the District of Columbia in *Samaritan Health Center, et al. v.*

Heckler, Civil Action No. 85–0464 dated August 29, 1985.

FOR FURTHER INFORMATION CONTACT:
Linda Magno, (301) 594–9343.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1886(d) of the Social Security Act (Act), enacted by the Social Security Amendments of 1983 (Pub. L. 98–21) on April 20, 1983, established a prospective payment system for Medicare payment of inpatient hospital services. The prospective payment system became effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis related groups (DRGs) and the rate paid for a particular discharge is based on the relative weight of the DRG into which the patients' case/inpatient stay is classified.

Section 1886(d)(5)(C)(i) of the Act authorizes adjustments to the prospective payment rates as follows:

> The Secretary shall provide for such exceptions and adjustments to the payment amounts established under this subsection as the Secretary deems appropriate to take into account the special needs of . . . public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this title.

We have not made special provisions for those hospitals (commonly referred to as disproportionate share hospitals) in the Medicare regulations because, based on our past analyses (which are described in **Federal Register** publications 47 FR 43285, 48 FR 39416, 48 FR 39783, 49 FR 276–277, 50 FR 24384–24385 and 50 FR 35685–35686), we believe that there is not currently sufficient evidence to demonstrate that an adjustment is warranted.

In connection with the statutory provision regarding hospitals serving a significantly disproportinate share of low income patients or Medicare Part A beneficiaries, Congress required the Secretary, in section 2315(h)(l) of the Deficit Reduction Act of 1984 (DRA) (Pub. L. 98–369), to develop and publish a definition of these hospitals. Section 2315(h)(2) of the DRA requires that we provide a list of the hospitals which meet the definition to the Ways and Means Committee of the House of Representatives and the Committee on Finance of the Senate. However, we had not published a definition or developed a list of hospitals meeting the definition because we believe further analysis is necessary to produce a reasonable definition and to determine whether an adjustment is warranted. We are currently in the process of gathering the data for this analysis.

On August 29, 1985, the United States District Court for the District of Columbia in *Samaritan Health Center; et al. v. Heckler* (Civil Action No. 85–0464) ordered the Secretary to develop and publish a definition of disproportionate share hospitals and to identify those hospitals to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on or before December 31, 1985.

Thus, this notice is issued in response to the Congressional mandate of section 2315(h)(1) of the DRA and the court order. It sets forth two definitions: (1) Hospitals serving a significantly disproportionate share of low income patients; and (2) hospitals serving a significantly disproportionate share of Medicare Part A beneficiaries. The court order compels us to issue these definitions based on the data currently available rather than waiting for the further analysis that we believe is necessary.

As required by Congress and the court order, we are forwarding to the appropriate Congressional committees a list identifying the hospitals that based on currently available data meet these definitions.

II. Definitions

A. General

Because of the time constraints placed on us, we have relied on a statistical definition applied to two variables that are related to a hospital's share of low income patients and Medicare patients. The variables are (1) the ratio of hospital inpatient days for Medicare beneficiaries qualifying for SSI payments (data source: Social Security Administration (SSA), 1984 file) to covered Medicare hospital inpatient days (data source: HCFA, 1984 Medicare PATBILL file) and (2) the ratio of Medicare inpatient days (data source: HCFA, Admissions Pattern Monitoring file, Hospital 1983 Fiscal Year) to total hospital inpatient days (data source: American Hospital Association (AHA), Hospital 1983 Fiscal Year).

The statistical definition applied to these ratios yields the method by which hospitals are designated disproportionate share hospitals. Hospitals with either ratio exceeding the national mean value plus 3 standard deviations are disproportionate share hospitals. The Congressional mandate was to define hospitals with a *significantly* disproportionate number of low income and Medicare patients, not merely hospitals with a large proportion of these patients. We interpret this mandate as Congressional concern over hospitals that have low income and Medicare utilization well outside the average. Therefore, consistent with the Congressional mandate, we believe that a measure based on 3 standard deviations from the mean assures that only hospitals with a significantly disproportionate share of low income or Medicare patients are recognized within our definition.

B. Low Income Patients

A hospital serving a significantly disproportionate share of low income patients is one whose ratio of hospital inpatient days for Medicare beneficiaries qualifying for Supplemental Security Income (SSI) payments to total hospital inpatient days exceeds 39.55 percent.

For this ratio, the mean value is 10.73 percent and the standard deviation is 9.605 percent. (The mean was derived by summing the ratio of hospital inpatient days for Medicare beneficiaries qualifying for SSI payments to covered Medicare hospital inpatient days for each hospital, and dividing by the total number of hospitals in the database.) Thus, hospitals with a ratio exceeding 39.55 percent would be identified as serving a significantly disproportionate share of low income patients. The database for this computation contained 5788 Medicare certified hospitals and yielded 89 hospitals with a disproportionate share of low income patients.

Under the Federal SSI program, payments are made to low-income aged, blind, and disabled individuals. We have used SSA SSI data linked to Medicare beneficiary data to define hospitals serving a disproportionate share of low income patients because it reflects the application of a uniform Federal standard for low income patients across States and is related to the delivery of health services to Medicare patients.

C. Medicare Patients

A hospital serving a significantly disproportionate share of Medicare patients is one whose ratio of Medicare inpatient days to total inpatient days exceeds 91.01 percent.

For this ratio, the mean value is 49.69 percent and the standard deviation is 13.774 percent. (The mean was derived by summing the ratio of Medicare inpatient days to total inpatient days for each hospital, and dividing by the total

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number of hospitals in the database.) Thus, hospitals with a ratio exceeding 91.01 percent would be identified as serving a significantly disproportionate share of Medicare Part A patients. The database for this computation contained 5443 Medicare certified hospitals. (This represents a lower number of hospitals than for the ratio for low income patients because of difficulties merging AHA data with HCFA data). From the database, eighteen hospitals met the definition of a hospital with a disproportionate share of Medicare patients.

We used 1983 AHA Annual Survey patient day information because it was the most recent data source for hospital total inpatient days. We therefore linked that information with Medicare inpatient day information from the Admissions Pattern Monitoring system for the 1983 period to define hospitals serving a disproportionate share of Medicare patients. Athough the AHA is the most recently available information on total patient days, it is unaudited survey data and is missing values on the survey responses, which were self-reported by hospitals. In addition, there are difficulties in linking the two different data sources (AHA and HCFA) for each hospital.

D. Conclusion

Although we have used the best data currently available to us, problems still remain with the data in terms of completeness, accuracy, and validity—especially with our use of AHA patient day data in combination with Medicare program data. We recognize that there are limitations to this method of determining disproportionate share hospitals, and we would have preferred to complete our analysis before issuing a definition and a list. This was not possible within the time and the data available to us. Thus, we would caution that a complete analysis might result in the establishment of a different definition and, consequently, a different list.

Although we are establishing definitions, we are not making adjustments to the prospective payment rates for disproportionate share hospitals at this time

(Section 2315(h)(1) of the Deficit Reduction Act of 1984 (Pub. L. 98–369))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance Program)

Dated: December 19, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: December 24, 1985.

Otis R. Bowen,

Secretary.

[FR Doc. 85–31004 Filed 12–30–85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona; Safford District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Safford District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43, CFR Part 1780, that a meeting of the Safford District Advisory Council will be held.

DATE: Friday, February 7, 1986, at 10:00 a.m.

ADDRESS: BLM Safford District Office, 425 E. 4th Street, Safford, Arizona 85546.

FOR FURTHER INFORMATION CONTACT: Pete Zwaneveld, Public Affairs Specialist, Safford District Office, 425 E. 4th Street, Safford, AZ 85546. Telephone (602) 428–4040.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items: State and Private Land Exchanges; San Simon Resource Management Plan; Aravaipa Canyon Wilderness Management Plan; Management Update; and Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:30 and 2:30 p.m. or may file written statements for the Council's consideration. Anyone wishing to make an oral statement must contact the Safford District Manager by February 6, 1986. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: December 19, 1985.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 85–30882 Filed 12–30–85; 8:45 am]

BILLING CODE 4310-33-M

Montana; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease M 60558, Carbon County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination, October 1, 1985.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms, and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Cynthia L. Embretson,

Chief, Fluids Adjudication Section.

[FR Doc. 85–30878 Filed 12–30–85; 8:45 am]

BILLING CODE 4310-84-M

[M–63882]

Montana; Realty Action—Exchange

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M–63882—Exchange of public and private lands, Valley, Fergus, Chouteau, Blaine, and Hill Counties, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T. 11 N., R. 17 E.,
Sec. 13, SW¼NE¼.
T. 19 N., R. 21 E.,
Sec. 6, S½SE¼, SE¼SW¼
T. 20 N., R 20 E.,
Sec. 8, NE¼NE¼, W½NE¼, NW¼.
T. 25 N., R. 10 E.,
Sec. 5, SW¼NW¼.
T. 26 N., R. 15 E.,
Sec. 34, SE¼SE¼.

T. 27 N., R. 4 E.,
Sec. 32 SW¼SE¼.
T. 27 N., R. 19 E.,
Sec. 17, SE¼NW¼, SW¼NE¼.
T. 31 N., R. 16 E.,
Sec. 25, Lot 4.
T. 34 N., R 40 E.,
Sec. 4, Lot 1, SE¼NE¼.
T. 35 N., R. 12 E.,
Sec. 18, SW¼NE¼.
T. 37 N., R. 10 E.,
Sec. 24, NE¼NE¼.
T. 37 N., R. 11 E.,
Sec. 19, Lot 1.
Aggregating 844.36 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridian Montana

T. 24 N., R 9 E.,
Sec. 9, Lot 5;
Sec. 10, Lot 3.
T. 24 N., R. 13 E.,
Sec. 23, Lots 3, 5;
Sec. 25, Lots 6–8, NW¼SW¼, SE¼SW¼, SW¼SE¼;
Sec. 26, Lots 2, 3, N½NW¼.
Aggregating 436.48 acres.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this reality action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership. All minerals shall be reserved to the United States, together with the right to prospect for, mine and removed minerals. A more detailed description of this reservation, which will be incorporated in the patent document is available for reviewing at this BLM office.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Value equalization by cash payment of $980 to the United States of America.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

The only lands in this exchange which may be subject to the Classification and Multiple Use Act of 1964 are located in T. 25 N., R. 10 E., sec. 5, SW¼NW¼. This parcel will be exchanged only when the tract is determined available for exchange. This exchange is consistant with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange as the United States of America will be acquiring a segment of land along the Wild and Scenic Missouri River containing Hole-In-The-Wall, Cathedral Rock as well as an island with wildlife values.

Dated: December 23, 1985

Glenn W. Freeman,

District Manager.

[FR Doc. 85–30879 Filed 12–30–85; 8:45 am]

BILLING CODE 4310-DN-M

Wyoming; Realty Action; Exchange of Public Lands and Interests in Sweetwater County for Private Lands and Interests in Teton and Sweetwater Counties

An exchange proposal to acquire valuable wildlife habitat on private land in Teton County is being evaluated. The private land proposed for exchange is located within the National Elk Refuge and is owned by Teton Valley Ranch of Kelly, Wyoming. This parcel will be acquired under section 206(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 and transferred to the U.S. Fish and Wildlife Service to be managed as an integral part of the National Elk Refuge.

This private parcel is located in Township Forty-two (42) North, Range One Hundred and Fifteen (115) West, Sixth Principal Meridian: Those parts of Sections Ten (10), Eleven (11), Fourteen (14), and Fifteen (15) described as follows: Lots One (1) through Seventeen (17), both inclusive, of Teton Valley Ranch Subdivision, Unit I, according to that plat recorded November 9, 1976, as Plat No. 293, Teton County, Wyoming; Lot Eighteen (18) and Lots Twenty-one (21) through Thirty-seven (37), both inclusive of Teton Valley Ranch Subdivision, Unit II, according to that plat recorded May 20, 1977, as Plat No. 309, Teton County, Wyoming; Lots Thirty-eight (38) through Forty-nine (49), both inclusive, of Teton Valley Ranch Subdivision, Unit III, according to that plat recorded May 20, 1977, as Plat No. 310, Teton County, Wyoming; and Lots One (1) through Twenty-six (26), both inclusive, of Sheep Mountain Commercial Area, according to that plat recorded May 20, 1980, as Plat No. 408, Teton County, Wyoming. The above described tract of land contains 354.27 acres, more or less.

Fee title to the private land is being offered to the United States subject to a long-term (60 years) grazing and recreation permit and other reservations.

Two separate options or exchange proposals are being considered to acquire the Teton Valley Ranch property. The public land for both options involves Federal coal within the Point of Rocks coal tract located east of Rock Springs, Wyoming, in Sweetwater County. The separate options are discussed below:

Option 1. One option to acquire the Teton Valley Ranch property is to exchange an equal value amount of Federal surface and mineral estates except for oil and gas. Coal is the primary mineral resource involved. Values would be equalized with a cash payment. The following described public land will be exchanged to acquire the private land:

T. 21 N., R. 101 W., 6th P.M.,

Section 32: NE¼ ..... 160 acres

That portion of section 6 necessary to equalize values will be exchanged. At a minimum the following portion will be required to equalize values:

T. 20 N., R. 101 W., 6th P.M.,
Sec. 6: Described as follows:
Beginning at the NW corner of said section 6, thence south along west line of section 6, 3,715 feet to the southwest corner of section 6; thence east along south line of section 6, 4,160 feet to a point on that line; thence north 1,140 feet to a point; thence west 300 feet to a point; thence north 2,600 feet to a point on north line of section 6; thence west along north line of section 6, 3,840 feet to the point of beginning.

This legal description will be conformed to the official survey plat at a later date, and the parcel will be described by aliquot parts.

Approximately 347 acres.
Total 507 acres.

The Teton Valley Ranch has been appraised at $3,452,000. The public land and coal described above have been appraised at $3,454,673. To exchange on an equal value basis, an equalization payment to the United States of $2,673 is required. The amount used to equalize values will vary depending upon the actual legal description of the public lands used to acquire the private tracts.

Option 2. The second option involves the use of a "retained royalty interest" concept. Under this approach, the Teton Valley Ranch property plus a "retained royalty interest" of 3.18 percent on private coal would be exchanged for the Federal surface and mineral estate except for oil and gas within the Point of Rocks coal tract. A "retained royalty interest" of 3.18 percent would be reserved to the United States on the Federal coal patented to the exchange proponents. The private coal involved with this option is also located within the Point of Rocks coal tract.

The legal descriptions for the private coal offered as part of the retained royalty concept is described below:

T. 20 N., R. 101 W., 6th P.M.:	
Sec. 5, lots 1 to 4 inclusive, and S½	456.32
Sec. 7, N½NE¼	80.00
Sec. 9, S½	320.00
Sec. 15, S½SW¼	80.00
Sec. 17, E½NE¼	80.00
Sec. 21, NE¼, N½SE¼	240.00
Sec. 23, NW¼SW¼, S½SW¼	120.00
3Sec. 27, E½NE¼, NW¼NE¼	120.00
T. 20 N., R. 102 W., 6th P.M.,	
Sec. 1, lots 1, 2, and 3, N½SE¼	180.03
T. 21 N., R. 101 W., 6th P.M.,	
Sec. 33, All	640.00
Total	2,318.35

The public land (and coal) involved with this proposal is described below:

T. 20 N., R. 101 W., 6th P.M.:	
Sec. 6, Lots 1–6, E½SW¼, SE¼	437.96
Sec. 8, E½, N½NW¼, SE¼NW¼	440.00
Sec. 22, NW¼NW¼, S½N½, S½	520.00
Sec. 28, N½NW¼, SW¼NW¼	120.00
T. 21 N., R. 101 W., 6th P.M.:	
Sec. 32, NE¼	160.00
Sec. 34, SW¼	160.00
Total	1,837.96

The estimated fair market value of the Federal lands and coal interest is $6,230,855. The offered land plus the "retained royalty interest" would result in an equal value exchange proposal.

Acquisition of the Teton Valley Ranch is considered in the public interest. This private parcel is extremely valuable wildlife habitat, and the Ranch can be incorporated into the existing management of the National Elk Refuge. If the Teton Valley Ranch property is not acquired by the Federal Government, it may eventually be developed for subdivision purposes. Any subdivision development in this area would have substantial adverse impacts on wildlife management in the National Elk Refuge.

The public lands involve substantial coal resources and are located in the Point of Rocks coal tract. There are 17,026,000 tons of coal in place. Approximately 15,324,000 tons are recoverable. The average quality of coal is 9,841 Btu/lb. The coal is in the Almond formation at a maximum pit depth of 160 feet.

The Point of Rocks tract is located near Rock Springs, Wyoming, within the checkerborad land pattern of the old Union Pacific Land Grant. No logical coal mining unit can be created without controlling both Federal and private coal interests. Rocky Mountain Energy operates one small mine adjacent to Point of Rocks to serve one industrial customer. Rocky Mountain Energy will lease the coal from Teton Valley Ranch following the exchange. The possibility of additional coal sales provides an opportunity to expand this operation with the roughly 25 million tons of coal within the tract if both the privately and Federally owned coal is combined and considered jointly. All of these factors indicate that an exchange inolving all the Federal coal in the tract may be advantageous to the U.S. Government.

The "retained royalty interest" concept is being explored because of a fee coal exchange (as described in Option 1) would split a logical mining unit which may not be in the public interest. Under the "retained royalty interest" concept, the entire Point of Rocks coal tract could be authorized by a single administrative action (i.e., exchange under Option 2). The retained royalty interest concept would avoid a potential bypass of Federal coal as well as the associated loss of bonus, rental, and royalty income. An exchange using a "retained royalty interest" concept would also eliminate the need for future complex exchanges or for other administrative actions to develop the coal left as a result of a fee exchange.

The terms and conditions applicable to the Federal lands (Sweetwater County) involved in this exchange are:

1. A reservation to the United States of the right to construct ditches or canals pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. The land will be exchanged subject to valid existing rights of record on the date of conveyance;

3. Oil and gas will be reserved to the United States.

4. Possible retained royalty interest.

5. The land would be exchanged subject to memorandums of understanding for the protection of raptors and archeology.

A public meeting on this proposal was held on July 27, 1983, in Rock Springs, Wyoming. Numerous support documents (i.e., environmental assessment, land report, etc.) are now being prepared to support the planning amendment. The notice to amend the land use plan was published in the **Federal Register** on July 18, 1984. Any comments received as a result of the notice will be considered in processing the planning amendment. After the decision record is approved, 60 days will be provided for the Governor's consistency review of the plan amendment before proceeding with the action.

The publication of this notice segregates the public lands described above the settlement, sale, location, and entry under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in 2 years, whichever occurs first.

Grazing privileges of Chilton Land and Livestock Company and Rock Springs Grazing Assocition will be reduced upon completion of this exchange. The Chilton Land and Livestock Company waived its right to a 2-year continuance of this privilege on September 6, 1984. On July 13, 1983, the Rock Springs Grazing Association was given a 2-year notice of the planned disposal and proposed reduction.

Detailed information concerning this exchange is available at the Green River Resource Area Office, P.O. Box 1170, 79 Winston Drive, Rock Springs, Wyoming 82901.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Rock Springs District Manager, P.O. Box 1869, (Highway 191 North), Rock Springs, WY 82901. Of specific interest are any concerns or comments on the two options under consideration and any comments at all on the "retained royalty interest" approach. Any adverse or supportive comments will be evaluated

by the Wyoming State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination.

Hillary A. Oden,

State Director.

[FR Doc. 85-30880 Filed 12-30-85; 8:45 am]

BILLING CODE [illegible]

Albuquerque District, New Mexico; Availability, and Request for Public Comment on the Proposed McKinley County Coal Fee Exchange

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of Availability, and Request for Public Comment on The Proposed McKinley County Coal Fee Exchange.

SUMMARY: The Bureau of Land Management has prepared the Final Amendment/Environmental Assessment to the Chaco Management Framework Plan: McKinley County Coal Exchange Proposal. The document is available for public review. There will be two public hearings on the exchange, and a 30-day comment period/protest period. The Final Amendment/Environmental Assessment analyzes the impacts of exchanging Federal coal for private coal in order to consolidate Federal coal tracts. Also analyzed are the impacts associated with the Federal Government obtaining mineral estate in Chaco Culture National Historic Park and under seven Chacoan outliers. The document discusses in detail both environmental and geological issues and the basis for the equal value determination.

Comments will be accepted on the Final Amendment/Environmental Assessment to the Chaco Management Framework Plan: McKinley County Coal Exchange Proposal until February 3, 1986. The public is invited to submit comments on all public interest factors of the exchange.

Comments should be sent to: Paul Applegate, District Manager, Albuquerque District Office, P.O. Box 6770, Albuquerque, New Mexico 87197-6770.

In addition, any person who participated in the planning process and has an interest that would be adversely affected by approval of the Final Amendment/Environmental Assessment may file a written protest with the Director of the BLM by February 3, 1986. The protest must contain the name, mailing address, telephone number, and interest of the person filing the protest; a statement of the issues being protested; copies of all documents addressing the issues submitted during the planning process by the protesting party, or an indication of the date the issues were discussed for the record; and a concise statement explaining why the State Director's planning decision is believed to be wrong. Any protests should be sent to the Director of the BLM at the following address: Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240.

The Director will render a prompt written decision on the protest, setting forth the reasons for the decision. The decision will be sent to the protesting party by certified mail and will be the final decision of the Department of the Interior.

There will be two hearings to obtain public comment on all public interest factors of the proposed exchange including the anti-trust consequences. The transcripts of the public hearing and all comments will be sent to the Department of Justice to determine the anti-trust consequences of the exchange.

DATES: The comment period and protest period will end February 3, 1986. Two public hearings will be held on January 23, 1986, one at 1:30 p.m. and the other at 7 p.m.

ADDRESS: The hearings will be held at: The Classic Hotel, "The Registry Room," 6815 Menaul Blvd., N.E., Albuquerque, New Mexico.

ADDITIONAL INFORMATION: For additional information and to obtain copies of the final document contact: Mary Zuschlag, Project Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87110, Commercial (505) 766-8280, FTS 474-8280.

Dated: December 12, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85-30906-Filed 12-30-85; 8:45 am]

BILLING CODE 4310-FB-M

[A-20241]

Realty Action, Direct Sale of Public Land in Cochise County, AZ

AGENCY: Bureau of Land Management, Safford District, Interior.

ACTION: Notice of Realty Action, Direct Sale of Public Lands in Cochise County, Arizona.

SUMMARY: The following lands have been examined and identified as suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2750; 43 U.S.C. 1713 at no less than the appraised fair market value.

Legal description	Acres	Appraised value
Gila and Salt River Meridian, Arizona T. 16 S., R. 21 E., sec. 6, lot 7, SE¼SW¼	32.14	$66,400

The land is being offered to the Apache Powder Company by direct sale at the appraised fair market value. This land is located within the industry-set buffer zones of three magazines used for the storage of explosives. No other bids or bidders will be considered.

The land is not required for any Federal purpose. The parcels are difficult and uneconomic to manage as public land. Disposal would best serve the public interest. The disposal would be consistent with the Bureau's planning recommendations.

All minerals, except oil and gas resources, will be offered for conveyance. The mineral interests being offered have no known mineral value. A bid on the parcel will also constitute application for conveyance of those mineral interests offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719(b). Purchasers of the affected parcels will be required to submit a non-returnable filing fee in the amount of $50.00 to cover the processing costs of conveying the available mineral interests. Failure to do so will result in disqualification.

The patent issued as the result of the sale will be subject to all valid existing rights and reservations of record and will contain a reservation to the United States for a right-of-way for ditches and canals under the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945 and for oil and gas resources. The patent will also be issued subject to oil and gas lease A 10774 and an electric distribution line right-of-way (A 20355) and a floodplain restriction.

Publication of this notice in the Federal Register segregates the public lands from the operation of the public land laws and the mining laws. The segregative effect will end upon issuance of a patent or 270 days from the date of the publication, whichever occurs first.

Sale Procedures

The designated bidder will be required to submit payment of at least 20 percent of the fair market value by cash, certified or cashier's check, or money order to the BLM at 425 East 4th Street, Safford, Arizona 85546 on March 10, 1986.

The balance of the appraised fair market value will be due within 180 days, payable in the same form at the

same location. Failure to submit the remainder of the payment within 180 days of receipt of the decision notice accepting the bid deposit will result in cancellation of the sale offering and forefeiture of the deposit.

DATE: For a period of 45 days from the date of this notice in the **Federal Register**, interested parties may submit comments to the District Manager at the above address. Any adverse comments will be evaluated by the State Director who may sustain, vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Detail information concerning reservations, conditions, terms, appraised price, bidding procedures and other items may be obtained from the Safford District Office or by calling (602) 428–4040 during the office hours 7:45 to 4:15 MST.

Dated: December 9, 1985.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 85–30902 Filed 12–30–85; 8:45 am]

BILLING CODE 4310-32-M

[N-30967]

Realty Action Exchange of Public and Private Lands in Elko County, NV

On November 13, 1984 a Notice of Realty Action was issued for a land exchange between Loyd and Alta Sorenson, the Humboldt National Forest and the Bureau of Land Management. Since the publication it was agreed among the parties involved that the land exchange proposal would be modified to include additional lands. The additional lands, both offered and selected, were originally included in the land exchange but deleted prior to the notice's November 23, 1984 publication in the **Federal Register** because of disagreements relative to their value. A reappraisal by an independent appraiser allowed negotiations to be reopened resulting in the additional land's inclusion in the land exchange proposal.

In order that interested parties may fully understand the proposal this Notice of Realty Action lists all lands involved including those in the original publication.

The following described public lands administered by the Bureau of Land Management have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Mount Diablo Meridian, Nevada

T. 34 N., R. 60 E.,
- Sec. 4, lots 3, 4;
- Sec. 8, S½SE¼;
- Sec. 16, SW¼NW¼, NW¼SW¼;
- Sec. 22, N½, N½SW¼, SE¼;
- Sec. 24, W½SW¼.

T. 35 N., R. 62 E.,
- Sec. 32, E½.

The areas described above contain 1,201.05 acres.

In exchange for these lands the United States will acquire the following described private lands within the Humboldt National Forest from Loyd and Alta Sorenson:

Mount Diablo Meridian, Nevada

T. 34 N., R. 59 E.,
- Sec. 13;
- Sec. 25, NW¼, N½NE¼SW¼.

T. 34 N., R. 61 E.,
- Sec. 3;
- Sec. 11, Lots 2–7 inclusive, S½NW¼, N½SW¼, N½SE¼;
- Sec. 15.

T. 35 N., R. 61 E.,
- Sec. 29, E½;
- Sec. 33.

The areas described above contain 3,677.20 acres.

The purpose of the exchange is to acquire higher multiple use value lands. In addition, the exchange would provide lands needed in support of a Federal program within an area of the Humboldt National Forest that is currently difficult to manage because of fragmented ownership patterns. The exchange is consistent with both agencies' land use planning and the public interest will be served by completing the exchange. The above described lands have been appraised and their values determined to be equal.

Patent, when issued, will reserve to the United States a right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890; 43 U.S.C. 945. Mineral estates will be transferred with public and private lands.

The patent will be subject to:

1. All valid existing rights.
2. Those rights for powerline purposes which have been granted to Wells Rural Electric Company, its successors or assigns by Permit No. Nev–058476 under the Act of March 4, 1911, as amended (43 U.S.C. 961).
3. Those rights for highway purposes which have been granted to the Nevada State Highway Department, its successors or assigns by Permit No. Nev–043573 under the Act of November 9, 1921, as amended (23 U.S.C. 317).
4. Those rights for highway purposes which have been granted to the Nevada State Highway Department, its successors or assigns by Permit No. Nev–045052 under the Act of November 9, 1921, as amended (U.S.C. 317).
5. Range Improvement Fence 1021.

The disposal of the E½, section 32, T. 35 N., R. 62 E., MDM will result in the reduction of the grazing preference of Dr. Blair Johns by 22 AUM's and Mr. Robert Peltier by 6 AUM's. Both permittees were notified by letter's dated March 10 & 11, 1982 respectively, that these reductions would be necessary.

Publication of this notice in the **FEDERAL REGISTER** will segregate the subject lands from all appropriations under the public land laws including the mining and mineral leasing laws. This segregation will terminate upon the issuance of patent or two years from the date of this notice or upon publication of a "Termination of Segregation".

Further information concerning the exchange, including the environmental assessment, is available for review at the Bureau of Land Management, Elko District Office, 3900 E. Idaho Street, Elko, Nevada.

For a period of 45 days from the date of first publication interested parties may submit comments to the District Manager, Elko District Office, P.O. Box 831, Elko, NV 89801.

Dated: December 3, 1985.

Rodney Harris,

District Manager.

[FR Doc. 85–30904 Filed 12–30–85; 8:45 am]

BILLING CODE 4310-HC-M

Realty Action; Exchange of Public and Private Lands in Bowman County, ND

AGENCY: Bureau of Land Management, Dickinson District Office, Interior.

ACTION: Notice of Realty Action—Exchange M–62060 (ND).

SUMMARY: The following described lands have been examined and identified as suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716):

Fifth Principal Meridian, North Dakota

T. 131 N., R. 103 W.
- Section 30, Lot 4
- Section 34, NE¼NW¼, NW¼SW¼
- Section 35, SE¼NE¼

T. 129 N., R. 104 W.
- Section 31,, Lots 1, 3, 4
- Section 32, SW¼SW¼

T. 130 N., R. 104 W.
- Section 9, NW¼SW¼
- Section 18, Lot 4
- Section 19, S½SE¼
- Section 21, S½SE¼

T. 129 N., R. 105 W.
- Section 5, SE¼NW¼, SW¼SW¼, SE¼SE¼

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Section 23, SE¼SE¼
Section 24, SW¼NE¼, NW¼NW¼, SW¼SE¼
Section 25, N½NW¼
Section 26, NE¼NE¼
Section 35, S½SE¼
T. 130 N., R. 105 W.
Section 6, Lot 8
Section 7, NE¼SW¼
Section 8, S½SW¼
Section 10, NW¼SW¼, SE¼SW¼, SW¼SE¼
Section 11, SE¼NW¼, E½SW¼
Section 13, S½SE¼
Section 18, E½SW¼
Section 22, SW¼SW¼
Section 24, N½NE¼, NE¼NW¼
Section 32, SE¼SE¼
Section 33, E½NE¼
T. 131 N., R. 105 W.
Section 10, N½NW¼, SW¼NW¼
Section 15, N½ SW¼
Section 17, SE¼NW¼
Section 21, SE¼SW¼, S½SE¼
Section 22, SW¼NW¼
Section 26, SW¼NW¼
Section 27, SE¼SE¼
Section 30, Lots 3, 5, SE¼NW¼
Section 31, Lots 1, 6
Section 34, NE¼, NE¼NW¼, N½SE¼
T. 132 N., R. 105 W.
Section 26, W½NW¼, S½SW¼
Section 28, SE¼NW¼
T. 129 N., R. 106 W.
Section 3, SE¼NW¼, NE¼SW¼, S½SW¼
Section 4, Lots 5, 6, 7
Section 11, N½NE¼, SE¼NE¼
Section 12, NW¼NW¼
Section 15, Lots 1, 2, NE¼NE¼, E½SE¼
Section 18, Lots 2, 3, NE¼SE¼
Section 20, S½NW¼
Section 21, NW¼SW¼
Section 22, E½NE¼
T. 130 N., R. 106 W.
Section 1, SE¼SE¼
Section 2, Lot 11
T. 131 N., R. 106 W.
Section 6, Lot 4
T. 132 N., R. 106 W.
Section 28, NW¼SW¼, NE¼SE¼
T. 129 N., R. 107 W.
Section 13, NE¼SE¼
Section 24, E½SE¼, SW¼SE¼
T. 131 N., R. 107 W.
Section 2, Lots 3, 4, S½NW¼
T. 132 N., R. 107 W.
Section 26, NE¼NE¼, SW¼, S½SE¼

Aggregating ±4797.02 acres.

Note: The entire 4797.02 acres listed above will not be used in this proposed exchange. Only those lands necessary to obtain sufficient dollars and equalize values will be exchanged.

In exchange for these public lands, the United States will acquire the surface estate in the following described lands:

Fifth Principal Meridian, North Dakota

T. 131 N., R. 106 W.
Section 10, W½
Section 15, NW¼
Section 22, N½, N½SW¼, NW¼SE¼
Section 23, Lots 2, 3, W½NE¼, NE¼NW¼NW¼, NE¼NW¼N W¼NW¼, S½NW¼NW¼, NW¼, S½NW¼NW¼, SW¼, NW¼, SW¼, W½SE¼
Section 24, Lot 6
Section 25, Lot 2, 3, W½NW¼
Section 26, N½, NW¼SW¼, NE¼SE¼
Section 27, NW¼NE¼, S½NE¼, N½SE¼, SW¼SE¼

Aggregating ±2168.85 acres

Comment Period: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 204 Sims Street, P.O. Box 1229, Dickinson, North Dakota 58602.

Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a decision for the Department of Interior. Parties adversely affected by the decision have the right to appeal to the Interior Board of Land Appeals. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this exchange, including planning documents, the environmental assessment and land report is available for review at the Dickinson District Office.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange of public lands will be subject to:

1. Reservation of all minerals in the lands to the United States together with the right to explore, prospect for, mine and remove some under applicable law and regulations;

2. Reservation of right-of-way for ditches or canals to the United States pursuant to with 43 U.S.C. 945;

3. All valid and existing rights and reservations of record.

This exchange is consistent with the Bureau of Land Management policies and planning. The public interest will be served by completion of this exchange.

Dated: December 10, 1985.

Gene C. Campbell,

Acting, District Manager.

[FR Doc. 85-30905 Filed 12-30-85; 8:45 am]

BILLING CODE 4310-DN-M

[OR 38510]

Realty Action; Direct Sale of Public Land in Baker County, OR

SUMMARY: The following lands are suitable for sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than the appraised fair market value.

Serial No.: OR 38510.
Legal Description: T 8 S., R 45 E., WM; Sec. 28: W½W½SE¼SW¼
Acreage: 10.00
Value: $6,000
Minimum Bid Deposit: 30%
Bidding Procedure: Direct.

The above described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute.

The sale will be held on March 19, 1986, at the Bureau of Land Management, Baker Resource Area Headquarters, New Federal Building, P.O. Box 987, Baker, Oregon 97814.

The subject parcel is difficult and uneconomical to manage as part of the public lands because of its characteristics, and is not suitable for management by another Federal agency. The sale will resolve a nonwillful unauthorized occupancy and, thereby, serve an important public objective. The sale is consistent with BLM's planning for the land involved and the public interest will be served by offering this land for sale.

Bidders must be U.S. citizens, 18 years of age or more, a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the state of Oregon.

Direct sale procedures are being used since a competitive sale is not appropriate and the public interest would best be served by the direct sale because this land action would resolve a nonwillful unauthorized use and occupancy. Further detailed information concerning the sale, including the planning documents, environmental assessment, land report, and record of decision, are available for review at the Baker Resource Area Headquarters, New Federal Building, Baker, Oregon.

The parcel identified by Serial No. OR 38510 is being offered to Ms. Maryjo Stephens using direct sale procedures authorized under 43 CFR 2711.3-3. The land will be sold at fair market value to Ms. Maryjo Stephens without competitive bidding. The prospective purchaser is required to render a minimum deposit of 30 percent of the purchase price by March 19, 1986, and

the balance within 180 days of the sale date. The bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Department of the Interior-BLM for at least 30 percent of the selling price. The entire purchase price may be rendered at this time. If the bid/purchase price is made by mail, a separate sealed envelope should be enclosed within the mailing envelope and clearly marked, in the lower left hand corner, "Bid or Purchase for Public Land Sale OR 38510, Baker County, Oregon, March 19, 1986". If the deposit is not submitted or the full purchase price not rendered within 180 days of the sale date, the preference right is canceled, the deposit will be forfeited, and the parcel may be sold through competitive bidding procedures.

TERMS AND CONDITIONS OF SALE: The terms and conditions applicable to this sale are:

1. A right-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with section 209 of the Federal Land Policy and Management Act 43 U.S.C. 1719. The prospective purchaser must include with her bid deposit a non-refundable $50.00 filing fee for the conveyance of the mineral estate.

3. The patent will be issued subject to all valid existing rights and reservations of record.

4. The Bureau of Land Management may accept or reject the offer, or withdraw the land or interest in the land from sale, if in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable laws.

5. The sale parcel will be SUBJECT TO:

a. Such rights for public road purposes as Baker County, or its successors in interest may have pursuant to a road right-of-way RS 2477 (43 U.S.C. 932).

b. Such rights for Tobin Irrigation Ditch purposes as John W. Stansberry, President of Tobin Irrigation Ditch Company, or his successors in interest may have, pursuant to the Act of July 26, 1866 (43 U.S.C. 661).

COMMENTS: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Baker Resource Area Headquarters, Bureau of Land Management, New Federal Building, P.O. Box 987, Baker, Oregon 97814, telephone (503) 523-6391, Ext. 324.

Objections will be reviewed by the District Manager, Vale District Office, 100 Oregon St., P.O. Box 700, Vale, Oregon 97918 who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 10, 1985.

Jack D. Albright,

Area Manager.

[FR Doc. 85-30903 Filed 12-30-85; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 21, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 15, 1986.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Boulder County

Boulder, *Boulder Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 1905 Fifteenth St.

Delta County

Delta, *Delta Post Office and Federal Building (U.S. Post Offices in Colorado, 1900—1941 TR)*, 360 Meeker St.

El Paso County

Colorado Springs, *Colorado Springs Post Office and Federal Courthouse (U.S. Post Offices in Colorado, 1900—1941 TR)*, 210 Pikes Peak Ave.

Manitou Springs, *Manitou Springs Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 307 Canon Ave.

Fremont County

Canon City, *Canon City Post Office and Federal Building (U.S. Post Offices in Colorado, 1900—1941 TR)*, Fifth St. and Macon Ave.

Florence, *Florence Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 121 N. Pikes Peak St.

Garfield County

Rifle, *Rifle Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, Railroad Ave. and Fourth St.

Las Animas County

Trinidad, *Trinidad Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 301 E. Main St.

Logan County

Sterling, *Sterling Post Office, Federal Building, and Federal Courthouse (U.S. Post Offices in Colorado, 1900—1941 TR)*, Third and Popular Sts.

Montrose County

Montrose, *Montrose Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 321 S. First St.

Morgan County

Fort Morgan, *Fort Morgan Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 300 State St.

Prowers County

Lamar, *Lamar Post Office (U.S. Post Offices in Colorado, 1900—1941 TR)*, 300 S. Fifth St.

Rio Grande County

Monte Vista, *Monte Vista Post Office and Federal Building (U.S. Post Offices in Colorado, 1900—1941 TR)*, Washington and Second Ave.

DISTRICT OF COLUMBIA

Washington

Plymouth (The), 1236 11th St., NW

GEORGIA

Fulton County

Atlanta, *Brookhaven Historic District*, E. of Peachtree-Dunwoody Rd., and N. & E. of Peachtree Rd. (also in DeKalb County)

Tift County

Tifton, *Tifton Commercial Historic District*, Main St., Love Ave., Second and Third Sts.

LOUISIANA

Caldwell Parish

Columbia, *Shepis Building*, Main St.

Rapides Parish

Alexandria, *Masonic Building*, 4th and Johnston Sts.

MAINE

Kennebec County

Monmouth, *Monmouth Academy*, Academy Rd.

MASSACHUSETTS

Hampden County

Holyoke, *United States Post Office-Holyoke Main*, 650 Dwight St.

MISSOURI

Cass County

Belton, *Wilson, Cowan, House*, 206 S. Scott

St. Louis (Independent City)

Neighborhood Gardens Apartments, 1205 N. 7th St.

NORTH DAKOTA

Dunn County

New Hradec, *Saints Peter and Paul Church*

Grand Forks

Grand Forks, *Wheeler, Dr. Henry, House*, 420 Franklin St.

Stutsman County

Jamestown, *Seiler Building*, 110 First St. East

OHIO

Lucas County

Toledo, *Westmoreland Historic District*, Roughly bounded by Bancroft St., Upton Ave., Potomac Dr.; and Parkside Blvd.

PENNSYLVANIA

Bradford County

Tioga Point Farm Prehistoric District (36Br3,48,49,51,52,61)

Philadelphia County

Philadelphia, *Hogue, Robert M., House*, 100 Pelham Rd.

VIRGINIA

Culpeper County

Culpeper vicinity, *Elwood*, US 522 W.

WEST VIRGINIA

Wood County

Parkersburg, *Avery Street Historic District*, Roughly bounded by Spring, Quincy, Eighth, Market, Nineteenth, and Avery Sts.

WISCONSIN

Milwaukee County

Milwaukee, *Clark Row House (West Side Area MRA)*, 2103–2109 W. Kilburn Ave.

[FR Doc. 85-30807 Filed 12-30-85; 8:45 am]

BILLING CODE 4310-70-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-3]

Consolidated Edison Co. of New York, Inc.; Condsideration of Issuance of Amendment to Provisional Operating License and Opportunity for Prior Hearing

The U.S. Nuclear Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–5 issued to Consolidation Edison Company of New York, Inc. (the licensee) for Indian Point Unit No. 1, (the facility) located in Westchester County, New York. The amendment is in response to the licensee's application dated October 17, 1980, as revised October 13, 1981, related to decommissonioning the facility.

The facility is a 615 MWt pressurized water reactor located in Westchester County, New York. The facility has been shut down since October 31, 1974, and all spent fuel has been transferred from the reactor to the spent fuel storage pool. By Order dated June 19, 1980, the Commission revoked authority to operate the facility as a nuclear reactor and required the licensee to submit a decommissioning plan. The licensee's application dated October 17, 1980, as revised October 13, 1981, was in response to the Commission's Order.

The licensee proposes to retain the facility in a safe storage status until the expiration date of the Indian Point Unit No. 2 license on October 14, 2006. At that time the residual radioactive material would be removed from the facility such that it could be released for unrestricted access and Provisional License No. DPR–5 terminated. The spent fuel would remain stored onsite in the interim until a Federal repository is available.

The amendment would revise the license to a possess-but-not operate status, approve the licensee's decommissioning plan and renew the license for a period of time up to October 14, 2006, or such lesser term as the Commission determines to be appropriate. License No. DPR–5 was issued as a provisional operating license, and had continued in effect since 1969 under a timely application for a full-term operating license. The licensee's plan to decommisson the facility makes its application for a full-term operating license moot.

Prior to issuance of an amendment the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By January 30, 1986, the licensee may file a request for a hearing with respect to issuance of the subject authorization and amendment, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to inervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commisson's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the action under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene becomes parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of

the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow, Director, Standardization and Special Projects Directorate, Division of PWR Licensing–B: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Brent L. Brandenburg, Esquire, Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, New York 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the presiding Atomic Safety and Licensing Board, that the petition and/or request should be gtrnated based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the licensee's decommissioning plan dated October 17, 1980 as revised October 13, 1981, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Bethesda, Maryland, this 18th day of December 1985.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Special Projects Directorate, Division of PWR Licensing–B.

[FR Doc. 85–30914 Filed 12–30–85; 8:45 am]

BILLING CODE 7590-01-M

Iowa; Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Agreement with State of Iowa.

SUMMARY: Notice is hereby given that on December 11, 1985, Nunzio J. Palladino, Chairman of the Nuclear Regulatory Commission and on December 13, 1985, Terry E. Branstad, Governor of the State of Iowa signed the Agreement set forth below for discontinuance by the Commission and assumption by the State of certain Commission regulatory authority. The Agreement is published in accordance with the requirements of Pub. L. 86–373 (section 274 of the Atomic Energy Act of 1954, as amended). The Exemptions from the Commission's licensing authority have been published in the **Federal Register** and codified as Part 150 of the Commission's regulations in title 10 of the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Joel O. Lubenau, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone (301) 492–9887.

SUPPLEMENTARY INFORMATION:

Agreement Between the United States Nuclear Regulatory Commission and the State of Iowa for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapter 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, The Governor of the State of Iowa is authorized under Chapter 136C, Code of Iowa, to enter into this Agreement with the Commission; and

Whereas, The Governor of the State of Iowa certified on August 22, 1985, that the State of Iowa (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, The Commission found on December 6, 1985, that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e.(1) of the Act;

B. Source materials; and

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission;

E. The land disposal of source, byproduct and special nuclear material received from other persons; and

F. The extraction or concentration of source material from source material ore

and the management and disposal of the resulting byproduct material.

Article III

This Agreement may be amended, upon application by the State and approval by the Commission, to include the additional area(s) specified in Article II, paragraph E or F, whereby the State can exert regulatory control over the materials stated therein.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will use its best efforts to cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any Agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j. of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act.

Article IX

This Agreement shall become effective on January 1, 1986, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Washington, District of Columbia, in triplicate, this 11th day of December, 1985.

For the United States Nuclear Regulatory Commission.

Nunzio J. Palladino,

Chairman.

Done at Des Moines, Iowa, in triplicate, this 13th day of December, 1985.

For the State of Iowa.

Terry E. Branstad,

Governor.

Dated at Bethesda, Maryland, this 19th day of December, 1985.

For the United States Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 85-30916 Filed 12-30-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. LRP; ASLBP No. 86-519-02 SP]

Inquiry into Three Mile Island Unit 2 Leak Rate Data Falsification; Appointment of Presiding Board To Conduct a Legislative Hearing

December 20, 1985.

Pursuant to the Commission's Order and Notice of Hearing dated December 18, 1985 (CLI-85-18), a Presiding Board is hereby appointed to conduct a hearing and to render a recommended decision concerning the facts surrounding the reactor coolant system leak rate data falsifications at Three Mile Island, Unit 2 (TMI-2) prior to the March 28, 1979 accident. The procedures to be employed and the issues to be addressed by the Presiding Board are set forth in the Commission's Order which provides for a legislative hearing. Except as noted in the Commission's Order, the powers and procedures set forth in Subpart G of 10 CFR Part 2 shall not apply to this proceeding.

The names and addresses of the members of the Presiding Board are:

Administrative Judge James L. Kelley, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 20th day of December, 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-30913 Filed 12-30-85; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

BEST COPY AVAILABLE

Regulatory Guide 4.16, Revision 1, "Monitoring and Reporting Radioactivity in Releases of Radioactive Materials in Liquid and Gaseous Effluents from Nuclear Fuel Processing and Fabrication Plants and Uranium Hexafluoride Production Plants," provides methods acceptable to the NRC staff for developing effluent monitoring programs and from monitoring and reporting effluent data by licensees.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of active guides may be purchased at the current Government Printing Office price. Information on current prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland, this 23rd day of December 1985.

For the Nuclear Regulatory Commission.

Denwood F. Ross,

Deputy Director, Office of Nuclear Regulatory Research.

[FR Doc. 85–30915 Filed 12–30–85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14862; File No. 812–6262]

Drexel Burnham Lambert Inc.; Application and Temporary Order

December 20, 1985.

Notice is hereby given that Drexel Burnham Lambert Incorporated ("Drexel" or the "Applicant"), filed an application on December 18, 1985 requesting an order of the Commission pursuant to section 9(c) of the Investment Company Act of 1940, as amended (the "Act"), exempting Drexel from the provisions of Section 9(a) of the Act in respect of the circumstances described below and a temporary exemption from section 9(a) pending the Commission's determination of the application for a permanent exemption.

Drexel states that it serves as investment adviser and distributor (principal underwriter) for the Drexel Burnham Fund, the DBL Cash Fund Inc., the Drexel Series Trust, the DBL Tax-Free Cash Fund Inc. and Benefactors Money Market Fund Inc., and Drexel or affiliates of Drexel serve as investment adviser of the Maxim Seres Fund Inc. and the Drexel Bond-Debenture Trading Fund (collectively, the "Funds"), each of which Drexel states is an investment company registered under the Act. Drexel states that from time to time it acts as a depositor and sponsor for unit investment trusts (the "UITS") registered as investment companies under the Act. In addition, Drexel states that it may serve as an investment adviser, principal underwriter or depositor for other registered investment companies in the future.

Drexel states that it is a registered broker-dealer and registered investment adviser. Drexel states that as distributor (principal underwriter) for the Funds, it engages in the sale and redemption of shares of the Funds with their shareholders, as well as additional investors in the Funds. Drexel also makes a secondary market for units of the various series of UITs it has sponsored and anticipates doing so with respect to UITs sponsored by it in the future.

Applicant states that on or about December 19, 1985 Drexel and a managing director in its corporate finance department, Stanley S. Trotman, Jr. ("Trotman"), each consented to the entry of a final judgment and order of permanent injunction in an action commenced by the Commission in the United States District Court for the Southern District of New York entitled *Securities and Exchange Commission* v. *Drexel Burnham Lambert Incorporated and Stanley S. Trotman, Jr.*, 85 Civ. *9855*. The Commission's complaint alleged that Applicant and Trotman had violated sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 in connection with Drexel's due diligence investigation for the underwriting of approximately $25.6 million of securities issued by Flight Transportation Corporation ("Flight") in June 1982. Drexel states that, without admitting or denying any of the non-jurisdictional allegations in the complaint, it and Trotman each consented to the entry of a final judgment enjoining and restraining them from engaging in any transaction, practice or course of business in violation of sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933 in connection with the offer or sale of any securities and providing for other equitable relief with respect to due diligence investigations for public securities offerings to be underwritten by Drexel.

Applicant states that the activities forming the basis for the consents to the injunctions took place during the period from approximately November 1981 to June 14, 1982, during which time Drexel acted as co-lead manager for two public offerings of Flight securities.

Applicant states that on June 18, 1982, the Commission halted trading in Flight securities and commenced an injunctive action against Flight and its chairman in the United States District Court for the District of Minnesota. Applicant states that on June 23, 1982, it commenced a class action in the District Court in Minnesota against Flight and others on behalf of all purchasers of Flight securities in the two June 1982 offerings. Applicant states that its lawsuit sought, *inter alia*, imposition of a constructive trust on the proceeds of those offering for the benefits of the purchasers. Applicant states that as a result of the Commission's prompt commencement of its action and the filing of Drexel's constructive trust claim, most of the proceeds of these offerings were seized from a bank in New Jersey and ultimately placed in a segregated account under the supervision of the District Court in Minnesota.

Applicant states that in the months that followed, several civil class action lawsuits were commenced in the District of Minnesota, in many of which Drexel was named as a defendant, and that in April 1984, Drexel entered into a settlement agreement disposing of all claims asserted by and against it in connection with Flight. Applicant states that the net effect of the settlement is that Drexel and the underwriting syndicates for those offerings have paid $3,800,000 in cash to settle the class actions and have made additional payments to settle certain other claims against them that were prosecuted outside the District of Minnesota.

On Februry 23, 1983, the Commission issued a formal order of private investigation entitled *In the Matter of Trading in the Securities of Flight Transportation Corporation*. Applicant states that following the Commission's private investigation and in settlement thereof, Drexel and Trotman consented to the entry of the above-referenced injunctions without admitting or denying any of the non-jurisdictional allegations of the Commission's complaint.

Applicant states that, subsequent to the events that formed the basis for the consents, it conducted a comprehensive review of its procedures for due diligence investigations in connection

with public offerings and implemented certain changes in those procedures, including *inter alia*, placing added emphasis on contacts with third parties.

Section 9(a) of the Act, insofar as it is pertinent here, disqualifies any person or any company with which such person is affiliated from serving or acting in the capacity of an investment adviser, principal underwriter or depositor of any registered investment company, if such person has been permanently or temporarily enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Applicant does not concede that the injunctions would disqualify it under section 9(a) of the Act. In order, however, to resolve fully any questions as to the applicability of that Section and in full compliance with all applicable Federal securities laws, Applicant has submitted this Application pursuant to section 9(c) of the Act for exemption from the provisions of section 9(a).

Section 9(c) of the Act provides that upon application, the Commission shall grant an exemption from the provisions of section 9(a) either unconditionally or on an appropriate temporary or other conditional basis if it is established that: (a) The prohibitions of section 9(a), as applied to a specific person, are unduly or disproportionately severe; and (b) the conduct of that person has been such as not to make it against the public interest or protection of investors to grant the application.

In support of its position that the Commission should grant Drexel an exemption from the provisions of section 9(a) of the Act, Drexel has represented the following:

1. The allegations of the Commission's complaint, the terms of the injunctions and the facts and circumstances to which they relate in no way involve any activities of the Funds, Drexel's activities on behalf of the Funds or the UITs or Drexel's activities with respect to any of its other investment advisory or brokerage clients and customers. More than three years have elapsed since the activities alleged in the complaint took place.

2. The injunctions were consented to without admitting or denying the non-jurisdictional allegations of the complaint and without consenting to the adjudication of any wrongdoing or liability.

3. Drexel has paid substantial amounts in settlement of private civil class actions and other actions arising out of the two June 1982 public offerings of Flight and has taken steps to improve upon the due diligence investigations it undertakes in connection with public securities offerings for which it acts as lead underwriter, including, *inter alia*, placing added emphasis on contacts with third parties.

4. The prohibitions of section 9(a) would be unduly and disproportionately severe as applied to Drexel because they would deprive the Funds of Drexel's investment advisory and distribution services and deprive the UITs of Drexel's market making function. The prohibitions of section 9(a) could thus operate significantly to the detriment of the financial interests of the Funds and their shareholders and unitholder of the UITs, none of which was affected in any way by the events that gave rise to the complaint and the injunctions. Trotman is not involved in the activities of the Funds or the UITs or in the activities of Drexel and its affiliates in connection therewith.

5. The prohibitions of section 9(a), to the extent applicable, would unfairly deprive Drexel of its ability to serve as an investment adviser, principal underwriter or depositor to other registered investment companies in the future.

6. The events that gave rise to the complaint and the injunctions are not such as to make it against the public interest or protection of investors to grant Applicant's application.

7. In order to maintain uninterrupted operations of the Funds and the UITs, it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act that the temporary exemption requested herein be issued forthwith.

8. In making this application, Applicant acknowledges, understands and agrees that this application and any temporary exemption issued herein shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigations or enforcement actions pursuant to the Federal securities laws, or the consideration by the Commission of any application for exemptions from statutory requirements, including, without limitation, the consideration of the instant application for a permanent exemption pursuant to Section 9(c) from the provisions of section 9(a) of the Act or the revocation or removal of any temporary exemption granted in connections with this application.

9. Applicant has never before applied for an exemption from the provisions of section 9(a) of the Act.

10. In consenting to a settlement of the Commission's civil action, Applicant has relied on an agreement by the Staff of the Commission not to oppose its application for temporary and permanent exemptions from the provisions of section 9(a) of the Act, based solely on the injunctions.

Accordingly, the application concludes that Applicant believes that granting the requested order and temporary order, pursuant to section 9(c) of the Act, exempting Drexel from the provisions of section 9(a) of the Act, is not inconsistent with the public interest and the protection of investors and the purposes fairly intended by the policy of the Act.

The Commission has considered the matter and finds that:

(1) The prohibitions of section 9(a) may be unduly or disproportionately severe as applied to Drexel in this case; and

(2) In order to maintain the uninterrupted services provided by Drexel to the Funds and the UITs, it is appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the Act, that a temporary order be issued forthwith.

Accordingly, it is hereby ordered that, pursuant to section 9(a) of the Act, Drexel be and hereby is granted a temporary exemption from the prohibitions of section 9(a) of the Act resulting from the injunctions issued against Drexel and Trotman, pending final determination by the Commission of the application for an order granting an exemption from those prohibitions; provided, however, that ths temporary exemption is conditioned upon Applicant's compliance with its undertakings as set forth above.

Notice is further given that any interested person may, not later than January 17, 1986 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he or she may request that he or she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided in Rule 0–5 of the Rules and Regulations promulgated under the Act.

an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-30863 Filed 12-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23960; 70-7193]

Kingsport Power Co. et al.; Proposed Issuance and Sale of Long-Term Notes to Banks Under Term Loan Agreements

December 23, 1985.

Kingsport Power Company ("Kingsport"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, Michigan Power Company ("Michigan"), P.O. Box 413, Three Rivers, Michigan 49093, Ohio Valley Electric Corporation ("OVEC"), P.O. Box 468, Piketon, Ohio 45661 and Wheeling Electric Company ("Wheeling"), 51 Sixteenth Street, Wheeling, West Virginia 26003 (individually and collectively hereafter "Declarant" and "Declarants"), electric utility subsidiaries of American Electric Power Company, Inc. ("American"), 1 Riverside Plaza, Columbia, Ohio 43215, a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(b) and 50(a)(2) thereunder.

OVEC and its wholly owned subsidiary, Indiana-Kentucky Electric Corporation, operate electric generation facilities for the principal purpose of supplying electric power to an agency of the United States of America. The capital stock of OVEC is jointly owned by American, Allegheny Power System, Inc., a registered holding company, and several other utility companies, which, pursuant to a power agreement, provide supplemental power to, and purchase surplus from, OVEC and its subsidiary.

By orders dated September 13, 1982, October 8, 1982, December 21, 1982, December 22, 1982, December 29, 1982 and March 23, 1983. (HCAR Nos. 22633, 22663, 22791, 22797, 22805 and 22888, respectively) the Commission authorized Kingport, Michigan, OVEC and Wheeling to enter into fixed rate term loan agreements with Citibank, N.A. ("Citibank") for up to $10 million each.

Declarants request authorization to refinance the above maturing fixed rate term loan agreements with Citibank (the "Citibank Agreements") and the unsecured promissory notes thereunder by each issuing up to $10,000,000 aggregate principal amount of unsecured promissory notes ("Notes") in connection with borrowings from one or more commercial banks, pursuant to proposed Term Loan Agreements ("Agreements"), for terms of not less than two nor more than ten years. The Notes of Kingsport, OVEC and Wheeling, will bear interest on the unpaid principal amount at a fixed rate of interest not greater than 13% per annum. In the case of Michigan, the Notes would bear interest at one of the following interest rate pricing bases to be selected by Michigan: (1) A fixed rate of interest not greater than 13% per annum (the "Fixed Rate"), (2) A fixed interest rate for one, two, three or six months equal to ½ of 1% per annum above the applicable London Interbank Offering Rate or (3) a floating interest rate equal to the bank's prime rate (as defined in the Agreement). Michigan's Agreement would further provide that Michigan could switch among the above pricing bases on which its Notes would bear interest, subject to certain exceptions, provided that once the Fixed Rate pricing basis was selected it would irrevocably be the interest rate of its Notes until maturity.

No compensating balances shall be maintained or fees paid in the form of substitute interest by the Declarants under the Agreements. The Agreements further specify that, in the event a Note is paid prior to maturity in whole or in part, a Declarant shall pay a fee to the lending bank calculated to reimburse the bank for interest lost, if any, as a result of the prepayment. Declarants will apply all of the proceeds of the Note or Notes, at the time of such borrowings, to the repayment of maturing notes evidencing indebtedness under the Citibank Agreements.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 16, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the Declarants at the addresses specified above. Proof of service (by affidavit, or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-30864 Filed 12-30-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14863; File No. 812-6162]

Prudential-Bache Adjustable Rate Preferred Stock Fund, Inc., et al.; Application for Order Pertaining to Exchange Offers and Contingent Deferred Sales Loads

December 20, 1985.

Notice is hereby given that Prudential-Bache Adjustable Rate Preferred Stock Fund, Inc., Prudential-Bache California Municipal Fund, Prudential-Bache Equity Fund, Inc., Prudential-Bache Global Fund, Inc., Prudential-Bache Government Plus Fund, Inc., Prudential-Bache Government Securities Trust, Prudential-Bache Growth Opportunity Fund, Inc., Prudential-Bache High Yield Fund, Inc., Prudential-Bache High Yield Municipals, Inc., Prudential-Bache MoneyMart Assets Inc., Prudential-Bache Municipal Series Fund, Prudential-Bache Option Growth Fund, Inc., Prudential-Bache Quality Income Fund, Inc., Prudential-Bache Research Fund, Inc., Prudential-Bache Tax-Free Money Fund, Inc. and Prudential-Bache Utility Fund, Inc. (collectively, "Funds") and Prudential-Bache Securities Inc. ("Prudential-Bache", and together with "Funds", "Applicants") each at One Seaport Plaza, New York, NY 10292, filed an application on July 31, 1985, and an amendment thereto on December 10, 1985, for a Commission order (i) pursuant to section 11(a) of the Investment Company Act of 1940 ("Act") permitting certain offers of exchange among the Funds and any future funds principally distributed by Prudential-Bache and (ii) pursuant to section 6(c) of the Act exempting those exchanges from the provisions of section 22(d) of the Act to permit variation, deferral or waiver of any otherwise applicable contingent deferred sales load ("CDSL"). All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which

are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

Applicants represent that each Fund is registered as an open-end investment company under the Act. Applicants also state that Prudential-Bache is the principal distributor for each Fund and maintains a continuous public offering of the shares of each Fund at their respective net asset values.

Applicants state that some of the Funds impose no sales load ("No-Load Funds") and that, pursuant to a Commission order issued July 1, 1985 (Investment Company Act Release No. 14615), some of the Funds may impose a CDSL ("CDSL Funds"). Applicants also state that some of the CDSL Funds previously imposed an initial sales load ("Former Load Funds") rather than a CDSL.

Applicants propose the following transactions:

(1) Shares of any CDSL Fund may be exchanged for shares of any other CDSL Fund without imposition of a CDSL until subsequent redemption, at which time the rate of the CDSL of the Fund from which the shares are being redeemed will be imposed but calculated from the date of the initial purchase of the exchanged shares;

(2) Shares of any CDSL Fund may be exchanged for shares of a No-Load Fund without imposition of the CDSL until subsequent redemption, at which time the rate of the CDSL of the Fund from which the shares are being redeemed will be imposed but calculated without regard to the time such shares were held in the No-Load Fund; and

(3) Shares of a Former Load Fund may be exchanged for shares of any CDSL Fund without imposition of a CDSL at the time of exchange or subsequent redemption. Applicants state that each exchange would be subject to the minimum investment requirements of the Fund shares to be acquired. Applicants submit that the proposed exchanges will not dilute the assets of any Fund.

Applicants request an order under section 11(a) of the Act permitting such exchanges since some of the proposed exchanges may be interpreted to be made on a basis other than relative net asset values. In support of this request, Applicants submit that the proposed exchange privileges are fair and equitable to all Fund shareholders and will give them flexibility in their financial planning. Further, Applicants represent there is no financial incentive for Prudential-Bache representatives designed to encourage the proposed exchanges. Applicants also request an exemption from section 22(d) of the Act in order that an otherwise applicable CDSL may be varied, deferred or waived as described above. Applicants represent that they will comply with the provisions of Rule 22d–1 under the Act in connection with the proposed variations, deferrals or waivers of the CDSL resulting from the exchanges.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 14, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–30865 Filed 12–30–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22740; File No. SR–NYSE–85–46]

Self-Regulatory Organizations; Proposed Rule Changes by New York Stock Exchange, Inc., Relating to Amendments to Supplementary Material to Rules 451 and 465 Relating to Reasonable Rates of Reimbursement of Member Organizations in Connection With Proxy and Annual Report Mailings

Pursuant to section 19(b)(1) of the Securities Executive Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes consist of modifications to certain rates of reimbursement as specified in Supplementary Material to Rules 451 and 465 identified as Par. 451.90—"Schedule of approved charges by member organizations in connection with proxy solicitations" and Par. 465.20—"Mailing charges by member organizations". Specifically, the rule changes propose to:

Increase, effective July 1, 1986, the approved reasonable rate of reimbursement for initial mailings of proxy material by $.10 per set (from $.50 to $.60 for those meetings which do not include a proposal which requires beneficial owner instructions and from $.60 to $.70 for those materials which include a proposal requiring beneficial owner instructions);

Increase, effective January 1, 1986, the approved reasonable rate of reimbursement for follow-up mailings of proxy material by $.10 per set (from $.50 to $.60 for a selective mailing or from $.30 to $.40 for a non-selective mailing);

Increase, effective January 1, 1986, the approved reasonable rate of reimbursement for separately mailed copies of annual reports by $.10 per report (from $.10 to $.20); and

Establish, effective January 1, 1986, as a reasonable rate of reimbursement, a minimum charge of $3.00 per issuer for mailing annual reports.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the propsed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) *Purpose.* The purpose of the proposed rule changes is to modify certain rates set forth in Rules 451 ad 465 as reasonable rates of reimbursement for the forwarding of

proxy and annual report mailings to beneficial shareowners.

Member organizations who possess or control stock for their customers who are beneficial owners of securities are required by the rules of the Exchange to transmit proxy soliciting material, interim reports, and other material to each beneficial owner whenever the issuer or other person shall furnish the material and give satisfactory assurance that it will reimburse member organizations for all out-of-pocket expenses, including reasonable clerical expenses.

The processing and transmitting of proxy material and the tabulation of votes demand a substantial amount of clerical work by the member organizations. Member organizations must be prepared to treat each proxy solicitation or other transmittal of material as an individual exercise demanding adherence to detailed corporate instructions. In most instances time is of the essence, since there is a limited period during which material received must be mailed to beneficial owners and their votes received, tabulated and sent to the issuers in advance of the stockholders' meeting date. Exchange rules require each member to maintain detailed records of the receipt and mailing of proxy material and to record the receipt of voting instructions from beneficial owners.

The Exchange has, since 1952, published rates of reimbursement it deems reasonable. The satisfactory assurance of payment by an issuer of these rates obligates the member organization to transmit the communications to the beneficial owners for whom it holds securities of the issuer. Member organizations may seek reimbursement at rates less than the approved rates or, with prior notification to and the consent of the person soliciting proxies or the company, may seek reimbursement at rates higher than the approved rates.

(2) *Basis.* The statutory basis for the proposed rule changes is section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act") which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issures, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

The Securities Industry Associaton, through its Operations Committee, has endorsed the changes.

The American Society of Corporate Secretaries, through its Securities Industry Committee, had no objection to the changes.

III. Date of Effectiveness of the Proposed Rules Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communication relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the capition above and should be submitted by January 21, 1986.

For the Commission by Division of Market Regulation, pursuant to delegated authority.

Dated: December 23, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-30866 Filed 12-30-85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF STATE

[Public Notice CM-8/921]

National Committee of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 21, 1986, at 1:30 p.m. in Room 1107, Department of State, 2201 C Street, NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCIR activities; provides advice on matters of policy and positions in preparation for CCIR Plenary Assemblies and meetings of the international study groups; and recommends the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration.

The main purposes of the meeting will be:

1. Review of the Final Study Group meetings (September–November, 1985);

2. Review of national and international CCIR activities (e.g., Interdepartment Radio Advisory Committee (IRAC) Ad Hoc Group on CCIR Matters, Space World Administrative Radio Conference (WARC) intersessional program, and Mobil WARC preparations;

3. Preparations for the CCIR Plenary Assembly in May, 1986;

4. Other business.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Richard Shrum, Department of State, Washington, DC.; telephone (202) 632–

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2592. All attendees must use the C Street entrance to the building.

Dated: December 19, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85-30861 Filed 12-30-85; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM 8/923]

State Department—American Private Sector Overseas Security Advisory Council; Meeting

Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), dated October 6, 1972, the Department of State announces an open meeting of the State Department-American Private Sector Overseas Security Advisory Council on January 23, 1986 at 9:30 A.M. in Room 1105, U.S. Department of State. The agenda will include committee reports, a discussion of travel advisories, potential educational programs and a progress report on the activities of the Council.

Members of the public will be welcome up to the seating capacity of the room. The Chairman will entertain comments from the general public as time permtis. Access to the Department of State is controlled. In this regard, please use the "C" Street (diplomatic) entrance to the Department of State. Members of the general public planning to attend the meeting should contact in advance Ms. Alice Johnson, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20520, phone: (202) 653-5220 to arrange for attendance.

Dated: December 23, 1985.

David C. Fields,

Director of the Diplomatic Security Service.

[FR Doc. 85-30860 Filed 12-30-85; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice CM-8/922]

Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet January 24, 1986 at 9:30 a.m. in Room 1105, Department of State, 2201 C Street, NW., Washington, DC.

The agenda of this meeting is as follows:

1. Report on Rapporteurs meeting;
2. Consideration of Contributions to Study Group VII meeting February 10-21, 1986;
3. Any other business.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled. All persons wishing to attend the meeting should contact the office of Earl Barbely, Department of State, Washington, DC., telephone (202) 632-6700. All attendees must use the C Street entrance to the building.

Dated: December 23, 1985.

Earl S. Barbely,

Director, Office of Technical Standards and Development.

[FR Doc. 85-30862 Filed 12-30-85; 8:45 am]

BILLING CODE 4710-07-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

AGENCY: United States Information Agency.

ACTION: Modification of notice.

SUMMARY: The United States Information Agency is modifying a notice found at 49 FR 10768, (March 22, 1984) and modified at 49 FR 34122 (August 28, 1984) regarding immunity from judicial seizure for the painting, "The Flaying of Marsyas" by Titian, on loan to the National Gallery, by changing the dates of the exhibit from September 1, 1984 to February 1, 1985, to January 17, 1986 to April 30, 1986.

EFFECTIVE DATE: The modification is effective December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Office of General Counsel, United States Information Agency, 400 "C" Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency is modifying a notice published at 49 FR 10768 (March 22, 1984) and modified at 49 FR 34122 (August 28, 1984). The notice rendered immune from judicial process the painting: "The Flaying of Marsyas" by Titian, on loan to the National Gallery. The exhibit lent by the National Gallery of Art, Kromeriz, Czechoslovakia was originally scheduled from March 23, 1984 to September 3, 1984 and rescheduled to September 1, 1984 to February 1, 1985. The exhibit is again rescheduled and will take place January 17, 1986 to April 30, 1986. Therefore the final determination published in the **Federal Register** is modified to reflect the change in dates.

Thomas E. Harvey,

General Counsel and Congressional Liaison, United States Information Agency.

[FR Doc. 85-30877 Filed 12-30-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Veterans Administration Medical Center (VAMC), Hampton, VA, Additional Floor NHCU; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed construction of a 112-Bed Nursing Home Care Unit at the Veterans Administration Medical Center (VAMC), Hampton, Virginia, and has determined that the potential environmental impacts will be minimal from the development of this project.

The proposed project is a second floor addition to the existing 120-Bed Nursing Home Care Unit (Building No. 146). The facility will provide space for 112 beds and support services in approximately 43,380 gross square feet.

There are no anticipated long-term environmental impacts associated with this subject. Short-term impacts associated with the construction process will affect air quality, noise levels and solid waste disposal.

The VA will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to considerations of both context and intensity as defined by the Council on Environmental Quality, (40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached

based upon the information in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, DC. Persons wishing to examine a copy of the document may do so at the following office: Director, Office of Environmental Affairs (088A), Room 512, Veterans Administration, 811 Vermont Avenue, NW., Washington, DC 20420, (202) 389-3717. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: December 17, 1985.

Everett Alvarez, Jr.

Deputy Administrator.

[FR Doc. 85-30858 Filed 12-30-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 251
Tuesday, December 31, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:37 p.m. on Friday, December 20, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in State Bank of Frost, Frost, Minnesota, which was closed by the Deputy Commissioner of Commerce for the State of Minnesota on Friday, December 20, 1985; (2) accept the bid for the transaction submitted by Frost State Bank, Frost, Minnesota, a newly-chartered State nonmember bank; (3) approve the applications of Frost State Bank, Frost, Minnesota, for Federal deposit insurance and for consent to purchase certain assets of and assume the liability to pay deposits made in State Bank of Frost, Frost, Minnesota; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. H. Joe Selby, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was recessed at 4:39 p.m., and at 10:18 p.m. that same day the meeting was reconvened, by telephone conference call, at which time the Board of Directors (1) received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First City Bank, Glendale, California, which was closed by the Superintendent of Banks for the State of California, on Friday, December 20, 1985; (2) accepted the bid for the transaction submitted by Sterling Bank, Los Angeles, California, an insured State nonmember bank; (3) approved the application of Sterling Bank, Los Angeles, California, for consent to purchase certain assets of an assume the liability to pay deposits made in First City Bank, Glendale, California, and for consent to establish the two offices of First City Bank as branches of Sterling Bank; and (4) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In reconvening the meeting, the Board determined, on motion of Director Irvine, H. Sprague (Appointive), seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practible; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(8), (c)(9)(A)(ii), and (c)(9)(B).

Dated: December 23, 1985.
Federal Deposit Insurance Corporation.
Janet M. Reddish,
Assistant Executive Secretary.
[FR Doc. 85-30970 Filed 12-27-85; 11:18 am]
BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, January 6, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m., two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 27, 1985.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 85-31019 Filed 12-27-85; 3:50 pm]
BILLING CODE 6210-01-M

3

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 30, 1985, January 6, 13, and 20, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 30

Thursday, January 2

3:30 p.m.: Affirmation Meeting (Public Meeting) (if needed).

Week of January 6—Tentative

Monday, January 6

2:00 p.m.: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6).

Tuesday, January 7

10:00 a.m.: Briefing by Staff on TVA Corporate Plan (Public Meeting).

2:00 p.m.: Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 &7).

Thursday, January 9

10:00 a.m.: Briefing by TVA on Corporate Plan (Public Meeting).

2:00 p.m.: Briefing by Executive Branch (Closed—Ex. 1).

4:00 p.m.: Affirmation Meeting (Public Meeting) (if needed).

Friday, January 10

2:00 p.m.: Briefing by Executive Branch (Closed—Ex. 1) (Tentative).

Week of January 13—Tentative

Monday, January 13

10:00 a.m.: Discussion/Possible Vote on Full Power Operating License for Millstone-3 (Public Meeting).

Tuesday, January 14

10:00 a.m.: Briefing by GPU on TMI–2 Cleanup (Public Meeting).

2:00 p.m.: Staff Briefing on Integrated Safety assessment Program (ISAP) (Public Meeting).

Thursday, January 16

2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed).

Friday, January 17

10:00 a.m.: Discussion of Revisions to NRC Sunshine Act Regulations (Public Meeting).

Week of January 20—Tentative

Tuesday, January 21

2:00 p.m.: Briefing on Status of Report of Task Force on Technical Specifications (Public Meeting).

Wednesday, January 22

2:00 p.m.: Discussion of Management/ Organization and Internal Personnel Matters (closed—Ex. 2 & 6).

Thursday, January 23

10:00 a.m.: Briefing by INPO (Public Meeting).

2:00 p.m.: Affirmation Meeting (Public Meeting) (if needed).

To verify the status of meetings call (recording)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Dated: December 27, 1985.

Julia Corrado,

Office of the Secretary.

[FR Doc. 85–30742 Filed 12–27–85; 3:38 pm]

BILLING CODE 7590-01-M

Federal Register

Tuesday
December 31, 1985

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Income Taxes; Partner's Distributive Share; Final Regulations

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8065]

Income Taxes; Partner's Distributive Share

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations under section 704(b) of the Internal Revenue Code of 1954, relating to the determination of a partner's distributive share of partnership income, gain, loss, deduction, or credit (or item thereof). It reflects certain changes made to the law by the Tax Reform Act of 1976. These final regulations provide taxpayers with the guidance needed to comply with the law.

DATE: The amendments are effective for partnership taxable years beginning after December 31, 1975.

FOR FURTHER INFORMATION CONTACT: John G. Schmalz of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. ATTN: CC:LR:T 202–566–3297.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1983, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 704(b) of the Internal Revenue Code of 1954. The amendments were proposed to conform the regulations to section 213(d) of the Tax Reform Act of 1976 (95 Stat. 1548). Numerous written comments were submitted during the comment period, and a public hearing was held on May 4, 1983. After consideration of all comments regarding the proposed regulations, these regulations are adopted as revised by this Treasury decision. This Treasury decision reserves § 1.704–1(b)(4)(iv), relating to allocations attributable to nonrecourse debt, with respect to which the March 9, 1983, notice of proposed rulemaking remains outstanding.

Explanation of the Provisions

Section 704(b), as amended by the Tax Reform Act of 1976, provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with such partner's interest in the partnership (determined by taking into account all facts and circumstances) if either the partnership agreement does not provide for the distributive share, or the allocation to the partner under the partnership agreement does not have substantial economic effect.

The final regulations provide rules and examples relating to the substantial economic effect test and to the determination of a partner's interest in the partnership. An allocation that does not meet the substantial economic effect test will not be disturbed if it is consistent with the partners' interests in the partnership. Special rules provide that certain allocations will be deemed to be in accordance with the partners' interests in the partnership.

Substantial Economic Effect

The final regulations provide that the determination of whether an allocation has substantial economic effect involves a two-part test. Under the first part of the test, the allocation must have economic effect. This means that in the event there is an economic benefit or burden that corresponds to an allocation, the partner receiving such allocation will receive such benefit or bear such burden. Generally, an allocation will not have economic effect unless the partners' capital accounts are maintained properly, liquidation proceeds are required to be distributed in accordance with the partners' capital account balances, and, following the distribution of such proceeds, partners are required to restore any deficits in their capital accounts to the partnership.

The final regulations provide rules concerning the sufficiency of a partner's obligation to restore the deficit balance in his capital account to the partnership. With respect to this deficit makeup requirement, the regulations make clear that the obligation to restore need not be unlimited. If certain other requirements are satisfied, an allocation of loss or deduction to a partner that creates or increases a deficit balance in such partner's capital account will be respected so long as such deficit balance does not exceed the dollar amount that such partner is obligated to restore.

The final regulations also provide for an economic effect equivalence test under which allocations have economic effect even though capital accounts are not maintained in accordance with the regulations so long as the same results as would be obtained under a capital account analysis are produced in all possible cases.

Under the second part of the two-part test, the economic effect of the allocation must be substantial. The general rules under this second test require that the allocation have a reasonable possibility of affecting the dollar amounts to be received by the partners, independent of tax consequences. Furthermore, these general rules provide that an allocation is insubstantial if, as a result of the allocation, the after-tax economic consequences of at least one partner may, in present value terms, be enhanced, and there is a strong likelihood that the after-tax economic consequences of no partner will, in present value terms, be diminished. The final regulations provide specifically that allocations are insubstantial if they merely shift tax consequences within a partnership taxable year or are likely to be offset by other allocations in subsequent taxable years.

Capital Accounts

The final regulations provide rules concerning the proper determination and maintenance of the partners' capital accounts. Under these rules a partner's capital account must be increased by the amount of money contributed by such partner to the partnership and allocations to such partner of income (including tax-exempt income) and gain, and must be decreased by the amount of money distributed to such partner by the partnership and allocations to such partner of loss, deduction, and section 705(a)(2)(B) expenditures. In the case of contributed property and property distributed in kind, the regulations adopt a fair market value approach. Thus, a partner's capital account must be increased by the fair market value of the property he contributes to the partnership (rather than its adjusted tax basis) and must be decreased by the fair market value of property distributed to him by the partnership. Consistent with these rules, the final regulations require a preliquidation adjustment to be made to capital accounts to reflect unrealized appreciation or depreciation in the value of distributed property.

The final regulations also permit adjustments to the partners' capital accounts to reflect unrealized appreciation or depreciation in partnership property in connection with the acquisition of an interest from the partnership and the disposition of an interest to the partnership, and in certain other specified circumstances. Additional rules provide for adjustments to the partners' capital accounts to reflect basis adjustments under section 48(q), syndication expenses under section 709, disallowed losses under sections 267(b) and 707(b), transfers of partnership interests, section 754 elections, and depletion, gain, and loss

in respect of partnership oil and gas properties.

The final regulations provide examples relating to the substantial economic effect test. To the extent an allocation fails the substantial economic effect test and is inconsistent with the partners' interests in the partnership, it will be reallocated in accordance with the partners' interests in the partnership.

Partner's Interest in the Partnership

Section 704(b) provides that a partner's interest in the partnership shall be determined by taking into account all the facts and circumstances. The final regulations provide rules and examples for determining a partner's interest in the partnership. Under the final regulations a partner's interest in the partnership is to be determined with reference to the underlying economic arrangement of the partners relating to the particular allocation under consideration. If that economic arrangement cannot be determined, each partner's interest in the partnership is presumed to be equal. The examples contained in the final regulations specify, in certain situations, the partners' interests in the partnership.

Special Rules

The final regulations contain special rules concerning allocations of tax credits, allocations of excess percentage depletion, and allocations of tax items where there has been a revaluation of partnership property. Allocations made in accordance with these special rules are deemed to be in accordance with the partners' interests in the partnership. Finally, the regulations contain rules for determining, in certain instances, the partners' allocable shares of adjusted basis and amount realized under section 613A(c)(7)(D).

Public Comments and Changes in Response to Public Comments—Effective Date

Several public comments questioned the statement in the proposed regulations that the fundamental principles of the rules contained therein relating to substantial economic effect would be applicable to taxable years beginning after December 31, 1975. The effective date rules have been clarified in the final regulations to make clear that the detailed requirements contained in the regulations concerning the maintenance of capital accounts are not mandated for taxable years beginning before May 1, 1986. The final regulations provide that, for taxable years beginning after December 31, 1975, but before May 1, 1986, an allocation that does not have substantial economic effect under the final regulations nevertheless may have substantial economic effect under section 704(b), as interpreted by case law prior regulations, and the legislative history of the Tax Reform Act of 1976. In addition, in order to permit existing partnerships to begin complying with the capital accounting rules contained in the final regulations for future taxable years, the final regulations allow existing partnerships to restate their capital accounts, as of the beginning of their first taxable year for which the final regulations are effective, to reflect the manner in which partnership property would be distributed if the partnership were liquidated at that time.

Allocations Attributable to Nonrecourse Debt

Several comments suggested that the so-called minimum gain rule contained in the proposed regulations was too restrictive. These comments contended that allocations attributable to nonrecourse debt should be permitted (without reference to minimum gain) to the extent the value of the property securing such debt exceeds the balance of the debt. Other comments urged that the nonrecourse rule was too lenient, and that, under the statute, deductions attributable to nonrecourse debt must follow the partners' interests in the partnership. These comments asserted that the minimum gain rule was inconsistent with such interests and proposed alternative measurements which the commentators felt would be more indicative of the partners' interests in the partnership. In addition, some comments pointed out certain technical deficiencies in the proposed regulations. The Treasury Department and the Internal Revenue Service are still considering the issues raised by these comments and, accordingly, have decided to defer any action on the portion of the proposed regulations concerning allocations attributable to nonrecourse debt.

Application of Profit Motive Test at the Partner Level

Several comments criticized the inference in the proposed regulations that the profit motive test of section 183 would be applied at the partner level for purposes of determining the deductibility of a partner's share of partnership losses or expenses. Since the Treasury Department and the Internal Revenue Service agree that it is inappropriate to decide in these regulations whether section 183 applies at the partner level, the reference to section 183 is deleted and replaced with the case law requirement that the partner receiving an allocation have a bona-fide motive for economic gain, independent of tax consequences.

Interaction Between Section 704(b) and Section 704(c)

Several comments concerned the relationship between the proposed rules relating to allocations under section 704(b) and the rules under section 704(c) relating to the determination of the partners' distributive shares of certain tax items with respect to contributed property. Specifically, some comments criticized the general rule in the proposed regulations that contributed property be reflected in capital accounts at its adjusted tax basis, even though an optional rule permitted such property to be reflected in capital accounts at fair market value if certain conditions were satisfied.

The final regulations clarify the relationship between section 704(c) and section 704(b) allocations. In view of the comments received and recent amendments to section 704(c), the suggestion that contributed property be required to be reflected in the contributing partner's capital account at fair market value (rather than adjusted tax basis) has been adopted in the final regulations.

The final regulations make clear that, if section 704(c) determines the partners' distributive shares of depreciation, depletion, and gain or loss with respect to the contributed property, such determination is not subject to the substantial economic effect test of section 704(b). However, the final regulations also make clear that in these cases the partners' distributive shares of the corresponding book items are determined under section 704(b) and the final regulations, and that it is with reference to that determination that section 704(c) determines the partners' distributive shares of the tax items.

Some comments questioned the reference to section 704(c) principles for purposes of determining the partners' shares of depreciation, depletion, and gain or loss, as computed for tax purposes, when capital accounts are adjusted to reflect unrealized appreciation or depreciation in partnership property. The final regulations clarify this reference and provide additional rules for certain cases not expressly addressed under the existing section 704(c) regulations. It is expected that similar rules will be included when new regulations under section 704(c) are proposed and that additional guidance will be contained in those regulations.

Two-Part Substantial Economic Effect Test

Several comments challenged the elevation of "substantiality" to a separate test within the substantial economic effect determination. Some comments asserted that absolute economic effect was not necessary to meet the statutory test. These comments were given careful consideration. Nevertheless, the Treasury Department and the Internal Revenue Service maintain that an allocation must have economic effect and that such economic effect must be substantial.

Several comments asserted that the substantiality test was vague and subjective, resulting in undue uncertainty. Although the concept of substantiality by its nature is not easily susceptible to mechanical tests, the final regulations provide clarification and additional guidance on the issue of substantiality. In particular, the final regulations make clear that the timing of the economic consequences that correspond to an allocation are taken into account in determining whether the economic effect of such allocation is substantial. The Treasury Department and the Internal Revenue Service are considering whether further guidance is warranted concerning the relationship of the substantial economic effect test to time value of money principles. *See.* H. R. Rep. No. 99–426 99th Cong., 1st Sess. 259 (1985). To assist in this consideration, comments from interested parties are invited.

Deficit Make-Up Requirement

Several comments questioned the necessity for the deficit make-up requirement in the economic effect test. Many of these comments concerned the applicability of this requirement to limited partners. The Treasury Department and the Internal Revenue Service gave careful consideration to these comments, but concluded that a deficit make-up obligation properly is required by the economic effect test. However, the rule has been clarified in certain respects. For instance, the final regulations clarify under what circumstances an allocation to a partner who is not obligated to restore the deficit balance in his capital account (or who is obligated to restore only a limited dollar amount of such deficit) will have economic effect. In general, an allocation will have economic effect in such circumstances, provided the allocation does not cause the recipient partner's capital account (as determined taking into account certain adjustments) to become less than zero (or to become negative by more than the amount of his limited deficit make-up obligation), and provided certain other requirements are satisfied.

Capital Account Maintenance Rules

Several comments questioned the use of tax accounting principles for maintaining capital accounts. Generally, the final regulations adopt the rule contained in the proposed regulations that requires the partners' capital accounts to reflect tax accounting principles. Nevertheless, the final regulations deviate from this general requirement in two principal respects. First, as described above, the final regulations adopt the suggestion of several commentators that all contributions and distributions of property be reflected in capital accounts at their fair market value when contributed or distributed (rather than at their adjusted tax basis), and that subsequent capital account adjustments in respect of such property reflect this fair market value.

Second, comments suggested that partnerships should have an unlimited right to adjust capital accounts to reflect unrealized appreciation and depreciation in the value of partnership assets. These comments suggested that the rule in the proposed regulations that permits such adjustments to capital accounts only upon the occurrence of certain specified events is too narrow. On the other hand, several members of the accounting profession expressed concern about the reference in the proposed regulations to sound financial accounting principles, since they believe such principles would rarely, if ever, allow capital accounts to be booked to fair market value. Accordingly, the final regulations eliminate this reference and modify the class of cases in which capital accounts may be adjusted to reflect the fair market value of partnership property and still comply with the capital account maintenance rules.

In addition, a number of technical suggestions and modifications relating to the maintenance of capital accounts have been adopted in the final regulations, including provisions to take into account the effect of liabilities and the provisions of sections 48(q), 267, 707(b), 709, and 754.

Simulated Depletion Allowance

A number of comments suggested that the rule requiring adjustments to capital account balances to reflect a simulated partnership depletion allowance be changed to allow partnerships to choose to adjust capital accounts by the actual depletion deductions taken by the partners. This suggestion has been adopted. A modified form of simulated depletion is retained as an option for those partnerships that elect it.

Economic Effect Equivalence

Several comments questioned the strictness of the capital account equivalence test. Some comments asked for a more liberal test, whereas others suggested certain technical and clarifying changes. Given that the taxpayer has the benefit of certain special rules deeming certain allocations to be consistent with the partners' interests in the partnership and the opportunity to demonstrate by the facts and circumstances that an allocation is in accordance with a partner's interest in the partnership, the test in the proposed regulations (which, for the sake of precision, has been relabeled the economic effect equivalence test) has not been liberalized, but its application has been clarified.

Partners' Interests in the Partnership

A number of comments asked for more guidance concerning how to determine a partner's interest in the partnership in various factual settings. Specific comments questioned the effect that a reallocation of an item would have on prior or subsequent allocations. The final regulations provide additional guidance in certain cases.

Example (19)(iii)

In the proposed regulations, public comment was specifically requested on how to apply that partner's interests in the partnership test to the facts in example (19)(iii) of the proposed regulations. After studying the public comments, the Treasury Department and the Internal Revenue Service have determined that under the standard in § 1.704–1(b)(3) both partners in example (19)(iii) of the proposed regulations are equal partners. The final regulations have incorporated this additional guidance into example (19)(iii) .

Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Internal Revenue Service has concluded that the final regulations contained herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 53 do not apply. Accordingly, these final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is John G. Schmalz of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations both on matters of substance and style.

List of Subjects in 26 CFR 1.701–1—1.771–1

Income taxes, Partnerships.

Adoption of Amendments to the Regulations

Accordingly, effective for partnership taxable years beginning after April 30, 1986, 26 CFR Part 1 is amended as follows:

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.704–1 is amended by revising paragraph (b) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) *Determination of partner's distributive share—(0) Cross-references.*

Heading	Section
Cross-references	1.704-1(b)(0)
In general	1.704-1(b)(1)
Basic principles	1.704-1(b)(1)(i)
Effective dates	1.704-1(b)(1)(ii)
Effect of other sections	1.704-1(b)(1)(iii)
Other possible tax consequences	1.704-1(b)(1)(iv)
Purported allocations	1.704-1(b)(1)(v)
Section 704(c) determinations	1.704-1(b)(1)(vi)
Bottom line allocations	1.704-1(b)(1)(vii)
Substantial economic effect	1.704-1(b)(2)
Two-part analysis	1.704-1(b)(2)(i)
Economic effect	1.704-1(b)(2)(ii)
Fundamental principles	1.704-1(b)(2)(ii)(a)
Three requirements	1.704-1(b)(2)(ii)(b)
Obligation to restore deficit	1.704-1(b)(2)(ii)(c)
Alternate test for economic effect	1.704-1(b)(2)(ii)(d)
Partial economic effect	1.704-1(b)(2)(ii)(e)
Reduction of obligation to restore	1.704-1(b)(2)(ii)(f)
Liquidation defined	1.704-1(b)(2)(ii)(g)
Partnership agreement defined	1.704-1(b)(2)(ii)(h)
Economic effect equivalence	1.704-1(b)(2)(ii)(i)
Substantiality	1.704-1(b)(2)(iii)
General rules	1.704-1(b)(2)(iii)(a)
Shifting tax consequences	1.704-1(b)(2)(iii)(b)
Transitory allocations	1.704-1(b)(2)(iii)(c)
Maintenance of capital accounts	1.704-1(b)(2)(iv)
In general	1.704-1(b)(2)(iv)(a)
Basic rules	1.704-1(b)(2)(iv)(b)
Treatment of liabilities	1.704-1(b)(2)(iv)(c)
Contributed property	1.704-1(b)(2)(iv)(d)
In general	1.704-1(b)(2)(iv)(d)(1)
Contribution of promissory notes	1.704-1(b)(2)(iv)(d)(2)
Section 704(c) consequences	1.704-1(b)(2)(iv)(d)(3)
Distributed property	1.704-1(b)(2)(iv)(e)
In general	1.704-1(2)(iv)(e)(1)
Distribution of promissory notes	1.704-1(b)(2)(e)(2)
Revaluations of property	1.704-1(b)(2)(iv)(f)
Adjustments to reflect book value	1.704-1(b)(2)(iv)(g)
In general	1.704-1(b)(2)(iv)(g)(1)
Payables and receivables	1.704-1(b)(2)(iv)(g)(2)
Determining amount of book items	1.704-1(b)(2)(iv)(g)(3)
Determinations of fair market value	1.704-1(b)(2)(iv)(h)
Section 705(a)(2)(B) expenditures	1.704-1(b)(2)(iv)(i)
In general	1.704-1(b)(2)(iv)(i)(1)
Expenses described in section 709	1.704-1(b)(2)(iv)(i)(2)
Disallowed losses	1.704-1(b)(2)(iv)(i)(3)
Basis adjustments to section 38 property	1.704-1(b)(2)(iv)(j)
Depletion of oil and gas properties	1.704-1(b)(2)(iv)(k)
In general	1.704-1(b)(2)(iv)(k)(1)
Simulated depletion	1.704-1(b)(2)(iv)(k)(2)
Actual depletion	1.704-1(b)(2)(iv)(k)(3)
Effect of book depletion	1.704-1(b)(2)(iv)(k)(4)
Transfers of partnership interests	1.704-1(b)(2)(iv)(l)
Section 754 elections	1.704-1(b)(2)(iv)(m)
In general	1.704-1(b)(2)(iv)(m)(1)
Section 743 adjustments	1.704-1(b)(2)(iv)(m)(2)
Section 732 adjustments	1.704-1(b)(2)(iv)(m)(3)
Section 734 adjustments	1.704-1(b)(2) iv)(m)(4)
Limitations on adjustments	1.704-1(b)(2) iv)(m)(5)
Partnership level characterization	1.704-1(b)(2)(iv)(n)
Guaranteed payments	1.704-1(b)(2)(iv)(o)
Minor discrepancies	1.704-1(b)(2)(iv)(p)
Adjustments where guidance is lacking	1.704-1(b)(2)(iv)(q)
Restatement of capital accounts	1.704-1(b)(2)(iv)(r)
Partner's interest in the partnership	1.704-1(b)(3)
In general	1.704-1(b)(3)(i)
Factors considered	1.704-1(b)(3)(ii)
Certain determinations	1.704-1(b)(3)(iii)
Special rules	1.704-1(b)(4)
Allocations to reflect revaluations	1.704-1(b)(4)(i)
Credits	1.704-1(b)(4)(ii)
Excess percentage depletion	1.704-1(b)(4)(iii)
Nonrecourse debt	1.704-1(b)(4) iv)
Allocations under section 613A(c)(7)(D)	1.704-1(b)(4)(v)
Amendments to partnership agreement	1.704-1(b)(4)(vi)
Recapture	1.704-1(b)(4)(vii)
Examples	1.704-1(b)(5)

(1) *In general—*(i) *Basic principles.* Under section 704(b) if a partnership agreement does not provide for the allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner, or if the partnership agreement provides for the allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner but such allocation does not have substantial economic effect, then the partner's distributive share of such income, gain, loss, deduction, or credit (or item thereof) shall be determined in accordance with such partner's interest in the partnership (taking into account all facts and circumstances). If the partnership agreement provides for the allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner, there are ways in which such allocation will be respected under section 704(b) and this paragraph. First, the allocation can have substantial economic effect in accordance with paragraph (b)(2) of this section. Second, taking into account all facts and circumstances, the allocation can be in accordance with the partner's interest in the partnership. See paragraph (b)(3) of this section. Third, the allocation can be deemed to be in accordance with the partner's interest in the partnership pursuant to one of the special rules contained in paragraph (b)(4) of this section. To the extent an allocation under the partnership agreement of income, gain, loss, deduction, or credit (or item thereof) to a partner does not have substantial economic effect, is not in accordance with the partner's interest in the partnership, and is not deemed to be in accordance with the partner's interest in the partnership, such income, gain, loss, deduction, or credit (or item thereof) will be reallocated in accordance with the partner's interest in the partnership (determined under paragraph (b)(3) of this section).

(ii) *Effective dates.* The provisions of this paragraph are effective for partnership taxable years beginning after December 31, 1975. However, for partnership taxable years beginning after December 31, 1975, but before May 1, 1986, an allocation of income, gain, loss, deduction, or credit (or item thereof) to a partner that is not respected under this paragraph nevertheless will be respected under section 704(b) if such allocation has substantial economic effect as that term has been interpreted under the relevant case law, the legislative history of section 210(d) of the Tax Reform Act of 1976, and the provisions of this paragraph in effect for partnership taxable years beginning before May 1, 1986.

(iii) *Effect of other sections.* The determination of a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) under section 704(b) and this paragraph is not conclusive as to the tax treatment of a partner with respect to such distributive share. For example, an allocation of loss or deduction to a partner that is respected under section 704(b) and this paragraph may not be deductible by such partner if the partner lacks the

requisite motive for economic gain (see, *e.g., Goldstein v. Commissioner*, 364 F.2d 734 (2d Cir. 1966)), or may be disallowed for that taxable year (and held in suspense) if the limitations of section 465 or section 704(d) are applicable. Similarly, an allocation that is respected under section 704(b) and this paragraph nevertheless may be reallocated under other provisions, such as section 482, section 704(e)(2), section 706(d) (and related assignment of income principles), and paragraph (b)(2)(ii) of § 1.751–1. If a partnership has a section 754 election in effect, a partner's distributive share of partnership income, gain, loss, or deduction may be affected as provided in § 1.743–1 (see paragraph (b)(2)(iv)(*m*)(*2*) of this section). The examples in paragraph (b)(5) of this section concern the validity of allocations under section 704(b) and this paragraph and, except as noted, do not address the effect of other sections or limitations on such allocations.

(iv) *Other possible tax consequences.* Allocations that are respected under section 704(b) and this paragraph may give rise to other tax consequences, such as those resulting from the application of section 61, section 83, section 751, section 2501, paragraph (f) of § 1.46–3, § 1.47–6, paragraph (b)(1) of § 1.721–1 (and related principles), and paragraph (e) of § 1.752–1. The examples in paragraph (b)(5) of this section concern the validity of allocations under section 704(b) and this paragraph and, except as noted, do not address other tax consequences that may result from such allocations.

(v) *Purported allocations.* Section 704(b) and this paragraph do not apply to a purported allocation if it is made to a person who is not a partner of the partnership (see section 7701(a)(2) and paragraph (d) of § 301.7701–3) or to a person who is not receiving the purported allocation in his capacity as a partner (see section 707(a) and paragraph (a) of § 1.707–1).

(vi) *Section 704(c) determinations.* Under section 704(c) if property is contributed by a partner to a partnership, the partners' distributive shares of income, gain, loss, and deduction, as computed for tax purposes, with respect to such property are determined so as to take account of the variation between the adjusted tax basis and fair market value of such property. Although section 704(b) does not directly determine the partners' distributive shares of tax items governed by section 704(c), the partners' distributive shares of tax items are determined under section 704(c) with reference to the partners' distributive shares of the corresponding book items, as determined under section 704(b) and this paragraph. (See paragraphs (b)(2)(iv)(*d*) and (b)(4)(i) of this section.) Section 704(c), as cited in this paragraph, refers to such section as in effect for property contributed to a partnership after March 31, 1984. See example (13)(i) of paragraph (b)(5) of this section.

(vii) *Bottom line allocations.* Section 704(b) and this paragraph are applicable to allocations of income, gain, loss, deduction, and credit, allocations of specific items of income, gain, loss, deduction, and credit, and allocations of partnership net or "bottom line" taxable income and loss. An allocation to a partner of a share of partnership net or "bottom line" taxable income or loss shall be treated as an allocation to such partner of the same share of each item of income, gain, loss, and deduction that is taken into account in computing such net or "bottom line" taxable income or loss. See example (15)(i) of paragraph (b)(5) of this section.

(2) *Substantial economic effect*—(i) *Two-part analysis.* The determination of whether an allocation of income, gain, loss, or deduction (or item thereof) to a partner has substantial economic effect involves a two-part analysis that is made as of the end of the partnership taxable year to which the allocation relates. First, the allocation must have economic effect (within the meaning of paragraph (b)(2)(ii) of this section). Second, the economic effect of the allocation must be substantial (within the meaning of paragraph (b)(2)(iii) of this section).

(ii) *Economic effect*—(*a*) *Fundamental principles.* In order for an allocation to have economic effect, it must be consistent with the underlying economic arrangement of the partners. This means that in the event there is an economic benefit or economic burden that corresponds to an allocation, the partner to whom the allocation is made must receive such economic benefit or bear such economic burden.

(*b*) *Three requirements.* Based on the principles contained in paragraph (b)(2)(ii)(*a*) of this section, and except as otherwise provided in this paragraph, an allocation of income, gain, loss, or deduction (or item thereof) to a partner will have economic effect if, and only if, throughout the full term of the partnership, the partnership agreement provides—

(*1*) For the determination and maintenance of the partners' capital accounts in accordance with the rules of paragraph (b)(2)(iv) of this section,

(*2*) Upon liquidation of the partnership any partner's interest in the partnership), liquidating distributions are required in all cases to be made in accordance with the positive capital account balances of the partners, as determined after taking into account all capital account adjustments for the partnership taxable year during which such liquidation occurs (other than those made pursuant to this requirement (*2*) and requirement (*3*) of this paragraph (b)(2)(ii)(*b*)), by the end of such taxable year (or, if later, within 90 days after the date of such liquidation), and

(*3*) If such partner has a deficit balance in his capital account following the liquidation of his interest in the partnership, as determined after taking into account all capital account adjustments for the partnership taxable year during which such liquidation occurs (other than those made pursuant to this requirement (*3*)), he is unconditionally obligated to restore the amount of such deficit balance to the partnership by the end of such taxable year (or, if later, within 90 days after the date of such liquidation), which amount shall, upon liquidation of the partnership, be paid to creditors of the partnership or distributed to other partners in accordance with their positive capital account balances (in accordance with requirement (*2*) of this paragraph (b)(2)(*ii*)(*b*)).

For purposes of the preceding sentence, a partnership taxable year shall be determined without regard to section 706(c)(2)(A). See examples (1)(i) and (ii), (4)(i), (8)(i), and (16)(i) of paragraph (b)(5) of this section.

(*c*) *Obligation to restore deficit.* If a partner is not expressly obligated to restore the deficit balance in his capital account, such partner nevertheless will be treated as obligated to restore the deficit balance in his capital account (in accordance with requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section) to the extent of—

(*1*) The outstanding principal balance of any promissory note (of which such partner is the maker) contributed to the partnership by such partner (other than a promissory note that is readily tradable on an established securities market), and

(*2*) The amount of any unconditional obligation of such partner (whether imposed by the partnership agreement or by State or local law) to make subsequent contributions to the partnership (other than pursuant to a promissory note of which such partner is the maker),

provided that such note or obligation is required to be satisfied at a time no later

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than the end of the partnership taxable year in which such partner's interest is liquidated (or, if later, within 90 days after the date of such liquidation). If a promissory note referred to in the previous sentence is negotiable, a partner will be considered required to satisfy such note within the time period specified in such sentence if the partnership agreement provides that, in lieu of actual satisfication, the partnership will retain such note and such partner will contribute to the partnership the excess, if any, of the outstanding principal balance of such note over its fair market value at the time of liquidation. See paragraph (b)(2)(iv)(*d*)(*2*) of this section. See examples (1)(ix) and (x) of paragraph (b)(5) of this section. A partner in no event will be considered obligated to restore the deficit balance in his capital account to the partnership (in accordance with requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section) to the extent such partner's obligation is not legally enforceable, or the facts and circumstances otherwise indicate a plan to avoid or circumvent such obligation. See paragraphs (b)(2)(ii)(*f*), (b)(2)(ii)(*h*), and (b)(4)(vi) of this section for other rules regarding such obligation.

(*d*) *Alternate test for economic effect.* If—

(*1*) Requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied, and

(*2*) The partner to whom an allocation is made is not obligated to restore the deficit balance in his capital account to the partnership (in accordance with requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section), or is obligated to restore only a limited dollar amount of such deficit balance, and

(*3*) The partnership agreement contains a "qualified income offset," such allocation will be considered to have economic effect under this paragraph (b)(2)(ii)(*d*) to the extent such allocation does not cause or increase a deficit balance in such partner's capital account (in excess of any limited dollar amount of such deficit balance that such partner is obligated to restore) as of the end of the partnership taxable year to which such allocation relates. In determining the extent to which the previous sentence is satisfied, such partner's capital account also shall be reduced for—

(*4*) Adjustments that, as of the end of such year, reasonably are expected to be made to such partner's capital account under paragraph (b)(2)(iv)(*k*) of this section for depletion allowances with respect to oil and gas properties of the partnership, and

(*5*) Allocations of loss and deduction that, as of the end of such year, reasonably are expected to be made to such partner pursuant to section 704(e)(2), section 706(d), and paragraph (b)(2)(ii) of § 751–1, and

(*6*) Distributions that, as of the end of such year, reasonably are expected to be made to such partner to the exent they exceed offsetting increases to such partner's capital account that reasonably are expected to occur during (or prior to) the partnership taxable years in which such distributions reasonably are expected to be made.

For purposes of determining the amount of expected distributions and expected capital account increases described in (*6*) above, the rule set out in paragraph (b)(2)(iii)(*c*) of this section concerning the presumed value of partnership property shall apply. The partnership agreement contains a "qualified income offset" if, and only if, it provides that a partner who unexpectedly receives an adjustment, allocation, or distribution described in (*4*), (*5*), or (*6*) above, will be allocated items of income and gain in an amount and manner sufficient to eliminate such deficit balance as quickly as possible. See examples (1)(iii), (iv), (v), (vi), (viii), (ix), and (x), (15), and (16)(ii) of paragraph (b)(5) of this section.

(*e*) *Partial economic effect.* If only a portion of an allocation made to a partner with respect to a partnership taxable year has economic effect, both the portion that has economic effect and the portion that is reallocated shall consist of a proportionate share of all items that made up the allocation to such partner for such year. See examples (15) (ii) and (iii) of paragraph (b)(5) of this section.

(*f*) *Reduction of obligation to restore.* If requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied, a partner's obligation to restore the deficit balance in his capital account (or any limited dollar amount thereof) to the partnership may be eliminated or reduced as of the end of a partnership taxable year without affecting the validity of prior allocations (see paragraph (b)(4)(vi) of this section) to the extent the deficit balance (if any) in such partner's capital account, after reduction for the items described in (*4*), and (*5*), and (*6*) of paragraph (b)(2)(iv)(*d*) of this section, will not exceed the partner's remaining obligation (if any) to restore the deficit balance in his capital account. See example (1)(viii) of paragraph (b)(5) of this section.

(*g*) *Liquidation defined.* For purposes of this paragraph, a liquidation of a partner's interest in the partnership occurs upon the earlier of (*1*) the date upon which there is a liquidation of the partnership, or (*2*) the date upon which there is a liquidation of the partner's interest in the partnership under paragraph (d) of § 1.761–1. For purposes of this paragraph, the liquidation of a partnership occurs upon the earlier of (*3*) the date upon which the partnership is terminated under section 708(b)(1), or (*4*) the date upon which the partnership ceases to be a going concern (even though it may continue in existence for the purpose of winding up its affairs, paying its debts, and distributing any remaining balance to its partners). Requirements (*2*) and (*3*) of paragraph (b)(2)(ii)(*b*) of this section will be considered unsatisfied if the liquidation of a partner's interest in the partnership is delayed after its primary business activities have been terminated (for example, by continuing to engage in a relatively minor amount of business activity, if such actions themselves do not cause the partnership to terminate pursuant to section 708(b)(1)) for a principal purpose of deferring any distribution pursuant to requirement (*2*) of paragraph (b)(2)(ii)(*b*) of this section or deferring any partner's obligations under requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section.

(*h*) *Partnership agreement defined.* For purposes of this paragraph, the partnership agreement includes all agreements among the partners, or between one or more partners and the partnership, concerning affairs of the partnership and responsibilities of partners, whether oral or written, and whether or not embodied in a document referred to by the partners as the partnership agreement. Thus, in determining whether distributions are required in all cases to be made in accordance with the partners' positive capital account balances (requirement (*2*) of paragraph (b)(2)(ii)(*b*) of this section), and in determining the extent to which a partner is obligated to restore a deficit balance in his capital account (requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section), all arrangements among partners, or between one or more partners and the partnership relating to the partnership, direct and indirect, including puts, options, and other buy-sell agreements, and any other "stop-loss" arrangement, are considered to be part of the partnership agreement. In addition, the partnership agreement includes provisions of Federal, State, or local law that govern the affairs of the partnership or are considered under such law to be a part of the partnership agreement (see the last sentence of paragraph (c) of

§ 1.761–1). For purposes of this paragraph (b)(2)(ii)(*h*), an agreement with a partner or a partnership shall include an agreement with a person related, within the meaning of section 267(b) (without modification by section 267(e)(1)) or section 707(b)(1), to such partner.

(*i*) *Economic effect equivalence.* Allocations made to a partner that do not otherwise have economic effect under this paragraph (b)(2)(ii) shall nevertheless have economic effect, provided that the partnership agreement ensures that a liquidation of the partnership as of the end of each partnership taxable year will produce the same economic results to the partners as would occur if requirements (*1*), (*2*), and (*3*) of paragraph (b)(2)(ii)(*b*) of this section had been satisfied. See examples (4)(ii) and (iii) of paragraph (b)(5) of this section.

(iii) *Substantiality*— (*a*) *General rules.* Except as otherwise provided in this paragraph (b)(2)(iii), the economic effect of an allocation (or allocations) is substantial if there is a reasonable possibility that the allocation (or allocations) will affect substantially the dollar amounts to be received by the partners from the partnership, independent of tax consequences. Notwithstanding the preceding sentence, the economic effect of an allocation (or allocations) is not substantial if, at the time the allocation becomes part of the partnership agreement, (*1*) the after-tax economic consequences of at least one partner may, in present value terms, be enhanced compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement, and (*2*) there is a strong likelihood that the after-tax economic consequences of no partner will, in present value terms, be substantially diminished compared to such consequences if the allocation (or allocations) were not contained in the partnership agreement. In determining the after-tax economic benefit or detriment to a partner, tax consequences that result from the interaction of the allocation with such partner's tax attributes that are unrelated to the partnership will be taken into account. See examples (5) and (9) of paragraph (b)(5) of this section. The economic effect of an allocation is not substantial in the two situtations described in paragraphs (b)(2)(iii) (*b*) and (*c*) of this section. However, even if an allocation is not described therein, its economic effect may be insubstantial under the general rules stated in this paragraph (b)(2)(iii)(*a*). References in this paragraph (b)(2)(iii) to allocations includes capital account adjustments made pursuant to paragraph (b)(2)(iv)(*k*) of this section.

(*b*) *Shifting tax consequences.* The economic effect of an allocation (or allocations) in a partnership taxable year is not substantial if, at the time the allocation (or allocations) becomes part of the partnership agreement, there is a strong likelihood that—

(*1*) The net increases and decreases that will be recorded in the partners' respective capital accounts for such taxable year will not differ substantially from the net increases and decreases that would be recorded in such partners' respective capital accounts for such year if the allocations were not contained in the partnership agreement, and

(*2*) The total tax liability of the partners (for their respective taxable years in which the allocations will be taken into account) will be less than if the allocations were not contained in the partnership agreement (taking into account tax consequences that result from the interaction of the allocation (or allocations) with partner tax attributes that are unrelated to the partnership). If, at the end of a partnership taxable year to which an allocation (or allocations) relates, the net increases and decreases that are recorded in the partners' respective capital accounts do not differ substantially from the net increases and decreases that would have been recorded in such partners' respective capital accounts had the allocation (or allocations) not been contained in the partnership agreement, and the total tax liability of the partners is (as described in (*2*) above) less than it would have been had the allocation (or allocations) not been contained in the partnership agreement, it will be presumed that, at the time the allocation (or allocations) became part of such partnership agreement, there was a strong likelihood that these results would occur. This presumption may be overcome by a showing of facts and circumstances that prove otherwise. See examples (6), (7)(ii) and (iii), and (10)(ii) of paragraph (b)(5) of this section.

(*c*) *Transitory allocations.* If a partnership agreement provides for the possibility that one or more allocations (the "original allocation(s)") will be largely offset by one or more other allocations (the "offsetting allocation(s)"), and, at the time the allocations become part of the partnership agreement, there is a strong likelihood that—

(*1*) The net increases and decreases that will be recorded in the partners' respective capital accounts for the taxable years to which the allocations relate will not differ substantially from the net increases and decreases that would be recorded in such partners' respective capital accounts for such years if the original allocation(s) and offsetting allocation(s) were not contained in the partnership agreement, and

(*2*) The total tax liability of the partners (for their respective taxable years in which the allocations will be taken into account) will be less than if the allocations were not contained in the partnership agreement (taking into account tax consequences that result from the interaction of the allocation (or allocations) with partner tax attributes that are unrelated to the partnership) the economic effect of the original allocation(s) and offsetting allocation(s) will not be substantial. If, at the end of a partnership taxable year to which an offsetting allocation(s) relates, the net increases and decreases recorded in the partners' respective capital accounts do not differ substantially from the net increases and decreases that would have been recorded in such partners' respective capital accounts had the original allocation(s) and the offsetting allocation(s) not been contained in the partnership agreement, and the total tax liability of the partners is (as described in (*2*) above) less than it would have been had such allocations not been contained in the partnership agreement, it will be presumed that, at the time the allocations became part of the partnership agreement, there was a strong likelihood that these results would occur. This presumption may be overcome by a showing of facts and circumstances that prove otherwise. See examples (1)(xi), (2), (3), (7) (i) and (iv), (8)(ii), and (17) of paragraph (b)(5) of this section. Notwithstanding the foregoing, the original allocation(s) and the offsetting allocation(s) will not be insubstantial (under this paragraph (b)(2)(iii)(*c*)) if, at the time the allocations become part of the partnership agreement, there is a strong likelihood that the offsetting allocation(s) will not, in large part, be made within five years after the original allocation(s) is made (determined on a first-in, first-out basis). See example (2) of paragraph (b)(5) of this section. For purposes of applying the provisions of this paragraph (b)(2)(iii) (and paragraphs (b)(2)(ii)(*d*)(*6*) and (b)(3)(iii) of this section), the adjusted tax basis of partnership property (or, if partnership property is properly reflected on the books of the partnership at a book value that differs from its adjusted tax basis,

the book value of such property) will be presumed to be the fair market value of such property, and adjustments to the adjusted tax basis (or book value) of such property will be presumed to be matched by corresponding changes in such property's fair market value. Thus, there cannot be a strong likelihood that the economic effect of an allocation (or allocations) will be largely offset by an allocation (or allocations) of gain or loss from the disposition of partnership property. See examples (1) (vi) and (xi) of paragraph (b)(5) of this section.

(iv) *Maintenance of capital accounts—(a) In general.* The economic effect test described in paragraph (b)(2)(ii) of this section requires an examination of the capital accounts of the partners of a partnership, as maintained under the partnership agreement. Except as otherwise provided in paragraph (b)(2)(ii)(*i*) of this section, an allocation of income, gain, loss, or deduction will not have economic effect under paragraph (b)(2)(ii) of this section, and will not be deemed to be in accordance with a partner's interest in the partnership under paragraph (b)(4) of this section, unless the capital accounts of the partners are determined and maintained throughout the full term of the partnership in accordance with the capital accounting rules of this paragraph (b)(2)(iv).

(*b*) *Basic rules.* Except as otherwise provided in this paragraph (b)(2)(iv), the partners' capital accounts will be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) if, and only if, each partner's capital account is increased by (*1*) the amount of money contributed by him to the partnership, (*2*) the fair market value of property contributed by him to the partnership (net of liabilities securing such contributed property that the partnership is considered to assume or take subject to under section 752), and (*3*) allocations to him of partnership income and gain (or items thereof), including income and gain exempt from tax and income and gain described in paragraph (b)(2)(iv)(*g*) of this section, but excluding income and gain described in paragraph (b)(4)(i) of this section; and is decreased by (*4*) the amount of money distributed to him by the partnership, (*5*) the fair market value of property distributed to him by the partnership (net of liabilities securing such distributed property that such partner is considered to assume or take subject to under section 752), (*6*) allocations to him of expenditures of the partnership described in section 705 (a)(2)(B), and (*7*) allocations of partnership loss and deduction (or item thereof), including loss and deduction described in paragraph (b)(2)(iv)(*g*) of this section, but excluding items described in (*6*) above and loss or deduction described in paragraphs (b)(4)(i) or (b)(4)(iii) of this section; and is otherwise adjusted in accordance with the additional rules set forth in this paragraph (b)(2)(iv). For purposes of this paragraph, a partner who has more than one interest in a partnership shall have a single capital account that reflects all such interests, regardless of the class of interests owned by such partner (*e.g.*, general or limited) and regardless of the time or manner in which such interests were acquired.

(*c*) *Treatment of liabilities.* For purposes of this paragraph (b)(2)(iv), (*1*) money contributed by a partner to a partnership includes the amount of any partnership liabilities that are assumed by such partner (other than liabilities described in paragraph (b)(2)(iv)(*b*)(*5*) of this section that are assumed by a distributee partner) but does not include increases in such partner's share of partnership liabilities (see section 752(a)), and (*2*) money distributed to a partner by a partnership includes the amount of such partner's individual liabilities that are assumed by the partnership (other than liabilities described in paragraph (b)(2)(iv)(*b*)(*2*) of this section that are assumed by the partnership) but does not include decreases in such partner's share of partnership liabilities (see section 752(b)). For purposes of this paragraph (b)(2)(iv)(*c*), liabilities may be considered to be assumed only to the extent the assuming party is thereby subjected to primary and personal liability with respect to such obligation, and the obligee is aware of the assumption and can directly enforce the assuming party's obligation.

(*d*) *Contributed property—(1) In general.* The basic capital accounting rules contained in paragraph (b)(2)(iv)(*b*) of this section require that a partner's capital account be increased by the fair market value of property contributed to the partnership by such partner on the date of contribution. See examples (13) (i) and (v) of paragraph (b)(5) of this section. Consistent with section 752(c), section 7701(g) does not apply in determining such fair market value.

(*2*) *Contribution of promissory notes.* Notwithstanding the general rule of paragraph (b)(2)(iv)(*b*)(*2*) of this section, except as provided in this paragraph (b)(2)(iv)(*d*)(*2*), if a promissory note is contributed to a partnership by a partner who is the maker of such note, such partner's capital account will be increased with respect to such note only when there is a taxable disposition of such note by the partnership or when the partner makes principal payments on such note. See example (1)(ix) of paragraph (b)(5) of this section. The first sentence of this paragraph (b)(2)(iv)(*d*)(*2*) shall not apply if the note referred to therein is readily tradable on an established securities market. See also paragraph (b)(2)(ii)(*c*) of this section. Furthermore, a partner whose interest is liquidated will be considered as satisfying his obligation to restore the deficit balance in his capital account to the extent of (*i*) the fair market value, at the time of contribution, of any negotiable promissory note (of which such partner is the maker) that such partner contributes to the partnership on or after the date his interest is liquidated and within the time specified in paragraph (b)(2)(ii)(*b*)(*3*) of this section, and (*ii*) the fair market value, at the time of liquidation, of the unsatisfied portion of any negotiable promissory note (of which such partner is the maker) that such partner previously contributed to the partnership. For purposes of the preceding sentence, the fair market value of a note will be no less than the outstanding principal balance of such note, provided that such note bears interest at a rate no less than the applicable federal rate at the time of valuation.

(3) *Section 704(c) considerations.* Section 704(c) governs the determination of the partner's distributive shares of income, gain, loss, and deduction, as computed for tax purposes, with respect to property contributed to a partnership (see paragraph (b)(1)(iv) of this section). In cases where section 704(c) applies to partnership property, the capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless the partnership agreement requires that the partners' capital accounts be adjusted in accordance with paragraph (b)(2)(iv)(*g*) of this section for allocation to them of depreciation, depletion, amortization, and gain and loss, as computed for book purposes, with respect to such property. See example (13)(i) of paragraph (b)(5) of this section.

(*e*) *Distributed property—(1) In general.* The basic capital accounting rules contained in paragraph (b)(2)(iv)(*b*) of this section require that a partner's capital account be decreased by the fair market value of property distributed by the partnership (without regard to section 7701(g)) to such partner (whether in connection with a

liquidation or otherwise). To satisfy this requirement, the capital accounts of the partners first must be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in such property (that has not been reflected in the capital accounts previously) would be allocated among the partners if there were a taxable disposition of such property for the fair market value of such property (taking section 7701(g) into account) on the date of distribution. See example (14)(v) of paragraph (b)(5) of this section.

(*2*) *Distribution of promissory notes.* Notwithstanding the general rule of paragraph (b)(2)(iv)(*b*)(*5*), except as provided in this paragraph (b)(2)(iv)(*e*)(*2*), if a promissory note is distributed to a partner by a partnership that is the maker of such note, such partner's capital account will be decreased with respect to such note only when there is a taxable disposition of such note by the partner or when the partnership makes principal payments on the note. The previous sentence shall not apply if a note distributed to a partner by a partnership who is the maker of such note is readily tradable on an established securities market. Furthermore, the capital account of a partner whose interest in a partnership is liquidated will be reduced to the extent of (*i*) the fair market value, at the time of distribution, of any negotiable promissory note (of which such partnership is the maker) that such partnership distributes to the partner on or after the date such partner's interest is liquidated and within the time specified in paragraph (b)(2)(ii)(*b*)(*2*) of this section, and (*ii*) the fair market value, at the time of liquidation, of the unsatisfied portion of any negotiable promissory note (of which such partnership is the maker) that such partnership previously distributed to the partner. For purposes of the preceding sentence, the fair market value of a note will be no less than the outstanding principal balance of such note, provided that such note bears interest at a rate no less than the applicable federal rate at time of valuation.

(*f*) *Revaluations of property.* A partnership agreement may, upon the occurrence of certain events, increase or decrease the capital accounts of the partners to reflect a revaluation of partnership property on the partnership's books. Capital accounts so adjusted will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless—

(*1*) The adjustments are based on the fair market value of partnership property (taking section 701(g) into account) on the date of adjustment, and

(*2*) The adjustments reflect the manner is which the unrealized income, gain, loss, or deduction inherent in such property (that has not been reflected in the capital accounts previously) would be allocated among the partners if there were a taxable disposition of such property for such fair market value on that date, and

(*3*) The partnership agreement requires that the partners' capital accounts be adjusted in accordance with paragraph (b)(2)(iv)(*g*) of this section for allocations to them of depreciation, depletion, amortization, and gain or loss, as computed for book purposes, with respect to such property, and

(*4*) The partnership agreement requires that the partners' distributive shares of depreciation, depletion, amortization, and gain or loss, as computed for tax purposes, with respect to such property be determined so as to take account of the variation between the adjusted tax basis and book value of such property in the same manner as under section 704(c) (see paragraph (b)(4)(i) of this section), and

(*5*) The adjustments are made principally for a substantial non-tax business purpose—

(*i*) In connection with a contribution of money or other property (other than a *de minimis* amount) to the partnership by a new or existing partner as consideration for an interest in the partnership, or

(*ii*) In connection with a distribution of money or other property (other than a *de minimis* amount) by the partnership to a retiring or continuing partner as consideration for an interest in the partnership, or

(*iii*) Under generally accepted industry accounting practices, provided substantially all of the partnership's property (excluding money) consists of stock, securities, commodities, options, warrants, futures, or similar instruments that are readily tradable on an established securities market.

See example (14) and (18) of paragraph (b)(5) of this section. If the capital accounts of the partners are not adjusted to reflect the fair market value of partnership property when an interest in the partnership is acquired from or relinquished to the partnership, paragraphs (b)(1)(iii) and (b)(1)(iv) of this section should be consulted regarding the potential tax consequences that may arise if the principles of section 704(c) are not applied to determine the partners' distributive shares of depreciation, depletion, amortization, and gain or loss as computed for tax purposes, with respect to such property.

(*g*) *Adjustments to reflect book value—*(*1*) *In general.* Under paragraphs (b)(2)(iv)(*d*) and (b)(2)(iv)(*f*) of this section, property may be properly reflected on the books of the partnership at a book value that differs from the adjusted tax basis of such property. In these circumstances, paragraphs (b)(2)(iv)(*d*)(*3*) and (b)(2)(iv)(*f*)(*3*) of this section provide that the capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless the partnership agreement requires the partners' capital accounts to be adjusted in accordance with this paragraph (b)(2)(iv)(*g*) for allocations to them of depreciation, depletion, amortization, and gain or loss, as computed for book purposes, with respect to such property. In determining whether the economic effect of an allocation of book items is substantial, consideration will be given to the effect of such allocation on the determination of the partners' distributive shares of corresponding tax items under section 704(c) and paragraph (b)(4)(i) of this section. See example (17) of paragraph (b)(5) of this section. If an allocation of book items under the partnership agreement does not have substantial economic effect (as determined under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section), or is not otherwise respected under this paragraph, such items will be reallocated in accordance with the partners' interests in the partnership, and such reallocation will be the basis upon which the partners' distributive shares of the corresponding tax items are determined under section 704(c) and paragraph (b)(4)(i) of this section. See examples (13), (14), and (18) of paragraph (b)(5) of this section.

(*2*) *Payables and receivables.* References in this paragraph (b)(2)(iv) and paragraph (b)(4)(i) of this section to book and tax depreciation, depletion, amortization, and gain or loss with respect to property that has an adjusted tax basis that differs from book value include, under analogous rules and principles, the unrealized income or deduction with respect to accounts receivable, accounts payable, and other accrued but unpaid items.

(*3*) *Determining amount of book items.* The partners' capital accounts will not be considered adjusted in accordance with this paragraph (b)(2)(iv)(*g*) unless book depreciation, depletion, and amortization with respect to partnership property are computed in accordance with a reasonable method selected by

the partnership, and under such method (*i*) if the book value of partnership property exceeds the adjusted tax basis thereof, the depreciation, depletion, or amortization, as computed for book purposes, will be no less than the depreciation, depletion, or amortization, as computed for tax purposes, and (*ii*) if the adjusted tax basis of partnership property exceeds the book value thereof, the depreciation, depletion, or amortization, as computed for book purposes, will be no greater than the depreciation, depletion, or amortization, as computed for tax purposes, and (iii) if the book value of partnership property equals the adjusted tax basis thereof, the depreciation, depletion, or amortization, as computed for book purposes, will equal the depreciation, depletion, or amortization, as computed for tax purposes.

(*h*) *Determinations of fair market value.* For purposes of this paragraph (b)(2)(iv), the fair market value assigned to property contributed to a partnership, property distributed by a partnership, or property otherwise revalued by a partnership, will be regarded as correct, provided that (*1*) such value is reasonably agreed to among the partners in arm's-length negotiations, and (*2*) the partners have sufficiently adverse interests. If, however, these conditions are not satisfied and the value assigned to such property is overstated or understated (by more than an insignificant amount), the capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv). Valuation of property contributed to the partnership, distributed by the partnership, or otherwise revalued by the partnership shall be on a property-by-property basis, except to the extent the regulations under section 704(c) permit otherwise.

(*i*) *Section 705(a)(2)(B) expenditures—(1) In general.* The basic capital accounting rules contained in paragraph (b)(2)(iv)(*b*) of this section require that a partner's capital account be decreased by allocations made to such partner of expenditures described in section 705(a)(2)(B). See example (11) of paragraph (b)(5) of this section. If an allocation of these expenditures under the partnership agreement does not have substantial economic effect (as determined under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section), or is not otherwise respected under this paragraph, such expenditures will be reallocated in accordance with the partners' interest in the partnership.

(*2*) *Expenses described in section 709.* Except for amounts with respect to which an election is properly made under section 709(b), amounts paid or incurred to organize a partnership or to promote the sale of (or to sell) an interest in such a partnership shall, solely for purposes of this paragraph, be treated as section 705(a)(2)(B) expenditures, and upon liquidation of the partnership no further capital account adjustments will be made in respect thereof.

(*3*) *Disallowed losses.* If a deduction for a loss incurred in connection with the sale or exchange of partnership property is disallowed to the partnership under section 267(a)(1) or section 707(b), that deduction shall, solely for purposes of this paragraph, be treated as a section 705(a)(2)(B) expenditure.

(j) *Basis adjustments to section 38 property.* The capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless such capital accounts are adjusted by the partners' shares of any upward or downward basis adjustments allocated to them under this paragraph (b)(2)(iv)(*j*). When there is a reduction in the adjusted tax basis of partnership section 38 property under section 48(q)(1) or section 48(g)(3), section 48(g)(6) provides for an equivalent downward adjustment to the aggregate basis of partnership interests (and no additional adjustment is made under section 705(a)(2)(B)). These downward basis adjustments shall be shared among the partners in the same proportion as the adjusted tax basis or cost of (or the qualified investment in) such section 38 property is allocated among the partners under paragraph (f) of § 1.46–3 (or paragraph (a)(4)(iv) of § 1.48–8). See example (2)(iii) of paragraph (b)(5) of this section. Conversely, when there is an increase in the adjusted tax basis of partnership section 38 property under section 48(q)(2), section 48(q)(6) provides for an equivalent upward adjustment to the aggregate basis of partnership interests. These upward adjustments shall be allocated among the partners in the same proportion as the investment tax credit from such property is recaptured by the partners under § 1.47–6.

(*k*) *Depletion of oil and gas properties*—(1) *In general.* The capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless such capital accounts are adjusted for depletion and gain or loss with respect to the oil or gas properties of the partnership in accordance with this paragraph (b)(2)(iv)(*k*).

(*2*) *Simulated depletion.* Except as provided in paragraph (b)(2)(iv)(*k*) (*3*) of this section, a partnership shall, solely for purposes of maintaining capital accounts under this paragraph, compute simulated depletion allowances with respect to its oil and gas properties at the partnership level. These allowances shall be computed on each depletable oil or gas property of the partnership by using either the cost depletion method or the percentage depletion method (computed in accordance with section 613 at the rates specified in section 613A(c)(5) without regard to the limitations of section 613A, which theoretically could apply to any partner) for each partnership taxable year that the property is owned by the partnership and subject to depletion. The choice between the simulated cost depletion method and the simulated percentage depletion method shall be made on a property-by-property basis in the first partnership taxable year beginning after April 30, 1986, for which it is relevent for the property, and shall be binding for all partnership taxable years during which the oil or gas property is held by the partnership. The partnership shall make downward adjustments to the capital accounts of the partners for the simulated depletion allowance with respect to each oil or gas property of the partnership, in the same proportion as such partners (or their precedecessors in interest) were properly allocated the adjusted tax basis of each such property. The aggregate capital account adjustments for simulated percentage depletion allowances with respect to an oil or gas property of the partnership shall not exceed the aggregate adjusted tax basis allocated to the partners with respect to such property. Upon the taxable disposition of an oil or gas property by a partnership, such partnership's simulated gain or loss shall be determined by subtracting its simulated adjusted basis in such property from the amount realized upon such disposition. (The partnership's simulated adjusted basis in an oil or gas property is determined in the same manner as adjusted tax basis except that simulated depletion allowances are taken into account instead of actual depletion allowances.) The capital accounts of the partners shall be adjusted upward by the amount of any simulated gain in proportion to such partners' allocable shares of the portion of the total amount realized from the disposition of such property that exceeds the partnership's simulated adjusted basis in such property. The capital accounts of such partners shall be adjusted downward by

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the amount of any simulated loss in proportion to such partners' allocable shares of the total amount realized from the disposition of such property that represents recovery of the partnership's simulated adjusted basis in such property. See section 613A(c)(7)(D) and the regulations thereunder and paragraph (b)(4)(v) of this section. See example (19)(iv) of paragraph (b)(5) of this section.

(3) *Actual depletion.* Pursuant to section 613A(c)(7)(D) and the regulations thereunder, the depletion allowance under section 611 with respect to the oil and gas properties of a partnership is computed separately by the partners. Accordingly, in lieu of adjusting the partner's capital accounts as provided in paragraph (b)(2)(iv)(*k*)(*2*) of this section, the partnership may make downward adjustments to the capital account of each partner equal to such partner's depletion allowance with respect to each oil or gas property of the partnership (for the partner's taxable year that ends with or within the partnership's taxable year). The aggregate adjustments to the capital account of a partner for depletion allowances with respect to an oil or gas property of the partnership shall not exceed the adjusted tax basis allocated to such partner with respect to such property. Upon the taxable disposition of an oil or gas property by a partnership, the capital account of each partner shall be adjusted upward by the amount of any excess of such partner's allocable share of the total amount realized from the disposition of such property over such partner's remaining adjusted tax basis in such property. If there is no such excess, the capital account of such partner shall be adjusted downward by the amount of any excess of such partner's remaining adjusted tax basis in such property over such partner's allocable share of the total amount realized from the disposition thereof. See section 613A(c)(7)(4)(D) and the regulations thereunder and paragraph (b)(4)(v) of this section.

(4) *Effect of book values.* If an oil or gas property of the partnership is, under paragraphs (b)(2)(iv(*d*) or (b)(2)(iv)(*f*) of this section, properly reflected on the books of the partnership at a book value that differs from the adjusted tax basis of such property, the rules contained in this paragraph (b)(2)(iv)(*k*) and paragraph (b)(4)(v) of this section shall be applied with reference to such book value. A revaluation of a partnership oil or gas property under paragraph (b)(2)(iv)(*f*) of this section may give rise to a reallocation of the adjusted tax basis of such property, or a change in the partners' relative shares of simulated depletion from such property, only to the extent permitted by section 613A(c)(7)(D) and the regulations thereunder.

(*l*) *Transfers of partnership interests.* The capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless, upon the transfer of all or a part of an interest in the partnership, the capital account of the transferor that is attributable to the transferred interest carries over to the transferee partner. (See paragraph (b)(2)(iv)(*m*) of this section for rules concerning the effect of a section 754 election on the capital accounts of the partners.) However, if the transfer of an interest in a partnership causes a termination of the partnership under section 708(b)(1)(B), the capital account that carriers over to the transferee partner will be adjusted in accordance with paragraph (b)(2)(iv)(*e*) of this section in connection with the constructive liquidation of the partnership under paragraph (b)(1)(iv) of § 1.708–1. Moreover, the constructive reformation of such partnership will, for purposes of this paragraph, be treated as the formation of a new partnership, and the capital accounts of the partners of such new partnership will be determined and maintained accordingly. See example (13) of paragraph (b)(5) of this section.

(*m*) *Section 754 elections*—(*1*) *In general.* The capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless, upon adjustment to the adjusted tax basis of partnership property under section 732, 734, or 743, the capital accounts of the partners are adjusted as provided in this paragraph (b)(2)(iv)(*m*).

(*2*) *Section 743 adjustments.* In the case of a transfer of all or a part of an interest in a partnership that has a section 754 election in effect for the partnership taxable year in which such transfer occurs, adjustments to the adjusted tax basis of partnership property under section 743 shall not be reflected in the capital account of the transferee partner or on the books of the partnership, and subsequent capital account adjustments for distributions (see paragraph (b)(2)(iv)(*e*)(1) of this section) and for depreciation, depletion, amortization, and gain or loss with respect to such property will disregard the effect of such basis adjustment. The preceding sentence shall not apply to the extent such basis adjustment is allocated to the common basis of partnership property under paragraph (b)(1) of § 1.734–2; in these cases, such basis adjustment shall, except as provided in paragraph (b)(2)(iv)(*m*)(*5*) of this section, give rise to adjustments to the capital accounts of the partners in accordance with their interests in the partnership under paragraph (b)(3) of this section. See examples (13) (iii) and (iv) of paragraph (b)(5) of this section.

(*3*) *Section 732 adjustments.* In the case of a transfer of all or a part of an interest in a partnership that does not have a section 745 election in effect for the partnership taxable year in which such transfer occurs, adjustments to the adjusted tax basis of partnership property under section 732(d) will be treated in the capital accounts of the partners in the same manner as section 743 basis adjustments are treated under paragraph (b)(2)(iv)(*m*)(*2*) of this section.

(*4*) *Section 734 adjustments.* Except as provided in paragraph (b)(2)(iv)(*m*)(*5*) of this section, in the case of a distribution of property by a partnership that has a section 754 election in effect for the partnership taxable year in which the distribution occurs, the partner who receives a distribution that gives rise to the adjustment to the adjusted tax basis of partnership property under section 734 shall have a corresponding adjustment made to his capital account.

(*5*) *Limitations on adjustments.* Adjustments may be made to the capital account of a partner (or his successor in interest) in respect of basis adjustments to partnership property under sections 732, 734, and 743 only to the extent that such basis adjustments (i) are permitted to be made to one or more items of partnership property under section 755, and (ii) result in an increase or a decrease in the amount at which such property is carried on the partnership's balance sheet, as computed for book purposes. For example, if the book value of partnership property exceeds the adjusted tax basis of such property, a basis adjustment to such property may be reflected in a partner's capital account only to the extent such adjustment exceeds the difference between the book value of such property and the adjusted tax basis of such property prior to such adjustment.

(*n*) *Partnership level characterization.* Except as otherwise provided in paragraph (b)(2)(iv)(k) of this section, the capital accounts of the partners will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless adjustments to such capital accounts in respect of partnership income, gain, loss, deduction, and section 705(a)(2)(B)

expenditures (or item thereof) are made with reference to the Federal tax treatment of such items (and in the case of book items, with reference to the Federal tax treatment of the corresponding tax items) at the partnership level, without regard to any requisite or elective tax treatment of such items at the partner level (for example, under section 58(i)). However, a partnership that incurs mining exploration expenditures will determine the Federal tax treatment of income, gain, loss, and deduction with respect to the property to which such expenditures relate at the partnership level only after first taking into account the elections made by its partners under section 617 and section 703(b)(4).

(*o*) *Guaranteed payments.* Guaranteed payments to a partner under section 707(c) cause the capital account of the recipient partner to be adjusted only to the extent of such partner's distributive share of any partnership deduction, loss, or other downward capital account adjustment resulting from such payment.

(*p*) *Minor discrepancies.* Discrepancies between the balances in the respective capital accounts of the partners and the balances that would be in such respective capital accounts if they had been determined and maintained in accordance with this paragraph (b)(2)(iv) will not adversely affect the validity of an allocation, provided that such discrepancies are minor and are attributable to good faith error by the partnership.

(*q*) *Adjustments where guidance is lacking.* If the rules of this paragraph (b)(2)(iv) fail to provide guidance on how adjustments to the capital accounts of the partners should be made to reflect particular adjustments to partnership capital on the books of the partnership, such capital accounts will not be considered to be determined and maintained in accordance with those rules unless such capital account adjustments are made in a manner that (*1*) maintains equality between the aggregate governing capital accounts of the partners and the amount of partnership capital reflected on the partnership's balance sheet, as computed for book purposes, (*2*) is consistent with the underlying economic arrangement of the partners, and (*3*) is based, wherever practicable, on Federal tax accounting principles.

(*r*) *Restatement of Capital Accounts.* With respect to partnerships that began operating in a taxable year beginning before May 1, 1986, the capital accounts of the partners of which have not been determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) since inception, such capital accounts shall not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) for taxable years beginning after April 30, 1986, unless (*1*) such capital accounts are adjusted, effective for the first partnership taxable year beginning after April 30, 1986, to reflect the fair market value of partnership property as of the first day of such taxable year, and (*2*) in connection with such adjustment, the rules contained in paragraph (b)(2)(iv)(*f*)(*2*), (*3*), and (*4*) of this section are satisfied. However, compliance with the previous sentence will have no bearing on the validity of allocations that relate to partnership taxable years beginning before May 1, 1986.

(3) *Partner's interest in the partnership*—(i) *In general.* References in section 704(b) and this paragraph to a partner's interest in the partnership, or to the partner's interests in the partnership, signify the manner in which the partners have agreed to share the economic benefit or burden with respect to the income, gain, loss, deduction, or credit (or item thereof) that is allocated. This sharing arrangement may or may not correspond to the overall economic arrangement of the partners. Thus, a partner who has a 50 percent overall interest in the partnership may have a 90 percent interest in a particular item of income or deduction. The determination of a partner's interest in a partnership shall be made by taking into account all facts and circumstances relating to the economic arrangement of the partners. All partners' interests in the partnership are presumed to be equal (determined on a per capita basis). However, this presumption may be rebutted by the taxpayer or the Internal Revenue Service by establishing facts and circumstances that show that the partners' interests in the partnership are otherwise.

(ii) *Factors considered.* In determining a partner's interest in the partnership, the following factors are among those that will be considered:

(*a*) The partners' relative contributions to the partnership,

(*b*) The interests of the partners in economic profits and losses (if different than that in taxable income or loss),

(*c*) The interests of the partners in cash flow and other non-liquidating distributions, and

(*d*) The rights of the partners to distributions of capital upon liquidation.

The provisions of this subparagraph (b)(3) are illustrated by examples (1)(i) and (ii), (4)(i), (5)(i) and (ii), (6), (7)(i), (ii), and (iv), (8), (10)(ii), 16(i), and (19)(iii) of paragraph (b)(5) of this section. See paragraph (b)(4)(i) of this section concerning rules for determining the partners' interests in the partnership with respect to certain tax items.

(*iii*) *Certain determinations.* If—

(*a*) Requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied, and

(*b*) All or a portion of an allocation of income, gain, loss, or deduction made to a partner for a partnership taxable year does not have economic effect under paragraph (b)(2)(ii) of this section.

the partners' interests in the partnership with respect to the portion of the allocation that lacks economic effect will be determined by comparing the manner in which distributions (and contributions) would be made if all partnership property were sold at book value and the partnership were liquidated immediately following the end of the taxable year to which the allocation relates with the manner in which distributions (and contributions) would be made if all partnership property were sold at book value and the partnership were liquidated immediately following the end of the prior taxable year, and adjusting the result for the items described in (*4*), (*5*), and (*6*) of paragraph (b)(2)(ii)(*d*) of this section. A determination made under this paragraph (b)(3)(iii) will have no force if the economic effect of valid allocations made in the same manner is insubstantial under paragraph (b)(2)(iii) of this section. See examples (1) (iv), (v), and (vi), and (15) (ii) and (iii) of paragraph (b)(5) of this section.

(4) *Special rules*—(i) *Allocations to reflect revaluations.* If partnership property is, under paragraphs (b)(2)(iv)(*d*) or (b)(2)(iv)(*f*) of this section, properly reflected in the capital accounts of the partners and on the books of the partnership at a book value that differs from the adjusted tax basis of such property, then depreciation, depletion, amortization, and gain or loss, as computed for book purposes, with respect to such property will be greater or less than the depreciation, depletion, amortization, and gain or loss, as computed for tax purposes, with respect to such property. In these cases the capital accounts of the partners are required to be adjusted solely for allocations of the book items to such partners (see paragraph (b)(2)(iv)(*g*) of this section), and the partners' shares of the corresponding tax items are not independently reflected by further adjustments to the partners' capital accounts. Thus, separate allocations of these tax items cannot have economic effect under paragraph (b)(2)(ii)(*b*)(*1*) of this section, and the partners' distributive shares of such tax items

must (unless governed by section 704(c)) be made in accordance with the partners' interests in the partnership. These tax items must be shared among the partners in a manner that takes account of the variation between the adjusted tax basis of such property and its book value in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the partnership are taken into account in determining the partners' shares of tax items under section 704(c). See examples (14) and (18) of paragraph (b)(5) of this section.

(ii) *Credits.* Allocations of tax credits and tax credit recapture are not reflected by adjustments to the partners' capital accounts (except to the extent that adjustments to the adjusted tax basis of partnership section 38 property in respect of tax credits and tax credit recapture give rise to capital account adjustments under paragraph (b)(2)(iv)(*j*) of this section). Thus, such allocations cannot have economic effect under paragraph (b)(2)(ii)(*b*)(*1*) of this section, and the tax credits and tax credit recapture must be allocated in accordance with the partners' interests in the partnership as of the time the tax credit or credit recapture arises. With respect to the investment tax credit provided by section 38, allocations of cost or qualified investment made in accordance with paragraph (f) of § 1.46–3 and paragraph (a)(4)(iv) of § 1.48–8 shall be deemed to be made in accordance with the partners' interests in the partnership. With respect to other tax credits, if a partnership expenditure (whether or not deductible) that gives rise to a tax credit in a partnership taxable year also gives rise to valid allocations of partnership loss or deduction (or other downward capital account adjustments) for such year, then the partners' interests in the partnership with respect to such credit (or the cost giving rise thereto) shall be in the same proportion as such partners' respective distributive shares of such loss or deduction (and adjustments). See example (11) of paragraph (b)(5) of this section. Identical principles shall apply in determining the partners' interests in the partnership with respect to tax credits that arise from receipts of the partnership (whether or not taxable).

(iii) *Excess percentage depletion.* To the extent the percentage depletion in respect of an item of depletable property of the partnership exceeds the adjusted tax basis of such property, allocations of such excess percentage depletion are not reflected by adjustments to the partners' capital accounts. Thus, such allocations cannot have economic effect under paragraph (b)(2)(ii)(*b*)(*1*) of this section, and such excess percentage depletion must be allocated in accordance with the partners' interests in the partnership. The partners' interests in the partnership for a partnership taxable year with respect to such excess percentage depletion shall be in the same proportion as such partners' respective distributive shares of gross income from the depletable property (as determined under section 613(c)) for such year. See example (12) of paragraph (b)(5) of this section. See paragraphs (b)(2)(iv)(*k*) and (b)(4)(v) of this section for special rules concerning oil and gas properties of the partnership.

(iv) *Nonrecourse debt.* [Reserved.]

(v) *Allocations under section 613A(c)(7)(D).* Allocations of the adjusted tax basis of a partnership oil or gas property are controlled by section 613A(c)(7)(D) and the regulations thereunder. However, if the partnership agreement provides for an allocation of the adjusted tax basis of an oil or gas property among the partners, and such allocation is not otherwise governed under section 704(c) (or related principles under paragraph (b)(4)(i) of this section), that allocation will be recognized as being in accordance with the partners' interests in partnership capital under section 613A(c)(7)(D), provided (*a*) such allocation does not give rise to capital account adjustments under paragraph (b)(2)(iv)(*k*) of this section the economic effect of which are insubstantial (as determined under paragraph (b)(2)(iii) of this section), and (*b*) all other allocations and capital account adjustments under the partnership agreement are recognized under this paragraph. Otherwise, such adjusted tax basis must be allocated among the partners pursuant to section 613A(c)(7)(D) in accordance with the partners' actual interests in partnership capital or income. For purposes of section 613A(c)(7)(D) the partners' allocable shares of the amount realized upon the partnership's taxable disposition of an oil or gas property will, except to the extent governed by section 704(c) (or related principles under paragraph (b)(4)(i) of this section), be determined under this paragraph (b)(4)(v). If, pursuant to paragraph (b)(2)(iv)(*k*)(*2*) of this section, the partners' capital accounts are adjusted to reflect the simulated depletion of an oil or gas property of the partnership, the portion of the total amount realized by the partnership upon the taxable disposition of such property that represents recovery of its simulated adjusted tax basis therein will be allocated to the partners in the same proportion as the aggregate adjusted tax basis of such property was allocated to such partners (or their predecessors in interest). If, pursuant to paragraph (b)(2)(iv)(*k*)(*3*) of this section, the partners' capital accounts are adjusted to reflect the actual depletion of an oil or gas property of the partnership, the portion of the total amount realized by the partnership upon the taxable disposition of such property that equals the partners' aggregate remaining adjusted basis therein will be allocated to the partners in proportion to their respective remaining adjusted tax bases in such property. An allocation provided by the partnership agreement of the portion of the total amount realized by the partnership on its taxable disposition of an oil or gas property that exceeds the portion of the total amount realized allocated under either of the previous two sentences (whichever is applicable) shall be deemed to be made in accordance with the partners' allocable shares of such amount realized, provided (*c*) such allocation does not give rise to capital account adjustments under paragraph (b)(2)(iv)(*k*) of this section the economic effect of which is insubstantial (as determined under paragraph (b)(2)(ii) of this section), and (*d*) all other allocations and capital account adjustments under the partnership agreement are recognized under this paragraph. Otherwise, the partners' allocable shares of the total amount realized by the partnership on its taxable disposition of an oil or gas property shall be determined in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section. See example (19) of paragraph (b)(5) of this section. (See paragraph (b)(2)(iv)(*k*) of this section for the determination of appropriate adjustments to the partners' capital accounts relating to section 613A(c)(7)(D).)

(vi) *Amendments to partnership agreement.* If an allocation has substantial economic effect under paragraph (b)(2) of this section or is deemed to be made in accordance with the partners' interests in the partnership under paragraph (b)(4) of this section under the partnership agreement that is effective for the taxable year to which such allocation relates, and such partnership agreement thereafter is modified, both the tax consequences of the modification and the facts and circumstances surrounding the modification will be closely scrutinized to determine whether the purported modification was part of the original agreement. If it is determined that the

purported modification was part of the original agreement, prior allocations may be reallocated in a manner consistent with the modified terms of the agreement, and subsequent allocations may be reallocated to take account of such modified terms. For example, if a partner is obligated by the partnership agreement to restore the deficit balance in his capital account (or any limited dollar amount thereof) in accordance with requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section and, thereafter, such obligation is eliminated or reduced (other than as provided in paragraph (b)(2)(ii)(*f*) of this section), or is not complied with in a timely manner, such elimination, reduction, or noncompliance may be treated as if it always were part of the partnership agreement for purposes of making any reallocations and determining the appropriate limitations period.

(vii) *Recapture.* For special rules applicable to the allocation of recapture income or credit, see paragraph (e) of § 1.1245–1, paragraph (f) of § 1.1250–1, paragraph (c) of § 1.1254–1, and paragraph (a) of § 1.47–6.

(5) *Examples.* The operation of the rules in this paragraph is illustrated by the following examples:

Example (1). (i) A and B form a general partnership with cash contributions of $40,000 each, which cash is used to purchase depreciable personal property at a cost of $80,000. The partnership elects under section 48(q)(4) to reduce the amount of investment tax credit in lieu of adjusting the tax basis of such property. The partnership agreement provides that A and B will have equal shares of taxable income and loss (computed without regard to cost recovery deductions) and cash flow and that all cost recovery deductions on the property will be allocated to A. The agreement further provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of the section, but that upon liquidation of the partnership, distributions will be made equally between the partners (regardless of capital account balances) and no partner will be required to restore the deficit balance in his capital account for distribution to partners with positive capital accounts balances. In the partnership's first taxable year, it recognizes operating income equal to its operating expenses and has an additional $20,000 cost recovery deduction, which is allocated entirely to A. That A and B will be entitled to equal distributions on liquidation, even through A is allocated the entire $20,000 cost recovery deduction, indicates A will not bear the full risk of the economic loss corresponding to such deduction if such loss occurs. Under paragraph (b)(2)(ii) of this section, the allocation lacks economic effect and will be disregarded. The partners made equal contributions to the partnership, share equally in other taxable income and loss and in cash flow, and will share equally in liquidation proceeds, indicating that their actual economic arrangement is to bear the risk imposed by the potential decrease in the value of the property equally. Thus, under paragraph (b)(3) of this section the partners' interests in the partnership are equal, and the cost recovery deduction will be reallocated equally between A and B.

(ii) Assume the same facts as in (i) except that the partnership agreement provides that liquidation proceeds will be distributed in accordance with capital account balances if the partnership is liquidated during the first five years of its existence but that liquidation proceeds will be distributed equally if the partnership is liquidated thereafter. Since the partnership agreement does not provide for the requirement contained in paragraph (b)(2)(ii)(*b*)(*2*) of this section to be satisified throughout the term of the partnership, the partnership allocations do not have economic effect. Even if the partnership agreement provided for the requirement contained in paragraph (b)(2)(ii)(*b*)(*2*) to be satisified throughout the term of the partnership, such allocations would not have economic effect unless the requirement contained in paragraph (b)(2)(ii)(*b*)(*3*) of this section or the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section were satisfied.

(iii) Assume the same facts as in (i) except that distributions in liquidation of the partnership (or any partner's interest) are to be made in accordance with the partners' positive capital account balances throughout the term of the partnership (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section). Assume further that the partnership agreement contains a qualified income offset (as defined in paragraph (b)(2)(ii)(*d*) of this section) and that, as of the end of each partnership taxable year, the items described in paragraphs (b)(2)(ii)(*d*)(*4*), (*5*), and (*6*) of this section are not reasonably expected to cause or increase a deficit balance in A's capital account.

	A	B
Capital account upon formation	$40,000	$40,000
Less: year 1 cost recovery deduction	(20,000)	0
Capital account at end of year 1	$20,000	$40,000

Under the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section, the allocation of the $20,000 cost recovery deduction to A has economic effect.

(iv) Assume the same facts as in (iii) and that in the partnership's second taxable year it recognizes operating income equal to its operating expenses and has a $25,000 cost recovery deduction which, under the partnership agreement, is allocated entirely to A.

	A	B
Capital account at beginning of year 2	$20,000	$40,000
Less: year 2 cost recovery deduction	(25,000)	0
Capital account at end of year 2	[illegible]	[illegible]

The allocation of the $25,000 cost recovery deduction to A satisfies that alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section only to the extent of $20,000. Therefore, only $20,000 of such allocation has economic effect, and the remaining $5,000 must be reallocated in accordance with the partners' interests in the partnership. Under the partnership agreement, if the property were sold immediately following the end of the partnership's second taxable year for $35,000 (its adjusted tax basis), the $35,000 would be distributed to B. Thus, B, and not A, bears the economic burden corresponding to $5,000 of the $25,000 cost recovery deduction allocated to A. Under paragraph (b)(3)(iii) of this section, $5,000 of such cost recovery deduction will be reallocated to B.

(v) Assume the same facts as in (iv) except that the cost recovery deduction for the partnership's second taxable year is $20,000 instead of $25,000. The allocation of such cost recovery deduction to A has economic effect under the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section. Assume further that the property is sold for $35,000 immediately following the end of the partnership's second taxable year, resulting in a $5,000 taxable loss ($40,000 adjusted tax basis less $35,000 sales price), and the partnership is liquidated.

	A	B
Capital account at beginning of year 2	[illegible]	[illegible]
Less: year 2 cost recovery deduction	[illegible]	0
Capital account at end of year 2	0	[illegible]
Less: loss on sale	(2,500)	[illegible]
Capital account before liquidation	[illegible]	[illegible]

Under the partnership agreement the $35,000 sales proceeds are distributed to B. Since B bears the entire economic burden corresponding to the $5,000 taxable loss from the sale of the property, the allocation of $2,500 of such loss to A does not have economic effect and must be reallocated in accordance with the partners' interests in the partnership. Under paragraph (b)(3)(iii) of this section, such $2,500 loss will be reallocated to B.

(vi) Assume the same facts as in (iv) except that the cost recovery deduction for the partnership's second taxable year is $20,000 instead of $25,000, and that as of the end of the partnership's second taxable year it is reasonably expected that during its third taxable year the partnership will (1) have operating income equal to its operating expenses (but will have no cost recovery deductions), (2) borrow $10,000 (recourse) and distribute such amount $5,000 to A and $5,000 to B, and (3) thereafter sell the partnership property, repay the $10,000 liability, and liquidate. In determining the extent to which the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section is satisfied as of the end of the partnership's second taxable year, the fair market value of partnership property is presumed to be equal to its adjusted tax basis (in accordance with paragraph (b)(2)(iii)(*c*) of

this section). Thus, it is presumed that the selling price of such property during the partnership's third taxable year will be its $40,000 adjusted tax basis. Accordingly, there can be no reasonable expectation that there will be increases to A's capital account in the partnership's third taxable year that will offset the expected $5,000 distribution to A. Therefore, the distribution of the loan proceeds must be taken into account in determining to what extent the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) is satisfied.

	A	B
Capital account at beginning of year 2	[illegible]	[illegible]
Less: expected future distribution	(5,000)	(5,000)
Less: year 2 cost recovery deduction	[illegible]	(0)
Hypothetical capital account at end of year 2	[illegible]	[illegible]

Upon sale of the partnership property, the $40,000 presumed sales proceeds would be used to repay the $10,000 liability, and the remaining $30,000 would be distributed to B. Under these circumstances the allocation of the $20,000 cost recovery deduction to A in the partnership's second taxable year satisfies the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section only to the extent of $15,000. Under paragraph (b)(3)(iii) of this section, the remaining $5,000 of such deduction will be reallocated to B. The results in this example would be the same even if the partnership agreement also provided that any gain (whether ordinary income or capital gain) upon the sale of the property would be allocated to A to the extent of the prior allocations of cost recovery deductions to him, and, at end of the partnership's second taxable year, the partners were confident that the gain on the sale of the property in the partnership's third taxable year would be sufficient to offset the expected $5,000 distribution to A.

(vii) Assume the same facts as in (iv) except that the partnership agreement also provides that any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraph (b)(2)(ii)(*b*)(*3*) of this section). Thus, if the property were sold for $35,000 immediately after the end of the partnership's second taxable year, the $35,000 would be distributed to B, A would contribute $5,000 (the deficit balance in his capital account) to the partnership, and that $5,000 would be distributed to B. The allocation of the entire $25,000 cost recovery deduction to A in the partnership's second taxable year has economic effect.

(viii) Assume the same facts as in (vii) except that A's obligation to restore the deficit balance in his capital account is limited to a maximum of $5,000. The allocation of the $25,000 cost recovery deduction to A in the partnership's second taxable year has economic effect under the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section. At the end of such year, A makes an additional $5,000 contribution to the partnership (thereby eliminating the $5,000 deficit balance in his capital account). Under paragraph (b)(2)(ii)(*f*) of this section, A's obligation to restore up to $5,000 of the deficit balance in his capital account may be eliminated after he contributes the additional $5,000 without affecting the validity of prior allocations.

(ix) Assume the same facts as in (iv) except that upon formation of the partnership A also contributes to the partnership his promissory note with a $5,000 principal balance. The note unconditionally obligates A to pay an additional $5,000 to the partnership at the earlier of (a) the beginning of the partnership's fourth taxable year, or (b) the end of the partnership taxable year in which A's interest is liquidated. Under paragraph (b)(2)(ii)(*c*) of this section, A is considered obligated to restore up to $5,000 of the deficit balance in his capital account to the partnership. Accordingly, under the alternate economic effect test contained in partnership (b)(2)(ii)(*d*) of this section, the allocation of the $25,000 cost recovery deduction to A in the partnership's second taxable year has economic effect. The results in this example would be the same if (1) the note A contributed to the partnership were payable only at the end of the partnership's fourth taxable year (so that A would not be required to satisfy the note upon liquidation of his interest in the partnership), and (2) the partnership agreement provided that upon liquidation of A's interest, the partnership would retain A's note, and A would contribute to the partnership the excess of the outstanding principal balance of the note over its then fair market value.

(x) Assume the same facts as in (ix) except that A's obligation to contribute an additional $5,000 to the partnership is not evidenced by a promissory note. Instead, the partnership agreement imposes upon A the obligation to make an additional $5,000 contribution to the partnership at the earlier of (a) the beginning of the partnership's fourth taxable year, or (b) the end of the partnership taxable year in which A's interest is liquidated. Under paragraph (b)(2)(ii)(*c*) of this section, as a result of A's deferred contribution requirement, A is considered obligated to restore up to $5,000 of the deficit balance in his capital account to the partnership. Accordingly, under the alternate economic effect test contained in paragraph (b)(2)(*ii*)(*d*) of this section, the allocation of the $25,000 cost recovery deduction to A in the partnership's second taxable year has economic effect.

(xi) Assume the same facts as in (vii) except that the partnership agreement also provides that any gain (whether ordinary income or capital gain) upon the sale of the property will be allocated to A to the extent of the prior allocations to A of cost recovery deductions from such property, and additional gain will be allocated equally between A and B. At the time the allocations of cost recovery deductions were made to A, the partners believed there would be gain on the sale of the property in an amount sufficient to offset the allocations of cost recovery deductions to A. Nevertheless, the existence of the gain chargeback provision will not cause the economic effect of the allocations to be insubstantial under paragraph (b)(2)(iii)(*c*) of this section, since in testing whether the economic effect of such allocations is substantial, the recovery property is presumed to decrease in value by the amount of such deductions.

Example (2). C and D form a general partnership solely to acquire and lease machinery that is 5-year recovery property under section 168. Each contributes $100,000, and the partnership obtains an $800,000 recourse loan to purchase the machinery. The partnership elects under section 48(q)(4) to reduce the amount of investment tax credit in lieu of adjusting the tax basis of such machinery. The partnership, C, and D have calendar taxable years. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*)(*2*) and (*3*) of this section). The partnership agreement further provides that (a) partnership net taxable loss will be allocated 90 percent to C and 10 percent to D until such time as there is partnership net taxable income, and therefore C will be allocated 90 percent of such taxable income until he has been allocated partnership net taxable income equal to the partnership net taxable loss previously allocated to him, (b) all further partnership net taxable income or loss will be allocated equally between C and D, and (c) distributions of operating cash flow will be made equally between C and D. The partnership enters into a 12-year lease with a financially secure corporation under which the partnership expects to have a net taxable loss in each of its first 5 partnership taxable years due to cost recovery deductions with respect to the machinery and net taxable income in each of its following 7 partnership taxable years, in part due to the absence of such cost recovery deductions. There is a strong likelihood that the partnership's net taxable loss in partnership taxable years 1 through 5 will be $100,000, $90,000, $80,000, $70,000, and $60,000, respectively, and the partnership's net taxable income in partnership taxable years 6 through 12 will be $40,000, $50,000, $60,000, $70,000, $80,000, $90,000, and $100,000, respectively. Even though there is a strong likelihood that the allocations of net taxable loss in years 1 through 5 will be largely offset by other allocations in partnership taxable years 6 through 12, and even if it is assumed that the total tax liability of the partners in years 1 through 12 will be less than if the allocations had not been provided in the partnership agreement, the economic effect of the allocations will not be insubstantial under paragraph (b)(2)(iii)(*c*) of this section. This is because at the time such allocations became part of the partnership agreement, there was a strong likelihood that the allocations of net taxable loss in years 1 through 5 would not be largely offset by allocations of income

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within 5 years (determined on a first-in, first-out basis). The year 1 allocation will not be offset until years 6, 7, and 8, the year 2 allocation will not be offset until years 8 and 9, the year 3 allocation will not be offset until years 9 and 10, the year 4 allocation will not be offset until years 10 and 11, and the year 5 allocation will not be offset until years 11 and 12.

Example (3). E and F enter into a partnership agreement to develop and market experimental electronic devices. E contributes $2,500 cash and agrees to devote his full-time services to the partnership. F contributes $100,000 cash and agrees to obtain a loan for the partnership for any additional capital needs. The partnership agreement provides that all deductions for research and experimental expenditures and interest on partnership loans are to be allocated to F. In addition, F will be allocated 90 percent, and E 10 percent, of partnership taxable income or loss, computed net of the deductions for such research and experimental expenditures and interest, until F has received allocations of such taxable income equal to the sum of such research and experimental expenditures, such interest expense, and his share of such taxable loss. Thereafter, E and F will share all taxable income and loss equally. Operating cash flow will be distributed equally between E and F. The partnership agreement also provides that E's and F's capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*)(*2*) and (*3*) of this section). These allocations have economic effect. In addition, in view of the nature of the partnership's activities, there is not a strong likelihood at the time the allocations become part of the partnership agreement that the economic effect of the allocations to F of deductions for research and experimental expenditures and interest on partnership loans will be largely offset by allocations to F of partnership net taxable income. The economic effect of the allocations is substantial.

Example (4). (i) G and H contribute $75,000 and $25,000, respectively, in forming a general partnership. The partnership agreement provides that all income, gain, loss, and deduction will be allocated equally between the partners, that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, but that all partnership distributions will, regardless of capital account balances, be made 75 percent to G and 25 percent to H. Following the liquidation of the partnership, neither partner is required to restore the deficit balance in his capital account to the partnership for distribution to partners with positive capital account balances. The allocations in the partnership agreement do not have economic effect. Since contributions were made in a 75/25 ratio and the partnership agreement indicates that all economic profits and losses of the partnership are to be shared in a 75/25 ratio, under paragraph (b)(3) of this section, partnership income, gain, loss, and deduction will be reallocated 75 percent to G and 25 percent to H.

(ii) Assume the same facts as in (i) except that the partnership maintains no capital accounts and the partnership agreement provides that all income, gain, loss, deduction, and credit will be allocated 75 percent to G and 25 percent to H. G and H are ultimately liable (under a State law right of contribution) for 75 percent and 25 percent, respectively, of any debts of the partnership. Although the allocations do not satisfy the requirements of paragraph (b)(2)(ii)(*b*) of this section, the allocations have economic effect under the economic effect equivalence test of paragraph (b)(2)(ii)(*i*) of this section.

(iii) Assume the same facts as in (i) except that the partnership agreement provides that any partner with a deficit balance in his capital account must restore that deficit to the partnership (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section). Although the allocations do not satisfy the requirements of paragraph (b)(2)(ii)(*b*) of this section, the allocations have economic effect under the economic effect equivalence test of paragraph (b)(2)(ii)(*i*) of this section.

Example (5). (i) Individuals I and J are the only partners of an investment partnership. The partnership owns corporate stocks, corporate debt instruments, and tax-exempt debt instruments. Over the next several years, I expects to be in the 50 percent marginal tax bracket, and J expects to be in the 15 percent marginal tax bracket. There is a strong likelihood that in each of the next several years the partnership will realize between $450 and $550 of tax-exempt interest and between $450 and $550 of a combination of taxable interest and dividends from its investments. I and J made equal capital contributions to the partnership, and they have agreed to share equally in gains and losses from the sale of the partnership's investment securities. I and J agree, however, that rather than share interest and dividends of the partnership equally, they will allocate the partnership's tax-exempt interest 80 percent to I and 20 percent to J and will distribute cash derived from interest received on the tax-exempt bonds in the same percentages. In addition, they agree to allocate 100 percent of the partnership's taxable interest and dividends to J and to distribute cash derived from interest and dividends received on the corporate stocks and debt instruments 100 percent to J. The partnership agreement further provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partner's positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The allocation of taxable interest and dividends and tax-exempt interest has economic effect, but that economic effect is not substantial under the general rules set forth in paragraph (b)(2)(iii) of this section. Without the allocation I would be allocated between $225 and $275 of tax-exempt interest and between $225 and $275 of a combination of taxable interest and dividends, which (net of Federal income taxes he would owe on such income) would give I between $337.50 and $412.50 after tax. With the allocation, however, I will be allocated between $360 and $440 of tax-exempt interest and no taxable interest and dividends, which (net of Federal income taxes) will give I between $360 and $440 after tax. Thus, at the time the allocations became part of the partnership agreement, I is expected to enhance his after-tax economic consequences as a result of the allocations. On the other hand, there is a strong likelihood that neither I nor J will substantially diminish his after-tax economic consequences as a result of the allocations. Under the combination of likely investment outcomes least favorable for J, the partnership would realize $550 of tax-exempt interest and $450 of taxable interest and dividends, giving J $492.50 after tax (which is more than the $466.25 after tax J would have received if each of such amounts had been allocated equally between the partners). Under the combination of likely investment outcomes least favorable for I, the partnership would realize $450 of tax-exempt interest and $550 of taxable interest and dividends, giving I $360 after tax (which is not substantially less than the $362.50 he would have received if each of such amounts had been allocated equally between the partners). Accordingly, the allocations in the partnership agreement must be reallocated in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section.

(ii) Assume the same facts as in (i). In addition, assume that in the first partnership taxable year in which the allocation arrangement described in (i) applies, the partnership realizes $450 of tax-exempt interest and $550 of taxable interest and dividends, so that, pursuant to the partnership agreement, I's capital account is credited with $360 (80 percent of the tax-exempt interest), and J's capital account is credited with $640 (20 percent of the tax-exempt interest and 100 percent of the taxable interest and dividends). The allocations of tax-exempt interest and taxable interest and dividends (which do not have substantial economic effect for the reasons stated in (i) will be disregarded and will be reallocated. Since under the partnership agreement I will receive 36 percent (360/1,000) and J will receive 64 percent (640/1,000) of the partnership's total investment income in such year, under paragraph (b)(3) of this section the partnership's tax-exempt interest and taxable interest and dividends each will be reallocated 36 percent to I and 64 percent to J.

Example (6). K and L are equal partners in a general partnership formed to acquire and operate property described in section 1231(b). The partnership, K, and L have calendar taxable years. The partnership agreement provides that the partners' capital accounts

will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, that distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and that any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). For a taxable year in which the partnership expects to incur a loss on the sale of a portion of such property, the partnership agreement is amended (at the beginning of the taxable year) to allocate such loss to K, who expects to have no gains from the sale of depreciable property described in section 1231(b) in that taxable year, and to allocate an equivalent amount of partnership loss and deduction for that year of a different character to L, who expects to have such gains. Any partnership loss and deduction in excess of these allocations will be allocated equally between K and L. The amendment is effective only for that taxable year. At the time the partnership agreement is amended, there is a strong likelihood that the partnership will incur deduction or loss in the taxable year other than loss from the sale of property described in section 1231(b) in an amount that will substantially equal or exceed the expected amount of the section 1231(b) loss. The allocations in such taxable year have economic effect. However, the economic effect of the allocations is insubstantial under the test described in paragraph (b)(2)(iii) (*b*) of this section because there is a strong likelihood, at the time the allocations become part of the partnership agreement, that the net increases and decreases to K's and L's capital accounts will be the same at the end of the taxable year to which they apply with such allocations in effect as they would have been in the absence of such allocations, and that the total taxes of K and L for such year will be reduced as a result of such allocations. If in fact the partnership incurs deduction or loss, other than loss from the sale of property described in section 1231(b), in an amount at least equal to the section 1231(b) loss, the loss and deduction in such taxable year will be reallocated equally between K and L under paragraph (b)(3) of this section. If not, the loss from the sale of property described in section 1231(b) and the items of deduction and other loss realized in such year will be reallocated between K and L in proportion to the net decreases in their capital accounts due to the allocation of such items under the partnership agreement.

Example (7). (i) M and N are partners in the MN general partnership, which is engaged in an active business. Income, gain, loss, and deduction from MN's business is allocated equally between M and N. The partnership, M, and N have calendar taxable years. Under the partnership agreement the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partner's positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). In order to enhance the credit standing of the partnership, the partners contribute surplus funds to the partnership, which the partners agree to invest in equal dollar amounts of tax-exempt bonds and corporate stock for the partnership's first 3 taxable years. M is expected to be in a higher marginal tax bracket than N during those 3 years. At the time the decision to make these investments is made, it is agreed that, during the 3-year period of the investment, M will be allocated 90 percent and N 10 percent of the interest income from the tax-exempt bonds as well as any gain or loss from the sale thereof, and that M will be allocated 10 percent and N 90 percent of the dividend income from the corporate stock as well as any gain or loss from the sale thereof. At the time the allocations concerning the investments become part of the partnership agreement, there is not a strong likelihood that the gain or loss from the sale of the stock will be substantially equal to the gain or loss from the sale of the tax-exempt bonds, but there is a strong likelihood that the tax-exempt interest and the taxable dividends realized from these investments during the 3-year period will not differ substantially. These allocations have economic effect, and the economic effect of the allocations of the gain or loss on the sale of the tex-exempt bonds and corporate stock is substantial. The economic effect of the allocations of the tax-exempt interest and the taxable dividends, however, is not substantial under the test described in paragraph (b)(2)(iii)(*c*) of this section because there is a strong likelihood, at the time the allocations become part of the partnership agreement, that at the end of the 3-year period to which such allocations relate, the net increases and decreases to M's and N's capital accounts will be the same with such allocations as they would have been in the absence of such allocations, and that the total taxes of M and N for the taxable years to which such allocations relate will be reduced as a result of such allocations. If in fact the amounts of the tax-exempt interest and taxable dividends earned by the partnership during the 3-year period are equal, the tax-exempt interest and taxable dividends will be reallocated to the partners in equal shares under paragraph (b)(3) of this section. If not, the tax-exempt interest and taxable dividends will be reallocated between M and N in proportion to the net increases in their capital accounts during such 3-year period due to the allocation of such items under the partnership agreement.

(ii) Assume the same facts as in (i) except that gain or loss from the sale of the tax-exempt bonds and corporate stock will be allocated equally between M and N and the partnership agreement provides that the 90/10 allocation arrangement with respect to the investment income applies only to the first $10,000 of interest income from the tax-exempt bonds and the first $10,000 of dividend income from the corporate stock, and only to the first taxable year of the partnership. There is a strong likelihood at the time the 90/10 allocation of the investment income became part of the partnership agreement that in the first taxable year of the partnership, the partnership will earn more than $10,000 of tax-exempt interest and more than $10,000 of taxable dividends. The allocations of tax-exempt interest and taxable dividends provided in the partnership agreement have economic effect, but under the test contained in paragraph (b)(2)(iii)(*b*) of this section, such economic effect is not substantial for the same reasons stated in (i) (but applied to the 1 taxable year, rather than to a 3-year period). If in fact the partnership realizes at least $10,000 of tax-exempt interest and at least $10,000 of taxable dividends in such year, the allocations of such interest income and dividend income will be reallocated equally between M and N under paragraph (b)(3) of this section. If not, the tax-exempt interest and taxable dividends will be reallocated between M and N in proportion to the net increases in their capital accounts due to the allocations of such items under the partnership agreement.

(iii) Assume the same facts as in (ii) except that at the time the 90/10 allocation of investment income becomes part of the partnership agreement, there is not a strong likelihood that (1) the partnership will earn $10,000 or more of tax-exempt interest and $10,000 or more of taxable dividends in the partnership's first taxable year, and (2) the amount of tax-exempt interest and taxable dividends earned during such year will be substantially the same. Under these facts the economic effect of the allocations generally will be substantial. (Additional facts may exist in certain cases, however, so that the allocation is insubstantial under the general rules of paragraph (b)(2)(iii). See example (5) above.)

Example (8). (i) O and P are equal partners in the OP general partnership. The partnership, O, and P have calendar taxable years. Partner O has a net operating loss carryover from another venture that is due to expire at the end of the partnership's second taxable year. Otherwise, both partners expect to be in the 50 percent marginal tax bracket in the next several taxable years. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The partnership agreement is amended (at the beginning of the partnership's second taxable year) to allocate all the partnership net taxable income for that year to O. Future partnership net taxable loss is to be allocated to O, and future partnership net taxable income to P, until the allocation of income to O in the partnership's second taxable year is offset. It is further agreed orally that in the event the partnership is liquidated prior to completion of such offset, O's capital account will be

adjusted downward to the extent of one-half of the allocations of income to O in the partnership's second taxable year that have not been offset by other allocations, P's capital account will be adjusted upward by a like amount, and liquidation proceeds will be distributed in accordance with the partners' adjusted capital account balances. As a result of this oral amendment, all allocations of partnership net taxable income and net taxable loss made pursuant to the amendment executed at the beginning of the partnership's second taxable year lack economic effect and will be disregarded. Under the partnership agreement other allocations are made equally to O and P, and O and P will share equally in liquidation proceeds, indicating that the partners' interests in the partnership are equal. Thus, the disregarded allocations will be reallocated equally between the partners under paragraph (b)(3) of this section.

(ii) Assume the same facts as in (i) except that there is no agreement that O's and P's capital accounts will be adjusted downward and upward, respectively, to the extent of one-half of the partnership net taxable income allocated to O in the partnership's second taxable year that is not offset subsequently by other allocations. The income of the partnership is generated primarily by fixed interest payments received with respect to highly rated corporate bonds, which are expected to produce sufficient net taxable income prior to the end of the partnership's seventh taxable year to offset in large part the net taxable income to be allocated to O in the partnership's second taxable year. Thus, at the time the allocations are made part of the partnership agreement, there is a strong likelihood that the allocation of net taxable income to be made to O in the second taxable year will be offset in large part within 5 taxable years thereafter. These allocations have economic effect. However, the economic effect of the allocation of partnership net taxable income to O in the partnership's second taxable year, as well as the offsetting allocations to P, is not substantial under the test contained in paragraph (b)(2)(iii)(*c*) of this section because there is a strong likelihood that the net increases or decreases in O's and P's capital accounts will be the same at the end of the partnership's seventh taxable year with such allocations as they would have been in the absence of such allocations, and the total taxes of O and P for the taxable years to which such allocations relate will be reduced as a result of such allocations. If in fact the partnership, in its taxable years 3 through 7, realizes sufficient net taxable income to offset the amount allocated to O in the second taxable year, the allocations provided in the partnership agreement will be reallocated equally between the partners under paragraph (b)(3) of this section.

Example (9). Q and R form a limited partnership with contributions of $20,000 and $180,000, respectively. Q, the limited partner, is a corporation that has $2,000,000 of net operating loss carryforwards that will not expire for 8 years. Q does not expect to have sufficient income (apart from the income of the partnership) to absorb any of such net operating loss carryforwards. R, the general partner, is a corporation that expects to be in the 46 percent marginal tax bracket for several years. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The partnership's cash, together with the proceeds of an $800,000 loan, are invested in assets that are expected to produce taxable income and cash flow (before debt service) of approximately $150,000 a year for the first 8 years of the partnership's operations. In addition, it is expected that the partnership's total taxable income in its first 8 taxable years will not exceed $2,000,000. The partnership's $150,000 of cash flow in each of its first 8 years will be used to retire the $800,000 loan. The partnership agreement provides that partnership net taxable income will be allocated 90 percent to Q and 10 percent to R in the first through eighth partnership taxable years, and 90 percent to R and 10 percent to Q in all subsequent partnership taxable years. Net taxable loss will be allocated 90 percent to R and 10 percent to Q in all partnership taxable years. All distributions of cash from the partnership to partners (other than the priority distributions to Q described below) will be made 90 percent to R and 10 percent to Q. At the end of the partnership's eighth taxable year, the amount of Q's capital account in excess of one-ninth of R's capital account on such date will be designated as Q's "excess capital account." Beginning in the ninth taxable year of the partnership, the undistributed portion of Q's excess capital account will begin to bear interest (which will be paid and deducted under section 707(c) at a rate of interest below the rate that the partnership can borrow from commercial lenders, and over the next several years (following the eight year) the partnership will make priority cash distributions to Q in prearranged percentages of Q's excess capital account designed to amortize Q's excess capital account and the interest thereon over a prearranged period. In addition, the partnership's agreement prevents Q from causing his interest in the partnership from being liquidated (and thereby receiving the balance in his capital account) without R's consent until Q's excess capital account has been eliminated. The below market rate of interest and the period over which the amortization will take place are prescribed such that, as of the end of the partnership's eighth taxable year, the present value of Q's right to receive such priority distributions is approximately 46 percent of the amount of Q's excess capital account as of such date. However, because the partnership's income for its first 8 taxable years will be realized approximately ratably over that period, the present value of Q's right to receive the priority distributions with respect to its excess capital account is, as of the date the partnership agreement is entered into, less than the present value of the additional Federal income taxes for which R would be liable if, during the partnership's first 8 taxable years, all partnership income were to be allocated 90 percent to R and 10 to Q. The allocations of partnership taxable income to Q and R in the first through eighth partnership taxable years have economic effect. However, such economic effect is not substantial under the general rules set forth in paragraph (b)(2)(iii) of this section. This is true because R may enhance his after-tax economic consequences, on a present value basis, as a result of the allocations to Q of 90 percent of partnership's income during taxable years 1 through 8, and there is a strong likelihood that neither R nor Q will substantially diminish its after-tax economic consequences, on a present value basis, as a result of such allocation. Accordingly, partnership taxable income for partnership taxable years 1 through 8 will be reallocated in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section.

Example (10). (i) S and T form a general partnership to operate a travel agency. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The partnership agreement provides that T, a resident of a foreign country, will be allocated 90 percent, and S 10 percent, of the income, gain, loss, and deduction derived from operations conducted by T within his country, and all remaining income, gain, loss, and deduction will be allocated equally. The amount of such income, gain, loss, or deduction cannot be predicted with any reasonable certainty. The allocations provided by the partnership agreement have substantial economic effect.

(ii) Assume the same facts as in (i) except that the partnership agreement provides that all income, gain, loss, and deduction of the partnership will be shared equally, but that T will be allocated all income, gain, loss, and deduction derived from operations conducted by him within his country as a part of his equal share of partnership income, gain, loss, and deduction, upon to the amount of such share. Assume the total tax liability of S and T for each year to which these allocations relate will be reduced as a result of such allocation. These allocations have economic effect. However, such economic effect is not substantial under the test stated in paragraph (b)(2)(iii)(*b*) of this section because, at the time the allocations became part of the partnership agreement, there is a strong likelihood that the net increases and decreases to S's and T's capital accounts will be the same at the end of each partnership taxable year with such allocations as they would have been in the absence of such

allocations, and that the total tax liability of S and T for each year to which such allocations relate will be reduced as a result of such allocations. Thus, all items of partnership income, gain, loss, and income, gain, loss, and deduction will be reallocated equally between S and T under paragraph (b)(3) of this section.

Example (11). (i) U and V share equally all income, gain, loss, and deduction of the UV general partnership, as well as all non-liquidating distributions made by the partnership. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore such deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The agreement further provides that the partners will be allocated equal shares of any section 705(a)(2)(B) expenditures of the partnership. In the partnership's first taxable year, it pays qualified first-year wages of $6,000 and is entitled to a $3,000 targeted jobs tax credit under sections 44B and 51 of the Code. Under section 280C the partnership must reduce its deduction for wages paid by the $3,000 credit claimed (which amount constitutes a section 705(a)(2)(B) expenditure). The partnership agreement allocates the credit to U. Although the allocations of wage deductions and section 705(a)(2)(B) expenditures have substantial economic effect, the allocation of tax credit cannot have economic effect since it cannot properly be reflected in the partners' capital accounts. Furthermore, the allocation is not in accordance with the special partners' interests in the partnership rule contained in paragraph (b)(4)(ii) of this section. Under that rule, since the expenses that gave rise to the credit are shared equally by the partners, the credit will be shared equally between U and V.

(ii) Assume the same facts as in (i) and that at the beginning of the partnership's second taxable year, the partnership agreement is amended to allocate to U all wage expenses incurred in that year (including wage expenses that constitute section 705(a)(2)(B) expenditures) whether or not such wages qualify for the credit. The partnership agreement contains no offsetting allocations. That taxable year the partnership pays $8,000 in total wages to its employees. Assume that the partnership has operating income equal to its operating expenses (exclusive of expenses for wages). Assume further that $6,000 of the $8,000 wage expense constitutes qualified first-year wages. U is allocated the $3,000 deduction and the $3,000 section 705(a)(2)(B) expenditure attributable to the $6,000 of qualified first-year wages, as well as the deduction for the other $2,000 in wage expenses. The allocations of wage deductions and section 705(a)(2)(B) expenditures have substantial economic effect. Furthermore, since the wage credit is allocated in the same proportion as the expenses that gave rise to the credit, and the allocation of those expenses has substantial economic effect, the allocation of such credit to U is in accordance with the special partners' interests in the partnership rule contained in paragraph (b)(4)(ii) of this section and is recognized thereunder.

Example (12). (i) W and X form a general partnership for the purpose of mining iron ore. W makes an initial contribution of $75,000, and X makes an initial contribution of $25,000. The partnership agreement provides that non-liquidating distributions will be made 75 percent to W and 25 percent to X, and that all items of income, gain, loss, and deduction will be allocated 75 percent to W and 25 percent to X, except that all percentage depletion deductions will be allocated to W. The agreement further provides that the partners' capital accounts will be determined and maintained in accordance with paragraphs (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore such deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). Assume that the adjusted tax basis of the partnership's only depletable iron ore property is $1,000 and that the percentage depletion deduction for the taxable year with respect to such property is $1,500. The allocation of partnership income, gain, loss, and deduction (excluding the percentage depletion deduction) as well as the allocation of $1,000 of the percentage depletion deduction have substantial economic effect. The allocation to W of the remaining $500 of the percentage depletion deduction, representing the excess of percentage depletion over adjusted tax basis of the iron ore property, cannot have economic effect since such amount cannot properly be reflected in the partners' capital accounts. Furthermore, the allocation to W of that $500 excess percentage depletion deduction is not in accordance with the special partners' interests in the partnership rule contained in paragraph (b)(4)(iii) of this section, under which such $500 excess depletion deduction (and all further percentage depletion deductions from the mine) will be reallocated 75 percent to W and 25 percent to X.

(ii) Assume the same facts as in (i) except that the partnership agreement provides that all percentage depletion deductions of the partnership will be allocated 75 percent to W and 25 percent to X. Once again, the allocation of partnership income, gain, loss, and deduction (excluding the percentage depletion deduction) as well as the allocation of $1,000 of the percentage depletion deduction have substantial economic effect. Furthermore, since the $500 portion of the percentage depletion deduction that exceeds the adjusted basis of such iron ore property is allocated in the same manner as valid allocations of the gross income from such property during the taxable year (*i.e.*, 75 percent to W and 25 percent to X), the allocation of the $500 excess percentage depletion contained in the partnership agreement is in accordance with the special partners' interests in the partnership rule contained in paragraph (b)(4)(iii) of this section.

Example (13). (i) Y and Z form a brokerage general partnership for the purpose of investing and trading in marketable securities. Y contributes cash of $10,000, and Z contributes securities of P corporation, which have an adjusted basis of $3,000 and a fair market value of $10,000. The partnership would not be an investment company under section 351(e) if it were incorporated. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). The initial capital accounts of Y and Z are fixed at $10,000 each. The agreement further provides that all partnership distributions, income, gain, loss, deduction, and credit will be shared equally between Y and Z, except that the taxable gain attributable to the precontribution appreciation in the value of the securities of P corporation will be allocated to Z in accordance with section 704(c). During the partnership's first taxable year, it sells the securities of P corporation for $12,000, resulting in a $2,000 book gain ($12,000 less $10,000 book value) and a $9,000 taxable gain ($12,000 less $3,000 adjusted tax basis). The partnership has no other income, gain, loss, or deductions for the taxable year. The gain from the sale of the securities is allocated as follows:

	Y		Z	
	Tax	Book	Tax	Book
Capital account upon formation	$10,000	$10,000	$3,000	$10,000
Plus: gain	1,000	1,000	9,000	1,000
Capital account at end of year 1	$11,000	$11,000	$11,000	$11,000

The allocation of the $2,000 book gain, $1,000 each to Y and Z, has substantial economic effect. Furthermore, under section 704(c) the partners' distributive shares of the $9,000 taxable gain are $1,000 to Y and $8,000 to Z.

(ii) Assume the same facts as in (i) and that at the beginning of the partnership's second taxable year, it invests its $22,000 of cash in securities of G Corp. The G Corp. securities increase in value to $40,000, at which time Y sells 50 percent of his partnership interest (*i.e.*, a 25 percent interest in the partnership) to LK for $10,000. The partnership does not have a section 754 election in effect for the partnership taxable year during which such sale occurs. In accordance with paragraph (b)(2)(iv)(*f*) of this section, the partnership agreement provides that LK inherits 50 percent of Y's $11,000 capital account balance. Thus, following the sale, LK and Y each have a capital account of $5,500, and Z's

capital account remains at $11,000. Prior to the end of the partnership's second taxable year, the securities are sold for their $40,000 fair market value, resulting in an $18,000 taxable gain ($40,000 less $22,000 adjusted tax basis). The partnership has no other income, gain, loss, or deduction in such taxable year. Under the partnership agreement the $18,000 taxable gain is allocated as follows:

	Y	Z	LK
Capital account before sale of securities	[illegible]	$11,000	[illegible]
Plus: gain	4,500	[illegible]	4,500
Capital account at end of year 2	[illegible]	[illegible]	$10,000

The allocation of the $18,000 taxable gain has substantial economic effect.

(iii) Assume the same facts as in (ii) except that the partnership has a section 754 election in effect for the partnership taxable year during which Y sells 50 percent of his interest to LK. Accordingly, under § 1.743–1 there is a $4,500 basis increase to the G Corp. securities with respect to LK. Notwithstanding this basis adjustment, as a result of the sale of the G Corp. securities, LK's capital account is, as in (ii), increased by $4,500. The fact that LK recognizes no taxable gain from such sale (due to his $4,500 section 743 basis adjustment) is irrelevant for capital accounting purposes since, in accordance with paragraph (b)(2)(iv)(*m*)(*2*) of this section, that basis adjustment is disregarded in the maintenance and computation of the partners' capital accounts.

(iv) Assume the same facts as in (iii) except that immediately following Y's sale of 50 percent of this interest to LK, the G Corp. securities decrease in value to $32,000 and are sold. The $10,000 taxable gain ($32,000 less $22,000 adjusted tax basis) is allocated as follows:

	Y	Z	LK
Capital account before sale of securities	[illegible]	$11,000	[illegible]
Plus: gain	2,500	5,000	2,500
Capital account at end of the year 2	[illegible]	$16,000	[illegible]

The fact that LK recongizes a $2,000 taxable loss from the sale of the G Corp. securities (due to his $4,500 section 743 basis adjustment) is irrelevant for capital accounting purposes since, in accordance with paragraph (b)(2)(iv)(*m*)(*2*) of this section, that basis adjustment is disregarded in the maintenance and computation of the partners' capital accounts.

(v) Assume the same facts as in (ii) except that Y sells 100 percent of his partnership interest (*i.e.*, a 50 percent interest in the partnership) to LK for $20,000. Under section 708(b)(1)(B) the partnership terminates. Under paragraph (b)(1)(iv) of § 1.708–1, there is a constructive liquidation of the partnership. Immediately preceding the constructive liquidation, the capital accounts of Z and LK equal $11,000 each (LK having inherited Y's $11,000 capital account). In accordance with paragraph (b)(2)(iv)(*e*) of this section, the partnership agreement provides that the partners' capital accounts are adjusted to reflect how unrealized taxable gain would have been allocated if the securities had been sold for their $40,000 fair market value. Accordingly, the $18,000 of unrealized gain ($40,000 less $22,000 adjusted tax basis is credited to the partners' capital accounts as follows:

	Z	LK
Capital account following sale	$11,000	$11,000
Deemed sale adjustment	9,000	[illegible]
Capital account before constructive liquidation	$20,000	[illegible]

Constructive liquidating distributions of the securities are made with reference to their $40,000 fair market value. Under section 732(b) the adjusted tax basis of the G Corp. securities constructively distributed to Z is equal to the $11,000 adjusted tax basis of Z's partnership interest before the constructive liquidation, and the adjusted tax basis of the G Corp. securities constructively distributed to Z is equal to the $20,000 adjusted tax basis of LK's partnership interest partnership before the constructive liquidation. Under paragraph (b)(1)(iv) of § 1.708–1, the partners then are treated as contributing to a new partnership the property constructively distributed to them in connection the partnership's termination. In accordance with paragraph (b)(2)(iv)(*d*) of this section, the capital accounts of Z and LK in the reconstituted partnership are stated at $20,000 each (*i.e.*, the fair market value of the property constructively contributed to the new partnership by each of the partners).

Example (14). (i) MC and RW form a general partnership to which each contributes $10,000. The $20,000 is invested in securities of Ventureco (which are not readily tradable on an established securities market). In each of the partnership's taxable years, it recognizes operating income equal to its operating deductions (excluding gain or loss from the sale of securities). The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(*b*)(*2*) and (*3*) of this section). Assume that the Ventureco securities subsequently appreciate in value to $50,000. At that time SK makes a $25,000 cash contribution to the partnership (thereby acquiring a one-third interest in the partnership), and the $25,000 is placed in a bank account. Upon SK's admission to the partnership, the capital accounts of MC and RW (which were $10,000 each prior to SK's admission) are, in accordance with paragraph (b)(2)(iv)(*f*) of this section, adjusted upward (to $25,000 each) to reflect their shares of the unrealized appreciation in the Ventureco securities that occurred before SK was admitted to the partnership. Immediately after SK's admission to the partnership, the securities are sold for their $50,000 fair market value, resulting in taxable gain of $30,000 ($50,000 less $20,000 adjusted tax basis) and no book gain or loss. An allocation of the $30,000 taxable gain cannot have economic effect since it cannot properly be reflected in the partners' book capital accounts. Under paragraph (b)(2)(iv)(*f*) of this section and the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, unless the partnership agreement provides that the $30,000 taxable gain will, in accordance with section 704(c) principles, be shared $15,000 to MC and $15,000 to RW, the partners' capital accounts will not be considered maintained in accordance with paragraph (b)(2)(iv) of this section.

	MC		RW		SK	
	Tax	Book	Tax	Book	Tax	Book
Capital account following SK's admission	[illegible]	$25,000	[illegible]	[illegible]	[illegible]	$25,000
Plus: gain	15,000	[illegible]	15,000	[illegible]	[illegible]	[illegible]
Capital account following sale	$25,000	$25,000	[illegible]	[illegible]	[illegible]	$25,000

(ii) Assume the same facts as (i), except that after SK's admission to the partnership, the Ventureco securities appreciate in value to $74,000 and are sold, resulting in taxable gain of $54,000 ($74,000 less $20,000 adjusted tax basis) and book gain of $24,000 ($74,000 less $50,000 book value). Under the partnership agreement the $24,000 book gain (the appreciation in value occurring after SK became a partner) is allocated equally among MC, RW, and SK, and such allocations have substantial economic effect. An allocation of the $54,000 taxable gain cannot have economic effect since it cannot properly be reflected in the partners' book capital accounts. Under paragraph (b)(2)(iv)(*f*) of this section and the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, unless the partnership agreement provides that the taxable gain will, in accordance with section 704(c) principles, be shared $23,000 to MC $23,000 to RW, and $8,000 to SK, the partners' capital accounts will not be considered maintained in accordance with paragraph (b)(2)(iv) of this section.

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	MC		RW		SK	
	Tax	Book	Tax	Book	Tax	Book
Capital account following SK's admission	$10,000	$25,000	$10,000	$25,000	$25,000	$25,000
Plus: gain	25,000	9,000	23,000	9,000	8,000	8,000
Capital account following sale	$35,000	$34,000	$33,000	$34,000	$33,000	$33,000

(iii) Assume the same facts as (i) except that after SK's admission to the partnership, the Ventureco securities depreciate in value to $44,000 and are sold, resulting in taxable gain of $24,000 ($44,000 less $20,000 adjusted tax basis) and a book loss of $6,000 ($50,000 book value less $44,000). Under the partnership agreement the $6,000 book loss is allocated equally among MC, RW, and SK, and such allocations have substantial economic effect. An allocation of the $24,000 taxable gain cannot have economic effect since it cannot properly be reflected in the partners' book capital accounts. Under paragraph (b)(2)(iv)(*f*) of this section and the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, unless the partnership agreement provides that the $24,000 taxable gain will, in accordance with section 704(c) principles, be shared equally between MC and RW, the partners' capital accounts will not be considered maintained in accordance with paragraph (b)(2)(iv) of this section.

	MC		RW		SK	
	Tax	Book	Tax	Book	Tax	Book
Capital account following SK's admission	$10,000	$25,000	$10,000	$25,000	$25,000	$25,000
Plus: gain	12,000	0	12,000	0	0	0
Less: loss	0	(2,000)	0	(2,000)	0	(2,000)
Capital account following sale	$22,000	$23,000	$22,000	$23,000	$25,000	$25,000

That SK bears an economic loss of $2,000 without a corresponding taxable loss is attributable entirely to the "ceiling rule." See paragraph (c)(2) of § 1.704–1.

(iv) Assume the same facts as in (ii) except that upon the admission of SK the capital accounts of MC and RW are not each adjusted upward from $10,000 to $25,000 to reflect the appreciation in the partnership's securities that occurred before SK was admitted to the partnership. Rather, upon SK's admission to the partnership, the partnership agreement is amended to provide that the first $30,000 of taxable gain upon the sale of such securities will be allocated equally between MC and RW, and that all other income, gain, loss, and deduction will be allocated equally between MC, RW, and SK. When the securities are sold for $74,000, the $54,000 of taxable gain is so allocated. These allocations of taxable gain have substantial economic effect. (If the agreement instead provides for all taxable gain (including the $30,000 taxable gain attributable to the appreciation in the securities prior to SK's admission to the partnership) to be allocated equally between MC, RW, and SK, the partners should consider whether, and to what extent, the provisions of paragraphs (b)(1) (iii) and (iv) of this section are applicable.)

(v) Assume the same facts as in (iv) except that instead of selling the securities, the partnership makes a distribution of the securities (which have a fair market value of $74,000). Assume the distribution does not give rise to a transaction described in section 707(a)(2)(B). In accordance with paragraph (b)(2)(iv)(*e*) of this section, the partners' capital accounts are adjusted immediately prior to the distribution to reflect how taxable gain ($54,000) would have been allocated had the securities been sold for their $74,000 fair market value, and capital account adjustments in respect of the distribution of the securities are made with reference to the $74,000 "booked-up" fair market value.

	MC		RW		SK	
	Tax	Book	Tax	Book	Tax	Book
Capital account before distribution	$10,000	$25,000	$10,000	$25,000	$25,000	$25,000
Plus: basis adjustment	15,000	0	0	0	0	0
Less: distribution	(25,000)	(25,000)	0	0	0	0
Capital account account after liquidation	0	0	$10,000	$25,000	$25,000	$25,000

	MC		RW		SK	
	Tax	Book	Tax	Book	Tax	Book
Capital account before distribution	$10,000	$25,000	$10,000	$25,000	$25,000	$25,000
Less: distribution	(25,000)	(25,000)	0	0	0	0
Capital account after liquidation	($15,000)	0	$10,000	$25,000	$25,000	$25,000

Following the liquidation of MC's interest in the partnership, the Ventureco securities are sold for their $50,000 fair market value, resulting in no book gain or loss but a $30,000 taxable gain. An allocation of this $30,000 taxable gain cannot have economic effect since it cannot properly be reflected in the partners' book capital accounts. Under paragraph (b)(2)(iv)(*f*) of this section and the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, unless the partnership agreement provides that $15,000 of such taxable gain will, in accordance with section 704(c) principles, be included in RW's distributive share, the partners' capital accounts will not be considered maintained in accordance with paragraph (b)(2)(iv) of this section. The remaining $15,000 of such gain will, under paragraph (b)(3) of this section, be shared equally between RW and SK.

Example (15). (i) JB and DK form a limited partnership for the purpose of purchasing residential real estate to lease. JB, the limited partner, contributes $13,500, and DK, the general partner, contributes $1,500. The partnership, which uses the cash receipts and disbursements method of accounting, purchases a building for $100,000 (on leased land), incurring a recourse mortgage of $85,000 that requires the payment of interest only for a period of 3 years. The partnership agreement provides that partnership net taxable income and loss will be allocated 90 percent to JB and 10 percent to DK, the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distribu-

	MC	RW	SK
Capital account before adjustment	$15,000	$15,000	$25,000
Deemed sale adjustment	15,000	15,000	9,000
Less: distribution	(24,667)	(24,667)	(24,667)
Capital account after liquidation	$5,333	$5,333	$9,333

(vi) Assume the same facts as in (i) except that the partnership does not sell the Ventureco securities. During the next 3 years the fair market value of the Ventureco securities remains at $50,000, and the partnership engages in no other investment activities. Thus, at the end of that period the balance sheet of the partnership and the partners' capital accounts are the same as they were at the beginning of such period. At the end of the 3 years, MC's interest in the partnership is liquidated for the $25,000 cash held by the partnership. Assume the distributions does not give rise to a transaction described in section 707(a)(2)(B). Assume further that the partnership has a section 754 election in effect for the taxable year during which such liquidation occurs. Under sections 734(b) and 755 the partnership increases the basis of the Ventureco securities by the $15,000 basis adjustment (the excess of $25,000 over the $10,000 adjusted tax basis of MC's partnership interest).

tions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section), and JB is not required to restore any deficit balance in his capital account, but DK is so required. The partnership agreement contains a qualified income offset (as defined in paragraph (b)(2)(ii)(*d*) of this section). As of the end of each of the partnership's first 3 taxable years, the items described in paragraphs (b)(2)(ii)(*d*)(*4*), (*5*), and (*6*) of this section are not reasonably expected to cause or increase a deficit balance in JB's capital account. In the partnership's first taxable year, it has rental income of $10,000, operating expenses of $2,000, interest expense of $8,000, and cost recovery deductions of $12,000. Under the partnership agreement JB and DK are allocated $10,800 and $1,200, respectively, of the $12,000 net taxable loss incurred in the partnership's first taxable year.

	[redacted]	DK
Capital account upon formation	$13,500	$1,500
Less: year 1 net loss	(10,800)	(1,200)
Capital account at end of year 1	$2,700	[redacted]

The alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section is satisfied as of the end of the partnership's first taxable year. Thus, the allocation made in the partnership's first taxable year has economic effect.

(ii) Assume the same facts as in (i) and that in the partnership's second taxable year it again has rental income of $10,000, operating expenses of $2,000, interest expense of $8,000, and cost recovery deductions of $12,000. Under the partnership agreement JB and DK are allocated $10,800 and $1,200, respectively, of the $12,000 net taxable loss incurred in the partnership's second taxable year.

	JB	JB
Capital account at beginning of year 1	$2,700	[redacted]
Less: year 2 net loss	(10,800)	(1,200)
Capital account at end of year 2	($8,100)	($900)

Only $2,700 of the $10,800 net taxable loss allocated to JB satisfies the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section as of the end of the partnership's second taxable year. The allocation of such $2,700 net taxable loss to JB (consisting of $2,250 of rental income, $450 of operating expenses, $1,800 of interest expense, and $2,700 of cost recovery deductions) has economic effect. The remaining $8,100 of net taxable loss allocated by the partnership agreement to JB must be reallocated in accordance with the partners' interests in the partnership. Under paragraph (b)(3)(iii) of this section, the determination of the partners' interests in the remaining $8,100 net taxable loss is made by comparing how distributions (and contributions) would be made if the partnership sold its property at its adjusted tax basis and liquidated immediately following the end of the partnership's first taxable year with the results of such a sale and liquidation immediately following the end of the partnership's second taxable year. If the partnership's real property were sold for its $88,000 adjusted tax basis and the partnership were liquidated immediately following the end of the partnership's first taxable year, the $88,000 sales proceeds would be used to repay the $85,000 note, and there would be $3,000 remaining in the partnership, which would be used to make liquidating distributions to DK and JB of $300 and $2,700, respectively. If such property were sold for its $76,000 adjusted tax basis and the partnership were liquidated immediately following the end of the partnership's second taxable year, DK would be required to contribute $9,000 to the partnership in order for the partnership to repay the $85,000 note, and there would be no assets remaining in the partnership to distribute. A comparison of these outcomes indicates that JB bore $2,700 and DK $9,300 of the economic burden that corresponds to the $12,000 net taxable loss. Thus, in addition to the $1,200 net taxable loss allocated to DK under the partnership agreement, $8,100 of net taxable loss will be reallocated to DK under paragraph (b)(3)(iii) of this section. Similarly, for subsequent taxable years, absent an increase in JB's capital account, all net taxable loss allocated to JB under the partnership agreement will be reallocated to DK.

(iii) Assume the same facts as in (ii) and that in the partnership's third taxable year there is rental income of $35,000, operating expenses of $2,000, interest expense of $8,000, and cost recovery deductions of $10,000. The capital accounts of the partners maintained on the books of the partnership do not take into account the reallocation to DK of the $8,100 net taxable loss in the partnership's second taxable year. Thus, an allocation of the $15,000 net taxable income $13,500 to JB and $1,500 to DK (as dictated by the partnership agreement and as reflected in the capital accounts of the partners) does not have economic effect. The partners' interests in the partnership with respect to such $15,000 taxable gain again is made in the manner described in paragraph (b) (3) (iii) of this section. If the partnership's real property were sold for its $76,000 adjusted tax basis and the partnership were liquidated immediately following the end of the partnership's second taxable year, DK would be required to contribute $9,000 to the partnership in order for the partnership to repay the $85,000 note, and there would be no assets remaining to distribute. If such property were sold for its $66,000 adjusted tax basis and the partnership were liquidated immediately following the end of the partnership's third taxable year, the $91,000 ($66,000 sales proceeds plus $25,000 cash on hand) would be used to repay the $85,000 note and there would be $6,000 remaining in the partnership, which would be used to make liquidating distributions to DK and JB of $600 and $5,400, respectively. Accordingly, under paragraph (b) (3) (iii) of this section the $15,000 net taxable income in the partnership's third taxable year will be reallocated $9,600 to DK (minus $9,000 at end of the second taxable year to positive $600 at end of the third taxable year) and $5,400 to JB (zero at end of the second taxable year to positive $5,400 at end of the third taxable year).

Example (16). (i) KG and WN form a limited partnership for the purpose of investing in improved real estate. KG, the general partner, contributes $10,000 to the partnership, and WN, the limited partner, contributes $990,000 to the partnership. The $1,000,000 is used to purchase an apartment building on leased land. The partnership agreement provides that (1) the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section; (2) cash will be distributed first to WN until such time as he has received the amount of his original capital contribution ($990,000), next to KG until such time as he has received the amount of his original capital contribution ($10,000), and thereafter equally between WN and KG; (3) partnership net taxable income will be allocated 99 percent to WN 1 percent to KG until the cumulative net taxable income allocated for all taxable years is equal to the cumulative net taxable loss previously allocated to the partners, and thereafter equally between WN and KG; (4) partnership net taxable loss will be allocated 99 percent to WN and 1 percent to KG, unless net taxable income has previously been allocated equally between WN and KG, in which case such net taxable loss first will be allocated equally until the cumulative net taxable loss allocated for all taxable years is equal to the cummulative net taxable income previously allocated to the partners; and (5) upon liquidation, WN is not required to restore any deficit balance in his capital account, but KG is so required. Since distributions in liquidation are not required to be made in accordance with the partners' positive capital account balances, and since WN is not required, upon the liquidation of his interest, to restore the deficit balance in his capital account to the partnership, the allocations provided by the partnership agreement do not have economic effect and will be reallocated in accordance with the partners' interests in the partnership under paragraph (b) (3) of this section.

(ii) Assume the same facts as in (i) except that the partnership agreement further provides that distributions in liquidation of the partnership (or any partner's interest) are to be made in accordance with the partners' positive capital account balances (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section). Assume further that the partnership agreement contains a qualified income offset (as defined in paragraph (b)(2)(ii)(*d*) of this section) and that, as of the end of each partnership taxable year, the items described in paragraphs (b)(2)(iii)(*d*) (*4*), (*5*), and (*6*) of this section are not reasonably expected to cause or increase a deficit balance in WN's capital account. The allocations provided by the partnership agreement have economic effect.

Example (17). FG and RP form a partnership with FG contributing cash of $100 and RP contributing property, with 2 years of cost recovery deductions remaining, that has

an adjusted tax basis of $80 and a fair market value of $100. The partnership, FG, and RP have calendar taxable years. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, liquidation proceeds will be made in accordance with capital account balances, and each partner is liable to restore the deficit balance in his capital account to the partnership upon liquidation of his interest (as set forth in paragraphs (b)(2)(ii)(*b*) (*2*) and (*3*) of this section). FG expects to be in a substantially higher tax bracket than RP in the partnership's first taxable year. In the partnership's second taxable year, and in subsequent taxable years, it is expected that both will be in approximately equivalent tax brackets. The partnership agreement allocates all items equally except that all $50 of book depreciation is allocated to FG in the partnership's first taxable year and all $50 of book depreciation is allocated to RP in the partnership's second taxable year. If the allocation to FG of all book depreciation in the partnership's first taxable year is respected, FG would be entitled under section 704(c) to the entire cost recovery deduction ($40) for such year. Likewise, if the allocation to RP of all the book depreciation in the partnership's second taxable year is respected, RP would be entitled under section 704(c) to the entire cost recovery deduction ($40) for such year. The allocation of book depreciation to FG and RP in the partnership's first 2 taxable years has economic effect within the meaning of paragraph (b)(2)(ii) of this section. However, the economic effect of these allocations is not substantial under the test described in paragraph (b)(2)(iii)(*c*) of this section since there is a strong likelihood at the time such allocations became part of the partnership agreement that at the end of the 2-year period to which such allocations relate, the net increases and decreases to FG's and RP's capital accounts will be the same with such allocations as they would have been in the absence of such allocation, and the total tax liability of FG and RP for the taxable years to which the section 704(c) determinations relate would be reduced as a result of the allocations of book depreciation. As a result the allocations of book depreciation in the partnership agreement will be disregarded. FG and RP will be allocated such book depreciation in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section. Under these facts the book depreciation deductions will be reallocated equally between the partners, and section 704(c) will be applied with reference to such reallocation of book depreciation.

Example (18). (i) WM and JL form a general partnership by each contributing $300,000 thereto. The partnership uses the $600,000 to purchase an item of tangible personal property, which it leases out. The partnership elects under section 48 (q)(4) to reduce the amount of investment tax credit in lieu of adjusting the tax basis of such property. The partnership agreement provides that (1) the partners' capital account will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, (2) distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section), (3) any partner with a deficit balance in his capital account following the liquidation of his interest must restore that deficit to the partnership (as set forth in paragraph (b)(2)(ii)(*b*)(*3*) of this section), (4) all income, gain, loss, and deduction of the partnership will be allocated equally between the partners, and (5) all non-liquidating distributions of the partnership will be made equally between the partners. Assume that in each of the partnership's taxable years, it recognizes operating income equal to its operating deductions (excluding cost recovery and depreciation deductions and gain or loss on the sale of its property). During its first 2 taxable years, the partnership has an additional $200,000 cost recovery deduction in each year. Pursuant to the partnership agreement these items are allocated equally between WM and JL.

	WM	JL
Capital account upon formation	$300,000	$300,000
Less: net loss for years 1 and 2	(200,000)	(200,000)
Capital account at end of year 2	$100,000	$100,000

The allocations made in the partnership's first 2 taxable years have substantial economic effect.

(ii) Assume the same facts as in (i) and that MK is admitted to the partnership at the beginning of the partnership's third taxable year. At the time of his admission, the fair market value of the partnership property is $600,000. MK contributes $300,000 to the partnership in exchange for an equal one-third interest in the partnership, and, as permitted under paragraph (b)(2)(iv)(*g*), the capital accounts of WM and JL are adjusted upward to $300,000 each to reflect the fair market value of partnership property. In addition, the partnership agreement is modified to provide that depreciation and gain or loss, as computed for tax purposes, with respect to the partnership property that appreciated prior to MK's admission will be shared among the partners in a manner that takes account of the variation between such property's $200,000 adjusted tax basis and its $600,000 book value in accordance with paragraph (b)(2)(iv)(*f*) and the special rule contained in paragraph (b)(4)(i) of this section. Depreciation and gain or loss, as computed for book purposes, with respct to such property will be allocated equally among the partners and, in accordance with paragraph (b)(2)(iv)(*g*) of this section, will be reflected in the partner's capital accounts, as will all other partnership income, gain, loss, and deduction. Since the requirements of (b)(2)(iv)(*g*) of this section are satisfied, the capital accounts of the partners (as adjusted) continue to be maintained in accordance with paragraph (B)(2)(iv) of this section.

(ii) Assume the same facts as in (iii) and that immediately after MK's admission to the partnership, the partnership property is sold for $600,000, resulting in a taxable gain of $400,000 ($600,000 less $200,000 adjusted tax basis) and no book gain or loss, and the partnership is liquidated. An allocation of the $400,000 taxable gain cannot have economic effect because such gain cannot properly be reflected in the partners' book capital accounts. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $400,000 taxable gain will, in accordance with section 704(c) principles, be shared equally between WN and JL.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	$100,000	$300,000	$100,000	$300,000	$300,000	$300,000
Plus: gain	200,000	0	200,000	0	0	0
Capital account before liquidation	$300,000	$300,000	$300,000	$300,000	$300,000	$300,000

The $900,000 of partnership cash ($600,000 sales proceeds plus $300,000 contributed by MK) is distributed equally among WM, JL, and MK in accordance with their adjusted positive capital account balances, each of which is $300,000.

(iv) Assume the same facts as in (iii) except that prior to liquidation the property appreciates and is sold for $900,000, resulting in a taxable gain of $700,000 ($900,000 less $200,000 adjusted tax basis) and a book gain of $300,000 ($900,000 less $600,000 book value). Under the partnership agreement the $300,000 of book gain is allocated equally among the partners, and such allocation has substantial economic effect.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	$100,000	$300,000	$100,000	$300,000	$300,000	$300,000
Plus: gain	300,000	100,000	300,000	100,000	100,000	100,000
Capital account before liquidation	$400,000	$400,000	$400,000	$400,000	$400,000	$400,000

Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the

$700,000 taxable gain is, in accordance with section 704(c) principles, shared $300,000 to JL, $300,000 to WM, and $100,000 to MK. This ensures that (1) WM and JL share equally the $400,000 taxable gain that is attributable to appreciation in the property that occurred prior to MK's admission to the partnership in the same manner as it was reflected in their capital accounts upon MK's admission, and (2) WM, JL, and MK share equally the additional $300,000 taxable gain in the same manner as they shared the $300,000 book gain.

(v) Assume the same facts as in (iii) except that shortly after MK's admission the property depreciates and is sold for $450,000, resulting in a taxable gain of $250,000 ($450,000 less $200,000 adjusted tax basis) and a book loss of $150,000 (450,000 less $600,000 book value). Under the partnership agreement these items are allocated as follow:

	WM		JL		[illegible]	
	Tax	[illegible]	Tax	[illegible]	Tax	[illegible]
Capital account at beginning of year 3	[illegible]	$300,000	[illegible]	[illegible]	[illegible]	[illegible]
Plus: gain	125,000	[illegible]	125,000	0	0	0
Less: loss	0	(50,000)	0	[illegible]	0	[illegible]
Capital account before liquidation	[illegible]	[illegible]	$225,000	[illegible]	[illegible]	[illegible]

The $150,000 book loss is allocated equally among the partners, and such allocation has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $250,000 taxable gain is, in accordance with section 704(c) principles, shared equally between WM and JL. The fact that MK bears an economic loss of $50,000 without a corresponding taxable loss is attributable entirely to the "ceiling rule." See paragraph (c)(2) of § 1.704–1.

(vi) Assume the same facts as in (ii) except that the property depreciates and is sold for $170,000, resulting in a $30,000 taxable loss ($200,000 adjusted tax basis less $170,000) and a book loss of $430,000 ($600,000 book value less $170,000). The book loss of $430,000 is allocated equally among the partners ($143,333 each) and has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the entire $30,000 taxable loss is, in accordance with section 704(c) principles, included in MK's distributive share.

	WM		JL		[illegible]	
	Tax	[illegible]	Tax	Book	Tax	[illegible]
Capital account at beginning of year 3	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Less Loss	0	(143,333)	0	(143,333)	[illegible]	(143,333)
Capital account before liquidation	$100,000	$156,667	$100,000	$156,667	[illegible]	$156,667

(vii) Assume the same facts as in (ii) and that during the partnership's third taxable year, the partnership has an additional $100,000 cost recovery deduction and $300,000 book depreciation deduction attributable to the property purchased by the partnership in its first taxable year. The $300,000 book depreciation deduction is allocated equally among the partners, and that allocation has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $100,000 cost recovery deduction for the partnership's third taxable year is, in accordance with section 704(c) principles, included in MK's distributive share. This is because under those principles MK must include the cost recovery deduction for such property in his distributive share up to the amount of the book depreciation deduction for such property properly allocated to him.

	WM		JL		[illegible]	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	$100,000	[illegible]	$100,000	[illegible]	[illegible]	$300,000
Less: recovery/depreciation deduction for year 3	0	(100,000)	0	[illegible]	(100,000)	[illegible]
Capital account at end of year 3	$100,000	[illegible]	$100,000	[illegible]	[illegible]	[illegible]

(viii) Assume the same facts as in (vii) except that upon MK's admission the partnership property has an adjusted tax basis of $220,000 (instead of $200,000), and thus the cost recovery deduction for the partnership's third taxable year is $110,000. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the excess $10,000 cost recovery deduction ($110,000 less $100,000 included in MK's distributive share) is, in accordance with section 704(c) principles, shared by WM and JL in proportion to their shares of book depreciation. Since their shares of book depreciation were equal, they each must include $5,000 of the cost recovery deduction in their distributive shares for the partnership's third taxable year.

(ix) Assume the same facts as in (vii) except that upon MK's admission the partnership agreement is amended to allocate the first $400,000 of book depreciation and loss on partnership property equally between WM and JL and the last $200,000 of such book depreciation and loss to MK. Assume such allocations have substantial economic effect. Pursuant to this amendment the $300,000 book depreciation deduction in the partnership's third taxable year is allocated equally between WM and JL. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $100,000 cost recovery deduction is, in accordance with section 704(c) principles, shared equally between WM and JL. In the partnership's fourth taxable year, it has a $60,000 cost recovery deduction and a $180,000 book depreciation deduction. Under the amendment described above, the $180,000 book depreciation deduction is allocated $50,000 to WM, $50,000 to JL, and $80,000 to MK. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $60,000 cost recovery deduction is, in accordance with section 704(c) principles, included entirely in MK's distributive share.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	$100,000	[illegible]	[illegible]	[illegible]	$300,000	[illegible]
Less:						
(a) recovery/depreciation deduction for year 3	(50,000)	(150,000)	(50,000)	(150,000)	0	[illegible]
(b) recovery/depreciation deduction for year 4	[illegible]	(50,000)	[illegible]	(50,000)	(60,000)	[illegible]
Capital account at end of year 4	$50,000	$100,000	[illegible]	$100,000	[illegible]	[illegible]

(x) Assume the same facts as in (vii) and that at the beginning of the partnership's third taxable year, the partnership purchases a second item of tangible personal property for $300,000 and elects under section 48(q) (4) to reduce the amount of investment tax credit in lieu of adjusting the tax basis of such property. The partnership agreement is amended to allocate the first $150,000 of cost recovery deductions and loss from such property to WM and the next $150,000 of cost recovery deductions and loss from such property equally between JL and MK. Thus, in the partnership's third taxable year it has, in addition to the items specified in (vii), a cost recovery and book depreciation deduction of $100,000 attributable to the newly acquired property, which is allocated entirely to WM.

As in (vii), the allocation of the $300,000 book depreciation attributable to the property purchased in the partnership's first taxable year equally among the partners has substantial economic effect, and consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement properly provides for the entire $100,000 cost recovery deduction attributable to such property to be included in MK's distributive share. Furthermore, the allocation to WM of the $100,000 cost recovery deduction attributable to the property purchased in the partnership's third taxable year has substantial economic effect.

	[illegible]		JL		[illegible]	
	Tax	[illegible]	Tax	[illegible]	Tax	[illegible]
Capital account at beginning of year 3	$100,000	[illegible]	$100,000	$300,000	$300,000	$300,000
Less:						
(a) recovery/depreciation deduction for property bought in year 1	[illegible]	(100,000)	0	(100,000)	(100,000)	(100,000)
(b) recovery/depreciation deduction for property bought in year 3	(100,000)	(100,000)	[illegible]	[illegible]	0	[illegible]
Capital account at end of year 3	[illegible]	$100,000	$100,000	[illegible]	$200,000	$200,000

(xi) Assume the same facts as in (x) and that at the beginning of the partnership's fourth taxable year, the properties purchased in the partnership's first and third taxable years are disposed of for $90,000 and $180,000, respectively, and the partnership is liquidated. With respect to the property purchased in the first taxable year, there is a book loss of $210,000 ($300,000 book value less $90,000) and a taxable loss of $10,000 ($100,000 adjusted tax basis less $90,000). The book loss is allocated equally among the partners, and such allocation has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the taxable loss of $10,000 will, in accordance with section 704(c) principles, be included entirely in MK's distributive share. With respect to the property purchased in the partnership's third taxable year, there is a book and taxable loss of $20,000. Pursuant to the partnership agreement this loss is allocated entirely to WM, and such allocation has substantial economic effect.

	WM		JL		[illegible]	
	Tax	[illegible]	Tax	[illegible]	Tax	[illegible]
Capital account at beginning of year 4	0	$100,000	$100,000	[illegible]	$200,000	[illegible]
Less:						
(a) loss on property bought in year 1	[illegible]	(70,000)	[illegible]	(70,000)	(10,000)	(70,000)
(b) loss on property bought in year 3	[illegible]	(20,000)	[illegible]	[illegible]	[illegible]	0
Capital account before liquidation	($20,000)	$10,000	$100,000	$130,000	$190,000	$130,000

Partnership liquidation proceeds ($270,000) are properly distributed in accordance with the partners' adjusted positive book capital account balances ($10,000 to WM, $130,000 to JL and $130,000 to MK).

(xii) Assume the same facts as in (x) and that in the partnership's fourth taxable year it has a cost recovery deduction of $80,000 and book depreciation deduction of $180,000 attributable to the property purchased in the partnership's first taxable year, and a cost recovery and book depreciation deduction of $100,000 attributable to the property purchased in the partnership's third taxable year. The $180,000 book depreciation deduction attributable to the property purchased in the partnership's first taxable year is allocated equally among the partners, and such allocation has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $60,000 cost recovery deduction attributable to the property purchased in the first taxable year is, in accordance with section 704(c) principles, included entirely in MK's distributive share. Furthermore, the $100,000 cost recovery deduction attributable to the property purchased in the third taxable year allocated $50,000 to WM, $25,000 to JL, and $25,000 to MK, and such allocation has substantial economic effect.

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	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 4	0	$100,000	$100,000	$200,000	$200,000	$200,000
Less						
(a) recovery/depreciation deduction for property bought in year 1	0	(80,000)	0	(80,000)	(80,000)	(80,000)
(b) recovery/depreciation deduction for property bought in year 3	(50,000)	(50,000)	(25,000)	(25,000)	(25,000)	(25,000)
Capital account at end of year 4	($50,000)	($10,000)	$75,000	$115,000	$115,000	$115,000

At the end of the partnership's fourth taxable year the adjusted tax bases of the partnership properties acquired in its first and third taxable years are $40,000 and $100,000, respectively. If the properties are disposed of at the beginning of the partnership's fifth taxable year for their adjusted tax bases, there would be no taxable gain or loss, a book loss of $80,000 on the property purchased in the partnership's first taxable year ($120,000 book value less $40,000), and cash available for distribution of $140,000.

	WM		JL		MK	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 5	($50,000)	($10,000)	$75,000	$115,000	$115,000	$115,000
Less loss	0	(26,667)	0	(26,667)	0	(26,667)
Capital account before liquidation	($50,000)	($36,667)	$75,000	$88,333	$115,000	$88,333

If the partnership is then liquidated, the $140,000 of cash on hand plus the $36,667 balance that WM would be required to contribute to the partnership (the deficit balance in his book capital account) would be distributed equally between JL and MK in accordance with their adjusted positive book capital account balances.

(xiii) Assume the same facts as in (i). Any tax preferences under section 57(a)(12) attributable to the partnership's cost recovery deductions in the first 2 taxable years will be taken into account equally by WM and JL. If the partnership agreement instead provides that the partnership's cost recovery deductions in its first 2 taxable years are allocated 25 percent to WM and 75 percent to JL (and such allocations have substantial economic effect), the tax preferences attributable to such cost recovery deductions would be taken into account 25 percent by WM and 75 percent by JL. The conclusion in the previous sentence is unchanged even if the partnership's operating expenses (exclusive of cost recovery and depreciation deductions) exceed its operating income in each of the partnership's first 2 taxable years, the resulting net loss is allocated entirely to WM, and the cost recovery deductions are allocated 25 percent to WM and 75 percent to JL (provided such allocations have substantial economic effect). If the partnership agreement instead provides that all income, gain, loss, and deduction (including cost recovery and depreciations) are allocated equally between JL and WM, the tax preferences attributable to the cost recovery deductions would be taken into account equally by JL and WM. In this case, if the partnership has a $100,000 cost recovery deduction in its first taxable year and an additional net loss of $100,000 in its first taxable year (*i.e.*, its operating expenses exceed its operating income by $100,000) and purports to categorize JL's $100,000 distributive share of partnership loss as being attributable to the cost recovery deduction and WM's $100,000 distributive share of partnership loss as being attributable to the net loss, the economic effect of such allocations is not substantial, and each partner will be allocated one-half of all partnership income, gain, loss, and deduction and will take into account one-half of the tax preferences attributable to the cost recovery deductions.

Example (19). (i) DG and JC form a general partnership for the purpose of drilling oil wells. DG contributes an oil lease, which has a fair market value and adjusted tax basis of $100,000. JC contributes $100,000 in cash, which is used to finance the drilling operations. The partnership agreement provides that DG is credited with a capital account of $100,000, and JC is credited with a capital account of $100,000. The agreement further provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances, and any partner with a deficit balance in his capital account following the liquidation of his interest must restore such deficit to the partnership (as set forth in paragraphs (b)(2)(ii)(b) (*2*) and (*3*) of this section. The partnership chooses to adjust capital accounts on a simulated cost depletion basis and elects under section 48(q)(4) to reduce the amount of investment tax credit in lieu of adjusting the basis of its section 38 property. The agreement further provides that (1) all additional cash requirements of the partnership will be borne equally by DG and JC, (2) the deductions attributable to the property (including money) contributed by each partner will be allocated to such partner, (3) all other income, gain, loss, and deductions (and item thereof) will be allocated equally between DG and JC, and (4) all cash from operations will be distributed equally between DG and JC. In the partnership's first taxable year $80,000 of partnership intangible drilling cost deductions and $20,000 of cost recovery deductions on partnership equipment are allocated to JC, and the $100,000 basis of the lease is, for purposes of the depletion allowance under sections 611 and 613A(c)(7)(D), allocated to DG. The allocations of income, gain, loss, and deduction provided in the partnership agreement have substantial economic effect. Furthermore, since the allocation of the entire basis of the lease to DG will not result in capital account adjustments (under paragraph (b)(2)(*iv*)(*k*) of this section) the economic effect of which is insubstantial, and since all other partnership allocations are recognized under this paragraph, the allocation of the $100,000 adjusted basis of the lease to DG is, under paragraph (b)(4)(v) of this section, recognized as being in accordance with the partners' interests in partnership capital for purposes of section 613A(c)(7)(D).

(ii) Assume the same facts as in (i) except that the partnership agreement provides that (1) all additional cash requirements of the partnership for additional expenses will be funded by additional contributions from JC, (2) all cash from operations will first be distributed to JC until the excess of such cash distributions over the amount of such additional expense equals his initial $100,000 contributions, (3) all deductions attributable to such additional operating expenses will be allocated to JC, and (4) all income will be allocated to JC until the aggregate amount of income allocated to him equals the amount of partnership operating expenses funded by his initial $100,000 contribution plus the amount of additional operating expenses paid from contributions made solely by him. The allocations of income, gain, loss, and deduction provided in partnership agreement have economic effect. In addition, the economic effect of the allocations provided in the agreement is substantial. Because the partnership's drilling activities are sufficiently speculative, there is not a strong likelihood at the time the disproportionate allocations of loss and deduction to JC are provided for by the partnership agreement that the economic effect of such allocations will be largely offset by allocations of income. In addition, since the allocation of the entire basis of the lease to DG will not result in capital account adjustments (under paragraph (b)(2)(*iv*)(*k*) of this section) the economic effect of which is insubstantial, and since all other partnership allocations are recognized under this paragraph, the allocation of the adjusted basis of the lease to DG is, under paragraph (b)(4)(v) of this section, recognized as being in accordance with the partners' interests in partnership capital under section 613A(c)(7)(D).

(iii) Assume the same facts as in (i) except that all distributions, including those made upon liquidation of the partnership, will be made equally between DG and JC, and no partner is obligated to restore the deficit balance in his capital account to the partnership following the liquidation of his interest for distribution to partners with positive capital account balances. Since liquidation proceeds will be distributed equally between DG and JC irrespective of

their capital account balances, and since no partner is required to restore the deficit balance in his capital account to the partnership upon liquidation (in accordance with paragraph (b)(2)(ii)(b)(3) of this section), the allocations of income, gain, loss, and deduction provided in the partnership agreement do not have economic effect and must be reallocated in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section. Under these facts all partnership income, gain, loss, and deduction (and item thereof) will be reallocated equally between JC and DG. Furthermore, the allocation of the $100,000 adjusted tax basis of the lease of DG is not, under paragraph (b)(4)(v) of this section, deemed to be in accordance with the partners' interests in partnership capital under section 613A(c)(7)(D), and such basis must be reallocated in accordance with the partners' interests in partnership capital or income as determined under section 613A(c)(7)(D). The results in this example would be the same if JC's initial cash contribution were $1,000,000 (instead of $100,000), but in such case the partners should consider whether, and to what extent, the provisions of paragraph (b)(1) of § 1.721–1, and principles related thereto, may be applicable.

(iv) Assume the same facts as in (i) and that for the partnership's first taxable year the simulated depletion deduction with respect to the lease is $10,000. Since DG properly was allocated the entire depletable basis of the lease (such allocation having been recognized as being in accordance with DG's interest in partnership capital with respect to such lease), under paragraph (b)(2)(iv)(*k*)(*1*) of this section the partnership's $10,000 simulated depletion deduction is allocated to DG and will reduce his capital account accordingly. If (prior to any additional simulated depletion deductions) the lease is sold for $100,000, paragraph (b)(4)(v) of this section requires that the first $90,000 (*i.e.*, the partnership's simulated adjusted basis in the lease) out of the $100,000 amount realized on such sale be allocated to DG (but does not directly affect his capital account). The partnership agreement allocates the remaining $10,000 amount realized equally between JC and DG (but such allocation does not directly affect their capital accounts). This allocation of the $10,000 portion of amount realized that exceeds the partnership's simulated adjusted basis in the lease will be treated as being in accordance with the partners' allocable shares of such amount realized under section 613A(c)(7)(D) because such allocation will not result in capital account adjustments (under paragraph (b)(2)(iv)(*k*) of this section) the economic effect of which is insubstantial, and all other partnership allocations are recognized under this paragraph. Under paragraph (b)(2)(iv)(*k*) of this section, the partners' capital accounts are adjusted upward by the partnership's simulated gain of $10,000 ($100,000 sales price less $90,000 simulated adjusted basis) in proportion to such partners' allocable shares of the $10,000 portion of the total amount realized that exceeds the partnership's $90,000 simulated adjusted basis ($5,000 to JC and $5,000 to DG). If the lease is sold for $50,000, under paragraph (b)(4)(v) of this section the entire $50,000 amount realized on the sale of the lease will be allocated to DG (but will not directly affect his capital account). Under paragraph (b)(2)(iv)(*k*) of this section the partners' capital accounts will be adjusted downward by the partnership's $40,000 simulated loss ($50,000 sales price less $90,000 simulated adjusted basis) in proportion to the partners' allocable shares of the total amount realized from the property that represents recovery of the partnership's simulated adjusted basis therein. Accordingly, DG's capital account will be reduced by such $40,000.

* * * * *

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: December 19, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 85–30781 Filed 12–24–85; 11:58 am]

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Federal Register

Tuesday
December 31, 1985

Part III

Environmental Protection Agency

40 CFR Part 300

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SW-FRL-2945-6]

National Oil and Hazardous Substances Contingency Plan; the National Priorities Lists

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete Sites from the National Priorities List; Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete eight sites from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

DATES: Comments concerning the sites may be submitted on or before January 30, 1986.

ADDRESSES: Comments may be mailed to Russel H. Wyer, Director, Hazardous Site Control Division (Attn: RAB Staff), Office of Emergency and Remedial Response (WH–548E), Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460. The Headquarters Docket clerk will maintain some background information on each site. Comprehensive information on each site is available through the EPA Regional Docket clerks.

The Headquarters public docket is located in EPA Headquarters, Waterside Mall subbasement, 401 M Street, SW., Washington, DC 20460, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding holidays. Requests for copies of the background information from the Headquarters public docket should be directed to the EPA Headquarters Docket Office. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office.

Addresses for the Headquarters and Regional Docket Office are:

For background information on all eight: Denise Sines, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, Subbasement, 401 M Street, SW., Washington, DC 20460, 202/382–3046.

For the Friedman, New Jersey site: Carole Petersen, Region II, U.S. EPA, 26 Federal Plaza, 7th Floor, Room 734, New York, NY 10278, 212/264–8677.

For the Enterprise Avenue and Lehigh, Pennsylvania sites: Diane McCreary, Region III, U.S. EPA Library, 5th Floor, 841 Chestnut Bldg., 9th & Chesnut Streets, Philadelphia, PA 19106, 215/597–0580.

For the PCB Spills site, North Carolina: Gayle Alston, Region IV, U.S. EPA Library, Room G–6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/881–4216.

For the Morris Dump site, Minnesota: Lou Tilley, Region V, U.S. EPA Library, Room 1420, 230 South Dearborn Street, Chicago, IL 60604, 312/353–2022.

For PCB Warehouse site, Commonwealth of the Northern Mariana Islands, PCB Waste sites, Trust Territory of the Pacific Islands, Taputimu Farm site, America Samoa: Jean Circiello, Region IX, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974–8076.

FOR FURTHER INFORMATION CONTACT: Russel H. Wyer, Director, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH–548E), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone (800) 424–9346 (or 382–3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete eight sites from the Naitonal Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on these deletions. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The eight sites EPA intends to delete from the NPL are:

1. Enterprise Avenue, Philadelphia, Pennsylvania.
2. Friedman Property (once listed as Upper Freehold), Upper Freehold, New Jersey.
3. Lehigh Electric and Engineering Co., Old Forge Borough, Pennsylvania.
4. Morris Arsenic Dump, Morris, Minnesota.
5. PCB Spills, 243 miles of roads, North Carolina.
6. PCB Warehouse, Saipan, Commonwealth of the Northern Mariana Islands.
7. PCB Wastes, Trust Territory of the Pacific Islands.
8. Taputimu Farm, Island of Tutuila, American Samoa.

The EPA will accept comments on these eight sites for thirty days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action and those that the Agency is considering using for future site deletions. Section IV discusses each site and explains how each site meets the deletion criteria.

II. NPL Deletion Criteria

Recent amendments to the NCP establish the criteria the Agency uses to delete sites from the NPL as published in the Federal Register on November 20, 1985 (50 FR 47912). Section 300.66(c)(7) of the NCP provides that sites:

* * * may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA has been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate at the time of the deletion.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

In the NPL rulemaking published in the Federal Register on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on the question of whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments also were received in response to the amendments to the NCP that were proposed in the Federal Register on February 12, 1985, (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individuals rights or obligations. The NPL is designed primarily for informational purposes and to assist agency management. As is mentioned in section II of this notice, § 300.66(c)(8) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this group of eight sites, EPA's Headquarters Office will accept and evaluate public comments before making the final decision to delete. In the future, EPA's Regional Offices may accept and evaluate public comments. The Agency believes that deletion procedures should focus on notice and comment at the local level, similar to those procedures for local comment outlined in EPA's March 27, 1984, "Interim Procedures for Deleting Sites from the NPL." Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of these eight sites. The Agency is considering using similar procedures in the future, with the exception that the notice and comment period would be conducted concurrently at the local level and through the Federal Register.

The procedures used were:

1. EPA Regional Offices recommended deletion and prepared relevant documents.

2. EPA Regional Offices provided a two to three week public comment period on the deletion package. The notification was provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories. Notice was also given at that time to any public meetings if they were determined to be necessary.

3. The comments received during the notice and comment period were evaluated before the tentative decision to delete was made.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the Federal Register, and the NPL will reflect any deletions in the next final update. Public notices and copies of the responsiveness summary will be made available to the local residents by the Regional Offices.

IV. Basis for Intended Site Deletions

The following summaries provide the Agency's rationale for intending to delete these sites from the NPL.

Enterprise Avenue Site, Philadelphia, Pennsylvania

The Enterprise Avenue site located in Philadelphia, Pennsylvania, encompasses approximately 57 acres, in an industrial area. Until mid-1976, the Philadelphia Streets Department used the Enterprise Avenue site for disposal of incineration residue, fly ash, and bulky debris. During the same period, drums containing various industrial and chemical wastes were illegally buried at the site by several waste handling firms. In response to the situation, the Philadelphia Water Department (PWD) conducted exploratory excavations during January 1979 to confirm these allegations. Approximately 1,700 drums were discovered. It was determined that the drums contained or had once contained such wastes as paint sludges, solvents, oils, resins, metal finishing waste, and solid inorganic wastes. On December 30, 1982, the site was proposed for inclusion on National Priorities List (NPL) and appeared on the final NPL on September 8, 1983.

In 1982, the City began remedial activities at the site in which all drums and drum fragments were removed and disposed of off-site, and some of the contaminated soil was excavated and placed into a Resource, Conservation, and Recovery Act (RCRA) permitted landfill. A total of 32,600 cubic yards of excavated soil was identified as contaminated with organic compounds (toluene, benzene, ethylbenzene, or organic halogens). Remaining contaminated soil was stockpiled on-site in two separate piles and a soil cover was partially placed, but not completed.

In 1984, an EPA and City funded Phase II remedial action was started to complete the remedial actions. All of the stockpiled soils were analyzed for a variety of metals and organics. Soils were divided into 100 cubic yard lots for analysis. A Key Indicator Analysis was used to determine which soil lots would be disposed of in an off-site facility. This test established action levels for organic compounds and inorganic elements disposed of at the site as identified from sampling results. If any one indicator exceeded action levels, the entire soil lot was deemed contaminated and disposed of off-site. Action levels for inorganics were selected based upon the Extraction Procedure Toxicity Test used to determine if a waste is hazardous under RCRA. Organic action levels were established utilizing similar methodology and are consistent with levels that would be used today. After removal of contaminated soils from the site, the area was sampled on a grid pattern to insure that all soils not passing the test had been removed and disposed of off-site. The results indicate that the remedial objectives were attained and that all soils considered contaminated were removed. The site was then capped and revegetated as a further precautionary measure and the site fenced. A local public comment period was held August 2, 1985, through August 23, 1985, specifically concerning deletion of the site. No public comments were received.

EPA, with the concurrence of the Commonwealth of Pennsylvania, has determined that all appropriate Fund-financed response under CERCLA at the Enterprise Avenue site has been completed, and has determined that no further cleanup by responsible parties is appropriate. The Pennsylvania Department of Environmental Resources (PADER) committed to operate and maintain the site. The PADER has also developed and implemented an operations and maintenance plan for the cap approved by EPA and will monitor the ground water to insure that the water quality remains at background levels.

Friedman Property Site, Upper Freehold, New Jersey

The Friedman Property is a 3-acre site located in Upper Freehold Township, Monmouth County, New Jersey. The site is located near 5 other NPL sites collectively known as the Plumsted sites. In the late 1950's and early 1960's the alleged dumping of free-flowing liquids, household wastes, and demolition debris occurred into a natural ditch which was then covered. The site was proposed for inclusion on the National Priorities List (NPL) on December 30, 1982, and appeared on the final NPL on September 8, 1983.

EPA and NJDEP completed a remedial investigation/feasibility study (RI/FS) in 1984. The RI/FS studied the air, soils, wastes, ground and surface water, and adjacent stream sediments for evidence of contamination. Results of the RI/FS indicate that limited contamination is

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present at the site, and that the site was not used as a hazardous waste disposal facility. Its wastes were no different than a typical municipal landfill.

Air monitoring during the RI/FS did not show levels above ambient air quality standards, and no complaints of odors or fumes were received from area citizens before or during testing, or from personnel conducting the RI/FS.

Ground water testing included the installation of six monitoring wells and sampling of domestic wells in the vicinity of the site. The shallow ground water was sampled for standard priority pollutants and indicated slightly elevated levels of zinc below 0.5 mg/l and detected some phenols at 0.03 mg/l. These levels are below current EPA Health Effects Assessment levels of 7.4 mg/l for zinc and 3.5 mg/l for phenols. Deep water sampling revealed only zinc at levels comparable to surface levels and no priority pollutants were detected.

No similarity exists between the shallow and deep ground water data except for comparable levels of naturally occurring zinc. Since similar chemicals were not found between the two aquifers, and geologic analysis does not indicate the presence of interconnections, there is no indication that contamination of the lower aquifer has occurred or will occur in the future.

Stream sediments and surface water quality also were sampled. The study indicated that the adjacent stream sediments had not been significantly contaminated by materials found at the site although trace contamination consistent with routine road maintenance practices from the adjacent highway was found.

In summary, the RI/FS concluded that there are no significant sources of contamination at the site, and contaminants have not migrated from the site and are not expected to migrate. Therefore, no remedial action was appropriate. A local public comment period was held July 12, 1984, through August 11, 1984, after a public meeting was held to discuss the no action alternative. No written comments were reveived. Public comment at the meeting consisted of a discussion of the extent of the problem at the site. A detailed report of this discussion is available through the appropriate EPA docket offices.

EPA, with the concurrence of the State of New Jersey, the determined that the Friedman Property site poses no significant threat to public healh or the environment and, therefore, taking remedial measures is not appropriate. However, EPA and the New Jersey Department of Environmental Protection (NJDEP) have agreed that ground water monitoring of the shallow aquifer in the vicinity of the site will be conducted as a precautionary measure to insure that current site conditions do not change. The State of New Jersey is responsible for periodic ground water monitoring for a period of five years. The results from monitoring conducted by the State of New Jersey to date indicate that conditions remain unchanged.

As an additional precaution, EPA recommended to State, County and local officials that a notice be placed on the property deed and the plot plan amended. The deed notice and plot restrictions would be entered in county land records noting previous use of the site for waste disposal and restricting on-site excavations, agricultural, and residential use.

Lehigh Electric Site, Old Forge Borough, Pennsylvania

The Lehigh Electric site is located in Old Forge Borough, Lackawanna County, Pennsylvania. The site was operated as a transformer service company by the Lehigh Electric Company. About 4,000 transformers and capacitors were stored at the facility. Indiscriminate transformer dielectric fluid handling and disposal occurred at the site, resulting in PCB contamination of on-site soils. The site was proposed for inclusion on the National Priorities List (NPL) on December 30, 1982, and appeared on the final NPL on September 8, 1983.

In 1983, EPA and Pennsylvania Department of Environmental Resources (PADER) completed a remedial investigation and feasibility study (RI/FS) at the site. The study included the analysis of ground water, air and river sediment samples, and the evaluation of clean-up alternatives. A local public comment period was held August 2, 1985, through August 23, 1985, specifically with respect to deletion. No comments were received.

Phase I of the remedial action removed all transformers, transformer contents, and surface debris from the site. This was completed in December 1982. The Phase II remedial action removed contaminated soils, and buildings from the site, and backfilled, graded, and vegetated the site. These actions were completed in September 1984. Sampling was conducted continuously during excavation showing that the remedial action reduced the concentration of PCBs to 10 ppm. Contaminated soils were removed from the site and disposed of in a TSCA approved disposal facility off-site. EPA inspected the site and collected samples in May 1985 and verified that the objectives of the remedial action were met.

After excavation of the contaminated soils was completed, the remaining soils containing low level PCBs were buried underneath 10 to 15 feet of clean backfill. This action eliminates surficial direct contact. PCBs are not readily soluble in water. PCBs remaining are not expected to impact ground water; no PCBs were detected in the ground water samples taken during the RI/FS.

EPA, with the concurrence of the Commonwealth of Pennsylvania, has determined that all appropriate Fund-financed response under CERCLA at the Lehigh Electric site has been completed, and has determined that no further cleanup by responsible parties is appropriate. The Pennsylvania Department of Environmental Resources agrees to perform all future operation and maintenance including the continued sampling of ground water PCB.

Morris Arsenic Site, Morris, Minnesota

The Morris Arsenic site is located in Stevens County approximately one mile northeast of Morris, Minnesota. In the early 1940's, approximately 1,500 pounds of arsenic-laced grasshopper bait were buried at the site. The subsequent construction of a highway through the general location of the burial site may have dispersed the bait and has made the discovery of the exact burial location difficult. The primary public health threat at the site was the potential for contamination of the shallow glacial aquifer, a source of drinking water for residential wells and the city of Morris. The site was proposed for inclusion on the National Priorities List (NPL) on September 8, 1983, and appeared on the final NPL on September 21, 1984.

In 1984, the EPA conducted a remedial investigation (RI) to determine the soil contamination levels and the ground water contamination levels. Eleven monitoring wells were installed on and around the site and a sampling program implemented to search for arsenic contamination in the site area.

The results of the RI indicate that arsenic levels in the surface soils were all below 7 μg/kg, well within the natural background range of 3 to 14 μg/kg. Arsenic concentrations in the soils at the water table were somewhat elevated, ranging between 20 and 40 μg/kg, but far below the Centers for Disease Control (CDC) action level of 100 μg/kg for surficial soils. CDC was consulted with respect to the soils and concurred that no action was necessary. Ground water samples taken from the monitoring wells and from nearby domestic sources indicate that arsenic

levels were considerably below the Primary Drinking Water Standard of 50 μg/l. Concentrations of arsenic were found to be at or near 3 μg/l. The municipal well field for Morris is approximately one mile in the opposite direction of ground water flow and would not be impacted if there were contamination at the site. Other domestic wells in the site vicinity were sampled and did not show any indications of arsenic contamination above background. A public meeting was held on May 2, 1985, and a local three-week public comment period was conducted from April 23, 1985, to May 14, 1985, concerning the no action alternative. No public comments were received.

EPA, with the concurrence of the State of Minnesota, has determined that the Morris Arsenic site poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate. EPA has recommended to State, County, and local officials that as a further precaution, a notice be placed on the property. The deed notice would be entered in county land records noting previous use of the site for the disposal of a hazardous substance.

PCB Spills Site, North Carolina

Between June 1978 and August 1978, over 30,000 gallons of waste transformer oil contaminated with polychlorinated biphenyls (PCB's) were deliberately discharged along 243 noncontiguous miles of highway shoulders in fourteen counties in North Carolina. The site was proposed for inclusion on the National Priorities List (NPL) on December 30, 1982, and appeared on the final NPL on September 8, 1983.

The State conducted several investigations and feasibility studies between 1979 and 1981 and ascertained that contamination did not migrate from the spill areas into surface water, biota or ground water. A detailed report was prepared and evaluated by EPA concerning the siting and construction of the landfill to receive the contaminated soils and wastes.

In May 1982, EPA and the State of North Carolina initiated remedial action to; (1) Construct a landfill for disposal of PCB wastes; (2) remove, transport and dispose of contaminated soils; and (3) reconstruct the highway shoulders. Disposal of contaminated soil was completed in November 1982, and the Toxic Substance Control Act (TSCA) approved landfill was capped, graded, and vegetated.

Sampling was conducted during removal at the beginning and end points of the contaminated strips in order to insure that all contaminated soils were removed. Random samples were collected from the areas after soils were removed. Sampling results indicate that a cleanup level of 10 ppm or less was achieved for nearly all of the samples. No soils contaminated with PCBs above 50 ppm were left in place. Excavated areas were then filled with clean soil.

A local three-week public comment period was held May 10, 1984, through May 31, 1984, with respect to deletion. No public comments were received.

EPA, with the concurrence of the State of North Carolina, has determined that all appropriate Fund-financed response under CERCLA at the PCB Spills site has been completed and has determined that no further cleanup by responsible parties is appropriate. The State is currently monitoring the landfill constructed to contain contaminated soils removed from the site and continues to meet all requirements for post-closure monitoring.

PCB Warehouse Site, Saipan, Commonwealth of the Northern Mariana Islands

PCB Warehouse is a Public Works warehouse building where intact drums of PCB transformer oil were stored. The warehouse is located adjacent to the Philippine Sea. The concern was that the PCB oil could be released in the event of a severe tropical storm thereby endangering public health and the environment through risk of direct contact and contamination of marine life. The site was proposed for inclusion on the National Priorities List (NPL) on December 20, 1982, and appeared on the final NPL on September 8, 1983.

A remedial investigation of the site in December 1982, revealed the presence of 21 drums of PCB contaminated oil and 3 crates of sodium arsenite. Drums were found to be intact and there was no evidence of any reported spills or leaks.

The transformers from which the oil was drained were located at the Saipan Headquarters Building and at the Department of Public Works Yard. There was no indication of leaks or spills near those transformers.

An immediate removal was conducted in 1984 that removed the 21 drums of PCB wastes and 3 crates of sodium arsenite. These were repackaged and transported back to the United States for disposal in a TSCA approved disposal facility. The sodium arsenite was disposed of in the continental United States in a Resource Conservation and Recovery Act (RCRA) permitted facility. After removal, testing was conducted on site, to insure that cleanup was complete and that no spills had occurred during or before cleanup. Test results confirmed that no PCB wastes had been spilled during the removal action.

A local public comment period was held June 13, 1985, through June 28, 1985 with respect to deletion. No public comments were received.

EPA, with the concurrence of the Commonwealth of the Northern Mariana Islands, has determined that all appropriate Fund-financed response under CERCLA has been completed at the PCB Warehouse site, and that no further cleanup by responsible parties is appropriate.

PCB Waste Sites, Trust Territory of the Pacific Islands

PCB Waste sites is a unique site comprised of 8 separate locations scattered throughout the Trust Territories of the Pacific Islands, an area larger than the continental United States. The sites were located on the islands of Koror in the Republic of Palau, Moen in Truk State, Yap, Kosrae, and two on both Ponape and Majuro. The sites represented a threat to public health and the environment because of their proximity to human populations, ground water supplies, and marine resources. The site was proposed for inclusion on the National Priorities List (NPL) on December 30, 1982, and appeared on the final NPL on September 8, 1983.

A remedial investigation at the sites in December 1982, revealed that the PCBs in drums and transformers, and some pesticides and chemicals were improperly stored at the stites. A previous oil spill was apparent at one site formerly used to store transformers. Some sites had intact transformer oil containers located in unsecured areas open to the general public.

An immediate removal was conducted in 1984 removing all PCB wastes over 50 ppm and the other hazardous wastes found at the various sites.

PCB fluids under 50 ppm were blended and burned on the islands. Other PCB wastes were transported to a TSCA approved disposal facility in the United States. Other hazardous wastes at the sites were removed and disposed of in the continential United States in a RCRA permitted facility.

During the removal action, soils and waste oils were sampled in the field using a portable testing kit that allowed for the segregation of wastes for transport. A target of below 50 ppm PCB was selected. Only one site had contaminated soils. The site was formerly used for transformer storage and is located in a fenced-in rural area. Testing was conducted where the spill

occurred before and after removal of contaminated soils to ascertain whether contamination over 50 ppm of PCB remained. No PCBs above 50 ppm were found in structures or soils after removal. A local public comment period was held July 1, 1985, through July 22, 1985, with respect to deletion. No comments were received.

EPA, with the concurrence of the Trust Territory of the Pacific Islands, has determined that all appropriate Fund-financed response under CERCLA has been completed at the PCB Waste sites, and that no further cleanup by responsponsible parties is appropriate.

Taputimu Farm Site, Island of Tutuila, American Samoa

The Taputimu Farm site consists of three rooms of a farm warehouse and a trailer. The site was the repository for unused and out-of-date agricultural chemicals and pesticides on American Samoa. A remedial investigation and feasibility study (RI/FS) conducted in 1982 revealed that the materials were improperly stored within the facility buildings. Analysis of the materials collected inside the building identified several pesticides and chlorinated organic solvents. The site was proposed for inclusion on the National Priorities List (NPL) on December 30, 1982, and appeared on the final NPL on September 8, 1983.

The chemical/pesticide materials were stored on a concrete or steel floor of the storage areas and trailer. Soil sampling for primary pollutants and visual examination of the site confirmed that contamination was confined to the interior floor areas of the warehouse and trailer.

The remedial action alternative selected and implemented at Taputimu Farm in 1984, involved repacking the chemical/pesticide materials for shipping to the continental United States for disposal in a RCRA approved facility. The remedial action also included washing down all exposed surfaces of the storage areas with bleach to ensure deactivation of any residual materials not picked up by sweeping and vacuuming. Finally, two layers of epoxy paint were applied to the interior walls and three inches of concrete were poured over the existing floor thereby eliminating the threat of direct contact. The American Samoa Government only utilizes the structure for farm equipment storage and has banned all food storage from the building. Since all materials were removed and contaminated surfaces cleaned and sealed, no further monitoring was conducted. Warning signs were placed on the building prohibiting food storage as an additional precautionary measure.

A local public comment period was held from June 13, 1985, through June 28, 1985, with respect to deletion. No public comments were received.

EPA, with the concurrence of the Government of American Samoa, has determined that all appropriate Fund-financed response under CERCLA has been completed at the Taputimu Farm site, and that no further cleanup by responsible parties is appropriate.

Dated: December 18, 1985.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 85-30806 Filed 12-30-85; 8:45 am]

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federal register

Tuesday
December 31, 1985

Part IV

Environmental Protection Agency

40 CFR Part 86

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AH-FRL-2937-5]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a final rule that will make nonconformance penalties (NCPs) available for specific emission standards taking effect in model years 1987 and 1988. The availability of NCPs will allow a manufacturer of heavy-duty engines (HDEs) or heavy/duty vehicles (HDVs) whose engines or vehicles fail to conform with certain applicable emission standards, but which do not exceed a designated upper limit, to be issued a certificate of conformity upon payment of a monetary penalty. An "upper limit" is an emission level, established by regulation and appropriate to a specific pollutant, above which an HDE or HDV could not be issued a certificate.

This rule, which was proposed in 50 FR 35402 (August 30, 1985), specifies emission standards for which NCPs will be made available, as well as specific upper limits and penalty rates for those emission standards. It follows the "generic" NCP rule, published August 30, 1985, at 50 FR 35374, which established the criteria for the availability of NCPs, the method of establishing upper limits, a testing program called Production Compliance Auditing (PCA), a penalty formula to determine the dollar amount of the NCP, and other general aspects of an NCP rule. This rule also includes a few general aspects of an NCP rule which were not fully addressed in the generic rule.

Regulations affected by this rulemaking are codified in Subpart L of 40 CFR Part 86.

EFFECTIVE DATE: January 29, 1986.

ADDRESS: *Public Docket:* Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN–85–02 at the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby/ Gallery 1, 401 M Street, SW., Washington, DC, 20460, and are available for review between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Montgomery or Mr. Claude Magnuson, Manufacturers Operations Division [EN–340F], Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Telephone (202) 382–2487 or (202) 382–2547.

SUPPLEMENTARY INFORMATION:

A. Statutory Authority

Section 206(g) of the Clean Air Act (the Act), 42 U.S.C. 7525(g), requires EPA to issue a certificate of conformity for heavy-duty vehicles or engines which exceed a section 202(a) emissions standard, but do not exceed a "practicable" upper limit determined by EPA, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking. In placing section 206(g) in the Clean Air Act amendments of 1977, Congress intended NCPs as a response to perceived problems with technology-forcing heavy-duty engine emission standards.[1] Following *International Harvester* v. *Ruckelshaus*, 478 F.2d 615 (D.C. Cir. 1973), Congress realized the dilemma that technology-forcing standards were likely to cause. If strict standards were maintained, then some manufacturers (technological laggards) might be unable to comply initially and would be forced out of the marketplace. NCPs were intended to remedy this potential problem; the laggards would have a temporary alternative to permit them to sell their engines or vehicles through payment of a penalty, yet leaders would not suffer an economic disadvantage compared to noncomforming manufacturers, because the NCP would be based, in part, on the amount of money the laggard and his customer saved from the noncomforming engine or vehicle.

Under section 206(g)(1), NCPs may be offered for heavy-duty vehicles (HDVs) and heavy-duty engines (HDEs), which are engines to be installed in heavy-duty vehicles. HDVs are defined by section 202(b)(3)(C) as vehicles in excess of 8,500 pounds gross vehicle weight rating (GVWR). They include the part of the light-duty truck (LDT) class between 8,001 and 8,500 pounds GVWR—the heavy light-duty trucks (HLDTs). The penalty may vary by pollutant and by class or category of vehicle or engine.

Section 206(g)(3) requires NCPs to be designed so as to:

- Increase with the degree of emission nonconformity;
- Increase periodically to provide incentive for nonconforming manufacturers to achieve the emission standards; and
- Remove any competitive disadvantage to conforming manufacturers.

Section 206(g) authorizes EPA to require testing of production vehicles or engines in order to determine the emission level on which the penalty is based. This emission level, the "compliance level," becomes the benchmark for warranty and recall liability; the manufacturer who elects the NCP may be responsible for warranty or recall liability if its vehicle or engine exceeds the compliance level in-use. It would not have in-use warranty or recall liability for emissions levels above the standard but below the compliance level.

However, if the emission level of a vehicle or engine exceeds the upper limit of nonconformity, the vehicle or engine would not qualify for an NCP under section 206(g) and no certificate of conformity could be issued to the manufacturer.

B. Background

This final rule follows the recently completed generic phase (Phase I) of the NCP rulemaking (50 FR 35374, August 30, 1985) and the notice of proposed rulemaking (NPRM) for the second NCP phase (Phase II) (50 FR 35402, August 30, 1985). During the generic phase, EPA published regulations covering when NCPs will be made available for emissions standards, how upper limits will be chosen, the general formula for calculating the penalties, and procedures for testing the degree of emissions nonconformity.

This rule completes Phase II of the NCP rulemakings. EPA has applied the Phase I concepts and is establishing specific emissions standards for which NCPs will be available, the upper limits for those standards, and numerical values for the variables in the penalty rate formula for particular subclasses of engines. This rule also includes a few general aspects of an NCP rule which were not fully addressed in Phase I.

[1] The existence of NCPs, however, does not change the criteria under which the standards should be set under section 202. The Natural Resources Defense Council (NRDC) objected to similar language which appeared in the preamble of the notice of proposed rulemaking (NPRM) for this rule (and also in the NPRM and final rule for Phase I of the NCP process). NRDC believed the proposal language was a significant departure from the language of the consensus document of the regulatory negotiation which provided the guidelines for this rule. *See* 50 FR 35374, 35375 (August 30, 1985). However, no substantial change was intended, and EPA here adopts the language of the consensus document.

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The U.S. District Court for the District of Columbia in *Natural Resources Defense Council* v. *Ruckelshaus*, No. 84–758 (D.D.C. Sept. 14, 1984), ordered EPA to publish the final rule for Phase II by December 31, 1985.

C. Discussion of Final Rule and Comments

This final rule adopts most of the provisions proposed in the NPRM for the reasons stated therein. EPA will not discuss all of the provisions of the final rule in this notice. Instead, EPA will discuss only the most significant provisions, or those that have been significantly revised or that were addressed in the comments.

During the time that was available for public comment on the NPRM, seven organizations presented written comments. Three were heavy-duty vehicle or engine manufacturers, two were industry trade associations, one was a state air pollution control program and one was an environmental organization.

EPA did not hold a public hearing for this rulemaking because it was not requested; however, a public workshop was held on September 19, 1985, at the request of a commenter. A summary of the workship and follow-up information is contained in the public docket for this rulemaking. The Engine Manufacturers Association urged EPA to schedule an additional workshop or other meeting prior to the publication of this final rule to allow interested parties the opportunity to express their opinions on the issues at hand. However, due to the court-ordered publication deadline of the rule, time was not available to permit EPA to grant such a request.

1. Eligibility for Nonconformance Penalties

The Phase I NCP rulemaking established three "generic" criteria for determining the emission standards for which NCPs will be offered.

First, the emission standard in question must become significantly more difficult to meet. This criterion may be met when either the standard itself becomes more stringent or compliance with it is made more difficult because another standard has become more stringent. In the latter case, an NCP for either standard may be appropriate.

Second, substantial work must be required for compliance with the standard. "Substantial work" is defined as the application of technology not previously used in that vehicle/engine class or subclass or the significant modification of existing technology or design parameters needed to bring the vehicle or engine into compliance. Obviously, substantial effort would not be required if many manufacturers' vehicles/engines were already meeting the revised standard or could do so with relatively minor calibration changes or modifications.

Finally, EPA must determine that a technological laggard is likely to develop. A technological laggard is a manufacturer who cannot meet the particular emission standard due to technological (not economic) difficulties and who consequently might be forced out of the marketplace. EPA's determination is based on an evaluation of the two criteria discussed above. However, even when these criterial are met, EPA may find that no technological laggard is likely. For example, a standard may become significantly more stringent and substantial effort might be required for compliance, but if that significant effort involves a relatively straightforward transfer of technology already well-developed for other vehicle classes, a technological laggard probably would not develop.

Eligibility for NCPs is determined by evaluating the requirements of each new or revised standard against the criteria discussed above. Based on its evaluation of these requirements, EPA proposed in the NPRM that NCPs be available for the following emission standards which take effect in model years 1987 and 1988:

—1987 diesel HLDT (HLDDT) particulate standard: 0.26 grams per mile (g/mi)
—1987 gasoline-fueled light HDE (LHDGE) hydrocarbon (HC) standard: 1.1 grams per brake horsepower-hour (g/BHP-hr)
—1987 LHDGE carbon monoxide (CO) standard: 14.4 g/BHP-hr
—1988 diesel HDE (HDDE) NO_x standard: 6.0 g/BHP-hr
—1988 HDDE participate standard: 0.60 g/BHP-hr

EPA's rationale as to why NCPs are being made available for these standards listed above is presented in the NPRM. The Natural Resources Defense Council (NRDC) did not support the proposed availability of NCPs for the HDDE particulate and NO_x standards because it did not agree that these standards will require substantial work or that there are likely to be laggards. NRDC's assertions, however, are not enough to rebut. The Agency's analysis at 50 FR 35404 which indicates that HDE manufacturers' lack of experience with particulate control and the inherent tradeoff between particulate and NO_x emissions are likely to require substantial work to overcome and to result in the development of technological laggards. Therefore, EPA believes that NCPs are appropriate for these standards and for all the other standards identified above and adopts the proposal on availability unchanged.

Eligibility for NCPs for longer term (1989 and later) standards will be determined in subsequent rulemaking(s) (Phase III, etc.).

2. Upper Limits for 1988 HDDE Particulate NCP

The current NCP provisions (50 FR 35374) prescribe that the previously applicable emission standard shall serve as the upper limit when NCPs are established for a more stringent emission standard. However, where there is no previous emission standard, the NCP provisions call for EPA to propose an upper limit. This is the case for the 1988 HDDE particulate standard, so EPA proposed two possible upper limits using two distinct approaches: (1) To set the upper limit at a "practicable" level that could be achieved by technological laggards with some reasonable effort on the part of the worst performers, in order to achieve some reduction in emissions from the highest emitting engines (0.80 g/BHP-hr), and (2) to set the upper limit at a level that could be achieved by all manufacturers/families (i.e., by the highest emitting engines), so as not to exclude any manufacturer/family on the basis of its current emissions from the market (0.95 g/BHP-hr). EPA also proposed that the same upper limit apply to all three HDDE subclasses.

The California Air Resources Board (CARB), the Engine Manufacturers Association (EMA), the Manufacturers of Emission Controls Association (MECA) and NRDC commented on the issue. EMA stated that EPA should set the upper limit at a level that would not exclude any offering from the market (i.e., at the level of the worst performer). EMA interpreted section 206(g) of the Clean Air Act as indicating Congressional intent for this approach, and EMA also stated that agreement had been reached in the regulatory negotiation for the Phase I rulemaking that the upper limit should be achievable by all manufacturers. EMA stated that setting the upper limit at the level of the highest emitting engine was the only way to assure that this goal would be achieved. EMA also stated that even at the higher upper limit, the requirement posed by the 1988 standards to lower particulate and NO_x emissions simultaneously might force out the highest emitters because of the NO_x/particulate tradeoff effect.

EMA comments supported EPA's proposal to set a common particulate upper limit for all HDDEs, rather than having separate limits for each of the three subclasses. EMA maintained that there was insufficient data at the present time to allow calculation of separate subclass upper limits. EMA felt that even if such data became available EPA should retain the common upper limit for the 1988 standards, although EMA maintained that it was in general agreement with the concept of separate upper limits.

The comments received from CARB, MECA and NRDC supported the concept that the HDDE particulate upper limit should achieve a practicable reduction from the highest-emitting engines. CARB said that most engines, including worst performers, could achieve moderate emission reductions with relatively minor design changes. MECA said that NCPs should not excuse the technological laggard from making a reasonable effort to control emissions. MECA stated that Congress intended that laggards achieve more than the status quo in terms of emission reduction. NRDC also supported this position, stating that Congress must have sought some improvement on the part of the worst performers or there would have been no point in requiring the establishment of upper limits. CARB stated that it strongly prefers an upper limit of 0.80 g/BHP-hr or lower. MECA and NRDC did not endorse either of the specific upper limit levels proposed, although NRDC stated that it was definitely opposed to a level of 0.95 g/BHP-hr. Neither CARB, MECA nor NRDC commented on the concept of different or uniform upper limits for the three HDDE subclasses.

EPA agrees with CARB, NRDC and MECA that Congress intended that upper limits require reasonably achievable reductions from the highest emitters. the language of section 206(g) of the Act calling for the Administrator to set upper limits at "practicable" levels implies that EPA is to require achievable emission reductions. As noted by NRDC, if Congress had not intended lagging engines to achieve some reductions, it would have had little reason to limit the availability of NCPs to those able to meet an upper limit. Moreover, the statutory guidelines for calculating NCPs makes clear that Congress intended NCPs to encourage eventual compliance. Requiring reasonably achievable reductions from engines for which NCPs are being paid is consistent with this statutory scheme.

EPA does not agree with EMA that it must set the upper limit at the uncontrolled level of the highest emitter in order to assure that all engines will be able to achieve the limit. The Agency is in the business of determining what emission reductions engines can achieve, and there is no reason to believe that in all cases, or even in some, the highest emitting engines cannot achieve some reductions over uncontrolled levels. Therefore, given the Clean Air Act's language and purpose, and the fact that HDDE particulate emissions are currently uncontrolled, EPA concludes that setting the upper limit at a level requiring reasonably achievable reductions represents the preferred approach from the standpoint of both Congressional intent and environmental benefit.

The next step is to determine what the upper limit should be in this case. There is some merit in EMA's concern regarding the NO_x/particulate tradeoff effect; however, EMA submitted no data as to what the effect of the tradeoff might be or showing that the proposed upper limit of 0.80 g/BHP-hr was not practicable. EPA in fact considered the tradeoff effect in determining the proposed upper limit (0.80 g/BHP-hr), but has chosen to re-examine the issue in response to the comment from EMA.

The approach used to estimate the tradeoff effect was to examine the NO_x and particulate levels for the California engines in the EPA database (confidential data previously submitted by the manufacturers) to see what effect the California NO_x standard has on particulate levels for current engines.[2] Engines certified for sale in California are representative of the technology necessary to meet the 1988 6.0 g/BHP-hr NO_x standard, since they must meet a California standard of 5.1 g/BHP-hr on the transient test, which is almost a full g/BHP-hr more stringent than the 1988 Federal standard. Available data for 18 California engine families in the sample (see Figure 1) indicated a mean low-mileage particulate level of 0.61 g/BHP-hr, with a standard deviation of 0.12 g/BHP-hr, at a mean low-mileage NO_x level of 4.4 g/BHP-hr. This particulate level is about 0.1 g/BHP-hr higher than the average for the data available on Federal engines which was used in the NPRM (see Figure 2).

Since the California low-mileage NO_x levels are much lower than would be required to meet the Federal standard, California particulate levels are likely to be higher than they would be under the 6.0 g/BHP-hr Federal NO_x standard. Thus the NO_x/particulate tradeoff effects of increasing the HDDE NO_x to the 5.3 g/BHP-hr low mileage target level for the 6.0 g/BHP-hr standard must be determined.

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[2] Emission information from the Federal engines in this same data base was used to determine the upper limit.

Figure 1

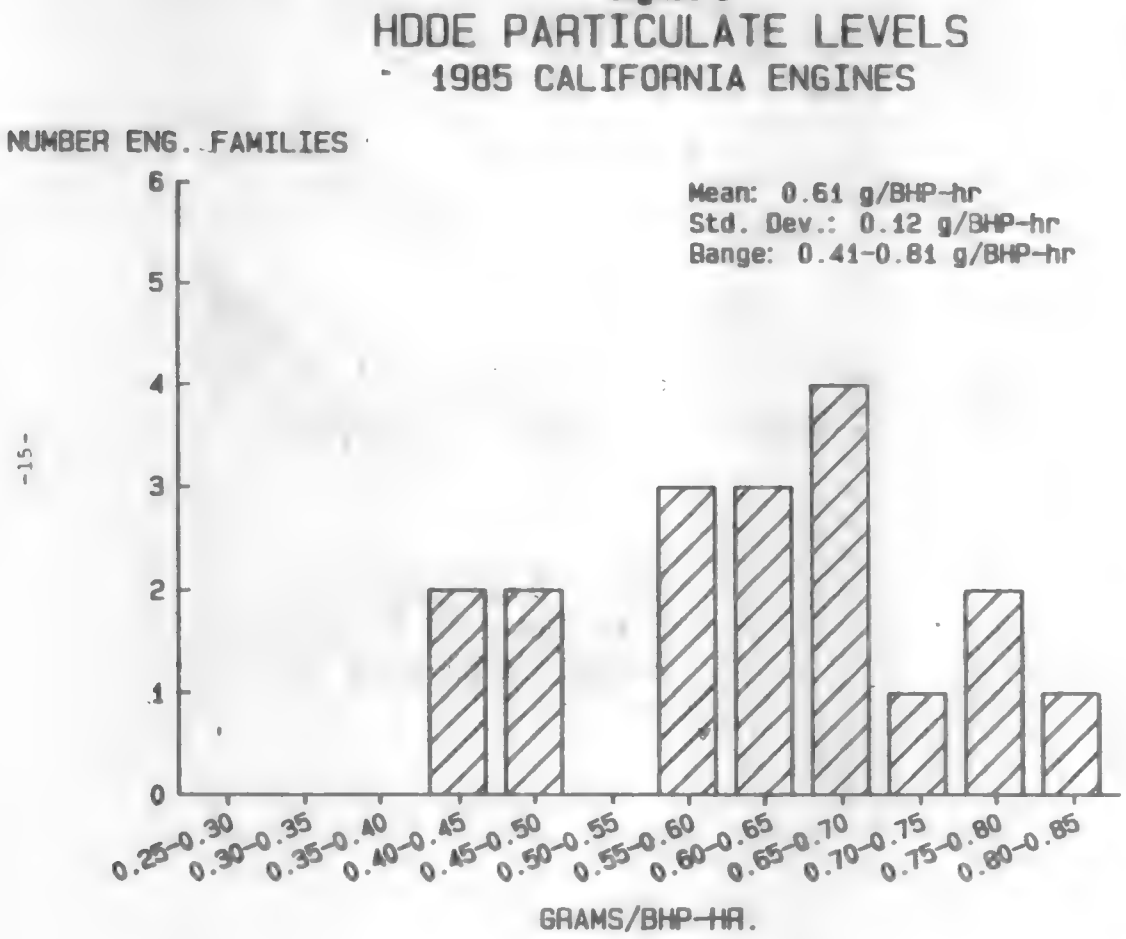
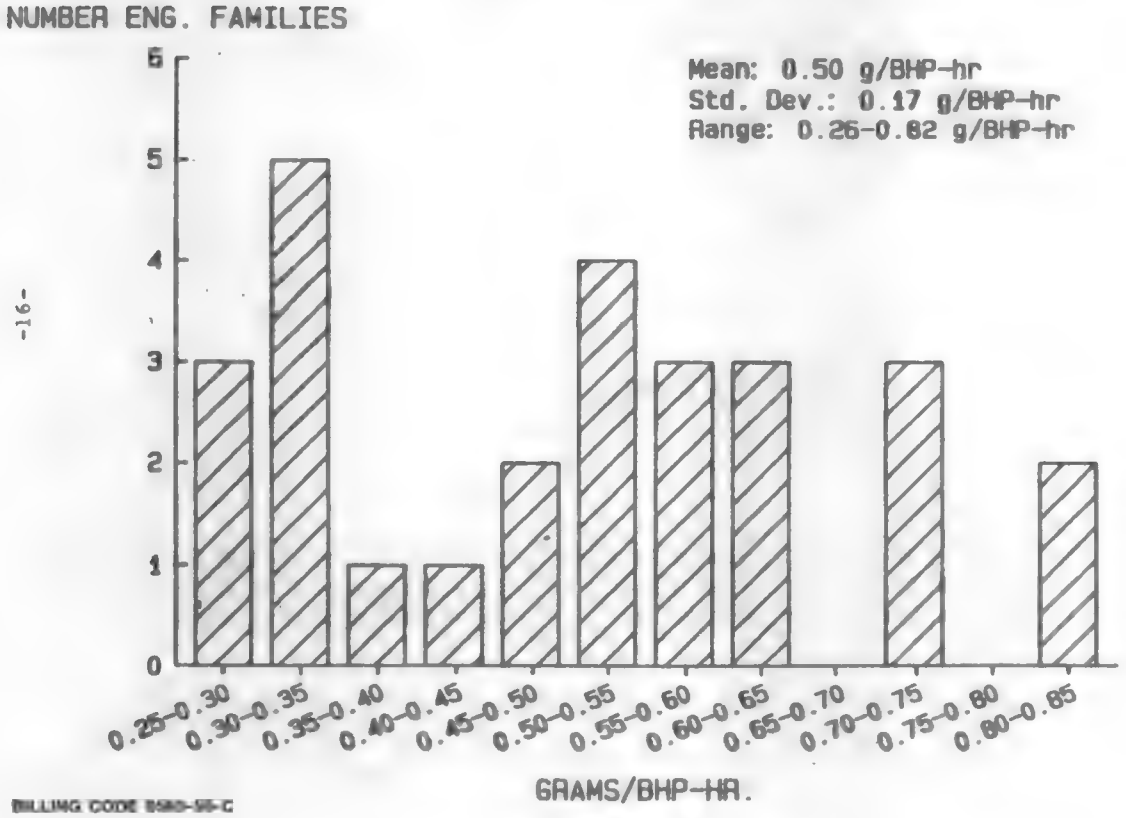


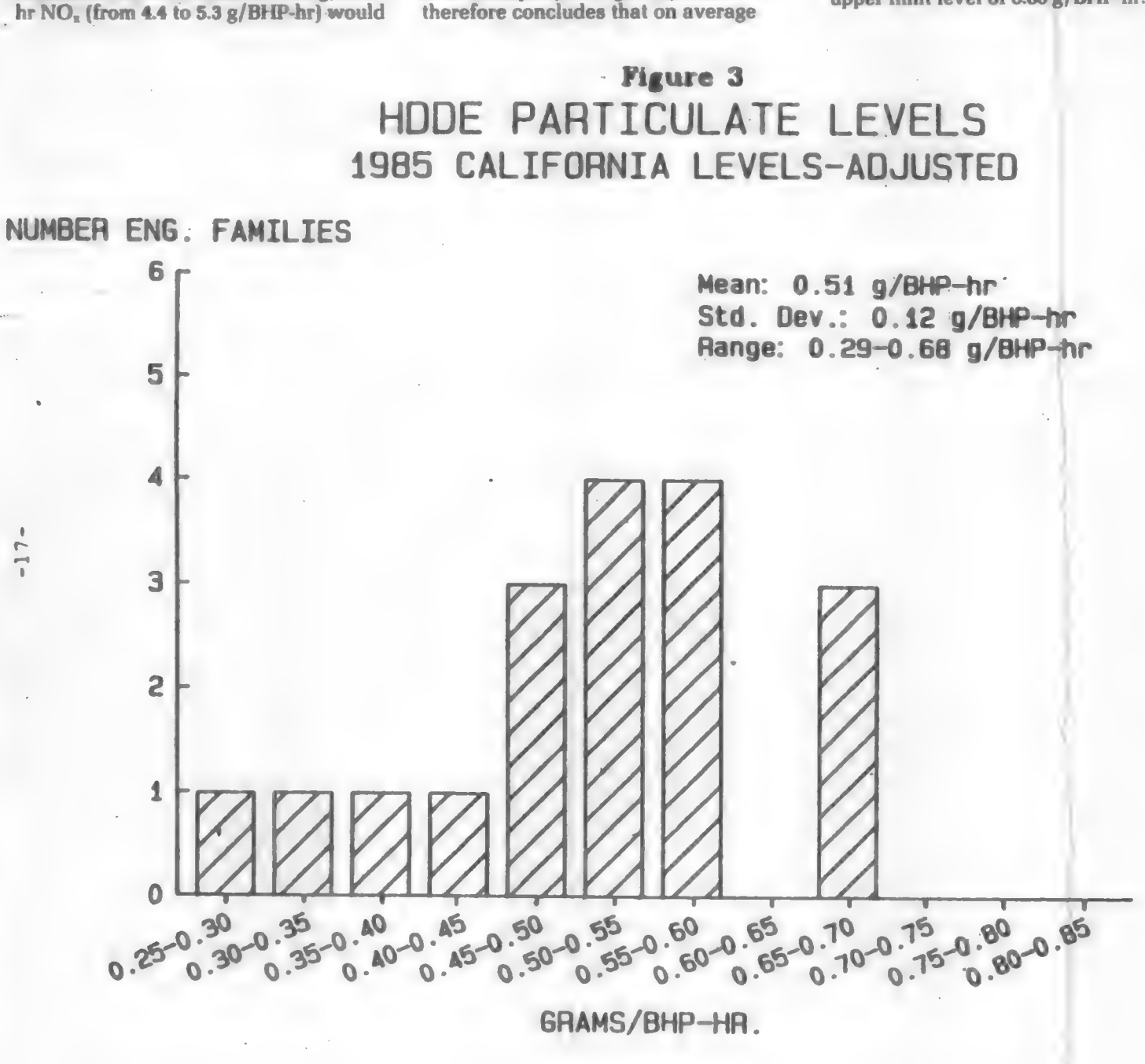
Figure 2



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A reasonable approach to estimating the tradeoff effect is to assume that NO_x and particulate levels could be varied by changing injection timing, as was done in the Regulatory Impact Analysis (RIA) for the NO_x/particulate rulemaking.[3] Using the injection timing tradeoff curve in the RIA (p. 2–52), EPA estimates that an increase of 0.9 g/BHP-hr NO_x (from 4.4 to 5.3 g/BHP-hr) would allow average particulate levels to decrease by about 0.1 g/BHP-hr. Thus, raising the NO_x standard to 6.0 g/BHP-hr would allow the particulate levels of the California engines in the sample to be reduced to 0.51 g/BHP-hr, which is about the same as the average particulate level for the Federal engines in the sample (see Figure 3). EPA therefore concludes that on average there is no effect on achievable particulate levels due to the 6.0 gram NO_x standard. Further, the high end of the range of adjusted California engine particulate emissions is approximately 0.65–0.70 g/BHP-hr, which represents the range of target levels estimated in the NPRM to be necessary to achieve an upper limit level of 0.80 g/BHP-hr.

Figure 3



As was discussed in the NPRM, current Federal engine low mileage particulate emissions range from 0.26 to 0.82 g/BHP-hr with a mean of 0.50 g/BHP-hr. Accounting for the effects of variability and deterioration, these represent a range of 0.37 to 0.93 g/BHP-hr with a mean of 0.62 g/BHP-hr. A particulate upper limit of 0.80 g/BHP-hr

[3] "Regulatory Impact Analysis, Oxides of Nitrogen Pollutant Specific Study and Summary and Analysis of Comments Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Gaseous Emission Regulations for 1987 and Later Model Year Light-Duty Vehicles, and for 1988 and Later Model Year Light-Duty Trucks and Heavy-Duty Engines; Particulate Emission Regulations for 1988 and Later Model Year Heavy Duty Diesel Engines." U.S. EPA, March 1985.

represents about a 15 percent reduction from the highest emitting engine and less from the remainder. Therefore, given that HDDE particulate is currently uncontrolled, EPA concludes that 0.60 g/BHP-hr represents a practicable upper limit for the 1988 HDDE particulate NCP, even with the effects of the more stringent 1988 HDE NO_x standard.

Given that no further particulate emission data was provided by the commenters, and the current data indicates that a common upper limit is appropriate, EPA will retain a common upper limit for all three HDDE subclasses. In future NCP rulemakings EPA will consider to establishing separate subclass upper limits for any pollutant or vehicle/engine class as deemed appropriate and consistent with the other portions of the pertinent NCP rule.

3. HDDE Particulate Deterioration Factors

The deterioration factors (DFs) used in calculating the NCP upper limits for the 1988 HDDE particulate standard were taken from the RIA for that rulemaking. Since actual particulate DF data were unavailable, the RIA analysis used HC emissions as an acceptable surrogate for determining particulate matter DFs. EMA stated that this choice was inappropriate, since it resulted in an "artificially deflated" particulate emission DF, which in turn affected the selection of an upper limit for the NCP. EMA maintained that EPA should have utilized in-use deterioration factors, which were available from a cooperative EPA/industry in-use testing program.

EPA believes that ideally the DF for particulate emissions should be based on particulate data from certification testing of HDDES, such as are available for NO_x emissions. However, no certification type data are available for HDDE particulate emissions. EPA considered using LDDV and LDDT particulate DF data, but these vehicles/engines were not considered representative of most HDDEs. Substitution of the available in-use DF data, as EMA suggested, clearly would have been inappropriate, since it would have resulted in the calculation of an artifically inflated upper limit. As was discussed in the RIA supporting the HDE NO_x/particulate final rule (p. 2–35), the available in-use DF data reflect tampering and malmaintenance and are not indicative of the performance of well maintained engines. Further, current engine designs are also not representative of the control technology expected to be used to meet the standard, since essentially no emission control modifications are involved. It is therefore unrealistic to expect that emissions from controlled engines would deteriorate at the same rate as emissions from uncontrolled engines.

As was pointed out in the RIA, EPA believes that HC emissions are an appropriate surrogate for particulate emissions for purposes of DF determination. Both types of emissions arise from essentially the same sources. Since aftertreatment devices such as trap-oxidizers are not expected to be used to meet the 1988 standards, emission control will likely be achieved through engine and component modifications. The modifications which reduce HC similarly reduce particulate emissions, so that engine wear which increases HC will similarly increase prarticulate emissions. Thus, there should be no substantial difference in the deterioration rates for the two types of emissions.

An apparent inconsistency in EMA's position is shown by the fact that its suggested DFs would result in particulate emission target levels of 0.1–0.3 g/BHP-hr, which manufacturers have stated are not achievable without trap-oxidizers. However, as is summarized in the aforementioned portions of the RIA (p. 2–35), almost all manufacturers commenting individually on the particulate standard indicated particulate target levels higher than those derived from EMA's comments. Therefore, given that no certification HDDE particulate DF information was available, EPA concludes that the DF used in calculating the upper limit for the 1988 particulate emissions NCP was determined by the best available means. It would not have been appropriate to utilize in-use particulate emissions data, as EMA suggested.

4. Penalty Rates

a. Parameters

For those standards for which EPA is specifying that NCPs be made available (the NCP standards), EPA is specifying values for the following parameters in the NCP formula for each standard: COC_{ee}, COC_{oo}, MC_{oo}, and F. The NCP formula was promulgated in the recent Phase I final rule (50 FR 35374, August 30, 1985).

COC_{ee} is an estimate of the industry-wide average incremental per engine or per vehicle cost associated with meeting the NCP standard for engines and vehicles in the NCP category. COC_{ee} generally measures the difference between the cost of complying with the NCP standard and the cost complying with the NCP standard and the cost of complying with the upper emissions limit for the NCP standard. In the case of the HDDE particulate standard, for which there is no prior emission standard, COC_{ee} measures the average initial costs of compliance. COC_{ee} is the sum of the manufacturer costs and owner costs associated with complying with the NCP standard.

The manufacturer cost component of COC_{ee} represents the average per engine or per vehicle cost to manufacturers of engines complying with the NCP standard. It is derived from cost estimates prepared for analyses used in setting the NCP standard. When the cost estimates in the analyses are provided as retail price equivalents (RPEs), those costs have been reduced to eliminate manufacturer profit and dealer overhead and profit. Based on the formulas normally used by EPA in estimating RPEs, this adjustment is accomplished by dividing the RPE by 1.16 for LDDTs and by 1.10 for HDGEs and HDDEs.

Certification costs are not included in COC_{ee}. Manufacturers will often incur certification costs even when NCPs are used, for instance when payment of NCPs is elected after a Selective Enforcement Audit (SEA) failure. In some cases they may carry over a prior year's certification results, thus delaying or avoiding certification procedures during the period the NCP is used. However, manufacturers using NCPs will incur the additional cost of PCA testing, which may be comparable to certification costs.

Owner costs include additional expenses for maintenance, parts replacement, and fuel that will be incurred throughout the useful life of the vehicle. These costs are also derived from analyses prepared in support of the NCP standard-setting process and, as in the analyses, are discounted to the year of purchase using a 10 percent discount rate.

COC_{oo} is EPA's best estimate of the 90th percentile incremental per engine or per vehicle cost associated with meeting the NCP standard within an NCP category. Thus, COC_{oo} is estimated to represent a level such that compliance costs exceed or equal COC_{oo} for only 10 percent of engines or vehicles in the NCP category. COC_{oo}, like COC_{ee}, includes both manufacturer and owner costs. These cost components are defined similarly to those for COC_{ee} except that they are 90th percentile costs rather than average costs.

EPA has not been able to identify true 90th percentile compliance costs with

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complete precision. Most cost estimates developed in the standard-setting process are averages or expected ranges of cost. The cost estimation process is not sufficiently detailed or precise to support development of the desired statistical distribution of costs. Thus, except where more detailed analysis was feasible, the high ends of the expected cost ranges were used as a surrogate for COC_{∞}.

Due to the uncertainty involved in developing the COC_{∞} values, EPA requested comments on whether it should limit the value of COC_{∞} such that it does not exceed the value of COC_{∞} by more than a factor of 1.3 and whether 1.3 is an appropriate value. The NPRM included both the estimated values of COC_{∞} and those values limited such that they do not exceed COC_{∞} by more than a factor of 1.3.

EPA received comments from CARB, EMA, MECA and NRDC on this issue. CARB, NRDC and MECA opposed the use of a numerical factor to estimate COC_{∞}. CARB stated that "[i]t is not appropriate to rely on a fixed factor when more accurate data are available." CARB added that the use of a factor of 1.3 could artificially depress the value of COC_{∞}, which could result in "overly low penalties, and in turn may afford undue competitive advantages to fee-paying manufacturers." NRDC commented that "[t]he proper approach is to estimate COC_{∞} directly and let it fall where it may." MECA commented that "it is far preferable for EPA to base COC_{∞} on actual cost data, and where that data is limited to base it on the high end of the expected cost ranges as EPA has done in calculating the proposed uncapped COC_{∞} figures." MECA added that "[a]rbitrary limits on COC_{∞} may in some instances create competitive disadvantages for conforming manufacturers."

EMA commented that EPA should limit the value of COC_{∞} such that it does not exceed the value of COC_{∞} by more than a factor of 1.3. EMA added that a factor of 1.2 should be used because it believes that the best available cost data for the calculation of COC_{∞} is no more accurate than the marginal cost data used to estimate MC_{∞} and EPA has proposed to use a factor of 1.2 to estimate MC_{∞}.

EPA does not agree with EMA's comment that the best available cost data for the calculation of COC_{∞} is no more accurate than the marginal cost data use to estimate MC_{∞}. EPA has stated that the best available cost data used in the standard setting process is not sufficiently detailed to develop a precise 90th percentile compliance cost. However, this data does contain expected ranges of costs, the high ends of which can be used as a surrogate for COC_{∞}. The available marginal cost data, on the other hand, does not allow EPA in most cases to reasonably estimate a value of MC_{∞}. Therefore, EPA does not believe that COC_{∞} and MC_{∞} should be estimated using the same approach. Furthermore, EPA agrees with the comments of MECA and NRDC that the best approach is to use the available cost data, not an arbitrary factor, especially when the use of such a factor could place a conforming manufacturer at a competitive disadvantage.

EPA recognizes that the COC_{∞} values being promulgated may be higher than the true 90th percentile compliance costs because the Agency considered only variations in the estimated cost of compliance and did not consider the ability of these engines to survive in the marketplace. It is quite possible that engines that would cost as much to control as the promulgated COC_{∞} values will not be able to compete with other engines. Thus, the promulgated COC_{∞} values would be higher than the true 90th percentile compliance costs. The Agency will consider revising in a future rulemaking the COC_{∞} values upon an adequate presentation of data to take into account the effect of competition. Anyone desiring to submit additional cost information should contact the Agency to discuss the type or form of submission to facilitate its consideration.

EMA commented that EPA should be "continuously mindful of changes in technology which could seriously influence the cost of compliance with emission standards." EPA intends to do so in order to ensure that conforming manufacturers are not placed at a competitive disadvantage; however, EPA would only make changes through rulemaking prior to the first model year that the NCP will become available.

MC_{∞} is the industry-wide average marginal cost of compliance with the NCP standard for engines and vehicles in the NCP category. MC_{∞} is measured in dollars per gram per brake horsepower-hour for heavy-duty engines and vehicles and in dollars per gram per mile for light-duty trucks. MC_{∞} measures the economic trade-off between emissions reduction and cost as certified emission levels are reduced. As with COC_{∞} and COC_{∞}, MC_{∞} has both a manufacturer and an owner cost component.

Most cost analyses performed during the standard-setting process do not estimate the marginal cost of compliance. Doing so would require much more detailed knowledge of the emission control alternatives and costs facing manufacturers and the resulting impacts on the cost of ownership than is typically available. Marginal cost estimates have thus been obtained indirectly, from one of two sources. The first source compares current emission levels to emission levels under the new standard. Then COC_{∞} is divided by the required emission reduction to determine the cost per unit (g/BHP-hr or g/mi) of achieving compliance. Another source occurs where costs of ownership are expected to rise due to fuel economy reductions that sometimes accompany lower emission levels. In this case, the marginal cost of fuel economy as a function of the emissions level is estimated in the vicinity of the NCP standard.

EMA commented that comparing current emission levels to the more stringent standards significantly underestimates the emission reduction needed from control technology in order to meet the standard and that this underestimation causes the MC_{∞} calculated by EPA to be significantly higher. EMA contends that the EPA methodology of comparing current emission levels to future standards embodies emission levels of dissimilar character.

EPA does not agree with EMA's comment on this issue. The current emission levels that EPA used included deterioration and variability effects and therefore it was appropriate to compare them directly to the more stringent standards since manufacturers must account for these effects in complying with the standards. EPA could have factored out these effects and measured the reduction from target level to target level, but chose the other approach since the entire NCP program is built around emission standards or numbers of similar character such as the upper limits.

F is a factor used to estimate MC_{∞}, the 90th percentile marginal cost of compliance with the NCP standard for engines and vehicles in the NCP category. MC_{∞} represents the penalty rate for compliance levels near the standard and is equal to MC_{∞} multiplied by F. The Phase I final rule stated that the value of F would be in the range of 1.1 to 1.3. In cases where no reasonable estimate of MC_{∞} can be made based on existing marginal cost data, EPA used a presumptive value of 1.2 for F. This approach was supported in comments by EMA and NRDC.

The NCP Phase I final rule stated that the Consumer Price Index (CPI) would be used to adjust NCPs for inflation for the second and subsequent years that

NCPs for the same standard are available. EPA will also use the CPI to adjust the penalty parameters developed in this rule to dollars as of January of the calendar year preceding the model year in which the NCP is first available. EMA commented that it continues to support EPA's use of the CPI to adjust NCPs for inflation. However, EMA added that the CPI may not always reflect accurately the changes in fuel costs for medium and heavy-duty diesel engines. EMA suggested that a separate inflation index may be required to account for any dramatic shift in fuel prices. EPA remains willing to revisit this issue in the future if the need arises.

b. Joint Costs

The following assumptions were made in order to account for emissions averaging and/or joint costs in the control of two or more pollutants.

The values of COC_{oo}, COC_{oo} and MC_{oo} are estimated as if all engines or vehicles in the NCP category are required to meet the NCP standard, whether or not emissions averaging is allowed. Thus, no specific allowance is made for emissions averaging in this approach.

The term "joint costs" is used to describe the costs attributable to a single control device or technique which simultaneously reduces emissions of two or more pollutants. It also describes the cost of controlling one pollutant when the cost depends on the degree of control of another pollutant. Where joint costs issues arise in the calculation of the parameters for the NCP formula, the general approach has been to calculate the cost of compliance with the NCP standard on the assumption that all pollutants for which NCPs are not available are controlled to their respective standards. Where NCPs are available for two pollutants, the cost of compliance for each pollutant is based on the assumption that manufacturers intend to comply with each of the two NCP standards.

EPA received comments on the issue of joint costs from EMA, MECA and NRDC. Specifically, these comments are directed to EPA's proposal on penalty rates for nonconformance with the 1987 LHDGE HC and CO standards, which EPA expects that most engines will meet with the use of a single catalyst control system. EPA proposed penalty rates that would have charged the full cost of a catalyst control system if any engine failed to meet either the HC or the CO standard and charged the cost of two catalyst control systems if any engine failed to meet both standards.

MECA and NRDC supported the proposal to base the penalties for nonconformance with regard to either HC or CO on the full cost of a catalyst and related equipment required to meet each standard independently, rather than on a half-cost basis of the single control system required to meet both standards. Both stated that the option selected by EPA will best ensure that conforming manufacturers are not placed at a competitive disadvantage.

EMA commented that EPA's proposal to separately cost HC and CO control systems was inconsistent with the approach EPA took when it set the HC and CO standards. EMA noted that during the standard-setting process, EPA determined that a single catalyst system would be needed in order for light heavy-duty gasoline engines to meet the 1987 HC and CO standards. EMA believes that EPA's approach of not splitting the costs for a single HC and CO control system would result in a "double charge" to manufacturers who fail to comply with both standards.

EPA proposed penalty rates for a CO catalyst control system and separate penalty rates for an HC catalyst control system because it was concerned that if the penalty rates were developed by splitting the costs for a single catalyst control system for both pollutants, as was done in the RIA for these standards, a manufacturer in nonconformance with only one of the two standards could pay a penalty lower than the true cost of compliance. This would occur when a manufacturer was able to meet one standard without the use of any catalyst control system at all; because meeting the second standard would require a catalyst control system. Charging NCPs which reflect only half the cost of a catalyst control system would fail to recoup the savings to the manufacturer of the non-catlayst engine. However, the problem with the proposal, as EMA pointed out, is that a manufacturer that is in nonconformity with both pollutants will be faced with a "double charge" because each penalty will be based on a complete catalyst control system. Due to EMA's concern over a "double charge", EPA has re-examined the likelihood of a manufacturer's engine meeting one standard without the use of a catalyst control system. EPA has concluded that the likelihood of this control scenario is very small. Therefore, EPA does not believe that it is appropriate to "double charge" virtually all the time just to protect against a situation that is not likely to happen. Accordingly, EPA has revised the penalty rates for the 1987 LHDGE HC and CO standards to reflect a single catalyst control system, the cost of which will be evenly split for the two standards.

c. Parameter values

The derivation of each of the following cost parameters is described in detail in a support document entitled "Development of Nonconformance Penalty Rates", which is available in the public docket for this rulemaking.

i. Light-Duty Diesel Trucks. The following values (in 1984 dollars) will be used in the NCP formula for the 1987 0.26 gram per mile particulate standard for heavy light-duty diesel truck configurations in the 6,001 to 8,500 pound GVW range.

COC_{oo}=$368
COC_{oo}=$541
MC_{oo}=$3,200 per gram/mile
F=1.2

ii. Heavy-Duty Diesel Engines. The cost of meeting the 1988 HDDE NO_x and particulate standards varies significantly among engine families in the heavy-duty diesel engines class, and NCPs have therefore been set separately for the three HDDE subclasses: light HDDEs (LHDDEs), medium HDDEs (MHDDEs), and heavy HDDEs (HHDDEs).

NO_x

The following values (in 1984 dollars) will be used in the NCP formula for the 1988 6.0g/BHP-hr HDDE NO_x standard for the three HDDE subclasses:

	LHDDE	MHDDE	HHDDE
COC_{oo}	$18	$1,125	$1,278
COC_{oo}	$41	$1,540	$1,585
MC_{oo}	$49/g/BHP-hr	$883/g/BHP-hr	$1,753/g/BHP-hr
F	1.2	1.2	1.2

Particulate

The following values (1984 dollars) will be used in the NCP formula for the 1988 0.60 g/BHP-hr HDDE particulate standard for the three HDDE subclasses:

	[illegible]	[illegible]	[illegible]
COC_{80}	$71	$84	[illegible]
COC_{90}	$83	$97	$101
MC_{90}	$340/g/BHP-hr	$382/g/BHP-hr	$725/g/BHP-hr
F	1.2	1.2	1.2

iii. Heavy-Duty Gasoline Engines. The following values (1984 dollars) will be used in the NCP formulas for the 1987 LHDGE HC and CO emission standards of 1.1 g/BHP-hr and 14.4 g/BHP-hr, respectively.

		HC		CO
COC_{80}	=	$45		[illegible]
COC_{90}	=	$95		$85
MC_{90}	=	$83/g/BHP-hr		4/g/BHP-hr
F	=	1.2		1.2

d. Consistent Use of Date

As part of the regulatory negotiation agreement concerning NCPs, it was agreed that the NCP analysis and RIA should be as consistent as reasonably possible, and that this goal could be achieved through consistent use of cost information, other data, and assumptions between the analyses.

It was further agreed that if an NCP rulemaking is preceded by the final rule for the corresponding emission standard, it would then be appropriate to use new information in the NCP analysis if better data becomes available.

In their comments on the NPRM, EMA stated that EPA had been inconsistent in the use of fuel consumption cost data, in that the data used for establishing NCPs were not the same data that were used for setting the standards. Specifically, EMA said that in calculating costs for the 1987 HDGE HC/CO NCP, EPA omitted a fuel consumption credit that was used in the HC/CO rulemaking. They stated that the 7–10 percent credit calculated in the Regulatory Support Document (RSD) for the 1987 standards would have resulted in a lifetime savings of $819–$1170 to the purchaser of a HDGE.[4] EMA said that by definition COC_{90} should include any owner/operator costs or savings, but EPA's omission of the fuel economy credit meant that COC_{90} would not reflect this savings, resulting in the calculation of a higher NCP than is justified.

EMA also stated that the fuel economy penalty used in the calculation of the 1988 HDDE NO_x NCP was different from the penalty presented in the rulemaking. The RIA for the rulemaking projected a fuel economy penalty of 0–2 percent, however, in calculating the NCP penalty EPA estimated a 0–4.3 percent fuel economy penalty, thus increasing the amount of the NCP. EMA claimed that the fuel economy penalty was revised upward based on a June, 1984 study by Christopher Weaver of Energy and Resource Consultants of Boulder, CO ("Weaver Study").[5] EMA maintained that the Weaver study information could have been used in the March, 1985 rulemaking but was not; therefore, it should not have been used in calculating the NCP.

EPA does not believe that the Agency has been inconsistent in the use of fuel economy costs/savings information in NCP calculations. The HDGE HC/CO fuel economy credit mentioned by EMA was never included in the cost calculations for either the original standards promulgated in 1979 or the revised standards referred to by EMA, which were promulgated in 1983. EPA recognized the potential for a fuel economy savings in the RIA supporting the 1979 rulemaking (RIA at 127), but noted that whether this potential was ever realized depended upon the technological approach to emission control utilized by the manufacturers.[6] Therefore, only a potential benefit was estimated, and it was never used in the cost effectiveness calculations. In any event, the interim non-catalyst standards promulgated in the 1983 rulemaking were based on the use of technology that would realize this benefit. Consequently, the benefit was gained under the interim non-catalyst standards, and was thus irrelevant in calculating either the cost of or NCPs for the 1987 catalyst standards (RSD at 1–34).

In the case of the NO_x NCP calculation, EMA erroneously understood that the revised fuel economy penalty information came from the June 1984 Weaver study. This information actually came from a letter dated January 30, 1985, from Weaver to an EPA contractor ("Weaver Memorandum").[7] This letter was dated well after the close of the comment period for the rulemaking, and in fact the information did not come to the Agency's attention until March, 1985, when the NO_x/particulate final rule was about to be published. Even though the data were received too late to be included in the standard-setting analysis, they represent the best available data for the NCP analysis, particularly since they are generally in agreement with EPA's estimate in the RIA and are at a level of detail which facilitates calculation of COC_{80} and COC_{90} estimates for the three HDDE subclasses.

Finally, as alluded to above, it is worthwhile noting that only the MHDDE fuel economy penalty fell outside EPA's original estimate of 0–2 percent. The LHDDE and HHDDE figures support EPA's RIA estimate, as does the average for the three subclasses. The following table summarizes the differences in the two estimates:

Subclass	RIA estimate (percent)	[illegible] (Sales-weighted average) (percent)
LHDDE	0–2	0
MHDDE	0–2	3.3
HDDE	0–2	1.5
Average	0–2	1.5

EPA therefore believes that use of the January 30, 1985 Weaver figures in the NCP analysis is appropriate and consistent with the regulatory negotiation agreement. In view of the above analysis, EPA does not consider EMA's argument of inconsistency in the application of fuel economy penalties or credits to be valid. The HDGE HC/CO fuel economy credit was never claimed in the final rulemaking support document for the standards and the HDDE NO_x fuel economy penalty was revised from the original RIA in accordance with the understanding expressed in the regulatory negotiation agreement.

Further, in their comments, EMA states that "the Weaver Memorandum utilized selected data from the Weaver Study." EMA also states that there are inconsistencies between the Weaver Study and the Weaver Memorandum, and cites as an example a difference in the fuel penalty estimated for Line-Haul Truck Engines.

First, the Weaver Memorandum does not appear to utilize selected data from the Weaver Study. The Memorandum

[4] "Regulatory Support Document Revised Gaseous Emission Regulations for 1985 and Later Model Year Heavy-Duty Engines," U.S. EPA, July 1985.

[5] "Preliminary Study of the Cost and Fuel-Consumption Effects of Alternative Heavy-Duty Diesel NO_x Standards," Final Report EPA Contract #68-01-6543, Work Order #50, Change 2, Energy and Resource Consultants, Inc., June 20, 1984.

[6] "Regulatory Analysis and Environmental Impact of Final Emission Regulations for 1984 and Later Model Year Heavy-Duty Engines," U.S. EPA, December 1979.

[7] Public Docket EN–85–02.

was written in conjunction with another project and is unrelated to the "Preliminary Study of the Cost and Fuel Consumption Effects of Alternative Heavy-Duty Diesel NO_x Standards." Second, the fuel penalty quoted by EMA from the study, 3.5–5.5%, arises from one set of data. Five data sets were presented. The data EMA selected was derived by the National Research Council/National Academy of Science NO_x Study Committee in 1981. It is not unreasonable that fuel penalty estimates developed in 1981 might differ from those developed independently in 1985.

EMA commented that EPA did not utilize all of the data supplied in the Weaver Memorandum. Seven subclasses are identified in that document, and EMA states that "EPA utilized only selected portions of this analysis in its NPRM." EMA objects to the fact that the LHDDE direct injection engine data was not utilized. EMA suggested that either the data should be sales-weighted, or separate classes should be created for indirect and direct injection light heavy duty engines. EMA states further that it was inappropriate to arrive at one "lump sum" NO_x fuel penalty estimate by sales-weighting the data for each of the MHDDE and HHDDE subclasses.

In response to EMA's comments, first, sales data indicate that approximately five percent of all LHDDE sales are direct injection engines. Sales-weighting the NO_x fuel penalty estimate for all LHDDEs results in an NCP which is not significantly different from that which is calculated from just those LHDDEs which are indirect injection engines (0.1% difference).

Second, EPA notes an apparent contradiction in EMA's comments, by suggesting that the data be sales-weighted for LHDDEs, but arguing that this method is inappropriate for MHDDEs or HHDDEs. However, as is discussed below, EPA believes that sales-weighting of the available fuel economy data is appropriate.

Third, EPA has determined that dividing the three subclasses of the HDDE category into smaller classifications is not a viable alternative at this time. Although NO_x fuel economy penalty information is available for smaller groups of engines, other cost data is not available for these smaller groups which would permit the development of separate NCPs. Given that the appropriate division of the HDDE class at this time is the division into three subclasses, some methodology must be developed for using the fuel economy data available. Taking a sales-weighted average of the data available is a reasonable way to develop a single estimate for the fuel economy component of COC_{ss} for each HDDE subclass. By definition, COC_{ss} represents the average cost of compliance. The aforementioned methodology provides an average cost of the NO_x fuel economy penalty.

However, to assure the accuracy of the sales-weighting calculations, EPA did update the sales percentages used for the sales-weightings within the three HDDE subclasses and included the direct injection engines in the LHDDE subclass as suggested by EMA. The resulting fuel economy penalties are as follows:

Subclass	Sales-weighted average (percent)
LHDDE	0.1
MHDDE	3.1
HHDDE	1.5
All HDDES[1]	1.5

[1] Weighted using 35% LHDDEs, 29% MHDDEs, and 36% HHDDEs.

Note that the sales-weighted average value for all HDDEs remains within EPA's original 0–2 percent estimate. These changes from the NPRM in NO_x fuel economy penalties are reflected in the revised COC_{ss} and MC_{ss} values for the three HDDE subclasses.

5. General NCP Provisions

This rule also includes a few general NCP provisions that were not fully addressed in the Phase I rulemaking.

EPA is requiring that a manufacturer place a label on each engine/vehicle (or make an addition to the existing label) for which an NCP is paid. The manufacturer will be required to begin labeling production engines/vehicles within 10 days after completion of the PCA. The label will contain the applicable compliance level for that engine/vehicle at the time of its introduction into commerce. This will allow EPA to easily associate every individual engine/vehicle with its proper compliance level, even if the compliance level is changed part way through the model year. If a manufacturer introduces engines/vehicles into commerce prior to the compliance level determination for that configuration, the manufacturer will be required to provide a label to each engine/vehicle owner (to be affixed to that engine/vehicle) containing the applicable compliance level. The manufacturer will be required to provide owners with the label within 30 days after completion of the PCA.

EPA stated in the proposal that it had requested a ruling from the Internal Revenue Service (IRS) on whether NCPs would be a tax deductible business operating expense. EPA has not received a decision from the IRS; however, the penalty rates that EPA has established are based on the assumption that the NCP will be a tax deductible business operating expense. If the IRS decides otherwise, EPA will issue a supplementary rulemaking to adjust the penalty rates to compensate for the nondeductibility of the NCP.

EPA proposed in the NPRM that manufacturers not be allowed to elect both NCPs and emissions averaging for use on the same engines/vehicles for the same pollutant because of the short time frame available to proceed with these regulations and the added complexity associated with applying NCPs to engines/vehicles which are in nonconformance with an averaging engine family emission limit. EPA indicated in the proposal that it would consider more specifically the technical and legal difficulties associated with incorporating NCPs into an averaging program in Phase III of the NCP rulemaking process. EMA supported EPA's decision to defer this complex matter until Phase III but urged EPA to initiate the Phase III rulemaking as soon as practicable and to consider all of the meritorious arguments in support of incorporating NCPs into an averaging program.

EPA also proposed in the NPRM to amend the administrative hearing procedures published in § 86.1115–87 during Phase I. Under the proposal, if a manufacturer elects an administrative hearing to contest an NCP assessment, EPA would impose interest on the challenged NCPs. EMA believed that EPA would "collect" the interest before the Agency renders its final decision in the hearing. EMA's comment is unwarranted. Under § 86.1113–87(g)(2) of the proposal and the final rule, the manufacturer is not required to pay the challenged NCP or any interest on it until after the Presiding Officer or the Administrator delivers the Agency's final decision in the hearing.

Since manufacturers must make NCP payments each quarter, based on that quarter's production of nonconforming vehicles or engines, interest will be calculated on each quarterly payment from the date it is due until the date the Presiding Officer or the Administrator renders the Agency's final decision. (In case of conflict, the cut-off date for interest calculation is the date on which the Agency delivers its final opinion, not when the hearing is deemed final for purposes of § 86.1115–87(y).) The interest rate for any particular quarterly payment will be the discount rate at auction (as quoted by the Secretary of the Treasury) for the last auction of six-month United States Treasury bills

settled immediately prior to the payment due date for that quarterly payment. This rate can be ascertained by calling the United States Department of the Treasury, Bureau of the Public Debt. For each quarterly payment outstanding on the date the Agency renders its final decision, the combined principal plus interest will be calculated according to the following formula:

$$QNCP(1+R)^{\frac{n}{12}}$$

where:

QNCP = the quarterly NCP payment
R = the interest rate applicable to that quarter
n = the number of quarters for which the quarterly NCP payment is outstanding

A manufacturer who pursues an administrative hearing must still make quarterly submittals of the information required by § 86.1113–87(g)(3).

EPA proposed in the NPRM that it would refund a portion of an NCP to a manufacturer that subsequently certifies as a replacement for the nonconforming configuration a configuration that is in conformance with the applicable standards and conducts a PCA that results in a compliance level below the applicable standards. EPA proposed this because engineering and development costs are included in the NCP, and EPA believes that a manufacturer that demonstrates that it has indeed expended these costs should be entitled to a monetary refund.

However, EPA did not propose that the entire engineering and development component of the NCP be refunded. Since a manufacturer that is eligible for such a refund expended the engineering and development costs at a later date, EPA believes that it is appropriate to subtract from the entire component an amount which reflects the manufacturer's financial benefit of delaying these costs. EPA proposed in the NPRM that 10 percent compounded annually be subtracted from the engineering and development component refund to reflect the time value of delaying these costs. EPA also proposed that an additional 20 percent per year of this component not be refunded to reflect the manufacturer's benefit of focusing its engineering and development efforts on the results already achieved by conforming manufacturers, but requested comments on whether it is appropriate to do so, and if so whether 20 percent per year is an appropriate amount.

CARB commented that it is not entirely convinced that the "belated achievements of applicable standards is prima facie evidence of research and development (R&D) expenditures," yet it agreed that refunds might be warranted in some instances. CARB recommended that EPA require some documentation of expenditures prior to any refund. EPA believes such a requirement would be difficult to administer and thus largely ineffective. Instead, EPA considers emission testing an adequate source of proof of engineering and development expenditures. With regard to the size of the refund, CARB supported EPA's proposal to withhold 10 percent and 20 percent, annually, to compensate for the time value of money and the benefit of a focused engineering and development horizon.

NRDC voiced "strong misgivings" regarding any refund of the NCPs. It argued that not only are refunds not due, but that the issue of refunds was never broached in the negotiations. If refunds are to be made, NRDC stated that it "strongly opposes" the implementation of any formula more lenient than that proposed by EPA.

EMA, on the other hand, contended that NCPs should not contain an engineering and development component in the first place. It maintained that, in order to stay in business, engine manufacturers will be required to conduct engineering and development to avoid rapidly increasing nonconformance penalties. Assuming that the engineering and development component is a necessary element of the NCP, EMA agreed that a refund of that component upon the manufacturer's conformance to standards would be appropriate. It objected, however, to any reduction in the refund to reflect the time value of money. EMA submitted that since the NCP is paid to EPA, it is EPA which enjoys the use and time value of the money, not the manufacturers.

With regard to the focusing of efforts reduction, EMA stated that it "recognizes the merits" of this concept, but could suggest no method of quantifying the advantage gained by manufacturers who borrow technology from precursors. EMA did submit that the proposed 20 percent per year reduction "appears very high," in that it suggests that a manufacturer could conform without conducting any engineering and development of its own within five years simply by making use of available technology. EMA contended that this time estimation is not realistic and urged EPA to re-evaluate the level proposed and provide documentation on how it was developed.

MECA agreed that refunding a portion of the engineering and development costs is appropriate in that it provides nonconforming manufacturers with an incentive to meet the standards as soon as possible. Although it agreed in principle that it is appropriate for EPA to refund only a portion of the engineering and development costs to reflect any economic benefit the nonconforming manufacturer may have received as a result of delaying the expenditure of these costs, MECA offered no guidance in translating these theories into an appropriate refund reduction formula.

EPA does not agree with EMA's comment that the NCP should not contain an engineering and development component in the first place. EPA is required by the Act to ensure that conforming manufacturers are not placed at a competitive disadvantage by allowing a nonconforming manufacturer to pay an NCP. If EPA did not include engineering and development costs in the NCP, a situation could occur where a manufacturer elects to pay NCPs until it discontinues the nonconforming engine or vehicle. Therefore, EPA must include this component in the NCP to meet the requirements of the Act.

EPA also disagrees with EMA's comment that nonconforming manufacturers should not be charged interest on the engineering and development component of the NCP because it is EPA that has the use of that money. In fact, nonconforming manufacturers will in most cases have benefited from putting off the expense of engineering and development. The nonconforming manufacturer only pays the engineering and development component of the NCP on each engine or vehicle when it is introduced into commerce. Therefore, the manufacturer is spreading out these NCP costs over time. Furthermore, a conforming manufacturer will most likely have spent its engineering and development costs several years before the effective date of the standard, while a nonconforming manufacturer may only spend those costs after that date. EPA has therefore decided to retain the time value of money figure at 10 percent compounded annually as proposed.

While EPA received support for a reduction of the potential engineering and development component refund to reflect a manufacturer's "focusing of efforts," none of the commenters supporting this concept provided EPA with any method of quantifying this apparent advantage. Without an adequate basis for predicting the value of "focusing of efforts", EPA does not believe that it is appropriate to charge nonconforming manufacturers for that component. In addition, it is not certain that in every case a nonconforming manufacturer will be significantly helped by other manufacturers' efforts because heavy-duty engines vary widely in configuration, usage and durability.

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For these reasons, EPA will not reduce the refund by an amount to reflect the manufacturers focusing of engineering and development efforts. EPA will therefore only reduce the refund to reflect the time value of money.

Based on 10 percent compounded annually for the time value of money, the following percentages of the engineering and development component will not be refunded:

Model year	1	2	3	4	5	6	7	8
Not refunded (%)	10	21	33	46	61	77	85	100

After the seventh model year, the manufacturer will no longer be eligible for a refund of engineering and development costs.

EPA proposed in the NPRM that the engineering and development component of the NCP payment would be payable to EPA and the remaining portion of the NCP payment would be payable to the United States Treasury. EPA proposed that both payments would be sent to EPA's Manufacturers Operations Division and it would place the engineering and development amount into an escrow account so that it could potentially be refunded to the manufacturer. Due to administrative reasons to allow for potential refunds, EPA will now require that only one payment be made, which will consist of both components of the penalty. The entire penalty amount will be payable to: U.S. Environmental Protection Agency, NCP Fund, P.O. Box 360277M, Pittsburgh, PA 15251.

EPA will transfer funds to the United States Treasury when the manufacturer becomes ineligible for a refund of those funds.

The engineering and development component of the NCP is calculated by multiplying the following factors by the penalty calculated from the NCP formula: (These factors represent the percentage of the engineering and development costs in relationship to COC_{60}.)

1987 LDDT particulate: 0.11
1987 HDGE HC: 0.06
1987 HDGE CO: 0.06
1988 LHDDE NO_x: 0.36
1988 MHDDE NO_x: 0.02
1988 HHDDE NO_x: 0.02
1988 LHDDE particulate: 0.64
1988 MHDDE particulate: 0.62
1988 HHDDE particulate: 0.60

D. Administrative Designation

Under Executive Order 12291, the Administrator has determined that this regulation is not "major" and therefore not subject to the requirement that a Regulatory Impact Analysis be prepared. This determination is based on the following:

(1) The NCP program will not result in an annual adverse effect on the economy of $100 million or more. NCPs merely provide an economically reasonable alternative to other possible actions, at least as costly as NCPs, that may be utilized when a manufacturer is unable to comply with a standard. This concept is more fully discussed in the Economic Impact section.

(2) The NCP program will not result in adverse cost or price impacts (above those that would otherwise occur from compliance with the emission standards themselves).

(3) The NCP program provides manufacturers with relief from the current prohibition against selling nonconforming HDEs or HDVs. Presently, a manufacturer experiencing difficulty in certifying or producing HDEs or HDVs in conformance with emission standards has only two alternatives: fix the nonconforming configuration or prevent its introduction into commerce. In some cases, a fix may not be readily available, and a manufacturer may have to prevent the HDE or HDV's introduction into commerce. NCPs provide relief from these disruptions. In addition, NCPs are calculated to deprive nonconforming manufacturers of any cost savings and competitive advantage stemming from nonconformance. Therefore, NCPs will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

As required by Executive Order 12291, this Final Rulemaking has been reviewed by the Office of Management and Budget (OMB) for compliance with regulatory development criteria and for general content. Any written OMB comments and EPA's response to those comments are available for inspection in the public docket for this rulemaking.

E. Economic Impact

Because the use of NCPs is optional, manufacturers have flexibility and will likely choose whether or not to use NCPs based on their ability to comply with emission standards. If no HDE or HDV manufacturer elects to use NCPs, these manufacturers and the users of their products will not incur any additional costs related to NCPs.

The existence of an NCP program may provide some direct cost savings to HDE or HDV manufacturers that lack the technological capability to conform with emission standards immediately. In the absence of NCPs, a manufacturer which has difficulty certifying HDEs or HDVs in conformance with emission standards or which fails an SEA has only two alternatives: fix the nonconforming engines or vehicles, perhaps at prohibitive cost, or prevent their introduction into commerce. The availability of NCPs provides manufacturers with a third alternative with some potential cost savings: continue production and introduce into commerce upon payment of a penalty a unit that exceeds the standard until an emission conformance technique is developed.

Therefore, NCPs represent a regulatory mechanism that allows affected manufacturers increased flexibility. A decision to use NCPs may be the manufacturer's only way to continue to introduce HDEs or HDVs into commerce. Hence, NCPs may be considered to have no adverse economic impact.

F. Environmental Impact

Because the use of NCPs is an option elected by affected manufacturers, EPA cannot be sure to what extent NCPs will be used.

If no manufacturer elects to use NCPs, all HDEs and HDVs produced will need to be in conformance with the regulatory requirements. In this situation, the environmental benefits estimated during the rulemakings establishing the emission regulations will not be affected.

If some manufacturers do elect to participate in the NCP program, some HDEs and/or HDVs will be introduced into commerce that will be emitting pollutants above applicable standards (as Congress contemplated when it mandated that EPA provide NCPs). The magnitude of this reduced environmental benefit is proportional to the number of HDEs and HDVs subject to NCPs and their degree of nonconformance. (Of course, the upper limits exclude gross emitters from being introduced into commerce.) EPA estimates that an NCP will not be used for more than ten percent of the HDE's and HDV's for which NCPs are provided in the first year that they are available and that they will be used for less than one percent in the third year. The long term environmental impact from NCP usage is expected to be relatively very small, if any, due to the relatively high penalty rates and the annual adjustment factor that rapidly increases those penalty rates when NCP usage is significant. Of course, any reduction in environmental benefit refers not to an increase in emissions from current

levels, but from levels that would otherwise occur from tightened emission standards without NCPs.

Because the emission impacts of NCPs are anticipated to be very small, if any, compared to the total emissions of HDEs and HDVs which in fact comply with emission standards, and because the extent of NCP usage in any specific model year cannot be accurately predicted at this time no specific air quality impact analysis has been made regarding this rule.

G. Compliance with Regulatory Flexibility Act

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Administrator is required to certify that this regulation will not have a significant economic impact on a substantial number of small business entities. None of the affected entities could be classified as a small business. Even if some were considered small, there would not be a substantial number of those. Moreover, as already discussed, the NCP program can be expected to have salutary effects on manufacturers. Thus, I certify that this rule will not have a significantly adverse economic impact on a substantial number of small entities.

H. Information Collection Requirements

The rule requires that manufacturers perform certain recordkeeping and submit certain reports to EPA. The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this rule have been approved by OMB.

List of Subjects in 40 CFR Part 86.

Administrative practice and procedure, Labeling, Motor vehicle pollution, reporting and recordkeeping requirements, Air pollution control, Environmental protection, gasoline, Motor vehicles.

Dated: December 23, 1985.

Lee M. Thomas,

Administrator.

PART 86—[AMENDED]

For the reasons set forth in the preamble, Part 86, Subparts A and L, Chapter I of Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 86 continues to read as follows:

Authority: Secs. 206(g) and 301, Clean Air Act, as amended, 42 U.S.C. 7525(g), 7601.

2. Paragraph (h) of § 86.087–35 of subpart A is added as follows:

§ 86.087–35 Labeling.

* * * * *

(h)(1) Light-duty trucks and heavy-duty vehicles and engines for which nonconformance penalties are to be paid in accordance with § 86.1113–87(b) shall have the following information printed on the label required in paragraph (a) of this section or on a separate permanent legible label in the English language and located in proximity to the label required in paragraph (a) of this section. The manufacturer shall begin labeling production engines or vehicles within 10 days after the completion of the PCA.

(i) The statement: "The manufacturer of this engine/vehicle will pay a nonconformance penalty to be allowed to introduce it into commerce at an emission level higher than the applicable emission standard. The compliance level (or new emission standard) for this engine/vehicle is _____." (The manufacturer shall insert the applicable pollutant and compliance level calculated in accordance with § 86.1112–87(a).)

(2) If a manufacturer introduces an engine or vehicle into commerce prior to the compliance level determination of § 86.1112–87(a), it shall provide the engine or vehicle owner with a label as described above to be affixed in a location in proximity to the label required in paragraph (a) of this section within 30 days of the completion of the PCA.

3. Section 86.1105–87 of Subpart L is added as follows:

§ 86.1105–87 Emission standards for which nonconformance penalties are available.

(a) Effective in the 1987 model year, NCPs will be available for the following emission standards:

(1) Diesel light-duty truck (rated in excess of 6,000 pounds GVWR) particulate emission standard of 0.26 grams per vehicle mile.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(A) COC_{50}: $368

(B) COC_{90}: $541

(C) MC_{50}: $3,200 per gram per vehicle mile

(D) F: 1.2

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.11.

(2) Gasoline-fueled heavy-duty engine hydrocarbon emission standard of 1.1 grams per brake horsepower-hour for engines intended for use in vehicles rated up to 14,000 pounds GVWR.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(A) COC_{50}: $45

(B) COC_{90}: $95

(C) MC_{50}: $83 per gram per brake horsepower-hour

(D) F: 1.2

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.06

(3) Gasoline-fueled heavy-duty engine carbon monoxide emission standard of 14.4 grams per brake horsepower-hour for engines intended for use in vehicles rated up to 14,000 pounds GVWR.

(i) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(A) COC_{50}: $45

(B) COC_{90}: $95

(C) MC_{50}: $4 per gram per brake horsepower-hour

(D) F: 1.2

(ii) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.06

(b) Effective in the 1988 model year, NCPs will be available for the following emission standards:

(1) Diesel heavy-duty engine oxides of nitrogen emission standard of 6.0 grams per brake horsepower-hour.

(i) For light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $18

(2) COC_{90}: $41

(3) MC_{50}: $49 per gram per brake horsepower-hour.

(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.36

(ii) For medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(1) COC_{50}: $1125

(2) COC_{90}: $1540

(3) MC_{50}: $883 per gram per brake horsepower-hour.

(4) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113- 87(h): 0.02

(iii) For heavy heavy-duty diesel engines:

(A) The following value shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $1278

(*2*) COC_{90}: $1980

(*3*) MC_{50}: $1733

(*4*) F: 1.2

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.02

(2) Diesel heavy-duty engine particulate emission standard of 0.60 grams per brake horsepower-hour.

(i) For light heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $71

(*2*) COC_{90}: $83

(*3*) MC_{50}: $340 per gram brake horsepower-hour

(*4*) F: 1.2

(*5*) UL: 0.80 grams per brake horsepower-hour

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.64

(ii) For medium heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $84

(*2*) COC_{90}: $97

(*3*) MC_{50}: $382 per gram per brake horsepower-hour

(*4*) F: 1.2

(*5*) UL: 0.80 grams per brake horsepower-hour

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.62

(iii) For heavy heavy-duty diesel engines:

(A) The following values shall be used to calculate an NCP in accordance with § 86.1113–87(a):

(*1*) COC_{50}: $87

(*2*) COC_{90}: $101

(*3*) MC_{50}: $725 per gram per brake horsepower-hour

(*4*) F: 1.2

(*5*) UL: 0.80 grams per brake horsepower-hour.

(B) The following factor shall be used to calculate the engineering and development component of the NCP in accordance with § 86.1113–87(h): 0.60

(c) The values of COC_{50}, COC_{90} and MC_{50} in paragraphs (a) and (b) of this section are expressed in December 1984 dollars. These values shall be adjusted for inflation to dollars as of January of the calendar year preceding the model year in which the NCP is first available by using the change in the overall Consumer Price Index.

4. In § 86.1113–87 of Subpart L paragraph (g) is revised and (h) is added to read as follows:

§ 86.1113–87 Calculation, payment and refund of penalty.

* * * * *

(g)(1) Except as provided in paragraph (g)(2) of this section, the nonconformance penalty or penalties assessed under this subpart must be paid by the quarterly due dates, i.e., within 30 days of the end of each calendar quarter (March 31, June 30, September 30 and December 31), or according to such other payment schedule as the Administrator may approve pursuant to a manufacturer's request, for all nonconforming engines or vehicles produced by a manufacturer in accordance with paragraph (b) of this section and distributed into commerce for that quarter. The penalty shall be payable to: U.S. Environmental Protection Agency, NCP Fund, P.O. Box 360277M, Pittsburgh, PA 15251.

(2) When a manufacturer has requested a hearing under § 86.1115–87, it must pay the nonconformance penalty, and any interest, within ten days after the Presiding Officer renders his decision, unless the manufacturer first files a notice of intention to appeal to the Administrator pursuant to § 86.1115–87(t)(1), or, if an appeal of the Presiding Officer's decision is taken, within ten days after the Administrator renders his decision, unless the manufacturer first files a petition for judicial review.

(3) A manufacturer making payment under paragraphs (g)(1) or (g)(2) of this section shall submit the following information by each quarterly due date to: Director, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The following information shall also accompany each payment:

(i) Corporate identification, identification and quantity of engines or vehicles subject to the NCP, certificate identification (number and date), and NCP payment calculations, if applicable.

(ii) The following statement and endorsement:

This information is submitted pursuant to section 206 of the Clean Air Act. All information reported herein is, to the best of

_____

(Company name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

_____

(Authorized Company Representative)

(4) The Administrator may verify the production figures or other documentation submitted under paragraph (g)(3) of this section.

(h) A manufacturer that certifies as a replacement for the nonconforming configuration a configuration in conformance with applicable standards and performs a PCA in accordance with § 86.1112–87(a) that results in a compliance level below the applicable standard will be eligible to receive a refund of a portion of the engineering and development component of the penalty. The engineering and development component will be determined by multiplying the penalty amount by the factor for the appropriate subclass and pollutant in §86.1105–87. The amount refunded will depend on which model year the certification and PCA take place and will be as follows:

(1) In the first model year that the NCP is available, 90 percent of the engineering and development component will be refunded.

(2) In the second model year that the NCP is available, 79 percent of the engineering and development component will be refunded.

(3) In the third model year that the NCP is available, 67 percent of the engineering and development component will be refunded.

(4) In the fourth model year that the NCP is available, 54 percent of the engineering and development component will be refunded.

(5) In the fifth model year that the NCP is available, 39 percent of the engineering and development component will be refunded.

(6) In the sixth model year that the NCP is available, 23 percent of the engineering and development component will be refunded.

(7) In the seventh model year that the NCP is available, 5 percent of the engineering and development component will be refunded.

(8) In the eighth and subsequent model years that the NCP is available, none of the engineering and development components will be refunded.

5. Paragraph (z) of § 86.1115–87 of Subpart L is revised and new paragraph (aa) is added to read as follows:

§ 86.1115–87 Hearing procedures for nonconformance determinations and penalties.

* * * * *

(z) *Interest on NCPs.* (1) Interest shall be assessed on any nonconformance penalty for which payment has been withheld pursuant to § 86.1113–87(g)(2).

Interest shall be calculated from the due date for the first quarterly NCP payment, as determined under § 86.1113–87(g)(1), until the date on which the Presiding Officer or the Administrator renders the final decision of the Agency.

(2) The combined principal plus interest on each quarterly NCP payment withheld pursuant to § 86.1113–87(g)(2) shall be calculated according to the following formula:

$$QNCP\ (1+R)^{-2n}$$

where:

QNCP = the quarterly NCP payment
R = the interest rate applicable to that quarter
n = the number of quarters for which the quarterly NCP payment is outstanding

(3) The number of quarters for which payment is outstanding for purposes of this paragraph shall be the number of quarterly NCP payment due dates, as determined under § 86.1113–87(g)(1), which have elapsed before the decision of the Agency under this section.

(4) The interest rate applicable to a quarter for purposes of this paragraph shall be the coupon issue yield equivalent (as quoted by the Secretary of the Treasury) of the average accepted auction price for the last auction of twenty-six week United States Treasury bills settled immediately prior to the quarterly NCP payment due date on which the payment was originally due.

(aa) *Judicial review.* (1) The Administrator hereby designates the General Counsel of the Environmental Protection Agency as the officer upon whom any copies for judicial review shall be served. Such officer shall be responsible for filing in the court the record on which the order of the Administrator is based.

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federal register

Tuesday
December 31, 1985

Part V

Department of Energy

Office of Hearings and Appeals

Implementation of Special Refund Procedures; Notice

BEST COPY AVAILABLE

DEPARTMENT OF ENERGY

Office of Hearings and Appeals Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from a fund of $27,000,000 obtained from Mobil Oil Corporation in settlement of enforcement proceedings and litigation brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by May 1, 1986, should conspicuously display a reference to case number HEF–0508, and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of settlement between Mobil Oil Corporation and the DOE. The consent order entered in the case settled all disputes between DOE and Mobil concerning possible violations of DOE price and allocation regulations with respect to the firm's sales of refined petroleum products to its customers during the period March 1973 through January 1981, and its sales of crude oil during the period June 1979 through January 1981.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by May 1, 1986, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: December 24, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

December 24, 1985.

Name of Firm: Mobil Oil Corporation.
Date of Filing: August 20, 1984.
Case Number: HEF–0508.

The Economic Regulatory Administration (ERA) has filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) requesting that OHA formulate and implement special procedures to distribute the proceeds of an April 19, 1984 consent order between the DOE and Mobil Oil Corporation (Mobil). This consent order settled all issues, with certain enumerated exceptions, regarding the firm's regulated refined product operations during the period January 1, 1973 through January 27, 1981, and its regulated crude oil operations during the period June 1, 1979 through January 27, 1981 (hereinafter referred to as the consent order period). In exchange for ERA's agreement not to pursue enforcement actions against the firm, Mobil remitted $27 million to the DOE. Those funds have been deposited into an escrow account under the jurisdiction of the DOE pending instructions from OHA regarding their distribution. The escrow account is an interest-bearing account, and as of October 31, 1985, the Mobil funds available for distribution total $31,153,743.09.

On July 30, 1985, we issued a Proposed Decision and Order setting forth the procedures that we had tentatively decided to use in distributing the Mobil settlement fund. The Proposed Decision was published in the **Federal Register** on August 9, 1985. *See* 50 FR 32271 (August 9, 1985) (hereinafter cited as Proposed Decision). In the Proposed Decision, we established a 30-day period for the submission of comments. 10 CFR 205.282(b). That period has expired, and we have received comments from twelve parties representing a broad range of interests. Representatives of trade associations and consumers as well as state governments and a retail gasoline station operator have presented their views and suggestions. Many of the comments were quite helpful, and this decision reflects a number of the commenters' suggestions.

In the present determination we shall briefly outline the background of this proceeding and summarize our July 30 Proposed Decision. Next we will discuss the comments that we received regarding the overall course of action that we tentatively adopted. Then we will examine the comments that addressed specific details of the procedures we proposed. Finally, we shall set forth the refund procedures that we have decided to adopt. This Decision and Order will be published in the **Federal Register**, 10 CFR 205.282(c), and persons will have 90 days from the date of publication in which to submit refund applications. 10 CFR 205.283(b).

I. Background

A. The Consent Order

Mobil is a major, integrated refiner that produced and sold crude oil and a complete slate of petroleum products during the period of federal price controls (1973 to 1981). It was therefore subject to the Mandatory Petroleum and Allocation Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, and 212. During the controls period, ERA and its predecessor agencies conducted extensive audits of Mobil's operations and, as a result of those audits, contended in the course of a number of judicial and administrative proceedings that Mobil had violated certain applicable DOE price and allocation regulations in its sales of crude oil and petroleum products. On April 19, 1984, ERA and Mobil signed a consent order that settled all issues regarding the firm's compliance with DOE price and allocation regulations during the consent order period, with certain noted exceptions.[1]

On April 25, 1984, ERA published notice of the consent order in the **Federal Register**, as required by the DOE regulations at 10 CFR 205.199J(c). *See* 49 FR 17,920 (April 25, 1984). ERA considered the numerous comments that

[1] An earlier consent order between Mobil and the DOE resolved issues concerning Mobil's compliance with DOE crude oil regulations during the period September 1, 1973 through May 31, 1979. *See* Consent Order, ¶ 305, 49 FR 17920, 17928 (April 25, 1984). The issues exempted from the second consent order relate generally to: (a) issues or claims concerning the subject matter before the courts in:

(i) Mobil Oil Corp. v. DOE, No. 81–CV–340 (N.D.N.Y.);

(ii) In re the DOE Stripper Well Litigation, MDL No. 378 (D. Kan.); and

(iii) Exxon v. DOE and 341 Tract Unit of the Citronelle Field, No. 81–25 (D. Del.);

(b) entitlement obligations that may be modified or imposed in the future;

(c) possible violations of DOE regulations by Mobil regarding crude oil resale transactions; and

(d) possible violations of DOE crude oil regulations by General Crude Oil Company during the period before it became affiliated with Mobil.

See Consent Order, ¶ 501, 49 FR at 17926–27 (April 25, 1984).

it received concerning the consent order and concluded that it should adopt the order, with minor technical modifications, as a final consent order. *See* 49 FR 30,354 (July 30, 1984).

B. The Proposed Refund Procedures

On August 20, 1984, the ERA filed a Petition for Implementation of Special Refund Procedures with OHA. In the July 30, 1985, Proposed Decision, we noted jurisdiction over the Mobil consent order fund and set forth the special refund procedures we had tentatively determined to adopt.[2] In that decision, we proposed to set aside a small portion of the consent order fund for potential claims based on crude oil sales by Mobil during the period June 19, 1979 through January 27, 1981, and concluded that this portion of the fund should properly be subject to the DOE's recently announced Statement of Restitutionary Policy for certain Entitlements-period crude oil overcharges. *See* 50 FR 27,400 (July 2, 1985); *see also* 50 FR 27,402 (July 2, 1985).

We also proposed that the remainder of the consent order fund be made available for distribution to purchasers of Mobil refined petroleum products during the consent order period who were injured by Mobil's practices. 10 CFR 205.280; *see Denny Klepper Oil Co. v. DOE*, 598 F. Supp. 527 (D.D.C. 1984). In formulating the proposed refund procedures, we examined publicly available information, information in the Mobil audit files, and proprietary data collected by the DOE's Energy Information Administration. Based on an analysis of that information, together with our long observation of the industry and our experience in analyzing refund claims in other proceedings, we proposed various findings and presumptions concerning the alleged overcharge by Mobil and the injury experienced by various purchasers of Mobil products.

These presumptions were both general and product-specific. First, the procedures included a "volumetric presumption," under which the effects of Mobil's alleged violations are presumed to have been spread evenly over each gallon of covered refined product sold. We also proposed presumptions that spot purchasers and consignee agents did not experience any injury and would therefore be ineligible to receive refunds, and that small purchasers of Mobil products generally absorbed the alleged Mobil overcharges and need not submit any additional proof of injury if their claims are for a refund less than $5,000. We also proposed to adopt a presumption that end-users (ultimate consumers) of Mobil refined products were injured by Mobil's alleged violations.

In addition we proposed specific presumptions to be applied to claims filed by purchasers of Mobil motor gasoline. Having found that Mobil's prices for motor gasoline products at the various levels of distribution closely tracked national average prices for the consent order period, presumptions based on these prices were suggested to apportion the injury sustained by Mobil motor gasoline purchasers among the various levels of distribution. An applicant that elected to base its refund claim on these level-of-distribution presumptions would have to furnish only its name and address, proof of its Mobil motor gasoline purchases, and its level in the distribution chain. Any claimant that believed it was entitled to more than the presumptive level of injury could file additional material to document that claim. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

In the Proposed Decision we also stated that we had insufficient data to make level-of-distribution presumptions for products other than motor gasoline. The Proposed Decision described the information we had obtained concerning these other Mobil products and solicited suggestions as to how those data, or other data that commenters may possess, could serve as reliable bases for findings, such as the motor gasoline level-of-distribution presumptions, for other refined products. We noted that in the absence of data sufficiently detailed to give rise to specific factual findings which could be used to develop presumptions, an applicant would be required to demonstrate that it was injured by the alleged Mobil overcharges, unless the total amount of its claim was less than $5,000. Finally, we stated that we would not propose any procedures for second-stage refunds, i.e. the distribution of any remaining consent order funds after all meritorious claims of purchasers of Mobil products have been paid.

II. Comments on the Overall Procedures

A number of parties filed comments on the overall framework of the proposed procedures outlined above. We shall discuss those comments first. However, most of the comments we received concerned the presumptions set forth in the Proposed Decision. Our analysis of the comments will therefore focus upon this aspect of the refund procedures.

A. First Stage Procedures

The comments we received concerning the first stage of the proposed Mobil special refund proceeding may be divided into two categories: those that treated the factual presumptions we proposed to make available to all applicants, and those regarding specific terms of the consent order and specific factual situations. We will address the more general comments first and then progress to the more specific comments.

The general presumptions we described in the Proposed Decision were intended to be available to applicants for refunds regardless of the specific product (excluding crude oil) on which they would be basing their claim. We have received no comments regarding most of them—e.g., the "volumetric" presumption, the presumption of no injury for consignee agents, and the presumption of injury for regulated industries and agricultural cooperatives. Consequently, we shall adopt these without modification in the final procedures. We did, however, receive comments regarding the "spot purchaser" presumption, the "end-user" presumption, and the general concept of adopting presumptions of injury in lieu of requiring additional proof of injury from each individual claimant. Each of these comments will be discussed in turn.

The National Council of Farmers Cooperatives (NCFL) requests that agricultural cooperatives be exempted from the general presumption that spot purchasers of refined petroleum products and NGLs suffer no injury from alleged regulatory violations. In support of this position, the NCFC cites *Husky Oil Co.*, 13 DOE ¶ 85,045 at 88,114 n.3 (1985). As that case specifies, agricultural cooperatives may receive refunds in this proceeding for spot purchases, but only to the extent a cooperative sold the products involved to its member-owners. *See, e.g., Arcone Oil Co./Agway Inc.*, 13 DOE ¶ 85,058 at 88,152 (1985).

The Air Transport Association of America—the trade association of domestic scheduled airlines—seeks clarification regarding the extent to which an end-user is required to establish injury. The Proposed Decision suggested a presumption that all end-users of Mobil products were injured. Any end-user of any Mobil product (other than motor gasoline) may rely on this presumption and need not submit

[2] None of the comments received questions the jurisdiction of the Office of Hearings and Appeals to formulate and implement special refund procedures in this case. We therefore adopt the discussion of jurisdiction contained in the Proposed Decision.

further proof of injury, provided the business activity involved was not subject to the DOE price regulations. *See, e.g., Gulf Oil Corp./Kerr-McGee Corp.*, 13 DOE ¶ 85,204 (1985).

The State of California questions the propriety of permitting any applicant to substitute presumptions of injury for actual, individualized proof of injury. It maintains that presumptions may not be employed to replace the applicant's burden of proving it was injured, but rather may be employed only after that determination has been made.

California's position is not suggested by the regulations. The Subpart V regulations specify:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). This section and the relevant portion of the preamble to the Subpart V regulations clearly permit the adoption of presumptions that facilitate the refund process by promoting efficient, effective and equitable distribution of refunds to injured persons. *See* Fed. Energy Guidelines, Regulations Preambles 1974–1981, ¶ 40,408 at 40,979–43. That is exactly what the presumptions we are adopting are intended to accomplish.

In a separate submission, the State of New Jersey and the Commonwealth of Pennsylvania concur with California in contending that Subpart V should provide restitution to persons who have been unjustly deprived of property or its value, and that those persons are by definition ultimate consumers, whose share of the refund is reduced each time injury is presumed rather than proven in an application. This position misunderstands the nature of the presumptions we proposed to adopt. Those presumptions are based on our years of experience in dealing with the petroleum industry and on factual findings resulting from our analysis of extensive data in refund proceedings. They do not find injury where none exists. Instead, they confirm our previous experience—namely, that the impact of a particular refiner's alleged overcharges was felt at all levels of the petroleum marketing chain. These States' position that the impact was felt only by ultimate consumers is not consistent with that experience, and they have not submitted any evidence whatsoever that would support it.

The Petroleum Marketers Association of America (PMAA) addresses the presumption of injury for small claims. In response, we wish to clarify that that presumption does not apply to applicants whose claims are based on motor gasoline purchases. Moreover, the $5,000 limit on the presumption of injury for small claims includes all refunds sought. For example, an applicant that claims a refund of over $5,000 based on motor gasoline purchases may not also take advantage of the small-claims presumption in a refund claim based on purchases of other Mobil products.

The PMAA also requests that we make findings and adopt presumptions based on those findings that would assist refund applicants basing claims on alleged motor gasoline allocation violations. The PMAA maintains that Mobil was not allocating motor gasoline to its purchasers in accordance with the DOE allocation regulations. It bases this assertion on information contained in a memorandum that it received from the DOE's Office of Special Counsel pursuant to a Freedom of Information Act request. That memorandum states that two of the eleven largest refiners in the United States were allocating products in a manner similar to the other nine but were not apparently experiencing the same supply shortfalls as the others. These two firms were not identified in the memorandum, nor was the reason for this apparent dichotomy identified. Through statistical analysis, the PMAA attempts to demonstrate that these two refiners were not complying with the allocation regulations and that one of the two allegedly non-complying firms was Mobil. We have carefully examined these comments, but we do not find the material a sufficient basis for making a factual finding that would support a new presumption. Nor did the Office of Special Counsel, with knowledge of the same information, determine that the same data indicated non-compliance, and it apparently took no enforcement action against any of the eleven refiners. As a result, no special rules for allocation claims will be developed, and the precedents established in other refund proceedings involving allocation claims will generally apply. *See, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982).

The remainder of the comments received pertaining to first-stage procedures are more specific in their focus. For example, Union Carbide Corporation requested clarification that natural gas liquids are indeed a product on which a refund claim may be based in this proceeding. The firm is correct. Any product purchased from Mobil during the consent order period that was covered by the Mandatory Petroleum Price and Allocation Regulations may form the basis for a claim, but only for the period during which it was covered by those regulations. Accordingly, since NGLs were subject to the regulations from March 6, 1973 through January 27, 1981, refund claims may be based on the volume of NGLs purchased from Mobil during that period. *But see Pioneer Corp./Phillips Petroleum Co.*, 13 DOE ¶ 85,175 at 88,473 n.2 (1985) (ethane volumes excluded from natural gas liquid product purchases). The dates of price and allocation controls for each product are set forth below in Section V, "How To Apply for a Refund."

The State of Illinois requested that we include in our special refund procedures confirmation that Mobil will assist applicants in identifying the volumes they purchased directly from the firm. Mobil has been extremely cooperative in its dealings with OHA, and we anticipate that it will continue to provide assistance in this proceeding, as the consent order provides. We will, however, require that applicants make every effort to obtain their purchase volumes from their own records or other sources. Mobil's assistance may be sought only if this material is not available. On a case-by-case basis we may request a refund applicant to submit a statement of its efforts in this regard prior to requesting Mobil's assistance.

The final comment regarding first-stage procedures was received from the former operator of a Mobil gas station in California. This commenter argued in favor of his receiving a refund larger than one based on the proposed volumetric refund amount. Although it would be inappropriate to rule on the validity of this potential applicant's claim at this time, we reiterate that all presumptions, including the volumetric presumption explained above, are rebuttable.

Finally, we note that no comments were received that addressed our solicitation of suggestions for obtaining or reinterpreting data concerning products other than motor gasoline. Consequently, for all other products, we will adopt the proposed refund procedures without modification.

B. Second Stage Procedures

The comments concerning this area of the proposed procedures—that is, the distribution of indirect restitution after all refunds based on purchases of Mobil products have been made—were received from representatives of state governments and groups of states.

However, we did not propose any plan of indirect restitution in this proceeding, and do not intend to at this juncture. Therefore, any discussion of this issue is premature.

III. Comments on the Procedures for Crude Oil Claims

Some comments addressed our proposed procedures for distributing consent order funds attributable to alleged violations of the crude oil regulations. In general, they challenge the DOE Statement of Restitutionary Policy that was published in the **Federal Register** on July 2, 1985. 50 FR 27400 (July 2, 1985).

A submission received from Mobil, however, while opposing the adoption of the Policy Statement in Subpart V proceedings in general, contends that the issue should be considered irrelevant to the present proceeding. Because we found in our Proposed Decision that no significant issues in the Consent Order concerned the crude oil regulations, it maintains that we could exclude all crude oil claims in this proceeding.

In the Proposed Decision we stated, "ERA indicates that a small portion of the alleged overcharges might be attributable to alleged crude oil tier violations during the [consent order] period." Proposed Decision, 50 FR 32273 n.4. We have re-examined the allegations of the Proposed Order of Disallowance and the various Proposed Remedial Orders that were settled by the April 19, 1984 consent order. We have now determined that the vast majority, if not all, of the alleged crude oil violation relate to alleged overstatements of landed costs in interaffiliate transfers of crude oil. This type of alleged violations did not involve a tier miscertification and therefore its impact was not spread among all domestic refiners by the Entitlements Program, 10 CFR 211.67 (1981).

In view of the foregoing, we will eliminate the proposed refund pool for crude oil applicants and combine that money with the rest of the consent order fund. This money will be available to purchasers of Mobil refined products during the consent order period. The comments challenging the proposed application of the DOE Restitutionary Policy Statement are therefore irrelevant to this proceeding.

IV. Comments on the Procedures for Motor Gasoline Claims

In our Proposed Decision, we established rebuttable presumptions for purchasers of Mobil motor gasoline based on their positions in the chain of product distribution. Under this mechanism, an applicant would need to provide only proof of the volume of its motor gasoline purchases from Mobil and would be eligible for a refund calculated as follows: (i) Purchase volume times (ii) presumed level of injury times (iii) the volumetric (per-gallon) refund. In the alternative, any applicant could present evidence that it should receive a refund larger than one based on these presumptions. If, however, an applicant submits evidence that, although intended to support a larger, non-presumption-based claim, instead fails to demonstrate the requisite injury, no refund will be granted. This is because the level-of-distribution presumptions are based on general factual findings; if an individual applicant's record contains evidence contrary to those presumptions, we cannot ignore that evidence.[3]

Comments received regarding the level-of-distribution presumptions for motor gasoline purchasers fell into two categories: those that challenged the method used for developing the presumptions and those that presented refinements of the proposed method. The first group of comments, concerning the appropriateness of using the proposed methodology at all, were submitted by the State of California and purport to rely on the Report of the Office of Hearings and Appeals in *Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. filed July 21, 1985); 50 FR 27,400 (July 2, 1985); Fed. Energy Guidelines ¶ 90,507. Those comments urge that we reject any presumptions based on an analysis of profit margins, together with other factors, in favor of the type of marginal economic analysis that is set forth in the OHA Stripper Well Report.

We will not adopt the suggestions set forth in the comments discussed above, since the analysis set forth in the OHA Stripper Well report is inapplicable to this case. The marginal economic analysis contained in that report focused on the impact at the refiner level of crude oil cost increases that were dispersed throughout the entire domestic refining industry through the operation of the Entitlements Program, 10 CFR 211.67 (1981). The evidence presented in that case did not address the situation of overcharges committed only by a single refiner. Nor did it address cost increases faced only by an individual firm and the impact of those increases on its downstream customers. Therefore, California has not shown that the conclusions based on marginal economic analysis should be extended to this case.

We also received comments from the PMAA and Energy Watch, Inc., a representative of individual retailers, that suggest a number of technical modifications to the methodology we proposed for establishing level-of-distribution presumptions for purchasers of Mobil motor gasoline. Examples of the type of modification suggested include using a different month for beginning the analysis (we started with July 1975, the first month for which we have data), using a different measure of significance for profit margin declines (we determined that a decline of less than one-tenth of one cent was insignificant during the last 13 months of the period), and considering the possibility of partial absorption and partial passthrough in a given month (we determined that if jobbers and/or retailers suffered injury in a month, consumers absorbed no injury in that month). Each of these suggested changes, if adopted, would result in additional refunds to the groups proposing them.

For the reasons explained below, we have decided not to adopt most of the modifications suggested by the two marketer groups. They do not refine or simplify the presumptions we have proposed. They in essence attempt to recalculate the presumed levels of injury in the gasoline marketing chain by reinterpreting the price and volume data referred to in the Proposed Decision. Those data formed part of the basis for our proposed presumptions, but other factors were also considered in making those judgments, including concerns of equity and administrative efficiency, our intimate knowledge of the industry and our experience in prior refund proceedings. Not surprisingly, each adjustment they seek would increase the share of the motor gasoline refunds available to the jobbers and retailers who suggested them, and decrease the funds available for other claimants, notably consumers. The proffered adjustments would *not*, however, create presumptions that are more accurate or reliable, nor would they increase the level of sophistication of the underlying analytical judgments. For example, the adjustments urged by the PMAA are mostly expressed in terms of mathematical manipulations which would purportedly improve the accuracy of our calculations. But this approach ignores the fact that the calculations

[3] We acknowledge that this position represents a departure from the position we maintained in several *Amoco* refund determinations: *See e.g.*, Standard Oil Co. (Indiana)/Miller's Standard, 12 DOE ¶ 85,124 (1984); Standard Oil Co. (Indiana)/John Coconato, 11 DOE ¶ 85,121 (1983).

themselves are part of an integrated judgment rather than an econometric analysis which can stand alone. As the United States District Court for the District of Columbia has noted, "Restitutions is never an exact science." *S.O.S. Gasoline Enterprises, Inc. v. DOE*, No. Civil 80-3277, Fed. Energy Guidelines ¶ 26,321 (D.D.C. July 8, 1981).

Two proposed modifications of our suggested presumptions should be made. These modifications, like those we have rejected, do require adjustment of the percentages of the presumptions of injury. They differ from the others, however, in that their adoption *would* increase the accuracy of our presumptions. In each case, the proponents have correctly indicated that our analysis was based on inaccurate assumptions and we will modify our analysis and its resultant presumptions of injury accordingly.

The PMAA correctly pointed out that the injury findings made in *Amoco* for motor gasoline retailers, which was based on an analysis of data for the period July 1975 through December 1979, are not applicable in this proceeding. In that case, a presumption of injury was established based upon analysis that showed that Amoco retailers were injured in 21 of the 53 months analyzed. However, 15 of those 21 months were considered months in which injury occurred for reasons based in part on the fact that Amoco's prices to retailers at those times were "more consistently higher than the national average prices than during any other portion of the consent order period which we examined." *Amoco*, 10 DOE at 88,212. Therefore, the 15 months in question were determined to be months of retailer injury not entirely because of the national average price data, but rather in part due to Amoco-specific information. Clearly, the determination in *Amoco* regarding these 15 months cannot be directly applied to this proceeding. We have reviewed the Mobil and national average price data available on sales to retailers and cannot draw a similar conclusion regarding Mobil's prices to retailers for the same period. Consequently, we conclude that retailers of Mobil motor gasoline were not injured during that 15-month period. Nevertheless, our analysis set forth in the Proposed Decision confirms that retailers were injured in six months during the 53-month period July 1975 through December 1979,[4] and the presumption of injury will be adjusted accordingly. The resulting recalculations of retailer injury are set forth below in Section V, "How To Apply for a Refund."

The second modification that we will make to our motor gasoline findings is based on comments we received from the PMAA and Energy Watch. As proposed, the level-of-distribution presumptions drew no distinctions between jobbers who sold to retailers and jobbers who sold directly to motorists and other end-users, nor between retailers who purchased motor gasoline through jobbers and those who purchased directly from Mobil. The commenters have stated that the vast mojority of motor gasoline passes from Mobil to motorists and other consumers through only one intermediate supplier and rarely through both jobber and retailer. Mobil has verified this contention. Telephone conversation between Gail F. Schulz, Senior Attorney, Mobil Oil Corporation, and William Schwartz, Staff Attorney, OHA, October 17, 1985. Consequently, we have created additional level-of-distribution presumptions (see Section V.B. below) for distributors and retailers who purchased Mobil products directly from Mobil and sold directly to end-users.[5] These new presumptions have been derived from calculations made in the same manner as all other level-of-distribution presumptions, that is, by analyzing months in which profit margins diminished.

V. How To Apply for a Refund

The information that refund applicants should furnish is set forth below. In Appendix A we have set forth a suggested format that applicants will find useful in organizing the required information. We will, however, accept all applications that contain the necessary information.

A. All Applicants

1. Each applicant for refund should begin with the caption "Application for Mobil Refund" and the case number, HEF-0508. Applicants should print or type all information.

2. Each applicant should furnish the name and address it was using during the consent order period, January 1, 1973 through January 27, 1981. If the applicant was a business firm, it should furnish any and all other names under which it had operated during the consent order period, or for whatever shorter period for which the claim is being filed.

3. The application for refund should contain the name, address and telephone number of the person who prepared the application, as well as the name, address and telephone number of a "contact person" who is familiar with the facts set forth in the application, if different. Unless otherwise specified, the refund check will be issued to the "contact person."

4. Each application should set forth the name, address and telephone number of the supplier who sold the applicant the volumes of Mobil product for which a claim is being filed. If the supplier was a reseller, the applicant should state whether the reseller was supplied directly by Mobil. If the product was purchased directly from Mobil, the applicant's customer identification number and its sales representative's name and telephone number should be provided. If the product was not Mobil-branded, the applicant should explain why it believes that the purchased volumes were Mobil product.

5. The application should include a list of purchase volumes, by month and by product, for all gallons for which a refund claim is being made. This volume figure should include only volumes purchased while the particular product was subject to federal price controls during the consent order period. Therefore, claims may be filed only for purchases made after March 6, 1973 and before the date of decontrol for a particular covered product. The covered products and their dates of decontrol are listed below:

Item	Decontrolled
Motor gasoline and NGLs	January 27, 1981.
Butane and natural gasoline	January 1, 1980.
Aviation gas and jet fuel	March 1, 1979.
Naphthas and naphtha-based jet fuel.	September 1, 1976.
Middle distillates	July 1, 1976.
Residual fuel and related products	June 1, 1976.

All grades of motor gasoline may be combined when reporting monthly volumes of motor gasoline. Monthly volumes of all other products should be reported separately. The volumes should be reported in gallons, not in dollars paid for the product. No invoices need be submitted with the application; however, the applicant should keep its supporting material in a convenient place at least until it has received its refund. We regularly make spot checks of applications, as well as request

[4] Actually, retailers were injured in 12 months. However, in those months injury occurred also at the jobber level. We have therefore apportioned one-half of the injury during the 12-month period to retailers and one-half to jobbers.

[5] We will not, however, create a different presumed level of injury for jobbers who sold directly to motorists through their own retail outlets. Although they may have incurred marginally higher costs than the retailers with whom they were in direct competition, they were able to purchase motor gasoline at lower prices. Jobbers who retailed gasoline may elect the appropriate level-of-distribution presumption.

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documentation in certain cases, and we may request copies of invoices or other more detailed supporting material in any case.

6. The application should state the total gallonage for which a refund is being requested. Refund applications for amounts less than $15.00 will not be processed. We will dismiss all refund applications that, after we have computed the refund amount due the applicant, result in a refund of less than $15.00. As we noted in the Proposed Decision, it is extremely unlikely that individual motorists made sufficient purchases of motor gasoline to warrant a refund at or above the $15.00 level. *See* Proposed Decision, 50 FR 32276. Consequently, individual motorists will in all probability not be able to qualify for a refund.

7. The applicant should report whether it is or has been involved as a party in DOE enforcement actions or private damage actions under section 210 of the Economic Stabilization Act of 1970. If an action has terminated, the applicant should furnish a copy of any final order issued in the matter. If an action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

8. The application must contain a signed statement that the applicant swears (or affirms) that all of the information furnished in the application is true and accurate to the applicant's best knowledge, and that the signer understands that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both. *See* 18 U.S.C. 1001.

9. A copy of the application will be made available for public inspection in our Public Docket Room. If there is confidential information in an application, the applicant should submit the original application and two copies of a version with all confidential information deleted. If the application does not contain any confidential information, the applicant should submit one copy in addition to the original.

10. Each application must be postmarked no later than May 1, 1986.

B. Motor Gasoline Claims

The information that a motor gasoline applicant should submit in addition to that listed above will depend upon whether it elects to have its application analyzed using the presumption applicable to it. The formula for calculating a refund using the presumption method is as follows:

Amount of refund = Applicant's purchase volumes × Applicable level-of-distribution presumption percentage × Volumetric amount ($.000388 per gallon) [6]

The following chart lists the applicable level-of-distribution presumptions of injury:

Level of distribution	Percentage of injury
Non-commission wholesalers:	
Selling to retailer	35
Selling to others (except motorists)	45
Resellers:	
Supplied through wholesaler	20
Supplied directly by Mobil	30
Consumers:	
Supplied through intermediate supplier(s)	60
Supplied directly from Mobil	100

The above presumptions represent the presumptions described in the Proposed Decision as modified in Part IV of this Decision and rounded for ease of administration. A motor gasoline claimant that elects to use these presumptions in filing an application for refund needs supply only the following information:

1. The information listed under "All Applicants."

2. A statement that the applicant elects to use the presumption method for calculating injury and its refund.

3. The claimant's applicable level-of-distribution percentage, or a statement that the claimant is unable to determine its level of distribution.

An applicant for a motor gasoline refund that does not elect to take under the presumptions must demonstrate that it was injured by the alleged overcharges. Applicants that fail to make that showing will in any event receive the presumption level of refund.[7]

The information that the wholesaler or retailer applicant must supply for us to analyze its application is as follows:

1. The information listed under "All Applicants."

2. A statement that the applicant does *not* elect to use the presumption method to calculate its injury and its refund.

3. The applicant's monthly, non-cumulative "banks" of unrecouped increase of product costs, from November 1973 through July 14, 1979 for retailers and through April 30, 1980 for wholesalers. *See Champlain Oil Co.*, 13 DOE ¶ 85,119 at 88,329 n.2 (1985) (banking provision for retailers eliminated); *Tenneco Oil Co./United Oil Marketers*, 12 DOE ¶ 85,051 at 88,155 n.3 (banking requirement for resellers eliminated).

4. If the applicant had only one supplier, the application should list by month the volume of product and the prices at which the applicant purchased and sold the Mobil motor gasoline. For example: May 1975, purchased product at 34.4 cents per gallon and resold it at 38.0 cents per gallon.

5. If the applicant had more than one supplier, the application should include the names of those suppliers, the volumes purchased from each supplier during each month of the refund period, the monthly prices paid to each supplier and the price at which the product was sold.

6. The claimant should also state where the price information supplied for Item 4 or 5 came from (i.e., books, invoices, etc.) and indicate where those records are located.

C. Claims Based on Other Products

In addition to the information listed under "All Applicants," an applicant for refund based on Mobil products other than motor gasoline must submit evidence to establish that it was injured by the alleged overcharges. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.[8]

Another method a claimant may use to establish that it absorbed the alleged overcharges is to submit the information listed as Items 1 through 6 for non-presumption-type motor gasoline claimants. However, certain types of applicants need not make the demonstration of injury described above. These groups of applicants include end-users (that is, applicants that do not resell the refined products they purchase), regulated industries (such as public utilities) and agricultural cooperatives. In addition, applicants for refunds of less than $5,000 exclusive of interest, need not submit any additional evidence of injury beyond the volumes of Mobil products purchased.

[6] This figure is derived by dividing the $27 million settlement amount by Mobil's sales volume of controlled refined products during the consent order period (69,671,310,000 gallons). To this amount will be added a proportionate share of the accrued interest in the Mobile escrow account.

[7] Due to the rebuttable presumptions of non-injury with respect to consignee agents and spot purchasers, applicants in these categories will *not* receive refunds based on the motor gasoline level-of-distribution injury presumptions if they fail to establish injury. *See* Proposed Decision, 50 FR 32274.

[8] Large purchasers of NGLs should supply appropriate market survey data. *See* National Helium Corp./Atlantic Richfield Co., 11 DOE ¶ 85,257 (1984).

D. Claims Based on Alleged Allocation Violations

Allocation claimants should furnish all of the information listed under "All Applicants" except for Item 5. For this item, allocation claimants should instead furnish information as to the circumstances under which the alleged Mobil obligation to supply arose, the volumes not offered to the applicant, and the injury suffered by the applicant as a result (e.g., lost profits due to inability to obtain substitute products, losses caused by purchasing higher-priced products, etc.). Allocation claimants should previously and contemporaneously have complained about the alleged allocation violation by filing a complaint with the DOE, a state agency, or a state or federal court. This previous complaint should be described in the application.

VI. Conclusion

In the foregoing determination we have reviewed the refund procedures that we tentatively adopted in our July 30, 1985 decision in light of the written comments we received during the 30-day comment period. We discussed all of the comments and made adjustments to our proposed methodology where warranted. We have concluded that we should adopt as final the first-stage procedures set forth in the present Decision and Order. We shall set May 1, 1986, as the deadline for filing applications for refund for a portion of the Mobil settlement fund, a date more than 90 days after the expected **Federal Register** publication of this Decision and Order. *See* 10 CFR 205.283(b).

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Mobil Oil Corporation pursuant to the consent order executed on April 19, 1984 may now be filed.

(2) All applications must be postmarked no later than May 1, 1986.

Dated: December 24, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

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APPENDIX A
APPLICATION FOR MOBIL REFUND--HEF-0508

1. Information on applicant at time of purchases:
   Name(s): _____
   Address: _____
   _____
   Type of applicant (retailer, end-user, jobber): _____

2. Information on contact person (who will receive refund made payable to applicant above unless specified otherwise):
   Name: _____
   Current Address: _____
   _____
   Telephone Number: ( ) _____

3. Information on person who prepared application (if different)
   Name: _____
   Address: _____
   _____
   Telephone Number: ( ) _____

4. Total gallonage for which refund requested (combined total of all schedules per Item 11): _____

5. Were you supplied by Mobil directly? ____ Yes ____ No. If yes, please provide information on sales representative in Item 6 and provide Mobil customer number here: _____

6. Information on applicant's supplier:
   Name: _____
   Address: _____
   _____
   Telephone Number: ( ) _____

7. FOR MOTOR GASOLINE CLAIMS ONLY:
   Do you elect the presumption method for calculating injury and your refund? ____ Yes ____ No. If not, please consult Decision for requirements. If yes, what level-of-distribution percentage do you claim? (Check one below.)

   Non-commission wholesalers
   ____ -- selling to retailer (35%)
   ____ -- selling to others (except to motorists) (45%)
   Retailers
   ____ -- supplied through wholesaler (20%)
   ____ -- supplied directly by Mobil (30%)
   Consumers
   ____ -- supplied through intermediate supplier(s) (60%)
   ____ -- supplied directly from Mobil (100%)

8. Was the product you bought Mobil-branded? ____ Yes ____ No. If not, please attach an explanation why you believe that the product came from Mobil.

9. If you were a reseller, were you at any time between 1973 and 1981 a consignee agent? ____ Yes ____ No. If yes, when were you a consignee agent? From _____ to _____.

10. Have you been a party or are you currently a party in a DOE enforcement action or private § 210 action? ____ Yes ____ No. If yes, please attach an explanation (see Decision for details).

11. On attached schedule please provide purchase volumes of Mobil products for each month of the period for which you claim a refund. Do not include any purchases of products after their date of decontrol (see below). Attach a separate schedule for each product on which you base your claim. You may, however, combine volumes of all grades of motor gasoline on a single schedule. Volumes of products may be included if they were purchased after March 6, 1973 and before:

Item	Decontrolled
Motor gasoline and NGLs	January 27, 1981
Butane and natural gasoline	January 1, 1980
Aviation gas and jet fuel	March 1, 1979
Naphthas and naphtha-based jet fuel	September 1, 1976
Middle distillates	July 1, 1976
Residual fuel and related products	June 1, 1976

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure.

_____ Date

_____ Signature of Applicant

_____ Title

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MONTHLY PURCHASE VOLUMES FOR _____ (product)

Name of Applicant: _____

	1973	1974	1975	1976	1977	1978	1979	1980	1981
January	*******	_____	_____	_____	_____	_____	_____	_____	_____
February	*******	_____	_____	_____	_____	_____	_____	_____	*******
March	_____	_____	_____	_____	_____	_____	_____	_____	*******
April	_____	_____	_____	_____	_____	_____	_____	_____	*******
May	_____	_____	_____	_____	_____	_____	_____	_____	*******
June	_____	_____	_____	_____	_____	_____	_____	_____	*******
July	_____	_____	_____	_____	_____	_____	_____	_____	*******
August	_____	_____	_____	_____	_____	_____	_____	_____	*******
September	_____	_____	_____	_____	_____	_____	_____	_____	*******
October	_____	_____	_____	_____	_____	_____	_____	_____	*******
November	_____	_____	_____	_____	_____	_____	_____	_____	*******
December	_____	_____	_____	_____	_____	_____	_____	_____	*******
Yearly Total	_____	_____	_____	_____	_____	_____	_____	_____	_____

GRAND TOTAL FOR THIS PRODUCT: _____

[FR Doc. 85-30927 Filed 12-30-85; 8:45 am]
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H.R. 2391 / Pub. L. 99–211

To authorize the Administrator of General Services to collect additional contributions of money provided to him by private individuals or organizations for the Nancy Hanks Center. (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 2542 / Pub. L. 99–212

Designating the building located at 125 South State Street, Salt Lake City, Utah, as the "Wallace F. Bennett Federal Building". (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 2698 / Pub. L. 99–213

To designate the United States Courthouse in Tucson, Arizona, as the "James A. Walsh United States Courthouse". (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 2903 / Pub. L. 99–214

To designate the Federal Building and United States Post Office located in Philadelphia, Pennsylvania, as the "Robert N.C. Nix, Sr., Federal Building and United States Post Office". (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 3003 / Pub. L. 99–215

To authorize the Secretary of the Interior to convey certain land located in the State of Maryland to the Maryland-National Capital Park and Planning Commission. (Dec. 26, 1985; 3 pages) Price: $1.00

H.R. 3718 / Pub. L. 99–216

District of Columbia Revenue Bond Act of 1985. (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 3837 / Pub. L. 99–217

Sentencing Reform Amendments Act of 1985 (Dec. 26, 1985; 1 page) Price: $1.00

H.R. 3914 / Pub. L. 99–218

To preserve the authority of the Supreme Court Police to provide protective services for Justices and Court personnel. (Dec. 26, 1985; 1 page) Price: $1.00

H.J. Res. 495 / Pub. L. 99–219

To provide for the temporary extension of certain programs relating to housing and community development, and for other purposes. (Dec. 26, 1985; 3 pages) Price: $1.00

S.J. Res. 189 / Pub. L. 99–220

Designating the week beginning January 12, 1986, as "National Fetal Alcohol Syndrome Awareness Week". (Dec. 26, 1985; 2 pages) Price: $1.00

S. 1728 / Pub. L. 99–221

Cherokee Leasing Act (Dec. 26, 1985; 2 pages) Price: $1.00

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LIST OF ACTS REQUIRING PUBLICATION IN THE FEDERAL REGISTER, 1984

Additions to Table III, February 17, 1984 through November 8, 1984

This table lists the subject matter, public law number, and citations to the U.S. Statutes at Large and U.S. Code for those acts of the second session of the 98th Congress which require Federal agencies to publish documents in the **Federal Register.** Table III appears in the CFR Index and Finding Aids volume revised as of January 1, 1986.

Description of Act	*Citation*
Paiute Indian Tribe of UT, lands in trust	Public Law 98–219; 98 Stat. 11; 25 U.S.C. 766 note.
Shipping Act of 1984	Public Law 98–237; 98 Stat. 72; 46 U.S.C. app. 1705.
Pueblo de Cochiti, lands in trust	Public Law 98–344; 98 Stat. 315.
Bon Secour National Wildlife Refuge, additional lands	Public Law 98–347; 98 Stat. 321.
Deficit Reduction Act of 1984	Public Law 98–369; 98 Stat. 514; 26 U.S.C. 168; 98 Stat. 524; 26 U.S.C. 168; 98 Stat. 925; 26 U.S.C. 103 note; 98 Stat. 1080; 42 U.S.C. 1395ww; 98 Stat. 1087; 42 U.S.C. 1395h, 1395u.
Christopher Columbus Quincentenary Jubilee Commission	Public Law 98–375; 98 Stat. 1262.
Education for Economic Security Act	Public Law 98–377; 98 Stat. 1282; 20 U.S.C. 3972.
Hoover Power Plant Act of 1984	Public Law 98–381; 98 Stat. 1337; 43 U.S.C. 619a.
Illinois and Michigan Canal National Heritage Corridor Act of 1984	Public Law 98–398; 98 Stat. 1457; 16 U.S.C. 461 note.
Box Elder County, UT, land conveyance	Public Law 98–401; 98 Stat. 1477; 25 U.S.C. 307 note.
Zuni Indian Tribe, land conveyance	Public Law 98–408; 98 Stat. 1534.
Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Act, 1985.	Public Law 98–411; 98 Stat. 1556.
Drug Price Competition and Patent Term Restoration Act of 1984	Public Law 98–417; 98 Stat. 1592; 21 U.S.C. 355; 98 Stat. 1599, 1600; 35 U.S.C. 156.
California Wilderness Act of 1984	Public Law 98–425; 98 Stat. 1621, 1622; 16 U.S.C. 1131 note; 98 Stat. 1627; 98 Stat. 1632; 16 U.S.C. 543.
Florida Wilderness Act of 1983	Public Law 98–430; 98 Stat. 1667.
Older Americans Act of 1984	Public Law 98–459; 98 Stat. 1770; 42 U.S.C. 3016.
National Cooperative Research Act of 1984	Public Law 98–462; 98 Stat. 1818; 15 U.S.C. 4305.
Continuing appropriations for fiscal year 1985, and for other purposes	Public Law 98–473; 98 Stat. 1873; 98 Stat. 1874; 98 Stat. 2084; 42 U.S.C. 3746; 98 Stat. 2087; 42 U.S.C. 3763; 98 Stat. 2116; 42 U.S.C. 5635; 98 Stat. 2129; 42 U.S.C. 5776.
Federal Timber Contract Payment Modification Act	Public Law 98–478; 98 Stat. 2215; 16 U.S.C. 618.
Lincoln County, NV, land withdrawals	Public Law 98–485; 98 Stat. 2262.
National Archives and Records Administration Act of 1984	Public Law 98–497; 98 Stat. 2294; 44 U.S.C. 3303a.
Marine Sanctuaries Amendments of 1984	Public Law 98–498; 98 Stat. 2299, 2300; 16 U.S.C. 1434.
Old Age Assistance Claims Settlement Act	Public Law 98–500; 98 Stat. 2317, 2318; 25 U.S.C. 2303.
Education Amendments of 1984	Public Law 98–511; 98 Stat. 2392; 25 U.S.C. 2001.
Department of Defense Authorization Act, 1985	Public Law 98–525; 98 Stat. 2590; 10 U.S.C. 2303a; 98 Stat. 2656; 22 U.S.C. 4605.
Veterans' Dioxin and Radiation Exposure Compensation Standards Act	Public Law 98–542; 98 Stat. 2728, 2729; 38 U.S.C. 354 note; 98 Stat. 2732; 38 U.S.C. 219 note.
Motor Vehicle Theft Law Enforcement Act of 1984	Public Law 98–547; 98 Stat. 2759; 15 U.S.C. 2024.
Wetlands Loan Act, extension	Public Law 98–548; 98 Stat. 2775; 98 Stat. 2777.
Motor Carrier Safety Act of 1984	Public Law 98–554; 98 Stat. 2835; 98 Stat. 2840; 49 U.S.C. app. 2508; 98 Stat. 2850; 49 U.S.C. 10530.
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Trade and Tariff Act of 1984	Public Law 98–573; 98 Stat. 3004; 19 U.S.C. 2412; 98 Stat. 3005; 19 U.S.C. 2413; 98 Stat. 3021; 98 Stat. 3022; 19 U.S.C. 2464.
Small Business and Federal Procurement Competition Enhancement Act of 1984.	Public Law 98–577; 98 Stat. 3076; 41 U.S.C. 418b.
Wyandotte Tribe of Oklahoma, use and distribution of funds	Public Law 98–602; 98 Stat. 3150.
Atlantic Striped Bass Conservation Act	Public Law 98–613; 98 Stat. 3190; 16 U.S.C. 1851 note.
The Hazardous and Solid Waste Amendments of 1984	Public Law 98–616; 98 Stat. 3232; 42 U.S.C. 6924; 98 Stat. 3251; 42 U.S.C. 6921.
Trademark Clarification Act of 1984	Public Law 98–620; 98 Stat. 3337; 42 U.S.C. 10701; 98 Stat. 3356; 17 U.S.C. 914.
Antarctic Marine Living Resources Convention Act of 1984	Public Law 98–623; 98 Stat. 3400; 16 U.S.C. 2434.

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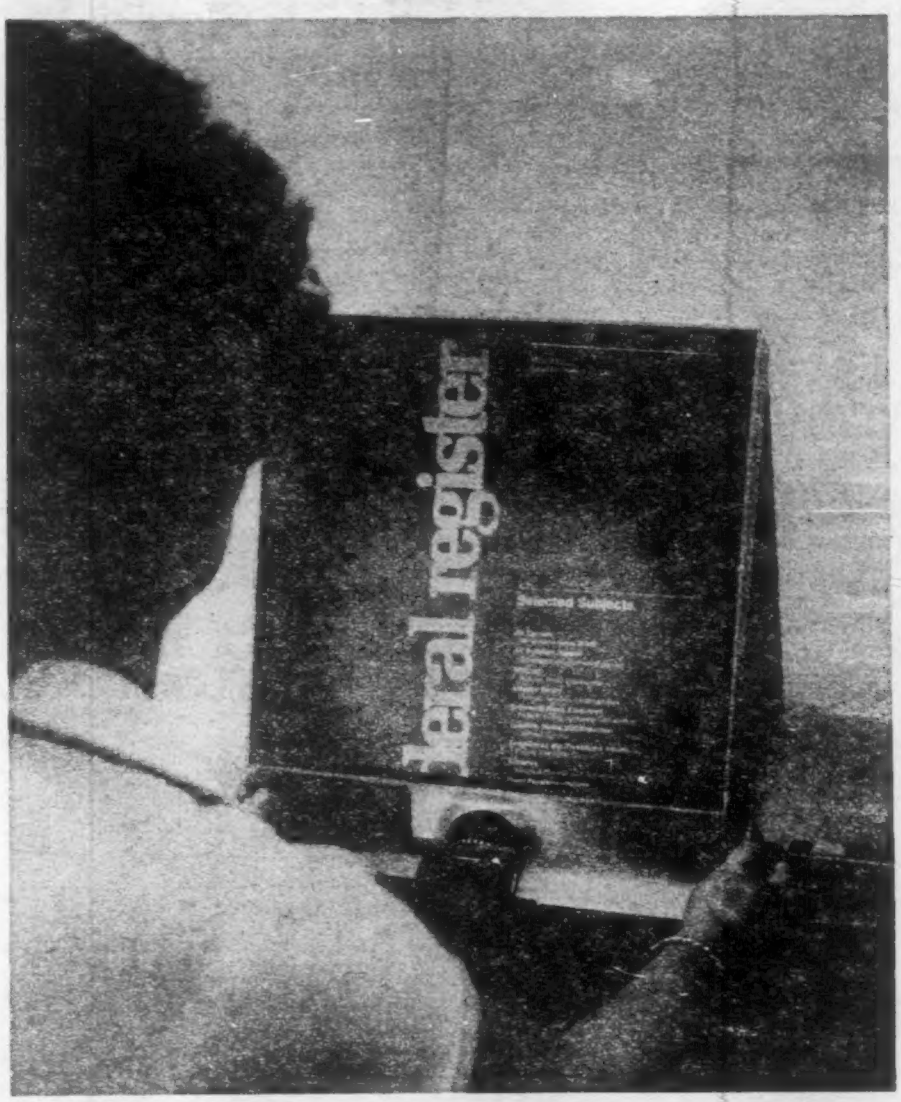
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